

NO. 63113-6-I

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

---

---

STATE OF WASHINGTON,

Respondent,

v.

PATRICK TOLLEFSON,

Appellant.

---

---

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

The Honorable Bruce Weiss, Judge

---

---

BRIEF OF APPELLANT

---

---

JARED B. STEED  
DAVID B. KOCH  
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC  
1908 East Madison  
Seattle, WA 98122  
(206)623-2373

FILED  
COURT OF APPEALS  
DIVISION ONE  
2009 AUG 31 PM 4:29

**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENTS OF ERROR</u> .....	1
<u>Issues Pertaining to Assignments of Error</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. <u>Procedural History</u> .....	2
2. <u>Substantive Facts</u> .....	3
C. <u>ARGUMENT</u> .....	5
1. THE JUDGMENT AND SENTENCE INCORRECTLY STATES TOLLEFSON'S OFFENDER SCORES FOR ATTEMPTED FIRST DEGREE ROBBERY AND ATTEMPTED FIRST DEGREE BURGLARY .....	5
2. THE TRIAL COURT UNCONSTITUTIONALLY SUBJECTED TOLLEFSON TO DOUBLE JEOPARDY BY IMPOSING MULTIPLE FIREARM ENHANCEMENTS AND ORDERING THEM TO RUN CONSECUTIVELY DESPITE A PRIOR FINDING OF SAME CRIMINAL CONDUCT .....	7
a. <u>Legislative Intent Prohibits Multiple Consecutive Enhancements Where A Defendnat Is Being Sentenced Upon A Single Offense</u> .....	7
b. <u>Multiple Enhancements Violate the Cougle Jeopardy Clause</u> .....	12
D. <u>CONCLUSION</u> .....	15

TABLE OF AUTHORITIES

	Page
 <u>WASHINGTON CASES</u>	
<u>City of Seattle v. Fontanilla</u> , 128 Wn.2d 492, 909 P.2d 1294 (1996).....	8
<u>Human Rights Comm’n v. Cheney Sch. Dist. No. 30</u> , 97 Wn.2d 118, 641 P.2d 163 (1982).....	8
<u>In re Estate of Kerr</u> , 134 Wn.2d 328, 949 P.2d 810 (1988).....	8
<u>In re Pers. Restraint of Orange</u> , 152 Wn.2d 795, 100 P.3d 291 (2004).....	12
<u>In re Swanson</u> , 115 Wn.2d 21, 804 P.2d 1 (1990).....	8
<u>State v. Adel</u> , 136 Wn.2d 629, 965 P.2d 1072 (1998).....	13
<u>State v. Callihan</u> , 120 Wn. App. 620, 85 P.3d 979 (2004).....	10
<u>State v. DeSantiago</u> , 149 Wn.2d 402, 68 P.3d 1065 (2003).....	7, 14
<u>State v. Ford</u> , 137 Wn.2d 472, 973 P.2d 452 (1999).....	6
<u>State v. Graham</u> , 153 Wn.2d 400, 103 P.3d 1238 (2005).....	12
<u>State v. Hagler</u> , 150 Wn. App. 196, 208 P.3d 32 (2009).....	6

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>WASHINGTON CASES (Cont'd)</u>	
<u>State v. Lewis (In re Charles),</u> 135 Wn.2d 239, 955 P.2d 798 (1998), <u>superceded by statute as stated in</u> <u>State v. Thomas,</u> 113 Wn. App. 755, 54 P.3d 719 (2002).....	12
<u>State v. Korum,</u> 157 Wn.2d 614, 141 P.3d 13 (2006).....	10
<u>State v. Mandanas,</u> No. 80441-9 .....	2
<u>State v. Moten,</u> 95 Wn. App. 927, 976 P.2d 1286 (1999).....	6
<u>State v. Roberts,</u> 117 Wn.2d 576, 817 P.2d 855 (1991).....	12
<u>State v. Roche,</u> 75 Wn. App. 500, 878 P.2d 497 (1994).....	6
<u>State v. Schoel,</u> 54 Wn.2d 388, 341 P.2d 481 (1959).....	12
<u>State v. Tvedt,</u> 153 Wn.2d 705, 107 P.3d 728 (2005).....	13, 14
<u>State v. Varnell,</u> 162 Wn.2d 165, 107 P.3d 24 (2008).....	14
<u>State v. Vladovic,</u> 99 Wn.2d 413, 662 P.2d 853 (1983).....	12
<u>State v. Watson,</u> 146 Wn.2d 947, 51 P.3d 66 (2002).....	10

TABLE OF AUTHORITIES (CONT'D)

	Page
 <u>WASHINGTON CASES (Cont'd)</u>	
<u>State v. Williams</u> , 94 Wn.2d 531, 617 P.2d 1012 (1980).....	8
<u>State v. Womac</u> , 160 Wn.2d 643, 160 P.3d 40 (2007).....	12
<u>State v. Wright</u> , 84 Wn.2d 645, 529 P.2d 452 (1974).....	9
<u>Waste Management of Seattle, Inc. v. Utilities Transp. Comm'n</u> , 123 Wn.2d 621, 869 P.2d 1034 (1994).....	9
 <u>FEDERAL CASES (CONT'D)</u>	
<u>Bell v. United States</u> , 349 U.S. 81, 75 S. Ct. 620, 99 L.Ed.2d 905 (1955).....	13
<u>United States v. Santos</u> , ___ U.S. ___, 128 S. Ct. 2020, 170 L. Ed. 2d 912 (2008).....	11
 <u>RULES, STATUTES AND OTHER</u>	
Black's Law Dictionary (8th ed. 1999).....	5
CrR 4.3.....	10
CrR 7.8(a) .....	5
RCW 9.41.010 .....	7
RCW 9.94A.310.....	10

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>RULES, STATUTES AND OTHER (Cont'd)</u>	
RCW 9.94A.533(3).....	7
RCW 9.94A.533(3)(e) .....	9, 10
RCW 9.94A.589(1)(a) .....	8, 9
RCW 9A.52.050.....	1, 2, 6
U.S. Const. amend. V.....	12
Wash. Const. art. I, § 9.....	12
WPIC 4.11.....	11

A. ASSIGNMENTS OF ERROR

1. The judgment and sentence incorrectly states appellant's offender scores for Attempted First Degree Robbery and Attempted First Degree Burglary.

2. The trial court erred when it imposed two firearm sentence enhancements against appellant.

3. The trial court erred when it determined that appellant's two firearm sentencing enhancements should run consecutively to one another and to the underlying sentences for the two convictions.

Issues Pertaining to Assignments of Error

1. The trial court concluded that appellant's offender scores for Attempted First Degree Robbery and Attempted First Degree Burglary were zero. The judgment and sentence, however, indicates appellant's offender score for each of these crimes is two. Should this Court remand for correction of appellant's offender scores?

2. During sentencing, the trial court determined that appellant's Attempted First Degree Robbery and Attempted First Degree Burglary arose from the same criminal course of conduct and that the anti-merger statute under RCW 9A.52.050 did not apply. The trial court then imposed a 36-month firearm enhancement against appellant for each crime

and ordered the enhancements to be served consecutively to one another and to the two underlying sentences. In light of the same criminal conduct finding, did the trial court unconstitutionally subject appellant to double jeopardy?<sup>1</sup>

B. STATEMENT OF THE CASE

1. Procedural History

The Snohomish County Prosecutor's Office charged Patrick Tollefson with one count of First Degree Assault (Count I), one count of Attempted First Degree Robbery (Count II), and one count of Attempted First Degree Burglary (Count III). CP 118-119. A jury found Tollefson not guilty on Count I and guilty on Counts II and III. CP 26, 28, 30, 32. The jury also returned special verdict forms on Counts II and III, finding that Tollefson was armed with a firearm. CP 27, 29.

The trial court determined that Tollefson's Attempted First Degree Robbery with a Firearm and Attempted First Degree Burglary with a Firearm arose from the same criminal course of conduct, and that the anti-merger statute under RCW 9A.52.050 did not apply. CP 3-15; 8RP<sup>2</sup> 17-

---

<sup>1</sup> The same issues Tollefson raises in this appeal concerning the firearm enhancements are currently pending before the Washington State Supreme Court in State v. Mandanas (No. 80441-9). Oral argument in that case was heard on October 14, 2008.

<sup>2</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – August 22, 2008; 2RP – January 26, 2009 (Morning Session); 3RP – January 26,

19, 28. Based on an offender score of zero, Tollefson was sentenced to 30.75 months on Count II, and 15 months on Count III. CP 3-15. An additional 36-month firearm enhancement was added to each count to be served by Tollefson consecutively to each enhancement and to the standard ranges. CP 3-15.

2. Substantive Facts

On June 4, 2008, at approximately 3:30 a.m., Tod Moon called 911 and reported that a person had just fired several bullets through the front door of his home in Arlington, Washington. 3RP 12, 14, 23-25, 29, 31. Neither Moon nor his wife or nephew were injured in the shooting. 3RP 24, 42-43. Moon identified the gunman as emerging from the driver's side of an unfamiliar white Jeep Cherokee that had been in his driveway. 3RP 19-20, 34. Moon was unsure how many people were in the Jeep at the time of the shooting. 3RP 34.

Following the incident, a 911 dispatcher advised all units to be on the lookout for a white Jeep Cherokee. 3RP 45-46. Sergeant Michael Tow of the Granite Falls Police Department responded to the dispatch and was advised that he should patrol the area between Granite Falls and the location of the incident. 3RP 46. While patrolling his assigned area, Tow

---

2009 (Afternoon Session); 4RP – January 27, 2009; 5RP – January 28, 2009; 6RP – January 29, 2009; 7RP – January 30, 2009; 8RP – March 4, 2009.

observed a white Jeep Cherokee and followed it to a gas station. 3RP 49-51. Tow then radioed for back-up, and with the assistance of other arriving officers, arrested the three people in the Jeep. 3RP 51, 53-58. The people were identified as Tyson Gaynor – the owner and driver, Patrick Tollefson – the front passenger, and Christopher Dichesare – the rear passenger. 3RP 52, 56-57; 5RP 12.

Moon was brought to the scene of the arrest and asked to identify the shooter. 3RP 26-27; 4RP 158-161. Though Moon was unable to identify the gunman at the time of the shooting, he identified Dichesare as the shooter, saying he was 90 percent certain. 3RP 20; 4RP 160, 164; 5RP 38.

All three individuals initially denied involvement, but Gaynor and Dichesare later admitted they were involved and Gaynor told police the plan was to burglarize Moon's home. 4RP 99, 116-124, 137-138, 142-143; 5RP 15-16. Dichesare took police to the location where the gun used in the shooting was thought to have been thrown from the Jeep, and police recovered a handgun at that location. 3RP 65, 67, 70-74; 4RP 107. No bullets were found in the gun, and no live or spent rounds were found near the gun or in the Jeep. 3RP 76-78; 4RP 10-11; 5RP 39-40.

Though the Washington State Patrol Crime Lab determined that the shell casings recovered at the incident scene were fired from the

recovered handgun, they were unable to make a comparative determination between test-fired bullets and those recovered at the scene. 5RP 95-96. No fingerprints of value were lifted from the shell casings recovered at the scene or the gun itself, and no efforts were made to conduct hand gunshot residue tests on Gaynor, Tollefson, or Dichesare. 5RP 31, 50-52. DNA tests conducted on the magazine of the recovered gun concluded that based on nine genetic markers, Gaynor's DNA could not be present, a match of Dichesare's DNA was inconclusive, and Tollefson's DNA had a statistical match of approximately 1 in 59 people. 5RP 78.

C. ARGUMENT

1. THE JUDGMENT AND SENTENCE INCORRECTLY STATES TOLLEFSON'S OFFENDER SCORES FOR ATTEMPTED FIRST DEGREE ROBBERY AND ATTEMPTED FIRST DEGREE BURGLARY.

Scrivener's errors are clerical errors that are the result of mistake or inadvertence, especially in writing or copying something on the record. See Black's Law Dictionary, 582, 1375 (8th ed. 1999). Under CrR 7.8(a), clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time of its own initiative or on the motion of any party. "A challenge to the offender score calculation is a sentencing error that may be raised for the first time on appeal." State v. Ford, 137

Wn.2d 472, 478, 973 P.2d 452 (1999) (citing State v. Roche, 75 Wn. App. 500, 513, 878 P.2d 497 (1994)).

During sentencing, the trial court determined that Tollefson's Attempted First Degree Robbery with a Firearm and Attempted First Degree Burglary with a Firearm arose from the same criminal course of conduct, and that the anti-merger statute under RCW 9A.52.050 did not apply. 8RP 17-19, 28. Accordingly, the trial court concluded that Tollefson's offender score for each crime was zero. Id. Though the judgment and sentence accurately reflects the standard range associated with an offender score of zero for both Attempted First Degree Robbery with a Firearm and Attempted First Degree Burglary with a Firearm,<sup>3</sup> the offender score listed for each crime is two. CP 3-15. As the incorrect offender scores appear to be the result of a scrivener's error, the appropriate remedy is to remand to correct the judgment and sentence. See State v. Hagler, 150 Wn. App. 196, 204, 208 P.3d 32 (2009); State v. Moten, 95 Wn. App. 927, 929, 935, 976 P.2d 1286 (1999).

---

<sup>3</sup> Using an offender score of zero, the correct standard range for count three, Attempted First Degree Burglary, is 11.25-15 months rather than the standard range of 11.5-15 months reflected in the judgment and sentence. As Tollefson was sentenced to the high end of the standard ranges on both counts two and three, however, the incorrect low end of the standard range on count three is irrelevant.

2. THE TRIAL COURT UNCONSTITUTIONALLY SUBJECTED TOLLEFSON TO DOUBLE JEOPARDY BY IMPOSING MULTIPLE FIREARM ENHANCEMENTS AND ORDERING THEM TO RUN CONSECUTIVELY DESPITE A PRIOR FINDING OF SAME CRIMINAL CONDUCT.

a. Legislative Intent Prohibits Multiple Consecutive Enhancements Where A Defendant Is Being Sentenced Upon A Single Offense.

RCW 9.94A.533(3) provides in pertinent part:

[A]dditional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement.

\* \* \*

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter.

In State v. DeSantiago, 149 Wn.2d 402, 68 P.3d 1065 (2003), the Washington Supreme Court concluded that the previously codified version of this same statute allows the same offense to be enhanced more than

once for *each* weapon used in that offense. This case, however, presents a very different question: whether the court can impose two separate weapon enhancements, and run those enhancements consecutively, even though Tollefson's underlying offenses have previously been found to constitute the same criminal conduct under RCW 9.94A.589(1)(a). For several reasons, the answer must be "no."

"Where statutory language is plain and unambiguous, a statute's meaning must be derived from the wording of the statute itself." In re Swanson, 115 Wn.2d 21, 27, 804 P.2d 1 (1990) (quoting Human Rights Comm'n v. Cheney Sch. Dist. No. 30, 97 Wn.2d 118, 121, 641 P.2d 163 (1982)). A statute must be construed as a whole so as to give effect to all language and to harmonize all provisions. See City of Seattle v. Fontanilla, 128 Wn.2d 492, 498, 909 P.2d 1294 (1996). Under rules of statutory construction each provision of a statute should be read together (*in para materia*) with other provisions in order to determine the legislative intent underlying the entire statutory scheme. See, e.g., In re Estate of Kerr, 134 Wn.2d 328, 336, 949 P.2d 810 (1988). The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes. See Id. (citing State v. Williams, 94 Wn.2d 531, 547, 617 P.2d 1012 (1980); State v. Wright, 84 Wn.2d 645,

650, 529 P.2d 452 (1974)). Statutes relating to the same subject must be read as complementary, instead of in conflict with each other. See, e.g., Waste Management of Seattle, Inc. v. Utilities Transp. Comm'n, 123 Wn.2d 621, 630, 869 P.2d 1034 (1994).

RCW 9.94A.533(3)(e) provides that a firearm enhancement may only apply if the defendant or an accomplice is armed with a firearm and he is “*being sentenced*” for one of the listed offenses. (emphasis added). Thus, by its own terms, a firearm enhancement should not apply to any offense upon which the defendant is *not* being sentenced. Where a sentencing court finds that two convictions encompass “same criminal conduct,” these offenses must be “counted as one crime” and the defendant is only sentenced for a single offense. See RCW 9.94A.589(1)(a).

Similarly, RCW 9.94A.533(3)(e) states that firearm enhancements are mandatory and consecutive in general, but it includes a proviso that such enhancements apply only to “all offenses *sentenced* under this chapter.” (emphasis added). In light of the clear terms of RCW 9.94A.589(1)(a), the legislature did not authorize multiple enhancements where the defendant is only being sentenced upon a single, unified offense. Accordingly, Tollefson’s firearm enhancement for the lesser offense of Attempted First Degree Burglary is not covered by RCW

9.94A.533(3)(e) since Tollefson must not be “sentenced” for that particular offense.

In State v. Callihan, 120 Wn. App. 620, 623, 85 P.3d 979 (2004), this Court, relying on RCW 9.94A.310 (a previous version of this same statute), concluded that the statute unambiguously requires consecutive sentences for each weapon enhancement regardless of a finding of “same criminal conduct.” Notwithstanding the fact that the Callihan Court offered little analysis to support its conclusion, the opinion also did not present the same issues as in the current case. Unlike the present case, the court in Callihan dismissed altogether the argument that the assaults at issue constituted the same criminal conduct, finding instead that they were two separate incidents.

The State is usually permitted to charge a defendant with multiple offenses – and multiple alternative offenses – based upon the same transaction and occurrence. See State v. Korum, 157 Wn.2d 614, 141 P.3d 13 (2006) (discussing CrR 4.3). But this does not mean that the Court must impose an increased sentence based upon the multiplicity of charges, particularly where such a scheme would necessarily lead to absurd results. See, e.g., State v. Watson, 146 Wn.2d 947, 955, 51 P.3d 66 (2002) (court must avoid a literal reading of a statute if it would result in unlikely, absurd, or strained consequences).

For example, when faced with a situation where the defendant fires a single gunshot and seriously injures another person during the course of an argument, the State would be free to charge that defendant with numerous offenses: assault in the first degree (assault with intent to kill), assault in the second degree (assault with a firearm), assault in the third degree (reckless assault), felony harassment, and perhaps numerous other offenses. In addition, the State would be free to allege that the defendant was armed with a firearm during the course of each of these offenses. If we assume that neither the State nor the defense requested a lesser included crime or lesser degree instruction (as in WPIC 4.11), the jury would be free to return verdicts on each of these alternative charges – including a multiplicity of enhancements. Clearly, the legislature could not have intended for the court to impose consecutive terms for each and every firearm enhancement that could conceivably be charged on account of a single incident involving one firearm and one victim.

Minimally, this Court should conclude that the firearm enhancement provisions are ambiguous in these circumstances. See, e.g., United States v. Santos, \_\_\_ U.S. \_\_\_, 128 S. Ct. 2020, 170 L. Ed. 2d 912 (2008) (applying rule of lenity to interpret ambiguous terms in federal money laundering statute). The rule of lenity applies to resolve statutory ambiguities in criminal cases in favor of the defendant, absent legislative

intent to the contrary. See State v. Lewis (In re Charles), 135 Wn.2d 239, 249-50, 955 P.2d 798 (1998), superceded by statute as stated in State v. Thomas, 113 Wn. App. 755, 761, 54 P.3d 719 (2002); accord State v. Roberts, 117 Wn.2d 576, 585-86, 817 P.2d 855 (1991). The rule should apply in this case.

b. Multiple Enhancements Violate the Double Jeopardy Clause.

The United States and Washington Constitutions' double jeopardy clauses are "identical in thought, substance, and purpose." State v. Schoel, 54 Wn.2d 388, 391, 341 P.2d 481 (1959). They both "protect against multiple punishments for the same offense, as well as against a subsequent prosecution for the same offense after acquittal or conviction." State v. Graham, 153 Wn.2d 400, 404, 103 P.3d 1238 (2005) (citing In re Pers. Restraint of Orange, 152 Wn.2d 795, 815, 100 P.3d 291 (2004)); Wash. Const. art. I, § 9; U.S. Const. amend. V. Courts may not enter multiple convictions for the same offense without offending double jeopardy. See State v. Vladovic, 99 Wn.2d 413, 422, 662 P.2d 853 (1983); see also State v. Womac, 160 Wn.2d 643, 657, 160 P.3d 40 (2007) (double jeopardy may be violated when a defendant receives multiple convictions for a single offense regardless of whether concurrent sentences are imposed.).

When the legislature defines the scope of a criminal act (the unit of prosecution), double jeopardy protects against multiple convictions for committing just one unit of the crime. See State v. Adel, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998). While the issue is one of constitutional magnitude on double jeopardy grounds, the analytical framework centers on a question of statutory interpretation and legislative intent. See Adel, 136 Wn.2d at 634.

If the legislature has failed to denote the unit of prosecution in a criminal statute, the United States Supreme Court has declared that the ambiguity should be construed in favor of lenity. See Bell v. United States, 349 U.S. 81, 83, 75 S. Ct. 620, 99 L.Ed.2d 905 (1955); State v. Tvedt, 153 Wn.2d 705, 710-11, 107 P.3d 728 (2005).

In Adel, for example, the Washington Supreme Court concluded that a defendant could not be punished multiple times for simple possession of marijuana simply because the drug was found in multiple places. In so ruling, the Court rejected the claim that the defendant violated the possession statute multiple times simply because he constructively possessed the drug in two different places and emphasized that the State's argument rested "on a slippery slope of prosecutorial discretion to multiply charges." 136 Wn.2d at 636.

Similarly, in State v. Varnell, 162 Wn.2d 165, 107 P.3d 24 (2008), the Court analyzed the appropriate prosecution unit for Washington's solicitation statute and concluded that the statute criminalizes the singular act of engaging another to commit a crime. Thus, the Varnell Court found one singular unit, even though the defendant had been convicted for soliciting the murder of four individuals. As the Court explained:

Varnell's solicitation to the undercover detective to commit the four murders was made only to the detective, at the same time, in the same place, and for the same motive. This scenario constitutes a single unit of prosecution.

Id. at 171.

In DeSantiago, the Washington Supreme Court concluded that, under the enhancement statute, use of the term "a firearm" means that a defendant may be punished separately for each firearm involved. See 149 Wn.2d at 419. Here, however, there is no dispute that appellant possessed only a single firearm.

As the Washington Supreme Court has explained, the unit of prosecution need not be determined by any single characteristic or factor. See, e.g., Tvedt, 153 Wn.2d at 711. In a case of this sort, in light of the terms of the enhancement statute, the prosecution unit is each "sentenced offense." Thus, where the defendant is sentenced for a single offense

including a single firearm, only one prosecution unit – or one enhancement – can be applied.

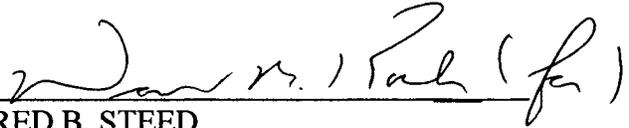
D. CONCLUSION

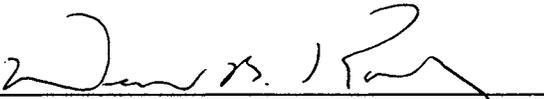
This Court should reverse Tollefson's sentence and remand for resentencing on a single firearm enhancement and to correct Tollefson's offender scores in the judgment and sentence.

DATED this 31<sup>st</sup> day of August, 2009.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

  
\_\_\_\_\_  
JARED B. STEED  
WSBA No. 40635

  
\_\_\_\_\_  
DAVID B. KOCH  
WSBA No. 23789  
Office ID No. 91051

Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I**

---

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 63113-6-I
	)	
PATRICK TOLLEFSON,	)	
	)	
Appellant.	)	

---

**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 31<sup>ST</sup> DAY OF AUGUST 2009, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLATN** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE  
3000 ROCKEFELLER AVENUE  
EVERETT, WA 98201
  
- [X] PATRICK TOLLEFSON  
DOC NO. 328600  
WASHINGTON STATE PENITENTIARY  
1313 N. 13<sup>TH</sup> AVENUE  
WALLA WALLA, WA 98362

2009 AUG 31 PM 4:29  
STATE OF WASHINGTON  
PATRICK MAYOVSKY

**SIGNED** IN SEATTLE WASHINGTON, THIS 31<sup>ST</sup> DAY OF AUGUST 2009.

x Patrick Mayovsky