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Court of Appeals  
Division III  
State of Washington  
3/15/2019 11:05 AM

No. 35940-9-III

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

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STATE OF WASHINGTON,

Respondent,

v.

LAURENCE J. MAYO,

Appellant.

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

The Honorable Scott R. Sparks

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APPELLANT'S REPLY BRIEF

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## A. INTRODUCTION

Appellant Laurence J. Mayo accepts this opportunity to reply to the State's brief. Mr. Mayo requests the Court refer to his opening brief for issues not addressed herein.

## B. ARGUMENT IN REPLY

**1. The State may not seek to dismiss as moot Mr. Mayo's assertion that the evidence was insufficient to convict for unlawful possession of fictitious identification in Count 7. Double jeopardy prohibits the retrial of a conviction obtained with insufficient evidence.**

The State concedes in its response brief that Mr. Mayo is entitled to a new trial on Count 7 because the jury instructions on the charged offense were inadequate to ensure he received a unanimous jury verdict. *See* Respondent's Brief, pgs. 2-4. The State further asserts that because it is conceding a remand for new trial is necessary, that it is unnecessary for this Court to decide whether sufficient evidence of the crime existed to sustain the conviction for unlawful possession of fictitious identification (Count 7). *See* Respondent's Brief, pg. 2. However, the State is mistaken as double jeopardy prohibits the retrial of a defendant after insufficient evidence is presented to sustain a conviction. Mr. Mayo in no way concedes or forfeits the right to raise his insufficiency argument as to Count 7, as set forth in his opening brief. *See* Appellant's Opening Brief pgs. 8-16.

The principles of double jeopardy prohibit a citizen from being placed in danger of standing trial more than once for the same offense. *State v. Anderson*, 96 Wn.2d 739, 742, 638 P.2d 1205 (1982) (citations omitted); U.S. Const. amend V. Generally double jeopardy is not implicated if an appellate court must reverse a conviction and remand for a new trial. *Id.* (citation omitted). "However, if an appellate court reverses a conviction based upon insufficiency of the evidence, a retrial is not permissible...." *Id.* (citation omitted). "That a person may not be retried for the same offense following an acquittal is

the most fundamental rule in the history of double jeopardy jurisprudence.” *State v. Wright*, 165 Wn.2d 783, 791-92, 203 P.3d 1027 (2009) (internal quotations and citation omitted). Dismissal of a conviction due to insufficient evidence is equivalent to an acquittal under the double jeopardy doctrine because “no rational factfinder could have voted to convict on the evidence presented.” *Id.* (internal quotations and citation omitted).

Again, Mr. Mayo does not agree with the State. Mr. Mayo’s insufficient evidence issue raised in his opening brief as to Count 7 is not a moot issue merely because the State concedes Mr. Mayo is entitled to a new trial on the same count. *Wright*, 165 Wn.2d at 791-92; *Anderson*, 96 Wn.2d at 742; U.S. Const. amend V.

Mr. Mayo’s respectfully requests this Court first consider and determine whether his conviction in Count 7 was based on insufficient evidence. However, if this Court finds sufficient evidence existed to support Count 7, Mr. Mayo agrees with the State’s concession that the case must be remanded for a new trial on Count 7.

### C. CONCLUSION

Based upon the arguments set forth above and those set forth in Mr. Mayo’s opening brief, his conviction for unlawful possession of fictitious identification in Count 7 should be dismissed with prejudice for insufficient evidence. In the alternative, Mr. Mayo agrees with the State that remand for a new trial on Count 7 is necessary.

Respectfully submitted this 15th day of March, 2019.

/s/ Laura M. Chuang  
Laura M. Chuang, WSBA #36707

/s/ Jill S. Reuter  
Jill S. Reuter, WSBA #38374

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )  
Plaintiff/Respondent ) COA No. 35940-9-III  
vs. )  
)  
LAURENCE J. MAYO ) PROOF OF SERVICE  
)  
Defendant/Appellant )  
\_\_\_\_\_)

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on March 15, 2019, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's reply brief to:

Laurence J. Mayo, DOC #347242  
Unit # GB06 Lower  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

Having obtained prior permission, I also served a copy on the Kittitas County Prosecutor's Office at [prosecutor@co.kittitas.wa.us](mailto:prosecutor@co.kittitas.wa.us) using the Washington State Appellate Courts' Portal.

Dated this 15th day of March, 2019.

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