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No. 93385-5
SUPREME COURT
OF THE STATE OF WASHINGTON

State of Washington)	
)	
vs.)	Statement of Additional Authority and
)	Certificate of Service
Zaida Cardenas-Flores)	RAP 10.8
_____)	

Petitioner submits the following additional authority. These cases are offered regarding Petitioner’s third issue (“Does a parent’s intentional touch that accidentally harms an infant always amount to an assault?”). The argument addressing this issue is in Petitioner’s Supplemental Brief, pp. 5-13.

State v. Bennett, 42 Wn. App. 125, 708 P.2d 1232 (1985)

Because of the uncertainty in the state of the law and the absence of a clear waiver, we are unable to find that Bennett made a knowing and intelligent waiver of his right to have the jury instructed that the State has the burden to show the absence of lawful use of force...Reversal is required in the present case because the jury could convict without the State proving every element of the crime charged beyond a reasonable doubt. Specifically, the jury could have convicted without finding the absence of lawful use of force.
Bennett, 42 Wn. App. at 129.

Statement of Add'l Authority- 1

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State v. Prado, 144 Wn. App. 227, 181 P.3d 901 (2008)

[The instructions] contained an incomplete definition of “assault” because the first paragraph defining assault omitted the phrase “with unlawful force” as recommended by the current pattern instructions and case law. However, [the self-defense instruction] correctly defined the “lawful” use of force [and] informed the jury of the State's burden of proving Mr. Prado's use of force “was not lawful.” Thus, the self-defense standard was made “manifestly apparent” to the average juror.

Prado, 144 Wn. App. at 247.

I certify that on February 10, 2017, I delivered an electronic version of this document to the Clark County Prosecuting Attorney (at prosecutor@clark.wa.gov, aaron.bartlett@clark.wa.gov and CntyPA.GeneralDelivery@clark.wa.gov) using the Court’s filing portal (with permission).

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed this February 10, 2017 at Olympia, Washington.



Manek R. Mistry, WSBA No. 22922
Attorney for Defendant/Appellant

BACKLUND & MISTRY

February 10, 2017 - 1:09 PM

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