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Sep 10, 2015  
Court of Appeals  
Division I  
State of Washington

No. 73130-1-I

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

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STATE OF WASHINGTON,

Respondent/Cross-Appellant,

v.

EVAN WILSON,

Appellant/Cross-Respondent.

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

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it did not give Evan Wilson's proposed instruction informing the jury it could not use his exercise of his constitutional right not to testify to infer guilt. CP 172.

2. The failure to instruct the jury it could not infer guilt from Wilson's decision not to testify violated his article I, section 9 right not to be compelled to give evidence against himself.

3. The failure to instruct the jury it could not infer guilt from Wilson's decision not to testify violated his Fifth Amendment right not to be a witness against himself.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Article I, section 9's guarantee that "no person shall be compelled in any criminal case to give evidence against himself" requires the trial court to instruct the jury it may not draw any adverse inference from a defendant's failure to testify on his own behalf. When the defendant requests such an instruction and the court does not give it, reversal is required. Wilson requested the court give WPIC 6.31, which would have informed the jury he was not required to testify and the jury could not use his decision not to testify "to infer guilt or to prejudice him in any way." Must Wilson's convictions be reversed

because the trial court did not give his proposed instruction?

(Assignments of Error 1, 2)

2. The Fifth Amendment guarantee that no person “shall be compelled in any criminal case to be a witness against himself” requires the trial court to instruct the jury it may not draw an adverse inference from a defendant’s failure to testify on his own behalf when the instruction is requested by the defense. Wilson requested the court give WPIC 6.31, which would have informed the jury that he was not required to testify and the jury could not use his decision not to testify “to infer guilt or to prejudice him in any way.” The trial court, however, did not give the instruction.

a. Does the violation of Wilson’s Fifth Amendment right not to testify require the automatic reversal of his convictions?

(Assignments of Error 1, 3)

b. In the alternative, must Wilson’s conviction be reversed because this Court cannot be convinced beyond a reasonable doubt that the constitutional error did not contribute to the jury’s verdicts? (Assignments of Error 1, 3)

### C. STATEMENT OF THE CASE

Nineteen-year-old Blake Rosenthal obtained a Sig Sauer 1911 handgun he believed was worth \$12,000 to \$13,000 in exchange for the rifle his mother had given him for his high school graduation and an additional \$300. 1/26/15 RP 98, 103-05. He quickly decided to sell the handgun and offered it for sale for \$1000 on Facebook. Id. at 108.

Rosenthal showed his 21-year-old friend Evan Wilson a photograph of the firearm and asked Wilson if he knew anyone interested in buying it. 1/26/15 RP 109-10. Wilson found a buyer who was willing to pay \$800 and two ounces of marijuana for the gun, and Rosenthal agreed to sell it for \$900 and one ounce of marijuana.<sup>1</sup> 1/27/15 RP 21-22.

Rosenthal and Wilson took the ferry from Whidbey Island to Mukilteo to meet the possible buyer. 1/27/15 RP 24-25. Rosenthal brought the Sig Sauer as well as two kinds of ammunition in a backpack. Id. at 22-23.

They met Wiley Breon Smith in Mukilteo and got into his car, where Rosenthal showed him the weapon. 1/27/15 RP 25-28, 96. Smith put an envelope with cash on the center armrest of the car. Id. at

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<sup>1</sup> Rosenthal could not legally purchase marijuana because he was under 21 years of age. RCW 69.50.4013(4).

27. Smith believed the price was only \$500 to \$600 plus two ounces of marijuana. Id. at 93. They decided to drive to Smith's apartment so Rosenthal could show him how to disassemble the gun for cleaning. Id. at 28.

According to Smith and Rosenthal, Rosenthal gave the gun to Wilson as they were driving. 1/27/15 RP 29, 98. Wilson purportedly waved the gun around and asked Rosenthal how it felt to be robbed with his own gun. Id. at 32, 99, 100. Smith and Rosenthal believed the gun was loaded. Id. at 31, 99. When Smith stopped the car in a residential neighborhood, Wilson demanded Rosenthal's cell phone, which Rosenthal gave to him. Id. at 33-35, 102, 158-59. Rosenthal was prevented from taking the payment envelope as he got out of the car. Id. at 36-37.

Smith and Wilson drove to Smith's home in Everett where Smith took a photograph of himself with the gun which he posted on his Facebook page. 1/27/15 RP 103-05, 171-72. Smith believed there was no reason he could not legally possess a firearm, but he was the subject of a no-contact order that included that prohibition. Id. at 112; Ex. 20. Smith then gave Wilson a ride to a friend's house in Everett. 1/27/15 RP 103, 105. Smith, however, told the police that he

immediately dropped Wilson off because he was mad at him. Id. at 108. He also denied any Facebook contact with Wilson during a pretrial interview. Id. at 53-54.

Meanwhile, Rosenthal went to three or four houses asking to use the residents' telephones rather than asking them to call 911. 1/27/15 RP 38-39, 41-42. Once someone let him use their telephone, Rosenthal tried to reach his mother. Id. at 42, 65. Rosenthal claimed that he was afraid to call the police because Wilson had threatened to hurt his younger brothers, and he also knew that police involvement would hurt his anticipated military career. Id. at 38-40. A passing motorist then gave Rosenthal a ride to the ferry dock. Id. at 42. Rosenthal met his mother in Clinton, and she advised him to call 911. Id. at 42-43, 46, 151. When Rosenthal talked to the police, he did not tell them that he had agreed to accept marijuana as part of his payment for the firearm. 1/27/15 RP 48, 62.

The Snohomish County Prosecutor charged Wilson and Smith with first degree robbery with a firearm enhancement, unlawful possession of a firearm in the second degree, possessing a stolen firearm, and intimidating a witness. CP 180-81. Smith reached a plea agreement with the prosecutor and pleaded guilty to a single count of

possession of stolen property in the third degree in exchange for his testimony against Wilson. 1/27/15 RP 104-05. Rosenthal contacted an attorney and was granted immunity by the prosecutor in exchange for his testimony. Ex. 14; 1/27/15 RP 55-56.

Rosenthal and Smith testified they did not know each other. 1/27/15 RP 27-28, 96. 110. A defense witness, however, testified that he met Smith through Wilson and they spent several hours helping Rosenthal in his unsuccessful attempt to obtain marijuana at dispensaries in Everett and Seattle. 1/28/15 RP 20-22. Another defense witness was with Rosenthal and Smith for three to four hours at the Everett Mall. Id. at 34. Smith was memorable because he resembled professional football player Marshawn Lynch. Id. at 22, 33-34.

Wilson did not testify in his own behalf. The court did not give the jury his requested instruction that it could not draw adverse inferences from his failure to testify. CP 121-50, 171.

Wilson was convicted of first degree robbery with a firearm enhancement, unlawful possession of a firearm, and possessing a stolen firearm. CP 116-19. He was acquitted of the intimidating a witness

charge. CP 115. The court sentenced Wilson to 150 months in prison followed by 18 months community custody. CP 10-11.

D. ARGUMENT

Wilson’s attorney proposed a simple instruction designed to ensure that the jury did not draw adverse inferences from his client’s exercise of his constitutional right not to testify:

The defendant is not required to testify. You may not use the fact that the defendant has not testified to infer guilt or to prejudice him in any way.

CP 172 (WPIC 6.31). The trial court did not give the instruction to the jury. CP 121-50. The lack of a “no adverse inference” instruction left the jury free to use Wilson’s silence against him in violation of his state and federal constitutional rights not to testify against himself.

**1. The court’s failure to give Evan Wilson’s requested instruction informing the jury that it could not infer guilt from his failure to testify violated article I section 9.**

Article I, section 9 provides, “No person shall be compelled in any criminal case to give evidence against himself . . . .” This constitutional provision requires the trial court to instruct the jury that it may not draw any inference from the defendant’s failure to testify on his own behalf when an instruction is requested by the defense. State v. Pavelich, 153 Wash. 379, 386, 279 P. 1102 (1929) (Pavelich II); State

v. Pavelich, 150 Wash. 411, 415, 420, 273 P. 182 (1928) (Pavelich I), aff'd en banc, 153 Wash. 701 (1929); accord City of Seattle v. Hawley, 13 Wn.2d 357, 124 P.2d 961 (1942) (and cases cited therein). Reversal is required under article I, section 9 when the court does not give this important instruction upon request. Pavelich II, 153 Wash. at 421.

From before the adoption of the Washington Constitution until 1927, trial courts were required by statute to instruct the jury it could not infer guilt from the defendant's decision not to testify. Pavelich I, 150 Wash. at 413, 415-16; State v. Hanes, 84 Wash. 601, 603-04, 147 P. 193 (1915); Linbeck v. State, 1 Wash. 336, 338, 25 P. 452 (1890). The former statute provided in part, "it shall be the duty of the court to instruct the jury that no inference of guilt shall arise against the accused if the accused shall fail or refuse to testify as a witness in his or her own behalf." Pavelich I, 150 Wash. at 415 (quoting Rem. Comp. Stat. § 2148). Failure to so instruct the jury required reversal unless affirmatively waived, whether or not the instruction was requested by the defense. Hanes, 84 Wash. at 604; State v. Myers, 8 Wash. 177, 181-84, 35 P. 580, 35 P. 756 (1894); Linbeck, 1 Wash. at 338-39.

In Pavelich I, the defendant requested an instruction that the jury could not draw adverse inferences from his failure to testify.<sup>2</sup> Pavelich I, 150 Wash. at 412. The trial court declined to give the instruction because the statute requiring the instruction had been recently abrogated when the Supreme Court adopted new court rules. Id. at 413.

The Pavelich I Court reversed, holding that after the adoption of the constitution, the statute simply provided legislative protection to the rights provided by article I, section 9. Pavelich I, 150 Wash. at 415. The court found that the requested no-adverse-inference instruction was necessary to ensure that the defendant's exercise of his right not to testify was not used against him. Id. at 419.

Under the protective provision of our Constitution heretofore quoted, to secure to the accused the full benefit of his privilege, silence must not be construed against him. The granting to him of the privilege of testifying at his option would be like making evidence against him, if it were thereafter held that failure to exercise the privilege granted justified an inference of guilt.

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<sup>2</sup> The instruction read:

You are instructed that you are to draw no inference of guilt against the defendant John Pavelich because he has not testified as a witness in his own behalf. As heretofore stated in these instruction, he is presumed innocent of any crime and this presumption remains with him throughout the trial, until and unless the state proves his guilt to the jury's satisfaction beyond a reasonable doubt. He is free to testify or not as witness in his own behalf, but no presumption or inference of guilt from his refusal or failure to testify is to be indulged by you.

Pavelich I, 150 Wash. at 412.

Id. The court concluded that article I, section 9 required the trial court to instruct the jury that it could not infer guilt from the defendant's failure to testify. Id. at 420.

Due to the violation of the defendant's article I, section 9 right not to testify, the Court reversed the defendant's convictions and remanded for a new trial. Pavelich I, 150 Wash. at 420. The Court cited with approval its reasoning in Myers:

This court has no right to conclude that this omission of the court was not largely instrumental in the conviction of this defendant. It would be a very natural thing for the jury to take into consideration the silence of the defendant when he was charged with this crime, and to use it most tellingly against him.

Pavelich I, 150 Wash. at 416 (quoting Myers, 8 Wash. at 184).

Washington is not alone in determining that the failure to give a requested no-adverse-inference instruction requires automatic reversal. The Supreme Courts of Pennsylvania and Illinois have come to the same conclusion. Commonwealth v. Lewis, 528 Pa. 440, 453, 598 A.2d 975 (Pa. 1991) (under Pennsylvania Constitution, failure to give no-adverse-inference instruction when requested not subject to harmless error analysis); People v. Ramirez, 98 Ill.2d 439, 451, 457 N.E.2d 31 (Ill. 1983) (court's refusal to instruct jury not to consider

defendant's silence constituted reversible error because it "affected substantial rights of the defendant").

The trial court's failure to give Wilson's proposed instruction violated his state constitutional right not to testify.<sup>3</sup> As in Pavelich I and Myers, this Court cannot assume the jury did not draw any negative inferences from Wilson's failure to testify. His convictions must be reversed and remanded for a new trial. Pavelich I, 150 Wash. at 421.

**2. The court's failure to give Evan Wilson's requested instruction informing the jury that it could not infer guilt from his failure to testify violated his Fifth Amendment right to remain silent.**

Just as the trial court's failure to give Wilson's proposed no-adverse-inference instruction violated article I, section 9, it also violated Wilson's constitutional rights under the Fifth Amendment. This Court should find that this is structural error requiring automatic reversal of Wilson's conviction or, in the alternative, that the error is not harmless beyond a reasonable doubt.

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<sup>3</sup> No Gunwall analysis is necessary because the Washington Supreme Court has previously determined that article I, section 9, requires reversal when a proposed no-adverse-inference instruction is not given upon request. See State v. Pugh, 167 Wn.2d 825, 835, 225 P.2d 892 (2009).

- a. In order to protect a defendant’s Fifth Amendment privilege not to testify, a trial court must give a no adverse inference instruction when requested by the defense.

The Fifth Amendment guarantees that no person “shall be compelled in any criminal case to be a witness against himself.”<sup>4</sup> This constitutional provision reflects our nation’s “fundamental values,” including our “unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury, or contempt,” placement of the burden of proof on the government rather than the individual, “distrust of self-deprecatory statements,” and our realization that the privilege protects the innocent. Carter v. Kentucky, 450 U.S. 288, 299-300, 101 S. Ct. 1112, 67 L. Ed. 2d 241 (1981) (quoting Murphy v. Waterfront Comm’n, 378 U.S. 52, 55, 84 S. Ct. 1594, 12 L. Ed. 2d 678 (1964)). No adverse inferences may be drawn from the exercise of the privilege not to testify. Carter, 450 U.S. at 301; Griffin v. California, 380 U.S. 609, 615, 85 S. Ct. 1229, 14 L. Ed. 2d 106 (1965).

An instruction that the jury cannot draw adverse inferences from the defendant’s exercise of his Fifth Amendment right not to testify is a “powerful tool” in protecting that constitutional privilege. Carter, 450

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<sup>4</sup> The Fifth Amendment applies to the states through the Fourteenth Amendment. Malloy v. Hogan, 378 U.S. 1, 11, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964).

U.S. at 303. The Carter Court held that a trial court is required to give such an instruction when requested by the accused in order to protect his Fifth Amendment privilege.

[T]he failure to limit the jurors' speculation on the meaning of [the defendant's] silence, when the defendant makes a timely request that a prophylactic instruction be given, exacts an impermissible toll on the full and free exercise of the privilege. Accordingly, we hold that a state trial judge has the constitutional obligation, upon proper request, to minimize the danger that the jury will give evidentiary weight to a defendant's failure to testify.

Id. at 305. The trial court's failure to give Wilson's requested no adverse inference instruction violated his rights under the Fifth Amendment.

b. The violation of Wilson's Fifth Amendment rights requires automatic reversal of his convictions.

The Carter Court expressly reserved decision on whether error in refusing to give a no-adverse-inference instruction on request is structural error or reviewed under the constitutional harmless error standard. Carter, 450 U.S. at 304; accord James v. Kentucky, 466 U.S. 341, 351, 104 S. Ct. 1830, 80 L. Ed. 2d 346 (1984). The Court noted that "it is arguable" such error can never be harmless. Carter, 450 U.S. at 304 (citing Bruno v. United States, 308 U.S. 287, 293, 60 S. Ct. 198, 84 L. Ed. 2d 257 (1939) (holding that federal statutory right to a no-

adverse-inference instruction was not subject to harmless error analysis because it affects a substantial right of the defendant)). The Washington Supreme Court also has not addressed the issue under the Fifth Amendment. This Court should hold a no-adverse-inference instruction is so basic to a fair trial that the refusal to give such an instruction when requested cannot be treated as harmless error.

Federal constitutional error that “necessarily renders a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence” is structural error that requires automatic reversal. Washington v. Recuenco, 548 U.S. 212, 218-19, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006); Neder v. United States, 527 U.S. 1, 9, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999). These fundamental constitutional errors “defy analysis by harmless error standards.” Neder, 527 U.S. at 7 (quoting Arizona v. Fulminante, 499 U.S. 279, 309, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991)). Common sense and the reasoning of Carter demonstrate that the failure to give a requested no-adverse-inference instruction is such a constitutional error.

Wilson had the constitutional right to have his guilt or innocence decided based only upon the evidence presented at trial. Taylor v. Kentucky, 436 U.S. 478, 485, 98 S. Ct. 1930, 56 L. Ed. 2d

468 (1978). Courts must be alert to factors that undermine this principle and guard against them. Estelle v. Williams, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976). Similarly, the accused “must pay no court-imposed price for the exercise of his constitutional privilege not to testify.” Carter, 450 U.S. at 301.

Jurors are not experts in criminal law and procedure and therefore must be accurately instructed. Carter, 450 U.S. at 302. This is especially true of instructions about the Fifth Amendment privilege, as many people assume that those who invoke the Fifth Amendment are guilty. Id. (quoting Ullmann v. United States, 350 U.S. 422, 426, 76 S. Ct. 497, 100 L. Ed. 511 (1956)). When a jury is not instructed that it may not draw adverse inferences from the defendant’s decision not to testify, the jury is “left to roam at large with only its untutored instincts to guide it, to draw from the defendant’s silence broad inferences of guilt.” Carter, 450 U.S. at 301.

Just as the Fifth Amendment reflects fundamental cultural values, the right to a jury trial reflects “a profound judgment about the way in which law should be enforced and justice administered.” Sullivan v. Louisiana, 508 U.S. 275, 281, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993) (quoting Duncan v. Louisiana, 391 U.S. 145, 155, 88 S.

Ct. 1444, 20 L. Ed. 2d 491 (1968)). A faulty reasonable doubt instruction is structural error that requires automatic reversal because it results in a trial where the accused is not afforded his right to a jury determination beyond a reasonable doubt. Id. “The deprivation of that right, with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as ‘structural error.’” Id. at 281-82. Similarly, the defendant right to a jury trial is violated when the jury is not instructed not to use a defendant’s exercise of his right not to testify as evidence of guilt.

There is no way for a reviewing court to know if the jurors used Wilson’s silence against him. As with the lack of a valid reasonable doubt instruction, the lack of a no-adverse-inference instruction is “necessarily unquantifiable and indeterminate” and therefore structural error. Wilson’s conviction should be reversed because the trial court’s failure to instruct the jury that it could not use Wilson’s silence against him was structural error. See Phillips v. State, 726 So.2d 292, 295 (Ala.App. 1998) (finding denial of requested no-adverse-inference instruction “plain error” in light of caselaw and important constitutional issues involved).

c. In the alternative, the violation of Wilson’s Fifth Amendment rights is not harmless beyond a reasonable doubt.

When a federal constitutional error is not structural, it is analyzed under the constitutional harmless error standard. The conviction must be reversed unless the State can demonstrate beyond a reasonable doubt that the error did not contribute to the defendant’s conviction. Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967). The harmless error test is designed to block the reversal of convictions for small errors or defects that have little likelihood of changing the result of the trial. Id. at 22. “The inquiry . . . is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.” Sullivan, 508 U.S. at 279 (emphasis in original).

The Chapman Court addressed a violation of the Fifth Amendment when the prosecuting attorney commented freely on the two defendants’ failure to testify and urged the jury to infer guilt from their silence. Chapman, 386 U.S. at 19. The trial court also instructed the jury that it could draw adverse inferences from their failure to

testify.<sup>5</sup> Id. The court quickly found the error was not harmless beyond a reasonable doubt given that the jury was essentially informed it was required to draw all inferences in favor of the State and, by their silence, the defendants served as witnesses against themselves. Id. at 25. Although the State presented ample circumstantial evidence to support the conviction, the court was not convinced that, absent the improper comments, a fair-minded jury could might have found the defendants not guilty. Id. at 25-26.

The jury in Wilson's case was instructed as to the correct burden of proof and the presumption of innocence. CP 126 (Instruction 3). But no instruction informed the jurors that they could not use the defendant's silence to infer guilt or prejudice him in any way.

This instruction was critical because the central issue in the case was the credibility of the State's two witnesses, one of whom was Wilson's co-defendant. Rosenthal received immunity from the prosecutor in exchange for testifying against Wilson. Ex. 14; 1/27/15 RP 56-57. Rosenthal was on a delayed entry program with the United States Marine Corps, and he had a strong motive to lie. 1/27/15 RP 40.

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<sup>5</sup> The argument and instruction were then permitted by the California Constitution but later found unconstitutional in Griffin. Chapman, 386 U.S. at 19.

Smith was charged as Wilson's accomplice, and his testimony was therefore "inevitably suspect." Bruton v. United States, 391 U.S. 123, 136, 88 S. Ct. 1620, 20 L. Ed.2d 426 (1968).<sup>6</sup> Smith was charged with the same crimes as Wilson, but the State dropped the robbery and unlawful possession of a firearm charges and reduced the possession of a stolen firearm count to possessing stolen property in the third degree, a gross misdemeanor, in exchange for his testimony against Wilson. 1/27/15 RP 105-06. Smith also asserted his Fifth Amendment right not to testify against himself at one point during cross-examination and admitted lying to the police. 1/27/15 RP 128-30. In addition, Rosenthal and Smith claimed not to know each other, although two witnesses had been together with the two young men for several hours.

In short, Rosenthal and Smith's credibility was so shaky that it is naturally likely the jury wanted to hear Wilson's version of the events and may have assumed that, because he did not testify and proclaim his innocence, he was guilty. This Court cannot be convinced beyond a reasonable doubt that the jury verdict would have been the same if the jury had been instructed that it could not use Wilson's

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<sup>6</sup> Washington juries are usually instructed to carefully examine an accomplice's testimony and treat it with great caution. State v. Harris, 102 Wn.2d 148, 155, 685 P.2d 584 (1984) (best practice to give cautionary instruction when accomplice testimony introduced); WPIC 6.05. Defense counsel did not request the instruction in this case. CP 153-73.

decision not to testify against him in any way. See United States v. Burgess, 175 F.3d 1261, 1268 (11<sup>th</sup> Cir. 1999) (“It is thus not unreasonable to image that the jurors, not having been instructed to draw no adverse inference from Burgess’s decision not to testify, resolved their doubts against him because of his failure to take the stand in his own defense.”). This Court should reverse Wilson’s convictions and remand for a new trial where he may exercise his constitutional right to remain silent without fear of prejudice.

E. CONCLUSION

Evan Wilson’s state and federal constitutional right to remain silent were violated when the trial court refused his proposed instruction informing the jury not to draw any adverse inferences from his decision not to testify.

Article I, section 9 therefore requires reversal of Wilson’s convictions. In the alternative, the error was not harmless beyond a reasonable doubt and reversal is mandated by the Fifth Amendment.

Respectfully submitted this 10<sup>th</sup> day of September 2015.

s/Elaine L. Winters  
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Washington Appellate Project  
Attorneys for Appellant

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

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STATE OF WASHINGTON,	)	
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Respondent/Cross-appellant,	)	NO. 73130-1-I
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	)	
EVAN WILSON,	)	
	)	
Appellant-Cross-respondent.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10<sup>TH</sup> DAY OF SEPTEMBER, 2015, I CAUSED THE ORIGINAL **OPENING 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:

- |   |                                    |  |
|---|------------------------------------|--|
| <p>[X] SETH FINE, DPA<br/>[sfine@snoco.org]<br/>SNOHOMISH COUNTY PROSECUTOR'S OFFICE<br/>3000 ROCKEFELLER<br/>EVERETT, WA 98201</p> | <p>( )<br/>( )<br/>(X)<br/>( )</p> | <p>U.S. MAIL<br/>HAND DELIVERY<br/>AGREED E-SERVICE<br/>VIA COA PORTAL</p> |
| <p>[X] EVAN WILSON<br/>ID #149064<br/>ISLAND COUNTY JAIL<br/>PO BOX 500<br/>COUPEVILLE, WA 98239</p>                                | <p>(X)<br/>( )<br/>( )</p>         | <p>U.S. MAIL<br/>HAND DELIVERY<br/>_____</p>                               |

**SIGNED** IN SEATTLE, WASHINGTON, THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2015.

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