

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
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NO. 101792-8

SUPREME COURT

STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

ROBERT JAMES ROGERS,

Defendant/Petitioner.

ADDITIONAL STATEMENT OF AUTHORITIES

Dennis W. Morgan WSBA #5286
Attorney for Petitioner
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ARGUMENT

ROBERT JAMES ROGERS requests that the Court consider the following additional authorities pertaining to the issue of the constitutional right to proper venue under Const. art I, § 22 and the Sixth Amendment to the United States Constitution.

In *State v. Tingdale*, 117 Wn.2d 595, 817 P.2d 850 (1991) the Court discussed the random statutory selection process for jurors. The Court ruled at 600:

Where the selection process is in substantial compliance with the statutes, the defendant must show prejudice. If there has been a material departure from the statutes, prejudice will be presumed. *Roche Fruit Co. v. Northern Pac. Ry.*, 18 Wn.2d 484, 139 P.2d 714 (1943).

... A randomly selected jury is a right provided by statute and is based on Legislature's policy of providing an impartial jury.

The second case is *City of Bothell v. Barnhart*, 156 Wn. App. 531, 234 P.3d 264 (2010). This case is more *apropos* to the constitutional argument involving proper venue. The *Barnhart* Court ruled at 536 that:

On its face, article I, section 22 does not permit a jury to include any individual who is not a resident of that county. Leading authorities on the state constitutional convention do not suggest that delegates to the convention understood article I, section 22 to have a different meaning. [Citations omitted.] Thus, residence in the county wherein the charged crime was allegedly committed is a constitutional requirement that must be satisfied for an individual to qualify for jury service. A defendant's jury trial right provided in article I, section 22 is satisfied only if all jurors reside in the county wherein the charged offense was allegedly committed.

There is no need for Mr. Rogers to establish prejudice based upon the *Barnhart* Court's determination at 538:

A material departure from the statutory scheme for selecting a jury results in presumptive prejudice requiring reversal and remand for a new trial.

State v. Tingdale, 17 Wn.2d 595, 602-03, 817 P.2d 850 (1991). Similar deviation from a constitutional requirement can be no less consequential. Accordingly, reversal and remand for a new trial is required.

Certificate of Compliance: I hereby certify there are 346 words contained in this Additional Statement of Authorities.

DATED this 5th day of May, 2023.

Respectfully submitted,

s/ Dennis W. Morgan

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NO. 101792-8

SUPREME COURT

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	STEVENS COUNTY
Plaintiff,)	NO. 19-1-00335-3
Respondent,)	
v.)	
)	CERTIFICATE OF SERVICE
ROBERT JAMES ROGERS,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 5th day of May, 2023, I caused a true and correct copy of the *ADDITIONAL STATEMENT OF AUTHORITIES* to be served on:

WASHINGTON STATE SUPREME COURT E-FILE
Attn: Erin Lennon, Court Clerk
supreme@courts.wa.gov

CERTIFICATE OF SERVICE

STEVENS COUNTY
PROSECUTOR'S OFFICE
Attn: Brian O'Brien
bobrien59@comcast.net

F-FILE

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May 05, 2023 - 10:07 AM

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