

**FILED**

OCT 08, 2015

Court of Appeals  
Division III  
State of Washington

NO. 32960-7-III

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

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STATE OF WASHINGTON,

Respondent,

v.

GENE CAMARATA,

Appellant.

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

The Honorable Doug Federspiel, Judge

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REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. THE EARLIER APPELLATE DECISION REGARDING THE CHALLENGE TO CAMARATA'S VOTER REGISTRATION IS IMMATERIAL TO WHETHER HE KNOWINGLY PROVIDED FALSE INFORMATION IN THIS CRIMINAL CASE.

The State points out that Camarata's opening brief does not address the appellate decision regarding his voter registration challenge. Brief of Respondent at 15-17 (discussing Camarata v. Kittitas County, 186 Wn. App. 695, 346 P.3d 822 (2015)). The reason is simple: that case does not affect the outcome of this case.

First, that case involved a challenge to an action by the state auditor under the Administrative Procedure Act. Camarata, 186 Wn. App. at 702. In that case, Camarata bore the burden to establish the invalidity of the agency's action. Id. This is precisely the opposite of the burden at Camarata's criminal trial where, as this Court is well aware, the State bore the burden to establish every element of the offense beyond a reasonable doubt.

Second, the question of the validity of the voter registration, at issue in the earlier appellate decision, is entirely different from whether that registration constituted a felony. For example, the registrant's mental state has no bearing on whether the registration is valid. But that mental state is

an essential element to the criminal offenses, without which the convictions cannot stand. RCW 29A.84.130 (1); RCW 29A.84.311.

Third, the different timing is dispositive. In the earlier case, the auditor cancelled Camarata's voter registration based on investigation performed several weeks after the registration showing that Camarata did not, at that time, reside at his registered address. 186 Wn. App. at 700, 707. Because Camarata did not provide evidence showing this conclusion was incorrect, this Court upheld the cancellation of his voter registration moving forward. Id. at 712, 714. But the evidence in this case shows there was no investigation of whether Camarata resided at that address at the time he registered or during the 30 days prior to an election in which he voted, which are the only times that matter for the criminal offenses. 5RP 58; Ex. 1B; RCW 29A.84.130 (1); RCW 29A.84.311. The conclusion from the earlier case is merely repetitive of the evidence presented – that Higashiyama investigated the site only several weeks after the registration was filed.

Fourth, this Court upheld the agency action because it concluded Camarata's understanding of the law was incorrect. Camarata, 186 Wn. App. at 709. But Camarata's incorrect understanding of the law does not establish criminal guilt. On the contrary, if he misunderstood, then he was not knowingly providing false information; he was merely attempting to comply with the statute.

The State also points to the earlier appellate decision concluding that 1001 E. 8<sup>th</sup> #4 was not an address to which mail could be sent. Brief of Respondent at 16. The Court made that finding in the context of discussing Camarata's challenge to the notice that was provided during the voter registration challenge proceedings. Camarata, 186 Wn. App. at 16. It has nothing to do with this case because Camarata did not list 1001 E. 8<sup>th</sup> #4 as his mailing address. 4RP 128.

The State also points to the Court's finding that Camarata did not actually register a non-traditional address. Brief of Respondent at 16. But again, this misses the point. In this criminal case, the question is not whether he actually created a valid voter registration based on a non-traditional address. The question is whether he knew the information he provided was false. If there were a space to check for "non-traditional address" on the online registration form, and if Camarata had failed to check it, this might prove he knowingly provided false information. But it was undisputed at trial that there was no way for Camarata to indicate that he was attempting to describe the place where he was residing or the place where he deemed himself to reside. The fact that the Court found Camarata's interpretation of the statute was wrong does not prove he knew it to be so before he registered.

The State claims this Court “has already addressed the issue.” Brief of Respondent at 17. This is simply not true. In the prior appellate case, Camarata had to prove he lived at 1001 E. 8<sup>th</sup> #4 moving forward. Camarata, 186 Wn. App. at 712. The fact that he did not do so is immaterial to whether the State proved in this case that he knew that address was false at the time he registered. In attempting to conflate these two cases, the State fails to appreciate the significance of the presumption of innocence, the burden of proof beyond a reasonable doubt, and the mens rea required for the criminal offense.

2. THE PLAIN LANGUAGE OF THE JURY INSTRUCTIONS REQUIRED THE JURY TO FIND CAMARATA WAS IN KITTITAS COUNTY WHEN HE COMMITTED THE CHARGED OFFENSES.

The State fails to appreciate the difference between providing false information in Kittitas County and registering to vote in Kittitas County. If the State had simply meant to allege that the registration was for voting in Kittitas County, or that the registration was ultimately sent to Kittitas County, the jury instructions could certainly have said so. Instead, the jury instructions required the state to prove that “in Kittitas County, Washington, the defendant knowingly provided false information on an application for voter registration” and “in Kittitas County, Washington, the defendant

knowingly provided false information on his declaration of candidacy.” CP 62, 64.

The State did not have to include “in Kittitas County” in the jury instructions in this way. Venue in a given county is not an element of either offense. RCW 29A.84.130; RCW 29A.84.311. Even assuming the statute required, as an element, a description of the county of *registration* or the county of *candidacy*, that language could have been added. But that is not what the jury instructions provide. CP 62, 64. Camarata does not argue that the *law* or the Legislature requires the State to prove he was present in Kittitas County when he submitted his applications. Thus, the State’s discussion of the Legislature’s intent and the implications of the Internet age are inapposite. See Brief of Respondent at 21. But, the plain language of the jury instructions requires proof Camarata was in Kittitas County. CP 62, 64. And under State v. Hickman, 135 Wn.2d 97, 954 P.2d 900 (1998), those jury instructions are the law of the case.

Moreover, the State’s discussion of Hickman actually supports Camarata’s position. The State argues that, in Hickman, “Clearly, the actual fraud occurred in Hawaii,” because that was where Hickman was located when he made the fraudulent phone calls to Washington State. Brief of Respondent at 20. If that is correct, then, by analogy, any offense by Camarata likewise occurred wherever he was located when he initiated the

communication with Kittitas County. Because the State failed to prove he was in Kittitas County at the time, as required by the jury instructions, his conviction must be reversed.

3. REJECTION OF A POTENTIAL JUROR FOR IMPERMISSIBLE REASONS IMPLICATES CONSTITUTIONAL CONCERNS AND REQUIRES REVERSAL.

The State relies in large part on State v. Cleary, 166 Wn. App. 43, 48, 269 P.3d 367, 369 (2012), to argue that the dismissal of a juror, without inquiring whether she was actually qualified, does not violate Washington law or the constitutional guarantees surrounding random and impartial jury selection. Brief of Respondent at 27-30. But Cleary, although superficially similar, is inapposite. The issue in Cleary was whether the mere potential that an unqualified juror had been allowed to serve, impacted the right to an impartial jury. The court concluded it did not. Cleary, 166 Wn.2d at 48. “Federal courts have concluded that a simple showing that a juror is incompetent does not implicate a constitutional right.” Id. Moreover, it was not even demonstrated that the juror in that case was unqualified. Id. at 49.

But Camarata’s challenge is not to the qualifications of a juror. It is to the process of jury selection and the improper exclusion of an identifiable group. Such a non-random process implicates constitutional due process and equal protection concerns. J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 161

n. 13, 114 S. Ct. 1419, 1438, 128 L. Ed. 2d 89 (1994); United States v. Williams, 264 F.3d 561, 567 (5th Cir. 2001); In re Pers. Restraint of Yates, 177 Wn.2d 1, 19, 296 P.3d 872 (2013).

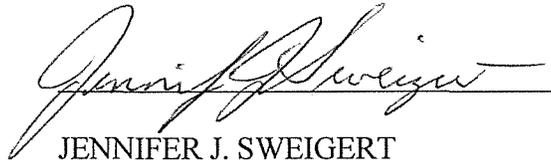
D. CONCLUSION

For the foregoing reasons and for the reasons stated in the opening Brief of Appellant, Camarata requests this Court reverse his convictions.

DATED this 8<sup>th</sup> day of October, 2015.

Respectfully submitted,

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State v. Gene Camarata

No. 32960-7-III

Certificate 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 8<sup>th</sup> day of October, 2015, I caused a true and correct copy of the **Reply Brief of Appellant** to be served on the party / parties designated below by email per agreement of the parties pursuant to GR30(b)(4) and/or by depositing said document in the United States mail.

Kittitas County Prosecuting Attorney  
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Gene Camarata  
Via email

Signed in Seattle, Washington this 8<sup>th</sup> day of October.

X 