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SUPREME COURT  
STATE OF WASHINGTON

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BY RONALD R. CARPENTER

*by h*

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
	)	Respondent,
	)	No. 78658-5
	)	
vs.	)	
	)	MOTION TO SUPPLEMENT
TERRANCE HALL	)	RECORD
	)	
	)	Appellant
	)	
	)	
	)	

1. IDENTITY OF THE MOVING PARTY

The State of Washington, Respondent, asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Supplement record to add the transcript of a bail hearing held on August 13, 2007.

3. FACTS RELEVANT TO MOTION

The Appellant, Terrance Hall, was arrested for the murder of Steven Buress on November 24, 1993. He was convicted of second degree murder (felony murder predicated on assault in the second degree) and has been incarcerated since his arrest. On May 6, 2006 the Appellant's conviction was vacated by the trial court, over his objection, pursuant to In re Andress, 147

Wn.2d 602 (2002). He was held pending trial on \$500,000 bail. His maximum for the murder charge was approximately February of 2007. The Appellant made motion to accelerate review on April 4, 2007. He noted that review should be accelerated because he was beyond his maximum sentence date. The State responded that Appellant could set a motion for release pursuant to RAP 7.2. The Court granted the Appellant's motion to accelerate review, and oral argument is scheduled for September 25, 2007. However, the defense did not set a motion to reduce bail or release the Appellant. The State set a motion for August 13<sup>th</sup> 2007 to address the Appellant's bail. Appellant's bail was reduced to \$10,000.

4. GROUND FOR RELIEF

The issue of the Appellant's maximum release date has been discussed in the briefing of the parties and has since been addressed by the trial court. The trial court has address the Appellant's bail and this Court should be aware of the trial courts resolution of that issue.

DATED this 5<sup>th</sup> day of September, 2007.

NORM MALENG  
King County Prosecuting Attorney

By:   
Jeffrey C. Dernbach, WSBA #27208  
Deputy Prosecuting Attorney  
Attorneys for Respondent

SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

-----  
STATE OF WASHINGTON, ) VERBATIM REPORT OF  
Plaintiff,) THE PROCEEDINGS  
vs. ) Cause No. 93-1-07954-7 (A) SEA  
TERRANCE HALL, )  
Defendant.)

COPY

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TRANSCRIPT

of the proceedings had in the above-entitled cause  
before the HONORABLE Nicole K. MacInnes, Superior  
Court Judge, on the 13th day of August, 2007,  
reported by Kimberly H. Girgus, Certified Court  
Reporter.

APPEARANCES:

FOR THE PLAINTIFF: JEFFREY DERNBACH  
Deputy Prosecuting Attorney

FOR THE DEFENDANT: KATHRYN ROSS  
Attorney at Law

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## PROCEEDINGS

AUGUST 13, 2007

1  
2  
3  
4 MR. DERNBACH: Your Honor, this is State of  
5 Washington versus Terrance Hall, 93-1-07954-7,  
6 Seattle. Jeff Dernbach behalf of State.  
7 Defendant is present represented by his attorney  
8 Kathryn Ross. We are sent here today -- actually,  
9 at the request of the State, and this is to  
10 address bail, and I guess this is an unusual set  
11 of circumstances for me to bring to the Court's  
12 attention. I know the Court and I know, counsel  
13 are aware of the maximum date that the defendant  
14 had on this case because it was contained, I  
15 think, in the original briefing in this matter  
16 when the Court vacated his conviction back in May  
17 of 2006.

18 His -- and just to refresh the Court's  
19 recollection that the defendant was, actually at  
20 the time of the conviction, was vacated, was past  
21 his earned early release date, but was not  
22 released because he was not providing an address  
23 to Department of Corrections indicating that he  
24 wished to leave the state, and didn't want to be  
25 under Department of Correction's supervision. He

1 was brought back to court. His conviction was  
2 vacated and bail was set.

3 I apologize to the Court. I intended to  
4 look up amount of bail that is currently in place,  
5 and was unable to find that on ECR, and typically  
6 they're substantial in these cases. Since that  
7 time, of course, as indicated in the briefing, the  
8 maximum for the murder conviction that he was  
9 originally on was, I think, about February of  
10 2007, and that is obviously -- and so I think the  
11 posture of the case that is changed a little bit  
12 in the sense that State's concern here is it's  
13 really not a matter of time for sentence because  
14 essentially that time has come and gone. But the  
15 State's concern, and interest is in obtaining a  
16 valid conviction and the conditions that would go  
17 along with that. For example, the prohibition of  
18 having a firearm, and those are still valid  
19 concerns, and the State still obviously be seeking  
20 to obtain a valid conviction. But again the time  
21 of that sentence, I think, is no longer really an  
22 issue, and that certainly change of circumstances  
23 at the same time bail, I think, is certainly  
24 appropriate and necessary to ensure the defendant  
25 appears for court, and in light of his action at

1 Department of Corrections as well as his  
2 statements, I think that's a very valid concern as  
3 to whether he would actually be willing to follow  
4 conditions of the Court, and make appearances, and  
5 accept the authority of this Court at this point  
6 in these proceedings.

7 And so -- and one of the reasons that this  
8 has come up was that, just so the Court knows,  
9 this case is now set at the Supreme Court for oral  
10 argument in September, September 25th is oral  
11 argument in the case. The schedule was  
12 accelerated, and accelerated in part because of  
13 the fact that the defendant was in custody.  
14 That's a decision that's already been made. I  
15 don't think, you know, any reduction of bail is  
16 going to have any impact on that decision, but  
17 nonetheless one of the things that -- was the fact  
18 that he was incarcerated past his maximum date,  
19 and it came up that it was something that Court  
20 had not addressed, and I think certainly  
21 appropriate for the Court to do so.

22 THE COURT: And is the State making a  
23 motion?

24 MR. DERNBACH: What am I asking?

25 THE COURT: Yeah, what's the State's

1 position here?

2 MR. DERNBACH: And, again, that's sort of  
3 the unusual posture of the case, and that usually  
4 would be the defense to make a motion to reduce  
5 the bail, and that hasn't happened despite the  
6 fact that I think we are all aware he is past  
7 maximum date, and Court -- again, State's not  
8 opposed to reduction in bail in light of those  
9 changed circumstances, but some bail is still  
10 going to be necessary to ensure the defendant  
11 appears. 15, 25 thousand dollars. Somewhere in  
12 that neighborhood.

13 THE COURT: And you don't know what bail  
14 currently is?

15 MR. DERNBACH: I don't recall off the top  
16 of my head. I'm sorry.

17 MS. ROSS: Your Honor?

18 THE COURT: Yes.

19 MS. ROSS: I wasn't present when bail was  
20 set, and I don't know if Mr. Dernbach is done or  
21 not, but just add the bail amount?

22 MR. DERNBACH: Please.

23 MS. ROSS: It was my impression from  
24 Ms. Jackson that it was \$500,000, and that's what  
25 we put in the briefing but --

1 THE COURT: Okay. So apparently the State  
2 is not moving for a reduction in bail, at least  
3 indicating that the State would not be opposed to  
4 reduction in bail. So I'm not sure what the  
5 posture of this motion is, but let me hear from  
6 the defense.

7 MS. ROSS: Well, your Honor, I'm going to  
8 speak a little louder than I normally would  
9 because Mr. Hall is hard of hearing.

10 THE COURT: Right.

11 MS. ROSS: So as Mr. Dernbach indicated  
12 this case is going to be argued in the Supreme  
13 Court on September 25th, our motion for  
14 accelerated review and for direct review was  
15 granted. That's Mr. Hall's motion. Mr. Hall's  
16 position is that he should be released without  
17 bail and without conditions.

18 In most instances out would not be a  
19 reasonable position but in Mr. Hall's case it is,  
20 and the reason it is is because Mr. Hall has  
21 served far beyond even what his maximum sentence  
22 was on the conviction of second degree murder  
23 which has been vacated. His release date was in  
24 February of this year. His maximum release date  
25 from the DOC. And of course anytime now since

1 then is also added on to that sentence should he  
2 ever have another trial on a lesser charge.

3 The -- the amended information in the Court  
4 now is to first degree manslaughter. By my  
5 calculations were he to be convicted of that the  
6 maximum sentence would be 102 months or 59 months  
7 less than he would have to be given credit for as  
8 of April. I'm reading from my brief that I did  
9 for the Supreme Court. So Mr. Hall has more than  
10 served his time. He has gone through a complete  
11 trial. He's been convicted. He's 71 years old.  
12 Really, what else can the State of Washington do,  
13 you know, to this man?

14 He -- whatever the bail is would be  
15 somewhat academic because he doesn't have any  
16 funds, but he has served beyond any possible  
17 sentence he could ever get were he to be subjected  
18 to another trial in this matter. Of course we  
19 believe that he will never be subjected to another  
20 trial in this matter because we are very confident  
21 in the double jeopardy argument before the Supreme  
22 Court, but even if he were this would -- there  
23 would be no additional time that the Court could  
24 impose upon him as far as incarceration.

25 Therefore, we do believe that he is

1 entitled and like many people that might be coming  
2 to you in a normal pretrial posture to be released  
3 without conditions. I know that if there were  
4 another trial that's one thing Mr. Hall would show  
5 up for because he testified in his first trial.  
6 He feels strongly about his defense in this case,  
7 and I'm sure he would appear to assert it again,  
8 but that's the position Mr. Hall takes at this  
9 time. He wants to be released without a bail and  
10 without conditions.

11 THE COURT: Mr. Dernbach, let me ask you a  
12 question: I'm not completely clear on the no  
13 offense intended logic of the State's asking that  
14 bail be reduced for the reasons that you've  
15 articulated. I mean, it seems to me that if the  
16 impetus for this motion or this hearing is that  
17 the defendant has served all possible maximum time  
18 what's -- what's the point of a bail reduction? I  
19 mean, you suggested 15 or \$20,000, and let's  
20 assume the defendant cannot make that, which I  
21 would certainly think knowing what I know about  
22 Mr. Hall, so I'm -- I don't understand how that  
23 touches on the issue, which is that he's been in  
24 jail and prison longer than he would ever be  
25 again.

1           MR. DERNBACH: It's, I guess, my goal would  
2 not be to have a bail imposed that he could not  
3 afford, and this is really, I guess, the quandry  
4 which I'm not sure what the solution for is. The  
5 goal is not to impose a bail that he couldn't  
6 afford. The goal would be to impose a bail that  
7 he could afford that would give him some incentive  
8 to return to court because again in light of the  
9 fact that he has indicated that he won't be  
10 subject to jurisdiction or conditions from  
11 Department of Corrections, and that he wants to  
12 leave the state I don't have any confidence that  
13 if he were simply PR'd he would just say you don't  
14 have any authority over me, and I will do whatever  
15 I want, and we will never see Mr. Hall again. You  
16 know, I threw a number out there because it's a  
17 relatively low level of bail for the type of  
18 offense that we are here for, but I understand the  
19 Court's position. And again I should say that I  
20 -- I think the goal should be to impose something  
21 that he could afford, but that would get him some  
22 incentive to return to court, and the problem may  
23 very well be that there is no such amount.

24           THE COURT: I think that might be the  
25 problem. I mean, certainly Mr. Hall's been in my

1 court many times now, and I would have to agree  
2 with Mr. Dernbach, if we are looking at bail for  
3 the reasons that the rules are set up to address  
4 bail, which is to assure as best we can a  
5 defendant's presence at future hearings. Mr. Hall  
6 is a very bad risk. Just in terms of his attitude  
7 towards the Court.

8 Now, you say he -- he would want to be here  
9 for another trial, but on the other hand I think  
10 if the Supreme Court did not rule in his favor,  
11 and he were told that there was going to be  
12 another trial Mr. Hall would not be very happy  
13 about that, and I can't imagine, based on my  
14 experience with Mr. Hall, that he would, in fact,  
15 show up. So can I really just reduce it to no  
16 bail, and let him go when I have -- when I analyze  
17 the risk factors, and would have to make a  
18 determination that Mr. Hall is more than likely  
19 not going to show up for any future court  
20 appearances?

21 MS. ROSS: Your Honor, something the Court  
22 hasn't considered, which I think is very  
23 significant, and that's that Mr. Hall was 58 years  
24 old when he was charged with this crime, and he  
25 had no criminal record and no criminal history.

1 He is not a law breaker.

2 He may be frustrated, and I would say  
3 with -- not -- not that any disrespect is  
4 justified, but with what's happened to him over  
5 the course of the last 13 years, he may have a  
6 level of frustration that is hard for a person  
7 that is handicapped, in significant pain, and now  
8 has other medical issues that may express himself  
9 to the Court. I don't think he has any history  
10 that suggests that he would not show up for a  
11 court appearance. And, in fact, just based on my  
12 conversations with him he would show up because he  
13 -- that would -- if he were recharged he -- for  
14 one thing he knows he would not be subjected to  
15 further imprisonment so he wouldn't have that  
16 motivation not to show up. The only thing that  
17 could -- would happen, if he didn't show up for  
18 his trial, is he would not have the opportunity to  
19 give his side of the story, which he feels very  
20 strongly about. And to be vindicated, which he  
21 feels he should be.

22 And so I would say the motivation for  
23 Mr. Hall are far stronger to show up for trial,  
24 and to put his story out there for the Court and  
25 the jury than not to show up. Because unlike

1 almost anyone else that would be before the Court  
2 he has no risk at showing up. He is not going to  
3 be subjected to anymore jail time. You know, he  
4 -- there's just -- he doesn't have the incentive  
5 to flee. All it would do is cause a warrant to be  
6 out for him, and cause more trouble for him in the  
7 future.

8 THE COURT: Well, he could have been out of  
9 custody though had he agreed to the supervision  
10 requirements. So that by itself was something  
11 that he was not willing to endure.

12 MS. ROSS: Yeah, he does not want to be  
13 supervised. But in addition to that, your Honor,  
14 he didn't have money for a residence. He has no  
15 residence, and that was a financial issue too.  
16 Now we would be able to have a social worker help  
17 him in that regard, if he were released without  
18 bail.

19 THE COURT: Mr. Hall, what do you have to  
20 say about this? If you were out --

21 THE DEFENDANT: I have not heard what the  
22 prosecutor said because as you well know I'm half  
23 deaf, and I only hear a little bit of what Kate's  
24 saying here because she is loud enough to hear. I  
25 don't have a clue what you people are talking

1 about.

2 THE COURT: We are talking about what would  
3 happen if you were released, and your case went to  
4 the Supreme Court to be argued in September, and  
5 then some months from now if you were -- if there  
6 was a decision that you had to go -- come back to  
7 court for another trial on the second charge, this  
8 manslaughter charge, whether you would show up.  
9 That's the question.

10 THE DEFENDANT: Well, number one, I'm not a  
11 resident of the state of Washington. There's no  
12 way in hell I will be a resident of the State of  
13 Washington, because of what's happened to me in  
14 this court system. I don't think anybody has had  
15 this happen to them in the court system, and I  
16 wouldn't want to be in the inside, the borders of  
17 this state again. So I would bring back a large  
18 group of people if I came back to trial. There  
19 would be a whole lot of people, and a whole lot of  
20 publicity. I can guarantee you that.

21 MS. ROSS: But you would want to testify?

22 THE DEFENDANT: Huh?

23 MS. ROSS: If you had to go to trial again,  
24 you would want to testify?

25 THE DEFENDANT: Well, if you want to bring

1 me back to trial, I'll bring a big group of  
2 people. But I don't want to stay in this state.  
3 It's that simple.

4 MS. ROSS: Well, he would stay in the  
5 state until trial, unless he should come back for  
6 trial.

7 THE COURT: I haven't heard him say that.

8 THE DEFENDANT: What?

9 MS. ROSS: Would you come back for trial to  
10 testify to your story? To tell your side of the  
11 story?

12 THE DEFENDANT: No problem.

13 MS. ROSS: No problem.

14 THE COURT: If you were released in the  
15 next week or so where would you go?

16 THE DEFENDANT: California. I have  
17 relatives down there that are older than I am.  
18 The witnesses in my case are older than I am, and  
19 so some very sick, and a couple of them have  
20 already died. I think I have been blocked from  
21 contacting any witnesses in this case, and I  
22 thought that was extremely malicious to begin with  
23 because these witnesses were World War II vets,  
24 and Korean War vets, and Vietnam War vets with  
25 disabilities, serious disabilities.

1           THE COURT:  What if you were instructed by  
2           the Court not to leave the state of Washington  
3           until there is a decision in your case?

4           THE DEFENDANT:  I have no place to go in  
5           the state of Washington.  I don't have a residence  
6           here.  I don't have relatives here, and I have no  
7           place to go here.  I have no desire to ever remain  
8           in this state for any reason at all.  Can you  
9           expect that anybody that you have done this to  
10          would?

11          THE COURT:  I'm not encouraged by  
12          Mr. Hall's responses.

13          MS. ROSS:  Well, I think Mr. Hall is not  
14          fully understanding.  If there were no other  
15          conditions, and if we could find him someplace in  
16          Washington or make contact with the relatives in  
17          California, and assure a return.  Either one of  
18          those may be acceptable.  But there's no question  
19          that Mr. Hall has been wronged in a way, I'm sure  
20          the Court and certainly I've not seen, and I've  
21          been practicing for 30 years, where a person is  
22          like a pretrial detention, and yet facing like no  
23          additional jail time and no prior criminal  
24          history.

25          THE COURT:  That's true.  Although he

1 certainly had an opportunity to be out of custody,  
2 which he chose not to take by not agreeing to the  
3 supervision. So, I mean, it's an unusual case.  
4 Mr. Dernbach, what's your comment at this point?

5 MR. DERNBACH: And, your Honor, again, I  
6 just -- just to reiterate the State's concern is  
7 that -- I mean, I don't think that, you know, even  
8 if there were a release without bail there would  
9 have to be conditions that go along with that  
10 about staying within the state of Washington, not  
11 contacting witnesses, not possessing a firearm, no  
12 criminal law violations, and such that I -- I'm  
13 just not quite, frankly, convinced that Mr. Hall  
14 would actually follow.

15 THE COURT: No. Not at all.

16 MS. ROSS: I'm sure he would not contact  
17 State's witnesses. His own witnesses were his  
18 friends, and that's what he was referring to  
19 before. We talked about that. That his own  
20 witnesses are his friends, and his relatives is  
21 who he is talking about. The State's witnesses he  
22 doesn't know and doesn't want to contact.

23 THE COURT: Well, Mr. Hall has indicated  
24 multiple times this afternoon that he has no  
25 intention and no interest in, and, in fact, is

1       adamantly opposed to staying in Washington, and no  
2       matter what was arranged for him I don't think he  
3       would do that. I think once he was gone, and was  
4       refusing to comply with the Court's conditions,  
5       which I think he would refuse to do, it would be  
6       very difficult to get him back, and I don't know  
7       that the State should be put to that burden.

8               So I just don't see how I can, in good  
9       faith or good conscience, release Mr. Hall at this  
10      point. I'm willing to reduce the bail. Again,  
11      I'm -- I don't know that that's -- really  
12      addresses the issue here, but I don't know what  
13      the substitute would be. So, you know, I'll  
14      reduce the bail to \$10,000, if there's some way in  
15      which that can be an amount that's executable, if  
16      that's the right phrase then fine. But just to  
17      release him we would never see Mr. Hall again.

18             MS. ROSS: I have to say, your Honor, I  
19      don't think that is true. I think you would  
20      definitely see him at his trial. Just from -- you  
21      read the transcript of his prior trial he was very  
22      eager to testify, and he is certainly eager to, if  
23      there is a trial, to tell his side of the story.  
24      And also just the fact that once he fully  
25      understands it, if he didn't come to trial, then

1 there would be a legitimate warrant out for his  
2 arrest for failing to show, if there was a trial  
3 scheduled and he didn't show up. Whereas if he is  
4 just here, comes to trial, goes to his trial,  
5 there won't be any legitimate basis to lock him up  
6 no matter how the trial comes out.

7 THE COURT: That's all very logical, but I  
8 think Mr. Hall has some emotional reactions to  
9 this whole process that are -- would overcome any  
10 logic or reasonable approach, and I'm not saying  
11 that in some respects they are unwarranted, but I  
12 just don't think we would find Mr. Hall again.  
13 So, as I say, I will reduce it, but I can't just  
14 let him go.

15 MR. DERNBACH: And as we addressed just  
16 briefly, I indicated on the form, I want to just  
17 address with the Court the conditions would also  
18 be not possessing a firearm, no contact with the  
19 witnesses, and reside in the State of Washington.

20 MS. ROSS: I wish it to indicate State's  
21 witnesses. The State's witnesses.

22 THE COURT: Yeah. Mr. Hall, so I'm  
23 reducing the bail. Apparently it's currently  
24 \$500,000. That's what your counsel believes, and  
25 I'm reducing it to \$10,000 which is much less.

1 I'm not saying that you have \$10,000, but it may  
2 be that somebody or somehow you can post that.

3 THE DEFENDANT: I only heard half of what  
4 you just said.

5 THE COURT: You still can't hear me?

6 THE DEFENDANT: I heard parts of what you  
7 said, but not the whole thing.

8 THE COURT: Okay. Well, Ms. Ross is going  
9 to show you an order that's reducing the bail to  
10 \$10,000. I know that you don't personally  
11 probably have \$10,000, but because it's a lot less  
12 than your bail already is there may be some way in  
13 which bail can be posted for you that would then  
14 still obligate you to come back to court if there  
15 are -- if the Supreme Court decides that you have  
16 to come back to court.

17 There are other conditions associated with  
18 that that you need to read on that form, and that  
19 you need to follow. This is if you make -- if you  
20 make the bail. It's not just the \$10,000, and  
21 then you can do anything you want. There's some  
22 conditions on there, including no firearms, no  
23 contacting State's witnesses --

24 MR. DERNBACH: No leaving Washington.

25 THE COURT: No leaving Washington and

1 Ms. Ross.

2 THE DEFENDANT: Well, that's not acceptable  
3 conditions to me and always have been. Secondly,  
4 since the prosecution coached their witnesses to  
5 commit perjury at the trial I think it's the right  
6 of the defense attorneys to contact those  
7 witnesses and get interviews.

8 THE COURT: Defense attorney, yeah.

9 MS. ROSS: Oh, we will be able to  
10 Mr. Hall.

11 THE COURT: Defense attorney, yes. Just  
12 not you on your own. Anyway, I think we've  
13 probably gone as far as we can go.

14 MR. DERNBACH: Thank you, your Honor. I  
15 will pass up the order.

16 THE COURT: Okay. I signed it.

17 MS. ROSS: Thanks, your Honor.

18 THE COURT: Thank you.

19 MR. DERNBACH: Thank you.

20 (Court adjourned at 4:26 p.m.)

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24

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## C E R T I F I C A T E

STATE OF WASHINGTON)

) SS.

COUNTY OF KING )

I, Kimberly H. Girgus, Certified Court Reporter, in and for the State of Washington, do hereby certify:

That to the best of my ability, the foregoing is a true and correct transcription of my shorthand notes as taken in the cause of STATE OF WASHINGTON vs. TERRANCE HALL, on the date and at the time and place as shown on page one hereto;

That I am not a relative or employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney of counsel, and that I am not financially interested in said action or the outcome thereof;

Dated this 31st day of August, 2007.

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Kimberly H. Girgus

Certified Court Reporter

Certificate of Service by Mail

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STATE OF WASHINGTON

2007 SEP -6 P 2:53

WILLIAM R. CARPENTER  
CLERK

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christine Jackson and Katheryn Ross, the attorney for Terrance Hall, at The Defender Association, 810 Third Avenue, Suite 800, Seattle, WA 98104, containing a copy of the Motion to Supplement Record, in STATE V. TERRENCE HALL, Cause No. 78658-5, in the Supreme Court, for the State of Washington.

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

W Brame

Name  
Done in Seattle, Washington

9/5/07  
Date 9/5/07