35111-1-II

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

STATE OF WASHINGTON, Respondent, vs. **PATRICIA GLASER-GIBSON,** Appellant.	**NO. 35111-1-II** **MASON COUNTY SUPERIOR COURT NO.: 05-1-00475-4**

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR MASON COUNTY THE HONORABLE JAMES E. SAWYER, II., JUDGE

REPLY BRIEF OF APPELLANT

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COMES NOW, the Appellant, and submits the following reply to the Brief of the Respondent, which Brief was received by Appellant's attorneys on February 7, 2007.

I. REPLY TO RESPONDENT'S ARGUMENT THAT THE OFFERED EXHIBITS 11 & 12, AND CROSS EXAMINATION OF NANCY BARNETT THEREON IS NOT RELEVANT

Exhibit 11 is the Information charging Nancy Barnett with the crime of forgery. Exhibit 12 is Nancy Barnett's Statement On a Plea of Guilty to the charging information, Exhibit 11. The Statement of Nancy Barnett is inconsistent with her testimony at trial. The Statement of Nancy Barnett taken together with Exhibit 11 is likewise inconsistent with her testimony at the trial of Appellant, Patricia Glaser-Gibson.

Relevant evidence is evidence having any tendency to make the evidence of any fact that is of consequence in the determination of the action more probable or less

probable than it would be without the evidence. ER 401. All relevant evidence is admissible except as limited by constitutional requirements or as otherwise provided by statute, by the court rules, or by other rules or regulations applicable to the courts of the State of Washington. Evidence which is not relevant is not admissible. ER 402.

Exhibits 11 and 12, are relevant to the issue of the credibility of Nancy Barnett. The only witness who accused the Appellant of forging David Barnett's signature to his Will is Nancy Barnett. The facts disclosed by these exhibits clearly should be considered by the jury in evaluating testimony.

The right to confront and cross examine adverse witnesses is guaranteed by both the Federal and State Constitutions. State v. Darden, 145 Wn.2d. 612, 41 P.3d. 1189 (2002) at page 620. The primary and most important component is the right to conduct a meaningful cross examination of adverse witnesses. The purpose is to test the perception, memory and credibility of witnesses. Confrontation therefore helps assure the accuracy of the fact

finding process. Whenever the right to confront is denied, the ultimate integrity of fact finding process is called into question. As such, the right to confront must be zealously guarded. State v. Darden, supra at p. 620.

Since cross examination is at the heart of the confrontation clause, it follows that the confrontation right is also not absolute. The confrontation right and associated cross examination are limited by general considerations of relevance. State v. Darden, supra at p. 621.

The threshold to admit relevant evidence is very low. Even minimally relevant evidence is admissible. However, relevant evidence may be deemed inadmissible if the State can show a compelling interest to exclude prejudicial or inflammatory testimony. State v. Darden, supra at p. 621.

There is a three prong approach with respect to relevance for impeachment purposes. First, the evidence must be of at least minimal relevance. Second, if relevant, the burden is on the State to show the evidence is so prejudicial as to disrupt the fairness of the fact finding process at trial. Finally, the State's interest to preclude

prejudicial evidence must be balance by the Defendant's need for the information sought, and only if the State's interest outweighs the Defendant's need can otherwise relevant evidence be withheld. State v. Darden, supra at p. 622.

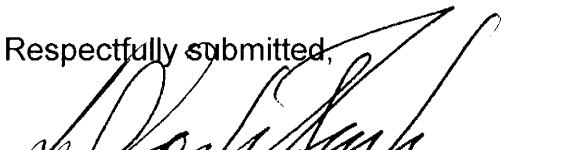
The admissibility of evidence offered to impeach the credibility of a witness is governed by ER 607 which provides "(t)he credibility of a witness may be attacked by any party, including the party calling him." State v. Lavaris, 106 Wn.2d. 340, 721 P.2d. 515 (1986) at p. 344.

The offered evidence is material and relevant to the credibility of Nancy Barnett. The State has not met its burden to show that the evidence is so prejudicial as to disrupt the fairness of the fact finding process at the Patricia Glaser-Gibson trial. Accordingly, the Court erred in excluding the evidence. The only remedy available to correct this error is to reverse the Judgment and the Verdict upon which it is based and direct that Appellant be granted a new trial.

II. CONCLUSION

The Order Denying Motion for New Trial and Arrest of Judgment, the Judgment and Sentence entered in these proceedings by the trial court must be reversed and the matter remanded to the Mason County Superior Court for further proceedings.

Respectfully submitted,



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STATE OF WASHINGTON
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STATE OF WASHINGTON, Respondent, vs. **PATRICIA GLASER-GIBSON,** Appellant.	**NO. 35111-1-II** **MASON COUNTY NO.: 05-1-00475-4** **AFFIDAVIT OF SERVICE OF REPLY BRIEF OF APPELLANT**

STATE OF WASHINGTON)
) ss.
County of Thurston)

Don Taylor, being first duly sworn on oath, deposes and says:

1. I am the attorney for Patricia Glaser-Gibson, Appellant, and as such, I am authorized to make this Affidavit.

2. On February 22, 2007, I caused to be enclosed in envelopes a copy of the Reply Brief of Appellant and a copy of this Affidavit, which envelope was addressed to the following named person:

//

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FRISTOE, TAYLOR & SCHULTZ, LTD., P.S.
LAWYERS
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Olympia, WA 98501
Telephone (360) 357-5566

Rebecca Lynn Jones-Garcia
Deputy Prosecuting Attorney
Mason County Prosecuting Attorneys Office
P.O. Box 639
Shelton, WA 98584

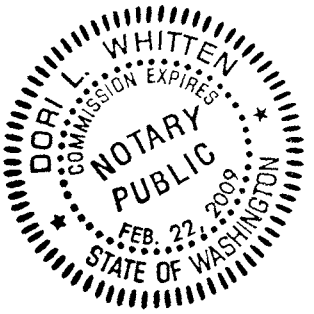
3. That on said date, I caused Rebecca Lynn Jones-Garcia to be served by depositing said envelope with the documents enclosed therein in the United States Post Office in Olympia, Washington, first class postage pre-paid.

4. I am informed, believe and therefore state that there is regular mail service between the Olympia Post Office and the address above stated.

DATED: February 22, 2007.

Don W. Taylor

SUBSCRIBED AND SWORN TO before me on February 22, 2007, by Don W. Taylor.



NOTARY PUBLIC in and for the State of Washington residing at Tacoma.
My commission expires 2-22-09.

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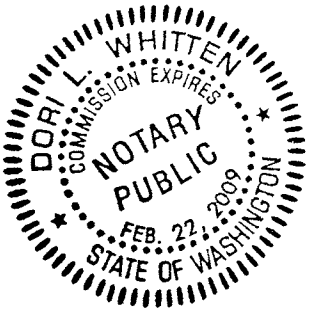

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