

NO. 35921-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JAYCEE THOMPSON,

Appellant.

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STATE OF WASHINGTON
BY *[Signature]*
COURT OF APPEALS
DIVISION II

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 06-1-01172-2

BRIEF OF RESPONDENT

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This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED November 15, 2007, Port Orchard, WA *[Signature]*
Original AND ONE COPY filed at the Court of Appeals, Ste. 300, 950 Broadway, Tacoma WA 98402; Copy to counsel listed at left.

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the Defendant has failed to show a *Doyle* violation when the State did not “use” the Defendant’s brief request for an attorney against him when the challenged testimony was only used to explain why the Bremerton detective ended his participation in the interview, and whether, even if there was error, the error was harmless given the context of the testimony and the fact that the State never argued or implied that the jury should infer guilt from the Defendant’s brief request for an attorney ?

2. Whether the Defendant has failed to show prosecutorial misconduct when the prosecutor’s argument drew a reasonable inference from the testimony at trial, and when, even if this court were to conclude that the prosecutor had argued facts not in evidence, the argument was not so flagrant and ill-intentioned that an enduring prejudice resulted such that a curative instruction could not have been effective?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The Defendant, Jaycee Thompson, was charged by amended information filed in Kitsap County Superior Court with theft in the first degree and residential burglary. CP 22, RP 3. Following a jury trial, the Defendant was convicted of theft in the first degree and acquitted on the

burglary charge. CP 53. The trial court imposed a standard range sentence.

CP 59. This appeal followed.

B. FACTS

The victim, David Foreman, lived at apartment 139 at the Bremerton Garden apartments at 2009 Parkside Drive. RP 38. Mr. Foreman met Dorothy Crystal Scruggs on-line, and Ms. Scruggs eventually became Mr. Foreman's girlfriend. RP 38.

At around 2:00 to 3:00 in the afternoon on June 30th, 2006, Mr. Foreman went to Ms. Scruggs' apartment to pick her up and took her back to his apartment. RP 39, 43. At approximately 4:00, Mr. Foreman, who was in the Navy, had to go back to his boat because he had duty that evening. RP 37, 39-40. Ms. Scruggs remained at Mr. Foreman's apartment. RP 40. Although she had previously stayed the night at Mr. Foreman's apartment, this was the first occasion when Ms. Scruggs remained at Mr. Foreman's apartment when he was not personally present. RP 40. Mr. Foreman spoke to Ms. Scruggs over the phone at around midnight. RP 40. Mr. Foreman also stated that he did not give permission for anyone else to be in his apartment that night, and specifically stated that he did not know the Defendant and did not give the Defendant permission to be in his apartment. RP 40-41.

Mr. Foreman returned home at approximately 9:00 am the next morning, and Ms. Scruggs was gone. RP 41. Mr. Foreman found the door to

the apartment ajar, and saw that the apartment had been "kind of trashed." RP 41. Mr. Foreman also observed that numerous items had been taken from the apartment, including: a 32 inch TV; a stereo system; a desktop computer; a laptop computer; a Playstation-II; an ipod, a box of trading cards, and over 300 DVDs and CDs. RP 41, 45, 47. Mr. Foreman estimated that the total value of the missing items was about \$20,000. RP 41.

Bremerton Police Department Detective Jason Vertefeuille spoke with the Defendant on July 21. RP 50-51. Special Agents Sievanen and Hoyt with the Naval Criminal Investigative Service were also present. RP 51. The officers introduced themselves and advised the Defendant of his Miranda rights. RP 51. The Defendant acknowledged that he understood his rights and agreed to speak with the officers. RP 52.

The Defendant admitted that he knew Ms. Scruggs and stated that she was his girlfriend and that they had been dating for several months. RP 52. The Defendant indicated that he saw Ms. Scruggs every day and had moved into her residence. RP 53.

When Detective Vertefeuille asked the Defendant about the burglary at Mr. Foreman's apartment, the Defendant requested an attorney. RP 53. Detective Vertefeuille terminated the interview and got up to leave. RP 53. The Defendant then indicated that he wanted to talk to the NCIS agents, but

didn't want to talk to Detective Vertefeuille. RP 53. Detective Vertefeuille told the Defendant to contact an attorney and explained to him that he could then make arrangements to talk with the officer with his attorney. RP 53. The Defendant again stated that he wanted to talk to the officers without an attorney, and Dectective Vertefeuille again told the Defendant that he would need to make those arrangements with his attorney. RP 54. The Defendant made another request to speak with the officers without an attorney, so Detective Vertefeuille had the Defendant write out a statement indicating that he wished to speak with the NCIS officer's without a lawyer. RP 55. The Defendant then spoke with the NCIS agents. RP 55.

The Defendant admitted going to Mr. Foreman's residence with Ms. Scruggs and another individual known as "Little Memphis." RP 63-64. He said that he and "Little Memphis" removed "heavy" suitcases from the residence and put them into a car that they had driven to the residence. RP 64.

During the direct examination of Agent Hoyt, the following exchange took place:

Prosecutor: Did the Defendant indicate what happened to the stolen property removed from Mr. Foreman's residence?

Agent Hoyt: Once it was removed, he said that they placed it in the vehicle, VW GTI.

Prosecutor: Did he say where the property was taken after that?

Agent Hoyt: I do not recall that he indicated at that time.
Excuse me, I'm incorrect. He did indicate that
they were taken to a storage unit.

Prosecutor: And this would be Mr. Foreman's property?

Agent Hoyt: That's how I understood it, yes.

RP 64-65.

In her closing argument, the prosecutor argued that the evidence showed that Mr. Foreman did not know the Defendant and did not give him permission to be at his apartment. RP 88. The prosecutor also argued that the Defendant admitted that he and Ms. Scruggs had been dating for several months and were living together at Ms. Scruggs' residence. RP 88. The prosecutor then argued that this evidence showed the Defendant's knowledge, since the Defendant was living with Ms Scruggs and saw her daily, and therefore, "knew where her stuff was, and it certainly wasn't at Mr. Foreman's residence where she had been only for a few hours." RP 89.

The prosecutor also argued that the Defendant told the NCIS agent that he knew where the stolen property was, and that the Defendant used the words "stolen property." RP 89.

In the defense closing, the Defendant argued that,

Now, the State has indicated that, well, how come he knew there was stolen property when he talked to NCIS people. He might have known there was stolen property when – from NCIS and detectives from Bremerton. That's what they were asking questions about, burglary and stolen property. He said maybe this stolen property that they're talking about, it might

be at this storage unit that I know about. So happens that it wasn't. He was trying to give them a lead where it might be.

RP 97.

The jury was instructed, among other things, that the lawyers' statements were not evidence and that the jury "must disregard any remark, statement, or argument that is not supported by the evidence or the law in [the court's] instructions." CP 29.

III. ARGUMENT

- A. **THE DEFENDANT HAS FAILED TO SHOW A *DOYLE* VIOLATION BECAUSE THE STATE DID NOT "USE" THE DEFENDANT'S BRIEF REQUEST FOR AN ATTORNEY AGAINST HIM SINCE THE CHALLENGED TESTIMONY WAS ONLY USED TO EXPLAIN WHY THE BREMERTON DETECTIVE ENDED HIS PARTICIPATION IN THE INTERVIEW. IN ADDITION, EVEN IF THERE WAS ERROR, THE ERROR WAS HARMLESS GIVEN THE CONTEXT OF THE TESTIMONY AND THE FACT THAT THE STATE NEVER ARGUED OR IMPLIED THAT THE JURY SHOULD INFER GUILT FROM THE DEFENDANT'S BRIEF REQUEST FOR AN ATTORNEY.**

The Defendant argues that the prosecutor committed misconduct by eliciting testimony regarding the Defendant's invocation of his right to counsel. App.'s Br. at 6. This claim is without merit because the Defendant has failed to show a *Doyle* violation and because even if there had been error, any error was harmless.

In *Doyle v. Ohio*, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976), the Supreme Court found that because Miranda warnings contain an implicit assurance that silence will carry no penalty, “it does not comport with due process to permit the prosecution during the trial to call attention to [the defendant's] silence at the time of arrest and to insist that because he did not speak about the facts of the case at that time, as he was told he need not do, an unfavorable inference might be drawn as to the truth of his trial testimony.” *Doyle*, 426 U.S. at 619, 96 S.Ct., at 2245. Accordingly, the Court in *Doyle* held that “the use for impeachment purposes of petitioners' silence, at the time of arrest and after receiving Miranda warnings, violated the Due Process Clause of the Fourteenth Amendment.” *Doyle*, 426 U.S., at 619, 96 S.Ct., at 2245.

Later, the Supreme Court reiterated that it was the impermissible *use* of the defendant's silence that formed the basis of a *Doyle* violation. *See, Wainwright v. Greenfield*, 474 U.S. 284, 291, 106 S.Ct. 634, 639, 88 L.Ed.2d 623 (1986)(“*Doyle* rests on ‘the fundamental unfairness of implicitly assuring a suspect that his silence will not be used against him and then using his silence to impeach an explanation subsequently offered at trial.’”); *Anderson v. Charles*, 447 U.S. 404, 408, 100 S.Ct. 2180, 2182, 65 L.Ed.2d 222 (1980) (cross-examination respecting inconsistent post-arrest statements “makes no

unfair use of silence, because a defendant who voluntarily speaks after receiving Miranda warnings has not been induced to remain silent”).

The Supreme Court, however, has not addressed situations where the reference to a defendant’s silence is a mere passing reference that is not “used” to imply guilt, but merely explains that a defendant initially waived his rights, briefly asserted them, and then waived them again. The State is also unaware of any Washington cases directly on point.

Courts in other jurisdictions, however, have addressed factual scenarios similar to the one presented in the present case, and have found no *Doyle* violation. For instance, in *United States v. Harris*, 956 F.2d 177, 181 (8th Cir.1992), the court noted that reference to the silence of an accused usually is impermissible, because it is fundamentally unfair for the government to induce silence through Miranda warnings and then later use this silence against the accused. *Harris*, 956 F.2d at 181, *citing Doyle*, 426 U.S. at 617-18, 96 S.Ct. at 2244-45. Where the accused initially waives his right to remain silent and agrees to questioning, however, no such inducement has occurred. *Harris*, 956 F.2d at 181. The *Harris* court, therefore, concluded that if the accused subsequently refuses to answer further questions, the prosecution may note the refusal because it now constitutes part of an otherwise admissible conversation between the police and the accused. *Harris*, 956 F.2d at 181, *citing United States v. Collins*, 652

F.2d 735, 740 (8th Cir.1981), *cert. denied*, 455 U.S. 906, 102 S.Ct. 1251, 71 L.Ed.2d 444 (1982). The *Harris* court ultimately concluded that the prosecutor's comment that the defendant had concluded the interview with the police was, therefore, permissible. *Harris*, 956 F.2d at 181. *See also, United States v. Burns*, 276 F.3d 439, 442 (8th Cir.2002) ("[W]here the accused initially waives his or her right to remain silent and agrees to questioning, but 'subsequently refuses to answer further questions, the prosecution may note the refusal because it now constitutes part of an otherwise admissible conversation between the police and the accused.' ") (*quoting Harris*, 956 F.2d at 181); *Rowan v. Owens*, 752 F.2d 1186, 1190 (7th Cir.1984) (prosecutor may note without undue emphasis that the defendant had initially given statements but had ended interrogation); *United States v. Williams*, 556 F.2d 65, 67 (D.C.Cir.1977) (recounting witness may conclude account of interview in natural fashion by indicating that the defendant chose to stop answering questions); *Scillion v. O'Dea*, 16 F.3d 1221 (6th Cir.1994)(finding nothing improper where defendant waived his Miranda rights following his arrest and answered a number of general questions, but then stated that he was not going to tell the police anything when questioned as to whether he knew anything about a burglary).

Other courts have found no *Doyle* violation where testimony concerning a defendant's request to end an interrogation was introduced in the context of the entire conversation (and was admitted so as not to leave the jury wondering why the interview ended abruptly), and when the State did not use the defendant's statement as evidence of his guilt or to impeach an explanation subsequently offered at trial. For instance, in *Commonwealth v. Habarek*, 520 N.E.2d 1303 (Mass. 1988), the Supreme Judicial Court of Massachusetts addressed a situation where a trial court allowed testimony that an officer questioned the defendant after his arrest, the defendant provided the officer with certain information, but then stated, "I don't think I want to say any more." *Habarek*, 520 N.E.2d at 1306. Consequently, the officer terminated the interview. *Habarek*, 520 N.E.2d at 1306. In addressing an alleged *Doyle* violation, the appeals court noted that here should be no comments on the defendant's claim of his rights under the Fifth Amendment, and that where such statements have been presented to the jury in order to prejudice the defendant for exercising his rights, reversible error has been found. *Habarek*, 520 N.E.2d at 1306, *citing Doyle*, 426 U.S. at 617-618, 96 S.Ct. at 2244-2245. The court went on to hold, however, that the officer's testimony concerning the defendant's request to end the interrogation was introduced in the context of the entire conversation, and was admitted so as not to leave the jury wondering why the interview ended abruptly.

Habarek, 520 N.E.2d at 1306. The court also noted that at no time did the Commonwealth use the defendant's statement as evidence of his guilt, or to impeach an explanation subsequently offered at trial. *Habarek*, 520 N.E.2d at 1306. The court, therefore, concluded that there was no error. *Habarek*, 520 N.E.2d at 1306.

Similarly, in *State v. Correia*, 707 A.2d 1245 (R.I., 1998), the Supreme Court of Rhode Island found no error when the trial court refused to grant a mistrial after a police officer testified that the defendant initially gave a statement after Miranda but then subsequently terminated the conversation and didn't want to cooperate further. *Correia*, 707 A.2d at 1247-48. The *Correia* court ultimately held that when a defendant initially waives his or her right to remain silent but later invokes that right by refusing to answer further questions, it is not improper for the prosecutor or the police witness to explain how or why the interview concluded. *Correia*, 707 A.2d at 1248. *See also, Cook v. State*, 544 N.E.2d 1359, 1363 (Ind., 1989)(holding that testimony by a federal agent that there was no further contact with the defendant at a certain point because he "had made a request to speak to an attorney" did not constitute a *Doyle* violation).

Based on the facts in the present case, the Defendant has fallen far short of establishing that his post-arrest silence was used against him in the manner forbidden by *Doyle*. The prosecutor did not offer any suggestion that

the Defendant's brief request for an attorney in any way indicated his guilt. The benign nature of the challenged testimony is further established by the fact that the Defendant had freely made incriminating oral statements to both the Bremerton Detective and the NCIS agents. The fact that the Defendant briefly requested an attorney and then requested to speak with only the NCIS agents was used to show why the Bremerton detective ended his participation in the interview without every discussing the burglary with the Defendant. In addition, unlike the cases above where the testimony outlined that the interview concluded with the Defendant's refusal to answer additional questions, the testimony in the present case was even more benign since the Defendant initially asked for an attorney but then waived his rights and spoke with the NCIS agents. Furthermore, the State never expanded on why the Defendant chose not to speak further with the Bremerton Detective and never asked the jury to draw any inferences from this choice.¹

“A prosecutor's or witness's remarks constitute comment on a

¹ The facts in the present case are distinguishable from the facts in the cases cited by the Defendant where the State specifically argued that the jury could draw an inference of guilt from the defendant's silence. *See, for instance, State v. Easter*, 130 Wn.2d 228, 234, 922 P.2d 1285 (2000)(where the state argued that the defendant's pre-arrest silence showed that he was a “smart drunk” who ignored the officer's direct questions); *United States v. Canterbury*, 985 F.2d 483, 486 (10th Cir. 1993)(where the court found that the challenged questions and testimony were designed to suggest an inference of guilt from the defendant's post-arrest silence and designed to discredit the defendant's trial testimony by drawing attention to his post-arrest silence); *United States v. Laury*, 985 F.2d 1293, 1304 (5th Cir. 1993)(where the court found that the prosecutor's “manifest intent” was to comment on Laury's silence, and thereby raise an inference that his alibi was a recent fabrication).

defendant's silence if the manifest intent was to comment on the defendant's silence, or if the character of the remark was such that the jury would naturally and necessarily so construe the remark." *United States v. Shaw*, 701 F.2d 367, 381 (5th Cir.1983). As the testimony in the present case did nothing more than explain why the interview took the course that it did, the challenged comments in the present case did not constitute a comment on the Defendant's silence. There was, therefore, no *Doyle* violation below.

In addition, even if there had been a *Doyle* violation below, any error was harmless harmless. The test for determining whether a constitutional error is harmless is "whether it appears 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" *Neder v. United States*, 527 U.S. 1, 15, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999), quoting *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). "When deciding whether a prosecutor's reference to a defendant's post-arrest silence was prejudicial, this court will consider the extent of comments made by the witness, whether an inference of guilt from silence was stressed to the jury, and the extent of other evidence suggesting defendant's guilt." *United States v. Bushyhead*, 270 F.3d 905, 913 (9th Cir. 2001), citing *United States v. Whitehead*, 200 F.3d 634, 639 (9th Cir.2000); *United States v. Hernandez*, 476 F.3d 791, 797 (9th Cir. 2007); *Velarde-Gomez*, 269 F.3d 1023, 1034-35 (9th Cir 2001). An inference of guilt is

stressed to the jury where the government "draw[s] a direct inference of guilt [from defendant's silence] during its closing argument." *Velarde-Gomez*, 269 F.3d at 1035.

In the present case, the State never suggested that the Defendant's brief request for an attorney implied guilt. In fact, the State never even addressed the request for counsel in its closing and the brief testimony was only used to explain how the interview itself occurred. The fact that the jury acquitted the Defendant of the burglary charge is further evidence that the brief mention of the Defendant's request for an attorney did not cause any prejudice.

For all of the above-mentioned reasons, the Defendant has failed to show a *Doyle* violation because the State did not "use" the Defendant's brief request for an attorney against him and because the challenged testimony was only used to explain why the Bremerton detective ended his participation in the interview. In addition, even if there was error, the error was harmless given the context of the testimony and the fact that the State never argued or implied that the jury should infer guilt from the Defendant's brief request for an attorney.

B. THE DEFENDANT HAS FAILED TO SHOW PROSECUTORIAL MISCONDUCT BECAUSE THE PROSECUTOR'S ARGUMENT DREW A REASONABLE INFERENCE FROM THE TESTIMONY AT TRIAL AND BECAUSE, EVEN IF THIS COURT WERE TO CONCLUDE THAT THE PROSECUTOR HAD ARGUED FACTS NOT IN EVIDENCE, THE ARGUMENT WAS NOT SO FLAGRANT AND ILL-INTENTIONED THAT AN ENDURING PREJUDICE RESULTED SUCH THAT A CURATIVE INSTRUCTION COULD NOT HAVE BEEN EFFECTIVE.

The Defendant next claims that the prosecutor committed flagrant and ill-intentioned misconduct by arguing facts not in evidence. App.'s Br. at 11. This claim is without merit because the prosecutor's argument drew a reasonable inference from the testimony at trial and because, even if this court were to conclude that the prosecutor had argued facts not in evidence, the Defendant has failed to show that the argument was so flagrant and ill-intentioned that an enduring prejudice resulted such that a curative instruction could not have been effective.

Prosecutorial misconduct requires a showing that the prosecutor's conduct was both improper and prejudicial in the context of the entire record and circumstances at trial. *State v. Hughes*, 118 Wn. App. 713, 727, 77 P.3d 681 (2003) (citing *State v. Stenson*, 132 Wn.2d 668, 718, 940 P.2d 1239 (1997)). The defendant bears the burden of proving improper conduct and prejudice. *Hughes*, 118 Wn. App. at 727. Furthermore, a prosecuting

attorney has wide latitude in closing argument to draw reasonable inferences from the evidence. *State v. Mak*, 105 Wn.2d 692, 726, 718 P.2d 407 (1986).

On appeal, a court is to view the allegedly improper statements within the context of the prosecutor's entire argument, the issues in the case, the evidence discussed in the argument, and the jury instructions. *State v. Dhaliwal*, 150 Wn.2d 559, 578, 79 P.3d 432 (2003). Prejudice is established if there is a substantial likelihood that the misconduct affected the verdict, thereby denying the defendant a fair trial. *State v. Evans*, 96 Wn.2d 1, 5, 633 P.2d 83 (1981). In general, a reviewing court is to presume that juries follow instructions to disregard improper evidence. *State v. Russell*, 125 Wn.2d 24, 84, 882 P.2d 747 (1994).

As the Defendant points out, arguing fact not in evidence constitutes misconduct and, absent an objection, is reversible error when the argument is so flagrant and ill-intentioned that an enduring prejudice resulted such that a curative instruction could not have been effective. App.'s Br. at 11, *citing*, *State v. Gregory*, 158 Wn.2d 759, 844, 147 P.3d 1201 (2006).

The Defendant argues that the prosecutor's argument that the Defendant himself described the items as "stolen property" was not supported by any testimony. App.'s Br. at 12. In addition, the Defendant acknowledges the following passage from the trial,

Prosecutor: Did the Defendant indicate what happened to the stolen property removed from Mr. Foreman's residence?

Agent Hoyt: Once it was removed, he said that they placed it in the vehicle, VW GTI.

App.'s Br. at 12, citing RP 64-65. The Defendant, however, argues that it is not a reasonable inference that the Defendant described the property as "stolen property" in his own words. App.'s Br. at 12.

Although the above mentioned question was inartfully worded, the question and answer can reasonably be interpreted to suggest that the Defendant used the words "stolen property." The fact that the defense counsel, and not just the prosecutor, understood that the testimony suggested that the Defendant used the term "stolen property" further supports the conclusion prosecutor's argument was reasonable. See, RP 97.² As a prosecuting attorney has wide latitude in closing argument to draw reasonable

² As mentioned above, in the defense closing, the Defendant argued that:

Now, the State has indicated that, well, how come he knew there was stolen property when he talked to NCIS people. He might have known there was stolen property when – from NCIS and detectives from Bremerton. That's what they were asking questions about, burglary and stolen property. He said maybe this stolen property that they're talking about, it might be at this storage unit that I know about.

RP 97.

inferences from the evidence, it was not error for the prosecutor to argue that the evidence showed that the Defendant himself used the phrase “stolen property,” as the evidence suggested that this was the case. *State v. Mak*, 105 Wn.2d at 726.

Furthermore, even if this court was to conclude that the testimony did not support the prosecutor’s (and the defense attorney’s) conclusion that the Defendant had used the words “stolen property,” the argument was harmless, since the jury was instructed that they were the sole judges of credibility and that the lawyer’s statements were not evidence and “must” be disregarded if not supported by the evidence. CP 29. Thus, even if this court were to conclude that the prosecutor’s argument that the Defendant used the words “stolen property” was improper, when placed in the context of the whole argument and the court’s prior instructions to the jury, the challenged comments do not rise to the level of prejudice required for a new trial.

In addition, as there was no objection below, any error would only be reversible error when the argument is so flagrant and ill-intentioned that an enduring prejudice resulted such that a curative instruction could not have been effective. App.’s Br. at 11, citing, *State v. Gregory*, 158 Wn.2d 759, 844, 147 P.3d 1201 (2006). The fact that the defense attorney seemingly reached the same conclusion regarding the question and answer at issue, demonstrates that the prosecutor’s argument was not “flagrant and ill-

intentioned.” Further, the comment, especially in light of the fact that the jury was instructed that counsel’s arguments were not evidence, could not have created an “enduring prejudice” that could not have been remedied by a curative instruction.

In short, the Defendant has failed to show that the prosecutor committed misconduct and that the argument was so flagrant and ill-intentioned that an enduring prejudice resulted that could not had been remedied by a curative instruction. For this reason, the Defendant’s claim of prosecutorial misconduct must fail.

IV. CONCLUSION

For the foregoing reasons, the Defendant’s conviction and sentence should be affirmed.

DATED November 15, 2007.

Respectfully submitted,

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OF THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY JW
DEPUTY

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 Jaycee C. Thompson)
 (your name))
)
 Appellant.)

No. 35921-9-II

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

I, Thompson Jaycee, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

I fill my attorney didnt represent me to the fullest because during my trial. The prosecutor mentioned to the jury that I knew about some stolen property, wich hadnt been testified or proven. I myself turned to my lawyer & asked to object by sayin no. My attorney just waived me off & told me that the prosecutor can do that.

Additional Ground 2

I fill my attorney Failed to represent me correctly. When I expressed that we should object to the prosecutor entering into evidence a storage receipt that the prosecutor said to the jury the state felt stolen property may have been taken, but when searched wasnt. The state entered this evidence to mislead juror members, because this evidence didnt have any thing to do with my case.

If there are additional grounds, a brief summary is attached to this statement.

Date: Aug 12, 2007

Signature: Jaycee Thompson

#3 I fill the prosecutor committed misconduct when she told the jury that she beleaved that I took stolen property to a certain storage in wich she had proof that I was involved with. When the storage was searched. No stolen property was ever recovered. Yet the prosecutor entered the storage receipts as evidence, because the stolen property might have been taken there. Wich I fill is misleading the jurors members & should have been unacceptable.

#4 I fill my rights were violated when I was brought in for questioning about my case, I asked for a attorney to be present. Insted of fullfilling my request & quit all questioning. They continued on by using ruse moves to convince me to talk without a attorney. I fill all questioning should have ceased until I was given a chance to seek counsel.

#5 state / Court misconduct?
While jury members were debating weather or not I was guilty or not. They became confused. They filled out a inquiry Form From the Jury & Courts Response Form. To help them make the right decision but was told that they would just have to go with what they think. Wich was obviously mixed thoughts.

Jaycee Thompsonson

CERTIFICATE OF SERVICE
I certify that I mailed
1 copies of SAC
to J. Weavers
& R. Dutton
8/22/07 JW
Date Signed

Aug 12, 2007

*Note After Aug 13, 2007 My
New residence will be at Cwallan Bay WA

So forward any mail to
that prison

Thank you