

NO. 74300-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

CITY OF KIRKLAND,

Respondent,

v.

HOPE A. STEVENS,

Petitioner.

CITY'S ANSWER OPPOSING
PETITIONER'S MOTION FOR DISCRETIONARY REVIEW

King County Superior Court RALJ Decision
No. 15-1-01772-8 SEA

Kirkland Municipal Court Cause
No. 38384

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APPENDICES

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- APPENDIX B: Decl. of Todd Maybrow in Support of Def.'s Mot. to Dismiss or for Alt. Relief (Dec. 10, 2014).
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APPENDIX P: Hrg. Transc. (Jan. 13, 2015).

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APPENDIX R: Order on Criminal Motion, City of Kirkland v. Stevens, 15-1-01772 SEA, Oct. 2, 2015.

APPENDIX S: Verbatim Report of Proceedings (“RP”), City of Kirkland v. Stevens, 15-1-01772 SEA, Oct. 2, 2015.

APPENDIX T: Mot. For Discretionary Review (Jan. 12, 2016).

A. IDENTITY OF RESPONDENT

Respondent, City of Kirkland, asks this Court to deny Petitioner Hope A. Stevens' motion for discretionary review because this case does not satisfy the requirements of RAP 2.3(d). Moreover, the Superior Court's decision to remand this case for trial was correct.

B. DECISION BELOW

Stevens seeks review of the October 2, 2015, RALJ decision of the King County Superior Court, the Honorable Judge Douglass A. North, finding an abuse of discretion by the trial court and remanding the case to the Kirkland Municipal Court. On RALJ appeal, the City argued that the trial court abused its discretion when it dismissed the case under CrRLJ 4.7 and CrRLJ 8.3(b).

The Superior Court agreed, finding that there was no evidence presented of governmental misconduct or arbitrary action in the record. The Superior Court determined that the trial court had "conflated" the City's obligations with the witnesses' actions, which does not meet the standard for dismissal under CrRLJ 8.3(b)¹.

C. ISSUES PRESENTED FOR REVIEW

1. Did the Superior Court err in applying RALJ 9.1(b) so as to create an issue of public interest meriting appeal, or so far depart from the accepted and usual course of judicial proceedings that review by the Court of Appeals is warranted?
2. Did the Superior Court "reject" the proper "abuse of discretion" standard of review so as to conflict with established precedent or

¹ Verbatim Report of Proceedings at 12, City of Kirkland v. Stevens, 15-1-01772 SEA, Oct. 2, 2015 (hereinafter "RP").

so far depart from the usual and accepted course of judicial proceedings as to call for discretionary review by this Court?

D. STATEMENT OF THE CASE

The City of Kirkland charged Hope A. Stevens with two counts of Assault in the Fourth Degree, Domestic Violence for conduct toward her half-sister, Teresa Obert, and her nephew, C.O. – Ms. Obert’s son - on June 21, 2014. (App. A).

Ms. Obert and C.O. retained independent legal counsel, Mary Gaston. (App. B, ¶ 7). At the request of Stevens’ attorney, Mr. Maybrown, Ms. Gaston offered Mr. Maybrown two separate opportunities to interview the witnesses in October. *Id.* at App. A. He declined to conduct those interviews. (App. C, ¶¶ 6 and app. A). Over the City’s objection, the trial court ordered the witnesses to sit for depositions. (App. D).

Mr. Maybrown scheduled the depositions of Ms. Obert and C.O. for December 2, 2014 and mailed notices of depositions to the witness’s attorney, Mary Gaston. (App. E). The prosecutors cleared their schedules in order to attend. (App. F, ¶ 8). On the morning of the scheduled depositions, Ms. Gaston informed the parties that her clients would not be present for the depositions because (1) C.O. was hospitalized on that date, and (2) Ms. Gaston read CrRLJ 4.6 to require the witnesses to be under subpoena. (App.

G, 13:13-17). The prosecutors immediately provided alternative dates. Id. at 13:21-22.

The defendant moved to dismiss under CrRLJ 8.3(b) “because the City’s witnesses have refused to be interviewed and/or deposed.” (App. H). Counsel based his motion on the witness’s behavior, stating “the witnesses have made it virtually impossible for counsel to prepare...,” attributing much of this difficulty to Mary Gaston, the witness’s independent counsel. (App. B, ¶¶ 7, 14, 18 – 20).

The City arranged for the witnesses to be available for depositions on December 19, 2014. (App. F, ¶¶11-15). The City subpoenaed the witnesses to appear for the deposition. (App. I). Both witnesses sat for depositions on December 19, 2014, each lasting for approximately ninety minutes. (App. G, 26:25- 27:1). Both witnesses answered counsel’s questions, with the exception of what medications C.O. was using at the time of the alleged assault and about his recent hospital stay. Id. at 27:2-6; 27:8-10; 28:1-2. Private counsel objected based on doctor-patient privilege. Id. at 27:6-7; 27:12; 28:2-4.

Defendant renewed her request for dismissal under CrRLJ 8.3(b) and CrRLJ 4.7, citing her belief that the depositions were inadequate. (App. J, ¶ 36). Counsel claimed the witnesses “hijacked” the proceedings and used “obstructionist” tactics when they failed to answer questions. (App. G,

8:22). He stated that the information was “material to the defense for several reasons” but did not elaborate on how. (App. J, ¶ 11). Additionally, counsel claimed that the City had failed to provide interview notes from the City’s October 22 interview of the two witnesses. Id. at ¶ 24-28.

On December 29, 2014, the City filed an amended witness list, adding four fact witnesses and including their contact information and a summary of their expected testimony. (App. K).

The trial court heard oral argument on December 30, 2014. (App. G). The trial court ordered the City to produce all notes and recordings from the City’s interview of the witnesses by end of business that day. Id. at 29:16-22. The trial court further ordered the witnesses to appear for additional depositions on January 2, 2015 to answer questions regarding C.O.’s medical history and medications used, finding this line of questioning to be “relevant.” Id. at 29:25, 30:8-13.

The City subpoenaed C.O. and Ms. Obert to appear for a second deposition, as ordered. (App. F, ¶ 19). The City arranged for a Kirkland Police officer to personally serve the witnesses, but the officer was unsuccessful. Id. at ¶ 19, 21. Ms. Offutt spoke with Ms. Obert by phone to inform her of the trial court’s ruling, and Ms. Obert responded that she did not know if they were available. Id. at ¶ 22. The second deposition did not occur. (App. L, ¶ 8).

On January 6, 2015, Mr. Maybrow conceded that but for the witnesses' absence at a second deposition on January 2, 2015 "[w]e would be prepared for trial in mid-January, if all of this hadn't been created by the misconduct of these witnesses... ." (App. M, 8:8). The trial court ruled that defense has a right to interview witnesses prior to trial, noting that the "defense does not have to wait to hear to questions for the first time while the jury is sitting there." Id. at 26:12-15. The judge stated that "the witnesses have chosen not to respond to the second deposition. That's up to the witnesses." Id. at 26:23-24. The trial court ordered a third deposition of C.O. and Ms. Obert to occur on January 8, once more instructing that the witnesses reveal "whether or not the [witness] was under the influence of medicines and narcotics and alcohol" and to answer "questions concerning what the [witness] was seeing the doctor for." Id. at 28:6-8.

Once again, the City prepared subpoenas for the witnesses to appear for the January 8, 2015 depositions. (App. N). The City again arranged for a Kirkland Police officer to personally serve the witnesses with the subpoenas, but again were unsuccessful. (App. O, ¶ 7). Both prosecutors made repeated attempts to call the witnesses, unsuccessfully. Id. at ¶10. Ms. Offutt provided notice to the witness's attorney, Ms. Gaston, via telephone on January 6, 2015. The witnesses failed to appear for the third ordered deposition. (App. P, 12:18-20).

On January 13, 2015, the trial court heard defendant's third motion to dismiss. Id. The court dismissed the case pursuant to 8.3(b) and 4.7. Id. 15:25-16:8.3. In its oral ruling, the trial court noted the "pattern of the City's witnesses' failure to cooperate with defense interviews...." Id. at 10:13-14. The trial court specifically noted that, at the "one and only interview" with defense counsel, the witnesses declined to answer questions regarding C.O.'s medication use and mental status at the time of the alleged assault, claiming medical privilege and lack of relevance. Id. at 10:20- 11:3. The witnesses failed to sit for the second deposition to answer questions the court deemed relevant, without analysis of whether the medical information was material to the defense. Id. at 11:9-10. The court also considered the witnesses' failure to appear for the third-ordered deposition on January 8, 2015 and the logistical strain the repeated depositions had on defense counsel to hire a stenographer and rearrange his schedule. Id. at 12:18-21; 12:9-13.

The trial court found that the City endorsed four additional witnesses "less than two weeks before trial readiness," finding it significant that the City disclosed the witnesses six months after filing the charges. Id. at 12:22-13:1. Of those four witnesses, the two named medical professionals declined to speak with Mr. Maybrown due to doctor-patient privilege. Id. at 13:11-13. Jeff Obert failed to appear for a scheduled interview on January

8, 2015. Id. at 14:2-3, 14:8-10. Cori Parks actually did speak to the defendant's investigator, but declined to interview over the phone. Id. at 5:13-17, 14:13-15. The trial court found that the defendant would "clearly be impermissibly prejudiced" due to defense counsel's inability to interview these four witnesses. Id.

Ultimately, the trial court found that Ms. Steven's right to a fair trial had been materially affected because she was forced to choose between proceeding to trial and hear testimony from some witnesses for the first time during trial, or forfeit her right to a speedy trial and ask for another continuance "in hopes that witnesses may cooperate." Id. at 15:9-24. The City sought review of the dismissal via RALJ appeal and argued that the trial court abused its discretion when it dismissed this case under CrRLJ 4.7 and CrRLJ 8.3. (App. Q).

The Superior Court remanded the case to the Kirkland Municipal Court. (App. R). The Superior Court found the trial court had abused its discretion because it did not follow the two-prong standard of CrRLJ 8.3 that requires a showing of governmental misconduct or arbitrary action **and** prejudice to the rights of the accused which materially affected her rights to a fair trial. (App. S, 19). The Superior Court found that, while there was "significant evidence" of prejudice to the defendant, there was no governmental misconduct or arbitrary action. (App. S, 16). Without

first finding both requirements, the trial court should not have reached the extraordinary, or “nuclear,” remedy of dismissal. (App. S, 14).

E. ARGUMENT: WHY REVIEW SHOULD BE DENIED

Under RAP 2.3(d), discretionary review may only be accepted in the following circumstances:

- (1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court; or
- (2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (3) If the decision involves an issue of public interest which should be determined by an appellate court; or
- (4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

Stevens seeks review under RAP 2.3(d) (1), (3), and (4), but fails to demonstrate that the Superior Court erred or how a public interest is implicated. The Superior Court’s decision showed no conflicts with precedent, there was no public interest issue, and there was no departure from the accepted and usual course of judicial proceedings. Therefore, review should be denied because Stevens's case does not meet the criteria of RAP 2.3 for discretionary review.

1. THE SUPERIOR COURT DID NOT ERR IN APPLYING RALJ 9.1(B) SO AS TO CREATE AN ISSUE OF PUBLIC INTEREST MERITING APPEAL, OR SO FAR DEPART FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS THAT REVIEW BY THE COURT OF APPEALS IS WARRANTED.

The Superior Court shall accept those factual determinations supported by substantial evidence in the record (1) which were expressly made by the court of limited jurisdiction, or (2) that may reasonably be inferred from the judgment of the court of limited jurisdiction. RALJ 9.1(b) If there is substantial evidence in the record supporting the challenged facts, those facts will be binding on appeal. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. Id. at 644 (quoting State v. Halstein, 122 Wn.2d 109, 129, 857 P.2d 270 (1993)).

While the court has an obligation to reasonably infer facts from the trial court's judgment, it would be difficult to determine what should be inferred if the record is not clear. State v. Weber, 159 Wn. App. 779, 786, 247 P.3d 782 (2011). It is a long-recognized logical fallacy to draw an affirmative conclusion from a negative premise. Id. In other words, a court on review cannot infer a finding where no facts support such a

finding. If nothing in the record would support an inference, the reviewing court must only infer facts that have substantial evidentiary support. Id.

Here, the trial court did not enter written findings of fact and conclusions of law before or after the City filed a RALJ appeal. On January 13, 2015, after the trial court dismissed the case, the parties had the following exchange that shows that Stevens offered, and then accepted, a written order that “incorporates” the trial court’s oral ruling and found that to be sufficient:

MS. MCELYEA: All right, thank you. And, your Honor, in light of your ruling, when -- when could we anticipate it in writing?

THE COURT: That's up to counsel. If you want to present an order to me.

MS. MCELYEA: Okay.

MR. MAYBROWN: Okay, your Honor --

THE COURT: Be happy to review it and sign it.

MR. MAYBROWN: Your Honor, I have an order which reflects what the court has considered and incorporates the court's oral ruling. **If that would be sufficient with the court, that would be sufficient with the defense.** If the court wants us to prepare findings, we would prepare findings and conclusions. **I'm satisfied either way, but I'll defer to the court.** And perhaps the prosecutor would

THE COURT: Does the prosecutor wish to be heard?

MS. MCELYEA: No, your Honor.

(App. P, 16:11-17:3). Rather than draft findings of fact and conclusions of law, Stevens deferred to the trial court's decision to incorporate into a written order the court's oral ruling.

Generally, issues not raised in the trial court may not be raised for the first time on appeal. See RAP 2.5(a); State v. Moen, 129 Wn.2d 535, 543, 919 P.2d 69 (1996). Now, faced with the Superior Court's decision, Stevens asks this Court to grant discretionary review on the basis that the Superior Court could have inferred governmental misconduct or arbitrary action from the record, or alternatively remand back to the trial court for completion of written findings of facts and conclusions of law.

The Superior Court did not misapply or disregard the dictates of RALJ 9.1(b). It did not "reject"¹ the trial court's oral statements from which Steven's urged the Superior Court to infer governmental misconduct or arbitrary action. Rather, the Superior Court was quite clear that there was nothing in the trial court record from which to infer governmental misconduct. RP at 12:1-4 (App. S). The only evidence the Superior Court could point to in the exhaustive record of several hearings was the presumed prejudice to the defense. Id. at 17:14-18. The Superior Court agreed with Stevens that if there was something in the record that

¹ (App. T, 18:8).

would allow the Court to “infer” the trial court found governmental misconduct then it would certainly look at that part of the record. Id. at 16:5-12. But it does not exist. Id. at 16:9.

Stevens argues that the record is “replete with facts” that would have allowed the Superior Court to infer governmental misconduct. (App. T, 20). But on the other hand, Stevens also argues the case should be remanded for the trial court to complete written findings of facts and conclusions of law in order for Superior court to have a “full record” so the Court would have “beautiful detailed findings.” (App. S, 11:7-8). The Superior Court ruled there simply were not facts supporting a finding of governmental misconduct; the record was completely absent of any mention that filing additional witness list, or defense’s difficulties interviewing witnesses, rose to the level of “gross mismanagement or arbitrary action, or willful violations by the prosecuting agency. Id. at 12. The Superior Court found that both the trial court and Stevens conflated the City’s obligation with the witnesses’ behavior in finding a violation of CrRLJ 4.7. Id. The Superior court was very clear that the trial court was not using the well-established two-prong rule for dismissal under CrRLJ 8.3, and therefore it could not infer the trial court found governmental misconduct from the record presented. Id. at 16, 19.

Furthermore, remanding this case for entry of findings of fact and conclusions of law would not cure the issue. The practice of entering findings after the appellant has framed the issues on appeal lends to unfairness. State v. McGary, 37 Wn.App. 856, 861, 683 P.2d 1125 (1984). Where there are no written finding of facts and conclusions of law from the lower court, a reviewing court should not remand solely to complete the formality of adding written findings and conclusions where the reasons for the trial court's ruling were clearly evident from the court's oral ruling. State v. Wilson, 149 Wn.2d 1,9, 65 P.3d 657 (2003), quoting State v. Sonneland, 80 Wn.2d 343, 350, 494 P.2d 469 (1972).

The trial court should not now be allowed to fix its oversight by completing written findings after the issues have been illuminated and argued on appeal. To now argue the case be remanded to complete written findings of facts and conclusions of law reeks of unfairness. Both parties were given the option of completing the findings and both parties deferred to the trial court. Stevens' argument focuses on the "informal nature" of judging that takes place in municipal courts and how "completely unworkable" it would be to require municipal court judges to complete written findings on all cases. (App. T, 19). There is no discussion on how giving a road map to the trial court of what is needed to prove her argument is a fair use of the judicial process. Remanding the case for entry of

“beautiful and detailed findings” would be a misuse of court resources and invite revision of the trial court’s true ruling and reasoning. (App. S, 19:1-5). Moreover, more detailed findings of the facts on which the trial court relied would not illuminate the trial court’s ruling – it still ignored the established rule for dismissal in violation of CrRLJ 8.3(b) and case law.

The absence of published case law analyzing RALJ 9.1(b)(2) does not automatically create a “public interest” issue under RAP 2.3(d)(3). (App. T, 20). A “public interest” under RAP 2.3(d)(3) relates to something that has a wide-reaching effect. State v. Walter, 66 Wn. App. 862, 865, 833 P.2d 440 (1992). For example: whether the State has to prove a defendant actually supplied a fake identification to someone under 21, Id.; whether several statutes dealing with suspended licenses proscribe the same conduct, State v. Alfonso, 47 Wn. App. 121,122, 702 P.2d 1218 (1985); challenging the language of a traffic violation, State v. Prado, 145 Wn. App. 646, 186 P.3d 1186 (2008); court appointment of counsel for RALJ appeal, State v. Mills, 85 Wn. App. 285, 932 P. 2d 192 (1997); challenging the safely-off-the-roadway defense, State v. Hazard, 43 Wn. App. 335, 336, 716 P.2d 977 (1986); or appointment of an expert for a public defender case, City of Mount Vernon v. Cochran, 70 Wn.App. 517,521, 855 P.2d 1180 (1993). All of these cases had the potential to

affect numerous defendants in numerous cases, and were therefore within the “public interest.”

Here, Stevens has again provided no case law to support this position or even argument about how this could be a “public interest” under the RAP. There is an extensive list of cases in Washington that refer to RALJ 9.1(b) as the RALJ rule that governs the standards by which a case is to be reviewed by the Superior Court. State v. Ford, 110 Wn.2d 827, 829, 755 P.2d 806 (1988). A public interest is generated out of the effects that issue will have on the public as a whole or an issue that has never been addressed in the court of Washington. Walter, 66 Wn. App. at 865. It is not the analysis of a rule that would create a public interest. If that were the case our judicial process would grind to a halt because every rule could be turned into a public interest. The City asks that this Court to reject Stevens’s argument that the perceived absence of published case law on the analysis of RALJ 9.1(b)(2) presumptively creates a public interest and deny discretionary review on that basis.

2. THE SUPERIOR COURT APPLIED THE ABUSE OF DISCRETION STANDARD PROPERLY.

The Superior Court employed the proper standard of review and applied the abuse of discretion standard squarely within the accepted and usual course of judicial proceedings in harmony with existing precedent.

Therefore, no review by this Court is warranted under RAP 2.3(d)(1) or 2.3(d)(4).

Washington's courts have repeatedly articulated the proper standard of review when evaluating appeals based on alleged discovery violations and alleged prosecutorial misconduct. "The trial court's power to dismiss is discretionary and is reviewable only for manifest abuse of discretion... 'Discretion is abused when the trial court's decision is manifestly unreasonable, or is exercised on **untenable grounds** or for **untenable reasons.**'" State v. Micheilli, 132 Wn.2d 229, 240, 937 P.2d 587 (1997) (quoting State v. Blackwell, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993)). "A trial court's decision to dismiss under CrR 8.3(b) can be reversed only when a trial court has abused its discretion by making a decision that is manifestly unreasonable or based on **untenable grounds.**" State v. Wilson, 149 Wn.2d 1, 9, 65 P.3d 657 (2003). "Abuse of discretion requires the trial court's decision [denying defendant's motion to dismiss under CrR 8.3(b)] to be manifestly unreasonable or based on **untenable grounds** or **untenable reasons.**" State v. Athan, 160 Wn.2d 354, 375-76, 158 P.3d 27 (2007). "A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on **untenable grounds** or for **untenable reasons**, i.e., if the court relies on unsupported facts, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its

ruling on an erroneous view of the law." State v. Slocum, 183 Wn. App. 438, 449, 333 P.3d 541 (2014) (reviewing a trial court's evidentiary rulings for an abuse of discretion).

Where there is no showing of governmental misconduct or arbitrary action, the trial Court's dismissal of the case will be reversed. Blackwell, 120 Wn.2d at 832, 845 P.2d 1017 (citing State v. Underwood, 33 Wn. App. 833, 837, 658 P.2d 50 (1983)).

Here, the Superior Court articulated that an abuse of discretion occurs when the trial court's ruling is "made for untenable grounds or for untenable reasons." (App. S, 15). In applying that standard here, Superior Court determined that the trial court abused its discretion when it dismissed this prosecution. Id. The Superior Court judge found that the trial court dismissed the prosecution on the "untenable" basis of governmental misconduct and/or arbitrary action without ever finding governmental misconduct or arbitrary action, contrary to the dictates of CrRLJ 8.3 case law¹. Id. "There, there clearly is not evidence of gross mismanagement or arbitrary action, or willful violations by the prosecuting agency. Now, there is by the witnesses. But ... you're conflating the witnesses with the prosecuting entity." Id. at 12.

¹ [T]he untenable grounds here is that there is no finding by the trial court of a governmental misconduct or arbitrary action." (App. S, 15).

The Superior Court further clarified that, not only did the trial court fail to make such an express finding of governmental misconduct, but the record was devoid of facts from which he could reasonably infer such a finding:

I'm certainly happy to infer Mr. Maybrown, if you can point me to something in the record that, that would allow me to infer that the Court actually found governmental misconduct or arbitrary action on the basis of something...but there, **it isn't there**. What's there is an enormous litany of, of concern about prejudice to the defense. And I grant you that there, there is significant evidence of that. But [dismissal] requires both elements (arbitrary action or governmental misconduct and prejudice affecting defendant's right to a fair trial). It can't just be one.

(App S, 16).

The Petitioner asks this Court to adopt a labored reading of the Superior Court's ruling¹. (App. T, 19). The Petitioner would have this Court understand that the Superior Court only found an abuse of discretion because the trial judge did not make a **specific written or oral** finding of prosecutorial misconduct, and that failure is what made the dismissal

¹ "But the RALJ judge's application of the test makes no sense. The failure to make a written or oral finding of fact does not mean that the trial court judge had no tenable reason. A reason need not be written or spoken to be a "tenable" reason... it only needs to be something that can be "reasonably inferred" from the trial court's judgment. (App. T, 19:4-10).

“untenable” in the Superior Court’s eyes. (App. T, 19:4-10). This understanding is flawed. In reading the Superior Court’s ruling in its entirety, it is clear that the Superior Court determined that the trial court had abused its discretion by dismissing the case when “there clearly is not evidence of gross mismanagement or arbitrary action, or willful violations by the prosecuting agency¹” – explicit or implicit. Thus, it was not the trial court’s failure to say or write the words “prosecutorial misconduct”, but the lack of evidence supporting such a finding that the Superior Court deemed an abuse of the trial court’s discretion.

The Superior Court in this case properly announced and applied the abuse of discretion standard as articulated in well-established case-law. Washington courts regularly apply this standard as stated by the Superior Court (i.e. that a trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons). Because the Superior Court operated within the accepted and usual course of proceedings, and acted in accordance with well-established decisions by the Washington State Supreme Court, this case does not meet the requirements for discretionary review under RAP 2.3(d)(1) or 2.3(d)(4).

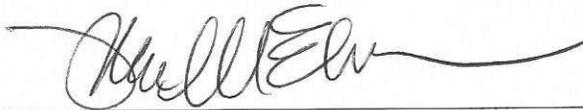
¹ (App. S, 12).

G. CONCLUSION

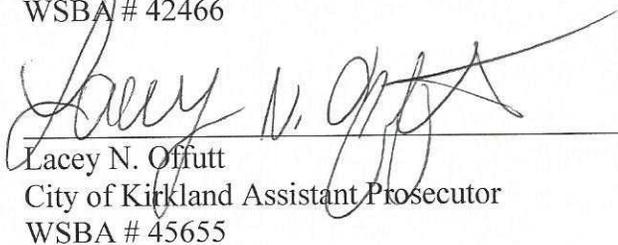
This case does not present an appropriate issue warranting discretionary review pursuant to RAP 2.3(d). For the foregoing reasons, the City asks this Court to deny the petitioner's motion for discretionary review.

DATED this 22th day of January 2016..

Respectfully Submitted,



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