No. 97748-8
COA No. 78057-3-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JERRY BOGART,

Petitioner.

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

PETITION FOR REVIEW

THOMAS M. KUMMEROW
Attorney for Petitioner

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

RULES

JURY INSTRUCTIONS

A. IDENTITY OF PETITIONER

Jerry Bogart asks this Court to accept review of the Court of Appeals decision terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b), petitioner seeks review of the unpublished Court of Appeals decision in *State v. Jerry Bogart*, No. 78057-3-I (September 16, 2019). A copy of the decision is in the Appendix.

C. ISSUE PRESENTED FOR REVIEW

As part of a defendant's constitutionally protected rights to present a defense and to a fair trial, the defendant is entitled to jury instructions embodying his theory of the case if the evidence supports that theory. Here, an informant who gained a benefit in return for his testimony testified against Mr. Bogart. Mr. Bogart proffered a jury instruction that urged jurors to view the informant's testimony with caution, which the trial court refused to give. Is a significant issue under the United States and Washington Constitutions presented where Mr. Bogart's right to present a defense and right to a fair trial were

impermissibly infringed by the trial court's refusal to instruct on his proffered instruction?

D. STATEMENT OF THE CASE

Kelley LeMoigne and his wife, Vicki Eklund, were long-time users of methamphetamine. CP 543-44[1]; RP 369-72. Jerry Bogart agreed to meet Kelly LeMoigne in the early morning hours of March 23, 2016, in order to sell him a quantity of methamphetamine. CP 553; RP 384, 389. Mr. LeMoigne and Ms. Eklund had purchased methamphetamine from Mr. Bogart on several prior occasions. CP 548; RP 377.

Ms. Eklund was a paid informant for law enforcement dating back to 1996. RP 379. Ms. Eklund would engage in controlled purchases with the police which would lead to the arrest of the seller. RP 382. While not a paid informant like his wife, Mr. LeMoigne also gave information to the police that resulted in the arrest of individuals, including a person he had known for eight years. CP 653-55.

[1] Mr. LeMoigne died of esophageal cancer prior to trial. RP 996. Mr. LeMoigne had been the subject of a preservation deposition by the parties, the transcript of which was admitted at trial in lieu of his testimony. CP 532-675; RP 477, 481-83.

Unknown to Mr. LeMoigne, Mr. Bogart did not intend to sell him methamphetamine. RP 758. Mr. Bogart intended to confront Mr. LeMoigne about working with the police as an informant. RP 758. Mr. Bogart had no intention of killing Mr. LeMoigne, just to confront him. RP 758.

When Mr. LeMoigne drove up to the meeting place, Mr. Bogart was already there, standing in front of his car. CP 559. Mr. LeMoigne parked so the nose of his car was facing the nose of Mr. Bogart's car. CP 559. Mr. LeMoigne never got out of his car, but he handed Mr. Bogart the money and Mr. Bogart threw a cigarette pack at Mr. LeMoigne. RP 762. Inside the cigarette pack was a quantity of salt. RP 758.

Mr. Bogart admitted he reached through the open car window and punched Mr. LeMoigne on the left side of his head. CP 564-65; RP 762. Mr. Bogart called Mr. LeMoigne a "rat"[2] and mentioned the niece of a friend on whom he believed Mr. LeMoigne had informed. CP 566-67; RP 764.

---

[2] "Rat:"
: a contemptible person: such as
a **:** one who betrays or deserts friends or associates
https://www.merriam-webster.com/dictionary/rat?src=search-dict-hed

Mr. LeMoigne testified he believed a second punch was coming, so he sped his car forward, intentionally hitting Mr. Bogart's car and Mr. Bogart's leg. CP 569-70; RP 767. Afraid that Mr. LeMoigne would back his car into him, Mr. Bogart fired several shots at Mr. LeMoigne's car as he drove away. RP 772-73. Mr. LeMoigne's car had damage consistent with bullets ricocheting off the car. CP 598; RP 531.

On the way back to his house, Mr. LeMoigne received a voicemail from a phone allegedly belonging to Mr. Bogart stating that he was concerned about Mr. LeMoigne. CP 588. The person on the other end, apparently thinking they had terminated the call, then said that he had tried to kill Mr. LeMoigne and if he saw him again, he would kill him and that Ms. Eklund and Mr. LeMoigne were "rats." CP 589-90; RP 394.

When Mr. LeMoigne returned home, he and Ms. Eklund decided to call the police. RP 403. Mr. Bogart was subsequently stopped and arrested. RP 298, 301. A search of his car produced a .22 caliber revolver and a .12 gauge shotgun. RP 444-49.

Mr. Bogart was charged with first degree assault with a firearm and two counts of first degree unlawful possession of a firearm. CP 849-50.[3]

Prior to trial, Mr. Bogart was housed in the jail for a period of time with Tyler Vorderstrasse. RP 560. Mr. Vorderstrasse and Mr. Bogart were acquaintances who met in 1999, and had run in the same circle of friends. RP 557. Mr. Vorderstrasse, Mr. LeMoigne and Ms. Eklund were friends as well. RP 559.

While cellmates, the two men shared details about their respective cases. RP 563. Mr. Bogart shared that he had set up a drug deal with Mr. LeMoigne at which he produced salt instead of the desired methamphetamine. RP 563, 566. Mr. Bogart admitted to Mr. Vorderstrasse he struck Mr. LeMoigne in the face and accused him of being a "rat." RP 567. As Mr. LeMoigne was driving away, Mr. Bogart admitted shooting at Mr. LeMoigne's car several times. RP 568.

Mr. Vorderstrasse testified at trial. In return, his charge of possession of a stolen motor vehicle with a standard range sentence of

[3] Prior to trial, Mr. Bogart was absent from one of the pretrial hearings and a warrant was issued for his arrest. Following his arrest, the State amended the Information to charge a count of Bail Jumping. CP 850. This count was bifurcated for trial, and following a bench trial, Mr. Bogart was found guilty. CP 471-72.

43 to 57 months was reduced to second degree theft of a motor vehicle with a standard range of 22 to 29 months. RP 596. Mr. Vorderstrasse pleaded guilty to this reduced charge and was sentenced to 22 months. RP 596-97.

Because of Mr. Vorderstrasse's self-interest in the case, Mr. Bogart proffered a jury instruction that asked the jury to view Mr. Vorderstrasse's testimony with caution:

> You have heard testimony from Tyler Vorderstrasse, a witness who received immunity. That testimony was given in exchange for a promise by the government that the witness received beneficial treatment from the government in connection with this case.
>
> For this reason, in evaluating the testimony of Tyler Vorderstrasse, you should consider the extent to which or whether his testimony may have been influenced by this beneficial treatment.
>
> In addition, you should examine the testimony of Tyler Vorderstrasse with greater caution than that of other witnesses.

CP 525-26, based upon Ninth Circuit Model Criminal Jury Instruction 4.9. (A copy of Mr. Bogart's requested instruction and the Instruction 4.9 are included in the Appendix).

The trial court refused to instruct the jury using Mr. Bogart's jury instruction:

> I concluded that to give this instruction would be an impermissible comment on the evidence, that the instruction language in WPIC 1.02, that is the general instruction to juries. They are the sole judges of the credibility of each witness is sufficient here. It specifically calls out that the jury may consider any personal interest that the witness might have, any outcome or the issues.

RP 718-19.

The jury found Mr. Bogart guilty of first degree assault and the two unlawful possession of a firearm counts. CP 486-87, 489.[4]

On appeal, the Court of Appeals concluded Mr. Bogart's proffered instruction was a comment on the evidence and the general jury instruction on credibility was sufficient to guide the jury. Decision at 5-7.

[4] The jury also found Mr. Bogart used a deadly weapon. CP 488. The trial court instead imposed a firearm enhancement. CP 12, 16; RP 1023-24. The State conceded this was error and the Court of Appeals agreed. Decision at 7.

E. ARGUMENT ON WHY REVIEW SHOULD BE GRANTED

The failure to instruct the jury on Mr. Bogart's requested jury instruction on the use of an informant impermissibly infringed upon right to present a defense.

The Sixth Amendment and the Due Process Clause of the Fourteenth Amendment guarantee a defendant's right to a trial by jury. *Sullivan v. Louisiana*, 508 U.S. 275, 277, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993) (the Sixth Amendment protects the defendant's right to trial by an impartial jury, which includes "as its most important element, the right to have the jury, rather than the judge, reach the requisite finding of 'guilty.'"). Similarly, the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment require that criminal defendants be afforded a meaningful opportunity to present a complete defense. *California v. Trombetta*, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984). As part of the right to present a defense, a defendant has a right to present his theory of the case to the jury. *State v. Williams,* 132 Wn.2d 248, 259, 937 P.2d 1052 (1997).

A defendant has the right to have the jury accurately instructed. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). "Parties are entitled to instructions that, when taken as a whole, properly instruct the jury on the applicable law, are not misleading, and

allow each party the opportunity to argue their theory of the case." *State v. Redmond*, 150 Wn.2d 489, 493, 78 P.3d 1001 (2003).

Thus, the court must give jury instructions that accurately state the law, that permit the defendant to argue his theory of the case, and that the evidence supports. *State v. Staley*, 123 Wn.2d 794, 803, 872 P.2d 502 (1994); *State v. Allen*, 161 Wn.App. 727, 734, 255 P.3d 784 (2011), *aff'd*, 176 Wn.2d 611 (2013).

The testimony of a prison informant is inherently untrustworthy. *Banks v. Dretke*, 540 U.S. 668, 701-02, 124 S.Ct. 1256, 157 L.Ed.2d 1166 (2004); *On Lee v. United States*, 343 U.S. 747, 757, 72 S.Ct. 967, 96 L.Ed.2d 1270 (1952). The use of informant testimony is strongly correlated to wrongful convictions. *See e.g.*, *Alexandra Natapoff, Snitching: Criminal Informants and the Erosion of American Justice*, 77 (2009) ("often juries believe lying criminal informants, even when juries know that the informant is being compensated and has the incentive to lie;" in a study of 51 wrongful capital convictions, "each one involve[ed] perjured informant testimony accepted by jurors as true.").

In light of the untrustworthiness of informant testimony, Mr. Bogart proposed the jury instruction on informants based upon the

Ninth Circuit Model Criminal Jury Instruction 4.9. CP 525-26. The trial court refused Mr. Bogart's requested instruction because it believed that the instruction was a comment on the evidence. RP 718-19. But this instruction is no different from the pattern instruction for accomplice testimony in WPIC 6.05, which the Supreme Court has ruled is not a comment on the evidence.[5]

In *State v. Carothers*, this Court rejected the State's argument that a precursor instruction to WPIC 6.05 constituted an impermissible comment on the evidence:

> An instruction to view the testimony of an accomplice with caution is an indication not of the judge's attitude toward the testimony of a particular witness, but of the attitude of the courts generally toward the testimony of witnesses of this type. It is an attitude which has been garnered from many years of observation of the prosecutorial process. The courts have an expertise upon this subject which the ordinary citizen cannot be expected to have. They have observed that innocent persons may be sent to prison or to death upon the testimony of an accomplice. At the same time such

[5] WPIC 6.05 reads:

> Testimony of an accomplice, given on behalf of the [State] [City] [County], should be subjected to careful examination in light of the other evidence in the case, and should be acted upon with great caution. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth.

> testimony is not invariably false and it may be the only proof available.

84 Wn.2d 256, 267-68, 525 P.2d 731 (1974), *overruled on other grounds by, State v. Harris*, 102 Wn.2d 148, 685 P.2d 584 (1984).

Mr. Bogart's proposed defense instruction accurately stated the law and was not a comment on the credibility of a witness. This instruction was no different from WPIC 6.05 and was designed to achieve the same goal; treat the testimony with caution.

Contrary to the Court of Appeals conclusion, the court's general credibility instruction was not extensive or specific enough to address the issue. Decision at 5-6. Based on the critical importance of Mr. Vorderstrasse to the State's case, as well as the undeniable effect of hearing his claim that Mr. Bogart effectively confessed to the crime, the failure to instruct the jury regarding the care with which it should evaluate the jailhouse informant's testimony denied Mr. Bogart his right to a fair trial by an accurately instructed jury. *Harris*, 102 Wn.2d at 155.

Mr. Bogart's proffered instruction did nothing different from what has been already been approved in WPIC 6.05. It instructed the jury on the provisions of the rule of law applicable to a "*class to which the witness belongs.*" *Id.* That class here being compensated

informants. The proffered instruction was not a comment on the evidence.

This Court should accept review to determine whether the requested instruction was a comment on the evidence and whether the general jury instruction on witness credibility was sufficient where the Mr. Bogart sought a specific instruction addressing the specific facts of the case. This Court should then find the trial court violated Mr. Bogart's right to present a defense as well as his right to due process and reverse his convictions.

F. CONCLUSION

For the reasons stated, Mr. Bogart asks this Court to grant review and reverse his convictions.

DATED this 7th day of October 2019.

Respectfully submitted,

s/Thomas M. Kummerow

THOMAS M. KUMMEROW (WSBA 21518)
tom@washapp.org
Washington Appellate Project – 91052
Attorneys for Appellant

APPENDIX

FILED
9/16/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JERRY BRAND BOGART, Appellant.	No. 78057-3-I DIVISION ONE UNPUBLISHED OPINION FILED: September 16, 2019

SMITH, J. — Jerry Bogart challenges the judgment and sentence imposed pursuant to his jury conviction for first degree assault with a deadly weapon and unlawful possession of a firearm. He contends that the trial court erred when it declined to give a cautionary instruction regarding the testimony of a prison informant. But the trial court's general instruction on witness credibility instructed the jury to consider "any personal interest that the witness might have in the outcome or the issues." This instruction was sufficient to allow Bogart to argue that the witness had a motivation to lie. Moreover, we have previously held that an instruction to view a particular witness's testimony with caution is improper because it constitutes an impermissible comment on the evidence.

However, we agree with the parties that the trial court erroneously imposed a firearm enhancement despite the jury returning a special verdict that Bogart was armed with a deadly weapon. The criminal filing fee and DNA

(deoxyribonucleic acid) collection fee must also be stricken. We remand for resentencing consistent with this opinion. In all other respects, we affirm.

FACTS

Kelly LeMoigne and his wife, Vicki Ecklund, were long-time users of methamphetamine.[1] Ecklund had worked off and on as a paid informant for law enforcement dating back to 1996. At some point in 2015 or 2016, both Ecklund and LeMoigne provided information to the police about a drug dealer named James Stevens, resulting in Stevens' arrest.

In the early morning hours of March 23, 2016, Ecklund contacted Bogart, from whom she and LeMoigne had bought methamphetamine in the past. Ecklund told Bogart that LeMoigne would contact him to arrange a time and meeting place to buy methamphetamine. However, Bogart was friends with Stevens and "[h]omicidely" angry that Ecklund and LeMoigne "were rats."

When LeMoigne arrived at the meeting place, Bogart was already there, standing in front of his car. LeMoigne parked so his car was facing Bogart's car, nose to nose. Without getting out of his car, LeMoigne handed Bogart money. In exchange, LeMoigne received a cigarette pack that he believed contained methamphetamine. He later discovered it contained only salt.

LeMoigne turned to put the cigarette pack in his center console. When he turned back around, he "got sucker punched." Bogart called LeMoigne a "rat" and said, "'This is for James's niece.'" Bogart drew back his hand a second time.

[1] At the time of trial, LeMoigne was suffering from advanced esophageal cancer and testified by way of a perpetuation deposition.

Believing Bogart was going to hit him again, LeMoigne sped off, hitting Bogart's car. Bogart fired several shots at LeMoigne as he drove off.

While driving back to his house, LeMoigne received a voice mail message from Bogart. In the message, Bogart asked, in a friendly tone of voice, where LeMoigne went and stated he was concerned about him. Apparently believing that he had terminated the call with LeMoigne, Bogart then proceeded to have a separate conversation with someone on his end of the phone. In a threatening tone, Bogart stated that LeMoigne and Ecklund were "rats." He stated that he had tried to kill LeMoigne and that if he saw him again he was "'[g]oing to kill him.'" Bogart's conversation was recorded on LeMoigne's voice mail.

The State charged Bogart with first degree assault with a firearm and two counts of first degree unlawful possession of a firearm. Prior to trial, Bogart shared a jail cell with Tyler Vorderstrasse for approximately four to six weeks. Vorderstrasse had known Bogart for several years, and they shared many mutual friends. Vorderstrasse also knew LeMoigne, Ecklund, and Stevens.

Vorderstrasse testified at trial. He stated that while they were cellmates, Bogart told him that he punched LeMoigne and called him a "rat" because LeMoigne and Ecklund had done a "controlled buy" involving Stevens. Bogart also said he fired shots as LeMoigne drove away, hitting LeMoigne's car. Bogart told Vorderstrasse that after he shot at LeMoigne, he took a shower, washed his clothes to remove any gunshot residue, and cleaned his gun. He also detailed plans to hide his own car, which had been struck by his bullets.

Vorderstrasse testified that he voluntarily provided this information to law enforcement "with no offer of anything in return." But Vorderstrasse acknowledged that the State ultimately agreed to reduce a pending charge against him in exchange for his testimony against Bogart. And Vorderstrasse testified that he had previously cooperated with law enforcement in a different matter and knew that if he "gave information [he] would get a deal."

Bogart requested that the jury be instructed to consider the testimony of an informant "with greater caution than that of other witnesses." Bogart proposed the following jury instruction, based on a Ninth Circuit model jury instruction:

> You have heard testimony from Tyler Vorderstrasse. That testimony was given in exchange for a promise by the government that the witness receive beneficial treatment from the government in connection with this case.
>
> For this reason, in evaluating the testimony of Tyler Vorderstrasse, you should consider the extent to which or whether his testimony may have been influenced by this beneficial treatment.
>
> In addition, you should examine the testimony of Tyler Vorderstrasse with greater caution than that of other witnesses.

The trial court declined to give the instruction.

Bogart testified in his own defense. He admitted that he planned to give LeMoigne a package containing salt instead of methamphetamine and then to punch LeMoigne. But he denied that he intended to cause LeMoigne great bodily harm by shooting at him. Instead, he claimed he did so in self-defense, believing that LeMoigne was going to hit him with his car.

A jury convicted Bogart as charged. Bogart appeals.

DISCUSSION

Bogart contends that the trial court violated his right to present a defense when it refused to give the instruction regarding Vorderstrasse's testimony. Citing federal case law and academic studies, he argues that "the testimony of a prison informant is inherently untrustworthy" and "is strongly correlated to wrongful convictions."

Instructions are adequate if they allow a party to argue its theory of the case and do not mislead the jury or misstate the law. State v. Barnes, 153 Wn.2d 378, 382, 103 P.3d 1219 (2005). We review a trial court's decision to give a jury instruction for abuse of discretion if the decision was based on a determination of fact. State v. Condon, 182 Wn.2d 307, 315-16, 343 P.3d 357 (2015). If the decision was based on a legal conclusion, it is reviewed de novo. Condon, 182 Wn.2d at 316.

Here, Bogart's proposed instruction was not necessary in order for him to argue that Vorderstrasse's testimony was inherently untrustworthy. Bogart extensively cross-examined Vorderstrasse on what benefit he received for his testimony and at what point he received it. And the jury was already instructed on how to evaluate the credibility of witnesses. The trial court's first instruction to the jury provided as follows:

> You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying;

> *any personal interest that the witness might have in the outcome or the issues*; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

(Emphasis added.) It is not error for a trial court to refuse to give a specific instruction when a more general instruction adequately explains the law and allows each party to argue its theory of the case. State v. Hathaway, 161 Wn. App. 634, 647, 251 P.3d 253 (2011). Because Bogart was able to argue his theory of the case under the instructions given, the trial court did not abuse its discretion in declining to give it.

Relying on State v. Carothers, 84 Wn.2d 256, 267-68, 525 P.2d 731 (1974), Bogart contends that the informant instruction is "no different from the pattern instruction on accomplice testimony in WPIC 6.05, which the Supreme Court has ruled is not a comment on the evidence." But in Carothers, the Washington Supreme Court held that such an instruction is proper only if it instructs the jury to view *any* accomplice testimony with caution. It noted that an instruction to view the testimony of a *particular* witness with caution would be an improper comment on the testimony of that witness. Carothers, 84 Wn.2d at 267-68.

Instead, this court has previously held that a trial court does not abuse its discretion in declining to give an informant instruction. In State v. Hummel, 165 Wn. App. 749, 266 P.3d 269 (2012), we noted that no Washington case requires a jury to be instructed as to the potential untrustworthiness of informant testimony. We also concluded that the informant instruction was more similar to

an instruction cautioning the jury about the untrustworthiness of cross-racial eyewitness testimony—which was held to be a comment on the evidence in State v. Allen, 161 Wn. App. 727, 255 P.3d 784, aff'd, 176 Wn.2d 611, 294 P.3d 679 (2013)—than it was to the accomplice instruction suggested by Bogart.[2] "Any instruction that could lead the jury to infer that the trial court believed or disbelieved a witness constitutes a judicial comment on the evidence." Allen, 161 Wn. App. at 742 (citing State v. Faucett, 22 Wn. App. 869, 876, 593 P.2d 559 (1979)). Bogart has not convinced us to depart from our earlier rationale in Hummel.

Bogart next contends, and the State concedes, that the trial court erroneously imposed a firearm enhancement when the jury returned a special verdict finding that Bogart was armed with a deadly weapon. We accept the State's concession, vacate the firearm enhancement, and remand for resentencing consistent with the jury's special verdict.[3]

Finally, Bogart challenges the criminal filing fee and DNA collection fee imposed as part of his sentence. Bogart contends, and the State concedes, that both fees must be stricken because he is indigent and because his DNA was

---

[2] We note, as we did in Allen, that such an instruction might be appropriate in a federal case, "where there is no constitutional prohibition from the judge commenting on matters of fact," but not in Washington, where our constitution contains such a prohibition. Allen, 161 Wn. App. at 740.

[3] Bogart also contends that because the jury did not find he was armed with a firearm, the trial court must vacate the order to register as a felony firearm offender. But RCW 9.41.330 provides: "[W]henever a defendant in this state is convicted of a felony firearm offense . . . the court must consider whether to impose a requirement that the person comply with the registration requirements of RCW 9.41.333 and may, in its discretion, impose such a requirement." Bogart was convicted of unlawful possession of a firearm, which is a "felony firearm offense." RCW 9.41.010(10)(a). Thus, the trial court had the authority to impose the registration requirement.

collected following a prior felony conviction. Although these fees were mandatory when imposed, the Washington Supreme Court has since held in State v. Ramirez, 191 Wn.2d 732, 746-50, 426 P.3d 714 (2018), that courts may not impose discretionary legal financial obligations on an indigent criminal defendant. We accept the State's concession and remand for the trial court to strike these fees from the judgment and sentence.

We affirm Bogart's convictions. We remand to the trial court to vacate the firearm enhancement, resentence Bogart based on the deadly weapon enhancement, and strike the criminal filing fee and DNA collection fee from the judgment and sentence.

WE CONCUR:

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. 78057-3-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:

☒ respondent Nathaniel Sugg
[nathan.sugg@snoco.org]
[Diane.Kremenich@co.snohomish.wa.us]
Snohomish County Prosecuting Attorney

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant Date: October 7, 2019
Washington Appellate Project

WASHINGTON APPELLATE PROJECT

October 07, 2019 - 4:01 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	78057-3
Appellate Court Case Title:	State of Washington, Respondent . v. Jerry Brand Bogart, Appellant
Superior Court Case Number:	16-1-00776-1

The following documents have been uploaded:

- 780573_Petition_for_Review_20191007160033D1884622_6197.pdf
  This File Contains:
  Petition for Review
  The Original File Name was washapp.100719-11.pdf

A copy of the uploaded files will be sent to:

- Diane.Kremenich@co.snohomish.wa.us
- diane.kremenich@snoco.org
- nathan.sugg@snoco.org

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Thomas Michael Kummerow - Email: tom@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20191007160033D1884622