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NO. 67062-0-1

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

JOHN PATRICK CHOAT,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable John M. Meyer, Judge

RESPONDENT'S BRIEF

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ORIGINAL

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I. SUMMARY OF ARGUMENT

John Choat claims the trial court erred in finding him guilty of Burglary in the First Degree in a bench trial. Choat entered a residence where his girlfriend was and assaulted a man who was sitting in the kitchen. The girlfriend had not invited Choat inside, Choat entered quietly and surprised the man and his girlfriend in the kitchen. At trial, Choat contended that he was defending himself because the man put his hand on a beer bottle, and had not entered with intent to commit a crime.

On appeal, Choat contends that the trial court's factual findings are unsupported by the factual record. Choat also claims there was insufficient evidence of an unlawful entry, since he contends he was invited, and that he had no intent to assault the man until he was inside the residence. However, the trial court found that Choat assaulted the victim and not in self defense and had entered the residence without an invitation.

Choat's conviction must be affirmed.

II. ISSUES

1. Were the trial court's written findings supported by substantial evidence in the record?

2. Where the girlfriend in excited utterances said the defendant entered the house uninvited and the renters of the house had not given the

defendant a standing invitation, was there sufficient evidence for the trial court to find that the defendant entered without an invitation?

3. Where a defendant quietly enters a house and when confronting a man who is with his girlfriend, immediately assaults the man who he knew was present, did the trial court err in concluding that he entered with intent to commit a crime inside the building?

III. STATEMENT OF THE CASE

1. Statement of Procedural History

On August 30, 2010, the State charged John Patrick Choat with Burglary in the First Degree and Assault in the First Degree. CP 1-2. Choat was alleged to have entered a residence of his former girlfriend uninvited and assaulted Daniel Kowzan causing multiple facial fractures with the risk of death or serious bodily injury due to the extensive bleeding behind Kowzan's eye. CP 4.

On February 25, 2011, the State amended the information to allege the lesser offense of Assault in the Second Degree from Assault in the First Degree. CP 11-12.

On February 25, 2011, Choat entered a written waiver of his right to a jury trial. CP 13.

On February 28, 2011, Choat filed a notice of intent to rely on the defense of self-defense. CP 14.

On February 28, 2011, the case proceeded to bench trial. 2/28/11 RP 3.¹ Prior to trial, the trial court reviewed the written waiver of right to jury trial with Mr. Choat and approved the waiver. 2/28/11 RP 8-9.

On March 2, 2011, the trial court found Choat guilty of Burglary in the First Degree and the lesser included offense of Assault in the Second Degree. 3/2/11 RP 178. The trial court issued oral findings. 3/2/11 RP 170-8.

On March 23, 2011, the trial court entered findings of fact and conclusions of law on the trial. CP 26-33, 3/23/11 RP 2.

On March 31, 2011, the trial court sentenced Choat to 48 months in prison. CP 42, 3/31/RP 20.

On April 22, 2011, Choat timely filed a notice of appeal. CP 49.

2. Summary of Trial Testimony

The State presents this detail statement of testimony because the claim here is sufficiency of the evidence. Part of this Court's determination is will be whether the trial court's findings are supported by substantial evidence in the record.

¹ The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

2/28/11 RP	Trial Testimony – Day 1
3/1/11 RP	Trial testimony – Day 2
3/2/11 RP	Trial testimony – Day 3
3/23/11 RP	Entry of findings, continuance of sentencing
3/31/11 RP	Sentencing.

Andrea Lukken is a dental assistant and a restaurant server. 2/28/11 RP 69. She had a former boyfriend by the name of John Choat. 2/28/11 RP 69. Lukken was introduced to Choat by a former room-mate. 2/28/11 RP 69. Lukken got to know Choat from playing pool and when he came by the house. 2/28/11 RP 70. Lukken and Choat became romantically involved in November of 2008. 2/28/11 RP 70. They were together for two years, until about a week before the assault of Daniel Kowzan. 2/28/11 RP 70-1. Lukken and Choat had a stormy relationship and broke up practically on a weekly basis. 3/1/11 RP 8-9. Lukken got to know Daniel Kowzan through playing pool through the Amateur Pool Association and also from AA meetings. 2/28/11 RP 71. Lukken's relationship with Kowzan was one of friendship. 2/28/11 RP 72. In August of 2010, Lukken stayed at John Choat's house, her mother's house, or at the house of her friend Dominick Cameron. 2/28/11 RP 72. Lukken stayed at Cameron's house when he left to go fishing in Alaska for three and a half months. 2/28/11 RP 73. Marco Pugh also stayed at Dominick Cameron's house. 2/28/11 RP 73. Lukken was also staying at the house to take care of it, because Marco Pugh, was going to be serving some jail time for a DUI. 2/28/11 RP 73. Lukken testified that she had only stayed overnight at Dominick's house 5 to 10 times, and that John Choat had never spent the night there. 2/28/11 RP 74. Lukken testified that Choat had been over to Dominick's house twice with

her. 2/28/11 RP 74. One time when she asked for a ride and one time when Choat helped her start a lawnmower. 2/28/11 RP 74. But Choat had not been inside. 2/28/11 RP 74. She had seen Choat at the residence one or two other times when there was a party. 2/28/11 RP 75. Lukken knew the next door neighbors were Jennifer Townsend and Dan Garcia. 3/1/11 RP 10-11.

Lukken described that about a week before August 29, 2010, she was fed up with how Choat was treating her. 2/28/11 RP 75. Choat had failed to show up for her birthday. 2/28/11 RP 76. The next day Lukken called police to help collect her belongings from Choat's residence. 2/28/11 RP 75. Lukken described that on August 29th, 2010 Lukken had been driving in a car by a local bar when Choat was outside and "flipped her off." 2/28/11 RP 76, 3/1/11 RP 15. Lukken's contact with Choat the rest of the day had been one phone call and about three texts. 2/28/11 RP 79. Lukken later went to a friend's house for a barbeque and to play pickle ball. 2/28/11 RP 77. Daniel Kowzan was at the friend's house playing pickle ball when Lukken arrived. 2/28/11 RP 77-8. Lukken was at the barbeque for about seven hours. 2/28/11 RP 78. Lukken had not been drinking. 2/28/11 RP 78. Lukken drove Kowzan in her vehicle to Dominick's residence. 2/28/11 RP 78.

At the residence Lukken and Kowzan began to heat up the oven to cook some steaks and potatoes. 2/28/11 RP 80. They had been there about fifteen minutes when John Choat arrived. 2/28/11 RP 80. Lukken and

Kowzan were sitting at the kitchen table. 2/28/11 RP 80. Lukken and Kowzan had just opened a bottle of wine. 2/28/11 RP 81. It had been hot that day and it was warm and stuffy inside the house. 2/28/11 RP 82. Lukken left the front door open with just the metal screen door in place to let air circulate inside. 2/28/11 RP 82. Lukken had also opened a kitchen window to get the air to circulate. 2/28/11 RP 82.

Lukken first noticed Choat when he appeared at the kitchen door. 2/28/11 RP 82. Choat had gone inside, through the living room and down a hallway to the door to the kitchen. 2/28/11 RP 82. Kowzan was sitting at the table facing Lukken with his back to the kitchen door. 2/28/11 RP 82. Choat stopped and Lukken asked what he was doing there. 2/28/11 RP 82. Choat came towards them. 2/28/11 RP 83. Lukken first thought he was coming at her, so she began to back up. 2/28/11 RP 83. Instead, Choat sucker-punched Kowzan, picked him up, pushed him into the glass table and pinned Kowzan down. 2/28/11 RP 83. Choat then kneeled on top of Kowzan, "used the arm of the chair that was falling over as a brace and proceeded to bash in his face." 2/28/11 RP 84. Lukken said she saw Choat swing five or ten times, and tried to pull him off from behind. 2/28/11 RP 84. Lukken was unable to, so she went to the living room to get her cell phone from her purse to call 911. 2/28/11 RP 85. While she was doing so, Choat was continuing to beat Kowzan. 2/28/11 RP 85. Kowzan had tried to

put up his arm to defend himself at one point. 2/28/11 RP 84. Lukken was at the kitchen door and described that Choat finally appeared to snap out of it and stated walking towards her. 2/28/11 RP 85. Lukken said Choat walked toward her as she backed into the living room. 2/28/11 RP 85. Choat then told her: "You know I love you, babe." 2/28/11 RP 85. Lukken told Choat to leave and told him she was calling the police. 2/28/11 RP 85. Choat walked to the front door, opened the screen door and again told Lukken that he loved her. 2/28/11 RP 86. Choat left and Lukken closed and locked the door. 2/28/11 RP 86. Lukken was able to call 911 after Choat left. 2/28/11 RP 86. Lukken was in shock but tried to describe what happened to 911 and the officers when they arrived. 2/28/11 RP 86.

Lukken later tried to contact Choat by a text message telling him to turn himself in. 2/28/11 RP 87. Lukken also said that Choat had called her at her work while she was on her lunch break the next day. 2/28/11 RP 87. Choat asked her to tell the police that she had invited him over and that Choat was not aware that Kowzan was there. 2/28/11 RP 87. Lukken asked him if he had been drinking and Choat said he had not. 2/28/11 RP 88. Choat also said that the neighbors Dan and Jen had called him and told him that Lukken had arrived at the house. 2/28/11 RP 89.

On cross-examination, defense counsel went over all of Lukken's texts back and forth with Choat that occurred leading up to the assault of

Kowzan. 3/1/11 RP 15-26. The texts were admitted. 3/1/11 RP 28-9. Lukken testified one of the reasons she went to Dominick Cameron's house was to have Choat stay away from her. 3/1/11 RP 42.

Daniel Kowzan is a finish carpenter. 3/1/11 RP 61. He got to know John Choat through pool tournaments through the Hideaway tavern that Choat ran. 3/1/11 RP 61. Kowzan knew him for about a year at the time of trial. 3/1/11 RP 61. Kowzan had been confronted at a bar by Choat about a month before the incident. 3/1/11 RP 82. Choat told Kowzan not to get within ten feet of him. 3/1/11 RP 104. Kowzan felt this was because he and a friend he was with at the time, Todd Derosier, had spent a weekend at a concert with Andrea Lukken. 3/1/11 RP 105. Kowzan met Andrea Lukken about a year and a half before the trial through playing pool and AA meetings. 3/1/11 RP 61. Kowzan and Lukken were good friends. 3/1/11 RP 62.

Lukken arranged with Kowzan to pick up a friend's car on August 29, 2010. 3/1/11 RP 63-4. When that fell through, Lukken dropped Kowzan off at a friend's house. 3/1/11 RP 64. Lukken later came over to the friend's house at about 2:30 in the afternoon where they played pickle ball and pool. 3/1/11 RP 64. They never ate the food they brought, so they decided to go to Dominick Cameron's house to cook the food they had. 3/1/11 RP 65. They left shortly after dark, around 9:30. 3/1/11 RP 66.

Kowzan testified that they arrived, started to prepare dinner and opened a bottle of wine. 3/1/11 RP 66. While talking to Lukken, Kowzan testified that Lukken had a look of shock on her face. 3/1/11 RP 66. Kowzan never saw whomever it was that entered the kitchen. 3/1/11 RP 66. Kowzan did not have much of a recollection of the events after the first blow. 3/1/11 RP 66. Kowzan recalled crashing through the table and next waking up with paramedics assisting him. 3/1/11 RP 67. Kowzan recalled parts of being taken out on the gurney. 3/1/11 RP 67. He had no recollection of the ambulance ride to the hospital or speaking with Officer Reid or Dr. Leibrand at the hospital. 3/1/11 RP 67, 102-3. He also recalled the unique sensation and noise of the lifting off for the helicopter flight. 3/1/11 RP 67. Kowzan recalled waking up the next day at Harborview with an IV in his arm and under the influence of heavy narcotics. 3/1/11 RP 67. There was a lot of numbness and swelling in his face. 3/1/11 RP 68. Doctors at Harborview were unable to do surgery because the swelling was too severe. 3/1/11 RP 69. Kowzan was discharged at 9:00 the next morning and given bus fare to Skagit County. 3/1/11 RP 69-71. Lukken located Kowzan and took him to the Mount Vernon police station. 3/1/11 RP 71-2.

Kowzan had multiple medical procedures required as a result of the injuries, including MRIs, CAT scans and x-rays. 3/1/11 RP 72. The main procedure was a surgery a week after the incident to fix twelve fractures in

his face. 3/1/11 RP 72. The surgery required insertion of a metal plate and screws which took six hours. 3/1/11 RP 72, 74. Kowzan had a follow-up with a local hospital to deal with an infection and two ophthalmology appointments and one surgical follow-up appointment at Harborview. 3/1/11 RP 73. Kowzan was still suffering from fractured teeth, numbness in his face, double vision and flashing lights in his vision. 3/1/11 RP 73. Pictures showing the injuries to Kowzan's face, taken the day after by the police, were admitted. 3/1/11 RP 75-7. At the time of the trial, Kowzan still had numbness and swelling on his face, scalp and upper jaw. 3/1/11 RP 68.

Howard Leibrand, M.D. testified as to treatment provided to Kowzan at the emergency room at Skagit Valley Hospital. 3/1/11 RP 78-9. Leibrand evaluated Kowzan's injuries when he arrived just after 10:00 p.m.. 3/1/11 RP 79-80. Kowzan had significant facial swelling on the right side and his eye was completely swollen shut. 3/1/11 RP 80. After evaluating the injuries to determine they did not appear to be immediately life threatening, Leibrand ordered an x-ray and CT scan of the neck and face. 3/1/11 RP 80. Leibrand received the films and the report and they revealed that Kowzan had multiple fractures to almost all the bones in the right side of his face with bleeding behind the right eye, pushing the eyeball forward. 3/1/11 RP 81. Leibrand felt the swelling behind the eyeball could cause irreparable damage and possible blindness. 3/1/11 RP 81, 88. He also felt Harborview was

better equipped to deal with the multiple fractures. 3/1/11 RP 81. The level of force was consistent with a motor vehicle accident. 3/1/11 RP 82, 95-6. The injury exceeded what Leibrand had seen with people striking their face on concrete, and was more like being struck with a baseball bat. The level of force was consistent with a motor vehicle accident. 3/1/11 RP 82, 95-6. Kowzan was administered pain medication as well as anti-nausea medication. 3/1/11 RP 85.

Dominick Cameron testified he resided at 1904 South 6th Street in Mount Vernon and had lived there three years. 3/1/11 RP 47. Cameron said Marco Pugh's name was on the lease initially, but Cameron made payments and lived there. 3/1/11 RP 47. Cameron had Lukken watch over the house while he was in Alaska from June to September of 2010. 3/1/11 RP 48. Cameron did not want Lukken to have anyone over at the house. 3/1/11 RP 48. While on his way back from Alaska, Cameron called and spoke with Lukken and found out about the incident with Choat. 3/1/11 RP 49. Cameron said Choat had been over to the house when he first met Choat. 3/1/11 RP 49. But that Lukken used his house as her getaway place where Choat was not allowed to go. 3/1/11 RP 49. Cameron never invited Choat to be at his house while he was in Alaska and Choat did not have a standing invitation to be at his residence when he was not around. 3/1/11 RP 53.

Marco Pugh lived at 1904 South 6th Street in Mount Vernon since July of 2006. 3/1/11 RP 54. Pugh had a one year lease in his name and Dominick Cameron was his roommate. 3/1/11 RP 54-5. Cameron resided with him for three years and Cameron pays half the rent and utilities. 3/1/11 RP 55. Pugh had to serve a commitment from July 28, 2010, to October 5, 2010. 3/1/11 RP 56. He and Cameron arranged to have Andrea Lukken take care of the house while he was in jail. 3/1/11 RP 56. Pugh knew Choat for about six years from a time when they lived near each other. 3/1/11 RP 57. Pugh never had Choat come over to his house. 3/1/11 RP 57. Pugh was aware of one occasion in June of 2010 when Lukken had Choat spend the night at the house. 3/1/11 RP 58.

The State called two employees of the 911 center to authenticate the 911 call made by Ms. Lukken. Sandy Burton, the 911 center records technician, testified as to the recording system at the 911 center. 2/28/11 RP 92-3. Burton identified the copy of the 911 call as a fair and accurate copy of the 911 call received. 2/28/11 RP 94. Amy Osterhof was a lead dispatcher at the 911 center who received the call on August 29, 2010. 2/28/11 RP 95-6. Osterhof identified that the 911 call fairly and accurately represented the full extent of the 911 call. 2/28/11 RP 96. The 911 call was admitted and a transcript of the call was admitted for illustrative purposes. 2/29/11 RP 6.

Officer Brien Reed of the Mount Vernon Police Department was the first officer to arrive at the house at 1904 South 6th Street in Mount Vernon. 2/28/11 RP 35-6. When Reed arrived, he was waved inside by Andrea Lukken. 2/28/11 RP 38. Reed knew Lukken. 2/28/11 RP 38. Lukken waived Reed into the kitchen. 2/28/11 RP 38. Daniel Kowzan was laying on the floor in broken glass in a fetal position. 2/28/11 RP 39, 55. Kowzan was laying on his left side with his back toward a counter. 2/28/11 RP 39. Kowzan was covered in blood on his face and there was blood on the ground. 2/28/11 RP 41. Kowzan was able to speak to Reed and stated his eye hurt. 2/28/11 RP 41. Reed called for aid and they brought in a stretcher to take Kowzan to the hospital. 2/28/11 RP 42.

Reed described Lukken's demeanor as frantic. 2/28/11 RP 40. Reed had a short conversation with Lukken. 2/28/11 RP 42. Lukken was very emotional, flustered and appeared in shock as she described to Reed what occurred. 2/28/11 RP 42-3. She described that John Choat came into the residence uninvited, walked through the door, picked Kowzan up, smashed him through the table and hit him about 30 times. 2/28/11 RP 42.

Reed went to the hospital to check on Kowzan's condition. 2/28/11 RP 55. Reed was able to speak with Kowzan. 2/28/11 RP 56, 61-2. Reed did not recall Kowzan smelling of alcohol. 2/28/11 RP 62. Reed described that Kowzan's eye was badly swollen and medical personnel modified paper

clips to pry open his eyelid. 2/28/11 RP 56. Reed took photographs of Kowzan's face, which were admitted. 2/28/11 RP 57-8. Through Reed, the State also admitted photographs of the interior of the residence after Kowzan was removed. 2/28/11 RP 45-53.

Officer Edgar Serrano testified he responded to a 911 call on August 29, 2010, at about 9:30 p.m.. 2/28/11 RP 17-8. Serrano had been given the name of John Choat and began looking for him, but could not find him. 2/28/11 RP 18-9, 23. Serrano arrived at the scene when they were removing a person to the ambulance. 2/28/11 RP 20. Serrano spoke with Andrea Lukken. 2/28/11 RP 20. Serrano did not recall whether Lukken smelled of alcohol. 2/28/11 RP 24. Lukken was visibly shaking, crying and in fear as she described what occurred to Serrano. 2/28/11 RP 20-1. Lukken described that "Choat arrived uninvited, just came inside the residence and started an altercation..." 2/28/11 RP 21. Lukken told Serrano that Choat picked up Kowzan and threw him through a glass table and started punching Kowzan about 30 times. 2/28/11 RP 21-2. Lukken told Serrano that she tried to get Choat off Kowzan but could not. 2/28/11 RP 22. Lukken then called 911. 2/28/11 RP 22. Lukken described that Choat was calm, after the altercation, like nothing had happened. 2/28/11 RP 22. Choat then told her he loved her and left the house. 2/28/11 RP 22. Officer Serrano described

that Lukken kept blaming herself for not locking the door when they arrived.
2/28/11 RP 23.

Officer Keith Johnston was also working at the time of the call and responded to the scene. 2/28/11 RP 28. Johnston testified he arrived at the house and went inside. 2/28/11 RP 29. Kowzan was still on the floor when he arrived with blood on his face and a pool of blood around his head. 2/28/11 RP 29. Officer Johnston identified Choat in court for the record. 2/28/11 RP 30. That night, Officer Johnston knew Choat and started looking for him. 2/28/11 RP 30. Johnston stopped by a neighbor's residence and was told that Choat came by earlier asking for a ride. 2/28/11 RP 30. Johnston also looked for Choat at bars where Johnston had seen Choat, but was unable to locate him. 2/28/11 RP 30-1

Detective Sergeant Mark Shipman did some follow-up work the next day on the case given the severity of the injury to Kowzan. 3/1/11 RP 116-7. Shipman tried to contact Lukken and locate Choat through Darlene Wilson, Lukken's mother. 3/1/11 RP 118-9. Shipman was able to talk to Kowzan later that evening when Lukken brought him. 3/1/11 RP 120. Shipman took photographs of Kowzan which were admitted. 3/1/11 RP 121-3.

The State also called a former inmate at the Skagit County jail, who testified that Choat has talked to him about the case. 3/1/11 RP 106-8. Michael Bogh testified that he played cribbage in jail and was sitting at a

table with John Choat. 3/1/11 RP 107. Choat began conversing with Bogh when he found out Bogh shot pool. 3/1/11 RP 108. Choat told Bogh that someone was hitting on his girlfriend and he warned the guy. 3/1/11 RP 108. Choat went on to describe that he beat the guy up. 3/1/11 RP 108. Choat said he went to the girlfriend's apartment, suspecting the other man was there. 3/1/11 RP 111. He said he opened the door, jumped on the guy and started hitting him repeatedly. 3/1/11 RP 111. Bogh described Choat as being matter of fact about the events and was just waiting to see how much time he would get. 3/1/11 RP 111.

Choat testified himself and called seven witnesses. Choat called Daniel Garcia who lived next to Marco Pugh and Dominick Cameron. 3/2/11 RP 6-7. Garcia had seen Choat at a bar playing pool in the afternoon of August 29, 2010. 3/2/11 RP 8-9. Garcia told Choat that Lukken was having men spending the night at the house. 3/2/11 RP 11. Choat asked Garcia to call Choat if Garcia saw Lukken later in the day. 3/2/11 RP 11. When Garcia got home around 8:00 or 9:00, Lukken was home. 3/2/11 RP 12. Garcia called Choat to let him know Lukken was there. 3/2/11 RP 12. Garcia did not see Choat arrive. 3/2/11 RP 12. Garcia said he was startled by Choat coming to him in the dark asking him for a ride. 3/2/11 RP 13. Choat had a wrapped sandwich in his hand and appeared to be nervous and excited. 3/2/11 RP 13. Choat appeared upset about Lukken. 3/2/11 RP 13.

On cross examination, Garcia said he saw a man in the front yard with Lukken but did not recognize the person because it was dark. 3/2/11 RP 17. Garcia knew Daniel Kowzan. 3/2/11 RP 16. Garcia also testified he told Choat that Lukken had a man over at the house when they spoke on the phone. 3/2/11 RP 17. Garcia did not hear anything else until Choat arrived at his house. 3/2/11 RP 17. Garcia described that Choat had blood on his hand and was shook up and upset. 3/2/11 RP 18. Garcia described that Choat asked him for a ride. 3/2/11 RP 17-18. Choat asked if Garcia's fiancée, Jennifer Townsend, could drive him. 3/2/11 RP 19. Garcia told him she was upstairs trying to sleep. 3/2/11 RP 19. Garcia went to pick up a box, turned around and Choat was gone. 3/2/11 RP 19. About ten minutes later, police arrived next door. 3/2/11 RP 20.

Jennifer Townsend testified she was aware of the arrangement to have Andrea Lukken look after Marco Pugh's residence. 3/2/11 RP 25. Townsend testified she had seen John Choat at the house "all the time." 3/2/11 RP 26. Townsend said she had seen Choat at the house two or three times a week before August 29, 2010. 3/2/11 RP 27. Townsend saw the police on August 29, 2010 and went over to talk to Lukken. 3/2/11 RP 27. Townsend said she believed Lukken had been drinking heavily from the odor inside the house. 3/2/11 RP 28. Townsend testified that Choat had not

been drinking while they were together playing pool. 3/2/11 RP 30. She described that he was preoccupied and acting sad. 3/2/11 RP 34.

Raymond Cantu was called by defense and testified that he ran a pool league. 3/2/11 RP 35. Cantu knew Kowzan. 3/2/11 RP 36. Cantu testified that Kowzan's pool playing had not diminished after the assault by John Choat. 3/2/11 RP 37-8.

Melissa Reed testified that she has known John Choat for twenty years. 3/2/11 RP 38-9. Reed also knows Andrea Lukken and Daniel Kowzan. 3/2/11 RP 39. Reed testified that Choat came to her house the morning after the incident with Daniel Kowzan. 3/2/11 RP 40. Choat's car was left at Reed's house, where it was located and seized by police. 3/2/11 RP 40-1. Reed described that she believed the relationship between Choat and Lukken was disturbing. 3/2/11 RP 41. Reed claimed Lukken treated Choat with jealousy. 3/2/11 RP 41.

On cross-examination, Reed acknowledged having spoken with Choat while he was in jail ten times by phone, visited him and put money on his books. 3/2/11 RP 47. When Reed spoke with Choat on the phone, on one occasion, Choat told Reed to take a letter to people to show and then burn the letter. 3/2/11 RP 48. During the phone calls Choat told Reed that he had only been over to the residence of the incident three or four times before. 3/2/11 RP 48.

Choat called Lukken's mother, Darlene Wilson. 3/2/11 RP 53-4. Wilson was asked if she recalled a conversation with Sergeant Shipman about where she had been house-sitting. 3/2/11 RP 56. Wilson did not recall the conversation. 3/2/11 RP 56.

John Simon testified that he had seen Choat earlier on the day of the incident at a pool tournament. 3/2/11 RP 129-30. Simon said Choat had a beverage but did not think Choat had an over amount, because Choat was playing good pool. 3/2/11 RP 130. After the tournament, Simon went to a pickle ball party where he saw Andrea Lukken and Daniel Kowzan. 3/2/11 RP 131. Simon said everyone was drinking at the party. 3/2/11 RP 132. Simon was there an hour or two. 3/2/11 RP 131-2. Lukken and Kowzan were still there when he left. 3/2/11 RP 132.

John Choat testified he had an on and off relationship with Andrea Lukken for two years. 3/2/11 RP 57-8. Choat made a picture and described the layout of the house at 1904 South Sixth Street in Mount Vernon where the incident occurred. 3/2/11 RP 58-9. At trial Choat testified he had been to the house eight to ten times. 3/2/11 RP 61. But prior to August 29, 2010, Choat had only been to the house two times when Lukken was house-sitting. 3/2/11 RP 61, 120-1.

Choat said that he had received texts from Lukken on the morning of August 29, 2010, but did not respond. 3/2/11 RP 62. When Choat saw

Lukken driving by Draft Pics bar around 2:30 p.m., Choat held up his phone in his hand and asked “what.” 3/2/11 RP 63. Choat said Lukken stopped and they had a conversation. 3/2/11 RP 63-4. Choat said that Lukken said “we need to talk.” 3/2/11 RP 64. Choat explained to Lukken that he was in a pool tournament until 6:00 and she said she was going to meet Deanie and wouldn’t be back until 8:00 or 9:00. 3/2/11 RP 65.

Choat testified he asked her “Want to meet you there” to which Lukken said yes. 3/2/11 RP 65. Choat did not describe where “there” was. 3/2/11 RP 65. Choat called and spoke with her on the phone a few minutes later. 3/2/11 RP 65. Choat was aware that there was something serious with the relationship. 3/2/11 RP 65. While playing pool, Choat asked Daniel Garcia to call him when Lukken came home. 3/2/11 RP 66. After the pool tournament, Choat bought Lukken a rose and a burrito. 3/2/11 RP 67. Choat later received a call just a little before 9:00 p.m. from Daniel Garcia. 3/2/11 RP 69. Garcia told Choat that Lukken had come home and someone was with her. 3/2/11 RP 69, 98. Choat drove straight from a friend’s house to the house where Lukken was. 3/2/11 RP 70. Choat parked in front of the house, grabbed the burrito and flower and went inside. 3/2/11 RP 71.

Choat said the front door was open but the screen door was closed. 3/2/11 RP 71. Choat claimed he said hello when he entered. 3/2/11 RP 71. Choat saw a light in the kitchen and walked down to the kitchen putting his

phone, the flower and burrito down. 3/2/11 RP 71-2. When he got to the kitchen Choat said he saw a man sitting with his back toward him and Lukken sitting across the table. 3/2/11 RP 72. Choat said the man turned his head and he recognized Daniel Kowzan. 3/2/11 RP 73. He claimed he saw Kowzan turn his hand on a beer bottle on the table and began to raise up. 3/2/11 RP 76. Choat said he acted on first instinct punching straight out and striking Choat on the cheekbone. 3/2/11 RP 76. He said Kowzan fell back to the corner with the beer bottle still in his hand. 3/2/11 RP 76-7. Choat then approached Kowzan to get the beer bottle out of his hand. 3/2/11 RP 77. Choat said the table top fell or slid over and broke. 3/2/11 RP 77-8. Choat claimed he could not remove the bottle from Kowzan's hand, so he struck him three times as hard as he could. 3/2/11 RP 78. Choat said Kowzan went limp and the bottle rolled out of his hand. 3/2/11 RP 78.

Choat said he grabbed the bottle, told Lukken "And I fell in love with you" and put the bottle down. 3/2/11 RP 79. Choat then said he took his phone, flower and burrito and left. 3/2/11 RP 79. Choat testified he went to the next door neighbor to ask for a ride, because he did not feel he could drive. 3/2/11 RP 80-1. Choat testified he turned himself in to jail a few days later after finding out the severity of what he did. 3/2/11 RP 82. Choat denied telling Michael Bogh, the inmate at the jail, that he had assaulted

Kowzan. 3/2/11 RP 85. Choat claimed that Bogh had approached him and that Bogh knew both Kowzan and Lukken. 3/2/11 RP 83.

On cross-examination, Choat described his relationship with Lukken volunteering: “Our relationship realistically was based on sex, that’s what it boils down to.” 3/2/11 RP 86. Choat described that he had not spent time with Lukken on her birthday about a week earlier and as a result, Lukken arranged with law enforcement to get some of her property back from Choat. 3/2/11 RP 89-90. There were further texts back and for the next few days leading up to August 29, 2010. 3/2/11 RP 90-3.

Choat acknowledged that he could have texted Lukken to find out if she was at the house. 3/2/11 RP 99. Instead, he told Garcia to call him. 3/2/11 RP 99. Choat said when he arrived at the house and went in, he recognized Daniel Kowzan once Kowzan turned. 3/2/11 RP 73, 104. Choat and Kowzan knew one another. 3/2/11 RP 104. Choat had been to Kowzan’s house many times for barbeques. 3/2/11 RP 104. Kowzan had never threatened Choat. 3/2/11 RP 104. Choat said when Kowzan’s hand moved on the bottle he was holding, “it all exploded.” 3/2/11 RP 106. Choat claimed that he was afraid Kowzan was going to strike him with the bottle, so he struck him first in the cheek. 3/2/11 RP 107-8. Choat said that after he struck Kowzan knocking him to the ground, he went around the chair to get to Kowzan in order to take the bottle away. 3/2/11 RP 112.

Because Choat could not get the bottle away, he held Kowzan down with his left hand and struck him three times hard in the face in order to “diffuse the situation immediately.” 3/2/11 RP 116. Choat acknowledged that Lukken never made contact with him that day or attempted to harm him. 3/2/11 RP 118-20. Choat was not in fear that Lukken was going to hurt him when he started striking Kowzan. 3/2/11 RP 120. Choat testified he wasn’t even in the house for five minutes. 3/2/11 RP 125.

After the altercation, Choat talked to Melissa Reed about getting texts from Lukken deleted on his phone. 3/2/11 RP 98-9. Choat also admitted talking to Reed about having her take a letter to individuals about the case which she was to burn after they read it. 3/2/11 RP 102.

On re-direct examination, Choat’s counsel asked him a series of questions about being invited to the house where the assault occurred.

- Q. You spent the night there with Andy before?
- A. Oh, yeah, and Dominick and Marco.
- Q. Did anyone ever tell you not to come to that house?
- A. No.
- Q. Have you ever been asked not to come there?
- A. No.
- Q. Not by anyone at any time?
- A. No.

3/2/11 RP 123.

3. Written Findings of Trial Court

On March 23, 2011, the trial court entered findings of fact and conclusions of law on the trial. CP 26-33, 3/23/11 RP 2.

The findings specifically included that Choat entered the house without knocking, Lukken and Choat were surprised and were not expecting Choat. CP 30. The trial court found that Kowzan was struck before he could do anything. CP 30. The trial court specifically found that Choat had not been invited to the house.

There was nothing that even approximated an open invitation for Choat at that house. The house was not his residence or building and was the building of another. On the date of this incident Choat was not expressly or impliedly invited into the house.

CP 29.

IV. ARGUMENT

1. Where the defendant entered a residence to assault a person therein, the trial court's determination the defendant is guilty of Burglary in the First Degree is supported by substantial evidence.

Choat contends there was insufficient evidence of an unlawful entry and intent to commit an assault inside the residence. Where the defendant quietly entered a house to assault the man with his girlfriend, the evidence before the trial court was sufficient to support guilt.

The standard for determining whether a conviction rests on insufficient evidence is "whether, after viewing the

evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (emphasis omitted) (quoting Jackson, 443 U.S. at 319, 99 S.Ct. 2781).

In re Pers. Restraint of Martinez, 171 Wn. 2d 354, 364, 256 P.3d 277, 282 (2011). Just as in the jury trial context, in a bench trial the findings of facts is left to the trier of fact. If substantial evidence supports the challenged findings, the trial courts are findings must be upheld.

Evidence is sufficient to support a conviction if the evidence permitted the trier of fact to find that each element of the crime had been proven beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221–222, 616 P.2d 628 (1980). **A challenge to the sufficiency of the evidence presented at a bench trial requires a reviewing court to determine whether substantial evidence supports the challenged findings and whether the findings support any challenged conclusions of law.** State v. Madarash, 116 Wn. App. 500, 509, 66 P.3d 682 (2003). Deference is given to the trier of fact who resolves conflicting testimony, evaluates witness credibility and decides the persuasiveness of material evidence. State v. Carver, 113 Wn.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989). Unchallenged factual findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

State v. Rose, 160 Wn. App. 29, 32, 246 P.3d 1277, 1278 (2011) (emphasis added). The question raised by Choat here, is whether substantial evidence supported the findings that Choat entered or remained unlawfully with intent to commit an assault inside the residence and thus committed Burglary in the First Degree.

A person commits the crime of Burglary in the First Degree when the person enters or remains unlawfully in a building with the intent to commit a crime against a person or property therein. RCW 9A.52.020(1).

The full language reads:

A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

RCW 9A.52.020(1).

Enters or remains unlawfully is also defined by statute.

(5) "Enters or remains unlawfully." A person "enters or remains unlawfully" in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

RCW 9A.52.010(5)². State v. Collins, 110 Wn. 2d 253, 256, 751 P.2d 837 (1988).

Choat asserts that the trial court did not expressly find that the entry was unlawful. Appellant's Opening Brief at page 10. Contrary to that assertion the trial court did find that Choat did not have an open invitation into the house and was not expressly or impliedly invited in the house where the assault occurred. CP 30. The actual finding reads as follows:

² The statute contains a longer portion of the description of license or privilege for buildings open to the public, unimproved land and land used for aquaculture, which is not applicable here. RCW 9A.52.010(5).

There was nothing that even approximated an open invitation for Choat at that house. The house was not his residence or building and was the building of another. On the date of this incident Choat was not expressly or impliedly invited into the house.

CP 29. By statutory definition, this is a determination that Choat entered unlawfully because “a person ‘enters or remains unlawfully’ in or upon premises when he ... is not ... invited....” RCW 9A.52.010(5).

Choat contends that the trial court did not determine what the exchange was which occurred outside of the bar earlier in the day, and that therefore the trial court did not determine there was no invitation. Appellant’s Opening Brief at page 11. However, the situation and statements made by Lukken showed there was no invitation. Lukken in excited utterances to officers said Choat came in “uninvited” and started an altercation. 2/28/11 RP 21, 42. And, in one of the few factual findings not challenged by Choat, the trial court held that Lukken had used the residence as a safe place to get away from Choat, supporting her excited utterances.

Lukken, even though she had previously invited Choat there, wanted to use that place as a bit of a getaway so that she could go there and feel safe. The 911 tape is significant where she kept saying "I should have locked the door". That was an excited utterance under the stress of an event which suggested very strongly that is maybe something she had done in the past when she wanted to be sure that she could be there and not be disturbed.

CP 30 (Finding 16).

Choat goes on to argue that an inference should have been drawn by the trial court regarding Choat's purchase of a rose and burrito for Lukken, thereby implying he had an invitation and harbored no intent to commit a crime. Appellant's Opening Brief at page 11. However, a trial court is not bound to follow draw an inference from the defendant's version of the events. And furthermore, his purchase of these items occurred before he was told by the next door neighbor Lukken had brought a man over to the house.

Choat also claims Lukken propped open the door thereby inviting Choat. Appellant's Opening Brief at page 13. But Lukken did not testify she propped open the door. Lukken said she had left the screen door open, implying that the front door was open to let air through, which was confirmed by Choat who said that the screen door was closed when he arrived and entered. 2/28/11 RP 82, 3/2/11 RP 71.

Choat further cites to State v. Miller, 90 Wn. App. 720, 954 P.2d 925 (1998) to support the argument that the open screen door constituted an "invitation." Appellant's Opening Brief at page 14. However, Miller involved a person going to a car wash which was open to the public and using bolt cutters to remove locks from coin boxes. State v. Miller, 90 Wn. App. 720, 723, 954 P.2d 925 (1998). The analysis of a business open to the public does not equate to a private residence. "Washington law does not provide that entry or remaining in a business open to the public is

rendered unlawful by the defendant's intent to commit a crime.” State v. Miller, 90 Wn. App. at 725, 954 P.2d 925, 928 (1998).

Contrary to Choat’s assertion on appeal, Choat did not testify he was invited inside by Lukken. He only claimed she asked to meet him “there,” but never described where “there” was. 3/2/11 RP 65. His later testimony on re-direct examination was that he had not been told he was not to come to the house. 3/2/11 RP 123.

Lukken’s excited utterances show Choat came in uninvited and the surprise to both Lukken and Kowzan when Choat arrived. Thus, the claimed “failure to resolve what happened during the afternoon ‘exchange’ at Draft Pics” by the trial court did not mean that the trial court could not determine that Choat was not invited. Appellant’s Opening Brief at page 13.

Choat’s challenge to claimed lack of proof intent to commit a crime therein is also based upon an interpretation of the evidence which was rejected by the trial court. “Intent may be inferred from all the facts and circumstances surrounding the commission of an act or acts.” State v. Lewis, 69 Wn.2d 120, 123, 417 P.2d 618 (1966), *citing* State v. Willis, 67 Wn.2d 681, 685, 409 P.2d 669 (1966). The trial court inferred from Choat’s quiet entry into the house and unprovoked attack of Kowzan, the man that Choat knew was inside the residence with his girlfriend, that Choat was angry and upset and struck Kowzan before Choat needed to

defendant himself. CP 28, 30-1 (Findings 11, 19, 22, 23,24 & 26). This describes the intended entry into the residence to commit the intended assault.

Furthermore, there was sufficient evidence to support both that finding as well as all of the other factual findings which Choat now contends are not supported by substantial evidence as described in detail below.

2. There was substantial evidence supporting each of the ten contested findings of fact.

Deference is given to the trier of fact who resolves conflicting testimony, evaluates witness credibility and decides the persuasiveness of material evidence. State v. Carver, 113 Wash.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989). Since Choat assigns error to ten of the trial court's findings of fact, the State provides citation to the record supporting the trial court's written findings.

i. Finding of fact 14:

There was nothing that even approximated an open invitation for Choat at that house. The house was not his residence or building and was the building of another. On the date of this incident Choat was not expressly or impliedly invited into the house.

CP 29.

The residence was rented by Marco Pugh and Dominick Cameron also paid rent. 3/1/11 RP 45, 54-5. Pugh never had Choat come over to his house. 3/1/11 RP 57. Cameron never invited Choat to be at his house when

he was in Alaska and did not have a standing invitation when Cameron was not around. 3/1/11 RP 53. Lukken did not testify that she invited Choat over to the house and her actions about his surprise appearance corroborate there was no invitation. 2/28/11 RP 80, 3/1/11 RP 66. In Lukken's excited utterances to police, she stated that Choat came over uninvited. 2/28/11 RP 21, 42.

Choat never testified that he was invited over to the house. 3/2/11 RP 65, 123. His testimony was that he had not been told he was not to come to the house. 3/2/11 RP 123.

ii. Finding of fact 17.

On this day she did not lock the door. The screen door was open. The back door was open because of the need to have some breeze circulate through the house. Lukken and Kowzan were sharing a glass of wine, there may have been a beer bottle in the vicinity which ended up broken after the altercation and swept up. The Court finds that when paramedics arrived they cleaned up some of the mess and got things out of the way to treat Kowzan.

CP 29.

Lukken had left the front door open, but the screen door closed, for circulation. 2/28/11 RP 81-2. Lukken said it had been hot that day and it was warm and stuffy inside the house leading her to open the screen door. 2/28/11 RP 82. Choat corroborated that the screen door was closed. 3/2/11 RP 71. Lukken and Kowzan were sitting at the kitchen table and had opened a bottle of wine. 2/28/11 RP 80-1. Officer Reed testified that some things in

the room where moved after aid arrived to roll in the stretcher . 2/28/11 RP 52-3, 64. Beer bottles were located in the kitchen. 2/28/11 RP 52-3, 64

iii. Finding of fact 18

Choat came up, didn't knock, walked in, and wasn't heard. Choat didn't act like he was there. Choat had said "what's going on" or words to that effect.

CP 30.

Choat testified that after he parked his car, "I grabbed the burrito, I grabbed her flower, my phone and went inside." 3/2/11 RP 71. Choat claimed he said hello when he entered. 3/2/11 RP 71. The trial court was free to disregard that testimony because the testimony from Lukken and Kowzan was that they did not know Choat was there until he appeared at the kitchen door. 2/28/11 RP 82, 3/1/11 RP 66. Lukken's statements to both officers was that Choat came in uninvited. 2/28/11 RP 21, 42. Choat testified that he said "What's going on." 3/2/11 RP 73.

iv. Finding of fact 19

Lukken and Kowzan were surprised when he came into the kitchen. Choat rather quietly went in there so that he wouldn't be heard.

CP 30.

Lukken testified that she first noticed Choat in the house when he appeared at the kitchen door. 2/28/11 RP 82. Kowzan described that Lukken had a look of shock and surprise on her face when Choat appeared in

the kitchen. 3/1/11 RP 66. Lukken described the relationship of the front door to the kitchen. 2/28/11 RP 82. The house was about 1200 square feet in size. 2/8/11 RP 38. Given that the size of the house, the relation of the front door to the kitchen and the surprise of Kowzan and Lukken, the records supports the trial court findings.

v. Finding of fact 21

Choat went in quietly and then probably says something along the lines of "what is going on? What is happening here?" He took both people sitting at the kitchen table by surprise, since they didn't expect him.

CP 30.

The same citations to the record for findings 18 and 19 support these trial court findings.

vi. Finding of fact 22

Choat went in angry and upset and was not walking slowly but was moving quickly.

CP 30.

Testimony from the trial from both Lukken and Kowzan was that Choat suddenly appeared at the kitchen door and almost immediately struck Kowzan. 2/28/11 RP 82, 3/1/11 RP 66. Lukken described what occurred as Choat entered the kitchen.

He went straight at Dan, basically sucker punched him. Dan didn't see it coming. Dan tried to get up. At that time, John picked him up, pushed him into the glass table.

2/28/11 RP 83. Kowzan also testified that after the look of shock and surprise on Lukken's face he didn't recall the altercation. 3/1/11 RP 66. Kowzan could not recall being struck. 3/1/11 RP 67.

The suddenness of the attack and the manner in which it occurred support the trial court's findings that Choat went in angry.

vii. Finding of fact 23

Kowzan stood up and turned slightly and the[n] was hit on the right side of the face by Choat's right hand

CP 30.

Choat testified that Kowzan turned and started to rise, when he realized it was Daniel Kowzan. 3/2/11 RP 73, 76. 107. Choat acknowledged striking Kowzan with his right hand, and Kowzan's injuries were to the right side of Kowzan's face. 3/2/11 RP 115, 3/1/11 RP 80.

viii. Finding of fact 24

Kowzan appeared to be trying to figure out some way to react to a surprise invader in the house. But before he could do anything he was struck.

CP 30.

The same citations to the record for findings 22 and 23 support these trial court findings. Those citations show that Kowzan did not have an opportunity to respond to Choat before he was struck.

ix. Finding of fact 25

At that point Kowzan went to the floor and Choat followed, punching Kowzan hard and causing injury.

CP 30.

Lukken and Choat both described how Kowzan fell to the floor and Choat got on top and kept on striking Kowzan. 2/28/11 RP 83-4, 3/2/11 RP 76-8, 107-8, 112, 116.

x. Finding of fact 26³

Choat was not defending himself. Choat described Kowzan as turning to the right. If Choat had been face on and he was going to be attacked, his right hand would have most likely hit Kowzan on the left side of the face. Here, there appeared to be no blow to the left side of Kowzan's face. Kowzan never got to the point where it was necessary for Choat to defend himself.

CP 30.

The trial court could logically choose to disbelieve Choat when he claimed that Kowzan grabbed onto the bottle and claimed the need to defend himself. 3/2/11 RP 76. Choat did describe that Kowzan turned his head so that Choat recognized him. 3/2/11 RP 73. Choat struck with his right hand. 3/2/11 RP 115. Both Lukken and Kowzan described that Choat struck without provocation.

³ Despite contesting this finding, Choat does not argue that his conviction for Assault in the Second Degree should be reversed.

3. The trial court conclusion of law that Choat committed Burglary in the First Degree is supported by the factual findings.

Although Choat assigned error to the trial court's conclusion of law that he committed Assault in the Second Degree, he fails to argue in his brief that conviction should be reversed for insufficiency. Therefore, the State only addresses the claim there was insufficient finding to support Burglary in the First Degree.

On review an appellate reviews to determine if the trial court's conclusions of law are supported by the factual findings. State v. Madarash, 116 Wn. App. 500, 509, 66 P.3d 682 (2003). The trial court here held:

On August 29th, 2010, in the County of Skagit, with intent to commit a crime against a person or property therein did enter or remain unlawfully in 1904 South 6th Street, Mount Vernon, the building of another. Choat knew that a man was in there with his girlfriend. Because of his anger and his possessiveness of the relationship, Choat entered the building uninvited intending to commit a crime against a person therein. Choat also unlawfully remained in the building to commit an unprovoked assault on Kowzan.

CP 32-3.

The trial court found that the incident occurred in Skagit County, Washington on August 29, 2010. CP 26 (Findings 1, 3). Around 9:00 p.m. on that day Andrea Lukken and Daniel Kowzan were at the residence of 1904 South 6th Street in Mount Vernon which Lukken was watching for Nick Cameron and Dominick Pugh. CP 27 (Finding 8). There was no

invitation for Choat at that house and it was not his residence and was the building of another. CP 28 (Finding 14). Choat knew there was a man in the residence with his girlfriend. CP 27 (Finding 11). Choat was angry and upset. CP 26 (Finding 11). Choat entered and remained to commit an unprovoked assault on Daniel Kowzan. CP 30-1 (Findings 26 & 27).

The legal conclusion that Choat committed Burglary in the First Degree is supported by the trial court's findings.

V. CONCLUSION

For the foregoing reasons, John Choat's conviction and sentence for Burglary in the First Degree should be affirmed.

DATED this 3rd day of February, 2012.

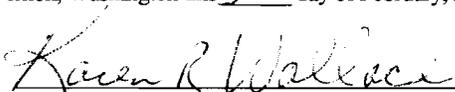
SKAGIT COUNTY PROSECUTING ATTORNEY

By: 
ERIK PEDERSEN, WSBA#20015
Deputy Prosecuting Attorney
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DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by; United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Susan F. Wilk, addressed as Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 3rd day of February, 2012.


KAREN R. WALLACE, DECLARANT