

SUPREME COURT NO. 90308-5
COURT OF APPEALS NO. 43359-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAVID WILLIAM CARSON,

Petitioner.

Received
Washington State Supreme Court

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Ronald R. Carpenter
Clerk

E

b/h

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

The Honorable Ronald E. Culpepper

SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUE FOR REVIEW

When the State presents evidence of multiple acts, any one of which could constitute the crime charged, the State must elect a particular act upon which it will rely for conviction or the jury must be instructed that they must unanimously agree as to which act constitutes the crime. Was Mr. Carson denied his constitutional right to effective assistance of counsel where defense counsel's performance was deficient in objecting to a unanimity instruction proposed by the State and Carson was prejudiced by counsel's deficient performance because the trial court consequently failed to give the instruction in violation of Carson's constitutional rights to a unanimous jury verdict and a jury trial?

B. STATEMENT OF THE CASE

1. Procedure

By amended information, the State charged Carson with three counts of child molestation in the first degree committed between April 1, 2009 and May 31, 2010. CP 9-10. A jury found Carson guilty as charged and the trial court sentenced him to 105 months with a maximum term of life in confinement and community custody for life. CP 75-77, 82-101; 4RP 476-78, 5RP 10-12. On appeal, a majority of the Court of Appeals affirmed Carson's convictions, holding that defense counsel did not provide

ineffective assistance of counsel because his “objection to the proposed Petrich instruction was legitimate trial strategy.” State v. Carson, 179 Wn. App. 961, 975, 320 P.3d 185 (2014). Judge Worswick dissented, concluding that defense counsel was ineffective where his objection was based “on an erroneous view of the law” and therefore it cannot “be characterized as a *legitimate* trial tactic.” Carson, 179 Wn. App. at 984.

2. Trial Testimony

On August 16, 2010, Detective Thomas Catey was assigned to investigate an alleged sexual assault of a six-year-old child, C.C., during the period between June 1, 2009 and May 31, 2010. 2RP 190-92. Catey did not speak with C.C., but he watched and listened to an interview of C.C. conducted by a forensic interviewer and spoke with C.C.’s mother, T.H. 2RP 192-94. Thereafter, he called the suspect identified as David Carson. 2RP 192, 194. Carson volunteered to meet with him at police headquarters. 2RP 194. Catey interviewed Carson for half an hour after advising him of his rights. 2RP 195.

Carson told Catey that he lived with Dustin Halbert and T.H. for about a year and a half when he was homeless. He paid rent, provided his food stamps to the household, and watched their children while they were at work. 2RP 198-99. Carson moved out after Halbert accused him of

sleeping with T.H. 2RP 198, 204. Carson considered C.C. his nephew and he denied the allegations. 2RP 196, 199-200. He believed that Halbert and T.H. planted the idea in C.C.'s head as retaliation for leaving them in a financial bind. 2RP 200. Catey allowed Carson to go home after the interview and he submitted a report to the prosecutor's office. 2RP 204.

T.H. lives with her fiancé, Dustin Halbert, and her three children. Her oldest child is C.C. who is now seven years old. 2RP 144-45. T.H. testified that Halbert and Carson were childhood friends and grew up together. 2RP 145-45. In the summer of 2009, Carson came to live with them because he was homeless. 2RP 147. He paid \$250 a month in rent, helped pay for food, cooked, cleaned, and watched the children while she and Halbert were at work. 2RP 152, 154, 183. The children liked Carson and C.C. called him "Uncle David." 2RP 153. Carson moved out on the day before Memorial Day 2010 because he and Halbert got into an argument. When Carson left, friends and relatives helped watch the children. 2RP 161-62.

On August 13, 2010, T. H. was driving to her friend's house with the children when C.C. kept saying, "Mom, Mom, Mom." 2RP 162-64. When she asked him what he wanted, C.C. "very simply just stated that David tried to put his penis in his butt." 2RP 164. C.C. said it happened

“[n]ext to the closet,” which was located at the end of a very small hallway between the stairs and bedrooms. 2RP 160, 180. C.C. did not say anything happened in an office, her bedroom, or his bedroom. 2RP 180. C.C. said David “had some of daddy’s strings on his hands” and he told her “about tape on his mouth.” 2RP 168. T.H. was unsure of the exact term that C.C. used but recalled that he sometimes used the word “business” to describe his penis. 2RP 165.

C.C. testified that “Uncle David” would watch him and his brother and sister when his mom and dad were at work.” 2RP 103-04. “Business” is “[s]omething that you use to go to the bathroom.” 2RP 105. He made up the word “business” and his mom and dad told him to use the word. 2RP 124-25. Uncle David touched C.C.’s business in his dad’s office, C.C.’s bedroom, his mom’s bedroom, in the bathroom, and his dad’s “old room.” 2RP 109-110, 113-14, 127-28. His business never went inside C.C.’s body. 2RP 111. Uncle David used plastic strings to tie C.C.’s hands and put duct tape on his mouth when they were in his mom’s room. 2RP 112 -13, 116-17, 128. When they were in his dad’s office, “where his computer games are,” Uncle David stopped when he looked out the window and saw someone come home. 2RP 109, 128-29. During cross-examination, C.C. said he could not remember Carson touching his business at all. 2RP 126.

C.C.'s responses changed numerous times throughout his testimony. 2RP 106-117, 125-29.

Cornelia Thomas, a child forensic interviewer, conducted an interview with C.C. on August 26, 2010 when he was six years old. 3RP 243. Thomas testified that C.C. disclosed a "twisting of his business" and being "duct-taped and having like a plastic string wrapped around his wrist." 3RP 246. The court admitted the recorded interview into evidence and it was played for the jury. 3RP 247-49; Ex. 5.

Michele Breland, a pediatric nurse practitioner, performed a medical examination on C.C. 3RP 385, 402-03. During the examination, C.C. told Breland that David "tried to punch me and he put his business in my bottom." 3RP 389. C.C. asked her if she "was going to check my business" and he pointed to his genital area. 3RP 390. The result of the examination was inconclusive. 3RP 401.

Katie Davenport met Carson when he was about seven years old. Carson has trouble focusing because of a learning disability. 3RP 266. Davenport has known Dustin Halbert and T.H. for several years. When Carson moved in with them, she visited him a few times. 3RP 267. Carson baby-sat the children, changed their diapers, fed them, and cleaned the house. Davenport heard the children call Carson "dad" because "he had

been with them so much and he does everything for them.” 3RP 267-68, 271. The children were really happy and healthy. 3RP 269.

Amber Midgett has known Carson for 11 years. 3RP 272. Midgett picked Carson up multiple times when he was living with Halbert and T.H. Carson was not able to drive. 3RP 272-73, 276. She saw Carson playing with the children on several occasions, “[t]hey adored him.” 3RP 274. Even when their mother was there, the children would go to Carson. Midgett “never saw anything other than love for him.” 3RP 274-75.

Carson’s brother, Martin, saw Carson playing with the children many times at family functions, get-togethers with friends, birthdays, and barbeques. 3RP 282-83. C.C. was a shy, very skittish child, but he loved Carson, gave him hugs, and played with him. 3RP 282-83. When Carson was living with Halbert and T.H., Martin never went to their home because they would not allow him to visit. 3RP 282, 287. Carson has a learning disability and people can easily take advantage of him. 3RP 284-85.

Jennifer Bryant, Martin’s wife, saw Carson playing with the children at family functions. Carson acted “like a really big kid with the kids.” 3RP 290. When Carson was living with Halbert and T.H., he watched the children, cooked, cleaned, and changed diapers. 3RP 291.

Bryant picked Carson up at their house many times but Halbert would never allow her to come inside. 3RP 291-92.

Ruben Lupio visited Carson almost everyday when he was living with Halbert and T.H. 3RP 294-95. They worked on cars or would just hang out. 3RP 296. Carson was “basically a baby-sitter, nanny, always watching the kids.” 3RP 295. Carson played with the children and had a good relationship with them. Lupio never noticed anything unusual. 3RP 296.

Carson testified that he has ADHD, a learning disability that slows him down. 3RP 301. He has known Halbert since they were kids and moved in with Halbert and T.H. in 2009 when he became homeless. 3RP 302-03. After four or five months, “I was giving them all my money and giving them \$150 of my food stamps and watching the kids pretty much all day.” 3RP 304. He cared for the children, cooked, cleaned, did the laundry, and took care of the family dog. 3RP 305-06. C.C., the oldest child, would pick on his younger brother and sister at times and was extremely skittish. 3RP 306-07, 301-11. Carson discovered C.C. with a pornographic tape once and the incident was reported to Halbert who “dealt with it.” 3RP 312-13.

Carson moved out in May 2010 after Halbert accused him of sleeping with T.H. 3RP 314. Halbert and T.H. were extremely upset when he left because they had no one to watch the children and he had been contributing about \$350 to \$400 to the family's income. 3RP 316, 319. When a detective called Carson about allegations made by C.C., he agreed to meet with the detective "[b]ecause I didn't do it and I wanted to try to clear my name as quickly as possible." 3RP 318-19. He did not do anything sexually inappropriate to C.C. 3RP 317. Carson acknowledged that there were discrepancies between his direct testimony and his responses during his interview with the detectives due to memory lapses. 3RP 324-25, 330-32.

3. Unanimity Instruction

During discussions about jury instructions, the court heard argument from the State and defense counsel on whether a Petrich unanimity instruction should be given to the jury. 3RP 334-37; 4RP 404-09. The State argued that it proposed a Petrich instruction because it did not elect any particular act and therefore a unanimity instruction is required because multiple acts of the same crime are alleged. 4RP 406-08. Defense counsel objected to giving the Petrich instruction, arguing that the instruction was not designed for multiple count cases, "it should only be used where you're

alleging one count but multiple acts.” 4RP 408. The trial court declined to give the jury instruction. 4RP 409.

4. Closing Argument

During closing argument, the State reminded the jury that C.C. described several different occasions where the defendant tried to put his penis in his bottom. The State asked the jury to focus on three incidents: the bathroom, where C.C.’s business was twisted, his mother’s room where the defendant zip-tied his hands and placed black tape on his mouth, and his bedroom where the defendant made him look at his Spiderman blanket. 4RP 427-30.

Defense counsel argued that the case was about credibility, motive, and revenge, contending that when Carson suddenly left, he left Halbert and T.H. in a bind and left them angry. 4RP 444-46. Defense counsel’s theory of the case was that Halbert and T.H. coached C.C. to accuse Carson of molestation in revenge for leaving them in a financial bind without a babysitter and housekeeper. 4RP 446-54. His strategy was to persuade the jury that the State failed to prove the charges beyond a reasonable doubt by repeatedly attacking C.C.’s statements as a “jumbled mess.” 4 RP 450-57.

C. ARGUMENT

CARSON WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE DEFENSE COUNSEL'S PERFORMANCE WAS DEFICIENT IN OBJECTING TO A UNANIMITY INSTRUCTION AND CARSON WAS PREJUDICED BY COUNSEL'S DEFICIENT PERFORMANCE BECAUSE THE TRIAL COURT CONSEQUENTLY FAILED TO GIVE THE INSTRUCTION IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS TO A UNANIMOUS JURY VERDICT AND JURY TRIAL.

The Sixth Amendment to the United States Constitution and art. I, section 22 of the Washington Constitution guarantee the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). "The purpose of the requirement of effective assistance of counsel is to ensure a fair and impartial trial." Thomas, 109 Wn.2d at 225.

To demonstrate ineffective assistance of counsel, a defendant must show that (1) defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced defendant, i.e. there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceedings would have been different. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251

(1995)(citing Thomas, 109 Wn.2d at 225-26)(applying the two-prong test in Strickland, 466 U.S. at 687)).

There is a strong presumption that counsel has rendered adequate assistance and has made all significant decisions by exercising reasonable professional judgment. State v. Lord, 117 Wn.2d 829, 883, 822 P.2d 177 (1991). A criminal defendant can rebut the presumption of reasonable performance by showing that there “is no conceivable legitimate tactic that explains counsel’s performance.” State v. Grier, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011). If counsel’s conduct can be characterized as “legitimate trial strategy or tactics,” it cannot serve as a basis for a claim of ineffective assistance of counsel. Lord, 117 Wn.2d at 883.

1. Defense counsel’s performance was deficient.

Criminal defendants in Washington have a constitutional right to a unanimous jury verdict. Wash. Const. art. I, section 21; State v. Ortega-Martinez, 124 Wn.2d 702, 707, 881 P.2d 231 (1994). A defendant may be convicted only when a unanimous jury concludes that the criminal act charged has been committed. Petrich, 101 Wn.2d 566, 569, 683 P.2d 173 (1984)(citing State v. Stephens, 93 Wn.2d 186, 190, 607 P.2d 304 (1980)). When the State presents evidence of multiple acts, any one of which could constitute the crime charged, the jury must unanimously agree as to which

act constitutes the crime. Petrich, 101 Wn.2d at 572; State v. Kitchen, 110 Wn.2d 403, 411, 756 P.2d 105 (1988).

To ensure jury unanimity, the State must elect a single act upon which it will rely for conviction, or the jury must be instructed that all of them must agree as to which act was proven beyond a reasonable doubt. Petrich, 101 Wn.2d at 572; Kitchen, 110 Wn.2d at 411. Failure to follow one of these options violates the defendant's state constitutional right to a unanimous jury verdict and United States constitutional right to a jury trial. Kitchen, 110 Wn.2d at 409 (citing State v. Badda, 63 Wn.2d 176, 182, 385 P.2d 859 (1963); Wash. Const. art. I, section 21; U.S. Const. amend. 6).

During discussions about whether a Petrich instruction should be given to the jury, the prosecutor explained that the State charged three counts of child molestation during the same period of time but did not elect a specific act as to a specific count. 3RP 334-36, 4RP 406-08. The prosecutor proposed a unanimity instruction, arguing that "my reading of the law is that where the State fails to elect, a Petrich instruction must be given, and it's a constitutionally due process right." ¹ 4RP 407.

1. The State alleges that the defendant committed acts of Child Molestation in the First Degree against C.C. on multiple occasions. To convict the defendant on any count of Child Molestation in the First Degree, one particular act of Child Molestation in the First Degree must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not

Defense counsel objected, arguing that the Petrich instruction was not designed for multiple count cases, “it should only be used where you’re alleging one count but multiple acts.” 4RP 408. Defense counsel contended that the unanimity instruction proposed by the State would confuse the jury and it would be error to give the instruction. 4RP 404-06, 408-09. The trial court declined to give the instruction. 4RP 409.

Defense counsel was absolutely mistaken because Petrich was a multiple count case. The State charged Petrich with one count of indecent liberties and one count of second degree statutory rape. Petrich, 101 Wn.2d at 568. The State alleged multiple acts but did not elect the act upon which it relied for each conviction, and the trial court failed to give a unanimity instruction. This Court reversed and remanded for a new trial because jury unanimity was not ensured with an instruction. Id. at 573.

Under Petrich and its progeny, defense counsel’s objection was clearly based on his erroneous view of the law. Furthermore, defense counsel’s interpretation of the law defies logic and common sense. There is no reason why a unanimity instruction would be required in a multiple acts case where the defendant is charged with one count and not required in

unanimously agree that the defendant committed all the acts of Child Molestation in the First Degree.

CP 38 (Jury Instruction 3, WPIC 4.25).

a multiple acts case where the defendant is charged with multiple counts. In either case, there is “the possibility that some jurors may have relied on one act or incident and some another, resulting in a lack of unanimity on all of the elements necessary for a valid conviction.” Kitchen, 110 Wn.2d at 411.

Defense counsel’s argument that the Petrich instruction proposed by the State would confuse the jury is also unfounded. The State’s jury instruction was based on WPIC 4.25 and a correct statement of the law. Defense counsel claimed that the instruction “confuses the jury into thinking, well, if you agree that one act happened, then you must agree that all of them happened.” 3RP 336. To the contrary, no such confusion could occur because the court further instructed the jury that “[a] separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.” CP 63 (Jury Instruction 3). Jury instructions must be read as a whole. State v. Brown, 132 Wn.2d 529, 605, 940 P.2d 546 (1997). Moreover, defense counsel could have proposed a modified unanimity instruction to cure what he believed was confusing. Instead, he objected to giving a unanimity instruction, arguing that it was not necessary, consequently depriving Carson of his right to a unanimous jury verdict.

Contrary to the Court of Appeals majority's holding, defense counsel's performance was deficient and cannot be excused as "reasonable trial strategy." Carson, 179 Wn. App. at 979-80. As Judge Worswick concluded in dissent, "defense counsel's reasons for declining the Petrich instruction are fundamentally unreasonable." Carson, 179 Wn. App. at 984. The relevant question when considering defense counsel's performance "is not whether counsel's choices were strategic, but whether they were unreasonable." Grier, 171 Wn.2d at 33-34 (citing Roe v. Flores-Ortega, 158 U.S. 470, 481, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000)). The record substantiates that defense counsel's choice to object to the Petrich instruction, thereby denying Carson his constitutional right to a unanimous jury verdict, was unreasonable under prevailing professional norms and constitutes deficient performance.

2. Defense counsel's deficient performance was prejudicial.

When there is no election made by the State in a multiple acts case, omission of a unanimity instruction "is presumed to result in prejudice" because of the possibility that some jurors relied on one act and some relied on another, resulting in a lack of unanimity on all of the elements necessary for a valid conviction. State v. Coleman, 159 Wn.2d 509, 512, 150 P.3d

1126 (2007)(citing State v. Kitchen, 110 Wn.2d 403, 411-12, 756 P.2d 105 (1988)).

The failure to give a unanimity instruction in multiple acts cases is constitutional error and the constitutional harmless error analysis applies. State v. Bobenhouse, 166 Wn.2d 881, 893, 214 P.3d 907 (2009). The standard of review for harmless error is whether a “rational trier of fact could find that each incident was proved beyond a reasonable doubt.” State v. Camarillo, 115 Wn.2d 60, 65, 794 P.2d 850 (1990)(quoting State v. Gitchel, 41 Wn. App. 820, 823, 706 P.2d 1091 (1985)). “The presumption of error is overcome only if no rational juror could have a reasonable doubt as to any of the incidents alleged.” Coleman, 159 Wn.2d at 512.

The evidence presented by the State revealed at least six separate acts which could form the basis of the three counts of child molestation. T.H. testified that her son, C.C., used the word “business” to describe his penis. 2RP 165. C.C. told her that Carson tried to put his penis in his butt and that it happened “[n]ext to the closet” located at the end of a very small hallway between the stairs and bedrooms. 2RP 160, 164, 180. C.C. testified that Carson touched his “business” while in his dad’s office, C.C.’s bedroom, his mom’s bedroom, in the bathroom, and his dad’s “old room.” 2RP 109-111, 113-14, 127-29. C.C. made similar statements during a

recorded forensic interview. Ex. 5. Without a unanimity instruction, there is no assurance that the jurors unanimously agreed as to which acts supported the three counts. Jurors have a constitutional “responsibility to connect the evidence to respective counts.” State v. Houwen, 153 Wn.2d 25, 39, 177 P.3d 93 (2008). Although the prosecutor asked the jury to focus on three incidents during closing argument, the court instructed the jury that “[i]t is important” to remember that “the lawyer’s statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you.” CP 60 (Jury Instruction 1). The jury is presumed to follow the court’s instructions. State v. Southerland, 109 Wn.2d 389, 391, 745 P.2d 33 (1987).

Furthermore, the record substantiates that the court’s failure to give a unanimity instruction was not harmless beyond a reasonable doubt. The failure to give a Petrich instruction is harmless when “the evidence presented was sufficient to establish that each crime had occurred, there was no conflicting testimony, and the victim provided specific detailed testimony.” Bobenhouse, 166 Wn.2d at 894. In Kitchen, 115 Wn.2d at 412, this Court reversed because of the conflicting testimony and a rational juror could have entertained reasonable doubt as to whether one or more of the acts occurred. In Petrich, 101 Wn.2d at 573, this Court reversed because at times during the child’s testimony, she expressed confusion and

uncertainty. While the victim testified to some of the instances with detail and specificity, “[o]thers were simply acknowledged, with attendant confusion as to date and place, and uncertainty regarding the type of sexual conduct that took place.” This Court concluded that it could not hold that a rational trier of fact could have found each incident proved beyond a reasonable doubt.

Similarly, there was conflicting testimony here. Carson testified that he never touched C.C. inappropriately and that he “was like my nephew or even my own kid.” 3RP 317-18. Numerous witnesses testified that Carson had a loving relationship with C.C. and the other children and they adored him and called him “dad.” 3RP 267-71, 274-75, 282-83, 290, 295-96. Much of C.C.’s testimony was vague, contradictory and confusing.² 2RP 106-08, 125-29. During cross-examination, C.C. said he did not remember Carson touching his “business” at all. 2RP 126. T.H. testified that when C.C. told her what Carson did, “it was unclear whether it was more than one event or not.” 2RP 181. C.C. did not say that anything happened in an office, her bedroom, or his bedroom. She could only remember that C.C. said it happened “next to the closet.” 2RP 180.

² Both the majority and dissent recognized that C.C.’s testimony was confusing and inconsistent. Carson, 179 Wn. App. at 966, footnote 13; 986.

The record in its entirety reveals conflicting testimony, uncertainty, and confusion, unlike in Camarillo, 115 Wn.2d at 72 (failure to give unanimity instruction was harmless beyond a reasonable doubt where “[t]here was no uncertainty on the part of the boy regarding the type of sexual conduct; there was no conflicting testimony about what happened on the three occasions testified to by the boy; the boy’s testimony was unimpeached; and there was no attendant confusion as to dates and places on the part of the victim.”). The trial court instructed the jury that “[i]n order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition.” CP 60 (Jury Instruction 1). When considering all of the evidence, fraught with contradictions and inconsistencies, no rational trier of fact could have found each incident proved beyond a reasonable doubt. Consequently, the presumption of prejudice cannot be overcome.

Kitchen requires a presumption of prejudice when the court fails to give a unanimity instruction “precisely because the error usually makes it impossible to determine what the jury found factually.” Carmarillo, 115 Wn.2d at 73 (Utter, concurring)(citing Kitchen, 110 Wn.2d at 411.) Most records do not permit confident inferences about what the jurors must have concluded. “Such inferences will be inappropriate in almost any other case.” Id. at 74. The State presented evidence of at least six separate acts

which could form the basis of the three counts of child molestation. Without a unanimity instruction, it is impossible to determine whether the jury unanimously agreed as to which acts constitutes the crimes.

D. CONCLUSION

The right to effective assistance of counsel is “fundamental to, and implicit in, any meaningful modern concept of ordered liberty.” State v. A.N.J., 168 Wn.2d 91, 96, 225 P.3d 956 (2010).

Reversal is required because Mr. Carson was denied his constitutional right to effective assistance of counsel where defense counsel’s performance was deficient in objecting to a unanimity instruction based on his erroneous view of the law and Carson was prejudiced where the omission of a unanimity instruction is presumed prejudicial and the error was not harmless beyond a reasonable doubt.

DATED this 17th day of October, 2014.

Respectfully submitted,

/s/ Valerie Marushige
VALERIE MARUSHIGE
WSBA No. 25851
Attorney for Petitioner, David William Carson

DECLARATION OF SERVICE

On this day, the undersigned sent by e-mail, a copy of the document to which this declaration is attached, to the 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 17th day of October, 2014, in Kent, Washington.

/s/ Valerie Marushige
VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851

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Attached is Petitioner's Supplemental Brief in Case No. 90308-5.

Thank you very much,
Valerie Marushige
Attorney for Petitioner, David William Carson