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68269-5

No. 68269-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

DAVID SIONA SOLOMONA,

Appellant.

---

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

The Honorable Cheryl Carey

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REPLY BRIEF OF APPELLANT

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STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION ONE  
CLERK OF COURT  
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A. ARGUMENT

THE PROSECUTOR'S REPRESENTATIONS  
BEFORE THE TRIAL COURT CLEARLY STATE  
MR. SOLOMONA OFFERED TO STIPULATE TO HIS  
PRIOR CONVICTION

In its response brief, the State alleges that Mr. Solomon never offered to stipulate to the prior conviction to establish the necessary element of unlawful possession of a firearm. Response Brief at 6 fn 3, 8 fn. 4.<sup>1</sup> In fact, the record indicates the prosecutor's representations to the trial court clearly state that Mr. Solomon had offered to stipulate to the prior conviction:

Certified court records. I have a certified copy of the defendant's 2000 conviction for assault in the second degree. It's a superior court, King County case, has all the proper certification with that.

The State is going to be introducing that certified copy to establish the element of unlawful possession of a firearm in the first degree. It is a necessary element. And I've provided notice to the defense we intend to do that.

*Defense has asked whether or not I'll agree to a stipulation on that. I know the State does not have to. I'm still considering whether or not I'm going to do that. I don't know if they'll try to put a request in to the court, but I have not made a decision whether I'm willing to do the stipulation to that or not at this time, but I do plan on*

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<sup>1</sup> The prosecutor's footnote regarding Mr. Solomon's argument in the opening brief paragraph D(1)(b) is well-taken. The error was unfortunately not corrected during the editing process. The prosecutor is correct that it should have been part of the second argument.

introducing that conviction one way or another to establish the element of unlawful possession of a firearm.

RP 30-31 (emphasis added).

Thus, contrary to the State's assertion, the prosecutor's own offer of proof indicated that Mr. Solomona did offer to stipulate to the prior conviction, but the offer was flatly rejected by the prosecutor.

The State also argues that it was required to prove That Mr. Solomona "had been convicted if a *particular felony* or a class of felony." Response brief at 6 (emphasis added). But, as both *Old Chief v. United States*, 519 U.S. 172, 174, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997), and *State v. Johnson*, 90 Wn.App. 54, 62, 950 P.2d 981 (1998), note, the defense can stipulate to the jury hearing only that the defendant has been convicted of an unnamed "serious offense" as was required here as opposed to the name of the specific crime. RCW 9.41.010, RCW 9.41.040(1). The prosecutor here was intent on proving the precise offense of which Mr. Solomona had been convicted, then repeatedly highlighted that fact to the jury.

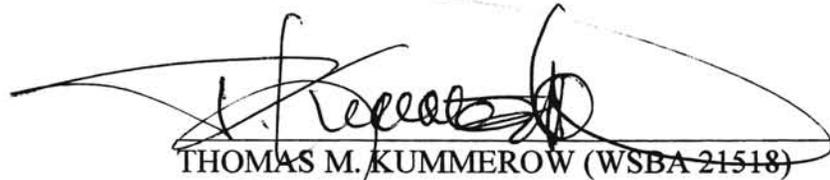
The State's refusal to stipulate to Mr. Solomona being convicted of an unnamed serious offense was error, thus its admission requires reversal of Mr. Solomona's convictions.

B. CONCLUSION

For the reasons stated in this Reply Brief as well as the previously filed Brief of Appellant, Mr. Solomona requests this Court reverse his convictions and remand for a new trial.

DATED this 20<sup>th</sup> day of November 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Kummerow', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

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Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, NINA ARRANZA RILEY, STATE THAT ON THE 20<sup>TH</sup> DAY OF NOVEMBER, 2012, I CAUSED THE ORIGINAL **REPLY 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:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2012.

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