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COURT OF APPEALS  
DIVISION II

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NO. 38099-4-II

STATE OF WASHINGTON

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

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STATE OF WASHINGTON,

Respondent,

v.

GARNETT LYNN WILLIAMS,

Appellant.

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

The Honorable Thomas P. Larkin

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REPLY BRIEF OF APPELLANT

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P. M. 6-18-2009

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A. ARGUMENT IN REPLY

1. REVERSAL IS REQUIRED BECAUSE THE TRIAL COURT VIOLATED WILLIAMS' CONSTITUTIONAL RIGHT TO CONFRONTATION BY SEVERELY CURTAILING CROSS-EXAMINATION OF HALL WHO WAS AN ESSENTIAL WITNESS TO THE STATE'S CASE.

The State argues that Williams had ample opportunity to cross-examine John Hall and the trial court did not err in sustaining the State's proper objections. Brief of Respondent at 7 - 12. Importantly, the State overlooks the fact that Hall was an essential witness to the State's case because no other witness saw the shooting. As the Washington State Supreme Court observed in State v. Darden, 145 Wn.2d 612, 619, 41 P.3d 1189 (2002), "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." Accordingly, in light of the significance of Hall's testimony, defense counsel was entitled to rigorously test its reliability. Maryland v. Craig, 497 U.S. 836, 845, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990)("The word 'confront,' after all, also means a clashing of forces or ideas carrying with it the notion of adversariness.").

The record reflects that the State repeatedly objected during cross-examination, impeding defense counsel's efforts to expose and accentuate

the contradictions and inconsistencies between Hall's trial testimony and statements he made to Detective Benson. 6RP 243, 245-46, 248, 252. The trial court continually sustained the State's objections, denying defense counsel the latitude accorded under the Confrontation Clause. "Courts should zealously guard [a defendant's right of cross-examination] and allow a defendant great latitude to expose a witness's bias, prejudice, or interest. State v. Kilgore, 107 Wn. App. 160, 184-85, 26 P.3d 308 (2001), affirmed by, 147 Wn.2d 288, 53 P.3d 974 (2002).

The United States Supreme Court emphasizes that, "The right of cross-examination is more than a desirable rule of trial procedure. It is implicit in the constitutional right of confrontation, and helps assure the accuracy of the truth-determining process," reasoning that it is "an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal." Chambers v. Mississippi, 410 U.S. 284, 295, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). The trial court's significant diminution of Williams' right of cross-examination calls into question the integrity of the truth-determining process in this case.

Consequently, the trial court's violation of Williams' constitutional right to confrontation requires reversal because without Hall's tainted testimony, the State's case was not so overwhelming that it would lead to a finding of guilt beyond a reasonable doubt. State v. Dickenson, 48 Wn.

App. 457, 470, 740 P.2d 312, review denied, 109 Wn.2d 1001 (1987); State v. Guloy, 104 Wn.2d 412, 425-26, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020, 106 S. Ct. 1208, 89 L. Ed. 2d 321 (1986). See Brief of Appellant at 9 - 14.

2. A REMAND FOR RESENTENCING IS REQUIRED BECAUSE THE TRIAL COURT FAILED TO DETERMINE WILLIAMS' CRIMINAL HISTORY AND CALCULATE HIS OFFENDER SCORE ON THE RECORD CONSEQUENTLY MISCALCULATING HIS OFFENDER SCORE.

As our State Supreme Court has emphasized, sentencing is a critical step in our criminal justice system:

The fact that guilt has already been established should not result in indifference to the integrity of the sentencing process. Determinations regarding the severity of criminal sanctions are not to be rendered in a cursory fashion. Sentencing courts require reliable facts and information. To uphold procedurally defective sentencing hearings would send the wrong message to trial courts, criminal defendants, and the public.

State v. Ford, 137 Wn.2d 472, 484, 973 P.2d 452 (1999).

The record reflects that Williams' sentencing was procedurally defective because the trial court failed to determine Williams' criminal history and calculate his offender score on the record as required under RCW 9.94A.500(1). 9RP 377-83. Consequently, the court erroneously imposed a sentence based on an incorrect offender score. 9RP 383; CP 26-28. See Brief of Appellant at 14 - 17.

The State concedes that Williams' offender score was calculated incorrectly. Brief of Respondent at 14 - 16. Accordingly, this Court should remand for resentencing and direct the trial court to properly calculate Williams' offender score and sentence him within the appropriate standard range.

B. CONCLUSION

For the reasons stated here, and in appellant's opening brief, this Court should reverse Williams' convictions, or in the alternative, remand for resentencing.

DATED this 18<sup>th</sup> day of June, 2009.

Respectfully submitted,

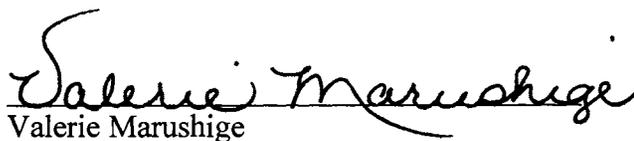
  
VALERIE MARUSHIGE  
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Attorney for Appellant, Garnett L. Williams

**DECLARATION OF SERVICE**

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kimberley DeMarco, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 18<sup>th</sup> day of June, 2009 in Kent, Washington.



Valerie Marushige  
Attorney at Law  
WSBA No. 25851

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