NO. _____
COURT OF APPEALS NO. 54171-4-I

FILED
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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN COLEMAN,

Petitioner.

STATE'S ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

The State of Washington is the respondent.

B. COURT OF APPEALS' OPINION

The Court of Appeals' decision at issue is State v. Coleman, No. 54171-4-I, filed June 13, 2005 (unpublished), attached as Appendix A. The Court of Appeals denied Coleman's motion for reconsideration on July 21, 2005. The Court of Appeals denied the State's motion for reconsideration on August 29, 2005; the order is attached as Appendix B.

C. ISSUE PRESENTED FOR REVIEW

Whether the trial court may impose an exceptional sentence at the re-sentencing hearing.

D. STATEMENT OF THE CASE

The relevant facts are set forth in the briefing before the Court of Appeals.

Coleman sexually abused two young girls. CP 1-4. A jury found Coleman guilty of two counts of first-degree child molestation. CP 162-63. The trial court imposed an exceptional

sentence on both counts based upon the aggravating factors that the offense was part of an on-going pattern of sexual abuse and that there was an abuse of trust. RP(4/23/2004) 10-11; CP 204.

On appeal, Coleman challenged his two convictions on a variety of grounds. He also challenged his exceptional sentence, arguing that it was imposed in violation of Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). Appellant's Opening Brief at 37-39. Coleman further argued that at re-sentencing, the trial court lacked authority to impose an exceptional sentence because of (i) the unconstitutionality of the exceptional sentence statute, (ii) double jeopardy, and (iii) mandatory joinder. Id. at 40-42.

In response, the State argued that the Blakely error was harmless and that, if re-sentencing was necessary, the trial court had authority to impanel a jury to find aggravating circumstances. Brief of Respondent at 26-34.

On June 13, 2005, the Court of Appeals reversed one of Coleman's two convictions due to the failure to give a unanimity instruction. Slip op. at 7-8. The court further reversed Coleman's exceptional sentence on both counts and held that "Coleman is

entitled to be re-sentenced within the standard range." Slip op. at 11.

The State filed a motion for reconsideration requesting the Court of Appeals delete the language in its opinion limiting the trial court to a standard range sentence upon remand. Before the Court of Appeals had ruled on the State's motion for reconsideration, Coleman filed his petition for review. The Court denied the State's motion for reconsideration on August 29, 2005.

E. ARGUMENT

In his Petition, Coleman seeks review of the Court of Appeals' decision to affirm one of his convictions for first-degree child molestation. The sole issue that Coleman raises is whether the Court of Appeals properly determined that the failure to give a unanimity instruction for that count was harmless. The State's briefing at the Court of Appeals fully responds to this issue. Given that the Court of Appeals' decision is consistent with prior decisions by this Court, the State submits that Coleman's Petition fails to establish grounds for review. The State submits this Answer in order to preserve and raise an additional issue concerning sentencing should this Court grant review.

1. IF THIS COURT GRANTS REVIEW, IT SHOULD ALSO CONSIDER WHETHER THE TRIAL COURT MAY IMPOSE AN EXCEPTIONAL SENTENCE UPON REMAND.

The Court of Appeals erred in restricting the trial court to a standard range sentence at the re-sentencing hearing. As a result of recent amendments to the Sentencing Reform Act ("SRA"), the trial court has the authority to consider and impose an exceptional sentence. When Coleman proceeds to re-trial on one count, the jury may consider whether certain aggravating circumstances have been proven beyond a reasonable doubt.

In its decision holding that an exceptional sentence could not be imposed upon remand, the Court of Appeals cited to this Court's decision in State v. Hughes, 154 Wn.2d 118, 110 P.3d 192 (2005). In Hughes, the Court reversed the exceptional sentences in the three consolidated cases and held that the trial court did not have authority at resentencing to impanel a jury for the purposes of finding aggravating circumstances. "Where the legislature has not created a procedure for juries to find aggravating factors and has, instead, explicitly provided for judges to do so, we refuse to imply such a procedure on remand." 154 Wn.2d at 150.

The Court in Hughes did not consider the impact of the recent amendments to the SRA. On the same day Hughes was filed, April 14, 2005, both houses of the Washington Legislature approved a new bill, creating a procedure for juries to find aggravating circumstances. Laws of 2005, ch. 68. The amendments provide that the facts supporting most aggravating circumstances must be proven to a jury beyond a reasonable doubt. Laws of 2005, ch. 68, § 4. The Act took effect immediately when signed into law on April 15, 2005. Laws of 2005, ch. 68, § 7.

This Court is now considering whether the new amendments apply to cases where the crime occurred before the amendment's effective date. In State v. Base, # 76081-1, the Court accepted supplemental briefing on this issue.

The new amendments should apply to the re-sentencing hearing in this case. While statutes are generally presumed to apply prospectively, Macumber v. Shafer, 96 Wn.2d 568, 570, 637 P.2d 645 (1981), this presumption is reversed to favor retroactive application if the enactment "is remedial and concerns procedure or forms of remedies...." Miebach v. Colasurdo, 102 Wn.2d 170, 180, 685 P.2d 1074 (1984). "As a general rule, a statutory amendment, if it is clearly curative or remedial, will be applied retroactively even

though it is completely silent as to legislative intent for retroactive application." State v. Kane, 101 Wn. App. 607, 613, 5 P.3d 741 (2000).

A remedial statute is one which relates to practice, procedures, and remedies. State v. T.K., 139 Wn.2d 320, 332-33, 987 P.2d 63 (1999). Washington courts have repeatedly recognized that a remedial statute should be applied retroactively when doing so would further its remedial purpose. In re F.D. Processing, Inc., 119 Wn.2d 452, 463, 832 P.2d 1303 (1992); Marine Power & Equipment Co. v. Washington State Human Rights Com'n Hearing Tribunal, 39 Wn. App. 609, 616-17, 694 P.2d 697 (1985).

Here, the amendments to the SRA are procedural in nature. The rule set forth in Blakely was a new constitutional rule of criminal procedure. See Schriro v. Summerlin, 542 U.S. 348, 124 S. Ct. 2519, 2523-24, 159 L. Ed. 2d 442 (2004); State v. Evans, 154 Wn.2d 438, 448, 114 P.3d 627 (2005). The new amendments to the SRA simply implement procedures to comply with Blakely. As such, the amendments are presumed to apply retroactively.

Accordingly, this Court should reverse the Court of Appeals' decision limiting the trial court to a "standard range" sentence upon

remand. Here, Coleman is subject to retrial on Count II and the trial court can submit the issue of the existence of aggravating circumstances to that jury at trial.

F. CONCLUSION

The Court should deny Coleman's petition. However, should the Court grant review, it should also accept review of the sentencing issue set forth herein.

DATED this 14th day of September, 2005.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 54171-4-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
JOHN COLEMAN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 13, 2005
	)	

Per Curiam. A jury found John Coleman guilty of two counts of first degree child molestation. We agree that the trial court's failure to give a unanimity instruction violated Coleman's constitutional right to a unanimous jury as to Count II. But the error was harmless as to Count I. We further conclude that the trial court did not abuse its discretion in admitting child hearsay statements and that Coleman's pro se arguments are without merit. Finally, Coleman's exceptional sentences are invalid under Blakely v. Washington, and he is entitled to be resentenced within the standard range. Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

John Coleman was charged with two counts of first degree child molestation involving C.V. and M.D. In January 2002, C.V. and M.D. were friends and in the same fourth grade class. Coleman was the brother of C.V.'s grandfather and frequently took the girls out to dinner, shopping, and to the movies. The girls also visited Coleman in his condo on a number of occasions. Coleman's daughter recalled that Coleman had spent time "rough housing" with the girls in his bedroom with the door closed.

On January 22, 2002, M.D. approached Sarah McAlpin, the girls' teacher, and complained that C.V. was threatening to reveal one of M.D.'s "secrets." McAlpin, who was aware that M.D. had been abused by a relative at some time in the past, talked to C.V. about M.D.'s concern. During the course of the conversation, C.V. revealed that Coleman had been touching her "where her bathing suit covered her body." C.V. indicated that Coleman had touched her both on and under her clothes. McAlpin also spoke to M.D., who said that "Uncle Johnny" had been touching her as well.

McAlpin reported her conversation to Christine Barnes, the school's counselor, and Barnes spoke with C.V. later that same day. C.V. said that "Uncle Johnny" had been touching her "down there," meaning her crotch area, and that the touching had occurred both at C.V.'s house and at Coleman's house. C.V. also said that Coleman had been touching M.D.

Marjorie Trudnowski, a CPS social worker, interviewed C.V. on January 23, 2002. C.V. pointed to her vagina and said that Coleman had been touching her under her clothes "down there." She said that the touching had occurred both at her house and in the car, and that it had occurred most often at Coleman's house. C.V. described specific incidents of touching that had occurred when C.V. and M.D. spent the night at Coleman's house and when Coleman, C.V., and M.D. were at the movie "Snow Dogs." C.V. indicated that Coleman had also done "the same thing" to M.D. in the past. Coleman told C.V. not to tell anyone about the touching because he would get into "deep, deep trouble."

At about this time, C.V. and M.D. also revealed the touching to M.D.'s mother. The girls said that C.V. had talked to someone at school and wanted to tell M.D.'s

mother before she heard from someone else. M.D. said that Coleman had touched her on her breast and vaginal areas while trying to explain sex to her. The girls indicated that they had not said anything earlier because they were still hoping to go on a trip to Hawaii that Coleman had been planning.

Christine Liebsack, an interview specialist for the King County Prosecutor's Office, spoke with C.V. on February 21, 2002. While reluctant to provide many details, C.V. eventually admitted that Coleman had been touching her "in places where he shouldn't." C.V. pointed to the crotch and buttocks of a body sketch to explain where Coleman had touched her. C.V. said that the touching had occurred mostly at Coleman's house. She indicated that the last time she had gone to the movies with Coleman and M.D., "nothing really happened." C.V. also saw Coleman touch M.D.

Liebsack interviewed M.D. on March 13, 2002. M.D. acknowledged that Coleman had been touching her on her chest, crotch, and buttocks areas, under her clothes. She described one incident of touching that had occurred when she and C.V. spent the night at Coleman's house. M.D. said that Coleman would occasionally ask her to touch him, but she "would just lie there." She denied that Coleman had ever made her touch him.

Both C.V. and M.D. also testified at trial. C.V. testified that Coleman had touched her in the "wrong places," by which she meant her vagina. C.V. was unable to recall many details about the touching incidents, but indicated they occurred primarily in the bedroom or living room of Coleman's house. C.V. also saw Coleman touch M.D. During cross-examination, C.V. denied that anything bad had happened when she and M.D. went to the movies with Coleman.

M.D. testified that Coleman would touch her on her breast and vagina, under her clothes. When this happened, M.D. would just "sit there quietly" because she was afraid her parents might find out. M.D. said that the touching always occurred in Coleman's house and that it occurred "a lot."

M.D. described one incident that occurred at Coleman's house while she and C.V. were watching "The Mummy Returns." M.D. sat in a leather chair next to Coleman, who reached up her shirt and started rubbing. After a few minutes, M.D. said she had to go to the bathroom and left the room. When she returned, she sat on the floor. M.D. also described an incident in the bedroom. While she was lying on the bed telling jokes, Coleman reached under M.D.'s pants and underwear and began rubbing. To stop the touching, M.D. moved down to the floor.

M.D. also described an incident in the bedroom in which Coleman made her touch his penis. In order to stop the touching, M.D. got up to go to the bathroom. She admitted that she had not told any of the interviewers about this incident. When asked why, she explained she was afraid that no one would believe her "because some people don't believe me a lot of times." On several occasions, M.D. watched Coleman rub C.V. underneath her shirt.

The jury found Coleman guilty as charged. The court then imposed concurrent 300-month exceptional sentences based on findings that Coleman abused a position of trust and that the offense was part of an on-going pattern of abuse.

Coleman first contends that his constitutional right to a unanimous jury was violated because the trial court failed to give a unanimity instruction. When the State presents evidence of several distinct criminal acts, each of which could form the basis

for one charged count, either the State must "elect" the act that it is relying upon for conviction or the court must instruct the jury to agree on a specific act. State v. Crane, 116 Wn.2d 315, 325, 804 P.2d 10 (1991); see also State v. Petrich, 101 Wn.2d 566, 683 P.2d 173 (1984). The court's failure to follow this rule may result in a violation of the defendant's constitutional right to a unanimous jury verdict and right to a jury trial. State v. Camarillo, 115 Wn.2d 60, 64, 794 P.2d 850 (1990).

The State concedes that it failed to make an election in this case and that a unanimity instruction was required, but argues the error was harmless. Accordingly, we can affirm the jury's verdict only if the error was harmless beyond a reasonable doubt. State v. Camarillo, 115 Wn.2d at 64. Such an error in a multiple acts case is presumed to be prejudicial, and the presumption can be overcome only "if no rational juror could have a reasonable doubt as to any of the incidents alleged." State v. Kitchen, 110 Wn.2d 403, 411, 756 P.2d 105 (1988) (quoting State v. Loehner, 42 Wn. App. 408, 411, 711 P.2d 377 (1985) (Scholfield, A.C.J., concurring)).

Our Supreme Court elaborated upon the harmless error test in State v. Camarillo, supra, a prosecution for 1 count of indecent liberties. In Camarillo, the 11-year-old victim testified in detail about three similar incidents of sexual contact occurring over a period of about a year. The defendant offered a general denial of the allegations, but did not otherwise challenge the victim's account or attempt to controvert or impeach the victim's testimony. Camarillo, 115 Wn.2d at 69-70. Under these circumstances, the failure to give a unanimity instruction was harmless error because a rational juror could not have distinguished among the incidents and would therefore have believed or disbelieved the victim as to all three incidents. Camarillo, 115 Wn.2d at 72.

In reaching its decision, the Camarillo court relied on a similar analysis in State v. Allen, 57 Wn. App. 134, 787 P.2d 566 (1990). In Allen, the defendant flatly denied any physical contact with the victim, who had described multiple similar incidents of touching. In concluding that the absence of a unanimity instruction was harmless error, the Allen court noted the defendant had offered only a general denial as to all incidents and that he had failed to challenge or distinguish any of the specific incidents or offer any prior inconsistent statements or defense character witnesses. Allen, 57 Wn. App. at 139.

Both the Camarillo and Allen courts distinguished the facts in State v. Kitchen, 110 Wn.2d 403, 756 P.2d 105 (1988). In Kitchen, the court held that the absence of a unanimity instruction was not harmless error in two of the three consolidated cases. In these cases, the victims described several incidents of sexual contact. In addition to general denials, the defense had impeached the victims with prior inconsistent statements and presented general character witnesses or witnesses who had controverted some aspect of the victims' accounts. Given the conflicting testimony, the Kitchen court concluded that a rational juror could have entertained a reasonable doubt as to whether one or more of the alleged acts had occurred:

> For example, some jurors may have based their verdict in State v. Albert Coburn on the testimony of the complaining witness in count 1 that Mr. Coburn touched her and attempted to touch her cousin when they were in the woods, while others may have based their decision on incidents that allegedly took place in the bedroom. Some jurors may have believed that Mr. Coburn touched the complaining witness in count 3 on the night she became upset while others determined that she was upset that night for other reasons, relying upon another act as basis for their verdict. Similarly, a reasonable juror could have doubted the *Kitchen* complaining witness' testimony that incidents occurred in a shower and believed that only those acts before school in the trailer actually occurred.

> Faced with these trial records, we cannot say that failure to ensure that Mr. Coburn and Mr. Kitchen were afforded a unanimous jury verdict was harmless error.

Kitchen, 110 Wn.2d at 412.

Here, C.V. described multiple similar incidents of abuse, but only in very general terms. When asked, C.V. was unable to identify any particular incident that stuck out in her memory; the focus of the evidence was the general pattern of the ongoing abuse. The deputy prosecutor did not attempt to distinguish among specific incidents during closing argument, noting that "[t]his case comes down to one simple question: Did the defendant touch these girls?" Coleman's defense was a general denial, and he maintained that C.V. was lying about all of the alleged touching. As in Camarillo and Allen, a rational juror could not have distinguished among the charged acts described by C.V. and would have had to believe C.V. as to all of the incidents in order to find Coleman guilty. See State v. Camarillo, 115 Wn.2d at 72.

But the failure to give a unanimity instruction as to M.D. was not harmless. In addition to testifying to a general pattern of ongoing abuse, M.D. described two specific incidents in detail. One incident involved touching that occurred while M.D. was sitting with Coleman in a leather chair in the living room, watching "The Mummy Returns." M.D. described how Coleman reached up under her shirt and started rubbing. In order to stop the touching, M.D. pretended to go to the bathroom and then sat on the floor. M.D. also described an incident that occurred in Coleman's bedroom when he told her that "it was his turn" and then made her touch his penis. M.D. acknowledged that she had not previously told anyone about this incident because she thought no one would believe her.

In addition to a general denial of M.D.'s allegations, the defense relied on general character evidence. M.D.'s mother testified that M.D.'s reputation for truthfulness was "bad," an assessment that M.D. herself acknowledged. The defense also impeached M.D. with her prior statement to the prosecution interview specialist, who testified that M.D. had denied touching Coleman. At trial, however, M.D. revealed for the first time that she had touched Coleman's penis. Defense counsel underscored the prior inconsistent statement during cross examination and closing argument.

Given the factually different incidents that M.D. described, and the presence of controverting character evidence and a prior inconsistent statement, the evidence is more comparable to that in Kitchen than in Camarillo. Under the circumstances, a rational juror could have had a reasonable doubt as to some of the incidents described by M.D. The failure to give a unanimity instruction was therefore not harmless beyond a reasonable doubt.

Coleman next contends that the trial court erred in admitting statements by C.V. and M.D. under RCW 9A.44.120, which sets forth the child hearsay exception. The challenged statements were admitted though testimony by the girls' teacher, the school counselor, a CPS social worker, an interviewer from the prosecutor's office, and M.D.'s mother.

An out-of-court statement by a testifying child victim is admissible under RCW 9A.44.120(1) if the court finds "that the time, content, and circumstances of the statement provide sufficient indicia of reliability." In determining the reliability of child hearsay, a court considers nine nonexclusive factors, including (1) whether the declarant had an apparent motive to lie; (2) the declarant's general character; (3) whether more than one

person heard the statements; (4) the spontaneity of the statements; and (5) the timing of the declaration and the relationship between the declarant and the witness. State v. Ryan, 103 Wn.2d 165, 175-76, 691 P.2d 197 (1984). The court should also consider (6) whether the statements contain express assertions of past fact; (7) whether the declarant's lack of knowledge could be established by cross-examination; (8) the possibility of the declarant's recollection being faulty; and (9) whether the circumstances suggest the declarant misrepresented the defendant's involvement. State v. Ryan, 103 Wn.2d at 176. The final four factors are often "not very helpful" in assessing the reliability of child hearsay. State v. Henderson, 48 Wn. App. 543, 551 n.5, 740 P.2d 329 (1987).

The trial court considers the foregoing factors as a whole; not every factor must be satisfied. State v. Swan, 114 Wn.2d 613, 652, 790 P.2d 610 (1990). No single factor is decisive. State v. Young, 62 Wn. App. 895, 902, 802 P.2d 829, 817 P.2d 412 (1991). We review the trial court's determination of reliability solely for a manifest abuse of discretion. State v. Pham, 75 Wn. App. 626, 631, 879 P.2d 321 (1994).

In ruling that the statements were reliable, the trial court found that the girls did not have an apparent motive to lie. The evidence supports this finding. While there was testimony that C.V. could be defensive and apparently did not like being called out "on the carpet" by the teacher, nothing supports an inference that she had a motive to lie about Coleman. In fact, both girls repeatedly stated that they liked Coleman and generally enjoyed being with him. Both C.V. and M.D. indicated that they had still been looking forward to going to Hawaii with Coleman. Nothing in the record provides

significant support for an inference that the girls had some reason to fabricate the allegations.

The general character of the victims also supported admission of the statements. On appeal, Coleman suggests that both girls had a reputation for lying and that M.D. had made false allegations of abuse in the past. But as the trial court observed, when the specific allegations against C.V. and M.D. were examined in detail, they indicated that the girls' statements were essentially true or represented an understandable characterization given the girls' young age. The record supports the trial court's determination that C.V. and M.D. were "normal girls of their age," even though not everything they had said in the past was entirely true.

As to the third factor, C.V. and M.D. made similar statements describing the abuse to several different people. See State v. Lopez, 95 Wn. App. 842, 853, 980 P.2d 224 (1999). Contrary to Coleman's assertions, the inconsistencies or variations were minor; the girls consistently described the frequency and nature of the abuse.

The statements were also generally spontaneous. McAlpin testified that she did not think that C.V. had planned on telling her about the abuse and that C.V. remained hesitant during the questioning. Barnes, Trudnowski, and Liebsack were all trained interviewers who stated that they asked the girls non-leading and open-ended questions. The professional training of most of the interviewers also supported the fifth factor: the timing of the statements and the relationship between the declarant and the witness. See State v. Lopez, 95 Wn. App. at 853.

Coleman does not challenge application of any of the remaining factors. When the Ryan factors are viewed in their totality, we cannot say that the trial court abused its discretion in finding the statements to be reliable.

Coleman next contends that his exceptional sentence must be reversed under Blakely v. Washington, ___ U.S. ___, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), because the court, rather than a jury, found the aggravating circumstances. Under Blakely, any fact that increases the penalty for an offense beyond that authorized by the verdict must be submitted to a jury and proved beyond a reasonable doubt. Blakely, 124 S. Ct. at 2536. The State concedes that Coleman's exceptional sentences are invalid under Blakely, but argues the error was harmless because the jury necessarily found the aggravating circumstances when it found Coleman guilty. But our Supreme Court has rejected this argument, concluding that a harmless error analysis cannot be applied to Blakely errors. State v. Hughes, ___ Wn.2d ___, 110 P.3d 192 (2005). Accordingly, Coleman is entitled to be resentenced within the standard range. State v. Hughes, supra.

Coleman raises several additional issues in his pro se statement of additional grounds. See RAP 10.10. He first alleges that his speedy trial rights were violated. But Coleman has not submitted a sufficient record of the challenged rulings to permit review. He also suggests that the trial court erred by refusing to rule on the speedy trial issues and "deferring" the matter for the Court of Appeals. But the trial court effectively denied Coleman's motions to dismiss, correctly noting that he would have to raise any further challenge on appeal.

Coleman next contends that the trial court erred in denying his motion to dismiss because of the State's failure to comply fully with a discovery order. The motion concerned the late disclosure of the CPS social worker's interview of the victims. The trial court denied the motion to dismiss and granted the defense a continuance to investigate the evidence. Dismissal of a criminal prosecution is an "extraordinary remedy," and the trial court did not abuse its discretion in denying the motion to dismiss. See State v. Ramos, 83 Wn. App. 622, 636-37, 922 P.2d 193 (1996).

Coleman next contends that the CPS social worker's testimony should have been excluded because she failed to complete an official investigation report within 14 days as required by statute. Because this issue is raised for the first time on appeal, we will not consider it. RAP 2.5(a).

Coleman next contends that the deputy prosecutor committed reversible misconduct during closing argument by asking the jury to overlook inconsistencies in the victims' testimony. But the deputy prosecutor has wide latitude in closing argument to draw reasonable inferences from the evidence. State v. Stenson, 132 Wn.2d 668, 727, 940 P.2d 1239 (1997). The deputy prosecutor here properly argued that the jurors could draw reasonable inferences from the evidence; no misconduct occurred.

Finally, Coleman asserts that the trial judge was biased. But he has failed to identify the nature of the alleged error sufficiently to permit meaningful review. See RAP 10.10(c).

We affirm Coleman's conviction on Count I (involving C.V.), reverse Coleman's conviction on Count II (involving M.D.), and remand for further proceedings. On remand, Coleman is entitled to be resentenced within the standard range.

Affirmed in part, reversed in part, and remanded.

For the court:

/s/ COX, C.J.

/s/ AGID, J.

/s/ BAKER, J.

APPENDIX B

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

STATE OF WASHINGTON, Respondent, v. JOHN COLEMAN, Appellant.	)	No. 54171-4-I ORDER DENYING STATE'S MOTION FOR RECONSIDERATION

2005 AUG 29 PM 12: 59

Respondent, State of Washington, has moved for reconsideration of the opinion filed in this case on June 13, 2005. The panel hearing the case has called for an answer from Appellant, John Coleman. The court having considered the motion and Appellant's answer, has determined that the motion for reconsideration should be denied. This court hereby

ORDERS that the motion for reconsideration is denied.

Dated this 29th day of August 2005.

FOR THE PANEL:

Cox CJ

Judge

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Answer to Petition, in STATE V. JOHN COLEMAN, Cause No. _____I, in the Supreme Court for the State of Washington.

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

Name

Done in Seattle, Washington

09-14-05

Date