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No. 69509-6-I

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

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STATE OF WASHINGTON,

Respondent,

v.

NELDIN LICONA-RIVERA,

Appellant.

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

The Honorable Monica J. Benton

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BRIEF OF APPELLANT

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SARAH M. HROBSKY  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in admitting recordings of telephone calls Mr. Licona-Rivera placed from King County Jail to his girlfriend and his mother, which were obtained in violation of the Privacy Act and in violation of Article I, section 7 of the Washington Constitution.

2. The trial court erred in instructing the jury that proof beyond a reasonable doubt was equivalent to an “abiding belief in the truth of the charges,” which improperly suggested the jury should decide the case based on whether it believed in the truth of the charge rather than whether the State carried its burden of proof.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The Privacy Act prohibits recording private conversations absent the consent of all parties. While the Act exempts the Department of Corrections, it does not exempt county jails. Did admission of the recordings of telephones calls placed by Mr. Licona-Rivera to his girlfriend and to his mother while he was incarcerated in King County Jail violate the Privacy Act?

2. Article I, section 7 of the Washington Constitution protects against governmental invasion into a person’s private affairs, including telephone calls, without authority of law. King County Jail routinely and without individualized, particularized suspicion, recorded telephone

conversations between Mr. Licona-Rivera and his girlfriend and his mother, and portions of the recordings were admitted at trial. Did admission of the recordings violate Article I, section 7, requiring reversal of Mr. Licona-Rivera's conviction?

3. The role of the jury is to decide whether the State met its burden of proof beyond a reasonable doubt at trial, and not to search for the truth. Over Mr. Licona-Rivera's objection, the court instructed the jury that it could find the State met its burden of proof if it had "an abiding belief in the truth of the charge." When it is not the jury's role to determine the truth, did the court misstate the burden of proof by instructing the jurors to determine whether they believed the charge was true?

C. STATEMENT OF THE CASE

Two armed and masked men robbed Tienda La Bahia, a small grocery store that specializes in Central and South American products and money transfers. 8/28/12 RP 8-9, 22. One man stayed by the front glass door and the second man went behind the counter where the owner was holding her 2-year old daughter. 8/28/12 RP 22-23. The second man took money from the cash register and the money transfers, but he dropped a paper receipt. 8/28/12 RP 22-23, 27, 39. The robbery was caught on the store's surveillance video camera, which showed the second man touch the glass door as he entered to store. 8/28/12 RP 84-85; Ex. 5. The police

were called and a latent fingerprint examiner lifted fingerprints from the glass door and the receipt, which were later identified as belonging to Neldin Licona-Rivera. 8/28/12 RP 91, 93-94, 95, 117, 129.

Mr. Licona-Rivera was arrested for robbery in the first degree and taken to King County Jail, where he told the investigating officer that he had never been in Tienda La Bahia. 8/29/12 RP 22, 24; Ex. 23. While in King County Jail, Mr. Licona-Rivera placed a telephone call to his girlfriend and a call to his mother. 8/29/12 RP 38; CP 14-15; Ex. 19. At the beginning of each call, the jail's automated telephone system announced, in English, that the call was "subject to monitoring and recording." Ex. 19.

At trial, over defense objection, recordings of the telephone calls were played for jury, and the substance of the conversations was relied upon by prosecutor in closing as evidence of guilt. 8/29/12 RP 7374. Also over defense objection, the court instructed the jury that reasonable doubt was established if the jurors had "an abiding belief in the truth of the charge." 8/29/12 RP 56-57; CP 21 (Instruction No. 2). Mr. Licona-Rivera was convicted as charged. CP 13.

D. ARGUMENT

**1. The recordings of Mr. Licona-Rivera's telephone conversations were obtained in violation of the Privacy Act and should have been suppressed.**

- a. The Privacy Act prohibits recording private conversations absent the consent of both parties.

The Privacy Act, Chapter 9.73 RCW, is “one of the most restrictive in the nation.” *State v. Christensen*, 153 Wn.2d 186, 198, 102 P.3d 789 (2004); *accord State v. O’Neill*, 103 Wn.2d 853, 878, 700 P.2d 711 (1985) (Dore, J., concurring in part, dissenting part). The Act proscribes the interception or recording of private communications. RCW 9.73.030(1)(a) provides:

(1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, **or the state of Washington, its agencies, and political subdivisions to intercept**, or record any:

(a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication.

(Emphasis added). Evidence obtained in violation of the act is inadmissible for any purpose at trial, with two exceptions not pertinent here. RCW 9.73.050.<sup>1</sup>

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<sup>1</sup> RCW 9.73.050 provides:

The Privacy Act does not define the term “private.” Thus, courts have adopted the dictionary definition, ““belonging to one’s self ... secret ... intended only for the persons involved (a conversation) ... holding a confidential relationship to something ... a secret message: a private communication ... secretly: not open or in public.”” *Christensen*, 153 Wn.2d at 192-93 (quoting *Webster’s Third New International Dictionary* (1969)).

Where, as here, the facts are not in dispute, the determination of whether a communication is private is a question of law. *Christensen*, 153 Wn.2d at 192; *State v. Townsend*, 147 Wn.2d 666, 673, 57 P.3d 255 (2002). A communication is private when 1) the parties to the communication manifest a subjective intention that it be private, and 2) that expectation is reasonable. *Christensen*, 153 Wn.2d at 193. The first criterion focuses on whether the parties subjectively intended the information conveyed in the conversation to remain confidential. *State v. Faford*, 128 Wn.2d 476, 484, 910 P.2d 447 (1996). In analyzing the second criterion, courts look to such factors as the duration and subject

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Any information obtained in violation of RCW 9.73.030 or pursuant to any order issued under the provisions of RCW 9.73.040 shall be inadmissible in any civil or criminal case in all courts of general or limited jurisdiction, except with the permission of the person whose rights have been violated in an action brought for damages under the provisions of RCW 9.73.030 through 9.73.080, or in a criminal action in which the defendant is charged with a crime, the commission of which would jeopardize national security.

matter of the conversation, the location and presence of third parties, and the relationship between the parties. *Id.*; *State v. Clark*, 129 Wn.2d 211, 225-26, 916 P.2d 384 (1996).

The Privacy Act contains several exceptions, including an exemption for the Department of Corrections (DOC).

- (1) RCW 9.73.030 through 9.73.260 shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an offender or resident of a state correctional facility; or intercepting, recording, or divulging any monitored nontelephonic conversations in offender living units, cells, rooms, dormitories, and common spaces where offenders may be present. For the purpose of this section, “state correctional facility” means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

RCW 9.73.095(1).

The Act is strictly construed in favor of the right to privacy. *State v. Williams*, 94 Wn.2d 531, 548, 617 P.2d 1012 (1980) (“*Williams I*”).

The Act “tips the balance in favor of individual privacy at the expense of law enforcement’s ability to gather evidence without a warrant.” *Lewis v. Dep’t of Licensing*, 157 Wn.2d 446, 458, 139 P.3d 1078 (2006) (quoting *Christensen*, 153 Wn.2d at 199-200).

- b. The recordings of Mr. Licona-Rivera's conversations with his girlfriend and his mother should have been excluded because they were private communications, the parties did not consent to the recordings, and their expectation of privacy was reasonable.

Mr. Licona-Rivera recognizes that the Washington Supreme Court previously has ruled that the recording of a pre-trial detainee's telephone conversations by a county jail does not necessarily violate the Privacy Act. *State v. Modica*, 164 Wn.2d 83, 90, 186 P.3d 1062 (2008).<sup>2</sup> However, the *Modica* court noted, "Nothing in this opinion should be taken to prejudice a future challenge to this practice, if properly supported with authority." 164 Wn.2d at 90. Mr. Licona-Rivera urges this court to adopt the reasoning of the dissenting opinion. He also submits that his case is distinguishable from *Modica* in that he more clearly demonstrated a subjective intent that his conversations remain private and his expectation of privacy was objectively reasonable.

First, the content of the conversations Mr. Licona-Rivera had with his girlfriend and with his mother plainly demonstrates that he intended the conversations to remain private, regardless of his location in a county jail. In the conversation with his girlfriend, they repeatedly professed their love for each other, and Mr. Licona-Rivera expressed profound remorse

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<sup>2</sup> See also *State v. Haq*, 166 Wn. App. 221, 268 P.3d 997 (2012).

for the criminal charge. Ex. 19. In the conversation with his mother, he expressed his love for her and his concern about the charge. Ex. 19. Certainly, the conversations were not “an inconsequential, nonincriminating telephone call with a stranger. See *Faford*, 128 Wn.2d at 484 (citing *Kadoranian v. Bellingham Police Dep’t*, 119 Wn.2d 178, 190, 829 P.2d 1061 (1992)). Rather, the conversations were of consequence regarding his personal relationship with his girlfriend and his mother, and the State characterized the conversations as incriminating to the extent Mr. Licona-Rivera expressed remorse for the charge. And far from being a brief conversation with a stranger, Mr. Licona-Rivera clearly had a deep romantic relationship with his girlfriend and a strong familial bond with his mother. Compare *Faford*, 128 Wn.2d at 485 (conversation private because it was a consequential communication between boyfriend and girlfriend) with *Clark*, 129 Wn.2d at 215 (conversations not private because they were brief and occurred on a public street between strangers, often within sight and hearing of passersby).

Second, the parties’ expectation of privacy was reasonable. Although inmates have a lower expectation of privacy than free citizens, *Modica*, 164 Wn.2d at 88, the Legislature carved out an exception for convicted felons incarcerated by DOC, but not pre-trial detainees or convicted misdemeanants housed in a county jail. RCW 9.73.095(1).

Other than DOC employees, all other state agencies and political subdivisions are expressly prohibited from intercepting or recording a private communication. RCW 9.73.030(1)(a). The Legislature would not have created the exception for DOC unless it intended to the Privacy Act to otherwise apply to inmate communications. “[L]ogically, ... a term which is restricted by an exception must have been used with the understanding that it was broad enough to include the exception, else engrafting the exception would have been an unnecessary and meaningless act.” *State v. Wanrow*, 88 Wn.2d 221, 228-29, 559 P.2d 548 (1977). For example, in *State v. Ortega*, the defendant was arrested without a warrant for a misdemeanor drug-traffic loitering offense that was committed outside the presence of the arresting officer. 177 Wn.2d 116, 121, 297 P.3d 57 (2013). RCW 10.31.100 and common law provide that an officer may conduct a warrantless arrest of a suspected misdemeanant only if the offense was committed in the officer’s presence, with several inapplicable exceptions. 177 Wn.2d at 123. On appeal, the defendant argued his warrantless arrest violated the presence requirement. *Id.* Based on the rule of statutory construction *expression unius est exclusio alterius*, the Washington Supreme Court agreed, and reversed his conviction. *Id.* at 124, 131. Similarly, here, the Legislature specifically exempted DOC from the Privacy Act, but did not exempt other detention or correctional

facilities. Accordingly, the recordings of Mr. Licona-Rivera's telephone calls from King County Jail were obtained in violation of the Privacy Act.

Moreover, the parties did not consent to the recording of the conversations. Initially, it may be noted, unlike the parties in *Modica*, none of the parties here were fluent in English or acknowledged that the calls were being recorded. *Cf. Modica*, 164 Wn.2d at 88. “[C]onsent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted.” RCW 9.73.030(3). Here, although the jail's automated telephone system warned that the conversation would be recorded, none of the parties announced the same to the other party.

The State may argue that the parties impliedly consented because they were on notice that their conversation was recorded. For example, in *State v. Townsend*, the Court ruled that the defendant impliedly consented to recording when he sent an e-mail message to an undercover police officer's computer that recorded the message, presumably with the understanding that a computer is a recording device. 147 Wn.2d at 675-78. By contrast, here, the recipient of the telephone call did not make the recording. In addition, notice is not the same as consent. As recognized by the majority in *Modica*, “a conversation is not private simply because the participants

know it will or might be recorded or intercepted.” 164 Wn.2d at 88 (citing *Faford*).

c. The proper remedy is reversal.

Mr. Licona-Rivera’s telephone calls were private communications entitled to the protections of the Privacy Act. In the absence of consent from the parties, the recordings were erroneously admitted at trial. RCW 9.73.050; *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990).

Failure to suppress evidence obtained in violation of the Privacy Act is prejudicial and requires reversal unless, within reasonable probability, the erroneous admission of the evidence did not materially affect the outcome of the trial. *Christensen*, 153 Wn.2d at 200. Here, the prosecutor relied heavily on the recordings as substantive evidence of guilt. 8/28/12 RP 63, 73-74, 87-88. Because there is a reasonable probability that the erroneous admission of the recorded conversations materially affected the outcome of the trial, Mr. Licona-Rivera’s conviction for robbery in the first degree must be reversed.

**2. The warrantless recordings of Mr. Licona-Rivera’s telephone conversations were obtained in violation of Article I, section 7 of the Washington Constitution.**

Article I, section 7 of the Washington Constitution prohibits recording of telephone conversations absent a search warrant or other court order. Article I, section 7 provides “no person shall be disturbed in his private affairs, or his home invaded, without authority of law.” It is well-settled that the protections guaranteed by Article I, section 7 are greater than those provided by the Fourth Amendment to the United States Constitution. *State v. McKinney*, 148 Wn.2d 20, 26, 60 P.3d 46 (2002); *State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833 (1999).

“Private affairs” are those “interests which citizens of this state have held, and should be entitled to hold, safe from government trespass.” *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984), *abrogated on other grounds by Brendlin v. California*, 551 U.S. 249, 255, 259 n.5, 127 S. Ct. 2400, 168 L.Ed.2d 132 (2007). Whether an interest is a private affair depends on “the *nature* of the information sought – this is, whether the information obtained via the governmental trespass reveals intimate or discrete details of a person’s life.” *State v. Jordan*, 160 Wn.2d 121, 126, 156 P.3d 893 (2007) (emphasis in original).

The Washington Supreme Court has also specifically recognized a privacy interest in telephone records. In *State v. Gunwall*, police attached a pen register<sup>3</sup> to the defendant's telephone pursuant to a court order obtained without any evidentiary showing. 106 Wn.2d 54, 57, 720 P.2d 808 (1986). Information gleaned from the pen register and telephone records led to information that was the basis for charges of felony drug violations. 106 Wn.2d at 57-58. At trial, the court denied the defendant's motion to suppress the evidence derived from the pen register as violative of Article I, section 7. On appeal, however, the Supreme Court reversed, ruling that the greater protections provided by the state constitution barred installation of the pen register without a warrant or court order.

[W]e conclude that when the police obtained the defendant's long distance telephone records, and when they placed a pen register on her telephone line or connections, all without benefit of any valid legal process, they unreasonably intruded into her private affairs without authority of law and in violation of Washington Const. art. 1, § 7.

*Id.* at 68-69.

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<sup>3</sup> "Pen register" means a device that records or decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

RCW 9.73.260(1)(d).

Regarding the pen register, the Court noted:

The pen register is comparable in impact to electronic eavesdropping devices in that it is continuing in nature, may affect other persons and can involve multiple invasions of privacy as distinguished from obtaining documents in a single routine search using a conventional search warrant. We conclude that a pen register interception comes within the definition of “private communication transmitted by telephone,” therefore, it may only be installed pursuant to the stricter requirements of our state statutes controlling electronic eavesdropping.

*Id.* (citing RCW 9.73.030-.040; *State v. O’Neill*, 103 Wn.2d at 874-75.

The Supreme Court has long disfavored warrantless intrusions into a person’s private affairs. For example, in *Jordan*, the Court ruled that random searches of motel room registries without any individualized or particularized suspicion violated Article I, section 7. 160 Wn.2d at 130. The Court was extremely troubled that information contained in a registry potentially revealed intimate details, thus intruding into the person’s private affairs. *Id.* at 129. In barring such searches, the Court noted:

We hesitate to allow a search of a citizen’s private affairs where the government cannot express at least an individualized or particularized suspicion about the search subject or present a valid exception to a warrantless search. A random suspicionless search is a fishing expedition, and we have on many occasions indicated displeasure with such practices.

*Id.* at 130 (citing *State v. Jackson*, 150 Wn.2d 251, 267, 76 P.3d 217 (2003) (attaching tracking device to suspect vehicle without warrant

violated Article I, section 7); *In re Personal Restraint of Maxfield*, 133 Wn.2d 332, 341, 945 P.2d 196 (1997) (suspicionless disclosure of power records violated Article I, section 7, as without authority of law); *State v. Young*, 123 Wn.2d 173, 186-87, 867 P.2d 593 (1994) (thermal imaging of residence without warrant invaded person's private affairs without authority of law); *City of Seattle v. Mesiani*, 110 Wn.2d 454, 455 n.1, 755 P.2d 775 (1988) (random suspicionless sobriety checkpoints violated Article I, section 7, as conducted without particularized and individualized suspicion)).

Here, Mr. Licona-Rivera's telephone calls were recorded by the King County Jail automated telephone system, which routinely records telephone calls from inmates without a warrant or other court order and without any particularized or individualized suspicion. This practice intrudes into the private affairs of both the inmate and the family members or friends, as demonstrated in the instant case by the personal and intimate nature of the conversations. In the absence of a search warrant or other court order, as well as the absence of an particularized and individualized suspicion, the recordings of Mr. Licona-Rivera's telephone conversations with his girlfriend and his mother were obtained in violation of Article I, section 7, requiring reversal.

**3. The trial court improperly instructed the jury that the State's burden of proof beyond a reasonable doubt was satisfied if the jury had an "abiding belief in the truth of the charges."**

Over Mr. Licona-Rivera's objection, the court instructed the jury that the State's burden of proof beyond a reasonable doubt was satisfied if the jury had an "abiding belief in the truth of the charges." 8/28/12 RP 56-57; CP 21 (Instruction No. 2). As defense counsel argued, many Americans have an abiding belief that President Obama was born in Kenya, even though there is no evidence to support that belief. 8/29/12 RP 56-57.

Equating proof beyond a reasonable doubt with "belief in the truth" of the charge confuses the critical role of the jury. "A criminal trial may in some ways be a search for truth. But truth is not the jury's job. Arguing that the jury should search for truth and not for reasonable doubt both misstates the jury's duty and sweeps aside the State's burden." *State v. Berube*, 171 Wn. App. 103, 121, 286 P.3d 402 (2012). As the Supreme Court has noted, "The jury's job is not to determine the truth of what happened; a jury therefore does not 'speak the truth or 'declare the truth.' Rather, a jury's job is to determine whether the State has proved the charged offenses beyond a reasonable doubt." *State v. Emery*, 174 Wn.2d 741, 760, 278 P.3d 653 (2012).

In *State v. Bennett*, the Washington Supreme Court exercised its “inherent supervisory powers,” and directed trial courts to use Washington Pattern Jury Instruction (WPIC) 4.01 in all future cases. 161 Wn.2d 303, 318, 165 P.3d 1241 (2007). The pattern instruction reads, in relevant part:

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

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.]*

11 *Washington Practice: Washington Pattern Jury Instructions: Criminal* 4.01, at 85 (3<sup>rd</sup> ed. 2008) (brackets and italics in original).

The *Bennett* Court did not comment on the bracketed “belief in the truth” language. However, in the subsequent case of *Emery*, the Court condemned the prosecutor’s argument that “your verdict should speak the truth,” and “the truth of the matter is, the truth of these charges, are that” the defendants are guilty, on the grounds the argument was a misstatement of the role of the jury. 174 Wn.2d at 751.

In *State v. Pirtle*, the Court held that the “abiding belief” language did not “diminish” the instruction defining reasonable doubt. 127 Wn.2d 628, 657-58, 904 P.2d 245 (1995). However, the *Pirtle* Court was not presented with the issue here, that is, whether this language encouraged a jury to view its role as a search for truth. *Id.* at 657-58. Rather, it addressed whether the phrase “abiding belief” was different from “proof beyond a reasonable doubt. *Id.* Accordingly, its ruling that addition of the bracketed last sentence “was unnecessary but not an error” is not controlling here. *See Id.* at 658.

An improper instruction on the meaning of proof beyond a reasonable doubt is structural error. *Sullivan v. Louisiana*, 508 U.S. 275, 281-82, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993). “[A] jury instruction misstating the reasonable doubt standard is subject to automatic reversal without any showing of prejudice.” *Emery*, 174 Wn.2d at 760 (quoting *Sullivan*, 508 U.S. at 281-82). In addition, this Court has a supervisory rule in ensuring that jury instructions fairly and accurately convey the law. *Bennett*, 161 Wn.2d at 318. It is the court’s obligation to vigilantly protect the presumption of innocence, which may be diluted or even “washed away” by confusing jury instructions. *Bennett*, 161 Wn.2d at 315-16. Accordingly, this Court should rule that equating proof beyond a reasonable doubt with an abiding belief in the truth of the charges

misstates the State's burden of proof, confuses the role of the jury, and denies an accused person his constitutional right to a fair trial by a jury. U.S. Amend. VI, XIV; Const. art I, sec. 21, 22.

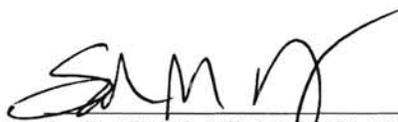
Reversal is required.

E. CONCLUSION

The recordings of Mr. Licona-Rivera's telephone calls to his girlfriend and his mother were obtained in violation of the Privacy Act in violation of Article I, section 7 and, therefore, were erroneously admitted against him at trial. The jury instruction that equated proof beyond a reasonable doubt with an abiding belief in the truth of the charges misstated the burden of proof and confused the jury. For the foregoing reasons, Mr. Licona-Rivera respectfully requests this Court reverse his conviction for robbery in the first degree.

DATED this 29<sup>th</sup> day of August 2013.

Respectfully submitted,



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SARAH M. HROBEKY (12352)  
Washington Appellate Project (91052)  
Attorneys for Appellant

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 69509-6-I
v.	)	
	)	
NELDIN LICONA-RIVERA,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 29<sup>TH</sup> DAY OF AUGUST, 2013, 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:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] NELDIN LICONA-RIVERA 887104 MONROE CORRECTIONAL COMPLEX-MMU PO BOX 7001 MONROE, WA 98272-7001	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

2013 AUG 29 PM 4:45  
STATE OF WASHINGTON  
COURT OF APPEALS - DIVISION ONE

**SIGNED** IN SEATTLE, WASHINGTON THIS 29<sup>TH</sup> DAY OF AUGUST, 2013.

X \_\_\_\_\_ *Arnel*

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710