

FILED
JAN 28, 2013
Court of Appeals
Division III
State of Washington

NO. 31137-6-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

CORY LEE LANE,

Defendant/Appellant.

APPELLANT'S BRIEF

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ASSIGNMENTS OF ERROR

1. Cory Lee Lane was denied due process and a fair trial as a result of instructional error and inaccurate charging language in Count II of the Second Amended Information. (CP 135)
2. The trial court miscalculated Mr. Lane's offender score.

ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Does the charging language of Count II in the Second Amended Information accurately define the offense of failure to register as a sex offender?
2. Did a variance in the instructions relating to failure to register as a sex offender deprive Mr. Lane of due process and a constitutionally fair trial under the Fourteenth Amendment to the United States Constitution and Const. art. I, §§ 3 and 22?
3. Did the State prove that Mr. Lane's offender score is nine (9)?

STATEMENT OF CASE

Roxanne Perry lives at 2044 Driskill Road in Newport, Washington. She owns that property. (RP 320, ll. 15-23)

Mr. Lane is a friend of Ms. Perry's. He is also a close friend of her former significant other, Dean Buck. He regularly visited with them at the Driskill Road address during the summer of 2010. (RP 111, l. 14; RP 437, l. 8 to RP 438, l. 17; RP 440, ll. 9-25)

Ms. Perry obtained a restraining order against Mr. Buck. Mr. Lane helped Mr. Buck move out of the Driskill Road residence. (RP 124, ll. 20-24; RP 126, ll. 15-21)

Mr. Lane continued to come to Newport to visit Ms. Perry. He helped repair the roofs on her outbuildings. He picked up Mr. Buck's tools and took them to him. (RP 445, ll. 5-23)

Mr. Lane would occasionally stay overnight at Ms. Perry's. He would take her boys to school in the morning. Neighbors periodically observed Mr. Lane driving to and from the Perry home. (RP 110, ll. 11-16; RP 115, ll. 4-12; RP 137, l. 18 to RP 138, l. 1; RP 258, ll. 7-13; RP 260, ll. 13-17; RP 265, ll. 16-17; RP 266, ll. 15-20; RP 268, ll. 23-24; RP 272, ll. 1-10; RP 279, ll. 17-23; RP 281, ll. 1-9; ll. 11-17; RP 281, l. 25 to RP 282, l. 1)

Mr. Lane is a registered sex offender in Spokane County. He has lived at 2819 North Madison since 2009. This is his parents home. He

has his own bedroom and bathroom. (RP 343, ll. 18-20; RP 345, ll. 1-9; RP 386, ll. 3-11; ll. 15-20; RP 429, ll. 6-10; RP 429, l. 22 to RP 430, l. 2)

Mr. Lane receives all of his mail at the Spokane address. On only one (1) occasion did a letter arrive for him at Ms. Perry's address. It was a letter from DSHS Support Enforcement. It arrived after he was arrested. (RP 210, l. 25 to RP 211, l. 3; RP 237, l. 13 to RP 238, l. 24; RP 386, ll. 12-14)

Mr. Lane works for Premier Roofing in Spokane Valley. The work is seasonal. During the winter of 2010 - 11 he helped Ms. Perry with roof repairs. He did not stay longer than one (1) week at a time. (RP 127, ll. 19-22; RP 209, ll. 2-9; ll. 11-21; RP 389, ll. 1-10; RP 431, l. 23 to RP 432, l. 13; RP 433, ll. 21-22; RP 449, ll. 21-24; RP 450, ll. 5-9)

Mr. Lane denies living in Pend Orielle County. He is not registered as a sex offender in Pend Orielle County. (RP 249, ll. 12-14; RP 316, l. 8 to RP 317, l. 17; RP 456, ll. 9-14)

Mr. Lane is not entitled to own, possess or control a firearm. Ms. Perry had a number of firearms at her residence. She traded those firearms to Joel Mejia. One (1) of the firearms was a .357. (CP 108; RP 96, ll. 1-24; RP 98, ll. 20-24; RP 99, l. 20 to RP 100, l. 2)

Travis Buck, Ms. Perry's twelve (12) year-old son, observed Mr. Lane shoot the .357 at a little target range. He also saw him shoot it to bring his dog home. (CP 68; RP 109, ll. 12-13; RP 116, ll. 12-14; ll. 17-24)

Levi Buck, Ms. Perry's fourteen (14) year-old son, and Patrina Carvell, a neighbor, also saw Mr. Lane shoot the gun in the air to get the dog to return home. (CP 68; RP 136, l. 24 to RP 137, l. 1; RP 138, ll. 18-21; RP 284, ll. 1-25; RP 285, l. 23 to RP 286, l. 2)

Ms. Perry asked Mr. Lane to show her how to use the gun. He handled it when he loaded it and also fired it. She denied that Mr. Lane ever used the gun to get the dog to come back home. (RP 165, ll. 3-5; RP 187, ll. 13-22; RP 189, ll. 3-11)

Mr. Lane admitted that Ms. Perry asked him to show her how to use the .357. However, he denied handling it. (RP 449, ll. 3-6; RP 477, ll. 1-5; ll. 14-22)

A search warrant was obtained for Ms. Perry's residence. During the search men's clothing, along with a man's electric razor and a box of men's watches labeled "To Cory," was located. There was also paperwork with Mr. Lane's name on it, including a pawn receipt listing Mr. Lane's address in Spokane. (RP 294, ll. 2-7; RP 296, ll. 6-7; RP 297, ll. 11-12; ll. 22-24; RP 298, ll. 10-14; RP 299, ll. 24-25; RP 335, ll. 2-8)

Mr. Lane denied that any of the clothing recovered at Ms. Perry's belonged to him. He also denied ever saying that Ms. Perry's was his "home." (RP 454, ll. 15-25; RP 471, ll. 14-17)

An Information was filed on June 30, 2011 charging Mr. Lane with unlawful possession of a firearm under Count I and failure to register as a sex offender under Count II. (CP 1)

Mr. Lane signed a number of waivers. Various continuances were granted until trial commenced on July 23, 2012. (CP 15; CP 16; CP 20; CP 21; CP 22; CP 23; CP 24; CP 25; CP 26; CP 27; CP 28; CP 29)

The State's Motion to Amend the Information to conform to the proof was granted on July 25, 2012. The Second Amended Information, under Count II, merely recites RCW 9A.44.130 without specification to any subsection. (CP 133)

The trial court and counsel conducted a considerable colloquy concerning the instructions for the offense of failure to register as a sex offender. Eventually, Instructions 11, 12 and 15 were submitted to the jury without objection. (CP 122; CP 123; CP 126; RP 501, l. 1 to RP 513, l. 22; RP 529, l. 10 to RP 532, l. 22; RP 585, l. 4 to RP 586, l. 19; RP 587, ll. 2-9; Appendix "A"; Appendix "B"; Appendix "C")

The jury found Mr. Lane guilty of both offenses. (CP 139; CP 140)

Judgment and Sentence was entered on September 13, 2012. The trial court calculated his offender score as a nine (9). The record does not reflect that certified copies of any Judgment and Sentence were presented to the Court. Mr. Lane filed his Notice of Appeal the same date. (CP 141; CP 152)

SUMMARY OF ARGUMENT

The Second Amended Information does not include all of the essential elements of the offense of failure to register as a sex offender.

Instructions 11, 12 and 15 misinformed the jury of the essential elements of failure to register as a sex offender. They also vary significantly from the charging language in Count II of the Second Amended Information.

The trial court miscalculated Mr. Lane's offender score.

ARGUMENT

A. DUE PROCESS

A criminal defendant is entitled to due process of the law. This includes a fair trial.

The Fourteenth Amendment to the United States Constitution provides, in part: "... No State ... shall ... deprive any person of life, liberty, or property, without due process of the law. ..."

Const. art. I, § 3 states: "No person shall be deprived of life, liberty, or property, without due process of law."

The State due process guarantee is carried over into Const. art. I, § 22 which provides, in part:

In criminal prosecutions the accused shall have the right ... to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed.

Moreover, Const. art. I, § 22 contains the essential elements rule.

The rule requires the State to properly inform a criminal defendant of the nature of the accusation against him/her.

Count II of the original Information states:

That the defendant, CORY LEE LANE, on or about or between November 1, 2010 and June 16, 2011, in Pend Orielle County, State of Washington, the above-named Defendant having been convicted on or about the 17th day of January 1992, of a sex offense that would be classified as a felony under the Laws of Washington ... and being required to register pursuant to RCW 9A.44.130 on or about or between November 1, 2010 and June 16, 2011, did knowingly fail to register with the county sheriffs for the counties in which the defendant resided

The original Information indicates that the charge is based upon RCW 9A.44.130(5)(b) and RCW 9A.44.132(1)(a).

Count II of the Second Amended Information reads as follows:

That the defendant, CORY LEE LANE, on or about or between May 1, 2010 and June 16, 2011, in Pend Orielle County, State of Washington, the above-named Defendant having been convicted ... of a sex offense that would be classified as a felony under the Laws of Washington ... and **being required to register pursuant to RCW 9A.44.130 on or about or between May 1, 2010 and June 16, 2011**, did knowingly fail

to register with the county sheriffs [*sic*] of
Pend Orielle County.

(Emphasis supplied.)

The charging language indicates that the offense is contrary to
RCW 9A.44.130 with no designation of any subsection.

RCW 9A.44.130 contains multiple subsections relating to various
means of violating the sex offender registration law.

RCW 9A.44.130(1)(a) provides, in part:

Any adult ... whether or not the person has a
fixed residence ... who has been found to
have committed or has been convicted of
any sex offense ... shall register with the
county sheriff for the county of the person's
residence

The word "residence" is not defined by statute. Instruction 15 pro-
vided two (2) definitions of the word "residence." It is a necessary defini-
tional instruction to aid the jury in interpreting and applying Instructions
11 and 12.

Instruction 11 defines failure to register as a sex offender. Instruc-
tion 12 is the to-convict instruction. Neither instruction appropriately de-
fines the offense as it existed for the entire charging period set forth in the
Second Amended Information.

LAWS OF 2010, ch. 267, § 2 became effective June 10, 2010. It is
codified as RCW 9A.44.130(5)(b) and provides, in part:

If any person required to register pursuant
to this section **moves to a new county, the**
person must register with that county

sheriff within three business days of moving. Within three business days, the person must also provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom the person last registered.

(Emphasis supplied.)

Instructions 11 and 12 deal with the sex offender registration law as it existed prior to June 10, 2010. Thus, as the offense is charged under Count II of the Second Amended Information, the only period of time applicable for the instructional language is May 1, 2010 to June 10, 2010.

The jury instructions do not correctly state the law for the charging period involved.

Jury instructions satisfy the fair trial requirement when, taken as a whole, they properly inform the jury of the law, are not misleading, and permit the parties to argue their theories of the case. If a trial court's decision about a jury instruction is based on a ruling of law, we review it *de novo*.

State v. Morgan, 123 Wn. App. 810, 814-15, 99 P.3d 411 (2004).

Mr. Lane contends that the jury instructions do not properly inform the jury of the law, are misleading, and deprived him of a fair and impartial trial.

As the *Morgan* court notes at 819: "A court must instruct the jury in a manner that requires the State to prove every essential element of the crime."

Mr. Lane was misinformed of the elements of the offense of failure to register as a sex offender. He was told that the elements involved the statute that was in effect prior to June 10, 2010.

An erroneous jury instruction that misstates the law is subject to a harmless error analysis. *State v. Thomas*, 150 Wn.2d 821, 844, 83 P.3d 970 (2004). **A misstatement of the law in a jury instruction is harmless if the element is supported by uncontroverted evidence.** ... The State bears the burden of showing that the error is harmless beyond a reasonable doubt.

State v. Peters, 163 Wn. App. 836, 850, 261 P.3d 199 (2011). (Emphasis supplied.)

The residency issue was hotly disputed. The evidence is not uncontroverted. Thus, the State must show that any error is harmless beyond a reasonable doubt.

In analyzing ... asserted constitutional ... error ... [w]e look to the asserted claim and assess whether, if correct, it implicates a constitutional interest as compared to another form of trial error. ...

After determining the error is of constitutional magnitude, the appellate court must determine whether the error was manifest. “‘Manifest’ in RAP 2.5(a)(3) requires a showing of actual prejudice.” *Kirkman* [*State v. Kirkman*, 159 Wn.2d 918, 155 P.3d 125 (2007)] at 935 (citing *State v. Walsh*, 143 Wn.2d 1, 8, 17 P.3d 591 (2001) To demonstrate actual prejudice, there must be a “‘plausible showing by the [appellant] that the asserted error had practical and identifiable consequences in the trial of the case.’” *Kirkman*, 159 Wn.2d at 935

State v. O'Hara, 167 Wn2d 91, 98-99, 217 P.3d 756 (2009).

Mr. Lane asserts that manifest error occurred in his case due to the combination of inartful charging language and erroneous jury instructions. The State was relieved of its burden of proof as to the essential elements of failure to register as a sex offender.

The *O'Hara* court then discussed what constitutes constitutional error. It stated at 100-101:

Having identified the manifest constitutional error test, it is next necessary to examine how to apply the manifest constitutional error exception to a ... jury instruction. Generally, unpreserved claims of error involving jury instructions are subject to an analysis of whether the error is manifest constitutional error. [Citations omitted.] Jury instructional errors that we have held constituted manifest constitutional error include directing of verdict [citation omitted]; shifting the burden of proof to the defendant [citation omitted]; failing to define the “beyond a reasonable doubt” standard [citation omitted]; failing to require a unanimous verdict [citation omitted]; and **omitting an element of the crime charged**, *State v. Johnson*, 100 Wn.2d 607, 623, 674 P.2d 145 (1983), *overruled on other grounds by State v. Bergeron*, 105 Wn.2d 1, 711 P.2d 1000 (1985).

(Emphasis supplied.)

It is Mr. Lane's position that the instructional error and inaccurate charging language omitted essential elements of the offense of failure to register as a sex offender. The State charged him under a prior enactment of RCW 9A.44.130. Because of the limited time frame within which that

prior enactment applies to Mr. Lane's offense, he submits that *State v. Aho*, 137 Wn2d 736, 975 P.2d 512 (1999) controls disposition of this issue.

In *Aho*, the defendant was charged with child molestation. Unfortunately for the State, the child molestation statute had not taken effect during the entire charging period which it had set forth in the Information.

The *Aho* court ruled at 744:

Under CONST. ART. I, § 22, a defendant has the right to be tried only for the offenses charged. *State v. Peterson*, 133 Wn.2d 885, 889, 948 P.2d 381 (1997) (subject to exceptions for lesser included and inferior degree offenses). ... **Because the jury did not identify when the acts that it found constituted the offenses occurred, it is possible that Aho has been illegally convicted based upon an act or acts occurring before the effective date of the ... statute.**

(Emphasis supplied.)

Under the facts and circumstances of Mr. Lane's case, he has been convicted of an offense that did not exist after June 9, 2010. His conviction must be reversed and dismissed.

B. OFFENDER SCORE

Mr. Lane was born on April 11, 1973. His date of birth is set forth on the Judgment and Sentence. The Judgment and Sentence lists the following criminal history:

	Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	<u>A or J</u> Adult, Juv.	Type of Crime	DV* Yes
1	Rape 2 attempt	10-19-90	2-28-91	Spokane, WA	J	F	
2	Burg 2	8-18-90	1-17-92	Spokane, WA	J	F	
3	Assault 3	8-18-90	1-17-92	Spokane, WA	A	F	
4	Attempt to Elude	5-25-93	2-4-94	Spokane, WA	A	F	
5	VUSCA-conspiracy	8-11-2000	10-30-2000	Spokane, WA	A	F	
6	Domestic Vio. NCOV's	12-24-03	8-4-04	Spokane, WA	A	F	
7	Cont sub	12-26-03	11-15-07	Spokane, WA	A	F	
8	VUSCA Conspiracy	5-12-03	8-4-04	Spokane, WA	A	F	
9	Assault 3		3-26-99	Spokane, WA	A	F	

Initially, the third degree assault conviction dated January 17, 1992 occurred when Mr. Lane was a juvenile. There is no indication in the record that he was tried as an adult. The Judgment and Sentence lists the third degree assault conviction as an adult conviction. It should count one-half (1/2) point as opposed to one (1) point.

Moreover, the third degree assault conviction washes out under the provisions of RCW 9.95A.525(1)(c) which states:

Except as provided in (e) of this subsection, class C prior felony convictions ... shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

Subsection (e) of RCW 9.95A.525(1) has no application to the facts and circumstances of Mr. Lane's case.

The third degree juvenile assault conviction was entered on January 17, 1992. His next conviction is attempting to elude a pursuing police vehicle on February 4, 1994. This is also a class C felony.

Between February 4, 1994 and March 26, 1999 the record does not reflect that Mr. Lane was convicted of another offense. On March 26, 1999 he was again convicted of third degree assault. However, the Judgment and Sentence does not reflect the date of the crime.

Thus, based on the record before the Court, more than five (5) years elapsed. Mr. Lane's first third degree assault conviction and the attempting to elude conviction wash out.

Mr. Lane was sentenced with an offender score of nine (9). The standard range sentence for unlawful possession of a firearm first degree, with an offender score of nine (9), is eighty-seven (87) to one hundred sixteen (116) months. (Appendix "D" - SRA Scoring Sheet for Unlawful Possession of a Firearm First Degree)

Mr. Lane contends that the correct calculation of his offender score is seven (7). The standard range sentence is thus sixty-seven (67) to eighty-nine (89) months.

At sentencing, the State bears the burden to prove the existence of prior convictions by a preponderance of the evidence ... It is the obligation of the State, not the defendant, to assure that the record before the sentencing

court supports the criminal history determination.

State v. Mendoza, 165 Wn.2d 913, 920, 205 P.3d 113 (2009).

The State failed to carry its burden of proof with regard to Mr. Lane's offender score. The record is devoid of any information concerning certified copies of any prior Judgment and Sentence.

Mr. Lane is not precluded from challenging the calculation of his offender score. As the *Mendoza* court noted at 528:

... [W]e have emphasized the need for an *affirmative* acknowledgement by the defendant of *facts and information* introduced for the purposes of sentencing. [Citations omitted.] The mere failure to object to a prosecutor's assertions of criminal history does not constitute such an acknowledgement. [Citation omitted.] Nor is a defendant deemed to have affirmatively acknowledged the prosecutor's asserted criminal history based on his agreement with the ultimate sentencing recommendation.

Mr. Lane's offender score will be seven (7) unless the Court agrees with his analysis concerning the failure to register as a sex offender. If that charge is dismissed then the offender score is six (6).

Mr. Lane recognizes that the State will have the opportunity to correctly calculate the offender score upon any remand. *See: State v. Mendoza, supra*, 930.

CONCLUSION

Mr. Lane's conviction for failure to register as a sex offender should be reversed and dismissed. His constitutional rights to due process and a fair trial were violated.

The trial court miscalculated his offender score. Mr. Lane is entitled to be resentenced.

DATED this 26th day of January, 2013.

Respectfully submitted,

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APPENDIX “A”

A person commits the crime of failure to register as a sex offender if the person has a duty to register for a felony sex offense and knowingly fails to notify the county sheriff in writing in the new county of residence at least 14 days prior to moving to such county and fails to register with such county within 24 hours of moving to such county.

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APPENDIX “B”

To convict the defendant of the crime of failure to register as a sex offender, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or between May 1, 2010 and June 16, 2011, the defendant has a duty to register as a sex offender;
- (2) That on or between May 1, 2010 and June 16, 2011, the defendant knowingly failed to comply with the requirement of sex offender registration;
 - (a) Failed to notify the Pend Oreille County Sheriff's Office in writing at least 14 days prior to moving his residence to the county; and
 - (b) Failed to register with the Pend Oreille County Sheriff's Office within 24 hours of moving his residence to Pend Oreille county.
- (3) That the acts occurred in the State of Washington

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

APPENDIX “C”

“Residence” is defined as personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, but not necessarily combined with design to stay permanently. “Residence” is also defined as a temporary or permanent dwelling place to which one intends to return, as distinguished from a place of temporary sojourn or transient visit.

APPENDIX “D”

UNLAWFUL POSSESSION OF A FIREARM FIRST DEGREE

RCW 9.41.040(1)
CLASS B – NONVIOLENT

OFFENDER SCORING RCW 9.94A.525(7)

If it was found that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2006, use the General Nonviolent Offense with a Sexual Motivation Finding scoring form on page 176.

If the present conviction is for a felony domestic violence offense where domestic violence was plead and proven, use the General Nonviolent Offense Where Domestic Violence Has Been Plead and Proven scoring form on page 174.

ADULT HISTORY:

Enter number of felony convictions x 1 = _____

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions x 1 = _____

Enter number of nonviolent felony dispositions x ½ = _____

OTHER CURRENT OFFENSES:

(Other current offenses that do not encompass the same conduct count in offender score)

Enter number of other felony convictions x 1 = _____

STATUS:

Was the offender on community custody on the date the current offense was committed? (if yes) + 1 = _____

Total the last column to get the **Offender Score** (Round down to the nearest whole number)

SENTENCE RANGE

		Offender Score									
		0	1	2	3	4	5	6	7	8	9+
LEVEL VII		17.5m	24m	30m	36m	42m	47.5m	66m	78m	89.5m	101.5m
		15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	57 - 75	67 - 89	77 - 102	87 - 116

- ✓ For attempt, solicitation, conspiracy (RCW 9.94A.595) see page 26 or for gang-related felonies where the court found the offender involved a minor (RCW 9.94A.833) see page 170 for standard range adjustments.
- ✓ For sentencing alternatives, see page 163.
- ✓ For community custody eligibility, see page 171.
- ✓ For any applicable enhancements other than deadly weapon enhancement, see page 168.
- ✓ Each firearm possessed under this section is a separate offense.
- ✓ The offender shall be sentenced according to RCW 9.94A.589(1)(c) if the offender is convicted of Unlawful Possession of a Firearm 1 or 2 (RCW 9.41.040) and for felonies Theft of a Firearm or Possession of a Stolen Firearm, or both, as current offenses.
- ✓ If the present conviction is for Unlawful Possession of a Firearm 1 or 2 and felonies Theft of a Firearm or Possession of a Stolen Firearm, or both, charged under RCW 9.41.040, other current convictions for Unlawful Possession of a Firearm 1 or 2, Possession of a Stolen Firearm or Theft of a Firearm may not be included in the computation of the offender score per RCW 9.94A.589(1)(c). The offender will serve consecutive sentences for these particular offenses.

The Caseload Forecast Council is not liable for errors or omissions in the manual, for sentences that may be inappropriately calculated as a result of a practitioner's or court's reliance on the manual, or for any other written or verbal information related to adult or juvenile sentencing. The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Caseload Forecast Council.

NO. 31137-6-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	PEND ORIELLE COUNTY
Plaintiff,)	NO. 11 1 00033 1
Respondent,)	
)	CERTIFICATE OF SERVICE
v.)	
)	
CORY LEE LANE,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 26th day of January, 2013, I caused a true and correct copy of the *APPELLANT'S BRIEF* to be served on:

Court of Appeals, Division III
Attn: Renee Townsley, Clerk
500 N Cedar St
Spokane, WA 99201

E-FILE

CERTIFICATE OF SERVICE

PEND ORIELLE COUNTY PROSECUTOR'S OFFICE U. S. MAIL
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COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff,
Respondent,

vs.

CORY LEE LANE,

Defendant,
Appellant.

ADDITIONAL STATEMENT OF AUTHORITIES

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COMES NOW, CORY LEE LANE, by and through the undersigned attorney, and requests the Court to consider the following additional authorities in connection with his appeal:

State v. Hunley, 175 Wn.2d 901 (2012)
(reaffirming the requirement that the State prove prior criminal history by a preponderance of the evidence through utilization of prior judgment and sentences).

DATED this 11th day of February, 2013.

Respectfully submitted,

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ADDITIONAL STATEMENT OF AUTHORITIES

NO. 31137-6-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,)	
)	PEND OREILLE COUNTY
Plaintiff,)	NO. 11 1 00033 1
Respondent,)	
)	CERTIFICATE OF SERVICE
CORY LEE LANE,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 11th day of February, 2013, I caused a true and correct copy of the *ADDITIONAL STATEMENT OF AUTHORITIES* to be served on:

RENEE S. TOWNSLEY, CLERK
Court of Appeals Division III
500 North Cedar Street
Spokane, Washington 99201

E-FILE

CERTIFICATE OF SERVICE

PEND ORIELLE COUNTY PROSECUTOR'S OFFICE U. S. MAIL
Attn: Thomas A Metzger
PO Box 5070
Newport, Washington 99156-5070

CORY LEE LANE #987521 U. S. MAIL
Coyote Ridge Correction Center
PO Box 769
Connell, Washington 99326

s/ Dennis W. Morgan
DENNIS W. MORGAN WSBA #5286
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