

No. 30338-1-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

FILED
June 8, 2012
Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

JUAN ANGEL DIAZ,

Defendant/Appellant.

APPEAL FROM THE BENTON COUNTY SUPERIOR COURT
Honorable Carrie L. Runge, Judge

BRIEF OF APPELLANT

SUSAN MARIE GASCH
WSBA No. 16485
P.O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
Attorney for Appellant

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR.....1

B. STATEMENT OF THE CASE.....1

C. ARGUMENT.....3

 1. A single fingerprint on the outside of the victim’s car is insufficient to establish the elements of possession of a stolen motor vehicle.....3

 a. Elements of the crime.....4

 b. Sufficiency of the evidence.....4

 2. The order requiring that portions of earnings while in Department of Corrections custody be withheld and applied to legal financial obligations must be vacated where the court did not find—nor does the record support such a finding—that Mr. Diaz has the current or future ability to pay legal financial obligations.....12

 a. Relevant statutory authority.....12

 b. There is no evidence in the record to support a finding that Mr. Diaz had the present or future ability to pay legal financial obligations.....13

 c. The remedy is to strike the unsupported implied finding and to vacate the withholding order.....15

D. CONCLUSION.....17

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Fuller v. Oregon</u> , 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974).....	12
<u>In re Winship</u> , 397 U.S. 358, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970).....	3
<u>Borum v. United States</u> , 380 F.2d 595 (D.C.Cir.1967).....	5, 9, 11
<u>Mikes v. Borg</u> , 947 F.2d 353 (9th Cir.1990), <i>cert. denied</i> , 505 U.S. 1229, 112 S.Ct. 3055, 120 L.Ed.2d 921 (1992).....	5, 6, 11
<u>United States v. Corso</u> , 439 F.2d 956 (4th Cir.1971).....	8
<u>United States v. Eddy</u> , 597 F.2d 430 (5th Cir.1979).....	8
<u>United States v. Lonsdale</u> , 577 F.2d 923 (5th Cir.1978).....	8
<u>United States v. Stephenson</u> , 474 F.2d 1353 (5th Cir.1973).....	9
<u>United States v. Van Fossen</u> , 460 F.2d 38 (4th Cir.1972).....	8
<u>Nordstrom Credit, Inc. v. Dep't of Revenue</u> , 120 Wn.2d 935, 845 P.2d 1331 (1993).....	14
<u>State v. Baeza</u> , 100 Wn.2d 487, 670 P.2d 646 (1983).....	3
<u>State v. Baldwin</u> , 63 Wn. App. 303, 818 P.2d 1116, 837 P.2d 646 (1991).....	14, 15, 16
<u>State v. Bertrand</u> , 165 Wn. App. 393, 267 P.3d 511 (2011)....	14, 15, 16, 17
<u>State v. Bridge</u> , 91 Wn. App. 98, 955 P.2d 418 (1998).....	4, 5, 6, 11, 12
<u>State v. Brockob</u> , 159 Wn.2d 311, 150 P.3d 59 (2006).....	14
<u>State v. Callahan</u> , 77 Wn.2d 27, 459 P.2d 400 (1969).....	4

<u>State v. Curry</u> , 118 Wn.2d 911, 829 P.2d 166 (1992).....	12, 13, 14
<u>State v. Delmarter</u> , 94 Wn.2d 634, 618 P.2d 99 (1980).....	3
<u>State v. Kroll</u> , 87 Wn.2d 829, 558 P.2d 173 (1976).....	5
<u>State v. Lucca</u> , 56 Wn. App. 597, 784 P.2d 572 (1990).....	4, 6, 7, 8, 9
<u>State v. Salinas</u> , 119 Wn.2d 192, 829 P.2d 1068 (1992).....	3, 4
<u>State v. Sewell</u> , 49 Wn.2d 244, 299 P.2d 570 (1956).....	7
<u>State v. Staley</u> , 123 Wn.2d 794, 872 P.2d 502 (1994).....	4
<u>State v. Varga</u> , 151 Wn.2d 179, 86 P.3d 139 (2004).....	3
<u>State v. Zamora</u> , 63 Wn. App. 220, 817 P.2d 880 (1991).....	5
<u>Smith v State</u> , 806 S.W.2d 391 (Ark.App. 1991).....	9, 10

Constitutional Provisions and Statutes

U. S. Const., Fourteenth Amendment.....	3
Wash. Const. art. 1, § 3.....	3
RCW 9.94A.030(30).....	13
RCW 9.94A.760.....	13
RCW 9.94A.760(1).....	13
RCW 9.94A.760(2).....	12

RCW 9A.56.068(1).....	4
RCW 9A.56.140(1).....	4
RCW 10.01.160.....	13, 14
RCW 10.01.160(1).....	12
RCW 10.01.160(2).....	13
RCW 10.01.160(3).....	12, 13
RCW 70.48.130.....	13

A. ASSIGNMENTS OF ERROR

1. The evidence is insufficient to support the conviction for possession of a stolen motor vehicle.

2. The trial court erred in ordering that portions of earnings while in Department of Corrections custody be withheld and applied to legal financial obligations.

Issues Pertaining to Assignments of Error

1. Is a single fingerprint on the outside of the victim's car insufficient to establish the elements of possession of a stolen motor vehicle, in violation of Mr. Diaz' right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment?

2. Should the order requiring that portions of earnings while in Department of Corrections custody be withheld and applied to legal financial obligations be vacated where the court did not find—nor does the record support such a finding—that Mr. Diaz has the current or future ability to pay legal financial obligations?

B. STATEMENT OF THE CASE

Between 12:30 a.m. and 9:30 a.m. the morning of August 1, 2010, someone took Kory Welsch' 2000 Honda Civic from his driveway in

Richland, Washington. Welsch found it about three houses down the street where it had apparently been pushed. The unbroken driver's side window was slightly off track, indicating a possible point of entry.

Miscellaneous parts from the engine and stereo-related items from the interior had been removed. RP 9–14, 18–19, 21–23, 34, 41, 56.

The State's fingerprint expert identified a latent fingerprint on the driver's side window as belonging to Juan Diaz. RP 25, 37–38, 47, 49, 54.

Welsch did not know Mr. Diaz and had never seen him before. RP 14.

Mr. Diaz was charged with possession of a stolen motor vehicle and trafficking in stolen property in the first degree. CP 5.

The jury court found Mr. Diaz not guilty of the trafficking charge and guilty of possession of a stolen motor vehicle. RP 81.

At sentencing, the court imposed a standard range term of confinement of 27 months. CP 37, 39. The court imposed costs, fines and fees totaling \$2,887.65. CP 38, 45. The court made no finding as to Mr. Diaz' ability or likely future ability to pay the legal financial obligations imposed. *See* CP 38 at ¶ 2.5. The court also ordered that:

[x] the defendant shall pay up to \$50.00 per month to be taken from any income the defendant earns while in the custody of the Department of Corrections. This money is to be applied towards legal financial obligations. ESB 5990.

CP 39, ¶ 4.1.

This appeal followed. CP 47.

C. ARGUMENT

1. A single fingerprint on the outside of the victim's car is insufficient to establish the elements of possession of a stolen motor vehicle.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment the state must prove every element of a crime charged beyond a reasonable doubt. State v. Baeza, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found each element of the offense beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence carry equal weight. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004) (citing State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). A sufficiency of the evidence challenge admits the truth of the State's

evidence and inferences reasonably drawn therefrom. Salinas, 119 Wn.2d at 201.

a. Elements of the crime. To be guilty of possession of a stolen motor vehicle, a person must knowingly “receive, retain, possess, conceal, or dispose of” a stolen motor vehicle. RCW 9A.56.068(1); RCW 9A.56.140(1). Possession may be actual or constructive. State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). To find actual possession, the property must be in one's personal custody. Id. at 29. In contrast, constructive possession requires dominion and control over the property or the premises on which it is found. Id. at 29-31. To possess property, a person must have actual control over it; passing, fleeting, or momentary control will not suffice. *See* State v. Staley, 123 Wn.2d 794, 801-02, 872 P.2d 502 (1994).

b. Sufficiency of the evidence. Fingerprint evidence is sufficient to support a conviction if the trier of fact (here the jury) could infer from the circumstances that the fingerprint could only have been impressed at the time of the crime. State v. Bridge, 91 Wn. App. 98, 100, 955 P.2d 418 (1998), citing State v. Lucca, 56 Wn. App. 597, 599, 784 P.2d 572 (1990). Circumstantial evidence is as probative and reliable as direct evidence.

State v. Kroll, 87 Wn.2d 829, 842, 558 P.2d 173 (1976); State v. Zamora, 63 Wn. App. 220, 223, 817 P.2d 880 (1991).

In order to support a finding of guilt beyond a reasonable doubt in a “fingerprint-only” case, the State must make a showing, reflected in the record, that the object upon which the fingerprint was found was generally inaccessible to the defendant at a previous time. Bridge, 91 Wn. App. at 100, citing Mikes v. Borg, 947 F.2d 353, 357 n. 6 (9th Cir.1990) (citing Borum v. United States, 380 F.2d 595 (D.C.Cir.1967)), *cert. denied*, 505 U.S. 1229, 112 S.Ct. 3055, 120 L.Ed.2d 921 (1992). This showing by the State is essential. Id. at 100, citing Mikes, 947 F.2d at 356–57.

“While the government need not exclude all inferences or reasonable hypotheses consistent with innocence, ... the record must contain sufficient probative facts from which a fact finder could reasonably infer a defendant's guilt under the beyond a reasonable doubt standard.” ... “[T]here must, at the very least, be sufficient evidence in the record to permit the fact finder to determine when the fingerprints were impressed; otherwise, any conviction would be based on pure speculation.” ... Accordingly, we have to examine the record.” Bridge, 91 Wn. App. at 100 (internal citations omitted).

When fingerprint evidence is the only evidence linking a defendant to a crime and the fingerprint is found on a moveable object, the State must show that the fingerprint could only have been impressed during the commission of the crime, and not earlier. Bridge, 91 Wn. App. at 100–01, citing Mikes, 947 F.2d 353, 356–57; Lucca, 56 Wn. App. at 599–600. “We distinguish between moveable objects generally accessible to the public and fixed objects generally inaccessible to the public.” Bridge, 91 Wn. App. at 101, citing Mikes, 947 F.2d at 357; Lucca, 56 Wn. App. at 602–03.

In Mikes, the Ninth Circuit held that if fingerprint evidence is the only evidence linking a defendant with a crime, the government “must present evidence sufficient to permit the jury to conclude that the objects on which the fingerprints appear were *inaccessible to the defendant prior to the time of the commission of the crime.*” Mikes, 947 F.2d at 357 (citing United States v. Talbert, 710 F.2d 528, 530–31 (9th Cir.1983), cert. denied, 464 U.S. 1052, 104 S.Ct. 733, 79 L.Ed.2d 192 (1984)).

Bridge, 91 Wn. App. at 101 (emphasis added).

In Lucca, the court found that since the location of the window where the defendant’s fingerprints were found was such that it was not accessible to the general public, being at the end of a cul-de-sac behind two houses and enclosed on three sides by fences, and since the defendant offered no evidence presenting any other reasonable explanation as to how

his fingerprint came to be on the window, the jury was entitled to conclude that it was unreasonable that Lucca would have made the fingerprint other than at the time of the burglary. Lucca, 56 Wn.App. at 601.

Lucca cited State v. Sewell, 49 Wn.2d 244, 299 P.2d 570 (1956), in support of his argument that the fingerprint alone was not sufficient for conviction because there was no evidence that his fingerprint was likely placed on the glass during the commission of the crime. In Sewell, the defendant was convicted of second degree burglary. The American Legion Club had been entered through a window and two windowpanes in the basement door had been broken. The burglar had attempted to open a cigarette machine, safe and liquor cabinet. A fingerprint found on a broken piece of glass from the basement door was determined to be Sewell's. Sewell was a member of the Legion Club and was there almost every Friday night. He testified to an alibi which was corroborated by other witnesses. The court held that the fact of entry by Sewell was not proved by direct evidence, nor was it established by circumstantial evidence because there was no circumstance from which the jury could determine that Sewell entered the premises. Sewell, 49 Wn.2d at 246.

The court stated that in order for the jury to have concluded from such evidence that Sewell was guilty, they would have had to speculate

and thereby place inference upon inference: first, that the fingerprint was placed on the glass during the evening in question; second, that the appellant broke the glass; and third, that, having broken the glass, he thereafter entered the premises. Sewell, 49 Wn.2d at 246.

Lucca also cited a number of federal cases as support for the reasoning in Sewell. State v. Lucca, 56 Wn .App. at 602-03, 784 P.2d 572. United States v. Lonsdale, 577 F.2d 923, 926 (5th Cir.1978) (defendant's thumbprint on a check which had been falsely uttered was insufficient evidence because no evidence was introduced to show that the thumbprint was left on the check during the course of uttering it); United States v. Eddy, 597 F.2d 430, 435 (5th Cir.1979) (defendant's fingerprints on falsely uttered checks were insufficient evidence to support a conviction absent evidence to show the fingerprints were placed there during commission of the crime); United States v. Van Fossen, 460 F.2d 38 (4th Cir.1972) (defendant's fingerprints found on counterfeiting materials held insufficient to convict because no evidence suggests that the prints were impressed when the crime was committed); United States v. Corso, 439 F.2d 956 (4th Cir.1971) (fingerprints on a matchbook used to jam lock on a door leading to the burglarized building held insufficient because the prints could have been placed there months before the

burglary); United States v. Stephenson, 474 F.2d 1353, 1354 (5th Cir.1973) (evidence of defendant's fingerprints on the seized heroin envelopes was insufficient to convict because the prosecution introduced no evidence that his fingerprints were placed on the envelopes when they contained heroin); Borum, *supra* (defendant's fingerprints on jars inside a house that had been broken into and defendant's location within a mile and a half from the scene at the time the crime was committed were insufficient in absence of evidence which could support an inference that the fingerprints were placed on the jars during the commission of the crime).

The Lucca Court distinguished the above federal cases because they dealt with fingerprints on objects that were mobile and, thus, the fingerprints could have been more easily placed on the object at some time other than when the crime was committed. They also dealt with objects, such as a check or matchbook, which the defendant had access to and could have left fingerprints on prior to the crime. Lucca, 56 Wn. App. at 603.

Fingerprints on the mobile object of an automobile were at issue in Smith v State, 806 S.W.2d 391 (Ark.App. 1991). There, the evidence failed to support a conviction of theft by receiving a stolen automobile on

the theory of constructive possession. The only connection between Mr. Smith and the stolen car was that he grabbed the door handle¹, his fingerprints were on the window sill and the trunk, and he had relatives living in the area. The car was found parked on a city street, accessible to the general public. No one saw appellant in control of, or even inside, the vehicle. No keys to the locked vehicle were found in his possession. The State did not dispute that Mr. Smith's fingerprints were found only on the exterior of the car. Nor was there any proof connecting appellant to any contents of the car. "From our review of the record, we cannot conclude that there is any substantial evidence to support a finding that [Mr. Smith] had actual or constructive possession of the vehicle". Smith, 806 S.W.2d at 393. The conviction was reversed and dismissed. Id.

The facts in the present case are very similar to Smith and are close to those in the federal cases, distinguished by the Lucca Court, *supra*, dealing with mobile objects or objects which the defendant had access to and could have left fingerprints on prior to the crime. Mr. Diaz was not in actual possession of the car.

¹ While being observed by investigating officers responding to a prowler report. Smith, 806 S.W.2d at 392.

Nor does the evidence show that he was in constructive possession. Mr. Diaz' single fingerprint was found on the outside of a car. Police did not find Mr. Diaz in the area of the crime. RP 27. No one saw Mr. Diaz pushing the car from Welsch's driveway to a nearby location, nor was there any evidence that missing items were in his possession. Further, the State did not rule out the possibility that Mr. Diaz' fingerprint might have been impressed while the car was accessible to the public. There was evidence Mr. Welsch would park the car in his and friends' driveways and in store parking lots. RP 15–17. Any number of people, including the defendant, could have momentarily touched the vehicle. The State did not introduce any other evidence showing entry by Mr. Diaz into the car, to make it reasonable to conclude that he could only have made the fingerprint at the time of the alleged possession of a stolen car.

The State must show that the fingerprint could only have been impressed during the commission of the crime, and not earlier. Bridge, 91 Wn. App. at 100–01. This court should agree with the court in Mikes that " 'to allow this conviction to stand would be to hold that anyone who touches anything which is found later at the scene of a crime may be convicted' " of possession of stolen property. Bridge, 91 Wn. App. at 101, quoting Mikes, 947 F.2d at 361(quoting Borum, 380 F.2d at 597). The

evidence of a latent fingerprint absent proof by the State that the print could "only have been impressed at the time the crime was committed" is insufficient to support a conviction for possession of stolen property. Lucca, 56 Wn. App. at 599. Since the State failed to prove that Mr. Diaz was in actual or constructive possession of the car, the conviction must be reversed and dismissed. See Bridge, 91 Wn. App. at 101.

2. The order requiring that portions of earnings while in Department of Corrections custody be withheld and applied to legal financial obligations must be vacated where the court did not find—nor does the record support such a finding—that Mr. Diaz has the current or future ability to pay legal financial obligations.

Courts may require an indigent defendant to reimburse the state for the costs only if the defendant has the financial ability to do so. Fuller v. Oregon, 417 U.S. 40, 47-48, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974); State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992); RCW 10.01.160(3); RCW 9.94A.760(2). To do otherwise would violate equal protection by imposing extra punishment on a defendant due to his or her poverty.

a. Relevant statutory authority. RCW 10.01.160(1) authorizes a superior court to "require a defendant to pay costs." These costs "shall be limited to expenses specially incurred by the state in prosecuting the

defendant.” RCW 10.01.160(2). In addition, “[t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them.” RCW 10.01.160(3). In determining the amount and method of payment of costs, *the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.*” RCW 10.01.160(3) (emphasis added).

RCW 9.94A.760(1) provides that upon a criminal conviction, a superior court “may order the payment of a legal financial obligation.” A court-ordered legal financial obligation [hereafter, “LFO”] may include the costs of incarceration (prison and/or county jail) and medical care incurred in a county jail. RCW 9.94A.760; RCW 10.01.160; RCW 70.48.130; *see also* RCW 9.94A.030(30).

b. There is no evidence in the record to support a finding that Mr. Diaz had the present or future ability to pay legal financial obligations. Curry concluded that while the ability to pay was a necessary threshold to the imposition of costs, a court need not make a specific finding of ability to pay; “[n]either the statute nor the constitution requires a trial court to enter formal, specific findings regarding a defendant's ability to pay court costs.” 118 Wn.2d at 916. Curry recognized, however, that both RCW

10.01.160 and the federal constitution "direct [a court] to consider ability to pay." Id. at 915-16.

Here, the court made no express and formal finding that Mr. Diaz had the present ability or likely future ability to pay LFOs. *See* CP 38 at ¶ 2.5. However, the finding is implied where the court ordered that up to \$50 per month be withheld from his earnings while in Department of Corrections custody and applied towards his LFOs. CP 39, ¶ 4.1. Whether a finding is expressed or implied, it must have support in the record. A trial court's findings of fact must be supported by substantial evidence. State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006) (citing Nordstrom Credit, Inc. v. Dep't of Revenue, 120 Wn.2d 935, 939, 845 P.2d 1331 (1993)). The trial court's determination "as to the defendant's resources and ability to pay is essentially factual and should be reviewed under the clearly erroneous standard." State v. Bertrand, 165 Wn. App. 393, 267 P.3d 511, 517 fn.13 (2011), citing State v. Baldwin, 63 Wn. App. 303, 312, 818 P.2d 1116, 837 P.2d 646 (1991).

"Although Baldwin does not require formal findings of fact about a defendant's present or future ability to pay LFOs, the record must be sufficient for [the appellate court] to review whether 'the trial court judge took into account the financial resources of the defendant and the nature of

the burden imposed by LFOs under the clearly erroneous standard (bracketed material added) (internal citation omitted).” Bertrand, 165 Wn. App. 393, 267 P.3d at 517, citing Baldwin, 63 Wn. App. at 312. A finding that is unsupported in the record must be stricken. Bertrand, 165 Wn. App. 393, 267 P.3d at 517.

The record here does not show that the trial court took into account Mr. Diaz’ financial resources and the nature of the burden of imposing LFOs. Nor does the record contain any evidence to support the implied finding in ¶ 4.1 that Mr. Diaz has the present or future ability to pay LFOs *and* at the required rate of up to \$50 per month from his earnings while in DOC custody. The implied finding is therefore clearly erroneous, and the trial court’s order requiring withholding must be stricken from the Judgment and Sentence. Bertrand, 165 Wn. App. 393, 267 P.3d at 517.

c. The remedy is to strike the unsupported implied finding and to vacate the withholding order. Bertrand is clear: where there is no evidence to support the trial court’s findings regarding ability and means to pay, the findings must be stricken. The State may argue that the issue is somehow “moot” because it is unknown at this time whether money is being withheld from Mr. Diaz’ earnings. However, Mr. Diaz does not challenge

the *imposition* of the LFOs or the authority of a sentencing court to authorize withholding of money from his DOC account. Rather, the trial court made an implied finding that he has the present or future ability to pay LFOs, and since there is no evidence in the record to support the finding, the implied finding must be stricken as clearly erroneous, and the order that is based upon it vacated. *See Bertrand*, 165 Wn. App. 393, 267 P.3d at 517.

The reversal of the trial court's order at ¶ 4.1 simply forecloses the ability of the Department of Corrections to begin collecting LFOs from Mr. Diaz until after a future determination of his ability to pay. It is at a future time when the government seeks to collect the obligation that “ ‘[t]he defendant may petition the court at any time for remission or modification of the payments on [the basis of manifest hardship]. Through this procedure the defendant is entitled to *judicial scrutiny* of his obligation and *his present ability to pay at the relevant time.*’ ” *Bertrand*, 165 Wn. App. at 405, citing *Baldwin*, 63 Wn. App. at 310–11, 818 P.2d 1116, 837 P.2d 646 (citing court adding emphasis and omitting footnote).

Since the record does not support the trial court's implied finding that Mr. Diaz has or will have the ability to pay his LFOs when and if the State attempts to collect them, the finding is clearly erroneous and the

order premised upon it must be vacated. See Bertrand, 165 Wn. App. 393, 267 P.3d at 517.

D. CONCLUSION

For the reasons stated, the conviction must be reversed and dismissed with prejudice. Alternatively, the order allowing the withholding of money premised upon the implied finding of ability to pay legal financial obligations must be vacated.

Respectfully submitted on June 8, 2012.

s/Susan Marie Gasch, WSBA #16485
Gasch Law Office
P.O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
FAX: None
gaschlaw@msn.com

PROOF OF SERVICE (RAP 18.5(b))

I, Susan Marie Gasch, do hereby certify under penalty of perjury that on June 8, 2012, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of brief of appellant:

Juan Angel Diaz (#353264)
Coyote Ridge Corrections Center
P. O. Box 769
Connell WA 99326-0769

E-mail: prosecuting@co.benton.wa.us
Andrew Kelvin Miller
Benton County Prosecutors Office
7122 W. Okanogan Place, Bldg. A
Kennewick WA 99336-2359

s/Susan Marie Gasch, WSBA #16485