

NO. 68319-5-I

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

---

STATE OF WASHINGTON,

Respondent,

v.

J. C.-P.,

Appellant.

---

2008 OCT 10 PM 1:35  
COURT OF APPEALS  
STATE OF WASHINGTON  


BRIEF OF RESPONDENT

---

MARK K. ROE  
Prosecuting Attorney

SETH A. FINE  
Deputy Prosecuting Attorney  
Attorney for Respondent

Snohomish County Prosecutor's Office  
3000 Rockefeller Avenue, M/S #504  
Everett, Washington 98201  
Telephone: (425) 388-3333

**TABLE OF CONTENTS**

I. ISSUES ..... 1

II. STATEMENT OF THE CASE..... 1

III. RESPONSE TO APPELLANT’S STATEMENT OF THE CASE . 5

IV. ARGUMENT ..... 7

    A. IN VIEW OF THE SPONTANEITY OF THE DISCLOSURE AND  
    THE ABSENCE OF ANY MOTIVE TO FALSIFY, THE COURT  
    PROPERLY EXERCISED ITS DISCRETION IN DETERMINING  
    THAT THERE WERE ADEQUATE INDICIA OF RELIABILITY. .... 7

    B. THE TRIAL COURT PROPERLY ADMITTED THE  
    APPELLANT’S STATEMENTS. .... 14

        1. The Court’s Factual Findings Are Supported By Substantial  
        Evidence..... 14

        2. Statements Made Without Coercion By A Juvenile Who  
        Understood His Rights Are Voluntary..... 18

V. CONCLUSION ..... 20

## TABLE OF AUTHORITIES

### WASHINGTON CASES

<u>In re Davis</u> , 152 Wn.2d 647, 101 P.3d 1 (2004) .....	15
<u>In re Dependency of S.S.</u> , 61 Wn. App. 488, 814 P.2d 204 (1991).....	12
<u>State v. Borland</u> , 57 Wn. App. 7, 786 P.2d 810 (1990).....	9
<u>State v. Broadaway</u> , 133 Wn.2d 118, 942 P.2d 363 (1997).....	15
<u>State v. Carlson</u> , 61 Wn. App. 865, 812 P.2d 536, 540 (1991).....	12
<u>State v. Clark</u> , 139 Wn.2d 152, 985 P.2d 377 (1999).....	7
<u>State v. Frey</u> , 43 Wn. App. 605, 718 P.2d 846 (1986).....	10, 14
<u>State v. Henderson</u> , 48 Wn. App. 543, 740 P.2d 329 (1987).....	11
<u>State v. Hill</u> , 123 Wn.2d 641, 870 P.2d 313 (1994) .....	15
<u>State v. Pham</u> , 75 Wn. App. 626, 879 P.2d 321 (1994), <u>review</u> <u>denied</u> , 125 Wn.2d 1002 (1995).....	9
<u>State v. Prater</u> , 77 Wn.2d 526, 463 P.2d 640 (1970).....	19
<u>State v. Ramirez</u> , 46 Wn. App. 223, 730 P.2d 98 (1986).....	13
<u>State v. Riley</u> , 17 Wn. App. 732, 565 P.2d 105 (1977) .....	19
<u>State v. Robinson</u> , 44 Wn. App. 611, 722 P.2d 1379 (1986).....	10
<u>State v. Ryan</u> , 10-3 Wn.2d 165, 691 P.2d 197 (1984).....	4, 9, 12
<u>State v. Unga</u> , 165 Wn.2d 95, 196 P.3d 645 (2008).....	19
<u>State v. Young</u> , 62 Wn. App. 895, 802 P.2d 829, 817 P.2d 412 (1991).....	9

### FEDERAL CASES

<u>Chambers v. Mississippi</u> , 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973) .....	7, 8
<u>Fare v. Michael C.</u> , 442 U.S. 707, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979).....	18, 19
<u>Perry v. New Hampshire</u> , ___ U.S. ___, 132 S. Ct. 716, 181 L. Ed. 2d 694 (2012) .....	8

### U.S. CONSTITUTIONAL PROVISIONS

Fifth Amendment.....	18
----------------------	----

### WASHINGTON STATUTES

RCW 9A.44.120(1).....	8
-----------------------	---

## **I. ISSUES**

(1) Four months after the 9-year-old victim had last visited the juvenile respondent, she unexpectedly told her mother that he had sexually abused her. The victim was a truthful child, and she had no motive to fabricate any false accusations. Did the trial court abuse its discretion in determining that these statements had adequate indicia of reliability to be admissible under the child hearsay statute?

(2) Police questioned a 15-year-old juvenile at his school. Before the questioning began, they advised him of his rights. The juvenile understood that he did not have to talk to police, but he decided to do so anyway. The officers did not make any threats or promises or use any coercion. Do these facts support the trial court's determination that the juvenile voluntarily waived his rights?

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

In early February, 2011, K. (born 2/2002) asked B., her mother, if she could talk to her. B. thought that K. was going to talk about school. Instead, K. said that someone had tried to touch her. B. asked who did it. K. replied, that J. C.-P. (born 5/1996) had put his fingers inside of her "private part" (meaning her vagina). At around this time, B.'s husband K. returned home. When told what

was going on, he asked K. if she was sure about what was happening. K. was crying and repeated that "he did it." 1 RP 126-32.

B. arranged to have K. examined by a physician, Dr. Yolanda Duralde. K. told Dr. Duralde that J. had touched her on her "bottom" with his hand. He had done this both on top of her clothes and under her clothes. 1 RP 194-96. On examining K., Dr. Duralde observed that she had a slightly decreased amount of tissue at one location on her hymen. This can be an indication of previous trauma, but it is not definitive. 1 RP 200.

On March 9, K. was interviewed by Carolyn Webster, a child interview specialist with the King County Prosecutor's Office. The interview was recorded. In the course of this interview, K. made similar disclosures. Ex. 19.

On June 21, J. was interviewed at his school, Monroe High School, by Det. Spencer Robinson and Officer Max Michel of the Monroe Police Department. Officer Michel was the school resource officer at the High School. 1 RP 6. Det. Robinson began the interview by advising J. of his rights. J. acknowledged that he understood his rights. He agreed to talk to the officers. 1 RP 29-

30. When the interview began, J. was "relatively calm," but he became more anxious as it proceeded. 1 RP 70.

Det. Robinson told J. about K.'s allegations. J. said that she might have mistaken him for his brother. The detective asked why K. would have said that J. had inappropriately touched her. He also asked J. if he would be willing to take a lie detector test. J. said that he and K. had been playing. He said that he had grabbed a leg and thrown her up on the bed. 1 RP 35-37, 45-46.

Det. Robinson took a break to talk to Officer Michel. When the interview resumed, Det. Robinson told J. that he did not believe that he was being truthful. J. then said that K. had forced him to touch her. She had grabbed his hand, pulled it to her vagina, and forced him to rub her. 1 RP 46-47.

Det. Robinson asked J. to make a written statement. Before taking the statement, he again read J. his rights. J. signed the rights form. He asked the officer to write the statement for him, saying that he could not do so. Officer Michel testified that J.'s hands were shaking, but Det. Robinson did not remember seeing that. 1 RP 20. To obtain the statements, Det. Robinson asked J. questions and wrote down a summary of his answers. J. then

signed the statement. 1 RP 51-54, 74-75. The entire interview lasted about an hour. 1 RP 33.

At the adjudicatory hearing, J. testified that he understood that he could have remained silent, but he “just didn’t pay attention that well.” He denied having been told that he had the right to an attorney. He said that he answered the questions because he “just wanted to get out of there.” He therefore “invented a story” that K. had forced him to touch her. 1 RP 83-86.

J. was charged as a juvenile with two counts of first degree child molestation and one count of first degree rape of a child. 2 CP 116-17. The adjudicatory hearing took place in January, 2012. The trial court found that J. was fully aware of and understood his rights. The court also found that he had not been subjected to any threats, promises, or coercion. It therefore determined that J.’s statements were voluntary and admissible. 1 RP 95-98; 1 CP 5-8.

With respect to K.’s statements, the court reviewed the nine factors set out in State v. Ryan, 103 Wn.2d 165, 691 P.2d 197 (1984). The court determined that these factors provided adequate indicia of reliability. It therefore admitted the statements. 3 RP 313-18.

At the adjudicatory hearing, K. testified that J. had touched her on her "private." She explained the spot by pointing to the crotch area of a toy bear. This had happened between five and ten times. Sometimes he touched her over her clothes. Other times, it was underneath. She did not tell anyone because she was scared, because J. had also touched her brother. 2 RP 262-76.

The court found that K. was a very credible witness. The manner in which her disclosure was made was also very credible. The court therefore found J. guilty of two counts of first degree child molestation. It found him not guilty of rape of a child. 3 RP 405-12; 1 CP 1-4.

### **III. RESPONSE TO APPELLANT'S STATEMENT OF THE CASE**

The appellant's Statement of the Case contains several assertions that are not supported by the record:

1. **"[J.] was a responsible, hard-working young teenager who helped his father with landscaping work and helped take care of his younger siblings. CP 69, 71, 73, 743."** Brief of Appellant at 6.

The only support for this assertion is unsworn documents that were introduced at the disposition hearing. These documents

were not made part of the record at either the suppression hearing or the fact-finding hearing.

**2. “[J.] was quite nervous and uncomfortable [at the beginning of the police interview]. RP 81-82, 85.”** Brief of Appellant at 7.

This assertion is based solely on the appellant’s own testimony. The investigating officer testified to the contrary – that at the beginning of the interview, the appellant did not appear unusually nervous. 1 RP 32-33. The court found that “[J.] initially appeared relatively comfortable speaking with the officers, but became more nervous and anxious as the interview went on.” 1 CP 6, finding no. 7.

**3. “[J.] was unfamiliar with the advisement of rights and did not understand it. RP 82-83.”** Brief of Appellant at 7.

The officer testified that he advised J. of his rights, and J. said that he understood them. 1 RP 29-30. In his testimony, J. admitted that he knew he had the right to remain silent. 1 RP 83, 88. He claimed that the officer did not inform him of his right to an attorney. 1 RP 83, 88. The court found that the officer “read [J.] his Constitutional rights off of a pre-printed card fully and completely.”

1 CP 6, finding no. 3. The court also found that J. “was fully aware of and understood his constitutional rights.” 1 CP 7, finding no. 17.

**4. “The detective threatened to subject [J.] to a polygraph test.” RP 45, 70.”** Brief of Appellant at 7.

The detective testified that he asked J. if he would be willing to take a polygraph. 1 RP 45. Nothing in the record indicates that this was done in a threatening manner.

**5. “Detective Robinson testified at the suppression hearing that it was ‘unusual’ for a suspect to be shaking. RP 32-33.”**

The detective testified that the appellant’s degree of nervousness was not unusual. 1 RP 32-33.

#### **IV. ARGUMENT**

**A. IN VIEW OF THE SPONTANEITY OF THE DISCLOSURE AND THE ABSENCE OF ANY MOTIVE TO FALSIFY, THE COURT PROPERLY EXERCISED ITS DISCRETION IN DETERMINING THAT THERE WERE ADEQUATE INDICIA OF RELIABILITY.**

The appellant claims that the trial court improperly admitted child hearsay. Since the child testified about the events and was subject to cross-examination, the admission of this evidence does not involve any constitutional issues under the Confrontation Clause. State v. Clark, 139 Wn.2d 152, 159, 985 P.2d 377 (1999). The appellant claims that the admission of “unreliable” evidence violates Due Process, citing Chambers v. Mississippi, 410 U.S.

284, 302, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). That case does not establish any such requirement. Rather, it held that Due Process could be violated by the *exclusion* of evidence offered by a *defendant*. More recently, the United States Supreme Court held that “the potential unreliability of a type of evidence does not alone render its introduction at the defendant's trial fundamentally unfair.” Perry v. New Hampshire, \_\_\_ U.S. \_\_\_, 132 S. Ct. 716, 728, 181 L. Ed. 2d 694 (2012).

Nevertheless, there is a statutory requirement that child hearsay be reliable. Such evidence is admissible only if “the time, content, and circumstances of the statement provide sufficient indicia of reliability.” RCW 9A.44.120(1). Thus, even though no constitutional requirement is involved, this court should determine whether statutory requirements were satisfied.

In determining the reliability of child hearsay, the court will consider nine factors:

(1) whether there is an apparent motive to lie; (2) the general character of the declarant; (3) whether more than one person heard the statements; (4) whether the statements were made spontaneously; ... (5) the timing of the declaration and the relationship between the declarant and the witness; ... [6] the statement contains no express assertion about past fact, [7] cross-examination could not show the declarant's lack of knowledge, [8] the possibility of the declarant's

faulty recollection is remote, and [9] the circumstances surrounding the statement ... are such that there is no reason to suppose the declarant misrepresented defendant's involvement.

State v. Ryan, 103 Wn.2d 165, 175-76, 691 P.2d 197 (1984).

Determining the admissibility of child hearsay lies within the discretion of the trial court. State v. Pham, 75 Wn. App. 626, 631, 879 P.2d 321 (1994), review denied, 125 Wn.2d 1002 (1995). No single factor is decisive; rather, reliability is based on an overall evaluation of the factors. State v. Young, 62 Wn. App. 895, 902, 802 P.2d 829, 817 P.2d 412 (1991). If the factors are substantially met, the statement is sufficiently reliable. State v. Borland, 57 Wn. App. 7, 20, 786 P.2d 810 (1990). Here, the court carefully reviewed the Ryan factors on the record. 3 RP 313-18. Its application of the factors was not an abuse of discretion.

#### **1. Motive to lie.**

The trial court concluded that the victim had no motive to lie. "There was no evidence other than the incidents that [K.] had any motive to want to get [J.] in trouble, that there was any bad feelings about him or that [K.] had any other motivation to make this story up." 3 RP 313-14. On appeal, the appellant does not challenge this conclusion. Brief of Appellant at 13.

## **2. The declarant's character.**

The victim's mother testified that K. was "a very good child" who had no trouble with dishonesty. 1 RP 106. Again, the appellant concedes that this factor weights in favor of admission. Brief of Appellant at 13.

## **3. Whether more than one person heard the statement.**

The initial portion of the disclosure was made solely to the victim's mother. 1 RP 125. In the course of the conversation, the victim's step-father arrived, and she made similar statements to him. 1 RP 129. Later, she made similar statements to a physician and a child interviewer. Ex. 19; 2 RP 196-97. She also testified to similar facts at the adjudicatory hearing. 2 RP 262-75. Consistent statements by a child indicate reliability. State v. Robinson, 44 Wn. App. 611, 620, 722 P.2d 1379 (1986); State v. Frey, 43 Wn. App. 605, 610-11, 718 P.2d 846 (1986). The trial court was thus correct in concluding that this factor supports reliability. 3 RP 314-15.

## **4. Spontaneity of the statements.**

The initial disclosure was completely spontaneous, which supports its reliability. 1 RP 127. The appellant points out that many of the details were disclosed in response to questioning. This does not, however, defeat the "spontaneity" of a statement.

Information volunteered by a child in response to non-suggestive questions is "spontaneous." State v. Henderson, 48 Wn. App. 543, 550, 740 P.2d 329 (1987).

To the extent that the questioning here was suggestive, it tended to *minimize* the abuse – and the victim rejected those suggestions. For example, the mother asked, "Did somebody try to touch you?" The victim replied, "No, Mom, he did it." 1 RP 127. The mother then asked, "But it was only over the clothes?" The victim responded that it was under her clothes. 1 RP 168. The record thus shows that the victim was not readily subject to suggestion. This is consistent with the expert testimony – in the age group of 9-11 years old, children are no more suggestible than adults. 2 RP 216.

In any event, the trial court did not rely on the details of the disclosure, but on the fact of disclosure and the general description. The court found that "the manner in which the disclosure was made is very credible." The court also found that "[a]lthough some of the details of the disclosures differ, the description of the touching has not waivered [*sic*] since the initial disclosure. 1 CP 2, findings nos. 10-11. The fact of disclosure was entirely spontaneous, and the

descriptions were the productive of non-suggestive questioning. The court correctly concluded that this factor supports reliability.

**5. The timing of the declaration and the relationship between the declarant and the witness.**

The trial court reasoned that “the mother ... was surprised by the disclosures and there was nothing with respect to timing or the relationship that would suggest that the disclosures were not reliable.” 3 RP 316. This was correct analysis.

The appellant claims that the delay in disclosure weighed against the statements’ reliability. Lapse of time is a factor only when the evidence demonstrates that the lapse affected the child’s statements. State v. Carlson, 61 Wn. App. 865, 873, 812 P.2d 536, 540 (1991). Here, there is no showing that the four-month delay before disclosure affected the statements.

The appellant also claims that the statement was rendered unreliable by the mother’s “lack of objectivity.” Courts have questioned the reliability of statements made to parents who were predisposed to believe that their children had been abused. In re Dependency of S.S., 61 Wn. App. 488, 498, 814 P.2d 204 (1991); Ryan, 103 Wn.2d at 176. When there is no such predisposition, a child’s relationship with her parent has not rendered statements

unreliable. State v. Ramirez, 46 Wn. App. 223, 231, 730 P.2d 98, 103 (1986). In the present case, the evidence suggests that the victim's mother was predisposed *not* to believe that sexual abuse had occurred. The trial court properly concluded that the timing and relationship did not undercut the statements' reliability.

**6. Whether the statements contain any express assertion about past facts.**

They do, but this is almost always true of child hearsay.

**7. Whether cross-examination could show the declarant's lack of knowledge.**

Since the victim was cross-examined, this factor is irrelevant.

**8. Whether the possibility of the declarant's faulty recollection is remote.**

The court concluded that in view of the victim's age, there was no indication that her statements reflected a lack of recollection. 3 RP 317. The appellant points to some discrepancies between her statements (made in February, 2011) and her testimony at the adjudicatory hearing (in January, 2012). This does not indicate faulty recollection at the time of the statement. It is more likely that her recollection dimmed in the ensuing year prior to trial.

**9. Whether there is no reason to suppose that the declarant misrepresented defendant's involvement.**

In light of the factors discussed above, there is no reason to believe that the victim's statements were anything other than the truth.

In short, the reliability of the statement is supported by the lack of any motive to falsify, the spontaneous nature of the disclosure, the victim's character, and the repetition of similar disclosures on multiple occasions. None of the other factors weigh strongly against reliability. On balancing all the factors, the court did not abuse its discretion in admitting the statements.

**B. THE TRIAL COURT PROPERLY ADMITTED THE APPELLANT'S STATEMENTS.**

**1. The Court's Factual Findings Are Supported By Substantial Evidence.**

The appellant claims that his statements to police were improperly admitted. Prior to the adjudicatory hearing, the trial court conducted a hearing to determine the admissibility of the appellant's statements. The court entered written findings of fact supporting its conclusion that the statements were voluntary.<sup>1</sup>

---

<sup>1</sup> The court entitled these "Findings of Fact and Conclusions of Law Re: 3.5 Hearing." CP 5-7. CrR 3.5 governs the admissibility of statements in adult criminal proceedings. Although that rule does not govern juvenile cases, the trial court properly employed a comparable procedure.

When the court enters findings of fact concerning the admissibility of a defendant's statement, those findings are verities on appeal if unchallenged. If they findings are challenged, they are verities if supported by substantial evidence in the record. State v. Broadaway, 133 Wn.2d 118, 942 P.2d 363 (1997). "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). In applying this standard, the trial court's credibility determinations cannot be reviewed. In re Davis, 152 Wn.2d 647, 678, 101 P.3d 1 (2004).

The appellant has assigned error to several of the trial court's findings of fact in the CrR 3.5 order. He has not, however, presented any specific arguments with regard to these assignments of error. Each of the challenged findings is supported by substantial evidence:

**a. "The Respondent was of sufficient maturity and intelligence to understand and make a knowing and intelligent waiver of his rights. The respondent was in the 9<sup>th</sup> grade, clearly understood and responded appropriately to questions. There**

**did not appear to be a language barrier of any sort.”** Finding no. 6, CP 6.

The record shows that J. was 15 years old and in the 9<sup>th</sup> grade. 1 RP 80-81. His grades were above average: Bs and Cs, with some As. 1 RP 88. The investigating officer testified that J. seemed to be of sound mind and to understand what was going on. J. acknowledged that he understood his rights. 1 RP 30-31. He testified that he knew that he had the right to remain silent. 1 RP 88.

**b. “The Respondent initially appeared relatively comfortable speaking with the officers, but became more nervous or anxious as the interview went on.”** Finding no. 7, CP 6.

The investigating officer testified that at the beginning of the interview, J. was “relatively calm.” 1 RP 67. When asked whether it was “unusual for someone being questioned about a sex crime to get nervous or shaky,” the officer responded:

Yeah, it’s typically unusual – I mean I would say that in general sometimes if you question somebody that has really had nothing to do with the incident in question, they typically get angry a lot of times and want to terminate the interview, but in this case it was appropriate of the answers and the material discussed.

1 RP 32-33.

When the officer started discussing the allegations, J.'s anxiety went up. 1 RP 67. His anxiety level was still "low to moderate." When J. started claiming that the victim forced him to touch her, "his anxiety increased greatly." 1 RP 70.

**c. "The Court finds that the respondent was fully aware of and understood his constitutional rights as per the Miranda decision and understood that any statements he made could be used against him."** Finding no. 17, 1 CP 7.

The officer testified that he read J. his rights from a pre-printed card. These included a special warning for juveniles: "If you are under the age of 18, anything you say can be used against you in a Juvenile Court prosecution for a juvenile offense and can also be used against you in an adult court criminal prosecution if you are to be tried as an adult." J. said that he understood his rights. 1 RP 29-30. J. testified that he knew that he had the right to remain silent. 1 RP 88.

**d. "There were no threats, promises or coercion used to get the respondent to make statements to the police."** Finding no. 18, CP 7.

The officer testified that he made no threats or promises and used no coercion. 1 RP 31-32. J. did not testify to any threats, promises, or coercion by the officer. 1 RP 81-86.

In short, the investigating officer's testimony supports each of the findings made by the trial court. Many of these findings are supported by the appellant's testimony as well. To the extent that J. contradicted the officer's testimony, the court was entitled to decide that the officer was more credible. Since each of the challenged findings is supported by substantial evidence, all of them are verities on appeal.

## **2. Statements Made Without Coercion By A Juvenile Who Understood His Rights Are Voluntary.**

The trial court's findings of fact support its determination that J. voluntarily waived his rights. In determining the voluntariness of a juvenile's waiver, the court examines the totality of the circumstances. Fare v. Michael C., 442 U.S. 707, 725, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979).

Included in the circumstances to be considered are the individual's age, experience, intelligence, education, background, and whether he or she has the capacity to understand any warnings given, his or her Fifth Amendment rights, and the consequences of waiving these rights. State courts have a responsibility to examine confessions of a juvenile with special care.

State v. Unga, 165 Wn.2d 95, 103, 196 P.3d 645 (2008).

In Unga, a police officer promised a 16½ year old juvenile that he would not be prosecuted if he confessed. Notwithstanding this promise, the Supreme Court upheld a determination that the resulting confession was voluntary. Id. at 108-09 ¶¶ 26-33. Other cases have likewise upheld the voluntariness of statements made by juveniles after full advisement of rights, where police did not employ any coercive tactics. See, e.g., Fare, 442 U.S. at 726-27; State v. Prater, 77 Wn.2d 526, 532-33, 463 P.2d 640 (1970). A juvenile's subjective desire to avoid arrest does not render a statement involuntary if it was not induced by any threats or promises. State v. Riley, 17 Wn. App. 732, 736, 565 P.2d 105 (1977).

Here, police questioned a 15-year-old boy after full advisement of rights. They made no threats or promises and used no coercion. The boy understood that he had a right to remain silent. He nonetheless chose to provide a false account of the events surrounding the allegations against him. This was a voluntary decision on his part. The record supports the trial court's determination that the statements were voluntary.

**V. CONCLUSION**

The adjudication and disposition should be affirmed.

Respectfully submitted on December 6, 2012.

MARK K. ROE  
Snohomish County Prosecuting Attorney

By:   
\_\_\_\_\_  
SETH A. FINE, WSBA # 10937  
Deputy Prosecuting Attorney  
Attorney for Respondent



**Snohomish County  
Prosecuting Attorney  
Mark K. Roe**

Criminal Division  
Joan T. Cavagnaro, Chief Deputy  
Mission Building, MS 504  
3000 Rockefeller Ave.  
Everett, WA 98201-4060  
(425) 388-3333  
Fax (425) 388-3572

December 6, 2012

Richard D. Johnson, Court Administrator/Clerk  
The Court of Appeals - Division I  
One Union Square  
600 University Street  
Seattle, WA 98101-4170

**Re: STATE v. JCP  
COURT OF APPEALS NO. 68319-5-I**

Dear Mr. Johnson:

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

2012 DEC 10 PM 1:35  
COURT OF APPEALS  
STATE OF WASHINGTON

Sincerely yours,

SETH A. FINE, #10937  
Deputy Prosecuting Attorney

cc: Washington Appellate Project  
Appellant's attorney

7th Dec 12  
County Prosecutor's Office

RECEIVED  
JAN 10 2013  
CLERK OF COURT  
[Handwritten signature]

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

THE STATE OF WASHINGTON,  
  
Respondent,  
  
v.  
  
JAIME J. CRUZ-PELAYO,  
  
Appellant.

No. 68319-5-I  
  
AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 7<sup>th</sup> day of December, 2012, 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

WASHINGTON APPELLATE PROJECT  
1511 THIRD AVENUE, SUITE 701  
SEATTLE, WA 98101

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 7<sup>th</sup> day of December, 2012.

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

DIANE K. KREMENICH  
Legal Assistant/Appeals Unit