

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.

[REDACTED] 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

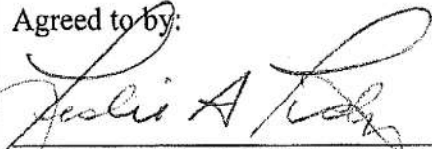
4 Now therefore, the appeal of the criminal conviction in Everett Municipal Case  
5 7Z0780144 is granted, the conviction is reversed and this matter is remanded to the municipal  
6 court for appropriate action.

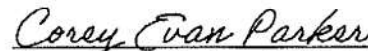
7 Signed, this 2<sup>nd</sup> day of June, 2018, in Everett, Washington

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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