

64409-2

64409-2

No. 64409-2-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TYRONE DASH,

Appellant.

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

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

A. INTRODUCTION ..... 1

B. ARGUMENT ..... 2

    1. THE JURY DID NOT FIND THE CRIME CONTINUED THROUGH THE PERIOD REQUIRED BY THE STATUTE OF LIMITATIONS ..... 2

    2. DASH OBJECTED TO THE VIOLATION OF THE CONFRONTATION CLAUSE, ASKED TO REDACT ALL SUBSTANTIVE REFERENCES TO THE CHARGED OFFENSE AND WAS PREJUDICED BY THE STATE'S RELIANCE ON OUT-OF-COURT STATEMENTS HE COULD NOT CONFRONT ..... 6

        a. The State cannot avoid the confrontation clause violation by concocting inapplicable claims of waiver ... 6

        b. The State introduced testimonial evidence that Dash could not confront..... 7

            i. Purpose of interview ..... 7

            ii. The complainant's "state of mind" as a hearsay exception..... 9

            iii. Redactions ..... 14

        c. The violation of the confrontation clause is not cured by an ineffective and unreasonable limiting instruction ... 15

3.	THE PROSCUTION DOES NOT INSULATE ITS OWN MISCONDUCT BY MISREPRESENTING THE LAW AND THEN BLAMING THE JURY INSTRUCTIONS.....	18
	a. The State explicitly misrepresented the legal definition of good faith claim of title, a critical concept to the case .....	18
	b. The State’s exposition on the intersection between civil and criminal law is irrelevant .....	20
4.	THE STATE CORRECTLY CONCEDES THE IMPROPER UNANIMITY INSTRUCTION BUT FAILS TO ACKNOWLEDGE THAT THE SUPREME COURT HAS REJECTED THE HARMLESS ERROR ANALYSIS IT SEEKS.....	21
C.	CONCLUSION.....	23

## TABLE OF AUTHORITIES

### **Washington Supreme Court Decisions**

<u>State v. Ager</u> , 128 Wn.2d 85, 904 P.2d 715 (1995).....	19
<u>State v. Bashaw</u> , 169 Wn.2d 133, 234 P.3d 195 (2010) ...	21, 22, 23
<u>State v. Davenport</u> , 100 Wn.2d 757, 675 P.2d 1213 (1984).....	18
<u>State v. Hicks</u> , 102 Wn.2d 182, 683 P.2d 186 (1984) .....	19
<u>State v. Kier</u> , 164 Wn.2d 798, 194 P.3d 212 (2008);.....	6
<u>State v. Koslowski</u> , 166 Wn.2d 409, 209 P.3d 479 (2009) .....	14
<u>State v. L.J.M.</u> , 129 Wn.2d. 386, 918 P2d 898 (1996) .....	3
<u>State v. LeFaber</u> , 128 Wn.2d 896, 913 P.2d 369 (1996).....	21
<u>State v. Mason</u> , 160 Wn.2d 910, 162 P.3d 396 (2007) .....	9
<u>State v. Williams-Walker</u> , 167 Wn.2d 889, 225 P.2d 913, 918 (2010).....	2, 5, 23
<u>State v. Williams-Walker</u> , 167 Wn.2d 889, 225 P.3d 913 (2010)...	22

### **Washington Court of Appeals Decisions**

<u>Betts v. Betts</u> , 3 Wn.App. 53, 473 P.2d 403, <u>rev. denied</u> , 78 Wn.2d 994 (1970) .....	10, 11
<u>In re Pers. Restraint of Theders</u> , 130 Wn.App. 422, 123 P.3d 489 (2005) .....	10, 11
<u>State v. Alvarez-Abrego</u> , 154 Wn.App. 351, 225 P.3d 296, <u>rev.</u> <u>denied</u> , 168 Wn.2d 889 (2010) .....	16
<u>State v. Crowder</u> , 103 Wn.App. 20, 11 P.3d 828 (2000) .....	20

<u>State v. Israel</u> , 113 Wn.App. 243, 54 P.3d 1218 (2002), <u>rev. denied</u> , 149 Wn.2d 1013 (2003).....	5
<u>State v. McDaniel</u> , 155 Wn.App. 829, 230 P.3d 245, <u>rev. denied</u> , 169 Wn.2d 1027 (2010).....	7
<u>State v. Mermis</u> , 105 Wn.App. 738, 20 P.3d 1044 (2001).....	3, 4, 5
<u>State v. Mora</u> , 110 Wn.App. 850, 43 P.3d 38, <u>rev. denied</u> , 147 Wn.2d 1021 (2002).....	19
<u>State v. Novotny</u> , 76 Wn.App. 343, 884 P.2d 1336 (1994).....	2
<u>State v. Tyler</u> , 138 Wn.App. 120, 155 P.3d 1002 (2007).....	7

### **United States Supreme Court Decisions**

<u>Apprendi v. New Jersey</u> , 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).....	2
<u>Crawford v. Washington</u> , 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).....	6, 10, 11, 12, 14
<u>Davis v. Washington</u> , 547 U.S. 813, 126 S.Ct. 2266, 165 L.Ed. 224 (2006).....	8
<u>Shepard v. United States</u> , 290 U.S. 96, 54 S.Ct. 22, 78 L.Ed. 196 (1933).....	14
<u>Tennessee v. Street</u> , 471 U.S. 409, 105 S.Ct. 2078, 85 L.Ed.2d 425 (1985).”.....	11, 12, 13

### **Federal Decisions**

<u>United States v. Alvarado-Valdez</u> , 521 F.3d 337 (5 <sup>th</sup> Cir. 2008)....	17
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### **United States Constitution**

Fourteenth Amendment .....	2
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Sixth Amendment..... 2, 15

**Washington Constitution**

Article I, § 21 ..... 2

Article I, § 22 ..... 15, 22

**Statutes**

RCW 9A.04.080 ..... 2

## A. INTRODUCTION

The prosecution offers a response brief of extreme length that serves more as a song and dance designed to confuse the legal issues presented. For example, on one page it asserts that Dash “invited the error” that violated his confrontation clause rights but on another page it concedes Dash objected to this very evidence on the grounds that it violated the confrontation clause. Even though both claims cannot be true, the prosecution does not resolve the contradiction. Rather than address the dispositive, constitutional claims in the order they are presented in the Opening Brief, the prosecution buries the issues most fatal to its case at the rear of its brief, perhaps holding out hope that after reading the State’s historical analysis of the interplay between civil and criminal law, this Court will have either lost interest in the case or be unable to ascertain fact from fiction.

Dash confines his reply to rebutting the portions of the State’s response brief that most egregiously misrepresent the claims presented. He relies on his Opening Brief as a correct statement of the law and facts for the remaining issues as well as for the issues discussed herein.

B. ARGUMENT.

1. THE JURY DID NOT FIND THE CRIME  
CONTINUED THROUGH THE PERIOD  
REQUIRED BY THE STATUTE OF  
LIMITATIONS

Questions of fact for the jury must be proven unanimously and beyond a reasonable doubt by the jury. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); State v. Williams-Walker, 167 Wn.2d 889, 225 P.2d 913, 918 (2010); U.S. Const. amends. 6 & 14; Wash. Const. art. I, § 21 (“[t]he right of trial by jury shall remain inviolate”). The statute of limitations is a jurisdictional issue that “creates an absolute bar to prosecution” and may be raised for the first time on appeal. State v. Novotny, 76 Wn.App. 343, 345, 884 P.2d 1336 (1994).

Whether an offense continued into the statute of limitations period “is a question of fact for the jury.” State v. Mermis, 105 Wn.App. 738, 745-46, 20 P.3d 1044 (2001). The statute of limitations for theft is three years. RCW 9A.04.080(h).

The prosecution contends that there are no factual questions at stake in resolving whether the statute of limitations had expired. It asserts that all jurisdictional questions are legal issues to be resolved by the judge, citing State v. L.J.M., 129 Wn.2d. 386, 918

P2d 898 (1996). L.J.M. involved whether a crime occurred on tribal trust land and thus needed to be prosecuted in federal court. The location of the offense was not in dispute; rather, the dispute was whether the legal definition of tribal trust land applied to the property. The court in L.J.M. ruled that this issue was “purely legal.” Id. at 396. As a “purely legal” matter, the jurisdictional determination was not a question for the jury. Id.

L.J.M. has no application here. The State filed a charge against Dash on March 18, 2008, alleging Dash unlawfully took money from Taylor during a time between January 1, 2000 and March 31, 2005. CP 1. Because almost three years had passed between the last possible date of the offense and the filing of the charge, the jury needed to find that Dash committed an unlawful taking in the last two weeks of March 2005 in order to avoid violating the three year statute of limitations. This is a question of disputed fact for the jury to resolve. Mermis, 105 Wn.App. at 746.

The prosecution asks this Court to distinguish Mermis based on the jury instructions used in that case, but these instructions do

seem to advance the State's position.<sup>1</sup> The "to convict" instruction in Mermis directed the jury to decide whether the defendant wrongfully obtained property "on or about September 26, 1995." CP 454. There was some evidence at trial that the taking occurred earlier, on September 6, 1995. 105 Wn.App. at 744. If the taking occurred before September 18, 1995, the prosecution violated the statute of limitations because the State did not file charges until September 18, 1998. Id.

In Mermis, this Court did not simply rest on the "to convict" instruction as defining the specific terms of the jury's verdict. Even though the "to convict" instruction indicates that the offense occurred on or about September 26<sup>th</sup>, this Court found that the jury may have decided the taking occurred earlier. Id. at 746. Consequently, this Court held that because the evidence would have allowed the jury to find that the offense occurred on different dates, the jury did not resolve the factual issue. Id. at 751-52. Where the jury did not expressly find that the offense occurred within the statute of limitations, the reviewing court cannot

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<sup>1</sup> Dash objected to the State request to supplement the record with jury instructions used in Mermis. The Commissioner issued a ruling deferring decision on the State's motion to the panel but noting that the instructions did not seem pertinent. Commissioner's Ruling, Feb. 4, 2011.

determine whether the crime occurred within the statute of limitations period. Id.

In the case at bar, the jury was not asked to determine whether the State proved any unlawful taking occurred after March 18, 2005, which is a finding critical to the statute of limitations. The State alleged Dash took far more than \$1500, and most of that money was taken before March 18, 2005. The jury needed to explicitly decide whether the offense continued through the end of March 2005, and Mermis dictates that the “to convict” instruction does not define what precise time of the event the jury found.

The prosecution does not address the necessity of a jury finding on essential factual elements and instead asks this Court to substitute its judgment and resolve the factual issues. It argues that the jury would have thought Dash’s takings in March 2005 were unauthorized since Taylor’s dementia increased over time. This Court cannot speculate as to the basis of the jury’s verdict. Williams-Walker, 168 Wn.2d at 898. A reviewing court does not substitute its judgment for the jury’s or weigh the evidence on appeal. State v. Israel, 113 Wn.App. 243, 277, 54 P.3d 1218 (2002), rev. denied, 149 Wn.2d 1013 (2003); see also State v. Kier, 164 Wn.2d 798, 811, 194 P.3d 212 (2008) (when verdict does not

specify the underlying act relied on, it is ambiguous and principles of lenity require the ambiguity to be construed in favor of the accused). The jury was never asked to determine whether the State proved the offense occurred on or after the period necessary for the statute of limitations. Thus, the State did not prove and the jury did not find that the charged offense occurred at a time before the statute of limitations expired.

2. DASH OBJECTED TO THE VIOLATION OF THE CONFRONTATION CLAUSE, ASKED TO REDACT ALL SUBSTANTIVE REFERENCES TO THE CHARGED OFFENSE AND WAS PREJUDICED BY THE STATE'S RELIANCE ON OUT-OF-COURT STATEMENTS HE COULD NOT CONFRONT

a. The State cannot avoid the confrontation clause violation by concocting inapplicable claims of waiver. Dash objected to the admission of Francis Taylor's videotaped interview to the police because he could not confront her and it violated the confrontation clause. 9/21/09RP 20-21 ("Your honor, defense would argue that the whole interview is in violation of Crawford<sup>2</sup> and in violation of . . . my client's right to confront this witness against him."). He argued that the recorded interview was testimonial. Id.

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<sup>2</sup> Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

at 21 (“Your Honor, I absolutely believe that it’s testimonial under Crawford.”). He asked the court to bar the admission of the interview. Id. at 23 (“I would argue that the whole interview needs to be suppressed.”). Alternatively, if the court would not exclude the entire interview, counsel contended that “any reference at all to Mr. Dash needs to be taken out of that interview because that clearly is testimonial.” Id. at 23. The prosecution’s claims of waiver and invited error are erroneous and disingenuous.

b. The State introduced testimonial evidence that Dash could not confront.

i. Purpose of interview. “Statements taken by officers in the course of investigations are almost always testimonial. So are statements that are the product of police-initiated contact.” State v. McDaniel, 155 Wn.App. 829, 847, 230 P.3d 245, rev. denied, 169 Wn.2d 1027 (2010) (quoting State v. Tyler, 138 Wn.App. 120, 127, 155 P.3d 1002 (2007)). The police and prosecution interviewed Taylor after the crime had ended, when Dash had no further contact with Taylor, for the purpose of gathering evidence of potential use to a possible prosecution.

The prosecution asserts that Robert Forgrave’s purpose in bringing Taylor to the prosecutor’s office for a recorded interview

was to assess her mental state, as if Forgrave's purpose mattered to the confrontation clause. Resp. Brf. at 60. The prosecution cites no case law that defines the testimonial nature of a structured interview based on what a family friend thinks. Furthermore, if Forgrave wanted someone to assess Taylor's mental state, he would have called a doctor. Forgrave took Taylor to the prosecutor's office because his purpose was to convince the State to criminally prosecute Dash.

The prosecution implies that the interview served a similarly non-prosecutorial purpose for the prosecution and the jury: to understand what Taylor thought and understood about Dash. But the purpose of the interview was to gather evidence that could be used in a criminal prosecution. It was a formal interview with structured questions. What Taylor thought about whether she authorized Dash to manage her money was the precise issue at the core of whether Dash committed theft. Her statement to the authorities falls within the core of the right to confrontation. . Davis v. Washington, 547 U.S. 813, 822, 126 S.Ct. 2266, 165 L.Ed.2d 224, 237 (2006).

ii. The complainant's "state of mind" as a hearsay exception. "[W]e are not convinced a trial court's ruling that a statement is offered for a purpose other than to prove the truth of the matter asserted immunizes the statement from confrontation clause analysis. To survive a hearsay challenge is not, per se, to survive a confrontation challenge." State v. Mason, 160 Wn.2d 910, 922, 162 P.3d 396 (2007). In Mason, the Supreme Court warned that a trial court's decision on whether a statement is hearsay is not dispositive of a confrontation clause issue. Even if a statement meets a hearsay exception, the statement may be "intended to establish a fact" and a declarant would reasonably "expect it would be used in a prosecution or investigation; in other words that it was testimonial." Id.

Inexplicably, the prosecution cites the Court of Appeals decision in Mason, rather than the Supreme Court's more detailed analysis coupled with its caution against equating the nominal application of a hearsay rule with a definitively non-testimonial statement. Resp. Brf. at 63.

The State relies on two other cases of questionable applicability, In re Personal Restraint of Theders<sup>3</sup> and Betts v. Betts,<sup>4</sup> to insist that Taylor's testimony was admissible for non-hearsay purposes.

Theders is unilluminating because it explicitly refused to apply Crawford. The petitioner in Theders lost his direct appeal before Crawford was decided and this Court refused to apply Crawford retroactively to his collateral attack. 130 Wn.App. at 430. The court decided his confrontation clause claim, which involved a concededly false alibi that both the defendant and co-defendant gave when arrested, under pre-Crawford hearsay analysis. Id. at 431. Theders is not helpful to resolving post-Crawford confrontation clause claims.

Betts is similarly unpersuasive authority. Betts was not only a civil case, in which the Sixth Amendment right of confrontation does not attach, but a case involving a child custody dispute where the court allowed hearsay evidence involving the young child's state of mind. 3 Wn.App. at 60. Betts turned on the specific needs

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<sup>3</sup> In re Pers. Restraint of Theders, 130 Wn.App. 422, 123 P.3d 489 (2005).

<sup>4</sup> Betts v. Betts, 3 Wn.App. 53, 473 P.2d 403, rev. denied, 78 Wn.2d 994 (1970).

of a child that allows a more expansive reading of hearsay law. Id. at 61-62 (“the rules of evidence are somewhat relaxed” in child custody cases and the child’s mental state is “especially important”).

The prosecution cites Theiders and Betts to encourage this Court to read a sentence of dictum in Crawford as a broad invitation to admit at trial any evidence if the prosecution can assert a need that does not rest on the truth of the matter asserted. In Crawford, a parenthetical at the end of a footnote says, “(The Clause also does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted. See Tennessee v. Street, 471 U.S. 409, 414, 105 S.Ct. 2078, 85 L.Ed.2d 425 (1985).)” 541 U.S. at 60 n.9.

In response to the prosecution’s suggestion that Dash misread Tennessee v. Street,<sup>5</sup> Dash offers further explanation.

Street did not hold -- as a casual reading of the Crawford dicta might suggest -- that anything goes when the prosecution posits a non-hearsay purpose for introducing an out-of-court testimonial statement.

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<sup>5</sup> Although the prosecution takes pains to point out that it closely reviewed Tennessee v. Street, to discern its meaning, it misstates the case’s name as “Tennessee v. State.” Resp. Brf. at 67-68.

Jeffrey Fisher, "The Truth About the 'Not For Truth' Exception to Crawford," *Champion*, 32 *Champ.* 18, 19 (2008).<sup>6</sup>

Street was decided before Crawford, and the portion of its analysis that rests on notions of reliability would not be controlling today. See Crawford, 541 U.S. at 61. In Street, the defendant testified that the sheriff coerced his confession by reading him a co-defendant's confession and directing him to say the same thing. 471 U.S. at 411. In rebuttal, the sheriff read from the co-defendant's confession to show there were material differences, and therefore the defendant's claim of coercion could not be true. Id. at 412.

The Street Court emphasized that the co-defendant's statement was admitted to show what happened when the defendant confessed, not for its truth and not for what happened during the crime. Id. at 414. Additionally, it was critical to rebut the claim of coercion and there were no alternative ways to shed necessary light on the defendant assertions. "[T]here were no

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<sup>6</sup> The requirement that out of court statements admitted not for their truth meet a "genuine need" requirement is supported by law review articles, such as: John O'Brien, "The Hearsay Within Confrontation," *St. Louis U. Pub. L. Rev.* 501, 526 (2010); Comment, "Crawford's Curious Dictum: Why Testimonial 'Nonhearsay' Implicates the Confrontation Clause," *82 Tul. L. Rev.* 297, 325 (2007).

alternatives that would have both assured the integrity of the trial's truth-seeking function and eliminated the risk of the improper use of evidence." Street, 417 U.S. at 414-15. As discussed in Appellant's Opening Brief, Street is not a broad invitation to use hearsay rules as a backdoor around the confrontation clause.

Here, the prosecution introduced Taylor's lengthy police interview as evidence against Dash in its case-in-chief. The court told the jury this evidence could be used to only establish Taylor's "state of mind." CP 231. The court also instructed the jury to use Taylor's testimony as evidence of Taylor's "capabilities and understanding and cognitive capacities." 9/24/09RP 16-17.

These so-called "limiting instructions" did not remove Taylor's statement from the ambit of the confrontation clause. The critical issue in the case was whether Taylor authorized Dash's spending and salary. Taylor's "state of mind" was the very issue the State was trying to prove: whether she authorized Dash's spending. Her "understanding" of what Dash could do with her finances was squarely within the prosecutorial purpose of Taylor's statement.

There is "ample evidence" that, even with a limiting instruction, there remains a substantial risk exists that "the jury

nonetheless will consider the evidence for the truth of the matter asserted.” Fisher, 32 Champ. at 20. For example, “it is unrealistic to expect human beings to consider damning words for one purpose but not another when ‘[t]he reverberating clang of . . . accusatory words would drown out all weaker sounds.’” Shepard v. United States, 290 U.S. 96, 103-04, 54 S.Ct. 22, 78 L.Ed. 196 (1933). Here, the limiting instructions did not cure the confrontation clause violation because even under those instructions, Taylor’s statements to the police and prosecution constituted “testimony against” Dash based on their content. See Crawford, 541 U.S. at 51.

iii. Redactions. The prosecution turns the tables on Dash by insisting that his failure to demand more redactions waives the confrontation clause error. Resp. Brf. at 64, 66-70. It is the State’s burden to prove that evidence is not testimonial. State v. Koslowski, 166 Wn.2d 409, 417 n.3, 209 P.3d 479 (2009). Dash objected to the entire interview. 9/21/09RP 21-22. The prosecution cites no authority that would require Dash to both raise a confrontation clause objection and also argue that some of the interview should be admitted. The court and prosecution understood Dash objected to the interview. Dash was

correct that the interview violated his right to confrontation and the court's redactions did not cure the error.

The prosecution contends that the trial court's decision to redact small portions of Taylor's statement transforms the legal issue into a factual determination by the trial court as to what redactions were necessary. Resp. Brf. at 71. Confrontation clause violations are reviewed *de novo* on appeal. Mason, 160 Wn.2d at 922. The question is not whether the trial court abused its discretion by failing to redact more of the interview. The question is whether the statement, as redacted, violated Dash's right to confront witnesses against him face to face as guaranteed by the state and federal constitutions. Wash. Const. art. I, § 22; U.S. Const. amend. 6. This Court should not be swayed the prosecution's efforts to put the issue into a box in which it does not belong.

c. The violation of the confrontation clause is not cured by an ineffective and unreasonable limiting instruction. In Taylor's videotaped statement to the police and prosecution, she said she did not authorize Dash to work for her, she did not understand the financial transactions Dash engaged in on Taylor's behalf, she did not direct Dash to write checks for her, she did not

use credit cards or bank machines to withdraw money. See Resp. Brf. at 74 (prosecutor's assessment of Taylor's statement in videotape). In addition, the State called Catherine Baker to talk about the results of her official investigation of suspected abuse of a vulnerable adult, including repeating her interview with Taylor conducted for official investigatory purposes. 9/24/09RP 104-20. While Dash objected to Baker's testimony on hearsay grounds rather than the confrontation clause, the confrontation error is a manifest claim with identifiable consequences that may be raised for the first time on appeal. Dash does not waive the error by questioning the witness about her statements after her direct testimony detailed her investigatory interviews of Taylor of others; Dash was not the person who introduced Baker's testimony, he simply tried to cross-examine her even though he could not cross-examine the witnesses statements she relayed.

The prosecution bears the burden of proving that statements are not testimonial. State v. Alvarez-Abrego, 154 Wn.App. 351, 364, 225 P.3d 296, rev. denied, 168 Wn.2d 889 (2010). It also bears the burden of proving that the jury did not rely on unconfrosted testimony, in violation of the confrontation clause, in rendering its verdict. United States v. Alvarado-Valdez, 521 F.3d

337, 342 (5<sup>th</sup> Cir. 2008). The State concedes that Taylor's statement was important to its case, and there was "no alternative to such testimony." Resp. Brf. at 69.

Taylor's videotaped testimony was the only opportunity to see and hear from the person whose perspective was the focal point of the trial. Furthermore, she addressed substantive issues at the crux of the case. The court told the jury to use Taylor's unopposed testimony to determine her "state of mind" and understanding of events, which is the very legal issue at the heart of the prosecution. Baker's testimony repeated claims by Taylor and others about whether she understood her finances. Dash had no opportunity to explore the honesty, accuracy, or bias of these witnesses who gave statements but were never confronted or cross-examined. The prosecution has not proven the unopposed evidence against Dash did not contribute to the verdict obtained. A new trial is required.

3. THE PROSECUTION DOES NOT INSULATE  
ITS OWN MISCONDUCT BY  
MISREPRESENTING THE LAW AND THEN  
BLAMING THE JURY INSTRUCTIONS

a. The State explicitly misrepresented the legal

definition of good faith claim of title, a critical concept to the case.

The prosecution tries to deflect its erroneous legal argument that misrepresented the legal requirements of a good faith claim of title by blaming Dash for not requesting a different jury instruction. The prosecution cannot avoid responsibility for misrepresenting the law. The prosecution has an ethical and legal obligation to refrain from misrepresenting the law, particularly before the jury when the prosecution's air of authority is at its strongest, its quasi-judicial status is legally recognized, and the jurors are lay people who are easily persuaded by the prosecution's explanation of the law. See State v. Davenport, 100 Wn.2d 757, 760, 675 P.2d 1213 (1984).

The prosecution claims that it did not misrepresent the good faith claim of title defense, but cannot find a single case to cite in support. Resp. Brf. at 87-89. It agrees that several cases say "a defendant cannot be guilty of theft if he or she takes property under a good faith subjective belief that he or she has the rights of ownership or is entitled to possession of the property." State v.

Mora, 110 Wn.App. 850, 855, 43 P.3d 38, rev. denied, 147 Wn.2d 1021 (2002); see also State v. Ager, 128 Wn.2d 85, 92, 904 P.2d 715 (1995) (“a defendant cannot be guilty of theft if the defendant takes property from another ‘under the good faith belief that he is the owner, or entitled to the possession, of the property.’” quoting State v. Hicks, 102 Wn.2d 182, 184, 683 P.2d 186 (1984)).

Yet the prosecution implies that when these cases say the accused must believe he is “the owner, or entitled to the possession, of the property,” they really mean that the accused must believe he has formal title to the property. The prosecution cannot find any legal support for this proposition. The plain language of Mora, Ager, and Hicks show that a good faith claim of title rests on either belief of ownership or entitlement, and “entitlement” would be redundant if it required actual ownership.

In any event, at trial, the prosecution argued that as a matter of law, you “need ownership” for this defense to apply. 9/29/09RP 124. It claimed pointedly, “If the jury finds this was a claim of entitlement,” then it necessarily finds “this defense doesn’t exist.” 9/29/06RP 125-26. It insisted, repeatedly, that the requisite claim of “title” only applies to the owner of the property. 9/29/09RP 124-26; 173-75.

The prosecution's repeated thematic misrepresentation of the law is contrary to the plain language of well-established case law. It could not have been cured by an instruction such as telling the jury that the argument of counsel is not the law when the prosecution used it as a central theme to defeat the theory of defense.

b. The State's exposition on the intersection between civil and criminal law is irrelevant. As part of what may be a tap dance around the legal issues on appeal, the State posits an extended history regarding the application of civil law concepts in criminal cases. This history misses the point of Dash's argument.

The problem with the State's use of fiduciary duty instructions in defining theft is that they misstate the essential elements of the offense of theft. The fact that the State used similar instructions in one other case is irrelevant; those instructions were not discussed in the appeal and may have been perfectly appropriate in that case. State v. Crowder, 103 Wn.App. 20, 11 P.3d 828 (2000); CP 409-39. The fact that civil law definitions of theft-related terms might be permissible in a criminal case on occasion does not resolve whether they accurately stated the

pertinent law governing this case and were properly used by the prosecution.

In a criminal case, “jury instructions ‘must more than adequately convey the law. They must make the relevant legal standard manifestly apparent to the average juror.’” State v. LeFaber, 128 Wn.2d 896, 900, 913 P.2d 369 (1996). Here, the instructions and the arguments about them fundamentally confused the legal issues before the jury and therefore denied Dash a fair trial.

4. THE STATE CORRECTLY CONCEDES THE IMPROPER UNANIMITY INSTRUCTION BUT FAILS TO ACKNOWLEDGE THAT THE SUPREME COURT HAS REJECTED THE HARMLESS ERROR ANALYSIS IT SEEKS

The prosecution properly agrees that State v. Bashaw, 169 Wn.2d 133, 234 P.3d 195 (2010), dictates that the court incorrectly instructed the jury that it must be unanimous to return a verdict on the exceptional sentence, even if some jurors found the State had not proven the aggravating factors. Resp. Brf. at 90.

Though unanimity is required to find the *presence* of a special finding increasing the maximum penalty, it is not required to find the *absence* of such a special finding. The jury instruction here stated that unanimity was required for either determination. That was error.

Bashaw, 169 Wn.2d at 147.

Despite this well-taken concession, the prosecution argues that this error is subject to harmless error review. But Bashaw expressly forecloses this analysis.

The error here was the procedure by which unanimity would be inappropriately achieved. . . . The result of the flawed deliberative process tells us little about what result the jury would have reached had it been given a correct instruction. . . . We therefore cannot conclude beyond a reasonable doubt that the jury instruction error was harmless.

Bashaw, 169 Wn.2d at 147-48. In Bashaw, the jury was polled and asserted that its verdict was unanimous, but the court still held the error could not be harmless because it is an error affecting the fundamental procedure under which the jury deliberated.

The prosecution also urges this Court to find the error harmless by weighing the evidence and deciding that the jury would have reached the same verdict regardless of the unanimity instruction. But Bashaw is predicated on the right to trial by jury, an “inviolable” right guaranteed and strictly protected by the Washington Constitution, article I, sections 21 and 22. Williams-Walker, 167 Wn.2d at 895-96. The jury’s verdict must authorize the punishment imposed. Id. at 899.

In Williams-Walker, 167 Wn.2d at 899, the Court held that guilty verdicts cannot authorize sentence enhancements.

We decline to hold that guilty verdicts alone are sufficient to authorize sentence enhancements. If we adopted this logic, a sentencing court could disregard altogether the statutory requirement that the jury find the defendant's use of a deadly weapon or firearm by special verdict. Such a result violates both the statutory requirements and the defendant's constitutional right to a jury trial.

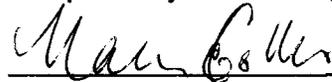
Id. This error was not harmless. This Court does not weigh the evidence. The remedy, as in Bashaw, is to vacate the sentence enhancement and remand for entry of a standard range term if the court affirms the underlying conviction or a new trial if the other errors in the case require one.

C. CONCLUSION.

For the foregoing reasons as well as those argued in Appellant's Opening Brief, Mr. Dash respectfully requests this Court reverse his conviction and sentence and remand his case for further proceedings.

DATED this 1st day of March 2011.

Respectfully submitted,



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Attorneys for Appellant

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 64409-2-I
v.	)	
	)	
TYRONE DASH,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 1<sup>ST</sup> DAY OF MARCH, 2011, 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] IVAN ORTON KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] TYRONE DASH 300087 STAFFORD CREEK CORRECTIONS CENTER 191 CONSTANTINE WAY ABERDEEN, WA 98520	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

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**SIGNED** IN SEATTLE, WASHINGTON THIS 1<sup>ST</sup> DAY OF MARCH, 2011.

X \_\_\_\_\_ 

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