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DEC 23 2013

King County Prosecutor  
Appellate Unit

NO. 69963-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

PAOLO GALEAZZI,

Appellant.

FILED  
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STATE OF WASHINGTON  
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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Andrea Darvas, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE COURT ABUSED ITS DISCRETION IN DENYING GALEAZZI'S MOTION TO WITHDRAW HIS GUILTY PLEA BECAUSE IT FAILED TO APPLY THE CORRECT BURDEN OF PROOF TO THE CONDITIONAL LANGUAGE OF THE PLEA AGREEMENT.

The State argues the plea agreement “advises Galeazzi that criminal conduct resulting in arrest will jeopardize the sentencing recommendation contained in the plea agreement even if charges have not been filed or a conviction has not been entered.” Brief of Respondent (BoR) at 10. This is incorrect. The agreement specifies that the recommendation may increase if he “commits” any new crimes whether charged or not, but it does not say what amount of proof will be necessary to determine whether or not he committed a new crime. ICP 33; 2CP 34. As is frequently stated in jury instructions, the mere fact of arrest is not proof. State v. Archie, 148 Wn. App. 198, 203, 199 P.3d 1005 (2009) (presumption of innocence serves to admonish jury that guilt may not be determined based on fact of arrest) (quoting Bell v. Wolfish, 441 U.S. 520, 533, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)). Nothing in the plea agreement states that it should be taken as such.

The State argues it was also permitted to increase its recommendation because this new crime constituted a “new law violation” and therefore violated the conditions of his release. BoR at 11 n. 7. Whether

or not Galeazzi committed the crime, thereby violating the conditions of his release, is subject to the same questions of proof and does not affect the arguments made in this appeal.

The State argues Galeazzi understood the recommendation would be increased if he committed new crimes. BoR at 12 (citing 3RP 6). This is correct, as far as it goes. But nothing in the plea colloquy discussed what level of proof would be necessary to establish, under the plea agreement, that he had, in fact, committed a new crime.

Basic principles of contract law, however, do establish a burden of proof for a condition subsequent contained in contractual language: namely, preponderance of the evidence. Colorado Structures, Inc. v. Ins. Co. of the West, 161 Wn.2d 577, 588, 167 P.3d 1125 (2007); Allstate Ins. Co. v. Huston, 123 Wn. App. 530, 543, 94 P.3d 358 (2004). The court failed to apply the correct burden of proof of the “new crimes” condition and, thereby, abused its discretion in denying Galeazzi’s motion to withdraw his guilty plea. State v. Adamy, 151 Wn. App. 583, 587, 213 P.3d 627 (2009).

B. CONCLUSION

For the foregoing reasons, and for the reasons stated in the opening Brief of Appellant, Galeazzi requests this Court reverse his convictions and the order denying his motion to withdraw his guilty plea.

DATED this 23<sup>rd</sup> day of December, 2013.

Respectfully submitted,

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