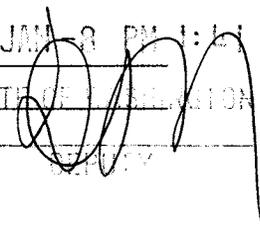


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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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

STATE OF WASHINGTON, RESPONDENT

v.

DAVID JAMES LEWIS, APPELLANT

---

Appeal from the Superior Court of Pierce County  
The Honorable Stephanie Arend

No. 06-1-03207-3

---

**BRIEF OF RESPONDENT**

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

1. Did the court properly deny defendant credit for time served when he was released on his personal recognizance before trial and not confined in accordance with any order in this case?
2. Did the court properly deny defendant's motion to suppress a video tape of child pornography and a copy of that tape when the State established a chain of custody for both tapes?
3. Did the court properly deny defendant's motion to dismiss for governmental misconduct when defendant had the opportunity to view the copied video tape before trial, defendant had the option of using the copy at trial, and defendant was not prejudiced by receiving the copy instead of the original tape?

B. STATEMENT OF THE CASE.

1. Procedure

On July 14, 2007, the Pierce County Prosecutor's Office filed an information charging DAVID JAMES LEWIS, hereinafter "defendant," with one count of possession of depictions of a minor engaged in sexually explicit conduct. CP 1. While trial was pending, defendant was released on his personal recognizance. CP 142-143. Defendant had been involuntarily committed to the Special Commitment Center on McNeil Island (hereinafter, "SCC") at the time he was charged, so he spent most

of the time pending and during trial at the SCC in accordance with his commitment. RP 9-13.<sup>1</sup> The court heard a 3.5 motion and motions in limine on May 1 and 2, 2007. RP 1-84.

Before trial, all parties believed that a tape of child pornography marked as Ex. 2-A<sup>2</sup> was an original tape that was found in defendant's room at the SCC. RP 366-376. Trial began on May 3, 2007. RP 136. During the testimony of Detective Robert Jackson at trial, the parties realized that Ex. 2-A was actually a copy of the original tape of child pornography that was recovered from defendant's room at the SCC. RP 201. The original version of the tape, later admitted as Ex. 5-A, was still in the SCC evidence lockup at the time Detective Jackson testified. RP 525-527, 554, 636; Ex. 5.

Ex. 2-A and Ex. 5-A were very similar. Ex. 2-A was labeled with four movie titles, bore the initials of Darold Weeks, and read, "copy." RP 477-481, 554; Ex. 2-A. When played, Ex. 2-A depicted some commercials, four to six clips of child pornography, a truncated version of the first movie, and three more movies. Ex. 2-A. Ex. 5-A was labeled

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<sup>1</sup> Most of the Verbatim Report of Proceedings is contained in 6 consecutively paginated volumes. Citations to those volumes will be preceded by "RP." Citations to the volume containing the sentencing hearing will be preceded by "RP(Sentencing)." Citations to the volume containing the CrR 7.8 hearing will be preceded by "RP(Housing)."

<sup>2</sup> Three video tapes were admitted into evidence below and are relevant on appeal: Ex. 5-A is the original tape confiscated from defendant's room on January 11, 2006. Ex. 2-A is a copy of Ex. 5-A. Ex. 3-A is a video tape of the search defendant's room during which Ex. 5-A was confiscated.

with the same movies in the same order. RP 477-481, 554; Ex. 5-A. It depicted substantially the same content in the same order as Ex. 2-A, except that Ex. 5-A contained a clip of child pornography before the commercials that Ex. 2-A did not contain. RP 477-481, 554, 643-650; Ex. 5-A. Upon discovering this discrepancy, the State suggested it should offer Ex. 2-A into evidence as the original because defendant did not have an opportunity to view the first clip on Ex. 5-A. RP 477-479. Defendant refused this offer, insisting that only Ex 5-A should be offered if the State could lay an appropriate chain of custody for Ex. 5-A. RP 478, 480-481.

On May 7, 2007, defendant moved (1) to suppress Ex. 5-A under CrR 4.7 because it was not part of the original discovery and (2) to dismiss the case under CrR 8.3(b) because the State mishandled Ex. 5-A by not providing it to the defense during discovery. RP 366-376. The court held that while the State had violated CrR 4.7 in failing to allow defendant access to the original version of the tape, defendant was not prejudiced by this act because the State did not gain an advantage and the defense could use the mistake to undermine the reliability of the tape. RP 577-578. It further found that the jury could determine whether the State's witnesses had credibly established a chain of custody in this case. RP 579.

The court also denied defendant's 8.3(b) motion. RP 608. While the State had committed misconduct in negligently providing a substantially similar copy instead of access to the original, defendant was not prejudiced because the State had offered to use Ex. 2-A, defendant had

an opportunity to observe that Ex. 2-A was labeled “copy,” and defendant could argue in closing that the mistake undermined the reliability of the original tape. RP 607-608.

During jury deliberations, the jury asked the court if it could watch Ex. 3. RP 890. Because the jury room was not equipped to view video tapes, the court assembled all the parties and brought the jury into the courtroom to watch the tape twice. RP 890-894. After watching the tape, the jury returned to the jury room and continued deliberation. RP 894. The jury convicted defendant of possession of depictions of a minor engaged in sexually explicit conduct on May 10, 2007. RP 896. The court sentenced defendant to 12 months’ confinement with credit for 35 days served in the Pierce County Jail during the trial. RP(Sentencing) 16; CP 131-141. The court did not give defendant credit for time served at the SCC. CP 131-141. On August 2, 2007, defendant filed a CrR 7.8 motion asking the court to grant him credit for the time he spent at the SCC pending and during trial. RP (Housing) 1-20. The court denied that motion, holding that the defendant was not being held in regard to the present charges and so could not receive credit for the time he was at the SCC. RP(Housing) 18.

## 2. Facts

On January 11, 2006, the staff of the SCC received a tip from Bruce Raffort, a SCC resident, that defendant and another resident of the

SCC were viewing child pornography in defendant's room. RP 265.

Terrell Smith, a staff member at the SCC, then activated a microphone in defendant's room and heard defendant and the other resident saying of a young girl, "you can tell that she's new at this; she's still tight," and discussing other vulgar subjects involving 11 year-old-girls. RP 237, 266-269. The SCC staff formed a search team consisting of Roy McIntyre, Eddie Blackburn, and Richard Dexter. RP 169; Ex. 3-A. The team went to Alder Unit, where defendant was living, and Mr. McIntyre saw that defendant was watching child pornography on his personal television. RP 176. Mr. Dexter noted that the scene depicted two young girls on a beach. RP 329. Mr. McIntyre told defendant to leave his room and, when defendant complied, began to search the room. RP 176-177. Mr. McIntyre pressed play on the VCR of the television, saw that the video cassette contained child pornography, and immediately pressed stop. RP 177; Ex. 3-A. Defendant later admitted that that tape contained child pornography. RP 517-520, 716-718, 862. Mr. McIntyre ejected the tape and gave it to Mr. Blackburn, who placed it in a white evidence collection tub that is typically used to collect evidence from residents. RP 178-180; Ex. 3-A. Ex. 5-A, 18 other VHS tapes, and several CDs were also collected and placed in the evidence collection box. RP 218, 385-386, 721, 751.

The team brought the evidence tub to the SCC administrative office, where it was placed in a locker to which only Mr. Weeks had

access. RP 330, 386, 387, 397, 415, 424, 448, 486, 489, 490. The next day, Mr. Weeks retrieved the evidence tub and locked it in the SCC evidence lockup, to which only he has access. RP 423-425. Mr. Weeks made a copy of the tape (Ex. 2-A), and delivered the copy to Detective Michael Portmann. RP 426-428, 431. In making this copy, Mr. Weeks did not rewind the original far enough and one of the clips of pornography was not transferred to Ex. 5-A. RP 477-481. The majority of the pornography, however, was transferred. RP 477-481, 554.

Detective Portmann checked the copy of the tape into the Pierce County Property Room in accordance with standard operating procedures. RP 464. Detective Portmann later left the Special Assault Unit and the case was assigned to Detective Robert Jackson. RP 468-469. Detective Jackson spoke to defendant at the SCC; during that conversation, defendant admitted that the tape contained child pornography. RP 517-520. When trial began, Detective Jackson brought Ex. 2-A to court and opened it in front of the parties. RP 201.

Mr. Weeks kept the original tape (Ex. 5-A) until May 4, 2007, when he retrieved it from the SCC evidence lockup and brought it to his home the weekend before he testified. RP 426, 428; Ex. 5. Mr. Weeks locked Ex. 5-A in a safe to which only he had access and brought it to court on Monday, May 7, 2007. RP 428-430. Ex. 5-A was not altered from the time Mr. Weeks received it until the time he brought it to court. RP 428.

Defendant testified at trial and claimed that he had originally recorded four movies on Ex. 5-A and then lent it to a fellow resident. RP 711-713. Defendant claimed that the other resident recorded the child pornography onto Ex. 5-A before returning the tape to defendant. RP 711-713. Defendant then realized on January 11, 2006, that there was child pornography on the tape when he viewed it in his room. RP 713. Defendant claimed he then notified a third resident that there was child pornography on the tape, showed it to that resident, and asked the resident what he should do. RP 713-718. The resident suggested he record over the child pornography, and defendant claimed he began to record commercials over the pornography when Mr. McIntyre's team searched defendant's room. RP 713-715.

C. ARGUMENT.

1. THE COURT PROPERLY REFUSED TO GIVE DEFENDANT CREDIT FOR STAYING AT THE SCC WHILE HE WAS RELEASED ON PERSONAL RECOGNIZANCE WHEN NO ORDER IN THIS CASE REQUIRED HIM TO BE CONFINED IN THE SCC.

Whether a defendant is entitled to credit for time served is a question of law that an appellate court reviews de novo. See State v. Swiger, 159 Wn.2d 224, 227, 149 P.3d 372 (2006). When a person is sentenced, “[t]he sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was

solely in regard to the offense for which the offender is being sentenced.” RCW 9.94A.505(6); In re Pers. Restraint of Schillereff, 159 Wn.2d 649, 152 P.3d 345 (2007). “Confinement” is defined as total or partial confinement. RCW 9.94A.030(11). Total confinement is “confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.” RCW 9.94A.030(47). When a defendant is sentenced on one conviction, he may not receive credit for time served on another charge because the term of confinement was not solely in regard to the charge for which he is being sentenced. State v. Williams, 59 Wn. App. 379, 382-383, 796 P.2d 1301 (1990).

Defendant in this case was not entitled to credit for time served while at the SCC because he was not confined in regard to the charge in this case. Defendant was released on his personal recognizance in this case and the trial court did not order him confined. CP 142-143. Defendant was only confined at the SCC in accordance with his previous involuntary commitment. RP(Housing) 12-13; CP 131-141. Because defendant was not confined in regard to the crime for which he was being sentenced here, the court was not required to give him for the time he was confined at the SCC. See Williams, 59Wn. App. at 382-383.

Even if defendant had been ordered to remain at the SCC pending the resolution of the present charges, he would not be entitled to time

served because the confinement would not have been solely in regard to that charge. There are no published Washington cases that address whether a defendant is solely confined on the charge for which he is being sentenced when he is civilly committed and afterwards also confined in regard to the crime for which he is sentenced. A defendant is not considered “solely confined,” however, if he is initially confined on one charge and afterwards also confined as part of the criminal charge for which he is sentenced. See Williams, 59 Wn. App. at 382-383. There is no reason to treat a prior civil commitment differently from a prior criminal confinement in this case: the statute mandates credit only when the defendant would not have been confined had he not committed the crime for which he is being sentenced. Here, defendant would have been confined to the SCC even if he had not been held on criminal charges because he was previously civilly committed. RP(Housing) 12. Defendant was not held *solely* in regard to the criminal charge, so he is not entitled to credit for the time he spent at the SCC.

Defendant inappropriately relies on the equitable doctrine of “credit for time served at liberty” in support of his claim that, even though he was not confined in this case, he is entitled to credit. This doctrine was adopted by the Washington Supreme Court in In re Pers. Restraint of Roach, 150 Wn.2d 29, 37, 74 P.3d 134 (2003):

a convicted person is entitled to credit against his sentence for time spent erroneously at liberty due to the State’s negligence, provided that the convicted person has not

contributed to his release, has not absconded legal obligations while at liberty, and has had no further criminal convictions.

Defendant does not allege, and the record does not reflect, that the State made some mistake that led to defendant's release on personal recognizance. Defendant has failed to establish that the doctrine of credit for time served at liberty applies in this case.

2. THE COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED DEFENDANT'S MOTION TO SUPPRESS EXHIBITS 2-A AND 5-A BECAUSE THE STATE ESTABLISHED A CHAIN OF CUSTODY FOR THOSE EXHIBITS.

A physical object connected with the commission of a crime may properly be admitted into evidence, once it has been satisfactorily identified and shown to be in substantially the same condition as when the crime was committed. State v. Campbell, 103 Wn.2d 1, 21, 691 P.2d 929 (1984). Evidence that is unique and readily identifiable may be identified by a witness who can state that the item is what it purports to be. State v. Roche, 114 Wn. App. 424, 436, 59 P.3d 682 (2002), citing 5 K. Tegland, Washington Practice § 402.31 (4th ed. 1999). A more particularized showing may be necessary for items susceptible to alteration or adulteration. Id. Factors to be considered include the nature of the item, the circumstances surrounding the preservation and custody, and the likelihood of tampering or alteration. Campbell, 103 Wn.2d at 21. It is

not necessary to identify the evidence with absolute certainty or to eliminate every possibility of alteration or substitution. Campbell, 103 Wn.2d at 21. Minor discrepancies or uncertainty affect only the weight of the evidence, not its admissibility. Id. The trial court is vested with a wide latitude of discretion in determining admissibility, which will not be disturbed absent clear abuse. Campbell, 103 Wn.2d at 21.

An appellate court will not reverse due to an error in admitting evidence that does not result in prejudice to the defendant. State v. Thomas, 150 Wn.2d 821, 871, 83 P.3d 970 (2004). Where the error is from violation of an evidentiary rule, “the error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred.” Id. “The improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole.” Id.

- a. The State established a chain of custody for Ex. 5-A.

The court properly denied defendant’s motion to suppress Ex. 5-A because the State established a chain of custody for that exhibit. When Mr. McIntyre’s team appeared outside defendant’s room, defendant was watching the tape and Mr. McIntyre witnessed the child pornography on the screen. RP 176. Defendant then exited the room and stopped the

VHS. RP 176-177. Mr. McIntyre entered the room, pressed “play” on the VCR, noted that the tape in the VCR contained child pornography, and immediately stopped and ejected the tape. RP 176-177. Mr. McIntyre gave the tape to Mr. Blackburn, who placed it and several other tapes in a white evidence collection bin. RP 218, 385-386, 721, 751. After the search, Mr. Blackburn brought the tape to the staff office, where Ms. Tate placed the bin into an evidence locker. RP 330, 386, 415, 486, 489. Ms. Tate locked the locker, and only Darold Weeks could unlock it. RP 387, 397, 424, 448, 486, 490. The next day, Mr. Weeks retrieved the evidence bin from the locker and moved it to the more permanent storage locker that the SCC maintains. RP 423-425. Only Mr. Weeks has access to that storage locker, and he checked out of the SCC locker on three occasions. RP 423-425; Ex. 5. On Friday, May 4, 2007, he retrieved the tape from the SCC and placed it in his gun safe at his home. RP 428. Only Mr. Weeks had access to that gun safe. RP 430. The tape remained in the gun safe until Monday, May 7, 2007, when Mr. Weeks retrieved it from his gun safe and brought it to court to be admitted. RP 428.

The State also established chain of custody by providing testimony that Ex. 5-A was the tape that the State purported it was. When defendant testified at trial, he admitted that the tape that was in his VCR was placed in the white evidence bin. RP 751. Ex. 5-A has a unique label containing four movies in a particular order: “Michael,” “As Good As It Gets,” “Mrs. Doubtfire,” and “Reckless.” Ex. 5-A. When defendant saw Ex. 5-A in

court, he recognized it as the one that had the child pornography on it and that was retrieved from his room. RP 706, 711-713, 751. Mr. Smith overheard defendant describing a young girl having intercourse, and Ex. 5-A depicts young girls engaged in sexually explicit behavior, including intercourse with adult males. RP 237, 643-650; Ex. 5-A. Mr. Weeks made Ex. 2-A shortly after Ex. 5-A was collected. RP 426-428, 431. When the parties viewed these tapes during trial, they agreed that they were substantially similar. RP 477-481. The only difference between Ex. 5-A and Ex. 2-A was that Ex. 2-A did not contain a small clip of pornography that was contained on Ex. 5-A. This similarity corroborates Mr. Weeks's testimony that Ex. 5-A was not altered from the time Mr. Weeks copied it. RP 477-481.

b. The State established a chain of custody for Ex. 2-A.

The court properly denied defendant's motion to suppress Ex. 2-A because the State established a chain of custody for that exhibit. Mr. Weeks made Ex. 2-A by copying Ex. 5-A at the SCC. After making Ex. 2-A, Mr. Weeks gave it to Detective Portmann, who placed it into the Pierce County Evidence Lockup in accordance with proper procedures. RP 464. Defendant's case was assigned to Detective Jackson, who then checked out Ex. 2-A and returned it to the lockup on several occasions in

accordance with the procedures of the evidence lockup. RP 529, 542. He then brought it to court. RP 201.

Even if the State had not established a chain of custody for Ex. 2-A, such failure would be harmless because the jury never saw that tape; only Ex. 5-A was played. RP 638. The fact that Ex. 2-A was accepted into evidence did not affect the verdict because it was not considered by the fact finder. When the jury wanted to view a video tape, the trial court assembled all the parties, brought the jury out into the courtroom, and played the tape for them because the viewing equipment was “not wired to be run in the jury room.” RP 891-894. The record only indicates that the jury viewed one video: Ex. 3. RP 891-894. The record does not indicate that the jury ever viewed Ex. 2-A, either during trial or during deliberation.

- c. Any failure of the chain of custody of either Ex. 2-A or Ex. 5-A was harmless because there was ample evidence defendant possessed child pornography on January 11, 2006.

There was ample evidence that defendant possessed child pornography on January 11, 2006. Defendant admitted that he possessed a tape containing child pornography when he spoke to Detective Jackson before trial and when he testified at trial. RP 517-520, 713. Mr. McIntyre and Mr. Dexter saw defendant watching child pornography when they raided his room. RP 176-177, 329. Mr. Smith heard defendant talking

about an 11-year-old girl's vagina and other vulgar material while defendant was watching the tape. RP 237, 266-269. Thus, even without Ex. 5-A or Ex. 2-A, the State had sufficient evidence to prove that defendant possessed child pornography on January 11, 2006.

d. State v. Neal does not apply in this case.

Defendant's reliance on State v. Neal, 144 Wn.2d 600, 30 P.3d 1255 (2001), is misplaced. Neal addressed the use of CrR 6.13(b), a court rule that controls the chain of custody of certain lab results. CrR 6.13(b); Neal, 144 Wn.2d at 607. The present case is not concerned with CrR 6.13 or the chain of custody for a lab report used in lieu of witness testimony. Defendant does not even cite an a court rule that would apply in this case that is analogous to the very specific rule contained in CrR 6.13(b).

3. THE COURT PROPERLY DENIED  
DEFENDANT'S MOTION TO DISMISS  
BECAUSE DEFENDANT WAS NOT  
PREJUDICED BY THE MISHANDLING OF  
EXHIBIT 5-A.

A court may dismiss a prosecution for discovery violations under CrR 8.3(b). State v. Cannon, 130 Wn.2d 313, 328, 922 P.2d 1223 (1996). A trial court has wide latitude in granting or denying a motion to dismiss a criminal prosecution for discovery violations. State v. Hanna, 123 Wn.2d 704, 715, 871 P.2d 135, cert. denied, 513 U.S. 919, 115 S. Ct. 299, 130 L. Ed. 2d 212 (1994). An appellate court will not disturb the trial court's

denial of the motion to dismiss unless it finds that the denial constitutes a manifest abuse of discretion. Id.

A trial court may dismiss any criminal prosecution in the furtherance of justice pursuant to CrR 8.3(b) if there is a showing of arbitrary action or governmental misconduct. State v. Dailey, 93 Wn.2d 454, 457, 610 P.2d 357 (1980). The governmental misconduct need not be of an evil intent or dishonest nature; mismanagement meets the standard. Dailey, at 457. In considering whether a criminal case may be dismissed under CrR 8.3(b), the trial court must determine: (1) whether there has been any governmental misconduct or arbitrary action, and (2) whether there has been prejudice to the rights of the accused. If there is no showing of governmental misconduct or if there is no prejudice to the defendant, then dismissal is inappropriate. State v. Blackwell, 120 Wn.2d 822, 845 P.2d 1017 (1993).

Whether under CrR 4.7 or 8.3(b), a trial court should not dismiss a prosecution casually:

Dismissal of the charges is an extraordinary remedy. It is available only when there has been prejudice to the rights of the accused which materially affected the rights of the accused to a fair trial and that prejudice cannot be remedied by granting a new trial.

State v. Baker, 78 Wn.2d 327, 332-333, 474 P.2d 254 (1970); State v. Woods, 143 Wn.2d 561, 582, 23 P.3d 1046 (2001); State v. Laureano, 101 Wn.2d 745, 682 P.2d 889 (1984). The trial court's authority under CrR

8.3(b) to dismiss has been limited to “truly egregious cases of mismanagement or misconduct by the prosecutor.” State v. Duggins, 68 Wn. App. 396, 401, 844 P.2d 441, aff’d, 121 Wn.2d 524, 852 P.2d 294 (1993)(citing State v. Stephans, 47 Wn. App. 600, 736 P.2d 302 (1987) as an example of egregious misconduct warranting dismissal under CrR 8.3(b) based on the State's encouragement of two witnesses to disobey the court’s discovery order). The Supreme Court has emphasized that CrR 8.3(b) is designed to protect against arbitrary action or governmental misconduct and not to grant courts the authority to substitute their judgment for that of the prosecutor. State v. Michielli, 132 Wn.2d 229, 240, 937 P.2d 587 (1997). Finally, the cases speak of dismissal of the charges rather than dismissal of criminal convictions.

A trial court’s decision on an 8.3(b) motion to dismiss charges is reviewable under the manifest abuse of discretion standard. Michielli, 132 Wn.2d at 240. Discretion is abused when the trial court’s decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons. Blackwell, 120 Wn.2d at 830.

Although the trial court found that the State mishandled Ex. 5-A and Ex. 2-A, defendant has failed to prove that this mishandling prejudiced his case. Nothing in the record suggests that the tape was altered between the time it was recovered and the time that it was played in court. See Section 2, supra. The fact that defendant did not know about the copy until trial did not deprive defendant of the opportunity to prepare

for trial because defendant was offered the opportunity to view Ex. 2-A or to proceed using Ex. 2-A instead of Ex. 5-A, so the State's mistake gave defendant the opportunity to prevent the jury from seeing some of the child pornography. RP 478, 480-481. The fact that defendant refused the State's offer and insisted on playing Ex. 5-A does not change the fact that the State's mistake gave defendant an option he would not otherwise have had. RP 478, 480-481. The State's mistake also gave defendant the opportunity to challenge the reliability of the tape in his closing argument. Defendant has failed to establish that the State's mishandling of Ex. 5-A materially affected defendant's right to a fair trial. See Baker, 78 Wn.2d at 332-333.

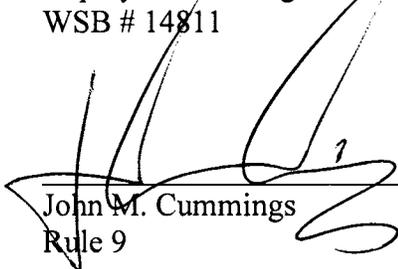
D. CONCLUSION.

For the foregoing reasons, the State asks this court to affirm defendant's conviction and sentence.

DATED: January 7, 2008

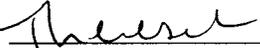
GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

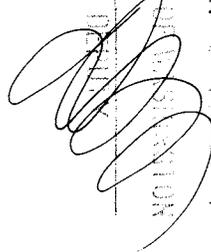
  
KATHLEEN PROCTOR  
Deputy Prosecuting Attorney  
WSB # 14811

  
John M. Cummings  
Rule 9

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.

1-7-08   
Date Signature

STATE OF WASHINGTON  
BY   
08 JAN -8 PM 1:41  
COURT OF APPEALS  
DIVISION II