

NO. 81314-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL KENNETH WEBB,

Petitioner.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
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SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. This Court has recently held that the underlying conviction of a defendant who dies while his appeal of that conviction is pending should not be *automatically* abated simply because of the defendant's death. Webb was convicted of making a fraudulent insurance claim and timely appealed. While his appeal was pending, Webb was murdered. Webb's counsel on appeal moved to abate the appeal *and* the underlying conviction. Did the Court of Appeals properly deny the motion to abate the underlying conviction?

2. In the prior case abandoning the *automatic* abatement *ab initio* doctrine in Washington, this Court declined to set forth a procedure to follow in cases when the defendant dies while a case is on direct appeal. Should this Court adopt a procedure that allows for a presumption of abatement of appeal while simultaneously presuming the retention of the underlying conviction and financial obligations?

B. STATEMENT OF THE CASE

The defendant, Michael Kenneth Webb, was charged in King County Superior Court with filing a fraudulent insurance claim, in

violation of RCW 48.30.230, for falsifying bank records and insurance documents in mid-2005 in connection with a traffic collision. CP 1-5. The case proceeded to a jury trial, which resulted in a mistrial during the deliberations. Supp. CP ____ (sub no. 44B, Clerk's Minutes). Webb later proceeded by way of a stipulated trial to the bench, allowing the trial judge to decide the case based on the evidence already presented. CP 39-53.

The trial judge found Webb guilty of the felony charge. CP 51-52. He was sentenced on February 2, 2007 to a standard range sentence. CP 30-37. The court imposed a number of financial penalties, including \$443.90 in court costs, \$1,000 fine, a mandatory Victim Penalty Assessment of \$500 and a mandatory DNA fee of \$100. CP 31. The court left open the possibility of imposing restitution at a later date. CP 31.

Webb filed a timely notice of appeal on February 27, 2007. CP 38. While the appeal was being perfected, Webb was murdered.¹ In light of his death, the prosecutor elected not to

¹ The death certificate submitted by Webb's attorney lists the "Death date" as "Found 06/28/2007." Documents filed in support of the criminal cause in the case against Webb's alleged murderer indicate that Webb was probably killed sometime in April. See Supp. CP ____ (sub no. 1 from King County Cause No. 07-1-05978-1 SEA, Information) (attached herein as Appendix A).

The State filed a Supplemental Designation of Clerk's Papers for this document and two other documents from Webb's own Superior Court file on October 30, 2008. The State received this Court's order rejecting that

pursue a separate restitution order in this case. Supp. CP ____ (sub no. 106, Memorandum re Restitution).

Meanwhile, Webb's attorney filed a motion titled "Motion to Abate Appeal" in the Court of Appeals. In that document, however, Webb actually asked the Court of Appeals to "abate Mr. Webb's judgment and sentence." Mot. to Abate Appeal at 1. The State did not oppose the motion to abate the appeal, but did oppose the motion to abate the underlying conviction, in light of the financial penalties involved. Response to Mot. to Abate Appeal at 1-2.

Relying on State v. Devin, 158 Wn.2d 157, 142 P.3d 599 (2006), the Court of Appeals denied the motion to abate the underlying conviction. Webb's attorney filed a motion to reconsider, which was also denied. This Court granted Webb's attorney's petition for review.

designation shortly before filing this Brief. The State has now filed a Motion To File Supplemental Designation of Clerk's Papers, which Webb's counsel does not oppose. The documents will be helpful to complete the record for review, but are not critical to resolution of these issues. If this Court denies the State's Motion to File a Supplemental Designation, the State will file a corrected copy of this Supplemental Brief that deletes references to those documents.

C. ARGUMENT

1. THE COURT OF APPEALS PROPERLY FOLLOWED VALID SUPREME COURT PRECEDENT BY ABATING WEBB'S APPEAL BUT LEAVING HIS UNDERLYING CONVICTION AND FINANCIAL OBLIGATIONS INTACT.

Counsel for Webb asks this Court to automatically abate both his appeal and his underlying conviction based solely on the fact that Webb is now deceased. Arguing that the applicable portion of this Court's recent opinion in Devin is "dicta," counsel asks this Court to reinstate the "abatement *ab initio*" doctrine to allow abatement of Webb's conviction. This argument should be rejected. This Court's considered analysis of the abatement *ab initio* rule should be applied to this case to prevent the automatic abatement of Webb's conviction.

Until recently, Washington applied the doctrine of abatement *ab initio*, or "from the beginning," to dismiss both the appeal and the underlying conviction whenever a defendant died while the case was on direct appeal. State v. Furth, 82 Wash. 665, 667, 144 P. 907 (1914); see also United States v. Estate of Parsons, 367 F.3d 409, 413 (5th Cir. 2004) (abandonment *ab initio* doctrine provides that when a defendant dies on appeal, "everything associated with

the case is extinguished, leaving the defendant 'as if he had never been indicted or convicted").

In State v. Devin, 158 Wn.2d 157, 142 P.3d 599 (2006), this Court abandoned this doctrine. In so doing, it noted that a criminal conviction is presumptively valid regardless of whether the defendant is alive. This Court also observed that a number of policy justifications warrant retaining a criminal conviction in spite of the defendant's death. Many such justifications turn on the recognition that payments made pursuant to a criminal conviction benefit others, such as the victim of the defendant's crime (as in the case of a restitution order), crime victims generally (such as in the case of a victim penalty assessment) or society as a whole (in the event of the DNA collection fee). Devin, 158 Wn.2d at 171-72.

Another important justification for abandoning the abatement *ab initio* rule was the potential harm to victims from automatically abating a conviction. The Devin court recognized the potential harm to victims from erasing a presumptively valid conviction, such as the emotional distress to a victim who has participated in a painful trial only to see a hard won conviction overturned based upon the arbitrary timing of the defendant's death. Devin, 158

Wn.2d at 170-71 (citing State v. Korsen, 111 P.3d 130, 134 (Idaho 2005) and Wheat v. State, 907 So.2d 461, 464 (Ala. 2005)).

In this appeal, Webb's attorney argues that the abatement *ab initio* doctrine survives in Washington because the Devin court's "discussion of abatement based on an appellant's death is *dicta*." Pet. for Review at 5. This characterization understates the significance of the Devin court's holdings, by suggesting that the abandonment of the abatement doctrine articulated there carries no precedential weight.

The Devin court first considered whether the Furth case applied to Devin's appeal in light of the unique procedural posture of that case. At the time of Devin's death, the parties were still litigating whether Devin had a valid appeal right at all, since he did not file a notice of appeal until six months after his judgment and sentence was filed. Devin, 158 Wn.2d at 164-66. Because Devin did not file a *timely* notice of appeal before his death, this Court ruled that the Furth abatement *ab initio* doctrine should not apply to his case. Devin, 158 Wn.2d at 167.

Although the Devin Court could have ended its analysis there, the Court deliberately chose not to do so:

Because of our holding that Furth was incorrectly applied in this case, we need not reach the question of whether to modify or abandon the Furth rule. *However, in light of the extensive briefing on that question, its importance to victim rights, and the likelihood that it will come up again, we take this opportunity to address it.*

Devin, 158 Wn.2d at 167 (emphasis added). Thus, the Devin Court's decision to address an issue that was briefed by the parties constitutes a binding holding of the court, entitled to the same precedential weight as if it were directly necessary to the resolution of that case.

The word *dicta* or *dictum* is commonly used as the abbreviation of *obiter dictum*. Black's Law Dictionary (8th ed. 2004) at 485. *Obiter dictum* is defined as:

[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).

Black's Law Dictionary (8th ed. 2004) at 1102. *Obiter dictum* differs in definition and effect from *judicial dictum*, which is an "opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision." Black's Law Dictionary (8th ed. 2004) at 485.

Courts in other jurisdictions have long acknowledged this distinction and given precedential effect or applied the principles of *stare decisis* to judicial dicta, i.e., prior considered decisions issued by a higher court. For example, federal circuit courts have recognized that they "are bound by the Supreme Court's considered dicta almost as firmly as by the Court's outright holdings, particularly when the dicta is of recent vintage and not enfeebled by any later statement." Jones v. St. Paul Cos., 495 F.3d 888, 893 (8th Cir. 2007) (internal quotes and citations omitted); McCoy v. Massachusetts Institute of Technology, 950 F.2d 13, 19 (1st Cir. 1991).

Likewise, a number of state courts have recognized the significant difference between an offhand remark made in passing by an opinion's author and a deliberately considered issue by a higher court. For example, the Hawaii Supreme Court has noted that:

a statement of a superior court [is] binding on inferior tribunals, even though technically dictum, where it was 'passed upon by the court with as great care and deliberation as if it had been necessary to decide it, was closely connected with the question upon which the case was decided, and the opinion was expressed with a view to settling a question that would in all probability have to be decided before the litigation was ended.'

Robinson v. Ariyoshi, 658 P.2d 287, 298 (Haw. 1982). And the Michigan Supreme Court has similarly observed that when a "court of last resort intentionally takes up, discusses and decides a question *germane* to, though not necessarily decisive of, the controversy," such a decision is a "judicial act of the court which it will thereafter recognize as a binding decision." Detroit v. Michigan Pub. Utils. Comm., 286 N.W. 368 (Mich. 1939) (cited in People v. Higuera, 625 N.W.2d 444, 449 (Mich. Ct. App. 2001)).

The portion of the Devin opinion that abandons the abatement *ab initio* rule is clearly considered, or judicial, dicta. Eight Justices of this Court unequivocally adopted the reasoning and holding of Chief Justice Alexander, the author of the opinion. Devin, 158 Wn.2d at 157, 172. Only Justice Sanders filed a concurring opinion in which he opined that the majority's opinion as to the abandonment of the abatement *ab initio* rule was not binding on future cases. Devin, 158 Wn.2d at 172.

Given this measured consideration of the merits of the abatement *ab initio* doctrine, the Devin Court's holding that Furth is overruled "to the extent that it automatically abates convictions as well as victim compensation orders upon the death of a defendant during a pending appeal" (Devin, 158 Wn.2d at 171-72) should be

given the full precedential effect of any other Supreme Court decision. Webb's attorney has not made any showing that the Devin court's holding is either incorrect or harmful, warranting departure from the recent pronouncement of this Court. See State v. Kier, ___ Wn.2d ___, ___ P.3d ___, 2008 WL 4512857 (No. 81030-03, Oct. 9, 2008). As such, the Court of Appeals correctly followed the Devin holding to prevent the *automatic* abatement of Webb's conviction.

2. THIS COURT SHOULD ESTABLISH A RULE PRESUMING THE PROPRIETY OF ABATEMENT OF A DEFENDANT'S DIRECT APPEAL IN THE EVENT OF HIS DEATH, BUT ESTABLISHING A PRESUMPTION THAT THE UNDERLYING CONVICTION AND FINANCIAL OBLIGATIONS SURVIVE UNLESS A PARTY MAKES A SHOWING OF GOOD CAUSE TO ABATE THE CONVICTION.

Although the Devin court abandoned the *automatic* abatement *ab initio* doctrine, this Court specifically declined to set forth a comprehensive rule as to what should happen when a defendant dies while his case is on appeal. Devin, 158 Wn.2d at 172 ("We decline, though, to fashion a new doctrine in place of the Furth "ab initio" rule, as suggested by the State and amicus.").

Thus, this case presents an appropriate opportunity to set forth such a procedure.

This Court should adopt the following rule: when a defendant dies while his direct appeal is pending, the Court of Appeals should automatically abate the pending *appeal* unless either party demonstrates good cause to continue with the appeal. This approach recognizes that the abatement doctrine is an appropriate resolution in most cases, while allowing for the possibility that the defendant's estate or even the State may have a compelling interest in seeing the appeal completed. See Florida v. Clements, 668 So.2d 980, 982 (Fla. 1996) (adopting similar rule in Florida).

However, given the modern emphasis on victim's rights and the public interest in criminal convictions generally (from identifying perpetrators of crimes or from the administration and development of a DNA database to further crime prevention and detection, for example), this Court should hold that *regardless of the abatement of an appeal*, a defendant's *underlying conviction* should remain in full force and effect unless the defendant's estate or some other party demonstrates good cause for abating the financial penalties or even the entire proceeding *ab initio*.

Such a presumption appropriately recognizes that the "central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence." Delaware v. Van Arsdall, 475 U.S. 673, 681, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986); see also State v. Bianchi, 92 Wn.2d 91, 92, 593 P.2d 1330 (1979) ("The only purpose of a criminal trial is the legal determination of the defendant's guilt or innocence."). Society and the victim have a strong interest in the factual determination of who was responsible for the crime at issue. Thus, presuming that the conviction itself remains valid recognizes and protects this interest.

In prior briefing to the Court of Appeals, defense counsel has suggested that the constitutional rights to a presumption of innocence and the right to appeal warrants abatement *ab initio* of the entire prosecution of the offense. See Reply to Motion to Abate at 2-4; see also United States v. Estate of Parsons, 367 F.3d 409, 413 (5th Cir. 2004). But this assertion fails to recognize the longstanding proposition that the presumption of innocence disappears once a defendant has been found guilty of an offense at trial. Herrera v. Collins, 506 U.S. 390, 399, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993); see also, State v. Salle, 34 Wn.2d 183, 190 208, P.2d 872 (1949) ("one who is accused of a crime is entitled to

the presumption of innocence until found guilty beyond a reasonable doubt"). Moreover, it fails to recognize this Court's prior affirmation of the significance of a jury's verdict, regardless of whether an appeal is pending. See, e.g., State v. Murray, 86 Wn.2d 165, 166-70, 543 P.2d 332 (1975) (a "presumptively valid prior conviction" which is pending appeal may be introduced to impeach a defendant's credibility in a criminal prosecution). See also Devin, 158 Wn.2d at 169-70 (rejecting similar arguments).

Likewise, a presumption against the automatic abatement of financial penalties, and particularly financial penalties that are not purely punitive (such as restitution orders and the DNA collection fee), appropriately recognizes and protects the interests of crime victims and society. This Court has recognized that by adopting a statute requiring payment of restitution to victims of felonies, the Legislature has, "at least arguably" expressed a "mandate 'contrary' to abatement of all penalties and proceedings." Devin, 158 Wn.2d at 168 (citing RCW 7.69.030). A rule that prevents the *automatic* abatement of such non-punitive financial penalties is consistent with the modern Legislative approach to victim's rights.

Furthermore, the rule suggested by the State allows for the possibility that certain circumstances might warrant the abatement

of financial penalties in a particular case, and recognizes that such hearings would likely only be necessary in a very small number of cases. In the case of a truly indigent defendant, there would be no "estate" from which to collect the fines, no enforcement efforts would likely follow, and the fines would simply remain uncollected, without the need to formally "abate" the obligation.

In the rare case where a defendant's heirs might be unfairly burdened, such as by the collection of a large embezzlement restitution debt that exceeds the total value of a defendant's estate, a short hearing establishing these facts would presumably be easily accomplished at the trial court level. For example, the executor of an estate attempting to satisfy debts could bring the defendant's death to the trial court's attention and argue for the abatement of any penalties that were purely punitive or any penalties that would impose an undue hardship on the heirs. See Devin, 158 Wn.2d at 172.

Trial courts are the appropriate forum for such hearings. The trial court that imposed the financial obligations is in the best position to assess which fines were meant to be punitive (and which would therefore presumably abate upon the defendant's death) and which fines serve other public policy goals (such as

restitution, the Victim Penalty Assessment, court costs or the DNA collection fee). Additionally, trial courts are best equipped to conduct any needed fact-finding and weigh the competing interests of the parties and the public that are at stake.²

Defense counsel's suggestion that it is "unfair and nonsensical to order Mr. Webb's heirs to pay to preserve his DNA in a data bank when he is dead" is misleading in many respects. Pet. for Review at 8. First, the fine itself is not collected for the purpose of preserving Webb's *own* DNA in the databank. Rather, it serves a dual purpose: (1) to help defray the costs of establishing and maintaining the database itself (including analysis of collected samples); and (2) to defray the costs associated with the *collection* of the sample as well. See RCW 43.43.7541 (making fee mandatory and dividing proceeds between the DNA database account and the "agency responsible for collection of a biological sample from the offender."). The costs of collecting Webb's DNA sample were incurred at the time the sample was collected, thus it

² Webb's appellate counsel apparently agrees with this proposition, as she had asked the Court of Appeals to "remand" the case to make that determination, in the event that the court ruled that such a finding was needed. Motion to Reconsider, at 3-4.

is not unfair to require him (or his estate) to pay the costs associated with that process.

Second, the DNA identification system serves a number of purposes that are not unique to the defendant from whom the sample is collected. DNA collection from convicted felons undoubtedly serves the purpose of identification and detection of criminals perpetrating crimes, but it also helps establish a database to help determine and identify missing and unidentified persons. For example, in this case, Webb's DNA sample may have even assisted the police in identifying his own remains some months later.

Third, Webb's "heirs" have not been ordered to pay anything. Webb himself was ordered to pay the \$100 DNA collection fee, and his *estate*, to the extent he has one, would be responsible for the payment of any such fine. There is simply no support for the assertion that the State could collect the fees directly from the heirs or family of Webb or attempt to enforce this fine against them in any civil proceeding.

The other assertions of "unfairness" to Webb's heirs are also purely speculative. For example, Webb's attorney suggests that the fact that Webb had been declared indigent and appointed

counsel on appeal has some bearing on the ability of his estate to pay off the financial obligations owed by him after his death. In fact, it is entirely possible that he owned a life insurance policy or other source of income that would only be recognized after his death, thus allowing for the payment of the minimal financial obligations directly from his estate.

Likewise, Webb's counsel claims that it would be unfair "to order that Mr. Webb's heirs pay the \$500 "Victim Penalty Assessment" when they should be the ones receiving compensation from it." Mot. to Reconsider at 4. But this argument incorrectly assumes that money from the Victim Penalty Assessment goes completely and directly to the Crime Victim's Compensation Program. In reality, only a small portion of the \$500 collected from this assessment goes directly into the fund from which Webb's family might be entitled to compensation. RCW 7.68.035(4). Other portions of the VPA fund victim and

witness advocacy programs, the office of public defense, and other State and local programs. RCW 7.68.035; RCW 10.82.070.³

Moreover, should Webb's murderer be convicted of that crime, the trial court in that case would be required to order restitution from that defendant directly to the Crime Victim's Compensation Fund for any money the fund paid to Webb's family. RCW 9.94A.753(7). Thus, counsel's suggestion that Webb's family would somehow receive money directly from Webb via the Crime Victim Compensation Fund or the Victim Penalty Assessment is without support.

³ For example, RCW 7.68.035(4) provides that the clerk must transmit the money received from the VPA to the county treasurer, to deposit in accordance with RCW 10.82.070. That statute requires the treasurer to remit 32% of the funds to the State Public Safety and Education Account (PSEA) established in RCW 43.08.250. Only a small portion of that account may be used for the Crime Victim's Compensation Fund. The PSEA also funds a broad variety of other purposes, including criminal justice training, judicial education, drug courts, the appellate indigent defense fund, criminal indigent defense at the trial level, the office of administration for the courts, and traffic safety education, and highway safety, to name only a few. RCW 7.68.035(4); RCW 10.82.070; RCW 43.08.250.

D. CONCLUSION

In sum, this Court should affirm the Court of Appeals' decision to abate Webb's appeal while leaving the underlying conviction and financial obligations intact.

Additionally, this Court should hold that the death of a defendant while a case is pending on direct appeal presumptively abates the appeal, but presumptively leaves the underlying conviction and financial obligations intact. This rule would adequately serve judicial economy while protecting the interests of victims and society as a whole in the criminal justice system.

DATED this 3rd day of November, 2008.

Respectfully submitted,

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APPENDIX "A"

Information and
Certification for Determination of Probable Cause

King County Superior Court No. 07-1-05978-1 SEA

CAUSE NO. 07-1-05978-1 SEA



SEATTLE
POLICE
DEPARTMENT

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

INCIDENT NUMBER	07-261858
UNIT FILE NUMBER	H07-235

That D. N. Duffy is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 07-261858;

There is probable cause to believe that White, Scott Brian W/M 06-30-79 committed the crime(s) of Murder within the City of Seattle, County of King, State of Washington:

This belief is predicated on the following facts and circumstances:

In the month of November of 2006, Michael K. Webb met the defendant Scott B. White. A short time later, the defendant moved into 2505 3rd Av W., the residence Webb had been renting for fourteen years. This home is located in the City of Seattle, County of King and State of Washington.

During the time the defendant lived with Webb, Webb worked as an Internet talk show host. In return for advertising on Webb's internet talk show, Bill Korum Nissan in Puyallup, Washington would loan Webb a car from the dealership for Webb to drive. On 4-6-07, Webb called 911 to report the car loaned to him from Korum had been stolen. The defendant was the last person in the car and failed to pick up Webb after an appointment. Webb told friends that the defendant had also stolen money and property from Webb. Later, the defendant admitted to Webb he had taken the car and the defendant returned the car to Webb a few days later.

On Friday April 13th 2007, Jane Bengtson, a friend of Webb's, took Webb to the dentist. Webb was to have intensive dental work and oral surgery on Tuesday April 17th. Webb did his nightly "live" Internet show from 9pm to 11pm. on this Friday. On Monday April 16th, Bengtson received a text message from Webb's phone, stating that he (Webb) would not be going to the dentist appointment on Tuesday. Bengtson said she received another text message from Webb's phone claiming he (Webb) was going out of town with a person named Paul.

Bill Korum also received text messages from Webb's phone stating he (Webb) had gone to California because his sister's husband had been injured in an accident and the husband was in the ICU in CA.

Brent Zimmerman, another friend of Webb's, also received text messages from Webb's phone asking Zimmerman to return the above-mentioned car to Korum. In the messages from Webb's phone, stated Korum was not to come to Webb's home at 2505 3rd Av. W. and Zimmerman was to meet Korum at an agreed upon location away from the home to return the car.

Bob Vesely, a friend of Webb's and his technical support person, had a prearranged appointment with Webb on April 15th. Webb did not appear.

All the individuals receiving text messages from Webb's cell phone noted the messages were out of character for Webb. Misspellings, such as "verry" rather than "very", appeared several times. The term "Iam" appeared several times instead of Webb's unusual "I'm" or "I am." The messages after April 13th also began ending with the name "Mike". Webb did not sign his text messages with his name.



**CERTIFICATION FOR DETERMINATION
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Bengtson thought it strange that Webb would not call her, so she went to his residence after work at about 0030 hours on April 20th. Bengtson said she was met by a panicked white male, with long dreadlocks, she had never seen before. The male ran out of the house and told her in a nervous voice that "they" thought Webb had come home early from California. Bengtson asked if Webb was at home and the male said, "no". Bengtson asked what he was doing there and the male replied, "I'm visiting White". Bengtson said the male then immediately left on foot. Bengtson said there was a red sheet covering the front window so she could not look inside the house. Bengtson said a few minutes later she received a text message from Webb's cell phone condemning her for coming to Webb's house uninvited.

Due to the fact that all of Webb's friends and family had not verbally heard from or seen Webb in person, a missing person's report was filed on May 14th 2007.

On June 28, 2007, the body of Mike Webb was located in his rented home at 2505 3rd Avenue W. by workers cleaning out the residence. Webb's body had been covered with a blue tarp and concealed in the crawl space of the basement of his home. His hands and feet had been bound with duct tape and a plastic bag had been duct taped around his head. A double-edged axe was found near the body.

The autopsy conducted by King County Medical Examiner Dr. Richard Harruff determined that Webb had suffered a stab wound to the chest, 3 stab wounds to the neck, and one to the shoulder. Webb further has sustained 5 lengthy lacerations across his face that resulted in a skull fracture. The wounds to the face would be consistent with wounds inflicted with an axe.

Detectives searching Webb's home located several pawn slips indicating that the defendant had pawned several electronic items that belonged to Michael Webb. Capitol Hill Loans owner, Rob Chandler, positively identified Scott White from a photo-montage as the person who sold Chandler a HP laptop owned by Webb.

Detectives also found blood spatter in the master bedroom in Webb's home. Above the bed on the ceiling, in addition to possible cast off blood stains, detectives found a gouge that would be consistent with damage left by an axe. Detectives found apparent drag marks in and from the master bedroom. Curiously, the sheets on the bed appeared free of significant blood stains. Removal of the sheets and examination of the mattress revealed a blood pool. Bloody sheets were found elsewhere in the house. On 7/9/07, Betty Newlin from Seattle Police Department Latent Print Lab recovered the defendant's bloody fingerprint from a dust pan believed to have been used to clean up the murder scene.

Detectives also received information that the defendant was using Webb's EBT (DSHS credit card) card. Detectives were able to locate the specific stores at which the transactions took place. Recovered video surveillance from these stores showed the defendant making the transactions with the card.

On July 18th, detectives received information that the defendant was staying in a transient camp in Trolley Park on Queen Anne Hill. Detective went to the park, located the defendant and took him into custody.



**CERTIFICATION FOR DETERMINATION
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INCIDENT NUMBER	07-261858
UNIT FILE NUMBER	H07-235

The defendant was taken to a SPD Homicide office interview room where he was read his Miranda warnings via an SPD issued card. The defendant stated he understood his rights. The defendant initially told detectives that he had taken the loaned car from Korum Nissan and later had returned it to Webb. The defendant said a day or two after returning the car, he left Webb's house. The defendant said he later returned to Webb's house only to discover Webb missing. The defendant claimed he then stayed at Webb's house for several weeks, concerned over where Webb had gone.

When confronted with some of the evidence detailed above, the defendant made an equivocal request for an attorney. The detectives stopped their questioning and inquired whether the defendant wanted an attorney. After being given time to decide, the defendant chose to speak with the detectives.

The defendant told detectives that he had placed an axe under his side of the bed in the master bedroom. He said that in the early morning hours of a day determined to be April 14, 2007, he told Webb he (the defendant) was going out to have a cigarette. The defendant said he then reached under the bed, grabbed the axe and hit Webb 3-7 times with it. The defendant said he left the body on the bed for several hours. When he returned, the body was stiff. The defendant said he put a plastic bag over the victims head due to the amount of blood; he duct taped the hands and used the tape as a handle to drag the body down the stairs. The defendant said this was very difficult and it took him a considerable amount of time. The defendant said he placed Webb's body in the crawl space and covered it up with Webb's blue tarp. The defendant then admitted to text messaging and emailing Webb's friends and family, posing as Mike Webb in those messages, and claiming that Webb was out of town. The defendant also admitted to pawning several items of Webb's personal property and using Webb's EBT card. He said he tried to use Webb's credit cards but he (the defendant) could not get them to work.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 19th day of July, 2007, at Seattle, Washington.

Det. D. D. D. #628

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CAUSE NO. 07-1-05978-1 SEA

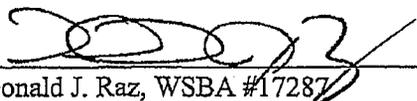
PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
CONDITIONS OF RELEASE

The State incorporates by reference the Certification for Determination of Probable Cause signed by City of Seattle Homicide Detective Dana Duffy under Seattle Police Department incident number 07-261858

REQUEST FOR BAIL

The State requests bail in the amount of \$1,000,000.00. The defendant is an extreme danger to the community as evidenced by his violent bludgeoning of the victim with an axe. The defendant has no residence or ties to the community. The defendant faces a minimum mandatory sentence of 22 years on the current charge. Combined with his lack of connections to the community, the defendant poses a substantial flight risk. The amount of bail requested is appropriate.

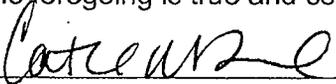
Signed this 20th day of July, 2007.


Donald J. Raz, WSBA #17287

Certificate of Service by Electronic Mail

Today I served via electronic mail address nancy@washapp.org, directed to Nancy P. Collins, Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, the attorney for the appellant, , a copy of the Supplemental Brief of Respondent, in STATE V. MICHAEL KENNETH WEBB, Cause No. 81314-1, 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

3rd Nov 2008
Date

**FILED AS
ATTACHMENT TO EMAIL**

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2008 NOV - 3 P 4: 46
BY RONALD R. CARPENTER
CLERK