

32867-8-III  
COURT OF APPEALS

FILED  
JUL 07, 2016  
Court of Appeals  
Division III  
State of Washington

DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JUAN A. RODRIGUEZ, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY

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APPELLANT'S SUPPLEMENTAL BRIEF

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## A. ARGUMENT

Our Supreme Court has held that gang-related statements provided to jail staff by a defendant in order to avoid being housed with rival gang members cannot be considered voluntary and their admission at trial violates the defendant's Fifth Amendment rights. *State v. DeLeon*, No. 91185-1, 2016 WL 2586679, at \*4 (Wash. May 5, 2016). The record shows Mr. Rodriguez made statements under circumstances indistinguishable from those in *DeLeon*, and admission of those statements violated his rights under the Fifth Amendment.

The error was constitutional and the State bears the burden of showing it was harmless. 2016 WL 2586679, at \*5. Here, as in *DeLeon*, the State cannot carry this burden. “[T]o find such a constitutional error harmless, we must find—beyond a reasonable doubt—that ‘any reasonable jury would have reached the same result, despite the error.’” 2016 WL 2586679, at \*5 (citing *State v. Aumick*, 126 Wn.2d 422, 430, 894 P.2d 1325 (1995)). Given the inflammatory nature of evidence of gang affiliation, this court cannot conclude “‘that the misconduct did not affect the verdict.’” 2016 WL 2586679, at \*5 (quoting *State v. Monday*, 171 Wn.2d 667, 680, 257 P.3d 551 (2011)).

B. CONCLUSION

Mr. Rodriguez's conviction should be vacated.

Dated this 7th day of July, 2016.

JANET GEMBERLING, P.S.



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Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 32867-8-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
JUAN A. RODRIGUEZ,	)	
	)	
Appellant.	)	

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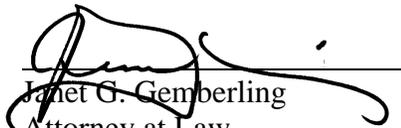
I certify under penalty of perjury under the laws of the State of Washington that on July 7, 2016, I served a copy of the Appellant's Supplemental Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

David Trefry  
David.Trefry@co.yakima.wa.us

I certify under penalty of perjury under the laws of the State of Washington that on July 7, 2016, I mailed a copy of the Appellant's Supplemental Brief in this matter to:

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Clallam Bay, WA 98326

Signed at Spokane, Washington on July 7, 2016.

  
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