

NO. 35087-4-II

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

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STATE OF WASHINGTON,

Respondent,

v.

CLARENCE D. TATE,

Appellant.

07 FEB 26 11:03 AM  
STATE OF WASHINGTON  
BY *W*  
COURT REPORTERS

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

The Honorable Thomas J. Felnagle

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BRIEF OF APPELLANT

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PM 2-23-07

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A. ASSIGNMENTS OF ERROR

1. There was insufficient evidence to find appellant guilty of Count I, Forgery and Count III, Theft in the First Degree.

2. There was insufficient evidence to find appellant guilty of a Count II, Forgery and Count IV, Theft in the First Degree, under accomplice liability.

3. Reversal is required because appellant established an affirmative defense to the three counts of bail jumping.

4. The trial court erred in admitting into evidence, the information charging appellant with forgery and theft, in violation of his constitutional right to confrontation.

Issues Pertaining to Assignments of Error

1. Was there insufficient evidence to find appellant guilty of forgery and theft when the State failed to prove beyond a reasonable doubt that appellant had the intent to defraud and knew that the check that he cashed was a forgery?

2. Was there insufficient evidence to find appellant guilty of forgery and theft under accomplice liability when the State failed to prove beyond a reasonable doubt that he aided or agreed to aid another person in planning or committing forgery and theft?

3. Is reversal required because appellant established an affirmative defense to bail jumping by proving that uncontrollable circumstances prevented him from appearing in court?

4. Did the trial court err in admitting into evidence, the information charging appellant with forgery and theft, in violation of appellant's right to confrontation because the information contained inadmissible hearsay?

B. STATEMENT OF THE CASE

1. Procedural Facts

On March 29, 2004, the State charged appellant, Clarence Tate, with two counts of forgery and two counts of theft. CP 1-3; RCW 9A.60.020(1)(a)(b), RCW 9A.56.020(1)(b), RCW 9A.56.030(1)(a). The State amended the information on December 19, 2005, additionally charging appellant with three counts of bail jumping. CP 45-48; RCW 9A.76.170(1), RCW 9A.76.170(3)(c). Following a trial on March 23, 27, and 29, 2006, before the Honorable Thomas J. Feltnagle, a jury found Tate guilty as charged. 16RP<sup>1</sup> 226-27; CP 55-61. On July 7, 2006, the court imposed a Drug Offender Sentencing Alternative (DOSA), sentencing

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<sup>1</sup> There are 19 verbatim report of proceedings: 1RP - 4/14/04; 2RP - 6/29/04; 3RP - 8/12/04; 4RP - 2/9/05; 5RP - 12/16/05, 3/14/05, 6/23/05, 9/6/05, 10/3/05; 6RP - 3/21/05; 7RP - 3/30/05; 8RP - 4/20/05; 9RP - 4/25/05; 10RP - 4/26/05; 11RP - 6/8/05; 12RP - 3/22/06; 13RP - 3/23/06; 14RP - 3/27/06; 15RP - 3/29/06; 16RP - 3/30/06; 17RP - 5/1/06; 18RP - 6/2/06; 19RP - 7/7/06.

Tate to 27.75 months in confinement and 27.75 months in community custody. 19RP 15-17; CP 121. Tate filed this timely appeal. CP 108.

2. Substantive Facts

Chang Kim testified that she was working at Best Check Cashing in January 2004 and has known Tate for more than 20 years. 13RP 35-37. Tate came into Best Check Cashing on two different days. She was not working on the first day, but another employee accepted a cashier's check from Tate for \$4,851.22. The Harbor Community Bank check had a phone number which the employee called for verification. Tate provided identification and filled out an application and the employee cashed the check, charging a three percent fee. 13RP 37-39, 43, 45. Kim was working the following day when Tate returned with Tammy Bromley. She accepted a cashier's check from Bromley for \$5,824.10. Kim called Harbor Community Bank for verification and cashed the check, charging a three percent fee, after Bromley provided identification and filled out an application. 13RP 41-43, 47, 52.

Bong Soo Han testified that he owns Best Check Cashing and that he received counterfeit checks in January 2004. 13RP 54. Han identified the checks written out to Tate and Bromley, stating that he never received payment for the two checks. 13RP 55-56.

Karen Gurley, of Security State Bank, testified that the bank purchased Harbor Community Bank in December 2004. 13RP 57. Gurley confirmed that the two checks written out to Tate and Bromley were counterfeit because they were not Harbor Community Bank checks. 13RP 57-58.

Detective Gary Hill testified that in February 2004, he was assigned to Tate's case, involving an investigation of counterfeit checks. 14RP 71. He contacted Kim who provided "identifications of the subjects that used these fraudulent checks." 14RP 71. Thereafter, Hill prepared montages and Kim identified Tate and Bromley out of the photographs.<sup>2</sup> 14RP 71-74.

Bromley testified that she knew Tate since 1999 and they had a business in the B&I shopping center in Lakewood. 14RP 101-02. In February 2004, she learned of Vincent E. Tax Services, owned by Tony Drake, from flyers posted throughout the shopping center. The flyers advertised that tax returns could be prepared in twenty-four hours. 14RP 102-03. Bromley met with Drake at his office in Federal Way, gave him her W-2 forms, and paid him two hundred dollars in cash to prepare her

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<sup>2</sup> Following Hills' testimony, the State moved to admit several exhibits, including the information charging Tate with two counts of forgery and two counts of theft. Over defense counsel's objection, the court admitted the information into evidence. 14RP 93-95; Ex. 8.

taxes. 14RP 103, 107, 109. The following day, Drake provided her with a tax refund check, which she cashed at Best Check Cashing where she had previously conducted business. 14RP 103-04. Bromley did not know that the check was counterfeit but pled guilty to lesser charges as a first-time offender and received no “jail time.” 14RP 104-05.

Private investigator, Lea Sanders, testified that she conducted an unsuccessful search for a business named Vincent E. Tax Services. However, she located an office in Federal Way that was leased to Tony Drake and she learned that Drake had a criminal record and used an alias. Sanders contacted Drake’s parents in Seattle but never found Drake. 15RP 132-35.

Tate testified that in 2004 he paid Tony Drake, of Vincent E. Tax Services, two hundred and fifty dollars in cash to prepare his taxes. He heard about Vincent E. Tax Services from Bromley who mentioned that she saw Drake’s flyers posted around the B&I shopping center and he noticed the flyers. 15RP 142-43. Tate knew of Drake because he had purchased pagers from Tate’s store in the shopping center. 15RP 172-73. Tate met with Drake in the store, provided his W-2 forms, and Drake returned the next day with a check. 15RP 170-72. Tate believed that the check was for his tax refund and since it was after banking hours he went to Best Check Cashing to cash the check on his way to the newly opened

Emerald Queen Casino. 15RP 144-45, 173-74. To cash the check, Tate filled out an application that required personal information, including his address, phone number, and social security number. 15RP 145-46, Ex. 3. Tate returned to Best Check Cashing with Bromley when she cashed her check but had no reason to believe that the check was counterfeit. He had lunch next door while Bromley cashed her check. 15RP 147-48.

Tate acknowledged that he was scheduled to appear in court on May 13, 2004 but did not appear because he was afraid to go to court. 15RP 149-50. That day, he locked himself in the bathroom for four or five hours because of his fear. Tate's attorney called him but could not understand him because Tate's panic attack impaired his ability to speak. 15RP 150-51. After Tate recovered he contacted his attorney to quash the bench warrant that was issued for his failure to appear. 15RP 151-52.

Subsequently, Tate was scheduled to appear in court on October 13, 2004 but had a recurring panic attack. 15RP 152-53. Tate attempted to make it to court despite discovering that his car had been stolen. After reporting the theft to police, he arrived late and the court had already issued a bench warrant. 15RP, 184-85. Thereafter, Tate was scheduled to appear in court on April 14, 2005 but was ridden with anxiety and suffered from sleep deprivation. 15RP 154-55. Tate contacted his attorney to quash the bench warrants for his failure to appear, but the hearings were

delayed because he could not afford to immediately pay his attorney and his attorney went on vacation. 15RP 155, 179, 186.

Tate explained that he has been hospitalized for his condition several times. During the pendency of the case, he had a severe panic attack while held in custody and was rushed to the hospital. 15RP 155-56. When he returned to court, his attorney requested a competency evaluation which was ordered by the court. Tate underwent an examination and was eventually declared competent to continue with the proceedings. 15RP 157-58. Tate was subsequently hospitalized at St. Joseph's Hospital and underwent a Cat scan that revealed patchy, cloudy areas on his brain. 15RP 158-61; Ex. 27.

Defense counsel submitted a report by Dr. Rostom D. Rivera, who diagnosed Tate with a severe form of generalized anxiety disorder and panic disorder with depression. 15RP 139. Dr. Rivera concluded that Tate was "unable to cope with his panic attacks when faced with the challenge of appearing in court and was debilitated to the point of 'shutting down' or becoming incapacitated." 15RP 139; Ex.22.

C. ARGUMENT

1. THERE WAS INSUFFICIENT EVIDENCE TO FIND TATE GUILTY OF FORGERY AND THEFT BEYOND A REASONABLE DOUBT.

Reversal and dismissal is required because there was insufficient evidence to find Tate guilty of two counts of forgery and two counts of theft beyond a reasonable doubt.

In a criminal prosecution, due process requires that the State prove every element necessary to constitute the charged crime beyond a reasonable doubt. U.S. Const. amend. 14; Wash. Const. art. I, sect. 3. “The reasonable-doubt standard is indispensable, for it ‘impresses on the trier of fact the necessity of reaching a subjective state of certitude on the facts in issue.’ ” State v. Hundley, 126 Wn.2d 418, 421-22, 895 P.2d 403 (1995) (quoting In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)).<sup>3</sup>

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any trier of fact could have found the elements of the crime beyond a reasonable

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<sup>3</sup> The United States Supreme Court noted, “It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves the public to wonder whether innocent persons are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper fact finder of guilt with utmost certainty.” In re Winship, 397 U.S. at 364.

doubt. State v. DeVries, 149 Wn.2d 842, 849, 72 P.3d 748 (2003) (citing State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

Dismissal is required following reversal for insufficient evidence. State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) (the double jeopardy clause of the Fifth Amendment protects against a second prosecution for the same offense after reversal for insufficient evidence) (citing North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), overruled in part on other grounds by Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989)).

a. There was Insufficient Evidence to Find Tate Guilty of Count I, Forgery and County III, Theft in the First Degree.

A person is guilty of forgery, if, “with intent to injure or defraud:

(a) He falsely makes, completes, or alters a written instrument or; (b) He possesses, utters, offers, disposes of, or puts off as a written instrument which he knows to be forged.” RCW 9A.60.020(1)(a)(b).

A person is guilty of theft in the first degree if “he or she commits theft of: (a) Property or services which exceed (s) one thousand five hundred dollars in value.” RCW 9A.56.030(1)(a).

Theft means by “color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services.” RCW 9A.56.020(1)(b).

Mere possession is insufficient to prove knowledge that the written instrument is a forgery. State v. Scoby, 117 Wn.2d 55, 61-62, 810 P.2d 1358 (1991). However, corroborating evidence, such as evidence that the forgery is obvious, may be sufficient to infer knowledge. Id. at 63. Intent to commit a crime may be inferred from surrounding facts and circumstances if they “plainly indicate such an intent as a matter of logical probability.” State v. Esquivel, 71 Wn. App. 868, 871, 863 P.2d 113 (1993).

Here, Kim testified that she was not working the first day that Tate came into Best Check Cashing with a forged check. Another employee cashed the check after Tate provided identification, filled out an application, and the employee called to verify the check. 13RP 37-39, 43. Karen Gurley, from Security State Bank, testified that the check was a forgery and described the check in detail but detected no patent defects as to the quality of the check. 13RP 57-58.

Tate testified that he paid Tony Drake, of Vincent E. Tax Services, to prepare his tax returns. He believed that the check was his tax refund and had no reason to suspect that the check was forged. 15RP 142-45,

170-74. He received the check from Drake after banking hours so he cashed the check at Best Check Cashing on his way to the newly opened Emerald Queen Casino. 15RP 173-74. To have the check cashed at Best Check Cashing, Tate provided personal information, including his address, phone number, and social security number. 15RP 145-46; Ex.3.

The record substantiates that the State provided no evidence that Tate intended to defraud Best Check Cashing and knew that the check was a forgery. There was no testimony from anyone at Best Check Cashing that accepted the check from Tate and observed his demeanor nor any evidence that the check was an obvious forgery. Contrary to an intent to defraud, Tate provided identification and personal information where he could be immediately located. Furthermore, Sanders' investigation lends support to Tate's testimony. Sanders uncovered that Drake had a criminal record, used an alias, and leased a business office but mysteriously disappeared. 15RP 132-35.

Even when admitting the truth of the State's thin circumstantial evidence, the evidence fails to prove the essential elements of intent and knowledge. Reversal and dismissal is required because there was insufficient evidence to find Tate guilty of forgery and theft on counts one and three beyond a reasonable doubt.

b. There was Insufficient Evidence to Find Tate Guilty of Count II, Forgery and Count IV, Theft in the First Degree, Under Accomplice Liability.

A person is guilty of a crime if he is an accomplice of another person in the commission of the crime. RCW 9A.08.020(1)(2)(c).

RCW 9A.08.020 provides in relevant part as follows:

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he

...

(ii) aids or agrees to aid such other person in planning or committing it.

Physical presence and assent alone are insufficient to constitute aiding and abetting. Something more than presence and knowledge of the crime must be shown to establish the intent requisite to a finding of accomplice liability. In re Wilson, 91 Wn.2d 487, 491-92, 588 P.2d 1161 (1979) (citing State v. Peasley, 80 Wn. 99, 141 P. 316 (1914); State v. Redden, 71 Wn.2d 147, 426 P.2d 854 (1967)). One's presence at the commission of a crime, even coupled with knowledge that one's presence would aid in the commission of the crime, will not subject an accused to accomplice liability. To prove that one present is an aider, the State must establish that one is ready to assist in the commission of the crime. State v. Rutunno, 95 Wn.2d 931, 933, 631 P.2d 951 (1981). One does not aid and

abet unless, in some way, he associates himself with the undertaking, participates in it as in something he desires to bring about, and seeks by his action to make it succeed. State v. J-R Distribs., Inc., 82 Wn.2d 584, 593, 512 P.2d 1049 (1973), cert. denied, 418 U.S. 949, 94 S. Ct. 3217, 41 L. Ed. 2d 1166 (1974); State v. Gladstone, 78 Wn.2d 306, 312, 474 P.2d 274 (1970).

Here, Kim testified that she was working at Best Check Cashing when Tate returned with Bromley. Kim accepted a check from Bromley and cashed it after Bromley provided identification, filled out an application, and she received verification on the check. 13RP 41-43, 52. Tate testified that he went to Best Check Cashing with Bromley but had lunch next door while she cashed her check. Tate did not know, and had no reason to suspect, that Bromley's tax refund check was a forgery. 15RP 147-48.

The record is clearly devoid of any evidence that Tate aided and abetted Bromley in committing forgery and theft. Even when admitting the truth of the State's evidence, there is no evidence other than Tate's presence with Bromley at Best Check Cashing. Tate did not participate or assist Bromley when she had her check cashed. Physical presence does not constitute aiding and abetting. Consequently, reversal and dismissal is

required because there was insufficient evidence to find Tate guilty of forgery and theft on counts two and four under accomplice liability.

2. REVERSAL IS REQUIRED BECAUSE TATE ESTABLISHED AN AFFIRMATIVE DEFENSE TO THE THREE COUNTS OF BAIL JUMPING.

Reversal is required because Tate established an affirmative defense to the three counts of bail jumping by proving that uncontrollable circumstances prevented him from appearing in court.

RCW 9A.76.170 provides in relevant part:

(1) Any person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state, or of the requirement to report to a correctional facility for service of sentence, and who fails to appear or who fails to surrender for service of sentence as required is guilty of bail jumping.

(2) It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

RCW 9A.76.010 defines uncontrollable circumstances:

(4) "Uncontrollable circumstances" means an act of nature such as a flood, earthquake, or fire, or a medical condition that requires immediate hospitalization or treatment, or an act of man such as an automobile accident or threats of death, forcible sexual attack, or substantial bodily injury in the immediate future for which there is no

time for a complaint to the authorities and no time or opportunity to resort to the courts.

In State v. Fredrick, 123 Wn. App. 347, 349-50, 97 P.3d 47 (2004), Fredrick was charged with bail jumping for failing to appear at her rearraignment. At trial, two friends testified that Fredrick was too sick to appear for her hearing. Id. at 350-51. One friend described Fredrick as “clammy and, when she attempted to stand up, became sick and had to rush to the bathroom.” Id. at 350. The friend said that Fredrick was sick for at least two days. Id. This Court determined that Fredrick failed to meet the statutory definition of uncontrollable circumstances because “she presented no evidence that she was in the hospital because she was sick or any other similar barrier to her attendance.” Id. at 352.

Unlike in Fredrick, the barrier that prevented Tate from making his court appearances was his grave medical condition. Tate became mortified and incapacitated when faced with the prospect of appearing in court. Tate testified that he would lock himself in the bathroom for four or five hours. 15RP 150. His fear of going to court would cause him to “blank out.” 15RP 153. Due to his anxiety and panic attacks he suffered from sleep deprivation and severe fatigue. 15RP 154-55.

The record reflects that Tate was hospitalized after not sleeping for three or four days and he underwent a CAT scan at St. Joseph’s Hospital

for his condition. 15RP 159-60; Ex. 27. The CAT scan revealed, "Mild patchy low attenuation changes of cerebral white matter most notably in the right frontal and left parietal lobes. This is nonspecific, but is somewhat unusual for the patient's age."<sup>4</sup> 15RP 161.

Dr. Rostom Rivera diagnosed Tate with a severe form of generalized anxiety disorder and panic disorder with depression that debilitates him from doing even simple daily activities:

His conditions have not been controlled, although multiple medication combinations have been tried. I believe he has made every attempt to seek medical care for his conditions and was unable to cope with his panic attacks when faced with the challenge of appearing in court and was debilitated to the point of 'shutting down' or becoming incapacitated.

15RP 139; Ex. 22.

Dr. Rivera explained that generalized anxiety disorder is characterized by excessive, exaggerated anxiety, fear, and worry about everyday life and the anxiety so dominates the person's thinking that it interferes with daily functions. He described panic disorder as a serious

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<sup>4</sup> The frontal lobes are essential for planning and executing learned and purposeful behaviors; they are also the site of many inhibitory functions. There are at least 4 functionally distinct areas in the frontal lobes: the primary motor cortex in the precentral gyrus (the most posterior part) and the medial, orbital, and lateral frontal areas (termed the prefrontal areas). The medial frontal area is important in arousal and motivation. The orbital frontal area helps modulate social behaviors. The inferolateral frontal area is specialized for expressive language function; the dorsolateral frontal area manipulates very recently acquired information, a function called working memory. The Merck Manual of Diagnosis and Therapy, Eighteenth Edition, 2006, pg. 1783.

condition that is very sudden, appears unprovoked, is often disabling, and can occur at any time, "A panic attack is one of the most distressing conditions a person can experience." RP 138-39.

It is evident that Tate's panic and anxiety attacks prevented him from appearing in court. As Dr. Rivera explained, Tate became debilitated and incapacitated, consumed by his uncontrollable fear of going to court. Dr. Rivera's diagnosis establishes a medical condition that constitutes uncontrollable circumstances. The State provided no evidence to the contrary. Furthermore, the record reflects that Tate contacted his attorney as soon as he recovered to schedule a hearing to quash the bench warrants. Any delay in setting a hearing was the result of his inability to pay his attorney or his attorney's unavailability. RP 155, 179, 186.

To establish an affirmative defense to bail jumping, Tate must prove by a preponderance of evidence that uncontrollable circumstances prevented him from appearing in court. Reversal is required because the record substantiates that Tate met his burden of proof.

3. THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE, THE INFORMATION CHARGING TATE WITH FORGERY AND THEFT, BECAUSE THE INFORMATION CONTAINED INADMISSIBLE HEARSAY.

The trial court erred in admitting into evidence, the information charging Tate with forgery and theft, because the information contained inadmissible hearsay in violation of Tate's constitutional right to confrontation. The court's error requires reversal.

The Sixth Amendment to the U.S. Constitution and Article I, Sect. 22 of the Washington State Constitution guarantee a defendant the right to confrontation. State v. Connie J.C., 86 Wn. App. 453, 456, 937 P.2d 1116 (1997). A hearsay statement does not violate this right to confrontation if the declarant is unavailable and the statement bears adequate indicia of reliability. The right to confrontation does not require that a court determine independent indicia of reliability if a document is admissible under a "firmly rooted" hearsay exception. The public records exception is a "firmly rooted" exception to the hearsay rule. State v. Monson, 113 Wn.2d 833, 840-43, 784 P.2d 485 (1989).

In State v. James, 104 Wn. App. 25, 32, 15 P.3d 1041 (2000), this Court concluded that not all public documents meeting the literal requirements of the public records exception are admissible. This Court held that a prosecutor's motion and declaration for a bench warrant fails to

meet the requirements of the public records exception to hearsay. Id. at 33. This Court reasoned that: 1) the declaration contains the prosecutor's own legal conclusions based upon facts that the prosecutor asserts to be true; 2) the prosecutor made the declaration in his capacity as an advocate, not as a public official; and 3) the declaration contains the prosecutor's assertions of fact, which the State introduced for their truth in order to prove elements of the charged crime. Id. at 33-34.

Here, the State moved to admit into evidence the information charging Tate with two counts of forgery and two counts of theft. Over defense counsel's objection, the court admitted the information.<sup>5</sup> 14RP 93-95; Ex. 8. Like the motion and declaration in James, the information fails to meet the requirements of the public records exception to hearsay because it contained assertions of fact by the prosecutor, offered for their truth to prove that Tate committed forgery and theft. CP 1-5. Furthermore, the information, which was superseded by an amended information, had no relevance and was prejudicial because it potentially misled and confused the jury.

Reversal is required because the court erred in admitting the information into evidence, violating Tate's constitutional right to

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<sup>5</sup> The court also erroneously admitted three motions with declarations for a bench warrant but the error appears harmless because Tate acknowledged that he knew about the hearings. James, 104 Wn. App. at 34-35.

confrontation. The court's error was not harmless because there was insufficient evidence to find Tate guilty of the two counts of forgery and two counts of theft.<sup>6</sup>

D. CONCLUSION

For the reasons stated, this Court should reverse and dismiss Mr. Tate's convictions.

DATED this 23<sup>rd</sup> of February, 2007.

Respectfully submitted,

  
VALERIE MARUSHIGE  
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Attorney for Appellant

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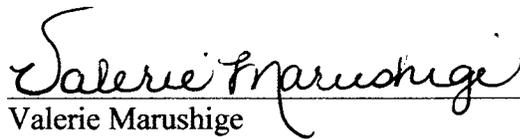
<sup>6</sup> “We find a constitutional error harmless only if convinced beyond a reasonable doubt any reasonable jury would reach the same result absent the error, and where the untainted evidence is so overwhelming it necessarily leads to a finding of guilt.” State v. Easter, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996)(citations omitted).

**DECLARATION OF SERVICE**

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached, Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402 and Clarence D. Tate, DOC# 854222, MCC/TRCC, P.O. Box 888, Monroe, Washington 98272-0888.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 23<sup>rd</sup> day of February, 2007 in Des Moines, Washington.



Valerie Marushige  
Attorney at Law  
WSBA No. 25851

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