

**FILED**

**FEB 17 2011**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 29128-6-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**RICKY DESHAWN THOMAS,**

Defendant/Appellant.

---

**REPLY BRIEF**

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Dennis W. Morgan    WSBA #5286  
Attorney for Appellant  
120 West Main  
Ritzville, Washington 99169  
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## ARGUMENT

The State initially contends that there was no continuous assault and thus a “same criminal conduct” analysis is not required.

Alternatively, the State urges the Court to apply the anti-burglary statute. RCW 9A.52.050.

The State’s argument concerning the “same criminal conduct” analysis misses the mark.

An appellate court reviews for abuse of discretion the trial court’s implicit assumption that the crimes were not for the same criminal conduct because it included both convictions when calculating [t]he...offender score.

If it is assumed that the trial court actually conducted a “same criminal conduct” analysis, then it abused its discretion by ignoring the fact that Mr. Thomas’ actions furthered the commission of the respective offenses based upon his underlying jealousy.

As the State recognizes in its brief, objective intent can be found where the crime is part of a recognizable scheme or plan. *See: State v. Lewis*, 115 Wn. 2d 294, 302, 797 P. 2d 1141 (1990).

Mr. Thomas takes the position that the facts fully support his claim of “same criminal conduct.”

The State's second argument is for application of the burglary anti-merger statute.

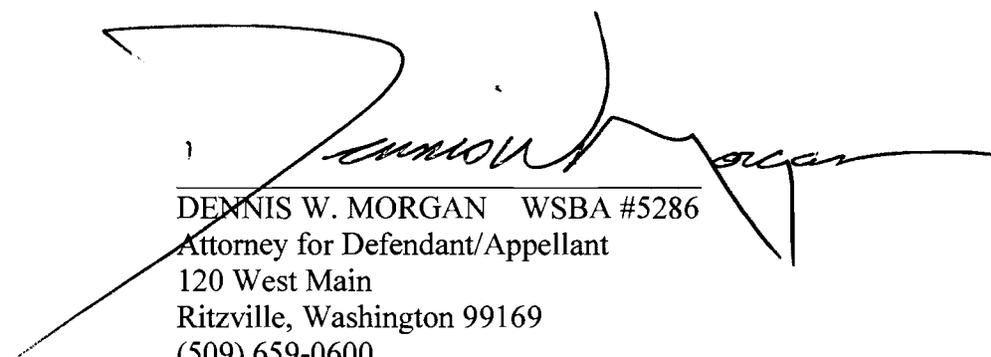
"...[T]he anti-merger statute does not preclude a finding that ...burglary and kidnapping constitute the same criminal conduct." *State v. Dunbar*, 59 Wn. App. 447, 457, 798 P. 2d 306 (1990).

Considering the *Dunbar* case in conjunction with *State v. Davis*, 90 Wn. App. 776, 781-82, 954 P. 2d 325 (1998) the only reasonable conclusion that can be reached is that Mr. Thomas's conviction constitutes the "same criminal conduct."

Mr. Thomas otherwise relies upon the argument contained in his original brief.

DATED this <sup>7<sup>th</sup></sup> 16 day of February, 2011.

Respectfully submitted,



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NO. 29128-6-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	BENTON COUNTY
Plaintiff,	)	NO. 09 1 01147 1
Respondent,	)	
	)	<b>AFFIDAVIT</b>
v.	)	<b>OF MAILING</b>
	)	
RICKY DESHAWN THOMAS,	)	
	)	
Defendant,	)	
Appellant.	)	
_____	)	

STATE OF WASHINGTON )  
: ss.  
County of Adams )

CONNIE HILLE, being first duly sworn upon oath, deposes and  
says:

That on this date I mailed in the mails of the United States of  
America a properly stamped and addressed envelope directed to:

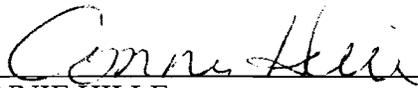
AFFIDAVIT OF MAILING

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Court of Appeals, Division III  
500 North Cedar Street  
Spokane, Washington 99201

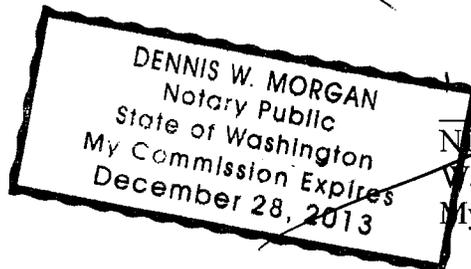
BENTON COUNTY PROSECUTOR'S OFFICE  
Attention: Andrew Miller  
7122 W Okanogan Pl, Bldg. A  
Kennewick, Washington 99336

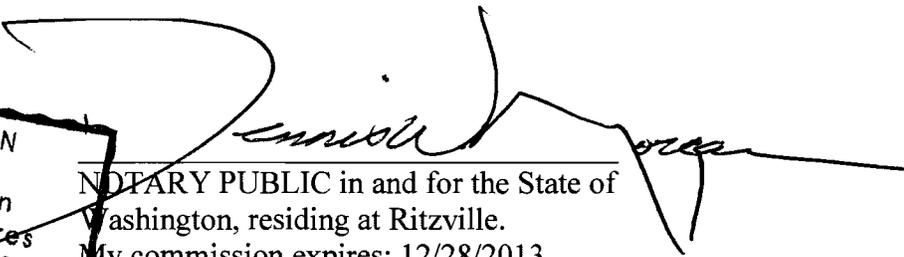
RICKY DESHAWN THOMAS #341080  
Washington State Penitentiary  
1313 N. 13<sup>th</sup> Ave, Unit Echo, E-121  
Walla Walla, Washington 99362

Containing a copy of the *REPLY BRIEF*.

  
\_\_\_\_\_  
CONNIE HILLE

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of  
February, 2011.

  
DENNIS W. MORGAN  
Notary Public  
State of Washington  
My Commission Expires  
December 28, 2013

  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at Ritzville.  
My commission expires: 12/28/2013.