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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 26899-3-III

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

STATE OF WASHINGTON,

Respondent,

v.

KEVIN HILTON,

Appellant.

REPLY BRIEF OF APPELLANT

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A. STATEMENT OF CASE IN REPLY

The State presents a stirring closing argument to support its theory of the case. Resp. Br. at 1-15. However, the evidence was similarly strong that Lisa Ulrich committed these crimes -- yet the defense was not allowed to argue its theory. See App. Br. at 89-94.

The State claims Mr. Hilton had a financial motive to kill the Ulrichs because he owed them back rent and faced eviction. However, killing them did not solve his debt; instead, it prevented any of his prior accommodations, such as working off the debt. The Ulrichs' deaths assured he had to pay the back rent and move. Indeed, within a month, he paid off the full back rent and gave notice he was moving. There was no apparent stress. See App. Br. at 51-52.

In contrast, Lisa Ulrich had a long-term financial motive to kill her parents: she inherited one-half of their estate which included rental properties and significant real estate.

The State's entire argument demonstrates how circumstantial its case was. The defense was entitled to present the circumstantial evidence and to argue that Ms. Ulrich committed these murders.

B. ARGUMENT IN REPLY

1. THE DEFENSE PROPOSED EVIDENCE OF A THIRD-PARTY PERPETRATOR.

The State's argument that the defense never proposed evidence or attempted to argue that Lisa Ulrich was a third-party perpetrator is ludicrous.¹ Resp. Br. at 16-18.

a. Order Prohibiting Argument

The Court's pretrial order ruled:

Arguments that Lisa Ulrich specifically committed the crimes herein shall not be allowed.

CP 23. Counsel was not required to violate this ruling in order to preserve the error. The party losing a motion in limine has a standing objection to the court's ruling. State v. Kelly, 102 Wn.2d 188, 192-93, 685 P.2d 564 (1984).

b. The Court's Order In Limine Preserved the Issue for Appeal.

An exception to this general rule of a standing objection occurs where the court expressly says its ruling is preliminary and it expects ongoing objections as the evidence is presented.

¹ See State v. Martinez, 121 Wn. App. 21, 33, 86 P.3d 1210 (2004) (given the trial record, the prosecutor's "insistence that he did not know the significance of the [withheld] burglary report until the middle of trial is ludicrous.")

State v. Asaeli, 150 Wn. App. 543, 586, 208 P.3d 1186, review denied, 167 Wn.2d 1001 (2009).

In Asaeli, however, the defense moved to exclude evidence on the grounds that no foundation had been laid. The court **denied** the motion "at this time. This is one of those cases where you have to hear the testimony as it comes in." Id. at 586.

Here the State knew the defense theory was that Lisa Ulrich committed these crimes.² The State filed a Motion to Exclude Third Party Perpetrator Evidence. It argued the court at the first trial had excluded any evidence of third-party perpetrator, nothing had changed since the first trial to justify changing that ruling, and so the court at the second trial should re-impose the same restriction. CP 630-33.

The defense submitted a written offer of proof indicating the evidence it intended to admit that Ms. Ulrich was the killer. "The defense should be allowed to put on this evidence to the extent it is

² The State reported defense counsel stated in a pretrial hearing "that he would offer" evidence that "a third party, namely Lisa Ulrich, committed the offenses." CP 631.

characterized as 'third party perpetrator' evidence." CP 623-27.³

A significant change since the first trial justified a different ruling: the United States Supreme Court had decided Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006). RP 202-03. That case specifically held that the Constitutional right to present a defense prevailed over a state court's evidentiary rules excluding evidence of a third-party perpetrator. After quoting the Holmes opinion, counsel said: "That's what we're seeking to do here through cross-examination." RP 203. He then discussed exactly what evidence he intended to present by way of cross-examination pursuant to Holmes, consistent with his offer of proof. RP 203-05.

The fact that counsel said he intended to present this evidence through cross-examination did not suggest he did not intend to present it. The fact that he argued that the court also should permit this evidence under a different evidentiary ground also does not mean he waived his purpose or the defense theory: Mr. Hilton did not commit

³ This Offer is quoted in full in the Brief of Appellant at 29-32.

these crimes, someone else did, and Ms. Ulrich was that someone else.

Indeed, the trial court granted the state's motion to exclude the evidence *on the theory of a third-party perpetrator*.

There is nothing in the record that causes me to overrule the former ruling of the court that third party perpetrator evidence will be excluded. It is, once again, excluded.

RP 207. Nonetheless, it ruled some of the defense's proposed evidence possibly could be admitted for a separate purpose:

However, I am very sensitive to the fact that defense is entitled to the old sifting and thorough cross-examination.

RP 207. As the prosecutor clarified, the court ruled in general that third-party perpetrator evidence was not admissible.. RP 209. The court noted the State should object if it believed specific proffered evidence fell within that ruling, and the court would then decide whether it was admissible for some other purpose. RP 209-10.

With the court's definitive ruling that it would not admit evidence of a third-party perpetrator, defense counsel was left only to urge other grounds for admitting the evidence he wanted the jury to hear.

Although counsel argued the receipt was forged and planted on Larry Ulrich's hand, that Mr. Hilton had no financial motive to murder the Ulrichs, and that he did not have sufficient time to commit two murders in the timeframe the state argued, the trial court's ruling nonetheless prevented him from presenting the evidence and arguing one step further: that Lisa Ulrich's financial motive was much greater than Kevin Hilton's and she would inherit nothing if she were convicted; she had the ability to forge her mother's signature from her long-term access to her rental accounts; and that she had more time to commit the murders (no one confirmed her claimed alibi of being in the garage with Joe Yahne) than the state's theory that Mr. Hilton did it in less than an hour. See App. Br. at 89-94 ("Argument Counsel Could Have Made").

There was no waiver of this issue.

c. Constitutional Right to Present Defense

Under Holmes v. South Carolina, supra, 547 U.S. at 324, the defense was entitled to present the evidence implicating Lisa Ulrich as the murderer, and to argue its complete theory based on this evidence. Exclusion of this evidence and

argument violated appellant's constitutional right to present a defense and to counsel. See Brief of Appellant at 81-87 and authority therein.⁴

Remarkably, the State does not mention Holmes, the United States or Washington Constitution; nor does it attempt to distinguish any of the cited federal cases in this context.

d. State Case Law Required Admitting this Evidence and Argument.

Contrary to the State's argument (Resp. Br. at 21-22), State v. Clark, 78 Wn. App. 471, 478-49, 898 P.2d 854, review denied, 128 Wn.2d 1004 (1995), compared the State's circumstantial evidence with that offered by the defense against another suspect.

[T]he evidence against Clark was entirely circumstantial. ... While this evidence is not insufficient to support a conviction, **no evidence linked Clark directly to the fire.**

Similar evidence indicates that Arrington had the motive, opportunity, and ability to commit the arson. ... Like Clark, while no evidence directly linked Arrington to the fire, this

⁴ See also State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010) (Supreme Court reversed Benton County conviction for denial of right to present defense; Court also cautioned prosecutor against repeating misconduct on retrial), quoted with approval in State v. Hawkins, 157 Wn. App. 739, 751-52, 238 P.3d 1226 (2010), also not cited by the State.

evidence nonetheless provides a trail of evidence sufficiently strong to allow its admission at trial.

Clark, 78 Wn. App. at 479-80 (emphasis added). As in Clark, here there was no direct evidence linking Mr. Hilton to the murders; and similar evidence indicated that Lisa Ulrich had the motive, opportunity, and ability to kill her parents.⁵

e. The Trial Court Abused Its Discretion By Applying the Incorrect Legal Standard.

A trial court abuses its discretion⁶ when it reaches a ruling by applying the incorrect legal standard. State v. Adamy, 151 Wn. App. 583, 587, 213 P.3d 627 (2009); State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

The trial court applied the incorrect legal standard in excluding the third-party perpetrator evidence. It ignored Clark, Holmes, and the

⁵ Appellant already discussed the other cases the State cites, Resp. Br. at 18-22, at App. Br. 66-85, except In re PRP of Lord, 123 Wn.2d 296, 868 P.2d 835 (1994). Lord however, was overturned. Lord v. Wood, 184 F.3d 1083 (9th Cir. 1999), held it was ineffective assistance of counsel not to interview three witnesses who reported seeing the victim after the date the State claimed she was killed. As in State v. Maupin, 128 Wn.2d 918, 913 P.2d 808 (1996), this evidence contradicted the State's circumstantial evidence of when the murder occurred, and so was relevant.

⁶ See Resp. Br. at 22.

constitutional rights to present a defense and have counsel argue the defense theory. Thus it abused its discretion in excluding this evidence and prohibiting argument.

f. Appellant Did Not Abandon His Challenge to the Court's Findings of Fact.

Appellant assigned error to the court's Findings of Fact 1, 2 and 4. CP 22; App. Br. at 1-2. These Findings were not supported by substantial evidence, as demonstrated by the facts reviewed in the Brief of Appellant. See App. Br. at 29-31 (evidence clearly pointing to Lisa Ulrich as the guilty party); at 79 (reason to steal rent receipt book); at 78 (caller ID). As in Holmes, supra, the defense never conceded that Ms. Ulrich was "always in the company of another person during the night of March 20, 2002, when the murders occurred." 547 U.S. at 330; App. Br. at 82. This evidence was "disputed."

The relevance of Ms. Ulrich calling Benton County Prosecutor Andy Miller after discovering her parents' bodies is a conclusion of law rather than a finding of fact. The State does not dispute the fact of the call. The defense argued relevance, however, throughout the proceedings of this case.

App. Br. at 88-89. See also App. Br. at 89-94 (Argument Defense Counsel Could Have Made).

The court's findings of fact therefore were not supported by substantial evidence and were error.

- g. Andy Miller Arrived Around the Same Time as the Police, Suggesting Andy Miller Was Called Around the Same Time as the Police.

The State continues to quibble over the defense not proving precisely at what time Ms. Ulrich called Mr. Miller. Resp. Br. at 27-29. Nonetheless, it does not dispute that Ms. Ulrich called Mr. Miller shortly after finding her parents' bodies, and he met her while she was still at the neighbor's. CP 874.⁷

Defense counsel offered as proof:

one of the first persons Ms. Ulrich called when she found her parents dead

⁷ Declaration of Andy Miller:
I knew Lisa Ulrich as an acquaintance prior to March 2002. ...
I got to know Lisa better after her parents were murdered in March 2002. I was called to the scene shortly after the murder and saw Lisa with her son, Kelly. Lisa and Kelly discovered her parents' bodies while Kelly was waiting outside in the car. I met Lisa and Kelly while they were at a neighbors across the street.

was Benton County Prosecutor Andy Miller, her 'friend.'

... On 03/21/02 police arrived at 210 Thayer Street (Richland), the murder scene. Benton County Prosecutor ANDY MILLER arrived around the same time as police because he had been called by complainant LISA ULRICH, "an acquaintance." Mr. MILLER went to 1407 Agnes, where LISA ULRICH was located. In a later interview with Detective S. McCAMIS on 03/21/02, Ms. Ulrich stated that "I called Andy Miller (Benton County Prosecutor) to come over because I didn't want anything messed up."

CP 863, 865 (emphasis added).

If Mr. Miller arrived around the same time as the police, it stands to reason that he was called around the same time as the police. See generally Brief of Appellant at 87-89.

Ms. Ulrich asked the neighbor to call 911. RP 1015-16. She never personally called the police or paramedics, ostensibly because she was too distraught; yet she was able to call Mr. Miller. Mrs. Coleman saw Ms. Ulrich use a cell phone. She recalled the neighbor called 911 and Lisa called "her friend." RP (Dep. of P. Coleman) at 1-13; Exh. 360.

h. Evidence Did Not Eliminate Ms. Ulrich As a Suspect.

The State argues there was "no evidence" to implicate Ms. Ulrich. Resp. Br. at 24. In fact,

there was "no evidence" that the police ever investigated Ms. Ulrich as a possible suspect. There was no evidence the police ever considered whether Ms. Ulrich had access to a gun or A-Merc ammunition; that they ever asked her about it; that they ever searched her home, as they did Mr. Hilton's twice. No one confirmed Ms. Ulrich's story that she was in her garage arguing with her boyfriend during the hours her parents apparently were killed. Much less did anyone confirm where she was when the power went out at her parents' house later that night, or when the paper carrier saw an unfamiliar car in the driveway. Yet the evidence was clear she had access to her parents' locked home⁸ -- something Mr. Hilton did not have. As to her financial motive, please see App. Br. at 140-43.

i. Relevance Does Not Require a Conspiracy.

Just as it is inaccurate to argue that the jury must disbelieve all the State's witnesses to believe the defendant (see App. Br. at 128), it is inaccurate to argue here that the phone call is

⁸ She used her credit card to gain entry. RP 1270, 1359-60.

only relevant if the defense is arguing a conspiracy between Mr. Miller and Ms. Ulrich. Resp. Br. at 29-30.

The State claims that anyone who heard Ms. Ulrich's cries that morning "would think that an argument that Ms. Ulrich is the true killer was ridiculous, incredible, and offensive." Resp. Br. at 17. Apparently that is Mr. Miller's opinion. Certainly one could argue that once Mr. Miller heard those cries of anguish, the emotion influenced the investigation. Having immediately ruled her out as a possible suspect, the investigation turned to the note found stuck on Mr. Ulrich's hand and Ms. Ulrich's interpretation of her parents' business practices. Yet her statement that she called Mr. Miller to make sure nothing got "messed up" suggests something far more in her mind than raw grief and shock.

This scenario did not require Mr. Miller to be a co-conspirator, but merely someone influenced by the emotions displayed that morning -- as the State agrees anyone would have been. See also App. Br. at 87-94.

2. THE RECORDS FROM SCHOONIE'S GUN SHOP ARE INADMISSIBLE BECAUSE THEY WERE RECOVERED AS A RESULT OF THE UNCONSTITUTIONAL SEARCH OF MR. HILTON'S HOME.

a. "Standing" is not at Issue.

The State argues Mr. Hilton has no "standing" to challenge the records obtained from Schoonie's Gun Shop. Resp. Br. at 30-31. Mr. Hilton does not claim any right of privacy in the gun shop; rather he claims the records were obtained as the result of the unconstitutional search of his home. The gun shop records were the fruit of the poisonous tree. See App. Br. at 94-112.

b. Inevitable Discovery Is Not An Exception to the Exclusionary Rule Under Constitution, art. I, § 7.

State v. Winterstein, 167 Wn.2d 620, 220 P.3d 1226 (2009), held that in Washington there is no "inevitable discovery" exception to the exclusionary rule. The State comes very close to conceding that point. Resp. Br. at 32.

This theory was the only one for which the trial court entered findings of fact and conclusions of law for denying the defense motion to exclude evidence. CP 24-27.

c. The Evidence Was Not Admissible Under The Independent Source Doctrine.

Although it entered no written order, findings, or conclusions, the trial court orally concluded the records from Schoonie's were admissible under the independent source doctrine. RP 131-32.

While holding there is no inevitable discovery exception to the state Constitution's exclusionary rule, Winterstein nonetheless appeared to approve the "independent source doctrine" as described in State v. Coates, 107 Wn.2d 882, 735 P.2d 64 (1987), and State v. Gaines, 154 Wn.2d 711, 116 P.3d 993 (2005). It did so with caution:

We do not read Coates and Gaines expansively. The independent source doctrine is much different from the inevitable discovery doctrine. The independent source doctrine recognizes that probable cause may exist based on legally obtained evidence; the tainted evidence, however, is suppressed.

Winterstein, 167 Wn.2d at 634.

The facts in this case do not support the "independent source" doctrine for Schoonie's records.

In Coates and Gaines, as here, the police conducted an illegal search. The police then

obtained a warrant to conduct a lawful search of the same location. Although the affidavits for the warrants included what they had seen illegally, they also included more than enough information, obtained independent of the search, to establish probable cause to search. Applying a test similar to Franks v. Delaware, 438 U.S. 154, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978), the Court held the affidavits without the tainted evidence were nonetheless sufficient for probable cause to search. Coates, 107 Wn.2d at 887-88.

In both Coates and Gaines, the police actually obtained the challenged evidence using the independent evidence. The court was not left to speculate whether they otherwise would have found the challenged evidence.⁹

Here the State and the trial court use the words "independent source doctrine," but the test they applied was the inevitable discovery doctrine.

Unlike Coates and Gaines, here the police used the documents from their unconstitutional search of

⁹ Accord: State v. O'Bremski, 70 Wn.2d 425, 423 P.2d 530 (1967) (when police illegally entered apartment, they already had information and evidence from other sources that the girl was missing, was a crucial witness, and was in the apartment; her testimony was not excluded).

Mr. Hilton's home to go directly to Schoonie's, where they then obtained Schoonie's copies. Unlike Coates and Gaines, at the time they went to Schoonie's, the police had no independent evidence that Schoonie's sold A-Merc brand ammunition or that it ever had any dealings with Mr. Hilton.

Instead, the State argued and the trial court concluded the police **would have found** the same documents, eventually, after further investigation, even if they had not used the papers they seized illegally. This conclusion requires precisely the speculation the Court rejected in Winterstein. Calling this reasoning "independent source doctrine" instead of inevitable discovery does not change its nature. As in Winterstein, this Court should reject this reasoning and exclude Schoonie's records.

If this Court chooses nonetheless to engage in speculation, please review App. Br. at 23-25 and 94-97 to see why the facts of this case do not even meet the requirements of the federal inevitable discovery doctrine.

Specifically, appellant takes issue with the State's repeated assertion that "Sgt. Wehner **had ordered** Det. Bricker to begin searching for

retailers who sell AMERC ammunition **before the execution of the search warrant.**" Resp. Br. at 37-38, 40. Sgt. Wehner's testimony flatly contradicts this statement.

A. ... He had been instructed to contact all gun shops or ammo shops in the region to research the A-Merc brand and who sold that.

Q. Okay, and when was that?

A. **When was he assigned it?**

Q. Right. ... Do you know whether it was prior to the issuance of the first search warrant?

A. I'm guessing it was probably **after the issuance of the search warrant.**

RP 124-25.

d. Admission of Schoonie's Records Was Not Harmless.

The State claims admitting Schoonie's records was harmless in this case "since the defendant sold AMERC at a yard sale." Resp. Br. at 41. The yard sale evidence, however, was very shaky at best. See generally App. Br. at 41-42.¹⁰ Schoonie's records showed Mr. Hilton had purchased 28 boxes of A-Merc ammunition years earlier -- far more than three individual casings. RP 1902, 1905, 1912.

¹⁰ The witness presented a can of 67 shell casings, some of which allegedly were purchased from Mr. Hilton after the police twice searched his home and seized all shell casings; only three of the 67 bore A-Merc stamp, no evidence these were from Mr. Hilton's yard sale.

3. PROSECUTORIAL MISCONDUCT DENIED APPELLANT
A FAIR TRIAL.

The State claims there was no prosecutorial misconduct. It relies on State v. Miller, 110 Wn. App. 283, 40 P.3d 692, review denied, 147 Wn.2d 1011 (2002), which turned on Portuondo v. Agard, 529 U.S. 61, 120 S. Ct. 1119, 146 L. Ed. 2d 47 (2000). Resp. Br. at 45-46. Miller, however, addressed only the requirements of the United States Constitution. Id. at 284-85.

Unlike Miller, here appellant has offered other reasons for this Court to find misconduct: violations of the Washington Constitution, and the appellate court's authority to supervise the trial courts. See App. Br. at 118-30. The State does not respond to these authorities or argument.

a. Washington Constitution, art. I, §§
3 and 22

The Washington Supreme Court is reviewing whether the Washington Constitution prohibits a prosecutor arguing that the defendant tailored his testimony by exercising his rights to appear, confront witnesses, and to testify. State v. Martin, 151 Wn. App. 98, 210 P.3d 345 (2009), review granted, 168 Wn.2d 1006 (2010). Oral argument was held October 21, 2010.

b. The State Does Not Distinguish State v. Stith.

The State claims appellant omitted a "key phrase" from his quote of State v. Stith, 71 Wn. App. 14, 856 P.2d 415 (1993). Resp. Br. at 47.

This court has previously determined, and the state concedes, that cross examination or comments in closing argument which seek to compare the honesty of the defendant with law enforcement officials or comments which express a personal opinion of witness veracity are improper.

Id. at 19. Appellant did not challenge the prosecutor's comments as expressing a personal opinion of witness veracity. The remainder of the Stith quote applies here and remains valid law.

4. THE SUBPOENA FROM THE NON-EXISTENT SPECIAL INQUIRY JUDGE PROCEEDING WAS NOT VALID.

a. Unchallenged Findings Are Verities On Appeal: There Was No SIJP.

The State relies on an oral statement from the judge at the first trial that "any and all of us can be a special inquiry judge." Resp. Br. at 52. Nonetheless, the court formally found

At the time of the issuance of the subpoena duces tecum, there were no subsequent [sic] special inquiry proceedings.

CP 1003-04. The State has not challenged this finding. See App. Br. at 25-28, 130-32.

b. Iowa Case Law Does Not Establish the State's Authority to Issue a Subpoena.

The State relies on a case from Iowa, Brown v. Johnston, 328 N.W.2d 510 (Ia. 1983), to support its claim that it had the authority to issue this subpoena for a non-existent proceeding.

In Brown, however, the court expressly noted:

While it is not clear in this case whether the application was "approved" by the court [as required by rule], the library personnel do not dispute the county attorney's claim that the subpoena was obtained in the manner provided by criminal rule 5(6).

Id., 328 N.W.2d at 512. Thus the parties did not challenge, and the court did not decide whether the prosecutor had the authority to issue the subpoena.

Of course, that is precisely the issue here: Whether the prosecutor had the authority to issue a subpoena duces tecum appearing to be for a Special Inquiry Judge Proceeding when no such proceeding existed, and whether it was approved by the judge.

The Washington State Bar Association's Ethics Advisory Opinion suggests significant problems with issuing a subpoena duces tecum "prior to commencement of a suit without a cause number and without a case being filed:"

... [I]ssuing a subpoena suggesting it has the force of law when, in fact, it has none, may be a violation of Rules of Professional Conduct 3.4, 4.1, 4.4 and 8.4.

To issue a subpoena without the commencement of an action may be a "... frivolous discovery request ...". RPC 3.4.

To create the impression that a judicial proceeding has been commenced or that a subpoena has the force of law, when in fact it does not, may be a violation of RPC 4.1.

You may also be in violation of RPC 4.4 by using a method to obtain evidence that violates the legal rights of a third person.

Under 8.4, such action may constitute "engagement and conduct involving dishonesty, fraud, deceit or misrepresentation" and, under subsection (k) may violate your oath as an attorney.

WSBA Ethics Advisory Opinion No. 2022 (2003).

All of these problems arise with the subpoena that was issued here, and more -- since the State never established that Judge Swisher actually authorized it and there was no telephonic record, as would be required for a warrant. See App. Br. at 132-33.

5. EVIDENCE OF A DEFENDANT'S POVERTY IS NOT ADMISSIBLE AS "MOTIVE" IF THE CRIME DID NOT INVOLVE PECUNIARY GAIN.

The cases the State cites all involved crimes that included robbery. Resp. Br. at 52-55. This case did not involve obvious pecuniary gain for Mr. Hilton. He owed back rent before the Ulrichs were

murdered; he still owed back rent after they were murdered. There was no evidence that his financial situation was relieved or improved by these killings. See App. Br. at 50-52, 140-43.

6. DEFENSE COUNSEL DID NOT HAVE ACCESS TO THE "INTERNAL INVESTIGATION" THAT OCCURRED AS A RESULT OF THE "VALDEZ MEMORANDUM."

Appellant acknowledged trial counsel and appellate counsel had access to the "four notebooks" and the 13-page "Valdez memo." Resp. Br. at 61-62. See App. Br. at 22.

The record, however, lists additional documents that were requested and not provided: the internal investigation records, which the trial court reviewed in camera for Brady¹¹ evidence and filed under seal. RP 140-43, 289-90.

Appellant intended to designate those documents to the Court of Appeals -- see CP 1118-1228 -- but was unable to determine, without access to them, where within the sealed record they appear. App. Br. at 22-23.

¹¹ Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

C. CONCLUSION

Appellant relies on the authority and argument in the Brief of Appellant for all remaining issues the State addresses.

For the reasons given here and in the Brief of Appellant, this Court should reverse Mr. Hilton's convictions and remand for a new trial.

Appellant also respectfully asks this Court to address issues that may recur in a new trial.

DATED this 15th day of November, 2010.

Respectfully submitted,



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