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Court of Appeals No. 71653-1-1

92181-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ALEXIS SANCHEZ-BALBUENA,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Pursuant to RAP 13.4 Petitioner, Alexis Sanchez-Balbuena asks this court to accept review of the opinion in *State v. Sanchez-Balbuena*, 71653-1-I.

B. OPINION BELOW

While a party is free to impeach its own witness, it is improper to call a witness solely to introduce otherwise inadmissible evidence under the guise of impeachment. The Court of Appeals concluded the State did not violate this rule when the State offered the testimony of a witness in rebuttal purportedly to rebut the claimed alibis of Alexis Sanchez-Balbuena and his codefendant, despite the State knowledge that the witness's testimony would not actually rebut that claim.

C. ISSUE PRESENTED

In *State v. Lavaris*, this Court concluded it is improper for a party to call a witness merely to introduce otherwise improper evidence under the guise of impeachment.¹ 106 Wn.2d 340, 345, 721 P.2d 515, 518 (1986). Where the State was aware the witness would not actually offer testimony rebutting the claimed alibis, but instead was merely a means by which to introduce otherwise improper hearsay evidence, is

¹ *State v. Lavaris*, 106 Wn.2d 340, 721 P.2d 515, 518 (1986).

the Court of Appeals opinion affirming the admission of this evidence contrary to *Lavaris*?

D. STATEMENT OF THE CASE

Matthew Koesema was a sometime-dealer of methamphetamine and heroin. 2/13/14 RP 38, 2/18/14 RP 51. Near midnight one evening, as Mr. Koesema was returning to his Bellevue apartment, he was confronted by two men in the parking lot who asked if he was selling drugs. 2/13/14 RP 31, 37. Believing they were “collecting taxes,” or charging for the right to sell drugs in the neighborhood, Mr. Koesema denied he was selling drugs. *Id.* at 38, 40.

One of the men stood in front him and accused him of lying. 2/13/14 RP at 40-41. According to Mr. Koesema, the man swung at him. *Id.* at 43. When he did so, Mr. Koesema ducked and struck the man in the stomach with a taser he happened to be holding. *Id.* Mr. Koesema turned to flee, but soon tripped. *Id.* at 48-49. When he did so, the two men and perhaps two others began kicking him. *Id.* at 48-51.

Residents of the apartments called police. Mr. Koesema told police that he was only missing a phone. 2/13/14 RP 186. At trial, however, Mr. Koesema claimed a taser, rings, and his wallet were taken from him. 2/13/14 RP 53-54.

Mr. Koesema claimed the two men who initially approached him were Mr. Sanchez-Balbuena and Pablo Delacruz-Perez. Mr. Koesema, also claimed the men took a his phone

The State charged Mr. Sanchez-Balbuena and Mr. Delacruz-Perez with second degree assault and first degree robbery. CP 65-66.

At a joint trial, Mr. Sanchez-Balbuena and Mr. Delacruz-Perez each offered testimony that they were elsewhere at the time of the assault. 2/18/14 RP 78; 2/19/14 RP 14.

A jury acquitted Mr. Sanchez-Balbuena of robbery but convicted him of the assault. CP 69-70.

E. ARGUMENT

The trial court erred in permitting the State to call a witness solely for purposes of impeaching her with otherwise inadmissible evidence.

Pursuant to RAP 13.4(b) review is proper where “ . . . the decision of the Court of Appeals is in conflict with a decision of the Supreme Court. As set forth below, that is the case here.

The State offered Ashley Hamilton as a rebuttal witness purportedly to rebut the claimed alibis offered by Mr. Sanchez-Balbuena and Mr. Delacruz-Perez. 2/19/14 RP 30. The State claimed Ms. Hamilton would place Mr. Sanchez-Balbuena and Mr. Delacruz-

Perez in the neighborhood of the assault at or shortly before the time of the assault. 2/19/14 RP 37.

But, the State knew Ms. Hamilton was not going to testify that she saw the two in the neighborhood shortly before the assault. When the court asked the State for an offer of proof the deputy prosecutor explained

She indicates she doesn't remember the time today. She says she believed it was light outside still. When she spoke with police on that particular night, she said it was the hour before, which would have been somewhere in the neighborhood of 10:30.

2/19/14 RP 30. Because the State knew that Ms. Hamilton was going to testify that she saw Mr. Sanchez-Balbuena and Mr. Delacruz-Perez much earlier in the day, the State had Officer Jay Moriarty ready to "impeach" Ms. Hamilton's testimony. *Id.* As defense counsel stated, "[i]ts only Officer Moriarty that says it was an hour earlier." *Id.* at 36.

ER 609 permits a party to impeach its own witness. However, it is improper for a party to call a witness merely to introduce otherwise improper evidence under the guise of impeachment. *Lavaris*, 106 Wn.2d at 345.

ER 802 provides "Hearsay is not admissible except as provided by these rules, by other court rules, or by statute."

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

ER 801. A statement is offered for the truth of the matter asserted where the statement is not relevant unless the asserted fact is true. *State v. Stenson*, 132 Wash.2d 668, 710-11, 940 P.2d 1239 (1997); *State v. Stubsjoen*, 48 Wn. App. 139, 147, 738 P.2d 306 (1987).

Ms. Hamilton’s testimony had no relevance beyond serving as means to introduce hearsay. The statement attributed to her, in turn, had no relevance aside from its truth. There was no value to Ms. Hamilton’s testimony as a rebuttal witness. As the State predicted in its offer of proof, Ms. Hamilton testified only that she had seen the two earlier in the day, when it was still light out. 7/19/14 RP 50. As such her testimony was not particularly relevant, if at all, and certainly did not rebut the alibis.

Moreover, there was no independent relevance to impeaching Ms. Hamilton’s credibility. Ms. Hamilton denied telling Officer Moriarty anything different on the night of the incident. 7/19/14 RP 48. Even if the jury found her testimony was not credible, the State was still left with no substantive evidence rebutting the evidence that Mr. Sanchez-Balbuena and Mr. Delacruz-Perez were somewhere else at the

time of the assault. At best calling, Ms. Hamilton as a witness was impeachment for impeachment sake as impeaching her testimony did not make any fact more or less probable. Only if Officer Moriarty's testimony was used as substantive evidence did the rebuttal evidence have any relevance at all. That was a plainly improper purpose for calling Ms. Hamilton, yet at the end of the day was the State's only purpose for doing so.

The State's intent was made clear in closing argument in which the prosecutor pointed to Ms. Hamilton's testimony as placing Mr. Sanchez-Balbuena and Mr. Delacruz-Perez in the neighborhood and "discredit[ing their] alibis." CP 24. Again, Ms. Hamilton did not discredit their alibis and did not place the two in the neighborhood at the time of the offense. Only Officer Moriarty testified to that fact. Ms. Hamilton's testimony was merely a conduit through which the State could get to the evidence it truly wanted, the hearsay testimony of Officer Moriarty. Ms. Hamilton's testimony was not relevant and was not proper.

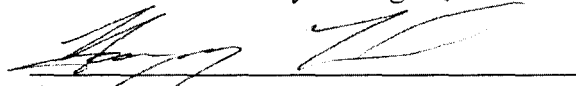
In affirming the conviction, the Court of Appeals engages in precisely the sort of reasoning which the *Lavaris* rule seeks to eliminate. The Court of Appeals reasons that after Ms. Hamilton was

impeached the jury could reasonably believe she the two much later in the evening closer to the time of the alleged assault. Opinion at 12. A juror could only reach such a conclusion by improperly rely in on the supposed impeachment evidence as substantive evidence, as there was no other evidence that Ms. Hamilton saw the two men later in the evening. Yet the court concludes this is not a misuse of impeachment. But this inability to appreciate the subtle distinction between impeachment and substantive evidence is precisely the basis for the rule this Court announced in *Lavaris*. Because the opinion the Court of Appeals is contrary to *Lavaris* this Court should accept review under RAP 13.4.

F. CONCLUSION

For the reasons above, this Court should grant review and reverse Mr. Sanchez-Balbuena's conviction.

Respectfully submitted this 25th day of August, 2015.



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Delacruz-Perez who asked Koesema if he had been selling drugs.³ After Koesema denied that he was selling drugs, Delacruz-Perez began to walk away and said that he would beat up Koesema if he found out that he was selling drugs. Koesema continued walking, and approximately 25 seconds later he encountered Alexis Sanchez-Balbuena. Sanchez-Balbuena approached Koesema in a fighting stance and announced, "Hey, this is him right here." Sanchez-Balbuena swung at Koesema, and Koesema used his stun gun on Sanchez-Balbuena. At that point, Koesema turned around and tried to run away, but tripped. Four men appeared and assaulted Koesema.

According to the certification of probable cause prepared by Detective Jeffry Christiansen, when Detective Moriarty arrived at the scene, a witness of the incident informed him that she thought one of the suspects involved in the assault was hiding in a storage closet on the second floor of one of the complex's buildings. Detective Moriarty located the storage closet, and it was locked. While Detective Moriarty waited for an apartment employee to open the closet,⁴ Ashley Hamilton walked onto the floor and spoke with Detective Moriarty. Hamilton said that she was Sanchez-Balbuena's best friend and that she was currently staying in his apartment in the building. She further stated that approximately one hour earlier, at 11:30 p.m., she was at the Hagen grocery store in the Crossroads area with Sanchez-Balbuena and Delacruz-Perez. Hamilton said that the group walked back to the Central Park East Apartments together and then went their separate ways.

³ Koesema did not know it was Delacruz-Perez at the time, but later identified him in a photo lineup.

⁴ Upon opening the storage closet, the officers found an open window leading to the backside of the apartments. There was no one inside.

The State charged Sanchez-Balbuena⁵ and Delacruz-Perez with second degree assault and first degree robbery.

At trial, both defendants presented alibi defenses. Sanchez-Balbuena's wife provided his alibi. Specifically, she testified that she had been with Sanchez-Balbuena at her home⁶ on the evening of the assault from 8:00 pm on and that he never left. Delacruz-Perez's mother provided his alibi. She testified that Delacruz-Perez was at her house when she returned home from work the night of the assault at 10:00 pm and that he did not leave the house until the next morning.⁷

After the defense rested its case, the State called Hamilton as a rebuttal witness. The State asserted that it was calling Hamilton in order to rebut the defendants' alibi claims. It told the trial court that Hamilton saw both of the defendants in the area prior to the assault and told the police specifics about the timing of the incident on the day of the assault. The State conceded that as of the time of trial, Hamilton stated that she could not remember how much time elapsed between when she saw the defendants and when the assault occurred. But, the State wished to call her to testify, would attempt to refresh her recollection from Detective Moriarty's police report, and would then attempt to impeach her if that did not work. At that point, the trial court asked for an offer of proof as to the time interval. The State claimed that on the day of the assault, when Hamilton spoke to the police, she stated that she was with the defendants about an hour before. The trial court accepted the offer of proof.

⁵ Sanchez-Balbuena was eventually arrested in September.

⁶ Sanchez-Balbuena's wife lived with her parents in Renton at the time of the incident. He did not live there.

⁷ At trial, a detective testified that Delacruz-Perez's cell phone records placed him in the area of the incident on the date and time of the incident.

Sanchez-Balbuena objected to Hamilton's testimony, because he believed the primary purpose for calling her was to then call Detective Moriarty to impeach her testimony once it contradicted her statement on the night of the incident. He argued that Hamilton's statement to Detective Moriarty on the night of the incident—that the defendants had been in the area an hour prior to the assault—was hearsay. And that, by calling Hamilton and offering her statement as impeachment, the State sought to get it in as substantive evidence. Sanchez-Balbuena argued that Detective Moriarty's testimony, if allowed in at all, should be admitted for only impeachment purposes and not as substantive evidence.

The trial court ultimately concluded that Hamilton would be able to testify, because her testimony was of "marginal relevance." The court stated that should Hamilton testify the way that the State anticipated, the use of Detective Moriarty's testimony to impeach her would come in only as impeachment evidence, not substantive evidence.

Hamilton then testified to the following facts: she was living in a storage room at the Central Park East Apartments briefly in July 2013, she was good friends with Sanchez-Balbuena at the time, she did not know if Sanchez-Balbuena was living in the Central Park East Apartments but knew that his mother lived there, and she had seen Sanchez-Balbuena and Delacruz-Perez together on other occasions.

Hamilton also testified about the day of the incident. She stated that, earlier that day, she had seen the defendants together in the Crossroads area around a mini mart and the Hagen grocery store—nearby the apartment complex where the assault occurred. She also testified that she spoke with the police that day at the Central Park East

Apartments near the storage closet. But, she denied speaking with the officers about Sanchez-Balbuena and Delacruz-Perez.

Hamilton stated that she could not estimate how long it was between seeing the defendants in the area and speaking with the police after the assault.⁸ But, Hamilton remembered and clearly described what she had done in the time period between seeing the defendants near the scene together and when she spoke with the police. She testified that she saw the defendants around the mini mart and the Hagen grocery store in the Crossroads area while she was with her friend. After Hamilton left the Hagen grocery store, she walked her friend to a bus stop and then walked back to the apartment complex. The apartment complex was approximately a five minute walk from the Crossroads area. Hamilton testified that when she left the Crossroads area, she went straight to the gym in the apartment complex for 30 to 45 minutes. She encountered Detective Moriarty on her way back from the gym. When asked if she did anything besides go to the gym between when she left the Crossroads area and when she went into the apartment complex, Hamilton responded, "Nothing."

When asked if she remembered telling the officers that she and Sanchez-Balbuena and Delacruz-Perez had walked from the Hagen grocery store together to the apartment complex, Hamilton said she did not. And, again, she stated that she could not say what time specifically she saw Sanchez-Balbuena and Delacruz-Perez together. On cross-examination, Hamilton was again asked about when she saw the two defendants

⁸ Hamilton also testified that she was a daily drug user. And, on the day of the incident she had been drinking and using drugs.

together. When asked specifically if the sun was out, Hamilton testified only that it was light outside.

The State then called Detective Moriarty to testify. Sanchez-Balbuena renewed his objection. Detective Moriarty testified that Hamilton spoke to him the night of the incident. He claimed she stated that she had been with Sanchez-Balbuena at the Hagen grocery store about an hour before speaking with him and that she and Sanchez-Balbuena had walked back to the complex together. He further stated that Hamilton said that Sanchez-Balbuena was her best friend.

Prior to deliberations, the jury was provided the following jury instruction:

The Court is allowing evidence concerning statements allegedly made by Ashley Hamilton to Detective Moriarty on July 2, 2013, but you may consider the answers only for the purpose of impeaching the credibility of Ashley Hamilton. You must not consider the answers for any other purpose.

The jury convicted Sanchez-Balbuena of assault in the second degree. Sanchez-Balbuena appeals the judgment and sentence.

DISCUSSION

Sanchez-Balbuena argues that the trial court erred when it permitted the State to call Hamilton as a witness, because there was no independent relevance of her testimony beyond its use as a conduit to admit otherwise inadmissible evidence. He contends this is so, because the State knew that Hamilton was not going to testify that she saw the two defendants together in the neighborhood shortly before the assault, and therefore, that her testimony would not rebut their alibis. He claims that the State called Hamilton only so that it could call Detective Moriarty to impeach Hamilton when she inevitably contradicted her earlier statement to Detective Moriarty that she saw the two together

within an hour of the assault. He asserts that the improper admission of Hamilton's testimony requires reversal, because the evidence had a substantial likelihood of effecting the verdict.

The decision to admit evidence lies within the sound discretion of the trial court and should not be overturned on appeal absent a manifest abuse of discretion. State v. Crenshaw, 98 Wn.2d 789, 806, 659 P.2d 488 (1983). ER 607 states that the credibility of a witness may be attacked by any party, including the party calling the witness.

Although the State may impeach its own witness, it may not call a witness for the primary purpose of eliciting testimony in order to impeach the witness with testimony that would be otherwise inadmissible. State v. Barber, 38 Wn. App. 758, 770-71, 689 P.2d 1099 (1984). The underlying concern is that prosecutors may abuse the rule by calling a witness they know will not provide useful evidence for the primary purpose of introducing hearsay evidence against the defendant. State v. Hancock, 109 Wn.2d 760, 763, 748 P.2d 611 (1988). This tactic seeks to exploit a jury's difficulty in making the subtle distinction between impeachment evidence and substantive evidence. Id. The motivation in such instances is less to impeach the witness than to introduce hearsay as substantive evidence, contrary to ER 802—the rule against hearsay.⁹ Id.

In State v. Lavaris, 106 Wn.2d 340, 346, 721 P.2d 515 (1986), the Washington Supreme Court considered whether the State's primary purpose of calling a witness was to elicit impeachable testimony. The court stated that it must determine whether the

⁹ "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. ER 801(c).

State's impeachment of its own witness by prior inconsistent statements was "employed as a mere subterfuge to place before the jury evidence not otherwise admissible." Id.

In Lavaris, Lavaris and Castro were charged of first degree murder. Id. at 341. The two were charged separately and convicted, but Lavaris's conviction was reversed and remanded. Id. Prior to Lavaris's retrial, defense counsel learned that the State intended to call Castro as a witness. Id. at 342. The prosecutor and defense counsel were aware that Castro would not incriminate Lavaris in the murder. Id. But, the State wanted to call Castro as a witness, because his testimony was relevant to the testimony of the State's key witness and because Castro had made a prior statement to police detectives implicating Lavaris in the murder. Id.

At trial, defense counsel objected to the prosecution questioning Castro on the basis that it was merely an attempt to bring before the jury the detectives' otherwise inadmissible statement of what Castro had allegedly said to them previously. Id. Castro previously made the statement at the state penitentiary, not under oath or signed, and the statement was kept only in informal notes of Castro's responses to questions. Id. Still, the trial court ruled that the State could call Castro as a witness and that his prior inconsistent statement could be admitted through the detective's testimony. Id. After Castro testified, denied seeing Lavaris at the scene of the crime, and denied seeing Lavaris kill the victim, the detective testified that Castro had told him that Lavaris killed the victim. Id. at 342-43. Lavaris was convicted. Id. at 343.

In affirming the conviction, the Washington Supreme Court stated that Castro's testimony was essential in many areas of the State's case. Id. at 346. It reasoned that Castro was integrally involved in the events leading up to the murder, that his testimony

corroborated the testimony of the main witness concerning the circumstances (dates, times, and places) leading up to the murder, and he corroborated the witness's testimony in other respects. Id. The Lavaris court ultimately concluded that the State did not call Castro for the primary purpose of eliciting his testimony in order to impeach him with testimony that would have been otherwise inadmissible. Id. at 347. It held that the trial court did not err when it admitted Castro's impeachment testimony. Id.

The Washington Supreme Court considered a similar issue in Hancock. 109 Wn.2d at 762. In Hancock, Roberta Hancock, the wife of a defendant accused of indecent liberties on his nephew and incest and rape of his son, testified for the State. Id. at 761. On direct examination, she denied suspecting anything improper between her husband and the children and denied that he had ever told her of any improper conduct. Id. After Roberta's direct-examination, the State called a detective to testify. Id. He testified as to out-of-court statements Roberta made to him previously. Id. According to the detective, shortly after her husband's arrest, Roberta told him that she had suspected something was going on between her husband and one of the children, that her husband told her what he had done to the other child, and that she was afraid of him. Id. at 761-62. Hancock was convicted. Id. at 762.

On appeal, Hancock argued that the prosecutor knew that Roberta would not testify favorably to the State and that the primary purpose in calling her as a witness was mere subterfuge to admit her prior inconsistent statements under the guise of impeachment. Id. The court concluded that, because Roberta provided testimony which affirmatively supported the defense—not just flat denials of making any statements to police investigators—the subsequent impeachment of her testimony was proper to rebut

her testimony supporting the defense and to impeach her credibility. Id. at 765, 767. The Hancock court further reasoned that the State was entitled to expect Roberta to testify under oath no differently from the apparently voluntary statement she gave to the detective. Id. at 765.

Here, the State argues that its primary purpose for calling Hamilton to testify was not to impeach her, but to rebut the defendants' alibis. Sanchez-Balbuena's alibi placed him at his wife's home in Renton by 8 p.m. Therefore, Hamilton's testimony is relevant to rebut Sanchez-Balbuena's alibi if her testimony tends to prove that she saw the defendants sometime after roughly 8:00 p.m.

Under Hancock, the State was entitled to expect Hamilton to testify under oath no differently from the apparently voluntary statement she provided to Detective Moriarty. 109 Wn.2d at 765. Therefore, the State was entitled to believe that Hamilton's testimony would place Sanchez-Balbuena and Delacruz-Perez in the area less than an hour before the assault.

And, like Castro's testimony in Lavaris, Hamilton's testimony, even if not as favorable to the State's case as was her original statement to Detective Moriarty, was still helpful to and circumstantially corroborative of the State's case. Hamilton's testimony placed Sanchez-Balbuena and his codefendant together a five minute walk from the scene of the incident on the day of the incident.¹⁰ Her testimony about what she had done in the time period between seeing the defendants together and when she spoke with the police calls into question the essential time frame of Sanchez-Balbuena's alibi.

¹⁰ Although other evidence in the record—cell phone records—place Delacruz-Perez in the vicinity at the time of the assault, Hamilton's testimony is important to place the two together.

Police officers were dispatched to the scene of the assault at 11:47 p.m. Detective Moriarty spoke with a witness on the second floor of the building who told him that she suspected a suspect was hiding in the storage closet. Detective Moriarty checked the storage closet, and it was locked. Detective Moriarty waited by the storage closet for the apartment maintenance staff to arrive with a key to open the closet. At this point in time—sometime after 11:47 p.m.—Hamilton walked into the area.

Hamilton had just come from the gym downstairs where she had been working out for 30 to 45 minutes. Prior to working out in the gym, Hamilton walked her female friend to a bus stop and walked back to the gym at the apartment complex. Immediately before that, she was in the Crossroads area where she saw Sanchez-Balbuena and Delacruz-Perez. When asked what else she did before leaving the Crossroads area and walking back to the apartment complex, she said, “Nothing.” Assuming Hamilton saw the officers at 11:47 p.m. when they first arrived, rather than later, Hamilton’s testimony is at least circumstantial evidence that she arrived at the gym around 11:00 p.m. A reasonable juror could infer from the timeline in her testimony that Hamilton’s contact with Sanchez-Balbuena occurred well after 8:00 p.m., thereby undermining his alibi.¹¹

¹¹ Sanchez-Balbuena argues that Hamilton’s testimony was not particularly relevant, because Hamilton testified that she saw Sanchez-Balbuena and Delacruz-Perez when it was light outside. But, the fact that it was light outside when Hamilton saw Sanchez-Balbuena does not render Hamilton’s rebuttal testimony completely irrelevant. The incident happened on July 2—less than two weeks after the longest day of the year. Moreover, when asked if the sun was out, Hamilton did not confirm and responded instead that “[i]t was light outside.” A reasonable juror could conclude that Hamilton saw Sanchez-Balbuena around the mini mart and Hagen grocery store after 8:00 p.m. notwithstanding the fact that she testified it was light outside. A reasonable juror could also disbelieve this testimony in light of Detective Moriarty’s impeachment testimony.

Moreover, at trial, Hamilton testified with precision when discussing the details of the day—that she had consumed alcohol that morning, that she saw the defendants together in the Crossroads area near the mini mart and Hagen grocery store, that she had walked a specific female friend to the bus stop, that she walked from the Crossroads area to the apartment complex and went directly to the gym, that she did not walk back to the apartments with Sanchez-Balbuena, and that she was at the gym for 30 to 45 minutes. And, Hamilton was clear she did not speak to officers about the defendants. However, her memory failed her concerning the specific time of the day she saw the two men or how long before her conversation with the police she had seen them—pieces of evidence which could directly rebut her friend's alibi and incriminate him.

Considering Detective Moriarty's testimony for impeachment purposes only, as the jury was instructed, Hamilton's testimony—that she had not spoken to officers about the defendants and that she did not know when that day she had spoken to the defendants in the Crossroads area—was impeached. A reasonable juror could conclude that this portion of Hamilton's testimony, favorable to the defendants, was not credible. This, in turn, would strengthen the inference a reasonable juror could draw that Hamilton had contact with the defendants after 8:00 p.m. It was not necessary for the jury to misuse the impeachment testimony in order for the State to undermine the defendant's alibi through Hamilton's testimony. We conclude the primary purpose of introducing Hamilton's testimony was not to obtain otherwise inadmissible impeachment testimony of Detective Moriarty.

We hold that the trial court did not abuse its discretion in admitting Hamilton's testimony. We also hold that the trial court did not abuse its discretion in admitting the testimony of Detective Moriarty for the limited purpose of impeaching Hamilton.

We affirm.

Appelwick, J.

WE CONCUR:

Dwyer, J.

Becker, J.

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. 71653-1-I**, 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 or residence address as listed on ACORDS:

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Date: August 25, 2015

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