

FILED

2018 JUL -3 AM 11:11

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

17-1-02630-31  
DCRA 21  
Decision of RALJ Appeal  
3410677



PROPOSED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

CITY OF EVERETT

Respondent, Plaintiffs,

vs.

SMITH,

Appellant, Defendant.

NO: 17-1-02630-31

Everett Municipal Court No. 7Z0780144

RALJ APPEAL ~~DENIAL~~ *Granted eor*  
AND REMAND

*(Clerk's Action Required)*

This matter, having come before the Court as scheduled, the Court being fully informed makes the following findings and conclusions:

**FINDINGS OF FACT:**

1. That Defendant was tried in Everett Municipal Court October 9 and 10, 2017 on the charge of Assault Domestic Violence.
2. That a jury returned a verdict of guilty and Defendant filed a timely appeal.

*Vlog*

- 1 3. That the Defendant cited a number of alleged errors in the trial, however, because a  
2 decision on the allegation of prosecutorial misconduct by shifting the burden is  
3 dispositive, that is the only issue this court need decide.
- 4 4. That the Defense presented evidence during the trial acted in self-defense and that  
5 the jury was properly instructed.
- 6 5. That the prosecutor misstated the law in his closing argument when he argued to the  
7 jury that the City need prove only two things, one that the Defendant assaulted the  
8 victim, and two, that this occurred in the City of Everett.
- 9 6. That the prosecutor compounded his mistake by making persuasive arguments about  
10 the amount of force the Defendant did not justify a finding of "self-defense,"  
11 including the argument that the Defendant had not produced evidence that "he even  
12 legally believed he was about to be injured."
- 13 7. That there were no objections at the time of trial to the prosecutor's arguments, and  
14 there was no curative instruction.

#### 15 CONCLUSIONS OF LAW:

16 Based on a review of the case transcripts and the briefs of the parties, this court  
17 finds:

- 18 1. When there is no objection a claim of prosecutorial misconduct is waived unless the  
19 misconduct is so flagrant and ill-intentioned that it caused an enduring and resulting  
20 prejudice that could not have been neutralized by a curative instruction.
- 21 2. To prevail the Defendant must meet three criteria:
  - 22 a. The Defendant must show the prosecutor committed misconduct and the  
23 parties agree that has been shown.
  - 24 b. The Defendant must show the conduct was flagrant and ill-intentioned  
25 and the Washington Supreme Court instructs in *In re Per Restraint of  
Glassman* that burden shifting as happened here is per se flagrant and ill-  
intentioned.
  - c. The Defendant must show the misconduct caused actual and substantial  
prejudice and this court finds that based on the testimony of the alleged


1 victim, the arguments of the prosecutor did cause actual and substantial  
2 prejudice.

3 **ORDER:**

3. The City is conceding error. EAF

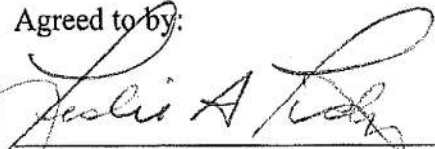
4 Now therefore, the appeal of the criminal conviction in Everett Municipal Case  
5 7Z0780144 is granted, the conviction is reversed and this matter is remanded to the municipal  
6 court for appropriate action.

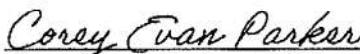
7 Signed, this 2<sup>nd</sup> day of June, 2018, in Everett, Washington

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9 \_\_\_\_\_  
10 Honorable Judge ~~Cindy Larson~~ Ellen J. Fair  
11 Snohomish County Superior Court  
12 Approved as to form by:

12 Agreed to by:

12 Agreed to by:

13   
14 \_\_\_\_\_  
15 Leslie A. Tidball, WSBA #23123  
16 Attorney for Respondent  
17 City of Everett

13   
14 \_\_\_\_\_  
15 Corey Evan Parker, WSBA #40006  
16 Attorney for Appellant