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No. 62864-0-I

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

STATE OF WASHINGTON,

Respondent,

v.

STEVEN LEE,

Appellant.

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

REPLY BRIEF

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A. REPLY ARGUMENT

1. **CONTRARY TO THE STATE’S CONTENTIONS, THE CHALLENGED EVIDENCE WAS A “TESTIMONIAL” “STATEMENT,” AND ALSO IMPLICATED MR. LEE, CAUSING REVERSIBLE CONFRONTATION ERROR UNDER CRAWFORD AND/OR BRUTON.**

On appeal, Mr. Lee assigned error to the State’s presentation of trial testimony by Leroy Holt that “violat[ed] [Lee’s] Sixth Amendment and Article 1, § 22 confrontation rights pursuant to Crawford v. Washington¹ and Bruton v. United States.²” Appellant’s Opening Brief, at pp. 1, 2.

In this case the challenged hearsay – the co-defendant’s assertive silence in the face of trial witness Holt’s factual statement to him (in an out-of-court conversation) that the defendant Mr. Lee was involved with him in the shooting – was a “statement” and was “testimonial,” including because of the manner in which the State presented it to the jury.

First, Zerhaimanot’s silence, admitted into evidence, violated Crawford, as it was both a statement (and thus hearsay), and was testimonial.

¹See Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 1374, 158 L.Ed.2d 177 (2004).

²See Bruton v. United States, 391 U.S. 123, 126, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).

a. The challenged hearsay qualified as such because it was a “statement” and was “testimonial,” including because of the manner in which the State presented it to the jury.

i. Statement for purposes of hearsay. The State’s argument and cited cases fail to persuade that co-defendant Zerhaimanot’s silence did not qualify as a “statement” affirming Holt’s assertion that Mr. Lee also shot Forrest Starrett. Brief of Respondent, at pp. 52-56.

First, the Respondent cites cases involving ER 801(d)(2)(ii), which is the hearsay rule applicable where a person adopts the statements of a third person by not objecting to them. Mr. Lee noted in his Opening Brief that Rule 801(d)(2)(ii), which provides that “adoptive admissions” by a party are “not hearsay,” is a separate rule from ER 801(a)(2)’s provision that nonverbal conduct of a person, including his or her silence, may constitute a statement, but also pointed out that cases involving the one rule may be helpful in analyzing issues under the other. Appellant’s opening Brief, at p. 22 n. 5.

But the cases cited by the Respondent are not instructive in any helpful manner because they are not factually analogous, involving as they do, situations wherein a party’s out-of-court failure to

protest another's factual assertion made the assertion his own, and thus admissible through a third witness, under the blanket rule, ER 801(d)(2)(i), providing that statements by a party-opponent are not hearsay.

Thus Respondent cites State v. McCaughey, 14 Wn. App. 326, 328, 541 P.2d 998 (1975), and argues that it defeats Appellant's argument that Mr. Zerhaimanot's silence was an assertion, arguing that the Court in that case "found the defendant's silence in the face of another's statement was not tacit acquiescence in the truth of that statement [because] the statement did not accuse the defendant of any crime[.]" Brief of Respondent, at p. 54. There, one person said that the defendants had come from California, and the person's silence in the face of this statement was deemed not inculpatory such that the person could be expected to protest if it was not true. McCaughey, 14 Wn. App. at 328. But in this case, Holt's statement to Zerhaimanot, in the course of statements implicating the co-defendant himself, of course definitively accused Mr. Lee of being a shooter of Mr. Starrett, which is murder -- commonly recognized as a "crime."

Indeed none of the Respondent's cases shed supportive light on the State's argument that the co-defendant's silence was not an assertion. Thus in the case of In re Dependency of Penelope B., 104

Wn.2d 643, 652-53, 709 P.2d 1185 (1985), it was held that the testimony of DSHS personnel regarding a child's utterances simply showing precocious knowledge of explicit sexual matters repeated nonassertive utterances of the child and were not hearsay. And in State v. Collins, 76 Wn. App. 496, 498, 886 P.2d 243 (1995), a police officer's testimony that callers to an apartment asked for drugs and requested to speak with the defendant were not assertions and thus were not hearsay.

These cases in no way stand for the proposition that Mr. Zerhaimanot's silence was not an assertion of fact. The Respondent fails to distinguish in United States v. Kenyon, 481 F.3d 1054 (8th Cir. 2007). There, the wife of a defendant charged with sexual abuse of a minor testified that she asked two other children whether they noticed anything that would support the minor's allegation of abuse. Kenyon, 481 F.3d at 1060, 1064. Kenyon's counsel then asked the wife if these children "had provided her 'with any information suggesting anything happened.'" The wife answered "no," but the trial court sustained the government's hearsay objection and the federal appellate court rejected Kenyon's argument that this question did not seek to elicit an out-of-court "statement," and thus did not attempt to proffer "hearsay." Kenyon, 481 F.3d at 1064. The federal case is directly analogous to what occurred in Mr. Lee's trial –

silence was proffered and admitted despite the fact that it was an assertive statement, and thus was hearsay.

Quite frankly, the Respondent's contention, that the co-defendant Zerahaimanot did not intend his silence as an assertion of agreement that the defendant shot Mr. Starrett, is remarkable – given that the deputy prosecuting attorney's own elicitation of the facts at trial showed that this silence was that of a person who was not disputing, feeling a need to correct, or in any other way "tak[ing] any issue" with Holt's assertion. 11/25/08RP at 1035. The colloquy proceeded as follows:

Q: And then Keylo [Mr. Zerahaimanot] made the statement to you that he believed he was the one that shot Forrest in the head.

A: Yes.

Q: And then it was after that that you said, No, I saw Stevie shoot him in the head.

A: Yes.

Q: **Did he take any issue with that?**

A: **No.**

Q: **Okay.**

MS. PAUL: **All right. Thank you. That's all I have.**

(Emphasis added.) 11/25/08RP at 1035. Zerahaimanot's silence was used blatantly by the prosecutor to implicate Mr. Lee.

Notably, the Respondent's 180-degree reversal of its stance for appeal, to now claim that Mr. Zerahaimanot was too addled or confused to be making an intentional statement by his silence, is also

completely immaterial. It does not matter that the co-defendant might have been confused about what body part he was alleging was shot by which shooter. The co-defendant admitted to shooting the victim and did not "take issue" with the assertion that Mr. Lee also shot him. His silence, as shown by the prosecutor's own examination of the witness, was intended as a statement to that effect. ER 801's basic requirement for hearsay that there be a "statement" is satisfied.

Mr. Lee believes that the State cannot now be heard to claim that Zerhaimanot's silence was not an assertion, when it was presented to the jury as precisely that, with obvious reason to do so, and for obvious purposes.

ii. "Testimonial" statement. The State has the burden on appeal of establishing that statements are nontestimonial under Crawford v. Washington, 541 U.S. 36, 53-54, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). State v. Koslowski, 166 Wn.2d 409, 417 n. 3, 209 P.3d 479 (2009). Crawford's definition of "testimonial," based on how a reasonable person "would anticipate" his statements could be used, is more than adequate to bring Mr. Zerhaimanot's statement within its ambit. See State v. Hendrickson, 138 Wn. App. 827, 833, 158 P.3d 1257 (2007), affirmed, 165 Wn.2d 474 (2009) (a statement is testimonial if a reasonable person in the declarant's position would

anticipate that his statement would be used against the accused in investigating or prosecuting a crime)).

The Supreme Court did state in Crawford that statements “taken by police officers in the course of interrogations are . . . testimonial even under a narrow standard.” Crawford, 124 S.Ct. at 1364.

But the Respondent's contention that the class of hearsay deemed testimonial is limited to statements made to police officers or other government officials is incorrect. Brief of Respondent, at p. 57. The Supreme Court has never stated that a person's accusatory allegation regarding the defendant cannot be testimonial where it is made to a non-government officer. The Respondent cites State v. Shafer, 156 Wn.2d 381, 389 n. 6, 128 P.3d 87 (2006) for the proposition that “casual remarks made to family, friends, and nongovernment agents are generally not testimonial statements because they were not made in contemplation of bearing formal witness against the accused.” Shaffer, at 389 n. 6 (citing Crawford, 541 U.S. at 51).

But as noted in the Opening Brief, Crawford makes clear that, although statements to police officers fall squarely within the class of statements deemed testimonial, such circumstances do not de-mark the entire class. Appellant's Opening Brief, at pp. 26-28. The

Crawford Court at the page of the opinion cited in Shaffer and in the Respondent's Brief simply mused that certain statements would not be testimonial, such as "[a]n off-hand, overheard remark." Crawford, at 51. The Respondent's overblown and overstated contention that only statements to government officials are testimonial is erroneous and fails to employ the actual test for "testimonial" statements handed down by the Supreme Court.

The fact that Mr. Zerachaimanot was not being questioned by a law enforcement officer when he alleged that Mr. Lee shot Mr. Starrett does not disqualify his hearsay from being deemed testimonial. It was a statement of fact alleging that Mr. Lee shot Mr. Starrett and committed a murder. It occurred in a conversation in which the co-defendant Zerachaimanot essentially confessed, and also specifically implicated Mr. Lee. Trial witness Leroy Holt was definitely not repeating some casual offhand remark, rather, he was repeating an outright accusation by the co-defendant and that co-defendant could never be cross-examined by Steven Lee.

Any reasonable person in Zerachaimanot's shoes would expect such a deadly inculpatory assertion to be used against the accused in any future criminal proceeding, and indeed it was emphatically so used by the prosecution in the present case. Truly, for the State to now contend that Zerachaimanot's statement of accusation was merely

an offhand remark and not within Crawford's class of implicative, testimonial statements is astonishingly disingenuous when made in the face of how the trial prosecutor actually employed the evidence to implicate the defendant for murder.

b. The challenged evidence "implicated" Mr. Lee, which is all that is required for a constitutional confrontation violation under Bruton. Second, even if one were to assume, arguendo, that the Respondent can meet its burden to show that Mr. Zerachaimanot did not utter a testimonial statement, establishing hearsay qualifying under Crawford, Mr. Lee's assignments of error under Bruton remain, and the confrontation analysis under Bruton is nowhere near as multifaceted or as complex as under Crawford.

The co-defendant's statement quite simply "implicated" his co-defendant, Mr. Lee, and its admission therefore also violated Bruton's particular confrontation clause analysis that applies where the out-of-court declarant is a co-accused. Bruton's dictates have never required that the co-defendant's out-of-court statement must be "testimonial" before it will violate the Sixth Amendment, likely in part because the declarant's state of mind or belief, as to whether the statement could be used in court, does not in any way diminish the

incurable prejudice caused to the now-implicated co-defendant, sitting in the other chair.

Although the Bruton question normally now arises in circumstances where the issue is whether redaction or severance is required, the simple admission of statements violating Bruton's confrontation principles can also be trial error in and of itself, and the premise for appeal. See, e.g., U.S. v. Pimentel-Tafolla, 60 Fed. Appx. 656, 667 (9th. Cir. 2003). And of course, Bruton v. United States itself was such a case, with the same procedural posture as Mr. Lee's case. The particular posture of Bruton was that the defendant challenged, and gained reversal, of his conviction based on a mid-trial insertion of evidence that violated the confrontation clause, coming as it did from the co-defendant, out of court. The Supreme Court held that admitting the co-defendant's statement expressly implicating the defendant was too prejudicial to be cured by a limiting instruction. Bruton, 391 U.S. at 135-36. The utter incurability of the error by objection, in that seminal case (and the present case) is clear -- in Bruton, the Supreme Court held that the defendant's conviction must be reversed because the statement implicating him was admitted at his trial, and nothing -- not even the court's instruction to the jury to regard the statement as pertinent only as to its declarant -- could cure the prejudice of one defendant stating (with no ability to be cross-

examined) that he and the other defendant together committed the crime. Bruton, 391 U.S. at 135-36.

This was indeed constitutional error. Under Bruton's progeny, the admission of a statement made by a non-testifying co-defendant violates the Confrontation Clause when that statement facially, expressly, clearly, or powerfully implicates the defendant. Richardson v. Marsh, 481 U.S. 200, 208, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987).

The fact that Mr. Zerhaimanot's statement was not a 'formal confession to police' is not a disqualifier under Bruton's rule. The issue with regard to whether statements violate Bruton is whether they are incriminating, and come from the non-examinable co-defendant. United States v. Hoac, 990 F.2d 1099, 1105 (9th Cir.1993), cert. denied, 510 U.S. 1120, 114 S.Ct. 1075, 127 L.Ed.2d 392 (1994). Thus in United States v. Wright, 742 F.2d 1215, 1223 (9th Cir.1984), the issue was whether a letter written by a non-testifying co-defendant to one "Robin" violated Bruton's "incriminating" requirement under the rule that the incriminatory aspects must not depend on other evidence, relying on Richardson, 481 U.S. at 208. And in the case of United States v. O'Connor, 737 F.2d 814, 820 (9th Cir.1984), cert. denied, 469 U.S. 1218, 105 S.Ct. 1198, 84 L.Ed.2d 343 (1985), the issue was whether a "conversation" had the "powerfully incriminating" impact required for a Bruton. See also United States v. Truslow, 530

F.2d 257, 263 (4th Cir.1975) (rejecting the government's argument that Bruton is strictly limited to confessions made to law enforcement officers).

As in the Bruton case itself, the present trial was characterized by a damning, if silent, accusation of the defendant Mr. Lee by his co-defendant. As noted extensively in Mr. Lee's Opening Brief, the impact of one accused implicating another is devastatingly prejudicial. For a lay jury, it cut through the muddled trial evidence, and the jurors surely concluded that no one would know better than a person admitting to the shooting, that another person, Lee, was also a shooter. Yet Mr. Lee had no opportunity to cross-examine this accuser. What happened below in the present case is exactly what happened in Bruton. Reversal here, as there, is required.

2. IF THE CRAWFORD/BRUTON ERROR WAS NOT MANIFEST, COUNSEL'S FAILURE TO OBJECT WAS INEFFECTIVE BECAUSE THE STATUS OF THE EVIDENCE AS HEARSAY IS FUNDAMENTAL TO SHOWING THE ABOVE CONFRONTATION VIOLATIONS.

The State's argument that Mr. Lee's counsel was not ineffective simply presumes (based on the Respondent's prior arguments) that the challenged evidence did not violate either Crawford or Bruton. Appellant contends otherwise, and trial counsel

was plainly ineffective - the evidence should properly have been objected to as hearsay (showing it to be an inculpatory out-of-court statement), and doing so would have allowed the full panoply of Crawford and Bruton arguments to be made on appeal without the necessity of the more difficult and burdensome “manifest constitutional error” argument. Counsel was ineffective, to his client’s material prejudice, requiring reversal. Strickland v. Washington, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984).

3. CONTRARY TO THE STATE’S CONTENTIONS, THE TRIAL COURT ERRED IN REFUSING TO VACATE MR. LEE’S “MERGED” MURDER CONVICTION, BECAUSE AT A MINIMUM, A DUPLICATIVE VERDICT THAT IS REDUCED TO JUDGMENT MUST BE VACATED.

As noted in the Opening Brief, the jury in this case issued verdicts finding Mr. Lee guilty on count 1, first degree felony murder pursuant to RCW 9A.32.030(1)(c), and count 2, first degree premeditated murder pursuant to RCW 9A.32.030(1)(a). CP 242, 244; 12/10/08RP at 2173. At sentencing all parties agreed the trial court should “dismiss Count II so there is no double jeopardy issue on appeal.” 12/16/08RP at 2184.

The court agreed that count 2 should properly merge into count 1, but held that both convictions should be reflected in the judgment

because these were the decisions of the jury 12/16/08RP at 2184. The court therefore ordered that count 2 would merge into count 1, and the judgment and sentence would so indicate, but the document would also include convictions on both counts as identified by their statutory references. 12/16/08RP at 2186-87. See CP 20 (judgment and sentence). The trial court in fact hand-modified the prosecutor's proffered document to add the other conviction and said statutory reference. CP 20. These are twin judgments of "conviction." RCW 9.94A.030(12).

And this was error. In State v. Womac, the Supreme Court held that when a trial court finds that multiple verdicts violate double jeopardy, the proper remedy is to vacate the duplicative verdict, not to hold the verdicts in abeyance. State v. Womac, 160 Wn.2d 643, 160 P.3d 40 (2007). The trial court in Womac improperly stated in the judgment and sentence that the duplicative, double-jeopardy-violating count is a "valid conviction" although the defendant was not receiving a sentence because of double jeopardy concerns. State v. Womac, 160 Wn.2d at 655.

The present case is one in which the trial court was faced with twin jury verdicts, both for the murder of Forrest Starrett, that violated Mr. Lee's Double Jeopardy rights, but the court reduced both counts to judgment, although not entering sentence on the duplicative

conviction and noting that the additional count merged into the first. CP 20. Although several questions remain open in the area of determining the appropriate way for a trial court to address jury verdicts that violate Double Jeopardy, at a minimum the following rules hold true under Double Jeopardy:

Certainly, the imposition of twin sentences would have plainly violated Double Jeopardy. But additionally, as the Womac Court explained, even if “Womac received only one sentence is of no matter as he [would] still [suffer] the punitive consequences of his [twin] convictions.” State v. Womac, 160 Wn.2d at 656.

Womac makes clear that in order to avoid double jeopardy, a trial court must vacate a charge that it has reduced to judgment but chooses not to sentence.

State v. Turner, 144 Wn. App. 279, 282, 182 P.3d 478 (2008), review granted, 165 Wn.2d 1002 (2008).

Here, the trial court’s procedure of reducing both of Mr. Lee’s murder convictions to judgment in the judgment and sentence (although sentencing only upon one), violates the Double Jeopardy guaranties, as does the failure to vacate the duplicative verdict.

Womac stands for the latter proposition, but on the first question, even those cases that stand for the proposition that a verdict alone does not violate double jeopardy require reversal here, because even those cases conclude that entry of judgment is violative.

Thus the Turner Court stated that where the trial court did not reduce Turner's duplicative conviction to judgment and did not sentence him for the conviction "or include any information regarding this conviction in his judgment and sentence)," Turner's non-vacated duplicative verdict in and of itself did not subject him to double jeopardy. Turner, 144 Wn. App. at 28.³

The Respondent argues, perhaps by some analogy to Turner, that there is no Double Jeopardy violation in the judgment and sentence in Mr. Lee's case, because the trial court noted on the document that the second murder conviction "merges into count I for sentencing purposes." Brief of Respondent, at p. 45 (citing judgment and sentence). The argument appears to be that the merger notation effectively renders the entry of judgment a nullity. This argument is difficult to reconcile with the fact that the trial court specifically hand-corrected the prosecutor's prepared judgment and sentence documents to add the additional judgment on the jury verdict under RCW 9A.32.030(1)(a). CP 20. The court therefore affirmatively reduced the jury's duplicative verdict to judgment. CP 20. This violates double jeopardy under Womac.

³Mr. Turner had argued in the Court of Appeals that Womac holds that an unvacated jury verdict of guilty alone, even one on which judgment is not entered, violates the Double Jeopardy provisions.

This is true, irrespective of the court's notation of merger. The Respondent's characterization of State v. Johnson as allowing what occurred here is not correct. Brief of Respondent, at p. 45. There, the judgment and sentence document reflected that the jury had found the defendant guilty on two counts, but in total it made clear that only one verdict was reduced to judgment. Thus the Johnson Court stated:

Johnson's judgment and sentence contains four sections, labeled "Hearing", "Findings", "Judgment" and "Order." In the findings, the court correctly recited that Johnson was found guilty on both counts by jury verdict, but further found that the two counts constituted only one conviction. In the judgment section, the court adjudged Johnson guilty as set forth in the findings, thus incorporating the language that there was but one conviction. The court sentenced Johnson to 219 months of incarceration only on count I and imposed no sentence regarding count II. Therefore, contrary to Johnson's claim, the judgment and sentence does not impose "two counts of conviction" constituting multiple punishments.

(Emphasis added.) State v. Johnson, 113 Wn. App. 482, 488, 54 P.3d 155 (2002), review denied, 149 Wn.2d 1010 (2003).

First, Johnson is incorrect in a larger sense in failing to recognize that the failure to vacate duplicative verdicts violated Double Jeopardy under Womac. Second, even if the present case is evaluated under Johnson, a double jeopardy violation exists, because the trial court here reduced the duplicative conviction to judgment, and

the flourish of other language and semantic arguments does not alter the fact that the judgment and sentence document reflects two convictions. Johnson involves a specific incorporation of language in the judgment, by reference that there is only a sole count of conviction. Judged under Johnson's terms, the present case is distinguishable. The language stating that count II "merges into count I for sentencing purposes," fails to indicate that the second conviction has not had judgment entered upon it.

Judged by this same Johnson standard, in State v. Trujillo, the defendants were charged and convicted of alternative charges of attempted murder and first degree assault, but no vacation was held necessary because the trial court did not enter judgment on the assault conviction. State v. Trujillo, 112 Wn. App. 390, 49 P.3d 935 (2002). The Trujillo Court noted that if the assault conviction "was in fact reduced to judgment, the trial court should enter an order vacating the assault judgment." (Emphasis added.) See Womac, 160 Wn.2d at 660 (quoting Trujillo, 112 Wn. App. at 412 n. 15).

Here, under these partially correct authorities, the duplicative verdict in Mr. Lee's case was reduced to judgment and should be vacated. The court below took pains to actually hand-enter judgment on the duplicative murder verdict – although it did not impose sentence – on the second count.

The Respondent's argument also fails to persuade, when viewed through the requirements of the constitutions, federal and state, and Washington statute. RCW 9.94A.030(12) states that verdicts are convictions. Here, the defendant will forever be listed as having been convicted of a duplicative count, including with respect to classification in the Washington Department of Corrections' prison system. No database or listing of the defendant's convictions will reflect the trial court's asterisked notation of merger, rather the operative entries will be the trial court's entry of judgment on two counts. As the Womac Court noted, in the absence of a remedy, a defendant's convictions for duplicative counts, if entered, would count in his offender score should he be charged with another crime in the future. Womac, 160 Wn.2d at 656. The Court also noted that the presence of multiple convictions on one's record may impact parole eligibility, may be used to impeach the defendant's credibility, and "certainly carries the societal stigma accompanying any criminal conviction." Womac, 160 Wn.2d at 657 (quoting Ball v. United States, 470 U.S. 856, 865, 105 S.Ct. 1668, 84 L.Ed.2d 740 (1985)).

Notably, although social stigma is but one of the many negative consequences of the fact of conviction, it should be noted that lay society or even the Department of Corrections is unlikely to

understand the concept of “merger” or consider it to change the fact that a person has been convicted of multiple crimes.

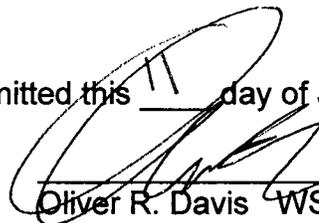
Indeed, if the Respondent agrees that the second conviction violates double jeopardy, and if it insists on contending (erroneously) that no negative consequences whatsoever flow from the existence of the second count having been reduced to judgment but absent sentence, then the State should in fact have no objection to vacation of the conviction. In fact, what is revealed is the State’s desire to hold the duplicative verdict in abeyance, which was specifically prohibited by Womac. See also State v. Ward, 125 Wn. App. 138, 104 P.3d 61 (2005).

Here the trial court actually entered judgment against Mr. Lee on two counts for the same constitutional “offense.” Consequently, one count must be vacated. Womac, 160 Wn.2d at 658-59.

B. CONCLUSION

Based on the foregoing, and on his Appellant’s Opening Brief, Mr. Lee respectfully requests that this Court reverse his judgment and sentence.

Respectfully submitted this 11 day of June, 2010.



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

STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 62864-0-I
)	
)	
STEVEN LEE,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10TH DAY OF JUNE, 2010, 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] | MARY WEBBER, DPA
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