

NO. 67873-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

GARY SAWYER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE RICHARD EADIE

**BRIEF OF RESPONDENT**

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STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION I  
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A. ISSUES PRESENTED

1. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. To prove Bail Jumping, the State must show that the defendant was charged with a particular crime, was released or admitted to bail with the requirement of a subsequent personal appearance, and knowingly failed to appear as required. While Sawyer appeared for the start of his original trial, he failed to return to court after an early morning recess. Was there sufficient evidence to demonstrate that Sawyer failed to appear as required?

2. A defendant can waive an objection to the inclusion of an out-of-state conviction in his offender score. Sawyer's counsel conceded that his Illinois conviction for "Theft From Person" was comparable to Washington's Theft in the First Degree. Did the trial court properly include Sawyer's Illinois conviction in his offender score based on the concession?

3. Legitimate trial tactics and strategy cannot form the basis of an ineffective assistance of counsel claim. During closing argument, defense counsel argued that jury should acquit Sawyer regardless of their opinion as to the credibility of Sawyer's

testimony. At sentencing, defense counsel requested an exceptional sentence based on a theory different from that advanced by Sawyer's trial testimony and allocution. Do counsel's arguments reflect a legitimate trial tactics and strategy? If not, has Sawyer failed to show prejudice from counsel's arguments?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Gary Sawyer was charged by amended information with two counts of Violation of the Uniform Controlled Substances Act (count I- Possession with Intent to Deliver Cocaine and count II- Delivery of Cocaine) and one count of Bail Jumping (count III). CP 11-12. The two VUCSA charges arose from an incident that occurred on December 17, 2009.<sup>1</sup> CP 11-12. The bail jumping charge arose from Sawyer's failure to return to court after a court recess when his original trial on the VUCSA charges commenced. 1RP 6-20.

Following a jury trial on all three counts, Sawyer was convicted of bail jumping as charged, and was convicted of two

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<sup>1</sup> The underlying allegations related to the VUCSA charges will not be discussed further in this brief as Sawyer has not claimed any error related to those counts other than calculation of his offender score.

lesser-included VUCSA charges of possession of cocaine on counts I and II. CP 78-80. The trial court found Sawyer had an offender score of seven on all counts (scoring the two VUCSAs as one point). CP 167-74. The court imposed concurrent standard range sentences on all counts. CP 167-74.

## 2. SUBSTANTIVE FACTS

On December 21, 2009, Sawyer was charged with VUCSA (Possession with Intent to Deliver). Ex. 7. On both December 30, 2009 and October 28, 2010, Sawyer was released on his personal recognizance and ordered to appear personally for court hearings and for trial. Ex. 8 and 9. Sawyer signed both orders acknowledging that failing to appear for court hearings would constitute the additional crime of bail jumping. Ex. 8 and 9. An Omnibus order was entered on January 21, 2011 setting Sawyer's case for trial on February 3, 2011. Ex. 10. On February 7, 2011, Sawyer's case was assigned to Judge Middaugh for trial. Ex. 11. Sawyer was present in court when it convened at 9:35 a.m. Ex. 11. At 9:47 a.m., the court decided to recess until 10:00 a.m. to allow Sawyer and his defense counsel to speak with one another as they seemed to be in disagreement about his offender score and as

Sawyer expressed a desire to proceed *pro se*. Ex. 11. The court cautioned Sawyer that he would not be granted a continuance should he decide to proceed *pro se*. Ex. 11. Court reconvened at 10:04 a.m. but Sawyer did not appear. Ex. 11. At approximately 10:06 a.m., the court signed a bench warrant for Sawyer's arrest and struck the trial date. Ex. 11. Sawyer did not return to court on this case until April 4, 2011, after he was booked into jail on the bench warrant. Supp. CP \_\_ (sub 79A and 82).

Sawyer's trial on all three charges began on August 4, 2011. Supp. CP \_\_ (sub 111A). At trial, Sawyer readily admitted during his testimony that he knew he was to appear in court for trial on February 7, 2011. 6RP 137.<sup>2</sup> He further acknowledged that a recess was taken for him to talk to his attorney and for the prosecutor to retrieve some paperwork, and that he did not appear in court after the recess. He claimed he left the courthouse to attend to his sick wife. 6RP 120, 137-38. Apart from his testimony, Sawyer provided no proof that his wife was actually ill or that she had been hospitalized. Moreover, he acknowledged that he failed to notify anyone that he was leaving court and that he simply "took

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<sup>2</sup> This brief refers to the verbatim report of proceedings as follows: 1RP (2/3/2011, 2/7/2011, 6/17/2011, 10/6/2011, 10/31/2011), 2RP (7/25/2011, 7/27/2011), 3RP (8/4/2011), 4RP (8/8/2011), 5RP (8/9/2011), 6RP (8/10/2011), 7RP (8/11/2011), 8RP (8/12/2011), and 9RP (9/12/2011, 9/26/2011).

off.” 6RP 120, 137. Additionally, on direct examination Sawyer conceded that he did not return to court that day or immediately thereafter. 6RP 121.

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS SAWYER'S BAIL JUMPING CONVICTION.

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). “When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Moreover, “[a] claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” Id.

In the present case, sufficient evidence supports Sawyer’s bail jumping conviction. Under RCW 9A.76.170, the crime of bail jumping is defined as “(1) Any person having been released by

court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state... and who fails to appear ... as required is guilty of bail jumping.” The elements of bail jumping are satisfied if the defendant (1) was held for, charged with, or convicted of a particular crime; (2) had knowledge of the requirement of a subsequent personal appearance; and (3) failed to appear as required. State v. Downing, 122 Wn. App. 185, 192, 93 P.3d 900 (2004).

Sawyer argues that, because he initially appeared for trial on February 7, 2011, the State did not prove that he failed to appear as required. But the evidence at trial showed that Sawyer failed to appear at 10:04 a.m. when he did not return to court after a short recess was ordered from 9:47 a.m. until 10:00 a.m. The evidence showed that the court ordered the recess so that Sawyer could confer with his counsel, and that the court informed Sawyer his case would not be continued even if he requested to discharge counsel and proceed *pro se*. Sawyer also acknowledged that he did not return to court shortly thereafter. Thus, the jury reasonably found that Sawyer understood that he was required to return after the recess to proceed with trial.

On appeal, Sawyer attempts to argue that instead of issuing a warrant, the trial court should have simply proceeded with trial in his absence. While a criminal trial may proceed *in absentia* if the court finds a defendant has voluntarily absented himself, Sawyer cites no statute or case that prevents the State from filing bail jumping charges had the trial proceeded without him. Nevertheless, the trial court could not have proceeded *in absentia* on February 7, 2011, as jury selection had not yet begun. See State v. Crafton, 72 Wn. App. 98, 103, 863 P.2d 620, 623 (1993) (holding that, for purposes of a defendant's presence, trial commences when jury panel is sworn in at the beginning of voir dire).

Sawyer attempts to liken this case to State v. Coleman in which this Court reversed a defendant's bail jumping conviction when the State proved Coleman was not present in court at 8:30 a.m. on a certain date although he had been informed the start time was 9:00 a.m. State v. Coleman, 155 Wn. App. 951, 963-64, 231 P.3d 212 (2010). Because there was no evidence before the jury that Coleman was absent at the required time, this Court held that there was insufficient evidence to prove the crime of bail jumping. Id. at 964. This case is distinguishable on its facts as

Sawyer was aware he needed to return to proceed with trial at 10:00 a.m. Based on the court minutes and Sawyer's own admissions, the State proved that Sawyer failed to appear at 10:04 a.m. when the court reconvened. Sufficient evidence supports his conviction for bail jumping.

2. THE TRIAL COURT PROPERLY INCLUDED SAWYER'S ILLINOIS CONVICTION FOR "THEFT FROM PERSON" IN HIS OFFENDER SCORE BECAUSE HE CONCEDED THAT IT WAS COMPARABLE TO A WASHINGTON FELONY.

Sawyer argues that the trial court erred by including his prior Illinois conviction for "Theft From Person." However, while Sawyer's counsel had earlier indicated a concern about the inclusion of this offense in his offender score, counsel conceded that this conviction was comparable to Theft in the First Degree under Washington law and should be included in his offender score. 1RP 27-28, 30-31, 41-42. As his counsel conceded comparability, the court properly included the Illinois conviction in his offender score.

The State normally bears the burden to prove the existence and comparability of a defendant's prior out-of-state conviction by a preponderance of evidence. State v. Ross, 152 Wn.2d 220, 230,

95 P.3d 1225 (2004). An out-of-state prior conviction may count in the offender score if it is comparable to a Washington felony. RCW 9.94A.525(3). Comparability is both a legal and a factual question. State v. Morley, 134 Wn.2d 588, 605-06, 952 P.2d 167 (1998). If the Washington statute defines the offense with elements that are identical to, or broader than, the foreign statute, then the conviction under the foreign statute is necessarily comparable to a Washington offense. But if the Washington statute defines the offense more narrowly than the foreign statute, then the court must determine whether the defendant's conduct, as evidenced in the records of the foreign conviction, would have violated the Washington statute. Id. at 606. Factual comparability requires the sentencing court to determine whether the defendant's conduct, as evidenced by the indictment or information, Morley, 134 Wn.2d at 606, or the records of the foreign conviction, In re PRP of Lavery, 154 Wn.2d 249, 255, 111 P.3d 837 (2005), would have violated the comparable Washington statute. The underlying facts in the foreign record must be admitted, stipulated to, or proven beyond a reasonable doubt. State v. Farnsworth, 133 Wn. App. 1, 18, 130 P.3d 389 (2006), reviewed and remanded by, 159 Wn.2d 1004, 151 P.3d 976 (2007).

When defense counsel affirmatively acknowledges that a foreign conviction is properly included in the offender score, the trial court does not need further proof of classification before imposing a sentence based on that score. State v. Ford, 137 Wn.2d 472, 483 n.5, 973 P.2d 452 (1999). In State v. Collins, 144 Wn. App. 547, 182 P.3d 1016 (2008), this Court ruled that the comparability analysis can be waived. Collins pleaded guilty and explicitly agreed to his criminal history and offender score. Id. at 549. At sentencing, he attempted to contest the scoring of his out-of-state convictions unless the State proved them. Id. This Court held that when Collins affirmatively acknowledged that the California convictions were properly included in his offender score as part of his plea agreement, he thereby relieved the State of its normal burden of proof. Id. at 558. As comparability is both a legal and a factual question, factual issues may be waived. Id. at 553. The Court reasoned that when a defendant affirmatively acknowledges the comparability of foreign convictions in his criminal history, the trial court needs no further proof. Id. This comports with Ross, 152 Wn.2d at 230-31, which involved a similar appellate challenge to out-of-state convictions by a defendant where defense counsel

affirmatively acknowledged to sentencing court the correctness of State's classification.

In the present case, Sawyer acknowledged his Illinois conviction for "Theft From Person." At sentencing, Sawyer's attorney expressly agreed with the State that the conviction was comparable to a Washington felony. The prosecutor stated, "It's the State's understanding that this was first continued because there was an issue about a conviction from Illinois, a theft-from-a-person conviction. It's the State's understanding that Defense is now conceding that that is a conviction that counts..." 1RP 27. Sawyer's lawyer affirmed, "I spent an exhaustive amount of time looking at the Judgment and Sentences as well as the factual component of what was alleged happening for the theft of a person, attempted robbery and robbery. I am left with the unfortunate but firm conviction that they do count as felonies...He got years for the sentences and the language is comparable to a Washington State felony." 1RP 31. Sawyer's lawyer went on to say that he believed the defendant's offender score was a seven by arguing that his three forgery convictions constituted the same criminal conduct. 1RP 31-42. The court found the forgery convictions to be the same

criminal conduct and found Sawyer's offender score to be a seven.  
1RP 50-51.

When Sawyer addressed the court, he indicated that he did not agree with his lawyer's calculation of his offender score and objected to the inclusion of his Illinois "Theft From Person" conviction, but on the basis that the value of the property stolen was under \$300. 1RP 44-45. Defense counsel noted that although his client disagreed with his concession that the Illinois "Theft From Person" conviction was a felony, counsel was satisfied that Sawyer's conviction was comparable to Theft in the First Degree in Washington. 1RP 41-42. While counsel indicated that he was "qualify[ing his] concession to satisfy his client" and that it might be possible for a "bright appellate lawyer to stomp on [him,]" he did not withdraw the concession. Counsel's so-called "qualification" (App Br. at 170) has not preserved this issue for appellate review as counsel clearly conceded comparability.

A represented defendant's *pro se* objection to comparability does not preserve this issue unless the court considered and ruled on the *pro se* argument. See State v. Bergstrom, 162 Wn.2d 87, 97, 169 P.3d 816 (2007) (explaining that a sentencing court can decline to consider a defendant's *pro se* argument contesting

comparability where a defendant is represented by competent counsel but remanding for an evidentiary hearing on comparability where the court considered the *pro se* argument without requiring proof of comparability from the State). While the trial judge here ruled that the conviction was comparable to a Washington felony, the judge never addressed Sawyer's *pro se* argument that the crime was comparable to a misdemeanor because the value of the property was less than \$300.

Even if Sawyer's *pro se* objection preserved this issue for review, his Illinois conviction is comparable to Theft in the First Degree under RCW 9A.56.030(1)(b) (2004). Sawyer was convicted of "Theft From Person" in Illinois in 2004 under 720 ILCS 5/16-1(a)(b)(4) (2004). CP 142-46. This was a felony. As Illinois case law interprets its "Theft From Person" statute to include the taking of property in the possession or control and protection of the victim,<sup>3</sup> the State agrees that the Illinois statute is conceivably broader than Washington's felony crime of Theft in the First Degree (theft from person). See State v. Nam, 136 Wn. App 698, 705, 150 P.3d 617 (2007) (interpreting the "from the person of another" language under the robbery statute more narrowly).

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<sup>3</sup> People v. Pierce, 226 Ill. 2d 470, 483, 877 N.E.2d 408 (2007).

If this issue had been preserved for appellate review, the court would turn to the facts of the foreign conviction, to determine if Sawyer would have violated the Washington statute. Morley, 134 Wn.2d at 606. Here, based on an earlier indication that defense counsel might contest comparability, the prosecutor filed some of the records of the Illinois conviction: a copy of the Judgment and Sentence and the November 17, 2004, Grand Jury Indictment to which the defendant pled guilty. CP 143-44. As Sawyer pled guilty, the allegations contained in that indictment constitute the facts of the crime. CP 143. The indictment lists the crime charged as "Theft From Person" in violation of 710 ILCS 5/16-1(a)(b)(4). CP 144. As discussed above, the designation of this crime on its own is not sufficient to show comparability.

However, the factual allegation contained in the indictment is that Sawyer "knowingly took property, being United States currency, *from the person of Pedro Velasco*, not exceeding \$300 in value." CP 144 (emphasis added). Notably, it appears that allegations contained in the indictment were edited before filing such that the original factual allegation was that the defendant took the property "*from the presence of Pedro Velasco*." CP 144 (emphasis added). Thus, it is apparent that Sawyer pled guilty to

this crime by admitting that he took money directly from Pedro Velasco's person and not merely in his presence. On its facts, Sawyer's actions constituted the crime of Theft in the First Degree under Washington law. Because Sawyer's attorney properly conceded that the conviction should be included in his offender score, the trial court did not err by accepting this concession.

However, should this Court find the Sawyer's *pro se* objection preserved this issue for appeal but find the indictment to be insufficient to establish factual comparability, the remedy is to remand for a factual comparability hearing as the State was not previously required to present evidence of factual comparability due to the concession. State v. Thiefault, 160 Wn.2d 409, 417 and n.4, 158 P.3d 580 (2007); Bergstrom, 162 Wn.2d at 96-98.

### 3. SAWYER'S COUNSEL PROVIDED EFFECTIVE REPRESENTATION.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced him. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996).

There is a strong presumption that counsel 'exercised reasonable professional judgment,' and appellate courts will not find ineffective assistance when the actions complained of "go to the theory of the case or to trial tactics." State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994) (quoting State v. Renfro, 96 Wn.2d 902, 909, 639 P.2d 737, cert. denied, 459 U.S. 842 (1982)).

To demonstrate that counsel's deficient performance was prejudicial, the defendant must show that "there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." Hendrickson, 129 Wn.2d at 78. If he cannot satisfy either prong of the ineffective assistance of counsel test, the entire claim fails. Id.

a. Defense Counsel's Failure To Request An Exceptional Sentence Based On "Uncontrollable Circumstances" Did Not Constitute Ineffective Assistance Of Counsel.

Sawyer claims that his trial counsel failed to provide effective assistance when counsel did not request an exceptional sentence based on a failed defense of "uncontrollable circumstances" under RCW 9A.76.170(2). However, Sawyer fails to provide any authority that indicates that counsel's request for an exceptional sentence

downward under one theory is ineffective if the attorney could have argued a different theory.

Sawyer's counsel performance at sentencing was not deficient. At sentencing, counsel requested the court grant Sawyer an exceptional sentence downward based on counsel's argument that Sawyer committed the crime of bail jumping due to anxiety caused by overcharging by the State. While counsel did not specifically cite RCW 9.94A.535(1)(c), he was essentially arguing that the defendant committed the crime under duress because he was compelled to leave based on the prosecutor's actions. Sawyer, on the other hand, told the trial court that he left due to his wife's condition as he testified at trial. Given the fact that there were significant reasons to doubt the truthfulness of Sawyer's claim (see discussion under section C.3.b infra), it was not objectively unreasonable for counsel to request a downward departure under a different theory.

But even if defense counsel's failure constituted deficient performance, Sawyer still cannot show the requisite prejudice. RCW 9.94A.535 permits a sentencing court to consider a downward departure from the standard range sentence; it does not, however, mandate one. See State v. Hernandez-Hernandez, 104

Wn. App. 263, 266, 15 P.3d 719 (2001). The court had discretion to impose an exceptional sentence downward with or without counsel's request. Additionally, as Sawyer continued to claim he left due to his wife's condition, the court considered that in sentencing him. RP 53. Notably, in issuing its sentence, the trial court stated:

You're going to get the low range—the low end of the range, and I think that that's what is appropriate in this case. It may have been that any family member would have bolted at some news like that, but I think that any reasonable person would have left a message, would have contacted the court immediately. It may have been handled differently if you had done that instead of just leaving and disappearing.

RP 53. Because the court considered those facts, Sawyer cannot show that he was prejudiced by counsel's failure to make the argument as the outcome would not have been different if he had. Thus, Sawyer cannot show that he received ineffective assistance of counsel.

b. Defense Counsel's Arguments Regarding The Bail Jumping Charge Did Not Constitute Ineffective Assistance Of Counsel.

Sawyer claims that defense counsel, in closing argument, characterized Sawyer's testimony as not credible and violated his duty of loyalty. Sawyer further contends that such argument constituted ineffective assistance of counsel. The claim fails because defense counsel did not undermine his client's credibility, but rather provided the jury with an alternative theory of the defense under which counsel argued the jury should acquit. Further, Sawyer cites no case law to support his claim that his attorney's comments demonstrate deficient performance and prejudice.

A defense attorney's admission of guilt on behalf of his client during closing argument, without the client's consent, denies the defendant the right to have guilt or innocence determined by the jury as a meaningful adversarial issue and may constitute ineffective assistance of counsel. United States v. Simone, 931 F.2d 1186, 1196 (7th Cir.1991). Similarly, if defense counsel expresses doubts about a significant aspect of the defendant's testimony during closing argument, then the trier of fact may question whether it can believe anything else the defendant says. See State v. Moorman, 320 N.C. 387, 358 S.E.2d 502, 511 (1987)

(where defense counsel characterized defendant's testimony that he mistook victim for someone else as not worthy of belief, confidence in trial's reliability was undermined). But admissions that involve only some of the charges or factual issues and do not amount to a complete concession of guilt may constitute legitimate trial strategy. See Simone, 931 F.2d at 1196 (defense counsel's strategy of conceding guilt on charges for which evidence was overwhelming, while arguing innocence on more serious charges, was reasonable under the circumstances).

During his testimony, Sawyer claimed that he had left court due to his wife's hospitalization, but was unable to provide any evidence corroborating that his wife had been hospitalized. Sawyer also acknowledged that he failed to notify anyone that he was leaving court. As Sawyer claimed he was still in the courthouse and just outside the courtroom when he received the news of his wife's hospitalization, Sawyer could have notified his attorney that he had to leave and given his attorney permission to disclose the reason for his absence to the court. Alternatively, Sawyer could have waited less than 15 minutes for court to resume and appeared in front to the trial judge to request a longer recess or a continuance so that he could attend to his wife. Based on the indication that

Sawyer wished to proceed *pro se* and the fact that the trial court cautioned Sawyer that he would not receive a trial continuance should he proceed *pro se*, the logical explanation for Sawyer's disappearance was that he had a disagreement with counsel but that he did not feel prepared to proceed to trial immediately if *pro se*. Further, Sawyer's admission that he did not return to court immediately after the claimed emergency was resolved cast significant doubt to his claimed reason for leaving court.

Consequently, defense counsel attempted, during closing argument, to offer a more plausible explanation for Sawyer's departure from court by arguing that Sawyer may have left because he panicked due to overcharging by the State. It is apparent that when the challenged remarks are viewed in context, defense counsel's performance was not deficient. Contrary to Sawyer's claim, counsel never argued that the jury should disbelieve Sawyer's testimony. Rather, when counsel stated "I don't care if you believe him or not," he was arguing that the jury should acquit Sawyer under an alternative theory regardless of Sawyer's credibility.

Under the circumstances, the remarks did not amount to an abandonment of defense counsel's duty of loyalty. See United

States v. Harris, 761 F.2d 394, 401-02 (7th Cir. 1985) (defense counsel's statement during closing argument that defendant "was not totally honest with you" was reasonable attempt to mitigate negative effect of defendant's damaging testimony and did not constitute deficient performance). As in Harris, defense counsel was "faced with the choice of relying solely on his client's dubious testimony or attempting to show that, despite this testimony, his client was nonetheless not guilty." Id. at 402. Choosing the latter under these circumstances is an objectively reasonable trial strategy. Id.

Further, even if counsel's argument was not a legitimate trial strategy, Sawyer has not established that he was prejudiced given the overwhelming evidence that he committed the crime of bail jumping. On appeal, Sawyer claims that defense counsel undermined the only defense to bail jumping by undermining his testimony. However, Sawyer's own briefing contradicts that claim as Sawyer acknowledges that, based on his testimony, he could not prove the statutory defense of "uncontrollable circumstances" under RCW 9A.76.170(2). App. Br. at 21. As Sawyer's testimony did not provide any evidence that negated proof of the elements of the bail jumping charge, and rather corroborated the State's

evidence that he left court during a recess, Sawyer has failed to establish that the result of the trial would have been different absent counsel's comments.

D. CONCLUSION

For the foregoing reasons, the State asks this Court to affirm Sawyer's convictions and sentence.

DATED this 13 day of December, 2012.

Respectfully submitted,

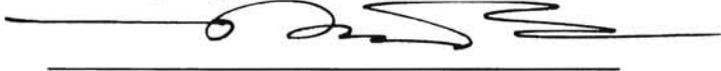
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Elaine Winters, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. GARY SAWYER, Cause No. 67873-6-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



\_\_\_\_\_  
Name  
Done in Seattle, Washington

12-13-12  
Date

STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION I  
SEATTLE, WASHINGTON