

73413-0

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Court of Appeals
Division I
State of Washington

73413-0

NO. 73413-0-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ALI ALI,

Appellant.

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

The Honorable Tanya Thorp, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
1. <u>Procedural Facts</u>	2
2. <u>Pretrial Motion to Suppress the "Show-Up" Identification</u>	2
3. <u>Trial Testimony</u>	7
4. <u>Trial in Ali's Absence</u>	10
C. <u>ARGUMENT</u>	15
1. THE TRIAL COURT VIOLATED ALI'S RIGHT TO DUE PROCESS BY ADMITTING EVIDENCE ABOUT AN UNNECESSARILY SUGGESTIVE SHOW-UP IDENTIFICATION.....	15
2. THE COURT VIOLATED ALI'S SIXTH AMENDMENT RIGHT TO BE PRESENT AT ALL CRITICAL STAGES OF THE TRIAL.....	20
D. <u>CONCLUSION</u>	24

TABLE OF AUTHORITIES

	Page
 <u>WASHINGTON CASES</u>	
<u>State v. Burrell</u> 28 Wn. App. 606, 625 P.2d 726 (1981)	16
<u>State v. Chapple</u> 145 Wn.2d 310, 36 P.3d 1025 (2001)	20
<u>State v. DeWeese</u> 117 Wn.2d 369, 816 P.2d 1 (1991)	20
<u>State v. Irby</u> 170 Wn.2d 874, 246 P.3d 796 (2011)	23
<u>State v. McDonald</u> 40 Wn. App. 743, 700 P.2d 327 (1985)	17, 19, 20
<u>State v. Rogers</u> 44 Wn. App. 510, 722 P.2d 1349 (1986)	16, 18
<u>State v. Shea</u> 85 Wn. App. 56, 930 P.2d 1232 (1997)	18
<u>State v. Taylor</u> 50 Wn. App. 481, 749 P.2d 181 (1988)	16, 17
<u>State v. Vickers</u> 107 Wn. App. 960, 29 P.3d 752 (2001)	18
 <u>FEDERAL CASES</u>	
<u>Brady v. Maryland</u> 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)	10, 11
<u>Crawford v. Washington</u> 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004)	10, 11

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>Griffith v. Kentucky</u> 479 U.S. 314, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987).....	16
<u>Illinois v. Allen</u> 397 U.S. 337, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970).....	20
<u>Manson v. Braithwaite</u> 432 U.S. 98, 53 L. Ed. 2d 140, 97 S. Ct. 2243 (1977).....	16
<u>Neil v. Biggers</u> 409 U.S. 188, 34 L. Ed. 2d 401, 93 S. Ct. 375 (1972).....	16, 18
<u>Simmons v. United States</u> 390 U.S. 377, 19 L. Ed. 2d 1247, 88 S. Ct. 967 (1983).....	16
<u>Stovall v. Denno</u> 388 U.S. 293, 87 S. Ct. 1967, 18 L. Ed. 2d 1199 (1967).....	16
<u>United States v. Rushen</u> 464 U.S. 114, 104 S. Ct. 453, 78 L. Ed. 2d 267 (1983).....	23

RULES, STATUTES AND OTHER AUTHORITIES

U.S. Const. amend. V.....	1, 15, 20
U.S. Const. amend. VI	20
U.S. Const., amend. XIV	1, 15, 20
Const., art. I, § 3.....	15, 20
Const. art. I, § 22.....	20

A. ASSIGNMENTS OF ERROR

1. The trial court violated appellant's Fifth and Fourteenth Amendment due process rights by admitting evidence of a show-up identification that was so impermissibly suggestive as to give rise to a very substantial likelihood of misidentification.

2. The trial court violated appellant's Sixth Amendment right to be present at all critical stages of the proceeding.

Issues Pertaining to Assignments of Error

1. Whether the show-up identification of appellant was unduly suggestive, where inter alia, after the complainant was robbed of his car, he was told by police he was being taken to possibly identify the three individuals who police stopped in his stolen car, and where there was a significant discrepancy in the complainant's description of the suspects and the physical appearance of the individuals stopped in his car approximately an hour after the purported incident?

2. Whether the court violated appellant's right to be present where appellant was escorted from the courtroom following an outburst and the court proceeded with trial in appellant's absence without informing him he could reclaim his right to be

present if he made assurances of proper future courtroom behavior?

B. STATEMENT OF THE CASE¹

1. Procedural Facts

Following a jury trial in King County Superior Court, appellant Ali Ali was convicted of first degree robbery. CP 87. Based on an agreed offender score of 3 points, the court sentenced Ali to a standard range sentence of 50 months. CP 91-100; 1RP 5-6, 9. This appeal timely follows. CP 102.

2. Pretrial Motion to Suppress the "Show-Up" Identification

On October 28, 2014, the King County prosecutor charged Ali and Abdihakim Mohamed and Abdishakur Ibrahim with first degree robbery for allegedly pulling a gun on Mike Harris and taking his Geo Prizm. CP 1. According to the charging document, Harris agreed to give the three men a ride from Seattle to Tukwila. When they arrived, however, one of the men reportedly pulled a gun on Harris and the three took off in Harris' car. CP 5.

Approximately 55 minutes later, police reportedly spotted and stopped Harris' car and took its three occupants – Ali,

Mohamed and Ibrahim – into custody. CP 6. Harris was brought to the scene for a “show-up” identification and agreed the men in custody were the men who took his car. CP 6. After Harris agreed to a search of his car, police recovered a handgun from underneath the driver’s seat. CP 6.

Ali filed a motion to suppress the show-up identification as impermissibly suggestive. CP 67-72. For the motion, the parties stipulated:

1. The description provided by Mr. Harris of Defendant – Ali’s clothing is different that [sic] than the clothing on Defendant-Ali at the time of arrest.
2. Officer Bartolo was the only officer who communicated with Mr. Harris regarding the one-on-one identification.
3. The entirety of the 911 CD should be considered for purposes of the 3.6 hearing.

CP 80-81.

In addition, the court took the testimony of deputy Jose Bartolo. RP 39. At 10:51 p.m. on October 22, 2014, Bartolo was dispatched to the AM/PM near South 154th Street and International Boulevard to respond to a reported robbery. RP 40.

¹ This brief refers to the verbatim report of proceedings as follows: “RP” – 6 bound volumes, consecutively paginated, of the pretrial proceedings and jury trial held in March 2015; and “1RP” – sentencing held 4/23/15.

When Bartolo arrived at 10:56 p.m., Harris told him he had agreed to give three men a ride to Tukwila. RP 42, 53. When they arrived, however, the men directed Harris to the parking garage across the street from the AM/PM where Bartolo met Harris. RP 42-43. Harris reported that once they arrived, he and the three men got out of the car, whereupon the men threatened him with a gun and took his car. RP 43.

Harris told Bartolo he really did not interact with the men during the ride and instead, listened to music. RP 55.

While Bartolo was talking to Harris, a police broadcast indicated another deputy, William Mitchem, had located Harris' Geo Prizm. RP 43. Bartolo testified Harris likely heard the broadcast, including that there were three individuals in the car when it was stopped. RP 61. Bartolo told Harris his vehicle had been stopped and that Bartolo would take him to the stop location to possibly identify the three subjects in the Prizm. RP 44.

When they arrived at the stop location at 11:54 p.m.,² Bartolo could see the Geo Prizm and three men handcuffed and in custody on the sidewalk. RP 45-46, 54, 56. Bartolo stopped his patrol car approximately 30-40 feet from the Geo Prizm. RP 46. There were

a number of other police cars there that had been involved in the stop and had their flashers activated. RP 57.

Bartolo parked with his lights directed southbound towards Harris' vehicle and turned his spotlight on. RP 47-48. The suspects were led toward Bartolo's car one at a time by one of the other deputies and stopped one to two car lengths away for Harris to identify. RP 47. RP 48. Harris positively identified each of the handcuffed men led by the officer as being involved in the robbery. RP 49-50.

Defense counsel argued the show-up identification was impermissibly suggestive because Harris knew his car had been stopped and that the persons he was about to identify were in the car when police stopped it. CP 70; RP 89. Furthermore, when Harris was taken to his car, Ali and the other two suspects were in custody on the sidewalk near the car. CP 70. And when the identification was made, Ali was handcuffed and accompanied by a deputy with a spotlight shining in his face. CP 70; RP 89. The combination of these factors strongly suggested Ali was one of the men who stole Harris' car. CP 70; RP 90.

² Bartolo testified the stop occurred near South 195th Street and International Boulevard. RP 55.

As defense counsel further argued, the suggestiveness created a strong likelihood of misidentification, as evidenced by the discrepancy between Harris' descriptions of the suspects and the physical appearance of the men taken into custody. CP 70. Harris described the men as black and in their early twenties. CP 70; RP 91. However, Ali was 35 years old. CP 70; RP 91. Moreover, he was wearing different clothes than described by Harris. CP 80-81, 89. There was also a strong likelihood of misidentification, because Harris did not interact with the men during the car ride. RP 96. Accordingly, he did not have a good opportunity to view the suspects prior to the identification. CP 71; RP 96. Finally, approximately an hour had passed between the time of the incident and the show-up identification. RP 89. There was therefore plenty of time for a change in the car's occupants by the time of the stop. RP 97.

The court disagreed the circumstances showed a strong likelihood of misidentification, which in turn, caused the court to question whether suggestiveness had been established. RP 100-102. In short, the court found the defense had not met its burden and denied the motion to suppress. RP 102.

2. Trial Testimony

Harris testified that he sometimes goes to Third Avenue and Yesler Way in downtown Seattle and offers rides to people to make extra money. RP 463, 466-67. Around 10:00 p.m. on October 22, 2014, he was downtown talking to someone about giving him a ride. RP 467-68. Another man reportedly overheard and asked if he could get a ride to his car in Tukwila. RP 468. Harris claimed he agreed but said, "it's going to cost you." RP 468. The man reportedly responded, "I got you." RP 468-69.

Harris testified this was the man police later identified as Mohamed. RP 470. Harris identified Ali and Ibrahim as the other two that got in his car. RP 470-71. Mohamed reportedly got in the front passenger seat, while Ali (whom he described as a younger guy wearing a gray coat) reportedly sat behind Harris and Ibrahim sat behind Mohamed. RP 472-73.

Harris testified that when they got to Tukwila from Highway 99, Mohamed directed him into the Money Tree parking lot and up a ramp to the second floor, where he said his car was located. RP 474-75.

Harris drove up the ramp and parked next to one of the two cars parked there. RP 476. Everyone got out, including Harris.

RP 476. Harris walked toward the back of the car expecting one of the men to pay him. RP 476-77. One of the men reportedly pulled a gun, however. RP 478. Harris backed up around his car and ended up at the driver's door. RP 478. Harris testified he and the men ended up on the ground and one of the men told him not to move. RP 478. According to Harris, the three men then jumped in his car and took off. RP 478.

Harris collected his things, including his wallet, which was on the ground, and walked down the ramp and over to the AM/PM to call 911. RP 482-83. Harris testified he was in shock. RP 485. Bartolo responded to the 911 call and took Harris' statement. RP 392, 483-84.

Deputy Mitchem heard the broadcast about the reported carjacking. RP 325-26, 351. Around 11:45 p.m., he spotted Harris' Geo Prizm heading southbound on International Boulevard. RP 326-27. After requesting back-up, Mitchem and several other police officers stopped the car. RP 330-32.

Mitchem testified he and the other officers ordered instructions to the car's occupants. 333. Mitchem claimed the men initially complied, but the rear passenger – later identified as Ali – appeared to be reaching or bending down. RP 333-34. When

another officer told Ali to show his hands, Ali was cooperative. RP 447. Ali was handcuffed and taken into custody. RP 334. Ibrahim, who was driving, and Mohamed, the right front passenger, were also handcuffed and taken into custody. RP 335, 362.

Bartolo heard the radio traffic about the Geo Prizm and brought Harris to the stop location for a show-up identification. RP 336, 397-98. Harris testified he recognized each of the three men that were individually led towards Bartolo's car as being involved in the robbery. RP 496-99.

Harris claimed the individual in the gray jacket whom he identified as Ali was the one with the gun. RP 505, 513, 519. However, Harris' statement to the 911 operator – which was played for the jury – pointed toward Ibrahim being the one with the gun. RP 532, 673; see also RP 527.

Following Harris' positive identification of the three suspects, the police obtained his permission to search the car and found a handgun underneath the driver's seat. RP 339, 449. It was not racked or ready to be fired. RP 340.

3. Trial in Ali's Absence

Ali's distrust of his attorney James Womack manifested early and culminated in Ali's outburst and removal from the courtroom just before closing arguments.

Ali's distrust stemmed in part from "continuances back to back," to which Ali objected but defense counsel did not. RP 18; see e.g. Supp. CP __ (sub. no. 19, Order Continuing Trial, 12/19/14); Supp. CP __ (sub. no. 26, Order Continuing Trial, 2/5/15); Supp. CP __ (sub. no. 29, Order Continuing Trial, 2/17/15); Supp. CP __ (sub. no. 36, Order Continuing Trial, 3/10/15); RP 4.

Ali also complained that Womack failed to file motions Ali requested. RP 18. In that vein, Ali filed a pro se motion to dismiss the case in early January 2015 with the acting chief judge. CP 57-66. In the motion, Ali asserted he had the right to a pre-trial interview of all the state's witnesses under Brady v. Maryland,³ and that unless these witnesses came forward for an interview, the case should be dismissed under Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 1370, 158 L.Ed.2d 177 (2004).

When trial convened on March 11, Ali moved to discharge Womack as defense counsel, citing the above reasons. RP 17-18.

³ Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

He referenced a letter he mailed to the chief judge requesting new counsel.⁴ RP 17. Ali told the trial judge (the Honorable Tanya Thorp) he did not feel “safe with his life being represented by Mr. Womack.” RP 17. Judge Thorp had not received Ali’s motion to discharge counsel, but had read Ali’s previously filed motion to dismiss the charge. RP 18.

Womack was also unaware of the motion to discharge, but stated in regard to Ali’s motion to dismiss, that he had interviewed the complainant, as well as all the officers the state intended to call. RP 19. Accordingly, counsel did not see a Brady or Crawford issue, which Womack said he had communicated to Ali. RP 20.

The court ruled there had not been a total breakdown in communication to warrant Womack’s discharge. RP 20. The court also indicated Ali’s earlier motion to dismiss was – at that time it was filed – premature. RP 20-21. The court therefore denied the motion to discharge counsel. RP 21.

Ali persisted, however, accusing Womack of acting like a prosecutor and lying to him. RP 25. The court admonished Ali to choose his words carefully and noted Womack had filed a number

⁴ It does not appear the letter and motion reached the court until later. CP 82-84. In the motion, Ali accused his attorney of trying to persuade him into a plea deal, rather than advocate for his innocence. CP 82-84.

of motions on his behalf. RP 25-26. The court maintained its ruling. RP 25.

After the parties rested, but before closing arguments, Womack put Ali's increasing distrust on the record. RP 604. Apparently, Ali wanted to preview Womack's closing argument. RP 604. Womack asserted he outlined to Ali what he intended to say and assured Ali of his preparedness. RP 604. However, Ali was embarrassed by what Womack was going to say. RP 604.

Ali interrupted to explain he was upset about how the jury was picked. RP 604. The court responded that peremptory challenges are considered strategic and therefore up to counsel. RP 605. Ali countered that Womack had offered him money for sex. RP 605-06.

The court warned Ali that lying to an officer of the court could result in criminal proceedings. RP 606. The court noted Ali made no such accusation in his motion to discharge counsel and expressed "grave disbelief" in Ali's accusation. RP 608. Ali questioned: "See, I'm basically I'm a cow just – just brought to the mine or something like that?" RP 608.

The court ruled there was no credible basis to discharge counsel and warned:

And I am instructing you right now, sir, if you make an outburst in front of the jury when they return to this courtroom for closing argument, I will stop this matter and you will be escorted out. Do you understand that, sir?

RP 609.

Approximately two pages into the prosecutor's closing argument (as transcribed), Ali interrupted and the following occurred:

DEFENDANT ALI: I just want to tell the jury my lawyer, he –

THE COURT: Members of the jury –

DEFENDANT ALI: He (inaudible) give me – (inaudible/voices overlapping) supplying drugs, sex, I refused. He wants – give me some money and I refused –

THE COURT: Please exit the courtroom immediately.

DEFENDANT ALI: This is against me and he locked me up with something I haven't done. Once the evidence is against me.

UNIDENTIFIED SPEAKER: Stay seated.

UNIDENTIFIED SPEAKER: I wish you wouldn't get up.

UNIDENTIFIED SPEAKER: He's too upset now. I'm just letting you guys know –

(In Court/Jury Out).

RP 613-14. The court thereafter recessed to allow counsel to consider how they should proceed. RP 614.

When court reconvened, the court questioned Sergeant Lu under oath about what had since happened with Ali. RP 617. According to Lu, Ali was refusing to return to court, did not want to talk to his attorney and wanted to return to his cell. RP 617. When asked about an alternate location for Ali to watch the proceedings by remote access, Lu asserted the jail did not have enough staff to sit with Ali at another location. RP 618. Moreover, Lu did not believe Ali would “come willfully to that courtroom.” RP 618.

When the court gave the parties an opportunity to weigh in on how to proceed, Womack moved for a mistrial on grounds there was a complete breakdown in communication, and Ali would be better served if he had “counsel that he could possibly work with.” RP 621.

The court denied the motion, characterizing Ali’s outburst as “discrete,” and noting only closing argument remained. RP 624. The court saw no reason Womack could not still fully advocate on Ali’s behalf. RP 624. However, the court ruled a curative instruction would be appropriate. RP 623.

The court also ruled that Ali had waived his right to be present but that he needed to be advised that he could return if he made assurances of appropriate behavior. RP 622-23. The court asked Womack to so advise Ali before he returned to his general cell. RP 623.

When court reconvened, the following exchange occurred between the court and Womack:

THE COURT: And is there anything you would like to put on the record about advising Defendant Ali?

MR. WOMACK: Yes, Your Honor. I did at the court's permission, immediately after we broke last I did go downstairs and attempted to make contact with Defendant Ali. He turned it to the zero, I sat there, I was later informed that a couple things that Defendant Ali (inaudible).

THE COURT: Thank you, Counsel. Thank you for making those efforts.

RP 628-29.

C. ARGUMENT

1. THE TRIAL COURT VIOLATED ALI'S RIGHT TO DUE PROCESS BY ADMITTING EVIDENCE ABOUT AN UNNECESSARILY SUGGESTIVE SHOW-UP IDENTIFICATION.

Due process protections apply to pretrial identification proceedings. U.S. Const., amends. 5 and 14; Const., art. 1, § 3; Stovall v. Denno, 388 U.S. 293, 302, 87 S. Ct. 1967, 18 L. Ed. 2d

1199 (1967), overruled on other grounds by, Griffith v. Kentucky, 479 U.S. 314, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987); State v. Burrell, 28 Wn. App. 606, 609, 625 P.2d 726 (1981). Evidence of a show-up identification should be excluded when the identification procedure was "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." State v. Rogers, 44 Wn. App. 510, 722 P.2d 1349 (1986) (quoting Simmons v. United States, 390 U.S. 377, 384, 19 L. Ed. 2d 1247, 88 S. Ct. 967 (1983)). Reliability is the linchpin in determining the admissibility of pretrial identifications, however, and reliable identifications can overcome the taint of a suggestive identification procedure. Manson v. Braithwaite, 432 U.S. 98, 114, 53 L. Ed. 2d 140, 97 S. Ct. 2243 (1977); State v. Taylor, 50 Wn. App. 481, 485, 749 P.2d 181 (1988).

Suggestive confrontations are disapproved because they increase the likelihood of misidentification, and it is the likelihood of misidentification that violates a defendant's right to due process. Neil v. Biggers, 409 U.S. 188, 198, 34 L. Ed. 2d 401, 93 S. Ct. 375 (1972). Unnecessarily suggestive confrontations are further condemned because the increased chance of misidentification is gratuitous. Neil v. Biggers, 409 U.S. at 198.

This Court first determines whether the procedure was impermissibly suggestive, and if it was, this Court then determines whether, under the totality of the circumstances, that suggestiveness has rendered the identification unreliable. Taylor, 50 Wn. App. at 485; State v. McDonald, 40 Wn. App. 743, 746, 700 P.2d 327 (1985).

Contrary to the trial court's ruling here, the show-up identification of Ali was unnecessarily suggestive. Harris was brought to the show-up location, where there were several police cars with their flashers activated. RP 57. Moreover, Harris knew his car had been stopped and that the persons he was about to identify were in the car when police stopped it. CP 70; RP 89. Furthermore, when Harris was taken to his car, Ali and the other two suspects were in custody on the sidewalk near the car. CP 70. And when the identification was made, Ali was handcuffed and led by a deputy with a spotlight shining in his face. CP 70; RP 89. The combination of these factors strongly suggested Ali was one of the men who stole Harris' car. CP 70; RP 90.

Generally, show-ups are not necessarily suggestive just because the suspect is handcuffed and standing near a patrol car or surrounded by police officers. See e.g. State v. Shea, 85 Wn.

App. 56, 60, 930 P.2d 1232 (1997), overruled on other grounds, State v. Vickers, 107 Wn. App. 960, 29 P.3d 752 (2001). Under the circumstances here, however, Ali was not only handcuffed near patrol cars and surrounded by officers, he was handcuffed near Harris' stolen car, and led by a police officer for the identification with a spotlight shining in his face. Moreover, Harris was told he was being taken to possibly identify three suspects who had been stopped in his car. Anyone in that circumstance would assume the three persons who were stopped in the car must be the same three who took it. The constellation of circumstances resulted in an unduly suggestive identification procedure.

Contrary to the trial court's finding, the suggestiveness of the show-up identification created a substantial likelihood of irreparable misidentification. In the evaluation of reliability, this Court considers the factors set out in Neil v. Biggers. State v. Rogers, 44 Wn. App. at 515-16 (citing Manson v. Braithwaite, 432 U.S. at 114). These factors include "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation." Manson v. Braithwaite, 432 U.S. at 114;

Neil v. Biggers, 409 U.S. at 199- 200; Rogers, 44 Wn. App. at 515-16; McDonald, 40 Wn. App. at 746. Applied here, these factors weigh against reliability.

Significantly, there was quite a discrepancy between Harris' physical description of the suspects and their physical appearance. For instance, Harris described the men as black and in their early twenties. CP 70; RP 91. However, Ali was 35 years old. CP 70; RP 91. Moreover, he was wearing different clothes than described by Harris. CP 80-81. Moreover, Harris did not interact with the men during the car ride. Accordingly, he did not have a good opportunity to view the suspects prior to the identification. CP 71; RP 96. Finally, approximately an hour had passed between the time of the incident and the show-up identification. RP 89. There was therefore plenty of time for a change in the car's occupants by the time of the stop.

These circumstances combined would likely compel anyone to misidentify a suspect in the face of an unduly suggestive show-up. Indeed, that's what happened here. The trial court erred in concluding otherwise and in denying Ali's motion to suppress the identification. The remedy is reversal and remand for a new trial,

without admission of the unreliable identification. McDonald, 40 Wn. App. at 747- 48.

2. THE COURT VIOLATED ALI'S SIXTH AMENDMENT RIGHT TO BE PRESENT AT ALL CRITICAL STAGES OF THE TRIAL.

A criminal defendant has a constitutional right to be present in the courtroom at all critical stages of the trial. U.S. Const. amends. V, VI, XIV; Wash. Const. art. 1, §§ 3, 22. Although an accused can lose this right if he or she engages in repetitive and disruptive behavior, see Illinois v. Allen, 397 U.S. 337, 343, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970), State v. DeWeese, 117 Wn.2d 369, 381, 816 P.2d 1 (1991), trial courts are bound to follow certain guidelines before ejecting a defendant from the courtroom. State v. Chapple, 145 Wn.2d 310, 320-26, 36 P.3d 1025 (2001). The Washington Supreme Court has identified these guidelines as follows:

First, the defendant should be warned that his conduct could lead to removal. Second, the defendant's conduct must be severe enough to justify removal. Third, this court has expressed a preference for the least severe alternative that will prevent the defendant from disrupting the trial. Finally, the defendant must be allowed to reclaim his right to be present upon assurances that the defendant's conduct will improve.

Chapple, 145 Wn.2d at 320.

At issue here is whether Ali was given an opportunity to reclaim his right to be present following his removal. The answer is no.

In Chapple, the Washington Supreme Court was asked to decide whether a trial court is obligated to inquire directly of an accused (rather than through counsel) whether he or she wishes to reclaim their right to be present. In that case, the trial court did not inform Chapple on the record he could return whenever he chose to conduct himself appropriately. Chapple, 145 Wn.2d at 324. Instead, the trial court sent defense counsel to inquire whether the defendant wanted to return and, if so, he could conduct himself appropriately. Defense counsel reported back, on the record, that the defendant would not agree to behave differently if allowed to return. Id. The Supreme Court held that given the circumstances in Chapple, defense counsel's representations to the court were adequate to give the defendant an opportunity to return to the courtroom. Id. at 326.

The facts in Chapple are distinguishable. Unlike this case, there was no indication that a conflict had arisen between Chapple

and his attorney. Obviously, the court's ability to rely on counsel to convey messages between it and an excluded defendant – messages of constitutional importance – is greatly reduced when there is obvious discord between defendant and counsel. Because the relationship between Ali and Womack had broken down, the court should have directly inquired of Ali whether he wished to return.

And perhaps more significantly, the record does not reflect that Womack successfully communicated to Ali that he could come back if he behaved himself. Indeed, the record is quite to the contrary. It indicates Womack's effort at communication was unsuccessful:

THE COURT: And is there anything you would like to put on the record about advising Defendant Ali?

MR. WOMACK: Yes, Your Honor. I did at the court's permission, immediately after we broke last I did go downstairs and attempted to make contact with Defendant Ali. He turned it to the zero, I sat there, I was later informed that a couple things that Defendant Ali (inaudible).

THE COURT: Thank you, Counsel. Thank you for making those efforts.

RP 628-29 (emphasis added).

Under these circumstances, the court did not provide Ali with an opportunity to reclaim his right to be present. As a result, the court violated Ali's right to be present when it continued trial in Ali's absence.

The violation of the right to be present is subject to constitutional harmless error analysis. United States v. Rushen, 464 U.S. 114, 117-18, 104 S. Ct. 453, 78 L. Ed. 2d 267 (1983); State v. Irby, 170 Wn.2d 874, 246 P.3d 796 (2011). The burden of proving harmlessness is on the state and it must do so beyond a reasonable doubt. Irby, 170 Wn.2d at 886.

The state cannot do so here. Womack had not yet heard the prosecutor's closing argument or given closing argument on behalf of Ali. There was therefore still time for Womack and Ali to consult about what should be the focus of closing argument. Had Ali been informed he could reclaim his right to be present, he could have assisted in this important part of his defense. Ali was therefore prejudiced by the violation of his right to be present. This Court therefore should reverse.

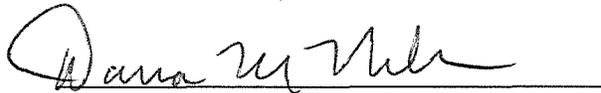
D. CONCLUSION

This Court should reverse Ali's conviction, because the lower court violated his due process rights by permitting evidence of an unduly suggestive identification. Alternatively, this Court should reverse because the court violated Ali's right to be present.

Dated this 5th day of October, 2015

Respectfully submitted

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 73413-0-1
)	
ALI ALI,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 5TH DAY OF OCTOBER, 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] JOSEPH STRANGE
DOC NO. 382281
COYOTE RIDGE CORRECTIONS CENTER
P.O. BOX 769
CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 5TH DAY OF OCTOBER 2015.

X *Patrick Mayovsky*