FILED
December 12, 2013
Court of Appeals
Division III
State of Washington

90666-1

NO. 31208-9-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

ADRIAN BENTURA OZUNA,

Defendant/Appellant.

APPELLANT'S REPLY BRIEF,

Dennis W. Morgan WSBA #5286
Attorney for Appellant
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Republic, Washington 99166
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ARGUMENT

The State confuses Mr. Ozuna's argument concerning "communication." It appears that the State interprets the argument as attacking the credibility of the witnesses.

Mr. Ozuna does not contest the fact that he wrote the letters. He does contest the fact that there was any "communication."

The State fails to address the case of *State v. Hosier,* 157 Wn.2d 1, 133 P.2d 936 (2006).

Even though the *Hosier* case involves the offense of communication with a minor for immoral purposes, it is pertinent because it interprets the meaning of "communication."

In *Hosier* the defendant left hand-written notes on a chain link fence near a children's playground and in a neighboring yard.

Even though the notes were not given directly to any child, their contents were disclosed to the children by third parties. The *Hosier* Court ruled at 9:

> Unless a person's message is both transmitted by the person and received by the minor, the person has not communicated "with children," the act the statute is designed to prohibit and punish. Requiring both transmittal and receipt is consistent with our prior case law and supported by common sense.

Mr. Ozuna did not transmit any message. He had written the letters; but the letters were never mailed. They were seized by jail staff.

Mr. Ozuna otherwise relies upon the argument contained in his original brief as to this particular issue.

The State misconstrues Mr. Ozuna's argument concerning legal financial obligations (LFOs). The State concedes that the DV assessment was improperly imposed. Mr. Ozuna only contests costs of incarceration in addition to the DV assessment.

The State's argument concerning the mandatory LFOs is not at issue.

The record at sentencing is inadequate to support the trial court's determination that Mr. Ozuna has the current or future ability to pay costs of incarceration.

The State's argument, based upon the letters written by Mr. Ozuna, is pure speculation as to whether or not he will have funds available to make payment of those costs.

Otherwise, Mr. Ozuna relies upon the argument contained in his original brief as to the remaining issues involved in his case.

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DATED this 12th day of December, 2013.

Respectfully submitted,

s/Dennis W. Morgan

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NO. 31208-9-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	YAKIMA COUNTY
Plaintiff,	)	NO. 11 1 01529 2
Respondent,	)	
	)	**CERTIFICATE**
v.	)	**OF SERVICE**
	)	
ADRIAN BENTURA OZUNA,	)	
	)	
Defendant,	)	
Appellant.	)	
	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 12th day of December, 2013, I caused a true and correct copy of the *APPELLANT'S REPLY BRIEF* to be served on:

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CERTIFICATE OF SERVICE