No. 92228-4
Court of Appeals No. 45487-4-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LEOVIGILDO PEREZ GUTTIEREZ, JR.,

Petitioner.

PETITION FOR REVIEW

On review from the Court of Appeals, Division Two,
and the Superior Court of Pierce County

KATHRYN RUSSELL SELK
WSBA No. 23879
Counsel for Petitioner
RUSSELL SELK LAW OFFICE
Post Office Box 31017
Seattle, Washington 98103
(206) 782-3353

TABLE OF CONTENTS

TABLE OF AUTHORITIES

WASHINGTON SUPREME COURT

WASHINGTON COURT OF APPEALS

FEDERAL CASELAW

RULES, STATUTES AND CONSTITUTIONAL PROVISIONS

A. IDENTITY OF PETITIONER

Leovigildo Perez Guttierez, Jr., appellant below, petitions this Court to grant review of a portion of the unpublished decision of the court of appeals designated in section.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b)(1), Petitioner asks this Court to review a portion of the unpublished decision of Division Two of the Court of Appeals, in State v. Perez Guttierez, __ Wn. App. __ (2015 WL 4627868), issued on August 4, 2015, in which the court affirmed in part and reversed in part.[1]

C. ISSUES PRESENTED FOR REVIEW

1. Where the prosecutor repeatedly misstates the law of accomplice liability and tells the jury that they should find Petitioner guilty as an accomplice to the crimes of another under the theory of "in for a penny, in for a pound," is prejudice determined solely by whether there were other uncharged crimes for which the defendant could have been found guilty as an accomplice as Division Two here held or must the reviewing court also examine the impact of the prosecutor's argument on the jury's ability to fairly and impartially decide guilt?

2. In State v. Cronin, 142 Wn.2d 568, 14 P.3d 752 (2000), this Court explicitly condemned the argument that a defendant could be convicted as an accomplice under a theory similar

[1] A copy of the Opinion is filed herewith as Appendix A.

to the idea of "if you are in for a penny, you are in for a pound." Ten years later, the experienced prosecutor in this case used that misstatement of the law of accomplice liability as the theme in both opening and closing argument, also adding in closing, "sometimes when you lie down with dogs, you get fleas" and the prosecutor's opinion that these "metaphors. . .[are] what we are dealing with in this case."

Did the court of appeals err in failing to find the misconduct so flagrant and ill-intentioned that it compelled reversal despite counsel's ineffective failure to object and is where the experienced prosecutor made a deliberate decision to misstate the crucial law as a "theme" of the case and the evidence against the defendant was so thin that the jury hung on some claims and the court of appeals found one conviction completely unsupported by sufficient evidence?

3. In State v. Allen, 182 Wn.2d 364, 341 P.3d 268 (2015), this Court held that Division Two had used the wrong inquiry when deciding that a Pierce County prosecutor's misconduct in misstating the law of accomplice liability and the prosecutor's burden of proof did not compel reversal, because the lower appellate court had affirmed based on the belief that the evidence was sufficient to support the conviction.

Should review also be granted to address whether Division Two similarly used the wrong inquiry here, because the issue of whether the proper inquiry is used when there is a misstatement of the burden of proof and the law of accomplice liability is an issue of continuing public importance upon which this Court should rule and because the same prosecutor's office as in Allen engaged in similar misconduct on the law of the prosecutor's burden of accomplice liability, thus indicating that further clarity on this issue is crucial?

D. STATEMENT OF THE CASE

1. Procedural facts

Petitioner Leovigildo Perez Gutierrez, Jr., was charged by corrected amended information in Pierce County superior court with three counts of second-degree identity theft, two counts of forgery and one count of second-degree possession of stolen property. CP 59-61; RCW 9.35.020(3), RCW 9A.56.140(1), RCW 9A.56.150(1)(c), RCW 9A.60.020(1)(a)(b). The jury could not agree on one of the second-degree identity theft counts and one of the counts of forgery but convicted of two counts of second-degree identity theft, one count of forgery and one count of possession of stolen property, with a mistrial declared on the other two counts. CP 103-108. After standard-range sentences were imposed, Guttierez, Jr., appealed. See CP 109-21, 125.[2] On August 4, 2015, Division Two of the court of appeals affirmed in part and reversed in part. See App. A. This Petition follows.

2. Overview of facts relating to incident

In early February, 2013, a man named Jimmy Visario went into a "Checkmate" check-cashing store to get a "payday" loan. RP 289-92. A

[2]References to the verbatim report of proceedings are explained in Appellant's Opening Brief ("AOB") at 2 n. 1.

clerk there, Jeannette Abdon, called his bank and verified his identification and his job. RP 289-90. A few days later, he came in to pay off the payday loan and cash a check, but the check he gave to Abdon had a different company name on it, Valley Medical Center (VMC), so she told Visario she would need to call and verify it and he said it was fine. RP 292-93. An employee at VMC testified that she had checked their database, Visario was not listed as an employee and the check in question had been issued to Mary Franklin, a nurse. RP 274-76. The nurse would later testify that she did not know Visario and that her paycheck had not arrived in the mailbox the previous month. RP 267-68. Abdon told Visario that she had to call police, and Visario seemed nervous but said everything was "fine." RP 293-94.

Abdon still had Visario's identification and the man with him, Leovigildo Perez Guttierez, Jr., got upset and asked for Abdon to return it, but she told him to calm down and that it did not involve him. RP 294-95. When police arrived, they arrested Visario and "detained" Perez Guttierez, Jr., trying to search him and handcuffing him when he seemed "reluctant" to let that happen. RP 319-22, 368-73. He was searched and was found to have a billing statement in Visario's name, a partially filled-out money order in his own name and an Alaska Airlines Visa card in the name of

Wilbur Bown. RP 278, 364-65. Bowen testified later that he was expecting a new card in the mail, it had not arrived, he had another one issued and there were no charges on the missing card as far as he knew. RP 281-85.

There was a car outside which Abdon thought was associated with the two men, but those people were questioned and officers decided not to arrest them based on what those people said they knew. RP 199-200, 226-34. Visario was the registered owner of the vehicle and, in the center console of the front seat, officers found a brown vinyl envelope which included a valid check drawn on an account belonging to Visario, a check for $406 which appeared to have had the payee erased and Visario's name added, and another check for $30 with the payer information erased. RP 242-46. There were several credit card applications, one of which was filled out in the name "Vickie D. Friend" and had a date of birth and social security number on it, and a mailing address which an officer said was the address that was listed on Perez Guttierez, Jr.'s driver's "status" by the time of trial. RP 249. Vickie Friend testified that it was her name and social security on the application but the wrong phone number and address, and that no account had ever been opened or charges made on her accounts or anything similar. RP 312-22.

The document folder could easily have been reached by the driver, passenger or anyone in the back seat of the car. RP 240. The state never tested the inside of the pouch although it would have been an "ideal" surface for fingerprints. RP 240, 265.

Perez Guttierrez, Jr., was convicted of one count of second-degree identity theft and one count of forgery for Visario's efforts to present and cash the check, and a count of second-degree possession of stolen property and a count of second-degree identity theft for the Bowen credit card. CP 59-61. Jurors could not agree on guilt for the forgery and identity theft charges which were based on the credit application for Friend, found in the pouch in the car, so a mistrial was declared for those counts. CP 59-61, 103-108.

3. Facts relevant to issues on review

In opening argument, the prosecutor set the tone for the trial, telling the jury that accomplice liability encompassed *all* crimes committed by the principal, declaring:

> May it please the Court, counsel, members of the jury. **If you are in for a penny, you are in for a pound. Sometimes when you lie down with dogs, you get fleas**. This is a case about two men who were acting in concert on February 7, 2013, to commit fraud. Only one of those men, the defendant, Mr. Gutierrez,[Jr.,] is on trial.

> This case essentially comes down to holding him accountable for his own actions for crimes that day and for his complicity in the actions of his friend, Jimmy Visario.

RP 169 (emphasis added). The prosecutor returned to this theme in closing argument, reminding the jury:

> At the outset of this case, I told you that **when you are in for a penny, you are in for a pound,** and sometimes when you lie down with dogs, you get fleas.
>
> And the reason I use those metaphors **is because that's what we are dealing with in this case.**

RP 406 (emphasis added). Counsel sat mute while these arguments occurred. RP 169-70, 406-407.

In the court of appeals, Division Two, Perez Guttierez, Jr., argued, *inter alia*, that there was insufficient evidence to prove that he was guilty as an accomplice to Visario's crimes, because the prosecution had not proved the required "knowledge," and that the prosecutor's repeated misstatements of the law on the burden of proof for accomplice liability had led to the convictions. Brief of Appellant ("BOA") at 1-13. He also argued that counsel was prejudicially ineffective for failing to object or attempt to address that serious, prejudicial misconduct. BOA at 1-13.

Division Two reversed the second-degree identity theft count for the possession of the Bowen card, but affirmed all other counts. App. A at

1-14. In doing so, Division Two first held that a jury could "reasonably infer" that Perez Guttierez, Jr. had the required "knowledge" to prove him guilty as an accomplice for Visario's crimes, based upon the evidence found in the *car*. App. A at 7-8. Regarding the misconduct, the court of appeals agreed that the prosecutor had committed misconduct and misstated the crucial law on accomplice liability. App. A at 8-11. More specifically, the court held that the prosecutor had improperly "invited the jury to find accomplice liability based on association or presence alone," and "also invited the jury to find liability based on Guttierez' [sp] knowledge that his actions would promote any crime," not just one for which he had knowledge. App. A at 12-13.

But the court did not reverse, saying it "failed to see how" the prosecutor's arguments could have prejudiced Mr. Perez Guttierez, Jr., because there was no evidence they could have convicted him as an accomplice of uncharged crimes. App. A at 13. And the court found that, while the prejudice caused by the misconduct could have been cured by instruction, counsel was not ineffective for failing to seek such a cure, because there was no "prejudice" caused by the improper arguments. App. A at 14. Again, the court of appeals relied on its belief that the only "prejudice" involved was whether Mr. Perez Guttierez, Jr., had been

convicted as an accomplice to uncharged crimes. App. A at 14.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

WHEN A PROSECUTOR REPEATEDLY TELLS THE JURY THAT THEY SHOULD FIND GUILT BASED ON THE THEORY THAT ACCOMPLICE LIABILITY MEANS "IN FOR A PENNY, IN FOR A POUND," THE REVIEWING COURT MUST LOOK NOT ONLY AT WHETHER THERE WAS A POSSIBILITY OF CONVICTION AS AN ACCOMPLICE TO UNCHARGED CRIMES BUT ALSO WHETHER THE COMPLETELY IMPROPER ARGUMENT CAUSED OTHER HARM

Both the state and federal constitutions guarantee the accused in a criminal case the right to a fair trial before an impartial jury. See Taylor v. Louisiana, 419 U.S. 522, 95 S. Ct. 692, 42 L. Ed. 2d 690 (1975); State v. Davis, 141 Wn.2d 798, 824, 10 P.3d 977 (2000); Sixth Amend.; Fourteenth Amend.; Article I, § 3; Article I, § 22. Further, because of their status as "quasi-judicial" officers, prosecutors have special duties not imposed on other attorneys, such as the duty to seek justice instead of acting as a "heated partisan" by trying to gain conviction at all costs. See State v. Charlton, 90 Wn.2d 657, 664-65, 585 P.2d 142 (1978); State v. Stith, 71 Wn. App. 14, 18, 856 P.2d 415 (1993); State v. Huson, 73 Wn.2d 660, 662, 440 P.2d 192 (1968), cert. denied, 393 U.S. 1096 (1969). When a prosecutor fails in this duty, he not only deprives the defendant's of the due process right to a fair trial but also denigrates the integrity of the

prosecutor's role. Charlton, 90 Wn.2d at 664; State v. Suarez-Bravo, 72 Wn. App. 359, 367, 864 P.2d 426 (1994).

In this case, the misconduct engaged in by the Pierce County prosecutor has been repeatedly condemned in this state and a prejudicial misstatement of the law. It is serious misconduct for a public prosecutor, with all the weight of his office behind him, to mislead the jury as to the relevant law, especially in a way which deprives a defendant of his full rights. See, e.g., State v. Davenport, 100 Wn.2d 757, 763, 675 P.2d 1213 (1984).

In Cronin, this Court soundly condemned the "in for a penny, in for a pound" or "in for a dime, in for a dollar" theory of accomplice liability as a misstatement of the law. See Cronin, 142 Wn.2d at 578-79. Further, the Court found that the argument was a misstatement of the prosecution's burden, which required proof, beyond a reasonable doubt, that the accomplice actually intended to facilitate the particular conduct that forms the basis of the charge. See Cronin, 142 Wn.2d at 578-79. The discredited "in for a penny" theory is wrong because it incorrectly suggests that a person who goes along with and agrees to engage in *any* criminal conduct with someone is liable for *all* crimes that person ends up committing, regardless whether there is evidence the first person had

knowledge that their acts would be facilitating such other crimes. Id.

Under Cronin, there can be no question that the repeated "theme" used by the prosecutor here was flagrant, ill-intentioned misconduct at the time the argument was made. Where courts have specifically condemned an argument, it is such misconduct for the prosecutor to nevertheless rely on the argument in making an effort to gain a conviction. See State v. Fleming, 83 Wn. App. 209, 921 P.2d 1076 (1996). Here, the prosecutor made the arguments more than 10 years after they were condemned in Cronin - and they were made by an experienced prosecutor.

The court of appeals properly found this argument to be misconduct. But then it erred in finding the experienced prosecutor's deliberate misstatements of the law of accomplice liability - as a *theme of the entire case* - were not prejudicial, simply because it could not conceive of an uncharged crime committed by Visario that the jury could have convicted Perez Guttierez, Jr., of as an accomplice. App. A at 12-13.

This Court should grant review. Division Two's decision improperly focused on only *one* of the potential harms caused by the deliberate misconduct of this experienced prosecutor. But this ill-intentioned misconduct was clearly an effort to convince the jury to convict Gutierrez, Jr., based something far less than proof beyond a

reasonable doubt of his guilt. The prosecutor was urging the jury to convict Gutierrez, Jr., based on his association with Visario- i.e., "lie down with dogs, you get fleas" and being present when Visario committed his crimes, *even if* the jury did not believe that Gutierrez, Jr., knew about Visario's plan to commit the crimes, because he was guilty of whatever Visario did regardless of Gutierrez, Jr.'s own knowledge or intent - i.e., "in for a penny, in for a pound." By repeatedly telling the jury that Gutierrez, Jr., was "in for a penny, in for a pound," and that he should be found guilty as a result, the prosecutor relieved himself of the full weight of his burden of actually proving that Gutierrez, Jr. was, in fact, an accomplice under the law, instead of based solely upon presence and association. Because there was only presence and association, the result was that the jury convicted based on insufficient evidence.

There is no question that conviction as an accomplice of an uncharged crime is a risk which occurs when the jury is told that they should convict based on association alone, i.e., because the defendant had "lay down with dogs" he was taking the risk of getting fleas and thus was guilty of whatever occurred. That is not, however, the only risk. Where, as here, the jury is told repeatedly that they can convict on the theory of "in for a penny, in for a pound," that also raises the specter of the jury

convicting *even if they do not believe that the defendant had the required knowledge of the specific crimes*, simply because he was present. And that is not the law of accomplice liability. See, Allen, supra It is not only the risk of convicting based on a belief there was knowledge of uncharged crimes but also the risk of convicting based on a belief that just being in the Checkmate while his friend was committing the crimes meant Perez Guttierez, Jr., could be found guilty as an accomplice even if he had *no* knowledge of Visario's crimes at all. Further, because the jury hung on whether it believed Perez Guttierrez, Jr., was guilty as an accomplice based on the items in the car, the misconduct clearly could have affected . . even without knowledge of the specific crimes, the defendant may be found guilty as an accomplice

In Allen, supra, this Court similarly addressed Division Two's use of an improper standard in determining whether misconduct by a Pierce County prosecutor in misstating their burden and the law of accomplice liability. The fact that this case involves the same prosecutor's office , the same kind of misconduct (misstating the law on their burden of proof) and the same area of the law (accomplice liability) is further proof that review should be granted in this case. It is clear that ongoing problems with this area of the law are occurring and these misunderstandings have not been

remedied by this Court's prior declarations. This Court should grant review and, on review, should either find that the misconduct was so flagrant and ill-intentioned that it could not have been cured by instruction or, in the alternative, that counsel's unprofessional failure in failing to object or attempt to mitigate the harm to Mr. Perez Guttierez, Jr., was ineffective assistance, compelling reversal. Both the state and federal constitutions guarantee the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.3d 563 (1996); Sixth. Amend.; Art. I, § 22. Counsel is ineffective despite a strong presumption to the contrary if his conduct falls below an objective standard of reasonableness and prejudiced the defendant. See State v. Studd, 137 Wn.2d 533, 551, 973 P.2d 1049 (1999). Here, given that the bulk of the prosecution's case against Gutierrez, Jr., was based on the theory of accomplice liability, the prosecutor's repeated, evocative misstatements of the requirements for such liability were extremely likely to have a highly prejudicial effect. Yet counsel sat mute, allowing these remarkable, flagrant and ill-intentioned arguments to be made to the jury not only at the beginning of the case but again at the end.

There was insufficient evidence to prove Gutierrez, Jr., was guilty

of Visario's forgery and identity thefts as an accomplice. The prosecutor's misconduct went directly to this issue and cannot be deemed harmless in any way. Further, to the extent the highly improper arguments might have been able to be cured, counsel was ineffective in failing to at least attempt to mitigate the prejudice to his client. This Court should grant review and so hold.

G. CONCLUSION

For the foregoing reasons, this Court should accept review of the decision of Division Two of the court of appeals.

DATED this 3rd day of August, 2015.

Respectfully submitted,

/s/ Kathryn Russell Selk
KATHRYN RUSSELL SELK, No. 23879
Attorney for Petitioner
RUSSELL SELK LAW OFFICE
Post Office Box 31017
Seattle, Washington 98103
(206) 782-3353

CERTIFICATE OF SERVICE BY EFILING/MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Petition for Review to opposing counsel via the upload portal at the Court of Appeals, Division Two, at their official service address, pcpatcecf@co.pierce.wa.us, and petitioner by depositing the same in the United States Mail, first class postage pre-paid, as follows: Mr. Perez Guttierez, Jr., at hsi current address in DOC.

DATED this 3rd day of August, 2015.

/s Kathryn Russell Selk
KATHRYN RUSSELL SELK, No. 23879
Attorney for Petitioner
RUSSELL SELK LAW OFFICE
Post Office Box 31017
Seattle, Washington 98103
(206) 782-3353

RUSSELL SELK LAW OFFICES

September 03, 2015 - 5:00 PM

Transmittal Letter

Document Uploaded: 6-454874-Petition for Review.pdf

Case Name: State v. Gutttierez
Court of Appeals Case Number: 45487-4

Is this a Personal Restraint Petition? Yes ● No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

● Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: K A Russell Selk - Email: karsdroit@aol.com

A copy of this document has been emailed to the following addresses:

pcpatcecf@co.pierce.wa.us

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. LEOVIGILDO PEREZ GUTIERREZ JR., Appellant.	No. 45487-4-II UNPUBLISHED OPINION

BJORGEN, A.C.J. — A jury found Leovigildo Perez Gutierrez Jr. guilty of forgery, second degree possession of stolen property, and two counts of second degree identity theft, based in part on the acts of an alleged accomplice. Gutierrez appeals the convictions and sentence, contending that (1) insufficient evidence supports the convictions, (2) the deputy prosecutor committed flagrant and ill-intentioned misconduct in closing argument, (3) he received ineffective assistance of counsel, and (4) the sentencing court imposed discretionary legal financial obligations (LFOs) without considering Gutierrez's ability to pay them. We reverse the second degree identity theft conviction arising from Gutierrez's possession of a credit card, affirm his other convictions, and remand for resentencing.

FACTS

The charges at issue here arose out of a February 2013 incident at Checkmate, a pay day loan business in Fife. Gutierrez arrived at the Checkmate in a vehicle with Jimmy Visario. Visario approached the teller's window while Gutierrez sat in the waiting area.

Visario presented a check made out by Valley Medical Center and gave the teller his identification. The teller remembered Visario from a previous payday loan transaction, in which

he had claimed to work for a different employer. The teller called Valley Medical Center to verify that it had issued the check to Visario. After "transferring [her] from person to person" for around 10 minutes, the medical center's staff told the teller that Visario did not work there and that the check had actually been issued to a Mary Franklin. 2 Verbatim Report of Proceedings (VRP) at 305.

The teller told Visario she would have to call the police. Gutierrez, who had stood up and approached the window, then became angry and demanded that the teller return Visario's identification, saying that "they didn't want to cash a check with" Checkmate and wished to leave right away. 2 VRP at 294-95, 305. The teller refused to return the identification and called the police.

Fife Police Patrol Commander David Woods and Detectives Jeff Nolta, Michael Malave, and Thomas Gow soon arrived on the scene and arrested Visario and Gutierrez. Gutierrez first tried to pull away from Malave, "and there was like a little wrestle with the cops," 2 VRP at 296, but he became compliant once Malave "put hands on him." 3 VRP at 362. The detectives searched Gutierrez and found in his wallet a credit card issued to a Wilbur Bowen. The detectives also found on Gutierrez's person an insurance billing statement issued to Visario and a Sandra Cardena, as well as a money transfer order partially filled out with Gutierrez's name.

Nolta determined that Visario was the owner or driver of the vehicle involved and obtained his consent to search it. In the center console, in plain view and accessible from any seat in the vehicle, Nolta found a brown vinyl envelope containing "a number of checks and other documents with writing." 2 VRP at 239-40, 255.

The papers in the vinyl envelope included: (1) two apparently valid checks with Visario's account information, (2) a check bearing Credit One Bank's account information with

the payee information erased, and (3) a check bearing North Meridian Contract Collection's account information with the original payee similarly erased and replaced with Visario's name. The envelope also contained (4) an American Express credit card application filled out with the name and personal information of a Vickie Friend, except a different phone number had been entered and the original mailing address had been crossed out and replaced with the address appearing on Gutierrez's driver's license.

PROCEDURAL HISTORY

The State charged Gutierrez with (1) one count of second degree identity theft based on possessing Franklin's check issued from Valley Medical Center, (2) one count of forgery based on Visario's presentation of the Valley Medical Center check at Checkmate, (3) one count of second degree identity theft based on possessing Friend's personal information, (4) one count of forgery based on the Friend credit card application, (5) one count of second degree possession of stolen property based on possessing Bowen's credit card, and (6) one count of second degree identity theft based on the Bowen credit card. The information alleged that the crimes were "based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan." Clerk's Papers (CP) at 59-61.

At trial, the State presented the testimony of an accountant from Valley Medical Center, the Checkmate teller, and the Fife police officers involved, who testified to the facts set forth above. Friend, Bowen, and Franklin also testified, stating that they did not know Visario or Gutierrez and had not given either man the items at issue or permission to use their personal information. Franklin testified that, prior to this incident, she ordinarily received her paychecks in the mail, but that the check at issue never arrived. Bowen recalled ordering a replacement credit card about a year prior that never arrived, requiring him to cancel it and have a new one

issued, but did not recall discovering any unauthorized charges. Friend did not know of any American Express credit card having been issued to her with the information on the application found in the vinyl envelope.

Gutierrez did not testify. The defense rested without presenting any evidence.

The deputy prosecutor began his closing argument as he had begun his opening statement, with the sayings "when you are in for a penny, you are in for a pound" and "sometimes when you lie down with dogs, you get fleas." 3 VRP at 406. He then argued that Visario and Gutierrez "were working together that day" and "because of that, they become responsible for each other's criminal activities." 3 VRP at 407.

The prosecutor then went on to explain the law of accomplice liability using the court's instruction:

> The instruction explains that a person is an accomplice in the commission of a crime if with the knowledge that it will promote or facilitate the commission of the crime he or she either solicits, commands, encourages or requests another person to commit the crime, or two, aids or agrees to aid another person in planning on [sic] committing the crime.

3 VRP at 407. Gutierrez did not object to this portion of the prosecutor's argument or to the jury instruction that the argument largely tracked.

The jury returned guilty verdicts on the counts involving the Valley Medical Center check and Bowen's credit card, but did not reach unanimous agreement on the two counts, forgery and identity theft, involving the American Express application. The court entered convictions on the jury's verdicts, imposing concurrent sentences resulting in 12 months' confinement and 12 months' community supervision.

As part of the sentence, the court imposed LFOs, including $1,500 in "Court-Appointed Attorney Fees and Defense Costs." CP at 113. Other than a preprinted finding in the judgment

and sentence, no evidence in the record suggests that the court considered Gutierrez's present or future ability to pay, but he did not object to this finding in the sentencing proceeding or to the imposition of the LFOs. Gutierrez appeals.

ANALYSIS

Because Gutierrez's challenge to the sufficiency of the evidence, if successful, could obviate the need to consider other claims, we begin there, then turn to his claims of prosecutorial misconduct and ineffective assistance of counsel. Because we remand for resentencing, we decline to address Gutierrez's claim that the trial court erred in failing to consider his ability to pay certain LFOs.

I. SUFFICIENCY OF THE EVIDENCE

Gutierrez contends that insufficient evidence supports the forgery and identity theft convictions based on the Valley Medical Center check, because the State failed to establish facts from which the jury could properly hold him liable as an accomplice. He further contends that insufficient evidence supports the identity theft and possession of stolen property convictions based on the Bowen credit card, because the State presented no evidence of the requisite mens rea for the crimes other than Gutierrez's possession of the card itself.

After setting forth the standard of review, we address Gutierrez's claim concerning accomplice liability for the check charges. We then turn to his claim regarding the criminal charges based on the Bowen credit card.

A. Standard of Review

In evaluating the sufficiency of the evidence, we review the record in the light most favorable to the State. *State v. Ehrhardt*, 167 Wn. App. 934, 943, 276 P.3d 332 (2012) (citing *State v. Drum*, 168 Wn.2d 23, 34, 225 P.3d 237 (2010)). We ask "'whether any rational fact

finder could have found the essential elements of the crime beyond a reasonable doubt.'" *Drum*, 168 Wn.2d at 34-35 (quoting *State v. Wentz*, 149 Wn.2d 342, 347, 68 P.3d 282 (2003)).

An appellant who claims that insufficient evidence supports his conviction "admits the truth of the State's evidence and all reasonable inferences therefrom." *Ehrhardt*, 167 Wn. App. at 943 (citing *Drum*, 168 Wn.2d at 35). Where "the inferences and underlying evidence are strong enough to permit a rational fact finder to find guilt beyond a reasonable doubt, a conviction may be properly based on 'pyramiding inferences.'" *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999) (quoting 1 CLIFFORD S. FISHMAN, JONES ON EVIDENCE: CIVIL AND CRIMINAL § 5.17, at 450 (7th ed. 1992)). Inferences drawn from circumstantial evidence "must be reasonable and cannot be based on speculation." *State v. Vasquez*, 178 Wn.2d 1, 16, 309 P.3d 318 (2013) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

B. Accomplice Liability for Visario's Attempt To Cash the Check

As relevant, the accomplice liability statute provides that "[a] person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable," namely, "when . . . [h]e or she is an accomplice of such other person in the commission of the crime." RCW 9A.08.020(1), (2)(c). The statute specifies that

> [a] person is an accomplice of another person in the commission of a crime if:
> (a) With knowledge that it will promote or facilitate the commission of the crime, he or she:
> (i) Solicits, commands, encourages, or requests such other person to commit it; or
> (ii) Aids or agrees to aid such other person in planning or committing it.

RCW 9A.08.020(3). The trial court instructed the jury accordingly.

Our Supreme Court has made clear that, to be liable as an accomplice, the defendant "must have acted with knowledge that he or she was promoting or facilitating *the* crime for

which [he] was eventually charged." *State v. Cronin*, 142 Wn.2d 568, 579, 14 P.3d 752 (2000). Specifically, the defendant must "'have the purpose to promote or facilitate the particular conduct that forms the basis for the charge'" and "'will not be liable for conduct that does not fall within this purpose.'" *State v. Roberts*, 142 Wn.2d 471, 510-11, 14 P.3d 713 (2000) (quoting MODEL PENAL CODE § 2.06 cmt. 6(b) (1985)) (emphasis omitted).

Thus, "one's presence at the commission of a crime, even coupled with a knowledge that one's presence would aid in the commission of the crime, will not subject an accused to accomplice liability." *State v. Rotunno*, 95 Wn.2d 931, 933, 631 P.2d 951 (1981). Instead, for accomplice liability to attach, the evidence must show that the merely present defendant at least stood "ready to assist." *Rotunno*, 95 Wn.2d at 933 (internal quotation marks omitted).

Gutierrez contends that the evidence showed only that he was present at the Checkmate while Visario presented the check and that he sought the return of Visario's identification when the teller said she would call the police. He points out that the evidence is equally consistent with his simply having become impatient with the delay, and that, because Visario drove the car in which the men arrived, he could quite innocently have demanded the return of the identification so that he could go about his business. From this he argues that the State failed to prove that he knew about Visario's criminal aim, let alone that he had the purpose to promote or facilitate it or stood ready to assist.

The jury could reasonably infer from the evidence that Gutierrez not only stood ready to assist, but that he actually did assist by angrily demanding the return of Visario's identification once the teller said she would call police. Thus, the only issue is whether the jury could properly infer from the evidence that Gutierrez knew Visario was presenting a forged check.

Gutierrez's anger itself when the teller mentioned the police suggests that he knew Visario's purpose. Gutierrez's initial resistance to Malave's effort to detain him also tends to suggest he knew that Visario was doing something illegal, albeit only weakly: an innocent person could also reasonably take umbrage at being arrested.

However, in light of the discovery of the incriminating documents inside the vehicle in which both men arrived, Gutierrez's conduct in the Checkmate gives rise to a much stronger inference that he knew Visario was presenting an altered check. Viewing the evidence and drawing all reasonable inferences favorably to the State, the jury could properly have inferred beyond a reasonable doubt that Gutierrez knew Visario was engaging in the criminal conduct that gave rise to the identity theft and forgery charges involving the Valley Medical Center check. Because Gutierrez did not just passively stand by, but stood ready and actually sought to assist Visario, we therefore hold that sufficient evidence supports his convictions as an accomplice to the identity theft and forgery charges based on Visario's presentation of the check.

C. Evidence of Knowledge and Intent as to the Charges Based on the Credit Card

Gutierrez was convicted of one count of second degree possession of stolen property and one count of second degree identity theft based on his possession of the Bowen credit card. The criminal code defines possession of stolen property in relevant part as "knowingly to receive, retain, [or] possess . . . stolen property knowing that it has been stolen and to withhold or appropriate the same." RCW 9A.56.140(1). The identity theft statute requires the State to prove that the defendant "knowingly obtain[ed], possess[ed], use[ed], or transfer[ed] a means of identification or financial information of another person, living or dead, with the intent to commit, or to aid or abet, any crime." RCW 9.35.020(1).

As to the possession of stolen property charge based on Bowen's credit card, Gutierrez contends the State presented no evidence that he knew the card had been stolen other than the fact of his possession itself, which is insufficient as a matter of law. As to the identity theft charge, he argues that the State presented insufficient evidence not only to show that he knew it was stolen, but that he intended to commit, aid, or abet a crime. We address each claim in turn.

1. Knowledge That the Card Was Stolen

Our Supreme Court has held that, where a criminal statute requires knowledge that property is stolen, "bare possession of recently stolen property alone is not sufficient to justify a conviction." *State v. Couet*, 71 Wn.2d 773, 775, 430 P.2d 974 (1967). The court noted, however, that "[w]hen a person is found in possession of recently stolen property, slight corroborative evidence of other inculpatory circumstances tending to show his guilt will support a conviction." *Couet*, 71 Wn.2d at 776 (internal quotation marks omitted).

The circumstances here give rise to a reasonable inference that someone stole the card from Bowen's mailbox less than a year before police discovered it in Gutierrez's wallet. As shown above, the jury could properly have inferred that Gutierrez acted as an accomplice to the crimes involving the Valley Medical Center check, which someone apparently took from Franklin's mailbox. The evidence also showed that the vinyl envelope contained similarly altered checks, one showing Visario as payee, and a suspicious credit card application containing Friend's personal information but Gutierrez's address.

This provides at least "slight corroborative evidence" that Gutierrez knew that the Bowen credit card was stolen. *Couet*, 71 Wn.2d at 776 (internal quotation marks omitted). Thus, under *Couet* sufficient evidence supports the inference that Gutierrez knew that the card was stolen.

With that, Gutierrez's challenge to the sufficiency of the evidence supporting his conviction for possession of stolen property must fail.

2. Intent to Commit, Aid, or Abet a Crime for Purposes of Identity Theft

Our Supreme Court recently discussed the degree of proof necessary to infer criminal intent in the context of a challenge to the sufficiency of the evidence supporting a forgery conviction:

> When intent is an element of the crime, "intent to commit a crime may be inferred if the defendant's conduct and surrounding facts and circumstances plainly indicate such an intent as a matter of logical probability." *State v. Woods*, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991). Though intent is typically proved through circumstantial evidence, "[i]ntent may not be inferred from evidence that is 'patently equivocal'." [*Woods*, 63 Wn. App.] at 592 (quoting *State v. Bergeron*, 105 Wn.2d 1, 20, 711 P.2d 1000 (1985); *State v. Couch*, 44 Wn. App. 26, 32, 720 P.2d 1387 (1986)).

Vasquez, 178 Wn.2d at 8. The *Vasquez* court held that Vasquez's possession of forged identification cards, together with his statement to a security guard that the cards were his and evidence that Vasquez held a job, was insufficient to support the necessary inference of intent to injure or defraud. 178 Wn.2d at 14-18.

In reaching this conclusion, the *Vasquez* court relied in part on the New York Court of Appeals' decision in *People v. Bailey*, 13 N.Y.3d 67, 915 N.E.2d 611 (2009), which is also instructive here. *Vasquez*, 178 Wn.2d at 10. Police arrested Bailey after observing him attempt to pickpocket restaurant patrons, searched him, and found money that Bailey admitted knowing was counterfeit. *Bailey*, 13 N.Y.3d at 69. The trial court convicted Bailey of first degree criminal possession of a forged instrument, requiring proof of "'intent to defraud, deceive or injure another.'" *Bailey*, 13 N.Y.3d at 69-70 (quoting MCKINNEY'S PENAL LAW § 170.30). New York's intermediate appellate court affirmed,

> reason[ing] that the totality of the evidence, including defendant's statement to the police evincing a consciousness of guilt, and the lack of any reason for the defendant to be carrying counterfeit bills in a shopping district other than to pass them, supported the inference that he possessed the bills with the requisite intent.

Bailey, 13 N.Y.3d at 70.

The Court of Appeals reversed, rejecting the argument that "the requisite intent for possessing a forged instrument can be drawn from defendant's presence in a shopping district, his possession of counterfeit bills, and his larcenous intent." *Bailey*, 13 N.Y.3d at 72. The court relied on the principle that "the intent to commit a crime must be specific to the crime charged." *Bailey*, 13 N.Y.3d at 72. That is, Bailey's attempts to pick pockets did not adequately support the inference that he intended to pass counterfeit currency, even though he knew the bills were fake and possessed them in a retail shopping area. *Bailey*, 13 N.Y.3d at 72.

Similarly, Gutierrez's conduct at the Checkmate, together with the surrounding facts and circumstances, does not plainly indicate intent to commit, aid, or abet, a crime involving the Bowen credit card "as a matter of logical probability." *Vasquez*, 178 Wn.2d at 8 (internal quotation marks omitted). In light of *Vasquez* and *Bailey*, Gutierrez's apparent intent to help Visario pass a forged check does not properly support the inference that he intended to commit or abet a crime involving Bowen's credit card, even though the jury could properly infer he knew it was stolen. Even when viewed in the light most favorable to the State, the evidence supporting the necessary inference remains "patently equivocal." *Vasquez*, 178 Wn.2d at 8 (internal quotations marks omitted). Consequently, insufficient evidence supports the identity theft conviction based on the Bowen credit card.

II. PROSECUTORIAL MISCONDUCT

Gutierrez contends that the prosecutor committed flagrant and ill-intentioned misconduct by using the sayings "when you are in for a penny, you are in for a pound" and "sometimes when

you lie down with dogs, you get fleas" in his opening statement and closing argument. Br. of Appellant at 10-14. Specifically, Gutierrez argues that (1) these remarks misstated the law and invited the jury to decide the case on an improper basis, (2) case law clearly proscribed such statements at the time of his trial, and (3) no instruction could have cured the resulting prejudice. In the alternative, Gutierrez argues that his trial counsel rendered ineffective assistance by not objecting to these remarks.

A. The Remarks Were Improper, but Were Not Prejudicial and Could Have Been Cured by an Instruction

To prevail on a prosecutorial misconduct claim, a defendant must show that the prosecutor's conduct was both improper and prejudicial "in the context of the record and all of the circumstances of the trial." *In re Pers. Restraint of Glasmann*, 175 Wn.2d 696, 704, 286 P.3d 673 (2012), *petition for cert. filed* July 8, 2015. To establish prejudice, the defendant must "show a substantial likelihood that the misconduct affected the jury verdict." *Glasmann*, 175 Wn.2d at 704. A defendant who failed to object at trial must also establish "that the misconduct was so flagrant and ill intentioned that an instruction would not have cured the prejudice." *Glasmann*, 175 Wn.2d at 704. Prosecutors enjoy "wide latitude to argue reasonable inferences from the evidence." *Glasmann*, 175 Wn.2d at 704. A prosecutor commits misconduct, however, by misstating the law. *State v. Fleming*, 83 Wn. App. 209, 213, 921 P.2d 1076 (1996).

Gutierrez relies primarily on *Cronin*, 142 Wn.2d at 577, where the prosecutor used the expression "in for a penny, in for a pound," and our Supreme Court ultimately reversed. The Court, however, reversed Cronin's murder conviction because the trial court had instructed the jury that it could convict "if it found that he knew he promoted or facilitated the commission of *a crime*," thus relieving the State of its burden to prove the essential element that he "acted with

knowledge that his or her conduct would promote or facilitate *the* crime" for which he was charged. *Cronin*, 142 Wn.2d at 578-79, 582 (internal quotation marks omitted).

Unlike *Cronin*, this case does not involve an erroneous jury instruction. The challenged statements by the prosecutor, though, invited the jury to find accomplice liability based on association or presence alone, a standard rejected by *Rotunno*, 95 Wn.2d at 933. The statements also invited the jury to find liability based on Gutierrez's knowledge that his actions would promote any crime, a standard rejected by *Cronin*. Thus, the prosecutor's remarks misstated the law and constituted misconduct.

However, even if the prosecutor's argument constituted misconduct, we fail to see how the improper remarks could have prejudiced Gutierrez. The charged offenses comprised the only criminal conduct he could have intended to aid Visario in committing under the evidence presented. Nothing in the record suggested he may have believed that Visario only planned to commit some lesser offense. Thus, any suggestion that Gutierrez's liability could rest on knowledge he was facilitating any crime would have no practical effect.

Further, although the deputy prosecutor began by suggesting that Visario and Gutierrez "bec[a]me responsible for each other's criminal activities" merely because they "were working together that day," he immediately proceeded to properly explain the law of accomplice liability using the trial court's instruction. 3 VRP at 407. That instruction accurately informed the jury that "[a] person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he . . . aids or agrees to aid another person in planning or committing the crime." CP at 77; *see Cronin*, 142 Wn.2d at 579.

Most importantly, our Supreme Court has held that a curative instruction could remedy the prejudice flowing even from a prosecutor's serious misstatement of the law. *E.g.*, *State v.*

Emery, 174 Wn.2d 741, 764, 278 P.3d 653 (2012); *State v. Warren*, 165 Wn.2d 17, 28, 195 P.3d 1940 (2008). As noted, because Gutierrez failed to object at trial, he must also establish "that the misconduct was so flagrant and ill intentioned that an instruction would not have cured the prejudice." *Glasmann*, 175 Wn.2d at 704. This he cannot do. Therefore, his prosecutorial misconduct claim fails.

B. No Ineffective Assistance of Counsel

Gutierrez also contends that his attorney's failure to object to the prosecutor's remarks amounted to ineffective assistance because "the bulk of the prosecution's case . . . was based on the theory of accomplice liability," and therefore "the prosecutor's repeated evocative misstatements of the requirements for such liability were extremely likely to have a highly prejudicial effect." Br. of Appellant at 14. We disagree.

Claims of ineffective assistance of counsel present mixed questions of law and fact that we review de novo. *State v. A.N.J.*, 168 Wn.2d 91, 109, 225 P.3d 956 (2010). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). A defendant who raises an ineffective assistance claim "bears the burden of showing that (1) his counsel's performance fell below an objective standard of reasonableness and, if so, (2) that counsel's poor work prejudiced him." *A.N.J.*, 168 Wn.2d at 109.

With respect to the first prong, "[t]here is a strong presumption that defense counsel's conduct is not deficient," but the defendant rebuts that presumption if "no conceivable legitimate tactic explain[s] counsel's performance." *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). To meet the prejudice prong, a defendant must show, "based on the record developed

in the trial court, that the result of the proceeding would have been different but for counsel's deficient representation." *State v. McFarland*, 127 Wn.2d 322, 337, 899 P.2d 1251 (1995).

As discussed above, Gutierrez's claim that the prosecutor's remarks caused any prejudice appears tenuous at best. He does not explain what other crime the jury may have concluded he intended to facilitate in finding accomplice liability, nor does he rebut the presumption that the jury followed the court's instruction to disregard remarks that conflicted with the law as explained by the court. Given that the prosecutor followed the remarks with an accurate statement of the law, it is difficult to see what more an objection and request for a curative instruction could have accomplished.

Under these circumstances, furthermore, defense counsel's decision not to object could conceivably have resulted from legitimate tactical considerations. Indeed, the record shows that defense counsel sought in his own closing argument to use the improper remarks to undermine the prosecutor's credibility with the jury, pointing out that they did not comport with the court's instructions.

Gutierrez can neither rebut the presumption of competent performance nor demonstrate prejudice. His claim of ineffective assistance fails.

CONCLUSION

We reverse the second degree identity theft conviction arising from Gutierrez's possession of the Bowen credit card, affirm his other convictions, and remand for resentencing. Because we remand for resentencing, we decline to address Gutierrez's claim regarding the imposition of LFOs, except to note that the sentencing court must consider his ability to pay on

remand consistently with our Supreme Court's recent opinion in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015) (affirming Court of Appeals' exercise of discretion to refuse to address issue raised for the first time on appeal, but exercising its own discretion to reach the issue and remand to trial court for further proceedings).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Bjorgen, A.C.J.

BJORGEN, A.C.J.

We concur:

J.

LEE, J.

Sutton, J.

SUTTON, J.

RUSSELL SELK LAW OFFICES

September 03, 2015 - 5:01 PM

Transmittal Letter

Document Uploaded: 6-454874-perezg.opinion.pdf

Case Name: State v. Gutttierez
Court of Appeals Case Number: 45487-4

Is this a Personal Restraint Petition? Yes ● No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

● Other: Appendix A _____

Comments:

Appendix A to petition

Sender Name: K A Russell Selk - Email: karsdroit@aol.com

A copy of this document has been emailed to the following addresses:

pcpatcecf@co.pierce.wa.us

Office DEPOT OfficeMax

OFFICE DEPOT STORE 956
4900 25TH AVE. N.E.
SEATTLE WA 98105
(206) 527-3220
Logan Brown - Store Manager

08/29/2015 15.2.5 3:55 PM
STR 956 REG4 TRN 8826 EMP 758472

********** REPRINT **********
Reprint Transaction # 0956082915004882?

SALE

Product ID	Description	Total
162804	LPTP,i7347-255	699.99SS
	Instant Savings	-230.00
	You Pay	**469.99**SS
405758	2YRADHREPAIR10	159 99 SS
	PPP: 552091	
	Use your PPP Card to register online at www.officedepotservices.com or call 866-540-0013	
	PPP ContractI 885026443595	
667863	DR,EXT,8X,SLIM	49.99SS
	Instant Savings	-20.00
	You Pay	**29.99**SS
1378828	OMX Filler Pap	
	4 @ 1.99	7.96
	Instant Savings	-4.96
	You Pay	**3.00**SS
224744	RECYCLING PROG	
	6 @ 0.01	0.06
	You Pay	**0.00**SS

Office supplies (excluding Office Depot® Brand products), with their Original Receipt and in their original, unopened condition, may be exchanged or returned for a full refund within 30 days of purchase.

Ink & Toner, including Office Depot® Brand and all national brands, with their Original Receipt and in their original, unopened condition, may be exchanged or returned with a full refund within 30 days of purchase.

Technology and consumer electronic products may be exchanged or returned with their Original Receipt and in their original packaging with UPC code within 14 days of purchase. A 15% Restocking Fee will be applied if any components are missing. Opened software may be exchanged for the same item only. Please remember to remove all personal data from exchanged/returned products. Office Depot is not responsible for any personal data left in or on an exchanged/returned product.

Furniture may only be exchanged or returned with Original Receipt and in new condition unassembled, in original packaging with UPC code within 14 days of purchase.

Refund Method for Returns with Original Receipt:

If you paid with:	Your refund will be:
Cash or check written more than 10 days ago	Cash
Check less than 10 days ago or Office Depot® Gift Card	Office Depot® Merchandise Card
Credit Card or Debit Card	Same Card

Refund Methods for Returns without an Original Receipt

All ink, toner and supplies being returned without an Original Receipt require valid government identification. Items still active in our computer system will be refunded in the form of an Office Depot® Merchandise Card in an amount equal to the lowest retail price you will receive a full refund.

RUSSELL SELK LAW OFFICES

September 03, 2015 - 10:29 PM

Transmittal Letter

Document Uploaded: 6-454874-appc.pdf

Case Name: State v. Perez Guttierez, Jr.
Court of Appeals Case Number: 45487-4

Is this a Personal Restraint Petition? Yes ● No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

● Other: Appendix C to motion _____

Comments:

No Comments were entered.

Sender Name: K A Russell Selk - Email: karsdroit@aol.com

A copy of this document has been emailed to the following addresses:

pcpatcecf@co.pierce.wa.us