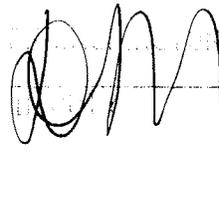


COURT OF APPEALS  
DIVISION II

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**40992-5-II**

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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State of Washington  
Respondent

v.

**JARROD A. AIRINGTON**  
Appellant

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On Appeal from the Superior Court of Grays Harbor County

Superior Court Cause number 10-1-175-4  
The Honorable F. Mark McCauley

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**BRIEF OF APPELLANT**

**Jordan B. McCabe, WSBA No. 27211**  
**For Jarrod A. Airington**

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## II. ASSIGNMENTS OF ERROR AND ISSUES

### A. Assignment of Error

1. The trial court sua sponte amended the charges, contrary to the separation of powers doctrine.
2. The trial court violated Wash. Const. art 1, § 22 by convicting Appellant for an offense with which he was not charged.
3. The evidence is insufficient to support the court's findings entered in support of the conviction.

### B. Issues Pertaining to Assignments of Error

1. In a bench trial, where the sole charge in the Information is second degree assault by means of strangulation, and neither the State nor the defense asks the court to consider a lesser charge, and court finds the defendant not guilty of the charged offense, does the separation of powers doctrine preclude the judge from sua sponte finding the defendant guilty of the uncharged offense of fourth degree assault by a means other than strangulation?
2. Is the Information fatally defective where it charges the single offense of second degree assault by the sole means of strangulation, but the defendant is convicted of fourth degree

assault by the alternative means of pushing, pulling, or sitting on the alleged victim?

3. If the court properly considered fourth degree assault, did the State fail to prove beyond a reasonable doubt that —

- (a) Appellant grabbed and pushed the alleged victim, forced her to the floor and sat on her; and —
- (b) this contact was harmful and offensive to this alleged victim and —
- (c) the contact would offend a reasonable person?

Finding of Fact No. 3, CP 31.

### **III. INTRODUCTION**

Appellant was charged with second degree DV assault by means of strangulation and nothing else. The chief witness was the alleged victim whose evidence included her prior statements to police and her live testimony at the bench trial. In court, she gave minimal substantive evidence, claiming loss of memory regarding the alleged assault and her prior statements. The court found that this witness completely lacked credibility, both under oath and in her prior unsworn allegations. The court specifically found that the State had not proved the essential element of strangulation.

Instead of acquitting Appellant outright, however, the court found him not guilty of the charged offense of second degree assault but guilty of the uncharged offense of DV fourth degree assault based on alternative means. The primary issues are:

- (1) Where the Information charges a single offense, and neither party asks the court to consider a lesser included offense, does the court as fact-finder have the option of acquitting on the only charge before it and convicting on a lesser charge based on different facts?
- (2) Where the fact-finder determines that the State's chief witness is so lacking in credibility that neither her in-court testimony nor her prior statements can be believed, is the evidence insufficient as a matter of law to support any conviction whatsoever?

Airington contends that waiving his right to a jury does not cast the judge in the role of back-up prosecutor entitled to make charging decisions. In the alternative, he asserts that the complaining witness was so thoroughly impeached that no reasonable fact-finder could base a conviction on her evidence. He asks this Court to reverse his conviction for fourth degree assault and dismiss with prejudice.

#### IV. STATEMENT OF THE CASE

At about 8:35 p.m. on April 22, 2010, Officer Gary Sexton of the Aberdeen Police responded to a 911 report of a possible domestic disturbance. CP 3.

As he approached the scene, Sexton was stopped by a man called Teddy Moore, who directed him to the apartment shared by Appellant, Jarrod A. Airington, and his girlfriend, Hannah Goedker and indicated that they were the people involved. CP 3; CP 30; RP 60-61.<sup>1</sup>

As Sexton approached the front porch, Airington came around the side of the building toward him. Airington's face was red and swollen. Sexton asked him what happened to him, and Airington said he had punched himself in the face. He demonstrated striking himself with his two fists. CP 4; RP 62.

While Sexton was talking to Airington, Officers Glasser and Parkinson arrived. Sexton left Airington with them and knocked on the apartment door. RP 63. Hannah Goedker was the sole occupant of the apartment. She was crying and excited. RP 63-64. Sexton said Goedker did not use the word "strangled" but described conduct by Airington that sounded like strangulation. She said she could not breathe and thought

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<sup>1</sup> The pretrial and trial proceedings are in a single volume designated RP. The sentencing is in a separate volume dated July 12, 2010, designated RPS.

she was going to die. CP 4; RP 65. Sexton wrote down Goedker's version of the events and Goedker signed this statement. RP 67. The court admitted this statement as an excited utterance. RP 64. Based on this, the police arrested Airington and he spent the night in the Aberdeen police jail. CP 4; RP 66.

The next morning, Detective John Hudson interviewed Goedker at the apartment. After the interview, Hudson wrote up a narrative report of his recollected understanding of what Goedker had told him. Hudson then interviewed Airington at the jail. Airington flat-out denied assaulting Goedker. Specifically, he said he did not try to strangle her. RP 25. At all times, Airington was coherent and cooperative and did not appear to be under the influence of anything. RP 73, 82, 84.

The State filed an Information charging Airington with a single count of second degree assault by means of strangulation. CP 1. Airington waived his right to a jury, and a bench trial was held in the Grays Harbor Superior Court on June 30, 2010.<sup>2</sup>

Hannah Goedker testified. She claimed to remember little about the events of April 22<sup>nd</sup> or about her statements either to Sexton or Hudson. The prosecutor nevertheless managed to elicit from her the following substantive testimony:

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<sup>2</sup> The verbatim report of proceedings includes the pretrial hearings and the one-day trial in a single volume denoted RP.

She and Airington were arguing. She was sitting on the couch when Airington came over and sat on her, straddling her. The argument was heated and emotional, but Airington did not lay violent hands on her. RP 44-45. Rather, he was sitting on her lap and holding her arms because of the intense nature of the interaction. They were both really emotional. RP 45. Airington held onto her arms while he was talking to her. Then he stopped and started punching himself in the face. RP 46. At one point — after he let go of her — she slid onto floor and he sat on top of her while they continued arguing. RP 46.

Goedker remembered going outside while Airington remained in the house. She said she did not see anyone in parking lot or in the area around the apartment. RP 48. She walked between her building and the next one over, and just stood there. RP 49. Airington called to her to go back inside and put her shoes and coat on if she intended to leave. RP 49. Goedker testified that Airington did not choke her in the parking lot. RP 50. She said he picked her up by her armpits and started moving her back towards the house but he did not have her by the throat. RP 50, 54. She remained standing the whole time. RP 51. When he was walking her backwards, she dropped her cell phone. She asked Airington to pick it up, which he did, letting go of her. She then walked back inside under her own steam. They did walk backwards to the wall, and Airington had his

hands on her shoulders, but did not shove her against the wall. RP 51. She went into the bedroom to put on her shoes and coat and called 911. Airington told her the police were already there, so she hung up. Goedker said she felt scared but denied having said she never was more scared in her life. RP 52.

Throughout her testimony, Goedker repeatedly claimed not to remember what she said to Sexton. She acknowledged her signature on the written statement. RP 43. But reading it did not refresh her memory, either of the statement or of the underlying events. RP 44.

The prosecutor then impeached Goedker with Hudson's narrative report of his jail interview. RP 57. The court overruled a defense hearsay objection and ruled the statement was admissible for impeachment. RP 57.

Officer Sexton testified next. The prosecutor showed him Goedker's written statement and asked him to testify about its contents. RP 67. In response to a defense objection, the prosecutor said this was a "prior inconsistent statement." The court admitted it "to impeach her." RP 67. The prosecutor then read each allegation into the record and asked Sexton whether that was correct. It cannot be discerned from the record whether Sexton's affirmative replies meant that this was in fact what Goedker said or merely that the prosecutor had read it correctly. RP 69.

Photographs taken of Goedker's neck showed a barely-visible thin red mark, but no bruising or other signs of strangulation. RP 80, 82.

The State played the tape of a 911 call by an upstairs neighbor, Trinisha Obi. CP 31; RP 33, 36, 76. The defense stipulated to the admission of both the tape and a transcript (which was not admitted, but which the judge used while listening to the tape.) RP 76, 91. The State presented no additional evidence besides Goedker and the police. Ms. Obi did not testify, even though she was present in court. RP 78. The State decided not to call Teddy Moore after determining he was mentally incompetent to testify. RP 90.

When the State rested, the defense moved to dismiss for lack of evidence. In the context of the motion to dismiss, counsel said: "There may be lesser includeds, but on that particular charge I'm moving the court to dismiss for lack of evidence." RP 93-94. The Court denied the motion. RP 94.

The State did not amend the Information. Neither party asked the court to consider a lesser included offense of assault by an alternative means. RP 94. Likewise, neither counsel mentioned lesser includeds during closing arguments. RP 95-103.

The court immediately delivered an oral verdict from the bench. The court acquitted Airington of the offense charged. The judge remarked

that, in domestic violence cases, the alleged victims frequently lied. Sometimes they falsely recanted after tempers cooled, but women also often made false reports or exaggerated minor incidents out of vindictiveness. RP 106-07. Here, the court found that Ms. Goedker was so lacking in credibility that neither her sworn nor unsworn statements could support a verdict of guilt beyond a reasonable doubt. RP 105-08. Specifically, the court found that no credible evidence established the essential element of strangulation. The court then announced that it was convicting Airington instead of fourth degree assault by grabbing, pushing, pulling, and sitting upon Goedker. RP 108.

The court entered written finding (a) that the physical contact by Airington was harmful and offensive to Goedker particularly and (b) that the contact would offend reasonable persons in general. Finding No. 3, CP 31.

At sentencing, the court ordered Airington incarcerated for six months, to be served consecutively to a current DOC commitment for a probation violation. CP 35. The court also imposed a no-contact order to be reviewed at the time of release. CP 39, 41.

## V. ARGUMENT

### 1. THE COURT VIOLATED THE SEPARATION OF POWERS BY SUA SPONTE AMENDING THE CHARGE FROM SECOND DEGREE ASSAULT BY STRANGULATION TO FOURTH DEGREE ASSAULT BY OTHER MEANS.

A action by the court that violates the separation of powers doctrine is done without constitutional authority. *State v. Tracer*, 155 Wn. App. 171, 182, 229 P.3d 847, *review granted*, 169 Wn.2d 1010 (2010). This is a fundamental defect that renders any judgment void. *Tracer*, 155, Wn. App. at 182. A separation of powers violation may be raised for the first time on appeal. *Tracer*, 155, Wn. App. at 182.

The power to select and file appropriate charges is vested in the prosecuting attorney as a member of the executive branch. *State v. Lewis*, 115 Wn.2d 294, 299, 797 P.2d 1141 (1990). Under the separation of powers doctrine, a judge has no authority to substitute his judgment for that of the prosecutor. *Tracer*, 155 Wn. App. at 182. Under the SRA, prosecutors have great discretion in determining which charges to file. “It is clear the Sentencing Guidelines Commission and the Legislature intended to prevent judicial review of [the prosecutor’s charging] decisions.” *Lewis*, 115 Wn.2d at 299, quoting D. Boerner, *Sentencing in Washington* § 12.24, at 12-47 (1985). A prosecutor’s charging discretion

has long been recognized as an exclusively executive function. *State v. Korum*, 157 Wn.2d 614, 655, 141 P.3d 13 (2006) (Johnson, J., concurring.)

A trial judge may dismiss a charge in certain circumstances (for mismanagement under CrR 8.3(b), for example, or under *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986)). Here, the defense asked the court to do that, but the court refused. RP 94. Instead, the judge sua sponte amended the charges in lieu of dismissing for insufficient evidence. Courts cannot do this. *Tracer*, 155 Wn. App. at 183.

**All-or-Nothing:** This restriction on judicial power confers solely on counsel the prerogative to decide whether to pursue an all-or-nothing strategy or to give the fact-finder the option of considering a lesser offense. *State v. King*, 24 Wn. App. 495, 501, 601 P.2d 982 (1979). *King* is directly on point. That case was a prosecution for second degree assault in which the reviewing court held it was a legitimate tactic to submit the case for a verdict solely on the greater charge because “that well could have resulted in an outright acquittal.” *King*, 24 Wn. App. at 501. Clearly, that was the case here. The court did in fact acquit on the greater charge. This is simply a facet of the constitutional principle applied to the prosecutor’s charging decision. Gambling on submitting the case solely

on the greater offense is a legitimate strategy in seeking an outright conviction.

Here, counsel for both the State and the defense liked their chances in sticking with the charged offense. It was not an option for the court to sabotage their legitimate trial strategies and substitute its own judgment.

The violation was a fundamental error for which the remedy is to reverse the conviction.

**2. BY AMENDING THE CHARGE FROM SECOND TO FOURTH DEGREE ASSAULT AND CHANGING THE FACTUAL BASIS, THE COURT VIOLATED AIRINGTON'S CONSTITUTIONAL RIGHT TO BE INFORMED OF THE CHARGES AGAINST HIM.**

As a corollary to the separation of powers violation, the court also violated state and federal constitutional requirements that accused persons must be informed of the nature and cause of the charges against them.

Wash. Const. art. 1, § 22, U.S. Const. amend. VI.<sup>3</sup> Under these constitutional provisions, the accused must be informed of the charge he is to meet at trial, and cannot be tried for an offense not charged. *State v. Carr*, 97 Wn.2d 436, 439, 645 P.2d 1098 (1982). Whether the conviction was for something other than the offense charged is a question of law that

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<sup>3</sup> "In criminal prosecutions the accused shall have the right to ... demand the nature and cause of the accusation against him...." Const. art. I, § 22. "In all criminal prosecutions, the accused shall ... be informed of the nature and cause of the accusation...." U.S. Const. amend. VI.

this Court reviews de novo. *State v. Porter*, 150 Wn.2d 732, 735, 82 P.3d 234 (2004).

***Defective Information:*** The information must be “a plain, concise and definite written statement of the essential facts constituting the offense charged.” CrR 2.1(e)(1). The primary goal of the charging document is to provide the accused with notice of the charge he must be prepared to meet so that he can prepare an adequate defense. *State v. Kjorsvik*, 117 Wn.2d 93, 105, 812 P.2d 86 (1991). The manner of committing an offense is an element, and the defendant must be informed of this element in the Information. *State v. Bray*, 52 Wn. App. 30, 34, 756 P.2d 1332 (1988).

Where a defect in the Information is alleged for the first time on appeal, the appellant must show that there is no “fair construction” by which the elements are all contained in the document. *Kjorsvik*, 117 Wn.2d at 105; *State v. Hopper*, 118 Wn.2d 151, 155-56, 822 P.2d 775 (1992). That is the case here. The Information charges the alternative means crime of assault and alleges the sole means of strangulation. By no fair construction can this be construed as giving notice to be prepared to defend against a charge of assault by other means.

Moreover, even if a charging instrument can be upheld under the stricter interpretation, the reviewing Court must find that the accused suffered no prejudice. *Kjorsvik*, at 105-06, 812 P.2d 86; *Hopper*, 118

Wn.2d at 156. If the accused can show that he lacked the requisite notice to prepare an adequate defense, the conviction should be dismissed.

Here, if Airington had known the elements of the assault charge included harm or offense by contact other than putting his hands on Ms. Goedker's neck, or by some other form of contact that would offend a reasonable person, he might have elicited additional testimony from Goedker to clarify and refute this. Reversal is required.

The same result is prescribed by statute. The act charged as the crime must be clearly and distinctly set forth in ordinary and concise language, such that a person of common understanding would know what is intended. RCW 10.37.050(6). The act charged as the crime must be stated with such a degree of certainty that the court is able to pronounce judgment upon a conviction according to the right of the case. RCW 10.37.050(7). Accordingly, the Information must state the acts constituting the offense in plain language — not the name of the offense, but a statement of the acts. This is just as important and essential as the other requirements of the Information, such as the title of the action and the names of the parties. *State v. Royse*, 66 Wn.2d 552, 557, 403 P.2d 838 (1965), citing cases.

All essential elements of a crime must be included in the charging document to give notice to the accused of the nature of the allegations so

that he can prepare a meaningful defense. *State v. Siers*, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2010 WL 4813737 (2010), Slip Op. 63697-9-I at 3, citing *Kjorsvik*, 117 Wn.2d at 97-102. This rule is of constitutional origin. Const. art. I, § 22 (amend.10); U.S. Const. amend. VI. *Kjorsvik*, 117 Wn.2d at 102-04. The essential elements consist of the statutory elements of the charged crime and a description of the defendant's conduct that supports every statutory element of the offense. *State v. Powell*, 167 Wn.2d 672, 682, 223 P.3d 493 (2009).

Here, the court found Airington not guilty of the charged offense of second degree assault by the specific means of strangulation, but convicted him instead of the uncharged offense of fourth degree assault by a different alternative means. Reversal is required.

***Facts Must Be Alleged:*** The manner of committing an offense is an element, and the defendant must be informed of this element in the information. *Bray*, 52 Wn. App. at 34. Due process requires the State to prove beyond a reasonable doubt all the necessary facts of the crime charged. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). An accused may be convicted of a lesser offense, but "it is also true that accusation must precede conviction, and that no one can legally be convicted of an offense not properly alleged. *Ackles*, 8 Wash.

462, 464, 36 P. 597, 598 (1894); *State v. Pelkey*, 109 Wn.2d 484, 487-88, 745 P.2d 854 (1987).

Here, fourth degree assault by offensive touching other than choking was not properly alleged. The Information fails to allege the necessary facts to charge an offense other than assault by strangulation.

***Assault is an Alternative Means Crime:*** “[W]here an act is punishable in a particular manner, under certain conditions, those conditions must be set forth so as to show that the act is punishable.” *Ackles*, 8 Wash. at 464, citing 1 Whart. Cr. Law, § 192. Specifically, if the information charges only one means of committing an alternative means crime, it is reversible error to instruct the jury on any other means of committing the crime. If the court committed such an error, the defendant would be denied the opportunity to prepare a proper defense. *State v. Doogan*, 82 Wn. App. 185, 188, 917 P.2d 155 (1996). Assault is an alternative means crime. *State v. Smith*, 159 Wn.2d 778, 784, 154 P.3d 873 (2007).

That is what happened here. Airington came to court prepared to defend against a charge of assault by strangulation. He was not on notice to prepare to defend against assault by other means, including pushing, pulling, or sitting upon. The State neither alleged nor proved alternative means.

***Amending the Information:*** If the original Information fails to meet the constitutional requirements, the State may move to amend it so long as the defendant's substantial rights are not prejudiced. CrR 2.1(d); *State v. Schaffer*, 120 Wn.2d 616, 621, 845 P.2d 281 (1993). A trial court may permit the Information to be amended "at any time before the verdict if substantial rights of the defendant are not prejudiced." *Pelkey*, 109 Wn.2d 18 491; *State v. Herrera*, 95 Wn. App. 328, 330, 977 P.2d 12, 13 (1999).

Rule CrR 2.1(d) uses the passive voice, but its meaning is limited by the separation of powers doctrine. To say "the court may permit an amendment" means "the court may permit the State to amend." The rule does not, and could not, authorize the court to amend charges sua sponte. Moreover, the rule permitting liberal amendment of an Information is further limited by the constitutional provision requiring that a defendant be adequately informed of the charges he is to meet at trial. *State v. Hull*, 83 Wn. App. 786, 800, 924 P.2d 375, *review denied*, 131 Wn.2d 1016 (1996).

Here, the State did not amend the charges, before or after it rested its case in chief. Moreover, the rule limits the court's discretion to permit amendment to "before the verdict."

Here, at no time did the State amend the Information. Moreover, when the court undertook announced the amended charge, not only had

the State rested its case, the defense also had rested. Moreover, the case had been submitted for a verdict upon the sole charge of second degree assault by strangulation. The court sua sponte announced the amended charge in the course of announcing its verdict.

Charging instruments that fail to set forth the essential elements of crime in such a way that defendant is notified of the illegal conduct are constitutionally defective, and require dismissal. *Hopper*, 118 Wn.2d at 155. Specifically, if the accused can show that he or she actually lacked requisite notice to prepare an adequate defense due to deficiency in the charging instrument, his conviction should be reversed and dismissed. *Id.*

### 3. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE FINDINGS UNDERLYING THE CONVICTION FOR FOURTH DEGREE ASSAULT.

Due process requires the State to prove beyond a reasonable doubt all the necessary facts of the crime charged. *State v. Hundley*, 126 Wn.2d 418, 421, 895 P.2d 403 (1995), citing *Winship*, 397 U.S. at 364.

A person commits fourth degree assault by intentionally touching another unlawfully. RCW 9A.36.041(1); *State v. Kindsvogel*, 149 Wn.2d 477, 483, 69 P.3d 870 (2003). A touch is unlawful when it is neither consented to nor privileged and was either harmful or offensive. *State v. Stevens*, 158 Wn.2d 304, 315, 143 P.3d 817 (2006); *State v. Tyler*, 138

Wn. App. 120, 130, 155 P.3d 1002 (2007), citing *State v. Shelley*, 85 Wn. App. 24, 28-29, 929 P.2d 489 (1997). A touching is offensive or harmful if the touching or striking would offend any ordinary person who is not unduly sensitive. *Stevens*, 158 Wn.2d at 315.

The trial court found that Airington committed fourth degree assault by means of grabbing pushing, or sitting on Ms. Goedker. But he was not charged with any of this. He was charged with assaulting Goedker by the specific means of trying to strangle her.

The court entered findings that Airington touched Hannah Goedker in a manner that was offensive to her and that also would offend an ordinary person. CP 32. (This suggests that, at some level, the court recognized it was out in left field and that the elements of the offense constituting the conviction were not those of the offense charged.)<sup>4</sup>

Moreover, the record does not support this finding. Since the State was relying on the allegation that the assault consisted of Airington's trying to choke Ms. Goedker, the prosecutor never inquired of Goedker whether she was harmed or offended by any physical contact other than the alleged choking. And her testimony suggests she was not harmed and not offended. She said the two of them were just arguing and it was very intense and emotional. She did not feel that Airington laid hands on her in

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<sup>4</sup> Also the prosecutor, who presumably drafted the Findings.

excess of what seemed to her to be appropriate in the situation. RP 45.

“He was just holding onto my arms as he’s talking to me ...” RP 46.

On its face, this is insufficient to establish the alternative means of harmful and offensive contact.

Besides that, the court made a specific finding that this witness was not credible. Not that she was mistaken or confused or that she misspoke, but that she was lied to the police and lied again under oath.

“In asking whether evidence is sufficient to sustain a conviction, this Court reviews the evidence in the light most favorable to the State. *State v. Wentz*, 149 Wn.2d 342, 347, 68 P.3d 282 (2003). The question is “whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.” *Id.*, citing *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

The general rule is that a claim of insufficient evidence necessarily admits the truth of the State’s evidence and all reasonable inferences that can be drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Here, however, the fact-finder specifically repudiated the truth of the State’s evidence.

The more germane principle is that the reviewing court defers to the fact-finder on issues of witness credibility. *State v. Camarillo*, 115

Wn.2d 60, 71, 794 P.2d 850 (1990).” Here, the fact-finder determined that the State’s chief witness was not credible.

Accordingly, no reasonable fact-finder could rely on that witness’s evidence, whether elicited in or out of court, to find beyond a reasonable doubt the truth of any alleged fact that came out of her mouth. Nothing in this record suggests any means by which a reasonable fact-finder could determine which of the witness’s allegations were true, false, or something in between. Accordingly, reversal is required as a matter of law.

Retrial following reversal for insufficient evidence is ‘unequivocally prohibited’ and dismissal is the remedy.” *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998), quoting *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996). Therefore, the Court should dismiss this prosecution with prejudice.

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IV. CONCLUSION

The trial court's action was contrary to court rule, case law, Washington statutes and the state and federal constitutions and lacks support in the record. Accordingly, this Court should reverse Mr. Airington's conviction, vacate the judgment and sentence, and dismiss the prosecution with prejudice.

Respectfully submitted this 27<sup>th</sup> day of December, 2010.



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Counsel for Jarrod A. Airington

CERTIFICATE OF SERVICE

Jordan McCabe certifies that she mailed this day, first class postage prepaid, a copy of this Appellant's Brief to:

Gerald R. Fuller  
Grays Harbor Prosecutor's Office  
102 West Broadway, Room 102  
Montesano, WA 98563-3621

Jarrod A. Airington Book No. 178266  
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100 West Broadway Avenue  
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Date: December 27, 2010