

NO. 49851-1-II

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

---

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER THOMAS FULLER,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF  
KITSAP COUNTY, STATE OF WASHINGTON  
Superior Court No. 16-1-00969-5

---

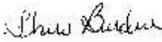
BRIEF OF RESPONDENT

---

TINA R. ROBINSON  
Prosecuting Attorney

JOHN L. CROSS  
Deputy Prosecuting Attorney

614 Division Street  
Port Orchard, WA 98366  
(360) 337-7174

<b>SERVICE</b>	Catherine E. Glinski Po Box 761 Manchester, Wa 98353 Email: cathyglinski@wavecable.com	This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, <i>or, if an email address appears to the left, electronically.</i> I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.  DATED July 24, 2017, Port Orchard, WA  <b>Original e-filed at the Court of Appeals; Copy to counsel listed at left.</b> <b>Office ID #91103 kcpa@co.kitsap.wa.us</b>
----------------	---	--

**TABLE OF CONTENTS**

I. COUNTERSTATEMENT OF THE ISSUES.....1

II. STATEMENT OF THE CASE.....1

    A. PROCEDURAL HISTORY.....1

    B. FACTS .....2

III. ARGUMENT .....6

    A. SINCE FULLER DID NOT REMAIN SILENT WHEN ARRESTED, NEVER INVOKED HIS RIGHT TO REMAIN SILENT, AND TESTIFIED AT TRIAL, THERE IS NOT FIFTH AMENDMENT VIOLATION AND THE INDIRECT REMARK ABOUT NOT ANSWERING QUESTIONS WAS HARMLESS.....6

    B. THE FORFEITURE PROVISION OF THE JUDGMENT AND SENTENCE RAISED NO ACTUAL CONTROVERSEY AND FULLER WAS NOT A PERSON AGGREIVED SINCE THERE IS NO PROOF THAT ANY OF HIS PROPERTY WAS FORFEITED.....17

IV. CONCLUSION.....19

## TABLE OF AUTHORITIES

### CASES

<i>Doe v. United States</i> , 487 U.S. 201, 108 S.Ct. 2341, 101 L.Ed.2d 184 (1988).....	12
<i>State v. Earls</i> , 116 Wash.2d 364, 805 P.2d 211 (1991).....	6
<i>Griffin v. Callifornia</i> , 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965).....	8
<i>State v. Barry</i> , 183 Wn.2d 297, 352 P.3d 161 (2015).....	7, 11, 12, 16
<i>State v. Lewis</i> , 130 Wn.2d 700, 927 P.2d 235 (1996).....	7
<i>State v. Pottorff</i> , 138 Wn. App. 343, 156 P.3d 955 (2007).....	7
<i>State v. Romero</i> , 113 Wn.App. 779, 54 P.3d 1255 (2002).....	7, 8, 13, 14
<i>State v. Taylor</i> , 150 Wn.2d 599, 80 P.3d 605 (2003).....	17, 18
<i>State v. Young</i> , 89 Wn.2d 613, 574 P.2d 1171 (1978).....	10
<i>United States v. Fairchild</i> , 505 F.2d 1378 (5th Cir. 1975) .....	9
<i>United States v. Shannon</i> , 766 F.3d 346 (3rd Cir. 2014).....	9

## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Whether the state violated Fuller's right to remain silent when a state's witness testified that he, Fuller, would not answer any questions ?

2. Whether Fuller is a person aggrieved by a forfeiture provision in the judgment and sentence that was not used to forfeit any of Fuller's property?

## **II. STATEMENT OF THE CASE**

### **A. PROCEDURAL HISTORY**

Christopher Thomas Fuller was charged by information filed in Kitsap County Superior Court with theft of a motor vehicle. CP 1. A first amended information later added a second count of possession of stolen property. CP 9.

A jury trial followed unremarkable pretrial procedures. The jury found Fuller guilty of both counts. CP 65.

Fuller received a low-end standard range sentence. CP 67. The judgment and sentence included a provision regarding forfeiture of property. CP 72. That provision ordered forfeit all seized property referenced in the discovery issued in the matter. Id.

Fuller timely appealed the convictions. CP 77.

## **B. FACTS**

Very early one morning, Theodore Borchers ran into an old acquaintance at a Starbucks store. IIRP 116. He and his acquaintance had met 14 or 15 years earlier in school. IIRP 115-16. Fuller asked Borchers to help him on a roofing job later that day. Id.

Awaiting the time for the job, the two men drove around Port Orchard in Borchers's 2016 Volkswagon Jetta. IIRP 117; 120. They drove to a Walmart, visited Fuller's friend, and went downtown. IIRP 117. At some point, Borchers got a call from a friend, Bradley Fulton, who needed his car jumped. IIR 117. Borchers drove to a 7/11 store and accomplished the starting of Fulton's car. IIRP 118. Fuller never got out of the car during the jumping process. IIRP 120.

Mr. Borchers saw Fuller slide over from the passenger seat to the driver's seat. IIRP 120. Fuller pulled the car over to some nearby gas pumps and Mr. Borchers thought Fuller was going to put gas in the car. IIRP 121. Mr. Borchers went to the car and placed the jumper cables back in the trunk. IIRP 121.

At that point, Fuller drove away with the car. IIRP 121. Fuller drove into the parking lot of an AM/PM store across the street. Id. Mr. Borchers had no idea why Fuller had driven over to the AM/PM. IIRP 122. Mr. Borchers and Mr. Fulton tried to follow but the car was gone.

Id. A store security video showed all of the actions that occurred at the scene of the car jumping. IIRP 129-30.

Mr. Borchers testified that he never gave Fuller permission to drive the car; he never asked Fuller to get gas; he had no agreement with Fuller to allow Fuller to run an errand in the car; he had no plan to remain there with Mr. Fulton. IIRP 123. Further, a fact that becomes more important later, Mr. Borchers never gave Fuller the key fob that starts the car, which Mr. Borchers wears on a lanyard around his neck. IIRP 124.

Failing in following his car and not knowing how to contact Fuller or where Fuller lived, Mr. Borchers waited. IIRP 126-27. Eventually, Mr. Borchers got word that his car had been found at a Shell station some miles away. IIRP 127. He went there and discovered that Fuller was gone and that numerous items had been taken from his car. IIRP 131. Among the items taken was an active debit card. IIRP 134, 137. Also taken were a hardhat, a florescent orange construction vest, and a golf umbrella. IIRP 132.

Turns out that Fuller had pulled into the Shell to get gas but once the car was stopped it could not be started without the key fob which was still on the lanyard around Mr. Borchers's neck. IIRP 124. Fuller asked another customer getting gas if he, Fuller, could use the man's mobile phone, saying he needed the Bluetooth function therefrom in order to start the car. IIRP 151-52. Fuller told the other customer that it was his

girlfriend's car. Id. Fuller was described by the other customer as fidgety and worried. IIRP 154.

After looking around for the car with Mr. Fulton for as much as an hour, Mr. Borchers had called 911. IIRP 126. Ktisap County Sheriff Deputy Argyle responded to Mr. Borchers call. IRP 69. Deputy Argyle met Mr. Borchers at the Shell station having found the car there. IRP 71. The deputy reviewed the security tape from the shell station observing Fuller at the gas pump for an hour and a half going in and out of the car, walking around the car multiple time, going in and out of the trunk, and removing items from the trunk. IRP 81. He observed Fuller eventually walk away wearing the hardhat and the orange vest and carrying the golf umbrella. IRP 81.

The attendant at the Shell station had contact with Fuller and described him as "real ancy." IIRP 164. The attendant saw that Fuller had the car at the gas pump for as long as an hour and an half. IIRP 164. He observed Fuller walking around the car and going through the car. IIRP 162. The attendant saw Fuller acting strange, walking around the car wearing a hardhat and construction vest and holding a clipboard as though he was a worker or something. IIRP 167. Twice, Fuller came inside and asked to use the phone. IIRP 163. Eventually, Fuller walked away leaving the car at the gas pump.

Deputy Argyle went back by the Shell station about an hour later

and saw Fuller walking on the side of the road nearby. IRP 84. The deputy immediately recognized the hardhat, vest, and umbrella. Id. The deputy walked up and placed Fuller under arrest. IRP 85-86. Fuller was “right off the bat argumentative, threatening, refused to do any of my commands.” IRP 86. The deputy testified that this demeanor continued:

And that lasted the entire time he was in my presence all the way up to the jail. Very agitated, no down time where he calmed down. And was just he's going to beat me up, and I'm wrong and he did nothing wrong. But he would not answer any specific questions.

IRP 86. Deputy Argyle read *Miranda* rights to Fuller but “He would not listen. He kept talking.” Id.

A search incident revealed that Fuller had the items missing from Mr. Borchers’ car, including military ID, driver’s license, credit card, the vehicle registration and, vehicle manual. IRP 87. When the deputy was cross examined, defense counsel asked “So Mr. Fuller was telling you that he didn’t do anything?” IRP 98-99. The deputy responded “He wouldn’t answer any questions. That was the only thing he kept repeating that had to do with the incident.” IRP 98-99. Again, later in cross examination, defense counsel asked for more of Fuller’s words during the arrest, asking whether or not Fuller had asked him to call Mr. Borchers. IRP 103. The deputy did not recall that bit of the exchange with Fuller. Id.

### III. ARGUMENT

**A. SINCE FULLER DID NOT REMAIN SILENT WHEN ARRESTED, NEVER INVOKED HIS RIGHT TO REMAIN SILENT, AND TESTIFIED AT TRIAL, THERE IS NOT FIFTH AMENDMENT VIOLATION AND THE INDIRECT REMARK ABOUT NOT ANSWERING QUESTIONS WAS HARMLESS.**

Fuller argues that the twice-given testimony by Deputy Argyle that he, Fuller, would not answer any questions constituted an impermissible comment on Fuller's right to remain silent. This claim is without merit because it is apparent that Fuller at no point, either pre- or post-*Miranda*, remained silent; because in context there was no direct comment on Fuller's exercise of his right to remain silent and thus Fuller must overcome the non-constitutional harmless error standard; because testimony relating a person's demeanor while talking is admissible; and, because the defense wanted the jury to hear some of Fuller's statements from the time of his arrest and therefore admission of his statements at that time is harmless.

The Fifth Amendment provides, no person "shall be compelled in any criminal case to be a witness against himself." Article I, section 9 of the Washington Constitution states, "[n]o person shall be compelled in any criminal case to give evidence against himself." The protection of article I, section 9 is coextensive with the protection of the Fifth Amendment. *State*

*v. Earls*, 116 Wash.2d 364, 374–75, 805 P.2d 211 (1991). The state may not use a defendant's constitutionally permitted silence as substantive evidence of guilt. *Id.* at 236, 922 P.2d 1285. “Thus, ‘a police witness may not comment on the silence of a defendant so as to infer guilt from a refusal to answer questions.’ ” *State v. Romero*, 113 Wash.App. 779, 787, 54 P.3d 1255 (2002) (quoting *State v. Lewis*, 130 Wash.2d 700, 705, 927 P.2d 235 (1996)).

There is a distinction between a direct and an indirect comment on silence. “A direct comment occurs when a witness or state agent makes reference to the defendant's invocation of his or her right to remain silent.” *State v. Pottorff*, 138 Wn. App. 343, 346, 156 P.3d 955 (2007) citing *State v. Romero*, *supra*, at 793. “An indirect comment on the right to remain silent occurs when a witness or state agent references a comment or action by the defendant which could be inferred as an attempt to exercise the right to remain silent.” *Pottorff* at 347.

An indirect comment must cause prejudice to the defendant's right to a fair trial. *State v. Barry*, 183 Wn.2d 297, 303, 352 P.3d 161 (2015); see *State v. Lewis*, 130 Wn.2d 700, 705-06, 927 P.2d 235 (1996) (a “comment” on silence is one used to infer guilt from that silence). But even an impermissible direct comment does not warrant reversal if that direct comment is not exploited and used as substantive evidence of guilt.

*Pottorff, supra*, at 347. Review of a direct comment applies a constitutional harmless error standard requiring that the comment be harmless beyond a reasonable doubt. *Pottorff*, 138 Wn. App. at 347, citing *Romero*, 113 Wn. App. at 790. But “[p]rejudice resulting from an indirect comment is reviewed using the lower, nonconstitutional harmless error standard to determine whether no reasonable probability exists that the error affected the outcome.” 138 Wn. App. at 347.

These disparate approaches are driven by the core constitutional concern. In *Griffin v. California*, cited by Fuller, the issue arose by way of a provision of the California constitution allowing comment on a defendant’s failure to explain the facts against him. 380 U.S. 609, 610, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965). The Supreme Court disapproved because the provision “is in substance a rule that allows the State the privilege of tendering to the jury for its consideration the failure of the accused to testify.” 380 U.S. at 613. Thus the holding that “the Fifth Amendment...forbids either a comment by the prosecution on the accused’s silence or instructions by the court that such silence is evidence of guilt.” 380 U.S. at 615.

That core holding does not fit well under circumstances where the defendant did anything but remain silent, both in his interactions with the police when arrested and in that he testified before the jury. *See Pottorff*,

138 Wn. App. at 348 (“Although the State did not seek any advantage from Officer Davis’ comment on Potorff’s silence, the State could have commented on what Mr. Potorff did not say, because he did not remain silent entirely, but did talk to the police.”). Moreover, difficulty attends the present issue because in this case the defense itself tried to exploit his statements at the time of arrest by asking Deputy Argyle if Fuller had in fact made exculpatory statements at that time.

The Fifth Amendment and the *Miranda* decision exclude use of a defendant’s silence “for the purpose of protecting certain rights of the defendant.” *U.S. v. Fairchild*, 505 F.2d 1378, 1383 (5<sup>th</sup> Cir. 1975). But “[i]t is not excluded so that a defendant may freely and falsely create the impression that he has cooperated with the police when, in fact, he has not.” *Id.* Similarly, when an arrestee does not remain silent and speaks of many things including his innocence and his desire to assault the arresting officer and wishes to underline his exculpatory statements at trial, he should not get constitutional protection that amounts to carving out an observation by the arresting officer that is based on his lack of silence. “Constitutional rights, like others, may be waived; and a criminal defendant may, by his conduct, make otherwise constitutionally inadmissible evidence admissible for certain purposes.” 505 F.2d at 1383; *see also U.S. v. Shannon*, 766 F.3d 346 (3<sup>rd</sup> Cir. 2014) (“A defendant may,

however, open himself up to questions about his post-arrest silence if he “testifies to an exculpatory version of events and claims to have told the police the same version upon arrest.”” (internal citation omitted)); *State v. Young*, 89 Wn.2d 613, 621, 574 P.2d 1171 (1978) (“If a defendant voluntarily offers information to the police, his toying with authorities by allegedly telling only part of his story is certainly not protected by *Miranda* or *Doyle*.”)

In this case, then, Deputy Argyle’s observations should be viewed in light of the above principles. There is nothing in this record that leads to the conclusion that Fuller ever invoked his right to remain silent to Deputy Argyle. In fact the opposite seems to be true: the deputy testified that Fuller never stopped talking. And the continuing theme of Fuller’s continuing statements was that he, Fuller, had done nothing wrong. Further, as noted, the defense attempted to exploit Fuller’s lack of silence by asking Deputy Argyle about a particular aspect of his ongoing statements—the exculpatory part. Under these circumstances, it should be held that Fuller’s complete failure to exercise his right to remain silent and his attempt to use his own statements in defense constitute a waiver of the right or, at minimum, an opening of the door to inquiries about the totality of his statements and demeanor.

In any event, it can be seen from this record that the deputy’s

remarks did not constitute a direct comment on Fuller's exercise of the right to remain silent. Since the record is empty of an invocation of the right, or its exercise, it is difficult to imagine how Deputy Argyle could have commented on such an invocation. The assertion that Fuller would not answer any specific questions remains quite ambiguous on this record. Neither party attempted to put content to these words; no one asked the deputy what questions Fuller would not answer. As Fuller threatened the deputy, refused to follow the deputy's commands, and repeatedly asserted his innocence, did the deputy merely ask "what's your name?" or "what's your date of birth?" There is no answer in this record. Thus another infirmity in Fuller's argument is that he asks this Court to assume that the questions asked and refused had any substance at all.

Further, Deputy Argyle's description of Fuller's demeanor and behavior at the time of arrest is not objectionable. As the Washington Supreme Court has observed:

Courts have almost unanimously held that the Fifth Amendment does not protect evidence of a defendant's actions or demeanor (hereinafter, demeanor evidence), a conclusion consistent with Fifth Amendment jurisprudence and the plain meaning of "demeanor." Courts have determined that consideration of demeanor evidence is constitutionally barred only if the demeanor is testimonial, or if it is merely the demeanor accompanying a defendant's silence or failure to testify.

*State v. Barry*, 183 Wn.2d 297, 305, 352 P.3d 161 (2015) (footnote

omitted). “In order to be testimonial, an accused’s communication must itself, explicitly or implicitly, relate factual assertions or disclose information.” 183 Wn.2d at 309, *citing Doe v. United States*, 487 U.S. 201, 210, 108 S.Ct. 2341, 101 L.Ed.2d 184 (1988). Moreover, demeanor is not “inherently testimonial.” 183 Wn.2d at 311. The Barry Court held that

Ordinarily, a person's posture, a person's body language, and other aspects of his outward manner do not require that person to confront the *Muniz* trilemma of truth, falsity, or silence. And while facial expressions and body language might reveal someone's “state of mind” in the most general sense, they do not communicate specific “factual assertions” or “thoughts.”

183 Wn.2d at 311. In the same way, reporting that the individual would not cooperate with the arresting officer is not necessarily reporting testimonial facts. In particular, such does not communicate testimonial facts about the incident in question. Similarly, when an arrestee talks incessantly about things like beating up the police officer and that he did nothing wrong, it should not be deemed an impermissible comment merely to observe what he did not say.

But insofar as the present comment can be characterized as an impermissible comment on silence, it’s effect should be viewed under the standard applicable to an indirect comment. Deputy Argyle never said “I read him his rights and he chose to remain silent,” which is a direct

comment. *See, e.g., State v. Pottorff*, 138 Wn. App. at 346-47 (“He said at that time he wanted to invoke his right to remain silent...” held direct comment); *citing State v. Romero, supra* at 793 (“I read him his *Miranda* warnings, which he chose not to waive, would not talk to me,” constitutes a direct comment). Here, to the contrary, Fuller’s failure to answer questions, whatever those questions were, may be seen as an action by the defendant having to do with the right to remain silent and as such should be regarded as an indirect comment. Thus, if error, the testimony here should be reviewed under the non-constitutional harmless error standard.

But in order to apply that less onerous standard, a three part test must be considered

First, could the comment reasonably be considered purposeful, meaning responsive to the State's questioning, with even slight inferable prejudice to the defendant's claim of silence? Second, could the comment reasonably be considered unresponsive to a question posed by either examiner, but in the context of the defense, the volunteered comment can reasonably be considered as either (a) given for the purpose of attempting to prejudice the defense, or (b) resulting in the unintended effect of likely prejudice to the defense? Third, was the indirect comment exploited by the State during the course of the trial, including argument, in an apparent attempt to prejudice the defense offered by the defendant?

*State v. Romero*, 113 Wn. App. 779, 790-91, 54 P.3d 1255 (2002). A “yes” answer on any one of these questions establishes that an indirect comment is of constitutional issue. *Id.*

Deputy Argyle was asked “Can you describe your interactions with

the defendant at that time?” IRP 85. Since this question did not expressly seek any evidence as to what Fuller said or did not say, it can be seen that Deputy Argyle’s remark was not responsive. Moreover, Fuller did not claim silence so no prejudice can be attached to such a claim. The answer to the first question is “no.”

On the second question in the *Romero* test, as seen, the allegedly offending comment was in fact unresponsive when the deputy was being questioned by the state on direct. And, regarding the defense questioning, defense counsel asked the deputy about what Fuller had to say when arrested and she simply got a fuller answer than she had expected. Addressing the parts (a) and (b) of question two gets to the heart of the inquiry in asking whether Deputy Argyle intended to prejudice Fuller or whether his otherwise not ill-intentioned remark prejudiced Fuller. When asked by the state, the deputy’s remark is but a small piece of a larger description of Fuller’s behavior and demeanor at the time of arrest. There was no indication in any manner that Fuller had a duty to answer anything. That he would not answer some unspecified question (“what’s your name?”) proved nothing in the case. But in both instances the deputy reasonably answered the question put to him. The deputy’s motives may be seen as gilding the lily of his testimony about Fuller’s general uncooperative demeanor but does not appear as a calculated effort to

prejudice the defense case. Moreover, although the state did reference the remark in closing, it again was only a piece of a much larger point about Fuller's uncooperative behavior. The answer to the second question is "no."

Finally, the third question, regarding the exploiting of the remark by the prosecutor seems at first blush to favor Fuller. However, as just observed, the state's reference to the remark was to underline Fuller's demeanor. The prosecutor was speaking of the credibility of Fuller's testimony. IIRP 375. She noted his manner in testifying at length, including his failure to remember details and that he spoke so fast he seemed to confuse himself. IIRP 376-77. She remarked on Fuller's bias to avoid conviction when he testified. IIRP 377. She assailed the lack of reasonableness of the defense case and Fuller's testimony. IIRP 377 *et seq.* Then, in discussing Deputy Argyle's testimony, the prosecutor said

Deputy Argyle describes the defendant as belligerent, uncooperative, fighting him, not responding clearly to his answers, not responding clearly to his questions or commands.

IIRP 379. Thus, the deputy's remark is a small and seemingly inconsequential part of the state's argument. In fact, the prosecutor softens any inference regarding silence by essentially editorializing that he did respond but not clearly. Thus the state did not "exploit" Deputy Argyle's remark and the answer to the third question is also "no."

The foregoing, then, establishes that if the remark was an improper comment on silence, it was an indirect one. Moreover, it is an indirect comment that warrants nonconstitutional harmless error analysis. Thus, the deputy's remarks are harmless because "error is not prejudicial unless, within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." *State v. Berry*, 183 Wn.2d 297, 303, 352 P.3d 161 (2015). The test emphasizes that there be prejudice: "an accused cannot avail himself of error as a ground for reversal unless it has been prejudicial." *Id.* The issue is assessed by measuring admissible evidence of guilt against the prejudice, if any, caused by the inadmissible evidence. *Id.* The burden falls to the defense to show prejudice. 183 Wn.2d at 304.

Here, Fuller fails to establish that because of Deputy Argyle's remarks there was a reasonable probability that the outcome of the trial was materially affected. The remarks had no effect on proof of guilt. The remarks add nothing at all to Mr. Borchers' testimony. Fuller did not have permission to take the car. Mr. Borchers' was left standing at the 7/11 store with no information as to where Fuller lived. Mr. Borchers did not have Fuller's phone number. The deputy's remarks had nothing to do with the testimony about Fuller's odd behavior at the Shell station. The deputy's remarks had nothing to do with the stolen items found on Fuller

when he was arrested. Absent the remarks, the state's case was every bit as strong as it was with the remarks.

Constitutional protections of silence do not well apply under circumstances such as the present case where the arrestee never remains silent. Moreover, Christopher Fuller was in no way tricked or coerced into foregoing the right to remain silent; he voluntarily continued to talk from the time of arrest all the way to the jail after having been properly advised of his right to remain silent. Further, even if this behavior does not waive the right, the remarks here were not reasonably likely to change the result of the trial. The conviction should be affirmed.

**B. THE FORFEITURE PROVISION OF THE JUDGMENT AND SENTENCE RAISED NO ACTUAL CONTROVERSEY AND FULLER WAS NOT A PERSON AGGRIEVED SINCE THERE IS NO PROOF THAT ANY OF HIS PROPERTY WAS FORFEITED.**

Fuller next claims that the trial court erred by ordering forfeiture of "all seized property referenced in the discovery." CP 72. This claim is without merit because the issue is not ripe; that is, Fuller is not aggrieved by the trial court's order since the record does not show that any of Fuller's property was forfeited. RAP 3.1.

An aggrieved party is "one whose personal right or pecuniary interests have been affected." *State v. Taylor*, 150 Wn.2d 599, 603, 80

P.3d 605 (2003). Taylor was being prosecuted for manufacturing marijuana. 150 Wn.2d at 600. The trial court dismissed his case without prejudice, allowing the state to refile at a future date within the statute of limitations. Id. at 601. The Supreme Court held that Taylor was not an aggrieved party, saying

In our judgment, Taylor is not currently an aggrieved party. Until the State refiles charges against Taylor, if indeed it does, he is under no restriction, and he has the benefit of a running statute of limitations. We cannot conclude, therefore, that he has been injured in any legal sense.

150 Wn.2d at 603. Similarly, nothing in the present record shows that Fuller “has been injured in any legal sense.” Nothing in the record shows that any property of Fuller’s was either seized or forfeited. Thus Fuller asks for a remedy here when he was not injured below.

There is no real controversy in this case regarding any of Fuller’s property. However, this Court has held that relief may be granted on this issue even without an actual legal injury. *State v. Trevino*, 195 Wn. App. 1002 (UNPUBLISHED AND UNBINDING). If relief is granted, judicial economy will suffer from a remand order that solves no problem that Fuller has in regaining or keeping any particular property. Absent some seizure or forfeiture in the record, this Court should hold that there is no controversy to decide.

**IV. CONCLUSION**

For the foregoing reasons, Fuller's conviction and sentence should be affirmed.

DATED July 24, 2017.

Respectfully submitted,

TINA R. ROBINSON  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "John L. Cross". The signature is written in a cursive style with a large initial "J" and "C".

JOHN L. CROSS  
WSBA No. 20142  
Deputy Prosecuting Attorney

Office ID #91103  
kcpa@co.kitsap.wa.us

**KITSAP COUNTY PROSECUTOR'S OFFICE - CRIMINAL DIVISION**

**July 24, 2017 - 2:14 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49851-1  
**Appellate Court Case Title:** State of Washington, Respondent v Christopher Thomas Fuller, Appellant  
**Superior Court Case Number:** 16-1-00969-5

**The following documents have been uploaded:**

- 2-498511\_Briefs\_20170724141256D2436430\_0049.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was State of WA v Christopher Thomas Fuller 49851-1-II.pdf*

**A copy of the uploaded files will be sent to:**

- cathyglinski@wavecable.com
- glinskilaw@wavecable.com
- kcpa@co.kitsap.wa.us
- rsutton@co.kitsap.wa.us

**Comments:**

---

Sender Name: Sheri Burdue - Email: siburdue@co.kitsap.wa.us

**Filing on Behalf of:** John L. Cross - Email: jcross@co.kitsap.wa.us (Alternate Email: )

Address:  
614 Division Street, MS-35  
Port Orchard, WA, 98366  
Phone: (360) 337-7171

**Note: The Filing Id is 20170724141256D2436430**