

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

No. 97843-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 35841-1-III

Chelan County Superior Court
Cause No. 15-1-00084-6

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

EDWARD LEE JEGLUM,
Defendant/Petitioner.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Douglas J. Shae
Chelan County Prosecuting Attorney

C. Kurt Parrish WSBA #49735
Deputy Prosecuting Attorney

Chelan County Prosecuting Attorney's Office
P.O. Box 2596
Wenatchee, Washington 98807-2596
(509) 667-6204

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I. IDENTITY OF RESPONDENT

The State of Washington, acting through the Office of the Chelan County Prosecuting Attorney, is the Respondent in the case before this Court.

II. STATEMENT OF ISSUE PRESENTED

Did the Court of Appeals properly apply existing case law in its determination that the trial court had discretion to determine whether to order forfeiture of Mr. Jeglum's cash bail and, if so, the appropriate amount?

III. STATEMENT OF THE CASE

On February 10, 2015, the State charged Edward Jeglum, with felony stalking – domestic violence and two misdemeanor counts of violation of a no contact order – domestic violence. Clerk's Papers (CP¹) 2-3. The cause number assigned to those charges was 15-1-00084-6. During most of the proceedings at issue in this case, the defendant had two other felony cases open in Chelan County Superior Court, numbers 13-1-00344-0 and 15-1-00086-2. *See*, CP 6-8 (establishing release conditions in all three cases).

¹ "CP" referenced herein are those filed with the Court of Appeals.

On February 12, 2015, the superior court set bail and release conditions in all three cases. CP 6-8. The court set bail in the case on appeal at \$100,000. CP 7. Bail in the other two cases was \$250,000 in 15-1-00086-2 and \$50,000 in 13-1-003440. CP 7. The defendant initially posted \$350,000 of the \$400,000 total bail in cash.² On April 8, 2015, the defendant obtained a bond for the \$250,000 in 15-1-00086-2. CP 9. In the case on appeal he remained free on the \$100,000 cash bail. CP 1. When the defendant posted his cash bail, he was warned that failure to appear in court would result in forfeiture of the bail money. CP 1.

On August 3, 2015, the court amended his release conditions to permit travel within the State of Washington for “medical evaluations and appointments with legal counsel.” CP 10. Previously he had been prohibited from leaving Chelan and Douglas Counties. CP 6. On August 31, 2015, the court modified release conditions again, this time to permit “travel to the State of Arizona during the month of November, 2015 to attend scheduled medical appointments.” CP 11. The order also stated: “Defendant understands that further requests for out-of-state travel will require prior approval from the Court.” CP 11.

² The defendant posted a \$50,000 bond in 13-1-00344-0 on February 18, 2015.

On November 20, 2015, the defendant appeared again in court to reset his trial and hearing dates. CP 13. The court set trial for February 9, 2016, and a readiness hearing on January 20, 2016. CP 13. The defendant also knew that he was required to “personally appear in court for all hearings.” CP 7.

But, at the readiness hearing on January 20, 2016, the defendant failed to appear in person or even by telephone. CP 15. His attorney was present by telephone and claimed that Mr. Jeglum was at a medical facility in Arizona and could not be medically released. CP 15. No medical documentation was provided at that time to substantiate the claims. Furthermore, the defendant had not obtained, or even requested, approval to travel to Arizona a second time, as required by the court’s August 31st order.

On February 17, 2016, the court held another hearing regarding the defendant’s unexcused absence from the state in violation of his release conditions. At that hearing, the defendant’s lawyer submitted a letter on letterhead from MYDR NOW. CP 16. The letter, ostensibly signed by a nurse practitioner, Jeanne Carver, and a physician, Payam Zamani, stated that the defendant was currently residing in a licensed assisted living home and that “traveling is not recommended.” CP 16. The defendant’s lawyer

also represented to the court that he had been in contact with Dr. Zamani and represented that he was Mr. Jeglum's primary care physician. RP 2 (2-17-16). The name of the facility was never provided, and was apparently separate from MYDR NOW.

However, when the State attempted to call the phone number for the business listed on the letter, it turned out to be the number for a storage unit company. CP 18; RP 2-3 (2-17-16). The State requested a warrant and bail forfeiture. CP 18; RP 3-4 (2-17-16).

The court reserved on the warrant and bail forfeiture. RP 9 (2-17-16). Instead, the court said it was going to give the defense one last chance to provide more specific information about the defendant's medical condition and that at the next hearing the defendant's medical provider would have to be available to testify by telephone. CP 18; RP 8-11 (2-17-16). The court scheduled the next hearing for March 3, 2016. CP 18.

About an hour prior to the hearing on March 3rd, the defendant sent a facsimile message to the court. CP 19-22. In that message, the defendant acknowledged his knowledge of the hearing date and time and that his physician, Dr. Zamani (the same doctor from the MYDR NOW letter), was supposed to testify at that hearing about the defendant's medical condition and ability to travel. CP 20. Bizarrely, the defendant

now claimed that Dr. Zamani was not his physician, he did not consent to Dr. Zamani to release any patient healthcare information, he had never spoken to Dr. Zamani, he had never been examined by Dr. Zamani, and Dr. Zamani lacked the specialties necessary to speak about the defendant's condition. CP 21.

In other words, the defendant admitted that he had perpetuated a fraud upon the court by having his lawyer submit the MYDR NOW letter when he failed to appear as required on February 17, 2016.

Later that morning on the 3rd, the court heard from Dr. Zamani by telephone and found the testimony to be unhelpful. CP 24; RP 8 (3-3-16). The court had wanted to hear from a medical professional who had actually met the defendant. CP 24; RP 9 (3-3-16). The court thereafter granted the State's request for a warrant. CP 23, 25; RP 15 (3-3-16). However, the court again reserved on the issue of bail forfeiture. CP 24; RP 16 (3-3-16). The bail bondsman on the other matters, Mr. Bender, was present at the hearing and requested the warrant be extraditable. CP 24; RP 20 (3-3-16).

Moreover, the defendant's lawyer had not heard from the defendant in more than a week. CP 24. The defendant's lawyer informed the court he had called the defendant upwards of ten times a day over the last two

weeks including several voicemail messages and e-mail messages, but that the defendant had not responded. RP 11 (3-3-16). This was another violation of the defendant's release conditions, which required the defendant to "contact his attorney in person or by telephone at least . . . weekly." CP 7. The court also took notice that the facsimile from earlier that morning demonstrated the defendant's continued ability to contact his lawyer, which showed that the defendant's failure to contact his lawyer was a willful violation of his release conditions. CP 24; RP 17-19 (3-3-16).

Mr. Bender, the bail bondsman, then flew to Arizona, took the defendant into custody, and surrendered him to the Chelan County jail. RP 25 (3-14-16); RP 59, 62-63 (3-22-16). At the defendant's first appearance after arrest on March 14, 2016, the State informed the court what it had learned about the defendant's living arrangements in Arizona from Mr. Bender. Specifically, that the defendant had been coming and going from his assisted living facility daily and had been driving around in a van he had purchased while in Arizona. CP 26; RP 27 (3-14-16).

The State requested the court forfeit the defendant's cash bail and requested he be held without bail. CP 26. The court again reserved on

bail forfeiture, and set new bail in the amount of \$1,000,000 in each case. CP 26; RP 31 (3-14-16).

The following week, the defendant pleaded guilty. CP 27-31. The parties recommended 30 days. RP 39 (3-22-16). But the court exercised its discretion and sentenced him to 9 months in jail. CP 28; RP 58 (3-22-16). In issuing its sentence, the court noted that the defendant was away in Arizona without permission, that his medical treatment was never proven to the court, and that he stonewalled all attempts to verify his claims. RP 56 (3-22-16). The court further remarked:

Frankly, Mr. Jeglum, I feel like you have made a mockery of the legal system.

You have dragged out these legal proceedings beyond a point that I would have thought would have been possible.

* * *

And I always felt that you were looking for the next way to delay accountability for your actions.

RP 57 (3-22-16).

At sentencing, the court again reserved on the question of forfeiture. RP 59-60 (3-22-16).³ The court seemed to suggest that it was inclined to grant the State's motion by putting the onus on the defendant's lawyer to set a hearing to address the forfeiture issue. RP 60 (3-22-16). The court also ordered that all future motions were to be heard by Judge Lesley Allan. CP 32; RP 59 (3-22-16). Judge Allan handled the plea and sentencing, and had also been the judge throughout the Arizona saga. CP 18, 24, 32; RP 57 (3-22-16).

Before Judge Allan could hear and rule on the State's ongoing request to forfeit the cash bail, the defendant filed a declaration of candidacy to run against Judge Allan.⁴ CP 38. On May 27th, Judge Allan held a hearing on her ability to continue to hear the defendant's cases. CP 39. Finding that the Code of Judicial Conduct likely prohibited her from continuing to hear these matters, Judge Allan disqualified herself from further proceedings. CP 39. After that hearing, the bail issue languished.

³ The Judgment and Sentence originally stated "The bond is hereby exonerated." CP 29. But, the court corrected that scrivener's error that same day, issuing an Amended Judgment and Sentence with that language crossed out. CP 35.

⁴ Randy Thies, the defendant's retained lawyer on a couple of pending district court cases, hand-delivered the declaration of candidacy for the defendant because the defendant was still incarcerated. The State filed a separate lawsuit to have the defendant removed from the ballot due to him not meeting the legal requirements to serve as judge.

On August 30, 2017, the court held another hearing regarding bail in front of Judge Nakata. CP 40. At that hearing, the defendant requested time to hire a new lawyer to address the issue, and the court continued the hearing to September 13, 2017. On September 13th, the defendant had not retained a lawyer and both parties requested to set the matter over to November 9, 2017. CP 41. On November 9th, Judge Small struck the hearing and asked that it be reset. CP 42.

The matter was next heard on December 14, 2017. CP 43. At that hearing, Judge Small heard preliminary arguments from the State, and set the matter over to January 18, 2018. CP 43.

On January 18th, Judge Small issued his order regarding bail forfeiture. CP 44-45; RP 69-75, 81 (1-18-18). The defendant was still pro se and refused to sign the order. CP 44. The court's order instructed the return of the defendant's cash bail based on the belief that, as a matter of law, *State v. Paul*, 95 Wn. App. 775, 976 P.2d 1272 (1999), required the return of the defendant's bail. CP 44. Relying on *Paul*, the court found that it lost the discretion to forfeit the cash bail after the defendant was sentenced. CP 45; RP 72, 75 (1-18-18). The court also noted that the

unpublished *Navarro*⁵ decision was also applicable, but that the court could not rely on that case due to it falling outside the bounds of GR 14.1 and because the court disagreed with the *Navarro* decision. CP 45; RP 70 (1-18-18). Importantly, the court stated that it did not believe it had any discretion at this point under *Paul* because the defendant had already been sentenced. RP 81, 74 (1-18-18). The court stayed its decision for 30 days to permit the State to file a notice of appeal. CP 44. On February 5th, the State appealed to the Court of Appeals. CP 46-47.

IV. ARGUMENT

A. MR. JEGLUM'S RIGHT TO COUNSEL WAS NOT INFRINGED.

Mr. Jeglum's right to counsel was not violated because he had been previously represented by privately retained attorneys, he was not indigent, and he had been advised of his right to counsel at arraignment. *See* Appendix I. On August 30, 2017, when the issue regarding forfeiture of bail was addressed, Mr. Jeglum requested additional time to retain counsel; he noted he had just received notice and was not prepared. CP 40. The court continued the matter to September 13, 2017. *Id.* On that

⁵ The superior court in doing its own research came upon the case of *State v. Navarro* and discussed it with the parties. *State v. Navarro*, No. 28230-9-III (Unpublished 2010).

date, Mr. Jeglum noted that he had tried contacting an attorney but it had been too short of notice and, as a result, requested additional time. CP 41. Further, the hand-written letter from Mr. Jeglum to the Court of Appeals on September 16, 2018, did not, as he argues, indicate his inability to “understand that he was required to file a written brief in response to the State’s brief.” Resp. Br. at 5. Rather, it shows that he was purportedly under that belief previously, and he learned on September 14, 2018, that he was indeed required to file such a brief. At that time, the Court allowed him until October 16, 2018 to file his responsive brief.

A review of the record reflects that Mr. Jeglum was not and had never been indigent during the course of the trial court proceedings. As a result, the authority cited by Mr. Jeglum in his Petition for Review is inapplicable. RCW 10.73.150(2) applies to adult offenders convicted of a crime, responding to an appeal filed by the State when the offender is indigent.

Mr. Jeglum takes the position that the procedure employed by the Court of Appeals in this matter conflicts with *State v. Rafay*, 167 Wn.2d 644, 222 P.3d 86 (2009). In that case, the criminal defendant/appellant specifically requested to appear *pro se* and allow his court-appointed counsel to withdraw. This Court ultimately held that Art. I, § 22 of the

Washington Constitution guarantees a criminal defendant's right of self-representation on appeal. *Id.* at 656. The Court stressed the importance of individual autonomy with respect to the rights of the accused: "It remains he who bears the personal cost if his bid is unsuccessful. Because the right to appeal, like the other rights enumerated in Art. I, § 22, must be personally held, the provision as a whole must be construed as guaranteeing a right of self-representation on appeal." *Id.* at 651.

If Mr. Jeglum were appealing a conviction, he would have been appointed an attorney if indigence had been established. But Mr. Jeglum was not the appellant. He held no right to appeal in this instance. He was not indigent, and he knew that there was a schedule for briefing on appeal; this is evident from his correspondence with the Court of Appeals. Further, *Rafay* is inapplicable because Mr. Jeglum never asserted his right to proceed *pro se*, and if anything, this case is further confirmation of Mr. Jeglum's right to proceed as he did. Indeed, he proceeded with perfect autonomy. He was a non-indigent *pro se* respondent, and he failed to respond to the State's brief.

B. THE DECISION OF THE COURT OF APPEALS WAS NOT IN CONFLICT WITH ANY OTHER APPELLATE COURT DECISION.

Despite Mr. Jeglum's arguments to the contrary, the decision of the Court of Appeals below was not in conflict with any Supreme Court decisions nor any published decisions of the Court of Appeals. The issue in the decision below was squarely limited to whether the trial court abused its discretion by misconstruing existing law on the ability of a trial court to forfeit cash bail after the defendant reappears in court and after entry of the judgment and sentence. *State v. Jeglum*, 8 Wn. App. 2d 960, 961, 442 P.3d 1 (2019).

The court did not overrule *State v. Paul*, 95 Wn. App. 775, 976 P.2d 1272 (1999), or *State v. Ransom*, 34 Wn. App. 819, 664 P.2d 521 (1983). The court distinguished their facts from Mr. Jeglum's case. In *Paul*, the trial court forfeited cash bail for the purpose of applying towards her restitution obligation. *Paul*, 95 Wn. App. at 777. The court below confirmed that this was improper for defendants who had appeared at all court hearings, but this was not the case for individuals who had missed one or more court hearings. *Jeglum*, 8 Wn. App. 2d at 966-67. This is consistent with the relevant Superior Court Criminal Rule.

If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

CrR 3.2(o).

In *Ransom*, the defendant fled just after the court-imposed sentence and before a deputy could take him in to custody. *Ransom*, 34 Wn. App. at 821. The trial court then ordered forfeiture of his cash bail. *Id.* This was improper because the defendant had complied with the conditions of his cash bail. *Id.* at 824-25.

Mr. Jeglum argues that the holding below is in conflict with established Supreme Court precedent in *State v. Akers*, 156 Wash. 353, 286 P. 846 (1930), and *State v. Caruso*, 137 Wash. 519, 243 P. 14 (1926). However, *Akers* and *Caruso* involved the forfeiture of a *bond*, rather than the cash bail at issue in Mr. Jeglum's case. As noted below, citing *In re Marriage of Bralley*, 70 Wn. App. 646, 855 P.2d 1174 (1993), the underlying legal theories behind bail bonds and cash bail are different; in bail bonds the law looks to the surety to guarantee the defendant's appearance, while in cash bail the law looks to the money already in the hands of the state to insure defendant's appearance. *Id.* at 653.

Mr. Jeglum did not even remotely satisfy his bail conditions. He fled the jurisdiction without permission for months after dragging his cases out for years—beyond which the trial court ever thought possible. RP 57 (3-22-16). He refused to return to the jurisdiction. He refused to stay in contact with his lawyer. He refused to call into court—instead sending a facsimile letter the morning of his hearing on March 3, 2016. He perpetuated a fraud upon the court by obtaining a letter from a dubious medical outfit stating that travel was not recommended—as opposed to travel being actually harmful to his health—even though Dr. Zamani never examined him and did not possess the necessary specialized training to examine him. He untruthfully claimed to be receiving around the clock care in an assisted living facility. The bail bondsman on his other cases had to arrest and retrieve him. The defendant took no actions to remedy the situation or take responsibility for his disruptive behavior. He “made a mockery of the legal system.” RP 57 (3-22-16).

As the court in *Paul* noted, if the defendant fails to appear, the cash bail is supposed to be forfeited and when the defendant reappears the court has the *discretion* to decide whether to give that money back or not. *Paul*, 95 Wn. App. at 778. Under *Paul*, the trial court here should have forfeited

the cash bail when the defendant failed to appear and then held its hearing upon reappearance on whether to vacate the forfeiture.

Notably, when a defendant out on bond is returned to custody, forfeiture of that bond is dictated by timing and whether the bail bondsperson “was directly responsible for producing the defendant in court or directly responsible for apprehension of the person by law enforcement.” RCW 10.19.140. Although this statute does not apply to cash bail, it would be proper for the court when fashioning a procedure and remedy “conformable to the spirit of the laws” under RCW 2.28.150 to look to RCW 10.19.140 for guidance. Because the defendant did not return himself to court and did not surrender himself to law enforcement in Washington or in Arizona, exoneration of the bail is discretionary, not mandatory. *Paul*, 95 Wn. App. at 778 (“If the defendant does not appear, the cash bail is forfeited. If the defendant is subsequently apprehended, the court has the discretion to vacate the bail forfeiture or not.”).

Furthermore, unlike the bail bondsperson, a defendant who posts his own bail is entitled to no leniency with regard to return of his bail money when he fails to appear in court as required. *State v. Ohm*, 145 Wash. 197, 259 P. 382 (1927). In *Ohm*, the defendant pleaded guilty, but fled to Oregon prior to sentencing. *Id.* at 197. The trial court forfeited the

defendant's cash bail. *Id.* When the defendant was finally apprehended and sentenced, he sought return of his cash bail, and the court denied his motion. *Id.* On appeal, the Supreme Court noted that different policies apply to bail by surety (i.e. bail bonds) versus cash bail posted by the defendant. With respect to the former, "courts are lenient in relieving bondsmen from a forfeiture where they have been diligent in returning the person who has forfeited his bail to the processes of the courts." *Id.* at 198. This is so because doing otherwise would discourage people from offering bail bonds. *Id.* With respect to the latter, "the law is rigorous" and the "offender is entitled to no leniency" where it appears the defendant's purpose in posting the bail "is to escape the penalties of a crime." *Id.*

V. CONCLUSION

Given the Washington Supreme Court's admonishment in *Ohm* that defendants are entitled to no leniency regarding bail exoneration after jumping bail, it would seem clear that it would not violate the spirit of the law for the court to hear the State's forfeiture motion under RCW 2.28.150 under the circumstances presented by this case. As a result, the trial court had the authority to forfeit the defendant's cash bail even after he reappeared in court and was sentenced.

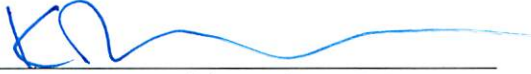
The remaining issues raised by Mr. Jeglum are ones that were not raised below, and as a result, review by this Court would be inappropriate. RAP 2.5(a).

No basis for review under RAP 13.4(b) has been established in this case, and as a result, the State respectfully requests that this Court deny the Petition for Review.

DATED this 22nd day of January, 2020.

Respectfully submitted,

Douglas J. Shae
Chelan County Prosecuting Attorney


By: C. Kurt Parrish WSBA #49735
Deputy Prosecuting Attorney

Appendix I

FILED

2015 MAR -4 4:06

KIM MORRISON
CHELAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

STATE OF WASHINGTON)
)
Plaintiff,)
)
vs.)
)
EDWARD L. JEBLUM)
)
Defendant.)

No. 15-1-00084-6

DEFENDANT'S ACKNOWLEDGEMENT
OF ADVICE OF RIGHTS

1. My true name is Edward L. Jeblum
2. My age is 63 (DOB 12/24/51)
3. My lawyer's name is John Henry Browne & Michael T. Lee
4. I have been informed that I am charged with the crime(s) of STALKING; DV COURT ORDER VIOLATION X2

the maximum penalty(ies) for which (is)(are) 5 YEARS PRISON AND/OR \$10,000 FINE (STALKING)

5. I have been informed that: 364 DAYS JAIL AND/OR \$5,000 FINE (DV ORDER VIOLATION)
 - (a) I have the right to representation by a lawyer, and that if I cannot afford to pay for a lawyer, one will be provided at public expense. I have the right to have my lawyer present during questioning, and any statement I make may be used at trial against me.
 - (b) I have the right to a speedy and public trial by an impartial jury in the place where the crime is alleged to have been committed.
 - (c) I have the right to remain silent before and during trial, and I need not testify against myself.
 - (d) I have the right at trial to confront witnesses who testify against me.
 - (e) I have the right at trial to call witnesses to testify. These witnesses can be made to appear at no expense to me.
 - (f) I am presumed innocent until a charge is proved beyond a reasonable doubt, or I enter a plea of guilty.
 - (g) I have the right to appeal a finding, after trial, of guilt.
 - (h) If I decide to plead guilty, I will have no right to a trial on the charge to which I plead guilty. All that will remain for the court to do will be to sentence me. I will be unable to appeal the question of my guilt on the charge to which I plead

Edward L. Jeblum
Defendant
3/4/15 2:44 pm

The above statement was read by or read to the defendant and signed by or offered to the defendant for signature in open court this 4 day of MARCH, 2015.

Michael T. Lee
Attorney for Defendant WSBA # 44192

[Signature]
Judge of the Superior Court

DEFENDANT'S ACKNOWLEDGEMENT
OF ADVICE OF RIGHTS

DOUGLAS J. SHAE
CHELAN COUNTY
PROSECUTING ATTORNEY
P.O. Box 2596
Wenatchee, WA 98807
(509) 667-6202

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IN THE SUPREME COURT
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STATE OF WASHINGTON,

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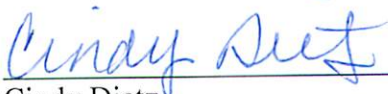
DECLARATION OF SERVICE

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 22nd day of January, 2020, I caused the original RESPONDENT'S ANSWER TO PETITION FOR REVIEW to be filed via electronic transmission with the Washington State Supreme Court, and a true and correct copy of the same to be served on the following in the manner indicated below:

Suzanne Lee Elliott
Attorney at Law
705 2nd Avenue, Suite 1300
Seattle, WA 98104-1797
suzanne-elliott@msn.com

U.S. Mail
 Hand Delivery
 E-Service Via Appellate Courts' Portal

Signed at Wenatchee, Washington, this 22nd day of January, 2020.


Cindy Dietz
Legal Administrative Supervisor
Chelan County Prosecuting Attorney's Office

DECLARATION OF SERVICE

DOUGLAS J. SHAE
CHELAN COUNTY
PROSECUTING ATTORNEY
P.O. Box 2596
Wenatchee, WA 98807
(509) 667-6202

CHELAN COUNTY PROSECUTING ATTORNEY

January 22, 2020 - 10:36 AM

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Appellate Court Case Title: State of Washington v. Edward Lee Jeglum
Superior Court Case Number: 15-1-00084-6

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