

**FILED**

Cause No. 311899-III

OCT 29 2013

**COURT OF APPEALS  
STATE OF WASHINGTON  
(Div. III)**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**STATE OF WASHINGTON**

*Respondent,*

v.

**TAYLOR MAREAN**

*Appellant,*

SUPERIOR COURT No. 10-1-01597-4  
SPOKANE COUNTY  
HONORABLE JUDGE LEVEQUE

**REPLY BRIEF**

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## **B. REPLY TO STATE'S STATEMENT OF THE ISSUE**

The State has rewritten Marean's issue, offering a strawman argument in place of the valid issues raised by appellant. The issue is not whether a trial court in general has the "authority to reject a defendant's arguments" but whether the trial court in this case was in error by (1) determining that the forensic evidence of the under-age victim's blood alcohol (.12) was irrelevant to Marean's motion for an exceptional sentence and (2) rejecting consideration of the statutory "willing participant" exception based on a passenger not being the actual driver in an underage-drinking road race.

As argued in the Opening brief, the court below rejected out of hand the blood alcohol test as having "no value to [the exhibit] in terms of the issues before the Court for sentencing." RP 54:1. The court's ruling did not display any regard for the relevance of the proffered evidence but apparently determined that the victim's blood alcohol had no evidentiary value.

This was error on the part of the trial court.

While the lower court could, in the exercise of its discretion, weigh the impact of the evidence on its decision, Marean's issue raised the question whether the trial court was free to reject the

evidence as being irrelevant to the issue of willing participation by the decedent in underage drinking followed by a road race.<sup>1</sup>

**I. THE DEFENDANT IS ENTITLED TO A REVIEW OF THE LOWER COURT'S EXCLUSION OF EVIDENCE SUPPORTING A STATUTORY CHALLENGE TO THE STANDARD RANGE AND TO DEFICIENCIES IN THE COURT'S EXERCISE OF DISCRETION.**

The State argues that Marean is not entitled to review because his sentence was within the guidelines. This proposition is in conflict with well-settled law regarding this Court's jurisdiction to review sentences that are flawed due to the lower court's failure to exercise its discretion at all or to its use of an impermissible reason to refuse granting the exceptional sentence below the standard range. See, *State v. Garcia-Martinez*, 88 Wn.App. 322 at 330 (Div 1, 1997). The State's failure to address the issue forthrightly raised by Appellant Marean, or the case law in support of Marean's argument in support of review, does not merit abbreviating this Court's appellate jurisdiction.

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<sup>1</sup> *State v. Grayson*, 154 Wn.2d 333, 342 (2005) (defendants are entitled to have court consider evidence and argument in support of exceptional sentence).

**II. THE LOWER COURT EXPRESSLY STATED THAT IT AGREED WITH THE STATE'S ARGUMENT REJECTING MAREAN'S WILLING PARTICIPANT ARGUMENT BECAUSE MAREAN'S FACTS WERE LEGALLY INSUFFICIENT**

The State attacks Marean's arguments by arguing that the lower court never made a ruling that Marean was legally barred from the "willing participant" basis for an exceptional sentence. The State argued that it searched the Verbatim Report of Proceedings, twice manually and once electronically, finding no mention of a ruling as a matter of law that a passenger could not be a willing participant in a vehicular homicide. See Response Brief at 1, footnote 1.

The State's error arises from its failure to acknowledge the record citation provided in the Opening Brief. The State's manual and electronic searches may have been in good faith, but the Opening Brief actually cited and quoted the relevant portion of the transcript. See Page 14, Opening Brief, citing RP 97.

The transcript is telling: at that stage of the hearing, the lower court summarized the parties arguments regarding the statutory basis for an exceptional sentence premised upon a victim's willing participation. The lower court did a concise review, noting that the State argued that the victim "didn't participate in anything other than being in the

vehicle.” The lower court then summarized the defense position (though it left out numerous facts in support of the proposition, such as the deceased being a willing participant to drinking and racing — which facts are found at CP 44, 45). The lower court concluded thus: “I agree with the State. I do not believe we have the legal basis for a willing participant criteria...” RP 97:10-25.

So, it is true that the State could not find a “holding that passengers could statutorily not be considered ‘willing’ participants” because the lower court did not say any particular magic words that would lend themselves to an electronic search. What the lower court did, as reflected in the transcript and quoted in the Opening Brief, is to note the State’s argument — that the willing participant status was inapplicable to mere passenger — and that, on balance, the court agreed with the State. The lower court’s ruling constitutes the legal basis given by the Court, is the entire extent of its exercise of discretion, and it was properly set forth in the Opening Brief. Nothing else need be said other than to refer this Court to the Opening Brief, the statute in dispute, and the proffered evidence.<sup>2</sup>

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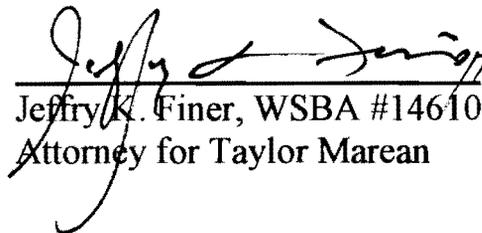
<sup>2</sup> Lest this evidence get lost in the debate, see Appendix B at 7: Marean rolls down his window to address the driver *and Bryant* offering to race. Driver admitted to law enforcement she then made

## CONCLUSION

For the reasons set forth above, Taylor Marean respectfully asks this Court to vacate the sentence and remand for new sentencing with instructions to admit both exhibits and to permit argument and evidence as may be necessary for the court to impose a proper and lawful sentence.

DATED THIS 29<sup>th</sup> day of October, 2013.

Law Offices of JEFFRY K FINER



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Attorney for Taylor Marean

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“the worst decision in my life” and agreed, taking off and speeding up to catch Marean. And Appendix B at 6: Reese stated all the people [at the party], including herself and Marean, had been drinking alcoholic beverages. And see Appendix A: the deceased’s blood alcohol was .12 g/100mL.

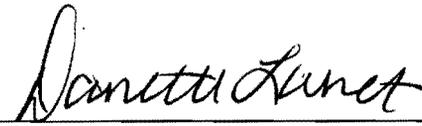
CERTIFICATE OF SERVICE

I, Danette Lanet, certify that on the 29 day of October, 2013, I caused the foregoing *REPLY BRIEF*, to be served via USPS, postage prepaid on the following:

Mark Lindsay  
Spokane County Prosecutor  
1100 W. Mallon  
Spokane, WA 99260

Taylor Marean  
DOC #360890  
11235 Hoh Mainline  
Forks, WA 98331

DATED this 29 day of October, 2013.

  
\_\_\_\_\_  
Danette Lanet