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Court of Appeals
Division II
State of Washington
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NO. 51255-6-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

IVON CRANSHAW,

Appellant.

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

APPELLANT'S OPENING BRIEF

TRAVIS STEARNS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711

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A. INTRODUCTION

When Ivon Cranshaw needed to get to the coroner's office and the realtor before his mother's funeral, he asked Traditia Wood for a ride. Mr. Cranshaw left his mother's house and got into her rental car. The police stopped the rental car to arrest Ms. Wood, who had an active felony arrest warrant. As she was being arrested, Ms. Wood told the police there were drugs in the rental car, which they found hidden in the center console after getting a search warrant. The police also found two drug pipes in Ms. Wood's purse.

Other than briefly driving the rental car, Mr. Cranshaw had no other connection to the car or drugs. He had not rented the car. He had only been in it for a brief period of time before the police stopped the car. There was no forensic evidence tying him to the drugs. The pipes found in Ms. Wood's purse belonged to her. No other evidence of drug use found in the car. And while on his way to the police station, Mr. Cranshaw stated that there might be drugs in the rental car, he did not say they were his.

A conviction can only stand when the government presents sufficient evidence of every element of the crime charged. Because the government failed to prove Mr. Cranshaw constructively possessed the

methamphetamine, there is not legally sufficient evidence to convict him of possessing the drugs in the car.

B. ASSIGNMENTS OF ERROR

1. The government failed to present sufficient evidence that Mr. Cranshaw possessed the methamphetamines found in the center console of Ms. Wood's rental car.

2. Because recent amendments to the legal financial obligation statutes are retroactive, the filing fee and the DNA collection fee should be stricken.

C. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Due process requires the government to present sufficient evidence of every element of a charged crime. Evidence of possession is insufficient where the government is unable to establish that the defendant exercised dominion and control over the charged contraband. Is dismissal required where the government failed to establish Mr. Cranshaw exercised dominion and control over methamphetamines found in the center console of a car rented to another person, when the only other evidence of possession was two drug pipes found in the possession of the passenger arrested and Mr. Cranshaw's statement that there might be drugs in the rental car?

2. Recent amendments to the legal financial obligation statutes prohibit courts from imposing the clerk's filing fee where a person is found to be indigent and the DNA collection fee where it has previously been collected. Should this Court find these amendments to be retroactive as applied to Mr. Cranshaw and order them stricken?

D. STATEMENT OF THE CASE

On May 1, 2017, Mr. Cranshaw's mother died after a prolonged illness. RP 340, 322. She had lived in a large rental house, with seven bedrooms that accommodated the grandchildren she cared for. RP 345, 321. Because Mr. Cranshaw was family, the rental agency was willing to give him a break on rent on the house his mother had rented, but in order to avoid eviction, Mr. Cranshaw needed to clear up some paperwork with the rental agency. RP 345. This paperwork included making changes to his mother's death certificate. RP 341. These issues arose as he was preparing for his mother's funeral. RP 342. Dahlia Arreola, who had cared for Mr. Cranshaw's mother before she died, had helped him put together the paperwork that he needed for the funeral and to take over his mother's lease. RP 326, 321.

On May 11, 2017, Mr. Cranshaw called Ms. Wood because he needed a ride to the coroner's office and the rental agency. RP 344. Ms.

Wood was driving a rented blue Mini Cooper. RP 357. The car's rental agreement was in another person's name, but Ms. Wood was known by the police to be associated with this car. RP 242, 191. She agreed to take Mr. Cranshaw on his errands in the rental car. RP 344. Ms. Wood arrived at the house where Mr. Cranshaw's mother had lived. RP 322. She spoke with Dahlia Arreola in her room. RP 323. Ms. Wood showed Ms. Arreola a bandana with two methamphetamine pipes in it and asked Ms. Arreola if she wanted to smoke with her. RP 323. Ms. Arreola declined. RP 323. Ms. Wood put the pipes back in her purse. RP 323. No evidence was presented that Mr. Cranshaw ever knew about the drug pipes.

The police had secured an arrest warrant for Ms. Wood and were looking for her. RP 194. She was being investigated for felonies which had occurred at the Red Canoe Credit Union. RP 196. The police knew that Ms. Wood was associated with the Mini Cooper parked outside Mr. Cranshaw's mother's house. RP 191. When the detective watching the Mini Cooper saw two people leave the house in the rented car, he followed them. RP 191. The detective drove next to the rental car to confirm Ms. Wood was in the car and then asked a marked police car to pull the car over. RP 192. Once stopped, the police arrested Ms.

Wood. RP 194. Mr. Cranshaw, who was driving, cooperated with the police, staying in the car while they processed his identification. RP 194. The police discovered that he had a suspended license and arrested him for that charge. RP 205.

Based on information the police obtained from Ms. Wood, they believed that there were methamphetamines inside the rental car. RP 197. The police impounded the car and secured a search warrant for it. RP 220. Inside the center console of the rental car, the police found a cigarette pack, which contained two grams of methamphetamines. RP 235. The police found two glass pipes used for smoking methamphetamines inside Ms. Wood's purse. RP 222, 241. Mr. Cranshaw's paperwork from his mother's death was also in the car. RP 168.

While heading to the police station, the transport officer said Mr. Cranshaw "mentioned something about possibly having drugs in the vehicle and some other items." RP 203. At trial, Mr. Cranshaw strongly denied making this statement. RP 352. He testified that he told the police he did not know anything about drugs in the car but needed the paperwork that he had brought with him. RP 205, 352.

Mr. Cranshaw was charged with possession of a controlled substance. CP 3-4. At trial, the prosecution argued that Mr. Cranshaw constructively possessed the drugs. RP 395-96. At the close of the government's case, Mr. Cranshaw moved to dismiss the charge for failure to prove possession. RP 306. The court denied Mr. Cranshaw's motion. RP 314. After deliberations, the jury found Mr. Cranshaw guilty. RP 422.

Mr. Cranshaw was sentenced to a standard range sentence of 15 months. CP 42. The court found him indigent, striking all of the mandatory court fees but still imposing the \$500 victim penalty, the \$200 filing fee, and the \$100 DNA collection fee. RP 434, CP 44.

E. ARGUMENT

1. The government failed to prove Mr. Cranshaw had actual or constructive possession of the controlled substances found in Ms. Wood's rental car.

a. The government failed to establish Mr. Cranshaw exercised dominion and control over the controlled substances found in Ms. Wood's rental car.

Due process requires the government to prove every element of the crime charged beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). Dismissal is required where

the government is unable to meet this burden. *State v. Chouinard*, 169 Wn. App. 895, 903, 282 P.3d 117 (2012).

A possessory offense can be proved through actual or constructive possession. *State v. Lakotiy*, 151 Wn. App. 699, 714, 214 P.3d 181 (2009). While possession may be actual or constructive, mere proximity is insufficient to establish dominion and control. *State v. Bradford*, 60 Wn. App. 857, 862, 808 P.2d 174 (1991); *see also State v. Duncan*, 146 Wn.2d 166, 182, 43 P.3d 513 (2002). Knowledge of the presence of contraband, without more, is also insufficient to show dominion and control. *State v. Hystad*, 36 Wn. App. 42, 49, 671 P.2d 793 (1983).

In *State v. George*, the court rejected the government's argument that proximity and knowledge of the controlled substances was sufficient to prove dominion and control. 146 Wn. App. 906, 912-13, 193 P.3d 693 (2008). In *George*, four persons were arrested in a vehicle. *Id.* The government established that Mr. George was in close proximity to the eight-inch-long water pipe that was found next to where Mr. George was seated and that he knew it was there. *Id.* The government, however, produced no evidence Mr. George had used the pipe. *Id.* at 922. Additionally, the government offered no evidence to

rule out the other occupants of the vehicle. *Id.* Even though Mr. George knew about the water pipe and was close to it, the court held that this was insufficient to establish dominion and control over the illegal contraband. *Id.* at 923.

The holding in *George* is consistent with other cases analyzing the issue of dominion and control. In *State v. Spruell*, the court found insufficient evidence of possession of a controlled substance when the government established Mr. Spruell was seated near a table where police observed cocaine residue, a scale, vials, and a razor blade. 57 Wn. App. 383, 384, 788 P.2d 21 (1990). In dismissing the possession charge, the *Spruell* Court considered why the defendant was in the house where the drugs were found, how long he had been there, and whether he had ever been in the house before. *Id.* at 388-89. Without some evidence tying the defendant to the drugs, even where he was in close proximity and had some knowledge of the existence of the drug, dismissal was required. *Id.*

In this case, the government had to prove Mr. Cranshaw exercised dominion and control over the methamphetamine found secreted inside the rental car associated with Ms. Wood. *Chouinard*, 169 Wn. App. at 899. Like in *George*, Mr. Cranshaw was not the only

person in the car when it was stopped. RP 191. Mr. Cranshaw may have been sitting in close proximity to the drugs, but they were not immediately apparent to him like the water pipe was in *George*, as they were hidden in a cigarette pack in the center console. RP 235.

The only evidence linking the drugs to anyone were the methamphetamine pipes found in Ms. Wood's purse, which Ms. Wood brought into in the rental car without Mr. Cranshaw when she got into the car. RP 357. The drugs were found in the center console, right next to her seat. RP 235. She had two methamphetamine pipes in her purse, along with her identification. RP 241. She was also a known drug user, having offered to smoke methamphetamines with a person immediately before her arrest. RP 323. She was wanted for felony crimes. RP 196.

Further, the drugs were found stacked with the car's rental agreement, which did not have Mr. Cranshaw's name on it. RP 242. All of Mr. Cranshaw's paperwork about his mother was on the rear seat of the car, far away from the drugs. RP 205, 352. The drugs were secreted inside a cigarette pack, inside a smaller bag. RP 248. No evidence was produced to demonstrate that Mr. Cranshaw had used or even touched the found drugs. RP 284. The police conducted no forensic tests to

determine ownership. RP 284. Other than being the driver of the car, there was no evidence tying Mr. Cranshaw to the drugs.

And while Mr. Cranshaw was the driver of the car where the drugs were found, he had very tenuous connections to the car itself. The evidence established that the car had been rented. RP 242. Mr. Cranshaw's name was not on the rental agreement. RP 242. The police had become interested in the car because of Ms. Wood's relationship to it. RP 191. In fact, the police stopped the car in order to arrest Ms. Wood, for whom they had secured an arrest warrant. RP 194. While other cases have examined dominion and control issues for the drivers of vehicles, there do not appear to be any opinions that have examined the issue when the vehicle in question is a rental car. *See, e.g., State v. Bowen*, 157 Wn. App. 821, 828, 239 P.3d 1114 (2010) (citing *State v. Potts*, 1 Wn. App. 614, 617, 464 P.2d 742 (1969)). In these cases, the driver was the sole occupant of the car as well as its owner. *Bowen*, 157 Wn. App. at 828; *Potts*, 1 Wn. App. at 617. Here, Mr. Cranshaw was only driving the car because Ms. Wood had temporarily given him permission to do so, while she sat next to him in the car. He had no ownership interest in the car and cannot be presumed to know or to

have possessed the car's entire contents from his brief presence in the car.

The driver of another person's rental car is more analogous to a house guest. For a rental car, this Court should instead rely on cases where the court has examined the inability of the government to establish possession for house guests. In *State v. Callahan*, Washington's Supreme Court determined there was insufficient evidence to support the defendant's conviction for possession of narcotics. 77 Wn.2d 27, 31, 459 P.2d 400 (1969). Mr. Callahan was present and his personal possessions were in the same houseboat the police found drugs visibly places along with other paraphernalia, including scales used to measure drugs. *Id.* The court also found Mr. Callahan had been staying on the houseboat for two or three days. *Id.* In finding insufficient evidence to convict Mr. Callahan of possession, the court held that the government had failed to prove dominion and control over the contraband or the premise where the contraband was located. *Id.* at 30–31. The court held that even though the defendant had stayed at the houseboat for a few days and kept his possessions there, this was insufficient to establish dominion and control over drugs found

on the houseboat that did not belong to him and in which he was a temporary guest. *Id.* at 31.

The evidence of dominion and control is even more tenuous here than in *Callahan*. Only circumstantial evidence points to any dominion and control of the drugs found in the center console of Ms. Wood's rental car. *Callahan*, 77 Wn.2d at 31-32. Mr. Cranshaw was driving the rental car but had no other connection to it. It was rented to another person and was known by the police to be a car Ms. Wood had been using. RP 242, 191. Mr. Cranshaw had no connection to the drugs found in the in the rental car. The evidence at trial established only that Mr. Cranshaw was driving the rented car, not that he had dominion and control over the rented car or the drugs found in the center console.

The police also stated Mr. Cranshaw thought there might be drugs in the Mini Cooper. RP 203. But knowledge of contraband is not sufficient to establish possession. *Chouinard*, 169 Wn. App. at 898. Mr. Cranshaw may have known that Ms. Wood was in possession of the drugs found in the rental car, but this does not mean the drugs were his. In *Chouinard*, the defendant acknowledged that he knew about the rifle that was behind his seat. *Id.* Mr. Chouinard knew the gun was in the car. *Id.* at 902-03. Even with this fact, this Court reversed Mr.

Chouinard's conviction, holding that the government had failed to establish dominion and control. *Id.* In *George*, this Court also found insufficient evidence of possession, even though the defendant knew that the marijuana water pipe was in the car. 146 Wn. App. at 923.

The facts presented do not establish Mr. Cranshaw had dominion and control over the rented car or the drugs found in the center console. He did not own or rent the car and had a very temporary connection with it, having only started driving it minutes before he was stopped by the police. There was no evidence introduced that Mr. Cranshaw had anything other than a transitory relationship with the car. This is insufficient proof to establish dominion and control.

b. The failure to establish Mr. Cranshaw possessed the methamphetamine found in the center console of the rental car requires dismissal.

The government failed to establish Mr. Cranshaw exercised dominion and control over the methamphetamine found in the center console of Ms. Wood's rental car. Mere proximity and knowledge of the drug's presence in the vehicle are not enough to establish possession. Only purely circumstantial evidence connects Mr. Cranshaw to the controlled substances. It is unreasonable to rely on such evidence given the facts established here. *Callahan*, 77 Wn.2d at

31-32. Because the evidence presented is insufficient to establish possession, dismissal is required. *Chouinard*, 169 Wn. App. at 903.

2. This Court should hold that recently passed legal financial obligation legislation requires striking the court filing fee and the DNA collection fee imposed on Mr. Cranshaw.

a. The amended legal financial obligation statutes invalidate the filing fee and DNA fee imposed on Mr. Cranshaw.

The legislature recently amended the statutory scheme governing when legal financial obligations may be imposed on an indigent person. The amended statute clarifies that an indigent person lacks the necessary “ability to pay.” Laws of 2018, ch. 269, § 6.

Under the revised statute, the court “shall not order a defendant to pay costs” if “the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c).” Laws of 2018, ch. 269, § 6. If a person is indigent, the court does not further examine the person’s financial resources or the nature of the burden payment of costs would impose. *Id.*

The amendments also clarify when several non-mandatory legal financial obligations may be imposed. *See* Laws of 2018, ch. 269, § 6; Laws of 2018, ch. 269, § 17. These include the clerk’s filing fee and the DNA fee, both of which were imposed against Mr. Cranshaw. CP 44.

The chart below explains how these fees are impacted by the new legislation.

Legal Financial Obligations Imposed on Mr. Cranshaw Affected by the 2018 Amendments to the Legal Financial Obligation Statutes

Fee	Amount	Amended Rule
Filing Fee	\$200	<u>Shall not be imposed</u> on a defendant who is indigent under RCW 10.101.020(3).
DNA Fee	\$100	<u>Shall not be imposed</u> where the state has previously collected the offender’s DNA as a result of a prior conviction.

The sentencing court imposed a \$200 filing fee against Mr. Cranshaw. CP 44. Under the new statute, the \$200 clerk’s filing fee “shall not be imposed on a defendant who is indigent as defined in RCW 10.101.020(3)(a) through (c).” RCW 36.18.020(2)(h). Mr. Cranshaw was found to be indigent and this fee should not be imposed. RP 434; CP 44.

The sentencing court also imposed a \$100 DNA fee. CP 44. This fee should only be imposed where the government has not previously collected DNA from the defendant as the result of a prior conviction. RCW 43.43.7541. Mr. Cranshaw has prior convictions

where this fee was previously imposed. CP 5, 40. This fee should not be collected.

b. The changes made by the legislature are retroactive and apply to Mr. Cranshaw.

Under the common law, pending cases are decided according to the law in effect at the time of the decision. *State v. Rose*, 191 Wn. App. 858, 864, 365 P.3d 756 (2015). This rule applies when a case is pending on appeal. If “a controlling law changes” during the pendency of the case, “the appellate court should apply the new or altered law, especially where no vested rights are involved, and the Legislature intended retroactive application.” *Marine Power & Equip. Co. v. Wash. State Human Rights Comm’n Hearing Tribunal*, 39 Wn. App. 609, 620, 694 P.2d 697 (1985). Washington’s saving statute is applied narrowly and its exceptions—“unless a contrary intention is expressly declared in the amendatory or repealing act”—are interpreted broadly.” *State v. Kane*, 101 Wn. App. 607, 612, 5 P.3d 741 (2000); *see also* RCW 10.01.040.

The legislature is not required to use explicit language to express its intent. *State v. Zornes*, 78 Wn.2d 9, 13, 475 P.2d 109 (1970). Instead, the question is whether the law fairly conveys the intent to apply to pending litigation. *Id.* When a statute reduces the

penalty for a crime, “the legislature is presumed to have determined that the new penalty is adequate and that no purpose would be served by imposing the older, harsher one.” *State v. Heath*, 85 Wn.2d 196, 198, 532 P.2d 621 (1975). Courts have consistently held that the presumption that statutes generally apply prospectively does not control changes in the law enacted to reduce punishment or ease the harshness of criminal prosecutions. *Heath*, 139 Wn.2d at 198; *see also Rose*, 191 Wn. App.at 868. Because these rules apply here, this Court should hold that the amendments to the legal financial obligation statute are retroactive.

i. The legal financial obligation amendments are retroactive because they were enacted to reduce punishment and ease the harshness of criminal prosecution.

Amendments to statutes that are remedial should be presumed retroactive and apply to pending cases. *Heath*, 85 Wn.2d at 197-98. In *Heath*, the trial court retroactively applied an amendment to the habitual traffic offender act that allowed judges to stay license revocations when a person was engaged in treatment. *Id.* The purpose of the amendment had been to allow alcoholics to receive treatment rather than lose their driving privileges. *Id.* at 198. Because the amendment was remedial the court held, “the presumption of

retroactivity therefore applies.” *Id.* In *Heath*, the Court also focused on how the amendment “reduced the penalty for a crime.” *Id.* “When this is so, the legislature is presumed to have determined that the new penalty is adequate and that no purpose would be served by imposing the older, harsher one.” *Id.*

ii. The legal financial obligations amendments are retroactive because they are remedial in nature and were intended to clarify an ambiguity.

The legislature is also aware that statutory changes operate retroactively when they are remedial in nature or intended to clarify an ambiguity. *State v. Humphrey*, 139 Wn.2d 53, 61, 983 P.2d 1118 (1999). An amendment is remedial when it “applies to practice, procedure, or remedies and does not affect a substantive or vested right.” *Id.* at 62. Here the amendments to RCW 10.01.160(3) and RCW 36.18.020(2)(h) are remedial and should be applied retroactively.

In *Humphrey*, the Court addressed whether an amendment increasing the victim penalty assessment from \$100 to \$500 applied to people who were charged before the increase but convicted after it. 139 Wn.2d at 55. The Court found the amendments were not remedial, and therefore could not be applied retroactively because they increased the financial penalty imposed on people convicted of crimes. *Id.* at 63.

The changes to the legal financial obligation statutory scheme here are remedial and should be applied retroactively because they provide guidance on how to apply existing liabilities. The language of RCW 10.01.160(3) previously directed the court should not order an individual to pay costs unless he “is or will be able to pay them.” *See* Laws of 2018, ch. 269, § 6. The amendments eliminated this imprecise language and prohibited ordering costs against indigent persons pursuant to RCW 10.101.010(3).

Unlike *Humphrey*, the amendments to RCW 10.01.160(3) create no new liability. The changes to RCW 10.01.160(3) simply provide more concrete guidelines for the legislature’s previous directive that individuals not be burdened with costs they cannot pay.

Similarly, the legislature’s directive not to recoup the \$200 filing fee from indigent individuals under RCW 36.18.020(2)(h) is also remedial. In fact, even though this Court has said the \$200 filing fee is mandatory in some cases, some trial courts regularly waive the fee for indigent persons. *See, e.g., State v. Mathers*, 193 Wn. App. 913, 917, 376 P.3d 1163 (2016) (finding the DNA fee and Victim Penalty Assessment fee mandatory but noting the trial court “waived all other LFOs” because the individual was indigent); *but see State v. Lundy*,

176 Wn. App. 96, 102, 308 P.3d 755 (2013) (construing criminal filing fee as mandatory). These changes now reconcile this problem and should be applied retroactively.

Likewise, prohibiting a court from imposing multiple DNA collection fees where DNA sample has already been collected is remedial. It remedies the punitive imposition of a fee when that fee was intended for a purely administrative purpose. *See State v. Brewster*, 152 Wn. App. 856, 860-61, 218 P.3d 249 (2009) (noting DNA collection fee serves administrative purposes and “is not punitive”). The change to RCW 43.43.7541 removes the unreasonable imposition of a fee when the purpose of the fee has already been satisfied.

iii. The legal financial obligation amendments apply to Mr. Cranshaw because his case is pending on direct review.

Finally, this Court should apply the general rule that “a new rule applies prospectively to all cases pending on direct review or not yet final.” *State v. Hanson*, 151 Wn.2d 783, 790, 91 P.3d 888 (2004). Because Mr. Cranshaw’s case remains pending on direct review, this Court may apply the amendments to RCW 10.01.160(3) prospectively here.

c. This Court should strike the court's filing fee and the DNA collection fee.

If this Court does not dismiss the charges against Mr. Cranshaw for insufficient evidence, he asks this Court to hold that the recent amendments to the legal financial obligation statutes are retroactive. As such, he asks this Court to strike the court's filing fee and the DNA collection fee, both of which would not be allowed under the recent amendments.

F. CONCLUSION

Mr. Cranshaw asks this Court to vacate his conviction and dismiss the charge of possession of a controlled substance because the government failed to present sufficient evidence he actually or constructively possessed the methamphetamines found in the center console of the rented car.

In the alternative, he asks this Court to find recent amendments to the legal financial obligations statute to be retroactive and order the court's filing fee and the DNA fee to be stricken.

DATED this 5 day of June 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to be the initials 'TWO' followed by a stylized flourish.

TRAVIS STEARNS (WSBA 29935)
Washington Appellate Project (91052)
Attorneys for Appellant

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

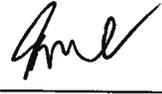
STATE OF WASHINGTON,)	
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RESPONDENT,)	
)	
v.)	NO. 51255-6-II
)	
IVON CRANSHAW,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 5TH DAY OF JUNE, 2018, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE COURT OF APPEALS - DIVISION TWO AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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312 SW 1 ST AVE		PORTAL
KELSO, WA 98626-1739		
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YACOLT, WA 98675		

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Washington Appellate Project
1511 Third Avenue
Suite 610
Seattle, Washington 98101
Phone (206) 587-2711

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