

FILED
Court of Appeals
Division III
State of Washington
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No. 35611-6-III

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

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN A. BENSON,

Appellant.

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

The Honorable Judge Doug L. Federspiel

APPELLANT'S REPLY BRIEF

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A. INTRODUCTION

Appellant Jonathon A. Benson accepts this opportunity to reply to the State's brief. Mr. Benson requests that the Court refer to his opening brief for issues not addressed in this reply.

B. ARGUMENT IN REPLY

1. Mr. Benson agrees that Issues 3-5 in his opening brief have been resolved and are now moot.

This argument pertains to Issues 3, 4, and 5 raised in Mr. Benson's opening brief. In Issue 3, Mr. Benson argued eight conditions of community custody imposed by the trial court should be stricken, or modified, as requested. *See* Appellant's Opening Brief pgs. 24-34. In Issue 4, Mr. Benson argued the trial court erred by requiring him to pay costs of incarceration and costs of medical care. *See* Appellant's Opening Brief pgs. 34-41. In Issue 5, Mr. Benson preemptively objected to the imposition of appellate costs. *See* Appellant's Opening Brief pgs. 41-44.

In response, the State asserts: "[t]he parties have come to an agreed resolution of Appellant's allegations 3-5. They have been resolved through and [sic] agreed amended judgment and sentence which has been filed." *See* Respondent's Brief pg. 22. The State also asserts "[t]he State shall not be requesting cost upon completion of this appeal." *See* Respondent's Brief pg. 22.

On September 11, 2018, an Order Amending Judgment and Sentence was filed in the trial court. (Supp. CP). This Order Amending Judgment and Sentence removed, or modified as requested, the eight community custody conditions challenged by Mr. Benson in Issue 3. (Supp. CP). This Order Amending Judgment and Sentence also removed the costs of incarceration and costs of medical care challenged by Mr. Benson in

Issue 4. (Supp. CP). Therefore, Mr. Benson agrees that Issues 3 and 4 of his opening brief have been resolved and are now moot.

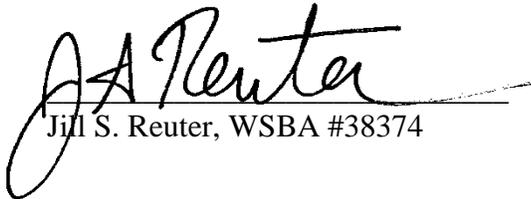
Mr. Benson also agrees that Issue 5 of his opening brief has been resolved and is now moot, based on the State's assurance that it will not seek appellate costs. *See* Respondent's Brief pg. 22.

C. CONCLUSION

Mr. Benson agrees the issues raised in Issues 3-5 of his opening brief have been resolved and are now moot.

Based upon the arguments set forth in Mr. Benson's opening brief, his conviction should be reversed and dismissed with prejudice, because there was insufficient evidence of forcible compulsion. In the alternative, the case should be reversed and remanded for a new trial, because the State committed misconduct in its closing argument.

Respectfully submitted this 16th day of October, 2018.


Jill S. Reuter, WSBA #38374

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DIVISION III
OF THE STATE OF WASHINGTON

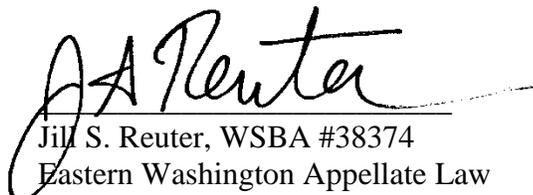
STATE OF WASHINGTON)	
Plaintiff/Respondent)	COA No. 35611-6-III
vs.)	Yakima Co. No. 16-1-01472-39
)	
JONATHAN A. BENSON)	PROOF OF SERVICE
)	
Defendant/Appellant)	
_____)	

I, Jill S. Reuter, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on October 16, 2018, I deposited for mailing by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's reply brief to:

Jonathan A. Benson, DOC #400173
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

Having obtained prior permission, I also served a copy on the Respondent at David.Trefry@co.yakima.wa.us and appeals@co.yakima.wa.us using the Washington State Appellate Courts' Portal.

Dated this 16th day of October, 2018.


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