

NO. 47797-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

BLAINE W. WHITEHEAD,

Appellant.

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court violated the defendant's right to due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, when it accepted the jury's verdict on the offense of second degree burglary because substantial evidence does not support the conclusion that the defendant was the person who committed the offense.

2. Trial counsel's failure to object when the state elicited evidence of and argued guilt from the defendant's exercise of his right to silence under Washington Constitution, Article 1, § 9, and United States Constitution, Fifth Amendment, denied the defendant effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment.

Issues Pertaining to Assignment of Error

1. Does a trial court violate a defendant's right to due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, if it accepts a jury's verdict on an offense of second degree burglary when substantial evidence does not support the conclusion that the defendant was the person who committed the offense?

2. Does a trial counsel's failure to object when the state elicits evidence of and argues guilt from a defendant's exercise of the right to silence under Washington Constitution, Article 1, § 9, and United States Constitution, Fifth Amendment, deny that defendant effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, when no reasonable counsel would have failed to object and when this failure affected the jury's verdict?

STATEMENT OF THE CASE

On Sunday September 29, 2013, Pastor Julie Kanarr of the Grace Lutheran Church in Belfair arrived at the church building to prepare for morning services. RP 21-22¹. As she entered the building she discovered that someone had forced the front door open, entered the building, and had stolen a number of items, including two laptop computers and a petty cash box. *Id.* Upon discovering the intrusion she called the Mason County Sheriff's office, who sent out Deputy Larry Ellis to begin an investigation. *Id.* When Deputy Ellis arrived Pastor Kanarr showed him a number of video images from the church security system showing the intruder from the previous afternoon. RP 24-36, 79-80. Neither Pastor Kanarr nor Deputy Ellis recognized the person in the videos. *Id.*

Latter that day Deputy Ellis developed information during his investigation of the burglary that led him to the residence at 20 N.E. Cherokee Beach Road in Belfair. RP 80. Once at that address he knocked on the door. RP 81-82. According to Deputy Ellis's later testimony, a person who identified himself as Mark Dillinger opened the door a few inches and spoke with the deputy for about 20 seconds. *Id.* During his later testimony

¹The record on appeal includes one volume of verbatim reports of the jury trial held from May 12, 2015, to May 15, 2015, as well as the sentencing hearing held on June 15, 2015. It is referred to herein as "RP [page #]."

Deputy Ellis stated that he was “probably 95% sure” that the person who answered the door was the intruder from the video. *Id.* However, when he asked the person to speak further about the matter with him the person closed the door and refused to reopen it, even though Deputy Ellis stood there repeatedly knocking. *Id.* Eventually Deputy Ellis gave up and left. RP 81-82.

The next day Deputy Ellis returned to the residence at 20 N.E. Cherokee Beach Road and spoke with Courtney Burrell, who stated that she occasionally stayed at that house, along with the homeowner Marlin Schauer and her uncle Billy Whitehead. RP 39-41;82-83. She also stated that no person by the name of Mark Dillinger lived at the residence. *Id.* During this conversation Deputy Ellis went to his patrol vehicle, printed out a picture of the defendant and then showed it to Ms Burrell. *Id.* This photograph was from a police database and not from the church surveillance video. RP 85. Ms Burrell identified the person in the picture as her uncle, the defendant Blain Whitehead, whom she called “Billy.” *Id.*

The state later charged the defendant Blaine W. Whitehead with second degree burglary out of the intrusion at the Grace Lutheran Church. CP 106. During trial in the matter the state called three witnesses: Pastor Julie Kanarr, Courtney Burrell, and Deputy Larry Ellis. RP 21, 39, 77. They testified to the preceding facts. RP 21-39, 39-77, 77-87. In addition, Pastor

Kanarr identified Exhibits 6 and 7 as CD's with copies of portions of the security videos showing the intruder walking about the church. RP 27-28; Exhibits 6 and 7. She also identified Exhibits 8 and 9 as CDs with copies of some still photographs of the intruder taken from the videos. RP 31-32; Exhibits 8 and 9. Although the state showed the jury the still photographs copied onto exhibits 8 and 9, the state did not play the videos copied onto Exhibits 6 and 7 to the jury. RP 24-36; Exhibits 1-9. However, Pastor Kanarr and Deputy Ellis testified to what they saw when they reviewed the videos. RP 34-35; 80-81.

During Courtney Burrell's testimony the state showed her the still photographs copied onto Exhibits 8 and 9. RP 45-48. The state then asked if she could identify the person shown in the still photographs. *Id.* Mr. Burrell responded that while the person shown in the still photographs did resemble her uncle, she couldn't say for sure that it was him. *Id.* In particular, she stated that she did not remember the defendant having a moustache during the month of September whereas the person in the still photographs taken from the videos did have a moustache. *Id.* As a result, she stated that she was 60% sure it was the defendant and 40% unsure. RP 74-75. During her testimony Courtney Burrell also stated that it was not unusual to have a number of different people staying at the house at 20 N.E. Cherokee Beach Road during this period of time. RP 43-45. Finally, Ms

Burrell stated that she was sure that the photograph the deputy printed out from the police database was the defendant. RP 72-73; *see* Exhibit 11.

During his testimony before the jury Deputy Ellis stated the following concerning the refusal of the person at the door at 20 N. E. Cherokee Beach Road to speak with him:

Q After he told you – did you ask him anything after he told you his name?

A When – when he told me his name, I advised him, you're the person that I need to talk with.

Q Okay. And what did he do at that time?

A He closed the door and went back inside the residence.

Q After he closed the door and went back inside the residence, what did you do?

A I knocked on the door and advised him that I – he's the person I needed to talk to. And he told me he wasn't the home owner.

Q All right. And what did you do after that?

A I continued to knock. And then I could hear movement inside. It's a trailer home, so I could hear movement inside the trailer home. It sounded like the person – or the person who came – that came to the door was going further back inside the trailer.

Q Now after that did you go back to the office, or what'd you do?

A I knocked on the door several more times. And after I didn't receive any more response, I left and – and continued my duties.

RP 81-82.

During trial the defendant's attorney made no objection that this evidence constituted an impermissible comment on the defendant's exercise of his right to silence given the fact that it was the state's theory of the case that the person who answered the door was the defendant. RP 77-87. Neither did the defense object when the state argued guilt from this evidence during the following portion of the state's closing arguments:

And based upon that, and based upon an investigation, Deputy Ellis went to 20 North East Cherokee Lane – or Cherokee Beach Lane in Belfair and knocked on the door. And a person opened the door and pecked through. And the door was open about the width of his head. And Deputy Ellis talked to him for approximately 20 seconds or so. And then the person – when Deputy Ellis basically says we have something to discuss, the person backs off into the house – closes the door, backs off into the house, and doesn't – doesn't talk any more.

Well, before that happened though, Deputy Ellis asked the person what's your name. And the guy told him my name is Mark Dillinger. We know that not to be true. We know that there was no Mark Dillinger who lived in that house. Just didn't happen, wasn't there. There are two people who lived in that house. There was the defendant, Blaine Whitehead, and the owner of the house. That was it.

RP 114-115.

Finally, during trial the defendant attempted to make a claim of ineffective assistance of counsel to the court based upon his attorney's failure to make certain motions and call certain witnesses. RP 100-103. Although the defendant's attorney outlined what he believed the defendant's complaints were against him, the court refused to allow the defendant to enunciate the

claims he wanted to make. *Id.*

The jury eventually returned a verdict convicting the defendant of second degree burglary in this case. CP 42. The court later sentenced the defendant within the standard range, after which he filed timely notice of appeal. CP 3-14, 19-30.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT ACCEPTED THE JURY'S VERDICT ON THE CHARGE OF SECOND DEGREE BURGLARY BECAUSE SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE CONCLUSION THAT THE DEFENDANT COMMITTED THE OFFENSE.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: “[The] use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* In addition, evidence that is equally consistent with innocence as it is with guilt is not sufficient to support a conviction; it is not substantial evidence. *State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996).

“Substantial evidence” in the context of a criminal case means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227, 228 (1970)). This includes the requirement that the state present substantial evidence “that the defendant was the one who perpetrated the crime.” *State v. Johnson*, 12 Wn.App. 40, 527 P.2d 1324 (1974). The test for determining the sufficiency of the evidence is whether “after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 560 (1979).

For example, in *State v. Mace*, 97 Wn.2d 840, 650 P.2d 217 (1982), the defendant was charged and convicted of burglary. At trial, the state presented the following evidence: (1) during the evening in question, someone entered the victims’ home in Richland without permission and took a purse, which contained a wallet and a bank access card, (2) that the card was used in a cash machine in Kennewick (an adjoining city), at 4:30 that same morning, (3) that the victim’s wallet was found in a bag next to the cash machine, (4) that the bag had the defendant’s fingerprints on it, and (5) that the defendant’s fingerprints were also found on a piece of paper located by

a second cash machine where the card was used.

Following conviction, the defendant appealed, arguing that the state had failed to present substantial evidence to support the burglary conviction. The Court of Appeals disagreed, and affirmed. The defendant then sought and obtained review by the Washington Supreme Court, which reversed, stating as follows.

Second degree burglary is defined as follows:

A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building other than a vehicle.

RCW 9A.52.030(1). We agree with petitioner that the State failed to sustain its burden of proof. The State's evidence proved only that petitioner may have possessed the recently stolen bank cards in Kennewick. *There was no direct evidence, only inferences*, that he had committed second degree burglary by entering the premises in Richland.

State v. Mace, 97 Wn.2d at 842 (emphasis added).

Similarly, in the case at bar there was no direct evidence that the defendant was the person who entered the Grace Lutheran Church on September 28, 2013. Indeed, the best that can be said from the evidence presented at trial was that the defendant resembled the video of the person who burglarized the church. At most, Courtney Burrell, the one witness who was acquainted with the defendant, stated that she had reviewed the videos and that she thought it a 60% chance that the burglar was the defendant,

although the burglar had a moustache and she did not remember the defendant having a moustache during the relevant period of time.

Although Deputy Ellis was “probably 95% sure” that the person he saw for about 20 seconds through the crack in the door at 20 NE Cherokee Beach Road in Belfair was the burglar in the surveillance video, the defendant was not the only person residing at that residence during that period of time. Indeed, Ms Burrell explained to the jury that a number of people periodically stayed at that residence, including some with moustaches. Thus, in this case, the evidence presented at trial, even seen in the light most favorable to the defendant, only created a possibility, suspicion, speculation, or conjecture that the defendant was the burglar. It did not prove that he was beyond a reasonable doubt. As a result, this court should reverse the defendant’s conviction and remand with instructions to dismiss with prejudice.

II. TRIAL COUNSEL'S FAILURE TO OBJECT WHEN THE STATE ELICITED EVIDENCE OF AND ARGUED GUILT FROM THE DEFENDANT'S EXERCISE OF HIS RIGHT TO SILENCE DENIED THE DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL.

Under both United States Constitution, Sixth Amendment, and Washington Constitution, Article 1, § 22, the defendant in any criminal prosecution is entitled to effective assistance of counsel. The standard for judging claims of ineffective assistance of counsel under the Sixth Amendment is "whether counsel's conduct so undermined the proper functioning of the adversary process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). In determining whether counsel's assistance has met this standard, the Supreme Court has set a two part test.

First, a convicted defendant must show that trial counsel's performance fell below that required of a reasonably competent defense attorney. Second, the convicted defendant must then go on to show that counsel's conduct caused prejudice. *Strickland*, 466 U.S. at 687, 80 L.Ed.2d at 693, 104 S.Ct. at 2064-65. The test for prejudice is "whether there is a reasonable probability that, but for counsel's errors, the result in the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Church v. Kinchelse*, 767 F.2d 639, 643 (9th Cir. 1985) (citing *Strickland*, 466 U.S. at

694, 80 L.Ed.2d at 698, 104 S.Ct. at 2068). In essence, the standard under the Washington Constitution is identical. *State v. Cobb*, 22 Wn.App. 221, 589 P.2d 297 (1978) (counsel must have failed to act as a reasonably prudent attorney); *State v. Johnson*, 29 Wn.App. 807, 631 P.2d 413 (1981) (counsel's ineffective assistance must have caused prejudice to client).

In the case at bar, the defendant claims ineffective assistance based upon trial counsel's failure to object when the state elicited evidence that the defendant had refused to answer questions Deputy Ellis attempted to ask him about his alleged involvement with the burglary, and when the state argued guilt from this exercise of the defendant's right to silence. The following presents this argument.

The Fifth Amendment to the United States Constitution states that no person "shall ... be compelled in any criminal case to be a witness against himself." Washington Constitution, Article 1, § 9 contains an equivalent protection. *State v. Earls*, 116 Wn.2d 364, 805 P.2d 211 (1991). The courts liberally construe this right. *Hoffman v. United States*, 341 U.S. 479, 486, 71 S.Ct. 814, 818, 95 L.Ed. 1118 (1951). At trial, this right prohibits the State from forcing the defendant to testify. *State v. Foster*, 91 Wn.2d 466, 589 P.2d 789 (1979). It further precludes the state from eliciting comments from witnesses or making closing arguments inviting the jury to infer guilt from the defendant's silence. *State v. Fricks*, 91 Wn.2d 391, 588 P.2d 1328

(1979). Finally, as part of the Fifth Amendment right to silence, a defendant has the right to consult with an attorney prior to and during questioning. *State v. Earls, supra*. Any comment on the invocation to this Fifth Amendment right to counsel also improperly impinges upon the Fifth Amendment right to silence. *Id.*

For example, in *State v. Easter*, 130 Wn.2d 228, 922 P.2d 1285 (1996), the state charged the defendant with multiple counts of vehicular homicide. At trial the chief investigating officer testified that he found the defendant in a gas station bathroom shortly after the accident and the defendant “totally ignored” him when he asked what happened. The police officer also testified that upon further questioning the defendant looked down, “once again ignoring me, ignoring my questions.” Following conviction the defendant appealed, arguing that this testimony violated his Fifth Amendment right to silence.

In addressing this issue the Washington Supreme Court first reviewed the rights protected under both Washington Constitution, Article 1, § 9, and United States Constitution, Fifth Amendment, stating as follows:

The right against self-incrimination is liberally construed. It is intended to prohibit the inquisitorial method of investigation in which the accused is forced to disclose the contents of his mind, or speak his guilt. To enforce this principle, upon arrest, an accused must be advised he or she can remain silent.

At trial, the right against self incrimination prohibits the State

from forcing the defendant to testify. Moreover, the State may not elicit comments from witnesses or make closing arguments relating to a defendant's silence to infer guilt from such silence. As the United States Supreme Court said in *Miranda*, "[t]he prosecution may not ... use at trial the fact [the defendant] stood mute or claimed his privilege in the face of accusation." The purpose of this rule is plain. An accused's Fifth Amendment right to silence can be circumvented by the State "just as effectively by questioning the arresting officer or commenting in closing argument as by questioning defendant himself."

State v. Easter, 130 Wn.2d at 235-236 (citations omitted).

In *Easter*, the prosecution tried to take the statements admitted at trial out of Fifth Amendment analysis by arguing that they were "pre-arrest," and thus not constitutionally protected. The court noted: "[t]he State argues pre-arrest silence may be used to support the State's case in chief because the Fifth Amendment is designed to deal only with 'compelled' testimony, and Easter was under no compulsion to speak at the accident scene prior to his arrest." *Easter*, 130 Wn.2d at 237-38. The Court rejected this argument, holding as follows:

We decline to read the Fifth Amendment so narrowly as the State urges. An accused's right to silence derives, not from *Miranda*, but from the Fifth Amendment itself. The Fifth Amendment applies before the defendant is in custody or is the subject of suspicion or investigation. The right can be asserted in any investigatory or adjudicatory proceeding. Indeed, the *Miranda* warning states the accused is entitled by the Fifth Amendment to remain silent; *Miranda* indicates the right to silence exists prior to the time the government must advise the person of such right when taking the person into custody for interrogation. When the State may later comment an accused did not speak up prior to an arrest, the accused effectively has lost the right to silence. A "bell once rung cannot be unring." The

State's theory would encourage delay in reading *Miranda* warnings so officers could preserve the opportunity to use the defendant's pre-arrest silence as evidence of guilt.

The State's belief that the Fifth Amendment applies only to "compelled testimony" also implies that an accused acquires the right to silence only when advised of such right at the time of arrest. This is not so. No special set of words is necessary to invoke the right. In fact, an accused's silence in the face of police questioning is quite expressive as to the person's intent to invoke the right regardless of whether it is pre-arrest or post-arrest. If silence after arrest is "insolubly ambiguous" according to the *Doyle* Court, it is equally so before an arrest.

State v. Easter, 130 Wn.2d 238-239 (citations omitted).

Given this analysis, the Supreme Court reversed, finding an error of constitutional magnitude, and insufficient proof by the state that the error was harmless beyond a reasonable doubt.

The decision in *Easter* is on point with the facts in the case at bar. In *Easter* a police officer testified before the jury that he confronted the defendant, who refused to respond. In the case at bar Deputy Ellis testified before the jury that he also confronted the person he believed to be the defendant, and that the defendant refused to respond. This exchange went as follows:

Q After he told you – did you ask him anything after he told you his name?

A When – when he told me his name, I advised him, you're the person that I need to talk with.

Q Okay. And what did he do at that time?

A He closed the door and went back inside the residence.

Q After he closed the door and went back inside the residence, what did you do?

A I knocked on the door and advised him that I – he’s the person I needed to talk to. And he told me he wasn’t the home owner.

Q All right. And what did you do after that?

A I continued to knock. And then I could hear movement inside. It’s a trailer home, so I could hear movement inside the trailer home. It sounded like the person – or the person who came – that came to the door was going further back inside the trailer.

Q Now after that did you go back to the office, or what’d you do?

A I knocked on the door several more times. And after I didn’t receive any more response, I left and – and continued my duties.

RP 81-82.

During trial the defendant’s attorney made no objection that this evidence constituted an impermissible comment on the defendant’s exercise of his right to silence since it was the state’s theory of the case that the person who answered the door was the defendant. RP 77-87. Neither did the defense object when the state argued guilt from this evidence during the following portion of the state’s closing arguments:

And based upon that, and based upon an investigation, Deputy Ellis went to 20 North East Cherokee Lane – or Cherokee Beach Lane in Belfair and knocked on the door. And a person opened the door and peeked through. And the door was open about the width of his head. And Deputy Ellis talked to him for approximately 20 seconds or so. And then the person – when Deputy Ellis basically says we

have something to discuss, the person backs off into the house – closes the door, backs off into the house, and doesn't – doesn't talk any more.

Well, before that happened though, Deputy Ellis asked the person what's your name. And the guy told him my name is Mark Dillinger. We know that not to be true. We know that there was no Mark Dillinger who lived in that house. Just didn't happen, wasn't there. There are two people who lived in that house. There was the defendant, Blaine Whitehead, and the owner of the house. That was it.

RP 114-115.

In this case there was no possible tactical basis for failing to object to the state's action eliciting evidence that the defendant, under the state's theory of the case, refused to answer questions about the burglary. In addition, there was no possible tactical basis for failing to object to the state's argument in closing that this action proved guilt. Thus, counsel's failure to object fell below the standard of a reasonably prudent attorney. In addition, given the paucity of evidence proving that the defendant was the person who burglarized the church, the result in the proceeding would more likely than not have been different given a timely, proper objection to this evidence. Consequently, trial counsel's failure to object to the officer's comment upon the defendant's exercise of his right to silence and counsel's failure to object when the state argued guilt from this evidence denied the defendant effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment. As a result, this court should

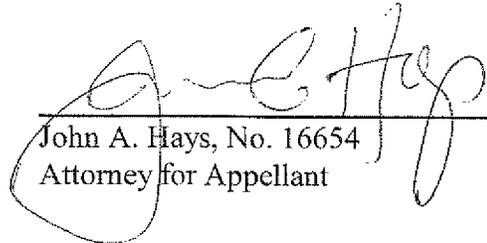
reverse the defendant's conviction and remand for a new trial.

CONCLUSION

This court should vacate the defendant's conviction and remand with instructions to dismiss with prejudice because substantial evidence does not support the conclusion that the defendant was the person who committed the offense. In the alternative, this court should reverse the defendant's conviction and remand for a new trial based upon ineffective assistance of counsel.

DATED this 26th day of October, 2015.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 9**

No person shall be compelled in any criminal, case to give evidence against himself, or be twice put in jeopardy for the same offense.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 22**

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

UNITED STATES CONSTITUTION,

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**UNITED STATES CONSTITUTION,
SIXTH AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

. . .

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

NO. 47797-1-II

vs.

**AFFIRMATION
OF SERVICE**

BLAINE W. WHITEHEAD,
Appellant.

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

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Dated this 26th day of October, 2015, at Longview, WA.



Donna Baker

HAYS LAW OFFICE

October 26, 2015 - 10:29 AM

Transmittal Letter

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Case Name: State vs Blaine Whitehead

Court of Appeals Case Number: 47797-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

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