

70838-4

70838-4

No. 70838-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

---

STATE OF WASHINGTON,

Respondent,

v.

MIRANDA JENKINS,

Appellant.

---

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

---

BRIEF OF APPELLANT

---

WHITNEY RIVERA  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711  
whitney@washapp.org

FILED  
COURT OF APPEALS DIVISION ONE  
STATE OF WASHINGTON  
JAN 25 2011  
PR 4:54

**TABLE OF CONTENTS**

A. ASSIGNMENTS OF ERROR.....1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....1

C. STATEMENT OF THE CASE.....2

D. ARGUMENT.....6

**1. The trial court violated Ms. Jenkins’s constitutional rights to a fair trial, to present a defense, and to confront adverse witnesses.....6**

        a. An accused has a due process and Sixth Amendment right to confront adverse witnesses and conduct a meaningful cross examination.....6

            i. Detective Taylor’s misconduct was relevant to the investigation.....8

            ii. This evidence of misconduct was not so prejudicial that it would disrupt the fairness of the fact finding process.....10

            iii. Ms. Jenkins’s constitutional right to confront Detective Taylor outweighed any State interest in excluding this evidence.....11

        b. The trial court’s limitation of defense’s cross examination requires reversal.....12

**2. The trial court’s admission of testimony regarding a firearm located in the vehicle associated with Ms. Jenkins was manifestly unreasonable .....13**

        a. Testimony that a firearm was located in the vehicle was not relevant to the crime of forgery.....13

b. Testimony regarding the firearm should have been excluded because of its prejudicial nature.....	15
c. The admission of testimony regarding the firearm was prejudicial error and requires reversal.....	16
3. <b>Cumulative trial errors denied Ms. Jenkins her constitutional right to a fair trial.....</b>	<b>17</b>
E. CONCLUSION.....	18

**TABLE OF AUTHORITIES**

**Washington Supreme Court Decisions**

*Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 230 P.3d 583 (2010).....17

*State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 482 P.2d 775 (1971).....13

*State v. Coe*, 101 Wn.2d 772, 684 P.2d 668 (1984).....17

*State v. Cronin*, 142 Wn.2d 568, 14 P.3d 752 (2000).....15

*State v. Darden*, 145 Wn.2d 612, 41 P.3d 1189 (2002).....8, 9, 10

*State v. Foster*, 135 Wn.2d 441, 957 P.2d 712 (1998).....7

*State v. Foxhaven*, 161 Wn.2d 168, 163 P.3d 786 (2007).....13

*State v. Guloy*, 104 Wn.2d 412, 705 P.2d 1182 (1985).....12

*State v. Hudlow*, 99 Wn.2d 1, 659 P.2d 514 (1983).....7, 8, 10, 11

*State v. Jones*, 67 Wn.2d 506, 408 P.2d 247 (1965).....8

*State v. Jones*, 168 Wn.2d 713, 230 P.3d 576 (2010).....6

*State v. Koslowski*, 166 Wn.2d 409, 209 P.3d 479 (2009).....8

*State v. Parris*, 98 Wn.2d 140, 654 P.2d 77 (1982).....7

*State v. Smith*, 106 Wn.2d 772, 725 P.2d 951 (2003).....15

*State v. Swan*, 114 Wn.2d 613, 790 P.2d 610 (1990).....13

*State v. Tharp*, 96 Wn.2d 591, 637 P.2d 961 (1981).....16

### Washington Court of Appeals Decisions

<i>State v. Alexander</i> , 64 Wn. App. 147, 822 P.2d 1250 (1992).....	18
<i>State v. Bennett</i> , 36 Wn. App. 176, 672 P.2d 772 (1983).....	15
<i>State v. Dickenson</i> , 48 Wn. App. 457, 740 P.2d 312 (1987).....	12
<i>State v. Freeburg</i> , 105 Wn. App. 492, 20 P.3d 984 (2001).....	15
<i>State v. Kilgore</i> , 107 Wn. App. 160, 26 P.3d 308 (2001).....	7, 12
<i>State v. McDaniel</i> , 83 Wn. App. 179, 920 P.2d 1218 (1996).....	10
<i>State v. Venegas</i> , 153 Wn. App. 507, 228 P.3d 813 (2010).....	18
<i>State v. Weaville</i> , 162 Wn. App. 801, 256 P.3d 426 (2011).....	13

### United States Supreme Court Decisions

<i>Chambers v. Mississippi</i> , 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).....	6, 7
<i>Davis v. Alaska</i> , 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974).....	7, 9, 12
<i>Harrington v. California</i> , 395 U.S. 250, 89 S. Ct. 1726, 23 L. Ed. 2d 284 (1969).....	12
<i>Taylor v. Kentucky</i> , 436 U.S. 478, 98 S. Ct. 1930, 56 L. Ed. 2d 468 (1978).....	17
<i>Washington v. Texas</i> , 338 U.S. 14, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967).....	7
<i>Williams v. Taylor</i> , 529 U.S. 362, 120 S. Ct. 1479, 146 L. Ed. 2d 435 (2000).....	17

**Decisions of Other Jurisdictions**

*Moody v. United States*, 376 F.2d 525 (9th Cir. 1967).....16  
*United States v. Reid*, 410 F.2d 1223 (7th Cir. 1969).....16, 17  
*United States v. Warledo*, 557 F.2d 721 (10th Cir. 1977).....15

**Constitutional Provisions**

U.S. Const. amend. VI.....6-7  
U.S. Const. amend. XIV.....17  
Const. art. I, § 3.....17  
Const. art. I, § 22.....6-7

**Rules and Statutes**

ER 401.....8  
ER 402.....13, 14  
ER 403.....15, 16

**A. ASSIGNMENTS OF ERROR**

1. The trial court's limitation of the defense's ability to cross examine a law enforcement witness violated Ms. Jenkins's right to confront and cross examine witnesses.

2. The trial court abused its discretion when it admitted testimony that deputies located a firearm in the vehicle associated with Ms. Jenkins.

3. Cumulative error materially affected the outcome of the trial and violated Ms. Jenkins's right to a fair trial.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. The right to confront and cross examine adverse witnesses is guaranteed by both the federal and state constitutions. The primary and most important component of the right to confrontation is the right to conduct a meaningful examination of an adverse witness. Denial of a criminal defendant's right to adequately cross examine an essential State witness violates the constitutional right to confrontation. Did the trial court's limitation of the scope of cross examination of the detective assigned to the forgery investigation violate Ms. Jenkins's constitutional right to confront witnesses?

2. The trial court allowed testimony that, after Ms. Jenkins's arrest, deputies discovered a firearm in the vehicle associated with her. Deputies testified about locating this firearm and investigating whether it was stolen. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination more or less probable. Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Did the trial court abuse its discretion when permitting testimony regarding the firearm, which was wholly unrelated to the forgery allegation and highly prejudicial?

3. Under the cumulative error doctrine, even where no single trial error standing alone merits reversal, an appellate court may nonetheless find that together the combined errors denied the defendant a fair trial. When viewed together, did the errors that occurred in Ms. Jenkins's trial create a cumulative and enduring prejudice that was likely to have materially affected the jury's verdict?

#### C. STATEMENT OF THE CASE

On the third day of Ms. Jenkins's jury trial, defense counsel learned for the first time that Detective Brian Taylor had been the subject of a misconduct investigation by the King County Sheriff's

Office. 7/11/13 RP 4. Detective Taylor was the lead detective assigned to direct the follow up investigation into the forgery allegation related to Ms. Jenkins. 7/11/13 RP 18, 34. Detective Taylor's captain had filed a complaint against him because of his conduct during a suspect interrogation and use of improper search procedures during the summer of 2012. 7/11/13 RP 5. The King County Sheriff's Office issued a finding of misconduct and Detective Taylor was removed from the vice unit to which he had previously been assigned. 7/11/13 RP 3, 5. At the time of Ms. Jenkins's trial, Detective Taylor was in the process of appealing this misconduct finding. 7/11/13 RP 5.

The State moved outside the presence of the jury to prohibit Ms. Jenkins from cross examining Detective Taylor regarding his misconduct. 7/11/13 RP 4. The defense argued that this information was relevant to Detective Taylor's credibility and the investigation that took place with regard to Ms. Jenkins. 7/11/13 RP 6. Defense counsel explained that the investigation conducted by law enforcement, including Detective Taylor's failure to document and log evidence, was a central issue in Ms. Jenkins's defense. 7/11/13 RP 9. The trial court granted the State's motion to prohibit defense counsel from cross examining Detective Taylor about his misconduct, concluding that this

evidence would be “a big distraction and very inappropriate.” 7/11/13 RP 14.

During trial, testimony established that on July 31, 2012, Ms. Jenkins presented a check at a Wells Fargo Bank. 7/11/13 RP 99. The bank teller spoke to the account owner via telephone and learned that he had not made or authorized the check. 7/11/13 RP 104. The bank teller contacted law enforcement, who subsequently responded to the scene and placed Ms. Jenkins under arrest. 7/11/13 RP 56. Ms. Jenkins told law enforcement that she received the check as payment for work she had done. 7/11/13 RP 56.

Deputies escorted Ms. Jenkins outside of the bank and placed her near Deputy Abbott’s patrol car. 7/11/13 RP 57. Ms. Jenkins explained that she received the check in the mail and showed Deputy Abbott a copy of the United States Postal Service tracking slip. 7/11/13 RP 58. Ms. Jenkins informed Deputy Abbott that her friend had driven her to the bank in a white sport utility vehicle. 7/11/13 RP 59.

Deputy Abbott put out a description of the vehicle and Deputies Hsu and Tag located it in the parking lot of the bank. 7/11/13 RP 159. Over defense counsel’s objection, Deputy Hsu testified that he conducted a sweep of the vehicle and located a firearm. 7/11/13 RP

159. Deputy Hsu explained to the jury that he ran the serial number to investigate whether the firearm was stolen. 7/11/13 RP 159. Deputy Tag was also permitted to testify, over defense counsel's objection, that Deputy Hsu told him there was a firearm in the vehicle associated with Ms. Jenkins. 7/11/13 RP 151.

Detective Taylor testified at trial that a couple of days after her arrest, Ms. Jenkins came into the police department to speak with him. 7/11/13 RP 24. He testified that she gave him an envelope that was related to the forgery allegation being made against her. 7/11/13 RP 24. Detective Taylor did not enter the envelope into evidence or document its existence because he "didn't feel it would help the case at all." 7/11/13 RP 25.

However, Detective Sergeant Bowen testified that he was the one that spoke with Ms. Jenkins at the police department and took possession of the envelope. 7/11/13 RP 170. Detective Sergeant Bowen testified that he placed the envelope in Detective Taylor's inbox because Detective Taylor was not present at the police station when Ms. Jenkins brought in the envelope. 7/11/13 RP 172-73. After this testimony, the defense moved the trial court to reconsider its prior ruling that prohibited cross examination of Detective Taylor regarding

his misconduct. 7/11/13 RP 176. The trial court maintained its prior ruling and would not permit cross examination on this subject. 7/11/13 RP 177. The jury returned a guilty verdict on one count of forgery as charged. CP 120.

D. ARGUMENT

**1. The trial court violated Ms. Jenkins's constitutional rights to a fair trial, to present a defense, and to confront adverse witnesses.**

“The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations.” *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010) (quoting *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)). An accused's right to an opportunity to be heard in his defense, including the rights to examine witnesses against him and to offer testimony, is basic to our system of jurisprudence.

*Jones*, 168 Wn.2d at 720.

- a. An accused has a due process and Sixth Amendment right to confront adverse witnesses and conduct a meaningful cross examination.

A criminal defendant's right to cross examine witnesses against him is a fundamental constitutional right. *Chambers*, 410 U.S. at 295.

The right to confront and cross examine adverse witnesses is

guaranteed by both the federal and state constitutions. U.S. Const. amend. VI; Const. art. I, § 22; *Davis v. Alaska*, 415 U.S. 308, 315, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); *Washington v. Texas*, 338 U.S. 14, 23, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967); *State v. Hudlow*, 99 Wn.2d 1, 15, 659 P.2d 514 (1983). The primary and most important component of confrontation is the right to conduct a meaningful cross examination of adverse witnesses. *State v. Foster*, 135 Wn.2d 441, 455-56, 957 P.2d 712 (1998).

Confrontation helps ensure the accuracy of the fact finding process. *Chambers*, 410 U.S. at 295. The purpose of cross examination is to test the perception, memory, and credibility of witnesses. *State v. Parris*, 98 Wn.2d 140, 144, 654 P.2d 77 (1982). A defendant must be permitted to expose the jury to the facts from which the jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness. *Davis*, 415 U.S. at 318. Whenever the right to confront is denied, the ultimate integrity of this fact finding process is called into question. *Chambers*, 410 U.S. at 295. As such, the right to confront must be zealously guarded. *State v. Kilgore*, 107 Wn. App. 160, 184-85, 26 P.3d 308 (2001).

Trial courts may deny cross examination if the evidence sought is vague, argumentative, or speculative. *State v. Jones*, 67 Wn.2d 506, 512, 408 P.2d 247 (1965). Determinations on whether cross examination may be limited require a three prong approach: (1) the evidence must be of at least minimal relevance; (2) if relevant, the burden is on the State to show that the evidence is so prejudicial as to disrupt the fairness of the fact finding process at trial, and (3) the State's interest to exclude prejudicial evidence must be balanced against the defendant's need for the information sought. *State v. Darden*, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002). Only if the State's interest outweighs the defendant's need can otherwise relevant information be withheld. *Id.* Review of alleged violations of the confrontation clause are de novo. *State v. Koslowski*, 166 Wn.2d 409, 417, 209 P.3d 479 (2009).

i. *Detective Taylor's misconduct was relevant to the investigation.*

The threshold to admit relevant evidence is very low. *Darden*, 145 Wn.2d at 621. Even minimally relevant evidence is admissible. *Hudlow*, 99 Wn.2d at 16. Evidence is relevant if it has a tendency to make the existence of any fact of consequence more or less probable than it would be without the evidence. ER 401. Courts must permit

cross examination that would expose untrustworthiness, bias, or inaccuracy. *See Davis*, 415 U.S. at 317-18.

The more essential the witness is to the prosecution's case, the more latitude the defense should be given to explore fundamental elements such as motive, bias, credibility, or foundational matters. *Darden*, 145 Wn.2d at 619. Here, Detective Taylor was the lead detective from the criminal investigative unit assigned to the forgery investigation. 7/11/13 RP 18. Detective Taylor was responsible for making decisions about the necessary follow up investigation, including whether to collect additional evidence, obtain search warrants, or submit the check at issue to a handwriting exemplar for analysis. 7/11/13 RP 23, 26, 27. Detective Taylor was also in charge of certifying the determination of probable cause and preparing the case for referral to the prosecuting attorney's office for a charging decision. 7/11/13 RP 23, 34.

A fact of consequence to the determination of the trial was whether Ms. Jenkins knew the check was forged. Law enforcement's investigation into the origins of this check would tend to make this fact more or less probable. Law enforcement's investigation was central to the defense's theory at trial that Ms. Jenkins did not know that the

check was forged. 7/11/13 RP 9. In light of the fact that Detective Taylor failed to log the envelope provided by Ms. Jenkins into evidence and that he testified inconsistently with Detective Sergeant Bowen regarding who initially took possession of the envelope from Ms. Jenkins, Detective Taylor's prior misconduct is probative to the quality of the investigation conducted in Ms. Jenkins's case. Thus, this evidence was relevant and cross examination on the misconduct should have been allowed.

ii. *This evidence of misconduct was not so prejudicial that it would disrupt the fairness of the fact finding process.*

Before the State may preclude the admission of evidence, it must demonstrate a compelling state interest. *State v. McDaniel*, 83 Wn. App. 179, 185, 920 P.2d 1218 (1996) (citing *Hudlow*, 99 Wn.2d at 15-16). The burden is on the State to show that the evidence is so prejudicial that it would disrupt the fairness of the fact finding process at trial. *Darden*, 145 Wn.2d at 622. During its motion in limine, the State offered no argument regarding whether or not Detective Taylor's prior misconduct was prejudicial to the extent required. 7/11/13 RP 4. The State failed to articulate any compelling State interest that would supersede Ms. Jenkins's confrontation rights and justify exclusion of this evidence.

Cross examination on Detective Taylor's prior misconduct would not disrupt the fairness of the fact finding process. Rather, this evidence should have been available to the defense to illuminate the quality of the investigation conducted by law enforcement. The State cannot meet its burden of establishing prejudice to the level required to limit the cross examination of Detective Taylor.

iii. Ms. Jenkins's constitutional right to confront Detective Taylor outweighed any State interest in excluding this evidence.

Where a court ruling is challenged on grounds that it unduly restricts the Sixth Amendment right to confrontation, the State's interest must be balanced against the "fundamental requirements of the constitution." *Hudlow*, 99 Wn.2d at 15-16. Even if this Court concluded that the State had met its burden and established some unarticulated compelling State interest, the State's interest in excluding this evidence is greatly outweighed by Ms. Jenkins's right to cross examine witnesses called against her. The defense should have been allowed to explore Detective Taylor's prior misconduct on cross examination. The trial court's prohibition on doing so violated the confrontation rights guaranteed to Ms. Jenkins by both the state and federal constitutions.

b. The trial court's limitation on defense's cross examination requires reversal.

A violation of a defendant's rights under the confrontation clause is constitutional error. *State v. Dickenson*, 48 Wn. App. 457, 470, 740 P.2d 312 (1987) (citing *Harrington v. California*, 395 U.S. 250, 251–52, 89 S. Ct. 1726, 23 L. Ed. 2d 284 (1969)). Constitutional error is presumed to be prejudicial and the State bears the burden of proving that the error was harmless. *State v. Guloy*, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). A constitutional error is harmless only if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error. *Kilgore*, 104 Wn.2d at 425.

The investigation conducted by Detective Taylor was central to the defense's theory at trial. Courts cannot speculate as to whether the jury, as sole judges of the credibility of a witness, would have accepted the defense's theory had Ms. Jenkins been permitted to fully present it. *Davis*, 415 U.S. at 317. However, the jurors were entitled to have the benefit of this evidence, as elicited through cross examination, before them to allow informed judgment as to the weight to place on Detective Taylor's testimony.

The trial court's limitation of the scope of cross examination prohibited defense counsel from engaging in an effective cross examination of Detective Taylor. This violation of Ms. Jenkins's rights compromised the ultimate integrity of her trial. Ms. Jenkins's inability to engage in a meaningful cross examination of the lead detective on the case was not harmless and requires reversal of her conviction.

**2. The trial court's admission of testimony regarding a firearm located in the vehicle associated with Ms. Jenkins was manifestly unreasonable.**

A trial court's decision to admit evidence is reviewed for abuse of discretion. *State v. Swan*, 114 Wn.2d 613, 658, 790 P.2d 610 (1990). Discretion is abused if it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Failure to adhere to the requirements of an evidentiary rule can be an abuse of discretion. *State v. Foxhaven*, 161 Wn.2d 168, 174, 163 P.3d 786 (2007).

a. Testimony that a firearm was located in the vehicle was not relevant to the crime of forgery.

Evidence that is not relevant is not admissible. ER 402. To be relevant, evidence must (1) tend to prove or disprove the existence of a fact, and (2) that fact must be of consequence of the outcome of the case. *State v. Weaville*, 162 Wn. App. 801, 818, 256 P.3d 426 (2011).

This definition includes facts which offer direct or circumstantial evidence of any element or defense. *Id.*

The State charged Ms. Jenkins with one count of forgery. CP 1. The State was required to prove beyond a reasonable doubt: (1) that on or about July 31, 2012, Ms. Jenkins possessed or offered or disposed of or put off as true a written instrument which had been falsely made, completed, or altered; (2) that Ms. Jenkins knew that the instrument had been falsely made, completed, or altered; (3) that Ms. Jenkins acted with intent to injure or defraud; and (4) that the acts occurred in the State of Washington. CP 85.

Upon learning from Ms. Jenkins that she arrived at the location in a white sport utility vehicle, officers found that vehicle in the bank's parking lot. 7/11/13 RP 158-59. Officer Hsu searched the vehicle and located a firearm. 7/11/13 RP 159. Deputy Hsu ran the serial number to check if the firearm was stolen. 7/11/13 RP 159. The presence of a firearm is not probative of any element of the crime of forgery. Moreover, there was no indication that Ms. Jenkins was aware that there was a firearm in vehicle. Thus, this evidence was not relevant and its admission violates ER 402.

- b. Testimony regarding the firearm should have been excluded because of its prejudicial nature.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. ER 403. In doubtful cases the scale should be tipped in favor of the defendant and exclusion of evidence. *State v. Smith*, 106 Wn.2d 772, 776, 725 P.2d 951 (2003) (citing *State v. Bennett*, 36 Wn. App. 176, 180, 672 P.2d 772 (1983)). Unfair prejudice is that which is more likely to arouse an emotional response than a rational decision by the jury and which creates an undue tendency to suggest a decision on an improper basis. *State v. Cronin*, 142 Wn.2d 568, 584, 14 P.3d 752 (2000).

Courts have uniformly condemned allowing testimony concerning dangerous weapons, even when found in the possession of a defendant, which have nothing to do with the crime charged. *United States v. Warledo*, 557 F.2d 721, 725 (10th Cir. 1977). Evidence of weapons is highly prejudicial. *E.g.*, *State v. Freeburg*, 105 Wn. App. 492, 501, 20 P.3d 984 (2001) (evidence that defendant was armed with gun at time of arrest was prejudicial because it tended to show he was a “bad man”); *Warledo*, 557 F.2d at 725 (admission of rifle found in trunk of car was unrelated to any issue in the case and was inherently

prejudicial); *United States v. Reid*, 410 F.2d 1223, 1226 (7th Cir. 1969) (testimony concerning dangerous weapons invited the jury to speculate about other bad acts which the defendant may have committed).

In *Moody v. United States*, admission of evidence that a revolver was found in the automobile of the defendant accused of possession of heroin was prejudicial error. 376 F.2d 525, 532 (9th Cir. 1967). The presence of the gun was irrelevant and prejudicial. *Id.* “The presence of the loaded revolver could only be regarded by the jury as indicating that the appellant was a bad man engaged in a criminal enterprise, who might shoot anybody who attempted to frustrate the illegal importation of heroin.” *Id.* Similarly, the prejudicial nature of the firearm testimony admitted in Ms. Jenkins’s trial greatly outweighed any relevance it may have had. Its admission violated ER 403 and was manifestly unreasonable.

- c. The admission of testimony regarding the firearm was prejudicial error and requires reversal.

Error is prejudicial if there is a reasonable probability that 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). Where there is a risk of prejudice and no way to know what value the jury placed upon the improperly admitted evidence, a new trial is

required. *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 673, 230 P.3d 583 (2010).

The introduction of testimony concerning dangerous weapons connected to a person charged with a crime, no part of which depends upon the use or ownership of the weapon, has consistently been regarded as prejudicial error requiring a new trial. *Reid*, 410 F.2d at 1226. This Court should accordingly reverse and remand for a new trial.

**3. Cumulative trial errors denied Ms. Jenkins her constitutional right to a fair trial.**

Under the cumulative error doctrine, even where no single trial error standing alone merits reversal, an appellate court may nonetheless find that together the combined errors denied the defendant a fair trial. U.S. Const. amend. XIV; Const. art. I, § 3; *e.g.*, *Williams v. Taylor*, 529 U.S. 362, 396-98, 120 S. Ct. 1479, 146 L. Ed. 2d 435 (2000) (considering the accumulation of trial counsel's errors in determining that the defendant was denied a fundamentally fair proceeding); *Taylor v. Kentucky*, 436 U.S. 478, 488, 98 S. Ct. 1930, 56 L. Ed. 2d 468 (1978) (holding that "the cumulative effect of the potentially damaging circumstances of this case violated the due process guarantee of

fundamental fairness”); *State v. Coe*, 101 Wn.2d 772, 789, 684 P.2d 668 (1984); *State v. Venegas*, 153 Wn. App. 507, 530, 228 P.3d 813 (2010).

The cumulative error doctrine mandates reversal where the cumulative effect of nonreversible errors materially affected the outcome of the trial. *State v. Alexander*, 64 Wn. App. 147, 150-51, 822 P.2d 1250 (1992). Here, each of the trial errors above merits reversal standing alone. Viewed together, the errors created a cumulative and enduring prejudice that was likely to have materially affected the jury’s verdict.

E. CONCLUSION

This Court should reverse Ms. Jenkins’s conviction for forgery because of the violation of her constitutional right to confront adverse witnesses and present a defense and because the admission of testimony associating Ms. Jenkins with a firearm constituted prejudicial error.

DATED this 25th day of April, 2014.

Respectfully submitted,



---

WHITNEY RIVERA, WSBA No. 38139  
Washington Appellate Project  
Attorneys for Appellant

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 70838-4-I
v.	)	
	)	
MIRANDA JENKINS,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 25<sup>TH</sup> DAY OF APRIL, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] MIRANDA JENKINS 23821 43 <sup>RD</sup> AVE S UNIT A1 KENT, WA 98032	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 APR 25 PM 4:54

**SIGNED** IN SEATTLE, WASHINGTON THIS 25<sup>TH</sup> DAY OF APRIL, 2014.

X \_\_\_\_\_ 

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