

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY Cm
DEPUTY

No. 37936-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Scott Silvas,

Appellant.

Clallam County Superior Court

Cause No. 05-1-00592-0

The Honorable Judges S. Brooke Taylor and Ken Williams.

Appellant's Reply Brief

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ARGUMENT

I. NOTHING IN THE RECORD PROVES THAT MR. SILVAS COMMITTED THE CHARGED CRIMES.

Neither the trial court record nor the record on appeal contains facts supporting Mr. Silvas's convictions. Accordingly, his convictions must be reversed and the case dismissed with prejudice. *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 892 (2006). Respondent improperly attempts to show that the trial judge received police reports under cover of a letter dated June 2, 2008. *See* Brief of Respondent, Exhibit B. But this letter was not made part of the record in the trial court, and the state has not sought to supplement the record on appeal. Furthermore, even if the trial judge did consider police reports purportedly sent on June 2, those reports are not part of the trial court record because they were neither admitted into evidence nor filed with the clerk. Accordingly, they cannot be used to support Mr. Silvas's conviction. *See State v. Wilson*, 75 Wn.2d 329, 332, 450 P.2d 971 (1969), *and State v. Gurske*, 155 Wn.2d 134, 118 P.3d 333 (2005).

**II. MR. SILVAS DID NOT PRESERVE ANY ISSUES FOR REVIEW;
ACCORDINGLY, HIS STIPULATED TRIAL WAS EQUIVALENT TO A
GUILTY PLEA.**

Notwithstanding Respondent's confidence in trial counsel (*see*
Brief of Respondent, p. 10), Mr. Silvas rests on the argument made in his
opening brief.

CONCLUSION

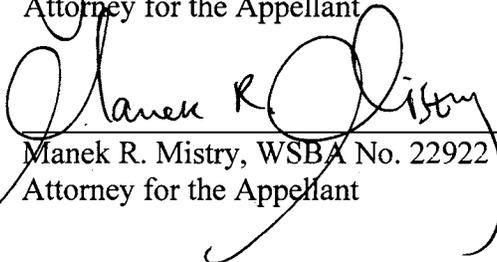
Mr. Silvas's convictions must be reversed and the case dismissed
with prejudice. In the alternative, the case must be remanded to the
superior court for trial.

Respectfully submitted on January 2, 2009.

BACKLUND AND MISTRY



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CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Reply Brief to:

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and to:

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223 E. 4th Street, Suite 11
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STATE OF WASHINGTON
BY Manek R. Mistry
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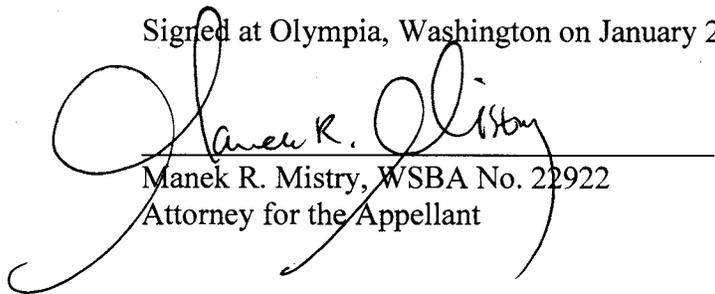
COURT OF APPEALS
DIVISION II

And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on January 2, 2009.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on January 2, 2009.


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