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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**David Valdez,**

Appellant.

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Cowlitz County Superior Court Cause No. 14-1-01508-6

The Honorable Judge Michael H. Evans

**Appellant's Opening Brief**

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## ISSUES AND ASSIGNMENTS OF ERROR

1. The trial court erred by giving Instruction No. 7.
2. Instruction No. 7 included an unconstitutional judicial comment on the evidence, in violation of Wash. Const. art. IV, § 16.
3. Instruction No. 7 violated due process by relieving the state of its burden to prove an unlawful touching.

**ISSUE 1:** A judge may not comment on the evidence. Did the trial court's nonstandard instruction defining assault include a judicial comment in violation of art. IV, § 16?

**ISSUE 2:** If a jury can construe a court's instructions to allow conviction without proof of an element, any resulting conviction violates due process. Did Instruction No. 7 relieve the state of its burden to prove an unlawful touching?

4. Mr. Valdez's assault conviction was entered in violation of his Sixth and Fourteenth Amendment right to a jury trial and his right to due process.
5. Officer Kelly's testimony invaded the province of the jury and infringed Mr. Valdez's right to an independent determination of the facts.
6. Officer Kelly provided improper opinion testimony on Mr. Valdez's mental state.

**ISSUE 3:** A police officer may not provide a "nearly explicit" opinion on an accused person's mental state. Did Officer Kelly invade the province of the jury by providing a nearly explicit opinion that Mr. Valdez intentionally spat on Officer Woodard?

**ISSUE 4:** A witness's improper opinion on the accused person's guilt invades the province of the jury. Did the admission of improper opinion testimony violate Mr. Valdez's Sixth and Fourteenth Amendment right to a jury trial and his right to due process?

7. Mr. Valdez was denied his Sixth and Fourteenth Amendment right to the effective assistance of counsel.
8. Defense counsel provided ineffective assistance by failing to object to inadmissible opinion testimony.

**ISSUE 5:** An unreasonable failure to object to evidence that is prejudicial and inadmissible deprives an accused person of the effective assistance of counsel. Did defense counsel's failure to object to prejudicial opinion testimony deny Mr. Valdez the effective assistance of counsel?

9. The trial court erred by giving Instruction No. 3.
10. The trial court's reasonable doubt instruction violated Mr. Valdez's right to due process under the Fourteenth Amendment and Wash. Const. art. I, § 3.
11. The trial court's reasonable doubt instruction violated Mr. Valdez's right to a jury trial under the Sixth and Fourteenth Amendments and Wash. Const. art. I, §§ 21 and 22.
12. The trial court's reasonable doubt instruction unconstitutionally shifted the burden of proof and undermined the presumption of innocence.
13. The trial court's instruction improperly focused jurors on "the truth of the charge" rather than the reasonableness of their doubts.

**ISSUE 6:** A criminal trial is not a search for the truth. By equating proof beyond a reasonable doubt with "an abiding belief in the truth of the charge," did the trial court undermine the presumption of innocence, impermissibly shift the burden of proof, and violate Mr. Valdez's constitutional right to a jury trial?

**ISSUE 7:** A juror with reasonable doubt must acquit, even if unable to articulate a reason for the doubt. By defining a "reasonable doubt" as a doubt "for which a reason exists," did the trial court undermine the presumption of innocence, impermissibly shift the burden of proof, and violate Mr. Valdez's constitutional right to a jury trial?

## **STATEMENT OF FACTS AND PRIOR PROCEEDINGS**

Officers arrested David Valdez for disorderly conduct. RP 79, 128. As they attempted to cuff him, the officers had Mr. Valdez against their sport-utility vehicle. RP 80-81, 86, 104, 116, 128, 165, 211.

An officer named James Kelly II stood behind Mr. Valdez, searching him. RP 158. During the search, Mr. Valdez turned and spat. He spat forcefully, to avoid getting phlegm on the police car. RP 210. He didn't realize that one officer, Nicholas Woodard, was standing by his side. RP 198.

He was surprised when Woodard accused him of spitting on him. RP 200. Woodard later acknowledged the possibility that "the majority of [the] spit went past," with "just some sticking on [his] ear." RP 112. Mr. Valdez believed that, at worst, Woodard was hit only with mist. RP 199.

The state charged Mr. Valdez with assault three and resisting arrest. CP 1-2.

The sole contested issue at trial was whether Mr. Valdez hit the officer with saliva on purpose. RP 267-301. Officer Kelly testified that Mr. Valdez "intentionally cleared his throat... [a]nd turned and intentionally spit." RP 164. Defense counsel did not object to this testimony. RP 164.

Mr. Valdez testified. He told jurors he had not known that Officer Woodard was at his side, and that he had not intentionally spat on him. RP 198, 199, 201, 211.

Mr. Valdez proposed the standard instruction defining assault. CP 7. The state proposed a non-standard jury instruction that defined assault as follows:

An assault is an intentional touching of or spitting on another person, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or spitting is offensive if the touching or spitting would offend any ordinary person who is not unduly sensitive.  
CP 17; RP 223-225.

Over the defense's objection, the court gave the state's proposed instruction to the jury. RP 227-228; CP 17.

The court also instructed the jury on the burden of proof and the definition of reasonable doubt. Instruction No. 3 included the following language:

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.  
CP 13.

The jury found Mr. Valdez guilty. CP 24, 25. After sentencing, Mr. Valdez timely appealed. CP 27-38, 39.

## ARGUMENT

**I. THE TRIAL COURT IMPROPERLY COMMENTED ON THE EVIDENCE, TIPPING THE JURY TOWARD CONVICTION AND RELIEVING THE STATE OF ITS BURDEN TO PROVE AN INTENTIONAL TOUCHING.**

A. The court should not have endorsed the state's theory by providing a nonstandard definition of assault.<sup>1</sup>

The Washington constitution provides "Judges shall not charge juries with respect to matters of fact, nor comment thereon..." Art. IV, § 16. In this case, the court gave a nonstandard instruction that violated both of these rules. CP 17.

Under Washington's common law definition, an assault is "an intentional touching of another person, that is harmful or offensive..." 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 35.50 (3d Ed) (certain bracketed material deleted). Here, the court added to this language, instructing jurors that an assault is "an intentional touching of *or spitting on* another person, that is harmful or offensive..." CP 17.

This was improper. The court's nonstandard instruction favored conviction. By emphasizing that the jury *could* convict based on spitting, the court tipped the balance in favor of a guilty verdict. CP 17.

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<sup>1</sup> A comment on the evidence "invades a fundamental right" and may be challenged for the first time on review under RAP 2.5(a)(3). *State v. Becker*, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997). In addition, defense counsel objected to the court's nonstandard instruction, arguing that it commented on the evidence. RP 225-226.

The court's instructions favored the prosecution, and improperly commented on the evidence. Such comments are presumed prejudicial. *State v. Levy*, 156 Wn.2d 709, 725, 132 P.3d 1076 (2006). A comment on the evidence requires reversal unless the record affirmatively shows that no prejudice could have resulted. *Id.*

This is a higher standard than that normally applied to constitutional errors. *Id.* Here, the record does not affirmatively show an absence of prejudice. The comment went directly to the contested facts at trial: whether or not Mr. Valdez intentionally spat on Officer Woodard.

The judicial comment infringed Mr. Valdez's right to a fair trial, free of improper influence, and a decision by an impartial jury. *Id.* His assault conviction must be reversed and the charge remanded for a new trial. *Id.*

B. The court's nonstandard instruction relieved the state of its burden to prove an intentional touching.

Due process prohibits a trial judge from instructing jurors in a manner that relieves the state of its burden of proof. U.S. Const. Amend. XIV; *State v. Aumick*, 126 Wn.2d 422, 429, 894 P.2d 1325 (1995). Here, the court's nonstandard instruction relieved the state of its burden to prove an intentional touching. CP 17.

Jury instructions must make the relevant legal standard manifestly apparent to the average juror. *State v. Kyлло*, 166 Wn.2d 856, 864, 215 P.3d 177 (2009). The instructions in this case did not make the requirements for conviction manifestly clear. The court's instructions did not make clear the state's burden of proving an intentional touching. The nonstandard language allowed for conviction based on a showing that Mr. Valdez spat intentionally regardless of whether or not he intended his spit to touch Officer Woodard. CP 17.

If a jury can construe a court's instructions to allow conviction without proof of an element, any resulting conviction violates due process. U.S. Const. Amend. XIV; *State v. Stein*, 144 Wn.2d 236, 241, 27 P.3d 184 (2001). The court's instructions in this case can be construed to allow conviction based on an intentional spitting, even if Mr. Valdez did not intend to spit on Officer Woodard. Because of this, the conviction violates due process. *Id.*

Such an error requires reversal unless the state shows beyond a reasonable doubt that it did not contribute to the verdict. *State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002). This requires proof that the element is supported by uncontroverted evidence. *Id.*

Here, the error went to the very heart of the case. Mr. Valdez testified that he sought to avoid hitting the officer (and the vehicle) with

his spit. RP 198, 199, 201, 211. The court's instructions allowed conviction based on intentional spitting, even if the state failed to prove that Mr. Valdez intended contact with Officer Woodard. CP 17.

The court's instructions failed to make the relevant standard manifestly apparent to the average juror. *Kyllo*, 166 Wn.2d at 864.<sup>2</sup> This relieved the state of its burden to prove an intentional assault. The conviction must be reversed and the case remanded for a new trial with proper instructions. *Id.*

**II. OFFICER KELLY'S IMPROPER TESTIMONY DEPRIVED MR. VALDEZ OF DUE PROCESS AND HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO A JURY TRIAL.**

A. Officer Kelly invaded the province of the jury by providing an explicit opinion that Mr. Valdez "intentionally" spat on Woodard.

Testimony providing an "explicit or nearly explicit" opinion on the guilt of an accused person invades the exclusive province of the jury and violates the right to a jury trial.<sup>3</sup> *State v. King*, 167 Wn.2d 324, 332, 219 P.3d 642 (2009); *State v. Sutherby*, 138 Wn. App. 609, 617, 158 P.3d 91

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<sup>2</sup> The error is preserved because Mr. Valdez objected to the instruction, and proposed the standard instruction defining assault. In addition, the improper instruction created a manifest error affecting Mr. Valdez's right to due process. The issue can be addressed for the first time on review. RAP 2.5(a)(3). The court should review the error even if it does not qualify under RAP 2.5(a)(3). *State v. Russell*, 171 Wn.2d 118, 122, 249 P.3d 604 (2011). The Rules of Appellate procedure require courts to decide cases on their merits "except in compelling circumstances where justice demands..." RAP 1.2(a). A decision on the merits here would promote justice; there is no compelling basis to refuse review on the merits. RAP 1.2(a).

<sup>3</sup> U.S. Const. Amends. VI, XIV; art. I, §§ 21, 22.

(2007) *aff'd on other grounds*, 165 Wn.2d 870, 204 P.3d 916 (2009). No witness may offer improper opinion testimony by direct statement or inference. *King*, 167 Wn.2d at 331.

In this case, Officer Kelly provided an “explicit or nearly explicit” opinion on Mr. Valdez’s guilt. He testified that Mr. Valdez “intentionally cleared his throat... [a]nd turned and intentionally spit.” RP 163-164.<sup>4</sup>

The primary issue at trial was Mr. Valdez’s intent. RP 270-273, 277-290, 293. Officer Kelly’s testimony that Mr. Valdez intentionally spat on Officer Woodard directly contradicted Mr. Valdez’s own account of the incident. RP 163-164, 198, 199, 201, 211.

A law enforcement officer’s improper opinion testimony may be particularly prejudicial because it carries “a special aura of reliability.” *Id.* The improper opinion testimony here carried such an aura of reliability, because it was provided by a police officer. *Id.*

The improper opinion testimony invaded the province of the jury. It violated Mr. Valdez’s Sixth and Fourteenth Amendment right to a jury trial and his Fourteenth Amendment right to due process. The jury should

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<sup>4</sup> As a matter of law, this creates a manifest error affecting a constitutional right. *State v. Thach*, 126 Wn. App. 297, 312, 106 P.3d 782 (2005). Accordingly, it may be reviewed for the first time on appeal, despite the absence of objection. *Id.*; RAP 2.5(a)(3). Alternatively, the court should review the error even if it does not qualify under RAP 2.5(a)(3). *Russell*, 171 Wn.2d at 122; RAP 1.2(a).

have been allowed to determine Mr. Valdez's mental state from the evidence. Instead, Officer Kelly provided an improper opinion that resolved the primary issue in favor of the prosecution. RP 163-164.

The assault conviction must be reversed and the charge remanded for a new trial. *King*, 167 Wn.2d at 332.

B. Defense counsel should have objected to Officer Kelly's explicit opinion testimony that Mr. Valdez "intentionally" spat on Officer Woodard.<sup>5</sup>

Without a valid tactical reason, failure to object to improper opinion testimony constitutes deficient performance. *State v. Hendrickson*, 138 Wn. App. 827, 833, 158 P.3d 1257 (2007). Here, counsel had no strategic reason to allow Officer Kelly's improper opinion.

The improper opinion went directly to the heart of the case. Kelly's testimony contradicted Mr. Valdez's own account. RP 163-164, 198, 199, 201, 211. Mr. Valdez's intent was the main issue discussed by both lawyers in closing. RP 270-273, 277-290, 293.

Defense counsel should have prevented Officer Kelly from putting his thumb on the scale of justice. Mr. Valdez was prejudiced by his

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<sup>5</sup> Ineffective assistance of counsel is an issue of constitutional magnitude that can be raised for the first time on appeal. *Kyllo*, 166 Wn.2d at 862; RAP 2.5(a).

attorney's deficient performance. *Kyllo*, 166 Wn.2d at 862. His convictions must be reversed and the case remanded for a new trial. *Id.*

**III. THE COURT'S "REASONABLE DOUBT" INSTRUCTION INFRINGED MR. VALDEZ'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.**

A. The instruction improperly focused the jury on a search for "the truth."

A jury's role is not to search for the truth. *State v. Emery*, 174 Wn.2d 741, 760, 278 P.3d 653 (2012); *State v. Berube*, 171 Wn. App. 103, 286 P.3d 402 (2012). Here, the trial court instructed the jury that proof beyond a reasonable doubt means having "an abiding belief *in the truth of the charge.*" CP 13 (emphasis added).

Rather than determining the truth, a jury's task "is to determine whether the State has proved the charged offenses beyond a reasonable doubt." *Emery*, 174 Wn.2d at 760. In this case, the court undermined its otherwise clear reasonable doubt instruction by directing jurors to consider "the truth of the charge." CP 13.<sup>6</sup>

A jury instruction misstating the reasonable doubt standard "is subject to automatic reversal without any showing of prejudice." *Id.* at 757

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<sup>6</sup> Mr. Valdez does not challenge the phrase "abiding belief." Both the U.S. and Washington Supreme Courts have already determined that phrase to be constitutional. *See Victor v. Nebraska*, 511 U.S. 1, 15, 114 S.Ct. 1239, 127 L.Ed.2d 583 (1994) (citing *Hopt v. Utah*, 120 U.S. 430, 439, 7 S.Ct. 614, 30 L.Ed. 708 (1887)); *State v. Pirtle*, 127 Wn.2d 628, 658, 904 P.2d 245 (1995). Rather, Mr. Valdez objects to the instruction's focus on "the truth." CP 13.

(citing *Sullivan v. Louisiana*, 508 U.S. 275, 281–82, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993)). Here, by equating proof beyond a reasonable doubt with a “belief in the truth of the charge,” the court confused the critical role of the jury. CP 13.

The court’s instruction impermissibly encouraged the jury to undertake a search for the truth, inviting the error identified in *Emery*. The problem here is greater than that presented in *Emery*. In that case, the error stemmed from a prosecutor’s misconduct. Here, the prohibited language reached the jury in the form of an instruction from the court. CP 13. Jurors were obligated to follow the instruction.

The presumption of innocence can be “diluted and even washed away” by confusing jury instructions. *State v. Bennett*, 161 Wn.2d 303, 315-16, 165 P.3d 1241 (2007). Courts must vigilantly protect the presumption of innocence by ensuring that the appropriate standard is clearly articulated.<sup>7</sup> *Id.*

Improper instruction on the reasonable doubt standard is structural error. *Sullivan*, 508 U.S. at 281-82. By equating that standard with “belief in the truth of the charge” the court misstated the prosecution’s burden of proof, confused the jury’s role, and denied Mr. Valdez his constitutional

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<sup>7</sup> Although the *Bennett* court approved WPIC 4.01, the court was not faced with a challenge to the “truth” language in that instruction. *Id.*

right to a jury trial.<sup>8</sup> Mr. Valdez's convictions must be reversed. The case must be remanded for a new trial with proper instructions. *Id.*

B. The instruction diverted the jury's attention away from the reasonableness of any doubt, and erroneously focused it on whether jurors could provide a reason for any doubts.

1. Jurors need not articulate a reason for doubt in order to acquit.

Due process requires the state to prove each element of a charged offense beyond a reasonable doubt. U.S. Const. Amend. XIV; art. I, § 3; *Sullivan*, 508 U.S. 275; *State v. Hundley*, 126 Wn.2d 418, 421, 895 P.2d 403 (1995). Jury instructions must clearly communicate this burden to the jury. *Bennett*, 161 Wn.2d at 307 (citing *Victor*, 511 U.S. at 5-6).

Instructions that relieve the state of its burden violate due process and the Sixth Amendment right to trial by jury. U.S. Const. Amends. VI; XIV; *Sullivan*, 508 U.S. at 278-81; *Bennett*, 161 Wn.2d at 307. An instruction that misdirects the jury as to its duty "vitiates *all* the jury's findings." *Sullivan*, 508 U.S. at 279-281.

Jurors need not articulate a reason for their doubt before they can vote to acquit. *Emery*, 174 Wn.2d at 759-60 (addressing prosecutorial misconduct). Language suggesting jurors must be able to articulate a

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<sup>8</sup> U.S. Const. Amends. VI, XIV; art. I, §§ 3, 21, 22.

reason for their doubt is “inappropriate” because it “subtly shifts the burden to the defense.” *Emery*, 174 Wn.2d at 759-60.<sup>9</sup>

Requiring articulation “skews the deliberation process in favor of the state by suggesting that those with doubts must perform certain actions in the jury room—actions that many individuals find difficult or intimidating—before they may vote to acquit...” *Humphrey v. Cain*, 120 F.3d 526, 531 (5th Cir. 1997) *on reh'g en banc*, 138 F.3d 552 (5th Cir. 1998).<sup>10</sup> An instruction imposing an articulation requirement “creates a lower standard of proof than due process requires.” *Id.*, at 534.<sup>11</sup>

2. The trial court erroneously told jurors to convict unless they had a doubt “for which a reason exists.”

The trial court instructed jurors that “A reasonable doubt is one for which a reason exists.” CP 13. This suggested to the jury that it could not acquit unless it could find a doubt “for which a reason exists.” CP 13. This

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<sup>9</sup>See also *State v. Walker*, 164 Wn. App. 724, 731-732, 265 P.3d 191 (2011), *as amended* (Nov. 18, 2011), *review granted, cause remanded*, 175 Wn. 2d 1022, 295 P.3d 728 (2012); *State v. Johnson*, 158 Wn. App. 677, 684-86, 243 P.3d 936 (2010) *review denied*, 171 Wn.2d 1013, 249 P.3d 1029 (2011).

<sup>10</sup>The Fifth Circuit decided *Humphrey* before enactment of the AEDPA. Subsequent cases applied the AEDPA’s strict procedural limitations to avoid the issue. See, e.g., *Williams v. Cain*, 229 F.3d 468, 476 (5th Cir. 2000).

<sup>11</sup>In *Humphrey*, the court addressed an instruction containing numerous errors, including an articulation requirement. Specifically, the instruction defined reasonable doubt as “a serious doubt, for which you can give a good reason.” *Humphrey*, 120 F.3d at 530.

instruction – based on WPIC 4.01 – imposes an articulation requirement that violates the constitution.

A “reasonable doubt” is not the same as a reason to doubt. “Reasonable” means “being in agreement with right thinking or right judgment: not conflicting with reason: not absurd: not ridiculous. . . being or remaining within the bounds of reason. . . Rational.” *Webster’s Third New Int’l Dictionary* (Merriam-Webster, 1993). A reasonable doubt is thus one that is rational, is not absurd or ridiculous, is within the bounds of reason, and does not conflict with reason.<sup>12</sup>

The “a” before “reason” in Instruction No. 3 inappropriately alters and augments the definition of reasonable doubt. CP 13. “[A] reason” is “an expression or statement offered as an explanation of a belief or assertion or as a justification.” *Webster’s Third New Int’l Dictionary*. The phrase “a reason” indicates that reasonable doubt must be capable of explanation or justification. In other words, WPIC 4.01 requires more than just a reasonable doubt; it requires an explainable, articulable doubt—one for which a reason exists, rather than one that is merely reasonable.

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<sup>12</sup> *Accord Jackson v. Virginia*, 443 U.S. 307, 317, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) (“A ‘reasonable doubt,’ at a minimum, is one based upon ‘reason.’”); *Johnson v. Louisiana*, 406 U.S. 356, 360, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972) (collecting cases defining reasonable doubt as one “‘based on reason which arises from the evidence or lack of evidence’” (quoting *United States v. Johnson*, 343 F.2d 5, 6 n.1 (2d Cir. 1965))).

This language requires more than just a reasonable doubt to acquit. *Cf. In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) (“[W]e explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt.”) Jurors applying Instruction No. 3 could have a reasonable doubt but also have difficulty articulating or explaining why their doubt is reasonable.<sup>13</sup> For example, a case might present such voluminous and contradictory evidence that jurors with reasonable doubts would struggle putting their doubts into words or pointing to a specific, discrete reason for doubt. Despite reasonable doubt, acquittal would not be an option under Instruction No. 3, if jurors couldn’t put their doubts into words. CP 13.

As a matter of law, the jury is “firmly presumed” to have followed the court’s reasonable doubt instruction. *Diaz v. State*, 175 Wn.2d 457, 474-475, 285 P.3d 873 (2012). The instruction here left jurors with no choice but to convict unless they had a reason for their doubts. This meant Mr. Valdez couldn’t be acquitted, even if jurors had a reasonable doubt.

The instruction “subtly shift[ed] the burden to the defense.” *Emery*, 174 Wn.2d at 759-60. It also “create[d] a lower standard of proof than due process requires...” *Humphrey*, 120 F.3d at 534. By relieving the state of

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<sup>13</sup>See Steve Sheppard, *The Metamorphoses of Reasonable Doubt: How Changes in the Burden of Proof Have Weakened the Presumption of Innocence*, 78 NOTRE DAME L. REV. 1165, 1213-14 (2003).

its constitutional burden of proof, the court's instruction violated Mr. Valdez's right to due process and his right to a jury trial. *Id.*; *Sullivan*, 508 U.S. at 278-81; *Bennett*, 161 Wn.2d at 307. Accordingly, his convictions must be reversed and the case remanded for a new trial with proper instructions. *Sullivan*, 508 U.S. at 278-82.

### CONCLUSION

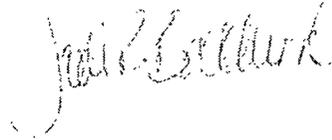
Mr. Valdez's convictions must be reversed and the case remanded for a new trial. The trial court commented on the evidence and relieved the state of its burden to prove the elements of third-degree assault.

In addition, Officer Kelly's testimony invaded the province of the jury and deprived Mr. Valdez of his right to a jury trial. Defense counsel should have objected to the improper testimony.

Finally, the court's "reasonable doubt" instruction included an articulation requirement and improperly focused jurors on a search for "the truth."

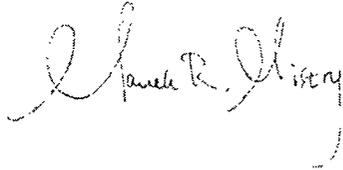
Respectfully submitted on August 14, 2015,

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

David Valdez  
c/o Cowlitz County Jail  
1935 1st Ave  
Longview, WA 98632

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Cowlitz County Prosecuting Attorney  
appeals@co.cowlitz.wa.us

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on August 14, 2015.



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