

NO. 39077-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

DARRELL K. JACKSON,

Appellant.

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BY WA

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

The Honorable Bryan Chushcoff, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENTS IN REPLY

1. THE TRIAL COURT ERRED BY SEALING THE JURY QUESTIONNAIRE WITHOUT APPLYING THE "BONE-CLUB"¹ FACTORS.

Darrell Jackson contends the trial court violated his constitutional right to an open and public trial by sealing the jury questionnaires without first weighing the need for sealing against the right to public court records. The state, reusing the same arguments that have been repeatedly rejected by most appellate panels as well as the state Supreme Court, asks this Court to repudiate the reasoning of State v. Waldon² and State v. Coleman³ and to uphold the trial court's sealing order. Brief of Respondent (BOR) at 23-35. Alternatively, the state urges this Court to find Jackson invited any trial court error. BOR at 21-23.

a. *The sealing order was error.*

The state first relies on Press-Enterprise Co. v. Superior Court of California for Riverside County,⁴ in which the issue was whether the public has a right of access to a closed preliminary hearing transcript. To

¹ State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995).

² 148 Wn. App. 952, 957, 202 P.3d 325, review denied, 166 Wn.2d 1026 (2009).

³ 151 Wn. App. 614, 214 P.3d 158 (2009).

⁴ 478 U.S. 1, 3, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986).

resolve the issue, the Court considered two questions: (1) "whether the place and process have historically been open to the press and public;" and (2) "whether public access plays a significant positive role in the functioning of the particular process in question." Id., 478 U.S. at 8. The Court answered each question affirmatively and concluded a qualified First Amendment right of access applied to California preliminary hearings. Id., 478 U.S. at 10-13.

The state applies the same analysis in Jackson's case and answers each of the two questions in the negative. BOR at 24-34. With respect to the historical prong, the state asserts juror questionnaires are presumptively private documents in Washington. The state relies on GR 31(j), which states in pertinent part that "[i]ndividual juror information, other than name, is presumed to be private."

Reliance on GR 31 is misplaced. First, the Supreme Court has rejected it. See State v. Strobe, 167 Wn.2d 222, 239, 217 P.3d 310 (2009) (in a dissent joined by only one colleague, Justice Charles Johnson cited the same language in a failed attempt to garner a majority). Dissenting opinions are not binding authority. In re Personal Restraint of Domingo, 155 Wn.2d 356, 367, 119 P.3d 816 (2005).

Second, two divisions of the Court of Appeals have rejected the argument. See State v. Duckett, 141 Wn. App. 797, 808, 173 P.3d 948

(2007) ("The privacy interests of jurors acknowledged by GR 31 are simply part of the Bone-Club analysis."), petition for review pending; State v. Frawley, 140 Wn. App. 713, 720, 167 P.3d 593 (2007) ("[W]hile court rules, specifically GR 31(j), or other considerations of jury privacy can and should influence the judge's decision to exclude the public from certain phases of a trial, they do not trump constitutional requirements that the trial be public."); Coleman, 151 Wn. App. at 622-23 (citing Duckett with approval).

Third, insofar as the state suggests a court rule or statute may supplant constitutional requirements, it is wrong. This was illustrated by the Court in Allied Daily Newspapers of Washington v. Eikenberry, 121 Wn.2d 205, 848 P.2d 1258 (1993), where the Court considered the constitutionality of a legislative mandate ordering trial courts to seal "any portion of any court records, transcripts, or recordings of court proceedings that contain information identifying the child victim" of an alleged sexual offense. Allied Daily Newspapers, 121 Wn.2d at 209. The Court held the provision was unconstitutional because its mandatory nature prohibited individualized determinations of the need for closure contrary to "the Ishikawa guidelines." Id., 121 Wn.2d at 211.⁵ See also In

⁵ Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 45, 640 P.2d 716 (1982) (holding trial court must weigh same factors later approved of in

re Detention of D.F.F., 144 Wn. App. 214, 226, 183 P.3d 302, review granted, 164 Wn.2d 1034 (2008) (because MPR 1.3 does not permit application of closure factors in determining whether to close mental illness civil commitment hearings, it "is unconstitutional on its face").

Finally, it is indisputable that trial courts must consider the Bone-Club factors before sealing court records. See Rufer v. Abbott Laboratories, 154 Wn.2d 530, 549, 114 P.3d 1182 (2005) ("any records that were filed with the court in anticipation of a court decision (dispositive or not) should be sealed or continue to be sealed only when the court determines--pursuant to Ishikawa-- that there is a compelling interest which overrides the public's right to the open administration of justice."); Dreiling v. Jain, 151 Wn.2d 900, 915, 93 P.3d 861 (2004) ("We now explicitly hold that the same guidelines applied in Ishikawa must be applied to documents filed in support of dispositive motions, including motions to terminate" a shareholder's derivative lawsuit). The Ishikawa analysis applies even where the criminal proceedings ended well before the motion to seal the records is filed. State v. McEnry, 124 Wn. App. 918, 926, 103 P.3d 857 (2004); State v. Noel, 101 Wn. App. 623, 628-29, 5 P.3d 747 (2000).

Bone-Club before closing hearing on accused's pretrial motion to dismiss prosecution and sealing hearing transcript, related pleadings, exhibits and briefs).

In summary, GR 31 offers the state little refuge.

As additional support, the state cites to a "juror handbook prepared by judges' associations" and a Washington State Jury Commission recommendation, for the proposition jury questioning may occur in private. BOR at 25-27. The state's reliance on the juror handbook suffers the same fate at its use of GR 31: it appeared only in Justice Johnson's dissent in Strode, and was therefore rejected by a majority of the Court. See Strode, 167 Wn.2d at 239-40 (citing *Washington Courts: A Juror's Guide*, which "acknowledges juror privacy interests and assures them that courts provide protective measures to ensure confidentiality.").

In any event, Jackson has no quarrel with the notion of private voir dire. Rather, he contends private voir dire – whether it occurs via a sealed written questionnaire or by live questioning in a private setting – must be preceded by consideration of the Bone-Club factors. See Forum Communications Co. v. Paulson, 752 N.W.2d 177, 185 (N.D. 2008) ("We agree with those jurisdictions that have applied the First Amendment right of public access to juror questionnaires and their reasoning that a written questionnaire serves as an alternative to oral disclosure of the same information in open court and is, therefore, synonymous with, and a part of, voir dire."); State ex rel. Beacon Journal Publishing Co. v. Bond, 98 Ohio St.3d 146, 152, 781 N.E.2d 180, 188 (Ohio 2002) ("Because the

purpose behind juror questionnaires is merely to expedite the examination of prospective jurors, it follows that such questionnaires are part of the voir dire process" and subject to First Amendment treatment); Copley Press, Inc. v. Superior Court, 228 Cal. App. 3d 77, 89, 278 Cal. Rptr. 443, 451 (Cal. App. 1991) ("The fact that the questioning of jurors was largely done in written form rather than orally is of no constitutional import.").

The state concludes its analysis of the historical prong of the two-pronged Press Enterprise II test by citing to a host of statutes and court rules around the country that prohibit disclosure of juror questionnaires to the public. BOR at 27-30. This shows, according to the state, that "jury questionnaires are not matters of public record." BOR at 30.

Allied Daily Newspapers disposes of the notion that a statute can trump the constitutional right to public access to court records. See also McEntry, 124 Wn. App. at 927 (holding that if Legislature, by authorizing vacation of criminal convictions, had intended to provide absolute protection from disclosure of court records despite article 1, section 10, "it would have so stated."). Moreover, if reliance on our own GR 31 is misplaced, as demonstrated in Strode, reliance on similar provisions from other states is even less persuasive.

For these reasons the state has failed to establish jury questionnaires have been historically treated as private documents in Washington.

With respect to the second, or "logic" prong, the state cites an American Bar Association recommendation and a 2001 study for the assertion the voir dire procedure like the one used in Jackson's case "will protect juror privacy and ensure candid responses." BOR at 32. The state speculates juror response rates "could drop further" than the "notoriously low" present level. The state claims a juror should not be "forced to disclose intensely private information to the general public simply because he or she" ended up sitting on a jury, especially when the juror is from a small community and because of the ease with which members of the public access court records on the internet.

Courts have rejected similar boilerplate claims in the context of closed live voir dire. In Presley v. Georgia, the Supreme Court emphasized the "generic risk of jurors overhearing prejudicial remarks, unsubstantiated by any specific threat or incident" does not support voir dire closure. ___ U.S. ___, 130 S. Ct. 721, 725, ___ L. Ed. 3d ___ (2010). Instead, the trial court must specify the particular interest, and threat to that interest, and made factual findings to facilitate a review of whether the closure order was properly entered. Id. In State v. Paumier, this

Court held that under Presley, a prospective juror's claim for privacy under the Health Insurance Portability and Accountability Act (HIPAA) does not alone justify closure but rather is one of the factors the trial court must consider when exploring reasonable alternatives to closure and making proper findings to justify closure. 155 Wn. App. 673, 230 P.3d 212, 219 (2010), petition for review pending. In D.F.F., the court rejected the notion of automatic closure, even of mental illness civil commitment hearings. The court held a rule that prohibits the trial court from weighing the competing interests before closing -- despite the likelihood a person subject to commitment would in all cases be able to show the hearing poses a sufficient threat to privacy to warrant closure -- violates the constitutional right to public proceedings. 144 Wn. App. at 225-26.

In addition, the state's assertions are mere truisms that provide no substantive reasons to excuse the sealing of jury questionnaires from the constitutional scrutiny called for by Bone-Club. Indeed, the state's platitudes illustrate the utility of the Bone-Club factors; by requiring their application, this Court will ensure trial courts faced with a request to seal balance the public right of access to open court proceedings and records against a juror's privacy interests before sealing a questionnaire.

The state has therefore failed to show the purpose of a jury questionnaire, like a grand jury hearing, for instance, "would be totally

frustrated if conducted openly." Press-Enterprise Co., 478 U.S. at 9. In other words, the state has failed to satisfy the second, or "logic," prong, of the two-pronged Press-Enterprise test. This Court should hold application of the Bone-Club factors by the trial court is a mandatory prerequisite to sealing of a jury questionnaire.

Finally, the state contends the trial judge essentially applied the factors before sealing the questionnaire in Jackson's case. Jackson disagrees. BOR at 34-35. The trial court did no such thing. Because the court sealed the questionnaire to protect jurors' privacy and not Jackson's right to a fair trial, the court was required to find a "serious and imminent threat" to that right. Bone-Club, 128 Wn.2d at 258-59. The court did not make this finding or engage in any analysis necessary to make such a finding. Nor did the court discuss less restrictive means to promote privacy, such as redacting particularly sensitive portions of the individual questionnaires of those members of the venire who sat as jurors. The court also did not weight the competing interests of privacy and open access to court records. The state's assertion to the contrary is wrong.

b. Jackson did not invite the trial court's error.

The state maintains that if the trial court erred by summarily sealing the jury questionnaires, Jackson invited the error because he agreed to a questionnaire that contained language it would be sealed,

stipulated to the sealing, and indicated he was satisfied with the procedure. BOR at 23. Jackson disagrees.

The State bears the burden of proving invited error. State v. Thomas, 150 Wn.2d 821, 844, 83 P.3d 970 (2004). "The invited error doctrine prohibits a party from setting up an error in the trial court then complaining of it on appeal." In re Personal Restraint of Tortorelli, 149 Wn.2d 82, 94, 66 P.3d 606 (2003). The doctrine applies only to affirmative conduct. In re Personal Restraint of Thompson, 141 Wn.2d 712, 724, 10 P.3d 380 (2000); see State v. Lucero, ___ Wn.2d ___, 230 P.3d 165, 166 (2010) (unless offender affirmatively acknowledges foreign convictions are comparable to Washington felony crimes, state bears burden of establishing comparability).

Courts have found invited error where, for example, the accused proposed a faulty instruction, City of Seattle v. Patu, 147 Wn.2d 717, 720-21, 58 P.3d 273 (2002), agreed to and argued for expansion of private questioning of prospective jurors, State v. Momah, 167 Wn.2d 140, 151, 217 P.3d 321 (2009), proposed an agreed statement of the case be read to the venire, assisted in its drafting, and agreed to its content, State v. Elmore, 139 Wn.2d 250, 280, 985 P.2d 289 (1999), and submitted a guilty plea statement that indicated he would recommend consecutive sentencing. State v. Cooper, 63 Wn. App. 8, 14, 816 P.2d 734 (1991).

Implicit in these cases is a showing the accused initiated the error, for without initiation there is no "set up." See, e.g., State v. Lucero, 223 Ariz. 129, 220 P.3d 249, 258 (Ariz. Ct. App. 2009) ("policy to limit the invited error doctrine to persons intending to 'catch the court' by affirmatively being the source of the proposed error also appears to be the general rule in other jurisdictions"); Thomson v. Olsen, 147 Idaho 99, 106-07, 205 P.3d 1235, 1242-43 (Idaho 2009) (invited error rule estops party from asserting error when his own conduct induces its commission); State v. Ferguson, 201 Or. App. 261, 269, 119 P.3d 794, 799 (Ore. Ct. App. 2005) (invited error generally requires finding that appellant actively brought about error); Prystash v. State, 3 S.W.3d 522, 531 (Tex. Crim. App. 1999) ("[T]he law of invited error estops a party from making an appellate error of an action it induced.").

Jackson's trial counsel did not initiate the subject of a jury questionnaire. Instead, the trial court said, "I'm assuming that you are probably going to want a jury questionnaire." 5RP 21. The prosecutor responded, "Right, Your Honor." 5RP 21. Defense counsel then said, "Yes." 5RP 21. The prosecutor volunteered to draft and circulate a questionnaire. Jackson's counsel offered to prepare a questionnaire, then agreed to work off of the prosecutor's basic draft. 5RP 27. After reviewing the prosecutor's draft, co-defendant's attorney proposed three

additional questions, and both the prosecutor and Jackson's counsel agreed. 6RP 5-6. The co-defendant's counsel also suggested changes to the state's summary of the case. Again, the prosecutor and Jackson's attorney agreed. 6RP 5-9.

The prosecutor later announced the questionnaire was completed. 7RP 4. The first page of the document informed jurors the questionnaires would be sealed subject to further court order. CP 295. Later, the prosecutor asked what the court would do with the questionnaire, saying, "We put them under seal, I think, is the expectation, isn't it?" 7RP 69. The judge explained counsel would have to give their copies of the completed questionnaires to the court for shredding. The original questionnaire would be sealed. 7RP 70. This was "the way that we have always done it," the court said. 7RP 69. When asked whether the process satisfied him, Jackson's counsel said, "Yes." 7RP 70. Finally, counsel added their signatures to the court's order to seal, which stated the matter had come before the court "by stipulation/motion of the parties to seal jury questionnaires." CP 308-09.

These passages indicate Jackson's counsel was neither the initiator nor an active participant in the questionnaire idea, the drafting of the document or its modifications, or the decision to seal. Rather, he simply agreed with the idea and went along with the court's standard operating

procedure. Defense counsel certainly did not advocate for a different or longer questionnaire, nor did counsel seek a more robust sealing process. Absent some affirmative conduct that suggested a design to "set up" constitutional error, the state cannot meet its burden of proving Jackson's counsel invited the erroneous sealing of the questionnaire.

For these reasons, Jackson urges this Court to reject the state's arguments and conclude the trial court erroneously sealed the questionnaire without first applying the Ishikawa/Bone-Club factors. This Court should remand for reconsideration of the sealing order. Coleman, 151 Wn. App. at 624; see also Dreiling, 151 Wn.2d at 907 (where trial court's decision to seal court record rests on improper legal rule, "the appropriate course of action is to remand to the trial judge to apply the correct rule.").

2. THE PROSECUTOR'S USE OF A WITNESS'S GUILTY PLEA PROMISE TO TESTIFY TRUTHFULLY CONSTITUTED IMPROPER VOUCHING AND DENIED JACKSON HIS RIGHT TO A FAIR TRIAL.

Pierre Spencer participated in the criminal activity with Jackson and Smith. He made a favorable plea deal with the prosecutor in exchange for his truthful testimony. The plea agreement and plea statement were admitted into evidence without objection. Exs. 262, 263. Spencer was the state's most important witness and his testimony was devastating.

The prosecutor enhanced the value of the testimony by repeatedly referring to the truthfulness provision of the plea agreement during opening statement, direct and redirect examination, and closing argument. Contrary to the state's contention, the prosecutor improperly vouched for Spencer's credibility. Jackson is therefore entitled to a new trial.

The state maintains the prosecutor's use of the provision in opening statement was "an accurate statement of what the State expected Spencer to say and what the terms of his plea agreement contained." BOR at 38-39. The state accurately identifies the purpose of the opening statement, which is to "outline the material evidence the State intends to introduce." State v. Kroll, 87 Wn.2d 829, 834-35, 558 P.2d 173 (1977). Implicit in that holding, however, is a requirement the "material evidence" be admitted and used for a proper purpose. While a plea agreement may be admissible, using it to vouch for the credibility of a witness is not proper. See State v. Green, 119 Wn. App. 15, 24, 79 P.3d 460 (2003) ("[T]he language that the intent of the agreement was to 'secure the true and accurate testimony' and the provision that Cole 'testify truthfully' should have been redacted. . . . These provisions were prejudicial and improperly vouched for [the witness's] veracity.").

The state defends its improper use of the plea agreement in closing argument by contending the prosecutor also offered proper reasons why

the jury should find Spencer credible. BOR at 39-40. None of those assertions, however reduce the prejudicial effect of the following improper argument:

What he [Spencer] was told, from day one, was that you have to tell the truth. He knows because he has signed this written plea agreement that tells them in no uncertain terms, if you don't tell the truth, life in prison, no parole. That is a huge incentive for him to come in here and take his oath seriously and tell you the truth.

7RP 1884-85.

The context of the prosecutor's entire argument does not excuse this misconduct. See State v. Fisher, 165 Wn.2d 727, 747, 202 P.3d 937 (2009) (appellate courts review challenged comments in the context of the entire argument). The prosecutor made the comments during a more general presentation of why the jury should find Spencer credible. 7RP 1882-87. While the rest of the argument is not objectionable, the prejudicial nature of the improper remarks remains. The problem is the prosecutor implied the state could verify Spencer's testimony "and therefore enforce the truthfulness condition of its plea agreement." United States v. Brooks, 508 F.3d 1205, 1210 (9th Cir. 2007) (quoting United States v. Wallace, 848 F.2d 1464, 1474 (9th Cir.1988)).

Furthermore, the comments highlighted the prosecutor's repeated improper questions about the plea agreement during direct examination of Spencer. See Brief of Appellant at 16-17 (setting forth instances of

improper questioning related to plea agreement). The effect of such testimony, combined with the closing remarks, was to privilege Spencer's testimony over all other evidence.

The state also argues Jackson's case is analogous to State v. Coleman,⁶ which was decided after Jackson filed his opening brief. The trial court in Coleman's case admitted a witness's plea agreement without objection. The witness agreed to cooperate in any "additional truthful, complete, and comprehensive interviews." Coleman, 2010 WL 1839410, at *1. His most important obligation under the agreement was to testify truthfully. If he was deceptive, untruthful, or incomplete, the state could terminate the agreement. The State offered the agreement on direct examination and elicited testimony from the witness about it. Id.

On appeal, Coleman argued the prosecutor committed misconduct by offering the plea agreement and asking the witness about it. In rejecting the challenge, the court distinguished Green, which held language in a plea agreement indicating the state's intent was to "secure the true and accurate testimony" of a witness and the provision the witness "testify truthfully" were objectionable because they were prejudicial and vouched for the witness's testimony. Coleman, 2010 WL 1839410, at *2 (citing Green, 119 Wn. App. at 22-24 & n.18). The court

⁶ ___ Wn. App. ___, ___ P.3d ___, 2010 WL 1839410 (2010).

noted Coleman's plea agreement contained no such declaration of the state's intent. It found the only disputed portion of the agreement – that the witness testify truthfully – "merely set the context for Coleman's testimony." Coleman, 2010 WL 1839410, at *3.

The Coleman court borrowed its reasoning from State v. Ish, 150 Wn. App. 775, 208 P.3d 1281, review granted, 167 Wn.2d 1005 (2009). The issue there was whether the trial court erred by permitting the prosecutor to admit evidence that a plea agreement required a witness to testify truthfully and could be revoked if he breached it. Ish, 150 Wn. App. at 785.

This Court found there was no error because those portions of the agreement "merely set the context for the jury to evaluate his testimony." Ish, 150 Wn. App. at 787. This Court found the situation similar to that presented in State v. Kirkman, 159 Wn.2d 918, 155 P.3d 125 (2007), a child rape case where a detective testified that before he interviewed the victim, he obtained the victim's promise to tell the truth. The Kirkman Court rejected the claim the detective offered an improper opinion on the victim's veracity, holding the detective simply explained the child interview protocol and provided the context necessary for the jury to assess the reasonableness of the victim's responses. Kirkman, 159 Wn.2d at 930-31.

Jackson asks this Court to reject this rationale. In Kirkman, there was no suggestion the detective could independently determine whether or not the child was telling the truth. Here, by contrast, the import of Spencer's testimony about the plea agreement was that the prosecutor could assess his truthfulness and would give him the benefit of his plea bargain only if he testified truthfully. This implication -- that the prosecutor could assess the truth of Spencer's testimony -- distinguishes the error here from that in Kirkman.

This implication was much cleared in Jackson's case than in Coleman or Ish because, in contrast with those cases, the prosecutor discussed the truthfulness provision of the plea agreement during opening statement and closing argument. Coleman, 2010 WL 1839410, at *1 (noting "In closing, the State did not mention the agreement's 'testify truthfully' provisions."); Ish, 150 Wn. App. at 785 (the prosecutor argued the state's goal was "to seek justice" and "to seek the truth.").

In opening statement, Jackson's prosecutor told jurors, "The evidence will show you that [Spencer] is looking at three decades in prison as punishment for his role, and that is after providing truthful testimony to you." 7RP 516-17. The prosecutor during closing argument called the terms of the agreement "a huge incentive for [Spencer] to come in here and take his oath seriously and tell you the truth." 7RP 1885. Implicit in

these statements is a message to the jury that the prosecutor could tell if Spencer did not tell the "truth" and would punish him by revoking the plea deal if he did not.

Finally, the prosecutor's exploitation of the truthfulness provision during direct examination of Spencer was much more extensive than the methods used in either Coleman or Ish. The witness in Coleman simply testified he "made a plea agreement to testify against Coleman and received a 45-month sentence for first degree robbery." 2010 WL 1839410, at *1. In Ish, the prosecutor asked whether the witness knew if the agreement was going to be revoked, whether one of the terms was that he testify truthfully, and whether or not he testified truthfully. Ish, 150 Wn. App. at 782.

In contrast, Jackson's prosecutor repeatedly asked Spencer about the truthfulness provisions during direct examination. See BOA at 16-17 (setting forth repeated questions and answers). The prosecutor successfully elicited Spencer's testimony that he had an ongoing duty to tell the truth, that his agreement would become void and he would be sentenced to life in prison without parole if he was untruthful, and that he would receive a 25-year sentence if he did tell the truth. 7RP 1352-62.

For these reasons, this Court should find neither Coleman nor Ish apply given the facts in Jackson's case. The state's argument to the

contrary should be rejected. The prosecutor committed misconduct, the embellishing and cumulative nature of which demonstrates it was ill intentioned and flagrant.

Finally, Spencer's testimony was critical; he was the only witness who testified Jackson stabbed both of the deceased. 7RP 1457-59, 1465-66. Jackson, in contrast, acknowledged he was inside the apartment at times during the incident, but maintained he was never armed with a weapon and did not harm either victim. 7RP 1794-1811. Spencer's credibility was therefore of paramount importance. The prosecutor's improper vouching for that credibility was prejudicial and deprived Jackson of his constitutional due process right to a fair trial.

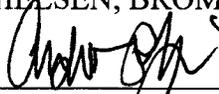
B. CONCLUSION

For the reasons cited herein and in his Brief of Appellant, Jackson requests this Court to reverse his convictions for first degree murder and remand for a new trial.

DATED this 21 day of June, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



ANDREW P. ZINNER
WSBA No. 18631
Office ID No. 91051

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 39077-9-II
)	
DARRELL K. JACKSON,)	
)	
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 21ST DAY OF JUNE 2010, 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] MELODY CRICK
PIERCE COUNTY PROSECUTING ATTORNEY
930 TACOMA AVENUE SOUTH
ROOM 946
TACOMA, WA 98402

- [X] DARRELL K. JACKSON
DOC NO. 329268
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STATE OF WASHINGTON
10 JUN 22 PM 12:51
FILED
COURT OF APPEALS

SIGNED IN SEATTLE WASHINGTON, THIS 21ST DAY OF JUNE 2010.

x Patrick Mayovsky