

67247-9

67247-9

NO. 67247-9-I

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

STATE OF WASHINGTON,

Respondent,

v.

JEROME BLAKE,

Appellant.

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

The Honorable Thomas J. Wynne, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

I. APPELLANT WAS DENIED A FAIR TRIAL WHEN THE JURY HEARD IMPERMISSIBLE OPINIONS REGARDING HIS GUILT.

In his opening brief, appellant Jerome Blake asserts he was denied a fair trial when the State presented evidence establishing that two lay witnesses (Quinlin Bess and Ivor Williams) had formed an opinion that Blake shot Marquise Brown despite the fact that neither witness personally saw who shot Brown. Brief of Appellant (BOA) at 23- 29. In response, the State claims: the issue was not properly preserved for appellate review; the defendant invited any error; the challenged evidence did not constitute an impermissible comment on guilt; and any error was harmless. Brief of Respondent (BOR) 9-22. For reasons explained in appellant's opening brief and below, the State's arguments should be rejected.

a. The Issue Was Properly Preserved for Appellate Review.

The State claims Blake failed to preserve this issue for review because defense counsel did not specifically object to the opinion evidence. BOR at 9-12. Given the trial court's ruling on a motion in limine, however, such objections would have amounted to a useless endeavor. Consequently, appellate review is appropriate. See, State v.

Cantabrana, 83 Wn. App. 204, 208-09, 921 P.2d 572 (1996) (appellate review is not precluded when interposing an objection would have constituted a “useless endeavor” given the trial court’s prior ruling).

Testimony about a fact which is based on the witness’ personal knowledge of that fact is not opinion testimony.¹ See, e.g., Price v. State, 96 Wn. App. 604, 618, 980 P.2d 302 (1999) (holding witness testimony of what she saw did not qualify as opinion testimony because the witness had personal knowledge). Consequently, as a threshold matter, a party must establish that a witness lacks personal knowledge before it may properly object to evidence on the ground that it is an improper opinion.² Otherwise the party cannot show the evidence is an “opinion.” Id.

One of the defense’s first pretrial motions was to exclude evidence identifying Blake as the shooter on the basis that the opining witness

¹ Black’s Law Dictionary 1093 (6th ed.1991) defines opinion evidence or testimony as: “Evidence of what the witness thinks, believes, or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts themselves.”

² An important distinction must be made here. Personal knowledge of the fact to which one is testifying should be distinguished from personal knowledge of the facts relied upon by a witness when drawing an opinion. On the one hand, if a witness has personally observed a fact, testimony as to that fact is not opinion evidence. Price, 96 Wn. App. at 618. On the other hand, before a lay witness may properly render an opinion regarding something other than guilt, he must have personal knowledge of the facts from which he drew his opinion. State v. Fallentine, 149 Wn. App. 614, 215 P.3d 945 (2009). When appellant refers to the witness’ lack of personal knowledge, he is referring to the former.

lacked personal knowledge of that fact. Specifically, the defense moved to exclude a phone message in which Bess identified Blake as the shooter, arguing it was hearsay. The basis for the objection was that Bess did not possess personal knowledge as to who shot Brown and, thus, the voicemail identification did not qualify as an excited utterance for hearsay purposes. RP 57-58; CP 70.

The State clearly understood that the relevant question being litigated was whether Bess' recorded statement that Blake was the shooter would be permitted to go to the jury as substantive evidence despite the fact Bess did not personally observe Blake shoot Brown. RP 58-59. In response, the State argued Bess had personal knowledge of other facts leading up to the shooting and this was sufficient knowledge to enable him to be certain beyond a reasonable doubt that Blake shot Brown. RP 58-59. The trial court agreed with the State and denied the defense's motion. RP 59. In so ruling, the trial court essentially concluded Bess had sufficient personal knowledge to permit the jury to hear his out-of-court statement in which Bess opined Blake was the shooter.

Although the defense's lack-of-personal-knowledge argument came within a hearsay objection, the consequences of the trial court's ruling made it futile for the defense to make further objections to the opinion evidence on the ground that it amounted to an improper opinion.

For the defense would be unable to meet the threshold requirement for making such an objection (i.e. showing the declarant lacked personal knowledge). As such, further objection to the challenged opinion evidence would have amounted to a “useless endeavor.” Consequently, appellate review is not precluded. Cantabrana, 83 Wn. App. at 208-09.

Even if this Court disagrees, Blake still may raise this issue for the first time on appeal because it constitutes manifest constitutional error. RAP 2.5(a) (3). Impermissible opinion testimony regarding the defendant's guilt violates his constitutional right to a fair jury trial. State v. Black, 109 Wn.2d 336, 348, 745 P.2d 12 (1987). Consequently, Washington courts have found the admission of an explicit or nearly explicit comment on guilt constitutes manifest constitutional error which may be raised for the first time on appeal. See, State v. King, 167 Wn.2d 324, 329, 332 219 P.3d 642 (2009); State v. Johnson, 152 Wn. App. 924, 934, 219 P.3d 958 (2009).

As explained in appellant's opening brief and detailed further below, Bess' and Williams' opinions that Blake was the shooter constituted an explicit comment on Blake's guilt that affected his trial rights. (BOA at 24-26) Arguing to the contrary, the State claims the opinion evidence was not an “explicit or nearly explicit comment” on guilt constituting a manifest error because the jury still had to consider witness

credibility and had to determine whether Blake had the requisite intent. BOR at 15-16. Case law does not support such a narrow reading of what constitutes an “explicit or nearly explicit comment.”

The jury must always decide whether an opining witness is credible. Therefore, if the fact that the jury must decide witness credibility were enough to insulate a comment on guilt from appellate review under RAP 2.5(a)(3), there would be no situation where this issue could be raised for the first time on appeal. Yet, the Washington Supreme Court has explicitly held the issue may be raised for the first time on appeal under RAP 2.5(a)(3). King, 167 Wn.2d at 332.

This is not to say, however, that the jury’s determination of witness credibility never factors into deciding whether opinion evidence is a manifest error. For example, where an expert offers the impermissible opinion but the jury is specifically instructed that they are not bound by that opinion, the error may not be manifest. State v. Kirkman, 159 Wn.2d 918, 937, 155 P.3d 125 (2007). Likewise, where the impermissible opinion goes to the victim’s credibility rather than the defendant’s guilt, an instruction telling the jury it is the sole determiner of credibility may render the witness’ opinion innocuous. Id. Finally, admission of opinion evidence may not constitute a manifest error where it appears the defense, for tactical reasons, chose to waive objection to the opinion as part of its

strategy to attack the witness' credibility. Id. None of these situations exists here, however.

Bess and Williams were not experts and, thus, the jury was never specifically instructed that it was not bound by their opinions. Similarly, the challenged evidence did not touch upon witness credibility which might have been cured by an instruction to the jury stating it was the sole judge of credibility. Instead, these comments went directly to guilt.

Finally, the State points to nothing in the record indicating the defense made a tactical decision to let the jury hear witnesses opine Blake was the shooter as some kind of strategy to attack the credibility of these witnesses. In fact, the defense's motion attempting to exclude Bess' voicemail statement demonstrates the defense did not want the jury to hear this type of evidence. More importantly, given that the State could not produce anyone who saw who pulled the trigger or produce any physical evidence suggesting the identity of the shooter, there exists no conceivably legitimate reason why the defense would have wanted the jury to hear witnesses opine that Blake shot Brown.

Turning to the question of intent, the fact that an opining witness does not explicitly state the defendant had the requisite intent does not mean the witness has not rendered an "explicit or near explicit comment on guilt" creating a manifest constitutional error. The focus of the inquiry

is not on whether the challenged comment covers all the statutory elements. The focus is on whether the witness renders an opinion regarding the core issue being litigated. E.g., State v. Olmedo, 112 Wn. App. 525, 532, 49 P.3d 960 (2002).

Here, the core issue to be determined was who shot Brown. Intent was not contested. As the prosecutor recognized, the jury did not “hear any suggestion when you pull a trigger [six inches] from somebody’s head you don’t intend to kill.” RP 1472-73. The State understood the central question for determining guilt was whether it was Blake who shot Brown. As such, the opinions of both Bess and Williams went to the core issue in dispute and constituted an explicit comment on guilt that significantly impeded Blake’s right to a fair jury trial.

In sum, appellate review is appropriate because Blake preserved the error by objecting to the voicemail identification on the grounds Bess lacked personal knowledge. The trial court’s denial of this motion made futile any further objections predicated on that same ground. Alternatively, review is appropriate pursuant to RAP 2.5(a)(3), because the opinion evidence constituted explicit comments on guilt.

b. The Defense Did Not Invite Error And Did Not Agree That Opinions A To Guilt Could Be Used As Substantive Evidence.

The State claims the defense invited any error pertaining to the admission of impermissible opinion evidence because it confronted Bess during cross examination about his opinion that Blake was the shooter. BOR at 11, 13-14. However, the State ignores the evidence it had already put before the jury.

By the time the defense cross-examined Bess, the State had introduced a considerable amount of evidence establishing Bess' opinion that Blake shot Brown. It had played several times the voicemail message in which Bess renders his opinion, elicited testimony from Detective Wally Friesen establishing Bess identified Blake as the shooter, presented testimony from Detective Kevin Allen establishing that Bess was consistent in who he believed to be the shooter, and elicited testimony from Bess that he had no doubt in his mind who the shooter was when he identified him on the voicemail. RP 410, 473, 510, 545, 886-87. With all this before the jury, the defense had no choice but to directly confront Bess regarding his opinion. Given this record, the State's suggestion that the defense invited error is untenable.

Similarly, the State's claim that the defense "affirmatively agreed evidence identifying the defendant as the shooter could come in through

detectives” is without merit. BOR 14. The State points to statements made during a defense objection to the admission of a photo montage. BOR at 14 (citing 4RP 501-06). During this exchange, defense counsel agreed the photo montages could come in for identification purposes,³ but there is nothing indicating the defense was agreeing that Bess’ and Williams’ identification of him could be properly submitted to the jury as substantive evidence proving Blake as the shooter. RP 503-04. Instead, a fair reading of the record shows defense counsel agreed that the photo identification of Blake could come in through the detectives only for the purpose of identifying him as a person at the scene, not as the shooter.⁴ As such, the record does not support the State’s claim the defense affirmatively agreed to the admission of the challenged opinion testimony for the purpose of actually proving the fact Blake was the shooter.

³ The defense had already lost a motion in limine in which it sought to exclude the photo montages. RP 68.

⁴ Appellant’s interpretation of the record is consistent with the defense’s pre-trial written and oral motions demonstrating the defense was under the impression the photo montage would be used to support an identification of Blake as being at the scene, not as the shooter. RP 67; CP 72.

c. The Challenged Evidence Constituted An Improper Opinion As To Guilt.

The Washington Supreme Court has held it is “clearly inappropriate” for the State to offer opinion testimony in criminal trials that amounts to an expression of personal belief as to the guilt of the defendant. State v. Montgomery, 163 Wn.2d 577, 591, 183 P.3d 267 (2008) (citation omitted). Such an opinion is not helpful to the jury and highly prejudicial. Id. at 591, n. 5.

Despite this, the State claims the challenged opinion evidence was properly admitted because it was not a direct comment on guilt, it was otherwise helpful to the jury, and it was based on inferences from the evidence. BOR at 17-20. As shown below, the State is incorrect.

First, the State fails to engage in the appropriate legal analysis for determining whether opinion evidence constitutes an impermissible comment on guilt. BOR at 17-20. To determine whether evidence is a direct comment on guilt, courts considers the following factors: (1) the type of witness involved; (2) the specific nature of the testimony; (3) the nature of the charges; (4) the type of defense; and (5) the other evidence before the trier of fact. E.g., State v. Demery, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001).

Applying these factors here, there can be little doubt that the challenged evidence amounted to an impermissible comment on guilt. Bess and Williams were lay witnesses. The nature of the challenged evidence was witness testimony and out-of-court statements that directly and affirmatively concluded Blake was the person who shot and killed Brown. The charge was murder. Blake's defense was built entirely on the theory he was not the shooter and the police had the wrong man. Finally, the other evidence before the trier of fact established that nobody had personal knowledge of who shot Brown and that there were other people at the scene who had motive, opportunity, and the means to shoot Brown.

Arguing to the contrary, the State claims the rules of evidence support admission of the challenged opinion evidence. BOR at 17. This is not so. While lay witnesses may give opinions or inferences based upon rational perceptions, these opinions must be helpful to the jury and may not constitute an opinion on guilt. ER 701; e.g., King, 167 Wn.2d at 331. Witnesses may not tell the jury what result to reach, and opinion testimony should be avoided if the information can be presented in such a way that the jury can draw its own conclusions. Montgomery, 163 Wn.2d at 591.

Evidence of Bess' and Williams' conclusion that Blake shot Brown should have been excluded because the jury heard information about what these witnesses actually observed and could have reached its

own conclusion as to whom shot Brown. The State offered extensive testimony from Bess and Williams establishing the demeanor of those at the scene, where the people were standing at the time of the shooting, where the sound of gunfire came from, and from where the witnesses saw the muzzle flash – all facts of which they had personal knowledge. RP 706-14, 877-84, 905-10. After hearing this testimony, the jury was in just as good of a position to decide who they thought shot Brown as the witnesses were. Thus, it was unnecessary and unhelpful for the jury to hear the opinion evidence. See, Montgomery, 163 Wn.2d at 592 (explaining “It is unnecessary for a witness to express belief that certain facts or findings lead to a conclusion of guilt.”).

Next, the State claims that because Bess’ and Williams’ opinions were based on inferences drawn from facts they observed, the jury was entitled to hear their opinions. Case law does not support this. For example, in State v. Black, 109 Wn.2d 336, 745 P.2d 12 (1987), the Washington Supreme Court held a witness’s conclusion that the victim was suffering from rape trauma syndrome amounted to an impermissible comment that the defendant was guilty of rape. Id. at 349. The Supreme Court reached this conclusion even though the witness had formed her opinion based on inferences she drew from facts she had personally observed (i.e. the victim’s psychological and emotional state the months

following the alleged rape). Id. at 339. The Supreme Court explained that the State could have offered the foundational testimony establishing the emotional trauma suffered by the victim after the alleged rape and then argued to the jury that it might infer from that testimony that the victim was raped. Id. at 349. However, the State should not have submitted to the jury the witness' opinion that the victim had been raped. Id. Instead, it was the jury's duty to weigh the evidence and independently draw this inference or reject it. Id.

A similar process should have occurred here -- the jury only should have heard testimony establishing what Bess and Williams actually observed. The jury should have been left to independently draw its own inferences when determining whether Blake had pulled the trigger.

Arguing to the contrary, the State cites cases which are distinguishable.⁵ The State cites two cases where the challenged testimony did not go to the core issue needed to be decided by the jury when determining guilt. BOR at 17-18 (citing State v. Mason, 160 Wn.2d 910, 916, 932, 162 P.3d 396 (2007) and State v. Sanders, 66 Wn. App. 380, 832 P.2d 1326 (1992)). In Mason, the Supreme Court concluded that the challenged testimony in a murder case did not amount to a comment

⁵ Importantly, the distinguishing features go to one or more of the five factors used for determining whether a direct comment on guilt has been made.

on guilt because the substance of the testimony only established the victim somehow sustained life-threatening injuries and this fact did not conflict with Mason's alibi defense. 160 Wn.2d at 916, 932. In Sanders, an officer testified that the lack of drug paraphernalia in the defendant's home indicated the defendant did not use drugs regularly. This Court concluded this was not an impermissible comment on guilt because the officer's opinion was not inconsistent with Sanders' unwitting possession defense. Sanders, 66 Wn. App at 389. Thus, unlike here, the comments at issue in Mason and Sanders did not go to the core issue determining guilt.

The State also relies on State v. Heatley, 70 Wn. App. 573, 854 P.2d 658 (1993). BOA at 17-18. This case is not on point because it involved a different type of witness and testimony that was uniquely admissible. Heatley was charged with reckless driving and driving under the influence. Id. at 575. An officer testified that based on his observations and experiences the defendant was intoxicated and unable to safely drive. Id. at 576. This Court held the officer's testimony did not constitute an impermissible comment on guilt because it was based on the officer's experience in the field, his observation of Heatley's field sobriety tests, and his conclusion regarding intoxication. Id.

Heatley is distinguishable because the witness had considerable professional experience observing alcohol impairment, and because

Washington permits witness testimony as to the degree of intoxication of another person if the witness had the opportunity to observe that person. See, State v. Barr, 123 Wn. App. 373, 98 P.3d 518 (2004) (distinguishing Heatley on these grounds when determining an officer's testimony constituted a comment on guilt). Here, neither Bess nor Williams testified he had any experience in crime-scene reconstruction, bullet projectiles, or psychological profiling. Furthermore, the State has pointed to no case suggesting Washington law permits a jury to hear lay opinion in a murder case that concludes the defendant shot the victim.

In sum, when the appropriate legal standard is applied to the facts of this case, it is apparent that the challenged opinion evidence constituted an impermissible comment on guilt.

d. Admission of the Challenged Comments Was Not Harmless.

The State claims admission of the challenged opinion evidence was harmless error. BOR at 20-23. Based on this record, however, the State cannot show the untainted evidence is so overwhelming that the jury would have reached the same result despite the error.

Once the comments on guilt are properly excluded, the State's evidence is not overwhelming. See, BOA 26-28. No one saw who shot Brown. RP 156-57, 168, 184, 654, 660, 731, 957, 975, 1050. Police never

recovered the drug money or drugs. RP 1327. There was no physical evidence suggesting the identification of the shooter. RP 313. The murder weapon was never recovered. RP 1324. Moreover, there were other people present at the scene who had the same motive and opportunity to shoot the victim.⁶

The State claims appellant's assertion that the opinion evidence was "unnecessary" somehow undermines any argument the error was harmless. BOR at 20. It suggests the opinion evidence was not prejudicial because a jury might have drawn the exact same inferences as did Bess and Williams. The State misses the point, however. While a jury

⁶ Considerable evidence pointed to Cooper. The evidence established Cooper: put up money for the drug transaction; had been misled by Brown; was present at the time of the shooting; was carrying bag over his shoulder that likely contained a gun; had his hand inside the bag so that it was concealed; became irate with Brown just moments before the shooting; was standing near the location from where the gun fire came; and had used the safe where police found bullets that were from the same manufacturer as the bullet used to kill Brown. RP 347, 653, 655-56, 658-60, 710, 718, 736-37, 741, 848, 869, 875, 899, 1112-25, 1245, 1250. There was also evidence that Bess attempted to conceal Cooper's presence at the scene and his role in the drug deal. RP 531, 544, 577, 1263. Cooper was Bess's childhood friend and financier. RP 840-43, 850.

There was also evidence suggesting Bess may have shot Brown. RP 1507-08. First, Bess lied to police about his involvement and has told many versions of the events. RP 1260-1277. Additionally, Bess was burned by the shell casing. RP 1238. The State's firearm expert, Kathy Geil, testified that in her experience, most often it is the shooter who is burned by the shell casing. RP 1414. This evidence directly contradicts the State's claim that the "physical evidence showing Bess was burned by the ejected shell casing would eliminate him as a potential shooter." BOA at 21 (no citation).

could have drawn the same inferences and reached a guilty verdict without hearing the inadmissible comments on guilt, the State cannot show beyond a reasonable doubt the jury would have done so.

The State also suggests that because neighbors and phone records corroborated the movements of Bess and Williams prior to the shooting, admission of the opinion evidence was harmless. BOR at 21. However, that so-called corroborating evidence only supports (to some extent) what Bess and Williams said occurred just prior to and after the shooting. The testimony does not corroborate their opinions that Blake was the person who shot Brown. Indeed, no one can corroborate this fact.

Finally, the State points to Bess' testimony that he confronted Blake about his own alleged gunshot injury and that Blake tacitly admitted to the shooting by responding "My bad." BOR 21; RP 889. While this conversation supports the State's theory, this evidence standing alone is not enough to render harmless the multiple comments on guilt.

Importantly, no one corroborated that this alleged conversation ever took place. Such corroboration was particularly important given Bess' considerable credibility problems. The jury heard testimony establishing Bess had lied and misled police, presenting an ever-evolving version of events. RP 531, 533, 544, 574, 577, 580-81, 930, 931, 988, 1260-81. In fact, Bess' inconsistencies led the prosecutor to admit:

“Quite frankly, I’m not sure Quinlin Bess would tell you the same story 10 times. The details are different. That’s just him. That’s the witness we had to deal with.” RP 1533. Given his track-record as a manipulator of the truth, Bess’ uncorroborated claim that Blake made a tacit admission does not carry much weight in comparison to the challenged opinion evidence. Hence, this evidence standing alone does not establish beyond a reasonable doubt that the jury would have reached the same verdict without the improper opinion evidence.

Given the weaknesses of the State’s case and its repeated emphasis on the improper opinion evidence during argument, it cannot be said beyond a reasonable doubt that the jury would have reached the same result without that evidence. As such, the error was not harmless.

II. THE TRIAL COURT ERRED WHEN IT ADMITTED HEARSAY EVIDENCE DESPITE THE DECLARANT’S LACK OF PERSONAL KNOWLEDGE.

In his opening brief, Blake asserts the trial court erred when it admitted as substantive evidence Bess’ voicemail identification of Blake as the shooter because of Bess’ lack of personal knowledge regarding that fact. BOA at 29-33. In response, the State claims that because Bess personally observed events leading up to the shooting, the trial court could infer he possessed the requisite personal knowledge to support admission of the hearsay. BOR at 24 (citing Beck v. Dye, 200 Wash. 1, 10, 92 P.2d

113 (1939) and State v. Bryant, 65 Wn. App. 438, 433, 828 P.2d 1121 (1992) and United States v. Tocco, 135 F.3d 116, 128 (2nd Cir 1998)).

The State is wrong.

The State admits “personal knowledge is not shown where there is evidence which provides an articulable basis on which to believe the declarant did not witness the event.” BOR at 25 (citing Brown v. Keane, 355 F.3d 82 (2nd Cir. 2004). A witness’ explicit statement that he did not personally observe an act is a pretty solid basis for concluding he did not possess personal knowledge regarding that act.⁷ Here, neither the trial court nor the jury could reasonably infer Bess or Williams had personal knowledge of the fact Blake shot Brown because both affirmatively stated they did not personally see who shot Brown. RP 660, 955.

Moreover, the cases relied on by the State do not support its argument that personal knowledge of an act can be inferred where the record affirmatively shows the witness did not observe that act. In Beck, the trial court excluded hearsay evidence precisely because the declarant had not witnessed the act or fact concerning which the statement was

⁷ This is especially so in a case where the witness is willing to get up on the stand and render an opinion as to the defendant’s guilt. Under such circumstances, the State cannot successfully argue the witness was unwilling to admit to having personal knowledge of a fact establishing guilt because he was afraid of retribution for fingering the defendant or because he has some kind of loyalty to the defendant.

made. 200 Wash. at 10. In Bryant and Tocco, sufficient evidence established the witness had personal knowledge of the facts that formed the substance of the challenged statement. Bryant, 65 Wn. App. at 433; Tocco, 135 F.3d at 128. Thus, unlike here, the prosecution did not attempt to prove the witness possessed personal knowledge of an act based on the witness' personal observation of other facts.

Finally, the State claims the admission of the voicemail was harmless. For the reasons detailed in appellant's opening brief, this error was not harmless. BOA at 26-27, 32-33. Additionally, as explained above, the trial court's error had a far greater impact on the outcome of this case than is usually the case with erroneously admitted hearsay, because its decision to deny the defense's objection rendered futile any further defense objections to opinion evidence. Hence, the trial court's admission of the voicemail identification was reversible error.

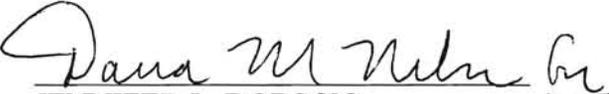
B. CONCLUSION

This Court should reverse appellant's conviction.

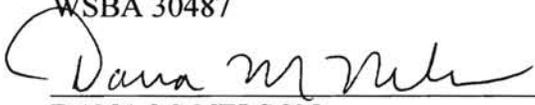
DATED this 3rd day of July, 2012.

Respectfully submitted,

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 67247-9-1
)	
JEROME BLAKE,)	
)	
Appellant.)	

DECLARATION OF SERVICE

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

THAT ON THE 3RD DAY OF JULY 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE
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SIGNED IN SEATTLE WASHINGTON, THIS 3RD DAY OF JULY 2012.

x *Patrick Mayovsky*

2012 JUL -3 PM 1:16
COURT OF APPEALS DIV 1
STATE OF WASHINGTON