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COURT OF APPEALS
DIVISION II

No. 40447-8-II

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STATE OF WASHINGTON
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DIVISION II OF THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

SETH THOMAS WILLIAMS,

Appellant.

APPEAL FROM THE SUPERIOR COURT
OF WASHINGTON FOR PIERCE COUNTY

Cause No. 09-1-01947-1

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The court erred in giving Instruction Number 11.

2. The court erred in giving Instruction Number 14.

3. Mr. Williams received ineffective assistance of counsel when his counsel failed to object to the giving of Instruction Numbers 11 and 14.

4. Mr. Williams received ineffective assistance of counsel when his counsel failed to prepare him for cross examination.

5. There was insufficient evidence presented to the jury to convict Mr. Williams of the crime of robbery.

6. The prosecutor improperly vouched for the credibility of the victim.

II. ISSUES PERTAINING TO ASSIGNMENTS OF
ERROR

1. Whether the court's instructions allowed the defendant to be convicted of robbery in the first degree as an accomplice, when the defendant had not agreed to commit the crime of robbery in the first degree? (Assignments of Error No. 1 and 2)

2. Whether the defendant received effective assistance of counsel? (Assignments of Error No. 3 and 4)

3. Whether sufficient evidence was admitted to convict the defendant of the crime of robbery in the first degree? (Assignment of Error No. 5)

4. Whether a prosecutor commits misconduct when it questions a witness about his agreement to testify truthfully pursuant to a plea agreement? (Assignment of Error No. 6)

III. STATEMENT OF THE CASE

A. Procedural History

On April 10, 2009 Seth Williams, along with four co-defendants, was charged with robbery in the first degree along with a firearm enhancement. CP 1. Subsequently, the information was amended to add a second firearm enhancement. (CP 7) The other co-defendants were charged with various offenses, with three of them pleading guilty before trial. Seth Williams, along with James Bradford, went to trial, beginning on February 8, 2010.

After approximately a six day trial, Mr. Williams was convicted of the crime of robbery in the first degree along with the two firearm enhancements. CP 147-48. He was sentenced to 12.5 years in prison. CP 190. A timely notice of appeal was filed on March 12, 2010. CP 187. This appeal follows.

During the course of the trial, the prosecutor on numerous occasions vouched for the credibility of the alleged victim, Efrem Peoples. Specifically, without objection, he questioned Mr. Peoples' feelings about prosecuting the case and his agreement to testify truthfully. RP 292:16-

309:10-22, 380:16-381:14. Additionally, Mr. Williams' counsel never provided copies of video or photographs to his client prior to him testifying. RP 863: 14-24.

Finally, when the court was preparing instructions to be given to the jury, it relied on those presented by the prosecution. With the exception of an objection to the enhancement instructions, there were no further objections. RP 908-926. As a result, the jury was instructed as to the definition of accomplice liability in Instruction No. 14 as follows:

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

(1) solicits, commands, encourages or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts,

encouragement, support or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

CP 134. Additionally, the "To Convict"

Instruction reads as follows:

To convict the defendant, Seth Thomas Williams, of the crime of robbery in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 8th day of April, 2009, the defendant, Seth Thomas Williams, or an accomplice unlawfully took personal property, not belonging to the defendant, from the person or in the presence of another;

(2) That the defendant, Seth Thomas Williams, or an accomplice intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant, Seth Thomas Williams, or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person;

(4) That the force or fear was used by the defendant, Seth Thomas Williams, or an accomplice, to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

(5) That in the commission of these acts the defendant, Seth Thomas Williams, or an accomplice, was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon; and

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

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

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

CP 130-31. Consistent with the above instruction, the prosecutor, in closing argument, argued that in order to convict Mr. Williams of the crime of robbery, he only had to show that Mr. Williams agreed to commit the crime of theft. RP 979:15-17. There was no objection.

B. Facts

On April 8, 2000, Efrem Peoples arranged to sell marijuana to a person by the name of James Briggs. RP 235:15-237:13. Mr. Peoples was going to meet Mr. Briggs at the 7-11 store located on 96th Street in Tacoma. RP 238:9-10. While Mr. Peoples intended to meet Mr. Briggs alone, when he arrived at the location, Mr. Briggs was with another gentleman who went by the name of Larell (defendant Harttlet). RP 236:10-237:6. After their arrival, Mr. Peoples, Mr. Briggs and Mr. Harttlet discussed

going to the Sandman Apartments to do the transaction. RP 239:12-20. At that time Mr. Briggs got in his car and they drove over to the Sandman Apartments. RP 240:3- 241:15. Mr. Briggs wanted to park next to a blue dumpster located in the darkness, but Mr. Peoples did not want to because of the darkness. RP 246:3-17. When they parked, Mr. Briggs got out of the vehicle and left to go to the bathroom. Mr. Peoples never saw him again. RP 247: 18-22. After Mr. Briggs left, the driver's side of the vehicle opened and defendant Sanders got out of the vehicle with a gun. RP 248:2-4. Mr. Sanders was a person that Mr. Peoples recognized from earlier contacts, most recently a couple of days prior to this incident. RP 248:9-19.

At that time Mr. Sanders put a gun to Mr. Peoples' face. RP 249:1-4. At the same time, Mr. Hartlett also had a small chrome revolver. RP 249:22-23. They then rifled through Mr. Peoples' pockets, finding cash and a cell phone and then took a gold chain that was on his neck. RP 249:22-250:1-19. After taking those items, Mr. Peoples was told to get out of the car. RP 252:1. Instead of complying he ran to the buildings and knocked

on the door, ultimately going across the street to the store. RP 252:15-18. At the store the clerk called the police at which time an officer arrived. RP 257:2-7. The call was received by Deputy Heilman at 10:28 p.m. RP 418:3-7. Deputy Heilman, along with Officer Grabski, arrived at the scene where the van was located at approximately 10:50 p.m. RP 407:14-16.

Mr. Peoples was also taken to the location of the van. RP 259:19-260:4-8. There, he was able to identify Mr. Briggs, Mr. Sanders and Mr. Hartlett. RP 260:8-24. He also was able to identify Mr. Bradford. RP 261:11-16. He never did see the driver of the van. RP 264:7-8. Nor did he ever see Mr. Williams during the night of the incident. RP 358:13-14. However, Deputy Heilman did have Mr. Williams get out of the driver's seat of the van. RP 412:15-23.

While at the scene, Deputy Robinson conducted a pat down of Mr. Williams. He did not find any weapons on his person. RP 462:5-13. Nor did he take any money from Mr. Williams. RP 463:7-11. Additionally, Deputy Messineo searched the van and saw three handguns located on the floorboard in

the rear of the van. RP 469:5-8. No fingerprints were found either on the van or any of the firearms. RP 510:15-512:6, RP 647:2-14.

Mr. Bradford and Mr. Williams testified that they were not present during the robbery and were unaware that the other individuals were armed at anytime. RP 752:4-13, RP 839:6-841:16. The only reason they were there is that Mr. Briggs called for a ride home. RP 811:1-4.

IV. ARGUMENT

A. THE CONVICTION SHOULD BE REVERSED BECAUSE THE TRIAL COURT ERRONEOUSLY INSTRUCTED THE JURY ON ACCOMPLICE LIABILITY.

The State must prove every essential element of a crime beyond a reasonable doubt for a conviction to be upheld. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368 (1970); State v. Acosta, 101 Wn.2d 612, 615, 683 P.2d 1069 (1984). It is reversible error to instruct a jury in a manner that may relieve the State of this burden. State v. Allen, 101 Wn.2d 355, 358, 678 P.2d 798 (1984).

Here, using the standard WPIC instruction on accomplice liability, the trial court instructed

the jury that in order to find the defendant guilty under this theory, the State need only prove that the defendant had agreed with his accomplice to commit "the crime". CP 134. Unfortunately, under the "to convict" instruction, "the crime" was defined as theft. CP 130-31. In the context of a robbery charge, this was error.

In evaluating this case, the court is guided by the principle that if the instructions allow a party to argue its theory of the case and do not mislead the jury or misstate the law, then they are adequate. State v. Stevens, 158 Wn.2d 304, 308, 143 P.3d 817 (2006) (citing State v. Barnes, 153 Wn.2d 378, 382, 103 P.3d 219 (2005)). Whether the instruction properly states the applicable law is a question of law reviewed de novo. 158 Wn.2d at 308. Moreover, the failure to object at trial does not preclude review, because an instruction that relieves the State's burden as to an element is of constitutional magnitude and may be raised for the first time on appeal. State v. Kylo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009) (citations omitted). In this case, the instructions taken

together misstated the law on accomplice liability.

This precise issue has been addressed by the courts in this State on no less than two occasions. See State v. Evans, 154 Wn.2d 438, 114 P.3d 627 (2005); State v. Grendahl, 110 Wn.App. 905, 43 P.3d 76 (2002). In Evans, the petitioner raised the issue in a personal restraint petition. In granting the petition, the court, in a situation almost identical to that presented here, noted that the defense was severely impaired because of the erroneous instruction, which essentially allowed the State to argue "in for a dime, in for a dollar". 154 Wn.2d at 452. As in the situation here, the accomplice liability instruction included the words "the crime" as opposed to the words "a crime"; however because the "to convict" instruction designated the crime as theft, the court held that the instruction was erroneous based on State v. Roberts, 142 Wn.2d 471, 14 P.3d 713 (2000) and State v. Cronin, 142 Wn.2d 568, 14 P.3d 752 (2000). Id. at 451-52.

Likewise, in Grendahl, Division III of the Court of Appeals reversed the robbery conviction

where the trial court instructed the jury as to accomplice liability identical to the instruction given here. There, the accomplice liability instruction also included the words "the crime", but because the "to convict" instruction referenced theft, the appellate court held the defendant could be convicted based on accomplice liability even if he had only agreed to commit the crime of theft as referenced in the "to convict" instruction. Id.

For the same reasons cited in the above cases, the court should reverse Mr. Williams' conviction. As was the situation in those cases, accomplice liability was referenced with the words "the crime", while the "to convict" instruction referenced the crime of theft. As a result, the jury was erroneously instructed on the law and the defendant was allowed to be convicted for the crime of robbery when his intent was only to commit the crime of theft.

The only issue then, is not whether the instructions taken together were erroneous, but whether the erroneous instructions were prejudicial to Mr. Williams. A conviction based on

instructional error will be reversed unless the State demonstrates by a reasonable doubt that the error was harmless. See State v. Brown, 147 Wn.2d 330, 340, 58 P.3d 889 (2002). Stated another way, the error is presumed to be prejudicial and requires reversal "unless it affirmatively appears to be harmless." Grendahl, supra, at 910 (quoting State v. Stein, 144 Wn.2d 236, 246, 207 P.3d 184 (2001)).

Here, the evidence demonstrates that the victim of the robbery had arranged to sell marijuana to one of the co-defendants prior to the robbery occurring. There is no indication that Mr. Williams was part of that conversation; nor part of any conversation prior to the robbery wherein it was discussed that they were simply going to engage in nothing more than a marijuana transaction. Even if he had knowledge of a theft and had agreed to commit a theft, that is not enough to convict him of the crime of robbery. Further, as in the cases cited above, the prosecutor, on at least a single occasion, argued that if he had agreed to the crime of theft that would be sufficient to convict him of the robbery.

Under this scenario, it is clear that the erroneous instructions prejudiced Mr. Williams. As a result, this Court should reverse.

B. MR. WILLIAMS WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

1. Counsel Failed to Research and Know the Law on Accomplice Liability.

The ineffective assistance claim centers around counsel's failure to object to the giving of Court's Instructions Number 11 and 14. Importantly, in determining this issue, the Washington Supreme Court has stated that an attorney has a duty to research the relevant law and know its applicability. Kyllo, supra, at 862 (citing Strickland v. Washington, 466 U.S. 668, 687, 690-91, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

The Sixth Amendment entitles a defendant to the "effective" assistance of counsel acting on his or her behalf. In analyzing an ineffective assistance of counsel claim, the Court will consider the entire record and determine whether

counsel's performance was deficient and whether the deficiency prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). While courts presume that defense counsel's performance was effective, this presumption will not stand muster when the performance falls below an objective standard of reasonableness. State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008, 118 S.Ct. 1193, 140 L.Ed.2d 323 (1998).

Kyllo involved a situation similar to that presented here. There, counsel did not object to an instruction which was taken directly from the Washington Pattern Jury Instructions. In ruling that counsel was ineffective, the court held that after the commission adopted the pattern jury instruction, several cases had been decided by the courts indicating that the instruction was flawed. Id. at 866.

Likewise, in this situation, no less than two cases have been decided by the Court of Appeals and the Washington Supreme Court indicating that the two instructions given here were flawed in the

context of accomplice liability and robbery. Since counsel had an obligation to research and know the law and ultimately object to the instructions based on Evans and Grendahl, but failed to do so, the court should hold that his conduct was not reasonable. As a result, Mr. Williams received ineffective assistance of counsel in violation of his Sixth Amendment rights.

Thus, the only question is whether he was prejudiced by counsel's failure to know the law. Prejudice occurs when, but for the deficient performance, there is a reasonable probability that the outcome would have been different. State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004). The appropriate remedy for a trial conducted with the ineffective assistance of counsel is for the case to be remanded for a new trial with new counsel. Tower v. Glover, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758 (1984); State v. Ermert, 94 Wn.2d 839, 621 P.2d 121 (1980).

A review of the entire record indicates that the defendant denied knowing that a robbery was to occur or being part of it. He was not identified

at the scene of the robbery. Nor was Mr. Peoples able to place him at the scene of the robbery when he exited the van at a different location.

Even assuming there is enough evidence to connect him to the scene of the actual robbery, there is nothing to indicate that he knew, beforehand, that the crime was going to be a robbery, as opposed to the marijuana transaction agreed to earlier between one of the co-defendants and the victim. Under this scenario, the failure to object to the instruction worked to prejudice Mr. Williams and, as was the case in Evans and Grendahl, the conviction should be reversed and the case remanded for a new trial.

2. Counsel Failed to Adequately Prepare His Client to Testify.

In addition to failing to know the applicable law, counsel was also deficient in failing to adequately prepare his client to testify. Specifically, he never provided photographs that were received as part of discovery, so that his client would know what the evidence was prior to taking the stand.

The Washington Supreme Court recognized this failure to prepare in the context of an expert witness, who testified differently, once shown photographs for the first time while testifying before the jury. See In re Personal Restraint of Stenson, 142 Wn.2d 710, 755-57, 16 P.3d 1 (2001). While the court did not reverse because there was no showing of prejudice, the court recognized that a claim for ineffective assistance of counsel will lie when counsel is unprepared.

Here, Mr. Williams took the stand without ever having been provided photographs (and video) of the robbery scene. Thus, he was caught off-guard when the state confronted him with the evidence. Had he been shown the evidence, it may have impacted his decision to testify and/or his ability to address the evidence. This was critical in a largely circumstantial case against him. Thus, as opposed to Stenson, he has demonstrated prejudice.

3. Counsel Failed to Object to Improper Vouching.

As mentioned below, it is improper for the prosecutor to state a personal belief as to the

credibility of a witness, which includes going over a plea agreement, in which the cooperating witness agrees to testify "truthfully". See Ish, infra. Because the prosecutor did this here and counsel failed to object, Mr. Williams received ineffective assistance of counsel.

C. THIS COURT SHOULD REVERSE THE VERDICT BECAUSE THERE IS INSUFFICIENT EVIDENCE TO PROVE THAT MR. WILLIAMS WAS AN ACCOMPLICE TO ROBBERY OR DIRECTLY COMMITTED THE ROBBERY HIMSELF.

In a criminal case, a defendant may challenge the sufficiency of the evidence (a) before trial, (b) at the end of the State's case in chief, (c) at the end of all the evidence, (d) after verdict, and (e) on appeal. In each instance, the court takes the evidence and the reasonable inferences therefrom in the light most favorable to the State . . . at the end of all the evidence, after verdict, or on appeal, a court examines sufficiency based on all the evidence admitted at trial . . . Regardless of when a court is asked to examine the sufficiency of the evidence, it will do so using the best factual basis then

available. State v. Freigang, 115 Wn.App. 496, 61 P.3d 343 (2002).

The standard of review used in determining ineffective assistance of counsel claims is de novo, as a mixed question of fact and law. State v. White, 80 Wn.App. 406, 410, 907 P.2d 310 (1995).

In State v. Dodgen, 81 Wn.App. 487, 915 P.2d 531 (1996), Division I stated:

Generally, the court reviewing a sufficiency of the evidence claim looks at the evidence as a whole whenever a defendant presents evidence after the trial court has denied his or her motion to dismiss for lack of sufficient evidence. State v. Chavez, 65 Wn.App. 602, 605, 829 P.2d 1118 (1992); State v. Smith, 56 Wn.App. 909, 914, 786 P.2d 320 (1990). Thus, we consider the evidence in its entirety.

Id., 81 Wn.App. at 493.

The standard of review for a challenge to the sufficiency of the evidence was set forth in State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980). There it was said that evidence is sufficient if, after it is viewed in a light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Green, 94 Wn.2d at 221, 616

P.2d 628 (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, *reh'g denied*, 444 U.S. 890, 100 S.Ct. 195, 62 L.Ed.2d 126 (1979)). The trier-of-fact determines credibility. State v. Casbeer, 48 Wn.App. 539, 740 P.2d 335 (1987). Circumstantial and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

To establish robbery, the State must prove that the defendant took the property by force or violence. RCW 98.56.190; State v. Shcherenkov, 146 Wn.App. 619, 628-29, 191 P.3d 99 (2008). As it relates to accomplice liability, the defendant is guilty as an accomplice to the commission of a crime if that individual, with knowledge that the co-defendant will commit the crime of robbery, solicits, commands, encourages, or requests such other person to plan or commit the robbery. RCW 9A.08.020(3)(a).

In this instance there's no testimony that Mr. Williams, acted as a principal. Thus, the only possibility is that he acted as an accomplice. The law has consistently held that under this theory mere presence at the scene is insufficient, even

if the defendant assents to the crime. The state must prove that he was ready to assist in the crime itself. See State v. Luna, 71 Wn. App. 755, 759, 862 P.2d 620 (1993).

Applying these principles in a juvenile case factually similar to this case, Division I held that the evidence was insufficient to convict the juvenile of robbery and reversed the conviction. See State v. Robinson, 73 Wn.App. 851, 872 P.2d 43 (1994). In Robinson, the juvenile was driving a vehicle when the co-defendant jumped out, took a purse from the victim by using force, and then jumped back into the vehicle. He then drove away and told the co-defendant to throw away the purse. The court held that the robbery was complete prior to re-entering the car and since force was not used to escape, there was insufficient evidence to convict. Id. at 856-57. The court indicated the juvenile's conduct was more akin to rendering criminal assistance under RCW 9A.76.050(3). Id. at 857.

Similarly, the only evidence tying Mr. Williams to the robbery is that after the fact he gave a ride to the principal, with no indication

that beforehand he either promoted or facilitated the commission of the crime of robbery. At best, he was merely present. As in Robinson, his conduct is more akin to that of the crime of rendering criminal assistance. Thus, this court should reverse.

D. THE PROSECUTOR IMPROPERLY
VOUCHED FOR THE VICTIM/WITNESS
BY QUESTIONING HIM ON HIS PLEA
AGREEMENT WHICH INCLUDED
LANGUAGE THAT HE TESTIFY
TRUTHFULLY.

The Washington Supreme Court recently addressed the issue of improper vouching in the context of a witness's plea agreement. See State v. Ish, 2010 Wash. LEXIS 867, No. 83308-7 (October 7, 2010). In Ish, as is the situation here, a witness had entered into a plea agreement with the State. On direct examination, the trial court allowed questions regarding the promise of the witness to testify truthfully. The court, while finding the admission was harmless under the facts of that case, nevertheless found that the testimony should not have been allowed because it was not relevant and could, in fact, amount to improper vouching. Ish, citing United States v. Roberts, 618 F.2d 530 (9th Cir. 1980).

Similarly, the prosecutor in this case also engaged in the same type of questioning regarding similar language. The testimony should not have been allowed and the court erred for allowing the testimony.

V. CONCLUSION

Based on the foregoing points and authorities, Mr. Williams requests that his conviction be reversed and/or the case be remanded for a new trial.

VI. APPENDIX

1. Court's Instruction No. 11
2. Court's Instruction No. 14

RESPECTFULLY SUBMITTED this 17th day of
November, 2010.

HESTER LAW GROUP, INC. P.S.
Attorneys for Appellant

By: 
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WSB #16550

CERTIFICATE OF SERVICE

10 NOV 18 PM 12:12

STATE OF WASHINGTON

BY E DEPUTY

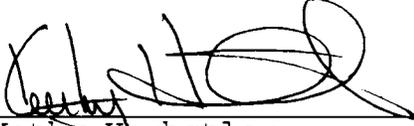
Kathy Herbstler, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of brief of appellant to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

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Deputy Prosecuting Attorney
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Seth T. Williams
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Washington Corrections Center
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Signed at Tacoma, Washington this 17th day of
November, 2010.



Kathy Herbstler

INSTRUCTION NO. 11

To convict the defendant, Seth Thomas Williams, of the crime of robbery in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 8th day of April, 2009 the defendant, Seth Thomas Williams, or an accomplice unlawfully took personal property, not belonging to the defendant, from the person or in the presence of another;
- (2) That the defendant, Seth Thomas Williams, or an accomplice intended to commit theft of the property;
- (3) That the taking was against the person's will by the defendant, Seth Thomas Williams, or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person;
- (4) That the force or fear was used by the defendant, Seth Thomas Williams, or an accomplice, to obtain or retain possession of the property or to prevent or overcome resistance to the taking;
- (5) That in the commission of these acts the defendant, Seth Thomas Williams, or an accomplice, was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon; and
- (6) That any of these acts occurred in the State of Washington.

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



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

INSTRUCTION NO. 14

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the *commission of the crime*.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, *encouragement, support, or presence*. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

