

FILED
Court of Appeals
Division III
State of Washington
3/6/2018 8:35 AM

NO. 35306-1-III

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

DONALD LEROY BROERS,

Defendant/Appellant.

REPLY BRIEF

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ARGUMENT

The State, in its brief, properly sets out the general rules pertaining to jury instructions. However, the State fails to address the crux of Mr. Broers' original argument.

The State asserts that harmless error analysis precludes reversal of Mr. Broers' conviction. The State is in error.

The main case which the State relies upon, *State v. Carosa*, 83 Wn. App. 380, 921 P.2d 593 (1996), only states a broad principle. Mr. Broers has not argued that more than a single offense occurred. What Mr. Broers has argued is that the jury instructions failed to properly advise the jury concerning "aggravation of value" and "common scheme or plan."

The State does not address *State v. Garman*, 100 Wn. App. 307, 317, 984 P.2d 453 (1999) which specifically requires that a jury be instructed on the law of aggregation and that a to-convict instruction must include the language "a common scheme or plan."

The instructions fail to comply with the requirements of *Garman*. The instructional error in Mr. Broers' case is not harmless. He was improperly convicted of second degree theft.

Mr. Broers otherwise relies upon the argument contained in his original brief.

DATED this 6th day of March, 2018.

Respectfully submitted,

s/ Dennis W. Morgan

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NO. 35306-1-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	KITTITAS COUNTY
Plaintiff,)	NO. 16 1 00282 9
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
DONALD LEROY BROERS,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 6th day of March, 2018, I caused a true and correct copy of the *REPLY BRIEF* and to be served on:

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