

NO. 67555-9-1

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

REC'D
JAN 26 2012
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER BINGHAM,

Appellant.

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

The Honorable James Cayce, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERRORS

1. The trial court erred when it denied appellant's motion for a mistrial after a state's witness mentioned highly prejudicial and inadmissible evidence.

2. Appellant was denied his right to effective assistance of counsel where counsel failed to object to inadmissible and prejudicial testimony that appellant had a criminal past.

3. The court erred in finding appellant's convictions for burglary and robbery were not the same criminal conduct.

4. The court erred in entering findings of fact no. 5 and conclusions of law 1,2 and 3 (CP 221-223) and in imposing an exceptional sentence.

Issues Pertaining to Assignment of Errors

1. A state's witness revealed the montage photographs, which included appellant's photograph, were booking photographs. Where this evidence showed a propensity to commit crimes in violation of ER 404(b), did the trial court err when it refused to grant a mistrial?

2. A state's witness testified that he was present when appellant was previously arrested by the Department of Corrections and taken jail. Appellant's counsel failed to object to the evidence even

though the evidence was improper under ER 404(b) and prejudicial. Was appellant denied his constitutional right to effective assistance of counsel?

3. Where the burglary and robbery encompassed the same time, place, victim and criminal intent did the court err when it denied appellant's request to find the two offenses were the same criminal conduct?

4. The court imposed an exceptional sentence under RCW 9.94A.535(2)(c) by ordering consecutive sentences on the robbery and burglary convictions. Where the robbery and burglary are one crime was the court statutorily authorized to impose an exceptional under RCW 9.94A.535(2)(c), which requires a person be sentenced to multiple offenses?

B. STATEMENT OF THE CASE¹

1. Procedural History

The King County prosecutor charged appellant Christopher Bingham with first degree burglary (Count I), first degree robbery (Count II), second degree assault (Count IV) and intimidating a witness (Count V). CP 14-18. Eric Cooper, Daniel Miller and Anthony Robles were charged as co-defendants in Counts I and II. CP 14-15. Cooper was

¹ RP refers to the verbatim report of proceedings for 4/28/2011; 5/5/2011; 5/11/2011; 5/17/2011; 5/18/2011; 5/23/2011; 5/24/2011; 5/25/2011; 5/26/2011; 5/31/2011 and 6/1/2011, which are sequentially numbered. The other verbatim reports of proceedings are referred to as RP followed by the date.

charged as a co-defendant in Counts IV and V. CP 17-18. Tyler Anway was named as the alleged victim in Counts I and II. CP 14-15. Darren Keatts was named as the alleged victim in Counts IV and V. CP 17-18.

Robles entered a guilty plea before trial. RP 112. A jury found Bingham guilty on Counts I and II and acquitted him on Counts IV and V. CP 54.

Bingham was given an exceptional sentence of 258 months. CP 206-214. Based on an offender score of 18 for Count I and 19 for Count II the court sentenced Bingham to 87 months on Count I, the low end of the standard range, and 171 months on Count II, the high end of the standard range. Id. The court ordered the sentences to run consecutive to each other under RCW 9.94A.535(2)(c). CP 207, 209, 221-223. The court also ordered the sentences to run consecutive to 2 unrelated prior sentences. CP 209.

2. Substantive Facts Counts I and II

Tyler Anway lived in a house in Covington that his parents owned. RP 482. Anway was involved in an ongoing dispute with the Department of Labor and Industry over support payments because of a back injury. RP 475, 545. Because of the injury, Anway had not worked in years and was supported by his parents.

Anway's girlfriend and Darren Keatts also lived in the house with Anway. RP 485-86. Keatts started living with Anway in early November 2010. RP 572-73. The previous month Keatts was living in Bingham's house with Bingham and Bingham's wife. RP 770. Keatts was kicked out of Bingham's house because he owed Bingham rent money, which he later paid. RP 773, 868.

Anway testified he had only known Keatts for a couple of months before Keatts moved in and he was letting Keatts live in the house rent free. RP 509-510, 846. Keatts on the other hand testified he knew Anway for about a year before he started living with Anway. RP 791. Keatts met Anway through one of Anway's neighbors and Anway had fixed an amplifier for Keatts. RP 792, 836. Anway repaired electronic equipment for people. RP 472, 526, 541-42.

Early in the morning on November 30, 2010, Anway was in his bedroom when he heard what he said was someone kicking in the front door of his house. RP 513, 580. He had gone to bed earlier and fell asleep with his clothes on but when he heard the door being kicked he was awake. RP 514, 539-577. Anway got up and opened his bedroom door. Eric Cooper was standing there and other people were rummaging through the house. RP 515-517. Cooper started hitting Anway and when Anway

asked him why he was hitting him, Cooper accused him of stealing an amplifier from him. RP 518-519.

Anway somehow managed to get away from Cooper. RP 519. Instead of running out the back door he went into a back room where he said he was confronted by Bingham, Tony Robles, and Daniel Miller, all of whom Anway had met before. RP 506-508, 520, 666. The men took turns hitting him and taking property from the house. RP 521-23, 549-550, 583. Anway testified that at one point he saw Bingham carrying an amplifier, however, Anway did not mention that in his statement to police or during his interview with the defense investigator. RP 547. After about ten minutes the men left. RP 541. Anway believed Keatts was in the house but he did not see him. RP 514, 521.

Keatts testified he was asleep in the spare bedroom and he did not know Anway was home. RP 795, 815. Coincidentally, he too fell asleep with his clothes on, including his coat and cap. RP 850-864. He woke up when he heard banging at the front door. He went to the door, looked through the peep hole and saw Cooper and two other men he did not recognize. RP 802-803. When Keatts asked Cooper what he wanted, Cooper told Keatts he wanted to talk. Cooper appeared angry and Keatts thought the men were after him so he ran out of the house through the garage. RP 803-04.

The garage door was next to the front door where the men were standing. Keatts could not explain why he left through the garage instead of the back door. RP 858-859. As Keatts left the garage he saw Miller going into the house and he claimed Miller saw him as well. RP 806-832.

Keatts ran down the street and hid in a neighbor's bushes. Keatts testified the neighbors came outside and he told them something was happening at a house down the street so they handed him a phone to call 911. RP 807-808. Later, on cross examination, Keatts said he knocked on the neighbor's door and when he was handed the phone the 911 operator was already on the line. RP 834, 861-862.

Keatts told the 911 operator some men chased him and he gave the operator Bingham's address where he thought the men were going even though he never saw Bingham that night. RP 812, 824, 861-862. Keatts claimed he saw Cooper's truck leave the house but he did not mention that to the 911 operator. RP 812. On cross examination Keatts admitted he could not identify the truck he saw leave. RP 866-867.

According to Keatts, it was little over a minute from the time he saw Cooper at the front door until the police arrived. Keatts said it took him 15 seconds to get to the bushes after talking to Cooper at the front door. RP 893. About 10 seconds later he was handed the phone and talking to the 911 operator. Id. Police arrived about a 40 seconds later.

RP 835. Anway, on the other hand, said the men were in the house for about 10 minutes. RP 541.

When police arrived they found Keatts walking back towards the house. RP 387. Police saw a shoe print on the front door and the door frame was shattered. RP 423. The living room was in disarray and a television was face down on the floor. RP 423-424. Anway appeared dazed and had blood on his hands and face. RP 426. Anway, however, declined to seek medical attention for his injuries. RP 464.

While at the house, police interviewed both Anway and Keatts. RP 444. Anway told police 4 items were taken. Anway then spent the next few days at his parents' house. RP 559. After he returned home Anway made another list of missing items, which included some guns Anway said were in the living room where he was cleaning them earlier. RP 543, 598. Anway never mentioned anything about the guns to police or during the defense interview. RP 530. Anway subsequently submitted an insurance claim for about 19 items he alleged were taken and he received a payment for those items from the insurance carrier. RP 600, 613-617, 633.

Keatts on the other hand saw Anway earlier in the evening but he did not see Anway cleaning any guns and Keatts never saw any guns in the house. RP 817-819, 837-38. He said because he is a convicted felon he would not have stayed in the house if there were guns present. RP 817-

819. Keatts claimed his cell phone and laptop computer were taken from the house although in his statement to police and during a defense interview Keatts never mentioned his cell phone. RP 817, 847.

There were a number of discrepancies between Keatts' testimony and his statement to police. Keatts admitted when police interviewed him that evening he told them four men assaulted him. Although he testified he left when he saw Cooper at the front door, in his statement to police he said he saw Cooper kick in the front door. RP 848-849. He also told police he saw four men at the front door with Cooper, contrary to his trial testimony that he only saw two men with Cooper. RP 851. Keatts explained the discrepancies between parts of his testimony and his statement to police was because the police did not record his statement accurately. He claimed the initials on the written police statement were not his and he insisted that a handwriting expert could prove they were not his initials. RP 852-854.

Two week earlier, in a similar incident, Anway was asleep when three people came into his house and assaulted him. RP 675-676. Anway chased them out of the house but they took his jacket. Id. Anway claimed he did not know who his assailants were. Id. Anway lived in the house for years without any trouble and it was only after Keatts moved in that within a few weeks he was assaulted twice in his home. RP 687.

C. ARGUMENTS

1. BINGHAM'S MOTION FOR A MISTRIAL SHOULD HAVE BEEN GRANTED WHEN THE DETECTIVE IMPROPERLY INTRODUCED THE FACT THAT BINGHAM HAD A PRIOR CRIMINAL HISTORY.

The state sought to introduce photo montages shown to Anway. Everyone in the photographs, including the defendants, wore clothing issued by the jail. RP 650. The defense moved to prohibit the state's witnesses from mentioning the photographs were booking photos and moved to sanitize the photographs so the jury could not see that the defendants were wearing jail issued uniforms. RP 650, 719. The court ordered the state to crop out the jail uniforms from the photographs as a condition for admission of the montages. RP 651.

Detective Theresa Schrimpsheer testified when she showed the montages to Anway he identified the defendants' photographs as the men who were in his home. RP 702, 705, 707, 709-710, 714. When the state asked Schrimpsheer how the montages were put together she responded that normally booking photographs were used. RP 705. Bingham objected to the testimony, which the court sustained. RP 705. When the state asked Schrimpsheer how the montages shown to Anway were put

together she again mentioned “booking” photos. RP 706. Over Bingham’s objection the court struck Shcrimpsher’s testimony. Id.

All the defendants moved for a mistrial. RP 719. They argued Schrimpsher’s testimony the photographs were booking photos told the jury the defendants were in jail and it prejudiced their right to a fair trial. IRP 719-721. The court denied the motion. RP 721.

When examining a trial irregularity, the question is whether the evidence so prejudiced the jury that Bingham was denied his right to a fair trial. If it did, the trial court should have granted a mistrial. State v. Escalona, 49 Wn. App. 251, 254, 742 P.2d 190 (1987).

In deciding whether a trial irregularity may have had this impact, this Court examines (1) its seriousness, (2) whether it involved cumulative evidence, and (3) whether a curative instruction was given capable of curing the irregularity. State v. Johnson, 124 Wn.2d 57, 76, 873 P.2d 514 (1994); Escalona, 49 Wn. App. at 254. The trial court's denial of a motion for mistrial is reviewed for an abuse of discretion. Johnson, 124 Wn.2d at 76. An examination of the above criteria reveals an abuse of discretion here.

The revelation the photograph of Bingham used in the montage was a booking photo was a serious mistake. Recognizing the prejudice that would result from this information, counsel objected each time it was

mentioned. The court agreed the references to booking photographs was prejudicial and struck the testimony.

The harm from this evidence is apparent. Evidence of the prior bookings was inadmissible propensity evidence. ER 404(b) (Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.); Escalona, 49 Wn. App. at 255 (evidence of prior crimes prohibited). See, State v. Tate, 74 Wn.2d 261, 267-68, 444 P.2d 150 (1968) (reference to and use of mug shots by the prosecution may unfairly prejudice a defendant). A reference to booking photos raises a prejudicial inference of criminal propensity. State v. Sanford, 128 Wn.App. 280, 287, 115 P.3d 368 (2005); State v. Henderson, 100 Wn.App. 794, 803, 998 P.2d 907 (2000). The state's case rested almost entirely on the credibility of Anway and Keatts. The testimony of both was riddled with a number of discrepancies and inconsistencies. Once jurors heard Bingham had a criminal record, it would have been impossible to resist the temptation to conclude that because he had been involved with the criminal justice system before it was more likely he was involved in the robbery and burglary despite any doubts jurors may have had about Anway and Keatts' credibility.

Moreover, this evidence was not cumulative of any properly admitted evidence. And, although the court struck the testimony and

cautioned the jury to disregard it, once the bell was rung not once but twice, there was no instruction capable of undoing the harm. “A ‘bell once rung cannot be unring.’” State v. Easter, 130 Wn.2d 228, 238–39, 922 P.2d 1285 (1996) (quoting State v. Trickel, 16 Wn.App. 18, 30, 553 P.2d 139 (1976)); See, State v. Mack, 80 Wn.2d 19, 24, 490 P.2d 1303 (1971) (appellant's prior similar crimes evidence “beyond hope of cure by corrective instruction.”). A mistrial was the only effective remedy.

The improper booking photo evidence denied Bingham a fair trial. The motion for mistrial should have been granted.

2. BINGHAM WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO OBJECT TO KEATTS' IMPROPER TESTIMONY THAT BINGHAM HAD BEEN ARRESTED AND TAKEN TO JAIL IN THE PAST.

The federal and state constitutions guarantee the right to effective representation of counsel. U.S. Const. Amend. VI; Const. art. 1, § 22 (amend. 10); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). To prevail on a claim of ineffective assistance of counsel, counsel's representation must have been deficient, and the deficient representation must have prejudiced the defendant. State v. Aho, 137 Wn.2d 736, 745, 975 P.2d 512 (1999) (citing Strickland v. Washington, 466 U.S. 668, 686, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984)).

Counsel's performance is deficient if it falls below an objective standard of reasonableness. State v. Maurice, 79 Wn. App. 544, 551-52, 903 P.2d 514 (1995). Where counsel's trial conduct cannot be characterized as legitimate trial strategy or tactics, it constitutes ineffective assistance. Id. at 552.

Counsel's failure to object to inadmissible and prejudicial evidence can constitute ineffective assistance. See, State v. Dawkins, 71 Wn. App. 902, 909, 863 P.2d 124 (1993) (reasoning counsel deficient where he failed to object to highly prejudicial evidence). To prevail on a claim of ineffective assistance of counsel based on a failure to object, the defendant must show (1) the absence of legitimate strategic or tactical reason for not objecting, (2) that the trial court would have sustained the objection if made, and (3) the result of the trial would have differed if the evidence had not been admitted. State v. Saunders, 91 Wn. App. 575, 578, 958 P.2d 364 (1998).

During the state's direct examination of Keatts, he testified that he had been at Bingham's house "one day that the DOC came and Chris went to jail." RP 776. Bingham's counsel did not object. Keatts' testimony that Bingham was previously arrested by the DOC and taken to jail told the jury that Bingham had a criminal record. The evidence was irrelevant and

inadmissible criminal propensity evidence. ER 404(b); See, Escalona, 49 Wn. App. at 255 (evidence of prior crimes prohibited).

Bingham's counsel failed to object to Keatts' improper testimony and ask for relief, either in the form of a curative instruction, mistrial or admonition the jury disregard the testimony. Counsel objected to the booking photo testimony on the grounds it was improper criminal propensity evidence. Keatts' testimony was objectionable for the same reason. Given that both the booking photo evidence and Keatts' testimony were improper and prejudicial for the same reasons, there is no legitimate tactical reason for counsel's failure to object to Keatts' testimony. Because the court struck the booking photos testimony there is little doubt it would have sustained a proper objection to Keatts' testimony and given a curative instruction.

Keatts' testimony was prejudicial. Evidence relating to a defendant's prior criminal conduct is unfair because it impermissibly shifts "the jury's attention to the defendant's propensity for criminality, the forbidden inference" State v. Perrett, 86 Wn. App. 312, 320, 936 P.2d 426 (quoting State v. Bowen, 48 Wn. App. 187, 196, 738 P.2d 316 (1987)), rev. denied, 133 Wn.2d 1019 (1997); see also State v. Hardy, 133 Wn.2d 701, 706, 946 P.2d 1175 (1997) (prior conviction evidence is "very

prejudicial, as it may lead the jury to believe the defendant has a propensity to commit crime.").

A defendant is prejudiced by counsel's deficient performance if there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. Strickland v. Washington, 466 U.S. at 687-88. Coupled with the booking photo testimony, Keatts' testimony left the jury with no doubt that Bingham had a criminal record. Similar to the prejudice engendered by the booking photo testimony, any doubts the jury had about Anway and Keatts' credibility were overcome by its natural inclination to conclude Bingham had a propensity for criminality and therefore he likely committed these offenses despite the state's weak case.

Ineffective assistance of counsel denied Bingham his right to a fair trial. Bingham was prejudiced by counsel's performance. He is entitled to a new trial.

3. THE BURGLARY AND ROBBERY WERE THE SAME CRIMINAL CONDUCT AND THE COURT'S EXCEPTIONAL SENTENCE BASED ON BINGHAM HAVING COMMITTED MULTIPLE OFFENSES WAS IMPROPER.

a. The Burglary And Robbery Were The Same Criminal Conduct

After the court imposed its sentence, Bingham moved to reconsider. Bingham argued the burglary and robbery (Counts I and II) were the same criminal conduct. RP 3-4 (8/15/2011). The state conceded the two offenses encompassed the same time, place and victim. RP 4 (8/15/2011). It argued there was no “unity of intent.” Id. The state told the court it was not asking it to rely on the burglary anti-merger statute to find the two offenses were not the same criminal conduct. Id.

The court denied the motion. It found the crimes were not the same criminal conduct because they encompassed a different intent. RP 6 (8/15/2011). “I do think that it’s substantially different breaking into somebody’s house and stealing property, as opposed to assaulting someone in their own house. That is different criminal intent, and I think that consecutive sentence, given that, is warranted, so I will impose it.” Id.

RCW 9.94A.589(1)(a) provides:

[W]henver a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. “Same

criminal conduct,” as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim.

Same criminal conduct is defined as two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. RCW 9.94A.589(1)(a). CP 222 (finding of fact no. 5). The test is an objective one that considers how intimately related the crimes committed are, and whether, between the crimes charged, there was any substantial change in the nature of the criminal objective. State v. Burns, 114 Wn.2d 314, 318, 788 P.2d 531 (1990). The standard is the extent to which the criminal intent, objectively viewed, changed from one crime to the next. State v. Vike, 125 Wn.2d 407, 411, 885 P.2d 824 (1994). [I]f one crime furthered another, and if the time and place of the crimes remained the same, then the defendant's criminal purpose or intent did not change and the offenses encompass the same criminal conduct. State v. Lessley, 118 Wn.2d 773, 777, 827 P.2d 996 (1992).

Bingham's burglary and robbery convictions constitute the same criminal conduct. Here, as the state conceded, both crimes occurred at the same time and place and involved the same victim. The issue is whether they encompassed the same intent. They did.

In general, the objective criminal purpose of robbery, as determined by the courts, is to “acquire property.” State v. Dunaway, 109 Wn.2d 207, 216, 743 P.2d 1237, 749 P.2d 160 (1987). Bingham entered Anway’s house unlawfully to commit robbery. This is not a situation where the intent changed from one crime to another. The burglary furthered the robbery and the objective intent of both was to steal Anway’s property. Bingham’s burglary and robbery convictions constitute the same criminal conduct because they involve the same time and place, the same victim, and the same criminal intent.

b. The Exceptional Sentence Was Improper

In addition to erroneously finding the robbery and burglary were not the same criminal conduct, the court imposed an exceptional sentence by ordering consecutive sentences for the burglary and robbery. It based its exceptional sentence on RCW 9.94A.535(2)(c). Under that provision the court can impose a sentence outside the standard range where “[t]he defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.” However, where “current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime.” RCW 9.94A.589(1)(a).

The court's sentencing authority is limited to the authority granted by the Legislature via statute. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). Under rules of statutory construction, when interpreting a criminal statute, the court must give the statute a literal and strict interpretation. State v. Delgado, 148 Wn. 2d 723, 727, 63 P.3d 792 (2003) (citing State v. Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994)). Words or clauses cannot be added to an unambiguous statute when the Legislature has chosen not to include that language. Delgado, 148 Wn.2d at 727. The court must assume the legislature means exactly what it says. Id. at 727 (citing Davis v. Dept of Licensing, 137 Wn.2d 957, 964, 977 P.2d 554 (1999)). If the statute's meaning is plain on its face, the court must give effect to the plain meaning as an expression of legislative intent. State v. Sweet, 138 Wn.2d 466, 478-79, 980 P.2d 1223 (1999). Moreover, under the rule of lenity, any ambiguity is interpreted in favor of the accused. State v. Jacobs, 154 Wn.2d 596, 601, 115 P.3d 281 (2005) (citing In re Post Sentencing Review of Charles, 135 Wn.2d 239, 249, 955 P.2d 798 (1998); State v. Roberts, 117 Wn.2d 576, 585, 817 P.2d 855 (1991)).

Here, because the burglary and robbery were the same criminal conduct, under RCW 9.94A.589(1)(a) they counted as "one crime" and not multiple current offenses. Under the plain language in RCW

9.94A.535(2)(c), an exceptional sentence can only be imposed where the defendant “has committed multiple current offenses.” Because Bingham was convicted for only one crime for sentencing purposes and not multiple current offenses, the court could not impose consecutive sentences under RCW 9.94A.535(2)(c). Even if an argument can be made the statute is ambiguous, which it is not, under the rule of lenity it must be interpreted in Bingham’s favor.

The court was concerned the standard range sentence did not account for Bingham’s high offender score given his criminal history. RP 15 (7/22/2011); RP 6 (8/15/2011). With the robbery and burglary counted separately he had an offender score of 19 for Count I and 18 for Count II. CP 206-214. The sentencing grid establishing the standard range sentence only calculates up to an offender score of 9. RCW 9.94A.510. When the defendant's score is above a 9, the standard range does not reflect all of the defendant's current crimes and therefore some of the defendant's crimes could go unpunished. The Legislature authorized courts to impose exceptional sentences outside of the standard range in such cases when the presumptive sentence is clearly too lenient. RCW 9.94A.535(2)(d) (“The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.”). The court.

however, did not rely on this provision in imposing the exceptional sentence. Instead it erroneously relied on RCW 9.94A.535(2)(c).

The court improperly found the two crimes were not the same criminal conduct. Based on that erroneous finding the court imposed an unauthorized exceptional sentence under RCW 9.94A.535(2)(c). Thus, Bingham sentence should be reversed.

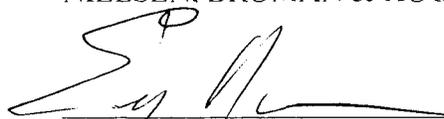
D. CONCLUSION

For the above reasons, Bingham's convictions should be reversed. Alternatively, Bingham's sentence should be reversed because the court erroneously ruled the robbery and burglary were not the same criminal conduct and imposed an unauthorized exceptional sentence.

DATED this 25 day of January, 2012.

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.)	COA NO. 67555-9-1
)	
CHRISTOPHER BINGHAM,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 26TH DAY OF JANUARY 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] CHRISTOPHER BINGHAM
 DOC NO. 725702
 COYOTE RIDGE CORRECTIONS CENTER
 P.O. BOX 769
 CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 26TH DAY OF JANUARY 2012.

x *Patrick Mayovsky*