73519-5

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Court of Appeals
Division I
State of Washington

NO. 73519-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JASON THOMAS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE TIMOTHY A. BRADSHAW

BRIEF OF RESPONDENT

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A. ISSUES

1. The Washington Supreme Court has held that the language of WPIC 4.01 defining "reasonable doubt" provides an accurate statement of the law. The trial court gave the standard WPIC 4.01 instruction. Thomas did not object. Has Thomas failed to show that it was manifest constitutional error for the trial court to have given the standard approved instruction?

2. When interpreting a statute, the reviewing court's objective is to determine the legislature's intent. Here, Thomas ignores a clear statement of legislative intent that punishment is intended to be "proportionate to the seriousness of the offense and the offender's criminal history." For offenders sentenced to the Department of Corrections, RCW 9.94A.701 sets out a tiered approach to imposition of community custody according to the seriousness of three offense categories: serious violent, violent, and crimes against persons. By first mandating 36 months of community custody for serious violent offenses and 18 months for violent offenses, did the legislature unambiguously intend that 12 months of community custody be applied only to crimes against persons that are not also categorized as serious violent or violent offenses?

B. STATEMENT OF THE CASE

On November 19, 2014, defendant Jason Thomas attacked his employer Kavit Sanghvi with a metal bar. CP 5-6. The attack was in front of several witnesses at MS International, a granite countertop business in Seattle. Id. In the attack, Sanghvi suffered severe compound fractures to his right leg. Id.

Thomas was charged with Assault in the Second Degree, alleging that he had intentionally assaulted Sanghvi with a deadly weapon, and that he had recklessly inflicted substantial bodily harm. CP 11. Thomas was also charged with the sentence enhancement of being armed with a deadly weapon, and with a sentence aggravator alleging that the injuries inflicted on his victim substantially exceeded the level of bodily harm necessary to satisfy the element of second degree assault. CP 11.

At Thomas's trial the court gave the standard reasonable doubt instruction, WPIC 4.01,[1] which reads, in part: "A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence." CP 34; 4RP[2] 111. The jury found Thomas guilty of Assault in the Second Degree. CP 24. The jury also returned special verdicts finding

[1] 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS CRIMINAL 4.01, at 85 (3d ed. 2008).

[2] This brief refers to the verbatim report of proceedings as follows: 1RP (3/26/15); 2RP (3/30/15); 3RP (3/31/15); 4RP (4/1/15); 5RP (5/22/15).

Thomas was armed with a deadly weapon during the commission of the crime and that Sanghvi's injuries substantially exceeded the level of bodily harm necessary to constitute substantial bodily harm, pursuant to RCW 9.94A.535(3)(y). CP 11, 26-27.

The standard range sentence including the 12-month deadly weapon enhancement was 34 to 41 months. CP 55. Based on the extent of Sanghvi's injuries and the jury's finding of the sentence aggravator, the court imposed an exceptional sentence of 53 months. 5RP 21; CP 55-57. The court also imposed 18 months of community custody. CP 58.

C. ARGUMENT

1. THE STANDARD WPIC DEFINING "REASONABLE DOUBT" DOES NOT VIOLATE THE CONSTITUTION.

a. The Alleged Error Is Not Manifest And Cannot Be Raised For The First Time On Appeal.

At trial, Thomas did not object to the giving of the standard WPIC 4.01 defining "reasonable doubt." An instructional error not objected to below may be raised for the first time on appeal only if it is a "manifest error affecting a constitutional right." RAP 2.5(a)(3); State v. Scott, 110 Wn.2d 682, 686-87, 757 P.2d 492 (1988) (failure to instruct on "knowledge" was not manifest error). To obtain review, a defendant must show that the claimed error is of constitutional magnitude and that it

resulted in actual prejudice. State v. O'Hara, 167 Wn.2d 91, 98-99, 217 P.3d 756 (2009).

If the claimed error is of constitutional magnitude, the court will determine whether the error is manifest. An error is manifest if it is "so obvious on the record that the error warrants appellate review." O'Hara, 167 Wn.2d at 99-100. Manifest error also requires a showing of "actual prejudice." Id. To demonstrate actual prejudice there must be a "plausible showing by the appellant that the asserted error had practical and identifiable consequences in the trial of the case." Id.

The State acknowledges that it is an error of constitutional magnitude when a trial court incorrectly instructs the jury in a way that misstates reasonable doubt or shifts the burden of proof to the defendant. State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983). However, although Thomas asserts that a constitutional error occurred, he fails to establish that it was manifest error for the trial court to give the standard WPIC defining reasonable doubt. Recently, in State v. Kalebaugh, 183 Wn.2d 578, 355 P.3d 253 (2015), our supreme court found that a trial court's oral instruction on reasonable doubt was manifest error specifically because it differed from WPIC 4.01.

In Kalebaugh, before a jury was impaneled, the trial court gave the jury venire oral instructions that included an incorrect articulation of the reasonable doubt standard:

> If after your deliberations you do not have ***a doubt for which a reason can be given*** as to the defendant's guilt, then, you are satisfied beyond a reasonable doubt.
>
> On the other hand, if after your deliberations you do have ***a doubt for which a reason can be given*** as to the defendant's guilt, then, you are not satisfied beyond a reasonable doubt.

Id. at 582 (emphasis added). The defendant did not object. Id. At the close of the evidence, the trial court instructed the jury with relevant Washington pattern jury instructions. Id. The supreme court stated: "More importantly and relevant to our review, the court's instructions included the complete and proper version of WPIC 4.01, the instruction on reasonable doubt." Id.

The Kalebaugh court, in determining whether the alleged error was "obvious on the record" and "practical and identifiable," and, thus, manifest, contrasted the judge's oral instruction with the correct standard for instructing on reasonable doubt.

> The trial judge instructed that a "reasonable doubt" is a doubt for which a reason can be given, rather than the correct jury instruction that a "reasonable doubt" is a doubt for which a reason exists. WPIC 4.01, at 85. The jury instruction given was a misstatement of the law that the trial court should have known, and the mistake is manifest

> from the record. Thus, Kalebaugh's claim is a manifest constitutional error and can be raised for the first time on appeal.

Id. at 584. Thus, it was the deviation from the "correct jury instruction," WPIC 4.01, that made the trial court's error manifest. Here, Thomas does not even allege that the trial court's instruction on reasonable doubt deviated from what our supreme court termed the correct statement of the law, WPIC 4.01. There was no manifest error.

The trial court's use of WPIC 4.01 is not an "obvious error," and there can be nothing more than pure speculation that the inclusion of the disputed language in the jury instructions had any identifiable consequences. This is insufficient to allow for appellate review. State v. Donald, 178 Wn. App. 250, 271, 316 P.3d 1081 (2013) (refusing to consider defendant's argument regarding the "to convict" jury instructions because he failed to object below and failed to demonstrate prejudice as required under RAP 2.5). This Court should decline to address Thomas's argument regarding the reasonable doubt instruction.

b. The Trial Court Did Not Err By Giving The Standard WPIC Defining "Reasonable Doubt."

Thomas argues that WPIC 4.01, which defines "reasonable doubt," shifts the burden of proof and undermines the presumption of innocence. Specifically, Thomas claims that the language "A reasonable doubt is one

for which a reason exists," grafts onto the definition an unacceptable burden that jurors must be able to articulate their doubts. Thomas's specific argument was recently addressed and rejected by this Court:

> Lizarraga challenges the jury instruction defining "reasonable doubt" in 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 4.01, at 85 (3d ed. 2008) (WPIC). Specifically, the language that states, "A reasonable doubt is one for which a reason exists." Lizarraga claims the language undermines the presumption of innocence and the burden of proof. But in State v. Bennett, 161 Wn.2d 303, 318, 165 P.3d 1241 (2007), our Supreme Court expressly approves the WPIC as a correct statement of the law and directs courts to use WPIC 4.01 to instruct on the burden of proof and the definition of reasonable doubt. See also State v. Pirtle, 127 Wn.2d 628, 656-58, 904 P.2d 245 (1995) (concluding WPIC 4.01 adequately permits both the government and the accused to argue their theories of the case).

State v. Lizarraga, 71532-1-I, 2015 WL 8112963, at 20 (Dec. 9, 2015).

This matter has been resolved. Thus, if this Court decides to address Thomas's claim raised for the first time on appeal, it should be rejected.

2. RCW 9.94A.701 UNAMBIGUOUSLY REQUIRES AN 18-MONTH TERM OF COMMUNITY CUSTODY BE IMPOSED FOR AN OFFENDER SENTENCED TO PRISON FOR SECOND DEGREE ASSAULT.

Thomas claims that because assault in the second degree is classified both as a "violent offense" and a "crime against persons," there is an ambiguity as to whether the legislature intended 12 or 18 months of

community custody as part of his sentence, so that the rule of lenity requires that only12 months of community custody be imposed. Thomas's argument must be rejected because it is contrary to the clear intent of the legislature and renders meaningless a section of the community custody statute.

A court's primary duty in construing a statute is to determine the legislature's intent. State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). Reviewing courts look to the text of the statutory provision in question, as well as "the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." Ervin, 169 Wn.2d at 820 (quoting Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)). A statute is ambiguous only if it is susceptible to more than one reasonable interpretation. State v. Jacobs, 154 Wn.2d 596, 600-01, 115 P.3d 281 (2005). Only if the court finds the statute is susceptible to more than one reasonable interpretation may the court "resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent." Christensen v. Ellsworth, 162 Wn.2d 365, 373, 173 P.3d 228 (2007). Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003). A "stopgap principle" is that, in construing

a statute, "a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results." State v. J.P., 149 Wn.2d at 450. Appellate courts review the Sentencing Reform Act de novo to discern and implement the legislature's intent. State v. Graham, 181 Wn.2d 878, 337 P.3d 319 (2014).

Here, RCW 9.94A.701 is not ambiguous because the provisions dictating imposition of community custody, considered in light of the clearly articulated legislative policy goals of the Sentencing Reform Act, are susceptible to only one reasonable interpretation—that for an offender sentenced to prison, 18 months of community custody is mandatory for a violent offense and 12 months is to be imposed for crimes against persons that are not violent offenses.

RCW 9.94A.701 dictates mandatory community custody terms for offenders sentenced to the department of corrections; those terms are longer for the most serious offenses and shorter for the less serious offenses. The statute reads, in pertinent part:

> (1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall ... sentence the offender to community custody for three years:
> (a) A sex offense not sentenced under RCW 9.94A.507; or
> (b) **A serious violent offense**.
>
> (2) A court shall ... sentence an offender to community custody for eighteen months when the court sentences the

person to the custody of the department for **a violent offense that is not considered a serious violent offense.**
(3) A court shall … sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:
(a) **Any crime against persons under RCW 9.94A.411(2)**;
(b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate;
(c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000; or
(d) A felony violation of RCW 9A.44.132(1) (failure to register) that is the offender's first violation for a felony failure to register.
….

RCW 9.94A.701 (emphasis added).

RCW 9.94A.702, which governs community custody for offenders *not* sentenced to prison, provides:

(1) If an offender is sentenced to a term of confinement for one year or less for one of the following offenses, the court may impose up to one year of community custody:
(a) A sex offense;
(b) **A violent offense**;
(c) **A crime against a person under RCW 9.94A.411**;
(d) A felony violation of chapter 69.50 or 69.52 RCW, or an attempt, conspiracy, or solicitation to commit such a crime; or
(e) A felony violation of RCW 9A.44.132(1) (failure to register).

(2) If an offender is sentenced to a first-time offender waiver, the court may impose community custody as provided in RCW 9.94A.650.

RCW 9.94A.702 (emphasis added). Together, these statutes show a legislative scheme that is intended to impose the longest term of community custody for those convicted of the most serious offenses (serious violent offenses), a medium term to those convicted of violent offenses, and the shortest term of community custody for the offenders whose offenses were crimes against persons but not serious violent or violent offenses.

This approach is plainly consistent with the legislature's purpose to "ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history." RCW 9.94A.110(1). A "serious violent offense is a subcategory of violent offense." RCW 9.94A.030(46) (All serious violent offenses are violent offenses). All serious violent offenses are class A felonies.[3] "Violent offenses" include all "serious violent offenses" and other enumerated class A and B felonies. RCW 9.94A.030(55). Thomas argues that we cannot tell whether the legislature intended assault in the second degree to be subject to the longer term because that crime is both a violent offense and a crime against persons. This interpretation is absurd and would render

[3] See attached appendix that includes lists of the "serious violent offenses" and "violent offenses" enumerated in RCW 9.94A.030(46) and (55), and "crimes against persons" listed in RCW 9.94A.411(2). The lists are from the 2014 Washington State Adult Sentencing Guidelines Manual and show the crime classification and seriousness level of each offense.

RCW 9.94A.701 meaningless. "Crimes against persons" are listed in RCW 9.94A.411(2). The list includes all of the serious violent offenses and nearly all of the violent offenses. Unlike serious violent offenses and violent offenses, crimes against persons include class C felonies. For instance, both assault in the first degree (a class A serious violent offense) and assault in the second degree (a class B violent offense) are also categorized as crimes against persons. Under Thomas's reasoning, all of these crimes would be eligible for only 12 months instead of 36 or 18 months of community custody. This is an absurd result.

Moreover, if Thomas's interpretation were correct, there would be no real need for RCW 9.94A.702, since all defendants convicted of a violent offense or a crime against persons would be limited to 12 months of community supervision regardless of whether the sentence resulted in prison time. The provision would be rendered meaningless and superfluous.

Finally, Thomas argues that to the extent there is any ambiguity in the statute, it must be construed in his favor. However, the rule of lenity does not trump a construction that best reflects the legislature's intent. State v. Oakley, 117 Wn. App. 730, 734, 72 P.3d 1114 (2003), rev. denied, 151 Wn.2d 1007 (2004). The rule of lenity does not require that a "forced, narrow, and over-strict construction . . . be applied to defeat the obvious

intent of the legislature." State v. Gilbert, 68 Wn. App. 379, 383, 842 P.2d 1029 (1993). Here, the intent of the legislature was obvious—that RCW 9.94A.701 mandates 12 months of community custody only for the crimes against persons that are not either serious violent or violent offenses.

RCW 9.94A.701, when viewed in conjunction with RCW 9.94A.702, makes clear that the legislature intended a tiered step-down approach to community custody in accordance with the goal of proportionality in sentencing. An offender's term in custody is determined by the combination of the seriousness of the offense and the offender's offender score. Thus, those who are sentenced to the Department of Corrections are treated as more serious offenders than those sentenced to less than one year in custody. For the more serious offenders sentenced to prison, the legislature also established gradations of community custody terms determined by the seriousness of the particular offense. For the less serious offenders, whose combination of offense seriousness level and offender score did not result in a prison sentence, the legislature found it unnecessary to distinguish between violent offenses and crimes against persons and limited community custody to 12 months for all cases.

Thomas was convicted of assault in the second degree, a violent offense, and sentenced to the Department of Corrections. The trial court

properly imposed an 18-month term of community custody, as unambiguously intended by the legislature.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Thomas's judgment and sentence.

DATED this 11 day of February, 2016.

Respectfully submitted,

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APPENDIX

Serious Violent Offenses

RCW 9.94A.030(45)

Statute (RCW)	Offense	Class	Seriousness Level
10.95.020	Aggravated Murder 1	A	XVI
9A.36.011	Assault 1	A	XII
9A.36.120	Assault of a Child 1	A	XII
9A.32.055	Homicide by Abuse	A	XV
9A.40.020	Kidnapping 1	A	X
9A.32.060	Manslaughter 1	A	XI
9A.32.030	Murder 1	A	XV
9A.32.050	Murder 2	A	XIV
9A.44.040	Rape 1	A	XII
Attempt, Solicitation or Conspiracy to commit one of these felonies			
Any federal or out-of-state conviction for an offense that, under the laws of this state, would be a felony classified as a serious violent offense			

SECTION 4 – VIOLENT OFFENSES

VIOLENT OFFENSES

RCW 9.94A.030(54)

Statute (RCW)	Offense	Class	Seriousness Level
9A.48.020	Arson 1	A	VIII
9A.48.030	Arson 2	B	IV
9A.36.021(2)(a)	Assault 2	B	IV
9A.36.021(2)(b)	Assault 2 With a Finding of Sexual Motivation	A	IV
9A.36.130	Assault of a Child 2	B	IX
9A.76.170(3)(a)	Bail Jumping with Murder 1	A	VI
9A.52.020	Burglary 1	A	VII
9A.44.083	Child Molestation 1	A	X
70.245.200(2)	Coerce Patient to Request Life-ending Medication	A	Unranked
9A.36.045	Drive-by Shooting	B	VII
70.74.180	Explosive Devices Prohibited	A	IX
9A.56.120	Extortion 1	B	V
70.245.200(1)	Forging Request for Medication	A	Unranked
79A.60.050(1)(c)	Homicide by Watercraft - Disregard for the Safety of Others	A	VII
79A.60.050(1)(b)	Homicide by Watercraft – In a Reckless Manner	A	VIII
79A.60.050(1)(a)	Homicide by Watercraft – While Under the Influence of Intoxicating Liquor or any Drug	A	IX
9A.44.100(2)(b)	Indecent Liberties - With Forcible Compulsion	A	X
9A.40.030(3)(a)	Kidnapping 2	B	V
9A.40.030(3)(b)	Kidnapping 2 With a Finding of Sexual Motivation	A	V
9A.82.060(1)(a)	Leading Organized Crime – Organizing Criminal Profiteering	A	X
70.74.280(1)	Malicious Explosion of a Substance 1	A	XV
70.74.280(2)	Malicious Explosion of a Substance 2	A	XIII
70.74.270(1)	Malicious Placement of an Explosive 1	A	XIII
9A.32.070	Manslaughter 2	B	VIII
69.50.406(1)	Over 18 and Deliver Heroin, Methamphetamine, a Narcotic from Schedule I or II, or Flunitrazepam from Schedule IV to Someone Under 18	A	DG-III
9.68A.101	Promoting Commercial Sexual Abuse of a Minor	A	XII
9A.44.050	Rape 2	A	XI
9A.44.073	Rape of a Child 1	A	XII

SECTION 4 – VIOLENT OFFENSES

Statute (RCW)	Offense	Class	Seriousness Level
9A.44.076	Rape of a Child 2	A	XI
9A.56.200	Robbery 1	A	IX
9A.56.210	Robbery 2	B	IV
9A.76.115	Sexually Violent Predator Escape	A	X
9A.40.100(1)	Trafficking 1	A	XIV
9A.40.100(2)	Trafficking 2	A	XII
9.82.010	Treason	A	Unranked
9.41.225	Use of Machine Gun in Commission of a Felony	A	VII
46.61.522(1)(a) & (b)	Vehicular Assault – In a Reckless Manner or While Under the Influence of Intoxicating Liquor or any Drug	B	IV
46.61.520(1)(c)	Vehicular Homicide - Disregard for the Safety of Others	A	VII
46.61.520(1)(b)	Vehicular Homicide – In a Reckless Manner	A	VIII
46.61.520(1)(a)	Vehicular Homicide – While Under the Influence of Intoxicating Liquor or any Drug	A	XI
Any offense currently listed as a Serious Violent offense			
Attempt, Solicitation or Conspiracy to commit a class A felony			
Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent.			
Any federal or out-of-state conviction for an offense that, under the laws of this state, would be a felony classified as a violent offense			

SECTION 4 – CRIMES AGAINST PERSONS

CRIME AGAINST PERSONS OFFENSES

RCW 9.94A.411(2)

Statute (RCW)	Offense	Class	Seriousness Level
10.95.020	Aggravated Murder 1	A	XVI
9A.48.020	Arson 1	A	VIII
9A.36.011	Assault 1	A	XII
9A.36.021(2)(a)	Assault 2	B	IV
9A.36.031(1)(a)-(g) & (i)-(j)	Assault 3 – Excluding Assault 3 of a Peace Officer with a Projectile Stun Gun	C	III
9A.36.031(1)(h)	Assault 3 - Of a Peace Officer with a Projectile Stun Gun	C	IV
9A.36.120	Assault of a Child 1	A	XII
9A.36.130	Assault of a Child 2	B	IX
9A.36.140	Assault of a Child 3	C	III
9A.52.020	Burglary 1	A	VII
9A.44.083	Child Molestation 1	A	X
9A.44.086	Child Molestation 2	B	VII
9A.44.089	Child Molestation 3	C	V
9.68A.090(2)	Communication with Minor for Immoral Purposes (Subsequent Violation or Prior Sex Offense Conviction)	C	III
9.16.035(4)	Counterfeiting – Endanger Public Health or Safety	C	IV
9A.36.100	Custodial Assault	C	III
26.50.110	Domestic Violence Court Order Violation	C	V
46.61.502(6)	Driving While Under the Influence of Intoxicating Liquor or any Drug (Effective 7/1/2007)	C	V
9A.56.120	Extortion 1	B	V
9A.56.130	Extortion 2	C	III
9.35.020(2)	Identity Theft 1	B	IV
9.35.020(3)	Identity Theft 2	C	II
9A.64.020(1)	Incest 1	B	VI
9A.64.020(2)	Incest 2	C	V
9A.44.100(2)(b)	Indecent Liberties - With Forcible Compulsion	A	X

SECTION 4 – CRIMES AGAINST PERSONS

Statute (RCW)	Offense	Class	Seriousness Level
9A.44.100(2)(a)	Indecent Liberties - Without Forcible Compulsion	B	VII
9A.72.130	Intimidating a Juror	B	VI
9A.76.180	Intimidating a Public Servant	B	III
9A.72.110	Intimidating a Witness	B	VI
9A.40.020	Kidnapping 1	A	X
9A.40.030(3)(a)	Kidnapping 2	B	V
9A.32.060	Manslaughter 1	A	XI
9A.32.070	Manslaughter 2	B	VIII
9A.32.030	Murder 1	A	XV
9A.32.050	Murder 2	A	XIV
46.61.504(6)	Physical Control of a Vehicle While Under the Influence of Intoxicating Liquor or any Drug (Effective 7/1/2007)	C	V
9A.36.060	Promoting a Suicide Attempt	C	Unranked
9A.88.070	Promoting Prostitution 1	B	VIII
9A.44.040	Rape 1	A	XII
9A.44.050	Rape 2	A	XI
9A.44.060	Rape 3	C	V
9A.44.073	Rape of a Child 1	A	XII
9A.44.076	Rape of a Child 2	A	XI
9A.44.079	Rape of a Child 3	C	VI
9A.84.010(2)(b)	Riot (If Against Person)	C	Unranked
9A.56.200	Robbery 1	A	IX
9A.56.210	Robbery 2	B	IV
9A.46.110	Stalking	B	V
9.61.160	Threats to Bomb (If Against Person)	B	IV
9A.40.040	Unlawful Imprisonment	C	III
46.61.522(1)(c)	Vehicular Assault - Disregard for the Safety of Others	B	III
46.61.522(1) (a) & (b)	Vehicular Assault – In a Reckless Manner or While Under the Influence of Intoxicating Liquor or any Drug	B	IV
46.61.520(1)(c)	Vehicular Homicide - Disregard for the Safety of Others	A	VII
46.61.520(1)(b)	Vehicular Homicide – In a Reckless Manner	A	VIII
46.61.520(1)(a)	Vehicular Homicide – While Under the Influence of Intoxicating Liquor or any Drug	A	XI

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorney for the appellant, Mary T. Swift, containing a copy of the Brief of Respondent, in STATE V. JASON THOMAS, Cause No. 73519-5-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Date : Feb. 12, 2016

Done in Seattle, Washington