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No. 98256-2

No. 52369-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

TANNER CORYELL  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable James J. Dixon  
Cause No. 17-1-01990-34

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BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the trial court abused its discretion by properly applying long standing precedent from the State Supreme Court in finding that there was not affirmative evidence to support a lesser included instruction of assault in the fourth degree.

2. Whether part two of the Workman test, the factual prong has two interpretations where the State Supreme Court has consistently held that one test applies, and whether that test is incorrect and harmful where the Supreme Court has relied upon it for over thirty years.

3. Whether the trial court properly found that principles of double jeopardy were not violated by convictions for two assaults which occurred in different areas of an apartment and were interrupted by the victim being outside and behind a locked door.

B. STATEMENT OF THE CASE.

1. Procedural History

The appellant, Tanner Coryell, was charged in Thurston County Superior Court with assault in the second degree, domestic violence and assault in the fourth degree, domestic violence. CP 4. During trial, Coryell requested a lesser included jury instruction for the charge of assault in the fourth degree as a lesser included offense of assault in the second degree. CP 78, 79. RP 205-206. The trial court denied the request finding that there was no evidence in the record that anything happened, "other than an alleged assault in the second degree." RP 213.

Following deliberations, the jury convicted Coryell of both charges. RP 314-315. CP 95-98. At sentencing, the trial court denied the defense request for a finding that count II should merge with count I. CP 126-127, 3 RP 20. The trial court sentenced Coryell to 15 months incarceration. 3 RP 21; CP 164-174. This appeal follows.

## 2. Substantive History

Autumn Hart'Lnenicka was in a dating relationship with Coryell. RP 34, 35. In June of 2017, the two moved into an apartment together in the city of Olympia. RP 36. On November 7, 2017, Hart'Lnenicka confronted Coryell about having an ex-girlfriend over to the apartment. RP 40. Coryell started to get mad and Hart'Lnenicka told him to leave. RP 42. Hart'Lnenicka grabbed the play station that Coryell had been playing in the living room and unplugged it. RP 42.

When Hart'Lnenicka threatened to break the play station, Coryell ripped it out of her hands, sat it on a coffee table and shoved her. RP 42. Hart'Lnenicka testified that he pushed her down and placed his hands around her neck while he stood over her. RP 43-44. During this incident, Hart'Lnenicka could still breathe. RP 44. Coryell then grabbed her by the ankles and pulled

her out of the front door, pulling her pants down and ripping them in the process. RP 43-44. After dragging her out of the apartment, Coryell shut and locked the door. RP 44.

Hart'Lnenicka then tried to get back inside because she was "halfway naked," and didn't have a phone or keys. RP 45-46. She banged on the door and she snuck through when he opened it and ran to the laundry room. RP 46. While in the laundry room, Hart'Lnenicka indicated, "I was like Tanner, just leave. And I'm saying again. You know, he wouldn't obviously. And he came over there and pushed me down again and then choked me right there on the ground." RP 46.

Hart'Lnenicka described this second incident, stating:

"The same as before, both hands around my neck. I could still breathe - - not as well as the first time, you know? I mean I could talk barely, like you could hear my voice was kind of like raspy, you know, telling him to get off of me."

RP 47. She said that she grabbed his arm and "then he picked me up, like the - - he grabbed my neck. He still had ahold of it, but he was picking me up in the process. And if I didn't like move my legs, it could have pulled my neck like out." RP 47.

Hart'Lnenicka continued,

“he had kind of lifted my body up a little bit. And slammed my head five times against the bi-folding laundry room doors. And that time I could not breathe at all. I - - I actually thought that was going to be the last thing I ever saw. I thought I was going - - I thought it was going to be over. He wasn't - - he yelled at me in my face, and he said, I'm not afraid to kill you.”

RP 48. She described grabbing his glasses and throwing them, which prompted Coryell to let go of her. RP 50. She indicated that she fell on the ground because she was so weak from having no oxygen. RP 50.

Hart'Lnenicka indicated that Coryell kicked her as she crawled away. RP 50-51. She stated that Coryell got about two inches from her face and started screaming at her. RP 55. She then ran to the bedroom and locked the door, however Coryell was able to unlock the door. RP 55. Hart'Lnenicka stated that he came into the walk-in closet and threw her clothes at her and then started putting her things in garbage bags. RP 55.

At that point, Hart'Lnenicka grabbed her house keys and phone and ran out the front door. RP 55. She called 911 while walking down the stairs. RP 55. Hart'Lnenicka had bruising on her arms and finger marks on her neck. RP 62-63.

Officer Shon Malone of the Olympia Police Department testified at trial. RP 104. While going over his qualifications, the prosecutor asked, “are you trained to look for signs or symptoms of strangulation?” RP 106. Officer Malone answered affirmatively, stating, “depending on the level, you’ll have welts, possibly bruising around the throat and neck area. Sometimes you’ll have broken blood vessels in the eyes or broken blood vessels along the neck, sometimes in the face.” RP 107. Officer Malone also acknowledged that not every case of strangulation presents the same physical symptoms on a person. RP 107.

Regarding his response to the incident on November 7, 2017, Officer Malone testified regarding his observations. He indicated that when he made contact with Hart’Lnenicka, “she appeared to be upset. She was crying,” and Officer Malone noted that “her face was red” and “she was shaking.” RP 110. When asked about his observations of her physical appearance, Officer Malone stated:

“She had her - - the - her chest area that you could see, the upper chest that you could see from the T-shirt appeared to be red. I could also see - - on the left side of her neck, I could see a vertical - - probably a two-inch vertical - - what looked to me like a scratch or an abrasion. And I could also see, on both sides of her neck there appeared to be horizontal welts. That

would be consistent with the - - appeared to look consistent with possibly fingers.”

RP 110-111.

Officer Malone also spoke with Coryell, who appeared calm.

RP 113. Coryell informed Malone that he was in a dating relationship with Hart'Lnenicka and that they shared an apartment together. RP 114. Coryell stated that an argument had occurred, and she had grabbed his play station and threatened to break it. RP 114. He indicated that he grabbed the play station from her, and during the course of that, he had pushed her to the ground. RP 114. Coryell also told Officer Malone that Hart'Lnenicka scratched his face and had broken his glasses. RP 114. Officer Malone asked Coryell if he had ever put his hands around her neck, and Coryell responded, “if I did, I don't remember.” RP 117. When Officer Malone spoke with Coryell a second time, Coryell denied ever grabbing her around the neck. RP 117-118.

On cross examination, Coryell's counsel asked Officer Malone about petechial hemorrhaging. RP 133. Officer Malone acknowledged that there was no petechial hemorrhaging that he could remember during his investigation of this case. RP 134.

Coryell testified that Hart'Lnenicka accused him of cheating on her. RP 159. He indicated that she unplugged the play station aggressively and stated that she was going to smash it. RP 159. Coryell stated that he then got up and grabbed it from her before placing it on the coffee table. RP 159. Coryell denied touching Hart'Lnenicka while taking the play station. RP 159. He testified that after he sat it down, Hart'Lnenicka smacked him causing his glasses to fly past the coffee room table. RP 159. He indicated that she then threatened to break the television while he was retrieving his glasses, prompting him to grab it and put it back on the entertainment center. RP 160.

Coryell testified that that he asked Hart'Lnenicka what was going on and she hit his glasses off and twisted them. RP 161. He said he picked up the parts and Hart'Lnenicka started hitting him and scratched his face. RP 161. He said that he responded by turning away and she continued to hit his shoulder blade. RP 161. He said that while she was hitting him, he "pushed her off, and her heel hit the side of the wall, and she hit - - she fell down and scraped her back on the door handle of the front door and then hit the floor." RP 162. Coryell said that afterwards, Hart'Lnenicka ran into the bedroom to grab her phone and her car keys, and then she

ran outside. He added, "And that's the last time I saw her that day."

RP 165.

When specifically asked if he recalled putting his hands on her that day, Coryell stated, "Not around her neck, no. Other than - the only time I put my hands on her was to push her off of me, because she was scratching my face and hitting me in the back of the shoulder." RP 169. When asked about the marks on her neck, Coryell stated:

"All I can remember is I, used my forearm to pin her up on the - - that wall that I was telling you about, pinned her up like this, because she was still attacking me, like hitting me in the back of the head, the back of the - - like on my spine and my shoulder blade, just punching me, like with fist and the hammer fist, so I just pinned her against the wall like that."

RP 170.

### C. ARGUMENT.

1. The trial court properly applied the standard recognized by the State Supreme Court when it denied Coryell's request for a lesser included instruction.

The State does not dispute a defendant's right to a lesser included instruction when the law and the facts of the case permit. Amendments V, VI, and XIV of the federal constitution require the trial court to give a requested instruction when the lesser included offense is supported by the evidence. Vujosevic v. Rafferty, 844

F.2d 1023 (1988). This right protects a defendant who might otherwise be convicted of a crime more serious than that which the jury believes he committed simply because it wishes to avoid setting him free. Keeble v. United States, 412 U.S. 205, 212-13, 36 L. Ed. 2d 844, 93 S. Ct. 1993 (1973). See also State v. Bowerman, 115 Wn.2d 794, 805, 802 P.2d 116 (1990). This right applies when (1) each element of the lesser offense is a necessary element of the crime charged, and (2) the evidence supports an inference that only the lesser included crime was committed. State v. Workman, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978); State v. Peterson, 133 Wn.2d 885, 891, 948 P.2d 381 (1997). This two-prong test reflects consideration for the specific constitutional rights of the defendant, particularly his right to know the charges against him and to present a full defense. Peterson, 133 Wn.2d at 889. An inference that only the lesser offense was committed is justified “[i]f the evidence would permit a jury to rationally find a defendant guilty of the lesser offense and acquit him of the greater.” State v. Fernandez-Medina, 141 Wn.2d 448, 456, 6 P.3d 1150 (2000) (quoting State v. Warden, 133 Wn.2d 559, 563, 947 P.2d 708 (1997)).

A trial court's refusal to give a lesser included offense instruction is reviewed for abuse of discretion when the decision is based upon the facts of the case. State v. Lucky, 128 Wn.2d 727, 731, 912 P.2d 483 (1996), *overruled on other grounds*, State v. Berlin, 133 Wn.2d 541, 947 P.2d 700 (1997). When there is evidence to support the defendant's guilt solely on the lesser charge, the trial court's refusal to instruct on the lesser charge compromises a defendant's ability to present his theory to the jury and can constitute reversible error. State v. Jones, 95 Wn.2d 616, 628 P.2d 472 (1981). The party requesting the lesser included instruction must point to evidence that affirmatively supports the instruction and may not rely on the possibility that the jury will disbelieve the opposing party's evidence. Fernandez-Medina, 141 Wn.2d at 456; State v. Leremia, 78 Wn. App. 746, 755, 899 P.2d 16 (1995).

Coryell specifically requested a lesser included instruction with regard to count two, assault in the second degree. CP 78, 79. RP 205-206. A lesser included instruction must be given if the evidence, when viewed in a light most favorable to the defendant, raises an inference that the defendant committed the lesser crime instead of the greater crime. In re Pers. Restraint of Sandoval, 189

Wn.2d 811, 822, 408 P.3d 675 (2018). Here, if you looked at the evidence in a light most favorable to Coryell, nothing happened in the laundry room. There can be no inference from the record that Coryell committed the lesser crime instead of the greater crime. To use statutory language, no reasonable doubt as to which of the offenses occurred exists. See RCW 10.58.020.

The State was very clear that the allegation of assault in the second degree related to the incident that occurred in the laundry room. RP 206. The trial court did not abuse its discretion when it found that there was no evidence to support the lesser included instruction. RP 213-214. Coryell's defense counsel argued that the lack of petechial hemorrhaging somehow constituted affirmative evidence to justify a lesser included instruction. RP 207. Officer Malone noted that not all cases of strangulation present the same way. At best, the lack of petechia might have been used to attack Hart'Lnenicka's credibility, but that would not constitute affirmative evidence to support the lesser included instruction. State v. Brown, 127 Wn.2d 749, 755, 903 P.2d 459 (1995).

The denial of a lesser included instruction on assault in the fourth degree as it related to the charge of assault in the second

degree was well within the trial court's discretion and should not be overturned on appeal.

2. There is only one standard currently recognized by the Courts in the State of Washington for lesser included offenses and that standard is not incorrect and harmful.

Coryell argues that the Courts in our State have recognized two distinct tests in regard to the factual prong of State v. Workman. While there has been some distinction in the application of the rule, all Washington Court's adhere to the general rule that was announced in Workman. Though the rule is commonly referred to as the Workman test, the decision in Workman borrowed the language of the factual prong from State v. Snider, 70 Wn.2d 326, 326-327, 422 P.2d 816 (1967) ("To justify such an instruction there must be some basis in the evidence produced at trial positively inferring that the lesser crime was committed and upon which the jury could make a finding as to the lesser included offense); Workman, 90 Wn.2d at 448. In Snider, the defendant denied taking any property whatsoever, therefore the Court found that under the facts, he was guilty of robbery or not guilty, and therefore there was no evidence to support an instruction on larceny from the person. 70 Wn.2d at 327.

Since its decision in Workman, the State Supreme Court has addressed the factual prong of the Workman test many times. In State v. Fowler, 114 Wn.2d 59, 67, 785 P.2d 808 (1990); *overruled on other grounds*, State v. Blair, 117 Wn.2d 479, 816 P.2d 718 (1991), the test was described as “when the evidence in the case supports an inference that the lesser included crime was committed.” The defendant argued that testimony that served to discredit a witness’ testimony supported a lesser included instruction, but the Court found, “It is not enough that the jury might simply disbelieve the State’s evidence. Instead, some evidence must be presented which affirmatively establishes the defendant’s theory on the lesser included offense before an instruction will be given. Fowler, 114 Wn.2d at 67.

In State v. Smith, 115 Wn.2d 434, 442, 798 P.2d 1146 (1990), the test was again described as “when the evidence in the case supports an inference that the lesser included crime was committed.” In that case, the defendant argued that he was entitled to lesser included instructions of theft in the second degree or third degree when he was charged with theft in the first degree. Id. in rejecting the contention, the Court stated that the evidence presented showed that the stolen merchandise was worth \$3000

without a discount, and \$2400 with a discount, therefore, there the defendant “had failed to produce evidence which would support an inference that either theft in the second or third degree was committed.” Id.

In State v. Brown, 127 Wn.2d 749, 754, 903 P.2d 459 (1995), the Court described the factual prong of the test, stating, “the evidence in the case must support an inference that the lesser crime was committed.” Brown was charged with first degree rape and the State sought a lesser included instruction for rape in the second degree. Id. Brown argued that neither party introduced affirmative evidence that he had committed only second-degree rape. Id. The Court of Appeals had concluded that there was affirmative evidence that Brown committed only second-degree rape because there was evidence which tended to impeach the victim’s claim that a gun was used. Id. at 55. The Court found that the State had failed to demonstrate the factual prong of the test, noting that “affirmative evidence” requires something more than the possibility that the jury could disbelieve some of the State’s evidence.” Id.

In State v. Speece, 115 Wn.2d 360, 363, 798 P.2d 294 (1990), the Court rejected a claim that a lesser included instruction

of burglary in the second degree should have been given in a burglary in the first degree case, because the defense was solely that he did not commit the burglary, and there was no affirmative evidence presented that the defendant was not armed during the burglary.

In State v. Fernandez-Medina, 141 Wn.2d at 454, the factual prong of the test was described as, “the evidence in the case must support an inference that the lesser crime was committed.” The Court stated that

“an instruction on an inferior degree offense is properly before administered when: (1) the statutes for both the charged offense and the proposed inferior degree offense proscribe but one offense; (2) the information charges an offense that is divided into degrees, and the proposed offense is an inferior degree of the charged offense and (3) there is evidence that the defendant committed only the inferior offense.”

Id.; *citing*, State v. Peterson, 133 Wn.2d at 891. In addressing the factual prong of the test, the Court stated,

“necessarily, then, the factual test includes a requirement that there be a factual showing more particularized than that required for other jury instructions. Specifically, we have held that the evidence must raise an inference that only the lesser included/inferior degree offense was committed to the exclusion of the charged offense.”

Fernandez-Medina, 141 Wn.2d at 455, *citing* Peterson, 133 Wn.2d at 891 and State v. Bowerman, 115 Wn.2d 794, 805, 802 P.2d 116 (1990); *overruled on legal prong test*, State v. Condon, 182 Wn.2d 307, 343 P.3d 357 (2015).

The Court continued to explain the factual prong of the test in State v. Porter, 150 Wn.2d 732, 82 P.3d 234 (2004). The Court again stated, “we have held that the evidence must raise an inference that only the lesser included offense was committed to the exclusion of the charged offense.” Id. at 737. “In other words,” the Court continued, “the evidence must affirmatively establish the defendant’s theory of the case - - it is not enough that the jury might disbelieve the evidence pointing to guilt.” Id.

In State v. Condon, 182 Wn.2d at 316, the Court stated, “under the second (factual) prong, the court asks whether the evidence in the case supports an inference that only the lesser offense was committed, to the exclusion of the greater, charged offense.” The test was referred to in a similar fashion in State v. Schierman, 192 Wn.2d 577, 657, 415 P.3d 106 (2018).

There is only one test in this State for consideration of whether a lesser included instruction is warranted. Coryell’s argument that there is a recognized Workman test and a

recognized exclusion test is incorrect. The exclusion rule is part of the Workman test as it has evolved in over thirty years of jurisprudence. Coryell points to State v. Henderson, 182 Wn.2d 734, 344 P.3d 1207 (2015) for the proposition that two tests exist; however, a close reading of that opinion reveals otherwise.

In Henderson, the Court considered whether a lesser included instruction should have been given on first degree manslaughter in a prosecution for first degree murder by extreme indifference. Id. at 743. Without stating so, the Court applied the exclusion rule of the Workman test, stating,

“the proper question under our current case law is whether a rational jury could have that Henderson’s actions constituted a disregard of a substantial risk that a homicide may occur but not an extreme indifference that created a grave risk of death.”

Henderson, at 744. In other words, the majority opinion was asking whether affirmative evidence existed which would support only a conclusion that the manslaughter offense occurred.

In dissent, Justice Gordon McCloud criticized the majority opinion, but recognized that the majority acknowledged the exclusion rule. Id. at 748. In a footnote, Justice Gordon McCloud opined that the exclusion rule arguably stands in tension with RCW 9A.04.100(2) but acknowledged that the issue had not been raised.

Id. n. 6. RCW 9A.04.100(2) reads “when a crime has been proven against a person, and there exist a reasonable doubt as to which of two or more degrees he or she is guilty, he or she shall be convicted only of the lowest degree.” Similar language is included in RCW 10.58.020. However, these rules are not in tension with the current factual prong test. In fact, by requiring an inference that only the lesser included offense was committed, the test gives meaning to the phrase, “and there exist a reasonable doubt as to which of two or more degrees he or she is guilty.” If there can be no inference that only the lesser included offense was committed to the exclusion of the greater, there is no reasonable doubt as to which degree was committed.

Contrary to Coryell’s claim, the rule is also not inconsistent with State v. McClam, 69 Wn.App. 885, 850 P.2d 1377 (1997). McClam acknowledged that affirmative evidence supporting the lesser included offense in that case was presented and led to a reasonable inference that the appellant may have merely possessed the cocaine. Id. at 888-889. There is no support for Coryell’s contention that the current test for the factual prong is incorrect or harmful.

Stare decisis is a bedrock principle which “promotes the evenhanded, predictable, and consistent development of legal principals, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” State v. Barber, 170 Wn.2d 854, 863, 248 P.3d 494 (2011) (quoting Keene v. Edie, 131 Wn.2d 822, 831, 935 P.2d 588 (1997), quoting Payne v. Tennessee, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L. Ed 2d 720, *reh’g denied*, 501 U.S. 1277, 112 S. Ct. 28, 115 L. Ed. 2d 1110 (1991)). Courts will depart from precedent when there is a reason to do so, but they require a plain showing that the rule in place is both incorrect and harmful. Barber, 170 Wn.2d at 863-64. No such showing has been made in this case. This Court is bound to follow the precedent set forth by the State Supreme Court.

3. Coryell’s convictions for assault in the second degree and assault in the fourth degree do not violate double jeopardy.

Double jeopardy claims are reviewed de novo. State v. Villanueva-Gonzalez, 180 Wn.2d 975, 979-80, 329 P.3d 78 (2014). The Fifth Amendment to the United States Constitution and Washington Constitution art. I, § 9, provide coextensive protection against being twice prosecuted for the same offense. State v. Gocken, 127 Wn.2d 95, 107, 896 P.2d 1267 (1995). That

protection precludes more than one punishment for the same offense. Villanueva-Gonzalez, 180 Wn.2d at 980.

Whether a defendant has been punished more than once for the same crime depends on what the legislature intended as the punishable act. State v. Leyda, 157 Wn.2d 335, 343, 138 P.3d 610 (2006). When a defendant has been convicted of multiple counts of the same statute, the question is what the legislature intended to be the unit of prosecution. Villanueva-Gonzalez, 180 Wn.2d at 980. If only one unit of prosecution of the crime has been committed, there can be only one punishment. State v. Adel, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998). If the statute does not define the unit of prosecution, or if the intent of the legislature is not clear, the ambiguity must be resolved in favor of the defendant. Lyeda, 157 Wn.2d at 343.

The Washington Supreme Court has addressed the unit of prosecution of assault and concluded that it is a course of conduct crime. Villanueva-Gonzalez, 180 Wn.2d at 983. Once the court determines the unit of prosecution, it must then conduct a factual analysis to determine if the facts show one or more than one unit of prosecution. State v. Bobic, 140 Wn.2d 250, 266, 996 P.2d 610

(2000). The court in Villanueva-Gonzalez, having determined that assault is a course of conduct crime, said:

There is no bright-line rule for when multiple assaultive acts constitute one course of conduct. While any analysis of this issue is highly dependent on the facts, courts in other jurisdictions generally take the following factors into account:

--The length of time over which the assaultive acts took place,

--Whether the assaultive acts took place in the same location,

--The defendant's intent or motivation for the different assaultive acts,

--Whether the acts were uninterrupted or whether there were any intervening acts or events, and

--Whether there was an opportunity for the defendant to reconsider his or her actions.

We find these factors useful for determining whether multiple assaultive acts constitute one course of conduct. However, no one factor is dispositive, and the ultimate determination should depend on the totality of the circumstances, not a mechanical balancing of the various factors.

Villanueva-Gonzalez, 180 Wn.2d at 985.

In Villanueva-Gonzalez, the defendant struck pulled his girlfriend out of a bedroom, hit her head with his forehead, breaking her nose in two places and then grabbed her by the neck and held her up against some furniture, restricting her ability to breathe. Id. at 978. There was no indication in the record of any interruptions or intervening events. Id. at 986.

During her closing argument, the prosecutor in this case made it very clear that the charge of fourth degree assault was referring to the initial incident, when Hart'Lnenicka could breathe, stating, "You have Autumn's testimony, that he pushed her down, put his hands around her neck, and he drug her out over the laminate, over the weather strip, or I think she called it a metal bar, out onto the concrete patio or concrete entryway." RP 272.

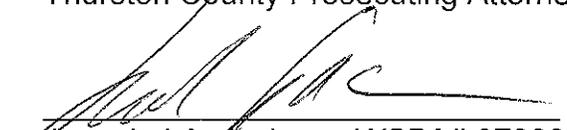
Unlike the situation in Villanueva-Gonzales, there was an interruption between the two assaults in this case. After Coryell initially dragged Hart'Lnenicka outside, he shut and locked the door. RP 46. The assaults were interrupted by their separation and Coryell had the opportunity to form a different intent. After the interruption, he opened the door and pursued Hart'Lnenicka into the laundry room, a different location in the apartment than the first offense and committed the assault in the second degree. RP 46-47. Under the totality of the circumstances of this case, given that the two assaults occurred in different locations in the apartment and were interrupted when the victim and assailant were separated by a locked door of the apartment, it cannot be said that assault in the second degree and assault in the fourth-degree convictions violated the prohibition against double jeopardy.

D. CONCLUSION.

The trial court did not abuse its discretion when it applied the proper standards of Workman test in denying Coryell's request for a lesser included instruction of assault in the fourth degree. The request was not supported by affirmative evidence. There is only one standard for the factual prong of the Workman test in this State, and it is neither incorrect nor harmful. There were two incidents of assault interrupted by a locked door between the victim and Coryell and occurring in two different locations in the apartment. The State respectfully requests that this Court affirm Coryell's convictions and sentence.

Respectfully submitted this 12<sup>th</sup> day of APRIL 2019.

JON TUNHEIM  
Thurston County Prosecuting Attorney



Joseph J.A. Jackson, WSBA# 37306  
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief of Respondent on the date below as follows:

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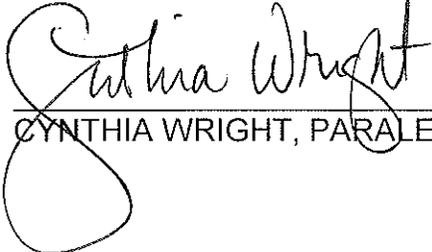
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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 12<sup>th</sup> day of APRIL, 2019, at Olympia, Washington.

  
\_\_\_\_\_  
CYNTHIA WRIGHT, PARALEGAL

**THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE**

**April 12, 2019 - 11:55 AM**

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