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Supreme Court No.: 95757-6
Court of Appeals No.: 49425-6-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

RANDOLPH WOOD,

Petitioner.

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# PETITION FOR REVIEW

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

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Marla L. Zink
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

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A. <u>IDENTITY OF PETITIONER AND THE DECISION BELOW</u>

Randolph Wood, petitioner here and appellant below, asks this Court to grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals in *State v. Wood*, No. 494256, filed February 6, 2018. A copy of the opinion is attached as Appendix A. Mr. Wood's motion to reconsider was denied on March 23, 2018; a copy of the order is attached as Appendix B.

Mr. Wood was charged as the suspected driver of an eluding vehicle. The driver was not apprehended at the scene. The identification was based on an officer's two brief glimpses at the driver in a dark parking lot after midnight.

B. <u>ISSUES PRESENTED FOR REVIEW</u>

1. Whether the Court should grant review to determine if the trial court erred by finding out-of-court statements that Mr. Wood committed a misdemeanor against his girlfriend were admissible to show why law enforcement was pursuing him, even if the information is not material to the crime of eluding a pursuing police vehicle and where the Court of Appeals opinion affirming is in conflict with its own cases? RAP 13.4(b).

2. Whether the Court should grant review to determine if the out-of-court statements that Mr. Wood committed a misdemeanor against his girlfriend were admitted for the truth of the matter asserted, were they

testimonial such that their admission violated Mr. Wood's right to confront witnesses? RAP 13.4(b).

3. Whether the Court should grant review to determine if the trial court abused its discretion by admitting the out-of-court statements where any minimal probative value was substantially outweighed by the prejudicial effect? RAP 13.4(b).

4. Whether the Court should grant review to determine if the prosecutor committed misconduct by arguing the out-of-court statements relating to a domestic violence misdemeanor could be used to infer motive for flight where the court's limiting instruction restricted use of the evidence and did not include motive for flight? RAP 13.4(b).

5. Whether the Court should grant review to determine if the court improperly admitted a photograph of Mr. Wood that was viewed only after law enforcement learned his name from the non-testifying declarant's out-of-court statements? RAP 13.4(b).

6. Whether the Court should grant review to determine if the trial court abused its discretion in admitting evidence of a 911 call after the State agreed it would not be used at trial, when the State exceeded the court's ruling on limited admissibility, and because the evidence contained hearsay within hearsay that violated Mr. Wood's right to confront

witnesses, and if the trial court abused its discretion in denying Mr. Wood's related motion for mistrial? RAP 13.4(b).

7. Whether the Court should grant review to determine if reversal is required due to the error the Court of Appeals found in providing a an expert witness opinion testimony instruction where no expert witnesses testified, and where the prosecutor expounded on the problem by arguing in closing, from facts not in evidence, that the police officer witnesses were trained observers? RAP 13.4(b).

8. Whether review should be granted of the cumulative effect of the trial errors? RAP 13.4(b).

## C. STATEMENT OF THE CASE

### 1. Based upon a passing glimpse in the dark while driving, Officer Johnson believed Randolph Wood was the driver of an eluding vehicle.

Sergeant Matt Brown could not identify the driver of the eluding vehicle he pursued. RP 290-91. There was no driver in the vehicle when the police approached it. RP 304-05, 307-08. The police employed a dog track within seconds but could not locate the driver. RP 268-69, 304-06. No personal items were found in the vehicle. RP 268, 308-09.

The vehicle was not registered to Mr. Wood or to his girlfriend Anna Hall. RP 269. Yet, Officer Michael Johnson believed Randolph Wood was the driver, RP 241-42, 257-59, based on the following:

More than three hours earlier, Officer Johnson had responded to the Carlyle Apartments and spoke with Anna Hall. RP 151-57, 165-66, 230-31, 242, 253-54. He asked Ms. Hall to fill out an affidavit, which she declined to complete. RP 158-60, 164-65, 168-69, 176-79. Ms. Hall told him that she and her boyfriend, Randolph Wood, had argued and then he hit her and left in her green 1990s Infinity vehicle. RP 158, 232. Officer Johnson looked up a photograph of Mr. Wood on the database in his car. RP 165-66. It showed a white male with a short haircut similar to the officer's. RP 258-59; *see* Exhibit 8.

For the next three hours, Officer Johnson conducted other patrol work. RP 231-33, 253.

Dispatch received a call at 12:53 a.m. that Randolph Wood had been at the nearby Carlyle Apartments again but had left. RP 161, 232-35. As Officer Johnson approached the area, he saw a set of headlights turn into the parking lot of a different apartment building. RP 236-38.

In the main parking lot, Officer Johnson encountered a green Infinity parked in the middle. RP 239. The driver was "slouched down" and, as the police vehicle headlights illuminated it, the Infinity started to move. RP 241, 282.

Although it was dark, both vehicles were moving, and as Officer Johnson was driving, he got a "good view" of the driver, who was a white

male with a similar haircut to his own. RP 241-42, 265, 280-81. He briefly saw the driver one more time as the vehicles drove by each other. RP 243-44. He believed the driver matched the database photograph he had viewed three hours before. *See* RP 165-66, 241-42, 257-59.

Officer Johnson followed the vehicle out of the parking lot and then onto Pacific Highway. RP 245-47. Sergeant Brown joined the pursuit, but the driver was not recovered. RP 246-50, 295-308.

**2. The State charged Mr. Wood with eluding.**

The State charged Mr. Wood with attempting to elude a pursuing police vehicle (RCW 46.61.024(1)). CP 1-2.[1] Two witnesses testified at trial, Officer Johnson and Sergeant Brown. RP 221-317.

Mr. Wood objected to the admission of Ms. Hall's out-of-court statements to Officer Johnson and 911. CP 14-18, 24-29; RP 18-30. The State did not call Ms. Hall to testify and sought to admit the testimony as excited utterances. *See* RP 1-2, 151-95; CP 11-13, 19-23. Ultimately, the State argued the testimony was not hearsay because it would be admitted to provide context for why the police were looking for Mr. Wood. RP 184-85. Mr. Wood contended the admission violated his right to confront witnesses, constituted hearsay to which no exception applied, and should

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[1] Although the State also initially charged Mr. Wood with fourth degree assault of Anna Hall (RCW 9A.36.041) and duty on striking property (RCW 46.52.010), the charges were dismissed by the State. CP 1-2, 65; RP 23-24.

be excluded as irrelevant, untried bad acts under ER 404(b). CP 14-18, RP 6-14, 18-30, 187-95.

The court allowed the State to admit testimony from Officer Johnson that Anna Hall told him Mr. Wood had perpetrated a misdemeanor and then left the apartment in her car. RP 195-96, 229. The jury was instructed this testimony could be considered only to explain why law enforcement officers were called to the apartments and provided the name Randolph Wood. CP 44; RP 196-97, 200.

Although the State initially stated it would not admit Anna Hall's second call to 911, at the State's later request the court admitted testimony the police received a call stating Mr. Wood had returned. CP 16-17 (motion to exclude); RP 204-05, 215-20. Officer Johnson's testimony exceeded this limited information. RP 271-73, 276-77, 279. Mr. Wood's motion for a mistrial was denied. RP 215-20.

Mr. Wood also moved to exclude admission of the database photograph that Officer Johnson consulted three hours before the pursuit because it derived from Anna Wood's hearsay statements. RP 198-99. The court denied the motion, admitting the photograph as deriving from non-hearsay evidence and an excited utterance. RP 198-99; *see* RP 230-31.

Over Mr. Wood's objection, the court included an expert opinion instruction, although the State presented no expert witnesses. CP 51. The

prosecutor argued at closing that the police officers were "trained observers." RP 386. Neither law enforcement witness testified about observation-related training. *See* RP 222-23, 286.

In closing, the prosecutor also argued that the jury could use the out-of-court statements from Ms. Hall to infer that Mr. Wood knew the police were in pursuit to arrest him for a misdemeanor and he was trying to flee. RP 350. Mr. Wood objected to the argument as beyond the scope of the limiting instruction, but the court overruled the objection. *Id.*

Mr. Wood was convicted of the sole count. CP 56, 60-72.

D. ARGUMENT

**1. The Court should grant review and hold the out-of-court statements by a nontestifying witness should have been excluded because they were admitted for the truth of the matter asserted, and whether hearsay or not, were irrelevant and prejudicial and were inadmissible under ER 404(b).**

The trial court abused its discretion in admitting out-of-court statements to show the officers' states of mind in pursuing Mr. Wood where their states of mind were irrelevant to the charge that Mr. Wood eluded a pursuing police vehicle. The use of these statements for the truth of the matter asserted violated Mr. Wood's right to confront witnesses. Even if the statements overcame the hearsay bar, the court should have excluded them under ER 404(b) as substantially more prejudicial than

probative. This Court should grant review to clarify the reach of the state of mind exception to the hearsay rule.

"A statement is not hearsay if it is used only to show the effect on the listener, without regard to the truth of the statement." *State v. Edwards*, 131 Wn. App. 611, 614, 128 P.3d 631 (2006). However, testimony is admitted for the truth of the matter asserted if the effect on the listener is irrelevant to a material issue in the case. *E.g.*, *id.* at 614-15; *State v. Johnson*, 61 Wn. App. 539, 547, 811 P.2d 687 (1991).

Generally, an officer's basis for suspecting an individual of a crime is not relevant to any material issue in a subsequent criminal trial. *Johnson*, 61 Wn. App. at 545-46; *Edwards*, 131 Wn. App. at 614-15. Where testimony as to out-of-court statements is used for the inescapable inference that a nontestifying witness has furnished the police with evidence the defendant committed a crime, the testimony is inadmissible hearsay. *Johnson*, 61 Wn. App. at 547.

The ultimate issue was whether Mr. Wood attempted to elude a pursuing police vehicle. *State v. Tandecki*, 153 Wn.2d 842, 848, 109 P.3d 398 (2005) (elements of offense are (1) willful failure (2) to immediately bring vehicle to a stop and (3) drive in a manner indicating a wanton and willful disregard for the lives or property of others (4) while attempting to elude police after being signaled to stop by a uniformed officer). "The

gravamen of the attempting to elude offense is that the defendant failed to stop when signaled to do so by police." *State v. Pittman*, 185 Wn. App. 614, 621, 341 P.3d 1024 (2015).

More narrowly, the only trial issue was whether Mr. Wood drove the vehicle that eluded police pursuit. RP 210, 361. Officer Johnson's basis for pursuing him is irrelevant to the crime and was not a material issue at trial. *E.g.*, *State v. Brown*, 40 Wn. App. 91, 96, 697 P.2d 583 (1985) (legality of stop is not at issue in charge of attempting to elude); *State v. Perez*, 166 Wn. App. 55, 61, 269 P.3d 372 (2012) (discussing proof for eluding charge, which does not include basis for pursuit).

As in the Court of Appeals decisions in *Edwards* and *Johnson*, the legality of and basis for the officer's stop of the vehicle was not at issue here. The testimony that Anna Hall reported a misdemeanor incident committed by Mr. Wood should have been excluded as hearsay because it implicated Mr. Wood in a crime and was irrelevant for the purported non-hearsay purpose for which it was admitted.

**2. The Court should grant review and hold admission of the out-of-court statements by a nontestifying witness violated Mr. Wood's constitutional right to confront witnesses.**

The trial court also ruled the testimony satisfied the excited utterances exception. RP 195-96. The admission of the evidence is

therefore subject to the confrontation requirement. The Court of Appeals opinion conflicts with its own decision in *Moses* and with this Court's decision in *Koslowski*.

A declarant's knowing statement in response to structured police questioning is undoubtedly testimonial. *State v. Moses*, 129 Wn. App. 718, 725, 119 P.3d 906 (2005) (quoting *Crawford v. Washington*, 541 U.S. 36, 53 n.4, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)). The *Moses* court discussed how the nature of an interaction with police can evolve from necessity or protection to investigation over the course of time. 129 Wn. App. at 727-28; *accord State v. Koslowski*, 166 Wn.2d 409, 419, 209 P.3d 479 (2009). There, the court held that while the declarant may have originally asked a neighbor to call 911 for help and protection, over the course of the 40-minute interaction, the declarant gave a detailed report in response to structured police questioning and acknowledged her statements could be used to prosecute her assailant. *Id*. The statements were testimonial and should have been excluded. *Id*.

The same result is compelled here. When Officer Johnson arrived and spoke with Anna Hall, any emergency was over. Mr. Wood was not present. RP 158. *See Koslowski*, 166 Wn.2d at 423-24. Three police officers were with Ms. Hall. RP 162-64. She described past events to Officer Johnson, including the history of her relationship with Mr. Wood.

RP 163-64; *see Koslowski*, 166 Wn.2d at 422. Ms. Hall discussed past court orders and other historical events. RP 165-66. Tellingly, Officer Johnson called his discussion with Ms. Hall an "investigation" and he had his notepad out to record her responses. RP 158, 162. He asked her to fill out an affidavit. RP 159, 166. Meanwhile, Officer Johnson returned to his vehicle to complete a report for possible prosecution and further investigation. RP 168-69. Understanding the affidavit would be used to prosecute Mr. Wood, Ms. Hall refused. RP 160.

Admission of Ms. Hall's testimonial statements that Mr. Wood had committed a misdemeanor against her violated Mr. Wood's right to confrontation because Ms. Hall did not testify.

**3. The Court should grant review and hold that, even if these out-of-court statements were otherwise admissible, the substantial risk of prejudice from admitting evidence of an uncharged offense outweighs substantially any probative value.**

The trial court abused its discretion in admitting these statements over Mr. Wood's objection because they were irrelevant and prejudicial, even if otherwise admissible.

In admitting the evidence, the trial court overruled Mr. Wood's objection under ER 404(b). As discussed, the basis for the officers' search for Mr. Wood is irrelevant to the attempting to elude charge at issue at trial. Thus, the evidence was irrelevant.

On the other hand, the evidence was unduly prejudicial. It implicated Mr. Wood in another crime—a misdemeanor. The report from Anna Hall also suggested that the crime was one of domestic violence. The trial court should have excluded the evidence under ER 404(b) because it was substantially more prejudicial than probative.

If the statements, in fact, were not admitted to show Mr. Wood had perpetrated a misdemeanor against Ms. Hall, they could have been cleansed of their prejudice. The State simply could have elicited testimony from Officer Johnson that he received information that caused him to seek Mr. Wood in the area of the Carlysle Apartments. *See Johnson*, 61 Wn. App. at 547 (testimony was improperly admitted where it contained more than police were on the scene due to "information received"). The fact that the statements were not cleansed strongly indicates that the State sought to use them for the non-admissible truth of the matter asserted. The lack of sanitization also demonstrates the prejudice to Mr. Wood from the admission of these out-of-court statements.

The opinion below improperly holds that Mr. Wood did not object on the basis of ER 404(b). Slip Op. at 9. Mr. Wood moved to exclude evidence of alleged assaults under ER 404(b) in his written motions in limine. CP 15 (motions in limine 5, 7). The State indicated it would not bring in any bad acts evidence, but the matter was

reserved while the parties worked on a stipulation that did not come to fruition. RP (7/21/16) 7; RP (7/25/16) 18-30. He never withdrew the objection, yet the trial court admitted testimony that Anna Hall told Officer Johnson that Mr. Wood had perpetrated a misdemeanor and then left the apartment in her car. RP 195-96, 229. The opinion does not reference these portions of the record. *See* Slip Op. at 9.

Because admission of these statements prejudiced Mr. Wood, reversal is required.

**4. The Court should grant review and hold the prosecutor committed prejudicial misconduct by arguing the jury should consider the out-of-court statements for purposes other than the limited basis for which they were admitted.**

The limiting instruction provided that statements made by Anna Hall "may be considered by [the jury] only for the purpose of understanding why law enforcement officers were called to the Carlyle Court apartments, and were provided the name Randolph Wood." CP 44. The instruction explicitly provided the jury "may not consider [the evidence] for any other purpose." *Id.* Yet, the prosecutor improperly argued in closing that the jury could consider the testimony that Mr. Wood was wanted for a domestic violence misdemeanor for purposes beyond

which the limiting instruction allowed. RP 350.

When a trial court has ruled that certain evidence is admissible only for a limited purpose, the prosecutor makes improper argument by urging the jury to consider the evidence for a purpose beyond the court's initial ruling. *State v. Fisher*, 165 Wn.2d 727, 748-49, 202 P.3d 937 (2009); *State v. Feely*, 192 Wn. App. 751, 768, 368 P.3d 514 (2016).

The improper argument served two additional prejudicial purposes: it reminded the jury that Mr. Wood was wanted for a misdemeanor against his girlfriend and it undermined the limiting instruction.

Because it is substantially likely the prosecutor's improper argument affected the verdict, the Court should grant review, reverse and remand.

**5. The Court should grant review and hold the trial court erroneously admitted the database photograph.**

Over Mr. Wood's objection, the trial court also admitted the database photograph that Officer Johnson viewed as a result of Ms. Hall's statements and Officer Johnson's testimony as to viewing the photograph. RP 199; CP 15 (motion in limine 8 to exclude photograph). Thus, Officer Johnson testified he identified Mr. Wood through a photograph he looked up and viewed on a database in his car after speaking with Ms. Hall. RP 230-31. The photograph of Mr. Wood was admitted as Exhibit 8. *Id*.

Because the database photograph depended on the jury learning of Anna Hall's out-of-court statements, the exhibit should have been excluded on the same basis as the statements.

The improper admission was prejudicial. The admitted exhibit allowed the jury to compare a photograph of Mr. Wood with Mr. Wood as seated in court. Because the photograph matched Mr. Wood, the jury was likely to believe the State charged the right person. But, the actual question for the jury was whether the person in the database photograph was the same person Officer Johnson saw driving the vehicle on September 26, 2015. The jury did not have a visual image of the actual driver on that date. The database photograph was an improper substitute.

**6. The Court should grant review and hold the second 911 call should have been excluded as per the pretrial agreement and because it was testimonial hearsay.**

Mr. Wood moved pretrial to exclude the two 911 calls—the first from a minor and the second from Ms. Hall after Mr. Wood had purportedly returned. CP 16-17. Mr. Wood argued the content of the calls was testimonial and admission would violate Mr. Wood's right to confront witnesses because neither caller testified at trial. *Id*. The State agreed it would not introduce the 911 calls. RP 198.

> [Defense Counsel]: I think the State is agreeing that they're not introducing that, the 911 calls.

> [Prosecutor]: Correct. Other than they initially received a 911 call to go to -- none of the content of it, but that's how they were dispatched.
>
> THE COURT: Ms. Bjork, are you in agreement with that: The fact of a 911 call; then as a result of that call, they were dispatched?
>
> [Defense Counsel]: Yes. Or can we just say "call" rather than "911 call"?
>
> [Prosecutor]: You know what, it does not matter to me. I'm comfortable with that.
>
> THE COURT: All right.

RP 198.

In her opening statement, however, the prosecutor introduced that Officer Johnson responded to Ms. Hall's call "that the defendant had returned." RP 203-04. Mr. Wood objected outside the presence of the jury and moved for a mistrial. RP 215-18, 219-20. But the court held, despite the prior agreement, that the information was "just really for background" and permitted evidence that police received a call at 12:20 a.m. that Mr. Wood had returned and the police responded. RP 218-19, 220.

Officer Johnson's testimony then exceeded the limits of the court's ruling. RP 232-33, 235 (discussing information received and then an "update from Anna Hall saying that Mr. Wood was leaving in the vehicle description that she provided from her apartment complex"). When Mr.

Wood objected, the State acknowledged the testimony exceeded the permissible scope. RP 271-73. The prosecutor used her redirect to have Officer Johnson clarify that the radio communication was from dispatch based on a 911 call. RP 279. He did not speak directly with Ms. Hall. *Id*.

The trial court improperly denied Mr. Wood's mistrial motion. First, the admission violated the pretrial agreement to exclude the evidence. RP 198. Second, the statements were hearsay within hearsay, each level of which failed to conform to an exception to the rule against the admission of hearsay. ER 805. Anna Hall's out-of-court statements to 911 were admitted for the truth of the matter asserted, that Mr. Wood had returned to the apartment. The relay of that information from dispatch to Officer Johnson was also hearsay, admitted to prove that the police received the information and responded.

Third, the hearsay should have also been excluded as testimonial in violation of the Sixth Amendment right to confront witnesses. U.S. Const. amend. VI. Neither Ms. Hall nor the 911 operator testified. Mr. Wood was deprived of the opportunity to cross-examine the witnesses against him.

Finally, the evidence was improperly admitted and the mistrial erroneously denied because the testimony exceeded the court's limited ruling.

The improperly admitted evidence prejudiced Mr. Wood. This testimony linked Mr. Wood to the area in which the attempting to elude occurred. Had the testimony been excluded on one or more of the bases above, the jury would have had even less reason to credit Officer Johnson's identification of the driver as Mr. Wood.

**7. The Court should grant review and hold court's instruction and the prosecutor's argument encouraged the jury to consider the police officer's lay testimony as expert opinion evidence.**

The opinion below holds the trial court erred by providing an expert witness instruction when no witness testified in that capacity. Slip Op. at 12-13. However, the Court of Appeals found the error harmless, reasoning neither officer offered his opinion. Slip Op. at 13. The Court should grant review and reverse.

The officers offered opinion testimony on several occasions. For example, Officer Johnson opined the driver of the vehicle in the parking lot matched the photograph he had viewed earlier. RP 241-42; *accord* RP 244 (Johnson testifies his opinion on the identity of the driver derived from "the photo that I saw and proximity of the call"). On cross-examination, Officer Johnson testified he "believ[ed]" the driver was Mr. Wood. RP 257-58; *see* RP 294-95 (prosecutor asks Brown whether he "believe[d]" this was the vehicle they were looking for

"based upon information [he] had received"). Likewise, Sergeant Brown opined the driver exited the vehicle in the woods because he did not see the driver exit at any other point and "it probably would have been fatal or traumatic" if the driver had exited while the vehicle was in motion. RP 308

These were conclusions the officers reached, not facts they recited. *See* RP 253-55 (prosecutor questions Johnson as to the basis for his opinion); RP 377-78 (defense counsel argues officers' opinions should not be given greater weight). As the Court of Appeals recognized, the prosecutor encouraged the jury to give these opinions extra weight because the officers were "trained observers." Slip Op. at 13 (citing prosecutor's argument at RP 386).

These opinions were significant because law enforcement did not apprehend the driver of the vehicle.

**8. The Court should grant review and hold the error accumulated to deny Mr. Wood a fair trial.**

Under the cumulative error doctrine, even where no single trial error standing alone merits reversal, an appellate court may nonetheless find that, together, the combined errors denied the defendant a constitutionally fair trial. U.S. Const. amend. XIV; Const. art. I, § 3; *e.g.*, *Williams v. Taylor*, 529 U.S. 362, 396-98, 120 S. Ct 1479, 146 L. Ed. 2d

435 (2000); *Taylor v. Kentucky*, 436 U.S. 478, 488, 98 S. Ct. 1930, 56 L. Ed. 2d 468 (1978); *State v. Coe*, 101 Wn.2d 772, 789, 684 P.2d 668 (1984); *State v. Venegas*, 153 Wn. App. 507, 530, 228 P.3d 813 (2010).

The above errors accumulated to deny Mr. Wood the fair trial to which he was entitled. Officer Johnson was the only witness who claimed Mr. Wood was the driver of the eluding vehicle, his description was generic (a white male with short hair), and his opportunity to view the driver was limited. The problematic trial court rulings admitted testimony linking Mr. Wood to an earlier, untried crime, a photograph of Mr. Wood, and argument from the State encouraging the jury to decide the case on unsupported grounds. The conviction is not the result of a fair process. This Court should grant review, reverse and remand for a new trial.

## E. CONCLUSION

The Court should grant review of these important issues.

DATED this 23rd day of April, 2018.

Respectfully submitted,

s/ Marla L. Zink
Marla L. Zink – WSBA 39042
Washington Appellate Project
Attorney for Petitioner

# APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

February 6, 2018

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>RANDOLPH WEBSTER WOOD,<br><br>Appellant. | No. 49425-6-II<br><br><br><br>UNPUBLISHED OPINION |

WORSWICK, P.J. — Randolph Webster Wood appeals his conviction for attempting to elude a pursuing police vehicle. Wood argues that (1) the trial court erred in admitting an officer's testimony regarding a victim's statements when the officer responded to two 911 calls from her residence, (2) the trial court erred in admitting a police database photo of Wood, (3) the trial court abused its discretion in denying Wood's motion for mistrial, (4) the trial court erred in giving the jury an instruction regarding expert testimony, (5) the prosecutor committed misconduct, and (6) the cumulative effect of these alleged errors deprived Wood of a fair trial. We affirm Wood's conviction.

### FACTS

#### I. BACKGROUND

On September 25, 2015, Anna Hall's daughter called 911 to report a domestic violence incident. Officer Michael Johnson was dispatched to Hall's residence and responded approximately 10 minutes after the 911 call was placed. Hall told Officer Johnson that her boyfriend, Wood, had assaulted her and that he left in an older green vehicle. After Officer

Johnson's conversation with Hall, he obtained a police database photo of Wood and searched the area around Hall's residence.

Approximately three hours later, Hall called 911 to report that Wood had returned to her home. Officer Johnson was again dispatched to Hall's residence. As Officer Johnson neared Hall's residence, he recognized a vehicle matching the description of the vehicle Hall had said Wood was driving. As he passed the vehicle, Officer Johnson recognized Wood as the driver. Officer Johnson then activated his emergency lights and sirens. A high-speed chase ensued and the driver later crashed the vehicle into a wooded area. The driver exited the vehicle before police arrived and was not apprehended at that time. The State subsequently charged Wood with attempting to elude a pursuing police vehicle.[1]

## II. Pretrial

Prior to trial, Wood filed a motion in limine to exclude all of Hall's out-of-court statements, including the statements made to Officer Johnson after he responded to the first 911 call and Hall's statements in the second 911 call, as testimonial hearsay. Wood did not object on relevance grounds or under ER 404(b). The State presented Officer Johnson's testimony in an offer of proof.

Officer Johnson testified that he responded to Hall's residence approximately 10 minutes after the first 911 call. When he arrived, Hall was crying and "[i]t was obvious that she had just been in some sort of a fight." 2 Verbatim Report of Proceedings (VRP) at 158. Hall had red marks on her forehead and an injury to her lip. Hall told Officer Johnson that Wood assaulted her, and she provided a description of the vehicle he left in. Hall also told Officer Johnson that

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[1] RCW 46.61.024(1).

there were prior no-contact orders between her and Wood and that Wood was potentially watching her home from a nearby apartment complex. Officer Johnson stated that there was some concern that Wood would return. Officer Johnson also testified that Hall called 911 approximately three hours later to report that Wood had, in fact, returned.

The trial court denied Wood's motion, ruling:

> The Court's finding that at the time . . . some of the statements that were made were an excited utterance.
>
> . . . .
>
> So, as a result of that . . . that information is going to be allowed in, and the Court is finding that it is not barred by *Crawford* [2] as being testimonial.
>
> It is also provided for . . . the non-hearsay purpose as to why the law enforcement officers were looking for the defendant.

3 VRP at 195-96.

Wood also filed a motion in limine to exclude admission of the recordings of the two 911 calls. The State agreed that it would not introduce the content of the 911 calls, and the trial court granted Wood's motion in limine.

Also during the pretrial hearing, Wood objected to the admission of the police database photograph of Wood that Officer Johnson obtained as a result of his conversation with Hall and any testimony about the photograph. The trial court denied Wood's motion, determining that the photograph was obtained pursuant to an excited utterance and that testimony about the photograph would be admitted only to show why Officer Johnson attempted to stop Wood.

### III. Trial

During her opening statement, the prosecutor said:

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[2] *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004).

> At the time that the Lakewood police arrived that night, the first call, the defendant had already left the scene. Ms. Hall reported he had already left the scene. . . . So they had no contact with him at that time.
>
> Officers then were called back to the scene in the early morning hours . . . . And Officer Johnson again responded. Ms. Hall had called to indicate that the defendant had returned.

3 VRP at 203-04. Wood moved for mistrial, arguing that the prosecutor's reference to the second 911 call violated an order in limine, and the statements made during the second 911 call were inadmissible hearsay. The trial court denied Wood's motion.

Hall did not testify at trial. Officer Johnson testified that he was dispatched to Hall's residence to respond to a call about a misdemeanor incident. Officer Johnson stated that when he responded to her residence, Hall identified Wood and said that he left in an older green vehicle. Officer Johnson testified that he located a photograph of Wood in a police database after his conversation with Hall. The trial court admitted the photograph into evidence.

Officer Johnson also testified that he received a call notifying him that Wood had returned to Hall's residence. Officer Johnson located a vehicle matching Hall's description, identified Wood as the driver of the car, and activated his lights and sirens. Sergeant Matt Brown testified to the above facts regarding law enforcement's pursuit of the older green vehicle.

Before closing arguments, the trial court instructed the jury:

> Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of witness testimony regarding statements made by Anna Hall and may be considered by you only for the purpose of understanding why law enforcement officers were called . . . and were provided the name Randolph Wood. You may not consider it for any other purpose.

Clerk's Papers (CP) at 44. The trial court also provided an expert witness instruction over Wood's objection. That instruction stated:

> A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.
> You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any another witness.

CP at 51.

During closing argument, the prosecutor provided that the officers were "trained observers . . . . These are not lay witnesses where they glance at a car going by and they're in an emotional state." 5 VRP at 386. The prosecutor also noted: "You can also reasonably infer from the evidence that the defendant knew that the police were behind him to arrest him on a misdemeanor charge, and that was the reason that he was trying to flee from the police." 5 VRP at 350. Wood objected, arguing that the prosecutor's remarks went beyond the scope of the court's limiting instruction. The trial court denied Wood's objection. Later, the prosecutor provided:

> You know just that [the reason the police were called was for] a misdemeanor. It doesn't matter what it was. You're only to use the information about the fact that the officers had a basis to arrest him on the misdemeanor to provide context as to why the officers responded that night to [Hall's residence] and were looking for the defendant . . . . You cannot use that information for any other reason.

5 VRP at 360.

The jury returned its verdict finding Wood guilty of attempting to elude a pursuing police vehicle. Wood appeals.

## ANALYSIS

### I. Admission of Hall's Statements to Police

Wood argues that the trial court erred in admitting Officer Johnson's testimony regarding Hall's statements when he responded to the 911 calls because Hall's statements violated Wood's right to confrontation, were irrelevant, and were improper character evidence.[3] We hold that evidence of Hall's statements did not violate Wood's right to confrontation and further hold that Wood failed to preserve his remaining arguments.

#### A. *Testimonial Evidence*

First, Wood argues that the trial court erred in admitting Officer Johnson's testimony regarding Hall's statements when he responded to Hall's 911 calls because her statements violated Wood's right to confrontation under the Sixth Amendment. We disagree.

We review de novo an alleged violation of a defendant's right to confront witnesses. *State v. Koslowski*, 166 Wn.2d 409, 417, 209 P.3d 479 (2009). The confrontation clause "bars 'admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.'" *Davis v. Washington*, 547 U.S. 813, 821, 126 S. Ct. 2266 (2006) (quoting *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S. Ct. 1354 (2004)). However, nontestimonial statements

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[3] Wood also argues that the trial court erred in admitting Officer Johnson's testimony regarding Hall's statements because Hall's statements were inadmissible hearsay and were not subject to a hearsay exception. Although the trial court ruled that some of Hall's statements were excited utterances, Hall's statements clearly were not admitted for the truth of the matter asserted. This is evidenced by the trial court's limiting instruction: ". . . witness testimony regarding statements made by Anna Hall and may be considered by you only for the purpose of understanding why law enforcement officers were called . . . and were provided the name Randolph Wood. You may not consider it for any other purpose." CP at 44. Accordingly, we do not consider Wood's argument because Hall's statements were not admitted as excited utterances.

are admissible under the Sixth Amendment subject to only the rules of evidence. *State v. Pugh*, 167 Wn.2d 825, 831-32, 225 P.3d 892 (2009).

"Where the police are involved in procuring an unconfronted statement, whether the statement is testimonial depends upon the 'primary purpose' for the interrogation during which the statement was made." *State v. Reed*, 168 Wn. App. 553, 562, 278 P.3d 203 (2012) (quoting *Davis*, 547 U.S. at 822). When the circumstances of a police interrogation objectively show that there was no ongoing emergency and that the primary purpose of the interrogation was to establish past events that may be relevant to future criminal prosecution, the product of the interrogation is necessarily testimonial. *Pugh*, 167 Wn.2d at 832. On the other hand, statements are nontestimonial when they were made under circumstances that objectively indicate that the primary purpose of the interrogation was to enable the police to assist in an ongoing emergency. 167 Wn.2d at 832.

To determine whether the primary purpose of police interrogation was to enable the police to assist in an ongoing emergency, we consider:

> (1) whether the speaker is speaking of events as they are actually occurring or instead describing past events; (2) whether a reasonable listener would recognize that the speaker is facing an ongoing emergency; (3) whether the questions and answers show that the statements were necessary to resolve the present emergency or instead to learn what had happened in the past; and (4) the level of formality of the interrogation.

167 Wn.2d at 832. Statements made within minutes of an assault may be properly considered as statements that are contemporaneous with the events that occurred. *State v. Ohlson*, 162 Wn.2d 1, 17, 168 P.3d 1273 (2007).

During a pretrial hearing, Officer Johnson testified that he responded to Hall's residence approximately 10 minutes after the first 911 call. When he arrived, Officer Johnson saw Hall

crying, observed injuries, and reasoned that "[i]t was obvious that she had just been in some sort of a fight." 2 VRP at 158.

Officer Johnson spoke with Hall in her home, and during that conversation, Hall told Officer Johnson that Wood assaulted her and left in an older green vehicle. Hall also disclosed that there were prior no-contact orders between her and Wood and that Wood may have been watching her home from a nearby apartment complex. Officer Johnson testified that he was concerned that Wood would return. He further testified that Hall called 911 approximately three hours later to report that Wood did in fact return.

The circumstances of Officer Johnson's conversation with Hall after the first 911 call objectively show that the primary purpose of the conversation was to assist Hall in an ongoing emergency. Officer Johnson's conversation with Hall was in Hall's home and appeared informal. Because Officer Johnson responded within minutes of the 911 call, we consider Hall's statements as being made contemporaneously with the assault. *Ohlson*, 162 Wn.2d at 17. In addition, a reasonable listener would clearly understand that Hall faced an ongoing emergency. When Officer Johnson responded, it was clear that Hall had been assaulted. Hall disclosed that she had previous no-contact orders against Wood, and Officer Johnson noted that there was concern that Wood would return.

That Hall was facing an ongoing emergency is further evidenced by the fact that Wood returned to her residence shortly after the assault. Further, questions and answers regarding Wood's name and the vehicle he was driving were necessary to locate Wood and to end the ongoing emergency. As a result, the primary purpose of Officer Johnson's conversation with Hall was to assist in an ongoing emergency, and Hall's statements were nontestimonial.

Therefore, the trial court did not violate Wood's right to confrontation under the Sixth Amendment by admitting Hall's statements to Officer Johnson.

Moreover, Hall's statement during the second 911 call was made for the primary purpose of obtaining assistance in an ongoing emergency. Hall called 911 when Wood returned to her home. Given the previous 911 call and assault that evening, a reasonable listener would understand that Hall was facing a continuing emergency and that her statement was necessary to obtain help from law enforcement to end the emergency. Accordingly, the primary purpose of Hall's statement was to obtain assistance in an ongoing emergency, and her statement was nontestimonial. Thus, the trial court did not violate Wood's right to confrontation by admitting Hall's statement during the second 911 call.

B. *Relevance & Improper Character Evidence*

Wood argues for the first time on appeal that the trial court erred in admitting Officer Johnson's testimony regarding Hall's statements when he responded to two 911 calls from her residence because Hall's statements were irrelevant and were improper character evidence under ER 404(b). Generally, we will not review issues raised for the first time on appeal. RAP 2.5(a). In addition, a party arguing an evidentiary error must assign error on appeal only on the specific grounds argued at trial. *DeHaven v. Gant*, 42 Wn. App. 666, 669, 713 P.2d 149 (1986). Wood failed to object to the admission of Hall's statements on relevance grounds or under ER 404(b). Accordingly, we do not review Wood's arguments that the trial court abused its discretion in admitting irrelevant evidence and improper character evidence under ER 404(b). *See State v. Mason*, 160 Wn.2d 910, 931, 162 P.3d 396 (2007).

## II. Admissibility of Photograph

Wood also argues without authority that the trial court erred in admitting a police database photo of Wood because admission of the photo was based on Hall's testimonial hearsay statements to Officer Johnson. We disagree.

Hall's statements to Officer Johnson were properly admitted. Because Hall's statements to Officer Johnson were admissible, the foundation necessary to admit the photograph was also admissible. Therefore, admission of the photograph was proper.

## III. Mistrial

Wood also argues that the trial court abused its discretion in denying Wood's motion for mistrial because the prosecutor violated an order in limine during opening argument by referring to Hall's second 911 call. We disagree.

We review a trial court's decision denying a motion for mistrial for an abuse of discretion. *State v. Emery*, 174 Wn.2d 741, 765, 278 P.3d 653 (2012). A trial court abuses its discretion when no reasonable judge would have reached the same conclusion. 174 Wn.2d at 765. "The trial court should grant a mistrial only when the defendant has been so prejudiced that nothing short of a new trial can ensure that the defendant will be fairly tried." 174 Wn.2d at 765. To determine the effect of a trial irregularity, we examine (1) its seriousness, (2) whether it involved cumulative evidence, and (3) whether the trial court properly instructed the jury to disregard it. 174 Wn.2d at 765.

The trial court denied Wood's motion in limine to exclude all of Hall's out-of-court statements but granted his motion in limine to exclude recordings of the two 911 calls. In her opening statement, the prosecutor said:

> At the time that the Lakewood police arrived that night, the first call, the defendant had already left the scene. Ms. Hall reported he had already left the scene. . . . So they had no contact with him at that time.
>
> Officers then were called back to the scene in the early morning hours . . . . And Officer Johnson again responded. Ms. Hall had called to indicate that the defendant had returned.

3 VRP at 203-04. Based on these comments, Wood moved for mistrial, arguing violation of the order in limine and inadmissible hearsay. The trial court denied Wood's motion, reasoning that the prosecutor's reference to the second 911 call did not violate the previous order in limine, and that it provided background information for law enforcement's involvement.

At the close of evidence, the trial court instructed the jury:

> Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of witness testimony regarding statements made by Anna Hall and may be considered by you only for the purpose of understanding why law enforcement officers were called . . . and were provided the name Randolph Wood. You may not consider it for any other purpose.

CP at 44.

The prosecutor's remark that there was a second call where Hall reported that Wood had returned was inconsequential. The trial court previously ruled that the statement was admissible, and the prosecutor did not violate an order in limine by referring to the second call. Moreover, the trial court's limiting instruction directed the jury to consider Hall's statements only for the purpose of understanding why law enforcement was called. This instruction was consistent with the trial court's pretrial rulings and helped to eliminate any resulting prejudice. As a result, Wood cannot show that the prosecutor's comment during opening argument was so prejudicial that nothing short of a new trial could ensure that he would be fairly tried. Accordingly, the trial court did not abuse its discretion in denying Wood's motion for mistrial.

## IV. Instructional Error

Wood also argues that the trial court erred in giving the jury an instruction regarding expert testimony because the instruction misled the jury in that no expert witnesses testified at trial. We determine that the expert testimony instruction was erroneous but nevertheless conclude that the error was harmless beyond a reasonable doubt.

We review alleged errors of law in jury instructions de novo. *State v. Willis*, 153 Wn.2d 366, 370, 103 P.3d 1213 (2005). Jury instructions are proper when they permit the parties to argue their theories of the case, do not mislead the jury, and properly inform the jury of the applicable law. 153 Wn.2d at 370. A jury instruction is misleading when an ordinary juror would interpret the instruction erroneously. *See State v. Moultrie*, 143 Wn. App. 387, 393-94, 177 P.3d 776 (2008). An erroneous jury instruction that misleads the jury is subject to a constitutional harmless error analysis. *State v. Thomas*, 150 Wn.2d 821, 844, 83 P.3d 970 (2004). An erroneous instruction is harmless so long as we conclude beyond a reasonable doubt that the jury verdict would have been the same without the error. 150 Wn.2d at 845.

At trial, only Officer Johnson and Sergeant Brown testified. The State did not offer or disclose either witness as an expert witness. Despite Wood's objection, the trial court instructed the jury:

> A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.
>
> You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any another witness.

CP at 51.

During closing argument, the State noted that the officers were "trained observers . . . . These are not lay witnesses where they glance at a car going by and they're in an emotional state." 5 VRP at 386.

The trial court gave an expert testimony instruction when no witness testified in an expert capacity. As a result, an ordinary juror may have interpreted the instruction as suggesting that the two testifying officers were expert witnesses. Accordingly, the trial court's instruction misled the jury and was erroneous.

Despite this, we conclude that the error was harmless beyond a reasonable doubt. Although it is possible that the jurors concluded that the instruction applied to the officers' testimony, the instruction made clear that it applied only to the officers' opinions, and not to the facts they testified to. At trial, Officer Johnson testified to his observations, which allowed him to identify Wood as the driver of the older green vehicle. In addition, Sergeant Brown testified to facts that occurred during the high speed chase and his observations regarding the driver's physical features. Consequently, neither Officer Johnson nor Sergeant Brown expressed an opinion at trial. Moreover, the instruction stated that the jury could reject an expert's opinion and that each juror must consider an expert's credibility, as well as the weight to give his or her testimony, as any other witness. Accordingly, the instruction did not suggest that the officers' testimony be given more weight and did not impact the jury in assessing the officers' testimony. As a result, we conclude beyond a reasonable doubt that Wood's verdict would have been the same without the erroneous instruction. Therefore, the trial court's erroneous jury instruction was harmless beyond a reasonable doubt.

V. PROSECUTORIAL MISCONDUCT

Wood also argues that the prosecutor committed misconduct during closing argument by arguing that the jury could consider evidence of the two 911 calls for more than the trial court had instructed in its limiting instruction. The State appears to concede that the prosecutor's statement was improper. We determine that Wood fails to show that the prosecutor's statement was prejudicial.

To establish prosecutorial misconduct, a defendant must show first that the prosecutor's conduct was improper and second, that the comments were prejudicial. *State v. Yates*, 161 Wn.2d 714, 774, 168 P.3d 359 (2007). A prosecutor's improper conduct is prejudicial only when there is a substantial likelihood that the misconduct affected the jury's verdict. 161 Wn.2d at 774. In assessing the prejudicial effect of a prosecutor's improper statements, we do not review the statements in isolation and instead place the remarks in the context of the total argument, the issues in the case, the evidence addressed in argument, and the instructions given to the jury. 161 Wn.2d at 774.

The trial court instructed the jury:

> Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of witness testimony regarding statements made by Anna Hall and may be considered by you only for the purpose of understanding why law enforcement officers were called . . . and were provided the name Randolph Wood. You may not consider it for any other purpose.

CP at 44.

During closing argument, the prosecutor provided that "[y]ou can also reasonably infer from the evidence that the defendant knew that the police were behind him to arrest him on a misdemeanor charge, and that was the reason that he was trying to flee from the police." 5 VRP

at 350. Wood objected, arguing that the prosecutor's remarks went beyond the scope of the court's limiting instruction. The trial court denied Wood's objection. The prosecutor continued:

> You know just that it's a misdemeanor. It doesn't matter what it was. You're only to use the information about the fact that the officers had a basis to arrest him on the misdemeanor to provide context as to why the officers responded that night to [Hall's residence] and were looking for the defendant . . . . You cannot use that information for any other reason.

5 VRP at 360.

The prosecutor's remark that the jury could infer that Wood knew he was going to be arrested and attempted to flee as a result suggested to the jury that it could consider Hall's statements for purposes other than the purpose of understanding why law enforcement was called to her residence and provided with Wood's name. As a result, the prosecutor indicated that the jury was not bound by the purposes stated in the court's limiting instruction. Accordingly, the prosecutor's remark was improper.

Although the prosecutor improperly suggested that the jury could disregard the trial court's limiting instruction, Wood cannot show that there is a substantial likelihood that the prosecutor's isolated remark affected the jury's verdict. The prosecutor later rephrased her reference to Hall's statements and clarified the purposes for which the jury could consider the evidence. Moreover, the trial court instructed the jury that it could consider Hall's statements only for purposes of understanding law enforcement's involvement; we presume that juries follow the trial court's instructions. *State v. Lamar*, 180 Wn.2d 576, 586, 327 P.3d 46 (2014). Accordingly, Wood fails to show that the prosecutor's conduct was prejudicial.

### VI. CUMULATIVE ERROR

Wood also argues that the cumulative effect of these alleged errors deprived him of a fair trial. We disagree.

The cumulative error doctrine applies when a trial is affected by several errors that standing alone may not be sufficient to justify reversal but when combined may deny a defendant a fair trial. *State v. Greiff*, 141 Wn.2d 910, 929, 10 P.3d 390 (2000). To determine whether cumulative error requires reversal of a defendant's conviction, we must consider whether the totality of circumstances substantially prejudiced the defendant. *In re Pers. Restraint of Cross*, 180 Wn.2d 664, 690, 327 P.3d 660 (2014). The cumulative error doctrine does not apply when there are no errors or where the errors are few and have little or no effect on the trial's outcome. *State v. Weber*, 159 Wn.2d 252, 279, 149 P.3d 646 (2006).

As discussed above, Wood identifies only two trial errors—the trial court's erroneous expert testimony instruction and the prosecutor's improper suggestion that the jury could disregard the trial court's limiting instruction. Considering these errors together, Wood fails to show that their combined effect deprived him of a fair trial. The prosecutor's remark during closing argument had little to no effect on the outcome of Wood's trial because it was brief, the trial court instructed the jury that it could consider Hall's statements only for purposes of understanding why law enforcement responded and was given Wood's name, and the prosecutor rephrased her improper suggestion. Moreover, the trial court's erroneous instruction did not impact the jury's consideration of the officers' testimony, and the trial court instructed the jury to weigh the credibility of witnesses on its own. Accordingly, Wood identifies only two errors that

had little to no effect on the outcome of his trial. Thus, the cumulative error doctrine does not apply.

We affirm Wood's conviction.

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, P.J.

We concur:

Lee, J.

Melnick, J.

# APPENDIX B

Filed
Washington State
Court of Appeals
Division Two

March 23, 2018

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| STATE OF WASHINGTON,<br>Respondent,<br>v.<br>RANDOLPH WEBSTER WOOD,<br>Appellant. | No. 49425-6-II<br><br>ORDER DENYING<br>MOTION FOR RECONSIDERATION |
|---|---|

Appellant filed a motion for reconsideration of the opinion filed on February 6, 2018 in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

**SO ORDERED.**

**PANEL:** Jj. Worswick, Lee, Melnick

**FOR THE COURT:**

PRESIDING JUDGE

## DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 49425-6-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent Mark Von Wahlde, DPA
[PCpatcecf@co.pierce.wa.us]
Pierce County Prosecutor's Office

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: April 23, 2018

## WASHINGTON APPELLATE PROJECT

## April 23, 2018 - 4:27 PM

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| **Appellate Court Case Number:** | 49425-6 |
| **Appellate Court Case Title:** | State of Washington, Respondent v. Randolph W. Wood, Appellant |
| **Superior Court Case Number:** | 15-1-04065-2 |

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