

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MELANIE ANN ROYCE,

Appellant.

No. 41033-8-II

UNPUBLISHED OPINION

Armstrong, P.J. — Melanie Royce appeals her conviction for first degree theft, arguing that the trial court erred by not giving a unanimity instruction as required by *State v. Coleman*, 159 Wn.2d 502, 511, 150 P.3d 1126 (2007). The State concedes that she is correct. The exception to the unanimity requirement announced in *State v. Garman*, 100 Wn. App. 307, 317, 984 P.2d 453 (1999), does not apply because the jury was not instructed that it had to find that Royce's thefts were parts of a common scheme or plan. We accept the State's concession, reverse Royce's conviction, and remand for further proceedings.¹

¹ A commissioner of this court initially considered Royce's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

No. 41033-8-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Van Deren, J.

Quinn-Brintnall, J.