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Court of Appeals
Division I
State of Washington

72299-9

NO. 72299-9-I

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

B. W.,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable John M. Meyer, Judge

RESPONDENT'S BRIEF

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I. SUMMARY OF ARGUMENT

B.W. appeals from his juvenile court disposition of Attempted Rape of a Child in the First Degree. B.W. claims the trial court improperly found him guilty of the charge because he contends the judge in a juvenile trial lacks the authority to find a juvenile guilty of a lesser charge.

At the trial court B.W. conceded that the trial court had the ability to find the defendant guilty of the attempt but instead claimed the finding violated separation of powers. B.W. abandons the separation of powers claim on appeal.

Juvenile court is a division of the superior court. The judge has all authority that a trial court has in a bench trial to enter findings as to a lesser charge. Nothing in the RCW title 13 prevents the juvenile court judge from finding guilt on a lesser charge.

For these reasons, this Court must affirm the conviction.

B.W. also contends the sexual assault protection order exceeded the maximum term allowable. He is correct and the matter should be remanded to enter a protection order with the appropriate two year term.

II. ISSUES

1. Where the juvenile agreed the judge had the authority to find the juvenile guilty of the lesser offense, has the defense conceded the issue he raises now on appeal?

2. Since a juvenile court judge sits as a division of the superior court, does the judge have statutory authority to find a juvenile respondent guilty of a lesser charge?
3. Does any portion of RCW title 13 provide that the juvenile court judge lacks authority to find a juvenile guilty of a lesser charge?
4. Should the court remand the case to the trial court to enter a corrected protection order where the term of the order exceeded that authorized by statute?

III. STATEMENT OF THE CASE

1. Statement of Procedural History

On December 20, 2013, B.W. was charged with two counts of Rape of a Child in the First Degree against two different individuals and one count of Child Molestation in the First Degree alleged to have occurred on or about and between June 1, 2013, and August 31, 2013. CP 1-2.

On June 19, 2014, the information was amended to allege all the offenses occurred against the same individual. CP 8-9.

On July 3, 2014, the trial court conducted a child hearsay hearing. 7/3/14 RP 3-105.¹ The statements of A.R.J. were determined to be admissible at trial. CP 77, 7/23/14 RP 3-8.

On July 23, 2014, the trial court began the adjudication hearing. 7/23/14 RP 3-154, 7/24/14 RP 3-77.

On July 24, 2014, the trial court found B.W. guilty of the charge of Attempted Rape of a Child in the First Degree. 7/24/14 RP 77.

On July 31, 2014, the trial court entered the order of disposition. CP 94. The disposition order imposed a manifest injustice sentence downward to 24 months supervision, 150 hours of community service work and 30 days detention. CP 96-7, 7/31/14 RP 36-7. The trial court perceived that it was likely B.W. would move to Nevada for supervision under the interstate compact. 7/31/14 RP 39-40.

On July 31, 2014, B.W. timely filed a notice of appeal. CP 92.

On August 14, 2014, B.W.'s supervision was transferred to Nevada under an interstate compact. CP __ (Application for Interstate Compact, Sub.

¹ The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

3/6/14 RP	Quash Warrant and Arraignment
7/3/14 RP	Child Hearsay Hearing
7/17/14 RP	Trial Confirmation,
7/23/14 RP	Adjudication Hearing – Day 1
7/24/14 RP	Adjudication Hearing – Day 2
7/31/14 RP	Disposition Hearing.

No. 63, filed August 14, 2014, Supplemental Designation of Clerk's Paper's Pending).

On August 28, 2014, the State filed a notice of cross appeal regarding the manifest injustice sentence. CP __ (Notice of Cross-Appeal, Sub. No. 65, filed August 28, 2014, Supplemental Designation of Clerk's Paper's Pending).

On November 18, 2014, the trial court entered the findings of fact and conclusions of law. CP __ (Findings of Fact and Conclusions of Law, Sub. No. 73, filed November 18, 2014, Supplemental Designation of Clerk's Paper's Pending).

On January 16, 2015, after Nevada was unwilling or unable to supervise B.W., he stipulated to setting aside the manifest injustice disposition. Supp. CP 17-8. An amended order of disposition was filed for a standard range sentence of 15 to 36 weeks at JRA. Supp. CP 3, 6.

Based upon the trial court's eventual imposition of a standard range sentence, the State is withdrawing its cross-appeal.

2. Summary of Trial Proceedings

i. Summary of Trial Testimony

A.J.² was seven at the time of trial. 7/23/14 RP 28. A.J. lived in Anacortes with his three brothers, sister and parents. 7/23/14 RP 29. A.J. testified that B.W., the respondent, was a neighbor boy who had lived next door the summer before. 7/23/14 RP 31, 38.

A.J. testified that two bad things happened while at B.W.'s house in the summer of 2013. 7/23/14 RP 39, 41. One day, after they had been playing on B.W.'s porch, B.W. took A.J. to his bedroom. 7/23/14 RP 39-40. B.W. closed the door, locked it, and pulled down A.J.'s pants so his back and private were showing. 7/23/14 RP 39. B.W. then pulled down his own pants so A.J. could see his private. 7/23/14 RP 39. B.W. then put his private in A.J. 7/23/14 RP 39-40. A.J. felt sperm and said it felt icky. 7/23/14 RP 40.

A.J. did not tell anybody because he was scared his parents would get mad at him. 7/23/14 RP 42.

A.J. testified that on another day, an incident occurred when they were in a tree fort. 7/23/14 RP 43-4. On that day, B.W. pulled down his pants so his privates were showing and had A.J. put his mouth on B.W.'s penis when he had a boner. 7/23/14 RP 45-6. A.J. described that a boner was

² The State uses the initials of the victim and his family members in order to maintain his privacy to the degree possible since he remains a minor. Using the full name of family members would have the further effect of revealing the victim's identity.

a private that becomes big for boys. 7/23/14 RP 45. A.J. said he had his mouth on the penis for about ten seconds. 7/23/14 RP 46. A.J. again did not tell his parents because he was scared they would get mad. 7/23/14 RP 47.

The first incident was the incident in the house that happened which occurred during the summer and the second was the thing that occurred in the tree fort during school. 7/23/14 RP 56.

A.J. first told his brother about what happened a long time after everything had happened. 7/23/14 RP 54. A.J.'s parents then talked to him. 7/23/14 RP 54.

T.J. is A.J.'s older brother. 7/23/14 RP 70-2. T.J. knew B.W. as a neighbor and that he had hung out with younger children. 7/23/14 RP 71-2. In November 2013, T.J. and A.J. were sitting in the living room watching television when A.J. said something about sperm. 7/23/14 RP 73. T.J. asked A.J. where he heard it and A.J. said B.W. had said when he put his penis on A.J.'s bare bottom. 7/23/14 RP 73. T.J. took his brother into his parent's bedroom where A.J. told his parents and left. 7/23/14 RP 73. A.J. seemed nervous. 7/23/14 RP 73.

R.J. is A.J.'s father. 7/23/14 RP 77, 79. R.J. knew B.W. because he was a gym teacher at B.W.'s school. 7/23/14 RP 78. B.W.'s family was neighbors to R.J. and they knew each other fairly well. 7/23/14 RP 78. A.J. and his brother S.J. were not allowed to go into other people's houses.

7/23/14 RP 82. But they did so and got in trouble. 7/23/14 RP 82. A couple of months before B.W. moved, he A.J. and S.J. were not allowed to play with B.W. anymore. 7/23/14 RP 82.

In December of 2013, T.J. brought A.J. to their father and A.J. told him that B.W. had put his penis in B.W.'s bare bottom. 7/23/14 RP 83. A.J. also told his father that B.W. had covered his mouth with one hand with his other forearm pushed up against him and against the wall. 7/23/14 RP 83. A.J. said B.W. stuck his penis in his bottom. 7/23/14 RP 84. A.J. was shy and not excited to talk about the incident. 7/23/14 RP 85. R.J. had not talked to A.J. about sex prior to this discussion. 7/23/14 RP 86.

R.J. called police to find out what to do and an appointment was made to have A.J. go talk to a counselor. 7/23/14 RP 84. When his wife got home R.J. told her what A.J. had said. 7/23/14 RP 85. His wife went into the bedroom to talk to A.J. 7/23/14 RP 85, 94.

R.J. testified that B.W. had already moved by the time that A.J. disclosed to him. 7/23/14 RP 86.

L.J. is A.J.'s mother. 7/23/14 RP 97. B.W. and his family were neighbors until they moved out in October, 2013. 7/23/14 RP 97-8. B.W. began playing with A.J. more in the summer of 2013. 7/23/14 RP 98, 101-2. B.W. was cut off from interacting with A.J. prior to B.W. moving. 7/23/14 RP 101. A.J. and B.W. were never married. 7/23/14 RP 101.

Deborah Ridgeway is an interview and resource specialist who interviewed A.J. 7/23/14 RP 107, 111. A.J. described an incident at B.W.'s house where B.W. had pulled down A.J.'s pants, placed his private in A.J.'s butt and sperm came out. 7/23/14 RP 117-8. A.J. said that happened one time in the bedroom of B.W.'s house. 7/23/14 RP 118-9. A.J. described the sperm as being liquidy like sticky. 7/23/14 RP 120. B.W.'s pants had been pulled down and A.J. could see his privates. 7/23/14 RP 120. A.J. described that during the incident, B.W. had pinned A.J. against the wall. 7/23/14 RP 122. A.J. described to Ridgeway that the incident ended when B.W.'s father had called him down to dinner. 7/23/14 RP 121.

A.J. also described a separate incident that happened at a tree fort. 7/23/14 RP 124. A.J. said that B.W. had pulled down his pants part way, made A.J. put his mouth over his private and B.W. counted to ten. 7/23/14 RP 124. A.J. said he stopped sucking after B.W. had counted to ten. 7/23/14 RP 124. B.W.'s private had hair on it. 7/23/14 RP 124. B.W. was snickering. 7/23/14 RP 124. A.J. described that B.W.'s privates were bigger than his and felt like skin. 7/23/14 RP 125, 139. A.J. believed the incident happened in the summertime when he was not going to school. 7/23/14 RP 125. A.J. said the incident happened the summer before more than a year before the interview. 7/23/14 RP 126, 140.

On cross-examination, Ridgeway described that she had asked A.J. was it ever completely inside and A.J. responded no because he couldn't get his pee pee that far in. 7/23/14 RP 133. A.J. said the first incident he described was the first one that occurred. 7/23/14 RP 134. B.W.'s counsel pointed out potential inconsistencies in A.J.'s taped statements, about the positions of the bodies, if they were clothed, which incident occurred first and the number of incidents. 7/23/14 RP 135-40. A.J. believed the incidents happened when he was either five or six years-old, and over a year before. 7/23/14 RP 140

Officer Sam Hansen followed up to the initial call made by R.J. on December 1, 2013. 7/23/14 RP 144-5, 147. Hansen arranged to set up an interview of A.J. on December 4, 2013. 7/23/14 RP 147-8. Hansen provided the interview specialist information about the subjects involved and the report. 7/23/14 RP 148. Hansen did not speak with A.J. himself, but did view the interview. 7/23/14 RP 148-9.

Defense called investigator Colleen Warness to testify regarding the defense interview of A.J. 7/24/13 RP 11-13. Warness described that A.J. had said what he thought boner meant. 7/24/13. He described it as when your private gets all big and stiff. 7/24/14 RP 15. When asked about sperm, A.J. said that he thought boys and girls got sperm when they are a little bit older than he was then. 7/24/14 RP 15.

B.W. did not testify. 7/24/14 RP 28, 31.

ii. Post-trial Motions

At the trial court the defense acknowledged the trial court in a bench trial may find a defendant guilty of a lesser included offense. CP 83, 7/31/14 RP 3-4. Defense filed a motion to set aside the verdict alleging a separation of powers violation by the trial court “considering a lesser included offense not offered by the state.” CP 83. Defense indicated the separation of powers claim “appears to be a matter of first impression.” CP 83. The trial court denied the motion to set aside the verdict. 7/31/14 RP 8.

iii. Adjudication Hearing Findings

On November 18, 2014, the trial court entered the findings of fact and conclusions of law. CP __ (Findings of Fact and Conclusions of Law, Sub. No. 73, filed November 18, 2014, Supplemental Designation of Clerk’s Paper’s Pending).

IV. ARGUMENT

1. **A lesser included offense of attempt to commit an offense is available to a judge in a juvenile court bench trial.**
 - i. **B.W. conceded at the trial court that the lesser offense was available for the judge to consider.**

B.W. conceded at the trial court that during the bench trial, the trial court had the authority to find a defendant guilty of a lesser included offense. CP 83.

B.W.'s claim before this court is inconsistent with the position he took in the trial court.

I understand that this is not a clear cut issue and **I concede in my brief that there is case law indicates a judge in a bench trial can find a lesser included that is not requested or argued by the State.** But I do believe this is a legitimate legal issue because all of the previous cases that have found a judge can do that, the only objection by defense was notice. And clearly defense is on notice because the statute 10.61.010 puts the defense and the defendant on notice that a lesser included could be proven when completed crime is charged.

7/31/14 RP 3-4 (bold emphasis added).

Instead, B.W. claimed "I believe it's a separation of powers issue."

7/31/14 RP 4, CP 83. B.W. does not raise the separation of powers issue on appeal.³

³ The trial court did not violate separation of powers because the trial court did not get involved in the charging function that is reserved for the prosecutor. *State v. Tracer*, 155 Wn. App. 171, 182, 229 P.3d 847, affirmed in part and reversed in part 173 Wn.2d 708, 272

B.W. now claims that even though the matter is of “first impression” and he took a different position before the trial court, he should be permitted to take a contrary position for the first time on appeal because it was a “manifest error affecting a constitution right.” Brief of Appellant at pages 1, 11. He contends that the failure to have notice of the charges he was facing violated B.W.’s right under Wash. Const. art 1, section 22. Brief of Appellant at page 11. Lesser offenses do not violate such notice.

Lesser Included Offenses: Threshold Requirement. In *State v. Fernandez-Medina*, 141 Wn.2d 448, 6 P.3d 1150 (2000), we recalled the " 'ancient doctrine' that a criminal defendant may be held to answer for only those offenses contained in the indictment or information." Id. at 453 (quoting *Schmuck v. United States*, 489 U.S. 705, 717-18, 109 S. Ct. 1443, 103 L. Ed. 2d 734 (1989)). As we also observed, "[c]onsistent with that notion, Wash. Const. art. I, § 22 preserves a defendant's 'right to be informed of the charges against him and to be tried only for offenses charged.'" Id. (quoting *State v. Peterson*, 133 Wn.2d 885, 889, 948 P.2d 381 (1997)). In keeping with the constitutional requirement of notice, the lesser included offense doctrine entitles the prosecution or the defendant to a jury instruction on a crime other than the one charged only if "the commission of [the lesser offense] is necessarily included within [the offense] with which [the defendant] is charged in the indictment or information." RCW 10.61.006 (emphasis added).

P.3d 199 (2012) A trial court may not sua sponte amend the charges against the defendant. *Tracer*, 155 Wn. App. at 182-83. But a conviction of an uncharged lesser included offense does not involve a charging decision. The original charge gives a defendant notice that he can be convicted of any lesser degree or lesser included offense if the evidence supports it. *State v. Peterson*, 133 Wn.2d 885, 892, 948 P.2d 381 (1997).

State v. Porter, 150 Wn.2d 732, 735-36, 82 P.3d 234 (2004). The notice of the charges was not constitutionally deficient.

ii. The judge in a bench trial has the authority to find the commission of an attempt offense to the same extent that as a jury.

In a jury trial, the jury must be instructed on a lesser included to find an accused guilty in order to return a verdict on an offense. *State v. Harris*, 121 Wn.2d 317, 320, 849 P.2d 1216 (1993). A lesser included instruction may be requested by either the State or the accused or even on the Court's own initiative. *State v. Bandura*, 85 Wn. App. 87, 96, 931 P.2d 174 (1997).

In a bench trial, no jury instructions are required. See *State v. Allen*, 89 Wn.2d 651, 654, 574 P.2d 1182 (1978) ("The purpose of an instruction is to furnish guidance to the jury in its deliberations, and to aid it in arriving at a proper verdict, so far as it is competent for the court to assist them."). The trial court judge, as the trier of fact, is not constrained by the instructions and may consider the charged offense as well as any lesser included offense. *State v. Peterson*, 133 Wn.2d 885, 892-93, 948 P.2d 381 (1997) (In a bench trial, the judge "may properly find defendant guilty of any inferior degree crime of the crimes included within the original information.").

RCW 10.61.010 which provides for the lesser charge of attempt to be considered by the trier of fact is structured with two sentences.

Upon the trial of an indictment or information, the defendant may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the same crime. Whenever the jury shall find a verdict of guilty against a person so charged, they shall in their verdict specify the degree or attempt of which the accused is guilty.

RCW 10.61.010. The first sentence provides for consideration of lesser offenses and does not distinguish between trials to the bench and those to the jury. The second sentence specifies that when a jury makes the determination, the jury has to specify the degree or attempt. As opposed to a jury trial, in a trial to the bench factual findings are required which provides the safeguard applicable to the second sentence. JuCR 7.11(d), CrR 6.1(d). Application of RCW 10.61.010 is not limited to jury trials.

iii. A judge in juvenile court is sitting as a division of the superior court and has all authority a superior court judge has in a bench trial.

Juvenile court is a division of Superior Court; not a separate constitutional court. RCW 13.04.021(1). RCW 13.04.021(2) provides the cases shall be tried without a jury. The judge has all the constitutional subject matter and personal jurisdiction regardless of age and the legislature can never divest the court of that power. *State v. Posey*, 174 Wn.2d 131, 136-7, 272 P.3d 840 (2012).

For the purpose of the juvenile justice act, juvenile offenses are defined to include the charges which an adult would face.

(21) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

RCW 13.40.020(21). B.W. faced the same statutes defining crimes, including lesser charges that an adult would face.

No provision of Title 13 indicates the juvenile court lacks the power to find commission of a lesser included offense. The adjudicatory hearing statute, RCW 13.40.130, does not provide that a judge cannot find a juvenile guilty of a lesser included offense.

B.W. is correct that RCW 13.04.450 just says Title 13 is the exclusive authority for the adjudication of a juvenile case. However, this does not prohibit application of other statutes to juvenile proceedings.

The provisions of chapters 13.04 and 13.40 RCW, as now or hereafter amended, shall be the exclusive authority for the adjudication and disposition of juvenile offenders except where otherwise expressly provided. Chapter 10.22 RCW does not apply to juvenile offender proceedings, including diversion, under chapter 13.40 RCW.

RCW 13.04.450. The statute sets the procedure by which juvenile prosecutions occur, not substantive law applicable to juvenile offenses.

By its terms, the statute specifically exempts out the compromise of misdemeanor statute. If B.W.'s position was correct, such an exemption would not have been required. In fact, the compromise of misdemeanor

statute was specifically exempted after appellate courts were applying it to juvenile offenses. *State v. Ford*, 99 Wn. App. 682, 686, 995 P.2d 93 (2000).

In addition, the Court of Appeals has applied the competency provisions of RCW Ch. 10.77 to juvenile offenses, despite a request to limit its application in a case where the juvenile relied upon RCW 13.04.050.

With respect to the disposition of juvenile offenders, RCW 13.04.450 provides in pertinent part that "[t]he provisions of Chapter 13.04 and 13.40 RCW, as now or hereafter amended, shall be the exclusive authority for the adjudication and disposition of juvenile offenders except where otherwise expressly provided." (Emphasis added). E.C. argues that because RCW 10.77 fails to expressly provide that its terms apply to juvenile offenders, the juvenile court's inherent authority over the disposition of incompetent juvenile offenders remains unlimited by the statute. This argument fails to consider other provisions governing the disposition of juvenile offender cases.

State v. E.C., 83 Wn. App. 523, 528, 922 P.2d 152 (1996). These examples demonstrate that other provisions of RCW title 10 apply to juvenile cases despite the language of RCW 13.04.450.

There are a number of examples of juvenile court cases in which appellate courts affirmed convictions for lesser offenses or found the commission of lesser offenses after reversal of a conviction on a greater offense for sufficiency of the greater offense.

In *State v. Hendrix*, 109 Wn. App. 508, 35 P.3d 1189 (2001), a juvenile appealed a decision that she was guilty of second degree escape.

The court held there was insufficient evidence of an element of the greater offense, but the juvenile conceded her actions violated the third degree escape statute. Thus, the court remanded for resentencing for the lesser-included offense. *State v. Hendrix*, 109 Wn. App. at 515, 35 P.3d 1189 (2001).

In *State v. McCann*, 74 Wn. App. 650, 878 P.2d 1218 (1994), the juvenile was charged with first degree possession of stolen property. After a trial to the bench in juvenile court, he was found guilty of the lesser included offense of second degree possession of stolen property. His conviction was affirmed on appeal.

In the juvenile court cases of *State v. Cobelli*, 56 Wn. App. 921, 788 P.2d 1081 (1989) and *State v. Kovac*, 50 Wn. App. 117, 747 P.2d 484 (1987) the Court of Appeals held there was insufficient evidence to support the conviction for possession with intent to deliver. However, because the evidence of possession was undisputed, the court of appeals remanded the cases for entry of an amended judgment of guilt on the lesser included offense of possession.

In *State v. N.S.*, 98 Wn. App. 910, 991 P.2d 133 (2000) the juvenile was charged in juvenile court with rape in the third degree. The court found N.S. guilty of the lesser included offense of attempted rape in the third degree even though the statute of limitations for that crime had run. The

conviction was reversed because the statute of limitations had run on the greater offense, not because the juvenile court lacked authority to consider it.

If as B.W. suggests, no provision of RCW Ch. 10.61 can be applied to juvenile offenders, then juveniles would lack the benefit of seeking lesser included offenses simply because those offenses are not charged.

Contrary to that position, RCW 13.04.450, does not limit a trial court's consideration of substantive criminal law.

Thus, B.W.'s conviction must be affirmed.

2. The duration of the sexual assault protection order imposed pursuant to the statute was in error.

When an offender is found guilty of a sex offense, any sentencing condition which restricts an offender's ability to contact the victim is referred to as a sexual assault protection order. RCW 7.90.150(6)(a).⁴ By the statute's plain language, "[a] final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years" following an offender's sentence and any term of community custody imposed. RCW 7.90.150(6)(c).

⁴ The State also notes that application of the sexual assault protection order under RCW 7.90.150 is outside the terms provided in RCW Ch. 13.04 and RCW Ch. 13.40. B.W.'s application of RCW 7.90.150 is inconsistent with his contention in the other section of the Brief of Appellant that RCW 13.04.450 precludes application of the statutes not referenced in RCW Ch. 13.04 and RCW Ch. 13.40.

Here the trial court imposed a sexual assault protection order to expire August 7, 2099. Supp. CP 14. This duration violates the permissible term provided in RCW 7.90.150(6)(c). The order also provided the correct duration in the parenthesis after the provision setting the term.

(A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation or parole.)

Supp. CP 14.

The case should be remanded to the trial court to set expiration of the protection order at two years following expiration of any sentence of imprisonment and subsequent period of supervision. If that term can be determined, as of the date of the hearing after remand because he has completed the term, a precise date can be set. If B.W. still has confinement or supervision remaining, a date two years after the last date upon which he could be confined or supervised should be set.

V. CONCLUSION

For the foregoing reasons, the Court must affirm B.W.'s conviction. Since the sexual assault protection order exceeded the maximum permissible statutory term, the case must be remanded for entry of a corrected protection order.

DATED this 9th day of June, 2015.

SKAGIT COUNTY PROSECUTING ATTORNEY

By: 
ERIK PEDERSEN, WSBA#20015
Deputy Prosecuting Attorney
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by; United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Christopher H. Gibson, addressed as Nielsen, Broman & Koch PLLC, 1908 E Madison Street, Seattle, WA 98122. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 9th day of June, 2015.


KAREN R. WALLACE, DECLARANT