NO. 31611-4-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ADRIAN SUTLEJ SAMALIA,

Appellant.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

Cases

TABLE OF AUTHORITIES (continued)

PAGE

TABLE OF AUTHORITIES (continued)

PAGE

TABLE OF AUTHORITIES (continued)

PAGE

Federal Cases

Rules and Statutes

I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant makes numerous assignments of error. These can be summarized as follows;

1. Was there sufficient evidence to convict Appellant of robbery?
2. Did the trial court improperly instruct the jury and additionally refuse an instruction proposed by Appellant?
3. Did the trial court improperly restrict cross-examination of witness Stacey Melton?
4. Did the trial court improperly deny a motion for mistrial based on an alleged improper comment by a testifying officer and misconduct by the State in closing argument? ”
5. Whether the courtroom was open to the public?
6. Cumulative error.

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. There was sufficient evidence to convict Appellant.
2. The instruction submitted to the jury were proper and the denial of Appellant’s proposed was proper.
3. The limitations on cross-examination of witness Stacey Melton was proper and within the discretion of the court.
4. The mistrial was properly denied.
5. The courtroom was not closed to the public.
6. There was no cumulative error.

II. STATEMENT OF THE CASE

The substantive and procedural facts have been adequately set forth in appellants brief therefore, pursuant to RAP 10.3(b); the State shall not set forth an additional facts section. The State shall refer to specific

sections of the record as needed. Certain sections shall also be set forth in the appendix to this document.

III. ARGUMENT

The evidence presented was more than sufficient to support the charges against Appellant. The instructions that were given to the jury by the trial court were proper, the court's denial of the instruction proposed by Appellant is supported by the record. There limitations imposed on cross-examination of Stacey Melton were well within the discretion of the trial court and once again supported by the facts. The comment made by Officer Taylor was invited by the hostile tactics of defense counsel, was objected to at the time it was made, struck from the record by the trial court and of no consequence in light of the overwhelming evidence presented. Because there was no supportable errors in this case there can be no claim that cumulative error occurred in this trial.

RESPONSE TO ISSUE ONE –
The trial court erred when it convicted Appellant of robbery; the court erred when it denied Appellant's motion to dismiss for insufficient evidence.

Appellant challenges the sufficiency of the evidence to support his conviction for robbery in the first degree. In reviewing a challenge to the sufficiency of the evidence, this court will view the evidence in a light most favorable to the State to determine whether any rational trier of fact

could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). A defendant claiming insufficiency admits the truth of the State's evidence and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The elements of a crime can be established by both direct and circumstantial evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). One is no less valuable than the other. There is sufficient evidence to support the conviction if a rational trier of fact could find each element of the crime proven beyond a reasonable doubt. Circumstantial evidence and direct evidence are equally reliable. State v. Dejarlais, 88 Wash. App. 297, 305, 944 P.2d 1110 (1997), *aff'd,* 136 Wash.2d 939, 969 P.2d 90 (1998).

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense." State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974). State v. Green, 94 Wn.2d 216,

221, 616 P.2d 628 (1980) The reviewing court need not "itself" be convinced beyond a reasonable doubt.

State v. Bucknell, 183 P.3d 1078, 1080 (2008) follows this line of cases and additionally indicated "Credibility determinations are within the sole province of the jury and are not subject to review." State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). Assessing discrepancies in trial testimony and the weighing of evidence are also within the sole province of the fact finder. State v. Longuskie, 59 Wn. App. 838, 844, 801 P.2d 1004 (1990)."

The facts establish that there were three individuals involved in this crime. Two went to the UPS truck, entered that truck and actually took packages. (RP 262-4, 289-92, 311, 383-5) And one, Samalia, armed himself before he left the car to go commit this theft. Samalia's counsel argued that Samalia was not pointing the gun at anyone he was merely taking it out of his pants pocket so that he could run better. (RP 534-5) If all that Samalia was going to do was steal a package, not rob someone, there would be no need for him to arm himself. By pure happenstance the driver and an employee from the business that the UPS truck was at came out at the time Samalia and Cliett were exiting the truck. Appellant and Cliett ran with the items they had just stolen, but the pursuit was catching up with them and Appellant dropped his package so that he could access

his weapon. (RP 263-5, 289-92, 383-5) Samalia pulled that weapon from this pants and aimed it at the two men who were giving chase. (RP 290-1) Appellant attempts to tailor this act into him merely abandoning his stolen package and pulling the gun so that it was easier to run and/or to deter the men chasing him from stopping his flight, flight alone. Samalia's claim is that the evidence was clear that he had ended the robbery merely by abandoning his stolen good. Samalia fails to address the fact that this was a joint effort, he was charged as a primary and as an accomplice. Therefore the actions of the other, Cliett, where Samalia's actions. By pulling out this gun and threatening the men pursing Samalia and Cliett it was abundantly clear that this furthered the robbery. Certainly it furthered the escape too and as the trial court stated on at least one occasion if there had only been one person involved in the robbery there was a probability that the court would have granted the requested instruction from State v. Johnson, infra, but that was not the case.

This line of logic would mean that a group could rob a bank and the armed individuals involved would merely need to be given some of the "loot" drop it then run weapon in hand. This according to the theory of Samalia would free them of the more significantly more harsh penalty imposed for a robbery than a theft. Clearly this was not the intent of the court's ruling in Johnson.

This was an ongoing crime, there was truly never a time when Appellant had terminated his involvement in this crime. He was not simply running he was defending Cliett and himself from apprehension. This was a continuous action where the UPS driver and the employee immediately confronted Samalia and Cliett. There was not a single second of time which would or could be said to he had abandon his active involvement in this robbery. The theory is dependent on the abandonment of the stolen item and the change in the intent of the party from the theft and robbery to purely flight, escape. That is not the case here.

State v. Johnson, 155 Wn. 2d 609, 121 P.3d 91 (2005) cited by Appellant is distinguishable. Johnson dropped the stolen property and was attempting to affect a getaway at the time he assaulted the other person. This case is factually very distinguishable in that the property was retained, albeit by the co-defendant, the process of the theft and the apprehension were still ongoing. The two victims were in pursuit the entire time, until they saw the weapon and fled. The testimony was there were mere seconds from the time Samalia and Cliett left the UPS truck and when the initial confrontation occurred. And here there is testimony that one package was retained by Cliett and that Samalia followed Cliett to

the getaway car and fled together. Samalia only abandon the robbery when he fled the car and threw the gun away. (RP 509-13)

This is not a case where Samalia took the stand and said I was done I dropped the stolen item and I just wanted to get away. He chose not to take the stand so the only testimony is that there was a continuous course and conduct by Samalia and Cliett from the time they stole the packages to the time the gun was draw to discourage those pursing to the accomplices jumping in the waiting getaway car driven by Cliett's companion, Ms. Melton. Cases which cite Johnson make it clear that abandonment of the property is essential, not just an escape.

First degree robbery occurs when a person inflicts bodily injury in the commission of a robbery or in immediate flight therefrom. RCW 9A.56.200(1)(iii). It requires a connection between the use of force and taking of the property. State v. Johnson, 155 Wn.2d 609, 611, 121 P.3d 91 (2005). Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. RCW 9A.56.190. To convict Samalia the jury had to find, beyond a reasonable doubt, that he or his accomplice, unlawfully took personal property and was armed with a deadly weapon; or displays what appears to be a firearm or other deadly weapon. The jury had to find that Appellant used force or fear to retain possession of the property or to overcome the victim's

resistance, the degree of force was unimportant. Id.; State v. Johnson, 155 Wn.2d 609, 610, 121 P.3d 91 (2005). The jury also had to find that Samalia and/or his companion intended to steal the packages State v. Kjorsvik, 117 Wn.2d 93, 98, 812 P.2d 86 (1991).

Johnson held that robbery occurs when a defendant either (1) uses force or threat of force to obtain property, (2) uses force or threat of force to retain property, or (3) uses force to overcome resistance to the taking of the property. Johnson, 155 Wash.2d at 611, 121 P.3d 91. Johnson is based on an earlier opinion State v. Handburgh, 119 Wash.2d 284, 830 P.2d 641 (1992). Handburgh articulated the legal principle that robbery occurs when a defendant uses force to retain possession of property, even if the defendant initially took the property peaceably or took it in the owner's absence. Handburgh, 119 Wash.2d at 293, 830 P.2d 641 Washington law has established that robbery requires a defendant's use or threat of force to relate to taking or to retaining another's property. Under this construction, Samalia is guilty of robbery if he confronted the victims and used force in an attempt to flee the area. This court should affirm this conviction because the evidence sufficiently supports this verdict.

State v. Johnson, supra, (citing RCW 9A.56.190). Any force or threatened force, however slight, is sufficient to sustain a robbery conviction. State v. O'Connell, 137 Wn. App. 81, 95, 152 P.3d 349 (2007)

The courts have gone so far as to say that a perpetrator who peacefully obtains the stolen property but uses violence during flight commits robbery. See State v. Manchester, 57 Wn.App. 765, 770, 790 P.2d 217 (1990). Once again," [t]he trier of fact is in a better position to resolve conflicts, weigh evidence, and draw reasonable inferences from the evidence. State v. Gerber, 28 Wn. App. 214, 216, 622 P.2d 888, review denied, 95 Wn.2d 1021 (1981)."

Appellant, the driver and Cliett used a car and fled the scene; flight is a factor that can be weighed by the jury. State v. Price, 126 Wn. App. 617, 645, 109 P.3d 27 (2005), review denied 155 Wn.2d 1018, 124 P.3d 659 (2005):

> Evidence of flight is generally admissible as tending to show guilt, but the inference of flight must be "substantial and real" not "speculative, conjectural, or fanciful." State v. Bruton, 66 Wn.2d 111, 112, 401 P.2d 340 (1965). The evidence must be sufficient so as to create a reasonable and substantive inference that defendant's departure from the scene was an instinctive or impulsive reaction to a consciousness of guilt or was a deliberate effort to evade arrest and prosecution. Bruton, 66 Wn.2d at 112-13.

The appellant's culpability is further supported by his actions when the car had been stopped and he continued to flee from the scene, he hid inside a nearby carport after purposefully abandoning the weapon, all in

the presence of a pursuing police officer. State v. McChristian, 158 Wn.App. 392, 400-01, 241 P.3d 468 (2010), review denied, 171 Wn.2d 1003, 249 P.3d 182 (2011):

> Washington's complicity statute, RCW 9A.08.020, provides that a person is guilty of a crime if he is an accomplice of the person that committed the crime. A person is an accomplice under the statute if, with knowledge that it will promote or facilitate the commission of the crime, he aids another person in committing it. RCW 9A.08.020. General knowledge by an accomplice that a principal intends to commit "a crime" does not impose strict liability for any and all offenses that follow. State v. Roberts, 142 Wash.2d 471, 513, 14 P.3d 713 (2000). Our Supreme Court has made clear, however, that an accomplice need not have knowledge of each element of the principal's crime to be convicted under RCW 9A.08.020; general knowledge of " the crime" is sufficient. Roberts, 142 Wash.2d at 513, 14 P.3d 713 (citing State v. Rice, 102 Wash.2d 120, 683 P.2d 199 (1984); State v. Davis, 101 Wash.2d 654, 682 P.2d 883 (1984)). " [A]n accomplice, having agreed to participate in a criminal act, runs the risk of having the primary actor exceed the scope of the preplanned illegality." Davis, 101 Wash.2d at 658, 682 P.2d 883. In other words, "an accused who is charged with assault in the first or second degree as an accomplice must have known generally that he was facilitating an assault, even if only a simple, misdemeanor level assault, and need not have known that the principal was going to use deadly force or that the principal was armed." In re Pers. Restraint of Sarausad, 109 Wash.App. 824, 836, 39 P.3d 308 (2001).

There was sufficient evidence to convict Appellant, therefore the court properly denied the motion to dismiss.

RESPONSE TO ISSUE TWO – Court erred by refusing to use Appellant's proposed jury instruction.

The jury instruction that was given is the instruction set forth in the WPIC's. WPIC 10.01 Intent—Intentionally—Definition A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime. The "Comment" with this instruction states as follows;

"This instruction is taken from the statutory language. In State v. Allen, 101 Wn.2d 355, 678 P.2d 798 (1984), the court stated that WPIC 10.01, if requested, must be given whenever intent is an element of the crime charged. The court in Allen held that it was reversible error to refuse to give the instruction when the defendant was charged with attempted second degree burglary.

In State v. Rice, 110 Wn.2d 577, 757 P.2d 889 (1988), the court held that the trial court did not err or violate the defendant's constitutional rights by giving WPIC 10.01 instead of the defendant's proposed instruction that more specifically defined the word "intent." Compare State v. Markham, 40 Wn.App. 75, 697 P.2d 263 (1985) (trial court did not err in not giving WPIC 10.01 in a prosecution for securities violations because the subject matter was adequately covered in other instructions.)"

A jury may infer that a defendant acted with intent even when there is no direct evidence. State v. Bea, 162 Wn.App. 570, 579, 254 P.3d 948 (2011) (citing State v. Caliguri, 99 Wn.2d 501, 506, 664 P.2d 466 (1983)). "A jury may infer criminal intent from a defendant's conduct where it is plainly indicated as a matter of logical probability. This includes inferring or permissibly presuming that a defendant intends the natural and probable consequences of his or her acts." Id. (citations omitted).

Appellant states in his brief at page 27-8;

> The instructions in this case were likewise misleading and deficient. Defense counsel attempted to remedy the problem so that the defendant could only be convicted if the jury found intent wherein "a known or expected result is also the actor's object of purpose." *Calliguri*, 99 Wn.2d 501; RP 487-88, 555-57, 574-75. But the court resisted defense counsel's efforts to clarify the necessary elements for robbery, even while seeming to acknowledge that the current instructions may allow the defendant to be convicted as an accomplice whether or not he knew the other individual retained the package when he pulled the weapon. (See trial court's discussion at RP 556-57)

This is an incorrect interpretation of the court's ruling. The one phrase this court should consider strongly is "seeming to acknowledge" because this adjective means;

> **Meriam-Webster's online dictionary - Full Definition of *SEEMING***

> **:** outwardly or superficially evident but not true or real <the *seeming* immortality of our heroes>
> **Oxford Dictionaries**
> **Adjective** 1 Appearing to be real or true, but not necessarily being so; apparent:

It may outwardly or superficially appear to Appellant that the judge is saying that there may be a conviction as stated in his brief. BUT that is not true or real when the court's ruling is read with an unbiased eye and in context:

> SCOTT: Ok. We'll take a look at them. Has the Court decided whether to give my intent instruction? Based on…
> JUDGE : You know I looked at that. It was in the context of a murder and I looked at the quote out of the paragraph in the case. And I'm inclined to just stick with the WPIC and not add that additional sentence.
> SCOTT: I understand Your Honor. I disagree with it, but I understand.
> JUDGE: No I understand.
> SCOTT: The WPICs are not approved by the Court. Or prepared by the Court. Instead they are prepared by a committee and submitted.
> JUDGE: Yeah.
> SCOTT: And the Courts often times say no that's not what…
> JUDGE: Well and I'm not doing it just for that purpose. I took a look at it and I just think it could add to some confusion more than clarity. Notwithstanding that it is admittedly an accurate verbatim quote out of that case. I'm just not sure that it…
> SCOTT: It's an accurate statement of the law. No one has ever argued otherwise. You know, I don't what the Court's hesitation, or the State's hesitation on it is. I know that the State's hesitation is just simply if it's not WPIC, we object. But beyond that I don't know of any….

JUDGE: Well, that wasn't my hesitation.
SCOTT: No, no, no. But that is the State's hesitation. The State always says if it's not WPIC, we object. And that's that. But the Court's much more thoughtful about it than that. And the concern that the Court has. I'm not sure how it is more confusing. It I think adds clarity that the intent has to be something that is more than just by accident. I think that the normal intent and in this case it becomes very important. Because when we are talking about the accomplis (**sic –There are innumerable typographical errors throughout this transcript. The word "accomplice" is, on most occasions, spelled "accomplis" throughout.)** theory you can't simply schlep this through. The person acts with intent or intentionally when acting with objective or purpose to accomplish a result. It constitutes a crime, as in WPIC. But in this case with the accomplis theory. And the very precise nature of that, it requires that the intent not be a result that happens to be a crime. But the crime has to be the intent. And that's why the intent exists only if a known or expected result is also the actor's objective or purpose. It's not by accident. But if you don't put that in there then it allows it by accident.
JUDGE: And it would be…
SCOTT: And it allows the State to argue that, "Well you know whether he knew or not. It doesn't matter ladies and gentlemen. If the guy was taking a box and he shows a firearm. Tough." That's all it takes. That's the result. That's what it says. The purpose is to accomplish a result that constitutes a crime. You see my concern.
JUDGE: Well and then I've got the additional concern that you want to be able to argue one of two things. That either Mr. Samalia didn't know that the other individual was going to take an item and therefore could be responsible for accomplis liability. Or the alternate that the other gentleman didn't know that Mr. Samalia had a firearm. Or allegedly had a firearm.
SCOTT: That's two of the myriad arguments available to us. Yes.
JUDGE: Yeah. I understand. Well I think I've decided everything but for that one.

Caliguri is a 1983 case, it was cited in seventy-seven cases in this state. Few cited this "intent" section of the opinion and none for the reason posited by Samalia. Three published cases State v. Bea, 162 Wn.App. 570, 254 P.3d 948 (2011) and State v. Peterson, 54 Wn.App. 75, 772 P.2d 513 (1989) and State v. Peterson, 54 Wn.App. 75, 772 P.2d 513 (1989) refer to the section of the opinion that Samalia claims is dispositive of the issue. This court in Bea states:

> "Intent" to commit a criminal act means more than merely " knowledge" that a consequence will result. *Compare* RCW 9A.08.010(1)(a) (defining " intent") *with* RCW 9A.08.010(1)(b) (defining " knowledge"); *State v.* Caliguri, 99 Wash.2d 501, 505, 664 P.2d 466 (1983). "Intent" exists only if a known or expected result is also the actor's "objective or purpose." Caliguri, 99 Wash.2d at 506, 664 P.2d 466 (citing RCW 9A.08.010(1)(a)). Where there is no direct evidence of the actor's intended objective or purpose, intent may be inferred from circumstantial evidence. *Id.* (citing State v. Shelton, 71 Wash.2d 838, 839, 431 P.2d 201 (1967)). A jury may infer criminal intent from a defendant's conduct where it is plainly indicated as a matter of logical probability. State v. Myers, 133 Wash.2d 26, 38, 941 P.2d 1102 (1997) (citing State v. Bright, 129 Wash.2d 257, 270, 916 P.2d 922 (1996)). This includes inferring or permissively presuming that a defendant intends the natural and probable consequences of his or her acts. Caliguri, 99 Wash.2d at 506, 664 P.2d 466 (citing State v. Caldwell, 94 Wash.2d 614, 617-18, 618 P.2d 508 (1980)).
>
> While the trier of fact is *permitted* to draw an inference or presumption that a defendant intends the natural and probable consequences of his or her acts, however, the defendant is entitled to have the jury give equal consideration to the possibility that he did not act

intentionally, including any theory of nonintentional conduct that he might offer.

Peterson, supra at 80-81, states:

> The evidence here establishes that Weiss committed the substantive crime of manufacturing a controlled substance with the intent to manufacture or deliver. RCW 69.50.401(a); W. LaFave & A. Scott, Criminal Law § 28, at 196 (1972) (if statute proscribes a certain act, e.g., receiving stolen property, without requiring the actor to do so with knowledge or reason to know, commission of the crime requires only intent to engage in the forbidden conduct); See also RCW 9A.08.010(1)(a) ("Intent. A person acts with intent ... when he acts with the objective or purpose to accomplish a result which constitutes a crime."); State v. Caliguri, 99 Wash.2d 501, 505-06, 664 P.2d 466 (1983). The crime here did not require an intent to do more than the proscribed act. It required only manufacture or possession with intent to manufacture or deliver. Thus, although Weiss in effect had the permission of the police to manufacture the speed and arguably did so without a mens rea of criminal purpose, he nonetheless "committed the crime" for purposes of being a principal to support liability under the accomplice liability statute.

Further, the accomplice instruction was given in this case, WPIC 10.51 (CP 82) therefore the analysis in State v. Cronin, 142 Wn.2d 568, 589, 14 P.3d 752 (2000) is applicable:

> …the Court of Appeals has repeatedly upheld accomplice liability where the accomplice had general knowledge his or her confederate would commit a crime; the accomplices need not share the mens rea of the crime and, in fact, need not have specific knowledge of all of the elements of the crime actually committed. *See, e.g.,* State v. Johnston, 100 Wn.App. 126, 996 P.2d 629 (2000); State v. Haack, 88 Wn.App. 423, 958 P.2d 1001 (1997), *review denied,* 134 Wn.2d 1016, 958 P.2d 314 (1998); State v. Ferreira, 69

Wn.App. 465, 850 P.2d 541 (1993); State v. Hinds, 85 Wn.App. 474, 936 P.2d 1135 (1997); State v. Galisia, 63 Wn.App. 833, 822 P.2d 303, *review denied,* 119 Wn.2d 1003, 832 P.2d 487 (1992); State v. Peterson, 54 Wn.App. 75, 772 P.2d 513, *review denied,* 113 Wn.2d 1007, 779 P.2d 727 (1989); State v. Randle, 47 Wn.App. 232, 734 P.2d 51 (1987), *review denied,* 110 Wash.2d 1008 (1988); State v. Bockman, 37 Wn.App. 474, 682 P.2d 925, *review denied,* 102 Wn.2d 1002 (1984).

RESPONE TO ISSUE THREE- Cross examination of Ms. Melton.

Samalia was allowed to effectively cross examine this witness. The ruling by the trial court, with the agreement of the State, appears to be more to insure that defense counsel did not inject an error into the proceedings. The only thing that trial counsel was not allowed to do was have Ms. Melton testify as to what the actual punishment was for the original count, Robbery 1, that she was charge with.

Trial counsel acknowledged that this was not a proper line of questioning "in general" but continued to argue that he should be allowed to elicit from this witness what the punishment was. The error here is that what counsel was attempting to elicit was information that would not be allowed before the jury against his client. The method counsel attempted to use and, that Samalia continues to argue before this court, would have been as the court and the deputy prosecutor stated invited error. RP 395, 400. Invited error prohibits a party from "setting up error in the trial court

and then complaining of it on appeal." State v. Young, 63 Wn. App. 324, 330, 818 P.2d 1375 (1991)

State v. Garcia, 179 Wn.2d 828, 318 P.3d 266 (2014) addressed the issue of cross examination:

> An impermissible limitation on the scope of cross-examination is a violation of a defendant's right to confrontation. *See* U.S. Const. amend. VI; State v. Darden, 145 Wn.2d 612, 620-21, 41 P.3d 1189 (2002). The scope of cross-examination is within the discretion of the trial court and will not be disturbed unless there is a manifest abuse of discretion. Id. at 619. "A trial court abuses its discretion if its decision 'is manifestly unreasonable or based upon untenable grounds or reasons.'" State v. Lamb, 175 Wn.2d 121, 127, 285 P.3d 27 (2012) (quoting State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995)). Therefore, the court erred if there was no lawful justification for restricting the cross-examination.

A trial court violates a defendant's right to confront witnesses if it impermissibly limits the scope of cross-examination. State v. Garcia, 179 Wn.2d 828, 844, 318 P.3d 266 (2014). But "[t]he right to confrontation, and the associated right to cross-examine adverse witnesses, is limited by general considerations of relevance." State v. O'Connor, 155 Wn.2d 335, 348-49, 119 P.3d 806 (2005) (emphasis omitted). Evidence is relevant if it tends "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." ER 401

This court reviews a trial court's rulings on relevancy for abuse of discretion. State v. Foxhoven, 161 Wn.2d. 168, 176, 163 P.3d 786 (2007). This court also reviews rulings on "[t]he scope of cross-examination" for abuse of discretion. Garcia, supra, 179 Wn.2d at 844.

The trial court properly limited the scope of cross-examination, the possible effect of the plea bargain on the testimony of this witness was relevant, the exact period of incarceration for the original crime was not.

The State has included this section of the VRP in Appendix A. The defendant was allowed an amazing amount of leeway in asking questions of this witness. Basically the only thing counsel was not allowed to ask or elicit from Ms. Melton was that this was a "class A Felony" and that the maximum punishment was "life imprisonment and/or $50,000.00 fine…with the possibility of parole." (RP 394-5, 396-7) The following section addresses the primary section of this examination. It is absolutely clear that the actions of the trial court were not a violation of that courts discretion.

> SCOTT: You were charged in this case. Correct?
> MELTON: Yes.
> SCOTT: Very serious charge. Right?
> MELTON: Yes.
> SCOTT: And after talking to the officers and essentially lying to them repeatedly, you then came to an agreement with the State. Correct?
> MELTON: Yes.

SCOTT: And it's your understanding that this very serious charge is going to ultimately be dismissed. Isn't it?
MELTON: I believe so.
SCOTT: And you are, have been permitted to plead guilty to a much less, significantly less. Almost infinitesimal by comparison, criminal charge. Correct?
…
SCOTT: I'm going to talk about what your understanding is. Ok? Do you believe that your, that the State's recommendation regarding sentence is somehow connected with your testimony here?
MELTON: Um, yes. I guess so.
RP 433
SCOTT: Ok. So can you tell me what your understanding is regarding that?
MELTON: Um. I'm not really sure how to answer that.
SCOTT: Ok. Let me try and do it this way. If you testify favorably for the State, is it your understanding that they will recommend less time?
MELTON: Yes.
SCOTT: Then if you testify unfavorably to the state?
MELTON: Yes. I suppose so.
SCOTT: Ok. So you're getting an incredible, incredible benefit from Mr. Chen and the State by coming in here and testifying. Is that true?
MELTON: Yes.
SCOTT: Who decides ultimately whether your testimony satisfies the States requirements?
MELTON: Um, I'm not 100% sure. To be honest.
SCOTT: Well it's Mr. Chen. Isn't it? Right?
MELTON: I guess so.
SCOTT: So you have every reason to want to please him with your testimony here. Don't you?
MELTON: I never really thought of it that way. I didn't know it was ultimately up to him.
SCOTT: Ok. Ultimately up to the State?
…
SCOTT: I'll try. What is your understanding? What do you expect the State's recommendation regarding sentencing in your case to be if you please the State in your testimony here today?

MELTON: Um, the robbery charge will be dropped to a gross misdemeanor of rendering criminal assistance.
SCOTT: And what kind of a sentence would you receive?
MELTON: I believe there's no more jail time and there's just some fines. But I'm not exactly sure how much.
SCOTT: How much time have you served in jail so far?
MELTON: Twenty-something days.
SCOTT: Thank you. Nothing further.
RP 432-437

Samalia argues that he was not allowed to inquire into the details of the plea and that the areas that he could not inquire into where "highly relevant" for assessing credibility and may be "essential" for effective cross examination, citing United States v. Mayans, 17 F.3d 1174 (9th Cir. 1994). Samalia does not address the problem that his attorney created and was addressed by the court, invited error. The court crafted a method that allowed Samalia to cross examine Ms. Melton as to every aspect of her involvement in this case, except these two very limited areas and that was for Samalia's own protection. So that the jury would not have before it information that could have been highly prejudicial to his trial.

State v. Downing, 151 Wn.2d 265, 272-3 (2004) "We will not disturb the trial court's decision unless the appellant or petitioner makes "a clear showing . . . [that the trial court's] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex rel. Carroll v .Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (citing MacKay v. MacKay, 55 Wn.2d 344, 347 P.2d 1062 (1959)).

Samalia has not met the test set forth in Garcia and Junker, he was allowed to effectively discredit Ms. Melton, he was not allowed to inject error into the trial with information that was at best of limited relevance.

RESPONSE TO ISSUE FOUR – Denial of motion for mistrial officer's statement and power point.

Vouching

There is no doubt that generally, witnesses are not permitted to testify regarding the veracity of another witness because such testimony invades the province of the jury as the fact finder in a trial." "Such testimony from a law enforcement officer may be especially prejudicial because the officer's testimony often carries a special aura of reliability." State v. Demery, 144 Wn.2d 753, 764, 65, 30 P.3d 1278 (2001). The general context of this type of claim is where an officer, prosecutor, agent of the State "vouches" for a lay witness. In this instance the "vouching" was by one testifying officer regarding the actions of other testifying officers. Officers who were intimately involved in this investigation, an investigation that was conducted contemporaneously with the robbery committed by Samalia.

The cross-examination of Officer Taylor by trial counsel that resulted in the challenged statement was hostile and aggressive. Throughout the examination of Office Taylor the trial attorney was openly

challenging the veracity of the actions of the officers. He went so far as to challenge whether or not the vehicle that was in the impound lot was actually the same vehicle that was stopped by the other officer. The cross examination began hostilely and continued throughout, the following is the very first series of questions asked, counsel is already intimating that the officer(s) are lying or at best covering up;

> SCOTT: All right. Who is Miss McGregor?
> TAYLOR: I'm not sure.
> SCOTT: You don't have any idea. Do you?
> TAYLOR: No.
> SCOTT: Isn't it true that the registered owner is a woman by the name of McGregor?
> TAYLOR: At the time Stacey…
> SCOTT: You don't know do you? You don't know do you?
> TAYLOR: Currently I don't know who the registered owner is.
> SCOTT: No, at the time.
> TAYLOR: At the time it was Stacey Melton.
> SCOTT: And there was no McGregor on the registration?
> TAYLOR: That I don't know. There's…
> SCOTT: Why not? Didn't you go to DOL?
> TAYLOR: Yes.
> SCOTT: And did DOL respond?
> TAYLOR: DOL responded. Yes.
> SCOTT: And then tell us. Was there Stacey Melton and Miss McGregor or do you even know? (RP 327)
> …
> SCOTT: Ok. And with Mr. Chen leading you through your testimony, you said that the correct license plate on the vehicle that left the scene that was reported as a robbery was 242-KNA. Is that what your testimony is? (RP 328)
> …
> SCOTT: You weren't even there. Were you?
> TAYLOR: Correct.
> SCOTT: So how is it that you know where this stop happened?
> TAYLOR: Being my radio.

SCOTT: Somebody told you, right?
TAYLOR: Yes.
SCOTT: But you had no personal knowledge. Do you?
TAYLOR: No.
SCOTT: And since you didn't see this car, somebody must have told you that it's the same car. Right? (RP 329)
…
SCOTT: So all of this testimony about whether it's the same car or not is just what somebody else has told you.
TAYLOR: Based on another officer's observations. Yes.
…
SCOTT: Ok. So the truth is you went back to the garage. The YPD garage and that's when you first say this car on December the9th. Isn't that true?
TAYLOR: The first time I saw the car that day, yes. Is, was at the YPD annex. Yes.
…
SCOTT: Mr. Chen can ask you that question if you really have a burning desire to get it out. Ok?

Resulting in this final portion of this cross examination;

SCOTT: So your assumption is based on the fact that you believe, if you make that assumption it helps the State convict Mr. Samalia. Isn't that true?
CHEN: Objection.
TAYLOR: Not at all.
CHEN: Relevance, objection.
JUDGE: Sustained.
SCOTT: Why would you make that assumption?
CHEN: Objection. Relevance.
SCOTT: He's stated that it is his assumption. Mr. Chen brought it up. This proper cross exam…
JUDGE: Over ruled. I'll allow that question.
TAYLOR: Because…
SCOTT: Why would you assume that?
TAYLOR: Because another officer stopped that car. Saw Mr. Samalia run from it. He was detained shortly thereafter in a very immediate proximity to where the car was. Based on my training experience I know these officers aren't lying.

The trial court had to order defense counsel to "[c]alm down" because of his abusive action. State v. Hakimi, 124 Wn.App. 15, 19, 98 P.3d 809 (2004) Washington trial courts have "broad discretion 'to conduct [a] trial with dignity, decorum and dispatch and [to enable it to] maintain impartiality.'" The court agreed that trial counsel had "opened the door" to the response by Officer Taylor. There would have been no statement but for the baiting of Appellant's trial counsel who then, purposefully it would appear, repeatedly stated in front of the jury that the officer was "vouching" for his fellow officers. Obviously in an attempt to manufacture a mistrial;

> SCOTT: Oh. Come on. I object Your Honor and ask that that be stricken. *This witness knows darn well you cannot vouch for the voracity of another witness.*
> CHEN: Your Honor, this attorney asked for that answer. **He's the one that opened the door on this one.**
> JUDGE: Yes.
> SCOTT: *I did not ask for a vouching of this witness.*
> JUDGE: **Calm down**. I'm going to sustain the objection of the portion of the response that had to do with the response that had to do with lying or not lying. **And the jury's instructed to disregard that portion.** The rest of the answer will stay (inaudible). You can continue Mr. Scott.
> SCOTT: You've been an officer for over seven years. Haven't you?
> TAYLOR: Yes. I have.
> SCOTT: And you're familiar with the rules of testifying. Aren't you?
> (The next statement is attributed to Officer Taylor, from a reading of this portion of the transcript it is beyond doubt attorney Scott making this statement.)
> TAYLOR: *And you're willing to break those rules if you think it will help get a conviction*.
> CHEN: Objection.
> JUDGE: Sustained. (RP 334)(Emphasis mine.)

"A trial court should grant a mistrial only when the defendant has been so prejudiced that nothing short of a new trial can ensure that the defendant receives a fair trial." State v. Jungers, 125 Wn.App. 895, 901-02, 106 P.3d 827 (2005). Declaration of a mistrial is a "drastic measure," and there are other options a trial court may choose to exercise based on the individual situation. State v. Falk, 17 Wn.App. 905, 908, 567 P.2d 235 (1977). A continuance or curative instruction may be preferred to mistrial. See State v. Linden, 89 Wn.App. 184, 195, 947 P.2d 1284 (1997); State v. Johnson, 124 Wn.2d 57, 76-77, 873 P.2d 514 (1994). This court must consider when deciding whether a trial irregularity should result in a mistrial the following (1) its seriousness, (2) whether it involved cumulative evidence, and (3) whether an instruction could cure the irregularity. State v. Bourgeois, 133 Wn.2d 389, 409, 945 P.2d 1120 (1997).

State v. Escalona, 49 Wn.App. 251, 255, 742 P.2d 190 (1987) "The difficult question, however, is whether the court's oral instruction to the jury to disregard the statement could cure the error. While it is presumed that juries follow the court's instruction to disregard testimony, see Weber, supra, no instruction can "remove the prejudicial impression created [by evidence that] is inherently prejudicial and of such a nature as to likely impress itself upon the minds of the jurors." State v. Miles, 73 Wash.2d

67, 71, 436 P.2d 198 (1968); see also State v. Suleski, 67 Wash.2d 45, 51, 406 P.2d 613 (1965); State v. Morsette, 7 Wash.App. 783, 789, 502 P.2d 1234 (1972)."

In this trial the jury heard the testimony of the officers that Officer Taylor was allegedly vouching for. Further, Samalia's trial counsel was able to cross examine all of the officers involved and place before this same jury his theory that they were not being accurate in their rendition of the facts.

Here there was a curative instruction, the court ordered the jury to disregard the portion of the statement made by the officer that Samalia now claims was error, "[t]he jury is presumed to follow the court's instructions. State v. Grisby, 97 Wn.2d 493, 499, 647 P.2d 6 (1982), cert. denied, 459 U.S. 1211 (1983)."

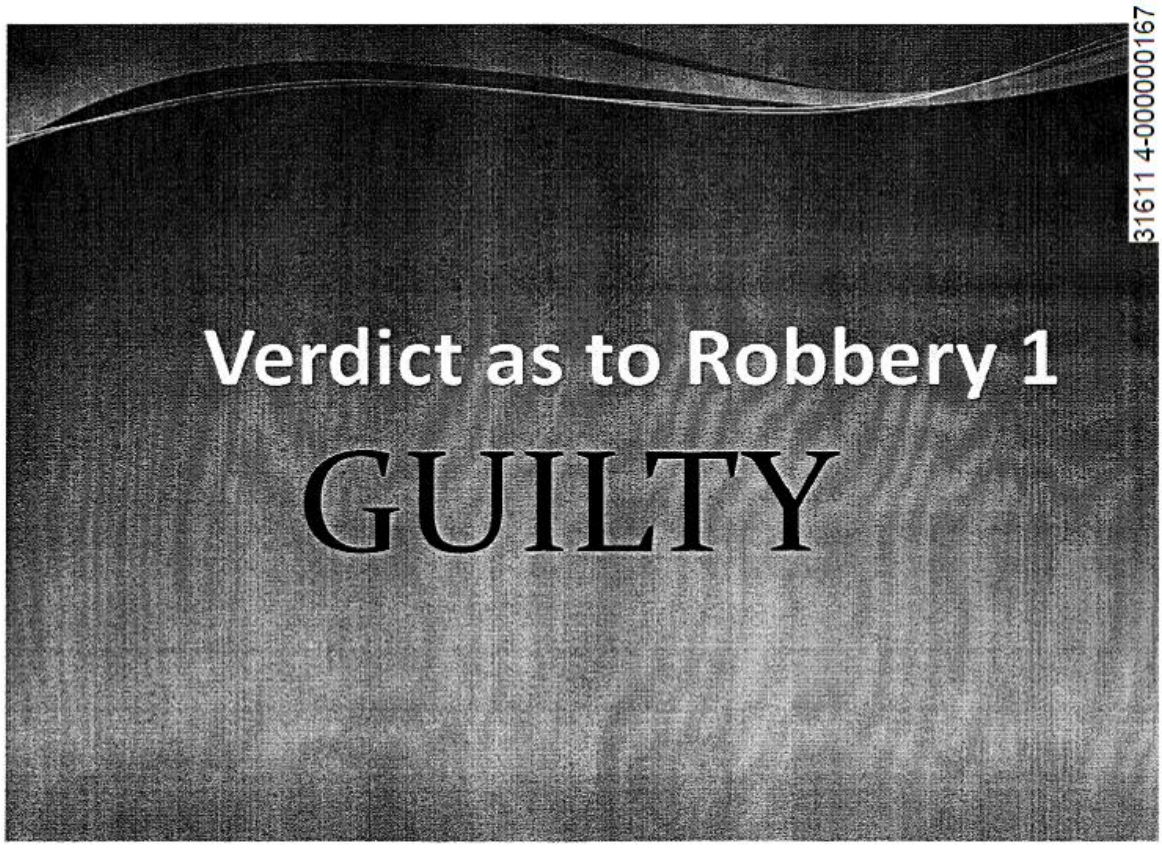
State v. Pepoon, 62 Wash. 635, 644, 114 P. 449 (1911):

> While the rights of the defendant in a criminal action must be maintained, when once the court indulges in consideration of bare possibilities and reverses judgments because it was within the range of possibility that a juror might have received a communication from the outside, the court will wander from the path of reasonable caution into the hazy realms of fancy; for when imagination waves its magic wand, sober calculation is put to flight. In the case cited the court, by extending its imagination a hair's breadth, might have concluded that it was conceivable that a communication concealed in a sandwich or biscuit would reach a juror, or would reach him in one of many other ways which are conceivable. In addition, we must indulge some presumptions in favor of the integrity of the

> jury. It is a branch of the judiciary, and if we assume that jurors are so quickly forgetful of the duties of citizenship as to stand continually ready to violate their oath on the slightest provocation, we must inevitably conclude that a trial by jury is a farce and our government a failure.

PowerPoint

The entire PowerPoint utilized by the State in closing is contained in the record before this court. (CP 147-167) There is only one slide that was objected to and is now at issue in this appeal. That slide, the final slide CP 167



The following is a portion of the oral portion of the State's closing argument.

> We also talked about following the Court's instructions. Or the jury instructions. You have it in front of you, the jury instructions. Basically, the laws that apply in this case. What you do is apply the jury instructions to the evidence that you heard during this trial. And make a determination whether or not the State has proven beyond a reasonable doubt that the defendant is guilty of the crime of Robbery in the 1st Degree. And so the defendant is charged with Robbery in the 1st Degree. Basically, that states that on or about December 9, 2011, the defendant or an accomplis. In this case we're talking about Travis Cliett. That is the evidence from the testimony you heard that the other individual was Travis Cliett. Unlawfully took personal property of Vernon Place or the UPS. Basically the items from, the box from the UPS truck. In the presence of Vernon Place. And that the defendant or an accomplis intended to commit theft of that property. Again it's the box from the UPS. The taking was against the person's will by the defendant or an accomplis us or threaten use of immediate force, violence, or fear of injury to that person. And that force or fear was used by the defendant or an accomplis to obtain or retain possession of the property. That in the commission of these acts. In other words, taking the boxes. Or an immediate flight therefrom, the defendant or an accomplis was either armed with a deadly weapon or displayed what appeared to be a firearm or another deadly weapon. And that the acts occurred in the state of Washington.
> RP 593

The deputy prosecutor then takes the elements and goes through each and describes for the jury what evidence the State relied on to prove that the defendant was guilty of the crime charged. He specifically addresses the "intent" issue raised by the defendant;

> Again this is sentence number four in Instruction #14. And that part of it says the following; force or fear was used by the dependent or an accomplis to obtain or retain possession of the property. Mr. Scott I'm sure will probably, I'm not 100% sure, may argue that once the defendant drops the box that was it. It's just basically a theft. That all he did was steal something. But think about it ladies and gentlemen of the jury, again use your common sense. The purpose of taking out the gun was to use force or fear by the defendant to retain possession of the property that he and his accomplis, Travis Cliett, had taken. Or his other goal is to stop them from following them. He pulls out a gun. Why does he pull out a gun? He's telling them, "Stop. Don't follow me anymore". And what does Ty and Vernon do? They stop. Had Ty and Vernon not been shown a gun. Had they not seen that firearm pointed at them. Remember what Ty Walker said. He testified the firearm was pointed at him. Had that not occurred they would've continued. RP 596-7

The deputy prosecuting attorney (DPA) then points out to the jury that the argument that this is "just" a theft is not supported by the facts and the most glaring fact is that the defendant brought that gun in the first place. As the DPA states (if) this is just a theft..[w]hy bring a gun? (RP 59) He continues by pointing out that Appellant's actions in fleeing the scene and fleeing the automobile was "consciousness of guilt" (RP 602) all stated without objection. The DPA on numerous occasions states that the evidence proves Appellant guilty beyond a reasonable doubt without objections. (RP 602-3) "Special Verdict, once you look into the

evidence and the elements of robbery in Instruction #14 I'll ask you to find him guilty." It is apparently just after this that the PowerPoint picture is posted. The DPA says "[a]nd the verdict is guilty." There is an immediate objection, the judge asks that it be "taken down" and it is taken down. The alleged offensive "guilty" was only up for a matter of seconds. As can be seen from the CP 167 the only thing in the specific slide are the words "Verdict as to Robbery 1" followed by "GUILTY". There is no other graphic, not a picture of the defendant, no gun nothing, just simply the word "GUILTY". This is no different than if the DPA had empathically stated in closing that Samalia was Guilty. There is absolutely nothing prejudicial about this power point slide. RP 603-4

The cases cited are clearly distinguishable. Obviously State v. Walker, 182 Wn.2d 463, 341 P.3d 976 (2015) is the most recent case to address the use of PowerPoint presentations. In Walker the State used hundreds of slides many having information superimposed over pictures of the defendant including one in, in color, that indicated GUILTY BEYOND A REASONABLE DOUBT, over the booking photograph of the defendant another of the defendant and his family happily eating dinner that was paid for with money from the crime. Id at 472.

Here there is no objection to any of the slides used except the one set forth above. There is no claim that the slide was accompanied by

photographs of the defendant or that the slides were in any bright color. This is simply a picture of the word GUILTY. This is no different than if the DPA had taken a pen and in all capital letters written on poster board the same word. Further, as can be seen the slide was only before the jury for a matter of seconds.

This presentation was at the end of a multiple day trial where the victims had testified that they had observed two men exiting a UPS truck both with packages, whey observed they both ran, one dropping his package so that he could access his gun. A gun he then brandished at the victims causing them to cease chasing the defendant. The victims were able to identify the getaway vehicle by color and license plate and reported, almost immediately, to 911. 911 dispatched officers who were in the area in minutes, observed the getaway vehicle which fled. When the vehicle did stop the defendant fled the vehicle with the same gun in his hand. He was chased by an officer who observed Samalia throw the gun away, a gun that was recovered. The defendant was then arrested nearby hiding from the officers. The driver of the getaway vehicle testified that she drove the defendant and his partner to the location of the robbery, observed them reenter the vehicle with one package, she then drove the getaway vehicle with the defendant in it until she pulled over after having been pursued by the police. She testified that the defendant then fled from

that vehicle, she left in the vehicle, her own, and later abandon it and reported it stolen.

This evidence is the very definition of "overwhelming" even if there was an error in the use of this singular slide for a matter of seconds the court will "evaluating whether the error is harmless, this court applies the "`overwhelming untainted evidence'" test. Under that test, when the properly admitted evidence is so overwhelming as to necessarily lead to a finding of guilt, the error is harmless. Evidence that is merely cumulative of overwhelming untainted evidence is harmless." State v. Flores, 164 Wn.2d 1, 186 P.3d 1038, 1046-47 (2008)

This is also closing argument, the jury was instructed throughout the trial that they are to rely on the evidence presented by the parties not the statements or arguments of counsel. (CP 74-5)

The slide presented to the jury was not prejudicial, it was no different than an emphatic statement by the deputy prosecuting attorney. There was no undue emphasis and as indicated above the evidence was overwhelming. In re Pers. Restraint of Glasmann, 175 Wn.2d 696, 707, 286 P.3d 673 (2012) "In order to prevail on a claim of prosecutorial misconduct, a defendant is required to show that in the context of the record and all of the circumstances of the trial, the prosecutor's conduct was both improper and prejudicial. Thorgerson, 172 Wash.2d at 442, 258

P.3d 43. To show prejudice requires that the defendant show a substantial likelihood that the misconduct affected the jury verdict. *Id.;* State v. Ish, 170 Wash.2d 189, 195, 241 P.3d 389 (2010); State v. Dhaliwal, 150 Wash.2d 559, 578, 79 P.3d 432 (2003)."

In closing argument, a prosecutor does not commit misconduct by making statements supported by evidence. State v. Curtiss, 161 Wn.App. 673, 701, 250 P.3d 496, review denied, 172 Wn.2d 1012 (2011). The State would agree that a prosecutor commits misconduct when displaying PowerPoint slides that contain evidence so altered as to become "the equivalent of unadmitted evidence."; this was not the what occurred in this case. In re Pers. Restraint of Glasmann, 286 P.3d 673, 678

RESPONSE TO ISSUE FIVE. Open courthouse/room.

This issue was addressed by the Washington State Supreme Court in State v. Andy, 182 Wn.2d 294, 340 P.3d 840 (2014) The court determined there was no violation of Andy's rights based on a nearly identical fact pattern. The record in this case was supplemented with the verbatim report of proceedings from Andy. Based on the record before this court there can be no determination other than the rights of these defendants, as with Andy, were not violated. Andy at 305-6:

> When defendants assert public trial rights violations, they have the burden to show that a courtroom closure occurred. In this case, the trial judge made findings of fact that the

> courthouse was open at all times during Andy's trial and that the sign regarding courthouse hours did not deter the public from attending Andy's trial. Those findings of fact were supported by substantial evidence, including testimony by security officers. On this record, Andy has not shown that a closure occurred. We affirm his conviction.

RESPONSE TO ISSUE SIX.

An accumulation of non-reversible errors may deny a defendant a fair trial. State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984). Appellant has failed to supply this court with any error or errors that individually or in their aggregate would amount to and be considered such that the cumulative effect on this trial would cause this court to overturn these convictions. There were no errors in this trial which would warrant reversal or dismissal or retrial of either of the charges. In re Personal Restraint of Lord, 123 Wn.2d 296, 332, 868 P.2d 835 (1994)"This PRP has similarly failed to demonstrate an accumulation of error of such magnitude that resentencing or retrial is necessary." Because there was no substantive error in this trial there can be no "cumulative" error. When no prejudicial error is shown to have occurred, cumulative error could not have deprived the defendant of a fair trial. State v. Stevens, 58 Wn. App. 478, 498, 794 P.2d 38, review denied, 115 Wn.2d 1025 (1990). Under the cumulative error doctrine, a defendant may be entitled to a new trial

when cumulative errors produce a trial that is fundamentally unfair, as stated in State v. Greiff, 141 Wn.2d 910, 10 P.3d 390 (2000);

> We do not believe the cumulative error doctrine warrants reversal in this case. The application of that doctrine is limited to instances when there have been several trial errors that standing alone may not be sufficient to justify reversal but when combined may deny a defendant a fair trial.

IV. CONCLUSION

For the reasons set forth above this court should deny this appeal. .

Respectfully submitted this 31st day of July 2015,

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APPENDIX A

SCOTT: Yes. Thank you. Good morning Officer Taylor.

TAYLOR: Good morning sir.

SCOTT: All right. Who is Miss McGregor?

TAYLOR: I'm not sure.

SCOTT: You don't have any idea. Do you?

TAYLOR: No.

SCOTT: Isn't it true that the registered owner is a woman by the name of McGregor?

TAYLOR: At the time Stacey…

SCOTT: You don't know do you? You don't know do you?

TAYLOR: Currently I don't know who the registered owner is.

SCOTT: No, at the time.

TAYLOR: At the time it was Stacey Melton.

SCOTT: And there was no McGregor on the registration?

TAYLOR: That I don't know. There's…

SCOTT: Why not? Didn't you go to DOL?

TAYLOR: Yes.

SCOTT: And did DOL respond?

TAYLOR: DOL responded. Yes.

SCOTT: And then tell us. Was there Stacey Melton and Miss McGregor or do you even know?
RP 327
TAYLOR: I don't recall if Miss McGregor's name was on the registration.

SCOTT: Fair enough. All right and you testified that two or three weeks prior to this incident that we've talked about here today, that you ran into this car.

TAYLOR: Correct.

SCOTT: And you testified that the driver at that time was who?

TAYLOR: Stacey Melton.

SCOTT: And then there were a couple of other folks that were in the car. Right?

TAYLOR: Correct.

SCOTT: But Adrian was not one of them. Was he?

TAYLOR: Correct.

SCOTT: Ok. And with Mr. Chen leading you through your testimony, you said that the correct license plate on the vehicle that left the scene that was reported as a robbery was 242-KNA. Is that what your testimony is?

TAYLOR: The correct license plate on the vehicle that we stopped. That Officer Miller stopped that I did the search warrant on was 242-KNA.

SCOTT: All right. Let's just focus on that for a moment. Were you there when Tarn Miller stopped that car?

TAYLOR: No. I was not.

SCOTT: Did you see that car at the site where Taryn
RP 328

Miller says she stopped that car?

TAYLOR: No, I did not.

SCOTT: In fact, when you arrived it was nowhere to be found. Was it?

TAYOR: I didn't see the actual traffic stop. I was set up at 2nd Street and I. Which was I'd say about a block and a half east of…

SCOTT: Right.

TAYLOR: Where the traffic stop.

SCOTT: You weren't even there. Were you?

TAYLOR: Correct.

SCOTT: So how is it that you know where this stop happened?

TAYLOR: Being my radio.

SCOTT: Somebody told you, right?

TAYLOR: Yes.

SCOTT: But you had no personal knowledge. Do you?

TAYLOR: No.

SCOTT: And since you didn't see this car, somebody must have told you that it's the same car. Right?

TAYLOR: Correct.

SCOTT: And you don't have any personal knowledge of that either. Do you?

TAYLOR: I don't have personal knowledge that this car is the car that was used in the robbery?
RP 329
SCOTT: That this car is the same one that was stopped. Because you didn't see which car was stopped you don't know. Do you?

TAYLOR: Correct.

SCOTT: So all of this testimony about whether it's the same car or not is just what somebody else has told you.

TAYLOR: Based on another officer's observations. Yes.

SCOTT: Do you know where this car was finally found?

TAYLOR: I believe…you know what. I don't know. I can make a guess.

SCOTT: Yeah.

TAYLOR: But I'd prefer not to. Because…

SCOTT: Yeah. Probably not a good idea to guess. This is an important case. Would you agree?

TAYLOR: Yeah. I take it pretty serious.

SCOTT: Good. We do too. So let's not guess. Shall we. So you don't know where the car was found?

TAYLOR: No.

SCOTT: You don't know who found the car because you weren't there. Right?

TAYLOR: Correct.

SCOTT: You don't know…did you ever go to the place where this car was supposedly found?

TAYLOR: No.

SCOTT: Ok. So the truth is you went back to the garage. The YPD garage and that's when you first say this car on December the
RP 330
9th. Isn't that true?

TAYLOR: The first time I saw the car that day, yes. Is, was at the YPD annex. Yes.

SCOTT: Yeah. So somebody had taken it, and towed it in and locked it up in the annex.

TAYLOR: Correct.

SCOTT: All right.

TAYLOR: It was another officer that stopped it…

SCOTT: There is no questions here. Thank you.

TAYLOR: I would like to explain.

SCOTT: Mr. Chen can ask you that question if you really have a burning desire to get it out. Ok?

TAYLOR: Fine.

SCOTT: Your executed a search warrant on that car. Didn't you?

TAYLOR: Yes. I did.

SCOTT: And you indicated that you found some items.

TAYLOR: Correct.

SCOTT: And one of the items was a wallet.

TAYLOR: Correct.

SCOTT: You do not remember where the wallet was. Correct?

TAYLOR: I'm not positive. Correct.

SCOTT: But you opened it up and searched its contents.

TAYLOR: Correct.
RP 331
SCOTT: And you found an ID that you believe belongs to Mr. Samalia.

TAYLOR: Correct.

SCOTT: Ok. Do you know who put the wallet there?

TAYLOR: I would assume Mr. Samalia.

SCOTT: But that would be absolutely, under oath, an assumption on your part. Wouldn't it?

TAYLOR: Yes.

SCOTT: Because you have no idea. Do you?

TAYLOR: Correct.

SCOTT: And other people could have access to that wallet and you not know it.

TAYLOR: It is possible. Yes.

SCOTT: And it could've been placed there at any time. Couldn't it?

TAYLOR: It is possible. Yes.

SCOTT: You've already testified about Stacey Melton being in this car two or three weeks earlier. Haven't you?

TAYLOR: Yes.

SCOTT: And you don't know if Adrian had been in the back of this car at any time during that two or three weeks. Do you?

TAYLOR: Correct.

SCOTT: That wallet could've been there for six months and you wouldn't know. Would you?

TAYLOR: Correct.
RP 332
SCOTT: So your assumption is based on the fact that you believe, if you make that assumption it helps the State convict Mr. Samalia. Isn't that true?

CHEN: Objection.

TAYLOR: Not at all.

CHEN: Relevance, objection.

JUDGE: Sustained.

SCOTT: Why would you make that assumption?

CHEN: Objection. Relevance.

SCOTT: He's stated that it is his assumption. Mr. Chen brought it up. This proper cross exam…

JUDGE: Over ruled. I'll allow that question.

TAYLOR: Because…

SCOTT: Why would you assume that?

TAYLOR: Because another officer stopped that car. Saw Mr. Samalia run from it. He was detained shortly thereafter in a very immediate proximity to where the car was. Based on my training experience I know these officers aren't lying.

SCOTT: Oh. Come on. I object Your Honor and ask that that be stricken. This witness knows darn well you cannot vouch for the voracity of another witness.

CHEN: Your Honor, this attorney asked for that answer. He's the one that opened the door on this one.

JUDGE: Yes.

SCOTT: I did not ask for a vouching of this witness.
RP 333
JUDGE: Calm down. I'm going to sustain the objection of the portion of the response that had to do with the response that had to do with lying or

not lying. And the jury's instructed to disregard that portion. The rest of the answer will stay (inaudible). You can continue Mr. Scott.

SCOTT: You've been an officer for over seven years. Haven't you?

TAYLOR: Yes. I have.

SCOTT: And you're familiar with the rules of testifying. Aren't you?

TAYLOR: And you're willing to break those rules if you think it will help get a conviction.

CHEN: Objection.

JUDGE: Sustained.

SCOTT: No further questions.
RP 334