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Division I
State of Washington

NO. 75012-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON

Respondent,

v.

MICHAEL BYRD,

Appellant.

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

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

When Michael Byrd tried to sell a laptop to a pawn shop, the clerk immediately called the police and the computer's true owner. Instead of walking out with cash in hand, Mr. Byrd was walked out in handcuffs.

The State mischarged the crime. At worst, this was an attempted offense. The trafficking in stolen property in the second degree conviction should be set aside for insufficient evidence.

Irrespective of whether there is sufficient evidence to sustain a conviction for a completed offense, the trial judge's decree to the jury that defense counsel's closing argument was unreasonable and false, constituted a comment on the evidence. Because the judicial comment undercut Mr. Byrd's theory of defense – that he was only trying to sell the computer on his nephew's behalf – a new trial is required.

B. ASSIGNMENTS OF ERROR

1. The evidence is insufficient to uphold the conviction.
2. The trial court erred in sustaining the State's objection to defense closing argument.
3. The trial court erred in declaring the inference defense counsel was drawing to be unsupported by the evidence, unreasonable, and false.

4. The trial court made an impermissible comment on the evidence in violation of Article IV, Section 16 of the Washington State Constitution.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. To convict a defendant of trafficking in stolen property in the second degree, the State must prove beyond a reasonable doubt that the defendant trafficked stolen property (meaning sold, transferred, distributed, dispensed, or otherwise disposed to another person), and did so with reckless disregard of whether the property was stolen.

If the pawn shop clerk lied to Mr. Byrd to keep him on site so he would be arrested without getting anything of value for the stolen computer, did the State present sufficient evidence of a completed offense, or only of an uncharged attempt?

2. An impermissible comment on the evidence under Article IV, Section 16 is one that conveys to the jury the court's attitude toward the merits of the particular case. During closing arguments, counsel are permitted wide latitude, to not only argue the facts in evidence, but also to draw and express reasonable inferences flowing from those facts.

Interrupting defense counsel's closing argument, the trial judge told the jury that "there has been no evidence presented in this case that

[the nephew] did not have identification,” as defense counsel inferred.

3/1/15 RP129.

If the jury had heard evidence that identification was necessary to sell something to a pawn shop and also heard that Mr. Byrd was trying to handle the transaction for his nephew, was defense counsel’s suggestion that the nephew lacked identification a reasonable inference and thus permissible argument? Was the trial judge’s statement to the contrary a comment on the evidence?

Given that the judicial comment signaled both approval of the prosecution’s interpretation of the evidence and rejection of how Mr. Byrd was defending the trafficking in stolen property charge, can the State now meet its burden of proving that the comment was harmless?

D. STATEMENT OF THE CASE

The Snohomish County Prosecuting Attorney’s Office charged Michael Byrd with one count of trafficking in stolen property in the second degree. CP 66-67. The State alleged that Mr. Byrd on April 10, 2015 “recklessly” trafficked in stolen property, “to-wit” Michael Gerrodette’s Apple laptop.” Id.

Mr. Gerrodette testified that his computer was stolen during a burglary of his home. 2/29/15 RP41. He testified that on April 10, 2015, he was summoned to the G&H pawn shop in Everett. 2/29/15 RP42-43.

There, the owner – Yuriy Korlev – pointed out Mr. Byrd to him as the man trying to get cash for the laptop. 2/29/15 RP43.

Mr. Korlev testified that Mr. Byrd told him he had bought the laptop for \$900 and wanted to sell it. 2/29/15 RP72. Mr. Korlev opened-up the laptop, “connected to wi-fi, and messages started coming up on the screen.” 2/29/15 RP72, 81. The messages displayed discussed a burglary and a stolen laptop. 2/29/15 RP73. Mr. Korlev wrote back to the person in the message exchange and was given Mr. Gerrodette’s phone number. 2/29/15 RP73. Immediately, Mr. Korlev called the police and called Mr. Gerrodette. 2/29/15 RP73.

Once connected to the wi-fi network, the computer beeped. 2/29/15 RP46-47, 72. Mr. Korlev lied to Mr. Byrd that the beeping was just the store making sure the computer was working, but this was not true. Id.

Mr. Korlev “didn’t want to alert [Mr. Byrd] that the police were on their way.” 2/29/15 RP73. He wanted Mr. Byrd to be caught: “people run off and there is no consequences, and so, we were kind of stalling him, telling him we were still doing research on the computer.” Id. Mr. Korlev also wanted to stall Mr. Byrd because if he were to buy stolen merchandise, “then the police would come and confiscate it” and he would take a loss. 2/29/15 RP83.

Mr. Korlev then took Mr. Byrd's identification and "made him an offer of \$200... he agreed." Id.¹ Mr. Korlev testified that "by law we're required to take state ID" for a sale transaction. Id. The pawn shop would "absolutely" not buy anything from someone without identification. 2/29/15 RP79. Mr. Korlev also would not buy something from someone acting on behalf of a third party. 2/29/15 RP83. Mr. Korlev copied Mr. Byrd's identification and had him sign a purchase agreement, but he was not going to actually pay Mr. Byrd. 2/29/15 RP74-76; Ex. 4.

Mr. Byrd "went up to the window to get payment," but Mr. Korlev instructed his "office manager to stall him, because the police wasn't there yet." 2/29/15 RP75. He had the office manager tell another lie to Mr. Byrd: "we told him we're doing a till count and we have to do an up till and everything and told him it was going to be another few minutes until he gets payment." 2/29/15 RP75, 80. Mr. Korlev was not going to pay Mr. Byrd: "we had strong reasons to believe... there is something – something wrong there with the item he was trying to sell." 2/29/15 RP76.

The police arrived and put Mr. Byrd in handcuffs. Id. The laptop was returned to Mr. Gerrodette. 2/29/15 RP99.

Officer Steven Ross testified that as he was coming up on the scene, he spoke with a young adult sitting in a car outside who told him

¹ The pawn shop sets a low purchase price in order to "be able to resell it and make a profit on it." 2/29/15 RP79, 81.

“he was waiting for his uncle, Michael Byrd, who was inside the pawn shop selling a laptop.” 2/29/15 RP88. This man was Johnny Williams. 2/29/15 RP89.

Officer Joshua Doonan testified about arresting Mr. Byrd. 2/29/15 RP97-98. Mr. Byrd told the officer that in the morning his nephew, Mr. Williams, had asked him to pawn the laptop and he agreed. 2/29/15 RP99. Mr. Byrd knew his nephew had a history of theft and shoplifting, but he did not know this laptop was stolen. 2/29/15 RP99, 101.

In closing argument, defense counsel told the jury that Mr. Byrd hid the fact he was selling the laptop on behalf of his nephew from the pawn shop owner: “*I am here to sell it.* He lied. He did. He lied on behalf of his nephew who met him at Big Lots, had a laptop with him and went over to pawn it.” 3/1/15 RP129 (italics added).

Defense counsel suggested a possible explanation for this lie: “[H]is nephew didn’t have any identification. He couldn’t have pawned it or sold it.” Id. The prosecutor objected and the following exchange ensued:

PROSECUTOR: Your Honor, I am going to object. There is no testimony, other than [defense counsel’s] opening statement, that listed that in evidence. Not one of the witnesses testified to that.

THE COURT: Sustained.

DEFENSE: I believe that the pawn shop owner said that you could not pawn it without having license or identification.

THE COURT: The witness did make that statement, but there has been no evidence presented in this case that Mr. Williams, the individual identified as a nephew, did not have identification.

DEFENSE: All right, Your Honor. But –

THE COURT: So the objection is sustained.

3/1/15 RP129.

Mr. Byrd was convicted as charged. CP 24. At sentencing, he let the court know he had not been in trouble with the law for several years and attributed this to completing a Drug Offender Sentencing Alternative treatment program. 3/9/16 RP157. With respect to the charge, said he “helped a family member and that was an honest mistake... I just offered to pawn something for him that I didn't realize was stolen.” 3/9/16 RP154.

Mr. Byrd was sentenced to serve nearly five years in prison. CP 7.

E. ARGUMENT

1. THE CONVICTION SHOULD BE REVERSED AND
DISMISSED WITH PREJUDICE BECAUSE THE
STATE FAILED TO PROVE THE COMPLETED
OFFENSE IT CHOSE TO CHARGE

- a. Due Process requires the State to prove each element of the offense charged beyond a reasonable doubt.

The State bears the burden of proving each element of the crime charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence. Id.; U.S. Const. amend. XIV; Const. art. I, § 3; City of Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). On appellate review, evidence is sufficient to support a conviction only if, "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." Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 628, 61 L.Ed.2d 560 (1970); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

b. The State did not present sufficient evidence that what Mr. Byrd tried to do amounted to a completed offense.

“A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.” RCW 9A.28.020(1). The attempt statute casts a wide net.

Any act done in furtherance of the crime constitutes an attempt if it clearly shows the design of the defendant to commit the crime. State v. Wilson, 158 Wn.App. 305, 242 P.3d 19 (2010). Factual or legal impossibility is not a defense. RCW 9A.28.020(2); State v. Luther, 157 Wn.2d 63, 134 P.3d 205 (2006).

Attempted offenses warrant lesser punishment than completed crimes. RCW 9A.28.020(3). Here, if Mr. Byrd had been charged and convicted of *attempted* trafficking in stolen property in the second degree, he would have been facing punishment for a gross misdemeanor, not a Class C felony. RCW 9A.28.020(3)(d).

Interrupted crimes are commonly (and properly) chargeable as attempted offenses. For example, in State v. Cook, 69 Wn. App. 412, 414, 848 P.2d 1325 (1993), a would-be robber “tried” to take a victim’s rings at knifepoint, but “the police arrived and Cook fled out a back door.” He was charged with attempted robbery. Similarly, in State v. Beals, 100 Wn.

App. 189, 191–92, 997 P.2d 941 (2000), the complainant made “an effort to stall for time, hoping that a neighbor called the police.” That would-be robber also fled and was likewise charged with an attempted crime. Id.

While the allegation against Mr. Byrd was not one of a forcible taking, his allegedly illegal endeavor was also interrupted.² In fact, the alleged criminality of what he did was detected within moments of his entering the pawn shop.

The pawn shop owner, Mr. Korlev called the police and Mr. Gerrodette. Mr. Korlev told Mr. Byrd that he would buy the laptop for \$200, but this was a lie. Mr. Korlev had no intention of letting Mr. Byrd profit from the sale of a computer he suspected to be stolen; he wanted Mr. Byrd arrested. 2/29/15 RP72, 73-76, 79, 80, 83.

Mr. Korlev summoned the police and the laptop’s owner. In dealing with Mr. Byrd at the store, his intent was to keep Mr. Byrd there so Mr. Byrd would be arrested by the police.

Here, it was factually impossible for Mr. Byrd to traffic in stolen property. This reality would not have been a defense if the State charged

² “A person who recklessly traffics in stolen property is guilty of trafficking in stolen property in the second degree.” RCW 9A.82.055. The jury was instructed that “‘traffic’ means: to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person.” CP 34. But see RCW 9A.82.010(19) (full definition). The “to convict” instruction claimed “[t]hat on or about April 10, 2015,” Mr. Byrd had “recklessly trafficked in stolen property.” CP 33 (emphasis added to highlight use of past tense).

Mr. Byrd with *attempted* trafficking, but it is an evidentiary shortcoming fatal to the State's case as charged.

The defendant in State v. Benson, 144 Wash. 170, 171, 257 P. 236 (1927) was charged with bribery, or offering and promising a sum of money to a witness upon an agreement or understanding that his testimony would thus be influenced. The evidence introduced at the trial showed that the defendant made an offer or promise for the purpose of influencing the witness' testimony. But the offer was not accepted and no mutual agreement or understanding existed.

Because the evidence did not show a *completed* crime, Benson's bribery conviction was reversed and dismissed, with the State Supreme Court passing on "whether the prosecutor can or should file an information charging an attempt to commit the crime of bribery." Id. at 172.

Mr. Byrd's conviction should also be reversed and dismissed for the same reasons. Any effort to get rid of the computer was broken-up by the pawn shop owner, the laptop owner, and the police.

The State's closing argument that Mr. Byrd was guilty because "he agreed to sell it" and turned the laptop over to the pawn shop was

misplaced. 3/1/15 RP125.³ Even as the State interpreted the evidence, Mr. Byrd did not want to gift the laptop, he expected cash for it. And, as Mr. Korlev testified, Mr. Byrd was never going to get paid for it, because Mr. Korlev believed the computer to be stolen and wanted Mr. Byrd apprehended, not paid. 2/29/15 RP83 (testimony pawn shop would not purchase stolen merchandise because it would be confiscated and cause a loss).

The State's burden here was to prove beyond a reasonable doubt that Mr. Byrd had "trafficked" in stolen property, not that he had tried to only to be thwarted. CP 33. The State may have had a case for attempted trafficking – where the factual impossibility of the completion of the offense would be no defense – but as to the charge of a completed offense, the State's proof is insufficient.

c. Reversal and dismissal is the appropriate remedy.

In the absence of evidence from which a rational trier of fact could find beyond a reasonable doubt Mr. Byrd committed the offense of which

³ The trial prosecutor further argued:

It doesn't say he had actually received the money. He expected to, just agreed to sell it and that's what the contract says. He did transfer it and he signed it away saying that that document -- that laptop now belongs to G & H pawn. He distributed or dispensed it. He gave it to them. He didn't get it back. He gave them that laptop.

3/1/15 RP125.

he was convicted, the judgment may not stand. State v. Spruell, 57 Wn. App. 383, 389, 788 P.2d 21 (1990). The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution prohibits a second prosecution for the same offense after a reversal for lack of sufficient evidence. State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) (citing North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969)). The appropriate remedy is dismissal of Count I with prejudice.

2. THE TRIAL COURT’S ASSERTION THAT THE PROSECUTION’S INTERPRETATION OF THE EVIDENCE WAS CORRECT – AND THE DEFENSE INTERPRETATION OF THE SAME EVIDENCE BASELESS – WAS AN IMPERMISSIBLE AND PREJUDICIAL COMMENT ON THE EVIDENCE.

a. The trial court must not comment on the evidence.

Article IV, Section 16 of the Washington Constitution requires that “[j]udges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.” This provision prohibits a judge from “‘conveying to the jury his or her personal attitudes toward the merits of the case’ or instructing a jury that ‘matters of fact have been established as a matter of law.’” State v. Jackman, 156 Wn.2d 736, 743-44, 132 P.3d 136 (2006), quoting State v. Becker, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997).

Judicial “remarks and observations as to the facts before the jury are positively prohibited.” State v. Bogner, 62 Wn.2d 247, 252, 382 P.2d 254 (1963), quoting State v. Walters, 7 Wn. 246, 250, 34 P. 938 (1893). “A statement by the court constitutes a comment on the evidence if the court’s attitude toward the merits of the case or the court’s evaluation relative to the disputed issue is inferable from the statement.” State v. Lane, 125 Wn.2d 825, 838, 889 P.2d 929 (1995). This constitutional mandate applies to criminal and civil cases. Wuth ex rel. Kessler v. Lab. Corp. of Am., 189 Wn. App. 660, 697, 359 P.3d 841 (2015); In re Det. of R.W., 98 Wn. App. 140, 145, 988 P.2d 1034 (1999).

An accurate statement of the law pertaining to issues in the case does not constitute a comment on the evidence. Christensen v. Munsen, 123 Wn.2d 234, 249, 867 P.2d 626 (1994); State v. Kepiro, 61 Wn.App. 116, 810 P.2d 19 (1991). But, it is error for a judge to instruct the jury that matters of fact have been established as a matter of law. State v. Boss, 167 Wn.2d 710, 223 P.3d 506 (2009); Becker, 132 Wn.2d at 64-65.

“Once it has been demonstrated that a trial judge's conduct or remarks constitute a comment on the evidence, a reviewing court will presume the comments were prejudicial.” Lane, 125 Wn.2d at 838, citing to State v. Bogner, 62 Wn.2d at 249, 253-54. The burden is on the State to show that the defendant was not prejudiced, unless the record

affirmatively shows that no prejudice could have resulted. State v. Boss, 167 Wn.2d at 721; State v. Levy, 156 Wn.2d 709, 725, 132 P.3d 1076 (2006).

- b. Defense counsel's permissible argument did not warrant an objection, let alone a judicial scolding.

During closing arguments, “[c]ounsel are permitted latitude to argue the facts in evidence and reasonable inferences” flowing from those facts. State v. Smith, 104 Wn.2d 497, 510, 707 P.2d 1306 (1985); State v. Dhaliwal, 150 Wn.2d 559, 577, 79 P.3d 432 (2003). They may not, however, “urg[e] the jury to decide a case based on evidence outside the record.” State v. Pierce, 169 Wn.App. 533, 553, 280 P.3d 1158 (2012); WPIC 1.02. Mr. Byrd’s jury was correctly instructed to “disregard any remark, statement, or argument that is not supported by the evidence or the law.” CP 27.

Caselaw outlining permissible argument is largely based on prosecutorial arguments and confirms that lawyers have substantial leeway to argue their cases. For example, State v. Thorgerson, 172 Wn.2d 438, 448, 258 P.3d 43 (2011), stands for the proposition that a prosecuting attorney has wide latitude to argue reasonable inferences from the evidence, including inferences as to the credibility of witnesses. Even a direct accusation that a witness is a “liar,” may come “within the rule

which allows counsel to draw and express reasonable inferences from the evidence produced at trial.” State v. Hale, 26 Wn. App. 211, 216, 611 P.2d 1370 (1980) citing State v. Adams, 76 Wn.2d 650, 660, 458 P.2d 558 (1969).

In In re Yates, 177 Wn.2d 1, 59–61, 296 P.3d 872 (2013), our State Supreme Court approved of a “prosecutor’s arguments of future dangerousness” as “reasonable inferences” from the defendant’s criminal history. In State v. Dhaliwal, 150 Wn.2d at 579, a prosecutor’s closing argument that asserted that testimony about cultural values of the Sikh community offered “an explanation as to possible motive” of the defendant was also deemed a reasonable inference.

Similarly, in State v. Lougin, 50 Wn. App. 376, 383, 749 P.2d 173 (1988), this Court saw nothing wrong with a prosecutor’s argument that the defendant and a witness “must be friends” because the latter visited the former in jail. “This was simply an argument based upon the evidence in the case and did not amount to misconduct.” Id.

Here, what Mr. Byrd’s defense counsel argued was well within the realm of a reasonable inference based on the evidence. 3/1/15 RP129. The jury had heard testimony that identification was “absolutely” necessary for a pawn shop transaction. 2/29/16 RP79. They heard testimony that the pawn shop would refuse to deal with a third party. 2/29/16 RP82 (“we

wouldn't take it because we would need the person's ID"). They heard testimony that Mr. Byrd was selling the laptop for his nephew. 2/29/16 RP99 (police officer testifying Mr. Byrd told him "he agreed to sell the laptop, so he met him up at the Big Lots... [and] Mr. Byrd drove Mr. Williams down to the pawn shop").

On these facts, the suggestion that the nephew's lack of identification could be why Mr. Byrd was handling the laptop sales transaction was a reasonable inference from this evidence. This is especially so where defense counsel linked this inference to the admission that Mr. Byrd had lied to the pawn shop about being the laptop's true seller. 3/1/15 RP129.

It was error to sustain the prosecutor's objection as to this permissible argument. The trial judge should have, as trial judges nearly always do, repeated the caution that it is the jurors' "duty to decide the facts... based upon the evidence presented... at trial" and that "the lawyers' statements are not evidence." CP 26-27. Such a response to the prosecutor's objection would have been proper. What followed here, however, was not.

The trial judge not only approved of the prosecutor's speaking objection by declaring it "sustained," the trial judge went even further than that. Stepping far outside its role as a neutral arbiter, the trial judge twice

“sustained” the State’s objection. 3/1/15 RP129. Going even further, the judge declared to the jury that defense counsel’s inference was unfounded and false: “there has been no evidence presented in this case that Mr. Williams, the individual identified as a nephew, did not have identification.” Id.

This declaration was a comment on Mr. Byrd’s defense and violated Article IV, Section 16 of the Washington Constitution. (“[j]udges shall not charge juries with respect to matters of fact, nor comment thereon”). And, the comment undercut Mr. Byrd’s defense to the charge.

c. The State cannot prove that the judicial comment did not prejudice Mr. Byrd.

A judicial comment on the evidence is presumed prejudicial, and the State must demonstrate the defendant was not prejudiced by the comment, unless the record affirmatively shows no prejudice occurred. Levy, 156 Wn.2d at 723, citing Lane, 125 Wn.2d at 838-39; State v. Stephens, 7 Wn.App. 569, 573, 500 P.2d 1262 (1972), aff’d in part, rev’d in part, 83 Wn.2d 485 (1973) (the State has the burden of showing that the jury’s decision was not influenced, even when the evidence is undisputed or overwhelming).

The constitution has made the jury the sole judge of the weight of the testimony and of the credibility of the witnesses, and it is a fact well and universally known by courts and practitioners that the ordinary juror is always anxious to obtain the opinion of the court on matters which are submitted to his discretion, and that such opinion, if known to the juror, has a great influence upon the final determination of the issues.

State v. Crotts, 22 Wash. 245, 250-51, 60 P. 403 (1900).

In State v. Crotts, the Supreme Court reversed a murder in the first degree conviction because the trial judge's own leading questions to witnesses implied the judge was skeptical about Crotts's self-defense claims. 22 Wash. at 247-48. What occurred here was equally prejudicial.

The judicial comment denigrated the defense attempt to offer an innocent explanation of Mr. Byrd's motive to sell the laptop for his nephew. Simultaneously, the judicial comment declared that the prosecutor's nefarious assertions as to Mr. Byrd's motive were correct.

This Court should reverse.

F. CONCLUSION

This Court should reverse and dismiss Mr. Byrd's conviction for lack of sufficient evidence. In the alternative, this Court should remand for a new trial.

Should this Court reject Mr. Byrd's arguments on appeal, he asks that this Court issue a ruling refusing to allow the State to seek any reimbursement for costs on appeal due to his continued indigency.⁴ State v. Sinclair, 192 Wn.App. 380, 367 P.3d 612 (2016).

DATED this 31st of October 2016

Respectfully submitted,

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Washington Appellate Project
Attorneys for Appellant

⁴ The sentencing court found Mr. Byrd to be indigent and waived court costs and court appointed attorney fees. 3/9/16 RP156; CP 10. Mr. Byrd's lawyer described his client's "chances of employment [as] just about non-existent." 3/9/16 RP156. Based on Mr. Byrd's representation that he "may be able to pull out \$25 to \$30" upon his release, a \$25/month payment schedule was set. 3/9/16 RP157; CP 10.

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 75012-7-I
)	
MICHAEL BYRD,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF OCTOBER, 2016, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | |
|--|-------------------|--|
| [X] SETH FINE, DPA
[sfine@snoco.org]
SNOHOMISH COUNTY PROSECUTOR'S OFFICE
3000 ROCKEFELLER
EVERETT, WA 98201 | ()
()
(X) | U.S. MAIL
HAND DELIVERY
AGREED E-SERVICE
VIA COA PORTAL |
| [X] MICHAEL BYRD
371218
WASHINGTON CORRECTIONS CENTER
PO BOX 900
SHELTON, WA 98584 | (X)
()
() | U.S. MAIL
HAND DELIVERY
_____ |

SIGNED IN SEATTLE, WASHINGTON, THIS 31ST DAY OF OCTOBER, 2016.



X _____

Washington Appellate Project
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