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## A. INTRODUCTION

This case is of the primary type the appellate system was designed to correct: one in which serious errors resulted in the conviction of an individual who may well be innocent. The State concedes multiple errors – including its own misconduct – but remains undisturbed by the outcome. The State’s dismissive attitude should not be endorsed. This Court should reverse and remand for dismissal of the charge or for a new trial.

## B. ARGUMENT

### **1. The conviction violates due process because the State’s own undisputed evidence showed someone else likely killed Ms. Pettifer.**

As explained in the opening brief, although the State presented sufficient evidence to prove that someone killed Angela Pettifer, it failed to prove Mr. Benjamin was the perpetrator. Indeed, the State’s evidence showed that Ms. Pettifer’s father most likely killed her during an alcoholic blackout, and that her ex-boyfriend may have been the perpetrator.

Although the State presented sufficient evidence that Mr. Benjamin might have been the killer, that is not good enough to satisfy due process. See Brief of Appellant at 12-24 (explaining issue at length).

- a. On review, we must admit the truth of the State's evidence showing the father's and ex-boyfriend's DNA – but not Mr. Benjamin's – was under fingernails the victim used to defend herself and on the clothing the killer removed after the homicide.

The State pins its hopes on the standard of review, but the Jackson/Green standard does not mean the State is free to ignore its own undisputed evidence. Indeed, on review one must “admit[] the truth of the State's evidence and all reasonable inferences that could be drawn from that evidence.” Brief of Respondent at 14.

The State's own undisputed evidence was that the DNA found under Ms. Pettifer's fingernails, which she used to fight off her killer, belonged to her father and ex-boyfriend. CP 147; 9/21/11 RP 57, 91; 9/27/11 RP 34-35, 48-49. The State's evidence showed that Mr. Benjamin's DNA was not under the victim's fingernails. 9/27/11 RP 34, 49.

The State concedes Ms. Pettifer “was clothed at the time she was struck” and that “her killer took the jeans off of her body.” Brief of Respondent at 9, 17; 9/21/11 RP 22. The State's own undisputed evidence was that both the father's and ex-boyfriend's DNA was on the clothing the killer removed after the murder. CP 148; 9/21/11 RP 22; 9/23/11 RP 172-73; 9/26/11 RP 51, 54, 74. The State's evidence showed that Mr.

Benjamin's DNA was not on the clothing the killer removed. 9/26/11 RP 53, 106.

The State's evidence showed that no one saw Ms. Pettifer's father between 8:50 p.m., when Mike Brady saw him outside Ms. Pettifer's front door, and 1:30 a.m., when a cab picked him up about an hour after Ms. Pettifer was killed, then drove him from Monroe to his home in Shoreline. 9/21/11 RP 162-207; 9/22/11 RP 102-04, 119, 124, 135, 210; 9/23/11 RP 97, 106.

The State makes much of the fact that Mr. Benjamin was sweating, and notes the temperature outside after midnight was in the low 70's. Brief of Respondent at 16. But the State's evidence showed that because it had been almost 90 degrees that day, it was extraordinarily hot inside the Savoy Building. 9/21/11 RP 186 (Karla Prosser testifies that it was a "very hot" night – "a really, really hot August night"); 9/22/11 RP 127 (Andrea Estep testifies that it was "particularly hot" that week and that the Savoy Building is not well-ventilated); 9/26/11 RP 128 (record temperatures of 88 degrees August 14 and 91 degrees August 15). It was so hot that, as the State acknowledges in its response brief, Jason Chapman refused to have sex with the victim because it was "too hot in the apartment." Brief of Respondent at 5.

Given these undisputed facts, presented by the State's own witnesses, no rational juror could find beyond a reasonable doubt that Mr. Benjamin was the killer. The conviction violates due process, and should be reversed and dismissed with prejudice.

b. It is important for appellate courts to correct wrongful convictions caused by tunnel vision.

The State's defense of this conviction presents a troubling example of the "tunnel vision" problem associated with wrongful convictions. See Brief of Appellant at 20 n.1. Investigators were confident the killer's DNA would be found under Ms. Pettifer's fingernails, but they had already charged Mr. Benjamin with the crime by the time the lab reported that the samples instead matched Ms. Pettifer's father and ex-boyfriend. CP 147, 150; 9/21/11 RP 57, 91; 9/27/11 RP 34-35, 48-50. At this point, the State should have investigated the father and ex-boyfriend further – especially given the fact that their DNA, and not Mr. Benjamin's, was also on the clothing the killer removed. But the State did not change course. And the State does not now concede reversal is required despite the weakness of its evidence against Mr. Benjamin and the specter of a wrongful conviction.

The problem is common in cases of actual innocence. "[P]olice often become prisoners of their own initial hunches." Susan Bandes,

Loyalty to One's Convictions: the Prosecutor and Tunnel Vision, 49 How. L.J. 475, 477 (2006) (quoting Scott Turow, Ultimate Punishment: A Lawyer's Reflections on Dealing With the Death Penalty 34 (2003)). Prosecutors may be under pressure to make convictions "stick": "In case after case across the country where DNA has proven an inmate innocent, the prosecutors have suddenly changed the facts of the case to try to explain away the new DNA results." Mark A. Godsey, False Justice And The "True" Prosecutor: A Memoir, Tribute, And Commentary, 9 Ohio St. J. Crim. L. 789, 794 (Spring 2012).

Tunnel vision is not usually caused by any malice or ill intent. As a matter of cognitive science, "people are more likely to attend to, seek out and evaluate evidence that is consistent with their beliefs, and ignore or downplay evidence that is inconsistent with their beliefs." Bandes, supra, at 490 (quoting Jonathan A. Fugelsang & Kevin N. Dunbar, A Cognitive Neuroscience Framework for Understanding Causal Reasoning and the Law, 359 Phil. Transactions Royal Soc'y London B 1749, 1751 (2004)). There is a natural human "tendency to develop a fierce loyalty to a particular version of events" which "results in a refusal to consider alternative theories or suspects during the initial investigation." Bandes, supra, at 479. But it is precisely because tunnel vision may be

unconscious that an outside party – e.g., an appellate court – must step in to correct the problem.

The investigators in this case focused too quickly on Michael Benjamin, and ignored subsequent evidence strongly implicating other suspects and excluding him. The result is a conviction based on insufficient evidence, in violation of due process. Mr. Benjamin asks this Court to correct the error, reverse his conviction, and remand for dismissal of the charge with prejudice.

**2. The State concedes the prosecutor repeatedly violated Mr. Benjamin's Fifth and Fourteenth Amendment rights during closing argument; reversal is required because the prosecutor flagrantly ignored the trial court's rulings sustaining Mr. Benjamin's objections to the misconduct, and the State cannot prove harmlessness beyond a reasonable doubt.**

The State concedes the prosecutor committed misconduct by repeatedly telling the jury Mr. Benjamin had to explain the presence of trace amounts of his DNA on Ms. Pettifer. Brief of Respondent at 24. Indeed, the prosecutor violated Mr. Benjamin's Fifth Amendment right to silence and Fourteenth Amendment right to due process by stating twice during closing argument and twice during rebuttal closing that the jury should convict because Mr. Benjamin had not provided an innocent explanation for this piece of evidence. Brief of Appellant at 24-30. Mr. Benjamin objected both during closing and during rebuttal, and the court

sustained the objections, but the prosecutor flagrantly ignored the court's rulings and repeated the improper argument after each ruling. This Court should reject the State's plea to affirm the conviction despite the conceded misconduct.

To begin with, the State applies the wrong harmless error standard, arguing Mr. Benjamin must prove prejudice. Brief of Respondent at 22. It is well-settled that in these circumstances the State bears the burden of proving beyond a reasonable doubt that its constitutional violations did not contribute to the verdict. Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); State v. Fleming, 83 Wn. App. 209, 216, 921 P.2d 1076 (1996); State v. Fiallo-Lopez, 78 Wn. App. 717, 729, 899 P.2d 1294 (1995); State v. Cleveland, 58 Wn. App. 634, 648, 794 P.2d 547 (1990); see also State v. Emery, \_\_\_ Wn.2d \_\_\_, 278 P.3d 653, 662 (2012) (explaining that constitutional harmless error standard applies when prosecutor urges jury to draw adverse inference from defendant's exercise of his right to silence; it did not apply in Emery where both defendants testified and there was no Fifth Amendment violation).

The State cites Stenson for the proposition that Mr. Benjamin must prove prejudice, but Stenson is not on point because it did not involve a constitutional violation, so the constitutional harmless error standard did not apply. See Brief of Respondent at 21-22 (citing State v. Stenson, 132

Wn.2d 668, 718, 940 P.2d 1239 (1997), cert. denied, 523 U.S. 1008 (1998)). In Stenson, the defendant argued the prosecutor elicited improper opinion testimony, violated an in limine order, and misstated the evidence in closing argument. Stenson, 132 Wn. 2d at 718-29. Unlike this case, the defendant did not argue the prosecutor violated his Fifth and Fourteenth Amendment rights, the State did not concede any errors, and the Court held none of the comments were improper. Id.

The seminal case establishing the constitutional harmless error standard is one in which the jury was urged to draw an adverse inference from the defendants' exercise of their Fifth Amendment right not to testify. Chapman, 386 U.S. at 19. The Supreme Court held "the beneficiary of a constitutional error [must] prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Id. at 24. In other words, "before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Id.

The State does not address Chapman or any of the cases cited in Mr. Benjamin's opening brief in which this Court properly applied the Chapman standard. This Court applied the constitutional harmless error standard in Cleveland, where the prosecutor made arguments similar to the improper arguments made here. Cleveland, 58 Wn. App. at 648 (State had

to prove beyond a reasonable doubt its misconduct was harmless where prosecutor implied defendant had a duty to present favorable evidence). This Court applied the constitutional harmless error standard in Fiallo-Lopez, where the prosecutor improperly argued the jury should convict because “there was no evidence to explain” why the defendant was at the crime scene. Fiallo-Lopez, 78 Wn. App. at 728-29 (argument “improperly commented on the defendant’s constitutional right not to testify and impermissibly shifted the burden of proof” so reversal required unless court convinced beyond a reasonable doubt that jury would have reached same result in absence of error). This Court applied the constitutional error standard in Fleming and reversed the conviction where the prosecutor made arguments like the improper arguments here, including:

[Y]ou would expect and hope that if the defendants are suggesting there is a reasonable doubt, they would explain some fundamental evidence in this matter. And several things, they never explained.

Fleming, 83 Wn. App. at 214-16. As in Fleming, the constitutional harmless error standard applies here and reversal is required.<sup>1</sup>

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<sup>1</sup> This case is like Fleming, not Killingsworth. See Brief of Respondent at 29 (citing State v. Killingsworth, 166 Wn. App. 283, 291-92, 269 P.3d 1064, review denied, 278 P.3d 1112 (2012)). In Killingsworth, the prosecutor never said the defendant or the jury was required to explain the evidence, only that there was no reasonable explanation for the evidence other than that the defendant perpetrated the crime. Id. at 291. Here, in contrast, the comment “there is no innocent

The State's reliance on Warren is misplaced. Brief of Respondent at 24 (citing State v. Warren, 165 Wn.2d 17, 195 P.3d 940 (2008), cert. denied, 129 S.Ct. 2007 (2009)). There, the prosecutor mischaracterized the reasonable-doubt standard, but did not shift the burden of proof or urge the jury to draw an adverse inference from the defendant's failure to testify. Warren, 165 Wn.2d at 24-25. Thus, unlike in this case, the constitutional harmless error standard did not apply. Id. at 26 & n.3. Furthermore, in Warren the prosecutor did not repeat the improper argument after the court sustained the defendant's objection. Id. at 26. In contrast, the prosecutor here flagrantly ignored the trial court's rulings and repeated the improper argument each time the court sustained Mr. Benjamin's objections. To obtain a conviction in this manner undermines the reliability of the outcome and the integrity of the system as a whole.<sup>2</sup>

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explanation for that DNA" was immediately preceded by, "One thing that I kept waiting for throughout the entirety of the defendant's lawyer's closing argument was an explanation for one bit of evidence. How do you account for the DNA on her left nipple?" 9/27/11 RP 122-23. The prosecutor had also earlier said "Mr. Benjamin ... has no innocent explanation for his DNA being on her left nipple and areola" and "you have to come up with some explanation for his DNA on her left nipple." 9/27/11 RP 72, 77. The arguments were clearly improper under Fleming and the other cases cited in the opening brief.

<sup>2</sup> The State's claim that Mr. Benjamin should have objected even more is without merit. Brief of Respondent at 26. Mr. Benjamin objected twice to the improper argument and the Court sustained the objections both times, but the prosecutor made it clear that he was going to continue

In sum, under Chapman, Fleming, Fiallo-Lopez, and Cleveland, the State bears the burden of proving beyond a reasonable doubt that its constitutional violations did not contribute to the verdict. Because the State concedes multiple constitutional violations but does not even attempt to prove the violations were harmless beyond a reasonable doubt (and could not do so), this Court should reverse and remand for a new trial. See Brief of Appellant at 30-31; Fleming, 83 Wn. App. at 215-16.

**3. The State conceded below that Detective Hatch discovered Mr. Benjamin's August hot-sauce purchase via an unconstitutional search, and now concedes that the subsequent warrant was unconstitutionally overbroad; the remedy is reversal and suppression of the illegally obtained evidence.**

The State's theory of the case was not that the perpetrator hit Ms. Pettifer with a bottle hot sauce from her own apartment, but that the killer brought his own bottle of hot sauce to Ms. Pettifer's apartment and hit her with it. In an effort to support this theory, the State searched for evidence that Mr. Benjamin purchased hot sauce at the Monroe Safeway. These searches violated the Fourth Amendment and article I, section 7. See Brief of Appellant at 31-40.

As with the prosecutorial misconduct issue, the State concedes multiple violations of Mr. Benjamin's constitutional right to privacy. CP

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to make this argument regardless of objections and regardless of the court's rulings. 9/27/11 RP 72, 74, 77, 122, 123.

87 (State concedes Detective Hatch's discovery of the August 11 hot sauce purchase was unconstitutional); Brief of Respondent at 36-37 (State concedes subsequent warrant was overbroad). But as with the prosecutorial misconduct issue, the State urges this Court to affirm notwithstanding the multiple constitutional violations. This Court should reject the State's request.

First, the State never explains why the evidence of the August 11 hot-sauce purchase was admissible in light of its concession that Detective Hatch violated Mr. Benjamin's constitutional rights by calling Safeway and obtaining this information without a warrant. Brief of Respondent at 34-40. The evidence of this purchase must be suppressed in light of the concededly invalid search. State v. Winterstein, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009) (exclusionary rule is "nearly categorical" and there is no inevitable-discovery exception).

Second, although the State now also concedes that the warrant was unconstitutionally overbroad and that evidence of the bleach purchase should have been suppressed, it wrongly claims the evidence of hot-sauce purchases need not be excluded. The State argues that hot-sauce evidence was properly admitted under the severance doctrine. Brief of Respondent at 37-38. But as explained in the opening brief, severance does not apply here because there is no valid portion to sever from the rest. The first

clause of the warrant simply repeated information obtained during Detective Hatch's concededly unconstitutional search, and the second clause of the warrant was an unconstitutional general warrant. Thus, suppression of all evidence obtained from Safeway must be suppressed. State v. Riley, 121 Wn.2d 22, 28-30, 846 P.2d 1365 (1993) (suppressing all evidence obtained pursuant to warrant that "permitted the seizure of broad categories of material"); State v. Perrone, 119 Wn.2d 538, 556-61, 834 P.2d 611 (1992) (overbroad warrant not severable; suppression required); Brief of Appellant at 39-40.

The State's argument also fails by its own terms. The State acknowledges that a warrant is severable (i.e. suppression is not required) only if all five of the following requirements are met: (1) the problem with the warrant lies in either the intensity or duration of the warrant, and not with the intrusion itself; (2) the warrant particularly describes at least one item for which there is probable cause; (3) the item particularly described which is supported by probable cause must be significant when compared to the warrant as a whole; (4) the disputed items must have been found and seized while executing the valid part of the warrant; and (5) police must not have conducted a general search. Brief of Respondent at 37 (citing State v. Maddox, 116 Wn. App. 796, 67 P.3d 1135 (2003)). The State cannot prove any of these factors is satisfied – let alone all of them – so

the warrant is not severable and all Safeway purchases should have been suppressed.

First, the problem with the warrant lies in both the intensity and duration – it authorized a search of all purchases (improper intensity) over several months (improper duration). CP 115.

Second, the warrant did not particularly describe any item for which there was probable cause. The only mention of hot sauce was in the first clause, which must be excised because it was gleaned from Detective Hatch’s concededly unconstitutional search (“[r]ecords related to the purchase of ‘Frank’s RedHot Cayenne Pepper Sauce’ from a transaction on August 11, 2010 at 07:33 hours at store number 537, register number 3, transaction number 0142”). CP 115. The remaining clause was an unconstitutional general warrant which did not mention any specific items at all. It authorized the seizure of “all club card history under the name of Michael Benjamin and referencing telephone number 253-709-8035.” CP 116. But as the case cited by the State notes, “the warrant must include one or more particularly described items for which there is probable cause. Otherwise, there is nothing for the severability doctrine to save.” Maddox, 116 Wn. App. at 807.

Third, because there was no item particularly described, there was necessarily no such item that was significant when compared to the

warrant as a whole. “If most of the warrant purports to authorize a search for items not supported by probable cause or not described with particularity, the warrant is likely to be ‘general’ in the sense of authorizing ‘a general, exploratory rummaging in a person’s belongings,’ and no part of it will be saved by severance or redaction.” *Id.* at 807-08 (citation omitted).

Fourth, as explained above, there was no valid part of the warrant; and fifth, police conducted an improper general search, obtaining Mr. Benjamin’s entire Safeway purchase history over several months. CP 115, 123-24, 128.

This case is unlike Maddox, where some of the warrant described items for which there was not probable cause (e.g. photographs of co-conspirators), but most of the warrant particularly described items for which there was probable cause (e.g. methamphetamine, items used to package and distribute methamphetamine, and records regarding methamphetamine sales). *Id.* at 806. Here, the warrant authorized a search of “all club card history.” CP 116. No items were particularly described; it was simply an invalid general warrant. Thus, under the State’s own test, the warrant is not severable and all of the Safeway purchase history should have been suppressed. Mr. Benjamin asks this Court to reverse and remand for suppression of the evidence.

**4. Multiple evidentiary errors prejudiced Mr. Benjamin, requiring reversal and remand for a new trial.**

a. The State concedes the bleach was inadmissible.

As explained in the opening brief, the trial court abused its discretion under ER 402 and 403 by admitting (1) evidence that Mr. Benjamin bought a bottle of bleach on August 15 and (2) testimony speculating about its purpose. Brief of Appellant at 40-42; 9/16/11 RP 90-91. The State concedes that evidence of the bleach purchase should have been suppressed for the Fourth Amendment violation, so it does not reach the evidentiary issue. Brief of Respondent at 41. This Court should accept the concession.

The State wrongly argues that even if the bleach were suppressed the detective would have been permitted to testify regarding his speculations about why Mr. Benjamin bought bleach. Brief of Respondent at 42. This argument makes no sense: the detective would not have been allowed to speculate about why Mr. Benjamin bought bleach if the fact that Mr. Benjamin bought bleach was inadmissible. For the same reason, the argument that Mr. Benjamin did not preserve the issue for appeal is unavailing. The only reason the detective was allowed to testify about the bleach purchase is that Mr. Benjamin lost his motions to suppress evidence of the bleach purchase – motions he made pursuant to the Fourth

Amendment, article I, section 7, ER 402 and ER 403. 9/16/11 RP 90-91; CP 106-33. Mr. Benjamin clearly preserved the issue by moving to exclude the bleach on a number of grounds. Because the State concedes the trial court improperly admitted evidence that Mr. Benjamin purchased bleach, the admission of the detective's testimony speculating about the reasons for the bleach purchase was also improper.

b. Mr. Benjamin's statement to Lauren Chapman was inadmissible under ER 403.

As explained in the opening brief, Mr. Benjamin's statement that it was "a hot night for having sex" should have been suppressed because it was substantially more prejudicial than probative, in violation of ER 403. Brief of Appellant at 42-43. The State claims the statement "was highly probative" because the victim's legs were apart when she was found and the killer partially removed the victim's clothes. Brief of Respondent at 43. But as explained previously, this was a homicide, not a sex crime, and there was no evidence of rape. Furthermore, courts have recognized that the potential for unfair prejudice is at its highest when evidence of sex acts is admitted, and evidence of sexual statements is similarly prejudicial. Brief of Appellant at 42-43 (citing State v. Sutherby, 165 Wn.2d 870, 886, 204 P.3d 916 (2009); State v. Saltarelli, 98 Wn.2d 358, 363, 655 P.2d 697 (1982)). The State claims the evidence was not prejudicial here because

Mr. Benjamin was not on trial for a sex crime. Brief of Respondent at 44. But that is exactly why the evidence had limited probative value which was substantially exceeded by the danger of unfair prejudice. ER 403. This Court should reject the State's arguments.

- c. The ex-boyfriend's statement that he would chop up Ms. Pettifer if she ever went out with someone else was not hearsay and was admissible regardless to show motive or intent.

As explained in the opening brief, the trial court erred in excluding the ex-boyfriend's statement, "If I ever see you with another man, I'll chop you up with a hatchet." The statement was not hearsay because not offered for its truth – a conditional statement is neither true nor false, and in any event, Ms. Pettifer was not chopped up with a hatchet so the statement would not be true even if it were not conditional. Furthermore, even if the statement were hearsay, it would still be admissible to show motive and intent. It was highly relevant to the question of the killer's identity, and should have been admitted. Brief of Appellant at 43-45.

The State simply repeats the definition of hearsay without explaining how this statement was a true statement. Brief of Respondent at 46-47. Again, the statement was conditional, and nobody chopped Ms. Pettifer up with a hatchet, so the statement could not have been offered for its truth. The statement was offered to show the ex-boyfriend was

motivated by jealousy to kill Ms. Pettifer. It was admissible as relevant, non-hearsay evidence.

Even if it were hearsay, it was admissible to show motive or intent. The State claims this alternative basis for admission was not argued below, but this is simply wrong. Not only did Mr. Benjamin make this argument, he cited both State v. Powell, 126 Wn.2d 244, 260, 893 P.2d 615 (1995) and State v. Parr, 93 Wn.2d 95, 102, 606 P.2d 263 (1980). 9/16/11 RP 40. The fact that he used the words “motive” and “intent” and cited two cases should be enough to preserve the issue whether or not he uttered the phrase “ER 803(a)(3)”. After all, would the State claim an issue was not preserved if a party objected on “relevance” grounds but did not utter the phrase “ER 402”? The argument is without merit.

The State acknowledges that under Powell such statements are admissible “to prove the declarant acted in accordance with statements of future intent.” Brief of Respondent at 46. But the State then claims the statement was inadmissible because it was not a statement of what Ms. Pettifer planned to do. Id. The State is confused. Ms. Pettifer was not the declarant; her ex-boyfriend was the declarant. Because it was a statement showing the declarant’s intent and motive, it was admissible. Powell, 126 Wn.2d at 260; Parr, 93 Wn.2d at 102.

**5. Cumulative error deprived Mr. Benjamin of a fair trial.**

As explained in the opening brief, each of the errors that occurred in this case was serious and prejudicial, and independently requires reversal. But even if each of the errors individually did not warrant a new trial, they would in the aggregate. Brief of Appellant at 46 (citing State v. Venegas, 155 Wn. App. 507, 522, 228 P.3d 813 (2010), review denied 245 P.3d 226). The State essentially responds that the cumulative error doctrine does not apply because there were no errors. Brief of Respondent at 47-48. But as explained above and in the opening brief, the State is wrong. Here, the combination of improper evidentiary rulings, an erroneous suppression ruling, and prosecutorial misconduct denied Mr. Benjamin his right to a fair trial. This Court should reverse and remand for a new trial.

C. CONCLUSION

For the reasons set forth above and in the opening brief, Mr. Benjamin respectfully requests that this Court reverse his conviction and remand for dismissal of the charge with prejudice. In the alternative, the conviction should be reversed and the case remanded for a new trial.

DATED this 2nd day of August, 2012.

Respectfully submitted,

  
~~Lila J. Silverstein~~ WSBA 38394  
Washington Appellate Project  
Attorney for Appellant

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON, )  
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 Respondent, )  
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 ) NO. 67946-5-I  
 )  
 )  
 MICHAEL BENJAMIN, )  
 )  
 )  
 Appellant. )

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 2<sup>ND</sup> DAY OF AUGUST, 2012, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON, THIS 2<sup>ND</sup> DAY OF AUGUST, 2012.

X \_\_\_\_\_ *grd*

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