

No. 49242-3-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**SARAH J. SEWARES,**

Appellant.

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Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Brief**

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By:

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## I. ISSUES

- A. Did the trial court err when it found officers had reasonable suspicion Sewares was involved in a plan to deliver heroin and did the detention of Sewares exceed the proper scope of an investigatory stop?
- B. The State cannot recover appellate costs with the amendment of RAP 14.2, as Sewares has been found indigent.

## II. STATEMENT OF THE CASE

In December 2015, a confidential informant identified Christopher Neff as an Everett heroin dealer with associates in the Lewis County area. RP (6/22/16) 6. The informant made arrangements for Neff to transport between 10 and 16 ounces of heroin to Lewis County on December 23, 2015. RP (6/22/16) 7. The transaction was set to take place in room 254 of the Motel 6 in Centralia, Washington. RP (6/22/16) 7. Centralia Police Detective Haggerty positively identified Neff through a Department of Licensing photo, a Department of Corrections records check, and confirmation with the informant. RP (6/22/16) 7. Centralia police officers positioned themselves around the Motel 6 waiting for Neff to arrive. RP (6/22/16) 8. The Centralia officers were assisted by Special Agents from Homeland Security Investigations. RP (6/22/16) 7-8.

While waiting for Neff, the informant contacted the officers and reported Neff was getting food at the nearby Arby's and would be

arriving shortly. RP (6/22/16) 8, 35-36. Detective Withrow reported to Detective Haggerty that a white Cadillac was in the Arby's drive thru. RP (6/22/16) 15. A short time later, Neff arrived at the motel in a white Cadillac, which also contained two women. RP (6/22/16) 8, 15. Neff and the two women exited the vehicle and walked straight to room 254. RP (6/22/16) 8-9, 36-38. Neff carried an Arby's bag and one of the women carried a black backpack. RP (6/22/16) 9, 36-38. The officers believed the two women were coconspirators in the arranged heroin delivery. RP (6/22/16) 31, 52.

After Neff and the two women stopped at room 254, the officers drew their weapons, converged on the trio, and detained them. RP (6/22/16) 9, 25. All three were secured in handcuffs for officer safety purposes. RP (6/22/16) 9. Neff was escorted downstairs by the special agents, and officers spoke with the women upstairs. RP (6/22/16) 10-11, 27, 42, 54-55.

The woman with the black backpack told officers she was carrying the backpack for Neff, and she consented to a search of the backpack. RP (6/22/16) 10-11. A search of the backpack revealed a large freezer bag containing a brown tarry powdered substance and smaller amounts of methamphetamine. RP (6/22/16) 11.

Detective Withrow spoke with the second woman, identified as Sarah Sewares. RP (6/22/16) 42. Detective Withrow asked Sewares if she had any weapons or drugs on her person. RP (6/22/16) 42, 50. Sewares told Detective Withrow she had methamphetamine in her purse. RP (6/22/16) 42-43, 50. Detective Withrow asked for consent to remove the methamphetamine from the purse and Sewares consented. RP (6/22/16) 43, 50. Detective Withrow removed the purse from Sewares's shoulder and could see a prescription bottle containing a large shard of crystal consistent with methamphetamine. RP (6/22/16) 43. Detective Withrow again asked for consent to remove the methamphetamine, and Sewares again gave consent. RP (6/22/16) 43. Detective Withrow removed the methamphetamine and placed Sewares under arrest. RP (6/22/16) 44. Sewares was charged with Possession of Methamphetamine. CP 1-2.

Neff and Sewares moved to suppress the collected evidence, arguing the initial detention was unlawful and the officers did not obtain proper consent to search the backpack. CP 19-27. At an evidentiary hearing, Detective Haggerty testified to the reliability of the confidential informant. RP (6/22/16) 5-6, 17-23. The informant began working with law enforcement after being arrested on drug

charges. RP (6/22/16) 5-6. The informant was able to corroborate information in Detective Haggerty's case and provided a gun out of good faith that was used in a felony crime in Centralia. RP (6/22/16) 5, 20. The informant had also worked with federal law enforcement in the Midwest. RP (6/22/16) 6. With the informant's assistance, federal law enforcement was able to seize 100 pounds of cocaine and make numerous arrests. RP (6/22/16) 6, 22-23. Detective Haggerty testified he did not remember specifics of the informant's criminal history, but the informant may have had some crimes of dishonesty from 15 or more years before. RP (6/22/16) 17, 30.

The trial court found Detective Haggerty had sufficient information to determine the confidential informant was providing reliable and trustworthy information. RP (6/22/16) 97. The trial court found the observations by the police corroborated the informant's information and gave the officers reasonable suspicion the defendants were carrying out a plan to deliver heroin. RP (6/22/16) 98-99. The trial court held the initial detention of the defendants was valid. RP (6/22/16) 97. The trial court also specifically found the officers had reasonable suspicion for the detention of Sewares, finding Sewares was not merely present at the scene. RP (6/22/16) 94, 101. The trial court held the backpack was searched pursuant to

valid consent by the woman in possession of the backpack. RP (6/22/16) 100. The trial court denied the motions to suppress, entering written findings of fact and conclusions of law. RP (6/22/16) 101; CP 32-35.

Sewares proceeded with a stipulated facts bench trial, with the intent to appeal the trial court's ruling on the motion to suppress. RP (7/13/16) 2-3. RP 45. The trial court reviewed the stipulated facts and found Sewares guilty of Possession of Methamphetamine. RP (7/13/16) 3-4; CP 37-39. This appeal follows. CP 53.

The State will supplement the facts as necessary throughout its argument below.

### III. ARGUMENT

#### **A. THE INVESTIGATORY STOP OF SEWARES WAS PERMISSIBLE BECAUSE THE OFFICERS POSSESSED THE REQUISITE REASONABLE SUSPICION THAT SEWARES WAS INVOLVED IN CRIMINAL ACTIVITY AND DID NOT EXCEED THE SCOPE OF THE STOP.**

Sewares argues the trial court incorrectly denied her motion to suppress the evidence found in her purse after she was detained by the officers investigating an arranged heroin delivery. The trial court correctly ruled the officers had reasonable suspicion Sewares was involved with the planned delivery, and it was lawful for officers to stop her. The trial court correctly found Sewares was more than

merely present at the scene. Although the trial court did not specifically rule on whether the scope of the stop was exceeded, the trial court did discuss what circumstances should have resulted in the stop being terminated and found the stop lawful. The officers did not exceed the scope of the investigatory stop of Sewares. This Court should find that the motion to suppress the evidence obtained was correctly denied.

### **1. Standard Of Review.**

When an appellant challenges a trial court's denial of a motion to suppress, the reviewing court determines whether there is substantial evidence to support the challenged findings of fact and whether those findings support the trial court's conclusions of law. *State v. Campbell*, 166 Wn. App. 464, 469, 272 P.3d 859 (2011). Findings of fact entered by a trial court after a suppression hearing will be reviewed by the appellate court only if the appellant has assigned error to the fact. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). "Where there is substantial evidence in the record supporting the challenged facts, those facts will be binding on appeal." *Id.* Substantial evidence exists when the evidence is sufficient to persuade a rational, fair-minded person of the truth of the finding based upon the evidence in the record. *State v. Lohr*, 164

Wn. App. 414, 418, 263 P.3d 1287 (2011) (citation omitted). The appellate court defers to the fact finder regarding the credibility of witnesses and the weight to be given reasonable but competing inferences. *State ex. rel. Lige v. County of Pierce*, 65 Wn. App. 614, 618, 829 P.2d 217 (1992), *review denied* 120 Wn.2d 1008 (1992). Findings of fact not assigned error are considered verities on appeal. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). A trial court's conclusions of law are reviewed de novo, with deference to the trial court on issues of weight and credibility. *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008).

In the present case Sewares does not assign error to any of the findings of fact, they are therefore verities on appeal. Sewares also fails to assign error to the conclusions of law. Given Sewares's arguments on appeal, the State will assume this was an oversight.

**2. The *Terry* Stop Was Lawful Because The Officers Had Articulable Suspicion Provided From A Reliable Confidential Informant Of Planned Criminal Activity And There Was Reasonable Suspicion To Believe Sewares Was Involved.**

The Washington State Constitution guarantees its citizens the right to not be disturbed in their private affairs except under the authority of the law. Const. art. I, § 7. People have a right to not have government unreasonably intrude on one's private affairs. U.S.

Const. amend IV. Article One, section seven, of the Washington State Constitution protects the privacy rights of the citizens of Washington State. The right to privacy in Washington State is broader than the right under the Fourth Amendment of the United States Constitution. Const. art. I, § 7; *State v. Eisfeldt*, 163 Wn.2d 628, 634-35, 185 P.3d 580 (2008). Washington State places a greater emphasis on privacy and recognizes individuals have a right to privacy with no express limitations. Const. art. I, § 7; *State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833 (1999). A warrantless “seizure is considered per se unconstitutional unless it falls within one of the exceptions to the warrant requirement.” *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004) (citation omitted).

The United States and Washington State constitutions permit an officer to seize someone for investigative purposes without a warrant if the officer has reasonable suspicion that the person has committed a crime. See *Terry v. Ohio*, 392 U.S. 1, 21-24, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) (federal constitution); *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003) (same); *State v. Brown*, 154 Wn.2d 787, 796, 117 P.3d 336 (2005) (state constitution). An officer is not entitled to seize a person due to his or her mere presence at the scene of suspected criminal activity. *State v.*

*Broadnax*, 98 Wn.2d 289, 302, 654 P.2d 96 (1982). An officer must have some suspicion that the person he or she is detaining is connected to a particular crime and not a generalized suspicion that the person detained is up to no good. *State v. Bliss*, 153 Wn. App. 197, 204, 222 P.3d 107 (2009) (citation omitted). An officer must be able to identify “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Mendez*, 137 Wn. 2d 208, 223, 970 P.2d 722 (1999), *abrogated by Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007) (*citing Terry*, 392 U.S. at 21). When a court determines the reasonableness of the officer’s suspicion it looks at the totality of the circumstances. *Bliss*, 153 Wn. App. at 204.

When an officer bases their suspicion from an informant’s tip the State is required to show, under the totality of the circumstances, that the tip bears some indicia of reliability. *State v. Z.U.E.*, 183 Wn.2d 610, 618, 352 P.3d 796 (2015). There must be “(1) circumstances establishing the informant’s reliability or (2) some corroborative observation, usually by the officers, that shows either (a) the presence of criminal activity or (b) that the informer’s information was obtained in a reliable fashion.” *Id.* at 618-19. The

corroborative observations do not have to be of blatant criminal activity but do have to be of more than just innocuous facts. *Id.*

The most common way to determine the reliability of a “professional” or “criminal” informant is to evaluate the informant’s “track record,” i.e., the number of times he or she has provided accurate information to police in the past. *State v. Lair*, 95 Wn.2d 706, 630 P.2d 427 (1981) (citing *State v. Thompson*, 13 Wn. App. 526, 536 P.2d 683 (1975)). A conclusory statement from the officer that the confidential informant has been reliable in the past is insufficient. *State v. Woodall*, 100 Wn.2d 74, 666 P.2d 364 (1983). However, some information that the informant’s tips have led to arrests or convictions in the past may be enough to prove a credible track record. *State v. Fischer*, 96 Wn.2d 962, 639 P.2d 743 (1982); *State v. Partin*, 88 Wn.2d 899, 567 P.2d 1136 (1977).

Courts have determined informants providing information to police in order to avoid punishment for their own crimes have a strong incentive to provide accurate information. See, e.g., *State v. Bean*, 89 Wn.2d 467, 469-71, 572 P.2d 1102 (1978) (an informant who trades information for a favorable sentencing recommendation has a strong motive to be accurate); *State v. Estorga*, 60 Wn. App. 298, 305, 803 P.2d 813 (1991) (offer to drop charges in exchange

for accurate information established strong motive to be truthful); *State v. Smith*, 39 Wn. App. 642, 647–48, 694 P.2d 660 (1984) (offer of reduction in charge from felony to misdemeanor gave informant strong motive to be truthful).

Sewares argues the confidential informant did not provide sufficient information for the officers to form a reasonable, articulable suspicion of criminal activity and the totality of the circumstances do not support a reasonable belief anyone was involved in criminal conduct. Brief of Appellant 14. Alternatively, Sewares argues even if there was reasonable suspicion to stop Neff, there was not reasonable suspicion to specifically stop Sewares. Brief of Appellant 14-15. Sewares argues the evidence shows at most her mere proximity to a person suspected of possessing heroin. Brief of Appellant 14.

Sewares argues her case is similar to *State v. Z.U.E.*, 183 Wn.2d 610, 352 P.3d 796 (2015) because the officers did not provide the trial court with a sufficient factual basis to support the information provided by the informant. Brief of Appellant 11-14. However, *Z.U.E.* can be distinguished from this case.

In *Z.U.E.*, officers received a series of 911 calls reporting seeing a shirtless man carrying a gun. 183 Wn.2d at 613-14. A

number of the callers observed the man enter a vehicle with eight other people. *Id.* at 614. One witness identifying herself by first name reported witnessing what she believed looked like a 17-year-old female handing a gun off to a shirtless man, who then carried the gun through the park. *Id.* The officers had little information regarding the identities of any of the 911 callers. *Id.*

A block away from the park, the officers observed two women, one matching the description of the purported 17-year-old. *Id.* at 614-15. The officers later observed the women enter a vehicle near the park which did not match the vehicle described by the callers. *Id.* None of the occupants matched the description of the shirtless man. *Id.* at 615. The officers conducted a “felony stop” of the vehicles occupants and ultimately arrested and stun-gunned Z.U.E. for obstruction of law enforcement. *Id.* at 616. In a search incident to arrest, officers found marijuana on Z.U.E.’s person. *Id.* The officers never located the bald, shirtless subject. *Id.*

The Court found insufficient facts to support a reasonable suspicion the bald, shirtless subject was in the car. *Id.* at 622. The Court also found the police could not justify a stop to investigate the crime of minor in possession of a firearm. *Id.* at 622-23. The Court stated although there was little reason to doubt the veracity of the

911 caller, there was no factual basis for establishing how the caller knew or believed the reported female was a 17-year-old rather than an adult who could legally possess a firearm. *Id.* at 623. Without knowing anything about the caller other than a first name, the officers had no basis on which to evaluate the accuracy of her estimation. *Id.*

Here, unlike in *Z.U.E.*, the confidential informant was a known person to the officers, and had an established track record of providing information that led to drug seizures and arrests. RP (6/22/16) 6, 22-23. The informant was also working with law enforcement to gain a benefit regarding his own criminal charges. RP (6/22/16) 5-6. This suggests the informant had a strong incentive to provide accurate information. *State v. Bean*, at 469-71.

Further, as the trial court noted, the informant's information was borne out by multiple factors. RP (6/22/16) 97. The informant reported Neff would be arriving at the Motel 6 by car and later reported that Neff was seen at the nearby Arby's. RP (6/22/16) 97-98. This was corroborated by one officer observing a vehicle drive through Arby's and enter the Motel 6 parking lot. RP (6/22/16) 98. The information was further corroborated when officers identified Neff as the man exiting the vehicle carrying an Arby's bag. RP (6/22/16) 98. The information was corroborated further when officers

observed all three walk to the specific room that had been selected as the meeting location. RP (6/22/16) 98. The trial court properly found these facts, along with the presence of the backpack, gave the officers reasonable suspicion the trio was carrying out a plan to deliver heroin. RP (6/22/16) 98-99.

The trial court was also correct in specifically finding the detention of Sewares to be reasonable. RP (6/22/16) 101. Sewares was not merely present at the scene. RP (6/22/16) 101. Sewares got out of the same car with Neff and the woman with the backpack and walked with them to the designated motel room door arranged with the informant. RP (6/22/16) 101. The trial court properly found this gave the officers reasonable suspicion to believe Sewares was involved in the plan to deliver heroin. RP (6/22/16) 94. The trial court correctly held the stop was lawful and this Court should affirm the ruling and Sewares's conviction.

**3. Officer Withrow Did Not Exceed The Scope Of The Terry Stop When He Asked Sewares If She Had Weapons Or Drugs On Her Person During The Investigation Of An Arranged Heroin Delivery.**

A *Terry* stop must be limited to a scope and duration reasonably necessary for fulfilling the purpose of the detention. *State v. Williams*, 102 W.2d 733, 738-40, 689 P.2d 1065 (1984). An officer making a *Terry* stop “may ask a moderate number of questions . . .

to confirm or dispel the officer's suspicions" without converting the stop into a custodial arrest. *State v. Heritage*, 152 Wn.2d 210, 219, 95 P.3d 345 (2004) (citation omitted). The scope of an investigatory stop may be enlarged or prolonged if the stop confirms or arouses further suspicions. *State v. Smith*, 115 Wn.2d 775, 785, 801 P.2d 975 (1990).

Sewares argues Detective Withrow exceeded the scope of the stop when he asked Sewares whether she had drugs on her person and asked for consent to search her purse when she responded in the affirmative. Brief of Appellant 18-19. Sewares cites *State v. Saggars*, 182 Wn. App. 832, 332 P.3d 1034 (2014), to support this argument. Brief of Appellant 15-19. However, *Saggars* can be distinguished from this case.

In *Saggars*, officers responded to a 911 call where an unknown caller provided a name and reported seeing a man hit a woman and threaten her with a shotgun on the front porch. 182 Wn. App. at 836. When the officers arrived at the provided street address, they investigated the complaint, eventually ordering the suspect, *Saggars*, out of the home and searching the residence. *Id.* at 836-38. During the course of the investigation, the officers noted the address provided was the same address from a man who had called

in requesting a civil standby 13 minutes before the 911 call. *Id.* The civil standby was denied for being made at an unreasonable hour, and the caller had become agitated with the denial. *Id.* at 835-36. The officers determined it was extremely likely the civil standby caller made the 911 call as a prank and nothing in the officers' investigation supported the alleged complaint. *Id.* at .837-38.

After making this determination, officers continued to ask Saggars questions, including whether he had a shotgun in the home. *Id.* at 838. Saggars told the officers he did own a shotgun, and when the officers later determined Saggars was ineligible to possess firearms, the officers asked permission to reenter the home and retrieve the shotgun. *Id.* The court held the officers exceeded the scope of their investigatory stop when asking about the shotgun. *Id.* at 847. The court found at the time of the questioning, any suspicions Saggars was involved in the reported criminal activity had already been dispelled along with any sense of exigency. *Id.* at 844-47.

Here, Detective Withrow asked Sewares whether she had weapons or drugs on her person. RP (6/22/16) 42, 50. When Sewares indicated methamphetamine was in her purse, Detective Withrow asked for, and received consent to remove, the methamphetamine from the purse. RP (6/22/16) 42-43, 50. Once the

methamphetamine was removed, Detective Withrow converted the detention into a formal arrest. RP (6/22/16) 44.

Detective Withrow was permitted to ask Sewares a “moderate number of questions” to confirm or dispel his suspicions of her involvement in the planned heroin delivery. *Heritage*, at 219. Sewares response aroused further suspicions, which prompted Withrow to enlarge the scope of his investigation. *Smith*, at 785. Unlike in *Saggers*, Detective Withrow had no reason to believe the information provided by the confidential informant was unreliable or fabricated, and Detective Withrow’s suspicions of Sewares’s involvement had not been dispelled. The fact Detective Haggerty found heroin in the backpack held by the other woman does not somehow render Sewares less suspicious.

While the scope of the investigatory stop was not explicitly discussed, the trial court noted had the search of the backpack produced nothing, the officers would likely no longer have a basis for the continued detention of any member of the trio. RP (6/22/16) 99. The trial court also noted had Sewares told officers she did not have any contraband and did not give consent to search her purse, the officers would not have had a basis to search the purse nor probable cause to arrest at that point. RP (6/22/16) 101, 106. Under the

circumstances present in this case, Detective Withrow's question and course of action was permissible and appropriate, and it did not exceed the scope of the investigatory stop. This Court should affirm the trial court's ruling and Sewares's conviction.

**B. SEWARES'S ISSUE REGARDING APPELLATE COSTS IS MOOT WITH THE COURT'S AMENDMENT OF RAP 14.2.**

Sewares argues this Court should not impose appellate costs if the State prevails. This issue has been mooted by the amendment of RAP 14.2, as Sewares was found indigent for purposes of this appeal, and the State has no evidence that her circumstances have changed. See RAP 14.2; CP 67-68. The State does not know how it will ever meet RAP 14.2's burden to show by a "preponderance of the evidence that the offender's financial circumstances have significantly improved since the last determination of indigency." The State has no ability to require an appellant to provide current financial information. RAP 14.2 guarantees there will be no appellate costs imposed upon Sewares in this case if the State is the prevailing party.

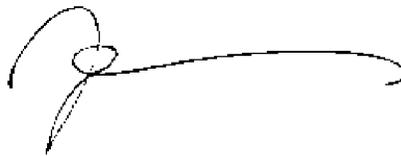
**IV. CONCLUSION**

The officers had reasonable suspicion to believe Sewares and her companions were involved in a plan to deliver heroin based on the information provided by a reliable informant and corroborated by the officers' observations. Officer Withrow did not exceed the scope

of the stop when he asked Sewares if she had drugs or weapons on her person and requested consent to remove the methamphetamine she reported was located in her purse. Because the officers had sufficient information to form a reasonable, articulable suspicion and did not exceed the scope of the stop, the subsequent search was lawful. The State will not be seeking appellate costs pursuant to the recently amended RAP 14.2. This Court should affirm the trial court's conclusions of law from the CrR 3.6 Hearing and Sewares's conviction for Possession of Methamphetamine.

RESPECTFULLY submitted this 24<sup>th</sup> day of February, 2017.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

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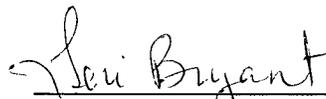
by: \_\_\_\_\_  
JESSICA L. BLYE, WSBA 43759  
Attorney for Plaintiff

**COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II**

STATE OF WASHINGTON,  Respondent,  vs.  SARAH J. SEWARES,  Appellant.	No. 49242-3-II  DECLARATION OF SERVICE
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Ms. Teri Bryant, paralegal for Jessica L. Blye, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On February 24, 2017, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to John A. Hays, attorney for appellant, at the following email addresses: [jahays@3equitycourt.com](mailto:jahays@3equitycourt.com) and [jahayslaw@comcast.net](mailto:jahayslaw@comcast.net).

DATED this 24<sup>th</sup> day of February, 2017, at Chehalis, Washington.



\_\_\_\_\_  
Teri Bryant, Paralegal  
Lewis County Prosecuting Attorney Office

**LEWIS COUNTY PROSECUTOR**

**February 24, 2017 - 1:49 PM**

**Transmittal Letter**

Document Uploaded: 7-492423-Respondent's Brief.pdf

Case Name:

Court of Appeals Case Number: 49242-3

**Is this a Personal Restraint Petition?**    Yes     No

**The document being Filed is:**

Designation of Clerk's Papers  
Papers

Supplemental Designation of Clerk's

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Teresa L Bryant - Email: [teri.bryant@lewiscountywa.gov](mailto:teri.bryant@lewiscountywa.gov)

A copy of this document has been emailed to the following addresses:

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