

FILED  
Court of Appeals  
Division II  
State of Washington  
3/15/2018 3:11 PM  
NO. 50112-1-II

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

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STATE OF WASHINGTON,

Respondent,

v.

SHANE CHRISTOPHER GILBERT,

Appellant.

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

The Honorable Karen Kirkendoll, Judge

REPLY BRIEF OF APPELLANT

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Peter B. Tiller, WSBA No. 20835  
Of Attorneys for Appellant

The Tiller Law Firm  
Corner of Rock and Pine  
P. O. Box 58  
Centralia, WA 98531  
(360) 736-9301

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**A. ARGUMENT IN REPLY**

**1. GILBERT'S OBJECTION TO EXHIBIT 24 - A TUPPERWARE CONTAINER - IS ADEQUATELY PRESERVED FOR APPELLATE REVIEW**

In its response, the State argues that Appellant Shane Gilbert challenges only admission of Exhibit 21 in the Assignment of Errors but did not assign error to admission of Exhibit 24. Brief of Respondent at 21 n. 4. In the appellant's brief, Gilbert argues to this Court, *inter alia*, that trial counsel was ineffective for failing to move to suppress a Tupperware container designated at trial as Exhibit 24 along with other items found in at metal box. Brief of Appellant at 20, 22. The State engages in a hyper-technical reading the Rules of Appellate Procedure and argues that the appellant's argument challenging Exhibit 24 should be rejected.

Case law holds that the rules of appellate procedure should be liberally interpreted to promote justice. *State v. Olson*, 74 Wash.App. 126, 129, 872 P.2d 64 (1994), *aff'd*, 126 Wash.2d 315, 893 P.2d 629 (1995) (citing RAP 1.2(a)). *Olson* is compelling authority on this point. In *Olson*, the State appealed the trial court's dismissal of its case against *Olson*. But the State failed to appeal the order suppressing the evidence or to assign error in its appellate brief to either the dismissal order or to the court's findings of fact and conclusions of law. The State, however, did include in its brief arguments with references to legal authority regarding the suppression as well as assignments of error that challenged the basis for the suppression. Division One of this Court held that technical violations of the rules of appellate procedure will not ordinarily bar review when the nature of the challenge is perfectly clear and the challenged finding is set forth in the appellate brief. *Olson*, 74 Wash.App. at 128 (citing *State v. Williams*,

96 Wash.2d 215, 220, 634 P.2d 868 (1981)). The *Olson* court also ruled review was not barred because the respondent had not been prejudiced by the State's errors and RAP 1.2(a) promotes a liberal interpretation of the rules to "facilitate the decision of cases on the merits". *Olson*, 74 Wash.App. at 129.

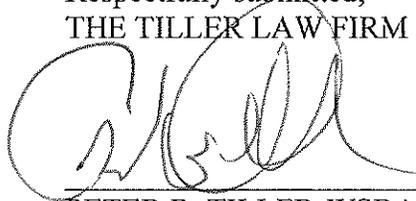
In this case, the appellant's brief is sufficiently clear for the State to respond to the issue, which it has. The State has not been prejudiced and the review process is not impeded by an alleged technical inadequacy in the appellant's opening brief. Because the challenge to the Exhibit based on ineffective assistance of trial counsel is clear, this Court should review the appellant's argument related to the Exhibit on its merits.

**B. CONCLUSION**

For the reasons stated herein, and in appellant's opening brief, the appellant respectfully requests this Court to reverse the conviction.

DATED: March 15, 2018.

Respectfully submitted,  
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'P. Tiller', is written over a horizontal line. The signature is stylized and cursive.

PETER B. TILLER-WSBA 20835  
Of Attorneys for Shane Gilbert

CERTIFICATE OF SERVICE

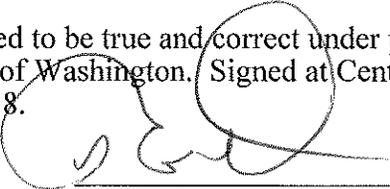
The undersigned certifies that on March 15, 2018, that this Reply Brief of Appellant was sent by the JIS link to Mr. Derek M. Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and Michelle Hyer, Pierce County Prosecuting Attorney and copies were mailed by U.S. mail, postage prepaid, to the following appellant at:

Michelle Hyer  
Pierce County Prosecutor  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2102  
[PCpatcecf@co.pierce.wa.us](mailto:PCpatcecf@co.pierce.wa.us)

Mr. Derek M. Byrne  
Clerk of the Court  
Court of Appeals  
950 Broadway, Ste.300  
Tacoma, WA 98402-4454

Mr. Shane C. Gilbert  
DOC#785139  
Washington Corrections Center  
PO Box 900  
Shelton, WA 98584  
**LEGAL MAIL/SPECIAL MAIL**

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on March 15, 2018.



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PETER B. TILLER

**THE TILLER LAW FIRM**

**March 15, 2018 - 3:11 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50112-1  
**Appellate Court Case Title:** State of Washington, Respondent v Shane Christopher Gilbert, Appellant  
**Superior Court Case Number:** 16-1-04632-2

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Sender Name: Becca Leigh - Email: bleigh@tillerlaw.com

**Filing on Behalf of:** Peter B. Tiller - Email: ptiller@tillerlaw.com (Alternate Email: bleigh@tillerlaw.com)

Address:  
PO Box 58  
Centralia, WA, 98531  
Phone: (360) 736-9301

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