65576-1

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No. 65576-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SERGIO GONZALEZ-GUZMAN,

Appellant.

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

APPELLANT'S REPLY BRIEF AND SUPPLEMENTAL ASSIGNMENT OF ERROR

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A. SUPPLEMENTAL ASSIGNMENT OF ERROR

The court violated Sergio Gonzalez Guzman's right to due process when it lowered the State's burden of proof by instructing the jury that it could convict Gonzalez Guzman of assault of a child in the first degree if it found he disregarded a substantial risk that a wrongful act may occur.

B. ISSUE PERTAINING TO SUPPLEMENTAL ASSIGNMENT OF ERROR

As dictated by case law and explained in WPIC 10.03, to prove first degree assault of a child, the State must show beyond a reasonable doubt that the defendant knew of and disregarded a substantial risk that great bodily harm, not just that any wrongful act, may occur. The court incorrectly instructed the jury that it could convict Gonzalez Guzman of first degree assault of a child if he knew of and disregarded a substantial risk that a wrongful act may occur. Did the trial court's lowering of the State's burden of proof violate Gonzalez Guzman's right to due process, requiring reversal?

C. ARGUMENT.

1. **Recent case law dictates that the court inaccurately and misleadingly instructed the jury on the necessary elements of recklessness**

a. The court diluted the State's burden of proof by incorrectly instructing the jury on an essential element of the crime.

When an offense includes the element that the accused person recklessly caused a specific type of injury, the court's failure to accurately and clearly direct the jury on the meaning of "recklessness" impermissibly relieves the State of its burden of proof. State v. Harris, 164 Wn.App. 377, 263 P.3d 1276 (2011); State v. Peters, 163 Wn.App. 836, 850, 261 P.3d 199 (2011); State v. Johnson, 172 Wn.App. 112, 297 P.3d 710, 719 (2012), as modified on denial of reconsideration (Feb. 13, 2013).

In Harris, the defendant was accused of first degree assault of a child, just as Gonzalez Guzman. 164 Wn.App. at 383. The court gave the jury virtually identical instructions explaining the elements of the crime as in the case at bar. Id. at 384; CP 33-34.

In both Harris and the case at bar, the charge of first degree assault of a child required the State to prove the defendant "intentionally assaults the child . . . [r]ecklessly inflicts substantial

bodily harm." 164 Wn.App. at 383; RCW 9A.36.120(1)(b)(i); see CP 34.

In both cases, the jury instruction explaining recklessness provided that, "A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that *a wrongful act* may occur . . . ." 164 Wn.App. at 384; CP 33 (emphasis added). The court further explained that "when recklessness is required to establish an element of a crime, the element is also established if a person acts intentionally." CP 33 (emphasis added) (Instruction 10).[1]

This instruction is wrong because the statute specifically requires the defendant "recklessly disregarded the substantial risk that 'great bodily harm' would occur" to the child, not that *a wrongful act* would occur. Harris, 164 Wn.App. at 385. As Harris explained, the recklessness pattern jury instruction inserts brackets after the "wrongful act" language with a direction that the court "fill in more particular description of act, if applicable." 11 WPIC 10.03, at 209.

> The pattern jury instruction thus directs a trial court to instruct the jury that, in order to find that a defendant

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[1] In Harris, the court's instruction said "when recklessness is required to establish an element of a crime, the recklessness element is also established if a person acts intentionally." 164 Wn.App. at 387.

> acted recklessly, it must find that the defendant "act[ed] recklessly when he or she kn[e]w[ ] of and disregard[ed] a substantial risk that [a particular result] m[ight] occur and this disregard [wa]s a gross deviation from conduct that a reasonable person would [have] exercise[d] in the same situation." WPIC 10.03, at 209.

164 Wn.App. at 385. "Accordingly, the instruction stating that the jury could find Harris acted recklessly if he knew and disregarded the risk of an undefined 'wrongful act' misstated the law regarding the crime of first degree assault of a child." Id.

The Harris Court held,

> a jury instruction defining RCW 9A.36.120(1)(b)(i)'s recklessness requirement must account for the specific risk contemplated under that statute, here great bodily harm, and not some undefined wrongful act.

Id. at 387-88. This very error occurred in the case at bar.

Similarly, in Peters, this Court reversed a manslaughter conviction where the definition of recklessness used the language that the accused knew of and disregarded the risk of a "wrongful act" rather than the required element of a "substantial risk death may occur." 163 Wn.App. at 849-50.

Likewise, in Johnson, this Court agreed that in a second degree assault prosecution, which requires that the accused intentionally assaulted and thereby recklessly inflicted substantial bodily harm, it is

incorrect to instruct the jury that a person acts recklessly when he "knows of and disregards a substantial risk that a wrongful act may occur." 172 Wn.App. at 718-19. Instead of using the term "a wrongful act" the court should instruct the jury that it must find the accused disregarded a substantial risk "of substantial bodily harm" Id. at 719. It is error for the court to give an instruction that the risk involves only "a wrongful act" and not the specific type of harm required to prove the elements of the offense. Id.

Gonzalez Guzman was accused of first degree assault of a child, which required the State to prove he "intentionally assaulted Danny Gonzalez and recklessly inflicted substantial bodily harm." CP 34. But to explain what it meant to act recklessly, the court merely told the jury that, "A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur . . . ." CP 33. This instruction erroneously diluted the State's burden of proof. Harris, 164 Wn.App. at 387-88.

b. The incorrect definition of the type of harm required to prove recklessness denied Gonzlez Guzman a fair trial.

As in Harris, the jury was given the incorrect, diluted definition the nature of the recklessness required to prove first degree assault of a

child. CP 33. In Harris, the defendant had told another person that any injuries were accidental, and he did not realize he had harmed the child. 164 Wn.App. at 387. The Harris court reversed the conviction due to the erroneous definition of recklessness, because the instruction would not permit the jury to properly evaluate whether the defendant had known of and disregarded a substantial risk of great bodily harm. Id.

Like Harris, this instructional error went to the crux of the case. Gonzalez Guzman told the police that he inadvertently slipped and the baby hit his head. 6/22/09RP 135. He told his wife Crystal it was an accident. 6/22/09RP 88. The "specific mechanism" causing these injuries was unknown to the doctors. 6/17/09RP 26. His attorney argued Gonzalez Guzman fell, he had no intent to harm the child, and the doctors could not say how the injury happend. 6/23/09RP 20, 30. The prosecution agreed that "we can't be absolutely sure" what happened and it is "not really our job to determine that." 6/23/09RP 15. But the prosecutor claimed that it is "A or B," either accidental and 'inflicted" injuries, and because they were not accidental, Gonzalez Guzman must be guilty. 6/23/09RP 7, 33-34.

By telling the jury that recklessness merely meant disregarding the risk of a wrongful act, and instead accurately explaining

recklessness means the knowing disregard of a substantial risk of great bodily injury, the jury was unable to accurately weigh whether Gonzalez Guzman acted with the necessarily degree of recklessness. As in Harris, the error requires reversal of the conviction and remand for a new trial.

c. Gonzalez Guzman was also denied a fair trial because the court incorrectly equated an intentional assault with the separate element of recklessly disregarding the risk of great bodily harm

As explained in Appellant's Opening Brief, the to-convict instruction treated as a single element the question of whether "the defendant intentionally assaulted Danny Gonzalez and recklessly inflicted substantial bodily harm." CP 34. The court instructed the jury that "When recklessness is required to establish an element of a crime, *the element is also established if a person acts intentionally.*" CP 33 (emphasis added).

These instructions, taken together, directed the jury that if the State proved Gonzalez Guzman intentional assaulted the child, the prosecution necessarily had "also established" that element's required recklessness. CP 33, 34. This created an impermissible mandatory presumption requiring the jury "to find a presumed fact from a proven

fact." State v. Hayward, 152 Wn.App. 632, 642, 126 P.3d 354 (2009) (citing State v. Deal, 128 Wn.2d 693, 699, 911 P.2d 966 (1996)).

Although the prosecution insists that these instructions were not erroneous or confusing, it is incorrect in that regard, as detailed in Appellant's Opening Brief. The prosecution also tries to water down the effect of this instruction on the jury.

Here, the effect of the presumption was not "comparatively minimal" or "unimportant in relation to everything else the jury considered on the issue in question." Yates v. Evatt, 500 U.S. 391, 403, 111 S. Ct. 1884, 114 L. Ed. 2d 432 (1991), overruled in part on other grounds, Estelle v. McGuire, 502 U.S. 62, 73 n.4, 12 S. Ct. 475, 116 L. Ed. 2d 385 (1991). Instruction 10 told the jury that if Gonzalez Guzman intentionally committed assault, meaning he touched or struck the child offensively, he necessarily caused the injury with the required recklessness. CP 33; see CP 30 (defining assault as "an intentional touching or striking of another person that is harmful or offensive."). This error is compounded by the failure to correctly explain the type of recklessness required -- Instruction 10 only said Gonzalez Guzman needed to be reckless about whether "a wrongful act"" would occur, not about whether his act could cause great bodily harm.

The prosecutor exacerbated the instructional flaw regarding what *mens rea* applies in his closing argument because he emphasized that the "only" issue was whether Gonzalez Guzman acted intentionally, if he was the perpetrator. 6/23/09RP 6-7. He told the jury that their "choice" was merely whether the incident was "A or B": an accident or "inflicted trauma." Id. at 7. If it was "inflicted trauma" by Gonzalez Guzman, then he was guilty. Id. at 7-8. The prosecutor never explained how the injury was recklessly inflicted, never discussed whether Gonzalez Guzman knew of and disregarded a risk that great bodily harm would occur, and conflated the elements into a single question of "inflicted" trauma or accident.

The fact that a person "inflicted" Danny's injuries does not mean that person did so intentionally, just as it does not mean the person knowingly and unreasonably disregarded the substantial risk that great bodily harm would occur as required to prove recklessness. CP 33. The mandatory presumption contained in Instruction 10 was compounded by the prosecution's insistence that if the injuries were "inflicted" and not accidental, it had proven the essential elements of the case. This instructional error is fatal and requires reversal.

2. **Gonzalez Guzman was denied his right to represent himself**

Anytime an accused person requests to represent himself, "the trial court must determine whether the request is unequivocal and timely." State v. Madsen, 168 Wn.2d 496, 504, 229 P.3d 714 (2010) (emphasis added). Then, if the request is unequivocal, "the court must determine if the request is voluntary, knowing, and intelligent, usually by colloquy." Id. (emphasis added).

Gonzalez Guzman unequivocally informed the court that he wanted to represent himself when he said to the judge, "I want to represent myself while we're in trial." 6/15/09RP 4. The court did not inquire into Gonzalez Guzman's request for self-representation even though it was unambiguous. It did not ask clarifying questions about his understanding of the charges or his ability to proceed to trial immediately. Instead, the court ignored the request.

The court was not free to disregard this unequivocal request. It did not identify any facts making the request untimely, unintelligent, or involuntary, which establishes an abuse of the court's discretion and a denial of the right to proceed pro se. Madsen, 168 Wn.2d at 505-06.

The fact that Gonzalez Guzman also said he wanted another lawyer when answering the court's questions is "irrelevant" and does not render equivocal his statement: "I want to represent myself while we're in trial." Id. at 507. "[A]n unequivocal request to proceed pro se is valid even if combined with an alternative request for new counsel." Id.

The court did not question Gonzalez Guzman about the voluntariness of his request to proceed pro se or evaluate his ability to timely proceed to trial. 6/15/09RP 5. The record does not disprove the validity of his plainly spoken request, "I want to represent myself while we're in trial." 6/15/09RP 4. It violates Gonzalez Guzman's right to self-representation to deny his request for self-representation without inquiry. Madsen, 168 Wn.2d at 504.

3. Gonzalez Guzman was denied his right to an attorney with whom he could effectively communicate

Here, the State claims that Gonzalez Guzman has no right to a meaningful relationship with counsel, and therefore cannot complain that his attorney does not speak his language. Response Brief at 14. While it may be true that an attorney can take steps to rectify a language barrier, that does not mean a complaint about an inability to

communicate with counsel due to a language barrier is a never a violation of the right to counsel as protected by article I, section 22 and the Sixth Amendment.

A court errs by focusing on the attorney's competence when an accused person complains about the attorney-client relationship. United States v. Nguyen, 262 F.3d 998, 1003 (9th Cir. 2002) ("Even if present counsel is competent, a serious breakdown in communications can result in an inadequate defense."). Instead, the court must inquire into the nature of the problem between the lawyer and client. Id. at 1002.

The relationship between an attorney and client extends beyond the in-court proceedings where an interpreter translates what occurs in open court. See Response Brief at 14. A criminal defendant "cannot be presumed to make critical decisions without counsel's advice." Lafler v. Cooper, _U.S. _, 132 S.Ct. 1376, 1385, 182 L.Ed. 2d 398 (2012). An attorney's failure to inform a client about critical information is just as much a deprivation of competent counsel as affirmative misadvice. Padilla v. Kentucky, _ U.S. _, 130 S.Ct. 1473, 1484, 176 L.Ed.2d 284 (2010).

The State's citation to State v. Ramirez-Dominguez, 140 Wn.App. 233, 244-47, 165 P.3d 391 (2007), is irrelevant, as that case

involves the right to a competent interpreter at trial, for the purpose of ensuring the accused person understands the in-court proceedings. Gonzalez Guzman's complaint involved his right to counsel, a right that embraces and necessarily involves far more than the taking of testimony in court. An attorney's mandatory duties include investigating the case, affording the client a confidential relationship, explaining the elements of the charges, counseling the client on whether to plead guilty, and preparing for trial when a trial occurs. State v. A.N.J., 168 Wn.2d 91, 111-13, 117-18, 225 P.3d 956, 966 (2010). "[A]t the very least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty." Id. at 111-12.

When Gonzalez Guzman informed the court that he wanted to represent himself, or alternatively, to have a lawyer who spoke his language because he needed "to understand better," the court was not free to disregard this complaint solely because Gonzalez Guzman had not retained another lawyer. 6/15/09RP 4-6. The court is obligated to protect an accused person's right to competent counsel and a fair trial, which includes inquiring into the attorney-client relationship in a

meaningful fashion when the accused person complains to the court about that relationship. See Nguyen, 262 F.3d at 1003; Appellant's Opening Brief at 15-17 (discussing court's obligation when potential attorney-client conflict arises). The court failed to ensure Gonzalez Guzman was being effectively represented by counsel when it did not inquire, in private and in depth, about the nature and extent of the communication difficulties between Gonzalez Guzman and his lawyer.

4. **The prosecutor's impermissible comment on Gonzalez Guzman's failure to testify requires reversal**

a. The prosecutor highlighted Gonzalez Guzman's failure to testify.

The State distracts the court from the issues in this case by discussing at length how a defendant must object at trial to preserve an issue of misconduct but then brushes past the fact that Gonzalez Guzman did object to the State's argument that was predicated on Gonzalez Guzman's failure to testify and the court never cured the error.

The Fifth Amendment "forbids" any "comment by the prosecution on the accused's silence." Griffin v. California, 380 U.S. 609, 615, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965); U.S. Const. amend. 5;

Const. art. I, § 9.[2] The prosecution violated this fundamental tenet by highlighting the fact that Gonzalez Guzman did not testify at trial when he told the jury they had "enough" evidence to convict Gonzalez Guzman "even if we didn't have the defendant's story or supposed story." Id. (emphasis added).

The State responds by claiming the jury would not have construed this comment as a reference to the fact that Gonzalez Guzman did not testify at trial. However, a salient indication of how the jury would have viewed these comments comes from defense counsel's immediate objection as well as his later motion for a mistrial on this very point. 6/23/09RP 9, 39.Defense counsel heard these remarks as a direct comment on Gonzalez Guzman's failure to testify and objected on that basis. 6/23/09RP 39.

Moreover, the prosecutor exacerbated his comment encouraging the jury to draw a negative inference from Gonzalez Guzman's failure to testify by repeatedly reminding the jury that Crystal Gonzalez testified under oath – this argument was meant to contrast Crystal with

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[2] The Fifth Amendment provides that no person "shall ... be compelled in any criminal case to be a witness against himself." Article I, section 9 similarly provides, "[n]o person shall be compelled in any criminal case to give

Sergio Gonzalez Guzman, who spoke only out-of-court but never "under oath." 6/23/09RP 9, 12, 33.

On numerous occasions, courts have held that it is forbidden for a prosecution to "make closing arguments relating to a defendant's silence to infer guilt from such silence." State v. Easter, 130 Wn.2d 228, 236, 922 P.2d 1285 (1996); State v. Fuller, 169 Wn.App. 797, 814, 282 P.3d 126 (2012); State v. Sloane, 133 Wn.App. 120, 126–27, 134 P.3d 1217 (2006). The right to not have one's silence used against him includes an accused person's partial silence, when he gives some statements voluntarily but exercises his right to remain silent on other occasions. Fuller, 169 Wn.App. at 814-15.

The State tries to hide behind generic instructions given to the jury before closing arguments telling them not to draw inferences from the accused's failure to testify, but the State undermined these instructions when it directly appealed to the jurors to considered Gonzalez Guzman's failure to testify under oath, unlike Crystal's testimony, and the court overruled Gonzalez Guzman's objection.

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evidence against himself."

b. The prosecution urged the jury to convict Gonzalez Guzman based on speculation about his marital status.

As recently explained by this Court, "a prosecutor commits reversible misconduct by urging the jury to decide a case based on evidence outside the record." State v. Pierce, 169 Wn.App. 533, 553, 280 P.3d 1158, rev. denied, 175 Wn.2d 1025 (2012); see State v. Claflin, 38 Wn.App. 847, 851, 690 P.2d 1086 (1984) ("statements of facts not proved, and comments thereon, are outside of the case. They stand legally irrelevant to the matter in question, and are therefore not pertinent. If not pertinent, they are not within the privilege of counsel." (internal citations omitted)); see also State v. Miles, 139 Wn.App. 879, 886, 162 P.3d 1169 (2007) ("A person being tried on a criminal charge can be convicted only by evidence, not by innuendo.").

The prosecution presented the jury with an entirely concocted argument that Sergio married Crystal after Danny's injury because he had been refusing or neglecting to marry Crystal for many years and felt guilty. 6/23/09RP 18. Then he urged the jury to infer that his selfish behavior in refusing to marry Crystal showed he was guilty of the charged crime: "He feels guilty about this [not marrying Crystal earlier] because he is guilty." 6/23/09RP 18; see also 6/23/09RP 35. This purely

speculative and irrelevant argument was not based on a permissible inference and was designed to encourage the jury to view Gonzalez Guzman as a cold-hearted partner.

Furthermore, it was not an isolated argument. The prosecutor repeated this theory several times, thereby demonstrating that it was not curable by a simple instruction and exacerbating its prejudicial effect.

c. The prosecution misrepresented its burden of proof and emphasized the defendant's failure to present evidence.

The prosecution tries to diminish its arguments that misrepresented the law but the plain words spoken by the trial deputy demonstrate plainly erroneous shifting the burden to the defense. Telling the jury its role is to decide which of two stories to believe is a false choice, but that is what the prosecutor did. Miles, 139 Wn.App. at 890; 6/23/09RP 9, 10.

The prosecution asked the jury, "[d]o you have any reason not to believe Crystal?" 6/23/09RP 10. And if not, that is all they needed to convict Gonzalez Guzman. Id. This argument is similarly invalid because the defendant bears no burden and "the jury need not do anything to find the defendant not guilty." State v. Emery, 174 Wn.2d 741, 760, 278 P.3d 653 (2012).

d. The prosecution's improper argument that the case involves a search for the truth, coupled with the court's "abiding belief" instruction, violated due process.

Over Gonzalez Guzman's objection, the court instructed the jury that proof beyond a reasonable doubt means that, after considering the evidence, the jurors had "an abiding belief in the truth of the charge." CP 25 (Instruction 11); 6/23/09RP 2. Echoing this instruction, the prosecution told the jury, "Folks, all you need is an abiding belief in the truth of the charge, and you're satisfied beyond a reasonable doubt. That's the standard. It's in your jury instructions." 6/23/09RP 36.

Our courts have recently emphasized that a jury's role is not to search for the truth. Emery, 174 Wn.2d 741, 760; see also State v. Berube, 171 Wn.App. 103, 120-21, 286 P.3d 402 (2012) ("truth is not the jury's job. And arguing that the jury should search for truth and not for reasonable doubt both misstates the jury's duty and sweeps aside the State's burden"). Instead, the job of the jury "is to determine whether the State has proved the charged offenses beyond a reasonable doubt." Emery, 174 Wn.2d at 760.

The "abiding belief in the truth of the charge" language in the instruction defining reasonable doubt misleads the jury, and when the prosecution presses this language in its closing argument, it encourages

the jury to look for the "the truth," even though that is not their job. Emery, 174 Wn.2d at 760; Berube, 171 Wn.App. at 120-21.

Gonzalez Guzman's objection to this language is well-taken. The prosecution cites State v. Larios-Lopez, 156 Wn.App. 257, 233 P.3d 899 (2010), as a case upholding the use of this language both by the court and prosecution. But the prosecutorial arguments in Larios-Lopez, emphasizing the jury's role in searching for the truth, certainly run afoul of the legal analysis in Emery and Berube and are no model for a properly crafted argument to the jury. Id. at 259. The abiding belief in the truth language is surplusage that misleads the jury and invites improper prosecutorial arguments. It should not be given as part of the jury instruction defining the meaning of proof beyond a reasonable doubt.

5. **The State's absurd assertion that Gonzalez Guzman has not proven paternity, even though the child's mother testified he was the father, should be disregarded.**

The trial court entered a blanket, absolute no contact order between Gonzalez Guzman and Danny without any discussion of the necessity of such an order as our Supreme Court requires. In re Pers. Restraint of Rainey, 168 Wn.2d 367, 377-82, 229 P.3d 686 (2010). A

defendant's fundamental rights limit the sentencing court's ability to impose sentencing conditions, including no contact orders involving one's biological children. Id. at 377.

The State responds by asserting Gonzalez Guzman never proved his paternity, apparently because the prosecution believes parents must be married at the time a child is born to demonstrate paternity. Response Brief at 43. The prosecution makes no mention of the presumption of parentage under RCW 26.26.116(2) when a person resides in the same household as the child and openly holds out the child as his own, as in the case at bar.

In any event, Gonzalez Guzman's paternity is undisputed. Indeed, the prosecutor asked Danny's mother Crystal the following questions:

Q. Talk about Danny.
When was he born?
A. September 27, 2007.
Q. And who is his father?
A. Sergio.
Q. The defendant?
A. Yes.
Q. And obviously you're his mother?
A. Yes.

6/22/13RP 34.

If anything, the State's far-fetched claim that this young child, whom Gonzalez Guzman cared for in the course of a long-term relationship with Crystal, does not absolve the State of its due process obligation at sentencing. See State v. Hunley, 175 Wn.2d 901, 909-10, 287 P.3d 584 (2012); State v. Mendoza, 165 Wn.2d 913, 920, 205 P.3d 113 (2009); State v. Ford, 137 Wn.2d 472, 480-81, 973 P.2d 452 (1999); U.S. Const. amend. 14; Const. art. I, § 3. Because the prosecution bears the burden of proof at sentencing, it must present reliable evidence supporting the sentence requested. Hunley, 175 Wn.2d at 909-10. There was certainly a preponderance of evidence before the court that Gonzalez Guzman was Danny's biological father. 6/22/13RP 34.

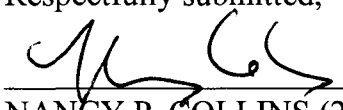
When the State wants to impose restrictions on a person's fundamental rights, it bears the due process burden of establishing the basis for the restriction. Rainey, 168 Wn.2d at 381. It was uncontested at trial that Gonzalez Guzman was the child's father and the State's insistence that Gonzalez Guzman is not the father can be raised, if needed, at the resentencing hearing that is required based on the facially impermissible lifetime no contact order.

B. CONCLUSION.

For the foregoing reasons as well as those argued in Appellant's Opening Brief, Mr. Gonzalez Guzman respectfully requests this Court reverse his conviction and remand his case for further proceedings.

DATED this 3rd day of May 2013.

Respectfully submitted,



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

STATE OF WASHINGTON, Respondent, v. SERGIO GONZALEZ-GUZMAN, Appellant.	)))))))))	NO. 65576-1-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 3RD DAY OF MAY, 2013, I CAUSED THE ORIGINAL **APPELLANT'S REPLY BRIEF AND SUPPLEMENTAL ASSIGNMENT OF ERROR** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DEBORAH DWYER, DPA KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] SERGIO GONZALEZ-GUZMAN 333758 COYOTE RIDGE CORRECTIONS CENTER PO BOX 769 CONNELL, WA 99326	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 3RD DAY OF MAY, 2013.

X_____

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