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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON NO. 37995-3-II
BY _____
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

v.

DAVID CHARLES HAMILTON,

Appellant.

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

The Honorable James Stonier, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court lacked authority to impose an exceptional sentence under RCW 9.94A.535¹ and RCW 9.94A.537².
2. The prosecutor lacked authority to request an exceptional sentence as he had not complied with the mandatory notice requirements of RCW 9.94A.537.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

1. RCW 9.94A.537 expressly requires the prosecution to provide notice before the entry of a plea or trial if it seeks an exceptional sentence. The notice requirement is not limited to aggravating factors that may be found by a court and not a jury. Did the prosecution's failure to provide the statutory required notice to Mr. Hamilton invalidate its request for an exceptional sentence?

¹ See full text of statute at Appendix of Statutes.

² See full text of statute at Appendix of Statutes.

C. STATEMENT OF THE CASE

1. Procedural facts.

The Cowlitz County prosecutor charged David Hamilton with three counts of felony violation of a no-contact order for phone calls made on three consecutive days. CP 1-2. The prosecutor charged each count as a felony by alleging that Mr. Hamilton had, on two previous occasions, been convicted of violating protection, restraining, or no-contact orders. CP 1-2; RCW 26.50.110(5).³ A jury heard the case. RP Trial 1-151. Mr. Hamilton testified. RP Trial 103-27. The jury convicted on all counts and found, by a special interrogatory, that all of the counts were domestic violence offenses. CP 25-28.

At sentencing, Mr. Hamilton stipulated to having an offender score of "8" prior to adding the two current offenses.⁴ RP Trial 160. With the two current offenses, each of Mr. Hamilton's three convictions scored as a "10". With a seriousness level of "5" assigned to his convictions, Mr. Hamilton reached his statutory maximum sentence of 60-months once he scored as an "8" on each of his class C felonies. RCW 9.94A.510, .515; RCW 26.50.110(5).

³ See full text of statute at Appendix of Statutes.

⁴ This calculation includes seven points for prior convictions and one point for being on community custody at the time of new offenses. CP 30.

Prior to trial, the State did not give notice of its intent to seek an exceptional sentence.⁵ Even though it had not given this required notice, at sentencing, the State asked the court to impose an exceptional sentence upward arguing that without it, Mr. Hamilton would receive no additional punishment on counts two and three. RP Trial 161. The court, over Mr. Hamilton's objection, imposed a 60-month sentence on count one and 12-month sentences on counts two and three all to run consecutive for a total sentence of 74 months. RP Trial 162, 164; CP 34.

Mr. Hamilton appeals all portions of his judgment and sentence. CP 42.

2. Trial Record.

David Hamilton and Barbara Lansing had known each other for many years. RP Trial 103. In June 2007, their relationship took a romantic turn and they began dating. RP Trial 104. Nine months later, the relationship soured from Ms. Lansing's perspective, and she broke it off. RP Trial 104.

Mr. Hamilton clung to a hope that Ms. Lansing would want to get back together. RP Trial 105. Ms. Lansing did not share Mr. Hamilton's hope. RP Trial 105. Instead, on March 21, 2008, she

⁵ There is no such notice in the superior court file.

obtained a no-contact order from the Cowlitz County Superior Court prohibiting Mr. Hamilton from having contact with her. RP Trial 11-13. In order to serve the order on Mr. Hamilton, Ms. Lansing called Mr. Hamilton and asked him to meet her at the Triangle Bowl lounge that night. RP Trial 14, 105.

Mr. Hamilton did not suspect that Ms. Lansing intended to serve him with a no-contact order. RP Trial 106. Instead, he hoped for reconciliation. RP Trial 106. He shaved, bought some new pants, and arrived at the lounge on time. RP Trial 106. After some brief, friendly conversation, Ms. Lansing gave Mr. Hamilton a notebook with a green cover. RP Trial 16, 18, 110-11. Ms. Lansing told Mr. Hamilton that he would find a note from her inside the notebook. RP Trial 110-11. According to Ms. Lansing, Mr. Hamilton's face fell when he opened the notebook and glanced inside. RP Trial 20-21. Ms. Lansing had put a note to Mr. Hamilton inside the notebook. RP Trial 40. But she had also put a copy of the no-contact order in the notebook. RP Trial 19. Ms. Lansing's friend, Ms. Sturgis, who was positioned at the bar, tapped Mr. Hamilton on the shoulder and told him that he had been served. RP Trial 63.

Later that evening, and on the following two days, Mr. Hamilton left friendly messages on Ms. Lansing's voice mail telling her that he loved her and that he wanted to talk to her. RP Trial 23-26, 113-14. Ms. Lansing did not respond to Mr. Hamilton's wishes. Instead, she called the police. RP Trial 24.

At trial, Mr. Hamilton acknowledged making the phone calls but adamantly denied looking into the notebook or seeing the no-contact order. RP Trial 111. He said he merely left the green notebook at the bar. RP Trial 111-12. He acknowledged having been twice previously convicted of violating court orders prohibiting contact. RP Trial 115.

D. ARGUMENT

THE STATE MUST PROVIDE NOTICE IT WILL SEEK AN EXCEPTIONAL SENTENCE PRIOR TO TRIAL.

- a. The prosecutor must provide its intent to seek an exceptional aggravated sentence.

Notice of aggravating factors is required by RCW 9.94A.537, as well as the Sixth and Fourteenth Amendments and Articles I, §§3, 22 of the Washington Constitution.

In Gault v. Lewis, 489 F.3d 993, 1002-03 (9th Cir. 2007), the Ninth Circuit ruled that the constitutional right to notice of the charges against an accused included sentencing enhancements.

Adequate notice must apprise the accused of the elements with sufficient clarity to let the defendant know what he must be prepared to defend against. Id. at 1003.

Washington has long required a complete and comprehensive charging document. See e.g., Leonard v. Territory, 2 Wash. Terr. 381, 392, 7 P. 872 (1885) (“Under our laws an indictment must be direct and certain, both as regards the crime charged and as to regards the particular circumstances thereof, when they are necessary to constitute a complete crime.”); State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989) (“essential elements” rule requires that a charging document allege *facts supporting every element of the offense*, in addition to adequately identifying the crime charged.” (emphasis in original)). Any fact increasing punishment is an element of the offense. Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); Ring v. Arizona, 536 U.S. 584, 609, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002). Even if notice of prior convictions is not expressly required by the constitution, notice of intent to seek an exceptional sentence is statutorily required in Washington.

- b. The statute specifically requires notice by the prosecution before trial.

RCW 9.94A.537(1) expressly mandates the prosecution must “give notice” that it intends to seek an exceptional sentence prior to trial or entry of a guilty plea. Here, Mr. Hamilton did not receive notice of an exceptional sentence prior to trial. The notice was not given as part of the information or filed as a separate document.

The requirements of RCW 9.94A.537 are plain and unambiguous. A trial court is authorized to impose an exceptional sentence only after compliance with specified statutory procedures. The defendant must have received notice, prior to trial, of any aggravating factor the prosecution would seek to establish. Because Mr. Hamilton did not receive notice of the aggravating factor the trial court lacks authority to impose an exceptional sentence.

- c. The statutory requirement is not superfluous when the aggravating factor is not submitted to a jury.

The language of RCW 9.94A.537 dictates the steps the prosecution must follow anytime it seeks an exceptional sentence.

By its plain terms, the State must give notice prior to trial or a plea, anytime it seeks an exceptional sentence.

The statute does not create any alternatives excusing the State from complying with the mandatory notice requirement. It does not excuse the State from providing notice of its intent to seek an exceptional sentence when the facts underlying the sentence are not ones that must be found by a jury, although it could have done so if that was its intent. See Delgado, 148 Wn.2d 723, 730, 63 P.3d 792 (2003) (refusing to construe statute absent clear inconsistency rendering statute meaningless, as “[t]his court has exhibited a long history of restraint in compensating for legislative omissions.” State v. Taylor, 97 Wn.2d 724, 728, 649 P.2d 633 (1982)).

Because the statute is unambiguous, it requires no construction and its plain terms must be enforced. Here, the prosecution did not provide notice of its intent to seek an exceptional sentence prior to Mr. Hamilton’s trial. The prosecution’s failure to comply with the statute invalidates the sentence imposed when the sentence was predicated upon the prosecution’s vigorous efforts to obtain an exceptional sentence yet the State did not provide notice it would seek such a sentence

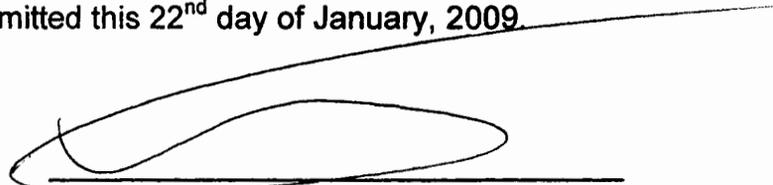
before trial. RP Trial 161 (prosecution's oral argument requesting exceptional sentence).

The prosecution cannot void its plain statutory obligation by encouraging the court to impose a sentence that the State has no authority to seek on its own. Although RCW. 9.94A.535 permits a court to impose an exceptional sentence based on the offender's criminal history without providing notice before trial, the prosecutor may not circumvent its statutory obligations by asking the court to do what the prosecutor cannot do.

E. CONCLUSION

Mr. Hamilton's exceptional sentence should be vacated and his case remanded for resentencing.

Respectfully submitted this 22nd day of January, 2009.

A handwritten signature in black ink, appearing to read "LISA E. TABBUT", is written over a horizontal line. The signature is fluid and cursive.

LISA E. TABBUT/WSBA #21344
Attorney for Appellant

F. APPENDIX OF STATUTES

RCW 9.94A.535 – Departures from Guidelines

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury -Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

RCW 9.94A.537 – Aggravating Circumstances – Sentences above standard range

(1) At any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced, the state may give notice that it is seeking a sentence above the standard sentencing range. The notice shall state aggravating circumstances upon which the requested sentence will be based.

(2) In any case where an exceptional sentence above the standard range was imposed and where a new sentencing hearing is required, the superior court may impanel a jury to consider any alleged aggravating circumstances listed in RCW 9.94A.535(3), that were relied upon by the superior court in imposing the previous sentence, at the new sentencing hearing.

(3) The facts supporting aggravating circumstances shall be proved to a jury beyond a reasonable doubt. The jury's verdict on the aggravating factor must be unanimous, and by special interrogatory. If a jury is waived, proof shall be to the court beyond a reasonable doubt, unless the defendant stipulates to the aggravating facts.

(4) Evidence regarding any facts supporting aggravating circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented to the jury during the trial of the alleged crime, unless the jury has been impaneled solely for resentencing, or unless the state alleges the aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t). If one of these aggravating circumstances is alleged, the trial court may conduct a separate proceeding if the evidence supporting the aggravating fact is not part of the res geste of the charged crime, if the evidence is not otherwise admissible in trial of the charged crime, and if the court finds that the probative value of the evidence to the aggravated fact is substantially outweighed by its prejudicial effect on the jury's ability to determine guilt or innocence for the underlying crime.

(5) If the superior court conducts a separate proceeding to determine the existence of aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall immediately follow the trial on the underlying conviction, if possible. If any person who served on the jury is unable to continue, the court shall substitute an alternate juror.

(6) If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence.

RCW 26.50.110

Violation of order — Penalties.

(1)(a) Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location; or

(iv) A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid

foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEAL OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)	Court of Appeals No. 37995-3-II
)	
Respondent,)	CERTIFICATE OF MAILING
)	
vs.)	
)	
DAVID CHARLES HAMILTON,)	
)	
Appellant.)	
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)	

That on the 22nd day of January 2009, I deposited in the mails of the United States Postal Service, first class mail, a properly stamped and address envelope, containing Appellant's Brief and a Certificate of Mailing (PA only) addressed to the following parties:

Susan I. Baur
Cowlitz County Prosecutor's Office
312 S.W. First Ave.
Kelso, WA 98626-1799

And

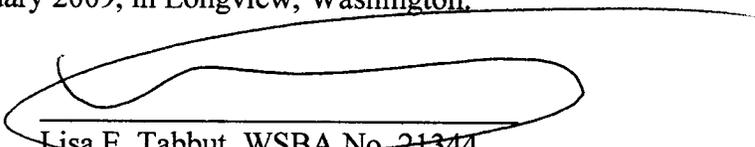
LISA E. TABBUT
ATTORNEY AT LAW

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David C. Hamilton/DOC#274733
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P.O. Box 1809, Unit L, Cell B-36
Airway Heights, WA 99001-1809

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

Dated this 22nd day of January 2009, in Longview, Washington.



Lisa E. Tabbut, WSBA No. 21344
Attorney for Appellant