

FILED
COURT OF APPEALS
DIVISION II

09 FEB 25 PM 12:28

STATE OF WASHINGTON
BY:  CLERK

NO. 38008-1-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DAVID READING,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THURSTON COUNTY

Before the Honorable Chris Wickham, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The charge of conspiracy to commit robbery and/or burglary must be reversed and dismissed because there was insufficient evidence that David Reading had reached an agreement with any other alleged co-conspirators or that he took a substantial step pursuant to an agreement.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether the charge of conspiracy must be reversed and dismissed because there was insufficient evidence that Mr. Reading had entered into an agreement with any other alleged co-conspirators or that there was a substantial step taken in furtherance of an agreement?

C. STATEMENT OF THE CASE

1. Procedural history:

David Reading was charged by second amended information filed in Thurston County Superior Court on March 6, 2008, with first degree unlawful possession of a firearm,¹ attempting to elude a pursuing police vehicle,² and conspiracy to commit either first degree burglary and/or first degree robbery.³ Clerk's Papers [CP] at 25-26. Mr. Reading was tried jointly with co-defendants Donald Waller and Dawn Cooper.

¹ RCW 9A.040(1)(a)(b).

² RCW 9A.040(1)(a)(b).

³ RCW 9A.28.040, 9A.56.200(1), 9A.52.020(1)(a)(b).

No motions were filed nor heard regarding either a CrR 3.5 or CrR 3.6 hearing. Mr. Reading did not move to sever his trial from that of his co-defendants. Trial to a jury commenced June 18, 2008, the Honorable Chris Wickham presiding.

Mr. Reading's trial counsel made no objections or exceptions to the court's instructions to the jury. RP at 672.

After the State rested, Bruce Finlay, counsel for Ms. Cooper, moved to present testimony by Nate Hoffman. RP at 441. In an offer of proof, Mr. Finlay stated that Mr. Hoffman would testify that he was a friend of Ms. Cooper's, that he did not know Mr. Reading or Mr. Waller, and that a friend of Mr. Hoffman's was put in jail, and he asked Ms. Cooper for a loan to bail the friend out, that Ms. Cooper said that she didn't have the money and she introduced him to Mr. Reading, who loaned Mr. Hoffman the money with the requirement that he pay it back with interest. RP at 441-42. Mr. Hoffman would testify that he had no reason to believe anyone was angry with him, that he received no threats, and that nobody had tried to contact him or request that he repay the money. RP at 442.

Mr. Finlay also noted that trial counsel for Mr. Reading had represented Mr. Hoffman on previous criminal matters. RP at 422, 444-

45. Richard Woodrow, counsel for Mr. Reading stated:

If the charges had been a completed offense, I could not be counsel for Mr. Reading, but since it's a conspiracy, whether or not Mr. Hoffman was ever contacted doesn't matter.

RP at 446.

The prosecution argued that there was no named victim and that the elements of the offense are that the co-defendants got together either to cause or put into effect conduct that constitutes a crime and that they took a substantial step toward it, and that Mr. Hoffman's testimony as to what might have happened is not relevant. RP at 448.

Judge Wickham agreed with the prosecution and found that Mr. Hoffman's testimony was not relevant and denied Mr. Finlay's motion to present the testimony. RP at 449.

The jury found Mr. Reading guilty of attempting to elude a police vehicle⁴ and conspiracy to commit first degree burglary and first degree robbery. CP at 128, 127, 129. He was acquitted of first degree unlawful possession of a firearm. CP at 174.

The matter came on for sentencing on July 15, 2008. The court sentenced Mr. Reading to a standard range sentence of 120 months. RP (7/15/08 Sentencing) at 20; CP at 180.

⁴ Mr. Reading conceded that he was attempting to elude the police vehicle and does not challenge the conviction for that offense on appeal. RP at 549.

Timely notice of appeal by the defense was filed on July 30, 2008.

CP at 195. This appeal follows.

2. Trial testimony:

On the morning of November 27, 2007, in Tumwater, Washington, Kristi Jones looked out her bay window and saw three men walking up the driveway of her duplex toward her neighbor's door. Report of Proceedings [RP] at 43, 45. She did not recognize the men and tapped on the bay window to get their attention. RP at 46. She lost sight of them, but saw them approximately five minutes later when they got into a Ford Explorer. RP at 47, 48. As the men walked by her house, one of them walked up to her house and knocked on her door. RP at 47. She opened the window and he asked "is Nate home?" RP at 48. She responded that she didn't know who Nate was, and he said "okay." RP at 48. Ms. Jones subsequently identified the man she spoke to as Don Waller, one of Mr. Reading's co-defendants. RP at 48-49.

Another neighbor, Narissa Kelley, saw a green Ford Explorer with tinted windows drive past her house approximately five times in a 40 to 45 minute period the morning of November 27. RP at 71-72, 75. The vehicle eventually stopped at a house across from Ms. Kelley's residence and three men got out of the Explorer. RP at 74. Ms. Kelley stated that one of the men was trying to open the front door of the house and was pushing

the door with his right shoulder, that another man was standing by the bay window, and the third man was standing by the garage door. RP at 75, 76. Ms. Kelley stated that the man standing by the bay window was trying to open the window. RP at 76. All three men then got back into the Explorer and drove north on Dennis Plaza in the direction of a nearby Dairy Queen. RP at 77. Ms. Kelley called 911 about two minutes before they left the area. RP at 78, 81. She said the men had hoods covering their heads and one of them was wearing a black knitted cap. RP at 81.

At 9:35 a.m. on November 27 Chris Tressler of the Tumwater Police Department responded to a call of a suspicious green Ford Explorer in the area of Dennis Plaza. RP at 89, 90. While travelling southbound on Capitol Blvd., Officer Tressler saw a green Ford Explorer with tinted windows travelling northbound. RP at 91. He turned around and followed the vehicle, which had three occupants. RP at 92. He stopped behind the Explorer at a red light at the corner of Capital Blvd. and Trosper. RP at 92. The vehicle turned left onto Trosper and traveled westbound. RP at 95. Officer Tressler followed and then activated his overhead lights. RP at 95. The vehicle entered Interstate 5 where it was traveling at about 85 miles per hour. RP at 97. The Explorer left I-5 at Exit 104 and went part way down the off ramp, braked and made a hard right turn onto the on ramp to Highway 101 and Deschutes Parkway, driving the wrong onto the

ramp. RP at 96, 97. The vehicle then turned left on Deschutes Parkway and traveled approximately one mile north before going up Lakeridge Drive toward the Thurston County Courthouse. RP at 98. While on Deschutes Parkway the vehicle was going approximately 80 miles per hour. RP at 98. The Explorer left Lakeridge Drive and turned into a private driveway at the top of the hill, across the street from the courthouse. RP at 100. After travelling about 50 yards on the driveway, the Explorer stopped and the three occupants ran from the vehicle. RP at 100.

Inside the Explorer, police found a hatchet, a Motorola Talkabout two-way radio, a roll of duct tape, a Radio Shack brand scanner, a wooden club, a pair of gloves, zip ties, a sleeping bag, and a .45 caliber handgun. RP at 129, 134, 135, 207, 210. 225, 226. Police also found a page from a Dex telephone book with directions written on it stating: "Right at the Dairy Queen, take the first right, follow to the end and take a left." RP at 231. The scanner, when turned on, went to the frequency used by the Tumwater and Lacey Police Departments. RP at 210.

Officer Tressler caught the man who had been riding in the back, who was identified as Janus Afo. RP at 108-09. Don Waller was riding in the front passenger the vehicle. RP at 128. Mr. Waller was tracked by police dog and located in a nearby wooded area. RP at 154. Mr. Waller

was wearing a camouflage jacket, and had two pairs of gloves in his pocket. RP at 132. A ski mask was around Mr. Waller's neck. RP at 133.

Officer Tressler identified Mr. Reading as the driver of the Explorer. RP at 139. Mr. Reading was caught behind a convenience store near Highway 101. RP at 162, 166. Mr. Reading had a warrant for his arrest for a Department of Corrections [DOC] probation violation. RP at 515.

Charles Liska, a detective for the Tumwater Police Department, found a cell phone that was ringing in the front passenger seat of the Explorer. RP at 173. He answered it and a female voice repeatedly asked him who he was. RP at 174. He said that he was "Janus," and the person who had called said "[q]uit fucking with me" and wanted to know where they could pick them up. RP at 174, 175. Detective Liska told her she could pick them up at the Dairy Queen in Tumwater. RP at 175. He hung up and, the phone rang again, and the caller ID read "Don C." RP at 176. He then said "Dawn, where are you at" and told her to pick him up at the Dairy Queen. RP at 177. He hung up, and the phone rang again, and he handed the phone to Detective Jennifer Kolb, who told Detective Liska that the person wanted to talk to the male to whom she had just spoken.

RP at 178. The caller told Detective Liska that she was at the Chevron station and he said that they would meet her at the Chevron. RP at 178.

On November 27, 2007 Janus Afo went to Kristinna Whitt's parent's house on Steamboat Island in Thurston County and told her that he wanted her help to find someone. RP at 256, 257. Driving her own car, Ms. Whitt followed Mr. Afo—who was in a green Ford Explorer—to the Steamboat Island Store. RP at 257. At the store, Mr. Afo got into her car and told her that he needed her to help him find Nate Hoffman because Mr. Hoffman had “ripped some people off for \$1500.” RP at 258. Ms. Whitt and Mr. Afo drove to a nearby driving range, followed by the Explorer. RP at 259. Ms. Whitt stated that Dawn Cooper got out of the Explorer and got into her car and sat behind Mr. Afo. RP at 261. Ms. Whitt then drove to a trailer park in Olympia, and they all went into a trailer. RP at 261, 262. Mr. Reading and Mr. Waller, who followed in the Explorer, also went into the trailer. RP at 303. Ms. Whitt made a number of telephone calls in an attempt to find Mr. Hoffman. RP at 264. After approximately ten calls, she obtained directions to a residence in Tumwater from Angel Benson. RP at 265. She wrote the directions on the Dex page found in the Explorer and gave it to Mr. Afo. RP at 265. Exhibit 44. Mr. Afo, Mr. Reading and Mr. Waller then left in the Explorer, leaving Ms. Cooper at the trailer. RP at 266. Ms. Cooper called

them several times when they were gone. RP at 289. She and Ms. Whitt and Tara Miller then went to Dairy Queen in Tumwater, where she saw a car that she believed to be an undercover police officer. RP at 291, 301.

Mr. Afo said that he was trying to find Mr. Hoffman in order to help Ms. Cooper, who was his friend at the time. RP at 313. He said that Mr. Hoffman owed money to Ms. Cooper. RP at 314. Mr. Afo denied that Ms. Cooper asked him to commit a robbery or burglary. RP at 361. He said that if necessary, he “probably would have beat somebody up,” and that he “wasn’t expecting a tea party.” RP at 364, 368. Detective Kolb stated that Ms. Cooper told her that she felt she had to help find Mr. Hoffman because he had stolen money and that she had introduced him to the other men. RP at 389. She said that Ms. Cooper said that she had to help them get the money back and that she “figured” that someone was going to either get the money back or “beat him up” and “beat him pretty bad.” RP at 393, 394, 397.

Mr. Reading testified that Mr. Afo directed him to go to Ms. Whitt’s parent’s house on Steamboat Island on November 27 because Mr. Afo was trying to help him find Mr. Hoffman, who owed him money. RP at 522, 531. He stated that Ms. Cooper had told him that Mr. Afo could help him find Mr. Hoffman. RP at 536, 539. He stated that Mr. Hoffman owed him \$1500 because he had test-driven a Pontiac belonging to Mr.

Reading and not returned with the car. RP at 531, 538. This occurred approximately two months prior to November 27, 2007. RP at 532. While they were at the trailer in Olympia, Ms. Whitt made approximately six telephone calls and was able to get directions to a house in Tumwater. RP at 527, 542. After Ms. Whitt gave the directions to Mr. Afo, he drove Mr. Afo and Mr. Waller to Tumwater. RP at 542. Mr. Reading stated that they went to Tumwater because Mr. Afo said that Mr. Hoffman was located there. RP at 527. He did not know where they were going and followed Mr. Afo's directions. RP at 527. He said that in Tumwater they circled the neighborhood a few times and then Mr. Afo pointed at the house and said "that's it [,] [t]hat's where Nate is." RP at 527-28. Mr. Reading parked the Explorer and they got out and went to the house. RP at 528. He stated that he stood in the driveway and noticed that Mr. Waller was talking to a neighbor, and that they then left. RP at 528. He denied that any of them tried to force open doors or windows of the house. RP at 528.

After they drove away, a patrol car pulled in behind the Explorer while the vehicle was stopped at a light. RP at 529. After the light turned green, the patrol car followed the Explorer and then turned on its overhead lights. RP at 529. Mr. Reading stipulated that he attempted to elude the patrol car, and that he did so because of his outstanding DOC warrants for

failing to report for probation. RP at 530, 549. Mr. Reading obtained the Explorer the day before from a friend named Bronco Dave, and that he had borrowed vehicles from him in the past. RP at 552, 560, 561. Mr. Reading stated that the framing hammer located in the vehicle was his and he used it for work. RP at 532, 561. The radio scanner was his and he used it to listen to police to keep from being arrested on the DOC warrants. RP at 533, 553. He was not aware that that the gun or the wooden club were in the Explorer. RP at 558, 561.

Connie Baldwin said that she cleaned out the Explorer the day before Mr. Reading was arrested, and that she left a bag behind in the Explorer when she was cleaning. RP at 611. She said that the bag was previously attached to the front of her motorcycle, and that it contained duct tape, an allen wrench, pliers, zip ties, black tape, and other items. RP at 605-06. She identified the zip ties in Exhibit 40 and the duct tape as her possessions that she left in the Explorer. RP at 607-08. When she cleaned the vehicle she did not see a club, an ax, a handgun, or a scanner. RP at 614.

Mr. Reading stated that none of them had any weapons when they walked up to the house and denied that they had an intent to rob Mr. Hoffman or commit burglary, and that he only wanted to find Mr.

Hoffman in order to find out why he had not contacted him to pay him the \$1500.00. RP at 534, 535.

D. ARGUMENT

1. **THE EVIDENCE WAS INSUFFICIENT FOR ANY RATIONAL TRIER OF FACT TO FIND THE ESSENTIAL ELEMENTS OF THE CRIME OF CONSPIRACY TO COMMIT EITHER FIRST DEGREE ROBBERY AND/OR FIRST DEGREE BURGLARY BECAUSE THE STATE FAILED TO PROVE MR. READING REACHED AN AGREEMENT WITH ANY OTHER ALLEGED CO-CONSPIRATOR OR THAT THERE WAS A SUBSTANTIAL STEP IN FURTHERANCE OF AN AGREEMENT**

Mr. Reading was convicted of conspiracy to commit first degree robbery and burglary, in violation of RCW 9A.28.040. The evidence is insufficient to support this verdict.

Due process requires the state to prove every fact necessary to constitute the charged offense. U.S. Const. amend. 14; Const. art. I, § 3; *In re Winship*, 397 U.S. 358, 90 S. Ct. 1086, 25 L. Ed. 2d 368 (1970); *State v. Crediford*, 130 Wn.2d 747, 759, 927 P.2d 1129 (1996). A reviewing court should reverse a conviction for insufficient evidence where no rational trier of fact, when viewing the evidence in the light most favorable to the State, could have found the elements of the crime charged beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068

(1992); *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980); *State v. Israel*, 113 Wn. App. 243, 54 P.3d 1218 (2002).

"When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068 (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201, 829 P.2d 1068 (citing *State Theroff*, 25 Wn.App. 590, 593, 608 P.2d 1254, *affd*, 95 Wn.2d 385, 622 P.2d 1240 (1980)). While circumstantial evidence is no less reliable than direct evidence, *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), evidence is insufficient if the inferences drawn from it do not establish the requisite facts beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 491, 670 P.2d 646 (1983)."

RCW 9A.28.040, criminal conspiracy, provides in pertinent part:

(1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

The requirement of an agreement with one or more persons is a necessary element under RCW 9A.28.040.

State v. Pacheco, 125 Wn.2d 150, 156, 882 P.2d 183 (1994). In *Pacheco*, 125 Wn.2d at 154-55, the Court stated:

Subsection (1) of RCW 9A.28.040 expressly requires an agreement, but does not define the term. Black's Law Dictionary defines agreement as "[a] meeting of two or more minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition". Black's Law Dictionary, 67 (6th rev.ed. 1990). Similarly, agreement is defined in Webster's as "1 a: the act of agreeing or coming to a mutual agreement . . . b: oneness of opinion . . .". Webster's Third New International Dictionary, 43 (1986). The dictionary definitions thus support the Defendant's argument.

Likewise, the common law definition of the agreement required for a conspiracy is defined not in unilateral terms but rather as a confederation or combination of minds. *State v. Casarez-Gastelum*, 48 Wn. App. 112, 116, 738 P.2d 303 (1987) (citing *Marino v. United States*, 91 F.2d 691, 693-98, 113 A.L.R. 975 (9th Cir. 1937), cert. denied, 302 U.S. 764 (1938)). A conspiratorial agreement necessarily requires more than one to agree because it is impossible to conspire with oneself. *Morrison v. California*, 291 U.S. 82, 92, 78 L.Ed. 664, 54 S.Ct. 281 (1934). We conclude that by requiring an agreement, the Legislature intended to retain the requirement of a genuine or bilateral agreement.

Pacheco, 125 Wn.2d at 154-55. Here, the State simply failed to produce evidence of an agreement to commit burglary and robbery.

RCW 9A.52.020, burglary in the first degree, provides in pertinent part:

(1) 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

a door of the house with his right shoulder one was standing by the bay window was trying to open the window, Mr. Waller asked a neighbor “is Nate home?” RP at 48, 75, 76. Mr. Afo stated that he “probably would have beat somebody up,” and that he “wasn’t expecting a tea party.” RP at 364, 368. Det. Kolb stated that Ms. Cooper said that she “figured” that either they would get the money or that someone was going to “beat him up” and “beat him pretty bad.” RP at 393, 395, 396. Det. Kolb acknowledged that Ms. Cooper did not tell her that there was an agreement that Mr. Hoffman was going to be beaten. RP at 394.

The evidence presented only revealed a general plan to find Mr. Hoffman. None of the witnesses said that they agreed that they were going to take money from Mr. Hoffman by force or that they were going to enter the house to find Mr. Hoffman. Ms. Whitt said that Mr. Afo said that they needed help to find Mr. Hoffman; she did not state that there was an agreement to do anything other than try to find him. RP at 256, 258. Mr. Afo said that he thought something might happen and that he didn’t think it was going to be a tea party; he did not testify that they agreed to take money from Mr. Hoffman or enter the house. RP at 364.

In order to prove conspiracy, there had to be an agreement, and it had to be communicated to constitute conspiracy. There was no evidence of an agreement to enter unlawfully into the house while armed with a

weapon or to assault Mr. Hoffman, and there was no evidence of an agreement to take anything from Mr. Hoffman while armed arm with a deadly weapon or by force. There had to be a showing of an agreement. *United States v. Blessing*, 727 F.2d 353, 356 (5th Cir. 1984), *cert. denied*, 469 U.S. 1105 (1985). The agreement must be proved, or, there simply is no conspiracy as a matter of law. Marcus, PROSECUTION AND DEFENSE OF CRIMINAL CONSPIRACY CASES, at § 2.05[1], 2-44 (1996).

The evidence is insufficient to support Mr. Reading's conviction. This Court should reverse and dismiss the charge as a matter of law.

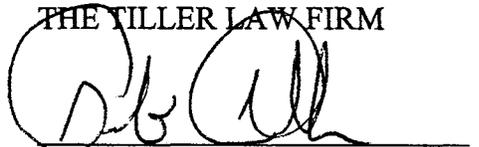
F. CONCLUSION

Based on the above, David Reading respectfully requests this Court to reverse and dismiss his conviction for conspiracy to commit first degree burglary and first degree robbery.

DATED: February 24, 2009.

Respectfully submitted,

THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'P. B. Tiller', is written over a horizontal line. The signature is enclosed within a large, hand-drawn circle.

PETER B. TILLER-WSBA 20835
Of Attorneys for David Reading

APPENDIX

WASHINGTON STATE CONSTITUTION ARTICLE 1 § 3

No person shall be deprived of life, liberty, or property, without due process of law.

UNITED STATES CONSTITUTION

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

RCW 9A.28.040 Criminal conspiracy.

(1) A person is guilty of criminal conspiracy when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.

(2) It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:

- (a) Has not been prosecuted or convicted; or
- (b) Has been convicted of a different offense; or

- (c) Is not amenable to justice; or
- (d) Has been acquitted; or
- (e) Lacked the capacity to commit an offense; or
- (f) Is a law enforcement officer or other government agent who did not intend that a crime be committed.

(3) Criminal conspiracy is a:

- (a) Class A felony when an object of the conspiratorial agreement is murder in the first degree;
- (b) Class B felony when an object of the conspiratorial agreement is a class A felony other than murder in the first degree;
- (c) Class C felony when an object of the conspiratorial agreement is a class B felony;
- (d) Gross misdemeanor when an object of the conspiratorial agreement is a class C felony;
- (e) Misdemeanor when an object of the conspiratorial agreement is a gross misdemeanor or misdemeanor.
[1997 c 17 § 1; 1975 1st ex.s. c 260 § 9A.28.040.]

RCW 9A.52.020
Burglary in the first degree.

(1) 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.

(2) Burglary in the first degree is a class A felony.
[1996 c 15 § 1; 1995 c 129 § 9 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.52.020.]

RCW 9A.56.200
Robbery in the first degree.

(1) A person is guilty of robbery in the first degree if:

(a) In the commission of a robbery or of immediate flight therefrom, he or she:

(i) Is armed with a deadly weapon; or

(ii) Displays what appears to be a firearm or other deadly weapon; or

(iii) Inflicts bodily injury; or

(b) He or she commits a robbery within and against a financial institution as defined in RCW 7.88.010 or 35.38.060.

(2) Robbery in the first degree is a class A felony.

[2002 c 85 § 1; 1975 1st ex.s. c 260 § 9A.56.200.]

FILED
COURT OF APPEALS
DIVISION II

09 FEB 25 PM 12: 27

STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DAVID READING,

Appellant.

COURT OF APPEALS NO.
38008-1-II

THURSTON COUNTY
07-1-02060-1

CERTIFICATE OF MAILING

The undersigned attorney for the Appellant hereby certifies that one original and one copy of the Opening Brief of Appellant was mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to David Reading, Appellant, and David Bruneau, Thurston County Deputy Prosecuting Attorney, by first class mail, postage pre-paid on February 24, 2009, at the Centralia, Washington post office addressed as follows

Mr. David H. Bruneau
Deputy Prosecuting Attorney
Thurston County Prosecutor's Office
2000 Lakeridge Dr. SW
Olympia, WA 98502-6001

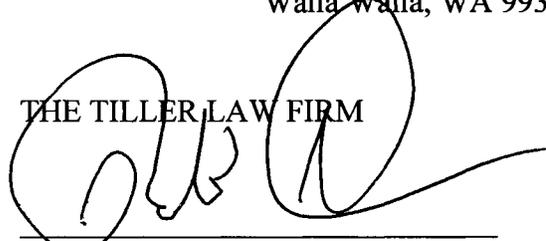
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