

Treated as a Petition  
for Review

96008-9

COA No. 76407-1-T

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

STATE OF WASHINGTON  
Respondent

v.

TAN VAN VO,  
Appellant.

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

STATE OF WASHINGTON  
DIVISION ONE  
2018 AUG -6 PM 12:18

VO TAN #752059

Filing on his behalf

CRCC

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2d 530, 92 S.Ct. 2006 (1972)

Faretta v. California, 422 U.S. 806, 819, 45 S.  
ct. 2525, 45 L. Ed. 2d 562 (1975)

Bellevue v. Acree, 37 Wn. App. 57 (1984)

Adams v. United States ex rel. McCann  
317 U.S. [269, 279, 87 L. Ed 268, 63 S. Ct.  
236, 143 A.L.R. 435 (1942)

## ASSIGNMENT OF ERROR

1. The trial court Failed to enter Mr. Vo's findings and conclusions of Law under CrR 6.1(d), Violating his due Process.

2. The state did not prove beyond a reasonable doubt that Mr. Vo entered the building unlawfully.

3. The Court Violated Mr. Vo's Constitutional Rights to Self Representation by misusing a interpreter and the lost translation was never admitted on record.

## ADDITIONAL Grounds 1

THE TRIAL COURT HAS FAILED TO ENTER FINDINGS AND CONCLUSIONS OF LAW UNDER CrR 6.1(d) VIOLATING DUE PROCESS

Mr. Vo waived his right to a jury trial and was tried before a Bench Trial. SRP 189-202. As of date, no findings of fact and conclusions of law have been

1-STATEMENT OF ADDITIONAL GROUNDS

1 entered or provided to Mr. Vo. Findings  
2 and conclusions are required under  
3 CrR 6.1 (d) Trial without jury, U.S.  
4 CONST. Amend. 14. Mr. Vo submits  
5 that his rights to direct appeal under  
6 Art. 1, Sec. 22 of the Washington Constitution  
7 are being prejudiced without said findings  
8 because Vo cannot lodge a challenge to  
9 such findings and assign error to the  
10 findings and conclusions.

11 The failure to enter written findings  
12 of facts and conclusions of law as  
13 required under CrR 6.1 (d) requires  
14 remand for entry of written findings and  
15 conclusions. State v. Head, 136 Wn.2d 619, 622  
16 21 (1998). A delayed entry of the findings and  
17 conclusions does not warrant reversal of  
18 the conviction unless the delay prejudiced  
19 the defendant or prevented effective  
20 appellate review. State v. Vailencour, 81 Wn.  
21 App. 372 (1996) (Div. I). Because written findings  
22 and conclusions facilitate appellate review,  
23 reviewing courts will generally refuse  
24 to address issues raised on appeal  
25 in the absence of such findings  
26

2-STATEMENT OF ADDITIONAL GROUNDS

1 and conclusions. Head, 136 Wn. 2d at 624.  
2 Each element must be addressed separately  
3 setting out the factual basis for each  
4 conclusion of law. Id at 623.

5 In addition the findings must specifically  
6 state that an element has been met.  
7 State v. Alvarez, 128 Wn. 2d 1, 19 (1995).

8 Mr. Vo respectfully request remand to  
9 enter findings and conclusions for  
10 effective appellate review and challenges  
11 to such findings.

12  
13 ADDITIONAL GROUNDS TWO  
14 THE STATE DID NOT PROVE  
15 BEYOND A REASONABLE DOUBT  
16 THAT VO ENTERED THE BUILDING  
17 UNLAWFULLY TO CHARGE HIM  
18 WITH BURGLARY IN THE FIRST  
19 DEGREE

20  
21 The state charged Mr. Vo by an  
22 Amended Information with one count  
23 of Burglary in the first Degree with  
24 a Deadly Weapon, Assault in the  
25 second Degree and Felony Harassment.

26 The incident stemmed from

3-STATEMENT OF ADDITIONAL GROUNDS

1 Mr. Vo driving to work and was told to  
2 slow down by construction workers  
3 in the street. Unpleasant words  
4 were exchanged between Mr. Vo and a  
5 Steven Kline. 3 RP, 7-8.

6 Manuel Galindo testified that Mr. VO  
7 initially waited outside quietly, respectfully  
8 and not saying nothing. "And then go  
9 back to main door and I said to him  
10 he's not in here. Let me go to second  
11 floor. So when I go to the left and  
12 start going up to the stairs he starts  
13 following me. He came inside of the  
14 house is what I'm saying." "Started  
15 saying the same thing I'm gonna hit  
16 it with a bat, why he call the police,  
17 same thing." Note, that Mr. Vo's English  
18 is inaudible, making his Broken English  
19 hard to understand. "Finally I came to  
20 the second floor. He was behind me like  
21 two or three steps down, same thing,  
22 he's not here, nothing, We see nothing.  
23 .. Nobody was in the house.

24 "So he -- that was quickly, like  
25 less than a minute. He don't hear  
26 anything, so he just turn around

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1 and start going down. I follow him  
2 and that's when Carl shows up."

3 Mr. Vo later outside of the house  
4 got into a confrontation with the  
5 Work Supervisor. 4 RP 18-19.

6 Mr. Vo's conviction cannot stand, as  
7 charged, under the burglary statute. The  
8 State charged Vo under the Deadly  
9 Weapon prong of that statute and not  
10 the "assaults any person therein" prong.

11 The testimony shows Vo had either  
12 Galindo's consent or implied consent to  
13 enter the house being constructed, when  
14 Vo followed Galindo inside to confirm  
15 Mr. Kline, was not inside the dwelling.  
16 Vo was not inside the house over a  
17 minute with an employee of the  
18 property. Vo was never asked to leave  
19 the location. Vo then testified that  
20 Galindo gestured through Galindo's  
21 second encounter gesturing Vo to come  
22 see for himself that Kline was not  
23 inside.

24 At no time was the bat was used  
25 as a deadly weapon towards Galindo  
26 or Kline, although evidence may

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1 show Vo may have yelled out threats  
2 to assault Kline, Mr. Vo's supposed  
3 threats were hard to understand because  
4 of Vo's Broken English. Because the  
5 State charged Vo, under the Deadly  
6 Weapon prong of Burglary, the  
7 evidence is insufficient.

8 The term "deadly weapon" is defined  
9 in former Wash. Rev. Code § 9A.04.110(6)  
10 as follows: "Deadly Weapon" means  
11 an explosive or loaded or unloaded  
12 firearm, and shall include any other  
13 weapon, device, instrument, article,  
14 substance, including a "vehicle" as  
15 defined in this section; which under  
16 the circumstances in which it is  
17 used, attempted to be used or  
18 threatened to be used, is readily  
19 capable of causing death or serious  
20 bodily injury.

21 True a bat could cause death  
22 or serious bodily injury but Vo had  
23 the bat for defensive purposes and  
24 it was not used to gain entry into  
25 the building as a deadly weapon.  
26 Further Vo followed a worker in the

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1 building and was never told to not  
2 come in with the second encounter  
3 with Galindo. This is consent or  
4 implied consent given by Galindo.

5 A person who commits a crime  
6 within a dwelling may not be convicted  
7 of first degree burglary, unless there  
8 are sufficient facts from which  
9 to infer independantly that entry or  
10 remaining was unlawful, uninvited,  
11 or otherwise without consent. See  
12 State v. Collins, 48 Wn. App. 95 (1987)  
13 (Div. 3)

14 Here Vo had consent by Manuel  
15 Galindo to enter the building so there  
16 is no unlawful entry and the bat  
17 was not used as a weapon towards  
18 Kline or Galindo to gain entry. For  
19 these reasons Vo's conviction should  
20 be reversed. Mr. Vo did not threaten  
21 or intend to assault Carl Stevenson  
22 the supervisor within the dwelling or  
23 immediate flight there from of the  
24 supposed Burglary. The assault on  
25 Carl Stevenson was a separate  
26 incident outside the residence in

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1 question. Mr. Vo intended to confront  
2 Steve Kline, no one else. No evidence  
3 shows that Mr. Vo intended to use the  
4 baton Kline or Galindo in the  
5 residence or Galindo. would have had  
6 been assaulted not Carl Stevenson.  
7 The state did not meet it's burden  
8 of proving all of the elements of  
9 first Degree Burglary and the  
10 convictions violates Due Process of  
11 Law under the 14<sup>th</sup> Amendment of  
12 the United States Constitution.  
13 See In re Winship, 397 U.S. 358, 364  
14 (1970); U.S. v. O'Brien, 508 U.S. 275,  
15 278 (1993). For the foregoing reasons,  
16 Mr. Vo's conviction should be reversed.  
17

18 ADDITIONAL GROUND THREE  
19 THE COURT VIOLATED VOTAN  
20 CONSTITUTIONAL RIGHT TO  
21 SELF REPRESENTATION UNDER  
22 THE SIXTH AMENDMENT TO THE  
23 UNITED STATE CONSTITUTION  
24 ADD ARTICLE 1, SECTION 22  
25 OF THE WASHINGTON  
26 CONSTITUTION

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1 How does a person that does not  
2 understand the English language or even  
3 write in his own language represent  
4 himself in the Court of law. Vo Tan  
5 could have self represent himself  
6 voluntarily, knowing, and intelligently.  
7 Only because he has some understanding.  
8 State v. Madsen, 168 Wn.2d 496, 504, 229, P.3d 714 (2010)

9 The Court must reverse their decision  
10 because the situation that Mr. Vo  
11 was in is manifestly unreasonable.  
12 The Court relies on supported facts  
13 that was twisted in Translation  
14 when Vietnamese was translated into  
15 english; and when Vietnamese was not  
16 translated. 1 RP 156, 8-9. And with  
17 these facts to law, this is an incorrect  
18 legal standard to force a person to use  
19 counsel he distrust and would like to  
20 discharge counsel and represent himself  
21 in the court of law, when he voluntarily,  
22 knowingly, or intelligently wanted to  
23 represent himself. Mr. Vo Comprehended  
24 what self representation meant when  
25 asked. Vo repeatedly asked to discharge  
26 his attorney and wanted to represent

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1 himself. Vo Tan wanted to speak for  
2 himself in court and defend himself  
3 in court. This is where the translation  
4 was twisted and the court was miss  
5 informed on how Mr. Vo wanted to  
6 proceed in discharging his attorney  
7 Mr. Sorenson that would not help  
8 him. Even the Trial Judge Catherine  
9 Shaffer admitted to have difficulty  
10 understanding witnesses with different  
11 languages. 2 RP 135, 9-17.

12 Mr. Vo's self representation was  
13 lost in translation. Mr. Vo did not  
14 want Attorney Sorenson representing  
15 him. The interpreters translation  
16 indicates Mr. Vo's request for a  
17 different lawyer. 1 RP 153, 22-25. When  
18 Vo's request for a different lawyer was  
19 denied, Vo's reply was "I want to  
20 represent myself." 1 RP 154, 22-25.  
21 Twice Vo indicated he wanted to  
22 represent myself. First the court  
23 did not give Vo the chance to dismiss  
24 his counsel Mr. Sorenson properly, like  
25 every court should have. Mr. Vo would  
26 have had the chance to continue to

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1 Waive Counsel Knowingly, Voluntarily, and  
2 intelligently. Argersinger V. Hamlin, 407  
3 U.S. 25, 32 L. Ed. 2d 530, 92 S. Ct. 2006 (1972).  
4 Mr. Vo's Constitutional right to represent  
5 himself was violated. If the court  
6 "If", would have properly waived Mr. Vo's  
7 Counsel like he wanted to, the Court would  
8 have and could have properly discharge  
9 Sorenson, then ask Vo the next question  
10 of Self Representation, But the court  
11 would rather use Mr. Vo's disability  
12 to understand english through an  
13 interpreter to disclaim evidence on his  
14 chance to represent himself. Faretta V.  
15 California, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975)

16 Mr. Vo was asked why he wanted  
17 to discharge Sorenson, then was cut  
18 short before the translation and Vo's  
19 answer to any question that was  
20 asked by the court. Here the  
21 Interpreter was misused to redirect  
22 the important question at hand. Mr.  
23 Vo wanted to discharge his Attorney.  
24 In RCW 2.43.090 every interpreter for  
25 a non-English speaking person has a  
26 code of ethic's. Here the code of

1 ethic's was broken by the court. This  
2 ethical violation, violated Mr. Vo's  
3 Constitutional Right to represent  
4 himself. At the end of the proceeding  
5 Mr. Vo speaks Vietnamese and no  
6 interpretation was given by the  
7 translator on what Mr. Vo had spoken,  
8 or what was translated to him.

9 1 RP 156, 8-13.

10 The court allowed this decision to  
11 be lost in translation, instead of  
12 seeking truth and justice to continue.

13 Mr. Vo never indicated he wanted  
14 Attorney Sorenson to be a standby  
15 counsel. Mr. Vo wanted Sorenson to  
16 be discharged, and to represent himself  
17 which Sorenson indicated in the  
18 beginning of the proceedings. 1 RP 151, 12-13.

19 The Court violated Mr. Vo's  
20 Constitutional Rights to represent  
21 himself, when the court denied his  
22 request to discharge Sorenson. 1 RP  
23 154, 5-6. Bellevue v. Acrey, 37 Wn. App.  
24 at 67. Mr. Vo had already indicated he  
25 wanted to "represent myself" multiple  
26 times. Adams v. United States ex

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1 rel. McCann, 317 U.S. [269, 279, 87 L. Ed.  
2 268, 63 S. St. 236, 143 A.L.R. 435 (1942)].  
3 (*Italics ours.*) Favetta, at 835.

4 Although Mr. Vo did not have the skill  
5 and experience of a lawyer in order to  
6 competently and intelligently represent  
7 himself, he clearly indicated on the  
8 record he knows what he was doing by  
9 representing himself and wanted to  
10 represent himself "I just want to  
11 try by myself". 1 RP 155, 16-17.

12 A review should be done on why  
13 Mr. Vo's Attorney Sorenson was not  
14 properly discharged when asked. Also  
15 Mr. Vo's translation at the end of  
16 the proceedings was not properly  
17 translated or heard for the record.  
18 1 RP 156, 8-10.

19 These structural errors done by  
20 the Court require to overturn Mr. Vo's  
21 conviction and remand for a new trial.

## 22 23 CONCLUSION

24 The Court should remand for findings  
25 and conclusions, or for resentencing,  
26 or remand for a new trial.

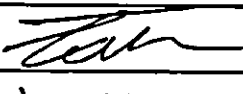
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1 As previously stated, Mr. Vo cannot  
2 read or write, or barely understand  
3 english and, therefore he had to seek  
4 help from another prisoner in the  
5 prison law library preparing this SAG.  
6 Mr. Vo asks this Court to order his  
7 appellant Counsel to brief the issues  
8 he has raised in this SAG.  
9  
10

11 Dated this August  
12 First 2018  
13  
14

15 Signature VO TAN

16 TAN VAN VO, Prose  
17 \* 752054  
18

19 I certify: 

20 Copies was sent to the  
21 King County Prosecuting office  
22 Division ±, Court of Appeals  
23 and Deputy Clerk  
24  
25  
26

14-SAG

TRANSCRIPTS OF PROCEEDINGS  
COA NO. 76407-1-T

1 RP Verbatim Transcripts of Proceedings  
Cause No. 16-1-04828-1-SEA  
December 19<sup>th</sup>, 2016

2 RP Verbatim Transcripts of Proceedings  
Cause No. 16-1-03280-6-SEA  
12-22-16

3 RP Verbatim Report of Proceedings  
Cause No. 16-1-03280-6-SEA  
December 20<sup>th</sup>, 2016

4 RP Verbatim Transcripts of Proceedings  
Cause No. 16-1-03280-6-SEA  
12-21-16

5 RP Verbatim Transcripts of Proceedings  
Cause No. 16-1-04828-1-SEA  
December 20, 2016

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DECLARATION OF SERVICE BY MAIL  
CR 3.1

I, Vo Tan, declare that, on  
this 1<sup>st</sup> day of August, 2018 I deposited the forgoing documents:  
Statement of Additional Grounds  
for review

on a copy thereof, in the internal legal mail system of  
Clallam Bay Correction Center

- And made arrangements for postage, addressed to: (name & address of court or other party.)
- 1. Court of Appeals Division one one union square  
600 university street Seattle, WA 98101
  - 2. King County Prosecuting office 516 3rd Ave Seattle  
WA 98104-2395
  - 3. Nielsen Braman & Koch

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct

Dated at Clallam Bay, WA on 8/1/2018  
(City & State) (Date)

tan  
Signature  
Vo Tan  
Type / Print Name

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TAN VAN VO,

Appellant.

No. 76407-1-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: June 4, 2018

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2018 JUN -4 AM 11:23

LEACH, J. — Tan Van Vo appeals his convictions for assault in the second degree, burglary in the first degree, and misdemeanor harassment. Vo claims that the trial court violated his constitutional right of self-representation when it denied his request to proceed pro se. Because Vo vacillated between self-representation and the desire to change attorneys, the trial court did not abuse its discretion when denying the request. We affirm.

BACKGROUND

On the day of trial, Vo's attorney announced, "Mr. Vo is requesting to discharge counsel, and—or proceed pro se." Vo explained that during the seven months before trial his lawyer did not meet with him or help him understand his case. But when directly asked, Vo admitted his attorney did meet with him. His attorney told the court that the discovery had been translated to Vietnamese for Vo. The trial court found no legal basis to discharge his attorney and told Vo that

he would not get to choose another lawyer on the first day of his trial. The exchange between the judge and Vo continued:

THE COURT: So, the next question is: do you want to represent yourself?

The case will not be continued; you will go downstairs immediately to start trial without the benefit of counsel.

You will be held to the same legal standard as a licensed, practicing attorney in the State of Washington.

INTERPRETER: Your Honor, can you repeat the last statement?

THE COURT: You will be required to represent yourself like a licensed, practicing attorney in the State of Washington.

INTERPRETER: [Speaks Vietnamese.]

THE COURT: Do you want to represent yourself?

INTERPRETER: [Speaks Vietnamese.]

MR. VO: [Speaks Vietnamese.]

INTERPRETER: I want to represent myself. I don't know anything, but I want to represent myself. Between my lawyer and I, there is not—I don't know what else to say.

THE COURT: Okay. Other than the fact that you're claiming that he hasn't gone over the police reports with you in Vietnamese, or with an interpreter, is there any other reason why you want to fire him?

INTERPRETER: [Speaks Vietnamese.]

MR. VO: [Speaks Vietnamese.]

INTERPRETER: On the days that I go to trial, I told my lawyer to bring—

THE COURT: Mr. Vo, try to stay focused. You're going to trial today; either with an attorney, Mr. Sorenson or by yourself.

Which do you want to do? You're not going to get a different lawyer.

So, it's time to make a decision. We have a trial judge ready to start your case today.

MR. VO: [Speaks Vietnamese.]

INTERPRETER: Please [inaudible] I do not know. I just want to try by myself.

THE COURT: No, it's not a question of trying; once you do it, the door's closed. You're on your own.

You don't get to bring him back, you don't get standby counsel; you're all by yourself. You're held to the same standard as a practicing attorney.

Do you know anything about the law?

MR. VO: [Speaks Vietnamese.]

INTERPRETER: I just need to go to court to change a lawyer, or I can—I do not feel that my lawyers have been helping me at all.

THE COURT: I'm not hearing a basis; it sounds like Mr. Sorenson has used the benefit of an interpreter to go over the police reports and explain to you what you're facing.

You don't get to change lawyers on the day of your trial.

So, I'm not hearing anything about going pro se.

So the motion is denied; you're going to go to trial.

INTERPRETER: [Speaks Vietnamese.]

MR. VO: [Speaks Vietnamese.]

THE COURT: You can report to your trial judge now. We're all done.

After trial, Vo was convicted of assault in the second degree, burglary in the first degree, and misdemeanor harassment. Vo appeals.

#### ANALYSIS

The Washington Constitution and the federal constitution provide criminal defendants the right of self-representation.<sup>1</sup> But this right is not absolute or self-

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<sup>1</sup> WASH. CONST. art. I, § 22; Faretta v. California, 422 U.S. 806, 819-20, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

executing.<sup>2</sup> The trial court must first determine whether a defendant's request is unequivocal and timely.<sup>3</sup> If a defendant makes a timely and unequivocal request for self-representation, then the trial court must determine whether the request is voluntary, knowing, and intelligent.<sup>4</sup> The court "must indulge in 'every reasonable presumption against a defendant's waiver of his or her right to counsel.'"<sup>5</sup>

This court reviews a trial court's decision on a self-representation request for an abuse of discretion.<sup>6</sup> Because the analysis of a defendant's waiver of counsel is fact specific, the trial court is in the best position to make the determination.<sup>7</sup> Therefore, an appellate court will reverse the trial court's decision only if it is "manifestly unreasonable,' relies on unsupported facts, or applies an incorrect legal standard."<sup>8</sup>

Vo contends the trial court abused its discretion when it decided his request to proceed pro se was equivocal. A request to self-represent must be unequivocal to protect the defendant from making an impulsive waiver of counsel and to protect trial courts from manipulative vacillations by defendants about representation.<sup>9</sup> "While a request to proceed pro se as an alternative to substitution of new counsel

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<sup>2</sup> State v. Woods, 143 Wn.2d 561, 586, 23 P.3d 1046 (2001).

<sup>3</sup> State v. Madsen, 168 Wn.2d 496, 504, 229 P.3d 714 (2010).

<sup>4</sup> Madsen, 168 Wn.2d at 504.

<sup>5</sup> Madsen, 168 Wn.2d at 504 (internal quotation marks omitted) (quoting In re Det. of Turay, 139 Wn.2d 379, 396, 986 P.2d 790 (1999)).

<sup>6</sup> State v. Coley, 180 Wn.2d 543, 559, 326 P.3d 702 (2014).

<sup>7</sup> Coley, 180 Wn.2d at 559 (citing State v. Hahn, 106 Wn.2d 885, 900-01, 726 P.2d 25 (1986)).

<sup>8</sup> Coley, 180 Wn.2d at 559 (internal quotation marks omitted) (quoting Madsen, 168 Wn.2d at 504).

<sup>9</sup> State v. Stenson, 132 Wn.2d 668, 740, 940 P.2d 1239 (1997).



does not necessarily make the request equivocal, such a request may be an indication to the trial court, in light of the whole record, that the request is not unequivocal.”<sup>10</sup>

Vo unsuccessfully tries to distinguish his case from State v. Stenson.<sup>11</sup> There, Stenson filed a written request for new counsel,<sup>12</sup> which the trial court denied. Stenson then asked to represent himself.<sup>13</sup> The trial court also denied this request and found that Stenson “really [did] not want to proceed without counsel.”<sup>14</sup> Similarly, here, the trial court denied Vo’s request for new counsel, after which he asked to proceed pro se. After further discussion between the trial judge and Vo, Vo renewed his request for new counsel. The judge responded, “So, I’m not hearing anything about going pro se.” As in Stenson, Vo did not counter the trial court’s conclusion that his request was ambivalent. Because the record shows Vo equivocated about his request for self-representation, we affirm the trial court’s decision.

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<sup>10</sup> Stenson, 132 Wn.2d at 740. (citation omitted).

<sup>11</sup> 132 Wn.2d 668, 940 P.2d 1239 (1997).

<sup>12</sup> Stenson, 132 Wn.2d at 733.

<sup>13</sup> Stenson, 132 Wn.2d at 739-40.

<sup>14</sup> Stenson, 132 Wn.2d at 742 (alteration in original).

Vo also contends that the trial court did not determine that his request to proceed pro se was untimely.<sup>15</sup> But because the trial court denied his motion after finding his request equivocal, timeliness is not at issue.<sup>16</sup> So we do not reach it.

Finally, Vo contends that the trial court did not conduct a proper colloquy and thus we must treat his request as knowing, voluntary, and intelligent. But because the trial court found his request to be equivocal, we do not need to decide whether the request was knowing, voluntary, and intelligent.<sup>17</sup>

#### STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

In his statement of additional grounds for review, Vo contends that the trial court violated his due process rights by failing to enter findings of fact and conclusions of law as required by CrR 6.1(d). But the record shows that the trial court entered findings of fact and conclusions of law on January 9, 2017. So no violation of due process occurred.

Vo also contends that the State did not prove beyond a reasonable doubt all the elements of burglary in the first degree with a deadly weapon. A defendant who challenges the sufficiency of the evidence admits the truth of the evidence and all rational inferences that may be drawn from it.<sup>18</sup> We will reverse a conviction

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<sup>15</sup> Vo relies on a Division Two opinion, State v. Paumier, 155 Wn. App. 673, 230 P.3d 212 (2010), to show that his request was timely. But this is irrelevant because the trial court's denial was based on Vo's equivocal request.

<sup>16</sup> Woods, 143 Wn.2d at 586 ("The State does not suggest that Woods's request was untimely. The focus of our inquiry, therefore, is on whether the claimed request to proceed pro se was unequivocal.").

<sup>17</sup> E.g., Madsen, 168 Wn.2d at 504 ("Absent a finding that the request was equivocal or untimely, the court must then determine if the defendant's request is voluntary, knowing, and intelligent, usually by colloquy.").

<sup>18</sup> State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

“only where no rational trier of fact could find that all elements of the crime were proved beyond a reasonable doubt.”<sup>19</sup>

First, Vo claims that the State did not prove that he used a deadly weapon as defined in RCW 9A.04.110(6). This statute defines a “deadly weapon” as

any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including “vehicle” as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

This statute describes two categories of deadly weapons: (i) “deadly weapons per se, namely ‘any explosive or loaded or unloaded firearm’” and (ii) “deadly weapons in fact, namely ‘any other weapon, device, instrument, article, or substance . . . which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.’”<sup>20</sup> “[M]ere possession is insufficient to render ‘deadly’ a dangerous weapon other than a firearm or explosive.”<sup>21</sup> Although Vo concedes that the bat he carried could cause death or serious bodily injury, he claims that he had the bat for defensive purposes and did not use it to gain entry into the premises. But Vo’s argument about his intended use of the bat is irrelevant. Because Vo used the bat to cause substantial bodily harm to the construction supervisor, Vo did more than

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<sup>19</sup> State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005).

<sup>20</sup> In re Pers. Restraint of Martinez, 171 Wn.2d 354, 364-65, 256 P.3d 277 (2011) (internal quotation marks omitted) (quoting State v. Taylor, 97 Wn. App. 123, 126, 982 P.2d 687 (1999)).

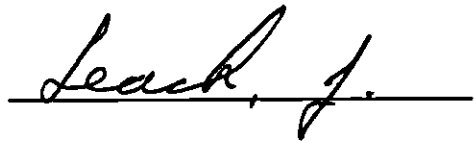
<sup>21</sup> Martinez, 171 Wn.2d at 366.

merely possess the bat. Thus, a court could reasonably find that Vo's bat was a deadly weapon under the "weapons in fact" prong.

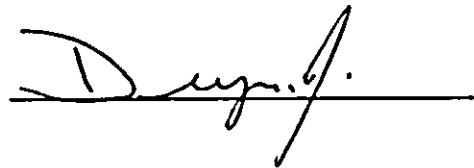
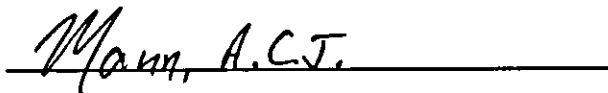
Last, Vo challenges the sufficiency of the evidence supporting his burglary conviction. Vo testified that a construction worker gave him permission to enter the premises and gestured for Vo to follow him inside. By contrast, the construction worker testified that he told Vo to wait outside. Here, the trial court weighed the conflicting testimony and found the construction worker's testimony more credible. The court explained that after considering all of the evidence, the State had proved the elements of burglary in the first degree beyond a reasonable doubt. We "defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence."<sup>22</sup> Because sufficient evidence supports each element of Vo's burglary charge, his challenge fails.

#### CONCLUSION

The trial court did not abuse its discretion by determining Vo's self-representation request was equivocal. We affirm.



WE CONCUR:



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<sup>22</sup> Thomas, 150 Wn.2d at 874-85.