

72167-4

72167-4

No. 72167-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

JORDAN WILSON,

Appellant.

FILED  
JAN 29 2011  
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CLERK OF COURT

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

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BRIEF OF APPELLANT

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## A. INTRODUCTION

Mr. Wilson was standing in parking lot of an extended-stay motel during daytime hours next to a car that contained bags and backpacks when he was detained by a police detective for investigation of criminal activity. Mr. Wilson's innocuous activity does not support the investigative detention. The trial court's order denying Mr. Wilson's motion to suppress heroin and methamphetamine found on his person should therefore be reversed. Because the prosecution for possession of a controlled substance cannot proceed without that evidence, the conviction should also be reversed and dismissed.

## B. ASSIGNMENTS OF ERROR

1. The trial court erred by concluding a police detective was aware of specific and articulable facts that supported a reasonable suspicion that Jordan Wilson was involved in the crime of trafficking in stolen property.<sup>1</sup>

2. The trial court erred by concluding that the detective's investigative detention of Mr. Wilson was constitutional.

3. The trial court erred by denying Mr. Wilson's motion to suppress controlled substances found on his person.

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<sup>1</sup> A copy of the Certification Pursuant to CrR 3.6 of the Criminal Rules for Suppression Hearing, CP 38-40, is attached to this brief as an appendix.

4. Appellant assigns error to Finding of Fact 5.

5. Appellant assigns error to the following portion of Finding of Fact 2: “Detective Massingale . . . found a vehicle associated with rooms at the hotel where criminal activity was taking place.”

6. The police officers exceeded the scope of the investigative detention by running Mr. Wilson’s name for warrants.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Article I, section 7 of the Washington Constitution protects citizens from warrantless seizures and permits only limited exceptions to the warrant requirement. A temporary warrantless investigative seizure of a person must be based upon a reasonable articulable suspicion, based upon specific, objective facts, that the person seized has committed or is about to commit a crime. The trial court determined that police officers constitutionally detained Mr. Wilson because he was standing next to a car that contained bags, gym bags, and backpacks in the parking lot of a motel where stolen property had been found eleven days earlier. Where Mr. Wilson’s conduct was innocuous and not logically connected to criminal activity, was the investigative stop unconstitutional, requiring the reversal of the court order denying his motion to suppress evidence found as a result of the

seizure?

2. A trial court's findings of fact supporting a conclusion concerning the constitutionality of an investigative stop must be supported by substantial evidence. The trial court found that the items in the car Mr. Wilson was observed next to – bags, gym bags, and backpacks – were “of a character associated with transporting stolen property.” Finding of Fact 5. Where the police detective did not testify that bags, gym bags, and backpacks are demonstrative of transportation of stolen property, must Finding of Fact 5 be stricken because it is not supported by substantial evidence?

3. The trial court found that eleven days before the detective seized Mr. Wilson, the detective found a vehicle “associated with rooms at the hotel where criminal activity was taking place.” Finding of Fact 2. Where the detective testified that he only investigated one room of the Extended Stay America on March 20, must this portion of Finding of Fact 2 be stricken because it is not supported by substantial evidence?

4. The scope and duration of an investigative detention must be reasonably related to the circumstances that gave rise to the seizure of the person. The police held Mr. Wilson while they ran his name

through a police computer system and learned he had a warrant for his arrest. Where the arrest warrant was not relevant to the investigation of possible criminal activity, did the police unconstitutionally exceed the scope of the investigative stop?

D. STATEMENT OF THE CASE

On March 20, 2014, Everett police officers found property stolen in a burglary earlier that day in a vehicle in the parking lot of an Extended Stay America motel. 5/29/14 RP 6, 8. They also located property stolen in several burglaries in one of the motel rooms and placed one person under arrest. Id. at 9, 13, 15.

A 50-year-old white man registered to a different room of the Extended Stay motel, Room 123, pawned jewelry after March 20. 5/29/14 RP 6-7, 17. He was not connected to the burglaries. Id. at 18. Detective James Massingale went to the motel on March 31 looking for a blue Buick he believed was “associated with the people in Room 123.” Id. at 7.

Detective Massingale did not find the blue Buick in the motel parking lot, but he noticed a green Monte Carlo. 5/29/14 RP 7. The Monte Carlo’s doors and trunk lid were open, a number of bags were visible inside the care, and three men were standing around the car

talking. Id. at 9-10. The officer “aggressively” approached the three men, told them about his investigation, commanded them to put their hands on the car, and drew his firearm. Id. at 11-12, 20.

Jordan Wilson was one of the three men in the parking lot standing by the Monte Carlo. 5/29/14 RP 10. He was not touching the bags or items in the car. Id. at 16. Mr. Wilson was a 20-year old black male. CP 33. Detective Massingale had no information connecting Mr. Wilson with the 50-year-old man believed to be in Room 123. 5/29/14 RP 19. The detective did not see any of the men approach the motel or move property in or towards the motel. Id. at 21.

After another police officer arrived, he and Detective Massingale obtained the three men’s identification and patted them down for weapons; no weapons were found. 5/29/14 RP 14; CP 35. The other officer requested a “computer check” on the three and learned that Mr. Wilson had a warrant for his arrest. Id.

Officer Massingale searched Mr. Wilson after arresting him on the warrant. The officer seized small amounts of what appeared to be methamphetamine and heroin from Mr. Wilson’s pants’ pockets. CP 35. Field tests were presumptively positive. CP 35-36.

The Snohomish County Prosecutor charged Mr. Wilson with possession of a controlled substance, RCW 69.50.4013, with the additional allegation that he was on community custody when the crime was committed, RCW 9.94A.525(19). CP 69.

Mr. Wilson moved to suppress the items found on his person because the police officer lacked the reasonable suspicion based upon articulable facts necessary to support an investigatory detention, but the motion was denied. CP 38-40, 50-61.

Mr. Wilson then waived his right to a jury and was convicted based upon his stipulation to the facts contained in the police report. 7/1/14 RP 2-4; CP 28-37.

E. ARGUMENT

**Mr. Wilson's conviction for possession of a controlled substance must be reversed because the controlled substances were obtained as a result of an unconstitutional detention.**

1. Article 1, section 7 protects the right to privacy from government intrusion.

The federal and state constitutions prohibit the government from detaining or searching an individual without a warrant or probable cause. U.S. Const. amends. IV, XIV; Const. art. 1 § 7. Article I,

section 7 succinctly provides, “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”<sup>2</sup>

The protections of article I, section 7 are “qualitatively different” than those of the Fourth Amendment. State v. Snapp, 174 Wn.2d 177, 187, 275 P.3d 289 (2012). It is well-settled that the Washington Constitution provides greater protection against warrantless seizures than the federal constitution. State v. Setterstrom, 163 Wn.2d 621, 626, 183 P.3d 1075 (2008); State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008); see State v. Parker, 139 Wn.2d 486, 493, 987 P.2d 73 (1999) (state constitution “clearly recognizes an individual’s right to privacy with no express limitations”) (quoting State v. White, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982)). No Gunwall analysis is necessary before the appellate court will consider an article I, section 7 claim.<sup>3</sup> State v. Jackson, 150 Wn.2d 251, 259, 76 P.3d 217 (2003).

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<sup>2</sup> The Fourth Amendment to the United States Constitution reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation,, and particularly describing the place to be searched, and the persons or things to be seized.

<sup>3</sup> State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986).

2. A warrantless investigative stop must be based upon a reasonable, articulable suspicion, based upon specific, objective facts, that the person is about to commit a crime.

Warrantless searches are per se unreasonable. State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). The State has the burden of proving one of the narrowly-drawn exceptions to the warrant requirement applies. Ladson, 138 Wn.2d at 349-50. The warrant requirement is especially important for an article I, section 7 analysis because “it is the warrant that provides the ‘authority of law’” referenced in the constitution. Id. at 350.

One exception to the warrant requirement is an investigative stop. Gatewood, 163 Wn.2d at 539; Terry v. Ohio, 392 U.S. 1, 16-19, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). A police officer may briefly detain a citizen if the officer has “a reasonable, articulable suspicion, based upon specific, objective facts, that the person seized has committed or is about to commit a crime.” Gatewood, 163 Wn.2d at 539 (emphasis in original) (quoting State v. Duncan, 146 Wn.2d 166, 172, 43 P.3d 513 (2002)); accord Terry, 392 U.S. at 21. The officer’s actions must be justified “at their inception.” Id.; Ladson, 138 Wn.2d at 350. The State has the burden of demonstrating the legality of a warrantless investigative stop. Gatewood, 163 Wn.2d at 539.

In addition, the scope and duration of the detention must be reasonably related to the circumstances that gave rise to the detention. State v. Williams, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984). Thus, the detention may not last longer, or interfere with the individual's freedom any more, than is necessary to effectuate the purpose of the stop. Id. at 739-40.

3. Mr. Wilson's activities did not justify detention for investigation of criminal activity.

An investigative detention may not be based upon innocuous conduct. State v. Armenta, 134 Wn.2d 1, 13-14, 948 P.2d 1280 (1997). The trial court held that the Terry stop of Mr. Wilson was justified based upon (1) Detective Massingale's investigation at the Extended Stay America eleven days earlier, (2) the detective's belief that someone in Room 123 was pawning stolen property, (3) the location of the Monte Carlo in the motel parking lot, and (4) the bags and other containers the detective could see in the car. CP 39.

This Court reviews a lower court ruling addressing the constitutionality of an investigative stop de novo. Gatewood, 163 Wn.2d at 539. The trial court's factual findings are reviewed for substantial evidence. Id. The trial court's factual findings are not all supported by substantial evidence. Moreover, they do not support the

conclusion that the detective was aware of specific, articulable facts that supported a reasonable, articulable suspicion that Mr. Wilson was involved in criminal activity.

- a. The specific, articulable facts known to the detective do not support a reasonable inference that Mr. Wilson was involved in a crime.

The trial court incorrectly concluded that Detective Massingale was aware of specific, articulable facts that supported a reasonable, articulable suspicion that Mr. Wilson was involved in criminal activity.

Detective Massingale was aware that a room of the Extended Stay America and a car parked outside contained stolen property on March 20. On March 31, the detective saw Mr. Wilson in the parking lot of the motel next to a different car. The fact that the detective located stolen property in one room and one car on March 20 does not support a reasonable belief that a different car in the parking lot of a large motel was involved in criminal activity eleven days later.

The trial court also found that the car Mr. Wilson was next to was parked near the western entrance to the hotel “that proved to have access to room #123” and that the detective learned the occupant of that room had been pawning property. CP 39 (Findings of Fact 3-4). The man was not connected to the prior burglaries. 5/29/14 RP 18.

Motel parking lots are near motel entrances for the convenience of their customers. The detective had not yet been to Room 123, but he nonetheless opined that Mr. Wilson would have had easy access to the room from the west parking lot. 5/29/14 RP 9. Anyone with a key to the hotel, however, could access any room from any door, and the detective testified that at least 30 rooms were near the west parking lot door. Id. at 21. Importantly, the detective had no information that Mr. Wilson was working with the man or otherwise connected to Room 123. Id. at 19. Mere proximity to other people independently suspected of criminal activity does not supply the grounds necessary for an investigative detention. State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 57 (2010).

The court's ruling also hinges on the contents of the car - backpacks, gym bags, and bags - which the court incorrectly found were containers associated with transporting stolen property. Backpacks, gym bags, and bags are all items that could be used to carry personal belongings to a motel. Innocuous facts do not permit the police to conduct an investigative detention. Armenta, 134 Wn.2d at 13-16; State v. Tijerina, 61 Wn. App. 626, 629, 811 P.2d 241, rev. denied, 118 Wn2d 1007 (1991). The detective testified that homeless

and semi-homeless people often utilize the Extended Stay America. 5/29/14 RP 27. Low income people and those without permanent housing are likely to use bags to carry their belongings rather than traditional suitcases or to have more belongings with them than the business traveler. Id. This does not mean they are transporting stolen property.

The detective also testified that the car was full. This was an extended stay motel, and it has amenities such as full kitchens, Wi-Fi, laundry facilities, and a fitness room that permit people to comfortably stay for months. [www.extendedstayamerica.com/suites/hotel-rooms-and-amenities.html](http://www.extendedstayamerica.com/suites/hotel-rooms-and-amenities.html). A car full of personal goods in the Extended Stay America parking lot is not a sign of criminal activity.

The Washington Supreme Court found an investigatory stop similarly violated article I, section 7 in Doughty, supra. Police officers observed Doughty approach a house at 3:20 a.m., remain inside for about two minutes, and then drive away. Doughty, 170 Wn.2d at 59-60. The police were aware of complaints from neighbors about the large amount of “short stay traffic” at the house, and they stopped Doughty because they suspected he was involved in drug activity. Id. After checking Doughty’s records, the officer arrested him for driving

with a suspended operator's license, searched his car, and found methamphetamine. Id. at 60.

The Supreme Court held the investigatory stop was unconstitutional, as the totality of the circumstances known to the police did not support a reasonable suspicion Doughty was involved in drug activity. Doughty, 170 Wn.2d at 65. "The Terry-stop threshold was created to stop police from this very brand of interference with people's everyday lives." Id. at 64.

The Court of Appeals decision in State v. Doughty, 170 Wn.2d 57, 239 P.3d 57 (2010); State v. Martinez, 135 Wn. App. 174, 143 P.3d 855 (2006), is also instructive. A Richland police officer stopped Martinez in a neighborhood where several vehicle prowls has been reported. Id. at 177. According to the officer, Martinez looked around nervously as he walked briskly away from a shadowy area where several cars were parked. Id. The officer asked Martinez whether he lived in the neighboring apartments and stopped Martinez when he said he did not. Id. at 177-78. During a pat-down search for weapons, the officer discovered a container containing methamphetamine. Id. at 178.

The Court of Appeals found that the totality of the circumstances did not justify the investigative stop. Martinez, 135 Wn. App. at 181-82. The court noted that vehicle prowls had been reported at the apartment complex in the past, but not on the night when Martinez was stopped. Id. at 180. Because the State must demonstrate “some suspicion of a particular crime or a particular person, and some connection between the two,” the court concluded the officer’s “generalized suspicions that Mr. Martinez may have been up to no good” did not support the stop. Id. at 182.

b. Critical findings of fact are not supported by substantial evidence.

The trial court’s conclusion that Detective Massingale had reasonable grounds to conduct a Terry stop is based largely upon its finding that the property inside the Monte Carlo “was of a character associated with transporting stolen property, such as bags, gym bags, and backpacks.” CP 39 (Finding of Fact 5). The court’s finding that bags, gym bags, and backpacks are “associated with” stolen property is not supported by the evidence. Detective Massingale testified that the property in the car appeared consistent with crimes he was investigating, not that backpacks, bags, and gym bags are characteristically used to transport stolen property. 5/29/14 RP 10, 26.

Nor is the court's factual finding supported by logic. Numerous law-abiding citizens carry bags, backpacks, and gym bags in their everyday lives or when they utilize a motel.

In Finding of Fact 2, the trial court determined that on March 20, Detective Massingale found a car "associated with rooms at the hotel where criminal activity was taking place." CP 39 (emphasis added). In fact, the car only led the detective to one room of the Extended Stay hotel that day, and the detective did not know that this or any other rooms were used for criminal activity on March 31. This portion of the factual finding is not supported by substantial evidence.

*c. The stop of Mr. Wilson was constitutional.*

Mr. Wilson's presence in the parking lot was innocuous. The trial court improperly concluded that the police detective had "specific and articulable facts to support a reasonable suspicion" that Mr. Wilson was engaged in trafficking stolen property. CP 40 (Conclusion of Law 1). This Court should reverse the trial court's order denying Mr. Wilson's motion to suppress evidence seized as a result of the unconstitutional stop and detention.

4. Running Mr. Wilson's name through the police computer system exceeded the permissible scope of the investigative detention.

When the police seize a person for investigation based upon a suspicion the person is involved in criminal activity, the scope and duration of the detention must be reasonably related to the circumstances that gave rise to the detention. Williams, 102 Wn.2d at 739. Thus, the detention may not interfere with the individual's freedom any more than is necessary to effectuate the purpose of the stop. Id. at 739-40.

While Everett Police officers detained Mr. Wilson in the Extended Stay America parking lot, one of the officer ran Mr. Wilson's name through the Department's computer. The officer learned of an outstanding warrant, leading to Mr. Wilson's arrest and subsequent search. The officer's actions in checking Mr. Wilson for warrants, however, was unrelated to the reasons for the Terry stop, and thus exceeded its constitutional scope.

In Williams, the Supreme Court ruled that a police officer's initial Terry stop of an individual was constitutional, but that the police exceeded the proper purpose and scope of the stop. Williams, 102 Wn.2d at 741. In that case, police officers responding to a burglary

stopped Williams in a car in front of the residence where an alarm was sounding. Id. at 734. An officer patted Williams down, handcuffed him, and placed him in a patrol car. Id. at 735. He then questioned Williams about why he was in the area and then began investigating the house and collecting property from Williams' car. Id.

In addition to concluding that handcuffing Williams and placing him in a patrol car was not justified in the absence of an inference that he was dangerous, the Supreme Court concluded that the lengthy detention exceeded the purpose of the investigation:

[T]he detention was not related to an investigation focused on the petitioner. Such relationship is essential. A citizen's right to be free of governmental interference with his movement means, at a minimum, that when such interference must occur, it be brief and related directly to inquiries concerning the suspect.

Williams, 102 Wn.2d at 741.

Here, the officers obtained Mr. Wilson's identification. The detective provided no reason that learning Mr. Wilson's warrant status would be relevant to his investigation of whether Mr. Wilson was involved in transporting stolen property. The police officer's use of a computer to learn of Mr. Wilson's arrest warrant exceeded the scope of a Terry stop. Mr. Wilson was therefore illegally seized.

5. Mr. Wilson's conviction must be reversed and the charge dismissed.

Detective Massingale did not have sufficient information tying Mr. Wilson to the commission of a crime to justify an investigative detention. In addition, the police exceeded the allowable scope of the investigative stop by running Mr. Wilson's name for warrants even though the information obtained was irrelevant to their investigation.

Since the stop and detention of Mr. Wilson was unlawful, "the subsequent search and fruits of that search are inadmissible."

Gatewood, 163 Wn.2d at 542 (quoting State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 455 (1986)). The controlled substances found in Mr.

Wilson's possession when he was arrested must be suppressed and his conviction for unlawful possession of a firearm reversed and dismissed.

Id.

F. CONCLUSION

The detective's detention of Mr. Wilson was unconstitutional because the detective did not have a reasonable suspicion based upon objective, articulable facts that Mr. Wilson was engaged in criminal activity. In the alternative, the scope of the investigative detention was exceeded when a police officer checked the police computer to determine if Mr. Wilson had arrest warrants.

The trial court erred by admitting the evidence obtained as a result of the unconstitutional stop, and without this evidence the State would not be able to prove that Mr. Wilson possessed controlled substances. His conviction for possession of a controlled substance must be reversed and dismissed.

DATED this 27<sup>th</sup> day of January 2015.

Respectfully submitted,



Elaine L. Winters – WSBA #7780  
Washington Appellate Project  
Attorneys for Appellant

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SNOHOMISH COUNTY  
SUPERIOR COURT

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SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

No. 14-1-00741-2

v.

WILSON, JORDAN LEE

CERTIFICATE PURSUANT TO  
CrR 3.6 OF THE CRIMINAL RULES  
FOR SUPPRESSION HEARING

Defendant.

On May 29, 2014, a hearing was held on the defendant's motion to suppress evidence. The court considered the testimony of the witnesses at the hearing and the arguments and memoranda of counsel. Being fully advised, the court now enters the following findings of fact and conclusions of law:

**I. FINDINGS OF FACT**

1. Detective Massingale of the Everett Police Department responded to Extended Stay America, on 112<sup>th</sup> Street in South Everett, on March 31, 2014, to continue his investigation of recent burglaries.

ORIGINAL

Appendix  
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2. Detective Massingale had been at that location previously on March 20, 2014, at which time he found a vehicle associated with rooms at the hotel where criminal activity was taking place.
3. Detective Massingale learned that the occupant of room #123 might be associated with the prior burglaries and trafficking of stolen property based on recent pawn activity, which was the purpose of his returning to the hotel on March 31, 2014.
4. On his arrival, Detective Massingale observed Defendant and two other males standing around a vehicle parked in proximity to the western entrance of the hotel that proved to have access to room #123.
5. Detective Massingale observed property in the vehicle which was of a character associated with transporting stolen property, such as bags, gym bags, and backpacks.
6. Detective Massingale was also aware that guns had been taken from the earlier burglaries.
7. A second officer, Officer Loucks, arrived on scene and all three men were patted down for possible weapons.
8. A warrant returned for Defendant and was confirmed, after which Detective Massingale placed Defendant under arrest on that warrant and searched him incident to that arrest.

9. Detective Massingale located evidence on Defendant's person during the search incident to his arrest, which resulted in Defendant's current charge of Possession of a Controlled Substance.

**II. CONCLUSIONS OF LAW**

1. Detective Massingale had specific and articulable facts to support a reasonable suspicion that the three men he contacted, including Defendant, were involved in the crime of Trafficking in Stolen Property on March 31, 2014.
2. Detective Massingale was fully justified in talking to these men and detaining them for the purposes of conducting a Terry investigation with regard to his reasonable suspicion of their involvement with Trafficking in Stolen Property.
3. The defense motion is denied.

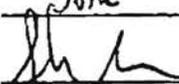
DONE IN OPEN COURT this 2nd day of June, 2014.

JUDGE 

Presented by:

  
TERESA M. COX, #31135  
Deputy Prosecuting Attorney

Copy received this 2nd day of June, 2014.

  
SARAH SILBOVITZ, #41924  
Attorney for Defendant

JORDAN L. WILSON  
Defendant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent/Cross-appellant,	)	
	)	NO. 72167-4-I
	)	
JORDAN WILSON,	)	
	)	
Appellant-Cross-respondent.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 27<sup>TH</sup> DAY OF JANUARY, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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| [X] | JORDAN WILSON<br>2526 CLEVELAND AVE<br>EVERETT, WA 98201  | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON, THIS 27<sup>TH</sup> DAY OF JANUARY, 2015.

X \_\_\_\_\_ 

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