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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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NO. 35023-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

KATHLEEN MARIE ALLEN,

Appellant.

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

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III. STATEMENT OF THE CASE

A. Procedural History. On March 29, 2006, the Clark County prosecuting attorney filed an information charging Kathleen Allen with one count of residential burglary (count I) and two counts of burglary in the second degree (counts II-III).¹ CP 1-2. On March 31, Ms. Allen appeared with her counsel for arraignment and entered a not guilty plea. 1RP² 3-4. The court set a May 15, trial date. 1RP 3-4.

¹ The information actually lists four counts but Ms. Allen's name is only listed in Counts I-III. CP 1-2.

² "1RP" refers to the first of six volumes of verbatim prepared for this appeal. Hereafter, the specific volume number where the specified page is found shall appear before the "RP".

On May 5, the court moved the May 15 trial to May 17 to accommodate defense counsel's schedule and to accommodate a severance from the other defendants named in the information. 2RP 9-14. Ms. Allen did not object to the severance. 2RP 9-14.

On May 10, the case was back before the court on the State's motion to continue the trial date. 3RP 22-23. An affidavit supported the continuance motion: Vancouver police detective Ringo, the lead investigator, was scheduled for SWAT training on the Oregon Coast from May 15-18 and would not be available for testimony until May 22. CP 3-4. Defense counsel did not object to a short continuance. 3RP 23. Ms. Allen did object to the continuance and asked for new counsel based upon her lack of communication with her existing counsel. 3RP 24-25, 28. The court declined to relieve counsel. 3RP 25. Ms. Allen declined to sign a speedy trial waiver. 3RP 29. The court found good cause for a continuance and reset the trial date to June 19. The State successfully argued that the time needed for resetting the trial date was an excluded period in the speedy trial calculations. 3RP 27.³

³ See CrR 3.3, Time for Trial.

There is no record of the defense – either counsel or Ms. Allen – filing a written waiver to the resetting of the trial to June 19.⁴

On June 19, the court moved the trial date to June 21 because it was set to hear two trials on the 19th. 4RP 32. Ms. Allen again complained about the continuance. 4RP 33.

Before the start of the June 21 jury trial, the State filed an amended information reducing the number of charges from three counts to one count. 5RP 36. The one count, charging residential burglary in violation of RCW 9A.52.025(1), was identical to count I in the original information. CP 7. The court, Judge Nichols, allowed the amendment. 5RP 37. The trial took place in one day. 5RP. Before taking trial testimony, the court heard a CrR 3.5 hearing. Detective Ringo was the only witness. 5RP 39-62. Ms. Allen did not testify; she was advised of her right to do so. 5RP 57. The court found no disputed facts and that Ms. Allen's statements to Detective Ringo were voluntarily given after she was advised of her Miranda⁵ rights. 5RP 61-62. CrR 3.5 Findings of Fact and Conclusions were later entered on August 1.⁶

⁴ This is based upon my review of the Clark County Superior Court file.

⁵ Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 80 S. Ct. 1602 (1966)

⁶ See State's Supplemental Designation of Clerk's Papers

At trial, the State presented testimony from four witnesses to include the testimony of her co-defendant and son, Aaron Allen. CP 1-2; 5RP 86. Ms. Allen did not testify and offered no defense witnesses' testimony. RP 128.

Ms. Allen did not object to the giving or failure to give any of the jury instructions. 5RP 132. See Supplemental Designation of Clerk's Papers for Defendant's Proposed Jury Instructions.

The jury found Ms. Allen guilty of residential burglary as charged. CP 25; 5RP 158.

At the June 22 sentencing, Ms. Allen exercised her right to allocution. She received 16 months on a standard range of 13-17 months. 6RP 166; CP 28. Her sentence did not include community custody. CP 31. She filed a notice of appeal on June 22.

B. Factual History. On March 22, 2006, Gail Millmaker lived in a duplex in Vancouver, Washington. 5RP 70. She had lived there for about seven years. 5RP 72. She knew Kathleen Allen through the Friends of the Carpenter Church. 5RP 72. Ms. Allen had never been to Ms. Millmaker's home and was not invited there on March 22.

On March 22, Ms. Millmaker discovered that her home had been entered in her absence and certain items taken without her

permission: \$250 in Safeway cards, \$1,500 in cash, \$160 in change, and some phone cards. 5RP 72-76. The entry was made by forcing the front door. 5RP 73, 80-81. The responding police officer, Vancouver police officer Brent Donaldson, opined that the pry marks on the door were caused by something like a crowbar. 5RP 78-79, 85.

The Vancouver police subsequently arrested Ms. Allen's son, Aaron Allen, for burglarizing Ms. Millmaker's home. 5RP 86-88, 112-13. Aaron Allen later pled guilty to the burglary. 5RP 88. He testified against his mother. He had heard through another person, Ron Thorsen, that Ms. Millmaker was usually gone from 12:30 p.m. to 3:30 p.m. and that she had Safeway cards and possibly money in a cabinet in her home's bead room. 5RP 91-92. He and his uncle and his mother took a bus to Ms. Millmaker's residence. 5RP 89, 93. Ms. Allen went to the front door with her son. 5RP 94. He used a crowbar to pop the door open. 5RP 94. At some point, Ms. Allen joined her son in Ms. Millmaker's bead room. 5RP 97. He handed the Safeway cards to his mother and she put them in her pocket. 5RP 98-99, 105. A couple of days later, she gave the Safeway cards to Ron Thorsen. 5RP 102, 105.

After her arrest, Ms. Allen spoke with Vancouver Detective John Ringo. After initially denying involvement in the burglary, Ms. Allen admitted entering the home and taking Ms. Millmaker's Safeway cards without her permission. 5RP 113. She entered after her son forced open the front door. 5RP 119. She had knowledge beforehand that Ms. Millmaker would not be home and that Ms. Millmaker kept Safeway cards in her bead room. 5RP 120.

IV. ARGUMENT

I. DEFENSE COUNSEL'S UNPROFESSIONAL ERRORS DENIED KATHLEEN ALLEN CONSTITUTIONALLY EFFECTIVE COUNSEL.

The Washington State and United States Constitutions guarantee a criminal defendant the right to effective assistance of counsel. Const. Art. I, Sec. 22; U.S. Const. Amend. VI. The test for ineffective assistance of counsel has two parts. One, it must be shown that the defense counsel's conduct was deficient, i.e., that it fell below an objective standard of reasonableness. Legitimate strategic or tactical reasons of trial counsel do not support ineffective assistance claims. State v. McFarland, 127 Wn.2d 322, 334-38, 899 P.2d 1251 (1995). Two, it must be shown that such conduct prejudiced the defendant, i.e., that there is a reasonable possibility that, but for the deficient conduct, the outcome of the

proceeding would have been different. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (adopting test from Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Ineffective assistance of counsel claims are reviewed de novo. State v. S.M., 100 Wn. App. 401, 409, 996 P.2d 1111 (2000). There is a presumption that counsel's assistance was effective. State v. Sardinia, 42 Wn. App. 533, 539, 713 P.2d 122, review denied, 105 Wn.2d 1013 (1986).

Here, trial counsel was ineffective in two ways. First, he failed to request WPIC 6.05, the accomplice cautionary instruction. Second, he failed to argue and preserve Allen's right to a speedy trial.

(A) Failure to request WPIC 6.05.

Washington Pattern Jury Instruction-Criminal (WPIC) 6.05 admonishes the jury to exercise great caution when evaluating an accomplice's testimony presented by the State:

The testimony of an accomplice, given on behalf of the plaintiff, should be subjected to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt.

In State v. Harris, 102 Wn.2d 148, 155, 685 P.2d 584 (1984), overruled on other grounds in State v. Brown, 111 Wn.2d 124, 157, 761 P.2d 588 (1988), the court instructed on the use of WPIC 6.05. First, it is always the better practice for a trial court to give the cautionary instruction whenever accomplice testimony is introduced. Second, failure to give the instruction is always reversible error when the prosecution relied solely on accomplice testimony. And third, whether failure to give this instruction constitutes reversible error when the accomplice testimony is corroborated by independent evidence depends upon the extent of corroboration. If the accomplice testimony was substantially corroborated by testimonial, documentary or circumstantial evidence, the trial court did not commit reversible error by failure to give the instruction.

Because the State called Aaron Allen to give accomplice testimony, WPIC 6.05 should have been given – and should have been requested by defense counsel. However, as Ms. Allen's statements to Detective Ringo were also offered by the State, the question is whether Aaron Allen's testimony was substantially corroborated Ms. Allen's statements. Because of the

inconsistencies in Aaron Allen's testimony, the corroboration was insufficient and the failure to give WPIC 6.05 was reversible error.

In his testimony, Aaron Allen was not sure who was on the bus with him – his mother or his uncle, neither or both - when he rode it to Ms. Millmaker's home. 5RP 89. He thought Ms. Allen was with him when Ron Thorsen told him about Ms. Millmaker having Safeway cards but he was not sure. 5RP 91. The reference to the Safeway cards was made in passing rather than just talked about yet Aaron Allen, his uncle, and Ms. Allen met with Thorsen at Ms. Millmaker's home a few days before the burglary and he told them where the property could be found. 5RP 91-92. He was not sure if he handed the Safeway cards to Ms. Allen while in the home and then he was sure that he had. 5RP 99-100. He never received any of the Safeway cards yet when he was contacted by police at Safeway he had the cards. 5RP 102, 113. By contrast, Ms. Allen's statements to Detective Ringo did not mention a bus ride or any involvement with Ron Thorsen prior to the burglary. 5RP 119-23.

Had defense counsel been effective in his representation of Ms. Allen, he would have proposed WPIC 6.05. Had he done so, the jury would have been aware of its duty to be wary of Aaron

Allen's testimony. Had the jury been wary, Ms. Allen likely would have been acquitted.

(B) Failure to preserve speedy trial violation.

A defendant detained in jail shall presumptively be brought to trial within 60 days unless there is an allowable excluded period. CrR 3.3 (b)(1)(i) & (b)(5). The 60-day window commences with arraignment. CrR 3.3(c)(1). Ms. Allen was arraigned in custody on her original information on March 31, 2006, giving the court until May 31 for trial. The court set a May 15 trial date and later reset the date to May 17 to accommodate defense counsel's schedule. On May 10, the State moved to have the trial date continued due to Detective Ringo's brief unavailability - until May 22. CP 3-4. Over Ms. Allen's objection, defense counsel agreed to the continuance to June 19 and later June 21.

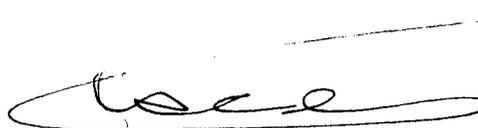
The trial court does not abuse its discretion when it grants a continuance to accommodate a police officer's schedule. State v. Grilley, 67 Wn. App. 795, 840 P.2d 903 (1997). Ms. Allen does not complain that a continuance until Detective Ringo was available on May 22 would have been an abuse of discretion. But the record is devoid of any need to continue the trial to any date outside of the original 60-day May 31 window. Objections to the resetting of a

trial date must be made within 10-days of receiving notice of the new date or the right to challenge the new date is lost. CrR 3.5(d)(3). Defense counsel should have respected Ms. Allen's request to be tried within 60-days and filed an objection to the June trial date within the 10-days required by the rule. Had defense counsel done so, Ms. Allen's right to object to the trial date would have been preserved and she would likely have been successful on challenging her delayed trial date and won a dismissal with prejudice. CrR(h). Defense counsel's failure to do so fell below the standard required by effective counsel.

V. CONCLUSION

Ms. Allen's conviction should be reversed and remanded to the trial court for retrial. Ms. Allen should be represented by another defense counsel.

Respectfully submitted this 11th day of December, 2006



LISA E. TABBUT/WSBA #21344
Attorney for Appellant

**VI. APPENDIX OF STATUTES, CONSTITUTIONS, AND
COURT RULES**

**RCW 9A.52.025
Residential burglary.**

(1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

(2) Residential burglary is a class B felony. In establishing sentencing guidelines and disposition standards, the sentencing guidelines commission and the juvenile disposition standards commission shall consider residential burglary as a more serious offense than second degree burglary.

**WASHINGTON STATE CONSTITUTION
ARTICLE I, SECTION 22
RIGHTS OF THE ACCUSED.**

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: *Provided*, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed. [AMENDMENT 10, 1921 p 79 Section 1. Approved November, 1922.]

UNITED STATES CONSTITUTION, AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

SUPERIOR COURT RULE (CrR) 3.3 TIME FOR TRIAL

(a) General Provisions.

(1) Responsibility of Court. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

(2) Precedence Over Civil Cases. Criminal trials shall take precedence over civil trials.

(3) Definitions. For purposes of this rule:

(i) "Pending charge" means the charge for which the allowable time for trial is being computed.

(ii) "Related charge" means a charge based on the same conduct as the pending charge that is ultimately filed in the superior court.

(iii) "Appearance" means the defendant's physical presence in the adult division of the superior court where the pending charge was filed. Such presence constitutes appearance only if (A) the prosecutor was notified of the presence and (B) the presence is contemporaneously noted on the record under the cause number of the pending charge.

(iv) "Arrestment" means the date determined under CrR 4.1(b).

(v) "Detained in jail" means held in the custody of a correctional facility pursuant to the pending charge. Such detention excluded any period in which a defendant is on electronic home monitoring, is being held in custody on an unrelated charge or hold, or is serving a sentence of confinement.

(4) Construction. The allowable time for trial shall be computed in accordance with this rule. If a trial is timely under the language of this rule, but was delayed by circumstances not addressed in this rule or CrR 4.1, the pending charge shall not be dismissed unless the defendant's constitutional right to a speedy trial was violated.

(5) Related Charges. The computation of the allowable time for trial of a pending charge shall apply equally to all related charges.

(6) Reporting of Dismissals and Untimely Trials. The court shall report to the Administrative Office of the Courts, on a form determined by that office, any case in which

(i) the court dismissed a charge on a determination pursuant to section (h) that the charge had not been brought to trial within the time limit required by this rule, or

(ii) the time limits would have been violated absent the cure period authorized by section (g)

(b) Time for Trial.

(1) Defendant Detained in Jail. A defendant who is detained in jail shall be brought to trial within the longer of

(i) 60 days after the commencement date specified in this rule, or

(ii) the time specified under subsection (b)(5).

(2) Defendant Not Detained in Jail. A defendant who is not detained in jail shall be brought to trial within the longer of

(i) 90 days after the commencement date specified in this rule,

or

(ii) the time specified in subsection (b)(5)

(3) Release of Defendant. If a defendant is released from jail before the 60-day time limit has expired, the limit shall be extended to 90 days.

(4) Return to Custody Following Release. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90-day limit shall continue to apply. If the defendant is detained in jail when trial is reset following a new commencement date, the 60-day limit shall apply.

(5) Allowable Time After Excluded Period. If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period.

(c) Commencement Date.

(1) Initial Commencement Date. The initial commencement date shall be the date of arraignment as determined under CrR 4.1.

(2) Resetting of Commencement Date. On occurrence of one of the following events, a new commencement date shall be established, and the elapsed time shall be reset to zero. If more than one of these events occurs, the commencement date shall be the latest of the dates specified in this subsection.

(i) Waiver. The filing of a written waiver of the defendant's rights under this rule signed by the defendant. The new commencement date shall be the date specified in the waiver, which shall not be earlier than the date on which the waiver was filed. If no date is specified, the commencement date shall be

the date of the trial contemporaneously or subsequently set by the court.

(ii) Failure to Appear. The failure of the defendant to appear for any proceeding at which the defendant's presence was required. The new commencement date shall be the date of the defendant's next appearance.

(iii) New Trial. The entry of an order granting a mistrial or new trial or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(iv) Appellate Review or Stay. The acceptance of review or grant of a stay by an appellate court. The new commencement date shall be the date of the defendant's appearance that next follows the receipt by the clerk of the superior court of the mandate or written order terminating review or stay.

(v) Collateral Proceeding. The entry of an order granting a new trial pursuant to a personal restraint petition, a habeas corpus proceeding, or a motion to vacate judgment. The new commencement date shall be the date of the defendant's appearance that next follows either the expiration of the time to appeal such order or the receipt by the clerk of the superior court of notice of action terminating the collateral proceeding, whichever comes later.

(vi) Change of Venue. The entry of an order granting a change of venue. The new commencement date shall be the date of the order.

(vii) Disqualification of Counsel. The disqualification of the defense attorney or prosecuting attorney. The new commencement date shall be the date of the disqualification.

(d) Trial Settings and Notice---Objections---Loss of Right to Object.

(1) Initial Setting of Trial Date. The court shall, within 15 days of the defendant's actual arraignment in superior court

or at the omnibus hearing, set a date for trial which is within the time limits prescribed by this rule and notify counsel for each party of the date set. If a defendant is not represented by counsel, the notice shall be given to the defendant and may be mailed to the defendant's last known address. The notice shall set forth the proper date of the defendant's arraignment and the date set for trial.

(2) Resetting of Trial Date. When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a new commencement date pursuant to subsection (c)(2) or a period of exclusion pursuant to section (e), the court shall set a new date for trial which is within the time limits prescribed and notify each counsel or party of the date set.

(3) Objection to Trial Setting. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

(4) Loss of Right to Object. If a trial date is set outside the time allowed by this rule, but the defendant lost the right to object to that date pursuant to subsection (d)(3), that date shall be treated as the last allowable date for trial, subject to section (g). A later trial date shall be timely only if the commencement date is reset pursuant to subsection (c)(2) or there is a subsequent excluded period pursuant to section (e) and subsection (b)(5).

(e) Excluded Periods. The following periods shall be excluded in computing the time for trial:

(1) Competency Proceedings. All proceedings relating to the competency of a defendant to stand trial on the pending charge,

beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) Proceedings on Unrelated Charges. Arraignment, pre-trial proceedings, trial, and sentencing on an unrelated charge.

(3) Continuances. Delay granted by the court pursuant to section (f).

(4) Period between Dismissal and Re-filing. The time between the dismissal of a charge and the re-filing of the same or related charge.

(5) Disposition of Related Charge. The period between the commencement of trial or the entry of a plea of guilty on one charge and the defendant's arraignment in superior court on a related charge.

(6) Defendant Subject to foreign or Federal Custody or Conditions. The time during which a defendant is detained in jail or prison outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the State of Washington.

(7) Juvenile Proceedings. All proceedings in juvenile court.

(8) Unavoidable or Unforeseen Circumstances. Unavoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties. This exclusion also applies to the cure period of section (g).

(9) Disqualification of Judge. A five-day period of time commencing with the disqualification of the judge to whom the case is assigned for trial.

(f) Continuances. Continuances or other delays may be granted as follows:

(1) Written Agreement. Upon written agreement of the parties, which must be signed by the defendant or all defendants, the court may continue the trial date to a specified date.

(2) Motion by the Court or a Party. On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense. The motion must be made before the time for trial has expired. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(g) Cure Period. The court may continue the case beyond the limits specified in section (b) on motion of the court or a party made within five days after the time for trial has expired. Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his or her defense. The period of delay shall be for no more than 14 days for a defendant detained in jail, or 28 days for a defendant not detained in jail, from the date that the continuance is granted. The court may direct the parties to remain in attendance or be on-call for trial assignment during the cure period.

(h) Dismissal With Prejudice. A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice. The State shall provide notice of dismissal to the victim and at the court's discretion shall allow the victim to address the court regarding the impact of the crime. No case shall be dismissed for time-to-trial reasons except as expressly required by this rule, a statute, or the state or federal constitution.

SUPERIOR COURT RULE (CrR) 3.5 CONFESSION PROCEDURE

(a) Requirement for and Time of Hearing. When a statement of the accused is to be offered in evidence, the judge at the time of

the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissible. A court reporter or a court approved electronic recording device shall record the evidence adduced at this hearing.

(b) **Duty of Court To Inform Defendant.** It shall be the duty of the court to inform the defendant that: (1) he may, but need not, testify at the hearing on the circumstances surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning the statement at trial.

(c) **Duty of Court To Make a Record.** After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor.

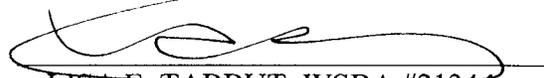
(d) **Rights of Defendant When Statement Is Ruled Admissible.** If the court rules that the statement is admissible, and it is offered in evidence: (1) the defense may offer evidence or cross-examine the witnesses, with respect to the statement without waiving an objection to the admissibility of the statement; (2) unless the defendant testifies at the trial concerning the statement, no reference shall be made to the fact, if it be so, that the defendant testified at the preliminary hearing on the admissibility of the confession; (3) if the defendant becomes a witness on this issue, he shall be subject to cross examination to the same extent as would any other witness; and, (4) if the defense raises the issue of voluntariness under subsection (1) above, the jury shall be instructed that they may give such weight and credibility to the confession in view of the surrounding circumstances, as they see fit.

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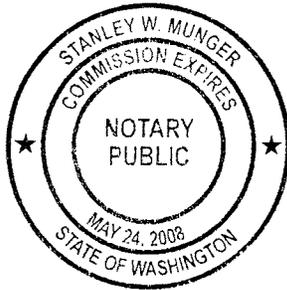
- (1) APPELLANT'S BREIF
- (2) AFFIDAVIT OF MAILING

Dated this 11th day of December 2006.



LISA E. TABBUT, WSBA #21344
Attorney for Appellant

SUBSCRIBED AND SWORN to before me this 11th day of December 2006.



Stanley W. Munger
Notary Public in and for the
State of Washington
Residing at Longview, WA 98632
My commission expires May 24, 2008