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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

TEGAN MARIE RUSHWORTH, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

1. Was the defendant's constitutional right to a public trial violated when prospective juror number 3, in open court, stated that serving on that particular jury would create an employment hardship, which resulted in both State and defense counsel agreeing, in writing, to strike that juror for-cause and that writing was filed in the court file the second day of trial for the public's review? If error, was it invited?

2. Was the defendant's constitutional right to a public trial violated when the trial court, *sua sponte*, struck prospective juror number 7 for-cause, in open court, due to hardship, after that juror stated he had a family member being taken off life support that day? If error, was it invited?

3. Was the defendant's constitutional right to a public trial violated when peremptory challenges were exercised by the silent exchange of juror selection forms between counsel in open court?

4. Was there sufficient evidence for a rational jury to find the defendant guilty of possession of a stolen motor vehicle?

5. Although the trial court sustained an objection to testimony that the motel where the defendant was first observed was in a location where people buy drugs, did the trial court abuse its discretion by not granting a motion to strike that testimony? If there was error, was it harmless?

6. Did the trial court abuse its discretion by allowing an officer to testify that the defendant's boyfriend did not want to be involved in looking for a vehicle title? If error, was it harmless?

7. Did the trial court abuse its discretion by permitting an officer to testify that the person who gave the stolen vehicle to the defendant knew it was stolen if the court found the door had been opened to that testimony? If error, was it harmless?

8. Did the trial court err by failing to *sua sponte* prevent the defendant from asking the officer what occurred after he spoke with the individual who allegedly gave the car to the defendant?

9. Was it error for the deputy prosecutor to ask an officer, without objection, that based upon his conversation with the person who gave the stolen vehicle to Rushworth, that the officer referred a charge against the defendant? If error, was it harmless?

10. Has the defendant established that the cumulative error doctrine is applicable in this case?

11. Should this Court remand to the trial court to enter an order striking the \$200 court costs imposed at sentencing if the defendant was indigent at sentencing?

12. If the defendant has not established that her DNA was previously collected, did the trial court err when it imposed the \$100 DNA collection fee?

II. STATEMENT OF THE CASE

Tegan Rushworth was charged with and convicted of possession of a stolen motor vehicle. CP 1, 40. With an offender score of “9,” the defendant was sentenced to the high end of the standard range. CP 74, 75.

Substantive facts.

Gregory Phelps had borrowed a 1999 Ford Expedition from the owner, Randall Lee. RP 139, 145-46. The vehicle was stolen in Spokane on January 5, 2016. *Id.* Mr. Phelps had left the keys in the vehicle and was inside his house changing to go to work. RP 140. No one else had permission to use the vehicle. RP 140, 146. A police officer responded and placed the stolen vehicle information into a national database for law enforcement. RP 153-55.

Officer Mark Brownell was a member of the Spokane Anti-Crime Team (PACT) at the time of the theft. RP 165. On February 27, 2016, around 1:00 a.m., Officer Brownell was paired with Officer Scott Lesser, who was in another vehicle. RP 165-66, 169. The officers were called to the Roadway Inn (formerly Knights Inn) at 20 West Houston, in North Spokane, to look for an individual. RP 166. Officer Brownell observed

someone driving a Ford Expedition in the parking lot of the motel. RP 168. The officer shined the vehicle lights and his flashlight at the Expedition. RP 168. The vehicles passed each other at approximately five feet. RP 168-69. During this time, Officer Lesser was out of his patrol vehicle and on foot, approximately 20 - 25 feet away. Officer Lesser wore a police duty vest, with a shiny, silver badge, and had a duty belt with a holstered weapon. RP 170, 192.

The driver of the Expedition drove past Officer Lesser and accelerated. RP 171, 193. Officer Brownell believed the driver of the vehicle was trying to get away. RP 172. Officer Brownell attempted to catch up to the vehicle after it exited the parking lot. RP 173. The vehicle turned northbound onto Atlantic and then westbound onto Lyons. RP 175. After approximately three to four blocks, Officer Brownell activated his emergency lights and the driver of the vehicle pulled over. RP 173-74. Officer Brownell contacted the driver, who was subsequently identified as the defendant. RP 176. The officers determined through dispatch that the vehicle was stolen. RP 194, 210-11.

Rushworth told Officer Brownell that she obtained the vehicle several weeks earlier from an individual named Ray Pfluger and she did not know it was stolen. RP 177. The defendant claimed she had a title to the vehicle at her residence. RP 178, 195. The officers and the defendant

proceeded to a residence at 1629 Toni Rae Drive. RP 178. At the residence, the defendant and her boyfriend, Adam Wilkening, rummaged through kitchen drawers and some garbage bags in the garage without finding the title. RP 179-80. Shortly thereafter, both the defendant and Wilkening asserted they must have thrown the title away. RP 182. The officers left the residence. RP 182-83, 196. Officer Brownell located the defendant's iPad in the Ford Expedition. RP 182-83.

Officer Brownell contacted Mr. Pfluger at the Geiger Correctional Facility to check on the defendant's story that she obtained the Ford Expedition from him. RP 203. Thereafter, the officer requested charges on the defendant. RP 204.

When the vehicle was returned to the owner, silver paint had been sprayed on the wheels and bumper. RP 147-48.

III. ARGUMENT

A. THE DEFENDANT'S PUBLIC TRIAL RIGHT WAS NOT VIOLATED WHEN TWO JURORS WERE STRUCK FOR-CAUSE. THE TWO JURORS EXPLAINED, ON THE RECORD AND IN OPEN COURT, THEY COULD NOT SERVE DUE TO A HARDSHIP. THEIR REASONS WERE MEMORIALIZED IN WRITING AND FILED WITH THE CLERK OF COURT THE DAY AFTER VOIR DIRE. FURTHERMORE, THE METHOD USED IN THIS CASE FOR EXERCISING PEREMPTORY CHALLENGES HAS BEEN APPROVED BY THE SUPREME COURT.

The defendant alleges her public trial right was violated during voir dire because the “for-cause” challenges to several jurors occurred at an “off the record” sidebar conference of which the trial court did not make a record regarding the challenges. It appears the defendant makes the same claim about the peremptory challenges. These claims are not supported by the record. Each claim will be addressed in turn.

1. Challenges for-cause.

Jury selection began on Tuesday, September 12, 2017.¹ RP 39. Juror number 3 and juror number 7 were struck for-cause by the court. The basis for each, discussed in open court, is set forth below:

a. Prospective juror number three.

THE COURT: How do you pronounce that?

JUROR NO. 3: Dentone. Thanks, your Honor. I have a -- I'm a business owner and I have an all-company meeting I scheduled five months ago happens to be on Thursday.

¹ See <https://www.timeanddate.com/calendar/?country=1&year=2017>.

THE COURT: Of this week?

JUROR NO. 3: Yeah.

THE COURT: Okay. What time is the meeting, sir?

JUROR NO. 3: 7:30 to 4:30, all day, all-company meeting.

THE COURT: Thanks for letting me know that, sir.

JUROR NO. 3: Thanks, your Honor.

RP 57.

[DEFENSE ATTORNEY]: ... Juror No. 3, you had mentioned that you had an important business meeting on Thursday; is that correct?

JUROR NO. 3: That's correct.

[DEFENSE ATTORNEY]: If at least the jury deliberations ran over into Thursday, can you miss that meeting or do you absolutely have to be there?

JUROR NO. 3: I should definitely be there for my team.

[DEFENSE ATTORNEY]: If this case was dragging on and ticking closer and closer and closer to Thursday, would that be a distraction to you?

JUROR NO. 3: Yes.

RP 114-15.

[DEPUTY PROSECUTOR]: Just one other question. Several of you on the question about prior jury service made the comment that I was called for jury duty but I wasn't selected. Is there anybody here that really, really hopes they don't get selected for this jury? Kind of like what [the defense attorney] was asking. Number 3, and I think I understand your reasons, right? Anyone else?

RP 117.

b. Prospective juror number seven.

[THE COURT]: Hi, let's see, is it No. 7? Is it Mr. Arnzen?

JUROR NO. 7: Yes, it is.

THE COURT: Did I get that right?

JUROR NO. 7: Yes, you did.

THE COURT: Yes, sir.

JUROR NO. 7: I have a sister-in-law that's been on life support for two weeks, and she's been taken off today.

THE COURT: Okay.

JUROR NO. 7: So I have no idea -- I have no idea how long or if -- if she'll be with us.

THE COURT: You would like to be there with her?

JUROR NO. 7: I would.

THE COURT: Thanks for letting me know, sir. I appreciate that.

RP 58.

THE COURT: ... Juror No. 7, I would consider that to be an extraordinary issue and I would like to excuse that juror now. Any objection?

MR. STINE: No objection.

MR. NELSON: None, your Honor.

THE COURT: All right. And, Counsel, I want the record to be clear, this is not a suggestion that you have to agree. I want to be very straightforward that it strikes me that gentleman should be able to spend the time with his family.

So, sir, thank you very much for being here, and I'm so sorry for your situation. Why don't you step out of the jury box and go right through that door and Ms. Dorman will help you out, okay?

JUROR NO. 7: Okay.

THE COURT: Thank you, sir.

JUROR NO. 7: This way?

THE COURT: Thank you, sir.

Okay. Thank you very much, Counsel, for your courtesy.

RP 59.

c. Preemptory challenges.

[THE COURT]: All right. Well, ladies and gentlemen, Ms. Dorman is going to be out here in a minute and you're going to see her with a mysterious piece of paper that goes back and forth as the lawyers are working on picking a jury. I had the privilege of working with all three counsel here countless times. I know they pick a jury in a fairly expedient fashion so it shouldn't be too long.

I have some further instructions for you in a minute but let me just talk to Ms. Dorman for a second. Would you mind?

Can I talk to you for a minute? Come on over here.

(Off the record.)

THE COURT: Counsel, Ms. Dorman has some instructions for you for a second. Sorry, Counsel, I should have talked to you about that when we did motions.

(Off the record.)

THE COURT: Counsel, thank you for your courtesy working that out.

Ladies and gentlemen of the jury, you probably thought they just picked the jury. No chance. They were just doing some preliminary work for me. So again, Counsel, thank you so much.

Folks, here's what we're going to do. While the lawyers are working with the clerk and my judicial assistant to pick a jury, if you want to stand and stretch and softly talk to your neighbor, feel free to do that. I can't let you leave the courtroom while we're picking the jury for a couple of reasons. Most prominently, the lawyers need to be able to turn around and see who is who and who said what, so if you see one of the lawyers staring at you, don't be offended. They're just trying to remember where the comments came from.

Usually takes, I'll say, about 10 minutes or so to complete this process so make yourself comfortable and feel free to chat, okay? Thank you.

(Peremptory challenges.)

THE COURT: Ladies and gentlemen, with counsels' assistance and expediency, we have selected a jury and again some of you have done this before. You told me you were on juries or were jurors before but if you haven't done it, then this process can take hours and, counsel, I appreciate that you've gotten through this so quickly on behalf of all our prospective jurors.

RP 117-19.

2. Standard of review.

Whether an accused's constitutional public trial right has been violated is a question of law that an appellate court reviews de novo. *State v. Andy*, 182 Wn.2d 294, 301, 340 P.3d 840 (2014). The right to a public trial extends to jury selection, including for-cause and preemptory challenges. *State v. Love*, 183 Wn.2d 598, 605, 354 P.3d 841 (2015), *cert. denied*, --U.S.--, 136 S.Ct. 1524, 194 L.Ed.2d 604 (2016); *State v. Brightman*, 155 Wn.2d 506, 515, 122 P.3d 150 (2005).

Our high court has devised a three-part inquiry for determining if a trial procedure violated an accused's right to a public trial: (1) Did the proceeding implicate the public trial right? (2) If so, was the proceeding closed? (3) And if so, was the closure justified? *State v. Smith*, 181 Wn.2d 508, 521, 334 P.3d 1049 (2014). The defendant carries the burden of establishing the first two factors. *Love*, 183 Wn.2d at 605.

There are two types of closure: "when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave," and when "a portion of a trial is held someplace 'inaccessible' to spectators, usually in chambers." *Id.* at 606. If the appellant establishes there was a closure, the trial court must have either conducted a *Bone-Club*

analysis² on the record or the record must otherwise show that the court “effectively weighed the defendant’s public trial right against other compelling interests.” *Smith*, 181 Wn.2d at 520.

3. For-cause challenges.

In *State v. Effinger*, 194 Wn. App. 554, 557-58, 375 P.3d 701 (2016), review denied, 187 Wn.2d 1008 (2017), the defendant argued that his right to a public trial and right to be present were violated when the trial court conducted sidebars for both the for-cause and peremptory challenges. The sidebar conferences were not transcribed, but occurred in open court. *Id.* at 558. After the sidebar conferences, the trial court announced the jurors who were seated for trial. The sidebars were memorialized on the juror information sheet, which indicated the jurors who were struck for-cause. *Id.* at 558. The sheet also indicated several jurors who were struck for hardship. *Id.* at 558-59. The trial court filed the information sheet as part of the record. *Id.* at 559. Ultimately, the Court of Appeals found that no closure occurred when the lawyers struck the jurors at the sidebars, even though those sidebars were not transcribed. *Id.* at 560.

In finding no courtroom closure occurred and relying on *Love*, the *Effinger* court found that the questioning of and answers by potential jurors

² *State v. Bone-Club*, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995).

took place in open court for everyone to observe, the sidebar conferences were visible to all in the courtroom, no one was asked to leave the courtroom during the process, the trial court excused jurors for-cause in front of the defendant and the public, and the jury was empaneled in open court. *Id.* at 561-62. The court ultimately concluded that the sidebar peremptory challenges, even though not transcribed, did not constitute a closure. “The case information sheet, in combination with the public voir dire, and the court’s oral excusals of potential jurors, preserved the record for the public to review.” *Id.* at 563.

In the present case, the record preserves the basis for both juror number 3 and juror number 7 dismissals for hardship. However, the defendant claims that after voir dire was concluded, there were several “off the record” discussions conducted by the court which were not done in open court. The defendant fails to produce the context of what occurred “off the record,” as the court prepared for the lawyers’ exercise of their preemptory challenges. The court’s “off the record” comments or tasks could have ranged from the court asking the judicial assistant to undertake an administrative task, the court asking the lawyers something regarding the previous motions or their schedules, or the court requiring time to conduct ministerial work. There is nothing in the record to suggest that the “off the record” conversations or tasks encompassed jury selection. Furthermore,

there is nothing in the record that the “off the record” discussions or tasks involved a sidebar conference, as asserted by the defendant.

Even if there were “off the record” discussions or tasks concerning the “for-cause” challenges in the present case, which hypothetically occurred at a sidebar conference, no processes were concealed from the public. It is apparent from the questions and answers given in open court that both jurors 3 and 7 were struck for hardship reasons. Juror number 3 stated in open court that he would not be able to concentrate if selected because of a preplanned work conflict. Both the defense and the State agreed that juror number three should be struck for-cause,³ which was memorialized in writing, attached to the jury information sheet and contemporaneously filed in the court record in the clerk’s office, for the public’s review, on Wednesday, September 13, 1997. CP 109-112.⁴

Similarly, the court immediately excused juror number 7 for-cause, on the record and in open court, due to that juror’s urgent, family hardship.

³ The *Effinger* court also recognized that “it is only when an adverse party excepts to a party’s for-cause challenge on sufficiency grounds that a trial on the for cause challenge occurs. CrR 6.4(d). There is no requirement that an attorney state the basis in open court when requesting that a potential juror be excused for cause. *See* CrR 6.4. Likewise, there is no requirement that a trial court announce its reasons for excusing a juror for cause. CrR 6.4, RCW 4.44.150–.190. Unchallenged dismissals of jurors for-cause are proper.” 194 Wn. App. at 562.

⁴ A designation of clerk’s papers is being filed contemporaneously herewith designating the Jury Panel document which is estimated to be CP 109-112 (four pages plus the Confidential Sheet).

The defense agreed in open court to striking this juror based upon that hardship. Accordingly, no closure occurred.

Furthermore, defense counsel had a role in the procedure and dismissal of both jurors when he agreed to their dismissal. There was no complaint or objection lodged by defense counsel to the procedure used by the court for dismissing these two jurors for hardship. Under these facts, Rushworth cannot complain of the procedure employed by the trial court when the defense assented to the procedure. Under the invited error doctrine, a party who sets up an error at trial cannot claim that very action as an error on appeal and obtain a new trial. *See Matter of Salinas*, 189 Wn.2d 747, 754-59, 408 P.3d 344 (2018) (defense attorney can invite error when alleging an open court violation).

Even if the defendant could establish that a closure occurred, her public trial claim fails. This situation is akin to the trial court preliminarily releasing jurors from service before trial due to a hardship. For example, in *State v. Russell*, 183 Wn.2d 720, 357 P.3d 38 (2015), the Supreme Court held that “[t]he public trial right is not implicated by preliminary excusals for statutory reasons (including hardship) based on juror questionnaires.” In *Russell*, the preliminary discussions and excusals occurred in chambers. *Id.* at 723. Ultimately, the Court held that the preliminary review of the juror

questionnaires for hardship determinations did not implicate the defendant's public trial right.

In its decision, the Court emphasized, "No jurors were questioned during those work sessions. The judge announced all his excusal decisions in open court and clearly stated that the excusals immediately following the work sessions were based on hardship." *Id.* at 43. The Court held that "[d]etermining whether a juror is able to serve at a particular time or for a particular duration (as in hardship and administrative excusals) is qualitatively different from challenging a juror's ability to serve as a neutral factfinder in a particular case (as in peremptory and for-cause challenges)." *Id.* at 730-31; *see also Love*, 183 Wn.2d at 606 ("Unlike administrative or hardship excusals, for cause and peremptory challenges can raise questions about a juror's neutrality and a party's motivation for excusing the juror that implicate the core purpose of the [public] right, and questioning jurors in open court is critical to protect that right").

Similarly, in *State v. Wilson*, 174 Wn. App. 328, 298 P.3d 148 (2013), *review denied*, 184 Wn.2d 1026 (2016), applying the experience and logic test, Division Two concluded that the right to a public trial does not attach to the hardship excusal phase of jury selection. *Id.* at 346-47. In that case, a bailiff excused two jurors for illness before voir dire began in the courtroom. Under the "experience" prong, the court noted that no

Washington decision has held that preliminary juror excusals for hardships have historically been open to the public. *Id.* at 342. Nor has a court held that the public trial right implicates any component of jury selection “that does not involve ‘voir dire’ or a similar jury selection proceeding involving the exercise of ‘peremptory’ challenges and ‘for cause’ juror excusals.” *Id.* The court noted that the trial court and its staff retain broad discretion to excuse jurors for administrative or hardship reasons outside of the courtroom, “provided that the excusals are not the equivalent of peremptory or for cause juror challenges.” *Id.* at 344; *see also* RCW 2.36.100(1).⁵

Under the “logic” prong, the *Wilson* court found no showing that public access played “a significant positive role” in the excusal of jurors before voir dire for hardships. 174 Wn. App. at 346. Moreover, because the bailiff had broad discretion to excuse jury pool members for “hardship” and other reasons, openness for excusal before voir dire would not have “enhance[d] both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.” *Id.* Ultimately, the court concluded that the bailiff’s administrative excusal of two jurors

⁵ RCW 2.36.100(1) states: “Except for a person who is not qualified for jury service under RCW 2.36.070, no person may be excused from jury service by the court except upon a showing of undue hardship, extreme inconvenience, public necessity, or any reason deemed sufficient by the court for a period of time the court deems necessary.”

for illness did not implicate Wilson’s public trial right and no courtroom closure occurred.⁶ *Id.* at 347.

Here, although the removal of jurors 3 and 7 for hardship occurred during voir dire, the *Russell* and *Wilson* rationales are applicable. The record indicates that jurors 3 and 7 were dismissed for administrative reasons – a prescheduled work conference and a family hardship, and not because of a concern for the jurors’ ability try Rushworth’s case impartially.

Rushworth contends that the record here fails to reveal who excused the jurors, when the excusals occurred, and the reason for the excusals. Because the record certainly contradicts this claim, her factual assertions do not support her claim of error.

Generally, the trial court bears the burden of making a record demonstrating the proper procedures for closing a court proceeding to which the open trial right attaches. *State v. Koss*, 181 Wn.2d 493, 503, 334 P.3d 1042 (2014). However, the appellant “bears the responsibility to provide a record showing that such a closure occurred in the first place” when alleging a public trial violation for the first time on appeal. *Id.* The

⁶ Washington courts have also held that a court clerk has authority to dismiss prospective jurors from service for certain reasons when the jury pool is first being assembled. *In re Yates*, 177 Wn.2d 1, 21–22, 296 P.3d 872 (2013); *State v. Rice*, 120 Wn.2d 549, 559–61, 844 P.2d 416 (1993); *State v. Langford*, 67 Wn. App. 572, 583–84, 837 P.2d 1037 (1992). Because a clerk’s work is not necessarily open to the public, these rulings suggest that the public trial right does not apply to this type of dismissal of a juror. *See Wilson*, 174 Wn. App. at 344.

Koss court suggested that if material facts are not in the record, that a party has the option of preparing a narrative report of proceedings under RAP 9.3. Further, the court stated that RAP 9.9 “permits correction or supplementation of the report of proceedings before transmittal to the appellate court, ‘on motion of a party, or on stipulation of the parties’” and “RAP 9.10 permits such supplementation of the record even after transmittal to the appellate court.” *Id.* at 503-04.

In that regard, where a claim is brought on direct appeal, a reviewing court will not consider matters outside the trial record. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995), *as amended* (Sept. 13, 1995). Rushworth’s claims, including an assertion that the trial court conducted unreported sidebar conferences with counsel, refer to matters outside the record, and this Court should not address them.

Even if conversations between the court and counsel did occur at a sidebar concerning the “for-cause” or “peremptory” challenges, Rushworth has failed to take the necessary steps to perfect the record to establish a closure occurred in the first instance. Under the circumstances, she cannot demonstrate a courtroom closure or trial court error related to the administrative juror excusals. Accordingly, Rushworth’s claim that the for-cause challenges violated her constitutional right to a public trial is without merit.

4. Peremptory challenges.

To the extent that Rushworth argues her public trial right was violated during the peremptory challenges phase of the trial, that very claim was addressed and dismissed in *Love*. In *Love*, the defendant argued, in part, that courtroom spectators could not observe which jurors were struck on the court's jury information sheet, which rendered that part of the trial inaccessible to the public. Rejecting this argument, the Court held:

[T]he public had ample opportunity to oversee the selection of Love's jury because no portion of the process was concealed from the public; no juror was questioned in chambers. To the contrary, observers could watch the trial judge and counsel ask questions of potential jurors, listen to the answers to those questions, see counsel exercise challenges at the bench and on paper, and ultimately evaluate the empaneled jury. The transcript of the discussion about for-cause challenges and the struck juror sheet showing the peremptory challenges are both publicly available. The public was present for and could scrutinize the selection of Love's jury from start to finish, affording him the safeguards of the public trial right missing in cases where we found closures of jury selection. We hold the procedures used at Love's trial comport with the minimum guarantees of the public trial right and find no closure here.

183 Wn.2d at 607 (citations omitted). The Supreme Court further held that "written peremptory challenges are consistent with the public trial right so long as they are filed in the public record." *Id.* at 607. Here, those documents were filed. CP _____.

In *State v. Small*, 1 Wn. App. 2d 254, 404 P.3d 543 (2017), *review denied*, 190 Wn.2d 1014 (2018), the defendant argued that his public trial

rights were violated by the failure of the court clerk to timely file the peremptory challenge document. In rejecting this claim, this Court held

We resolve this issue in a practical manner consistent with the purposes and practicalities of public trial rights. At all times, the public could view the jury selection process that occurred in open court. After the notations on the seating chart were made, a member of the public could have requested and would have eventually received a copy of the seating chart. Here, once the erroneous advice was made known, the clerk's office was able to find and provide the document. If public trial rights required same-day receipt of requested peremptory challenge information, a copy of peremptory challenge discussions—which might take several days to transcribe—would be insufficient to satisfy a defendant's right to a public trial. But *Love* implies that the eventual public availability of such a transcript is sufficient. *Love*, 183 Wash.2d at 607, 354 P.3d 841. By extension, a temporarily misplaced written record of peremptory challenges does not render an open proceeding closed. In reaching this conclusion, we note that the seating chart was always in the clerk's office, albeit misplaced, and there was no court action that prevented a requesting party from obtaining a copy of the chart.

Id. at 259.

Similarly, the *Effinger* court concluded that the sidebar peremptory challenges, even though not transcribed, do not constitute a closure. *Id.* at 560. Consistent with *Love*'s holding, the court concluded that the written peremptory challenges were filed in the public record for the public to scrutinize, satisfying *Effinger*'s public trial right. 194 Wn. App. at 561-62.

Rushworth's constitutional right to an open court was not violated by the trial court's procedure for counsel exercising their respective peremptory challenges. The respective peremptory challenges were

documented on the juror information sheet and filed in the record within one day of the jury selection for the public's review. CP 108-112. There was no error.

B. THE STANDARD OF REVIEW FOR A SUFFICIENCY OF THE EVIDENCE CHALLENGE IS HIGHLY DEFERENTIAL TO THE FINDING OF THE JURY. THERE WAS SUFFICIENT EVIDENCE UPON WHICH A RATIONAL JURY COULD CONVICT THE DEFENDANT OF POSSESSION OF A STOLEN MOTOR VEHICLE.

In reviewing a challenge to the sufficiency of the evidence, the test is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence must be interpreted most strongly against the defendant. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004), *abrogated in part on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

Circumstantial evidence carries the same weight, and is as reliable as direct evidence. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). “[I]nferences based on circumstantial evidence must be reasonable and cannot be based on speculation.” *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2013). Nevertheless, “a verdict does not rest on speculation or conjecture when founded on reasonable inferences drawn from circumstantial facts.” *State v. Jameison*, 4 Wn. App. 2d 184, 197-98, 421 P.3d 463 (2018).

In a sufficiency of the evidence challenge, the court is highly deferential to the decision of the jury. *State v. Davis*, 182 Wn.2d 222, 227, 340 P.3d 820 (2014). In that regard, our Supreme Court has stated:

It is the province of the jury to weigh the evidence, under proper instructions, and determine the facts. It is the province of the jury to believe, or disbelieve, any witness whose testimony it is called upon to consider. If there is substantial evidence (as distinguished from a scintilla) on both sides of an issue, what the trial court believes after hearing the testimony, and what this court believes after reading the record, is immaterial. The finding of the jury, upon substantial, conflicting evidence properly submitted to it, is final.

State v. Williams, 96 Wn.2d 215, 222, 634 P.2d 868 (1981). Similarly expressed:

The fact that a trial or appellate court may conclude the evidence is not convincing, or may find the evidence hard to reconcile in some of its aspects, or may think some evidence

appears to refute or negative guilt, or to cast doubt thereon, does not justify the court's setting aside the jury's verdict.

State v. Randecker, 79 Wn.2d 512, 517-18, 487 P.2d 1295 (1971).

Rushworth asserts there is not sufficient evidence to support the fact that she knew the Ford Explorer was stolen.

A person is guilty of possessing a stolen vehicle if he or she possesses a stolen vehicle. RCW 9A.56.068; CP 124, 130. RCW 9A.56.140(1) defines what it means to "possess" stolen property:

"Possessing stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

Possession can be actual or constructive. "Actual possession means that the goods are in the personal custody of the person charged with possession." *State v. Plank*, 46 Wn. App. 728, 731, 731 P.2d 1170 (1987). Rushworth was in actual possession of the Ford Expedition, as she was driving the vehicle when contacted by the police and she exclaimed that she acquired the vehicle from another person. Her possession of the vehicle was not disputed at trial.

In addition, the State had to prove that Rushworth acted with knowledge that the motor vehicle had been stolen. *State v. Porter*, 186 Wn.2d 85, 90, 375 P.3d 664 (2016). A person knows of a fact by being

aware of it or having information that would lead a reasonable person to conclude the fact exists. RCW 9A.08.010(1)(b). Both circumstantial evidence and direct evidence are equally reliable to establish knowledge. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). An inference of guilty knowledge may be supported by evidence of either actual or constructive knowledge. *State v. Rockett*, 6 Wn. App. 399, 402, 493 P.2d 321 (1972). Knowledge may be determined by looking at the context surrounding the defendant's acquisition of the vehicle. It is proved by showing the defendant "had knowledge of facts sufficient to put him [or her] on notice that [the goods received] were stolen." *Id.* A jury may find actual knowledge when the defendant cannot explain his or her possession of a recently stolen vehicle, especially when an explanation given by the defendant is improbable or unverifiable. *Id.* at 403.

While mere possession of stolen property is insufficient to justify a conviction,⁷ our high court in *State v. Couet* noted, however, that "[w]hen a person is found in possession of recently stolen property, slight corroborative evidence of other inculpatory circumstances tending to show his [or her] guilt will support a conviction." 71 Wn.2d 773, 776, 430 P.2d 974 (1967). Examples of corroborative evidence may include a false or

⁷ *Couet*, 71 Wn.2d at 775; *State v. McPhee*, 156 Wn. App. 44, 62, 230 P.3d 284 (2010).

improbable explanation of possession, flight, or the presence of the accused near the scene of the crime. *State v. Q.D.*, 102 Wn.2d 19, 28, 685 P.2d 557 (1984); *State v. Womble*, 93 Wn. App. 599, 604, 969 P.2d 1097 (1999) (absence of a plausible explanation or an improbable explanation is a corroborating circumstance); *State v. Hudson*, 56 Wn. App. 490, 495, 784 P.2d 533 (1990) (flight from the police is a sufficient corroborating circumstance); *State v. Smyth*, 7 Wn. App. 50, 53, 499 P.2d 63 (1972) (buying the stolen property at an unreasonably low price may also be a corroborating circumstance); *State v. Hatch*, 4 Wn. App. 691, 694, 483 P.2d 864 (1971) (explanations of the stolen property that cannot be checked or rebutted may be corroborating circumstances).

Here, the circumstances surrounding Rushworth's acquisition and possession of the vehicle, when viewed in the light most favorable to the State, amply support the inference that Rushworth knew the Ford Expedition was stolen. Her explanation of how she acquired the Ford Expedition could have been viewed as improbable by the jury. She claimed that she obtained the vehicle several weeks earlier from an individual named Pfluger and she did not know it was stolen, RP 177, and Rushworth emphatically told the officer that she had the title to the vehicle at her residence. RP 178, 195. She then changed her story and asserted the title must have been thrown away. RP 182. The jury could have reasonably

inferred that individuals do not haphazardly throw a recently acquired vehicle title in the garbage – that it is generally placed in an area of a residence for safe keeping.

Moreover, Rushworth's flight from the officers was sufficient corroborating evidence of her knowledge that the vehicle was stolen. Finally, the poorly, freshly painted bumper and rims were evidence that would have put Rushworth on notice that someone had attempted to disguise the identity of the Expedition.

Viewed in the light most favorable to the State, a reasonable juror could infer that Rushworth had actual knowledge that the Ford Expedition was stolen when she acquired and was in possession of it. The evidence is sufficient to sustain the jury's verdict finding Rushworth guilty of possession of a stolen vehicle.

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT RULED ON THE DEFENDANT'S SEVERAL OBJECTIONS DURING TRIAL. IF THERE WAS ERROR, IT WAS HARMLESS.

Rushworth claims three of the trial court's evidentiary rulings require reversal. First, she alleges the trial court erred when it did not strike testimony after it had sustained an objection to an answer given by the officer. Second, Rushworth asserts error that an officer testified, over defense objection, that her boyfriend did not want to be involved in looking

for the title to the stolen vehicle. Third, Rushworth argues the trial court abused its discretion when it ruled that defense counsel had opened the door to testimony from the officer that Pfluger knew the Ford Expedition was stolen. Each alleged error will be addressed in turn.

1. Officer's testimony that people buy drugs at the motel.

At the time of trial, the following exchange occurred on direct examination:

[DEPUTY PROSECUTOR]: What happened when you got up there?

[OFFICER BROWNELL]: We -- I was able to identify the person in a vehicle as I was leaving the area.

[DEPUTY PROSECUTOR]: What attracted your attention to that vehicle?

[OFFICER BROWNELL]: Just doing my due diligence looking for the person. I pulled into the parking lot that's empty. There's only one vehicle leaving the area. It's just my -- it's just my investigative skills going, yeah, illuminating the vehicle and identifying them.

[DEPUTY PROSECUTOR]: What was the parking lot like? It was 1:12 [a.m.] in the morning; is that correct?

[OFFICER BROWNELL]: Yeah.

[DEPUTY PROSECUTOR]: Was there a lot of traffic, a lot of activity going on?

[OFFICER BROWNELL]: At -- it's a fairly busy place but not busy in the sense of I want to go there and stay there with my family. It's busy in the sense of where can I buy drugs, let's go to the Knights Inn.

[DEFENSE ATTORNEY]: Objection, your Honor. That's not relevant to this case.

THE COURT: Sustained.

[DEFENSE ATTORNEY]: Move to strike.

THE COURT: I'll deny that.

Go ahead, Counsel.

THE WITNESS: I can't hear what the defense attorney was saying.

THE COURT: It's not relevant. It had to do with an objection.

RP 167-68.

Standard of review.

An appellate court reviews a trial court's admission of evidence and ruling on a motion to strike for an abuse of discretion. *State v. Pirtle*, 127 Wn.2d 628, 648, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026 (1996).

Here, the single, isolated remark occurred in the context of the entire trial. Officer Brownell testified that he and Officer Lesser were at the motel investigating and looking for a person on a matter unrelated to the defendant. RP 166, 191-92. Although the officers were looking for the passenger in Rushworth's car, their encounter with Rushworth in the parking lot was mere coincidence. *See* RP 194. If anything, the trial court could have reasoned and the jury could have inferred Rushworth was turning around in the parking lot or dropping a guest off at the motel. The officer's testimony was not linked to the defendant, either directly or inferentially, at the time of trial.

If there was error, it was harmless.

If the trial court erred by not striking the officer's comment, it was harmless. A trial court is in the best position to evaluate the dynamics of a jury trial and the prejudicial effect of a piece of evidence. *State v. Taylor*, 60 Wn.2d 32, 40, 371 P.2d 617 (1962). Because the evidentiary error alleged by Rushworth is not of a constitutional magnitude, the standard of

review for this type of alleged error was set forth by the Supreme Court in

State v. Barry:

“Where the error is *not* of constitutional magnitude, we apply the rule that error is not prejudicial unless, within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.” Under this nonconstitutional harmless error standard, “an accused cannot avail himself of error as a ground for reversal unless it has been prejudicial.” In assessing whether the error was harmless, we must measure the admissible evidence of the defendant’s guilt against the prejudice, if any, caused by the inadmissible evidence.

183 Wn.2d 297, 303, 352 P.3d 161 (2015) (*italics in original*) (internal citations omitted); *see also State v. Tharp*, 96 Wn.2d 591, 599, 637 P.2d 961, 965 (1981). In that regard, “[t]he improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole.” *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997)

In the present case, the officer’s remark did not reference any misconduct on the part of Rushworth, that she was involved in any drug transactions, or that she had any connection to that motel. The officer simply conveyed a general description of the area at that particular motel. Further, the trial court informed the witness, in the presence of the jury, that his answer regarding the drugs was not relevant. Moreover, the deputy prosecutor did not mention or argue from the statement during closing argument nor did he ask the jury to infer or consider that evidence.

Here, other than alleging the term “drug” was used in conjunction with the motel, Rushworth has no evidence or argument that she was “irretrievably besmirched” by the comment. Appellant’s Br. at 26. Rushworth further laments that “[i]t has been long understood that implications of a link between the defendant and illegal drugs is inherently prejudicial.” *Id.* However, as discussed above, there was no evidence or argument that tied Rushworth to the officer’s comment about drugs and the motel. Other than a bare assertion, Rushworth makes no argument as to how, within reasonable probabilities, the claimed error materially affected the outcome of the trial. The officer’s remark was brief, it was not detailed or directed at any particular individual. The jury was present when the court sustained the objection on relevancy and when the court instructed the witness that the answer was not relevant. The deputy prosecutor did not mention or argue the statement in his closing remarks. *See* RP 234-41, 255-60 (State’s closing argument). All things considered, if there was error, it was harmless because the statement was of minor significance regarding the overall evidence that Rushworth possessed a stolen motor vehicle.

2. Wilkening’s statement that he did not want to be involved in the search for the vehicle’s title at the residence.

Rushworth asserts the trial court committed error when it allowed inadmissible hearsay regarding Rushworth’s roommate at the residence:

[DEPUTY PROSECUTOR]: So did you explain the situation to Mr. Wilkening?

[OFFICER BROWNELL]: I did.

[DEPUTY PROSECUTOR]: And what, if anything, did he do after you talked with him about the status of the vehicle?

[OFFICER BROWNELL]: He didn't want to be involved.

[DEPUTY PROSECUTOR]: Is that what he said?

[OFFICER BROWNELL]: Yeah.

[DEFENSE ATTORNEY]: Objection, your Honor. Hearsay. Move to strike.

THE COURT: It is, Counsel, but it's been asked and answered so let's just go on to the next question.

[DEPUTY PROSECUTOR]: So what happened then as far as the activity that you could observe with Mr. Wilkening?

Generally, to preserve an evidentiary issue for appellate review, the party challenging the ruling must make a timely and specific objection. ER 103; RAP 2.5(a); *State v. Avendano-Lopez*, 79 Wn. App. 706, 710, 904 P.2d 324 (1995). Here, the question and answer to the asserted hearsay had been asked and answered and the deputy prosecutor had moved on to a new question before the defense lodged its objection. There was not a timely objection which would have allowed the court to rule on the asserted hearsay statement. Where a timely objection to the admission of hearsay evidence is not made, the admission of such evidence is not reversible error. *State v. Music*, 79 Wn.2d 699, 712, 489 P.2d 159, 167 (1971), *vacated, in part, on other grounds*, 408 U.S. 940 (1972) (death penalty vacated); *State v. Naples*, 51 Wn.2d 525, 319 P.2d 1096 (1958).

Even if the court erred by not sustaining and striking the question and answer, Rushworth cannot establish prejudice. Nonconstitutional error in admitting hearsay evidence requires reversal only if it is reasonably probable that the error materially affected the trial's outcome. *State v. Neal*, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001), *as amended* (July 19, 2002). Other than claiming error, Rushworth cannot establish prejudice. There was follow-up testimony that Wilkening actively participated in looking for the nonexistent title. RP 179-80. Wilkening's comment that he did not want to be involved was not material to any contested issue and it could have been as innocuous as referring to the inconvenient time of day the request was made to look for the title. It is likely Wilkening wanted to sleep in the early morning hours rather than become involved in the search for the title. Rushworth cannot establish that the immaterial testimony impacted the verdict.

3. Officer's Brownell's reference to speaking with Pfluger.

During cross-examination of Officer Brownell, the following exchange occurred:

[DEFENSE ATTORNEY]: And then you also talked to -- you found Mr. Pfluger and talked to him about this vehicle; is that correct?

[OFFICER BROWNELL]: Did you say without this vehicle or about this vehicle?

[DEFENSE ATTORNEY]: About this vehicle.

[OFFICER BROWNELL]: About the vehicle? Yes, sir.

[DEFENSE ATTORNEY]: Okay. And after talking to Mr. Wilkening at the house and Mr. Pfluger, were you able to corroborate through your investigation that Mr. Pfluger had, in fact, given or supplied the car to Ms. Rushworth?

[OFFICER BROWNELL]: That Mr. Pfluger had given the car to Ms. Rushworth?

[DEFENSE ATTORNEY]: Yeah.

[OFFICER BROWNELL]: Yes, sir.

RP 216.

On redirect examination of Officer Brownell, the following exchange occurred:

[DEPUTY PROSECUTOR]: Officer Brownell, when you talked to Mr. Pfluger, did he dispel your suspicions that the defendant knew the car was stolen?

[DEFENSE ATTORNEY]: Objection, your Honor.

[DEPUTY PROSECUTOR]: I think the door has been opened, Judge.

THE COURT: So do I. Overruled.

[OFFICER BROWNELL]: Yeah. He knew the car was stolen.

[DEPUTY PROSECUTOR]: Did he know if she knew the car was stolen?

[DEFENSE ATTORNEY]: Objection, your Honor. Asking for speculation.

THE COURT: Sustained.

[DEPUTY PROSECUTOR]: But, based on your conversation with Mr. Pfluger, you elected to file the charge against the defendant; is that correct?

[OFFICER BROWNELL]: That's correct, sir.

RP 217.

The trial court has discretion to admit evidence that otherwise might be inadmissible if the defendant opens the door to the evidence. *State v. Gefeller*, 76 Wn.2d 449, 455, 458 P.2d 17 (1969); *State v. Bennett*, 42 Wn.

App. 125, 127, 708 P.2d 1232 (1985); *State v. Olson*, 30 Wn. App. 298, 633 P.2d 927 (1981). Accordingly, a party who introduces evidence on a particular subject may open the door to otherwise inadmissible testimony offered to explain, clarify, or contradict that evidence. *State v. Wafford*, 199 Wn. App. 32, 36–37, 397 P.3d 926, *review denied*, 189 Wn.2d 1014 (2017). This rule “is intended to preserve fairness” by preventing the introduction of one-sided testimony that the opposing party has no opportunity to rebut. *Avendano-Lopez*, 79 Wn. App. at 714.

The defense attorney’s line of questioning regarding the fact that Pfluger gave the Ford Expedition to Rushworth without any explanation of the circumstance left the impression that there was nothing improper regarding the transaction or that neither Pfluger or Rushworth knew the vehicle was stolen. Essentially, the defense questions intimated it was one person simply giving another a vehicle to drive. The deputy prosecutor properly questioned the officer surrounding the circumstances of Pfluger giving the vehicle to Rushworth and whether her story that she had the title to the Ford Expedition could be corroborated. The fact that Pfluger knew the vehicle was stolen shed light on whether Rushworth’s story could be corroborated. It is important to note that there was no testimony from Pfluger that Rushworth knew the vehicle was stolen. It was only the circumstance under which Pfluger possessed the vehicle.

Furthermore, regarding the question and answer that Officer Brownell referred a criminal charge after speaking with Pfluger, there was no objection to this testimony. RP 217. A proper objection must be made at trial to preserve errors in admitting or excluding evidence; the failure to do so precludes raising the issue on appeal. *State v. Guloy*, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985). “[A] litigant cannot remain silent as to claimed error during trial and later, for the first time, urge objections thereto on appeal.” *Id.* The party must have challenged the admission of evidence at trial on the same grounds that it raises on appeal. *Id.* at 422. As explained there:

... counsel objected but on the basis that it was not proper impeachment nor was it within the scope of redirect. A party may only assign error in the appellate court on the specific ground of the evidentiary objection made at trial. Since the specific objection made at trial is not the basis the defendants are arguing before this court, they have lost their opportunity for review.

Id.

Rushworth’s argument on appeal that it was error to allow the officer to testify that he referred a criminal charge after speaking with Pfluger has been waived.

Even it was error to admit the hearsay statement, it was harmless. The admission of the hearsay statement was unlikely to have materially affected Rushworth’s conviction. Given that Rushworth was in actual possession of the vehicle, attempted to evade the police for a short period

of time, provided a story regarding the vehicle's title for which she could not corroborate, including the unlikely story that she threw the vehicle title away, and drove a vehicle that had been physically altered, it is not reasonably likely the hearsay statement from Pfluger that he knew the vehicle was stolen affected the jury's verdict. This claim has no merit.

D. THE DEFENDANT'S CUMULATIVE ERROR CLAIM FAILS.

Rushworth argues that cumulative error deprived her of her right to a fair trial. Under the cumulative error doctrine, an appellate court may reverse an appellant's convictions if the combined effect of trial errors effectively denied the appellant his right to a fair trial, even if each error alone would be harmless. *State v. Weber*, 159 Wn.2d 252, 279, 149 P.3d 646 (2006). To support a cumulative error claim, the appellant must demonstrate multiple errors.

The test to determine whether cumulative errors require reversal of a defendant's conviction is whether the totality of circumstances substantially prejudiced the defendant and denied him a fair trial. In other words, [the appellant] bears the burden of showing multiple trial errors and that the accumulated prejudice affected the outcome of the trial.

In re Cross, 180 Wn.2d 664, 690, 327 P.3d 660 (2014), *abrogated on other grounds by State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018) (death penalty). Rushworth fails to demonstrate any evidentiary error, let alone

multiple evidentiary errors, making the cumulative error doctrine inapplicable.

E. THE COURT SHOULD REMAND FOR THE TRIAL COURT TO STRIKE THE \$200 COURT COSTS AND TO DETERMINE WHETHER THE DEFENDANT'S DNA WAS PREVIOUSLY COLLECTED.

The court imposed the \$200 criminal filing fee and \$100 DNA collection fee. CP 78. Rushworth argues this Court should order the trial court to strike the imposition of the \$200 filing fee and the \$100 DNA fee imposed at sentencing.

1. Court costs.

As of June 7, 2018, trial courts are prohibited from imposing the \$200 criminal filing fee on defendants who are indigent at the time of sentencing. RCW 10.01.160(a)-(c).

In *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018), our high Court addressed the 2018 amendments to RCW 43.43.754 and held that the amendment is applicable to cases pending on direct review and not final when the amendment was enacted. *Id.* at 747. In the present case, the defendant was sentenced on May 4, 2018,⁸ and was pending direct review at the time of the legislative amendments. Thus, this Court should order that the \$200 court costs be stricken from judgment and sentence; this may be

⁸ CP 82.

done without a resentencing. *See State v. Ramos*, 171 Wn.2d 46, 48, 246 P.3d 811 (2011) (a ministerial correction does not require a defendant’s presence).

2. DNA collection.

Regarding the collection of Rushworth’s DNA, it is unknown whether she has any previous felony convictions where her DNA would have been drawn. CP 85-86 (Understanding of Criminal History). Rushworth’s last felony conviction appears to be for theft of a firearm in 2006, in Clark County, Washington. CP 85. It is unknown whether Rushworth’s DNA was collected at that time.

RCW 43.43.7541⁹ establishes that the DNA database fee is mandatory only if the offender’s DNA has not been previously collected because of a prior conviction. Rushworth provides no evidence that her DNA was previously collected. Consequently, Rushworth has not shown that, under RCW 43.43.7541, the trial court erred in imposing the DNA collection fee.

⁹ “Every sentence imposed for a crime specified in RCW 43.43.754 [i.e., any felony] must include a fee of one hundred dollars unless the state has previously collected the offender’s DNA as a result of a prior conviction.” Laws of 2018, ch. 269, §18.

IV. CONCLUSION

For the reasons stated herein, the State requests this Court affirm the judgment and sentence; however, the State agrees that this Court must remand to the trial court to strike the \$200 filing fee.

Respectfully submitted this 3 day of June, 2019.

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

STATE OF WASHINGTON,

Respondent,

v.

TEGAN RUSHWORTH,

Appellant.

NO. 36077-6-III

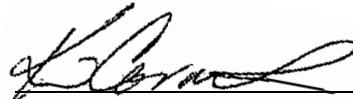
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on June 3, 2019, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Oliver Davis
wapofficemail@washapp.org

6/3/2019
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

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