

**No. 34373-1**

FILED  
FEB 13, 2017  
Court of Appeals  
Division III  
State of Washington

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

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STATE OF WASHINGTON, Respondent

v.

AMY JO MURPHY, Appellant

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY  
THE HONORABLE JUDGE DAVID ELOFSON

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BRIEF OF APPELLANT

---

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253-445-7920

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## I. ASSIGNMENTS OF ERROR

- A. The evidence was insufficient to sustain a conviction for assault in the second degree as an accomplice.
- B. The evidence was insufficient to sustain a conviction for attempted burglary second degree.
- C. The evidence was insufficient to sustain a conviction for possession of a stolen motor vehicle.
- D. This Court should exercise its discretion under RAP 15.2(f) and RAP 14.2 and decline to impose appellate costs if the state substantially prevails on appeal.

## ISSUES RELATED TO ASSIGNMENTS OF ERROR

- A. An individual is liable for the conduct of another as an accomplice if, knowing that it will promote or facilitate the commission of the crime, he solicits, commands encourages, or requests such person to commit it; or aids or agrees to aid such other person in planning or committing it. Did the state present sufficient evidence that Stahlman assaulted Oliver and that Ms. Murphy had knowledge and solicited, commanded, encouraged, requested, or planned the alleged assault ?

- B. Did the state present sufficient evidence that Stahlman attempted second degree burglary and Ms. Murphy was an accomplice ?
- C. Was the evidence insufficient to sustain a conviction for possession of a stolen motor vehicle where the owner of the vehicle testified she was not sure if her partner gave Ms. Murphy permission to use the car?
- D. Where the trial court has found an appellant indigent and authorizes appeal at public expense, should this Court exercise its discretion and deny appellate costs if the state substantially prevails on appeal?

## II. STATEMENT OF FACTS

Around 2:00 a.m. on September 23, 2015, Bill Oliver got up to use the bathroom. RP 114;134. He heard a vehicle pull up into the area near his home and walked outside onto the deck to observe. RP 114. A motion light came on and from his vantage point, he saw a figure about 30 to 35 feet away. RP 114-115. He testified the figure appeared to be about three feet away from Oliver's shop door. RP 115. Oliver yelled, "Get the 'f' out of here." The figure did not touch the door but instead, took off running.

Oliver heard a car door slam and then saw a white minivan drive away. RP 116-117.

Oliver ran back into his bedroom to put on his pants and shoes. He did not put on a shirt. Without alerting his wife or stepdaughter to call 911, he ran out of the house. He did not bring his cell phone or a weapon. RP 117. Although he did not know if any of his property had been disturbed, he later said, "in the heat of the moment, I was just not going to roll over and let somebody steal from me." RP 119;173. He testified, "I went to pursue this vehicle." RP 117.

Oliver got into his late model Ford 150 pick up truck and drove after the minivan. RP 118. He said the van was initially driving about 45 miles per hour, and he drove about 90 miles per hour to catch up to it. RP 172. He continuously honked the horn and flashed his lights at the van as he chased it for 13 miles. RP 124;173; 186.

Eventually, with horn honking and lights flashing, going between 80 and 90 miles per hour, he pulled up alongside the van. RP 176. He saw a man in the van passenger seat screaming at the female driver. RP 178. He testified the van "ran into the side of my truck." RP 178. An officer later examined Oliver's truck and the

van. RP 296. He testified he saw white and red paint scrapes on the truck running boards, but there were no corresponding scrapes on the white van. RP 296.

Oliver backed away from the van to get the license plate number. RP 179. He continued, however, to chase the van into a residential area. The van stopped at a stop sign and he stopped about five feet behind it. RP 180-181. Oliver said he got out of his truck and saw the male passenger get out of the van. The man came toward Oliver and was carrying a small sledgehammer. RP 182. Oliver got back in his truck. The male swung the hammer, hitting the fender near the headlight. RP 182;202. The male did not try to hit the driver's window or the windshield. RP 182. Oliver testified he backed up and then drove forward toward the van. The male ran back to the van. RP 182-183. Oliver agreed it was possible that the male perceived that he would run him over with the truck. RP 203. He said the van backed up, so he cranked the wheel of his truck, went up over the curb, and ran into a fence. RP 183.

The van again tried to get away and Oliver followed, continually honking the horn and flashing the lights. RP 185. Oliver followed at a high speed, weaving in and out traffic until the

van ran into a curb. RP 368. The van flew about six feet into the air, landed, and came to a stop. RP 143. Shawn Stahlman and Amy Jo Murphy got out of the van and ran away from Oliver. RP 189. Oliver drove up to the van, took the keys and then drove to a gas station and asked the clerk to call the police. RP 145;189. Oliver told the clerk that Stahlman and Murphy had tried to kill him. RP 190. He later reported the clerk and the police officer were both wary of him because he looked like a “nut case.” RP 207-208.

Officers checked the van. Inside was a used tire and wheel that was later determined to have been taken from Oliver’s property. RP 270. Police contacted the owner of the van, Ann Wells. She reported she had not given her step-grandson, Mr. Stahlman or his fiancée, Ms. Murphy, permission to take the van RP 248. She did not know, however, if her partner, Robert Santos, had given them permission to use the van. RP 260-261. She did not carry insurance on it. RP 262.

Stahlman and Ms. Murphy were both arrested. Ms. Murphy was charged as an accomplice with attempted burglary second degree, assault second degree with a sledgehammer, second degree assault with a motor vehicle, second degree theft, second degree possession of stolen property and possession of a stolen

motor vehicle. She was also charged with being armed with a deadly weapon, the sledge hammer. CP 10-12.

Both Mr. Stahlman and Ms. Murphy testified that Robert Santos, gave Murphy permission to use the van and handed her the keys. RP 369;453. Ms. Murphy testified she drove the van onto Oliver's property. RP 453. She stayed in the car, but knew that Stahlman put a tire into the vehicle. RP 453-54. She said Stahlman did not approach the door to Oliver's shop, but he went toward another vehicle on the property. RP 454. She said they heard a noise and left. RP 455.

She drove away. She remembered seeing headlights behind them, but thought nothing of it. RP 455. She noticed a truck behind them gaining speed. The driver tailgated them in an aggressive manner, honking the horn and flashing the lights. She drove faster to get away, but he kept up with her and then drove up alongside the van. RP 456. She said the driver looked like he was yelling at her and "he looked crazy. His hair was crazy. He didn't have a shirt on. I didn't know what he wanted." RP 456. She testified when he was alongside the van he motioned like he was going to slam into the van and run her off the road. RP 457. She was terrified because of the 80 to 90 mile per hour speed, afraid he

would cause her to crash, and she unable to get away from him.  
RP 457;460. She said it was like a game of cat and mouse. RP  
462. She testified not only did she did not intentionally ram the van  
into his truck, but she did not believe the two vehicles ever touched.  
RP 458.

When she stopped the van at a stop sign in a residential  
area, Mr. Stahlman got out and told Oliver to leave them alone.  
Stahlman carried a small sledgehammer that had been in the van.  
RP 363. Oliver did not get out of his truck, but rather accelerated  
toward Mr. Stahlman. RP 461; 463. As Oliver's truck got closer,  
Stahlman, swung the hammer. RP 364. Stahlman saw the truck  
get stuck in the fence so he ran back to the van and they drove  
away from the area. RP 462-63.

The court gave the following pertinent jury instructions:

Number 9:

A person commits the crime of attempted second degree  
burglary when, with intent to commit that crime, he or she  
does any act which is a substantial step toward the  
commission of that crime.

CP 44.

Number 10:

A person commits the crime of second degree burglary when  
he or she enters or remains unlawfully in a building with  
intent to commit a crime against a person or property.

CP 45.

Number 11:

A substantial step is conduct which strongly indicates a criminal purpose and that is more than mere preparation.

CP 46.

Number 30:

An assault is an intentional touching or striking of another person, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking or shooting is offensive if the touching or striking or shooting would offend an ordinary person who is not unduly sensitive.

An assault is also an act, with unlawful force, done with intent to inflict bodily injury on another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevent. It is not necessary that bodily injury be inflicted.

An assault is also an act, with unlawful force, done with intent to create in another apprehension and fear of bodily injury, which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

CP 65.

Number 40:

A person is entitled to act on appearances in defending himself, if he believes in good faith and on reasonable grounds that he is in actual danger of injury, although it afterwards might develop that the person was mistaken as to the extent of the danger. Actual danger is not necessary for the use of force to be lawful.

CP 74.

Number 38:

To convict the defendant of the crime of Possession of a

Stolen Motor Vehicle in Count 6, each of the following

elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about September 23, 2015, the defendant knowingly received , retained, possessed, concealed, or disposed of a stolen motor vehicle;
- (2) That the defendant acted with knowledge that the motor vehicle had been stolen;
- (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto;
- (4) That any of these acts occurred in the State of Washington.

CP 72.

The jury convicted Ms. Murphy of possession of stolen motor vehicle, third degree theft, second-degree assault with a deadly weapon (sledgehammer), and attempted burglary second degree. RP 613; CP 97-98. The jury instructions included third degree possession of stolen property as a lesser included of second degree possession of stolen property. However, the verdict form substituted third degree theft instead of third degree possession of stolen property. RP 617. The court dismissed the charge. RP 641; CP 97. Despite the dismissal, the judgment and sentence warrant of commitment lists the count of “third degree possession of stolen property”. CP 103.

Ms. Murphy was sentenced to 72 months of confinement. CP 99. The trial court found her indigent for purposes of appeal and ordered review at public expense. CP 115-117. She makes this timely appeal. CP 105.

### III. ARGUMENT

#### A. The Evidence Was Insufficient To Sustain A Conviction As An Accomplice For Assault In the Second Degree.

Due process rights, guaranteed under the United States Constitution and the Washington Constitution, require the State to prove every element of a crime charged beyond a reasonable doubt. U.S. Const. Amend. VI; Const. art. 1 §3,22; *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983). Mere possibility, speculation, suspicion, conjecture, or even a scintilla of evidence is not substantial evidence and does not meet the minimum requirements of due process. *State v. Fateley*, 18 Wn. App. 99, 102, 566 P.2d 959 (1977). Any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Baeza*, 100 Wn.2d at 488.

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. *State v. Green*, 94 Wn.2d 216, 220-21, 615 P.2d 628 (1980). The reviewing court draws all reasonable inferences in favor of the state, however, evidence is insufficient if the inferences drawn from it do not establish the requisite facts beyond a reasonable doubt. *Baeza*, 100 Wn.2d at 491; *State v. G.S.*, 104 Wn.App. 643, 651, 17 P.3d 1221 (2001).

The state charged Ms. Murphy with assault in the second degree as an accomplice. Under an accomplice liability theory, the State must prove the principal actually committed the substantive crime and the accused acted knowing that she was aiding in the commission of the offense. *State v. Nikolich*, 137 Wash. 62 66-67, 241 P.664 (1925). The state had to prove beyond a reasonable doubt that Stahlman committed second degree assault and that Ms. Murphy knowingly promoted or facilitated an intentional assault by soliciting, commanding, encouraging or requesting that Stahlman assault Oliver, or by aiding or agreeing to aid him in planning or committing it. RCW 9A.08.020.

To prove assault beyond a reasonable doubt, the state had to prove the use of the force was unlawful and done with either

intent to inflict bodily injury or intent to create apprehension and fear of bodily injury. RCW 9A.36.021(1)(c).

The record bears out quite clearly that Oliver aggressively, relentlessly, and recklessly chased Ms. Murphy in his large truck for 13 miles . He continually flashed his truck lights and honked the horn, and wove in and out of traffic as he bore down on her minivan. Even he described himself as looking like a 'nut case' and admitted he did not call the police before or during the pursuit. RP 170; 207. And even unaware of any theft of his property, Oliver nevertheless fully intended to chase down and frighten the nonviolent trespassers.

Terrified and frantic, Ms. Murphy stopped the van at a stop sign in a residential area. RP 359;431; 462;464. Clueless why Oliver was following them, she testified that Stahlman got out of the minivan and told Oliver to leave them alone. RP 462-63.

Stahlman testified he grabbed the hammer to defend himself when he got out to yell at Oliver<sup>1</sup>. RP 363. Although the testimony differed, whether Oliver was gunning the engine and drove toward

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<sup>1</sup> Despite Oliver's testimony that Stahlman raised the hammer over his head to take a swing at him, Stahlman reported he had a physical deformity on his back that prevents him from raising his arms over his head. RP 365.

Stahlman, or whether Oliver jumped back in his truck when Stahlman was walking toward him, at some point Stahlman swung the hammer one time and dented Oliver's truck. He did not continue to approach Oliver, but dropped the hammer, and ran back to the van to get away from him. RP 365-366.

There was no evidence that a terrified and hysterical Ms. Murphy was aware Stahlman had the sledgehammer, or encouraged him to use it, or asked him to use it, or agreed that he should use it, to scare Oliver away from them. Her mere presence in the minivan cannot serve as the basis for a conviction as an accomplice of second degree assault. *State v. Knight*, 176 Wn.App. 936, 950, 309 P.3d 776 (2013).

Because Ms. Murphy raised a self-defense claim, it required the state to also disprove self-defense as another element. *State v. Acosta*, 101 Wn.2d 612, 615-16, 683 P.2d 1069 (1984). Using force is lawful whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, if the force is not more than is necessary. RCW 9A.16.030(3).

A person's right to use force is based on what a reasonably cautious and prudent person in similar circumstances would have

done and whether he reasonably believed he was in danger of bodily injury; actual danger is unnecessary. *State v. Theroff*, 95 Wn.2d 385, 390, 622 P.2d 1240 (1980).

The record is clear that Murphy and Stahlman had been chased down for miles by a stranger, who looked like a “nut case” and was playing cat and mouse with them at speeds of 80-90 miles per hour. Oliver’s actions were terrifying and dangerous. Murphy could not retreat from or drive away from him. She, like any cautious and prudent person in a similar circumstance reasonably believed that she and Stahlman were in imminent danger of crashing and either being injured or killed by the individual exhibiting vigilante road rage.

“Self defense finds its basis in necessity and generally ends with the cessation of the exigent circumstance which gave rise to the defensive act.” *In re Faircloth*, 177 Wn.App. 161,169, 311 P.3d 47 (2013). The evidence at trial showed that Stahlman told Oliver to leave them alone, swung the hammer one time at the fender of the truck, dropped it, and ran away. The use of force was the act of a reasonably cautious and prudent person and was no more force than necessary for self-defense in the face of a more than reasonable belief that Stahlman and Murphy were in very real

danger of bodily injury. A conviction based on insufficient evidence cannot stand, it must be reversed and the charge dismissed with prejudice. *State v. Hickman*, 135 Wn.2d 97, 105, 954 P.2d 900 (1998). The deadly weapon enhancement must also be reversed.

B. The Evidence Was Insufficient To Sustain A Conviction As An Accomplice For Attempted Burglary Second Degree.

Ms. Murphy was charged as an accomplice to attempted burglary in the second degree. She contends the state did not provide sufficient evidence that Stahlman actually committed the crime or that she aided or encouraged Stahlman to act. The state's evidence is insufficient to establish intent and a substantial step toward committing the crime.

A conviction must be reversed unless, after viewing the evidence in the light most favorable to the state any rational trier of fact could have found the state did not prove the essential elements of the charged crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d at 221. A person is guilty of attempted burglary in the second degree, if he took a substantial step toward entering or remaining unlawfully in a building intending to commit a crime against another person or property. RCW 9A.52.030(1). Both the

substantial step and the intent must be established beyond a reasonable doubt to sustain the conviction. *State v. Bencivenga*, 137 Wn.2d 703, 707, 974 P.2d 832 (1999).

Intent may be inferred only where the conduct of the defendant is “plainly indicated as a matter of logical probability.” *State v. Johnson*, 159 Wn.App. 766, 774, 247 P.3d 11 (2011). However, intent may *not* be inferred from evidence that is patently equivocal. *State v. Bergeron*, 105 Wn.2d 1, 20, 711 P.2d 1000 (1985). Likewise, “conduct is not a substantial step unless it is strongly corroborative of the actor’s criminal purpose.” *State v. Smith*, 115 Wn.2d 775, 782, 801 P.2d 975 (1990). (internal citations omitted). Whether conduct constitutes a substantial step is a question of fact under the evidence. *State v. Bencivenga*, 137 Wn.2d at 703; 707-711.

The *Bencivenga* Court’s analysis of case law addressing attempted second-degree burglary helps clarify the concept of a substantial step. For conduct to comprise a substantial step, it must be overt “strongly corroborative of criminal purpose.” *State v. Workman*, 90 Wn.2d. 443, 452, 584 P.2d 382 (1978). Whether conduct constitutes a substantial step is a question of fact. *State v. Billups*, 62 Wn.App. 122, 126, 813 P.2d 149 (1991).

In *Bencivenga* the defendant was caught trying to pry open the door of a restaurant at 3:30 in the morning. There were fresh pry marks by the lock and chipped paint on the door he had attempted to open. Bencivenga admitted he had tried to force the door open. *Id.* at 705-706. In *Chacky*, a police officer watched Chacky get a crow bar and physically pry the padlock off the door of a building. *State v. Chacky*, 177 Wash. 694, 696, 33 P.2d 111 (1934). In *State v. Bergeron*, 105 Wn.2d 1, 711 P.2d 1000 (1985), the defendant broke a basement window in a residence and pushed it off its track. As police arrived the defendant ran away before entering the home. *Id.* at 11.

The conduct of each defendant in *Bencivenga*, *Chacky*, and *Bergeron*, was strongly corroborative of criminal purpose: prying open a lock, breaking a window to enter a home, and trying to pry open a door. The conduct comprised a substantial step toward the intended burglary.

By contrast, Mr. Stahlman was literally three feet away from a door. He did not touch the handle, didn't kick the door, did not push the door, did not try and enter through the door. His conduct is not strongly corroborative of criminal purpose. There was no overt, albeit ineffectual act done toward commission of the alleged

crime. *State v. Grundy*, 76 Wn.App. 335, 337, 886 P.2d 208 (1994).

Oliver testified that Stahlman's arm was outstretched while he was yet three feet away from the door. This is also insufficient, without more, to constitute the requisite overt act. In a somewhat analogous case, the *Grundy* Court found insufficient evidence of a substantial step toward possession of a controlled substance. *Grundy*, 76 Wn.App. at 338. There, an undercover police officer, posing as a drug dealer, approached Grundy and asked what he wanted. Grundy said "20 of coke". The officer wanted to see the money and Grundy wanted to first see the drugs. The officer arrested him, and Grundy was charged and convicted of attempted possession of cocaine. *Id.* On appeal, the Court reversed, holding that to constitute a substantial step, the overt act must be more than mere preparation. *Id.* at 337. The evidence did not show a sufficient step for the Court to find an overt act leading directly toward consummation of the attempted crime. *Id.* at 338. Similarly, the state could not show an overt act leading directly toward consummating an attempted burglary.

Ms. Murphy was charged under an accomplice liability theory; the state had to prove the principal, Stahlman, actually

committed the substantive crime and she acted knowing that she was aiding in the commission of the offense. *Nikolich*, 137 Wash. at 66-67. Here, the state cannot prove that Stahlman attempted to burglarize the shed. Ms. Murphy's mere presence at the scene is not sufficient to sustain a conviction. No rational trier of fact could have found the state proved beyond a reasonable doubt that she knowingly promoted, facilitated, solicited, commanded, encouraged, requested, planned or agreed to aid Stahlman. RCW 9A.08.020. The conviction must be reversed and the case dismissed. *Baeza*, 100 Wn.2d at 491.

C. The Evidence Was Insufficient To Sustain A Conviction For Possession Of A Stolen Motor Vehicle.

The state must prove beyond a reasonable doubt every element of a charged crime. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). Although credibility issues are for the finder of fact to determine, the existence of facts cannot be based on guess, speculation or conjecture. *State v. Hutton*, 7 Wn.App 726, 728, 502 P.2d 1037 (1972). To support a determination of the existence of a fact, evidence thereof must be substantial, it must attain that character which would convince an unprejudiced, thinking mind of the truth of the fact to which the

evidence is directed. *State v. Zamora*, 6 Wn. App. 130, 132, 491 P.2d 1342 (1971). Where the prosecution fails to meet its burden, reversal and dismissal with prejudice is required. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

To convict Ms. Murphy of possession of a stolen motor vehicle, the state had to prove not only that it was stolen, but that she possessed it, knowing it was stolen. RCW 9A.56.068; RCW 9A.56.140(1);CP 72. Here, there was insufficient evidence to prove the essential elements of the unlawful possession of a stolen motor vehicle.

Ann Wells, the owner of the van testified she had allowed Stahlman, her grandson, to use the minivan on prior occasions. RP 260-261. She said on that day she did not give him permission to use the van. RP 261. She did not, however, know if her partner, Robert Santos gave Ms. Murphy permission to use the minivan. RP 261. Ms. Murphy said that at 11 a.m. on September 22, 2015, Robert Santos, Ms. Wells' longterm partner, not only gave her permission to drive the minivan, but also handed the keys to her. RP 314; 453. She also testified that while Ms. Wells was on the

telephone she nodded her head “yes” to Santos’s permission. RP 453.

The knowledge element of possession of the stolen property is an essential element. *State v. Porter*, 186 Wn.2d 85, 93, 375 P.3d 664 (2016). Mere possession of a stolen vehicle insufficient to establish that the possessor knew the property was stolen. *State v. Couet*, 71 Wn.2d 773, 775, 430 P.2d 974 (1967). To substantiate guilty knowledge, there must be some type of corroborative evidence, such as damage to the vehicle, the vehicle ignition control switch, the steering column, and there must be an absence of a plausible explanation for legitimate possession. *State v. Womble*, 93 Wn.App. 599, 604, 969 P.2d 1097 (1999).

Here, there was no corroborative evidence. Ms. Murphy did not knowingly possess stolen property because she believed she had permission when Santos handed the keys to her. Her explanation for the possession of the minivan was plausible: she asked permission, was given permission, and then handed the keys to the van. This Court should reverse this conviction on the basis of insufficiency of the evidence and remand with directions to dismiss the count with prejudice. *Baeza*, 100 Wn.2d at 491.

D. This Court Should Not Award Appellate Costs In The Event The State Substantially Prevails On Appeal And Submits A Cost Bill.

RAP 15.2(f) provides the appellate court will give a party the benefits of an order of indigency throughout review unless the appellate court finds the party's financial condition has improved to the extent that the party is no longer indigent. Similarly, RAP 14.2 provides, in pertinent part: When the trial court has entered an order that an offender is indigent for purposes of appeal, that finding of indigency remains in effect, under RAP 15.2(f), unless the commissioner or clerk determines by a preponderance of the evidence that the offender's financial circumstances have significantly improved since the last determination of indigency.

Ms. Murphy was found indigent by the trial court. CP 115-117. Under the Rules, this Court can presume Ms. Murphy's indigency continues throughout the appeal process. There is no evidence that Ms. Murphy's financial circumstances have significantly improved since the trial court made its determination.

Ms. Murphy respectfully asks this Court to exercise its discretion and decline to impose appellate costs if she does not

substantially prevail on appeal and the state submits a cost bill.

RCW 10.73.160(1).

#### IV. CONCLUSION

Based on the foregoing facts and authorities, Ms. Murphy respectfully asks this Court to reverse each of the convictions and dismiss with prejudice for insufficient evidence.

Respectfully submitted this 13<sup>th</sup> day of February 2017.

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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Amy Jo Murphy, 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 Appellant's Opening Brief was sent by first class mail, postage prepaid on February 13, 2016 to:

Amy Jo Murphy, 390477  
Washington Corrections Center for Women  
9601 Bujacich Rd. NW  
Gig Harbor, WA 98332-8300

And by electronic service by prior agreement between the parties to:

EMAIL: [David.Trefry@co.yakima.wa.us](mailto:David.Trefry@co.yakima.wa.us)  
David Trefry Yakima County Prosecutor

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