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No. 100186-0

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

(Court of Appeals No. 50400-6-II)

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STATE OF WASHINGTON,

Respondent,

vs.

FORREST EUGENE AMOS,

Petitioner.

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RESPONSE TO PETITION FOR REVIEW

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On review from the Court of Appeals, Division Two,  
And the Superior Court of Lewis County

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JONATHAN MEYER  
Lewis County Prosecuting Attorney



By:

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Senior Deputy Prosecuting Attorney  
WSBA No. 35564

Lewis County Prosecutor's Office  
Office ID 91182  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

**TABLE OF CONTENTS**

TABLE OF AUTHORITES ..... ii

A. COURT OF APPEALS DECISION ..... 1

B. COUNTERSTATEMENT OF THE ISSUES ..... 1

C. STATEMENT OF FACTS..... 1

D. ARGUMENT .....6

    1. There Is No Conflict Between The Court Of Appeals Decisions And This Court’s Decision in *State v. Jackson*..... 7

    2. This Court Should Decline Amos’ Invitation To Allow Him To Raise An Argument He Failed To Litigate In The Court Of Appeals ..... 9

E. CONCLUSION ..... 11

APPENDIX

## TABLE OF AUTHORITIES

### **Washington Cases**

*Plein v. Lackey*, 149 Wn.2d 214, 67 P.3d 1061  
(2003) ..... 10, 11

*State v. Amos (Amos I)*, No. 50400-6-II, LEXIS 1240  
(Wash. Ct. App. April 28, 2020) ..... 2, 4, 5, 10

*State v. Forrest Eugene Amos (Amos II)*, No. 50400-6-II,  
(June 8, 2021) ..... 1, 6, 7, 8

*State v. Jackson*, 195 Wn.2d 841, 467 P.3d 97 (2020) ...5,  
6, 7

### **Other Rules or Authorities**

GR 14.1 .....2

RAP 13.4 .....6, 9

## A. COURT OF APPEALS DECISION

The Petitioner, Forrest Eugene Amos, seeks review of the unpublished opinion in *State v. Forrest Eugene Amos (Amos II)*, Court of Appeals, Division II, cause number 50400-6-II, filed June 8, 2021. Reconsideration of the decision was denied on August 5, 2021. A copy of the decision is attached for the Court's convenience as Appendix A.

## B. COUNTERSTATEMENT OF THE ISSUES:

1. Did the Court of Appeals, on remand from this Court, apply the wrong legal standard to determine if the trial court's improper shackling was constitutionally harmless beyond a reasonable doubt?
2. May Amos raise a new argument, not litigated at the Court of Appeals, in this petition for review to the Supreme Court?

## C. STATEMENT OF FACTS

Amos, believing he was wronged by Detective Adam Haggerty, Detective Chad Withrow, Deputy William Halstead, and Prosecuting Attorney Jonathan Meyer, filed

fraudulently made subrogation bonds in each victim's name in Lewis County Superior Court. RP 92-95, 140-42, 181-84, 189-92, 297-303; Ex. 2, 3, 4, 5. Amos was angry about a 2013 criminal case filed by the Lewis County Prosecutor's Office, wherein part of case a search warrant was executed on his jail cell by the detectives. *State v. Amos (Amos I)*, No. 50400-6-II at 2-3, LEXIS 1240 (Wash. Crt. App. April 28, 2020)(unpublished).<sup>1</sup> Amos asserted his civil rights were violated, leading him to have no choice but to plead guilty to numerous felonies (12) in a plea deal Amos reached with the State in the 2013 case. *Id.* at 3; RP 88-89. Amos was sentenced to 12 years in prison in that matter. RP 88-89.

Amos filed four documents titled, "Forced Commercial Contract." Ex. 2, 3, 4, 5. The documents also

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<sup>1</sup> The State cites to the first unpublished Court of Appeals opinion for Amos' case for citation to the facts and for context as it pertains to this petition for review of the second Court of Appeals decision on Amos' case. GR 14.1.

state they are a notice of a subrogation bond and require Clerk's action. *Id.* The four documents are similar with minor changes for the victims. *Id.* The documents similarly stated (with the minor changes):

Jonathan Meyer, public servant, prosecuting attorney, law merchant do hereby enter myself security for costs in the cause and acknowledge myself bound to pay or cause to be paid all costs which may accure [sic] in this action, either to the opposite party, or to any of the officer of this court, pursuant to the laws of this state, and/or the District of Columbia, 28 USC Sex. 3002(15)(c). See State v. Sefrit, 82 Wash. 520, 144 P. 725 (1914), State v. Yelle. 4 Wn2d 324, 103 P.2d 372 (1940); Nelson v. Bortell, 4 Wn.2d 174, 103 P.2d 30 (1940).  
Dated this 11<sup>th</sup> day of March, 2016. Jonathan Meyer

Ex. 3, page 1 (under Mr. Meyer's name it states, "public servant, prosecuting attorney). The documents also contain language stating Amos is the surety on the bonds and place each in excess of one million dollars. Ex. 2, 3, 4, 5.

Amos was charged with four counts of forgery and four counts of criminal impersonation in the first degree. CP

1-5. Only the forgery counts have been at issue throughout the appeal. As his case was being litigated in the trial court, Amos began to have problems with his court appointed counsel, Don Blair. RP 13-18, 37-51; RP (11/29/16) 26-29; CP 14-15. The issues appeared to mainly revolve around Amos' desire for his counsel make certain arguments Mr. Blair believed he could not properly present. *Amos I*, at 6-7. Amos ultimately proceeded pro se. *Id.* at 7.

During the trial Amos wore a leg brace pursuant to jail policy. RP (6/7/17) 51-52. There was no individualized inquiry regarding the use of restraints. See RP (6/7/17). During preliminary matters, Amos brought up the issue regarding the leg restraint. *Id.* at 51-52. The trial court stated, "Well, I will tell you I didn't notice that you had anything on until you said that...You know, it's not something they can see." RP 51. Amos was convicted as charged and sentenced to an exceptional sentence. RP 375-76, 408-11.

Division Two affirmed Amos' conviction and sentence. *Amos I*, No. 50400-6-II (2020). After *Amos I* was decided, this Court decided *State v. Jackson*, 195 Wn.2d 841, 467 P.3d 97 (2020). Amos filed a petition for review on select issues decided by the Court of Appeals (as there were five (5) issues raised by Amos' attorney and nine (9) issues raised by Amos in his statement of additional grounds (SAG) at the Court of Appeals). Appendix B. The State conceded the Court of Appeals used the incorrect standard when it determined Amos' restraint argument and requested this Court grant review solely on that matter, and remand the case to the Court of Appeals for the proper harmless error analysis to be conducted. Appendix C. This Court agreed with the State and granted review solely for the Court of Appeals to reconsider its decision by applying the correct harmless error analysis, as set forth in *Jackson*, 195 Wn.2d 841. Appendix D.



The Court of Appeals, on remand reconsidered Amos' restraint. *Amos II*, Slip. Op. 50400-6-II. The Court of Appeals reviewed the relevant facts, applied the harmless beyond a reasonable doubt standard from *Jackson*, and determined Amos' physical restraint was harmless. *Id.* Amos has petitioned for review.

The State will supplement the facts in the argument section below.

#### D. ARGUMENT.

Amos asserts the Court of Appeals failed to apply the correct harmless error analysis adopted by this Court in *State v. Jackson*, 195 Wn.2d 841. Amos also, as he did in his previous petition for review, raises claims not argued below. The Court of Appeals properly reconsidered Amos' restraint issue pursuant to this Court's remand order, therefore, review is not warranted. RAP 13.4(b)(1). The remaining issue(s) raised by Amos in his petition do not warrant review by this Court. See RAP 13.4(b).

1. There Is No Conflict Between The Court Of Appeals Decisions And This Court's Decision in *State v. Jackson*.

Amos argues the Court of Appeals decision in regard to his improper shackling argument is in conflict with this Court's decision in *State v. Jackson*, 195 Wn.2d 841. Amos asserts the Court of Appeals failed to apply the correct harmless error standard. Petition at 10-16. Amos argues the Court of Appeals either misunderstood or rejected the analysis mandated by this Court in *Jackson*. Petition at 12. Finally, Amos asserts the record provided "ample evidence the jury would have noticed" his restraint, even more than the restraint in *Jackson*. *Id.* Amos' dissatisfaction with the Court of Appeals does not warrant review.

The Court of Appeals followed this Court's mandate, reconsidering its earlier opinion, applying the harmless error analysis set forth by this Court in *Jackson*. *Amos II*; *Amos I*, at 20-24; Appendix D. The only argument ever before the Court of Appeals in regard to Amos' shackling

was whether it was harmless error, as the State conceded from the start that Amos was improperly shackled. COA Brief of Respondent at 15-18. The Court of Appeals reviewed the facts, applied the correct standard, and found the error harmless beyond a reasonable doubt. *Amos II*.

Contrary to Amos' argument, there was never a statement by Amos that the brace was visible. See RP (6/7/17) 51-52. Amos discussed that it was awkward. *Id.* at 51. Amos stated the jurors would be looking at "this side of me." *Id.* There is nothing in the record that states the jurors could see brace. See RP generally. The evidence was that the brace was not visible, specifically noted by the prosecutor when Amos was standing, as the prosecutor could not tell the difference between Amos' two legs. RP (6/7/17) 52. Amos, by his request, stood while presenting his case to the jurors. RP 296. Amos' disagreement with the Court of Appeals application of the law, because it did not turn in his favor, does not warrant review by this Court.

This Court should deny Amos' request for review as it does not meet the standard pursuant to RAP 13.4(b)(1).

2. This Court Should Decline Amos' Invitation To Allow Him To Raise An Argument He Failed To Litigate In The Court Of Appeals.

Amos argues his unconstitutional shackling should be considered structural error due to it undermining his constitutional right to self-representation. Petition at 16-21. Alternatively, Amos argues due to his pro se statutes, and the effect of the wrongful shackling on his self-representation, this Court should require the presumably prejudicial standard "to tip even more favorable to the defendant and against the prosecution." Petition at 21. The State is unsure what Amos is asserting is a more stringent test than constitutional harmless error and less than structural error, as he appears to simply state the error cannot be proven harmless and requires reversal, and that is structural error. *Id.*

Regardless, Amos made similar argument to this Court in his previous petition for review. Appendix B. Amos asserted the shackling should have been structural error due to it undermining his ability to make an informed decision whether to waive counsel and proceed pro se. Appendix C, 12-14. The State argued Amos did not raise a structural error argument regarding a conflict between his shackling and pro se representation at the Court of Appeals. Appendix C, 9-10; *see also Amos I*.

As noted in the State's response to the prior petition for review, in addition to appellate counsel's five (5) arguments, Amos argued nine (9) statements of additional grounds to the Court of Appeals. *Amos I* at 37-59. Amos had ample opportunity, and ability, to make any structural error or other argument in regards to his self-representation and shackling, but failed to do so.

It is the general rule that a party "may not raise a new issue for the first time in a petition for review." *Plein v.*

*Lackey*, 149 Wn.2d 214, 222, 67 P.3d 1061 (2003) (internal citation omitted). The Court should not accept review on Amos' structural error argument or his heightened presumed prejudiced for pro se litigants standard. This Court did not accept Amos' invitation previously when he requested this Court look at new issues upon review, and it should not do so now. Appendix B, C, D.

#### E. CONCLUSION

The State respectfully requests this Court not accept review of Amos' petition. If this Court were to accept review on the other matters or request argument in this case, the State would respectfully request an opportunity to submit supplemental briefing.

This document contains 1,755 words, excluding the parts of the document exempted from the words count by RAP 18.17.

RESPECTFULLY submitted this 6<sup>th</sup> day of October, 2021.

JONATHAN MEYER  
Lewis County Prosecuting Attorney

A handwritten signature in blue ink, appearing to be 'SIB', written over a horizontal line.

by: \_\_\_\_\_  
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff

# Appendix A

*State v. Amos (Amos II),*

COA No. 50400-6-II (June 8, 2021)



June 8, 2021

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

FORREST EUGENE AMOS,

Appellant.

No. 50400-6-II

UNPUBLISHED OPINION  
ON REMAND FROM  
THE SUPREME COURT

WORSWICK, J. — On April 28, 2020, we filed an unpublished opinion affirming Forrest Amos’s convictions and sentence for four counts of forgery and four counts of first degree criminal impersonation. *State v. Amos*, 13 Wn. App. 2d 1040 (2021). Our Supreme Court granted Amos’s petition for review in part and remanded to us for reconsideration only on the issue of whether Amos was unconstitutionally shackled during trial in light of *State v. Jackson*, 195 Wn.2d 841, 467 P.3d 97 (2020).<sup>1</sup> *State v. Amos*, 197 Wn.2d 1007, 484 P.3d 1262 (2021).

We set out the majority of the facts in our original opinion and need not repeat them here. The only issue before us is the proper remedy on remand as to Amos’s restraints during trial. Amos argues that he was unconstitutionally physically restrained during the trial. We hold that Amos’s physical restraint was harmless, and thus, we affirm Amos’s convictions.

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<sup>1</sup> In *Jackson*, our Supreme Court held that the State bears the burden to prove that unconstitutional shackling was harmless beyond a reasonable doubt, abrogating *State v. Hutchinson*, 135 Wn.2d 863, 959 P.2d 1061 (1998).

RELEVANT FACTS

This case arises out of Amos's attempt to file documents with the Lewis County Superior Court regarding the Lewis County prosecutor, a Lewis County deputy prosecutor, and two City of Centralia police detectives. As a result of Amos filing these documents, the State charged Amos with four counts of forgery and four counts of first degree criminal impersonation.

On June 7, 2017, before Amos's trial started, the trial court and parties addressed a number of issues, including Amos's leg restraint. Verbatim Transcript of Proceedings (VTP) (June 7, 2017) at 51. The following exchange occurred:

MR. AMOS: One quick question, your Honor, before we take a recess. Is there a possibility that I can object to this leg brace being on my leg since I've got to get up and like talk to a jury and stuff? It's kind of awkward.

THE COURT: No. That's got to stay on. That's jail policy. I'm not going to direct that, because you just need to—you've got to work with it.

MR. AMOS: Right here in our jury box it's like looking directly at this side of me. I understand I've got to work with it, but I think it's still prejudicial. I've never had any kind of eludes or any kind of attempts to do anything. We have an officer right here. I mean, that's not—I'm just kind of—

THE COURT: I understand that but—

MR. AMOS: I'm just concerned about the prejudicial effect of this.

THE COURT: Well, I will tell you I didn't notice that you had anything on until you said that. And I—that is minimally intrusive. You know, it's not something they can see. The only thing that is going to happen is you are going to reach down to your knee and hit the release when you sit down, and that's the only thing that's going to happen. So that has to stay on.

MR. AMOS: All right.

THE COURT: All right. I don't think that it's going to be an issue for here, but there is—we have had other people who have tried to bolt, and it's just—it's a security—it's a safety thing, and it's just something that we need to deal with it.

No. 50400-6-II

MR. AMOS: All right.

[THE STATE]: If I could just make a record, your Honor, it appears that there is no exterior discernible protruding item that at all shows through the clothing of the defendant, at least not from this view, and I don't see anything either. So for the record—

MR. AMOS: You [sic] looking at the wrong leg just for the record.

THE COURT: Well, but there's nothing—it's all contained. It's underneath your pant leg, correct?

MR. AMOS: Yes.

THE COURT: Okay. All right. We will take a recess.

VTP (June 7, 2017) at 51-52.

During the trial, Amos moved around the courtroom in front of the jury. Amos handed documents to witnesses and approached the bench. When Amos presented his defense, the trial court directed Amos to “come on up” to testify in the presence of the jury. 3 Verbatim Report of Proceedings (VRP) at 296. Other than Amos's objection, there is no further mention of the leg restraint. And nothing in the record on appeal shows or suggests that the jury noticed Amos's leg restraint.

The jury found Amos guilty of four counts of forgery and four counts of first degree criminal impersonation.

#### ANALYSIS

Amos argues that the trial court abused its discretion by requiring Amos to wear a leg restraint. The State concedes that the trial court abused its discretion, but argues that the error was harmless beyond a reasonable doubt. We agree with the State.

The presumption of innocence is a fundamental component of a fair trial. *State v. Jaime*, 168 Wn.2d 857, 861, 233 P.3d 554 (2010). To preserve the presumption of innocence, a defendant is “entitled to the physical indicia of innocence which includes the right of the defendant to be brought before the court with the appearance, dignity, and self-respect of a free and innocent [person].” *Jaime*, 168 Wn.2d at 861-62 (quoting *State v. Finch*, 137 Wn.2d 792, 844, 975 P.2d 967 (1999)).

A trial court also has a duty to provide for courtroom security, and may exercise its discretion to implement measures needed to protect the safety of court officers, parties, and the public. *State v. Hartzog*, 96 Wn.2d 383, 396, 635 P.2d 694 (1981). In exercising discretion, the trial court must bear in mind a defendant’s right “to be brought into the presence of the court free from restraints.” *State v. Damon*, 144 Wn.2d 686, 690, 25 P.3d 418 (2001). “[R]egardless of the nature of the court proceeding or whether a jury is present, it is particularly within the province of the trial court to determine whether and in what manner, shackles or other restraints should be used.” *State v. Walker*, 185 Wn. App. 790, 797, 344 P.3d 227 (2015).

Courts recognize that physical restraints are inherently prejudicial to the defendant. *Finch*, 137 Wn.2d at 845-46. Restraints should be allowed “only after conducting a hearing and entering findings into the record that are sufficient to justify their use on a particular defendant.” *Walker*, 185 Wn. App. at 800. The trial court must engage in this individual inquiry prior to every court appearance. *Jackson*, 195 Wn.2d at 854. The trial court’s determination must be based on specific facts in the record that relate to the particular defendant. *Jaime*, 168 Wn.2d at 866.

No. 50400-6-II

We review a trial court's decision to keep a defendant restrained for abuse of discretion. *State v. Turner*, 143 Wn.2d 715, 724, 23 P.3d 499 (2001). A trial court's failure to exercise its discretion when considering a courtroom security measure constitutes constitutional error. *State v. Lundstrom*, 6 Wn. App. 2d 388, 394, 429 P.3d 1116 (2018), *review denied*, 193 Wn.2d 1007 (2019). Deferring to general jail policy without an individual inquiry is an abuse of discretion and constitutional error. *Lundstrom*, 6 Wn. App. 2d at 395.

A claim for unconstitutional physical restraint is subject to a harmless error analysis. *Jackson*, 195 Wn.2d at 855-56. If an error violates a defendant's constitutional right, it is presumed to be prejudicial. *Finch*, 137 Wn.2d at 859. But the State may overcome this presumption by showing that the error was harmless beyond a reasonable doubt. *Jackson*, 195 Wn.2d at 856.

In *Jackson*, the trial court failed to conduct an individualized inquiry into whether the defendant needed to be restrained. 195 Wn.2d at 844, 857. Jackson was shackled during trial and the record there showed that Jackson therefore remained seated for his oath and on the witness stand. *Jackson*, 195 Wn.2d at 848, 857. The only mention in the record there as to whether the restraint was visible was Jackson's statement to the trial court that the jury could see his restraint when he was in the witness box. *Jackson*, 195 Wn.2d at 857. Our Supreme Court reversed Jackson's conviction, holding that the State had failed to prove that the error was harmless beyond a reasonable doubt. *Jackson*, 195 Wn.2d at 858.

Here, the trial court abused its discretion because it failed to conduct an adequate hearing or enter findings sufficient to justify Amos's leg restraint. Amos objected to the leg restraint, but the trial court ruled that Amos would remain restrained during trial. The trial court failed to

No. 50400-6-II

conduct an individual inquiry and failed to enter any findings about the leg restraint. The court merely deferred to jail policy as the justification for the restraint. We hold that the trial court abused its discretion and that Amos's restraint was a constitutional error.

As stated above, unconstitutional shackling is subject to a harmless error analysis. *Jackson*, 195 Wn.2d at 855. The State is required to show that this error was harmless beyond a reasonable doubt. *Jackson*, 195 Wn.2d at 856. It does so here.

This case differs from *Jackson*. The record here shows that neither the trial court judge nor the prosecutor saw anything protruding under Amos's pant leg. The record also shows that throughout the trial, Amos moved around the courtroom in front of the jury. Amos handed documents to witnesses and approached the bench. When Amos was presenting his defense, the trial court directed Amos to "come on up" to testify in the presence of the jury. 3 VRP at 296.


On appeal, Amos states that the leg restraint interfered with his ability to move around while presenting his defense. He argues that the leg restraint encumbered his movements but the record on appeal shows otherwise. Amos even acknowledges that "[i]t is not clear from the record" whether his movements were impeded. Brief of Appellant at 15. Amos, acting as his own counsel, moved throughout the courtroom in the presence of the jury. Nothing in the record on appeal shows that the jury noticed Amos's leg restraint. Indeed, the trial court judge did not notice the restraint until Amos called it to his attention. Because the record shows that the leg restraint was not visible and that Amos was able to freely move around the courtroom and step into the witness box, we hold that the State has shown that the error was harmless beyond a reasonable doubt.

No. 50400-6-II

Accordingly, we hold that Amos's physical restraint was harmless. We affirm Amos's convictions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
Worswick, J.

  
L., C.J.

  
Sutton, J.

# Appendix B

Amos' Petition for Review, *State v. Amos (Amos I)*,  
No. 50400-6-II, LEXIS 1240, (Wash. Ct. App. April 28, 2020)



FILED  
SUPREME COURT  
STATE OF WASHINGTON  
1/21/2021 9:45 AM  
BY SUSAN L. CARLSON  
CLERK

Supreme Court No. 98763-7  
(COA No. 50400-6-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

FORREST EUGENE AMOS, Appellant.

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

The Honorable James Lawler, Judge  
(No. 16-1-00399-21)

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PETITION FOR REVIEW

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Presented by:

Forrest Eugene Amos DOC# 809903  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, Wa 98326

Pro se petitioner

TABLE OF CONTENTS

A. IDENTITY OF PETITIONER.....1

B. COURT OF APPEALS DECISION.....1

C. ISSUES PRESENTED FOR REVIEW.....1

D. STATEMENT OF THE CASE.....2

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.....6

    1. Amos's Insufficiency of Evidence Claim.....6

        a. The Court of Appeals decision conflicts with Mark.....6

        b. The Court of Appeals decision conflicts with Scoby.....8

    2. Amos's Unconstitutional Shackling Claim.....10

        a. The Court of Appeals decision conflicts with Jackson and Clark.....10

        b. Does the unconstitutional shackling of a pro se defendant create a structural error as it undermines the validity of the defendant's choice to represent himself and waive his right to counsel?.....12

    3. Amos's Ineffective Assistance of Counsel/Continuance Claim.....14

        a. Does counsel's failure to meet with a client when specifically ordered to do so by the trial court constitute per se ineffective assistance of counsel?.....14

    4. Amos's Right to Present a Defense Claim.....15

F. CONCLUSION.....16

A. IDENTITY OF PETITIONER

Forrest Eugene Amos, petitioner pro se, asks this Court to review the Court of Appeals decision referenced in Section B.

B. COURT OF APPEALS DECISION

Amos requests review of the unpublished opinion in State v. Amos, No. 50400-6-II, filed on April 28, 2020. A copy of that opinion is attached. See Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals erred when it found that the evidence was sufficient to support the forgery convictions although the documents said to be forged was not signed or purported to be the act of someone other than the maker, and did not have legal efficacy because it was simply a "notice" rather than a "negotiable instrument" and did not have the necessary requirements to give the documents legal force and effect in law.

QUESTION: Can a hand-written printed name of another person, purported to be done by the maker himself, be considered a "signature" for the purposes of a forgery conviction?

QUESTION: Can an unsworn statement support a forgery conviction if it does not possess the necessary predicates under RCW 9A.72.085 to give it legal force and effect in law?

2. Whether the Court of Appeals erred when it applied the "substantial or injurious effect" test rather than the "harmless beyond a reasonable doubt" test to the shackling violation where the trial court required Amos to wear a leg restraint during jury trial under a "blanket jail policy," without conducting an individualized inquiry into whether the restraint was as needed, while he was acting pro se.

QUESTION: Does the unconstitutional shackling of a pro se defendant create a structural error as it undermines the validity of the defendant's choice to represent himself and waive his right to counsel?

3. Whether the Court of Appeals erred when it found that Amos did not receive ineffective assistance of counsel despite the record showing counsel did not comply with the judge's order to make trips to the prison to meet with Amos in order to prepare a defense.

QUESTION: Does counsel's failure to meet with a client when specifically ordered to do so by the trial court constitute per se ineffective assistance of counsel?

4. Whether the Court of Appeals erred when it found the trial court did not abuse its discretion when it granted Amos's request to represent himself and denied his motion for a continuance after it allowed Amos to represent himself.

5. Whether the Court of Appeals erred when it found that Amos did not raise reversible issues in his SAG although it found the trial court abused its discretion by granting the State's motion to exclude evidence regarding legal efficacy and then including it as an element in the jury instructions.

6. Whether the Court of Appeals erred when it found that Amos's right to present a defense was not violated despite the trial court's ruling regarding the motion in limine for legal efficacy.

D. STATEMENT OF THE CASE

The Lewis County Prosecutor's Office charged Forrest Eugene Amos with several criminal offenses: (count 1) Forgery; (count 2) Forgery; (count 3) Forgery; (count 4) Forgery; (count 5) Criminal Impersonation in the First Degree; (count 6) Criminal Impersonation in the First

Degree; (count 7) Criminal Impersonation in the First Degree; and (count 8) Criminal Impersonation in the First Degree. The named victim in counts 1 and 5 was Jonathan Meyer. The named victim in counts 2 and 6 was William Halstead. The named victim in counts 3 and 7 was Chad Withrow. The named victim in counts 4 and 8 was Adam Haggerty. All counts included an aggravating circumstance alleging the offenses were committed against a public official in retaliation for them performing their duty to the criminal justice system. Each count also included a "free crime" aggravator allegation. CP 1-5.

These charges stem from Amos executing four three-page pleadings entitled "Forced Commercial Contract" that were subsequently filed with the Lewis County Clerk. CP 31-42. Amos never denied executing the documents. The documents were executed from prison, where Amos is currently serving a sentence under same cause number (No. 13-1-00818-6) in which the four documents were filed.

The first page of the documents gave rise to the criminal charges in this matter. The full heading of the first page reads "Forced Commercial Contract," "Notice of Subrogation Bond [...]," "Clerk's Action Required." Id. Each of these four notices lists public officials in Lewis County that Amos felt wronged him. VRP 151. The first sentence of the Notices is written in the first person: "[name], public servant, [...] do hereby enter myself security for costs in the cause [...]." CP 31-42. The final line of the first page then shows the name of each official printed over a line with the date. Id. The Notice is not sworn under penalty of perjury, but does begin with the "ss" header normally used in affidavits in Washington. See RCW 9A.72.085. The two pages

following the first are pleadings signed by Amos and properly notarized by a notary at the prison. CP 31-42.

Amos was represented by counsel in his case up until one week before trial. VRP 47. Prior to Amos's self-representation, in September 2016, his counsel was "specifically order[ed] ... to make however many trips between [the county] and Clallam Bay Corrections facility as is necessary to properly prepare the defense in this case." VRP 54. Despite this specific order, counsel never made one trip to the prison to meet with Amos. Amos made this clear on June 1, 2017, one week before trial, when he was forced to move for self-representation because of counsel's failure to communicate with him. VRP 39-40.

When Amos moved for self-representation, he made it clear that he felt that he had no other choice because counsel never contacted or visited him at the prison in order to prepare his defense. Supp. VRP 15-16. Based on what was in the attorney-client file when it was given to Amos, counsel never conducted any witness interviews or trial preparations. The court would not accept that Amos kept asserting that he had no other choice but to represent himself because of counsel's deficient performance. VRP 16-18.

The trial court granted Amos's request to represent himself on June 1, 2017, one week before trial. Amos was never informed that he would be required to wear a leg restraint while representing himself before a jury. VRP 43-47. He was returned back to the prison until the morning the trial was set to start.

Upon arriving back to the trial court, Amos sought a continuance because of counsel's lack of preparation. Supp. VRP 15-16. The motion

was denied and he was forced to interview witnesses the morning of trial. Thereafter, the State sought to exclude evidence of legal efficacy and prohibiting Amos from inquiring about it. VRP 62-70. Initially, the trial court granted the State's motion. However, before the State rested its case, the trial court rescinded its ruling when it finally recognized that legal efficacy was an element of forgery and added it into the jury instructions. VRP 234-238, 257.

It was not until the morning of trial Amos became aware that he would be required to wear a leg restraint while he represented himself before the jury. He objected to the use of the leg restraint because it was "awkward" and "prejudicial" because the "jury box [was] ... looking directly at" the side of him the leg restraint was on. VRP 51-52. Also because he had "to get up and like talk to the jury and stuff" and he "never had any kind of eludes or any kind of attempts to do anything." Id. The trial court did not conduct a proper individualized inquiry into whether the leg restraint was needed. Rather than conducting the proper inquiry, the trial court relied on "jail policy" to justify the use of the leg restraint although the court "[did not] think that [Amos was] going to be an issue[,]" calling it "minimally intrusive" because "the only thing that [was] going to happen is [Amos] is going to reach down to [his] knee and hit the release when [he] s[a]t down...." Id. The State later conceded that the trial court abused its discretion and committed error by not conducting the proper individualized inquiry into the need for restraints, but argued it was harmless under the "substantial or injurious effect" test. *State v. Amos*, No. 50400-6-II, slip opinion at 15-18 (Appendix A). The Court of Appeals agreed.

Amos was found guilty on all eight counts charged. The jury returned verdicts of "no" for the retaliation aggravating factor. Amos was sentenced to 29 months on each count of Forgery which were run consecutive to each other under the "free crime" aggravator for a total of 116 months. The remaining sentences were run concurrently. VRP 408-09. In addition, the court specifically stated that the sentence was to run consecutive to the sentence imposed under a different cause, No. 13-1-00818-6, because the offenses occurred while he was under that sentence. RCW 9.94A.589(2)(a). VRP 408-11. Amos filed a timely appeal. CP 180.

On April 28, 2020, the Court of Appeals affirmed his convictions and sentence in an unpublished opinion. Appendix A (COA unpublished slip opinion). He filed a timely motion for reconsideration which was denied on June 9, 2020. The Washington Supreme Court has granted Amos a number of extensions to file a petition for review which is due on January 21, 2021.

**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

**1. Amos's Insufficiency of Evidence Claim**

**a. The Court of Appeals decision conflicts with Mark.**

Even though a document may contain a false representation of fact, it is not necessarily forged. This scenario arose in *State v. Mark*, 94 Wn.2d 520, 618 P.2d 73 (1980) when pharmacists drafted false prescriptions but did not forge the physician's signature on them:

[...] a criminal statute which must be strictly construed in favor of the defendant. In writing the doctor's names on his claim form, the defendant represented that they had submitted prescriptions to him, but he did not represent that the doctors themselves had signed the claim forms.



In *Dexter Horton*, we quoted with approval the following from the case of *People v. Bendit*, 111 Cal. 274, 43 P. 901 (1896):

"When the crime is charged to be the false making of a writing, there must be the making of a writing which falsely purports to be the writing of another. The falsity must be in the writing itself - in the manuscript. A false statement of fact in the body of the instrument, or a false assertion of authority to write another's name, or to sign his name as agent, by which a person is deceived or defrauded, is not forgery. There must be a design to pass as the genuine writing of another person that which is not the writing of such other person. The instrument must fraudulently purport to be what it is not. And there was nothing of the kind in the case at bar...." 149 Wash. at 348, 270 P.2d 799. Accord: *State v. Marshall*, 25 Wn.App. 240, 606 P.2d 278 (1980).

Thus, there is a significant distinction between a forgery and a writing falsely representing that the facts which it reports are true. Since the claim forms submitted by the defendant were exactly what they purported to be, it was error to instruct the jury that it could properly find the defendant guilty of forgery, and the Court of Appeals was incorrect in sustaining the convictions on those counts. *Id.* at 524, 75.

The Supreme Court referenced *Mark* again in *Scoby*: "The claim forms at issue in those cases [*Mark*] were genuine and unaltered, and the pharmacists' signatures were genuine. The forms and the signatures on them were thus exactly what they purported to be." *State v. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358, 1361 (1991).

In this case, the documents were purported to be "notices" that were made by the maker, Mr. Amos. Although those "notices" were falsely represented to be written in the first person, Amos simply hand-printed the names of the four victims on the signature line then properly signed his own name in front of a notary public. He did not sign the names of the four victims before the notary public, nor did he attempt to mimic their "signatures." Therefore, the documents and Amos's own signature before a notary public were exactly what they were purported to be, and

the false representation in the "notices" is not forgery.

Furthermore, there was no design to pass the documents off as a genuine writing of another. This is because the second page of the three page document made it clear that the writing was of the maker, Mr. Amos, and not the writing of another. The documents were also hand written in Amos's own handwriting and did not attempt to mimic the handwriting, or signatures, of anyone other than Amos. When all three pages of the document are viewed as a whole, it makes it very clear that Amos was the maker, not anyone else. Therefore, like the scenario in Mark, the said documents are not purported to be forged.

The Court of Appeals disregarded and misconstrued the principles set forth in Mark when affirming the four Forgery convictions on appeal. Review is appropriate under RAP 13.4(b)(1).

**b. The Court of Appeals decision conflicts with Scoby.**

Although the reference to legal efficacy was removed from Washington's prior forgery statute, the requirement still stands:

[...] the instrument must be "something which, if genuine, may have legal effect or be the foundation of legal liability."

State v. Scoby, 117 Wn.2d 55, 57-58, 810 P.2d 1358 (1991).

In this case, the alleged documents said to be forged did not possess the necessary requirements to give them legal force and effect in law. This is because, as explained in subsection (1)(a) of this Section, the documents did not have what would constitute a "signature" from each of the victims as required by RCW 62A.3-401(a); and, aside from the signature requirement, the documents did not recite that they were certified or declared by the person to be true and correct under penalty

of perjury or state that it was so certified or declared under the laws of the State of Washington as required by RCW 9A.72.085(1)(a)(d) in order to give the documents legal force and effect in law.

As explained in Section (D) of this petition, the Forgery convictions stem from Amos executing four three page pleadings that were filed with the Lewis County Clerk. It was only the first page of those documents which gave rise to the criminal charges. The first page was equivalent to an unsworn statement, therefore, all four requirements in RCW 9A.72.085(1) must be present in the document in order to make it legally binding in an official proceeding. Because all four requirements were not present on the face of the four separate documents said to be forged, the documents cannot be used to form the foundation of legal liability against any of the victims.

Lastly, the documents were simply "notices" and not "negotiable instruments" governed by RCW 62A.3-104. The "notices" contained conspicuous statements, such as, the term "Notice of Subrogation" and the mark "ss" indicating the documents were unsworn statements governed by RCW 9A.72.085. See RCW 62A.3.104(d) ("A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article"). Therefore, the documents cannot be considered "negotiable instruments," or be considered to have the legal efficacy necessary to support the Forgery convictions charged in this matter.

The Court of Appeals disregarded and misconstrued the principle of

legal efficacy set for in Scoby when affirming the four Forgery convictions on appeal. Review is appropriate under RAP 13.4(b)(1).

#### SUBCONCLUSION

Based on the forgoing arguments in subsections (1)(a) and (1)(b) of this Section, the State did not meet its burden to prove every element of Forgery beyond a reasonable doubt as required by the Due Process Clauses of the Federal and State Constitutions. U.S. Const. Amend. 14; Wash. Const. Art. I, Sec. 3.

#### 2. Amos's Unconstitutional Shackling Claim

##### a. The Court of Appeals decision conflicts with Jackson and Clark.

To ensure the right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 22 of the Washington State Constitution, "[i]t is well settled that a defendant in a criminal case is entitled to appear at trial free from all bonds or shackles except in extraordinary circumstances." *State v. Finch*, 137 Wn.2d 792, 842, 975 P.2d 967 (1999).

Recently, the Washington Supreme Court addressed concerns of the systematic and routine shackling of incarcerated persons without an individualized inquiry into the need for restraints. *State v. Jackson*, 195 Wn.2d 841, 467 P.3d 97 (2020). The *Jackson* court held "that the trial court abused its discretion and committed constitutional error when it required [the defendant] to be shackled under a blanket jail policy ... without an individualized inquiry into its need." *Id.* at 855. Furthermore, the *Jackson* court held "that the State bears the burden to prove beyond a reasonable doubt that the constitutional violation was

harmless as set forth in *Clark*, 143 Wn.2d at 775-76. In doing so, [the Court] disavow Hutchinson's "substantial or injurious effect" test, 135 Wn.2d at 888, because application of the test has resulted in no meaningful remedy for a shackling constitutional violation." *Id.* at 856.

Earlier, in *Clark*, the Court opined that:

"[t]he test for harmless error is whether the state has overcome the presumption of prejudice when a constitutional right of the defendant is violated when, from an examination of the record, it appears the error was harmless beyond a reasonable doubt, or whether the evidence against the defendant is so overwhelming that no rational conclusion other than guilt can be reached."

*State v. Clark*, 143 Wn.2d 731, 775-76, 24 P.3d 1006 (2001).

Herein, this case is identical to the shackling violation that occurred in *Jackson*. Like *Jackson*, the trial court required Amos to wear a leg restraint under a "blanket jail policy" without conducting an individualized inquiry into whether the restraint was needed. Also, like *Jackson*, the State conceded to the constitutional error but argued the error was harmless under the "substantial or injurious effect" test, which the Court of Appeals agreed because nothing in the record shows that the leg restraint influenced the jury's verdict. Appendix A (unpublished slip opinion at 18).

As explained in Section (D) of this petition, Amos objected to the leg restraint because it was "awkward" and "prejudicial" since the jury box was so close and he would have to get up and down in front of the jury in order to present his case pro se. VRP 51-52. The trial court relied solely on jail policy to justify the restraint use, calling it "minimally intrusive" although it did not think Amos was going to be a problem because he had no escapes or attempts to do anything that would

justify the restraint use. Id.

Since the trial court abused its discretion and committed constitutional error similar to that in Jackson, the Court of Appeals erred when it relied on the incorrect standard to find that Amos's shackling violation was harmless beyond a reasonable doubt. The Court of Appeals decision conflicts with Jackson and Clark. Review is appropriate under RAP 13.4(b)(1).

- b. Does the unconstitutional shackling of a pro se defendant create a structural error as it undermines the validity of the defendant's choice to represent himself and waive his right to counsel?

Unlike the circumstances in Jackson, this case presents a unique constitutional question because Amos was acting pro se when the trial court abused its discretion and committed error when requiring him to wear a leg restraint.

It has been a long-standing rule in Washington that the right to appear and defend in person extends to both mental and physical faculties. *State v. Finch*, 137 Wn.2d 792, 975 P.2d 967 (1999). This is because "they may abridge important constitutional rights, including the presumption of innocence, privilege of testifying in one's own behalf, and right to consult with counsel during trial." *State v. Hartzog*, 96 Wn.2d 383, 398, 635 P.2d 694 (1981). The Jackson Court went further and recognized how the use of restraints has an "unknown risks of prejudice from implicit bias and how [the restraints] may impair decision-making...." *Jackson*, 195 Wn.2d at 856.

Because Amos was not informed of the possibility of being restrained at trial when he chose to represent himself and waive his

right to counsel, the Court must apply "every presumption against [his] waiver of counsel" and then determine whether the waiver was made knowingly, voluntarily, and intelligently." *State v. Curry*, 191 Wn.2d 475, 486, 423 P.3d 179 (2018). Since the use of restraints can affect Amos's decision making process, it cannot be said that his request for self-representation was unequivocal or voluntarily made at this time.

"A structural error resists harmless error review completely because it taints the entire proceeding." *State v. Levy*, 156 Wn.2d 709, 725, 132 P.3d 1076 (2006). Such structural error include total denial of counsel, a biased trial judge, racial discrimination in jury selection, denial of self-representation at trial, and denial of a public trial. *Arizona v. Fulminante*, 499 U.S. 279, 310, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). "Each of these constitutional deprivations is a simple structural defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself. *Id.* at 310.

Herein, the unconstitutional shackling violation becomes a structural error because it completely undermines the validity of Amos's choice to represent himself and waive his right to counsel. Therefore, the entire framework of the trial, in the specific case, was completely tainted by the trial courts abuse of discretion and constitutional error regarding thier decision to make Amos wear a leg restraint while representing himself. Especially, since he was never informed of the possibility when he exercised his right to self-representation and waived his right to counsel. This error is equivalent to an outright denial of both the right to self-representation and the right to

counsel.

This Court should exercise its authority and accept review of this unique constitutional issue presented in this case. Review is appropriate under RAP 13.4(b)(3).

3. Amos's Ineffective Assistance of Counsel/Continuance Claims

- a. Does counsel's failure to meet with a client when specifically ordered to do so by the trial court constitute per se ineffective assistance of counsel?

The Sixth Amendment of the United States Constitution and Article I, Section 22 of the Washington State Constitution guarantee the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S.Ct. 2052 (1984).

This case presents a unique constitutional question of whether an ineffective assistance of counsel claim can be per se. The answer should be yes because the record clearly shows that counsel was ordered by the trial court to make trips to the prison to meet with Amos in order to prepare a defense. Counsel acknowledged that he would make the necessary trips to the prison and get with the court administrator about reimbursement. VRP 54. Despite this specific order, counsel never made a trip to the prison to meet with Amos. As a result Amos had no other choice but to move to represent himself.

RPC 1.4 makes it clear that counsel has a duty to communicate with a defendant which requires counsel to keep the defendant "reasonably informed about the status of a matter," and to "explain a matter to the extent reasonably necessary to permit the [defendant] to make informed decisions regarding the representation." Herein, the trial court felt it was necessary to order Amos's counsel to travel to the prison in order



the entire trial before the element was added in the jury instructions toward the end of trial.

By excluding Amos the ability to prepare a defense regarding the legal efficacy of the documents said to be forged, he was prevented from conducting proper examinations of every witness and, more importantly, he was prevented from exploring the possibility of finding a financial expert witness to show the documents in question did not have legal efficacy.

Herein, by limiting Amos's ability to present a defense surrounding legal efficacy clearly prevent him from having a fair trial in this case. This Court should exercise its authority and accept review of this constitutional issue. Review is appropriate under RAP 13.4(b)(3).

F. CONCLUSION

Amos respectfully asks this Court to accept review and reverse the Court of Appeals decision.

Dated: January 20, 2021

Respectfully submitted,



Forrest Eugene Amos #809903  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, Wa 98326

# Appendix C

State's Response to Petition for Review, *State v. Amos (Amos I)*,  
No. 50400-6-II, LEXIS 1240, (Wash. Ct. App. April 28, 2020)

No. 98763-7

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

(Court of Appeals No. 50400-6-II)

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**STATE OF WASHINGTON,**

Respondent,

vs.

**FORREST EUGENE AMOS,**

Petitioner.

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RESPONSE TO PETITION FOR REVIEW

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On review from the Court of Appeals, Division One,  
And the Superior Court of Lewis County

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JONATHAN MEYER  
Lewis County Prosecuting Attorney



By:

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Deputy Prosecuting Attorney  
WSBA No. 35564

Lewis County Prosecutor's Office  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

A. COURT OF APPEALS DECISION ..... 1

B. STATEMENT OF THE CASE ..... 1

C. STATEMENT OF FACTS ..... 1

D. ARGUMENT ..... 4

    1. The Court of Appeals’ Determination That The State Presented Sufficient Evidence Did Not Conflict With Binding Precedent From The Supreme Court, Therefore Review Is Not Appropriate ..... 4

    2. There Is No Unique Constitutional Question To Be Decided By This Court Regarding Amos’s Claimed Ineffective Assistance Of Counsel Issue Because The Court Of Appeals Correctly Found Amos’s Trial Attorney Communication With Amos Met Professional Standards .. 6

    3. This Court Should Remand Amos’s Case Back To The Court Of Appeals For Further Consideration Of Amos’s Improper Shackling Argument In Light Of This Court’s Decision In *State v. Jackson* ..... 7

    4. This Court Should Decline Amos’s Invitation To Allow Him To Raise An Argument He Failed To Litigate In The Court Of Appeals ..... 9

E. CONCLUSION ..... 11

APPENDIX

**TABLE OF AUTHORITIES**

**Washington Cases**

*Plein v. Lackey*, 149 Wn.2d 214, 67 P.3d 1061 (2003).....10

*State v. Andy*, 182 Wn.2d 294, 340 P.3d 840 (2014).....5

*State v. Hutchinson*, 135 Wn.2d 863, 959 P.2d 1061 (1998).....8

*State v. Jackman II*, 156 Wn.2d 736, 132 P.3d 136 (2006).....8

*State v. Jackson*, 195 Wn.2d 841, 467 P.3d 97  
(2020) .....4, 8, 9, 10, 11

*State v. Mark*, 94 Wn.2d 520, 618 P.2d 73 (1980).....4, 5

*State v. Scoby*, 57 Wn.2d 55, 810 P.2d 1358 (1991).....4, 6

*State v. Zimmerman*, 135 Wn. App. 970, 146 P.3d 1224 (2006) .....8

**Other Rules or Authorities**

GR 14.1 .....2

RAP 13.4(b) .....4, 6, 7, 9

WPIC 130.10 .....6

A. COURT OF APPEALS DECISION

The Petitioner, Forrest Eugene Amos, seeks review of the unpublished opinion in *State v. Forrest Eugene Amos*, Court of Appeals, Division II, cause number 50400-6-II, filed April 28, 2020, attached for the Court's convenience as Appendix A.

B. COUNTERSTATEMENT OF THE ISSUES:

1. By finding the State presented sufficient evidence to sustain Amos' convictions for forgery, did the Court of Appeals render a decision that conflicted with binding precedent from the Supreme Court?
2. Amos provides no basis in law or fact for his argument that defense counsel should be found per se ineffective
3. Did the Court of Appeals apply the wrong legal standard to determine if the trial court's improper shackling was constitutionally harmless beyond a reasonable doubt?
4. May Amos raise new arguments for the first time on a petition for review to the Supreme Court?

C. STATEMENT OF FACTS

Amos, believing he was wronged by Detective Adam Haggerty, Detective Chad Withrow, Deputy William Halstead, and Prosecuting Attorney Jonathan Meyer, filed fraudulently made subrogation bonds in each victim's name in Lewis County Superior Court. RP 92-95, 140-42, 181-84, 189-92, 297-303; Ex. 2, 3, 4, 5. Amos was angry about a 2013 criminal case filed by the Lewis County Prosecutor's Office, wherein part of that case a search

warrant was executed on his jail cell by the detectives. *Amos*, COA No. 50400-6-II, Slip Op. 2.<sup>1</sup> *Amos* asserted his civil rights were violated, leading him to have no choice but to plead guilty to numerous felonies (12) in a plea deal *Amos* reached with the State in the 2013 case. *Id.* at 2; RP 88-89. *Amos* was sentenced to 12 years in prison. RP 88-89.

*Amos* filed four documents titled, "Forced Commercial Contract." Ex. 2, 3, 4, 5. The documents also state they are a notice of a subrogation bond and require Clerk's action. *Id.* The four documents are similar with minor changes for the victims, dependent on the type of employment, such as police officer or deputy prosecutor. *Id.* The documents similarly stated (with the minor changes):

Jonathan Meyer, public servant, prosecuting attorney, law merchant do hereby enter myself security for costs in the cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue [sic] in this action, either to the opposite party, or to any of the officer of this court, pursuant to the laws of this state, and/or the District of Columbia, 28 USC Sec. 3002(15)(c). See *State v. Sefrit*, 82 Wash. 520, 144 P. 725 (1914), *State v. Yelle*, 4 Wn2d 324, 103 P.2d 372 (1940); *Nelson v. Bortell*, 4 Wn.2d 174, 103 P.2d 30 (1940).

Dated this 11<sup>th</sup> day of March, 2016. Jonathan Meyer

---

<sup>1</sup> The State cites to *Amos's* unpublished Court of Appeals opinion for factual basis and for support for the Court of Appeals' holdings, not for precedential purposes. GR 14.1. The State will hereafter cite to the unpublished decision as, *Amos*, Slip. Op. \_\_\_.

Ex. 3, page 1 (under Mr. Meyer's name it states, "public servant, prosecuting attorney). The documents also contain language stating Amos is the surety on the bonds and place each in excess of one million dollars. Ex. 2, 3, 4, 5.

Amos was charged with four counts of forgery and four counts of criminal impersonation in the first degree. CP 1-5. Only the forgery counts have been at issue throughout the appeal. As his case was being litigated in the trial court, Amos began to have problems with his court appointed counsel, Don Blair. RP 13-18, 37-51; RPRP (11/29/16) 26-29; CP 14-15. Much of the issues between Amos and Mr. Blair appeared to revolve around Amos's desire to have his counsel make certain arguments Mr. Blair believed he could not properly present. *Amos*, Slip Op. 4-5. Amos ultimately proceeded pro se. *Id.* at 5. During the trial Amos wore a leg brace pursuant to jail policy. RP (6/7/17) 51-52. Amos was convicted as charged and sentenced to an exceptional sentence. RP 375-76, 408-11.

Division Two affirmed Amos's conviction and sentence. Amos files this petition on select issues decided by the Court of Appeals. The State will supplement the facts in the argument section below.



D. ARGUMENT.

Amos raises an issue for review regarding a conflict with the Court of Appeals determination of his unconstitutional shackling claim and a decision from the Supreme Court. The Court should only accept review in this case for the limited purpose of remanding the case back the Court of Appeals for reconsideration in light of this Court's decision in *State v. Jackson*, 195 Wn.2d 841, 467 P.3d 97 (2020). RAP 13.4(b)(1). The remaining issues raised by Amos in his petition do not warrant review by this Court. See RAP 13.4(b).

1. The Court of Appeals' Determination That The State Presented Sufficient Evidence Did Not Conflict With Binding Precedent From The Supreme Court, Therefore Review Is Not Appropriate.

Amos asserts the Court of Appeals' determination that the State presented sufficient evidence to sustain his forgery convictions was based upon its improper application of the law. Amos lifts these two legal arguments, word for word, out of his Opening Brief to the Court of Appeals. See Petition 6-8; Appellant's Opening Brief 5-6. Specifically, Amos argues the Court of Appeals decision conflicts with *State v. Mark*, 94 Wn.2d 520, 618 P.2d 73 (1980) and *State v. Scoby*, 57 Wn.2d 55, 810 P.2d 1358 (1991). Amos's argument is without merit. The Court of Appeals properly applied the law when it

determined the State presented sufficient evidence, there is no conflict supporting review.

Amos ignores the standards for a sufficiency of evidence claim and, as he did in the Court of Appeals, spins the facts in a context that ignores the State's evidence. Petition 2-10; *Amos*, Slip Op. 12. The Court of Appeals correctly stated it must "defer to the jury on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence." *Amos*, No. 50400-6-II, Slip Op. 12, citing *State v. Andy*, 182 Wn.2d 294, 303, 340 P.3d 840 (2014). Amos's testimony was only one piece of the evidence considered by the jury.

The State acknowledges, as it did in its briefing below, that in *Mark*, this Court held that when a document is exactly what it purports to be, but contains false facts, it cannot be a forgery. *Mark*, 94 Wn.2d at 522-24. Amos's case is distinct from *Mark*. Amos would like this Court to believe all he did was simply present documents that contain false facts, but that is not the case. Yet, when Amos took the witness stand he admitted to assuming each victim's identity when he created the documents. RP 311-12. Therefore, even the Court only considered Amos's own testimony; Amos admitted he falsely made the subrogation bonds purporting to be Jonathan

Meyer, William Halstead, Chad Withrow, and Adam Haggerty. Ex. 2, 3, 4, 5.

Amos also urges this Court to believe the Court of Appeals failed to adhere to *Scoby's* requirement that the documents have legal efficacy. Petition 8-10, *citing Scoby*, 117 Wn.2d 57-58. Yet, legal efficacy is a factual question for the jury, which it determined after being given the correct jury instruction. CP 135 (Instruction 10), *citing* WPIC 130.10. As the Court of Appeals stated in its opinion, a principal-surety relationship can be created without a written contract. *Amos*, Slip Op. 14. The Court of Appeals noted all that is required is mutual assent, therefore the documents were sufficient, if genuine, to "have legal effect or be the foundation of legal liability." *Id.*

This Court should not accept review of Amos's sufficiency of evidence argument. Amos cannot show there is a conflict between the decision of Court of Appeals in his case and decisions of the Supreme Court. RAP 13.4(b)(1).

2. There Is No Unique Constitutional Question To Be Decided By This Court Regarding Amos's Claimed Ineffective Assistance Of Counsel Issue Because The Court Of Appeals Correctly Found Amos's Trial Attorney Communication With Amos Met Professional Standards.

Amos argues to this Court that he presents a unique constitutional issue whether an ineffective assistance of counsel claim may be per se. Petition 14. Amos claims, "the record clearly shows that counsel was ordered by the trial court to make trips to the prison to meet with Amos in order to prepare a defense." *Id.* This interpretation of the trial court's order is false, as noted by the Court of Appeals when it cited to the trial court record. *Amos*, Slip Op. 20. The trial court stated, "And I'm specifically ordering Mr. Blair to make however many trips between here and Clallam Bay Corrections Facility as is necessary to properly prepare the defense in this case." RP (11/29/16) 54. Trial counsel was directed to communicate, as necessary, to adequately prepare Amos's defense. *Amos*, Slip. Op. 20. Mr. Blair did not violate a direct order from the trial court by communicating with Amos through means other than face to face contact at Clallam Bay Corrections Center. *Amos*, Slip Op. 19-20.

There is no significant question of law under the United States Constitution, or the Washington State Constitution, as Amos claims. Therefore, review by this Court is not warranted. RAP 13.4(b)(3).

3. This Court Should Remand Amos's Case Back To The Court Of Appeals For Further Consider Of Amos's Improper Shackling Argument In Light Of This Court's Decision In *State v. Jackson*.

Amos argues the Court of Appeals decision in regards to his improper shackling argument is in conflict with this Court's decision in *State v. Jackson*, 195 Wn.2d 841, 467 P.3d 97 (2020). The State acknowledges the Court of Appeals based its legal analysis on prior precedent, as it rendered its decision on April 28, 2020 and *Jackson* was published on July 16, 2020. *Jackson*, 195 Wn.2d 841; *Amos*, COA No. 50400-6-II. Specifically, the Court of Appeals used the "substantial or injurious effect of influence on the jury's verdict" harmless error analysis from *State v. Hutchinson*, 135 Wn.2d 863, 888, 959 P.2d 1061 (1998). *Amos*, Slip Op. 16-17. This Court explicitly disavowed the *Hutchinson* analysis in *Jackson* in favor of the standard constitutional harmless error test. *Jackson*, 195 Wn.2d at 855-56.

This Court has previously remanded matters back to the Court of Appeals for consideration in light of opinions it has rendered. *State v. Zimmerman*, 135 Wn. App. 970, 973, 146 P.3d 1224 (2006) (remanding the matter back to the Court of Appeals for consideration in light of *State v. Jackman II*, 156 Wn.2d 736, 132 P.3d 136 (2006)). The only argument at the Court of Appeals was whether the

shackling was harmless error, as the State conceded the trial court had improperly shackled Amos when it failed to conduct an independent inquiry. Brief of Respondent at 15-18. The State argued the harmless error analysis followed by the Court of Appeals, which at the time the State believed to be the correct legal analysis. *Id.* at 17-18. Amos's appellate counsel only argued the shackling was an abuse of the trial court's discretion. Appellant's Opening Brief. 11-12. The Court of Appeals should have the opportunity to decide the matter with the correct legal analysis, and if it so decides it is warranted, request the parties provide further legal and factual analysis to assist the court in making such a decision.

Therefore, Amos is correct, the Court of Appeals decision is in conflict with the Supreme Court's decision in *State v. Jackson*, 195 Wn.2d 841, thereby fulfilling the requirement of RAP 13.4(b)(1). This Court should grant review for the limited purpose of remanding the matter back to the Court of Appeals for further consideration in light of this Court's decision in *Jackson*.

4. This Court Should Decline Amos's Invitation To Allow Him To Raise An Argument He Failed To Litigate In The Court Of Appeals.

Amos argues his unconstitutional shackling should be considered structural error due to it undermining his ability to make

an informed decision whether to waive counsel and proceed pro se. Petition 12-14. Amos never raised a structural error argument regarding a conflict between his shackling and pro se representation below. See *Amos*, COA No. 50400-6-II, Slip. Op. In addition to appellate counsel's arguments, Amos argued nine statements of additional grounds to the Court of Appeals. *Id.* at 28-44. Amos had ample opportunity and ability to make his structural error argument and failed to do so.

It is the general rule that a party "may not raise a new issue for the first time in a petition for review." *Plein v. Lackey*, 149 Wn.2d 214, 222, 67 P.3d 1061 (2003) (internal citation omitted). This Court should decline Amos's invitation to do so now. The State has already acknowledged the Court of Appeals relied on the incorrect legal analysis when it rendered its shackling decision. The Court should not accept review on Amos's structural error argument and only accept review for the limited purpose of remanding the matter back to the Court of Appeals for reconsideration of the improper shackling in light of *State v. Jackson*.

E. CONCLUSION

The State respectfully requests this Court only accept review on the improper legal analysis conducted by the Court of Appeals on the shackling issue, as it is in conflict with this Court's decision in *State v. Jackson*. The State requests this review be limited to remand the matter back to the Court of Appeals for reconsideration of Amos's improper shackling in light of *Jackson*.

If this Court were to accept review on the other matters or request argument in this case, the State would respectfully request an opportunity to submit supplemental briefing.

RESPECTFULLY submitted this 12<sup>th</sup> day of February, 2021.

JONATHAN MEYER  
Lewis County Prosecuting Attorney



by: \_\_\_\_\_  
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff



# Appendix D

Supreme Court Order, Case No. 98763-7

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,	)	No. 98763-7
	)	
Respondent,	)	<b>ORDER</b>
	)	
v.	)	Court of Appeals
	)	No. 50400-6-II
FORREST EUGENE AMOS,	)	
	)	
Petitioner.	)	
	)	
	)	
	)	

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis, considered at its April 27, 2021, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is granted only on the issue whether the Petitioner was unconstitutionally shackled during trial and this case is remanded to the Court of Appeals Division II for reconsideration in light of *State of Washington v. John W. Jackson, Sr.*, 195 Wn.2d 841, 467 P.3d 97 (2020). The Petitioner’s motion for appointment of counsel is also granted.

DATED at Olympia, Washington, this 28th day of April, 2021.

For the Court

  
CHIEF JUSTICE

**LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE**

**October 06, 2021 - 3:49 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 100,186-0  
**Appellate Court Case Title:** State of Washington v. Forrest Eugene Amos  
**Superior Court Case Number:** 16-1-00399-5

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