31386-7-III

FILED

SEP 30, 2013

Court of Appeals
Division III
State of Washington

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MERSADEZE SIDNEY RIOJAS,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:

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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the trial and conviction of the Appellant.

III. ISSUES

1. Is there sufficient evidence that the sergeant was performing his official duties at the time of the assault where the sergeant was investigating allegations of two felony assaults?
2. Did the court abuse its discretion in excluding irrelevant and misleading evidence of the force used in restraining the Defendant after she assaulted the law enforcement officer?
3. Did the court abuse its discretion in excluding irrelevant and misleading evidence of the Defendant's training in self defense when she was not surprised by the sergeant's detention of her after he instructed her that she was not free to leave and when her response was not consistent with the self defense training she described?

4. Did the court prevent the Defendant from making her case that the assault was unintentional, because it excluded some irrelevant and unduly prejudicial evidence while allowing her to testify and argue to accident?

5. Did the court err in refusing to give a self defense instruction that was without a "scintilla" of factual support?

6. Did the court err in correctly defining assault as an act or "unlawful force"?

IV. STATEMENT OF THE CASE

The Defendant Mersadeze Riojas appeals from her conviction by jury of assault in the third degree. CP 52, 66, 81-83. She testified at her trial. RP 233-91.

On July 20, 2012 at about one in the morning, Walla Walla police responded to a report of a party involving underage drinking, fighting, and a gun. RP 81-82, 115. They arrived at a large, vacant, warehouse with at least eight vehicles parked inside the fenced property. RP 82, 108, 194. Police could hear female voices in the warehouse screaming and yelling, and they could hear bottles breaking. RP 83, 109. They observed evidence of alcohol consumption (open containers and a heavy odor of

alcohol). RP 108-09. Police heard screaming and the shattering of glass within the warehouse. RP 109, 115, 121.

Abel Avila exited the building and asked police to leave. RP 196-97. Mr. Avila was acquainted with police through his criminal history, which include various felony convictions which are considered crimes of dishonesty. RP 213-17, 229, 232-33. He had been drinking, however, he confronted police because he was 21 and wanted to prevent police from investigating the under-aged drinking of others in the warehouse. RP 201, 204 ("[We] wanted the police to leave so we could continue the partying pretty much"), 221-22. Mr. Avila was not surprised that police had been called to investigate fighting. RP 207.

Mr. Avila believed his friend Jacob Bueck rented out a small section of the warehouse and believed that he had authority through his friend to prevent police from investigating a disturbance of the peace and other possible crimes. RP 195-97. When Sergeant Michael Moses asked to speak to the tenant of the warehouse, Mr. Avila falsely stated that Mr. Bueck was not there. RP 200-01. In fact, Mr. Bueck was inside the building celebrating his 20th birthday and consuming alcohol. RP 195, 201. Eventually, Sgt. Moses convinced Mr. Avila to bring Mr. Bueck out to speak with polices so that police could verify the legal tenants of the

property. RP 109, 115, 119, 121, 195, 200-01.

The Defendant was one of the party attendees. RP 237. She testified that she had only recently turned 21, had been drinking, and that her behavior was affected by her drinking that night such that it was appropriate to have a designated driver. RP 234, 239, 266-67. Her friend Mr. Avila also believed that her behavior was affected by her drinking. RP 203. The 5'2" Defendant had consumed by her own admission three to four bottles of beer. RP 239, 265. However, she denied that drinking had affected her perceptions or emotions. RP 239, 266.

The Defendant denied that any of the female party goers had been involved in any physical altercations. RP 240. However, she admitted to being in an argument with Bailee Culver which was precipitated by Ms. Culver asking the Defendant to keep her voice down because the police were outside and investigating this underage drinking party. RP 242-43. The Defendant told Ms. Culver to leave and then followed her to the door and jumped off the loading dock. RP 243, 247.

Police saw an intoxicated Ms. Culver run out of the warehouse away from the pursuing Defendant and right off a four foot concrete loading dock, hitting the ground and catching herself with her arms. RP 83-84, 88, 110, 118-19, 202. Ms. Culver was yelling "those Mexican girls

are chasing me and throwing bottles at me and I don't know why." RP 122.

The pursuing Defendant was "highly intoxicated" with slurred speech, blood shot eyes, and a definite smell of alcohol. RP 86. She also had wet spots on her pants. RP 86. She landed right next to Officer Ignacio Colin, who prevented her from charging at Ms. Culver, telling her that she did not want to assault someone in front of a police officer. RP 84-85, 88, 110, 248. Mr. Avila saw Officer Colin grab the Defendant "to keep her away from the other girl." RP 200. The officer had to "kind of hug[]" the Defendant and "put her aside" to stop her from pursuing Ms. Culver and to calm her down. RP 202, 222. When the Defendant lunged for Ms. Culver again, the officer advised her that she could be arrested. RP 85.

The Defendant admitted to having an argument with Ms. Culver, but denied that it was physical. RP 260. While the Defendant believed that Officer Colin had asked her questions about her or others' gang membership (RP 260), the officer testified that the Defendant volunteered this information in response to the question "what had just happened." RP 85. Officer Colin testified that the Defendant explained that she had just moved to town, had been invited to this party, and was not associated with

a gang. RP 85. Eventually, he had to "get her back on track" to the matter at hand, namely why she had been chasing Ms. Culver. RP 85. The Defendant told Officer Colin that Ms. Culver had "been going after her friend." RP 85. The Defendant did not like that, so she "went after" Ms. Culver. RP 85.

As Sgt. Moses approached the Defendant, she volunteered that Ms. Culver had a knife or had been chasing her with a knife. RP 86, 110-11. When the sergeant asked why the Defendant had been chasing Ms. Culver, she became dismissive of him. RP 111. She claimed that Ms. Culver had been chasing her, but police would think what they want, because they were "white." RP 111. She then cursed and started to walk away. RP 111-12, 124.

Sergeant Moses told the Defendant she was not free to leave. RP 112-13. But she cursed again and kept walking away. RP 113. When the sergeant caught up with her and grabbed her by the upper right arm, the Defendant swung around and hit him in the mouth with her left hand. RP 114, 124-25. The impact left a blood blister on the sergeant's lip. RP 136. Officer Colin and Officer Jeremy Pellicer observed the Defendant becoming loud. RP 87, 142. She swung at Sgt. Moses with both arms separately. RP 142-43. The sergeant told her to stop hitting him, and he

restrained her. RP 143. She was arrested for the assault. RP 87, 143. As she was escorted to a patrol car, the Defendant continued to scream, yell, and resist. RP 87.

Defense witness Avila's statement was consistent with police testimony. Mr. Avila witnessed the Defendant chasing Ms. Culver out of the warehouse. RP 202. He saw Officer Colin grab the Defendant "to keep her away from the other girl." RP 200. The officer had to "kind of hug[]" the Defendant and "put her aside" to stop her from pursuing Ms. Culver and to calm her down. RP 202, 222. Mr. Avila observed the Defendant arguing with Sgt. Moses. RP 202, 226. He believed the argument was related to the Defendant's intoxicated state. RP 203. He thought the Defendant walked away from the sergeant when she was asked for her ID. RP 231. He heard the sergeant ask the Defendant to stop. RP 209. He observed the sergeant take the Defendant by the arm as she walked away from him, the Defendant swing her arm to swat him away and hit the sergeant in the lip, and the officers and the Defendant struggle. RP 198-99, 202, 206, 226-28, 232.

The Defendant testified that she perceived Sgt. Moses as being aggressive, loud, and accusatory. RP 261. She felt his judgment evidenced racial bias. RP 261-62. The Defendant testified that it was a

surprise to her that the sergeant would stop her as she tried to leave. RP 264. The Defendant testified that she did not strike the sergeant intentionally but only reactively when his grasp caused her pain. RP 264-65.

Detective Miguel Sanchez spoke with the Defendant the next morning and advised her that she had been arrested for striking an officer. RP 178. The Defendant laughed. *Id.* Initially, she denied hitting anybody, but quickly volunteered to having a poor memory of events. RP 178 ("As I was leaving she made the comment that, 'I can't remember anything.'") She testified that she did not start to remember details about the night until the next morning. RP 267.

The Defendant appeals from her conviction of assault in the third degree. CP 66-80, 81-83.

V. ARGUMENT

A. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE MOTION TO DISMISS FOR INSUFFICIENT EVIDENCE.

The Defendant challenges the court's denial of her motion to dismiss for insufficient evidence, citing *State v. Barnes*, 96 Wn. App. 217, 978 P.2d 1131 (1999). The court ruled against a *Knapstad* motion and a

mid-trial motion to dismiss, both times addressing the *Barnes* case. CP 20-21; RP 185-88. The standard of review is the same whether the claim is framed as insufficiency of the evidence, denial of a *Knapstad* motion, or denial of a midtrial motion to dismiss. *State v. Athan,* 160 Wn.2d 354, 378 n. 5, 158 P.3d 27 (2007). After viewing the evidence in the light most favorable to the State, interpreting all inferences in favor of the State and most strongly against the Defendant, the Court must determine whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

The Defendant was charged and convicted under RCW 9A.36.031(1)(g), which defines the offense as an assault of a law enforcement officer who is performing his official duties at the time of the assault. CP 1, 66. The Defendant argued that Sgt. Moses was engaged in an unlawful detention and that an unlawful detention is not part of lawful police duties under *State v. Barnes.* CP 6; RP 185-86.

The Defendant's argument was that after Officer Colin had spoken with the Defendant, the sergeant could have no lawful purpose in questioning the Defendant. This argument, that it is illegal for a second law enforcement officer to ask any further questions, is without any

authority in law. It is also contrary to common sense.

First of all, there is nothing unusual or irregular or offensive in a second investigative officer following up with questions of his or her own. In this case, Sergeant Moses is the superior officer in rank and experience, making this exercise all the more common. RP 81 (Officer Colin is a patrol officer with less than four years experience); RP 108 (Sgt. Moses is the supervisor for the patrol shift with approximately 25 years experience). There is no indication in the record that Officer Colin informed the Defendant that she was free to leave and that no further questions would be put to her. RP 86. Rather, Sgt. Moses substituted for or replaced Officer Colin in the questioning. RP 87 (Officer Colin testifying that he left the Defendant with the sergeant).

Under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889 (1968), an officer may lawfully detain with reasonable suspicion of criminal activity. *State v. Ibrahim*, 164 Wn. App. 503, 508, 269 P.3d 292 (2011). The detention must be reasonably related in scope to the circumstances which justify detention. *State v. Williams*, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984).

In this case, police were initially on the premises to investigate underage drinking, fighting, and the presence of a gun. They then

witnessed the Defendant chasing Ms. Culver and heard dueling assault allegations. Ms. Culver accused "[t]hose Mexican girl" of chasing her and throwing bottles at her. RP 122. The Defendant was the person giving chase. The record does not explain whether Ms. Culver's statement had been taken in the brief time between the women's appearance outside the warehouse and the Defendant's assault on a law enforcement officer. It appears that everything occurred in a short period of time such that it was not yet possible for the six officers to have compared Ms. Culver's statement to that of the Defendant's statement. Therefore, the brief detention of the Defendant for this purpose (to compare the two women's statements) would have been warranted. Whether Officer Colin was satisfied to hand the Defendant over for continued questioning by his superior officer has no bearing on the validity of the scope of the detention.

As the prosecutor pointed out, immediately before Sergeant Moses took hold of the Defendant, the Defendant had accused Ms. Culver of chasing her with a knife. RP 86. It was a new and uninvestigated allegation of a serious nature (RCW 9A.36.021(1)(c) – assault with a deadly weapon is an assault in the second degree and a class B felony). Regardless of their initial impression of the credibility of the Defendant's

accusation, police had a duty to investigate such a serious allegation. And if their investigation resulted in probable cause, they would have had authority to arrest Ms. Culver without a warrant. RCW 10.31.100. If indeed Ms. Culver had a weapon and an intent to harm another, police would have been reckless to have left the parties alone with each other without investigating.

On the other hand, if their investigation determined that the Defendant had made a false accusation, there may have been cause to charge another crime. RCW 9A.76.175 (making a materially false statement to a public servant is a gross misdemeanor). In other words, regardless of the truth or falsity of the Defendant's accusation, there was reasonable suspicion of a crime (assault or false statement). And police had a duty to continue investigating.

The trial court did not abuse its discretion in ruling against the Defendant's dismissal motion predicated on a claim that there was insufficient evidence that Sergeant Moses was performing official duties at the time of the assault. Sergeant Moses was in the process of investigating criminal activity for which there was reasonable suspicion justifying a brief detention for questioning.

Viewing the evidence in the light most favorable to the State,

interpreting all inferences in favor of the State and most strongly against the Defendant, this Court must find that a rational trier of fact could have found beyond a reasonable doubt that the sergeant was performing official duties at the time of the assault.

B. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO ADMIT EVIDENCE OF THE ARREST WHICH FOLLOWED THE ASSAULT.

The Defendant argues that the force used in arresting her was relevant to show that her assault on the officer had been in self defense. Amended Brief of Appellant at 22. It was not relevant. The court properly excluded evidence, forestalling an argument that would have misled the jury. *State v. Weaville*, 162 Wn. App. 801, 818, 256 P.3d 426, *review denied* 173 Wn.2d 1004, 268 P.3d 942 (2011) (a criminal defendant has no right, constitutional or otherwise, to have irrelevant evidence admitted in her defense).

A trial court's rulings on both relevance under ER 402 and prejudicial effect under ER 403 are reviewed only for abuse of discretion. *State v. Anderson*, 44 Wn. App. 644, 652, 723 P.23 P.2d 464 (1986). Under an abuse of discretion standard, the reviewing court will find error only when the trial court's decision (1) adopts a view that no reasonable

person would take and is thus manifestly unreasonable, (2) rests on facts unsupported in the record and is thus based on untenable grounds, or (3) was reached by applying the wrong legal standard and is thus made for untenable reasons. *State v. Sisouvanh*, 175 Wn.2d 607, 623, 290 P.3d 942 (2012).

As the Defendant explains, the court allowed evidence of Sergeant's force in grabbing the Defendant by the arm (i.e. occurrences preceding the assault) but excluded evidence of force in restraining the Defendant after the assault. Amended Brief of Appellant at 23. This was exactly proper.

The Defendant argues that the force used in arresting her for assault reflects on the force used in detaining her for questioning. It does not. When Sgt. Moses detained the intoxicated, irrational, and cursing Defendant by taking her by the arm as she tried to leave amid allegations of a knife (or felony assault), he used the force necessary *to keep her from leaving*, i.e. a firm squeeze on her upper arm. However, when several officers restrained the Defendant in the process of arresting her, the cause for restraint and amount of restraint needed had changed. The Defendant had just committed a felony assault in their presence and was resisting arrest. She had stricken a fellow officer in their presence while he was

attempting to investigate various complaints. She continued to swing at him with both arms while he instructed her to stop and then resisted arrest (RP 87). The different kinds of forces were predicated on to two very different situations.

The Defendant responded to a firm squeeze on her arm with a smack in the face. She did not smack the sergeant in the face because she anticipated that he would arrest her for smacking him in the face. Her response had no logical relation to an arrest, which only came to pass *because of* her response.

Any attempt to link the two would be (1) not relevant to a claim of self-defense and (2) confusing and misleading of the jury insofar as the Defendant attempted to represent otherwise. The evidence was properly excluded under both ER 402 and ER 403. The trial court's evidentiary decision was reasonable and must be affirmed under the standard of review.

C. THE COURT DID NOT ABUSE ITS DISCRETION IN EXCLUDING EVIDENCE OF THE DEFENDANT'S TRAINING IN SELF DEFENSE.

The Defendant claims that the court abused its discretion in excluding evidence of her training in self-defense. Amended Brief of

Appellant at 26; CP 57. In fact, the court acted within its discretion to exclude evidence that was irrelevant and misleading.

At the time of State's objection, the Defendant had already testified that she "took martial arts in middle school" and that she had taken a martial arts class at the community college and a self-defense class over the summer. RP 254. The State only objected to the Defendant characterizing her actions as "self defense." RP 254-55.

The trial court had previously precluded the Defendant from arguing self defense. RP 43 ("[t]here is not a scintilla of evidence justifying a self defense argument to the jury in this case"). Such a defense is limited by case law when made in the context of an assault against a law enforcement officer. A criminal defendant must first show that there was an imminent threat of serious physical harm in connection with an unlawful arrest. *State v. Mierz*, 127 Wn.2d 460, 476, 901 P.2d 286 (1995). Use of force against an unlawful arrest will be unreasonable if the arrest only threatens loss of freedom. *State v. Goree*, 36 Wn. App. 205, 209, 673 P.2d 194 (1983), *review denied* 101 Wn.2d 1003 (1984).

Defense counsel explained that he only wanted to demonstrate that the assault was not intentional, but a spontaneous or automatic reaction ***resulting from her training in self-defense***. RP 255-56. The court

allowed the Defendant to make an offer of proof that her self-defense training was relevant to a defense of accident. RP 257. The Defendant testified that she had been trained that when grabbed from behind, she should pull away and hit the restraining arm down. RP 257. She was also taught to grab an attacker's hand. RP 258.

But there was no evidence that the Defendant had moved to strike down the sergeant's hand or grab his hand. Sergeant Moses testified that the Defendant did not move in this way. RP 293, ll. 12-15. Rather, she smacked him in the face (RP 114) and then continued to flail at him (RP 142-43) while being instructed to stop (RP 143). Nor did she have any reason to be surprised by the sergeant's taking hold of her when he had told her that she was not free to leave and she had responded by cursing at him and walking off. RP 112-14. In that context, where there could have been zero surprise, any trained or automatic response had no relevance.

The trial court had discretion to exclude the testimony under both ER 402 and ER 403. *State v. Anderson*, 44 Wn. App. at 652. There is tenable to reason to exclude this evidence as being irrelevant and misleading.

D. THE COURT DID NOT PREVENT THE DEFENDANT FROM ARGUING THAT THE ASSAULT HAD BEEN UNINTENTIONAL OR ACCIDENTAL.

The Defendant argues that she was prevented from "tell[ing] her version of what happened." Amended Brief of Appellant at 31. As the Defendant acknowledges, her right to present a defense is not absolute, because her evidence must be relevant. Amended Brief of Appellant at 29, *citing State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010), *quoting State v. Darden*, 145 Wn.2d 612, 622, 41 P.3d 1189 (2002).

Not only are the court's rulings on admissibility and relevance within its discretion, but its rulings did not prevent the Defendant from making her defense of accident.

The Defendant testified that she became uncomfortable when people encroached on her personal space. RP 259. She testified that she was surprised when the sergeant grabbed her arm and that her reaction had been automatic, but not intentional. RP 264-65. Defense counsel was permitted to confront the sergeant with the proposition that the Defendant's action striking the sergeant was only a quick reactive, non-intentional motion. RP 293. Counsel even argued that his client's gesture was no different in its reactivity than the Sergeant's defensive action in restraining the Defendant. RP 296, ll. 18-25 (comparing sergeant's

"surprise" with the Defendant's). And the court permitted the Defendant to make this latter argument through untimely recall of a State's witness. RP 251. The Defendant made her case in closing argument. RP 351-52. Even the prosecutor explained the defense's case in closing. RP 328 (Defendant claiming her gesture had been accidental or unintentional), 357 (a quick reaction).

The Defendant was not prevented from making her defense merely because she was not permitted to bring in irrelevant or misleading evidence. The court was concerned that the defense was going to be jury nullification. RP 38-39. A defendant has no right to the court's assistance in seeking jury nullification. *State v. Wilson*, -- Wn. App. --, 307 P.3d 823, 825 (2013); *State v. Meggyesy*, 90 Wn. App. 693, 699-700, 958 P.2d 319 (1998), *abrogated on other grounds by State v. Recuenco*, 154 Wn.2d 156, 110 P.3d 188 (2005).

E. THE COURT DID NOT ERR IN REFUSING TO GIVE A SELF-DEFENSE INSTRUCTION.

The Defendant challenges the court's refusal to instruct the jury on self-defense. Amended Brief of Appellant at 32. At trial the Defendant offered a self-defense instruction. CP 35; RP 305.

The court explained its ruling again at the close of evidence,

finding Sergeant Moses was engaged in lawful activity as a matter of law and finding "not a scintilla of evidence" that the Defendant had been in actual and imminent danger of serious injury from an officer's use of excessive force. RP 307-08.

The Defendant notes that she would be entitled to an instruction if there were substantial evidence supporting it. Amended Brief of Appellant at 32, *citing State v. Fernandez-Medina*, 141 Wn.3d 448, 455-56, 6 P.3d 1150 (2000). There is not substantial evidence or, as the lower court expressed, not a scintilla of evidence.

As explained *supra*, such a defense is limited when made in the context of an assault against a police officer. A defendant must first show that there was an imminent threat of serious physical harm in connection with an unlawful arrest. *State v. Mierz*, 127 Wn.2d 460, 476, 901 P.2d 286 (1995). Use of force against an unlawful arrest will be unreasonable if the arrest only threatens loss of freedom. *State v. Goree*, 36 Wn. App. 205, 209, 673 P.2d 194 (1983), *review denied* 101 Wn.2d 1003 (1984).

The Defendant has not met her burden of showing that her detention was unlawful. The sergeant was lawfully investigating allegations of assault by both the Defendant and Ms. Culver. And the Defendant has not met her burden of showing that grabbing her by the arm

put her at imminent threat of serious physical harm. Therefore, she is not entitled to an instruction on self-defense.

F. THE COURT DID NOT COMMIT REVERSIBLE ERROR BY CORRECTLY INSTRUCTING THAT AN ASSAULT IS AN ACT OF "UNLAWFUL FORCE."

The Defendant complains that because the definition of assault (CP 44) includes the phrase "with unlawful force," the conviction should be reversed. Amended Brief of Appellant at 38.

"Instructions satisfy the requirement of a fair trial when, taken as a whole, they properly inform the jury of the applicable law, are not misleading, and permit the defendant to argue his theory of the case." 13 Wash. Prac. sec. 4401. The Defendant's argument here is that the instruction is misleading. She suggests the jury might understand from this language that it was "a given" that the force she used was unlawful. Amended Brief of Appellant at 35. This suggestion is not logical. The jurors are instructed that the Defendant's plea of not guilty has put "every element" of the crime at issue. CP 42. And jurors are presumed to follow the court's instructions. *In re Detention of Coe*, 175 Wn.2d 482, 514, 286 P.3d 29 (2012).

The Defendant argues that the instruction is a violation of the Note

on Use. Amended Brief of Appellant at 35. It is not. The Comment observes that the definition of "assault" includes the ***requirement*** that it be committed with unlawful force. WPIC 35.50 (11 Wash. Prac. WPIC 35.50), Comment, *citing State v. Hupe*, 50 Wn. App. 277, 748 P.2d 263 (1988).

The Comment's advisory language which states that "the jury should not be left to speculate" regards cases where the court ***allows*** a self-defense instruction. That did not happen here.

The Comment observes that in *State v. Arthur,* 42 Wn. App. 120, 708 P.2d 1230 (1985) (which was followed by *State v. Hardy*, 44 Wn. App. 477, 483, 722 P.2d 872 (1986)), which are cases where there was a basis for a self defense claim, the courts reversed because they wanted more instruction (not less) on the meaning of an "unlawful act." *State v. Arthur,* 42 Wn. App. at 122-25; *State v. Hardy*, 44 Wn. App. at 483-85. The cases speak to the necessity for an aggressor instruction (which did not exist in the instant case) to be directed to intentional acts. This note has no application to this case where no self defense case was made.

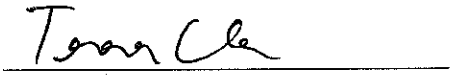
There was no error in the court's instruction.

VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

DATED: September 27, 2013.

Respectfully submitted:



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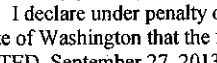
William Edelblute 1030 N Center Parkway Kennewick, WA 99336 <bill@edellaw.com> Mersadeze Riojas 2344 Hood Place Walla Walla, WA 99362	A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED September 27, 2013, Pasco, WA  **Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201**