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STATE OF WASHINGTON
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NO. 96599-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

ROBERT PRY & ARNOLD CRUZ,

Respondents.

ON DISCRETIOANRY REVIEW FROM
THE COURT OF APPEALS, DIVISION I
Court of Appeals No. 77930-3-I
Superior Court No. 15-1-01503-4

AMENDED SUPPLEMENTAL BRIEF OF PETITIONER

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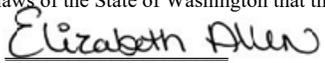
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I. STATEMENT OF THE ISSUE

Whether the Court of Appeals erred in finding that the charging document was inadequate for not including language found in a separate definitional statute?

II. STATEMENT OF THE CASE

The State relies on the statements of facts in its brief below and in the petition for review.

III. ARGUMENT

THE COURT OF APPEALS ERRONEOUSLY CONFLATED THE STANDARD OF REVIEW FOR THE SUFFICIENCY OF THE CHARGING DOCUMENT WITH THAT OF SUFFICIENCY OF THE EVIDENCE..

The State will rely primarily on its argument set forth in the brief of respondent filed in the Court of Appeals and its petition for review. As noted there, the primary thrust of the State's argument is that the reliance, *Op.*, at 38-43, by the Court of Appeals on *State v. Budik*, 173 Wn.2d 727, 272 P.3d 816 (2012), was misplaced. Firstly, that case specifically characterized RCW 9A.76.050 as a definitional statute, and indicated that the elements are found in RCW 9A.76.070. *Budik*, 173 Wn.2d at 734.

Secondly, to the extent that *Budik* refers to the definitional terms as elements, that reference is not controlling. *Budik* was addressing the sufficiency of the evidence, not the charging document. As explained in

Porter, 186 Wn.2d at 92-93, this is a significant difference. The Court therefore specifically rejected the notion that “all aspects of proof that are necessary at trial constitute essential elements that must be included in the information.” *Porter*, 186 Wn.2d at 94 (citing *Johnson*, 180 Wn.2d at 301-02). Neither Cruz nor the court below addressed this distinction. As such the decision below was in error and should be reversed.

IV. CONCLUSION

For the foregoing reasons, the Court of Appeals decision should be *reversed* with instructions to affirm Cruz's conviction and decide the sentencing issue that court declined to consider as moot.

DATED May 1, 2019.

Respectfully submitted,
CHAD M. ENRIGHT
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A handwritten signature in black ink, appearing to read 'RS', with a long horizontal flourish extending to the right.

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