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**COURT OF APPEALS, DIVISION II**  
**STATE OF WASHINGTON**

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STATE OF WASHINGTON,

Respondent,

v.

RUSSELL MARTIN,

Appellant.

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Appeal from the Superior Court of Pierce County  
The Honorable Judge Michael Schwartz

No. 17-1-01043-1

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

On March 10, 2017, the Pierce County Sheriff's Office served a search warrant on a residence in unincorporated Pierce County, Washington. The search warrant authorized a search of Martin's residence and his person for drug and firearm evidence involved in Mr. Martin's drug distribution operation. While serving the search warrant as a "perimeter unit" in the backyard, Deputy Robert Tjossem heard items being thrown and multiple people yelling inside a trailer near the residence on the property, and Mr. Martin eventually appeared in the doorway of the trailer. Under exigent circumstances involving both officer safety and the destruction of evidence, Deputy Tjossem entered the trailer to arrest Mr. Martin pursuant to the search warrant and found three other people inside the trailer with him. A methamphetamine bong and elaborate surveillance system were in plain view in the trailer when the deputy entered to arrest Mr. Martin. Deputy Tjossem then applied for a search warrant specifically for the trailer based on his observations of the methamphetamine bong and surveillance system inside the trailer.

Pursuant to both search warrants, police found over 3.5 pounds of heroin packaged in half pound sizes; over \$30,000 in cash, \$20,000 of which was packaged in \$1,000 increments; numerous scales and new and used Ziplock bags; two safes; and four handguns and a rifle.

Mr. Martin was convicted of five counts of unlawful possession of a firearm in the second degree and two counts of unlawful possession of a controlled substance with intent to deliver, with aggravating circumstances of weapon possession for the controlled substance convictions. Mr. Martin asserts that exigent circumstances did not justify Deputy Tjossem's warrantless entry into the trailer and contends that police did not have authority to arrest Mr. Martin pursuant to the search warrant in which he was named.

However, substantial evidence in this case supports the trial court's findings that Deputy Tjossem's entry into the trailer was justified both by the search warrant authorizing Mr. Martin's arrest and by exigent circumstances. Accordingly, this Court should affirm the trial court's denial of Mr. Martin's suppression motion and affirm Mr. Martin's convictions.

## **II. RESTATEMENT OF THE ISSUES**

- A.** Whether Deputy Tjossem's entry into the trailer to arrest Mr. Martin was justified when it was supported by a valid search warrant and by exigent circumstances.

## **III. STATEMENT OF THE CASE**

### **A. Facts**

On March 3, 2017, case agent Deputy Robert Tjossem applied for and was granted a search warrant for the residence at 7002 224th St. E in unincorporated Pierce County, Washington, and for one of its residents, Mr.

Russell Martin. Vol. 1 10/23/18 RP 24<sup>1</sup>, Vol. 8 03/11/19 RP 491; CP 43-47. This search warrant was based upon reliable information from a confidential informant who “stated that while inside the home, he/she saw Martin with a large amount of heroin. The heroin was sitting on a scale and Martin was weighing it...the C/I saw a black handgun next to Martin while he was weighing the heroin.” CP 46. The search warrant authorized a search of Martin’s residence and his person and specified that officers would be searching for “[h]eroin, and/or any other controlled substance manufactured, distributed, dispensed, acquired or possessed...[d]rug [p]araphernalia, including foil, syringes, pipes, packing materials and or weighing equipment;” and “[f]irearms, pistols, rifles and/or any other dangerous weapons....” CP 48.

As the case agent for the service of the search warrant, Deputy Tjossem was the lead officer who “conducted the investigation and brought it to fruition through obtaining probable cause for a search warrant and presenting it to the Prosecutor’s office.” Vol. 1 10/23/18 RP 24. Additionally, Deputy Tjossem served as the primary officer coordinating the service of the search warrant at the residence at 5:53 a.m. on March 10, 2017. Vol. 8 03/11/19 RP 490, 494. Deputy Tjossem acted as a “perimeter

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<sup>1</sup> The State cites each Report of Proceedings under their respective file names.

unit” on the tactical entry team and moved alone, along the outside of the back of the house, where a fifth wheel trailer was sitting 10 to 15 feet from the back of the house. Vol. 1 10/23/18 RP 26, 35, Vol. 8 03/11/19 RP 495. This trailer was not named in the original search warrant for the residence nor was it the object of the investigation at that point. Vol. 1 10/23/18 RP 27; CP 43-47.

A great commotion arose from inside of the fifth wheel trailer – Deputy Tjossem “could hear a male and female voice yelling inside the fifth wheel and...could hear items banging and things being thrown.” Vol. 1 10/23/18 RP 26. At that time, Deputy Tjossem thought that the occupants of the trailer were aware of the presence of the police and were “either hiding or destroying evidence” or arming themselves. Vol. 1 10/23/18 RP 27, 29.

At that time, the rest of the tactical entry team was located inside the residence; Deputy Tjossem was alone in the backyard with the trailer. Vol. 1 10/23/18 RP 27, 28. As Deputy Tjossem ventured around the side of the trailer in view of the door, a man opened the door of the trailer. Vol. 1 10/23/18 RP 27. After a moment, Deputy Tjossem realized the man was Russell Martin, the subject of the search warrant. Vol. 1 10/23/18 RP 28. Deputy Tjossem could not reasonably leave the occupants in the trailer while he went to obtain a new search warrant for the trailer: “I was not going

to sit there with an unknown number of people inside after hearing what I heard...I had the exigency to the warrant requirement to enter the trailer and secure it for a search warrant and take Mr. Martin into custody.” Vol. 1 10/23/18 RP 58. However, Deputy Tjossem wanted to wait until backup arrived before he contacted the people in the trailer because he “knew [he] was outnumbered,” so he told the man to go back inside of the trailer. Vol. 1 10/23/18 RP 28.

Deputy Tjossem determined that he would have to act quickly to make contact with the occupants of the trailer, so he called for backup for his safety: “...it’s unknown at that point if people are arming themselves, if they are destroying evidence, there is so many unknowns and it’s a huge officer safety issue.” Vol. 1 10/23/18 RP 29. Deputy Tjossem was concerned that there could be weapons inside of the trailer with the occupants because the original search warrant involved a gun. He noted it is common to see firearms involved in narcotics investigations. Vol. 1 10/23/18 RP 54. Deputy Tjossem elaborated that “drugs and guns go hand in hand...You couldn’t leave [the occupants of the trailer] in there. They could destroy evidence. They could arm themselves, all of those safety concerns, evidentiary concerns.” Vol. 1 10/23/18 RP 29, Vol. 8 03/11/19 RP 539-40.

After about five minutes, Sergeant Paul Schneider arrived to provide backup for Deputy Tjossem so contact could be made with the occupants of the trailer. Vol. 8 03/11/19 RP 501. Deputy Tjossem recontacted the trailer and knocked on the door to contact the occupants of the trailer. Vol. 1 10/23/18 RP 29. Mr. Martin opened the door and stepped back into the threshold of the trailer. Vol. 1 10/23/18 RP 29. Deputy Tjossem, concerned that Mr. Martin was advancing toward something that could hurt the officers, stepped into the trailer to take Mr. Martin into custody and was met by three additional individuals inside of the trailer. Vol. 1 10/23/18 RP 29-30, Vol. 8 03/11/19 RP 501.

As Deputy Tjossem moved into the trailer to take Mr. Martin into custody, the deputy's attention was drawn to a methamphetamine bong sitting on the table about 10 to 15 feet away from Deputy Tjossem and to a video surveillance system that "obviously showed the entry team had approached and there were police on the property." Vol. 1 10/23/18 RP 29, 49, Vol. 8 03/11/19 RP 509. Deputy Tjossem noticed that the bong had black and white residue inside of it consistent with having been used to smoke methamphetamine. Vol. 1 10/23/18 RP 88; CP 24.

Deputy Tjossem handcuffed Mr. Martin and handed him off to Sergeant Schneider who was waiting outside the trailer. Vol. 1 10/23/18 RP 31, Vol. 8 03/11/19 RP 501-502. Deputy Tjossem then detained the three

other occupants one at a time and handed them off to Sergeant Schneider. Vol. 1 10/23/18 RP 31, Vol. 8 03/11/19 RP 502. Once everyone was out of the trailer, Deputy Tjossem backed out of the trailer. Vol. 1 10/23/18 RP 31.

Deputy Tjossem led Mr. Martin over to a patrol car and read Mr. Martin his *Miranda* warnings and the search warrant for the property. Vol. 1 10/23/18 RP 32, Vol. 8 03/11/19 RP 502-03. A search of Mr. Martin's person revealed \$2,700 in cash that Mr. Martin claimed he won at the casino; Deputy Tjossem recognized this claim as a common one made by people upon arrest to prevent money from being seized. Vol. 8 03/11/19 RP 503. Deputy Tjossem then interviewed Mr. Martin. Vol. 1 10/23/18 RP 32, Vol. 8 03/11/19 RP 502. Mr. Martin told Deputy Tjossem that he was living in the residence and that the "trailer was his and that he allowed...people on the property to use it." Vol. 1 10/23/18 RP 32, Vol. 8 03/11/19 RP 503.

Immediately after interviewing Mr. Martin, Deputy Tjossem wrote another search warrant specifically for the fifth-wheel trailer where he found Mr. Martin and he saw the bong and surveillance system. Vol. 8 03/11/19 RP 517-18, 539; CP 50-55. That second search warrant was based on Deputy Tjossem's observations of the methamphetamine bong and surveillance system inside the trailer while he arrested Mr. Martin. CP 50-55. Deputy Tjossem immediately left the scene to meet with the judge to

secure that search warrant; the judge granted the warrant that same morning at 7:37 AM. Vol. 8 03/11/19 RP 517-18; CP 51.

Pursuant to these search warrants, Police found over 3.5 pounds of heroin packaged in half pound sizes; over \$30,000 in cash, \$20,000 of which was packaged in \$1,000 increments; numerous scales and new and used Ziplock bags; two safes; and four handguns and a rifle. CP 1-2.

**B. Procedural History**

On March 13, 2017, the Pierce County Prosecutor's Office charged Mr. Martin with five counts of unlawful possession of a firearm in the second degree and two counts of unlawful possession of a controlled substance with intent to deliver, with aggravating circumstances of weapon possession for each controlled substance count. CP 3-6.

At a CrR 3.6 hearing on October 18, 2018, Mr. Martin moved to suppress the drugs, drug paraphernalia, safes, the surveillance system, and various weapons found in the trailer, contending, among other things, that no exigency existed for entry into the trailer to seize Mr. Martin, and that seizure of Mr. Martin was not supported by the search warrant. CP 27-40.

The court found that exigent circumstances existed for Deputy Tjossem to enter the trailer to seize Mr. Martin pursuant to the search warrant: "there [were] exigent circumstances to justify that intrusion to take custody of Mr. Martin in accordance with the warrant" and "that, in fact,

the entry was lawful...[for the] limited purpose of taking custody of Mr. Martin, which [Deputy Tjossem] had a lawful warrant for, and second, so that [Deputy Tjossem] could have eyes on the other persons within the trailer itself.” Vol. 1 10/23/18 RP 84-85; CP 218-225.

Additionally, the court clarified that the “warrant gave [Deputy Tjossem] authority to seize [Mr. Martin’s] person, that’s an arrest, and search him...” and the court took issue with Mr. Martin’s contention that because there was no arrest warrant naming Mr. Martin, Deputy Tjossem could not arrest him: “[i]t’s clear...that [Deputy Tjossem] had probable cause even without the warrant to arrest [Mr. Martin]...a reliable informant [said] he watched [Mr. Martin] deal drugs. That amounts to probable cause... [Deputy Tjossem] did have a warrant to seize the person of Mr. Martin and search him...That’s an arrest.” Vol. 1 10/23/18 RP 78.

Mr. Martin later asked the court to reconsider his motion to suppress based on video surveillance footage seized from the trailer that depicted the seizure of Mr. Martin by Deputy Tjossem in the trailer, among other things. Exh. 8; CP 154-207. The court again denied Mr. Martin’s motion to suppress the evidence, concluding that Deputy Tjossem had probable cause to arrest Mr. Martin. Vol. 5 2/26/19 RP 272.

At trial, chemist Martin McDermott with the Washington State Patrol Crime Lab presented the test results from tests of the substances

found in the trailer; he determined the substances to be heroin and methamphetamine. Vol. 9 03/12/19 RP 713-18. Additionally, Forensic Investigator Adam Anderson with the Pierce County Sheriff's Department presented evidence that he tested the five firearms found in Mr. Martin's possession and determined them to all be operable. Vol. 9 03/12/19 RP 672-75. Finally, Mr. Martin stipulated that he had two prior felony convictions and as a result was prohibited from possessing a firearm. Vol. 10 03/13/19 RP 809-10.

The State presented evidence that the exceptionally large amounts of methamphetamine and heroin found, coupled with the scales, safes, multiple cell phones, large amount of cash, and packaging materials were consistent with a large-scale drug distribution operation. Vol. 8 03/11/19 RP 569, Vol. 9 03/12/19 RP 624-648, 650-651, 724, 755.

The jury convicted Mr. Martin of all charges including all aggravating factors. Vol. 11 03/14/19 RP 887-90; CP 316-326. The court noted that although many people describe drug crimes as victimless crimes, the court stated "I do not find it to be a victimless crime," and told Mr. Martin that "given the size of your trophy...of money, drugs and guns, I would consider you to be one of the fairly significant traffickers in this county." Vol. 11 03/14, 04/09, 05/17/19 RP 916-17. The court sentenced Mr. Martin to 262 months in prison and 12 months of community custody.

Vol. 11 03/14, 04/09, 05/17/19 RP 916-17; CP 368. Mr. Martin timely appealed. CP 376.

#### IV. ARGUMENT

**A. Deputy Tjossem's entry into the trailer was justified both by the search warrant authorizing Mr. Martin's arrest and by exigent circumstances.**

Deputy Tjossem's entry into the trailer was justified to contact Mr. Martin pursuant to a search warrant in which Mr. Martin was named. Furthermore, exigent circumstances, including concerns about the potential destruction of evidence and officer safety, existed.

To review the denial of a motion to suppress, courts consider whether substantial evidence supports the trial court's findings of fact and if those facts in turn support the trial court's conclusions of law. *State v. Levy*, 165 Wn.2d 709, 733, 132 P.3d 1076 (2006). The substantial evidence standard requires that substantial evidence is "evidence sufficient to persuade a fair-minded, rational person of the truth of the finding." *Id.* Appellate courts review conclusions of law de novo. *Id.*

**1. Deputy Tjossem's entry into the trailer was justified because he entered to arrest Mr. Martin pursuant to the search warrant for which Deputy Tjossem had probable cause to arrest Mr. Martin.**

Deputy Tjossem's entry into the trailer was justified to arrest Mr. Martin pursuant to the search warrant. Under CrR 2.3(b), "[A] warrant may be issued under this rule to search for and seize any...person for whose

arrest there is probable cause....” In this case, the initial search warrant named Mr. Martin. CP 43 - 47; Vol. 1 10/23/18 RP 28. Therefore, in order to seize and arrest Mr. Martin pursuant to the search warrant, Deputy Tjossem had to contact Mr. Martin, who was inside of the trailer. Vol. 1 10/23/18 RP 27-28. When Mr. Martin emerged from the trailer, Deputy Tjossem recognized Mr. Martin to be the subject of the search warrant at hand. Vol. 1 10/23/18 27-28.

The court clarified that the search warrant for Mr. Martin was informed by probable cause, and thus police had probable cause to arrest Mr. Martin: “That warrant gave [Deputy Tjossem] the authority to seize [Mr. Martin’s] person, that’s an arrest, and search him...” Vol. 1 10/23/18 RP 78. The court continued that “it’s clear...that [Deputy Tjossem] had probable cause even without the warrant to arrest him, because he has a reliable informant say he watched [Mr. Martin] deal drugs. That amounts to probable cause.” Vol. 1 10/23/18 RP 78. In its written findings of fact after the first hearing on the motion to suppress, the court found that the first search warrant was “also an arrest warrant to seize Mr. Martin and search his person.” CP 221.

The court reiterated at the motion to reconsider that “[t]he fact is that there was a lawful arrest warrant out for Mr. Martin at the time. There was probable cause to believe he was engaged in criminal activity. That

provided the authority for Tjossem...once he recognized that Mr. Martin was there, to take him into custody.” Vol. 5 02/26/19 RP 271. The court’s fourth written finding of fact after this motion to reconsider restated the same: “Deputy Tjossem...entered the trailer to arrest Russell Martin pursuant to the search warrant.” CP 229. Therefore, Deputy Tjossem’s entry into the trailer was justified to arrest Mr. Martin pursuant to the search warrant for which Deputy Tjossem had probable cause to believe that Mr. Martin was involved in a large drug dealing operation.

**2. Deputy Tjossem’s entry into the trailer was justified by exigent circumstances involving officer safety concerns and destruction of evidence.**

Courts determine whether exigent circumstances exist by considering the “totality of the situation in which the circumstances arose.” *State v. Smith*, 165 Wn.2d 511, 518, 199 P.3d 127 (2002). To determine if warrantless entry is justified under exigent circumstances, courts consider eleven factors: (1) the gravity of the offense, especially if offense involves violence; (2) a reasonable belief that suspects are armed; (3) trustworthy information that suspect is guilty; (4) strong reason exists to believe the suspect is on the premises; (5) likelihood of suspect escape if not swiftly apprehended; (6) whether entry could be made peaceably; (7) the police are in hot pursuit; (8) the suspect is fleeing; (9) the existence of danger to the pursuing police officer or the public; (10) the suspect has access to a vehicle;

and (11) there is a risk that the police will lose evidence. *State v. Wolters*, 133 Wn. App. 297, 301-02, 132 P.3d 562 (2006).

Not all of the factors must be present each case; the State is only required to show that considering these factors, officers needed to react quickly to the situation. *State v. Smith*, 137 Wn. App. 262, 269, 153 P.3d 1999 (2007). Exigent circumstances exist where “obtaining a warrant is not practical because of the delay inherent in securing a warrant would compromise officer safety, facilitate escape or permit destruction of evidence.” *State v. Cruz*, 195 Wn. App. 120, 125, 380 P.3d 599 (2016). If circumstances either place the police in danger or create a risk of loss of or destruction of evidence, a warrantless search is permissible. *State v. Grinier*, 34 Wn. App. 164, 168, 659 P.2d 550 (1983).

To prove the existence of exigent circumstances, the State must point to “specific, articulable facts and the reasonable inferences therefrom which justify the intrusion.” *State v. Coyle*, 95 Wn.2d 1, 9, 621 P.2d 1256 (1980). This particularity requirement is satisfied if officers are “confronted with some sort of contemporaneous sound or activity alerting them to probable, immediate, or actual destruction of evidence.” *State v. Mueller*, 15 Wn. App. 667, 670, 552 P.2d 1089 (1976).

Accordingly, in the trial court’s written finding of fact after the first hearing on this motion to suppress, the court conclusively found that five of

the *Wolters* factors existed to conclude that exigent circumstances existed in this case requiring the quick action of the police:

13. This was an investigation for drug dealing. While Deputy Tjossem was talking to Mr. Martin he was in the threshold of the trailer and Deputy Tjossem does not indicate whether he believes that Mr. Martin was armed. But the court needs to take into consideration that there was a search warrant which was signed based on reliable information by an informant that Mr. Martin had access to weapons.

14. From the facts that Deputy Tjossem reasonably understood, there was more than one person inside the trailer. Where the Deputy was standing outside the trailer all he could see was Mr. Martin. Given the entry way into the trailer was small enough that the ability of Mr. Martin to grab a weapon which at the time was unseen by the Deputy, is always an issue in these types of cases.

15. There was reasonably trustworthy information that the suspect was guilty. There was a valid warrant based on reliable information from a reliable informant that Mr. Martin had drugs present in the house...

16. Mr. Martin was on the premises and the Deputy saw him.

CP 221-22.

In its findings of fact after the hearing on the motion to reconsider, the court reiterated its findings that exigent circumstances existed:

4. Deputy Tjossem had concerns that Russell Martin, and the other occupants may have access to firearms and could pose a threat to the officers on the scene due to their ability to suddenly access a weapon.

Exigent circumstances also include those circumstances that threaten officer safety. *Smith*, 137 Wn. App. At 269. In order to determine if exigent circumstances exist in a given situation, the court must be satisfied that the claimed emergency was not merely a pretext to perform a search

and the search was “actually motivated by a perceived need to render...assistance.” *Id.* This inquiry requires both a subjective and objective assessment of reasonableness of the police officer’s belief that an emergency existed. *Id.*

The trial court agreed that exigent circumstances existed within the totality of the circumstances in this case: “[A]n exigency did in fact...exist at the time for what I would characterize as a very slight, noninvasive intrusion into the home...[Deputy Tjossem] steps inside...essentially the very small foyer of the travel trailer...for two reasons. One is he wants to take custody of Mr. Martin, and two, he wants to see the other occupants, and from an officer’s safety standpoint that makes sense.” Vol. 1 10/23/18 RP 83. At the motion for reconsideration on February 26, 2019, during its denial of Mr. Martin’s motion to reconsider, the court stated that “the evidence that I heard during this supplemental hearing, as well as the video evidence, does not change my mind.” Vol. 5 02/26/19 RP 270-71.

The first time that Mr. Martin emerged from the trailer, Deputy Tjossem was alone in the backyard. Vol. 1 10/23/18 RP 27. Deputy Tjossem told Mr. Martin to go back inside of the trailer because Deputy Tjossem believed he was outnumbered and determined he needed backup before contacting the occupants of the trailer. Vol. 1 10/23/18 RP 27-28. When Deputy Tjossem heard the banging and yelling inside the trailer, he didn’t

know “if at that point people are arming themselves...there are so many unknowns and it’s a huge officer safety issue.” Vol. 1 10/23/18 RP 29.

Specifically, Deputy Tjossem had reason to believe that people inside the trailer might be arming themselves: the search warrant for the residence and for Mr. Martin involved firearms and Deputy Tjossem knew from his training and experience as a narcotics officer that it is common to see firearms involved in drug distribution investigations. Vol. 1 10/23/18 RP 54. Furthermore, Deputy Tjossem did not require the occupants of the trailer step out of the trailer but instead Deputy Tjossem entered the trailer to bring them out because he did not want to complicate the situation by introducing new individuals into the backyard that would have to each be monitored individually, taking resources away from the service of the search warrant in the house. Vol. 8 03/11/19 RP 496.

Although the trial court did not make any explicit findings regarding exigent circumstances regarding the destruction of evidence, those concerns apply here as well. “Exigent circumstances” involve a true emergency, i.e., “an immediate major crisis,” requiring swift action to prevent...the destruction of evidence. *State v. Hinshaw*, 149 Wn. App. 747, 753-54, 205 P.3d 178 (2009). Police must show that a delay of any length would have resulted in the imminent destruction of evidence. *See Id* at 755. Sounds that alert the police to the probable, immediate or actual destruction of evidence

are specific enough to justify warrantless entry. *See Mueller*, 15 Wn. App at 670.

When Deputy Tjossem heard “a male and female voice yelling inside the fifth wheel and...items banging and things being thrown,” exigent circumstances existed to justify Deputy Tjossem’s entry into the trailer. Vol. 1 10/23/18 RP 26. Deputy Tjossem became concerned that the occupants of the trailer were destroying evidence or arming themselves. Vol. 1 10/23/18 RP 26-27, 29. Within the confines of the trailer, Mr. Martin and the other occupants of the trailer had ready access to means to destroy or hide evidence named in the search warrant.

Therefore, concerns both about officer safety and about the destruction of evidence required Deputy Tjossem enter the trailer to retrieve the occupants. The trial court thus correctly denied Mr. Martin’s motion to suppress.

## V. CONCLUSION

For the foregoing reasons, the substantial evidence in this case supports the trial court’s findings that Deputy Tjossem’s entry into the trailer was justified both by the search warrant authorizing Mr. Martin’s arrest and by exigent circumstances. Accordingly, this Court should affirm

the trial court's denial of Mr. Martin's motion to suppress and affirm Mr. Martin's convictions.

RESPECTFULLY SUBMITTED this 11th day of March, 2020.

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Certificate of Service:

The undersigned certifies that on this day she delivered by E-file or U.S. mail to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

3.17.20 Athena K  
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

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