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68311-0
NO. ~~68149-4+~~

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

RAYMOND L. ATCHISON,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

1. A defendant pulled a knife on two people sitting among a group in a restaurant. As to the first victim, the defendant held the knife to the neck or chest area. The defendant held the knife pointed towards the second victim at close quarters, between one and three feet. Witnesses thought the knife's blade was anywhere from 2 to 4 inches in length. A knife matching their descriptions was retrieved 12 minutes later from the back seat of a van where the defendant had been sitting. The defendant was convicted of two counts of second-degree assault with a deadly weapon (the knife).

Did the trial court abuse its discretion when it concluded, on the facts before it, that there was no affirmative evidence that only the lesser crimes of fourth-degree assault or unlawful display of a weapon were committed?

II. STATEMENT OF THE CASE

A. TRIAL TESTIMONY.

Six co-workers -- Tim Lankhaar, Brian Skywalker, Nicholas Fritzberg, Patrick Malone, Jordan Slagle, and James Allen -- went to a Seahawks football game on October 2, 2011 and met afterwards at a Jack-in-the-Box restaurant in Marysville. A seventh man,

Cory Mehler, who was dating Lankhaar's sister, was with them. 1 Trial R 19, 45-46, 70, 85-86, 91-92, 98; 2 Trial RP 5-7, 15-16. Mehler, Malone, and Skywalker sat at a booth; Lankhaar, Fritzberg, Slagle, and Allen sat at an adjoining table or tables. 1 Trial RP 21, 46-47, 70-71, 76-77, 86-87, 91, 99; 2 Trial RP 10, 16, 23. All seven testified to what happened next.

Mehler recalled he was eating when the defendant came from behind, hit him on the side of the head, and held a knife to his throat. 1 Trial RP 21-22. All but one of the witnesses recalled it was a fold-open or click-open knife with an approximately 2 – 4 inch blade, half serrated and half straight. 1 Trial RP 28-30 (Mehler), 63 (Lankhaar), 79 (Skywalker), 89 (Fritzberg), 101, 107 (Malone); 2 Trial RP 21 (Allen). (Slagle could not recall any details about the knife. 2 Trial RP 11.)

Lankhaar had seen the defendant lean into Mehler and saw a frightened look on Mehler's face. He saw the defendant had a knife blade flat against Mehler's "chest plate" or "breast plate." 1 Trial RP 47-49, 60-61. Lankhaar got up and shoved the defendant. 1 Trial RP 23, 50. The defendant then turned on Lankhaar. Id. Mehler recalled he started to stand up, but the defendant pushed him back down in his seat, with the knife to his stomach. 1 Trial RP

23, 25. He also recalled the defendant said something like “Wipe that smirk off your face,” and added he would stab both Mehler and Lankhaar. 1 Trial RP 23, 28, 31.

Lankhaar, with the defendant now turned on him, thought he was in a “bad spot.” 1 Trial RP 50. The defendant shoved him back. 1 Trial RP 55. Lankhaar could see the defendant had his arm at his side, tensed, holding the knife, with the knife pointing up. 1 Trial RP 51, 62. Lankhaar yelled, “Are you really going to stab me in the middle of the f***ing Jack-in-the-Box?” 1 Trial RP 51, 54, 73, 81, 83-84; 2 Trial RP 19. For his part, he did not recall the defendant saying anything, at least not to him. 1 Trial RP 52, 54.

Skywalker saw the defendant come up to Mehler and put a fold-out knife on Mehler’s chest, pointing towards his neck. 1 Trial RP 71, 82. He saw Lankhaar shove the defendant. 1 Trial RP 72. When the defendant turned towards Lankhaar, Skywalker saw the defendant had the knife out, pointed at Lankhaar. 1 Trial RP 73-74. Lankhaar and the defendant were only 2 – 3 feet apart. 1 Trial RP 73. Skywalker recalled a verbal altercation, with Lankhaar saying “Do you even know who we are?” and the defendant responding, “Do you know who I am?” 1 Trial RP 73; see 2 Trial RP 8, 19 (Slagle and Allen recalling an exchange of words).

Fritzberg recalled the defendant first saying, "What are you looking at," then pointing a knife at Mehler's stomach. 1 Trial RP 87-88, 93. After Lankhaar got up, the defendant then pointed the knife at him. 1 Trial RP 88-89. As he did so, the defendant got within a foot of Lankhaar. 1 Trial RP 89. While the knife was pointed at Lankhaar, Fritzberg opined, "it wasn't really threatening, I guess." 1 Trial RP 96.

Malone did not have a good view of the defendant and Mehler, and only saw the knife when Lankhaar intervened. 1 Trial RP 99, 101-102, 106. He thought the knife was held pointing down. 1 Trial RP 102, 106. He saw Mehler try to stand up, and the defendant "pulled a move on him," and Mehler sat back down. Malone did not see the knife used to do this. 1 Trial RP 101, 107.

Slagle saw the defendant get close to Mehler and then saw Lankhaar pull the defendant off. 2 Trial RP 7. Only then did he see a knife, which the defendant held pointed outwards, towards Lankhaar. 2 Trial RP 9, 12.

Allen had noticed the defendant walk to the part of the restaurant where he and his friends sat, which he thought odd since no one else but he and his friends were there. 2 Trial RP 17. When the defendant was about 5 feet away, he pulled out a knife.

2 Trial RP 17. Allen heard it “click.” 2 Trial RP 18. (Mehler recalled hearing it “click” too. 1 Trial RP 29-30.) The defendant turned on Mehler – who had his back to the defendant – and brought the knife to Mehler’s neck area. 2 Trial RP 18. He said, “What the f**k are you looking at?” Id. Lankhaar got up and grabbed the defendant’s arms. 2 Trial RP 19. The defendant turned on him and they exchanged words. 2 Trial RP 19. The defendant had the knife extended towards Lankhaar – not fully extended, but “just ready to use it still.” 2 Trial RP 20. After this was when Lankhaar yelled, “Are you going to stab me in the Jack-in-the-Box?” Id.

Mehler thought he was going to get his throat slashed. 1 Trial RP 24. Lankhaar felt threatened, and, in his words, a “little” frightened he was actually going to get stabbed. 1 Trial RP 69.

Friends of the defendant came over and restrained him, asking, “What are you doing?” and “Do you even know these people?” The defendant and his companions left in a red Chevy Tahoe, clearly visible through the restaurant window. 1 Trial RP 25, 27, 52-53, 81, 89, 100; 2 Trial AP 10, 19-20. Allen could see the license number and called it in. 2 Trial RP 22.

Responding officers located the suspect vehicle a half mile away twelve minutes later. 2 Trial RP 33, 35-36. There were three or four occupants. The defendant was sitting in the back. 2 Trial RP 34-35, 44. Mehler and Lankhaar were brought over for a “show-up” and both readily and positively identified the defendant as their assailant. 1 Trial RP 30-31, 53-54; 2 Trial RP 38, 49, 65-66. A search of the car yielded a fold-out knife tucked in the crack of the back passenger seat, between the seat back and the seat cushion. Exs. 10, 11. It had a blade that was half serrated, half straight. 2 Trial RP 45-46, 68-69; Exs. 11, 20. The blade was 3-1/2 inches long. Id.

The defendant did not testify. 2 Trial RP 75.

The defense case focused on inconsistencies. For example, though others remembered differently, Lankhaar did not recall the defendant saying anything, at least not to him. 1 Trial RP 52, 54. Neither Lankhaar, Slagle, nor Allen remembered the defendant turning back to Mehler and sitting him back down at knifepoint to the stomach. 1 Trial RP 66; 2 Trial RP 12, 26. (Malone recalled the defendant’s doing so, but not with the knife. 1 Trial RP 101, 107. Fritzberg recalled simply seeing the defendant point the knife at Mehler’s stomach. 1 Trial RP 87-88, 93, 94-96.) No one else

testified to seeing the initial hit or slap. 1 Trial RP 60, 105; 2 Trial RP 12, 26. (Skywalker, however, saw that Mehler's face was red and swollen "on, like, the opposite side of him." 1 Trial RP 72.)

B. RESPONSE TO APPELLANT'S STATEMENT OF FACTS.

Fritzberg testified the defendant pointed the knife at Mehler's stomach in a threatening manner. 1 Trial RP 94, 95, 96. Appellant represents Fritzberg told police the defendant did not use the knife in a threatening manner towards Mehler. BOA 4, citing 1 Trial RP 89, 96 and 2 Trial RP 73-74. Appellant also argues from this. BOA 11. Actually, if Fritzberg made any inconsistent statement in this regard (that is, as to Mehler), it was to a defense investigator, not to police. 1 Trial RP 94-95; 2 Trial RP 73-75. And any inconsistent statement was only offered to impeach. 2 Trial RP 75. It is not substantive evidence.

Fritzberg did testify that, *as to Lankhaar*, the defendant's pointing the knife at him a foot away "wasn't really threatening, I guess." 1 Trial RP 96. That statement is fair game. But it is inaccurate to say, as appellant does, that Fritzberg minimized the threat *to Mehler*.

C. CHARGES AND VERDICT.

The defendant was charged by amended information with two counts of second-degree assault while armed with a deadly weapon (the knife). 1 CP 77-78. The jury convicted on both counts. 1 CP 31, 33. They answered "yes" on both counts to whether a deadly weapon had been used. 1 CP 30, 32. The matter proceeded to sentencing. 1 CP 14-24; 2 CP __ (sub 49). (No sentencing errors are alleged in this appeal.) This appeal followed.

D. TRIAL COURT'S DENIAL OF PROPOSED JURY INSTRUCTIONS ON LESSER CRIMES.

The defendant sought instructions on fourth-degree assault, as a lesser-degree offense, and on unlawful display of a weapon, as a lesser-included offense. 2 Trial RP 76-78; 1 CP 61, 63-67. Defense counsel argued that since witness testimony varied on the length of the knife,¹ it became a deadly weapon only in the manner it was used or threatened to be used. Consequently, she argued, both fourth-degree assault and unlawful display of a weapon could

¹ Witness testimony on blade length was as follows: 1 Trial RP 28-30 (Mehler, 3-4"), 63 (Lankhaar, 2-4"), 79 (Skywalker, 3"), 89 (Fritzberg, no length given), 101, 107 (Malone, 2.5 – 3.5"); 2 Trial RP 21 (Allen, 3-4"). (Slagle could not recall any details about the knife. 2 Trial RP 11.) A knife recovered in the suspect vehicle a half mile away and 12 minutes later had a 3-1/2 inch blade. Exs. 10, 11, 20.

be considered lesser crimes under the “factual prong” of the relevant analysis. 2 Trial RP 76-78.

The prosecution responded that the evidence must support an inference that only the lesser crime occurred, to the exclusion of the greater; a simple challenge to the State’s evidence is not enough. 2 Trial RP 78-79. As for unlawful display, the prosecutor noted that the testimony was that the defendant held the knife to Mehlers and pushed him back with it, constituting assault and nothing else. Id. There was no affirmative evidence the defendant was intending merely to intimidate. 2 Trial RP 78-79.

The court asked, since no one could state conclusively that the knife found in the Tahoe was the knife used in the assault, did that not implicate fourth-degree assault if the knife used might have had a blade shorter than three inches?² 2 Trial RP 80-81. The State responded that the manner in which the knife was used against Mehlers supported only second-degree assault. 2 Trial RP 81-82. And in the case of Lankhaar, the manner in which it was

² Although both the trial court and appellant discuss the blade length, it has no bearing on the question of whether instructions on lesser crimes should be given. For purposes of sentence enhancement, a knife with a blade over 3” is a “deadly weapon” per se, but this is not true for purposes of defining “deadly weapon” as an element. Compare RCW 9A.04.110(6) (definition of “deadly weapon” as an element) with RCW 9.94A.825 (definition of deadly weapon for enhancement purposes).

used had prompted him to yell, "Are you really going to stab me in the middle of the f***ing Jack-in-the-Box?" 2 Trial RP 80; see 1 Trial RP 51, 54 (testimony of Lankhaar), 73, 81, 83-84; 2 Trial RP 19 (testimony of others).

The trial court declined to give the proposed instructions:

I don't believe there is sufficient evidence to support a lesser-included of Fourth Degree Assault because if there was an assault, there was an assault with a knife. Even if there is a dispute over the blade length, that that knife, under all the affirmative evidence, was used in a manner that would support a finding that it was a deadly weapon, that it was used or threatened to be used in a way that was readily capable of causing substantial bodily harm or death.

While certainly there is evidence to support fourth Degree assault, there is not evidence that would support fourth Degree Assault to the exclusion of Second Degree Assault.

With regard to the unlawful display of a weapon, to impose a lesser-included, I believe the same analysis holds true that although there might have been an unlawful display, it's not to the exclusion of an assault charge. I'm not prepared to give either lesser included.

2 Trial RP 84.

III. ARGUMENT

A. OVERVIEW.

Seven people were eating at a restaurant when the defendant approached and pulled a knife on two of them. All seven

men testified. The inevitable discrepancies among that many witnesses' recollections indeed gave the defendant something to work with in cross-examination. Appellant argues that these discrepancies also support an inference that only proposed lesser crimes were committed. He is wrong. Factors that make a case "triable" do not also support instructions on lesser crimes.

B. ONLY FACTUAL PRONG IS AT ISSUE.

1. Lesser Crimes Generally; Only Factual Prong At Issue When Considering Lesser-Degree Crime

A defendant is entitled to an instruction on a lesser-included offense if (1) each element of the lesser offense is a necessary element of the offense charged (the "legal prong"), and (2) the evidence in the case supports an inference that only the lesser crime was committed (the "factual prong"). State v. Berlin, 133 Wn.2d 541, 545-46, 947 P.2d 700 (1997); State v. Workman, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978). Both prongs must be satisfied before a lesser-included instruction will be given to the jury. Workman, 90 Wn.2d at 447-48.

In the case of lesser-degree crimes, there is no need to first analyze the legal prong of Workman because the Legislature has already provided that defendant may be convicted of lesser-degree offenses. RCW 10.61.003. Factual-prong analysis remains, and is

the same as that used under Workman for a lesser-included offense instruction. State v. Leremia, 78 Wn. App. 746, 754-55, 899 P.2d 16 (1995).

Since the defendant argues that the jury should have been instructed on the lesser-degree crime of fourth-degree assault, only “factual prong” analysis is implicated.

2. Whether Unlawful Display Of A Weapon Is a Lesser-Included Crime Of Second-Degree Assault Only Turns On The Factual Prong As Well.

To convict a defendant of second degree assault, the jury must find specific intent to create reasonable fear and apprehension of bodily injury. State v. Byrd, 125 Wn.2d 707, 713, 887 P.2d 396 (1995)). To convict on a charge of unlawful display of a weapon, a defendant must “carry, exhibit, display, or draw any . . . knife or other cutting or stabbing instrument . . . or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that . . . manifests an intent to intimidate another[.]” RCW 9.41.270(1). Because all the elements of unlawful display of a weapon are also necessary elements of second degree assault, unlawful display of a weapon is a lesser included offense of second degree assault under the legal prong. In re Crace, 157 Wn. App. 81, 107-08, 236 P.3d 914 (2010),

reversed on other grounds, In re Crace, 174 Wn.2d 835, 280 P.3d 1102 (2012) (not per se ineffective assistance for counsel not to request lesser-included instruction); see State v. Berlin, 133 Wn.2d at 548-49, overruling State v. Lucky, 128 Wn.2d 727, 912 P.2d 483 (1996) (Lucky having held to the contrary on legal prong).

3. “Factual Prong” Analysis.

For the second, "factual" prong to apply, the evidence must support the inference that the defendant committed *only* the lesser offense. State v. Gamble, 168 Wn.2d 161, 181, 225 P.3d 973, 984 (2010). (For example, under the factual prong, assault will typically not be a lesser-included crime of murder, for the very fact of death precludes a finding that *only* the lesser offense of assault was committed. In re Andress, 147 Wn.2d 602, 613-14, 56 P.3d 981 (2002), superseded by statute, RCW 9A.32.050 (2005).) It is not sufficient that the jury might simply disbelieve the State's evidence supporting the charged crime. Leremia, 78 Wn. App. at 754-55. Rather, the evidence must support an inference that the defendant committed the lesser offense instead of the greater one. Id., citing State v. Bergeson, 64 Wn. App. 366, 369, 824 P.2d 515 (1992). In conducting the factual-prong inquiry, the evidence is viewed in the

light most favorable to the proponent of the instruction. State v. Fernandez-Medina, 141 Wn.2d 448, 455, 6 P.3d 1150 (2000).

C. SINCE ONLY THE FACTUAL PRONG IS IMPLICATED IN THIS APPEAL, THE STANDARD OF REVIEW IS ABUSE OF DISCRETION.

The standard of review of the trial court's analysis of the legal prong is de novo, while application of the factual prong is reviewed for abuse of discretion. State v. Walker, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1998). Since only the factual prong is at issue, the deferential standard applies. Discretion is abused if the trial court's decision is manifestly unreasonable, or exercised on untenable grounds or for untenable reasons, or if no reasonable person would take the view adopted by the trial court. State v. Alexander, 125 Wn.2d 717, 732, 888 P.2d 1169 (1995); State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971))

D. APPLIED TO THESE FACTS.

1. Re Fourth-Degree Assault: Did The Trial Court Abuse Its Discretion In Determining There Was No Affirmative Evidence That The Knife, In The Manner It Was Used, Was Not Deadly?

Under these facts and as charged, the only difference between fourth-degree assault and second-degree assault is the use of a deadly weapon. Compare RCW 9A.36.021(c) and 1 CP

45, 46 (“to convict” instructions) with RCW 9A.30.041. This analysis assumes an assault. The question for the trial court to resolve was whether there was any affirmative evidence that the knife, in the manner it was used, was not a deadly weapon.

There was not. With respect to Mehler, Mehler himself said that the defendant held the knife against his throat and stomach. 1 Trial RP 21-22. He heard the defendant threaten to stab him. 1 Trial RP 23, 28, 31. Lankhaar saw the knife held flat against Mehler’s “breast plate” or “chest plate.” 1 Trial RP 47-49, 60-61. Skywalker saw the defendant put the knife to Mehler’s chest, pointing towards the neck. 1 Trial RP 72. Fritzberg saw the defendant point the knife at Mehler’s stomach, in a threatening manner. 1 Trial RP 87-88, 93, 94-96. Allen saw and heard the defendant flick the knife open, then bring it to Mehler’s neck area. 2 Trial RP 18. Mehler thought he was going to get his throat slashed. 1 Trial RP 24.

In the case of Lankhaar, Mehler recalls the defendant threatening to stab Lankhaar, too. 1 Trial RP 23, 28, 31. Lankhaar, Skywalker, Slagle, Fritzberg and Allen all saw the defendant holding the knife pointed at Lankhaar. 1 Trial RP 51, 62, 73-74, 88-89; 2 Trial RP 9, 12, 20. And this was at close quarters, too:

only one to three feet apart. 1 Trial RP 73-74, 89. With both men standing, this would necessarily mean the knife was pointed at Lankhaar's chest or stomach. And this was a *knife*. A simple lunge could have seriously injured or killed Lankhaar. As for Mehler, a knife at or near his throat was potentially very deadly indeed.

With respect to both victims, the knife the defendant wielded was a device "which, under the circumstances in which it is used, attempted to be used, or threatened to be used, [was] readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6), WPIC 2.06.01, 1 CP 50. *There was no affirmative evidence to the contrary*. The trial court did not abuse its discretion when, examining these facts, it declined to instruct the jury on the lesser-degree crime of fourth-degree assault.

2. Re Unlawful Display Of A Weapon: Did The Trial Court Abuse Its Discretion In Determining There Was No Affirmative Evidence That The Defendant's Conduct Fell Short Of An Assault?

Assault includes the mens rea of intending to create reasonable fear and apprehension of bodily injury. WPIC 35.50; State v. Byrd, 125 Wn.2d at 713. Second-degree assault couples this mental state to the use of a deadly weapon. RCW 9A.36.021(c). The corresponding mental state for unlawful display

of a weapon is the intent to intimidate another, through the use of a knife or other instrument capable of producing bodily harm. RCW 9.41.270(1) and WPIC 133.41. Use of a deadly weapon is thus assumed in this analysis. The difference between the two crimes is one is an assault and the other is not. The question for the trial court to resolve was whether there was any affirmative evidence that the defendant's conduct with the knife fell short of an assault.

With respect to Mehler, the testimony was that the defendant held the knife (depending on the witness description) to Mehler's neck or neck area, to his chest, to his chest with the blade pointing to the neck, and to the stomach. 1 Trial RP 21-22, 47-49, 60-61, 72, 87-88, 93, 94-96; 2 Trial RP 18. It was coupled with a threat to stab. 1 Trial RP 23, 28, 31. One cannot argue this was not an assault. And there was no affirmative evidence that the defendant's conduct towards Mehler comprised something less than that.

As for Lankhaar, it is true there was not a touching. But a touching is not required. See WPIC 35.50, third alternative of "common law assault," apprehension of bodily harm. And it is true that merely displaying a weapon, without any actions indicating that its use is imminent, does not constitute an assault. State v.

Murphy, 7 Wn. App. 505, 511-12, 500 P.2d 1276 (1972). But Lankhaar, and four others, saw the defendant holding the knife pointed at Lankhaar. 1 Trial RP 51, 62, 73-74, 88-89; 2 Trial RP 9, 12, 20. And, as for imminent use, this occurred at close quarters. 1 Trial RP 73-74, 89. One to three feet is well within a lunge range. And there was (as recalled by Mehler) a threat to stab. 1 Trial RP 23, 28, 31. Lankhaar himself certainly thought he was in a "bad spot," 1 Trial RP 50, and that he might get stabbed, 1 Trial RP 69.

As to Mehler, all three alternate means of assault are satisfied: it was certainly an unconsented touching that was harmful and offensive; it was also an act done with intent to inflict bodily injury, accompanied with apparent present ability to inflict the bodily injury if not prevented; and, lastly, an act with intent to cause in another apprehension and fear of bodily injury, and which in fact creates in another apprehension and imminent fear of bodily injury, even though the actor did not intend to inflict bodily injury. WPIC 35.50; 1 CP 47. In the case of Lankhaar, the third means is established.

The defendant may cite to Fritzberg's statement that, even though the men stood a foot apart, the defendant did not hold the knife in a threatening manner, 1 Trial RP 96, or to Malone's

recollection that the defendant simply held the knife at his side, with the blade pointing down, as he faced Lankhaar. 1 Trial RP 102, 106. If all that had happened was a confrontation with Lankhaar, this might carry some weight as affirmative evidence that only an unlawful display of weapon had occurred. But there had already just been the assault on Mehler that all the witnesses, to a greater or lesser extent, were aware of, Lankhaar in particular. “[W]hether or not there has been an assault in a particular case depends more upon the apprehension created in the mind of the person assaulted than in the undisclosed intention of the person assaulting.” Murphy, 7 Wn. App. at 511.


“[I]f, within shooting distance, one menacingly points at another with a gun, apparently loaded yet not in fact, he commits an assault the same as if it were loaded; there must be some power, actual or apparent, of doing bodily harm; but apparent power is sufficient.” Murphy, 7 Wn. App. at 511. Similarly, if one menacingly points a knife at another, within stabbing distance, he commits an assault. The trial court did not abuse its discretion in concluding that there was no affirmative evidence that only an unlawful display occurred.

IV. CONCLUSION

The judgment and sentence should be *affirmed*.

Respectfully submitted on October 4, 2012.

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October 3, 2012

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COURT OF APPEALS
STATE OF WASHINGTON
[Handwritten initials]

**Re: STATE v. RAYMOND L. ATCHISON
COURT OF APPEALS NO. 68311-0-1**

Dear Mr. Johnson:

The respondent's brief does not contain any counter-assignments of error. Accordingly, the State is withdrawing its cross-appeal.

Sincerely yours,

CHARLES F. BLACKMAN, #19354
Deputy Prosecuting Attorney

cc: Nielsen, Broman & Koch
Appellant's attorney

I have enclosed a properly stamped envelope
to the attorney for the defendant that
contains a copy of this document.
I am under penalty of perjury under the laws of the
State of Washington that this is true.
Snohomish County Prosecutor's Office
4th Oct 2012
[Handwritten signature]

COURT OF APPEALS
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

THE STATE OF WASHINGTON,

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v.

RAYMOND L. ATCHISON,

Appellant.

68311-0
No. ~~68149-4-1~~
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SEATTLE, WA 98101-4170

NIELSEN, BROMAN & KOCH
1908 EAST MADISON STREET
SEATTLE, WA 98122

containing an original and one copy to the Court of Appeals, and one copy to the attorney for the appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 4th day of October, 2012.

A handwritten signature in black ink, appearing to read "Diane K. Kremenich", written over a horizontal line. The signature is cursive and includes a long horizontal flourish extending to the right.

DIANE K. KREMENICH
Legal Assistant/Appeals Unit