

NO. 67017-4-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

GILBERTO MARTINEZ-VAZQUEZ,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. The prosecutor committed reversible misconduct by commenting on Mr. Martinez-Vazquez's constitutional right to a trial by jury.

2. The prosecutor committed reversible misconduct by disparaging defense counsel.

3. The prosecutor committed reversible misconduct by inserting her personal opinion into her closing argument.

4. The prosecutor committed reversible misconduct by misstating the jury's role.

5. Cumulative misconduct denied Mr. Martinez-Vazquez a fair trial.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. It is improper for a prosecutor to comment on a defendant's exercising his constitutional right to a trial by jury. In this case, the prosecutor argued multiple times that the case was a simple one, that Mr. Martinez-Vazquez "just want[ed] [her] to do [her] job," and that "this is really just a case of the defendant

wanting the state to prove the case.”¹ 3RP 10; 5RP 84. Were the prosecutor’s comments improper?

2. When a prosecutor’s comment affects a constitutional right, this Court applies the constitutional harmless error standard. In this case, the prosecutor commented on Mr. Martinez-Vazquez’s decision to go to trial. Are the comments subject to review under the constitutional harmless error standard?

3. Constitutional harmless error review of improper comments requires reversal unless the State can prove beyond a reasonable doubt that the improper comments were harmless. Here, the State put on only two witnesses, both of whom saw Mr. Martinez-Vazquez for a very short period of time. Were the prosecutor’s improper comments harmless beyond a reasonable doubt?

4. It is improper for a prosecutor to disparage the role of defense counsel. In this case, the prosecutor suggested that the

¹ The transcripts in this case are contained in five individually-paginated volumes:

1RP	-	2/7/11
2RP	-	2/8/11
3RP	-	2/9/11
4RP	-	4/8/11
5RP	-	2/8/11 (Opening, voir dire – entitled “Excerpt of VRP”).

defense attorney was burdening the State by going to trial. Were the prosecutor's comments improper misconduct?

5. A prosecutor may not assert her personal opinion about the strength of a case. Here, the prosecutor compared the trial to other trials and stated that in this case, there should be a quick conviction. Were the comments improper?

6. It is improper for a prosecutor to misstate the role of the jury. In this case, the prosecutor told the jury that, rather than consider the evidence and determine whether the State had proved every element of the offenses beyond a reasonable doubt, it was the jury's "job" to find the defendant guilty. Did the prosecutor behave improperly?

7. Misconduct is flagrant and ill-intentioned when its cumulative effect is prejudicial and could not be cured by an instruction to the jury. In this case, the prosecutor repeatedly disparaged defense counsel, inserted her personal opinion into closing argument, and misstated the jury's role. Did cumulative misconduct deny Mr. Martinez-Vazquez a fair trial?

C. STATEMENT OF THE CASE

Gilberto Martinez-Vazquez was issued a trespass admonishment by Nordstrom loss prevention officers (LPOs) on

March 17, 2010. 2RP 6–7. On August 26, 2010, LPO Emily Powell saw a man who looked like Mr. Martinez-Vazquez enter the downtown Seattle Nordstrom. 2RP 13. She radioed to tell another LPO to watch out for Mr. Martinez-Vazquez. 2RP 13. They watched him select seven pairs of jeans and put them into a bag. 2RP 25. The man then exited the store, and two other LPOs ran after him and stopped him on the street. 2RP 15, 25. The entire incident occurred in less than a minute. 2RP 26. Mr. Martinez-Vazquez was charged with burglary in the second degree and theft in the second degree. CP 1; 1RP 3.

In her opening statement, the prosecutor said,

There is no doubt about this, as you will see after you watch the surveillance video and hear the testimony. This is really just a case of the defendant wanting the State to prove the case.

5RP 84. During closing argument, the prosecutor stated,

So, again, undisputed facts, simple law, this is not a complex mental task for you. As I said at the outset, this is a situation of the defendant just wanting to make me do my job. I did my job, and now you do your job. I ask that you find Mr. Martinez guilty of these crimes.

3RP 10. She also argued,

You know, there are a lot of different trials

you could get assigned to as jurors, as one juror mentioned, that can take weeks and weeks with very complicated testimony and expert witnesses. This is not one of those cases. There are trials that you can get assigned to where you deliberate for multiple days and agonize over your decision. This should not be one of those cases.

3RP 7. There was no objection to the prosecutor's comments. 3RP 7, 10; 5RP 84.

Mr. Martinez-Vazquez was convicted of burglary in the second degree and theft in the second degree. CP 32.

D. ARGUMENT

1. THE PROSECUTOR COMMITTED REVERSIBLE MISCONDUCT BY COMMENTING ON MR. MARTINEZ-VAZQUEZ'S RIGHT TO A TRIAL BY JURY.

A prosecutor's conduct may deny a defendant his due process right to a fair trial. State v. Fisher, 165 Wn.2d 727, 757, 202 P.3d 937 (2009). In order to prevail on a claim of prosecutorial misconduct, the defendant must show both that comments were improper and that they prejudiced the proceeding. State v. Reed, 102 Wn.2d 140, 145, 684 P.2d 699 (1984). This prejudice is assigned different standards of review based on the nature of the comment and on whether the comment triggered an objection:

when there is an objection, a defendant needs to show there is a substantial likelihood that the comments affected the jury's decision. State v. Gregory, 158 Wn.2d 759, 841, 147 P.3d 1201 (2006). When there is no objection, a defendant must show the conduct was flagrant and ill-intentioned and could not have been cured by an instruction to the jury. Id.; see State v. Allen, 161 Wn. App. 727, 747, 255 P.3d 784 (2011). When the improper comment refers to a separate constitutional right, the constitutional harmless error standard applies. State v. Moreno, 132 Wn. App. 663, 671–72, 132 P.3d 1137 (2006). Under this standard the conviction must be reversed unless the reviewing court is convinced beyond a reasonable doubt the evidence is so overwhelming that it necessarily would have led to a finding of guilt. Id. (citing State v. Easter, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996)).

a. A prosecutor may not comment on a defendant's decision to exercise a constitutional right. As the Washington Supreme Court explained in State v. Rupe, behavior protected by the constitution cannot be the basis for punishment. 101 Wn.2d 664, 704–05, 683 P.2d 571 (1984) (citing Hess v. Indiana, 414 U.S. 105, 107, 94 S. Ct. 326, 38 L. Ed. 2d 303 (1973) and Stanley v. Georgia, 394 U.S. 557, 568, 89 S. Ct. 1243, 22 L. Ed. 2d 542

(1969)). Accordingly, in a criminal trial, the State cannot draw adverse inferences from a defendant's decision to exercise a constitutional right. State v. Burke, 163 Wn.2d 204, 217, 181 P.3d 1 (2008); Rupe, 101 Wn.2d at 705 (citing Griffin v. California, 308 U.S. 609, 614, 85 S. Ct. 1229, 14 L. Ed. 2d 106 (1965)).

b. The prosecutor in this case commented on Mr. Martinez-Vazquez's decision to exercise his right to a jury trial. The federal and state constitutions protect a defendant's right to a fair trial before an impartial jury. Const. art. 1 §§ 3, 21, 22; U.S. Const. amends. 6, 14; State v. Davis, 141 Wn.2d 798, 824, 10 P.3d 977 (2000). Here, the prosecutor urged the jury to draw an adverse inference from Mr. Martinez-Vazquez's choice to exercise this constitutional right by stating, "This is really just a case of the defendant wanting the State to prove the case" and "[T]his is a situation of the defendant just wanting to make me do my job." 3RP 10; 5RP 84. With those statements, the prosecutor implied that Mr. Martinez-Vazquez should be penalized for going to trial, his constitutional right. This was improper. See Burke, 163 Wn.2d at 221.

Washington courts have considered the application of the Rupe rule to a variety of constitutional rights, but have not

addressed whether the prohibition against burdening a defendant's exercise of his constitutional rights extends to the right to trial by jury. See id. (comment on the constitutional right to remain silent); Rupe, 101 Wn.2d at 705–07 (introduction of evidence of possession of guns allowed jury to draw adverse inference from constitutional right to bear arms); Moreno, 132 Wn. App. at 672–73, (constitutional right of self-representation unduly burdened by prosecutor's closing argument). No published Washington case addresses the question in the context of the right to a trial by jury. This Court was faced with the question in just one unpublished case, but did not squarely address whether the prosecutor's comments drew adverse inferences from the defendant's decision to exercise his right to a jury trial, explaining instead that the prosecutor's comments were not improper because they responded to the defense's theory of the case. State v. Wilson, 139 Wn. App. 1066, not reported in P.3d, 2007 WL 2085333 at *4–5 (Div. 1 2007).

This Court should extend the protection assigned in Rupe to the constitutional right to a jury trial. This would be a consistent application of the law: after all, the constitutional right to a trial by jury is jealously guarded by the courts. In State v. Evans, for

example, the Supreme Court wrote, “The right of trial by jury is not merely important, it is a fundamental right secured by the United States Constitution. It finds its roots in the core principles upon which this nation was founded.” 154 Wn.2d 438, 445, 114 P.3d 627 (2005). In Evans and later in State v. Kirkman, the Supreme Court quoted the United States Supreme Court in writing, “the right to a jury trial is no mere procedural formality, but a fundamental reservation of power in our constitutional structure. Just as suffrage ensures the people’s ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary.” 159 Wn.2d 918, 938, 155 P.3d 125 (2007) (quoting Blakely v. Washington, 542 U.S. 296, 305–06, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)) (internal quotation marks omitted); Evans, 154 Wn.2d at 445.

The importance of the constitutional right to a trial by jury is clear. A defendant’s decision to exercise that right should be protected by the same rule that protects his fundamental rights to silence and to self-representation. See Burke, 163 Wn.2d at 221; Moreno, 132 Wn. App. at 672–73. When a prosecutor comments on or encourages a jury to draw negative inferences from a defendant’s decision to go to trial, it should be improper

misconduct. The Second Circuit Court of Appeals has reached this conclusion, in a case similar to Mr. Martinez-Vazquez's. In United States v. Whitten, the prosecutor argued, "[The defendant] has an absolute right to go to trial, put the government to its burden of proof, to prove he committed these crimes, but he can't have it both ways. He can't do that, then say I accept responsibility." 610 F.3d 168, 194 (2nd Cir. 2010). The court held that the comment impermissibly burdened the defendant's Sixth Amendment right to a trial by jury. Id.; see Zant v. Stephens, 462 U.S. 862, 885, 103 S. Ct. 2773, 77 L. Ed. 2d 235 (1983) (explaining that it is improper to allow a jury to draw "inferences from conduct that is constitutionally protected . . . for example . . . the request for trial by jury."); United States v. Jackson, 390 U.S. 570, 583, 591, 88 S. Ct. 1209, 20 L. Ed. 2d 138 (1968) (invalidating provision of federal statute that burdened defendant's right to a jury trial); People v. Handcock, 193 Cal. Rptr. 397, 403 n. 8 (Cal. Ct. App. 1983) ("There is authority indicating that when a trial court interferes with a defendant's constitutional right to a jury trial, reversal is mandatory.").

c. When a constitutional right is implicated by a prosecutor's improper comments, the constitutional harmless error standard applies. In Moreno, this Court applied the constitutional

harmless error standard to an instance where the prosecutor commented on a defendant's exercising his constitutional right. 132 Wn. App. 663. In that case, the prosecutor argued, "The defendant is a picture perfect example of a domestic violence abuser. He has got to be in control. He is still trying to call the shots. So much so that he has exercised his constitutional rights to defend himself, because power is that important to him." Id. at 672. The court explained that the argument was an improper comment on the defendant's constitutional right to represent himself. Id. at 672–73. But in light of the overwhelming evidence presented against Mr. Moreno, the error "was harmless beyond a reasonable doubt." Id. at 674.

The Moreno Court's use of the constitutional harmless error standard is consistent with both United States and Washington Supreme Court precedent applying the constitutional harmless error standard when a prosecutor has improperly burdened a defendant's constitutional right. In Chapman v. California, the prosecutor repeatedly commented on the defendants' silence and urged the jury to draw negative inferences from their failure to testify. 386 U.S. 18, 19, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967). The Court articulated and then applied the constitutional harmless error

standard. Id. at 24; see also Burke, 163 Wn.2d at 222 (right to silence); Easter, 130 Wn.2d at 230, 242 (same). In State v. Monday, the Washington Supreme Court applied the constitutional harmless error standard where a prosecutor made numerous racially-charged comments, violating the defendant's right to an impartial jury. 171 Wn.2d 667, 680, 257 P.3d 551 (2011).

Here, as in Monday and Moreno, the prosecutor violated the defendant's fundamental constitutional right. Monday, 171 Wn.2d at 680; Moreno, 132 Wn. App. at 672–73. The constitutional harmless error standard should apply. Whitten, 610 F.3d at 173; see Monday, 171 Wn.2d at 680; Burke, 163 Wn.2d at 222; Easter, 130 Wn.2d at 230; Moreno, 132 Wn. App. at 672–73.

d. The improper comments were not harmless beyond a reasonable doubt. Under the constitutional harmless error standard, the error is only harmless if the reviewing court is convinced beyond a reasonable doubt that the jury would have reached the same conclusion absent the improper comment; the test is satisfied only if the evidence is so overwhelming that it must lead to a finding of guilt. Burke, 163 Wn.2d at 222. Here, the witnesses saw Mr. Martinez-Vazquez for “under a minute.” 2RP 26. No police officer testified. See 2RP 3–30. No forensic evidence was

presented. See 2RP 3–30. There is a possibility that the jury would have reached a different conclusion in the absence of the prosecutor’s improper comments. See, e.g., State v. Romero, 113 Wn. App. 779, 794–95, 54 P.3d 1255 (2002) (finding the State’s evidence “not overwhelming” when the verdict turned on the testimony of one witness, and thus declining to find a comment on the defendant’s right to silence harmless beyond a reasonable doubt). The standard requires only a chance that the verdict would be different. See, e.g., State v. Jones, 168 Wn.2d 713, 724–25, 230 P.3d 576 (2010) (stating that “a reasonable jury . . . may have been inclined to see the [matter] in a different light.”).

2. THE PROSECUTOR COMMITTED REVERSIBLE MISCONDUCT BY DISPARAGING DEFENSE COUNSEL, ASSERTING HER PERSONAL OPINION ABOUT THE CASE, AND TELLING THE JURY THAT IT WAS THEIR “JOB” TO CONVICT MR. MARTINEZ-VAZQUEZ.

a. The prosecutor improperly disparaged the role of defense counsel. In addition to being impermissible commentary on Mr. Martinez-Vazquez’s decision to exercise a constitutional right, the prosecutor’s argument that he was just “wanting the State to prove its case” and “wanting [her] to do [her] job” were improper

because they disparaged the role of defense counsel. 3RP 10; 5RP 84.

In State v. Thorgerson, the Washington Supreme Court recently stated, “It is improper for the prosecutor to disparagingly comment on defense counsel's role or impugn the defense lawyer's integrity.” 172 Wn.2d 438, 258 P.3d 43, 50, (2011) (citing State v. Warren, 165 Wn.2d 17, 29–30, 195 P.3d 940 (2008), cert. denied, 129 S. Ct. 2007, 173 L. Ed. 2d 1102 (2009), and State v. Negrete, 72 Wn. App. 62, 67, 863 P.2d 137 (1993)). A prosecutor improperly impugns defense counsel when she suggests that defense counsel is underhanded or is behaving dishonestly. For example, in Thorgerson, the prosecutor stated that the defense's case was “bogus” and involved “sleight of hand.” 258 P.3d at 51. The court focused on the fact that the comments implied to the jury that the attorney was not acting with integrity. Id. Similarly, in Warren, the prosecutor's comments undercut the defense attorney's integrity: he stated that the defense was a “classic example of taking these facts and completely twisting them to their own benefit, and hoping that you are not smart enough to figure out what in fact they are doing.” 165 Wn.2d at 29; see also Negrete, 72 Wn. App. at 66 (prosecutor argued, “Two things come to mind: I have never heard

so much speculation in my entire life in going into facts that weren't even presented into evidence. And the second is, he is being paid to twist the words of the witnesses by Mr. Negrete.”).

Here, the prosecutor likewise disparaged the role of defense counsel because the comment that Mr. Martinez-Vazquez was just making her do her job suggested to the jury that he and his attorney had gone to trial for spurious reasons. See 3RP 10; 5RP 84. Like the comments in Warren and Thorgerson, these arguments undermined the integrity of defense counsel and were improper. Thorgerson, 258 P.3d at 50; Warren, 165 Wn.2d at 29–30; see also Reed, 102 Wn.2d at 145–46 (deeming improper a prosecutor’s statements that the defense counsel did not have a case and this was “clearly a ‘murder two’”).

b. The prosecutor improperly inserted her personal opinion into closing argument. A prosecutor is permitted to draw reasonable inferences from the evidence presented at trial, but she may not make a clear statement of her own opinion. State v. Brett, 126 Wn.2d 136, 175 (1995). Prejudicial error occurs when it is obvious that a prosecutor is not arguing an inference from the evidence, but instead is voicing her opinion. State v. Swan, 114 Wn.2d 613, 664, 790 P.2d 610 (1990); see State v. Armstrong, 37

Wn. 51, 54–55, 79 P. 490 (1905) (“In other words, there is a distinction between the individual opinion of the prosecuting attorney, as an independent fact, and an opinion based upon or deduced from the testimony of the case.”).

In this case, the prosecutor made statements of independent fact, isolated from evidence presented at trial. She said,

You know, there are a lot of different trials you could get assigned to as jurors . . . that can take weeks and weeks with very complicated testimony and expert witnesses. This is not one of those cases. There are trials that you can get assigned to where you deliberate for multiple days and agonize over your decision. This should not be one of those cases.

3RP 7. Nothing in this argument can be inferred from the evidence presented at trial. C.f. State v. McKenzie, 157 Wn.2d 44, 54–57, 134 P.3d 221 (2006) (explaining that each time the prosecutor called the defendant “guilty,” it was not a personal opinion because it was linked to the evidence and in response to the defense’s theory of the case). This statement was based on the prosecutor’s personal experience conducting and witnessing numerous trials over time. See 3RP 7. The statement was improper because the prosecutor was not arguing that Mr. Martinez-Vazquez was guilty

based on the evidence in this case, but rather, that he was guilty because compared to other cases, the evidence was “simple.” 3RP 7. This is similar to the prosecutor’s comments in Monday: he stated that “all good prosecutors believe the word of a criminal defendant is inherently unreliable.” 171 Wn.2d at 677 (internal quotation marks omitted). As here, the argument in that case was based on his personal experience as a prosecutor and had no place in a fair trial. See id. at 677–78. Therefore, the comments were improper.

c. The prosecutor improperly misstated the role of the jury. A prosecutor is a quasi-judicial officer, and “[t]he jury knows that the prosecutor is an officer of the State.” Warren, 165 Wn.2d at 27. It is therefore critical that a prosecutor not mislead the jury or misstate their role. See id. This Court has repeatedly held that it is improper for a prosecutor to argue that in order to find the defendant not guilty, the jury must believe that the State’s witnesses were either lying or mistaken. State v. Fleming, 83 Wn. App. 209, 213, 921 P.2d 1076 (1996); State v. Wright, 76 Wn. App. 811, 826, 888 P.2d 1214 (1995), rev. denied, 127 Wn.2d 1010 (1995) (superceded by statute on other grounds). These arguments are not permitted because they “misstate the jury’s role in reaching

its verdict in a criminal case.” Wright, 76 Wn. App. at 826. This Court has also recently held that arguments urging the jury to “declare the truth” or “find the truth” are improper because they misstate the jury’s role. State v. Evans, 163 Wn. App. 635, 260 P.3d 934, 939 (2011); State v. Anderson, 153 Wn. App. 417, 429, 220 P.3d 1273 (2009).

Here, the prosecutor told the jury, “I did my job, and now you do your job. I ask that you find Mr. Martinez guilty of these crimes.” 3RP 10. But the jury’s “job” is to carefully consider the evidence presented and determine whether the State has proved each element beyond a reasonable doubt. E.g. Anderson, 153 Wn. App. at 429. It is not the jury’s “job” to convict. See id. To explicitly state otherwise was improper misconduct. See Wright, 76 Wn. App. at 826.

3. CUMULATIVE MISCONDUCT DENIED MR. MARTINEZ-VAZQUEZ A FAIR TRIAL.

The cumulative error doctrine permits a reviewing court to find that, even when a single error standing alone may not require reversal, the combined errors in a trial denied the defendant a fair trial. See State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984); State v. Alexander, 64 Wn. App. 147, 150–51, 822 P.2d 1250

(1992). This Court has recently used a similar standard in reviewing the cumulative effect of repeated prosecutorial misconduct. In State v. Walker, the prosecutor made a “fill-in-the-blank” argument, mischaracterized the reasonable doubt standard, told the jury to “declare the truth,” and misstated the law of defense of others. ___ P.3d ___, 2011 WL 5345265 at *1 (Div. 2 Nov. 8, 2011). In that case, defense counsel did not object to the first four improper comments, so the court, as here, had to find that the comments were flagrant and ill-intentioned in order to reverse. Id. at *2–5.² The Walker Court cited an earlier Washington Supreme Court case, State v. Case, in which the prosecutor had asserted his personal opinions about the defendant’s guilt and referred to the defendant’s witnesses as “his entire herd.” 49 Wn.2d 66, 73–74, 298 P.2d 500 (1956). In both Case and Walker, the courts explained that the cumulative effect of the misconduct could not have been cured by an instruction. Case, 49 Wn.2d at 73–74; Walker, 2011 WL 5345265 at *7.

In this case, the prosecutor repeatedly made improper comments to the jury. In her opening statement, she stated that Mr.

² The defense attorney objected to the misstatement of the law, but the court applied the flagrant and ill-intentioned test to the combined effect of the

Martinez-Vazquez “want[ed] the state to prove the case,” which was both an impermissible comment on Mr. Martinez-Vazquez’s constitutional right to a jury trial, and was disparaging to defense counsel. 5RP 84. During closing argument, the prosecutor stated that this was not the type of case in which the jurors would need to spend a lot of time deliberating; this was improper argument of a personal opinion. 3RP 7. She then again commented on Mr. Martinez-Vazquez’s constitutional right and disparaged defense counsel by stating this was just a case of Mr. Martinez-Vazquez wanting her to do her job. 3RP 10. Finally, she misstated the jury’s role by telling them it was their “job” to convict Mr. Martinez-Vazquez. 3RP 10. These cumulative errors constituted flagrant and ill-intentioned misconduct, and denied Mr. Martinez-Vazquez a fair trial. See Case, 49 Wn.2d at 73–74; Walker, 2011 WL 5345265 at *7.

improper comments. Walker, 2011 WL 5345265 at *6–7.

E. CONCLUSION

For the foregoing reasons, Mr. Martinez-Vazquez respectfully requests that this Court reverse his convictions for burglary in the second degree and theft in the second degree.

DATED this 14th day of November 2011.

Respectfully submitted,



LINDSAY CALKINS - Rule 9 No. 9117856


MAUREEN M. CYR - WSBA No. 28724
Washington Appellate Project - 91052
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 67017-4-I
)	
GILBERTO MARTINEZ-VAZQUEZ,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 14TH DAY OF NOVEMBER, 2011, I CAUSED THE ORIGINAL **OPENING 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:

<p>[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104</p>	<p>(X) () ()</p>	<p>U.S. MAIL HAND DELIVERY _____</p>
<p>[X] GILBERTO MARTINEZ-VAZQUEZ 811463 MONROE CORRECTIONAL COMPLEX-WSR PO BOX 777 MONROE, WA 98272-0777</p>	<p>(X) () ()</p>	<p>U.S. MAIL HAND DELIVERY _____</p>

2011 NOV 14 PM 4:58
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE

SIGNED IN SEATTLE, WASHINGTON THIS 14TH DAY OF NOVEMBER, 2011.

X _____ 

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