

No. 34753-2-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Christopher Standley,

Appellant.

Grant County Superior Court Cause No. 16-1-00147-8

The Honorable Judge John M. Antosz

Appellant's Opening Brief

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ISSUES AND ASSIGNMENTS OF ERROR

1. Mr. Standley's convictions for attempting to promote prostitution (count 6) violated his Fourteenth Amendment right to due process because it was based on insufficient evidence.
2. The state failed to prove that Mr. Standley acted with specific intent to commit the completed crime of promoting prostitution.
3. The court failed to find that Mr. Standley acted with specific intent to commit the completed crime of promoting prostitution.
4. The trial court erred by entering Finding of Fact No. 18.
5. The trial court erred by entering Finding of Fact No. 19.
6. The trial court erred by adopting Conclusion of Law No. 8.
7. The trial court erred by adopting Conclusion of Law No. 15.

ISSUE 1: A conviction for attempting to promote prostitution requires proof that the accused person acted with specific intent to compel another to engage in prostitution. Must Mr. Standley's conviction for attempting to promote prostitution be reversed for insufficient evidence because the state's evidence regarding his intent was "patently equivocal"?

ISSUE 2: In the absence of a finding on a factual issue, courts presume the party with the burden of proof failed to meet its burden. Must this court reverse Mr. Standley's conviction for attempting to promote prostitution and dismiss the charge with prejudice because the trial court failed to find that Mr. Standley acted with the specific intent required for a finding of guilt?

8. The court's findings are insufficient to sustain the convictions in counts 2, 5, 6, and 8 because the court failed to find facts supporting the essential elements required for conviction of each offense.
9. The trial court erred by adopting Conclusion of Law No. 3.
10. The trial court erred by adopting Conclusion of Law No. 4.
11. The trial court erred by adopting Conclusion of Law No. 7.
12. The trial court erred by adopting Conclusion of Law No. 8.
13. The trial court erred by adopting Conclusion of Law No. 14.

14. The trial court erred by adopting Conclusion of Law No. 15.

ISSUE 3: A trial court's failure to find facts sufficient for conviction following a bench trial requires reversal and dismissal unless (a) the court unequivocally announced the defendant's guilt, and (b) the record contains sufficient evidence to sustain the conviction. What remedy applies to the court's failure to find facts sufficient to sustain the convictions in counts 2, 5, and 7?

15. The trial court violated Mr. Standley's Fifth and Fourteenth Amendment right to be free from double jeopardy.

16. The trial court erred by entering two convictions and imposing two sentences for a single assault on Mason Beeman.

17. The trial court erred by adopting Conclusion of Law No. 14.

ISSUE 4: Where a jury returns separate guilty verdicts for alternative means of committing a single offense, only one conviction may be entered and one sentence imposed. Did the court violate the Fifth and Fourteenth Amendment prohibition against double jeopardy by entering two convictions and imposing two sentences for a single second-degree assault committed by two alternative means?

18. The trial court erred by failing to properly determine Mr. Standley's offender score.

19. The trial court abused its discretion by failing to determine whether Mr. Standley's current convictions for crimes against Hedrick comprised the same criminal conduct.

20. The trial court erred by sentencing Mr. Standley with offender scores of 8 (assault charges) and 7 (other offenses).

ISSUE 5: Multiple current offenses score as the same criminal conduct if they occurred at the same time and place, against the same victim, and with the same criminal intent. Did the sentencing court abuse its discretion by failing to determine if the three offenses against Hedrick in the couple's car comprised the same criminal conduct?

21. Mr. Standley was denied his Sixth and Fourteenth Amendment right to the effective assistance of counsel at sentencing.

22. Defense counsel provided ineffective assistance by stipulating to the state's proposed offender scores.
23. Defense counsel provided ineffective assistance by failing to argue that Mr. Standley's current convictions against Hedrick in the car comprised same criminal conduct.

ISSUE 6: Defense counsel provides ineffective assistance at sentencing by failing to argue same criminal conduct when warranted by the facts. Did counsel provide ineffective assistance by failing to argue same criminal conduct for the current convictions involving Hedrick?

24. The Court of Appeals should decline to impose appellate costs, should Respondent substantially prevail and request such costs.

ISSUE 7: If the state substantially prevails on appeal and makes a proper request for costs, should the Court of Appeals decline to impose appellate costs because Christopher Standley is indigent?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Christopher Standley and Amanda Hedrick were in a relationship. RP 84. They used heroin together. RP 91-92. They got their heroin from Mason Beeman.¹ RP 94, 129, 256. On February 27, 2016, as they consumed heroin, Mr. Standley believed that they didn't have as much heroin as he purchased. He accused Hedrick of using some secretly. She denied it. RP 94-95, 131; CP 22. He concluded that the small amount must be a result of Beeman shorting him, so the couple went to Beeman's to confront him. RP 103, 137, 258.

They arrived at the house and went to Beeman's room. RP 111. They knocked and Beeman let them in. RP 111, 135. Mr. Standley made his accusation and the two fought. RP 112-113, 135; CP 24. Mr. Standley would later say that Beeman grabbed his arms right away and used his stun gun. RP 260-265. Beeman, on the other hand, claimed that Mr. Standley threatened and attacked him. RP 179. All three of the people present would agree that Beeman used a stungun on Mr. Standley multiple times. RP 112, 180, 200, 264-265. Both men also described that after having been hit with the stun gun multiple times, Mr. Standley used a very short knife to stab Beeman in the face. RP 180, 265, 266. Mr. Standley

¹ Beeman would later deny selling drugs. RP 198.

ran out of the house and medical aid was summoned. RP 113, 181.

Beeman went to the hospital, and required stitches and plastic surgery on his stab wound. CP 25; RP 188.

Hedrick also received medical care, and claimed to police that Mr. Standley had beat her up multiple times on the way to the dealer's home. RP 94-105. She alleged that Mr. Standley would not let her get out of the car. RP 142-145. Hedrick claimed that Mr. Standley told her she owed him and as they walked through town, he urged her to prostitute herself and pointed out a man in a parking lot for her to approach. RP 108-109. She also said Mr. Standley told her to write a letter to her family because if there was a shootout with police she may die. CP 23.

The state charged Mr. Standley as to the alleged assault on Beeman in the alternative: assault one with a deadly weapon enhancement (count 1), and two different means of committing assault two, both with a deadly weapon enhancement (counts 2 and 3). CP 13-14. As to Hedrick, the state charged assault one (count 4) and in the alternative assault two (count 5). The charges also included attempted promoting prostitution (count 6), felony harassment (count 7), and unlawful imprisonment (count 8). CP 12-17.

Mr. Standley waived his right to a jury trial, and the case was tried to a judge. RP 19.

The state presented no medical evidence as to Hedrick's alleged injuries, relying solely on Hedrick's testimony. RP 83-280. Hedrick told the court that Mr. Standley had assaulted her before, that they use drugs together, and that he threatened to kill her during their walk. RP 85-148. She said as they used drugs together in the car that day, Mr. Standley became angry that they had less heroin than he expected. He blamed Hedrick, and according to her, he assaulted her, threatened to kill her, and imprisoned her. RP 93-107. When asked, she admitted she didn't try to leave or get away from Mr. Standley at any point before or during their walk to the Beeman house. RP 101, 103.

Mr. Standley testified, describing his actions as to Beeman as self-defense. RP 260-266, 279. He denied assaulting Hedrick. RP 277.

The judge found Mr. Standley guilty of both of the lesser charges of assault 2 as to Beeman, noting the charges were in the alternative and encompassed the same criminal act. The court found the deadly weapon allegation not proven. RP 321-333, CP 26-27. As to Hedrick, the court likewise found Mr. Standley guilty of the lesser charge of assault two. CP 26-27. The court found Mr. Standley guilty of all of the remaining charges. CP 27.

At sentencing, the state alleged that Mr. Standley had three prior felonies and a score of eight. CP 30-31. The defense attorney agreed.

RP 354-355. The court sentenced Mr. Standley to 68 months in prison. CP 33. The court did not make a finding that Mr. Standley had a likely ability to pay, and further found that Mr. Standley continued to be indigent for purposes of his appeal. CP 35-36, 52-53.

ARGUMENT

I. THE TRIAL COURT’S FINDINGS OF FACT DO NOT SUPPORT THE CONVICTIONS IN FOUR OF THE SIX COUNTS.

Due process requires the state to prove every element of a crime beyond a reasonable doubt. U.S. Const. Amend. XIV; *State v. Mau*, 178 Wn.2d 308, 312, 308 P.3d 629 (2013). Failure to do so requires dismissal with prejudice. *State v. Rodgers*, 146 Wn.2d 55, 60, 43 P.3d 1 (2002).

Following a bench trial, the court is required to enter written findings of fact and conclusions of law. CrR 6.1(d). In the absence of a finding on a factual issue, courts presume the party with the burden of proof failed to sustain its burden. *State v. Armenta*, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997).

A case may be remanded for entry of additional findings, but only if (1) the trial court unequivocally stated that the crime has been proved beyond a reasonable doubt and (2) the record already contains evidence to support the omitted findings. *State v. Webb*, 147 Wn. App. 264, 270–71, 195 P.3d 550 (2008); *State v. Hescoc*k, 98 Wn. App. 600, 607-11, 989

P.2d 1251 (1999) (citing *State v. Alvarez*, 128 Wn.2d 1, 904 P.2d 754 (1995)). On remand, no additional evidence may be considered. *State v. Avila*, 102 Wn. App. 882, 897, 10 P.3d 486 (2000).

- A. Mr. Standley’s conviction for attempting to promote prostitution (count 6) must be reversed and the charge dismissed with prejudice, because the state failed to prove and the court failed to find that Mr. Standley acted with specific intent to promote prostitution.

Conviction for criminal attempt requires proof of specific intent to commit the completed crime. RCW 9A.28.020(1). The attempt statute requires “the highest possible mental state... because criminal attempt focuses on the dangerousness of the actor, not the act.” *State v. Johnson*, 173 Wn.2d 895, 905, 270 P.3d 591 (2012).

A person is guilty of promoting prostitution in the first-degree when he or she advances prostitution by compelling another to engage in prostitution through threat or force. RCW 9A.88.070(1). To convict a person of attempting to promote prostitution, the state must prove that the person acted with specific intent to compel another person to engage in prostitution. RCW 9A.28.020(1); RCW 9A.88.070(1).

Intent may not be proved through evidence that is patently equivocal. *State v. Vasquez*, 178 Wn.2d 1, 8, 309 P.3d 318 (2013). Here, the state presented only equivocal evidence to prove Mr. Standley’s specific intent.

The facts suggest Mr. Standley intended to shame Hedrick and to vent his anger, not to get her to engage in prostitution. RP 94-109. He may also have believed he could test her veracity or force her to confess by threatening to force her to prostitute herself.

However, his actions show he did not intend for her to engage in prostitution. If his true aim had been to compel her to engage in prostitution, her refusal would have prompted him to use additional force or threats: the evidence showed he had no qualms about physical violence. RP 85-145. The evidence did not prove Mr. Standley's specific intent.

Nor did the trial court find he specifically intended to commit the completed crime of promoting prostitution. CP 20-27. Not only did the court fail to find the ultimate fact to be proved, it found no predicate facts that could support such a finding. CP 20-27.

The court's failure to find facts proving specific intent means that the state failed to sustain its burden. *Armenta*, 134 Wn.2d at 14. The conviction in count 6 (attempting to promote prostitution) must be reversed and the charged dismissed with prejudice. *Rodgers*, 146 Wn.2d at 60.

B. The court failed to find facts sufficient to convict Mr. Standley of second-degree assault (counts 2 and 5) and felony harassment (count 7).

1. Second-degree assault.

To obtain a conviction for second-degree assault in counts 2 and 5, the state was required to prove that Mr. Standley intentionally assaulted another and recklessly inflicted substantial bodily harm. RCW 9A.36.021(1)(a). The court made no finding that Mr. Standley recklessly inflicted substantial bodily harm, although it did find that he intentionally assaulted both Beeman and Hedrick. CP 22, 24.

In the absence of such findings, the state is presumed to have failed to meet its burden. *Armenta*, 134 Wn.2d at 14. The convictions for second-degree assault must be reversed and the charges dismissed with prejudice. *Rodgers*, 146 Wn.2d at 60. In the alternative, the case must be remanded for the trial judge to determine if the state met its burden of proving the elements of each offense. *Webb*, 147 Wn. App. at 270–71; *Hescock*, 98 Wn. App. at 607-11.

2. Felony Harassment.

A conviction for felony harassment requires proof that the accused person (a) knowingly threatened to kill another person, and (b) by words or conduct placed the person threatened in reasonable fear that the threat to kill would be carried out. RCW 9A.46.020(1) and (2); *State v. C.G.*, 150 Wn.2d 604, 612, 80 P.3d 594 (2003). Threat is defined as a communication of “the intent... [t]o cause bodily injury.” RCW 9A.04.110(28)(c).

In addition, the First Amendment’s free speech clause requires the state to prove a “true threat,” which is “a statement made in a context or under such circumstances wherein a reasonable person would foresee the statement would be interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another person.” *State v. Schaler*, 169 Wn.2d 274, 283, 236 P.3d 858 (2010) (internal quotation marks and citation omitted). Although a “true threat” is not an essential element that must be pled or included in a to-convict instruction,² failure to prove a “true threat” requires reversal and dismissal with prejudice. *State v. Kohonen*, 192 Wn. App. 567, 575-83, 370 P.3d 16 (2016).

Here, the trial court did not find facts sufficient to support a conviction for felony harassment. First, the court did not find that Mr. Standley threatened to kill Hedrick. Instead, the court found only that Mr. Standley told Hedrick “to write a letter to her parents before the sun came up, and told her that if law enforcement appeared, they would die together in a shootout.” CP 23.

This finding does not show that Mr. Standley communicated an intent to kill Hedrick. CP 23. Instead, it reflects his prediction or warning that they both would die at the hands of the police. CP 23.

² See *State v. Allen*, 176 Wn.2d 611, 630, 294 P.3d 679 (2013), as amended (Feb. 8, 2013).

(Continued)

The court did not find any other predicate facts that might prove Mr. Standley communicated an intent to kill.³ CP 20-27. Nor did the court make a finding on the ultimate fact itself. CP 20-27. These failures must be held against the state, as the party with the burden of proof. *Armenta*, 134 Wn.2d at 14.

Second, the court did not find that Mr. Standley's statements met the definition of "true threat." CP 20-27; *Schaler*, 169 Wn.2d at 283. Although the court concluded that Hedrick was placed in reasonable fear, it did not find that "a reasonable person would foresee that [Mr. Standley's] statement[s]" about a police shoot-out "would be interpreted as a serious expression of intention to inflict bodily harm upon or to take the life of another person." CP 20-27.

Absent such findings, the state is presumed to have failed in its burden of proving the elements of the offense and the constitutional requirement of a true threat. *Id*; *Armenta*, 134 Wn.2d at 14. The conviction for felony harassment must be reversed and the charge dismissed with prejudice. *Rodgers*, 146 Wn.2d at 60. In the alternative, the case must be remanded for the trial judge to determine if the state met

³ The court did conclude that Hedrick took seriously Mr. Standley's "threats to kill [her]," and that her "belief was reasonable." CP 26.

its burden of proof. *Webb*, 147 Wn. App. at 270–71; *Hescock*, 98 Wn. App. at 607-11.

II. THE TRIAL COURT VIOLATED THE FIFTH AND FOURTEENTH AMENDMENT PROHIBITION AGAINST DOUBLE JEOPARDY.

The state charged Mr. Standley with a single assault on Beeman, committed by two alternative means (charged as alternative counts 2 and 3). CP 13-14. The court found him guilty under both alternative means. CP 27. Although the court noted that counts 2 and 3 were alternative charges, it entered two convictions and sentenced Mr. Standley on both counts. CP 28, 33. This violated Mr. Standley’s double jeopardy rights. *State v. Fuller*, 169 Wn. App. 797, 832–33, 282 P.3d 126 (2012) (*Fuller I*).

A. The double jeopardy violation may be raised for the first time on appeal, and review is *de novo*.

Double jeopardy claims present manifest error affecting a constitutional right, and may be raised for the first time on appeal. RAP 2.5(a)(3); *State v. Whittaker*, 192 Wn. App. 395, 411, 367 P.3d 1092 (2016) (citing *State v. Ralph*, 175 Wn. App. 814, 823, 308 P.3d 729 (2013)). Double jeopardy claims are reviewed *de novo*. *State v. Fuller*, 185 Wn.2d 30, 34, 367 P.3d 1057 (2016) (*Fuller II*) .

B. The trial judge should have vacated the first-degree felony murder and first-degree arson convictions.

The state and federal constitutions prohibit multiple punishments for a single offense. U.S. Const. Amends. V, XIV; Wash. Const. art. I, §9. Here, the trial court violated Mr. Standley's double jeopardy rights by entering two convictions and sentences for the second-degree assault on Beeman. CP 26-27, 28, 33.

Only one conviction may be entered when a jury returns guilty verdicts for alternative means of committing a single crime. *Fuller I*, 169 Wn. App. at 832–33. It is “immaterial” whether the alternatives are charged in a single count or in separate counts. *Id.*, n. 13.

The statute criminalizing second-degree assault “articulates a single criminal offense.” *Fuller II*, 185 Wn.2d at 34 (citing *State v. Smith*, 159 Wn.2d 778, 784, 154 P.3d 873 (2007)).

The state charged Mr. Standley with two alternative means of committing the assault on Beeman. Count 2 alleged an intentional assault and the reckless infliction of substantial bodily harm. CP 13-14. Count 3 alleged assault with a deadly weapon. CP 14. The two alternatives involved a single assault, and should have resulted in a single conviction and sentence. *Fuller I*, 169 Wn. App. at 832–33.

By entering convictions and sentences for Counts 2 and 3, the trial court violated Mr. Standley’s double jeopardy rights under the state and federal constitutions. *Fuller I*, 169 Wn. App. at 832–33. The case must be remanded to the trial court for vacation of the judgment and sentence as to one count of second-degree assault involving Beeman. *Id.*

III. THE SENTENCING COURT FAILED TO PROPERLY DETERMINE MR. STANDLEY’S OFFENDER SCORE AND STANDARD RANGE.

A. The trial court should have scored three of the crimes against Hedrick as the same criminal conduct.

A sentencing court must determine the defendant’s offender score. RCW 9.94A.525. Offenses that comprise the “same criminal conduct” are “counted as one crime.” RCW 9.94A.589(1)(a). “Same criminal conduct” means “two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim.” RCW 9.94A.589(1)(a).

Simultaneity is not required for a finding of same criminal conduct. *State v. Williams*, 135 Wn.2d 365, 368, 957 P.2d 216 (1998); *State v. Porter*, 133 Wn.2d 177, 183, 942 P.2d 974 (1997). Nor is it necessary that all offenses occur at the exact same location. *State v. Davis*, 174 Wn. App. 623, 644, 300 P.3d 465 (2013).

The phrase “same criminal intent” does not refer to a crime’s *mens rea*. *State v. Phuong*, 174 Wn. App. 494, 546-47, 299 P.3d 37 (2013).

Instead, courts consider how intimately related the crimes are, the overall criminal objective, and whether one crime furthered the other. *Id.* When objectively viewed, the intent for a “continuing, uninterrupted sequence of conduct” likely remains the same from one crime to the next. *See Porter*, 133 Wn.2d at 186.

Here, the offenses that took place in the couple’s car comprised the same criminal conduct. RCW 9.94A.589(1)(a). The crimes were part of a “continuing, uninterrupted sequence of conduct” motivated by Mr. Standley’s belief that Hedrick had stolen from him. *Id.* This suggests that his criminal intent remained the same from one crime to the next. *Id.*

The state introduced evidence that Mr. Standley assaulted, restrained, and threatened Hedrick while both were in the couple’s car. RP 84-145. These crimes were intimately related and based on a single criminal objective: punishing the person who stole from him. *See Phuong*, 174 Wn. App. at 546-47. The offenses thus involved the same criminal intent under RCW 9.94A.589(1)(a).

Furthermore, the crimes against Hedrick in the car all transpired at the same time and place, and against the same victim. The assault, the threats, and the restraint took place without interruption during the time the two were in the car. RP 84-145; |CP 22.

The three crimes in the car comprised the same criminal conduct, and the trial court should have scored them as one offense.⁴ The court failed to exercise its discretion. Although it addressed counts 2 and 3 (the assault against Beeman), it did not enter any findings regarding the three offenses against Hedrick that took place in the car. RP 320-339, 350-366; CP 30.

The sentencing court's failure to exercise discretion was itself an abuse of discretion. *See State v. O'Dell*, 183 Wn.2d 680, 697, 358 P.3d 359 (2015). Mr. Standley's sentence must be vacated and the case remanded for a new sentencing hearing. *Id.* On remand, the sentencing court must determine if the crimes within the car comprised the same criminal conduct or were separate and distinct.

B. Mr. Standley was deprived of the effective assistance of counsel at sentencing.

An accused person has a right to the effective assistance of counsel at sentencing. *Gardner v. Florida*, 430 U.S. 349, 358, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977). Counsel's performance is deficient if it falls below an objective standard of reasonableness. *State v. Kyлло*, 166 Wn.2d 856,

⁴ Although defense counsel agreed with the offender score calculated by the state, this stipulation is not binding. *Worden v. Smith*, 178 Wn. App. 309, 327, 314 P.3d 1125 (2013).

862, 215 P.3d 177 (2009). An attorney has “the duty to research the relevant law.” *Id.* An unreasonable failure to do so constitutes deficient performance. *Id.*, at 868.

Deficient performance prejudices the accused when there is a reasonable probability that it affected the outcome of the proceeding. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Phuong*, 174 Wn. App. at 547.

An attorney provides ineffective assistance at sentencing by failing to argue same criminal conduct when warranted. *Id.*, at 548. Here, defense counsel unreasonably stipulated to the offender scores proposed by the prosecution. RP 354-355. Counsel did not make a same-criminal-conduct argument, even though the facts introduced at trial proved that the offenses against Hedrick in the car comprised the same criminal conduct. RP 85-145, 343-366.

This deprived Mr. Standley of the effective assistance of counsel. *Phuong*, 174 Wn. App. at 548.

To show prejudice for failure to argue same criminal conduct, an appellant need only show that a sentencing court “could determine” the offenses comprised the same criminal conduct. *Id.* That showing is met here. As outlined above, a sentencing court “could determine” the three offenses comprised the same criminal conduct. *Id.*

If defense counsel had argued same criminal conduct at sentencing, there is a reasonable probability the sentencing court would have reduced Mr. Standley's offender score. This would have decreased his standard range for each current offense, resulting in a lower sentence.

There is a reasonable probability that counsel's deficient performance affected the outcome of the sentencing proceeding. *Phuong*, 174 Wn. App. at 548. Confidence in the result is undermined. *Id.*, at 547. Mr. Standley's sentence must be vacated and the case remanded for a new sentencing hearing. *Id.*

IV. IF THE STATE SUBSTANTIALLY PREVAILS, THE COURT OF APPEALS SHOULD DECLINE TO AWARD ANY APPELLATE COSTS REQUESTED.

The Court of Appeals should decline to award appellate costs because Mr. Standley "does not have the current or likely future ability to pay such costs." RAP 14.2. The concerns identified by the Supreme Court in *Blazina* apply with equal force to this court's discretionary decisions on appellate costs. *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

The trial court found Mr. Standley indigent at the end of the proceedings in superior court. CP 52-53. That status is unlikely to change, especially with the addition of six felony convictions and imposition of a 68-month prison term. CP 28-29, 33. The *Blazina* court indicated that courts should "seriously question" the ability of a person who meets the

GR 34 standard for indigency to pay discretionary legal financial obligations. *Id.* at 839.

If the state substantially prevails on this appeal, this court should exercise its discretion to deny any appellate costs requested.

CONCLUSION

For the foregoing reasons Mr. Standley's convictions on counts 2, 5, 6, and 7 must be reversed. Count 6 must be dismissed with prejudice; the remaining counts must be remanded for the trial court to determine if it should revise its findings or dismiss the charges.

If the remaining convictions are supported by sufficient evidence, the conviction in either count 2 or count 3 must nonetheless be vacated to avoid a double jeopardy violation.

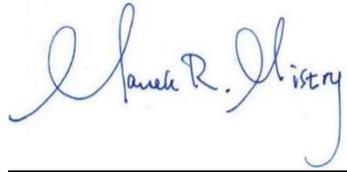
The sentence must be vacated and the case remanded for a new sentencing hearing with a corrected offender score.

Respectfully submitted on March 20, 2017,

BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Christopher Standley, DOC #394179
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Grant County Prosecuting Attorney
gdano@grantcountywa.gov

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division III, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on March 20, 2017.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

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