Supreme Court No. 96135-2
COA No. 76136-6-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRADLEY KEY,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT
OF ISLAND COUNTY

The Honorable Alan R. Hancock

PETITION FOR REVIEW

OLIVER R. DAVIS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES COURT OF APPEALS CASES

CASES FROM OTHER STATE JURISDICTIONS

TREATISES AND LAW REVIEW ARTICLES

A. IDENTITY OF PETITIONER

Bradley Key was the appellant in COA No. 76136-6-I.

B. COURT OF APPEALS DECISION

The Court rejected Key's argument of conflict of interest, which was raised, by Key and his counsel, in the trial court rather than for the first time on appeal. Appx. A.

C. ISSUES PRESENTED ON REVIEW

1. On *de novo* review under Key's Sixth Amendment right to conflict-free counsel, was Key entitled to new counsel in his self-defense case where counsel had previously represented the attacker, where Key refused to waive the conflict, where Key and counsel (who sought to withdraw) raised the conflict before trial, and the victim did not waive attorney-client privilege?

2. In assessing conflict, is it error of law for the trial court to reject the claim of conflict by relying, as it did here, on counsel's statement that he could not recall the facts of the prior case, and/or on the fact that independent counsel consulted by Key similarly said she knew nothing about the prior case, and/or on the fact the defendant similarly could not state the facts of the prior case (involving the victim)?

3. Must the defendant who, before trial, raises a conflict of interest squarely defined as such by the Rules of Professional Conduct (RPC's), in order to obtain conflict-free counsel, be able to state the unknown

confidential facts of his counsel's prior representation of the victim, and therefore be able to predict in detail, without such knowledge, the precise factual nature of a future "adverse effect" on his lawyer's representation of him before the trial even commences, or must such a defendant (as this defendant was forced to do) instead proceed to trial with counsel having a conflict defined as such by the RPC's, and hope that he can show "adverse effect" after he is convicted?

D. STATEMENT OF THE CASE

Mr. Key allegedly assaulted Donald Giddings by punching and kicking him in Oak Harbor. CP 135-37. During the lead-up to trial, the self-defense aspect of the case was clearly established, by the affidavit of probable cause, and the State's trial brief. CP 163-68; CP 169-202. In the affidavit, police noted that Key told officers upon arrest that Giddings had attempted to sell him marijuana. When Key declined, Giddings cursed at him, challenged him to fight, and pulled out a knife. CP 166-67. Key left the area and went to another bus stop, at the Walmart, but Giddings again approached him with the knife. Mr. Key defended himself when Giddings attacked, because he was scared. CP 166-67. Giddings' knife, which had been described by Eric Reynolds, was found on the ground. CP 166-67.

On September 30, 2016 Key's counsel, Matthew Montoya, filed a Notice of Intent to pursue the defense of self-defense." CP 148. However, on

October 25, Mr. Key objected to proceeding to trial with his attorney, Mr. Montoya. At that time, Montoya himself stated he was laboring under a conflict. 10/25/16RP at 44-48, 50-53. Counsel had learned he previously represented the complainant, Giddings, in a criminal case several years earlier, which was a "direct conflict." 10/25/16RP at 39-40. Mr. Key and the complainant were allowed to consult with independent counsel. Mr. Key, through independent counsel, informed the court that he would not waive the conflict of interest. 10/25/16RP at 50-53, 44-48. The court ruled there was no conflict of interest, because Mr. Montoya could not at that time recall the facts of the prior case, Mr. Giddings had said the matters were different, and because Key could not answer the court's request to describe the conflict he was alleging or why his counsel should withdraw. 10/25/16RP at 56-61. The court also agreed with the prosecutor that Key was required, but had failed, to show an "adverse affect" on his lawyer's performance. 10/25/16RP at 61-64.

E. ARGUMENT

The court violated Mr. Key's Sixth Amendment right to conflict-free counsel when it required him to proceed to trial with a lawyer who had revealed he had a direct conflict of interest and moved to withdraw.

(a). Review is warranted under RAP 13.4.

Here, review is warranted under RAP 13.4(b)(1), (2), (3) and (4). The Court of Appeals decision conflicts with this Court's decisions and decisions of the Court of Appeals regarding conflicts of interest and the application of

the adverse effect test as one of appellate scrutiny, including as detailed by Washington and federal treatises on conflict of interest and ineffective assistance law. See infra. The decision also presents a significant question of constitutional law under the Sixth Amendment and Mickens v. Taylor, infra. Finally, the decision presents a question of important public interest concerning the Rules of Professional Conduct, pursuant to which defense counsel properly but unsuccessfully sought to withdraw below.

(b). Mr. Montoya moved to withdraw because of a direct conflict of interest on the eve of trial, Mr. Key refused to waive the conflict, and counsel never abandoned the motion to withdraw.

Just before trial, attorney Montoya told the court that he had realized that he had represented the complainant Mr. Giddings in a case several years previously. Montoya stated that the charge had eventually been dismissed, following proceedings in Municipal Court. 10/25/16RP at 38-40. Although Montoya was able to note these details, he stated he did not recall Giddings or the prior case. 10/25/16RP at 39.

Montoya affirmed that this was a "direct conflict" of interest precluding representation of Key at trial. 10/25/16RP at 39-40, 54-55.

(i). Independent counsel consulted by complainant, and Mr. Key.

The court, the prosecutor, and defense counsel agreed that both Mr. Key and Mr. Giddings should each consult independent attorneys. However, the court opined that if Mr. Montoya would not remember the facts of his

representation of Giddings, there would be no substantive reason why he could not represent Mr. Key in this case. 10/25/16RP at 40-42.

For his part, the prosecutor stated that the defendant would have to demonstrate that there was a conflict of interest that had an actual adverse effect on the lawyer's representation in the case. 10/25/16RP at 42-43.

(ii). Independent counsel informed the court that Giddings wants case to go forward, but he never waives attorney-client privilege.

Following a recess, the prosecutor informed the court that the accuser, Mr. Giddings, had consulted independent counsel and was going to agree in writing to waive any conflict issue. 10/25/16RP at 45. Mr. Giddings told the court that he did not have a problem with the case going forward or with Mr. Montoya cross-examining him; he asserted that the cases did not have anything to do with each other, and said the prior case was "water under the bridge." 10/25/16RP at 50-53. At no juncture in his oral statements, or in his written "waiver," did Giddings waive attorney-client privilege. CP 140-41.

(iii). Mr. Key will not waive the conflict.

Key had also consulted an independent attorney, Margo Carter. She informed the court Key would not sign a conflict waiver and was unwilling to proceed with Montoya. 10/25/16RP at 44-46. Counsel confirmed to the court that he and Key had spoken, and Mr. Key was unwilling to proceed with Montoya because of the conflict, which Key would not waive as required per the Rules of Professional Conduct. 10/25/16RP at 47.

(c). The prosecutor and the court embraced the notion that Mr. Key must go to trial with counsel Montoya unless he could point to and describe a specific "adverse affect" on counsel's performance.

The prosecutor opposed Mr. Key receiving a new attorney. The prosecutor claimed that under the case of State v. Dhaliwal, 150 Wn.2d 559 (2003), the defendant was required to demonstrate a conflict of interest that adversely affected the attorney's performance. 10/25/16RP at 47-48.

Mr. Key's independent counsel, Ms. Carter, noted to the court that the present case was in the posture of Mr. Key refusing to waive a conflict before the case has been tried. 10/25/16RP at 49. She re-affirmed,

> I believe that Mr. Key fundamentally believes that he cannot get adequate representation at this point because of this conflict and is therefore not waiving.

10/25/16RP at 49. Defense counsel Montoya reiterated that Key was not willing to waive any conflict, and that he and his entire office was moving to withdraw from the representation of Key. 10/25/16RP at 54-55 ("I also need to move the Court to withdraw from this case."); see RPC 1.10 (regarding imputation of conflict to all lawyers in a firm under Rules 1.7 and 1.9).

(d). Next, the court challenged Mr. Key, a layperson, to the impossible task of stating the specifics of the conflict of interest involved.

The trial court noted that Mr. Montoya agreed that he was adequately prepared for trial, and stated that CrR 3.1 provides that an attorney cannot withdraw except for "good and sufficient reason." 10/25/16RP at 56-57. The court asked Key if there was anything he would like to say about Montoya's

request to withdraw, and Mr. Key stated, "No, sir." 10/25/16RP at 56-57.

The court then announced that Mr. Key had "declined to provide me with any reasons why he would want Mr. Montoya to withdraw" and that no one else had specified "any reasons why Mr. Montoya should be required to withdraw," or shown that Mr. Key's rights "would be substantially impaired or denied;" therefore there was no reason to believe that Mr. Key would not receive excellent representation, and disagreement over "tactics" was not enough to obtain a new lawyer. 10/25/16RP at 57-58.

(i). Court finds no conflict under the Rules of Professional Conduct.

Specifically addressing the issue of conflict of interest, the trial court first cited RPC 1.7(a), which sets out one example of a conflict arising because of a lawyer's former representation:

> [A] lawyer shall not represent a client if the representation involves a current conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of the client will be materially limited by the lawyer's responsibilities to a former client.

10/25/16RP at 59; see RPC 1.7(a). The court next noted that RPC 1.7(b) provides that even if there is a concurrent conflict of interest, a lawyer may nonetheless represent the client if:

> the lawyer reasonably believes the lawyer will be able to provide competent and diligent representation . . . and each affected client gives informed consent, confirmed in writing following authorization from the other client to make any required disclosures.

10/25/16RP at 59; see RPC 1.7(b).

The court asked Mr. Montoya if he believed that his representation of Mr. Key would be materially limited by responsibilities to Mr. Giddings, given Giddings' "waiver," and Mr. Montoya stated that it would not. 10/25/16RP at 60. Therefore, the court stated, there was no conflict and Mr. Key's consent was not needed.

> I don't believe I would need to address the factors set forth in rule of professional conduct 1.7(b).

10/25/16RP at 60. The court also elicited from Mr. Montoya that he was reasonably sure that he would not need to use information relating to his representation of Mr. Giddings in his representation of Mr. Key. 10/25/16RP at 60-61 (the court referencing RPC 1.9). No mention was made by the trial court of how the fact that Montoya could not recall the facts of the earlier case might affect his ability answer these questions. The court also did not note the absence of a waiver of attorney-client privilege.

(ii). Court finds Mr. Key failed to show "adverse effect.".

The court also told the defendant he needed to show "adverse affect" in order to avoid going to trial with Mr. Montoya, and asked Mr. Key if there was "anything you'd like to tell the Court about any possible conflict that would adversely affect your attorney's performance in this case?" 10/25/16RP at 61. Mr. Key answered, "No, sir." 10/25/16RP at 61.

The court next asked independent counsel, Ms. Carter, if she could

identify any actual conflict that would "adversely affect" Montoya's performance. 10/25/16RP at 62. Ms. Carter cautioned again that she had "very limited knowledge" of the specifics of the prior case involving Mr. Giddings, and was retained simply to advise Mr. Key; she could not answer the court's directive to identify an "adverse affect." 10/25/16RP at 63.

Ultimately, the court ruled, no person had been able to make the required showing under the "adverse affect" test. 10/25/16RP at 63-64 ("I find that the fact that Mr. Montoya represented Mr. Giddings in a prior case would not adversely affect his performance on behalf of Mr. Key.").

(e). Mr. Keys was forced to go to trial with counsel who had a conflict of interest, a question subject to *de novo* review on appeal.

Defendants have a right to conflict-free counsel, guaranteed by the Sixth Amendment and article I, section 22 of the Washington Constitution. U.S. Const. amend. 6 ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."); Const. art. 1, sec. 22; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Wood v. Georgia, 450 U.S. 261, 271, 101 S.Ct. 1097, 67 L.Ed.2d 220 (1981) under the Sixth Amendment "there is a correlative right to representation that is free from conflicts of interest."); State v. Davis, 141 Wn.2d 798, 860, 10 P.3d 977 (2000).

Whether a conflict existed is a question of law that is reviewed de novo on appeal. State v. O'Neill, 198 Wn. App. 537, 542–43, 393 P.3d 1238,

1240–42 (2017) (citing State v. Vicuna, 119 Wn. App. 26, 30-31, 79 P.3d 1 (2003); State v. Ramos, 83 Wn. App. 622, 629, 922 P.2d 193 (1996)); State v. Hunsaker, 74 Wn. App. 38, 42, 873 P.2d 540 (1994).

Here, a conflict existed. An attorney for a client charged with assault and raising self-defense, who previously represented the accuser in a former criminal matter, is laboring under a conflict. RPC 1.7(a); RPC 1.9(a), (b), (c). Contrary to the Court of Appeals' view, in Mickens v. Taylor, 535 U.S. 162, 122 S.Ct. 1237, 152 L.Ed.2d 291 (2002), the Supreme Court assumed there was a conflict of interest where defense counsel in a murder case had represented the dead victim previously. Appx. at 5-6; Mickens v. Taylor, 535 U.S. at 165-68. In that case, because the conflict issue had not been raised and litigated in the trial court, the Court held that reversal was not required because the petitioner had not made out the "adverse effect" requirement that applies on appeal. Mickens v. Taylor, 535 U.S. at 165-68; see also Mickens, at 183 and n. 5 (Stevens, J. dissenting) (stating that such a conflict was so plain that automatic reversal was required) (citing brief of *amicus* American Bar Association, arguing that such a conflict is "nonwaivable" by the client).

Determining whether a conflict exists in these circumstances is based on the "significant risk" standard of RPC 1.7, and also on RPC 1.9, which protects the confidences of former clients. These rules define conflicts.[1]

[1] RPC 1.7 states as follows in pertinent part:

RPC 1.7(a) defines conflict as including the presence of a "significant

---

CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest **exists** if:

* * *

(2) there is a **significant risk** that the representation of one or more clients will be **materially limited** by the lawyer's responsibilities to . . . a former client[.]

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; [and]

(4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

(Emphasis added.) Rule of Professional Conduct 1.7. Rule of Professional Conduct 1.9 provides, in pertinent part:

DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom that lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Rule of Professional Conduct 1.9.

risk" that the current representation will be materially limited by obligations to a former client, while RPC 1.9(c) makes clear what is always owed to a prior client in terms of confidences and thus creates a conflict. RPC 1.9(a) and (b) also prohibit representation where the prior and current clients' matters are "substantially related," a test that does *not* require commonality of legal claims. State v. Hunsaker, 74 Wn. App. at 44-45.

Under Mickens, RPC 1.7(a), and RPC 1.9(c), representing the accused when one previously represented the accuser is a conflict of interest that violates the Sixth Amendment right to counsel, which includes the "right to counsel's undivided loyalty." Mannhalt v. Reed, 847 F.2d 576, 579 (9th Cir. 1988), cert. denied, 488 U.S. 908 (1988).

In such circumstances, there is a substantial risk that the present representation will be materially limited by responsibilities to the former client, including the responsibility to protect any confidences even if they might help the present defendant. RPC 1.7(a); RPC 1.9(c). Raising the issue prior to trial entitled Mr. Key to new counsel. See State v. Tensley, 955 So. 2d 227, 242-46 (La. Ct. App. 2007) (a defense attorney required to cross-examine a former client and co-defendant, on behalf of a current defendant suffers from an actual conflict; when the defendant asserted the issue prior to trial, reversal is required); State v. Gray, 736 S.E.2d 837, 842-43 (N.C. Ct. App. 2013) (prejudice presumed where defendant objected to appointed

counsel's representation on the grounds that he had previously represented one of the State's witnesses) (also stating that the witness' waiver of the conflict did nothing to alleviate the problem).

Additionally, in situations where the defense attorney has previously represented the accuser, the matters are likely to be "substantially related," as that term is used in RPC 1.9(a) and (b). Where the prior representation contained any factual matter similar enough to a factual matter in the present case that a later lawyer would find it useful in representing a current client, the cases are "substantially related." State v. Hunsaker, at 44–45.

In these circumstances, there was, on its face, no value in counsel Montoya's answer to the court that he could not show how his representation of Mr. Keys would be materially limited. A useful answer to the relevant ethical questions required a basic understanding of the facts of both matters:

> [T]o determine conflict, "[f]irst, the court reconstructs the scope of the facts involved in the former representation and projects the scope of the facts that will be involved in the second representation. Second, the court assumes that the lawyer obtained confidential client information about all facts within the scope of the former representation. Third, the court then determines whether any factual matter in the former representation is so similar to any material factual matter in the latter representation that a lawyer would consider it useful in advancing the interests of the client in the latter representation.

Hunsaker, at 44–45 (citing C. Wolfram, Modern Legal Ethics § 7.4.3 at 370 (1986); and State v. Stenger, 111 Wn.2d 516, 518, 760 P.2d 357 (1988) (prosecutor's office was disqualified from prosecuting Stenger on aggravated

murder where prosecutor had previously represented Stenger on misdemeanor assault and taking motor vehicle)). Here, on its face, a conflict like in Stenger existed under the substantial risk standard of RPC 1.7, and under RPC 1.9, particularly where the case involves self-defense. A wide variety of evidence as to the victim may be admissible in a case where the defendant asserts self-defense. 13B Fine & Ende, Wash. Practice: Evidence § 3310 (2013–2014 ed.); ER 404(a)(2).

Contrary to the Court of Appeals, this can include "Montoya's potential knowledge" of key facts, such as the victim's reputation for violence, and prior acts of violence. Appx. at 10; State v. Hutchinson, 135 Wn.2d 863, 886, 959 P.2d 1061 (1998); State v. Alexander, 52 Wn. App. 897, 900, 765 P.2d 321 (1988); State v. Cloud, 7 Wn. App. 211, 218, 498 P.2d 907 (1972); see Stenger, 111 Wn.2d at 518 (prosecutor who had previously represented Stenger was disqualified from State's case because the death penalty so much involved highly relevant knowledge of the defendant's past conduct). Montoya was bound by attorney-client privilege as to Giddings, which was never waived. State v. Perrow, 156 Wn. App. 322, 328, 231 P.3d 853 (2010) (citing RCW 5.60.060(2)(a)). It cannot be said that the fact that the attorney cannot, presently, recall the earlier representation, establishes absence of conflict.

Further, and even if it had been correctly determined that Montoya

might nonetheless be able to represent the defendant, the Rules are clear - informed client consent from the defendant is required in such instance. RPC 1.7(b). But Key made clear he would not agree to representation by Mr. Montoya under any circumstances. 10/25/16RP at 39, 54-55, 46-47. Mr. Key clearly based his request for new counsel, expressed through Montoya and Carter, on the conflict. 10/15/16RP at 44-46. His lay inability to articulate the details of the matter, or predict the specific nature of the future perils resulting from representation contrary to the RPC's, did not permit the court to find that he was agreeing there was no conflict.

For his part, Mr. Montoya had indicated a direct conflict existed. An attorney's request for withdrawal based on his representations as an officer of the court regarding a conflict of interest should be granted, because he is in the best position to assess the ethical conflict of interest. Holloway v. Arkansas, 435 U.S. 475, 485, 98 S. Ct. 1173, 1179, 55 L. Ed. 2d 426 (1978).

(f). Montoya's inability to assert the specific basis for the conflict of interest could not be relied on by the trial court.

Montoya's inability to identify the details of the conflict was not an abandonment of his original position that there was a direct conflict of interest. First, it was Mr. Montoya's duty to determine the facts of his prior representation of Mr. Giddings in order to assess what he might need to use in diligent representation of Mr. Key. Matter of Osborne, 187 Wn. 2d 188, 199, 386 P.3d 288, 294 (2016), as amended (Jan. 19, 2017) ("Lawyers are

prohibited from representing a client if a concurrent conflict exists [and under] RPC 1.7(a) [a] concurrent conflict exists if "there is a significant risk that the representation . . . will be materially limited[.]" RPC 1.7(a)(2).").

The court knew that Montoya was unable to make this assessment, since he he could not recall the case. For the court to rule that there was no conflict of interest because of Montoya's lack of memory at that juncture ignored this responsibility. Instead, the only proper assumption would be that Montoya would be obligated to immediately determine the facts of the prior case to locate anything useful that he could employ in defense of Key, which would then place him in a position of needing to breach former client confidences.

This same position would result at any moment that his memory or cognition allowed recollections of the prior case. See RPC 1.3, comment (the lawyer must pursue all avenues to vindicate client's cause). The risk that Montoya would find himself serving two masters was at least substantial, if not inevitable. Yet Giddings had not waived attorney-client privilege.

Additionally, even if Mr. Montoya had believed that he could go forward with competence in representing Mr. Key under RAP 1.7(b) -- where the attorney with a conflict believes he can nonetheless provide diligent representation despite the conflict – going forward requires that Mr. Key, the client, give consent. RPC 1.7(a). Mr. Key did not give consent.

(g). Crucially, Mr. Giddings had never been advised by the correct lawyer – Montoya – regarding what confidences would be at risk, and neither did Giddings ever waive attorney-client privilege.

As for the former client, it was Montoya who needed to advise Giddings in order for any valid waiver to be obtained from him. It is from the former client, and to that counsel, between whom client confidences are created, starting from the first initiation of the relationship and thereafter. United States v. Trafficante, 328 F.2d 117, 119–20 (5th Cir.1964); E. Cleary, McCormick on Evidence § 88 (3d ed. 1984); RPC 1.9.

Giddings had certainly not waived attorney-client privilege so that Montoya could represent Key without violating the ethical rules' protection of Giddings. State v. Vandenberg, 19 Wn. App. 182, 187, 575 P.2d 254 (1978). Where there is a waiver, it is possible for counsel's duties to a former client to be lessened for purposes of later representation of another. State v. Vicuna, 119 Wn. App. 26, 31–32 (citing Ramos, at 636; State v. Anderson, 42 Wn. App. 659, 664, 713 P.2d 145 (1986)). Here, Giddings said he understood he would be cross-examined by his former lawyer, and that he was waiving "conflict of interest," but at no time orally or in writing did he waive *attorney-client privilege*. 10/25/16RP at 51-53; CP 140; Alexander v. Housewright, 667 F.2d 556, 558 (8th Cir.1981) (no conflict if prior client waives privilege). Montoya was bound by specific obligations to his prior client. Giddings' statements that he was willing to be 'examined' by his

former lawyer, in no way solved the conflict issue.

On the other hand, Key was entitled to be represented by a lawyer willing to litigate in every manner favorable to him if there was a basis in law and fact for doing so that was not frivolous, all the more so in a criminal case. RPC 1.3; see also RPC 3.1. As the Strickland court noted, "[r]epresentation of a criminal defendant entails certain basic duties." Strickland, 466 U.S. at 688. These duties include the duty to "bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Strickland, 466 U.S. at 688. Any information or confidences that Montoya might recall that would be useful to Key in this self-defense case would be matters he would be required by the ethical rules and the constitution to question Giddings about, or to investigate in a competent search for admissible evidence.

For all these reasons, as Montoya stated, he had discovered an inherent conflict. FMC Technologies, Inc. v. Edwards, 420 F. Supp. 2d 1153, 1160-61 (W.D. Wash. 2006); State v. Hatfield, 51 Wn. App. 408, 412, 754 P.2d 136 (1988). "Conflicts of interest arise whenever an attorney's loyalties are divided, and an attorney who cross-examines former clients inherently encounters divided loyalties." FMC Technologies, at 1160.

(h). The error requires reversal.

In requiring Key to proceed with Montoya, the trial court employed the wrong legal standard by faulting Key for failing to predict and explain the

factual details of an "adverse effect" in order to assert his right to conflict-free counsel before trial. Requiring a defendant to show "adverse effect" has primarily been referred to as an appellate court standard where the conflict of interest was not raised at trial; here, the defendant timely objected. State v. Jensen, 125 Wn. App. 319, 330, 104 P.3d 717 (2005) (on appeal, in order to "establish a Sixth Amendment violation, a defendant who did not object at trial must demonstrate that an actual conflict of interest adversely affected his attorney's performance") (emphasis added); State v. Dhaliwal, 150 Wn.2d 559, 566-71, 79 P.3d 432 (2003) (defendant who expressly agreed to proceed despite possible conflict was required, on appeal, to show a conflict that adversely affected performance); Cuyler v. Sullivan, 446 U.S. 335, 350, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980) (to demonstrate Sixth Amendment violation where conflict was not raised defendant must establish that an actual conflict of interest adversely affected his lawyer's performance).

This distinction is well-settled. See 3 LAFAVE, CRIM. PROC. § 11.9(d) (3d ed. 2013) ("The Cuyler] opinion requires that the defendant presenting a postconviction challenge 'demonstrate [that] an actual conflict of interest adversely affected the lawyer's performance.' This requires a showing both that counsel was placed in a situation where conflicting loyalties pointed in opposite directions (an 'actual conflict') and that counsel proceeded to act against the defendant's interests ('adversely affect[ing] his

performance').") (emphasis added); Davis, at 861 and n. 338 (defendant who does not raise objection at trial must demonstrate that the conflict "adversely affected" his lawyer's performance) (citing Cuyler). But this case is not in that posture. Mr. Key showed the "significant risk" under the RPC's that the representation would be compromised. State v. Regan, 143 Wn. App. 419, 428, 177 P.3d 783 (2008) (defendant need not show reversible prejudice, but rather, a conflict that likely affects particular aspects of counsel's advocacy).

Reversal is required because the unjustified denial of Mr. Key's timely objection violated his Sixth Amendment right to counsel, and it is structural error. United States v. Williams, 594 F.2d 1258, 1261 (9th Cir.1979); see also United States v. Gallegos, 108 F.3d 1272, 1280 (10th Cir. 1997) (holding, under Holloway, that reversal is automatic where timely objection is made to joint representation of conflicting interests).

F. CONCLUSION.

Based on the foregoing, this Court should accept review, and reverse Mr. Key's judgment and sentence.

Respectfully submitted this 24th day of July, 2018.

s/ Oliver R. Davis
Washington Bar Number 24560
Washington Appellate Project-91052
1511 Third Avenue, Suite 701
Seattle, WA 98102
Telephone: (206) 587-2711
FAX: (206) 587-2710
E-mail: Oliver@washapp.org

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. BRADLEY MICHAEL KEY, Appellant.	No. 76136-6-I DIVISION ONE UNPUBLISHED DECISION FILED: June 25, 2018

LEACH, J. — Bradley Key challenges his conviction and sentence for one count of assault in the first degree and two counts of assault in the fourth degree. First, he claims his right to conflict-free counsel under the Sixth Amendment to the United States Constitution was violated because his attorney had previously represented a witness. Second, he contends that a sidebar during voir dire violated his constitutional public trial rights. Third, Key contends that the trial court sentenced him based on an improper offender score. Because Key fails to show his attorney had a disqualifying conflict of interest or that the sidebar implicated his public trial rights, we affirm Key's conviction. But because the State failed to prove the existence and comparability of prior out-of-state convictions, we remand for resentencing.

FACTS

In April 2016, Donald Giddings rode his bicycle to a bus stop in Oak Harbor, Washington. There, Giddings saw Key and asked him if he had a cigarette lighter. Key responded, "If you're man enough to smoke, you ought to be man enough to have a lighter." Giddings felt threatened and pulled out a pocket knife, which he kept closed in his hand on top of the handlebars. Giddings called Key a "punk bitch" and rode away on his bicycle to another bus stop. Two other men were waiting at that bus stop.

Key followed Giddings to the second bus stop. Key approached Giddings and demanded that he apologize. Giddings said, "I've done nothing wrong." He took out his knife again, saying, "This is all I did." He then said, "I'm sorry" multiple times.

Key struck Giddings on the side of the head. Key beat Giddings, kicking him and stomping on his head and neck. The two men at the bus stop tried to intervene. Key assaulted them as well—he wrestled one to the ground and pushed the other.

After a trial, the jury convicted Key of assault in the first degree and two counts of assault in the fourth degree. The trial court sentenced Key using an offender score of five based on several foreign convictions. Key appeals his conviction and sentence.

ANALYSIS

Conflict of Interest

First, Key contends that he did not receive effective assistance of counsel because of his attorney's conflict of interest.

Matthew Montoya was appointed to represent Key. The first day of trial, Montoya discovered that he had previously represented Giddings on another matter. Montoya moved to withdraw from the case. Montoya told the court,

> Your Honor, in discussing witnesses, [the prosecutor] brought to my attention a case where Mr. Giddings has a prior conviction, but the case was dismissed. However, it was dismissed after, I believe, a stipulated order of continuance in municipal court. The lawyer of record, however, was myself. I do not recall Mr. Giddings at all in any way, shape, or form. I didn't recognize Mr. Giddings when I saw the initial pictures when discovery was first provided. I did not recognize him. I glanced over the exhibits this morning.

The court provided Key with independent counsel to consult about the conflict issue. Giddings waived the possible conflict of interest. Key did not waive any conflict and requested a new attorney. The trial court denied Montoya's motion to withdraw. Key contends that denying this motion violated his Sixth Amendment right to counsel.

We review claims of ineffective assistance of counsel de novo.[1] We also review whether a conflict exists de novo.[2] The State asserts that a decision to

---

[1] State v. White, 80 Wn. App. 406, 410, 907 P.2d 310 (1995).
[2] State v. O'Neil, 198 Wn. App. 537, 542, 393 P.3d 1238 (2017).

disqualify an attorney for a conflict is reviewed for abuse of discretion.[3] As we observed in State v. O'Neil,[4] "it may be true that withdrawal is, generally, a matter of trial court discretion." "But, whether a conflict exists requiring withdrawal is a question of law," and "[i]f a conflict creates a legal duty to withdraw, denying withdrawal is an abuse of discretion."[5] Because Key contends that a conflict existed that required withdrawal, the appropriate standard of review is de novo.

"The right to counsel under the Sixth Amendment to the United States Constitution includes the right to conflict-free counsel."[6] To show a violation of the Sixth Amendment right to counsel free from conflict, the defendant must demonstrate that his attorney had an actual conflict of interest that adversely affected his attorney's performance.[7] An actual conflict of interest exists when the conflict affects counsel's performance "as opposed to a mere theoretical division of loyalties."[8] To show an actual conflict of interest deprived him of

---

[3] See State v. Orozco, 144 Wn. App. 17, 20, 186 P.3d 1078 (2008). The State also contends that the trial court's factual findings are verities on appeal because Key does not challenge them. See State v. Horrace, 144 Wn.2d 386, 391, 28 P.3d 753 (2001). But the trial court did not enter formal findings; it merely explained the reasoning behind its decision to deny the motion to withdraw.

[4] 198 Wn. App. 537, 543, 393 P.3d 1238 (2017) (distinguishing Orozco, 144 Wn. App. at 20).

[5] O'Neil, 198 Wn. App. at 543.

[6] O'Neil, 198 Wn. App. at 543; see also State v. Dhaliwal, 150 Wn.2d 559, 566, 79 P.3d 432 (2003).

[7] Dhaliwal, 150 Wn.2d at 570.

[8] Mickens v. Taylor, 535 U.S. 162, 171, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002).

effective assistance of counsel, a defendant must show that his attorney had a conflict of interest and the conflict adversely affected his attorney's performance.[9]

Because the court inquired into the conflict, Key asserts that he does not need to show any "adverse effect" on his counsel's performance. But Key cites no case that supports his position—that if he raises a potential conflict before trial, the trial court must grant a motion to withdraw, even when its inquiry reveals no evidence that the claimed conflict will adversely impact that attorney's performance. Key distinguishes the leading cases that discuss conflict on the basis of his objection and the trial court's inquiry. But he identifies no case that recognizes different review standards for conflict decisions based on this distinction.[10] On the contrary, in Mickens v. Taylor[11] the United States Supreme Court indicates otherwise.

Mickens stands for the rule that courts apply the same review standard, whether or not the court inquired.[12] Mickens observed that the trial court's failure to be aware of or inquire into a conflict does not make it more likely that counsel's

---

[9] Mickens, 535 U.S. at 174-75; State v. Reeder, 181 Wn. App. 897, 909, 330 P.3d 786 (2014).

[10] See Mickens, 535 U.S. at 165-68; Dhaliwal, 150 Wn.2d at 566-71; State v. Jensen, 125 Wn. App. 319, 330, 104 P.3d 717 (2005).

[11] 535 U.S. 162, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002).

[12] Mickens, 535 U.S. at 173; see also State v. Chavez, 162 Wn. App. 431, 442, 257 P.3d 1114 (2011) (Korsmo, A.C.J., dissenting) (explaining that Mickens "clarified that only an actual conflict of interest that adversely affected counsel's performance violates the Sixth Amendment").

performance was significantly affected or in any other way render the verdict less reliable.[13] Likewise, a court's awareness of and inquiry into a conflict does not alter the likelihood that the conflict affected counsel's performance. We note that Mickens addressed a concern about incentivizing courts to make an appropriate inquiry.[14] In a dissent, Justice Souter observed that the majority's decision in Mickens eliminated any sanction for failure to inquire.[15] But the majority declined to presume that trial judges needed more incentive to follow the law.[16] It also observed that the presumption of prejudice once a defendant shows an effect upon representation offers some incentive to inquire into the matter and replace a conflicted attorney if necessary in order to avoid reversal.[17] Following Mickens, we decline Key's invitation to apply a different test when the defendant raises a conflict issue and the court inquires into it.

Thus, to establish a Sixth Amendment violation, Key must show the existence of a conflict and an adverse effect on Montoya's performance. Key claims Montoya had a conflict under RPC 1.7 and RPC 1.9. Under RPC 1.7(a)(2), a conflict exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to

---

[13] Mickens, 535 U.S. at 173.
[14] Mickens, 535 U.S. at 173.
[15] Mickens, 535 U.S. at 206-07.
[16] Mickens, 535 U.S. at 173.
[17] Mickens, 535 U.S. at 173.

another client, a former client or a third person or by a personal interest of the lawyer." RPC 1.9(a) and (b) prohibit a lawyer from representing a client in a matter substantially related to a matter in which the lawyer or the lawyer's firm has represented a former client unless the former client gives written consent.

Facts matter. Here, the facts presented to the trial court do not show a significant risk that Montoya's former representation of Giddings materially limited his representation of Key. The trial court received this evidence: First, when asked, Montoya could not identify any way that his prior representation of Giddings would limit his ability to represent Key.

> THE COURT: So, Mr. Montoya, do you believe that your representation of Mr. Key in this case would be materially limited by your responsibilities to your former client, Donald Giddings, and bear in mind Mr. Giddings' comments here?
>
> MR. MONTOYA: It would not, Your Honor.

Montoya also represented that he could not identify any way to use information gained from his prior representation of Giddings.

> THE COURT: So are you reasonably sure, Mr. Montoya, that you would not be in any way required to use information relating to your representation of Donald Giddings in a prior matter in order to properly represent Mr. Key?
>
> MR. MONTOYA: No, Your Honor. And as I previously noted, I have no recollection of the case whatsoever. Even after looking at the court docket, I have no recollection of the case at all.

Montoya answered as an officer of the court. The trial court could properly rely on his statements.

Key's independent counsel on the conflict issue, Margot Carter, also told the court that she could not identify any conflict of interest.

> THE COURT: So you cannot identify, as I understand it, any actual conflict of interest or any conflict that would adversely affect Mr. Montoya's performance on behalf of Mr. Key in this case; is that right?
>
> MS. CARTER: Your Honor, what I would say is that I have very limited knowledge of the specifics and I was, as I understood it, appointed to explain to him what his options were and what the conflict was in general terms, but based on what I've heard today, I haven't been able to identify any.
>
> THE COURT: So just to be clear, you haven't been able to identify any actual conflict of interest on the part of Mr. Montoya; is that right?
>
> MS. CARTER: That is correct.
>
> THE COURT: And you haven't been able to identify any conflict that adversely affects Mr. Montoya's performance on behalf of Mr. Key; is that right?
>
> MS. CARTER: From the limited amount of knowledge I have, yes.

Key could not identify disqualifying conflict either. The court asked Key directly if he could identify any actual conflict of interest that would adversely affect Montoya's performance.

> THE COURT: Okay, Mr. Key, I want to give you an opportunity to identify any actual conflict of interest that you think

exists in Mr. Montoya representing you in this case. Do you have anything to say about that?

DEFENDANT: No, sir.

THE COURT: Is there anything you'd like to tell the Court about any possible conflict that would adversely affect your attorney's performance in this case?

THE DEFENDANT: No, sir.

From this inquiry, the experienced trial court judge properly determined that no actual conflict existed that required appointing Key new counsel. No one could identify any conflict based on Montoya's previous representation of Giddings. And Key acknowledges that Montoya remembered nothing about the prior case.

As for RPC 1.9, the former client, Giddings, gave his written consent to the representation, satisfying the conditions of the rule. Key argues that because Giddings never waived his attorney-client privilege, Montoya's performance was limited. But Montoya maintained that he could not recall any details of his representation of Giddings. The court had no reason to find a conflict when no facts supported it.

Key claims this case is like State v. Stenger.[18] There, the court disqualified a prosecuting attorney from prosecuting an aggravated murder charge because the attorney had previously represented the defendant in a

[18] 111 Wn.2d 516, 518, 521-22, 760 P.2d 357 (1988).

misdemeanor assault case. But we distinguish Stenger. In Stenger, the prosecuting attorney's earlier representation of the defendant was "closely interwoven" with the aggravated murder prosecution case because information obtained in that representation, "including information about the defendant's background and earlier criminal and antisocial conduct," could influence the prosecuting attorney's exercise of discretion in seeking the death penalty.[19] Here, Key identifies no information about Montoya's representation of Giddings that could have disadvantaged Key. Key claims that Giddings' reputation for violence or prior acts of violence could be relevant to a claim of self-defense.[20] But unlike in Stenger, where the knowledge obtained in the prior representation might have influenced the prosecuting attorney in seeking the death penalty, Key does not show how Montoya's potential knowledge of these facts could have affected his representation of Key.

The record here does not show more than a theoretical conflict, which is not enough to justify reversal.[21] Key's claim that a conflict deprived him of effective counsel fails.

---

[19] Stenger, 111 Wn.2d at 521-22.
[20] See ER 404(a)(2).
[21] Mickens, 535 U.S. at 171.

Public Trial Right

Next, Key contends that the trial court violated his right to a public trial with an unrecorded sidebar conference during voir dire. We disagree.

Both our state and federal constitutions guarantee defendants the right to a public trial.[22] But this right is not absolute.[23] Not all interactions between the court, counsel, and defendants implicate the public trial right.[24] Washington courts follow a three-step analysis to determine whether a violation of the right to a public trial has occurred.[25] The court asks (1) whether the public trial right attaches to the proceeding at issue, (2) whether the courtroom was closed, and (3) whether closure was justified.[26] Whether the trial court has violated the defendant's public trial right is a question of law that this court reviews de novo.[27]

The Washington Supreme Court has adopted the experience and logic test to determine if a particular proceeding implicates the public trial right.[28] Under the experience prong, courts ask "'whether the place and process have historically been open to the press and general public.'"[29] Under the logic prong,

---

[22] U.S. CONST. amend. VI; WASH. CONST. art. I, § 22.
[23] State v. Wise, 176 Wn.2d 1, 9, 288 P.3d 1113 (2012).
[24] State v. Slert, 181 Wn.2d 598, 603, 334 P.3d 1088 (2014).
[25] State v. Love, 183 Wn.2d 598, 605, 354 P.3d 841 (2015).
[26] Love, 183 Wn.2d at 605.
[27] State v. Brightman, 155 Wn.2d 506, 514, 122 P.3d 150 (2005).
[28] State v. Smith, 181 Wn.2d 508, 511, 334 P.3d 1049 (2014).
[29] Smith, 181 Wn.2d at 514 (internal quotation marks omitted) (quoting State v. Sublett, 176 Wn.2d 58, 73, 292 P.3d 715 (2012) (plurality opinion))).

courts ask "whether public access plays a significant positive role in the functioning of the particular process in question."[30] If the public trial right attaches, then the trial court must apply the five factors from State v. Bone-Club[31] before the trial court can close any part of a trial to the public.[32]

Key contends that the sidebar that occurred during voir dire was an improper courtroom closure. Generally, sidebars do not implicate the public trial right because they have historically been closed to the public and public access plays no positive role in the proceeding.[33] Proper sidebars "deal with mundane issues implicating little public interest."[34] Thus, under the experience and logic test, sidebars do not usually implicate the public trial right.[35]

Key contends that this sidebar was unusual and implicates the public trial right. "'[T]he party presenting an issue for review has the burden of providing an adequate record to establish such error.'"[36] Here, Key has not shown that this was an untraditional sidebar. He merely cites the portion of the record showing the sidebar occurred. In this case, the sidebar took place during voir dire, after the attorneys questioned prospective jurors and before for-cause challenges.

---

[30] Smith, 181 Wn.2d at 514 (citing Sublett, 176 Wn.2d at 73).
[31] 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995).
[32] Sublett, 176 Wn.2d at 73.
[33] Smith, 181 Wn.2d at 511.
[34] Smith, 181 Wn.2d at 516.
[35] Smith, 181 Wn.2d at 516.
[36] Slert, 181 Wn. 2d at 608 (quoting State v. Sisouvanh, 175 Wn.2d 607, 619, 290 P.3d 942 (2012)).

The record shows that immediately after the sidebar the court took a short recess. This strongly suggests that the sidebar discussion was about taking a recess. Key has presented no evidence that the court and counsel discussed anything else. Because "scheduling matters" are exactly the type of subject intended for sidebar discussions, the conference was a traditional sidebar and does not implicate Key's public trial right.[37]

Key contends that because the trial court never memorialized the sidebar, his right to a public trial was violated. "To avoid implicating the public trial right, sidebars . . . must either be on the record or be promptly memorialized in the record."[38] But this does not relieve Key of his burden to prove that the sidebar implicated his public trial right. In State v. Crowder,[39] a Division Three case, the appellant argued that an unrecorded sidebar violated his right to a public trial. The court stated, "Crowder's public trial argument would have traction only if he could show something substantive occurred during the off-the-record sidebar."[40] Crowder failed to prove that the sidebar in his case was outside of the general rule.[41] The same is true here. Although the trial court did not memorialize the

---

[37] State v. Whitlock, 188 Wn.2d 511, 513-14, 396 P.3d 310 (2017) ("Typical examples of such mundane issues are scheduling, housekeeping, and decorum.").

[38] Smith, 181 Wn.2d at 516 n.10; see also Whitlock, 188 Wn.2d at 522.

[39] 196 Wn. App. 861, 867, 385 P.3d 275 (2016), review denied, 188 Wn.2d 1003 (2017).

[40] Crowder, 196 Wn. App. at 867.

[41] Crowder, 196 Wn. App. at 867.

sidebar, Key has not shown that anything substantive occurred implicating his right to a public trial.

Offender Score

Key contends that the State failed to prove the comparability of his out-of-state convictions and seeks review of his offender score. In calculating Key's offender score, the trial court used five out-of-state convictions, two from Wisconsin, two from California, and one from Florida. The State concedes that it presented insufficient evidence of these prior convictions for the court to include them in Key's offender score. We agree.

Under the Sentence Reform Act of 1981 (SRA),[42] a defendant's offender score may include out-of-state convictions if the out-of-state offense is comparable to a Washington offense.[43] An out-of-state offense must be classified according to the comparable definitions and sentences provided by Washington law.[44] "The State bears the burden of proving the existence and comparability of all out-of-state convictions."[45]

The State did not produce evidence to establish the existence of the Wisconsin and Florida convictions. The record contains no evidence of either Wisconsin conviction. For the Florida conviction, the record does contain

---

[42] Ch. 9.94A RCW.
[43] RCW 9.94A.525(3).
[44] RCW 9.94A.525(3).
[45] State v. Olsen, 180 Wn.2d 468, 472, 325 P.3d 187 (2014).

judgment and sentence documents from Florida. But neither evidences the convictions used in Key's criminal history. The Florida offense described in the judgment and sentence in this case states that Key was sentenced on February 15, 2008, for "Dealing in Stolen Property." The documents in the record, however, related to convictions for "Petit Theft-Retail" with an August 4, 2008, disposition date, and "Fraud Use of Credit Cards" with a disposition date of September 28, 2008. The State did not meet its burden to establish the existence of these prior convictions.

For the California convictions, the State did not prove comparability. The State introduced documents to show the existence of the California convictions but offered no argument below or on appeal to show that they are comparable to Washington offenses. The trial court merely accepted the State's proffered criminal history. Thus, the State did not meet its burden to show that the California offenses were comparable to Washington offenses.

We accept the State's concession and remand to the trial court for resentencing. The SRA permits the parties to introduce evidence related to criminal history on remand.[46]

[46] RCW 9.94A.530(2).

Appellate Costs

Key asks this court to deny any award of appellate costs. But the State does not request appellate costs in its brief. And when, as here, a trial court makes a finding of indigency, that finding remains throughout review "unless the commissioner or clerk determines by a preponderance of the evidence that the offender's financial circumstances have significantly improved since the last determination of indigency."[47] If the State has evidence to establish this change in circumstance, it may file a motion for costs with the commissioner.

CONCLUSION

Because Key does not show his right to effective assistance of counsel and a public trial were violated, we affirm his conviction. Because the State failed to prove the existence and comparability of prior foreign convictions, however, we remand for resentencing.

Leach, J.

WE CONCUR:

[47] RAP 14.2.

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

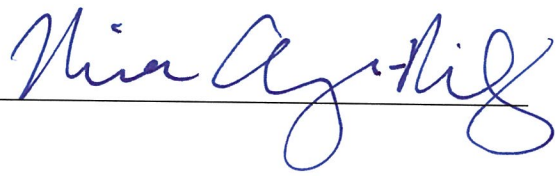
STATE OF WASHINGTON, Respondent, v. BRADLEY KEY, Appellant.	)))))))))	NO. 76136-6-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, NINA ARRANZA RILEY, STATE THAT ON THE 25TH DAY OF JULY, 2018, I CAUSED THE ORIGINAL **PETITION FOR REVIEW** 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] ISLAND COUNTY PROSECUTING ATTORNEY [ICPAO_webmaster@co.island.wa.us] ISLAND COUNTY PROSECUTOR'S OFFICE PO BOX 5000 COUPEVILLE, WA 98239	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL

SIGNED IN SEATTLE, WASHINGTON THIS 25TH DAY OF JULY, 2018.

X 

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

WASHINGTON APPELLATE PROJECT

July 25, 2018 - 4:10 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	76136-6
Appellate Court Case Title:	State of Washington, Respondent v. Bradley Michael Key, Appellant
Superior Court Case Number:	16-1-00100-0

The following documents have been uploaded:

- 761366_Petition_for_Review_20180725160953D1258095_7735.pdf
  This File Contains:
  Petition for Review
  The Original File Name was washapp.072518-6.pdf

A copy of the uploaded files will be sent to:

- ICPAO_webmaster@co.island.wa.us
- gregb@co.island.wa.us
- m.safstrom@co.island.wa.us

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Oliver Ross Davis - Email: oliver@washapp.org (Alternate Email: wapofficemail@washapp.org)

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

Note: The Filing Id is 20180725160953D1258095