

NO. 42892-0-II

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

---

STATE OF WASHINGTON, Respondent

v.

RAYMOND CLAIR CONNOLLY, Appellant

---

FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.11-1-01022-8

---

BRIEF OF RESPONDENT

---

Attorneys for Respondent:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

ABIGAIL E. BARTLETT, WSBA #36937  
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney  
1013 Franklin Street  
PO Box 5000  
Vancouver WA 98666-5000  
Telephone (360) 397-2261

## TABLE OF CONTENTS

A.	RESPONSE TO ASSIGNMENT OF ERROR.....	1
I.	This Court should decline review of the Mr. Connolly’s first assignment of error.....	1
a.	Mr. Connolly waived any challenge to the trial court’s excusal of Juror No. 11 when he did not object to the court’s ruling at the time of trial. ....	1
b.	In the alternative, the trial court did not abuse its discretion when it excused Juror 11, pursuant to RCW 2.36.110, for bias.....	1
II.	This Court should find the evidence was sufficient to convict Mr. Connelly of Counts Three-Five (Voyeurism). ....	1
III.	This Court should find the evidence was sufficient to convict Mr. Connelly of Counts Six-Nine (Indecent Exposure to Victim under Fourteen Years Old).....	1
B.	STATEMENT OF THE CASE .....	1
I.	Procedural History .....	1
II.	Summary of Facts .....	2
III.	Excusal of Juror Eleven .....	14
C.	ARGUMENT.....	18
I.	The Court should decline review of the defendant’s first assignment of error.....	18
a.	The defendant waived any challenge to the trial court’s excusal of Juror No. 11 when he did not object to the court’s ruling at the time of trial. ....	18
b.	In the alternative, the trial court did not abuse its discretion when it excused Juror 11, pursuant to RCW 2.36.110, for bias.....	21
II.	The evidence was sufficient to convict the defendant of Counts Three – Five (Voyeurism).....	24

III. The evidence was sufficient to convict the defendant of Counts Six-Nine (Indecent Exposure to Victim under Fourteen Years Old) .....	31
D. CONCLUSION .....	35

## TABLE OF AUTHORITIES

### Cases

<i>Jackson v. Virginia</i> , 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).....	25
<i>State v. Bailey</i> , 114 Wn.2d 340, 345, 787 P.2d 1378 (1990).....	18
<i>State v. Boyd</i> , 137 Wn. App. 910, 918, <i>fn</i> 1, 155 P.3d 188 (2007).....	26
<i>State v. Brown</i> , 162 Wn.2d 422, 428, 173 P.3d 245 (2007).....	25
<i>State v. Coe</i> , 109 Wn.2d 832, 842, 750 P.2d 208 (1988).....	20
<i>State v. Delmarter</i> , 94 Wn.2d 634, 638, 618 P.2d 99 (1980).....	25, 31
<i>State v. Depaz</i> , 165 Wn.2d 842, 855, 204 P.3d 217 (2009).....	21, 22
<i>State v. Diaz-Flores</i> , 148 Wn. App. 911, 919, 201 P.3d 1073 (2009), review denied by 166 Wn.2d 1017, 210 P.3d 1019 (2009).....	27
<i>State v. Eisenshank</i> , 10 Wn. App. 921, 924, 521 P.2d 239 (1974).....	32
<i>State v. Elmore</i> , 155 Wn.2d 758, 778, 123 P.3d 72 (2005).....	22
<i>State v. Galbreath</i> , 69 Wn.2d 664, 668, 419 P.2d 800 (1966).....	32, 33
<i>State v. Gentry</i> , 125 Wn.2d 570, 616, 888 P.2d 1105 (1995).....	20, 23, 24
<i>State v. Glas</i> , 106 Wn. App. 895, 902, 27 P.3d 216 (2001), <i>rev'd on other grounds</i> , 147 Wn.2d 410, 54 P.3d 147 (2002).....	27
<i>State v. Gordon</i> , 172 Wn.2d 671, 676, 260 P.3d 884 (2011).....	19
<i>State v. Green</i> , 94 Wn.2d 216, 221, 616 P.2d 628 (1980).....	25
<i>State v. Jordan</i> , 103 Wn. App. 221, 226, 29, 11 P.3d 866 (2000).....	21
<i>State v. Kirkman</i> , 159 Wn.2d 918, 926, 155 P.3d 125 (2007).....	18
<i>State v. McFarland</i> , 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).....	19
<i>State v. O'Hara</i> , 167 Wn.2d 91, 97-98, 217 P.3d 756 (2009).....	19
<i>State v. Powell</i> , 126 Wn.2d 244, 258, 893 P.2d 615 (1995).....	22
<i>State v. Scott</i> , 110 Wn.2d 682, 687, 757 P.2d 492 (1988).....	18, 19
<i>State v. Thomas</i> , 150 Wn.2d 821, 875-75, 83 P.3d 970 (2004).....	25
<i>State v. Vars</i> , 157 Wn. App. 482, 490, 237 P.3d 378 (2010).....	31, 32
<i>State v. Whisenhunt</i> , 96 Wn. App. 18, 24, 980 P.2d 232 (1999).....	27
<i>United States v. Peterson</i> , 385 F.3d 127 134 (2d Cir. 2004).....	22

### Statutes

RCW 2.36.110.....	15, 16, 20, 21, 22, 23
RCW 9A.44.115.....	25
RCW 9A.44.115(a).....	26
RCW 9A.44.115(c).....	26
RCW 9A.88.010.....	31

RCW 9A.88.010(2)(b).....31

**Rules**

RAP 2.5(a)(3) .....19

A. RESPONSE TO ASSIGNMENT OF ERROR

- I. This Court should decline review of the Mr. Connolly's first assignment of error.
  - a. *Mr. Connolly waived any challenge to the trial court's excusal of Juror No. 11 when he did not object to the court's ruling at the time of trial.*
  - b. *In the alternative, the trial court did not abuse its discretion when it excused Juror 11, pursuant to RCW 2.36.110, for bias.*
- II. This Court should find the evidence was sufficient to convict Mr. Connelly of Counts Three-Five (Voyeurism).
- III. This Court should find the evidence was sufficient to convict Mr. Connelly of Counts Six-Nine (Indecent Exposure to Victim under Fourteen Years Old).

B. STATEMENT OF THE CASE

I. Procedural History

The appellant (hereafter, "the defendant") was charged by Information with Count One: Child Molestation in the Second Degree, Counts Two – Five: Voyeurism, and Counts Six – Nine: Indecent Exposure to Victim Under Fourteen Years Old. (CP 1-3). The named victim in Count One was "S.M.W.," the named victims in Count Two were "S.M.W." and/or "K.A.M.G.," and the named victim in Counts

Three – Nine was “S.M.W.” (CP 1-3). The State alleged that Counts Two – Five occurred between June 1, 2010 and June 13, 2011 (incidents separate and distinct from each other). (CP 1-2). The State alleged that Counts Six – Nine occurred between January 15, 2011 and April 5, 2011 (incidents separate and distinct). (CP 3). For Counts One – Five the State alleged, as an aggravating factor, that the defendant used his position of trust to facilitate the commission of the offenses. (CP 1-3).

Trial commenced on September 12, 2011. (RP 1). The jury convicted the defendant of Counts Two – Nine. (CP 114, 117, 120, 123, 126-29). In addition, the jury found the State proved the presence of the aggravating factor (position of trust) for Counts Two – Five. (CP 116, 119, 122, 125).

The defendant was sentenced on December 9, 2011 to 57 months confinement on Counts Two – Five. (CP 130, 133). The defendant was sentenced to 364 days with 360 days suspended on Counts Six – Nine. (CP 149-151). This timely appeal followed.

## II. Summary of Facts

S.M.W. was born on April 6, 1997. (RP 157). S.M.W.’s parents broke-up around 2005. (RP 159). S.M.W. lived with her mother after the break up and until July of 2011. (RP 158-59). S.M.W.’s mother lived in

Camas, Washington.<sup>1</sup> (RP 179). S.M.W.'s mother dated the defendant. (RP 159). The defendant lived with S.M.W. and her mother, at S.M.W.'s mother's house. (RP 159). S.M.W. had her own bedroom at her mother's house. (RP 159).

The first time something happened with the defendant that made S.M.W. uncomfortable was during the summer of 2010. (RP 160). S.M.W. was thirteen years old at the time. S.M.W. was in her bedroom with her best friend, K.A.M.G. (RP 160). S.M.W. and K.A.M.G. were changing into their swimsuits to go swimming. (RP 160). K.A.M.G. looked down at the vent in S.M.W.'s bedroom and saw the defendant's face staring at them, through the other end of the vent. (RP 160). K.A.M.G. screamed at the defendant "what are you looking at, Peanut?"<sup>2</sup> (RP 161). K.A.M.G. and S.M.W. then ran into the closet in S.M.W.'s bedroom to finish changing. (RP 161).

The vent in S.M.W.'s bedroom is located near the floor. (RP 161). The vent in S.M.W.'s bedroom connects to the vent in the bathroom. (RP 161). There is a cover that is supposed to go over the vent in S.M.W.'s bedroom; however, the cover regularly fell-off; after which, S.M.W. would unsuccessfully try to put it back on with duct-tape. (RP 161-62).

---

<sup>1</sup> Camas is in Clark County, Washington. (RP 209).

<sup>2</sup> "Peanut" is the defendant's nickname. (RP 119).

The cover was off of the bedroom vent throughout 2010 and 2011. (RP 162-63).

After the incident in her bedroom with K.A.M.G. in the summer of 2010, S.M.W. frequently heard noises coming from the vent in her bedroom. (RP 163). S.M.W. heard these noises when she was alone in her bedroom at night, changing into her pajamas. (RP 163). S.M.W. did not like to look at the vent. (RP 163). However, on three separate occasions, S.M.W. saw the defendant looking at her, through the vent, while she was changing out of her clothes. (RP 163-64). S.M.W. could clearly see the defendant's face, because the light was on in the bathroom. (RP 193). S.M.W. would go into her closet to finish changing when she saw the defendant's face through the vent. (RP 164). S.M.W. went into her closet because the closet "ha[d] big doors that swung out so you couldn't see anything." (RP 164).

Several times, S.M.W. tried block the vent with items such as a laundry basket or a trash can. (RP 164). Each time S.M.W. tried to block the vent, her mother or the defendant made her move the items away from the vent. (RP 164-65). Eventually, S.M.W. moved her bed in front of the vent. (RP 164).

The defendant liked to wrestle with S.M.W. and to carry her. The defendant usually held onto S.M.W. by her legs when he carried her. (RP

186). However, one time when the defendant was carrying S.M.W. during the fall of 2010, he reached around S.M.W.'s body and held her up by putting his "hands on [her] butt." (RP 167-68). S.M.W. felt uncomfortable with the defendant's hands on her buttocks. (RP 169). She jumped off of the defendant and ran inside.<sup>3</sup> (RP 169).

During late 2010 or early 2011, S.M.W. felt like the defendant tried to look at her when her clothes were not on when she was taking a shower at her mom's house. (RP 166). S.M.W. couldn't find the shampoo so she put on a towel and opened up the bathroom door. (RP 166). When she opened the door, she saw the defendant crouched down next to the door. (RP 166). There was no chair near the bathroom door. (RP 198). The defendant walked away "really fast" after S.M.W. saw him. (RP 166).

On another occasion, S.M.W. woke up because she felt like her t-shirt was being lifted. (RP 167). S.M.W. was sleeping on the couch that night. (RP 194). When she opened her eyes, the defendant was sitting next to her. (RP 167, 195).

---

<sup>3</sup> S.M.W. remembered telling the original investigating officer that the defendant "was wiggling his fingers in [her] vagina" when he held her on his back. S.M.W. said she was shaking her head but crying when she told the officer about this incident, "so [she] could understand how [the officer] thought it was a yes." (RP 170). S.M.W. said she wanted to correct the officer's interpretation of this incident "because it wasn't right." (RP 171).

The defendant woke S.M.W. up in the morning for school between two and three times per week. (RP 145). Each time the defendant woke-up S.M.W., he was wearing his pajamas. (RP 171-72). The defendant had a “Budweiser” pair and a “red” pair of pajamas. (RP 174). The defendant’s pajamas had a “little hole,” or a flap, in front. (RP 171). Starting around Christmas of 2010 and continuing for the next few months (when S.M.W. was in the eighth grade), each time the defendant woke up S.M.W., his penis was sticking out of the flap in the front of his pajamas. (RP 171-73). The defendant’s penis would be sticking out of his pajamas irrespective of what pair of pajamas he was wearing. (RP 173). One time, S.M.W. saw the defendant “put [his penis] away” before he left her bedroom to go into the living room. (RP 174). S.M.W. estimated that, during this time period, the defendant exposed his penis to her at least seventy times. (RP 196).

S.M.W. was not sure what the word “circumcision” meant. (RP 174). A police officer tried to explain the term to her and S.M.W. said she believed the defendant might not be circumcised. (RP 174-75).

S.M.W. did not say anything to the defendant when he came into her bedroom with his penis exposed. (RP 175). Instead, S.M.W. would try to not look at it and she would try to avoid it. (RP 175). S.M.W. confided in a friend of hers and she confided in her step-sister, K.B., about

what the defendant was doing. (RP 176). S.M.W. told K.B. because she felt like she could “trust her with like anything.” (RP 176). S.M.W. hoped K.B. would not tell anyone else. (RP 177). Originally, S.M.W. did not say anything to her mother because she did not know “what her reaction was going to be.” (RP 205). S.M.W. was afraid the defendant would leave, her mother wouldn’t be able to pay the bills, and her mother would blame her. (RP 206).

After the incidents with the defendant started happening, S.M.W. wanted to get out of the house. (RP 178). She asked if she could live with her dad. (RP 178). S.M.W. thought that if she could just move in with her father, then the police would not get involved and things wouldn’t have to be “awkward” with her mom. (RP 179).

S.M.W.’s best friend, K.A.M.G., was also in the eighth grade between 2010 and 2011. (RP 117). K.A.M.G. spent a lot of time at S.M.W.’s house. K.A.M.G. believed that S.M.W. and the defendant used to get along pretty well. (RP 119). However, K.A.M.G. recalled the incident with defendant in the summer of 2010, when she and S.M.W. were changing into their swimsuits inside S.M.W.’s bedroom. (RP 121). K.A.M.G. saw the defendant looking at them through the bedroom vent. (RP 121). K.A.M.G. recognized the defendant’s facial features and his

facial hair. (RP 122). When K.A.M.G. saw the defendant's face through the vent, she screamed and threw a pillow at the vent. (RP 122).

K.A.M.G. frequently spent the night at S.M.W.'s house over the weekends. (RP 123, 146). The defendant often woke-up K.A.M.G. and S.M.W. when K.A.M.G. slept over. (RP 123). Starting around Christmas of 2010 and continuing until June of 2011, K.A.M.G. saw "stuff hanging out" of the fly of the defendant's pajamas - "stuff that shouldn't be shown to kids" - when the defendant woke up her and S.M.W. in the mornings. (RP 124, 128, 146). Specifically, K.A.M.G. saw the defendant's penis hanging out of his pajamas. (RP 125). K.A.M.G. saw the defendant's penis sticking out of his pajamas between ten and fifteen times, when he was inside S.M.W.'s bedroom. (RP 125). One time, K.A.M.G. saw the defendant pulling his penis out, once he was inside S.M.W.'s bedroom. (RP 126). When the defendant exposed his penis to K.A.M.G. and S.M.W., K.A.M.G. "mostly hid in the corner with the blankets over [her] head." (RP 147). K.A.M.G. didn't say anything to the defendant because she was not sure how he would react.<sup>4</sup> (RP 146).

K.A.M.G. recalled that she and S.M.W. were "startled" and "creeped out" after they saw the defendant's penis for the first time. (RP

---

<sup>4</sup> K.A.M.G., like S.M.V., was not sure what "circumcision" meant. (RP 126). She guessed that maybe the defendant "was" circumcised. (RP 127).

144). K.A.M.G. recalled that S.M.W. “started to be afraid to go to her mom’s after that.” (RP 144).

S.M.W.’s little sister, K.B., remembered S.M.W. telling her about something happening that made her feel uncomfortable. (RP 81). S.M.W. seemed pretty upset when she confided in her sister. (RP 82). K.B. recalled that S.M.W. did not want her to tell anyone. (RP 82). Around the time that S.M.W. confided in her sister, K.B. noticed that S.M.W.’s attitude was changing. (RP 83). S.M.W. didn’t want to do “normal stuff” anymore. (RP 83-4). S.M.W. started dying her hair and she got some body piercings. (RP 83).

S.M.W.’s father, Alfred Worley, recalled that S.M.W. used to get along fine with the defendant. (RP 91). However, Mr. Worley started seeing a change in his daughter’s attitude around the winter of 2010. (RP 92). S.M.W. started “moping around.” (RP 91). Around that time, S.M.W. told her father that she wanted to come live with him. (RP 91). This was the first time S.M.W. had asked to live with her father. (RP 91).

S.M.W. moved in with her father at the beginning of the summer, in 2011. (RP 97). One day, during the summer, S.M.W. confided in her father about what had been going on at her mother’s home. (RP 93). S.M.W. was not in trouble with her father at the time she disclosed and her

father had not asked her any questions prompting her disclosure.<sup>5</sup> (RP 93-94). Worley immediately took S.M.W. to K.A.M.G.'s house. (RP 94-95). While S.M.W. was not in the same room as K.A.M.G., K.A.M.G. also disclosed the inappropriate behavior to Worley. (RP 95). K.A.M.G. started crying when she disclosed the incidents. (RP 96). Mr. Worley called the police. (RP 96). Mr. Worley did not have any problems with his daughter, or with her behavior, after she moved in with him. (RP 97).

Camas Police Department ("CPD") Officer Katie Brock was the initial officer assigned to investigate the case on June 15, 2011. (RP 209-10, 286). Officer Brock observed that S.M.W. was "visibly upset" when she spoke to her. (RP 210-11). S.M.W. started crying a few times during her interview. (RP 211). Officer Brock also spoke to K.A.M.G. (RP 211-12). K.A.M.G. appeared "quiet" and "shy." (RP 212). After she spoke to the girls, Officer Brock received permission to go inside S.M.W.'s mother's residence. (RP 216-17). Officer Brock went into the bathroom and looked through the vent. (RP 217). By looking through the vent in the bathroom, Officer Brock could clearly see into S.M.W.'s bedroom. (RP 217). Officer Brock went into S.M.W.'s bedroom. (RP 217). Officer Brock observed that S.M.W.'s bed had been moved away from the vent in

---

<sup>5</sup> S.M.V. said she confided in her mother about the incidences the day before she told her father. (RP 177). She said she told her father because it didn't seem like her mother "cared too much" or "believed [her]" and she "wanted someone to know – that cared." (RP 178).

the bedroom. (RP 217). Officer Brock also observed that there was no cover on the vent in S.M.W.'s bedroom. (RP 217). Officer Brock observed that there was a cover on the vent in the bathroom; however, at the top of the vent, it looked "like the slats ha[d] been pried open." (RP 219).

The defendant agreed to talk to Officer Brock. (RP 214). The defendant said he had not spoken to S.M.W.'s mother about the allegations against him; however, he admitted that, earlier in the day, S.M.W.'s mother moved S.M.W.'s bed and took the vent cover off, to see if she could see through it. (RP 214, 220). The defendant said it was possible that the girls had seen him through the vent when he was using the toilet. (RP 247). The defendant told Officer Brock that he asked S.M.W. to not put items in front of the vent because the heat needed to be able to get into her bedroom. (RP 223).

The defendant originally told Officer Brock that he never noticed his penis being out when he woke up S.M.W. and K.A.M.G. (RP 222). Later in their conversation, the defendant admitted that "a couple times," after he had woken up the girls, when he was making coffee in the kitchen, he noticed his penis was hanging out and he "put it away." (RP 225). The defendant said he assumed the girls never saw it, because they didn't say anything. (RP 225).

The defendant claimed he was sitting in a chair in the living room when S.M.W. came out of the shower in a towel, looking for shampoo. (RP 222). The defendant said he never “intentionally” touched S.M.W.’s butt, but he said it was possible that it “accidentally” happened. (RP 221).

CPD Sergeant Doug Norcross accompanied Officer Brock to S.M.W.’s mother’s residence. (RP 286). Sergeant Norcross had an opportunity to look through the vent that connects the bathroom to S.M.W.’s bedroom. (RP 286). In order to look through the vent from the bathroom, Sergeant Norcross had to “get down on his hands and knees on the floor and put [his] face right down” in front of it. (RP 287). Once he was lying on the floor with his face pressed up to the vent, Sergeant Norcross was able to see through the vent into S.M.W.’s bedroom. (RP 287). By turning his face one way or the other, Sergeant Norcross was able to get a view of different parts of S.M.W.’s bedroom. (RP 288).

The defendant testified at trial. (RP 228). During direct examination, defense counsel asked the defendant if it was possible that his penis was sticking out when he woke up S.M.W., upwards of seventy times? (RP 239). The defendant responded “in the realm of possibility, anything is possible...but I don’t see it happening seventy times.” (RP 239-40). The defendant originally testified that “nobody ever said anything to me,” regarding his penis sticking out. (RP 240). Moments

later, the defendant testified that he recalled a time when he was sitting on the couch with S.M.W.'s mother, while wearing some of the same pajamas he would wear to wake up S.M.W. and K.A.M.G. (RP 241). At that time, S.M.W.'s mother said to him "hey[,] your...wiener is out." (RP 241). The defendant indicated that he was shocked by this news. (RP 241).

During cross-examination, the defendant admitted that the vent leading into S.M.W.'s bedroom did not work well, as far as getting heat into the room. (RP 247). The defendant agreed that S.M.W. had to have a space heater in her bedroom, in order to get heat. (RP 247). The defendant said he noticed his penis was sticking out "a few" times when he was making coffee, just after he had woken up the girls. (RP 250). When questioned as to how many times was "a few," the defendant responded "two – three...[a] few is no more than four." (RP 250). The defendant said it was "possible" that S.M.W. saw his penis sticking out of his pajamas "dozens" of times. (RP 251).

The defendant said he only noticed his penis hanging out when he was wearing one of his four pairs of pajamas. (RP 252). When asked why he did not stop wearing these pajamas to wake-up a thirteen-year-old girl, the defendant said "if they would have said something to me[,] I would have addressed the issue." (RP 252).

### III. Excusal of Juror Eleven

The defendant did not arrange for transcription of voir dire. (RP 12). However, it appears that, during voir dire, the trial court read the names of each of the State's and the defendant's witnesses to the jury pool (including S.M.W.'s mother, Michelle Fleischman) and the court asked the jury pool if they were familiar with any of these names. (RP 279). Juror Eleven did not indicate that he was familiar with the name, "Michelle Fleischman." (RP 279).

Michelle Fleischman testified for both the State and the defense. (RP 207, 256). After the defense rested and before the State put on a rebuttal witness, the trial court's judicial assistant passed a note to the court. (RP 279). The note said Juror Eleven, Mr. Sarasong, recognized Fleischman as a waitress where he has breakfast. (RP 279). The State advised the court that it would like to ask Mr. Sarasong whether his familiarity with Fleischman would have any effect on his ability to be impartial. (RP 279). Defense counsel said "I don't have any questions for him." (RP 279).

Following a recess, Mr. Sarasong was called into the courtroom. (RP 282). Mr. Sarasong advised the court that he did not know Fleischman "by name" but she was a waitress at Shari's, where he had breakfast about once a week. (RP 282). The State asked Mr. Sarasong

whether he had any preconceived idea about whether Fleischman was credible or not, to which Mr. Sarasong responded “I like her but I – I don’t have a preconceived opinions about her.” (RP 282-83). Defense counsel did not ask Mr. Sarasong any questions. (RP 283). After Mr. Sarasong left the courtroom, the State advised the court that it would prefer to have Mr. Sarasong replaced with an alternate juror because it was uncomfortable with Mr. Sarasong having prior knowledge of Fleischman and indicating that he liked her. (RP 284). Defense counsel did not move the court to retain Mr. Sarasong as a juror and he did not object to the State’s request to replace Mr. Sarasong with an alternate. (RP 284). Rather, defense counsel said, “I think he’s fine Your Honor.” (RP 284).

The court opined that, if the parties had known about Mr. Sarasong’s prior acquaintance with Fleischman during jury selection, “it would have been something that the attorneys would have liked to know.” (RP 284). However, the court denied any request to excuse Mr. Sarasong because “at this point he says he doesn’t think it would be difficult for him to be fair.” (RP 284). The court did not analyze the excusal of Mr. Sarasong under RCW 2.36.110. (RP 284).

After the State called a rebuttal witness and during another recess, the court advised the parties that it had given further consideration to what it understood to be the State’s Motion to Dismiss Juror Number

Eleven. (RP 290). The court explained that, since it made its original ruling, it had done some “initial research,” it had looked at relevant cases, and it had reviewed RCW 2.36.110. (RP 291).

Citing to RCW 2.36.110, the court stated it was its duty to excuse from service any juror who in the opinion of the judge “manifested unfitness...by reason of bias, prejudice -” (RP 291). The court made an oral finding that Michelle Fleischman was an “important witness in the case.” (RP 291). Next, the court found that Mr. Sarasong was “biased in favor of [Fleischman].” (RP 291). The court noted two reasons that it found Mr. Sarasong was biased. First, the court found Mr. Sarasong was biased based on his relationship with Fleischman. The court stated

I like her, that would tend to form a personal opinion outside the courtroom and the evidence presented in court to be a factor in evaluating her testimony.

(RP 291-92). Second, the court found Mr. Sarasong was biased based on its personal observations of him. The court stated

I observed a hesitation on Mr. Sarasong’s part when asked if he thought he could be fair. He said he thought so but he said I like her. So I think that expressed a hesitation on his part under the circumstances.

(RP 292). Therefore, the court ruled that it would have Mr. Sarasong come into the courtroom, excuse him, and substitute him with a previously-selected alternate juror. (RP 292).

Defense counsel did not object to the court's ruling. (RP 292). Rather, defense counsel's only complaint was that there was no proof that Fleischman was, in fact, the waitress at Shari's whom Mr. Sarasong believed he recognized. (RP 292). Accordingly, the court asked Fleischman (who was sitting in the courtroom) whether she worked at Shari's. Fleischman responded, "I do." (RP 292). The court asked Fleischman if she recognized Mr. Sarasong. Fleischman responded, "I do." (RP 292).

After Fleischman was questioned by the court, the court stated it would bring in Mr. Sarasong, thank him, and substitute an alternate juror. (RP 293). Defense counsel stated "And just for the record I am – am opposed to that but I've already said that so - ." (RP 293). All of the above actions took place prior to jury deliberations. (RP 293-94).

C. ARGUMENT

I. The Court should decline review of the defendant's first assignment of error.

- a. *The defendant waived any challenge to the trial court's excusal of Juror No. 11 when he did not object to the court's ruling at the time of trial.*

In his first assignment of error, the defendant claims the trial court abused its discretion when it "disqualified" Juror Number Eleven. *See* Brief of Appellant ("Brief") at p.17. The defendant failed to preserve this claim of error for review.

A defendant must object to an alleged error at the time of trial in order to preserve the issue for review. *State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). A defendant properly objects to an alleged error at the time of trial by apprising the trial court of the precise points of law involved and the reasons upon which error has occurred. *State v. Bailey*, 114 Wn.2d 340, 345, 787 P.2d 1378 (1990). An objection at the time of trial preserves judicial resources because it affords the trial court an opportunity to prevent or cure the alleged error. *Kirkman*, 159 Wn.2d at 926; *see also State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988) (stating "[this] court [ ] will not sanction a party's failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial").

Pursuant to RAP 2.5(a), an appellate court may refuse to review any claim of error which was not raised in the trial court. *State v. O'Hara*, 167 Wn.2d 91, 97-98, 217 P.3d 756 (2009).

An exception to the rule requiring issue preservation applies only if the defendant can demonstrate manifest error affecting a constitutional right. RAP 2.5(a)(3); *Scott*, 110 Wn.2d at 687. In order to demonstrate “constitutional” error, the defendant must identify a constitutional right that was implicated. *State v. Gordon*, 172 Wn.2d 671, 676, 260 P.3d 884 (2011). In order to demonstrate “manifest” error, the claimant must show he was “actually prejudiced” by the constitutional error. *Gordon*, 172 Wn.2d at 676 (i.e., there must be a “plausible showing by the [defendant] that the asserted error had practical and identifiable consequences in the trial of the case”). The burden shifts to the State to demonstrate the error was harmless only if the defendant can successfully make the threshold showing that manifest constitutional error, in fact, occurred. *See State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

Here, the defendant failed to preserve his first claim of error for review because he did not object to the trial court’s ruling, excusing Juror No. 11, at the time of trial. First, the defendant did not object when the State originally moved the court to dismiss Juror No. 11. Instead, the defendant said “I don’t have any questions for him.” (RP 279). Second,

the defendant did not object when the trial court ultimately ruled that it would excuse Juror No. 11, pursuant to its consideration of RCW 2.36.110. Instead, the defendant simply said “And just for the record I am – am opposed to that but I’ve already said that so - .” (RP 293). The defendant did not articulate as to what he was “opposed” to. Further, the defendant did not articulate the precise points of law involved or the reasons upon which any alleged error occurred. Consequently, the defendant did not afford the court with the opportunity to prevent or cure any alleged error.<sup>6</sup>

This Court should not sanction the defendant’s attempts to revive an issue on appeal when the defendant failed to properly preserve the issue for review and when the issue was clearly of no moment to the defendant at the time of trial. The issue raised by the defendant pertains to the court’s compliance with a procedural rule (RCW 2.36.110) rather than a constitutional issue; therefore, it may not be raised for the first time on appeal. *See State v. Gentry*, 125 Wn.2d 570, 616, 888 P.2d 1105 (1995), *citing State v. Coe*, 109 Wn.2d 832, 842, 750 P.2d 208 (1988). In addition, the defendant does not argue that the court’s excusal of Juror No. 11 constitutes manifest error affecting a constitutional right; therefore, he does not argue that an exception to the rule requiring issue preservation

---

<sup>6</sup> The defendant expressed no hesitation in lodging reasoned objections throughout the course of trial. (RP 82, 94, 96, 106, 112, 120, 124, 163, 181).

applies. For these reasons, pursuant to RAP 2.5(a), this Court should find the defendant waived any challenge to the excusal of Juror No. 11.

- b. *In the alternative, the trial court did not abuse its discretion when it excused Juror 11, pursuant to RCW 2.36.110, for bias.*

Assuming, *arguendo*, this Court reviews the defendant's first assignment of error on the merits, it should find that no error occurred.

RCW 2.36.110 "place[s] a continuous obligation on the trial court to excuse any juror who is unfit and unable to perform the duties of a juror." *State v. Jordan*, 103 Wn. App. 221, 226, 29, 11 P.3d 866 (2000).

RCW 2.36.110 states that:

[i]t shall be the duty of a judge to excuse from further jury service any juror, who in the opinion of the judge, has manifested unfitness as a juror *by reason of bias*, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service.

RCW 2.36.110 (emphasis added). There is no requirement under RCW 2.36.110 that the court finds "misconduct" by a juror. *See State v. Depaz*, 165 Wn.2d 842, 855, 204 P.3d 217 (2009) (disagreeing with approach taken by court in *State v. Jordan*, 103 Wn. App. 221, 229, 11 P.3d 866 (2000), wherein court removed juror based on finding of misconduct).

Rather, the appropriate question for the trial court is whether the juror has manifested unfitness to serve, based on one the reasons listed under RCW 2.36.110.<sup>7</sup> *Depaz*, 165 Wn.2d at 856.

The appellate court reviews the trial court's determination of whether to excuse a juror for abuse of discretion. *State v. Elmore*, 155 Wn.2d 758, 778, 123 P.3d 72 (2005). A trial court abuses its discretion when it bases its decision on untenable grounds or reasons. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

Because the trial court is able to observe a juror, the trial court is in the best position to evaluate a juror's candor and his or her ability to deliberate. *Elmore*, 155 Wn.2d at 769, citing *United States v. Peterson*, 385 F.3d 127 134 (2d Cir. 2004). Therefore, "so long as the trial court has applied the proper legal standard of proof to the evidence, the trial court's decision deserves deference." *Elmore*, at 768-69.

Here, Mr. Sarasong (Juror No. 11) advised the court that he was familiar with the witness Michelle Fleischman, because she regularly served him at Shari's restaurant. Mr. Sarasong told the court that, based on his prior relationship with Fleischman, he liked her. Mr. Sarasong's

---

<sup>7</sup> Once a jury has begun deliberating, there are special considerations that the trial court must consider before it excuses a juror; however, because Juror No. Eleven was excused prior to the commencement of deliberations, these special considerations are not at issue. *Depaz*, at 852-53.

previous relationship with Fleischman and his previously-formed opinion of her suggested bias.

However, when the trial court originally ruled on the State's motion to disqualify Mr. Sarasong, the court did not apply the appropriate legal standard (RCW 2.36.110) and it did not consider whether Mr. Sarasong had manifested unfitness as a juror by reason of bias.

Alternatively, when the trial court reconsidered the State's motion, it applied the appropriate legal standard, as set-forth under RCW 2.36.110, and it considered the issue of bias.

Upon its reconsideration of the State's motion, the court found Mr. Sarasong was biased for two reasons (1) due to his prior relationship with the witness and (2) due to the "hesitation" that the court observed when Mr. Sarasong was asked whether he could be fair.

The court applied the appropriate legal standard when it ruled that Mr. Sarasong should be dismissed because he was biased. The court provided reasons for its finding of bias. The court's reasons were supported by the record. Therefore, the trial court's ruling was not based on untenable grounds or reasons.

In addition, the defendant cannot show that he was prejudiced by the court's ruling. In *Gentry*, the Washington Supreme Court held the defendant could not demonstrate that he was prejudiced when the trial

court replaced a regular juror with an alternate juror, prior to deliberations, because the defendant participated in the selection of the entire panel, both regular jurors and alternates. *Gentry*, 125 Wn.2d at 615-16 (emphasis added) (finding “[a] Defendant in a criminal case has a right to be tried by an impartial, 12-person jury... [a] defendant has no right to be tried by a *particular* juror or by a particular jury”). Similarly, in this case, the defendant could not be prejudiced by the court’s pre-deliberations replacement of Juror No. 11 with one of the alternate jurors because the defendant was responsible for selecting the alternate juror prior to trial, as a person whom he believed would be fair and unbiased.

For each of these reasons, the trial court did not abuse its discretion when it excused Juror No. 11. The defendant’s convictions should be affirmed.

II. The evidence was sufficient to convict the defendant of Counts Three – Five (Voyeurism).

The defendant does not dispute that the evidence was sufficient to convict him of Count Two (Voyeurism) (i.e. that he viewed S.M.W. and K.A.M.G. in S.M.W.’s bedroom, through the bathroom vent, while they were undressing, for the purpose of sexual gratification). *See* Brief at p. 21. However, the defendant claims the evidence was insufficient to convict him of Counts Three – Five (Voyeurism) (to wit: that he viewed

S.M.W. on three separate occasions, in a place where she had a reasonable expectation of privacy or her intimate areas, for the purpose of sexual gratification). *See* Brief at p.20. The defendant's claim is without merit.

A reviewing court must affirm a conviction if ““after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”” *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). A claim of insufficiency admits the truth of the State's evidence as well as all reasonable inferences that can be drawn from it. *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007). The reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 875-75, 83 P.3d 970 (2004). Specific criminal intent “may be inferred from the conduct where it is plainly indicated as a matter of logical probability.” *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Under § 9A.44.115, a person commits the crime of Voyeurism

(2) ...if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

(a) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or

(b) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

“The voyeurism statute establishes two kinds of criminal acts.” *State v.*

*Boyd*, 137 Wn. App. 910, 918, *fn* 1, 155 P.3d 188 (2007). The first kind of voyeurism involves a visual intrusion into a “geographical area” where the victim would have a reasonable expectation of privacy; the second kind of voyeurism involves a visual intrusion onto the intimate areas of the victim, whether in a public or private place. *Boyd*, 137 Wn. App. 918, *fn* 1.

“‘Intimate areas’ means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.” RCW 9A.44.115(a). “‘Place where he or she would have a reasonable expectation of privacy’ means: (i) [a] place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or (ii) [a] place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.” RCW 9A.44.115(c). “[T]his includes places such as bathrooms [and] bedrooms...” *State v.*

*Glas*, 106 Wn. App. 895, 902, 27 P.3d 216 (2001), *rev'd on other grounds*, 147 Wn.2d 410, 54 P.3d 147 (2002).

In order to prove “sexual gratification,” the State is not required to prove that the defendant was “actually” aroused or gratified by the person(s) he viewed. *State v. Diaz-Flores*, 148 Wn. App. 911, 919, 201 P.3d 1073 (2009), *review denied by* 166 Wn.2d 1017, 210 P.3d 1019 (2009). Rather, the voyeurism statute “requires only that the *purpose* of the behavior be to arouse or gratify in some manner some sexual desire of any person.” *Diaz-Flores*, 148 Wn. App. at 919 (quoting *Glas*, 106 Wn. App. at 904) (emphasis added). The element of sexual gratification can be proven from the surrounding facts and circumstances. *See Glas*, at 904. (finding evidence was sufficient to prove sexual gratification when defendant took photographs up two women’s skirts at the mall, even though defendant did not admit to sexual intent and even though defendant was not caught masturbating with photos, because proof of sexual gratification “followed from the evidence,” which included, but was not contingent upon, fact that defendant intended to sell photos to pornographic website); *see also State v. Whisenhunt*, 96 Wn. App. 18, 24, 980 P.2d 232 (1999) (finding, when defendant was charged with child molestation, evidence was sufficient to prove sexual gratification because defendant's conduct was not susceptible to innocent explanation).

Here, the defendant “knowingly viewed” S.M.W. without her consent, on at least five separate occasions: (1) the defendant viewed S.M.W. while she was undressing in her bedroom on three separate occasions, by peering at her through the bathroom vent; (2) the defendant viewed S.M.W. while she was in the shower, by crouching next to the bathroom door; and (3) the defendant viewed S.M.W.’s breasts while she slept on the couch, by lifting up her t-shirt.

As for the bathroom-vent incidents, the State proved that a person could see through the vent because both Officer Brock and Sergeant Norcross testified that they could clearly see into S.M.W.’s bedroom when they put their faces up to the bathroom vent. In addition, the State proved that the defendant watched S.M.W. through the bathroom vent because both S.M.W. and K.A.M.G. testified that they clearly saw the defendant’s face in the vent, looking at them, when they were undressing. S.M.W. said she saw the defendant watching her through the vent three times (in addition to the incident with K.A.M.G.). S.M.W. repeatedly tried to block the bedroom vent with objects, so that the defendant would stop watching her.

The defendant knowingly viewed S.M.W. “in a place where she had a reasonable expectation of privacy” because he clandestinely viewed S.M.W. while she was in her bedroom and while she was in the bathroom.

Because the State proved that the defendant watched S.M.W. in a place where she had a reasonable expectation of privacy, the State did not also have to prove that the defendant viewed S.M.W.'s intimate areas.

However, the State proved this alternate element of voyeurism as well because the jury could reasonably infer (1) that S.M.W. was in a state of nudity when she took off one outfit, in order to put on another, while in her bedroom; (2) that S.M.W. was naked while in the shower; and (3) that S.M.W.'s breasts were exposed when the defendant lifted her t-shirt.<sup>8</sup>

The State proved that the defendant repeatedly watched S.M.W. “for the purpose of sexual gratification” based on the surrounding facts and circumstances. First, the measures that the defendant had to take in order to watch S.M.W., in and of themselves, proved the defendant’s prurient intent. For example, in order to watch S.M.W. through the bathroom vent while she was undressing in her bedroom, the defendant could not simply “walk by” the vent; rather, he had to crawl onto his hands and knees and lay on the bathroom floor with his face pressed up to the vent. The fact that the slats in the bathroom vent appeared to have been pried open demonstrated that the defendant worked to expand his

---

<sup>8</sup> By special interrogatory, the jury found the State proved that the defendant viewed the victim(s) in a place where she/they would have a reasonable expectation of privacy *and* he viewed her/their intimate areas, for each count of Voyeurism. (CP 115, 118, 121, 124).

viewing access. Similarly, in order to watch S.M.W. while she showered, the defendant had to crouch down next to the bathroom door.

Next, the timing of the defendant's clandestine viewings demonstrated his prurient intent. S.M.W. testified that she would hear noises coming from the vent in her bedroom at night, when she was changing for bed. It was at this time she would see the defendant's face in the vent. The defendant chose to watch S.M.W. at a time of day when he knew she would be undressing.

In addition, the defendant's course of conduct with S.M.W., wherein he repeatedly attempted to push sexual boundaries with her, demonstrated his prurient intent. For example, in the summer of 2010, the defendant started watching S.M.W. through the bathroom vent while she was undressing in her bedroom. This conduct escalated into the defendant lifting up S.M.W.'s t-shirt while she slept. Lifting up S.M.W.'s shirt escalated into the defendant grabbing onto S.M.W.'s buttocks when he held her. Grabbing onto S.M.W.'s buttocks escalated into the defendant waking S.M.W. up in the morning, starting around Christmas of 2010, with his penis exposed.

There is simply no innocent explanation for the defendant's conduct. Given the facts and circumstances of this case, it was unnecessary for a witness to catch the defendant in the act of masturbating

while he watched S.M.W. or for the defendant to admit to *why* he repeatedly watched S.M.W., because the defendant’s specific criminal intent (to wit: sexual gratification) was “plainly indicated as a matter of logical probability” by his conduct. *Delmarter*, 94 Wn.2d at 638.

For each of these reasons, the evidence was more than sufficient for a reasonable trier of fact to find the defendant guilty of three counts of voyeurism. The defendant’s convictions for Counts Three – Five should be affirmed.

III. The evidence was sufficient to convict the defendant of Counts Six-Nine (Indecent Exposure to Victim under Fourteen Years Old).

Under RCW 9A.88.010, a person is guilty of indecent exposure if he or she

intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm.

RCW 9A.88.010(2)(b) provides that indecent exposure is a gross misdemeanor on the first offense if the person exposes himself to a person under the age of fourteen years.

Because RCW 9A.88.010 does not define “open and obscene” exposure, the term is presumed to have its common law meaning. *State v. Vars*, 157 Wn. App. 482, 490, 237 P.3d 378 (2010). The Washington

common law has defined the term to mean ““a lascivious exhibition of those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others.”” *Vars*, 157 Wn. App. at 490 (quoting *State v. Galbreath*, 69 Wn.2d 664, 668, 419 P.2d 800 (1966)). “This conduct is the essence of the crime of indecent exposure.” *Id.*, citing *State v. Eisenshank*, 10 Wn. App. 921, 924, 521 P.2d 239 (1974).

In order to prove “reasonable affront or alarm,” the victim is not required to experience “shame” or distress” as a result of the defendant’s conduct and, if such emotions are experienced, the victim is not required to express them to the defendant. *Eisenshank*, 10 Wn. App. at 924. Rather, this element of indecent exposure is proved if the defendant’s act is “such that the common sense of society would regard the specific act performed as indecent and improper.” *Id.*

Here, the defendant made an “open and obscene exposure of his person,” starting around Christmas of 2010 and continuing until April of 2011, when he woke S.M.W. up in the morning with his penis on display. The defendant displayed his penis to S.M.W. by sticking his penis out of the front flap of pajamas. S.M.W. testified that the defendant exposed his penis to her on at least seventy separate occasions. S.M.W. also said defendant’s penis was exposed irrespective of what pair of pajamas he was

wearing. K.A.M.G. corroborated S.M.W.'s testimony because she also saw the defendant's penis exposed when he woke them up in the morning, on at least ten to fifteen separate occasions. Displaying an adult penis to a thirteen year old girl, while in the thirteen year old girl's bedroom, is without question "a lascivious exhibition of those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others."

*Galbreath*, 69 Wn.2d at 668.

A reasonable person in the defendant's shoes would have known that exposing a penis to a thirteen year old girl would be "likely to cause reasonable affront or alarm." Additionally, the defendant's conduct *did* cause reasonable affront and alarm to S.M.W. S.M.W. testified that she was afraid to live at home once the defendant started exposing his penis to her. It was at this point, S.M.W. wanted to move in with her father. K.A.M.G. testified that both she and S.M.W. were "creeped out" by the defendant's behavior. K.A.M.G. said she would try to hide under the covers when the defendant came into S.M.W.'s bedroom. Further, the defendant knew that his conduct was likely to cause reasonable affront or alarm because his girlfriend (S.M.W.'s mother) explained to him that *she* was shocked when she saw the defendant's penis sticking out of his pajamas.

The fact that the defendant's exposure of his penis was "intentional" was proven by K.A.M.G., who testified that she saw the defendant "pulling his penis out" when he entered S.M.W.'s bedroom, and by S.M.W., who testified that she saw the defendant "put [his penis] away" before he left her bedroom. Further, the defendant all but admitted that his conduct was intentional when he testified that he knew his penis was hanging out of his pajamas, after he awoke S.M.W., on three-to-four occasions. The defendant also admitted that his penis might have been on display "dozens" of times and that "in the realm of possibility" it was not impossible that he displayed his penis to S.M.W. seventy times. In addition, the defendant said he believed his penis was on display for S.M.W. only when he wore one particular pair of pajamas; however, the defendant admitted that he continued to wear this same pair of pajamas to awaken S.M.W., despite his knowledge. Lastly, the defendant self-reported that he had a small penis and S.M.W. testified that the defendant wore multiple pairs of pajamas to awaken her.<sup>9</sup> It is logistically inconceivable that the defendant's penis could have been "accidentally" on display in one pair of pajamas, let-alone in multiple pairs of pajamas, on seventy separate occasions.

---

<sup>9</sup> The defendant testified, "I'm not packing the biggest...thing in the world...I'm not real worried about it hopping out." (RP 252).

For each these reasons, substantial evidence supported the jury's verdicts finding the defendant guilty of three counts of indecent exposure. The defendant's convictions for Counts Six – Nine should be affirmed.

D. CONCLUSION

The evidence of Voyeurism and of Indecent Exposure was overwhelming. Consequently, the defendant's convictions for Counts Three – Five and Counts Six – Nine should be affirmed. Also, the defendant failed to preserve any challenge to the trial court's excusal of a juror and, in the alternative, no error occurred. Therefore, all of the defendant's convictions should be affirmed. The defendant's sentence should also be affirmed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Respectfully submitted:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

By: \_\_\_\_\_  
ABIGAIL E. BARTLETT, WSBA #36937  
Deputy Prosecuting Attorney

# CLARK COUNTY PROSECUTOR

## August 01, 2012 - 2:51 PM

### Transmittal Letter

Document Uploaded: 428920-Respondent's Brief.PDF

Case Name: State v. Raymond Connolly

Court of Appeals Case Number: 42892-0

Is this a Personal Restraint Petition?  Yes  No

#### The document being Filed is:

- Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_\_
- Answer/Reply to Motion: \_\_\_\_\_
- Brief: Respondent's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: \_\_\_\_\_

#### Comments:

No Comments were entered.

Sender Name: Jennifer M Casey - Email: [jennifer.casey@clark.wa.gov](mailto:jennifer.casey@clark.wa.gov)

A copy of this document has been emailed to the following addresses:  
[markmuen@ix.netcom.com](mailto:markmuen@ix.netcom.com)