NO. 98925-7

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BLESS CHIECHI,

Appellant.

RESPONSE TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by Eric H. Bentson, Deputy Prosecuting Attorney for Ryan P. Jurvakainen, Cowlitz County Prosecuting Attorney.

II. COURT OF APPEALS' DECISION

The Court of Appeals correctly decided this matter. The Respondent respectfully requests this Court deny review of the July 21, 2020, unpublished Court of Appeals' opinion in *State of Washington v. Bless Chiechi*, Court of Appeals No. 52405-8-II.

III. ISSUE PRESENTED FOR REVIEW

Does the Court of Appeals' decision that found giving the aggressor instruction was not a manifest error affecting a constitutional right raise a significant question of constitutional law under RAP 13.4(b)(3)?

IV. STATEMENT OF THE CASE

Berry Bernard came to America from Micronesia and eventually settled in Kelso, Washington, where he worked at Foster Farms. RP 197-98. On August 26, 2017, Bernard was at his cousin's house at 710 Fourth Street in Kelso. RP 198-99. Bernard was drinking beer at the house along with a group of men that included Bless Chiechi. RP 202. Chiechi and a man named Cassidy had an argument. RP 202. Chiechi became angry, and using "strong language," threatened Cassidy. RP 203-04.

Bernard told Chiechi not to cause problems at Cassidy's house. RP 205. Chiechi told Bernard not to say anything. RP 205. Chiechi called Bernard a mother f***er and challenged Bernard to fight outside. RP 206. Both Bernard and Chiechi went outside. RP 206. Outside, Chiechi and Bernard threw punches at each other. RP 207. Bernard got Chiechi into a hold. RP 207. Eventually, Bernard let Chiechi go. RP 208. Chiechi ran to his house, which was about a block away. RP 206, 208.

Bernard remained on the sidewalk then headed for his brother's house. RP 208. Chiechi obtained a metal baseball bat. RP 208-09. From behind Bernard, Chiechi called Bernard's name and said stop. RP 208. The two men came together. RP 233. Chiechi struck Bernard on the left side of the head two times with the bat. RP 208-09. Chiechi attempted to strike Bernard a third time in the head, but Bernard blocked the bat with his left arm. RP 209. Chiechi struck Bernard in the leg with the bat. RP 209-10. Chiechi then struck Bernard on the right side of the head with the bat. RP 209-10. Chiechi struck Bernard a sixth time with the bat on the right leg. RP 209.

Mike Saito observed the latter portion of the first fight and the entirety of the second fight. RP 231-33. Saito testified when he observed the men outside, Bernard had a hold of Chiechi's hair. RP 231. After Saito told Bernard to let Chiechi go, he did so. RP 232. Saito observed Chiechi

run away and retrieve the metal baseball bat from his car at his house. RP 232. Saito observed Chiechi and Bernard come together. RP 233. Chiechi had a weapon. RP 233. Bernard did not. RP 233. Saito observed Chiechi strike Bernard six times with the bat. RP 233. After being struck in the head, legs, and arms, Bernard was able to take the bat away from Chiechi and throw it. RP 233.

The blows to Bernard's head caused swelling that was wide and oblong to both sides of his head. RP 256, 272. Bernard went to his wife's house and 911 was called. RP 211. Bernard was transported by ambulance to St. John Medical Center in Longview. RP 273. The injuries to his head were located near his temples and were of significant mass. RP 296-97. A CT scan revealed a large hematoma to the left side of Bernard's head and a subarachnoid hemorrhage. RP 299. Because Bernard's internal bleeding risked displacing brain tissue, it put his life at risk. RP 300-02. Bernard was transferred to Southwest Washington Medical Center, to be seen by a neurosurgeon. 304-05.

Chiechi was charged with assault in the first degree with a deadly weapon enhancement. CP 12-13. Several of the witnesses testified at trial, including Bernard. RP 197-244, 253-407. Chiechi also testified. RP 379-401.

Chiechi testified that he had gone over to the house to see Cassidy. RP 380. Chiechi said he was drinking with Bernard and the other men that were there. RP 381. Chiechi said Bernard challenged him to fight. RP 381-82. Chiechi claimed he exited the house to avoid Bernard. RP 383. Chiechi claimed Bernard followed him, then pulled his hair from behind, while they were walking on the sidewalk. RP 383. Chiechi said Bernard held him so he was unable to turn. RP 384. Chiechi said Bernard pushed him to the grass. RP 384. Chiechi claimed Bernard continued to hold his hair while they walked to Chiechi's house. RP 384-85.

Chiechi claimed that as they got closer to his house, Bernard was holding his hair with one hand and used the other to punch him. RP 385. Chiechi claimed while this occurred he was able to open his locked car door and retrieve an aluminum bat from inside. RP 385. Chiechi testified that he hit Bernard with the bat in the legs, causing Bernard to release his hair. RP 385-86. Chiechi said Bernard left and returned with a metal cutter with two handles. RP 386. Chiechi claimed Bernard struck him with the metal cutter. RP 388. Chiechi claimed he then warned Bernard if he had to injure him he would not be breaking the law because he was at his house. RP 388. Chiechi testified that after being hit, he struck Bernard. RP 389. Chiechi said Bernard then ran to Chiechi's car in an effort to strike it. RP 389.

Chiechi said he then struck Bernard in the head because Bernard had struck him with the cutter and said he would damage his car. RP 389-90.

Chiechi's testimony contradicted what he had originally told Detective Tim Gower. RP 329-32. Chiechi told Detective Gower, Bernard wanted to fight, so he went to his car, retrieved a baseball bat, and struck Bernard six times. RP 330. Chiechi told Detective Gower, that Bernard did not have a weapon when he was striking him with the bat. RP 330. Chiechi told Detective Gower that after he had struck Bernard once in the leg, twice in the body, and three times in the head, Bernard ran away. RP 330. Chiechi told Detective Gower that after this Bernard returned with pruning sheers and swung them at him, missed, and left. RP 331.

The State proposed the aggressor jury instruction as part of the law on use of force. RP 410. The court inquired as to whether Chiechi was objecting to that instruction. RP 410. Chiechi's attorney told the court: "I think it states the law correctly." RP 410. Chiechi did not object to the aggressor instruction. RP 410. During his closing argument, Chiechi's attorney argued Chiechi's use of the bat as a weapon was lawful because Bernard was the aggressor. RP 464-80.

Chiechi challenged the aggressor instruction for the first time on appeal. Slip Opinion at 1. The Court of Appeals affirmed his conviction finding that because the evidence supported giving the aggressor

instruction, Chiechi did not suffer a manifest error affecting a constitutional right, and his attorney was not ineffective. Slip Opinion at 1, 9-10.

V. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS' DECISION

Because Chiechi's petition fails to raise any of the grounds governing review under RAP 13.4(b), it should be denied. Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Chiechi appears to argue that the Court of Appeals' decision involves a significant question of law under the Constitution of the State of Washington or of the United States under RAP 13.4(b)(3). His argument does not claim, or even suggest, any other grounds under RAP 13.4(b).

Chiechi petitions for review arguing he suffered ineffective assistance of counsel. Chiechi reasons that his attorney's failure to object was based on a misunderstanding of the law, therefore it was not a legitimate trial tactic. Chiechi acknowledges that he cannot raise an issue

for the first time on appeal unless he can show a manifest error affecting a constitutional right.

As explained by the Court of Appeals, because the instruction was appropriate, Chiechi did not suffer a manifest error affecting a constitutional right. With regard to ineffective assistance of counsel, because there was no error, an objection to the instruction would have failed. Additionally, Chiechi's attorney used the aggressor instruction to argue his theory of the case, and therefore had a legitimate tactical reason for agreeing the instruction should be given. Because Chiechi fails to raise a constitutional issue, his petition does not meet any of the criteria required for review under RAP 13.4(b).

A. THE COURT OF APPEALS' OPINION DOES NOT INVOLVE A SIGNIFICANT QUESTION OF CONSTITUTIONAL LAW.

Because the Court of Appeals' opinion did not involve a significant question of constitutional law, Chiechi fails to raise grounds for review under RAP 13.4(b)(3). First, giving the aggressor instruction did not cause Chiechi to suffer a manifest error affecting a constitutional right. Second, Chiechi did not suffer ineffective assistance of counsel.

1. The Court of Appeals correctly found Chiechi did not suffer a manifest error affecting a constitutional right.

There was no error in giving the aggressor instruction, therefore Chiechi did not suffer a manifest error affecting a constitutional right. To

raise a constitutional challenge for the first time on appeal "[t]he error must be 'manifest' and not a constitutional issue that the appellant *deliberately* chose not to litigate below." *State v. Trout*, 125 Wn. App. 313, 318, 103 P.3d 1278 (2005) (emphasis in original) (citing *State v. Valladareas*, 99 Wn.2d 663, 671-72, 664 P.2d 508 (1983); *State v. Walton*, 76 Wn. App. 364, 370, 884 P.2d 1348 (1994)). Having deliberately chosen not to litigate the issue at trial, Chiechi may not now raise the issue for the first time on appeal. First, the aggressor instruction did not relieve the State of its burden of proof or prevent Chiechi from arguing his theory of the case, thus even if in error, the error is not of constitutional magnitude. Second, as was obvious to the trial court, Chiechi's trial attorney, and the Court of Appeals, the evidence warranted giving of the aggressor instruction. Thus, there was no error, much less a manifest error affecting a constitutional right. Consequently, the Court of Appeals did not err in finding Chiechi could not bring the issue for the first time on appeal.

"[A]ppellate courts should determine on a case-by-case basis whether an unpreserved claim of error regarding a self-defense jury instruction constitutes a manifest constitutional error." *State v. O'Hara*, 167 Wn.2d 91, 101, 217 P.3d 756 (2009) (abrogating *State v. LeFaber*, 128 Wn.2d 896, 900, 913 P.2d 369 (1996)). "[A]n alleged error is manifest only if it results in a concrete detriment to the claimant's constitutional rights,

and the claimed error rests upon a plausible argument that is supported by the record." *State v. WWJ Corp.*, 138 Wn.2d 595, 603, 980 P.2d 1257 (1999) (emphasis in original). "RAP 2.5(a)(3) is not intended to afford criminal defendants a means for obtaining a new trial whenever they can identify some constitutional issue not raised in the trial court." *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). "Without a showing that the defendant's rights were actually affected by the alleged constitutional error, the alleged error is not 'manifest' under RAP 2.5(a)(3), and the claimed error may not be raised for the first time on appeal." *Id.* at 338.

"Where relevant to the issue of whether a first aggressor instruction was properly given, the evidence is presented in the light most favorable to the State." *State v. Grott*, 195, Wn.2d 256, 260, 458 P.3d 750 (2020). "A court properly submits an aggressor instruction where (1) the jury can reasonably determine from the evidence that the defendant provoked the fight; (2) the evidence conflicts as to whether the defendant provoked the fight; or (3) the evidence shows the defendant made the first move by drawing a weapon." *State v. Anderson*, 144 Wn. App. 85, 89, 180 P.3d 885 (2008). "Each party at trial is entitled to have the trial court instruct upon its theory of the case if there is sufficient evidence to support the theory." *State v. Thompson*, 47 Wn. App. 1, 733 P.2d 584 (1987) (citing *State v. Theroff*, 95 Wn.2d 385, 622 P.2d 1240 (1980)). "[A]n aggressor instruction

should be given where called for by the evidence." *State v. Riley*, 137 Wn.2d 904, 910 n.2, 976 P.2d 624 (1999).

Recently in *Grott*, this Court provided clarification as to when giving the aggressor instruction entails a manifest error affecting a constitutional right that would permit it to be challenged for the first time on appeal. 195 Wn.2d at 260. The Court noted, "Because first aggressor instructions do not actually relieve the State of its burden of proof, erroneously given first aggressor instructions are not necessarily errors of constitutional magnitude." *Id.* at 268-69. "The jury was instructed on self-defense and Grott was not prevented from arguing that theory of the case." *Id.* at 269. The first aggressor instruction did not relieve the State of its burden of proof because it required the jury to "find beyond a reasonable doubt that the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight." *Id.* at 269. "Thus, even if the first aggressor instruction was erroneously given, the error was not of constitutional magnitude." *Id.*

In addition to finding the instructions did not create an error of constitutional magnitude, this Court also reviewed the Court of Appeals' finding that Grott had suffered a manifest error affecting a constitutional right. *Id.* There was "substantial conflicting evidence of the shooting and the events leading up to it." *Id.* at 269-70 Additionally, there was some

testimony indicating the confrontation between Grott and the victim on the day of the shooting was provoked by Grott firing the first shots. *Id.* at 270.

The Court of Appeals erred in applying a bright-line rule rather than conducting a fact-specific inquiry while viewing the evidence in the light most favorable to the party requesting the aggressor instruction. *See id.* at 273. Grott engaged in a "course of aggressive conduct" shooting and pausing to reload multiple times. *Id.* There was testimony that Grott fired before the victim was aware of his presence. *Id.* There was also evidence that during the shooting the victim was directly facing Grott and had a loaded gun with the safety off. *Id.*

This evidence permitted the jury to infer that after Grott began shooting, the victim turned to face Grott and pulled out a gun. Grott then had reasonable fear of imminent harm and continued to shoot in self-defense. *Id.* If the jury inferred that Grott provoked the need to defend himself by firing first, then it was proper to find self-defense was not legally available to him. *See id.* at 273-74. For this reason, the aggressor instruction was properly given. *Id.* at 274. Further, because the aggressor instruction was supported by the evidence, Grott's attorney was not ineffective because an objection to the instruction would have been overruled. *Id.*

Here, because the jury instructions did not relieve the State of its burden of proof, giving the aggressor instruction did not create an error of constitutional magnitude. The jury was instructed on self-defense. CP 77. Chiechi was not prevented from arguing his theory of the case. The aggressor instruction did not relieve the State of its burden of proof, because it required the jury to find beyond a reasonable doubt that the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight. CP 89. Accordingly, the State was required to prove the absence of lawful force by Chiechi beyond a reasonable doubt. The aggressor instruction merely informed the jury that one means of finding the absence of lawful use of force was to find Chiechi was the aggressor beyond a reasonable doubt. This did not relieve the State of its burden of proof. Thus, as in *Grott*, even if giving the aggressor instruction had been erroneous, it would not have been an error of constitutional magnitude. 195 Wn.2d at 269. Therefore, as the Court of Appeals found, Chiechi is not permitted to challenge this instruction for the first time on appeal.

Moreover, as in *Grott*, the evidence supported giving the instruction. 195 Wn.2d at 270. The Court of Appeals considered the specific facts of the case in reaching its conclusion that the instruction was supported by the evidence. According to testimony of both Saito and Bernard, Chiechi and Bernard's first fight ended. Bernard remained on the sidewalk and then

began to walk to his brother's home. Meanwhile, Chiechi went to his home where he obtained the metal baseball bat. Chiechi then returned to where Bernard was. According to Saito, when Chiechi approached with the bat Chiechi and Bernard came together. RP 233. Chiechi struck Bernard twice in the head before Bernard was able to block the third blow to his head with his arm. Because there was credible evidence that Chiechi made the first move by drawing a weapon, the aggressor instruction was appropriate.

Even if Chiechi's attack with the bat was viewed as part of a continuous event, the aggressor instruction would still have been appropriate. The first fight began when Chiechi challenged Bernard to a fight, went outside with him, and the two men began punching each other. Thus, there was sufficient evidence to find Chiechi's acts provoked the fight. Further, Saito, Bernard, and Chiechi's testimony taken together provided conflicting evidence as to whether Chiechi or Bernard's conduct provoked the fight. This also made the aggressor instruction appropriate.

As in *Grott*, the jury was permitted to consider all the evidence in reaching its conclusion. It could have inferred that by challenging Bernard to a fight and punching him, Chiechi provoked the fight. Therefore, when Bernard then restrained him, Chiechi's subsequent act of obtaining a baseball bat and beating Bernard with it was not a justifiable act of self-defense.

Finally, Chiechi's attorney deliberately chose not to object to the aggressor instruction. RP 410. He then used the language of the aggressor instruction to argue that Bernard had been the aggressor rather than his client. RP 464-80. Because Chiechi "*deliberately* chose not to litigate" the issue at trial, he may not now change course and claim a manifest constitutional error for the first time on appeal. *See Trout*, 125 Wn. App. at 318 (emphasis in original).

2. Chiechi did not suffer ineffective assistance of counsel.

Chiechi's attorney was not ineffective. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that prejudice resulted from that deficiency. *Strickland v. Washington*, 446 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Chiechi's claim of ineffectiveness fails. First, Chiechi's attorney was not ineffective because he had a legitimate tactical reason for agreeing to the aggressor instruction—he embraced the language of the instruction to argue the victim, Bernard, was the aggressor. Second, as explained in Part A-1, the evidence supported giving the aggressor instruction. Therefore, any objection to the instruction would have been overruled, and Chiechi suffered no prejudice.

Whether counsel was ineffective is determined by the following test: "[a]fter considering the entire record, can it be said that the accused was

afforded an effective representation and a fair and impartial trial?" *State v. Jury*, 19 Wn. App. 256, 262, 576 P.2d 1302 (1978) (*citing State v. Myers*, 86 Wn.2d 419, 424, 545 P.2d 538 (1976)). The first prong of this two-part test requires the defendant to show "that his . . . lawyer failed to exercise the customary skills and diligence that a reasonably competent attorney would exercise under similar circumstances." *State v. Visitacion*, 55 Wn. App. 166, 173, 776 P.2d 986, 990 (1989) (*citing State v. Sardinia*, 42 Wn. App. 533, 539, 713 P.2d 122, *review denied*, 105 Wn.2d 1013 (1986)). "If trial counsel's conduct can be characterized as legitimate trial strategy or tactics, it cannot serve as a basis for a claim that the defendant received ineffective assistance of counsel." *State v. McNeal*, 145 Wn. App. 352, 362, 37 P.3d 280 (2002).

The second prong requires the defendant to show "there is a reasonable probability that, but for the counsel's errors, the result of the proceeding would have been different." *Visitacion*, 55 Wn. App. at 173. If trial counsel would not have succeeded in a course of action a defendant claims should have been taken at trial, it cannot form the basis of an ineffective assistance claim. *State v. Nichols*, 161 Wn.2d 1, 14-15, 162 P.3d 1122 (2007) ("[T]here is no ineffectiveness if a challenge to the admissibility of evidence would have failed[.]").

With regard to jury instructions, trial attorneys must make several strategic decisions—these decisions are presumed to be reasonable. *See State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011); *State v. Embry*, 171 Wn. App. 714, 762, 287 P.3d 648 (2012) ("Not requesting a limiting instruction can be a legitimate tactic to avoid reemphasizing damaging evidence."); *State v. Calvin*, 176 Wn. App. 1, 14, 316 P.3d 496 (2013) (explaining that when evidence did not support a self-defense claim, defense attorney's decision not to request a self-defense instruction constituted a "clear strategic reason" for that decision); *State v. Hassan*, 151 Wn. App. 209, 218, 211 P.3d 441 (2009) ("The decision to not request an instruction on a lesser included offense is not ineffective assistance of counsel if it can be characterized as part of a legitimate trial strategy to obtain an acquittal.").

Using a jury instruction that contains language supportive of a defense attorney's closing argument is an example of a strategic decision made for the sake of the overall defense. *Cf. State v. Piche*, 71 Wn.2d 583, 589-90, 430 P.2d 522 (1967) ("[T]rial practice, despite persistent efforts toward its advancement, remains more of an art than a science....the law must afford the attorney a wide latitude and flexibility in his choice of trial psychology and tactics."). There are not detailed rules for reasonable conduct because, "'[a]ny such set of rules would interfere with the

constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions.'" *In re Pers. Restraint of Stenson*, 142 Wn.2d 710, 742, 16 P.3d 1 (2001) (quoting *Strickland*, 466 U.S. at 689.). Of course, "error is not prejudicial unless within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred." *State v. Tharp*, 96 Wn.2d 591, 599, 637 P.2d 961 (1981) (citing *State v. Cunningham*, 93 Wn.2d 823, 613 P.2d 1139 (1980)).

Here, the record shows Chiechi's attorney made the decision not to object to the aggressor instruction because its language was useful during Chiechi's closing argument. The entire thrust of Chiechi's attorney's closing argument was that Chiechi was justified in using the bat to strike Bernard, because Bernard was the aggressor. Chiechi's attorney argued:

- "And what it [the evidence] has shown is that my client, Bless Chiechi, is the victim." RP 464.

- "Ladies and gentlemen, my client was defending himself that night. He was not the aggressor, and he did what was necessary and appropriate in that situation." RP 467.

- "What did Berry [Bernard] tell to Officer Gower? Well, he admitted to being the aggressor. Berry admitted to being the aggressor. He said he put Bless [Chiechi] in a headlock." RP 472.

- "How did the fight start? According to Berry, Bless swung at him. That's what he testified to at this trial." RP 474.

- "So, basically, everyone who was present that testified, including my client, said that Berry was the aggressor, the one that started this[.]" RP 474.

- "Ladies and gentlemen, when you look at all of this it's clear that Bless was not the aggressor....What did occur was my client was defending himself." RP 477.

- "If my client was the aggressor, where would the fight have occurred? At Mazawa's house. It didn't. It happened on the way to his house." RP 478.

- "The circumstantial evidence shows that my client was not the one that wanted to get in a fight at the time. My client testifies that his hair was being pulled, that he was being attacked by this person en route to his house." RP 478.

Ultimately, Chiechi's attorney used his claim that Bernard was attacking him as the justification for Chiechi's violence:

> "What is appropriate? What is necessary? Well, when examining that question, let's go back and let's go with just what the Prosecutor is going to say happened. That my client hit him six times when he didn't have a weapon. Even in that situation, self-defense is appropriate."

RP 480. Thus, Chiechi's attorney's closing argument demonstrates that his strategy was to justify Chiechi's use of force by claiming he had only done so to respond to an aggressor.

The aggressor instruction's first sentence stated: "No person may by any intentional act reasonably likely to provoke a belligerent response,

create a necessity for acting in self-defense and thereupon use, offer, or attempt to use force upon or toward another person." CP 89. The "no person" language was supportive of Chiechi's attorney's argument, as it did not merely apply to Chiechi but to any person. Without the aggressor instruction, Chiechi's attorney would have been limited to the language of the lawful used of force instruction. This would have restricted him to arguing it was reasonable and necessary to strike Bernard six times with a metal bat, when Chiechi himself had admitted to Detective Gower that Bernard was unarmed. Chiechi's attorney's strategy was to change the jury's focus from the reasonableness of Chiechi's actions to a claim that Bernard was the aggressor. This was a legitimate trial strategy.

Chiechi also did not suffer any prejudice. The jury was still instructed that the State had the burden of disproving lawful use of force beyond a reasonable doubt. There was evidence Chiechi provoked the fight, there was conflicting evidence as to whether Chiechi or Bernard provoked the fight, and Chiechi made the first move during the second fight by drawing a weapon. *See supra* Part A-1. Independently, any of these would have constituted sufficient grounds for the court to give the aggressor instruction. Thus, as in *Grott*, had an objection to the aggressor instruction been made it would have been overruled, and Chiechi suffered no prejudice. 195 Wn.2d at 274.

VI. CONCLUSION

Because the petition does not meet any of the considerations governing acceptance of review under RAP 13.4(b), it should be denied.

Respectfully submitted this 16th day of September, 2020.

RYAN P. JURVAKAINEN
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By: _____
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CERTIFICATE OF SERVICE

I, Julie Dalton, do hereby certify that RESPONDENT'S BRIEF was filed electronically via the Washington State Appellate Courts' Portal which will automatically cause such filing to be served on the opposing counsel listed below:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on September 17, 2020.

Julie Dalton

Julie Dalton

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

September 18, 2020 - 9:10 AM

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