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Court of Appeals
Division III
State of Washington

No. 32124-0-III
No. 32125-8-III
(consolidated)

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

STATE OF WASHINGTON,

Respondent,

v.

JUAN JOSE SERRANO BERRIOS,
Appellant.

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

The Honorable Judge John Antosz

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

The State charged Juan Jose Serrano Berrios with eight crimes under two separate cause numbers. Mr. Serrano was found guilty of three gross misdemeanor offenses: fourth degree assault, harassment, and cyberstalking.

The trial court abused its discretion by denying Mr. Serrano's motion to sever his two cases for trial. Evidence on one case would not have been admitted in the other if the matters were not joined for trial. The trial involving both cause numbers was manifestly prejudicial. This Court should reverse and remand for separate trials.

In the alternative, the trial court erred in not giving Mr. Serrano's proposed jury instructions to limit consideration of evidence to the crimes in the particular case for which it was offered. The jury instruction given by the trial court, stating that each count must be considered separately, was insufficient to mitigate the possibility of prejudice in this joined trial. The case should be reversed and remanded for a new trial.

Finally, the trial court erred in denying Mr. Serrano credit for the time he served in pretrial incarceration; resentencing is warranted.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Mr. Serrano's motion to sever his two cases for trial.

2. The trial court erred in not giving Mr. Serrano's proposed jury instructions to limit consideration of evidence to the particular case for which it was offered.

3. The trial court erred in denying Mr. Serrano credit for time served in pretrial incarceration.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: The trial court abused its discretion by denying Mr. Serrano's motion to sever his two cases for trial.

Issue 2: The trial should have given Mr. Serrano's proposed jury instructions to limit consideration of evidence to the particular case for which it was offered.

Issue 3: The trial court should have given Mr. Serrano credit for time served in pretrial incarceration.

D. STATEMENT OF THE CASE

Juan Jose Serrano Berrios[1] and Isabel Hernandez were in a relationship and had a daughter together. (C. Beck RP 47-48, 191-193).[2]

---

[1] Jose Juan Serrano Berrios will be referred to herein as Mr. Serrano, rather than as Mr. Berrios. The trial court referred to him by this surname, after he informed the trial court is true name is Jose Juan Serrano. (K. Beck RP 4-5).

[2] The report of proceedings consists of seven volumes. The two volumes labeled ECR Volumes I and II, transcribed by Kenneth C. Beck, are referred to herein as "ECR RP." The single volume transcribed by Alison J. Sosa is referred to herein as "Sosa RP." The single volume transcribed by Charlene M. Beck is referred to herein as "C. Beck RP." The two volumes transcribed by Tom R. Bartunek are referred to herein as "Bartunek RP." Finally, the single volume transcribed by Kenneth C. Beck, dated November 20, 2013, is referred to herein as "K. Beck RP."

Sometime prior to July 2012 the couple broke up and Ms. Hernandez was living in an apartment in Ephrata. (C. Beck RP 47-48, 192-193, 202, 210).

Ms. Hernandez alleged that on July 13, 2012, Mr. Serrano pushed in the door to her apartment, grabbed her by the jaw, and bit her lip. (Sosa RP 76-80; C. Beck RP 56-58, 198-199). She also alleged that on July 22, 2012, Mr. Serrano hit the back of her car with his car and tried to push her car off the street. (Sosa RP 36-41, 43-44, 51-63; C. Beck RP 66-70, 200-201, 211-213). Ms. Hernandez further alleged that Mr. Serrano sent her threatening text messages between July 1, 2012, and July 24, 2012. (C. Beck RP 98-131, 152-175).

Based on these allegations, the State charged Mr. Serrano with first degree burglary, fourth degree assault, and third degree malicious mischief, alleged to have occurred on July 13, 2012 (referred to herein as "the assault case"). (1 CP 1-4)[3]. Under a separate cause number, the State charged Mr. Serrano with second degree assault, harassment, reckless endangerment, reckless driving, and cyberstalking (referred to herein as "the harassment case"). (2 CP 29-31). The State alleged the second degree assault, reckless endangerment, and reckless driving occurred on July 22, 2012, and the harassment and cyberstalking occurred between

[3] There are two sets of Clerk's Papers for this appeal, one for each trial court cause number. The first set corresponds to Grant County Superior Court Cause Number 12-1-00373-7, the assault case, and is referred to herein as "1CP." The second set corresponds to Grant County Superior Court Cause Number 12-1-00395-8, the harassment case, and is referred to herein as "2CP."

June 29, 2012 and July 24, 2012. (2 CP 29-31). Except for reckless driving, the State alleged all of the charges were domestic violence. (1 CP 1-4; 2 CP 29-31).

The trial court granted the State's motion to consolidate the two cases for trial. (1 CP 37-38; ECR RP 29-31, 33-34, 47, 74). Subsequently, Mr. Serrano objected to the consolidation and filed a motion to sever his two cases for trial. (1 CP 50-52, 83-90, 137-141; ECR RP 87-88, 90-91, 98-104, 116-127; K. Beck RP 38-43).

Mr. Serrano argued the two cases should be severed because the evidence supporting each case was not cross-admissible against the other case. (ECR RP 117; K. Beck RP 39-41). The trial court denied Mr. Serrano's motion to sever, reasoning the State's evidence is strong on each count; Mr. Serrano asserted clear defenses on each count of alibi;[4] the jury can be instructed to consider each count separately; and there would be some cross-admissibility on the harassment charge. (ECR RP 101, 121-127; K. Beck RP 42-43). Mr. Serrano renewed his motion to sever on the first day of trial, and the trial court again denied the motion. (K. Beck RP 38-43).

Following a pretrial motion, the trial court ruled the State could present evidence of two prior bad acts by Mr. Serrano against Ms.

[4] Mr. Serrano did not present alibi defenses at trial. (Sosa RP 17-126; C. Beck RP 45-242; Bartunek RP 1-94). The defense presented was general denial.

Hernandez, occurring on July 3, 2012 and July 8, 2012, to prove the reasonable fear element of the harassment charge. (Sosa RP 44-51; C. Beck RP 22-28, 137-142; K. Beck RP 48-72).

The case proceeded to a jury trial. (Sosa RP 17-126; C. Beck RP 45-242; Bartunek RP 1-94). Ms. Hernandez testified consistent with the allegations set forth above. (C. Beck RP 45-238). Prior to her testimony regarding the text messages sent to her by Mr. Serrano, the trial court published the text messages to the jury and gave the following limiting instruction:

> Members of the Jury, an exhibit will now be published for you. And I understand that these are purported to be text messages, copies of text messages. And these -- these text messages you are about to hear can only be considered by you with regards to the charge of harassment and cyberstalking. When we get the Jury Instructions you'll be given instructions as to what the elements of each of those crimes are. And I'm just advising you in advance that these text messages can only be considered with regards to those charges; again, harassment and cyberstalking charges. You cannot consider it for any other charges that are alleged; only for those two charges.

(C. Beck RP 91-92, 97).

During Ms. Hernandez's testimony regarding the text messages, the trial court gave another limiting instruction:

> I also have a limiting instruction to give to you and that is about the testimony of this witness that you've been hearing. The -- the text messages and the testimony of this witness about the text messages -- And I mentioned this before, but I just wanted to clarify. -- can only be considered by you in regards to the charges or alleged crimes of harassment and cyberstalking, and you cannot consider these text messages or the testimony about the text messages for any other charges alleged.

(C. Beck RP 150-151).

Ms. Hernandez testified to the two prior bad acts against her by Mr. Serrano, previously ruled admissible by the trial court. (C. Beck RP 49-55). She testified that on July 3, 2012, she looked out her window and saw Mr. Serrano across the street from her apartment. (C. Beck RP 49-50). She further testified that on July 8, 2012, she went to take out her trash at her apartment and Mr. Serrano attacked her, spraying what she thought was paint in her face and slapping her in the face. (C. Beck RP 51-55).

Ms. Hernandez also testified, over Mr. Serrano's objection, that Mr. Serrano told her in the past that he might kill her. (C. Beck RP 117-121). The trial court ruled this testimony was admissible to prove the reasonable fear element of the harassment charge. (C. Beck RP 139, 141-142).

Ephrata Police Department Sergeant Troy Froewiss testified regarding the two prior bad acts by Mr. Serrano against Ms. Hernandez,

occurring on July 3, 2012 and July 8, 2012. (Sosa RP 63-76). Sergeant Froewiss testified that on July 3, 2012, he saw Mr. Serrano within walking distance of Ms. Hernandez's apartment. (Sosa RP 63-66).

Sergeant Froewiss further testified that on July 8, 2012, he saw Ms. Hernandez at her apartment complex. (Sosa RP 66-67). He testified Ms. Hernandez had a bruise next to her left eye, and the area around her eyes was pink. (Sosa RP 67-68). The trial court allowed admission, over Mr. Serrano's objection, of three photographs of Ms. Hernandez on this date. (Sosa RP 75-76). After the admission of the photographs, the trial court instructed the jury:

> Members of the Jury, these pictures that have just been admitted . . . you are to consider them only in regards to the charged crime of harassment. You cannot consider these pictures for any other charges alleged.

(Sosa RP 75-76).

Mr. Serrano proposed the following jury instructions, referring to them as modified versions of WPIC 5.30[5]:

> Certain evidence has been admitted in this case of Burglary First Degree, Assault 4th Degree and Malicious Mischief Third Degree. Other evidence in this case as to Assault Second Degree, Harassment, Cyberstalking, Reckless Driving and Reckless Endangerment. Evidence as to one crime cannot be considered by you as to evidence of another crime. You may not consider the evidence as to one crime as proof of the other crime. Any discussion of

[5] *See* 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 5.30 (3d Ed. 2008).

> the evidence during your deliberations must be consistent with this limitation[;]
>
> [and]
>
> Certain evidence has been admitted regarding the charges involving the allegations of Burglary First Degree, Assault t [sic] 4th Degree and Malicious Mischief Third Degree. Other evidence has been admitted regarding the charges involving the allegations of Assault in the Second Degree, Harassment, Cyberstalking, Reckless Driving and Reckless Endangerment. You may not consider the evidence of one alleged crime as proof of any other alleged crime. Any discussion of the evidence during your deliberations must be consistent with this limitation.

(1 CP 225, 229; Bartunek RP 12-14).

The trial court declined to give these proposed instructions, stating "[t]he court took the position that this instruction proposed by the defendant is really not a modified [WPIC] 5.30, it's actually a modified [WPIC] 3.01, because it has to do with considering each charge separately." (1 CP 284-332; Bartunek RP 14-15, 27-50). The trial court expressed concern that the instruction would confuse the jury, because certain pieces of evidence, such as "the defendant's name and where he lived and the nature of his relationship" would apply to more than one crime. (Bartunek RP 14-15).

The trial court gave the jury the following limiting instructions:

> A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.
> . . . .
>
> Certain evidence has been introduced in this case for only a limited purpose. This evidence consists of the testimony regarding the text messages and may be considered by you only for your deliberations on the charges of harassment and cyberstalking. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.
> . . . .
>
> Certain evidence has been introduced in this case for only a limited purpose. This evidence consists of the testimony regarding the events of July 3, 2012 and July 8, 2012, and may be considered by you only for your deliberations on the charge of harassment. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

(1 CP 289, 296-297; Bartunek RP 32, 34-35).

The jury found Mr. Serrano guilty of fourth degree assault, harassment, and cyberstalking. (1 CP 335, 339, 342). Mr. Serrano was acquitted on all other charges. (1 CP 334, 336-338, 340-341).

For the fourth degree assault conviction, the trial court sentenced Mr. Serrano to 360 days in jail, with 330 days suspended, to run concurrent to the sentences on the harassment and cyberstalking convictions. (1 CP 367; ECR RP 309). For the harassment and cyberstalking convictions, the trial court sentenced Mr. Serrano to 330 days in jail, with 90 days suspended, on each count, to run concurrent.

(Supplemental CP; ECR RP 307). The trial court suspended the sentences for a period of two years and placed Mr. Serrano on probation for this time period, pursuant to RCW 9.95.210. (1 CP 367; Supplemental CP; ECR RP 302, 308, 311, 320).

Over Mr. Serrano' objection, the trial court declined to give him credit for the 517 days he served in jail prior to trial against the suspended jail time. (1 CP 367; Supplemental CP; ECR RP 310-312). The trial court stated "this suspended jail time begins to run as of the date of sentencing." (ECR RP 311).

Mr. Serrano timely appealed. (1 CP 376-377; 2 CP 32-33).

E. ARGUMENT

Issue 1: The trial court abused its discretion by denying Mr. Serrano's motion to sever his two cases for trial.

Under CrR 4.4(b), the trial court must sever offenses "whenever before trial or during trial with consent of the defendant, the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense." CrR 4.4(b). "Severance of charges is important when there is a risk that the jury will use the evidence of one crime to infer the defendant's guilt for another crime or to infer a general criminal disposition." *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

"Defendants seeking severance have the burden of demonstrating that a trial involving both counts would be so manifestly prejudicial as to outweigh the concern for judicial economy." *State v. Bythrow*, 114 Wn.2d 713, 718, 790 P.2d 154 (1990). Trial courts must consider four factors in determining whether severance of offenses is required:

> (1) [T]he strength of the State's evidence on each count; (2) the clarity of defenses as to each count; (3) court instructions to the jury to consider each count separately; and (4) the admissibility of evidence of the other charges even if not joined for trial.

State v. Russell, 125 Wn.2d 24, 63, 882 P.2d 747 (1994). The trial court must also weigh the risk of prejudice against the need for judicial economy. *Id*.

"Even if separate counts would not be cross-admissible in separate proceedings, this does not as a matter of law state sufficient basis for the requisite showing by the defense that undue prejudice would result from a joint trial." *State v. Markle*, 118 Wn.2d 424, 439, 823 P.2d 1101 (1992). A defendant must show specific prejudice. *Bythrow*, 114 Wn.2d at 720. A trial court's denial of a motion to sever offenses is reviewed for manifest abuse of discretion. *Id*. at 717.

Here, the trial court denied Mr. Serrano's motion to sever the assault case and the harassment case for trial. (ECR RP 121-127; K. Beck RP 42-43). Evaluating the factors set forth in *Russell* demonstrates that

the motion to sever should have been granted. *See Russell*, 125 Wn.2d at 63.

First, evaluating the strength of the State's case, the assault case and the harassment case were based primarily on Ms. Hernandez's testimony. (C. Beck RP 56-58, 198-199); *see also Russell*, 125 Wn.2d at 63. Allowing the two cases to remain joined for trial bolstered Ms. Hernandez's testimony. There was a risk the jury would use the evidence of each crime to infer guilt on the other crimes, or infer that Mr. Serrano has a general criminal disposition. *See Sutherby*, 165 Wn.2d at 883.

Second, Mr. Serrano did not assert different defenses for the two cases. *See Russell*, 125 Wn.2d at 63. At the time of the severance motion, Mr. Serrano asserted alibi defenses. (ECR RP 101, 124). The defense presented at trial was general denial. (Sosa RP 17-126; C. Beck RP 45-242; Bartunek RP 1-94).

Third, the trial court did instruct the jury that it "must decide each count separately." (1 CP 289; Bartunek RP 32); *see also Russell*, 125 Wn.2d at 63. The jury was also given limiting instructions stating the text messages could only be considered on the charges of harassment and cyberstalking. (1 CP 296; C. Beck RP 91-92, 97, 150-151; Bartunek RP 34). The jury was also given limiting instructions that the prior bad acts by Mr. Serrano against Ms. Hernandez, occurring on July 3, 2012, and

July 8, 2012, could only be considered on the harassment charge. (1 CP 297; Sosa RP 75-76; Bartunek RP 34-35).

However, the trial court declined to give Mr. Serrano's proposed jury instructions to limit consideration of evidence to the crimes in the case for which it was offered. (1 CP 225, 229, 284-332; Bartunek RP 12-15, 27-50). Therefore, there was nothing to prevent the jury from using evidence of crimes in the assault case to prove crimes in the harassment case, and from using evidence from crimes in the harassment case to prove crimes in the assault case.

The trial court also did not give a limiting instruction regarding Ms. Hernandez's testimony that Mr. Serrano told her in the past that he might kill her. (C. Beck RP 117-121). Therefore, the jury was not limited to considering this evidence for its admitted purpose of proving the reasonable fear elements of the harassment charge. (C. Beck RP 139, 141-142). Instead, the jury could have used the evidence to infer that Mr. Serrano has a general criminal disposition, or as proof for the other crimes in both the assault case and the harassment case. *See Sutherby*, 165 Wn.2d at 883; *see also* ER 404(b) (stating "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.").

Finally, evidence for each case would not have been admissible if the cases were not joined for trial. *See Russell*, 125 Wn.2d at 63. The text message evidence and prior bad acts evidence admitted for the harassment case would not have been admitted in the assault case, because this evidence was not relevant to prove the crimes of first degree burglary, fourth degree assault, or third degree malicious mischief. *See State v. Nelson*, 131 Wn. App. 108, 115-116, 125 P.3d 1008 (2006) (setting forth the requirements for admitting prior bad acts evidence under ER 404(b)); *see also State v. Barragan*, 102 Wn. App. 754, 758-60, 9 P.3d 942 (2000) (finding a prior bad act was admissible to prove the reasonable fear elements of a harassment charge).

The presentation of the text message evidence and prior bad acts evidence consumed a large amount of time at trial. (Sosa RP 17-126; C. Beck RP 45-242; Bartunek RP 1-94). Given the volume of this evidence, the jury could not be expected to compartmentalize this evidence. *Cf. Bythrow*, 114 Wn.2d at 121 ("[w]hen the issues are relatively simple and the trial lasts only a couple of days, the jury can be reasonably expected to compartmentalize the evidence."). In addition, the assault case occurred on a date separate from the harassment case. *Cf. Markle*, 118 Wn.2d at 439 (upholding the denial of a motion to sever offenses where some of the incidents occurred contemporaneously).

In summary, the four factors set forth in *Russell* support severance of the assault case and the harassment case. *See Russell*, 125 Wn.2d at 63. Severance of these cases would promote a fair determination of Mr. Serrano's guilt or innocence for each offense. *See* CrR 4.4(b). The trial involving both cases was manifestly prejudicial. *See Bythrow*, 114 Wn.2d at 718. The trial court abused its discretion by denying Mr. Serrano's motion to sever his two cases for trial. The case should be reversed and remanded for separate trials.

Issue 2: The trial court should have given Mr. Serrano's proposed jury instructions to limit consideration of evidence to the particular case for which it was offered.

A trial court's refusal to give a requested jury instruction, based on a factual dispute, is reviewed for an abuse of discretion. *State v. Walker*, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1998). However, when the trial court declines to give a requested jury instruction based upon a ruling as to the law, the decision is subject to de novo review. *Id*. at 772. The latter standard applies here.

"Jury instructions are sufficient if they are supported by substantial evidence, allow the parties to argue their theories of the case, and when read as a whole properly inform the jury of the applicable law." *State v. Clausing*, 147 Wn.2d 620, 626, 56 P.3d 550 (2002). When evidence is offered for a limited purpose and a limiting instruction is requested, the

court is obligated to give the instruction. *See State v. Aaron*, 57 Wn. App. 277, 281, 787 P.2d 949 (1990); *see also* ER 105.

Here, the trial court instructed the jury:

> A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

(1 CP 289; Bartunek RP 32).

The trial court declined to give Mr. Serrano's proposed jury instructions limiting consideration of evidence to the crimes in the case for which it was offered. (1 CP 225, 229, 284-332; Bartunek RP 14-15, 27-50).

The trial court erred in refusing to give Mr. Serrano's proposed jury instructions. (1 CP 225, 229); *see also* 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 5.30 (3d Ed. 2008). The jury instruction given by the trial court, stating that each count must be considered separately, was insufficient to mitigate the possibility of prejudice in this joined trial. (1 CP 289; Bartunek RP 32); *see also* 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 3.01 (3d Ed. 2008). The trial court should have given Mr. Serrano's proposed instructions, making it clear to the jury that it could not use evidence proving the crimes in one case as proof of the crimes in the other case.

The instruction given by the trial court does not specifically tell the jury how it may use the evidence. (1 CP 289; Bartunek RP 32); *see also*

State v. Bradford, 60 Wn. App. 857, 861-62, 808 P.3d 174 (1991). It did not directly instruct the jury to compartmentalize the evidence. (1 CP 289; Bartunek RP 32). Because not all of the evidence for each case was cross-admissible in the other case, the trial court should have given Mr. Serrano's proposed jury instructions telling the jury to limit consideration of evidence to the crimes in the case for which it was offered. The case should be reversed and remanded for a new trial.

Issue 3: The trial court should have given Mr. Serrano credit for time served in pretrial incarceration.

Mr. Serrano was found guilty of three gross misdemeanor offenses: fourth degree assault, harassment, and cyberstalking. (1 CP 335, 339, 342, 366; Supplemental CP); *see also* RCW 9A.36.041(2) ("[a]ssault in the fourth degree is a gross misdemeanor."); RCW 9A.46.020(2)(a) (except under circumstances not present here, "a person who harasses another is guilty of a gross misdemeanor."); RCW 9.61.260(2) (except under circumstances not present here, "[c]yberstalking is a gross misdemeanor[.]"). Therefore, the Sentencing Reform Act does not apply to his sentence. *See State v. Marks*, 95 Wn. App. 537, 539, 977 P.2d 606 (1999) (stating that the Sentencing Reform Act only applies to felonies).

The sentencing court may impose up to 364 days in jail for a gross misdemeanor conviction. RCW 9A.20.021(2). A misdemeanor sentencing court has the authority to suspend the execution of all or any

portion of a sentence. RCW 9.95.210; *see also State v. Rice*, 180 Wn. App. 308, 313, 320 P.3d 723 (2014) (stating "RCW 9.95.210(1)(a) grants the trial court authority to suspend the sentence of a criminal defendant.").

Whether a defendant is entitled to credit for time served is a question of law subject to de novo review. *State v. Swiger*, 159 Wn.2d 224, 227, 149 P.3d 372 (2006). All criminal defendants must be given credit for pre-sentencing detention time. *Harris v. Charles*, 171 Wn.2d 455, 466 n.5, 470, 256 P.3d 328 (2011). "[P]rinciples of equal protection and double jeopardy demand that all defendants receive credit for time spent in incarceration prior to sentencing." *Id*. at 470 (citing *Reanier v. Smith*, 83 Wn.2d 342, 351-52, 517 P.2d 949 (1974)). Furthermore, where a suspended sentence is imposed under RCW 9.95.210, the sentencing court cannot order a defendant to serve one year of jail time for a probation violation without giving credit for time already served in jail. *See State v. Stanley*, 47 Wn. App. 715, 717-720, 737 P.2d 296 (1987).

Here, Mr. Serrano served 517 days in jail prior to trial. (ECR RP 310). The constitutional principles of equal protection and double jeopardy require that Mr. Serrano receive credit for this time served. *See Harris*, 171 Wn.2d at 470 (citing *Reanier*, 83 Wn.2d at 351-52). RCW 9.95.210 also requires that Mr. Serrano receive credit for time served. *See Stanley*, 47 Wn. App. at 717-720. The trial court erred in denying Mr.

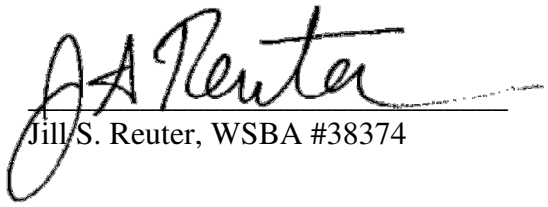
Serrano credit for time served in pretrial incarceration. Therefore, the case should be remanded for resentencing.

F. CONCLUSION

The case should be reversed and remanded for a new trial because the trial court abused its discretion by denying Mr. Serrano's motion to sever his two cases for trial. In the alternative, the case should be reversed and remanded for a new trial because the trial court erred in not giving Mr. Serrano's proposed jury instructions to limit consideration of evidence to the particular case for which it was offered.

At a minimum, the case should be remanded for resentencing in order to give Mr. Serrano credit for time served in pretrial incarceration.

Respectfully submitted this 13th day of August, 2014.



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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON	)	
Plaintiff/Respondent	)	COA No. **32124-0-III**
vs.	)	32125-8-III
	)	(consolidated)
JUAN JOSE SERRANO BERRIOS	)	
	)	PROOF OF SERVICE
Defendant/Appellant	)	
	)	

I, Kristina M. Nichols, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on August 13, 2014, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's opening brief to:

Grant County Jail Inmate
Juan Jose Serrano-Berrios
P.O. Box 37
Ephrata, WA 98823

Having obtained prior permission from Grant County Prosecutor's Office, I also served D Angus Lee by email at kburns@co.grant.wa.us using Division III's e-service feature.

Dated this 13th day of August, 2014.

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