No. 68815-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

PETER JAMES CARR,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

1. **Mr. Carr's conviction for child molestation in the first degree must be dismissed because the State did not prove the element of sexual gratification beyond a reasonable doubt.**

Mr. Carr challenges his conviction for child molestation in the first degree on the grounds that the State did not prove the elements of the crime beyond a reasonable doubt. Brief of Appellant (BOA) at 10-16. On appeal, the standard of review requires this Court to view the evidence in the light most favorable to the prosecution. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). Reasonable inferences from the evidence are drawn in favor of the State. Id.

Mr. Carr testified did not touch ML, and he offered an alibi defense. RP 3/29/12 RP 893-94; 4/2/12 RP 13; Ex. 56. Given the standard of review, however, he challenged the conviction on the grounds that the State did not prove beyond a reasonable doubt that he had contact with a sexual part of M.L.'s body for the purpose of sexual gratification. Brief of Appellant (BOA) at 10-16. Appellate counsel refers to the person who touched ML as Mr. Carr in light of ML's identification of him, but does not abandon Mr. Carr's position that he was not that person. See BOA at 11 n.3.

a. Mr. Carr had an alibi for the dates the incident most likely occurred. In the information, the State alleged that the crime occurred between June 1 and June 10, 2011, but midtrial amended the information midtrial to extend the timeline to June 14, 2011. CP 1, 47. During the course of the pre-trial hearings and trial, defense counsel attempted to establish the date upon which the incident occurred.

At trial, ML's mother was certain it happened on a Saturday before June 17 between 11:30 AM and noon. 3/21/12 RP 238-39; 3/26/12 RP 412, 424-25. This was consistent with testimony that incident happened during the school year, the family never went to the thrift store during school hours ML was in school every day in June until school ended on June 15, the store was not open on Sundays. 3/21/12 RP 235, 238-39, 249; 3/26/12 RP 459, 474; 3/27/12 RP 575; 4/2/12 RP 3-4; Ex 59.

Mr. Carr worked at the SeaTac MasterPark, where he valeted cars and drove the shuttle bus. 3/29/12 RP 895. On the two Saturdays before June 17 – June 4 and June 11 – Mr. Carr worked from approximately 5:00 AM to 2:00 PM. Id. 3/29/12 RP 893; 4/2/12 RP 31-32; Ex. 56.

The State appears to suggest that Mr. Carr could have gone to Deseret Industries on a lunch break, but the record does not establish that the thrift store was close to the SeaTac airport. Brief of Respondent (BOR) at 9 (citing 4/2/12 RP 7, which establishes that Deseret Industries

was close to Mr. Carr's home, not his place of employment). Mr. Carr's home was a 20 to 30 minute car ride from his job, suggesting Mr. Carr could not get to the thrift store and back on a break from work, where he needed to be available when needed. 3/29/12 RP 894; 4/2/12 RP 34. Moreover, Mr. Carr wore a uniform at work with tan pants and a yellow shirt, whereas ML said the man was wearing a green shirt with stripes and black pants. 3/7/12 RP 550-51; 4/2/12 RP 34.

b. The State did not prove beyond a reasonable doubt that the touching was for purposes of sexual gratification. A person is guilty of first degree child molestation if he has sexual contact with another person who is less than 12 years of age, the defendant is at least 36 months older than the other person, and the two are not married. RCW 9A.44.083(1). "Sexual contact" is defined as "[a]ny touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third person." RCW 9A.44.010(2)

Courts interpreting the definition of sexual contact have not limited it to direct contact, but have including the touching of a sexual or intimate part of another person through clothing. State v. Camarillo, 115 Wn.2d 60, 69, 794 P.2d 850 (1999); State v. Harstad, 153 Wn. App. 10, 22-23, 218 P.3d 624 (2009); State v Powell, 62 Wn. App. 914, 917, 816 P.2d 86 (1991), rev. denied, 118 Wn.2d 1013 (1992). The circumstances of the

case, however, must prove that the touching was for purposes of sexual gratification. The Powell Court explained:

> Proof that an unrelated adult with no care-taking function has touched the intimate parts of a child supports the inference the touching was for the purpose of sexual gratification. However, in those cases in which the evidence shows touching through clothing, or touching of intimate parts of the body other than the primary erogenous areas, the courts have required some additional evidence of sexual gratification.

Powell, 62 Wn. App. at 917 (citations omitted).

The State suggests that the reasoning of Powell, a Division 2 case, was rejected by this Court in State v. Veliz, 76 Wn. App. 775, 888 P.2d 189 (1995). BOR at 17. The State is incorrect. The Veliz Court held that Powell, a precedential case holding that certain evidence was not sufficient to prove the sexual gratification required for sexual contact, does not entitle a defendant to a specific jury instruction that the jury must find addition evidence of sexual gratification when touching is through closing. Veliz, 76 Wn. App. at 778. Veliz is cited for this proposition in a footnote in the Ninth Circuit case also cited by the State. Norris v. Morgan, 622 F.3d 1276, 1293 n.20 (9th Cir. 2010), cert. denied, 131 S. CT. 1557 (2011). Contrary to the State's argument, the Veliz Court agreed with Powell's reasoning. Veliz, 76 Wn. App. at 778.

The State claims that Mr. Carr "rubbed his palm back and forth" on [ML's] breast." BOR at 17; see Id. at 4-6, 13. This is incorrect. ML said Mr. Carr's hand brushed the left side of her chest over her clothing one time, lasting about a second. Ex. 4 at 11:51:32, 11:53:08, 11:53:43, 11:53:49, 11:54:15; Ex. 3 at 7, 9-10; 3/27/12 RP 584-85. The State points out that ML agreed when the deputy prosecuting attorney described the action as "rubbing." BOR at 6 (citing 3/27/12 RP 545-46). The verb "to rub," however, connotes a back and forth movement with pressure. Webster's Third New International Dictionary at 1983 (1993); Dictionary.com (based upon Random House Dictionary (2013)).[1]

In the recorded interview with the child interview specialist, ML showed how the man touched her five times. Each time she quickly ran her hand over her upper chest, barely touching it. ML's older sister Angelina chose the word "swipe" to describe what ML demonstrated in her presence. 3/26/12 RP 472, 507-08. ML's demonstrated is like the "swipe" of a magnetic card through a machine that reads data, but without the needed pressure. See Dictionary.com.[2] The State did not prove that Mr. Carr rubbed ML's chest.

[1] http://dictionary.reference.com/browse/rub?s=t (last viewed 11/25/13).
[2] http://dcisitonary.reference.com/browe/swipe?s=t (last viewed 11/25/13).

In addition, ML said the man was not looking at her, making it more likely that the brief contact was accidental. 3/27/12 RP 576. Although ML said she believed Mr. Carr did it on purpose, she did not know why she believed this. 3/27/12 RP 572-73. The State thus did not prove beyond a reasonable doubt the fleeting touch of ML's chest was for purposes of sexual gratification.

The State argues that "the circumstances of this secret touching by a stranger" establish that the touching was for sexual gratification. BOR at 13. The touching was not "secret." It occurred in a public place – a suburban thrift store on a Saturday. While the record does not explain how busy the store was that day, it is clear that 50 people worked at the Deseret Industries location. 3/27/12 RP 608. The store was equipped with multiple security cameras, and the racks were low enough that Mrs. Lopez, who is not tall, could look see over them. 3/21/12 RP 185; 3/22/12 RP 298. The location of the brief touch does not establish it was for purposes of sexual gratification.

c. Mr. Carr's conviction for child molestation must be reversed. The State did not prove beyond a reasonable doubt that the fleeting touch over clothing was for purposes of sexual gratification. Mr. Carr's conviction must be reversed and dismissed.

2. **Mr. Carr's conviction for communicating with a minor for immoral purposes must be dismissed because the State did not prove beyond a reasonable doubt the communication was for an immoral sexual purpose.**

In order to convict Mr. Carr of communicating with a minor for immoral purposes, the State was required to prove beyond a reasonable doubt that he communicated with a minor with words or actions "with the predatory purpose of promoting [a minor's] exposure to and involvement in sexual misconduct." State v. McNallie, 120 Wn.2d 925, 933, 846 P.2d 1358 (1993); RCW 9.68A.090(1). Mr. Carr's conduct was not designed to involve K.W. in sexual misconduct, and his conviction for communicating with a minor for immoral purposes must be therefore be reversed.

In arguing that sufficient evidence supports Mr. Carr's conviction for communicating with a minor for immoral purposes, the State misstates the evidence. The State claims that Mr. Carr contacted KW in the girls section of Goodwill and then followed her around the store. BOR at 20. KW, however, testified that a man was standing and looking at a garment when she went to the girls' clothing section. 3/28/12 RP 688-89. She did not testify that the man was following her. 3/28/12 RP 692-93. In fact, the man was about ten feet away from her and in front of her when she observed that his pants were slightly down. 3/28/12 RP 694, 697.

The State also asserts that Mr. Carr "displayed his genitalia" encased in a pink women's swim suit. BOR at 20. KW related only that she could see the man's pink bikini bottom for a few seconds, and she did not mention noticing his genitalia. 3/28/12 RP 696-97, 701, 706; Ex. 6 at 9. She said the man was "scratching his butt," and he was not looking at her. 3/28/12 RP 708. Mr. Carr was wearing a long green polo shirt that would have covered much of his body. Ex. 6 at 13, Ex. 39, Ex. 33.

It is also important to note that this occurred in a public store within view of other people. There were other shoppers nearby, and KW could see her mother, who was never more than 20 feet away. 3/28/12 RP 689, 699. Another person also walked by. Ex. 6 at 13. The racks of clothing in that area were low so that Ms. Wolf could see her daughter, and the Goodwill Store had security cameras. 3/28/12 RP 634-36, 649, 669.

In his opening brief, Mr. Carr pointed out that children may view a man's underwear in various settings in our society and that fashionable men's wear may be hot pink. BOA at 21-22. In response, the State claims that this argument was rejected by the Supreme Court in Hosier, 157 Wn.2d at 13-14. BOR at 21. The State's argument misstates Hosier's reasoning. In Hosier, the defendant placed a pair of girl's hot pink underpants in a chain link fence at a children's playground at a child's eye

level. Id. at 4. Messages fantasizing about sexual contact with a 7-year-old girl were written on the underpants with a dark marker. Id. Rejecting Hosier's argument that the children who found the underpants were too young to read and thus could not understand the sexual content of the notes, the court found that the victim need not understand the sexual nature of the communication. Id. at 13.

The Court went on to note that Hosier's communication included "using little girl's underpants, bright pink in color to attract children." Hosier, 157 Wn.2d at 13. Thus, it was the combination of the words and underpants that demonstrated the defendant's intent. Id. "The conduct of placing attractive and sexual objected directed at children, combined with the sexual message written in black marker and plainly visible, illustrates Hosier's overall intent: to convince a young girl to take off her underwear to engage in sexual misconduct." Id. In short, the color of the underwear was not the sole basis for upholding Hosier's conviction, nor does Hosier stand for the proposition that that the color pink is necessarily designed to attract young children.

Mr. Carr did not speak or write any words that indicated an intent to encourage KW to engage in sexual conduct. Looking at girls' clothing and briefly exposing a swimsuit beneath your pants, even a pink one, in a public place does not expose or involve children in sexual misconduct.

The State did not prove beyond a reasonable doubt that Mr. Carr communicated with KW for immoral purposes, and his conviction must be reversed.

3. **The communicating with a minor for immoral purposes statute is unconstitutionally vague as applied to Mr. Carr's conduct.**

The Washington Supreme Court upheld the communication with a minor for immoral purposes statute from a challenges that it is unconstitutionally vague on its face, finding it prohibits "any spoken word or course of conduct with a minor for purposes of sexual misconduct." State v. Schimmelpfennig, 92 Wn.2d 95, 105, 594 P.2d 442 (1979). The statute is interpreted to prohibit communication with "the predatory purpose of promoting [children's] exposure to and involvement in sexual misconduct." McNallie, 120 Wn.2d at 931-32. Mr. Carr argues that the statute is unconstitutionally vague only as applied to his conduct. BOA at 22-26.

Due process requires that statutes provide people of ordinary intelligence fair notice of what is prohibited and provide ascertainable standards of guilt to protect against arbitrary enforcement. United States v. Williams, 553 U.S. 285, 304, 128 S. Ct. 1830, 1845, 170 L. Ed. 2d 650 (2008). A person of ordinary intelligence, however, would not understand that talking to a child about a garment in a store or briefly exposing your

underwear in public is communication with the predatory purpose of promoting the child's exposure to or involvement in sexual misconduct.

The jury was instructed it could convict Mr. Carr it they found he communicated with KW "for immoral purposes of a sexual nature." CP 63. The jury was obviously unsure of the meaning of this term, as it requested a definition of this term from the court, but was never told the statute required a predatory purpose of exposing or involving a child in sexual misconduct.[3] CP 142-43. In addition, the prosecutor argued that Mr. Carr could be convicted for merely showing his undergarment in a public store. 4/3/12 RP 42. The State counters that the jury question did not even demonstrate "confusion" about the term, but has no response to how the prosecutor, a persons of ordinary understanding, could so broadly interpret the statute. BOR at 15-26.

The State's argument that the communication with a minor statute is not vague as applied to Mr. Carr's conduct relies upon misstatements of the evidence. Mr. Carr did not say anything sexual to MW, he did not follow her, and his underwear was exposed for only a brief second or two when his sweat pants were part-way down. The communication with a

[3] The court responded that there was no legal definition, the jury should rely on its common understanding of the term and could not look to a dictionary for assistance. CP 143.

minor for immoral purposes is unconstitutionally vague as applied to his conduct.

4. **Mr. Carr did not receive the effective assistance of counsel guaranteed by the federal and state constitutions.**

Severance of charges is important whenever there is a risk that the jury will use evidence of one crime to inter guilt for another or a general criminal propensity. State v. Sutherby, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). The joinder of charges can be particularly prejudicial when the alleged crimes are sexual in nature." Id. at 884. There was no possible advantage to Mr. Carr in having the charges of child molestation in the first degree and communication with a minor for immoral purposes tried together. His attorney was therefore ineffective for failing to renew his motion to severe the two offense as required by CrR 4.4(a)(2). State v. McDonald, 122 Wn. App. 804, 814, 95 P.3d 1248 (2004), rev. denied, 153 Wn.2d 1006 (2005).

In reviewing a claim of ineffective of assistance of counsel, the appellate court determines (1) if defense counsel's performance fell below objective standards of reasonable representation, and, if so, (2) whether counsel's deficient performance prejudice the defendant. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Sutherby, 165 Wn.2d at 883. Addressing the first prong, the

prosecutor argues that counsel's failure to renew the motion to sever counts was within standards of reasonable representation because there was no tactic reason to renew a motion that had been denied. BOR at 30. The fact that the motion had been denied before, however, does not establish the decision was tactical.

With live child and adult witnesses, the facts elicited at a criminal trial may differ from those anticipated pre-trial. Here, for example, KW did not identify Mr. Carr in court as the person she saw in the thrift store in Count 2. 3/28/12 RP 708. And Mrs. Lopez for the first time narrowed the dates upon which Count I occurred. 3/26/12 RP 424-25. This combination required Mr. Carr to raise an alibi defense to Count 1 and, in contrast, admit he was the person in the store for Count 2. In addition, Mr. Carr testified about cross-dressing with women's bathing suits in defending against Count 2, and the prosecutor used that against Mr. Carr for both counts, arguing it showed he was secretive and deceitful.[4] 4/3/12 RP 20. A motion to sever was thus appropriate at the close of the State's case and at the conclusion of all of the evidence.

[4] The prosecutor argued that Mr. Carr "has the secret about himself that he kept from his closest friends, people he has known all his life. He knows how to keep things from people, he knows how to deceive people. . . . He thought he could pull the wool over your eyes." 4/3/12 RP 20.

Effective defense counsel would have been aware of the CrR 4.4 requirement that severance be renewed and aware of the great prejudice to Mr. Carr and his defense by trying the two counts together. Defense counsel's performance was deficient.

In order to show prejudice when counsel fails to move for severance or renew a severance motion, the defendant must show that (1) the motion likely would have been granted and (2) there is a reasonable probability the jury would not have found him guilty beyond a reasonable doubt if counts had been tried separately. Sutherby, 165 Wn.2d at 884. The only unifying characteristics of the two counts in this case were that they occurred in thrift stores and the alleged victims were 8-year-old girls. Yet the evidence of each count was used to support the mental element of the other.

Mr. Carr argued in his opening brief that the evidence of the two counts were not admissible against the other under ER 404(b). BOA at 33-40. Instead of responding to Mr. Carr's argument, the State simply asserts that Mr. Carr cannot challenge the court's pre-trial ruling denying his motion to sever and the facts of the case had not significantly changed since that ruling. BOR at 32-34. Defense counsel's waiver of a challenge to the court's denial of his motion to sever does not excuse the appellate court from reviewing the cross-admissibility of the evidence in ruling on

Mr. Carr's ineffective assistance of counsel claim. See Sutherby, 165 Wn.2d at 886-87; State v. Price, 127 Wn. App. 193, 203-06, 110 P.3d 1171 (2005), aff'd, 158 Wn.2d 630, 146 P.3d 1183 (2006).

The State make no reference to ER 404(b) and cites no cases to support the trial court's ruling. Id. This court need not review an argument that is not supported by adequate briefing. RAP 10.3(a)(5), (b).

Mr. Carr's attorney should have known that he was waiving Mr. Carr's severance motion by failing to renew it, and his performance was thus deficient. Had Mr. Carr's attorney renewed the motion to sever the trial court Counts 1 and 2, it would have been granted, and the outcome of separate jury trials would have been different. Mr. Carr's convictions must be reversed and remanded for a trial with effective counsel.

5. **Prosecutorial misconduct in closing argument denied Mr. Carr a fair trial.**

In a criminal case, the prosecutor's office is obligated to ensure the defendant receives a fair trial and must therefore refrain from overzealous or improper statements in closing argument. State v. Reed, 102 Wn.2d 140, 146-49, 684 P.2d 699 (1984). The prosecutor committed misconduct in closing argument by misstating the State's burden of proof, using emotionally-charged language that at misrepresented the facts of the case, and making arguments that appealed to their fears and prejudices about

sex offenders. The misconduct was so flagrant and ill-intentioned that Mr. Carr's convictions must be reversed.

First, it is misconduct for the prosecutor to argue to the jury in a manner that removes or reduces its high burden of proof of every element of the crime beyond a reasonable doubt. State v. Warren, 165 Wn.2d 17, 26-27, 195 P.3d 940 (2008), cert. denied, 556 U.S. 1192 (2009). In discussing the burden of proof beyond a reasonable doubt, the prosecutor in Mr. Carr's argued that the jury had to convict if it believed ML and KW:

> If, as you sit in that deliberation room, you can say, "I believe M[.] or I believe K[.] that is enough to end your inquiry. That is enough to convict the defendant.

4/3/12 RP 25. At a break the trial court cautioned the prosecutor that she was misstating the burden of proof, because the jury could believe one side or the other and still have a reasonable doubt. Id. at 39.

The State argues that the comment was not improper in context of the prosecutor's entire argument and the court's instruction and the prosecutor did not go so far as to tell the jury it could only acquit the defendant if it believed the State's witnesses were lying. BOR at 45-48. The point, however, is that the jury could believe both ML and KW and still believe the State had not met its burden of proof. The prosecutor mislead the jury and misstated the burden of proof.

Second, a prosecutor may not misstate the evidence or appeal to the passions and prejudices of the jury in closing argument. State v. Belgarde, 110 Wn.2d 504, 508-10, 755 P.2d 174 (1988). Mr. Carr argues the prosecutor committed misconduct in closing argument by using key words that exaggerated the evidence and made a lengthy argument about Mr. Carr's motivations as if she could read Mr. Carr's mind. BOA at 45-48. The State argues the prosecutor fairly characterized the evidence presented at trial and made reasonable inferences from that evidence. BOR at 38-45.

The prosecutor, however, repeatedly argued that Mr. Carr "groped" ML's breast. 4/3/12 RP 4, 9, 11, 20, 42. One of the definitions of "grope" is to pass one's hands over another person "for the sake of sexual pleasure." Webster's Third New International Dictionary at 1002; accord Dictionary.com ("to touch or handle (someone) for sexual pleasure.")[5] As pointed out in argument A(1) above, a review of the evidence presented at trial shows that Mr. Carr did not "grope" ML's breast. This is especially obvious after a review of ML's interview with the child interview specialists, where she demonstrated several times how

[5] http://dictionary.reference.com/browse/group?s=t (last viewed 11/25/13)

she was touched several times. Ex. 4 at 11:51:32, 11:53:08, 11:53:49, 11:54:15.

The prosecutors also argued multiple times that Mr. Carr "exposed" his genitals to KW when she observed his underwear for a brief second. 4/3/12 RP 8, 9, 12, 18, 21, 42. The State attempts to excuse the use of the word "exposed" because the first time the prosecutor used the word she said he exposed his hot pink undergarment. BOR at 38-39 (citing 4/3/12 RP 8). But the prosecutor kept repeating the word without this qualifier, asserting that Mr. Carr got a thrill out of exposing his exposed his genitals to little girls. 4/3/12 RP 9, 42.

> . . . Going up and talking to K[.], that's evidence he likes little girls. Exposing himself to her, that is evidence that he likes little girls, and make no mistake, he exposed himself to her. . . . And when he pulled his pants down to show just her what he had on underneath. Yes, that means he exposed himself to her.

4/3/12 RP 42. The prosecutor's use of the emotionally-charged word "exposed" was a misstatement of the evidence that appealed to the juror's fears and was thus misconduct.

At the beginning of her argument, the prosecutor purported to explain Mr. Carr's thoughts to the jury, picturing him as a predator preying upon young girls 4/3/12 RP 3-9. The prosecutor claimed, for example, that Mr. Carr went to Deseret Industries to find a little girl, chose

ML because she spoke Spanish, and waited for the perfect opportunity to "claim his treasure" and then "slithered away." RP 3-4. The prosecutor also posited "how excited [Mr. Carr] must have been" when he found KW at the Goodwill store, having picked the store because of the low income clientele. RP 7-8. The prosecutor's mind-reading went far beyond drawing rational inferences from the evidence. By adding her baseless interpretation of Mr. Carr's mental state to depict Mr. Carr as a predator, the prosecutor crossed the line into misconduct.

"The prosecutor owes a duty to defendants to see that their rights to a constitutionally fair trial are not violated." State v. Monday, 171 Wn.2d 667, 676, 257 P.3d 551 (2011); accord Reed, 102 Wn.2d at 146-47. The prosecutor misstated the burden of proof, used words the exaggerated the facts of the case, and argued assumptions Mr. Carr's thoughts that were an improper appeal to the jury's fear and prejudice against child sex offenders. Given the emotional facts of this case, it is likely the prosecutor's misconduct affected the jury verdict. Mr. Carr's convictions must be reversed due to the misconduct in closing argument. Belgarde, 110 Wn.2d at 510; Reed, 102 Wn.2d at 145-47.

B. CONCLUSION

For the reasons stated above and in the Brief of Appellant, Mr. Carr's convictions for child molestation and communicating with a minor for immoral purposes must be reversed and dismissed because the State did not prove every element of the crime beyond a reasonable doubt. Mr. Carr's conviction for communicating with a minor for immoral purposes statute must also be reversed and dismissed because the statute is unconstitutionally vague as applied to his conduct.

In the alternative, the convictions must be reversed and remanded for separate trials because Mr. Carr was prejudiced by his attorney's failure to renew his severance motion and the prosecutor's misconduct in closing argument.

DATED this 25th day of November 2013.

Respectfully submitted,

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

STATE OF WASHINGTON, Respondent, v. PETER CARR, Appellant.	)))))))))	NO. 68815-4-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 25TH DAY OF NOVEMBER, 2013, I CAUSED THE ORIGINAL **REPLY 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] DONNA WISE, DPA KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] PETER CARR 357101 STAFFORD CREEK CORRECTIONS CENTER 191 CONSTANTINE WAY ABERDEEN, WA 98520	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 25TH DAY OF NOVEMBER, 2013.

X_____

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