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AUG 15 2013

King County Prosecutor
Appellate Unit

COA No. 69717-0-1

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

STATE OF WASHINGTON,

Respondent,

v.

PHILLIP D. BALDWIN,

Appellant.

On Appeal from the King County Superior Court
The Honorable Regina S. Cahan, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The "to convict" instruction erroneously stated the jury had a "duty to return a verdict of guilty" if it found each element proven beyond a reasonable doubt.¹

Issue Pertaining to Assignment of Error

Does a "to convict" instruction stating the jury has a duty to return a guilty verdict if it finds the elements have been proven beyond a reasonable doubt violate a defendant's right to a jury trial, when there is no such duty under the state and federal constitutions?

B. STATEMENT OF THE CASE

A.H. was at her Covington home with her two young children on a fall morning in 2010 when she answered a knock at her front door. A.H., who was 28 years old, had given birth to her son 20 days before. 5RP 72-84. She opened the door to see a young man, who said he was a high school student doing a survey for his senior project. The man asked if he could come inside. A.H. hesitated, thinking she should say no, but she let

¹ This Court rejected the arguments raised here in State v. Meggyesy, 90 Wn. App. 693, 958 P.2d 319, review denied, 136 Wn.2d 1028 (1998), abrogated on other grounds by State v. Recuenco, 154 Wn.2d 156, 110 P.3d 188 (2005). Counsel respectfully contends Meggyesy was incorrectly decided. Because Baldwin must include a Gunwall analysis or risk waiver of the issue, the Meggyesy argument is included in its entirety.

him in because she did not want to be rude. 5RP 84-86. The man was Phillip D. Baldwin. 2RP 86.

Baldwin carried a piece of paper and pen with him. He asked for something to write on, and A.H. handed him a health insurance pamphlet. 5RP 88-90. He explained the subject of his project was construction and families in the area. After asking a series of demographics-related questions, Baldwin began asking about construction and whether he could walk around and look at the rooms in the home. 5RP 91-93. A.H. invited him to look around, but Baldwin asked her to accompany him to dispel any notion he would steal anything. 5RP 93.

With her newborn in tow and two-year-old daughter at her side, A.H. followed Baldwin as he looked around in each room. 5RP 94-95. At some point, A.H. got ahead of Baldwin and had her back to him. Baldwin then grabbed her hard from behind and put his hand over her mouth. 5RP 96-97. Baldwin told her to cooperate or he would hurt the children. 5RP 98. A.H. "just froze." 5RP 99, 130-31. Baldwin told her to put the children in the baby's bedroom, which she did. 5RP 99-101.

He then maneuvered A.H. into her bedroom. He said he was not going to rape her because he had no condoms. 5RP 102-03. Baldwin told A.H. she could perform oral sex on him instead. 5RP 103. He told her to

take her clothes off, which she did. She got onto her knees and put his penis in her mouth. Baldwin ejaculated within fewer than 10 minutes, and A.H. swallowed as Baldwin directed her to do. 5RP 107. He then told her to lie face-down on the bed and to stay there until she heard the front door close. 5RP 107.

A.H. lay there for a couple of minutes, heard nothing, quickly got dressed and ran to her children. 5RP 115, 121. She brought them back to her bedroom and waited for a bit. Hearing no noises, she then checked every room in the house and locked all the doors. She repeatedly called her husband at work, but he did not answer. 5RP 121-22, 138-39. A.H. then called the police. 5RP 123.

Several officers from the King County Sheriff's Office responded to A.H.'s home. 5RP 7-9, 24-26, 37-41. A.H. provided a statement detailing what had happened with Baldwin. 5RP 43, 126. She also gave a description of Baldwin and said she did not know him. 5RP 17. An officer also obtained DNA from her mouth. 5RP 26-28. A.H. had a red mark on her cheek that she said Baldwin caused when he grabbed her face. 5RP 43-44, 119-20; 6RP 168-70.

A police officer and tracking dog were not successful in locating Baldwin. 5RP 14. A three-officer team specializing in tracking scoured

the area around and behind A.H.'s house. One officer found shoeprints with a pattern consistent with Nike athletic shoes along the shoulder of the road that ran in front of A.H.'s home. 6RP 21-28. A print with the same pattern and of the same size was found on a linoleum floor in the entryway of the house. 6RP 29-30.

A.H. helped a police sketch artist draw her assailant's face. 5RP 126-29; 6RP 124-25. She said the sketch looked exactly like the suspect. 5RP 129. Her husband, B.H. also looked at the sketch. 6RP 125. One day after viewing it, B.H. realized the suspect looked like Phillip Baldwin, who had come to his home a few months earlier to look at a motorcycle that was for sale. 6RP 126-29. B.H. shared this information with his wife and police. 6RP 131.

The detective in charge of the case ordered Baldwin's driver's license photograph and put together a six-person photo montage. 7RP 67-68. An officer presented the montage to A.H., who immediately pointed to Baldwin's photo as depicting the suspect. 6RP 142-52.

The detective obtained a search warrant for Baldwin's residence. 7RP 73-77. Officers executed the warrant and arrested Baldwin without incident. The detective informed Baldwin he was being arrested for rape. 6RP 77-79. During a search of Baldwin's room, an officer found a pair of

size 13 Nike shoes with the same sole pattern as that found in the entry to and in front of A.H.'s home. 6RP 174-76.

The detective advised Baldwin of his rights and he agreed to speak with her. 8RP 37-38. He told the detective he did not knock on any doors or go into any homes on the day of the alleged rape. 8RP 39. He did not say he knew A.H. or had visited her at her home several times. 8RP 40-41.

Meanwhile, officers had collected A.H.'s clothing and bedding, as well as the cover of the health insurance pamphlet, and submitted them for analysis. 7RP 20-23, 57-59. Baldwin's DNA, as well as that of A.H. and B.H., matched a mixed-source sample taken from A.H.'s shirt. 7RP 28-32. Baldwin's DNA also matched one single-source sample recovered from A.H.'s comforter. Baldwin's DNA, as well as that of A.H., matched a mixed male/female sample found on the same comforter. 7RP 32-46. A fingerprint analyst found Baldwin's fingerprints on the cover of the health insurance pamphlet A.H. said he used to write on. 5RP 65-66; 6RP 92-98.

The State ultimately charged Baldwin with second degree rape. CP 47-48; 8RP 3-5.² Baldwin's defense was consent. He testified that in

² The State went to trial charging Baldwin with first degree rape. CP 45-46. After the State rested, Baldwin argued the State failed to prove he feloniously entered A.H.'s home because she invited him in. 7RP 106-07.

August 2010, he was getting out of his truck in a store parking lot when she saw A.H. with a little girl pushing a shopping cart. A.H. asked him how he was doing in a "flirtatious voice." 7RP 116-17. Chit-chat followed, during which time A.H. said she was pregnant and nearly due to give birth. Baldwin asked for her phone number, but she declined because her husband routinely checked her phone. Baldwin said his girlfriend did the same to his phone, so there was no exchange of numbers. 7RP 117-18, 137-40.

Instead, A.H. invited Baldwin to her home to watch a movie because her husband was not home. When they arrived, Baldwin was surprised to find out he used to live in the same house when he was a teenager. 7RP 118, 141. They sat on the couch while A.H.'s daughter watched a kids' movie with her back to them. A.H. and Baldwin kissed for about five minutes. 7RP 142-43. He stayed for about 90 minutes, then A.H. gave him a ride back to the parking lot. She asked when she would next see him, and they arranged to meet at her house on Thursday mornings. 7RP 119-20.

The State, rather than potentially creating an appeal issue, chose to proceed with a second degree rape charge. 8RP 3-5.

On the last Thursday of August, Baldwin visited A.H. at her home. 7RP 121. They kissed for awhile, but the session was interrupted by a telephone call from A.H.'s husband. Baldwin left, but not before arranging to return after A.H. had her baby. 7RP 122. A.H. gave birth September 10. 5RP 79.

Baldwin came to visit a third time during the third week of September. A.H. allowed him in, and they chatted a bit. Baldwin left after a short time, however, because it appeared A.H. was about to fall asleep. 7RP 122-23. A.H. invited him to return the following Thursday, September 30.

Baldwin arrived as planned. There were magazines and mail on the couch, which Baldwin moved so they could sit down. He surmised that may have been when he touched the health insurance pamphlet upon which his fingerprints were found. 7RP 124-25. The two again kissed for a short time. A.H. then got up, took Baldwin by the hand, and led him into her bedroom. They lay on the bed kissing, and Baldwin took A.H.'s clothes off down to her panties. 7RP 126, 172. A.H. then pulled Baldwin's pants down and performed oral sex. 7RP 126-27, 171.

Once finished, Baldwin got up to put his pants on. A.H. asked her where he was going, and he said to hang out with his girlfriend. This

angered A.H., who began screaming at him. She said Baldwin was going to get his, which angered him. He responded he was going to come back and tell A.H.'s husband, then stormed out of the house. 7RP 128. He walked straight back to his truck and drove off. 7RP 129. He had no pen or paper during the visit and did not take anything when he left. 7RP 129-30.

Baldwin explained he gave a false statement to police because he was nervous and frightened. 7RP 132; 8RP 37-43. He said the officer who transported him to the station before he gave a statement told him if he did not admit to committing rape, he could get "25 to life." 7RP 133; 8RP 43-44.

The jury found Baldwin guilty of second degree rape as charged. CP 66. As a result of evidence found during the police investigation of this case, the State charged Baldwin with attempted second degree rape for an incident in the Ballard neighborhood about a week before the September 30 crime. As well, the State charged Baldwin with second degree rape for a July 28, 2010, incident that occurred in a parking lot a few miles from A.H.'s Covington home. CP 11-15. After several amendments to the information, the charges ended up being indecent liberties and second degree rape respectively. CP 45-48, 73-74.

After the jury had been chosen and several witnesses testified, Baldwin changed his pleas to guilty as charged. CP 75-107; 15RP 5-18. The trial court sentenced Baldwin to concurrent, standard range sentences of 194 months to life for the rapes and a concurrent 130 months for indecent liberties. CP 108-18; 16RP 16-20.

C. ARGUMENT

THE TRIAL COURT ERRED BY INSTRUCTING THE JURY THAT IT HAD A "DUTY TO RETURN A VERDICT OF GUILTY."

As part of the "to convict" instruction used to convict Baldwin, the trial court instructed the jury as follows:

If you find from the evidence these elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 59. This is standard language from the pattern instructions. WPIC 41.02. Baldwin contends there is no constitutional "duty to convict" and that the instructions therefore misstate the law. Accordingly, the instructions violated Baldwin's right to a properly instructed jury.

1. The United States Constitution

The right to jury trial in a criminal case was one of the few guarantees of individual rights enumerated in the federal constitution. It was the only guarantee to appear in both the original document and the Bill of Rights. U.S. Const. art. 3, §§ 2, 3; U. S. Const. amend. 6; U.S. Const. amend. 7. Thomas Jefferson wrote of the importance of this right in a letter to Thomas Paine in 1789: "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." *The Papers of Thomas Jefferson*, Vol. 15, p. 269 (Princeton Univ. Press, 1958).

In criminal trials, the right to jury trial is fundamental to the American scheme of justice. It is thus further guaranteed by the due process clauses of the Fifth and Fourteenth Amendments. Duncan v. Louisiana, 391 U.S. 145, 156, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968); Pasco v. Mace, 98 Wn.2d 87, 94, 653 P.2d 618 (1982).

Trial by jury was not only a valued right of persons accused of crime, but was also an allocation of political power to the citizenry:

[T]he jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power -- a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other

respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence.

Duncan, 391 U.S. at 156.³

2. Washington Constitution

The drafters of our state constitution granted the right to a jury trial and expressly declared the right "inviolable." Const. art. I, §§ 21, 22.

The term "inviolable" connotes deserving of the highest protection Applied to the right to trial by jury, this language indicates that the right must remain the essential component of our legal system that it has always been. For such a right to remain inviolable, it must not diminish over time and must be protected from all assault to its essential guarantees.

Sofie, 112 Wn.2d at 656. Article I, section 21 "preserves the right [to jury trial] as it existed in the territory at the time of its adoption." Mace, 98 Wn.2d at 96.

The difference in language suggests the drafters meant something different from the federal Bill of Rights. See State v. Hobbie, 126 Wn.2d 283, 298, 892 P.2d 85 (1995) ("The right to trial by jury under the

³ In Sofie v. Fibreboard Corp., a majority of state Supreme Court justices viewed this allocation of political power to the citizens as a limit on the power of the legislature. 112 Wn.2d 636, 650-53, 771 P.2d 711, 780 P.2d 260 (1989). Two of the dissenting members of the court acknowledged the allocation of power, but interpreted it rather as a limit on the power of the judiciary. Sofie, 112 Wn.2d at 676 (Callow, C.J., joined by Dolliver, J., dissenting).

Washington State Constitution is not coextensive with the federal right."); Hon. Robert F. Utter, Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights, 7 U. Puget Sound L. Rev. 491, 515 (1984) (Utter).

The framers added other constitutional protections to this right. A court is not permitted to convey to the jury its own impression of the evidence. Const. art. IV, § 16.⁴ The federal constitution contains no such prohibition. State v. Levy, 156 Wn.2d 709, 725, 132 P.3d 1076, 1084 (2006). Furthermore, even a witness may not invade the province of the jury. State v. Black, 109 Wn.2d 336, 350, 745 P.2d 12 (1987). The right to jury trial is also protected by the due process clause of article I, section 3.

While this Court in Meggyesy may have been correct when it found there is no specific constitutional language that addresses this precise issue, what language there is indicates the right to a jury trial is so fundamental that any infringement violates the constitution.

⁴ "Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law."

3. State Constitutional and Common Law History

Washington based its Declaration of Rights on the Bills of Rights of other states, which relied on common law and not the federal constitution. This difference supports an independent reading of the Washington Constitution.

4. Preexisting State Law

Since article I, section 21, "preserves the right [to jury trial] as it existed in the territory at the time of its adoption," it is helpful to look at the preexisting state law. Sofie, 112 Wn.2d at 645; Mace, 98 Wn.2d at 96. In Leonard v. Territory, the Supreme Court reversed a murder conviction and set out in some detail the jury instructions given in the case. 2 Wash. Terr. 381, 7 Pac. 872 (1885). The language of those instructions provides a view of the law before the adoption of the Constitution:

If you find the facts necessary to establish the guilt of defendant proven to the certainty above stated, then you *may* find him guilty of such a degree of crime as the facts so found show him to have committed; but if you do not find such facts so proven, then you *must* acquit.

Leonard, 2 Wash. Terr. at 399 (emphasis added).

The courts thus acknowledged, and incorporated into the jury instructions, the threshold requirement that each element be proved beyond a reasonable doubt to permit a conviction; but any reasonable

doubt required an acquittal. Because this was the law regarding the scope of the jury's authority at the time of the adoption of the Constitution, it was incorporated into Const. art. I, § 21, and remains inviolate. Sofie, 112 Wn.2d at 656; Mace, 98 Wn.2d at 93, 96.

This Court distinguished Leonard on the basis that the Leonard court "simply quoted the relevant instruction. . . ." Meggyesy, 90 Wn. App. at 703. This missed the point; Leonard suggests that at the time the Constitution was adopted, courts instructed juries using the permissive "may" as opposed to the current practice of requiring the jury to make a finding of guilt.

5. Differences in Federal and State Constitutions' Structure

State constitutions were originally intended to be the primary devices to protect individual rights, with the United States Constitution a secondary layer of protection. Utter, 7 U. Puget Sound L. Rev. at 497; Hon. Robert F. Utter & Sanford E. Pitler, "Presenting a State Constitutional Argument: Comment on Theory and Technique," 20 Ind. L. Rev. 635, 636 (1987). Accordingly, state constitutions were intended to give broader protection than the federal constitution. An independent interpretation is necessary to accomplish this end. "An analysis of the differences in structure supports an independent state constitutional

analysis in every case." State v. Foster, 135 Wn.2d 441, 458, 957 P.2d 712 (1998).

It is evident, therefore, that the "inviolable" Washington right to trial by jury was more extensive than that which was protected by the federal constitution when it was adopted in 1789. Mace, 98 Wn.2d at 99.

6. Matters of Particular State Interest or Local Concern

Criminal law is a local matter. State v. Russell, 125 Wn.2d 24, 61, 882 P.2d 747 (1994), cert. denied, 514 U.S. 1129 (1995). There is no need for national uniformity in criminal law. Until the Fourteenth Amendment was interpreted to apply the federal Bill of Rights in state court proceedings, all matters of criminal procedure were considered a matter of state law. See, e.g., Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963); State v. Gibbons, 118 Wash. 171, 203 P. 390 (1922).

7. Jury's Power to Acquit

A court may never direct a verdict of guilty in a criminal case. State v. Holmes, 68 Wash. 7, 12-13, 122 P. 345 (1912); United States v. Garaway, 425 F.2d 185 (9th Cir. 1970). If a court improperly withdraws a particular issue from the jury's consideration, it may deny the defendant the right to jury trial. United States v. Gaudin, 515 U.S. 506, 115 S. Ct.

2310, 132 L. Ed. 2d 444 (1995) (improper to withdraw issue of "materiality" of false statement from jury's consideration); see Allen v. State, 192 Md.App. 625, 640-48, 995 A.2d 1013 (2010) (government may not use collateral estoppel to establish an element of the crime).

The constitutional protections against double jeopardy also safeguard the right to a jury trial by prohibiting a retrial after a verdict of acquittal. U.S. Const. amend. 5; Const. art. I, § 9.⁵ A jury verdict of not guilty is thus nonreviewable.

Also well established is "the principle of noncoercion of jurors," established in Bushell's Case, Vaughan 135, 124 Eng. Rep. 1006 (1671). Edward Bushell was a juror in the prosecution of William Penn for unlawful assembly and disturbing the peace. When the jury refused to convict, the court fined the jurors for disregarding the evidence and the court's instructions. Bushell was imprisoned for refusing to pay the fine. In issuing a writ of habeas corpus for his release, Chief Justice Vaughan declared that judges could neither punish nor threaten to punish jurors for their verdicts. Albert W. Alschuler & Andrew G. Deiss, A Brief History of Criminal Jury in the United States, 61 U. Chi. L. Rev. 867, 912-13 (1994).

⁵ "No person shall be . . . twice put in jeopardy for the same offense."

If there is no ability to review a jury verdict of acquittal, no authority to direct a guilty verdict, and no authority to coerce a jury in its decision, there can be no "duty to return a verdict of guilty." Indeed, there is no authority in law that suggests such a duty.⁶

We recognize, as appellants urge, the undisputed power of the jury to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence. This is a power that must exist as long as we adhere to the general verdict in criminal cases, for the courts cannot search the minds of the jurors to find the basis upon which they judge. If the jury feels that the law under which the defendant is accused is unjust, or that exigent circumstances justified the actions of the accused, or for any reason which appeals to their logic or passion, the jury has the power to acquit, and the courts must abide by that decision.

United States v. Moylan, 417 F.2d 1002, 1006 (4th Cir. 1969), cert. denied, 397 U.S. 910 (1970).

Washington courts have also recognized that a jury may always vote to acquit. A judge cannot direct a verdict for the state because this would ignore "the jury's prerogative to acquit against the evidence,

⁶ Baldwin did not make this argument to the trial court. He may nevertheless raise it for the first time on appeal as an issue of constitutional magnitude. RAP 2.5(a)(3); State v. Scott, 110 Wn.2d 682, 688, 757 P.2d 492 (1988); State v. Byrd, 72 Wn. App. 774, 782, 868 P.2d 158 (1994) (failure to instruct jury that defendant charged with second degree assault must intend to cause apprehension in the victim may be challenged for first time on appeal), affirmed, 125 Wn. 2d 707, 887 P.2d 396 (1995).

sometimes referred to as the jury's pardon or veto power." State v. Primrose, 32 Wn. App. 1, 4, 645 P.2d 714 (1982). See also Hartigan v. Washington Territory, 1 Wash. Terr. 447, 449 (1874) ("[T]he jury may find a general verdict compounded of law and fact, and if it is for the defendant, and is plainly contrary to the law, either from mistake or a willful disregard of the law, there is no remedy."); State v. Salazar, 59 Wn. App. 202, 211, 796 P.2d 773 (1990) (relying on jury's "constitutional prerogative to acquit" as basis for upholding admission of evidence).

This is not to say there is a right to instruct a jury that it may disregard the law in reaching its verdict. See, e.g., United States v. Powell, 955 F.2d 1206, 1213 (9th Cir. 1991) (refusing to give jury nullification instruction). However, if the court may not tell the jury it may disregard the law, it is at least equally wrong for the court to direct the jury that it has a duty to return a verdict of guilty if it finds certain facts to be proved.

8. Scope of Jury's Role Regarding Fact and Law

Although a jury may not strictly determine what the law is, it does have a role in applying the law of the case that goes beyond mere fact-finding. In Gaudin, the Court rejected limiting the jury's role to merely finding facts. Gaudin, 515 U.S. at 514-15. The jury's role has historically

never been so limited: "[O]ur decision in no way undermined the historical and constitutionally guaranteed right of a criminal defendant to demand that the jury decide guilt or innocence on every issue, which includes application of the law to the facts." *Id.* at 514.

Professor Wigmore described the roles of the law and the jury in our system:

Law and Justice are from time to time inevitably in conflict. That is because law is a general rule (even the stated exceptions to the rules are general exceptions); while justice is the fairness of this precise case under all its circumstances. And as a rule of law only takes account of broadly typical conditions, and is aimed at average results, law and justice every so often do not coincide. . . . We want justice, and we think we are going to get it through "the law" and when we do not, we blame the law. Now this is where the jury comes in. The jury, in the privacy of its retirement, adjusts the general rule of law to the justice of the particular case. Thus the odium of inflexible rules of law is avoided, and popular satisfaction is preserved. . . . That is what a jury trial does. It supplies that flexibility of legal rules which is essential to justice and popular contentment. . . . The jury, and the secrecy of the jury room, are the indispensable elements in popular justice.

John H. Wigmore, "A Program for the Trial of Jury Trial," 12 *Am. Jud. Soc.* 166 (1929).

Furthermore, if such a "duty" to convict existed, the law lacks any method of enforcing it. If a jury acquits, the case is over, the charge dismissed, and there is no further review. In contrast, if a jury convicts

when the evidence is insufficient, the court has a legally enforceable duty to reverse the conviction or enter a judgment of acquittal notwithstanding the verdict. Jackson v. Virginia, 443 U.S. 307, 318-20, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). See State v. Green, 94 Wn.2d 216, 233, 616 P.2d 628 (1980) ("Having determined there is not sufficient evidence to support the kidnapping element, the cause must be remanded for new trial[.]").

Thus, a legal "threshold" exists before a jury may convict. A guilty verdict in a case that does not meet this evidentiary threshold is contrary to law and will be reversed. The "duty" to return a verdict of not guilty, therefore, is genuine and enforceable by law. A jury must return a verdict of not guilty if there is a reasonable doubt; however, it may return a verdict of guilty if, and only if, it finds every element proven beyond a reasonable doubt.

The instructions given in Baldwin's case did not contain a correct statement of the law. They provided a level of coercion for the jury to return a guilty verdict. When the trial court instructed the jury it had a duty to return a verdict of guilty based merely on finding certain facts, the court took from the jury its constitutional authority to apply the law to the facts to reach its general verdict. The instructions creating a "duty" to

return a verdict of guilty were an incorrect statement of law and violated Baldwin's right to a jury trial as to both counts.

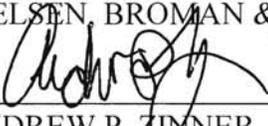
D. CONCLUSION

For the above reasons, this Court should reverse Baldwin's conviction and remand for a new trial.

DATED this 15 day of August, 2013.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 69717-0-1
)	
PHILLIP BALDWIN,)	
)	
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 14TH DAY OF AUGUST 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] PHILLIP BALDWIN
DOC NO. 361750
AIRWAY HEIGHTS CORRECTIONS CENTER
P.O. BOX 1899
AIRWAY HEIGHTS, WA 99001

SIGNED IN SEATTLE WASHINGTON, THIS 14TH DAY OF AUGUST 2013.

x Patrick Mayovsky

2013 AUG 15 PM 4:10
COURT OF APPEALS
STATE OF WASHINGTON
K