

COURT OF APPEALS  
DIVISION II  
DATED - BY 2:42  
STATE OF WASHINGTON  
BY Sw  
OFFICER

No. 37751-9-II

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

STATE OF WASHINGTON,  
Respondent,

v.

JEANETTE ANN DOCKTER,  
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID L. EDWARDS, JUDGE

BRIEF OF RESPONDENT

H. STEWARD MENEFFEE  
Prosecuting Attorney  
for Grays Harbor County

BY: Kraig  
KRAIG C. NEWMAN  
Senior Deputy Prosecuting Attorney  
WSBA #\*

OFFICE ADDRESS:  
Grays Harbor County Courthouse  
102 West Broadway, Room 102  
Montesano, Washington 98563  
Telephone: (360) 249-3951

PM 2-2-09

**TABLE**

**Table of Contents**

ISSUES ..... 1

    1.    There is sufficient evidence the defendant  
          waived her right to a jury trial. .... 1

    2.    The State provided an adequate foundation  
          to support the admission of business records. .... 2

CONCLUSION ..... 4

**TABLE OF AUTHORITIES**

**Table of Cases**

*De Young v. Campbell* (1957) 51 Wash.2d 11, 315 P.2d 629 ..... 4

*State v. Johnson*, 950 P.2d 981 ..... 2

**STATUTES**

Wash. Rev. Code § 5.45.020 ..... 2

## ISSUES

- 1. There is sufficient evidence the defendant waived her right to a jury trial.**

The first claimed error the appellant asks this Court to consider is whether she voluntarily, knowingly and intelligently waived her right to a jury trial. The appellant claims that there exists some confusion as to whether her waiver was to any jury trial or merely to a jury comprised of six persons. From the record presented to this Court, it should find that the intent of the appellant was to waive her right to a jury entirely.

The appellant has accurately stated the law as to waiver of the right to jury. The question before this Court is a factual issue. The record is clear that the appellant made a waiver, as to a right she had, that was voluntary, knowing and intelligent. The only issue is whether it was her intent to waive jury. Proof of her intent to completely waive jury is found in the record of the proceeding in open court and the fact that there was a bench trial and no one ever objected to it.

At the beginning of the hearing when the appellant waived jury she attorney stated: "I'm handing forward a waiver of jury." This statement is clear and unqualified. The defense intended to waive jury. The State

responded that the waiver might effect scheduling stating: "because it's not a jury trial." The appellant was present during this exchange.

The court went on to explain to the appellant had a right to a jury trial comprised of twelve citizens, and asked her if she understood that bench trial would only require proof to a single person. The appellant stated that she understood, and expressed no confusion.

The appellate's attorney was present when the court explained this and made no objections the court reference to a bench trial. Then, on the day of trial, a bench trial was held with out objection, nor was there objection at sentencing.

The fact that no objection is made at the bench trial, to the lack of a jury, is not sufficient to prove implied waiver. *State v. Johnson*, 950 P.2d 981, but in this case it is telling as to the appellant's intent when her waiver was made. No objection to the bench trial before or after is strong evidence that what the appellant consented to on the record was a waive of here right to a jury trial.

**2. The State provided an adequate foundation to support the admission of business records.**

The appellant further claims that the court erred in admitting evidence purported to be business records without proper foundation. Wash. Rev. Code § 5.45.020 provides that a record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or

other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

The appellant objected to a number of printouts from the computed records of the Grays Harbor PUD. The person testify to their relevance was Doug Streeter, who is the Chief Financial Officer of the Corporation. He explained, before the admission of exhibit #11, that it was a “screen shot” from the customer account system, which listed account number, address, customer name, and meter number. RP at 14. He further explained that the particular document was a payment event that occurred on September 21, 2007. It was an amount of \$40 from 120 Eklund. The court asked the witness to clarify whether the document was a business record maintained on the software program of the corporation. The witness responded yes.

The second objection made was to exhibit #7. Mr. Streeter testified that it was a screen shot of a particular customer’s account within the customer information system showing a bill and payment history from November 5, 2007. The document showed payments made on the 21<sup>st</sup> and 26<sup>th</sup> that were canceled. This exhibit was admitted over the appellant’s objection.

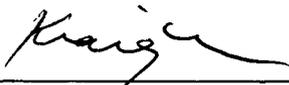
Ruling of trial judge in admitting or excluding record as evidence is to be given much weight and will not be reversed unless there is manifest abuse of discretion. *De Young v. Campbell* (1957) 51 Wash.2d 11, 315 P.2d 629. In the case at bar, there is ample evidence that these documents were business records made and maintained in the regular course of business. It was explained that the documents computer records of payment transactions of customers that were made on particular dates.

The appellant expresses a concern that there was no foundation as to the creation of the documents. The documents are of computer entries made of customer payments. In the case of exhibit #7 the entry was made by the appellant. RP at 43.

#### CONCLUSION

It is clear from the record that the defendant intended to waive her right to a jury trial. A simple error in the paperwork should not require the court to expend its scarce resources on a new trial. The court did not abuse its discretion in admitting documents that were business records of the Grays Harbor PUD. For these reasons the State asks the Court to deny the appellants assignment of error and confirm the conviction against her.

Respectfully Submitted,

By:   
KRAIG C. NEWMAN  
Senior Deputy Prosecuting Attorney  
WSBA #33270

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

COURT OF APPEALS  
DIVISION II  
CO-FLD-3 PM 2:42  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

No.: 37751-9-II

v.

**DECLARATION OF MAILING**

JEANETTE ANN DOCKTER,

Appellant.

**DECLARATION**

I, Barbara Chapman hereby declare as follows:

On the 2<sup>nd</sup> day of February, 2009, I mailed a copy of the Brief of Respondent to Roger A. Hunko; Attorney for Appellant; The Law Office of Wecker-Hunko; 569 Division Street, Suite E; Port Orchard, WA 98366, and Jeanette Ann Dockter; 1002 West Market; Aberdeen, WA 98520, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 2<sup>nd</sup> day of February, 2009, at Montesano, Washington.

Barbara Chapman