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Court of Appeals
Division I
State of Washington

No. 73798-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

MARGARET COLSON,

Appellant.

---

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

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# APPELLANT'S REPLY BRIEF

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## A. ARGUMENT

### 1. The law of the case doctrine remains good law in Washington.

Despite its longstanding roots in Washington law, the State contends that the law of the case doctrine no longer exists in Washington. Br. of Resp't at 18. The basis for this argument is a United States Supreme Court case. Musacchio v. United States, 577 U.S. ___, 136 S. Ct. 709, 193 L. Ed. 2d 639 (2016). In Musacchio, the court held that a challenge to the sufficiency of the evidence under due process "should be assessed against the elements of the charged crime, not against the erroneously heightened command in the jury instruction." Musacchio, 136 S. Ct. at 715. Because the court was reviewing a federal criminal case, the Court was necessarily construing the due process clause of the Fifth Amendment (which constrains the federal government), not the due process clause of the Fourteenth Amendment (which constrains the states). Id. at 716.

This holding does not overrule State v. Hickman, 135 Wn.2d 97, 954 P.2d 900 (1998) or abrogate long-standing Washington precedent on the law of the case doctrine. Contrary to the State's contentions, the law of the case doctrine in Washington is not premised on the due process clause of the Fourteenth Amendment. Br. of Resp't at 19-20. Rather, it is

premised on the Washington Constitution and the rules of appellate review as crafted by Washington courts since the birth of this state. See Hickman, 135 Wn.2d at 101-02 (collecting cases). As the Washington Supreme Court has indicated, the law of the case doctrine arises "from the nature and exigencies of appellate review," not simply from the constitutional principle that the State must prove every element of the crime beyond a reasonable doubt:

> This case is framed by two fundamental principles of law: the first constitutional, the second arising from the nature and exigencies of appellate review. The first principle is that constitutional due process requires that the State prove every element of the crime beyond a reasonable doubt. The second principle is that "jury instructions not objected to become the law of the case." If the jury is instructed (without objection) that to convict the defendant, it must be persuaded beyond a reasonable doubt of some element that is not contained in the definition of the crime, the State must present sufficient evidence to persuade a reasonable jury of that element regardless of the fact that the additional element is not otherwise an element of the crime.

State v. France, 180 Wn.2d 809, 814, 329 P.3d 864 (2014) (emphasis added) (citations omitted).

Explored more thoroughly, the law of the case doctrine in Washington is premised on Washington common law and article I, § 16, which provides that judges "shall declare the law." Const. art. I, § 16. Thus, in 1896, our Supreme Court described the law of the case doctrine as a "general rule," and noted that it had special support in article I, § 16.

Pepperall v. City Park Transit Co., 15 Wash. 176, 183, 45 P. 743 (1896). Neither the Pepperall opinion nor even the majority opinion in Hickman cite to the Fourteenth Amendment or use the phrase "due process" in expounding on the law of the case doctrine.

The standard used to evaluate the sufficiency of evidence in criminal cases can be traced to Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) and In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Winship held that the due process clause of the Fourteenth Amendment requires the State to prove every element of a criminal offense beyond a reasonable doubt. Winship, 397 U.S. at 364. Jackson held that in evaluating whether the State has met this burden, the Court should view the evidence in the light most favorable to the prosecution and analyze whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Virginia, 443 U.S. at 319. Shortly after Jackson, the Washington Supreme Court adopted this standard in evaluating the sufficiency of the evidence. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980).

The Washington Supreme Court also adopted the same standard in reviewing whether the State has met its burden to prove an added requirement in a jury instruction. Hickman, 135 Wn.2d at 103. But it does not therefore follow that the law of the case doctrine is dependent on

the due process clause of the Fourteenth Amendment, as construed by the United States Supreme Court. The law of the case doctrine was applied in criminal cases predating Winship, Jackson, and Green. See, e.g., State v. Hames, 74 Wn.2d 721, 724-25, 446 P.2d 344 (1968).

Accordingly, the State is incorrect in its contention that Mussachio overruled Hickman. Because the issue is not a matter of federal constitutional law, states throughout the union remain free to continue use the jury instructions as the yardstick in deciding whether parties—including the government, have met their burden. See Michigan v. Long, 463 U.S. 1032, 1040, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983) (Supreme Court will not review judgments of state courts that rest on adequate and independent state grounds). Hickman remains good law and must be followed.

A panel on this Division of this Court recently reached a contrary conclusion in State v. Tyler, No. 73564-1-L, 2016 WL 4272999, at *5 (Wash. Ct. App. Aug. 15, 2016). For the reasons explained above, this conclusion is incorrect. This panel (or even the same panel) need not perpetuate the error. Grisby v. Herzog, 190 Wn. App. 786, 809-10, 362 P.3d 763 (2015); ("two inconsistent opinions of the Court of Appeals may exist at the same time."); see, e.g., State v. Morgan, 163 Wn. App. 341,

351, 261 P.3d 167 (2011) (reaching different result than previous panel on identical issue).

This Court should continue to apply the law of the case doctrine as set forth in Hickman.

**2. The State failed to prove Counts 1 and 2 of identity theft.**

**a. The State bore the burden of proving that Counts 1 and 2 were committed "on or about" February 16, 2012. The State elected February 16, 2012 as the date the offenses were committed.**

As argued, the jury instructions for counts 1 and 2 required the State prove that the offenses occurred "on or about February 16, 2012." CP 114-15; Br. of App. at 11. The State resists this conclusion, arguing that the date of the crime is not a material element. Br. of Resp't at 15-16. In support, the State cites State v. Hayes, 81 Wn. App. 425, 432, 914 P.2d 788 (1996). This case, however, predates Hickman, which held that under the law of the case doctrine and the jury instructions in the case, venue was an essential element that the State failed to prove. Hickman, 135 Wn.2d at 99. Thus, this Court also declined to follow Hayes's assertion that time does not became an element if in jury instruction. State v. Jensen, 125 Wn. App. 319, 326, 104 P.3d 717 (2005).

The State argues Ms. Colson possessed the identifying information on February 16, 2012 with intent to commit further crimes. Br. of App. at

15. This was not the State's theory below. 7/22/14RP 7-9. Rather, the State's theory was Ms. Colson was guilty on these two counts because she possessed the identifying information on February 16, 2012 and this information *had been used earlier* by Mr. Chopra and Mr. Schulze:

> We've established the date -- the date she was pulled over. We've established it was the defendant; she was identified by her driver's license. And, in her car, she had this check and this debit card.
>
> And you heard testimony from Mr. Chopra and Mr. Schulze about where they got this: that they stole it from a mailbox, that they found a box of checks that had been sent to Mr. Stanewich, they found a debit card that had been sent to Mr. Stanewich; and, that together, the three of them used that check.
>
> They deposited the check into an account they'd created in Mr. Eskridge's name; and they used that debit card to make some purchases.
>
> So, with [the] elements that we're looking at, it was Possessed with Intent to Commit a Crime. The crime had been committed: the check had been written, it had been cashed into Mr. Eskridge's fake account, it had been -- the debit card had been used.

7/22/14RP 8 (emphasis added). The State repeated this flawed argument as to Count 2. 7/22/14RP 9 ("she possessed it; she acted with the intent to commit a crime -- the check had been deposited into that account, cash had been withdrawn; and, she knew that it belonged to another person.") (emphasis added). The offense of identity theft is not committed merely by possessing identifying information that was used *in the past* to commit

a crime. Rather, it is committed by possessing identifying information with present intent to commit a crime. The unit of prosecution is per each act of identity theft. RCW 9.35.001. A person can commit multiple acts of identity theft against the same person. Id.

Here, the State *elected* February 16, 2016 as the date of the offense (i.e., the unit of prosecution) and identified Ms. Colson's possession of the identifying information on that date as fulfilling the elements of the offense. See State v. Carson, 184 Wn.2d 207, 228-29, 357 P.3d 1064 (2015) (prosecutor elected specific acts during closing). The State cannot change its theory. See State v. Mills, 80 Wn. App. 231, 234, 907 P.2d 316 (1995) (rejecting State's new theory on appeal that it proved defendant possessed a firearm "about" May 26, 1992 when it had argued below that defendant constructively possessed firearm on the precise date of May 26, 1992). Absent this election, Ms. Colson's right to a unanimous verdict on the act constituting the crime would have been placed in jeopardy. See Carson, 184 Wn.2d at 227 ("*Petrich*'s multiple acts instruction applies only when the State fails to 'elect the act upon which it will rely for conviction.'") (quoting State v. Petrich, 101 Wn.2d 566, 572, 683 P.2d 173 (1984)).

Moreover, mere possession of a person's identifying information is insufficient to prove intent to commit a crime using that information. Br.

of App. at 14; State v. Vasquez, 178 Wn.2d 1, 14-16, 309 P.3d 318 (2013). Proof that the identifying information was used in the past does not prove there was present intent to use it again.

Even setting aside the State's election during closing that the counts 1 and 2 were committed on February 16, 2016, proof that counts 1 and 2 occurred on February 6, 2016 is not proof that they occurred "on or about" February 16, 2016. Black's Law Dictionary defines "on or about," as "Approximately; at or around the time specified," explaining that, "This language is used in pleading to prevent a variance between the pleading and the proof, usu. when there is any uncertainty about the exact date of a pivotal event." ON OR ABOUT, Black's Law Dictionary (10th ed. 2014). Here, the difference of about ten days is significant and not close.

The State argues that the "on or about" requirement is established if the State proves the offense was committed "reasonably near" the specific date. Br. of Resp't at 16. The State cites United States v. Shea, 493 F.3d 1110, 1118 (9th Cir. 2007) in support of this rule. Shea, a federal case, is unhelpful. The cited language comes from a claim involving a challenge to the sufficiency of the indictment. Shea, 493 F.3d at 1118-19. Shea did not involve a law of the case claim or an election by the prosecutor that the offense occurred on a specific date.

The State did not prove the date requirements in counts 1 and 2. These two convictions should be reversed.

**b. The State did not prove that the identifying information in Count 2 belonged to a real person.**

The State does not disagree that it bore the burden of proving that the identifying information belonged to a specific, real person. Br. of Resp't at 16. Thus, as to Count 2, the State bore the burden of proving that the identity of "Rafic Farah" belonged to a real person. The State cursorily argues that it met its burden because the check bearing the name of "Rafic Farah" was found in the mail and was successfully deposited. Br. of Resp't 17. Otherwise, the State does not respond to Ms. Colson's arguments. Br. of App. at 16-17. The State's arguments fail because the name might have been fictitious or the check could have been altered. Successfully depositing a check does not prove beyond a reasonable doubt that the payer listed on the check is a real person. Assumptions are not proof, let alone proof beyond a reasonable doubt. This Court should hold the State to its burden of proof and reverse.

**3. Under the jury instructions, the State assumed the burden of proving Ms. Colson committed the crimes of identity theft as a principle rather than as an accomplice. The State did not meet this burden.**

Besides arguing that the law of the case doctrine no longer exists in Washington, the State argues that the jury instructions did not impose a

burden of proving that Ms. Colson acted as a principle rather than an accomplice. Br. of Resp't at 20. The State argues that the "to-convict" instruction for Count 7 did not impose this requirement, despite its use of the phrase "or an accomplice" in one element. Br. of Resp't at 20. The State relies on State v. Teal, 152 Wn.2d 333, 338, 96 P.3d 974 (2004). But in Teal, there was not a to-convict instruction which had this language. Rather, the jury was simply given a general accomplice liability instruction. Teal, 152 Wn.2d at 339. Thus, it is not controlling.

Rather, the Supreme Court's subsequent decision in State v. Willis, 153 Wn.2d 366, 103 P.3d 1213 (2005) is controlling. There, the failure to include the phrase "or an accomplice" in an instruction on a firearm enhancement required the State to prove that the defendant himself (rather than an accomplice) was armed. Willis, 153 Wn.2d at 374-75. The State does not respond to this argument.

Oddly, the Willis court did not cite or discuss Teal. The decision, however, is reconcilable with Teal once one examines the jury instructions in Willis. There, as memorialized in the Court of Appeals opinion, the to-convict instruction on burglary used the language "the defendant or an accomplice," but the instruction on the firearm enhancement did not,

instead stating "the defendant." State v. Willis, 118 Wn. App. 1026 n. 9 & 11 (2003).[1] Because another instruction used the phrase, "the defendant or an accomplice," a reasonable jury would read the other instruction, which simply said "the defendant," as requiring proof that defendant himself possessed the firearm. See In Matter of Dependency of D.L.B., __ Wn.2d __, 376 P.3d 1099, 1107 (2016) (when different terms within same statutory scheme are used, court presumes legislature intended different meanings).

Similar to Willis, element 4 in the to-convict instruction for count 7 used the phrase "the defendant or an accomplice," but none of the other elements in any of the instructions used this phrase, instead using the phrase "the defendant." CP 114-20, 123-25. Hence, the State assumed the burden of proving principal liability on all the counts except for the fourth element of count 7. Willis, 153 Wn.2d at 374-75.

The State does contest Ms. Colson's arguments that the State did not prove principle liability as to counts 3, 5, 6, 7, 8, 9, and 10. Br. of App. at 22-30; Br. of Resp't at 17-21. By not doing so, the State has

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[1] This unpublished opinion is not cited as authority, but only to show what the instructions in Willis stated. This is appropriate. See State v. Conover, 183 Wn.2d 706, 717 n.7, 355 P.3d 1093 (2015) (citing unpublished opinions not as authority, but to show reader that Court of Appeals had reached divergent results on issue before Supreme Court).

impliedly conceded that it did not prove principle liability as to these counts. Applying the law of case doctrine, this Court should reverse those convictions.

**4. The State failed to prove that Ms. Colson "disposed of" stolen mail, an alternative means of the offense of possession of stolen mail.**

The "to-convict" instruction on the crime of possession of stolen mail required the State to prove that Ms. Colson "knowingly received, retained, possessed, concealed, or disposed of ten or more pieces of stolen mail addressed to three or more different addresses." CP 117 (emphasis added). These are alternative means and there must be sufficient evidence to support each means. See State v. Lillard, 122 Wn. App. 422, 434-35, 93 P.3d 969 (2004); State v. Hayes, 164 Wn. App. 459, 480-81, 262 P.3d 538 (2011).

The State argues these five terms are not alternative means. The State is wrong. The statute says: "A person is guilty of possession of stolen mail if he or she: (a) Possesses stolen mail addressed to three or more different mailboxes; and (b) possesses a minimum of ten separate pieces of stolen mail." RCW 9A.56.380(1). The same statute says: "'Possesses stolen mail' means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen, and to withhold or appropriate to the use of any person other than the true owner,

or the person to whom the mail is addressed." RCW 9A.56.380(2). (emphasis added). Subsection (2) of the statute does more than simply define a term, it defines the offense.

Hence, the cases the State relies on are inapposite. The cases and analysis that this Court should look to are those involving the crime of theft. Like possession of stolen mail, theft is an alternative means crime. State v. Linehan, 147 Wn.2d 638, 647, 56 P.3d 542 (2002). The three alternatives come from a "definitional" statute:

> (1) "Theft" means:
> (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
> (b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or
> (c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

RCW 9A.56.020; Linehan, 147 Wn.2d at 649 (jury must be unanimous as to whether defendant commits theft by wrongfully obtaining, exerting unauthorized control, or obtaining the property by color and aid of deception).

This results because, as explained in Linehan, the theft statutes are structured differently than other criminal statutes, which results in alternative means crimes despite that the alternatives are derived from a

definitional statute:

> The theft statutes are structured differently than other crimes. . . . The statutes describing the degrees of theft do not provide alternative means of committing the crime, nor do they define the crime. Rather, the crime of theft is defined in terms of the alternative means of commission, in a statute separate from those defining the degrees of theft. *Compare* RCW 9A.56.020 *and* 9A.56.030-.050.

Linehan, 147 Wn.2d at 647 (emphasis added). Moreover, as explained by this Court in an earlier case,

> RCW 9A.56.020 is set apart, separate and distinct, from the chapter's general definitions contained in RCW 9A.56.010, and, in essence, actually defines the *crime* of "theft." The crime is merely segregated by degree in subsequent sections.

State v. Laico, 97 Wn. App. 759, 987 P.2d 638, 641 (1999).

The analysis from the Linehan and Laico courts apply here. While there are not different degrees for the offense of possession of stolen mail, RCW 9A.56.380(2) essentially defines the crime of possession of stolen mail. Like RCW 9A.56.020 (the theft statute), RCW 9A.56.380(2) (the possession of stolen mail statute) is set apart from the general definition section at RCW 9A.56.010.

Accordingly, like the unique definitional statute for "theft," which sets out three alternative means, the unique definitional statute for possession of stolen mail sets out five alternative means. Applying Linehan, this Court should conclude that to "receive, retain, possess,

conceal, or dispose of" are alternative means which must be supported by sufficient evidence. Thus, when a jury is instructed on these alternatives, jury unanimity is required as to the means unless there is sufficient evidence to prove each means. Linehan, 147 Wn.2d at 645; Ortega-Martinez, 124 Wn.2d 702, 707-08, 881 P.2d 231 (1994). Lillard and Hayes were correctly decided, albeit for reasons not explained therein.

Panels on Divisions One and Two of this Court have recently reached a different conclusion on this issue in the context of the offense of possession of a stolen vehicle. State v. Makekau, 194 Wn. App. 407, __, __ P.3d __ (2016); Tyler, 2016 WL 4272999 at *7. These cases involve a different offense and are not controlling. Unlike the statute setting out the offense of stolen mail, the statutes for possession of stolen property and possession of a stolen vehicle rely on a definitional section set forth in another statute. RCW 9A.56.140(1).

Further, neither Makekau nor Tyler appear to have considered the argument that the offense at issue was is akin to theft. Neither cite to or discuss Linehan or Laico. The cases relied for their conclusions are State v. Lindsey, 177 Wn. App. 233, 311 P.3d 61 (2013); State v. Owens, 180 Wn.2d 90, 323 P.3d 1030 (2014); and State v. Sandholm, 184 Wn.2d 726, 364 P.3d 87 (2015).

Owens and Lindsey involved the crime of trafficking in stolen property in the first degree. The statute setting out this offense reads:

> (1) A person who knowingly initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others, or who knowingly traffics in stolen property, is guilty of trafficking in stolen property in the first degree.
>
> (2) Trafficking in stolen property in the first degree is a class B felony.

RCW 9A.82.050. The defendants in Owens and Lindsey argued each of the terms in the first part of the statute created eight alternative means. The Owens and Lindsey courts held the language created only two alternative means. Owens, 180 Wn.2d at 98; Lindsey, 177 Wn. App. at 241. The rationale was that the first seven terms were "merely different ways of committing one act, specifically stealing." Owens, 180 Wn.2d at 99.

Sandholm involved driving under the influence. The provision read:

> (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:
> (a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or
> (b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

> (c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

Former RCW 46.61.502 (2008). The court reasoned that these "statutory subsections describe facets of the same conduct, not distinct criminal acts." Sandholm, 184 Wn.2d at 735. The defendant's "*conduct* is the same—operating a vehicle while under the influence of certain substances." Id.

As explained earlier, in contrast to these cases, the statutory scheme for possession of stolen mail, like the scheme for theft, is unique. This distinguishes the offense from those at issue in Owens and Sandholm. Moreover, the five terms—possess, receive, retain, conceal, and dispose of—are varied. It is possible to commit the last four alternatives without necessarily "possessing" the thing in question.

"Possession of property may be either actual or constructive." State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). "Actual possession means that the goods are in the personal custody of the person charged with possession; whereas, constructive possession means that the goods are not in actual, physical possession, but that the person charged with possession has dominion and control over the goods." Id.

When one holds a piece of mail, the person has "possession," i.e., "dominion and control." In contrast, a person could "receive" mail

without it being in their dominion and control, such as by having the mail delivered to an agreed location not in the person's control, like a neighbor's house. Similarly, a person could "retain" mail without possessing it, such as by authorizing a neighbor to hold onto the mail. A person could also "conceal" mail without possessing it, such as by having the mail placed in a hidden location. And a person could "dispose of" mail without possessing it—for example, imagine burning a pile of mail.

In sum, the statute at issue is more like the theft statute. The decision on point is Linehan, not Owens or Sandholm. Accordingly, this panel should apply Lillard and Hayes because they are correct. Moreover, the State has not shown that these decisions are harmful. The State can avoid the potential problem by having the jury instructed on the alternatives that apply.

Ms. Colson's conviction for possession of stolen mail should be reversed because there was insufficient evidence that she "disposed of" the mail.

**5. The jury erroneously determined that six of the identity theft counts were "major economic offenses." This issue is not moot.**

The jury found the major economic offense aggravator as to counts 5 through 10. Ms. Colson's judgment and sentence recounts the jury's findings. CP 205. As argued, the jury erroneously found these

aggravators because the jury was not required to find that Ms. Colson had some knowledge that informed the aggravating factors. State v. Hayes, 182 Wn.2d 556, 566-67, 342 P.3d 1144 (2015).

Despite the aggravators being in the judgment and sentence, the State argues the issue is moot because the Court did not impose an exceptional sentence. The State is wrong. Ms. Colson's judgment and sentence is a public record. She may be stigmatized by society for perpetrating "major economic offenses." See State v. Rinaldo, 98 Wn.2d 419, 422, 655 P.2d 1141 (1982) (stigma associated with the classifying person as sexual psychopath was factor in concluded issue was not moot).

Further, the legislature could someday create a regulatory nonpunitive registration scheme for those who have perpetrated "major economic offenses." If so, Ms. Colson would be forced to register. The prohibition against ex-post facto laws would not protect her because this would be a nonpunitive law. Smith v. Doe, 538 U.S. 84, 97-103, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003) (because Alaska's Sex Offender Registration Act was nonpunitive, retroactive application of the Act did not violate the ex post facto clause).

The Court should conclude the issue is not moot.

Alternatively, the State cursorily argues that the jury properly found the aggravators. Br. of Resp't at 28. The State does not attempt to

distinguish Hayes and does not argue that the jury was required to find that Ms. Colson had some knowledge that informed the aggravating factors. Br. of Resp't at 28. The State's argument is contrary to Hayes and should be rejected. Br. of App. at 35-37.

Following Hayes, this court should strike all reference to the aggravators from the judgment and sentence.

**6. The Court should not impose appellate costs.**

Because the trial court found Ms. Colson indigent, she is presumed to remain indigent on appeal. RAP 15.2(f); State v. Sinclair, 192 Wn. App. 380, 393, 367 P.3d 612 (2016). What money she had appears to have been expended on a private attorney at trial. See 7/29/15RP 17 (defense counsel represents: "I think Ms. Colson at this point is not going to have any money, and will be indigent."). Ms. Colson's financial situation will not likely improve from imprisonment for 50 months. With a felony record and being middle-aged, it is unlikely that she will readily find gainful employment. Under the circumstances, the State has not rebutted the presumption of indigency. This Court should exercise its discretion and instruct that no appellate costs will be imposed.

## B. CONCLUSION

Applying the law of the case doctrine, the State failed to prove all of the offenses for which Ms. Colson was convicted. This Court should reverse.

DATED this 8th day of September, 2016.

Respectfully submitted,

s/ Richard W. Lechich____________
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Washington Appellate Project
Attorney for Appellant

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

| | | |
|---|---|---|
| STATE OF WASHINGTON, | ) | |
| | ) | |
| Respondent, | ) | |
| | ) | NO. 73798-8-I |
| v. | ) | |
| | ) | |
| MARGARET COLSON, | ) | |
| | ) | |
| Appellant. | ) | |

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 8TH DAY OF SEPTEMBER, 2016, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** 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] ANN SUMMERS, DPA<br>[paoappellateunitmail@kingcounty.gov]<br>[ann.summers@kingcounty.gov]<br>KING COUNTY PROSECUTING ATTORNEY<br>APPELLATE UNIT<br>KING COUNTY COURTHOUSE<br>516 THIRD AVENUE, W-554<br>SEATTLE, WA 98104 | ( )<br>( )<br>(X) | U.S. MAIL<br>HAND DELIVERY<br>AGREED E-SERVICE<br>VIA COA PORTAL |
| [X] MARGARET COLSON<br>378514<br>WACC FOR WOMEN<br>9601 BUJACICH RD NW<br>GIG HARBOR, WA 98332 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>________________ |

**SIGNED** IN SEATTLE, WASHINGTON THIS 8TH DAY OF SEPTEMBER, 2016.

X______________________________

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