COURT OF APPEALS
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STATE OF WASHINGTON
BY DEPUTY

NO. 38517-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

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STATE OF WASHINGTON,

Respondent,

vs.

DELBERT ELLISON GOBLE,

Appellant.

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# BRIEF OF APPELLANT

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ORIGINAL

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## *ASSIGNMENT OF ERROR*

### *Assignment of Error*

1. The trial court violated the defendant's right to a jury trial under Washington Constitution, Article 1, § 21, and United States Constitution, Sixth Amendment, when it accepted a jury waiver that the defendant did not knowingly, intelligently, and voluntarily enter. RP 1-8; CP 10.

2. The trial court's refusal to allow the defendant to impeach a state's witness with prior inconsistent statements violated the defendant's right to confrontation under Washington Constitution, Article 1, § 22, and under United States Constitution, Sixth Amendment. RP 28-29.

### *Issues Pertaining to Assignment of Error*

1. Does a trial court violate a defendant's right to a jury trial under Washington Constitution, Article 1, § 21, and United States Constitution, Sixth Amendment, if it accepts a jury waiver that the defendant did not knowingly, intelligently, and voluntarily enter?

2. Does a trial court's refusal to allow a defendant to impeach a state's witness with prior inconsistent statements concerning relevant issues before the court violate that defendant's right to confrontation under Washington Constitution, Article 1, § 22, and under United States Constitution, Sixth Amendment?

## STATEMENT OF THE CASE

### *Factual History*

Jessica Pakar and her husband Justin have lived for the past 6 years at 129 Baugh Road in Randle, Washington. RP 17-18.[1] Their home has a main floor with an attached garage and a basement. 2-4. The setting is rural, with an adjacent horse pasture with a path that runs through it. *Id.* The nearest neighbors are a couple of hundred yards away. *Id.* The Pakars garage is accessible from the kitchen through a door with a large window. RP 5. They routinely leave the large garage doors open to the outside. RP 13-14. As with most people, the Pakars use their garage to store numerous items, such as Mr. Pakar's tools. RP 6.

During the very early morning hours of March 21, 2006, Jessica Pakar was in bed sleeping and Justin Pakar was at work. RP 17-18. At about 1:30 in the morning, Jessica awoke to the sound of her dog barking and the sound of someone moving things about in the garage. *Id.* Upon hearing this, she grabbed a handgun and walked into the kitchen to look through the window into the garage. *Id.* As she got to the window, she saw a man holding one of her husband's saws run out of the garage. RP 19-21. She could not see who

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[1]The record in this case includes two volumes of verbatim reports. The first is the report of the hearing held on July 10, 2008, referred to herein as "RP 7/10/08 [#]." The second is the report of the bench trial held on October 23, 2008, referred to herein as "RP [#]."

it was. *Id.* As the man ran out of the garage, Jessica ran out of the house to the front of the garage, where she confronted the man at a distance of about 15 yards, demanding to know what he was doing. *Id.* Jessica later stated that the man was wearing a leather coat. RP 31-32.

According to Jessica, at the point she confronted the man in the driveway, she recognized him as the defendant Delbert Goble. RP 19-21. Although she had not seen him for a number of years, when she was younger she had gone to school with one of his children and had been in his home on a number of occasions. *Id.* When she asked the person what he was doing, he responded that he was chasing someone out of the garage. RP 34. In fact, Jessica did not see any other person in the area. *Id.* Within a few seconds, the man ran off as Jessica fired one shot from her handgun into the air. RP 23-24. She then returned to the house and called 911 and her husband. *id.*

Within about 10 minutes, Deputy Gabrial Frase of the Lewis County Sheriff's office responded to the Pakar's residence. RP 36-38. As part of his investigation, Deputy Frase used his flashlight to walk down the path in the horse pasture. RP 39. When he did, he found a chainsaw sitting next to some bushes just off the path. *Id.* The chainsaw belonged to Mr. Pakar, and had been stored in their garage. RP 6-8. Also as part of his investigation, Deputy Frase took two taped statements from Jessica Pakar. RP 45-46. He then prepared a photo montage with the defendant's picture in it. RP 40-42.

When he showed the montage to Jessica Pakar, she identified the defendant as the person she had confronted outside her garage during the early morning of the 21st. RP 42-44. According to both Deputy Frase and Jessica Pakar, when the deputy first responded to the scene, Jessica had identified the defendant as the intruder, although she did not do so in either of her taped statements. RP 31-32, 45-46.

***Procedural History***

By information filed October 30, 2007, the Lewis County Prosecutor charged the defendant Delbert Ellison Goble with one count of residential burglary and one count of theft in the second degree, alleging that he had entered the Jessica and Justin Pakar's garage on March 21, 2006, and stolen a chainsaw with a value over $250.00. CP 1-3. The case was continued a number of times, and on July 10, 2008, the parties appeared before the court, at which time the defendant filed a written waiver of jury trial. CP 6, 8, 10, 13. This wavier stated as follows:

> I, Delbert Goble, the above-named Defendant, having been advised of my constitutional right to a jury trial, do hereby waive, give up, and relinquish my right to a jury trial in the above-entitled matter.

CP 10.

The following gives the court's entire colloquy with the defendant concerning the waiver of his right to a jury trial:

MR. MITCHELL: This is Delbert Goble, Your Honor, 07-1-00746-1. Mr. Goble is present, not in custody, represented by counsel, Mr. J.P. Enbody.

Parties are confirming.

MR. ENBODY: That's correct, Your Honor. I've previously spoken with Mr. Werner, also talked with Mr. Goble about this case. And he has signed in my presence a waiver of jury trial. We discussed the nuance of such and perils and this kind of thing. We're prepared to go on with a bench trial. I don't know whether it's been preassigned or not.

THE COURT: Everything's preassigned to Department 3 next week since he's the only judge.

MR. ENBODY: All right.

THE COURT: All right. Mr. Goble, do you agree with what your attorney just told me?

MR. GOBLE: Yes.

THE COURT: You understand by waiving your right to jury, a judge will decide this on his own?

MR. GOBLE: Yeah.

THE COURT: All right. I will approve the jury waiver. It's going to be subject to --

MR. ENBODY: I understand.

THE COURT: -- Judge Brosey's approval. And I believe he's done with his hearing so you can get that approved today.

RP 2-3.

Although the court alludes to the parties appearing before Judge Brosey later that day, there is nothing in the record before the trial court that

indicates that this ever happened on that day or on any other day. CP 1-36; SCP 1-4.

On October 23, 2008, the parties appeared before the court for a trial to the bench. RP 1. During the trial, the state called three witnesses: Justin Pakar, Jessica Pakar, and Deputy Gabrial Frase. RP 1, 17, 36. They testified to the facts contained in the preceding factual history. *See* Factual History. During Ms Pakar's testimony, the defense attempted to cross-examine her with the fact that she had submitted to an interview with a defense investigator and that she had given statements inconsistent with her testimony on direct. RP 28-29. Specifically, the defense attempted to elicit the fact that she had told the investigator the intruder did not have a beard. *Id.* However, upon objection by the state, the court refused to allow the defense to confront Ms Pakar with her prior inconsistent statements because the defense had not endorsed the investigator as a witness. *Id.* This exchange went as follows:

> Q. Did you have a discussion with Ms Howell about Mr. Goble and a beard?
>
> MR. WERNER: I'm going to object to this testimony.
>
> THE COURT: What is the basis for what your – state your objection and the basis.
>
> MR. WERNER: Well, I'm objecting to the testimony. This is information that has not been disclosed to the state.
>
> THE COURT: All right.

MR. WERNER: I don't know anything about this conversation, who Ms Howell was, why she contacted Ms Pakar.

THE COURT: She's a defense investigator, that much I can tell you. I know that's the case because I used her as well back in my days. So what's the objection?

MR. WERNER: Well, for one, we don't have any record of the interview, we don't know anything that happened in the interview. The state doesn't – I think this is unfair surprise, it is a discovery violation. If there were notes taken of the interview, that should have been provided to me prior to trial.

MR. ENBODY: I haven't introduced that yet.

THE COURT: Aren't you supposed to provide the statement of the prospective witnesses?

MR. ENBODY: She's not a prospective witness.

THE COURT: She is, though.

MR. ENBODY: She is, but Ms Howell is not. I'm just asking her questions about that time frame.

THE COURT: Why wasn't this conversation that she had – if you're going to be asking this witness about a conversation she had with your investigator, why hasn't that transcript been disclosed to the state?

MR. ENBODY: Didn't intend to ask Paula Howell to be a witness, that would be by answer.

THE COURT: I'm going to sustain the objection.

MR. ENBODY: Okay.

RP 28-29.

The discovery order to which the court alluded was entered as part of

the omnibus order filed December 10, 2007. CP 4-5. Paragraph 4 of that order stated the following:

> 4. MUTUAL DISCOVERY DEADLINE: 10 days before trial. Both parties shall complete discovery, including names, and all required information pertaining to witnesses (including conviction data), by this deadline date.

CP 5.

After the state rested its case, the defendant and his wife took the stand for the defense. RP 58, 63. The defendant's wife testified that during the time period in question, the defendant had a very large, full red beard, and that he had never owned a leather coat. RP 58-62. The defendant testified that (1) he was not the person who had been at the Pakar's house, (2) that during this time period, he had a bushy, red beard, and (3) that he had never owned a leather coat. RP 63-71. After the defendant's testimony, the defense closed its case and both parties presented closing argument. 72-83. The court then rendered its verdict, finding the defendant guilty of residential burglary, and guilty of the lesser-included offense of third degree theft. RP 83-86. The court later sentenced the defendant within the standard range, after which the defendant filed timely notice of appeal. CP 22, 28, 29-36.

## ARGUMENT

**I. THE TRIAL COURT VIOLATED THE DEFENDANT'S RIGHT TO A JURY TRIAL UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 21, AND UNITED STATES CONSTITUTION, SIXTH AMENDMENT, WHEN IT ACCEPTED A JURY WAIVER THAT THE DEFENDANT DID NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY ENTER.**

Under the United States Constitution, Sixth Amendment every person charged with an offense that could result in over six months imprisonment is entitled to a trial by jury. *Cheff v. Schnackenberg*, 384 U.S. 373, 86 S.Ct. 1523, 16 L.Ed.2d 629 (1966). By contrast, Washington Constitution, Article 1, § 21, affords the citizens of this state the right to trial by jury for any offense that is defined as a "crime," conviction of which could result in any imprisonment. *Pasco v. Mace*, 98 Wn.2d 87, 653 P.2d 618 (1982). Since all persons charged with a crime have a fundamental right to trial by jury, the waiver of this right may only be sustained if "knowingly, intelligently and voluntarily made." *State v. Bugai*, 30 Wn.App. 156, 157, 632 P.2d 917 (1981).

The waiver of the right to jury trial must either be made in writing or made orally on the record. *State v. Wicke*, 91 Wn.2d 638, 591 P.2d 452 (1979). If the defendant challenges the validity of the jury waiver on appeal, the State bears the burden of proving that the waiver was knowingly, intelligently and voluntarily made. *State v. Donahue*, 76 Wn.App. 695, 697,

887 P.2d 485 (1995). Because it implicates the waiver of an important constitutional right, the appellate court reviews the waiver de novo. *State v. Vasquez*, 109 Wn.App. 310, 34 P.3d 1255 (2001). Finally, in examining an oral waiver of the right to jury made in violation of the requirement under CrR 6.1, "every reasonable presumption should be indulged against the waiver of such a right, absent an adequate record to the contrary." *State v. Wicke, supra.*

For example, in *State v. Williams*, 23 Wn.App. 694, 598 P.2d 731 (1979) the defendant's were convicted in a superior court bench trial de novo of illegally taking shellfish. The record contained no written waiver of jury trial and no colloquy between the defendant and the court. The defendants thereafter appealed, arguing that the state had failed to meet its burden of showing that they had knowingly, intelligently, and voluntarily waived their rights to a jury trial. The Court of Appeals agreed, holding as follows:

> *State v. Jones*, 17 Wn.App. 261, 562 P.2d 283 (1977), held that a criminal defendant's right to trial by jury is not waived unless a written waiver is filed by defendant himself. *In re Reese*, 20 Wn.App. 441, 580 P.2d 272 (1978), softened the rule in holding that an express and open waiver of jury trial in open court and appearing in the record constitutes substantial compliance with CrR 6.1(a). This interpretation was upheld by our Supreme Court following a consolidated appeal in *State v. Wicke, supra*. Under the present state of the law, where there is no written waiver of a jury trial, substantial compliance with CrR 6.1(a) requires some colloquy between the court and the defendant personally. The absence of such a colloquy in the record of the present case dictates reversal of the convictions.

*State v. Williams,* 23 Wn.App. at 697-698.

In a recent case, *State v. Borboa*, 124 Wn.App. 779, 102 P.3d 183 (2004), the defendant appealed his exceptional sentence, arguing that under the decision in *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), the trial court had denied him his right to jury trial when it imposed a sentence in excess of the standard range based upon judicially determined aggravating facts. In this case, a jury convicted the defendant of first degree kidnaping, second degree assault of a child, and first degree rape of a child. The jury had also returned a special finding that the defendant had committed the kidnaping with sexual motivation. Under RCW 9.94A.712, the court imposed sentences of life in prison, and then declared a minium mandatory term in excess of the applicable range based upon deliberate cruelty and particular vulnerability because of age.

While the defendant's case was on appeal, the Supreme Court issued the decision in *Blakely* and the defendant then argued that the minimum mandatory sentence in excess of the applicable range violated his right to jury trial. The state responded by arguing that even if *Blakely* applied, the defendant had waived his right to a jury determination on the aggravating factors when he admitted one of the factors in his initial brief. However, the Court of Appeals rejected this argument, holding as follows:

Although a defendant can waive his Sixth Amendment right to jury

> trial, he or she must do so knowingly, voluntarily, and intelligently. Borboa was tried by a jury and sentenced before Blakely was decided. He did not know of or agree to forgo his right to have a jury find the facts needed to support a sentence above the standard range. Thus, he did not knowingly, voluntarily, or intelligently waive his Sixth Amendment right to have a jury find such facts.

*State v. Borboa*, 124 Wn.App. at 792 (footnotes omitted).

In the case at bar, the defendant was at least aware that he did have the right to trial by jury, since the written waiver so states. However, both the shortness of the colloquy and the failure of the trial court to adequately inform the defendant of the nature of the right to jury trial under the Washington Constitution show that the waiver in this case was no more effective than that in *Borboa*. First, while the colloquy does reveal that the defendant spoke with his attorney about the tactical advisability of a bench trial over a jury trial, it does not reveal that the defendant's attorney informed him of the rights that a defendant waives when giving up a jury trial as that right is protected under the Washington Constitution.

Second, the colloquy in this case does not reveal whether or not the defendant understood that under the Washington constitution, there had to be complete jury unanimity in order to enter a guilty verdict. This state constitutional right varies significantly from the United States Constitution and many other state constitutions, which do not require complete jury unanimity in order to sustain a guilty verdict. *See State v. Gimarelli*, 105

Wn.App. 370, 20 P.3d 430 (2001); *State v. Klimes*, 117 Wn.App. 758, 73 P.3d 416 (2003). Absent advise on this important component of the right to jury trial under Washington Constitution, Article 1, § 21, the state in this case cannot meet it's burden of proving that the jury waiver was knowingly, intelligently, and voluntarily made. As a result, this court should reverse the conviction and remand for a new trial before a jury.

**II. THE TRIAL COURT'S REFUSAL TO ALLOW THE DEFENDANT TO IMPEACH A STATE'S WITNESS WITH PRIOR INCONSISTENT STATEMENTS VIOLATED THE DEFENDANT'S RIGHT TO CONFRONTATION UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 22, AND UNITED STATES CONSTITUTION, SIXTH AMENDMENT.**

The confrontation clause of the Sixth Amendment and under Washington Constitution, Article 1, § 22, guarantees a defendant the opportunity to confront the witnesses against him through cross-examination. *Delaware v. Van Arsdall*, 475 U.S. 673, 678, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986); *State v. Hudlow*, 99 Wn.2d 1, 15-16, 659 P.2d 514 (1983). This includes the right to impeach a witness with prior inconsistent statements. *Davis v. Alaska*, 415 U.S. 308, 316-18, 94 S.Ct. 1105, 1110-11, 39 L.Ed.2d 347 (1974); *State v. Dickenson*, 48 Wn.App. 457, 469, 740 P.2d 312 (1987). Thus, any error in excluding evidence is presumed prejudicial and requires reversal unless no rational person could have a reasonable doubt that the defendant would have been convicted even if the error had not taken place.

*Davis*, 415 U.S. at 318; *State v. Fitzsimmons*, 93 Wn.2d 436, 452, 610 P.2d 893, 18 A.L.R.4th 690 (1980); Dickenson, 48 Wn.App. at 470.

Although the right to confront witnesses is constitutional, it is subject to two limitations: (1) the offered evidence must be relevant; and (2) the defendant's right to introduce relevant evidence must be balanced against the State's interest in precluding evidence so prejudicial as to disrupt the fairness of the fact-finding process. *State v. McDaniel*, 83 Wn.App. 179, 184-85, 920 P.2d 1218 (1996). However, any attempt to limit meaningful cross-examination, however, must be justified by a compelling state interest. *State v. Hudlow*, 99 Wash.2d 1, 15-16, 659 P.2d 514 (1983).

For example, in *State v. Darden*, 145 Wn.2d 612, 41 P.3d 1189 (2002). *supra*, the defendant was charged with possession of a controlled substance with intent to deliver. During trial, the state called a police officer who testified that he had stationed himself in a specific surveillance location and that from this position he saw the defendant participate in a number of suspected drug transactions on the street. He then identified the defendant to other officers who made the arrest. After the arrest, the police strip searched the defendant and uncovered a bindle of cocaine on the defendant's person. At trial the surveillance officer testified that he had observed the defendant for over an hour and had seen him give people bindles similar to the one uncovered during his arrest.

On cross-examination the defense asked the officer to identify his exact position in order to show that the officer could not have seen what he said he did. However, the state objected that this information was "secret." Based upon this claim, the trial court refused to order the officer to answer the defendant's questions concerning the officer's exact position. Following conviction the defendant appealed, arguing that the trial court's ruling had violated his right to confrontation under Washington Constitution, Article 1, § 22 and United States Constitution, Sixth Amendment. In addressing these arguments the court first noted that threshold for what is or is not relevant is very low. The court observed:

> 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 evidence.

*State v. Darden*, 145 Wn.2d at 621 (footnotes and citations omitted).

In addressing the issue of relevance, the court noted that the defendant's mere possession of a small amount of cocaine was not sufficient to support a conviction for possession with intent. Thus, the officer's claimed observations were critical in either sustaining or refuting a charge of possession with intent. As such, what the officer could or could not see from his particular vantage point was relevant in determining the credibility of the officer's claimed observations. The court held:

> Here the fact of consequence was Sgt. Vandergiessen's ability to observe and identify Darden as the person who allegedly conducted three transactions. Since he was the only one of the three prosecution witnesses who saw the alleged transactions, he was a crucial witness. It was Sgt. Vandergiessen's observations that gave law enforcement probable cause to arrest Darden. It was his description of Darden that enabled the arrest team to separate Darden from the other person wearing the identical jacket at the bus shelter. Lastly, it was his testimony that enabled the prosecution to convict Darden of possession with the intent to deliver rather than the lesser offense of possession.

*State v. Darden*, 145 Wn.2d at 624.

Finding the evidence relevant, the court then addressed the issue of prejudice. Based upon the fact that the one officer's observation was the only evidence of intent to deliver, the court found that the confrontation violation was not harmless. The court stated:

> Nor was this error harmless or otherwise within the trial court's discretion. The State's entire case for possession with intent to deliver hinged on Sgt. Vandergiesse's testimony.

*State v. Darden*, 145 Wn.2d at 626.

In the case at bar, there should be no question that any prior inconsistent statements Jessica Pakar made concerning the identity of the person who burglarized her house would be highly relevant. The issue in this case was not the validity of her claim that a crime had occurred. Rather, the sole issue was the identity of the perpetrator. Thus, if Jessica Pakar had told the defense investigator that the perpetrator was clean shaven, then this evidence would be highly relevant to rebut her claim at trial that this person

was the defendant, as the defendant had presented evidence that he had a large, distinctive beard during the time surrounding the burglary. Thus, there was no basis to exclude the defendant's questions as irrelevant.

In this case, the court attempted to justify the exclusion of cross-examination of Jessica Pakar on her prior inconsistent statement to the defense investigator on the holding that the defendant had failed to endorse the defense investigatory as a witness and had failed to provide a transcript of the interview to the prosecution. The problem with this holding is twofold. First, the defense did not endorse the investigator as a witness because it did not intend to call her to testify. Thus, the failure to endorse this person as a witness was not a discovery violation. Rather, the defense was relying upon its belief that Jessica Pakar would freely admit the prior inconsistent statements she made. In addition, there was no evidence there ever was a transcript or report of the interview. Thus, there was no evidence of a discovery violation.

Second, even had the defense intended to call the investigator as a witness, that witness would have been called solely to rebut any denials by Jessica Pakar that she had made certain statements to the investigator. Rebuttal witnesses need not be listed. *State v. Stambach*, 76 Wn.2d 298, 456 P.2d 362 (1969). Had the state needed time to interview the witness, it was well within the court's discretion to grant a continuance to allow the state this

opportunity. In addition, had Jessica Pakar denied making certain statements to the defense investigator, the court might have been able to justify exclusion of the defense investigator as a witness. However, what the court could not do without offending the defendant's constitutional right to confrontation, was preclude the defendant from asking Jessica Pakar whether or not she had made a prior inconsistent statement concerning the correct identification of the person who burglarized her garage.

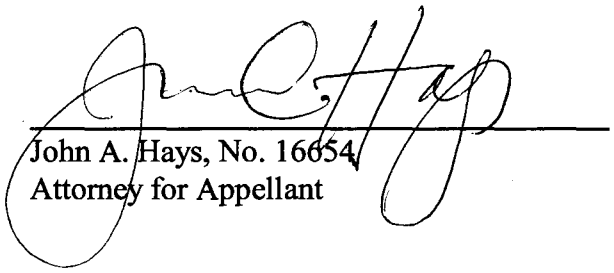
In addition, in this case this error caused significant prejudice. Although both the police officer and Ms Pakar claimed at trial that Ms Pakar had immediately identified the defendant as the person who committed the crime, the recording of the officers two interviews with Ms Pakar brings that testimony into question. The reason is that on the taped statements the officer asks questions concerning the identity of the perpetrator, and Ms Pakar fails to identify the defendant. Seen in the light of circumstances in which Ms Pakar saw the perpetrator, as well as in the light of the Defendant and his wife's testimony concerning his appearance, there is a substantial likelihood that the admission of the impeachment evidence would probably have resulted in a judgment of acquittal. As a result, the defendant is entitled to a new trial under either standard of review applicable.

## CONCLUSION

The defendant is entitled to a new trial based upon (1) the trial court's failure to confirm that the defendant knowingly relinquished his right to a jury trial, and (2) based upon the trial court's erroneous and prejudicial action inhibiting the defendant's constitutional right to confrontation.

DATED this _____ day of April, 2009.

Respectfully submitted,



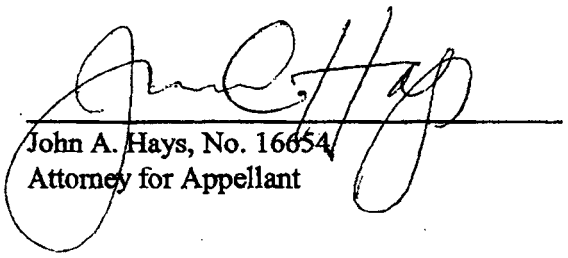
John A. Hays, No. 16654
Attorney for Appellant

## CONCLUSION

The defendant is entitled to a new trial based upon (1) the trial court's failure to confirm that the defendant knowingly relinquished his right to a jury trial, and (2) based upon the trial court's erroneous and prejudicial action inhibiting the defendant's constitutional right to confrontation.

DATED this 20TH day of April, 2009.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

## APPENDIX

### WASHINGTON CONSTITUTION
### ARTICLE 1, § 21

The right to trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases where the consent of the parties interested is given thereto.

### WASHINGTON CONSTITUTION
### ARTICLE 1, § 22

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

### UNITED STATES CONSTITUTION,
### SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

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DIVISION II

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

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| **STATE OF WASHINGTON,**<br>**Respondent,**<br><br>**vs.**<br><br>**DELBERT E. GOBLE,**<br>**Appellant.** | **LEWIS CO. NO. 07-1-00746-1**<br>**APPEAL NO: 38517-1-II**<br><br>**AFFIRMATION OF SERVICE** |

**STATE OF WASHINGTON** )
) **vs.**
**COUNTY OF LEWIS** )

**CATHY RUSSELL,** states the following under penalty of perjury under the laws of Washington State. That at all times herein mentioned I was and now am a citizen of the United States and resident of the State of Washington, over the age of eighteen and competent to be a witness and make service herein.

On **APRIL 20TH , 2009** , I personally placed in the mail the following documents

1. BRIEF OF APPELLANT
2. AFFIDAVIT OF MAILING
3. SUPPLEMENTAL DESIGNATION OF CLERK'S PAPERS

to the following:

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Dated this 20TH day of APRIL, 2009 at LONGVIEW, Washington.

Cathy Russell
CATHY RUSSELL
LEGAL ASSISTANT TO JOHN A. HAYS



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