

65239-7

65239-7

NO. 65239-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

WENDY MOSLEY,

Appellant.

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COURT OF APPEALS  
DIVISION ONE  
SEATTLE, WA

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

The Honorable Stephen J. Mura, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State failed to present sufficient evidence to prove Mosley's identity beyond a reasonable doubt.

2. The court erred by admitting photographs downloaded off the Internet without sufficient foundation.

3. The prosecutor committed misconduct in rebuttal by shifting the burden of proof and commenting on appellant's right to silence.

Issues Pertaining to Assignments of Error

1. Where criminal conduct depends on documents, more than mere identity of names is required to prove that the person referenced in the documents is the person on trial. The State presented only documentary evidence and no witness had any personal acquaintance with Mosley. Nor was there any evidence in the record that she resembled the driver's license on file. Did the State fail to present sufficient evidence that Mosley was the individual who committed the criminal conduct?

2. Authentication of a photograph requires testimony from a witness with personal knowledge of the subject matter that the photograph is a reasonably accurate portrayal of that subject matter. A witness testified she downloaded photographs from a website purporting to be appellant's. The witness could not identify from personal knowledge any

aspect of the photographs. Nor could she testify the portrayal was reasonably accurate. Did the court err in admitting the photographs over continuing defense objections?

3. Did prosecutorial misconduct deprive appellant of a fair trial when the prosecutor argued defense counsel “didn’t say that it wasn’t her” improperly shifting the burden of proof and commenting on appellant’s constitutional right to silence?

B. STATEMENT OF THE CASE

1. Procedural Facts

On June 4, 2009, the Whatcom County prosecutor charged appellant Wendy Mosley with one count of unlawful issuance of bank checks and one count of second-degree theft. CP 56-57. The jury found Mosley guilty and the court imposed a standard range sentence of 90 days. CP 18, 27. Notice of appeal was timely filed. CP 2.

2. Substantive Facts

a. Testimony of Detective Tim Ferguson

The State’s case began with testimony from Tim Ferguson, a detective with the Bellingham Police. RP 3. Ferguson testified he was assigned to investigate a report of check fraud from Industrial Credit Union. RP 4. The prosecutor asked, “[D]id you determine that there was

a scheme of some sort regarding check fraud?” RP 4. The detective answered, “Yes, I did.” RP 4.

He described the fraud as a “check kiting scheme,” a “kind of shell game with checks and money with different accounts and different financial institutions.” RP 4. At the prosecutor’s behest, and over defense counsel’s repeated objections to the relevance of this testimony, the detective testified that check kiting is a scheme in which person A writes a check to person B, possibly without any money in the account. RP 5-6. Then, person B writes checks to persons C, D, and E who deposit them and withdraw the money from their accounts before the banks have learned that the checks are not valid. RP 6-7. The detective stated that persons C, D, and E are all stealing from their banks. RP 7. The detective also testified that in such schemes the perpetrators use checks in amounts of under \$200 or \$250 to avoid the bank placing a hold on the funds. RP 7.

Defense counsel objected yet again to the “continued display” but the court overruled the objection. RP 9. The detective continued his discussion, explaining that perpetrators of such schemes also typically use multiple branches of the same bank to make deposits and withdrawals so as not to be recognized by the teller. RP 10. He also explained the

deposits and withdrawals are made in a short period of time, before the bank has time to learn that the checks are not valid. RP 10.

The detective then testified that he learned from the patrol officer that the department had received financial records from Mosley's two accounts. RP 11-12. The prosecutor then asked him, "Did it appear a check kiting scheme was going on?" RP 12. Defense counsel's objection to relevance was sustained. RP 12.

The detective then testified to the contents of the financial records received from Industrial Credit Union (ICU). RP 12-14. The detective testified he examined 5 checks from Kelsey Bartell that Mosley deposited to her ICU account, all of which were returned as not sufficient funds or account closed. RP 13. He also testified Mosley wrote checks to others that were deposited and withdrawn by others. RP 13.

He testified that other persons involved in the scheme were Mosley's son Marcus Mosley, her friends John Anderson, Michael Eggers, Nicole Colton, and Samanda Dillard, and her son's girlfriend Kelsey Bartell. RP 14. On cross examination, the detective claimed to know Samanda Dillard was Mosley's friend because of photographs posted on the social networking website "myspace" purporting to show Mosley holding a sign reading "Samanda's girl for life," Dillard holding a sign reading "Wendizzle is mah Nizzle Shizzle," and a third of Mosley and

Dillard captioned “dorkin out in the back seat.” RP 20-21. Ultimately the second photo was excluded because nothing showed a connection to Mosley. RP 28. There was no evidence the detective knew any of these people or had any personal knowledge of their relationship to Mosley. RP 18-19.

Defense counsel did not object until the prosecutor asked the detective if there were any other indications of fraud on the checks Mosley wrote to others. RP 15. After a side bar, the objection was sustained and the detective did not answer. RP 15-16. The detective finished his testimony on direct by telling the jury he arrested Mosley and Kelsey Bartell related to check activity. RP 16-17. The detective admitted he was not there when the checks were written or deposited or cashed and had no personal knowledge of any of these events. RP 19-20.

b. Testimony of Amy Jo Wauda

The State’s second witness was Amy Jo Wauda, an ICU employee charged with monitoring accounts for fraud. RP 33-34. She testified a teller alerted her something looked wrong. RP 34. She also testified the financial records of Mosley’s account were kept in the normal course of business and made at or near the time the events occurred. RP 36.

Exhibit 1 was a signature card used to open an account in the name of Wendy Mosley on March 26, 2009. RP 38. The account was payable

on death to Mosley's son Marcus. RP 39. It was an individual account, with Mosley the only person authorized to access it. RP 40. The signature card includes a signature purporting to be Mosley's and, Wauda testified, the employee would have checked it against a driver's license at the time. RP 41. Exhibit 2 was a photocopy of a driver's license in the name of Wendy Mosley. RP 42. The person opening the account gave a different address than that listed on the driver's license and provided verification in the form of a municipal court statement, admitted as Exhibit 3. RP 43.

According to bank records, Wauda testified, the account was opened with a deposit of \$22. RP 45. The next day, March 27, 2009, a \$250 check from Kelsey Bartell was deposited at the Barkley Village branch. RP 46. That check was later returned for insufficient funds. RP 47-48. The same day a second \$250 check from Kelsey Bartell was deposited at the State street branch. RP 47, 51. That check too was later returned for insufficient funds. RP 47-48. Later that same day, a \$500 withdrawal was made from the Fred Meyer branch. RP 50, 51.

The next day, March 28, 2009, the bank teller stopped the transaction when a third check was deposited, to the Northwest Avenue branch, also in the amount of \$250 from Kelsey Bartell. RP 48. Two more \$250 checks from Kelsey Bartell were deposited that day at other branches, but the tellers reversed the transactions. RP 48-50. Before the

transactions were reversed, Wauda testified, the money from the deposits was still showing in the accounts, but the bank had placed a hold on it until the checks cleared. RP 54-55. Wauda testified she received an email from a teller alerting her Mosley had twice inquired whether the hold was lifted so she could withdraw the funds. RP 54-55. A fifth check from Kelsey Bartell was refused for deposit. RP 54.

Wauda testified the only valid deposit to the account was the initial \$22. RP 54. ICU sustained a loss of \$537.78 including the \$500 withdrawn on March 27, 2009. RP 57-58. On cross-examination, Wauda admitted she did not see who made the deposits and could testify only that the transactions occurred, not that Mosley herself was involved. RP 58.

c. Testimony of Christopher Juchmes

Another ICU employee, Christopher Juchmes testified that, on April 10, 2009, ICU closed Mosley's account because numerous checks were returned as insufficient funds. RP 73. He notified her via a phone message and a letter. RP 73. Ten checks, all drawn on Mosley's account and dated from March 31, 2009 to April 8, 2009, were presented for payment and were returned after her account was closed. RP 62-71. The total was at least \$4,400. RP 74-75. He also testified he had no contact with Mosley. RP 73. She never called to report any checks stolen or any

fraud on her account. RP 75. She never attempted to work with the bank to discuss what was happening. RP 75.

Juchmes also testified that the signature on the March 27, 2009 withdrawal slip appeared to match Mosley's from the signature card signed when the account was opened. RP 77-78. He admitted, however, that he had no firsthand knowledge of who wrote the checks or presented them to the other banks for payment. RP 79.

d. Testimony of Samantha Henthorn

The only other witness was Samantha Henthorn, an employee of Whatcom Educational Credit Union (WECU). RP 81-82. She testified that checks came back to WECU, returned by ICU because the account was closed. RP 82-83. The checks were presented to WECU as deposits to Marcus Mosley's and Michael Eggers' accounts. RP 83. She testified Marcus Mosley opened an account at WECU's Birchwood branch on April 16, 2009, depositing \$5.00. RP 84-86. At 3:04 p.m. that day, he deposited a \$200 check from Mosley at the Fountain branch. RP 85-86. At 3:17 p.m. he withdrew \$200 cash from the Holly branch. RP 86. At 3:44 p.m. that same day, he deposited a \$200 check from Mosley at the Birchwood branch. RP 86-87. At 3:57, he withdrew \$200 cash at the Bellis Fair branch. RP 87. There was no other activity on Marcus

Mosley's account. RP 87. She identified Marcus Mosley as the person in a surveillance video from the Bellis Fair branch at 3:57. RP 94-95.

Henthorn testified Samanda Dillard deposited a \$200 check from Mosley on April 10, 2009 at 2:41 at the Birchwood branch. RP 88. At 3:04 the same day, she withdrew \$200 cash from the drive-up window at the Holly branch. RP 88. At 3:09 she withdrew a money order for \$121 while inside the Holly branch. RP 88. At 4:20 she deposited a \$200 check from Mosley at the Birchwood branch drive-up window. RP 89. She deposited another \$200 check at 4:33 the same day at the Ferndale branch drive-up window. RP 89. At 4:42 that day, she went inside the Ferndale branch and withdrew \$470. RP 89. All four checks were returned to WECU because the account they were drawn upon had closed. RP 89.

Henthorn testified she went online and found a myspace page purporting to belong to Mosley and listing Dillard as a friend. RP 90. She downloaded and printed the photographs admitted as exhibits 20 and 22. RP 90-92. Defense counsel noted a continuing objection. RP 92. Henthorn admitted she does not know Dillard, but identified her in the photographs from Dillard's identification. RP 92. She also admitted she does not know who posted the photographs or whether they accurately portray what they purport to portray. RP 96.

e. Closing Arguments

The defense argued there was insufficient evidence to connect Mosley to these transactions beyond a reasonable doubt. RP 113-16. He pointed out the lack of any personal connection to Mosley, arguing, “But they’ve not proven to you that she’s responsible.” RP 116.

In rebuttal, the prosecutor told the jury defense counsel, “didn’t tell you what the defense was. He didn’t say that it wasn’t her.” RP 118. There was no objection to this comment at the time. After the jury was dismissed, defense counsel moved for a mistrial, arguing the prosecutor had improperly shifted the burden of proof. RP 123. The court agreed that if requested, it would have instructed the jury to disregard the comment, but felt compelled to deny the mistrial motion given the lack of a timely objection. RP 124.

C. ARGUMENT

1. THE EVIDENCE WAS INSUFFICIENT TO CONNECT MOSLEY TO THE CRIMINAL ACTS AT ISSUE BEYOND A REASONABLE DOUBT.

Due process requires the State to prove beyond a reasonable doubt all the necessary facts of the crime charged. U.S. Const. Amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Crediford, 130 Wn.2d 747, 749, 927 P.2d 1129 (1996). Evidence is sufficient to support a conviction only if, viewed in

the light most favorable to the State, a rational trier of fact could find each element of the crime beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). When the prosecution fails to present sufficient evidence on any essential element, reversal and dismissal of the conviction is required. State v. Stanton, 68 Wn. App. 855, 867, 845 P.2d 1365 (1993). In this case, this Court should reverse and dismiss Mosley's convictions because the State failed to present sufficient evidence of she was the person who engaged in the transactions at issue.

"It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense." State v. Huber, 129 Wn. App. 499, 501, 119 P.3d 388 (2005) (quoting State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974)). When criminal liability depends on the accused being the person to whom a document pertains, the State must do more than authenticate and admit the document. Huber, 129 Wn. App. at 502. It must show beyond a reasonable doubt that the accused is the person named in the document; identity of name is insufficient. Id.

The State does not meet this burden merely because the defense presents no evidence refuting the claim of identity. Id. at 503. The State must present affirmative evidence such as photographs, fingerprints, eyewitness identification, or distinctive personal information. Id.

In Huber, a bail jumping case, the State presented only documents referencing Wayne Huber, but no evidence the person on trial was the same person named in those documents. Id. On appeal, the court reversed Huber's conviction, concluding the documentary evidence was insufficient to show Huber was the person named in the documents. Id. at 504.

As in Huber, the evidence here was entirely documentary. There was no evidence directly connecting Mosley to the accounts and checks at issue. The only witness who testified to ever having met Mosley was the detective who testified he arrested her. RP 16. He had no personal knowledge of who conducted the transactions. RP 19-20.

The State may argue that Exhibit 2, a copy of a driver's license was sufficient, but Huber rejected a similar claim. In Huber, one of the warrants contained a general physical description, but the court found this insufficient, not because the description was vague, but because the record did not reflect any comparison between that description and the person before the court. 129 Wn. App. at 503 n. 18. Here there is also no record that the driver's license photograph in any way resembled Wendy Mosley.

Even assuming Mosley resembled the photograph on the driver's license, there was no evidence Mosley was the person who presented that license to open the account or withdraw the money. In these days of frequent identity theft, the mere fact of having the same name is

insufficient to show Mosley's identity. See, e.g., Chris Jay Hoofnagle, Internalizing Identity Theft, 13 UCLA J.L. & Tech. 2, 1 (2009) (9.9 million Americans fell victim to identity theft in 2009); Darren M. Gelber, Recovering From Identity Theft: A Case Study, 254-OCT N.J. Law. 28, 29 (2008) (discussing Identity Theft Resource Center study showing that, in 2007, 62 percent of survey respondents reported financial crimes resulting in warrants being issued in the victim's name, more than two and a half times more than in 2006); Chris Jay Hoofnagle, Identity Theft: Making The Known Unknowns Known, 21 Harv. J.L. & Tech. 97, 98 (2007) (Federal Trade Commission has identified identity theft as the fastest growing white collar crime).

The State may argue, as it did at trial, that Mosley's identity is sufficiently proven because the checks she deposited came from her son's girlfriend and the checks she wrote were to her son and her friends. But there was insufficient evidence of these connections as well. No one testified to ever meeting Mosley, her son Marcus, or any of her so-called friends. They appeared only as names on documents, not as actual humans with demonstrated connections to Mosley. As discussed below, the State's feeble attempts to draw this connection led it to present inadmissible evidence without sufficient foundation and attempt to bolster

its case by commenting on Mosley's right to silence in rebuttal closing argument.

2. PHOTOGRAPHS TAKEN AND POSTED ON THE INTERNET BY UNKNOWN PARTIES WERE NOT PROPERLY AUTHENTICATED AND SHOULD HAVE BEEN EXCLUDED.

The State attempted to use photographs downloaded from the Internet social networking website "myspace" to connect Mosley to the criminal transactions at issue. RP 18, 90-92. Over repeated defense objection, the court admitted two of the photographs with no evidence by anyone with personal knowledge, that the subject matter was what it purported to be. RP 90-92. These photographs purported to show a friendship between Mosley and Samantha Dillard, the recipient of several of her checks. RP 17-18; 90. But the court abused its discretion in admitting these photographs without a proper foundation.

Evidence may not be admitted at trial unless it is authenticated. ER 901. Authentication requires evidence sufficient to support a reasonable belief that the item is what it purports to be. Id. Generally, the testimony of a witness with knowledge is sufficient. Id. When the evidence at issue is a photograph, courts have required that a photograph be authenticated by testimony from a witness who has first-hand knowledge of the subject matter of the photograph. Toftoy v. Ocean

Shores Properties, 71 Wn.2d 833, 836, 431 P.2d 212 (1967) (citing Kelley v. Great Northern Railway Co., 59 Wn.2d 894, 371 P.2d 528 (1962); State v. Tatum, 58 Wn.2d 73, 360 P.2d 754 (1961)). That witness must testify that the photograph is a reasonably accurate portrayal of the subject matter. Id.

In this case, the court admitted photographs that a bank employee found on the internet, on a website purporting to be Mosley's. RP 90-92. The bank employee could not and did not claim to have any personal, first-hand knowledge of the subject matter of the photograph. RP 90-92. She did not know who took it, who posted it on the internet, or whether it had been altered. RP 90-92. She had no personal firsthand knowledge of what either Samantha Dillard or Wendy Mosley looked like. RP 90-92. She could not and did not testify the photographs "accurately portray[ed] the subject matter" because she had no personal knowledge of that subject matter. Toftoy, 71 Wn.2d at 836. Because the bank employee had no first-hand knowledge of the subject matter of the photographs, the court erred in overruling defense counsel's repeated objections to the foundation and in admitting them as exhibits in Mosley's trial.

3. THE PROSECUTOR'S COMMENTS ON MOSLEY'S FAILURE TO TESTIFY VIOLATED DUE PROCESS BY DEPRIVING MOSLEY OF THE FULL BENEFIT OF THE REASONABLE DOUBT STANDARD.

Both the United States and Washington Constitutions guarantee a criminal defendant the right to be free from self-incrimination, including the right to silence. U.S. Const. amend. V; Const. art. I, § 9; State v. Easter, 130 Wn.2d 228, 235, 922 P.2d 1285 (1996). A comment by the prosecuting attorney on the defendant's failure to testify is prohibited by the Fifth Amendment to the United States Constitution and violates the due process protections of the Fourteenth Amendment. Griffin v. California, 380 U.S. 609, 615, 85 S. Ct. 1229, 14 L. Ed. 2d 106 (1965); State v. Brett, 126 Wn.2d 136, 176, 892 P.2d 29 (1995). A prosecuting attorney's comment on a defendant's silence or failure to testify is likewise prohibited under article I, § 9 of the Washington Constitution. State v. Burke, 163 Wn.2d 204, 217, 181 P.3d 1 (2008).

It is misconduct for the State, in closing argument, to make a statement the jury would naturally and necessarily accept as a comment on the defendant's failure to testify. State v. Sargent, 40 Wn. App. 340, 346, 698 P.2d 598 (1985). While mere reference to silence may be permissible, the State crosses the line into impermissible comment when it argues silence as evidence of guilt. Burke, 163 Wn.2d at 217. "[W]hen the State invites

the jury to infer guilt from the invocation of the right of silence, the Fifth Amendment and article I, section 9 of the Washington Constitution are violated.” Id.

The prosecutor in this case made precisely this constitutionally forbidden invitation when he argued defense counsel “didn’t say that it wasn’t her.” RP 118. Even when a comment does not directly implicate the defendant’s silence, a comment on silence by another person whose conduct is imputed to the defendant is equally offensive to the constitution. See Burke, 163 Wn.2d at 222 (comment on defendant’s father’s suggestion to end the interview). Likewise, a comment on defense counsel’s failure to assert that “it wasn’t her” was an indirect but obvious comment on Mosley’s failure to testify.

Without Mosley’s testimony, there was no direct evidence she was not responsible for this check fraud. Attorneys are prohibited from making arguments based on facts not in evidence. State v. Belgarde, 110 Wn.2d 504, 507-08, 755 P.2d 174 (1988); RPC 3.3. Thus, defense counsel could not, in good conscience, affirmatively make the argument the prosecutor faulted him for not making. The defense was reasonable doubt, the insufficiency of the State’s evidence to prove Mosley’s involvement. Pointing out those reasonable doubts, the lack of any personal connection of the documentary evidence to Mosley was the gist of the defense closing. RP

112-17. By commenting on counsel's failure to assert she "didn't do it," the prosecutor impliedly commented on Mosley's failure to take the stand in her own defense. The jury could not help but take the argument as a comment on Mosley's failure to testify.

The comment on Mosley's failure to "say that it wasn't her" also indicated to the jury its reasonable doubts were not enough to acquit without affirmative evidence of innocence, essentially shifting the burden of proof and diminishing the reasonable doubt standard. The presumption of innocence and the burden of proof beyond a reasonable doubt is the bedrock of our criminal justice system. State v. Bennett, 161 Wn.2d 256, 315-16, 165 P.3d 1241 (2007). Due process requires giving the defendant the "full benefit of the reasonable doubt standard." Beck v. Alabama, 447 U.S. 625, 633, 100 S. Ct. 2382, 65 L. Ed. 2d 392 (1980). That benefit includes the jury holding the State to its burden of proof, and requires acquittal if the State has failed to exclude all reasonable doubts, regardless of whether the defendant testifies that "it wasn't her." By commenting on the absence of affirmative argument (and evidence) that "it wasn't her," the prosecutor used her failure to testify as evidence of guilt and deprived Mosley of the full benefit of the reasonable doubt standard.

The prosecutor's comments shifted the burden of proof similarly to comments that were held improper in State v. Cleveland, 58 Wn. App. 634,

647-48, 794 P.2d 546 (1990). There the prosecutor argued, “Mr. Cleveland was given a chance to present any and all evidence that he felt would help you decide. He has a good defense attorney, and you can bet your bottom dollar that Mr. Jones would not have overlooked any opportunity to present admissible, helpful evidence to you.” Id. The court held the argument was improper, the objection should have been sustained and the argument stricken and the jury instructed to disregard. Id. at 648. The court reasoned that this argument inferred a duty to present favorable evidence if it existed. Id. at 648.

Comments on the right to silence are constitutional errors that require reversal unless demonstrably harmless beyond a reasonable doubt. Burke, 163 Wn.2d at 222. Likewise a prosecutor’s comment shifting the burden of proof to the defense requires reversal unless harmless beyond a reasonable doubt. Cleveland, 58 Wn. App. at 648; see also State v. French, 101 Wn. App. 380, 386, 4 P.3d 857 (2000); State v. Fleming, 83 Wn. App. 209, 213-16, 921 P.2d 1076 (1996); State v. Traweek, 43 Wn. App. 99, 106-108, 715 P.2d 1148 (1986), disapproved on other grounds by State v. Blair, 117 Wn.2d 479, 816 P.2d 718 (1991).

In Cleveland, the court held the prosecutor’s comments were harmless beyond a reasonable doubt because in a child molestation case, the jury would understand there typically are no witnesses and because

Cleveland testified he was innocent of the accusations. Cleveland, 58 Wn. App. at 648. Under those circumstances, the argument was harmless because the defendant did present as much evidence as the jury could expect. Here, by contrast, Mosley did not testify. She exercised her right to silence and thus the comment on it was not harmless.

This case is more similar to Burke, in which the court held the comment on Burke's exercise of his right to silence both undermined his credibility as a witness and used his silence as substantive evidence against him. 163 Wn.2d at 222-23. Here, the prosecutor's comments were not harmless because they directly undermined the defense strategy of pointing out reasonable doubts based on the many weaknesses and inconsistencies in the State's case, rather than presenting affirmative evidence and used Mosley's silence as substantive evidence against her. Reversal is required because the prosecutor's argument deprived Mosley of the full benefit of the beyond a reasonable doubt standard and shifted the burden of proof.

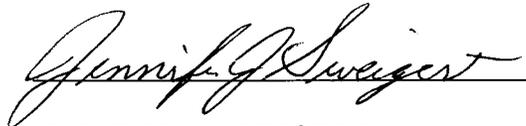
D. CONCLUSION

For the foregoing reasons, Mosley respectfully requests this Court reverse her convictions.

DATED this 28<sup>th</sup> day of September, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in cursive script, reading "Jennifer J. Sweigert", written over a horizontal line.

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 65239-7-I
	)	
WENDY MOSLEY,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 28<sup>TH</sup> DAY OF SEPTEMBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] WHATCOM COUNTY PROSECUTOR'S OFFICE  
WHATCOM COUNTY COURTHOUSE  
311 GRAND AVENUE  
BELLINGHAM, WA 98225
  
- [X] WENDY MOSLEY  
NO. 199830  
WHATCOM COUNTY JAIL  
311 GRAND AVENUE  
BELLINGHAM, WA 98225

**SIGNED** IN SEATTLE WASHINGTON, THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2010.

x *Patrick Mayovsky*