Supreme Court No. 90825-7
Court of Appeals No. 30644-5-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

GARY D. ENGELSTAD JR.

Petitioner.

RESPONSE TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES

Washington Supreme Court Decisions

Washington Court of Appeals Decisions

United States Supreme Court Decisions

United States Court of Appeals Decisions

RULES AND REGULATIONS

A. IDENTITY OF RESPONDENT:

The State of Washington was the Plaintiff in the Superior Court, and is the Respondent herein. The State is represented by the Kittitas County Prosecutor's Office.

B. RESPONSE TO ISSUES PRESENTED FOR REVIEW:

1. The trial court was not required to give a "no-adverse-inference" instruction *sua sponte*. Absent such a requirement, there can be no finding of error on the part of the trial court. The fact that petitioner desires this court to formulate a new rule contrary to all former state and federal case holdings does not meet the criteria for review found in RAP 13.4(b)(3) and RAP 13.4(b)(4).

2. The "failure" of defense counsel to request a "no-adverse-inference" instruction is not per se ineffective assistance of counsel. The fact that petitioner desires this court to formulate a new rule contrary to all former state and federal case holdings does not meet the criteria for review found in RAP 13.4(b)(3) and RAP 13.4(b)(4).

3. The Court of Appeals decision concerning ineffective assistance of counsel premised upon a failure to request a "no-adverse-inference" instruction did apply the correct law to the relevant facts found within the record. Petitioner's decision not to request a "no-adverse-inference" instruction was a tactical decision which does not give rise to a

claim of ineffective assistance of counsel.

The fact that petitioner disagreed with the decision reached by the Court of Appeals does not mean that this case meets the criteria for review found in RAP 13.4(b)(1), RAP 13.4(b)(3), or RAP 13.4(b)(4).

C. STATEMENT OF THE CASE:

Contrary to Petitioner's claims that this was a circumstantial case, it is clear that on March 17, 2011, Joseph Shouse, Gary Engelstad (Petitioner) and Paul Erickson were caught in the process of scrapping an old crane by two Kittitas County Sheriff's Deputies. RP 14, 18, 23, 40, and 43. The deputies were told by Mr. Shouse that they were on TJ Pecka's claim and that they had permission from him to clean the area. Deputy McBride thought Mr. Shouse indicated that the crane that they were working on belonged to Mr. Shouse. RP 23. Corporal Nale believed that Mr. Shouse stated that the crane belonged to TJ Pecka and they were scrapping it out for TJ while TJ was in prison. RP 43. The Deputies indicated that Petitioner Engelstad did not say much, but was basically agreeing with what Mr. Shouse told law enforcement. RP 43.

Because the law enforcement officers could not confirm or refute the information provided to them, they cleared the scene and let the three continue what they were doing. RP 24, 49. The two deputies were joined in the investigation by Deputy Dan Jonassen, their designated Forest

Service Deputy. RP 25, 48. When the three returned to the site with Forest Service employee JoAnne Homuth to follow up with their investigation they noted that a fuel tank was now missing and that the crane was disassembled with just the shell of the cab remaining. RP 26, 48.

A review of the record demonstrates that the state called multiple witnesses to testify that the crane in question was owned by Bruce Bradshaw, who received it from Richard Miller. A review of the record demonstrates that the state called Mr. Shouse and Mr. Erickson as witnesses; that Mr. Shouse had previously pled guilty to the crimes; and that the charges were dropped against Mr. Erickson. A review of the record also demonstrates that both Mr. Shouse and Mr. Erickson attempted to minimize or eliminate any blame on the part of the Petitioner. Although Mr. Erickson continued to maintain that the three individuals removed a large portion of the crane on the day that they were caught by law enforcement.

Contrary to Petitioner's claim that the record is silent as to the intentions of trial counsel, it is clear from a review of the record that defense counsel's theory was that:

1) Mr. Shouse owned the crane, having received it as a gift from Mr. Miller. With every witness, counsel attempted to demonstrate that the only evidence of ownership of the

crane by Bruce Bradshaw was the word of Mr. Bradshaw himself, and that it was probable that Mr. Miller had in fact given the crane to Mr. Shouse; or

2) In the alternative, if the jury did not believe that Mr. Shouse actually owned the crane, it was still reasonable to believe that Petitioner did nothing wrong as he could rely upon the assertions of ownership by Mr. Shouse, and therefore, could not be found guilty of either crime.

It is clear from the jury's verdict that the jury, having listened to the testimony of the witnesses and judging the witnesses credibility, came to the conclusion that Mr. Shouse did not own the crane and that it was not reasonable for the Petitioner to believe that Mr. Shouse had a lawful claim to the crane.

The State and defense rested and the jury was excused so that the parties could review jury instructions. RP 251 – 253. A break was held and then jury instructions commenced at 3:30 and were completed at a point in time where the court indicated that they hoped to get the suggested changes put into a packet and out to counsel before the close of business that day. RP 256, 275 – 276. Petitioner has placed great emphasis on the fact that neither party requested WPIC 6.31 and states that given how much time was spent on jury instructions that the "failure" to request the instruction could not have been a tactical decision, but rather an oversight. This is particularly true, per petitioner, because there is no colloquy as to the instruction between trial counsel and the court.

A review of the Jury instructions and the discussion concerning same does not support Petitioner's claim. CP 45; RP 256-278. While defense counsel attacked the value of the crane during trial with several witnesses, counsel did not request a jury instruction on a lesser included offense of Theft in the Third Degree or Malicious Mischief in the Third Degree, and the court did not hold a colloquy as to those decisions. The parties disagreed on how the accomplice liability instruction should read. RP 258-260. The defendant requested and was granted a different direct and circumstantial evidence instruction, WPIC 5.01. All agreed to not give WPIC 5.05 concerning the defendant's prior criminal history as impeachment evidence – as he did not testify. RP 261. Defendant also argued against giving WPIC 6.05, an instruction about carefully examining the testimony of an accomplice testifying for the state, as it was felt by defense counsel that any "accomplices" (Mr. Shouse and Mr. Erickson, did not testify against the defendant, or only partially. RP 261-262. The parties initially appeared to agree to give WPIC 6.41 but then the state indicated that it was up to the defendant, and the defendant chose not to have that instruction given. Were these decisions tactical trial decisions or "failures" by defense counsel? Does the lack of a colloquy as to some not requested make it clear that the "failure" to request some was an error, as opposed to a tactical trial decision?

What is clear from the discussion of jury instructions, is that the parties:

i. Understood the instructions that had been offered,
ii. Understood their theories of the case;
iii. Recollected the evidence as they believed beneficial to their theories of the case;
iv. Debated minute details on proposed instructions; and
v. Declined to have certain instructions given, noting that some were to be provided if requested by defense, but not given if not desired by defense, and defense had the opportunity to decline on those that would have been given by the court if they desired RP 255 – 278.

Petitioner has also claimed that the state improperly commented upon the defendant's right to remain silent in closing argument, or inferred that he was guilty based upon not testifying (although Petitioner did not allege Prosecutorial Misconduct and spent little time addressing the assertion). The claimed error alluded to is found at RP 280, 290, and 293. When put in the proper context of the record, as was done by the Court of Appeals, it is clear that the comments were not related to Petitioner's right to remain silent; were not about what Petitioner said at any point in time; were not about the Petitioner not taking the witness stand; and were not an improper inference about what the Petitioner could have or should have said to prove his innocence if he had taken the witness stand. Rather, the comments related directly to Petitioner's questions during trial and anticipated closing argument that it was reasonable for Mr. Engelstad to

have relied upon Mr. Shouse's claim of ownership of the crane.

The implications of Petitioner's criminal history were a concern for trial counsel from before the trial commenced, as it is lengthy and contains crimes of dishonesty that could be used to impeach the defendant. See Exhibit A (State's recitation of criminal history). Counsel objected to amending the information to add the aggravating factor related to criminal history. RP 7. The Petitioner and the state reached an agreement as to a stipulation regarding pleading and proving criminal history so that it was taken out of the hands of the jury. RP 98; CP 43. The intent of Petitioner, in entering the stipulation, was set forth as follows:

> The parties are stipulating to the above facts ... on behalf of the Defendant, to avoid having such information in front of the jury during their deliberations on the underlying issue of guilt....

C. ARGUMENT:

1. The trial court was not required to give a "no-adverse-inference" instruction *sua sponte*. Absent such a requirement, there can be no finding of error on the part of the trial court.

The Petitioner requests this Court to articulate several new rules related to the giving, or not giving, by a trial court of WPIC 6.31, Washington's "no-adverse-inferences" instruction. This instruction is often referred to as a *Carter* instruction from the case of *Carter v. Kentucky*, 450 U.S. 288, 101 S.Ct. 112, 67 L.Ed.2d 241 (1981).

a. No requirement to sua sponte give a *Carter* instruction:

The Petitioner requests this Court to declare a new rule **REQUIRING** a trial court to give a *Carter* instruction in every jury trial regardless of the wishes of the defendant and their counsel. Petitioner has not, and cannot, cite any federal or Washington State case that holds that a trial court must give a *Carter* instruction sua sponte. Petitioner, in support of his request, relies extensively upon *Carter v. Kentucky*, supra, as well as *Lakeside v. Oregon*, 435 U.S. 333, 98 S.Ct. 1091, 55 L.Ed.2d 319, with passing reference to *State v. Easter*, 130 Wn.2d 228, 922 P.2d 1285 (1996).

State v. Easter, 130 Wn.2d 228, 922 P.2d 1285 (1996), while instructive on the use of pre and post-arrest silence, is not instructive on the issue of whether a trial court must sua sponte give a *Carter* instruction. *Carter v. Kentucky*, 450 U.S. 288, 101 S.Ct. 112, 67 L.Ed.2d 241 (1981) dealt with the question of whether a "no-adverse-inference" instruction must be given by the trial court if requested by a defendant in state court actions. The *Carter* Court traced the line of cases putting the issue squarely before the court: *Malloy v. Hogan*, 378 U.S. 1 (5th amendment applicable to state trials); *Griffin v. California*, 380 U.S. 609 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965) (A jury instruction allowing the jury to draw

inferences of guilt from the lack of testimony by a defendant is error); and *Lakeside v. Oregon,* 435 U.S. 333, 98 S.Ct. 1091, 55 L.Ed.2d 319 (1978) (A judge's instruction, over defendant's objection, not to draw adverse inferences does not rise to the level of constitutional error).

While the Carter Court used strong and forceful language about the importance of the right against self-incrimination, and the importance of "no-adverse-inference" instructions, the actual holding was limited to a holding that not giving such an instruction **when requested** violates a defendant's constitutional rights. *Carter* at 305.

The Court in *Carter* did not require a sua sponte giving of a 'no-adverse-inference instruction. Similarly, the Court in *Lakeside* did not require a trial court to sua sponte give a "no-adverse-inference instruction, **further holding that it would be wise for a trial judge not to give such a cautionary instruction over a defendant's objection.** *Lakeside* at 341.

A review of state and federal cases demonstrate that the holding in *Carter* is still the rule on "no-adverse-inference" instructions and no court has required a trial court to sua sponte give a *Carter* instruction.

> *Hunter v. Clark*, 906 F.2d 302, (1990) (Co-defendant case where one defendant wanted a *Carter* instruction and one defendant did

not want such an instruction. The defendant who wanted the instruction refused to sever the trial, and the trial court chose not to instruct the jury with a *Carter* instruction. No error was found given that defendant was given a timely option to solve the problem, but if there was an error, it was harmless;

United States v. Brand, 80 F.3d 560 (1st Cir. 1996) (Follows *Carter*, instruction must be given if requested);

United States v. Soto, 519 F.3d 927, (9th Cir. 2008) (Follows *Carter*, instruction must be given if requested);

United States v. Whitten, 610 F.3d 168 (1st Cir. 2010) (Follows *Carter*, instruction must be given if requested);

United States v. Padilla, 639 F.3d 892 (9th Cir. 2011) (Follows *Carter*, instruction must be given if requested); and

State v. Dauenhauer, 103 Wn. App. 373, 12P.3d 661 (2000) (Cites *Carter* with approval, but similar to *Lakeside*, did not find error when the Court sua sponte gave a Carter instruction. The difference here, versus the *Lakeside* case, was the *Carter* instruction was not requested, but when told a *Carter* instruction would be given, there was no objection).

Petitioner's claim for adoption of a new rule does not meet the criteria for review found in RAP 13.4(b)(3) and review should be denied. There is no support for Petitioner's contention that a trial court should be required to provide a Carter instruction in every trial sua sponte. If, however, this Court should accept review, this Court should decline to adopt a new rule that is at odds with all other federal and state case law previously rendered on this topic.

b. Requested New Standard of Review:

Petitioner also requests this Court to declare that a failure by the trial Court to give a *Carter* instruction is a structural error that always impacts the fairness of a trial, rebuking the current and long-standing constitutional harmless error test which requires a defendant to demonstrate that an error has occurred, and that the error resulted in prejudice to the defendant such that it cannot be said that the defendant received a fair trial.

This Court need not reach this issue unless it determines that the law should change and that trial courts should be required to sua sponte give a *Carter* instruction. Again, Petitioner relies upon the language of *Carter* in support of requesting this change to the existing state of the law, specifically:

> "Thus, the failure to instruct on the privilege is not simply a technical error which does not affect substantial rights. Id. At 300 (citation omitted). Rather, the right to an instruction on the privilege reflects 'the absolute constitutional guarantee against compulsory self-incrimination.' Id."
>
> *Brief of Petitioner at 8.*
>
> The petitioner further cited *Carter*:
>
> "In Carter, the Supreme Court noted that 'it is arguable that a refusal to give an instruction similar to the one that was requested here can never be harmless.' 450 U.S. at 304. The Court, however, expressly declined to reach the issue because it had not been

presented to the Kentucky courts.(with reference to footnote 4 to be addressed momentarily)"

Brief of Petitioner at 9.

Despite this language, the Court in *Carter* did not impose a heightened degree of scrutiny, nor did the dissent and three concurring Justices desire such a strong statement. It is also clear that no other federal or Washington State case having addressed this issue has applied anything other than a constitutional harmless error standard, as acknowledged by Petitioner in his brief under footnote 4 on page 9. In fact such a request was rejected in *United States v. Soto*, 519 F.3d 927 (9th Cir. 2008) and *United States v. Brand*,80 F.3d 560, 567 (1996) U.S. App.

Petitioner's claim for a new standard does not meet the criteria for review found in RAP 13.4(b)(3) and RAP 13.4(b)(4) and review should be denied. If, however, this Court should accept review, this Court should decline to adopt a new rule that is at odds with all other federal and state case law previously rendered on this topic.

2. The "failure" of defense counsel to request a "no-adverse-inference" instruction is not per se ineffective assistance of counsel. The fact that petitioner desires this court to formulate a new rule contrary to all former state and federal case holdings does not meet the criteria for review found in RAP 13.4(b)(3) and RAP 13.4(b)(4).

Petitioner does not and cannot cite to any precedence to support a

rule declaring that the failure to request a *Carter* instruction is, or should be, per se ineffective assistance of counsel. The Court of Appeals determined that the decision not to seek a *Carter* instruction in this case, much like the decision not to testify, was a tactical decision. This was not a statement made in the abstract, rather it was a statement grounded in common experience and established case law. Two of Washington's appellate courts have opined that the decision to seek a "no-adverse-inference" instruction is a tactical one for defense counsel to make. *State v. Dauenhauer*, 103 Wn.App. 373, 376 12 P.3d 661 (2000); and *State v. King*, 24 Wn. App. 495, 500, 601 P.2d 982 (1979) (Failure to propose an instruction similar to WPIC 6.31 on the failure of the defendant to testify can hardly be regarded as evidence of incompetent counsel).

The Court of Appeals, on review of this case, and other courts have indicated that while many defense counsel seek a *Carter* instruction when appropriate, not all do so, and many who decline such instructions do so for the tactical reason of not highlighting the defendant's decision to not testify. The courts have also suggested that there are many reasons why the defense might prefer to have the jury focus on the State and its burden of proof rather than being reminded that the defendant did not testify.

In *Lakeside*, the Court referred to the defendant's objection to the giving of a "no-adverse-inference" instruction as assuredly being based

upon studious avoidance of any mention of the fact that the defendant had not testified. *Lakeside v. Oregon*,435 U.S. 333, 341, 98 S. Ct. 1091, 1093, 55 L. Ed. 2d 319, 322-323,1978. The Court in *Hunter v. Clark*, 906 F.2d 302, (1990) did not have an issue concerning ineffective assistance of counsel, where two defendants, after being tried together with the same evidence, took divergent paths based upon the same evidence, one requesting a *Carter* instruction, and one objecting to a *Carter* instruction.

Petitioner has cited two cases to support his argument, but neither held that the failure to request a *Carter* instruction was/is per se ineffective assistance of counsel. The fact that Petitioner desires this court to formulate a new rule contrary to all former state and federal case holdings does not meet the criteria for review found in RAP 13.4(b)(3) and RAP 13.4(b)(4). Should this Court accept review, it should decline Petitioner's request to create such a per se rule.

3. The Court of Appeals decision, as to petitioner's claim of ineffective assistance of counsel premised upon a failure to request a "no-adverse-inference" instruction did apply the correct law to the relevant facts found within the record. Petitioner's decision not to request a "no-adverse-inference" instruction was a tactical decision which does not give rise to a claim of ineffective assistance of counsel.

The law concerning the test for ineffective assistance of counsel is well settled. To establish that counsel was ineffective, a defendant must

show that counsel's conduct was deficient and that the deficient performance resulted in prejudice. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (adopting test in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052 80 L.Ed.2d 674 (1984). To show deficient representation, the defendant must show that it fell below an objective standard of reasonableness based on all the circumstances. *State v. Nichols*, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007). The defendant must overcome a strong presumption that counsel's performance was not deficient. In evaluating ineffectiveness claims, courts must be highly deferential to counsel's decisions. A strategic or tactical decision is not a basis for finding error. *Strickland v. Washington,* 466 U.S. 668, 689-691, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). If either part of the test is not satisfied, the inquiry need go no further. *State v. Foster*, 140 Wn. App. 266, 273, 166 P.3d 726 (2007); *State v. Mierz*, 127 Wn.2d 460, 470, 901 P.2d 286 (1995).

Petitioner claims that defense counsel at trial inexplicably did not request a *Carter* instruction. The cases cited by both parties all indicate that there are many reasons why counsel might choose not to have the jury instructed in such fashion. As noted above, such reasoning has led two courts in Washington to conclude that such a decision is a tactical decision for counsel to make. See, *State v. Dauenhauer; State v. King*, infra.

It can be presumed that the Court of Appeals read the verbatim report of proceedings as they deliberated on a decision. A reading of the transcript of testimony would leave a reader with the distinct impression of the strategy of defense counsel:

1. Avoid putting your client on the stand so that he cannot be impeached with his criminal history;
2. Enter into a stipulation that removes from the jury any information concerning past criminal history;
3. Discredit or show gaps in testimony of the state's witnesses;
4. Use the state's witnesses against the state to bolster the claim that Petitioner did nothing wrong as he had no information that would have led him to believe that the crane was not Mr. Shouse's; and
5. Do not request WPIC 6.31 so as not to draw attention to the fact that Petitioner did not testify, because from a defense perspective this case is about the state charging Petitioner with a crime when there is no evidence that what he did was wrong.

Petitioner's tactical decisions were clear during the questioning of witnesses, attempting to plant the seed that the crane in question was Mr. Shouse's, but that if the jury doubted that, the evidence still showed that Petitioner relied upon Mr. Shouse telling him that it was his crane and that there were good reasons for the Petitioner to believe that to be true. The line of questioning carried through to closing arguments. Petitioner built upon the theme with each witness pushing the fact that the only reason they believed Bradshaw owned the crane was because Bradshaw told them so. Contrary to Petitioner's claim, the record is not silent as to the strategy

of trial counsel.

Petitioner's reliance on two cases involving determining counsel's effectiveness based upon a silent record is misplaced. Neither case dealt with a failure to request WPIC 6.31. In both *State v. Powell*, 150 Wn. App. 139, 206 P.3d 703 (2009), and *State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987) the courts were faced with trying to understand what if any logic existed in the failure to request a proper instruction that was crucial to presenting a statutory defense. In this case, we are not talking about a statutory defense not being presented by an instruction. The claimed error in this case is a decision concerning a trial tactic that has been recognized time and again as a legitimate course of action to take by trial counsel.

Petitioner also asserts that the lack of a colloquy between trial counsel and the court on the record is a clear sign that the failure to request such an instruction was not tactical, but rather ineffective assistance of counsel. The lack of a requirement for such a discussion between the trial court and a defendant is clearly established.

> *United States v. Soto*, 519 F.3d 927, 930, (9th Cir. 2008) (Carter instruction not required in every criminal trial – merely available if requested);
>
> *State v. Thomas*, 128 Wn.2d 553, 557, 910 P.2d 475 (1996)

(colloquy not necessary for a valid waiver of the right to testify). The *Thomas* court cited a multitude of federal and state court decisions that had held that no such discussion between the trial court and defendant was required. Id. at 558-559;

State v. Russ, 93 Wn. App. 241, 246-247, 969 P.2d 106, (Div. I, 1998), (such a colloquy might be unduly influential, problematic in terms of timing, and that unknown tactical reasons might exist making it inappropriate) .

Finally, this Court has recently reached a similar decision as it relates to a valid stipulation by a defendant to an element of a charged crime (prior conviction of a "serious offense") and secondly whether defense counsel's failure to request a limiting instruction as to the stipulation was ineffective. *State v. Humphries*, En Banc 88234-7 (October 2014). This Court held that a colloquy on the record was not necessary and re-affirmed the presumption that an omission to request a limiting instruction regarding a prior conviction is a tactical decision and not ineffective assistance of counsel.

Petitioner's claim that the Court of Appeals incorrectly applied the correct rule of law to the review of this case is not supported. That reviewing court was justified in according trial counsel the presumption of effectiveness and a high degree of deference concerning the skills of trial counsel. Presuming that the omission of the instruction was a sound trial tactic, not presuming ineffective assistance of counsel, was also supported

by case law and common experience. The fact that Petitioner felt the decision did not fully explore the facts of the case does not meet the criteria for review under RAP 13.4(b)(3) and RAP 13.4(b)(4). However, if this Court should accept review, this Court should rule in accordance with all prior cases and determine that the omission of WPIC 6.31 was a trail tactic not giving rise to a claim of ineffective assistance of counsel.

E. CONCLUSION:

All that is required of the State is to provide a defendant with a fair trial. Mr. Engelstad had a fair trial. Mr. Engelstad's counsel presented a solid case, asking proper questions, eliciting necessary information, requesting proper instructions, conceding points that needed to be conceded, and otherwise providing competent assistance of counsel

The Petitioner has not met his burden in demonstrating that this case meets the criteria for review under any prong of RAP 13.4. However, if this Court should determine that review is merited, the Court should decline the invitation by the Petitioner to create new rules for criminal trials in the state of Washington that are unsupported by any federal or state cases previously decided on this issue.

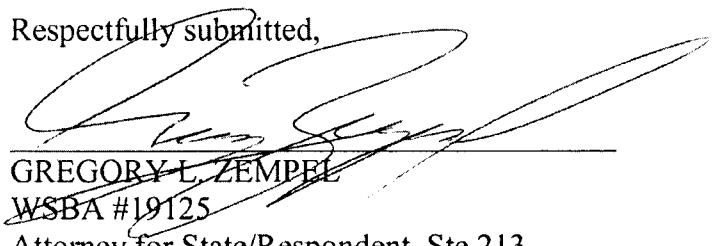
This Court should not create a new rule requiring a trial court to sua sponte provide a *Carter* instruction in every trial regardless of the

wishes of trial counsel. This Court should not create a new rule that the failure to request a *Carter* instruction, is per se ineffective assistance of counsel. This Court should find that the decision not to request a *Carter* instruction was a sound trial tactic by counsel based upon the record herein and that the Court of Appeals applied the correct rules of law in reaching the decision that such tactic was not ineffective assistance of counsel.

Finally, should this Court find that the omission of a Carter instruction was in fact error, this Court should not entertain a new rule finding such omission to be a structural error. Rather, this Court should maintain the constitutional harmless error standard and upon review of the record, determine that even if there was error, it was harmless.

DATED this 5th day of November, 2014.

Respectfully submitted,



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APPENDIX A

CRIMINAL HISTORY OF GARY DALE ENGELSTAD, JR.

TIME OF TRIAL AND SENTENCING ON THIS CASE

HIGHLIGHTED ARE THE CRIMES UNDER APPEAL

Violation Date	Court	Charge	Dispo Date:
05-26-2011	LKD	DWLS 3rd	
03-30-2011	LKD	DWLS 3rd	
11-09-2010	LKD	PSP 3rd	
04-17-2011	Superior	Theft 2nd	02-14-12
04-17-2011	Superior	Malicious Mischief 2nd	02-14-12
10-20-2010	Superior	Unlawful Poss Firearm 1st	11-23-11
10-20-2010	Superior	Assault 2nd Deadly Weapon	11-23-11
10-20-2010	Superior	Assault 2nd Deadly Weapon	11-23-11
10-20-2010	Superior	Assault 2nd Deadly Weapon	11-23-11
10-20-2010	Superior	Burglary 1st Degree	11-23-11
10-20-2010	Superior	Theft 2 $750-$5,000 No Firearm Merged Dismissed By Court Based Upon Merger	
10-20-2010	Superior	Theft 2 $750-$5,000 No Firearm Merged Dismissed By Court Based Upon Merger	
10-20-2010	Superior	Robbery 1st Deadly Weapon	11-23-11
10-20-2010	Superior	Robbery 1st Deadly Weapon	11-23-11
06-06-2010	LKD	Assault 4th Degree	02-22-11

08-01-2009	Superior	Assault 4th Degree	10-13-09
08-01-2009	Superior	Assault 4th Degree	10-13-09
01-18-2006	Superior	Assault 2nd Deadly Weapon	06-20-06
01-18-2006	Superior	Theft 2nd $250-$1,500 No Firearm	06-20-06
06-25-2005	LKD	DWLS 3rd	
12-20-2002	Superior	Possess Incendiary Device	01-10-03
09-11-2002	Superior	Const Subst Viol – Section (A)	01-10-03
02-05-2001	LKD	DWLS 3rd	
02-03-2000	LKD	Disorderly Conduct	06-06-01
07-03-2000	LKD	DWLS 3rd	
04-17-1999	LKD	Simple Assault	10-13-09
04-17-1999	LKD	Simple Assault	10-13-09
02-08-1999	Superior	Malicious Mischief 3rd	
01-13-1999	BCC	Theft 3rd – GM	
10-06-1998	Superior	Possession Stolen Property 2nd	11-13-1998
05-07-1997	Juvenile	Assault 2nd	
03-31-1997	Juvenile	Theft 3rd	
03-31-1997	Juvenile	Theft 3rd	
07-19-1996	Juvenile	Obstruct Law Enforcement	
09-04-1995	Juvenile	Assault 4th Degree	

SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff/Respondent. GARY D. ENGELSTAD JR., Defendant/Appellant.	)	No. 90825-7 AFFIDAVIT OF MAILING

STATE OF WASHINGTON)
) ss.
County of Kittitas)

The undersigned being first duly sworn on oath, deposes and states:

That on the 5th day of November, 2014, affiant deposited into the mail of the United States a properly stamped and addressed envelope directed to:

Susan Wilk Washington Appellate Project susan@washapp.org	Gary D. Engelstad Jr. # 788871 1313 North 13th Ave. Walla Walla, WA 99362

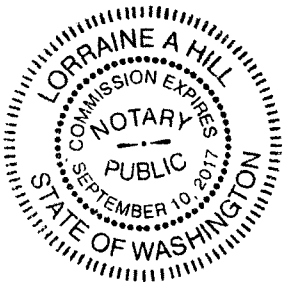
containing copies of the following documents:

(1) Affidavit of Mailing

(2) Response to Petition for Review

Theresa Larsen

SIGNED AND SWORN to (or affirmed) before me on this 5th day of November, 2014.



Lorraine A. Hill

NOTARY PUBLIC in and for the
State of Washington.
My Appointment Expires: 09-10-17

OFFICE RECEPTIONIST, CLERK

To: Theresa Larsen
Subject: RE: Response to Petition for Review ENGELSTAD, Affidavit of Mailing ENGELSTAD

Rec'd 11/5/14

-----Original Message-----
From: Theresa Larsen [mailto:theresa.larsen@co.kittitas.wa.us]
Sent: Wednesday, November 05, 2014 1:50 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: susan@washapp.org
Subject: Response to Petition for Review ENGELSTAD, Affidavit of Mailing ENGELSTAD

Supreme Court No. 90825-7
Court of Appeals No. 30644-5-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON _____

STATE OF WASHINGTON,

Respondent,

vs.

GARY D. ENGELSTAD JR.

Petitioner.

RESPONSE TO PETITION FOR REVIEW

Gregory L. Zempel, WSBA # 19125
Attorney for Respondent
Kittitas County Prosecuting Attorney's Office Rm. 213, Kittitas County Courthouse
205 West 5th
Ellensburg, WA 98926 (509) 962-7520

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message id: 38eb45916c6dcbdac24bb8719d004a14