

NO. 70214-9-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

SANG T. NGUYEN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE KEN SCHUBERT

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. The State has the burden to prove accomplice liability beyond a reasonable doubt and jury instructions as a whole must clearly convey that burden. Washington courts have held that pattern instructions on the presumption of innocence, burden of proof, accomplice liability, and the elements necessary to convict the defendant of the crime charged are sufficient to ensure that the jury determines the defendant's liability as an accomplice beyond a reasonable doubt. The trial court gave these standard instructions. Did the court properly instruct the jury on the State's burden of proof?

2. Where an element is omitted or misstated in a jury instruction, the error is harmless beyond a reasonable doubt if that element is supported by uncontroverted evidence. Here, Nguyen's own statement establishes that he orchestrated the drug deal, had his girlfriend carry the drugs to the meeting location, and intended to personally exchange those drugs for money. Where the evidence establishes that Nguyen was guilty of possession with intent to deliver as a principal, is any error with respect to the accomplice liability instruction harmless beyond a reasonable doubt?

B. STATEMENT OF THE CASE

On April 11, 2012, Seattle Police Narcotics Detective Pasquan conducted an "order up" investigation using a cooperating witness named Van.¹ RP² 253, 259-60. At Pasquan's direction, Van called Sang ("Sam") Nguyen and asked to buy \$200 worth of cocaine. RP 263-64. The person who answered the call identified himself as Sam and arranged to meet Van at a grocery store parking lot to conduct the transaction. RP 262, 265. Once at that location, Van called Nguyen again to arrange to meet at Van's house instead. RP 267.

Police observed as Nguyen arrived at Van's house. RP 271. Nguyen was the passenger in a car that was driven by a woman later identified as Kimberle Alojasin, Nguyen's wife.³ RP 271-72, 274. Nguyen and Alojasin went to the front door of the house and knocked. RP 272. When they received no answer, Nguyen called Van to say that he had arrived and to open the door. RP 273. Van

¹ An "order up" investigation involves having a cooperating witness place a phone call to a drug dealer they know and arranging to meet that person for a drug deal. RP 257. When the dealer shows up and is identified by the cooperating witness, police make the arrest. RP 257-58.

² The verbatim report of proceedings consists of four volumes, consecutively paginated. The State refers to the record by page number only.

³ Alojasin and Nguyen were not married until September 2012, but Alojasin referred to Nguyen as her husband at the time of this incident. RP 454, 470.

said that he was on his way. RP 273. Nguyen and Alojasin waited at the front door for a while and then walked back toward the car. RP 273-74. After Van confirmed that Nguyen and Alojasin were the people with whom he had arranged the deal, officers arrested them. RP 274.

During a search incident to arrest, Officer Lilje found two cell phones on Nguyen's person. RP 313. When officers used Van's phone to call the number Van had used to contact Nguyen, one of the phones recovered from Nguyen rang. RP 314. Alojasin admitted that she had drugs hidden in her bra and turned them over to an officer. RP 374. The substance was tested and found to be cocaine. RP 400.

Officer Terry took Nguyen's recorded statement. RP 412; Ex. 9 (attached). Nguyen confirmed that he went to Van's house to deal drugs and explained that Alojasin was holding the drugs for him, but that he intended to exchange the drugs for money himself. RP 415; Ex. 9 at 7.

The State charged Nguyen and Alojasin each with one count of possession of cocaine, a controlled substance, with intent to deliver. CP 50-51. Alojasin pleaded guilty as charged. RP 448.

At Nguyen's trial, the State presented the testimony of several law enforcement officers, who testified as described above. At the close of the State's case-in-chief, Nguyen moved to dismiss the charge for lack of evidence that he had "dominion and control" over the cocaine, as required to prove constructive possession. RP 420-21. The prosecutor opposed the motion, pointing out that Nguyen's admitted conduct and Alojasin's actual possession of the drugs proved Nguyen's guilt as an accomplice. RP 421. Nevertheless, the State highlighted portions of Exhibit 9 that demonstrated that Nguyen also had dominion and control over the drugs. RP 422. After conducting independent legal research on constructive possession, the trial court concluded that the evidence was sufficient and denied the motion. RP 424-25.

Alojasin testified for the defense. RP 447. She claimed that Van called her on April 11, and that she (not Nguyen) arranged to meet Van for the purpose of selling him crack. RP 448-49. She testified that she had Nguyen take the second call from Van because she was driving, and that she asked Nguyen to call Van when he failed to answer the door because she found it difficult to understand Van's broken English. RP 451. Otherwise, Alojasin testified, Nguyen had nothing to do with the drug deal. RP 452-53.

On cross examination, Alojasin acknowledged that Nguyen had assisted her in the transaction by calling Van on his own phone and selecting a meeting location. RP 464. The State confronted Alojasin with her own taped statement to police. RP 468. On the tape, Alojasin repeatedly referred to Nguyen and herself collectively when she described arranging and preparing for the drug transaction. RP 468-75.

The jury convicted Nguyen as charged. CP 21. The court imposed a standard range sentence of 72 months of confinement. CP 76-84.

C. ARGUMENT

1. THE JURY INSTRUCTIONS ADEQUATELY INFORMED THE JURY OF THE STATE'S BURDEN TO PROVE ACCOMPLICE LIABILITY BEYOND A REASONABLE DOUBT.

Nguyen claims for the first time on appeal that he was denied his right to a jury determination of each fact necessary for a conviction because no single instruction explicitly informed the jury of the State's burden to prove accomplice liability beyond a reasonable doubt. Division Two of this Court rejected the same

argument over 30 years ago in State v. Teaford, 31 Wn. App. 496, 644 P.2d 136 (1982), and this Court expressly adopted Teaford's analysis in State v. Teal, 117 Wn. App. 831, 73 P.3d 402 (2003). Nguyen offers nothing to distinguish his case from Teaford. Moreover, his claim is not properly before this Court.

a. Any Error Was Invited And Precludes Appellate Review.

The invited error doctrine "prohibits a party from setting up an error at trial and then complaining of it on appeal." State v. Pam, 101 Wn.2d 507, 511, 680 P.2d 762 (1984), overruled on other grounds by State v. Olson, 126 Wn.2d 315, 893 P.2d 629 (1995). With respect to jury instructions, "[a] party may not request an instruction and later claim on appeal that the requested instruction was given." State v. Studd, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999). Although the failure to object alone does not trigger the invited error doctrine, the doctrine applies when the defendant affirmatively assents to the instruction. See State v. LeFaber, 128 Wn.2d 896, 904 n.1, 913 P.2d 369 (1996).

Here, the State proposed a complete set of jury instructions, including pattern "to convict" and accomplice

instructions. CP 106-26. Nguyen's counsel confirmed that the State's proposed instructions "appear to be the WPICs ... essentially, so I don't have any issues with those." RP 435. After the trial court refused Nguyen's proposed instruction on a lesser offense, the court asked, "[D]o we have agreement on every other instruction?" RP 441. Nguyen's counsel responded, "Yes." RP 441. At the end of trial, the court asked for objections or exceptions to the proposed instructions. Nguyen's counsel had "[n]o exceptions." RP 483. Nguyen's affirmative agreement to the instructions proposed by the State is tantamount to proposing the instructions that he now claims were inadequate. Because Nguyen invited any error, he may not complain of it on appeal.

b. RAP 2.5(a) Precludes Appellate Review.

Even if this Court finds that Nguyen did not invite error, he failed to preserve the jury instruction issue for appellate review. "Failure to object deprives the trial court of [its] opportunity to prevent or cure the error." State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). An instructional error not objected to below may be raised for the first time on appeal only if it is "manifest error

affecting a constitutional right.” RAP 2.5(a)(3); State v. Scott, 110 Wn.2d 682, 686-87, 757 P.2d 492 (1988). An error is manifest if it resulted in actual prejudice. To demonstrate actual prejudice, there must be a “plausible showing by the [appellant] that the asserted error had practical and identifiable consequences in the trial of the case.” Kirkman, 159 Wn.2d at 135 (alteration in original).

Nguyen never objected to the instructions given here. Rather, as shown above, he affirmatively assented to the instructions proposed by the State. This bars review unless Nguyen can show that the error is manifest constitutional error with identifiable consequences. See State v. Lynn, 67 Wn. App. 339, 342-44, 835 P.2d 251 (1992). Nguyen does not argue that the instructions given here caused manifest error, and because any error was harmless beyond a reasonable doubt (as argued supra), he can make no such showing. This Court should decline to consider his claim.

c. The Jury Instructions Were Not Erroneous.

Nguyen contends that the jury instructions were inadequate because no single instruction informed the jury of the State’s burden to prove accomplice liability beyond a reasonable doubt.

Division Two of this Court rejected the same argument 30 years ago, and Nguyen makes no argument that would justify departing from that precedent.

In Teaford, the defendant was convicted of first degree escape, first degree burglary, and second degree assault. 31 Wn. App. at 497. As to the burglary and assault, Teaford argued on appeal that he was culpable only as an accomplice and the trial court erred by not specifically instructing the jury that the elements of accomplice liability must be proved beyond a reasonable doubt. Id. at 499. Division Two rejected the argument, concluding that the State's burden was clear from the standard instructions:

Instructions must be considered as a whole and the reviewing court must assume that the jury followed the instructions. The court gave the standard burden of proof instruction (WPIC 4.01), the standard accomplice instruction (WPIC 10.51) and the "elements" and "to convict" instructions for both robbery and assault. These instructions correctly stated the law, were not misleading and permitted defense counsel to argue his theory of the case. Defendant's status as an accomplice was not an element of either of the principal crimes. Considered as a whole, the instructions required the jury to determine defendant's liability as an accomplice in light of the elements of the principal crimes in the perpetration of which such liability arose and under the overall requirement that criminal liability must be

proved beyond a reasonable doubt. There was no error.

Teaford, 31 Wn. App. at 500 (citations omitted).

This Court expressly endorsed Teaford's reasoning in Teal. 117 Wn. App. at 840-41. Teal was convicted of first degree robbery. Id. at 834. The evidence established that Teal loaned his brother money for a drug deal, drove his brother to the deal, and took property from the dealer's car after his brother shot the dealer and stole his money. Id.

In Teal, as here, the "to convict" instruction contained no reference to accomplice liability and instead referred only to "the defendant" as the actor whose conduct must establish the elements of the crime. Id. at 835. Teal argued that by failing to include accomplice liability in the "to convict" instruction, the State assumed the burden of proving that Teal's own conduct established all elements of the crime. Id. at 837. Pointing out that accomplice liability is not an element of the crime, this Court held otherwise:

Here, read as a whole, the instructions were clear about what the jury needed to decide and the legal principles they were to use. Instruction 2 set forth the presumption of innocence and defined reasonable doubt. The same instruction specified that the State carried the burden of proving Teal's guilt beyond a reasonable doubt. Instruction 7, the "to convict" instruction, contained all the essential

elements of the crime of first degree robbery. Instruction 8 informed the jury of what constituted acting with intent. Next came Instruction 9, the accomplice liability instruction. That instruction began, "A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not", and then defined when a person is an accomplice.⁴ ...

These instructions did not obscure the State's burden of proof. They allowed the State to argue its theory that Teal was guilty as an accomplice to Hinton's robbery of Wright even if he did not personally use force or display a firearm. They allowed Teal to argue his theory that he was aware of the drug deal, but was not an accomplice because he did not knowingly participate in the robbery. We conclude these instructions were adequate to satisfy due process despite the lack of language expressly incorporating accomplice liability into the "to convict" instruction.

Id. at 839-40. This Court then noted that its reasoning was consistent with Teaford and quoted at length from that decision with approval.⁵

⁴ This Court noted that a defendant who is tried on an accomplice liability theory would have a much stronger argument that the instruction does not meet due process standards if the accomplice instruction omits a sentence stating that an accomplice is "guilty" of the crime. 117 Wn. App. at 842 n.8. The accomplice instruction in this case contains such a statement. See CP 38 (Instruction 13), discussed *infra* at p. 12.

⁵ This Court also noted that State v. Spencer, 111 Wn. App. 401, 45 P.3d 209 (2002), another Division Two opinion, might be inconsistent with Teaford. 117 Wn. App. at 841-42 & n.8. Spencer "appears to hold that even where the jury receives the standard accomplice liability instruction, a defendant can be convicted as an accomplice only if the 'to convict' instruction says so." Id. Noting that no authority supports "such an inflexible rule," this Court disagreed. Id.

As in Teaford and Teal, the trial court in this case gave the pattern accomplice and burden of proof instructions, as well as the “elements” and “to convict” instructions for possession with intent to deliver cocaine. CP 28, 32, 33, 38. The accomplice instruction provided as follows:

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word “aid” means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that the person present is an accomplice.

CP 38 (Instruction 13). As in Teaford and Teal, these instructions correctly stated the law and permitted Nguyen to argue his theory of the case: that Alojasin was solely culpable for the offense.

See RP 502-06. The instructions thus allowed the jury to convict

Nguyen only if it found beyond a reasonable doubt that he or an accomplice committed all the acts constituting possession with intent to deliver. Under Teaford and Teal, there was no error.

Without discussing or distinguishing Teaford or Teal, Nguyen simply reiterates the argument that was rejected in those cases: that the court erred by failing to expressly instruct the jury that the State bears the burden to prove accomplice liability beyond a reasonable doubt. Because the instructions given in this case mirror the ones in Teaford and Teal and sufficiently convey the State's burden, Nguyen's argument fails.

2. ANY INSTRUCTIONAL ERROR IS HARMLESS
BEYOND A REASONABLE DOUBT.

Nguyen contends that the jury instructions here relieved the State of its burden of proof, constituting structural error that demands automatic reversal. Brief of Appellant at 7. In the alternative, Nguyen argues that the alleged instructional error was not harmless because the State "relied on accomplice liability to demonstrate his dominion and control" of the cocaine. Id. This Court should reject Nguyen's arguments because the State did not rely on accomplice liability to prove constructive possession and

because the evidence establishes his guilt as a principal in the crime of possession with intent to deliver; thus, any error is harmless.⁶

Nguyen's argument rests on the notion that the absence of a jury instruction providing an express statement that the State bears the burden to prove accomplice liability beyond a reasonable doubt relieved the State of that burden. But "not every omission or misstatement in a jury instruction relieves the State of its burden." State v. Brown, 147 Wn.2d 330, 339, 58 P.3d 889 (2002). Even a jury instruction that omits an element of the offense is subject to harmless error analysis. Id. at 340 (citing Neder v. United States, 527 U.S. 1, 9, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)). Such an error is harmless if it appears beyond a reasonable doubt that it did not contribute to the verdict and the missing element is supported by uncontroverted evidence. Id. at 341 (citing Neder, 527 U.S. at 15, 18).

For example, in Brown, our supreme court considered whether an accomplice instruction that erroneously allowed juries to convict upon proof that the accomplice had knowledge that his

⁶ For the same reason, Nguyen cannot demonstrate manifest error entitling him to review in spite of his failure to object to the jury instructions below. RAP 2.5(a)(3).

actions would facilitate “a crime” rather than “the crime” charged was harmless with respect to several individual defendants. 147 Wn.2d at 341. The court concluded that the error was harmless beyond a reasonable doubt where the evidence established that a defendant acted as a principal because the erroneous accomplice instruction did not affect the jury’s verdict. Id. at 341-43. The same is true in this case.

To convict Nguyen as a principal, the State had to prove (among other things) that he possessed the controlled substance. CP 33 (Instruction 8). Nguyen argues that the State could not prove possession without proving accomplice liability. That is not so. The trial court instructed the jury that “possession” may be either actual or constructive, and that “[c]onstructive possession occurs when there is no actual possession but there is dominion and control over the substance.” CP 37 (Instruction 12).

In deciding whether the defendant had dominion and control over a substance, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the substance, whether the defendant had the capacity to exclude others from possession of the substance, and whether the defendant had dominion and control over the premises where the

substance was located. No single one of these factors necessarily controls your decision.

CP 37 (Instruction 12).

Nguyen's statement to Officer Terry demonstrates that Nguyen had constructive possession of the cocaine and was therefore guilty as a principal. Nguyen admitted that he received the call from Van, arranged to meet Van at a particular location to sell him crack cocaine, and agreed to change the location at Van's request. Ex. 9 at 3-4. Nguyen also admitted that he brought a half-ounce of crack with him, from which he intended to weigh out the quarter-ounce that Van had requested. Ex. 9 at 6-7. Although he had Alojasin carry the drugs, Nguyen admitted that the plan was for her to hand it to him before the transaction and that he would then take the money for the crack. Ex. 9 at 7.

Contrary to Nguyen's argument on appeal, the State did not rely on accomplice liability to establish dominion and control of the cocaine in its closing argument. See Brief of Appellant at 7. Rather, the State argued that the jury could find Nguyen guilty as either a principal, relying on his constructive possession, or an accomplice, relying on Alojasin's actual possession. 4RP 494-97.

With respect to constructive possession, the State relied on Nguyen's own conduct to establish his dominion and control:

He had dominion and control. Yes, he did. And we know that, one, because he's the one who had the ability to sell these drugs. He's the one who set up the deal. If you had something to sell, for example, if you have a car or something like that, and you have the ability to transfer that car from one person to another person, then you had dominion and control over that car. And, that's what Mr. Nguyen had over those drugs. He had the ability to sell them. That's a level of control.

He also had the ability to tell those drugs to go from one place to another place, 'cause he told Van that he was going to meet him at the Red Hill Market. And, when that plan didn't work out, he told Van that he was going to meet him at his house. So, he was telling that substance to go from Point A to ... Point B. That is a level of dominion and control. But, the Defendant himself also tells you that – in his own words, in his statements, that he had a level of control; ... that he set up the deal; that he had a role to play as far as carrying the drugs. And, he even tells us in his statement that he – when asked how much crack did you bring with you, he says a half-ounce. That question is very crucial. How much drugs did you bring with you? So, there is a level of constructive possession in this case. And, more importantly, there is actual possession because he was working in concert with Ms. Alojasin.

4RP 495-96. The prosecutor then summarized, "We dealt with actual and we dealt with constructive possession. And you can choose whichever one you find, but they're both present in this case." 4RP 497.

Because the evidence established that Nguyen had constructive possession of the cocaine and intent to deliver, any error in the accomplice instructions was harmless beyond a reasonable doubt. This Court should affirm.

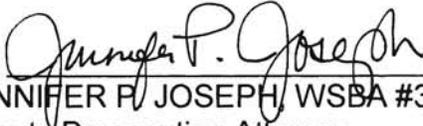
D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Nguyen's conviction for possession of cocaine with intent to deliver.

DATED this 13th day of February, 2014.

Respectfully submitted,

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 12-C-03947-6 SEA
Plaintiff,)	
)	
vs.)	
)	TRANSCRIPT OF SANG THANH
SANG THANH NGUYEN,)	NGUYEN INTERVIEW
)	
Defendant.)	
)	
)	
)	

OFFICER: I'm Officer David Terry, serial number six-seven-zero-nine, of the Seattle Police Department. This statement will pertain to SPD incident number two-zero-one-two dash one-one-zero-five-five-eight. Today's date is April eleventh, two thousand twelve. The time is twenty-two-zero-six. This will be the interview of Sang T. Nguyen, date of birth zero-six zero-five, seven-three. There'll be, we are the only two that are present. Mr. Sang, uh do I have your permission to audio record this conversation?

NGUYEN: Yes.

OFFICER: Would you please say and spell your last name.

NGUYEN: 'Kay. Uh-uh, S-A-N-G...

1 OFFICER: No.

2 NGUYEN: (unintelligible)...

3 OFFICER: I'm sorry, your last name.

4 NGUYEN: my last name, N-G-U-Y-E-N.

5 OFFICER: 'Kay. And your first name?

6 NGUYEN: Sang, S-A-N-G.

7 OFFICER: 'Kay. Uh, can you give me your address?

8 NGUYEN: Um Thirty-Two-Oh-Nine uh South Orcas Street in Seattle, Nine-Eight-

9 One-One-Eight.

10 OFFICER: 'Kay. And your phone number?

11 NGUYEN: Um, two-oh-six um s...eight-one-six, um...five-eight-five-six.

12 OFFICER: 'Kay. And you have to speak loud enough for it to pick up your, what

13 you're saying. Okay? So your Miranda warnings, advisement of rights,

14 you have the right to remain silent. Anything you say can be used against

15 you in a court of law. You have the right at this time to talk to a lawyer

16 and have your lawyer present with you while you're being questioned. If

17 you cannot afford to hire a lawyer, one'll be appointed to represent you

18 before any questioning if you wish. You can decide at any time to

19 exercise these rights and not answer any question or make any statements.

20 Do you understand each of these rights I've explained to you?

21 NGUYEN: Yes.

22 OFFICER: You have the right to a lawyer. If you're unable to pay for a lawyer,

23 you're entitled to have one provided without charge. Uh, Mr. Nguyen, on

24

1 April eleven, two thousand twelve, that's tonight, around eight-eighteen
2 p.m. you were on the fourteen-hundred block of South Walker Street.
3 Before, and that's where you were arrested. So before that happened, can
4 you tell me a little bit a-about what happened? You received a call; I
5 mean how did it come about? How did everything happen?
6 NGUYEN: I received a call and...
7 OFFICER: From who?
8 NGUYEN: Um Van is what I think his name was.
9 OFFICER: Okay.
10 NGUYEN: Uh, I was supposed to meet him up at his house.
11 OFFICER: Okay.
12 NGUYEN: (Unintelligible)...
13 OFFICER: What were you supposed to meet him at his house for?
14 NGUYEN: 'Cause he wanted some dope.
15 OFFICER: 'Kay. You're gonna have to speak louder.
16 NGUYEN: He wanted some dope.
17 OFFICER: What kind a dope?
18 NGUYEN: Crack.
19 OFFICER: Crack-cocaine?
20 NGUYEN: Yes.
21 OFFICER: 'Kay, how much?
22 NGUYEN: Think he wanted a q-quarter.
23 OFFICER: A quarter? How much would that cost him?
24

1 NGUYEN: Like three hundred.

2 OFFICER: Three hundred? Okay. And so what happened next? Did you agree to
3 that?

4 NGUYEN: Yeah.

5 OFFICER: 'Kay. Where did you agree to meet?

6 NGUYEN: First it was at this...at the Shell Station (unintelligible) by his house.

7 OFFICER: So you already knew where he lived?

8 NGUYEN: Yeah.

9 OFFICER: 'Kay. So how did you get to his house?

10 NGUYEN: (Unintelligible) drove (unintelligible).

11 OFFICER: He drove?

12 NGUYEN: No.

13 OFFICER: No, who drove?

14 NGUYEN: Uh, my girl drove.

15 OFFICER: 'Kay, what's her name?

16 NGUYEN: Kim.

17 OFFICER: And what's her last name?

18 NGUYEN: Alojasin.

19 OFFICER: Okay. And you were in the front passenger seat I'm assuming?

20 NGUYEN: Passenger.

21 OFFICER: Passenger seat. Whose car was it?

22 NGUYEN: Just an old friend car.

23 OFFICER: Okay. So you drove up to his house?

24

1 NGUYEN: Yeah.

2 OFFICER: And then what did you do?

3 NGUYEN: Uh, knock on the door and nobody there.

4 OFFICER: Oh, so you walked right up to his front door?

5 NGUYEN: Yeah.

6 OFFICER: Okay. And then did anybody walk up there with you?

7 NGUYEN: Uh, my girlfriend.

8 OFFICER: Your girlfriend did? Okay, and what did you do when no one answered

9 the door?

10 NGUYEN: Uh, we came back to the car.

11 OFFICER: You didn't call him or anything in that, in the meantime?

12 NGUYEN: No, he called me.

13 OFFICER: Okay. And what did you say?

14 NGUYEN: I said where you at.

15 OFFICER: 'Kay. So why did you go back to the car?

16 NGUYEN: Cause he said he was at the Shell Station.

17 OFFICER: And where were you gonna go?

18 NGUYEN: Pick him up.

19 OFFICER: Oh, okay. Um, and then uh so you got back in which door? Got back in

20 the passenger front seat, passenger?

21 NGUYEN: (Unintelligible).

22 OFFICER: 'Kay. Um, and then what happened?

23 NGUYEN: Then you guys showed up.

24

1 OFFICER: Okay. So was the car started at this point?
2 NGUYEN: Yeah.
3 OFFICER: Okay. So you're ready to drive off? Alright. How much uh crack-
4 cocaine did you bring along with you tonight?
5 NGUYEN: (Unintelligible) half.
6 OFFICER: A half a what?
7 NGUYEN: Half ounce.
8 OFFICER: A half ounce?
9 NGUYEN: Yeah.
10 OFFICER: And how much does that go for?
11 NGUYEN: Uh, five hundred.
12 OFFICER: Five hundred? So you weren't gonna sell him everything that you brought
13 with you? Is that...
14 NGUYEN: No.
15 OFFICER: What you're sayin'?
16 NGUYEN: No.
17 OFFICER: How many baggies full of crack did you have?
18 NGUYEN: Just three.
19 OFFICER: You had three?
20 NGUYEN: Yep.
21 OFFICER: Okay. And how were you gonna sell it to him? Were you gonna split it
22 up or weigh it; how did you figure that out?
23 NGUYEN: Weigh it.

24

1 OFFICER: You were, then you have a scale or something?
2 NGUYEN: No.
3 OFFICER: No? Do you have a scale?
4 NGUYEN: No.
5 OFFICER: How were you gonna weigh it?
6 NGUYEN: His scale.
7 OFFICER: Oh, his scale, okay. Uh, who was carrying the crack-cocaine?
8 NGUYEN: My girl.
9 OFFICER: Okay. She was carryin' it the whole time?
10 NGUYEN: Uh-huh.
11 OFFICER: Yeah, and then what do you carry?
12 NGUYEN: Uh, nothin'.
13 OFFICER: You don't carry the money? Like...
14 NGUYEN: (Unintelligible)...
15 OFFICER: If you made an exchange would people make the exchange with you?
16 NGUYEN: Yeah.
17 OFFICER: Yeah? So what would she hand you the crack and then you would take
18 the money for the crack?
19 NGUYEN: Yeah.
20 OFFICER: 'Kay. So you have any other questions for me?
21 NGUYEN: No.

22
23
24

1 OFFICER: 'Kay. Do you declare under perjury...I'll start that over. Do you declare
2 under penalty of perjury under the laws of the state of Washington that
3 what you have stated in this statement is true and correct?

4 NGUYEN: Yes.

5 OFFICER: This will end the recorded statement. The time is now twenty-two-twelve.
6 (Interview ends).

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to's Exhibit

9

12-1-039417-6 SEA

State v. Nguyen

Filed

3-11-13

Jon Schroeder
Deputy

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Sarah M. Hrobsky, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. SANG T. NGUYEN, Cause No. 70214-9 -I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 13th day of February, 2014

U Brame

Name

Done in Seattle, Washington