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No. 69766-8

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

STATE OF WASHINGTON,

Respondent,

v.

RYAN PATRICK MOORE,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENT OF ERROR

Ryan Moore was denied his constitutional right to a jury trial where the "to-convict" instruction erroneously stated that the jury had a "duty to return a verdict of guilty" if it found each element proved beyond a reasonable doubt.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

In a criminal trial, does a "to-convict" instruction that informs the jury it has a duty to return a verdict of guilty if it finds the elements have been proved beyond a reasonable doubt, violate a defendant's right to a jury trial when there is no such duty under the state and federal constitutions?

C. STATEMENT OF THE CASE

Everett police detective Daniel Rabelos identified Mr. Moore as a suspect in a police investigation. 12/12/12RP 18-19. After concluding his investigation, Detective Rabelos referred the case to the Snohomish County Prosecutor. 12/12/12RP 19. As a result, Mr. Moore was charged with one count of possession of a stolen motor vehicle. 12/12/12RP 25-26.

Mr. Moore appeared in court for an arraignment hearing on May 18, 2012. 12/12/12RP 27. He pled not guilty. 12/12/12RP 28. An

omnibus hearing was set for August 10, 2012. 12/12/12RP 33. Mr. Moore was informed, in writing, that he must appear for trial and for all scheduled hearings, and that failure to appear could result in a prosecution for bail jumping. 12/12/12RP 33.

Mr. Moore did not appear at the omnibus hearing scheduled for August 10. 12/12/12RP 34. A bench warrant was issued. 12/12/12RP 35. Police arrested Mr. Moore on the warrant. 12/12/12RP 36. Mr. Moore appeared at the next hearing, which was held September 5, 2012. 12/12/12RP 36.

Mr. Moore was charged with one count of bail jumping, RCW 9A.76.170(1). CP 36; 12/07/12RP 2. At the same time, the State moved to dismiss the charge of possession of a stolen motor vehicle because it did not have enough evidence to prove it. 12/07/12RP 3; 12/13/12RP 2. Mr. Moore then argued, with reason, that the bail jumping charge should also be dismissed because he should not have had a court date to begin with; by requiring him to appear in court on a charge that should not have been filed at all, the State unfairly placed Mr. Moore in a "catch-22." 12/07/12RP 3-4. The court declined to dismiss the bail jumping charge but assured Mr. Moore that he could present his argument to the jury. 12/07/12RP 4.

Prior to trial, the prosecutor moved to preclude the defense from eliciting testimony about why the underlying charge was dismissed. 12/12/12RP 4. The prosecutor argued the reason why the underlying charge was dismissed was irrelevant. 12/12/12RP 5-6. The court granted the motion. 12/12/12RP 6.

At trial, Mr. Moore testified that he missed court on August 10 because he had no car and had to rely on public transportation. 12/12/12RP 42. That day, he was at his attorney's office handling a matter for a different case. 12/12/12RP 43-35. He missed his bus and therefore did not have time to get to court for the hearing on the current charge. 12/12/12RP 43-45, 49.

Defense counsel then asked Mr. Moore why he had decided to go to trial on the bail jumping charge, given that it was "a simple, easy case for the State to prove." RP 45. Mr. Moore answered, "I agreed to go to trial because . . . I don't think it's right to . . . have a court date for something that I know that I'm not guilty of." RP 45-46. The prosecutor objected and the court sustained the objection. RP 46. Mr. Moore then testified that he had decided to go to trial because "I didn't want to plead guilty to something that I didn't do." RP 46.

The jury was instructed:

> It is your duty to decide the facts of this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

CP 26. In addition, the "to-convict" jury instruction stated:

> To convict the defendant of the crime of bail jumping, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about the 10th day of August, 2012, the defendant failed to appear before a court;
>
> (2) That at that time and in that court, the defendant was charged with Possession of a Stolen Vehicle;
>
> (3) That the defendant had been released on that charge by court order with knowledge of the requirement of the subsequent personal appearance before that court; and
>
> (4) That these acts occurred in the State of Washington.
>
> If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, *then it will be your duty to return a verdict of guilty.*
>
> On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 32 (emphasis added).

The jury found Mr. Moore guilty of bail jumping as charged.

CP 3, 24.

D. ARGUMENT

MR. MOORE WAS DENIED HIS CONSTITUTIONAL RIGHT TO A JURY TRIAL BECAUSE THE "TO-CONVICT" INSTRUCTION TOLD THE JURY THAT IT HAD A "DUTY TO RETURN A VERDICT OF GUILTY" IF IT FOUND EACH ELEMENT PROVED BEYOND A REASONABLE DOUBT

The right to a jury trial in a criminal case is one of the few guarantees of individual rights enumerated in the United States Constitution of 1789. It is the only guarantee to appear in both the original document and the Bill of Rights. U.S. Const. art. 3, ¶ 3; U.S. Const. amends. VI, VII.

In criminal trials, the right to a jury trial is fundamental to the American scheme of justice. It is thus further guaranteed by the Due Process Clauses of the Fifth and Fourteenth Amendments. Duncan v. Louisiana, 391 U.S. 145, 156, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968); Pasco v. Mace, 98 Wn.2d 87, 94, 653 P.2d 618 (1982).

Trial by jury was not only a valued right of persons accused of a crime, but was also an allocation of political power to the citizenry:

> the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in

> this insistence upon community participation in the determination of guilt or innocence.

Duncan, 391 U.S. at 156.

In Washington, citizens enjoy an even stronger guarantee to a jury trial. State v. Williams-Walker, 167 Wn.2d 889, 896, 225 P.3d 913 (2010). Because the Washington Supreme Court has already determined that the state constitution provides greater protection for jury trials than the federal constitution in some circumstances, a full Gunwall[1] analysis is no longer necessary to determine whether a claim under article I, section 21 warrants an inquiry on independent state grounds. Id. at 896 n.2. The question instead is "whether the unique characteristics of the state constitutional provision and its prior interpretations actually compel a particular result" under the circumstances of the case. State v. Pugh, 167 Wn.2d 825, 835, 225 P.3d 892 (2009). To answer that question, the Court "examine[s] the constitutional text, the historical treatment of the interest at stake as disclosed by relevant case law and statutes, and the current implications of recognizing or not recognizing an interest." Id.

The textual language of Washington's constitution is significantly different from the federal constitution, suggesting the

[1] State v. Gunwall, 106 Wn.2d 54, 720 P 808 (1986).

drafters meant something different from the federal Bill of Rights. See Hon. Robert F. Utter, Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491, 515 (1984). In 1889 (when the constitution was adopted), the Sixth Amendment did not apply to the states. Instead, Washington based its Declaration of Rights on the Bills of Rights of other states, which relied on common law and not the federal constitution. State v. Silva, 107 Wn. App. 605, 619, 27 P.3d 663 (2001).

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." In comparison, the drafters of our state constitution not only granted the right to a jury trial, in article I, section 22 ("In criminal prosecutions, the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed . . . ."), they expressly declared it "shall remain inviolate." Const. art. I, § 21. The term "inviolate" has been interpreted to mean:

> deserving of the highest protection. . . . Applied to the right to trial by jury, this language indicates that the right

> must remain the essential component of our legal system that it has always been. For such a right to remain inviolate, it must not diminish over time and must be protected from all assaults to its essential guarantees.

Sofie v. Fibreboard Corp., 112 Wn.2d 636, 656, 771 P.2d 711 (1989).

Article I, section 21 "preserves the right [to jury trial] as it existed in the territory at the time of its adoption." Pasco, 98 Wn.2d at 96; State v. Strasburg, 60 Wash. 106, 110 P. 1020 (1910). As such, the right to trial by jury "should be continued unimpaired and inviolate." Strasburg, 60 Wash. at 115.

Additionally, the framers added other constitutional protections to this right. The right to jury trial is protected by the Due Process Clause of article I, section 3. Also, a court is not permitted to convey to the jury its own impressions of the evidence. Const. art. IV, § 16 ("Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law."). Even a witness may not invade the province of the jury. State v. Black, 109 Wn.2d 336, 350, 745 P.2d 12 (1987).

In State v. Meggyesy, 90 Wn. App. 693, 701, 958 P.2d 319, review denied, 136 Wn.2d 1028 (1998), abrogated on other grounds by State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005), Division One concluded there is no constitutional language that specifically addresses

how the jury must be instructed. But the language that is present indicates the right to a jury trial is so fundamental that any infringement violates the constitution.

State common law history also supports the conclusion that the jury instruction in this case was unconstitutional. Article I, section 21 "preserves the right as it existed at common law in the territory at the time of its adoption." Sofie, 112 Wn.2d at 645; Pasco, 98 Wn.2d at 96; see also State v. Hobble, 126 Wn.2d 283, 299, 892 P.2d 85 (1995). Under the common law, juries were instructed in such a way as to allow them to acquit even where the prosecution proved guilt beyond a reasonable doubt. Leonard v. Territory, 2 Wash. Terr. 381, 7 P. 872 (Wash. Terr. 1885). In Leonard, the trial court had instructed the jurors that they "should" convict and "may find [the defendant] guilty" if the prosecution proved its case, but that they "must" acquit in the absence of such proof. Leonard, 2 Wash. Terr. at 398-99. The word "should" in jury instructions is permissive, while the word "must" indicates a mandatory duty. State v. Smith, __ Wn. App. __, 298 P.3d 785, 790 (2013). Thus, the common law practice was to instruct the jury that they were *required* to acquit upon a failure of proof, and were

permitted to acquit even if the proof was sufficient. Leonard, 2 Wash. Terr. at 398-99.

Meggyesy attempted to distinguish Leonard on the basis that the Leonard court "simply quoted the relevant instruction." Meggyesy, 90 Wn. App. at 703. But Leonard shows that, at the time the Constitution was adopted, courts instructed juries using the permissive "may" as opposed to the current practice of requiring the jury to make a finding of guilt. The current practice does not comport with the scope of the right to jury trial existing at that time, and should now be re-examined.

An accused person's guilt has always been the sole province of the jury. State v. Kitchen, 46 Wn. App. 232, 238, 730 P.2d 103 (1986), aff'd, 110 Wn.2d 403, 736 P.2d 105 (1988) ("In a jury trial the determination of guilt or innocence is solely within the province of the jury under proper instructions."); see also State v. Christiansen, 161 Wash. 530, 534, 297 P. 151 (1931) ("In our opinion the denial to a jury of the right and power to bring in a verdict of acquittal in a criminal case is to effectually deny to the one being tried the right of trial by jury."); State v. Holmes, 68 Wash. 7, 13, 122 P. 345 (1912) (trial court may not, either directly or indirectly, direct a verdict of guilty in a criminal case). This rule applies even where the jury ignores applicable

law. See, e.g., Hartigan v. Washington Territory, 1 Wash. Terr. 447, 449 (1874) (holding "the jury may find a general verdict compounded of law and fact, and if it is for the defendant, and is plainly contrary to the law, either from mistake or a willful disregard of the law, there is no remedy.").[2]

The jury's power to acquit is substantial and the jury has no duty to return a verdict of guilty. As shown below, there is no ability to review a jury verdict of acquittal, no authority to direct a guilty verdict, and no authority to coerce a jury in its decision, so there can be no "duty to return a verdict of guilty."

A court may never direct a verdict of guilty in a criminal case. United States v. Garaway, 425 F.2d 185 (9th Cir. 1970) (directed verdict improper even where no issues of fact are in dispute); Holmes, 68 Wash. at 12-13. If a court improperly withdraws a particular issue from the jury's consideration, it may deny the defendant the right to a fair trial. United States v. Gaudin, 515 U.S. 506, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995) (improper to withdraw issue of "materiality" of

[2] This is likewise true in the federal system. See, e.g., United States v. Moylan, 417 F.2d 1002, 1006 (4th Cir. 1969) ("We recognize, as appellants urge, the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence.").

false statement from jury's consideration); Neder v. United States, 527 U.S. 1, 8, 15-16, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999) (omission of element in jury instruction subject to harmless error analysis).

The constitutional protections against double jeopardy also protect the right to a jury trial by prohibiting a retrial after a verdict of acquittal. U.S. Const. amend. V; Const. art. I, § 9. A jury verdict of not guilty is thus non-reviewable.

Also well-established is "the principle of noncoercion of jurors," established in Bushell's Case, Vaughan 135, 124 Eng. Rep. 1006 (1671). Edward Bushell was a juror in the prosecution of William Penn for unlawful assembly and disturbing the peace. When the jury refused to convict, the court fined the jurors for disregarding the evidence and the court's instructions. Bushell was imprisoned for refusing to pay the fine. In issuing a writ of habeas corpus for his release, Chief Justice Vaughan declared that judges could neither punish nor threaten to punish jurors for their verdicts. See generally, Albert W. Alschuler & Andrew G. Deiss, A Brief History of the Criminal Jury in the United States, 61 U. Chi. L. Rev. 867, 912-13 (1994).

Under Washington law, juries have always had the ability to deliver a verdict of acquittal that is against the evidence. Hartigan v.

Washington Territory, 1 Wash. Terr. 447, 449 (1874). A judge cannot direct a verdict for the State because this would ignore "the jury's prerogative to acquit against the evidence, sometimes referred to as the jury's pardon or veto power." State v. Primrose, 32 Wn. App. 1, 4, 645 P.2d 714 (1982); see also State v. Salazar, 59 Wn. App. 202, 211, 796 P.2d 773 (1990) (relying on jury's "constitutional prerogative to acquit" as basis for upholding admission of evidence). An instruction telling jurors that they *may not* acquit if the elements have been established affirmatively misstates the law, and deceives the jury as to its own power. Such an instruction fails to make the correct legal standard manifestly apparent to the average juror and is therefore erroneous. State v. Kyllo, 166 Wn.2d 856, 864, 215 P.3d 177 (2009).

This is not to say there is a right to instruct the jury that it may disregard the law in reaching its verdict. That was the concern of this Court in affirming the jury instructions at issue in State v. Brown, 130 Wn. App. 767, 771, 124 P.3d 663 (2005) ("The power of jury nullification is not an applicable law to be applied in a second degree burglary case."). But although a court may not affirmatively tell a jury that it may disregard the law, it also may not instruct the jury that it *must* return a verdict of guilty if it finds certain facts to be proved.

Moreover, if such a "duty" to convict exists, the law lacks any method of enforcing it. If a jury acquits, the case is over, the charge is dismissed, and there is no further review. In contrast, if a jury convicts when the evidence is insufficient, the court has a legally enforceable obligation to reverse the conviction or enter a judgment of acquittal notwithstanding the verdict. Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980). Thus, a legal "threshold" exists before a jury may convict. A guilty verdict in a case that does not meet this evidentiary threshold is contrary to law and will be reversed. The "duty" to return a verdict of not guilty, therefore, is genuine and enforceable by law. A jury must return a verdict of not guilty if there is a reasonable doubt; but it *may* return a verdict of guilty even if it finds every element proven beyond a reasonable doubt.

The duty to acquit and permission to convict is well-reflected in the instruction given to the jury in Leonard:

> If you find the facts necessary to establish the guilt of defendant proven to the certainty above stated, then you *may* find him guilty of such a degree of the crime as the facts so found show him to have committed; but if you do not find such facts so proven, then you *must* acquit.

Leonard, 2 Wash. Terr. at 399 (emphases added). This was the law as given to the jury in this murder trial in 1885, just four years before the adoption of the Washington Constitution. This practice of allocating power to the jury "shall remain inviolate." Const. art. I, § 21.

The Washington Pattern Jury Instruction Committee has adopted accurate language consistent with Leonard for considering a special verdict:

> In order to answer the special verdict form[s] "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously agree that the answer to the question is "no," or if after full and fair consideration of the evidence you are not in agreement as to the answer, you must fill in the blank with the answer "no."

WPIC 160.00. The due process requirements to return a special verdict—that the jury must find each element of the special verdict proven beyond a reasonable doubt—are exactly the same as for the elements of the general verdict. This language in no way instructs the jury on "jury nullification." But at the same time, it does not impose a "duty to return a verdict of guilty."

In contrast, the "to-convict" instruction at issue here does not reflect this legal asymmetry. It is not a correct statement of the law. It provides a level of coercion, not supported by law, for the jury to return

a guilty verdict. Such coercion is prohibited by the right to a jury trial. Leonard, 2 Wash. Terr. at 398-99; State v. Boogard, 90 Wn.2d 733, 737-38, 585 P.2d 789 (1978) (holding questioning of individual jurors in presence of other jurors, with respect to each juror's opinion regarding jury's ability to reach verdict within a half hour, unavoidably tended to suggest to minority jurors that they should "give in" for sake of goal of reaching verdict within a half hour, thus depriving defendant of his constitutional right to fair and impartial jury trial).

"The right to a fair and impartial jury trial demands that a judge not bring to bear coercive pressure upon the deliberations of a criminal jury." Boogard, 90 Wn.2d at 736-37. That is, the judge may not pressure the jury into making a decision. If there is no ability to review a verdict of acquittal, no authority to direct a verdict of guilty, and no authority to coerce a jury in its decision, there can be no "duty to return a verdict of guilty."

Although the jury may not strictly determine what the law is, nonetheless it has a role in applying the law of the case that goes beyond mere fact-finding. In United States v. Gaudin, the Court rejected limiting the jury's role to merely finding facts. Historically, the jury's role has never been so limited.

> Juries at the time of the framing [of the Constitution] could not be forced to produce mere "factual findings," but were entitled to deliver a general verdict pronouncing the defendant's guilt or innocence.

515 U.S. at 513. "[T]he jury's constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence." Id. at 514.

Meggyesy does not analyze the issue presented here. In Meggyesy, the Court held the federal and state constitutions did not "preclude" this language and so it affirmed. Meggyesy, 90 Wn. App. at 696. In its analysis, the Court characterized the alternative language proposed by the appellants—"you *may* return a verdict of guilty"—as "an instruction notifying the jury of its power to acquit against the evidence." 90 Wn. App. at 699. The Court concluded there was no legal authority requiring the trial court to instruct a jury that it had the power to acquit against the evidence.

Meggyesy's analysis addressed a different aspect of the issue than is presented here. "Duty" is the challenged language here. By focusing on the proposed remedy, Meggyesy side-stepped the underlying issue raised by the appellants: the instructions violated their right to trial by jury because the "duty to return a verdict of guilty"

language required the juries to convict if they found that the State proved all of the elements of the charged crimes.

Portions of the Meggyesy decision are relevant, however. The opinion acknowledged the Supreme Court has never considered this issue. 90 Wn. App. at 698. It recognized that the jury has the power to acquit against the evidence: "This is an inherent feature of the use of general verdicts. But the power to acquit does not require any instruction telling the jury that it may do so." Id. at 700 (citations omitted). The Court also relied in part upon federal cases in which the approved "to-convict" instructions did *not* instruct the jury it had a "duty to return a verdict of guilty" if it found every element proven. Id. at 698-99 nn. 5, 6, 7. These concepts support Mr. Moore's position and do not contradict the arguments set forth here.

But Meggyesy ultimately looked at the issue through the wrong lens. The question is not whether the court is required to tell the jury it may acquit despite finding each element has been proved beyond a reasonable doubt. The question is whether the law ever requires the jury to return a verdict of guilty. If the law never requires the jury to return a verdict of guilty, it is an incorrect statement of the law to instruct the jury that it does. An instruction that says the jury has such

a duty impermissibly directs a verdict. See Sullivan v. Louisiana, 508 U.S. 275, 277, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993) (judge may not direct a verdict for the State, no matter how overwhelming the evidence).

Unlike the appellant in Meggyesy, Mr. Moore does not ask the court to approve an instruction that affirmatively notifies the jury of its power to acquit. Instead, he argues that jurors should not be affirmatively misled. This question was not addressed in Meggyesy; thus the holding of Meggyesy should not govern here.

The court's instructions in this case affirmatively misled the jury about its power to acquit even if the prosecution proved its case beyond a reasonable doubt. The instructions did not contain a correct statement of the law. The court instructed the jurors that it was their "duty" to accept the law, and that it was their "duty" to return a verdict of guilty if they found the elements were proved beyond a reasonable doubt. CP 40, 55. The court's use of the word "duty" in the "to-convict" instruction conveyed to the jury that it could not acquit if the elements had been established. See Smith, 298 P.3d at 790. This misstatement of the law provided a level of coercion for the jury to return a guilty verdict, deceived the jurors about their power to acquit in the face of

sufficient evidence, and failed to make the correct legal standard manifestly apparent to the average juror. Kyllo, 166 Wn.2d at 864.

By instructing the jury it had a duty to return a verdict of guilty based merely on finding certain facts, the court took away from the jury its constitutional authority to apply the law to the facts to reach its general verdict. The instruction creating a "duty" to return a verdict of guilty was an incorrect statement of law. The error violated Mr. Moore's state and federal constitutional right to a jury trial.[3] Accordingly, his conviction must be reversed and the case remanded for a new trial with proper instructions.[4]

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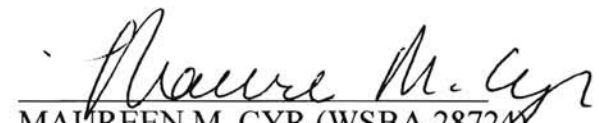
[3] Mr. Moore may challenge this manifest constitutional error in the jury instructions for the first time on appeal. See State v. O'Hara, 167 Wn.2d 91, 100-01, 217 P.3d 756 (2009); RAP 2.5(a).

[4] Erroneously instructing the jury that it must convict if it finds the elements beyond a reasonable doubt is structural error requiring reversal. See Smith, 298 P.3d at 790-91; United States v. Gonzalez-Lopez, 548 U.S. 140, 149, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006) (denial of right to trial by jury by giving defective reasonable doubt instruction is structural error); Sullivan, 508 U.S. at 277.

E. CONCLUSION

Because Mr. Moore was denied his constitutional right to a jury trial when the jury was instructed it must convict if it found the elements beyond a reasonable doubt, the conviction must be reversed and remanded for a new trial with proper instructions.

Respectfully submitted this 26th day of June, 2013.



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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 69766-8-I
	)	
	)	
RYAN MOORE,	)	
	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 26TH DAY OF JUNE, 2013, 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]	SETH FINE, DPA SNOHOMISH COUNTY PROSECUTOR'S OFFICE 3000 ROCKEFELLER EVERETT, WA 98201	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
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SIGNED IN SEATTLE, WASHINGTON, THIS 26TH DAY OF JUNE, 2013.

X_____

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