

NO. 48295-9

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

DARNELL PARKS, JR., APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Judge Stanley Rumbaugh

No. 15-1-00901-1

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. When viewed in the light most favorable to the State, was the evidence sufficient for a jury to find defendant guilty beyond a reasonable doubt of Burglary in the Second Degree as it relates to Count IV when tools stolen from a locked vehicle in a nearby, secured parking lot were used by defendant to commit a burglary a few hours later? (Appellant's Assignments of Error 1-3).
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B. STATEMENT OF THE CASE.

1. Procedure

On May 28, 2015, the Pierce County Prosecutor's Office filed an amended information charging Darnell Parks, Jr. ("defendant") with Count I (Burglary in the Second Degree), Count II (Theft in the Second Degree), Count III (Malicious Mischief in the Second Degree), Count IV (Burglary in the Second Degree), Count V (Theft in the Third Degree), and Count VI (Vehicle Prowling in the Second Degree). CP 1-3. The Honorable Judge Stanley J. Rumbaugh presided over the trial on September 23, 2015. RP 1.

A hearing was held on July 17, 2015, at which defendant presented a motion for withdrawal and substitution of his attorney, Mr. Aaron Talney. RP (07/17/2015) 2. Mr. Talney was defendant's second defense attorney assigned to the case. RP (07/17/2015) 3. Mr. Talney was unable to be present for the hearing due to a family emergency, however, the court nevertheless allowed defendant to present his motion. RP (07/17/2015) 4. Defendant stated he had been incarcerated for five months at that point in time. RP (07/17/2015) 5. His motion was based on concerns about lack of communication between himself and defense counsel. RP (07/17/2015) 6.

The court advised defendant that if it granted his motion to allow substitution of counsel, it was possible defendant's trial would be continued to allow a new attorney time to properly represent him. *Id.* The court also acknowledged that defendant would unlikely be pleased about a continuance. RP (07/17/2015) 2. Defendant stated he did not wish to be in proximity to defense counsel and that defense counsel was disrespectful. RP (07/17/2015) 7.

The court ruled that defendant's dissatisfaction was insufficient to justify the motion for a new counsel at that time. RP (07/17/2015) 8-9. The court decided it was most appropriate to deny defendant's motion without prejudice and to allow defendant the right to bring the motion again. *Id.* The motion was then renoted for the next Friday when defense counsel was available to appear. *Id.*

Defendant presented his motion again on July 24, 2015, at which time defense counsel was present at the hearing. RP (07/24/2015) 1. Defendant stated he had been unable to review a police report or discovery, and that defense counsel would not return his calls. RP (07/24/2015) 3. The court inquired if defendant would have a different perspective if defense counsel was able to provide him with discovery to review. *Id.* Defendant responded it would not change his perspective, that

he did not want defense counsel to have anything to do with his case, and that defense counsel was hindering his case. RP (07/24/2015) 4.

Defense counsel explained they were waiting for two main pieces of evidence, including fingerprint evidence (which they expected to have received by that time) and the videotape of the alleged Tacoma Antique Mall burglary. RP (07/24/2015) 4. At that time, defense counsel informed the court that defendant had previously been represented by Ms. Contris, and the case had been transferred to him with the hope that it would “make a difference.” RP (07/24/2015) 5. The court inquired whether defendant had filed a similar motion while represented by Ms. Contris; defense counsel indicated that defendant had not officially filed a motion, and the reassignment had taken place internally within the assigned counsel’s office. *Id.*

The court denied defendant’s motion, explaining that while the Sixth Amendment provides right to counsel, it does not necessarily guarantee the right to counsel of one’s choice, and the court was satisfied there was no reason to remove defense counsel from the case. RP (07/24/2015) 5. Defendant then stated that he, “did not want to [go] to court anymore,” and that he was not finished with his argument. *Id.* The court allowed him to continue and he stated that defense counsel had referred to black people as “so difficult,” and said defense counsel was

“making [his] life miserable” and he “[didn’t] want to be around [him] or have him on [his] case.” RP (07/24/2015) 5-6. The court reiterated its ruling. RP (07/24/2015) 6.

At the onset of the trial, defense counsel raised a CrR 3.6 issue, arguing that a *Terry*¹ stop resulted in information that led to a witness defense counsel wished to suppress. RP 7. Defense counsel wanted to exclude a certain witness and testimony, claiming it linked defendant to a portion of jewelry defendant was accused of stealing. *Id.*

The court found that the contact between the officer and defendant was a legitimate *Terry* stop based on a number of objective factors officers may consider when they develop a suspicion that a person is involved in criminal activity. 2RP 80. Here, defendant’s jacket and tattoos matched the description of the burglary suspect, so, objectively, defendant was an appropriate person on whom the police could cast suspicion. *Id.* The court also found that, in addition to the officer having reasonable cause to stop and question defendant, the 15-minute detention was reasonable in length. 2RP 82.

Further, the court determined that the officer’s questioning of defendant was fundamental for a police officer. *Id.* The officer simply

¹ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

questioned defendant about his identity, and tried to determine whether or not his suspicion about defendant's connection with the crime was well-founded. *Id.*

2. Facts

On February 28, 2015, officers responded to investigate a burglary of the Tacoma Antique Mall. 2RP 13. Video surveillance provided officers a description of the suspect as a mixed race or black light-skin male with an athletic build, who was approximately six feet tall, weighed 200-220 pounds, had short, black hair, and tattoos on the back of each hand which appeared to be musical note symbols. 2RP 13-14. The video further showed the suspect was wearing a black varsity letterman's jacket with cream-colored sleeves. 2RP 14.

On March 4, 2015—five days after the burglary occurred—an officer reported seeing an individual matching the description of the suspect along Pacific Avenue Highway. 2RP 14-15. Officer Vradenburg then began an area check to see if he could locate the subject. *Id.* When Officer Vradenburg reached Pacific Highway East, he saw a man walking outside the Rodeway Motel and immediately noticed that the man's letterman's jacket matched the exact description of the suspect in the burglary case. 2RP 16, 4RP 39-40. As he approached the subject, Officer Vradenburg then observed that the individual's physical attributes

matched the description of the suspect, including the tattoos on the backs of the subject's hands. 2RP 17.

Officer Vradenburg parked his fully marked police car and approached the subject on foot, walking at a normal pace. 2RP 19-20. He advised the subject he was a police officer and asked him to stop. 2RP 21. Officer Vradenburg approached the subject, later identified as defendant, and advised him of why he was contacting him, and why he was being detained. *Id.* Officer Vradenburg indicated to defendant that he matched the description of a burglary suspect and asked if he had ever been to the Tacoma Antique Mall. *Id.* Defendant indicated he had been to the business a week before to pick up a watch and "maybe sell something." *Id.*

Defendant indicated he had been staying in Fife for approximately one month and was staying with someone at the Rodeway Motel—the parking lot of which he and Officer Vradenburg's conversation was taking place. 2RP 25. Defendant further indicated he had been staying in room 107. *Id.* Officer Vradenburg went to room 107, where he met Mr. Hoxsey. 2RP 30. Mr. Hoxsey indicated defendant had been staying with him off and on for some time. *Id.* Mr. Hoxsey went on to state that within the past two days, defendant had displayed several silver chains to him and was bragging about having them, but did not actually say where he had gotten them from. 2RP 30-31, 4RP 97.

Carly Willis, a Tacoma Antique Center employee and daughter of the business' owner, testified about the security system on which defendant was recorded during the commission of the burglary. 2RP 92. Ms. Willis reviewed the surveillance recording from the day of the burglary and saw defendant inside the mall that afternoon. 3RP 77. She also testified it was defendant in the recordings during the time of the burglary that same day. *Id.*

Robin Gorne, a Tacoma Antique Mall employee, reviewed the surveillance video of the burglary and testified she recognized one of the individuals in the recording by the clothes he was wearing and his stature. 4RP 110-111. She described him as wearing a very distinctive jacket that appeared to be a letterman's jacket with a dark body and white or cream sleeves. *Id.* Ms. Gorne had been the only employee scheduled on the floor by where the individual was standing and had assisted him at approximately 5:00 p.m. the day of the burglary. 4RP 111. Ms. Gorne did not see or assist any other customers wearing a jacket similar to the individual's. 4RP 136. She spent approximately 10 minutes assisting defendant and opened several cases for him so he could try on jewelry, including some rings and watches. 7RP 35. While defendant was trying on the rings, Ms. Gorne noticed he had tattoos on the backs of his hands that looked like treble clefs. 4RP 114. 4RP 112.

Richard Mirau, the owner of Tacoma Antique Center, testified that he received a phone call from Tyco, the security system company for the

business, around 1:00 a.m., alerting him that several alarms had been set off. 3RP 24. Mr. Mirau learned the green door at the back of the mall was the entry-point alarm that had been tripped. 3RP 52, 7RP 33. The green door appeared to have been pried open, and there were pry marks and scratches along the latch. 3RP 34. Two wooden doors lead from the inside of the mall to a back hallway, and the green door leads from that hallway to an external loading dock. *Id.*

Mr. Mirau, discovered three broken display cases inside the building. 3RP 28. Mr. Mirau personally owned two of the display cases and their contents. 4RP 18. One of the cases, an elaborate, curved, wood-framed glass case, contained several pads of rings, sterling chains, golf filled or golf platted watch fob chains and fobs, pins, pendants, and trays of other various types of jewelry. *Id.* Mr. Mirau estimated that the total value of the stolen jewelry was around \$1,000.00. *Id.* The second case owned by Mr. Mirau was located down a hallway in the mall and its glass was also broken. 4RP 18.

Damage to the green door was confirmed when Officer Vradenburg walked through the mall with Mr. Mirau to determine what had been stolen and to look for signs of forced entry. 4RP 20. The two locked wooden doors were damaged and appeared to have been kicked in from the outer side in toward the showroom, and the hinge lock was bent, the wood was shattered, and there was debris on the floor. *Id.*

Mr. Mirau testified that there tools which did not belong to him laying all around one of the broken display cases. 3RP 43. Mr. Mirau also noticed there was a tool laying on top of a nearby antique trunk that did not belong to him or any of the vendors. *Id*, Ex. 21. Officer Vradenburg testified that as he and Mr. Mirau were inspecting the mall, he found a number of hand tools, a large pry bar, and a mallet on the ground by the broken display cases. 4RP 21. The tools looked worn and did not have price tags on them. *Id*. He also discovered a black tire iron with a flat head in the vicinity, as well as a large socket outside the building. *Id*. Officer Vradenburg inspected the tire iron and observed green transfer paint from the green door on the flat portion of it. 4RP 23, Ex. 24, 7RP 33.

Mr. Mirau estimated approximately 50 pieces of jewelry had been taken from one of the standing glass cases. 3RP 57. Mr. Mirau's losses included several pads of rings, approximately 20 sterling chains, gold filled and gold plated watch fob chains, pins, and pendants, and several trays of jewelry. 3RP 30-31. He also had to repair the 12-foot, curved glass showcase for \$400.00. 3RP 31. A number of the items from Mr. Mirau's display case were found on the ground and outside of the building. 3RP 70.

Dion Palomino is the assistant manager for Les Schwab Tire Center in Fife. 5RP 6. At the business, there is a completely fenced back

lot is used to store tires and containers and as a parking lot. *Id.* Lee & Eastes Tank Lines leases a portion of the parking lot to park its tankers. *Id.* The lot is surrounded by a chain-link fence that Mr. Palomino testified as being approximately eight feet high. 5RP 8. The day of the Tacoma Antique Mall burglary, Mr. Palomino received a call and learned that the Les Schwab semi-truck that was also parked in the lot had been prowled and that the business' sledgehammer and fifth wheel pin puller were missing from within it. 5RP 9-10.

Officer Mulrine investigated around the exterior of the building where he found trail of a number of hand tools leading away from the building and the loading dock. 5RP 78. He testified that the trail of tools included a hammer and several screwdrivers. 5RP 79, 7RP 43. He also noted that there were jewelry items which were later identified by Mr. Mirau as merchandise from inside the mall. 5RP 79-80.

A few hours later, Officer Mulrine responded to another burglary call at approximately 4:15 a.m. 5RP 94. That call was made by Paul Kuether, reporting his truck had been broken into and numerous tools and items had been stolen from within. *Id.* The incident had taken place in the parking lot leased by Lee & Eastes at the Fife Les Schwab Tire Center. *Id.* When Mr. Kuether returned from his shift, he unlocked the gate and pulled into the lot to discover broken glass on the ground next to his truck. *Id.* He approached his truck and saw that the passenger side window had been shattered. 5RP 61. Everything had been ransacked, and the glove

compartment had been opened and items were scattered all over the truck. 5RP 62. Mr. Kuether also noticed his tools, GPS, and satellite radio were missing. *Id.*

Officer Mulrine testified that he completed a walk-through of the property lines to ensure there were no obvious points of entry that allowed someone to enter the yard and commit the theft, and confirmed he did not find any entry points. *Id.*, 5RP 97. The State presented pictures of the tools found inside the Tacoma Antique Mall as exhibits. 3RP 44, 4RP 24-26, 30, 5RP 81-82. The pictures were shown to Mr. Kuether, and he confirmed that the tools belonged to him. 7RP 33.

C. ARGUMENT.

1. WHEN VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE IS SUFFICIENT FOR A JURY TO FIND DEFENDANT GUILTY OF COUNTS IV, V, AND VI (THE OFFENSES AT THE LES SCHWAB LOCATION) WHEN TOOLS STOLEN FROM A LOCKED, SECURED PARKING LOT WERE USED BY DEFENDANT TO COMMIT A BURGLARY A FEW HOURS LATER.

In a criminal case, a defendant may challenge the sufficiency of the evidence before trial, at the end of the State's case in chief, at the end of all of the evidence, after the verdict, and on appeal. *State v. Lopez*, 107 Wn. App. 270, 276, 27 P.3d 237 (2001). "In a claim of insufficient evidence, a reviewing court examines whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable

doubt,' 'viewing the evidence in the light most favorable to the State.'” *State v. Brockob*, 159 Wn.2d 311, 336, P.3d 59 (2006) (quoting *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). Thus, sufficient evidence supports a conviction when, viewing it in the light most favorable to the State, a rational fact finder could find the essential elements of the crime beyond a reasonable doubt. *State v. Cannon*, 120 Wn. App. 86, 90, 84 P.3d 283 (2004).

“A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.* (quoting *State v. Myers*, 133 Wn.2d 26, 37, 941 P.2d 1102 (1997)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Finally, determinations of credibility are for the fact finder and are not reviewable on appeal. *Brockob*, 159 Wn.2d at 336; *State v. Locke*, 175 Wn. App. 779, 788-89, 307 P.3d 771, 776 (2013). In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99, 101 (1980). In addition, a jury can infer the specific criminal intent of a criminal defendant where it is a matter of logical probability. *Id.*

Proof of possession of recently stolen property, unless accompanied by other evidence of guilt, is not prima facie evidence of

burglary. *State v. Garske*, 74 Wn.2d 901, 447 P.2d 167 (1968); *State v. Douglas*, 71 Wn.2d 303, 428 P.2d 535 (1967); *State v. Mevis*, 53 Wn.2d 377, 333 P.2d 1095 (1959); *State v. Portee*, 25 Wn.2d 246, 170 P.2d 326 (1946); *State v. Rodriguez*, 20 Wn. App. 876, 582 P.2d 904 (1978); *State v. Pisauro*, 14 Wn. App. 217, 540 P.2d 447 (1975); *State v. Beck*, 4 Wn. App. 306, 480 P.2d 803 (1971). However, it is also well established that proof of such possession, if accompanied by “indicatory evidence on collateral matters” will support a burglary conviction. *State v. Garske*, 74 Wn.2d at 903, 447 P.2d 167 (1968). In prosecutions for burglary, the possession of the stolen property is almost invariably accompanied by other incriminating circumstances, such as the character of the explanation of the possession, the secrecy of the possession, a denial of the possession, the presence of the accused near the scene of the crime, flight, etc. *State v. Portee*, 25 Wn.2d 246, 170 P.2d 326 (1946) quoting (19 Am. & Eng. Ann. Cas. 1281). It is generally held that proof of such possession, explained falsely or not reasonably, or accompanied by other guilty circumstance, is sufficient to carry the case to the jury and to support a conviction. *Id.*

- a. State proved beyond a reasonable doubt Burglary in the Second Degree as it relates to Count IV when stolen tools were found at the scene of a subsequent burglary defendant committed.

Defendant was convicted of Burglary in the Second Degree. CP 1-

3. The jury was presented with the elements of the crime as follows:

- 1) That on or about the 28th day of February, 2015, defendant or a person to whom he was an accomplice entered or remained unlawfully in a building;
- 2) That the entering or remaining was with intent to commit a crime against a person or property therein; and
- 3) That this act occurred in the state of Washington.

7RP 16, CP 45, 50

In this case, there is corroborative evidence of a number of the inculpatory circumstances set forth in the rule; for example, defendant's presence near the scene of the Les Schwab burglary and his use of the stolen tools to accomplish the second burglary at Tacoma Antique Mall. Defense counsel argues that mere possession of stolen property is insufficient to prove burglary, particularly when the possession is established only by inference and circumstantial evidence. Brief of Appellant, 13. Defense counsel is incorrect based on *Garske* and the facts directly connecting defendant to the Les Schwab burglary.

In *Garske*, a defendant was found guilty of burglary in the second degree based on inculpatory circumstances. The defendant was stopped

and questioned by police officers near a jewelry store around midnight, and a burglary was discovered to have occurred at the jewelry store around 8:00 a.m. the following morning. *State v. Garske*, 74 Wn.2d 901, 902, 447 P.2d 167 (1968). An officer recalled confronting the defendant near the jewelry store and went to defendant's residence. *Id.* Officers searched the residence and discovered two wristwatches, which were then identified by the owner of the jewelry store. *Id.* Additionally, officers discovered most of the stolen jewelry and watches in a recess in an old lumber pile near the rear of defendant's residence. *Id.*

Similar to *Garske*, in this case, officers discovered stolen property in close proximity to where defendant had undeniably been present in recent hours. It is undisputed that defendant was guilty of the Tacoma Antique Mall theft, as he conceded at the sentencing hearing. 9RP 43. Defendant admitted to having been inside the antique mall, and the stolen tools stolen from Les Schwab were found inside the mall and around the mall. *Id.* Ms. Willis recognized defendant on the video surveillance at the time the burglary occurred. 2RP 93. Ms. Gorne, who had previously assisted defendant at the mall earlier that day, also identified defendant when viewing the video surveillance. 4RP 110. She specifically recognized his outfit—wide-leg jeans and a black jacket with cream colored sleeves. *Id.* Additionally, Les Schwab and Tacoma Antique are

located approximately 150 feet from each other, which proves defendant was physically present near the Les Schwab burglary around the time of the burglary. 5RP 77.

Further, the Tacoma Antique burglary was committed at approximately 1:00 a.m., and the Les Schwab burglary was committed sometime between 6:00 p.m. the previous evening and 4:00 a.m. that morning. The narrow timeframe during which both burglaries occurred is clearly an incriminating circumstances under *Portee*.² Another significant similarity between *Garske* and the present case is that both defendants were witnessed at the locations of the burglaries prior to the discovery of the burglaries. In *Garske*, the defendant was seen by officers near the jewelry store before the burglary was committed. In the present case, a Tacoma Antique employee recalled (and video surveillance confirmed) defendant entering the mall earlier in the day before the burglary was committed. 4RP 110-111.

Circumstantial evidence proves defendant or an accomplice unlawfully entered or remained in the Les Schwab yard. The tools found inside Tacoma Antique Mall were confirmed to be the tools stolen from Mr. Kuether's vehicle which was inside the Les Schwab parking lot.

² *State v. Portee*, 25 Wn.2d 246, 253, 170 P.2d 326 (1946).

Therefore, there is circumstantial evidence that defendant or an accomplice unlawfully entered or remained in the Les Schwab parking lot in order to obtain the tools.

The jury was presented with the jury instruction regarding unlawfully entering or remaining in a building as follows:

A person enters or remains unlawfully in or upon premises when he or she is not then licensed, invited or otherwise privileged to so enter or remain.

7RP 17, CP 38.

The record indicates Mr. Palomino, the owner of the Fife Les Schwab Tire Center, did not give defendant or an accomplice permission to enter the parking lot. 5RP 22. The record also indicates Mr. Kuether did not give defendant or an accomplice permission to enter his truck while it was parked inside the Les Schwab parking lot. 5RP 70. Because permission was given to neither defendant nor an accomplice to enter either of the respective premises, any entry by defendant or an accomplice was unlawful.

The jury was further instructed:

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 she or he 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.

7 RP 15, CP 25, 30.

In the context of the jury instruction, the word “aid” means all assistance, whether given by words, acts, encouragement, support, or presence. 7RP 15. 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. *Id.* 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. *Id.* A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not. 7RP 15-16.

Defendant admitted to committing the burglary at the Tacoma Antique Mall. 9RP 43. Witnesses were also able to identify defendant on video surveillance from the time of the incident. 2RP 93, 4RP 110. Defense counsel argues that a vehicle window being broken and some items going missing from the Les Schwab lot only “*could have*” been evidence of a burglary, and that it could have been evidence that an employee of either Les Schwab or Lee & Eastes saw the opportunity to steal the items while the lot was unsupervised and took them. Brief of Appellant at 15. Defense counsel fails to explain how the tools would

have then ended up being used to break into the Tacoma Antique Mall and subsequently found inside by someone other than defendant or an accomplice. Further, there is no question the tools found inside the Tacoma Antique Mall were in fact the tools that were stolen from Mr. Kuether's truck in the Les Schwab lot. 5RP 68-69, Ex. 6.

Because circumstantial evidence proves beyond a reasonable doubt that defendant possessed the tools stolen from Les Schwab and used them to break into the Tacoma Antique Mall, it follows that defendant or an accomplice entered the Les Schwab premises to obtain the stolen tools. Les Schwab and Tacoma Antique are located approximately 150 feet from each other. 5RP 77. The close proximity of the buildings is compelling evidence that the burglaries were connected. Further, both burglaries occurred within a narrow range of time from each other, which connects the crimes and defendant's participation in the crimes.

Mr. Palomino, the owner of Les Schwab, testified that a sledgehammer and pin puller had been stolen from the Les Schwab semi-truck parked in the lot. 3RP 10. Mr. Palomino confirmed that the sledgehammer with the wooden handle and the pin pulled found outside of the Tacoma Antique Mall had been taken from the Les Schwab semi-

truck. 5RP 21-22, Ex 6. A picture of the tools was submitted as Exhibit 6, at which point Mr. Palomino stated he recognized them as belonging to Les Schwab. *Id.*

- b. State proved beyond a reasonable doubt Vehicle Prowling in the Second Degree as it relates to Count VI when defendant or an accomplice entered and stole tools from a locked vehicle inside a secured parking lot.

The jury was presented with the elements as follows:

- (1) That on or about the 28th day of February, 2015, the defendant or a person to whom he was an accomplice unlawfully entered or remained in a vehicle.
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein; and
- (3) That the acts occurred in the State of Washington.

CP 55.

Accomplice liability and principal liability are not alternative means of committing crime. *State v. Sweet*, 138 Wn.2d 466, 980 P.2d 1223 (1999). Accomplice liability does not constitute alternative means of committing crime, but rather the accomplice is charge with, and liable for, the particular crime committed by his principal. *State v. Munden*, 81 Wn. App. 192, 913 P.2d 421 (1996). Even if defendant did not personally steal the tools, an accomplice is charged with, and liable for, a particular crime committed by his principal. *State v. McPherson*, 111 Wn. App. 747, 46 P.3d 284 (2002). Further, the Legislature intended to impose accomplice

liability upon those having the purpose to promote or facilitate the particular conduct that forms the basis for the charge, and not to impose such liability for conduct that does not fall within this purpose. *Sarausad v. State*, 109 Wn. App. 824, 39 P.3d 308 (2001). If an accomplice prowled the vehicle in the Les Schwab parking lot to obtain the tools, defendant clearly supported the accomplice's conduct because he personally used the tools to participate in the Tacoma Antique Mall burglary shortly thereafter.

Because circumstantial evidence proves beyond a reasonable doubt that defendant possessed the tools stolen from Les Schwab and used them to break into the Tacoma Antique Mall, it can reasonably be determined that defendant or an accomplice entered the Les Schwab premises and stole the tools to use to perpetuate the Tacoma Antique Mall burglary.

- c. State proved beyond a reasonable doubt Theft in the Third Degree as it relates to Count V when defendant or an accomplice entered and stole tools from a locked vehicle and used the tools to commit a burglary.

A defendant acts pursuant to a common scheme or plan when he or she (1) commits several crimes, each of which constitutes a part of his or

her larger plan or (2) he or she develops a plan and carries it out multiple times to achieve distinct, but substantively similar, crimes. *State v. Rivas*, 168 Wn. App. 882, 890, 278 P.3d 686 (2012) (quoting *State v. Gresham*, 173 Wn.2d 405, 421-422, P.3d 207 (2012)). When a defendant acts under a common scheme or plan, the State may aggregate multiple distinct acts to meet the threshold to charge a more serious degree. *State v. Atterton*, 81 Wn. App. 470, 472-273, 915 P.2d 535 (1996). Similarly, the State may aggregate multiple distinct acts committed by the defendant as part of his or her common scheme or plan even if the defendant committed those distinct acts on the same day. *State v. Scherer*, 77 Wn.2d 345, 354, 462 P.2d 549 (1969). The burglaries were part of a common scheme or plan because the tools stolen from Les Schwab were used to carry out the burglary at the Tacoma Antique Mall. Defendant or an accomplice broke Mr. Keuther's truck window for the purpose of obtaining the tools inside, which were then used to commit the Tacoma Antique Mall burglary.

Jury Instruction No. 30 defined Theft in the Third Degree when he or she or a person to whom he or she is an accomplice commits theft of property or services not exceeding \$750.00 in value. CP 58. The jury was further provided with the elements as follows:

- (1) That on or about the 28th day of February, 2015, the defendant or a person to whom he is an accomplice wrongfully obtained or exerted

unauthorized control over property of another or the value therefor not exceeding \$750.00 in value;

That the defendant or a person to whom he is an accomplice intended to deprive the other person of the property; and

(2) That this act occurred in the State of Washington.

CP 61.

The jury was also instructed that, whenever any series of incidents, which constitute theft is part of a common scheme or plan, the sum of the value of all incidents shall be the value considered in determining the amount of value. CP 44. An additional instruction stated that if more than one item of property is physically damaged as a result of a common scheme or plan, then the sum of the value of all physical damages shall be the value considered in determining the amount of physical damage.³ CP 52.

Mr. Mirau had to repair the 12-foot, curved glass showcase due to the damage caused by the burglary. 3RP 31. He had it replaced with Plexiglas because he was unable to find a kiln to replace such a large, curved piece of glass, and that cost totaled \$400.00. *Id.* Penny Jensen, one of the vendors whose display cases was damaged, sustained \$325.00

³ Appellant does not assign error to this jury instruction.

in damages, which included the cost to repair the broken display case glass and clean up the broken glass. 7RP 46. The total damages caused by defendant during the Tacoma Antique Mall burglary was \$725.00. *Id.* Mr. Kuether's damages totaled \$150.00 for the cost to repair the shattered window of his truck. *Id.* The total damages caused during both the Les Schwab and Tacoma Antique Mall burglaries totaled \$875.00. 7RP 46.

However, the jury was also instructed that if, that after careful deliberation on the charge, the jury was not satisfied beyond a reasonable doubt that defendant was guilty, then it should consider whether defendant was guilty of the lesser crime of Theft in the Third Degree. CP 60. The jury exercised its discretion and charged defendant as guilty of Count V and convicted him of Theft in the Third Degree. CP 79; CP 80.

2. WHEN VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE WAS SUFFICIENT FOR A JURY TO FIND DEFENDANT GUILTY BEYOND A REASONABLE DOUBT OF MALICIOUS MISCHIEF IN THE SECOND DEGREE AS IT RELATES TO COUNT III WHEN THE DAMAGE TO ANY INDIVIDUAL PROPERTY WAS LESS THAN \$750.00 AND THE TOTAL VALUE OF THE PHYSICAL DAMAGES EXCEEDED \$250.00.

Only where the multiple items of property are damaged "as a result of a common scheme or plan," is aggregation permitted to reach the \$750.00 threshold. RCW 9A.68.100(2). The damages from the Les

Schwab and Tacoma Antique Mall burglaries should be aggregated because they were part of a common scheme or plan. In order to convict a person of malicious mischief in the second degree, the State must prove that the person “cause[d] physical damage to the property of another in an amount exceeding [\$750.00]. RCW 9A.48.080(1)(a). The State is permitted to aggregate the amount of damage to multiple items of property only in narrow, statutorily defined circumstances.

The jury was instructed as follows:

To convict the defendant of the crime of malicious mischief in the second degree as charged in count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 28th day of February, 2015, the defendant or a person to whom he was an accomplice caused damage to more than one item of property of another;
- (2) That the damage to any individual property is less than \$750.00 in value, but the sum of the value of all the physical damages exceeds \$250.00;
- (3) That the damage is part of a common scheme or plan;
- (4) That the defendant or a person to whom he was an accomplice acted knowingly and maliciously; and
- (5) That this act occurred in the State of Washington.

CP 22.

The Les Schwab and Tacoma Antique Mall burglaries were part of a common scheme because tools stolen from Les Schwab were used to carry out the Tacoma Antique Mall burglary, and evidence that the damage to any individual property was less than \$750.00 in value, but the

sum of the damages of all the property exceeded \$250.00 is provided above. Defense counsel argues that the damage to all of the property must have been caused “by a person,” and that there is no evidence showing defendant personally caused all of the damage. Brief of Appellant, 17-18. Defense counsel cited *Montejano*, a case where a defendant was convicted of felony rioting. Brief of Appellant, 18. *Montejano* is distinguishable from the current case because complicity is inherent within the crime of rioting, whereas, malicious mischief can be carried out by a single person. In *Montejano*, the defense argued that Washington’s riot statute defines the contours of the accomplice liability by setting forth the participation required by the accused, and that in the fact of such a specific statute, the more general statute does not apply. *State v. Montejano*, 147 Wn. App. 696, 196 P.3d 1083 (2008) (quoting *State v. Wappenstein*, 67 Wash., 502, 530, 121 P. 989 (1912)). The charges arose from an incident where the defendant and five other juvenile males confronted and threatened to assault several women and their friends on the streets of Moses Lake. *State v. Montejano*, 147 Wn. App. 696, 698, 196 P.3d 1083 (2008). The trial court held that the crime could not be committed by complicity under RCW 9A.08.020 when the defendant was not armed and did not know that the other participants were armed. *Id.* *Montejano* is distinguishable from

the current case because complicity is inherent within the crime of rioting, whereas, malicious mischief can be carried out by a single person.

Statutes and rules are, if possible, to be given a rational, sensible construction. *State v. Thomas*, 121 Wn.2d 504, 512, 851 P.2d 673 (1993) (quoting *State v. Smalls*, 99 Wn.2d 755, 766, 665 P.2d 384 (1983)). Had the legislative intent been to prevent aggregation of damages among multiple people, the statute likely would have included limiting language such as “a single person” or “one person” for optimal clarity. It is illogical to assume the language limits liability to one person because it is often impossible to discern which individual caused specific damages when multiple people are acting in concert.

In *Rivas*, the defendant was charged with Malicious Mischief in the Second Degree for damaging two automobiles which were both owned by the same person. *State v. Rivas*, 168 Wn. App. 882, 888, 278 P.3d 686 (2012). The owner of the vehicles paid \$757.58 out-of-pocket to repair the damages to both vehicles. The Court held that the damages must be aggregated because they arose out of a common scheme or plan. *Id.* at 890. In reaching its decision, the Court looked to RCW 9A.48.100(2), which provides as follows:

If more than one *item* of property is physically damaged as a *result of a common scheme or plan* by a person and the physical damage to the property would, when considered

separately, constitutes mischief in the third degree because of value, then the value of the damages may be aggregated in one count. If the sum of the value of all the physical damages exceeds [\$750.00], the defendant may be charged with and convicted of malicious mischief in the second degree.

The Court further reasoned that a defendant acts pursuant to a common scheme or plan when he or she (1) commits several crimes, each of which constitutes a part of his or her larger plan, or (2) he or she develops a plan and carries it out multiple times to achieve distinct, but substantively similar, crimes. *State v. Gresham*, 173 Wn.2d 405, 421-22, 269 P.3d 207 (2012). When a defendant acts under a common scheme or plan, the State may aggregate multiple distinct acts to meet the threshold to charge a more serious degree. *Rivas* at 889 (quoting *State v. Atterton*, 81 Wn. App. 470, 472-73, 915 P.2d 535 (1996)). Similarly, the State may aggregate multiple distinct acts committed by the defendant as part of his or her common scheme or plan even if the defendant committed those distinct acts on the *same day*. *Rivas* at 889 (quoting *State v. Scherer*, 77 Wn.2d 345, 354, 462 P.2d 549 (1969)).

Like in the present case, two pieces of property were damaged but, alone, neither would satisfy the \$750.00 minimum in damages. Further, although the items stolen from the Tacoma Antique Mall were owned by multiple people, the items were all stolen as part of a common scheme or

plan—the commission of the Tacoma Antique Mall burglary. As explained above, Mr. Mirau spent \$400.00 to replace his display case, and Penny Jensen sustained \$325.00 in damages to her display case. 3RP 31, 7RP 46. The total damages caused by defendant during the Tacoma Antique Mall burglary was \$725.00. 7RP 46. Mr. Kuether’s damages totaled \$150.00 for the cost to repair the shattered window of his truck. *Id.* The total damages caused during both the Les Schwab and Tacoma Antique Mall burglaries totaled \$875.00. *Id.* Based on the reasoning in *Rivas*, because the damages were all the result of a common scheme or plan, the damages should be aggregated.

3. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING A SUBSTITUTION OF COUNSEL AFTER CONDUCTING A MEANINGFUL INQUIRY INTO THE ALLEGED BREAKDOWN OF COMMUNICATION BETWEEN DEFENDANT AND DEFENSE COUNSEL.

The Sixth Amendment ensures a defendant’s right to counsel. *U.S. Const. amend. VI.* When reviewing a trial court’s refusal to appoint new counsel, the court considers, “(1) the extent of the conflict, (2) the adequacy of the [trial court’s] inquiry, and (3) the timeliness of the motion.” *State v. Cross*, 156 Wn.2d 580, 607, 132 P.3d 80 (2006). An adequate inquiry must include a full airing of concerns and a meaningful evaluation of the conflict by the trial court. *Id.* at 610. To warrant

substitution, good cause such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant must be shown. *State v. Schaller*, 143 Wn. App. 258, 260, 177 P.3d 1139 (2007). The decision on whether to substitute counsel is within the discretion of the trial court. *Id.*

In examining the extent of conflict, the court considers the extent and nature of the breakdown in the relationship and its effect on the representation actually presented. *In Re: The Personal Restraint of Stenson*, 142 Wn.2d 710, 724, 16 P.3d 1 (2014). If the representation is inadequate, prejudice is presumed. If the representation is adequate, prejudice must be shown. *State v. Cross*, 156 Wn.2d 580, 132 P.3d 80⁴ (2006). Because the purpose of providing assistance of counsel is to ensure that defendants receive a fair trial, the appropriate inquiry necessarily must focus on the adversarial process, not only on the defendant's relationship with his lawyer as such. *State v. Schaller*, 143 Wn. App. 258, 270, 177 P.3d 1139 (2007). The essential aim of the Sixth Amendment is to guarantee an effective advocate for each criminal defendant, rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers (quoting: *Wheat v. United*

⁴ Absent actual ineffective assistance of counsel, trial strategy is left to the attorney and client to work out.

States, 486 U.S., 153, 159, 108 S. Ct. 1692, 100 L. Ed.2d 140 (1988)).

A trial court conducts adequate inquiry by allowing the defendant and counsel to express their concerns fully. *State v. Varga*, 151 Wn.2d 179, 200–01, 86 P.3d 139 (2004); *Stenson II*, 142 Wn.2d at 731, 16 P.3d 1. Further, formal inquiry is not always essential where the defendant otherwise states his reasons for dissatisfaction on the record. *United States v. Willie*, 941 F.2d 1384, 1391 (10th Cir.1991); *United States v. Padilla*, 819 F.2d 952, 956 n. 1 (10th Cir.1987).

- a. The trial court appropriately and effectively conducted an investigation by allowing defendant to freely voice his concerns on the record.

The court conducted a meaningful inquiry into the alleged complete breakdown in communication between defendant and defense counsel by renoting defendant’s original motion for substitution of counsel in order to allow defense counsel to be present. RP (07/17/2016) 10. Further, the court allowed defendant to freely address all of his concerns regarding his representation by defense counsel. RP (07/17/215) 6. Defense counsel clearly addressed defendant’s concerns that he had not been able to review all discovery and other information. (07/24/2015) 4. Defense counsel explained at the hearing that they were waiting for two main pieces of evidence, including fingerprint evidence and the videotape

of the alleged Tacoma Antique Mall burglary. RP (07/24/2015) 4.

Defense counsel was unable to provide the information to defendant only because defense counsel had not yet received it himself.

- b. Trial defense counsel adequately represented defendant and defendant was not prejudiced by trial defense counsel's representation.

Prior to trial, defendant filed a motion for substitution of counsel to remove defense counsel from his case. RP (07/17/2016) 2. The motion was renoted for the next Friday to allow defense counsel to be present. RP (07/17/2016) 10. Defendant alleged a complete collapse in communication between himself and defense counsel, and contends that the court violated his right to counsel by failing to conduct any analysis into the breakdown of communication between himself and defense counsel. Brief of Appellant, 21. Defendant's contentions are incorrect, as the inquiries conducted by the court were sufficiently thorough, and the record does not show that the alleged complete breakdown in communication or conflict between defense counsel and defendant affected the quality of representation defendant received.

Here, the record does not establish inadequate representation, nor does it show that defendant's right to effective assistance of counsel was jeopardized by his continued representation with defense counsel. Defense counsel's client advocacy was demonstrated throughout the case

by filing a motion in limine and half-time motion to ensure witness testimony was not wrongly admitted. RP 7. Prior to trial, defense counsel raised a CrR 3.6 issue, arguing that a *Terry*⁵ stop resulted in information that led to a witness defense counsel wished to suppress. *Id.* Defense counsel wanted to exclude that witness and testimony, claiming it linked defendant to a portion of the jewelry defendant was accused of stealing. *Id.* Defense counsel's advocacy initiated briefing from both counsels and extensive deliberation of the court. RP 7, 16. Defense counsel's continued advocacy throughout the proceedings and the Court's diligence in conducting an inquiry cannot be proven, nor can any prejudice against defendant.

4. THE INFORMATION CONTAINED THE ELEMENTS OF THE CHARGED OFFENSES, GAVE DEFENDANT ADEQUATE NOTICE OF THE CHARGES, AND PROTECTED DEFENDANT AGAINST DOUBLE JEOPARDY.

The primary purpose of a charging document is to supply the accused with notice of the charge that he or she must be prepared to meet. *State v. Kjorsvik*, 117 Wn.2d 93, 101, 812 P.2d 86 (1991). Defendants are entitled to be fully informed of the nature of the accusations against them so that they can prepare an adequate defense. *Id.* Words in charging

⁵ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20. L. Ed. 2d 889 (1968).

documents are read as a whole, construed according to common sense, and include facts which are necessarily implied. *State v. Kjorsvik*, 117 Wn.2d 93, 109, 812 P.2d 86 (1991).

If an information is not challenged until appeal, the appellate court evaluates the sufficiency of the information under a two-prong test: (1) an inquiry into whether the charging document contains the crime's essential elements, and if so (2) an inquiry into whether there was nevertheless actual prejudice caused by unartful drafting of the charging document. *State v. Greathouse*, 113 Wn. App. 889, 900, 56 P.3d 569 (2002). Only if the reviewing court determines that the information contains the essential elements of the crime charged may the court reach the actual prejudice prong of the test. *Id.*

Where an information is not challenged until appeal, the reviewing court will construe the information in favor of validity. *State v. Greathouse*, 113 Wn. App. 889, 900, 56 P.3d 569 (2002). A different standard of review should be applied when no challenge to the charging document had been raised at or before trial because otherwise the defendant has no incentive to timely make such a challenge, since it might only result in an amendment or a dismissal potentially following by a refiling of the charge. *Kjorsvik*, 117 Wn.2d 93, 103, 812 P.2d 86 (1991). Liberally construing the document in favor of validity encourages

defendants who recognize a charging defect to raise an objection when the defect can be cured by amendment. *Id.*

To be legally sufficient, an information or other charging document must state each essential element of an alleged crime, including all statutory and non-statutory elements. *State v. Rivas*, 168 Wn. App. 882, 888, 278 P.3d 686 (2012) (quoting *State v. Courneya*, 132 Wn. App. 347, 350, 131 P.3d 343 (2006)). Where an information fails to include an essential element of the alleged crime, it fails to charge a crime. *Id.* Further, an information must also allege facts supporting each element of the crime charged. *Id.* These legal and factual requirements are designed to give the defendant adequate notice of the charges so that he or she may prepare a defense. *Id.* If all essential elements of the alleged crime are not included in the information, the court will reverse the conviction. *Id.* However, if the necessary facts do appear in some form in the charging document, the court will continue its analysis and determine whether the defendant can show that he or she was nonetheless prejudiced by the inartful language [that] caused a lack of notice. *State v. Rivas* (quoting *State v. Williams*, 162 Wn.2d 177, 185, 170 P.3d 30 (2007)).

- a. The charging language for Theft in the Third Degree as it relates to Count V was sufficient because it effectively supplied defendant with knowledge of the charges against him.

The information in the present case sufficiently informed defendant of the charges he faced in Counts II and V (Theft in the Second Degree) by linking them to the thefts to Counts I and III (Burglary in the Second Degree). In *Tresenriter*, the court found the information insufficient to charge the defendant with thefts because the only connection included in the information between a burglary committed by defendant and the thefts was the date. *State v. Tresenriter*, 101 Wn. App. 486, 492, 4 P.3d 145 (2000). In the present case, however, the burglaries and thefts are clearly connected by the inclusion of both the dates and addresses at which the crimes occurred. CP 1-3. Since the first prong is satisfied, defendant must be able to show he was prejudiced by the drafting of the information. He cannot establish prejudice, as he received adequate representation at trial to defend against the charges made against him. Because defendant cannot articulate actual prejudice, his claim fails.

- b. The charging language for the Malicious Mischief in the Second Degree and Vehicle Prowling in the Second Degree allegations as it relates to Counts IV and V was sufficient because it effectively supplied defendant with knowledge of the charges against him and included all elements of the crimes.

In *Rivas*, the defendant was charged with Malicious Mischief in

the Second Degree when he damaged a both a Honda and a Ford automobile. *State v. Rivas*, 168 Wn. App. 882, 888, 278 P.3d 686 (2012). The State did not allege a common scheme or plan in its information, and instead charged the defendant with “knowingly and maliciously causing[ing] physical damage to the property of another... in the amount of \$757.58.” *Id.* at 889. The language in the information mirrored the statutory language required to charge a person with second degree malicious mischief based on the value of damage to a *single item* of property. *Id.* Because the defendant damaged *two items* of property, the court found the information to be deficient and to not contain all elements of the crime since the State failed to allege the defendant damaged the Honda and the Ford as part of a common scheme or plan. *Id.* at 890. In the present case, as argued above, the State *does* allege a common scheme or plan involving both the theft and vehicle prowling charges, and, as such, the language is sufficient to inform defendant of the charges against him and included all elements of the crimes. The State alleges a common scheme by linking the use of the stolen tools from the Les Schwab parking lot to the Tacoma Antique Mall burglary. 7RP 43. Specifically, Mr. Kuether’s tire iron was used by defendant or his accomplice to pry open the green door to enter the mall to commit the burglary. 7RP 44. Further, the sledgehammer stolen from Mr. Kuether’s vehicle was used to shatter

the display cases so defendant and his accomplice could access the contents. *Id.* It is clear that the tools were stolen from Les Schwab for the purpose of accomplishing the Tacoma Antique Mall burglary. 7RP 43.

5. DEFENDANT FAILED TO PRESERVE THE ARGUMENT THAT THE COURT ERRED BY GIVING JURY INSTRUCTION NUMBER 19 FOR REVIEW.

Arguments unsupported by applicable authority and meaningful analysis should not be considered. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990); *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989); *In re Disciplinary Proceeding against Whitney*, 155 Wn.2d 451, 467, 120 P.3d 550 (2005)(citing *Matter of Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998)(declining to scour the record to construct arguments for a litigant); RAP 10.3(a).

Assignment of error No. 6 claims the Court erred by giving jury instruction number 19. It should be summarily rejected since defendant did not address it in the body of his opening brief.

6. THE STATE HAS NOT YET REQUESTED AN AWARD OF APPELLATE COSTS AND THIS COURT HAS THE DISCRETION TO AWARD THEM IF A COST BILL IS FILED.

The State has not yet requested an award of appellate costs. The State agrees with defendant that this court has the discretion to grant or

deny a request for appellate costs once a cost bill has been filed. *State v. Nolan*, 141 Wn.2d 620, 628, 8 P.3d 300 (2000). Should the State prevail in this appeal and file a cost bill, defendant may object to the cost bill. The decision of whether to award appellate costs is the prerogative of this court in the exercise of its discretion under RCW 10.73.160 and RAP 14.2.

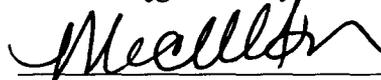
D. CONCLUSION.

There was sufficient evidence for a jury to find defendant guilty beyond a reasonable doubt when the tools stolen from the locked Les Schwab parking lot were used by the defendant to commit a burglary later that night at the Tacoma Antique Mall, which was 150 feet away. There was also sufficient evidence for a jury to find defendant guilty of felony malicious mischief beyond a reasonable doubt because the damage to any of the individual property was less than \$750.00, and the damages exceeded \$250.00. Additionally, the court conducted a meaningful inquiry into the alleged breakdown of communication between defendant and defense counsel by allowing defendant to freely express all concerns on the record. The information contained all the elements of the charged

offenses, gave defendant adequate notice of the charges, and protected defendant from double jeopardy. Finally, this court has the discretion to award appellate costs if a cost bill is filed.

DATED: August 11, 2016.

MARK LINDQUIST
Pierce County
Prosecuting Attorney



MICHELLE HYER
Deputy Prosecuting Attorney
WSB # 32724

Lily Wilson
Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8-11-16 
Date Signature

PIERCE COUNTY PROSECUTOR

August 11, 2016 - 2:01 PM

Transmittal Letter

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Court of Appeals Case Number: 48295-9

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