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**Court of Appeals No. 70515-6-I**

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**IN THE COURT OF APPEALS, DIVISION I**
**OF THE STATE OF WASHINGTON**

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LEO MCMILIAN,

Appellant,

v.

KING COUNTY,

Respondent.

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# APPELLANT'S REPLY BRIEF

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## *I. REPLY IN SUPPORT OF APPELLANT'S OPENING BRIEF*

King County offers a number of arguments in response to McMilian's brief that places directly into question a *pro tem* Hearing Examiner's ability to review the administrative record, perform his own assessment of the credibility of testifying witnesses, act as his own expert witness, then issue a supplemental decision that directly conflicted with the decision of the fact-finder, the presiding Hearing Examiner.

However, King County fails to address the crux of these issues raised on appeal in any meaningful way; its brief is devoid of legal analysis or pertinent authority to defeat McMilian's position that only the presiding factfinder may assess the credibility of witnesses who have testified before him in the proceeding. City of University Place v. McGuire, 144 Wn.2d 640, 652, 30 P.3d 453 (2001). King County offers no controlling or persuasive authority to depart from this longstanding rule of law.

Because the *pro tem* Hearing Examiner is not permitted to weigh the evidence or substitute his judgment regarding witness credibility, yet his supplemental decision openly disregards the credibility of each and every testifying witness in the proceeding, "due process permits dispensing with the [*pro tem*] hearing examiner's report altogether."

N.L.R.B. v. Stocker Mfg. Co., 185 F.2d. 451, 453 (3rd Cir., 1950) *citing* N.L.R.B. v. Mackay Radio & Telegraph Co., 304 U.S. 333, 58 S. Ct. 904, 82 L.Ed. 1381 (1938).

## *II. PRESIDING HEARING EXAMINER DONAHUE IS THE ONLY FACT-FINDER THAT MAY ASSESS CREDIBILITY*

In response to McMilian's argument that the presiding hearing examiner is the only person who can assess the credibility of evidence, King County asserts that its agency may substitute its judgment on factual questions, including the credibility of witnesses. (King County's Response, pg. 28). King County's position conflicts with the controlling legal authority.

> [RCW 36.70.970 permits the county to adopt a hearing examiner system, requiring it to] elect between original jurisdiction, which allows it to substitute its judgment for the examiner's on all factual and legal issues, and appellate jurisdiction, which requires that it base its decision on the record made before the examiner and review the examiner's findings of fact only to see if they are supported by substantial evidence. The statute does not authorize a combination of these choices, and a county legislative authority may not define its power in such a way as to incorporate aspects of both alternatives.

State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce, 65 Wn. App. 614, 619, 829 P.2d 217 (1992). King County elected the latter

option, which does not allow the County to substitute its judgment for the examiner's. KCC 20.24.080 provides, in pertinent part:

> Final decisions by the examiner.
>
> A. The examiner shall receive and examine available information, conduct open record public hearings and prepare records and reports thereof, and issue final decisions, including findings and conclusions, based on the issues and evidence in the record,...

Consequently, King County's argument that an agency may substitute its judgment for that of the presiding hearing examiner fails given its applicable code provision, KCC 20.24.080.

In support of its proposition, King County cites three foreign cases that all pertain to the National Labor Relations Act, (King County's Response, pg. 28-29) which places the responsibility of making a final decision on the Board, not the presiding hearing examiner. 29 U.S.C. §160(c) (1984). Consequently, none of these foreign cases are analogous. In fact, N.L.R.B v. Stocker, *supra*, supports McMilian. In that case, the original examiner died before preparing his report and another examiner prepared a report based upon the transcribed hearing record. Id. at 452. The Board made its independent conclusion based upon its own study of the record, without placing any reliance on the intermediate report. Id. at 453. The intermediate report's function and significance was admittedly

limited in value because the substitute hearing examiner was in no better position to evaluate the credibility of the evidence than was the Board. Id. at 454.

### *III. CREDIBILITY IS A CRITICAL ISSUE IN THIS CASE*

King County asserts that the *pro tem* hearing examiner's decision can be upheld because it was based upon documentary evidence instead of the credibility of witnesses. (King County's Response, pg. 2, 10). However, credibility is not a collateral issue in this case; it is the very essence of McMilian's presentation. The only witnesses to the use of the subject parcel during the time period at issue, from 1958 to the present date, were McMilian's witnesses. The importance of Ritchie Horan's testimony cannot be overstated. He was the only live witness who had personal knowledge of the use of the subject parcel as a storage yard from the time he was a young boy in 1956, through the time of his purchase in 1977, and sale in 2001. (CABR page 65-70 of 112). Both the presiding hearing examiner and the *pro tem* hearing examiner recognized the importance of assessing the credibility of his testimony. (CP 25-26; 72-73). During cross examination, King County's attorney even acknowledged that Ritchie Horan's personal knowledge of the property

was superior to any other witness: "[Y]ou may be able to tell us more about these Exhibits than anybody else." (CABR page 80 of 112).

Ritchie Horan testified about his intimate knowledge of the property from 1956, the length of time the wrecking yard business had been operating and spilling over to the subject parcel, as well as the degree and manner in which the use of the subject parcel had been consistently used for storage of automobile parts. (CABR page 65-70 of 112). In order to reach a conclusion that the property had not been used as a storage yard in conjunction with the wrecking yard on the adjoining parcel, Ritchie Horan's testimony would have to be completely discredited. One cannot give complete credence to Ritchie Horan's detailed testimony, as the presiding hearing examiner did, CP 25-26, yet find that the subject parcel was not continually used as a storage yard from 1956 through the present date, as the *pro tem* hearing examiner did. One cannot deem that the 1960 aerial photograph, CP 94-95, is conclusive evidence of the degree of use of the subject parcel during the period of 1956 through 2001, without completely disregarding Ritchie Horan's testimony, as the *pro tem* hearing examiner did.

It is disingenuous for Respondent to assert that credibility is not a factor in this case when, in fact, this was a major concern when the issue

was first raised by McMilian. On August 7, 2012, counsel for Respondent wrote:

> There is case law supporting the conclusion that a substitute judge cannot decide issues of fact. I haven't looked yet to see if there is an argument that in an agency proceeding less process is due, but don't expect to find what I would need to have this case upheld. Is it possible to bring Donahue back as a protem to resolve any and all factual questions, especially involving those that require credibility determinations? (CP 989-990)

On August 8, 2012, the *pro tem* hearing examiner responded:

> It occurred to me that credibility findings based on demeanor would be problematic so I tried to focus on inconsistencies and motivation. But I never considered the possibility that findings of fact of any kind would be precluded and so never researched it. (CP 988)

Notably, physical demeanor is not the only measure of credibility; inconsistency and motivation are incorporated in that concept as well. There is no question that the *pro tem* hearing examiner evaluated the credibility of Ritchie Horan, as well as McMilian's other witnesses.

> [His determination] necessarily requires a process of weighing, comparing, testing, and evaluating—a function best performed by the trier of the fact, who usually has the advantage of actually hearing and seeing the parties and the witnesses, and whose right and duty it is to observe their attitude and demeanor.

Proctor v. Huntington, 146 Wn. App. 836, 846, 192 P.3d 958, 964 (2008) aff'd, 169 Wn.2d 491, 238 P.3d 1117 (2010) (internal quotations and citations omitted). In this case, only the presiding hearing examiner was afforded the opportunity to hear and see the witnesses, and to observe their attitude and demeanor, the *pro tem* hearing examiner did not perform that critical function. It is improper for the *pro tem* hearing examiner weigh the credibility of witnesses and evidence.

## *IV. THE PRESIDING HEARING EXAMINER WAS AVAILABLE FOR MORE THAN A YEAR AFTER THE MANDATE WAS ISSUED*

King County repeatedly asserts that the presiding hearing examiner was leaving employment and thus, was unavailable to make the factual finding that this Court ordered him to make. However, the presiding hearing examiner remained employed for over a year after the mandate was issued. The opinion was filed on May 2, 2011; the mandate was issued on June 17, 2011 (CP 596); a pro tem hearing examiner became involved on May 29, 2012 (CP 840, 949); the presiding hearing examiner's employment terminated on June 15, 2012 (CP 951); and the supplemental decision was issued on June 28, 2012 (CP 76). This case did not involve the death of the presiding hearing examiner, which would unexpectedly and permanently preclude the final factual finding to be

made; instead, this case involved unjustified and unreasonable delays that violated King County Code's time limits for issuance of a decision. It is disingenuous for King County to assert that there was "no other option but to appoint a pro tem" (King County's Response, pg. 30) when clearly, the presiding hearing examiner could have complied with the order anytime during the year prior to his departure, and even at the time it was decided he would be leaving. Peter Donahue was certainly not *unavailable* to make a final factual finding; he was the individual King County alleges took steps on the case in May 2012, but only to re-assign the case to another. (CP 516).

Pursuant to RCW 36.70C.130(1)(a), McMilian has met his burden to show that King County's pro tem hearing examiner engaged in an unlawful procedure in assessing the credibility of witnesses in a proceeding in which he was not present. This was harmful to McMilian because he discredited each and every one of McMilian's witnesses, even those that the presiding hearing examiner found to be credible. McMilian is entitled to relief pursuant to RCW 36.70C.130(1)(a), (e).

## *V. KING COUNTY CANNOT CITE ANY EVIDENTIARY BASIS IN THE RECORD TO SUPPORT THE CHALLENGED UNSUPPORTED FINDINGS AND CONCLUSIONS MADE*

McMilian assigns error to the pro tem hearing examiner's decision

in which he acts as his own "expert" witness and as a result of reviewing a single photograph, he determines where the property boundaries are located, and the density of the cover that trees of a certain age provide. (Appellant's Brief, pg. 18-24). A judicial officer may not act as a witness, expert or otherwise, in the proceeding in which he is presiding. ER 605, Vandercook v. Reece, 120 Wn. App. 647, 652, 86 P.3d 206 (2004).

In response, King County summarily asserts that it was proper for the *pro tem* hearing examiner to infer the height of the trees from reviewing the photograph, without citing any legal authority to support its argument that such an inference is permissible. (King County's Response, pg. 14). Conclusory arguments that do not cite legal authority should not be considered. *See* RAP 10.3(a)(6), 10.4; State v. Marintorres, 93 Wn. App. 442, 452, 969 P.2d 501 (1999).

The law is clear. The finder of fact may not base "his judgment upon his own independent experience and preconceived opinion. In doing so, he denied, perhaps unintentionally, the probative force of the opinions of [testifying] witnesses." Elston v. McGlauflin, 79 Wash. 355, 360, 140 P. 396, 398 (1914).

In responding to the argument that the *pro tem* hearing examiner impermissibly determined where the boundary lines were on the 1960 photograph, King County inserted a footnote to reference Richie Horan's

testimony regarding the accuracy of property lines. (King County's Response, pg. 14). However, his testimony was not supportive and notably *pertained to a different photograph*. This shows a complete lack of factual support in the record to support that argument. Such "[p]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." Holland v. City of Tacoma, 90 Wn. App. 533, 538, 954 P.2d 290 (1998).

Hearing Examiner Smith's findings are not supported by substantial evidence; he acted as his own expert witness to develop the facts upon which he relied. Consequently, McMilian is entitled to prevail on the grounds that the *pro tem* engaged in an unlawful procedure and that the *pro tem's* findings are not supported by substantial evidence. RCW 36.70C.130(1)(a), (c).

## *VI. MCMILIAN PRESENTED SUBSTANTIAL EVIDENCE THAT THE SUBJECT PARCEL WAS EXTENSIVELY USED FOR STORAGE FROM PRE-1958 TO THE DATE OF THE HEARING*

In response to McMilian's argument that substantial evidence was presented to support a finding of a legal nonconforming use, King County, ironically, responds that the hearing examiner's credibility assessments must be accepted. (King County's Response, pg. 10). In order to give proper deference on factual issues, the only credibility assessments that

can be accepted are those of the presiding hearing examiner, as he presided over the hearing. The presiding hearing examiner found McMilian's witnesses and evidence to be credible, but committed an error of law. Consequently, evidence that the *presiding* hearing examiner found to be credible, may not be discredited.

The only party that presented any evidence as to the subject parcel's use in the 1958 time period was McMilian. In addition to the live testimony of Ritchie Horan, discussed above, McMilian presented affidavits of former customers of the automobile wrecking business that corroborated Ritchie Horan's testimony as to the state of the subject parcel in 1958. (CP 492 – 499). McMilian also presented evidence of others who were familiar with the business and the subject parcel for the next several decades in order to show that the subject parcel was continually used for storage. McMilian's unearthing of antique automobiles and parts, and millions of pounds of old tires, from the property support a reasonable inference that the subject parcel was continually and extensively used, consistent with the testimony. (CP 501). The evidence uncovered in 2005 should not be viewed in a vacuum; it should be viewed as a whole; what items were found in 2005 is probative of the history of the subject parcel.

King County attempts to discredit McMilian's evidence that the subject parcel was extensively used for storage by disingenuously

representing to this Court that Tim Pennington, the contractor hired to reclaim the subject parcel, testified "just one or two cars were recovered from the subject property." (King County's Response, pg. 15). Instead, Mr. Pennington testified that he assisted with removal of "probably 50 tons of various metals, cars, transmissions, [and] wrecking yard debris [from the subject parcel, the 'vacant lot']." (CABR pg. 5-6 of 21). Despite King County's assertion to the contrary, Mr. Pennington's testimony did not conflict with McMilian's testimony. The *pro tem* hearing examiner's decision to dismiss McMilian's testimony solely because he had a personal interest in the outcome of the hearing is far from harmless, especially since the presiding hearing examiner did not discredit McMilian's testimony. "Mr. McMilian, on the other hand, has an obvious incentive ... and his testimony is less than credible." (CP 74).

When reviewing the record in an appellate capacity, the Honorable Judge Fleck held that McMilian "presented substantial evidence to support a finding that the property was used as part of an auto wrecking yard... [with] evidence from numerous independent witnesses with relevant personal knowledge going back over 50 years." (CP 153). This Court should do the same and grant McMilian relief pursuant to RCW 36.70C.130(1)(c), (d).

## *VII. UNJUSTIFIED DELAYS EVENTUALLY PREJUDICED MCMILIAN AND VIOLATED HIS DUE PROCESS RIGHTS*

The mere passage of time does not *per se* constitute a due process violation; that is true. However, when there is such a substantial and unjustified delay that the parties lose the opportunity for the presiding hearing examiner to make the final factual determination, as was ordered by this Court, an issue of due process arises. This matter has not been managed in a way that demonstrates the orderly administration of a judicial process, nor has it complied with the time limits set forth in the King County Code. The delay is so egregious, that it has become a constitutional violation under both federal and state constitutions. Property interests are subject to due process considerations. U.S. Const. amend. V; Const. art. I, § 3.

"Justice in all cases shall be administered openly, and without unnecessary delay." Const. art. 1, § 10. In State v. Smith, 68 Wn. App. 201, 842 P.2d 494 (1992), this Court analyzed an analogous situation in which the State unjustifiably failed to take any action to have findings of fact timely entered, holding that findings to be entered over 1.5 years after trial was a "long delay [and] prejudicial," citing Art. 1, § 10. Id. at 208. This Court should also hold that the delay between the time the opinion was issued and the time that the presiding hearing examiner left his

employment, over 13 months, was such an unjustifiably long delay that it deprived McMilian of the due process protections to which he was entitled. "A delay in the appellate process of this magnitude, without explanation or justification, caused by failure to enter findings which could and should have been entered in the first instance is clearly 'unnecessary.' " Id. at 209. King County's failure to comply with this Court's mandate is completely inexcusable to the point of becoming prejudicial and unconstitutional.

Notably, this is not a case in which both parties were caught off guard by a presiding hearing examiner's abrupt departure. King County was in complete control of the hearing examiner, his case load, the decision to terminate him, the timing of his termination, and the outstanding proceedings that had yet to be completed. McMilian should not suffer the consequences of King County's decision to terminate the hearing examiner without requiring him to first abide by the Court of Appeals' Opinion, which had been issued more than 13 months prior.

McMilian was not provided with notice and an opportunity to be heard. An e-mail from the presiding hearing examiner to outside counsel, which is copied to McMilian's counsel is not sufficient to inform McMilian that the presiding hearing examiner will be leaving employment and will never complete the task mandated by the Court of Appeals. (CP

516). Naturally King County would take the position that this was sufficient notice because it was fully apprised of the context of that e-mail; McMilian certainly was not afforded the same access to such information. The failure to object to an e-mail communication does not waive McMilian's right to object now. "Mere silence does not constitute a waiver unless there is an obligation to speak." Voelker v. Joseph, 62 Wash. 2d 429, 435, 383 P.2d 301 (1963) (citations omitted).

In this case, the requisite finding of fact will never be properly made by the presiding hearing examiner. The prejudicial delay constitutes a due process violation. "Acts violative of the [due process] clause may be declared void by the courts..." Systems Amusement, Inc. v. State, 7 Wn. App. 516, 518, 500 P.2d 1253 (1972). The more than thirteen month delay, under King County's control, justifies a decision by this Court that a violation of due process has occurred and entitles McMilian to relief. RCW 36.70C.130(1)(f).

## *VIII. IRREGULAR PROCESS OF APPOINTMENT OF PRO TEM HEARING EXAMINER IS A FURTHER VIOLATION OF DUE PROCESS*

McMilian assigns error to the appointment of a *pro tem* hearing examiner to issue decisions after the conclusion of an administrative hearing. The appointment was not made in compliance with KCC

20.24.065, which only permits the appointment of pro tem hearing examiners to "**hear** pending applications and appeals" (emphasis added). Although the term "hear" is not defined by the Code, nor by Black's Law Dictionary, in its response, King County inappropriately substitutes the word at issue and instead analyzes the definition of "hearing" in order to change the meaning of its own Municipal Code. (King County's Response, pg. 26-27). Notably, the King County Code explicitly uses the word "hear," not "hearing" and the words have significantly different meanings. "Words in a statute should be given their ordinary meaning absent ambiguity and/or a statutory definition. Courts may consider extrinsic aids to interpret statutory language even without a showing that the language is ambiguous." Garrison v. Washington State Nursing Bd., 87 Wash. 2d 195, 196, 550 P.2d 7, 8 (1976) (internal citations omitted). Merriam-Webster's online dictionary defines "hear" as follows, in pertinent part:

> : to perceive or apprehend by the ear
> : to gain knowledge of by hearing
> : to listen to with attention : heed
> : attend <*hear* mass>
> : **to give a legal hearing to**
> : **to take testimony from** <*hear* witnesses>

Given this definition, by its own language, KCC 20.24.065 only permits appointment of a *pro tem* to preside over an entire hearing and to take

testimony from witnesses, not to issue decisions for matters that have been heard by someone else. Thus, King County's argument that its own code authorizes appointment of a pro tem hearing examiner to subsequently decide, without first participating in the legal hearing in which testimony is taken from witnesses, is seriously flawed and legally unsupported. King County failed to follow its own prescribed procedures that govern the Office of the Hearing Examiner. KCC 20.24. Thus, McMilian is entitled to relief on the grounds that the pro tem hearing examiner's "supplemental decision" is not a proper decision under the municipal code. King County failed to follow its prescribed process and engaged in an unlawful procedure. RCW 36.70C.130(1)(a).

### *IX. SUPPLEMENTAL DECISION IS CONTRARY TO LAW*

McMilian assigned error to Hearing Examiner Smith's decision on the grounds that he concluded that no legal nonconforming use can be found absent evidence that it had been consistently used in a "sufficient degree." (Appellant's Brief, pg. 39). Any level of "degree" of use of the subject parcel as a storage area for the adjoining automobile wrecking yard constitutes a legal nonconforming use. King County failed to make any arguments or cite any authority against that assignment of error. Thus, McMilian is entitled to relief on the grounds that there is an error of

law. RCW 36.70C.130(1)(b).

## *X. BOTH PROCEDURAL AND SUBSTANTIVE DUE PROCESS ISSUES HAVE BEEN RAISED*

In addition to the procedural due process violations that McMilian assigns error to, as briefed above, McMilian also challenged the land use decisions as an unconstitutional taking and a violation of substantive due process under U.S. Const. amend. V and Const. art 1, 16. (Appellant's Brief, pg. 40). King County also failed to address the substantive due process violations to oppose that assignment of error.

A three-prong test is utilized to evaluate a substantive due process violation. A Court evaluates "(1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether the regulation is unduly oppressive on the landowner." Peste v. Mason County, 133 Wn. App. 456, 474, 136 P.3d 140 (2006), *citing* Guimont v. Clarke, 121 Wn. 2d 586, 594, 854 P.2d 1 (1993). The third prong is squarely at issue in this case.

The Court has "wide discretion" in balancing the interests of the public and the landowner and should consider several factors when performing the analysis. Peste at 475. In this case, the land use decision at issue jeopardizes all use of the subject parcel in support of the adjoining

business. The land use decision *permanently* enjoins McMilian from continuing to support the operation of an efficient and financially viable business that has been in operation since the early 1900s. Although the zoning code has been in effect since 1958, King County permitted its continued use and has never taken any enforcement action prior to the issuance of a violation letter in 2007. Prior owners had even recorded documents to show that the "auto wrecking yard and automobile storage facility" use pre-dated the zoning laws and had been used consistently thereafter in order to enjoy the status of being "grandfatherered" and protected from adverse action. (CP 438; CABR page 72 of 112). McMilian purchased the storage yard lot in August 2002 and was entitled to believe that his investment was protected.

Additionally, the storage yard is not harmful to the public, in fact, McMilian has been extremely diligent in cleaning up and investing in the subject parcel to eliminate contamination and pollutants and improve its environmental condition. In doing so, this issue arose because the presence of automobile parts became far more visible to the adjoining residential neighborhood. (CABR page 15 of 25; page 32 of 34). But the residential development was newly constructed, in 2004. (CABR page 8 of 34). Essentially, in taking enforcement action, King County is favoring one set of private property owners over another, without consideration of

the fact that the residential property owners have no legitimate basis for complaining about the continued use of neighboring property, which use existed for decades before their recent purchases. Clearly, there are "less drastic protective measures" that exist to provide an aesthetically pleasing visual buffer between the automobile wrecking business and the residential neighborhood, short of prohibiting all use of the entire property for storage. Peste at 475. In fact, there is nothing at all guaranteeing the residential property owners that ceasing storage of automobile parts on the subject parcel would provide them with a permanent view of undeveloped countryside, or "greenbelt," to serve as a buffer between them and the automobile wrecking business.

The land use decision destroys McMilian's right to make some economically viable use of the subject parcel, which is directly adjacent to his automobile wrecking business, as a storage yard. Id. at 471. The ability to store automobile parts is a critical part of the function of an automobile wrecking business, as shown in this case by a long and consistent history of such use.

Given the valuable and protectable property interests at stake, and evaluating the factors above, this Court should hold that McMilian's substantive due process rights are violated by this land use decision and grant relief pursuant to RCW 36.70C.130(1)(f).

## *XI. CONCLUSION*

The highest and best use of the subject parcel is to serve as a storage yard for the adjoining automobile wrecking business, which has been the case for far more than fifty six years, the time in which King County first passed its zoning laws. The land use decision issued by *pro tem* hearing examiner Smith was improper as he was never in a position to determine credibility of witnesses and evidence; he was not the presiding hearing examiner. The presiding hearing examiner failed to comply with this Court's Opinion for over 13 months, and left King County's employment without ever having done so. King County failed to comply with its own municipal code and its prescribed processes.

*Pro tem* Hearing Examiner Smith served as his own expert witness and based his decision on facts that are unsupported by the record. All of McMilian's witnesses were completely discredited in reaching his decision. Although substantial evidence supports the use of the subject parcel as a storage yard from long before 1958, that evidence was disregarded even though the presiding hearing examiner found it to be credible. *Pro tem* Hearing Examiner Smith's decision also suffers from errors of law and clearly erroneous application of law to the facts.

McMilian is entitled to relief from the land use decision under each and every standard available in a LUPA proceeding.

Respectfully submitted this 21st day of January, 2014.

SINGLETON & JORGENSEN, INC. PS

By _____

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Attorneys for Appellant Leo McMilian

CERTIFICATE OF SERVICE

Jamie Brazier declares: I am a citizen of the United States and of the State of Washington; that I am over the age of 18 years and competent to be a witness in this cause. That on January 21, 2014, I caused to be delivered one copy of the APPELLANT'S REPLY BRIEF, to the address(es) listed below by email to:

Cristy Craig
Senior Deputy Prosecuting Attorney
King County Prosecuting Attorney
King County Administration Building
516 Third Avenue, Suite W400
Seattle, WA 98104
(by email per agreement and messenger service)

Sherry McMilian
PO Box 508
Maple Valley, WA 98038
(by email per agreement)

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

Executed at Renton, Washington, on: January 21st, 2014.

Jamie Brazier