

64939-6

64939-6

No. 64939-6-I

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

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STATE OF WASHINGTON,

Respondent,

v.

ROMMEL LIDDELL,

Appellant.

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

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BRIEF OF APPELLANT

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**A. ASSIGNMENTS OF ERROR**

1. The State did not prove beyond a reasonable doubt that Rommel Liddell entered or remained unlawfully in a residence, an essential element of the crime of residential burglary.

2. The trial court erred by denying Mr. Liddell's motion to sever the trials of Count 1 (residential burglary) and Count 2 (violation of a court protection order).

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. A defendant may not be convicted of a crime unless the State proves every element of that crime beyond a reasonable doubt. Rommel Liddell was convicted of residential burglary, but the State did not prove he entered the residence in question.

Viewing the evidence in the light most favorable to the State, must Liddell's conviction for residential burglary be dismissed?

2. The defendant's right to a fair trial requires severance of charges for trial when the defendant is prejudiced by the jury's inability to separate proof of one charge from another or when the jury uses proof of one charge to infer a criminal disposition to find guilt on the other. Did the trial court's denial of Mr. Liddell's motion to sever the charges of residential burglary and violation of a court order violate his constitutional right to a fair trial where the jury was

not instructed to segregate the evidence to determine if sufficient evidence supported each crime individually and evidence relevant to the burglary prosecution would not have been cross-admissible in a separate trial for violation of a court order?

C. STATEMENT OF THE CASE

Rommel Liddell was charged by the King County Prosecutor with one count of residential burglary and one count of violating a RCW 10.99 court order, both occurring on April 29, 2009. CP 1-2. Mr. Liddell's motion to sever two counts for trial was denied. CP 10-17; 12/14/09RP 28-38; 12/17/09RP 79.

David Dunlap and Aurora Anderson shared an apartment at 2202 N.E. 197<sup>th</sup> Place, Apartment B, in Shoreline, which was burglarized during the evening of April 29.<sup>1</sup> 12/16/09RP 3-5, 62-63, 79-80. The front door was broken; a 42-inch flat screen television, sound system and sub-woofer, Play Station 3, Direct TV receiver, and various video games and movies were taken. 12/16/09RP 3-5, 12-13, 17, 79-80.

Mr. Dunlap was out of town that evening. 12/16/09RP 11-12. Ms. Anderson and her friend Christian DeBoer visited her

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<sup>1</sup> Mr. Dunlap testified he had a second roommate, Alex Frasier, who was in a relationship with Ms. Anderson, but Ms. Anderson did not mention Mr. Frasier and he did not testify at trial. 12/16/09RP 5, 63.

neighbors Jennifer White Emmanuel and Alva Emmanuel.<sup>2</sup>

12/16/09RP 74, 99-100.

Ms. Anderson testified that Ms. Emmanuel invited Terrence Nicholson and Mr. Liddell to her apartment, but only Mr. Nicholson came. 12/16/09RP 75-76. Ms. Anderson claimed she peeked out of a window and saw Mr. Nicholson get out of a green Cadillac. 12/16/09RP 100-01. She thought Mr. Liddell might have been in the driver's seat but she could not be positive. 12/16/09RP 120, 128-29. In her prior statement to the police, however, Ms. Anderson said only Mr. Nicholson had been invited to the Emmanuel's home, and she did not mention seeing him or the car. 12/16/09RP 101-04.

Ms. Anderson had only met Mr. Liddell one time and was initially unable to identify him in court, changing her testimony after a recess and viewing photographs of Mr. Liddell. 12/16/09RP 68-69, 111-12, 122-25. She asserted she had seen Mr. Liddell driving a green Cadillac in the past.<sup>3</sup> 12/16/09RP 73; Ex. 24-25. She had also seen a short, Asian woman drive the Cadillac. 12/16/09RP

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<sup>2</sup> Ms. Anderson's friend Christian DeBoer, 12/16/09RP 159-60, did not testify at trial. Neither did Jennifer or Alva Emmanuel; the State obtained a material witness warrant for Ms. Emmanuel which was never served. 12/14/09RP 1-3; 12/17/09RP 124.

<sup>3</sup> Ms. Anderson identified the blue car seen in Exhibits 24-25 as the green Cadillac. 12/16/09RP 71-73

123-24. Ms. Anderson first said she had seen Mr. Liddell and the woman together but later said she had never seen the two together.<sup>4</sup> 12/16/09RP 70, 123-24.

When he joined the party, Mr. Nicholson was very nervous and only stayed for 10 to 15 minutes.<sup>5</sup> 12/16/09RP 104. Ms. Anderson returned to her apartment about five minutes after Mr. Nicholson left the gathering. She noticed the front door was damaged and the television and other items were missing. 12/16/09RP 80, 105-06. She went back to the Emmanuel's where she called 911 and her roommate Dunlap, and then returned to her apartment with the Emmanuels and talked to other neighbors. 12/16/09RP 11-12, 80, 85-86, 106.

Thinking Mr. Nicholson might have been involved in the break-in, Ms. Anderson and Ms. Emmanuel then walked about a half a mile to an apartment Ms. Emmanuel believed was occupied by Mr. Liddell's girlfriend. The two women stood outside the apartment on the sidewalk. 12/16/09RP 87-88, 107-09, 142. The green Cadillac was parked outside the apartment. 12/16/09RP 88-89.

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<sup>4</sup> Ms. Anderson never met the woman but assumed she was Mr. Liddell's girlfriend. 12/16/09PR 70.

<sup>5</sup> Mr. Nicholson did not testify at trial.

Mr. Nicholson came out of the apartment and talked to Ms. Emmanuel. 12/16/09RP 90, 109-110. Mr. Liddell later arrived; Ms. Anderson first said she did not know from which direction he came and then said he came from the direction of the apartment. 12/16/09RP 91-94, 110, 127. Mr. Liddell and Ms. Emmanuel had a brief conversation; he asked Ms. Emmanuel why she was making "my spot hot." 12/16/09RP 91-92, 110.

King County Sheriff's deputies investigated the burglary and went to the apartment where Ms. Anderson and Ms. Emmanuel were waiting. 12/16/09RP 23-24. Ms. Le allowed the officers to look inside the apartment. 12/16/09RP 24, 27-28. When the officers went upstairs and saw a television, however, Ms. Le became nervous and asked them to leave. 12/16/09RP 28-29, 40, 139-40. Outside Ms. Le got in a verbal altercation with Mr. Anderson and Ms. Emmanuel. 12/17/09RP 30. Mr. Nicholson returned to Ms. Le's shortly after the police arrived. 12/16/09RP 111, 178.

A detective obtained a search warrant for Ms. Le's home and car. 12/17/09RP 32. Items taken from Ms. Anderson's apartment were seized from the residence. 12/16/09RP 40-41. The flat-screen television was in the master bedroom; the Play Station 3

game console and other items were found in the top bunk of the room in the child's bedroom; and various CDs were in the kitchen. 12/16/09RP 33, 42, 144, 173-75. The police noted the closet in the child's bedroom contained men's clothing and shoes. 12/16/09RP 152.

The police found Mr. Liddell's Washington State identification card on the kitchen table.<sup>6</sup> 12/16/09RP 45-47; Ex. 20. Another photo identification card belonging to Mr. Liddell was in a shoe box in the child's bedroom closet. 12/16/09RP 147-48. Other papers with Mr. Liddell's name, such as court documents and a receipt for counseling, were also seized from the home. 12/17/09RP 46-50. The only paper that showed the address of the apartment, however, was addressed to Ms. Le. 12/17/09RP 49-50; 12/17/09RP 71; Ex. 53-54.

The police also searched the green Cadillac, which was registered to Ms. Le. 12/16/09RP 182. They did not locate any property from Mr. Dunlap and Ms. Anderson's apartment in the car. 12/16/09RP 51; 12/17/09RP 56. A police detective testified the car was big enough to hold the 42 inch television and other items taken in the burglary. 12/16/09RP 59.

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<sup>6</sup> The identification card shows a Lynnwood address for Mr. Liddell. Ex 20.

Fingerprints were lifted from Ms. Anderson's apartment, but none were matched to Mr. Liddell. 12/16/09RP 179-80; 12/17/09 60, 74.

Mr. Liddell was later arrested. He told the police he was at his mother's house on the night of the burglary. 12/17/09RP 62-63. He added that he was not supposed to be at Ms. Lee's house because of a no-contact order. 12/17/09RP 63.

In September, 2008, the King County District Court ordered Mr. Liddell to have no contact with "Vi Lee" until September 30, 2010. Ex. 69. The order prohibited Mr. Liddell from knowingly coming within 500 feet of her residence, workplace, school, or person. 12/17/09RP 66; Ex. 69.

The State charged Mr. Liddell as a principal and did not request an accomplice liability instruction for the burglary. CP 1; 12/16/09RP 200; 12/17/09RP 85. After a jury trial before the Honorable Michael Hayden, the jury convicted Mr. Liddell as charged. CP 30-31. Mr. Liddell received a standard range sentence for residential burglary consecutive to a 12-month suspended sentence for violation of a court order. CP 52-62. This appeal follows. CP 63-74.

## D. ARGUMENT

### 1. THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT MR. LIDDELL COMMITTED RESIDENTIAL BURGLARY

a. The State was required to prove every element of residential burglary beyond a reasonable doubt. The due process clauses of the federal and state constitutions require the government prove every element of a crime beyond a reasonable doubt.<sup>7</sup> Apprendi v. New Jersey, 530 U.S. 466, 476-77, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22. The inquiry on appellate review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 334, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Drum, 168 Wn.2d 23, 34-35, 225 P.3d 237 (2010).

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<sup>7</sup> The Fourteenth Amendment states in part, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

The Sixth Amendment provides in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

Article I Section 3 of the Washington Constitution states, "No person shall be deprived of life, liberty, or property, without due process of law."

Article I, Section 22 provides specific rights in criminal cases. "In all criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel . . . to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his owns behalf, to have a speedy public trial by an impartial jury . . ."

Mr. Liddell was convicted of residential burglary, RCW 9A.52.025. CP 1, 30. Residential burglary is committed when a person enters or remains unlawfully in a dwelling with the intent to commit a crime.<sup>8</sup> RCW 9A.52.025(1). The statute reads:

A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

Id. A person enters or remains unlawfully on property if he is not “licensed, invited, or otherwise privileged” to be on the property.

RCW 9A.52.010(3). “Enter” is further defined at the insertion of a body part, instrument, or weapon. RCW 9A.52.010(2) reads:

The word “enter” when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property.

The elements of residential burglary thus are that on April 29, 2009, the defendant (1) entered or remained unlawfully in Ms. Anderson’s apartment (2) with intent to commit a crime against persons or property in the dwelling. CP 43; State v. Devitt, 152

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<sup>8</sup> “Dwelling” is not defined by statute and therefore has its common dictionary definition. RCW 9A.52.010; State v. Watson, 146 Wn.2d 947, 956, 58 P.3d 61 (2002).

Wn.App. 907, 911, 218 P.3d 647 (2009). The issue here is whether Mr. Liddell's conviction for residential burglary can stand where the State did not produce evidence that he entered the dwelling or took property.

b. The State did not prove beyond a reasonable doubt that Mr. Liddell entered Ms. Anderson and Mr. Dunlap's apartment or that he took their property. Viewing the evidence in the light most favorable to the State, the State proved Mr. Dunlap's property was found in Ms. Le's apartment, Mr. Liddell was outside that apartment after the burglary, Ms. Le's car was outside her apartment after the burglary, Ms. Le and Mr. Liddell appeared to have a relationship, and Mr. Liddell may have been outside the burglarized home in Ms. Le's car near the time of the burglary. This circumstantial evidence was not sufficient to establish beyond a reasonable doubt that Mr. Liddell committed residential burglary.

Washington courts have long held that mere proximity to recently stolen property does not establish a prima facie case of burglary. State v. Q.D., 102 Wn.2d 19, 28, 685 P.2d 557 (1984); State v. Mace, 97 Wn.2d 840, 843, 650 P.2d 217 (1982) (and cases cited therein); State v. Mevis, 53 Wn.2d 377, 380, 333 P.2d 1095 (1959). Instead, the State must produce other evidence of guilt,

“such as flight, improbable or inconsistent explanations, the giving of fictitious names or circumstantial proof of entry.” Mace, 97 Wn.2d at 844-45. Thus, in Mace, a burglary conviction was reversed where the defendant was found in possession of recently stolen bank cards taken from a residence and failed to adequately explain the possession. Id. at 842-45. A trespass conviction was reversed in Q.D. where the juvenile respondent was found in possession of keys to a school in absence of proof he was near the scene at the time the keys disappeared. Q.D., 102 Wn.2d at 28.

Here, Mr. Liddell was not found in possession of stolen property. Instead, stolen property was found in the home of Ms. Le, and the State presented circumstantial evidence that Mr. Liddell had a close relationship with Ms. Le. While some of Mr. Liddell’s papers were found in her home, the State produced nothing addressed to him at that address and thus did not prove he lived there or that he was inside her apartment at the same time as the stolen property. At most, a witness who had difficulty identifying Mr. Liddell saw him outside the apartment.

In addition to lack of proof of possession of recently stolen property, the State produced little additional evidence to establish Mr. Liddell committed the burglary. Ms. Anderson’s testimony

placing Mr. Liddell in the vicinity of the burglarized apartment was equivocal:

Q: And on redirect, you said that you had a view also into the driver's side of the green Cadillac?

A: Not necessarily just the driver's side, like a view of kind of like the corner of the car, so you could see in the windshield, and like a little bit of the driver's side, most of the windshield.

Q: Okay, and with that understanding, and that view that you had ---

A: Yes.

Q: -- it's also your testimony that you saw Rommel Liddell in that green Cadillac?

A: Yes, I believe that was him.

Q: Okay, and when you say you believe that was him, did you see somebody in the green Cadillac?

A: That looked like him, yes.

Q: Okay.

A: I can't -- I'm not positive to be like that was him in the driver's seat, but it looked like him.

12/16/09RP 128-29 (emphasis added). Ms. Anderson was also impeached with her failure to mention seeing the car earlier, and she later revealed her opinion was based upon what other people told her. 12/16/09RP 129-30.

The State did not charge Mr. Liddell with another person, allege he acted as an accomplice or request accomplice liability instructions. CP 1; 12/16/09RP 200; 12/17/09RP 85. Thus, the State was required to prove he entered the apartment with the intent to commit a crime. RCW 9A.52.025; CP 43.

The petitioner was charged with second degree burglary. He could not constitutionally be convicted of that charge if the jury found he was an accomplice but never entered or remained unlawfully in the burglarized residence, because it was never instructed on accomplice liability.

State v. Davenport, 100 Wn.2d 757, 765, 675 P.2d 1213 (1984).

As mentioned above, to “enter” property, a person must cross the property’s threshold with his body, a part of his body, or an instrument or weapon without permission. RCW 9A.52.010(2). Here, there is no evidence that Mr. Liddell entered the apartment. The jury may have believed Mr. Liddell and Mr. Nicholson and/or Ms. Lee worked together to burglarize the apartment, it was not presented with any proof that Mr. Liddell was inside the burglarized apartment. The circumstantial evidence presented in this case was not sufficient to prove beyond a reasonable doubt Mr. Liddell entered the apartment and took property.

c. Mr. Liddell's conviction for residential burglary must be reversed and dismissed. The State did not prove Mr. Liddell entered Ms. Anderson and Mr. Dunlap's apartment or stole their property. Mr. Liddell's conviction must be reversed and dismissed. Q.D., 102 Wn.2d at 28; Mace, 97 Wn.2d at 845.

2. THE DENIAL OF MR. LIDDELL'S MOTION TO SEVER THE PROSECUTIONS FOR RESIDENTIAL BURGLARY AND VIOLATION OF A COURT ORDER FOR TRIAL VIOLATED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL

a. The defendant's constitutional right to a fair trial requires severance of counts when necessary to promote the fair determination of guilt or innocence on each offense. A criminal defendant has the constitutional right to a fair trial. U.S. Const. amend. XIV; Const. art. I, §§ 3, 22. Washington court rules addressing joinder and severance of criminal charges protect this right by ensuring the defendant receives "a fair trial untainted by undue prejudice." State v. Bryant, 89 Wn.App. 857, 865, 950 P.2d 1004 (1998), rev. denied, 137 Wn.2d 1017 (1999).

CrR 4.4(b) provides the court "shall" sever counts when severance will promote a fair determination of the defendant's guilt or innocence. The rule reads:

The court, on application of the prosecuting attorney, or on application of the defendant other than under section (a), shall grant a severance of offenses whenever before trial or during trial with consent of the defendant, the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense.

CrR 4.4(b). The term "shall" creates a mandatory duty. State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994). A trial court's decision addressing a motion to sever is a question of law reviewed de novo for manifest abuse of discretion. Bryant, 89 Wn.App. at 864.

Although the decision to grant or deny a motion to sever is discretionary, Washington courts recognize that joinder of charges is inherently prejudicial. State v. Smith, 74 Wn.2d 744, 754-55, 446 P.2d 571 (1968), vacated in part, 408 U.S. 934 (1972), overruled on other grounds, State v. Gosby, 85 Wn.2d 758, 539 P.2d 680 (1975). "[E]ven if joinder is legally permissible, the trial court should not join offenses if prosecution of all charges in a single trial would prejudice the defendant." Bryant, 89 Wn.App. at 864.

"Joinder of counts should never be used in such a way as to unduly embarrass or prejudice a defendant or deny him a substantial right." State v. Russell, 125 Wn.2d 24, 62, 882 P.2d 747 (1994), cert. denied, 514 U.S. 1129 (1995). A defendant may

be prejudiced if he is embarrassed or confounded in presenting separate defenses or if a single trial invites the jury to cumulate evidence to infer a criminal disposition or find guilt when, considered separately, it would not do so. Id. at 62; State v. Bythrow, 114 Wn.2d 713, 718, 790 P.2d 154 (1990).

b. Mr. Liddell's moved to sever the residential burglary and violation of a court order charges for trial. Prior to trial, Mr. Liddell moved to sever the two charges against him. CP 10-17; 12/14/09RP 28-34. While CrR 4.4(a)(1) requires the motion be made prior to trial, the prosecutor agreed that Mr. Liddell could raise the motion during pre-trial hearings after the case was assigned to Judge Hayden. 12/14/09RP 28.

The court denied the motion, finding the defenses were the same; that, with the exception of the no-contact order, the two charges were based upon the same evidence; and Mr. Liddell would not be prejudiced because the jury would not learn the no-contact order was for domestic violence. 12/14/09RP 37-38.

As required by CrR 4.4(a)(2), Mr. Liddell renewed his motion to sever the counts at the close of the State's case, pointing out evidence admissible in the burglary prosecution would not have been admissible in the violation of court order trial. 12/17/09RP 79.

c. The trial court erred by denying Mr. Liddell's motion to sever the residential burglary and violation of a court order charges.

To determine whether to sever charges in order to avoid prejudice to the defendant, the court must consider (1) the strength of the government's evidence on each count, (2) the clarity of the defenses as to each count, (3) whether a jury instruction can properly guide the jury to consider the evidence of each count separately, and (4) the admissibility of evidence of the other charges even if not joined for trial. State v. Sutherby, 165 Wn.2d 870, 884-85, 204 P.3d 916 (2009); Russell, 125 Wn.2d 63.

Here, the trial court incorrectly assumed that all of the evidence that was relevant to the burglary prosecution was necessarily relevant and admissible to the violation of a court-order count. In fact, the State was entitled to show the relationship between Mr. Liddell and Ms. Le in the burglary prosecution. Ms. Le resided in the apartment where the stolen property was found and the only letter found inside that was addressed to that address was a letter to Ms. Le. In addition, Ms. Le was the registered owner of the green car that was seen near burglarized residence and also outside her apartment. Given the State's inability to place Mr. Liddell in Ms. Le's car or apartment that evening, establishing that

relationship was important to show Mr. Liddell had dominion and control over the stolen goods. Additionally, evidence that Mr. Liddell may have used Ms. Le's car on that date or in the past was only relevant to the burglary charge.

This evidence, however, was not relevant to the violation of court order prosecution. There, the State had to prove beyond a reasonable doubt that Mr. Liddell came within 500 feet of Ms. Le or her residence on April 29, 2009. CP 1-2, 48; Ex. 69. The jury would not have learned about the residential burglary if it had only been deciding the violation of a no-contact order charge.

Additionally, the State needed to show Mr. Liddell's relationship to Ms. Le in order to prosecute the burglary. The evidence that there was men's clothing in the child's room of Ms. Le's residence, that Ms. Le had pictures on her wall where the two appeared to be a couple and share a child, and evidence that Mr. Liddell's letters or court documents dated prior to April 29 were found in her residence were not relevant to the no-contact order case. This evidence showed Mr. Liddell may have placed the items in Ms. Le's home on a prior occasion, not that he was there on April 29.

The court's jury instructions did not cure the problem, as the jury was never instructed that the evidence of Mr. Liddell's

documents, clothing or photographs at Ms. Le's residence was not relevant to the violation of a court-order charge. The court instructed the jury

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

CP 41 (Instruction 6). The instruction is identical to a pattern jury instruction. 11 Washington Practice, Pattern Jury Instructions Criminal § 3.01 (2008) (WPIC).

While this instruction is a proper statement of the law, it does not limit the jury's consideration of evidence of one charge as proof of an element of another charge. State v. Bradford, 60 Wn.App. 857, 860-61, 808 P.2d 174 (1991). The instruction does not tell the jury what to do when evidence is admissible for only one count or tell the jury to segregate the evidence to determine if each count is individually proved. Thus, it did not mitigate the prejudice to Mr. Liddell. The joinder of the two counts for trial thus violated Mr. Liddell's right to a fair trial on the charge of violation of a court order.

d. Mr. Liddell's conviction for violating a court order must be reversed and remanded for a separate trial. A defendant must be tried for the offense charged and not unrelated conduct. Sutherby, 165 Wn.2d at 887. When two charges are improperly joined for trial, the convictions must be reversed unless the error was harmless. Bryant, 89 Wn.App. at 864. The wrongful admission of evidence is harmless only "if the evidence is of minor significance in reference to the evidence as a whole." State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001).

Here, the trial court denied Mr. Liddell's motion to sever the counts without considering the impact of evidence relevant to the burglary prosecution to the charge of violating a court order. If the no-contact order violation had been tried separately, the State would not have been able to introduce evidence showing Mr. Liddell's relationship with Ms. Le or circumstantial evidence that he may have been in her residence at times prior to April 29, 2009. This error was not harmless as, without that evidence, all the State had was Ms. Anderson's testimony that she saw Mr. Liddell outside Ms. Le's apartment that evening. Given Ms. Anderson's hesitancy in identifying Mr. Liddell, who she had only met once, the jury may not have convicted Mr. Liddell on that basis alone. His conviction

for violating a no-contact order must therefore be reversed and remanded for a separate trial.

E. CONCLUSION

Rommel Liddell's conviction for residential burglary must be reversed and dismissed because the State did not prove every element of the crime beyond a reasonable doubt. His conviction for violation of a court order must be reversed and remanded for a new trial.

DATED this 15<sup>th</sup> day of September 2010.

Respectfully submitted,



Elaine L. Winters – WSBA # 7780  
Washington Appellate Project  
Attorneys for Appellant

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 64939-6-I
v.	)	
	)	
ROMMEL LIDDELL,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 15<sup>TH</sup> DAY OF SEPTEMBER, 2010, I CAUSED THE ORIGINAL **OPENING 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] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] ROMMEL LIDDELL 20818 52 <sup>ND</sup> AVE W LYNNWOOD, WA 98036	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 15<sup>TH</sup> DAY OF SEPTEMBER, 2010.

x \_\_\_\_\_ 

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