

**FILED**  
Nov 01, 2016  
Court of Appeals  
Division III  
State of Washington

**NO. 32228-9-III**  
**COURT OF APPEALS**  
**STATE OF WASHINGTON**  
**DIVISION III**

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**DANIEL CHRISTOPHER LAZCANO,**

Defendant/Appellant.

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**REPLY TO SUPPLEMENTAL BRIEF**

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Dennis W. Morgan    WSBA #5286  
Attorney for Defendant/Appellant  
PO Box 1019  
Republic, Washington 99166  
(509) 775-0777

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## ARGUMENT

The Court of Appeals requested supplemental briefing from Mr. Lazcano and the State in connection with seven issues raised by Mr. Lazcano in his Additional Statement of Grounds for Review.

The State fails to address the use of hearsay statements by Travis Carlon and Jamie Whitney as substantive evidence.

The State fails to address the issue of prosecutorial misconduct.

The State fails to address Undersheriff Rockness's testimony violating Mr. Lazcano's Fifth Amendment right to remain silent.

The State does not address, in connection with Dr. Reynold's testimony, why no intact bullet was located.

The State does not address, in connection with Dr. Reynold's testimony, his lack of expertise in ballistics.

The State does not address, in connection with Dr. Reynold's testimony, why a forensic pathologist's failure to conduct a complete autopsy and recover all evidentiary material does not constitute a denial of due process.

The State, in its response to the introduction of testimony from the non-testifying co-defendant, relies upon *State v. Alvarez*, 45 Wn. App. 407, 726 P.2d 43 (1986) and *Personal Restraint of Theders*, 130 Wn. App. 422, 123 P.3d 489 (2005).

The State relies upon the hearsay exception involving statements in furtherance of a conspiracy. ER 801 (d)(2)(v).

ER 801(d)(2)(v) clearly states that “a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy,” is not hearsay.

What the State overlooks is the fact that there is a pre-trial notice requirement in connection with the use of such statements under ER 801 (d)(2)(v).

The State is not required to give pre-trial notice every time it asserts conspiracy... as the basis for introducing and out-of-court statement. There is no need for notice here because the conspiracy underlying admission of the statements is incidental (not integral) to the crime charged.

*State v. Sanchez-Guillen*, 135 Wn. App. 636, 644, 145 P.3d 406 (2006).

Mr. Lazcano contends that the facts and circumstances of his case, including statements by the non-testifying co-defendant, were not inci-

dental; but were rather an integral part of the claimed conspiracy. *See also:*  
*State v. Baruso*, 72 Wn. App. 603, 613, 865 P.2d 512 (1993).

Mr. Lazcano otherwise relies upon the argument contained in his  
original brief, reply brief and supplemental brief.

DATED this 1st day of November, 2016.

Respectfully submitted,

s/Dennis W. Morgan  
DENNIS W. MORGAN WSBA #5286  
Attorney for Defendant/Appellant  
P.O. Box 1019  
Republic, Washington 99166  
Phone: (509) 775-0777/Fax: (509) 775-0776  
[nodblspk@rcabletv.com](mailto:nodblspk@rcabletv.com)

**NO. 32228-9-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	WHITMAN COUNTY
Plaintiff,	)	NO. 12 1 00051 9
Respondent,	)	
	)	<b>CERTIFICATE</b>
v.	)	<b>OF SERVICE</b>
	)	
DANIEL CHRISTOPHER LAZCANO,	)	
	)	
Defendant,	)	
Appellant.	)	
	)	

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I certify under penalty of perjury under the laws of the State of Washington that on this 1<sup>st</sup> day of November, 2016, I caused a true and correct copy of the *REPLY TO SUPPLEMENTAL BRIEF*, to be served on:

RENEE S. TOWNSLEY, CLERK  
Court of Appeals, Division III  
500 North Cedar Street  
Spokane, Washington 99201

E-FILE

CERTIFICATE OF SERVICE

WHITMAN COUNTY PROSECUTOR'S OFFICE  
Attn: Denis Paul Tracy  
PO Box 30  
Colfax, Washington 99111-0030  
[denist@co.whitman.wa.us](mailto:denist@co.whitman.wa.us)

E-FILE

DANIEL CHRISTOPHER LAZCANO #372108  
Washington State Penitentiary  
1313 N 13<sup>th</sup> Avenue, Fox E-227  
Walla Walla, Washington 99362

U.S. MAIL

s/Dennis W. Morgan

Dennis W. Morgan, Attorney at Law  
DENNIS W. MORGAN LAW OFFICE  
PO Box 1019  
Republic, WA 99166  
(509) 775-0777  
(509) 775-0776  
[nodblspk@rcabletv.com](mailto:nodblspk@rcabletv.com)

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