

COA NO. 34078-3-III

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

STATE OF WASHINGTON,

Respondent,

v.

ZACHARY ROY,

Appellant.

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

The Honorable Tina Kernan, Judge

BRIEF OF APPELLANT (AMENDED)

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A. ASSIGNMENTS OF ERROR

1. Appellant received ineffective assistance of counsel due to counsel's failure to object to hearsay evidence.

2. The trial court erred in entering the following finding: "The only logical source of the eight hundred and eighty two dollars in Respondent's wallet is from the eight hundred dollars missing from Teresa Roy's bank envelopes." CP 11 (FF 11).

3. The court erred in failing to consider appellant's request for a suspended sentence.

Issues Pertaining to Assignments of Error

1. Whether counsel was ineffective in failing to object to hearsay that someone saw appellant outside the home trying to figure out how to get inside before the burglary and theft occurred, where the court relied on that hearsay evidence to convict appellant?

2. Whether the trial court abused its discretion as a matter of law by declining a request for a suspended sentence based on the erroneous assumption it lacked legal authority to impose one?

B. STATEMENT OF THE CASE

The State charged 15-year-old Zachary Roy in juvenile court with second degree theft and residential burglary. CP 8-9. The case proceeded to a bench trial.

1. Trial

Roy is Teresa Roy's grandson. 1RP¹ 17. He lived with his grandmother for about a year, from October 2014 to October 2015. 1RP 18, 31. On October 9, 2015, Ms. Roy went into Roy's bedroom after smelling marijuana and saw Roy's wallet sticking out from underneath a pillow on his bed. 1RP 18-19. She looked in his wallet and found \$882 in cash inside, including eight \$100 bills. 1RP 20.

She went to her office inside her home to see if the cash from her towing business was still in a filing cabinet. 1RP 20-21, 23-24. She keeps her office locked. 1RP 22. The window to her office looked locked but actually wasn't. 1RP 22. Roy is not allowed in her office when she's not there. 1RP 37. She earlier had \$100 bills, some twenties, and some ones in her office. 1RP 27-28. The \$100 bills she had in the filing cabinet, which she had seen the day before, were gone.² 1RP 21, 23.

Ms. Roy testified "my mother had said he'd been going around the outside of the house, to figure out how he would have got in. And, that's

¹ The verbatim report of proceedings is referenced as follows: 1RP - 2/5/16; 2RP - 2/10/16.

² She testified she had "at least" eight \$100 bills in her office, but she inferred this number based on her finding eight \$100 bills in Roy's wallet rather than any independent memory of how many \$100 bills she had in the office. 1RP 27-28.

when I found that the window looked locked but it wasn't." 1RP 24. Defense counsel did not object to this testimony.

Ms. Roy called the police. 1RP 24. She led the responding officer to Roy's bedroom and handed him the wallet. 1RP 10-11. No attempt was made by police to interview Roy and get his side of the story. 1RP 12-13. No attempt was made to lift fingerprints from the office. 1RP 14.

When Roy came home from school that day, he acted upset after he came out of his room and did not talk to his grandmother. 1RP 25. Ms. Roy later had a conversation with Roy in which she said she knew he took the money. 1RP 25-26. Roy said he didn't. 1RP 26. According to Ms. Roy, Roy never asked about what happened to the \$800. 1RP 36-37.

Ms. Roy testified Roy did not have a job and could have gotten that money only if he stole it or was selling drugs. 1RP 20. She gave Roy an allowance of \$5 a week for cleaning his room. 1RP 32-33. She gave him \$10 for painting. 1RP 32. She heard rumors he was selling pot. 1RP 32. Ms. Roy was concerned about Roy's friends committing thefts. 1RP 34.

Roy testified in his own defense. He received \$5-\$10 a week in allowance. 1RP 41. He sold his X-box, games and accessories for \$150. 1RP 41. He denied selling marijuana. 1RP 42. He spent \$5-\$10 a month

on a case of soda. 1RP 42. He converted his money to \$100 bills "so I wouldn't lose it as easy." 1RP 43.

As Roy told it, he was surprised when he came home and found his money (about \$880) missing. 1RP 44, 49. He confronted his grandmother about it, but was unable to get a straight answer from her. 1RP 44, 49. He denied ever going into the office when his grandmother was not there and denied taking her money. 1RP 45-46. He believed his grandmother stole his money, although he wasn't sure. 1RP 50, 52. He did not go to the police because, being a minor with previous experience with law enforcement, he did not think he would be believed. 1RP 51.

In closing argument, defense counsel contended the State had not proven its circumstantial case beyond a reasonable doubt. 1RP 62-67. The grandmother assumed Roy went into the office and took her money. 1RP 63. Roy could have gotten the money from other sources. 1RP 63-66. It was understandable that Roy did not go to the police after discovering his money was missing because he did not think the police would believe him. 1RP 65. No one saw Roy go through the window or into the locked room and police did not try to lift any fingerprints. 1RP 67.

The court found Roy guilty as charged. 1RP 67-69. The court acknowledged the case was circumstantial. 1RP 68. Looking at "each thing" separately can create reasonable doubt, "[b]ut when I tie all these

things together to make a nice little rope of evidence, so to speak, I do find that it all adds to concluding that there was -- that there is no reasonable doubt that Mr. Roy committed theft in the second degree and residential burglary." IRP 68.

The court entered written findings of fact in support of its conclusions of law. CP 10-13.³ In support of its conclusion that Roy committed theft and burglary, the court found "Teresa Roy's mother, Respondent's great grandmother, observed Respondent running around the outside of the residence near the office window prior to Respondent going to school." CP 11 (FF 8). The court did not find Roy's testimony that the money belonged to him credible because (1) the amount of money he saved did not add up to the amount found in his wallet; and (2) when his grandmother took the money, Roy did not call the police or confront his grandmother about the theft. CP 11 (FF 9, 10). The court also found "The only logical source of the eight hundred and eighty two dollars in Respondent's wallet is from the eight hundred dollars missing from Teresa Roy's bank envelopes." CP 11 (FF 11).

2. Sentencing

At the disposition hearing, defense counsel asked the court to consider granting a suspended sentence under "Option B" of the juvenile

³ Attached as appendix A.

sentencing statute. 2RP 5-7. Counsel contended a suspended sentence made sense because it would provide Roy with supervision and would be a significant deterrent from engaging in similar behavior in the future. 2RP 7. Referring to the sentencing statute, the prosecutor argued Roy was ineligible for a suspended sentence because he was 14 years of age or older and he committed the crime of residential burglary, which he described as a crime "specifically listed as an ineligible offense to -- for an Option B." 2RP 8.

The court responded "All right. And that is my reading, too, of the statute." 2RP 9. The court found "the Option B alternative does not apply to this case because Mr. Roy was convicted of residential burglary, and specifically under the statute, 13.40.0357(c)(b)(iii) residential burglary would make him ineligible for the Option B alternative. Thus, I will impose the standard range upon Mr. Roy." 2RP 10-11. The court imposed a standard range sentence consisting of 52-65 weeks in confinement for the burglary and 15-36 weeks in confinement for the theft, to run consecutively. 2RP 10-11; CP 19. Roy appeals. CP 21-33.

C. **ARGUMENT**

1. **DEFENSE COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT TO HEARSAY EVIDENCE, WHICH THE COURT RELIED ON TO CONVICT.**

Roy is guaranteed the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987); U.S. Const. amend. VI; Wash. Const. art. I, § 22. Roy's counsel was ineffective in failing to object to hearsay evidence that the court relied on to find Roy guilty. Reversal of the convictions is required because there is a reasonable probability that counsel's deficient performance affected the outcome.

On direct examination, Ms. Roy testified "my mother had said he'd been going around the outside of the house, to figure out how he would have got in. And, that's when I found that the window looked locked but it wasn't." 1RP 24. Defense counsel did not object to Ms. Roy's testimony about what her mother said.

A hearsay objection would have been proper. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. ER 801(c). Hearsay is inadmissible unless an exception applies. ER 802. What Ms. Roy's mother said constitutes an out-of-court statement. It was offered to prove Roy in fact had been going around the house, trying to

figure out how to get into the office. This is confirmed by the trial court's finding on the matter, treating this out-of-court statement as substantive evidence. CP 11 (FF 8). The testimony constituted inadmissible hearsay.

Defense counsel is ineffective where (1) the attorney's performance is deficient and (2) the deficiency prejudices the defendant. Strickland, 466 U.S. at 687. Deficient performance is that which falls below an objective standard of reasonableness. Thomas, 109 Wn.2d at 226. Only legitimate trial strategy or tactics constitute reasonable performance. State v. Kyllo, 166 Wn.2d 856, 869, 215 P.3d 177 (2009).

The record in this case rebuts the presumption of reasonable performance. The hearsay statement constituted inculpatory evidence against Roy. No legitimate tactic justified not objecting to the hearsay and keeping it out of evidence. The hearsay supported the State's case. It undermined the defense theory that the State failed to prove beyond a reasonable doubt that Roy committed the burglary and theft.

On cross examination, defense counsel confirmed neither Ms. Roy nor her mother saw Roy go through the window. 1RP 29-30. He then said "She only said she saw Zachary go around the back of the house at some point." 1RP 30. Ms. Roy answered "yes." 1RP 30. Having let the hearsay evidence slip in on direct examination, defense counsel may have been trying repair the damage by juxtaposing the hearsay evidence with

evidence that no one saw Roy go through the window. But the competent decision, and the only objectively reasonable one, was to keep the hearsay out of evidence in the first instance by objecting to it during direct examination. Damage control is not needed when the damage can be avoided through a timely objection.

A defendant demonstrates prejudice by showing a reasonable probability that, but for counsel's performance, the result would have been different. Thomas, 109 Wn.2d at 226. But Roy "need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Strickland, 466 U.S. at 693. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. The hearsay should not have been available to be considered as evidence that Roy committed the crimes. A hearsay objection would have kept it out. Without the objection, however, the evidence remained available for the trial court to consider as evidence against Roy and influenced the court's determination of guilt.

In bench trials, the presumption on appeal is that the trial judge, knowing the applicable rules of evidence, will not consider matters that are inadmissible when making findings. State v. Miles, 77 Wn.2d 593, 601, 464 P.2d 723 (1970). The presumption, however, is inapplicable when the judge actually "consider[ed] matters which are inadmissible when making

his [or her] findings." State v. Gower, 179 Wn.2d 851, 856, 321 P.3d 1178 (2014) (quoting Miles, 77 Wn.2d at 601).

Such is the case here. As a finding supporting its conclusion that the State proved its case beyond a reasonable doubt, the court found "Teresa Roy's mother, Respondent's great grandmother, observed Respondent running around the outside of the residence near the office window prior to Respondent going to school." CP 11 (FF 8). The record shows the court relied on inadmissible evidence in reaching its conclusion that Roy was guilty. Cf. State v. Billups, 62 Wn. App. 122, 131, 813 P.2d 149 (1991) (erroneous admission of ER 404(b) evidence was harmless because the lack of reference to the improper testimony demonstrated the trial judge did not rely on the testimony in finding the defendant guilty).

In a straightforward case of evidentiary error, "the analysis does not turn on whether there is sufficient evidence to convict without the inadmissible evidence. . . . Rather, the question is whether there is a reasonable probability that the outcome of the trial would have been different without the inadmissible evidence." Gower, 179 Wn.2d at 857. In the effective assistance context, the question is likewise whether there is a reasonable probability the error affected the outcome. Thomas, 109 Wn.2d at 226; see State v. Hendrickson, 138 Wn. App. 827, 833, 158 P.3d 1257 (2007) (counsel was ineffective for failing to object to the admission

of hearsay evidence where there was a reasonable probability the State could not have convicted the defendant but for admission of the hearsay), aff'd, 165 Wn.2d 474, 198 P.3d 1029 (2009).

The evidence against Roy was circumstantial and rather slim at that. Roy did not have a credible explanation for how he came into the money he said was his. On the other hand, Ms. Roy was concerned that Roy was earning money by dealing pot (something Roy understandably did not admit on the stand) and also that Roy's friends were thieves. 1RP 20, 32, 34. An available inference is that one of Roy's friends stole the money. Another available inference is that the \$882 in Roy's wallet represented money earned from dealing pot, not money stolen from his grandmother.

In this regard, Roy challenges the court's finding "[t]he only logical source of the eight hundred and eighty two dollars in Respondent's wallet is from the eight hundred dollars missing from Teresa Roy's bank envelopes." CP 11 (FF 11). Pot dealing is another logical source. An unadmirable source, but one that is exculpatory in the context of this case. Factual findings must be supported by substantial evidence. State v. Vickers, 148 Wn.2d 91, 116, 59 P.3d 58 (2002). The challenged finding in this case does not meet that standard.

Even if the finding is supported by substantial evidence, there is a reasonable probability that the outcome would have been different had counsel objected and prevented consideration of the hearsay evidence. The court commented "when I tie all these things together to make a nice little rope of evidence, so to speak, I do find that it all adds to concluding that there was -- that there is no reasonable doubt that Mr. Roy committed theft in the second degree and residential burglary." 1RP 68. One of the pieces of evidence it "tied together" to find guilt beyond a reasonable doubt is the hearsay evidence. CP 11 (FF 8). Under these circumstances, Roy shows counsel's deficient performance undermines confidence in the outcome. The conviction should be reversed because there is a reasonable probability the trial court would not have found Roy guilty in the absence of the hearsay evidence.

2. THE COURT ABUSED ITS DISCRETION IN FAILING TO CONSIDER ROY'S REQUEST FOR A SUSPENDED SENTENCE.

The trial court failed to recognize it had discretion to order a suspended sentence under Option B of RCW 13.40.0357. Where a court fails to recognize it has discretion to impose an alternative sentence, its failure to do so is reversible error. The court refused to exercise its discretion on whether to grant a suspended sentence because it labored

under the incorrect belief that Roy was statutorily ineligible for such a sentence. Remand for resentencing is required.

a. Roy is eligible for a suspended sentence under the statute.

Statutory interpretation is a question of law reviewed de novo. State v. Sandholm, 184 Wn.2d 726, 736, 364 P.3d 87 (2015). RCW 13.40.0357, Option B, provides "(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement." The statute lists the circumstances that make a juvenile ineligible:

- (3) An offender is ineligible for the suspended disposition option under this section if the offender is:
 - (a) Adjudicated of an A+ offense;
 - (b) *Fourteen years of age or older and is adjudicated of one or more of the following offenses:*
 - (i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;
 - (ii) Manslaughter in the first degree (RCW 9A.32.060); or
 - (iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), *residential burglary* (RCW 9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2

(RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon; (emphasis added).

The prosecutor argued Roy was ineligible for a suspended sentence because he was older than 14 and he had been found guilty of residential burglary. 2RP 8. The trial court agreed with the prosecutor and did not consider whether to impose a suspended sentence. 2RP 9-11. The court outright stated "I do find that the Option B alternative does not apply to this case because Mr. Roy was convicted of residential burglary, and specifically under the statute, 13.40.0357(c)(b)(iii) residential burglary would make him ineligible for the Option B alternative. Thus, I will impose the standard range upon Mr. Roy." 2RP 10-11.

The prosecutor and the trial court misread the statute. Both overlooked the qualifying phrase "when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon." RCW 13.40.0357, Option B, (3)(iii).

"Under the 'last antecedent rule' of statutory construction, a qualifying phrase refers to the last antecedent unless there is 'a comma before the qualifying phrase.'" Garrison v. Sagepoint Fin., Inc., 185 Wn. App. 461, 493, 345 P.3d 792 (2015), review denied, 183 Wn.2d 1009, 352

P.3d 188 (2015) (quoting Berrocal v. Fernandez, 155 Wn.2d 585, 593, 121 P.3d 82 (2005) (quoting In re Sehome Park Care Ctr., Inc., 127 Wn.2d 774, 781, 903 P.2d 443 (1995)). "A comma before the qualifying phrase indicates that the phrase 'is intended to apply to *all antecedents* instead of only the immediately preceding one.'" Garrison, 185 Wn. App. at 493 (quoting Berrocal, 155 Wn.2d at 593) (quoting Sehome Park, 127 Wn.2d at 782).

Here, the qualifying phrase is "when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon." RCW 13.40.0357, Option B, (3)(iii). A comma precedes that qualifying phrase, which means the qualifying phrase applies to all of the antecedents, i.e., all of the preceding offenses that are listed, including residential burglary. From this, it is clear the offenses listed in section (3)(iii) make a juvenile ineligible for a suspended sentence only if the offense included infliction of bodily harm or being armed with a deadly weapon. Roy's offense of residential burglary included neither. He therefore remained eligible for a suspended sentence.

This reading of the statute is confirmed by looking at the preceding provision, RCW 13.40.0357, Option B, (3)(ii). That provision simply specifies "Manslaughter in the first degree (RCW 9A.32.060)" as an

offense that renders the juvenile ineligible for a suspended sentence, without reference to whether the offense included infliction of bodily harm or being armed with a deadly weapon. Id.

If a crime listed in (3)(iii), such as residential burglary, by itself rendered a juvenile ineligible, then there would be no reason for the legislature to place the first degree manslaughter offense in a separate subsection of the statute with the conjunctive "or" connecting the provisions. The lack of reference to the bodily harm or deadly weapon qualifiers for manslaughter in (3)(ii) show those qualifiers are meant to apply to the offenses listed in (3)(iii). It is an "elementary rule that where the Legislature uses certain statutory language in one instance, and different language in another, there is a difference in legislative intent." United Parcel Serv., Inc. v. Dep't of Revenue, 102 Wn.2d 355, 362, 687 P.2d 186 (1984).

b. The court committed reversible error in not exercising its discretion to consider imposition of a suspended sentence.

All defendants have the right to the trial court's consideration of available sentence alternatives. In re Restraint of Mulholland, 161 Wn.2d 322, 334, 166 P.3d 677 (2007). "Remand for resentencing is often necessary where a sentence is based on a trial court's erroneous interpretation of or belief about the governing law." State v. McGill, 112

Wn. App. 95, 100, 47 P.3d 173 (2002). When judicial discretion is called for, the judge must exercise meaningful discretion. State v. Grayson, 154 Wn.2d 333, 335, 111 P.3d 1183 (2005). The failure to exercise discretion at sentencing based on a lack of understanding that such discretion exists constitutes an abuse of discretion. Grayson, 154 Wn.2d at 335; State v. O'Dell, 183 Wn.2d 680, 697, 358 P.3d 359 (2015).

In Grayson, the Supreme Court held the trial court erred when it failed to consider a DOSA sentence when the defendant requested it. Grayson, 154 Wn.2d at 343. The Court noted "there were ample other grounds to find that Grayson was not a good candidate for DOSA." Id. at 342. Despite these facts, the Court left it to the "able hands of the trial judge on remand to consider whether Grayson" was a suitable candidate for a DOSA sentence. Id. at 343. "While no defendant is entitled to an exceptional sentence below the standard range, every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative actually considered." Id. at 342.

In Mulholland, the trial court concluded it did not have discretion to run the defendant's sentences concurrently because the law required it to run them consecutively. Mulholland, 161 Wn.2d at 326. The Supreme Court remanded for resentencing, holding the plain language of the

governing sentencing statutes gave discretion to the trial court to impose an exceptional sentence and run the sentences concurrently. Id. at 330.

In O'Dell, the trial court erroneously believed it had no authority to impose an exceptional sentence downward based on youth as a mitigating factor. O'Dell, 183 Wn.2d at 696. In actuality, the trial court did have the authority to grant the request. Id. The trial court's failure to meaningfully consider the request for an exceptional sentence required reversal and remand for resentencing. Id. at 697.

The sentencing judge in Roy's case committed the same kind of error. Erroneously believing the statute rendered Roy ineligible for a suspended sentence as a matter of law, it did not meaningfully consider Roy's request and did not exercise its discretion on whether to grant it. "This failure to exercise discretion is itself an abuse of discretion subject to reversal." O'Dell, 183 Wn.2d at 697. Roy requests remand for resentencing so that the trial court may meaningfully consider his request for a suspended sentence.

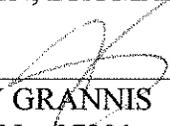
D. CONCLUSION

For the reasons set forth, Roy requests reversal of the convictions or, in the event the convictions are not reversed, remand for resentencing.

DATED this 29th day of November 2016

Respectfully Submitted,

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APPENDIX A

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SUPERIOR COURT OF WASHINGTON
FOR ASOTIN COUNTY - JUVENILE COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

ZACHARY R. ROY,
DOB: 5/04/00

Respondent.

NO: 15-8-00096-6

FINDING OF FACT AND CONCLUSIONS OF
LAW AFTER BENCH TRIAL

COMES NOW the Court, after bench trial held on February 5, 2016, the Respondent, ZACHARY R. ROY after advisement by counsel and acknowledges that the State offered the following: 3 exhibits (P2: Photo of money; P3: Photo of marijuana bag; and P4: Photo of school ID) and testimony from Asotin County Sheriff's Deputy Destry Jackson, Teresa Roy. The Respondent, after advice of counsel, testified on his own behalf. The Respondent offered no additional testimony and no physical evidence. Based upon this evidence, the Court makes the following findings of fact.

FINDINGS OF FACT

1. On October 9, 2015, Respondent resided with his grandmother, Teresa Roy.
2. Teresa Roy's residence is in Asotin County, State of Washington.
3. On October 9, 2015, Teresa Roy found eight hundred dollars missing from her bank envelopes.
4. Teresa Roy's bank envelopes were hidden in a file cabinet inside her locked office of her residence.
5. Teresa Roy found that a window leading to her office had been opened.
6. Teresa Roy found eight hundred and eighty two dollars in Respondent's wallet, that he left on his bed in his room.

FINDING OF FACT AND
CONCLUSIONS OF LAW
AFTER BENCH TRIAL

Page 1 of 2

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7. Respondent has been expressly told by Teresa Roy that he is not permitted in her office without her permission or in her presence.
8. Teresa Roy's mother, Respondent's great grandmother, observed Respondent running around the outside of the residence near the office window prior to Respondent going to school.
9. Respondent's testimony that the money was his was found to not be credible. Respondent testified that he had been saving up the money for months from his allowance of five to ten dollars a week. The amount saved does not add up to the amount found in Respondent's wallet.
10. Respondent's testimony that the money was his was also found to not be credible because when his grandmother, Teresa Roy, took the money Respondent chose not to call the police or confront his grandmother about the theft.
11. The only logical source of the eight hundred and eighty two dollars in Respondent's wallet is from the eight hundred dollars missing from Teresa Roy's bank envelopes.
12. The Court finds beyond a reasonable doubt that Respondent entered Teresa Roy's office, without her permission, with the intent to permanently deprive Teresa Roy of eight hundred dollars and that Respondent did in fact take eight hundred dollars belonging to Teresa Roy, with the intent to permanently deprive her of her property.

CONCLUSION OF LAW

BASED UPON the foregoing Findings of Fact the Court concludes that as a matter of law, ZACHARY R. ROY is guilty as charged of the offenses of Theft in the Second Degree and Residential Burglary.

DATED: 2/10/16



JUDGE/COURT COMMISSIONER

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**FINDING OF FACT AND
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State V. Zachary Roy

No. 34078-3-III

Certificate of Service

On November 29, 2016, I filed, mailed and/or e-served the amended brief of appellant directed to:

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Re: Roy

Cause No. 34078-3-III in the Court of Appeals, Division III, for the state of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



John Sloane
Office Manager
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11-29-2016

Date
Done in Seattle, Washington