

COURT OF APPEALS
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STATE OF WASHINGTON
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NO. 38128-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

TIFFANY DAWN DOLL,

Appellant.

APPELLANT'S BRIEF

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I. Assignment of Error

1. The trial counsel's failure to object to inadmissible evidence and failure to call witnesses violated Ms. Doll's right to effective assistance of counsel under the Washington Constitution, Article I, Section 22 and the Sixth Amendment to the United States Constitution.
2. Law enforcement provided improper opinion testimony commenting on Ms. Doll's guilt to the crimes charged.
3. The trial court abused its discretion by denying Ms. Doll's motion for a new trial.

II. Issues Pertaining to Assignments of Error

1. Did trial counsel's failure to object to improper testimony violate Ms. Doll's right to effective assistance of counsel under the Washington State Constitution, Article I, Section 22 and Sixth Amendment to the United States Constitution. (Assignment of Error No. 1)
2. Did trial counsel's failure to call several witnesses violate Ms. Doll's right to effective assistance of counsel under the Washington State Constitution, Article I, Section 22 and Sixth Amendment to the United States Constitution when the witness could have provided valuable information to the jury which would have refuted testimony of the State's key witness? (Assignment of Error No. 1)
3. Was Ms. Doll's right to a fair trial before an impartial jury violated when law enforcement testified that he determined Ms. Doll committed the crime of witness tampering and in his opinion Ms. Doll committed the crime of theft? (Assignment of Error No. 2)
4. Does a trial court abuse its discretion by denying a motion for a new trial when Ms. Doll's right to a fair trial was violated due to defense counsel's failure to provide adequate representation and failure to call key witnesses including Ms. Doll for the defense? (Assignment of Error No. 3)

III. Statement of the Case

A. Procedural History

Ms. Doll was charged by way of a third amended Information with the following: Count I: Possession of a Controlled Substance occurring on or about November 27, 2007; Count II: Delivery of Methamphetamine occurring on or about December 6, 2007, with a school bus stop enhancement; Count III: Theft in the First Degree occurring on or about December 10, 2007; Count IV: Possession of Methamphetamine with Intent to Manufacture or Deliver occurring on or about December 10, 2007, with a school zone enhancement; Count V: Bail Jumping occurring on or about January 16, 2008; Count VI: Bail Jumping occurring on or about January 23, 2008. CP 35

A jury trial was held in this matter. Mr. McAllister was defense counsel at the time of trial. 1RP, 2¹ Ms. Doll was found guilty of all charges. CP 172 Prior to sentencing Mr. Olmstead assumed representation of Ms. Doll. 4RP 2 Mr. Olmstead filed a motion for a new trial and for evidentiary hearing. CP 121 The motion was denied. RP 10-11 (7/21) Sentencing followed on July 21, 2008. Ms. Doll was sentenced to 108 months in prison. CP 172 This appeal timely follows.

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The transcript from the proceedings of 05/13/2008 is referred to as 1RP 2. The transcript from the proceedings of 07/21/2008 is referred to as 4RP.

B. Facts

The pre-trial proceedings in this matter prior to trial were problematic. Mr. McAllister was Ms. Doll's defense counsel at the time of trial. 1RP 2 Mr. McAllister made a motion to continue the trial on May 12, 2008, the day trial was set to begin. RP 2 (5/13) Mr. McAllister requested more time as he was not prepared for trial and the investigation for the case was not complete. *Id.* That motion was denied and the matter was set trial to begin the next day. Pre-trial motions were presented before the Honorable Judge Haberly on May 13, 2008. 4RP 2 The record so troubled the prosecuting attorney, Kevin Kelly, that he expressed concern about going forward with the trial on May 13, 2008. 1RP 2-4 Mr. Kelly described Mr. McAllister's motion for a continuance that had been presented the previous day. *Id.* Mr. Kelly summarized his concerns with the following statement:

"So, State's one concern is that there is a record now that the defense is not prepared and perhaps there are essential witnesses to the defense that have not been interviewed or called by the defense, and after discussing this with some members of my office in the Appellate Division, there were concerns about what claims may arise from a conviction based upon that record." 1RP 3

Mr. Kelly also had an issue with the late presentation of the list of defense witnesses. 1RP 3 On May 13, 2008 Mr. McAllister filed the first witness list for the defense. 1RP 4 Mr. McAllister indicated during the hearing of May 13 that he expected he would be amending the witnesses

list later that day by adding one or two names to the list. 1RP 4 Mr. Kelly had not been provided with a summary of the expected testimony from the defense witness and was uncertain of the expected testimony of those witnesses. 1RP 4. Mr. Kelly stated he was concerned about proceeding to trial on May 13 given his two concerns. *Id.*

On the issue of a continuance of the trial set for May 13, Mr. McAllister initially deferred to the Court, but later in the hearing stated he could use additional time for further investigation. 1RP 4 Also during the hearing of May 13, Mr. McAllister indicated he planned to file a CrR 3.6 motion and a motion to sever Count VII of the information in this matter. 1RP 8-9 Mr. McAllister anticipated he could complete the motion late that afternoon and asked for a recess to allow sufficient time to present the motions. RP 8. Judge Haberly stated her concern regarding the late notice of the CrR 3.6 motion. "If you have a 3.6, that should have been told to the Judge last month, or yesterday, you know." 1RP 10 The Court set the deadline for filing the CrR 3.6 motion for the afternoon on May 13. 1RP 13 The trial and pre-trial hearings in this matter were continued to Monday, May 19, 2008. 1RP 10

The CrR 3.6 motion was presented without any live testimony. 2RP 5-12² The Court found that Ms. Doll provided consent for the search

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The transcript of the trial proceedings commencing May 19, 2008 is referred to as 2RP

of her vehicle and denied the motion to suppress the evidence.

2RP 13-14 Mr. McAllister did not present a written motion to sever Count VII of the Information. 2RP 5 The Court considered the argument presented by the parties and denied the motion to sever. 2RP 16-17 The Court next moved on to address motions in limine filed by the State. 2RP 17 Mr. McAllister did not present any motions in limine. 2RP 21

Trial commenced on May 19, 2008. Witness testimony began the next day on May 20, 2008. Detective Manchester was the first witness presented at trial. Detective Manchester testified without objection from defense counsel as to a number of facts. First, he testified while on patrol on November 24, 2007 he recognized a vehicle owned by Ms. Doll and he was familiar with the license plate number of the vehicle. 2RP 32 Secondly, he stated that he knew Ms. Doll had an outstanding warrant. *Id.* Thirdly, he testified that he believed Ms. Doll's license was suspended, and he confirmed the suspension with his computer. *Id.* Fourthly, he testified that Ms. Doll was detained for the warrant and for driving on a suspended license and her vehicle was searched incident to her arrest. 2RP 33 Defense counsel did not object or ask to strike any of this testimony.

Detective Manchester followed Ms. Doll's vehicle for 30 seconds to a minute before initiating the traffic stop. *Id.* Ms. Doll immediately stopped her vehicle for the traffic stop. *Id.* At the time of the traffic stop

Ms. Candace Brasch was the passenger riding with Ms. Doll. 2RP 33-34
Ms. Brasch initially identified herself as Nicole Brasch. 2RP 33
Ms. Brasch held her purse during her contact with law enforcement.
2RP 45 Detective Manchester searched Ms. Brasch's purse and found a
large amount of narcotics in that purse. 2RP 34 Specifically, he found
one ounce of methamphetamine which was individually packaged for sale
in sixteen baggies in one container, all of which appeared to be in equal
amounts. 2RP 34-35 One group of baggies were found in a "horizontal
pouch in the purse". 2RP 35 Baggies of methamphetamine were found
in a nylon pouch and a blue plastic case. 2RP 47 Detective Manchester
also found a white case holding a small black baggie containing
methamphetamine and a methamphetamine smoking pipe. 2RP 37, 46-47
A purple container with several more packages of methamphetamine
were also found in Ms. Brasch's purse. 2RP 47-48 He also found cash in
amounts as Detective Manchester described "in denominations affiliated
with narcotics dealing." 2RP 34 The containers holding the
methamphetamine did not appear to be thrown into Ms. Brasch's purse.
2RP 48 No items recovered from Ms. Brasch's purse were tested either
for fingerprints or DNA. 2RP 49 All of the drugs recovered on
November 24, 2007 were found in either Ms. Brasch's purse or backpack.
2RP 34-49

Detective Manchester also found during his search of Ms. Doll's vehicle a backpack located on the backseat of Ms. Doll's vehicle. 2RP 51 The backpack was inscribed with the word "Ladulcebuena". 2RP 51 Some of the items found in the backpack had this word written on them as well. *Id.* An identification card for Ms. Brasch, and syringes were found in the backpack. 2RP 53 Ms. Brasch has the word "Ladulcebuena" tattooed on her neck. *Id.* Ms. Brasch did not claim ownership to the backpack. 2RP 53.

Ms. Brash assisted law enforcement as a confidential informant to gain a reduction of the drug charges she faced as a result of the methamphetamine found in her belongings during the traffic stop of Ms. Dolls' vehicle. 2RP 78-79 While working as an informant, on December 6, 2007, Ms. Brasch reported to law enforcement she was given 1.1 grams of methamphetamine from Ms. Doll. 2RP 81-82. On December 10, 2007 Ms. Brasch was given \$2,500.00 to conduct a drug buy from Ms. Doll. 2RP 81 Ms. Brasch reported she gave the buy money to Ms. Doll, Ms. Doll left the area, but did not return with any drugs. 2RP 81-84

Detective Manchester repeated comments made by Ms. Brasch of the incident of November 24, 2007 throughout his direct examination. 2RP 41-60 The hearsay testimony was presented without objection by defense counsel. 2RP 41 The detective testified that Ms. Brasch told him

that Ms. Doll had placed the items found in the purse prior to the traffic stop. *Id.* Defense counsel elicited this hearsay testimony again during his direct examination of Detective Manchester. 2RP 54 Detective Manchester also testified without objection from defense counsel that Ms. Brasch told him that Ms. Doll had devised a plan for Ms. Brasch to put the methamphetamine in her purse, and Ms. Brasch was to use her sister's name to avoid arrest for any outstanding warrant. 2RP 59-60

Detective Dobbins was involved in the investigation in this matter and testified for the State at the time of trial. Detective Dobbins reviewed Ms. Brasch's criminal history in preparation for working with her as a confidential informant. 2RP 77-79 Detective Dobbins testified that he found Ms. Brasch's lack of criminal history refreshing. 2RP 78-19 Detective Dobbins' testimony was as follows: "Typically when we deal with informants, they have several entries for various charges, et cetera. And with Brasch, it was rather refreshing to see she only had basically one charge." 2RP 78-79 Detective Dobbins commented again on Ms. Brasch's lack of criminal history. When questioned by defense counsel regarding Ms. Brasch's possible sentence for the offense she was arrested for Detective Dobbins testified: "There's a pretty broad scale, especially with her history being so clean." 2RP 132

Detective Dobbins also repeated hearsay comments made by Ms. Brasch during the trial. Detective Dobbins testified that on

December 6 he spoke to Ms. Brasch by telephone. 2RP 80-81 During his testimony Detective Dobbins repeated statements made by Ms. Brasch during that telephone conversation. He testified that Ms. Brasch told him that Ms. Doll had offered her about 1.1 grams of methamphetamine in compensation for taking the fall for the drugs found in Ms. Doll's vehicle. 2RP 81-84 Additionally, Detective Dobbins testified that Ms. Brasch reported to him that she had made an agreement with Ms. Doll to purchase methamphetamine and Ms. Brasch would receive an ounce of methamphetamine in the transaction. 2RP 81 Further in Detective Dobbins testimony, he outlined the specifics of the plan devised between Ms. Doll and Ms. Brasch in detail as reported by Ms. Brasch, including the plan to deliver methamphetamine together and support themselves financially from those sales. 2RP 82 Detective Dobbins also described statements made by Ms. Brasch regarding the alleged drug purchase from Ms. Doll on December 10, 2007. 2RP 81-84, 94 Defense counsel did not object or ask to strike any of this testimony. RP 81-82

Furthermore, defense counsel inquired as to statements made by Ms. Brasch to Detective Dobbins regarding the December 6, 2008 alleged drug transaction. 2RP 137-138 Detective Dobbins testified as to Ms. Brasch's report of the receipt of methamphetamine from Ms. Doll following the alleged transaction. 2RP 137-138. Law enforcement was not involved with the interaction between Ms. Brasch and Ms. Doll on

December 6, 2007. 2RP 138 Ms. Brasch was the only witness to the alleged delivery on December 6, 2007. 2RP 140 Ms. Brasch's statements were the only evidence presented possibly linking Ms. Doll to the 1.1 grams of methamphetamine Ms. Brasch provided to law enforcement on December 6. 2RP 140

Detective Dobbins testified that Ms. Brasch told him of a specific statement made by Ms. Doll during the alleged transaction on December 10, 2007. During the testimony Detective Dobbins repeated the following statement made by Ms. Brasch that was attributed to Ms. Doll: "Give us the money. We are going to drive around the block a few times, divide up the three ounces of methamphetamine, then we will be back with the narcotics." 2RP 94 Detective Dobbins also described a conversation Ms. Brasch reported having with Ms. Doll where the two discussed a plan to purchase a pound of methamphetamine together. 2RP 103 Detective Dobbins described Ms. Brasch's report of her interaction with Ms. Doll on December 10, 2007 in detail during the trial without objection from defense counsel. 2RP 103-104 Defense counsel asked Detective Dobbins questions regarding statements Ms. Brasch made at several points during cross examination. 2RP 155, 156, 157, 158, 159, 163.

Detective Dobbins went to Ms. Doll's residence on December 10, 2007. 2RP 106 He asked, and was given, permission from Ms. Doll to

search her vehicle. 2RP 107 During the search Detective Dobbins received a phone call from Special Agent Salazar who suggested a search of the engine compartment of Ms. Dolls' vehicle. *Id* Special Agent Salazar described the statements made by Ms. Brasch on the possible location of methamphetamine in Ms. Doll's vehicle. 2RP 192 A baggie of methamphetamine was found in the windshield wiper reservoir. 2RP 108 Detective Dobbins also testified that he found some of the buy money on Ms. Doll and Ms. Doll reported that she received \$2,500.00 from Ms. Brasch towards the purchase of her vehicle. 2RP 107

Detective Dobbins also testified as to statements Ms. Brasch made to him during a conversation he had with her on May 8, 2008. 2PR 126-127 Detective Dobbins testified that Ms. Brasch told him that Ms. Doll contacted Ms. Brasch and asked her not to appear for trial. 2RP 127 After his conversation with Ms. Brasch, Detective Dobbins contacted Mr. Kelly. "At that point I contacted you and we conferred about the situation and determined that it did fall under tampering with a witness." 2RP 127 Defense counsel did not object to the testimony. Defense counsel also asked Detective Dobbins to repeat what Ms. Brasch told him on this issue. 2RP 163

Detective Dobbins vouched for Ms. Brasch's credibility during his testimony. The detective under questioning from Mr. McAllister described the prior controlled buys Ms. Brasch had been involved in and, "She

established some substantial reliability in reference to her credibility.”.

2RP 164 The prosecuting attorney asked Detective Dobbins for his opinion on what he believed transpired the evening of December 10 without objection from defense counsel. *Id.*

Q: Based upon what transpired on December 10, and commingling the money, then the defendant disappearing, then later being arrested and methamphetamine being found in the Honda, did you form an opinion as to what you thought happened that night?

A: Yes, sir.

Q. What is your opinion?

A: Tiffany Doll conspired to steal the \$2,500.00 from Candace Brasch. It appeared that she used some of the money to purchase methamphetamine, because she was unemployed at the time, so how she was getting any other money was unknown, besides through drug proceeds.” RP 176-177

The State brought Ms. Rogers to testify regarding the charge of bail jumping. 2RP 287 Ms. Rogers described procedures of the Court and Clerk’s office. Ms. Rogers referred to a docket printout generated in this matter. 2RP 292 The testimony included a description of hearings that Ms. Doll had missed during the pendency of the case. 2RP 294 The State also inquired of Ms. Rogers of an order by the Court for no further warrant quashing in this case. 2RP 301

The defense called two witnesses on behalf of Ms. Doll. The first, Ms. Laub, was familiar with Ms. Doll’s vehicle and employed Ms. Doll

periodically. 2RP 326-327, 328 Mr. McAllister also called Mr. Lewis to testify regarding the hearings Ms. Doll missed and her attempts to immediately quash the warrants that had been issued for the two hearings she missed. 2RP 331-344 Mr. McAllister attempted to call Ms. Heany as a witness for Ms. Doll. 2RP 345 It was anticipated that Ms. Heany would testify that Ms. Doll had a medical appointment for January 23, the same day as her scheduled Court appearance. 2RP 345 The prosecutor objected to the testimony in part because information regarding this witness was provided the day before (May 21st). *Id.* The Court declined to allow the testimony based on the late disclosure of the witness, and relevancy. RP 347.

IV. Argument

A. Ms. Doll's right to effective counsel was violated as a result of counsel's deficiencies she did not receive a fair trial.

Claims of ineffective assistance of counsel are reviewed de novo. State v. White, 80 Wn.App 406, 410, 907 P.2d 310 (1995) Assertions of ineffective assistance of counsel are determined with the application of a two part test. To establish a claim of ineffective assistance of counsel a defendant must prove counsel's deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed2d 674 (1984); In Re Personal Restraint of Rice, 118 Wn.2d 876, 888, 828 P.2d 1086, *cert. denied*, 506 U.S. 958, 113 S.Ct. 421, 121

L.Ed.2d 344 (1992). To prove deficient performance, a defendant must prove the representation fell below an objective standard of reasonableness under professional norms and a reasonable possibility exists that but for counsel's error, the result would have been different. State v. Rice, 118 Wn.2d at 888-89. The Court starts with the presumption counsel's representation was effective. State v. Hendrickson, 129 Wn.2d.61, 77, 917 P.2d 563 (1996). To establish ineffective assistance of counsel for failure to object, the defendant must show the absence of a legitimate or tactical reason for not objecting and that the trial court would have sustained the objection if it had been made and the result of the trial would have differed if the evidence had not been admitted. State v. Saunders, 91 Wn.App 575, 578, 958 P.2d 364 (1998)

1. Defense counsel's failure to object to repeated hearsay was ineffective assistance.

Throughout the trial defense counsel failed to object to the three officers' testimony repeating statements Ms. Brasch made before she testified. First, Detective Manchester testified that Ms. Brasch told him that Ms. Doll had placed the items found in the purse prior to the traffic stop. 2RP 33 Ms. Brasch provided a slightly different statement during her testimony. At trial Ms. Brasch stated Ms. Doll told her to put the drugs in her purse. 2RP 218 Defense counsel elicited this hearsay testimony again during his direct examination of Detective Manchester. 2RP 54

Detective Manchester also testified without objection from defense counsel that Ms. Brasch told him that Ms. Doll had devised a plan for Ms. Brasch to put the methamphetamine in her purse, and Ms. Brasch was to use her sister's name to avoid arrest for any outstanding warrant. 2RP 59-60

These statements of Ms. Brasch made to Detective Manchester were hearsay. Hearsay is defined in ER 801(c) as: "a statement other than one made by the declarant while testifying at the trial or hearing, offer in evidence to prove the matter asserted". ER 801(c). In the testimony referenced above, Detective Manchester repeated comments made by Ms. Brasch. The information was provided in an attempt to prove that Ms. Doll was in possession of methamphetamine on November 24, 2007 and that Ms. Doll was engaged in drug dealing. Ms. Doll was charged with those criminal activities. The testimony was hearsay and defense counsel's failure to object, and later further inquiry into the hearsay statements was ineffective.

Inadmissible hearsay was also provided by Detective Dobbins. Detective Dobbins testified that on December 6 he spoke to Ms. Brasch by telephone. 2RP 80-81 During his testimony Detective Dobbins repeated statements made by Ms. Brasch during that telephone conversation. He testified that Ms. Brasch told him that Ms. Doll had offered about 1.1 grams of methamphetamine in compensation for taking

the fall for the drugs found in Ms. Doll's vehicle. 2RP 81-84 Additionally, Detective Dobbins testified that Ms. Brasch reported to him that she had made an agreement with Ms. Doll to purchase methamphetamine and Ms. Brasch would receive an ounce of methamphetamine in the transaction. 2RP 81 Ms. Brasch did not similarly testify at trial. Further in Detective Dobbins testimony, he outlined the specifics of the plan devised between Ms. Doll and Ms. Brasch in detail, including the plan to deliver methamphetamine together and support themselves financially from those sales. 2RP 82 Ms. Brasch did not testify as to that statement at trial. Detective Dobbins also described statements made by Ms. Brasch regarding the alleged drug purchase from Ms. Doll on December 10, 2007. 2RP 81-84, 94 Defense counsel did not object or ask to strike any of this testimony. RP 81-82 Furthermore, defense counsel inquired as to statements made by Ms. Brasch to Detective Dobbins regarding the December 6, 2008 alleged drug transaction. 2RP 137-138 Ms. Brasch reported the receipt of methamphetamine from Ms. Doll following the alleged transaction. 2RP 137-138 These statements also fall within the definition of hearsay. The Detective testified as to out of court statements made by Ms. Brasch which is hearsay. The information was offered in an attempt to prove that Ms. Doll did deliver methamphetamine to Ms. Brasch on December 6, 2007 and that Ms. Doll was engaged in drug

dealing. Ms. Doll was charged with those criminal activities. The testimony was hearsay and defense counsel's failure to object was ineffective.

Detective Dobbins also provided a description of statements made to him by Ms. Brasch of the alleged incident of December 10, 2007.

Detective Dobbins testified that Ms. Brasch told him of a specific statement made by Ms. Doll during the alleged transaction on December 10, 2007. During the testimony Detective Dobbins repeated the following statement made by Ms. Brasch that was attributed to Ms. Doll:

"Give us the money. We are going to drive around the block a few times, divide up the three ounces of methamphetamine, then we will be back with the narcotics." 2RP 94 This statement was not repeated during Ms. Brasch's testimony. Detective Dobbins also described a conversation Ms. Brasch reported having with Ms. Doll where the two discussed a plan to purchase a pound of methamphetamine together. 2RP 103 This statement was not repeated by Ms. Brasch during her testimony.

Detective Dobbins described Ms. Brasch's report of her interaction with Ms. Doll on December 10, 2007 in detail during the trial without objection from defense counsel. 2RP 103-104 Defense counsel asked Detective Dobbins questions regarding statements Ms. Brasch made at several points during cross examination. 2RP 155, 156, 157, 158, 159, 163 This testimony was hearsay. The Detective described statements made to him by Ms. Brasch. The statements were provided in an attempt to prove that

Ms. Doll took money from Ms. Brasch for a drug deal. The testimony outlined above was inadmissible hearsay. Defense counsel's failure to object to any of the above hearsay testimony, and later further inquiry into the statements made by Ms. Brasch was ineffective.

Detective Dobbins also testified as to statements Ms. Brasch made to him during a conversation he had with her on May 8, 2008. 2PR 126-127 Detective Dobbins testified that Ms. Brasch told him that Ms. Doll contacted Ms. Brasch and asked her not to appear for trial. 2RP 127 Defense counsel did not object to the testimony. Defense counsel also asked Detective Dobbins to repeat what Ms. Brasch told him on this issue. 2RP 163 This testimony was inadmissible hearsay. Detective Dobbins described statements made by Ms. Brasch and the testimony was provided to in an attempt to prove that Ms. Doll committed the crime of witness tampering.

Inadmissible hearsay statements were also provided by Special Agent Salazar. Ms. Brasch told Mr. Salazar that Ms. Doll gave methamphetamine to her. 2RP 137-138 Mr. Salazar described statements made by Ms. Brasch during the trial. Special Agent Salazar described the statements made by Ms. Brasch on the possible location of methamphetamine in Ms. Doll's vehicle. 2RP 192 This information was hearsay and was provided to show that Ms. Doll and Ms. Brasch

discussed drug dealing activities together in an effort to prove that Ms. Doll was involved in drug dealing as alleged in the information.

The statements of Ms. Brasch to the officers are clearly hearsay. The statements repeated are comments Ms. Brasch made to the officers. The statements were offered to prove Ms. Doll was involved in drug trading, involved in a theft and involved in witness tampering. The statements attempted to prove the crimes charged. Therefore, the statements were offered to prove the matter asserted. An objection to the hearsay would have been sustained. The evidence would not be admissible under any hearsay exceptions. For example, the evidence would not have been admissible under ER 801 (d)(1)(ii) as a prior consistent statement. In order for hearsay to be admissible under this rule, the statement must have been made before the witness had a motive to fabricate arose. In this case Ms. Brasch had a motive to fabricate statements before the statements at issue were made. Ms. Brasch was a confidential informant who would get the benefit of the bargain she made with the prosecutor only if she assisted law enforcement. RP 78-79 Ms. Brasch acted as a confidential informant to obtain a reduction in the charge which would not be given if the contract was unsatisfied. *Id.* Thus, Ms. Brasch had a motive to implicate Ms. Doll so she could meet the terms of her contract. The hearsay testimony does

not fall with an allowable exception to the prohibition against hearsay. The objection would have been sustained.

The result of the trial would have been different if the objections, and inappropriate lines of inquiry into what Ms. Brasch had told law enforcement, had been made or the repeated questioning during cross examination had not been presented. The effect of the repeated hearsay testimony was twofold. First, the testimony of law enforcement improperly bolstered the credibility of Ms. Brasch. The credibility of Ms. Brasch was key to this case. Ms. Brasch's credibility was questionable. Ms. Brasch has a motive to claim that Ms. Doll delivered Methamphetamine to her. Ms. Brasch was required to assist in the apprehension of drug dealers to gain a reduction in the felony drug charges she was facing. 2RP 78-79 Additionally, the testimony of Ms. Brasch's drug use around the time of the incident, and only three months prior to trial, combined with Ms. Brasch's admission to the possession of methamphetamine and paraphernalia used to consume methamphetamine calls into question Ms. Brasch's credibility. The jury likely did not consider issues with Ms. Brasch's credibility due to the repeated hearsay testimony which consistently repeated statements made by Ms. Brasch. The repetition of Ms. Brasch's version of events unduly emphasized her testimony as it was repeated through several witnesses during the trial.

It is significant that Ms. Brasch was the only witness to four of the charged crimes, the possession of methamphetamine on November 24, 2007, the delivery of methamphetamine that allegedly occurred on December 6, 2007, the alleged theft, and the alleged witness tampering. Law enforcement was not directly involved in either of those alleged incidents. If the objection was made and granted the jury would not have heard on multiple occasions Ms. Brasch's version of events. The repeated testimony through multiple witnesses must have affected the jury and led them to the conclusion that Ms. Brasch's description of events must have been accurate. The repeated hearsay testimony must have emphasized Ms. Brasch's version of events in the minds of the jury.

To make matters worse in this case defense counsel asked law enforcement to repeat the hearsay statements made by Ms. Brasch to them during cross examination. There is no possible trial strategy for allowing the hearsay statements of the key witness against Ms. Doll to be repeated time and time again during the course of the trial. As a result of defense counsel's deficient performance not only did the jury hear the hearsay statements repeatedly through direct testimony but also through cross examination. The repetition unduly emphasized Ms. Brasch's testimony and bolstered her credibility as previously argued. The effect of this cumulative presentation of Ms. Brasch's version of events influenced the jury and led to the conviction. The result of the trial would have been

different if the jury had not heard the information repeated through multiple witnesses during the course of the trial. The effect of the improper testimony was to enhance Ms. Brasch's credibility and to drive into the jury's minds Ms. Brasch's version of the events. Additionally, some of the statements of Ms. Brasch as described by the officers were not reported by Ms. Brasch during her testimony. If the objection had been properly made, the jury would not of heard of the alleged plan to live off drug transactions and details about the alleged transactions.

2. Defense counsel's failure to object to improper testimony was ineffective.

(a) Defense counsel did not object to the detectives' testimony bolstering Ms. Brasch's credibility.

During trial both Detective Manchester and Detective Dobbin provided testimony bolstering the credibility of the key witness in this case, Ms. Brasch. Both detectives testified that Ms. Brasch's lack of criminal history was favorable. Defense counsel did not object to this testimony. The testimony was in the form on an opinion on Ms. Brasch's good credibility and a violation of Ms. Doll's right to a fair trial. The impropriety of the testimony will be further discussed later in this brief. Ms. Brasch was a key witness in the trial. Both detectives commented on Ms. Brasch's lack of criminal history as a positive manner. Detective Dobbins testified that he found Ms. Brasch's lack of criminal history

refreshing. 2RP 78-19 Detective Dobbins as stated as follows: "She established some substantial reliability in reference to her credibility.". 2RP 164 This testimony was provided during defense counsel's cross examination of Detective Dobbins. Defense counsel did not move this testimony or otherwise address the improper testimony.

There was no tactical reason not to object to the testimony. The testimony affected the outcome of the trial. Ms. Brasch provided the only evidence suggesting that Ms. Doll committed the crimes of delivery of a controlled substance, theft and witness tampering. Ms. Brasch's credibility was key in determining if Ms. Doll committed the charged crimes. This improper evidence influenced the jury and led to a conviction. The evidence bolstering Ms. Brasch's credibility led the jury to conclude that she was telling the truth. Without the improper evidence the jury would have likely evaluated Ms. Brasch's credibility more carefully especially in light of her admitted drug use.

(b). Defense counsel did not object to improper opinion testimony regarding the allegation of witness tampering.

Detective Dobbins testified that he determined that Ms. Doll committed the crime of witness tampering. 2RP 127 Detective Dobbins testified that Ms. Brasch told him that Ms. Doll contacted Ms. Brasch and asked her not to appear for trial. 2RP 127 After his conversation with Ms. Brasch, Detective Dobbins contacted Mr. Kelly. "At that point I

contacted you and we conferred about the situation and determined that it did fall under tampering with a witness.” 2RP 127 Defense counsel did not object to testimony on Detective Dobbins indicating he determined that Ms. Doll committed witness tampering.

The failure to object was ineffective. This testimony was improper opinion evidence and commented on the guilt of Ms. Doll. Detective Dobbins testified that he determined that Ms. Doll committed one of the crimes she was charged with. There was not a tactical reason to fail to object to this evidence. The verdict on the charge of witness tampering would have been different but for the improper evidence. The jury certainly carefully considered Detective Dobbins decision that Ms. Doll committed the crime of witness tampering and may not have convicted Ms. Doll of the crime if the testimony had not been provided. The fact that the improper testimony came from a member of law enforcement is significant. The testimony of Ms. Brasch was that Ms. Doll asked her not to appear in Court. RP 244 Ms. Doll did not make any promises to Ms. Brasch in return for her failure to appear in court, nor did Ms. Brasch testify as to any threats made to her by Ms. Doll. *Id.* The testimony of Ms. Brasch did not indicate that Ms. Doll attempted to “strong arm” Ms. Brasch into skipping Court.

(c). Defense counsel did not object to improper opinion testimony regarding the charge of theft.

The prosecuting attorney asked Detective Dobbins for his opinion on what he believed transpired the evening of December 10 without objection from defense counsel.

Q: Based upon what transpired on December 10, and commingling the money, then the defendant disappearing, then later being arrested and methamphetamine being found in the Honda, did you form an opinion as to what you thought happened that night?

A: Yes, sir.

Q: What is your opinion?

A: Tiffany Doll conspired to steal the \$2,500.00 from Candace Brasch. It appeared that she used some of the that money to purchase methamphetamine, because she was unemployed at the time, so how she was getting any other money was unknown, besides through drug proceeds." 2RP 176-177

This was improper opinion testimony that was not objected to by defense counsel. In this testimony Detective Dobbins both commented on the guilt of Ms. Doll and provided an opinion that Ms. Doll committed the crime of theft. This information likely changed the outcome of the trial and led to the conviction. It is significant that a member of law enforcement opined that Ms. Doll committed a charged crime. The jury used this testimony to convict Ms. Doll. Defense counsel's failure to object to the testimony was ineffective.

3. Defense counsel's failure to timely disclose a witness which resulted in exclusion of the witness was ineffective.

Defense counsel attempted to call Ms. Heany to verify that Ms. Doll had a medical appointment on January 23, 2008 which was a conflict with her scheduled Court date. 2RP 345 Defense counsel did not disclose the witness in a timely manner. 2RP 347 Late disclosure of defense witnesses was a problem in this case, as the defense witness list was first provided at the day of the trial that had been scheduled for May 13. Defense counsel sought to call the witness, but the Court excluded the witness due in part to the late witness disclosure which was contrary to the prior ruling of the Court. The Court set a deadline for defense counsel to present the witness list the week prior. 2RP 347 The sought additional witness had not be disclosed as required by the Court. Defense counsel was ineffective and resulted in prejudice to Ms. Doll. Without the witness defense counsel was unable to present information indicating that Ms. Doll had a medical condition that needed attention. If Ms. Doll had such a condition, an argument could be made that an unforeseen event had occurred. Thus, providing a statutory defense to the charge of bail jumping. In this case the jury was instructed as to the statutory defense to the charge of bail jumping, but did not have evidence of a possible unforeseen event or condition. Consequently, Ms. Doll could not present an adequate defense to the charge of bail jumping and the result of the trial may have been different if the witness testified at trial.

4. Defense counsel's failure to object to testimony regarding the outstanding warrant for Ms. Doll and testimony indicating Ms. Doll committed the uncharged crime of Driving While License Suspended was ineffective.

The testimony presented on this issue is as follows. Detective Manchaester testified while on patrol on November 24, 2007 he recognized a vehicle owned by Ms. Doll and he was familiar with the license plate number of the vehicle. 2RP 32 Secondly, he stated that he knew Ms. Doll had an outstanding warrant. *Id.* Thirdly, he testified that he believed Ms. Doll's license was suspended, and he confirmed the suspension with his computer. *Id.* Fourthly, he testified that Ms. Doll was detained for the warrant and for driving on a suspended license and her vehicle was searched incident to her arrest. 2RP 33 Defense counsel did not object or ask to strike any of this testimony.

This evidence is improper 404(b) evidence. Under ER 404(b):

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ER 404(b)

The evidence of the uncharged crime of driving while license was suspended and the existence of the warrant was not admissible evidence. The evidence was not relevant to prove the crimes charged. The evidence suggested that Ms. Doll has a problem following laws and commits crime.

The evidence was prejudicial to Ms. Doll and likely improperly suggested to the jury that Ms. Doll was guilty of other crimes that she was not charged with, therefore she was guilty of the crimes charged in the present case. The information goes to the character of Ms. Doll and portrayed her in a negative fashion that must have influenced the jury.

5. Defense counsel's failure to allow Ms. Doll to testify was deficient.

A defendant in a criminal trial has a constitutional right to testify on her behalf. State v. Robinson, 138 Wn.2d 753,758, 982 P.2d 590 (1999) (citing Rock v. Arkansas, 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987)). The right to testify is protected under the Washington State Constitution and cannot be abrogated by defense counsel. State v. Robinson, 138 Wn.2d at 758, (citing State v. Thomas, 128 Wn.2d 553, 558, 910 P.2d 475 (1996)). Only the defendant has the authority to decide to testify or not to testify. State v. Robinson, 138 Wn.2d at 758, State v. Thomas, 128 Wn.2d at 558 The waiver of the right to testify must be made voluntarily, knowingly, and intelligently. *Id.*

In order to prove that an attorney prevented a defendant from testifying, the defendant must show the attorney refused to allow her to testify, "in the face of the defendant's unequivocal demands that he be allowed to do so.". State v. Robinson at 138 Wn.2d at 764 If a defendant is able to prove under a preponderance of the evidence standard that his

attorney prevented him from testifying, she establishes the waiver of the right to testify was not knowing and voluntary. State v. Robinson, 138 Wn. 2d at 764-65. This type of claim is reviewed as a claim of ineffective assistance of counsel under the test set forth in Strickland v. Washington, *supra*. The first prong of the Strickland test is satisfied if the defendant can prove by a preponderance of evidence that his/her attorney prevented him/her from testifying. State v. Robinson, 128 Wn.2d at 766.

A defendant is entitled to an evidentiary hearing on the issue if she presents substantial and factual evidence that the right to testify was violated. State v. Thomas, 128 Wn. 2d at 561. Upon a showing that counsel's actions prevented the defendant from testifying, a defendant should be granted a new trial if she can show she was prejudiced by her attorney's actions. State v. Robinson, 138 Wn.2d at 770.

In this matter Ms. Doll provided an extensive declaration which was filed a part of the motion for a new trial. CP 154-164. In that declaration Ms. Doll stated that she wanted to testify but was not allowed to do so by her counsel. CP 154. She outlined in her declaration the specific information should would have provided to refute the testimony provided by Ms. Brasch. CP 154-164. Ms. Doll was not allowed to present her side of the story and the jury likely entered a conviction in the absence of the information Ms. Doll could not provide. The failure to allow Ms. Doll to testify was ineffective.

6. Defense counsel's failure to call witnesses was

ineffective.

Defense counsel's failure to call witnesses was one of the issues raised in the motion for a new trial. CP 121 The failure to call the witnesses is ineffective if the failure to call the witness was and must resulted in prejudice, or created a reasonable probability that, had the lawyer presented the witnesses, the outcome of the trial would be different. *See Strickland, supra.*

In the case at hand defense counsel failed to call Johnny Doll, Sheena Andrada, Kayla Lopez, and Tiffany Doll. The failure to call these witnesses was significant. Mr. Doll was available for trial and was known to defense counsel prior to trial. CP 150, CP 154-164 He would have testified that Ms. Doll was attempting to sell her car. CP 150-153 This information was significant because it established that Ms. Doll kept the monies given to her by Ms. Brasch for the sale of her vehicle which was unrelated to any drug transaction. The outcome of the charge of theft may have been different if the evidence had been presented.

Ms. Andrada was available to testify as well. CP 165 Ms. Andrada had information about Ms. Brasch's buying and selling habits, which could have been admissible as impeachment evidence. CP 165-169.

Ms. Andrada was known to defense counsel. CP 166, CP 154-164

Ms. Andrada also could have testified about Ms. Doll's efforts to sell her

vehicle. *Id.* The jury would have certainly questioned Ms. Brasch's credibility if this information had been provided. Ms. Brasch testified that she had been staying clean for the three months prior to trial. Ms. Andrada's testimony would have called into question the truthfulness of that statement.

Ms. Lopez was available to testify as well. Ms. Lopez would have testified that she had observed Ms. Brasch both purchase and use controlled substances, including a purchase of drugs around April 2008. CP 170-171 This information could have been used to impeach Ms. Brasch's statement that she quit using controlled substances around February 2008.

Finally, Ms. Doll was not allowed to testify. The impropriety in failing to call Ms. Doll as a witness as she requested has been previously addressed in this brief. The information that all of the witness would have been provided is significant. Without the information most of the allegations made by Ms. Brasch went unanswered. Additionally, without the information the jury was left with the testimony of law enforcement bolstering the credibility of Ms. Brasch. The jury did not hear all of the story. The jury was left unaware that Ms. Brasch was not forthcoming about her participation in the drug world and her drug use. If the jury was aware of the information the witnesses had to provide, the outcome of the trial would have likely been different. The decision of defense counsel not

to call these witnesses was ineffective representation. As a result of the ineffective representation Ms. Doll did not receive a her constitutionally given right to a fair trial. The remedy for this constitutional error is to grant Ms. Doll a new trial.

B. Detective Dobbins' testimony that he determined that witness tampering and a theft had occurred was an impermissible comment on Ms. Doll's guilt.

Testimony containing opinions on a defendant's guilt is unconstitutional. This is an issue of constitutional magnitude that may be raised for the first time on appeal. State v. Scott, 110 Wn.2d 682, 688, 757 P.2d 492 (1988). No witness may testify as to the guilt of a defendant either by inference or direct statement. State v. Wilber, 55 Wn.App 294, 297, 777 P.2d 36 (1989) Such opinion testimony violates a defendant's right to a fair trial by an impartial jury and the right to have the jury make an independent evaluation of the facts. *Id.* Infringement on the province of the fact finder suggests this error is of constitutional magnitude. State v. Demery, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001) Errors of constitutional magnitude is harmless only if the reviewing court is "convinced beyond a reasonable doubt any reasonable jury would reach the same result absent the error, and where the untainted evidence is so overwhelming it necessarily leads to a finding of guilt." State v. Easter, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996).

In determining if a statement is impermissible opinion testimony, the court should generally consider the circumstances of the case and the following factors: "1) the type of witness involved; 2) the specific nature of the testimony; 3) the nature of the charges; 4) the type of defense; and 5) the other evidence before the trier of fact." City of Seattle v. Heatley, 70 Wn.App 573, 579, 854 P. 2d 658 (1993)

In the case at hand the circumstances of the case and factors outlined above indicate the testimony of Detective Dobbins was improper opinion testimony. First, the fact the opinion was given by a member of law enforcement is critical. A jury is likely to be influenced by opinion testimony given by law enforcement. Secondly, the specific testimony at issue was as follows:

On the issue of witness tampering: Detective Dobbins testified that Ms. Brasch told him that Ms. Doll contacted Ms. Brasch and asked her not to appear for trial. 2RP 127. After his conversation with Ms. Brasch, Detective Dobbins contacted Mr. Kelly. "At that point I contacted you and we conferred about the situation and determined that it did fall under tampering with a witness." RP 127

On the issue of the charged theft:

Q: Based upon what transpired on December 10, and commingling the money, then the defendant disappearing, then later being arrested and methamphetamine being found in the Honda, did you form an opinion as to what you through happened that night?

A: Yes, sir.

Q. What is your opinion?

A: Tiffany Doll conspired to steal the \$2,500 from Candace Brasch. It appeared that she used some of the that money to purchase methamphetamine, because she was unemployed at the time, so how she was getting any other money was unknown, besides through drug proceeds."RP 176-177

This was opinion testimony. As to the issue of witness tampering, the Detective after consulting with the prosecutor determined that Ms. Doll committed the crime of witness tampering. That information was provided to the jury. With that statement Detective Dobbins told the jury that in his opinion Ms. Doll was guilty of the charge. Additionally, the other evidence and the general denial to the charge suggest that the opinion evidence was improper. The jury was provided some information from Ms. Brasch who testified that Ms. Doll asked her not to show up for trial but not promises were made by Ms. Doll nor were any threats made. There was little evidence to indicate that Ms. Doll actually committed witness tampering. In light of the scant evidence provided at trial, the effect of the opinion evidence was significant.

As to the issue of theft the Detective provided a direct opinion that Ms. Doll committed the crime of theft. This information was provided to the jury and likely used by them to convict Ms. Doll of the charge of theft. The other evidence and the general denial to the charge suggest the opinion evidence was improper and unduly influenced the jury. Evidence was

presented indicating that the money Ms. Doll received from Ms. Brasch was to be used to purchase her vehicle.

Furthermore, the testimony invaded the province of the jury and interfered with Ms. Doll's right to an impartial jury. The officer testified that in his opinion Ms. Doll committed the crime of witness tampering. That was a determination for the jury to make. The testimony coming from a member of law enforcement swayed the jury into following Detective Dobbins opinion, that Ms. Doll had committed the crime of witness tampering and theft. Such evidence was improper and likely changed the outcome of the trial. This testimony prevented Ms. Doll from receiving a fair trial with an impartial jury. Reversal of the conviction should be required. These errors are of a constitutional magnitude which may be presented for the first time on appeal.

C. The Court abused its discretion by denying Ms. Doll's motion for a new trial.

A trial court's failure to grant a motion for a new trial is reviewed under an abuse of discretion standard. State v. Wilson, 71 Wn.2d 895, 899, 431 P.2d 221 (1967). An abuse of discretion is found when no reasonable Judge would have reached the same conclusion. State v. Bourgeois, 133 Wn. 2d389, 406, 945 P.2d 1120 (1997).

In the case at hand Mr. Olmstead filed a motion for a new trial under CrR 7.5(a)(4),(5), (8), and a motion for an evidentiary hearing. The

motion was filed on July 18, 2008. CP 121. CrR 7.5 allows the Court to grant a defendant's request for a new trial for any of the causes listed in the rule when a substantial right of a defendant is materially affected. The causes cited in the motion include

- (4) accident or surprise
- (5) irregularity in the proceedings of the court, jury or prosecution, or any order of the court, or abuse of discretion, by which the defendant was prevented from having a fair trial;
- (6) that substantial justice has not been done.

Under CrR 7.5(b) the motion for a new trial must be filed and served within ten days following the verdict. CrR 7.5(b) However, the court may extend the time for filing the motion. CrR 7.5(b) In fact, Judge Haberly allowed additional time at the hearing scheduled June 13, 2008.

The motion was filed more than ten days following the verdict. However, under CrR 7.5(b) the court has the discretion to extend the time for filing of the motion. In the case at hand Mr. Olmstead filed numerous declarations in support for the motion for a new trial and evidentiary hearing. CP 121-171 The declaration of Ms. Doll was filed with the motion. CP 154-164 Ms. Doll stated in her declaration that Mr. McAllister would not let her testify at trial. CP154 Ms. Doll stated with specificity her anticipated testimony. CP 154-164 Ms. Doll wanted to testify and feels that her testimony would have been useful to contradict the testimony of

Ms. Brasch. *Id.* Ms. Doll also could testify that she sold her car to Ms. Brasch for a down payment of \$2,500.00. *Id.*

Ms. Doll provided a letter that had been given to Mr. McAllister that contained her version of the events as well as a request to call specific individuals to testify in her behalf. *Id.* The letter had been given to Mr. McAllister in May 2008. *Id.* The declaration of Ms. Andrada was filed with the motion. CP165-169 Ms. Andrada had been interviewed, received a subpoena to testify and was available for trial. *Id.* Ms. Andrada had information about Ms. Brasch's buying and selling habits, which could have been admissible as impeachment evidence. *Id.* Ms. Andrada also could have testified about Ms. Doll's efforts to sell her vehicle. *Id.* The declaration of Ms. Lopez indicated she had observed Ms. Brasch both purchase and use controlled substances, including a purchase of drugs around April 2008. CP 170-171 This information could have been used to impeach Ms. Brasch's statement that she quit using controlled substances around February 2008. Mr. Doll submitted a declaration indicating that he was aware that Ms. Doll was selling her vehicle for \$5,000.00. CP 154-164

Ms. Doll's motion for a new trial should have been granted because Ms. Doll did not receive a fair trial due to the ineffectiveness of her counsel. As stated previously, both prongs of the Strickland test were met as Ms. Doll's defense counsel at trial committed many acts or

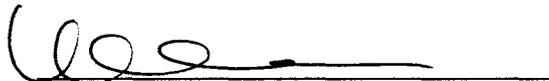
omissions that were outside the range of reasonably prudent assistance and there is a reasonable likelihood the jury would have reached a different decision but for the errors of counsel. Additionally, defense counsel's failure to call witnesses who were ready, willing, and had valuable information to provide was ineffective assistance. Under CrR 7.5(a)(5),(8) the motion should have been granted. The proceedings in this matter were not smooth and the counsel's ineffective representation led to the guilty verdicts. The Court abused its discretion by failing to grant the motion for a new trial. The Court had the discretion to extend the time for filing the brief, but chose not to do so. Ms. Doll should have been given the opportunity to have a trial with effective counsel. At the very least the court should have granted an evidentiary hearing to determine if Mr. McAllister prevented Ms. Doll from testifying on her behalf. Ms. Doll provided statements in her declaration indicating she was precluded from testifying. CP 154-164. The information in the declaration met the threshold requirements for an evidentiary hearing. The Court's decision to deny the motion without an evidentiary hearing was in error.

V. Conclusion

A review of the record of the proceedings in this matter shows that defense counsel was ineffective on a number of occasions. Ms. Doll did not receive a fair trial as a result of the ineffective representation. Law enforcement provided inappropriate opinion evidence which suggested

that Ms. Doll was guilty of some of the charges filed against her. That evidence also prevented Ms. Doll from receiving a fair trial before an impartial jury. Ms. Doll sought a new trial due to the inadequate representation she received. The trial court abused its discretion by denying the motion for a new trial. Ms. Doll respectfully requests this court to reverse the convictions entered against her in this matter. Alternatively, Ms. Doll requests this case be remanded to Kitsap County Superior Court for an evidentiary hearing on this issue of whether she was precluded from testifying at trial by defense counsel.

Respectfully submitted this 31st day of December, 2008.

A handwritten signature in black ink, appearing to read 'Michelle Bacon Adams', is written over a horizontal line.

MICHELLE BACON ADAMS
WSBA No. 25200
Attorney for Appellant

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DIVISION II

03 JAN 19 11:15

STATE OF WASHINGTON
BY
DEPUTY

NO. 38128-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

TIFFANY DAWN DOLL,

Appellant.

CERTIFICATION OF MAILING

I, JEANNE L. HOSKINSON, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and based on my personal knowledge, and that I am competent to testify to the same.

That on this day I had the Brief of Appellant in the above-captioned case hand-delivered or mailed as follows:

Original Mailed To:

Clerk of Court
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Copy Hand-Delivered To:

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Port Orchard, WA 98366

Copy of Mailed To:

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Washington Correction Center for Women
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Gig Harbor, WA 98332

DATED this 31st day of December, 2008, at Port Orchard, Washington.


JEANNE L. HOSKINSON
Legal Assistant