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NO. 67562-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ALLEN KNOLL,

Appellant.

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

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court violated Mr. Knoll's right to be present under the state and federal constitutions, and CrR 3.4, receiving a question from the deliberating jury and reinstructing the jury without Mr. Knoll's physical presence in the courtroom.

2. The prosecutor committed misconduct by presenting improper closing argument which misstated the law and lowered the burden of proof.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The right to be present in the courtroom during trial proceedings includes the court's receipt of questions from the deliberating jury and any reinstruction of the jury. Here, the trial judge received a question from the jury during deliberations and reinstructed the jury without bringing Mr. Knoll into the courtroom so he could observe, participate, and confer with his lawyer privately. Did the court violate Mr. Knoll's right to be present by receiving the jury note, discussing a response with attorneys, and reinstructing the jurors without permitting Mr. Knoll to participate in person?

2. A prosecutor, as a quasi-judicial officer, has an obligation to seek a verdict based upon reason, and the duty to see that the

accused is given a fair trial before an impartial jury. Here, the prosecutor misstated the law during closing argument, improperly commenting on Mr. Knoll's right to silence, and denigrating the defense. Did the prosecutor's closing argument deprive Mr. Knoll of a fair trial?

C. STATEMENT OF THE CASE

On the morning of March 1, 2011, two friends of Allen Knoll's planned to commit a purse theft in Skagit County, and brought him along. 7/19/11 RP 55-56, 77.¹ Mr. Knoll and the other two men drove to the Safeway in Mount Vernon, and took a purse from a woman's shopping cart as she unloaded her groceries into her car. 7/18/11 RP 19-20, 29-30; 7/19/11 RP 16-20, 72-73.

Unbeknownst to Mr. Knoll and his friends, the purse contained \$2005 and a credit card, as well as a handgun licensed to the complaining witness. 7/18/11 RP 21-22; 7/19/11 RP 6-8. The car, in which Mr. Knoll was a passenger, continued toward the Skagit River Bridge and Burlington, when it was stopped by State Patrol officers. 7/19/11 RP 29, 36. There was no evidence that Mr. Knoll or his

¹ The verbatim report of proceedings consists of proceedings held from July 18, 2011, through July 20, 2011, as well as sentencing proceedings on August 4, 2011.

friends knew that the purse contained a firearm at the time they took it.

Mr. Knoll was charged with unlawful possession of a firearm in the second degree; theft in the second degree; identity theft in the second degree; and theft of a firearm. CP 6-7; 3/17/11 RP 3-6.

The jury acquitted Mr. Knoll of identity theft in the second degree and theft of a firearm, and found him guilty of unlawful possession of a firearm and theft in the second degree. CP 47-48; 7/20/11 RP 152.

D. ARGUMENT

1. MR. KNOLL WAS DENIED THE RIGHT TO APPEAR AND DEFEND IN PERSON WHEN THE TRIAL COURT CONDUCTED A CRITICAL STAGE OF THE PROCEEDINGS WITHOUT MR. KNOLL PRESENT IN THE COURTROOM.

- a. An accused person has the right to be present when his substantial rights may be affected. The discussion of a jury inquiry is a critical stage of a criminal proceeding at which a defendant has the right to be present. Rogers v. United States, 422 U.S. 35, 39, 95 S.Ct. 2091, 45 L.Ed.2d 1 (1975); U.S. Const. amends. 5, 6, 14; Const. art. I, §§ 3, 21, 22. Under the federal constitution, an accused person is entitled to be personally present in court when a stage in the trial process offers a defendant, if

present, the opportunity to “give advice or suggestion or even to supersede his lawyers altogether.” State v. Irby, 170 Wn.2d 874, 883, 246 P.3d 796 (2011) (quoting Snyder v. Massachusetts, 291 U.S. 97, 105-06, 54 S.Ct. 330, 78 L.Ed. 674 (1934)).

The right to be present at trial stems in part from the fact that by his physical presence the defendant can hear and see the proceedings, can be seen by the jury, and can participate in the presentation of his rights.

Bustamante v. Eyman, 456 F.2d 268, 274 (9th Cir. 1972).

An accused person's right to “appear and defend” is more broadly protected by the Washington Constitution than its federal constitutional counterpart. Irby, 170 Wn.2d at 883.² The Washington Constitution expressly guarantees all accused persons the right to “appear and defend in person.” Const. art. I, § 22. The “right to appear and defend in person” is a personally held right that is not satisfied by counsel's participation in the proceedings. State v. Rafay, 167 Wn.2d 644, 650, 222 P.3d 86 (2009).

² The Supreme Court has explained that the right “to appear and defend” in article I, section 22 is broader than the federal right in a variety of cases. State v. Martin, 171 Wn.2d 521, 528, 252 P.3d 872 (2011) (article I, section 22 right to appear and defend bars prosecution from implying accused tailored testimony unless factual basis for tailoring elicited at trial); State v. Rafay, 167 Wn.2d 644, 650, 222 P.3d 86 (2009) (right to appear and defend underscores right to self-representation); see also State v. Pugh, 167 Wn.2d 825, 832, 225 P.3d 892 (2009) (article I, section 22 right to confront witnesses “face to face” broader than Sixth Amendment).

The right to be present as protected by the federal constitution extends to all critical stages of the trial. Kentucky v. Stincer, 482 U.S. 730, 745, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987); U.S. Const. amends. 5, 6, 14. In Washington, the right to be present is not limited to whether the proceedings involve a “critical” factual issue. Irby, 170 Wn.2d at 885. Instead, the constitution guarantees an accused person the right to appear and defend in person “*at every stage of the trial when his substantial rights may be affected.*” Id. at 885 (emphasis added in Irby, quoting State v. Shutzler, 82 Wash. 365, 367, 144 P. 284 (1914)).

In Irby, the Supreme Court considered the “hardship” stage of jury selection and the defendant’s right to be present. 170 Wn.2d at 878-81. The Irby Court explained that both the state and federal constitutional rights to be present at trial include stages where an individual juror is being evaluated and potentially dismissed based on his or her qualifications for service. Id. at 882, 885. Irby further discussed that under the Washington Constitution, the critical inquiry is whether a defendant’s substantial rights may have been affected at the proceeding in which he was absent. Id. at 885 (citing Shutzler, 82 Wash. at 367).

b. The court's response to a jury question and reinstruction of the jury was a stage of the proceedings at which Mr. Knoll had the right to appear in person. During trial, once the jury has begun its deliberations, any communication between the court and the jury in the absence of the defendant is error. State v. Caliguri, 99 Wn.2d 501, 509, 664 P.2d 466 (1983). Criminal Rule 6.15 expressly requires that all parties be notified of any jury question posed to the trial court during deliberations and be afforded an opportunity to comment upon the court's intended response:

The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing.... Any additional instruction upon any point of law shall be given in writing.

CrR 6.15(f)(1).

Here, the record of the jury's question is minimal, since there was no court reporter present during the apparent discussion of the jury note. Appendix; Supp. CP____, sub. no. 38 (minutes from 7/20/11 at 3:16 p.m.), at 7-8; CP 46. The minutes indicate that the

entire exchange took four minutes – the court recessed again at 3:20 – and that although both counsel were present, the defendant was not. Appendix; Supp. CP____, sub. no. 38, at 7-8.

The record also indicates that immediately following the verdict and the polling of the jury, Mr. Knoll objected to the court's response to the jury question and reinstruction of the jury without permitting him to appear. 7/20/11 RP 159-60. Mr. Knoll stated that he was not informed that there was a jury question, he was not transported to court, and he was not permitted to aid in his defense. Id. The court explained that his objection would be noted for the record and preserved for review. Id.

Here, the subject of the jury's question was crucial to the jury's understanding of the case. In their query, the jury asked:

With purse in car valuing over \$750.00 does each person have to have possession/holding (touching) the purse or does possession occur because purse is in car w/all 3 of them?

CP 46.

In this question, the jury clearly indicated that it was struggling with the concept of constructive possession – an instruction previously given them (Instruction No. 10), and important to the unlawful possession of a firearm count.

Instead of transporting Mr. Knoll to the courtroom and allowing him to hear this question, the court simply decided to re-instruct the jury and order them to refer to their jury instructions. Appendix; Supp. CP____, sub. no. 38, at 7-8; CP 46. Mr. Knoll was not able to guide his attorney in her requests for a new instruction or an alternative remedy. As Mr. Knoll stated,

I was not invited to hear what the question was until after the fact. And I wasn't allowed to put my, as a defendant, I wasn't able to aid in my defense, or what the question was, or how it was answered in any way. I just want that on the record. I was not present. I was not transported over, and I did not have the right to sit in aid of working out whatever error or whatever questions the jury had ... I wasn't able to give any advise [sic] as to whether or not that's the answer I wanted to give the jury.

7/20/11 RP 159-60.

Mr. Knoll was not able to confer privately with his attorney during the proceedings or to obtain information as to what was transpiring with the jury request. See Illinois v. Allen, 397 U.S. 337, 344, 90 S.Ct 1057, 25 L.Ed.353 (1970) (ability to communicate with counsel is one of the "primary advantages" of being present). This was a violation of his right to confer with counsel and his right to be present. See CrR 3.4(a) ("the defendant shall be present . . .

at every stage of the trial, including the empaneling of the jury and the return of the verdict”).

c. Mr. Knoll did not waive his right to be present. The right to be present at trial may be waived, but any such waiver must be knowingly and voluntarily executed. Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). Courts “must indulge every reasonable presumption against” the loss of the constitutional right to be present. Allen, 397 U.S. at 343.

At the least, a defendant must be aware of his right to be present in the courtroom in order to waive that right. See State v. Sargent, 111 Wn.2d 641, 655, 762 P.2d 1127 (1988) (while a waiver may be inferred, there cannot be “a knowing and intelligent waiver unless it is shown that the defendant knew of his right. Unless the defendant is informed of his right, he cannot be presumed to know it”); see United States v. Gordon, 829 F.2d 119, 125 (D.C. Cir. 1987) (holding that in order for a defendant to waive his constitutional right to be present he must be advised of the right and then permitted to make an on-the-record waiver in open court).

Mr. Knoll was in the jail’s custody, in the constant presence of corrections officers, during these proceedings. 6/30/11 RP 3-5. He could not control whether or when he came to court. See

Gordon, 829 F.2d at 125 n.7 (in-custody defendant may not have power to waive right to be present because his presence is not within his control). Mr. Knoll did not ask to remain in the jail during the proceedings and there was no indication that he had been disruptive during the trial such that he forfeited his right to be present. 7/20/11 RP 159-60.

The record contains no mention of Mr. Knoll's right to be present, although he did object immediately following the verdict. 7/20/11 RP 159-60. No colloquy occurred to explore whether Mr. Knoll understood he had the right to be present, should a jury question arise, and he was not offered the opportunity to appear in person. Thus, he did not knowingly, intelligently, and voluntarily waive his right to be present for the court proceedings.

d. Excluding Mr. Knoll from personally participating in the response to the jury question and reinstruction requires reversal.

i. The Washington Constitution treats the error as presumptively prejudicial.

In Irby, the Court explained that Washington case law historically treated a violation of the accused's right to be present as presumptively prejudicial. 170 Wn.2d at 885. The right was

strictly enforced and not cured by the attorney's presence. Id.; see Linbeck v. State, 1 Wash. 336, 338-39, 25 P. 452 (1890) (repeating and orally explaining jury instructions to deliberating jury with counsel but without defendant's presence is error "and we do not think this error was cured by the fact that defendant's attorney was present and made no objection."); State v. Beaudin, 76 Wash. 306, 308, 136 P. 137 (1913) ("[t]he giving of an instruction in appellant's absence constituted prejudicial error, which was not cured" by later re-instructing the jury with defendant present, because the right to be personally present is mandatory for all substantive trial proceedings and is strictly enforced); Shutzler, 82 Wash. at 367 (where court urged deliberating jury to try to reach a verdict in absence of attorneys or defendant, court's violation of accused's right to be personally present at trial requires reversal).³

The Irby Court was under the impression that State v. Caliguri, 99 Wn.2d 501, 664 P.2d 466 (1983) overruled these earlier cases. 170 Wn.2d at 886. However, in Irby, the state

³ A Gunwall analysis is unnecessary when the court has already determined that the state constitution warrants an inquiry on independent state grounds, as the Court indicated in Irby. See State v. Williams-Walker, 167 Wn.2d 889, 896 n.2, 225 P.3d 913 (2010); State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1996).

constitutional right had not been briefed, and therefore, the evolution of the case law was not discussed. Id. at 885.

In Caliguri, the court recognized that Washington had long held that improper communications between the judge and jury without the accused's presence were deemed prejudicial. 99 Wn.2d at 508. The error in Caliguri was the court's replaying of tapes admitted into evidence without notifying the defendant, which the Court agreed was "highly improper." But the Court departed from this precedent and adopted the "modern view" of the federal courts and other jurisdictions, which used a constitutional harmless error test. Id. at 509.

Caliguri contained no analysis of the broader protections required by article I, section 22. It simply decided to follow the "modern view" of other jurisdictions, even though this Court interprets our constitution based on the intent of the constitutional provision at the time of its framing and not the evolution of modern views on fundamental rights. In re Runyan, 121 Wn.2d 432, 441, 853 P.2d 424 (1993). Accordingly, Caliguri rested on an unpersuasive reason for departing from the independent interpretation and application of article I, section 22.

When the Framers drafted the state constitution, it was the prevailing understanding that an accused person had a personal right to be present when issues arose during jury deliberations. Linbeck, 1 Wash. at 338-39, Beaudin, 76 Wash. at 308; Shutzler, 82 Wash. at 367. A violation of this right was conclusively prejudicial.

Since it is the right of the accused to be present at every stage of the trial when his substantial rights may be affected, it is no answer to say that in the particular proceeding nothing was done which might not lawfully have been done had he been personally present. The excuse, if good for the particular proceeding, would be good for the entire proceedings; the result being a trial and conviction without his presence at all. The wrong lies in the act itself, in the violation of the constitutional and statutory right of the accused to be present and defend in person and by counsel.

Shutzler, 82 Wash. at 367-68.

In the context of article I, section 22's explicit protection of the public trial right, the court does not look to whether the courtroom closure was de minimis unless the defendant himself expressly sought this departure from constitutional norms. See State v. Storde, 167 Wn.2d 222, 231, 217 P.3d 310 (2009) (in Washington, "[t]he denial of the constitutional right to a public trial is one of the limited classes of fundamental rights not subject to

harmless error analysis.”). A courtroom closure is not “trivial” unless it is inadvertent. State v. Lormor, 172 Wn.2d 85, 96, 257 P.3d 624 (2011). Similarly, the constitution expressly guarantees an accused person the right to be present at trial if his substantial rights may be affected. Mr. Knoll was not inadvertently excluded from the substantive proceedings that pertained to the response to a jury question, as well as the reinstruction of the jury; thus, the violation of his right to be present should be treated as a presumptively and conclusively prejudicial error, requiring reversal.

ii. Under the federal constitution, the State bears the burden of proving the error is harmless beyond a reasonable doubt.

When there is a violation of the right to be present, the federal constitution places “the burden . . . on the prosecution to prove that the error was harmless beyond a reasonable doubt.” United States v. Marks, 530 F.3d 759, 812 (9th Cir. 2008); Irby, 170 Wn.2d at 885-86.

Applying this constitutional harmless error test in Irby, the Court held that the prosecution was required to show that all of the dismissed jurors “had no chance to sit on Irby’s jury,” and the State could not meet this heavy burden. Id. at 886. Those dismissed jurors had not had their ability to serve tested by Irby. Id. While

the attorneys and judge had agreed those jurors should be excused, the defendant himself had not probed their qualifications.

Here, had Mr. Knoll been present for the jury question, he might have suggested to his attorney a wholly different and more complete response to the jury's question. Since the jury was clearly troubled by the constructive possession aspect of the charges, which is directly relevant to the verdict on the unlawful possession of a firearm count, the reinstruction on this jury question was crucial to Mr. Knoll

The court's unexplained failure to include Mr. Knoll in the review of the jury note and reinstruction of the jury during deliberations denied Mr. Knoll his right to be present at a critical stage of the proceedings and to appear and defend where his substantial rights may be affected. The State cannot show this error was harmless beyond a reasonable doubt. Irby, 170 Wn.2d at 886. Accordingly, this violation of Mr. Knoll's right to be present requires reversal.

2. MR. KNOLL'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL WAS VIOLATED BY PROSECUTORIAL MISCONDUCT DURING CLOSING ARGUMENT.

a. Prosecutors have special duties which limit their advocacy. A prosecutor's misconduct in closing argument may deny a defendant his right to a fair trial, as guaranteed by the Sixth Amendment and by article 1, section 22 of the Washington Constitution. State v. Monday, 171 Wn.2d 667, 676-77, 297 P.3d 551 (2011). A prosecutor, as a quasi-judicial officer, has a duty to act impartially and to seek a verdict free from prejudice and based upon reason. State v. Echevarria, 71 Wn. App. 595, 598, 860 P.2d 420 (1993) (citing State v. Kroll, 87 Wn.2d 829, 835, 558 P.2d 173 (1976)). In State v. Huson, the Supreme Court noted the importance of impartiality on the part of the prosecution:

[The prosecutor] represents the state, and in the interest of justice must act impartially. His trial behavior must be worthy of the office, for his misconduct may deprive the defendant of a fair trial. Only a fair trial is a constitutional trial ... We do not condemn vigor, only its misuse ...

73 Wn.2d 660, 663, 440 P.2d 192 (1968), cert. denied, 393 U.S. 1096 (1969) (citation omitted); see also State v. Reed, 102 Wn.2d at 140, 147, 684 P.2d 699 (1984).

To determine whether prosecutorial comments constitute misconduct, the reviewing court must decide first whether such comments were improper, and if so, whether a “substantial likelihood” exists that the comments affected the jury.” Reed, 102 Wn.2d at 145. The burden is on the defendant to show that the prosecutorial comments rose to the level of misconduct requiring a new trial. State v. Sith, 71 Wn. App. 14, 19, 856 P.2d 415 (1993) (holding that in the absence of a defense objection, reversal for prosecutorial misconduct in closing argument is required only if the misconduct was so prejudicial that it could not have been cured by an objection and appropriate curative instruction).

During closing argument, Mr. Knoll objected to some, but not all of the prosecutor’s improper comments misstating the law, but due to the flagrant and repeated nature of these remarks, they may be raised for the first time on appeal. State v. Fleming, 83 Wn. App. 209, 213, 921 P.2d 1076, rev. denied, 131 Wn.2d 1018 (1997); RAP 2.5(a).

b. During closing argument, the prosecutor improperly commented on the defendant’s silence, misstating the law. It is clear that a prosecutor may not comment on a defendant’s silence or his decision not to present defense witnesses. Griffin v. California, 380

U.S. 609, 611, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965) (reversing based on prosecutor's argument that the defendant "had not seen fit to take the stand and deny or explain" the killing). The prosecutor may not comment on the defendant's silence or imply that guilt may be inferred therefrom. State v. Easter, 130 Wn.2d 228, 236, 922 P.2d 1285 (1996). To do so would be a violation of the Fifth Amendment. State v. Fiallo-Lopez, 78 Wn. App. 717, 728, 899 P.2d 1294 (1995) (quoting State v. Ramirez, 49 Wn. App. 332, 336, 742 P.2d 726 (1987)).

In this case, the prosecutor impugned Mr. Knoll's silence by referring to Mr. Knoll's two co-defendants, who testified for the State,

Did the other two get out of longer terms in jail?
Yeah, they did. But they came in here and told their version of events.

7/20/11 RP 131 (emphasis added).

The prosecutor thus improperly drew the jury's attention to the fact that Mr. Knoll had exercised his constitutional right to silence, and also implied that had Mr. Knoll been able to testify, he, too, might have avoided a lengthy term in jail, like his co-defendants.

The prosecutor's suggestion that Mr. Knoll has an obligation to prove his "version of events" implies that the defense has some

burden to produce evidence, directly undermining the actual burden of proof and misstating the law. Fleming, 83 Wn. App. at 215; Fiallo-Lopez, 78 Wn. App. at 729. It is constitutional error to emphasize a defendant's failure to testify or to call witnesses on his own behalf, despite Mr. Knoll's lack of objection here. RAP 2.5(a).

c. The prosecutor may not denigrate the defense or argue his personal opinion. The prosecutor "has no right to mislead the jury." State v. Reeder, 46 Wn.2d 888, 893-94, 285 P.2d 884 (1955). Misleading arguments, when they are made by an attorney with the quasi-judicial authority accorded to the prosecutor's office, are substantially likely to taint the jury's verdict. Id.; Fleming, 83 Wn. App. at 215. Arguments that denigrate the defense are highly disfavored. See, e.g., State v. Gonzalez, 111 Wn. App. 276, 282-83, 45 P.3d 205 (2002).

Here, the prosecutor repeatedly called the defense theories "red herrings." 7/20/11 RP 130-31, 148, 149. The prosecutor first argued that the defense claim that Mr. Knoll was not the individual in the car who actually took the purse is a "red herring."

And sort of in the law sometimes that's called a red herring, you know, let's try to throw us off of what we're really looking at to get, you know, say, well, three different stories here.

7/20/11 RP 130-31 (emphasis added).

The prosecutor then used the same “red herring” remark three additional times within his rebuttal argument. Comments which denigrate the defense, although never proper, are particularly egregious when made during rebuttal, as defense counsel is unable to respond, and the rebuttal is followed immediately by jury deliberations. See United States v. Holmes, 413 F.3d 770, 778 (8th Cir. 2005) (reversing due to prosecutor’s remarks in rebuttal, including “red herring,”).

In addition, it is misconduct for a deputy prosecutor to express a personal opinion as to the credibility of a witness or the strength of a case. Monday, 171 Wn.2d at 677-78 (noting the State “crosses the line” when its own attorney throws the prestige of his public office ... and the expression of his own belief of guilt onto the scales against the accused); State v. Horton, 116 Wn. App. 909, 921, 68 P.3d 1145 (2003); State v. Price, 126 Wn. App. 617, 653, 109 P.3d 27 (2005). Misconduct occurs when it is clear that the prosecutor is arguing his or her personal opinion rather than making an inference based upon the evidence. Price, 126 Wn. App. at 653.

Here, the prosecutor emphasized his own prior personal experience as a defense attorney, as if to inform the jury that he had special knowledge of each “red herring” with which the defense would try to confuse them. 7/20/11 RP 149.

Having defended many cases before I became the Prosecutor, that’s another red herring. We can dole those things out, and I can throw out 20 more that they could have done. But they didn’t need to.

7/20/11 RP 149.

By calling attention to his own stature as the Skagit County Prosecutor, as well as his personal background as a defense attorney, counsel personally vouched for the credibility of his witnesses and the strength of his case. See Monday, 171 Wn.2d at 677-78. This misconduct prejudiced Mr. Knoll and was so flagrant and ill-intentioned that no curative instruction would have cured its effect.

d. The prosecutor’s flagrant misconduct requires reversal. Generally, an objection to prosecutorial misconduct is waived by the failure to timely object and request a curative instruction. State v. Swan, 114 Wn.2d 613, 661, 790 P.2d 610 (1990), cert. denied, 498 U.S. 1046 (1991). However, the issue may be addressed for the first time on appeal when the misconduct

was so “flagrant and ill-intentioned, and the prejudice resulting therefrom so marked and enduring that corrective instructions or admonitions could not neutralize its effect.” Id. (citations omitted); see also State v. Copeland, 130 Wn.2d 244, 290, 922 P.2d 1304 (1996). “When no objection is raised, the issue is whether there was a substantial likelihood the prosecutor’s comments affected the verdict.” State v. Dhaliwal, 150 Wn.2d 559, 576, 79 P.3d 432 (2003); State v. Reed, 102 Wn.2d 140, 145, 684 P.2d 699 (1984) (conviction reversed where prosecutor repeatedly called defendant a liar during closing argument).

Here, the only evidence of the defendant’s knowledge regarding the firearm rested on the credibility of the codefendants testifying for the prosecution; thus, the prosecutor’s highlighting of the defendant’s failure to testify, as well as the prosecutor’s disparagement of the defense and referring to his own personal knowledge are particularly troubling.

Accordingly, because Mr. Knoll’s conviction resulted from prejudicial prosecutorial misconduct, it must be reversed. See Fleming, 83 Wn. App. at 216 (finding manifest constitutional error and reversing conviction, where prosecutor misstated nature of reasonable doubt and shifted burden of proof to defense).

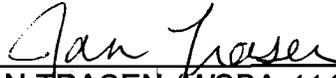
The cumulative effect of various instances of prosecutorial misconduct may violate a defendant's right to a fair trial. Reeder, 46 Wn.2d at 893-94; State v. Torres, 16 Wn. App. 254, 262-63, 554 P.2d 1069 (1976). Due to the several instances of misconduct in the closing argument during Mr. Knoll's trial, there is a substantial likelihood the cumulative effect affected the jury's verdict; thus, this Court should reverse his convictions. Reed, 102 Wn.2d at 146-47; see also Holmes, 413 F.3d at 778.

E. CONCLUSION.

For the foregoing reasons, Mr. Knoll respectfully requests this Court reverse his convictions and remand the case for further proceedings.

DATED this 27th day of January, 2012.

Respectfully submitted,



JAN TRASEN (WSBA 41177)
Washington Appellate Project (91052)
Attorney for Appellant

APPENDIX

SKAGIT COUNTY, WASH
FILED

JUL 18 2011

IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR SKAGIT COUNTY

NANCY K. SCOTT, CO. CLERK
Deputy

STATE OF WASHINGTON	11-1-00203-8
Plaintiff	
V.	
ALLEN KNOLL	
Defendant	JTRIAL

JUDGE: DAVID R. NEEDY
Clerk: KRISTEN DENTON
Bailiff: HELGA SCHINK / LOURDES YOUNG

DATED: 7/18/2011
Court Reporter: J. SCHROEDER

15

	JURORS	Poll	PLAINTIFF'S WITNESSES	July	DEFENDANTS WITNESSES	July
1.	Cassandra Stevens	YES	Peggy Lec	18		
2.	Jillian Gundersen	YES	Jane Thompson	18		
3.	Stacie Filler <i>Foreperson</i>	YES	Officer Jeff Dowhaniuk	18		
4.	Cheryl Vandermeij	YES	Officer Tom Wenzl	18		
5.	Barbara Aakland	YES	Detective Brandon Young	18		
6.	David Bixby	YES	Officer Chris Zimmer	19		
7.	Mary Larsen	YES	Elizabeth Nadeau	19		
8.	Brett Smith	ALT	Shelly Reed	19		
9.	Linda Wilholt	YES	Trooper Brandon Tobol	19		
10.	Kristal Ovenell	YES	Conner Alamillo	19		
11.	David Turner	YES	Mark Gerrish	19		
12.	Judith Olson	YES	Michael Minton	20		
13.	Elizabeth McLean	YES				
14.						

VERDICT: Guilty count 1, count 2, Not Guilty count 4

Monday JULY 18, 2011 Judge Susan K. Cook presiding

Prior to court commencing, the bailiff seats the jurors from a randomly selected computer list then the jurors watched a short video about jury service.

Mr. Rich Weyrich is present on behalf of the State of Washington Defendant is present, in custody and represented by Jennifer Rancourt. 46 Jurors are reporting for the first time and seated in random computer order.

Court welcomes jurors and thanks them for appearing for jury service.

Court calls case to trial @ 9:50.

Court excuses jurors 30 & 38.

Court excuses jurors 41, 42, 43, 44, 45 & 46.

Court introduces staff.

Clerk swears in jury panel regarding their qualifications & voir dire @ 9:58.

Juror 8 is excused for cause.

Court gives jury panel general instructions.

Counsel introduce themselves and their clients.

Court advises jury panel of the nature of the charges in this case.

Court questions jurors regarding qualifications.

RECESS @ 10:47

RECONVENE @ 11:05

Defendant and all counsel are present.

Jurors introduce themselves @ 11:05.

On behalf of the plaintiff, Mr. Weyrich begins examination of the jurors on voir dire @ 11:34.

Court gives general admonishments to the jurors and excuses them for lunch @ 12:00

RECESS @ 12:00

RECONVENE @ 1:32

Defendant and all counsel are present.

On behalf of the defendant, Ms. Rancourt begins examination of the jurors on voir dire @ 1:32

Court excuses juror 14 for cause.

Counsel exercise peremptory challenges @ 2:00. (see judge's list).

Counsel accepts jury as impaneled @ 2:05

Court thanks remainder of jury pool and excuses them from further jury service.

The Clerk administers an oath to the jurors as to their qualifications to sit on this trial @ 2:06.

Court gives jurors general instructions and admonishments.

Jury is excused to jury room for recess @ 2:27.

Mr. Weyrich informs the Court that he has just filed an amended information.

Court arraigns the defendant on the amended information.

Defendant waives formal arraignment and pleads not guilty.

Mr. Knoll advises the Court that he has not had access to his discovery due to jail issues.

Court asks the deputy in Court to request that the defendant be able to review his discovery this evening in the jail.

RECESS @ 2:30

RECONVENE @ 2:48

Defendant and all counsel are present.

Jury returns to open court @ 2:50

Court informs the jury that the information has been amended and she reads the amended information to the jury.

On behalf of the plaintiff, Mr. Weyrich makes opening statement @ 2:51

On behalf of the defendant, Ms. Rancourt makes opening statement @ 3:01.

Plaintiff's exhibits 1 - 21 are marked.

Peggy Lee is called on behalf of the plaintiff and is sworn & examined.

Direct @ 3:08

Exhibit 1 is offered & admitted.

Exhibits 6, 7 & 8 are identified, offered & admitted.

Exhibit 10 is identified, offered & admitted.

Exhibit's 11, 12 are identified, offered & admitted.

Exhibit's 13, 14, 15, 16, 17, 18 & 19 are identified, offered & admitted

Cross @ 3:22

Jane Thompson is called on behalf of the plaintiff and is sworn & examined.

Direct @ 3:26

Cross @ 3:34

Officer Jeff Dowhaniuk is called on behalf of the plaintiff and is sworn & examined.

Direct @ 3:37

Exhibit 4 is identified,

Cross @ 3:42

Officer Tom Wenzl is called on behalf of the plaintiff and is sworn & examined.

Direct @ 3:46

Exhibit 4 & 5 are identified, offered & admitted.

Exhibits 9, 20 & 21 are identified, offered & admitted.

Cross @ 3:55

RECESS @ 3:58

RECONVENE @ 4:05

Defendant and all counsel are present.
Mr. Weyrich moves to withdraw exhibit 3 and admit exhibit 2.
Ms. Rancourt is in agreement.
Court admits exhibit 2 and allows Mr. Weyrich to withdraw exhibit 3.
Clerk returns exhibit 3 to Mr. Weyrich.
Jury returns to open court @ 4:10
Plaintiff's exhibit 22 is marked.

Detective Brandon Young is called on behalf of the plaintiff and is sworn & examined.

Direct @ 4:11

Exhibit 22 is identified, offered & admitted.
Jury is reminded of the Court's prior admonishments and is excused for the evening @ 4:15

RECESS @ 4:18
Tuesday July 19, 2011 @ 9:37

Defendant and all counsel are present.
Defendant's exhibits 23, 24 & 25 are marked.
Mr. Weyrich advises the court of his witness schedule.
Jury returns to open court @ 9:40

Officer Chris Zimmer is called on behalf of the plaintiff and is sworn & examined.

Direct @ 9:41
Cross @ 9:49

Elizabeth Nadeau is called on behalf of the plaintiff and is sworn & examined.

Direct @ 9:57
No cross

Shelly Reed is called on behalf of the plaintiff and is sworn & examined.

Direct @ 10:04
Cross @ 10:16

Court informs the jury that due to witness scheduling we are going to take a recess until 11:00
Jury is excused to jury room @ 10:19

RECESS @ 10:19

RECONVENE @ 10:44

Defendant and all counsel are present.
Mr. Weyrich informs the court that they have located the witness Mr. Garish.
Jury returns to open court @ 10:45

Trooper Brandon Tobol is called on behalf of the plaintiff and is sworn & examined.

**Direct @ 10:46
Cross @ 10:49**

Jury is given the Court's admonishments and is excused to lunch.
Mr. Weyrich advises the Court of his remaining witnesses.

RECESS @ 10:52

RECONVENE @ 1:04

Defendant and all counsel are present.
Defendant's exhibits 26 & 27 are marked.
Plaintiff's exhibits 28, 29, 30, 31 & 32 are marked.

Mr. Weyrich addresses Mr. Alamillo's Oregon criminal history. Mr. Weyrich argues the Oregon criminal history was not in consideration when Mr. Alamillo was sentenced in Skagit County therefore Mr. Weyrich argues the Oregon criminal history should not be brought up during his testimony.

Ms. Rancourt moves to be allowed to address Mr. Alamillo's Oregon criminal history during cross examination.

Court finds Ms. Rancourt may inquire as to Mr. Alamillo's criminal history in Oregon and if he knew that his criminal history in Oregon would cause his sentence in Skagit County to be higher.

Jury returns to open court @ 1:15

Conner Alamillo is called on behalf of the plaintiff and is sworn & examined.

**Direct @ 1:15
Cross @ 1:27
Redirect @ 1:38**

Jury is excused to jury room for recess

RECESS @ 1:40

RECONVENE @ 2:33

Defendant and all counsel are present.
Jury returns to open court @ 2:33

Mark Gerrish is called on behalf of the plaintiff and is sworn & examined.

Direct @ 2:34
Cross @ 2:45
Redirect @ 2:52
Recross @ 2:55

Court gives admonishments to the jury and excuses them for the evening @ 2:57.

Mr. Weyrich moves to admit exhibits 28, 29, 30, 31 & 32.

Ms. Rancourt objects.

Court overrules the objection. Court addresses the amended information and finds that she did not read all of the amended information to the jury.

Mr. Weyrich moves to withdraw his offer of exhibit 28 since it deals with identity theft and that is the information that did not get read to the jury.

Court admits exhibits 29, 30, 31 & 32.

Exhibit 28 will remain as marked for the time being.

RECESS @ 3:12

Wednesday July 20, 2011 @ 9:33

Defendant and all counsel are present.

Jury returns to open court @ 9:34

Michael Minton is called on behalf of the plaintiff and is sworn & examined.

Direct @ 9:34
Cross @ 9:42

State Rests @ 9:43

Jury is excused to jury room @ 9:43

Ms. Rancourt moves to dismiss counts 1, 3 & 4.

Mr. Weyrich objects to motions to dismiss.

Court denies motion to dismiss count 1 & 4.

Court grants motion to dismiss count 3.

Court addresses the 2nd amended information with the defendant.

Mr. Knoll states he understands the amended information and the penalties that go along with the charges.

Mr. Knoll pleads not guilty.

Jury returns to open court @ 10:03

Court advises the jury that the Court has dismissed count 3.

Defense rests @ 10:04

Jury is excused to jury room @ 10:05
Court and counsel discuss jury instructions.

RECESS @ 10:20

RECONVENE @ 10:35

Defendant and all counsel are present.
Court goes through the packet of instructions with counsel.
Court takes exceptions and objections to the Court's instructions.
On behalf of the plaintiff, Mr. Weyrich does not have any exceptions or objections to the courts instructions.
On behalf of the defendant, Ms. Rancourt takes exception as to the accomplice instruction.

RECESS @ 10:39

RECONVENE @ 10:52

Defendant and all counsel are present.
Jury returns to open court @ 10:53
Court instructs the jury as to the law in this case @ 10:54.

On behalf of the plaintiff, Mr. Weyrich makes closing argument @ 11:12.
On behalf of the defendant, Ms. Rancourt makes closing argument @ 11:47.
Mr. Weyrich continues closing argument @ 12:14

By direction of the Court, the clerk randomly selects the alternate juror 8. Court advises him that he will remain under the Court's admonishments until a verdict is rendered and the bailiff has notified him.

The oath is given to the bailiff expanding on her duties to secure the jury during their deliberations @ 12:24.

Jury retires to the jury room to commence their deliberations @ 12:24, taking with them all admitted exhibits and the Court's instructions.

RECESS @ 12:25

RECONVENE @ 3:16

Defendant is not present No court reporter present
Mr. Weyrich is present
Ms. Rancourt is present.
Court informs counsel that the jury has a question.
Court reads the question to counsel.
Counsel agree that the Court may tell them to refer to the jury instructions that they already received.

RECESS @ 3:20
Judge Dave Needy Presiding

RECONVENE @ 4:24
J. Schroeder, reporter

Defendant and all counsel are present.
Jury returns to open court @ 4:25
Jury brings their verdict through foreperson, Stacie Filler.
Court receives verdict from the Bailiff and instructs the Clerk to read the verdict as follows:

We, the jury, find the defendant, ALLEN M. KNOLL, Guilty of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE – CONVICTION OF NON-SERIOUS FELONY OFFENSE OR DV CRIME, Count 1 as charged.

We, the jury, find the defendant, ALLEN M. KNOLL, Guilty of the crime of THEFT IN THE SECOND DEGREE – WRONGFULLY OBTAIN OR EXERT UNAUTHORIZED CONTROL, Count 2, as charged.

We, the jury, find the defendant, ALLEN M. KNOLL, Not Guilty of the crime of THEFT OF A FIREARM, Count 4, as charged.

Jury polled @ 4:30. All jurors answer “Yes” to verdict question: Is this your individual verdict and is this the verdict of the jury?.

Court thanks jurors and releases them from their prior admonishments.
Court sets hearing date: 7/21/2011 Order signed.
Mr. Knoll advises the court that he objects to not being brought over to the court when Court and counsel discussed the jury question or even advised that there was a question.

Adjourned @ 4:35

JURY SEATING CHART

(Court Room Three)

CAUSE NO. 11-1-00203-8

DATE IMPANELED: JULY 18, 2011

STATE OF WASHINGTON

-vs-

ALLEN KNOLL

5

4

3

2

1

BARBARA ASKLAND	CHERYL VANDERMEY	STACIE FILLER	JILLIAN GUNDERSEN	CASSANDRA STEVENS
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13

12

11

10

9

8

7

6

ELIZABETH MCLEAN	JUDITH OLSON	DAVID TURNER	KRISTAL OVENELL	LINDA WILHOIT	BRETT SMITH	MARY LARSEN	DAVID BIXBY
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REC-3

JUDGE: THE HONORABLE SUSAN K. COOK

BAILIFF: HELGA SCHINK & LOURDES YOUNG

CLERK: KRISTEN DENTON

COURT REPORTER: JENNIFER SCHROEDER

ATTORNEY FOR PLAINTIFF: RICHARD WEYRICH

ATTORNEY FOR DEFENDANT: JENNIFER RANCOURT

Judge's List ^{OK}
St. v. Knoll

Judge: SUSAN K COOK
 Event: 11-1-00203-8

Weyrich

Date: 7/18/11
 Time: 9:31 AM

Rancourt

Random

No.	Part No.	Pool Seq.	Name	Code (see legend)
* <input checked="" type="checkbox"/> 1	100090234	01- 0005	STEVENS,CASSANDRA R MOUNT VERNON	
* <input checked="" type="checkbox"/> 2	100020345	01- 0070	DRAKE,JAMES I BURLINGTON	<i>TI # 5</i>
* <input checked="" type="checkbox"/> 3	100076792	01- 0097	SYBRANDY,ALICE MOUNT VERNON	<i>TI # 2</i>
* <input checked="" type="checkbox"/> 4	100148159	01- 0187	LARSEN,MARY H BURLINGTON	
* <input checked="" type="checkbox"/> 5	100102673	01- 0119	MCLEAN,ELIZABETH L ANACORTES	
* <input checked="" type="checkbox"/> 6	100080383	01- 0177	VANDERMEY,CHERYL A MOUNT VERNON	
* <input checked="" type="checkbox"/> 7	100130860	01- 0125	STEDMAN,WILLIAM A ANACORTES	<i>TI # 3</i>
* <input checked="" type="checkbox"/> 8	100070475	01- 0144	SEKORA,WENDY SUE SEDRO WOOLLEY	<i>Father Medical (H)</i>
* <input checked="" type="checkbox"/> 9	100176415	01- 0136	MOODY,GEORGE P MOUNT VERNON	<i>TI # 1</i>
* <input checked="" type="checkbox"/> 10	100072501	01- 0096	SMITH,BRETT L SEDRO WOOLLEY	
* <input checked="" type="checkbox"/> 11	100162049	01- 0132	SMILEY,TONIA LYNN SEDRO WOOLLEY	<i>Δ # 1</i>
* <input checked="" type="checkbox"/> 12	100120045	01- 0214	NELSON,KEVIN DANIEL MOUNT VERNON	<i>Δ # 2</i>
* <input checked="" type="checkbox"/> 13	100158100	01- 0036	GUNDERSEN,JILLIAN RHEA BOW	
* <input checked="" type="checkbox"/> 14	100089945	01- 0010	GARCIA,JERET M MOUNT VERNON	<i>Business Conflicts</i>
* <input checked="" type="checkbox"/> 15	100157513	01- 0131	FILLER,STACIE A MOUNT VERNON	
* <input checked="" type="checkbox"/> 16	100150104	01- 0033	TURNER,DAVID R ANACORTES	
* <input checked="" type="checkbox"/> 17	100118942	01- 0152	MCNETT,JAMES E ANACORTES	<i>Δ # 3</i>
* <input checked="" type="checkbox"/> 18	100091442	01- 0013	ASKLAND,BARBARA LYNN MOUNT VERNON	
* <input checked="" type="checkbox"/> 19	100151417	01- 0034	WILHOIT,LINDA L ANACORTES	

Legend: J=Jury A=Alternate NU=Not Used BY=By Court
 PP=Peremptory Challenge Prosecutor/Plaintiff PD=Peremptory Challenge Defense
 CP=Challenge For Cause Prosecutor/Plaintiff CD=Challenge For Cause Defense
 JP=Joint Peremptory Challenge H=By Court - Hardship

Note: Return to Jury Assembly Room each evening during Panel.

Judge's List ~~OK~~

Judge: SUSAN K COOK

Date: 7/18/11

Event: 11-1-00203-8

Time: 9:31 AM

Random

No.	Part No.	Pool Seq.	Name	Code (see legend)
20	100015696	01- 0016	CORBÉLL, LORENA D BURLINGTON	<i>77#2</i>
21	100059134	01- 0174	OVENELL, KRISTAL KAY BURLINGTON	
22	100058424	01- 0095	OLSON, JUDITH L CLEAR LAKE	
23	100006902	01- 0197	BIXBY, DAVID A SEDRO WOOLLEY	
24	100077585	01- 0004	TESARIK, RYAN SEDRO WOOLLEY	
25	100039871	01- 0092	JONES, DEBORAH ANNE SEDRO WOOLLEY	
26	100151478	01- 0188	HALL, JENNIFER SEDRO WOOLLEY	
27	100185679	01- 0167	SNYDER, ERIC JOHN MOUNT VERNON	
28	100186271	01- 0066	LYNCH, KASEY MADDISON SEDRO WOOLLEY	
29	100182896	01- 0112	JOHNSON, BETTY JOAN SEDRO WOOLLEY	
30	100073226	01- 0049	SNIPES, DARLENE F MOUNT VERNON	<i>Medical (H)</i>
31	100135992	01- 0218	BIRD, DORIS E ANACORTES	
32	100151571	01- 0001	BARRETT, WILLIAM L MOUNT VERNON	
33	100037469	01- 0071	IVERSEN, ERIC L SEDRO WOOLLEY	
34	100014138	01- 0115	CLARK, THOMAS DANIEL ANACORTES	
35	100052994	01- 0201	MILLER, JAMES D SEDRO WOOLLEY	
36	100098514	01- 0079	RICE, WALTER C MOUNT VERNON	
37	100183945	01- 0164	ASPELUND, DALE MYRAD ANACORTES	
38	100146410	01- 0220	BUCKNER, CLAUDIA A ANACORTES	<i>Medical (H)</i>

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Judge's List

OK

Judge: SUSAN K COOK

Date: 7/18/11

Event: 11-1-00203-8

Time: 9:31 AM

Random

No.	Part No.	Pool Seq.	Name	Code (see legend)
38	100029307	01- 0015	GREEN,DIANNE L DARRINGTON	
48	100169609	01- 0037	NICHOL,JAMES G ANACORTES	
41	100037474	01- 0023	IVERSEN,LEAH SEDRO WOOLLEY	
42	100075594	01- 0204	STRAND,DEBRA LEE MOUNT VERNON	
48	100001812	01- 0089	ANDERSON,JAMES A SEDRO WOOLLEY	
44	100106012	01- 0055	SANTASHA,KAY R MARBLEMOUNT	
45	100164277	01- 0009	BRENNAN,SHARON SEDRO WOOLLEY	
48	100085608	01- 0075	WINGEN,JACQUELINE MOUNT VERNON	

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Judge's List

32

Judge: SUSAN K COOK
 Event: 11-1-00203-8

Date: 7/18/11
 Time: 9:31 AM

Random

No.	Part No.	Pool Seq.	Name	Code (see legend)
* 1	100090234	01- 0005	STEVENS,CASSANDRA R MOUNT VERNON	J ²
* 2	100020345	01- 0070	DRAKE,JAMES I BURLINGTON	PP ⁵
* 3	100076792	01- 0097	SYBRANDY,ALICE MOUNT VERNON	PP ²
* 4	100148159	01- 0187	LARSEN,MARY H BURLINGTON	J ⁷
* 5	100102673	01- 0119	MCLEAN,ELIZABETH L ANACORTES	J ¹³
* 6	100080383	01- 0177	VANDERMEY,CHERYL A MOUNT VERNON	J ⁴
* 7	100130860	01- 0125	STEDMAN,WILLIAM A ANACORTES	PP ³
* 8	100070475	01- 0144	SEKORA,WENDY SUE SEDRO WOOLLEY	By
* 9	100176415	01- 0136	MOODY,GEORGE P MOUNT VERNON	PP ²
* 10	100072501	01- 0096	SMITH,BRETT L SEDRO WOOLLEY	J ⁸
* 11	100162049	01- 0132	SMILEY,TONIA LYNN SEDRO WOOLLEY	PD ¹
* 12	100120045	01- 0214	NELSON,KEVIN DANIEL MOUNT VERNON	PD ²
13	100158100	01- 0036	GUNDERSEN,JILLIAN RHEA BOW	J ²
14	100089945	01- 0010	GARCIA,JERET M MOUNT VERNON	By
15	100157513	01- 0131	FILLER,STACIE A MOUNT VERNON	J ³
16	100150104	01- 0033	TURNER,DAVID R ANACORTES	J ¹¹
17	100118942	01- 0152	MCNETT,JAMES E ANACORTES	PD ³
18	100091442	01- 0013	ASKLAND,BARBARA LYNN MOUNT VERNON	J ⁵
19	100151417	01- 0034	WILHOIT,LINDA L ANACORTES	J ⁹

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Judge's List ~~035~~

Judge: SUSAN K COOK
 Event: 11-1-00203-8

Date: 7/18/11
 Time: 9:31 AM

Random

No.	Part No.	Pool Seq.	Name	Code (see legend)
20	100015696	01- 0016	CORBELL, LORENA D BURLINGTON	PP4
21	100059134	01- 0174	OVENELL, KRISTAL KAY BURLINGTON	J ¹⁰
22	100058424	01- 0095	OLSON, JUDITH L CLEAR LAKE	J ¹²
23	100006902	01- 0197	BIXBY, DAVID A SEDRO WOOLLEY	J ⁶
24	100077585	01- 0004	TESARIK, RYAN SEDRO WOOLLEY	NU
25	100039871	01- 0092	JONES, DEBORAH ANNE SEDRO WOOLLEY	NU
26	100151478	01- 0188	HALL, JENNIFER SEDRO WOOLLEY	NU
27	100185679	01- 0167	SNYDER, ERIC JOHN MOUNT VERNON	NU
28	100186271	01- 0066	LYNCH, KASEY MADDISON SEDRO WOOLLEY	NU
29	100182896	01- 0112	JOHNSON, BETTY JOAN SEDRO WOOLLEY	NU
30	100073226	01- 0049	SNIPES, DARLENE F MOUNT VERNON	BY
31	100135992	01- 0218	BIRD, DORIS E ANACORTES	NU
32	100151571	01- 0001	BARRETT, WILLIAM L MOUNT VERNON	NU
33	100037469	01- 0071	IVERSEN, ERIC L SEDRO WOOLLEY	NU
34	100014138	01- 0115	CLARK, THOMAS DANIEL ANACORTES	NU
35	100052994	01- 0201	MILLER, JAMES D SEDRO WOOLLEY	NU
36	100098514	01- 0079	RICE, WALTER C MOUNT VERNON	NU
37	100183945	01- 0164	ASPELUND, DALE MYRAD ANACORTES	NU
38	100146410	01- 0220	BUCKNER, CLAUDIA A ANACORTES	BY

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Judge's List ~~ONE~~

Judge: SUSAN K COOK
 Event: 11-1-00203-8

Date: 7/18/11
 Time: 9:31 AM

Random

No.	Part No.	Pool Seq.	Name	Code (see legend)
39	100029307	01- 0015	GREEN,DIANNE L DARRINGTON	NU
40	100169609	01- 0037	NICHOL,JAMES G ANACORTES	NU
41	100037474	01- 0023	IVERSEN,LEAH SEDRO WOOLLEY	BY
42	100075594	01- 0204	STRAND,DEBRA LEE MOUNT VERNON	BY
43	100001812	01- 0089	ANDERSON,JAMES A SEDRO WOOLLEY	BY
44	100106012	01- 0055	SANTASHA,KAY R MARBLEMOUNT	BY
45	100164277	01- 0009	BRENNAN,SHARON SEDRO WOOLLEY	BY
46	100085608	01- 0075	WINGEN,JACQUELINE MOUNT VERNON	BY

Legend: J=Jury A=Alternate NU=Not Used BY=By Court
 PP=Peremptory Challenge Prosecutor/Plaintiff PD=Peremptory Challenge Defense
 CP=Challenge For Cause Prosecutor/Plaintiff CD=Challenge For Cause Defense
 JP=Joint Peremptory Challenge H=By Court - Hardship

Note: Return to Jury Assembly Room each evening during Panel.

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 67562-1-I
v.)	
)	
ALLEN KNOLL,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 27TH DAY OF JANUARY, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] RICHARD WEYRICH, DPA
SKAGIT COUNTY PROSECUTOR'S OFFICE
COURTHOUSE ANNEX
605 S THIRD ST.
MOUNT VERNON, WA 98273

(X) U.S. MAIL
() HAND DELIVERY
() _____

[X] ALLEN KNOLL
326914
AIRWAY HEIGHTS CORRECTIONS CENTER
PO BOX 2049
AIRWAY HEIGHTS, WA 99001

(X) U.S. MAIL
() HAND DELIVERY
() _____

**FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2012 JAN 27 PM 4:59**

SIGNED IN SEATTLE, WASHINGTON THIS 27TH DAY OF JANUARY, 2012.

X _____ 