

NO. 35207-9-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

NATHANIEL W. MILES, APPELLANT

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DIVISION II
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Appeal from the Superior Court of Pierce County
The Honorable Stephanie A. Arend

No. 05-1-04301-8

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Does defendant fail to show that prosecutor committed flagrant and ill-intentioned misconduct during cross-examination where the prosecutor asked questions supported by a good faith basis?
2. Does defendant fail to show that the prosecutor committed flagrant and ill-intentioned misconduct by not introducing inadmissible evidence in order to rebut the defense's witnesses on a collateral matter?
3. Does defendant fail to show that the prosecutor committed flagrant and ill intentioned misconduct in closing where the prosecutor properly urged the jury to make its credibility determinations based on the evidence presented at trial?

B. STATEMENT OF THE CASE.

1. Procedure

On September 5, 2005, the Pierce County Prosecutor's Office charged appellant, NATHANIEL WESLEY MILES, hereinafter "defendant," with unlawful delivery of a controlled substance (cocaine). CP 1-2. The prosecutor amended the information to add a school zone enhancement. CP 3-4. The matter came on for trial before the Honorable Stephanie A. Arend on May 30, 2006. RP 1. After hearing the evidence

the jury convicted defendant as charged and returned a special verdict finding that defendant was within one thousand feet of a school bus route stop at the time of committing the crime charged. RP 185.

At the sentencing hearing on January 14, 2006, the parties agreed that defendant's offender score was 7 with a resulting standard sentence range of 84 to 144 months. CP 30-43. The court imposed a DOSA sentence of 57 months in custody and 57 months in community custody. Id. The court also imposed various legal financial obligations. Id.

Defendant timely appealed from this judgment and sentence. CP 44-56.

2. Facts

On May 27, 2004, Detective Scott Yenne of the Tacoma Police Department instructed Ronald Wilmoth, a confidential informant ("CI"), to arrange a purchase of narcotics from defendant. RP 43, 57-8. Wilmoth and defendant agreed to meet that day at the corner of 34th Street and McKinley. Wilmoth testified at trial that he was acquainted with defendant and possessed defendant's phone number prior to working with Detective Yenne. RP 41-2.

Detective Yenne along with Detective Stringer searched Wilmoth to ensure that he neither possessed drugs nor money, and then drove him to the arranged meeting place. RP 43-44, 58. Detective Yenne gave Wilmoth approximately \$250 to \$300 to buy narcotics and then dropped

him off. RP 44, 68. The detectives then positioned their vehicle so they could maintain constant surveillance of Wilmoth. RP 59. Additionally, two other detectives, Detectives Higgins and Skaanes, maintained observation and video surveillance of Wilmoth from a separate location. RP 59, 73-79.

A blue Geo Metro arrived at the meeting point. RP 45. Wilmore got into the vehicle and purchased 5.1 grams of rock cocaine. RP 45, 61, 89. After the transaction was finished, Wilmore got out of the Geo Metro which then drove away. RP 46. Detectives Yenne and Stringer immediately picked up Wilmoth. RP 61. Wilmoth gave the cocaine to the detectives. RP 46-7.

Wilmoth testified that he purchased the cocaine from defendant who was the driver and sole occupant of the Geo Metro. RP 44-5, 48. Wilmoth testified that at the time of the transaction defendant wore a hand brace from boxing, but appeared to be in good health. RP 48.

The detectives did not immediately arrest defendant and retrieve the money because it was their intention to later purchase a second, larger, quantity of drugs from defendant. RP 71.

Maureena Dudschus, a Washington State Patrol Crime Laboratory forensic scientist, tested the substance Wilmoth bought. RP 81-82, 88. The tests results confirmed it to be cocaine. RP 88.

At trial the defense presented evidence to show that defendant was incapable of driving or leaving his home unaccompanied due to three gun

shot wounds he sustained on January 12, 2001 or 2002¹, and therefore, could not have been the individual that sold cocaine to Wilmoth. RP 111.

The defense called Kawana Bell, who testified that she provided care for the defendant after he was shot. RP 96-7. Bell stated that the defendant did not drive, he was on medication, and that his arms and legs did not function. RP 98. She testified that during the four year period she cared for defendant that he never left her sight. RP 99-100.

Defendant testified that he could not have been in the vehicle because at the time of the transaction he was still receiving daily care from Bell and that he had not driven a car since being shot. RP 115, 121. Defendant stated on direct examination that he had been a professional boxer prior to being shot and that his last fight was at the Emerald Queen Casino in 2000. RP 113.

During rebuttal the State called Detective John Ringer who testified that he saw defendant approximately ten times in between 2001 and 2005, and spoke with defendant approximately five times during that period. RP 124. Detective Ringer testified that on these occasions defendant was “either in traffic or out [and] about.” Id. Detective Ringer never noticed that defendant had any physical problems or difficulty

¹ During direct-examination defendant initially replied he had been shot in 2001. He then corrected himself and said 2002. RP 111. During cross-examination, defendant testified that he had been shot in 2001. RP 119. Bell testified that she began caring for the defendant in 2001 after he was shot. RP 98, 104-105.

moving on any of the occasions he observed or conversed with defendant.

RP 124-125.

C. ARGUMENT.

I. DEFENDANT FAILS TO SHOW THAT THE PROSECUTOR COMMITTED FLAGRANT AND ILL INTENTIONED MISCONDUCT DURING CROSS EXAMINATION OR DURING CLOSING ARGUMENT.

Absent a proper objection, a defendant cannot raise the issue of prosecutorial misconduct on appeal unless the misconduct was so “flagrant and ill intentioned” that no curative instruction would have obviated the prejudice it engendered. State v. Hoffman, 116 Wn.2d 51, 93, 804 P.2d 577 (1991); State v. Ziegler, 114 Wn.2d 533, 540, 789 P.2d 79 (1990), State v. Belgarde, 110 Wn.2d 504, 507, 755 P.2d 174 (1988).

The defendant bears the burden of establishing both the impropriety of the prosecutor’s remarks and their prejudicial effect. State v. Finch, 137 Wn.2d 792, 839, 975 P.2d 967 (1999). To prove that a prosecutor’s actions constitute misconduct, the defendant must show that the prosecutor did not act in good faith and the prosecutor’s actions were improper. State v. Manthie, 39 Wn. App. 815, 820, 696 P.2d 33 (1985) (citing State v. Weekly, 41 Wn.2d 727, 252 P.2d 246 (1952)). Before an appellate court should review a claim based on prosecutorial misconduct, it should require “that [the] burden of showing essential unfairness be

sustained by him who claims such injustice.” Beck v. Washington, 369 U.S. 541, 557, 82 S. Ct. 955, 8 L. Ed. 2d 834 (1962).

Allegedly improper comments are reviewed in the context of the entire argument, the issues in the case, the evidence addressed in the argument and the instructions given. State v. Bryant, 89 Wn. App. 857, 873, 950 P.2d 1004 (1998) “remarks must be read in context.” State v. Pastrana, 94 Wn. App. 463, 479, 972 P.2d 557 (1999).

Improper remarks do not constitute prejudicial error unless the appellate court determines there is a substantial likelihood that the misconduct affected the jury’s verdict. Finch, 137 Wn.2d 792 at 839. The trial court is best suited to evaluate the prejudice of the statement. State v. Weber, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983).

- a. Defendant fails to show that the prosecutor committed flagrant and ill-intentioned misconduct where the prosecutor asked questions supported by a good faith basis and where the prosecutor did not attempt to contradict the defense’s witnesses on a collateral matter.

A defendant may be vigorously cross-examined in the same manner as any other witness if he voluntarily asserts his right to testify. State v. Robideau, 70 Wn.2d 994, 998, 425 P.2d 880 (1967). The scope of cross-examination lies within the sound discretion of the trial court and may be conducted so as to explain, qualify, and rebut the defendant’s direct testimony, including examination on issues the defendant

introduced to the jury. ER 611(b); State v. Hoffman, 116 Wn.2d 51, 96, 804 P.2d 577 (1991); State v. Graham, 59 Wn. App. 418, 427, 798 P.2d 314 (1990).

“Although counsel may explore certain areas of inquiry in a criminal trial without full knowledge of the answer to anticipated questions, he must, when confronted with a demand for an offer of proof, provide some good faith basis for questioning that alleges adverse facts.” United States v. Katsougrakis, 715 F.2d 769, 779 (2d Cir. 1983), cert. denied, 464 U.S. 1040, 104 S. Ct. 704, 79 L. Ed. 2d 169 (1984). Counsel, however, does not have a “duty to introduce the factual predicate for a question in the absence of an inquiry by the court or the opposing party.” United States v. Martel, 792 F.2d 630, 636 (7th Cir.1986).²

It is presumed that the examiner had a good faith basis for her questions where neither opposing counsel nor the court challenged the examiner’s basis. United States v. Holt, 817 F.2d 1264, 1275 (7th Cir. 987).

² In United States v. Martel the prosecutor asked a co-defendant whether he recalled telling an FBI agent that he had overheard defendant say that he was going to bill fraudulent hours to the government. The witness denied making the statement, and the prosecutor offered nothing to prove that the statement had been made. The court held that “[a]lthough the defendants correctly point out on appeal that it is error for a party to raise a prejudicial innuendo in cross-examination without having a basis of proof, they neglected to make this argument in the trial court and failed to move the court to instruct the jury to ignore the question. As a result they waived their right to complain of the possible error. Martel, 792 F.2d at 636.

A “court will not ordinarily impute bad faith to a party’s failure to volunteer its factual basis.” Martel, 792 F.2d 630 at 636; United States v. Harris, 542 F.2d 1283, 1308 (7th Cir. 1976) (refusing to impute bad faith to the government’s failure to volunteer its factual basis for cross-examination questions); see also State v. Terry, 928 S.W.2d 879, 883 (Mo. Ct. App. 1996) (holding “this court should not and will not presume the prosecutor acted in bad faith posing the question without some evidence of bad faith conduct.”).

It is the trial court’s role to determine whether counsel’s questions have a good faith basis, and unless there was a manifest abuse of discretion, the ruling of the trial court will not be disturbed. State v. Styles, 93 Wn.2d 173, 177, 606 P.2d 1233(1980) (citing Cantrill v. American Mail Line, Ltd., 42 Wn.2d 590, 607, 257 P.2d 179 (1953)).

“It is a well recognized rule that a witness cannot be contradicted or impeached by the use of evidence collateral to the issue.” State v. Hall, 10 Wn. App 678, 680, 519 P.2d 1305 (1974). “A cross-examiner is, within the sound discretion of the trial court, permitted to inquire into collateral matters testing the credibility of a witness, he does so at the risk of being concluded by the answers given.” State v. Oswald, 62 Wn.2d 118, 121, 381 P.2d 617 (1963).

Here defendant and Bell both testified during direct examination that defendant, as a result of being shot on January 12, 2001 or 2002, was physically incapable of driving a car and leaving his home without

assistance. RP 96-8, 115, 121. Bell testified that during a period spanning 2001 to 2005 defendant's arms and legs were essentially "paralyzed," and that he was physically incapable of caring for himself. RP 98. Defendant testified that he made his living as a professional boxer prior to being shot, and that he fought his last match at the Emerald Queen Casino in 2000. RP 113. In response to this testimony the prosecutor asked both defendant and Bell, a series of questions as to whether defendant fought in particular boxing matches subsequent to sustaining injuries from being shot. The prosecutor's questions and Bell's responses follow:

Q Okay. So based on [defendant's] physical condition during that time from 2001 to 2005, he was in no physical condition to box, for instance?

A No.

Q Okay. So there's no way on August 13th, 2004, that he could have fought Neil Stevens at the Angelston Convention Center in Ogdon, Utah?

A Neil Stevens.

Q There is no way he could have gone by a 12-round decision where it went to the judge's scorecard after 12 rounds? What I'm asking is Mr. Miles, in the condition that you observed him in, he couldn't have gone 12 rounds in a boxing fight in 2004, right?

A. No.

Q No?

A (Witness Mumbling)

Q There's no way that he could have fought Peter O'Cain February 4th of 2005 in Winnipeg? He would have been in no physical condition, right?

A Not to my knowledge. I don't know.

Q Okay. Especially – that one went 12 rounds as well?

A 12. I don't know.

RP 107-8. The prosecutor asked the following during cross-examination of defendant:

Q And the last time you fought was in 2000 at the Emerald Queen Casino. Who did you fight?

A I think it was Ronnie Warren.

Q Yeah? Tell me if this sounds about right. You weighed in at 175 pounds for that fight?

A Huh-uh. No way. I weighed about 187, something like that.

Q What division were you fighting in?

A Cruiser weight.

Q Cruiser weight. You say your date of birth is June 12 of '65?

A Correct.

Q Tell me if this profile describes you accurately: Sex, male; that's obvious. Nationality, you're a United States American, U.S. American?

A Yes, sir.

- Q Nickname "Tex." We talked about that.
Hometown, Tacoma, Washington; or would that be
Houston, Texas?
- A Houston, Texas. . . .
- Q Okay. But if I were to find nine fights after you
fought Ronnie Warren, at the Emerald Queen
Casino, those are all mistaken?
- A Nine at the Emerald Queen?
- Q No, nine fights after you fought Ronnie Warren at
the Emerald Queen. Were they all mistakes?
- A They have to be except probably one fight off
Ronnie, I think.
- Q Well, you indicated that Ronnie was your last fight.
- A That's at the Emerald Queen, he was.
- Q So you fought since 2000?
- A That's why I say 2000, 2001 when you asked me.
2000 or 2001.
- Q Okay. Who did you fight next?
- A Oh, I can't remember the guy's name.
- Q Alex Bonima?
- A No. I don't remember fighting Alex Bonima?
- Q Where did you fight?
- A If I can remember, he's -- this guy here is in the
middle -- he's a real light guy; he wouldn't have
been able to fight me.

Q Who is the guy you fought after Ronnie Warren, or where did you fight after Ronnie Warren if you can remember?

A If I can remember, I think it was in North Dakota.

RP 116-8.

Bell and defendant raised the issues of defendant's physical condition and his ability to box during his direct examination. The State was free to inquire on cross-examination regarding whether there had been boxing after the shooting injury. ER 611(b), see Hoffman, 116 Wn.2d 51 at 96. Defendant did not object to the cross-examination or ask the court to inquire as to prosecutor's good faith basis for the inquiry. Therefore an appellate court will presume that the prosecutor had a good faith basis for the questions.

Moreover, whether or not the defendant had boxed subsequent to being shot was not material to the central issue at trial. When the prosecutor asked defendant about whether he fought in particular matches and defendant said no, the prosecutor was then prohibited from introducing evidence to rebut defendant's response. See Hall, 10 Wn. App at 680. This is because whether defendant continued to box after being shot is a factual issue with "only a remote and indirect connection to the central issue at trial." Tegland, Karl B., *Washington Practice*, vol. 5, *Evidence Law and Practice* § 103.22 (4th ed. 1999); See Oswald, 62 Wn.2d at 121 (The test for determining whether a fact is collateral is

whether the disputed fact could have been introduced into evidence for any purpose independently of the contradiction.). If the prosecutor introduced such evidence, he would have simply caused “undue delay” and wasted time during trial. ER 403.

Whether defendant boxed subsequent to being shot was not material to the issue at trial, but whether he was physically capable of driving and leaving his home was. While the prosecutor did not present evidence that defendant continued to box after getting shot, he did present rebuttal evidence that defendant had been outside of his home, unaccompanied, and was in good physical condition. During rebuttal, Detective John Ringer testified that he saw defendant “either in traffic or out [and] about” approximately ten times in between 2001 and 2005. RP 124. Detective Ringer never noticed that defendant had any physical problems or difficulty moving on any of the occasions he observed or conversed with defendant. RP 124-125.

Defendant, nevertheless, contends that the prosecutor committed misconduct by failing “to introduce any evidence supporting his questions” during cross-examination, and thereby impeached the defense’s witness “by innuendo.” Brief of Appellant at 8. The authority on which defendant bases his argument is not applicable here. Defendant’s cited cases stand for three rules: one, that counsel may not impeach a witness using prior inconsistent statements without proving the alleged prior statements, two, a prosecutor may not impeach with alleged prior

convictions where she cannot offer proof of the convictions,³ and three, counsel cannot argue at closing that answers given by a witness during cross-examination were mistaken or untrue where counsel did not offer rebuttal evidence.⁴ None of the above rules apply here.

The common law rule prohibiting counsel from “assuming facts not in evidence,” while it extends to defendant’s cited cases does not extend to the facts here. Tegland, *Washington Practice*, vol. 5 § 103.22 (1999). Professor Tegland warns not to overestimate the scope of the prohibition. *Id.* He explains:

³ In *State v. Yoakum*, 37 Wn.2d 137, 222 P.2d 181 (1950), the prosecutor read from a transcript that he alleged to be of a wire recording of a conversation between the defendant and the police. *Yoakum*, 37 Wn.2d 137 at 139. The prosecutor referred to the defendant’s alleged statements contained in the transcript as “prior testimony” and stated that he was “quoting” the defendant’s words exactly as they appeared in the transcript. *Id.* The prosecutor then read excerpts where defendant admitted knowingly using a pen knife to cut the victim. *Yoakum*, 37 Wn.2d 137 at 140.

In *State v. Babich*, 68 Wn. App 438, 842 P.2d 1053, *rev. denied*, 121 Wn.2d 1015 (1993), the prosecutor, attempting to impeach a witness, read from the transcript of a “body wire recording” of a conversation between the witness and a confidential informant. The prosecutor read statements allegedly made by the witness that the defendant sold cocaine and was known as a dealer. The state did not introduce evidence to prove those statements. *Babich*, 68 Wn. App 438 at 441-3.

In *State v. Beard*, 74 Wn.2d 335, 338-9, 444 P.2d 651 (1968), the prosecutor used prior convictions to impeach during cross examination where there was no evidence of those convictions. *Id.*

⁴ In *State v. Lopez*, 95 Wn. App 842, 980 P.2d 224 (1999), the defense called the victim’s teacher who testified that the victim never told her that he had been sexually abused. In her closing argument, the prosecutor implied that the teacher had forgot that the victim had told her that she had been abused. The State never introduced evidence that the conversation occurred. *Lopez*, 95 Wn. App 842 at 854. Although the court found that the prosecutor erred, the court deemed the error harmless. *Lopez*, 95 Wn. App 842 at 858-9.

As a practical matter, lawyers assume facts not in evidence in a variety of trial situations, and some rules actually encourage the practice...

If counsel could never refer to anything that was not already in evidence, direct and cross examination would be a difficult task to say the least. Under a number of rules, in fact, counsel is expressly allowed to cross-examine about matters and may *not* introduce extrinsic evidence on the same matter. For example, the cross-examiner may ask a witness about a collateral matter contrary to the witnesses testimony, but if the witness denies the facts sought to be brought out, extrinsic evidence is inadmissible....

Thus cases such as *Denton* and *Yoakum* should not be interpreted to broadly. It may be noteworthy that in both *Denton* and *Yoakum* the, the cross examiners were faced with situations in which they were unable to bring out crucial evidence and then sought to remedy the situation by imparting their own personal knowledge to the jury.

Id.

Here the prosecutor asked pointed questions to discover whether defendant had boxed or was capable of boxing subsequent to being shot. Moreover, the challenged questions are not evidence; the witness's answer to those questions are evidence. As such, the trial court's instructions to the jury explained that "[t]he lawyers' remarks, statements and arguments are intended to help you understand the evidence and apply the law. The evidence is the testimony and the exhibits... You must disregard any remark, statement or argument that is not supported by the evidence[.]" CP 7-23. (Instruction No. 1). Jurors are presumed to follow the

instructions of the court. State v. Grisby, 97 Wn.2d 493, 499, 647 P.2d 6 (1982).

When Bell and defendant responded that defendant was not capable of or had not fought in particular matches, the prosecutor was not required to introduce extrinsic evidence to show that defendant had boxed after being shot. See Oswalt, 62 Wn.2d at 121. The prosecutor did, however, offer appropriate rebuttal evidence that defendant had been out in traffic and was without visible physical impairment during the period in which the defense's witnesses testified that he was physically incapable of leaving his home. Defendant fails to show that the prosecutor committed misconduct.

- b. Defendant fails to show that the prosecutor committed flagrant and ill intentioned misconduct at closing where the prosecutor properly urged the jury to make its credibility determinations based on the evidence presented at trial.

A prosecutor commits flagrant misconduct by arguing that to acquit a defendant, the jury must find that the State's witnesses are either lying or mistaken, because such an argument misstates the law and misrepresents both the role of the jury and the burden of proof. State v. Fleming, 83 Wn. App. 209, 213-14, 921 P.2d 1076 (1996) (prosecution's argument stating: "[F]or you to find the

defendants . . . not guilty of the crime of rape . . . you would have to find either that [the victim] has lied about what occurred . . . or that she was confused; essentially that she fantasized what occurred” was flagrant and ill-intentioned misconduct). But a prosecutor may properly draw inferences “from the evidence as to why the jury would want to believe one witness over another.” State v. Copeland, 130 Wn.2d 244, 290, 922 P.2d 1304 (1996); see also State v. Brett, 126 Wn.2d 136, 175, 892 P.2d 29 (1995); “[W]here a jury must necessarily resolve a conflict in witness testimony to reach a verdict, a prosecutor may properly argue that, in order to believe a defendant, the jury must find that the State’s witnesses are mistaken.” State v. Wright, 76 Wn. App. 811, 826, 888 P.2d 1214 (1995).

Here the prosecutor told the jury during closing argument that that the State and defendant had produced “mutually exclusive” testimony and explained that if the jury determined Bell and defendant’s testimony to be credible, then defendant could not have committed the crime charged. He stated;

I concede to you that if you believe that on May 27, 2004, the defendant was bedridden and was in such a position that he could not get out of bed without assistance and, as Ms. Bell testified, couldn’t even make it to the corner store to get a newspaper, that is the end of the case because there is

certainly no way he could have delivered crack cocaine to an undercover police operative on May 27th, 2004.”

RP 152.

Referring to the court’s instructions to the jury, the prosecutor told the jury members that it was their responsibility alone to judge the witnesses credibility and to determine how much weight “to give one witness as opposed to another.” RP 154. CP 7-23 (Jury Instructions No. 1 and 3).

The prosecutor properly urged the jury to make its credibility determinations based on the evidence presented at trial and argued that the testimony supported the State’s theory that its witnesses, Mr. Wilmoth, Detectives Yenne, Higgins, and Ringer were more credible than Ms. Bell and defendant. The prosecutor’s argument was intended to assist the jury in determining the credibility of the witnesses and in evaluating the conflicting testimony. In doing so, the prosecutor did no more than emphasize the substantial conflicting testimony, point out the aspects of the testimony that were inconsistent or irreconcilable, and argue that the jury would have to examine the testimony to determine which testimony was most credible. The prosecutor’s argument in no way lessened the State’s burden, it was not inappropriate or unduly prejudicial.

Moreover, the court instructed the Jury on the State’s burden, that “the State as the plaintiff has the burden of proving each element of the crime beyond a reasonable doubt. The

defendant has no burden of proving that a reasonable doubt exists.” CP 7-23 (Jury Instruction No. 2). Given the court’s instruction, which the jury is presumed to follow, it is unlikely that the jury had any confusion regarding the states burden.

Defendant relying on State v. Fleming, 83 Wn. App. 209, 921 P.2d 1076 (1996), argues that the prosecutor committed flagrant and ill-intentioned error by advising the jury of their responsibility to make witness credibility determinations, by “telling the jury that their job was to choose which set of witnesses to believe.” The State in doing so, defendant argues, “shifted the burden of proof.” (Brief of appellant at 16-7). Fleming, however, does not provide authority for defendant’s argument and is distinguished from the facts here. In Fleming the prosecutor told the jury during closing, “to find the defendants... not guilty you would have to find either that [the victim] lied... or that she was confused; essentially that she fantasized what occurred...” Fleming, 83 Wn. App. at 213. Here, the prosecutor did not make any such misstatements about the burden of proof. Rather, the record demonstrates that the prosecutor’s argument accurately emphasized jury instructions explaining the jury’s role as the sole judge of credibility, and properly challenged Bell and defendant’s credibility based on the evidence presented at trial.

Not only has defendant failed to demonstrate flagrant and ill-intentioned misconduct, given the jury instructions and the ease with which any confusion regarding the statements could have been addressed by a curative instruction, he cannot establish prejudice.

D. CONCLUSION.

For the reasons stated above, the State respectfully requests that the Court affirm defendant's conviction.

DATED: FEBRUARY 27, 2007

GERALD A. HORNE
Pierce County
Prosecuting Attorney



KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

Brett Shepard
Appellate Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

2/27/07 
Date Signature

FILED
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DIVISION II
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STATE OF WASHINGTON
BY M. DEWY
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