

original

NO. 36262-7 AND 35660-1-II
CONSOLIDATED WITH 34335-5-II

COURT OF APPEALS, DIVISION TWO
DIVISION TWO

STATE OF WASHINGTON, APPELLEE

V

CORY LAMONT THOMAS, APPELLANT / PETITIONER

ON APPEAL FROM THE SUPERIOR COURT
OF WASHINGTON FOR PIERCE COUNTY

HONORABLE KATHRYN J. NELSON
HONORABLE JAMES ORLANDO
HONORABLE LISA WORSWICK
JUDGE SERGIO ARMIJO

PETITIONERS RESPONSE TO RESPONDENTS RESPONSE BRIEF

CORY LAMONT THOMAS
1313 NORTH 13TH AVENUE
WALLA WALLA, WASHINGTON 99362

ISSUES PERTAINING TO RESPONDENTS BRIEF

36262-7-II [Cr.R. 7.8 Transferred to PRP]

Be it duly noted that petitioner filed a CrR 7.8 motion in the superior court. Said petition was transferred to this court as a Personal Restraint Petition, inherent in said petition petitioner effectively raised (9) enumerated assignments of error. The states response brief fails to contest one single enumerated assignment of error, notwithstanding the fact that petitioners petition raises "effectively" questions of both State and Federal applications. Petitioner is on appeal, and said PRP was consolidated with that appeal. The state had the duty and obligation to respond to the personal restraint petition, as such that failure to respond inherently entitling petitioner to the relief requested. "A respondents failure to respond to a particular assignment of error constitutes a default on that issue and the appellant will be granted the requested relief if a prima facie showing of error is made on appeal" Bolt v Hurn 40 Wn. App. 54(1985)

See also a recent 2005 holding "A respondent's failure to respond to an argument made by the appellant constitutes a concession on the point" State v Ward 125 Wn. App. 138(2005).

Petitioner respectfully MOVES this court to therefore grant the relief requested in the PRP, due to the states concession of said enumerated and articulated assignments of error, specifically (9).

Appellant only proceeds forward with this response so as to have properly responded to the states response brief.

1. WHERE PETITIONER RAISED NINE ISSUES FOR REVIEW, IN SUPPORT OF VACATION OF A SECOND COUNT, AND THE PETITIONER EFFECTIVELY AND PROPERLY RAISED THE ASSIGNMENTS OF ERROR, DOES THE STATE INHERENTLY CONCEDE THE ASSIGNMENT OF ERROR WHERE THEY FAIL TO RESPOND THEREWITH?
2. WHERE RESPONDENT FAILS TO RESPOND TO [GR1] PETITIONERS PLEA OF FORMER JEOPARDY, AND IT WAS PROPERLY AND EFFECTIVELY RAISED IN THE PRP, IS THIS COURT CALLED UPON TO DECIDE IF A PLEA OF FORMER JEOPARDY IS APPLICABLE?
3. WHERE RESPONDENT FAILS TO RESPOND TO [GR2] PETITIONERS ASSERTION THAT COUNT 1'S LESSER INCLUDED OFFENSE CONSTITUTES FOR THE PURPOSES OF DOUBLE JEOPARDY "THE SAME OFFENSE" AS THE MORE SERIOUS OFFENSE OF BURGLARY FIRST DEGREE, AND THE ISSUE WAS PROPERLY AND EFFECTIVELY RAISED IN THE PRP, IS THIS COURT CALLED UPON TO DECIDE IF FOR THE PURPOSES OF DOUBLE JEOPARDY ANALYSIS, GREATER AND LESSER INCLUDED OFFENSES ARE THE SAME OFFENSE?
4. WHERE RESPONDENT FAILS TO RESPOND TO [GR3] PETITIONERS ASSERTION THAT IN THE EVENT OF RETRIAL, RETRIAL WOULD BE LIMITED TO THE LESSER INCLUDED OFFENSE SOLELY, AND THE ISSUE WAS PROPERLY AND EFFECTIVELY RAISED IN THE PRP, IS THIS COURT CALLED UPON TO DECIDE IF RETRIAL, IF ANY, BE LIMITED TO THE LESSER INCLUDED OFFENSE?
5. WHERE RESPONDENT FAILS TO RESPOND TO [GR4] PETITIONERS ASSERTION THAT PURSUANT TO WPIC 4.11 WHERE THE JURY FINDS TWO DEGREES OF ONE AND THE SAME ALLEGED CRIME, PETITIONER CAN ONLY BE CONVICTED OF THE LESSER INCLUDED OFFENSE CONSISTENT WITH RCW 9A.04.100(2); AND RCW 10.58.020, AND THE ISSUE WAS PROPERLY AND EFFECTIVELY RAISED IS THIS COURT CALLED UPON TO DECIDE WHICH DEGREE CAN LAWFULLY STAND CONSISTENT WITH THE AFOREMENTIONED RCW'S AND WASHINGTON PATTERN JURY INSTRUCTIONS?
6. WHERE RESPONDENT FAILS TO RESPOND TO [GR5] PETITIONERS ASSERTION THAT THE STATE CANNOT OBTAIN MULTIPLE CONVICTIONS AND PUNISHMENTS FOR THE SAME ONE ALLEGED OFFENSE BY CREATING SUBSTANTIALLY IDENTICAL CRIMES DIFFERING ONLY IN NAMES, AND THE ISSUE WAS PROPERLY AND EFFECTIVELY RAISED IN THE PRP, IS THIS COURT CALLED UPON TO DECIDE THE MERITS ARTICULATED IN GROUND FIVE?
7. WHERE RESPONDENT FAILS TO RESPOND TO [GR6] PETITIONERS ASSERTION THAT ONCE ONE OF THE SEVERAL SENTENCES THAT WERE IMPOSED HAD BEEN COMPLETED THE PETITIONER COULD NOT BE MADE TO COMPLETE THE OTHER(S) AND THE ISSUE WAS PROPERLY AND EFFECTIVELY RAISED IN THE PRP IS THIS COURT CALLED UPON TO DECIDE THE MERITS ARTICULATED IN GROUND SIX?
8. WHERE THE RESPONDENT FAILS TO RESPOND TO [GR7] PETITIONERS ASSERTION THAT THE JURY WAS ERRONEOUSLY INSTRUCTED AND THE ISSUE WAS PROPERLY AND EFFECTIVELY RAISED IN THE PRP, IS THIS COURT CALLED UPON TO DECIDE IF THE JURY WAS INCORRECTLY INSTRUCTED? AND IF BEING ERRONEOUSLY INSTRUCTED CONTRIBUTED TO THE INCONSISTENT VERDICTS?

- 9(a) WHERE RESPONDENT FAILS TO RESPOND TO [GR8] PETITIONERS ASSERTION THAT (1) PURSUANT TO RCW 10.43.020 WHERE PETITIONER WAS CONVICTED OF A LESSER INCLUDED OFFENSE THAT IS EMBRACED BY A HIGHER OFFENSE, THAT THE LESSER EMBRACED OFFENSE CONVICTION IS A BAR TO ANOTHER INDICTMENT OR INFORMATION CONTAINING THE EMBRACED OFFENSE, AND THE ISSUE WAS PROPERLY AND EFFECTIVELY RAISED IN THE PRP, IS THIS COURT CALLED UPON TO DECIDE IF THE LESSER EMBRACED OFFENSE IS A BAR TO ANOTHER INDICTMENT OR INFORMATION CONTAINING THE EMBRACED OFFENSE?
- 9(b) WHERE RESPONDENT FAILS TO RESPOND TO [GR8] PETITIONERS ASSERTION THAT (2) PURSUANT TO RCW 10.43.050 WHERE PETITIONER WAS CONVICTED AND AQUITTED IN COUNT I, WHICH CONSISTED OF DIFFERENT DEGREES, THAT THE CONVICTION AND AQUITTAL IS A BAR TO ANOTHER INDICTMENT OR INFORMATION FOR THE SAME EMBRACED CRIME, AND THE ISSUE WAS PROPERLY AND EFFECTIVELY RAISED IN THE PRP, IS THIS COURT CALLED UPON TO DECIDE IF THE AQUITTAL AND/OR CONVICTION PURSUANT TO .050 IS A BAR TO A SUBSEQUENT PROSECUTION FOR THE EMBRACED OFFENSE?
10. WHERE RESPONDENT FAILS TO RESPOND TO [GR9] PETITIONERS ASSERTION THAT (1) RCW 9A.52.050 "AS APPLIED TO PETITIONER IS UNCONSTITUTIONAL" (2) THE STATUTE ITSELF IS AMBIGUOUS WITH RESPECT TO "CLEAR LEGISLATIVE INTENT" (3) RCW 9A.52.050'S LACK OF DEFINITION OF WHAT CONSTITUTES OR SUFFICES TO BEING "ANY OTHER CRIME" IS AMBIGUOUS AS RELATED TO THE ASSAULT INHERENT IN THE BURGLARY FIRST DEGREE STATUTE (4) EQUAL PROTECTION AND EQUAL APPLICATION VIOLATIONS OCCUR BY OPERATION OF RCW 9A.52.050 "IN CERTAIN CIRCUMSTANCES SUCH AS PETITIONERS" (6) EVERY FLORIDA APPELLATE COURT AS WELL AS THE 11TH CIRCUIT COURT OF APPEALS ON THE ISSUE OF BURGLARY FIRST DEGREE WITH AN ASSAULT AND A SEPARATE ASSAULT CONVICTION FOR THE SAME ASSAULT USED TO ELEVATE BURGLARY TO BURGLARY FIRST DEGREE IS CONSISTENT WITH DIVISION ONE HOLDING ORTIZ; SINGLETARY (7) THE SYNONYMY OF WASHINGTON'S BURGLARY FIRST DEGREE STATUTE AS COMPARED TO FLORIDA'S BURGLARY FIRST DEGREE STATUTE, AND (8) THE SYNONYMY OF SINGLETARY (11TH CIR) vs ORTIZ (DIV 1). WHERE ALL ARE AT QUESTION IN PETITIONERS CASE IN GROUND NINE, AND THE ISSUES WERE ALL PROPERLY AND EFFECTIVELY RAISED, IS THIS COURT CALLED UPON TO DECIDE THE ISSUES AND MERITS THEREON?
11. WHERE RESPONDENT FAILS TO RESPOND TO PETITIONER "SUPPLEMENT TO PLEA OF FORMER JEOPARDY" WHICH WAS PROPERLY FILED IN THE TRIAL AND APPELLATE COURTS, IS THIS COURT CALLED UPON TO DECIDE THE ARGUMENTS ADVANCED IN THE "SUPPLEMENT TO PLEA..."?
12. WHERE RESPONDENT FAILED TO RESPOND TO PETITIONERS "ADDITIONAL SUPPLEMENT TO PLEA OF FORMER JEOPARDY" WHICH WAS PROPERLY FILED IN THE TRIAL AND APPELLATE COURTS, IS THIS COURT CALLED UPON TO DECIDE THE ARGUMENTS ADVANCED IN PETITIONERS "ADDITIONAL SUPPLEMENT..."?
13. WHERE ALL OF THE AFOREMENTIONED INVOLVE QUESTIONS OF FEDERAL AND STATE APPLICATIONS AND THE STATE FAILED TO RESPOND IS THIS COURT CALLED UPON TO DECIDE THE FEDERAL AND STATE ARGUMENTS ADVANCED?

[CrR 7.8 Motion Transferred to PRP]

1. WHERE RESPONDENT FAILED TO RESPOND TO PETITIONERS ASSERTION OF MISAPPLICATION OF COUNTY JAIL TIME RESULTING IN AN UNLAWFUL RESTRAINT [GCT] THAT WAS PROPERLY FILED IN THE TRIAL AND APPELLATE COURTS, IS THIS COURT CALLED UPON TO DECIDE THE ISSUE OF COUNTY JAIL AWARD OF "GCT" GOOD CONDUCT TIME?

2. WHERE RESPONDENT FAILED TO RESPOND TO PETITIONERS ASSERTION OF THE UNCONSTITUTIONAL IMPOSITION OF AN EXCEPTIONAL SENTENCE AND PETITIONER PROPERLY AND EFFECTIVELY RAISED IN THE PRP, FOUR GROUNDS CONSTITUTING THE UNCONSTITUTIONALITY, IS THIS COURT CALLED UPON TO DECIDE THOSE FOUR ARGUMENTS? SPECIFICALLY:
 - (1) IF "CRIMINAL HISTORY ALONE" IS SUFFICIENT FOR AN EXCEPTIONAL SENTENCE IMPOSITION?
 - (2) IF THE FACT OF [a] "A PRIOR CONVICTION" IS THE SAME FACT AS [b] " A SENTENCE BEING CLEARLY TOO LENIENT "?
 - (3) WHERE A CLEARLY TOO LENIENT FACT IS NOT THE SAME FACT OF A PRIOR CONVICTION, AND ABSENT A JURY DETERMINATION, WAIVER, OR STIPULATION, DID THE COURT ERR IN "FINDING A FACT OTHER THAN A PRIOR CONVICTION"?
 - (4) WHERE OUR SUPREME COURT HAS HELD THAT (i) PRIOR CONVICTIONS ALONE CAN NEVER BE ENOUGH TO WARRANT AN EXCEPTIONAL SENTENCE, AND (ii) PER SE, THERE MUST BE TWO FACTS FOUND TO SUPPORT A CONCLUSION OF A "TOO LENIENT SENTENCE", DID THE COURT ERR IN (a) RELYING ON PRIOR CONVICTIONS ALONE? AND (b) DID THE COURT ERR IN FAILING TO MAKE THE TWO FINDINGS THAT (i) THE EGREGIOUS EFFECT OF DEFENDANTS MULTIPLE OFFENSES, AND (ii) THE LEVEL OF CULPABILITY RESULTING FROM THE MULTIPLE OFFENSE POLICY.
 WHERE THE COURT DID NOT MAKE THESE TWO ADDITIONAL FINDINGS IN CONCLUDING THE SENTENCE WAS "CLEARLY TOO LENIENT" DID ERROR OCCUR?
 - (5) INsofar AS PETITIONER HAS COMPLETED TRIAL AND THE STATES SOLE AGGRAVATOR (9.94A.535(2)(j)/(2)(b)) WAS PREDICATED ON CRIMINAL HISTORY ALONE AND OUR COURTS HAVE CONCLUDED THAT CRIMINAL HISTORY ALONE CAN NEVER BE ENOUGH TO SUPPORT AN EXCEPTIONAL SENTENCE, IS THE STATE NOW FORECLOSED FROM SEEKING AN EXCEPTIONAL SENTENCE DUE TO (i)THE INSUFFICIENCY OF RELIANCE ON CRIMINAL HISTORY ALONE, AND (ii) THAT INsofar AS PETITIONER HAS COMPLETED HIS TRIAL, IN SATISFYING DUE PROCESS "NOTICE PRIOR TO TRIAL" PETITIONER ENJOYS THE RIGHT TO NOTICE PRIOR TO TRIAL CONSEQUENTLY WHERE TRIAL HAS CONCLUDED AND THE ONLY AGGRAVATOR WAS INSUFFICIENT, THE STATE IS PRECLUDED FROM ANY SENTENCE OTHER THAN STANDARD RANGE ON REMAND?
 - (6) WHERE THE STATES SOLE RELIANCE WAS ON CRIMINAL HISTORY ALONE AND THAT HELD INSUFFICIENT "ALONE" IN THE EVENT OF REMAND AND REVERSAL, WOULD IT CONSTITUTE PROSECUTORIAL MISCONDUCT AND VINDICTIVE PROSECUTION TO AMEND THE INFORMATION ON REMAND SO AS TO ADD AN ADDITIONAL AGGRAVATOR SHOULD AN ALLEGED AGGRAVATOR EXIST?

ARGUMENT IN REBUTTAL TO RESPONDENTS BRIEF

Without plagiarizing my counsels opening brief, the prosecutions response is in word "appalling".

Notwithstanding, in spite of the fact that petitioner effectively raised 9+ grounds in my petition that is on review, the state failed to respond to petitioner arguments, as such petitioner has addressed that at this outset.

However the State in what could only be conceived as a "smoke screen" attempts yet again on appeal to "put the cart before the horse".

The state asserted an astonishing (2) cases, for proposition in support their position, appellant will outrightly assert the position(s) being advanced are not as simple as a Womac or Weber situation, as my advesary so cleverly attempt to simplify it as. If the holdings over the years by our courts that the respondents failure to responds constitutes an concession, or the petitioners assertion that the states failure to respond constitutes an acquiescence on behalf of the state, Petitioner nonetheless furthers;

Petitioner was not able to argue Womac as the current facility does not have that advance sheet.

~~If~~ Womac is in essence a Weber argument, petitioner flatly rejects those case propositions as fruitless, moot, and inapplicable to the circumstances before this court.

The issues in this case do not hinge entirely on what conviction is to be vacated, and that being the "lesser" offense or the offense "carrying the least amount of time".

WPIC 4.11

Notwithstanding the states attempt to introduce their "red Herring" The case at bar hinges heavily upon application and misapplication of WPIC 4.11, As raised in the PRP and not responded to by the state, petitioner maintains that my jury failed to properly apply the relevant wpic and or their instruct number 20 which provides:

WHEN A CRIME HAS BEEN PROVEN AGAINST A PERSON AND
THERE EXISTS A REASONBLE DOUBT AS TO WHICH OF THE
TWO OR MORE DEGREE OR CRIMES THAT PERSON IS GUILTY
HE OR SHE **SHALL** BE CONVICTED ONLY OF THE LOWEST
DEGREE OR CRIME

As is apparent, my jury failed to properly follow and or apply the WPIC as unambigiously drafted. The state although conceding double jeopardy violation, fails to respond to petitioners assertion that my jury misapplied the law.

As such Womac and Weber are not dispositive of the issue as to which conviction is to be vacated. WPIC 4.11 was provided at petitioners trial, petitioner therefore is not in a Weber or Womac situation, and this court should so hold.

The proper questions presented to this court, is in light of the instructions given, did the jury follow said instructions? The answer NO. Because petitioners jury misapplied or failed to apply a WPIC, we do not get to automatically jump to the issue of which convictions is to be vacated on "the principals of higher and lower grade, or more or less time to be served on such offenses at question" that futile attempt by the state undoubtedly "Places the Cart before the horse" at least in this limited aspect of Washington Pattern Jury Instructions.

This court nor the state can eradicate the fact that the jeopardy issue in this case hinges in part upon operation of this instruction.

And if reversal is not warranted based upon the aforementioned, then surely, reversal is still warranted under petitioners argument of trial counsel improperly instructing the jury leading to the inconsistent verdicts rendered. (see original Cr.R. 7.8/PRP)

Though Womac and Weber positions could arguably strengthen the states theory, Weber nor Womack advanced a argument based upon WPIC 4.11 or the many other grounds that petitioner is relying upon, as such the states argument must fail.

Petitioner feels no compulsion to belabor the WPIC 4.11 for I strongly believe the current records will suffice thereof.

In hindsight petitioner in COUNT I, was convicted of a lesser included offense, in COUNT II petitioner was convicted for the same alleged offense, and that being the single assault relied upon to prosecute Burglary First Degree

Should in petitioners case the jury (in count II alone) found both higher and lower degrees of assault, the states case propositions might have more weight, however the jury did not find the lesser included in Count II but found it instead in Count I, as a lesser to a more serious offense.

Inherently in the case at bar a balance has to be struck, as we are not at the states position, where we are is we have two convictions for two degree's of one alleged assault, the question is not which to vacate but what is a jury to do in such situation?

Since we cannot speculate as to why the jury found the way it did, objectively looking in, no matter how the cookie crumbles we have instructions that were to be followed and weren't.

In reality Count II is gone. Because had any of you learned judges sat on that panel, undoubtedly, you would not be reading this response because you would have more than likely not applied the WPIC's as instructed.

Assuming the state were candid in its interpretation of this WPIC argument, the state would at most, or at least, confer that reversal is necessary due to the error of not following the WPIC alone.

Dismissal is not only warranted with respect to Count II, but is mandated by the WPIC itself, further for the purposes of an opinion being rendered, petitioner asserts that in regards to WPIC 4.11 and its reasoning, we need not rest alone on the WPIC, petitioner further asserts that the conviction in Count II is violative of RCW 9A.04.100(2); as well as RCW 10.58.020.

Reversal and vacation is mandated on this ground.

FORMER JEOPARDY [GR1]

Again in recessitaion, Count I is not being appealed and is therefore final. Based on the arguments advanced on behalf and in support of Count I, this court should opine that Jeopardy has attached and terminated with respect to that final, lawful, conviction.

[GR2] GROUND TWO SAME OFFENSE FOR DOUBLE JEOPARDY PURPOSES

Based on the previous arguments advanced in the PRP, this court should opine that the Assult Fourth degree and Burglary First degree are the same offenses for the purposes of double jeopardy.

RETRIAL LIMITED TO LESSER INCLUDED [GR3]

Based on the arguments advanced in support of retrial limited to the lesser included, this court should opine that retrial is limited to the lesser included offense consistent with the arguments in ground three, as well as RCW 10.43.020 and RCW 10.43.050.

WPIC 4.11 ERROR [GR4]

See above detailed as well as PRP

SUBSTANTIALLY IDENTICAL CRIMES [GR5]

This court should hold that the crimes are substantially the same offense differing only in names.

COMPLETED SENTENCES [GR6]

Based on the arguments advanced in the PRP, this court should hold that where the petitioner has completed a portion of the sentence that could have been lawfully imposed, he could be required to serve no part of the other.

RCW 10.43.020 AND RCW 10.43.050 [GR7]

Based on the argument advanced in the PRP the court should opine that the state is foreclosed from retrying any offense that was subsumed in the more serious offense of Burglary First degree.

ERRONEOUSLY INSTRUCTED JURY [GR 8]

Based on the argument advanced in the PRP this court should opine that the jury was erroneously instructed and therefore that erroneous instruction contributed to the inconsistent verdicts.

CONSTITUTIONALITY OF RCW 9A.52.050 [GR9]

Based on the arguments advanced in the PRP this court should hold that

- (1) RCW 9A.52.050 was unconstitutionally applied to petitioner
- (2) 9A.52.050 is ambiguous as to "clear legislative intent"
- (3) 9A.52.050 is ambiguous as to what "any other crime constitutes" as it relates to Burglary one, with an assault subsumed within
- (4) Equal protection is violated in petitioners case by operation of RCW 9A.52.050 in circumstances such as petitioners
- (5) Washingtons previous holdings, with the exception to Ortiz do not meet Ortiz or appellants circumstances.
- (6) The 11th circuit case provided clearly and squarely purports petitioners case
- (7) That the Florida and Washington Burglary are synonymous in such cases similar to petitioners
- (8) That the Ortiz court and the Singletary court hold the same and sound conclusion(s)

35660-1-II [CR.R 7.8 MOTION TRANSFERRED TO PRP]

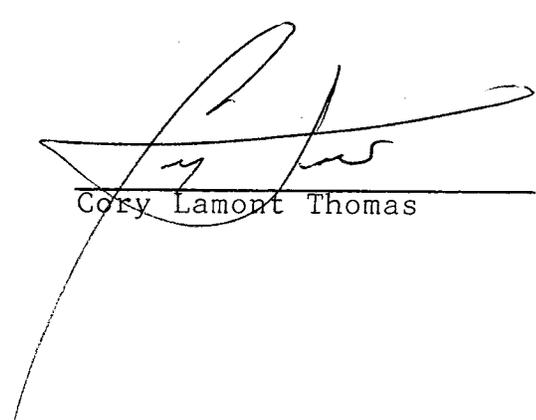
Based on the argument advanced in the PRP this court should opine that the county jail made an misapplication in regards to the GCT "Good Conduct Time" awarded.

Additionally based on the arguments previously advanced this court should opine that petitioner exceptional sentence was improperly imposed contrarry to petitioner 6th amendment rights articualted in PRP, and the court should further opine that the state is foreclosed from seeking an exceptional on remand due to the insufficiency of aggravators to support such imposition of an exceptional sentence, and that remand for standard range imposition is appropriate.

WHEREFORE based on the aforementioned arguments and each and every ground raised in the PRP Count II "assault two" must be vacated, or in the alternative, at the least remand for a new trial based on the aforemention ground enumerated in the PRP and herein, as well as the multitude of errors raised in petitioners SAG "RAP 10.10"

ADDITIONALLY petitioner respectfully request that a remand order incorporate the language ordering petitioner remand to a department other than Department #9, petitioners original trial judeg.

EXECUTED this 17 day of July, 2007


Cory Lamont Thomas

FURTHER AFFIANT SAYETH NAUGHT

PER SE RESPONSES

1. Respondents Brief at pp.4 provides:
"Especially over her tailbone" and
"Lavisha got to the bathroom and tried to close the door"

Though relatively minor in the overall view of all errors, the states assertions above are nowhere supported by the record.

2. Respondents Brief at pp.4-5 provides:
"Lavisha was screaming and defendant knocked her up against the wall"

Likewise, this is nowhere supported by the record.

3. Respondents Brief at pp.5 provides:
"defendant again knocked lavisha to the ground"

Again this is not supported by the record, at this point the state was asking a question to which the response was

"Yeah, I dont know how she got to the ground"

4. And lastly in an effort to bolster its case, the state comments:
"However, neither the emergency room physician nor the polise observed any sihns of intoxication" pp.7

As pointed out in petitioners SAG, at 7RP201 it is reflected

"Lavisha told the doctor that she does not drink" and the doctor wrote in his report "Patient does not drink"
But compare

Both Lavisha and Danielle testified that they went out the night beofre and both had numerous drinks. see 7RP87-91, 136

Appellant only points out these minor inconsistencies, so as to have set the record straight, based on the record.

IN THE COURT OF APPEALS
IN AND FOR THE STATE OF WASHINGTON
DIVISION TWO

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STATE OF WASHINGTON
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STATE OF WASHINGTON)
Respondent)
v)
CORY LAMONT THOMAS)
Appellant)

NO. 36262-7-II & 35660-1-II
Consolidated
AFFIDAVIT OF SERVICE
BY MAILING

I, CORY LAMONT THOMAS, being first sworn upon oath, do hereby certify that I have served the following documents:

- Response to States Response Brief;
AND NOTICE OF FILINGS IN (1) HABEAS CORPUS AD SUBJICIENDUM OF CORY THOMAS
(2) 34335-5-II REQUEST FOR STATE TO RESPOND
(3) 36460-3-II MOTION TO MODIFY COMMISSIONERS RULING

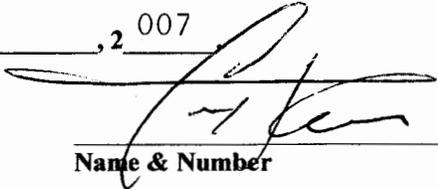
Upon:

OFFICE OF THE PIERCE COUNTY PROSECUTOR
946 COUNTY CITY BUILDING
930 TACOMA AVENUE SOUTH ROOM 946
TACOMA, WASHINGTON 98402

By placing same in the United States mail at:

Washington State Penitentiary at Walla Walla, WA 99362
WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA. 99362

On this 17 day of JULY, 2007


Name & Number

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.