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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

CONSOL. NO. 38034-0-II
No. 38104-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Christopher Olsen,

Appellant.

Thurston County Superior Court Cause No. 07-1-01363-0

The Honorable Judge Christine A. Pomeroy

Appellant's Supplemental Brief

Manek R. Mistry

Jodi R. Backlund

Attorneys for Appellant

BACKLUND & MISTRY

203 East Fourth Avenue, Suite 404

Olympia, WA 98501

(360) 352-5316

FAX: (866) 499-7475

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A. The trial court violated Mr. Olsen’s right to open and public trial proceedings when it held a hearing in response to a jury question in chambers. Sublett Opening Brief, pp. 7-19. 2

B. The trial court violated Mr. Olsen’s right to be present when it held a hearing in response to a jury question without him. Sublett Opening Brief, pp. 7-19. 2

C. The trial court failed to correct an ambiguity in the accomplice liability instruction where the jury indicated that the instruction given was susceptible of two constructions and where one of those constructions misstated the law and significantly lowered the state’s burden of proof. Sublett Opening Brief, pp. 7-19. 2

D. Prosecutorial misconduct merits a new trial, especially when considered cumulatively. Sublett Opening Brief, pp. 21-24. 2

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SUPPLEMENTAL ASSIGNMENTS OF ERROR

Pursuant to RAP 10.1(g), Mr. Olsen adopts and incorporates Assignments of Error B, C, D, and F set forth in Mr. Sublett's Opening Brief.

SUPPLEMENTAL STATEMENT OF ISSUES

Pursuant to RAP 10.1(g), Mr. Olsen adopts and incorporates Issues A, B, C, and E set forth in Mr. Sublett's Opening Brief.

SUPPLEMENTAL ARGUMENT

Pursuant to RAP 10.1(g), Mr. Olsen adopts and incorporates the following arguments from Mr. Sublett's Opening Brief:

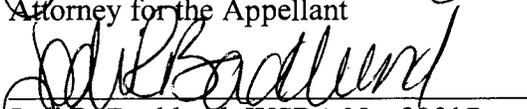
- A. The trial court violated Mr. Olsen's right to open and public trial proceedings when it held a hearing in response to a jury question in chambers. Sublett Opening Brief, pp. 7-19.
- B. The trial court violated Mr. Olsen's right to be present when it held a hearing in response to a jury question without him. Sublett Opening Brief, pp. 7-19.
- C. The trial court failed to correct an ambiguity in the accomplice liability instruction where the jury indicated that the instruction given was susceptible of two constructions and where one of those constructions misstated the law and significantly lowered the state's burden of proof. Sublett Opening Brief, pp. 7-19.
- D. Prosecutorial misconduct merits a new trial, especially when considered cumulatively. Sublett Opening Brief, pp. 21-24.

Respectfully submitted on April 20, 2009.

BACKLUND AND MISTRY



Mahek R. Mistry, WSBA No. 22922
Attorney for the Appellant



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

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CERTIFICATE OF SERVICE

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I certify that I mailed a copy of Appellant's Opening Brief to:

STATE OF WASHINGTON
BY _____
DEPUTY

Christopher Olsen, DOC #831898
Washington State Penitentiary
1313 N 13th Ave.
Walla Walla, WA 99362

and to:

Thurston County Prosecuting Attorney
2000 Lakeridge Dr. S.W., Building 2
Olympia, WA 98502

I further certify that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All mailed postage prepaid, on April 20, 2009.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on April 20, 2009.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant