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STATE OF WASHINGTON
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No. 102762-1
COA No. 57339-3-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW BRIAN ALAN DAVIS,

Appellant.

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

The Honorable Sharonda Amamillo, Judge
The Honorable Indu Thomas, Judge
Cause No. 21-1-00874-34

ANSWER TO PETITION FOR REVIEW AND CROSS PETITION FOR REVIEW

Joseph J.A. Jackson
Attorney for Respondent
2000 Lakeridge Drive S.W.
Olympia, Washington 98502
(360) 786-5540

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A. ISSUES PERTAINING TO REVIEW/CROSS PETITION

1. Whether review of the Court of Appeals' application of the "open the door doctrine" is warranted under RAP 13.4(b) and if so, whether this Court should also consider whether the evidence admitted was erroneously suppressed.

2. Whether review of the Court of Appeals' finding that any comment on the right to remain silent was harmless is appropriate under RAP 13.4(b) and if so, whether this Court should also consider whether the testimony was an impermissible comment on the right to remain silent following the United States Supreme Court decision in Salinas v. Texas, 570 U.S. 178, 133 S. Ct. 2174, 186 L.Ed. 2d 376 (2013).

B. STATEMENT OF THE CASE

1. Pretrial Motion to Suppress

Matthew Brian Alan Davis, was charged with one count of delivery of a controlled substance-Heroin, following a controlled buy operation conducted by the Thurston County Narcotics Task Force. CP 1, RP 78. The prosecutor informed defense counsel that the State would withhold discovery related to the confidential informant pursuant to CrR 4.7 on October 18, 2021. CP 20. The prosecutor indicated that she notified counsel,

> We have discovery that has not been provided which includes: body wire recording, C/S wire debrief audio and transcript and the SW affidavit for wire. I am happy to provide that discovery to you however once that discovery is provided all offers will be revoked and the State will not negotiate settlement of this case. Please discuss the State's position with your client and let me know in writing that (1) you have conveyed the State's position and (2) your client still wishes for that discovery to be sent.

CP 20. Police reports that were provided in October of 2021 indicated that a confidential informant (CI) was used in the investigation and included a summary of the

informant's criminal history. CP 19. The prosecutor indicated that the narrative also included "that the informant reported that there were multiple people at the house along with a description of the informant's actions as he awaited the defendant's arrival at the residence." CP 19-20.

On December 21, 2021, the parties entered a consolidated omnibus order which indicated that the State had not yet provided the CI statement, CI identity and police reports. CP 20, CP 375-378. The trial date was ultimately continued by agreed order to June 6, 2022, which calculated the expiration of speedy trial as July 6, 2022. CP 379. The prosecutor indicated that she emailed defense counsel indicating that she needed confirmation that his client was provided the offer and understood the consequences of proceeding to trial prior to providing the additional discovery on May 26, 2022. CP 21. Defense

counsel provided written confirmation via email on June 1, 2022. CP 21

At a hearing on June 2, 2022, defense counsel Christopher Taylor appeared on behalf of the counsel of record. CP 21, RP (6/2/21) 1. At that hearing, the prosecutor informed the trial court,

> This matter is actually scheduled for trial on Monday next week. This is a case that involves a confidential informant. That information – the State on confidential informant cases requires affirmative confirmation in writing prior to providing discovery that is withheld pursuant to the discovery rules. Yesterday the State received confirmation in writing from [defense counsel], and some of that withheld discovery was sent out yesterday. The rest of it is being sent out today, and the informant is being identified today.

RP (6/2/2022) 7-8. The prosecutor suggested a two-week trial continuance to allow defense counsel time to prepare after receiving the additional discovery. RP (6/2/2022) 8.

The trial court noted that Davis was out of custody and the trial date could be moved within the previously

calculated speedy trial clock and continued the trial to begin on June 21, 2022. RP (6/2/2022) 11. On June 8, 2022, the prosecutor filed an amended witness list disclosing the identity of the CI as Bradley Hull and provided the additional discovery related to the CI. CP 22. Defense counsel then filed a motion to suppress Hull's testimony and the audio of the controlled buy alleging prosecutorial mismanagement. CP 5-10.

A hearing on the motion was held on June 16, 2022. RP (6/16/2022) 1. In response to the motion, the prosecutor noted that defense counsel was made aware that there was a wire that was being withheld pursuant to CrR 4.7(f)(2) in October of 2021. RP (6/16/2022). The prosecutor also indicated,

> There are absolutely no material facts in the additional items of discovery that were provided to defense in June that change anything. The detective's report that was provided to defense in October made reference to the informant telling law enforcement that there were multiple other people on the

> property when this alleged drug deal took place.

RP 10-11.

The trial court stated,

> In this case, I do not believe it was intentional to delay based on the chronology of what I have seen. I don't think there was anything malicious necessarily going on based on what I have seen when I take both sides together, but although there was a delay, I don't think it was malicious. I do think it does rise to the level of mismanagement though because June 8th is, again, as this record reflects, two days beyond the original trial set, and trial is currently set for June 21st.

RP (6/16/2022) 20—21. The trial court then stated,

> Because of the amount of time that we have left, and because of the amount of time that - - and because of the location, having you interview Mr. Hull between now and the 21st is doable, but having you work through all of what could be available or discovered in the audio recording is too tall an order. The court is not excluding Mr. Hull, but the court is excluding the audio recording.

RP (6/16/2022) 22.

The trial court entered a brief finding regarding the suppression on June 16, 2022. CP 39. Findings of fact and conclusions of law were entered on June 23, 2022. CP 73-74.

2. <u>Trial and verdict</u>

Detective Sergeant Malcom McIver contacted Bradley Hull and reached an agreement where Hull agreed to buy heroin from Davis. RP 80. Hull was “told that if he conducted the investigation into Mr. Davis that, at the completion of the investigation, that then he would not be charged with the small amount of narcotics that he had” been found with. RP 80.

Detective Sergeant McIver directed Hull to make a phone call to Davis “and tell him that he needed to meet him on whatever terms he would normally use to arrange the purchase of a common amount of heroin.” RP 84. McIver listened to the conversation and heard Hull ask if it was Matt and a male on the other end said “yes.” Then

Hull said he needed "to come through and see you" and the male responded "okay." RP 85. After the phone call, McIver planed the buy, with a "safety plan." RP 87. When he met with Hull again, law enforcement searched Hull "to make sure that [he didn't] have extra money on [him] to buy extra drugs" and that he did not have drugs or contraband on him or in the vehicle he was driving. RP 88. Hull told McIver that the vehicle he was driving actually belonged to Davis. RP 89.

Law enforcement provided Hull with prerecorded money to conduct the buy. RP 89-90. Law enforcement kept Hull under surveillance while he drove to Davis' house. RP 90-91. McIver took a position to the east of the address and monitored the buy while maintaining communication with Hull. RP 93. When Hull notified McIver that he was done at Davis's house and was walking out to the roadway, McIver went to pick him up. RP 95. Hull handed him a Ziploc baggy with "roughly … a half

ounce of heroin." RP 124. After law enforcement interviewed and searched him, Hull was picked up by his girlfriend. RP 124-125. The heroin was tested by Washington State Patrol chemical analyst Martin McDermott and determined to contain heroin. RP 201-202, 209-210.

Weeks later, law enforcement contacted Davis in the parking lot of Ralph's Thriftway and placed him under arrest. RP 132. Detective Sergeant McIver testified that "Mr. Davis appeared surprised to see me but not surprised to hear why he was under arrest." RP 133. Defense counsel objected to the relevance of the specific question asked by the prosecutor, "How would you describe his demeanor?" which was overruled following a sidebar. RP 133. The trial court indicated that the response to the objection was that "it went to consciousness of guilt and that these were as to the observation of the detective and the further elaboration on the objection was that it was not

observation but speculation." RP 154. The trial court noted that it found that the "prejudice was outweighed by the probative value, and that it was relevant with respect to any observations of consciousness of guilt." RP 154.

McIver testified that Hull failed to complete his agreement with the Task Force and did not receive the benefit of the agreement. RP 134. At trial, Hull testified that he reached a deal with law enforcement that "if [he] did two controlled buys, [he] could walk without charges." RP 178. Hull indicated that law enforcement gave him money to go do the controlled buy and he "called Matt," later clarifying that "Matt" was Davis. RP 179-180. Hull testified that Davis was not home when he arrived and later arrived in a silver SUV. RP 181-182. He indicated that "Matt went in the house" and Hull talked to a couple of people until his girlfriend showed up. RP 183. Hull testified that he "threw her some money and [he grabbed] some drugs," then borrowed a scale from somebody and weighed out

approximately a half ounce of heroin and walked out the door. RP 183.

Hull indicated that his girlfriend at the time was “Becky Hinslan” and she drove his “black Honda Accord.” RP 188. Hull admitted that he told law enforcement that the transaction occurred between himself and Davis. RP 195.

Lieutenant Tim Rudloff of the Thurston County Sheriff’s Office testified that his role during the operation was to act “secondary” to Sergeant McIver. RP 227-228. Rudloff indicated that when Hull called Davis, he referred to him as “Matt” and said, “Hey, I need to meet with you, I need to pick up” or “pick something up,” and Davis told him that he was not at the house but would meet him there. RP 229. Rudloff indicated that they drove by Davis’ residence when they picked up Hull and the only vehicle that he noticed that was not previously there was the “Rav4” that Davis arrived in. RP 237. Ruldoff testified that Hull’s

girlfriend picked him up later and he had not seen the car she picked him up in at Davis' property. RP 237-238.

During cross examination, defense counsel asked about how long Hull was at Davis's residence and asked if Rudloff would have been able to see his girlfriend from where he parked. RP 243-244. Defense counsel asked if it was possible that happened and Rudloff testified that it was "possible" but said "I don't believe that's probable at all." RP 244. Defense counsel then asked about the evidence that Rudloff was trained to collect, specifically asking about video, body cameras and fingerprints. RP 244. Defense counsel then asked about Hull's cellular phone, asking "In theory, if he was communicating with his girlfriend about coming to the house, that information could have been on his phone," which the prosecutor objected to based on speculation, which was sustained by the trial court. RP 244-245. Defense counsel then asked if Rudloff

looked at Hull's phone or requested a search warrant for Hull's phone. RP 245.

The prosecutor then argued that defense counsel's questioning of Rudloff opened the door to admission of the audio recording that had previously been suppressed. RP 247-248. The prosecutor argued, "there is a wire recording that actually shows and is an audio recording of what happened during the 40 minutes that Mr. Hull was out of the line of sight of law enforcement." RP 248. The trial court ruled that defense questions had opened the door to allow the admission of the wire recording. RP 250-251. The trial court noted,

> [Defense counsel] specifically asked the lieutenant if it was possible that the girlfriend brought drugs to Mr. Hull. That opened the door to allow the Court to introduce the suppressed evidence because we are exactly at the point that they were in *Gefeller* in 1969 where there is a half truth that has been stated with the State not having the opportunity to respond to that.

RP 267, citing State v. Gefeller, 76 Wn.2d 449, 458 P.2d 17 (1969).

The State recalled Detective Sergeant McIver, who testified that while he could not see Hull the entire time, he was on Davis's property he was observing him by listening to him. RP 274. The audio of the buy-walk recording was admitted as Exhibit 9. RP 280-281. McIver testified that the audio contained Hull talking on the phone to his girlfriend about where to pick him up. RP 282. In response to cross examination, McIver testified that Hull was arguing with his girlfriend on the phone for a period of time on the audio. RP 284. McIver testified that Hull's girlfriend could be heard on the audio stating that she didn't know where Davis's house was. RP 285.

The jury found Davis guilty as charged. CP 115, RP 395.

3. Motion for new trial and sentencing

Following the conviction, the defense filed a motion for a new trial pursuant to CrR 7.5 alleging an error of law objected to at trial and misconduct by the prosecution. CP 119-127. Defense counsel argued that the testimony of Detective Sgt. McIver that Davis was not surprised when informed of why he was arrested violated the right to remain silent, and that the trial court erred in finding that the defense opened the door to allow the audio recording at trial. RP 429, 431. The trial court found that McIver's answer "went a step too far," but found that the error was harmless. RP 443-445. The trial court denied the motion for a new trial. RP 446-447.

The trial court sentenced Davis to 16 months incarceration followed by 12 months of community custody. RP 477, CP 325-337.

4. Decision of the Court of Appeals

The Court of Appeals affirmed the conviction and sentence. State v. Davis, No. 57339-3-II (Unpublished

Opinion). The Court of Appeals held that the trial court did not err in its application of the open the door doctrine and because of that finding, did not reach the State's argument that the trial court erred by suppressing the audio. Unpublished Opinion, at 3. The Court of Appeals also found that any comment on the post-arrest right to remain silent was harmless beyond a reasonable doubt and in so doing did not consider the State's argument that there was no comment on the right to remain silent. Unpublished Opinion, at 3. The State contends that this Court need not accept review, however, if this Court accepts review, the State asks the Court to include review of the State's arguments which were not addressed by the Court of Appeals.

C. ARGUMENT

3. This Court need not review the trial court's finding that the defense opened the door to suppressed evidence, however, if this Court accepts review, this Court should also consider the State's contention that the

original suppression of the audio was erroneous.

Davis argues that review is appropriate because the issue is of substantial public interest and therefore should be decided by this Court. A party who introduces evidence that would otherwise leave the jury with a false impression, or an incomplete picture of a material issue opens the door for his or her opponent to introduce rebuttal evidence, even if such evidence may not otherwise be admissible as substantive evidence. State v. Lile, 188 Wn.2d 766, 798, 398 P.3d 1052 (2017) (Madsen, J. concurring); *citing*, United States v. Whitworth, 856 F.2d 1268, 1285 (9th Cir. 1988); State v. Lord, 117 Wn.2d 829, 894, 822 P.2d 177 (1991). The general rule states, "when a party opens up a subject of inquiry on direct or cross-examination, he contemplates that the rules will permit cross examination or redirect examination, as the case may be within the

scope of the examination in which the subject matter was first introduced". Geffeller, 76 Wn.2d at 455.

The rule regarding opening the door is clear and the Court of Appeals correctly noted,

> the trial court did not abuse its discretion in admitting the recording because, even assuming the trial court was correct in finding that the State committed misconduct and that the suppression of the recording was the proper remedy for that violation, Davis opened the door to the recording by questioning the deputies in a strategic manner that put at issue the existence of the recording and its contents. More to the point, Davis tried to capitalize on the suppression of the recording by leaving the jury with the misimpression that the deputies had no way of knowing what occurred in the house. Davis even went so far as to question whether there was a video recording of what occurred in the house that would corroborate the State's theory of the case.

Unpublished Opinion, at 12. The Court of Appeals' ruling was correct. Davis might show that the issue is of importance to his case but has not shown that the issue is of sufficient interest to the public to warrant review of this Court.

If this Court accepts review, complete review of the issue would require consideration of the State's argument that the initial suppression was erroneous. A trial court must weigh four factors to determine if exclusion of evidence is warranted: "(1) the effectiveness of less severe sanctions; (2) the impact of witness preclusion on the evidence at trial and the outcome of the case; and (3) the extent to which the [other party] will be surprised or prejudiced by the witness's testimony; and (4) whether the violation was willful or in bad faith." State v. Ruelas, 7 Wn.App.2d 887, 896, 436 P.3d 362 (2019). Here, the trial court did not engage in the required analysis before suppressing the audio recording. RP (6/16/2022) 20-22.

In Washington, the governmental informant privilege is recognized by court rule. State v. Harris, 91 Wn.2d 145, 148, 588 P.2d 720 (1978); CrR 4.7(f)(2). The privilege allows the government to withhold the identity of informants who have supplied it with information concerning criminal

activity. The privilege of the government to withhold from disclosure the identity of police informers is known as the "informers' privilege." The purpose of the privilege is to foster the government-informant relationship and encourage citizens to communicate their knowledge to police in order to further and protect the public interest in law enforcement. Roviaro v. United States, 353 U.S. 53, 1 L. Ed. 2d 639, 77 S. Ct. 623 (1957). The privilege is not absolute, and if disclosure of an informer's identity "is relevant and helpful to the defense . . . or is essential to a fair determination of the cause, the privilege must give way. In these situations, the trial court may require disclosure." *Id.*, supra at 60-61.

The required procedure for compelling disclosure is to make a showing that the identity of the nondisclosed witness is relevant and helpful to the defense or essential to a fair determination of the cause. State v. Driscoll, 61 Wn.2d 533, 379 P.2d 206 (1963).

In this case, the trial court's findings of fact that the timing of the state's disclosure of the confidential information and wire constituted mismanagement, that the timing gave insufficient opportunity for the defense to explore the evidence in the audio recording and that the timing "partially prejudiced" Davis's right to speedy trial were unsupported by the record.

The record indicated that the speedy trial expiration date at the time of the motion was July 6, 2022. CP 379-380. The prosecutor informed the defense that there was an audio recording of the controlled buy in October of 2021 and indicated that the audio would be disclosed when the defense gave written notice that the defense was rejecting the State's offer. CP 20. The defense did not provide that written notice until June 1, 2022. CP 21. The identity of the confidential information and the audio were provided to the defense on June 8, 2022. CP 22.

The trial court's conclusion that the prosecutor committed mismanagement was based on untenable grounds. The record indicated that the prosecutor dutifully sought to protect the identity of the CI as contemplated by CrR 4.7(f)(2). The prosecutor was clear with defense counsel that the evidence existed and clearly gave the parameters upon which the evidence would be provided. Moreover, the audio and identity of the CI were provided well before the trial began on July 5, 2022. RP 1. There were no tenable grounds under either CrR 4.7 or CrR 8.3 upon which the trial court should have found that the prosecution had mismanaged the case to the detriment of the defense with the disclosure of CI information under CrR 4.7(f)(2). The trial court's decision to suppress the audio recording was manifestly unreasonable. If review is accepted, this Court should also consider whether the audio should have been suppressed at all.

4. There is no basis under RAP 13.4(b) upon which this Court should accept review of the Court of Appeals' finding that any violation of the right to remain silent was harmless, however, if review is accepted, this Court should also consider whether there was an impermissible comment on the right to remain silent.

When analyzing an improper comment on the right to remain silent, the standard of review differs depending on whether the comment is direct or indirect. State v. Romero, 113 Wn. App. 779, 790-791, 54 P.3d 1255 (2002). If the comment is a direct comment, constitutional error exists that requires constitutional harmless error analysis. State v. Easter, 130 Wn.2d 228, 922 P.2d 1285 (1996). Prejudice resulting from an indirect comment is reviewed using the lower, nonconstitutional harmless error standard. Romero, 113 Wn. App. at 791-792.

A law enforcement officer makes an indirect comment on the right to remain silent when a jury could infer from the comment the defendant attempted to

exercise his right to remain silent. State v. Pottorff, 138 Wn. App. 343, 156 P.3d 955 (2007). For example, a court found a police officer made an indirect comment when the officer testified the defendant claimed he was innocent and agreed to take a polygraph, but only after discussing the matter with his attorney. State v. Sweet, 138 Wn.2d 466, 480, 980 P.2d 1223 (1999). Courts deem an indirect comment on silence as not reversible error absent a showing of prejudice. State v. Lewis, 130 Wn.2d at 706-07, Sweet, 138 Wn.2d at 481

The testimony from Detective Sergeant McIver was not a direct comment on the right to remain silent. The Court of Appeals should have applied a nonconstitutional harmless error standard. However, the Court of Appeals' finding that even under a constitutional harmless error standard, any comment was harmless was correct. The prosecutor did not ask any follow up question regarding whether Davis denied knowledge of the events. The

purpose of the testimony was not to inform the jury that Davis refused to talk to law enforcement, but rather to demonstrate that Davis' demeanor evidenced a consciousness of guilt that he was involved in the drug transaction. If the testimony was a comment on the right to remain silent, it was indirect and should have been analyzed under the nonconstitutional harmless error standard.

Under either standard, the trial court correctly noted that the comment was harmless. The question and answer was only a very small portion of Detective Sergeant McIver's testimony. The trial court informed the jury that the defendant did not need to testify and had no burden of proving that a reasonable doubt existed. RP 321-322. The prosecutor did not overly emphasize the statement during closing argument. The prosecutor's argument briefly mentioned the testimony stating,

> You also heard from the detective sergeant that a few weeks after this buy-walk operation had occurred, he had contact with Mr. Davis in the parking lot, that Mr. Davis was surprised to see the detective but not surprised about why he was being placed under arrest. You also heard from the detective that Mr. Hull did not fulfill his obligations of the agreement.

RP 336. The prosecutor emphasized the phone call that law enforcement listened to prior to the buy where Hull arranged the buy with “Matt” and the audio recording of the buy to demonstrate Davis’s involvement. RP 345, 348-349, 366-367. The evidence was overwhelming. There is no basis under RAP 13.4(b) upon which this Court should accept review.

If review is accepted, this Court should also consider whether the comment was in fact an impermissible comment on the right to remain silent following the United States Supreme Court decision in Salinas v. Texas, 570 U.S. 178, 133 S. Ct. 2174, 186 L.Ed. 2d 376 (2013).

The Fifth Amendment to the United States Constitution provides that no person "shall … be compelled in any criminal case to be a witness against himself." The privilege against self-incrimination applies to the states through the 14th Amendment. Malloy v. Hogan, 378 U.S. 1 (1964). Similarly, under the Washington Constitution, "no person shall be compelled in any criminal case to give evidence against himself." Const. art. I, § 9. Courts interpret the federal and Washington State provisions equivalently. State v. Earls, 116 Wn.2d 466, 473, 589 P.2d 789 (1979). The right is "intended to prohibit the inquisitorial method of investigation in which the accused is forced to disclose the contents of his mind or speak his guilt." State v. Easter, 130 Wn.2d 228, 236, 922 P.2d 1285 (1996) (*citing*, Doe v. United States, 487 U.S. 201, 210-12 (1988)). The Fifth Amendment prevents the State from both eliciting comments from witnesses on the defendant's

silence and commenting on the defendant's silence in closing arguments. *See,* Easter, 130 Wn.2d at 236.

Comments on post-arrest, post-*Miranda* silence violate a defendant's right to due process because the *Miranda* warnings carry an "implicit assurance" that the defendant's silence carries no penalty. Brecht v. Abrahamson, 507 U.S. 619, 628 (1993); Easter, 130 Wn.2d at 236.

In Salinas v. Texas, 570 U.S. 178, the Court clarified the law regarding invocation of the right to remain silent. In a 5-4 plurality decision, the Court found that there is no prohibition against comments on pre-arrest, pre-invocation, silence. Three justices recognized the Fifth Amendment's protections might apply if explicitly invoked and two justices concluded no constitutional issue could apply outside of a custodial interview. Id.; *see also*, State v. Magana, 197 Wn. App. 189, 194-195, 389 P.3d 654 (2016), *overruled in part on other grounds*, State v.

Johnson, 4 Wn.App.2d 352, 421 P.3d 969 (2018), review denied, 192 Wn.2d 1003, 340 P.3d 260 (2018).

Prior to Salinas, State v. Easter and its progeny governed pre-arrest silence, however, as the Court of Appeals in Magana explained, those cases were overruled by Salinas, Magana, 197 Wn. App. at 194-195; see also, State v. Combs, 1 Wn.App.2d 1053 2017 Wash.App.LEXIS 2864, 2017 WL 6507241 (2017).[1] Salinas clarified a split between state courts and various Federal circuit courts as to how comments on demeanor or silence should be treated prior to invocation of the right to remain silent. For example, in United States v. Suarez, 162 Fed.Appx. 897, 902 (11th Cir. 2006), the Court held that "the government may comment on a defendant's silence after arrest but before *Miranda* warnings were given," upholding an order denying suppression of testimony that the defendant

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[1] Unpublished Decision offered under GR 14.1.

reacted to the results of a preliminary test on heroin prior to Miranda warnings. However, in United States v. Velarde-Gomez, 269 F.3d 1023 (9th Cir. 2001), the Court held that a comment on the defendant's lack of reaction at the time of arrest was a comment on the right to remain silent.

Here any comment made by Detective Sgt. McIver which may have been a comment on the silence, was not a comment on the invocation of the right to remain silent. Following Salinas, such a comment does not violate the Fifth Amendment. There was no impermissible comment on the right to remain silent. If this Court accepts review, the Court should consider whether the testimony was a comment on the right to remain silent.

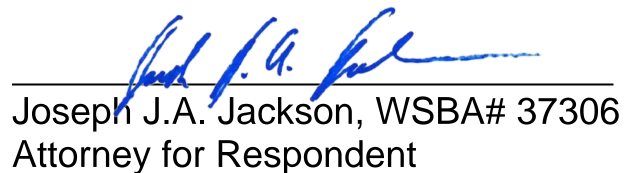
D. CONCLUSION

The State respectfully request that this Court deny review, however, if review is accepted, this Court should

consider all of the issues which were raised in the Court of Appeals.

I certify that this document contains 4,825 words, not including those portions exempted from the word count, as counted by word processing software, in compliance with RAP 18.17.

Respectfully submitted this 23rd day of February 2024.



Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, in The Supreme Court, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Dated this 23rd day of February 2024.

Signature: Stephanie Johnson

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

February 23, 2024 - 10:20 AM

Transmittal Information

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Appellate Court Case Number:	102,762-1
Appellate Court Case Title:	State of Washington v. Matthew Brian Alan Davis
Superior Court Case Number:	21-1-00874-7

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- val@bertilaw.com

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Answer to Petition for Review and Cross Petition for Review

Sender Name: Stephanie Johnson - Email: stephanie.johnson@co.thurston.wa.us
Filing on Behalf of: Joseph James Anthony Jackson - Email: joseph.jackson@co.thurston.wa.us (Alternate Email: PAOAppeals@co.thurston.wa.us)

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