

State of Washington
 Court of Appeals, Div. III
 500 N. Cedar Street
 Spokane, WA 99201

PRINT ORDER DATE: _____
 Printing/Binding Briefs
20# White Bond, 2 Sided, Thermal Bound

Attorney/Pro Se (full name) (If indigent (OPD) do not need attorneys name-just OPD)	Case No.	Case Type No. Do not send sealed, confidential, or type 5, 6, and 7 cases
OPD	305724	<u>1</u>

Case Name (Short CaseTitle) St. of WA v. Jamie Jerome Marsh	Quantity 5
PDF Name: Case #, Abbrev., [Party Name <u>if</u> more than one] 305724 APP	

CHECK BOX	<u>XX</u>							
COLOR	<u>GRAY</u>	GREEN	BLUE	TAN	LILAC	ORANGE	YELLOW	RED
BRIEF TYPE (delete extras)	<u>APP</u> PET	RSP CAP	APR PRB CRE	RER	APS AMI	RSB AMA	SAG	

To Be Completed By AOC	
Copy Room Staff	Financial Services
No Pages Printed: _____	Unit Cost: _____
Total Time Printing: _____	Job Cost: _____

State of Washington
 Court of Appeals, Div. III
 500 N. Cedar Street
 Spokane, WA 99201

PRINT ORDER DATE: _____
 Printing/Binding Briefs
20# White Bond, 2 Sided, Thermal Bound

Attorney/Pro Se (full name) (If indigent (OPD) do not need attorneys name-just OPD)	Case No.	Case Type No. Do not send sealed, confidential, or type 5, 6, and 7 cases
OPD	305724	<u>1</u>

Case Name (Short CaseTitle)	Quantity
St. of Wa v. Jamie Jerome Marsh	5
PDF Name: Case #, Abbrev., [Party Name <u>if</u> more than one] 305724 APP	

CHECK BOX	<u>XX</u>							
COLOR	<u>GRAY</u>	GREEN	BLUE	TAN	LILAC	ORANGE	YELLOW	RED
BRIEF TYPE (delete extras)	<u>APP</u> PET	RSP CAP	APR PRB CRE	RER	APS AMI	RSB AMA	SAG	

To Be Completed By AOC	
Copy Room Staff	Financial Services
No Pages Printed: _____	Unit Cost: _____
Total Time Printing: _____	Job Cost: _____

FILED
Dec 17, 2012
Court of Appeals
Division III
State of Washington

No. 305724

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

JAMIE MARSH, Appellant

APPEAL FROM THE SUPERIOR COURT
OF GRANT COUNTY

BRIEF OF APPELLANT

Marie J. Trombley
WSBA 41410
PO Box 829
Graham, WA 98338
509.939.3038
Fax: 253-268-0477
marietrombley@comcast.net

TABLE OF CONTENTS

I. Assignments of Error	1
II. Statement of Facts	2
III. Argument.....	7
A. The Evidence Was Insufficient To Sustain A Conviction For Possession Of A Controlled Substance With Intent To Deliver.....	7
1. Washington Law Prohibits The Inference Of Intent to Deliver Based On Bare Possession.	
B. Mr. Marsh Received Ineffective Assistance Of Counsel Where Counsel Failed To Request A Jury Instruction On The Technical Statutory Meaning Of An Essential Element: Intent.....	13
C. The Finding That Mr. Marsh Has The Likely Future Ability To Pay LFOs Is Not Supported In the Record And Must Be Stricken From The Judgment and Sentence.....	17
IV. Conclusion.....	18

TABLE OF AUTHORITIES

Washington Cases

<i>State v. Allen</i> , 101 Wn.2d 355, 678 P.2d 798 (1984)	15
<i>State v. Baldwin</i> , 63 Wn. App. 303, 818 P.2d 1116, 837 P.2d 646 (1991)	17
<i>State v. Bertrand</i> , 165 Wn. App. 393, 267 P.3d 511 (2011)	16
<i>State v. Brown</i> , 68 Wn. App. 480, 842 P.2d 1098 (1993)	7
<i>State v Campos</i> , 100 Wn. App. 218, 998 P.2d 893, <i>rev. denied</i> , 142 Wn.2d 1006, 34 P.3d 1232 (2000)	9
<i>State v. Darden</i> , 145 Wn.2d 612,41 P.3d 1189 (2002)	8
<i>State v. Delmarter</i> , 94 Wn. 2d 634, 618 P.2d 99 (1980)	11
<i>State v. George</i> , 146 Wn. App. 906,193 P.3d 693 (2008)	7
<i>State v. Goodman</i> , 150 Wn.2d 774, 83 P.3d 410 (2004)	10
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980)	7
<i>State v. Grier</i> , 171 Wn.2d 17, 246 P.3d 1260 (2011)	14
<i>State v. Harris</i> , 14 Wn. App. 414, 542 P.2d 122 (1975)	8
<i>State v. Holm</i> , 91 Wn. App. 429, 957 P.2d 1278 (1998)	13
<i>State v. Hutchins</i> , 73 Wn. App. 211, 868 P.2d 196(1994).	8
<i>State v. Lane</i> , 56 Wn. App. 286, 786 P.2d 277 (1989).	11
<i>State v. Lopez</i> , 79 Wn. App. 755, 904 P.2d 1179 (1995)	10
<i>State v. Robbins</i> , 68 Wn. App. 873, 846 P.2d 585 (1993)	12
<i>State v. Scott</i> , 110 Wn.2d 682, 757 P.2d 492 (1988)	15
<i>State v. Stein</i> , 144 Wn.2d 236, 27 P.3d 184 (2001)	15

State v. Thomas, 109 Wn.2d 222, 743 P.2d 816 (1987) _____ 13

State v. Zunker, 112 Wn. App. 130, 48 P.3d 344 (2002), *rev. denied*, 148 Wn.2d 1012, 62 P.3d 890 (2003) _____ 8

U.S. Supreme Court Cases

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) _____ 6

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) _____ 12

Constitutional Provisions

Const. art. 1 § 3 _____ 6

Const. art. I § 22 _____ 6,12

U.S. Const. Amend. VI _____ 6,12

U.S. Const. Amends. XIV _____ 6

Statutes

RCW 69.50.401 _____ 7

RCW 9A.08.010 (1)(a). _____ 14

I. ASSIGNMENTS OF ERROR

- A. The Evidence Was Insufficient To Sustain A Conviction For Possession With Intent To Deliver A Controlled Substance.
- B. Mr. Marsh Did Not Receive Effective Assistance of Counsel Required By The Federal And State Constitutions Because His Attorney Did Not Request A Jury Instruction On The Technical Statutory Meaning Of the Essential Element Of Intent.
- C. The Record Does Not Support The Finding That Mr. Marsh Has The Likely Future Ability To Pay Legal Financial Obligations.

Issues Related To Assignments Of Error

- 1. Was the evidence sufficient to sustain a conviction for possession with intent to deliver a controlled substance?
- 2. Did Mr. Marsh receive ineffective assistance of counsel where counsel failed to request a jury instruction on the technical statutory meaning of an essential element of the charged crime?
- 3. Should the finding that Mr. Marsh has the likely future ability to pay LFOS be stricken from the Judgment and Sentence as clearly erroneous, where it is not supported in the record?

II. STATEMENT OF FACTS

Jamie Marsh was charged by information with possession of a controlled substance, cocaine, with the intent to manufacture or deliver, or in the alternative, possession of a controlled substance, cocaine. (CP 1; Vol. 1RP 5)¹.

On the morning of July 1, 2010, officers from the Interagency Narcotics Enforcement Team (INET) set up to serve a search warrant on Jamie Marsh's residence, person, and car. (Vol. 1RP 58). As officers conducted their surveillance, they saw Mr. Marsh leave his home and drive away in his car. He circled the block and returned, got out of his car and ran into the home with officers giving chase. (RP 59-62). Mr. Marsh ran to his bedroom and officers quickly tasered him. (Vol. 1RP 64).

Mr. Marsh waived his Miranda rights and spoke with officers. (Vol. 2RP 180-81). He showed them the two small baggies in his closet that contained approximately 1.8 grams of what was later analyzed as rock cocaine. (Vol. 1RP 80; Vol. 2RP 203). In the

¹ For purposes of this brief, the hearing date of 1/5/2012 will be referenced as Vol. 1RP page no; the hearing date of 1/6/2012 will be referenced as Vol. 2RP page no.; the hearing date of 9/28/2011 will be referenced as Vol. 3RP page no.; and hearing dates 9/30/2010, 10/6/2010, 10/12/2010, 1/4/2011, 3/1/2011, 3/3/2011, 8/5/2011, 9/6/2011, 9/12/2011, 10/10/2011, 11/16/2011, 11/28/2011, 1/3/2012, and 1/17/2012 will be referenced as Vol. 4RP page no.

same bedroom they discovered a metal pipe with black tape on the handle. That pipe was never tested for rock cocaine residue. (Vol. 1RP 86, Vol. 2RP166). Officers also found \$585.41 in Mr. Marsh's pockets. (Vol. 2RP 159). At trial, Mr. Marsh testified that he was unemployed, but made a living playing poker at a local casino. (Vol. 2RP 230).

The goal of INET members is to target mid to upper level drug dealers, and arrest the highest dealer possible. (Vol. 1RP 68; Vol. 2RP 175). The INET officers testified they made a tentative offer to Mr. Marsh. (Vol. 1RP 70-71). If Mr. Marsh were willing to work with them in identifying drug dealers, they would work with the prosecutor's office to potentially reduce or dismiss charges against him. (Vol. 1RP 68-71; Vol. 2RP 223-225).

In response to their questioning about whether he could be of assistance to them, Mr. Marsh told the officers he could purchase cocaine (in the future) and "rock it up" and sell it for them. (Vol. 2RP 195-96). Mr. Marsh also identified, for the officers, two or three individuals as drug dealers. (Vol. 1RP 69; Vol. 2 RP 183). Although at trial he did not remember signing a contract with INET, he did, and was in fact allowed out of jail to make six buy attempts for INET. (Vol. 2RP 235; 243).

During questioning at trial, officers admitted they did not know if Mr. Marsh was ever specifically asked if he intended to sell the drugs that were found in his home. (Vol. 2RP 198-99). The officer further stated, "I can't recall if he ever went into the exact amount he sold every day, and I don't know if we just chalked it up to if a person's getting two to three ounces a day, common sense would tell us that he's selling two to three ounces a day." (Vol. 2RP 191).

INET officers explained that crack cocaine is weighed and sold as little rocks. (Vol. 2RP 154). In their training and experience, the 1.8 grams of cocaine Mr. Marsh had in his possession was an amount that a seller would possess for sale, rather than personal use. (Vol. 2RP 154; 164;193). Contrary to Mr. Marsh's testimony, an officer also stated that Mr. Marsh said he sold drugs for a living, but did not use them. (Vol. 2RP 183; 218-223). Mr. Marsh testified he possessed the rock cocaine for his personal use. (Vol. 2RP 218-19).

The court instructed the jury on simple possession as well as possession with intent to manufacture or deliver. The instructions included "intent" as an element of the offense, but did not define the

term. The instructions did define the meanings of the terms “deliver” and “possession”. (CP 37-39; Vol. 2RP 136, 250).

Mr. Marsh was found guilty on both counts. (CP 41-41).

The simple possession case was dismissed based on its merger with the possession with intent to deliver. (Vol. 4RP 37). At sentencing, the court imposed 90 months of incarceration, 12 months of community custody, and \$1,650 of legal financial obligations. (CP 49, 50, 53). As conditions of sentence, the court made the following finding:

¶ 2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant’s present and future ability to pay legal financial obligations, including the defendant’s financial resources and the likelihood that the defendant’s status will change. (RCW 10.01.160). The court makes the following specific findings:

Handwritten was

“Defendant has likely future ability to pay LFO’s imposed.” (CP 49).

This appeal followed. (CP 66).

III. ARGUMENT

A. The Evidence Was Insufficient To Sustain A Conviction For Possession Of A Controlled Substance With Intent To Deliver.

Mr. Marsh contends that, while there was proof that he possessed the rock cocaine, there was insufficient evidence to support the element of intent. The Due Process Clauses of the federal and state constitutions require the State to prove every element of the crime beyond a reasonable doubt. U.S. Const. Amends. VI, XIV; Const. art. I §§ 3, 22. In a challenge to the sufficiency of the evidence, the test is whether, viewing it in a light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). All reasonable inferences are drawn in favor of the verdict and interpreted most strongly against the defendant. *State v. George*, 146 Wn. App. 906, 919, 193 P.3d 693 (2008).

1. Washington Law Prohibits The Inference Of Intent to Deliver Based On Bare Possession.

The statutory elements of possession of controlled substance with intent to deliver are: (1) unlawful possession of (2) a controlled substance with (3) intent to deliver. RCW 69.50.401. Convictions for possession with intent to deliver are highly fact specific and require *substantial* corroborating evidence. *State v. Brown*, 68 Wn. App. 480, 483, 842 P.2d 1098 (1993). (Emphasis added).

Washington case law prohibits an inference of the intent to deliver based on 'bare possession of a controlled substance, absent other facts and circumstances'. *Brown*, 68 Wn.App. at 483, (quoting *State v. Harris*, 14 Wn. App. 414, 418, 542 P.2d 122 (1975)). Even the fact of possession of a large quantity of drugs, on its own, is insufficient to establish possession with intent to deliver. *State v. Hutchins*, 73 Wn. App. 211, 216, 868 P.2d 196(1994). The possession must be accompanied by at least one additional factor in order to establish the defendant intended to deliver the substance presently or at some future time. *State v. Zunker*, 112 Wn. App. 130, 136, 48 P.3d 344 (2002), *rev. denied*, 148 Wn.2d 1012, 62 P.3d 890 (2003); *State v. Darden*, 145 Wn.2d 612, 624, 41 P.3d 1189 (2002). Officer opinion that a defendant

possesses more drugs than normal for personal use is also insufficient to establish intent. *Hutchins*, 73 Wn. App. at 216.

During the search of Mr. Marsh's home, car, and person, officers seized 1.8 grams of rock cocaine and around \$500 in cash. None of the usual indicia for possession with intent to deliver were found: no scales, no cell phones, no items suggestive of manufacture of rock cocaine, no buy/sell record book, no weapons, and no drug paraphernalia indicative of sales or delivery. See *State v Campos*, 100 Wn. App. 218, 998 P.2d 893, *rev. denied*, 142 Wn.2d 1006, 34 P.3d 1232 (2000).

The facts in Mr. Marsh's case are similar to those in *Brown*. There, the sole incriminating evidence was 20 individual rocks of cocaine, weighing a total of 5.1 grams and, like Mr. Marsh, officer testimony that this amount was in excess of the amount normally possessed for personal use. *Brown*, 68 Wn. App. at 482. The reviewing court held that because Brown had no weapon, no substantial amount of money, no scales or other drug paraphernalia indicative of sales or delivery, the rocks of cocaine were not separately packaged, nor were separate packages found in his possession, there was no corroborating evidence of an intent to deliver. *Id.* at 484.

Case law is replete with examples of what the court does consider sufficient corroborating evidence for an inference of intent. In *Zunker*, the defendant was arrested in possession of 2.0 grams of methamphetamine. *Zunker*, 112 Wn. App. at 135-36. Although Zunker also had \$220 in cash, the court recognized that even the cash combined with the amount of drugs might not be enough to sustain a conviction for possession with intent to deliver. In affirming his conviction, the court instead cited the “scales bearing meth residue, notebooks with names and credit card numbers, a cell phone battery, meth ingredients. And the key to the trunk (containing anhydrous ammonia tank) was in his wallet” as sufficient to support a conviction. *Id.* at 136.

Similarly, in *Goodman*, in addition to the seized six baggies totaling 2.8 grams of methamphetamine, the intent to deliver was established by evidence of a scale, additional baggies, and an accessory kit in the defendant’s bedroom. *State v. Goodman*, 150 Wn.2d 774, 783, 83 P.3d 410 (2004). There was also a link between a controlled buy and items seized from the defendant’s room. *Id.*

There are cases where the court has upheld the inference based mainly on possession and cash held by the defendant.

However, in each of those cases, other evidence of intent was introduced.

For example, in *Lopez*, the defendant was arrested after he purchased cocaine from an informant and an undercover police officer. At the time of arrest, he possessed two ounces of rock cocaine, an additional 4.7 grams of cocaine in bindles and \$826.50 in cash. *State v. Lopez*, 79 Wn. App. 755, 769, 904 P.2d 1179 (1995). Thus, not only did the evidence establish that Lopez possessed a large amount of drugs (an ounce is considered a large amount), and cash, but he was apprehended after he made the purchase from an undercover police officer. *Id.*

In *Campos*, the defendant possessed almost an ounce of cocaine and \$1,650 in cash. However, the State did not rely solely on possession and cash, but also introduced intent evidence in the form of a pager, cell phone, and cell phone charger, (“tools of the trade”) and buy/sell records. *Campos*, 100 Wn. App. at 224.

In *Lane*, the court affirmed the inference of intent to be drawn where the defendant possessed drugs, along with over \$800 in cash, and a gram scale. *State v. Lane*, 56 Wn. App. 286, 297-98, 786 P.2d 277 (1989).

The lack of corroborating evidence that Mr. Marsh intended to deliver the rock cocaine is significant. “Evidence of an intent to deliver must be sufficiently compelling that the specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability.” *State v. Delmarter*, 94 Wn. 2d 634, 638, 618 P.2d 99 (1980). As applied here, the intent to deliver does not logically follow as a matter of probability from the evidence presented- evidence in addition to possession.

Here, at trial, much was made of Mr. Marsh’s offer to buy cocaine and “rock it up” to sell it; in essence, work as a confidential informant for INET. Washington law demands that the defendant possessed the *same* quantity of rock cocaine that he intended to deliver. RCW 69.50.401(a); *State v. Robbins*, 68 Wn. App. 873, 876, 846 P.2d 585 (1993). (Emphasis added). In this case, there was no evidence presented that Mr. Marsh intended to deliver the rock cocaine that he possessed. At trial, the officers could not recall that Mr. Marsh was ever specifically asked if he intended to sell the drugs found in his closet. Any offer to make a future cocaine purchase and “rock it up” in exchange for a reduction or

dismissal of charges cannot be used to infer intent for the current possession.

This is a case of simple possession. As the *Brown* court stated: “The courts must be careful to preserve the distinction and not turn every possession of a minima amount of a controlled substance into a possession with intent to deliver without substantial evidence as to the possessor’s intent above and beyond the possession itself.” *Brown*, at 485.

B. Mr. Marsh Received Ineffective Assistance Of Counsel Where Counsel Failed To Request A Jury Instruction On The Technical Statutory Meaning Of An Essential Element: Intent.

Under the state and federal constitutions, an accused has the right to effective assistance of counsel. U.S. Const. Amend. VI; Art. I, § 22, Wash. Const.; *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Mr. Marsh contends that counsel was ineffective for failing to request a definition of the word “intent” be included in the jury instructions.

The test for ineffective assistance of counsel consists of two prongs: (1) whether defense counsel’s performance fell below an objective standard of reasonableness based on all the

circumstances and (2) whether this deficiency prejudiced the defendant. *Id.* A strong presumption exists that defense counsel provided adequate assistance, and the defendant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *State v. Holm*, 91 Wn. App. 429, 434, 957 P.2d 1278 (1998). A reasonable probability is a probability that is sufficient to undermine confidence in the outcome of the proceeding. *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). Where counsel's conduct can be characterized as legitimate strategy or tactics, performance is not deficient. More significantly, however, is the question of whether counsel's choices were reasonable. *State v. Grier*, 171 Wn.2d 17, 246 P.3d 1260 (2011).

Simple possession of a controlled substance, unlike possession with intent to manufacture or deliver, is a strict liability crime. RCW 69.50.4013(1); RCW 69.50; RCW 69.50.401(1). "Intent" is crucial in differentiating the two crimes.

The jury instructions in this case defined both the crime of simple possession and the crime of possession with intent to deliver. The court gave instructions on the technical meanings of "possession" and "deliver." However, defense counsel did not

request, and the court did not give an instruction on the technical meaning of “intent.” Intent is a statutorily defined term, precisely meaning: “A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010 (1)(a).

Based on the court’s willingness to instruct the jury on the meanings of possession and delivery, it is more than likely that an instruction on the meaning of intent would very probably have been given if offered by counsel. Further, it was not reasonable for counsel to not request the instruction.

In *Allen*, the court noted that culpable mental states have been statutorily defined, having specific legal definitions aside from any common understanding or dictionary definitions. *State v. Allen*, 101 Wn.2d 355, 361, 678 P.2d 798 (1984). The reviewing court held that the trial court’s refusal to submit the statutory instruction defining “intent” “forced the jury to find a common denominator among each member’s individual understanding of these terms and to determine on its own what was their meaning. There is no way to ascertain whether they used the proper statutory definitions.” *Id.* at 362. The Court clarified in *Scott* that failure to give a technical term instruction is not constitutional error that can be properly

raised for the first time on appeal. The Court went on to reason, however, that *Allen* held that “intent” must be defined according to its statutory definition (when a party so requests) because that definition differs from common understandings of the meaning. *State v. Scott*, 110 Wn.2d 682, 757 P.2d 492 (1988). The “technical term rule” exists to ensure that defendants are not convicted by a jury that misunderstands the law. *Id.* at 690.

A jury is presumed follow all instructions that the trial court gives them. *State v. Stein*, 144 Wn.2d 236, 247, 27 P.3d 184 (2001). To find Mr. Marsh guilty, using the statutory definition of intent, the jury was required to find that Mr. Marsh acted with the objective or purpose to accomplish a result, which constituted a crime. As in *Allen*, there is no way to ascertain whether the jury here used the proper statutory definitions and did not convict based on a misunderstanding of the meaning of the critical element of “intent.” This is especially significant in light of the officer’s testimony that he could not recall if Mr. Marsh was ever asked if he intended to sell the drugs that were found in his home. The failure to propose the instruction resulted in prejudice to Mr. Marsh and the very real probability the outcome would have been different if the jury were fully instructed.

C. The Finding That Mr. Marsh Has The Likely Future Ability To Pay LFOs Is Not Supported In the Record And Must Be Stricken From The Judgment and Sentence.

The record here does not support the trial court's finding that Mr. Marsh has a likely future ability to pay the LFOs that were imposed as part of his sentence. (CP 49). A trial court's determination of an offender's financial resources and ability to pay are reviewed under the clearly erroneous standard. *State v. Bertrand*, 165 Wn. App. 393, 404 n.13, 267 P.3d 511 (2011)(citing *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116, 837 P.2d 646 (1991)). While formal findings of fact about a defendant's present or future ability to pay an imposed LFO are not required, the reviewing court must still have a sufficient record to determine "whether the trial court judge took into account the financial resources available to the defendant and the nature of the burden imposed by LFOs under the clearly erroneous standard" (internal citations omitted). *Bertrand*, 165 Wn. App. at 404. Some evidence is required.²

² In *Bertrand*, the reviewing court drew a distinction between the review of orders to pay the LFOs and the factual findings of ability to pay LFOs. *Bertrand*, 165 Wn.App. at 403-405.

The record here does not show that the trial court took into account Mr. Marsh's financial resources and the nature of the burden of the imposed LFOs on him. There is no evidence in the record to support the court's findings in ¶ 2.5. The finding is clearly erroneous and must be stricken from the Judgment and Sentence. *Id.* at 405.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Marsh respectfully requests this Court to vacate and dismiss his conviction with prejudice for insufficiency of the evidence; or in the alternative, remand for a new trial. Mr. Marsh also respectfully asks this Court to strike the finding that he has the likely ability to pay LFOs.

Dated this 14th day of December 2012.

Respectfully submitted,

Marie J. Trombley

Attorney for Appellant
WSBA 41410
PO Box 829
Graham, WA 98338
509-939-3038
Fax: 253-268-0477
marietrombley@comcast.net

CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Appellant Jamie Marsh, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Brief of Appellant was sent by first class mail, postage prepaid on December 14, 2012 to Jamie Marsh, DOC # 810812, Airway Heights Correction Center, Airway Heights, WA 99001; and by email per agreement between the parties to D. Angus Lee, Grant County Prosecuting Attorney, at kburns@co.grant.wa.us.

s/ Marie Trombley

WSBA 41410
PO Box 829
Graham, WA 98338
509-939-3038
Fax: 253-268-0477
marietrombley@comcast.net