

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 32961-5-III

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Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

JOEL M. GROVES,

Defendant/Appellant

Respondent's Brief

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. There is sufficient evidence to sustain an assault in the first degree conviction when there is testimony from eye witnesses that indicate the defendant fired the gun at the victim corroborated by the scene evidence showing a hole in the door where the victim was standing; a bullet slug inside the apartment that was identified as being from the gun later found at the home the defendant returned to after the shooting; an eye witness saw the defendant with the gun immediately after the shooting; and the defendant's DNA was recovered on the hammer of the gun.
- b. There is sufficient evidence to sustain a drive by shooting conviction when there was substantial evidence the defendant drove to and from the shooting in his car, including his own admissions; there is testimony from eye witnesses that circumstantially indicate the defendant fired the gun at the victim with several other people in the immediate vicinity, corroborated by the scene evidence; an eye witness saw the defendant with the gun in the defendant's car right after the shot was fired; and the defendant's DNA was recovered on the hammer of the gun.

- c. There is sufficient evidence to sustain a felony harassment conviction when two witnesses heard the shooter, identified by both hearers as an older male make the statement “I’ve got something for you,” moments before the gun was fired and one also heard the shooter say the victim’s nickname, “Dizzy”; the victim saw an arm pointed at him like someone was about to shoot a gun before he closed the door, and there is substantial evidence that the defendant was the shooter.
- d. There is sufficient evidence to sustain an unlawful possession of a firearm conviction when there is testimony from eye witnesses that circumstantially indicate the defendant fired the gun corroborated by the scene evidence; an eye witness who saw the defendant with the gun; the defendant admitted to handling the gun; the defendant stipulated to and admitted under examination his prior “serious” offense; spent shell casings that were fired from the same gun were found in the defendant’s room; and the defendant’s DNA was recovered on the hammer of the gun as a robust major contributor.

- e. The firearm enhancement should not have been added to the Drive by Shooting charge, per statute and the case should be remanded to the Superior Court to strike the enhancement from the defendant's sentence.
- f. The statutory maximum for Felony Harassment and the firearm enhancement is sixty months; the case should be remanded to the Superior Court to amend the sentence for Count Three to the statutory maximum of sixty months or to allow the court to find extraordinary circumstances to justify the upward departure.

B. ISSUES PRESENTED

- a. Is there sufficient evidence to sustain an assault in the first degree conviction when there is testimony from eye witnesses that indicate the defendant fired a gun at the victim corroborated by the scene evidence showing a hole in the door where the victim was standing; a bullet slug in the victim's apartment that was identified as being shot from the gun later found at the home where the defendant returned to after the shooting; an eye witness saw the defendant with the gun immediately after the shooting; and

the defendant's DNA was recovered on the hammer of the gun?

- b. Is there sufficient evidence to sustain a drive by shooting conviction when there was substantial evidence the defendant drove to and from the shooting in his car, including his own admissions; there is testimony from eye witnesses that circumstantially indicate the defendant fired the gun at the victim corroborated by the scene evidence; an eye witness saw the defendant with the gun in the car right after the shot was fired; and the defendant's DNA was recovered on the hammer of the gun?
- c. Is there sufficient evidence to sustain a felony harassment conviction when two witnesses heard the shooter, identified by both hearers as an older male make the statement "I've got something for you," moments before the gun was fired and one also heard the shooter say the victim's nickname, "Dizzy"; the victim saw an arm pointed at him like someone was about to shoot a gun and was able to describe a gun later found with the defendant's DNA on it; and there is substantial evidence that the defendant, an older male, was the shooter?

- d. Is there sufficient evidence to sustain a conviction for unlawful possession of a firearm in the first degree when there is testimony from eye witnesses that circumstantially indicate the defendant fired a gun corroborated by the scene evidence; an eye witness saw the defendant with the gun; the defendant admitted to handling the gun; the defendant stipulated to and admitted under examination his prior “serious” offense; spent shell casings that were fired from the gun were found in the defendant’s room; and the defendant’s DNA was recovered on the hammer of the gun as a robust major contributor?
- e. What is the proper remedy when the court allows a jury to consider a firearm enhancement on a charge that is excluded by statute from including that enhancement and the jury finds the enhancement proven?
- f. What is the proper remedy when the court imposes a sentence with an enhancement that is longer than the statutory maximum allowed for that offense without making a record of exceptional circumstances to justify an aggravated sentence?

C. STATEMENT OF THE CASE

Joel Groves was charged by amended information with Count One: Assault in the First Degree, Count Two: Drive by Shooting, Count Three: Felony Harassment, and Count Four: Unlawful Possession of a Firearm in the First Degree. (CP at 235). After a trial, he was found guilty by a jury of all four counts and the jury found the firearm enhancement on counts one, two, and three. (CP 368 – 374, RP 1706 – 07). The entire case stemmed out of an altercation at DaQwon Kessay's apartment in Ellensburg on July 8, 2014.

On July 8, 2014 police responded to a call of shots fired at 2012 North Walnut Street, apartment 243 at approximately 8:30 p.m. (RP at 846, 875). When police got to the scene, there was a bullet hole in the door of the apartment, large dents at the top of the door, and several spent shell casings. (RP at 853, 856, 875, 877, 881, 1016). Police checked inside the apartment to see if anyone was injured, but there was no one inside the apartment (RP at 855, 875, 896). Eventually, Mr. Kessay came back to his apartment while police were still there processing the scene. (RP at 857).

DaQwon Kessay testified that in the summer of 2014 Zachary Koback and Ryan Smith who were young men that were both known to him got into some sort of disagreement on the social media website “Facebook” which escalated into something more: a written dispute that Mr. Kessay also became involved in on the internet. (RP at 355, 358). He testified that at some point the argument online escalated to an agreement that he and Zach would meet and physically fight, but that he wasn’t even really sure if that would happen because he is older, bigger, and not afraid of Mr. Koback. (RP at 361 – 362, 365).

Mr. Kessay testified that on July 8th, he was working during the day and got home from work around 8:00 or 9:00 p.m. and showered (RP at 362). Ryan Smith, Devon Lowe, and Blake Campbell were at his apartment. (RP at 362 – 363). He said Scott Adams also came to the apartment later (RP at 363). Mr. Kessay indicated while at his house, he got out of the shower and heard a lot of commotion at the front door, specifically loud banging and yelling. (RP at 365, 367).

Mr. Kessay said when he opened the front door of his apartment initially, he saw Zach Koback who was known to him and was yelling, continuing on about the verbal fight they had

started online (RP at 370). He said he did not see anything in Zach's hands. (RP at 370, 393) He said he saw Jordan Hanson, whom he also knows there standing behind Zach and to the left but also saw nothing in Jordan's hands. (RP at 372).

Mr. Kessay testified he saw a "bet-up junker" purple and black car parked in front of his apartment and to his right (RP at 374 – 375). He said he could see the passenger side door ajar and someone at the car, but he did not get a good glimpse of who was at the car except that person was wearing a white tank top. (RP at 375). He testified that at the time, he did not know the defendant Joel Groves and would not recognize him if he saw him. (RP at 355, 413 – 414). He said initially he didn't think this person had anything to do with the argument, but could see on the right shoulder and a tattoo on the right bicep that he described as a green blob. (RP at 376 – 377, 1357).

He remembered Mr. Koback saying something about DaQwon having a gun and then he saw the arm of the person standing by the passenger side of the car holding the gun.¹ (RP at 378 – 379). When he heard the gunshot fired coming from the area where he saw the arm, he slammed the door closed. (RP at 378 –

¹ When recalled by defense Mr. Kessay testified he did not see a gun in the person's hand, although he was able to describe the gun. (RP at 1359).

379, 1358). He indicated he opened his door again and without looking out, fired a shot from his semiautomatic gun that he had put in his pocket². (RP at 379, 368) He did not recognize the tattoos on the arm he saw holding the gun. (RP at 380). He described the gun as a big and black “cowboy” gun because it had a cylinder and it was not a semiautomatic gun like the one he had (RP at 393). He said prior to the shot, he heard a name; he thought someone said, “Joe.” (RP at 395).

DaQwon Kessay testified that prior to that night, there was no bullet hole in his door and identified his door for the jury and the bullet hole from the shot he heard that night. (RP at 388 – 389). When changing his clothes later that evening, Mr. Kessay found an injury on his left leg that also had not been there prior to the shooting; on his upper thigh which was photographed by the police. (RP at 390). Mr. Kessay told the police where he put his gun into a canal and the police found the gun in the canal along with the magazine on the shoreline (RP at 1019 – 1020).

² The appellant indicates the victim Mr. Kessay plead guilty to two misdemeanors as a result of his conduct that night. This is not accurate. Mr. Kessay was charged one felony: Unlawful Possession of a Firearm in the Second Degree and two additional misdemeanors (Aiming or Discharging Weapons and Reckless Endangerment). (RP 369 -370, 406 – 407). The misdemeanors were dismissed in exchange for his guilty plea on the felony (Kittitas County Case 14-1-00177-0). (RP 369 -370, 406 – 407).

Devon Lowe testified that he has known DaQwon his whole life and are very close and was at DaQwon' s house on July 8, 2014³ with Ryan Smith, Blake Campbell, and Mr. Kessay (RP 453 – 454, 457). Mr. Lowe heard others talking about the interaction on Facebook and saw Mr. Smith using his phone to communicate with someone while at the apartment (RP at 458 – 459).

While Mr. Kessay was in the shower, someone banged on the door and Mr. Lowe answered the door and saw Zachary Koback (RP at 459 – 460). He said Zachary Koback was wearing brass knuckles and punching the door and yelling at the people inside to come out (RP at 460, 465). Mr. Lowe saw someone else in driver's seat of the Eclipse, a white man with a "buzz cut" maybe with a beard in his mid to late forties wearing a white tee shirt; he thought they were getting out of the car (RP at 466 – 467, 473, 477). He didn't know who it was and couldn't see their whole body because the man was standing behind the door (RP at 467).

Mr. Lowe also saw Jordan Hanson outside with Zachary Koback standing behind Mr. Koback near the car with nothing in his hands. (RP at 462, 494). He also saw his friend Patrick

³ Mr. Lowe's testimony was that he didn't remember the exact date, but did remember the details about what happened that day. (RP at 457).

Kennedy (who was invited to come over and they were expecting) walking outside, coming towards the apartment. (RP at 463). Mr. Lowe said Mr. Kennedy did not have anything in his hands (RP at 464).

Mr. Lowe testified that Mr. Kessay came to the door and stood at the door with it barely cracked open and Mr. Lowe was behind him with the other men in the apartment (RP at 464). Mr. Lowe heard an older guy say, “Dizzy I got something for you.”(RP at 469, 482). He did not recognize the voice as Jordan Hanson, Zachary Koback, or Patrick Kennedy’s voice. (RP at 469). Mr. Lowe said that right when he went to look out the blinds, the gunshot went off and DaQwon slammed the door shut (RP at 465,469, 488). When he heard the gunshot, he ran to the back room of the house and heard two more shots (RP at 470). He said everyone left the apartment: Patrick Kennedy rode away on his bike; Scott Adams went to his house; Mr. Lowe, Mr. Kessay, Ryan Smith, and Mr. Campbell left in Mr. Campbell’s car (RP at 471 – 472). When they came out of the apartment to leave, the Eclipse and everyone outside was gone (RP at 472 – 473).

Ryan Smith testified that on July 8th, he and Zach had fallen out as friends and were in a verbal dispute on Facebook (RP

at 504 – 506, 534). He did not believe Mr. Koback would come to Mr. Kessay's house to fight him (RP at 521). He was at Mr. Kessay's house playing video games in the back bedroom when someone came knocking on the door. (RP at 513). He heard what he thought was Zach Koback's voice yelling things like, "Get out here." (PR at 515, 542 – 43). He did not leave the bedroom, except to go into the hallway to listen better, but did not go into the living room/dining room area (Id.). He heard three gun shots, "'bang', and then 'bang, bang.'" (RP at 516). He was scared and stayed in the bedroom (Id.). He testified that he had known Zachary Koback since the third grade and had never seen him with a gun (501, 517).

Scott Adams testified that he was at DaQwon Kessay's apartment on July 8, 2014 (RP at 551). He testified that he knew about the fight between Ryan Smith and Zach Koback, but did not believe Mr. Koback would come to Mr. Kessay's apartment (IRP at 552 – 53). Mr. Adams testified that he saw Mr. Koback arrive at the apartment in a gray Mitsubishi Eclipse (RP at 553 – 54). He saw Mr. Koback get out of the passenger side of the car, saw another person in the backseat and saw a "slightly taller," "slightly muscular" bald older man (in his mid to late forties) with stubbly facial hair wearing a white tank top fidgeting with something in his

lap in the driver's seat (RP at 554 – 56). He testified that after the incident, he saw photos “all over” of the person who was wanted for the crimes and he recognized them as the same person who was driving that night; he was certain the person on the wanted posters was the driver by 90 – 95 % because the photos matched the things that he remembered about the driver of the car. (RP at 562, 568). Mr. Adams said he has known Mr. Koback for a long time and has never seen him with a gun (RP at 557).

Mr. Adams believed a fight was about to begin, so he went into the back of the apartment (RP at 557 – 58). He heard Mr. Koback's voice and then heard an “older” voice say, “Come outside so I can beat your ass.” (RP at 558). He heard one shot, got down on the ground and went into the bathroom; less than two minutes later, he heard two more shots (558 – 59). After waiting a bit, he left the apartment and went home (Id).

Blake Campbell testified that he was at Mr. Kessay's apartment playing video games with Mr. Smith, Mr. Lowe, Mr. Adams, and Mr. Kessay in Mr. Kessay's bedroom on a day in July. (RP at 573). He heard banging on the door and loud talking. (RP at 574). He heard a gunshot, a pause, and then more gun fire while he was in the bedroom (RP at 575). He left the apartment with Mr.

Lowe and Mr. Kessay; he was driving his car (RP at 576 – 77). He did not see anyone arriving or leaving (RP at 580).

Patrick Kennedy testified that he knows Mr. Kessay, Mr. Koback and Mr. Hanson but did not know the defendant (RP at 584). He said one day last summer he was going to Mr. Kessay's house, riding his bicycle, to hang out with him in the late afternoon/evening (RP at 585). When he rode up on his bike, he saw Mr. Koback and Mr. Hanson at Mr. Kessay's apartment banging on the door and yelling (RP at 586). He saw an older bald man with "sleeve" tattoos that covered his arms wearing a gray shirt and blue jeans outside of a gray Mitsubishi walking around. (RP at 587 – 88).

Mr. Kennedy saw the older man with a revolver and heard the older man say "Oh, I got something for you." (RP at 591). Mr. Kennedy then looked away and ran and heard gun shots (RP at 591 – 92). He saw the older man get back into the driver's side of the car and saw Mr. Hanson and Mr. Koback climb into the passenger side of the car and leave (RP at 592). He did hear other gun shots (RP at 593). He identified Mr. Groves from a photo lineup as the person he saw holding the gun with a ninety percent certainty (RP at 594, 645).

DaQwon Kessay, Devon Lowe, Ryan Smith, Scott Adams, Blake Campbell, and Patrick Kennedy testified that DaQwon Kessay's nickname is "Dizzy."⁴ (RP at 353, 454, 500, 547, 572, 583).

Jordan Hanson testified that he was very strung out on methamphetamines and acid during the summer, but he had a vague memory of hanging out at the lake on July 8, 2014 with Zach Koback (RP at 655 – 656). He remembered leaving the lake with Mr. Koback and Mr. Groves (RP at 657). He testified that the three of them drove to Mr. Kessay's apartment (RP at 658). While they were at the apartment, he was looking down at his feet, trying to climb out of the back seat of the two door car when he heard more than one gunshot and he ran and ducked behind the car. (RP at 659, 661). He testified that he was a felon, so was not allowed to be around guns and that he didn't see Mr. Koback with a gun. (RP at 659 – 660). He remembered leaving in the car with the defendant driving. (RP at 662). Mr. Hanson testified they drove to Mr. Koback's house where he lived with his mother, Kathy on Highway 97 (RP at 667). When they looked at the car at Ms. Koback's house, he remembered seeing two bullet holes in the car.

⁴ The trial transcript actually shows his testimony to be "Daisy," but his testimony in live court was that his nickname is "Dizzy."

(RP at 667). Mr. Hanson testified that he did have tattoos on his arms of cartoon characters and his last name and had a deep voice (RP at 670 – 671).

Zachary Koback testified that he had known the defendant for approximately six years and considered him to be his step dad because the defendant had dated his mom; he thought they had a close relationship and that the defendant cared for him (RP at 675). Mr. Koback testified that in July, 2014 he and Mr. Smith had a disagreement on Facebook with mutual comments and insults towards each other and at some point Mr. Kessay also became involved (RP at 679, 718). Mr. Koback was offended at some of the things Mr. Smith and Mr. Kessay were writing about his mom and told some of the comments to the defendant (RP at 682). The defendant started telling Mr. Koback that he needed to defend his mom's honor and respect (Id. at 682). Even though he believed Mr. Kessay would win in a fistfight, at some point he decided he was going to fight him (RP at 683). The defendant drove Mr. Koback to Mr. Kessay's apartment from the lake with Jordan Hanson in his gray Mitsubishi knowing that Mr. Koback planned to fight Mr. Kessay (RP at 684 – 85). The defendant told Mr. Koback to “try

his hardest and to just – do what [he could] to defend [his] mom’s honor.” (RP at 685).

Mr. Koback said that when they got to Mr. Kessay’s apartment, he walked up to the door wearing brass knuckles on his right hand and was mainly focused on his own objective; he didn’t pay much attention to what Mr. Hanson or the defendant were doing (RP at 686, 694). Mr. Koback remembered knocking on the door, Mr. Kessay answering, gun shots going off behind him, and Mr. Hanson yelling at Mr. Koback to duck and cover (RP at 687, 710, 732). He remembered Mr. Kessay answering the door with a gun in his hand and Mr. Koback told him to put the gun down and come outside and fight (RP at 688). He never saw Mr. Kessay fire his gun. (RP at 688). When he was ducking behind the car, he heard two more gunshots, but never saw anyone shoot (Id. at 689). He identified the door from the apartment at the trial and indicated the bullet hole in the lower half of the door was not present when he first started knocking on the door that night (RP at 744).

He testified that he got back into the car with Mr. Hanson and the defendant. (RP at 690). Mr. Hanson did not have a gun, but the defendant had a gun, a revolver, that he gave to Mr. Koback and asked him to put into a speaker in the backseat of the car. (RP

at 690 – 92). He testified that the drove back to his house on Highway 97, he gave the gun back to the defendant and they stayed there that night with his Mom, Ms. Kathy Sampson (RP at 693 – 94). At some point after the incident, the defendant and Mr. Koback had a conversation where the defendant told Mr. Koback he was proud of how Mr. Koback had handled the situation (RP at 712).

Mr. Koback testified that he gave an initial statement to police where he didn't mention the gun because he didn't want to see anything bad happen to the defendant but after reviewing a statement by the defendant in which the defendant said Mr. Koback was the one who fired the gun, he gave a second interview to the police in which he was truthful about what happened and about the defendant having the gun. (RP at 698 – 99). During the first interview he had also told police Mr. Kessay shot first (RP at 732). He testified that during his first interview he was doing whatever he could do to keep the defendant from being in trouble (RP at 736).

Ms. Cathy Koback Sampson, who is Zachary Koback's mother, testified that she dated the defendant on and off again beginning in 2009 (RP at 1057). On July 8, 2014 they were

together at the lake with her son Zachary and his friends and the defendant was driving his black or grey Mitsubishi Eclipse (RP at 1058, 1060 – 61). She testified that Zachary was not wearing a sweatshirt or a beanie cap that day (RP at 1061). She became aware of the problem Zachary was having with Ryan Smith and DaQwon Kessay and heard the defendant tell Zachary to go and face them and fight them. (RP at 1062 – 1063). Both Zachary and the defendant were very upset by the words the others were saying about Ms. Sampson (RP at 1063).

According to Ms. Sampson, when they left, Zachary, Jordan Hanson and the defendant left in his car and Ms. Koback headed to her house on Highway 97 in her jeep (RP at 1063). She made one stop at a gas station, but then arrived at her house and the defendant, Zachary, and Mr. Hanson were already home. (RP at 1065). She said no one said anything to her about what had happened but that the defendant asked the kids not to bother them and he spent the night at her house and the Mitsubishi was parked there (RP at 1069).

After speaking to the police about the incident, Ms. Sampson looked in her house and around her property for a gun, but only found a plastic case under her bed used to hold bullets that

she had not put there (RP at 1071). She testified that she does not keep guns in her house and had never seen Zachary with a gun, but did remember shooting a gun with the defendant one time (RP at 1068, 1069, 1071).

Jessica Felke testified that she was the manager at the apartment complex where the shooting took place at the time of the shooting. (RP at 751 – 52). She testified that on the day of the shooting, she was looking onto her porch, waiting for her friends to come by and she saw a dark grey Eclipse pull up and four men jump out of the car right in front of Mr. Kessay's apartment, 243; she was 190 feet away from the apartment where the shooting occurred. (RP at 752 – 53, 1088). She saw one person start banging on the door, but said the other three held back but were also yelling (RP at 754). She testified that she saw the guy who was banging who was wearing a sweatshirt, baggy jeans, and a cap, pull out a gun and shoot at the door (RP at 755). She didn't know how old he was but described him as "taller" with "shaggy" hair (RP at 766). Ms. Felke said she heard three more shot and three men got back into the car and left, while Mr. Kessay and four other guys came out of the apartment and chased after the car leaving (RP at 755, 769). She did not remember the shooter getting back into the car,

but said he ran to the east, shot two more times, then hid in the bushes (RP at 763, 768 – 69). She also saw someone come out of the apartment and ride away on a skateboard (RP at 763).

Melvin Thonton testified that he lived at the apartment complex where the shooting took place on July 8, 2014 and he saw two men outside of a grey sedan that was parked in front of the Mr. Kessay's apartment; specifically he saw the white male who was on the driver's side in a posture with his body like if he was holding a gun, with arms extended out, but did not specifically see a gun (RP at 773, 776 – 79). When he heard a gunshot sound, he got onto the ground and stopped watching out the window.

Officer Jim Weed with the Ellensburg police department testified that it is common for eye witnesses to have small variances or differences in their stories, but there are common chords that run throughout and the basic information that is reported is the same and they look to the evidence at the scene to corroborate and elaborate on the facts as reported by witnesses (RP at 845).

Police applied for and executed a search warrant on the apartment, took photos, and impounded evidence (RP at 876).

There were bullet fragments found in the parking lot space in front

of the apartment, below the curb which was six inches high along with other debris (RP at 885 – 86, 891, 1080). A 9 mm shell casing was found on the sidewalk in front of the apartment near the stairs (RP at 886, 894, 900). A second 9 mm casing was found just inside the apartment door (RP at 899).

Inside the apartment, from the front door looking in, you can see the side of the oven which is twenty-four feet, seven inches from the door (RP 925, 1081). There was a bullet fragment found just beneath the oven and a bullet hole in the side of the oven door, seventeen inches from the ground (RP at 900, 903, 1082). Using a rod to show trajectory, based on the location of the door, the bullet hole in the door, the bullet hole in the oven, and the bullet fragment found under the oven, Detective Clasen showed the jury how the bullet seemed to enter and exit the door as the door was slightly open. (RP at 1084). Because there were different size fragments found at the scene, the police department believed there were two shooters involved and two different firearms (RP at 910 – 11).

The police department identified the defendant as a possible suspect and put out a bulletin into the community that included the defendant's photograph beginning on July 10, 2014

(RP at 912, 950, 1328 – 29).⁵ The defendant was taken into custody on July 11, 2014 and had a goatee, extremely short, buzz cut hair where you could see his scalp, very muscular with broad shoulders and was not wearing glasses (RP at 918, 949, 954). The defendant had many tattoos on his arms, even what could be described as “sleeve” tattoos including several tattoos on his right arm that were green or had green in them (RP at 1323).

The police also executed a warrant on a ten foot by twelve foot bedroom at a house located 2407 North Ellington Street on July 9, 2014 where the defendant was known to reside in the home of Brett Stray in an attempt to locate the revolver that the defendant had used on July 8. (RP at 914, 1021, 1059, 1172, 1290 – 91). Inside the room police located many personal items: several prescription bottles with the defendant’s name on them, male clothing, a metal tube that had a gun cleaning brush, and a .44 caliber speed loader for a revolver (RP at 1026 – 1027, 1033, 1035, 1173). There was also a black bag that had a piece of mail addressed to the defendant in it along with several spent .357 bullet casings (RP at 1034, 1036, 1173 – 74). There was an additional piece of mail addressed to the defendant found on the desk in the

⁵ A press release was issued on July 9 that did included information about the case, but not the defendant’s name or photograph (RP at 1329).

room (RP at 1037). A safe was inside the bedroom, located under the desk that had bullet holsters with .357 caliber bullets loaded into it (RP at 1038, 1041). The spent casings were collected as evidence and sent to the Washington State Patrol Crime Laboratory for analysis (RP at 1175 – 76). The spent casings were identified as being fired from a gun that was found at the residence on Highway 97 where the defendant spent the night after the shooting. (RP at 1219).

Mr. Zachary Koback testified about a room at “Bret’s” house where the defendant stayed sometimes and worked on his car there but that Mr. Koback didn’t keep any of his belongings there. (RP at 695, 739). He did go to the address at the prompting of the defendant and Ms. Tina Weinman to look for a safe about a month after the shooting (RP at 746 – 47).

Ms. Cathy Koback reported to the police that the car the defendant was driving on July 8 was at her house with bullet holes in it. (RP at 1043). Officer Clayton testified that the mid-nineties Mitsubishi Eclipse that was involved in the shooting as identified by the VIN number was at Kathy Koback’s⁶ house on July 10th and

⁶ Zachary Koback’s mother is Kathy Koback who is also referred to by her AKA “Kathy Sampson” throughout the proceedings by different witnesses. Officer Clayton refers to her as Kathy Sampson.

he had the car towed and placed into evidence to be searched. (RP 439 – 441). When the car was searched, it was obvious there were two bullet holes in the front of the car (RP at 1134). Inside the car were several pieces of mail addressed to the defendant, prescription medication bottles for the defendant, and court paperwork with the defendant's name on it. (RP at 1139, 1141 – 42). Also in the backseat of the car, police found brass knuckles with paint transfer that matched the color of paint on the apartment door (RP at 1142, 1145). There was also an open speaker hole in the backseat of the car with the screen off (RP at 1168).

On August 11, Brian Anderson called the police to report that he located a gun at Mr. Sampson's residence on Highway 97 while moving some trash for her. (RP at 1197, 1180) Mr. Anderson testified that the garbage was in a trailer that was quite overloaded, but he attached the trailer to his truck and started to drive out the driveway when some of the load started tipping because it wasn't balanced. (RP at 1197). He climbed into the trailer to try to move the trash to balance the load and saw a gun and called the police (RP at 1199).

Detective Tim Weed with the Ellensburg Police Department drove to Ms. Sampson's house on Highway 97 and

met with Mr. Anderson. (RP at 1181). Inside the trailer with the trash, Detective Weed and Officer Houck found a holster with a single action model Ruger handgun in it (RP at 1182 – 83). Because it was a single-action gun, in order to pull the trigger, one would have to cock the hammer each time before you fire the gun (RP at 1185, 1214). There were five live rounds and one spent cartridge in the gun (RP at 1186). The gun was sent to the crime lab for analysis (RP at 1188).

Kathy Geil from the Washington State Patrol Crime Laboratory testified as a firearm and tool mark examiner expert. (RP at 1202). She received a HI-Point Model C9 semiautomatic handgun, a Ruger Blackhawk new model revolver, unfired cartridges, fired cartridge cases, and fired bullets (RP at 1210, 1211). She confirmed that the revolver was a functional single action revolver, fired test-fires, and then compared the test fires to the fired cartridge cases and bullets that were submitted for comparison. (RP at 1214, 1215). Based on her comparison, the fired bullet from below the stove in Mr. Kessay's apartment was fired from the Ruger Blackhawk revolver that was located in the trailer and Ms. Sampson's home and submitted to the lab (RP at 1216). The spent casing found in the gun was tested and confirmed

it had been fired in that gun (RP at 1219). Additionally she tested two shell casings that were found in the defendant's black bag at the Ellington Street address and concluded they were both also fired from the Ruger Blackhawk revolver (RP at 1219).

Amy Jagmin, a DNA scientist with the Washington State Patrol crime lab testified as an expert on DNA that she performed analysis at the state crime lab on a revolver pistol, the cylinder of that gun removed from the frame, one empty cartridge case from removed from the cylinder and five live rounds of ammunition from that cylinder (RP at 966, 983, 986, 987). On the frame of the gun, she swabbed the trigger, the trip, and the hammer for potential handler DNA left on the weapon (RP at 990 – 91). On the grip, the cylinder, and the trigger, she obtained a mixture of at least three contributors, but the level was very low so she could not make any conclusions because she could not do any comparisons (RP at 993, 995, 996). There was DNA on the unfired rounds, but it was so limited it would not yield a usable profile (RP at 997). The fired casing did not have enough DNA to detect (RP at 997).

Further, Ms. Jagmin testified it was rare to get a major contributor for DNA on a firearm based on handler DNA (RP at 998). On the top of the hammer of the gun, where one would push

the hammer down to cock the gun before firing, she was able to get a robust sample of DNA that she could make a comparison and draw conclusions from which was something that she rarely sees. (RP at 999 – 100). Within this sample, there were two contributors, but one was a dominant or major profile. (RP at 1000). She compared this sample to a reference sample obtained from the defendant and submitted to the lab and it matched: every allele that the defendant had in his reference sample was represented as the major profile within the sample from the hammer. (RP at 1001, 1146 – 47). The estimated probability of selecting an unrelated individual at random from the U.S. population that has a matching profile to the evidence sample is one in 2.7 sextillion. (RP at 1002). She did not compare the DNA to any additional samples, but because she only obtained the one major profile from the hammer of the gun that matched the defendant, additional samples would not have been comparable to any of the other partial profiles found on the weapon. (RP at 1006, 1010).

The defendant made a recorded phone call from the jail on July 14, 2014 where he stated that, “even if [he] had a gun, nobody got hurt.” (RP at 1157, 1160). He made a second recorded phone call from the jail on July 21, 2014 where he told Tina Weinman,

his girlfriend, that he was “teaching Zach to stand up for himself.” (RP at 1157, 1161, 1291). In a third recorded phone call from the jail on July 28, 2014 Mr. Groves told Ms. Weinman that he should have allowed [Mr. Kessay] to shoot Zach and left Zach to “flounder on his own.” (RP at 1158, 1161).

After his arrest and detention the defendant initiated an interview with the police accompanied by his attorney: he wrote a letter and then spoke to police about the letter. (RP at 1286, 1586). He admitted knowing about the disagreement between Mr. Smith, Mr. Kessay and Zachary Koback. (RP at 1286). He admitted driving the Eclipse to Mr. Kessay’s apartment (RP at 1286). He admitted that he had read everyone’s statements from “front to back” before his interview. (RP at 1287). He admitted he stood outside the car on the driver’s side (RP at 1288). He admitted driving the Eclipse back to Ms. Sampson’s home after the shooting and spending the night there (RP at 1289). He admitted handling the gun once they got back to Ms. Sampson’s house (RP at 1290). He admitted he had a conviction for a “serious offense.”⁷ (RP at 1292).

⁷ Defense made a stipulation to the defendant’s prior conviction for Armed Robbery being a “serious offense” for purposes of the requirements of the Unlawful Possession of a Firearm in the First Degree (CP at 281; RP at 1312).

During the trial the defendant testified that he loved Zachary Koback like his own son (RP at 1553). He admitted he rented a room at Ellington Street (RP at 1554, 1556). He admitted he was at the lake with Ms. Sampson and Zachary on July 8, 2014, driving the Mitsubishi (RP at 1558). He admitted leaving and driving Zachary and Mr. Hanson to Mr. Kessay's apartment (RP at 1563). He did not know Mr. Kessay, Mr. Lowe, Mr. Campbell, or Mr. Adams (RP at 1563). He admitted knowing about the problems Zachary was having with "this guy" and that he was encouraging Zachary to stand up for himself and "solve this problem." (RP at 1564). He said his intention in driving Mr. Hanson and Zachary over to the apartment was to let them resolve their issues by fighting, but admitted that if things "got rough" he probably would have jumped in. (RP at 1565). He admitted after the gunshot, he worried about getting Mr. Hanson and Zachary back into the car and then he saw Mr. Kessay shooting back at them (RP at 1567). He admitted driving away with the boys in the car, driving back to Ms. Sampson's house on Highway 97 where he spent that night. (RP at 1572, 1575). He admitted he "handled the gun." (RP at 1573). The jury also heard about some of Mr. Groves' prior felony history: armed robbery, forgery, and bail jumping (RP at 1574). He

admitted that as a convicted felon since 1991, he cannot have guns or be around firearms and that he knew of that prohibition (RP at 1575).

After being instructed, including an instruction defining “possession” with regard to the firearm, the defendant was found guilty as charged with all counts and the jury found proven firearm enhancements on Counts One, Two, and Three. (CP 326, 368 – 374, RP 1706 – 07). The defendant had nine points prior to this case that were scored against him at sentencing. (RP at 1740, CP 391 – 403). The defendant was sentenced to 279 months in prison on Count One: Assault in the First Degree, a Class A Serious Violent felony with a 60 month firearm enhancement, totaling 339 months. (CP at 391 – 403, RP at 1761). On Count Two: Drive by Shooting, a Class B Violent felony the court imposed 101 months (plus the 36 month enhancement for a total of 137 months), 55 months on Count Three: Harassment, a Class C nonviolent felony (plus the eighteen month enhancement for a total of 73 months), and 101 months on Count Four: Unlawful Possession of a Firearm in the First Degree, a Class B nonviolent offense (CP at 391 – 403; RP at 1766). All the counts were run concurrently and all of the enhancements ran consecutively (CP at 391 – 403, RP at 1761,

1767). The court also specifically found they were not the same course of conduct (CP at 391 – 403; RP at 1765). The court imposed thirty-six months of community custody for count one and eighteen months for count two, also to run concurrently (CP at 391 – 403; RP at 1767 – 68).

D. ARGUMENT

- a. THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE DEFENDANT’S CONVICTIONS FOR ASSAULT IN THE FIRST DEGREE, DRIVE BY SHOOTING, FELONY HARASSMENT, AND UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits a rational juror to find the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979)); accord, e.g., State v. Aver, 109 Wn.2d 303, 310-11, 745 P.2d 479 (1987); State v. Guloy, 104 Wn.2d 412, 417, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020 (1986); State v. McPherson, 186 Wn. App. 114, 117, 344 P.3d 1283, review denied, 183 Wn.2d 1012 (2015). A claim of insufficiency admits the truth of the State’s evidence and

all reasonable inferences that a juror can draw from that evidence. State v. Notaro, 161 Wn. App. 654, 671, 255 P.3d 774 (2011). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted strongly against the defendant. State v. Wilson, 141 Wn. App. 597, 608, 171 P.3d 501 (2007). Circumstantial evidence is no less reliable than direct evidence. Id. The court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

The defendant seems to argue for each of the counts that the evidence was insufficient to show that either he was the shooter or that he was in possession of the gun. Looking at all of the evidence in the light most favorable to the state and drawing all inferences in favor of the state there is substantial evidence the defendant owned the gun, was the shooter and possessed the gun.

Mr. Groves was the “unknown” person at the scene that day. Even based on his own testimony all of the young men at the apartment either were contemporaries with

Zachary Koback or his peers: DaQwon Kessay, Devon Lowe, Ryan Smith, Scott Adams, Blake Campbell who were inside the apartment; Patrick Kennedy who rode up on his bike after the altercation; and Jordan Hanson who came in the car with the defendant. All of them were known to each other.

Not one person identified Zachary Koback, Jordan Hanson, or Patrick Kennedy as the shooter; no one. There were only four people outside the apartment at the time of the shooting in the immediate vicinity by all accounts. It is undisputed that the revolver shot a bullet into the apartment that hit the stove and was recovered there.

No one actually claims to have seen a person shooting the gun, those who saw the gun worked hard to avoid being shot. From inside the apartment, only Mr. Kessay identified “an arm with a green blob tattoo” holding a gun the moments before he was shot. He was also able to describe the gun as a “cowboy” gun. Outside the apartment, Mr. Koback said the shot came from behind him. Patrick Kennedy identified the defendant from a photo lineup as the person who was holding the gun, although he

admits he was trying to hide at the time the gun was fired and didn't actually see the person pull the trigger. He testified that he did not have a gun and did not see Mr. Hanson or Mr. Koback with any type of weapon in their hands. Mr. Hanson confirmed that he never saw Zachary with a gun, even when he had direct contact with him immediately after the first shot was fired.

The bullet clearly entered the apartment and then hit the stove. The fragment was located below the stove by the police. Looking further at the forensic evidence, shell casings found in a bag at the bedroom Mr. Groves admitted was where he kept his things along with the defendant's mail ALSO were positively identified as coming from that gun. When they got into the car, Zachary says the defendant handed him the gun and told him to hide it in a speaker in the backseat.

After the shooting, Mr. Hanson, Zachary, and the defendant all agree they returned to Ms. Sampson's home on Highway 97 where the defendant spent the night. Almost a month later, the gun is recovered from that property. When examined, that fragment was identified as

coming from the gun that was located in the trash trailer at Ms. Sampson's house.

The most substantial evidence of the defendant actually firing the gun is the fact that a "robust" sample of his DNA as a major contributor was found on the hammer of the gun. The gun was a "single-action" gun, requiring the shooter to push down on the hammer in order to fire the gun. The typical way to handle a gun, in order to fire it, would require the handler to press down on that hammer: the DNA extracted from that location, although rarely seen by in firearm handler DNA examination, was a robust major profile belonging beyond all statistical probability to the defendant.

It is true the defendant told a different story to the jury. He was impeached by prior inconsistent statements, his felony history, forensic evidence like the DNA, and the facts as related by others at the scene. Whether the jury believed him, or chose to believe what others said about the shooting is something that is solely left to the jury: the trier of the fact; they get to determine credibility. They did so in

this case by finding the defendant guilty, despite his testimony.

i. ASSAULT IN THE FIRST DEGREE

A person commits Assault in the First Degree “if he, with intent to inflict great bodily harm: assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death.” RCW 9A.36.011. Evidence was sufficient to convict defendant of assault in the first degree where a rational trier of fact could conclude that defendant acted with intent to inflict great bodily harm by shooting in the direction of the victim. State v. Pedro, 148 Wn. App. 932, 201 P.3d 398 (2009). In prosecution for first degree assault, intent need not be established by direct and positive evidence, but may be established by inference. State v. Louthier, 22 Wn.2d 497, 156 P.2d 672 (1945).

Here the jury reviewed evidence that one of four people outside of Mr. Kessay’s apartment fired one .38 shot into the door of the apartment, right

where the victim was standing. The victim testified that his leg had a scratch on it that was not present before this incident. As indicted in the argument above, the evidence is substantial that the defendant was the shooter. Drawing all inferences in favor of the state, there is substantial evidence that supports the assault, first charge.

ii. DRIVE BY SHOOTING

A person commits Drive by Shooting “when he recklessly discharges a firearm as defined in RCW 9.41.010 in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge.” RCW 9A.36.045.

When you accept the evidence as presented that the defendant was the shooter, the other elements of drive-by shooting are all uncontested: the shooting was towards the door where the victim

was standing: probably intentional, but at a minimum the discharge was reckless. There were also reportedly at least two, possibly three other people between where the defendant was located on the driver's side of the car and where the victim was standing in his doorway at his own home.

Additionally, there is no contest that the defendant drove to the apartment, that the gun came with those in the car and left with those leaving and the defendant drove away after the shots were fired.

iii. FELONY HARASSMENT

A person is guilty of felony harassment if without lawful authority, the person knowingly threatens to kill immediately or in the future the person threatened or any other person. RCW 9A.46.020 (2) (b) (ii); 9A.46.020 (1) (a) (i). This section is neither ambiguous nor vague in requiring only one act or threat rather than multiple acts or threats to support a conviction. The court will not substitute plural "acts and threats" for the definition in this section, due to a perceived inconsistency

between this section and RCW 9A.46.010. State v. Alvarez, 74 Wn. App. 250, 872 P.2d 1123 (1994), aff'd, 128 Wn.2d 1, 904 P.2d 754 (1995). One threatening act is sufficient to support a harassment conviction if the other elements are proven. Id. The legislature chose to criminalize a single act rather than a course of conduct. Id. Evidence was sufficient to support the harassment conviction because the evidence amply supported the inferences that the alleged victim was afraid, that defendant could foresee that the alleged victim would consider the threat to be a true threat, and that the threat was a true threat. State v. Hecht, 179 Wn. App. 497, 319 P.3d 836 (2014). Where defendant made statements to his mental health counselor indicating that he was going to kill a judge, because the State failed to demonstrate that the judge, not the counselor, was informed of the threat and placed in reasonable fear that the threat would be carried out, and because the judge did not testify and no evidence was presented indicating

that he was placed in reasonable fear, the evidence was insufficient to support defendant's conviction. State v. Kiehl, 128 Wn. App. 88, 113 P.3d 528 (2005). Harmonizing the definition of "threat" in RCW 9A.04.110 (27) and subsections (1) (a) (i) and (1) (b) of this section, it is clear that the term "person threatened" includes the person to whom the accused communicates the threat. There is no requirement that the "person threatened" also be a person to whom the accused intends to cause bodily injury. State v. G.S., 104 Wn. App. 643, 17 P.3d 1221 (2001), overruled in part as stated in State v. Vidales Morales, 174 Wn. App. 370, 298 P.3d 791 (2013). This section requires that the person threatened must subjectively feel the fear and that the fear be objectively reasonable. State v. E.J.Y., 113 Wn. App. 940, 55 P.3d 673 (2002).

The evidence in this case supporting the Felony Harassment charge comes in two forms. First, the defendant's actions as viewed by the victim: he saw an arm with a green blob tattoo

pointing a gun at him. His reaction show his imminent fear: he immediately slammed the door. His reflexes were quick enough that the bullet went through the door and not into him.

Additionally, along with the actions of the defendant as viewed by the victim, there are his words spoken at the scene, “Dizzy, I’ve got something for you.” These words were communicated and heard by Devon Lowe as well as Patrick Kennedy (at least partially). Patrick Kennedy’s reaction also tells us something about the inherent danger the words posed: before any shots were fired, upon hearing the words and seeing the gun, he ran and hid, quick enough that he too did not see the actual shots fired.

The defendant’s words and actions prior to the shooting support the conviction for felony harassment.

iv. **UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE**

A person commits unlawful possession of a firearm in the first degree, if the person owns, has in

his possession, or has in his control any firearm after having previously been convicted of any serious offense. RCW 9.41.040. Where the owner/operator of a vehicle has dominion and control of a vehicle and knows a firearm is inside the vehicle, there is sufficient evidence of constructive possession of a firearm for the crime of unlawfully possessing a firearm. State v. Turner, 103 Wn. App. 515, 13 P.3d 234 (2000). It was reasonable to conclude that an accused constructively possessed firearms that were found in a trailer in which he both occasionally lived and kept clothing, and where there was evidence in various pieces of correspondence that the weapons were his. State v. Simonson, 91 Wn. App. 874, 960 P.2d 955 (1998). Possession may be actual or constructive, and constructive possession can be established by showing the defendant had dominion and control over the firearm or over the premises where the firearm was found. The ability to reduce an object to actual possession is an aspect of

dominion and control. State v. Echeverria, 85 Wn. App. 777, 934 P.2d 1214 (1997).

Here, the evidence that the defendant was the shooter along with his stipulation to his prior conviction proves this crime. The additional evidence supporting this charge comes from the bullet casings that were found in a room he admitted he kept his things. Inside a black bag within that room, along with mail addressed to him were several spent shell casings, the same caliber as the gun with his DNA on it. The crime lab tested these spent casings and concluded that they were fired from THAT gun; the same gun that had his DNA. The evidence that he was the owner, possessor, controller, and shooter of that gun was substantial.

The defendant's main argument seems to be about whether or not he actually possessed the gun because under only his version of events, there is an argument his possession was not legally sufficient. This negates the fact that the jury was instructed on

possession. If they didn't believe his argument, or found the other substantial evidence that he did possess the gun compelling, that is solely their province. We presume the jury follows the instructions they are given.

b. THE PROPER REMEDY FOR AN INCORRECT SENTENCING ENHANCEMENT FOUND BY THE JURY IN THIS CASE IS TO REMAND TO SUPERIOR COURT TO STRIKE THE ENHANCEMENT.

RCW 9.94A.533 (f) explicitly prohibits a firearm enhancement for the crime Drive by Shooting. This prohibition was overlooked by the state, the defendant and his attorney, and the court at sentencing. The 36 month firearm enhancement for Count Two, Drive by Shooting should be struck.

Because the enhancement must run consecutively to the underlying offenses (all ordered to run concurrently, the highest being 279 months), this does impact the total number of confinement for the defendant, which should now be 357 (279 for the highest of the underlying offenses, 60 months for the enhancement on Count One, Assault, 1st, plus 18 months enhancement for Count Three, Felony

Harassment). The enhancement for Drive by Shooting should be vacated.

- c. THE COURT MUST REMAND COUNT THREE, FELONY HARASSMENT FOR RESENTENCING EITHER FOR THE COURT TO FIND EXCEPTIONAL CIRCUMSTANCES JUSTIFYING THE SENTENCE OR TO COMPLY WITH THE STATUTORY MAXIMUM OF SIXTY MONTHS.

The statutory maximum "is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." U.S. v. Blakely, 542 U.S. 296, 303 (2004). If the addition of a firearm or deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced. State v. Thomas, 113 Wn. App. 755, 758, 54 P.3d 719, 721 (2002). Felony Harassment is a Class C felony, maximum punishment of up to five years (60 months). RCW 9A.46.020 (2) (b); 9A.20.020. The firearm enhancement for a class C felony adds eighteen months to a class C felony. RCW 9.94A.533 (3) (c). All firearm enhancements must consecutively to all

other sentencing provision, including other firearm enhancements. RCW 9.94A.533 (3) (e).

Because the maximum punishment for Felony Harassment is sixty months, the sentence imposed by the court of fifty-five months PLUS the eighteen month enhancement exceeds the statutory maximum. The case must be remanded for resentencing on this count either to make special findings justifying the exceptional sentence under Blakely, or reducing the sentence on the charge to forty-two months; thereby with the enhancement added, the count would not exceed the statutory maximum of sixty months.

Here, the most serious charge was the Assault, 1st, which is a Class A felony crime, maximum punishment of up to lifetime in prison.⁸ The felony harassment count was run concurrently with this count, so the error is harmless (even if the court reduces the defendant's sentence on the felony harassment count to 42 months, it is still well below the term imposed of 279 months). The total number of months confinement will remain the same.

⁸ RCW 9A.20.020 (1) (a).

E. CONCLUSION

For the reasons stated, the case should be remanded to Superior Court with instructions to strike the firearm enhancement for the Drive by Shooting count, and re-sentence for the Felony Harassment. All other portions of the defendant's sentence and convictions should be affirmed.

/s/

/s/ Jodi M. Hammond
Attorney for Respondent
WSBA #043885

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

State of Washington,)	Court of Appeals No. 32961-5-III
Respondent.)	
)	
JOEL GROVES,)	AFFIDAVIT OF SERVICE
Appellant.)	
_____)	

STATE OF WASHINGTON)
) ss.
 County of Kittitas)

The undersigned being first duly sworn on oath, deposes and states:

That on the 7th day of March, 2016, affiant an electronic copy directed to:

Renee Townsley	Marie Trombley
Court of Appeals	marietrombley@comcast.net
Division III	
500 N. Cedar Street	
Spokane, WA 99210	

containing copies of the following documents:

- (1) Affidavit of Service
- (2) Respondant's Brief

Theresa Burroughs

SIGNED AND SWORN to (or affirmed) before me on this 7th day of March, 2016, by THERESA BURROUGHS.



Lorraine A. Hill

NOTARY PUBLIC in and for the State of Washington.
My Appointment Expires: 09-10-17