

FILED

JUL 23 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 302580-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

TONY CANTU, Appellant,

BRIEF OF APPELLANT

Mitch Harrison

Attorney for Appellant

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I. ASSIGNMENTS OF ERROR

1. The trial court erred in denying the motion for the mistrial because Juror 30's statements about the defendant's gang involvement tainted the entire jury pool and denied Mr. Cantu a his right to an impartial jury.
2. The court's failure to grant Mr. Cantu's motion for a mistrial based upon juror misconduct during voir dire denied him his right to confrontation and cross examination.
3. The prosecutor committed misconduct during closing argument by repeatedly telling the jury that Mr. Cantu owned a white Honda (or similar car) because the evidence presented at the trial did not establish such ownership.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court erred in denying the motion for the mistrial because Juror 30's statements about the defendant's gang involvement tainted the entire jury pool and denied Mr. Cantu a his right to an impartial jury. (assignment of error #1)
2. Whether the court's failure to grant Mr. Cantu's motion for a mistrial based upon juror misconduct during voir dire denied him his right to confrontation and cross examination. (assignment of error #2)
3. Whether the prosecutor committed misconduct during closing argument by repeatedly telling the jury that Mr. Cantu owned a white Honda (or similar car) because the evidence presented at the trial did not establish such ownership. (assignment of error #3)

I. STATEMENT OF THE CASE

1. Procedural Facts

Charges. On April 27, 2010, Mr. Cantu was charged with Possession of a Stolen Vehicle, Criminal Trespass in the First Degree, and Unlawful Possession of a Firearm in the First Degree. CP 4.

Motion for a Mistrial. Before the court began voir dire of the 32 prospective jurors, one of the prospective jurors (number 30), a Mr. Adam Johnson, announced during voir dire that “[t]he defendant is a rival gang member of friends of mine.” RP 53. Almost immediately after this statement, the court took a recess. After the recess and outside the presence of the jury, the defendant moved for a mistrial based upon this statement, arguing that “there is no way that Tony is going to have a fair trial based upon that response.” RP 55. Defense counsel also noted that the courtroom was shocked at such an announcement, “What isn’t going to appear on the record is taking a look at all the juror’s faces and basically they probably had the same facial expression as I did and my chin more or less hit the ground.” RP 55.

Defense counsel argued that this type of error could not be fixed by a curative instruction or by simply instructing the jurors “to apply the law” because this was not a case in which gang evidence would be presented or even admissible. The State even admitted that “there’s no gang-related

evidence in this case.” RP 56. In emphasizing the point, defense counsel elaborated that there was no way to cure these type of comment in the minds of the jurors, “Obviously nobody saw this coming and, you know, it’s a shame; however, you know, in light of that type of response, I don’t think there’s anything we can do to cure that type of defect. Even if the Court said, “Ignore that response,” the bell’s been rung already. Everybody in the courtroom heard it.” RP 55-56.

In fact, defense counsel made it clear, that in such a case, a curative instruction “would only make this worse” by bringing more attention to the fact that Mr. Cantu may have been involved in a gang. RP 56. The court agreed with defense counsel on this point, “I agree it would probably highlight the issue to give any kind of a curative instruction at this point.” RP 58. The court however, still held that this “comment was not so prejudicial to require a mistrial.” RP 58.

Instead of granting the motion for a mistrial, then, the court only excused Prospective Juror 30 from the panel but denied the motion for a mistrial. RP 58-59. The court excluded juror number 30 immediately after the ruling and at no point later in the proceedings attempted to discover if the juror would possibly be fair or impartial after hearing that Mr. Cantu was in a gang.

Verdicts and Sentencing. Mr. Cantu was ultimately found guilty on all three counts and sentenced to 116 months on count III (unlawful possession of a firearm), which ran concurrent to the counts, for which Mr. Cantu was sentence to 57 months for Possession of a Stolen Vehicle and 365 days for Criminal Trespass First Degree. CP 90. These sentences were all the maximum sentences allowed within the guidelines for each felony and the maximum for the Criminal Trespass misdemeanor. CP 89.

2. Substantive Facts

a. Chris Olsen

The victim in the case was Chris Olsen. He testified that he saw a “white, late model, four door sedan parked in the driveway, a woman standing outside, she had a purse in her hand, a cigarette, and a gentleman came out of the garage with a tire in each arm, placed them in the trunk of the side of the sedan, the woman closed the trunk, walked to the other side of the sedan, opening the passenger door, and the person went back into the garage for two more tires.” RP 61.

Mr. Olsen identified the female as a “Hispanic female” whose hair was dark and “looked like a rat’s nest.” RP 62. Viewing the male suspect from about 35 feet away, Mr. Olson described the male as “taller” and “Hispanic.” RP 62. On cross, Mr. Olsen admitted that he was not able to identify the male suspect from his vantage point. RP 73.

After the male and female entered their vehicle and left the area, Mr. Olson called the police and proceeded followed them in his vehicle. RP 64. After terminating his pursuit of the vehicle, Mr. Olson returned to his garage and found dark, older model Honda parked in it, sitting on wooden blocks without its tires. RP 67. This all happened between 5:30 AM and 7:00 AM. RP 61.

Detective Dale Wagner. Detective Wagner of the Adams County Sherriff's Department testified that, on April 22, 2010, he and another officer pulled over a white 2001 Hyundai four door sedan. RP 75-77. When he pulled the vehicle over, there were a male and female inside the vehicle. RP 77. Detective Wanger identified Mr. Cantu as the driver of the vehicle and the co-defendant, Ms. Myra Valencia as the passenger. RP 77.

Upon contacting Mr. Cantu, Detective Wagner questioned Mr. Cantu about the report of the stolen car found in Mr. Olsen's garage. RP 106-07. In response, Mr. Cantu told the Detective that he knew nothing about any criminal activity at Mr. Olsen's garage. RP 106-07.

After speaking with Mr. Cantu and Ms. Valencia, Detective Wagner impounded the white Hyundai. RP 78. After the Hyundai was impounded, detective Wagner obtained a search warrant for the Hyundai and searched it. RP 83. In the vehicle, the detective located some tools and a handgun. RP 85. (found hidden underneath the steering wheel)

No one, including the Officers could identify who the registered owner of any of the vehicles were. *See, e.g.*, RP 116.

Myra Valencia. In exchange for a favorable plea bargain, Ms. Valencia, the co-defendant in this case, agreed to testify at the trial. RP 43-45. At trial, Ms. Valencia testified that she knew Mr. Cantu for about three years. RP 142. Ms. Valencia testified that Mr. Cantu may have picked her up 15 minutes prior to her arrest. RP 145. However, when questioned about the night preceding her arrest and that of Mr. Cantu, Ms. Valencia testified that she helped someone when the crimes were allegedly committed. RP 145. Ms. Valencia repeatedly testified that she did not know or at least did not remember who committed the crimes for which Mr. Cantu was charged. RP 181-82.

After significant questioning, Ms. Valencia admitted that she did not remember much of what happened that night because she had severe memory problems and hallucinations caused from her prolonged drug use. RP 182-83. Additionally, she testified that she was using crystal methamphetamine on the date of the incident, April 22, 2010, in addition to “some other stuff, too.” RP 182-83. By her own admission, Ms. Valencia was “really high” when the crimes here were allegedly committed.

Ms. Valencia agreed that testified that “was not sure who jacked that car in Moses [Lake].” RP 185. Ms. Valencia also volunteered that when she is high that she sometimes makes things up, and that sometimes when she makes things up, after a while you “actually start[s] thinking it’s real, and then [she doesn’t] even know what’s real or not.” RP 191.

After consistently testifying that she did not remember with whom she committed the crimes (possession of a stolen vehicle), the State attempted to offer a video recording of Ms. Valencia’s prior statements regarding the incident date. RP 162-167. The court ruled that the State could play the recording in order to refresh Ms. Valencia’s memory, but not offer it as substantive evidence. RP 167. In accordance with the court’s ruling, the State played the tape for Ms. Valencia, outside the presence of the jury. RP 175.

After refreshing her memory, Ms. Valencia testified that she remembered “going to Moses Lake with Tony [Cantu]” on April 21, 2010, the night before the crimes were committed. RP 176-77. While she was in Moses Lake, Ms. Valencia admitted to doing various drugs and being with numerous people, including Mr. Cantu, a man named Rick Rodgers and several other Hispanic males. RP 194-95.

Rick Rodgers. At trial, Mr. cantu’s defense was general denial. He argued that he was not the man who committed the above mentioned

crimes with Ms. Valencia. In support of this argument, he offered an alibi witness, Rick Rogers. Mr. Rogers testified that when the crime was allegedly committed, Mr. Cantu was at his residence sleeping when the alleged crimes were committed, from about 12:20 AM until Mr. Cantu was arrested. RP 252-60.

II. ARGUMENTS

1. The trial court erred when it denied Mr. Cantu's Motion for a mistrial.

The right to trial by an impartial jury is guaranteed by article I, section 22 of the Washington Constitution and the Sixth Amendment to the United States Constitution. *State v. Gonzales*, 111 Wn. App. 276, 277, 45 P.3d 205 (2002). Although the denial motion for a new trial is reviewed for abuse of discretion, alleged violations of the Sixth Amendment are reviewed de novo." *United States v. Seya*, 247 F.3d 929, 937 (9th Cir. 2001).

When challenged on direct review (rather than collaterally), appellate courts must evaluate allegations of juror misconduct under a harmless error review. *Id.* The standard for harmless error on direct review is the familiar test established by *Chapman v. California*, 386 U.S. 18, 24 (1967). The *Chapman* Court held "that before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was

harmless beyond a reasonable doubt." *Id.* at 24. The Court equated this standard to the way it framed the inquiry in a prior case, as "whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction." *Id.*

In the context of jury misconduct, the harmless error test applied is whether there is "a reasonable possibility that the extrinsic material *could* have affected the verdict." *Seya*, 247 F.3d at 937. Such a possibility exists if the extrinsic evidence may have affected the reasoning of *even one juror*. *United States v. Vasquez*, 597 F.2d 192, 194 (9th Cir. 1979) (emphasis added). In this case, Juror Number 30's statements during voir dire violated Mr. Cantu's rights right to an impartial jury and confrontation rights under the sixth amendment. These errors were not harmless.

- a. **The trial court erred in denying the motion for the mistrial because Juror 30's statements about the defendant's gang involvement tainted the entire jury pool and denied Mr. Cantu a his right to an impartial jury.**

When a jury is exposed to prejudicial facts during voir dire that would not be admissible at trial, any conviction that follows violates the defendant's rights to an impartial jury. *See Mach v. Stewart*, 137 F.3d 630, 634 (9th Cir. 1998). In *Mach v. Stewart*, the defendant was on trial for sexual abuse of a minor. *Id.* at 631. During voir dire, one prospective

juror, after informing counsel that she worked for Child Protective Services (CPS) and had a psychology background, stated that in the three years she had worked for CPS, every single allegation a child had made about sexual abuse was proven true. *Id.* at 632. The court struck the juror for cause, but denied the defendant's motion for a mistrial, even though the entire jury panel had heard the jurors prejudicial statements, like the trial court did here. *Id.*

Because the appeal was a collateral attack, rather than a direct appeal, the court held that an higher standard had to be met to require reversal. *See Stewart*, 137 F.3d at 634 (stating that in the context of juror statements made during voir dire, reversal is required may require reversal if the statements "**substantially affect[] or influence[] the verdict**" rather than the lower standard that is now current law for direct review cases). Despite this significantly higher standard, the Ninth Circuit held that the trial court erred by not granting a new trial based upon the jurors prejudicial pre-trial statements. The Ninth Circuit held that the error resulted in the swearing in of a tainted jury, and severely infected the entire trial process. *Id.* The court explained that it would not be the correct approach to "quantitatively assess [the error] in the context of other evidence presented [citation omitted], because all of the 'other evidence' presented during the case was received by a jury that was biased." *Id.*

Here, just as in *Mach*, a juror during voir dire volunteered information to the entire court and jury panel that was clearly prejudicial to the defendant's case. In *Mach*, the statements were the juror's "expert-like" statements about child sex abuse. The error in this case was in many ways, egregiously more harmless than that in *Mach* because the evidence was not simply the jurors own opinions on the type of case in general (i.e. child sex cases); rather it pertained directly to facts that were extremely prejudicial to the defendant on trial, namely his gang involvement and his propensity to commit crimes.

Washington court's have routinely held that generalized evidence regarding the behavior of gangs and gang members, absent (1) evidence showing adherence by the defendant or the defendant's alleged gang to those behaviors and (2) a finding that the evidence relating to gangs is relevant to prove the elements of the charged crime, serves no purpose but to "suggest[] that a defendant is guilty because he or she is a criminal-type person who would be likely to commit the crime charged." *State v. Foxhaven*, 161 Wn. App. 168, 175, 163 F.3d 786 (2007); *State v. Mee*, 168 Wn. App. 144, 275 P.3d 1192 (2012) (finding that court abused its discretion in admitting gang evidence to prove motive).

In this instance, by offering information to the court and jury that Mr. Cantu was in a gang, Juror Number 30 *severely infected the entire trial* because all of the 'other evidence' presented during the case was received by a jury that was biased” by the assumption that Mr. Cantu was a gang banger. This error was in fact so severe that the trial court acknowledged that a limiting instruction would probably do more harm than good and “highlight” Mr. Cantu’s gang involvement. Further, this error was not harmless because there is "a reasonable possibility that the extrinsic material *could* have affected the verdict." *Seya*, 247 F.3d at 937.

b. The court’s failure to grant Mr. Cantu’s motion for a mistrial denied him his right to confrontation and cross examination.

In addition to affecting the defendant’s right to an impartial jury, jury exposure to facts not in evidence deprives a defendant of the rights to confrontation, cross-examination and assistance of counsel embodied in the Sixth Amendment. *Dickson v. Sullivan*, 949 F.2d 403, 406 (9th Cir. 1988); *see also Jeffries v. Blodgett*, 5 F.3d 1180, 1191 (9th Cir. 1993) (introduction of extraneous prior bad acts evidence during deliberations constitutes error of constitutional proportions). Here, there can be no question that Potential Juror 30’s statement about his gang involvement was improper violation Mr. Cantu’s confrontation, cross-examination and

assistance of counsel embodied in the Sixth Amendment. *Dickson*, 949 F.2d at 406.

This error was not harmless. There is no “bright line test for determining whether a defendant has suffered prejudice from an instance of juror misconduct, but instead, courts will weigh a number of factors to determine whether the jury's exposure to extraneous information necessitates a new trial.” *Id.* These factors include:

- (1) whether the material was actually received, and, if so, how;
- (2) the length of time it was available to the jury;
- (3) the extent to which the jurors discussed and considered it;
- (4) whether the material was introduced before a verdict was reached, and if so at what point in the deliberations;
- and (5) any other matters which may bear on the issue of the reasonable possibility of whether the material affected the verdict.

Id. None of these factors are dispositive. *Id.* Most of these factors weighs in favor of a new trial.

First, the material was unquestionably “received” by each of the jurors. The statement by Potential Juror Number 30 is clearly on the record and was made while the court was conducting voir dire of all 33 potential jurors. RP 40-52. Moreover, as defense counsel noted in argument, the entire courtroom heard that Mr. Cantu was in a gang and was shocked at such an announcement. RP 55.

Second, the “length of time” that this information was available to the jury was the **entire length of the trial** because the statement was made before a jury was even sworn. Thus, the jury was allowed to sit through the entire trial evaluating the case and every single fact knowing that the defendant was in a gang. The length of time could not have been any more prejudicial. See *Gibson v. Clanton*, 633 F.2d 851, 855, (9th Cir. 1980) (nine hours of deliberation deemed protracted); *Lawson v. Borg*, 60 F.3d 608, 612 (1995) (third day of five day deliberation held to be significant length of time).

Third, the material was received not only before a verdict was reached, but also before the jury was picked. As stated above, this timing could not have been more prejudicial.

In addition to the above factors, the court should consider and place “great weight on the nature of the extrinsic evidence introduced.” *Id.* Specifically, the Court of Appeals for the Ninth Circuit “has observed that ‘reversible error commonly occurs where there is a **direct and rational connection between the extrinsic material and a prejudicial jury conclusion, and where the misconduct relates directly to a material aspect of the case.**’” *Id.* (emphasis added).

In *Lawson*, a juror introduced extrinsic evidence during deliberations of defendant's reputation for violence. Specifically, jurors had introduced outside evidence that Lawson was "very violent" and a "violent temper." *Id.* at 610, fn 2. The defendant was on trial for first degree murder, committed while engaged in an attempted robbery. The prosecutor had rested its theory of the case on the felony-murder rule, and the jury was instructed that it had to find a specific intent to rob. *Id.* at 609.

After analyzing some of the factors above, the *Lawson* court found that the extrajudicial information warranted reversal because it "was both directly related to a material issue in the case and highly inflammatory." *Id.* at 613 (citing *Dickson*, 849 F.2d at 403). Specifically, the Ninth Circuit held that the un-admitted evidence that the defendant was violent was extremely prejudicial because it pertained directly to whether Lawson intended to commit the violent offense (robbery) at issue at trial. *Id.* ("In Lawson's case, proof of intent to commit robbery was pivotal to establishing the special circumstance of attempted robbery alleged by the prosecution.").

Similarly, in reversing Dickson's Washington State court conviction, the Ninth Circuit reasoned that "comment was both directly related to a material issue in the case and highly inflammatory." *Dickson*,

849 F.2d at 403. Specifically, the court emphasized the kind of prejudice that accompanies the jury's knowledge of a prior conviction,

There is a direct and rational connection between the statement that Dickson had "done something like this before" and the conclusion that Dickson had done "this" again. See *United States v. Lewis*, 787 F.2d 1318, 1323 (9th Cir. 1986) (*Lewis*) (observing that it is extremely difficult for jurors to ignore prior convictions when determining guilt), *modified*, 798 F.2d 1250 (9th Cir. 1986); *United States v. Bagley*, 772 F.2d 482, 488 (9th Cir. 1985) (*Bagley*) (observing "the human tendency to draw a conclusion which is impermissible in law: because he did it before, he must have done it again"), *cert. denied*, 475 U.S. 1023, 89 L. Ed. 2d 326, 106 S. Ct. 1215 (1986); *United States v. Field*, 625 F.2d 862, 872 (9th Cir. 1980) (*Field*) (admitting evidence of past convictions of similar offenses raises the spectre of "he did it before, he could do it again").

Id.

The prejudice that Mr. Cantu suffered in this case is even greater than in both *Lawson* and *Dickson*. The gang evidence admitted in this case is at least as prejudicial as the statements in *Lawson* (that the defendant had a reputation for violence) and *Dickson* ("that the defendant had done this before"). As pointed out in the preceding argument above, Washington courts have emphasized the equally prejudicial nature of identifying the defendant as a member of a gang when that involvement has no relevance to the case involved. See also *State v. Scott*, 151 Wn.

App. 520, 213 P.3d 71 (2009) (“Without a connection of [gang] status to the crimes, the only reasonable inference for the jury to draw from the testimony was that Mr. Scott was a bad person.”).

Furthermore, just as in *Dickson*, there is a direct and rational connection between the statement extrajudicial statement (gang involvement) and the conclusion that Mr. Cantu had committed the crimes in question. Specifically, the jury’s knowledge that Mr. Cantu was in a gang was likely pivotal in convicting him of the instant offense because the two primary issues at trial were identity and possession of the firearm. Armed with the knowledge that Mr. Cantu was in a gang, the jury would naturally think that Mr. Cantu is more likely to be the person who committed the theft of a motor vehicle and more importantly, that he (as a gang banger) would possess a firearm.

2. The prosecutor committed misconduct during closing argument by repeatedly telling the jury that Mr. Cantu owned a white Honda (or similar car) because the evidence presented at the trial did not establish such ownership.

"Prosecutorial misconduct is grounds for reversal if the prosecuting attorney's conduct was both improper and prejudicial." *State v. Monday*, 171 Wn.2d 667, 675, 257 P.3d 551 (2011) (internal quotation marks and citations omitted). Comments that "encourage [the jury] to

render a verdict on facts not in evidence are improper." *State v. Smith*, 71 Wn. App. 14, 18, 856 P.2d 415 (1993) (quoting *State v. Stover*, 67 Wn. App. 228, 230-31, 834 P.2d 671 (1992)). When evaluating a prosecutor's conduct, the court must examine it in the full trial context, which includes the evidence presented, the total argument, the issues in the case, and the evidence addressed in the argument. *Monday*, 171 Wn.2d at 675. The defendant bears the burden of showing both prongs (misconduct and prejudice) of prosecutorial misconduct. *State v. Hughes*, 118 Wn. App. 713, 727, 77 P.3d 681 (2003).

In this case, the prosecutor repeatedly stated that the white Honda belonged to Mr. Cantu when no facts in the record establish that Mr. Cantu owned the white Honda. RP 307. In fact, no one, including the Officers could identify who the registered owner of any of the vehicles were. *See, e.g.*, RP 116.

Such statements were extremely prejudicial in this case as for each crime charged, but especially for the possession of the firearm charge because his possession was established through constructive possession, i.e. because the jury was told during closing that Mr. Cantu owned the vehicle in which the firearm was discovered. A defendant suffers

prejudice only where there is a substantial likelihood that the prosecutor's misconduct affected the jury's verdict. *Monday*, 171 Wn.2d at 675.

Here, to convict Mr. Cantu of unlawful possession of a firearm, the State needed to prove (1) that on or about April 22, 2010, Mr. Cantu unlawfully possessed a firearm, (2) that he had previously been convicted of a serious offense, (3) and that the possession or control of the firearm occurred in Washington State. CP 73. The jury was also instructed on actual and constructive possession. CP 76. Constructive possession is the exercise of dominion and control over an item. *State v. Callahan*, 77 Wn.2d 27, 29-30, 459 P.2d 400 (1969). Constructive possession is established by viewing the totality of the circumstances, including the proximity of the property and ownership of the premises where the contraband was found. *State v. Turner*, 103 Wn. App. 515, 522-23, 13 P.3d 234 (2000).

Because the firearm was found in the vehicle and not on Mr. Cantu's person, the jury must have convicted him based on constructive possession, which occurs when there is no actual possession but there is dominion and control over the firearm. CP 76. In determining whether a person constructively possesses an item, ownership of the vehicle or dwelling is often the key factor in deciding possession. Ownership of the

vehicle in which the contraband is found is an important factor to consider when assessing constructive possession. *State v. Enlow*, 143 Wn. App. 463, 469, 178 P.3d 366 (2008). Although exclusive control of the truck is not necessary to establish constructive possession, mere proximity alone is not enough to infer constructive possession. *Id.*

In *State v. Callahan*, the court emphasized how ownership of a houseboat could have allowed a jury to find that the defendant constructively possessed drugs found therein. In that case, Mr. Callahan did not own the houseboat he was on, but he was observed in close proximity to the drugs and he admitted handling the drugs earlier that day. *Callahan*, 77 Wn.2d at 28-31. Mr. Callahan had been on the houseboat for two or three days and he had with him two books, two guns, and a set of broken scales. *Id.* at 31. Without proof of ownership or other similar factors suggesting dominion or control, the court found insufficient evidence to find Mr. Callahan in constructive possession of the illegal drugs. *Id.*

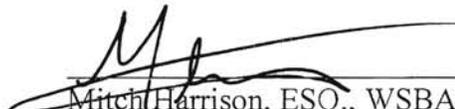
Here, it is impossible to say for certain what weight the jury gave to the prosecutor's improper comments that Mr. Cantu owned the vehicle in which the firearm was found. As the case law above states, however, possession of the vehicle was an important factor in determining

constructive possession. The jury could have logically and fairly concluded, therefore, that if anyone were to hide a firearm underneath the steering wheel of a vehicle, it would most likely be the owner of that vehicle. Yet, despite the prosecutor's repeated references to Mr. Cantu owning the vehicle, no evidence at trial established such ownership. Because ownership of the vehicle in question is there is a substantial likelihood that the prosecutor's misconduct affected the jury's verdict. *Id.*

III. CONCLUSION

For the reasons stated above, Mr. Cantu respectfully requests that the court grant the relief as designated above in his opening brief.

DATED this 16th day of July, 2012.



Mitch Harrison, ESQ., WSBA# 43040
Attorney for Appellant Tony Cantu

PROOF OF SERVICE

On July 17, 2012 I filed with the Court of Appeals, Division III via the United States Postal Service to be delivered to their office at **500 N Cedar St, Spokane, WA 99201-1905** one original and one copy of the attached Appellant's Brief and proof of service. On this same date, I deposited into the United States Postal service a copy of this Appellant's Brief and proof of service to the Adams County Prosecuting Attorney's Office, Appellate Unit at 210 W. Broadway, Ritzville, WA 99169. The defendant on this case, Mr. Cantu DOC#762542, was sent a copy of this Statement and this proof of service via the United States Postal Service at Airway Heights Corrections Center, 11919 W. Sprague Avenue, P.O. Box 1899, Airway Heights, WA 99001-1899.

Dated this 17th day of July, 2012,



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