

NO. 36629-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DANNY WAYNE EVANS,

Appellant.

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

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court erred when it admitted exhibits 12, 12A, 14, and 14A over defense objection because the state failed to prove an exception to the hearsay rule or the relevance of those documents. RP 16-18, 131-139, 216-220, 242-249.

2. The trial court denied the defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment when it denied the defendant's motion for a mistrial after a witness testified to the existence of highly prejudicial, excluded evidence. RP 350-363.

Issues Pertaining to Assignment of Error

1. Does a trial court err if it admits exhibits that contain hearsay into evidence over defense objection when the state fails to prove an exception to the hearsay rule and when the state fails to prove the relevance of those documents?

2. Does a trial court deny a defendant a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment if it denies a defendant's motion for a mistrial after a witness testifies to the existence of highly prejudicial, excluded evidence and the prejudicial effect of that evidence cannot be overcome by a curative instruction?

STATEMENT OF THE CASE

Factual History

At about 10:00 pm on October 23, 2002, Agents of the Cowlitz-Wahkiakum County Drug Task Force executed a search warrant at 1001½ Cowlitz Way in Kelso, Washington. RP 28-31, 101-105, 322-325.¹ The building at this address is a small detached apartment converted from a garage that sits behind the house at 1001 Cowlitz Way. *Id.* The detached apartment consists of a living room, a kitchen, a bathroom, and a bedroom. *Id.* The defendant Danny Wayne Evans owned both residences. RP 221-224. On the date the police executed the warrant, the defendant was renting the house to a person named Brian Kerr and the apartment to a person named Scott Stranz. Mr. Stranz had moved in a few weeks previous. RP 221-224, 238-239. The defendant lived in a residence on Barnes Road in Kelso. RP 196.

When the police knocked on the door of the apartment there was no reply. RP 28-31, 101-105. As a result, they forced the door open and entered. *Id.* Although they did not find anyone present, they did find evidence that someone was living in the residence. RP 89-90. Once inside,

¹The record in this case includes three continuously numbered volumes of verbatim reports, referred to herein as "RP," followed by the page number.

the officers smelled a “chemical” odor that one of the officers associated with acetone. RP 28-31, 198. Upon searching the kitchen cabinets and cupboards, the officers found numerous chemicals, filters, and items of glassware that had at some point in time been used to manufacture methamphetamine through the red phosphorus - iodine method. RP 34-74, 114-152, 277-321. However, the officers could not say that anyone had manufactured methamphetamine recently and that anyone had even manufactured methamphetamine in the apartment. RP 85-88, 317-319. In fact, the equipment could have last been used as long as three years previous. RP 88.

In one of the cupboards the officers found a number of laboratory grade glass beakers and containers. RP 142-152. These items were clean and did not have any residue on them to indicate that they had been used to manufacture methamphetamine, although they certainly would have been useful in that process. RP 121-152. Two of these items had latent fingerprints on them, which one of the officers preserved. *Id.*

During the execution of the warrant, both Brian Kerr and the defendant exited the front house and spoke with the police at different times. RP 31-33, 221-225, 322-325. Mr. Kerr came out of the top floor, and the defendant came out of the basement. *Id.* Once outside, the defendant spoke with Officer Tate, who obtained permission to search the defendant’s truck,

which was in the driveway. CP 12-19. Inside the truck, Officer Tate found a locked metal case. *Id.* The defendant stated that the case was not his, that he did not know who owned it, but that Officer Tate was not free to take it. *Id.* Officer Tate none the less took the case, and three days later after a drug dog alerted on it, he obtained a warrant to search it. *Id.* The case contained a large amount of methamphetamine, red phosphorus, and written materials with the defendant's name on them. *Id.* Upon discovering these items, Officer Tate rearrested the defendant, who had been arrested at the time the officer executed the warrant but was later released. *Id.*

Procedural History

By information filed October 28, 2002, the Cowlitz county Prosecutor charged the defendant with one count of manufacturing methamphetamine and one count of possession of methamphetamine with intent to deliver. CP 1-2. The defendant later unsuccessfully moved to suppress the evidence found in the case that Officer Tate had taken out of his truck. CP 12-19. Following trial, he was convicted on both counts. *Id.* He then appealed. *Id.* Ultimately, the Washington State Supreme Court reversed the defendant's convictions and remanded for a new trial, holding that the trial court had erred when it denied the motion to suppress the contents of the case Officer Tate seized. *id.*

Finally, on July 2, 2007, this case was called for a second trial before

a jury. RP 1. At the beginning of the new trial, the court entered an order prohibiting either side from mentioning the fact of the first trial or the existence of any of the evidence the court ordered suppressed. RP 21. The court instructed the parties to refer to the trial as a “prior hearing” should impeachment with prior trial testimony become necessary. RP 21. Following the pretrial motions, the state began its case by calling a number of drug task force officers, as well as a forensic scientist who tested the samples sent to him. RP 22, 96, 187, 213, 221, 244, 277, 322. These witnesses testified to the facts from the preceding factual history. *See Factual History.*

In addition, during trial, the state called Paul Curtis as a witness. RP 213. Mr. Curtis is an officer at the Cowlitz County Jail. RP 213-215. He testified that in 2002, the year the defendant was arrested, the procedures for fingerprinting inmates were generally as follows. RP 215-220. When an inmate came into the jail, an officer obtained identifying information and input that information into a computer. *Id.* That officer then sent the information to a second computer. *Id.* At this point, the officer would go to the second computer, log in, and pull up the identifying information from the first computer. *Id.* Once this was pulled up, the officer would roll the inmate’s fingertips over a glass screen, which would scan the inmates prints and put them into the computer. *Id.* Finally, the officer would send all of the information to a printer that would print out the inmates identifying

information on a sheet of paper with a picture of the inmates fingerprints. *Id.* Additionally, all of this information would be sent electronically to the Washington State Patrol. *Id.*

Officer Curtis also explained that there were times when this procedure was not followed. RP 216-220. For example, if the officers were very busy, sometimes one officer would get the identifying information from an inmate, input it into the first computer, and send it to the second computer. *Id.* A second officer would then log into the second computer and physically take the prints. *Id.* In addition, if an inmate was recalcitrant, sometimes it would take a number of officers to physically hold an inmate and get the prints into the second computer. *Id.*

During trial, Officer Curtis identified Exhibit 12A as a document that looked like the type of paper printout he explained would result from the booking process in 2002. RP 220. He also testified that the second page of the document had "CURTIS - J17" as the person who had taken the prints. RP 216-220. This was an indication that he had been the operator of the second computer and probably taken the prints shown on this document. *Id.* However, he had no independent recollection of taking the prints or inputting the other information on Exhibit 12A. *Id.* This document contains no certification by any agency or person. *See* Exhibit 12A. The court admitted this exhibit as a record of the defendant's fingerprints over defense objection.

RP 220. In addition, over defense objection that the exhibit was not properly identified or authenticated, and without any identification from a witness, the court admitted Exhibit 14, which purports to be a booking sheet for the defendant. RP 16-18, 131-139, 242-249. The court also admitted Exhibit 14A which was a redacted copy of Exhibit 14. *Id.*

Following the admission of Exhibits 12A and 14, the state called Randall Watson as a witness. RP 244. Mr. Watson is a forensic scientist with the Washington State Patrol Crime Lab and performs fingerprint analysis as part of his work. RP 244-253. While on the stand, he testified that the latent prints the officers took off of the clean glassware from the apartment matched the prints from Exhibit 12A, which were reportedly the defendant's prints. RP 244-265.

After the state closed its case, the defense called Scott Stranz, who testified that he was living in the apartment the police searched, that the items the police seized belonged to him, that he had moved them into the apartment from a storage unit, that he had not cooked methamphetamine in the apartment, and that the defendant did not know the items were in the apartment. RP 338-354. In fact, prior to his testimony, the court and counsel had engaged in a fairly lengthy colloquy concerning whether or not Mr. Stranz needed an attorney before he testified and whether or not the state intended to charge Mr. Stranz with a crime, given the substance of his

testimony. RP129-131. Ultimately the court asked Mr. Stranz if he wanted an attorney and he declined. *Id.* During the state's cross-examination of Mr. Stranz, the following occurred.

Q. No. So, Mr. Stranz, let me ask, because I'm a little uncertain, why are you coming forward at this point, five years after the – after all this stuff happened? Why now?

A. Uhm, the appeal, threw out a big piece of evidence.

RP 350.

After Mr. Stranz finished his testimony, the defense moved for a mistrial based upon his testimony concerning a prior trial and the fact that an appellate court “threw out a big piece of evidence.” RP 354-363. The court denied the motion and gave the following limiting instruction, which the defense objected was insufficient to ameliorate the prejudice the testimony had created. RP 364-365.

All right. Ladies and gentlemen, I do need first to address one issue from the prior witness. You heard some reference during the testimony of Mr. Stranz to an appeal and some evidence being tossed, I think is how he put it. Number one, I'm instructing the jury to disregard that comment. It's got nothing to do with this case.

And just so the jury is aware and has little bit more comfort in doing exactly that, the evidence he was referencing at no point had any bearing on this case – this particular case. The evidence referred to was not in any way at that – in the past or not involved in the case that we're here trying now.

So this is one of the things that we as – sometimes required as judge to do or something that's asked jurors to do is disregard something that you've heard. I understand it's not an easy task but it

is required in this case. So I'd ask you to disregard that comment entirely.

RP 364-365.

The defense closed its case just prior to the court giving this instruction. RP 365. The court then instructed the jury, with the defense taking exception to the court's refusal to give the defendant's proposed lesser included instruction on the crime of possession of methamphetamine. RP 366-368; CP 28-42. Counsel then gave closing argument and the jury retired for deliberation, after which it returned a verdict of guilty. RP 59. The court later sentenced the defendant within the standard range and the defendant then filed timely notice of appeal. CP 61-72, 74.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT ADMITTED EXHIBITS 12, 12A, 14, AND 14A OVER DEFENSE OBJECTION BECAUSE THE STATE FAILED TO PROVE AN EXCEPTION TO THE HEARSAY RULE OR THE RELEVANCE OF THOSE DOCUMENTS.

Under ER 802, hearsay “is not admissible except as provided by these rules, by other court rules, or by statute.” Under ER 801(c) hearsay is defined as follows:

(c) Hearsay. “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

ER 801(c).

The phrase “other than one made by the declarant while testifying at the trial or hearing” includes an out of court statement made by an in court witness. *State v. Sua*, 115 Wn.App. 29, 60 P.3d 1234 (2003). This restriction arises from the “unwillingness to countenance the general use of prior prepared statements” as substantive evidence. *See* Advisory Committee’s Note to Federal Rules of Evidence 801(d)(1).

In the case at bar, the state offered two hearsay documents into evidence during the trial: (1) Exhibit 12A, which the state claimed was a copy of a printout of a fingerprint sheet for the defendant that had been generated at the Cowlitz County Jail and kept by the Washington State Patrol, and (2) Exhibit 14, which the state claimed was a copy of a booking sheet for

the defendant created contemporaneously with Exhibit 12 at the Cowlitz County Jail and kept by the Washington State Patrol. In support of the admission of this evidence, the state called a Cowlitz County Jail employee whose name appeared on the second page of Exhibit 12A. However, this employee had no independent recollection of booking the defendant or taking his fingerprints.

In order to overcome the defendant's objection to the admission of these documents, the state argued and the court agreed, that they were admissible under RCW 5.44.040, the business records exception to the hearsay rule, and the court's decision in *State v. Hines*, 87 Wn.App. 98, 941 P.2d 9 (1997). RP 132-137, 216-220, 242-249. The business record exception to the hearsay rule states as follows:

Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state or any other state or territory of the United States, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence in the courts of this state.

RCW 5.44.040.

Under this rule, there are four requirements for the substantive admission of public document: (1) the document must be a copy of a "record" or "document on record," (2) the document must be "on file" in the "various departments" of the federal or state government, (3) the document

must be “certified by the respective officer having the lawful custody thereof,” and (4) the document must be “under” the “respective seals where such officers have official seals.” As reference to testimony of Officer Curtis and the documents themselves reveals, Exhibits 12A and 14 do not meet the requirements for admission under RCW 5.44.040. The following argument supports this conclusion.

Under the first two requirements for admission of documents under RCW 5.44.040, the document must be a copy of a “record” or “document on record,” and it must be “on file” in the “various departments” of the federal or state government. In this case, the testimony of Officer Curtis establishes both of these criteria as he explained how such documents are produced and recorded. However, neither document meets the requirements of criteria three. Under this requirement, the document must be “certified by the respective officer having the lawful custody thereof.” Exhibit 12A contains no certification whatsoever. In addition, the record before this court is ambiguous as to what agency even had the official custody of Exhibit 12A, and the record is silent on who was “the respective officer having the lawful custody thereof.” By contrast, Exhibit 14 does at least contain an apparent stamp on it stating as follows:

certify this is a true and correct record,
Specialist: _____
COWLITZ COUNTY LAW ENFORCEMENT RECORDS

The signature line to this stamp has some sort of illegible writing on it that might be a person's initials. However, no name is included and it does not claim that the person affixing the apparent initials was "the respective officer having the lawful custody thereof." Thus, this document also does not meet the third requirement for the admission of records under RCW 5.44.040.

Under the fourth criteria for the admission of records under RCW 5.44.040, the party seeking admission has the burden of proving that the document is "under" the "respective seals where such officers have official seals." In this case, Exhibits 12A and 14 bear no seals or stamps affixed to them. The state may argue that the absence of such a seal or stamp to these exhibits is not fatal to their admission under RCW 5.44.040 because the officers having the official custody of the records does not have an "official seal." This would be a valid response to the defendant's argument on the lack of any seal, but for two points: the state failed to present any evidence as to who was the official custodian of these records, and the state failed to present any evidence that this person or people did have official seals. Consequently, the trial court erred when it admitted Exhibits 12A and 14.

In this case the state cited to the decision *State v. Hines, supra*, in support of its argument that Exhibits 12A and 14 were admissible under RCW 5.44.040. In this case, the defendant appealed from her conviction for custodial interference, arguing in part that the trial court had erred when it

admitted a Montana Sheriff's office booking record under RCW 5.44.040. However, the defendant's argument was not that the document was inadmissible because the state had failed to prove the criteria under RCW 5.44.040, which is what the defendant in this case argues. Rather, the defendant in *Hines* argued that the admission of the document violated her right to confrontation under the Sixth Amendment, an argument that the defendant in this case does not make. Consequently, the decision in *State v. Hines* does not support the conclusion that Exhibits 12A and 14 were properly admitted under RCW 5.44.040.

In the case at bar, the admission of Exhibits 12A and 14 was not harmless. As the record reveals in this case, the only connection between the defendant and the methamphetamine lab found in the apartment was his fingerprints on two pieces of clean, laboratory grade glassware found in the apartment. Absent this evidence, the state would have been left with evidence that equipment used at some time for processing methamphetamine was found in an apartment that the defendant owned and rented out to another person. This evidence would not be sufficient to sustain a conviction. Thus, absent the admission of Exhibits 12A and 14, the jury would more likely than not have returned a verdict of acquittal, had the court even allowed the case to go to the jury. As a result, the defendant is entitled to a new trial based upon the trial court's erroneous admission of Exhibits 12A and 14.

II. THE TRIAL COURT DENIED THE DEFENDANT A FAIR TRIAL UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3, AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT WHEN IT DENIED THE DEFENDANT'S MOTION FOR A MISTRIAL AFTER A WITNESS TESTIFIED TO THE EXISTENCE OF HIGHLY PREJUDICIAL, EXCLUDED EVIDENCE.

While due process does not guarantee every person a perfect trial, *Bruton v. United States*, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968), both our state and federal constitutions do guarantee all defendants a fair trial untainted from inadmissible, prejudicial evidence. *State v. Swenson*, 62 Wn.2d 259, 382 P.2d 614 (1963). It also guarantees a fair trial untainted by unreliable, prejudicial evidence. *State v. Ford*, 137 Wn.2d 472, 973 P.2d 472 (1999). This legal principle is also found in ER 403, which states that the trial court should exclude otherwise relevant evidence if the unfair prejudice arising from the admission of the evidence outweighs its probative value.

This rule states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

ER 403.

In weighing the admissibility of evidence under ER 403 to determine whether the danger of unfair prejudice substantially outweighs probative value, a court should consider the importance of the fact that the evidence is

intended to prove the strength and length of the chain of inferences necessary to establish the fact, whether the fact is disputed, the availability of alternative means of proof, and the potential effectiveness of a limiting instruction. *State v. Kendrick*, 47 Wn.App. 620, 736 P.2d 1079 (1987) . In Graham's treatise on the equivalent federal rule, it states that the court should consider:

the importance of the fact of consequence for which the evidence is offered in the context of the litigation, the strength and length of the chain of inferences necessary to establish the fact of consequence, the availability of alternative means of proof, whether the fact of consequence for which the evidence is offered is being disputed, and, where appropriate, the potential effectiveness of a limiting instruction....

M. Graham, *Federal Evidence* § 403.1, at 180-81 (2d ed. 1986) (quoted in *State v. Kendrick*, 47 Wn.App. at 629).

The decision whether or not to exclude evidence under this rule lies within the sound discretion of the trial court and will not be overturned absent an abuse of that discretion. *State v. Baldwin*, 109 Wn.App. 516, 37 P.3d 1220 (2001). An abuse of discretion occurs when the trial court's exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Neal*, 144 Wn.2d 600, 30 P.3d 1255 (2001).

In addition, it is fundamental under our adversarial system of criminal justice that "propensity" evidence, usually offered in the form of prior convictions or prior bad acts, is not admissible to prove the commission of

a new offense. See 5 Karl B. Tegland, *Washington Practice, Evidence* § 114, at 383 (3d ed. 1989). This common law rule has been codified in ER 404(b) wherein it states that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” Tegland puts this principle as follows:

Rule 404(b) expresses the traditional rule that prior misconduct is inadmissible to show that the defendant is a “criminal type,” and is thus likely to have committed the crime for which he or she is presently charged. The rule excludes prior crimes, regardless of whether they resulted in convictions. The rule likewise excludes acts that are merely unpopular or disgraceful.

Arrests of mere accusations of crime are generally inadmissible, not so much on the basis of Rule 404(b), but simply because they are irrelevant and highly prejudicial.

The rule is a specialized version of Rule 403, based upon the belief that evidence of prior misconduct is likely to be highly prejudicial, and that it would be admitted only under limited circumstances, and then only when its probative value clearly outweighs its prejudicial effect.

5 Karl B. Tegland, *Washington Practice, Evidence* § 114, at 383-386 (3d ed. 1989).

For example, in *State v. Pogue*, 108 Wn.2d 981, 17 P.3d 1272 (2001), the defendant was charged with possession of cocaine after a police officer found crack cocaine in a car the defendant was driving. At trial, the defendant claimed that the car belonged to his sister, that it did not have

drugs in it, and that the police must have planted the drugs. During cross-examination, the state sought the court's permission to elicit evidence from the defendant concerning his 1992 conviction for delivery of cocaine. The court granted the state's request but limited the inquiry to whether or not the defendant had any familiarity with cocaine. The state then asked the defendant: "it's true that you have had cocaine in your possession in the past, isn't it?" The defendant responded in the affirmative.

The defendant was later convicted of the offense charged. On appeal, he argued that the trial court denied him a fair trial when it allowed the state to question him about his prior cocaine possession because this was propensity evidence. The state responded that the evidence was admissible to rebut the defendant's unwitting possession argument, as well as his police misconduct argument. First, the court noted that the defendant did not claim that he had knowingly possessed the cocaine without knowing what it was. Rather, he claimed that he didn't know the cocaine was in the car. Thus, the prior possession did not rebut this claim. Second, the court noted that there was no logical connection between prior possession and a claim that the police planted the evidence.

Finding error, the court then addressed the issue of prejudice. The court stated:

The erroneous admission of ER 404(b) evidence requires reversal if

there is a reasonable probability that the error materially affected the outcome. *State v. Halstien*, 122 Wn.2d 109, 127, 857 P.2d 270 (1993). It is within reasonable probabilities that but for the evidence of Pogue's prior possession of drugs, the jury may have acquitted him.

State v. Pogue, 104 Wn.App. at 987-988.

Finding a "reasonable probability" that the error affected the outcome of the trial, the court reversed and remanded the case for a new trial.

In the case at bar, as was mentioned in Argument I, the state's capacity to obtain a conviction in this case hinged upon the existence of one piece of evidence: the defendant's fingerprints on two pieces of clean, laboratory grade glassware, found in a cupboard in the apartment he owned and rented to another person. While the jury found this evidence sufficient, it was far from overwhelming or conclusive, particularly in light of the evidence that (1) the state could not prove that the glassware with the defendant's prints on it had ever been used to process methamphetamine, (2) the state could not tell when the other equipment had been used to process methamphetamine, and (3) the defense offered the testimony of the renter of the apartment who claimed ownership of all of the equipment.

In a case such as this, the erroneous admission of a single piece of unfairly prejudicial evidence is sufficient to change what would be an acquittal into a conviction. This is precisely what happened in the *Pogue* case cited above. It is also what happened in this case when the state cross-

examined the defendant's sole witness and elicited the following evidence:

Q. No. So, Mr. Stranz, let me ask, because I'm a little uncertain, why are you coming forward at this point, five years after the – after all this stuff happened? Why now?

A. Uhm, the appeal, threw out a big piece of evidence.

RP 350.

This evidence had the effect of telling the jury two things: (1) that the defendant had already been convicted once, and (2) that there was an extremely important piece of evidence showing that the defendant was guilty and they were not going to hear about it because the court had suppressed that evidence on appeal. In essence, the effect of this testimony was to tell the jury that the defendant was unquestionably guilty even though the evidence presented in the second trial was equivocal because of the “big piece of evidence” that they weren't going to hear about. Under these circumstances, no instruction by the court could ameliorate the harm that had been done.

Metaphorically, this evidence was the equivalent of a 600 pound gorilla walking through the courtroom. Everyone would see and remember it and no later instruction by the court that it really wasn't a gorilla and really didn't walk through the courtroom would ever get the jury to forget what they saw. Under the facts of this case, no instruction by the court was sufficient to overcome the prejudicial effect of the testimony of the “big piece of evidence” thrown out on appeal. This evidence denied the defendant his right

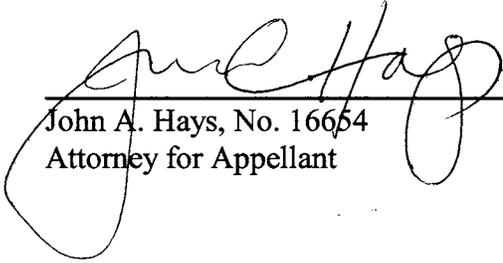
to a fair trial under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, and turned what would have probably been an acquittal upon reasonable doubt into a verdict of conviction. As a result, the defendant is entitled to a new trial.

CONCLUSION

The trial court erred when it admitted critical hearsay evidence without proof from the state of an applicable hearsay exception, and when it denied a motion for mistrial after the state elicited inadmissible, prejudicial evidence. As a result, the defendant is entitled to a new trial

DATED this 22nd day of January, 2008.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

RCW 5.44.040

Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state or any other state or territory of the United States, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, shall be admitted in evidence in the courts of this state.

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

STATE OF WASHINGTON,
Respondent

vs.

DANNY W. EVANS,
Appellant

NO. 02-1-01358-6
COURT OF APPEALS NO:
36629-1-II

AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
COUNTY OF COWLITZ) ss.

DONNA BAKER, being duly sworn on oath, states that on the 22ND day of January, 2008, affiant deposited into the mails of the United States of America, a properly stamped envelope directed to:

SUSAN I. BAUR
COWLITZ COUNTY PROSECUTING ATTY
312 S.W. 1ST STREET
KELSO, WA 98626

DANNY W. EVANS-DOC #716603
L.C.C. 55 Unit #23
15314 N.E. Dole Valley Road
Yacolt, WA. 98675

and that said envelope contained the following:

- 1. BRIEF OF APPELLANT
- 2. AFFIDAVIT OF MAILING

DATED this 22nd day of JANUARY, 2008.

[Signature]
DONNA BAKER

SUBSCRIBED AND SWORN to before me this 22nd day of JANUARY, 2008.



Heather Chittock
NOTARY PUBLIC in and for the
State of Washington,
Residing at: LONGVIEW/KELSO
Commission expires: 1-22-09

AFFIDAVIT OF MAILING - 1

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