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Division III
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NO. 36976-5-III

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

STATE OF WASHINGTON,

Respondent,

v.

EDGAR TORREZ,
Appellant.

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

The Honorable Samuel P. Swanberg, Judge

BRIEF OF APPELLANT

LISE ELLNER, WSBA No. 20955
ERIN C. SPERGER, WSBA No. 45931

Attorneys for Appellant

LAW OFFICES OF LISE ELLNER
Post Office Box 2711
Vashon, WA 98070
(206) 930-1090

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A. ASSIGNMENTS OF ERROR

1. Torrez's Sixth Amendment and Wash. Const. art. I, § 22 right to ineffective assistance of counsel was violated when defense counsel failed to request a finding of "same criminal conduct" for Count I first degree burglary and Count II violation of a court order.

2. The trial court abused its discretion when it failed to instruct the jury on the lesser included offenses of criminal trespass and fourth degree assault.

3. The trial court erred when it cited to RCW 9A.52.020(1)(a) in Torrez's judgment and sentence.

B. ISSUES PRESENTED ON APPEAL

1. Was Torrez's Sixth Amendment and art. I, § 22 right to effective assistance of counsel violated when defense counsel failed to request a finding of "same criminal conduct" for Count I first degree burglary and Count II violation of a court order when the two crimes were committed at the same time and place, involved the same victim, and, under the state's theory of the case, involved the same criminal intent?

2. Did the trial court abuse its discretion in refusing to instruct the jury on criminal trespass when all the elements of criminal trespass are included in the elements of first degree burglary and trial testimony supports an inference that Torrez did not intend to commit a crime inside the Beech Street Home?

3. Did the trial court err in refusing to instruct the jury on assault in the fourth degree when all the elements of assault in the fourth degree are included in the elements of first degree burglary and trial testimony supports an inference that Torrez did not intend to commit a crime when he entered or remained in the Beech Street Home?

4. Torrez's judgment and sentence states Torrez was convicted of First Degree Burglary under RCW 9A.52.020(1)(a), but the factual allegations contained in the amended information, the testimony at trial, and the jury instructions make it clear the intended prong is RCW 9A.52.020(1)(b), which is the assault prong. Should this Court remand to correct this clerical error?

C. STATEMENT OF THE CASE

1. Procedural History

Edgar Torrez was charged by amended information with Count I first degree burglary (RCW 9A.52.020 (1)(a)) and Count II felony violation of a court order (RCW 26.50.110(4)) with a special allegation of domestic violence on both counts. Supp. CP ___ (Amended Information).

After a trial, the jury convicted Torrez as charged and found both crimes were committed with domestic violence. CP 63-66. Defense counsel did not request a finding of “same criminal conduct” under RCW 9.94A.589(1)(a) for first degree burglary and violation of a court order. RP 14 (8/2/19). Instead, defense counsel agreed with the state’s calculation of Torrez’s offender score as a nine (9) on both counts and with the state’s recommendation of 87 months confinement. RP 12 (8/2/19). The trial court followed the state’s recommendation based on the victim’s request. RP 18 (8/2/19).

This timely appeal follows. CP 83.

2. Substantive Facts

a. Trial Testimony

The basic testimony at trial was as follows:

On April 25, 2019 Carolina Diaz awoke to her youngest son, Edgar Torrez, trying to enter her home through a window. RP 99. At that time, there was a two-year restraining order prohibiting Torrez from contacting Diaz and from coming within 250 feet of her or her home. Exh. 13. Diaz told Torrez he could not be there, and she was going to call the police. RP 100, 109. However, Diaz opened the sliding glass door in the dining room and let Torrez into the home. RP 106.

Torrez pushed past Diaz, lunging in the direction of her purse hanging on a chair. RP 100-01, 102. Diaz said Torrez knocked her down, drug her by her hair to the front door and threw her outside. RP 102-03. This whole ordeal took less than five minutes and Diaz immediately went to the neighbor's home and called her daughter and the police. RP 88-89, 103,107.

When the police arrived, Torrez was still in the home and when officers ordered Torrez to exit, he responded that it was his residence and that they did not have permission to enter. RP 45,

60. After a few moments Torrez emerged and was arrested without incident. RP 60-61.

b. Defendant's request to instruct the jury on the lesser included offenses of criminal trespass and fourth degree assault

At trial, the defense proposed jury instructions on the lesser included offenses of criminal trespass and fourth degree assault. RP 119. The state conceded the legal prong was met for the lesser included instructions but argued there was no factual basis for them. RP 74, 120-21. The court agreed with the state and refused to instruct the jury on criminal trespass or assault four. RP 123.

c. Facts related to the lesser included offenses

Although Diaz owns the home located on Beech Street in Kennewick (the "Beech Street Home") she sometimes lives with her intimate partner at a different address. RP 55, 105, 106. Diaz's oldest son Emiliano Torrez takes care of the Beech Street Home on weekends starting on Fridays, and sometimes allows Torrez to stay there. RP 106, 116.

April 25 was a Thursday. RP 96, 98. That morning, Torrez was on Diaz's patio when she returned from work, but he was sleeping so he did not see Diaz go into the house. RP 98. When

Diaz went to bed around 9:00 am, Torrez was gone. RP 99.

When Diaz woke up to Torrez trying to enter the home it was afternoon. RP 99. After Diaz opened the door to Torrez, he did not know why she was there; he expected Diaz to be at her other residence. RP 110. Although Diaz testified this five minute altercation took place in the afternoon, and she went to the neighbor's house to call her daughter Hernandez immediately after the altercation, Hernandez did not receive that call until around 6:40 pm. RP 113. This left a period of time unaccounted for during which Torrez was in the house without incident.

Based on these facts, the defense's theory of the case was that Torrez had been staying at the property while Diaz was away and Emiliano Torrez was in charge, which was usually on the weekends, but Torrez confused the days. RP 105, 106, 116, 150-51. Torrez only intended to stay at the home while Diaz was not there, and he did not intend to communicate with or to commit any crime against Diaz. *Id.* Consistent with this theory, Torrez told the police it was his residence. RP 60. Although Diaz did not expressly state that Emiliano Torrez gave Torrez permission to stay at the Beach Street Home, Diaz indicated that Emiliano Torrez was

authorized to give permission and that he may have done so. RP 106.

- d. The statute cited in the amended information and judgment and sentence does not match the factual allegations in the amended information or the to convict instructions

The amended information charged Torrez with first degree burglary with a deadly weapon under RCW 9A.52.020(1)(a). Likewise, the judgment and sentence states Torrez was convicted of first degree burglary under RCW 9A.52.020(1)(a).

However, the factual allegation in the amended information state as follows:

Count: 1

That the defendant, in Benton County, Washington, on or about the 25th day of April, 2019, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in the building of CAROLINA DIAZ, located at 627 BEECH STREET, KENNEWICK, WASHINGTON, and in entering or while in such building or in immediate flight therefrom, **the defendant did assault a person** proscribed, by RCW 9A.52.020, a felony.

Supp. CP __ (Amended Information) (emphasis added).

The to convict instruction on Count I provided as follows:

To convict the defendant of the crime of burglary in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about Aril 25, 2019 the defendant entered or remained unlawfully in a building;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
- (3) That is no entering or while in the building or in immediate flight from the building **the defendant assaulted a person;**
and
- (4) That any of these acts occurred in the State of Washington

CP 46 (emphasis added).

D. ARGUMENT

1. DEFENSE COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO REQUEST A FINDING OF “SAME CRIMINAL CONDUCT” FOR FIRST DEGREE BURGLARY AND VIOLATION OF A COURT ORDER

a. Standard of review for ineffective assistance of counsel

This Court reviews an ineffective assistance claim de novo. *In re Pers. Restraint of Fleming*, 142 Wn.2d 853, 865, 16 P.3d 610 (2001).

Every criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment of the United States Constitution and art. I, § 22 of the Washington State Constitution. U.S. Const. Amend. VI; Wash. Const. art. I, § 22; *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). Sentencing is a critical stage of a criminal proceeding at which a defendant is entitled to the effective assistance of counsel. *Gardner v. Florida*, 430 U.S. 349, 358, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977). Defense counsel's failure to argue same criminal conduct at sentencing can amount to ineffective assistance of counsel. *State v. Phuong*, 174 Wn. App. 494, 547, 299 P.3d 37 (2013) (citing *State v. Saunders*, 120 Wn. App. 800, 824–25, 86 P.3d 232 (2004)).

Defense counsel is ineffective where (1) the attorney's performance was deficient and (2) the deficiency prejudiced the defendant. *Thomas*, 109 Wn.2d at 225-26 (citing *Strickland*, 466 U.S. at 687). Deficient performance is that which falls below an objective standard of reasonableness. *Thomas*, 109 Wn.2d at 226. A defendant is prejudiced if there is a reasonable probability that, but for counsel's performance, the result would have been different. *Thomas*, 109 Wn.2d at 226. A reasonable probability is one sufficient to undermine confidence in the outcome. *Thomas*, 109 Wn.2d at 226 (citing *Strickland*, 466 U.S. at 694).

Counsel's performance is presumed to be competent, but this presumption can be overcome by showing an absence of

legitimate strategic or tactical reasons supporting counsel's challenged conduct. *State v. Crawford*, 159 Wn.2d 86, 98, 147 P.3d 1288 (2006) (citations omitted).

- b. Counsel's failure to request a finding of same criminal conduct constituted deficient performance that prejudiced the defendant

RCW 9.94A.525(5)(a)(i) provides in relevant part:

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

- (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score.

RCW 9.94A.525(a)(i).

Two or more crimes constitute the same criminal conduct if they each require the same criminal intent, are committed at the same time and place, and involve the same victim. RCW 9.94A.589(1)(a).

This is an objective test that "takes into consideration how intimately related the crimes committed are, and whether, between the crimes charged, there was any substantial change in the nature of the criminal objective." *Phuong*, 174 Wn. App. at 547 (citing *State v. Bums*, 114 Wn.2d 314, 318, 788 P.2d 531 (1990)

(discussing former RCW 9.94A.400)).

In *Phuong*, the Court of Appeals reversed Phuong's sentence and remanded for a new sentencing hearing when defense counsel did not argue at sentencing that Phuong's attempted rape and unlawful imprisonment convictions constituted the same criminal conduct for purposes of calculating Phuong's offender score. *Phuong*, 174 Wn. App. at 546.

The offenses were committed at the same time and place and involved the same victim. *Phuong*, 174 Wn. App. at 548. Further, Phuong dragged the victim from the victim's car, through the garage, and upstairs to Phuong's bedroom in order to accomplish the rape. From those facts, the sentencing court could have concluded Phuong's "objective criminal intent" in committing each offense was to rape the victim. *Phuong*, 174 Wn. App. at 548. Phuong received ineffective assistance of counsel because there was a reasonable probability that, had counsel so argued, the trial court would have found the attempted rape and unlawful imprisonment offenses encompassed the same criminal conduct. *Phuong*, 174, Wn. App. at 548.

Here, Torrez was charged with first-degree burglary and

violation of a court order, which both occurred at the same time, April 25, 2019 around 6:30 pm, occurred at the same place, the Beech Street Home, and involved the same victim, Diaz. RP 32, 98.

Torrez's conduct was similar to Phuong's in that, under the state's theory of the case, Torrez violated the court order in a single burglary involving the same victim and then remained in the home. When the police arrived, Torrez stated the Beech Street Home was his residence. Like in *Phuong*, this shows Torrez's criminal intent – to occupy the home in violation of the court order – remained constant.

Also, just like Phuong dragged his victim out of the car and through the house to accomplish the rape, here, under the state's theory of the case, Torrez dragged Diaz through the house, and threw her outside in order to accomplish his goal of occupying the house in violation of the restraining order.

Under these facts, the sentencing court could have concluded Torrez's "objective criminal intent" in committing each offense was to occupy the Beech Street Home in violation of the court order. Thus, defense counsel's failure to argue same criminal conduct constituted deficient performance. *Phuong*, 174 Wn. App.

at 548.

Here, had counsel moved the court to treat the crimes as the same criminal conduct, the court would have been bound to do so under *Phuong*. Torrez's offender score would have been eight (8), instead of nine (9). CP 69; RCW 9.94A.525. Torrez's standard range for first-degree burglary would have been 77 to 102 months, instead of 87 to 116 months. RCW 9.94A.510 (sentencing grid for felony offenses); RCW 9.94A.515 (first degree burglary has seriousness level of VII).

Defense counsel's failure to argue same criminal conduct was not a legitimate tactical decision because no reasonable attorney would fail to request such a finding when there was a possibility the court would have determined a lesser offender score upon request. Therefore, defense counsel's performance undermined the confidence in the outcome of the sentencing hearing and was ineffective. *Thomas*, 109 Wn.2d at 226.

- c. Applying the same criminal conduct analysis does not violate RCW 9A.52.050, the burglary anti-merger statute

RCW 9A.52.050, the burglary anti-merger statute, authorizes separate punishment for the burglary and for any crime committed during the burglary. RCW 9A.52.050. However, the court retains its

discretion not to apply the anti-merger statute. *State v. Davis*, 90 Wn. App. 776, 783-84, 954 P.2d 325 (1998); See Also *State v. Wilkins*, 200 Wn. App. 794, 805-06, 403 P.3d 890 (2017), *review denied*, 190 Wn.2d 1004, 413 P.3d 10 (2018) (The merger doctrine is a doctrine used to determine whether a defendant's double jeopardy rights have been violated, while the "same criminal conduct" doctrine is used to calculate a defendant's offender score; Therefore, whether certain crimes merge is a question distinct from how to calculate the offender score for each crime).

Counsel has a duty to investigate the relevant law. *State v. Woods*, 138 Wn. App. 191, 197, 156 P.3d 309 (2007). At the time of Torrez's sentencing, it was well established that sentencing courts have discretion not to apply the burglary anti-merger statute and to instead treat Torrez's felonies as the same criminal conduct. *Davis*, 90 Wn. App. at 783-84.

At the request of the victim, the sentencing court imposed the lowest possible sentence given Torrez's offender score, thus, there is a reasonable possibility the court would have imposed an even lower sentence if available. RP 18 (8/2/19). However, the trial court was not given that choice because the burden is on the

defendant to establish crimes constitute the same criminal conduct at sentencing. *State v. Graciano*, 176 Wn.2d 531, 539–40, 295 P.3d 219 (2013).

Defense counsel’s performance was deficient and prejudicial when he failed to request a same criminal conduct finding. *Phuong*, 174 Wn. App. at 548. This Court should remand for a new sentencing hearing. *Phuong*, 174 Wn. App. at 548.

2. THE COURT ERRED WHEN IT FAILED TO INSTRUCT THE JURY ON THE LESSER INCLUDED OFFENSES OF CRIMINAL TRESPASS AND FOURTH DEGREE ASSAULT

The trial court commits reversible error when the defendant is entitled to a lesser included instruction and the court fails to give one. *State v. Ginn*, 128 Wn. App. 872, 878, 117 P.3d 1155 (2005). The test to determine whether a lesser included instruction is warranted is two prong: legal and factual. *State v. Workman*, 90 Wn.2d 443, 447–48, 584 P.2d 382 (1978). “A defendant is entitled to jury instructions on lesser included offenses if each of the elements of the lesser offense is a necessary element of the offense charged and the evidence supports an inference that the lesser crime was committed.” *State v. Horton*, 195 Wn. App. 202,

223, 380 P.3d 608 (2016) (citing *Workman*, 90 Wn.2d at 447–48).

The legal prong is reviewed de novo and the factual prong for abuse of discretion. *State v. Walker*, 136 Wn.2d 767, 771–72, 966 P.2d 883 (1998); *Horton*, 195 Wn. App. at 223. A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46–47, 940 P.2d 1362 (1997). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *Littlefield*, 133 Wn. 2d at 47.

a. Both the legal and factual prongs were met to warrant an instruction on criminal trespass

Here, as the state conceded, criminal trespass meets the legal prong of the *Workman* test. RP 74, 120-21; *State v. Southerland*, 45 Wn. App. 885, 889, 728 P.2d 1079 (1986), *aff'd in part, rev'd in part*, 109 Wn.2d 389, 745 P.2d 33 (1987). A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a building. RCW 9A.52.070(1). A

person is guilty of burglary in the first degree “if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime ... (b) assaults any person.” RCW 9A.52.020(1)(b).

A defendant’s general denial of either crime does not bar a lesser included instruction. *Southerland*, 45 Wn. App. at 889-90. So long as there is evidence to support an inference the lesser crime was committed the defendant has an absolute right to have the jury consider it regardless of the plausibility. *State v. Parker*, 102 Wn.2d 161, 166, 683 P.2d 189 (1984) (citing *State v. Jones*, 95 Wn.2d 616, 628 P.2d 472 (1981); *State v. Dowell*, 26 Wn. App. 629, 613 P.2d 197, *review denied*, 94 Wn.2d 1018 (1980)).

In *Southerland*, the Court of Appeals reversed and remanded Southerland’s conviction for first degree burglary when the trial court failed to instruct the jury on criminal trespass because the jury could conceivably have believed Southerland’s theory of the case. *Southerland*, 45 Wn. App. at 890. At trial, the state presented testimony that Southerland went to Morris’ home to

search for his wife. Southerland entered the home against Morris' will and assaulted Morris in the process. Once inside, Southerland threatened one man with a gun and assaulted another man. *Southerland*, 45 Wn. App. at 887. The two men first reported the assaults to the police, then signed a notarized recantation stating they lied to the police, then testified at trial they did not read the recantation but signed it as a favor to Southerland's wife. *Southerland*, 45 Wn. App. at 888. Southerland denied that Morris tried to restrain him from entering or asked him to leave after he entered, or that he assaulted anyone therein. *Southerland*, 45 Wn. App. at 890.

The court of appeals found that given the facts of the case, particularly the conflicting testimony from the two men, the jury could have believed Southerland's theory of the case, which, if true, only amounted to criminal trespass. *Southerland*, 45 Wn. App. at 890. "Without the lesser included instruction the jury was given the choice of either finding [] Southerland guilty of first degree burglary or nothing at all: such a choice, given the evidence presented at trial, was unacceptable." *Southerland*, 45 Wn. App. at 890 (citing *Jones*, 95 Wn.2d 616).

Here, like in *Southerland*, given the facts of the case, particularly Diaz's conflicting testimony about the timing of the altercation, the jury could have conceivably believed Torrez's theory of the case. Torrez's theory of the case was that Diaz had another residence where she stayed. RP 105-06. While Diaz was gone, Emiliano Torrez took care of the house, usually on the weekends, and allowed Torrez to stay there. RP 105-06, 116. Torrez slept on the patio the night prior to this incident but never saw Diaz come home from work the next morning and had no reason to believe she was inside the home. RP 98-99.

Torrez left but returned later that night mistakenly believing it was Friday when Emiliano Torrez was in charge of the house. This theory is supported by Diaz's testimony that Torrez wondered why she was there. RP 110. Because Torrez had no reason to believe Diaz was in the house he did not intend to commit a crime against her once inside. Torrez's lack of intent is supported by Diaz's testimony that Torrez entered the home in the afternoon, yet she did not go to the neighbor's home until about 6:30 pm. RP 99, 109, 113. Thus, the jury could have believed Torrez remained in the home for a period of time without incident. Even more, after Torrez

allegedly threw Diaz out of the home, he did not steal anything, nor did he attempt to leave, and when the police arrived, Torrez told them it was his residence. RP 60-61. If the jury believed Torrez's theory of the case then, like in *Southerland*, Torrez's theory does not provide a predicate offense that was separate and distinct from the unlawful entry.

In the context of a restraining order, a violation of that order can serve as a predicate crime for burglary, but it must be supported by evidence separate and distinct from the evidence supporting the defendant's unlawful entry. *State v. Stinton*, 121 Wn. App. 569, 575-76, 89 P.3d 717 (2004). For example, in *State v. Wilson*, the no-contact order between Wilson and his girlfriend prohibited contact between them but did not prohibit Wilson from entering the premises. *State v. Wilson*, 136 Wn. App. 596, 604, 150 P.3d 144 (2007). Therefore, evidence that Wilson violated the protection order by harassing and assaulting the protected party only supported one element of burglary. *Wilson*, 136 Wn. App. at 611. The Court of Appeals affirmed the trial court's dismissal of the burglary conviction. *Wilson*, 136 Wn. App. at 615.

Torrez did not intend to communicate with Diaz or violate

any other provision of the restraining order – he only wanted to occupy the building. This unlawful occupancy, which only violates one provision of the restraining order, cannot be the basis for both the unlawful entry and the predicate offense. *Wilson*, 136 Wn. App. at 611.

Here, the jury also heard testimony Torrez lunged at his mother's purse, dragged his mother by her hair, and threw her outside. Like in *Southerland* the jury was faced with an "all or nothing" scenario and, given the evidence presented "nothing" was an unacceptable choice. *Southerland*, 45 Wn. App. at 890. Therefore, the trial court abused its discretion in failing to instruct the jury on the lesser included offense of criminal trespass. *Southerland*, 45 Wn. App. at 890.

- b. Both the legal and factual prongs were met to warrant an instruction on fourth degree assault

Here, the state conceded the legal prong of the *Workman* test for fourth degree assault. RP 74. Fourth degree assault is a lesser included offense of first degree burglary because the state had to prove Torrez committed an assault in the flight from the burglary. RCW 9A.52.020(1)(b).

The factual prong is also satisfied because if Torrez did not

intend to commit a crime when he entered or remained in the Beech Street Home, there was no burglary or flight therefrom. RCW 9.94A.020(1). As argued above, testimony at trial supports an inference that Torrez only intended to enter or remain in the home, not to commit an additional crime once inside.

If there was no burglary, then any alleged assault Torrez committed inside the Beech Street Home was just an assault. Because the testimony at trial could support an inference Torrez did not have the requisite intent to commit burglary the trial court erred in failing to instruct the jury on assault as a lesser included offense. This Court should remand for a new trial. *Southerland*, 45 Wn. App. at 890.

3. TORREZ'S JUDGMENT AND SENTENCE SHOULD BE AMENDED TO REFLECT THE CORRECT STATUTE UNDER WHICH HE WAS CONVICTED

Torrez's judgment and sentence states Torrez was convicted under RCW 9A.52.020(1)(a) which provides as follows:

A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is **armed with a deadly weapon.**

RCW 9A.52.020(1)(a) (emphasis added); CP 67.

This matches the amended information which also mistakenly cites to RCW 9A.52.020(1)(a), the deadly weapon prong. However, the factual allegations contained in the amended information, the testimony at trial, and the jury instructions make it clear the intended prong is RCW 9A.52.020(1)(b), the assault prong. Supp. CP __ (Amended Information); CP 46-50.

Therefore, this Court should remand to correct this clerical error so that it reflects the actual statute under which Torrez was convicted. *State v. Danley*, 9 Wn. App. 354, 355, 513 P.2d 96 (1973).

E. CONCLUSION

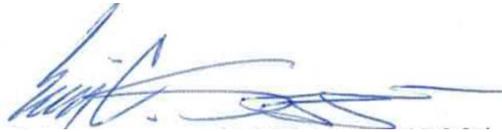
Edgar Torrez respectfully requests that this Court remand for resentencing where defense counsel can argue same criminal conduct. Torrez also requests this Court remand for a new trial in which the trial court instructs the jury on the lesser included offenses of criminal trespass and assault in the fourth degree. Finally, Torrez requests that this court remand to correct Torrez's judgment and sentence so that it reflects the correct statute under which Torrez was convicted.

DATED this 8th day of January 2020.

Respectfully submitted,



LISE ELLNER, WSBA No. 20955
Attorney for Appellant



ERIN C. SPENGER, WSBA No. 45931
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Benton County Prosecutor's Office prosecuting@co.benton.wa.us and Edgar Torrez/DOC#381726, Airway Heights Corrections Center, PO Box 2049, Airway Heights, WA 99001 a true copy of the document to which this certificate is affixed on January 8, 2020. Service was made by electronically to the prosecutor and Edgar Torrez by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

LAW OFFICES OF LISE ELLNER

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