

NO. 40290-4-II

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

STATE OF WASHINGTON, Respondent

v.

LIZZIE ELLEN JABBOUR, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.07-1-02353-4

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BRIEF OF RESPONDENT

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I. STATEMENT OF FACTS

The State accepts the statement of facts as set forth by the defendant. Where additional information is needed, it will be supplied in the body of the argument.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is a claim that the trial court failed to bring the defendant to trial within the time required under CrR 3.3.

The decision to grant or deny a motion for a continuance rests within the trial court's sound discretion. State v. Flinn, 154 Wn.2d 193, 199, 110 P.3d 748 (2005); State v. Kokot, 42 Wn. App. 733, 735, 713 P.2d 1121 (1986). Thus, the Appellate Court will not disturb the trial court's decision unless the defendant demonstrates that the trial court's exercise of its discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." Flinn, 154 Wn.2d at 199; State v. Melton, 63 Wn. App. 63, 66, 817 P.2d 413 (1991); State v. Nguyen, 131 Wn. App. 815, 821, 129 P.3d 821 (2006). The defendant challenging a decision to grant a continuance must show prejudice and abuse of discretion. State v. Torres, 111 Wn. App. 323, 330, 44 P.3d 903 (2002) (applying former CrR 3.3 (2002)). The court may consider scheduling

conflicts when it rules on a motion for continuance. Flinn, 154 Wn.2d at 200. Counsel's scheduled vacations also typically justify a continuance. Torres, 111 Wn. App. at 331.

The defendant has not demonstrated, nor has she even alluded to a reason why these continuances were an abuse of discretion or prejudicial to her. She mentions that she refused to sign the continuance orders, but her attorney signed each on her behalf and she does not assert that she received ineffective assistance of counsel. The court did not abuse its discretion in granting the requested trial continuance.

The defense attorney on appeal on page 21 of the brief makes mention that the area of concern is a question of whether or not the defendant was subject to the 60 or 90 day rule. The State submits that as previously set forth, the defendant has again not questioned the speedy trial rules. Specifically, the rule requires under CrR 3.3(d)(3) the following:

Objection to trial setting. A party who objects to the date set upon the ground that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial within those time limits. Such motion shall be promptly noted for hearing by the moving party in accordance with local procedures. A party who fails, for any reason, to make such a motion shall lose the right to object that a trial commenced on such a date is not within the time limits prescribed by this rule.

The State submits that the defense did not properly note this matter in any form whatsoever. It did not move the court nor did it promptly note a hearing which, according to the rule, appears to be the burden of the moving party.

The defense also is in error when it claims that this is a 60 day time limit. There is no question but that when the trial was originally set the defendant was out of custody and subject to the 90 day rule under CrR 3.3. It was after that that she got into trouble and was subsequently put into custody. The defense claims that because of that she is now subject to the 60 day time limit. This is not accurate. According to CrR 3.3(b)(4):

Return to custody following release. If a defendant not detained in jail at the time the trial date was set is subsequently returned to custody on the same or related charge, the 90 day limit shall continue to apply. If the defendant is detained in jail when the trial is reset following a new commencement date, the 60 day limit shall apply.

Finally, there is discussion raised on September 10, 2009 concerning representation of the defendant by her court appointed attorney, Ms. Stauffer. As Ms. Stauffer, the attorney, indicates:

Ms. Jabbour isn't happy with me. She indicates she is filing complaints against me so I am a little at a loss as to where I should go with this other than to ask the court to allow my withdrawal and perhaps substitute someone else in, at this point, to represent her. She is apparently very unhappy with

my representation. So, I am not comfortable proceeding, at this point.

-(RP 13, L11 – 14, L4)

The defendant goes on to further indicate that she's unhappy with her attorney because she doesn't feel that the attorney has done anything towards presenting a defense and is not prepared to go to trial on her behalf. (RP 14, 16, 21).

MS. STAUFFER: Your Honor, I would still ask the court to address the request by my client to fire me as well as my request to ask the court to relieve me, given the conflict situation and the ability to –

JUDGE HARRIS: I'm going to mark the case ready for trial. It has been going on too long.

DEFENDANT: Does it – Your Honor, she has done nothing to prepare for this trial in any way with me. She has only spent fifty – a total of fifty minutes with me in the last three months since I have been in custody. I've given her names and contact information for witnesses to testify on my behalf and she has not contacted them or subpoenaed them in any way, shape, or form.

JUDGE HARRIS: You have five witnesses on the witness list.

MS. STAUFFER: Your Honor, we have filed a witness list and my investigator has been working on it.

JUDGE HARRIS: Okay.

MS. STAUFFER: Thank you, Your Honor.

(Court recesses on this matter at 3:06:18 PM.)
(Court reconvenes on this matter at 3:09:41 PM.)

MS. STAUFFER: Your Honor, I think we need to recall Ms. Jabbour.

MR. ST. CLAIR (Deputy Prosecutor): Your Honor, we just have two documents that need to be signed by defense and defense counsel.

DEFENDANT: I'm not signing anything.

JUDGE HARRIS: That's fine. The clerk will note that she refused to sign.

DEFENDANT: I've been forced to be saddled with an attorney that's incompetent, doing incompetent work.

JUDGE HARRIS: That will be all. That's on the record.

-(RP 22, L 11 – 23, L21)

Clearly, the foregoing discussion indicates that this matter was not in a position to go to trial in early September, 2009. The State submits that the court exercised its discretion in setting this matter into a time and place where both sides could receive a fair and adequate trial.

III. RESPONES TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is a claim that there was insufficient evidence to convict her of the crime of identity theft in the second degree.

The Court's Instructions to the Jury (CP 86) include as Instruction No. 15 the elements that had to be proven beyond a reasonable doubt to convict the person of Identity Theft in the Second Degree. The elements are:

- (1) that on or about December 24, 2007, the defendant knowingly obtained, possessed, transferred, or used a means of identification or financial information of another person, living or dead;
- (2) that the defendant acted with the intent to commit or aid or abet any crime; and
- (3) that any of these acts occurred in the State of Washington.

Specifically, in our case the defense agrees that the defendant had in her possession a Social Security card with another person's identity contained on it. The claim being made is that the State cannot prove that she had a requisite intent to commit a crime.

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. State v. Luther, 157 Wn.2d 63, 77, 134 P.3d 205 (*quoting State v. Townsend*, 147 Wn.2d 666, 679, 57 P.3d 255 (2002)), cert. denied, 127 S. Ct. 440 (2006). A defendant claiming insufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn from it.

Luther, 157 Wn.2d at 77-78 (*citing* State v. Alvarez, 105 Wn. App. 215, 223, 19 P.3d 485 (2001)).

In considering the sufficiency of evidence, the Appellate Court gives equal weight to circumstantial and direct evidence. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). The Court defers to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (*citing* State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)). It does not substitute its judgment for that of the jury on factual issues. State v. Israel, 113 Wn. App. 243, 269, 54 P.3d 1218 (2002) (*citing* State v. Farmer, 116 Wn.2d 414, 425, 805 P.2d 200, 812 P.2d 858 (1991)), review denied, 149 Wn.2d 1013 (2003). “In determining whether the requisite quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case.” State v. Jones, 93 Wn. App. 166, 176, 968 P.2d 888 (1998), review denied, 138 Wn.2d 1003 (1999). Substantial evidence exists when the record contains evidence of sufficient quantity to persuade a fair-minded, rational person that the declared premise is true. Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 112, 937 P.2d 154, 943 P.2d 1358 (1997), cert. denied, 522 U.S. 1077, 139 L. Ed. 2d 755, 118 S. Ct. 856 (1998); World Wide Video, Inc. v. City of

Tukwila, 117 Wn.2d 382, 387, 816 P.2d 18 (1991). Direct evidence is not required to uphold a jury's verdict; circumstantial evidence can be sufficient. State v. O'Neal, 159 Wn.2d 500, 506, 150 P.3d 1121 (2007). "Intent is rarely provable by direct evidence, but may be gathered, nevertheless, from all of the circumstances surrounding the event." State v. Gallo, 20 Wn. App. 717, 729, 582 P.2d 558, review denied, 91 Wn.2d 1008 (1978); see also State v. Choi, 55 Wn. App. 895, 906, 781 P.2d 505 (1989), review denied, 114 Wn.2d 1002, 788 P.2d 1077 (1990). The trier of fact may infer criminal intent where a defendant's conduct plainly indicates the requisite intent as a matter of logical probability. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997).

Sergeant Troy Price, from the Vancouver Police Department indicated that on the date in question officers had occasion to question the defendant. To accomplish this they asked for her identification. She had told the officers that she wasn't from the State of Washington but that she was from the State of Alabama. Dispatchers ran the information that she provided using the State of Alabama as one of the search identifiers and again they received no record listed for the defendant. (RP 154-155). Sergeant Price asked her specifically for her name, date of birth, and her social security number, indicating that the information she had provided

did not come back to any type of record. The defendant then provided the officer with a name, date of birth, and a social security number. He left her for approximately 14 minutes and determined that the information she again supplied was inaccurate. (RP 155-156). She met the officer and indicated to him that she intended to provide the apparently false information to him and that she was aware that was not information that was specific to her. (RP 158). The officer told her that the social security number that she had provided was actually the social security number of a different person and that he would like to see some identification of hers. The officer indicated that she reached into a white plastic bag and removed a wallet and began thumbing through the wallet. While she was doing this he observed in this wallet a Washington drivers' license or identification card which she flipped past rather quickly. (RP 160). She was removing some type of benefits card when a laminated social security card fell to the ground. The Sergeant noted that the name on the social security card was not the defendant's name but belonged to an Anna Tolentino. The card had another social security number on it also. The officer asked her where this card had come from and the defendant indicated that she had recently found it on the ground. The officer noted that the ground was damp but the card was dry. He also observed that her demeanor changed and she began acting nervously. (RP 161).

Sergeant Price arrested her at that point and subsequent to the arrest, going through the plastic bag and little wallet that she had, he discovered a Connecticut driver's license with the defendant's name and a different date of birth than she had given to the officer. In addition, he found a Washington State driver's license for another person other than the defendant. (RP 163). Also during the search was found a spoon with a crystallized substance on it, which he recognized as a potential controlled substance, specifically methamphetamine. (RP 165).

Later in the questioning by the Sergeant, the defendant indicated that the purse was not even hers, but that she had borrowed it. (RP 169).

As the case law previously indicates, direct evidence is not necessarily required to uphold a jury's verdict. Circumstantial evidence is just as good as the direct evidence and logical inference and reasonable probabilities are also part of the factors that can be taken into consideration by a jury. The jury may infer criminal intent from conduct, and circumstantial evidence as well as direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). It's of interest in our case that the defendant continually tries to distance herself from not only the social security card but also the contents of the purse itself. The State submits that it was permissible for the jury to infer criminal intent to commit a crime by use of the social security card. This is a jury question and there

was adequate evidence and information to allow this question to go to the jury. As indicated previously, intent may be inferred from the defendant's conduct and the court must defer to the tier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004).

IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is that the trial court erred in not washing out a number of prior Class C felony convictions from earlier in the defendant's career. The argument is that she had at least five years crime-free in the community. The State submits that this is inaccurate.

At the time of sentencing, the deputy prosecutor presented to the court a packet of documentation at least 180 pages long setting forth certified Judgment and Sentences and other underlying documentation concerning convictions and probation violations. The State has moved to supplement the designation of clerk's papers to include the State's Sentencing Memorandum, which has attached as appendices the various documentation. The Deputy Prosecutor at the time of the sentencing also laid out the factual history concerning this defendant. It is interesting to note that the misdemeanors are not being included in any type of count by

the State but that the only things being counted are felony convictions and felony violations of probations. The section of the Deputy Prosecutor's argument to the Judge is located as an appendices to this brief and incorporates RP 442, L18 – 450, L11.

As the documentation clearly indicates the defendant had a long string of felony convictions and also violations of paroles and probations. Those parole and probation violations are based on felony convictions.

The wash-out provision for class C felonies is contained in RCW 9.94A.360(2), which reads in relevant part:

Class C prior felony convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without being convicted of any felonies.

Incarceration for a probation violation constitutes confinement pursuant to a felony conviction within the meaning of this statute; accordingly, defendant's incarceration pursuant to a probation violation interrupted the five-year washout period for his class C felony conviction. The State submits that State v. Blair, 57 Wn. App. 512, 789 P.2d 104 (1990), is influential in interpreting the language in this case. In Blair, the defendant had been convicted of a class C felony in 1981 and, as part of

the sentence, received three years' probation. Id. at 513-14. In 1984, Blair was found to have violated probation and sentenced to a 90-day jail term. Id. at 514. His probation was extended for another three years, and he again violated probation in 1987 and was sentenced to another 90-day jail term. Id. In 1989, Blair was sentenced for three new crimes. Id. at 513. At sentencing, Blair argued, and the trial court agreed, that the prior class C felonies had washed out. Id. at 514. The Court of Appeals reversed, holding that confinement on the felony probation violation reset the trigger date in that it was "confinement pursuant to a felony conviction." Id. at 515-17.

Confinement results from (1) the original conviction, which formerly could include terms of probation; and (2) the subsequent violation of probation conditions. In interpreting "pursuant to a felony conviction" under RCW 9.94A.360(2), there is no reason to disassociate the probation confinement from its underlying cause, the felony conviction. Each instance of the defendant's confinement must be considered. Disregarding confinement due to probation violations would render superfluous "last date of release from confinement" under the statute. It is a well-settled rule of statutory construction to give meaning to all words used. Hanson v. Tacoma, 105 Wn.2d 864, 871, 719 P.2d 104 (1986); State v. VanVlack, 53 Wn. App. 86, 90, 765 P.2d 349 (1988).

Moreover, "'Pursuant to' means 'in the course of carrying out: in conformance to or agreement with: according to.'" Knowles v. Holly, 82 Wn.2d 694, 702, 513 P.2d 18 (1973). Therefore, "confinement pursuant to a felony conviction" includes confinement due to a probation violation since this confinement results "in the course of carrying out" and "according to" a felony conviction. The defendant received a deferred sentence subject to terms of probation. This is in harmony with RCW 9.94A.010(5) by giving the offender an opportunity to improve herself. She was incarcerated for violating her probation conditions. Disregarding confinement due to probation violations when applying RCW 9.94A.360(2) would not promote respect for the law and provide just punishment as the SRA intended. RCW 9.94A.010(1), (2). Treating those who violate probation conditions differently from those who observe such conditions furthers the goals of the SRA.

Recently this issue was discussed by our Supreme Court in State v. Ervin, 2010 Wash. LEXIS 719 (Wash. Sept. 9, 2010)(Supreme Court docket number 83244-7). The Case Summary spells out the issues:

CASE SUMMARY

PROCEDURAL POSTURE: Defendant was convicted in 2006 of felony violation of a protection order. Defendant appealed his sentence but not his conviction. The

Washington Court of Appeals affirmed defendant's sentence. Defendant filed a petition for review.

OVERVIEW: Defendant argued that two of his prior class C felonies had washed out under Wash. Rev. Code § 9.94A.525(2)(c) because he went five consecutive years without committing a crime. The State disagreed, arguing that defendant's 17 days in jail in 2002 for violating a term of his probation for a misdemeanor interrupted the five-year washout period. The court found the plain language of § 9.94A.525(2)(c) allows for multiple reasonable interpretations. Applying relevant canons of statutory construction, the court discerned a legislative intent favoring defendant's interpretation of the statute. Accordingly, the court held that time spent in jail pursuant to violation of probation stemming from a misdemeanor does not interrupt the washout period. Because defendant, for a period of five years, did not commit any crime subsequently resulting in a conviction, and because defendant was not confined pursuant to a felony conviction during that period, his prior class C felonies washed out and should not have been included in his offender score.

OUTCOME: The appellate court's decision was reversed, and the case was remanded for resentencing.

At the conclusion of the Opinion, the Court states:

In sum, we find the plain language of RCW 9.94A.525(2)(c) allows for multiple reasonable interpretations. Applying relevant canons of statutory construction, we discern a legislative intent favoring Ervin's interpretation of the statute. Accordingly, we hold that time spent in jail pursuant to violation of probation stemming from a misdemeanor does not interrupt the washout period.

CONCLUSION

Because Ervin, for a period of five years, did not commit any crime subsequently resulting in a conviction, and because Ervin was not confined pursuant to a felony conviction during that period, his prior class C felonies washed out and should not have been included in his offender score. We therefore reverse the Court of Appeals and remand the case for resentencing.

The State submits that the distinguishing characteristic of the State of Washington is that the violations are violations of a felony and therefore constitute felony convictions for purposes of the washout. As the recent case law indicates, misdemeanors do not count in this fashion and thus are not to be considered as preventing a five-year washout on Class C felonies.

V. CONCLUSION

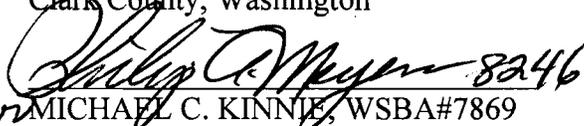
The trial court should be affirmed in all respects.

DATED this 28 day of October, 2010.

Respectfully submitted:

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1 (Court reconvenes on this matter at 9:19:57 AM, on
2 January 5, 2010.)

3 JUDGE NICHOLS: Are we ready to proceed?

4 MS. WARD: We are, Your Honor.

5 MS. STAUFFER: We are, Your Honor.

6 JUDGE NICHOLS: Okay.

7 MS. WARD: Your Honor, the State has provided to the
8 bench a copy of a sentencing memorandum basically setting
9 forth what I anticipate to be arguments of the defense
10 regarding criminal history and offender score
11 calculations and the ranges that correspond thereto. I
12 have provided a copy to defense counsel as well as
13 additional copies of what had previously already been
14 provided of -- of all the copies of the convictions as
15 well as warrant paperwork that had previously been
16 provided.

17
18 I think the appropriate place to start would be
19 looking to the declaration of criminal history, which
20 would be noted as Appendix A to the State's memorandum.
21 Looking first at the convictions -- the first convictions
22 listed on Appendix A, the declaration of criminal
23 history, the unlawful issuance of bank checks, which were
24 three counts and a theft in the second degree from Clark
25 County, under Cause No. 90-1-00914-9. The date of the

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1 crime was listed as October 19th, 1990. The defendant was
2 sentenced on December 7th of 1990. The Court will see an
3 Appendix D that the State has provided copies of the
4 statement on plea of guilty as well as the information
5 charging the defendant with this offense as well as the
6 certified copy of the judgment and sentence all
7 indicating that each of these offenses, Your Honor, is
8 classified as a felony at the time that they were
9 committed under Washington law. The State has then
10 calculated an offender score of 4 for each of these
11 offenses. One for each of the unlawful issuances of bank
12 check and one for the theft in the second degree.

14 The second conviction listed on the declaration of
15 criminal history is a forgery conviction out of the State
16 of California. This is under Cause No. 930203343. The
17 date of the crime was January 8th, 1993. (The microphone
18 picks up a loud continuous noise.) The date of the
19 sentence was March 9th, 1993. The State will -- or, the
20 Court will note that on -- later in the discussions --

21 (Clerk confers with the Court.)

22 JUDGE NICHOLS: Ms. Stauffer, the microphone.

23 MS. STAUFFER: Oh, I'm sorry.

24 (Defense moves papers off of the mic at the defense
25 counsel table.)

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1
2 MS. WARD: In later discussions, we will move to the
3 statements on plea of guilty as well as the judgment and
4 sentences for a '96 and a '98 cause number, each of which
5 takes into consideration this conviction for forgery out
6 of the State of California calculating it as one felony
7 point, under the defendant's offender score. Defendant,
8 as well as defense attorney at the time, all signed
9 declarations of criminal history attached to the
10 statements on the plea of guilty in that '96 and '98
11 cause number as well as on the judgment and sentences.

12 Additional information was requested regarding this
13 out of state conviction, however, I don't have any
14 additional documentation. Case law makes clear that if
15 the defendant is in fact disputing the comparability of
16 that forgery conviction, as a felony conviction or
17 Washington law at this point in time, even though it was
18 not contested at early points in time, that the State
19 must then come forward with our burden of proof and prove
20 by some other evidence that this in fact was comparable
21 to a Washington felony. I don't have such proof. I
22 don't know if defendant is in fact now contesting it
23 after having not contested it in the prior two
24 proceedings.
25

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1 But, what is clear from case law is that regardless
2 of whether or not the Court can consider this in the
3 offender score as an additional point, certainly can
4 consider the fact that the defendant was in fact
5 convicted of this offense for wash out purposes.

6 Then, we move to -- the defendant has then a
7 misdemeanor conviction for disorderly conduct. The State
8 is not submitting any documentation as to that because
9 the next conviction for theft in the second degree in
10 1996, the date of the crime being May 8th of 1996, the
11 date of the sentence being June 19th of 1996, still
12 continues to prevent any sort of wash out of that earlier
13 1990 offense because of the 1993 conviction as well as
14 what the State has also submitted in Appendix D as a
15 probation violation stemming from that 1990 offense. We
16 have submitted copies of warrants as well as the reports
17 of the probation officer, which indicate that on August
18 4th of 1994, that there was a probation violation. The
19 defendant was jailed for 51 days. The date of release is
20 noted as well in the State's brief again reflecting that
21 the defendant was still under supervision up to and until
22 at least 1994. In 1996, we have the theft in the second
23 degree conviction under Cause No. 96-1-00680-7. Again,
24
25

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1 the State has provided copies of the information, the
2 statement on plea of guilty as well as the judgment and
3 sentence all indicating that this was a felony offense at
4 the time that it was committed under Washington law.
5 Again, it is -- it is important for the Court to note
6 that in this judgment and sentence on this '96 cause
7 number, that it does in fact calculate the forgery
8 conviction from 1993 as an additional point in the
9 defendant's offender score.
10

11 We then have a couple of more misdemeanors, which
12 again the State has not submitted additional
13 documentation to the Court because the next cause number
14 we have is a 1998 forgery charge from Clark County under
15 Cause No. 98-1-00088-1. The date of the crime being
16 01/16/98. The date of the sentence being November 2nd,
17 1998. Again indicating that in the information, the
18 statement on the plea of guilty as well as the judgment
19 and sentence that this was a felony offense at the time
20 that it was committed and it appropriately calculated as
21 a score of 1 in the defendant's offender score.
22

23 The next two convictions that we come to, Your
24 Honor, is what I anticipate to be the bulk of the
25 argument this morning and that is a failure to appear in

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1 the first degree from Norwick, Connecticut and an
2 impersonating an officer from Norwick, Connecticut. Both
3 under the same Cause No. 051764AR. The State has
4 attached certified copies of the judgment and sentences
5 for those out of state convictions as well as --

6 JUDGE NICHOLS: I don't know if I have received --
7 that was attached to -- was that attached to the bench
8 copies?

9 MS. WARD: It is, Your Honor. But, I can certainly
10 provide another copy.

11 JUDGE NICHOLS: Oh, here is it. I have it.

12 MS. WARD: Another copy to the Court. The defendant
13 -- on the failure to appear, the defendant committed the
14 offense on July 15th, 2005. She was sentenced along with
15 the other count on October -- or, August 24th, 2005. That
16 failure to appear in the first degree, as the Court can
17 see on the judgment and sentence, is Connecticut Statute
18 53A-130A. The State has an Appendix B and attached the
19 statute from Connecticut, which shows that the elements
20 of that Connecticut offense are comparable, in fact, to
21 the Washington offense. The Washington statute that
22 corresponds to that RCW 9A.60.040, criminal impersonation
23 in the first degree, is attached to that Connecticut
24
25

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1 statute so that the Court can examine the language.

2 The next conviction is the impersonation -- I'm
3 sorry, Your Honor. I -- I -- I mixed up the arguments
4 between the failure to appear in the first degree and the
5 impersonating the officer. The impersonating the officer
6 is found at Connecticut statute 53A-130A. The
7 corresponding Washington statute, as I just recited for
8 the Court, is attached there, too.

9
10 The failure to appear in the first degree that can
11 be found at Connecticut Statute 53A-172. The comparable
12 Washington statute is RCW 9A.76.170. The interesting
13 difference here, Your Honor, is that a person can be
14 found guilty of the failure to appear in the first degree
15 when they are charged with the commission of a felony.
16 If the State were alleging that this was comparable to a
17 bail jump on a Class A offense, we may have some problem
18 because it doesn't appear to distinguish between Class A
19 and Class B or C felonies. However, in this instance the
20 State is alleging that this is in fact comparable to a
21 Class C felony, the class -- bail jumping on a Class B or
22 C felony and therefore, Your Honor, the language is
23 markedly similar and no differentiating factors are
24 noted, which would discount this in terms of the
25

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1 defendant's criminal history score. Therefore, the State
2 contends that both this failure to appear in the first
3 degree is comparable to a Washington State bail jumping
4 on a Class B or C felony. It is appropriately calculated
5 as a score of 1, as a Class C felony. Then,
6 impersonating the officer is comparable to a criminal
7 impersonation in the first degree. Again, calculated
8 appropriately with an offender score of 1.

9
10 The next documents that the Court will note in
11 Appendix D are probation violations and motions and
12 orders for bench warrants that existed on the '96 and '98
13 cause numbers. On the '96 cause number on September 12th,
14 1996, there was a violation report filed by the probation
15 officer. On July 7, 1997, there was a hearing on that
16 violation report. The defendant failed to appear at that
17 hearing. That failure to appear is noted. A bench
18 warrant was issued. Again, in May 15th of 1998, another
19 violation report was filed, a bench warrant was issued on
20 the '98 cause number. The defendant is noted to have
21 been released from prison on June 7th of 1999. The
22 defendant then failed to appear at a September 7th, 2000
23 hearing and again a bench warrant was issued. The order
24 for bench warrant was signed on September 28th of 2000.
25

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1 It was filed October 2nd of 2000. It then continued to be
2 outstanding from October 2nd of 2000 through June 24th of
3 2002. And then again, a bench warrant was issued on
4 September 3rd of 2004 and continued to exist through
5 December 26th of 2007.

6 Your Honor, for these reasons, there was never a
7 five-year period, as the statute requires, in which the
8 defendant was in the community crime-free, which would
9 allow any of those Class C felonies to wash out from the
10 offender score. Because of this, Your Honor, the State's
11 contention is in fact that all of the offenses listed in
12 the declaration of criminal history on Appendix A count
13 towards the defendant's offender score. That brings us
14 to a total of 10 without the forgery offense. Again, I
15 don't -- I don't know if the defendant is specifically
16 objecting to that now. Again, if she is, I -- I don't
17 have further documentation to submit to the Court. So,
18 the defendant is either a score of a 10 or an 11.

19
20 Regardless of that distinction, Your Honor, the
21 range for each of these offenses that we are here for
22 sentencing on today does not change.

23
24 The Court will recall the jury trial on September
25 6th, 2009, where the defendant was found guilty of Count

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10 NOV -1 PM 12:48

STATE OF WASHINGTON

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

STATE OF WASHINGTON,
Respondent,

v.

LIZZIE ELLEN JABBOUR,
Appellant.

No. 40290-4-II

Clark Co. No. 07-1-02353-4

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On Oct 28, 2010, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

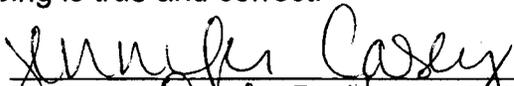
TO: David Ponzoha, Clerk
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950 Broadway, Suite 300
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Longview WA 98632

LIZZIE ELLEN JABBOUR
DOC # 974438
Washington Corrections Center for Women
9601 Buacich Road NW
Gig Harbor, WA 98332-8300

DOCUMENTS: Brief of Respondent, Motion to Supplement Clerk's Papers,
Supplemental Designation of Clerk's Papers

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


Date: Oct 28, 2010.
Place: Vancouver, Washington.