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SUPREME COURT
STATE OF WASHINGTON

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No. 85511-1

CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

LINDY DEER,

Respondent.

FILED
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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

ANSWER TO PETITION FOR REVIEW

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STATE CONCEDED IN THE COURT OF APPEALS
THAT REVERSAL OF MS. DEER'S CONVICTIONS
WAS REQUIRED. 5

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properly reversed Ms. Deer's convictions because the
trial court erred in allowing the State to amend the
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A. IDENTITY OF RESPONDENT AND RELIEF REQUESTED

Pursuant to RAP 13.4(b) and (d), Respondent Lindy Deer, through her attorney, Lila J. Silverstein, asks this Court to deny the State's petition for review of the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

The State seeks review of the Court of Appeals' opinion in State v. Deer, No. 63737-1-I (Slip Op. filed December 13, 2010). A copy of the opinion is attached as Appendix A.

C. ISSUES

1. The State conceded in the Court of Appeals, and continues to concede here, that Ms. Deer's convictions must be reversed because the trial court improperly allowed the State to amend a constitutionally defective information after resting its case. In dicta, the Court of Appeals addressed an instructional issue Ms. Deer raised, because it might present itself again if the State elects to re-file charges against Ms. Deer. Should this Court deny review because the State concedes the Court of Appeals properly reversed Ms. Deer's convictions?

2. A defendant may not be held liable for an act that was not volitional. Although the State is entitled to a permissive inference

that acts are performed voluntarily, where some evidence is presented showing the act in question was not volitional, the jury must be instructed on the State's burden to prove a volitional act beyond a reasonable doubt. Here, both the complainant and Ms. Deer testified that Ms. Deer was asleep while the complainant had sex with her. Should this Court deny review because the Court of Appeals correctly ruled that the trial court violated Ms. Deer's right to due process by denying the parties' joint request to instruct the jury that the State must prove a volitional act beyond a reasonable doubt?

D. STATEMENT OF THE CASE

In 2006 and 2007, 15-year-old R.R. frequently spent the night on Lindy Deer's couch, because he had moved to Washington State without his parents. On at least two occasions during that period, R.R. left the living room sofa on which he had been sleeping and went to Ms. Deer's bedroom, where she was sleeping. 6 RP 40, 47-49. The two had sex, after which Ms. Deer awoke and said she had been having a dream that she was having sex with a friend of hers. 6 RP 45. R.R. described these incidents as "sleep sex." 6 RP 59, 92; 7 RP 14.

In the fall of 2007, R.R. told a friend of his that he had had sex with Ms. Deer. 6 RP 75. Auburn police detectives eventually interviewed R.R., who told them that he and Ms. Deer had had sex but that Ms. Deer appeared to be asleep during the incidents. 5 RP 25.

Police subsequently arrested Ms. Deer, and charged her with rape of a child in the third degree. 5 RP 11; CP 1.

During trial, both R.R. and Ms. Deer testified that they had had "sleep sex." 5 RP 25, 6 RP 92, 7 RP 14. After the State rested its case, the parties and the court realized that the information omitted the elements of rape of a child and instead listed the elements of child molestation. 7 RP 62-64. Over Ms. Deer's repeated objections, the State was allowed to amend the information again to add the elements for child rape and delete the elements for child molestation. 7 RP 66-72.

Given the "sleep sex" testimony, both the State and Ms. Deer proposed a jury instruction that would have required the State to prove beyond a reasonable doubt that Ms. Deer committed a "volitional" act. 7 RP 77-80. The trial court denied the joint motion, instead instructing the jury that Ms. Deer had to prove her lack of consent by a preponderance of the evidence. 7 RP 81. CP 24

(Instruction 11). The "to convict" instructions stated that the prosecution was required to prove beyond a reasonable doubt that "the defendant had sexual intercourse with R.R.," but did not state that the prosecution had to prove the act of sexual intercourse was voluntary or conscious. CP 20-22.

The jury found Ms. Deer guilty of three counts of rape of a child in the third degree. CP 29-31.

Ms. Deer appealed and argued the trial court erred in allowing the State to amend a constitutionally defective information after resting its case, and in denying the parties' joint motion with respect to the to-convict instruction.

The State conceded error, acknowledging that the State should not have been allowed to amend the information after resting its case. The State agreed that Ms. Deer's convictions should be reversed, and the charges dismissed without prejudice to the State's ability to refile.

The Court of Appeals accepted the State's concession of error, reversed Ms. Deer's convictions, and remanded for dismissal of the charges without prejudice to the State's ability to refile. In dicta, the court addressed the instructional issue because it might arise again if the State elects to refile charges against Ms. Deer.

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

THIS COURT SHOULD DENY REVIEW BECAUSE THE STATE CONCEDED IN THE COURT OF APPEALS THAT REVERSAL OF MS. DEER'S CONVICTIONS WAS REQUIRED.

Neither party in this case challenges the remedy ordered by the Court of Appeals. Nor do the parties dispute the reasoning for the remedy applied. The State seeks review of mere dictum which has no bearing on the outcome of this appeal. Furthermore, the dictum is correct. This Court should deny review.

a. The State concedes that the Court of Appeals properly reversed Ms. Deer's convictions because the trial court erred in allowing the State to amend the information after resting its case.

In the Court of Appeals, the State conceded that reversal was required because the trial court improperly allowed the State to amend a constitutionally defective information after resting its case. Slip Op. at 4; Br. of Respondent at 9-14. The Court of Appeals accepted the concession, and applied the proper remedy of dismissal of charges without prejudice to the State's ability to refile. Slip Op. at 5-6.

In its petition for review, the State does not claim that the Court of Appeals erred in reversing Ms. Deer's convictions. Indeed,

the State continues to agree that reversal was required. Petition for Review at 5. The State simply objects to dictum that has no relevance to the outcome of this appeal. Accordingly, this Court should deny review.

b. In dictum, the Court of Appeals properly noted that the State is required to prove a volitional act beyond a reasonable doubt. The Court of Appeals addressed the instructional issue because the State might re-file charges in this case. The State has not demonstrated that this is an issue of broad import that would warrant review given its status as mere dictum here. Nor has the State shown that the Court of Appeals' opinion is contrary to decisions of this Court or the Court of Appeals. On the contrary, the Court of Appeals' opinion is consistent with the well-settled rule that even strict liability crimes have a volitional component as part of the actus reus. Finally, the State proposed the instruction in the superior court, and now complains that the Court of Appeals agreed that the instruction it proposed was correct. Accordingly, review is unwarranted under RAP 13.4.

Given the testimony of both the complainant and Ms. Deer that Ms. Deer was asleep during intercourse, both parties asked the Court to instruct the jury that in order to convict Ms. Deer, it must

find the State proved beyond a reasonable doubt that Ms. Deer's act of sexual intercourse was volitional. The court denied the motion, and required Ms. Deer to prove lack of knowledge or consent by a preponderance of the evidence. As the Court of Appeals recognized, the trial court's ruling violated Ms. Deer's right to due process.

A state may not hold an individual liable for an act that was unconscious or otherwise involuntary. State v. Eaton, 168 Wn.2d 476, 229 P.3d 704 (2010) (reversing conviction for zone enhancement where State failed to prove the defendant took some voluntary action to place himself in the zone). "An involuntary act, as it has no claim to merit, so neither can it induce any guilt." Id. at 481 (quoting William Blackstone, 5 Commentaries 21).

Fundamental to our notion of an ordered society is that people are punished only for their own conduct. Where an individual has taken no volitional action she is not generally subject to criminal liability as punishment would not serve to further any of the legitimate goals of the criminal law. We punish people for what they do, not for what others do to them.

Eaton at 481-82.

Thus, even for crimes like Rape of a Child which do not include an element of specific intent, there is "a certain minimal

mental element required in order to establish the actus reus itself.”
State v. Utter, 4 Wn. App. 137, 139, 479 P.2d 946 (1971).

The voluntary nature of the act is an element the State must prove beyond a reasonable doubt. Eaton at 485 (“we hold that RCW 9.94A.533(5) encompasses a volitional element that the State must prove beyond a reasonable doubt”); U.S. Const. amend. XIV. Although the State is entitled to a permissive inference that a defendant has acted voluntarily and consciously, the State retains the ultimate burden of proving a volitional act. Id. at 486-87. Thus, the State’s claim that “this Court has never squarely addressed the issue of which party bears the burden of proof” on voluntariness is simply wrong. Petition for Review at 10.

In its petition for review, the State attacks a straw man: it argues that the crime of rape of a child is a strict liability crime. Petition for Review at 6; see also Brief of Respondent at 14-20. But the Court of Appeals did not hold otherwise. As explained in the opinion, voluntariness is part of the actus reus, and is required even for strict liability crimes. Slip Op. at 8; see also Utter, 4 Wn. App. at 142-43; Brief of Appellant at 14-19.

The State then dismisses Eaton as inapposite. Petition for Review at 8-9; see also Brief of Respondent at 18-19. But it does

so on the ground that “the child rape statute at issue in this case has already been interpreted as a strict liability offense.” Petition at 9. Again, the State confuses the mens rea with the actus reus. The Court of Appeals did not hold that child rape has a mens rea; it noted the well-settled rule that the State must prove volition as part of the actus reus, even for strict liability crimes. Slip Op. at 8. Volition is part of the actus reus of every crime, regardless of the mens rea. Utter, 4 Wn. App. at 142-43.

The Court of Appeals did not claim that every criminal case requires an instruction explaining the State must prove a “volitional” act beyond a reasonable doubt. As explained above, the jury may presume acts are volitional. Eaton at 486-87. However, this is a permissive, not mandatory, presumption. Id. Once some evidence has been introduced to rebut the presumption, the jury must be instructed on the State’s burden to prove a volitional act beyond a reasonable doubt. The trial court here improperly denied the requested instruction and created a mandatory presumption – shifting the burden to Ms. Deer to prove the act was involuntary. 7 RP 82-84; CP 24 (Instruction 11); see State v. Deal, 128 Wn.2d 693, 700-03, 911 P.2d 996 (1996) (trial court improperly created a mandatory presumption which unconstitutionally shifted burden of

persuasion to defendant by instructing jury it could infer intent in burglary prosecution "unless such entering or remaining shall be explained by evidence satisfactory to the jury to have been made without such criminal intent"). The Court of Appeals properly noted that with regard to those counts for which Ms. Deer and the complainant testified she was asleep, the trial court erred by relieving the State of its burden of proving a volitional act beyond a reasonable doubt. Slip Op. at 9.

F. CONCLUSION

For the reasons set forth above, Ms. Deer respectfully requests that this Court deny review.

DATED this 20th day of January, 2011.

Respectfully submitted,



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APPENDIX A

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time, Lindy Deer worked as an administrative assistant for R.R.'s great aunt, Valerie Cox, through whom Deer and R.R. met. Deer was 52 years old.

Deer told Cox that she felt "motherly" toward R.R. and that she enjoyed doing things for him because she did not have children of her own. Deer at times took R.R. shopping for clothes and other essentials. Deer was also approved to check R.R. out of the boarding school for overnight visits.

During the summer of 2006, R.R. helped Deer with chores at her home, including helping her to move into a new home and to prepare for a housewarming party. R.R. testified that, on one occasion, while he was doing yard work for Deer, Deer told him that he should have "kissing lessons." Report of Proceedings (RP) (Feb. 11, 2009, Vol. 1) at 25. He further testified that he and Deer kissed multiple times that day. According to R.R.'s testimony, Deer told R.R. that she would "be okay with" having a sexual relationship with him "if it wasn't wrong in the eyes of society." RP (Feb. 11, 2009, Vol. 1) at 39.

Multiple sexual encounters occurred between Deer and R.R. from the fall of 2006 through the spring of 2007. On the first occasion, R.R. was staying the night at Deer's home. That night, R.R. left the couch, where he was planning to sleep, and got into bed with Deer, who appeared to be sleeping. R.R. placed Deer's hand on his penis. R.R. testified that Deer grabbed his penis and pulled him closer. He further testified that she inserted his penis into her vagina and started moving up and down and moaning. Deer testified at trial that she was asleep during the incident.

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Another sexual encounter occurred between Deer and R.R. in November 2006. On that occasion, Deer was comforting R.R., whose girlfriend had just broken up with him. Deer and R.R. were lying on the couch and kissing. Deer then performed oral sex on R.R. Deer testified at trial that she did not willingly participate in the oral sex. R.R. testified that he again got into bed and had sexual intercourse with Deer that night.

According to R.R.'s testimony, at least two additional sexual encounters occurred between Deer and R.R. as to which Deer does not contend that she was asleep. On one occasion, R.R. went into the bathroom where Deer was changing her clothes. The two kissed, took off their clothes, and went into Deer's bedroom, where they had sexual intercourse. Deer testified that this intercourse was forced by R.R. R.R. testified that another incident occurred at Cox's home, where Deer and R.R. had sexual intercourse in Cox's laundry room.

Deer was initially charged by information with one count of rape of a child in the third degree. The State later amended the information to add two additional counts of the same crime. Subsequently, the State amended the information again to conform the charging period to R.R.'s testimony. Both the first and second amended information contained erroneous charging language, alleging that Deer had "sexual contact" with R.R. rather than "sexual intercourse," while still identifying the crime charged as rape of a child in the third degree.¹ Thus, while the State intended to charge Deer with rape of a child in the third

¹ The first and second amended information also stated a birth date for R.R. (06/11/89) that would have made him 17 years old at the time of the incidents, although both documents correctly alleged that he was 15 years old when the incidents occurred.

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degree, the information instead listed the elements of child molestation in the third degree. Over the objection of defense counsel, and after the State rested its case, the trial court permitted the State to correct the error by again amending the information.

Due to Deer's contention that she was asleep during at least one of the sexual encounters, Deer and the State proposed a jury instruction that would have required the State to prove beyond a reasonable doubt that she committed a "volitional" act. In a pretrial hearing, the trial court informed the parties that, in the event that it decided to give this instruction, the "volitional argument" would apply only to the allegations of sexual encounters as to which Deer contended that she was asleep. The trial court later determined not to give the proposed instruction and instead gave the jury an instruction stating:

It is a defense to the charge of Rape of a Child in the Third Degree that the child had intercourse with the defendant without the knowledge or consent of the defendant.

The defendant has the burden of proving this defense by a preponderance of the evidence.

Clerk's Papers (CP) at 24.

The jury found Deer guilty of three counts of rape of a child in the third degree.

Deer appeals.

II

Deer first contends that the trial court erred by allowing the State to amend a constitutionally defective information after the State rested its case. The State concedes that this ruling was erroneous. We agree.

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"A criminal charge may not be amended after the State has rested its case in chief unless the amendment is to a lesser degree of the same charge or a lesser included offense." State v. Pelkey, 109 Wn.2d 484, 491, 745 P.2d 854 (1987). The first and second amended information in this case failed to set forth the essential elements of the crime charged—rape of a child in the third degree.² Although both charging documents cited to the statute defining the crime of rape of a child in the third degree, RCW 9A.44.079, the documents listed the elements of child molestation in the third degree.³ See State v. Vangerpen, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995) (noting that "[m]erely citing to the proper statute and naming the offense is insufficient to charge a crime unless the name of the offense apprises the defendant of all of the essential elements of the crime"). Thus, the charging documents erroneously included the element of "sexual contact" and failed to include the element of "sexual intercourse" that is essential to a rape charge.⁴

² "A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim." RCW 9A.44.079(1).

³ "A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim." RCW 9A.44.089(1).

⁴ Neither of the two exceptions set forth in the Pelkey decision—that the amendment is to a lesser degree of the same charge or to a lesser included offense—applies in this case. See Pelkey, 109 Wn.2d at 491. Rape of a child in the third degree is not a lesser included offense of child molestation, as rape of a child in the third degree requires "sexual intercourse," RCW 9A.44.079, and child molestation in the third degree does not, RCW 9A.44.089. See State v. Peterson, 133 Wn.2d 885, 890, 948 P.2d 381 (1997) (noting that a lesser included offense exists "when all of the elements of the lesser offense are necessary elements of the greater offense. Put another way, if it is possible to commit the greater offense without having committed the lesser offense, the latter is not an included crime") (quoting Pelkey, 109 Wn.2d at 488). Similarly, the inferior degree crime exception does not apply.

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Because "[t]he proper remedy [in such a case] is dismissal without prejudice to the State refiling the information," Vangerpen, 125 Wn.2d at 793 (quoting State v. Simon, 120 Wn.2d 196, 199, 840 P.2d 172 (1992)), we reverse the trial court's judgment and remand with instructions to dismiss the case without prejudice.

III.

Deer further contends that her right to due process was violated where the trial court instructed the jury that, in order to defend against the charges, Deer had the burden of proving by a preponderance of the evidence that the sexual intercourse occurred without her knowledge or consent. Because this issue is likely to recur if the State refiles the charges against Deer, we address it here.

The due process clause of the Fourteenth Amendment to the United States Constitution requires the prosecution to prove beyond a reasonable doubt every fact necessary to constitute the crime charged. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970). Every crime consists of two components: (1) an actus reus and (2) a mens rea. State v. Eaton, 168 Wn.2d 476, 480, 229 P.3d 704 (2010). The actus reus is "[t]he wrongful deed that comprises the physical components of a crime," while the mens rea is "[t]he state of mind that the prosecution . . . must prove that a defendant had when committing a crime." BLACK'S LAW DICTIONARY 41, 1075 (9th ed. 2009). Although the "legislature has the authority to create a crime without a mens rea element," Eaton, 168 Wn.2d at 481 (quoting State v. Bradshaw, 152 Wn.2d 528, 532, 98 P.3d 1190 (2004)), even such "strict liability" crimes require "a certain minimal

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mental element . . . in order to establish the actus reus itself." State v. Utter, 4 Wn. App. 137, 139, 479 P.2d 946 (1971)). "This is the element of volition." Utter, 4 Wn. App. at 139. See also BLACK'S; *supra*, at 1710 (defining "volition" as "[t]he act of making a choice or determining something"). "An 'act' committed while one is unconscious is in reality no act at all. It is merely a physical event or occurrence for which there can be no criminal liability." Utter, 4 Wn. App. at 143.

Our Supreme Court has recently explained why the imposition of criminal liability requires a volitional act:

Fundamental to our notion of an ordered society is that people are punished only for their own conduct. Where an individual has taken no volitional action she is not generally subject to criminal liability as punishment would not serve to further any of the legitimate goals of the criminal law. We punish people for what they do, not for what others do to them. We do not punish those who do not have the capacity to choose. Where the individual has not voluntarily acted, punishment will not deter the consequences.

As these principles suggest, although an individual need not possess a culpable mental state in order to commit a crime, there is "a certain minimal mental element required in order to establish the actus reas itself." Movement must be willed; a spasm is not an act. It is this volitional aspect of a person's actions that renders her morally responsible and her actions potentially deterrable. To punish an individual for an involuntary act would run counter to the principle that "a person cannot be morally responsible for an outcome unless the outcome is a consequence of that person's action." It would create what Simester has called "situational liability," penalizing a defendant for a situation she simply finds herself in. "Unless there is a requirement of voluntariness, situational offenses are at odds with the deepest presuppositions of the criminal law." As Holmes tells us, the "reason for requiring an act is, that an act implies a choice, and that it is felt to be impolitic and unjust to make a man answerable for harm, unless he might have chosen otherwise." "[T]he choice [to act] must be made with a chance of contemplating the consequence complained of, or else it has no bearing on responsibility for that consequence." A person cannot be answerable for a state of affairs unless she could have done something to avoid it.

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Eaton, 168 Wn.2d at 481-83 (internal citations omitted).⁵ Stated differently, "[a]n act must be a willed movement or the omission of a possible and legally-required performance." Utter, 4 Wn. App. at 140 (quoting R. PERKINS, CRIMINAL LAW 660 (1957)). "Criminal responsibility must be judged at the level of the conscious." Utter, 4 Wn. App. at 141 (quoting State v. Sikora, 44 N.J. 453, 470, 210 A.2d 193 (1965)). This is consistent with our legislature's pronouncement that the provisions of our criminal code must be interpreted "[t]o safeguard conduct that is without culpability from condemnation as criminal." RCW 9A.04.020(1)(b).

Here, the trial court rejected the proposed jury instruction, which would have required the State to prove beyond a reasonable doubt that Deer committed a volitional act. Instead, the trial court instructed the jury that Deer had the burden of proving her defense—"that the child had intercourse with the defendant without the knowledge or consent of the defendant"—by a preponderance of the evidence. CP at 24. Although the State is correct that rape of a child is a strict liability crime, see State v. Chhom, 128 Wn.2d 739, 743, 911 P.2d 1014 (1996), the "minimal mental element" of volition—as part of the actus reas—must be proved even for those crimes without a mens rea requirement. Thus, the State

⁵ In Eaton, our Supreme Court held that a statute permitting sentence enhancements encompassed a volitional element that the State must prove beyond a reasonable doubt. In doing so, the court explained the distinction between intent and volition:

The State appears to be under the misapprehension that requiring volition is the same as requiring intent. But nothing in our opinion should be read as requiring that the State prove a defendant intended to be in the enhancement zone or even that she knew she was in the enhancement zone. The State must simply demonstrate that the defendant took some voluntary action that placed him in the zone.

168 Wn.2d at 485-86 n.5. Here, the State similarly fails to recognize that "[t]here is a distinction between volition and intent." City of Seattle v. Hill, 72 Wn.2d 786, 796 n.1, 435 P.2d 692 (1967).

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bears the burden of proving beyond a reasonable doubt that the defendant committed a volitional act. With regard to those sexual encounters as to which Deer contends she was asleep, the trial court erred by relieving the State of that burden.⁶

We note the distinction, however, between Deer's contention that she was asleep during at least one of the sexual encounters at issue and her contention that she did not consent to other sexual encounters. As to those sexual encounters to which Deer contends she did not consent, the applicable defense is not that no volitional act was committed but, rather, that she did not agree to the commission of the act. See BLACK's, *supra*, at 346 (defining "consent" as "[a]greement, approval, or permission as to some act or purpose"). Because consent of the alleged perpetrator is not an element of the crime of rape of a child, due process does not require the State to prove that the defendant consented to the sexual encounters for which she is charged. Accordingly, an instruction on duress—an affirmative defense that the defendant must prove by a preponderance of the evidence, see State v. Riker, 123 Wn.2d 351, 368-69, 869 P.2d 43 (1994)—may be appropriate in such a case.

Due process requires the State to prove beyond a reasonable doubt all elements of a crime, including that the defendant committed a volitional act.

⁶ The State argues that our Supreme Court's decisions in State v. Cleppe, 96 Wn.2d 373, 635 P.2d 435 (1981), and State v. Bradshaw, 152 Wn.2d 528, 98 P.3d 1190 (2004), are inconsistent with a requirement that the State prove beyond a reasonable doubt that a defendant committed a volitional act. However, in those cases, the court held that the possession of controlled substances statute did not have a mens rea element, see Bradshaw, 152 Wn.2d at 539-40—actus reas was not at issue. We will not recharacterize our Supreme Court's own pronounced basis for its decisions, particularly given that its more recent holding in Eaton is directly on point here.

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Should the State refile charges against Deer and the case proceed to trial, it will be the testimony adduced at that trial that will inform the trial court's discretion in determining proper instructions to the jury.⁷

Reversed and remanded with instructions to dismiss without prejudice.

Dwyer, C.J.

We concur:

Schindler

Engel

⁷ Deer contends in a statement of additional grounds that the trial court violated her Fifth Amendment privilege against self-incrimination by ruling that she would have to testify regarding her lack-of-consent defense in order for the "hue and cry" testimony of other witnesses to be permitted. A defendant who must testify in order to present a defense is not compelled to testify in violation of the Fifth Amendment. See Williams v. Florida, 399 U.S. 78, 83-84, 90 S. Ct. 1893, 26 L.Ed.2d 446 (1970) ("The defendant in a criminal trial is frequently forced to testify himself . . . in an effort to reduce the risk of conviction. . . . That the defendant faces such a dilemma demanding a choice between complete silence and presenting a defense has never been thought an invasion of the privilege against compelled self-incrimination.") Thus, Deer was not compelled to testify in contravention of the Fifth Amendment by virtue of her decision to present a defense that required her own testimony.

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BY RONALD R. CARPENTER

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- Attorney for other party


MARIA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: January 20, 2011

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State v. Lindy Deer
No. 85511-1

Please accept the attached documents for filing in the above-subject case:

ANSWER TO PETITION FOR REVIEW

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