



No. 30717-4-III

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

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STATE OF WASHINGTON,

Respondent

v.

CHARLES MOE,

Appellant.

**FILED**

Aug 9, 2012

Court of Appeals  
Division III  
State of Washington

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR YAKIMA COUNTY

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APPELLANT'S OPENING BRIEF

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## INTRODUCTION

Charles Moe was convicted of second-degree assault and indecent exposure against A.M., his younger brother. A.M. testified unequivocally that the alleged assault occurred during the month of July 2011, and no other evidence indicated that the incident had occurred at any other time. But Mr. Moe had an irrefutable alibi for the entire month of July 2011. Despite this fact, the trial court convicted him of the assault, finding—without any evidentiary support—that the assault could have occurred at some other time. In so doing, the trial court violated Mr. Moe's constitutional right to present a defense.

The trial court also convicted Mr. Moe of indecent exposure to a child under the age of 14, even though the evidence did not establish that Mr. Moe ever exposed his genitals during the incident, and the evidence affirmatively established that even if Mr. Moe had so exposed himself, A.M. never saw it. Consistent with prior decisions of Washington courts, the trial court was required to find that both of these things occurred, yet it convicted Mr. Moe without finding that either of them had happened. This conviction was therefore based on insufficient evidence.

Finally, the court ordered Mr. Moe to pay an attorney's fee assessment without conducting a statutorily required inquiry into his

ability to pay. For these reasons, Mr. Moe's convictions must be reversed, and if they are not, the cost assessment must be vacated.

#### **ASSIGNMENTS OF ERROR**

1. The trial court erred in entering Finding of Fact 9, finding that the alleged assault had occurred during the summer of 2011 but not in the month of July.

2. The trial court erred in relying on a date other than that fixed by the evidence in order to convict Mr. Moe of assault.

3. Mr. Moe's conviction for indecent exposure was not supported by sufficient evidence to establish the elements of the crime.

4. The trial court erred in ordering Mr. Moe to pay attorney costs without inquiring into his ability to pay.

#### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. When the date on which an offense allegedly occurred is fixed by the trial evidence, and the defendant presents an alibi defense based on that evidence, the defendant's constitutional right to present a defense requires that the verdict be based on a finding that the offense occurred on the date or dates fixed by the evidence. The alleged victim in this case definitively fixed the date of the alleged assault as sometime within the month of July 2011, and no other evidence established the date of the

incident in question. Mr. Moe presented an alibi showing that he could not have committed the act during that month. The trial court accepted Mr. Moe's alibi but held that the offense could have occurred at some time other than that fixed by the evidence, and convicted Mr. Moe on that basis. By doing so, did the trial court deprive Mr. Moe of his constitutional right to present a defense? (Assignments of Error 1, 2.)

2. A conviction for indecent exposure requires the defendant to have exposed his genitals. Did the trial court err in holding that no genital exposure was necessary and convicting Mr. Moe of indecent exposure, despite a lack of evidence that he had exposed his genitals during the incident? (Assignment of Error 3.)

3. A conviction for indecent exposure as a gross, rather than simple, misdemeanor requires the State to prove that a child under the age of 14 observed the defendant's exposed genitals. Did the trial court err in convicting Mr. Moe of gross misdemeanor indecent exposure despite a lack of evidence that any child under the age of 14 ever saw Mr. Moe's genitals? (Assignment of Error 3.)

4. A court may only order a juvenile defendant to pay costs, including attorney's fees, if the court first inquires into the juvenile's ability to pay. Did the trial court err in ordering Mr. Moe to pay costs

without inquiring into whether he had the present or future ability to pay?

(Assignment of Error 4.)

#### STATEMENT OF THE CASE

In December 2011, A.M., then 13 years old, disclosed to his parents two incidents that he claimed had happened during the prior summer between him and his older brother, Charles Moe. 1RP 68-71, 76, 91-92.<sup>1</sup> A.M. claimed that during one of these incidents, Mr. Moe and A.M. had been alone in the laundry room of their home, and that Mr. Moe displayed their father's sheathed hunting knife and said that he wanted to cut off A.M.'s penis. 1RP 84-91. A.M. testified that the incident made him feel scared, but he thought Mr. Moe looked like he was only playing a joke. 1RP 100-06. He also testified that after he told Mr. Moe that the joke wasn't funny, Mr. Moe immediately apologized and promised not to do it again. 1RP 103.

A.M. testified that the other incident occurred while he, Mr. Moe, and some of their nieces and nephews were playing in the pool at their home. 1RP 93. A.M. claimed that Mr. Moe pulled down his pants and that A.M. and the other children saw Mr. Moe's bare buttocks. 1RP 93-96.

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<sup>1</sup> The Verbatim Report of Proceedings consists of two separately paginated volumes. The first volume, containing the proceedings of March 9 and March 12, 2012, is cited in this brief as "1RP." The second volume, containing the proceedings of April 24 and May 3, 2012, is cited as "2RP."

A.M. testified that Mr. Moe was turned away from him and the other children during the incident, so that they could see his buttocks but not his penis. 1RP 94.

Based on these allegations, the State charged Mr. Moe, at the time a juvenile, with one count of second-degree assault and one count of indecent exposure to a child under the age of 14. CP 18. At Mr. Moe's bench trial, his parents both testified about A.M.'s demeanor when he disclosed the incidents to them, as well as the timing of the disclosures. 1RP 63-77. Neither parent claimed to have any knowledge of when the incidents had actually happened, nor did they testify about when A.M. claimed that the incidents had happened. *Id.*

A.M. testified about the incidents as described above. In addition, he claimed that the alleged assault had occurred sometime in July 2011, shortly after July 4th. 1RP 90-91. He testified that the incident in the swimming pool had occurred at about the same time. 1RP 93. He also testified about the time period when he disclosed the incidents to his parents, and his testimony—that he had told them in December 2011, sometime before Christmas—was consistent with the testimony of both of his parents. 1RP 68, 76, 91.

After A.M. testified, Mr. Moe presented evidence that he had been incarcerated from June 30 to August 8, 2011.<sup>2</sup> Mr. Moe did not present any other evidence on his own behalf.

The trial court acknowledged Mr. Moe's alibi, stating that there was "no debate" that "he was in custody through the entire month of July." RP 124; *see also* CP 20-22, Findings of Fact (FF) 2, 5. But the court convicted him of assault anyway, finding A.M. credible as to the details of the incident but not as to its timing. 2RP 21-22; FF 5; CP 22-23, Conclusions of Law (COL) 1-2. The court did not identify any evidence, nor did any exist in the record before it, to suggest that the incident had occurred in the summer of 2011 but not in July of that year.

The court also convicted Mr. Moe of indecent exposure, holding that exposure of the buttocks satisfied the statutory requirements for a conviction, and that the State did not need to prove genital exposure. 1RP 127; FF 27-28; COL 11-14. The court sentenced Mr. Moe to 25 weeks of incarceration, a \$100 "Victims of Crime Penalty Assessment," and a \$25

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<sup>2</sup> This evidence was presented by Mr. Moe's probation officer, a Ms. Fluegge, and is reflected in the trial court's oral pronouncement of the judgment. 1RP 124. However, Ms. Fluegge's testimony from the adjudicatory portion of the trial is missing from the official record. *See* 1RP 108 (noting that a several-minute section of the audio recording of the proceeding is missing). However, given the court's clear holding as to the source and content of this information, as well as its formal finding of fact that Mr. Moe was incarcerated from June 30 to August 8, 2011, CP 20, this gap in the record need not affect this Court's consideration of the matter. *See also* 1RP 129 (noting during the sentencing hearing, held the same day as the adjudicatory hearing, that "Ms. Fluegge has been here almost the entire time"), 145 (recalling Ms. Fluegge to the stand for the sentencing hearing with the court's admonition that "[y]ou're still under oath from this morning").

"Court Appointed Attorney Recoupment." CP 10-14. Mr. Moe now appeals both of the convictions as well as the \$25 attorney's fee assessment.

### ARGUMENT

- I. **The Court's finding that the alleged assault occurred on a date outside that fixed by the evidence wrongly deprived Mr. Moe of his alibi defense.**

In general, the State does not need to allege or prove precisely when a crime occurred. But certain circumstances may limit the State's ability to rely on vague allegations as to timing:

We have adhered to the rule that, when a precise time is fixed by the evidence, as is the usual case, and the defense is alibi, then the time element becomes a material one and the jury must be instructed that a verdict of guilt must be buttoned to the exact time as fixed by the evidence.

*State v. Pitts*, 62 Wn.2d 294, 297, 382 P.2d 508 (1963) (collecting cases).

This requirement stems from a criminal defendant's right to present a defense, which is protected by both the state and federal constitutions.

*State v. Maupin*, 128 Wn.2d 918, 924-28, 913 P.2d 808 (1996);

*Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967) ("The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense . . . . This right is a fundamental element of due process of law.");

Const. art. I § 22; U.S. Const. amend. VI; U.S. Const. amend. XIV. Thus, in a case where the evidence fixes the alleged date of an offense, it is reversible error for the State to rely on a broader range of dates if doing so deprives the defendant of the ability to substantiate an alibi defense. *State v. Brown*, 35 Wn.2d 379, 382-83, 213 P.2d 305 (1949); *State v. Severns*, 13 Wn.2d 542, 560-61, 125 P.2d 659 (1942).

In *Brown*, the State attempted to prove that the defendant had committed a crime in Spokane on October 15, 1947. 35 Wn.2d at 381. The defendant offered evidence indicating that he had been in San Francisco on that date, including checks cashed by him in San Francisco on both October 14th and October 16th. *Id.* at 381-82. The State then claimed during closing argument that the precise date on which the offense occurred was immaterial, because the to-convict instruction simply asked the jury to determine whether the offense had occurred "on or about" October 15th. *Id.* at 382.

The Washington Supreme Court reversed the defendant's conviction, holding that this instruction "was erroneous and prejudicial." *Id.* at 383. The Court noted that because the State's evidence fixing the date as October 15th was the basis of the alibi, the State's subsequent reliance on a date outside that fixed by the evidence wrongly deprived the defendant of his defense. *Id.* at 382-83.

The key inquiry in such a case is whether the defendant was deprived of the alibi defense. For example, in *Pitts*, the Washington Supreme Court upheld a conviction that rested on an imprecise date, even though the defendant had claimed an alibi. The evidence in *Pitts* indicated that the criminal act had occurred on one of three consecutive days, though the date could not be fixed more specifically. 62 Wn.2d at 298. The defendant claimed an alibi as to all three days. *Id.* at 300. The Court held that even though the State had relied on an imprecise date, and even though the defendant had claimed an alibi, the defendant's constitutional right to present a defense was not violated, because the purported alibi spanned the entire period in question. *Id.* Thus, the defendant's subsequent conviction did not indicate that he had been deprived of his alibi defense—it merely indicated that the jury had not believed the alibi. *Id.*

In this case, on the other hand, the trial court's reliance on a date outside that fixed by the evidence did deprive Mr. Moe of his alibi defense. First, the evidence fixed the time of the alleged assault. A.M. testified unequivocally that the alleged assault occurred in July 2011, sometime shortly after July 4th. 1RP 90-91; FF 5. This was the only evidence introduced as to the date of the alleged assault. No other witnesses testified to the specific date, or even the general time period,

when these events happened. The evidence thus fixed the date of the alleged assault as sometime in July 2011.

Second, based on this testimony regarding the date of the alleged assault, Mr. Moe offered an alibi defense, presenting uncontroverted evidence that he was incarcerated during the entire month of July 2011. He therefore could not have committed any assault against A.M. during the time period fixed by the evidence. Thus, under *Pitts, Brown*, and the cases cited therein, the date on which the assault allegedly occurred was material to a conviction.

Because the date was material, the trial court was required to find that the assault had occurred during the time fixed by the evidence—sometime in July 2011—in order to convict Mr. Moe. *E.g., Pitts*, 62 Wn.2d at 297; *Brown*, 35 Wn. 2d at 383; *Severns*, 13 Wn.2d at 560-61. The trial court believed Mr. Moe's alibi, acknowledging that because of his incarceration, the date cited by A.M. could not have been accurate. IRP 124; FF 2, 5. Yet the court convicted Mr. Moe anyway, based upon its finding that the offense must simply have occurred on some date other than that fixed by the evidence. IRP 124; 2RP 21-22; FF 5; COL 1-2.

This finding departed from the evidence and wrongly deprived Mr. Moe of his alibi defense. And as in *Brown*, that error requires reversing the resulting conviction.

**II. The State failed to prove that Mr. Moe committed the gross misdemeanor of indecent exposure.**

The State bears the burden of proving each element of a criminal offense beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Evidence is sufficient to support a conviction only if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A criminal conviction that is based upon insufficient evidence violates the defendant's fundamental right to due process of law and must be reversed. *City of Seattle v. Slack*, 113 Wn.2d 850, 859, 784 P.2d 494 (1989); U.S. Const. amend. XIV; Const. art. I, § 3. Moreover, both the state and federal constitutional guarantees against double jeopardy prohibit a second prosecution for the same offense after a reversal for lack of sufficient evidence. *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) (citing *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969)); Const. art. I § 9; U.S. Const. amend. V. Thus, when a

conviction is reversed for lack of sufficient evidence, the appropriate remedy is dismissal of the charge with prejudice.

- a. **The trial court did not find that Mr. Moe exposed his genitals, as required to convict a defendant of indecent exposure, and the State did not present sufficient evidence to support such a finding.**

RCW 9A.88.010(1) provides that "[a] person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm." The offense is elevated from a simple misdemeanor to a gross misdemeanor "if the person exposes himself or herself to a person under the age of fourteen years." RCW 9A.88.010(2)(b). Mr. Moe was convicted of a gross misdemeanor under the latter provision. See CP 10 §§ 2.1, 2.3 (noting an offense score of "D+" for the indecent-exposure conviction); RCW 13.40.0357 (noting that the offense score for indecent exposure is "D+" only if the victim is under 14 years old); CP 18.

"Indecent or obscene exposure of his person" means "a lascivious exhibition of those *private parts* of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others." *State v. Galbreath*, 69 Wn.2d 664, 668,

419 P.2d 800 (1966) (emphasis added). "Private parts," in turn, means  
genitals:

It [is] not necessary that the term "private parts" be further defined. The term is generally understood as a commonplace designation of the genital procreative organs. . . . "It is hornbook law that, whenever and wherever the terms 'privates' or 'private parts' are used as descriptive of a part of the human body, they refer to the genital organs. Every dictionary so defines them."

*State v. Dennison*, 72 Wn.2d 842, 846, 435 P.2d 526 (1967) (quoting *State v. Moore*, 194 Or. 232, 240, 241 P.2d 455 (1952), *abrogated on other grounds by State v. Walters*, 311 Or. 80, 85 n.8, 804 P.2d 1164 (1991));

*State v. Vars*, 157 Wn. App. 482, 491, 237 P.3d 378 (2010)

(acknowledging that "RCW 9A.88.010 requires an exposure of genitalia in the presence of another"). So limited, the indecent exposure statute is not unconstitutionally vague. *Galbreath*, 69 Wn.2d at 668.

Washington's construction of "exposure of his or her person" to mean genital exposure is consistent with and derived from common law. "The Legislature is presumed to be aware of the common law, and a statute will not be construed in derogation of the common law unless the legislature has clearly expressed that purpose." *Hansen v. Virginia Mason Medical Center*, 113 Wn. App. 199, 205, 53 P.3d 60 (2002) (internal citation omitted). Moreover, the Legislature has mandated:

The provisions of the common law relating to the commission of crime and the punishment thereof, insofar as not inconsistent with the Constitution and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the court of this state having jurisdiction of the offense.

RCW 9A.04.060.

At common law, "exposure of his person" meant genital exposure, because in that context, "person" was a euphemism for "penis." *Duvallon v. District of Columbia*, 515 A.2d 724, 727 (D.C. Ct. App. 1986). The court in *Duvallon* interpreted and applied a statute that, like Washington's, prohibits the obscene "exposure of his or her person." *Id.* at 725 (citing D.C. Code § 22-1112(a) (1981)). The court surveyed the history of the offense and found that "English common law cases compel the conclusion that indecent exposure was limited to the exposure of genitals." *Id.* at 726. In further noting that "American common law cases are in accord with those of England," the court cited both the Washington Supreme Court's decision in *Dennison* and the Oregon Supreme Court's decision in *Moore*.

Other states agree. The Massachusetts Supreme Court, for example, recognizes that "[t]he exposure of genitalia has been defined by judicial interpretation as an essential element of the offense of indecent exposure." *Commonwealth v. Quinn*, 439 Mass. 492, 494, 789 N.E.2d 138 (2003). The court collected cases and legislation from multiple states to

show that in "[a]lmost all jurisdictions ... the exposure of genitalia is either expressly proscribed in the statute or judicially required for conviction of that offense." *Id.* at 497 n.10.

The California Court of Appeals reached the same conclusion in *People v. Massicot*, 97 Cal. App. 4th 920, 118 Cal. Rptr. 2d 705 (2002). Interpreting California's broader statute, which prohibits exposure of the "person or the private parts thereof," the court reversed an indecent-exposure conviction for failure to prove that the defendant displayed his naked genitals. *Id.* at 922, 924. The court recognized that statutes are presumed to codify common law and "the common law offense of indecent exposure requires display of the genitals." *Id.* at 928. Because the State had not proved genital exposure, the court reversed the defendant's conviction. *Id.* at 922.

The evidence in Mr. Moe's case did not establish that he ever exposed his genitals. The trial court thought that it did not need to find that any genital exposure had occurred, and did not make any such finding. IRP 127 ("I know of no case law or statute that requires that the exposure be frontal in nature; it doesn't have to be a penis. I don't know why it can't be the bare bottom of a person."); FF 27-28; COL 11-14. "In the absence of a finding on a factual issue we must indulge the presumption that the party with the burden of proof failed to sustain their burden on this issue."

*State v. Armenta*, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997). Indeed, by expressing its view that genital exposure was unnecessary to an indecent-exposure conviction, the trial court implicitly found that no such exposure had occurred. Accordingly, Mr. Moe's indecent-exposure conviction must be reversed and the charge dismissed with prejudice.

**b. The trial court did not find, and the State failed to prove, that any person under 14 years old saw Mr. Moe's genitals.**

As discussed above, the State failed to prove that Mr. Moe exposed his "person." This alone constitutes a sufficient basis for reversal. But the State also failed to prove the remaining portion of the offense as charged—exposure to a person under the age of 14.

The plain language of the statute requires that for the gross misdemeanor conviction obtained here, the defendant must have "expose[d] himself or herself to a person under the age of fourteen." RCW 9A.88.010(2)(b). As described above, this exposure must be of the genitals, not merely of the buttocks or another part of the body. This Court has held, under the materially identical language of former RCW 9.79.080, that such a conviction cannot stand unless a child under 14 actually saw the exposed genitals. *State v. Bunch*, 2 Wn. App. 189, 190, 467 P.2d 212 (1970) ("The state must prove as a constituent element of the crime

charged that there was an actual physical exposure of the defendant's private parts seen by the child involved.").

Here, not only is there no evidence that any child under 14 actually saw Mr. Moe's genitals, but A.M.'s testimony affirmatively establishes that he did not see anything other than Mr. Moe's buttocks. 1RP 93-99. A.M. testified that during the incident, he and the other children "didn't see [Mr. Moe's] private part but we saw his other part on the backside." 1RP 94. A.M. went on to describe the incident in terms that clearly demonstrate that he understood the difference between buttocks and genitals, and that he saw only Mr. Moe's buttocks. 1RP 94-99. Thus, even if the evidence had been sufficient to establish that Mr. Moe in fact exposed his genitals at all, it still was not sufficient to establish that any child under the age of 14 saw the exposed genitals. The conviction therefore must be reversed.

**III. The Court imposed a cost assessment without inquiring into Mr. Moe's ability to pay.**

RCW 13.40.145 provides the sole authorization for a juvenile court to assess attorney's fees. RCW 13.04.450 ("The provisions of chapters 13.04 and 13.40 RCW . . . shall be the exclusive authority for the adjudication and disposition of juvenile offenders except where otherwise expressly provided."). The statute allows a court to order a convicted juvenile "to pay a reasonable sum representing in whole or in part the fees

for legal services provided by publicly funded counsel." RCW 13.40.145. However, before ordering payment of such costs, the court must inquire into the juvenile's ability to pay. *Id.* ("If, after hearing, the court finds the juvenile, parent, or other legally obligated person able to pay part or all of the attorney's fees and costs incurred on appeal, the court may enter such order or decree as is equitable . . ."). Here, the court ordered Mr. Moe to pay \$25 in attorney's fees without ever inquiring into his ability to pay. CP 24-27, 13; IRP 176. Because the statute requires a court to make such an inquiry before imposing attorney's fees, this portion of the trial court's order was in error. Therefore, even if this Court upholds one or both of Mr. Moe's convictions, the \$25 cost assessment must be vacated.

#### CONCLUSION

By relying on a date outside that fixed by the evidence in order to undermine Mr. Moe's alibi, the trial court violated Mr. Moe's constitutional right to present a defense. The court also convicted Mr. Moe of indecent exposure based on legally insufficient evidence. And the court ordered Mr. Moe to pay a cost assessment without inquiring into his ability to pay, violating the court's statutory obligation. Therefore, Mr. Moe respectfully asks this Court to reverse his convictions, or alternatively, to vacate the \$25 cost assessment against him.

DATED this 9th day of August, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rabi Lahiri', written in a cursive style.

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Rabi Lahiri, WSBA #44214  
Washington Appellate Project  
Attorney for Appellant

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

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 30717-4-III
	)	
CHARLES M.,	)	
	)	
JUVENILE APPELLANT.	)	

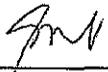
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**AMENDED DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 9<sup>TH</sup> DAY OF AUGUST, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |     |   |                   |  |
|-----|---|-------------------|--|
| [X] | JAMES HAGARTY, DPA<br>KEVIN EILMES, DPA<br>YAKIMA CO PROSECUTOR'S OFFICE<br>128 N 2 <sup>ND</sup> STREET, ROOM 211<br>YAKIMA, WA 98901-2639 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____  |
| [X] | CHARLES M. (APPELLANT)<br>(NO VALID ADDRESS)<br>C/O COUNSEL FOR APPELLANT<br>WASHINGTON APPELLATE PROJECT                                   | ( )<br>( )<br>(X) | U.S. MAIL<br>HAND DELIVERY<br>RETAINED FOR<br>MAILING ONCE<br>ADDRESS OBTAINED |

**SIGNED** IN SEATTLE, WASHINGTON THIS 9<sup>TH</sup> DAY OF AUGUST, 2012.

X \_\_\_\_\_ 

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

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 30717-4-III
	)	
CHARLES M.,	)	
	)	
JUVENILE APPELLANT.	)	

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**SUPPLEMENTAL DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 9<sup>TH</sup> DAY OF AUGUST, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> CHARLES M. 1210 S 72 <sup>ND</sup> AVE APT H-74 YAKIMA, WA 98908	(X) ( ) ( )	U.S. MAIL HAND DELIVERY <hr style="width: 100%;"/>
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**SIGNED** IN SEATTLE, WASHINGTON THIS 9<sup>TH</sup> DAY OF AUGUST, 2012.

X \_\_\_\_\_ 

CC: JAMES HAGARTY, DPA  
KEVIN EILMES, DPA  
YAKIMA COUNTY