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NO. 33549-6-III

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COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

JUL 27 2016

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

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STATE OF WASHINGTON,

Respondent,

vs.

WILLIAM MARK JULIAN,

Appellant.

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BRIEF IN REPLY OF APPELLANT WILLIAM MARK JULIAN

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## A. ARGUMENT IN REPLY

1. Contrary to the claims of the respondent, STATE OF WASHINGTON, the prosecution should not have been allowed to amend its information, so as to allege a different crime under count V of the information, to wit: “felony” communication with a minor for immoral purposes under RCW 9.68A.090(2). [Issue no. 1 revisited].

On pages 8 through 14 of the brief of respondent, the STATE OF WASHINGTON argues the trial court acted within its discretion in allowing the prosecution to amend its information. By suggesting the amendment was merely the correction of a “scrivener’s error” the respondent is being totally disingenuous. Simply put, it was not. By allowing the prosecution to amend its original information, the superior court permitted the respondent to elevate the charge in count V to a felony. This resulted in substantial and undue prejudice to the accused in terms of his then having to potentially face a sentence of life without parole, RCW 9.68A.090(2).

Under the governing law, the motion to amend should have been denied. In failing to do so, the superior court thus manifestly abused its discretion. See, Gordon v. Gordon, 44 Wn.2d 222, 226-27, 266 P.2d 786 (1954); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995); In re Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990).

Again, the prosecution cited Rule 2.1(d) of the Washington Superior Court Criminal Rules [CrR] as its sole authority in support of its motion to amend its original information. That rule only permits an amendment if the substantial rights of the defendant are not prejudiced thereby. Id.

Here, the proposed amendment was not the result of any newly discovered evidence during an ongoing investigation. Rather, the defendant's prior sex conviction was readily known or discoverable at the time of charging Mr. JULIAN. Both the current, alleged offenses as well as the prior sexual offense arose in Spokane County. Thus, there was no justifiable excuse whatsoever to not have included the felony charge in count V in its original information against the defendant.

Simply put, the substantial rights of Mr. JULIAN were implicated and unduly prejudiced by the court's decision which allowed this amendment. CrR 2.1(d) does not contemplate the substantive changing of a charge to a new and different offense. When interpreting the predecessor to CrR 2.1(d), the state supreme court in State v. Olds, 39 Wn.2d 258, 235 P.2d 165 (1951), held, without hesitation, that the government's ability to amend a criminal information does not encompass the changing of an existing count, without a subsequent change in facts

which were non-existent at the time of the original filing of charges. Such a novel interpretation allowing for the same, as undertaken by the STATE, runs entirely afoul of the guarantees of due process. See, State v. Schaffer, 120 Wn.2d 616, 845 P.2d 281 (1993). The court in State v. Martinez, 76 Wn.App. 1, 884 P.2d 3 (1994), held that CrR 2.1(d) must be read in light of the Article I, §22, of the Washington State Constitution which provides “in criminal prosecutions, the accused shall have the right . . . to demand the nature and cause of action of the accusation against him.” See also, State v. Berry, 31 Wn.App. 408, 641 P.2d 1213 (1982).

In sum, by ignoring the governing law, the superior court manifestly abuse of discretion unduly prejudicing the substantial rights of Mr. JULIAN. See, State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). Thus, reversal in this case is fully warranted. RAP 12.2.

2. Contrary to the claim of the respondent, STATE OF WASHINGTON, the appellant, WILLIAM MARK JULIAN, did not waive the argument that, as a direct consequence of the foregoing error associated with issue no. 1, the jury in turn should not have been advised by the superior court, during the prosecution’s case-in-chief, that the defendant, Mr. JULIAN, had been previously convicted of a predicate sexual offense for purposes of Count V of the amended information and, in turn, the court should not have provided the jury with a special verdict form during deliberations as relating to said Count V of the amended indictment and the corresponding jury instructions. [Issue no. 2 revisited].

On page 14 of the “brief of respondent,” the STATE OF WASHINGTON first erroneously claims the appellant, WILLIAM MARK JULIAN, has waived this argument by supposedly not providing any legal citation as required under RAP 10.3(a)(6). This is nothing short of an attempt to “skirt” the substantive issue. The unfairness surrounding this so-called “stipulation” speaks for themselves and do not require any further legal citation other than this error was the direct result of the court’s earlier error in allowing the prosecution to amend its information. In effect, any required citation was provided therein in Mr. JULIAN’s related argument challenged the propriety of amendment, as contemplated under RAP 10.3(a)(6). Accord, State v. Dennison, 115 Wn.2d 609, 929, 801 P.2d 193 (1990).

The STATE is also being disingenuous when claiming this error was not developed by Mr. JULIAN in his brief. As argued on pages 20 through 21 of appellant’s opening brief, the trial court should not have allowed the STATE to amend its information. The jury in turn should not have been advised during the prosecution’s case-in-chief that the defendant, Mr. JULIAN, had been previously convicted of a predicate offense for purposes of count V. In turn, the jury should not have then been provided with a special verdict form relating to said count V of the

amended indictment or the corresponding jury instructions.

Finally, respondent's argument on page 15 of its brief regarding the fact a defendant can elect to stipulate to a prior conviction is entirely misplaced. The error in allowing the information to be amended, left Mr. JULIAN with nothing short of a "Hobson's choice."

3. Contrary to the STATE OF WASHINGTON's argument, the complaining witness, L.A.T., should not have been permitted to testify at trial insofar as she not competent and lacked the ability to relate her impressions truthfully in terms of the events giving rise to this criminal action. [Issue no. 3 revisited].

The STATE OF WASHINGTON on pages 16 through 29 of the "brief of respondent," argues that the trial court properly determined the child witness, L.A.T., was competent to testify against the defendant, WILLIAM MARK JULIAN, even though it was demonstrated by a preponderance of the evidence that she lacked the ability to recall or accurately reflect truth from fiction in terms of alleged sexual misconduct at issue in this case. [CP 514-21]. Accordingly, the argument of the STATE concerning this issue is not well-taken.

Again, RCW 5.60.050 governs the competency of a witness to testify in a given proceeding. Rule 601 of the Washington Evidentiary Rules [ER], provides generally that "[e]very person is competent to be a

witness except as otherwise provided by statute or by court rule.” See also, 5D K. Tegland, “Courtroom Handbook on Washington Evidence,” Wash. Prac., Rule 601 (2011). In this vein, Rule 6.12 of the Washington Criminal Rules for Superior Court [CrR] implements the foregoing statute and court rule in the criminal context and provides guidance in terms of who may be deemed “incompetent.” Subsection (c) of that rule provides a child, such as the alleged victim, “who do[es] not have the capacity of receiving just impressions of the facts about which they are examined or who do not have the capacity of relating them truly” is incompetent to testify. In effect, CrR 6.12(c) adheres to the fundamental principles of procedural and substantive due process as contemplated under article I, section 22, of the Washington State Constitution and the 5<sup>th</sup> and 14<sup>th</sup> amendments to the United States Constitution, in the criminal setting.

In determining whether a child and the child’s testimony fall under the stricture of CrR 6.12(c), the Washington courts employ a five [5] factor test wherein a child will be deemed competent if the witness (a) understands the obligation to speak the truth on the witness stand, (b) has the mental capacity at the time of the events in question, to receive an accurate impression of the events, (c) has a memory sufficient to retain an independent recollection of the events, (d) has the capacity to express in

words his or her memory of the events and (e) has the capacity to understand simple questions about the events. State v. Allen, 70 Wn.2d 690, 692, 424 P.2d 1021 (1967); see also, Matter of Dependency of A.E.P., 135 Wn.2d 208, 223, 956 P.2d 297 (1998); Jenkins v. Snohomish Cy. PUD, 105 Wn.2d 99, 101, 713 P.2d 79 (1986); State v. Wyse, 71 Wn.2d 434, 437, 429 P.2d 121 (1967). The respondent fully recognizes this criteria or factors as controlling in this case.

Here, under the authority of Allen, there is no realistic doubt complaining witness, Ms. Thompson, was not competent to testify at trial. The superior court thus erred in finding her so, and allowing her to testify before the jury. [Trial RP 355-66]. First, in terms of the Allen factors (b) through (d), she indicated when interviewed on multiple occasions and by numerous individuals that she could not remember the events regarding the alleged abuse and could only recall, initially, that the bruise on her neck was due to Mr. JULIAN having pinched her neck when they were playing and, only later on, claimed that the defendant had, in fact, given her a hickey while they were allegedly in the shower together. This clearly demonstrated L.A.T. neither had the capacity to receive an accurate impression of the events nor sufficient memory to retain an independent recollection of thereof in term of what actually transpired. By

the same measure, it was clear that she did not have the capacity to express in her own words and from her own memory what had or had not occurred without have been coaxed and unduly influenced by her mother and other adults who without a doubt had a “jaundice eye” toward convicting Mr. JULIAN in this case.

In addition to the element addressed in factor (d), and the final consideration in (e) is likewise implicated from the standpoint of the multiple interviews and questioning of L.A.T. which took place in this case. Suffice it to say, her ability to understand and accurately respond to simple questions was clearly tainted and drawn into doubt by the numerous examiners and their methods of leading and suggesting answers to their questioning of L.A.T.. [Trial RP 709, 967-76].

Lastly, it should be noted that the mere fact that the complaining witness was age eight [8] at the time of trial, raised no presumption of competency to testify. This is especially true where it is shown the child has a vivid imagination and demonstrates an inability to distinguish between fact and fiction. See, State v. Karpenski, 94 Wn.App. 80, 971 P.2d 553 (1999); see also, 5D K. Tegland, at 403. Thus, contrary to the STATE’s thinking, Ms. Thompson was in fact incompetent to testify against Mr. JULIAN, and should not have been allowed to testify at trial.

4. Notwithstanding the protestations of the STATE OF WASHINGTON, the child hearsay evidence should not have been admitted at trial under the governing provisions of RCW 9A.44.120 and the related “reliability” criteria set forth in State v. Ryan, 103 Wn.2d 165, 175-76, 691 P.2d 197 (1984), and its progeny. [Issue No. 4 revisited].

On pages 29 through 40 of the “brief of respondent,” the STATE OF WASHINGTON incorrectly claims that the proffered hearsay evidence of the prosecution, including the claimed out-of-court statements made by the complaining witness, L.A.T., to her mother, Angela Thompson, officer Richard Atkins of the Spokane Police Department and Karen Winston with Parents and Partners with Children, was properly admitted at trial under the provisions of RCW 9A.44.120 and the related “reliability” criteria set forth in State v. Ryan, 103 Wn.2d 165, 175-76, 691 P.2d 197 (1984), and its progeny. Here, the respondent chose to overlook the initial consideration posed by the appellant, WILLIAM MARK JULIAN, wherein he maintained on page 29 of his “opening brief,” that in light of the “incompetency” of the complaining witness herein, the hearsay statements which L.A.T. allegedly made to her mother, Angela Thompson, Officer Richard Atkins as well as Karen Winston, a so-called forensic interviewer, should be considered de facto “unreliable,” and should have been excluded.

Once again, if the child witness is not herself competent to testify,

any alleged out-of-court statements she purported made should, in turn, be considered similarly infirm. Mr. JULIAN resubmits the principles of due process require nothing less in this instance. In any event, and contrary to the STATE, the superior court erred in determining otherwise. [Trial RP 366-75]. Thereupon, the prosecution was allowed to present, in addition to the complaining witness' own testimony, the testimony of her mother, Angela Thompson, Officer Richard Atkins and Karen Winston, concerning L.A.T.'s claims of sexual abuse at the hands of the accused. In this vein, the superior court erroneously held this child hearsay evidence was admissible under RCW 9A.44.120 and the corresponding reliability factors set forth in State v. Ryan, 103 Wn.2d 165, 175-76, 691 P.2d 197 (1984). [RP 366-75].

The parties are in agreement that RCW 9A.44.120 governs the admissibility of a child's hearsay statement. Once again, that statute provides, in pertinent part, that a "statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, describing any attempted act of sexual contact with or on the child by another . . . is admissible in the courts of the state of Washington if:

- (1) The court finds, in a hearing conducted outside the presence of

the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and (2) The child . . .

(a) Testifies at the proceedings. . . “

In effect, RCW 9A.44.120 establishes an exception to the hearsay rule for a child’s statements in the context of sexual or physical abuse. 5D K. Tegland, “Courtroom Handbook on Washington Evidence,” Wash.Prac., Rule 807 “Admissibility of Child’s Statement-Conditions,” §(1) at 471 (2011). In the situation where the child is considered “available” and does, in fact, testify at trial, the sixth amendment right of confrontation is not implicated in terms of the child’s out-of-court statements even though they may be considered “testimonial” in nature since the defendant is then afforded the opportunity to cross-examine the child. State v. Rohrich, 132 Wn.2d 472, 939 P.2d 697 (1997); see also, 5D Tegland, Rule 807 “Admissibility of Child’s Statement-Conditions,” §(2) at 472, §(5)(f) at 474; Rule 807 “Sixth Amendment Right to Confrontation,” §11 at 486.

Nevertheless, Mr. JULIAN, continues to maintain that in this particular instance he was not afforded any “meaningful” cross-examination of the L.A.T. in light of the fact she was incapable of perceiving fact from fiction as spelled out in appellant’s “argument”

concerning issue no. 3 revisited above, and also in his opening brief. This fact alone implicated and detracted upon his sixth amendment right of confrontation and constitutes reversible error, much in the same vein as expressed by the four [4] dissenting justices when denouncing the plurality opinion in State v. Grosso, 151 Wn.2d 1. 84 P.3d 859 (2004). See also, Crawford v. Washington, 541 U.S. 36, 158 L.Ed.2d 177, 124 S.Ct. 1354 (2006).

In any event, there remains the issue concerning the lack of “reliability” associated with the subject hearsay statements of the complaining witness in terms of this requirement under RCW 9A.44.120. Under this statute, the defendant has the right to exclude such evidence unless the trial court finds particularized guarantees of trustworthiness after considering the time, content, and circumstances of the statement. State v. Ryan, 103 Wn.2d 165, 174, 691 P.2d 197 (1984). Under the Ryan guidelines, the trial court must consider the following factors:

1. whether the declarant had an apparent motive to lie;
2. whether the general character of the declarant suggests trustworthiness;
3. whether more than one person heard the statements;
4. whether the statements were made spontaneously;
5. whether the timeliness of the statements and the relationship between the declarant and the witness suggest trustworthiness;
6. whether the statements contain express assertions of past fact;
7. whether cross-examination could not help to show the

- declarant's lack of knowledge;
8. whether the possibility of the declarant's recollection being faulty is remote; and
  9. whether the circumstances surrounding the statements give reason to suppose that the declarant misrepresented the defendant's involvement.

Ryan, at 175-76.

Here, in terms of these factors, there were serious questions raised at the time of the pre-trial hearing as to the unreliability of L.A.T.'s hearsay statements. Consequently, it is clear said statements should not have been allowed by the superior court to be admitted as evidence in the prosecution case-in-chief even though the respondent might argue otherwise.

First, there was clear proof that L.A.T. was known to lie, and had been in trouble at school for this reason, during the same time frame she made the representations of abuse against the accused. [Trial RP 697]. The impetus behind this misconduct was L.A.T.'s apparent desire to gain attention of her mother. [Trial RP 702-03]. Thus, the first Ryan factor was implicated.

Next, as to the second Ryan factor, there was a clear issue of trustworthiness in light of the glaring differences of those made by L.A.T. during the defense counsel interview of L.A.T. and those allegations made

Karen Winston and detectives. Third, many of the statements L.A.T. made to her mother, Angela Thompson, and those made to Ms. Winston can not be said to have been made spontaneously. Ms. Thompson and those persons, including Ms. Winston and the police questioned her thoroughly. Arguably, only the original statement allegedly made by L.A.T. to her mother was “spontaneous” in terms of fourth factor.

In this same vein, the timing of the declarations to Ms. Winston was inherently suspect. They were made some two [2] weeks after the alleged incident. It could reasonably be assumed that Ms. Thompson discussed the upcoming interview with L.A.T., as well as the content of her future testimony at trial. [Trial RP 709].

The relationship between L.A.T. and her mother clearly revealed Ms. Thompson, as well as her friend, Shawna Galloway, would have been predisposed to accept on its face as true anything which L.A.T. was alleging at the time and they may well have, albeit: inadvertently, coached or suggested her responses through direct and leading, as well as heated, questioning. Once her claims had become so “tainted” it follows that such would carry over to any statements subsequently made to Ms. Winston. Finally, the likelihood of L.A.T. suffering from a faulty memory is far from being remote in this instance given her lack of spontaneity, as well as

the unexplained contradictory changes to her allegations over the course of the criminal investigation. Clearly, Ryan factor nos. 8 and 9 are also implicated by the circumstances surrounding L.A.T.'s allegations Mr. JULIAN.

Hence, the superior court committed reversible error when unequivocally misapplying the Ryan factors in this case. Such error amount to a manifest abuse of discretion, and is clearly of a constitutional magnitude, requiring the intervention of this court. See, State v. Rohrich, 82 Wn.App. 674, 918 P.2d 512 (1996), aff'd, 132 Wn.2d 472, 939 697 (1997). Since the STATE OF WASHINGTON cannot prove that the resulting prejudice to Mr. JULIAN was harmless beyond a reasonable doubt, the convictions, judgments and sentences entered against him is subject to reversal on this appeal. State v. Spotted Elk, 109 Wn.App. 253, 261, 34 P.3d 906 (2001); see also, State v. Miller, 131 Wn.2d 78, 90, 929 P.2d 372 (1997); see also, RAP 12.2.

5. Even if such subject hearsay statements of L.A.T. were reliable for purposes of RCW 9A.44.120, they should have been excluded as being redundant and, therefore, unduly prejudicial insofar as the declarant herself testified. [Issue no. 5 revisited].

On pages 41 through 44 of the "brief of respondent" the STATE OF WASHINGTON, asserts that the appellant, WILLIAM MARK

JULIAN,” has failed to preserve his arguments that the admitted hearsay evidence was cumulative and overly prejudicial constituting a manifest violation of fundamental fairness and due process, as well as the related argument that the trial court violated the provisions of Article 5, section 14, of the Washington State Constitution prohibited the court from commenting on the evidence. Even if these precise issues were not raised at trial, it is axiomatic that an error of constitutional magnitude may be raised for the first time on appeal. See, RAP 2.5(a)(3). These issues meet this criteria notwithstanding the STATE’s claims otherwise. The STATE’s reliance upon State v. Powell, 166 Wn.2d 73, 82, 206 P.3d 321 (2009), and State v. Guloy, 104 Wn.2d 412, 422, 705 P.2d 1105 (1985) is entirely misplaced.

As noted before, the testimony of the complaining witness, L.A.T. Angel Thompson was presented in the prosecutor’s case-in-chief. The defendant, WILLIAM MARK JULIAN, once again maintains on this appeal that, in light of the fact L.A.T. testified herself at trial, her related out-of-court statement should not have been allowed as evidence at trial. These hearsay statement were inherently redundant, needlessly cumulative in nature, and were highly prejudicial insofar as they simply served to unduly overemphasize L.A.T.’s testimony.

Once again, Mr. JULIAN is fully aware of the decision in State v. Bedkar, 74 Wn.App.87, 93-94, 871 P.2d 673 (1994), holding that RCW 9A.44.120 applies as an exception to hearsay regardless of whether the child testifies or not and, accordingly, the child's out-of-court statement may also be admitted as evidence at trial. However, this is a case where the prosecution merely called numerous witnesses to testify for a single purpose of reiterating the same facts, and which added nothing to L.A.T.'s testimony other than to emphasize it over that of the denial of the defendant. Such statements did nothing to assist the jury except to unduly prejudice them against the accused, and side with the alleged victim. Thus, at a minimum, the hearsay statements of L.A.T. should have been excluded consistent with the court's reasoning in State v. Smith, 82 Wn.App. 327, 333-34, 917 P.2d 1108 (1996) which suggests in terms of this situation the child hearsay evidence serves no independent, legitimate purpose. See also, ER 403.

A criminal case should not be decided upon the immaterial fact as to how many occasions the alleged victim has repeated the same scenario and accusations of sexual abuse. In this fashion, the superior court essentially commented on the "credibility" of L.A.T. in terms of her accusations against Mr. JULIAN by allowing the prosecution to present

multiple child hearsay statements in its case-in-chief and, thus, invaded the province of the jury as trier of fact. See generally, United State v. King, 713 F.2d 627 (11<sup>th</sup> Cir. 1983); Ballou v. Henri Studios, Inc., 656 F.2d 1147, 1154 (5<sup>th</sup> Cir. 1983); State v. Stevens, 127 Wn.App. 269, 110 P.3d 1179 (2005); see also, 5D K. Tegland, “Courtroom Handbook on Washington Evidence,” Wash.Prac. Rule 403 §11 at 234 (2011).

Once again, Article V, section 16, of the Washington State Constitution states “Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.” The purpose of this provision is to prevent the jury from being influenced by the knowledge, tacit or otherwise, conveyed to it by the court as to the latter’s putative assessment of the evidence at trial. See, State v. Elmore, 139 Wn.2d 250, 275, 985 P.2d 289 (1999), cert. denied, 531 U.S. 837 (2000); State v. Miller, 179 Wn.App. 91, 106-07, 316 P.3d 1143 (2014). A prohibited comment on the evidence can be said to have occurred, when it appears that the trial court’s attitude towards the merits of the case is reasonable inferable, or can readily be discerned, from the nature, manner and action of the court regarding the admission of evidence. Id. Here, the actions of the court in allowing the redundant and the unnecessarily cumulative child hearsay statements could have reasonably inferred to the

jury as to the court's view as to the credibility of the L.A.T.'s claims against Mr. JULIAN. Id.

For this further reason, the convictions, judgments and sentences imposed against Mr. JULIAN at trial should now be reversed. RAP 12.2. Fundamental fairness and due process require nothing less in light of Article V, section 16.

6. Finally, the testimony of L.A.T., along with the HEARSAY evidence offered by the prosecution lacked the requisite proof supporting a finding of guilt beyond a reasonable doubt. [Issue no. 6 revisited].

Finally, contrary to the position of the STATE OF WASHINGTON, at pages 44 through 49 of its brief, a criminal conviction can only be upheld, if it can be said that, after viewing the evidence in the light most favorable to the prosecution, a rationale trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980); see also, Jackson v. Virginia, 443 U.S. 307, 61 L.Ed.2d 560, 99 S.Ct. 2781 (1979). Here, there is no question that this standard of proof could not be met in light of the unreliable, tainted and equivocal evidence of the complaining witness. To say the least, said evidence was contaminated by the in-artful manner in which this child witness was questioned by numerous inept adults

throughout this case.

Dr. Jameson Lontz's testimony highlighted the dubious nature of L.A.T.'s claims of abuse resulting from the numerous, leading and suggestive examinations she underwent. [Trial RP 928-77]. By the same measure, the testimony of the special investigator for the defense, Greg Beeman, made clear that L.A.T. had a history of being "untruthful" when examined and would not volunteer facts. [Trial RP 913, 928-29]. At the very least, the jury's expressed dilemma in being unable to properly discern what acts applied to the five [5] counts is itself telling in this regard. [Trial RP 1071-072]. How can it be said a rationale trier of fact could find each of the elements required to be prove the defendant guilty beyond a reasonable doubt when the jury was grappling with the facts when applying them to the required elements to establish guilt? It cannot. The convictions, judgments and sentences entered in this case [CP 480-91, 492-506] should now be reversed and remanded with instruction that this case be dismissed with prejudice. See, RAP12.2.

## **B. CONCLUSION**

Accordingly, the appellant, WILLIAM MARK JULIAN, once more respectfully requests that he be granted that relief originally requested in part **F. CONCLUSION**, of his "opening brief."

DATED this 27th day of July, 2016.

Respectfully submitted:



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JUL 27 2016

COUNTY PROSECUTING ATTORNEY  
APPEALS UNIT - SPOKANE, WA

STATE OF WASHINGTON COURT OF APPEALS  
DIVISION III

FILED

JUL 27 2016

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

STATE OF WASHINGTON,	)
	)
Appellee,	) NO. 335496-III
	)
vs.	) DECLARATION OF
	) SERVICE & MAILING
WILLIAM MARK JULIAN,	)
	)
Appellant.	)

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I, HOLLY EAGLE, declare under the penalty of perjury of the laws of the State being first duly sworn on oath, deposes and says: that I am a disinterested person, competent to be a witness, and past the age of 21 years; that on the 27<sup>th</sup> day of July, 2016, declarant caused true copies of the **Amended** Reply Brief of Appellant to be served upon the individuals below by depositing a copy of said document in a United States Post Office Box in Spokane, Spokane County, Washington, by first class mail addressed to:

William Mark Julian, #757429  
 Washington Correction Center  
 P O Box 900  
 Shelton, WA 98584

And by service on the Prosecuting Attorney be delivering to:

Brian O'Brien  
Deputy Prosecuting Attorney  
1100 W. Mallon  
Spokane, WA 99260

That the addresses given above are the addresses last known to your affiant.

Signed in Spokane, Washington this 27<sup>th</sup> day of July, 2016.

  
\_\_\_\_\_  
HOLLY EAGLE