

FILED  
Court of Appeals  
Division II  
State of Washington  
11/5/2018 2:06 PM

No. 51360-9-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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JONATHON L. TAYLOR,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF  
THE STATE OF WASHINGTON,

Respondent.

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REPLY BRIEF OF APPELLANT

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## I. ARGUMENT

### **The Doctrine of Invited Error Does Not Require That The Appellate Court Refuse to Review Errors Raised For the First Time on Appeal.**

Under RAP 2.5(a), the appellate court may, but is not required to refuse review of errors not raised before the trial court. Thus, the court may consider errors raised for the first time on appeal.

The doctrine of invited error is a judicially created one, whose goal is to prevent a party from “setting up an error at trial” and then relying on such an error on appeal. *City of Seattle v. Patu*, 147 Wn.2d 717, 720, 58 P.3d 273 (2002) (citing *State v. Pam*, 101 Wn.2d 507, 511, 680 P.2d (1984), *overruled on other grounds by State v. Olson*, 126 Wn.2d 315, 893 P.2d 629 (1995)). In *Pam*, the State, wishing to create a test case, intentionally created the error upon which it later relied. 101 Wn.2d at 511. The Court determined that invited error applied here where the appealing party attempted to circumvent the avenue of appeals available at the trial court level. *Id.*

As noted in the dissent of *City of Seattle*, the invited error doctrine is a judicially created doctrine based on the principles of estoppel. 147 Wn.2d at 721-722. As such, it is not a complete bar to review. *Id.* at 722. Given that neither RAP 2.5(a) nor the doctrine of invited error are complete bars to the appellate court reviewing errors below, this Court may consider

whether the admission of the sentencing terms of Mr. Taylor's conviction was more prejudicial than probative at trial.

## II. CONCLUSION

Mr. Taylor respectfully requests that the Court grant him a new jury trial in which evidence concerning his felony conviction and sentence are properly excluded.

Dated this 5<sup>th</sup> day of November, 2018.

Respectfully submitted,

VAIL, CROSS-EUTENEIER and  
ASSOCIATES

By: H.M. Weaver

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**CERTIFICATE OF MAILING**

SIGNED at Tacoma, Washington.

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, hereby certifies that on the 5th day of November, 2018, the document to which this certificate is attached, Reply Brief of Appellant, was placed in the U.S. Mail, postage prepaid, and addressed to Respondent's counsel as follows:

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DATED this 5<sup>th</sup> day of November, 2018.

  
LYNN M. VENEGAS, Secretary

# VAIL CROSS AND ASSOCIATES

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## Transmittal Information

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