

NO. 32188-6-III

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

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH HART,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. SUPPLEMENTAL ASSIGNMENT OF ERROR

10. The trial court erred by ordering Joseph Hart to pay (1) \$2,037.78 in court costs, (2) \$700.00 for recoupment, (3) \$21,566.49 for defense costs, (4) a \$500.00 fine, (5) a \$100.00 crime lab fee, (6) a \$100 DNS collection fee, and (6) a \$100.00 domestic violence fee without determining his ability to pay in light of his mental health condition as required by RCW 9.94A.777.

B. ISSUE PERTAINING TO SUPPLEMENTAL ASSIGNMENT OF ERROR

5. RCW 9.94A.777 requires the trial court to determine if an offender with a mental health condition has the means to pay before imposing any legal financial obligations except restitution and the mandatory victim penalty assessment. In addition to restitution and the victim penalty assessment, the sentencing court ordered Mr. Hart to pay legal financial obligations totaling \$25,104.27. There is no evidence that the court considered Mr. Hart's significant mental illness in assessing his ability to pay. Did the sentencing court err in ordering Mr. Hart to pay \$25,104.27 in legal financial obligations without determining if he has the means to pay?

C. ARGUMENT IN REPLY

- 1. The multiple convictions of murder and assault for a single attack with a knife that resulted in death violates double jeopardy, requiring the lesser assault conviction to be vacated.**

Joseph Hart argues that his convictions for second degree murder and second degree assault for the same crime violate double jeopardy. The State's arguments that the two offenses are not the same in law or in fact are not persuasive, and this Court should vacate the second degree assault conviction.

The entry of multiple convictions for the same offense violates the constitutional prohibitions against double jeopardy. U.S. Const. amends. V, XIV; Const. art. I, § 9; *In re Pers. Restraint of Francis*, 170 Wn.2d 517, 523, 242 P.3d 866 (2010). In reviewing whether multiple convictions violate double jeopardy, courts must determine if, in light of the legislative intent, the crimes constitute the same offense. *In re Pers. Restraint of Orange*, 152 Wn.2d 795, 815, 100 P.3d 291 (2004). Unless the legislative intent is clear, the test is whether the two charged offenses arose out of the same act and, if so, whether the evidence supporting one offense is sufficient to sustain the conviction for the

other offense. *Id.*; *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932). Mr. Hart's case meets this test.

First, Mr. Hart's convictions for second degree murder and second degree assault are the same in fact. Both crimes arose from a single incident, Mr. Hart's attack on Mr. Lincoln with a knife. CP 43 (FF 20); 108-09 (amended information).

Mr. Lincoln died as a result of sharp force injury to his head and torso. CP 43 (FF 20); CP 72. The State, however, argues that one of the stab wounds is different from the others and therefore supports a separate conviction for assault. Respondent's Brief at 8 (hereafter BOR). Since Mr. Lincoln was found with a knife in his left eye, the State reasons that this was the last stab wound and occurred after the wounds causing death. *Id.*

The State's assertion that the wound to Mr. Lincoln's eye did not contribute to his death is not supported by the evidence. The doctor who performed Mr. Lincoln's autopsy reported that the cause the death was "sharp force injury of the head *and* torso." CP 72 (emphasis added). The doctor did not indicate that any of the sharp force injuries to the head or torso did not contribute to Mr. Lincoln's death. CP 71-102. Moreover, the knife wound to the eye was quite deep and

penetrated the cerebrum, causing a subarachnoid hemorrhage. CP 71, 80. A review of the twelve sharp force injuries to the head enumerated in the autopsy report show this is the deepest wound and the only one to impact the brain. CP 77-81. Thus, this wound was not “gratuitous” or that it occurred “after the blows which would prove fatal” as the State asserts. BOR at 8

The knife wound to Mr. Lincoln’s eye was a significant contributor to his death. This Court should reject the State’s unsupported attempt to artificially divide Mr. Hart’s conduct into segments in order to support two convictions. The second degree murder and second degree assault convictions are based upon the same conduct against the same victim and are thus the same in fact.

The State also argues that a comparison of the elements of second degree murder and second degree assault “suggests the crimes are not the same in law.” BOR at 8. For example, the State notes that second degree assault does not necessarily require the use of a deadly weapon. *Id.* This Court, however, reviews double jeopardy claims based upon the crimes actually charged. *Francis*, 170 Wn.2d at 523; *Orange*, 152 Wn.2d at 817. The State charged Mr. Hart with second degree assault “with a deadly weapon, to wit: a knife.” CP 109.

The elements of second degree murder as charged were that the defendant caused the death of another person “with a knife” and acted with the intent to kill, and the elements of second degree assault were that the defendant assaulted the same person with a knife. CP 108-09; RCW 9A.32.050(1)(a); RCW 9A.36.021(1)(c). The second degree assault conviction thus does not contain any elements that are not necessarily included in the second degree murder conviction. The State essentially concedes this point when it argues that the assault is a lesser-included offense of murder as charged. BOR at 10. Thus, each offense does not include an element not included in the other. *See Orange*, 152 Wn.2d at 820, 100 P.3d 291 (2005) (attempted first degree murder and first degree assault are the same in law); *State v. Read*, 100 Wn. App. 776, 791-93, 998 P.2d 897 (2000) (second degree murder and first degree assault are the same in law).

Moreover, the same evidence test is not controlling when it is clear the legislature did not intend multiple punishments. *State v. Womac*, 160 Wn.2d 643, 652-53, 160 P.3d 40 (2007) (and cases cited therein). The *Read* Court, for example, found that the second degree murder and first degree assault statutes addressed the same type of

harm, and thus the Legislature did not intend the same conduct to violate both offenses. *Read*, 100 Wn. App. at 792.

[T]he second degree murder and first degree assault statutes both are directed at assaultive conduct; the essential difference between them is the grievousness of the harm caused by the conduct. When the harm is the same for both offenses, as in this case, it is inconceivable the Legislature intended the conduct to be a violation of both offenses.

Id.

Here, the second degree murder and second degree assault statutes are similarly aimed at the same type of harm, and the Legislature did not intend that a defendant be convicted of both second degree murder and second degree assault for a single assault on one person. The two offenses are the same in law, and the *Blockburger* test demonstrates the legislative intent that only one offense be charged. The convictions for both second degree murder and second degree assault thus violate double jeopardy

The State also argues that Mr. Hart's attorney did not object to the amendment of the information to add the second degree assault conviction. BOR at 9 ("Neither the trial attorney nor the trial judge expressed any offense at the amendment of the information to add the second count."). Double jeopardy, however, is an issue that may be

raised for the first time on appeal, even after a guilty plea. *State v. Mutch*, 171 Wn.2d 646, 661, 254 P.3d 803 (2011); *Francis*, 170 Wn.2d at 522. Defense counsel's failure to object is irrelevant to this Court's decision.

If two convictions violate double jeopardy protections, the remedy is to vacate the conviction for the lesser offense. *E.g., Francis*, 170 Wn.2d at 532. The State agrees, but urges this Court to review the sufficiency of the evidence supporting Mr. Hart's second degree murder conviction before dismissing the second degree assault. BOR at 10-11. The State provides no authority for this extra procedural step. *Id.* This Court need not address an argument that is not supported by authority or argument. *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990); RAP 10.3(a)(6); RAP 10.3(b). Mr. Hart has not challenged the sufficiency of the evidence supporting his second degree murder conviction. The issue is not before this Court

Mr. Hart's convictions for second degree murder and assault in the second degree violate double jeopardy. This Court should therefore vacate the second degree assault conviction. *Francis*, 170 Wn.2d at 532.

2. Requiring a sentence of life without parole for a 28-year-old mentally ill male who committed both predicates while his adolescent mind continued to develop, while he was particularly susceptible to outside influence, and while he lacked volitional control is cruel and unusual within the meaning of the Eighth Amendment and Article I, Section 14.

Mr. Hart was sentenced to life in prison without the possibility of parole under a sentencing scheme that did not permit the court to consider his mental illness or youth during the commission of the current offense or prior offenses. RCW 9.94A.570 (The Persistent Offender Accountability Act (POAA)). He argues that his constitutional right to be free from cruel punishment under the state and federal constitutions was violated. BOA at 13-31.

The Eighth Amendment prohibits cruel and unusual punishment and article I, section 14 forbids punishment that is cruel. U.S. Const. Amend. VIII; Const. art. I, § 14. Jurisprudence under both constitution focuses on whether sentences are proportionate to the offense and the offender and is guided by evolving standards of decency. *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455, 2462-63, 183 L. Ed.2d 407 (2012); *Solem v. Helm*, 463 U.S. 277, 284-86, 290, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983); *Gregg v. Georgia*, 428 U.S. 153, 172-73, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976); *State v. Campbell*, 103 Wn.2d 1, 31-

32, 691 P.2d 929 (1984), *cert. denied*, 471 U.S. 1094 (1985); *State v. Fain*, 94 Wn.2d 387, 393-402, 617 P.2d 720 (1980).

In addressing the constitutionality of a mandatory sentence of life without the possibility of parole for a juvenile, the *Miller* Court analyzed two strands of precedent. First, a line of cases dealt with categorical bans on certain sentences based upon the disparity between the class of offenders and the severity of the penalty. *Miller*, 132 S. Ct. at 2463; *see Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (Eighth Amendment forbids death penalty for juvenile offenders); *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002) (Eighth Amendment forbids death penalty for developmentally disabled defendants); *Ford v. Wainwright*, 477 U.S. 399, 410, 106 S. Ct. 2595, 91 L. Ed. 2d 335 (1986) (Eighth Amendment forbids execution of mentally ill offenders). A second line of cases requires the court to consider the individual characteristics of an offender and the details of his offense prior to imposing a death sentence. *Miller*, 132 S. Ct. at 2463-64; *see Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (life without the possibility of parole violates Eighth Amendment when imposed on juvenile offender for non-homicide offense). Importantly, the *Graham*

Court equated a sentence of life without the possibility of parole to a death sentence. *Graham*, 560 U.S. at 69-70.

The *Miller* Court concluded that “the confluence of these two lines of precedent leads to the conclusion that mandatory life-without-parole sentences for juvenile violates the Eighth Amendment.” *Miller*, 132 S. Ct. at 2464. Here, Mr. Hart’s youthfulness at the time of his prior convictions and his serious mental health issues are factors the sentencing court should constitutionally have been required to consider. Before imposing a sentence of life-without-parole sentence. The application of the POAA in this case was thus unconstitutional.

The State argues that this Court is bound by the Washington Supreme Court’s decision in *State v. Witherspoon*, 180 Wn.2d 875, 329 P.3d 888 (2014). BOR at 12, 16. The *Witherspoon* Court held that *Graham* and *Miller* were inapplicable to Witherspoon’s life without the possibility of parole sentence because he was an adult when he committed his three strike crimes. *Witherspoon*, 180 Wn.2d at 890. Unlike Mr. Hart, Witherspoon did not argue that he was mentally ill or that his prior strikes were committed when he was a young adult. *Witherspoon* is not controlling.

The State claims it is irrelevant that Mr. Hart was only 20 and 22 years old when he committed his prior strike offenses because, by law, he was considered an adult and there is no evidence he was immature. BOR at 14-16. This argument is at odds with Eighth Amendment jurisprudent requiring the court to consider age and mental illness or retardation in sentencing. *See Miller, Graham, Roper; Atkins*, It also ignores current research in adolescent brain development and cases citing that research. *See AOB at 22-22; Miller*, 132 S. Ct. at 2464, n.5; *Graham*, 560 U.S. at 68. This research establishes that the brain is not fully developed at age 18. *See Marsha Levick, et al., The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment through the Lens of Childhood and Adolescence*, 15 U. Pa. J. L. & Soc. Change 2895, 298-99 (2012) (and studies cited therein).

Not only was Mr. Hart quite young when he committed his prior crimes, he was suffering from a serious mental illness at the time of the current and, no doubt, the prior offenses. CP 56, 64. Schizophrenia normally emerges as early in the late teens and causes permanent cognitive impairment. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 102 (5th ed. 2013) (*DSM-5*). The disease is “associated with significant social and occupational

dysfunction.” *Id.* at 104. This condition is clearly relevant to the constitutionality of Mr. Hart’s sentence.

The State largely ignores this argument, claiming that schizophrenia “is treatable” and Mr. Hart was receiving some form of treatment at the time of the current offense. BOR at 1, 17-18. There is, however, no evidence Mr. Hart was taking antipsychotic medication prior to the murder or that they were successful in treating his symptoms. A typical symptom of those who suffer from schizophrenia is lack of awareness of their illness. *DSM-5* at 101; *see* CP 56 (Mr. Hart did not understand “the extent of what was wrong with him.”): As a result, those suffering from schizophrenia often fail to take needed medication or otherwise participate in treatment. *DSM-5* at 101.

Moreover, Mr. Hart’s sentence will be unconstitutionally cruel if he is incarcerated for life without proper mental health care. A recent study of people with mental illness in Washington’s prisons found that 5.0 percent of the inmates had schizophrenia or a related psychotic disorder, but only 10.4 percent of those inmates were provided with anti-psychotic medication. 36.9 percent of the inmates suffering from schizophrenia or a related psychotic disorder were receiving no medications whatsoever. Bette Michelle Fleishman, *Invisible Minority*:

People Incarcerated with Mental Illness, Developmental Disabilities, and Traumatic Brain Injury in Washington's Jails and Prisons, 11 Seattle J. for Soc. Just. 401, 414-15 (Winter 2013). In addition, the Department of Corrections (DOC) adopted a new formulary for permitted medication in the prison system in 2010. As a result, many inmates reported being given new medications that did not work and caused significant side effects; some had therefore stopped taking any medication. *Id.* at 433-34.

Persons suffering from mental illness are also likely to be placed in solitary confinement while in DOC. Studies of several Washington prisons from 1999 to 2001, showed that 45 percent of the prisoners in solitary confinement units suffered from serious mental illness.

Fleishman, *Invisible Minority* at 429 (citing David Lovell, *Patterns of Disturbed Behavior in a Supermax Population*, 35 Crim. Just. & Beh. 987 (2008)). Frequent placement in solitary confinement may damage inmates both mentally and physically. Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol'y 325, 328-29 (2006).

As a person incarcerated for life without the possibility of parole, Mr. Hart will probably not be eligible for the limited

rehabilitative and other programs available in Washington prisons. *See, Graham*, 560 U.S. at 79 (many prisons withhold counseling, education, and rehabilitation programs from prisoners ineligible for release). In addition, prison life has become significantly harsher in recent years, with many prisoners being deprived of human contact or at risk for victimization. John “Evan” Gibbs, *Jurisprudential Juxtaposition: Application of Florida v. Graham to Adult Sentences*, 38 Fla. St. U. L. Rev. 957, 969 (2011) (citing Eva S. Nilsen, *Decency, Dignity, and Dessert: Restoring Ideas of Humane Punishment to Constitutional Discourse*, 41 U.C. Davis L. Rev. 111 (2007) and James E. Robertson, *A Punk’s Song About Prison Reform*, 24 Pace L. Rev. 527 (2004)).

Miller’s reasoning applies to POAA offenders like Mr. Hart who suffer from serious mental illness and committed their prior offenses when young. The sentencing court, however, did not consider these factors because the sentence of life without the possibility of parole was mandatory under the POAA. Mr. Hart’s sentence should be stricken and his case remanded for a constitutional sentence. *See Graham*, 560 U.S. at 82.

3. The court’s preprinted “finding” that Mr. Hart had the ability to pay over \$25,000 in legal financial obligations is without support and should be vacated along with the imposed legal financial obligations.

The sentencing court ordered Mr. Hart to pay over \$25,000 in legal financial obligations and entered a written finding that Mr. Hart had the future ability to pay the obligations. CP 8-10. There was no discussion of Mr. Hart’s ability to pay at the sentencing hearing, and the court’s finding is not supported by the evidence.

In his opening brief, Mr. Hart argued that all non-mandatory fines should be vacated. BOA at 31-35, 32 n.6. In this brief, Mr. Hart argues that the court was required to determine Mr. Hart’s ability to pay before ordering any of the legal financial obligations with the exception of restitution and the \$500 victim penalty assessment based upon RCW 9.94A.777.¹

The superior court may not impose costs upon a defendant who does not or will not have the financial ability to pay them. RCW 10.01.160(3); *State v. Curry*, 118 Wn.2d 911, 914-16, 829 P.2d 166 (1992). In imposing costs, the court is required to “take account of the

¹ Counsel is filing a motion for permission to add an additional assignment of error with the understanding that the State will be given the opportunity to respond to this additional argument.

financial resources of the defendant and the nature of the burden that payment of costs will impose.” *Id.*

In addition, RCW 9.94A.777(1) prohibits the court from imposing any legal financial obligations except restitution or the mandatory victim penalty assessment on an offender with mental health issues without first determining that the defendant has the means to pay the additional amounts. The statute reads:

(1) Before imposing any legal financial obligations upon a defendant who suffers for a mental health condition, other than restitution or the victim penalty assessment under RCW 7.68.035, a judge *must* first determine that the defendant, under the terms of this section, has the means to pay such additional sums.

(2) For the purposes of this section, a defendant suffers from a mental health condition when the defendant has been diagnosed with a mental disorder that prevents the defendant from participating in gainful employment, as evidenced by a determination of mental disability as the basis for the defendant’s enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation.

RCW 9.94A.777 (emphasis added).

Poor citizens are entitled to equal protection of the law. U.S. Const. amend. XIV; Const. art. I § 12; *Williams v. Illinois*, 399 U.S. 235, 245, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970); *In re Personal Restraint of Mota*, 114 Wn.2d 465, 788 P.2d 538 (1990). The

constitution also prevents the loss of life or property without due process. U.S. Const. amends. V, XIV; Const. art. 1, §§ 3, 17, 22. Thus, the provisions of RCW 9.94A.777 and RCW 10.01.160(3) are constitutionally mandated. *See Fuller v. Oregon*, 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974); *State v. Barklind*, 87 Wn.2d 814, 557 P.2d 314 (1977). The court's unsupported finding that Mr. Hart had the ability to pay his legal financial obligations is thus a constitutional issue that he should be permitted to raise on appeal. RAP 2.5(a)

In addition, Washington courts are entitled to correct erroneous sentences whenever the error is pointed out. *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980). Permitting defendants to challenge an illegal sentence on appeal helps ensure that sentences are in compliance with the sentencing statutes and avoids sentences based only upon trial counsel's failure to pose a proper objection. *State v. Mendoza*, 165 Wn.2d 913, 920, 205 P.3d 113 (2009); *State v. Ross*, 152 Wn.2d 220, 95 P.3d 1225 (2004) (quoting *State v. Paine*, 69 Wn. App. 873, 884, 850 P.2d 1369, *rev. denied*, 122 Wn.2d 1024 (1993)). The rule also inspires confidence in the criminal justice system and is consistent with the Sentencing Reform Act's goal of uniform and proportional sentencing. *Mendoza*, 165 Wn.2d at 920; *State v. Ford*,

137 Wn.2d 472, 478-79, 484, 973 P.2d 452 (1999); RCW 9.94A.010(1)-(3). Washington courts have thus often reviewed challenges to erroneous sentences for the first time on appeal. *Mendoza*, 165 Wn.2d at 919-20 (criminal history); *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (condition of community custody); *Ford*, 137 Wn.2d at 477-78 (criminal history); *State v. Moen*, 129 Wn.2d 535, 546-47, 919 P.2d 69 (1996) (timeliness of restitution order); *State v. Bertrand*, 165 Wn. App. 393, 403-04, 267 P.3d 511 (2011) (sufficiency of evidence to support finding of ability to pay legal financial obligations), *rev. denied*, 175 Wn.2d 1014 (2012); *State v. Hunter*, 102 Wn. App. 630, 633-64, 9 P.3d 872 (2000) (drug fund contribution), *rev. denied*, 142 Wn.2d 1026 (2001); *Paine*, 69 Wn. App. at 884 (State's appeal of sentence below standard range).

Mr. Hart argues that, as in *Bertrand*, 165 Wn. App. at 403-04, there is no evidence to support the sentencing court's written finding that he has the ability to pay the ordered legal financial obligations. BOA at 33. The State counters that this Court should decline to review Mr. Hart's case in light of *State v. Duncan*, 180 Wn. App. 245, 327 P.3d 699 (2014). BOR at 18-19. *Duncan*, however is distinguishable. The *Duncan* Court specifically distinguished *Bertrand*, on its facts –

noting the record showed that Bertrand was disabled and would likely remain indigent. *Duncan*, 180 Wn. App. at 252. The *Duncan* Court also opined that it was “unhelpful for a defendant to portray himself as indigent at the time of sentencing.” *Id.* at 250. Here, however, Mr. Hart faced a mandatory sentence of life without the possibility of parole and there was no need for Mr. Hart to “portray” himself in any particular light. RCW 9.94A.570; 2RP 35, 37, 38.

The State also argues that Mr. Hart’s challenge is “premature” because challenges to legal financial obligations are not ripe “until the State seeks to enforce them.” BOR at 19-20. The State, however, is collecting the legal financial obligations. DOC Policy 200.000, Attachment 3. DOC may deduct 20 percent of an inmate’s funds to pay legal financial obligations. RCW 72.09.280(2)(c), (8) (addressing any funds received by an inmate apart from wages, legal settlements, or funds for educational or vocational programs); RCW 72.09.111(1)(a)(iv), (b)(iv), (c)(iv), (2) (addressing income from wages). Any time Mr. Hart has more than \$10.00 in his institutional account, DOC will deduct money for his legal financial obligations.²

² Even if Mr. Hart’s mental illness prevents him from participating in prison employment opportunities, his supportive family no doubt provides him money for the basic necessities he must pay for while in DOC custody. 2RP 36.

DOC Policy 200.000, Attachment 3; RCW 72.09.015(15) (defining “indigent inmate” as one with less than \$10.00 in disposable income in an institutional account).

There was no discussion at Mr. Hart’s sentence concerning his ability to pay over \$25,000 in legal financial obligations as required by RCW 9.94A.777, RCW 10.01.160, and due process. There is thus no evidence to support the court’s boilerplate “finding” that Mr. Hart has the current or likely future ability to pay the imposed financial obligations. 2RP 35, 39; CP 8. This Court should strike the written finding of fact and all of the legal financial obligations except restitution and the mandatory victim penalty assessment.

D. CONCLUSION

For the reasons stated above and in the Brief of Appellant, Mr. Hart asks this Court to (1) vacate his conviction for second degree assault because it violates his constitutional right to be free from double jeopardy; (2) remand for a new sentencing hearing because the mandatory sentence of life without the possibility of parole is cruel and unusual punishment given Mr. Hart’s mental illness and youthful attributes at the time of the predicate prior offenses; and (3) vacate the

legal financial obligations imposed by the court without evidence that Mr. Hart has the ability to pay the costs.

In addition, both parties agree that Mr. Hart's case should be remanded to correct a scrivener's error in his Judgment and Sentence.

BOR at 20-21

DATED this 24 day of December 2014.

Respectfully submitted,



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Attorney for Appellant

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

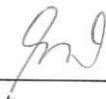
STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 32188-6-III
)	
JOSEPH HART,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF DECEMBER, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 24TH DAY OF DECEMBER, 2014.

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