

No. 41045-1-II

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

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STATE OF WASHINGTON,

Respondent,

v.

MICHAEL MELLOR,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

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REPLY BRIEF OF APPELLANT

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ELAINE L. WINTERS  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

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A. ARGUMENT IN REPLY

1. MR. MELLOR'S ATTORNEY DID NOT PROVIDE THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE FEDERAL AND STATE CONSTITUTIONS

The accused has the constitutional right to effective assistance of counsel. U.S. Const. amends. VI, XIV; Const. art. I, § 22; Kimmelman v. Morrison, 477 U.S. 365, 377, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986); State v. A.N.J., 168 Wn.2d 91, 98, 225 P.3d 956 (2010). v. Michael Mellor's attorney elicited or failed to object to testimony that prejudiced his case, and Mr. Mellor did not receive effective assistance of counsel. The well-known standard of review requires this Court to determine (1) whether the attorney's performance fell below objective standards of reasonable representation, and, if so, (2) whether counsel's deficient performance prejudiced the defendant. Strickland v. Washington, 466 U.S. 688, 687-88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); A.N.J., 168 Wn.2d at 226.

The reviewing court will not find deficient performance if defense counsel's conduct appears to be "legitimate trial strategy or tactics." State v. Grier, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011) (quoting State v. Kyllö, 169 Wn.2d 856, 863, 215 P.2d 177 (2009)).

The State responds that all of defense counsel's flawed decisions were the logical result of his chosen defense. Not all tactical decisions, however, are immune from attack. Grier, 171 Wn.2d at 33-34; State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004) (no tactical reason not to bring meritorious suppression motion); State v. Aho, 137 Wn.2d 736, 745-46, 975 P.2d 512 (1999) (no tactical reason to propose jury instructions that could lead to conviction under a statute not in effect during charging period). "The relevant question is not whether counsel's choices were strategic, but whether they were reasonable." Roe v. Flores-Ortega, 528 U.S. 470, 481, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000).

Whether a defendant received ineffective assistance of counsel is a fact-based determination necessarily decided on a case-by-case basis. Strickland, 466 U.S. at 696; Grier, 171 Wn.2d at 34. Looking at the combined individual errors and the evidence in this case, this Court must reverse Mr. Mellor's second degree burglary conviction because he was not provided the effective assistance of counsel guaranteed by the federal and state constitutions.

a. Defense counsel unreasonably elicited inadmissible hearsay that incriminated his client. When he was arrested for burglarizing a wrecking yard, Mr. Mellor was apparently with another man, Michael Lukin, but the State did not call Mr. Lukin as a witness or attempt to introduce his statements to the police. RP 6, 16, 26. Defense counsel nonetheless cross-examined the investigating police sergeant to bring out testimony that Mr. Lukin told the sergeant he believed Mr. Mellor went into the wrecking yard and took items with the intent to steal them. RP 25-26.

The State argues that defense counsel did not intend to bring out the incriminating response, thus essentially conceding the question was below standards of professional performance because it permitted the officer to testify as to evidence the lawyer knew or should have known would damage his client's case. The State nonetheless claims the cross-examination question was tactical because it was designed to establish that the sergeant did not look to see if there were people on the property other than Mr. Mellor. Brief of Respondent at 6, 11. The State's argument must be rejected.

Defense counsel asked Sergeant Kolilis if he made any attempts to determine who owned the items Mr. Mellor was found

with. This open-ended question permitted the law enforcement officer to explain what information he had, including information the court had just ruled was inadmissible hearsay. RP 7, 25-26. There is no legitimate tactical reason to ask a question that permits a police officer to tell the jury a non-testifying witness said the defendant was guilty.

In support of Mr. Mellor's argument that his lawyer's performance was deficient, appellate counsel provided a number of illustrative cases where courts have found defense attorneys' conduct in eliciting or failing to object to evidence that incriminated their clients constituted deficient conduct. Brief of Appellant at 10-14. The State responds by distinguishing the facts of each case. Brief of Respondent 7-11. This Court, however, uses the cases as guidance in evaluating the conduct at issue here; the facts need not be identical.

The State also suggests Mr. Mellor's case is akin to Foy v. Donnelly, 959 F.2d 1307 (5<sup>th</sup> Cir. 1992), an appeal from the denial of habeas corpus relief from a state court judgment addressing a confrontation clause issue. Foy, 959 F.2d at 1310. The Foy Court held that references to an accomplice's "confession," without reference to the contents, combined with evidence that an arrest

warrant followed the investigation, did not violate the petitioner's confrontation rights, since nothing linked the accomplice's "confession" to the defendant. Id. at 1312-13. In that case, the jury never heard the contents of the accomplice's statement and the prosecutor did not suggest it implicated Foy. Id. at 1313.

The State's quotation from the Foy case is thus misleading. Brief of Respondent at 10 (claiming the Foy Court held that "[T]here was so much other evidence connecting Foy to the crime that [sic] was no necessary inference that [the co-defendant's] statement had implicated Foy.")<sup>1</sup> The Foy Court found that the use of the word "confession" did not signal to the jury that the co-defendant implicated Foy, as the detective had already detailed his independent investigation that led to Foy's arrest. Foy, 959 F.2d at 1313. The court thus concluded the Sixth Amendment was not implicated. Id. The jury in Mr. Mellor's case, in contrast, heard the contents of the non-testifying accomplice's statement to the police, the statement incriminated Mr. Mellor, and the Sixth Amendment is implicated.

Mr. Mellor's defense was that he did not intend to steal the items he was removing from the wrecking yard. Mr. Lukin's

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<sup>1</sup> Appellate counsel was unable to find this quotation in the opinion.

hearsay statement that Mr. Mellor took the items with the intent to steal them was the only evidence on this point. While defense counsel may not have intentionally elicited this evidence, he asked a open-ended cross-examination question that invited the out-of-court statement as part of the answer. Even if the question was strategic, it was not reasonable. See, Grier, 171 Wn.2d at 34 (relevant question is whether counsel's choices were reasonable, not whether they were tactical); Thomas A. Mauet, Fundamentals of Trial Techniques pps. 243 (Little, Brown, 1980) ("open-ended questions are disastrous on cross-examinations"); Robert E. Oliphant, ed. Trial Techniques with Irving Younger, 51 (National Practice Institute, 1978) ("never ask anything but a leading question" one of "ten commandments for cross-examination").

b. Defense counsel unreasonably failed to object to Sergeant Kolilis's "expert" testimony describing the crime scene, including "recent" fingerprints and shoe prints. Mr. Mellor's counsel did not object when the investigating sergeant claimed (1) he could clearly tell from fingerprints that the window in a building within the wrecking yard fence had been recently pushed in attempt to gain entry, RP 7-8, (2) he observed "fairly fresh" fingerprints or footprints inside, RP 8, and (3) he could tell 55-gallon blue drums had been

recently moved beneath the window, RP 10-11. On cross-examination, the sergeant then testified that he could tell, based upon his experience and common sense observations, that the building had been broken into the day Mr. Mellor was found there. RP 18-20.

The State argues that Washington courts permit law enforcement officers to testify based upon their experience, and states that Sergeant Kolilis was testifying “about what a layman would see” if the layman had the sergeant’s training and experience. Brief of Respondent at 12-13 (citing State v. McPherson, 111 Wn.App. 747, 46 P.3d 284 (2002)). The admission of expert testimony is governed by ER 702, which permits testimony about scientific or specialized knowledge if the witness is qualified by “knowledge, skill, experience, training or education.” ER 702. In McPherson, for example, the court found the trial court did not abuse its discretion in permitting a police officer testify about methamphetamine production, despite his lack of a college degree in chemistry, based upon extensive training and experience. McPherson, 111 Wn.App. at 761-62 (witness had attended DEA training, several conferences, and a recent refresher course on methamphetamine labs, had himself trained other in his

department on the subject, and participated in 40-60 methamphetamine lab cleanups in the previous seven months alone). Similarly, a witness with over 23 years experience as a tracker for the Border Patrol, who trained people in his agency and in other fields, and who had been qualified as an expert witness in other jurisdictions, properly testified about his conclusions based upon tracking he performed in a murder case. State v. Ortiz, 119 Wn.2d 294, 310-11, 831 P.2d 1060 (1992).

The expert witness must of course have expertise in the areas in which he is testifying. State v. Jamerson, 153 N.J. 318, 708 A.2d 1183 (1998) (medical examiner not qualified to offer opinion regarding manner in which automobile was operated as he was not accident reconstructionist). The rule permitting experts testify based upon their experience assumes the witness will not posit theories that could be dismantled by an expert in the relevant field. The sergeant should not have been permitted to bolster his observations of the crime scene by citing his years of experience with fingerprints when his testimony was contrary to what a fingerprint expert could scientifically say if called to testify. See, Scientific Workgroup on Friction Ridge Analysis, Study, and Technology, Training to Competency for Latent Print Examiners

(2002)<sup>2</sup> (shows recognized training and areas of competency; they do not include ability to date fingerprints).

The State points to portions of the cross-examination where Mr. Mellor's lawyer was able to make the valid point that Sergeant Kolilis did not process the fingerprints or footprints and did not know for certain that they were placed there by Mr. Mellor. Brief of Respondent at 13-15. The portions of the cross-examination not mentioned by the prosecutor are critical.

Q: Okay. Well, could you tell me for certain that somebody else didn't move the barrels around?

A: Yes, I can.

Q: You can say for certainty?

A: I'm very certain that those barrels were moved around and that the window was pushed open. And I'm also very certain that the – the door that had been – the little shed where the door had been broke in to, those were very fresh of [sic] prints. I compared him [sic] to my prints as I walked up there. And one of the things with fingerprints – you know, I've been doing fingerprints for 21 years, one of the things about fingerprints is they dry out very fast. And where the smears where, where the door – where the window had been attempted to be open were still – you can still tell they were moist and very fresh.

Q: Could you be certain that it wasn't Mr. Lukin?

A: No, I cannot be certain it wasn't Mr. Lukin.

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<sup>2</sup> Available at [www.SWGFAST.org](http://www.SWGFAST.org) (last viewed 6/1/11).

Q: So it's – let – let's clarify this then. You're not certain that it was my client who did this then, right?

A: I'm certain it happened that day, which is what you're asking me.

Q: Could it have been the day before?

A: I really don't think so.

RP 18-19. On re-direct examination, the sergeant added that all of the footprints he saw were consistent in size and pattern and thus appeared to be a set. RP 27.

Given his experience with fingerprints, Sergeant Kolilis should know that a reputable fingerprint examiner cannot provide a date upon which fingerprints were placed on an item absent extrinsic evidence.<sup>3</sup> See, Scientific Workgroup on Friction Ridge Analysis, Study, and Technology, Training to Competency for Latent Print Examiners, supra; National Research Council of the National Academies, Strengthening Forensic Science in the United States: A Path Forward at 136-45 (Washington D.C. 2010) (describing friction ridge analysis without mentioning the possibility of dating fingerprints; noting the three acceptable conclusions are individualization (identification), exclusion, or inconclusive, not

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<sup>3</sup> For example, an expert could testify a fingerprint would have been placed after a window was washed or a wall painted.

information about when a fingerprint was placed). While the sergeant claimed the fingerprint looked recent because it was moist, he did not consider the possibility that the fingerprint had been placed by a person with a substance on his hands that added moisture. The sergeant's testimony that footprints were placed in the dust that day also does not appear to comport with current forensic science protocol. See William J. Bodziak, Footwear Impression Evidence: Detection, Recovery and Evaluation (2<sup>nd</sup> ed. 2000). Defense counsel fell below professional standards by failing to object to the sergeant's testimony on these points and by eliciting testimony emphasizing the witness's certainty he was correct on cross-examination. In the alternative, effective counsel should have obtained an expert witness to counter the sergeant's unscientific conclusions.

c. Defense counsel unreasonably failed to object to hearsay testimony that revealed the contents of a 911 call to the police that linked Mr. Mellor to the burglary. The person who initially called the police to the wrecking yard did not testify, and no 911 or other call was introduced. Defense counsel, however, did not object when the two law enforcement officers revealed that a call to the police

mentioned a white pickup truck and one officer said Mr. Mellor came to the wrecking yard in that truck. RP 13, 31-33, 39-40.

The State responds that there was no reason to object to this testimony because Mr. Mellor was clearly at the wrecking yard and because the contents of the call were not offered to prove the truth of the matter asserted but to explain why the officers went to the wrecking yard. Brief of Respondent at 16. It is true that defense counsel did not dispute that Mr. Mellor was at the wrecking yard when Trooper Aston arrived. The officers' testimony, however, established they went to the property to look for a white pickup truck and that Mr. Mellor and Mr. Lukin went to the wrecking yard in a similar truck. Since the information about the vehicle came from the 911 caller, the jury could easily assume some criminal activity beyond parking led to the 911 call. Defense counsel should have objected, as the evidence was hearsay that violated Mr. Mellor's right to confront the witnesses against him.

The State also claims, without citation to the record, that the 911 caller told the police that a white pickup was parked at the business and the caller thought the call was suspicious because the business was closed. Brief of Respondent at 15. This Court, however, can only base its decision upon evidence in the record.

State v. Leach, 113 Wn.2d 679, 692-93, 782 P.2d 552 (1989); State v. Wilson, 75 Wn.2d 329, 332, 450 P.2d 971 (1969). Portions of a brief that contain factual material not submitted to the trial court should be stricken. City of Bellevue v. Hellenthal, 144 Wn.2d 425, 429 n.1, 28 P.3d 744 (2001); Leach, 113 Wn.2d at 693. This Court should disregard the State's summary of the 911 call, as it was not presented to the jury and is not part of the record in this case.

d. Mr. Mellor's counsel unreasonably elicited testimony that the offense occurred while Mr. Mellor was on furlough from jail.

After successfully objecting to Trooper Aston's testimony that Mr. Mellor told the trooper he was on release from jail at the time of his arrest, RP 67-68, defense counsel elicited testimony from the trooper on cross-examination that Mr. Mellor agreed he should not be using methamphetamine and committing a burglary because he was supposed to be in jail. RP 70. The State argues defense counsel intentionally brought the information out because, despite the court's instruction to the jury to disregard the information, defense counsel knew "that bell had already been rung." Brief of Respondent at 17.

Defense counsel's questions to the trooper, however, were not designed to elicit information about the furlough, but simply to

show that Trooper Aston's description of Mr. Mellor's statements were in the trooper's words, not Mr. Mellor's. RP 70. Mr. Mellor's attorney was in fact attempting to control the trooper's testimony by asking leading questions, but he was not skillful enough to prevent the witness from volunteering the prejudicial information that was not necessary to answer the question. See Mauet, Fundamentals of Trial Techniques at 242-47 (rules for cross-examination include know the probable answer to the question, don't let the witness explain, control the witness, and don't ask one question too many); Oliphant, Trial Techniques with Irving Younger, 50-53 (National Practice Institute, 1978) (among ten commandments for cross-examination are always ask leading questions, only ask questions where you know the answer, never permit witness to explain answer, avoid one question too many).

Moreover, juries are presumed to follow the court's instructions. State v. Gamble, 168 Wn.2d 161, 178, 225 P.3d 973 (2101) (jury presumed to follow curative instruction to ignore inadmissible evidence of defendant's booking file where court gave curative instruction that did not highlight the evidence). Here, the trial court sustained defense counsel's objection to evidence of the jail furlough by stating, "Sustained. Disregard the last question and

answer.” RP 67-68. If the State is correct that defense counsel intentionally brought out testimony that Mr. Mellor was officially in jail at the time of his arrest, this tactic was not reasonable. Reasonable defense counsel would rely on the court’s ruling. This Court must reject the State’s nonsensical argument that defense counsel had a tactical reason for admitting prejudicial evidence that Mr. Mellor was on a furlough from jail.

e. Mr. Mellor was prejudiced by his lawyer’s deficient performance. The State essentially argues that Mr. Mellor was caught red-handed and thus could not be prejudiced by anything his attorney did or failed to do. Brief of Respondent at 2-3. Mr. Mellor’s defense was that he lacked the intent to steal, which he hoped to show with evidence that he was there to meet someone who had previously lived at the wrecking yard from whom he would buy parts. See Brief of Respondent at 3,5. This defense, however, was defeated when, on cross-examination by Mr. Mellor’s lawyer, a police officer testified that Mr. Lukin said Mr. Mellor took property from the wrecking yard and intended to steal it.

The police did not take latent prints or photograph or make casts of footwear impressions for purposes of comparison, yet Sergeant Kolilis testified that the smudged fingerprints and shoe

prints in “fluffy dust” were fresh. Defense counsel did not object to Sergeant Kolilis’s testimony and even elicited the sergeant’s opinion that Mr. Mellor or Mr. Lukin entered the building because the prints were obviously made that date.

Other errors by defense counsel also brought evidence to the attention of the jury that was inadmissible and hurt his case, such as the fact that Mr. Mellor was on furlough from jail and the 911 caller’s apparent statement that there was a suspicious white truck at the wrecking yard. This Court should reverse Mr. Mellor’s conviction because he did not receive the effective assistance of counsel guaranteed by the federal and state constitutions. State v. Kyllö, 169 Wn.2d at 871.

2. MR. MELLOR'S CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION WAS VIOLATED WHEN THE COURT ADMITTED MR. MELLOR'S CUSTODIAL STATEMENTS IN RESPONSE TO POLICE INTERROGATION WITHOUT DETERMINING IF HE KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS CONSTITUTIONAL RIGHTS

Mr. Mellor argues his convictions must be reversed because the State introduced his inculpatory custodial statements in the absence of a judicial finding that he knowingly, intelligently, and voluntarily waived his constitutional right to remain silent and to consult with counsel. Brief of Appellant at 27-36. The State concedes that it introduced Mr. Mellor's statements without a court ruling that they were admissible, and the State does not argue that Mr. Mellor may not raise the issue for the first time on appeal. The State nonetheless urges this Court, without providing controlling authority, to look at the evidence produced at trial and determine there was no error. Brief of Respondent at 18-23. This Court must reject the State's argument, as it flies in the face of the constitutional protections outlined in Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

When an individual is arrested and subjected to police questioning, he must be warned prior to any questioning that he

has the right to remain silent, that anything he says can be used against him in court, that he has the right to the presence of an attorney, and, if he cannot afford an attorney, that one will be provided at no cost to him. Miranda, 384 U.S. at 478-79. The Fifth Amendment places a high burden on the State to establish the admissibility of a defendant's custodial statements before they can be used against him at trial. Miranda, 384 U.S. at 475. "[U]nless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him." Id. at 479.

In accord with the Fifth Amendment requirements, the State must establish at a pre-trial hearing that the accused's custodial statements are admissible if the State seeks to introduce those statements at trial. CrR 3.5; State v. Kidd, 36 Wn.App. 503, 509, 674 P.2d 674 (1983) (and cases cited therein). The purpose of CrR 3.5 is to provide a procedure "that will prevent the jury from hearing an involuntary confession" and thus "obviate due process problems that would arise when the jury hears an involuntary confession." State v. Myers, 86 Wn.2d 419, 425, 545 P.2d 538 (1976).

The State cites two cases for the proposition that the failure to hold a CrR 3.5 hearing "does not render an otherwise admissible

statement inadmissible.” Brief of Respondent at 20-21 (quoting State v. Falk, 17 Wn.App. 905, 908, 567 P.2d 235 (1977) and citing Kidd, 36 Wn.App. at 509). The State neglects to disclose that these cases address volunteered, noncustodial statements where Miranda warnings are not required. Miranda, 384 U.S. at 489 (volunteered statements are not barred by the Fifth Amendment). The Kidd Court held that “voluntary, unsolicited statements of an accused made before interrogation are not rendered inadmissible by the absence of previous advisement of constitutional rights.” Kidd, 36 Wn.App. at 509. And in the defendant in Falk the defendant came to police station twice on own initiative to confess and did not even contend his statements were involuntary, a situation that is excluded from the protections of Miranda. Falk, 16 Wn.App. at 908-09.

The authority provided by the State does support its argument that this Court may affirm the admission of custodial statements made in response to police interrogation in the absence of a trial court determination that the defendant validly waived his constitutional rights. See, North Carolina v. Butler, 441 U.S. 369, 370-72, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979) (trial court held evidentiary hearing; record shows defendant’s educational level,

literacy, and that he was given copy of Miranda rights to read); State v. Aten, 130 Wn.2d 640, 664, 927 P.2d 210 (1996) (trial court found defendant's statements admissible); State v. Woods, 34 Wn.App. 750, 759, 665 P.2d 895 (upholding trial court's decision that State met burden of proving valid waiver), rev. denied, 100 Wn.2d 1010 (1983); State v. Sergeant, 27 Wn.App. 947, 948, 621 P.2d 209 (1980) (trial court determined statements admissible), rev. denied, 95 Wn.2d 1010 (1981).

According to the State, this Court may determine Mr. Mellor validly waived his constitutional rights and voluntarily spoke to law enforcement because the trial record shows (1) two officers testified they advised Mr. Mellor of his constitutional rights, and (2) one of the officers opined that Mr. Mellor understood his rights, even though (3) Mr. Mellor was under the influence of methamphetamine. Brief of Respondent at 21-23; see RP 14, 41. The validity of a waiver of Miranda rights depends upon the totality of the circumstances. Fare v. Michael C., 442 U.S. 707, 724, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979); Butler, 441 U.S. at 374-75 (citing Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed.2d 1461 (1938)); accord Brief of Respondent at 22 (citing Aten, 130 Wn.2d at 663-64). While Sergeant mentions that the use

of drugs alone does not render a waiver of Miranda rights invalid, the court looked at the totality of the circumstances presented at the CrR 3.5 hearing, including problems with the defendant's medication, to reverse the defendant's conviction because his statements were involuntary. Sergent, 27 Wn.App. at 949, 951.

Since there was no pre-trial hearing in Mr. Mellor's case, defense counsel did not have the opportunity to cross-examine the officers or call his own witnesses. At a pre-trial hearing, Mr. Mellor's attorney could have disputed the officer's conclusions the Mr. Mellor's waiver was valid and establish facts necessary for determining the validity of Mr. Mellor's waiver of his constitutional rights. These circumstances would include not just his mental condition as a result of methamphetamine but also his educational level, intelligence, physical condition, any other mental problems, and the police conduct in the case. Fare, 442 U.S. at 724; Aten, 130 Wn.2d at 664. Trooper Aston's described Mr. Mellor as sweaty, overheated, unable to control his muscles, talking and breathing quickly, "amped up" and "really tweeking" at the time he was arrested and questioned in the patrol car. RP 37, 38, 41, 45-46, 69. A CrR 3.5 hearing was certainly warranted.

Trooper Aston testified that Mr. Mellor told him where he obtained various items within the wrecking yard property, that he knew the business was closed and he was not supposed to be on there, and that he was on furlough from jail at the time. RP 68-69, 70. All of these statements severely damaged Mr. Mellor's defense that he did not intend to steal the items he was seen with. The State thus cannot prove the error in admitting Mr. Mellor's custodial statements was harmless beyond a reasonable doubt, and his conviction must be reversed. Sergent, 27 Wn.App. at 952.

B. CONCLUSION

As argued above and in the Brief of Appellant, Mr. Mellor's conviction for second degree burglary must be reversed and remanded for a new trial because he did not receive effective assistance of counsel and because the court admitted Mr. Mellor's custodial statements in the absence of a court determination that he validly waived his Fifth Amendment rights.

DATED this <sup>10<sup>th</sup></sup> 2<sup>nd</sup> day of June 2011.

Respectfully submitted,



Elaine L. Winters – WSBA #7780  
Washington Appellate Project  
Attorneys for Appellant

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

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 41045-1-II
	)	
MICHAEL MELLOR,	)	
	)	
APPELLANT.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 2<sup>ND</sup> DAY OF JUNE, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |  |                   |                                     |
|--|-------------------|-------------------------------------|
| [X] GORDON WRIGHT, DPA<br>GRAYS HARBOR CO. PROSECUTOR'S OFFICE<br>102 W. BROADWAY AVENUE, ROOM 102<br>MONTESANO, WA 98563-3621 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |
| [X] MICHAEL MELLOR<br>747449<br>COYOTE RIDGE CORRECTIONS CENTER<br>PO BOX 769<br>CONNELL, WA 99326-0769                        | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON THIS 2<sup>ND</sup> DAY OF JUNE, 2011.

X \_\_\_\_\_ 

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**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710