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No. 37754-4-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

BENJAMIN SANTOS CASTRO,

Defendant/Appellant

Respondent's Brief

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I. STATEMENT OF FACT

On December 13, 2013, Nick Burson, a police officer for the City of Cle Elum, got a call about 3:15 in the morning to go to the Best Western on the west end of town for a parking complaint. (Report of Proceedings Trial Volume I, hereafter RP I, page 50) The Best Western worker, Sally Graham, had noticed a white four-door car that parked in their parking lot without anyone getting out of the car. (RP I, 51, 125-127) She requested the police to come by and tell the people to move to a public parking area instead of taking of the spots for paying guests. This was a routine request. (RP I, 51) When Officer Burson pulled up to the vehicle and ran the plate, it came back with a stolen hit. (RP I, 51) The officer saw fogged windows, and Ms. Graham had not seen anyone get out of the car, so Officer Burson backed off and waited for backup. (RP I, 53, 128-9) While he was waiting, the car started. (RP I, 53)

Once various backup officers arrived, the driver was ordered out of the vehicle, and then the passenger was ordered out. (RP I, 55-56) When the officer went up to make sure there was no one left in the vehicle, he saw two small

baggies with what appeared to be a white crystalline substance on the front passenger seat. (RP I, 56) The officer believed from his training and experience that the baggies contained methamphetamine. (RP I, 56-57) The crime lab later confirmed this. (RP I, 91-103) Mr. Castro, the driver, had a syringe with a needle in his pockets. (RP I, 59) He also had a spring-loaded window punch in his pocket. (RP I, 60) It is the kind of tool that breaks windows of houses and vehicles. (RP I, 60) Mr. Castro also had credit cards with the name Jessie Prince on them, and that was not the passenger's name. (RP I, 61).

After the occupants of the stolen car were arrested, the police impounded and searched the car. (RP I, 62-90) They found a hand-held taser in Mr. Castro's driver's seat area, (RP I, 66-67) bolt cutters, ((RP I, 67) a wallet, (RP I, 68), clothing, (RP I 69), Jessie Prince's wallet and glasses, (RP I, 69), a cut padlock belonging to the car owner, Mrs. Hoy, (RP I, 70, 79) laptops from Mr. Friedman, (RP 71), and a North Face backpack with the name Tyler Schultz, (RP 71, 85) The backpack, when found, contained the defendant's credit card, (RP I, 72) and a white crystal substance believed to be methamphetamine and later confirmed by Crime Lab testing to be methamphetamine, (RP I, 72, 91-103), as well as more bolt cutters, pliers, binoculars, gloves, a shim, handcuffs, ATV keys,

several snips, a crowbar, a Leatherman tool, a magnet, wrenches, and pocket knives. (RP I, 74-77, 86-88) The officer testified these are tools used in burglaries as well as vehicle prowls. (RP I, 88) There was a Fred Meyer receipt for men's clothing and athletic shoes, with the same ending numbers of the credit card as Ms. Prince's stolen card that was found in Mr. Castro's pocket. (RP I, 77) There was a Coach purse with Sarah Beatty's ID, (RP I, 78) a camera belonging to Mr. Friedman, (RP I, 81), an airsoft gun with the orange tip removed that looked like a real gun, (RP I, 82), and shaved keys. (RP I, 85)

The defendant was charged with Possession of a Stolen Vehicle, Possession of Methamphetamine, Possession of Stolen Property in the Second Degree (access device), Possession of Burglary tools, and Possession of Stolen Property in the Second Degree (amount over $750). (CP 12-13)

At trial, the crime lab confirmed that the crystal substance in the car and the crystal substance in the backpack with Mr. Castro's ID were both methamphetamine. (RP I, 91-103)

Ronald Friedman was able to testify about his laptops being recovered. (RP I, 103-108) They were stolen from a Porsche at a fitness center (RP I, 103-108) and had a value of $1500 to $1600. (RP I, 107)

Sarah Beatty testified about her purse being stolen from her car at a fitness center. (RP I, 115) She was able to identify her ATV keys. (RP I, 116-118) The ID's were found in the backpack. (RP I, 130)

Tyler Schultz identified his stolen Northface Backpack. (RP I, 121-124). It had been stolen from a parking garage car prowl, and when taken had almost nothing in it but some pens. (RP I, 121-124) This was the backpack police found with the tools, stolen items, and Mr. Castro's ID. (RP I, 137)

There was a discussion with the officer about what kind of gloves burglars wear. (RP I, 138) Gift cards purchased at Fred Meyer with Jessie Prince's VISA were in Castro's front pocket. (RP I, 144-145)

Mr. Hoy testified that the vehicle Mr. Castro was in was stolen from his wife and himself two days before it was found, from a YMCA in Auburn. (RP of the Second Day of Trial, RP II, 35)

Because the trial had trailed another trial and was put off for a week, one victim could not attend. (RP I, 3, 7-11) Rather than continue the trial, a stipulation was reached between the parties. (RP I, 7-11) In the stipulation, which was read to the jury, the jury was told that Jessie Prince had suffered a vehicle prowl, her wallet and credit cards, including those found in the

defendant's pocket, had been stolen and used at Fred Meyer and T-Mobile, and receipts showing this were found in the car. (RP II, 48)

Mr. Castro's codefendant was called by the defense, and told the jury that she and Mr. Castro both had a meth problem. (RP II, 69). Her methamphetamine was the two bags in the front seat of the car. (RP II, 69) None of the other methamphetamine (for example, the meth in the backpack) was hers. (RP II, 69) She indicated she did not tell Mr. Castro the car was stolen. (RP II, 63) The Northface backpack was not hers or being used by her. (RP II, 63)

At the jury instruction conference, Mr. Castro said he had no objection to the State's proposed WPIC 4.01. (RP II, page 5). The defense proposed the exact same instruction of WPIC 4.01. (This set of instructions was inadvertently not filed, though parties and the court had copies in front of them and referred to them. The instructions are attached in Appendix A, and are pending approval of a Motion to Supplement the Record which accompanies this brief.)

Mr. Castro was found guilty of all five charges. (CP 56-60) He was sentenced on April 3, 2015. (CP 90-102)

This appeal followed.

ARGUMENT

A. There was sufficient evidence to convict Benjamin Castro of Making or Having Burglary Tools.

The standard for review when sufficiency of the evidence is questioned, is whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, when the evidence is viewed in the light most favorable to the State. State v. Bergeron, 105 Wn. 2d 1 (1985). A challenge to the sufficiency of the evidence to support a criminal conviction admits the truth of the State's evidence and all inferences that can be reasonably drawn therefrom. All reasonable inferences must be drawn in favor of the State and most strongly against the defendant. State v. Salinas, 119 Wn. 2d 192 (1992).

In State v. Roth, 131 Wn. App. 556, the court further elucidated "The

appellate court does not determine whether *it* believes that the evidence at trial established guilt beyond a reasonable doubt. Rather, the pertinent question is whether any rational trier of fact could have found the essential elements after viewing the evidence in the light most favorable to the State. "State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). When there is substantial evidence, and when the evidence is of such a character that reasonable minds may differ, it is the function and the province of the jury to weigh the evidence, determine the credibility of the witnesses, and decide disputed questions of fact. State v. Theroff, 25 Wash.App. 590, 593, 608 P.2d 1254, *aff'd,* 95 Wash.2d 385, 622 P.2d 1240 (1980). This court must defer to the determinations of the trier of fact on such issues. State v. Fiser, 99 Wash.App. 714, 719, 995 P.2d 107 (2000). In reviewing the sufficiency of the evidence, circumstantial evidence is not considered any less reliable than direct evidence. State v. Delmarter, 94 Wash.2d 634, 638 (1980)."

In assessing the sufficiency of the evidence the trial court must consider all evidence presented to the jury. "Individual pieces of evidence, insufficient in themselves to prove a point, may in cumulation prove it. The sum of an

evidentiary presentation may well be greater than its constituent parts." Bourjaily v. United States, 483 U.S. 171, 107 S. Ct. 268, 93 L. Ed 2d 246 (1987)

Turning to the facts of this case, the defendant was charged with Making or Possessing burglary tools. The jury instruction the court gave defines the crime as follows:

> "A person commits the crime of making or having burglary tools when he or she makes, mends, or causes to be made or mended or possesses any engine, machine, tool, false key, pick lock, bit nippers or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used. Burglary is the entering or remaining unlawfully in a building with intent to commit a crime against a person or property therein." (CP 36)

The elements of the crime as shown in the jury instructions are:

> "1) That on or about the 13th day of December, 2013, the defendant possessed a tool, false key, nippers, or implement adapted, or commonly used for the commission of burglary;
> 2) that the defendant's actions were under circumstances evincing an intent to use or employ, or allow the tools to be used or employed, or knowing that the tools were intended to be used or employed in the commission of a burglary; and

3) that the acts occurred in the State of Washington." (CP 37)

Defense cites State v. Miller, 90 Wn.App.720 (1998), which is a case that dealt primarily with whether the defendant's prying open coin boxes at an open car wash constituted a burglary. Finding that it didn't constitute a burglary because the business was open to the public, the court gave a fairly summary treatment to the issue of the burglary tools in this one-time event, indicating that since the crime wasn't burglary, the tools for that crime could not be burglary tools. The facts in the current case, however, are different and much more complex than those in Miller.

So what was the evidence that the jury considered in this case? There was evidence of panoply of stolen property found in a stolen car. There was evidence that Mr. Castro had a backpack that contained a number of different tools which were clearly assembled together as burglary and car prowl tools. Mr. Castro's backpack contained nippers, different knives, a pry bar, screwdrivers, a shim, wrenches, gloves, and shaved keys. (RP I, 68, 74, 87) These were obviously not meant for any one specific heist, but for Mr. Castro to be able to meet any obstacle in his criminal path. Mr. Castro had a window punch in his pocket, which is used for breaking out windows of buildings or vehicles. (RP I, 60) The officer on the

stand who has investigated burglaries and car prowls identified these types of tools as tools that are used in both burglaries and car prowls. (RP I, 88) Most telling, Mr. Castro also had handcuffs, a taser, and an airsoft gun that had been modified to look like a real gun. (RP I, 66-67, 74, 82, 87)

Unlike the facts in Miller, the occupants of this stolen vehicle have clearly been busy with more than one simple car wash machine tamper. Over and over various different vehicles have been broken and many different types of stolen property were obtained, presumably to support the methamphetamine habit that was in evidence as well.

The sheer number of crimes makes it more likely that this kit of tools is being used on a wide crime spree. The purpose of the tools need not be limited. The fact that the tools could be used in car prowls does not mean they are not burglary tools. The fact that they have likely *been* used recently for car prowls also does not mean that a jury with common sense could not find they were also likely there for use in burglaries. A reasonable jury could believe that handcuffs, a taser and a real-looking airsoft gun are more likely to be used in burglaries than car prowls. In fact, they are by their nature unlikely to be used in the car prowls as happened in the case. Handcuffs, tasers, and realistic-looking pistols are only

useful if you believe you will encounter a person's resistance, which is very unlikely in a car prowl. Such resistance is entirely foreseeable in a burglary, should the building prove to be occupied. A reasonable jury could easily conclude that the occupants of this car have something more than car prowls planned, and that the whole tool kit of pry bars, nippers, keys, and other tools are just as likely intended to be used for burglaries as simple car prowls. A reasonable jury could easily find that persons with methamphetamine habits who steal computers, cameras, and credit cards are just as likely to want to steal those things from buildings as from cars. The State does not have to prove the items were actually used in a specific burglary, but simply that the items are commonly used for the commission of burglary (which is not disputed), and that circumstances *evince the intent* to use the implements in a burglary. The presence of the handcuffs, taser, and realistic gun are circumstantial evidence of just such circumstances and intent. In this case, the sum of the evidentiary presentation is definitely greater than its constituent parts, as predicted in Bourjaily. Taken in the light most favorable to the State there was sufficient evidence to convict Mr. Castro of Possession of Burglary Tools.

B. Mr. Castro's right to a fair trial was not denied by the prosecutor's closing argument.

Defense cites a few cases in which the prosecutor was found to trivialize the State's burden of proof or to shift the burden of proof to the defendant to produce a reasonable doubt in order to find someone not guilty. In this case, however, the prosecutor does NO SUCH THING. Nowhere in closing argument did the prosecutor indicate or imply that Castro was required to provide a reason in order for the jury to have a reasonable doubt that Castro was not guilty. In State v. Emery, 174 Wn.2d 741 (2012), for example, the prosecutor began an argument with "In order for you to find the defendant not guilty..." and the court indicated this is a bad beginning because a jury need do nothing to find a defendant not guilty. State v. Anderson, 153 Wn. App. 417 (2009) was also about that exact "fill in the blank" type argument.

In the present case, the prosecutor was scrupulously careful not to ever imply the jury needed to do anything in order to find the defendant not guilty. The prosecutor never started any sentence with "in order for you to find the defendant not guilty." In fact, the prosecutor never said anything close at all. Each time the prosecutor mentioned the burden of proof in closing, it was simply to argue that that the State had proved its case and the evidence left no reasonable doubts. Asking once, "Do you have a reasonable doubt?" and answering, in essence, No, the evidence shows no reasonable doubt, is not similar at all to the language in the cases defense cites. Nor did the prosecutor ever tell the jury, as in Emery, that their role was to solve the case or seek the truth. The prosecutor simply discussed why the defense contention that the defendant may not have known the property was stolen was unlikely. Emery and Anderson are not applicable.

It is instructive to look at the entire closing argument. The closing begins in the Report of Proceedings Volume II, Page 108. The State very clearly indicates right from the start that the State has to prove the elements of the charges beyond a reasonable doubt. (RP II, 109) The prosecutor says,

> "And my suggestion is that you go to the five different instructions that tell you what the actual elements of the charge are, that is, these are the things that the State has to prove beyond a reasonable doubt so that you can make your decision that we have proved that he's guilty of the five different crimes he's charged with. There's one instruction for each crime." (RP II, 109)

The State then goes through each charge and discusses how it is that the State proved these elements. Over and over, the State consistently follows the court's instructions and makes reference to the State having to prove these elements. The prosecutor says, "All you have to know is that he's found in this car with all this stuff, and you have to decide whether there is enough circumstantial evidence for you to decide whether he knew in fact the vehicle was stolen." (RP II, 115) This clearly tells the jury that their role is to decide whether the state proved that element of the crime. Then the prosecutor continues to list the evidence and makes the statement,

> "in deciding whether the defendant had dominion and control over something, you're to consider all relevant circumstances in the case.... And once again I really want to stress that as we talk about every charge here. You don't take them apart and think about each little piece, you think about the whole picture of it because constructive possession, the circumstantial evidence, all of the legal terms that you've got to find in the instructions tell you that you are supposed to be considering all of the evidence as a whole.

> So, if the fact that there's one piece of stolen property somewhere in the back seat, you know, if he's driving the car, he's in Montana, you know, did he have one piece of stolen property in the back seat? Well, maybe, maybe not. But is it likely? Do you have any reasonable doubt that he knew that—I mean, there was loads of stolen property, almost everything in that car was stolen, apparently. Most of the things that were even found in the car, the officer told you. There were very few things that appeared to be associated with Kayla. Basically, she had her bra on the floorboard of the front seat and a pair of shoes that were associated with her. Almost everything else in there was found to be stolen or apparently produced with stolen credit cards, so that's really stolen also." (RP II, 118-119)

Just because the prosecutor, in the midst of a long discussion of evidence, asks the jury, "Do you have any reasonable doubt that he knew that?" does not tell the jury they need to come up with a reasonable doubt to acquit. There is no shift of burden of proof. The State has the burden of proving elements beyond a reasonable doubt. The State is bound to mention that the evidence does not leave any reasonable doubts as to the various elements. It was only in that context, that the State mentioned reasonable doubt.

After that, the State continues for pages discussing the specific facts of the crime in detail, discussing the fact that Mr. Castro knows Ms. Clark well enough that she asked him to go to Montana with her, the fact that she had just gotten out

of prison, the fact that they were driving in the middle of the night, that he has stolen credit cards in his pocket and his own credit card in a backpack full of stolen stuff and burglary and car prowl tools. The prosecutor concludes this review by summarizing,

> "So the whole question is, has the State proved beyond a reasonable doubt that he knew that this was a stolen vehicle, and the answer is yes, all of the details, the time of night, the positioning of the car, the recency of its having been stolen, the fact that it is not just a single stolen vehicle, it's a stolen vehicle filled with stolen property, all of these things, including property that was stolen at the same time that the vehicle was stolen, the stuff that he has, all of that tells you that in fact he knew that vehicle was stolen. " (RP II, 123)

The prosecutor goes through the same sort of analysis of each of the crimes in turn, discussing why the evidence shows all the elements of the crime have been proved. The prosecutor never shifts the burden of proof in the case, but squarely shoulders it and explains how it has been met.

Again, in rebuttal, the prosecutor discusses the specific evidence in the case. The prosecutor in rebuttal is directly responding to defense counsel's arguments that the State has not proved Mr. Castro knew the items in the car and the car itself were stolen. The prosecutor goes over the evidence in detail and shows why the State has proven that Mr. Castro knew the items were stolen.

Again, it is in the context of discussing the evidence that the State argues that knowledge has been proven and no doubt exists. (RP II 143) The case of State v. Kalebaugh, 183 Wn. 2d 578 (2015), cited by the Defendant, does not stand for the proposition that the prosecutor cannot argue that no reasonable doubt exists. The Court in Kalebaugh takes issue with the judge telling the jury "A reasonable doubt is a doubt for which a reason can be given" instead of the correct standard, "A reasonable doubt is a doubt for which a reason exists." But in this case, the prosecutor's complained of remark in Rebuttal began with the proper language from Kalebaugh: "Evidence Instruction No. 3 says: A reasonable doubt is one for which a reason exists. Do you think you have a reason to doubt in this case? He's got this car and he's got all this stolen property on him. Do you have any reason to doubt that he knew that it was stolen? Absolutely not." (RP II 143) The prosecutor does not tell the jury they have to come up with a doubt. She tells them no doubt exists because of the evidence. This is an important and deliberate distinction. It would be ridiculous to hold that the State cannot mention the words reasonable doubt in its closing, or to forbid the State from saying the evidence does not leave reasonable doubt. The State then recapped the evidence:

> "If he had not had a window punch in his pocket, he had not had stolen credit cards in his pocket and he was not in a stolen car, taking all those things as not true would make you think, well, you know, he just kind of got dragged along. There's no evidence of that.

and the very next audible words were again the exact language of the proper WPIC 4.01, saying "A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt that would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence." The distinction in Kalebaugh was followed properly by the prosecutor in this case. Far from telling the jury they had to come up with a reason to doubt in order to find anyone not guilty, this discourse simply argued from the evidence that the defense theory that Mr. Castro just got dragged along by the female passenger was not supported by that evidence. The harmless error analysis of Emery and Kalebaugh should apply, although the court need not indulge in this analysis, since the remarks were not error and certainly not "flagrant and ill-intentioned."

In the very recent case State v. Harun Osman, Washington Court of Appeals, Division One, slip op. 71844-4, filed January 25, 2016, the Court of Appeals indicates that a prosecutor is entitled to point out the improbability or

lack of evidentiary support for a defense theory of the case, citing State v. Russell, 125 Wn.2d 24 (1994). Also, a prosecutor has wide latitude to comment on the evidence introduced at trial and to draw reasonable inferences from the evidence. The court said, "Because the argument properly focused on the evidence, Osman cannot show prosecutorial misconduct." Osman slip op. at 15.

All the arguments the prosecutor made were based upon the evidence and the reasonable inferences that can be drawn therefrom. Nothing the prosecutor said in this case shifted the burden of proof, was flagrant or ill intentioned, or improperly stated the jury's role in the case. The prosecutor clearly focused on the evidence and never gave little analogies that trivialized the beyond a reasonable doubt standard. The prosecutor simply said that no reasonable doubt existed. The case was proved beyond a reasonable doubt. Nothing the prosecutor said deprived the defendant of a fair trial. No reversal should be required.

C. The Washington Pattern Jury Instruction 4.01 on Reasonable doubt is not unconstitutional.

The instruction given in this case, WPIC 4.01 is the instruction given in (nearly) every criminal case in Washington State, especially since the Washington State Supreme Court in State v. Bennett, 161 Wn.2d 303 (2007) instructed courts to do so. The Court in Bennett said specifically,

> "We therefore exercise our inherent supervisory power to instruct Washington trial courts not to use the *Castle* instruction. We have approved WPIC 4.01 and conclude that sound judicial practice **requires** that this instruction be given until a better instruction is approved. **Trial courts are instructed to use the WPIC 4.01 instruction to inform the jury of the government's burden to prove every element of the charged crime beyond a reasonable doubt.**" Bennett at 318. (emphasis added)

Having been so instructed, it would be odd indeed for the Court of Appeals to find that that exact instruction, required by the Supreme Court, is actually unconstitutional.

The defendant's argument was recently advanced in State v. Lizarraga, 2015 Washington App., slip opinion 71532-1-I. The Court held, "But in *State v. Bennett* our Supreme Court expressly approves the WPIC as a correct statement of

the law and directs courts to use WPIC 4.01 to instruct on the burden of proof and the definition of reasonable doubt. See also *State v. Pirtle, 127 Wn.2d 628 (1995)* (concluding WPIC 4.01 adequately permits both the government and the accused to argue their theories of the case)." Lizzarraga at 53.

The "fill in the blank" arguments of Emery and Anderson, as mentioned before, are improper not because they discuss whether a reasonable doubt exists, or whether a reasonable doubt is one for which there is a reason. They are improper because they do not use the language of our Supreme Court's direction in Bennett. They are improper because they suggest the defendant has to prove something. The WPIC 4.01 does not do that. Defining reasonable doubt is not the same as shifting the burden of proof.

In any event, even if it were unconstitutional, under the doctrine of invited error, this Court should not take up the argument in this case. The record shows not only that the defense made no objection to the WPIC instruction 4.01 at the time of the trial and actually agreed to it (RP II, 5, 79) but the defense actually proposed the same instruction themselves. (RP II, 3 and Page 6 of the Supplement to the Record, "Instructions Requested by the Defendant," which is

attached to the Brief as Appendix A, and which is the subject of a motion to supplement the record, pending this Court's approval) Defense Counsel tells the court specifically, when referring to his proposed instructions that everyone has in front of them, "They are not as complete as Ms. Hooper's that she sent me last night, but they are the same except for the definition of possession." (RP II, 3) The doctrine of invited error holds that when a defendant actually proposes an erroneous jury instruction, he may not later complain on appeal that the requested instruction was given. State v. Henderson, 114 Wn.2d 867 (1990) and State v. Studd, 137 Wn.2d 533 (1999). It did not matter that the error was of constitutional magnitude. Studd at 546-547. In this case, there was no error at all, let alone error of constitutional magnitude.

CONCLUSION

Where the defendant was found in possession in the middle of the night of numerous tools usable in burglaries and car prowls, along with various stolen property from multiple car prowls, and along with handcuffs, a taser, and an

airsoft pistol altered to look real, there was sufficient evidence for a jury to convict the defendant of Possession of Burglary Tools.

Where the prosecutor did not use "fill in the blank" reasonable doubt arguments and correctly stated the burden of proof of the prosecutor and the correct definition of reasonable doubt, and where there was no flagrant or ill-intentioned argument made in closing argument, the convictions of the defendant should not be reversed.

Where the defendant proposed the same jury instruction that the defendant now believes is unconstitutional, and where it has been held to be a correct statement of law, the defendant's convictions should not be reversed.

Respectfully submitted,

L. CANDACE HOOPER
WSBA #16325
Deputy Prosecuting Attorney

Appendix A

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

STATE OF WASHINGTON, Plaintiff, v. BENJAMIN CASTRO, Defendant.	Case No.: 13-1-00354-5 INSTRUCTIONS REQUESTED BY THE DEFENDANT

Submitted: March 11, 2015

Robert Moser, WSBA # 32253
Attorney for Benjamin Castro

INSTRUCTION NO. _____

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

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value

of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

WPIC 1.02

INSTRUCTION NO. _____

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

WPIC 1.04

INSTRUCTION NO. _____

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

WPIC 4.01

INSTRUCTION NO. _____

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

WPIC 5.01

INSTRUCTION NO. _____

A person commits the crime of possessing stolen property in the second degree when he or she knowingly possesses stolen property that exceeds $750 in value but does not exceed $5,000 in value or a stolen access device.

Possessing stolen property means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

WPIC 77.05

INSTRUCTION NO. _____

To convict the defendant of the crime of possessing stolen property in the second degree, each of the following five elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 13, 2013, the defendant knowingly possessed stolen property;

(2) That the defendant acted with knowledge that the property had been stolen;

(3) That the defendant withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;

(4) That the stolen property exceeded $750 in value but did not exceed $5,000 in value;

(5) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (3), (4), and (5) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), or (5), then it will be your duty to return a verdict of not guilty.

WPIC 77.06

INSTRUCTION NO. _____

To convict the defendant of the crime of possessing stolen property in the second degree, each of the following five elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 13, 2013, the defendant knowingly possessed stolen property;

(2) That the defendant acted with knowledge that the property had been stolen;

(3) That the defendant withheld or appropriated the property to the use of someone other than the true owner or person entitled thereto;

(4) That the stolen property was an access device;

(5) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (3), (4), and (5) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), or (5), then it will be your duty to return a verdict of not guilty.

WPIC 77.06

INSTRUCTION NO. _____

A person commits the crime of possessing a stolen motor vehicle when he or she possesses a stolen motor vehicle.

Possessing a stolen motor vehicle means knowingly to possess a stolen motor vehicle knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

WPIC 77.20

INSTRUCTION NO. _____

To convict the defendant of the crime of possessing a stolen motor vehicle, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 13, 2013, the defendant knowingly possessed a stolen motor vehicle;

(2) That the defendant acted with knowledge that the motor vehicle had been stolen;

(3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto;

(4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

WPIC 77.21

INSTRUCTION NO. _____

To convict the defendant of the crime of possession of a controlled substance, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about December 13, 2013, the defendant possessed a controlled substance, Methamphetamine; and

(2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

WPIC 50.02

INSTRUCTION NO. _____

A person knows or acts knowingly or with knowledge with respect to a fact when he is aware of that fact. It is not necessary that the person know that the fact is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

WPIC 10.02.

INSTRUCTION NO._____

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the questions and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict forms to express your decision. The presiding juror must sign the verdict forms and notify the bailiff. The bailiff will bring you into court to declare your verdict.

WPIC 151.00

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

STATE OF WASHINGTON, Plaintiff, v. BENJAMIN CASTRO, Defendant.	Case No.: 13-1-00354-5 VERDICT FORM A

We, the jury, find the defendant _____ of the crime of Possession of a Stolen Vehicle as charged in Count 1.

Date: _____

_____

Presiding Juror

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

STATE OF WASHINGTON, Plaintiff, v. BENJAMIN CASTRO, Defendant.	Case No.: 13-1-00354-5 VERDICT FORM B

We, the jury, find the defendant _____ of the crime of Possession of Stolen Property, 2nd Degree as charged in Count 2.

Date: _____

_____

Presiding Juror

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

STATE OF WASHINGTON, Plaintiff, v. BENJAMIN CASTRO, Defendant.	Case No.: 13-1-00354-5 VERDICT FORM C

We, the jury, find the defendant _____ of the crime of Possession of a Controlled Substance as charged in Count 3.

Date: _____

_____
Presiding Juror

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

STATE OF WASHINGTON, Plaintiff, v. BENJAMIN CASTRO, Defendant.	Case No.: 13-1-00354-5 VERDICT FORM D

We, the jury, find the defendant _____ of the crime of Possession of Burglary Tools as charged in Count 4.

Date: _____

_____
Presiding Juror

SUPERIOR COURT OF WASHINGTON FOR KITTITAS COUNTY

STATE OF WASHINGTON, Plaintiff, v. BENJAMIN CASTRO, Defendant.	Case No.: 13-1-00354-5 VERDICT FORM E

We, the jury, find the defendant _____ of the crime of Possession of Stolen Property, 2nd Degree as charged in Count 5.

Date: _____

_____
Presiding Juror

PROOF OF SERVICE

I, Jacob Schroeder, do hereby certify under penalty of perjury that on January 27, 2016, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of the Respondent's Brief:

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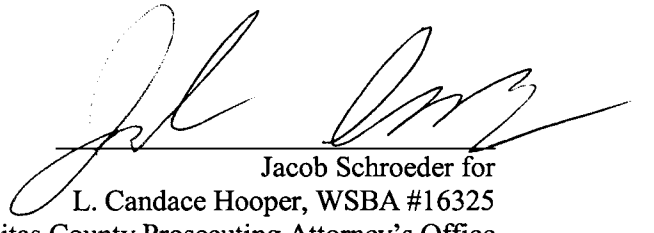

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