69912-1

69912-1

NO. 69912-1-I

IN THE COURT OF APPEALS
OFTHE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON

Respondent

v.

CRUZ R. BLACKSHEAR,

Appellant

BRIEF OF RESPONDENT

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2. Was the show up procedure used by police to identify the defendant impermissibly suggestive?

3. If evidence the victim identified the defendant as the robber should have been suppressed was error in introduction of that evidence harmless?

4. Did defense counsel render ineffective assistance of counsel for failing to adequately raise the suppression issue related to the victim's identification of the defendant?

5. The CrR 3.5 certificate was filed after the defense filed its opening brief. Should the defendant be given an opportunity to file a supplemental brief if he wants to challenge the ruling admitting his statements at trial?

II. STATEMENT OF THE CASE

On October 15, 2012 John Couldry had visited his wife who was recovering from surgery at Providence Hospital located at 13th and Colby in Everett. Mr. Couldry was himself recovering from hernia surgery performed two weeks earlier. Mr. Couldry was 59 years old, and had received a liver transplant one year earlier. As

Mr. Couldry left the hospital he was confronted by the defendant on his way back to his car. The defendant demanded Mr. Couldry give the defendant Mr. Couldry's money. When Mr. Couldry denied having any money the defendant again demanded money. Mr. Couldry had his hands in his sweatshirt pocket to protect himself from injury that he feared the defendant would inflict on him. The defendant asked if Mr. Couldry had a knife. When Mr. Couldry told the defendant that he did not have a knife, the defendant struck Mr. Couldry on the head. Mr. Couldry did not believe that he was in any condition to fight the defendant, so he offered the defendant his cell phone. The defendant took the cell phone and then walked across the street to a park. 2 RP 4-11.[1]

Just before the defendant accosted Mr. Couldry he was sitting in the park with Ms. Heather Ray. Ms. Ray saw the defendant leave the park and go across the street to talk to "some old guy." Ms. Ray saw the defendant take something from the man and walk back to the park. Before the defendant went to talk to the man he had one cell phone. After he came back the defendant showed Ms. Ray that he had a second cell phone. The defendant

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[1] The record consists of four volumes; 12-26-12 – Vol. I, 12-27-12 – Vol. II 12-28-12 – Vol. III, 1-22-13 – Vol IV.

admitted to Ms. Ray that he had stolen the man's cell phone and then told her that they needed to walk away from that area. They did walk away together, but split up for a short time. During that time Ms. Ray got a call on her phone from an unidentified number. When she answered it was the defendant who directed her to walk toward him. They then walked to the Wait's motel, located on 13th near Broadway.1 RP 44-52.

Sonya Rundle was sitting at the bus stop next to the park about the time of the robbery. She saw the defendant pass by her from the park and walk up to an older man. She saw the defendant talk to the man; when the man pulled out his cell phone the defendant grabbed it and ran back to the park where she saw him meet up with Ms. Ray. Ms. Rundle saw the defendant put on a coat before he and Ms. Ray left down an alley. 2 RP 29-32.

Mr. Couldry went into the hospital and got security to call the police. When police arrived Mr. Couldry and Ms. Rundle gave them a description of the defendant and Ms. Ray. A description of the couple was broadcast to other officers who began to search the area. A K-9 officer from Lynnwood was also called. 2 RP 12-13, 33-34, 95-98.

Officer Reid located the defendant and Ms. Ray at 13th between Broadway and Lombard. He asked them if they had seen a couple matching their description. When they denied seeing anyone, Officer Reid notified other officers that he had located the suspects. Officer Reid then re-contacted the defendant and Ms. Ray and asked them to stay so that a witnesses could come to their location. Mr. Couldry was then transported to the defendant's location. Once there Mr. Couldry positively identified the defendant as the man who had robbed him. 2 RP 116-123, 140-143.

While Mr. Couldry was transported to the defendant's location Officer Langdon from the Lynnwood Police Department and his police dog Buddy arrived at the park. Buddy tracked a scent from the park in the direction police were told the defendant had fled. After Mr. Couldry had identified the defendant, Buddy and Officer Langdon arrived on scene. Buddy indicated by going up to the patrol car where the defendant was seated at that time, and jumped up on the window near the defendant. Based on his training and experience, Officer Langdon believed that the target odor that Buddy tracked from the park was the same odor he tracked when he arrived at the defendant's location. The route the dog used to track the scent was the same route Ms. Ray described

that they had taken after leaving the park. 2 RP 162-167, 185-191; 3 RP 85.

The defendant was charged with one count of second degree robbery, alleged to have been committed while he was on community custody. 1 CP 72-73. He was convicted of that charge at trial. 1 CP 50.

III. ARGUMENT

A. THE DEFENDANT HAS FAILED TO PRESERVE THE ISSUE RELATING TO SUPPRESSION OF IDENTIFICATION EVIDENCE.

1. The Defendant Waived The Suppression Issue By Failing To Timely Raise It.

Defense counsel filed a trial brief setting out the pretrial motions he intended to argue, including authority to support his motions. Those motions included a motion to preclude police officers from testifying to what witnesses told those officers regarding the details identifying the defendant unless those witnesses testified at trial. 1 CP 66-69; 1 RP 14-19. Those motions did not include a challenge Mr. Couldry's identification of the defendant at the show up or in trial. Nevertheless, without prior notice to the State or the Court, and without any citation to authority or briefing, defense counsel sought to suppress Mr. Couldry's identification as the product of "an impermissible one-person show

up." 1 RP 24-25. The State objected to the court hearing the untimely suppression motion. 1 RP 26-27. The court noted that the defense had not provided the court with any authority to support its position, nor had it given the State an opportunity to respond. It therefore denied the motion without prejudice to renew if the defense had any authority to support its position. 1 RP 28.

The defendant now argues the trial court erred when it denied his motion to suppress Mr. Couldry's identification of him. As discussed below this issue is a fact specific inquiry. Although the defense nominally raised the issue in the trial court, this Court should nonetheless treat the issue as waived.

The Court has provided a specific procedure to suppress identification evidence in CrR 3.6. Pursuant to that rule the defendant must file a motion to suppress in writing, "supported by an affidavit or document setting forth the facts the moving party anticipates will be elicited at a hearing, and a memorandum of authorities in support of that motion." Id. The motion must be made timely or it is waived. State v. Burnley, 80 Wn. App. 571, 910 P.2d 1294 (1996). Here, the trial court was denied the opportunity to rule on the motion because the defense failed to provide the court with any authority or facts on which to decide the suppression

motion. In effect, simply stating the theory on which it sought suppression was insufficient to serve the purpose behind the waiver rule adopted by this State.

2. Under The Circumstances Of This Case If The Issue Was Not Outright Waived, Then The Standard For Review Set Out In RAP 2.5(a)(3) Should Apply.

This case presents an unusual situation because the defendant did not fail the raise the issue at all, or even failed to raise it until after the State presented its case, as in Burnley. Instead he inadequately raised it at the eleventh hour as the testimonial phase of the trial was about to begin. If this Court finds the defendant did not waive the issue for purposes of CrR 3.6, then whether this Court should address the suppression question should be determined pursuant to RAP 2.5.

Generally an appellate court will not consider issues raised for the first time on appeal. RAP 2.5(a), State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). The policy underlying the rule is to "'encourage[e] the efficient use of judicial resources. The appellate courts will not sanction a party's failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new

trial." State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009), quoting, State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 (1988).

The Court may consider an issue for the first time on appeal if it is a manifest error affecting a constitutional right. RAP 2.5(a)(3). Manifest requires a showing of actual prejudice. Kirkman, 159 Wn.2d at 935. ""Essential to this determination is a plausible showing by the defendant that the asserted error had practical and identifiable consequences in the trial of the case."" Id. quoting, State v. WWJ Corp, 138 Wn.2d 595, 602, 980 P.2d 1257 (1999). To determine if there was actual prejudice the court focusses on "whether the error is so obvious on the record that the error warrants appellate review." State v. O'Hara, 167 Wn.2d 91, 99-100, 217 P.3d 756 (2009). Actual prejudice is demonstrated when the defendant establishes from an adequate record that the trial court would have granted the suppression motion had it been made. State v. Abuan, 161 Wn. App. 135, 146, 257 P.3d 1 (2011).

a. The Claimed Error Involves A Constitutional Question. It Is Not A Manifest Error.

A procedure which creates the likelihood that the defendant will be misidentified violates his right to Due Process. Neil v. Biggers, 409 U.S. 188, 198, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972).

Thus the defendant has raised a constitutional issue. The issue is not manifest however for two reasons. First the record does not contain all the circumstances that would bear on the question. Second, even on the existing record, the trial court would not have likely granted the suppression motion.

"[T]he admission of evidence of a show-up without more does not violate due process." Id. at 198-99. A defendant who seeks to suppress pretrial and in court identification evidence must first show that the identification was unnecessarily suggestive. Stovall v. Denno, 388 U.S. 293, 302, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967), abrogation on other grounds recognized, Harper v. Virginia Department of Taxation, 509 U.S 86, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993). If he fails to meet this burden then the inquiry ends. State v. Vickers, 148 Wn.2d 91, 118, 59 P.3d 58 (2002).

If he meets this burden then the court considers whether, under the totality of the circumstances, the suggestiveness resulted in a substantial likelihood of irreparable misidentification. Manson v. Brathwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977). To make that determination the court considers five factors: (1) the witnesses' opportunity to view the criminal at the time of the crime, (2) the witnesses' degree of attention, (3) the accuracy of the

prior description given by the witness, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Id. Neil v. Biggers, 409 U.S. at 199-200.

An identification procedure which in essence tells the witness "this is the man" is impermissibly suggestive. Foster v. California, 394 U.S. 440, 443, 89 S.Ct. 1127, 22 L.Ed.2d 402 (1969). This standard was met in Foster. There the witness was shown to the defendant three times. The witness did not identify the defendant until after a second line up in which he was the only person the witness had repeatedly been shown. In a first line up the defendant's appearance was significantly different from the other two men. The witness did not positively identify the defendant in that line up or in a subsequent one-to-one confrontation. Id. at 443.

In contrast "[s]howups held shortly after a crime is committed and in the course of a prompt search for the suspect have been found to be permissible." State v. Booth, 36 Wn. App. 66, 71, 671 P.2d 1218 (1983). See also, State v. Rogers, 44 Wn App. 510, 515, 722 P.2d 1349 (1986). Thus, a show up where the defendant was placed in close proximity to police officers and a police car was

not unnecessarily suggestive. State v. Guzman-Cuellar, 47 Wn. App. 326, 336, 734 P.2d 966 (1987). Nor was the procedure unnecessarily suggestive when the witness was nervous or the suspect appeared in handcuffs or in a police car. United States v. Hines, 455 F.2d 1317, 1329 (D.C. Cir. 1971), cert denied, 406 U.S. 969 (1972).

Here the evidence presented at a suppression hearing would likely be more detailed than that presented at trial. At trial the prosecutor was able to rely on other evidence that identified the defendant as the robber. That evidence included the other two witnesses' testimony, as well as the result of the dog track. At a suppression hearing that other evidence would not be relevant to the question of whether the show-up presented a substantial likelihood of irreparable misidentification by Mr. Couldry. Thus at a suppression hearing the prosecutor would have had more incentive to introduce all of the details that Mr. Couldry gave police when describing the defendant in order to show that his description of the robber was accurate. Those details could include hair length and color, as well as facial hair. It could also include evidence regarding how Mr. Couldry's admitted colorblindness affected his ability to perceive colors. None of that was brought out at trial

however, because it was unnecessary to establish the defendant was the robber[2]. Where the record is not sufficient to show that a suppression motion would have been successful the defendant fails to show the requisite prejudice to justify review. State v. McFarland, 127 Wn.2d 322, 334, 899 P.2d 1251 (1995).

Even on this record however, there is reason to believe the trial court would not have granted the suppression motion. The show-up procedure occurred within less than one hour after the robbery occurred as a result of a police canvass of the area based on a description of the defendant and Ms. Ray given by Mr. Couldry and Ms. Rundle. The defendant was standing near police officers, but had not been handcuffed. Before the show-up the police did not indicate to Mr. Couldry that the defendant was in fact the person who robbed him. Rather the officer phrased the request to accompany police to the defendant's location in open ended terms, leaving open the possibility that the defendant was not the person who committed the crime. Mr. Couldry testified that he did not

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[2] Mr. Couldry could not articulate any additional details that he gave police at the time he reported the crime. 2 RP 27. His memory may have been affected by the lapse of time between the robbery and trial. However the police may have been able to present evidence at the CrR 3.6 hearing regarding additional details that Mr. Couldry gave them, and that had been recorded in their police reports. That evidence may have been admissible at a pre-trial hearing, whereas it would not have been admissible at trial. ER 802, ER 1101.

necessarily expect that the person who police had detained was the person who robbed him 2 RP 12-14, 24, 137-140. The police dog's indication that the defendant was the person the dog had tracked did not give Mr. Couldry any clue that "this is the man" because it occurred after Mr. Couldry identified the defendant. 2 RP 25. Given these circumstances the defendant fails to show that the show-up procedure used here was impermissibly suggestive.

Application of the Biggers factors further supports the conclusion that a suppression motion would have been unsuccessful. The length of time between the robbery and the show-up was very short. Mr. Couldry was face to face in close enough proximity to the defendant that the defendant was able to strike Mr. Couldry when the robbery occurred. Mr. Couldry paid attention to the defendant's facial features, testifying that given the circumstances "that face just gets implanted in the back of your brain" and that "I never forget a face." 2 RP 27-28.

The defendant primarily relies on discrepancies between Mr. Couldry's original description of the man who robbed him and the defendant's appearance to argue that the show-up was impermissibly suggestive. Mr. Couldry described the defendant as a young white male wearing a tan T-shirt and levis or blue jeans.

Ms. Ray described him wearing "a faded out white T-shirt, black pants too big for him, a black jacket." 1 RP 53; 2 RP 13, 97. The only real difference between Mr. Couldry's original description and the defendant's appearance at the time of the show up was the jacket the defendant had put on after the robbery. The kind of clothing he wore underneath the jacket was the same as that described by Mr. Couldry. The possible differences in color may be attributed to Mr. Couldry's colorblindness. But that distinction alone is not enough to conclude there was a likelihood of irreparable misidentification when all of the other circumstances are taken into account.

b. Even If There Is a Basis on Which to Conclude the Trial Court Might Have Granted the Suppression Motion, Admission Of the Victim's Identification Of The Defendant Was Harmless.

If the Court concludes the defendant has shown manifest error affecting a constitutional right, the error may nonetheless be harmless. State v. Lynn, 67 Wn. App. 339, 345, 835 P.2d 251 (1992). Constitutional error is harmless if the reviewing court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error. State v. Watt, 160 Wn.2d 626, 644, 160 P.3d 640 (2007). The Court has adopted the "overwhelming untainted evidence" test. Under

that test the court looks only at the untainted evidence to determine if it is so overwhelming that it necessarily leads to a finding of guilt. Id. at 644-645, State v. Guloy, 104 Wn.2d 412, 426, 705 P.2d 1182 (1985), cert denied, 475 U.S. 1020 (1986).

If Mr. Couldry's out of court and in court identification had been excluded, there was still overwhelming evidence that identified the defendant as the robber. Mr. Couldry's testimony about being accosted by a young man who demanded money, assaulted him, and then took his cell phone supports the conclusion that Mr. Couldry was robbed by someone. RCW 9A.56.201; 1 CP 59. Ms. Rundle separately identified the defendant as the person who took Mr. Couldry's phone, and ran off with a young woman. 2 RP 30-36.

Ms. Ray also provided evidence that identified the defendant as the robber. She was with the defendant just before and just after the robbery. She testified the defendant went across the street to talk to an old man. There was no evidence that anyone but Mr. Couldry was in the area. When the defendant came back he told her that he had stolen a phone from the man. He also showed her that he had two phones, whereas before confronting Mr. Couldry he only had one. Later the defendant called Ms. Ray

on a phone on an unidentified phone, when he had previously called her from a number that was identified. Except for a brief separation, they walked together, ending up at 13th street between Broadway and Lombard. 1RP 43-53.

Ms. Rundle described the defendant putting on a jacket and leaving with a young woman, travelling in a particular direction. When police located the defendant and Ms. Ray, they matched Ms. Rundle's description. The K-9 officer described his dog's reliability in tracking suspects. He described the route that the dog tracked from the defendant's last location to the car where the defendant was seated. The route matched the route Ms. Ray described that they had taken. Finally, the defendant admitted being in the park where he was seen with Ms. Ray within the 45 minutes before his detention. 1 RP 58; 2 RP 32-36, 121, 126, 166, 179, 183-191; 3 RP 85.

The defendant argues that error in introduction of Mr. Couldry's out of court and in court identification was not harmless. To support this claim he argues Ms. Rundle did not see a robbery, and Ms. Ray is not credible. BOA at 13-14. However the only challenged testimony was Mr. Couldry's identification of the robber. There is no tenable basis on which to exclude his description of the

robbery. The Court does not review a jury's credibility determinations even in the context of a constitutional harmless error analysis. State v. McDaniel, 155 Wn. App. 829, 877-878, 230 P.3d 245, review denied, 169 Wn.2d 1027 (2010). Accordingly the defendant's arguments that the alleged error in admitting Mr. Couldry's identification of the defendant was not harmless should be rejected.

B. THE DEFENDANT IS NOT ENTITLED TO A NEW TRIAL ON THE BASIS THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

Next the defendant argues that he received ineffective assistance of counsel when his attorney did not move for suppression of the show up. In order to prevail on a claim of ineffective assistance of counsel the defendant must show that his attorney's performance fell below an objective standard of reasonableness and that as a result of that deficiency the defendant was prejudiced at trial. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 647 (1984). Prejudice occurs when there is a reasonable probability that the outcome at trial would have been different. State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). "A reasonable probability is a probability sufficient to undermine confidence in the outcome."

Strickland, 466 U.S. at 694. The Court need not consider both prongs if the defendant fails to establish one of those prongs. In re Crace, 174 Wn.2d 835, 847, 280 P.3d 1102 (2012).

A defendant fails to show prejudice when all of the facts necessary to adjudicate the claim are not in the record on appeal. McFarland, 127 Wn.2d at 333. As discussed in section III.A.2.a the record does not necessarily include all of the evidence that would have been produced at a suppression hearing.

The record also is insufficient to support the defendant's claim that his attorney performed deficiently on the basis that there was no legitimate strategic reason to not move to suppress Mr. Couldry's identification. An attorney does not perform deficiently if his conduct can be characterized as legitimate trial strategy. In re Davis, 152 Wn.2d 647, 758, 101 P.3d 1 (2004), McFarland, 127 Wn.2d at 336. The defendant relies on Mr. Couldry's testimony at trial that "it was hard for me to make a positive identification" to argue that his identifications were insufficiently "reliable to overcome the suggestive identification procedure employed by the police." BOA at 16-18.

Mr. Couldry's single equivocal statement at trial is not sufficient to conclude that trial counsel unreasonably failed to bring

a motion to suppress Mr. Couldry's identification. Mr. Couldry was interviewed by defense counsel shortly before the trial began. 1 RP 27. What counsel was told in that interview is not part of the record. Mr. Couldry also testified that he was certain that he correctly identified the person who robbed him 2 RP 14-15, 25-28. Depending on what Mr. Couldry said in the interview, counsel may have had a reasonable basis on which to believe that he would not win a suppression motion. McFarland, 127 Wn.2d at 337, n.3.

Counsel was also aware that there was other evidence that pointed to the defendant as the robber. Although both the civilian witnesses were reluctant to testify, defense counsel could have reasonably relied on the belief that the State would get them to court. Once at court their testimony alone would have identified the defendant as the robber. Thus, given the record as it exists defense counsel could have reasonably concluded that even a successful motion to suppress Mr. Couldry's identification would not matter in the outcome of the trial when he prepared his trial brief. His failure to raise the issue pretrial therefore would have been a reasonable trial strategy.

Counsel's eleventh hour oral motion to suppress could reasonably be the result of new information from the prosecutor.

During motions in limine the prosecutor stated that he had not personally spoken with Ms. Rundle, and that he did not think that she would appear for trial. The prosecutor also stated that Ms. Ray was reluctant to appear for trial. 1 RP 11. Without either of these witnesses it became more important for the State to be able to introduce Mr. Couldry's identification of the defendant. Similarly, a motion to suppress Mr. Couldry's identification became more significant for the defense. Counsel acted reasonably when he tried to take advantage of this new information by attempting to bring an untimely suppression motion.[3]

C. THE CrR 3.5 CERTIFICATE HAS NOW BEEN FILED. THE DEFENDANT SHOULD BE GIVEN AN OPPORTUINTY TO FILE SUPPLEMENTAL BREIFING IF HE CHOOSES TO DO SO.

The defendant notes that at the time he filed his brief the CrR 3.5 certificate had not been filed with the court. He argues the

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[3] In a footnote the defendant also states that his attorney failed to object to hearsay accounts of Mr. Couldry's identification. BOA at 19, n.5. He does not provide any argument as to why counsel's decision not to object constituted deficient performance or how it prejudiced him. The court should not consider that conduct as a basis for the defendant's ineffective assistance of counsel claim because it is not adequately briefed. Milligan v. Thompson, 110 Wn. App. 628, 635, 42 P.3d 418 (2002).

In any event the portions of the record the defendant relies on do not support a contention that counsel performed deficiently. The first citation to the record involved Ms. Ray's testimony regarding her own observations. It was therefore not hearsay. 1 RP 53-55. Likewise the second citation to the record did not contain hearsay. 2 RP 123-24. The defense attorney did make several objections to hearsay in the third citation to the record. 2 RP 141-43.

remedy is to remand for a hearing in which the court enters the CrR 3.5 findings. BOA at 21-22.

The CrR 3.5 certificate has now been filed with the court. 2 CP __ (sub. 55). The conclusions of law in the certificate track the trial court's oral ruling. 2 RP 88-92. The defendant should be given an opportunity to file supplemental briefing limited to the court's findings and conclusions in that certificate now that it has been filed. Cf. State v. Eaton, 82 Wn. App. 723, 727, 919 P.2d 116 (1996), overruled on other grounds, State v. Frohs, 83 Wn. App. 803, 811, 924 P.2d 384 (1996).

IV. CONCLUSION

For the foregoing reasons the State asks the Court to affirm the defendant's conviction for robbery second degree. The State does not oppose the Court setting a briefing schedule for supplemental briefing related to the trial court's ruling on the

admissibility of the defendant's statements at trial should the defendant decide to raise that issue.

Respectfully submitted on November 19, 2013.

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November 19, 2013

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Re: STATE v. CRUZ R. BLACKSHEAR
COURT OF APPEALS NO. 69912-1-I

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,

Kathleen Webber

KATHLEEN WEBBER
Deputy Prosecuting Attorney

cc: Washington Appellate Project
Appellant's attorney

20th Nov 13

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

THE STATE OF WASHINGTON, Respondent, v. CRUZ R. BLACKSHEAR, Appellant.	No. 69912-1-I AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 20th day of November, 2013, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

WASHINGTON APPELLATE PROJECT
1511 THIRD AVENUE, SUITE 701
SEATTLE, WA 98101

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 20th day of November, 2013.

DIANE K. KREMENICH
Legal Assistant/Appeals Unit