

No. 46717-8-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**RAUL CASTILLO LOPEZ,**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Brief**

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JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

By:

  
\_\_\_\_\_  
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## I. FACTS

The State adopts the factual statement included in the Appellant's Opening Brief, with the following additions:

The Defendant was charged with, and convicted of, five counts of Rape of a Child, Second Degree, Domestic Violence. CP 129. The victim in this case was a child, age 12. CP 9.

When the parties appeared in front of Judge Hunt on June 19, 2014, the Court pointed out to both counsel that the charges in this case were, in fact, Rape of a Child, Second Degree. RP 4 (06-19-2014). The Court said it would have to consider that fact. RP 4 (06-19-2014). The context of the colloquy was the defense motion to continue the trial date. RP 4 (06-19-2014). In response to the Court's comments, the State indicated that the Court would have to find substantial and compelling reasons to continue the case; given the fact the victim was a minor child. RP 4 (06-19-2014). The State thought that perhaps needing the DNA evidence was, in fact, a compelling reason. RP 4 (06-19-2014). There is nothing in the record that showed the victim knew about, or was in agreement to continuing the trial.

The parties were before a different judge, Judge Brosey, on July 3, 2014. RP 1 (07-03-2014). The DNA evidence, which the

State was relying on in order to agree to the trial continuance on June 19, 2014, was in hand on that date. RP 4 (07-03-2014). The matter was on for trial confirmation. RP 8 (07-03-2014). The court's entire colloquy was over the substitution of counsel, and the request for a continuance based on that reason alone. RP 1-12 (07-03-2014). No mention was made of the victim, the victim's age, or the fact that defendant was charged with a sexual assault under RCW 9A.44. The defendant confirmed for trial. RP 8 (07-03-2014).

## II. ISSUE PRESENTED

Does RCW 10.46.085 trump the Defendant's right to private counsel of his choice in a sexual assault case, when the victim is a minor, the court appointed defense counsel is not ineffective, there are no facts to support a substantial and compelling reason to continue the trial, and there is no evidence that the benefit to the defendant of a trial postponement outweighs the detriment to the victim?

## III. ARGUMENT

This case presents a unique question for the Court of Appeals. Were this a simple assault that did not involve a sexual assault upon a minor, the State would concede the argument and ask the court to remand the matter for a new trial. But the Appellant

runs squarely into RCW 10.46.085 and does not address it. None of the nine cases the Appellant cites deal with a sexual assault on a minor victim. Here is a summary of the crimes proven in each case, in the order the cases appear on the Appellant's Table of Authorities:

CASE	CRIME
<i>United States v. Gonzalez-Lopez</i> , 548 W.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006)	Conspiracy to deliver Marijuana.
<i>Wheat v. United States</i> , 486 U.S. 153, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988)	Conspiracy to deliver Marijuana.
<i>State v. Aguirre</i> , 168 Wn.2d 350, 229 P.3d 669 (2010)	Sexual assault on an adult victim.
<i>State v. Chase</i> , 59 Wn. App. 501, 799 P.2d 272 (1990)	Burglary 2, no minor victim.
<i>State v. Hampton</i> , 182 Wn. App. 805, 332 P.3d 1020 (2014)	Rape 3, victim was an adult. <sup>1</sup>
<i>State v. Lawrence</i> , 108 Wn. App. 226, 31 P.3d 1198 (2001)	Rape 2, victim was an adult.
<i>State v. Price</i> , 126 Wn. App. 617, 109 P.3d 27 (2005)	Murder 1, victim was an adult.
<i>State v. Rafay</i> , 167 Wn.2d 644, 222 P.3d 86 (2009)	Murder 1, victims were adults.
<i>State v. Roth</i> , 75 Wn. App. 808, 881 P.2d 268 (1994)	Murder 1, victim was an adult.

<sup>1</sup> In *State v. Hampton*, the age of the victim, A.B., is unclear in the text of the appellate court decision. The State obtained a copy of the original charging information from the Snohomish County Clerk's Office, which indicates the DOB of A.B. was 09-07-1992. The date of offense was 01-08-2011, making the victim, A.B., age 18 at the time of offense. A copy of that charging information is attached as Attachment 1.

Postponements of trials where the victims are minors require an additional level of analysis by the trial court:

“When a defendant is charged with a crime which constitutes a violation of RCW 9A.64.020 or chapter 9.68, 9.68A, or **9A.44 RCW**, and the alleged victim of the crime is a person under the age of eighteen years, neither the defendant nor the prosecuting attorney may agree to extend the originally scheduled trial date unless the court, within its discretion, finds that there are substantial and compelling reasons for a continuance of the trial date and that the benefit of the postponement outweighs the detriment to the victim. The court may consider the testimony of lay witnesses and of expert witnesses, if available, regarding the impact of the continuance on the victim.” RCW 10.46.085 (emphasis added).

Applying this statute to Mr. Castillo Lopez, the victim was twelve years old at the time of offense, and fourteen years old at the time of trial. CP 9. The court apparently took RCW 10.46.085 into consideration when denying the trial postponement the first time. RP 4 (06-19-2014). The State’s reason for agreeing to a continuance on June 19, 2014, was that they did not have DNA results back. RP 4 (06-19-2014). While that may have been a substantial and compelling reason to continue the case then, the State and defense were in possession of the DNA results at trial confirmation, which was July 3, 2014. Discovery was complete. The only issue was the substitution of counsel. The court had to keep

the case on track or run afoul of the victim's rights in RCW 10.46.085 .

The trial court must compare any detriment to the child victim that might be caused by a continuance, with the compelling reasons for continuing the trial. *State v. Downing*, 151 Wn.2d 265, 87 P.3d 1169 (2004). Charles Downing was charged with first degree child molestation. *Downing*, 151 Wn.2d at 268. The victim was six at the time of the offense and seven when the case went to trial. *Downing*, 151 Wn.2d at 268. Downing attempted to continue the case in the middle of the trial in order to secure an expert witness. *Downing*, 151 Wn.2d at 271. The court denied the request for a variety of reasons, which did not include an analysis under RCW 10.46.085. *Downing*, 151 Wn.2d at 270-271. Nevertheless, the Washington Supreme Court upheld the trial court decision, but also added a cite to RCW 10.46.085 in its analysis. *Downing*, 151 Wn.2d at 268.

“In exercising discretion to grant or deny a continuance, trial courts may consider many factors, including surprise, diligence, redundancy, due process, materiality and maintenance of orderly procedure. *State v. Eller*, 84 Wn.2d 90, 95, 524 P.2d 242 (1974); RCW 10.46.080; CrR 3.3(f). However, trial courts *must* also compare any detriment to a child victim that might be caused by a continuance with the compelling reasons for continuing the trial, See RCW

10.46.085.” *State v. Downing*, 151 Wn.2d 265, 273, 87 P.3d 1169 (2004).

What is interesting about the *Downing* analysis is that the continuance in *Downing* had nothing to do with the minor child, but the Supreme Court nevertheless chose to include a reference to RCW 10.46.085. That indicates to the State that a continuance of a case involving a minor victim *must* (to use the Supreme Court’s word) include the findings of substantial and compelling reasons that outweigh the detriment to the minor victim. No such findings were made in this case because there were no facts to support them.

The plain language of RCW 10.46.085 presumes a detriment to a minor victim when there is a trial postponement. That is why the trial court must enter findings of a substantial and compelling reason. No facts are alleged by either party in this case that support the postponement. The trial court would have abused its discretion in continuing the trial.

#### IV. CONCLUSION

As it turned out, the defendant received a fair trial. There is no claim of ineffective assistance of counsel in the Appellant’s brief. Because RCW 10.46.085 prevented the court from continuing the case without a substantial and compelling reason, and because no

such reason exists in the record, there is nothing to place on the balance against the presumed detriment to the minor victim. The State respectfully submits that when the court balances the interests, the scale will tip in the victim's direction. The convictions should be affirmed.

RESPECTFULLY submitted this 26 day of February, 2015.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

by:

  
s. BRADLEY MEAGHER, WSBA 18685  
Attorney for Plaintiff

# Attachment 1

*State v. Hampton*, 182 Wn. App. 805, 332 P.3d 1020 (2014)

Snohomish County Superior Court Cause No. 12-1-00869-2

FILED

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SONYA KRASKI  
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SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

HAMPTON, MATTHEW ALEXANDER

Defendant.

No. 12-1-00869-2

INFORMATION

Aliases:

Other co-defendants in this case:

Comes now MARK K. ROE, Prosecuting Attorney for the County of Snohomish, State of Washington, and by this, his information, in the name and by the authority of the State of Washington, charges and accuses the above-named defendant(s) with the following crime(s) committed in the State of Washington:

INDECENT LIBERTIES, committed as follows: That the defendant, on or about the 8th day of January, 2011, did knowingly cause A.B. (DOB: 9/7/92), not the spouse of the defendant and incapable of consent by reason of being mentally defective, mentally incapacitated, and physically helpless, to have sexual contact with the defendant or another; proscribed by RCW 9A.44.100(1)(b), a felony.

MARK K. ROE  
PROSECUTING ATTORNEY

MATT HUNTER, #24021  
Deputy Prosecuting Attorney

\*\*\*\*\*

Address: 6911 COLUMBIA CT #1	EVERETT	WA	98208
HT: 5'10	DOB: 03/17/1963		SID: WA12078605
WT: 200	SEX: M		FBI: 221787X6
EYES: Blue	RACE: White		DOC:
HAIR: Blond or Strawberry	DOL: HAMPT-MA-371DP,		WA
ORIGINATING AGENCY: SNOHOMISH COUNTY SHERIFF'S OFFICE			AGENCY CASE#: 1102909

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ORIGINAL

COURT OF APPEALS FOR THE STATE OF WASHINGTON  
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STATE OF WASHINGTON,

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RAUL CASTILLO LOPEZ,

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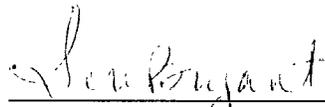
No. 46717-8-II

DECLARATION OF SERVICE

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Ms. Teri Bryant, paralegal for J. Bradley Meagher, Chief Criminal Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On February 27, 2015, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to John Hays, attorney for appellant, at the following email address: [jahayslaw@comcast.net](mailto:jahayslaw@comcast.net).

DATED this 27<sup>th</sup> day of February, 2015, at Chehalis, Washington.



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Teri Bryant, Paralegal  
Lewis County Prosecuting Attorney Office

**LEWIS COUNTY PROSECUTOR**

**February 27, 2015 - 10:58 AM**

**Transmittal Letter**

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Brief: Respondent's

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Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

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Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Teresa L Bryant - Email: [teri.bryant@lewiscountywa.gov](mailto:teri.bryant@lewiscountywa.gov)

A copy of this document has been emailed to the following addresses:

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