

67524-9

67524-9

REC'D

JUN 21 2012

King County Prosecutor  
Appellate Unit

COA NO. 67524-9-I

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

2012 JUN 21 PM 3:53  
COURT OF APPEALS DIV. 1  
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RATTANA PHUONG,

Appellant.

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

The Honorable Regina Cahan, Judge

REPLY BRIEF OF APPELLANT

CASEY GRANNIS  
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC  
1908 East Madison  
Seattle, WA 98122  
(206) 623-2373

**TABLE OF CONTENTS**

	Page
A. <u>ARGUMENT IN REPLY</u> .....	1
1. THE EVIDENCE WAS INSUFFICIENT TO PROVE UNLAWFUL IMPRISONMENT AS A SEPARATE CRIME UNDER THE INCIDENTAL RESTRAINT DOCTRINE. ....	1
2. PHUONG WAS DENIED EFFECTIVE REPRESENTATION WHEN HIS ATTORNEY FAILED TO ARGUE THE ATTEMPTED RAPE AND UNLAWFUL IMPRISONMENT OFFENSES CONSTITUTED THE "SAME CRIMINAL CONDUCT" IN CALCULATING THE OFFENDER SCORE. ....	3
3. THE INFORMATION IS DEFECTIVE IN FAILING TO INCLUDE ALL THE ESSENTIAL ELEMENTS OF THE UNLAWFUL IMPRISONMENT OFFENSE. ....	10
B. <u>CONCLUSION</u> .....	14

**TABLE OF AUTHORITIES**

	Page
<u>WASHINGTON CASES</u>	
<u>In re Pers. Restraint of LaChapelle</u> 153 Wn.2d 1, 100 P.3d 805 (2004).....	5
<u>State v. A.N.J.</u> 168 Wn.2d 91, 225 P.3d 956 (2010).....	4
<u>State v. Beasley</u> 126 Wn. App. 670, 109 P.3d 849 <u>review denied</u> , 155 Wn.2d 1020, 124 P.3d 659 (2005) .....	5
<u>State v. Brown</u> 159 Wn. App. 1, 248 P.3d 518 (2010).....	3, 4
<u>State v. Brown</u> 169 Wn.2d 195, 234 P.3d 212 (2010).....	3, 14
<u>State v. Deharo</u> 136 Wn.2d 856, 966 P.2d 1269 (1998).....	10
<u>State v. Everybodytalksabout</u> 161 Wn.2d 702, 166 P.3d 693 (2007).....	4
<u>State v. Feeser</u> 138 Wn. App. 737, 158 P.3d 616 (2007).....	13
<u>State v. Grantham</u> 84 Wn. App. 854, 932 P.2d 657 (1997).....	8, 9
<u>State v. Green</u> 94 Wn.2d 216, 616 P.2d 628 (1980).....	1
<u>State v. Haddock</u> 141 Wn.2d 103, 3 P.3d 733 (2000).....	6
<u>State v. Huelett</u> 92 Wn.2d 967, 603 P.2d 1258 (1979).....	6

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>State v. Johnson</u> 119 Wn.2d 143, 829 P.2d 1078 (1992).....	13
<u>State v. Keend</u> 140 Wn. App. 858, 166 P.3d 1268 (2007).....	4
<u>State v. Kjorsvik</u> 117 Wn.2d 93, 812 P.2d 86 (1991).....	13
<u>State v. Korum</u> 120 Wn. App. 686, 86 P.3d 166 (2004) <u>aff'd in part, rev. in part on other grounds</u> , 157 Wn.2d 614 (2006).....	2
<u>State v. Kyllo</u> 166 Wn.2d 856, 215 P.3d 177 (2009).....	3
<u>State v. McCarty</u> 140 Wn.2d 420, 998 P.2d 296 (2000).....	13, 14
<u>State v. Miller</u> 156 Wn.2d 23, 123 P.3d 827 (2005).....	14
<u>State v. Moavenzadeh</u> 135 Wn.2d 359, 956 P.2d 1097 (1998).....	12
<u>State v. Nichols</u> 161 Wn.2d 1, 162 P.3d 1122 (2007).....	3
<u>State v. Nysta</u> __ Wn. App. __, 275 P.3d 1162 (2012).....	5
<u>State v. Porter</u> 133 Wn.2d 177, 942 P.2d 974 (1997).....	7
<u>State v. Rhode</u> 63 Wn. App. 630, 821 P.2d 492 (1991) <u>review denied</u> , 118 Wn.2d 1022, 827 P.2d 1392 (1992) .....	11

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>State v. Sanchez</u> 60 Wn. App. 687, 806 P.2d 782 (1991).....	6
<u>State v. Saunders</u> 120 Wn. App. 800, 86 P.3d 232 (2004).....	5
<u>State v. Smith</u> 49 Wn. App. 596, 744 P.2d 1096 (1987) <u>review denied</u> , 110 Wn.2d 1007 (1988) .....	12
<u>State v. Thomas</u> 109 Wn.2d 222, 743 P.2d 816 (1987).....	6
<u>State v. Tinkham</u> 74 Wn. App. 102, 871 P.2d 1127 (1994).....	4, 5
<u>State v. Townsend</u> 147 Wn.2d 666, 57 P.3d 255 (2002).....	1
<u>State v. Warfield</u> 103 Wn. App. 152, 5 P.3d 1280 (2000).....	10, 11, 13, 14
<u>State v. Washington</u> 135 Wn. App. 42, 143 P.3d 606 (2006).....	2
<u>State v. Williams</u> 162 Wn.2d 177, 170 P.3d 30 (2007).....	14
 <b><u>FEDERAL CASES</u></b>	
<u>Gardner v. Florida</u> 430 U.S. 349, 97 S. Ct. 1197, 51 L. Ed. 2d 393 (1977).....	4
<u>Strickland v. Washington</u> 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).....	6

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
RCW 9A.28.020 .....	1
RPC 3.3.....	4
Sentencing Reform Act.....	5
U.S. Const. amend. VI .....	4

A. ARGUMENT IN REPLY

1. THE EVIDENCE WAS INSUFFICIENT TO PROVE UNLAWFUL IMPRISONMENT AS A SEPARATE CRIME UNDER THE INCIDENTAL RESTRAINT DOCTRINE.

The State claims the offense of unlawful imprisonment was not incidental to the attempted rape for sufficiency of evidence purposes because the two crimes had separate injuries. Brief of Respondent (BOR) at 13. Liem's knee was hurt when Phuong pulled her from the car. 4RP 12. From this, the State argues Liem received a separate injury from the unlawful imprisonment. BOR at 12-13.

But the act of pulling Liem from the car constituted a substantial step of attempted rape as well as an act of unlawful imprisonment. 2RP 52-69; see RCW 9A.28.020(1) ("A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime."); State v. Townsend, 147 Wn.2d 666, 679, 57 P.3d 255 (2002) (a substantial step is conduct strongly corroborative of the actor's criminal purpose). There is no separate injury.

The State emphasizes the incident lasted as long as ten minutes, as opposed to the two to three minutes at issue in State v. Green, 94 Wn.2d 216, 224, 616 P.2d 628 (1980). BOR at 13. The State fails to grasp that

the temporal touchstone is not length of time standing alone but whether the duration of restraint occurred contemporaneously with the other crime. State v. Korum, 120 Wn. App. 686, 707, 86 P.3d 166 (2004) ("restraining the victims was contemporaneous with the robberies"), aff'd in part, rev. in part on other grounds, 157 Wn.2d 614 (2006). One of the home invasions at issue in Korum lasted as long as 30 minutes, but the court still held the kidnapping was incidental to the robbery because the duration of the restraint did not appear to have been substantially longer than that required for commission of the robberies. Korum, 120 Wn. App. at 691-92, 707.

The State suggests the unlawful imprisonment was not incidental because Phuong removed Liem from the car and took her to the bedroom, thereby restraining her in multiple locations. BOR at 13. But again, Phuong committed a substantial step of rape in those same locations by means of the same restraint that supported the unlawful imprisonment offense. 2RP 52-69. The incidental restraint of a victim that might occur during the course of another crime is not, standing alone, indicia of a true unlawful imprisonment. See State v. Washington, 135 Wn. App. 42, 50-51, 143 P.3d 606 (2006) (applying incidental restraint doctrine to crime of unlawful imprisonment). The evidence was insufficient to convict Phuong of unlawful imprisonment because the restraint was in furtherance of and incidental to the attempted rape.

2. PHUONG WAS DENIED EFFECTIVE REPRESENTATION WHEN HIS ATTORNEY FAILED TO ARGUE THE ATTEMPTED RAPE AND UNLAWFUL IMPRISONMENT OFFENSES CONSTITUTED THE "SAME CRIMINAL CONDUCT" IN CALCULATING THE OFFENDER SCORE.

The State claims Phuong cannot raise an ineffective assistance claim on appeal because the attorney who provided the ineffective assistance did not challenge the offender score below. BOR at 18-19. The State obliquely acknowledges, as it must, the broad proposition that a claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal. BOR at 18-19; State v. Kylo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009) (citing State v. Nichols, 161 Wn.2d 1, 9, 162 P.3d 1122 (2007)).

The State, however, faults Phuong for failing to cite a case that specifically addresses whether a defendant can raise a claim of ineffective assistance of counsel for the first time on appeal in the context of a same criminal conduct determination. BOR at 19. Curiously, the State fails to cite State v. Brown, in which this Court held waiver of the same criminal conduct issue below is avoided by raising the argument by means of an ineffective assistance claim on appeal. State v. Brown, 159 Wn. App. 1, 16-17, 248 P.3d 518 (2010). Brown is controlling legal authority directly adverse to the State's position. The State's attorney was required to

disclose it. State v. Keend, 140 Wn. App. 858, 872 n.11, 166 P.3d 1268 (2007) (citing RPC 3.3(a)(3)); RPC 3.3(a)(3) ("A lawyer shall not knowingly . . . fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel").<sup>1</sup>

Addressing ineffective assistance claims in the same criminal conduct context makes perfect sense. "The right of effective counsel and the right of review are fundamental to, and implicit in, any meaningful modern concept of ordered liberty." State v. A.N.J., 168 Wn.2d 91, 96, 225 P.3d 956 (2010). The Sixth Amendment right to assistance of counsel applies to every "critical stage" of the proceedings. State v. Everybodytalksabout, 161 Wn.2d 702, 708, 166 P.3d 693 (2007) (quoting State v. Tinkham, 74 Wn. App. 102, 109, 871 P.2d 1127 (1994)). Sentencing is a critical stage of a criminal proceeding at which a defendant is entitled to the effective assistance of counsel. Gardner v. Florida, 430 U.S. 349, 358, 97 S. Ct. 1197, 51 L. Ed. 2d 393 (1977).

Notwithstanding this Court's decision in Brown, the State would have this Court carve out a unique exception for offender score determinations, seeking to shield trial counsel's performance and a defendant's right to effective assistance from scrutiny on an issue that has

---

<sup>1</sup> The King County Prosecutor's Office represented the State in Brown.

significant impact on the length of confinement that may lawfully be imposed on a client. That makes no sense. The purpose of the constitutional right to counsel "is to ensure that the accused does not suffer an adverse judgment or lose the benefit of procedural protections because of the ignorance of the law." Tinkham, 74 Wn. App. at 109. It is counsel's responsibility to ensure Phuong receives the benefit of an available same criminal conduct determination.

In keeping with this principle, appellate courts routinely address ineffective assistance claims in the same criminal conduct context. State v. Nysta, \_\_ Wn. App. \_\_, 275 P.3d 1162, 1174 (2012); State v. Beasley, 126 Wn. App. 670, 686, 109 P.3d 849, review denied, 155 Wn.2d 1020, 124 P.3d 659 (2005); State v. Saunders, 120 Wn. App. 800, 824-25, 86 P.3d 232 (2004). They do so because sentencing is a critical stage of the proceedings and proper calculation of the offender score holds significant consequences for the defendant. See In re Pers. Restraint of LaChapelle, 153 Wn.2d 1, 6, 100 P.3d 805 (2004) ("The difference of a single point may add or subtract three years to an offender's sentence. Therefore, the accurate interpretation and application of the SRA is of great importance to both the State and the offender.").

The State claims counsel was not ineffective because the requirements for same time, place and objective intent cannot be met. BOR at 22-26. The State is mistaken.

The prejudice standard for ineffective assistance claims is worth repeating. Prejudice results from a reasonable probability that the result would have been different but for counsel's performance. State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). Phuong need not show counsel's deficient performance more likely than not altered the outcome. Strickland v. Washington, 466 U.S. 668, 693, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). He need only show lack of confidence in the outcome. Thomas, 109 Wn.2d at 226.

A trial court's same criminal conduct determination is discretionary and will not be overturned absent a clear abuse of discretion. BOR at 22; State v. Haddock, 141 Wn.2d 103, 3 P.3d 733 (2000). An abuse of discretion occurs if no reasonable person would take the view adopted by the trial court. State v. Huelett, 92 Wn.2d 967, 969, 603 P.2d 1258 (1979). Abuse of discretion will not be found even though an appellate court may have decided the matter differently. State v. Sanchez, 60 Wn. App. 687, 696, 806 P.2d 782 (1991).

To prevail on appeal, Phuong need only show a reasonable probability that the sentencing court would have exercised its broad

discretion to find that the two offenses constituted the same criminal conduct. The State unpersuasively argues no reasonable judge could find the requirements of same time, same place and same objective intent requirements to be met. BOR at 23-26.

The evidence established the attempted rape and the unlawful imprisonment actually began at the same time and the same place: when Phuong pulled Liem out of the car. 2RP 52-53. That action constituted the beginning of the attempted rape because it undeniably was a substantial step towards the commission of rape. At the same time, that action constituted the beginning of the unlawful imprisonment. The attempted rape and unlawful imprisonment continued to take place at the same time and place as Phuong dragged Liem from the car, through the garage, up the stairs, and into the bedroom, at which point Phuong continued to restrain her to effectuate a rape. 2RP 52-69.

The offenses occurred simultaneously. Even if they did not, the "same time" and "same intent" elements may be established if the individual acts were part of a continuing, uninterrupted sequence of conduct. State v. Porter, 133 Wn.2d 177, 186, 942 P.2d 974 (1997). The attempted rape and the imprisonment are continuous rather than sequential, and committed with the same objective intent: to commit rape by means of restraint.

In arguing to the contrary, the State relies primarily on State v. Grantham, 84 Wn. App. 854, 932 P.2d 657 (1997). BOR at 24-26. That case is readily distinguishable.

Division Two in Grantham addressed whether the trial court abused its discretion in ruling two completed rapes, consisting of intercourse by forcible compulsion, were same criminal conduct. Grantham, 84 Wn. App. at 858-60. Grantham completed one rape before he commenced the second rape. Id. at 859-60. After the first completed rape and before the second rape, Grantham "had the presence of mind to threaten L.S. not to tell; that in between the two crimes L.S. begged him to stop and to take her home; and that Grantham had to use new physical force to obtain sufficient compliance to accomplish the second rape." Id. at 859.

Division Two reasoned: "Based on this evidence, the trial court could find that Grantham, upon completing the act of forced anal intercourse, had the time and opportunity to pause, reflect, and either cease his criminal activity or proceed to commit a further criminal act. He chose the latter, forming a new intent to commit the second act. The crimes were sequential, not simultaneous or continuous. The evidence also supports the trial court's conclusion that each act of sexual intercourse was

complete in itself; one did not depend upon the other or further the other."

Id. at 859.

Unlike Grantham, Phuong's actions constituting attempted rape were not completed before the unlawful imprisonment began, nor were his actions constituting unlawful imprisonment completed before the attempted rape began. Grantham completed one crime before he commenced the second, which precluded an argument that one criminal act may have furthered another. Id. at 859-60. No such preclusion exists in Phuong's case. The record shows the unlawful imprisonment furthered the crime of attempted rape and that actions constituting both the attempted rape and the unlawful restraint occurred at the same time or in a continuous manner. 2RP 52-69. Both criminal actions carried the objective purpose of consummating a rape.

The State claims there is a gap in time and different objective intent because Phuong, in the midst of dragging Liem up the stairs to the bedroom, told the children to go downstairs and that he was not doing anything to their mother. BOR at 25. Contrary to the State's claim, there is no gap in time or objective intent. 2RP 60-63. Phuong said these things to the children while he was simultaneously restraining Liem and taking a substantial step towards raping her by dragging her to the bedroom. These offenses involved the same objective intent because they were part of a

continuous transaction or involved a single, uninterrupted criminal episode.

State v. Deharo, 136 Wn.2d 856, 858, 966 P.2d 1269 (1998).

This Court cannot be confident that the trial court, had it been asked to make a same criminal conduct determination, would not have ruled in Phuong's favor. Remand for resentencing is appropriate.

3. THE INFORMATION IS DEFECTIVE IN FAILING TO INCLUDE ALL THE ESSENTIAL ELEMENTS OF THE UNLAWFUL IMPRISONMENT OFFENSE.

Phuong argued in the opening brief that his conviction for unlawful imprisonment must be reversed because the charging document does not set forth the essential elements that Phuong knowingly (1) restricted another's movements; (2) without that person's consent; (3) without legal authority; and (4) in a manner that substantially interfered with that person's liberty. Brief of Appellant at 22-26. The State was required to prove each of these elements of the crime in order to convict Phuong of unlawful imprisonment. State v. Warfield, 103 Wn. App. 152, 153-54, 157-59, 5 P.3d 1280 (2000).

The State, however, contends these elements are merely "definitional" and therefore need not be included in the information. BOR at 27, 29-30. Relying on State v. Rhode, the State claims the information alleged all of the essential elements of unlawful imprisonment because the failure to "define every element that the State must prove at trial does not

render the information constitutionally defective." BOR at 28 (quoting State v. Rhode, 63 Wn. App. 630, 821 P.2d 492 (1991), review denied, 118 Wn.2d 1022, 827 P.2d 1392 (1992)).

The proposition for which the State cites Rhode does not control the outcome here and, taken out of context, is a misstatement of the law.

Rhode held the word "attempt" as used in the first degree felony murder statute sufficiently apprised the defendant of the "substantial step" element of the crime. Rhode, 63 Wn. App. at 636. Specifically, it held the term "attempt" "encompasses the statutory definition including the substantial step element." Id. It was in this context that Rhode stated "[t]hat the information in the instant case does not define every element that the State must prove at trial does not render the information constitutionally defective." Id. at 635. The "attempt" element did not need to be defined in the charging document because the word itself gave sufficient notice of the underlying "substantial step" requirement of the offense. Id. at 636. The State does not and cannot explain how the information in Phuong's case notified him of each of the four elements set forth in Warfield.

For the proposition that the information need not define every element that the State must prove at trial, Rhode relied on State v. Smith, 49 Wn. App. 596, 599, 744 P.2d 1096 (1987), review denied, 110 Wn.2d

1007 (1988). Rhode, 63 Wn. App. at 635-36. In Smith, the charged offense was possession of a stolen vehicle. Smith, 49 Wn. App. at 600. Smith held this language was sufficient to charge a crime, since the term possession necessarily encompassed the statutory definition, including the knowledge element. Id. In reaching that holding, Smith stated "a failure to include in the information every element and the concomitant legal definitions that must be instructed upon or proved at trial does not render the information constitutionally defective." Id. at 599.

However, the Supreme Court later overruled Smith in State v. Moavenzadeh, 135 Wn.2d 359, 361-64, 956 P.2d 1097 (1998), where the Court held the information was constitutionally defective in failing to include the essential element of "knowledge" for a possession of stolen property charge. In addressing the Court of Appeals flawed reasoning to the contrary, the Supreme Court disavowed the notion advanced in Smith that "the failure to include in the information every element . . . that must be instructed upon or proved at trial does not render the information constitutionally defective."<sup>2</sup> Moavenzadeh, 135 Wn.2d at 362. The Supreme Court reiterated a charging document is "constitutionally

---

<sup>2</sup> The State cites Moavenzadeh in its brief but does not recognize Moavenzadeh undermines its definitional argument. BOR at 27, 30.

adequate only if it includes all of the essential elements of the crime, both statutory and nonstatutory." Id.

Elements labeled as "definitional" are still required to be included in the charging document if they constitute essential elements of the crime and the charging language otherwise fails to fairly apprise a defendant of their presence. The question is whether all of the essential elements appear in any form, or by fair construction are found, in the charging document. State v. Kjorsvik, 117 Wn.2d 93, 105-06, 812 P.2d 86 (1991); State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000).

The State cannot explain how a charging document that merely alleges Phuong "did knowingly restrain Samoeun Liem" in committing the crime of unlawful imprisonment puts Phuong on fair notice that he knowingly did each of these four things: (1) restricted another's movements; (2) without that person's consent; (3) without legal authority; and (4) in a manner that substantially interfered with that person's liberty. CP 2. Each of these four elements are essential elements because, under Warfield, they are "necessary to establish the very illegality of the behavior' charged." State v. Feeser, 138 Wn. App. 737, 743, 158 P.3d 616 (2007) (quoting State v. Johnson, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992)). Essential elements are those elements defined by the legislature that "the prosecution must prove to sustain a conviction." State v.

Williams, 162 Wn.2d 177, 183, 170 P.3d 30 (2007) (quoting State v. Miller, 156 Wn.2d 23, 27, 123 P.3d 827 (2005)). An unlawful imprisonment conviction cannot be sustained unless the State proves each of the four elements specified in Warfield. Because the necessary elements of unlawful imprisonment are neither found nor fairly implied in the charging document, this Court must presume prejudice and reverse Phuong's conviction. McCarty, 140 Wn.2d at 425; State v. Brown, 169 Wn.2d 195, 198, 234 P.3d 212 (2010).

B. CONCLUSION

For the reasons stated above and in the opening brief, Phuong requests reversal of the unlawful imprisonment conviction. In the event this Court declines to reverse the conviction, the case should be remanded for resentencing on the same criminal conduct issue.

DATED this 24<sup>th</sup> day of June, 2012

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.

  
\_\_\_\_\_  
CASEY GRANNIS  
WSBA No. 37301  
Office ID No. 91051  
Attorneys for Appellant

ERIC J. NIELSEN  
ERIC BROMAN  
DAVID B. KOCH  
CHRISTOPHER H. GIBSON  
DANA M. NELSON

LAW OFFICES OF  
**NIELSEN, BROMAN & KOCH, P.L.L.C.**

1908 E MADISON ST.  
SEATTLE, WASHINGTON 98122  
Voice (206) 623-2373 · Fax (206) 623-2488

WWW.NWATTORNEY.NET

JENNIFER M. WINKLER  
ANDREW P. ZINNER  
CASEY GRANNIS  
JENNIFER J. SWEIGERT  
JARED B. STEED

OFFICE MANAGER  
JOHN SLOANE

LEGAL ASSISTANT  
JAMILA BAKER

OF COUNSEL  
K. CAROLYN RAMAMURTI  
REBECCA WOLD BOUCHEY

---

State v. Rattana Phuong

No. 67524-9-I

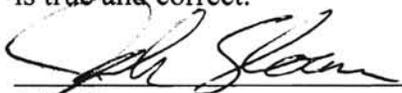
Certificate of Service of brief of appellant by Mail

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to:

Rattana Phuong 317384  
Washington Corrections Center  
PO Box 900  
Shelton, WA 98584-

Containing a copy of the Reply Brief of appellant, in State v. Rattana Phuong,  
Cause No. 67524-9-I, in the Court of Appeals, Division I, for the state of Washington.

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



John Sloane

Done in Seattle, Washington

6-21-12  
Date