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NO. 65063-7-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,
Respondent,
v.
MOSES PUGA,
Appellant.

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

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR.

1. The charging document did not contain essential factual allegations and omitted necessary legal elements.

2. The court violated Moses Puga's right to present a defense and receive a fair trial by refusing to instruct the jury on lesser offenses that were supported by evidence in the record.

3. The court improperly refused the instructions on lesser offenses requested by the defense. CP 52, 54.

4. The court prohibited Puga from arguing his theory of defense to the jury, thus denying him the right to meaningful assistance of counsel and a fair trial by jury.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. A charging document is fatally inadequate and denies an accused person the constitutionally required notice of all essential elements when it contains no allegations of an essential element of an offense. An essential element of robbery is that property is taken from another person who has an ownership interest in the property. Where the charging document contained no specific factual allegations whatsoever and did not allege that Puga took property belonging to another person, does the charging document inadequate lack the required essential elements?

2. The trial court must instruct the jury on lesser included offenses, upon request, when those offenses are supported by some evidence in the record. Puga asked for several lesser included offense instructions that were supported by the evidence and were legally available lesser offenses of the charged crime. Did the court refuse to provide the requested instructions to which Puga was entitled and thus deny him his right to present his defense?

3. A court denies an accused person meaningful assistance of counsel and due process of law when it unreasonably limits a defense attorney from arguing his theory of the case to the jury. Puga's theory of defense was that he participated in a theft but did not commit the first degree robbery that was charged. In a pretrial ruling and during closing argument, the court prevented Puga from arguing this theory of defense. Did the court deny Puga his right to present a closing argument and receive a fair trial by jury when it prohibited him from arguing his theory of defense?

D. STATEMENT OF THE CASE.

Moses Puga accompanied two friends as they entered and left a grocery store without paying for a 24-pack of Corona that a

friend carried. 1RP 172.¹ Once outside of the store, Puga's friends carried the beer away. 1RP 62. Puga stopped to pick up a cigarette and saw a man charging at him. 1RP 173. Puga explained that when he paused to get the cigarette, a man jumped on him and started hitting him. 1RP 173. Others present said Puga swung an empty beer bottle in the man's direction and the bottle fell to the ground and shattered. 1RP 52-53, 63, 66. The man who ran after Puga was a store employee named Rory Sprague, who grabbed Puga and Puga fought back. 1RP 63, 67, 174. Another store employee along with a newspaper delivery man held Puga for the police. 1RP 112-13, 131. When Sprague asked Puga why he swung at him, Puga said, "because you were after me." 1RP 96.

The State charged Puga with one count of first degree robbery. CP 65. Before his jury trial, the court granted the State's motion in limine to prohibit Puga from arguing that he should not be convicted of first degree robbery because he committed a different crime that was not charged. 1RP 3. Puga proposed several lesser offense instructions, including second degree robbery, third degree

¹ The verbatim report of proceedings are referred to as follows:
1RP is from trial proceedings on February 8th and 9th, 2010;
2RP is from sentencing on February 18, 2010.

theft and fourth degree assault. CP 51-55; 1RP 183. Following in chambers discussion and in-court argument, the court refused to give any of Puga's requested lesser offense instructions. 1RP 178, 185; Supp. CP __, sub. no. 27, p. 6 (clerk's minutes).

During closing arguments, the prosecution objected when Puga's attorney argued that Puga committed a theft by helping take the beer from the store, but not a robbery. 1RP 213-16. The court sustained the prosecution's objection on the ground that Puga's lawyer was violating the court's pretrial ruling prohibiting Puga from arguing that he had committed an offense other than what was charged. Id.

Puga was convicted of first degree robbery and received a standard range sentence. CP 29. He timely appeals. Pertinent facts are addressed in further detail below.

E. ARGUMENT.

1. THE INFORMATION OMITTED AN ESSENTIAL ELEMENT OF THE CHARGED CRIME, DENYING PUGA HIS RIGHT TO NOTICE OF THE ACCUSATIONS AGAINST HIM

- a. The person from whom property is taken is an essential element of robbery. Robbery is both a crime involving property and a crime against persons. State v. Tvedt, 153 Wn.2d

705, 712, 107 P.3d 728 (2005). An essential element of robbery is that property is taken from, or kept from, an owner. Id. As the Supreme Court explained in Tvedt, “a conviction for robbery requires that the person from whom or in whose presence the property is taken have an ownership or representative interest in the property or have dominion and control over it.” 153 Wn.2d at 714.

No conviction may be upheld when the prosecution does not allege a connection between the property taken and another person’s ownership of the property. Id., citing State v. Hall, 54 Wash. 142, 143-44, 102 P. 888 (1909). Put another way, “in order for a robbery to occur, the person from whom or from whose presence the property is taken must have an ownership, representative, or possessory interest in the property.” Tvedt, 153 Wn.2d at 714.

In Tvedt, the court addressed the unit of prosecution for a robbery involving property taken from a business. 153 Wn.2d at 715-16. When there is one taking of property, there is a single robbery, regardless of the number of employees present. Id. at 716.

The charging document for robbery must allege that the property was taken from a person with ownership interest. Id. As explained in Tvedt, “to charge robbery the State had to allege, among other things, that property was taken from or from the presence of a person having an ownership, representative, or possessory interest in the property.” 153 Wn.2d at 718.

A charging document must include “all the essential statutory and nonstatutory elements of the crimes charged.” Id. at 718; U.S. Const. amend. 6; Wash. Const. art. I, § 22. In Tvedt, the information alleged that the defendant took property from a business in the presence of certain named individuals. 153 Wn.2d at 718. Unlike Tvedt, here the charging document did not identify any owner of the property or name any individual from whom the property was taken. CP 65.

b. The charging document omitted an essential element. In order “to charge robbery,” the prosecution must “allege, among other things, that property was taken from or from the presence of a person having an ownership, representative, or possessory interest in the property.” Tvedt, 153 Wn.2d at 718.

The information charging Puga with robbery contained no mention of the owner of the property, the nature of the property, the

place from which it was taken, or any other descriptive factors that would explain that certain property was taken from another person or entity who owned it. CP 65.

A charging document must contain, “[a]ll essential elements of a crime.” State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991); see CrR 2.1(a)(1). These “essential elements” that required in the charging document are not only the elements of the crime but also “the conduct of the defendant which is alleged to have constituted that crime.” Kjorsvik, 117 Wn.2d at 101; State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989) (“essential elements’ rule requires that a charging document *allege facts supporting every element of the offense*, in addition to adequately identifying the crime charged.” (emphasis in original)). An accused person is entitled to be “fully informed” of the nature of the accusations so he can prepare an adequate defense. Kjorsvik, 117 Wn.2d at 101.

Merely reciting the statutory language is not always sufficient to provide the necessary factual notice. City of Seattle v. Termain, 124 Wn.App. 798, 803, 103 P.3d 209 (2004). In Termain, the Court faulted the charging document for failing to identify the underlying no-contact order with any degree of specificity. Termain

relied on Leach, whose “core holding” was that a defendant must be apprised not only of the legal elements but also “of the conduct of the defendant which is alleged to have constituted the crime.” Id. (citing Leach, 113 Wn.2d at 688-89; Kjorsvik, 117 Wn.2d at 98).

A victim of the crime need not always be named in a charging document, but the underlying facts of the offense must be contained in some form. For example, in a theft prosecution, the information may be sufficient if it “clearly charges” the defendant with intentionally, and without authorization, depriving the owner of “specifically described” property “of another.” State v. Greathouse, 113 Wn.App. 889, 903, 56 P.3d 569 (2002). Likewise, even if the prosecution need not prove a specific named victim in a robbery prosecution, it must allege that certain property belonged to another person. See State v. Levy, 156 Wn.2d 709, 722, 132 P.3d 1076 (2006). The mere allegation of an “intent to steal” or that property was “taken,” do not sufficiently allege the ownership of another. State v. Bunting, 115 Wn.App. 135, 143, 61 P.3d 375 (2003).

The charging document in the case at bar simply alleged that “on or about the 15th day of November, 2009,” Puga, “being in said county and state,”

did unlawfully take personal property from the person of another or in his or her presence against his or her will by the use of force or threatened use of immediate force, violence or fear of injury to that person or his or her property or the property of anyone, such force or fear being used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking, and in the commission of the robbery or in immediate flight therefrom, he inflicted bodily injury, in violation of RCW 9A.56.200

CP 65. The information contained no facts supporting the essential elements. It did not describe the property's owner, or allege another's person or entity's ownership interest in the property, and instead alleged that the property may be "the property of anyone."

When challenged for the first time on appeal, a charging document is construed liberally. State v. Ibsen, 98 Wn.App. 214, 216, 989 P.2d 1184 (1989). If the necessary facts appear in any form in the charging document, the inartful language must be actually prejudicial to the accused person to require dismissal. Id. at 216. But if the necessary facts do not appear in the charging document itself, the information is deficient and cannot be cured on appeal. Id.

Liberal construction of a charging document requires the missing language to be either "expressly stated" or "fairly implied" in the charging document. State v. McCarty, 140 Wn.2d 420, 428,

998 P.2d 296 (2000). If the essential factual elements are not expressly stated or fairly implied, the court reverses the conviction without examining whether the omission caused actual prejudice. Id.

Not only did the charging document contain no specific facts underlying the elements, it embraced Puga having taken the “property of anyone.” CP 65. Thus, the allegations contain no limitation or specification as to who might own the property, and would include property owned by Puga. By way of illustrating the inadequate nature of this language, Puga was accused of having a lime in his pocket, but while it could have been a lime from the store, there was no evidence showing the lime was owned by the store, and Puga said the lime was from another house where he had been in earlier. 1RP 81, 173. The State’s accusation could have rested on this lime; Puga would have no way of knowing which property he was accused of taking to prepare his defense.

There is no other language contained in the charging document from which Puga could draw to fill in the absent factual allegations. The information lacks any description of the property or explanation as to from where it was taken beyond “said county and state” on a certain day in November. Most significantly, it fails

the dictate of Tvedt: “to charge robbery the State had to allege, among other things, that property was taken from or from the presence of a person having an ownership, representative, or possessory interest in the property.” 153 Wn.2d at 718.

The information does not allege facts supporting every element. Tvedt, 153 Wn.2d at 714; Kjorsvik, 117 Wn.2d at 101; Leach, 113 Wn.2d at 689. The mandatory remedy is reversal and dismissal of the charge without prejudice. State v. Quismondo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (“We have repeatedly and recently held that the remedy for an insufficient charging document is reversal and dismissal of charges without prejudice to the State's ability to refile charges,” quoting State v. Vangerpen, 12 Wn.2d 782, 792-93, 888 P.2d 1177 (1988)).

2. WHERE THE COURT REFUSED TO INSTRUCT THE JURY ON AN AVAILABLE LESSER INCLUDED OFFENSE, COUPLED WITH ITS ORDER THAT PUGA COULD NOT ARGUE HE COMMITTED ONLY A LESSER CRIME, PUGA WAS DENIED A FAIR TRIAL BY JURY

a. The right to present a defense includes the right to jury instructions on lesser included offenses, upon request, when the lesser offense is supported by reasonable inferences from the record. A person accused of a crime has the constitutional right to

present a defense. California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); U.S. Const. amends. 6, 14; Wash. Const. art. I, §§ 3, 22. The right to present a defense entitles a defendant to have the jury instructed on the defense theory of the case when it is supported by the evidence. State v. Fernandez-Medina, 141 Wn.2d 448, 461-62, 6 P.3d 1150 (2000); State v. Janes, 121 Wn.2d 220, 236-37, 850 P.2d 495 (1993).

When deciding whether to give a requested lesser included jury instruction, “the trial court must interpret the evidence most strongly in favor of the defendant. The jury, not the judge, must weigh the proof and evaluate witnesses’ credibility.” State v. Ginn, 128 Wn.App. 872, 879, 117 P.3d 1155 (2005). The trial court’s failure to instruct the jury on an available and requested lesser included offense is reversible error. Id.

“The right to present a defense would be empty if it did not entail the further right to an instruction that allowed the jury to consider the defense.” Bradley v. Duncan, 315 F.3d 1091, 1098 (9th Cir. 2002) (internal citation omitted).

A defendant is entitled to a jury instruction on a lesser degree or lesser included offense whenever the evidence supports an inference that the inferior or lesser offense was committed.

State v. Workman, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978);
State v. Ieremia, 78 Wn.App. 746, 754-55, 899 P.2d 16 (1995); see
also Beck v. Alabama, 447 U.S. 625, 635-36, 100 S.Ct. 2382, 65
L.Ed.2d 392 (1980) (“the state courts that have addressed the
issue have unanimously held that a defendant is entitled to a lesser
included offense instruction where the evidence warrants it.” (citing
inter alia, Workman)).

Courts employ a two-prong test when determining whether a
defendant is entitled to a lesser included instruction:

When each element of the lesser-included offense
must be a necessary element of the offense
charged, and when the evidence in the case
supports an inference that the lesser-included
offense was committed.

Workman, 90 Wn.2d at 447-48. These two prongs are commonly
referred to as the “legal prong” and the “factual prong” of the
Workman test.

Where an offense is a lesser degree charge, there is no
need to analyze the “legal prong.” By statute, defendants in
Washington are entitled to an instruction for a lesser degree
offense whenever the evidence satisfies the “factual prong” of
Workman. Ieremia, 78 Wn.App. at 755 n.3; RCW 10.61.006 (“the
defendant may be found guilty of an offense the commission of

which is necessarily included within that with which he is charged in the indictment or information.”).²

Puga asked the court for lesser instructions on robbery in the second degree, theft in the third degree, and assault in the fourth degree. These offenses satisfied both prongs of the Workman test.

b. Puga was entitled to his requested lesser offense instructions.

i. The proposed lesser instructions satisfied the legal test. Robbery in the second degree is a lesser degree of first degree robbery and inherently satisfies the legal prong of the Workman test. Ieremia, 78 Wn.App. at 755 n.3; State v. Pacheco, 107 Wn.2d 59, 70, 726 P.2d 981 (1986) (each element of robbery in the second degree is a necessary element of robbery in the first degree); RCW 9A.56.200; RCW 9A.56.210.

Theft in the third degree is an included offense of robbery. RCW 9A.56.050.³ An offense is a lesser included offense if a person cannot commit the greater offense without also committing

² RCW 10.61.003 further provides that when a person is charged with an offense that consists of different degrees, “the jury may find the defendant not guilty of the degree charged and guilty of any degree inferior thereto, or of an attempt to commit the offense.”

the lesser offense as charged and proven. State v. Peterson, 133 Wn.2d 885, 890, 948 P.2d 381 (1997). Theft is an express element of robbery in the first degree, as both offenses require unlawful takings. RCW 9A.56.020 (defining theft); RCW 9A.56.190 (defining robbery); CP 37 (jury instruction defining robbery); CP 38 (instruction defining theft). A person could not commit robbery without committing theft, thus satisfying the legal prong of the Workman test.

Similarly, robbery in the first degree as charged and assault in the fourth degree require bodily injury. RCW 9A.56.200(1)(iii). Robbery in the first degree, as charged, could not be committed without bodily injury. CP 65 (information); CP 42 (jury instruction defining bodily injury for robbery). The jury instruction Puga requested for assault would apply in tandem with an instruction for theft, under the theory that Puga's physical reaction to the store employee who charged at him was not intended as a ploy to maintain the stolen property. The physical confrontation was separate and not intended to further the robbery. Assault was a lesser offense of the robbery as charged in the case at bar.

³ Theft in the third degree occurs when a person "commits theft of property or services" of less than \$750. RCW 9A.56.050.

ii. The lesser instructions were factually supported. There must be some affirmative evidence the defendant committed only the lesser offense to meet the factual prong of the Workman test. State v. Brown, 127 Wn.2d 749, 754, 903 P.2d 459 (1995).

“Regardless of the plausibility of this circumstance, the defendant had an absolute right to have the jury consider the lesser included offense on which there is evidence to support an inference it was committed.” State v. Parker, 102 Wn.2d 161, 166, 683 P.2d 189 (1994). The evidence need only support an inference that the defendant is guilty of the lesser offense rather than the greater offense.

The evidence must be examined in the light most favorable to the party requesting the instruction. Fernandez-Medina, 141 Wn.2d at 455-56. Evidence to support the lesser offense may come from any source. Id. at 456. The lesser offense need not be consistent with the theory of defense, as long as it is supported by some evidence in the record. Id. at 457-61 (defendant entitled to lesser of assault two even though defense presented an alibi claim); State v. Gostol, 92 Wn.App. 832, 838, 965 P.2d 1121 (1998) (defendant entitled to negligent driving instruction in

vehicular assault case where defendant denied liability for either offense).

There was sufficient evidence for Puga to be found guilty of proposed lesser offenses and not the greater offense of robbery in the first degree. Some of the jury instructions were discussed in chambers and the court did not explain its reason for denying Puga his written proposals for theft and assault. The court denied the second degree robbery request because there was a bodily injury, even though Puga's theory was that the injury resulted from a separate scuffle with a man who was charging at Puga and who turned out to be a store employee.

Puga admitted he entered the store with two others in order to get beer and he knew that no one paid for it. 1RP 172. But Puga did not expect anyone to resist their taking and he and his two friends quickly left the store. 1RP 175. As they headed away from the store, Puga had paused for a cigarette when he noticed someone that he did not know was charging at him and became scared. 1RP 175.

When Sprague asked Puga why he swung a beer bottle in his direction, Puga told him that it was because "you were after me." 1RP 96. Puga did not say he did it to escape with stolen

property. Evidence supports the theory that when Puga physically struggled with Sprague, he did so because he was reacting to someone charging at him. Puga's friends had continued on without him and were "significantly further" away. 1RP 62. Sprague agreed that the other people who carried the stolen property were much farther away than Puga was, supporting Puga's testimony that he paused while his friends hurried away with the stolen goods. Thus, there is a reasonably available inference that Puga's physical force was not used to retain the property, but rather to defend himself following his theft. The jury could fairly separate the bodily injury that occurred as part of a different offense of fourth degree assault.

Puga testified that he stopped to pick up a cigarette that fell to the ground and did not instigate a fight with the store security guard. 1RP 173. He denied hitting the store employee until the employee had hit him in his left eye and then he hit the employee back. Id. While the jury could have rejected his description of events, his testimony would support a use of force that was not intended to further the theft, even if he would have preferred that this physical confrontation had never occurred and he wished he had simply left with the beer and his friends.

As defense counsel explained in his closing argument, Puga may have incorrectly conveyed his intent when he was testifying. 1RP 214. He meant to say that what he really wanted to do was go somewhere and drink beer, when the prosecutor asked him about what he intended during the incident. Id. At the time the store employee was charging at him, he wanted to get away but he remained and ended up in a struggle with Sprague, rather than escaping with the beer as his friends had. A reasonable inference from the evidence would be that Puga committed a theft, and even may have used force to do it, thereby committing either a robbery in the second degree or a theft in the third degree. But the injury occurred when the theft was complete, Puga's friends had escaped with beer, and Puga stayed behind, finding himself in a fight with a man that he had not anticipated or instigated. Although some of the discussion of the proposed instructions occurred in chambers, Puga requested the lesser included offenses by proposing written jury instructions and during oral argument about the instructions. CP 51-55; 1RP 178, 183. Puga was entitled to instructions that were supported by some evidence in the record that he had not committed the greater and most serious offense of first degree robbery.

c. The court's order explicitly prohibiting Puga from arguing an alternative theory of events denied him the right to present a defense and receive meaningful assistance of counsel. Before trial, the court granted the State's motion in limine barring Puga from arguing that he may have committed another offense that was not charged. 1RP 3. In response, Puga's attorney said he intended to request lesser included offense instructions and would base his arguments upon those theories. Id. At the close of trial testimony, the court denied all of Puga's requested lesser offense instructions. 1RP 178, 183-85; CP 51-55.

In his closing argument, defense counsel tried to explain his theory of defense to the jury. He argued that Puga had participated in the theft, but had not caused injury to the store employee with the intent to further the theft. 1RP 213-14. He argued that Puga could not be convicted of the charged offense even though he committed a different offense that was not before them. 1RP 214, 216.

The prosecutor objected to this argument and the court sustained the objection. 1RP 216-17. The prosecutor's objection was that the defense was violating the motion in limine order barring him from mentioning other, uncharged, lesser offenses.

1RP 216. By sustaining the objection, the court precluded Puga from presenting his theory of defense. The defense attorney simply ended his argument after the court ruled he could not argue that Puga committed theft or assault, but not robbery. 1RP 217. The court's ruling impeded Puga's ability to articulate his theory of defense after the court refused to instruct the jury on lesser offenses.

A court violates an accused person's right to counsel by precluding the defendant from arguing his theory of defense. Conde v. Henry, 198 F.3d 734, 738 (9th Cir. 1999). While a court has discretion to limit closing argument for the purpose of ensuring a fair and orderly trial, the court may not require that the lawyers to adopt or argue only inferences the judge sees as logical. Herring v. New York, 422 U.S. 853, 862, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975). Closing argument has "particular importance" in the effective exercise of the right to counsel. State v. Frost, 160 Wn.2d 765, 773, 161 P.3d 361 (2007), cert. denied, 128 S.Ct. 1070 (2008). Improper limitations on closing argument deny the right to counsel as well as due process of law. Id.; U.S. Const. amends 6, 14; Wash. Const. art. I, §§ 3, 22.

The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free. In a criminal trial, . . . no aspect of such advocacy could be more important than the opportunity finally to marshal the evidence for each side before submission of the case to judgment.

Herring, 422 U.S. at 862.

The court's pretrial ruling precluded Puga from presenting any argument that he may have committed a lesser offense for which the court did not explicitly instruct the jury. 1RP 3. When Puga tried to make such an argument, which was entirely consistent with and readily available from the evidence at trial, the court sustained the prosecution's objection. 1RP 216-17. Accordingly, the court impeded Puga's ability to have an attorney meaningfully advocate on his behalf. This advocacy is essential to the right to counsel and to due process of law and the court's obstruction of his attorney's efforts to persuade the jury to view the facts in a different light than put forward by the prosecution denied him a fair trial.

In Conde, the court found the improper limitation on defense counsel's closing argument to be so serious as to affect "the very framework" of the trial. 198 F.3d at 741. It deprived the defendant

of effective assistance of counsel and due process of law by preventing the jury from analyzing whether the State proved all elements of the crime. Id. In Frost, the Court applied a constitutional harmless error test, which Conde also considered, requiring reversal unless the State proves it is harmless beyond a reasonable doubt. 160 Wn.2d at 773; see Conde, 198 F.3d at 741-42. The constitutional harmless error test requires reversal where there is “a reasonable possibility” that the error “might have contributed to the conviction.” Chapman v. California, 386 U.S. 18, 23, 87 S.Ct. 824, 17 L. Ed.2d 705 (1967).

Here, the court refused to provide requested jury instructions on lesser offenses and simultaneously forbade him from arguing his theory, drawn from the trial testimony, that Puga participated in a theft but the later assault was not part of that theft. The assault was independently motivated, under Puga’s theory. He could not articulate this theory without explaining that while Puga had indeed admitted to the underlying theft, he was not guilty of the greater offense of robbery.

The court’s broad pretrial ruling impeded Puga’s attorney’s ability to craft a closing argument. The pretrial ruling required Puga’s lawyer to limit the effectiveness of his closing argument in

anticipation that any argument that he committed something other than a robbery would violate the court's ruling. Indeed, the court enforced its broad pretrial ruling by affirmatively stopping Puga from arguing that he committed a theft but not a robbery, even though this argument was reasonably available from the evidence presented. This deprivation of Puga's rights to present a defense, receive meaningful assistance of counsel, and explain how that the State had not met its burden of prove, denied Puga a fair trial.

F. CONCLUSION.

For the reasons stated above, Mr. Puga respectfully asks this Court to reverse his conviction and order a new trial based on the deprivation of his right to present a defense and receive effective assistance of counsel.

DATED this 30th day of June 2010.

Respectfully submitted,



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Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 65063-7-I
)	
MOSES PUGA,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30TH DAY OF JUNE, 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:

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<input checked="" type="checkbox"/>	MOSES PUGA 338460 MONROE CORRECTIONAL COMPLEX PO BOX 7001 MONROE, WA 98272	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 30TH DAY OF JUNE, 2010.

X _____ 

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