

FILED  
Court of Appeals  
Division I  
State of Washington  
2/13/2018 3:31 PM

No. 96143-3

No. 77360-7-I

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

---

STATE OF WASHINGTON,

Respondent,

v.

D.L.,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF WASHINGTON  
FOR THE COUNTY OF WHATCOM

---

REPLY BRIEF OF APPELLANT

---

KATE BENWARD  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-271

TABLE OF CONTENTS

A. ARGUMENT IN REPLY .....1

**1. Due process requires that a juvenile receive notice, prior to entry of the plea, of the aggravating factors alleged in support of a manifest injustice sentence.....1**

a. The prosecutor relies on pre-Blakely case law to support its claim that due process does not require notice of the alleged aggravating factors in support of a manifest injustice sentence prior to trial or entry of the plea.....1

b. The accused’s right to notice of the aggravating factors is a due process right.....2

c. This Court’s decision that juveniles do not have a jury trial right does not mean that due process does not apply to the allegation of aggravating factors.....4

d. Due process requires notice of the aggravating factors and evidence alleged in support of a manifest injustice sentence before a juvenile gives up his constitutional rights and pleads guilty.....5

e. Notice to a juvenile of the aggravating factors prior to entry of his plea does not limit the court’s ability to fashion an appropriate sentence based on the rehabilitative aims of the Juvenile Justice Act.....8

**2. It violates the doctrine of separation of powers for the probation officer to allege and seek to prove aggravating factors in juvenile felony cases.....10**

**3. There was insufficient proof the aggravating factors.....11**

**4. D.L.’s right to due process was violated by the court’s denial of D.L.’s grandmother’s request to speak on his behalf at sentencing .....12**

**5. The court’s inquiry into the probation officer’s request for a manifest injustice sentence that contravened the prosecutor’s recommendation placed the court in a position adverse to D.L.—this violated the appearance of fairness.....13**

**6. The Prosecutor’s inflammatory misstatement of facts should not be considered by this court.....15**

**B. CONCLUSION .....16**

TABLE OF AUTHORITIES

**WASHINGTON STATE SUPREME COURT CASES**

*State v. Rhodes*, 92 Wn.2d 755, 600 P.2d 1264 (1979) ..... 12

*State v. Siers*, 174 Wn.2d 269, 274 P.3d 358 (2012)..... 3, 13

*State v. Sledge*, 133 Wn.2d 828, 947 P.2d 1199 (1997) ..... 14

**WASHINGTON COURT OF APPEALS DECISIONS**

*State v. Diaz–Cardona*, 123 Wn. App. 477, 98 P.3d 136 (2004) ..... 8

*State v. Duncan*, 90 Wn. App. 808, 960 P.2d 941 (1998)..... 11

*State v. Meade*, 129 Wn. App. 918, 120 P.3d 975 (2005) ..... 11, 12

*State v. Moro*, 117 Wn. App. 913, 73 P.3d 1029 (2003) ..... 1

*State v. Tai N.*, 127 Wn. App. 733, 113 P.3d 19 (2005) ..... 4, 5, 8, 11

*State v. Van Buren*, 101 Wn. App. 206, 2 P.3d 991 (2000) ..... 6

**STATUTES**

RCW 13.04.040(2)..... 10

RCW 13.04.040(4)..... 10

RCW 13.40.070(5)(a) ..... 10

RCW 13.40.150(1)..... 6

RCW 13.40.150(3)..... 12

RCW 13.40.150(3)(h) ..... 9

RCW 13.40.160(1).....	2
RCW 9.94A.537(1).....	2, 3
RCW 9A.28.020(1).....	15

**UNITED STATES SUPREME COURT DECISIONS**

<i>Application of Gault</i> , 387 U.S. 1, 87 S. Ct. 1428, 1445, 18 L. Ed. 2d 527 (1967).....	3, 5
<i>Apprendi v. New Jersey</i> , 530 U.S. 466, 120 S.Ct. 2348, 2355, 147 L.Ed.2d 435 (2000).....	5
<i>Blakely v. Washington</i> , 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).....	1, 2, 6
<i>Chapman v. California</i> , 386 U.S. 18, 87 S.Ct. 824, 17 L.ED.2d 705 (1967) .....	13

**FEDERAL COURT OF APPEALS DECISIONS**

<i>Figueroa Ruiz v. Delgado</i> , 359 F.2d 718 (1st Cir. 1966) .....	13, 14
--	--------

**RULES**

CR 4.2 .....	6
RAP 10.3(a)(5)&(b).....	16

## A. ARGUMENT IN REPLY

### 1. Due process requires that a juvenile receive notice, prior to entry of the plea, of the aggravating factors alleged in support of a manifest injustice sentence.

a. The prosecutor relies on pre-*Blakely* case law to support its claim that due process does not require notice of the alleged aggravating factors in support of a manifest injustice sentence prior to trial or entry of the plea.

*State v. Moro*, cited by the prosecutor, is based on a premise that is no longer good law after *Blakely v. Washington*. Brief of Respondent (BOR) at 20-21; *State v. Moro*, 117 Wn. App. 913, 920, 73 P.3d 1029 (2003).

*Moro* is predicated on the outdated, pre-*Blakely* proposition that: “Due process does not require that an adult defendant receive notice that the court is considering imposing an exceptional sentence. No such notice is required because an exceptional sentence is a possibility in all sentencing.” *Moro*, 117 Wn. App. at 920 (cited in BOR at 20).

This is no longer good law after *Blakely*, which defined “maximum sentence” as the sentence the court may impose “*solely on the basis of the facts reflected in the ... verdict or admitted by the defendant.*” *Blakely v. Washington*, 542 U.S. 296, 303, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) (emphasis in original); Appellant’s Opening Brief (AOB) at

10. Thus, absent notice of the aggravating factors the State seeks to prove beyond a reasonable doubt, it is simply no longer the case, as stated in *Moro*, that an exceptional sentence is a possibility in every sentencing. AOB at 8-11. The prosecutor's reliance on *Moro*'s statement of outdated case law is thus entirely unpersuasive.

b. The accused's right to notice of the aggravating factors is a due process right.

The Juvenile Justice Act's sentencing procedures must comply with due process.

The State contrasts the Sentencing Reform Act's (SRA) statutory requirement of notice of the aggravating factors the State must allege prior to entry of a plea with the lack of such a provision in the Juvenile Justice Act (JJA). BOR at 21 (comparing RCW 9.94A.537(1) with RCW 13.40.160(1)).

RCW 9.94A.537(1)'s requirement that a defendant receive notice of the State's intent to seek an exceptional sentence prior to entry of the plea or trial came as a result of *Blakely*'s requirement that the maximum sentence a court may impose is limited to the facts established by the verdict. *Blakely*, 542 U.S. 296 at 303. Indeed, the Legislature plainly states that the SRA was amended to conform to this due process requirement: "The legislature intends to conform the sentencing reform act, chapter

9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004).” Laws of 2005, ch. 68 sec. 1.

RCW 9.94A.537(1) was specifically added because of *Blakely’s* requirements:

New Section. Sec. 4. A new section is added to chapter 9.94A RCW to read as follows:

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

The State’s claim that the JJA lacks an analogous provision to RCW 9.94A.537(1) is thus of no consequence. This Court has already decided that due process requires notice, prior to entry of a plea or trial, of the aggravating factors that are to be relied on prior to the court imposing an exceptional sentence. *State v. Siers*, 174 Wn.2d 269, 277, 274 P.3d 358 (2012) (notice of intent to seek aggravating factors prior to defendant’s trial satisfies state and federal constitutional requirements). Thus, just as RCW 9.94A.537(1) was amended to comply with the Court’s due process requirements after *Blakely*, so must the Juvenile Justice Act conform to a juvenile’s due process rights. *See Application of Gault*, 387 U.S. 1, 30, 87 S. Ct. 1428, 1445, 18 L. Ed. 2d 527 (1967) (a “hearing must measure up to the essentials of due process and fair treatment.”).

c. This Court's decision that juveniles do not have a jury trial right does not mean that due process does not apply to the allegation of aggravating factors.

*State v. Tai N.*'s decision that juveniles are not entitled to a jury trial does not mean that they are not entitled to due process. *State v. Tai N.* decided only that non-jury trials of juvenile offenders remained constitutionally sound after *Blakely v. Washington*. *State v. Tai N.*, 127 Wn. App. 733, 740, 113 P.3d 19 (2005). *Tai N.* did not determine the scope of a juvenile's constitutional due process rights after *Blakely*, including whether a juvenile is entitled to notice of the aggravating factors the court can find in support of an exceptional sentence. AOB at 12-14; *Tai N.*, 127 Wn. App. at 733.

The *Tai N.* court reasoned that the statutory protections that governed juvenile court proceedings adequately addressed *Blakely*'s requirement of proof beyond a reasonable doubt of the aggravating factors. *Tai N.*, 127 Wn. App. at 742. Because of the statutory guarantee of proof by clear and convincing evidence, which the *Tai N.* court interpreted as equivalent to proof beyond a reasonable doubt, the court did not decide whether *Apprendi*<sup>1</sup> and *Blakely* require the same standard of proof as a matter of constitutional due process. *Id.*

---

<sup>1</sup> *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 2355, 147 L.Ed.2d 435 (2000).

There is no doubt that the Due Process Clause is applicable in juvenile proceedings. *Schall v. Martin*, 467 U.S. 253, 263, 104 S. Ct. 2403, 81 L. Ed. 2d 207 (1984). And notice is the cornerstone of this due process right: “[n]otice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must set forth the alleged misconduct with particularity.” *Gault*, 387 U.S. at 33 (internal citations omitted). Thus the fact that *Tai N.* does not require a jury finding of the aggravating factors beyond a reasonable doubt does not mean that *Blakely*’s due process requirements of notice do not apply.

d. Due process requires notice of the aggravating factors and evidence alleged in support of a manifest injustice sentence before a juvenile gives up his constitutional rights and pleads guilty.

D.L. was entitled to notice that failure to enter the SSODA program and the allegation that the victim was particularly vulnerable could be used in support of the manifest injustice sentence.

It is not enough that D.L. got notice, *after* he entered his guilty plea but before sentencing, as claimed by the prosecutor. BOR at 20. *Blakely* specifically addresses the unfairness of being sentenced well beyond the standard range, as in D.L.’s case, based on “facts extracted after trial from a report compiled by a probation officer who the judge thinks more likely got it right than got it wrong.” *Blakely*, 542 U.S. at 311–12.

There is no question that the accused gives up important constitutional rights when he pleads guilty. *State v. Van Buren*, 101 Wn. App. 206, 211, 2 P.3d 991 (2000). These rights include the right to remain silent, the right to cross-examine witnesses, and to be presumed innocent. CR 4.2; CP 107. The right to notice, however, is not given up in a guilty plea.

D.L. was subject to a much harsher penalty based on additional evidence, alleged *after* he gave up his constitutional rights to be presumed innocent of the charged offense, and to cross-examine his accusers. CP 107. After pleading guilty, D.L. no longer had the right to cross-examine the individuals alleging the victim's vulnerability, which would have affected his pre-trial strategy and aims. See RCW 13.40.150(1) (At disposition, cross-examination of individuals permitted only if they are reasonably available.). Notice of this aggravator would have informed the defense strategy in interviewing the child prior to entry of D.L.'s plea.

Similarly, the court relied on evidence of D.L.'s lack of participation in a SSODA evaluation in support of a manifest injustice sentence. RP 251. The prosecutor attempts to portray D.L.'s disqualification for the SSODA program as a "twist" in D.L.'s case when addressing the issue of D.L.'s due process rights to notice. BOR at 19. But the plea agreement provided for the fact that D.L. may not qualify for the

SSODA. CP 111. The prosecutor specifically promised to “support and recommend a SSODA disposition, if [D.L.] is found eligible for the program.” CP 111. And the prosecutor specifically agreed to recommend a 15-36 month sentence within the standard range if D.L. did not qualify for the program or was revoked from it. CP 111. Thus, there was no “twist” in D.L.’s case—the prosecutor’s standard range recommendation was made specifically in contemplation of D.L. not entering the SSODA program.

The probation officer’s belated allegations based on D.L.’s failure to enroll in the SSODA was contrary to the information he received in his guilty plea, which informed him that the prosecutor would recommend a standard range sentence whether he entered the SSODA program or not. CP 111. This allegation came without notice that D.L.’s conduct could result in an increased sentence.

The Constitution requires notice of aggravating factors and the evidence alleged in support of a manifest injustice sentence prior to the juvenile pleading guilty.

e. Notice to a juvenile of the aggravating factors prior to entry of the plea does not limit the court's ability to fashion an appropriate sentence based on the rehabilitative aims of the Juvenile Justice Act.

Notice of intent to seek a manifest injustice sentence prior to entry of a youth's plea does not undermine the Juvenile Justice Act's rehabilitative aims.

The Juvenile Justice Act is both rehabilitative and punitive. *Tai N.*, 127 Wn. App. at 739 (citing *State v. Diaz-Cardona*, 123 Wn. App. 477, 485, 98 P.3d 136 (2004) ("it is now well-recognized that juvenile courts function to punish as well to rehabilitate.")). The prosecutor mistakenly relies on the notion of "treatment and rehabilitation" to argue the due process right of notice of the alleged aggravating factors prior to entry of the plea is "unworkable." BOR at 22-23; *Diaz-Cardona*, 123 Wn. App. at 485 ("We recognize that this argument [rehabilitative goals of JJA as reason why adult constitutional protections do not apply] has long been put forward as justification for denying constitutional and procedural rights to juveniles.")

D.L. does not claim that he is entitled to notice of the services and treatment that the court relied on to fashion the length of the manifest injustice sentence. RP 221-223. Rather, D.L. argues that due process entitles him to notice of the State's intent to seek a manifest injustice

sentence prior to entering a plea of guilt, and notice of the aggravating factors alleged in support of that request, prior to giving up fundamental constitutional rights. AOB at 9-17.

The aggravating factors a court relies on to impose a manifest injustice sentence generally address the nature of the crime and the offender's risk of future dangerousness. RCW 13.40.150(3)(h). In D.L.'s case, the court imposed a manifest injustice sentence based on the aggravating factors that D.L. was a serious risk to reoffend, and the particular vulnerability of the victim. CP 209; 228-229. Though the court fashioned the length of D.L.'s sentence based on the probation officer's description of the services available to D.L. at the Juvenile Rehabilitation Center, its finding of the aggravating factors was based on the nature of the criminal allegations, the conduct of the defendant, status of the victim, and need to protect society. RP 246-248. Even if D.L.'s sentence was fashioned according to the court's notion of rehabilitation, the allegations and the court's finding of these aggravating factors was not. The JJA's rehabilitative aims should not be used as an excuse to deprive D.L. of due process.

Due process requires that a juvenile receive notice of aggravating factors prior to giving up his constitutional rights and entering a guilty

plea. Reversal for remand for entry of a standard range sentence is required.

**2. It violates the doctrine of separation of powers for the probation officer to allege and seek to prove aggravating factors in juvenile felony cases.**

On appeal, the prosecutor attempts to avoid the separation of powers problem by erroneously equating the probation officer's sentencing recommendations based on prepared reports, and the *recommendations for disposition*, which include the allegation of aggravating factors. BOR at 24. As analyzed in Appellant's opening brief, these two functions are not the same. AOB 20-24. The probation officer prepares studies and reports for consideration by the court. RCW 13.04.040(2) and (4). But whether an aggravating factor justifies departure from the standard range is a question of law. *State v. Moro*, 117 Wn. App. 913, 919, 73 P.3d 1029 (2003). This is the sole province of the prosecuting attorney, who alone is permitted to make criminal charges in class A or B felony juvenile cases. RCW 13.40.070(5)(a); AOB 20-24.

The prosecutor is simply unable to refute the constitutional problem of the probation officer making legal charging decisions, which is the sole province of the prosecuting attorney for class A and B felonies.

#### **4. There was insufficient proof the aggravating factors.**

The prosecutor appears to confuse evidence of a juvenile's need for treatment with the requirement of proof beyond a reasonable doubt of the aggravating factors that is required for the court to impose a manifest injustice sentence. BOR at 16-17.

Courts employ a three-part test when reviewing whether substantial evidence supports a manifest injustice sentence: “(1) Are the reasons given by the trial court supported by substantial evidence; (2) do those reasons support the determination of a manifest injustice disposition beyond a reasonable doubt; and (3) is the disposition either clearly too excessive or too lenient?” *Tai N.*, 127 Wn. App. at 743 (citing *State v. Duncan*, 90 Wn. App. 808, 812, 960 P.2d 941 (1998)).

“The record must support, beyond a reasonable doubt, the reasons given for finding a manifest injustice.” *State v. Meade*, 129 Wn. App. 918, 922, 120 P.3d 975 (2005). The prosecutor does not cite specific evidence in support of the aggravating factors found by the trial court—instead he argues that evidence “viewed as a whole” supports the conclusion that D.L. needs treatment. BOR at 16. Without citation to the record, the prosecutor makes generic claims like “placement in a therapeutic group home gives D.L. a chance at rehabilitation,” and “without a longer commitment, D.L. will return to the family that denies anything happened...” BOR at 16.

These are not facts in the record that support the aggravating factors of a “particularly vulnerable victim” or “serious risk to reoffend” as was alleged in D.L.’s case. CP 228-230; AOB at 26-32. These generalized conclusions do not provide the “demanding standard” required for a manifest injustice sentence. *Meade*, 129 Wn. App. at 922 (citing *State v. Rhodes*, 92 Wn.2d 755, 760, 600 P.2d 1264 (1979)). Reversal for insufficient evidence of these factors is required.

**4. D.L.’s right to due process was violated by the court’s denial of D.L.’s grandmother’s request to speak on his behalf at sentencing.**

The prosecutor mischaracterizes the issue on appeal: D.L. does not challenge the court’s ability to exclude a disruptive participant from the courtroom. BOR at 26-27. Rather, D.L. challenges the court’s refusal to let Ms. Loomer speak on D.L.’s behalf as is required under RCW 13.40.150(3). AOB at 32-33. The court was required to let her speak; the fact that she was not calm at sentencing is no basis for avoiding the statute’s mandate.

D.L.’s grandmother was his staunchest advocate; as described by the probation officer in the Manifest Injustice report, Ms. Loomer stated that she will not give up on D.L. CP 230. The court’s denial of testimony from the person who most supported D.L. was not mitigated by allowing D.L.’s grandfather the opportunity to speak. The statute does not say that

its mandate is satisfied by the testimony of one custodian or guardian— rather it mandates the court to hear testimony from the child’s custodian or guardian, who was Ms. Loomer. This was not harmless error, and requires reversal. AOB at 33 (citing *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.ED.2d 705 (1967)).

**5. The court’s inquiry into the probation officer’s request for a manifest injustice sentence that contravened the prosecutor’s recommendation placed the court in a position adverse to D.L.—this violated the appearance of fairness.**

When the State’s representative cannot elicit questions from a witness and the court fulfills this role in an adversary proceeding, it violates the appearance of fairness.

Courts recognize that when the accused is represented by counsel, but the State is not, a judge will seek to compensate for the missing player in the adversary system:

If a defendant has counsel, and particularly if he has effective counsel, and the people have none, it would be a rare judge who did not, at least unconsciously, seek to set the balance. While he may not be the ardent, striving, advocate that the Commonwealth's brief envisages as a public prosecutor, if he has to see that justice is done for the people’s cause, he must, to some extent at least, act as prosecutor.

*Figueroa Ruiz v. Delgado*, 359 F.2d 718, 720 (1st Cir. 1966).

D.L. specifically distinguishes the facts of *State v. Moreno*, 147 Wn.2d 500, 58 P.3d 265 (2002), which the prosecutor fails to counter.

AOB at 36. D.L.’s case is an adversary proceeding in which the court makes legal and factual determinations about D.L.’s future harm to the community. These facts make it far more likely that a judge will see that justice is done for the “people’s cause” than in the case of adjudicating traffic infractions at issue in *Moreno. Figueroa Ruiz*, 359 F.2d at 720.

The Juvenile Justice Act specifically names the prosecutor and defense as the advocates in the adversary system at disposition:

The youth or the youth’s counsel and the prosecuting attorney shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when such individuals are reasonably available...

RCW 13.40.150(1). The prosecutor breaches a plea agreement by calling a probation witness and conducting a direct examination eliciting facts in support of a manifest injustice sentence that undercuts its recommendation for a standard range sentence. *State v. Sledge*, 133 Wn.2d 828, 841–42, 947 P.2d 1199 (1997).

Here the State was unable to elicit testimony from the probation officer in support of a manifest injustice sentence because such advocacy would put the prosecutor in breach of the plea agreement it reached with D.L. RP 8/30/17, 213. The judge then did this for the prosecution.

It violates the appearance of fairness for a judge to fill in for the prosecutor who was barred from presenting the very testimony elicited by the trial court judge.

**6. The Prosecutor's inflammatory misstatement of facts should not be considered by this court.**

The prosecutor's inflammatory misstatement of facts is intended to distract this Court from the important due process issues in D.L.'s case.

The Prosecutor's Response first misstates, in its heading, that "D.L. molested his five-year-old- half brother." Brief of Respondent at 4. But D.L. plead guilty to one count of attempted child molestation after the prosecution amended the Information to include this charge alone. CP 100, 107. D.L. allowed the court to review the probable cause statement "to establish a factual basis" for this charge alone. CP 111. D.L. did not stipulate to the facts alleged in the probable cause statement. CP 111. Thus, the record on appeal establishes only that D.L. attempted an act, but not that he committed an act. See RCW 9A.28.020(1) (criminal attempt defined as a substantial step toward the commission of that crime.).

The prosecutor also cites to the entirely unproven, detailed allegations of child rape in the statement of probable cause under the guise of establishing a procedural record. BOR at 4. This alleged conduct

did not form the basis of D.L.'s plea, and should not be cited the prosecutor as established facts on appeal.

This inaccurate misstatement of D.L.'s proven conduct is inflammatory, and impermissibly makes up facts on appeal that were not proven at the trial level. D.L. asks this Court to limit its consideration of D.L.'s case to the facts established by the record, and to disregard the prosecutor's inflammatory misstatements of the case. RAP 10.3(a)(5) and (b).

## **B. CONCLUSION**

D.L.'s due process rights were violated. He was not notified, prior to entry of his plea, that aggravating factors would be alleged post-plea. The probation officer's allegation of these factors violated the doctrine of separation of powers, and the evidence alleged in support of the aggravating factors was not sufficient. D.L.'s due process rights were further violated when his most important advocate, his grandmother, was denied the opportunity to speak on his behalf, and the court became an adversary to D.L. by eliciting the probation officer's testimony in support of a manifest injustice sentence, which violated the appearance of fairness. Each of these due process violations require reversal of the manifest injustice sentence for entry of a standard range sentence, as first promised to D.L. when he entered his guilty plea.

DATED this 13th day of February, 2018.

Respectfully submitted,

s/ Kate Benward  
Washington State Bar Number 43651  
Washington Appellate Project  
1511 Third Ave, Suite 701  
Seattle, WA 98101  
Telephone: (206) 587-2711  
Fax: (206) 587-2711  
E-mail: [katebenward@washapp.org](mailto:katebenward@washapp.org)

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

---

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 77360-7-I
	)	
D.L.,	)	
	)	
JUVENILE APPELLANT.	)	

---

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 13<sup>TH</sup> DAY OF FEBRUARY, 2018, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |     |  |                   |  |
|-----|--|-------------------|--|
| [X] | HILARY THOMAS<br>WHATCOM COUNTY PROSECUTOR'S OFFICE<br>[Appellate_Division@co.whatcom.wa.us]<br>311 GRAND AVENUE<br>BELLINGHAM, WA 98225 | ( )<br>( )<br>(X) | U.S. MAIL<br>HAND DELIVERY<br>E-SERVICE VIA PORTAL |
| [X] | PHILIP BURI<br>[philip@burifunston.com]<br>BURI FUNSTON MUMFORD PLLC<br>1601 F ST<br>BELLINGHAM, WA 98225-3011                           | ( )<br>( )<br>(X) | U.S. MAIL<br>HAND DELIVERY<br>E-SERVICE VIA PORTAL |
| [X] | D.L.<br>ECHO GLENN CHILDREN'S CENTER<br>33010 SE 99 <sup>TH</sup> ST<br>SNOQUALMIE, WA 98065   | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>E-SERVICE VIA PORTAL |

**SIGNED** IN SEATTLE, WASHINGTON, THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2018.

X \_\_\_\_\_ 

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, Washington 98101  
Phone (206) 587-2711  
Fax (206) 587-2710

# WASHINGTON APPELLATE PROJECT

February 13, 2018 - 3:31 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 77360-7  
**Appellate Court Case Title:** State of Washington, Respondent v. Dakota Loomer, Appellant  
**Superior Court Case Number:** 16-8-00165-1

### The following documents have been uploaded:

- 773607\_Briefs\_20180213152928D1782324\_1599.pdf  
This File Contains:  
Briefs - Appellants Reply  
*The Original File Name was washapp.org\_20180213\_103625.pdf*

### A copy of the uploaded files will be sent to:

- Appellate\_Division@co.whatcom.wa.us
- hthomas@co.whatcom.wa.us
- philip@burifunston.com

### Comments:

---

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

**Filing on Behalf of:** Kate Benward - Email: katebenward@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:  
1511 3RD AVE STE 701  
SEATTLE, WA, 98101  
Phone: (206) 587-2711

**Note: The Filing Id is 20180213152928D1782324**