

90906-7

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

Court of Appeals NO. 44654-5-II

STATE OF WASHINGTON

Respondent,

vs.

HOWARD SHALE

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR JEFFERSON COUNTY
Cause Number: **12-1-00194-0**

**CITATION OF SUPPLEMENTAL AUTHORITY
PURSUANT TO RAP 10.8**

SCOTT ROSEKRANS
Jefferson County Prosecuting Attorney
Attorney for Respondent

P.O. Box 1220
Port Townsend, WA 98368
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Date: August 19, 2014

The State of Washington cites the following supplemental authority with respect to consideration of issue not raised in the trial court:

State v. Davis, 41 Wn.2d 535, 250 P.2d 548 (1953) (one of the most fundamental principles of appellate litigation is that a party may not assert on appeal a claim that was not presented at trial)

Yakus v. United States, 321 U.S. 414, 444, 64 S. Ct. 660, 88 L. Ed. 834 (1944) (“No procedural principle is more familiar to this Court than that a ... right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.”)

RAP 2.5(a) (“ The appellate court may refuse to review any claim of error which was not raised in the trial court.”)

Karl B. Tegland, *2A Washington Practice: Rules Practice*, RAP 2.5, at 190 et. seq. (6th ed.2004) (the contemporaneous objection rule is rooted in notions of fundamental fairness and judicial economy and has been applied across a whole range of issues, constitutional, non constitutional, civil and criminal)

State v. Riley, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993) (RAP 2.5 does not mandate appellate review of newly raised argument of manifest error affecting constitutional right where facts necessary for its adjudication are not in record)

State v. McFarland, 127 Wn.2d 322, 899 P.2d 1251 (1995) (if the facts necessary to adjudicate a claim that was not raised in the trial court, then the matter is not properly before the appellate court; ruling that matters should not be transferred to the trial court for a hearing to allow the defendant to make a record in support of a claim that was not raised in the trial court)

Respectfully submitted this 19th day of August, 2014.

SCOTT ROSEKRANS, Jefferson County
Prosecuting Attorney



By: Thomas A. Brotherton , WSBA # 37624
Deputy Prosecuting Attorney

PROOF OF SERVICE

I, Wendy M. Davis, certify that on this date: August 19, 2014

I filed the State's SUPPLEMENTAL AUTHORITY electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of same using the Court's filing portal to:

Backlund & Mistry
backlundmistry@gmail.com

And to Defendant via U.S. Mail, postage prepaid:

Howard Shale
211 2nd Ave., #10
Forks, WA 98331

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Port Townsend, Washington on August 19, 2014.



Wendy M. Davis
Legal Assistant

JEFFERSON COUNTY PROSECUTOR

August 19, 2014 - 12:18 PM

Transmittal Letter

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