

FILED
Court of Appeals
Division III
State of Washington
1/30/2020 4:29 PM

No. 36763-1-III

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

STATE OF WASHINGTON,

Respondent,

v.

DAVIEL CANELA,

Appellant.

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

BRIEF OF APPELLANT (AMENDED)

RICHARD W. LECHICH
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711
richard@washapp.org
wapofficemail@washapp.org

TABLE OF CONTENTS

A. INTRODUCTION 1

B. ASSIGNMENTS OF ERROR 2

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 4

D. STATEMENT OF THE CASE..... 7

E. ARGUMENT 14

 1. By failing to comply with the discovery rules, the prosecution violated Mr. Canela’s constitutional rights to a fair trial and effective assistance of counsel. The trial court’s failure to remedy the violations by excluding Joseph Stueckle’s testimony require reversal and a new trial. 14

 a. To ensure defendants their constitutional right to a fair trial, the prosecution has an affirmative duty to disclose contact information for witnesses it intends to call, along with any records of criminal convictions of these witnesses. 14

 b. The trial court correctly found that the prosecution failed to comply with its discovery obligations by not timely providing contact information for Mr. Stueckle or his criminal history. . 17

 c. While correctly finding that the prosecution had committed misconduct, the trial court erred by denying Mr. Canela’s requested remedy of excluding Mr. Stueckle’s testimony. 20

 d. The failure by the trial court to exclude Mr. Stueckle’s testimony requires reversal and a new trial..... 23

 2. Following the verdict, Mr. Canela discovered that Mr. Stueckle had additional criminal history that could have been used to impeach him. The prosecution’s failure to turn over this impeachment evidence required the trial court to grant Mr. Canela’s motion for a new trial..... 25

 a. The prosecution is required to turn over all material exculpatory evidence, including impeachment evidence, to the defense. ... 25

b.	Despite specific requests and court orders, the prosecution failed to disclose that Mr. Stueckle had two recent convictions for theft, a crime of dishonesty admissible for impeachment.....	26
c.	The prosecution’s misconduct in failing to disclose impeachment evidence requires a new trial.	27
3.	Prosecutorial misconduct deprived Mr. Canela of his constitutional right to a fair trial.	30
a.	Improper and prejudicial argument during closing summations by the prosecutor is misconduct that deprives a defendant of their right to a fair trial.	30
b.	During closing arguments, the prosecutor improperly vouched for Mr. Stueckle’s testimony identifying Mr. Canela as the shooter, citing evidence that had not been presented at trial....	31
c.	The misconduct requires reversal.....	33
4.	The court’s failure to instruct the jury that it must be unanimous on the act constituting unlawful possession of a firearm deprived Mr. Canela of his right to jury unanimity.	35
a.	Criminal defendants have a right to jury unanimity on the act constituting the crime.	35
b.	The evidence supported findings of multiple violations of unlawful possession of a firearm, requiring a unanimity instruction or a clear election by the prosecution.....	36
c.	The error was prejudicial, requiring reversal of the conviction for unlawful possession of a firearm.	39
5.	Cumulative error deprived Mr. Canela of a fair trial.	40
6.	The evidence did not prove that Mr. Canela had a prior qualifying conviction for unlawful possession of a firearm. Because insufficient evidence exists in the record to support this essential element, the conviction for unlawful possession must be reversed and dismissed with prejudice.	41

7. The conditions restricting Mr. Canela’s association with “known gang members” and his possession of “gang paraphernalia” are both unconstitutionally overbroad and vague. Remand is necessary to strike or reform these conditions.	43
a. Conditions of community custody must not be so broad as to violate an offender’s constitutional right to freedom of association. Due process further requires that conditions not be unconstitutionally vague.	43
b. The condition forbidding Mr. Canela from having contact with “known gang members” is unconstitutionally overbroad and vague.	45
c. The condition restricting Mr. Canela’s possession of “gang paraphernalia” is unconstitutionally overbroad and vague.	47
8. Remand is necessary to remedy errors related to imposition of supervision fees and interest on legal financial obligations.	48
a. Remand is necessary to strike the requirement that Mr. Canela pay supervision fees.	48
b. Remand is necessary to strike the interest accrual provision in the judgment and sentence.	49
F. CONCLUSION.....	49

TABLE OF AUTHORITIES

United States Supreme Court

Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)..... 1, 14, 25

Burks v. United States, 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978)..... 43

Dawson v. Delaware, 503 U.S. 159, 112 S. Ct. 1093, 117 L. Ed. 2d 309 (1992)..... 44

Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972)..... 14, 25

In re Winship, 397 U.S. 361, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).... 41

Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)..... 41

Krulewitch v. United States, 336 U.S. 440, 69 S. Ct. 716, 93 L. Ed. 790 (1949)..... 34

Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995)..... 28

Wearry v. Cain, ___ U.S. ___, 136 S. Ct. 1002, 194 L. Ed. 2d 78 (2016) ... 28

Washington Supreme Court

City of Seattle v. Orwick, 113 Wn.2d 823, 784 P.2d 161 (1989)..... 16

In re Pers. Restraint of Glasmann, 175 Wn.2d 696, 286 P.3d 673 (2012)..... 30, 33, 34

State v. A.M., 194 Wn.2d 33, 448 P.3d 35 (2019) 23, 28

State v. Bahl, 164 Wn.2d 739, 193 P.3d 678 (2008) 44, 46

State v. Belgarde, 110 Wn.2d 504, 755 P.2d 174 (1988) 31

State v. Burri, 87 Wn.2d 175, 550 P.2d 507 (1976) 14, 23

<u>State v. Callahan</u> , 77 Wn.2d 27, 459 P.2d 400 (1969).....	37
<u>State v. Carson</u> , 184 Wn.2d 207, 357 P.3d 1064 (2015).....	38
<u>State v. Coleman</u> , 159 Wn.2d 509, 150 P.3d 1126 (2007)	39
<u>State v. Dailey</u> , 93 Wn.2d 454, 610 P.2d 357 (1980)	21
<u>State v. Davila</u> , 184 Wn.2d 55, 357 P.3d 636 (2015)	25
<u>State v. Hickman</u> , 135 Wn.2d 97, 954 P.2d 900 (1998)	42
<u>State v. Immelt</u> , 173 Wn.2d 1, 267 P.3d 305 (2011)	44
<u>State v. Ish</u> , 170 Wn.2d 189, 241 P.3d 389 (2010).....	31
<u>State v. Johnson</u> , 188 Wn.2d 742, 762, 399 P.3d 507 (2017).....	42
<u>State v. Kier</u> , 164 Wn.2d 798, 194 P.3d 212 (2008).....	38
<u>State v. Kitchen</u> , 110 Wn.2d 403, 756 P.2d 105 (1988)	35, 36, 39, 40
<u>State v. Michielli</u> , 132 Wn.2d 229, 937 P.2d 587 (1997)	16, 22
<u>State v. Miles</u> , 73 Wn.2d 67, 436 P.2d 198 (1968).....	34
<u>State v. Petrich</u> , 101 Wn.2d 566, 683 P.2d 173 (1984).....	35
<u>State v. Ramirez</u> , 191 Wn.2d 747, 426 P.3d 714 (2018)	49
<u>State v. Ray</u> , 116 Wn.2d 531, 806 P.2d 1220 (1991)	26
<u>State v. Reed</u> , 102 Wn.2d 140, 684 P.2d 699 (1984).....	31
<u>State v. Reeder</u> , 46 Wn.2d 888, 285 P.2d 884 (1955).....	31
<u>State v. Riles</u> , 135 Wn.2d 326, 957 P.2d 655 (1998).....	44
<u>State v. Salgado-Mendoza</u> , 189 Wn.2d 420, 403 P.3d 45 (2017).....	16, 21, 22, 23
<u>State v. Valencia</u> , 169 Wn.2d 782, 239 P.3d 1059 (2010).....	44
<u>State v. Wilson</u> , 149 Wn.2d 1, 65 P.3d 657 (2003)	14

<u>Washington State Physicians Ins. Exch. & Ass’n v. Fisons Corp.</u> , 122 Wn.2d 299, 858 P.2d 1054 (1993).....	17
--	----

Washington Court of Appeals

<u>State v. Boehning</u> , 127 Wn. App. 511, 111 P.3d 899 (2005)	34
<u>State v. Brooks</u> , 149 Wn. App. 373, 203 P.3d 397 (2009)	16, 17, 22
<u>State v. Copeland</u> , 89 Wn. App. 492, 949 P.2d 458 (1998).....	29
<u>State v. Hanson</u> , 59 Wn. App. 651, 800 P.2d 1124 (1990).....	36, 40
<u>State v. Holmes</u> , 122 Wn. App. 438, 93 P.3d 212 (2004).....	24
<u>State v. Johnson</u> , 90 Wn. App. 54, 950 P.2d 981 (1998).....	42
<u>State v. Jussila</u> , 197 Wn. App. 908, 392 P.3d 1108 (2017)	43
<u>State v. King</u> , 75 Wn. App. 899, 878 P.2d 466 (1994).....	37
<u>State v. Lundstrom</u> , 6 Wn. App. 2d 388, 429 P.3d 1116 (2018)	48, 49
<u>State v. Manion</u> , 173 Wn. App. 610, 295 P.3d 270 (2013).....	36
<u>State v. Mata</u> , 180 Wn. App. 108, 321 P.3d 291 (2014).....	37
<u>State v. Perrett</u> , 86 Wn. App. 312, 936 P.2d 426 (1997)	40
<u>State v. Pierce</u> , 169 Wn. App. 533, 280 P.3d 1158 (2012).....	31
<u>State v. Salas</u> , 1 Wn. App. 2d 931, 408 P.3d 383 (2018).....	30
<u>State v. Scott</u> , 151 Wn. App. 520, 213 P.3d 71 (2009).....	44, 45
<u>State v. Villano</u> , 166 Wn. App. 142, 272 P.3d 255 (2012).....	48
<u>State v. Williams</u> , 136 Wash. App. 486, 150 P.3d 111 (2007).....	38

Other Cases

<u>Benn v. Lambert</u> , 283 F.3d 1040 (9th Cir. 2002)	27, 29
<u>United States v. Soltero</u> , 510 F.3d 858 (9th Cir. 2007)	46

Constitutional Provisions

Const. art. I, § 21.....	14
Const. art. I, § 22.....	14, 35
Const. art. I, § 3.....	passim
Const. art. I, § 5.....	43
U.S. Const. amend. I.....	43
U.S. Const. amend. VI.....	14
U.S. Const. amend. XIV.....	passim

Statutes

RCW 3.50.100(4)(b).....	49
RCW 9.41.040(1)(a).....	36
RCW 9.41.040(7).....	37
RCW 9.94.040(2)(a)(i).....	42
RCW 9.94A.030(12).....	46
RCW 9.94A.703(2)(d).....	48
RCW 9.94A.703(3)(b).....	45

Rules

CrR 4.7(a).....	14
CrR 4.7(a)(1)(i).....	15
CrR 4.7(a)(1)(vi).....	15, 25
CrR 4.7(a)(3).....	15, 25
CrR 4.7(h)(2).....	25

CrR 4.7(h)(7).....	16, 17
CrR 8.3(b).....	16, 17
ER 609(a)(2).....	26
GR 14.1.....	49
RAP 2.5(a)(3).....	36

Other Authorities

11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 4.25 (4th Ed)	35
--	----

A. INTRODUCTION

“Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.” Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Daviel Canela did not receive a fair trial. In violation of the discovery rules and constitutional law, the prosecution belatedly disclosed contact information and the criminal history of witnesses it intended to call. To remedy the violation, the trial court was obligated to grant Mr. Canela’s motion to exclude Joseph Stueckle’s testimony. Mr. Stueckle was a key witness. He was a purported eyewitness to the shooting and had identified Mr. Canela as the shooter. But the prosecution did not disclose Mr. Stueckle’s location so that he could be timely interviewed. Neither did the prosecution timely disclose that Mr. Stueckle had prior felony convictions that could be used to impeach him. Because the prosecution’s surprise tactics required exclusion of Mr. Stueckle’s testimony, this Court should reverse and remand for a new trial.

Compounding the transgression, the prosecution failed to completely disclose Mr. Stueckle’s criminal history, omitting prior convictions that could have been used to impeach his credibility. For this and other reasons detailed below, a new trial is required.

B. ASSIGNMENTS OF ERROR

1. In violation of CrR 4.7(a)(1)(i), (vi), and due process, as guaranteed by the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution, the prosecution failed to timely disclose contact information and the criminal history of witnesses it intended to call, including Joseph Stueckle. The trial court erred by denying Mr. Canela's motion to exclude Mr. Stueckle from testifying.

2. In belatedly disclosing Mr. Stueckle's criminal history, the prosecution failed to provide full disclosure. The omission of this exculpatory evidence violated CrR 4.7(a)(1)(vi), (3), and due process, as guaranteed by the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution. The trial court erred by denying Mr. Canela's motion for a new trial.

3. In violation of due process and the right to a jury trial, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 3, 21, and 22 of the Washington Constitution, the prosecutor committed misconduct by citing extrinsic evidence during closing arguments. The trial court erred by failing to declare a mistrial.

4. In violation of article I, section 22 of the Washington Constitution, the trial court erred by failing to provide a unanimity instruction as to the charge of unlawful possession of a firearm.

5. In violation of due process, as guaranteed by the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution, cumulative error deprived Mr. Canela of a fair trial. The trial court erred in entering the judgment and sentence.

6. In violation of due process, as guaranteed by the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution, the conviction for unlawful possession of a firearm is not supported by sufficient evidence. The trial court erred in entering the judgment and sentence.

7. The right to freedom of association is guaranteed under article I, section 5 of the Washington Constitution and the First and Fourteenth Amendments to the United States Constitution. Due process, as provided under article I, section 3 of the Washington Constitution and the Fourteenth Amendment to the United States Constitution, prohibits vague laws. In violation of these constitutional protections, the court erred by ordering, as a condition of community custody, that Mr. Canela have “[n]o contact with known gang members.” CP 88.

8. In violation of the constitutional prohibition against vague laws and the right to freedom of speech, the trial court erred by ordering, as a condition of community custody, that Mr. Canela have “[n]o possession of gang paraphernalia including clothing, insignia, medallions, etc.” CP 88.

9. The court erred in ordering that Mr. Canela pay supervision fees as a condition of community custody.

10. The court erred in ordering that non-restitution legal financial obligations accrue interest.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Due process, the right to effective assistance of counsel, and the court rules require the prosecution disclose the contact information of witnesses it intends to call, along with any record of prior criminal convictions of these witnesses. Before trial, the prosecution did not disclose the contact information of Joseph Stueckle, a key witness the prosecution intended to call. Nor did the prosecution disclose Mr. Stueckle’s criminal history. As the least severe sanction capable of remedying the prosecution’s violations, did the trial court err by denying Mr. Canela’s request to exclude Mr. Stueckle’s testimony?

2. Following the jury’s verdict, the defense learned that Mr. Stueckle had additional prior convictions for theft, which could have been used to impeach his testimony. The prosecution’s belated disclosure of

Mr. Stueckle's criminal history had been incomplete. Is Mr. Canela entitled to a new trial where this impeachment evidence was material and the inability of the defense to use it to impeach the state's key witness undermines confidence in the jury's verdict?

3. It is misconduct for a prosecutor to cite matters outside the evidence or to vouch for the credibility of a witness. During closing arguments, the prosecutor vouched for Mr. Stueckle's credibility and his identification of Mr. Canela. He did so by asserting there had been no mistake in Mr. Stueckle's identification of Mr. Canela because Mr. Stueckle knew Mr. Canela from serving time with him in jail. This fact was outside the evidence. Did prosecutorial misconduct deprive Mr. Canela of a fair trial?

4. Criminal defendants have a right to a unanimous jury verdict. When there is evidence of multiple acts that may prove a criminal charge, the prosecutor must make a clear election or the jury should be instructed that it must unanimously agree as to the act constituting the crime. There was evidence of multiple acts of unlawful possession of a firearm. Was Mr. Canela deprived of his right to jury unanimity when there was no clear election and the jury did not receive a unanimity instruction?

5. Did cumulative error deprive Mr. Canela of his due process right to a fair trial?

6. Due process requires the prosecution prove every element of a criminal offense. An element of unlawful possession of a firearm in the second degree is a prior felony conviction. No evidence was introduced at trial showing Mr. Canela had a prior felony conviction. While there was a discussion of Mr. Canela stipulating to the fact of a prior felony conviction, the record contains no written stipulation and no stipulation was read to the jury. Does insufficient evidence support the conviction for unlawful possession of a firearm?

7. There is a constitutional right to freedom of association. Conditions of community custody that broadly restrict this right without reasonable necessity are unconstitutionally overbroad. As a condition of community custody, the court ordered Mr. Canela have no contact with “known gang members.” Is this condition unconstitutionally overbroad in that it forbids contact with any “gang,” rather than “criminal street gangs?”

8. Conditions of community custody violate due process if they are unconstitutionally vague. A condition is unconstitutionally vague if it is insufficiently definite so that ordinary people cannot understand it or if it permits arbitrary enforcement. Is the language, “known gang members” unconstitutionally vague in that its scope is indefinite and it permits arbitrary enforcement?

9. As a condition of community custody, the court forbade Mr. Canela from possessing “gang paraphernalia.” Is this condition unconstitutionally vague, as this Court has previously held?

10. As part of community custody, a trial court may waive the requirement that the defendant pay supervision fees. Before imposing discretionary fees, the court must analyze the defendant’s ability to pay. The court found Mr. Canela was indigent and waived mandatory legal financial obligations, but nonetheless ordered him to pay supervision fees. Did the court err?

11. Interest does not accrue on non-restitution legal financial obligations. The judgment and sentence states that interest accrues on all legal financial obligations. Must this provision be stricken?

D. STATEMENT OF THE CASE

One afternoon in late March, Daviel Canela was at his friend’s apartment in Pasco with about three or four other people when police arrested him. RP 267, 270-71. The officers suspected that Mr. Canela was the perpetrator of a recent shooting that had occurred nearby. RP 267-270.

Earlier that afternoon, Victor Garcia had been shot outside of an apartment complex. RP 133, 164. He survived.

The prosecution charged Mr. Canela with first degree attempted murder and unlawful possession of a firearm in the second degree. CP 9-10. He pleaded not guilty and proceeded to trial.

At trial, the prosecutor's theory of the case was that Mr. Canela got into a dispute with Mr. Garcia outside of an apartment complex. RP 113. The prosecutor believed testimony would show that the two were friends and had belonged to the same gang, but that Mr. Garcia had left the gang. RP 113. He asserted that Mr. Canela had drawn a gun and shot at Mr. Garcia about five times. RP 113.

Mr. Canela contested the prosecution's claims, contending he had been wrongfully identified. RP 122-24.

Shortly before the trial started, Mr. Canela alleged the prosecution had not complied with its discovery obligations and the court rules. RP 8-12, 81-98. On both of the prosecution's witness lists, the prosecution stated that it may call "Josef Simeon Stueckle," but did not list an address or contact information. Supp. CP __ (sub. nos. 10, 11); RP 92-93. The lists also referred to two witnesses by initials and their date of birth, but did not list addresses or contact information. Supp. CP __ (sub. nos. 10, 11). The prosecution had also not provided any records of criminal history for these witnesses. RP 85, 106-07.

All three were purported eyewitnesses to the shooting. The prosecutor revealed that he planned to call all three to testify. RP 11, 94. The prosecutor explained that he had not used full names or addresses for the two witnesses listed by their initials because they were juveniles. RP 10, 91. As for Mr. Stueckle, the prosecutor stated he was a “street” person, but disclosed that he was in Benton County Jail in Kennewick. RP 11, 95. The prosecutor represented that the juveniles did not have any criminal history, but that Mr. Stueckle did. RP 91-92, 95.

The two juvenile witnesses were Ulysses Gonzalez and Christian Sapien, both 16-years old. RP 172, 185. They testified that they were on the way to one of their houses when they heard shots. RP 174-75, 187-88. Ulysses testified that the shooter was wearing a gray hoodie with the hood up and blue jeans. RP 175. He denied that he had earlier stated that the hoodie was black. RP 180. Ulysses, who said he has “very bad vision,” testified he did not see the shooter’s face. RP 175, 179. He thought the shooter got in a black car and left. RP 182. He thought the weapon he saw was a pistol which would be loaded on the bottom and cocked with a slide on the top. RP 184.

Christian testified the shooter had on a gray hoodie and dark blue pants. RP 187, 191. He recalled that someone had said the hoodie was black. RP 193. He did not see the shooter’s face because the shooter had

the hoodie on. RP 190. He saw a black gun, but was unsure what kind of gun it was. RP 188. He did not see the black car that his friend spoke about. RP 195.

Zeima Cardenas Quintero testified she was present at the time of the shooting. RP 286, 293. She was a few months pregnant with Mr. Garcia's child at the time. RP 287, 293. Ms. Quintero struggled with drug use during her pregnancy and was not sober until several months later. RP 324. She testified that while Mr. Canela and Mr. Garcia spoke outside the apartments, she had been nearby by a van unloading some of her belongings. RP 292-93. She had no reason to pay attention to them because they were friends who were just talking. RP 303-04, 307. She testified that the two were not loud. RP 301.

Still, she claimed to have heard Mr. Canela say to Mr. Garcia something along the lines, "Aren't you Xed out?" RP 301. She testified this meant that Mr. Garcia was no longer in a gang. RP 301. She stated that her attention was drawn after hearing a popping sound and she saw who she believed to be Mr. Canela shooting Mr. Garcia. RP 308. While holding Mr. Garcia following the shooting, an unknown male walked up to her, said "Xed out" or something along those lines, and recorded her. RP 310-11.

After the shooting, Mr. Garcia's sister came out of the apartment. RP 296. Ms. Quintero told her that Mr. Canela had shot Mr. Garcia. RP 296. Mr. Garcia's sister retrieved a picture of Mr. Canela on Facebook, which was shown to the police. RP 265, 296, 298. Ms. Quintero recalled that Mr. Canela had on a T-shirt. RP 318.

Following further requests by defense counsel that he be provided Mr. Stueckle's criminal history and after being afforded only a very brief opportunity to speak with Mr. Stueckle, the defense moved to exclude Mr. Stueckle from testifying. RP 196-97, 204. The court denied Mr. Canela's request. RP 204-06.

Mr. Stueckle testified he was in the area visiting one of his friends. RP 328. He later admitted he was there to pick up "paraphernalia." RP 353, 58. He testified that while outside smoking a cigarette, he offered Mr. Canela and Mr. Garcia cigarettes, and they all smoked. RP 328, 331. He testified that as he was walking away down the sidewalk, he heard shouting and shots fired in his direction. RP 331-32. He claimed to hear shouting saying, "hey, weren't you Xed out?" RP 333. He claimed that he saw Mr. Canela shoot at Mr. Garcia with a "very small" revolver before running away. RP 333-34, 345. He thought Mr. Canela was wearing a T-shirt. RP 335. Rather than call 911, he made a recording with his phone. RP 348-49. He identified Mr. Canela as the shooter. RP 337-38.

Mr. Stueckle admitted to having prior felony convictions for theft and burglary. RP 338. He denied he was promised leniency in a prosecution against him in exchange for testifying. RP 360.

Mr. Garcia, who was incarcerated at the time of trial, was not called to testify. RP 103, 108, 119-387.

Police arrived minutes after the shooting. RP 145, 155, 248, 268. Mr. Garcia had two small gunshot wounds. RP 279, 282-83. He was taken to the hospital. RP 137.

The police looked for shell casings and bullets at the scene, but did not find any. RP 149, 255, 262. A revolver would not leave shell casings. RP 149. A bullet was found in Mr. Garcia, but was not removed. RP 375.

After locating Mr. Canela at his friend's one-bedroom apartment and arresting him, the police searched the apartment. RP 270-72. They found a gray sweatshirt in the bedroom with a Nike logo on the front and words "just do it" on the sleeves. RP 237, 273-74. While two teenagers had testified about the shooter wearing a sweatshirt, neither testified about it have a Nike logo or the Nike slogan on it. RP 172-95. In the bathroom, a .22 caliber revolver inside a holster was found in the toilet tank. RP 225-27, 367, 372; Ex. 44-46. This revolver had a long barrel and was not small. Exs. 44-46. In a compartment hidden behind the bathroom mirror

were three other handguns, two of which were revolvers. RP 226, 373; Exs. 47-49. These guns had shorter barrels. Exs. 48-49.

During closing argument, the prosecution argued the gun found in the toilet tank was the firearm used in the shooting. RP 404-05. Defense counsel argued this was inconsistent with the testimony indicating that the gun used by the shooter was small. RP 414. Defense counsel argued the eyewitness testimony identifying Mr. Canela was not credible and that Mr. Canela had been wrongfully identified. RP 419-21. On rebuttal, the prosecutor asserted Mr. Stueckle had not made a mistake because he knew Mr. Canela from being in jail with him, a fact not in evidence. RP 427.

The jury convicted Mr. Canela as charged. RP 432. Following the verdict, defense counsel discovered that Mr. Stueckle had recent criminal convictions that could have been used to impeach him, but which the prosecution had not disclosed. CP 52-76. Mr. Canela moved for a new trial. CP 52-76. The court denied the motion. 4/16/19 RP 19-22. The court sentenced Mr. Canela to a mid-range sentence of 276 months' confinement. 4/23/19 RP 5-6.

E. ARGUMENT

- 1. By failing to comply with the discovery rules, the prosecution violated Mr. Canela's constitutional rights to a fair trial and effective assistance of counsel. The trial court's failure to remedy the violations by excluding Joseph Stueckle's testimony require reversal and a new trial.**

a. To ensure defendants their constitutional right to a fair trial, the prosecution has an affirmative duty to disclose contact information for witnesses it intends to call, along with any records of criminal convictions of these witnesses.

The State and federal constitutions guarantee due process and the right to a fair jury trial. U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 21, 22; State v. Burri, 87 Wn.2d 175, 180, 550 P.2d 507 (1976).

Defendants have the right to effective assistance of counsel, which includes the right of defense counsel to be prepared for trial. Burri, 87 Wn.2d. at 180. Part of preparation consists of investigation, which includes interviewing witnesses in advance of trial. Id. at 180-81; State v. Wilson, 149 Wn.2d 1, 12-13, 65 P.3d 657 (2003). The prosecution has a constitutional duty to turn over material evidence that is favorable to the defense, including impeachment evidence. Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963); Giglio v. United States, 405 U.S. 150, 153-154, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972).

Consistent with these constitutional requirements, the court rules impose discovery obligations upon the prosecution. CrR 4.7(a). Under

these rules, the prosecution must disclose, no later than the omnibus hearing, a witness list containing names and addresses, along with any record of prior criminal convictions of these witnesses:

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following material and information within the prosecuting attorney's possession or control no later than the omnibus hearing:

(i) the names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses; [and]

...

(vi) any record of prior criminal convictions known to the prosecuting attorney of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

CrR 4.7(a)(1)(i), (vi). Additionally, absent a protective order, “the prosecuting attorney shall disclose to defendant’s counsel any material or information within the prosecuting attorney’s knowledge which tends to negate defendant's guilt as to the offense charged, and/or that tends to impeach a State’s witness.” CrR 4.7(a)(3).

When the prosecution violates its discovery obligations and the defendant discovers the violation before the verdict, the court rules offer relief. CrR 8.3(b) authorizes dismissal for governmental misconduct:

The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

CrR 8.3(b). Simple mismanagement is sufficient to show misconduct.

State v. Michielli, 132 Wn.2d 229, 239, 937 P.2d 587 (1997). This includes the State mismanaging its discovery obligations. State v. Salgado-Mendoza, 189 Wn.2d 420, 429, 403 P.3d 45 (2017); State v. Brooks, 149 Wn. App. 373, 384-87, 203 P.3d 397 (2009). Dismissal is not the only remedy. Where suppression of evidence is adequate to eliminate the prejudice caused by the misconduct, this is the proper remedy. City of Seattle v. Orwick, 113 Wn.2d 823, 831, 784 P.2d 161 (1989).

Relatedly, CrR 4.7(h)(7) authorizes the trial court to dismiss or take other appropriate action when the State violates its discovery obligations:

(7) *Sanctions*.

(i) if at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

(ii) willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

CrR 4.7(h)(7).

Decisions on motions made under CrR 8.3(b) and CrR 4.7(h)(7) are reviewed for an abuse of discretion. Brooks, 149 Wn. App. at 384. A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). A trial court necessarily abuses its discretion if its ruling misapplies or misinterprets the law. Id.

b. The trial court correctly found that the prosecution failed to comply with its discovery obligations by not timely providing contact information for Mr. Stueckle or his criminal history.

During motions in limine, defense counsel brought a few issues regarding discovery to the attention of the trial court. RP 8-12. The prosecution's witness list did not have contact information for three witnesses the prosecution intended to call. Supp. CP __ (sub. no. 11); RP 8-9. One of these witnesses was Joseph Stueckle, while the other two were "U.G." (DOB: 12-26-2001)" and "C.S. (DOB 02-07-2002)." Supp. CP __ (sub. no. 11, p. 3-4); RP 8-9. The prosecution responded that "U.G." and C.S." were juveniles and it was the prosecution's policy not to provide the full names or addresses of juveniles. RP 10. The prosecution represented

that all last known addresses were given and that some of the witnesses were “street people.” RP 11. The prosecutor stated he intended to call these witnesses and expected them to appear. RP 11. Defense counsel explained he was raising the issue now because it appeared that the prosecution had successfully subpoenaed these witnesses and he had been unable to interview them despite written requests to the prosecution to set up interviews. RP 11-12.

After jury selection, the court and the parties resumed their discussion on the matter. RP 12, 81. Defense counsel asserted that he had also not received a record of the criminal histories of the witnesses the prosecution intended to call. RP 85. The prosecution represented that the juveniles did not have any criminal history, but that Mr. Stueckle had a criminal history and was currently in jail. RP 91-92, 95. The prosecution stated that Mr. Stueckle had been arrested in Pasco, was released, and then was arrested in Kennewick, where he was currently. RP 97-98. The prosecution conceded Mr. Stueckle’s previous address had not been given to defense counsel. RP 97-98.

The court ruled that defense counsel would be provided the opportunity to speak with the witnesses before their testimony. RP 98-99. The prosecutor represented that Mr. Stueckle was currently in Benton

County Jail and that the prosecution would provide Mr. Stueckle's criminal history to the defense. RP 102.

The next day, defense counsel informed the court he still did not have Mr. Stueckle's criminal history. RP 106-07. The court ordered the prosecution to provide it. RP 106-07.

Following opening statements and testimony from some of the witnesses, including the juveniles, Mr. Canela moved to exclude Mr. Stueckle from testifying due to the discovery violations. RP 196-97. Defense counsel represented he had only had three minutes with Mr. Stueckle during the lunch break and still did not have his criminal history. RP 197. Defense counsel argued he had not had enough time to prepare and that the information should have been provided prior to trial. RP 198. The prosecution stated the criminal history had only now been turned over because it was "being prepared" this morning. RP 198-99. The prosecutor stated that Mr. Stueckle had two prior felonies. RP 198-99.

The court ruled that the prosecution had not complied with the discovery rules:

THE COURT: . . . [T]he Rules also require that the state provide that to the defense. I was informed yesterday from [the prosecutor] that a lot of this contact information was not included in the initial discovery, was redacted because they don't want this information floating around the jail, and particularly for people who are not witnesses, but once the decision was made that these folks were going to be

called as witnesses, it was the state's obligation at that point to provide that information. That was not done.

RP 200.

Mr. Canela renewed his request to exclude Mr. Stueckle from testifying. RP 204. The court denied the motion, instead recessing for the afternoon to allow defense counsel to speak to Mr. Stueckle. RP 204-06. The court noted that defense counsel now had Mr. Stueckle's criminal history. RP 207. Mr. Stueckle testified the next day. RP 326.

c. While correctly finding that the prosecution had committed misconduct, the trial court erred by denying Mr. Canela's requested remedy of excluding Mr. Stueckle's testimony.

The trial court erred by denying Mr. Canela's request to exclude Mr. Stueckle's testimony. Mr. Stueckle was a key witness for the prosecution. He was a purported eyewitness to the shooting and he identified Mr. Canela as the perpetrator.

Still, the prosecution did not provide contact information for Mr. Stueckle.¹ On its witness lists, the prosecution only listed Mr. Stueckle as a witness and did not provide his address. Supp. ___ CP (sub. no. 10, p.1; sub. no. 11, p. 4. The defense made written requests to set up interviews

¹ The prosecution represented that police reports had an address for Mr. Stueckle at his mother-in-law's address in Kennewick, but that Mr. Stueckle had been kicked out of his mother-in-law's home. RP 95. This address was redacted in the defense's discovery. RP 96-98.

with him and the other witnesses the prosecution intended to call, but no interviews happened before trial. RP 11. The prosecution admitted to intending to call Mr. Stueckle and to knowing that he was at the Benton County jail in Kennewick. RP 95, 97-98. Still, the prosecution did not disclose this information to the defense, as mandated by the court rules. CrR 4.7(h)(2) (imposing a continuing duty to disclose)²; Salgado-Mendoza, 189 Wn.2d at 434 (“The prosecutor has the continuing obligation to pursue the disclosure of discoverable information”). Rather, the prosecution chose to surprise the defense, obtaining an order to transport Mr. Stueckle from Benton to Franklin County in the midst of trial on October 26, 2018. Supp. CP ___ (sub. no. 101). This was misconduct justifying a real remedy. See State v. Dailey, 93 Wn.2d 454, 459, 610 P.2d 357 (1980) (affirming dismissal of case due to discovery violations).

The prosecution also failed to timely disclose Mr. Stueckle’s criminal history, which was impeachment evidence. Rather, only after repeated demands in the midst of trial did the prosecution disclose that Mr. Stueckle had prior felony convictions for theft and burglary, along with a

² “If, after compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the party shall promptly notify the other party or their counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.”

conviction for “shoplifting.” RP 198-200, 203, 338-39. But even these disclosures were incomplete.

“[L]ate disclosure of a key witness presenting unique testimony—such as an investigating officer—is likely to prejudice the defense.” Salgado-Mendoza, 189 Wn.2d at 437. Here, the prosecution belatedly disclosed contact information and impeachment evidence concerning a key witness for the prosecution in the midst of trial. This impacted defense counsel’s ability to prepare for trial, including his examination of witnesses. Counsel was preparing for issues regarding hearsay from police officers, not examining Mr. Stueckle. RP 93. Defense counsel had to prepare to examine Mr. Stueckle during the trial and was only able to interview him less than 24 hours before he testified. He was belatedly provided Mr. Stueckle’s criminal history, which as detailed later, was incomplete. This late disclosure improperly required Mr. Canela to either demand a continuance and give up his right to speedy trial, or proceed with counsel who was not adequately prepared. This qualifies as prejudice. See Michielli, 132 Wn.2d at 240; Brooks, 149 Wn. App. at 390.

Given these circumstances, Mr. Canela established prejudice requiring a remedy. Exclusion of Mr. Stueckle’s testimony was the least severe sanction capable of remedying the prejudice caused to Mr. Canela

due to the prosecution's misconduct. See Salgado-Mendoza, 189 Wn.2d at 431. The trial court erred by denying Mr. Canela's request.

d. The failure by the trial court to exclude Mr. Stueckle's testimony requires reversal and a new trial.

The violations in this case, which concern due process and the right to effective assistance of counsel, are of constitutional proportions. Accordingly, the constitutional harmless error test applies. See Burri, 87 Wn.2d at 182. Under this test, prejudice is presumed and the prosecution bears the burden of proving beyond a reasonable doubt that the error did not contribute to the verdict. State v. A.M., 194 Wn.2d 33, 41-42, 448 P.3d 35 (2019). If there is a reasonable probability that the outcome of the trial would have been different absent the error, reversal is required. Id.

The prosecution cannot meet its burden to prove the result would have been the same without Mr. Stueckle's testimony. Mr. Stueckle testified that Mr. Canela was the shooter. He further testified he heard Mr. Canela say, "Hey, weren't you Xed out?" to Mr. Garcia, which was evidence of motive and premeditation. RP 333. He thought Mr. Canela used a small revolver. RP 333-34. He believed there had been multiple shots, with Mr. Canela firing the last shot while Mr. Garcia was on the ground, and that he heard clicking sounds afterward. RP 334, 346-47. All this testimony rebutted Mr. Canela's defense of mistaken identification.

And it bolstered the prosecution's claim that the attempted murder was premeditated, a requirement for attempted first degree murder. The prosecution cited Mr. Stueckle's testimony during closing arguments. RP 403, 405-06, 426-28.

Mr. Garcia, the victim of the shooting, did not testify. The two teenagers who testified about the shooting also did not identify Mr. Canela. RP 172-195. To be sure, Ms. Quintero identified Mr. Canela as the shooter, but the jury could have entertained a reasonable doubt about her identification absent Mr. Stueckle's testimony. Mr. Stueckle's testimony corroborated Ms. Quintero's testimony that Mr. Stueckle was the shooter. Absent this testimony, the jury could have found Ms. Quintero's testimony not credible or found reasonable doubt. This Court is not in a position to make credibility determinations. See State v. Holmes, 122 Wn. App. 438, 446-47, 93 P.3d 212 (2004) (appellate court not in position to say jury would have necessarily reached the same result when the issue boils down to credibility).

Absent Mr. Stueckle's testimony, there is a reasonable probability of a different result. The prosecution cannot prove otherwise beyond a reasonable doubt. Both convictions should be reversed and the case remanded for a new trial.

2. Following the verdict, Mr. Canela discovered that Mr. Stueckle had additional criminal history that could have been used to impeach him. The prosecution's failure to turn over this impeachment evidence required the trial court to grant Mr. Canela's motion for a new trial.

a. The prosecution is required to turn over all material exculpatory evidence, including impeachment evidence, to the defense.

The “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Brady, 373 U.S. at 87. This rule applies to evidence undermining witness credibility, i.e., impeachment evidence. Giglio, 405 U.S. at 153-54. Evidence is material when there is any reasonable likelihood that the evidence could affect the jury's judgment. Id. at 154. Whether evidence is material for purposes of Brady is a legal question reviewed de novo. State v. Davila, 184 Wn.2d 55, 74-75, 357 P.3d 636 (2015).

Consistent with due process, the court rules require the prosecution to disclose exculpatory evidence. CrR 4.7(a)(3). The prosecution must also turn over records of criminal convictions for witnesses it intends to call. CrR 4.7(a)(1)(vi). These obligations are continuing. CrR 4.7(h)(2).

b. Despite specific requests and court orders, the prosecution failed to disclose that Mr. Stueckle had two recent convictions for theft, a crime of dishonesty admissible for impeachment.

Defense counsel repeatedly requested that the prosecution comply with its duty to turn over any records of criminal convictions for Mr. Stueckle, a key witness that the prosecution intended to call. RP 85, 106-07, 196-98. The court ordered the prosecution to comply. RP 106-07, 200. The prosecution turned over some records showing criminal convictions. CP 54.

After Mr. Canela was convicted, the defense learned that Mr. Stueckle had additional criminal convictions. 4/16/19 RP 11-13; CP 54, 75. In addition to the felony convictions for burglary and theft, along with a “shoplifting” conviction, RP 326-27, Mr. Stueckle had two other very recent misdemeanor convictions for theft. CP 75; 4/16/19 RP 15. As crimes of dishonesty, these would have been admissible to impeach Mr. Stueckle. ER 609(a)(2); State v. Ray, 116 Wn.2d 531, 545, 806 P.2d 1220 (1991).

Based on defense counsel’s discovery and the additional fact that the prosecution’s partial disclosure of Mr. Stueckle’s criminal history had been untimely, Mr. Canela timely moved for a new trial. CP 52-67. While the prosecution conceded it had not disclosed these additional convictions

to the defense, the prosecution opposed a new trial. CP 76-78; 4/16/19 RP 15-16.

The trial court found that the prosecution had committed misconduct through its untimely and incomplete disclosure of Mr. Stueckle's criminal history. 4/16/19 RP 19-21. Still, the court denied Mr. Canela's motion for a new trial, reasoning that Mr. Canela had not shown "a substantial likelihood" that the outcome of the trial would have been different but for the misconduct. RP 4/16/19 RP 21-22. The court reasoned that Mr. Canela had been able to impeach Mr. Stueckle with other convictions and the jury had observed that cross-examination. RP 21.

c. The prosecution's misconduct in failing to disclose impeachment evidence requires a new trial.

The trial court erred in denying Mr. Canela a new trial. The trial court failed to recognize that the prosecution had violated not merely the court rules, but Brady. Because the undisclosed prior convictions for theft was impeachment evidence, it was material evidence that the prosecution was constitutionally obligated to provide to Mr. Canela.³ Giglio, 405 U.S. at 153-54; Benn v. Lambert, 283 F.3d 1040, 1057-58 (9th Cir. 2002).

³ Defense counsel had no obligation to seek this material out as the prosecution represented that it had disclosed Mr. Stueckle's criminal history. See Banks v. Dretke, 540 U.S. 668, 695, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004) ("Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed").

While Mr. Canela did not cite to Brady or its progeny, this is manifest constitutional error properly raised for the first time on appeal. See A.M., 194 Wn.2d at 38-40 (admission of evidence that violated privilege against self-incrimination qualified as manifest constitutional error because evidence was objected to on other grounds and its admission had practical and identifiable consequences).

Brady requires a new trial if evidence discovered after conviction undermines confidence in the verdict. Wearry v. Cain, __ U.S. __, 136 S. Ct. 1002, 1006, 194 L. Ed. 2d 78 (2016). This does *not* require the defendant to prove by a preponderance that a different result would have occurred. Kyles v. Whitley, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).

The two undisclosed prior convictions for theft are sufficient to undermine confidence in the verdict. That there was other impeachment evidence introduced at trial does not undermine this conclusion. As explained by the Ninth Circuit Court of Appeals, when

there is reason to believe that the jury relied on a witness's testimony to reach its verdict despite the introduction of impeachment evidence at trial, and there is a reasonable probability that the suppressed impeachment evidence, when considered together with the disclosed impeachment evidence, would have affected the jury's assessment of the witness's credibility, the suppressed impeachment evidence is prejudicial.

Benn, 283 F.3d at 1056.

Here, there is reason to believe that the jury relied on Mr. Stueckle's testimony despite the impeachment evidence because the prosecution cited his testimony and he was one of only two witnesses who identified Mr. Canela. There is a reasonable probability that the suppressed impeachment evidence, when considered with the disclosed impeachment, would have affected the jury's assessment of Mr. Stueckle's credibility. The two undisclosed convictions for theft were very recent and would have bolstered Mr. Canela's impeachment of Mr. Stueckle. The jury's assessment of Mr. Stueckle may have differed had this impeachment evidence been before the jury. Accordingly, the Brady violation prejudiced Mr. Canela. Benn, 283 F.3d at 1056.

Even setting Brady aside, Mr. Canela was entitled to relief because he showed there was a substantial likelihood that the prosecutor's misconduct affected the jury's verdict. This conclusion is compelled by State v. Copeland, 89 Wn. App. 492, 949 P.2d 458 (1998). There, the prosecution failed to disclose that its complaining witness had a prior felony conviction for theft. Copeland, 89 Wn. App. at 497. This Court held this discovery violation was misconduct by the prosecution. Id. at 497-98. The Court further held the trial court had abused its discretion by denying the defendant's motion for a new trial because the defendant had

shown prejudice. Id. at 498-99. The case turned on the credibility of the complaining witness and the theft conviction was admissible to impeach that witness's credibility. Id. at 498.

The same reasoning applies here. The case turned on credibility determinations, including Mr. Stueckle's testimony. The undisclosed impeachment evidence could "have created a reasonable doubt that did not otherwise exist." Id. at 498.

Under the court rules and Brady, Mr. Canela was entitled to have his motion for a new trial granted. This Court should reverse and remand for a new trial.

3. Prosecutorial misconduct deprived Mr. Canela of his constitutional right to a fair trial.

a. Improper and prejudicial argument during closing summations by the prosecutor is misconduct that deprives a defendant of their right to a fair trial.

"Closing argument provides an opportunity for counsel to summarize and highlight relevant evidence and argue reasonable inferences from the evidence." State v. Salas, 1 Wn. App. 2d 931, 940, 408 P.3d 383 (2018). When a prosecutor makes improper and prejudicial arguments during closing, this misconduct deprives the defendant of a fair trial. In re Pers. Restraint of Glasmann, 175 Wn.2d 696, 703-04, 286 P.3d 673 (2012). The right to a fair trial is a fundamental liberty secured by the

state and federal constitutions. Id. at 703-04; U.S. Const. amend. XIV; Const. art. I, § 3.

It is misconduct for a prosecutor to cite extrinsic evidence or make arguments outside the evidence. Glasmann, 175 Wn.2d at 705; State v. Belgarde, 110 Wn.2d 504, 507-08, 755 P.2d 174 (1988). Relatedly, it is also misconduct for a prosecutor to express a personal opinion or vouch for the credibility of a witness, including by citing evidence not presented at trial. State v. Lindsay, 180 Wn.2d 423, 437-38, 326 P.3d 125 (2014); State v. Ish, 170 Wn.2d 189, 196, 241 P.3d 389 (2010); State v. Reed, 102 Wn.2d 140, 145-46, 684 P.2d 699 (1984). “[A] prosecutor commits reversible misconduct by urging the jury to decide a case based on evidence outside the record.” State v. Pierce, 169 Wn. App. 533, 553, 280 P.3d 1158 (2012). For example, a prosecutor’s statements during closing that the defendant had threatened a person with a gun despite there being no such evidence required reversal. State v. Reeder, 46 Wn.2d 888, 892-94, 285 P.2d 884 (1955).

b. During closing arguments, the prosecutor improperly vouched for Mr. Stueckle’s testimony identifying Mr. Canela as the shooter, citing evidence that had not been presented at trial.

During the rebuttal phase of closing argument, the prosecutor committed misconduct by vouching for the credibility of Mr. Stueckle, who had identified Mr. Canela as the shooter. RP 427. The prosecutor did

this not only through expressing a personal opinion, but by asserting that Mr. Canela and Mr. Stueckle knew each other from being incarcerated together:

Mr. Stueckle [sic] knew the defendant from serving time with him at the jail. There was no mistake on his part. He actually looked at a photo lineup, picked the defendant out of the photo lineup.

RP 427 (emphasis added).⁴

There was no evidence presented at trial that Mr. Canela had served time in jail with Mr. Stueckle. Mr. Stueckle did not testify that he even knew Mr. Canela, let alone that he had served time in jail with him.⁵ RP 326-61. In fact, the court excluded references to prior convictions and prior criminal investigations into Mr. Canela. RP 81-83. By citing evidence not admitted at trial, the prosecutor committed misconduct.

It was also improper for the prosecutor to vouch for Mr. Stueckle's credibility by expressing his personal opinion that "[t]here was no mistake on [Mr. Stueckle's] part" in identifying Mr. Canela. This was especially egregious because the claim was based on unadmitted evidence that Mr.

⁴ Some portions of the transcript misspell Mr. Stueckle's name.

⁵ The affidavit of probable cause, which was not evidence and was not admitted at trial, asserted that Mr. Stueckle had been incarcerated with Mr. Canela before. CP 3.

Canela and Mr. Stueckle knew each other from serving time in jail together.

This court should hold that the prosecutor committed misconduct.

c. The misconduct requires reversal.

Mr. Canela did not object to the prosecutor's misconduct. Still, flagrant and ill-intentioned misconduct by a prosecutor excuses the lack of an objection when an instruction would not have cured the resulting prejudice. Glasmann, 175 Wn.2d at 704. Reversal is required if there is a substantial likelihood the misconduct affected the jury verdict. Id. Comments made during rebuttal are more likely to be prejudicial because there is no opportunity for defense counsel to respond. Lindsay, 180 Wn.2d at 443.

The prosecutor's action in introducing facts not in evidence was flagrant. The prosecutor introduced extrinsic evidence to vouch for Mr. Stueckle's identification and to rebut Mr. Canela's argument that he had been misidentified. No curative instruction would have erased the indelible prejudice created by the prosecutor's misconduct. The misconduct highlighted that Mr. Canela had a criminal background, which except for the fact of a prior qualifying conviction on the charge of unlawful possession of a firearm, was inadmissible. An objection to the misconduct would have only highlighted this for the jury. And while

jurors are presumed to follow their instructions, jurors are human. See Glasmann, 175 Wn.2d at 706 (misconduct “may well have affected the jurors’ feelings about the need to strictly observe legal principles and the care they must take in determining Glasmann’s guilt”). Jurors also know that prosecutors, who are quasi-judicial officers, are privy to relevant matters outside the evidence. See State v. Boehning, 127 Wn. App. 511, 518-23, 111 P.3d 899 (2005) (reversible misconduct for prosecutor discuss unadmitted evidence about dismissed charges of rape). Any instruction would have been ineffective. See State v. Miles, 73 Wn.2d 67, 71, 436 P.2d 198 (1968) (limiting instruction could not erase inherently prejudicial evidence); Krulewitch v. United States, 336 U.S. 440, 453, 69 S. Ct. 716, 93 L. Ed. 790 (1949) (Jackson, J., concurring) (“The naive assumption that prejudicial effects can be overcome by instructions to the jury . . . all practicing lawyers know to be unmitigated fiction”).

There is a substantial likelihood that the misconduct affected the jury’s verdict. The case turned on the jury finding testimony identifying Mr. Canela to be credible. Mr. Stueckle’s testimony was key to the prosecution’s case. The prosecutor’s improper remarks, which simultaneously vouched for Mr. Stueckle and improperly introduced highly prejudicial evidence that Mr. Canela had been in jail with Mr. Stueckle, came during rebuttal. Therefore, the misconduct is more likely

to be prejudicial. Lindsay, 180 Wn.2d at 443. Because the misconduct deprived Mr. Canela of a fair trial, this Court should reverse.

4. The court’s failure to instruct the jury that it must be unanimous on the act constituting unlawful possession of a firearm deprived Mr. Canela of his right to jury unanimity.

a. Criminal defendants have a right to jury unanimity on the act constituting the crime.

Criminal defendants have a right to a unanimous jury verdict.

State v. Kitchen, 110 Wn.2d 403, 411, 756 P.2d 105 (1988); Const. art. I, § 22. When the State presents evidence of several acts, any one of which is allegedly sufficient to constitute the crime charged, the jury must unanimously agree on which act constituted the crime. Kitchen, 110 Wn.2d at 411. The State must elect the act it is relying on or the trial court must provide a unanimity instruction, often called a “Petrich” instruction.⁶ Id.; 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 4.25 (4th Ed).⁷ Otherwise, some of the jurors may rely on one act while others may rely

⁶ State v. Petrich, 101 Wn.2d 566, 683 P.2d 173 (1984).

⁷ This pattern instructions reads:

The [State] [County] [City] alleges that the defendant committed acts of (identify crime) on multiple occasions. To convict the defendant [on any count] of (identify crime), one particular act of (identify crime) must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the defendant committed all the acts of (identify crime).

on another. Kitchen, 110 Wn.2d at 411. This violates the defendant's constitutional right to jury unanimity. Id.

In evaluating when a unanimity instruction is required, there are three inquiries. State v. Hanson, 59 Wn. App. 651, 656, 800 P.2d 1124 (1990). First, the court evaluates what must be proved under the criminal statute. Id. Second, the court evaluates what the evidence discloses, viewed in the light most favorable to the State. Id. & 656 n.6. Third, the court analyzes whether the evidence shows more than one violation of the statute. Id. at 657. If the evidence shows two or more violations, then a unanimity instruction is required. Id. The failure by the trial court to provide a unanimity instruction is manifest constitutional error that is properly raised for the first time on appeal. Id. at 659; RAP 2.5(a)(3).

b. The evidence supported findings of multiple violations of unlawful possession of a firearm, requiring a unanimity instruction or a clear election by the prosecution.

To convict Mr. Canela of unlawful possession of a firearm in the first degree, the jury had to find that Mr. Canela, on or about March 29, 2018, knowingly had a firearm in his possession or control. RCW 9.41.040(1)(a); CP 30 (instruction no. 16). Possession may be actual or constructive. State v. Manion, 173 Wn. App. 610, 634, 295 P.3d 270 (2013); CP 33 (instruction 19). Constructive possession means the person does not have physical possession but that the person has dominion and

control over the item. State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969); CP 33 (instruction 19).

Here, the evidence supported findings by the jury of *five* violations of unlawful possession of a firearm by Mr. Canela. First, the evidence implicating Mr. Canela in the shooting showed one actual possession. Second, the evidence of the four firearms found in the apartment where Mr. Canela was located on the same day of the shooting showed four separate and distinct constructive possessions. In the apartment, a holstered revolver with a long barrel was found in the water tank of the toilet. Three other handguns, two of which were revolvers with short barrels, were found close by in a compartment behind a mirror. Accordingly, the evidence established five distinct acts, any one of which could constitute the crime. See RCW 9.41.040(7) (“Each firearm unlawfully possessed under this section shall be a separate offense”); State v. Mata, 180 Wn. App. 108, 120, 321 P.3d 291 (2014) (recognizing “that an interruption in possession of a particular firearm may result in different ‘possessions’”); State v. King, 75 Wn. App. 899, 903, 878 P.2d 466 (1994) (evidence showed two distinct instances of possession of cocaine; one actual and the other constructive).

The lack of a unanimity instruction was not remedied by a clear election by the prosecution on the act relied on. For an election to be clear,

“the State must not only discuss the acts on which it is relying, it must in some way disclaim its intention to rely on other acts.” State v. Carson, 184 Wn.2d 207, 228 n.15, 357 P.3d 1064 (2015) (emphasis added). In Carson, the elections for acts constituting child molestation were clear because the “State specifically disclaimed its intention to rely on any other instances” of molestation. Id. at 228. In contrast, there was no clear election by a prosecutor during closing argument where the prosecutor “emphasized” one act over others but did not “expressly elect to rely only on” one act “in seeking the conviction” State v. Williams, 136 Wash. App. 486, 497, 150 P.3d 111 (2007); see also State v. Kier, 164 Wn.2d 798, 811-13, 194 P.3d 212 (2008) (no clear election during closing argument because while prosecutor named acts prosecution was relying on, prosecutor did not tell jury these were the only acts the prosecution was relying upon).

Here, the prosecution theorized that Mr. Canela was the shooter and that he had placed the gun he used in the toilet tank. RP 400, 404-05. But while the prosecution discussed the shooting as the act constituting the crime of unlawful possession of a firearm, the prosecution did not *disclaim* an intention to rely on other acts. Thus, there was no clear election. See Carson, 184 Wn.2d 228; Williams, 136 Wn. App. at 497. Without a unanimity instruction or clear election, the jurors were free divide their

votes on which act constituted the crime. This was a violation of Mr. Canela's right to a unanimous jury verdict.

c. The error was prejudicial, requiring reversal of the conviction for unlawful possession of a firearm.

When the prosecution does not make an election and the trial court fails to provide a Petrich instruction, prejudice is presumed. State v. Coleman, 159 Wn.2d 509, 512, 150 P.3d 1126 (2007). The error is "harmless only if no rational trier of fact could have entertained a reasonable doubt that each incident established the crime beyond a reasonable doubt." Kitchen, 110 Wn.2d at 406.

Here, a rational trier of fact could have entertained a reasonable doubt on at least one of the five identified incidents of unlawful possession of firearm. For example, while a reasonable trier of fact might conclude that Mr. Canela constructively possessed at least one of the firearms found in the apartment, a reasonable trier of fact might conclude to the contrary. Mr. Canela was found in this apartment at about the same time as the firearms were discovered. But the evidence indicated it was not Mr. Canela's apartment, and two or three other persons were found in the apartment with Mr. Canela. RP 270-72. As the guns were hidden, three in a compartment behind a mirror and one in the water reserve of the toilet, jurors could have doubted that Mr. Canela knew about some of guns. RP

225-27, 367, 372-73; Ex. 44-49. Because some jurors could have had a reasonable doubt on whether Mr. Canela constructively possessed any of the four firearms in the apartment, the conviction for unlawful possession of firearm should be reversed. See Kitchen, 110 Wn.2d at 412; Hanson, 59 Wn. App. at 659-60.

5. Cumulative error deprived Mr. Canela of a fair trial.

Due process entitles criminal defendants to a fair proceeding. U.S. Const. amend. XIV; Const. art. I, § 3. An accumulation of errors may deprive a defendant of this right. Chambers v. Mississippi, 410 U.S. 284, 290 n.3, 93 S. Ct. 1038, 1043, 35 L. Ed. 2d 297 (1973); State v. Perrett, 86 Wn. App. 312, 322-23, 936 P.2d 426 (1997). Reversal is warranted for cumulative error when the combination of errors denies the defendant a fair trial, even if each individual error is harmless by itself. Salas, 1 Wn. App. 2d at 952.

There is a reasonable probability that the cumulative effect of any combination of the errors materially affected the outcome. The prosecution committed discovery violations and failed to turn over exculpatory evidence to the defense. The trial court erred by failing to exclude a witness. The prosecutor committed serious misconduct during closing argument by vouching for a key witness and citing highly prejudicial evidence that was not admitted. And the trial court erred by not

instructing the jury that it must be unanimous as to the act constituting the charged offense of unlawful possession of a firearm. Both convictions should be reversed.

6. The evidence did not prove that Mr. Canela had a prior qualifying conviction for unlawful possession of a firearm. Because insufficient evidence exists in the record to support this essential element, the conviction for unlawful possession must be reversed and dismissed with prejudice.

Independent of the previous arguments, the conviction for unlawful possession of a firearm should be reversed and the charge dismissed with prejudice for insufficient evidence.

Due process demands the prosecution prove all the elements of a criminal offense beyond a reasonable doubt. In re Winship, 397 U.S. 361, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Const. art. I, § 3. In reviewing whether the prosecution has met this burden, the appellate court analyzes “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

Apart from the due process requirement that the prosecution prove all the elements of an offense beyond a reasonable doubt, the prosecution must prove the requirements set out in the jury instructions. This is

Washington's law of the case doctrine. State v. Johnson, 188 Wn.2d 742, 756, 762, 399 P.3d 507 (2017); State v. Hickman, 135 Wn.2d 97, 102, 954 P.2d 900 (1998).

As charged and instructed in this case, an essential element of unlawful possession of a firearm in the second degree is that the defendant has been previously convicted of a felony. RCW 9.94.040(2)(a)(i); CP 7, 14-15.

Because admission of evidence showing that a defendant has been convicted of felony poses a great risk of unfair prejudice, the defendant may stipulate to the fact of having a prior felony. See State v. Case, 187 Wn.2d 85, 91, 384 P.3d 1140 (2016); State v. Johnson, 90 Wn. App. 54, 63, 950 P.2d 981 (1998). "A 'stipulation' is an express waiver that concedes, for purposes of trial, the truth of some alleged fact, with the effect that one party need offer no evidence to prove it and the other is not allowed to disprove it." Case, 187 Wn.2d at 90.

Outside the presence of the jury, Mr. Canela indicated that he would stipulate to having a prior felony. RP 364-65. The record, however, contains no written stipulation and no stipulation was read to the jury. To be clear, the record indicates there was some kind of a written stipulation, but there is no actual written stipulation in the record. RP 364-66.

Notwithstanding that the court instructed that a stipulation be marked and

admitted as exhibit 50, there is no exhibit 50. RP 430-31; Supp. CP ___ (exhibit list).⁸

The trial court instructed that the evidence consisted of testimony, stipulations, and admitted exhibits. CP 12 (instruction 1). The record contains no testimony, stipulation, or admitted exhibit establishing that Mr. Canela was previously convicted of a felony. Consequently, due process and the law of the case doctrine compel reversal for insufficient evidence. The conviction for unlawful possession of a firearm in the second degree should be reversed and the charge dismissed with prejudice.

Burks v. United States, 437 U.S. 1, 11, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1978); State v. Jussila, 197 Wn. App. 908, 932, 392 P.3d 1108 (2017).

7. The conditions restricting Mr. Canela’s association with “known gang members” and his possession of “gang paraphernalia” are both unconstitutionally overbroad and vague. Remand is necessary to strike or reform these conditions.

a. Conditions of community custody must not be so broad as to violate an offender’s constitutional right to freedom of association. Due process further requires that conditions not be unconstitutionally vague.

Both the state and federal constitutions provide a constitutional right to freedom of speech. U.S. Const. amends. I, XIV; Const. art. I, § 5;

⁸ Appellate counsel for Mr. Canela consulted the clerk’s office for Franklin County on this matter. According to an email from the clerk, who consulted with the prosecutor, exhibit 50 does not exist and the stipulation was not marked.

State v. Immelt, 173 Wn.2d 1, 6, 267 P.3d 305 (2011). Included within the right to freedom of speech is the freedom of association. Dawson v. Delaware, 503 U.S. 159, 163, 112 S. Ct. 1093, 117 L. Ed. 2d 309 (1992); State v. Scott, 151 Wn. App. 520, 526, 213 P.3d 71 (2009). The state and federal constitutions also prohibit vague laws. U.S. Const. amend. XIV; Const. art. I, § 3; State v. Bahl, 164 Wn.2d 739, 752, 193 P.3d 678 (2008).

These constitutional rights or prohibitions restrict what conditions may be placed on persons on community custody. For example, “conditions may be imposed that restrict free speech rights if reasonably necessary, but they must be sensitively imposed.” Bahl, 164 Wn.2d at 757. Conditions implicating free speech rights “must be clear and must be reasonably necessary to accomplish essential state needs and public order.” Id. Relatedly, conditions must also not be impermissibly vague or be so overbroad that they unnecessarily restrict constitutionally protected activity. Id. at 754; State v. Riles, 135 Wn.2d 326, 346-47, 957 P.2d 655 (1998), abrogated on other grounds by State v. Valencia, 169 Wn.2d 782, 239 P.3d 1059 (2010). Unlike laws enacted by the legislature, there is no presumption of validity in favor of conditions of community custody. State v. Valencia, 169 Wn.2d 782, 792, 239 P.3d 1059 (2010). An illegal sentence may be challenged for the first time on appeal. Bahl, 164 Wn.2d at 744.

b. The condition forbidding Mr. Canela from having contact with “known gang members” is unconstitutionally overbroad and vague.

In imposing conditions of community custody, a statute authorizes courts to order the person to “[r]efrain from direct or indirect contact with . . . a specified class of individual.” RCW 9.94A.703(3)(b). As a condition of community custody, the court ordered that Mr. Canela have “[n]o contact with known gang members.” CP 88.

This condition is both unnecessarily overbroad and impermissibly vague. Starting with overbreadth, the condition restricts association with people who belong to a “gang.” “Like membership in a church, social club, or community organization, affiliation with a gang is protected by our First Amendment right of association.” Scott, 151 Wn. App. at 526. One meaning of gang is “a group of people with compatible tastes or mutual interests who gather together for social reasons.” <https://www.dictionary.com/browse/gang?s=t>. Thus, a gang is not necessarily involved in crime or violence.⁹ While forbidding association

⁹ For example, Democratic Presidential Candidate Andrew Yang refers to his supporters as members of the “Yang Gang.” <https://www.nytimes.com/2020/01/02/us/politics/andrew-yang-fundraising.html>. And the United States Senate had a bipartisan “Gang of Eight” that advocated for immigration reform. [https://en.wikipedia.org/wiki/Gang_of_Eight_\(immigration\)](https://en.wikipedia.org/wiki/Gang_of_Eight_(immigration)).

with members of “a criminal street gang”¹⁰ or a specific gang would likely not be overbroad, prohibiting contact with all members of a “gang” is overbroad.

The condition is also unconstitutionally vague. A condition is unconstitutionally vague if it is insufficiently definite so that ordinary people cannot understand it or if it permits arbitrary enforcement. Bahl, 164 Wn.2d at 752-53. The standard is stricter where First Amendment interests are involved, as here. Id. at 754.

The language, “gang member,” is indefinite and subject to arbitrary enforcement. Unlike the term “criminal street gang,” it is unclear who is and who is not a “gang member.” See United States v. Soltero, 510 F.3d 858, 866 (9th Cir. 2007) (rejecting vagueness challenge where condition forbade association with members of a criminal street gang, including members of a specific gang). For example, members of the Washington State Bar Association are arguably members of a “gang.” Thus, arbitrary enforcement may arise because some corrections officers may find one person to be a gang member, while others may say no. They

¹⁰ See RCW 9.94A.030(12) (defining a “criminal street gang” as “any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity”).

may arbitrarily provide or deny permission to associate with persons they deem to be gang members.

Further, while the condition requires the association be with persons “known” to be gang members, it fails to specify that this must be “known” by Mr. Canela. Rather it may be read to apply if “known” by the community or a department of corrections officer. Unless the condition states “known by Mr. Canela,” it is indefinite and subject to even greater arbitrary enforcement.

The condition should be ordered stricken or reformed.

c. The condition restricting Mr. Canela’s possession of “gang paraphernalia” is unconstitutionally overbroad and vague.

For similar reasons, the condition restricting Mr. Canela’s possession of “gang paraphernalia including clothing, insignia, medallions, etc” is unconstitutionally overbroad and vague.

This Court has held an identical condition unconstitutionally vague. In holding the condition unconstitutionally vague, this Court reasoned the provision did not provide clear notice about what could not be possessed:

There is no definition of what constitutes “gang paraphernalia.” In the common experience of this court, popular clothing items or specific colored items are frequently described as gang attire. If the trial court intended to prohibit the wearing of bandanas or particular colored shoes, it needed to provide clear notice to Mr. Villano about what he could not possess. This provision does not do that. It is unconstitutionally vague.

State v. Villano, 166 Wn. App. 142, 143-44, 272 P.3d 255 (2012). Under Villano, this Court should order the provision stricken.

8. Remand is necessary to remedy errors related to imposition of supervision fees and interest on legal financial obligations.

a. Remand is necessary to strike the requirement that Mr. Canela pay supervision fees.

Mr. Canela is indigent. CP 96-101. Based on this indigency, the court only imposed mandatory legal financial obligations. CP 81; 4/23/19 RP 5-6. Still, as a condition of community custody, the judgment and sentence orders Mr. Canela to “pay supervision fees as determined by [the Department of Corrections].” CP 87.

This condition was imposed in error. The relevant statute provides that supervision fees are discretionary: “Unless waived by the court . . . the court shall order an offender to . . . [p]ay supervision fees as determined by the department.” RCW 9.94A.703(2)(d) (emphasis added). Because they are discretionary, supervision fees are subject to an ability to pay inquiry. State v. Lundstrom, 6 Wn. App. 2d 388, 396 n.3, 429 P.3d 1116 (2018). Consistent with the trial court’s intent to waive discretionary costs, this Court should strike the requirements that Mr. Canela pay supervision

fees. See State v. Ramirez, 191 Wn.2d 732, 742-46, 426 P.3d 714 (2018).¹¹

b. Remand is necessary to strike the interest accrual provision in the judgment and sentence.

The judgment and sentence provides that legal financial obligations shall bear interest. CP 84. Financial obligations excluding restitution do not accrue interest. RCW 3.50.100(4)(b); Ramirez, 191 Wn.2d at 747. Accordingly, this Court should order the trial court to strike the interest accrual provision. See Ramirez, 191 Wn.2d at 749-50.

F. CONCLUSION

The prosecution's violation of the discovery rules and withholding of impeachment evidence deprived Mr. Canela of a fair trial. Both convictions should be reversed. The conviction for unlawful possession of a firearm should be reversed and dismissed with prejudice because the evidence was insufficient. If both convictions are not reversed, the Court should remand to remedy the sentencing errors.

¹¹ Consistent with Lundstrom, the Court has ordered supervision fees stricken in several unpublished cases. State v. Lilly, No. 78709-8-I, 2019 WL 6134572, at *1 (Wash. Ct. App. Nov. 18, 2019) (unpublished); State v. Etpison, No. 80103-1, 2019 WL 4415209, at *6 (Wash. Ct. App. Sept. 16, 2019) (unpublished); State v. Reamer, No. 78447-1-I, 2019 WL 3416868, at *5 (Wash. Ct. App. July 29, 2019); State v. Taylor, No. 51291-2-II, 2019 WL 2599184, at *4 (Wash. Ct. App. June 25, 2019). These non-precedential cases are cited as persuasive authority. GR 14.1.

DATED this 30th day of January 2020.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard W. Lechich". The signature is written in a cursive style with a large initial "R".

Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for Appellant

WASHINGTON APPELLATE PROJECT

January 30, 2020 - 4:29 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36763-1
Appellate Court Case Title: State of Washington v. Daviel Canela
Superior Court Case Number: 18-1-50218-6

The following documents have been uploaded:

- 367631_Briefs_20200130162736D3044922_0722.pdf
This File Contains:
Briefs - Appellants - Modifier: Amended
The Original File Name was washapp.013020-05.pdf
- 367631_Motion_20200130162736D3044922_2778.pdf
This File Contains:
Motion 1 - Other
The Original File Name was washapp.013020-04.pdf

A copy of the uploaded files will be sent to:

- appeals@co.franklin.wa.us
- greg@washapp.org
- ssant@co.franklin.wa.us

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Richard Wayne Lechich - Email: richard@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20200130162736D3044922