

Original

NO. 36468-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

CHAMROEUM NAM,

Appellant.

2007 DEC -7 PM 4:28

FILED
COURT OF APPEALS DIV. II
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Richard D. Hicks, Judge

Jordan B. McCabe

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant was denied his due process right to a public trial.
2. Appellant was denied due process when the court excluded cross examination of the chief prosecution witness for bias.
3. Appellant was denied his right to effective assistance of counsel.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A potential problem arose with one of the jurors during the trial. The court sealed the courtroom and excluded the public from the juror voir dire. Did this violate the public trial rule, requiring reversal?
2. The court limited appellant's cross examination of the chief prosecution witness for bias. Did this violate his due process right to present a complete defense?
3. Counsel failed to renew an objection to hearsay admitted as an excited utterance, even though the testimony exceeded the scope of the excited utterance exception. Did this constitute ineffective assistance of counsel requiring reversal?
4. To avoid undue prejudice, the court excluded evidence that appellant committed an uncharged crime. This evidence nevertheless came in by way of hearsay from another witness. Did defense counsel's

failure to move for a mistrial constitute ineffective assistance of counsel requiring reversal?

5. Was the trial irredeemably tainted by cumulative evidentiary error?

C. STATEMENT OF THE CASE

1. Procedural Facts

In 2005, a jury convicted appellant Chamroeum Nam of first degree robbery and attempted first degree kidnapping. On appeal, this Court dismissed the robbery conviction with prejudice and remanded for a new trial on the attempted kidnapping charge. The full text of the opinion, published in part at State v. Nam, 136 Wn. App. 698, 150 P.3d 617 (2007), is attached as an appendix.

On April 10, 2007, the State again charged Nam with attempted first degree kidnapping. CP 45. The State alleged Nam attempted to kidnap Tanya Harris in the early evening of March 6, 2004. CP 77. Nam's defense was general denial. CP 51. A jury trial was held June 5-7, 2007. 3RP.¹ The jury found Nam guilty, and the court imposed a standard range sentence of 66 months. CP 56; 4RP 3, 10. Nam again appeals. CP 88.

¹ The verbatim report of proceedings is contained in six volumes and designated as follows: 1RP - 4/20/07; 2RP - 4/26/07; 3RP - 6/5-7/07 (three consecutively paginated volumes); and 4RP - 6/22/07 (sentencing).

2. Substantive Facts

In early 2004, Nam, lived with Harris and their child at Harris's father's home. 3RP 172-73. Harris worked as a waitress while Nam provided child care. 3RP 184-85. Harris quit her job in early March, 2007. 3RP 185.

Harris testified she and Nam were driving somewhere with the child about six weeks before the alleged offense. Harris told Nam he needed to get a job. She claimed he hit her and threatened to harm her and the child. 3RP 186-87. Nam drove to the Nisqually River and ordered Harris out of the car. 3RP 187. Harris thought Nam was going to harm them. When a passerby pulled up in a truck, however, Nam told Harris to get back in the car, and they left to get something to eat. 3RP 189. Harris said this happened in early March. 3RP 186. But Harris also testified it occurred six weeks before the alleged kidnapping incident on March 6. 3RP 141.

A week before March 6, Harris told Nam to move out. 3RP 190. The two of them were in the bedroom. He said he wasn't going anywhere and that he was not going to let Harris deprive him of his son. Nam pushed Harris down on the bed. 3RP 190-91. Harris had to go to work, so she grabbed her keys and left. 3RP 191. Nam immediately moved out. 3RP 191.

Harris claimed Nam telephoned on March 6 and asked to see his son. This was all he wanted. 3RP 200. She told Nam he could not see his child and told him, falsely, she had a restraining order against him. 3RP 192. She told him to call back in a week and hung up on him. 3RP 192, 204.

According to Harris, she left ten minutes later to pick up her stepfather at the airport. 3RP 192-93. As she pulled out of the driveway, she saw Nam's car parked a few houses away, with Nam at the wheel. 3RP 194; 205. Harris conceded Nam did not try to prevent her continuing on her way. 3RP 205. She pulled up beside his car, rolled down her driver's side window, asked Nam what he was doing, and told him he could not be there. 3RP 194. Nam replied he simply wanted to see his son. 3RP 205. Harris could have driven away, but did not. 3RP 205.

Nam came over to Harris's car, stuck his hand inside, and opened the door. 3RP 194. Harris said Nam got in the driver's side and shoved her head toward the passenger door, so she was lying across the seat, still with her foot on the brake. 3RP 196. She thought he intended to drive away with her. 3RP 196. She screamed for help and honked the horn. 3RP 196. He started choking her and put his hand over her mouth. 3RP 196. Harris said she tried to remove the keys from the ignition and Nam tried to prevent her. 3RP 196, 203, 207. Harris testified that as they

struggled for the keys, Nam tried to put the vehicle in drive while she tried to keep it in park. 3RP 197. Then a neighbor, Nathan Clinton, arrived and said he was calling the police. 3RP 197. According to Clinton, the driver's side door was open, and Nam was partially in, partially out of the car. 3RP 104-05. It appeared to Clinton that Nam was trying to pull Harris out of the car, which did not move during the struggle. 3RP 105. Harris told Clinton it was Nam who was trying to get the keys out of the ignition, which she was trying to prevent. 3RP 95, 103-04, 106. In a taped statement on the evening of the incident, Harris told police Nam started trying to pull the keys out of the car and she was the one trying to drive. 3RP 203, 207. The keys were in fact pulled out of the ignition and bent. 3RP 205. At trial, Harris said for the first time that Nam tried to put the keys back in the ignition. 3RP 207-08.

Deputy George Oplinger responded to Clinton's 911 call. 3RP 43. The court admitted Harris's statements to Oplinger as excited utterances. 3RP 46. But, after Oplinger testified, the court expressed concern that this testimony exceeded the scope of the excited utterance exception because Harris's statements were so detailed. 3RP 53. Defense counsel acknowledged he should have renewed the hearsay objection, and the court agreed. 3RP 55, 94.

The court ruled Clinton could not say anything about Nam taking a purse from the vehicle. 3RP 20-21. Clinton complied. 3RP 72. The court also excluded Clinton's statements to Oplinger as inadmissible hearsay. 3RP 45. But Oplinger told the jury Clinton told him Nam "exited the vehicle with her purse and left in his vehicle." 3RP 48. Defense counsel failed to object or move for mistrial.

At the first trial, the defense offered evidence that Harris told Nam's sister, Charmaine Berry, that she would say anything to ensure Nam went to jail. On appeal, this Court held it was reversible error to exclude this evidence: "We hold that the trial court erred when it limited Nam's cross-examination of the victim's potential bias. This error necessitates a new trial[.]" Appendix at 11.

At the second trial, defense counsel again offered this evidence and listed Berry as a witness. 3RP 162; CP 51. The court again excluded this bias evidence, finding insufficient proof the conversation took place. 3RP 165.

During trial, a problem arose with a juror. 3RP 213-14. The court held a hearing to examine the juror and determine whether his developmental disability and frequent diabetic blackouts rendered him unable to serve. 3RP 213, 215. The judge sealed the courtroom and

excluded all but Nam, counsel, the court reporter, clerk and bailiff. 3RP 216. The juror was replaced with the alternate. 3RP 222.

D. ARGUMENT

1. THE COURT VIOLATED NAM'S RIGHT TO A PUBLIC TRIAL.

During the trial, the bailiff reported a potential problem with one of the jurors. 3RP 213-14. The court decided to hold a hearing to determine the juror's continued ability to serve. 3RP 213, 215. The court stated: "We'll do it in the courtroom, but sealed as if it was in chambers." 3RP 216. The courtroom was sealed and a hearing held with only the judge, counsel, Nam, court reporter, clerk and bailiff present. At the conclusion of the sealed hearing, the court determined the juror's developmental disability and diabetic blackouts precluded him from serving and replaced the ailing juror with the alternate. 3RP 222.

This was error requiring reversal of Nam's conviction because it denied him his right to a public trial. State v. Bone-Club, 128 Wn.2d 254, 259, 906 P.2d 325 (1995). The error is of constitutional magnitude and can be raised for the first time on appeal. Bone-Club, 128 Wn.2d at 257; State v. Brightman, 155 Wn.2d 506, 517, 122 P.3d 150 (2005). The court reviews constitutional issues de novo. State v. Jones, 159 Wn.2d 231, 237, 149 P.3d 636 (2006).

A person accused of a crime has a constitutional right to a public trial. U.S. Const. amend. VI; Wash. Const. art I, § 22. This includes the right to have all jury voir dire proceedings conducted in public. In re Pers. Restraint of Orange, 152 Wn.2d 795, 100 P.3d 291 (2005); Bone-Club, 128 Wn.2d at 259. An accused may waive his fundamental right to have jurors examined in public, but only by an affirmative act that is knowing, intelligent, voluntary and on the record. State v. Stegall, 124 Wn.2d 719, 724, 881 P.2d 979 (1994).

Without a valid waiver, the court may not close juror voir dire proceedings without considering the following criteria: a compelling interest in closure; the opportunity for objections; the weight of the alleged closure interest versus that of the public trial right; and whether closure is the least restrictive means available to protect the threatened interest. Orange, 152 Wn.2d at 801-02, 804-07; Bone-Club, 128 Wn.2d at 256-59. Consideration of these factors is essential to protect both the defendant's public trial right and the public's constitutional right to open proceedings. Bone-Club, 128 Wn.2d at 258-59; Orange, 152 Wn.2d at 804-05. The court must therefore address them on the record before holding juror voir dire proceedings in camera. Bone-Club, 128 Wn.2d at 260-61; Orange, 152 Wn.2d at 811-12.

This error is not subject to harmless error analysis. Bone-Club, 128 Wn.2d at 261-62; Neder v. United States, 527 U.S. 1, 8, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999). Prejudice is presumed. Bone-Club, 128 Wn.2d at 261-62; Orange, 152 Wn.2d at 812. The only appropriate remedy is to reverse the conviction and remand for a new trial. Brightman, 155 Wn.2d at 518; State v. Gregory, 158 Wn.2d 759, 816, 147 P.3d 1201 (2006).

Here, Nam did not affirmatively waive his right to public proceedings regarding the juror substitution, and the court did not consider the requisite factors on the record before ordering the courtroom sealed. This violated the public trial doctrine and reversal is required. Bone-Club, 128 Wn.2d at 259.

2. THE COURT AGAIN ERRED BY EXCLUDING EVIDENCE OF HARRIS'S BIAS.

At the first trial, the court refused to allow the defense to elicit evidence from Harris that she told Nam's sister, Charmaine Berry, she would do anything to ensure Nam went to jail. On appeal, this Court concluded it was reversible error not to allow Nam to cross-examine Harris for evidence of bias. Appendix at 11, citing State v. Johnson, 90 Wn. App. 54, 69, 950 P.2d 981 (1998). This Court explained that a

statement manifesting bias is relevant without regard to its truth. Appendix at 9-10.

At the second trial, defense counsel again sought to cross-examine Harris to elicit the same bias evidence. 3RP 162. Again the court excluded it – this time, on the grounds that the defense could not independently prove Harris made the statement. 3RP 165. Again, this was reversible error.

The Sixth Amendment to the United States Constitution and Const. art. 1, § 22 guarantee a criminal defendant two separate rights: (1) the right to present testimony in his own defense; and (2) the right to confront and cross-examine prosecution witnesses. State v. Hudlow, 99 Wn.2d 1, 14, 659 P.2d 514 (1983), citing Washington v. Texas, 388 U.S. 14, 23, 87 S. Ct. 1920, 1925, 18 L. Ed. 2d 1019 (1967) and Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).

The prosecution is not entitled to these same guarantees and therefore cannot use impeachment as a means of submitting evidence to the jury that is otherwise unavailable. State v. Miles, 139 Wn. App. 879, 885, 162 P.3d 1169 (2007), citing State v. Yoakum, 37 Wn.2d 137, 144, 222 P.2d 181 (1950), and State v. Babich, 68 Wn. App. 438, 445-46, 842 P.2d 1053 (1993). A prosecutor who asks questions that imply the

existence of a prejudicial fact must be prepared to prove the existence of that fact. Id.

However, the confrontation clause does not prevent the accused from cross examining the prosecution's chief witness for evidence of bias. To do so would violate the Sixth Amendment and art. 1, § 22 guarantees of criminal defendants' right to present a complete defense. Hudlow, 99 Wn.2d at 14. Rather, the right to cross-examine adverse witnesses is implicit in the constitutional right of confrontation. Davis, 415 U.S. at 315. The latitude afforded the accused in cross-examining an essential state witness to elicit facts showing the witness's bias is considerable. State v. Mak, 105 Wn.2d 692, 710-11, 718 P.2d 407 (1986). Our supreme court has characterized cross-examination to show bias as a matter of right. State v. Robbins, 35 Wn.2d 389, 396, 213 P.2d 310 (1950), citing Perry v. City of Centralia, 50 Wash. 670, 97 P. 802 (1908). "Where a party has been denied this right, we have not hesitated to reverse." Robbins, 35 Wn.2d at 396. The Robbins court noted that this "accords with the general practice throughout the country." Robbins, 35 Wn.2d at 396, citing 70 C.J., Witnesses, p. 958 et seq., §§ 1165, 1170, 1171.

Accordingly, any attempt to limit meaningful cross-examination must be justified by a compelling state interest. Hudlow, 99 Wn.2d at 15-16. "Compelling state interest" means that the evidence, if admitted,

would be “so prejudicial as to disrupt the fairness of the fact-finding process.” Hudlow, 99 Wn.2d at 16.

The State bears the burden of showing a constitutional error was harmless. State v. Easter, 130 Wn.2d 228, 242, 130 Wn.2d 228 (1996). This Court will deem a constitutional error harmless only if it is beyond reasonable doubt that any reasonable jury would reach the same result absent the error. State v. Aumick, 126 Wn.2d 422, 430, 894 P.2d 1325 (1995). The untainted evidence must be so overwhelming it necessarily leads to a finding of guilt. State v. Welchel, 115 Wn.2d 708, 728, 801 P.2d 948 (1990). Where the error was not harmless, the defendant must have a new trial. State v. Fricks, 91 Wn.2d 391, 397, 588 P.2d 1328 (1979).

This Court held in the first appeal that Nam was wrongfully denied the right to cross examine Harris for evidence of bias. Appendix at 11, citing State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). Moreover, the State could not show it was harmless beyond a reasonable doubt. Rather, the Court concluded the exclusion of the bias evidence was especially harmful because the State’s proof that any kidnapping attempt occurred turned “entirely on Harris’s credibility.” Appendix at 11.

In this trial, the reason for excluding the bias evidence was different. In failing to distinguish between the two separate constitutional

protections, the court applied the confrontation clause erroneously in favor of the State and against the defendant, which prevented Nam from presenting a complete defense. The court required no showing of a compelling State interest to do this. As in the first trial, the State cannot show the error was harmless, and reversal is required. Fricks, 91 Wn.2d at 392.

3. NAM WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

Both the United States and Washington Constitutions guarantee effective assistance of counsel. U.S. Const. amend. VI; Wash. Const. art. I, § 22. A claim of ineffective assistance of counsel is a mixed question of law and fact that is reviewed de novo. Strickland v. Washington, 466 U.S. 668, 698, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

To establish ineffective assistance, the appellant must show counsel's performance was deficient in some respect, and that the deficiency prejudiced the defense. Strickland, 466 U.S. at 687; State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). The reviewing court presumes counsel's representation was effective, and the defendant must demonstrate the absence of legitimate strategic or tactical reasons for the challenged conduct. McFarland, 127 Wn.2d at 335-36.

Nam was prejudiced by trial counsel's deficient performance in several instances.

(a) Counsel failed to renew an objection to damaging hearsay that clearly exceeded the scope of the excited utterance exception.

(i) Deficient Performance

Counsel failed to object to damaging hearsay testimony by Deputy George Oplinger that was admitted under the excited utterance exception to the hearsay rule, but exceeded its scope. 3RP 46.

Hearsay is any out-of-court statement offered "to prove the truth of the matter asserted." ER 801(c); State v. Chapin, 118 Wn.2d 681, 685, 826 P.2d 194 (1992). With certain exceptions, hearsay is inadmissible. ER 802; Chapin, 118 Wn.2d at 685. A so-called "excited utterance" is one exception. ER 803(a)(1) provides: "The following are not excluded by the hearsay rule, even though the declarant is available as a witness: A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter."

The relevance of such statements is to prove the startling event occurred. State v. Young, 160 Wn.2d 799, 816-17, 161 P.3d 967 (2007). Thus, the utterance must occur while the declarant was under the stress of excitement caused by the event, and it must also describe or relate to the

startling event. Chapin, 118 Wn.2d at 686. The evidentiary value of an excited utterance is based on the premise that a response to sensations and perceptions produced by an external shock is spontaneous and not based on reflection or self-interest. Chapin, 118 Wn.2d at 686, citing 6 John Henry Wigmore, Evidence § 1747, at 195 (1976). It is believed that the condition of excitement produced by the circumstances “temporarily stills the capacity of reflection” and reduces the likelihood of conscious fabrication. Young, 160 Wn.2d at 813, quoting the advisory committee’s note to Fed.R.Evid. 803(2).

Under no circumstances should a statement qualifying as an excited utterance be testimonial in nature. State v. Davis, 154 Wn.2d 291, 302, 111 P.3d 844 (2005). If it appears the statement was based on reflection or self-interest, confidence in its presumed reliability is undermined. State v. Brown, 127 Wn.2d 749, 758, 903 P.2d 459 (1995), citing Chapin, 118 Wn.2d at 686.

Here, Oplinger testified to detailed statements by Harris describing previously existing circumstances and conditions concerning her prior relationship with Nam. 3RP 46-47, 51. After Oplinger testified, the trial judge observed that some of these statements were not directly related to the alleged startling event. Moreover, the statements were so detailed they were of necessity the product of reflection and had exceeded the scope of

the excited utterance exception. 3RP 53. Defense counsel acknowledged – and the judge agreed –that Oplinger’s hearsay testimony about Harris’s statements was admitted in error and that an objection should have been made. 3RP 55.

(ii) Prejudice

The effect of this error was that a law enforcement officer corroborated Harris’s testimony, the chief prosecution witness. It is well-recognized that juries give particular credibility to police officers. State v. Kirkman, 159 Wn.2d 918, 928, 155 P.3d 125 (2007); State v. Demery, 144 Wn.2d 753, 765, 30 P.3d 1278 (2001) (“an officer’s testimony often carries a special aura of reliability.”) This was especially prejudicial here, because Nam’s conviction depended on the jury’s assessment of Harris’s credibility. Appendix at 11.

(b) Counsel was ineffective for failing to object when Oplinger injected hearsay evidence of an uncharged crime.

(i) Deficient Performance

Oplinger introduced yet more inadmissible hearsay when he told the jury Nathan Clinton said he saw Nam steal Harris’s purse from the car.

When Clinton testified, he obeyed the court’s order in limine to say nothing about Nam taking the purse. 3RP 20-21, 72. But later, Oplinger testified Clinton said Nam “exited the vehicle with her purse and left in his

vehicle.” 3RP 48. Defense counsel did not object. This violated court’s explicit ruling excluding this evidence which the court properly determined was unduly prejudicial to Nam.

Moreover, counsel’s failure to object cannot be characterized as a legitimate trial strategy to avoid drawing the attention of the jury to the damaging evidence. See e.g., State v. Gladden, 116 Wn. App. 561, 568, 66 P.3d 1095 (2003) (failure to object to evidence of defendant’s prior imprisonment so as not to draw undue attention deemed reasonable tactical decision). Counsel could have moved for a mistrial, prompting the court to address the grounds for the motion outside the presence of the jury.

(ii) Prejudice.

Evidence of uncharged criminal conduct is inherently prejudicial. Therefore, it may be admitted only if the court determines it has substantial probative value. State v. Goebel, 36 Wn.2d 367, 378, 218 P.2d 300 (1950).

Even where such evidence is properly admitted, the court must be sure to instruct the jury not to consider the uncharged conduct as evidence of propensity. Without a limiting instruction, the error requires reversal if, within reasonable probability, the impermissible evidence materially affected the outcome of the trial. State v. Cook, 131 Wn. App. 845, 854,

129 P.3d 834 (2006), citing State v. Everybodytalksabout, 145 Wn.2d 456, 468-69, 39 P.3d 294 (2002); State v. Jackson, 102 Wn.2d 689, 695, 689 P.2d 76 (1984).

Here, Nam was not charged with robbery because this court reversed and dismissed that charge with prejudice. Moreover, during pretrial motions the trial court ruled the robbery evidence inadmissible for any purpose. 3RP 20-21. But, because counsel failed to object when it came in the back door through Oplinger's hearsay, the jury did not receive a limiting instruction.

There is a reasonable probability the verdict was affected by this error. To convict Nam of attempted kidnapping, the jury had to accept the truth of Harris's testimony and her subjective feelings about his intent. Uninstructed as to the evils of propensity evidence, it is reasonably likely some members of the jury were swayed toward Harris and against Nam by an impermissible inference that Nam had a propensity for criminal conduct based on the purse-snatching evidence.

4. THE CUMULATIVE EFFECT OF THE EVIDENTIARY ERRORS WARRANTS REVERSAL.

Cumulative error may warrant reversal, even if the Court holds that each error standing alone is harmless. State v. Weber, 159 Wn.2d 252, 279, 149 P.3d 646 (2006); State v. Greiff, 141 Wn.2d 910, 929, 10 P.3d 390 (2000).

Here, each of the evidentiary errors in this trial was devastating to Nam's defense. But even if the Court does not view any single error standing alone as warranting reversal, taken together they deprived Nam of a fair trial, as the Court held in the first trial.

This Court recognized that the first jury's assessment of Harris's credibility was crucial, and the cumulative effect of three evidentiary errors was to artificially bolster Harris's credibility and undermine the defense. There, the defense was prevented from cross examining Harris regarding her alleged statement that she would say anything to get Nam convicted; a police officer corroborated Harris's testimony with evidence the jury would not have recognized as unreliable hearsay; and the jury learned about an uncharged crime but was not warned against the impermissible inference of propensity. This called the reliability of the verdict into question and warranted retrial. Appendix at 19. The same is true here.

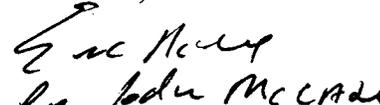
E. CONCLUSION

Nam's conviction for attempted first degree kidnapping should be reversed, because (a) he was denied his right to a public trial when the court conducted in camera voir dire and substitution of a juror; (b) defense counsel's deficient performance twice permitted inadmissible and highly prejudicial evidence to reach the jury; (c) Nam was deprived of due process when the court denied him the opportunity to elicit evidence of the chief prosecution witness's bias; and (d) the cumulative effect of these errors diminishes confidence in the conviction below the minimum constitutional threshold for prosecutorial fairness.

Dated this 6th day of December, 2007.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JORDAN B. McCABE
WSBA No. 27211



CHRISTOPHER H. GIBSON
WSBA No. 25097
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Attorneys for Appellant

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COURT OF APPEALS DIV #1
STATE OF WASHINGTON
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STATE OF WASHINGTON

Respondent,

v.

CHAMROEUM NAM,

Appellant.

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On December 7, 2007, I deposited in the US mail, a properly stamped and addressed envelope containing a true and correct copy of the following document on the parties below:

Documents Served:

- 1. Brief of Appellant

Via Mail to:

James Powers
Thurston Co. Prosecutor
Thurston County Superior Court
2000 Lakeridge Drive SW
Olympia, WA 98502

Dated this 7th day of December, 2007.

By: Amy Cox
Amy Cox, Legal Assistant
Nielsen, Broman and Koch, PLLC
1908 East Madison Street
Seattle, WA 98122

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

NO. 36468-9-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

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Olympia, WA 98502

& Chamroeum Nam, 969123
Stafford Creek Corrections Center
191 Constantine Way
Abderdeen, WA 98520-

Dated this 7th day of December, 2007.

By: [Signature]
Amy Cox, Legal Assistant
Nielsen, Broman and Koch, PLLC
1908 East Madison Street
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