Case No. 98377-1
COA No. 79017-0 I

IN THE WASHINGTON SUPREME COURT

STATE OF WASHINGTON,
RESPONDANT,

v.

Jagjit Singh,
Appellant/Petitioner.

PETITION FOR REVIEW

Jagjit Singh DOC# 411876
Petitioner, Pro Se
Coyote Ridge Corrections Center
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondant,	No. 98377-1 Ref. COA 79017-0-I
v.	
JAGJIT SINGH, Appellant/Petitioner.	PETITION FOR REVIEW

A. IDENTITY OF PETITIONER

Jagjit Singh asks this court to accept review of the Court of Appeals, Division One a decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioner Jagjit Singh seeks review of the decision of the Court of Appeals, Division One, filed on March 9, 2020. A Copy of the decision is in the Appendix A at pages A1 through A6.

C. ISSUES PRESENTED FOR REVIEW

ISSUE NO 1

Did the Court of Appeals Abuse its discretion making errors of law or fact rendering a decision that was manifestly unreasonable in its reliance on Guloy, 104 Wn2d at 422 (1985), making a decision that is in conflict with newer decisions of the Washington Supreme Court when the facts of the case support a ruling in Petitioner's favor under these newer rulings?

ISSUE NO. 2

Did the Court of Appeals abuse its discretion making a ruling that is manifestly unreasonable, allowing the state to benefit from its own wrongdoing in violation of the long-standing Common Law Doctrine of Forfeiture By Wrongdoing allowing the state to violate Petitioner's federally protected rights to confrontation, due process, and equal protection such that the state is not entitled to finality. Issues that can now only be resolved by ruling on the merits by the Washington Supreme Court?

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Washington State Supreme Court should accept review of Petitioner's case for the following reasons:

(1) The Court of Appeals, Divison One's ruling is in conflict with other newer cases by the Washington Supreme Court

which have direct application to this case given its facts And

(2) The Court of Appeals, Division One s ruling is in conflict with the long standing Common Law Doctrine of Forfeiture By Wrongdoing as adopted by The United States Supreme Court in Reynolds, 98 US (8 Otto) 145 (1878) and the Washington Supreme Court in State v Mason, 160 Wn2d 910, 924-25 (2006), posing significant questions of law regarding Petitioner's federally protected rights to confrontation, due process, and equal protection that need resolution by this Court and the state is not entitled to finality based on its actions at trial.

A memorandum of law supporting this pe ition fo review is attached as Appendix B

E CONCLUSION

1 The Court of Appeals, Division One abused its discretion making errors of law and fact resulting in its rendering a ruling that is manifestly unreasonable and in conflict with current decisions by the Washington Supreme Court, and also poses significant questions of law under the Common Law Doctrine of Forfeiture By Wrongdoing and these significant question should be determined by our Supreme Court in order to given direction to the Courts of Appeals and Trial Courts.

2. Given that Petitioner's case has already been overturned in part due to the trial court's error in calcuating Petitioner's Offender Score and rendering a sentence beyond the trial court s authority for Peititoner s Offender Score, the Washington Supreme Court should for the reasons above and judicial economy render a ruling in favor of Petitioner and either: (A) set aside his conviction and remand it back to the trial court for a new trial with directions, or (B) set aside Petitoiner's Conviction without a new trial denying the state a second bite at the apple because of its intentional violation of Petitioner's trial rights

Dated: December 1 2020

Respectfully Submitted

Jagjit Singh

Jagjit Singh DOC # 411876
Petitioner Pro Se

APPENDIX A

(Appendix A)

FILED
3/9/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JAGJIT SINGH, Appellant.	DIVISION ONE No. 79017-0-I UNPUBLISHED OPINION FILED: March 9, 2020

DWYER, J. — Jagjit Singh appeals from his convictions for assault in the first degree and assault in the second degree. He contends that the trial court erroneously admitted inadmissible hearsay evidence during his trial and that his offender score was improperly calculated at sentencing. Because Singh did not properly preserve his evidentiary claim of error for appeal and the State concedes that Singh's offender score was improperly calculated, we affirm the convictions but remand for resentencing.

I

The State charged Singh with one count of domestic violence assault in the first degree (count I), two counts of domestic violence assault in the second degree (counts II and III), and one count of rape in the third degree (count IV) for acts committed against his wife. Count II also charged a domestic violence "within sight or sound of the victim's or the offender's minor child" aggravating

factor. Each count also charged a domestic violence "ongoing pattern of . . . abuse" aggravating factor.

During Singh's bench trial, the State called Deputy Sherriff Nathaniel Obregon and elicited facts regarding that which Singh's family had reported to the police:

> [Prosecutor:] You talked to the son at this interview, did you not?
> [Obregon:] Very briefly, yes.
> [Prosecutor:] And did you ask him any questions about what you were told was happening to him by his father?
> [Obregon:] I did. I asked him—as in my notes, if—
> [Defense Counsel]: I object. I guess I can't object to the question.
> [Obregon]: —if his father hurt him when he pulled his arm back behind his back.
> [Defense Counsel]: I would object.
> The Court: I'm going to overrule the objection.
> [Prosecutor]: Go ahead.
> [Obregon]: I asked him if it hurt him when his father pulled his arm behind his back.
> [Prosecutor:] And did you get an answer from him?
> [Obregon]: I did. He—
> [Defense Counsel]: I object to any response.
> The Court: Overruled. He may answer the question.
> [Obregon]: He said hurt.

Singh was subsequently convicted of the crimes charged in counts I and II, and the court also concluded that both counts involved domestic violence that was a part of an ongoing pattern of abuse. At sentencing, Singh was assigned an offender score of 4 for each offense, thus setting a standard range sentence of 129 to 171 months for his conviction on count I and 15 to 20 months for his conviction on count II. Singh was sentenced at the high end of the standard range for both counts, with the sentences to run concurrently.

Singh appeals.

II

Singh contends (1) that his convictions must be reversed because the trial court admitted inadmissible hearsay evidence and (2) that his offender score was improperly calculated, requiring remand for resentencing if his convictions are affirmed. In response, the State asserts that Singh did not properly preserve his evidentiary claim for appellate review and concedes that Singh's offender score was improperly calculated, requiring remand for resentencing.

A

Singh first asserts that the trial court erroneously admitted inadmissible hearsay testimony from Deputy Sherriff Obregon and that such error requires reversal. Specifically, Singh claims that the trial court should not have admitted Deputy Sherriff Obregon's three word answer when asked to recount his interview with the victim's son—"he said hurt." However, because Singh did not interpose a specific objection to this testimony, he has waived any claim of error.

It is a longstanding rule that "[a]n objection which does not specify the particular ground upon which it is based is insufficient to preserve the question for appellate review." State v. Guloy, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985) (citing State v. Boast, 87 Wn.2d 447, 553 P.2d 1322 (1976)). For claims of error pertaining to the proper admission of evidence, "[a] party may only assign error in the appellate court on the specific ground of [an] evidentiary objection made at trial." Guloy, 104 Wn.2d at 422.

Singh contends that the court should have excluded Deputy Sheriff Obregon's three word answer, "he said hurt," at the end of the following exchange:

> [Prosecutor:] You talked to the son at this interview, did you not?
> [Obregon:] Very briefly, yes.
> [Prosecutor:] And did you ask him any questions about what you were told was happening to him by his father?
> [Obregon:] I did. I asked him—as in my notes, if—
> [Defense Counsel]: I object. I guess I can't object to the question.
> [Obregon]: —if his father hurt him when he pulled his arm back behind his back.
> [Defense Counsel]: I would object.
> The Court: I'm going to overrule the objection.
> [Prosecutor]: Go ahead.
> [Obregon]: I asked him if it hurt him when his father pulled his arm behind his back.
> [Prosecutor:] And did you get an answer from him?
> [Obregon]: I did. He—
> [Defense Counsel]: I object to any response.
> The Court: Overruled. He may answer the question.
> [Obregon]: He said hurt.

Plainly, Singh failed to properly preserve this claim of error for appellate review. While Singh's counsel objected to the admission of Deputy Sheriff Obregon's statement, no ground for the objection was ever offered. A general objection is insufficient to preserve the claim of error. Guloy, 104 Wn.2d at 422. Singh has therefore waived any claim of error regarding the admission of Deputy Sherriff Obregon's statement.

B

Singh next asserts that his offender score was improperly calculated at sentencing, resulting in the sentencing court imposing a sentence exceeding the proper standard range sentences for his offenses. Specifically, he asserts that his offender score for each offense is properly calculated as 2 instead of 4, that

the court double counted his other current offenses when calculating his offender score for each offense, and that this resulted in a sentence exceeding the proper standard range for his offenses. The State concedes that this is so. Both parties agree that Singh must be resentenced utilizing the proper offender score for each offense.[1]

We therefore affirm Singh's convictions and remand for resentencing.[2]

Affirmed in part, reversed in part, and remanded.

WE CONCUR:

[1] Therefore, we decline to consider Singh's contention that he was improperly required to pay Department of Corrections' supervision fees. Because he must be resentenced and the issue of legal financial obligations will be back before the trial court, this issue is not ripe for review. See State v. Bahl, 164 Wn.2d 739, 751, 193 P.3d 678 (2008) (noting that, to be ripe for review, a challenged action must be final); State v. Curry, 118 Wn.2d 911, 917 n.3, 829 P.2d 166 (1992) (rejecting, as premature, a challenge to the imposition of a victim penalty assessment). Singh may raise this issue with the sentencing court at his resentencing.

[2] Singh also submitted a statement of additional grounds (SAG). However, Singh's SAG does not establish any basis for granting appellate relief.

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle

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March 9, 2020

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CASE #: 79017-0-I
State of Washington, Respondent v. Jagjit Singh, Appellant

King County, Cause No. 17-1-05455-7KNT

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Affirmed in part, reversed in part, and remanded."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

jh
Enclosure
c: The Honorable Cheryl Carey
Jagit Singh

APPENDIX B

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

State of Washington,
Respondant,

v.

Jagjit Singh,
Appellant/Petitioner.

No. 98377 1
Ref COA 79017 0 I

MEMORANDUM OF LAW IN SUPPORT
OF PETITIONER FOR REVIEW

A. When Courts Get It Wrong
We Gently Call It An
Abuse Of Discretion

See e.g., State v.Dixon, 159 Wn2d 65 75 76 (2006), where the Washington Supreme Court used directive language saying:

> "The revieving court will find an abuse of discretion 'when the [lower] court's decision is manifestly unreasonable, or is exercised on untennable grounds, or for untennable reasons.' A decision is based `on untennable grounds' or `made for untennable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard A decision is 'manifestly unreasonable' if the court, despite applying the correct legal standard to the supported facts, adoptes a view that no reasonable person would take, and arrives at a decision 'outside the range of acceptable choices.' [collecting cases]." (internal citation omitted).

AS APPLIED TO THE CASE AT HAND

B1

When the Court of Appeals, Division One relied on the Washington Supreme Court's ruling in State v Guloy 104 Wn2d 412 422 (1985) saying in part "'An objection which does not specify the particular ground upon which it is based is insufficient to preserve the question for appellate review.' State v Boast, 87 Wn2d 447, 553 P 2d 1322 (1976) However, the COA was in error because the facts of Mr Singh s case distinquish it from Guloy and newer ruling by this Court has direct application.

(i) The Objection Applied To Testimonial Statments Made By An Unavailable Declarant Wrongfully Entered Thorugh A Third Party

This carfully scripted action by the prosecution unlawfully circumvented Mr Singh's Confrontation rights. See e.g., State v. Scanlan, 193 Wn2d 753, 761-63 (2019),

> "The Sixth Amendment made applicable to the states by the Fourteenth Amendment, states that '[i]n all criminal prosecutions, the accused shall enjoy the right... to be confronted by the witnesses against him.' The COurt of Appeals below correctly observed that confrontation clause jurisprudence has be in rapid flux since the United States Supreme Court's decision in Crawford [v Washington, 541 US 36 ... (2004)] ' State v Scanlan, 2 WnApp 2d 715, 725, 413 P.3d 82 (2018). In Crawford the Supreme Court held that whether admission of an out-of-court statement by a declarant who does not testify violates the Confrontation Clause depends on whether the statement was testimonial not, as it had previously held whether the statement was reliable, 541 US at 53 68 (abrogatting Ohio v Roberts 448 US 50 ... (1980)). If the statement was testimonial, then it is inadmissable unless the witness is unavailable at trial and the defendant had a prior opportunity from cross examination Id. at 59 68. Reasoning that the principle evil which the Confrontation Clause was directed, was the use, in traditional civil law systems of exparte examinations as evidence against the accused in criminal

proceedings, the Court held that a hearsay declarants statements to the police duering a station house interview were testimonial. Id at 50 68.

The Court in Crawford declined to fashion a legal test or to spell out a comprehensive definition of testimonial Id. at 68 And so in State v Shafer 156 Wn2d 381 . . (2006). we articulated our own declarant centric test for determining whether a statement was testimonial.

Meanwhile in Davis v Washington the United States Supreme Court announced what has since become known as the primary purpose test:

Statements are nontestimonial when made inthe course of police investigation unter circumstances indicatring that the primary purpose of the interrogation is to enable police assistance to meet an on-going em. They are testimonial when the circumstances objectively indicate that there is no such on going emergency and the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. 547 US 813 822,... (2006)."

Now in reviewing the police interrogation under the primary purpose test its purpose was to establish or prove past events and there was not on-going emergency. Thus, the COA made an error in law because the objected to third-party statements were testimonial under the primary purpose test and violated Mr Singh s federally protected Constitutional rights to confrontaton.

(ii) The COA Also Made An Error Of Law
Because The Trial Court Rendered
An Evidentiary Ruling

See e.g., State v. Sims, 193 Wn2d 86, 98 99 (2018).

BJ

"[C]ompliance with eral ruling is critical to orderly proceeding FOr instance, when a court rules on the admission of a prior conviction or other evidence, the ruling is not hypothetical or advisory; it is a final ruling that parties must obey. See State v. Austin, 34 WnApp 625, 634. . (1983)(Scholfield J., concurring)

... oral ruling provide sufficient notice and adequately preserve usses for appellate review."

See also e.g., Hendrickson v. Moses Lake Sch Dist., 192 Wn2d 269 279-80 (2018)("'So long as the trial court understands the reasons a party objects... the party preserves its objection for review.' Washiburn v City of Federal Wasy, 178 Wn2d 732 747-48 (2013).")).

So, not only was objected to statements testimonial under the primary purpose test and purposefully and wrongfully entered through a third-party police officer denying Mr Singh his Constitutional right to confront the declarant s testimonial statements. Also the trial judge made an evidentiary ruling cited by the Court of Appeals in its ruling. (See Appendix A, pgs A2 A4). This properly preserved the objection for review and the Court of Appeal s ruling was based on an error of law which in essence amounted to the COA ruling that the trial court didn t understand the objection when it rendered its evidentiary ruling

(iii) The COA's Error Of Law
Allowed The State To Wrongfully Benefit
From Its Own Misconduct

It is long-standing in the Common Law that parties are not allowed to benefit from their own wrongdoing especially when that party makes a witness unavailable. See e.g., Reynolds v United States, 98 US (8 Otto) 145 (1878)(noting the common law doctrine of Forfeiture by Wrongdoing was well established at the founding of the country and elaborating that not party should be allowed to benefit from their own wrong). See also Giles v California, ___ US ___ (2006)(analyzing the history of the common law doctrine of forfeiture by wrongdoing and determining a party has no right to finality its withholds witnesses). See also Int'l Union United Auto v NLRB, 459 F.2d 1329, 1332 (DC Cir 1972)("If one takes the maxims of equity seriously then the judiciary should not permit a party to benefit from its own wrongdoing")(citations omitted). This common law doctrine has also been adopted by the State of Washington by our Supreme Court. See e.g , State v Mason, 160 Wn2d 910 925 (2007), saying:

> "More recently and more bluntly, an appellate court in Connecticut defended the doctrine with the quip [t]hough justice may be blind it is not stupid.' State v Henry 76 ConnApp 515, 533 820 A.2d 1076 (2003)(quoting State v Alruii, 188 Conn 161, 173 448 A.2d 837 (1982)).
>
> We agree that equity compels adopting the doctrine of forfeiture by wrongdoing."

Now, the Washington Supreme Court should find in favor of Petitioner Singh because the statements were testimonial under the primary purpose test, the state wrongfully tried to enter it into the trial setting in a way that circumvented Petitioner Singh's federal rights to confrontation, due process, and equal protection, and the trial judge made an evidentiary ruling rendering counsel's objection properly preserved.

B. OATH

I, Jagjit Singh declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 1st day of December, 2020

Respectfully submitted

Jagjit Singh

Jagjit Singh DOC# 411876
Petitioner Pro se

INMATE

December 02, 2020 - 1:45 PM

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Appellate Court Case Number:	98377-1
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