

NO. 38888-0-II

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

CANDI BANGE,

Respondent,

v.

STATE OF WASHINGTON

Appellant.

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

The Honorable James Lawler, Judge

BRIEF OF RESPONDENT

CHRISTOPHER H. GIBSON
Attorney for Respondent

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

09 AUG 25 PM 12:19
STATE OF WASHINGTON
BY [Signature]

COURT OF APPEALS
STATE OF WASHINGTON
FILED
2009 AUG 21 PM 3:44

TABLE OF CONTENTS

| | Page |
|--|------|
| A. <u>RESPONDENT'S STATEMENT OF THE ISSUES</u> | 1 |
| B. <u>STATEMENT OF THE CASE</u> | 1 |
| C. <u>ARGUMENT</u> | 6 |
| <u>THE TRIAL COURT CORRECTLY DISMISSED THE</u> <u>CHARGE WITH PREJUDICE</u> | 6 |
| D. <u>CONCLUSION</u> | 14 |

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Baker
78 Wn.2d 327 (1970).....9

State v. Blackwell
120 Wn.2d 822, 845 P. 2d 1017 (1993)7, 9

State v. Brooks
149 Wn. App. 373, 203 P.3d 397 (2009)6, 11

State v. Cannon
130 Wn.2d 313, 922 P.2d 1293 (1996)6

State v. Chichester
141 Wn. App. 446, 170 P.3d 583 (2007)11, 12, 13

State v. Martinez
121 Wn. App. 21, 86 P.3d 1210 (2004)6

State v. Michielli
132 Wn.2d 229, 937 P.2d 587 (1997)6

State v. Moen
150 Wn.2d 221, 76 P.3d 721 (2003)7

State v. Price
94 Wn.2d 810, 620 P.2d 994 (1980)11

State v. Roche
114 Wn. App. 424, 59 P.3d 682 (2002)10

State v. Rohrich
149 Wn.2d 647, 71 P.3d 638 (2003)6

State v. Sherman
59 Wn. App. 763, 801 P.2d 274 (1990)7

TABLE OF AUTHORITIES (CONT'D)

| | Page |
|--|------------|
| <u>State v. Singleton</u> 274 Conn. 426, 876 A.2d 1 (2005)..... | 10 |
| <u>State v. Stephans</u> 47 Wn. App. 600, 726 P.2d 302 (1987) | 7, 8 |
| <u>State v. Sulgrove</u> 19 Wn. App. 860, 578 P.2d 74 (1978) | 7, 8, 13 |
| <u>State v. Wilke</u> 28 Wn. App. 590, 624 P.2d 1176 (1981) | 7 |
| <u>State v. Wilson</u> 149 Wn.2d 1, 65 P.3d 657 (2003)..... | 6 |
| RULES | |
| CrR 4.7 | 2, 3, 4, 5 |
| CrR 8.3 | Passim |
| CrRLJ 8.3 | 12 |
| RCW 69.50.401..... | 1 |
| RCW 69.50.435..... | 1 |

A. RESPONDENT'S STATEMENT OF THE ISSUES

Did the trial court properly exercise its discretion to dismiss a controlled substance delivery charge when on the day of trial the prosecution admitted it had failed to comply with court ordered discovery deadlines and was not prepared to prove an essential element of the offense -- that the substance delivered was a controlled substance -- and where the record supported the trial court's determination that the delay caused by the prosecution's error prejudiced respondent's right to a fair and speedy trial?

B. STATEMENT OF THE CASE

On October 28, 2008, the appellant Lewis County Prosecutor charged respondent Candi Lee Bange with delivery of methamphetamine to a state agent within 1000 feet of a school bus route stop. CP 41-42; RCW 69.50.401(1); RCW 69.50.435. According to the affidavit of probable cause, on November 11, 2007, Centralia police made arrangements through an "undercover police operative" to purchase \$100 of methamphetamine from Stanley Davies. CP 39. During the undercover operation, police saw Davies approach Bange in her car before Davies eventually delivered methamphetamine to the undercover police operative. CP 39-40. The prosecutor later filed an amended information deleting the school bus route allegation. CP 31-32.

An omnibus order was entered December 18, 2008. CP 36-37. The order noted Bange was asserting a "General Denial" defense and established a "Mutual Discovery Deadline" of "10 days prior to trial." CP 37.

Bange waived her right to a jury trial and the matter came before the Honorable James Lawler for a bench trial on Thursday, January 22, 2009. CP 35; 1RP 2.¹ The prosecutor asked for continuance so the State could obtain the correct crime lab person to testify. 1RP 3.

Bange's counsel objected, noting that on November 6, 2008, the matter had been set to go to trial during the week of January 19-23, 2009. 1RP 4. Counsel also noted the prosecution had not only subpoenaed the wrong witness, but had also obtained and provided the defense with the wrong lab report, which dealt with evidence irrelevant to the charge against Bange. 1RP 4-5. Counsel also noted the State's failure to provide the correct lab report violated the discovery rule, CrR 4.7. 1RP 6.

The court denied the State's request for a continuance:

If we were just talking about the witness not being here, that might be a different situation. But it's substantially more than that. We don't have the report, defense has not had the opportunity to look at the report to see if there are potential issues there. I think that's critical to this case for the defendant's rights in this, especially when we come into court and we're here the morning of trial by the time this error is recognized. So I'm going to deny the request for a

¹ There are two volumes of verbatim report of proceedings referenced herein as follows: 1RP - January 22, 2009, and 2RP - February 4, 2009.

continuance. I don't think there's -- on the record before me I don't think there is a basis for me to grant that.

1RP 7-8.

The prosecutor then requested that he be allowed to present the testimony of the relevant witness he did have available - the police officers involved in the undercover operation - "and then carry the matter over till tomorrow when [the correct witness from the State crime lab] may be available." 1RP 8. Bange's counsel objected, arguing the prosecution's request constituted another request to continue, which the court had already denied, and that it would be unfair for the defense to proceed to trial without knowing what the correct lab report stated, and what the correct witness from the lab would testify to at trial. 1RP 8-11. Counsel requested the court exercise its discretion under CrR 4.7(h)(7) to dismiss the prosecution. 1RP 9-11. In response, the prosecutor advised the court that before it could dismiss the prosecution under CrR 4.7, it had to find the prosecution's error had prejudiced Bange, and argued no such prejudice existed. 1RP 11-12.

The court granted Bange's motion to dismiss:

I'm going to grant the motion to dismiss. If this were just a matter of the witness not being available today and being available tomorrow, then I would agree with the State. But when you couple that with the discovery violation, I'm not making a finding that it was willful, but it was an oversight, and the major oversight puts the defendant at a huge disadvantage to hear and try the case and to start with the first witness of this case without knowing what the

evidence -- what all of the evidence is going to be because the report has not been provided.

The discovery rule under 4.7 was not complied with.

The administration of justice is one thing but it has to be looked at in light of the rights of the defendant. And again, if it were just a witness, I would agree with the State. But it's more than that here. And I don't think the administration of justice is satisfied to force the defendant to start a trial with -- without knowing what the evidence is going to be. I think that's critical. And that's the critical failure in this case. And for that reason I'm going to grant the defense motion and dismiss the charge.

1RP 12-13.

On January 26, 2009, the prosecution filed a motion to reconsider. CP 26-30. The motion argues the court should reverse its order to dismiss because the State's discovery violation did not prejudice Bange. *Id.* The State based this claim on the assertion: "Quite frankly, from the omnibus order, it appears that the identity of the substance (Methamphetamine) was never an issue for the Defendant." CP 28.

Bange's counsel filed a response. CP 12-18. Counsel disputed the prosecution's unfounded claim that the identity of the substance allegedly delivered by Bange was not at issue, noting that by pleading not guilty Bange put "every fact in issue and requires the State to prove each and every element of the charge beyond a reasonable doubt." CP 15.

A hearing was held February 4, 2009, to enter written findings of fact and conclusions of law on the court's order to dismiss the prosecution

and to consider the State's motion to reconsider. 2RP. With regard to the findings and conclusions, the State objected to a proposed conclusion of law that the prosecution's failure to timely provide the correct lab report materially affected Bange's right to a fair trial. 2RP 2-3. In response, Bange's counsel argued it is axiomatic that the defense in a prosecution for delivery of a controlled substance is prejudiced when the State fails to provided before trial the evidence it will rely on to prove the substance allegedly delivered was a controlled substance. 2RP 3-4. The court agreed with Bange's counsel and adopted the conclusion of law. 2RP 4.

The court did grant the State's request to change the phrase "gross mismanagement" to "mismanagement" in the second conclusion of law. 2RP 5-7. The court also granted Bange's counsel's request to include both CrR 4.7 and CrR 8.3 as authority for dismissal. 2RP 8. The written findings and conclusion were filed thereafter, as was a formal order of dismissal. CP 10-11, 19-22.²

With regard to the motion to reconsider, it was denied by the court without argument. CP 23; 2RP 8. The State has appealed the order dismissing the prosecution. CP 2-9.

² A copy of the findings and conclusions is attached hereto as an appendix.

C. ARGUMENT

THE TRIAL COURT CORRECTLY DISMISSED THE CHARGE
WITH PREJUDICE

The trial court did not abuse its discretion in finding the prosecution's failure to timely provide the defense with crucial evidence prejudiced Bange's right to a fair trial. Therefore, this court should affirm the trial court's order of dismissal.

CrR 8.3(b) authorizes a trial court to dismiss any criminal prosecution in the furtherance of justice, and to ensure that an accused person is treated fairly. The rule reads, in part, as follows:

The Court, in the furtherance of justice after motion and hearing, may dismiss any criminal prosecution due to arbitrary action or government misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial.

Thus, a court may require dismissal under CrR 8.3 when the defendant shows: (1) governmental misconduct; and (2) prejudice affecting the defendant's rights to a fair trial. State v. Brooks, 149 Wn. App. 373, 384, 203 P.3d 397 (2009); State v. Rohrich, 149 Wn.2d 647, 654, 658, 71 P.3d 638 (2003); State v. Wilson, 149 Wn.2d 1, 9, 65 P.3d 657 (2003); State v. Michielli, 132 Wn.2d 229, 937 P.2d 587 (1997); State v. Cannon, 130 Wn.2d 313, 328, 922 P.2d 1293 (1996); State v. Martinez, 121 Wn. App. 21, 86 P.3d 1210, 1214 (2004).

The trial court's decision on the motion to dismiss is reviewed for an abuse of discretion. State v. Moen, 150 Wn.2d 221, 226, 76 P.3d 721 (2003). A trial court only abuses its discretion when its decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons. State v. Blackwell, 120 Wn.2d 822, 830, 845 P. 2d 1017 (1993).

Under the first element, simple case mismanagement falls within the standard of government misconduct subject to CrR 8.3(b) dismissal. Blackwell, 120 Wn.2d at 831; State v. Sulgrove, 19 Wn. App. 860, 863, 578 P.2d 74 (1978). Moreover, Washington courts have held the misconduct need not be intentional, evil, or dishonest; simple mismanagement is indeed sufficient. State v. Sherman, 59 Wn. App. 763, 801 P.2d 274 (1990). The underlying purpose of CrR 8.3(b) is fairness to the defendant. State v. Stephans, 47 Wn. App. 600, 603, 726 P.2d 302 (1987). This is the reason CrR 8.3 exists; to provide a trial court with authority to dismiss any criminal prosecution in the furtherance of justice and to ensure an accused person is treated fairly. State v. Wilke, 28 Wn. App. 590, 624 P.2d 1176 (1981).

The type of governmental misconduct addressed by CR 8.3(b) can take many forms. For example, in Sulgrove, the defendant was charged with escape and the case was called to trial one day before expiration of speedy trial. The defendant promptly moved for dismissal on grounds he was

charged under the wrong statute. 19 Wn. App. at 861. The State moved to amend the charging document, which prompted the defendant to seek additional discovery on the amended charge. *Id.* at 862. The State then sought a recess for one-day and on the following day the State produced only inadmissible evidence and then sought an additional continuance. *Id.* The Sulgrove Court affirmed the trial court's dismissal of the case pursuant to CrR 8.3(b), holding the conduct of the State in failing to allege the offense properly and to marshal admissible evidence, was sufficiently careless to constitute misconduct and grounds for dismissal in the furtherance of justice. *Id.* at 863; see also Stephans, 47 Wn. App. at 603 (misconduct element met where witnesses disobeyed a court order, where there was no indication that the State was ready for trial, and where no remedy would have served interests of justice short of a dismissal).

Here, the State concedes, both at trial and on appeal, that it mismanaged Bange's prosecution. CP 28 ("State concedes its blunder. . ."); Brief of Appellant (BOA) at 10 ("the State concedes mismanagement below. . ."). This concession is warranted and should be accepted by this Court. Despite two months advance notice of the trial date, the prosecution failed to ensure it had provided the defense with notice of all of evidence it intended to rely on to prosecute Bange. Thus, as in Sulgrove, the State's failure to provide the defense with and marshal its evidence for the day of trial

constitutes mismanagement subject to dismissal under CrR 8.3(b).

Under the second element, the defendant must show prejudice that affects the defendant's rights to a fair trial. *State v. Baker*, 78 Wn.2d 327, 332- 33 (1970); *Blackwell*, 120 Wn.2d at 831 (1993). Here, Bange would have been prejudiced at trial due to the State's mismanagement because it would, as the trial court found, forced her to go to trial "without knowing what the evidence [against her was] going to be." 1RP 13. The record supports this finding and constitutes an adequate finding of prejudice to warrant dismissal under CrR 8.3.

It is undisputed that the State failed to provide the defense with the name of the correct crime lab technician until the day of trial, and failed to provide the defense with a copy of the correct lab report until several days after the matter came on for trial. CP 12-13; 1RP 2-5. The State claims these discovery violations did not prejudice Bange because "the defense was nonetheless on notice that *someone* from the Crime Lab would be testifying. [CP 44-45³]. Additionally, the defense was already on notice from the probable cause statement that the substance delivered by Bange field-tested positive for methamphetamine. CP 39-40." BOA at 14 (emphasis in original).

The State's no-prejudice claims is wrong because who testifies can be as important to preparing a defense to a drug charge as what they testify about. See State v. Roche, 114 Wn. App. 424, 59 P.3d 682 (2002) (reversing drug convictions when discovered post-trial that crime lab technician who tested substances and testified at trial was committing malfeasance on the job). The State is also wrong because field tests are, by nature only a preliminary determination of whether a substance is a controlled substance and more extensive testing of the materials is routinely done by a crime lab to ascertain the true nature of the substance. See State v. Singleton, 274 Conn. 426, 876 A.2d 1 (2005)(noting lower court's consideration of manufacturers of field tests for controlled substances noting they are only for providing a preliminary determination and that further testing in a laboratory is required to conclusively established the nature of the substance). Without access to the proper lab report at the time of trial, Bange had no way of knowing what the prosecution's key piece of evidence would provide.

Without knowledge of who lab tested the substances allegedly delivered or what the results of that testing were, Bange's counsel could not properly prepare a defense. And it was clear at the time the trial court granted Bange's motion to dismiss that it was uncertain when the test results

³ State's Witness List.

would be provided. See 1RP 4 (Bange's counsel notes neither the defense nor the prosecution currently has a copy of the relevant lab report). As the trial court correctly noted, this left Bange in the position of potentially proceeding to trial with an inadequately prepared defense. 1RP 13.

The only other option would have been for Bange to agree to a continuance, which likely would have meant waiving her right a speedy trial. Defendants are not required to make such a Hobson's choice just because the prosecution mismanaged their case. Brooks, 149 Wn. App. at 373; State v. Price, 94 Wn.2d 810, 814, 620 P.2d 994 (1980). If a defendant proves by a preponderance of the evidence that such a choice is faced absent dismissal, then dismissal is an appropriate remedy. Id.

Here, Bange met her burden to show the State's mismanagement was forcing her to either go to trial with inadequately prepared counsel or waive her right to a speedy trial. Therefore the trial court did not error in granting the motion to dismiss under CrR 8.3 and this Court should affirm.

But even if dismissal were not warranted under CrR 8.3(b), it was under State v. Chichester, 141 Wn. App. 446, 170 P.3d 583 (2007). In Chichester, several continuances had been granted before a firm trial date in district court was established. 141 Wn. App. at 449. On the day trial was to begin, the prosecutor's office requested another continuance because the prosecutor assigned to the case had another trial, office policy precluded

assigning a different prosecutor, and a continuance would not violate the speedy trial rules. *Id.* at 450-52. Chichester objected, noting he was missing work to attend trial, and argued that if trial did not proceed as scheduled, the charges should be dismissed due to governmental mismanagement. *Id.* at 452. The trial court denied the prosecutor's request for a continuance and dismissed the charge with prejudice, finding the prosecutor's office had mismanaged its caseload and that this had prejudiced Chichester "because of trial preparation, travel, and further delay." *Id.* at 452-53.

This Court rejected the State's appeal, holding the trial court did not abuse its discretion in denying the prosecutor's request for a continuance or in dismissing the charge. *Id.* at 454-59. With regard to the State's claim that Chichester was not sufficiently prejudiced by the prosecution's failures to warrant dismissal under CrRLJ 8.3(b),⁴ this Court held:

We think it plain from a review of the record in Chichester's case that the district court dismissed the case because the State was not ready, not on the basis that Chichester had been prejudiced by arbitrary action or governmental misconduct. . . . We do not believe CrRLJ 8.3(b) is the controlling rule where the State comes to court on the date of trial unready to proceed after being unable to show good cause for a continuance. To hold that the court in such a situation cannot dismiss the case, but must instead grant another continuance, would mean that control of the court's criminal trial settings would be transferred to the State. The mere filing by the State of a last-minute motion to continue would routinely serve to dislodge a confirmed trial

⁴ CrRLJ 8.3(b) contains identical language to that found in CrR 8.3(b).

date, so long as there was time left in the speedy trial period. Surely this was not intended by the drafters of the rule.

When Chichester moved to dismiss, the State still had the opportunity to begin the trial with [another prosecutor] or to propose some other deployment of resources consistent with the trial date. Instead of objecting to a dismissal, the State declared itself unready to proceed and virtually invited the court to grant the defense motion.

Somewhat similar circumstances were presented in State v. Sulgrove, 19 Wn. App 860, 578 P.2d 74 (1978). . . . The trial court dismissed the case because of the State's lack of preparation. This court affirmed. Sulgrove, 19 Wn. App. at 863. Of significance to the present case, we noted parenthetically that "had the trial court not dismissed the prosecution under CrR 8.3(b), but simply allowed the trial to proceed and denied any request for a continuance (as would have been well within its discretion, having already granted one continuance), the State would have failed for a lack of evidence." Sulgrove, 19 Wn. App. at 863. The same is true here. The trial court was within its discretion to deny the request for a continuance. Because the State was not ready to proceed, the case would have necessarily failed for lack of evidence if the court had called it for trial. Granting the defense motion to dismiss simply recognized that reality.

Control of a trial calendar ultimately rests with the court, not the litigants. The court's decisions were reasonable. We find no abuse of discretion.

141 Wn. App. at 457-59.

Here, as in Chichester, the State was not ready to proceed on the date of trial and failed to establish good cause for a continuance. And had trial proceeded as scheduled, the prosecution would likely have failed for lack of evidence. The trial court's decision to dismiss the prosecution "simply recognized this reality." 141 Wn. App. at 459. It also provided a clear and necessary signal from the court that "[c]ontrol of the trial calendar . . . rests

with the [trial] court" and not the prosecutor. Id. As such, the trial court did not abuse its discretion in dismissing the charge against Bange and therefore should be affirmed.

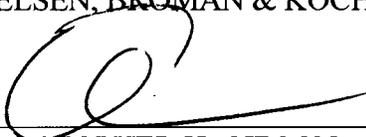
D. CONCLUSION

For the reasons stated, this Court should affirm the trial court and dismiss the State's appeal.

DATED this 21 day of August, 2009.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



CHRISTOPHER H. GIBSON
WSBA No. 25097
Office ID No. 91051

Attorneys for Respondent

ORIGINAL

Received & Filed
LEWIS COUNTY, WASH
Superior Court

FEB 04 2009

By Kathy A. Brack, Clerk
Deputy

JB

received
2-9-09

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON,

Plaintiff,

vs.

CANDI LEE BANGE,

Defendant.

NO. 08-1-00730-2

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR
DISMISSAL PURSUANT TO CrR 4.7

+ 8.3
JUL

SCANNED

THIS MATTER having come on for hearing for trial on January 22, 2009, the State being represented by J. BRADLEY MEAGHER of the Lewis County Prosecutor's Office, the Defendant present and being represented by DAVID P. ARCURI of ENBODY, DUGAW & ENBODY, and the Court having heard the arguments of counsel, now makes the following:

FINDINGS OF FACT

I.

This matter was filed by Information on October 28, 2008 alleging one count of Delivery of a Controlled Substance, Methamphetamine.

II.

The Defendant entered a plea of not guilty on November 6, 2008 and trial was scheduled for the week of January 19, 2009.

27

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

III.

On December 18, 2008, an Omnibus Hearing was held and an Order was entered. Paragraph four of that Order stated:

"MUTUAL DISCOVERY DEADLINE: Ten days prior to trial. Both parties shall complete discovery, including names and all required information pertaining to witnesses (including conviction data), by this deadline date."

IV.

The deadline for discovery as set in the Omnibus Hearing on December 18, 2008 was January 12, 2009.

V.

The State failed to disclose the name of a key and essential witness, the laboratory expert that examined the alleged substance delivered until the case had already been called for trial on January 22, 2009. The State inadvertently subpoenaed the wrong lab technician and had obtained the wrong lab report for this case.

VI.

At no time did the State provide to the defense a copy of the correct laboratory report pertaining to the alleged substance delivered by the Defendant. The State did provide a lab report that did not apply to this case.

VII.

The Defendant was prepared to proceed to trial on January 22, 2009. After the case was called for trial, the State informed the Court and the defense of an additional witness that the State intended to call at trial. This was a key and essential witness as she was the individual who apparently examined the alleged

1 substance involved in the delivery charged in this case.

2 **VIII.**

3 The State's failure to provide the name of this correct
4 forensic scientist, Ms. Keyes, until after the case had been called
5 for trial was a violation of CrR 4.7 and of the previous order of
6 the Court entered in the Omnibus Order on December 18, 2008.

7 **IX.**

8 The State's failure to provide the correct results of
9 examination of the substance allegedly delivered in this case until
10 after the case was called for trial was a violation of CrR 4.7 and
11 the Omnibus Hearing Order entered on December 18, 2008.

12
13 Based on the foregoing Findings of Fact, the court makes the
14 following:

15 **CONCLUSIONS OF LAW**

16 **I.**

17 The State's failure to provide the name of the correct
18 forensic scientist and to provide a copy of the correct lab report
19 materially affected the Defendant's right to a fair trial.

20 **II.**

21 The conduct of the State in failing to provide the required
22 discovery in this case was a result of ~~gross~~ mismanagement of the *JM*
23 case.

24 **ORDER**

25 Given the above Findings of Fact and Conclusions of Law, this
26 Court finds that the only appropriate remedy is to dismiss this

1 case with prejudice. The conduct of the State materially affected
2 the Defendant's right to be represented by effective counsel and
3 materially affected her right to a fair trial.

4 DATED this 4th day of February, 2009.

5
6 
7 JUDGE / COURT COMMISSIONER

8 Presented by:

9 ENBODY, DUGAW & ENBODY

10 

11 DAVID P. ARCURI, WSBA #15557
12 Attorney for Defendant

13 ^{As to Form}
14 Approved ~~for entry~~; Notice
of presentation waived:

15 
16 J. BRADLEY MEAGHER, WSBA #18685
17 Deputy Prosecuting Attorney

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

CANDI BANGE,)
)
Respondent,)
)
vs.)
)
STATE OF WASHINGTON,)
)
Appellant.)

COA NO. 38888-0-11

09 AUG 21 PM 12:20
STATE OF WASHINGTON
BY _____
DEPUTY CLERK

FILED
STATE OF WASHINGTON
2009 AUG 21 PM 3:44

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 21ST DAY OF AUGUST 2009, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF RESPONDENT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- LORI SMITH
LEWIS COUNTY PROSECUTOR'S OFFICE
345 W. MAIN STREET
FLOOR 2
CHEHALIS, WA 98532

- CANDI BANGE
925 LOGAN HILL ROAD
CHEHALIS, WA 98532

SIGNED IN SEATTLE WASHINGTON, THIS 21ST DAY OF AUGUST 2009.

x Patrick Mayovsky