

FILED

SEP 09 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
BY \_\_\_\_\_

NO. 28910-9-III

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

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STATE OF WASHINGTON,

Respondent,

v.

RILEY KALK,

Appellant.

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

The Honorable John Hotchkiss, Judge

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BRIEF OF APPELLANT

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Attorney for Appellant

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A. ASSIGNMENT OF ERRORS

1. The court erred in entering the order (findings of fact and conclusions of law on 3.6 hearing, 6.1) denying the CrR 3.6 motion to suppress the firearms seized pursuant to the execution of the search warrant. CP 70-74.

2. The court erred in entering that part of finding of fact 2.2 and 2.4 where the court finds police went to appellant's property to locate a responsible adult. CP 71.

3. The court erred in entering Court's reasons of Admissibility of the Evidence Sought to Be Suppressed 5.1 and 5.2. CP 73.

4. The court's conclusion the government agents were conducting legitimate business when they entered onto appellant's property is unsupported by the evidence.

5. The court's conclusion appellant did not have an expectation of privacy in his property is unsupported by the evidence.

6. Appellant's rights under both article 1, § 7 of the Washington State Constitution and the Fourth Amendment to the United States Constitution were violated when police searched his property without a warrant.

Issues Pertaining to Assignments of Error

1. The only access to appellant's rural property is a long dirt road and from the road to appellant's motor home and trailer is a dirt path. A gate blocks the entrance to the road and next to the gate a "No Trespassing" sign is posted. A police officer and a Child Protection Services employee went to appellant's property to contact a boy supposedly living on the property the day after the school he attended reported he did have his medications. The two did not contact the school before going onto appellant's property to look for the boy despite no reason to believe the boy was not in school at the time they went to appellant's property to look for him. While on appellant's property the police officer saw a rifle and ammunition through the window of appellant's trailer. That observation provided probable cause to support a search warrant for guns. Was the initial entry onto appellant's property illegal under both article 1, § 7 of the Washington Constitution and the Fourth Amendment of the United States Constitution?

2. Where the information supporting the probable cause for the search warrant was illegally obtained and absent that information there was no probable cause to support the warrant, did the court err in failing to suppress the evidence seized when the warrant was executed?

B. STATEMENT OF THE CASE

1. Procedural History

Riley Kalk was charged with three counts of first degree unlawful possession of a firearm. CP 3-5. In each count it was alleged Kalk illegally possessed a firearm because he had previously been convicted of a serious offense. Id.

Prior to trial, Kalk moved to suppress the firearm evidence under both the Washington and United States' Constitutions. CP 6-18. A CrR 3.6 hearing was held. The court denied the motion. CP 74.

Following the denial of Kalk's suppression motion there was a stipulated facts trial. CP 19-21. Kalk reserved the right to appeal the denial of his suppression motion. CP 17-18.

The court found Kalk guilty as charged and based on an offender score of three he was sentenced to 31 months for each count with the sentences ordered to run concurrent with each other. CP 22-31. The sentence was stayed pending this appeal. Id.

2. CrR 3.6 Hearing

On Monday, October 19, 2009, the Mansfield school sent a referral to Child Protective Services (CPS) regarding S.W. RP 19, 42. The referral claimed S.W. needed some prescription medicine but the school was unable to contact his mother. RP 31. The referral also indicated S.W.

was living on property that lacked electricity, he arrived to school dirty and he had to walk 3 miles to catch the school bus. RP 31-32. That same day the referral was faxed to the Douglas County Sheriff's Office. RP 42.

The following day, a Tuesday, at about noon, CPS worker Kathy Pete and Detective David Helvey drove to Kalk's property. According to Helvey, S.W. was supposedly living on Kalk's property. RP 20. Helvey testified their sole purpose for going to Kalk's property was to make contact with S.W. RP 42, 44-46. Although S.W. is 14 years old and there was no indication he was not attending school or he was not in school that day, Helvey and Pete did not contact the school or go to the school to determine if S.W. was there before going to Kalk's property. RP 44-47. As it turned out, S.W. was at the school. RP 47.

Helvey had a description of the location of the property; nonetheless, it took him an hour to find it. RP 20. To get to the property Helvey drove to the top of McNeil Canyon and followed Road E for about a mile. RP 20. From there he turned onto Columbia River Bluffs Road. Id. Columbia River Bluffs Road is a gravel road. RP 55. Helvey testified he believed it was a county road because he recalled someone telling him it was but he admitted he did not see any typical county road signs. RP 56.

Once Helvey turned onto Columbia River Bluffs Road he drove another mile until he came to a private dirt road that intersected Columbia River Bluffs Road. RP 21, 56. On either side of the entrance to the road was a fence. RP 25. There was also a gate blocking the entrance to the road and on one gatepost was a “No Trespassing” sign. RP 29. Helvey later learned the gate was located on property belonging to Donald Erickson and the owners of property located beyond the gate were allowed to use the road to access to their property. RP 30.

Helvey testified the gate was opened so he drove through it. He drove another mile down the road until he reached Kalk’s property. RP 32. Helvey testified he did not believe he saw any other signs on the road. RP 33. From the road there was a dirt path that led down to an area where a motor home and camp trailer are parked. RP 36. Around the motor home and trailer was nothing but dirt and there is no obvious right of way to either. Id. Both the motor home and trailer belong to Kalk. RP 21.

Helvey said he saw several dogs that appeared to be starving and he could hear cats. RP 34. It did not appear the property was serviced by either electricity or water. RP 35. Helvey walked up to the motor home and knocked but there was no answer. RP 34. He then walked over to the trailer and through a window on the left side of the trailer’s door he saw the barrel of a shotgun and a belt with shotgun shells. RP 34-35.

After Helvey and Pete left they then went to the Mansfield school where they contacted S.W. RP 47. Helvey also learned that Kalk was a convicted felon and was not allowed to possess guns. RP 35. Based on his observation of the shotgun in the trailer Helvey secured a warrant to search the property. Two days later police searched the property and found 17 firearms. RP 37-38.

Kalk testified he purchased the property about three years earlier and owns both the motor home and trailer. RP 62. When he was shown the property by the real estate agent, the agent pointed out the "No Trespassing" sign on the gate and told him the only people allowed to use the road were the owners of property located beyond the gate. RP 63-64.

Kalk said Columbia River Bluffs Road is private road. RP 65. About a half a mile before coming to the gate across the access road to Kalk's property is another gate. RP 67-68. On the gate are posted "No trespassing" signs. RP 68; Ex.'s 10, 11. Erickson also owns that gate. RP 67.

Kalk's property is almost two miles from the gate at the entrance to the private access road. RP 64, 72. Kalk too testified it is a primitive dirt road. RP 64. There are covenants that restrict what Kalk can do with the property and that require the property owners to keep the access road gate closed. RP 70. The covenants also require property owners to escort

quests from the gate to their respective property. Id. Kalk said the reason for the covenants is to keep people from wandering around on someone's property. Id.

On the day Helvey and Pete went to Kalk's property, Kalk had left about 11:00 a.m. to go to the store to buy dog food. RP 74. When he left he closed the gate. Id. When he returned at about 1:00 p.m., after Helvey and Pete had been there, the gate was closed. Id.

The road is the only means of accessing Kalk's property. RP 81. Kalk's property is not fenced and he did not have any signs posted on his property. RP 78-80.

### 3. Ruling

Kalk argued Helvey and Pete did not have a legitimate reason to enter onto Kalk's property because their purpose for going there was to find S.W. but they did not first contact the school to determine if S.W. was at the school. RP 90-93. Kalk also argued Helvey and Pete illegally entered onto Kalk's property and therefore evidence of the shotgun Helvey observed through the trailer window was an illegal search. RP 93-95.

The court entered findings of fact and conclusions of law. CP 70-74. It concluded the search was justified and denied the motion to suppress. Id. In its oral ruling the court found Helvey and Pete were

conducting legitimate CPS business when they entered onto Kalk's property. RP 96. The court also ruled:

Because I think Mr. Erickson could probably let whoever he wants run through this particular gate and, to me, that's the only evidence we have in this case that there was some expectation of privacy is that one gate that's on a different property. Mr. Kalk did not post his property. He did not fence his property. He did not gate his property, *etcetera*. So, under the circumstances, this Court's going to deny the motion. (emphasis original).

RP 97.

C. ARGUMENT

KALK'S MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED BECAUSE THE SEARCH WARRANT WAS NOT SUPPORTED BY UNTAINTED INFORMATION SHOWING PROBABLE CAUSE.

The appellate court reviews a trial court's denial of a suppression motion by considering whether substantial evidence supports the challenged findings and whether those findings support the trial court's conclusions of law. State v. Ague-Masters, 138 Wn. App. 86, 97, 156 P.3d 265 (2007). Findings are supported by substantial evidence only if the evidence is sufficient to persuade a fair-minded, rational person of the truth of the finding. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). The court reviews conclusions of law de novo. Id., 137 Wn.2d at 214.

Under both article 1, § 7, of the Washington Constitution and the Fourth Amendment to the United States Constitution, warrantless searches

and seizures are per se unreasonable. State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999) (citing State v. Houser, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980)). They are only a few carefully drawn and well-delineated exceptions to the warrant requirement. State v. Ross, 141 Wn.2d 304, 312, 4 P.3d 130 (2000); Ladson, 138 Wn.2d at 349 (citations omitted). It is the state's heavy burden to prove a warrantless search falls under one of the exceptions. State v. Eisfeldt, 163 Wn.2d 628, 635, 185 P.3d 580 (2008) (citation omitted); State v. Parker, 139 Wn.2d 486, 496, 987 P.2d 73 (1999).

The Fourth Amendment provides, “The right of the people to be secure in their ... houses ... against unreasonable searches ... shall not be violated....”). U.S. Const. amend. IV. The Washington Constitution, article I, section 7, however, provides, “ No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Although both protect similar interests, Article 1, § 7 places greater emphasis on privacy than does the Fourth Amendment. Eisfeldt, 163 Wn.2d at 634; State v. Young, 123 Wn.2d 173, 180, 867 P.2d 593 (1994).

When analyzing whether a warrantless search violates the Fourth Amendment’s reasonableness standard, the inquiry is whether the defendant possessed a reasonable expectation of privacy in the area searched. Eisfeldt, 163 Wn.2d at 637 (citing State v. Myrick, 102 Wn.2d

506, 511, 688 P.2d 151 (1984). By contrast, whether article 1, § 7 is violated turns on whether government agents intrude on a person's private affairs. State v. Boland, 115 Wn.2d 571, 577, 800 P.2d 1112 (1990). Article 1, § 7 protects those privacy interests citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant. State v. Ladson, 138 Wn.2d at 348-49 (quoting State v. Myrick, 102 Wn.2d at 511). "Private affairs are not determined according to a person's subjective expectation of privacy because looking at subjective expectations will not identify privacy rights that citizens have held or privacy rights that they are entitled to hold." State v. Surge, 160 Wn. 2d 65, 72, 156 P.3d 208 (2007).

One area where article 1, § 7 provides greater protection than the Fourth Amendment is to a person's right to exclude the government from his property. State v. Gave, 77 Wn.App. 333, 337, 890 P.2d 1088 (1995) (citing State v. Johnson, 75 Wn.App. 692, 702-03, 879 P.2d 984, review denied, 126 Wn.2d 1004 (1995)). A warrantless entry by government agents onto private property violates the state constitution if the agents intrude into the citizen's "private affairs." Johnson, 75 Wn.App. at 703.

The open view doctrine is a limited exception to the warrant requirement and under that doctrine, when law enforcement officers are able to detect something by using their senses while lawfully present at the

place where those senses are used, that detection does not generally constitute a search. Young, 123 Wn.2d at 182. The open view doctrine finds its origin under Fourth Amendment jurisprudence and is based on the premise that police with legitimate business may enter areas of the curtilage which are impliedly open like access routes to residences. State v. Seagull, 95 Wn.2d 898, 902, 632 P.2d 44 (1981). If police discover of evidence of a crime in open view there is no search. Id. at 901. Government agents on legitimate business may enter areas impliedly open to the public, such as access routes to a house or residence. State v. Rose, 128 Wn.2d 388, 392, 909 P.2d 280 (1996) (citing Seagull, 95 Wn.2d at 902). “An officer is permitted the same license to intrude as a reasonably respectful citizen.” Seagull, 95 Wn.2d at 902 (citation omitted).

While on Kalk’s property Helvey saw a rifle barrel and ammunition through the window of the trailer. It was that observation that supplied probable cause for the search warrant. The state failed to meet its burden that Helvey’s discovery of the rifle was justified under the open view exception to the warrant requirement.

The first requirement under an open view analysis is whether Helvey and Pete were on legitimate government business when they entered Kalk’s property. See State v. Jesson, 142 Wn.App. 852, 859, 177 P.3d 139 (2007) (citing Ross, 141 Wn.2d at 313). In its oral ruling the

court concluded they were on legitimate Department (CPS) business. RP 96. That conclusion is factually unsupported.

Although the court found Helvey and Pete went to Kalk's property to either contact S.W. or locate a responsible adult, that finding is unsupported. CP 71. Helvey testified the sole reason they entered Kalk's property was to contact S.W. because of the CPS referral from the school. RP 42, 44, 46. The referral was not based on S.W.'s lack of attendance and in fact the report indicated S.W. walked three miles to catch the school bus everyday and he consistently went to school. RP 31-32, 46. The referral was based on S.W. lacking his medication on the day of the referral. Although it was about noon on a Tuesday when the two went to Kalk's property, Helvey admitted neither he nor Pete contacted the school or went to the school to find S.W. before they went to Kalk's property. RP 45, 47. Only after the two left Kalk's property did they bother to go to the school where they found S.W. RP 47.

Helvey and Pete had no reason to believe S.W. would be at the property and not in school. Given that their reason for going onto Kalk's property was to contact S.W., Helvey and Pete's "business" was not legitimate. They were there to snoop around. Thus, Helvey's discovery of the rifle does not meet the first requirement of the open view doctrine and cannot be used to support the warrant.

Assuming *arguendo* the entry onto Kalk's property was for legitimate governmental business, access to the property had to be impliedly open to the public. Jesson, 142 Wn. App. at 859. It was not.

The character of the property is a significant factor in determining whether a government agent violates a person's privacy rights by entering property without permission and absent a warrant. In State v. Thorson, 98 Wn.App. 528, 530, 534-35, 540, 990 P.2d 446, review denied, 140 Wn.2d 1027 (2000), the court held "the location and topography" of the property itself can support the conclusion a citizen reasonably expects police will not trespass without a warrant and fences and signs are not necessary to assert an expectation of privacy. Id. at 535. There, the court found the access route to Thorson's property was not impliedly open to the public, despite the absence of any fence, gate or signage. The property was in a rural and sparsely populated area, was not serviced by public utilities and was not visible to from the road. Other courts have also found similar characteristics significant in determining whether a warrantless entry onto property was constitutionally justified. See State v. Ridgway, 57 Wn.App. 915, 918, 790 P.2d 1263 (1990) (house was located in an isolated setting, hidden from the road and from neighbors and accessed by a long driveway); Jesson, 142 Wn.App. at 855-57 (the property was in a sparsely populated area, police had to drive several miles of dirt roads to reach the

driveway, which was “primitive” and the residence was not visible from the public roadway or neighboring property); Johnson, 75 Wn.App. at 696-97 (the property was only accessible from a dirt road that ran through a state park, police had to pass through a closed, but unlocked, chain link gate with a fence extending from both sides of the gate and the home was not visible from the access route); State v. Crandall, 39 Wn. App. 849, 862-63, 697 P.2d 250 (1985) (rural property not posted only a partial fence and the contraband could not be seen outside the boundary of the property).

Here, Kalk’s property is located in an extremely rural area isolated from public roads and the trailer and motor home are not visible from any public road. Ex.’s 2, 3, 4. The property was so isolated that it took Helvey at least an “hour of looking” before he found it, despite using directions. RP 20. Moreover, the property did not appear to be serviced by public utilities. RP 35.

Although there is some confusion whether Columbia River Bluff Road is a private or public road, it is nonetheless a mile long primitive unpaved gravel road. RP 55. The private road from Columbia River Bluff Road to Kalk’s property is even more primitive and Kalk’s property is located one to one and a half miles from the entrance to the road. RP 20-21, 64. From the road there is a dirt path that led down the area where the

motor home and trailer are parked but there is no obvious right of way to either.

Given character and location of the property, a person would reasonably expect that neither the police nor anyone else would intrude without permission or a warrant. The character and location of Kalk's property, however, is not the only factors that show access is not impliedly open to the public.

While "No Trespassing" signs alone do not necessarily mean access is not impliedly open to the public, whether property is posted is an additional factor to consider. See Johnson, 75 Wn. App. at 697 ("No Trespassing" signs posted on both sides of the fence on a tree behind the fence); See also, Jesson, 142 Wn. App. at 859 (the driveway leading to the property was posted with "No Trespassing signs).<sup>1</sup> Here, on the fence post next to the gate marking the entrance to the private access road there was posted a "No Trespassing" sign, a further indication the access road was not open to the public.

Other additional factors showing access to property is not open to the public include the presence of gates or fences. See Ridgway, 57

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<sup>1</sup> See State v. Blair, 65 Wn. App. 64, 827 P.2d 356 (1992) ("No Trespassing" signs informed the public the housing complex was not open to the public absent an invitation from a resident); Singleton v. Jackson, 85 Wn. App. 835, 840, 935 P.2d 644 (1997) (although a driveway or walkway may imply consent to approach a house, "[n]otice that consent has been withdrawn can be accomplished in a variety of ways, including the posting of a 'No Trespassing' or 'No Solicitation' sign.").

Wn.App. 915, 918 (long driveway to the house blocked by a closed gate); Johnson, 75 Wn. App. at 697 (unlocked chained link gate across road with a fence on either side); Jesson, 142 Wn.App. at 855-57 (closed but unlocked gate at entrance to driveway leading to the property). Here, there was unlocked gate blocking the entrance to the access road and on either side of the gate was a fence. Although Helvey testified the gate was open, Kalk testified it was closed when he left and returned to the property that same day. Furthermore, the community of property owners using the access road are respectful of each other's privacy and are required to escort their visitors and guests from the gate to their respective properties. The gate, fence and community custom further support the conclusion the access to Kalk's property is not impliedly open to the public.

In contrast, where courts have held access is impliedly open to the public the nature of the property was either residential, the house could be seen from the public roadway, there were no gates or fences or the gates were not intended to prevent public access. See State v. Ague-Masters, 138 Wn.App. at 92-93 (residence only 225 feet from access point, there were no fences and police accessed the property through an open, unlocked cattle gate); State v. Gave, 77 Wn.App. at 335-36, 338-39 ("No Trespassing" signs were placed by the City of Olympia on land owned by the city that was leased to the defendants, residence was visible from the

road and no fences or gates blocked the access route); State v. Hornback, 73 Wn. App. 738, 740, 743-44, 871 P.2d 1075 (1994) (access route was an open and unobstructed driveway only 100 years long, the residence was partially visible from the road and property was located in a semi-residential area).

Article 1, § 7, protects "those privacy interests which citizens of this state have held, and should be entitled to hold, safe from *governmental trespass* absent a warrant." Young, 123 Wn.2d at 181 (citation omitted; emphasis added). To determine whether a government agent has unconstitutionally invaded a citizen's privacy interest courts are required "to look to the nature of the property, the expectation of privacy it reasonably supports, and the nature of the intrusion." Thorson, 98 Wn.App. at 533.

Access to Kalk's property is not impliedly open to the public: (1) the property is isolated and rural; (2) the motor home and trailer are not visible from a public road; (3) the road leading to the access road is unpaved; (4) it is over a mile from the entrance of the access road to the property and it is nothing more than a dirt road; (5) there is a gate with a fence on either side at the entrance to the access road; (6) there is a "No Trespassing" sign on the fence post next to the gate; (7) only a dirt path leads from access road to the motor home and trailer; and (8) the

community of property owners who shared the access road customarily escorted visitors and quests from the gate to their respective properties because they respected the privacy of the other property owners.

As to the nature of the intrusion, Helvey and Pete went to Kalk's property to contact S.W. based on a referral that S.W. was at school without his medication. Yet, they did not try to contact S.W. on the day of the school's referral but the following day and despite the lack of any information that S.W. was not attending school or was not in school on the day they went to the property, neither attempted to even contact the school to find out if S.W. was there before they went out to Kalk's property. The only reasonable inference is that Helvey and Pete went to the property for the illegitimate purpose of searching for evidence without a warrant in support of the allegation in the referral that S.W. was living in less than ideal conditions.

Under the facts here, the nature of the property and intrusion show Helvey's unpermitted and warrantless entry onto Kalk's property violated article 1, § 7.

A search occurs under the Fourth Amendment if the government intrudes upon a subjective expectation of privacy that society is willing to recognize as objectively reasonable. Katz v. United States, 389 U.S. 347, 351-52, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967); Young, 123 Wash.2d at 181.

Whether a search is unreasonable depends upon the facts and circumstances of each case. Cooper v. California, 386 U.S. 58, 59, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967).

The trial court ruled that because the gate was located on Erickson's property and Kalk's property was not posted or gated, Kalk had no reasonable expectation of privacy. RP 97; CP 73 (Court's Reasons for Admissibility of the Evidence Sought to be Suppressed 5.1). The court was wrong.

First, there is no evidence Erickson gave police or anyone else other than the other property owners' permission to enter onto the road. See e.g. State v. Bobic, 140 Wn.2d 250, 259, 996 P.2d 610 (2000) ("the detective was lawfully inside the adjoining unit because the manager had given him permission to enter.").

Second, whether Kalk erected the gate or posted the access road himself is irrelevant. The private road is the only access to his property. There was no reason for Kalk to post a "No Trespassing" sign at the entrance to the road because one already existed. Posting another sign himself would have been redundant.

Third, it is reasonable for Kalk to believe it unnecessary to post or fence his property to prevent unwanted intruders. The gate, the "No Trespassing" sign at the gate, the rural location, the long primitive dirt

road and the dirt path from the road to Kalk's motor home and trailer, support a subjective expectation of privacy in the property that is objectively reasonable. A reasonably respectful person would not ignore those clear signals that the property was not open to intrusion absent permission. Furthermore, to find there is no subjective expectation of privacy unless a person erects a gated fence around his property would mean the constitution only protects the privacy rights of citizens who have the financial resources to build fences or gates. There is no legal or logical support for that proposition. See Thorson, 98 Wn. App. at 535 ("The nature of Thorson's property is such that he has no reason to anticipate intrusion by strangers, much less by law enforcement officers. The location and topography support the conclusion that Thorson reasonably expected privacy, and that fences and signs were not necessary to assert that expectation.").

Under these facts Kalk had a reasonable expectation of privacy. Helvey's warrantless search violated the Fourth Amendment as well.

In reviewing whether probable cause supports the warrant, illegally obtained information must be excised from the affidavit supporting the warrant. Ross, 141 Wn.2d at 311-312. A search warrant remains valid only if the affidavit contains sufficient untainted facts to establish probable

cause independent of the illegally obtained information. Eisfeldt, 163 Wn.2d at 640.

Helvey's observation of the rifle in Kalk's trailer was the result of an unlawful search. That observation was the information that provided probable cause to support the search warrant. CP 44-66. Because unlawfully obtained information cannot be used to support a search warrant, the evidence of the firearms seized under the warrant must be suppressed. Eisfeldt, 163 Wn.2d at 640.

D. CONCLUSION

For the reasons stated, this Court should hold the trial court erred in admitting evidence of the firearms and reverse Kalk's conviction.

DATED this 7 day of September, 2010.

Respectfully submitted,

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

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|----------------------|---|---------------------|
| STATE OF WASHINGTON, | ) |                     |
|                      | ) |                     |
| Respondent,          | ) |                     |
|                      | ) |                     |
| v.                   | ) | COA NO. 28910-9-III |
|                      | ) |                     |
| RILEY KALK,          | ) |                     |
|                      | ) |                     |
| Appellant.           | ) |                     |

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 7<sup>TH</sup> DAY OF SEPTEMBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ERIC C. BIGGAR  
DOUGLAS COUNTY PROSECUTOR'S OFFICE  
P.O. BOX 360  
WATERVILLE, WA 98858

[X] RILEY KALK  
P.O. BOX 2073  
CHELAN, WA 98816

**SIGNED** IN SEATTLE WASHINGTON, 7<sup>TH</sup> DAY OF SEPTEMBER, 2010.

x *Patrick Mayovsky*