

68936-3

68936-3

No. 68936-3-I

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

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STATE OF WASHINGTON,

Respondent,

v.

VICTOR CERVANTES,

Appellant.

---

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

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State presented insufficient evidence as a matter of law to prove Mr. Cervantes committed burglary in the first degree.

2. The State presented insufficient evidence as a matter of law to prove Mr. Cervantes committed theft of a firearm.

3. The trial court erred in overruling Mr. Cervantes's objection to Instruction 3, because the instruction misstated the definition of proof beyond a reasonable doubt.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A person is guilty of first-degree burglary, as opposed to second-degree burglary, if he or an accomplice is armed with a deadly weapon. The Supreme Court has held that in order to prove this element, the State must show the defendant or an accomplice did not merely steal a weapon but handled it "in a manner indicative of an intent or willingness to use it in furtherance of the crime." *State v. Brown*, 162 Wn.2d 422, 432, 173 P.3d 245 (2007). Here, the State presented evidence that Mr. Cervantes and two accomplices broke into another person's home, and that a gun was missing from the home afterward. Did the State fail to prove first-degree burglary, requiring dismissal of that conviction and entry of a conviction on the lesser charge of second-degree burglary?

2. A person is guilty as an accomplice to a crime only if he acted with knowledge that his conduct would promote or facilitate *the specific crime* with which he was charged. The trial court denied Mr. Cervantes's motion to dismiss the charge of theft of a firearm, stating that because there was sufficient evidence that he was an accomplice to *theft*, the jury could convict him of the crime of *theft of a firearm*. Theft of a firearm is not simply a different degree of the crime of theft but is a separate crime with a much higher seriousness level. Did the trial court err in denying the motion to dismiss, requiring reversal of the conviction and dismissal of the charge?

3. The role of the jury is to decide whether the prosecution met its burden of proof and it misleads the jury to encourage it to search for the truth. Over Mr. Cervantes's objection, the court instructed the jury that it could find the State met its burden of proof if it had "an abiding belief in the truth of the charge." Where both this Court and the Supreme Court have held it is not the jury's job to determine the truth, did the court misstate the burden of proof by focusing the jurors on whether they believed the charge was true?

#### C. STATEMENT OF THE CASE

Michelle Richie came home one day to find an unfamiliar car parked outside her house and the door broken open. 1 RP 28-29. Victor

Cervantes came out of the house, and when Ms. Richie tried to talk to her husband on her cell phone, Mr. Cervantes hit her and took the phone. 1 RP 31-33. According to Ms. Richie, Mr. Cervantes did not have a gun, and was not carrying a bag or backpack. 1 RP 60. Mr. Cervantes then drove away in his car. 1 RP 34.

In the meantime, two other men ran out of the back of the house and escaped through a fence. 1 RP 34. In going through the house after the intruders left, Ms. Richie and her husband Brandon Richie saw drawers open and clothes strewn all over the floor. 1 RP 94. They also realized that Mr. Richie's gun was missing. 1 RP 87-88, 95.

The police never recovered the gun or found the two men who fled through the back fence, but the State charged Mr. Cervantes with first-degree burglary, first-degree robbery, and theft of a firearm. CP 6-7. At the end of the presentation of evidence Mr. Cervantes moved to dismiss the first-degree burglary charge because there was no evidence Mr. Cervantes or an accomplice was armed, and moved to dismiss the theft-of-a-firearm charge because there was no evidence Mr. Cervantes knowingly facilitated that crime. 1 RP 171-81. The court denied the motions, ruling that the first-degree burglary charge was supported by the evidence that the gun was stolen, and that Mr. Cervantes could be convicted of theft of a firearm if the State showed he knowingly facilitated the crime of theft. 1

RP 174-75, 181. The court also overruled Mr. Cervantes's objection to the last sentence of the jury instruction defining proof beyond a reasonable doubt as proof that creates "an abiding belief in the truth of the charge." 1 RP 199. For count one, the court instructed the jury on the lesser-included offense of second-degree burglary. CP 63-64.

Mr. Cervantes was convicted as charged on all counts and sentenced to 66 months in prison. CP 80-82, 112. He timely appeals. CP 123-33.

D. ARGUMENT

**1. The State presented insufficient evidence to convict Mr. Cervantes of first-degree burglary.**

- a. Due Process requires the State to prove each element of the offense charged beyond a reasonable doubt.

The State bears the burden of proving each element of the crime charged beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence. *Id.*; U.S. Const. amend. XIV; Const. art. I, § 3; *City of Seattle v. Slack*, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). On appellate review, evidence is sufficient to support a conviction

only if, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 318, 99 S.Ct. 628, 61 L.Ed.2d 560 (1970); *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

- b. The State failed to prove the element that Mr. Cervantes or an accomplice was armed with a deadly weapon because there was no evidence of intent or willingness to use the stolen gun in furtherance of the crime.

The first-degree burglary statute provides:

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, or (b) assaults any person.

RCW 9A.52.020(1). The jury in Mr. Cervantes’s case was instructed only on the first alternative means, “is armed with a deadly weapon.” CP 57. However, the State presented insufficient evidence as a matter of law to prove this element.

“The term ‘armed’, as used in RCW 9A.52.020, means that the weapon is readily available and accessible for use.” *State v. Chiariello*, 66 Wn. App. 241, 243, 831 P.2d 1119 (1992) (holding insufficient evidence on this element where accomplice threatened to kill victim with knife in

his pocket but knife was never produced). There must be “a nexus between the defendant, the crime, and the weapon.” *Brown*, 162 Wn.2d at 431. Importantly, the State must present evidence that the defendant or his accomplice handled the weapon “in a manner indicative of an intent or willingness to use it in furtherance of the crime.” *Id.* at 432; *see also id.* at 433-34 (rejecting dissent’s view that evidence of intent to use weapon is not a requirement).

Here, as in *Brown*, the State presented no evidence of intent or willingness to use the weapon in furtherance of the crime. Instead, just as in *Brown*, “the facts suggest that the weapon was merely loot.” *Id.* at 434.

The State’s evidence showed Ms. Richie came home to find an unfamiliar car parked outside her house and the door broken open. 1 RP 28-29. Mr. Cervantes came out of the house, and when Ms. Richie tried to call her husband on her cell phone, Mr. Cervantes hit her and took the phone. 1 RP 31-33. According to Ms. Richie, Mr. Cervantes did not have a gun. 1 RP 60.

In the meantime, two accomplices ran out of the back of the house and escaped through a fence. 1 RP 34. In going through the house after the intruders left, Ms. Richie’s husband Brandon Richie realized that his gun had been stolen. 1 RP 87-88, 95.

Thus, as in *Brown*, the State presented no evidence of intent or willingness to use the weapon in furtherance of the burglary. The prosecutor argued to the jury that the State satisfied this element because “when either the defendant or one of his accomplices stole a firearm in the house and left the house with it they armed themselves, and that then establishes element 3.” 2 RP 20. That argument is plainly incorrect under *Brown*, 162 Wn.2d at 432-34.

The trial court committed the same error in denying the motion to dismiss. 1 RP 179-82. The trial court denied the motion on the basis that “[w]e have enough evidence here to allow the jury to infer that either Mr. Cervantes or his two accomplices took the gun. And they took it with them when they left, which means they had to have had it on their person when they took it from the home.” 1 RP 182. Although this would be enough in some jurisdictions, it is not enough in Washington. In *Brown*, our supreme court rejected this view:

The dissent cites a New Jersey Superior Court decision for the proposition that a nexus between the gun and crime is shown if the weapon could have been used for offensive or defensive purposes. Dissent at 254 (citing *State v. Merritt*, 247 N.J.Super. 425, 431, 589 A.2d 648 (App.Div. 1991)). In *Merritt*, the court found that “the majority of courts ... have held that a person who steals a weapon may be found to have been armed, without showing that he actually used or intended to use the weapon, so long as he had immediate access to the weapon during the offense. *Merritt* is

inapposite because it did not involve application of a nexus requirement.

*Brown*, 162 Wn.2d at 434 n.4. In Washington, “the defendant’s intent or willingness to use the [weapon] is a condition of the nexus requirement.” *Id.* at 434.

Because the State presented no evidence that Mr. Cervantes or his accomplices intended to use the gun they stole in furtherance of the burglary, the conviction for first-degree burglary must be reversed. *Id.* at 432-34.

- c. The remedy is reversal of the conviction for first-degree burglary and remand for entry of a conviction on second-degree burglary.

In the absence of evidence from which a rational trier of fact could find beyond a reasonable doubt Mr. Cervantes committed the offense for which he was convicted, the judgment may not stand. *State v. Spruell*, 57 Wn. App. 383, 389, 788 P.2d 21 (1990). The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution prohibits a second prosecution for the same offense after a reversal for lack of sufficient evidence. U.S. Const. amend. V; *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) (citing *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969)). The first-degree burglary charge must therefore be dismissed with prejudice, but a

conviction may be entered on the lesser offense of second-degree burglary. *In re Heidari*, 174 Wn.2d 288, 293-94, 274 P.3d 366 (2012) (when dismissing a conviction on a higher-degree offense for insufficient evidence, it is appropriate to enter a conviction for lesser offense where the jury was instructed on the lesser offense and found each element of the lesser offense).

**2. The State presented insufficient evidence to convict Mr. Cervantes as an accomplice to theft of a firearm, and the State's theory that it only had to prove he was an accomplice to theft in order to support a conviction for theft of a firearm is incorrect under *Roberts* and *Cronin*.**

- a. The trial court denied the motion to dismiss on the theory that a person could be convicted of theft of a firearm even if the State only proved he was an accomplice to theft.

The State charged Mr. Cervantes in count three with Theft of a Firearm. CP 7. Its theory was that Mr. Cervantes's companions stole the gun and escaped through the back fence while Mr. Cervantes was robbing Ms. Richie of her cell phone in the front yard. Indeed, Ms. Richie testified that Mr. Cervantes did not have a gun or a bag in which one might be stored, but the gun was missing after the three intruders left. 1 RP 31-34, 60, 87-88, 95.

At the close of the State's case, Mr. Cervantes moved to dismiss count three for insufficient evidence that Mr. Cervantes knowingly

facilitated theft of a firearm. 1 RP 171. His attorney noted that this crime is a “separate distinct offense” and “the State must prove that Mr. Cervantes knew that he was somehow assisting in the commission of that particular crime,” but there was “no indication that he knew that a firearm was taken, that he ever saw firearms taken, that he solicited, commanded, aided, encouraged the theft of a firearm.” 1 RP 172.

The State claimed, “The State does not have to prove that this man had an intention that one of them steal a firearm specifically.” 1 RP 172. The prosecutor argued that so long as the State presented sufficient evidence that Mr. Cervantes was an accomplice to *theft*, the jury could find him guilty of *theft of a firearm*. 1 RP 173. Mr. Cervantes reiterated that the State had to prove he “had knowledge he was facilitating that particular crime, the crime charged.” 1 RP 173.

The trial court stated, “It looks like this is an issue of first impression.” 1 RP 173-74. The judge denied the motion to dismiss, saying, “it appears to me that just because theft of a firearm is a separate statute from the other theft statutes it doesn’t change the analysis here to the extent that Mr. Cervantes is an accomplice to a theft. He’s an accomplice to whatever happens to be stolen, whether it’s a separate crime or not.” 1 RP 174-75.

Emboldened by this ruling, the prosecutor essentially put forth an “in for a dime, in for a dollar” theory of accomplice liability in closing argument to the jury. She hypothesized that if a person agreed to serve as a getaway driver for a bank robbery, he would be guilty not only as an accomplice to that crime, but if the principal wound up robbing other victims also, the driver would be guilty of those crimes as well. 2 RP 16. She then argued that Mr. Cervantes was an accomplice to theft of a firearm “at least because he drove them there, and he escaped using his car,” regardless of whether he knew they were going to commit theft of a firearm. 2 RP 18.

As explained below, the prosecutor’s argument and the trial court’s ruling are improper under the Supreme Court’s decisions in *Roberts* and *Cronin*. Under those cases, the State must prove an accomplice knowingly facilitated *the specific crime charged*. Because the State presented insufficient evidence that Mr. Cervantes knowingly facilitated the crime of theft of a firearm, this Court should reverse the conviction on count three.

- b. The trial court erred because the Supreme Court has made clear that a person is not guilty as an accomplice unless he knowingly facilitated the specific crime charged.

A person is liable as an accomplice, if, “[w]ith knowledge that it will promote or facilitate the commission of *the crime*,” he encourages or aids another in commission of the crime. RCW 9A.08.020 (emphasis added). Thus, accomplice liability requires knowledge that one is facilitating *the crime* in question. *State v. Cronin*, 142 Wn.2d 568, 578-79, 12 P.3d 752 (2000). “[K]nowledge by the accomplice that the principal intends to commit ‘a crime’ does not impose strict liability for any and all offenses that follow.” *State v. Roberts*, 142 Wn.2d 471, 513, 14 P.3d 713 (2000).

Although the accomplice statute was once interpreted the way the State construed it here, the Supreme Court clarified the law of accomplice liability in *Roberts* and *Cronin*. Timothy Cronin was convicted of murder as Michael Roberts’s accomplice. *Cronin*, 142 Wn.2d at 581. Cronin had argued at trial that he was not guilty of murder because he did not know the principal was going to kill the victim but thought they were only going to tie him up and take his vehicle. *Id.* at 576. But the jury was instructed that a person is liable as an accomplice if he knowingly facilitates “a

crime,” and the State told the jury an accomplice is “in for a dime, in for a dollar.” *Id.* at 576-77. The Supreme Court reversed, explaining:

[T]he plain language of the complicity statute does not support the State’s argument that accomplice liability attaches so long as the defendant knows that he or she is aiding in the commission of *any* crime. On the contrary, the statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate *the* crime for which he or she is eventually charged. ... [T]he legislature intended the culpability of an accomplice not extend beyond the crimes of which the accomplice actually has knowledge.

*Id.* at 578-79.

The State’s argument is correct insofar as it claims it does not have to prove a defendant knowingly facilitated *a particular degree* of a crime in order to support a conviction as an accomplice. For example, in *Cronin*, the Court said, “In order to convict Cronin as an accomplice to premeditated [first-degree] murder, the State had to prove beyond a reasonable doubt that Cronin had general knowledge that he was aiding in the commission of the crime of murder.” *Id.* at 581-82. And in *Roberts*, the Court explained that a person could be guilty as an accomplice to first-degree robbery if he knowingly facilitated the crime of robbery, even if he lacked specific knowledge of the element that raised it to first-degree robbery. *Roberts*, 142 Wn.2d at 512 (explaining *State v. Davis*, 101

Wn.2d 654, 682 P.2d 883 (1984)). However, general knowledge of *the crime* is required. *Id.* at 513.

Theft of a firearm is not a degree of theft, it is a separate crime. RCW 9A.56.300. It has a much higher seriousness level than any degree of theft, because it punishes individuals for special harms caused by armed crime. RCW 9.94A.530; *State v. Miller*, 92 Wn. App. 693, 699-702, 964 P.2d 1196 (1998). The fact that the statute is in the same chapter as theft does not mean the State can simply prove theft and thereby obtain a conviction for the separate crime of theft of a firearm. Robbery is also in the same chapter as theft, but proof that a person knowingly facilitated theft is insufficient to support a conviction as an accomplice to robbery. *State v. Grendhahl*, 110 Wn. App. 905, 910-11, 43 P.3d 76 (2002); *accord State v. Evans*, 154 Wn.2d 438, 454, 114 P.3d 627 (2005). In sum, Mr. Cervantes's conviction for theft of a firearm is improper because it was based on proof that he knowingly facilitated the different, less serious crime of theft.

c. The remedy is reversal of the conviction on count three and dismissal of the charge with prejudice.

Where the State presents insufficient evidence to support a conviction, the remedy is reversal and remand for vacation of the conviction and dismissal of the charge with prejudice. *State v. Engel*, 166

Wn.2d 572, 581, 210 P.3d 1007 (2009). Mr. Cervantes asks this Court to reverse the conviction on count three, and remand for dismissal of the charge. *Id.*

**3. The trial court erred in overruling Mr. Cervantes’s objection to the reasonable-doubt instruction, because the Supreme Court has held the jury’s job is not to find the truth but to determine whether the State proved its case.**

A jury’s role is not to search for the truth. *State v. Emery*, 174 Wn.2d 741, 760, 278 P.3d 653 (2012); *see also State v. Berube*, \_\_\_ Wn.2d \_\_\_, 286 P.3d 402, 411 (2012) (“truth is not the jury’s job. And arguing that the jury should search for truth and not for reasonable doubt both misstates the jury’s duty and sweeps aside the State’s burden”). Instead, the job of the jury “is to determine whether the State has proved the charged offenses beyond a reasonable doubt.” *Emery*, 174 Wn.2d at 760. “[A] jury instruction misstating the reasonable doubt standard is subject to automatic reversal without any showing of prejudice. *Id.* at 757 (quoting *Sullivan v. Louisiana*, 508 U.S. 275, 281–82, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993)).

Over Mr. Cervantes’s objection, the trial court instructed the jury that proof beyond a reasonable doubt means that, after considering the evidence, the jurors had “an abiding belief in the truth of the charge.” CP 52 (Instruction 3); 1 RP 199. Echoing this instruction, the prosecution told

the jury, “if from such circumstances you have an abiding belief in the truth of the charge, then you are satisfied beyond a reasonable doubt.” 2 RP 15. By equating proof beyond a reasonable doubt with a “belief in the truth” of the charge, the court confused the critical role of the jury. The “belief in the truth” language encourages the jury to undertake an impermissible search for the truth and invites the error identified in *Emery*.

The presumption of innocence may be diluted or even “washed away” by confusing jury instructions. *State v. Bennett*, 161 Wn.2d 303, 315-16, 165 P.3d 1241 (2007). It is the court’s obligation to vigilantly protect the presumption of innocence. *Id.* In *Bennett*, the Supreme Court found the reasonable doubt instruction derived from *State v. Castle*, 86 Wn. App. 48, 53, 935 P.2d 656 (1997), was “problematic” as it was inaccurate and misleading. 161 Wn.2d at 317-18. Exercising its “inherent supervisory powers,” the Supreme Court directed trial courts to use WPIC 4.01 in all future cases. *Id.* at 318.

That pattern instruction reads:

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your

deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. [If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt].

11 *Washington Practice: Washington Pattern Jury Instructions: Criminal* 4.01, at 85 (3<sup>rd</sup> ed. 2008) (“WPIC”).

The *Bennett* Court did not comment on the bracketed “belief in the truth” language. However, recent cases show the problematic nature of such language. In *Emery*, the prosecution told the jury that “your verdict should speak the truth,” and “the truth of the matter is, the truth of these charges, are that” the defendants are guilty. 174 Wn.2d at 751. These remarks misstated the jury’s role, but because they were not part of the court’s instructions, and the evidence was overwhelming, the error was harmless. *Id.* at 764 n.14.

In *Pirtle*, the Court held that the “abiding belief” language did not “diminish” the pattern instruction defining reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 657-58, 904 P.2d 245 (1995). The Court ruled that the “[a]ddition of the last sentence [regarding having an abiding belief in the truth] was unnecessary but was not an error.” *Id.* at 658. The *Pirtle*

Court did not focus its attention on whether this language encouraged the jury to view its role as searching for the truth. *Id.* at 657-58. Instead, it was addressing whether the phrase “abiding belief” was different from proof beyond a reasonable doubt. *Id.*

The *Pirtle* Court concluded that this language was unnecessary but not erroneous, which is far from an endorsement of the language. Yet *Emery* demonstrates the danger of injecting a search for the truth into the definition of the State’s burden of proof. This language invites the jury to be confused about its role and serves as a platform for improper arguments about the jury’s role in looking for the truth, as explained in *Emery*. 174 Wn.2d at 760.

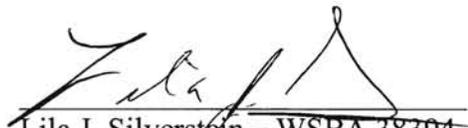
Improperly instructing the jury on the meaning of proof beyond a reasonable doubt is structural error. *Sullivan*, 508 U.S. at 281-82. Furthermore, this Court has a supervisory role in ensuring the jury’s instructions fairly and accurately convey the law. *Bennett*, 161 Wn.2d at 318. This Court should hold that directing the jury to treat proof beyond a reasonable doubt as the equivalent of having an “abiding belief in the truth of the charge” misstates the prosecution’s burden of proof, confuses the jury’s role, and denies an accused person his right to a fair trial by jury as protected by the state and federal constitutions.

E. CONCLUSION

For the reasons set forth above Mr. Cervantes asks this Court to reverse his conviction for first-degree burglary and remand for entry of a conviction on second-degree burglary, and reverse his conviction for theft of a firearm and remand for a dismissal of the charge. Mr. Cervantes must then be resentenced on the remaining charges. Mr. Cervantes also asks this Court to hold that an instruction defining proof beyond a reasonable doubt as proof that creates “an abiding belief in the truth of the charge” is improper and should not be used.

DATED this 12th day of December, 2012.

Respectfully submitted,

  
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Washington Appellate Project  
Attorney for Appellant

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 68936-3-I
v.	)	
	)	
VICTOR CERVANTES,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 12<sup>TH</sup> DAY OF DECEMBER, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |     |  |                   |                                     |
|-----|--|-------------------|-------------------------------------|
| [X] | ERIK PEDERSEN, DPA<br>SKAGIT COUNTY PROSECUTOR'S OFFICE<br>COURTHOUSE ANNEX<br>605 S THIRD ST.<br>MOUNT VERNON, WA 98273 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |
| [X] | VICTOR CERVANTES<br>358766<br>MCC-WSR<br>PO BOX 777<br>MONROE, WA 98272  | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON THIS 12<sup>TH</sup> DAY OF DECEMBER, 2012.

X \_\_\_\_\_ 

**Washington Appellate Project**  
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