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NO. 88683-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

J.C. JOHNSON,

Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER

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A. ISSUES PRESENTED

1. Whether an information charging unlawful imprisonment fairly puts a defendant on notice that the restraint was “without legal authority” when the information alleges that the defendant committed “unlawful imprisonment” by “knowingly restraining” his victim.

2. Whether Johnson received ineffective assistance of trial counsel when counsel proposed a jury instruction defining “reckless” that used statutory terms, and where the “to convict” instruction made clear that the “wrongful act” in question was an assault resulting in substantial bodily harm.

B. STATEMENT OF THE CASE

J.C. Johnson and J.J. were married for about a year, during which time Johnson became increasingly assaultive and controlling. He separated J.J. from her family and friends, he forced her to make job-related changes so he could better monitor her conduct, and he electronically eavesdropped on her conversations.

Over a three day period beginning May 4, 2010 and ending May 7, 2010, J.C. Johnson restrained J.J., in their apartment against her will.

7RP 63-63.¹ Having convinced himself that she was unfaithful, he interrogated, threatened, and strangled her. 7RP 63-64. Johnson kept J.J. nearly nude during that time and used his Rottweiler to corral her as a prisoner in her own home. 7RP 67-68, 70, 92. J.J. left the house only if accompanied by Johnson. 7RP 66. She believed that Johnson was going to murder her and that her corpse would be left for her children to find. 7RP 64. Eventually, J.J. fled the apartment in her underwear, bolting to her neighbor's home to call the police. 7RP 70, 92. When police arrived, they found J.J. covered in bruises and marked with strangulation injuries and dog bites. 6RP 21-22; 8RP 93-94.

Johnson fled in J.J.'s car. 6RP 20-22; 7RP 72. He was eventually captured, charged, and convicted of numerous crimes, including assault in the second degree (count II) and unlawful imprisonment (count V). CP 132-40, 144-46, 149-51. A persistent offender sentence was imposed.

Johnson raised multiple claims on appeal, most of which were rejected in a decision affirming his convictions and sentence. State v. Johnson, 172 Wn. App. 112, 297 P.3d 710 (2013), as modified on denial of reconsideration. The Court of Appeals held that the trial court

¹ The report of proceedings are cited as follows: 1RP (11/29/10), 2RP (11/30/10 - morning), 3RP (11/30/10 - afternoon), 4RP (12/1/10 - voir dire), 5RP (12/1/10), 6RP (12/2/10), 7RP (12/6/10), 8RP (12/7/10), 9RP (12/8/10), 10RP (12/13/10), 11RP (12/14/10), 12RP (12/15/10), 13RP (12/16/10), 14RP (12/17/10), 15RP (1/26/11).

improperly defined “reckless” in jury instructions for assault in the second degree, that error was invited, and trial counsel had not been objectively unreasonable in recommending the jury instruction because there was substantial confusion in the law at the time. The Court of Appeals also held that the charging document was deficient as to unlawful imprisonment for not including the definition of “restrain.” The State and Johnson both sought review. This court granted review as follows: “The State’s Petition for Review is granted only on the defective information issue. The Petition for Review filed by J.C. Johnson is granted only on the ineffective assistance of counsel issue.” Order, 9/4/13.

C. ARGUMENT

The State respectfully asks this Court to hold that an information charging unlawful imprisonment sufficiently provides notice of the charged crime when the information alleges that the defendant was charged with “unlawful imprisonment” for conduct where he “knowingly restrained” his victim. It is not necessary to define “restraint” in the charging document.

The State also respectfully asks this Court to hold that trial counsel provided effective representation when he proposed jury instructions—including an instruction on the definition of “reckless” conduct-- which correctly stated the law and allowed him to argue his theory of the case.

Even if the definition of “reckless” conduct was flawed, counsel’s representation was not objectively unreasonable since no case had yet required that the definition of “reckless” refer to “substantial bodily harm” instead of simply a “wrongful act.” Finally, even if counsel was deficient in failing to offer the correct instruction, Johnson was not prejudiced by the court’s instruction.

1. DEFINITIONS ARE NOT ESSENTIAL ELEMENTS OF THE CRIME; THEY NEED NOT BE INCLUDED IN THE INFORMATION.

The Court of Appeals held that the full definition of “restrain” must be included in an information charging unlawful imprisonment. Johnson, 172 Wn. App. 136-40. The court found that, even liberally construed, the information in this case did not put Johnson on notice that he was accused of restraining his victim knowing that the restraint was “without legal authority.” Id. That holding was erroneous. The definition of “restrain” is not an essential element of the crime of unlawful imprisonment, so it need not be included in the charging document. Even if the full definition should have been included, notice was provided if the information is liberally construed.

To satisfy Due Process, all “essential elements” of the crime—whether statutory or nonstatutory—must be pleaded in the information and proved beyond a reasonable doubt. State v. Vangerpen, 125 Wn.2d 782,

787, 888 P.2d 1177 (1995). The to-convict instruction must also contain all essential elements, State v. Smith, 131 Wn.2d 258, 263, 930 P.2d 917 (1997).

However, this Court has repeatedly held that definitions of elements are not, themselves, essential elements of the crime that must be included in a charging document. For instance, this court has held that the harassment statute prohibits only “true threats,” a threat that a reasonable person would believe would actually be carried out. State v. Allen, 176 Wn.2d 611, 294 P.3d 679 (Jan 24, 2013). Although the State must *prove* that a threat is “true,” the definition of “threat” need not be *alleged* in the information because it is not, itself, an essential element. Id.

Similarly, in State v. J.M., this Court found that the term “knowingly” before “threatens” in the information modified both components of the definition of threat: a defendant must *know* that he or she is communicating a threat and *know* that the communication is a true threat. 144 Wn.2d 472, 480-81, 28 P.3d 720 (2001). But, in State v. Schaler, 169 Wn.2d 274, 236 P.3d 858 (2010), this Court also repeated that the detailed aspects of the definition of “threat” were not essential elements of the crime. Viewed together, these decisions establish that simply because a *mens rea* applies to some aspect of a definition, it does not follow that the definition becomes an essential element.

This Court has also distinguished between definitions and elements in other contexts. In State v. O'Hara, 167 Wn.2d 91, 97, 217 P.3d 756 (2009), this Court held that the failure to fully define the term "malice" in the context of a self-defense claim was, "at most, a failure to *define* one of the elements." Id. (emphasis added). In State v. Scott, the jury instructions failed to define the term "knowledge," an element of the crime charged. 110 Wn.2d 682, 683-84, 757 P.2d 492 (1988). But, because the missing jury instruction was for a definition and not an element, the claimed error was not "of constitutional magnitude." Id.

This Court has similarly distinguished between elements and definitions in the context of alternative means analysis. In State v. Linehan, 147 Wn.2d 638, 56 P.3d 542 (2002), this Court discussed whether definitions create alternative means for committing the same offense – in other words, whether the definitions of elements are themselves elements. The court held that "[d]efinition statutes do not create additional alternative means of committing an offense." Id. at 646.²

This Court has also addressed the distinction between elements and their definitions when discussing the criteria for a proper plea to a firearm enhancement. In State v. Easterlin, 159 Wn.2d 203, 209, 149 P.3d 366

² See State v. Laico, 97 Wn. App. 759, 763, 987 P.2d 638 (1999) (citing State v. Strohm, 75 Wn. App. 301, 309, 879 P.2d 962 (1994), *aff'd in* 126 Wn.2d 1002 (1995)). See also State v. Marko, 107 Wn. App. 215, 220, 27 P.3d 228 (2001); State v. Garvin, 28 Wn. App. 82, 86, 621 P.2d 215 (1980).

(2006), this Court held that “the connection between the defendant, the weapon, and the crime is not an element the State must explicitly plead and prove... Instead, it is essentially *definitional*.” *Id.* at 209 (internal citations omitted) (emphasis added).

In this case, count V charged unlawful imprisonment and included the following language:

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse J.C. Johnson of the crime of **Unlawful Imprisonment – Domestic Violence**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant J.C. Johnson in King County, Washington, during a period of time intervening between May 4, 2009 through May 6, 2009, did knowingly restrain [J.J.], a human being. . .

CP 13 (bold in original). RCW 9A.40.040 provides that a “person is guilty of unlawful imprisonment if he knowingly restrains another person.” This statute establishes the essential elements of knowing restraint. “Restrain” is then separately defined as “to restrict a person’s movements without consent and without legal authority in a manner which interferes substantially with his or her liberty.” RCW 9A.40.010(6). Although the information must allege that the defendant restrained his victim, it need not allege the full definition of the term “restrain.” Each definitional word is not, itself, an essential element of the Due Process notice requirement. Otherwise, the information (and the to-convict

instruction) might also have to include notions of consent, age, physical force, intimidation, deception, competency, guardianship, and lawful control or custody.³

The Court of Appeals cited State v. Borrero, 147 Wn.2d 353, 58 P.3d 245 (2002) as support for its holding that definitional terms are essential elements, but Borrero is distinguishable. Johnson, at 138. The information accusing Borrero of attempted murder in the first degree failed to charge him with taking a “substantial step” toward the commission of the crime. Borrero, 147 Wn.2d at 358. Under RCW 9A.28.020, “a person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.” By statute, a “substantial step” *is* the essential element of the crime of criminal attempt, it is not a definition. Id. The definition of the element of “substantial step” is “conduct which strongly indicates a criminal purpose and which is more than mere preparation.” There is no holding in Borrero

³ The full definition of “restrain” is relatively complex. It provides:

(6) “Restrain” means to restrict a person’s movements without consent and without legal authority in a manner which interferes substantially with his or her liberty. Restraint is “without consent” if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.

RCW 9A.40.010(6).

that this definition must be alleged in the information. Id. at 362. Thus, Borrero is consistent with the rest of Washington case law in holding that essential elements, but not definitions, must be alleged in the information. Borrero does not support the conclusion reached in Johnson.⁴

The Court of Appeals also relied on State v. Warfield, 103 Wn. App. 152, 157, 5 P.3d 1280 (2000). Johnson, at 139. Warfield was a bounty hunter who was charged with unlawful imprisonment after he detained a victim based on an outstanding warrant. 103 Wn. App. at 154-55. On appeal he claimed that there was insufficient evidence to prove knowledge; he did not challenge the charging document. The court held that the word “knowingly” in the unlawful imprisonment statute modified “all of the components of the definition of restrain.” Id. at 157. Because the defendants relied in good faith on an arrest warrant, the court held that the evidence was not sufficient to prove the defendants knew they were not legally authorized to restrain the victim. Id. at 157. But it does not follow from the fact that the State must prove knowledge of a definition that the definition becomes an essential element that must be charged in the information. Only essential elements must be charged.

⁴ Borrero is also distinguishable because defense counsel in Borrero objected to the missing element, changing the standard of review of the information from a “liberal” interpretation to a “strict one.” Id. at 359-60.

Thus, the Court of Appeals erred in failing to distinguish definitions from essential elements. Essential elements must be included in the charging document, definitions need not be included.

Even if this Court holds that lack of authority to restrain must be alleged, the failure to expressly allege it here is not fatal to the charge. The Court of Appeals held that while one could reasonably infer that “restrain” entails restricting a person’s movements “without consent” and “interfere[ing] substantially” with their liberty, there is no way to reasonably conclude that the restraint must be “without legal authority.” Johnson, at 138-39.

An information not challenged at trial must be liberally construed in favor of validity. State v. Kjorsvik, 117 Wn.2d 93, 105, 812 P.2d 86 (1991). In determining whether the charging language provides adequate notice, a court should be “guided by common sense.” State v. Campbell, 125 Wn.2d 797, 881, 888 P.2d 1185 (1995).

The Court of Appeals failed to read the information liberally, and as a whole. The information accused Johnson of committing “**Unlawful Imprisonment**” by “knowingly restrain[ing]” his victim. CP 18 (bold in original). A fair reading of “restrain” in this context includes notice that the restraint is unlawful, and satisfies notice pleading requirements. The name of the charge itself—written in bold on the charging document—is

“Unlawful Imprisonment.” An ordinary person reading those words would conclude that the document alleged that restraint was not “lawful.” No reasonable person would conclude that he was accused of unlawful restraint of a person he had lawful authority to restrain. Particularly in the context of this case, there is no question that Johnson knew that he was being charged for keeping J.J. in an apartment for three days against her will while he beat her, threatened her, and sicced his dog on her. If he had doubts, he could have sought a bill of particulars. CrR 2.1(c). In short, liberal construction of this information shows that Johnson had notice of the charge, and he was not prejudiced. Kjorsvik, 117 Wn.2d at 105.

2. TRIAL COUNSEL WAS NOT INEFFECTIVE IN PROPOSING A DEFINITION OF “RECKLESS” THAT TRACKS THE STATUTORY LANGUAGE AND THAT HAS HISTORICALLY BEEN APPROVED UNDER WASHINGTON LAW.

There is a strong presumption that counsel is competent; a defendant claiming ineffective assistance of counsel must overcome that presumption and show prejudice before he is entitled to relief. Strickland v. Washington, 466 U.S. 668, 687, 14 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Trial counsel need not anticipate changes in the law. State v. Studd, 137 Wn.2d 533, 538, 973 P.2d 1049 (1999) (counsel was not ineffective for failing to predict change in self-defense instructions);

State v. Summers, 107 Wn. App. 373, 383, 28 P.3d 780 (2001) (counsel was entitled to rely on established WPIC instruction); State v. Brown, 159 Wn. App. 366, 372, 245 P.3d 776 (2011), *review denied*, 171 Wn.2d 1025, 257 P.3d 664 (2011); United States v. Fields, 565 F.3d 290, 296 (5th Cir.2009).

Johnson was charged in count II with assault in the second degree under RCW 9A.36.021(1)(a) for “intentionally assault[ing] another and thereby recklessly inflicting substantial bodily harm upon [J.J.]” CP 11. The “to convict” jury instruction required the State to prove beyond a reasonable doubt that Johnson “recklessly inflicted *substantial bodily harm* on [J.J.]” (emphasis added). CP 48. “Reckless” was defined—at Johnson’s behest—in a separate instruction which provided that a “person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a *wrongful act* may occur...” (emphasis added). CP 11. This instruction tracks the statutory language. RCW 9A.08.010(1)(c). This Court has long held that courts not just may, but should, use statutory language to instruct juries. State v. Hardwick, 74 Wn.2d 828, 830, 447 P.2d 80 (1968); State v. Bixby, 27 Wn.2d 144, 177 P.2d 689 (1947). Former WPIC 10.03 has for a least thirty years been the standard instruction used to define recklessness. See State v. Smith, 31 Wn. App. 226, 229, 640 P.2d 25 (1982).

On appeal, Johnson argued that trial counsel was constitutionally deficient in asking for this instruction. He insisted that counsel should have asked for an instruction saying that “a person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that substantial bodily harm may occur. The Court of Appeals held that the definition of “reckless” was deficient because it failed to specifically refer to “substantial bodily harm.” Johnson, at 131-33. However, the Court of Appeals also recognized that cases requiring a more precise definition of recklessness had not been decided before Johnson’s trial, so it was not unreasonable for trial counsel to propose the traditional instruction instead of a modified instruction. Id. at 133-35. This holding was both correct and incorrect.

The holding was correct because at the time of Johnson’s trial, no Washington case had held that a jury instruction defining recklessness must include the harm that might result if a person were reckless. In State v. Gamble, 154 Wn.2d 457, 114 P.3d 646 (2005), this Court held that manslaughter was not a lesser included offense of felony murder because the jury must find a direct connection between recklessness and death for manslaughter, but not for felony murder. 154 Wn.2d at 460. The court noted that in a manslaughter case, the wrongful act recklessly disregarded is “death.” Id. at 467-68. This Court’s decision in Gamble said nothing,

however, as to how jury instructions defining “recklessness” must be drafted, whether in a manslaughter case or any other case.⁵

After Gamble, the pattern instruction committee created an alternative recklessness definition with a fill-in-the-blank bracket permitting (but not requiring) a particularized definition. WPIC 10.03. The WPIC committee was plainly uncertain about the reach of Gamble.

The [Gamble] court gave no indication as whether more particularized standards would also apply to offenses other than manslaughter. The first paragraph of the instruction above is drafted in a manner that allows practitioners to more fully consider how Gamble applies to other offenses. If the instruction’s blank line is used, care must be taken to avoid commenting on the evidence.

11 Wash. Practice: WPIC 10.03, Comment. Thus, the pattern instruction committee was unsure whether Gamble required a change to jury instructions outside of the manslaughter context. Moreover, the committee noted that the alternative instruction might comment on the evidence. In light of this confusion, a prudent lawyer might reasonably propose the normal instruction, so it cannot be said that counsel provided deficient performance.

The holding of the Court of Appeals was incorrect, however, insofar as it suggests that a more particularized definition of recklessness is *required* by the Due Process Clause. Although it may be preferable in

⁵ It seems that clarification could be made to either the “to convict” instruction or the recklessness instruction, or both. The issue was never addressed in Gamble.

some circumstances to modify the definition of recklessness, modification is not required by the Due Process Clause.

Jury instructions are read in a common-sense manner and are sufficient if they properly inform the jury of the applicable law. State v. Bowerman, 115 Wn.2d 794, 809 P.2d 116 (1990). Instructions are reviewed *de novo*, “within the context of the jury instructions as a whole.” State v. Jackman, 156 Wn.2d 736, 743, 132 P.3d 136 (2006). The instructions, “taken in their entirety, must inform the jury that the State bears the burden of proving every essential element of a criminal offense beyond a reasonable doubt.” State v. Pirtle, 127 Wn.2d 628, 656, 904 P.2d 245 (1995). An appellate court will “review the instructions in the same manner as a reasonable juror.” State v. Hanna, 123 Wn.2d 704, 719, 871 P.2d 135 (1994). There are no “magic words” that must be used. State v. Coe, 101 Wn.2d 772, 787, 684 P.2d 668 (1984).

Where, as here, the “to convict” instruction includes all elements of assault defined in statutory terms, and recklessness is also defined in statutory terms, the instructions satisfy Due Process requirements, especially in light of this Court’s clearly-stated preference for using statutory language in jury instructions. State v. Hardwick, 74 Wn.2d at 830; State v. Bixby, 27 Wn.2d at 170. No Washington case holds that failure to more particularly define recklessness in a jury instruction is a

Due Process violation. As noted above, Gamble did not involve the wording of jury instructions, so its holding did not create a Due Process requirement. Other cases have, however, suggested that Due Process requires a certain form of recklessness instruction. These cases are mistaken.

In State v. Peters, 163 Wn. App. 836, 847, 261 P.3d 199 (2011), the defendant was convicted of manslaughter in the first degree. On appeal, he claimed that the jury instructions violated his Due Process rights by lowering the State's burden of proof. Peters, 163 Wn. App. at 847. Peters was correct insofar as the "to convict" instruction asked the jury to find that Peters engaged in "reckless conduct" before convicting him, instead of saying that it had to find Peters "recklessly caused the death" of his victim. Id. A "to convict" instruction must contain all the elements of the crime because it "serves as a yardstick by which the jury measures the evidence to determine guilt or innocence." State v. Sibert, 168 Wn.2d 306, 311, 230 P.3d 142 (2010). By failing to provide the nexus between recklessness and death, the "to convict" instruction was constitutionally deficient. However, rather than simply identifying error in the "to convict" instruction, the Peters court criticized the "reckless" definition because that definition did not cross-reference the risk of death. There would be no need, however, to cross-reference the risk of death in

the reckless definition if the “to convict” instruction had included that nexus.⁶

State v. Harris, 164 Wn. App. 377, 263 P.3d 1276 (2011) applied this improper analysis to instructions for assault of a child. The “to convict” instruction in Harris—unlike the instruction in Peters—used the precise language of the charged crime and required the jury to find that the defendant “recklessly inflicted *great bodily harm*.” Harris, at 384 (italics added). “Reckless” was defined using WPIC 10.03, i.e., disregarding the risk that a “wrongful act” may occur. The Harris court apparently failed to realize that the “to convict” instruction in Peters was deficient. It simply followed the holding of Peters, focused on the WPIC 10.03 instruction, and held that by failing to include “great bodily harm” in the definition of “reckless,” the State was relieved “of its burden to prove that Harris acted with disregard of the risk that his actions would result in “great bodily harm.” Id. at 387. This was error. The “to convict” instruction in Harris specifically informed the jury that it had to find that the defendant recklessly inflicted a defined level of harm, “great bodily harm.” Id. at 384. Thus, there was no need to insert the phrase “great bodily harm” into the definition of recklessness.

⁶ Of course, a trial judge might choose to include such a cross-reference for the sake of clarity, but the instruction would be constitutionally sufficient without it.

The Court of Appeals decision in Johnson extended the errors in Peters and Harris to the crime of assault in the second degree under RCW 9A.36.021(1)(a). The Due Process violation in Peters occurred because the State was relieved of proving an element of the crime when the nexus between act and risk was not provided in the “to convict” instruction. In Harris or Johnson, however, the link between recklessness and harm was made clear in the “to convict” instructions. Taking the instructions as a whole, there was no Due Process violation; the “reckless” definition may simply repeat the statutory language rather than be tailored to fit each charged crime. Thus, counsel was not deficient in asking for the traditional WPIC 10.03 instruction.

Moreover, if Due Process *requires* that the definition of reckless *always* link to the harm covered by the underlying crime, the “reckless” definition will create problems in many circumstances. In a criminal mistreatment case, for example, the WPIC 10.03 instruction would read:

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that *an imminent and substantial risk of death or great bodily harm may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.*

WPIC 10.03 (2010); RCW 9A.42.030(1) (criminal mistreatment language in italics). Replacing the simple “wrongful act” language with the

language from the specific crime makes the definition of reckless redundant. Telling a jury that “a substantial risk that a... substantial risk... may occur,” hampers rather than helps the trier of fact.

Another example of needless redundancy occurs with the charge of reckless burning in the second degree, where “reckless” would be defined as knowing of and disregarding a substantial risk of “danger of destruction or damage of a building or other structure.” RCW 9A.48.050(1). There is little difference between “danger” and “risk” so it is difficult to see how Due Process would demand that both concepts appear in the same instruction.

Even more confusion could arise in cases where a defendant is charged with multiple crimes that require a reckless definition. For example, in a case where drive-by shooting, assault in the second degree, and reckless endangerment are charged, Johnson’s argument would require three separate definitions of recklessness, because each alternative charge aims to prevent a unique harm. *See* RCW 9A.36.045; RCW 9A.36.021; RCW 9A.36.050. It is unclear how this Court will be able to draw constitutional distinctions between these various situations, or how trial courts and practitioners will know when WPIC 10.03 *must* be modified as a matter of Due Process.

For these reasons, this Court should reject the argument that the Due Process Clause demands that WPIC 10.03 include a description of the harm to be avoided by the underlying crime. Instead, this Court could note a preference for such language, but leave it to the trial court and the parties to fashion an appropriate instruction. As long as the “to convict” instruction identifies the harm to be avoided, WPIC 10.03 may be used without violating the Due Process Clause.

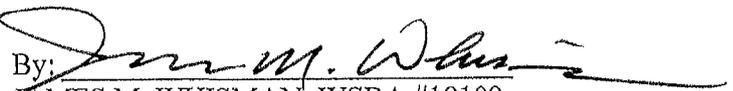
D. CONCLUSION

For these reasons, the State respectfully asks this Court to affirm Johnson’s convictions, and hold that the definition of “restrain” is not an essential element that must be listed in the charging document, and that the jury instruction defining “reckless” need not be modified where the “to convict” instruction made clear that the “wrongful act” at issue was an assault resulting in “substantial bodily injury.”

DATED this 4th day of November, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

JAMES M. WHISMAN, WSBA #19109
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Certificate of Service by Mail

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Casey Grannis, of Nielsen, Broman and Koch, P.L.L.C., at the following address: Central Building, 1908 East Madison Street, Seattle, WA 98122, the attorney of record for the respondent, containing a copy of the Supplemental Brief of Petitioner in STATE V. J.C. JOHNSON, Cause No. 88683-1, in the Supreme Court of the State of Washington.

I certify under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

 11-04-13

Name

Date

Done in Seattle, Washington

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Subject: RE: State of Washington v. J.C. Johnson/Case # 88683-1

Rec'd 11-4-13

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Dear Supreme Court Clerk:

Attached for filing in the above-subject case, please find the Supplemental Brief of Petitioner.

Please let me know if you should have problems opening the attachment.

Thank you,

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For

Jim Whisman
Senior Deputy Prosecuting Attorney
Attorney for Petitioner