

NO. 64957-4-I

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

STATE OF WASHINGTON,

Appellant,

v.

D.R.,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

BRIEF OF RESPONDENT

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A. COUNTERSTATEMENT OF ISSUES

1. Under King County Local Juvenile Court Rule 7.14, “[t]he Court may dismiss an information if it is established that there has been an unreasonable delay in referral of the offense by the police to the prosecutor and respondent has been prejudiced.” Here, the detective knew that respondent D.R. was a suspect in two burglaries committed within two hours of each other in the same neighborhood, but investigated the crimes sequentially rather than simultaneously, and referred one case to the prosecutor’s office much later than the other. Where D.R.’s disposition on the first burglary would have been admissible at trial on the second, and where D.R. could have received a deferred disposition on both charges had they been joined, did the juvenile court act within its discretion in dismissing the second case under LJuCR 7.14?

2. Criminal Rule 8.3 provides that a trial court “may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused.” Did the juvenile court act within its discretion by finding government delay prejudiced D.R. and dismissing the second prosecution under CrR 8.3(b)?

3. Under CrR 4.3.1, a charge must be dismissed if a defendant has already been tried for a “related offense.” Two or more offenses are “related offenses” if they are “within the jurisdiction and venue of the same court and are based on the same conduct.” Where D.R. allegedly committed two burglaries within two hours in the same neighborhood, were the charges subject to mandatory joinder?

B. STATEMENT OF THE CASE

At about 1:10 p.m. on May 18, 2009, David Reis discovered a burglary in progress in his home at 12001 Renton Avenue South, in Skyway. CP 4. The three perpetrators fled, and Mr. Reis called the police. The King County Sheriff’s Office documented the incident under case number 09-118019. CP 5.

On the same date, just two hours later, another burglary occurred just a few blocks from Mr. Reis’s home, at the home of Nancy Goree. CP 5, 26. Sheriff’s deputies apprehended three people who were chased from the scene. They documented this incident under case number 09-118138. CP 5.

Both incidents were assigned to Deputy Neil Woodruff for follow-up investigation. Supp. CP ____, Sub no. 35 at 3. Deputy Woodruff received the Goree case on May 20 and the Reis case on

May 21. Id. On May 21, Detective Woodruff noted that appellant D.R. was a suspect in both cases. Id. at Exhibit III. Indeed, Mr. Reis had chosen D.R. in a photo montage and Ms. Goree had identified him in a show-up. Id.; CP 18.

Even though Detective Woodruff knew on May 21, 2009 that D.R. was a suspect in two burglaries that occurred on the same day in the same neighborhood, he did not investigate the cases in parallel. Rather, he investigated the incidents sequentially, working on the Goree burglary from the end of May through July 6, and the Reis burglary from July 13 to August 13. Id. at Exs. II, III. No reason is listed in the incident report for waiting seven weeks to begin the Reis investigation, and the prosecutor did not provide a reason during the motion to dismiss at issue here. Deputy Woodruff referred the Goree burglary to the prosecutor's office on July 6, but apparently did not alert the prosecutor's office that he was still investigating a related burglary for the same defendant in the same neighborhood on the same date. Deputy Woodruff referred the Reis burglary to the prosecutor's office on August 13, 2009. Id.

The following is the investigation timeline for both cases, as outlined in Deputy Woodruff's follow-up reports:

Date	Goree burglary	Reis burglary
May 20	Received case	
May 21		Received case; noted that D.R. was suspect in both this case and Goree case; ordered 911 tape; Reis picked D.R. in photo montage
May 27	Returned items to Ms. Goree and spoke with her	
May 28	Ordered 911 tapes and photographs	
June 1	Requested and received suspects' criminal histories	
June 3	Interviewed a witness	
June 17	Received 911 tape and made copies; interviewed another witness	
June 22	Interviewed Ms. Goree's daughters	
July 6	Completed certification of probable cause; forwarded case to prosecutor	
July 13		Packaged 911 tape
July 21		Called D.R., spoke to his mother
August 11		Interviewed D.R., who denied knowledge of burglary; updated latent request; requested and received criminal history

August 12		Spoke with AFIS, who said there were no developed prints at the scene so they were unable to process request
August 13		Spoke with Reis about value of missing item; referred case to prosecutor

Id. at exs. II, III (follow-up reports of Deputy Woodruff).

The prosecutor's office filed charges in the Goree burglary on July 30, 2009. D.R. moved for a deferred disposition, which was granted on September 23, 2009.

The prosecutor's office filed an information in the Reis burglary on September 21, 2009. CP 1. It did not notify defense counsel or the court that there were two pending related cases. Instead, the Goree charge was deferred two days later without having been joined with the Reis charge. On December 23, the prosecutor notified defense counsel that it intended to offer evidence of the Goree burglary at the trial on the Reis burglary under ER 404(b). Supp. CP ____, sub no. 35, at 4.

D.R. moved to dismiss the Reis burglary charge pursuant to King County LJUCR 7.14, CrR 8.3(b), and CrR 4.3.1, arguing that the State had mismanaged the case by not investigating it in parallel with the related burglary and by filing the charges

separately months apart. Supp. CP ____, sub no. 35; RP 11. D.R. argued he was prejudiced because he could not receive a deferred disposition on both charges since the State had filed them separately. He further argued he was prejudiced by the fact that the State would be introducing his stipulation on the Goree burglary at trial for the Reis burglary. RP 9-10. D.R. also argued that dismissal was required because the State violated the mandatory joinder rule by filing the charges separately. Supp. CP ____, sub no. 35.

The juvenile court granted the motion under both LJuCR 7.14(b) and CrR 8.3(b). CP 51-52; RP 25-26. The court ruled D.R. showed he was prejudiced by the unreasonable delay because the Goree burglary was admissible in the Reis case under the "common scheme or plan" rule, and its admission would be especially prejudicial since D.R. had stipulated to committing that crime. RP 14-18. The State agreed the prior disposition would be admissible under ER 404(b) and ER 609. RP 14.

The court also ruled D.R. was prejudiced because he could not receive a deferred disposition for both burglaries given the delay in charging the Reis incident. The State conceded that the cases would have been "joined as a common scheme" had they

been referred at the same time. RP 4. The court concluded a deferred disposition probably would have been granted on both charges had they been filed as part of the same information. RP 23. Thus, D.R. was prejudiced by the unreasonable delay on the Reis incident. RP 23.

Before resorting to dismissal as a remedy, the juvenile court suggested the parties agree to join the two charges under the same deferred prosecution. RP 5-7. D.R. was abiding by the requirements of the deferred disposition on the Goree matter, attending G.E.D. classes and testing negative for drug use. RP 27. The court noted, “we have to be more cognizant” of the rehabilitative goal of the Juvenile Justice Act. RP 23. The State refused to join the charges in a deferred prosecution, so the trial court dismissed the Reis charge. RP 7-8; CP 51-52.

The State appeals.

C. ARGUMENT

The trial court correctly dismissed this matter under LJuCR 7.14(b) and CR 8.3(b). Even if only one of the trial court’s bases is correct, the dismissal should stand. In this case both of the justifications are correct. Furthermore, dismissal was required under CrR 4.3.1, which provides a third independent basis for

affirming the juvenile court's ruling. Finally, the trial court's order is reviewable only for manifest abuse of discretion. The juvenile court operated well within its discretion, especially in light of the rehabilitative purpose of the Juvenile Justice Act. Accordingly, D.R. asks this Court to affirm the trial court's order of dismissal.

1. THE STATE'S SEQUENTIAL INVESTIGATION OF THE GOREE AND REIS BURGLARIES CONSTITUTED UNREASONABLE DELAY UNDER LJuCR 7.14(b) AND MISCONDUCT UNDER CrR 8.3(b) .

a. The State's sequential handling of the related burglaries created unreasonable delay in violation of LJuCR 7.14(b). King County Local Juvenile Court Rule 7.14 provides, in relevant part, "The Court may dismiss an information if it is established that there has been an unreasonable delay in referral of the offense by the police to the prosecutor and respondent has been prejudiced." LJuCR 7.14(b). The rule is "aimed at promoting the juvenile justice system's goal of prompt adjudication and is consistent with other rules that establish shorter time limitations for processing juvenile cases." State v. Chavez, 111 Wn.2d 548, 555, 761 P.2d 607 (1988). This Court will not disturb a trial court's ruling under LJuCR 7.14 unless it concludes the ruling was a manifest abuse of discretion. Id. at 562.

The State argues that the delay here was not unreasonable because Deputy Woodruff referred the case to the prosecutor within two weeks of finishing his investigation. But while a two-week lag at that stage would have been prima facie evidence of unreasonable delay, see LJuCR 7.14(b), it is not the only evidence the trial court may consider. State v. Terrell, 38 Wn. App. 187, 684 P.2d 1318 (1984); State v. Nitschke, 33 Wn. App. 521, 655 P.2d 1204 (1982).

In Terrell, for example, the prosecutor's office received the referral six days after the police completed their investigation. Terrell, 38 Wn. App. at 190. Thus, that particular lag did not constitute prima facie evidence of unreasonable delay. Id. However, this Court noted that the trial court had the discretion to consider the delay that occurred after this point in determining whether there was unreasonable delay for purposes of LJuCR 7.14(b). Id.

Similarly in Nitschke, the defendant did not take issue with the gap between completion of investigation and referral. Rather, he argued that the delay between referral and filing was unreasonable. Nitschke, 33 Wn. App. at 525. This Court implicitly held that this time period was relevant to the question of

unreasonable delay, but ruled the defendant was not prejudiced by the delay. Id.

The State's reliance on Cantrell is unavailing. State v. Cantrell, 111 Wn.2d 385, 758 P.2d 1 (1988). There, the Supreme Court held the trial court erroneously read the rule as stating that a 14-day gap between referral and filing constituted prima facie evidence of unreasonable delay, rather than the gap between investigation and referral. Id. at 388. The case therefore speaks only to the "per se" portion of the rule, and says nothing about the general prohibition on unreasonable delay.

The juvenile court here properly considered the totality of circumstances in concluding there was unreasonable delay under LJuCR 7.14(b). The nearly eight-week period of inaction on the Reis investigation in itself constituted unreasonable delay. On top of this mismanagement, the detective failed to alert the prosecuting attorney's office when referring the Goree burglary that there was another residential burglary involving D.R. on the same day. And the prosecutor's office failed to take any action on the Reis referral until after D.R. had already set the first referral for a motion for deferred disposition. Nor did it alert defense counsel on the Goree burglary to the existence of the impending charge for the Reis

burglary. The trial court operated well within its discretion in finding unreasonable delay in this case.

b. The State's sequential handling of the related burglaries constituted mismanagement in violation of CrR 8.3(b). Criminal Rule 8.3 provides that a trial court "may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused." CrR 8.3(b). In order for dismissal to occur, State's actions "need not be of an evil or dishonest nature; simple mismanagement is sufficient." State v. Michielli, 132 Wn.2d 229, 239, 937 P.2d 587 (1997). This Court reviews a trial court's dismissal order under CrR 8.3(b) for abuse of discretion. State v. Brooks, 149 Wn. App. 373, 384, 203 P.3d 397 (2009). It will not reverse the lower court's ruling unless it is "manifestly unreasonable," based on "untenable grounds," or made for "untenable reasons." Id.

The juvenile court properly found that the State mismanaged D.R.'s related cases. The detective knew on May 21 that D.R. was a suspect in both of the May 18 burglaries, which occurred in the same neighborhood within a couple of hours. Yet the detective investigated only the Goree burglary for several weeks, and did not

begin the Reis investigation until a week after he referred the Goree case to the prosecutor's office.

The prosecutor posits that the delay in this case did not constitute mismanagement because the detective "followed standard procedures by requesting the 911 tape, a fingerprint analysis, and D.R.'s criminal history" and that his attempt to interview D.R. "added to the length of the investigation." But the problem is not that the detective took these steps; the problem is that he did nothing for nearly eight weeks before taking these steps. Unlike in the case the State cites, the delay was clearly not due to officer training days and vacations, because the officer was working on the Goree case during these eight weeks, and could have been working on the Reis case simultaneously. See Br. of Appellant at 15 (citing State v. Alvin, 109 Wn.2d 602, 604, 746 P.2d 807 (1987) (failure of detective to reassign case before leaving for training and vacation did not constitute mismanagement)).

Michielli is instructive. There, the prosecutor filed an information charging the defendant with one count of second-degree theft. Michielli, 132 Wn.2d at 232-33. Three and a half months later, and five days before the scheduled trial date, the prosecutor moved to amend the information to add four counts. Id.

at 243. The State had had sufficient information to charge these counts months earlier, but had failed to do so. The delay constituted mismanagement as there was no “reasonable explanation” for waiting so long to add the new charges. Id. at 244.

Similarly here, the detective knew on May 21 that D.R. was a suspect in two related burglaries, yet investigated and referred them sequentially rather than simultaneously. The State gave no reasonable explanation for his doing so. The juvenile court operated well within its discretion in finding mismanagement.

2. THE JUVENILE COURT PROPERLY FOUND THAT THE DELAY PREJUDICED D.R.

The juvenile court found D.R. was prejudiced in two ways. First, he was unable to obtain a deferred disposition on the Reis charge. Second, his admission to the Goree burglary would have been admissible at his trial on the Reis burglary. The trial court’s findings of prejudice are discretionary and may be overturned only if this Court finds manifest abuse of discretion. Michielli, 132 Wn.2d at 240. If the trial court acted within its discretion to find prejudice on either ground, this Court should affirm.

As the trial court found, D.R. was prejudiced by the delay because he was unable to obtain a deferred disposition on the Reis

burglary, and instead now has a conviction on his permanent record, contrary to the purposes of the Juvenile Justice Act. The State agrees that “[b]y granting a deferral, the court may better meet the needs of a juvenile while promoting the rehabilitative and accountability goals of the Juvenile Justice Act.” Br. of Appellant at 22. However, it argues that the trial court abused its discretion because “D.R. could not have obtained a deferred disposition on two separate cases.” *Id.* But that is precisely the point. These related burglaries would not have been “separate cases” if the State had not mismanaged them. The prosecutor conceded that the cases would have been “joined as a common scheme and thus [D.R.] would have had the opportunity to seek the deferred disposition” had they been referred at the same time. RP 4. Thus, deferral of both counts would have been proper.

The State then argues that the prejudice is speculative because it is not certain that a judge would have granted a deferred disposition on both charges had they been joined. Br. of Appellant at 25. But the trial court concluded a deferred disposition probably would have been granted on both counts had they been filed as part of the same information. RP 23. Thus, the court properly

found that D.R. was prejudiced by the unreasonable delay in the Reis case.

The trial court also properly found that D.R. was prejudiced by the unreasonable delay because evidence of the Goree burglary was admissible in the Reis case under the “common scheme or plan” rule, and its admission would be especially prejudicial since D.R. had stipulated to committing that crime. RP 14-18. The State agreed the prior disposition would be admissible under ER 404(b) and ER 609. RP 14.

The State now reverses course and argues the prior disposition would not have been admissible. Br. of Appellant at 18-22. The State is wrong. Under ER 404(b), evidence of a defendant’s actions on the day of the incident is admissible to show state of mind. State v. Turner, 29 Wn. App. 282, 290, 627 P.2d 1324 (1981). The evidence also would have been admissible to show intent or motive. ER 404(b); State v. Brockob, 159 Wn.2d 311, 349, 150 P.3d 59 (2006) (intent); State v. Price, 126 Wn. App. 617, 639, 109 P.3d 27 (2005), review denied 155 Wn.2d 1018.

Furthermore, the Goree burglary was admissible under the res gestae or same transaction rule to “complete the story of the crime on trial by proving its immediate context of happenings near

in time and place.” State v. Tharp, 27 Wn. App. 198, 204, 616 P.2d 693 (1980), aff’d 96 Wn.2d 591 (1981) (quoting E. Cleary, McCormick on Evidence § 190, at 448 (2d ed. 1972)).

This Court reaffirmed this principle more recently in Lillard:

A defendant cannot insulate himself by committing a string of connected offenses and then argue that the evidence of the other ... crimes is inadmissible because it shows the defendant’s bad character, thus forcing the State to present a fragmented version of the events. Under the *res gestae* or “same transaction” exception to ER 404(b), evidence of other crimes or bad acts is admissible to complete the story of a crime or to provide the immediate context for events close in both time and place too the charged crime.

State v. Lillard, 122 Wn. App. 422, 431-32, 93 P.3d 969 (2004).

Finally, the evidence would have been admissible because it was part of a common scheme or plan. Saldivar v. Momah, 145 Wn. App. 365, 395, 186 P.3d 1117 (2008). Saldivar involved allegations that twin brothers who were doctors impersonated each other and raped patients. The trial court granted the defendant’s motion to exclude evidence of prior incidents of impersonation, because they allegedly occurred at a different location. Id. at 394. This Court reversed, holding the trial court abused its discretion in excluding the evidence. “Because the evidence proffered would show that the Momah brothers engaged in a common scheme or

plan in which they impersonated each other in their medical capacity, it is admissible under ER 404(b)." Id. at 395.

The State also argues that evidence of the Goree burglary is not admissible under ER 609. Br. of Appellant at 19. But "when a prior conviction has been admitted as substantive evidence under ER 404(b), it is admissible as a matter of course for impeachment under ER 609(a)." State v. Anderson, 42 Wn. App. 659, 666, 713 P.2d 145 (1986). In any event, the prior conviction would have been prejudicial no matter which rule it was admitted under.

The State is also wrong in contending that the court merely found prejudice in "the ability of a prosecutor to seek admission of a prior conviction." Br. of Appellant at 22. The prosecutor was not just able to seek admission of the Goree burglary; it did seek admission of the Goree burglary, and the trial court ruled the evidence admissible. CP 52; Supp. CP ____, sub no. 35; RP 17-18. For this reason, too, the trial court properly found that the delay in the Reis case prejudiced D.R. Accordingly, dismissal was proper under both LJuCR 7.14(b) and CrR 8.3(b).

3. DISMISSAL WAS PROPER BECAUSE THE CHARGES WERE SUBJECT TO MANDATORY JOINDER.

If this Court rules that the trial court abused its discretion both with respect to LJuCR 7.14(b) and with respect to CrR 8.3(b), it should affirm anyway because of a mandatory joinder violation. Michielli, 132 Wn.2d at 242 (reviewing court can “affirm the lower court’s judgment on any ground within the pleadings and proof”); State v. Williams, 148 Wn. App. 678, 687 n.8, 201 P.3d 371 (2009) (Court of Appeals may affirm on any ground supported by the record).

A charge must be dismissed if a defendant has already been tried for a “related offense.” CrR 4.3.1(b)(3). Because D.R. was already tried for the Goree burglary, CrR 4.3.1 provides another basis for dismissal of the Reis charge, which was a related offense.

The State argues the two burglaries are not “related offenses” subject to mandatory joinder. Br. of Appellant at 26-27. The State is wrong. Two or more offenses are “related offenses” if they are “within the jurisdiction and venue of the same court and are based on the same conduct.” CrR 4.3.1(b)(1). The Reis and Goree burglaries, committed two hours apart in the same neighborhood, meet this definition.

State v. Holt is instructive. State v. Holt, 36 Wn. App. 224, 673 P.2d 627 (1983). There, the prosecutor charged the defendants with multiple counts of possession of obscene material with intent to sell, based on items found in an adult bookstore owned by a defendant. Id. at 225. Later, the prosecutor filed a 20-count information charging the defendants with possession of obscene material with intent to sell, based on items found in a Shurgard storage unit. Id. The defendants were found guilty of one count in the first trial, and subsequently moved to dismiss the charges in the second trial for a mandatory joinder violation. Id. at 226.

This Court held that the offenses were related offenses, making joinder mandatory. Id. at 227. This Court explained that “offenses are related, i.e., arise out of the same conduct, for mandatory joinder purposes when they share an intimate relationship or are intimately connected.” Id. The Court noted that “the charges were the same, the kind of material allegedly illegally possessed was the same, and the date of possession charged was the same.” Id. at 228. Thus, “[i]t would be a gross injustice to allow the state to charge one crime at a time when it could have and

should have brought all charges against [the defendant] at one trial.” Id. at 228 n.5.

Similarly here, the crimes shared an intimate relationship and were intimately connected. The charges were the same, the method of execution was the same, the neighborhood was the same, and the date was the same. Thus, as in Holt, it would be a gross injustice to allow the state to charge one crime at a time when it could have and should have brought all charges against D.R. at one trial.

The State wrongly argues that this case is like State v. Lee, 132 Wn.2d 498, 939 P.2d 1223 (1997). Br. of Appellant at 26. In Lee, one group of charges was filed for a scheme whereby the defendant fixed up a house and rented it without the owner’s permission. The defendant was separately charged for crimes in which he took money from victims with a promise of future housing, and failed to return the money when the promised housing was not provided. Id. at 504-05. The Court held the offenses were not related and joinder was not required. Id. at 505. But here, as in Holt, the underlying conduct for the two charges is the same: D.R. allegedly entered homes and stole personal items. D.R. allegedly committed the same crimes in the same neighborhood within two

hours. As in Holt, the two crimes were related offenses and joinder was required. Accordingly, in addition to LJuCR 7.14 and CrR 8.3(b), CrR 4.3.1 supports dismissal in this case.

Finally, the State argues that mandatory joinder does not apply because D.R. was not “tried” on the first charge and instead “pleaded guilty” to the Goree burglary. Br. of Appellant at 27. That is not the case. As the State later acknowledges, D.R. did not plead guilty, but agreed to a deferred disposition. Unlike a guilty plea, a deferred disposition “provides juvenile offenders with an opportunity to earn vacation and dismissal of a case with prejudice upon full compliance with ‘conditions of supervision and payment of full restitution.’” State v. Watson, 146 Wn.2d 947, 952, 51 P.3d 66 (2002) (citing RCW 13.40.127(9)) (emphasis added).

Furthermore, the State’s definition of “tried” is too narrow. In State v. Russell, the State charged the defendant with premeditated first-degree murder, and the jury was instructed on the lesser included offense of second-degree intentional murder. State v. Russell, 101 Wn.2d 349, 350, 678 P.2d 332 (1984). The trial court declared a mistrial after the jury acquitted the defendant of the greater charge and was unable to agree on the lesser. Id. Before retrial on second-degree murder, the State was permitted to amend

the information to add felony murder as an alternative means of committing the crime. Although the defendant argued the amendment violated the mandatory joinder rule, the State argued that since a mistrial had been granted the first time around, the intentional second-degree murder charge was not “tried” within the meaning of the rule. *Id.* at 353. The Supreme Court rejected this reasoning, concluding:

[W]hereas the Court of Appeals, in ruling on the case, has placed its emphasis on the word “trial” we conclude emphasis is more properly placed on the term “related offense.” ... Failure to join second degree felony murder in the original information precludes its inclusion for the first time by way of amendment in the second trial.

Id. (emphasis added).

In *State v. Dixon*, the defendant was charged in district court with aiming or discharging a firearm, but the charge was dismissed before trial. *State v. Dixon*, 42 Wn. App. 315, 316, 711 P.2d 1046 (1985). The State later charged the defendant in superior court with being a convicted felon in possession of a pistol. *Id.* The trial court denied a motion to dismiss for a mandatory joinder violation, but this Court reversed. This Court held that even though the original charge had not gone to trial and had instead been dismissed, the defendant had been “tried” for purposes of the rule,

because he was “harassed by successive prosecutions.” Id. at 318.

The same is true here. D.R. was harassed by successive prosecutions on charges that should have been joined. Accordingly, this Court may affirm the trial court on this basis as well.

D. CONCLUSION.

For the reasons set forth above D.R. respectfully requests that this Court affirm the trial court.

DATED this 13th day of October, 2010.

Respectfully submitted,


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Washington Appellate Project
Attorneys for Respondent

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

STATE OF WASHINGTON,)	
)	
Appellant)	COURT OF APPEALS No. 64957-4
)	
v.)	
)	
D.R.,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, ANN JOYCE, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

1. THAT ON THE 13th DAY OF OCTOBER, 2010, A COPY OF THE **BRIEF OF RESPONDENT** WAS SERVED ON THE PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL TO THE ADDRESSES INDICATED:

James Whisman
King Co Pros Ofc/Appellate Unit
516 3rd Ave Ste W554
Seattle WA 98104-2362

D.R.
27830 Pacific Highway S., Apt. 1303
Federal Way, WA 98003

SIGNED IN SEATTLE, WASHINGTON THIS 13th DAY OF OCTOBER, 2010

x *Ann Joyce*