

NO. 64513-7-I

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

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STATE OF WASHINGTON,

Respondent,

v.

DAVID W. MITCHELL,

Appellant.

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BRIEF OF RESPONDENT

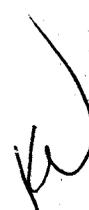
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## **I. ISSUES**

1. Was the evidence sufficient to prove the defendant viewed the victim for the purpose of gratifying sexual desire of a person?

2. Has the defendant shown that his trial attorney's representation was deficient and that as a result of that deficiency his defense was prejudiced?

## **II. STATEMENT OF THE CASE**

On January 5, 2009 the defendant, David Warren Mitchell, went to the Sun Deck tanning salon in Marysville. The defendant, who had been a customer of the tanning salon since the previous September, was escorted into room 3 for a 30 minute tanning session. A few minutes later Julie Hummer entered the tanning salon and was escorted to room 4, next to room 3. Ms. Mitchell's girlfriend who accompanied her was escorted to room 5. There were no other customers in the tanning salon at the time. Ms. Hummer locked the door to room 4 while she was in it. RP 13-14, 18, 33-40.

Ms. Hummer disrobed and tanned in the nude for 25 minutes. When she got out of the tanning bed and was wiping the sweat off her body something caught her eye. She looked up and saw the top of a man's head from the eyebrow on up to the top of

his head. The man's hands went up and he dropped, as dust flew from the top of the wall where his hands had been. Ms. Hummer was frightened; she dropped to the ground and dressed quickly. She then went to the front desk and told the receptionist, Stephanie Buell, what she had seen. Ms. Buell called her supervisor, and then called the police. RP 16-19, 26, 40-42.

Shortly thereafter the police arrived. Police contacted the defendant in room 3 and escorted him out. The defendant denied that he had looked over the wall into room 4. RP 43, 92-97, 108.

Room 3 and 4 were divided by an 8' high divider. There was a substantial amount of dust on the top of the divider. Police observed fresh fingerprints in the dust. In addition there was a chair placed with its back to the divider wall. There were shoe prints on the back of the chair. It appeared that someone has stood on the chair. Police compared the tread on the bottom of the defendant's shoes to the tread on the chair. Those tread prints matched. RP 66-72, 99-100, 109, 112.

The chair measured 2' 7" (31") to the top of the chair. The measurement between the top of the chair and the top of the wall was 5'5" (65"). According to Department of Licensing the defendant is 6'2" (74") tall. RP 112, 115.

The defendant was charged with one count of Voyeurism. 1 CP 101-102. The defendant was convicted after jury trial. 1 CP 3. After the jury returned its verdict the defendant retained a new attorney. The defendant's new attorney filed a motion to arrest judgment and for new trial pursuant to CrR 7.6. The motion was based on the argument that there was insufficient evidence to support the charge and that defense counsel was ineffective. 1 CP 43-62. The court denied both motions. 1 CP 18.

### **III. ARGUMENT**

#### **A. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE CHARGE.**

To convict the defendant of Voyeurism the State was required to prove (1) that the defendant knowingly viewed another person; (2) that the viewing was for the purpose of gratifying the sexual desire of any person; (3) that the viewing was without the second persons' knowledge and consent; (4) that the intimate areas of the second person were viewed under circumstances where he or she had a reasonable expectation of privacy, whether in a public or private place; and (5) the acts occurred in the State of Washington. 1 CP 75. The defendant argues the evidence was insufficient to support elements 1 and 2.

Evidence is sufficient to sustain a conviction if after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences are drawn in favor of the verdict, and most strongly against the defendant. State v. Gentry, 125 Wn.2d 570, 597, 888 P.2d 1105, cert. denied, 516 U.S. 843, 116 S.Ct. 131, 133 L.Ed.2d 79 (1995). Evidence which favors the defendant, and refutes the State’s evidence is not considered. State v. Randecker, 79 Wn.2d 512, 521, 487 P.2d 1295 (1971). Circumstantial and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The reviewing court defers to the trier of fact on matters of credibility and what weight to afford the evidence. State v. Stewart, 141 Wn. App. 791, 795, 174 P.3d 111 (2007). When reviewing the sufficiency of the evidence the Court need not itself be satisfied that the defendant is guilty beyond a reasonable doubt. Randecker, 79 Wn.2d at 518.

**1. There Was Sufficient Evidence That The Defendant Viewed The Victim As Defined By The Statute.**

Here the defendant argues there is insufficient evidence that the defendant “viewed” Ms. Hummer as that term is defined by statute. Viewed is defined as “the intentional looking upon of another person for more than a brief period of time, in other than a causal or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.” RCW 9A.44.115(1)(e).

The defendant argues the “view” element is not met because all Ms. Hummer saw was the top of the defendant’s head. That argument fails to consider the reasonable inferences that may be drawn from the evidence.

A rational trier of fact could have found the defendant “viewed” Ms. Hummer as that term is defined by the statute. Had the defendant stood upright on the back of the chair he would have been elevated more than nine inches above the top of the wall.<sup>1</sup> Even if he did not stand up fully he would have had a considerable amount of headroom in which to look over the top of the divider.

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<sup>1</sup> The chair was 31” and the defendant was 74” tall. The wall was 96” high.  $31+74=105-96=9$ ”.

Ms. Hummer saw the defendant's head from his eyebrows up in the process of dropping down and his hands flying up when she looked up at the top of the wall. A reasonable inference from that evidence was the defendant saw Ms. Hummer was going to look up at him while he was looking at her over the top of the divider and quickly dropped down into his room to avoid detection.

The evidence also showed that the defendant did not come out of his tanning room when he would have been expected to after his 30 minute tanning session. He was already in his room for about 10 to 15 minutes by the time Ms. Hummer went into her room. RP 45. Ms. Hummer tanned for 15 to 25 minutes. RP 15, 40. The defendant did not exit his room until the police escorted him out of it. Police arrived at the tanning salon 5 to 10 minutes after Ms. Hummer noticed the defendant. RP 22, 42. The jury could have reasonably inferred from that evidence that the defendant was avoiding Ms. Hummer, Ms. Buell, and the police because he knew that he had been looking into Ms. Hummer's room when he should not have been.

The defendant also argues the evidence the defendant viewed Ms. Hummer within the meaning of the statute because there is no evidence that he viewed her for more than a brief period

of time. He asserts that under the rule of lenity the phrase “more than a brief period of time” should be interpreted in favor of the defendant. BOA at 9, n.3. The rule of lenity is a rule of statutory interpretation which only applies if the Court determines the statutory language is ambiguous and that ambiguity cannot be clarified. In re Bowman, 109 Wn. App. 869, 875-876, 38 P.3d 1017 (2001), review denied, 146 Wn.2d 1001, 56 P.3d 566 (2002). It may not be applied where to do so would contravene the Legislature’s intent. Id.

When considering the meaning of a statute the court construes the statute to carry out the legislature’s intent. Burns v. Seattle, 161 Wn.2d 129, 140, 164 P.3d 475 (2007). The court first looks to the plain meaning of the statute, which is discerned from “the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009).

The phrase “for more than a brief period of time” is followed by the phrase “in other than a casual or cursory manner.” Considering the context of the statute the latter phrase modifies “brief period of time” to the kind of viewing resulting from a casual

glance. Thus a person casually glancing in the direction of another without the particular intent to see that person is excluded from the definition of views under the statute. A person who purposefully looks at another person with intent to view that person is not excluded, even when the view is for a short period of time.

This interpretation is consistent with the statutory scheme. The final bill report produced in 1998 when the Voyeurism statute was first enacted emphasized the resulting invasion of privacy when one viewed, photographed, or filmed a person without that persons' consent.<sup>2</sup> It did not emphasize the duration of the act of viewing, photographing, or filming.

In addition the Court has found evidence of a viewing for even a very short period of time is sufficient to satisfy the statutory requirements. In Fleming the defendant looked over the top of a toilet stall to see the victim using the facility. State v. Fleming, 137 Wn. App. 645, 154 P.3d 304 (2007). Although the defendant only briefly viewed the victim a majority of the Court held this was sufficient to satisfy the statute. Id. at 648.

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<sup>2</sup>See Substitute House Final Bill report at <http://dlr.leg.wa.gov/billssummary/default.aspx?year=1997&bill=1441>.

## **2. Alternatively There Was Sufficient Evidence That The Defendant Attempted To Commit The Crime Of Voyeurism.**

Even if the Court were to accept the defendant's interpretation of the statute, there was sufficient evidence to prove the defendant attempted to view Ms. Hummer while she was tanning. An attempt to commit a crime is established if there is evidence the defendant, with intent to commit a specific crime, does any act which is a substantial step toward the commission of that crime. RCW 9A.28.020(1). A substantial step is one that strongly corroborates the defendant's criminal purpose. State v. Sivins, 138 Wn. App. 52, 63, 155 P.3d 982 (2007). "Any slight act done in furtherance of a crime constitutes an attempt if it clearly shows the design of the individual to commit the crime." State v. Price, 103 Wn. App. 845, 852, 14 P.3d 841 (2000), review denied, 143 Wn.2d 1014, 22 P.3d 803 (2001).

Here there is direct and circumstantial evidence that the defendant stood on the back of a chair and held onto the top of the room divider in order to elevate himself above the top of the room divider. A reasonable inference from that evidence is that he did so in order to look into Ms. Hummer's tanning room. This act is much

more than necessary to establish the defendant took a substantial step toward the act of voyeurism.

**3. There Was Sufficient Evidence To Prove That The Defendant Acted With The Purpose Of Arousing Or Gratifying Sexual Desires Of Any Person.**

The defendant also argues that the evidence was insufficient to support the element that he acted for the purpose of arousing or gratifying the sexual desires of any person. A rational trier of fact could conclude that since the defendant had been a patron of the salon for approximately four months at the time of the incident that he would have been familiar with the procedures for using the tanning bed. That includes the likelihood that anyone using the bed would disrobe, exposing the intimate areas of her body. The evidence also showed the defendant had an ankle injury, and that it could have caused him some pain to balance on the top of the chair. RP 146, 148. The jury could conclude from that evidence the defendant would have to have had the strong motivation such as that produced by the desire for sexual gratification in order to risk that kind of pain.

The defendant poses alternative explanations for climbing on the chair and peering over the wall. BOA at 9. Those explanations are irrelevant. Since the analysis requires the Court to draw all

reasonable inferences in the State's favor and most strongly against the defendant, other possible reasons for his conduct does not undermine the sufficiency of the evidence that otherwise supports an element of the offense. State v. VJW, 37 Wn. App. 428, 433-434, 680 P.2d 1068, review denied, 102 Wn.2d 1001 (1984) (rejecting the argument that evidence of the defendant's intent in a prostitution case was insufficient because there may be innocent explanations for the defendant's conduct when a jury could reasonably infer the defendant's intent from her conduct), State v. Brockob, 159 Wn.2d 311, 340-341, 150 P.3d 59 (2006) (where a jury is presented with both innocent and criminal explanations the jury is entitled to infer guilt).

Similarly, the lack of direct evidence that the defendant knew there was a female next door does not support the defendant's argument. The State is only required to prove the act was done for the purpose of sexual arousal, not that actual arousal occurred. State v. Diaz-Flores, 148 Wn. App. 911, 919, 201 P.3d 1073, review denied, 166 Wn.2d 1017, 210 P.3d 1019 (2009). Whether the defendant actually knew there was a woman next door is

therefore not relevant.<sup>3</sup> It is only relevant that he had reason to believe that he might see someone who would arouse or gratify his sexual desires and that he acted in order to fulfill that hope.

Even if the State had to prove the defendant knew there was a woman next door, there was circumstantial evidence from which the jury could have inferred that the defendant actually knew that he would be viewing a woman when he peered over the room divider. Ms. Hummer and her female friend came into the salon after the defendant. Because the walls to the tanning rooms do not reach the ceiling the jury could infer that they were not sound proofed, and the defendant would have heard any discussion between Ms. Hummer and Ms. Buell as Ms. Hummer was escorted to the tanning room. Thus the jury could have believed the defendant was aware there were females on either side of him based on the quality of the women's voices.

Finally, the defendant points to the few cases which have considered this issue in the context of the voyeurism statute to support his position. Although those cases are helpful when the

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<sup>3</sup> This argument should also be rejected because taken to its logical extension it would require proof that the defendant was actually aroused by the person who was ultimately viewed. The defendant's preferences are not an element of the offense.

evidence is similar to the case under review, they are not that helpful when, like the case here, the facts are completely different. To the extent that they are at all helpful they support the conclusion that the evidence was sufficient to support the charge here.

While evidence the defendant acted for the purpose of sexual gratification was sufficient in Diaz-Flores it was also apparently sufficient in Fleming. In Diaz-Flores there was graphic direct evidence the defendant was actually sexually aroused. Diaz-Flores, 148 Wn. App. at 914. In Fleming the evidence was only that the defendant was peering into an area he had no right to look into. Fleming, 137 Wn. App. at 648. Here the evidence of the defendant's purpose is even stronger than in Fleming. The defendant was looking into a room one could reasonably expect to find a fully disrobed person, not just someone partially disrobed sitting on a toilet.

Evidence was sufficient on the question of whether the defendant viewed Ms. Hummer as that term is defined by statute is also supported by Fleming and State v. Stevenson, 128 Wn. App. 179, 114 P.3d 699 (2005). In Fleming the Court found the evidence was sufficient even though "the encounter did not last long." Fleming, 137 Wn. App. at 648.

In Stevenson the trial court at a bench trial entered findings that the defendant “looked into the shower” where his daughter was showering, and “viewed a part of his daughter’s elbow.” The trial court found the victim was in the shower about nine minutes before noticing the defendant. It made no findings regarding how long the defendant had been looking into the shower. Despite that the Court found the evidence sufficient to support the conclusion that he intentionally viewed the victim for more than a brief period of time. Stevenson, 128 Wn. App. at 194-195.

Although there was no direct evidence regarding the amount of time the defendant viewed Ms. Hummer, the jury could reasonably infer from his hasty retreat that he viewed her for a period of time long enough for him to be aware she was in the room, and that she was going to discover his presence. Under Stevenson and Fleming that amount of time is sufficient to support the conclusion that the defendant viewed Ms. Hummer “for more than a brief period of time, in other than a casual or cursory manner”.

**B. THE DEFENDANT IS NOT ENTITLED TO A NEW TRIAL ON THE BASIS HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.**

Before trial the State moved for an order prohibiting the defense from inquiring into what if any medications Ms. Hummer was taking on the incident date. The court resolved the matter by requiring the deputy prosecutor to determine if Ms. Hummer had been on medications, and if so what. The court stated that if she had been using alcohol, illicit drugs, or prescription narcotics that may have altered her perception the defense was entitled to inquire into that subject. RP 5-6.

Without further discussion on the record the State elicited from Ms. Hummer that she took prescription medication for chronic hip pain at the time of the incident and at the time of her testimony. She was prescribed more Methadone at trial than she had been at the time of the incident. RP 23-25. On cross-examination defense counsel elicited from Ms. Hummer that in addition to methadone she took OxyContin and Oxycodone. The only limitation her doctor placed on her while taking these drugs was drinking. Ms. Hummer admitted that they were "pretty strong painkillers." RP 28.

Defense counsel had originally listed Dr. Wardell to testify regarding the defendant's ankle injury and his limitations due to that

injury. 2 CP \_\_\_ ( sub. 20 Amended Witness List). After Ms. Hummer's testimony defense counsel sought to enlarge the scope of Dr. Wardell's testimony to include why OxyContin and OxyCodone are prescribed and limitations placed on a person taking those drugs. RP 128-129.

In an offer of proof Dr. Wardell testified that he was a foot and ankle surgeon. He prescribed Oxycodone for acute pain. He did not prescribe OxyContin due to concerns about abuse. Dr. Wardell further testified that he does not treat patients for chronic pain and that he was not familiar with Ms. Hummer. RP 136-141.

As to the effects of Oxycodone he testified:

There are all kinds of side-effects. They can nauseate people. It could make them constipated. They can give them loss of coherence, I guess is a way to put it. It's similar to – it's a depressant similar to like alcohol. So the more you take, the more you become impaired.

RP 136.

At the conclusion of Dr. Wardell's testimony the trial judge ruled that he would not be able to testify regarding either OxyContin or Oxycodone. The court ruled evidence OxyContin was addictive was not relevant in that case. The court also ruled that the doctor's testimony regarding side-effects was also not relevant because the

doctor could only discuss the subject in general terms. He could not relate the subject to the dose Ms. Hummer was taking, what tolerance may have been built up, and whether or not as a treating physician he had seen those effects in his own patients. As a second ground for his ruling the trial judge stated that the defense had not previously identified the doctor as an expert on that subject. The doctor was permitted to testify to the facts previously identified on the defense witness list. RP 142-143.

The defendant argues he is entitled to a new trial because his trial counsel failed to adequately determine the nature and extent of Ms. Hummer's drug use during cross-examination, and provide the State with pre-trial notice of his intent to call Dr. Wardel as an expert on the issue of the effect of narcotics on a person.

A defendant who asserts he received ineffective assistance of counsel bears the burden to prove both that counsel performance was deficient and that deficient performance prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The defendant is not entitled to a new trial if he fails to establish either prong. In re Riley, 122 Wn.2d 772, 780, 863 P.2d 554 (1993).

The court is highly deferential when evaluating counsel's performance. "It is all too tempting for a defendant to second-guess counsel's assistance after conviction or sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. Where the defendant alleges his attorney's deficient performance was based on a failure to investigate, the court considers whether the decision not to investigate was reasonable under all of the circumstances of the case, including the strength of the State's case. Id. at 691, In re Davis, 152 Wn.2d 647, 739, 101 P.3d 1 (2004).

Defense counsel interviewed Ms. Hummer before trial. At that time she refused to disclose what if any medications she had been taking at the time of the incident. Although the trial judge suggested that defense counsel could have made a motion to compel that information from Ms. Hummer, defense counsel could have reasonably made the tactical decision to not pursue it. Counsel's legitimate trial tactic will not support a claim of ineffective assistance of counsel. State v. McFarland, 127 Wn.2d 322, 336, 899 P.2d 1251 (1995).

There was no direct evidence the defendant actually viewed Ms. Hummer for any period of time. Moreover there was no direct evidence any of the defendant's actions were "for the purpose of arousing or gratifying the sexual desire of any person." Counsel did have information that what Ms. Hummer saw was brief, and that she had not worn eye protection when she was in the tanning bed. From this information defense counsel could have reasonably determined additional investigation was unnecessary to determine what if any medications she was taking. Ms. Hummer was certainly not overstating what she had seen. The effect of light rays from the tanning bed on her unprotected eyes could have affected what little she did observe. Given this defense counsel could have made a tactical decision based on a belief that the State's case was weak enough already, and further inquiry into medications she may have been taking would not develop information that could discredit her testimony any more than the information already available to him.

Trial counsel's decision to limit cross examination of Ms. Hummer under the circumstances may well have been tactical. "A decision not to cross examine a witness is often tactical because counsel may be concerned about opening the door to rebuttal or

because cross examination may not provide useful to the defense.”

In re Brown, 143 Wn.2d 431, 451, 21 P.3d 687 (2001).

Here counsel may not have pursued the line of questioning that the defendant argues he should have because it would not have been productive to do so. Counsel did not know what Ms. Hummer may have said on cross-examination on that subject. However, because she testified that she was taking the same kind of medication on the date she testified defense counsel was aware of how those medications affected her on the date in question. Evidence she took narcotics was only relevant to what affect they actually had on her ability to perceive and relate events.

There is nothing to suggest from the record that Ms. Hummer’s powers of perception were in any way affected at trial. Counsel apparently understood that because at one point he asked Ms. Hummer if the medications affected her, and then quickly withdrew the question by posing another question. RP 28. Counsel’s substitute question elicited evidence the drugs Ms. Hummer took were “pretty strong painkillers” that she had been on for a long time. That evidence permitted counsel to invite the jury to infer some effect on her ability to perceive, without risking any direct evidence that they do not.

As discussed below, even if counsel had laid a foundation in order to permit Dr. Wardel to testify regarding the effects of the two medications he was familiar with, at best testimony on that subject could have been neutral. Counsel certainly was not deficient when he did not inquire into a subject on cross examination that was not going to help the defense.

The defendant also fails to establish the requisite prejudice necessary to afford him a new trial. To establish prejudice resulting in conviction the court must ask if there is a reasonable probability that absent the alleged error the jury would have had a reasonable doubt regarding the defendant's guilt considering the totality of the evidence. Strickland, 466 U.S. at 695. The defendant argues that evidence from either Dr. Wardel or some other expert would have produced evidence from which the jury could have questioned Ms. Hummer's credibility.

Both Dr. Wardel and Dr. Julien spoke in terms of what medications Ms. Hummer took could have done. 1 CP 37-38; RP 136. There is no evidence that had they known what dosage Ms. Hummer took, and when she took it, that either could predict with any certainty what she would have seen while toweling off from a

session in a tanning bed. At best Dr. Julien stated she should not be driving or operating heavy equipment. 1CP 38.

Unlike either doctor the jury had the advantage of seeing Ms. Hummer testify. They also had evidence that corroborated her testimony. She testified that she saw a man's hands fly up and head go down. The dust on the top of the divider was disturbed at a place where she said she saw those hands. Additionally, defense counsel did test her credibility in cross examination. Counsel inquired into her lack of eye protection, the brief length of time she observed the person's forehead, the discrepancy between her statement and trial testimony regarding the gender of the person she reported seeing, and her failure to hear any noise suggesting a person getting on a chair, or quickly getting off a chair. RP 25-31. Given the totality of the evidence it is not likely that testimony from an expert regarding the possible effects of the medications Ms. Hummer took could have so affected her credibility that the jury would have had a reasonable doubt as to the defendant's guilt.

**IV. CONCLUSION**

For the forgoing reasons the State asks the Court to affirm the defendant's conviction.

Respectfully submitted on July 13, 2010.

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July 13, 2010

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**Re: STATE v. DAVID W. MITCHELL  
COURT OF APPEALS NO. 64513-7-1**

2010 JUL 14 AM 9:52  
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*[Handwritten signature]*

Dear Mr. Johnson:

The respondent's brief does not contain any counter-assignments of error. Accordingly, the State is withdrawing its cross-appeal.

Sincerely yours,

*Kathleen Webber*

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Deputy Prosecuting Attorney**

cc: David Allen  
Attorney for Appellant

I have enclosed a properly stamped envelope addressed to the attorney for the defendant that contains a copy of this document.

I declare under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office

the 13<sup>th</sup> day of July 2010  
*[Handwritten signature]*

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

THE STATE OF WASHINGTON,

Respondent,

v.

DAVID W. MITCHELL,

Appellant.

No. 64513-7-1

AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 13<sup>th</sup> day of July, 2010, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I  
ONE UNION SQUARE BUILDING  
600 UNIVERSITY STREET  
SEATTLE, WA 98101-4170

DAVID ALLEN  
ATTORNEY AT LAW  
600 UNIVERSITY STREET, SUITE 3020  
SEATTLE, WA 98101

2010 JUL 14 AM 9:52

COURT OF APPEALS  
STATE OF WASHINGTON  


containing an original and one copy to the Court of Appeals, and one copy to the attorney for the Appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 13<sup>th</sup> day of July, 2010.

A handwritten signature in black ink, appearing to read "Diane K. Kremenich", written over a horizontal line.

DIANE K. KREMENICH  
Legal Assistant/Appeals Unit