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COURT OF APPEALS  
DIVISION ONE

DEC 18 2006

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THE DEFENDER ASSOC  
King County Superior Court Nos. 06-1-03186-1 SEA, 06-1-03187-0 SEA, 06-1-03195-1 SEA &  
06-1-04016-0 SEA

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

79973-3

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CITY OF SEATTLE,  
Petitioner,

vs.

MELISSA DEIBERT, MARKEYES MONTGOMERY & STEPHEN KLEIN,  
Respondents.

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MOTION FOR DISCRETIONARY REVIEW AND STAY

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**A. IDENTITY OF PETITIONER.**

The City of Seattle asks this court to accept review of the decisions designated in Part B of this motion and stay further proceedings in superior court.

**B. DECISIONS.**

The Orders Denying City's Motion to Dismiss, entered on December 8, 2006, denied the City of Seattle's motions to dismiss these RALJ appeals based on each defendant being a fugitive from justice.

**C. ISSUES PRESENTED FOR REVIEW.**

1. Where a defendant has been convicted and filed a notice of appeal, the defendant then fails to appear for a review hearing in the trial court, and the trial court issues a warrant for the defendant's arrest during the pendency of the appeal, should the appeal be dismissed?

2. Does the superior court's decision denying petitioner's motion to dismiss such an appeal warrant review under RAP 2.3(d)(1), (2) or (3)?

3. If this court accepts review, should it also stay the pending RALJ appeals in superior court in order to preserve to the City the fruits of a successful appeal?

**D. STATEMENT OF THE CASE.**

With respect to MELISSA DEIBERT, on February 23, 2006, defendant was convicted of Theft in Seattle Municipal Court and her

deferred sentence on a prior conviction for Prostitution was revoked.<sup>1</sup> As part of her suspended sentences, defendant was ordered to perform a total of six days of work crew.<sup>2</sup> The sentences were not stayed pending appeal.<sup>3</sup> Defendant did not complete the work crew so the court scheduled a review hearing for October 27, 2006.<sup>4</sup> Defendant did not appear at that hearing, and the trial court issued a warrant for her arrest.<sup>5</sup>

On November 17, 2006, the City of Seattle moved to dismiss defendant's RALJ appeal because of the outstanding warrant.<sup>6</sup> On December 8, 2006 the superior court denied the motion to dismiss.<sup>7</sup>

With respect to MARKEYES MONTGOMERY, on February 26, 2006, defendant was convicted of Driving While Intoxicated in Seattle Municipal Court.<sup>8</sup> As part of his suspended sentence, defendant was ordered to complete chemical dependency treatment, attend a victim's

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<sup>1</sup> Dockets in Seattle Municipal Court (SMC) cases 476891 & 431554 (attached to Respondent's Motion to Dismiss Appeal in cases 06-1-03186-1 SEA & 06-1-03187-0 SEA (attached)).

<sup>2</sup> Dockets in SMC cases 476891 & 431554.

<sup>3</sup> Dockets in SMC cases 476891 & 431554.

<sup>4</sup> Dockets in SMC cases 476891 & 431554.

<sup>5</sup> Dockets in SMC cases 476891 & 431554.

<sup>6</sup> Respondent's Motion to Dismiss Appeal in cases 06-1-03186-1 SEA & 06-1-03187-0 SEA.

<sup>7</sup> Order Denying City's Motion to Dismiss.

<sup>8</sup> Docket in SMC case 461665 (attached to Respondent's Motion to Dismiss Appeal & Respondent's Reply to Appellant's Response to Respondent's Motion to Dismiss Appeal in case 06-1-03195-1 SEA (attached)).

panel and report to the probation department.<sup>9</sup> The sentence was not stayed pending appeal.<sup>10</sup> On July 14, 2006, a review hearing was scheduled because defendant had not completed the chemical dependency treatment, attended the victim's panel or reported to the probation department.<sup>11</sup> Defendant did not appear at that hearing so the court issued a warrant for his arrest.<sup>12</sup> On August 9, 2006, defendant or his counsel requested the trial court to schedule a hearing in order for defendant to move to quash the outstanding warrant.<sup>13</sup> Defendant failed to appear at that hearing as well so the warrant remained outstanding.<sup>14</sup>

On July 28, 2006, the City of Seattle moved to dismiss defendant's RALJ appeal because of the outstanding warrant.<sup>15</sup> On December 8, 2006, the superior court denied the motion to dismiss.<sup>16</sup>

With respect to STEPHEN KLEIN, on March 29, 2006, defendant was convicted of Assault in Seattle Municipal Court.<sup>17</sup> One of the conditions of his suspended sentence was that he was to have no further

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<sup>9</sup> Docket in SMC case 461665.

<sup>10</sup> Docket in SMC case 461665.

<sup>11</sup> Docket in SMC case 461665.

<sup>12</sup> Docket in SMC case 461665.

<sup>13</sup> Docket in SMC case 461665.

<sup>14</sup> Docket in SMC case 461665.

<sup>15</sup> Respondent's Motion to Dismiss Appeal in case 06-1-03195-1  
SEA.

<sup>16</sup> Order Denying City's Motion to Dismiss.

<sup>17</sup> Docket in SMC case 480244 (attached to Respondent's Motion

criminal law violations.<sup>18</sup> The sentence was not stayed pending appeal.<sup>19</sup> At an August 3, 2006, review hearing, defendant admitted that he had been convicted of a new violation, 10 days of his suspended sentence was revoked and defendant was ordered to serve this sentence on work crew.<sup>20</sup> At that time, a review hearing was set for September 18, 2006, to determine if defendant had completed the work crew.<sup>21</sup> Defendant did not appear at that hearing, and the work crew obligation had not been completed so the court continued the case for one week.<sup>22</sup> On September 25, 2006, the court received a probation report indicating that defendant still had not completed the work crew obligation.<sup>23</sup> The court then issued a warrant for defendant's arrest.<sup>24</sup>

On October 20, 2006, the City of Seattle moved to dismiss defendant's RALJ appeal because of the outstanding warrant.<sup>25</sup> On

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to Dismiss Appeal in case 06-1-04016-0 SEA (attached)).

<sup>18</sup> Docket in SMC case 480244.

<sup>19</sup> Docket in SMC case 480244.

<sup>20</sup> Docket in SMC case 480244.

<sup>21</sup> Docket in SMC case 480244; Alternative to Confinement Commitment Referral (attached to Respondent's Motion to Dismiss Appeal in case 06-1-04016-0 SEA).

<sup>22</sup> Docket in SMC case 480244.

<sup>23</sup> Docket in SMC case 480244; Probation Services Division Status Report (attached to Respondent's Motion to Dismiss Appeal in case 06-1-04016-0 SEA).

<sup>24</sup> Docket in SMC case 480244.

<sup>25</sup> Respondent's Motion to Dismiss Appeal in case 06-1-04016-0 SEA.

December 8, 2006, the superior court denied the motion to dismiss.<sup>26</sup> The City of Seattle now seeks review of these decisions.

**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED AND A STAY GRANTED.**

1. The Superior Court erred by denying the City of Seattle's motion to dismiss the appeals of defendants for whom the trial court had issued an arrest warrant during the pendency of the appeal.
  - a. A defendant who has affirmatively avoided the trial court's jurisdiction has waived or forfeited his right to appeal.

If a defendant flees the jurisdiction of the court pending an appeal, his constitutional right to appeal is deemed waived.<sup>27</sup> Several rationales have been offered in support of this rule. A litigant who withdraws himself from the power of the court to enforce its judgment also withdraws the questions which he had submitted to the court's adjudication.<sup>28</sup> A defendant who flees the jurisdiction of the court is attempting to set the terms upon which he will surrender and is a contempt of the court's authority.<sup>29</sup> The likelihood that an absconding defendant

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<sup>26</sup> Order Denying City's Motion to Dismiss.

<sup>27</sup> *State v. Johnson*, 105 Wn.2d 92, 97, 711 P.2d 1017 (1986); *State v. Koloske*, 100 Wn.2d 889, 892, 676 P.2d 456 (1984) (overruled on other grounds, *State v. Brown*, 113 Wn.2d 520, 540, 782 P.2d 1013, 787 P.2d 906 (1989)); *State v. Mosley*, 84 Wn.2d 608, 609-10, 528 P.2d 986 (1974).

<sup>28</sup> *Johnson*, 105 Wn.2d at 97.

<sup>29</sup> *Mosley*, 84 Wn.2d at 610.

will not appear in the event a new trial is ordered most likely makes the appeal moot.<sup>30</sup>

The defendants' failure to appear at review hearings demonstrated that they are affirmatively avoiding the jurisdiction of the trial court. They have withdrawn themselves from the power of Seattle Municipal Court to enforce its judgment. Their refusal to submit to the authority of the court is a contempt. Because defendants may never reappear their appeals probably are moot. Defendants have thereby waived or forfeited their constitutional right to appeal. These appeals should have been dismissed.

The superior court believed that these appeals should not be dismissed because the City had not shown that each defendant knowingly, intelligently and voluntarily waived his or her right to appeal.<sup>31</sup> No case involving the dismissal of an appeal based on the defendant being a fugitive from justice has ever required such a showing. The superior court's reliance on *State v. Sweet*<sup>32</sup> with respect to this point is entirely misplaced as that case involved a defendant who failed to file a notice of appeal, as opposed to a defendant who filed a notice of appeal and then removed himself from the trial court's jurisdiction. The superior court

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<sup>30</sup> *State v. Handy*, 27 Wash. 469, 471, 67 Pac. 1094 (1902).

<sup>31</sup> *Orders Denying City's Motion to Dismiss*, at 3.

<sup>32</sup> 90 Wn.2d 282, 581 P.2d 579 (1978).

erred by relying on *Sweet* as a basis for denying the City's motion to dismiss these appeals.

- b. Application of the "fugitive disentitlement" doctrine does not violate a state constitutional right to appeal.

The superior court apparently believed that dismissing the appeal of a defendant who absconds during the pendency of the appeal is incompatible with the constitutional right to appeal. In *State v. Johnson*,<sup>33</sup> the Supreme Court, in applying the doctrine, stated:

Finally, if the appealing defendant flees the jurisdiction of the court pending an appeal, the defendant waives the right to prosecute the appeal. *State v. Koloske*, 100 Wn.2d 889, 676 P.2d 456 (1984); *State v. Mosley*, 84 Wn.2d 608, 528 P.2d 986 (1974). Defendants who affirmatively avoid the court's jurisdiction waive their appeal and cannot claim a violation of Const. art. 1, § 22 (amend. 10). *State v. Sweet*, 90 Wn.2d 282, 581 P.2d 579 (1978).

. . . By failing to appear at the court-ordered probation revocation hearing and failing to submit to the court's authority within the 30-day period allowed by the Court of Appeals, Johnson affirmatively waived his right to prosecute his appeal. *State v. Koloske, supra* at 892; *State v. Mosley, supra* at 609.

Although not discussing the issue in great detail, the court in *Johnson* rejected the suggestion that dismissing the appeal of an absconding defendant violates his constitutional right to appeal. Courts in other jurisdictions where the right to appeal a criminal conviction is

constitutional rather than statutory also have rejected this argument.<sup>34</sup>

Application of the “fugitive disentitlement doctrine” does not violate the state constitutional right to appeal.

The superior court’s reliance on *State v. French*<sup>35</sup> with respect to this point is also misplaced as that case involved a defendant who fled the jurisdiction prior to being sentenced and, thus, prior to even having a right of appeal. The court in *French* expressly distinguished such a situation from that in which a defendant absconds after having begun the appellate process:

The reasons that justify dismissal of an appeal when an appellant flees become attenuated when applied in the context of a convicted but unsentenced defendant. First, since sentencing has not occurred, there is nothing yet to appeal. Second, upon sentencing of the defendant, the terms of his or her sentence can be appealed. Third, the deterrent effect of dismissal is adequately addressed by the fact that the State may pursue additional charges for the act of fleeing. Fourth, the defendant presumably is not informed of the right to appeal before sentencing, thereby negating the knowledge requirement of a valid waiver. Finally, under the facts of this case, the State has not argued or established prejudice. Declining to extend the

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<sup>33</sup> 105 Wn.2d at 97-98.

<sup>34</sup> See *Commonwealth v. Elbridge*, 97 Mass. 543 (1867) (defendant’s escape from jail waives his right to appeal under Massachusetts Declaration of Rights, article 12); *Powell v. State*, 99 Tex. Crim. 276, 269 S.W. 443, 448 (1925) (statute requiring dismissal of appeal of defendant who escapes is not unconstitutional as violating the constitutional right to appeal).

<sup>35</sup> 157 Wn.2d 593, 141 P.3d 54 (2006).

doctrine to the facts of this case is consistent with preserving the constitutional right to appeal.<sup>36</sup>

*French* did not purport to overrule any of the cases applying the fugitive disentitlement doctrine to a defendant who has already been sentenced and filed a notice of appeal before fleeing the court's jurisdiction. The superior court erred by relying on *French* as a basis for denying the City's motion to dismiss these appeals.

c. The fugitive disentitlement doctrine is not based on any uniquely federal court considerations.

The superior court also apparently believed that this doctrine's application in Washington is based on federal cases that do not account for the state constitutional right to appeal. *State v. Handy*,<sup>37</sup> which appears to be the seminal case on this issue, relies on three out-of-state court decisions and one United States Supreme Court decision. *Johnson*,<sup>38</sup> which seems to be the most recent case applying the doctrine, relies on three Washington decisions and a dissenting opinion in a United States Supreme Court case. The doctrine does not appear to be grounded on federal precedent.

The fugitive dismissal rule is based on several rationales, including the need to ensure enforcement of the appellate court's orders, the desire

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<sup>36</sup> *French*, 157 Wn.2d at 602.

<sup>37</sup> 27 Wash. at 470-71.

to uphold the dignity and efficiency of the court system, the view that escape or absence waives or forfeits any entitlement to relief and the belief that a threat of dismissal deters defendants from fleeing or remaining at large.<sup>39</sup> None of these considerations are distinctly related to federal courts or whether the right to appeal is constitutional rather than statutory. The fugitive disentitlement doctrine does not rely on federal precedent and is not based on any uniquely federal court considerations. The superior court erred by concluding otherwise.

2. This court should accept review because the superior court's decisions conflict with decisions of the Supreme Court and the Court of Appeals.

During the past century, the Supreme Court has applied the fugitive disentitlement doctrine in at least five cases<sup>40</sup> and the Court of Appeals in at least one case<sup>41</sup> in situations essentially indistinguishable from that in these cases. The superior court's decisions not to apply the

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<sup>38</sup> 105 Wn.2d at 97.

<sup>39</sup> Annotation, *Effect of escape by, or fugitive status of, state criminal defendant on availability of appeal or other post-verdict or post-conviction relief—state cases*, 105 A.L.R. 5<sup>th</sup> 529 § 2 [a], at 554 (2003); see also 5 W. LaFave, J. Israel & N. King, *Criminal Procedure* § 27.5(c), at 921 (2<sup>nd</sup> Ed. 1999).

<sup>40</sup> See *Johnson*, 105 Wn.2d at 97-98; *Koloske*, 100 Wn.2d at 891-92; *Mosley*, 84 Wn.2d at 609-11; *State ex rel. Soudas v. Brinker*, 128 Wash. 319, 323-24, 222 Pac. 615 (1924); *Handy*, 27 Wash. at 470-71.

<sup>41</sup> See *State v. Rosales-Gonzales*, 59 Wn. App. 583, 799 P.2d 756 (1990).

doctrine conflicts with these appellate court decisions. Review is warranted under RAP 2.3(d)(1).

3. This court should accept review because the superior court's decisions involve a significant question of constitutional law.

Whether application of the fugitive disentitlement doctrine to a defendant who flees the trial court's jurisdiction during the pendency of an appeal conflicts with article 1, section 22 of the state constitution certainly would appear to be an issue of constitutional magnitude. The court in *French* acknowledged, but did not reach, this issue.<sup>42</sup> In light of the number of persons who could be affected by an appellate court decision in this case, the superior court's decisions present a significant question of constitutional law. Review is warranted under RAP 2.3(d)(2).

4. This court should accept review because the superior court's decisions involves an issue of public interest which should be determined by an appellate court.

The City of Seattle alone has successfully moved to dismiss 130 RALJ appeals, out of some 1716 appeals filed, during the past decade based on the defendant having an outstanding arrest warrant. Other jurisdictions undoubtedly have a similar percentage of appeals which could be dismissed on this ground. The number of persons affected by an

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<sup>42</sup> *French*, 157 Wn.2d at 602 n. 2.

appellate court decision in this case demonstrates that this case involves an issue of public interest. Review is warranted under RAP 2.3(d)(3).

5. If this court accepts review, it should stay the pending RALJ appeals in superior court.

After the superior court denied the City's motion to dismiss these appeals, it set defendant MONTGOMERY's RALJ appeal for argument on March 12, 2007. The superior court presumably will set defendant KLEIN's RALJ appeal defendant and DEIBERT's RALJ appeal for argument as soon as their respective briefs are filed. If this court accepts review of the superior court's decisions, the City also requests that the pending RALJ appeals be stayed.

RAP 8.3 provides:

Except when prohibited by statute, the appellate court has authority to issue orders, before or after acceptance of review or in an original action under Title 16 of these rules, to insure effective and equitable review, including authority to grant injunctive or other relief to a party.<sup>43</sup>

The purpose of this rule is to permit appellate courts to grant preliminary relief in aid of their appellate jurisdiction so as to prevent

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<sup>43</sup> RAP 8.1 does not apply to this case as that rule is limited to civil cases. RAP 8.1(a). RAP 8.2 does not apply as that rule is limited to a criminal defendant seeking to stay the trial court's sentence. RAP 8.2(a).

destruction of the fruits of a successful appeal.<sup>44</sup> The general considerations for granting a stay are whether the issue presented by the appeal is debatable and whether a stay is necessary to preserve for the movant the fruits of a successful appeal, considering the equities of the situation.<sup>45</sup>

The fruit of a successful appeal in this court for the City will be the dismissal of defendants' RALJ appeals in superior court. Without a stay, those RALJ appeals will proceed and the City will be required to brief and argue the issues raised; thus, the fruit of a successful appeal will be lost. A RALJ appeal also obviously would require a superior court judge to devote scarce judicial resources to reading a transcript and briefs and hearing argument. In addition, should a defendant prevail in his RALJ appeal, the case will be remanded to Seattle Municipal Court for further proceedings, which cannot possibly occur until the defendant again submits himself to that court's jurisdiction. When that might occur is completely unknown. Failing to stay the pending RALJ appeals will not only deprive the City of the fruits of a successful appeal, but could result in the case being placed in limbo in the trial court. If this court accepts

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<sup>44</sup> *Washington Federation of State Employees, Council 28, AFL-CIO v. State*, 99 Wn.2d 878, 883, 665 P.2d 1337 (1983).

<sup>45</sup> *Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985), *cert. dismissed*, 478 U.S. 1029 (1986); *Boeing Co. v. Sierracin Corp.*, 43

review, it should also, pursuant to RAP 8.3, stay the pending RALJ appeals in superior court.

**F. CONCLUSION.**

Based on the foregoing argument, this court should accept review of these cases and stay the pending RALJ appeals in superior court.

Respectfully submitted this 18<sup>th</sup> day of December, 2006.

**THOMAS CARR  
SEATTLE CITY ATTORNEY**

By Richard Greene  
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Assistant City Attorney  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

CITY OF SEATTLE, )  
Respondent, )  
vs. )  
MELISSA DEIBERT, )  
Appellant. )

Nos. 06-1-03186-1 SEA  
06-1-03187-0 SEA

RESPONDENT'S MOTION  
TO DISMISS APPEAL

A. MOTION.

Respondent City of Seattle moves to dismiss defendant's appeal on the ground that defendant is a fugitive from justice.

B. STATEMENT OF THE CASE.

On February 23, 2006, defendant was convicted of Theft and her deferred sentence on a Prostitution conviction was revoked.<sup>1</sup> As part of her suspended sentences, defendant was ordered to perform a total of six days of work crew.<sup>2</sup> The sentences were not stayed

<sup>1</sup> Dockets (attached).  
<sup>2</sup> Dockets.

1 pending appeal.<sup>3</sup> Defendant did not complete the work crew so the court scheduled a  
2 review hearing for October 27, 2006.<sup>4</sup> Defendant did not appear at that hearing, and the  
3 court issued a warrant for her arrest.<sup>5</sup>

4  
5 **C. ARGUMENT.**

- 6 1. Because defendant has affirmatively avoided the court's jurisdiction, she  
7 has waived or forfeited her right to appeal.

8 If a defendant flees the jurisdiction of the court pending an appeal, he waives his  
9 constitutional right to appeal.<sup>6</sup> Several rationales have been offered in support of this  
10 rule. A litigant who withdraws himself from the power of the court to enforce its  
11 judgment also withdraws the questions which he had submitted to the court's  
12 adjudication.<sup>7</sup> A defendant who flees the jurisdiction of the court is attempting to set the  
13 terms upon which he will surrender and is a contempt of the court's authority.<sup>8</sup> The  
14 likelihood that an absconding defendant will not appear in the event a new trial is ordered  
15 most likely makes the appeal moot.<sup>9</sup>

16 Defendant's failure to appear for her review hearing on June 8, 2006 demonstrates  
17 that she is affirmatively avoiding the jurisdiction of the court. She has withdrawn herself  
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23 <sup>3</sup> Dockets.

24 <sup>4</sup> Dockets.

25 <sup>5</sup> Dockets.

26 <sup>6</sup> *State v. Johnson*, 105 Wn.2d 92, 97, 711 P.2d 1017 (1986); *State v. Koloske*, 100  
27 Wn.2d 889, 892, 676 P.2d 456 (1984) (*overruled on other grounds*, *State v. Brown*, 113 Wn.2d  
28 520, 540, 782 P.2d 1013, 787 P.2d 906 (1989)); *State v. Mosley*, 84 Wn.2d 608, 609-10, 528  
29 P.2d 986 (1974).

<sup>7</sup> *Johnson*, 105 Wn.2d at 97.

<sup>8</sup> *Mosley*, 84 Wn.2d at 610.

1 from the power of Seattle Municipal Court to enforce its judgment. Her refusal to submit  
2 to the authority of the court is a contempt. Because defendant may never reappear her  
3 appeal probably is moot. Defendant has thereby waived or forfeited her constitutional  
4 right to appeal. This appeal should be dismissed.  
5

6 2. Application of the "fugitive disentitlement" doctrine does not violate a state  
7 constitutional right to appeal.

8 Defendant may contend that dismissing the appeal of a defendant who absconds  
9 during the pendency of the appeal is incompatible with the constitutional right to appeal.  
10

11 In *State v. Johnson*,<sup>10</sup> the Supreme Court, in applying the doctrine, stated:

12 Finally, if the appealing defendant flees the jurisdiction of the court  
13 pending an appeal, the defendant waives the right to prosecute the appeal.  
14 *State v. Koloske*, 100 Wn.2d 889, 676 P.2d 456 (1984); *State v. Mosley*, 84  
15 Wn.2d 608, 528 P.2d 986 (1974). Defendants who affirmatively avoid the  
16 court's jurisdiction waive their appeal and cannot claim a violation of  
17 Const. art. 1, § 22 (amend. 10). *State v. Sweet*, 90 Wn.2d 282, 581 P.2d 579  
18 (1978).

19 . . . By failing to appear at the court-ordered probation revocation  
20 hearing and failing to submit to the court's authority within the 30-day  
21 period allowed by the Court of Appeals, Johnson affirmatively waived his  
22 right to prosecute his appeal. *State v. Koloske*, *supra* at 892; *State v. Mosley*,  
23 *supra* at 609.

24 Although not discussing the issue in great detail, the court in *Johnson* rejected the  
25 suggestion that dismissing the appeal of an absconding defendant violates his  
26 constitutional right to appeal. Courts in other jurisdictions where the right to appeal a  
27 criminal conviction is constitutional rather than statutory also have rejected this  
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29 <sup>9</sup> *State v. Handy*, 27 Wash. 469, 471, 67 Pac. 1094 (1902).

1 argument.<sup>11</sup> Application of the “fugitive disentitlement” doctrine does not violate the  
2 state constitutional right to appeal.

3 3. The “fugitive disentitlement” doctrine is not based on any uniquely federal  
4 court considerations.

5 Defendant also may contend that this doctrine’s application in Washington is based  
6 on federal cases that do not account for the state constitutional right to appeal. *State v.*  
7 *Handy*,<sup>12</sup> which appears to be the seminal case on this issue, relies on three out-of-state  
8 court decisions and one United States Supreme Court decision. *Johnson*,<sup>13</sup> which seems  
9 to be the most recent case applying the doctrine, relies on three Washington decisions and  
10 a dissenting opinion in a United States Supreme Court case. The doctrine does not appear  
11 to be grounded on federal precedent.

12 The fugitive dismissal rule is based on several rationales, including the need to  
13 ensure enforcement of the appellate court’s orders, the desire to uphold the dignity and  
14 efficiency of the court system, the view that escape or absence waives or forfeits any  
15 entitlement to relief and the belief that a threat of dismissal deters defendants from fleeing  
16 or remaining at large.<sup>14</sup> None of these considerations are distinctly related to federal  
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23 <sup>10</sup> 105 Wn.2d at 97-98.

24 <sup>11</sup> See *Commonwealth v. Elbridge*, 97 Mass. 543 (1867) (defendant’s escape from jail  
25 waives his right to appeal under Massachusetts Declaration of Rights, article 12); *Powell v. State*,  
26 99 Tex. Crim. 276, 269 S.W. 443, 448 (1925) (statute requiring dismissal of appeal of defendant  
27 who escapes is not unconstitutional as violating the constitutional right to appeal).

28 <sup>12</sup> 27 Wash. at 470-71.

29 <sup>13</sup> 105 Wn.2d at 97.

<sup>14</sup> Annotation, *Effect of escape by, or fugitive status of, state criminal defendant on*  
*availability of appeal or other post-verdict or post-conviction relief – state cases*, 105 A.L.R. 5<sup>th</sup>

1 courts or whether the right to appeal is constitutional rather than statutory. The “fugitive  
2 disentitlement” doctrine does not rely on federal precedent and is not based on any  
3 uniquely federal court considerations.  
4

- 5 4. If defendant wishes to invoke the “deported alien” exception to the rule  
6 requiring dismissal of the appeal of a fugitive from justice, defense counsel  
7 must establish that defendant has been deported.

8 In *State v. Ortiz*,<sup>15</sup> the court held that the rule calling for dismissal of an appeal by  
9 an absconding defendant does not apply to a defendant who has been deported. None of  
10 the rationales for the rule applies to a defendant who has been forcibly removed from the  
11 court’s jurisdiction.<sup>16</sup> The burden of invoking this exception, *i.e.*, establishing that a  
12 defendant has been deported, rests with defense counsel.<sup>17</sup>  
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14 If defendant seeks to avoid dismissal of this appeal on the basis of the *Ortiz*  
15 exception, defense counsel must establish that defendant has been deported.  
16

- 17 5. Defendant’s subsequent appearance will not revive her right to appeal.

18 Defendant may well argue that this appeal should be reinstated once she reappears  
19 and again submits herself to the authority of the court. This contention was rejected in  
20 *Johnson*. “Once the right to appeal has been waived, as here, it is forfeited. It cannot be  
21 reactivated by an appearance subsequent to waiver.”<sup>18</sup> Nor will defendant be permitted to  
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25 529 § 2 [a], at 554 (2003); *see also* 5 W. LaFave, J. Israel & N. King, *Criminal Procedure* §  
26 27.5(c), at 921 (2<sup>nd</sup> Ed. 1999).

27 <sup>15</sup> 113 Wn.2d 32, 774 P.2d 1229 (1989).

28 <sup>16</sup> *Ortiz*, 113 Wn.2d at 34-35.

29 <sup>17</sup> *State v. Rosales-Gonzales*, 59 Wn. App. 583, 585, 799 P.2d 756 (1990).

<sup>18</sup> *Johnson*, 105 Wn.2d at 98.

1 raise in a collateral attack on her conviction any issue she could have raised in this  
2 appeal.<sup>19</sup>

3 Defendant probably will be apprehended or will have the arrest warrant quashed  
4 eventually. Her arrest or the quashing of the arrest warrant should not act to reinstate this  
5 appeal.  
6

7 6. Defendant should, however, be given a limited time period in which to  
8 surrender.

9 The usual procedure in situations where a defendant has absconded during the  
10 pendency of his appeal is to provide him with a short period in which he can avoid  
11 dismissal of his appeal by surrendering.<sup>20</sup> Defendant should be given a limited period of  
12 time, perhaps until November 30, 2006, to return to custody to avoid dismissal of her  
13 appeal.  
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24 <sup>19</sup> *In the Matter of the Personal Restraint of Rountree*, 35 Wn. App. 557, 558, 668 P.2d  
25 1292 (1983).

26 <sup>20</sup> See *Johnson*, 105 Wn.2d at 94 (defendant given 27 days to surrender in order to defeat  
27 motion to dismiss appeal); *State v. Nason*, 20 Wn. App. 433, 434, 579 P.2d 366 (1978)  
28 (defendant given 10 days to return to custody, either voluntarily or involuntarily); *but see State v. Beck*, 23 Wn. App. 640, 598 P.2d 400 (1979) (grace period not required before appeal can be dismissed).

29 **RESPONDENT'S MOTION  
TO DISMISS APPEAL 6**

Thomas A. Carr  
Seattle City Attorney  
700 Fifth Avenue Suite 5350  
P.O. Box 94667  
Seattle, WA 98124-4667  
(206) 684-7757

1 **D. CONCLUSION.**

2 Based on the foregoing argument, defendant's appeal should be dismissed unless  
3 she is returned to custody by November 30, 2006.  
4

5 Respectfully submitted this 7<sup>th</sup> day of November, 2006.

6 **THOMAS A. CARR**  
7 **SEATTLE CITY ATTORNEY**

8 By Richard Greene  
9 Richard Greene  
10 Assistant City Attorney  
11 WSBA #13496  
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MUNICIPAL COURT OF SEATTLE  
DOCKET  
Case Status: WRNT

r295002

CITY OF SEATTLE, Plaintiff

\*\* O/S WARRANT \*\*

Vs.

DEIBERT, MELISSA MARIE , Defendant

Address: 6728 4 AV NW  
SEATTLE, WA 98117  
206 783/6150 (Home)

Case No: 476891  
File Loc: REC  
Def No: 607312  
Incident No: 5418130  
Custody: OUT  
Rltd Grp No: 171407  
Co-Def's: 1

DOB: 06/27/1968 Age: 38 Sex: F Race: W Lang:

DOL: ██████████

Sentencing Judge:

Prosecutor:

Defense Attorney: KIM, JAMIE

Interpreter:

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\*\* Charges \*\*

Chrg Doc No: Type: BK Viol Date: 09/29/2005 Filing Date: 09/29/2005

Chrg 1: THEFT

12A.08.060 Plea: NG Find: G Status: AF  
Disposition: APPEAL FILED

BAIL BAIL NOT FORFEITABLE GDT  
Start:09/29/2005 Due:09/29/2005 End:09/30/2005 APPEARED IN COURT  
Amt:475 Susp: Curr:

FINE PAY FINE PJB  
Start:02/23/2006 Due:02/23/2006 End:  
Amt:5,000 Susp:5,000 Curr:

JAIL COMPLY WITH JAIL SENTENCE RER  
Start:02/23/2006 Due:02/22/2008 End:  
Jail:365 Susp:360 Unit:Days Cfts:Y  
Rmks:2.23.06: JCRW IN LIEU OF JAIL. TO RUN CONCURRENTLY WITH  
431554. CFTS 2 DAYS.

JCRW WORK CREW IN LIEU OF JAIL RER  
Start:02/23/2006 Due:02/22/2008 End:  
Jail:3 Susp: Unit:Days Cfts:N

Other Case Obligations:

BALW BAIL ON A WARRANT SXL  
Start:10/27/2006 Due: End:  
Amt:5,000 Susp: Curr:5,000

BALW	BAIL ON A WARRANT						TSD
	Start:12/06/2005 Due:	End:12/15/2005	APPEARED IN COURT				
	Amt:10,000 Susp:	Curr:					
CCFE	CRIMINAL CONVICTION FEE						STK
	Start:02/23/2006 Due:02/23/2006	End:03/14/2006	PAID IN FULL				
	Amt:43 Susp:	Curr:					
WFEE	WARRANT FEE						STK
	Start:12/15/2005 Due:01/23/2006	End:03/14/2006	PAID IN FULL				
	Amt:50 Susp:	Curr:					
NCLV	NO CRIMINAL LAW VIOLATIONS						RER
	Start:02/23/2006 Due:02/22/2008	End:					
NCOV	COMPLY WITH VERBAL NO CONTACT ORDER						RER
	Start:02/23/2006 Due:02/22/2008	End:					
	Vctm:SAFEWAY, 01/01/1905						
	Conditions:LOCATED AT 1423 NW MARKET STREET						
QTHR	OTHER OBLIGATION						RER
	Start:09/30/2005 Due:03/29/2006	End:02/23/2006	STRICKEN				
	Rmks:9/30/05: COND OF RLS:SAME AS CS 431554						
PROB	PROBATION						RER
	Start:02/23/2006 Due:02/22/2008	End:					
	Rmks:DF ORDERED TO REPORT TO THE MUNICIPAL COURT PROBATION						
	SERVICES IMMEDIATELY AFTER LEAVING COURT.						

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 \*\* Scheduled Hearings \*\*

S	Date	Time	Crtrm	Type	Tape	Judge	Prosecutor	Date	Clk
H	09/30/2005	9:05	KCJ2	ICA	87871	CARTER, B	SANDERS, M	09/29/2005	TMO
H	10/31/2005	14:30	1003	PTH		MAMIYA, R	MCGOODWIN, J	09/30/2005	GDT
H	12/02/2005	8:30	1002	RDNSS		BONNER, F	FINKLE, M	10/31/2005	ALS
W	12/06/2005	8:30	1002	MASTER		WILSON, S	FINKLE, M	10/31/2005	ALS
H	12/08/2005	10:00	1002	BWADD		BONNER, F	ROBERTSON, R	12/06/2005	JXH
C	12/08/2005	10:00	1002	BWADD				12/06/2005	JXH
H	12/15/2005	10:00	1002	BWADD		WILSON, S	SMITH, D	12/13/2005	JXH
H	01/23/2006	13:30	1003	PTH		MAMIYA, R	LYNCH, M	12/15/2005	TSD
R	02/17/2006	8:30	1002	RDNSS				01/23/2006	TSD
C	02/22/2006	8:30	1002	MASTER		BONNER, F	HOOD, B	01/23/2006	TSD
H	02/22/2006	9:00	1102	JURY		CHARLES, E	LOR, S	02/22/2006	RER
H	02/23/2006	9:00	1102	REVOKE		CHARLES, E	LOR, S	02/23/2006	RER
W	10/27/2006	9:00	1003	RV_PB		CARTER, B	AMAN, H	10/09/2006	JRR

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\*\* Events \*\*

Date	Description	
09/29/2005	DEFENDANT BOOKED. BA# 205038293	TMO
09/29/2005	IN-CUSTODY ARRAIGNMENT SCHEDULED FOR 09/30/2005 AT 905 IN COURTROOM KCJ2	TMO
09/30/2005	DF: DEIBERT, MELISSA MARIE (607312) PRESENT LOC 2512 CLK SY ATTY L.GIBSON.	GDT
09/30/2005	PROBABLE CAUSE FOUND BY COURT	GDT
09/30/2005	CHARGE # 1 12A080600 (THEFT) NOT GUILTY PLEA ENTERED	GDT
09/30/2005	PR GRANTED BY COURT	GDT
09/30/2005	PRE-TRIAL HEARING SCHEDULED FOR 10/31/2005 AT 1430 IN COURTROOM 1003	GDT
09/30/2005	DEF SCREENED-CASE REFERRED TO ACA FOR ASSIGNMENT	GDT
10/05/2005	NOTICE OF APPEARANCE FILED BY; ACA ATTY. JAMIE S. KIM WSBA #34983	SXP
10/31/2005	DF: DEIBERT, MELISSA MARIE (607312) PRESENT	ALS
10/31/2005	DA: KIM, JAMIE (1000010124) PRESENT CLERK ALS. DL 2:57. TRIAL SETTING: SEE PRE-TRAIL ORDER FOR NOTED MOTIONS AND RULINGS.	ALS
10/31/2005	MASTER CALENDAR SCHEDULED FOR 12/06/2005 AT 830 IN COURTROOM 1002	ALS
12/02/2005	DF: DEIBERT, MELISSA MARIE (607312) DEFENDANT NOT PRESENT. DL 10:14AM.	JXH
12/02/2005	CONTINUANCE REQUESTED BY DEFENSE INVEST. DUE TO CO-DF CASE GRANTED.	JXH
12/06/2005	DF: DEIBERT, MELISSA MARIE (607312) DEFENDANT NOT PRESENT. DL 10:15AM DF IS NOT CURRENTLY HELD IN KING COUNTY CORRECTIONAL SYSTEM PER BAILIFF	JXH
12/06/2005	BENCH WARRANT # 990308035 ISSUED 12/06/2005	JXH
12/06/2005	BENCH WARRANT ADD ON CALENDAR SCHEDULED FOR 12/08/2005 AT 1000 IN COURTROOM 1002	JXH
12/06/2005	BENCH WARRANT ADD ON CALENDAR SCHEDULED FOR 12/08/2005 AT 1000 IN COURTROOM 1002	JXH
12/06/2005	BENCH WARRANT ADD ON CALENDAR HRNG SCHDLD FOR 12/08/2005 AT 1000 IN DEPT 1002, CANCELLED!	JXH
12/08/2005	DF: DEIBERT, MELISSA MARIE (607312) DEFENDANT NOT	TSD

PRESENT. DL:11:10 CLK:TD ATTY:J.POYDRAS. DEF DID NOT  
APPEAR FOR BWADD. WARRANT REMAINS.

12/13/2005 BENCH WARRANT ADD ON CALENDAR SCHEDULED FOR 12/15/2005 AT 1000 IN COURTROOM 1002	JXH
12/15/2005 DF: DEIBERT, MELISSA MARIE (607312) PRESENT DL: 10:17 CLK:TD. DEF MOTION TO QUASH BW AND RESET ONTO PTH-GRANTED.	TSD
12/15/2005 DA: KIM, JAMIE (1000010124) PRESENT	TSD
12/15/2005 BENCH WARRANT # 990308035 CLEARED 12/15/2005 (QUASHED)	TSD
12/15/2005 DEFENDANT REFERRED/RELEASED TO TIME PAY OFFICE	TSD
12/15/2005 PRE-TRIAL HEARING SCHEDULED FOR 01/23/2006 AT 1330 IN COURTROOM 1003	TSD
01/23/2006 DF: DEIBERT, MELISSA MARIE (607312) PRESENT DL: 2:21 CLK:TD ATTY:J.KIM. TRIAL SETTING:SEE PRE- TRIAL ORDER FOR NOTED MOTIONS AND RULINGS. POSSIBLE DEF WITNESS:STANLEY SEARS.	TSD
01/23/2006 MASTER CALENDAR SCHEDULED FOR 02/22/2006 AT 830 IN COURTROOM 1002	TSD
02/22/2006 JURY TRIAL SCHEDULED FOR 02/22/2006 AT 900 IN COURTROOM 1102	RER
02/22/2006 MASTER CALENDAR HRNG SCHDLD FOR 02/22/2006 AT 830 IN DEPT 1002, CANCELLED!	RER
02/22/2006 DF: DEIBERT, MELISSA MARIE (607312) PRESENT CLK RER AOR J. KIM	RER
02/22/2006 DF MOTION TO EXCLUDE WITNESSES FROM COURT UNTIL TESTIMONY AND REFRAIN FROM DISCUSSING CASE-GRANTED. (CS EVENT)	RER
02/22/2006 DF MOTION TO EXCLUDE PRIOR BAD ACTS-GRANTED (CS EVENT)	RER
02/22/2006 DF MOTION TO EXCLUDE ANY PRIOR CONVICTIONS-GRANTED. (CS EVENT)	RER
02/22/2006 DF MOTION TO ADMONISH WITNESSES REGARDING MENTION OF DEFENDANTS OUTSTANDING WARRANT-GRANTED. (CS EVENT)	RER
02/22/2006 JURY TRIAL PROCEEDING	RER
02/22/2006 VOIR DIRE (CS EVENT)	RER
02/22/2006 OPENING STATEMENTS BY BOTH PARTIES (CS EVENT)	RER
02/22/2006 CELSO SERRANO (CITY'S WITNESS) TESTIFIED	RER
02/22/2006 MIKE SABOE (CITY'S WITNESS) TESTIFIED	RER

02/22/2006 CITY RESTS (CS EVENT) DEFENSE PRESENTS ITS EVIDENCE	RER
02/22/2006 STANLEY SEARS (DEFENSE WITNESS) TESTIFIED	RER
02/22/2006 MELISSA DEIBERT (DEFENDANT) TESTIFIED	RER
02/22/2006 DEFENSE RESTS (CS EVENT)	RER
02/22/2006 JURORS EXCUSED FOR THE EVENING AND JURY TRIAL SET OVER ONE DAY FOR THE BALANCE OF THE TRIAL. (CS EVENT)	RER
02/22/2006 JURY TRIAL SCHEDULED FOR 02/23/2006 AT 900 IN COURTROOM 1102	RER
02/23/2006 DF: DEIBERT, MELISSA MARIE (607312) PRESENT CLK RER DL 909 AOR J. KIM	RER
02/23/2006 DISCUSSION OF JURY INSTRUCTIONS (CS EVENT)	RER
02/23/2006 CLOSING ARGUMENTS (CS EVENT)	RER
02/23/2006 JURY EXCUSED TO DELIBERATE. (CS EVENT)	RER
02/23/2006 REVOCATION HEARING SET BY COURT SCHEDULED FOR 02/23/2006 AT 900 IN COURTROOM 1102	RER
02/23/2006 CHARGE # 1 12A080600 (THEFT) GUILTY FINDING ENTERED	RER
02/23/2006 CHARGE # 1 12A080600 (THEFT) SUSPENDED SENTENCE	RER
02/23/2006 JURISDICTION END DATE SET TO 02/22/2008	RER
02/23/2006 TO BE GIVEN CREDIT FOR TIME SERVED	RER
02/23/2006 DEFENDANT REFERRED/RELEASED TO TIME PAY OFFICE	RER
02/23/2006 NO CONTACT ORDER WITH SAFEWAY, DOB 01/01/1905	RER
02/23/2006 CASE REFERRED TO PROBATION	RER
03/09/2006 NOTICE OF APPEAL FILED ON 03/08/2006, SUPRCT CAUSE# 61031861	SXP
03/10/2006 TRANSCRIPT ISSUED	SXP
03/10/2006 STATUS/REVIEW REPORT RECEIVED FROM PROBATION SERVICES DIVISION/ COURT COMPLIANCE. FORWARDED TO JUDGE RIETSCHEL FOR CONSIDERATION.	SMY
03/22/2006 NOTICE OF WITHDRAWAL FILED BY ACA 031006 (CS EVENT)	NCH
10/09/2006 REVIEW PROBATION HEARING SCHEDULED FOR 10/27/2006 AT 900 IN COURTROOM 1003	JRR
10/09/2006 REVIEW HEARING SCHEDULED FOR FTC-JCRW PER PC CAROL	JRR

BELL-DANIEL

10/11/2006 STATUS/REVIEW REPORT RECEIVED FROM CAROL BELL-DANIEL. SAF  
10/27/2006 DF: DEIBERT, MELISSA MARIE (607312) DEFENDANT NOT SXL  
PRESENT. DL 10:43, RECALLED 12:17. CLK SXL. MPS  
RPT IN COURT AND RETAINED IN CASE #431554. DEFT IS NOT  
CURRENTLY HELD IN KING COUNTY CORRECTIONAL SYSTEM  
PER BAILIFF LAM DATE 10-27-06  
10/27/2006 BENCH WARRANT # 990317012 ISSUED 10/27/2006 SXL

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\*\* Warrants \*\*

Wrnt Nr	Issued	Served	Wrnt/ Clrn Type	Description
990308035	12/06/2005	12/15/2005	BW QU	BENCH WARRANT QUASHED
Reasons: FAILURE TO APPEAR FOR MASTER CALENDAR HEARING				
Rstrcs: FTA MASTER NO PR				
Warrant issued by: JUDGE SHIRLEY WILSON				
990317012	10/27/2006		BW	BENCH WARRANT
Reasons: FAIL TO APPEAR AT PROBATION/PRE SENTENCING				
Rstrcs: NO PR				
Warrant issued by: JUDGE BRUCE CARTER				

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\*\* Accounting Summary \*\*

Chg :	Obl :	Orig Obl :	Obl :	TP :
Sq# :	Type :	Amount :	Bal Due :	Status :
	BALW	5000.00	5000.00	

\*\* Total due on this case: 5000.00 \*\*

MUNICIPAL COURT OF SEATTLE  
DOCKET  
Case Status: WRNT

r295002

CITY OF SEATTLE, Plaintiff

\*\* O/S WARRANT \*\*

Vs.

DEIBERT, MELISSA M , Defendant

Address: 6728 4 AV NW  
SEATTLE, WA 98117  
206 783/6150 (Home)

Case No: 431554  
File Loc: REC  
Def No: 607312  
Incident No: 2561050  
Custody: OUT  
Rltd Grp No:  
Co-Def's:

DOB: 06/27/1968 Age: 38 Sex: F Race: W Lang:

DOL: ██████████

Sentencing Judge:

Prosecutor:

Defense Attorney: ZAMORA, KARLA

ACA

Interpreter:

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\*\* Charges \*\*

Chrg Doc No: Type: CS Viol Date: 12/15/2002 Filing Date: 02/13/2003

Chrg 1: PROSTITUTION  
12A.10.020 Plea: G Find: G Status: AF  
Disposition: APPEAL FILED

BAIL BAIL NOT FORFEITABLE GDT  
Start:03/04/2003 Due:03/04/2003 End:03/19/2003 FTA WARRANT ISSUED  
Amt:950 Susp: Curr:

FINE PAY FINE RER  
Start:02/23/2006 Due:02/23/2006 End:  
Amt:1,000 Susp:950 Curr:50

PPIA PROSTITUTION PREVENTION AND INTERVENTION CXT  
Start:07/21/2003 Due:07/21/2003 End:07/21/2003 INFORMA PAUPERIS  
Amt:50 Susp: Curr:  
Rmks:07/21/03 INDIGENCY FORM FILED.

JAIL COMPLY WITH JAIL SENTENCE KJL  
Start:02/23/2006 Due:02/22/2008 End:  
Jail:90 Susp:87 Unit:Days Cfts:N  
Rmks:2.23.06: 2 DAYS JCRW IN LIEU OF JAIL. TO RUN  
CONCURRENTLY WITH 476891.  
6/9/06: 1 DAY REVOKED, TO BE SVD AS JCRW IN LIEU OF  
JAIL.

JCRW WORK CREW IN LIEU OF JAIL KJL  
Start:06/09/2006 Due:02/22/2008 End:  
Jail:3 Susp: Unit:Days Cfts:N  
Rmks:6/9/06: 1 DAYS OF PREVIOUS SUSP SENT REVOKED, TO BE  
SERVED AS JCRW IN LIEU OF JAIL.

Other Case Obligations:

BALW BAIL ON A WARRANT SXL  
Start:10/27/2006 Due: End:  
Amt:5,000 Susp: Curr:5,000

BALW BAIL ON A WARRANT KJL  
Start:05/19/2006 Due: End:06/09/2006 APPEARED IN COURT  
Amt:200 Susp: Curr:

BALW BAIL ON A WARRANT RER  
Start:12/06/2005 Due: End:02/22/2006 APPEARED IN COURT  
Amt:1,000 Susp: Curr:

BALW BAIL ON A WARRANT GDT  
Start:07/20/2005 Due: End:09/30/2005 RELEASE ON PR  
Amt:1,500 Susp: Curr:

BALW BAIL ON A WARRANT MDS  
Start:03/18/2003 Due: End:04/23/2003 RELEASE ON PR  
Amt:500 Susp: Curr:

CADD REPORT ADDR CHANGE TO COURT IN WRITING W/IN 24HR RER  
Start:07/21/2003 Due:07/20/2005 End:02/23/2006 STRICKEN

HIVT HIV TEST RER  
Start:02/23/2006 Due:04/24/2006 End:

HIVT HIV TEST RER  
Start:07/21/2003 Due:07/20/2005 End:02/23/2006 STRICKEN  
Rmks:07/21/03 WITHIN 60 DAYS.

NCLV NO CRIMINAL LAW VIOLATIONS RER  
Start:02/23/2006 Due:02/22/2008 End:

NCLV NO CRIMINAL LAW VIOLATIONS RER  
Start:07/21/2003 Due:07/20/2005 End:02/23/2006 STRICKEN

OTHR OTHER OBLIGATION RER  
Start:07/21/2003 Due:07/20/2005 End:02/23/2006 STRICKEN  
Rmks:07/21/03 DNA SAMPLE THROUGH PROBATION

PROB PROBATION RER  
Start:02/23/2006 Due:02/22/2008 End:  
Rmks:DF ORDERED TO REPORT TO THE MUNICIPAL COURT PROBATION  
SERVICES IMMEDIATELY AFTER LEAVING COURT.

PROB PROBATION RER  
Start:07/21/2003 Due:07/20/2005 End:02/23/2006 STRICKEN

SOAP STAY OUT OF AREAS OF PROSTITUTION RER  
 Start:07/21/2003 Due:07/20/2005 End:02/23/2006 STRICKEN

SSEX SEX EDUCATION CLASS OXJ  
 Start:02/23/2006 Due:04/24/2006 End:11/03/2006 OBLIGATION COMPLETED

SSEX SEX EDUCATION CLASS RER  
 Start:07/21/2003 Due:07/20/2005 End:02/23/2006 STRICKEN  
 Rmks:07/21/03 WITHIN 60 DAYS.

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 \*\* Scheduled Hearings \*\*

S	Date	Time	Crtrm	Type	Tape	Judge	Prosecutor	Date	Clk
W	03/18/2003	18:05	302	INTAKE		DANIELI, A	REILLY, L	03/04/2003	JGR
H	05/13/2003	18:05	302	INTAKE		HURTADO, M	REILLY, L	04/23/2003	MDS
H	06/16/2003	13:30	1001	PTH		KONDO, C	GAPPERT, B	05/13/2003	GDT
H	07/21/2003	13:30	1003	PTH		MAMIYA, R	DIKEAKOS, S	06/16/2003	RHJ
W	07/20/2005	9:00	1003	DFRRL		MAMIYA, R	MCGOODWIN, J	07/21/2003	CXT
H	09/30/2005	9:05	KCJ2	ICA	87871	CARTER, B	SANDERS, M	09/29/2005	TMO
H	10/31/2005	14:30	1003	REVIEW		MAMIYA, R	MCGOODWIN, J	10/11/2005	BJA
R	12/02/2005	8:30	1002	RDNS				10/31/2005	ALS
C	12/06/2005	8:30	1002	MASTER				10/31/2005	ALS
W	12/06/2005	8:30	1002	REVOKE		WILSON, S	FINKLE, M	11/22/2005	LBS
H	12/08/2005	10:00	1002	BWADD		BONNER, F	ROBERTSON, R	12/06/2005	JXH
H	02/23/2006	9:00	1102	REVOKE		CHARLES, E	LOR, S	02/23/2006	RER
W	05/19/2006	9:00	1003	RV_PB		TANABE, I	MC GOODWI, J	04/19/2006	JRR
H	06/09/2006	9:00	1003	BWADD		MAMIYA, R	HAYDEN, S	06/06/2006	LBS
W	10/27/2006	9:00	1003	RV_PB		CARTER, B	AMAN, H	10/05/2006	JRR

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 \*\* Events \*\*

Date	Description	Clk
02/13/2003	CHARGE(S) FILED	JGR
03/04/2003	INTAKE HEARING SCHEDULED FOR 03/18/2003 AT 1805 IN COURTROOM 302	JGR
03/05/2003	INTAKE HEARING NOTICE MAILED TO 6728 4 NW SEATTLE, WA 98117	B
03/18/2003	DF: DEIBERT, MELISSA M (607312) DEFENDANT NOT PRESENT	GDT
03/18/2003	PROBABLE CAUSE FOUND BY COURT	GDT
03/18/2003	BENCH WARRANT # 990284238 ISSUED 03/18/2003	GDT
03/19/2003	INTAKE NOTICE RTN UNDELIVERABLE (CS EVENT)	ZBA
04/23/2003	BENCH WARRANT # 990284238 CLEARED RELEASED ON PERSONAL RECOGNIZAN ( )	MDS
04/23/2003	PR GRANTED BY COURT	MDS
04/23/2003	INTAKE HEARING SCHEDULED FOR 05/13/2003 AT 1805 IN	MDS

COURTROOM 302

04/24/2003 INTAKE HEARING NOTICE MAILED TO 6728 4 AV NW SEATTLE,  
WA 98117 B

05/13/2003 DF: DEIBERT, MELISSA M (607312) PRESENT GDT

05/13/2003 DF APPEARED FOR INITIAL APPEARANCE ASSIGNED TO ACA GDT

05/13/2003 PRE-TRIAL HEARING SCHEDULED FOR 06/16/2003 AT 1330 IN  
COURTROOM 1001 GDT

06/16/2003 DF: DEIBERT, MELISSA M (607312) PRESENT RHJ  
CLERK DAO TP 2:20 ATTY R WILLIAMS. DEFT MOTION TO  
CONT FOR INVESTIGATION GRANTED.

06/16/2003 CONTINUANCE REQUESTED BY DEFENSE RHJ

06/16/2003 SPEEDY TRIAL RULE WAIVER FILED 30 DAYS RHJ

06/16/2003 PRE-TRIAL HEARING SCHEDULED FOR 07/21/2003 AT 1330 IN  
COURTROOM 1003 RHJ

07/21/2003 DF: DEIBERT, MELISSA M (607312) PRESENT CXT

07/21/2003 DA: WILLIAMS, ROBERT (1000000075) PRESENT CXT  
DL: 3:49:15 CLK: CXT. ALFORD PLEA ENTERED, STATEMENT  
OF DEF ON PLEA OF ALFORD ATTACHED HERETO.

07/21/2003 JURY WAIVED CXT

07/21/2003 BENCH TRIAL WAIVED CXT

07/21/2003 CHARGE # 1 12A100200 (PROSTITUTION) ALFORD PLEA ENTERED CXT

07/21/2003 CHARGE # 1 12A100200 (PROSTITUTION) GUILTY FINDING  
ENTERED CXT

07/21/2003 CHARGE # 1 12A100200 (PROSTITUTION) DEFERRED SENTENCE CXT

07/21/2003 JURISDICTION END DATE SET TO 07/20/2005 CXT

07/21/2003 CASE REFERRED TO PROBATION CXT  
DEF ORDERED TO REPORT TO MUNICIPAL COURT PROBATION  
IMMEDIATELY AFTER LEAVING COURT.

07/21/2003 JRS DCT END DATE EXTENDED 1 DAYS FROM 07/19/2005 TO  
07/20/2005 CXT

07/21/2003 DEFERRAL/DISMISSAL HEARING SCHEDULED FOR 07/20/2005 AT  
900 IN COURTROOM 1003 CXT  
\*\* DEF NEED NOT RETURN IF ALL CONDITIONS ARE MET \*\*

07/20/2005 STATUS/REVIEW REPORT RECEIVED FROM OTHELLA JONES CXT

07/20/2005 DF: DEIBERT, MELISSA M (607312) DEFENDANT NOT PRESENT CXT  
DL: 9:11 CLK: CXT. MPS RPT IN COURT AND RETAINED.

07/20/2005	BENCH WARRANT # 990304800 ISSUED 07/20/2005 ** FTA DFRRL, FTC HIVT & SSEX, \$1,500, NO PR ** DEF IS NOT CURRENTLY HELD IN KC CORRECTIONAL SYSTEM PER BAILIFF PZP ON 7/20/05.	CXT
09/29/2005	JRS DCT END DATE EXTENDED 71 DAYS FROM 07/20/05 TO 09/29/05	TMO
09/29/2005	BENCH WARRANT # 990304800 CLEARED 09/29/2005 (BOOKED INTO JAIL)	TMO
09/29/2005	JRS DCT END DATE EXTENDED DAYS FROM 09/29/2005 TO	TMO
09/29/2005	DEFENDANT BOOKED. BA# 205038293	TMO
09/29/2005	IN-CUSTODY ARRAIGNMENT SCHEDULED FOR 09/30/2005 AT 905 IN COURTROOM KCJ2	TMO
09/30/2005	DF: DEIBERT, MELISSA M (607312) PRESENT LOC 2521 CLK SY ATTY L.GIBSON. CITY REQUEST TO MAINTAIN \$1500 BAIL-DENIED. DFNS DENIED ALLEGATIONS FTC HIVT/SSEX-ADMITS TO FTA. MSP REPT IN CT FILE/RETAIN DFNS REQUEST TO RLS, SET REVIEW-GRT.	GDT
09/30/2005	PR GRANTED BY COURT	GDT
09/30/2005	CS TRACKING CS W/ 476891 (CS EVENT)	GDT
10/11/2005	REVIEW HEARING SCHEDULED FOR 10/31/2005 AT 1430 IN COURTROOM 1003	BJA
10/31/2005	DF: DEIBERT, MELISSA M (607312) PRESENT CLERK ALS. DL 2:57. ATTY J KIM PRESENT. CASE TRACKING W/ #476891. MPS REPORT IN COURT & RETAINED.	ALS
10/31/2005	MASTER CALENDAR SCHEDULED FOR 12/06/2005 AT 830 IN COURTROOM 1002	ALS
11/08/2005	NOTICE OF PROBATION VIOLATION HEARING FILED 11/08/05 BY ATTY BOB CHUNG, WSBA # 20396, FORWARD TO COURTROOM 1002 (CS EVENT)	LKP
11/22/2005	REVOCATION HEARING SET BY COURT SCHEDULED FOR 12/06/2005 AT 830 IN COURTROOM 1002	LBS
11/22/2005	MASTER CALENDAR HRNG SCHEDLD FOR 12/06/2005 AT 830 IN DEPT 1002, CANCELLED!	LBS
12/06/2005	DF: DEIBERT, MELISSA M (607312) DEFENDANT NOT PRESENT DL 10:15AM DF IS NOT CURRENTLY HELD IN KING COUNTY CORRECTIONAL SYSTEM PER BAILIFF	JXH
12/06/2005	BENCH WARRANT # 990308033 ISSUED 12/06/2005	JXH
12/06/2005	BENCH WARRANT ADD ON CALENDAR SCHEDULED FOR 12/08/2005 AT 1000 IN COURTROOM 1002	JXH

12/08/2005 DF: DEIBERT, MELISSA M (607312) DEFENDANT NOT PRESENT DL: 11:10 CLK:TD ATTY:J.POYDRAS. DEF DID NOT APPEAR FOR BWADD. WARRANT REMAINS OUTSTANDING.	TSD
02/22/2006 BENCH WARRANT # 990308033 CLEARED 02/22/2006 (QUASHED)	RER
02/22/2006 DF MOTION TO QUASH BENCH WARRANT-GRANTED. (CS EVENT)	RER
02/23/2006 REVOCATION HEARING SET BY COURT SCHEDULED FOR 02/23/2006 AT 900 IN COURTROOM 1102	RER
02/23/2006 DF: DEIBERT, MELISSA M (607312) PRESENT CLK RER DL 1104 AOR J. KIM CITY MOTION TO REVOKE DEFERRED SENTENCE-GRANTED.	RER
02/23/2006 DEFENDANT RECEIVED APPELLATE RIGHTS	RER
02/23/2006 CHARGE # 1 12A100200 (PROSTITUTION) SUSPENDED SENTENCE	RER
02/23/2006 JURISDICTION END DATE SET TO 02/22/2008	RER
02/23/2006 DEFENDANT REFERRED/RELEASED TO TIME PAY OFFICE	RER
03/09/2006 NOTICE OF APPEAL FILED ON 03/09/2006, SUPRCT CAUSE# 61031870	SXP
03/10/2006 TRANSCRIPT ISSUED	SXP
03/10/2006 STATUS/REVIEW REPORT RECEIVED FROM PROBATION SERVICES DIVISION/ COURT COMPLIANCE. FORWARDED TO JUDGE RIETSCHER FOR CONSIDERATION.	SMY
04/19/2006 REVIEW PROBATION HEARING SCHEDULED FOR 05/19/2006 AT 900 IN COURTROOM 1003	JRR
05/12/2006 STATUS/REVIEW REPORT RECEIVED FROM PROBATION SERVICES	NXB
05/19/2006 DF: DEIBERT, MELISSA M (607312) DEFENDANT NOT PRESENT DEFENDANT IS NOT CURRENTLY HELD IN KCCS PER BALIFF LAM CLK: CJS DL: 12:00:55	NXB
05/19/2006 BENCH WARRANT # 990312240 ISSUED 05/19/2006	NXB
06/01/2006 NOTICE OF APPEARANCE FILED BY TDA ATTY KATE DE ZENOTITA #36629 05/31/06	TXH
06/06/2006 BENCH WARRANT ADD ON CALENDAR SCHEDULED FOR 06/09/2006 AT 900 IN COURTROOM 1003 ADD ON MOTION TO QUASH BENCH WARRANT APPROVED BY JUDGE MAMIYA DEF ATTY CONTACTED VIA EMAIL	LBS
06/09/2006 DF: DEIBERT, MELISSA M (607312) PRESENT CLERK: MAK. DL: 11:22. ATTY K DEZENOTITA PRESENT. (D) MOTION TO QUASH B/W GRANTED. DEF ADMITS FTC WORK CREW. 1 ADDL DAY OF WORKCREW IMPOSED. CREW TO BE COMPLETED W/I 30 DAYS.	KJL

06/09/2006 CASE REFERRED TO PROBATION KJL

06/09/2006 WORK CREW IN LIEU OF JAIL INCREASED FROM 2 D TO 3 D KJL

06/09/2006 CHARGE# 1 12A100200 (PROSTITUTION) 1 Days OF SUSP  
COMPLY WITH JAIL SENTENCE REVOKED KJL

06/09/2006 BENCH WARRANT # 990312240 CLEARED 06/09/2006 (QUASHED) KJL

10/05/2006 REVIEW PROBATION HEARING SCHEDULED FOR 10/27/2006 AT  
900 IN COURTROOM 1003 JRR

10/05/2006 REVIEW HEARING SCHEDULED FOR FTC-JCRW PER PC CAROL  
BELL-DANIEL JRR

10/11/2006 STATUS/REVIEW REPORT RECEIVED FROM CAROL BELL-DANIEL. SAF

10/13/2006 NOTICE OF WITHDRAWAL FILED BY KATE ZENGOTITITA 101006  
(CS EVENT) JRT

10/27/2006 DF: DEIBERT, MELISSA M (607312) DEFENDANT NOT PRESENT SXL  
DL 10:43. CLK SXL. MPS RPT IN CRT AND RETAINED. DEFT  
IS NOT CURRENTLY HELD IN KING COUNTY CORRECTIONAL  
SYSTEM PER BAILIFF LAM DATE 10-27-06

10/27/2006 BENCH WARRANT # 990317013 ISSUED 10/27/2006 SXL

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\*\* Warrants \*\*

Wrnt Nr	Issued	Served	Wrnt/ Clnr Type	Description
990284238	03/18/2003	04/23/2003	BW PR	BENCH WARRANT RELEASED ON PERSONAL RECOGNIZANCE Reasons: FAIL TO APPEAR FOR INTAKE HEARING Warrant issued by: JUDGE ANN DANIELI
990304800	07/20/2005	09/29/2005	BW JL	BENCH WARRANT BOOKED INTO JAIL Reasons: FAIL TO APPEAR FOR DEFERRAL HEARING Rstrcs: FTA DFRRL, FTC HVT & SSEX, NO PR Warrant issued by: JUDGE RON MAMIYA
990308033	12/06/2005	02/22/2006	BW QU	BENCH WARRANT QUASHED Reasons: FAIL TO APPEAR FOR REVOCATION HEARING SET BY CRT Rstrcs: FTA REVOKE NO PR Warrant issued by: JUDGE SHIRLEY WILSON
990312240	05/19/2006	06/09/2006	BW QU	BENCH WARRANT QUASHED Reasons: FAIL TO APPEAR AT PROBATION/PRE SENTENCING Rstrcs: FTA JCRW FTP FINE NO PR

Warrant issued by: JUDGE IRENE TANABE

990317013 10/27/2006

BW BENCH WARRANT

Reasons: FAIL TO APPEAR AT PROBATION/PRE SENTENCING

Rstrcs: NO PR

Warrant issued by: JUDGE BRUCE CARTER

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\*\* Accounting Summary \*\*

Chg :	Obl :	Orig Obl :	Obl :	TP :
Sq# :	Type :	Amount :	Bal Due :	Status :
1	FINE	1000.00	50.00	
	BALW	5000.00	5000.00	

\*\* Total due on this case: 5050.00 \*\*

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

CITY OF SEATTLE, )  
Respondent, )  
vs. )  
MARKEYES MONTGOMERY, )  
Appellant. )

No. 06-1-03195-1 SEA  
RESPONDENT'S MOTION  
TO DISMISS APPEAL

**A. MOTION.**

Respondent City of Seattle moves to dismiss defendant's appeal on the ground that defendant is a fugitive from justice.

**B. STATEMENT OF THE CASE.**

On February 28, 2006, defendant was convicted of Driving While Intoxicated.<sup>1</sup> As part of his suspended sentence, defendant was ordered to complete chemical dependency treatment, attend a victim's panel and report to the probation department.<sup>2</sup> The sentence

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<sup>1</sup> Docket (attached).  
<sup>2</sup> Docket.

1 was not stayed pending appeal.<sup>3</sup> On July 14, 2006, a review hearing was scheduled  
2 because defendant had not completed the chemical dependency treatment, attended the  
3 victim's panel or reported to the probation department.<sup>4</sup> Defendant did not appear at that  
4 hearing so the court issued a warrant for his arrest.<sup>5</sup>

6 **C. ARGUMENT.**

- 7  
8 1. Because defendant has affirmatively avoided the court's jurisdiction, he has  
9 waived his right to appeal.

10 If a defendant flees the jurisdiction of the court pending an appeal, he waives his  
11 constitutional right to appeal.<sup>6</sup> Several rationales have been offered in support of this  
12 rule. A litigant who withdraws himself from the power of the court to enforce its  
13 judgment also withdraws the questions which he had submitted to the court's  
14 adjudication.<sup>7</sup> A defendant who flees the jurisdiction of the court is attempting to set the  
15 terms upon which he will surrender and is a contempt of the court's authority.<sup>8</sup> The  
16 likelihood that an absconding defendant will not appear in the event a new trial is ordered  
17 most likely makes the appeal moot.<sup>9</sup>

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20  
21 Defendant's failure to appear at the review hearing on July 14, 2006 demonstrates

22  
23 <sup>3</sup> Docket.

24 <sup>4</sup> Docket.

25 <sup>5</sup> Docket.

26 <sup>6</sup> *State v. Johnson*, 105 Wn.2d 92, 97, 711 P.2d 1017 (1986); *State v. Koloske*, 100  
27 Wn.2d 889, 892, 676 P.2d 456 (1984) (*overruled on other grounds, State v. Brown*, 113 Wn.2d  
28 520, 540, 782 P.2d 1013, 787 P.2d 906 (1989)); *State v. Mosley*, 84 Wn.2d 608, 609-10, 528  
29 P.2d 986 (1974).

<sup>7</sup> *Johnson*, 105 Wn.2d at 97.

<sup>8</sup> *Mosley*, 84 Wn.2d at 610.

1 that he is affirmatively avoiding the jurisdiction of the court. He has withdrawn himself  
2 from the power of Seattle Municipal Court to enforce its judgment. His refusal to submit  
3 to the authority of the court is a contempt. Because defendant may never reappear his  
4 appeal probably is moot. Defendant has thereby waived his constitutional right to appeal.  
5 This appeal should be dismissed.  
6

- 7  
8 2. If defendant wishes to invoke the “deported alien” exception to the rule  
9 requiring dismissal of the appeal of a fugitive from justice, defense counsel  
10 must establish that defendant has been deported.

11 In *State v. Ortiz*,<sup>10</sup> the court held that the rule calling for dismissal of an appeal by  
12 an absconding defendant does not apply to a defendant who has been deported. None of  
13 the rationales for the rule applies to a defendant who has been forcibly removed from the  
14 court’s jurisdiction.<sup>11</sup> The burden of invoking this exception, *i.e.*, establishing that a  
15 defendant has been deported, rests with defense counsel.<sup>12</sup>  
16

17 If defendant seeks to avoid dismissal of this appeal on the basis of the *Ortiz*  
18 exception, defense counsel must establish that defendant has been deported.  
19

- 20 3. Defendant’s subsequent appearance will not revive his right to appeal.

21 Defendant may well argue that this appeal should be reinstated once he reappears  
22 and again submits himself to the authority of the court. This contention was rejected in  
23 *Johnson*. “Once the right to appeal has been waived, as here, it is forfeited. It cannot be  
24  
25

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26 <sup>9</sup> *State v. Handy*, 27 Wash. 469, 471, 67 Pac. 1094 (1902).

27 <sup>10</sup> 113 Wn.2d 32, 774 P.2d 1229 (1989).

28 <sup>11</sup> *Ortiz*, 113 Wn.2d at 34-35.

29 <sup>12</sup> *State v. Rosales-Gonzales*, 59 Wn. App. 583, 585, 799 P.2d 756 (1990).

1 reactivated by an appearance subsequent to waiver.”<sup>13</sup> Nor will defendant be permitted to  
2 raise in a collateral attack on his conviction any issue he could have raised in this  
3 appeal.<sup>14</sup>  
4

5 Defendant probably will be apprehended or will have the arrest warrant quashed  
6 eventually. His arrest or the quashing of the arrest warrant should not act to reinstate this  
7 appeal.  
8

- 9 4. Defendant should, however, be given a limited time period in which to  
10 surrender.

11 The usual procedure in situations where a defendant has absconded during the  
12 pendency of his appeal is to provide him with a short period in which he can avoid  
13 dismissal of his appeal by surrendering.<sup>15</sup> Defendant should be given a limited period of  
14 time, perhaps until August 10, 2006, to return to custody to avoid dismissal of his appeal.  
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24 <sup>13</sup> *Johnson*, 105 Wn.2d at 98.

25 <sup>14</sup> *In the Matter of the Personal Restraint of Rountree*, 35 Wn. App. 557, 558, 668 P.2d  
26 1292 (1983).

27 <sup>15</sup> *See Johnson*, 105 Wn.2d at 94 (defendant given 27 days to surrender in order to defeat  
28 motion to dismiss appeal); *State v. Nason*, 20 Wn. App. 433, 434, 579 P.2d 366 (1978)  
29 (defendant given 10 days to return to custody, either voluntarily or involuntarily); *but see State v. Beck*, 23 Wn. App. 640, 598 P.2d 400 (1979) (grace period not required before appeal can be dismissed).

1 **D. CONCLUSION.**

2 Based on the foregoing argument, defendant's appeal should be dismissed unless  
3 he is returned to custody by August 10, 2006.  
4

5 Respectfully submitted this 10<sup>th</sup> day of January, 2006.

6 **THOMAS A. CARR**  
7 **SEATTLE CITY ATTORNEY**

8 By Richard Greene  
9 Richard Greene  
10 Assistant City Attorney  
11 WSBA #13496  
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THE DEFENDER ASSOC

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

CITY OF SEATTLE, )  
Respondent, )  
vs. )  
MARKEYES MONTGOMERY, )  
Appellant. )

No. 06-1-03195-1 SEA

RESPONDENT'S REPLY TO  
APPELLANT'S RESPONSE  
TO RESPONDENT'S MOTION  
TO DISMISS APPEAL

**A. SUPPLEMENTAL STATEMENT OF THE CASE.**

On February 28, 2006, defendant was convicted of Driving While Intoxicated.<sup>1</sup> As part of his suspended sentence, defendant was ordered to complete chemical dependency treatment, attend a victim's panel and report to the probation department.<sup>2</sup> The sentence was not stayed pending appeal.<sup>3</sup> On July 14, 2006, a review hearing was scheduled because defendant had not completed the chemical dependency treatment, attended the

<sup>1</sup> Docket (attached).

<sup>2</sup> Docket.

<sup>3</sup> Docket.

RESPONDENT'S REPLY TO  
APPELLANT'S RESPONSE  
TO RESPONDENT'S MOTION  
TO DISMISS APPEAL 1

Thomas A. Carr  
Seattle City Attorney  
700 Fifth Avenue, Suite 5350  
Seattle, WA 98124-4667  
(206) 684-7757

1 victim's panel or reported to the probation department.<sup>4</sup> Defendant did not appear at that  
2 hearing so the court issued a warrant for his arrest.<sup>5</sup>

3 On August 9, defendant or his counsel requested the trial court to schedule a  
4 hearing in order for defendant to move to quash the outstanding warrant.<sup>6</sup> The court  
5 obliged and scheduled a hearing for August 11.<sup>7</sup> Defendant again failed to appear so the  
6 arrest warrant remains outstanding.<sup>8</sup>

9 **B. ARGUMENT.**

10 1. Application of the "fugitive disentitlement" doctrine does not violate a state  
11 constitutional right to appeal.

12 Defendant contends that dismissing the appeal of a defendant who absconds  
13 during the pendency of the appeal is incompatible with the constitutional right to appeal.  
14

15 In *State v. Johnson*,<sup>9</sup> the Supreme Court, in applying the doctrine, stated:

16 Finally, if the appealing defendant flees the jurisdiction of the court  
17 pending an appeal, the defendant waives the right to prosecute the appeal.  
18 *State v. Koloske*, 100 Wn.2d 889, 676 P.2d 456 (1984); *State v. Mosley*, 84  
19 Wn.2d 608, 528 P.2d 986 (1974). Defendants who affirmatively avoid the  
20 court's jurisdiction waive their appeal and cannot claim a violation of  
21 Const. art. 1, § 22 (amend. 10). *State v. Sweet*, 90 Wn.2d 282, 581 P.2d 579  
22 (1978).

23 . . . By failing to appear at the court-ordered probation revocation  
24 hearing and failing to submit to the court's authority within the 30-day  
25 period allowed by the Court of Appeals, Johnson affirmatively waived his

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26 <sup>4</sup> Docket.

27 <sup>5</sup> Docket.

28 <sup>6</sup> Docket.

<sup>7</sup> Docket.

<sup>8</sup> Docket.

<sup>9</sup> 105 Wn.2d 92, 97-98, 711 P.2d 1017 (1986).

1 right to prosecute his appeal. *State v. Koloske*, *supra* at 892; *State v. Mosley*,  
2 *supra* at 609.

3 Although not discussing the issue in great detail, the court in *Johnson* rejected the  
4 suggestion that dismissing the appeal of an absconding defendant violates his  
5 constitutional right to appeal. Courts in other jurisdictions where the right to appeal a  
6 criminal conviction is constitutional rather than statutory also have rejected this  
7 argument.<sup>10</sup> Application of the “fugitive disentitlement” doctrine does not violate the  
8 state constitutional right to appeal.  
9  
10

11 2. The “fugitive disentitlement” doctrine is not based on any uniquely federal  
12 court considerations.

13 Defendant also contends that this doctrine’s application in Washington is based on  
14 federal cases that do not account for the state constitutional right to appeal. *State v.*  
15 *Handy*,<sup>11</sup> which appears to be the seminal case on this issue, relies on three out-of-state  
16 court decisions and one United States Supreme Court decision. *Johnson*,<sup>12</sup> which seems  
17 to be the most recent case applying the doctrine, relies on three Washington decisions and  
18 a dissenting opinion in a United States Supreme Court case. Defendant is simply  
19 incorrect that the doctrine is grounded on federal precedent.  
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22 The fugitive dismissal rule is based on several rationales, including the need to  
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25 <sup>10</sup> See *Commonwealth v. Elbridge*, 97 Mass. 543 (1867) (defendant’s escape from jail  
26 waives his right to appeal under Massachusetts Declaration of Rights, article 12); *Powell v. State*,  
27 99 Tex. Crim. 276, 269 S.W. 443, 448 (1925) (statute requiring dismissal of appeal of defendant  
who escapes is not unconstitutional as violating the constitutional right to appeal).

28 <sup>11</sup> 27 Wash. 469, 470-71, 67 Pac. 1094 (1902).

1 ensure enforcement of the appellate court's orders, the desire to uphold the dignity and  
2 efficiency of the court system, the view that escape or absence waives or forfeits any  
3 entitlement to relief and the belief that a threat of dismissal deters defendants from fleeing  
4 or remaining at large.<sup>13</sup> None of these considerations are distinctly related to federal  
5 courts or whether the right to appeal is constitutional rather than statutory. The "fugitive  
6 disentitlement" doctrine does not rely on federal precedent and is not based on any  
7 uniquely federal court considerations.  
8

9  
10 3. The "fugitive disentitlement" doctrine has particular application to  
11 defendant's appeal.

12 The issue that defendant apparently wishes to raise in his appeal is whether the  
13 trial court erred by denying his petition for deferred prosecution.<sup>14</sup> If defendant is correct,  
14 then the case will need to be remanded to the trial court for further proceedings. Yet,  
15 those proceedings cannot possibly occur so long as defendant refuses to submit himself to  
16 the trial court's jurisdiction. Proceeding with defendant's appeal would be a pointless  
17 expenditure of scarce public defense, prosecutor and judicial resources. In addition,  
18 defendant's contemptuous conduct should not be rewarded by considering his appeal. All  
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23 <sup>12</sup> 105 Wn.2d at 97.

24 <sup>13</sup> Annotation, *Effect of escape by, or fugitive status of, state criminal defendant on*  
25 *availability of appeal or other post-verdict or post-conviction relief – state cases*, 105 A.L.R. 5<sup>th</sup>  
26 529 § 2 [a], at 554 (2003); *see also* 5 W. LaFave, J. Israel & N. King, *Criminal Procedure* §  
27 27.5(c), at 921 (2<sup>nd</sup> Ed. 1999).

28 <sup>14</sup> Inasmuch as defendant has not complied with the chemical dependency treatment that  
29 was ordered as part of his sentence and has not reported to the probation department, his ability  
to comply with the same treatment as part of a deferred prosecution program seems questionable.

1 the rationales supporting the doctrine apply with particular effect to defendant's appeal.

2 **C. CONCLUSION.**

3 Based on the foregoing argument, defendant's appeal should be dismissed.

4  
5 Respectfully submitted this 21<sup>st</sup> day of September, 2006.

6 **THOMAS A. CARR**  
7 **SEATTLE CITY ATTORNEY**

8 By Richard Greene  
9 Richard Greene  
10 Assistant City Attorney  
11 WSBA #13496

MUNICIPAL COURT OF SEATTLE  
DOCKET  
Case Status: WRNT

r295002

CITY OF SEATTLE, Plaintiff

\*\* DRIVING WHILE INTOXICATED \*\*  
\*\* O/S WARRANT \*\*

Vs.

MONTGOMERY, MARKEYES DEVOR , Defendant

Address: 2814 S NORMAN ST  
SEATTLE, WA 98144  
206 323/7730 (Home) - / (Work)

Case No: 461665  
File Loc: REC  
Def No: 789349  
Incident No: 4389118  
Custody: OUT  
Rltd Grp No: 168022  
Co-Def's:

DOB: 01/25/1978 Age: 28 Sex: M Race: B Lang:

DOL: ~~XXXXXXXXXXXX~~

Sentencing Judge:

Prosecutor:

Defense Attorney: ALLMAN, THERESA

TDA

Interpreter:

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\*\* Charges \*\*

Chrg Doc No: 10232731 Type: BK Viol Date: 09/16/2004 Filing Date: 09/16/2004

Chrg 1: PRSNS UNDR THE INFLNCE OF INTXCNTS/DRUGS  
11.56.020 Plea: NG Find: G Status: AF  
Disposition: APPEAL FILED

BAIL BAIL NOT FORFEITABLE ADJ  
Start:09/16/2004 Due:09/16/2004 End:11/15/2004 PAID IN FULL  
Amt:500 Susp: Curr:

BRTH BREATH TEST ASSESSMENT RXB  
Start:02/28/2006 Due:02/28/2006 End:  
Amt:125 Susp: Curr:125 Time Pay: 45D

DIAS DUI ASSESSMENT FEE RXB  
Start:02/28/2006 Due:02/28/2006 End:  
Amt:103 Susp: Curr:103 Time Pay: 45D

FINE PAY FINE RXB  
Start:02/28/2006 Due:02/28/2006 End:  
Amt:5,000 Susp:4,150 Curr:850 Time Pay: 45D  
Rmks:TIME PAYMENT STARTED LATE/CASE NOT UPDATED AFTER DEF  
APPR'D. 050206 DUE DATE SET DUE TO DEF DOING JAIL IN  
RENTON. RXB000 032706

JAIL COMPLY WITH JAIL SENTENCE SLE  
Start:02/28/2006 Due:02/26/2011 End:  
Jail:365 Susp:355 Unit:Days Cfts:Y  
Rmks:02/28/06: CFTS, CFPTS, TO RUN CONSECUTIVELY TO CS483230

TO SERVE IN RENTON JAIL

Other Case Obligations:

BALW	BAIL ON A WARRANT	LBS
	Start:07/14/2006 Due: End:	
	Amt:10,000 Susp: Curr:10,000	
ABST	ABSTAIN FROM ALCOHOL/DRUG USE	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
CDAT	CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
	Rmks:AND FOLLOW UP	
DONT	DO NOT REFUSE BLOOD OR BREATH ALCOHOL TEST	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
DWIV	DWI VICTIM'S PANEL	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
IID	DRIVE ONLY VEHICLE W/IGNITION INTERLOCK .025	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
	Rmks:ONE YEAR	
NARO	NO ALCOHOL-RELATED OFFENSES	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
NDRO	NO DRUG RELATED OFFENSES	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
NOMV	NO MOVING VIOLATIONS	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
NVOI	COMPLY NOT DRIVE W/OUT VALID LIC OR INSURANCE	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
OTHR	OTHER OBLIGATION	SLE
	Start:09/18/2004 Due:03/18/2005 End:02/28/2006 STRICKEN	
	Rmks:09182004: CONDITIONS OF RELEASE: NCLV, NVOI, ABST,NDRO	
	NARO, DONT, IID IN ANY VEHICLE YOU DRIVE, ATTEND 5	
	SOBRIETY MTGS PER WEEK WITH PROOF TO ALL HEARINGS.	
	10/18/04 COURT REDUCES SOBRIETY MTGS TO THREE (3) PER	
	WEEK.	
PROB	PROBATION	SLE
	Start:02/28/2006 Due:02/26/2011 End:	
	Rmks:TO MONITOR	

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 \*\* Scheduled Hearings \*\*

S	Date	Time	Crtrm	Type	Tape	Judge	Prosecutor	Date	Clk
C	09/17/2004	10:05	KCJ2	ICA				09/16/2004	DXP
H	09/18/2004	13:30	KCJ2	DUIOCA	86945	EISENBERG, A	MILNOR, T	09/16/2004	TMO
H	10/18/2004	9:30	902	PTH		HURTADO, M	KILPATRIC, K	09/18/2004	JML
H	11/15/2004	10:30	902	PTH		HURTADO, M	ROSS, W	10/18/2004	ADJ

H 12/13/2004 9:30 902 PTH	HURTADO, M	ROSS, W	11/15/2004	ADJ
H 01/10/2005 9:30 902 PTH	BONNER, F	ROSS, W	12/13/2004	ADJ
H 02/14/2005 9:30 1101 PTH	HURTADO, M	SANDERS, M	01/10/2005	GDT
H 03/21/2005 9:30 1101 PTH	WILSON, S	CHAE, H	02/14/2005	VXS
H 04/25/2005 14:30 1103 PTH	HOLIFIELD, G	BOEHL, K	03/21/2005	ADJ
H 04/26/2005 9:00 1103 REVIEW	HOLIFIELD, G	BOEHL, K	04/25/2005	SLE
H 06/06/2005 14:30 1103 PTH	HOLIFIELD, G	SANDERS, M	04/26/2005	SLE
H 07/25/2005 13:30 1103 PTH	HOLIFIELD, G	SMITH, D	06/06/2005	JXH
H 09/06/2005 14:30 1103 PTH	HOLIFIELD, G	BOEHL, K	07/25/2005	MAK
H 11/04/2005 8:30 1002 RDNSS	BONNER, F	KILPATRIC, K	09/06/2005	MAK
H 11/08/2005 8:30 1002 MASTER	BONNER, F	FINKLE, M	09/06/2005	MAK
H 01/20/2006 8:30 1002 RDNSS	WILSON, S	KILPATRIC, K	11/08/2005	JXH
H 01/25/2006 8:30 1002 MASTER	BONNER, F	KILPATRIC, K	11/08/2005	JXH
R 02/24/2006 8:30 1002 RDNSS			01/25/2006	TSD
C 02/28/2006 8:30 1002 MASTER			01/25/2006	TSD
H 02/28/2006 10:00 1103 DISPO	HOLIFIELD, G	HOM, G	02/28/2006	SLE
H 03/29/2006 8:45 1103 J-REV	HOLIFIELD, G	KENNY, J	02/28/2006	SLE
H 06/30/2006 9:00 1103 RV_PB	ALICEA-GA, V	FAULKNER, W	05/31/2006	JRR
W 07/14/2006 9:00 1103 RV_PB	HOLIFIELD, G	SANDERS, M	06/30/2006	KLM
H 08/11/2006 9:00 1103 BWADD	HOLIFIELD, G	SANDERS, M	08/09/2006	KLM

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 \*\* Events \*\*

Date	Description	
09/16/2004	DEFENDANT BOOKED. BA# 204036523	DXP
09/16/2004	IN-CUSTODY ARRAIGNMENT SCHEDULED FOR 09/17/2004 AT 1005 IN COURTROOM KCJ2	DXP
09/16/2004	DUI OUT OF CUSTODY ARRAIGNMENT SCHEDULED FOR 09/18/2004 AT 1330 IN COURTROOM KCJ2	TMO
09/16/2004	IN-CUSTODY ARRAIGNMENT HRNG SCHDLD FOR 09/17/2004 AT 1005 IN DEPT KCJ2, CANCELLED!	TMO
09/18/2004	DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT CLK;JML. AOD: L. ROBERTS. TP:86944 LOC: 3285. TDA ASSIGNED/DISCOVERY PROVIDED. DEFENSE MOTION FOR RELEASE-BAIL REMAINS THE SAME. CITY MOTION TO SET BAIL AT \$5000 DENIED.	JML
09/18/2004	PROBABLE CAUSE FOR DETENTION FOUND BY THE COURT	JML
09/18/2004	CHARGE # 1 115602000 (D.U.I.) NOT GUILTY PLEA ENTERED	JML
09/18/2004	PRE-TRIAL HEARING SCHEDULED FOR 10/18/2004 AT 930 IN COURTROOM 902	JML
09/20/2004	REC'D COURT COPIES FROM SPD-UPDATE CR #-SCAN CITS, ENTERED COMPANION INFRACTION. (CS EVENT)	JCF
09/27/2004	NOTICE OF APPEARANCE FILED BY TDA 09272004, R BOCK 409	ZBA
10/18/2004	DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT DL 10:05 CLK:VAS ATTY:RS BOCK COURT SATISFIED WITH PROOF OF SOBRIETY MTGS.	ADJ

10/18/2004 CONTINUANCE REQUESTED BY DEFENSE - INVESTIGATIONS: GRANTED STW FILED 1/16/05.	ADJ
10/18/2004 DFNS MTION TO REDUCE SOBRIETY MTGS TO 3 PER WK: GRANTED (CS EVENT)	ADJ
10/18/2004 PRE-TRIAL HEARING SCHEDULED FOR 11/15/2004 AT 1030 IN COURTROOM 902	ADJ
11/15/2004 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT DL 10:16 CLK:VAS ATTY:RS BOCK	ADJ
11/15/2004 CONTINUANCE REQUESTED BY DEFENSE - EVALUATION: GRANTED. SPEEDY TRIAL RULE WAIVER FILED, NEW EXP 2/13/05. COURT SATISFIED WITH PROOF OF SOBRIETY MTGS, DF TO CONTINUE. DFNS MOTION TO EXONERATE BAIL: GRANTED.	ADJ
11/15/2004 BAIL EXONERATED	ADJ
11/15/2004 PRE-TRIAL HEARING SCHEDULED FOR 12/13/2004 AT 930 IN COURTROOM 902	ADJ
12/13/2004 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT DL 10:55 CLK:VAS ATTY:RS BOCK CONDITIONAL SUBMITTAL FILED	ADJ
12/13/2004 CONTINUANCE REQUESTED BY DEFENSE - POSSIBLE DEFERRED PROSECUTION: GRANTED. STW FILED NEW COMMENCEMENT DATE 12/13/04, NEW EXP 3/14/05. COURT SATISFIED WITH PROOF OF SOBRIETY MTGS, DF TO CONTINUE.	ADJ
12/13/2004 PRE-TRIAL HEARING SCHEDULED FOR 01/10/2005 AT 930 IN COURTROOM 902	ADJ
01/10/2005 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT 141 CLK JH ATTY BOCK. AA VERIFY IN OPEN CT.	GDT
01/10/2005 CONTINUANCE REQUESTED BY DEFENSE RESULT OF EVAL-GRT (CONDS OF SUBMITTAL FILED)	GDT
01/10/2005 SPEEDY TRIAL RULE WAIVER FILED NEW COMM DATE TODAY NEW EXP 4/8/05 DAYS	GDT
01/10/2005 PRE-TRIAL HEARING SCHEDULED FOR 02/14/2005 AT 930 IN COURTROOM 1101	GDT
02/14/2005 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT CLERK: VAMMS FTR 12:14. COURT SATISFIED WITH SOBERITY MEETINGS, DEFENDANT TO CONTINUE.	VXS
02/14/2005 DA: BOCK, ROBERT (1000009709) PRESENT	VXS
02/14/2005 CONTINUANCE REQUESTED BY DEFENSE EVALUATION - GRANTED.	VXS
02/14/2005 SPEEDY TRIAL RULE WAIVER FILED. (CS EVENT)	VXS

NEW COMMENCEMENT DATE 2/14/05  
NEW EXP. DATE 5/14/05

02/14/2005 PRE-TRIAL HEARING SCHEDULED FOR 03/21/2005 AT 930 IN VXS  
COURTROOM 1101

03/21/2005 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT ADJ  
DL 10:34 CLK:ADJ ATTY:G.BENSON-AMRAN

03/21/2005 CONTINUANCE REQUESTED BY DEFENSE - POSSIBLE DEFERRED ADJ  
PROSECUTION: GRANTED. STW FILED NEW EXP 6/19/05. COURT  
SATISFIED WITH PROOF OF AA PROOF.

03/21/2005 DFNS REQUEST AFTERNOON SET DUE TO SCHOOL SCHEDULE: ADJ  
GRANTED (CS EVENT)

03/21/2005 PRE-TRIAL HEARING SCHEDULED FOR 04/25/2005 AT 1430 IN ADJ  
COURTROOM 1103

04/25/2005 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT SLE  
DL: 3:24 CLK SJG ATTY G BENSON-AMRAM PRSSENT;  
DEF TO BRING AA'S ON TOMORROW

04/25/2005 CONTINUANCE REQUESTED BY DEFENSE -GRT SLE

04/25/2005 REVIEW HEARING SCHEDULED FOR 04/26/2005 AT 900 IN SLE  
COURTROOM 1103

04/26/2005 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT SLE  
CLK/SLE: DEF HAS PROOF OF AA'S, SET FOR PTH

04/26/2005 PRE-TRIAL HEARING SCHEDULED FOR 06/06/2005 AT 1430 IN SLE  
COURTROOM 1103

06/06/2005 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT JXH  
DL 4:19PM DF ATTY PRESENT G BENSON ARMAN.  
LAST CONT

06/06/2005 CONTINUANCE REQUESTED BY DEFENSE JXH  
GRANTED

06/06/2005 SPEEDY TRIAL RULE WAIVER FILED NEW COMM DATE TODAY NEW JXH  
EXP DATE 09022005 DAYS

06/06/2005 PRE-TRIAL HEARING SCHEDULED FOR 07/25/2005 AT 1330 IN JXH  
COURTROOM 1103

07/25/2005 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT MAK  
LOC 2:02. CLK MAK. DA: G. BENSON-ARRAM. PROOF OF 3 AA'S  
PER WEEK PROVIDED AND RETAINED.

07/25/2005 CONTINUANCE REQUESTED BY THE CITY MAK  
JUST RECIEVED DP. - GRANTED.

07/25/2005 SPEEDY TRIAL RULE WAIVER FILED, NEW COMM DATE 7/25/05 MAK  
NEW EXP DATE 10/21/05.

07/25/2005	PRE-TRIAL HEARING SCHEDULED FOR 09/06/2005 AT 1430 IN COURTROOM 1103	MAK
09/06/2005	DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT LOC 3:49. CLK MAK. DA: T ALMAN FOR AOR. DFNS MOTION FOR CT TO FUND DEFERRED PROS. - DENIED. TRIAL SETTING: SEE PRE-TRIAL ORDER FOR NOTED MOTIONS AND RULINGS.	MAK
09/06/2005	SPEEDY TRIAL RULE WAIVER FILED NEW COMM DATE 9/6/05 NEW EXP DATE 12/5/05.	MAK
09/06/2005	MASTER CALENDAR SCHEDULED FOR 11/08/2005 AT 830 IN COURTROOM 1002	MAK
11/04/2005	DF: MONTGOMERY, MARKEYES DEVOR (789349) DEFENDANT NOT PRESENT. DL 9:17AM	JXH
11/04/2005	DA: ALLMAN, THERESA (1000010182) PRESENT	JXH
11/04/2005	CONTINUANCE REQUESTED BY THE CITY GRANTED.	JXH
11/08/2005	DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT DL 9:58AM	JXH
11/08/2005	DA: ALLMAN, THERESA (1000010182) PRESENT	JXH
11/08/2005	SPEEDY TRIAL RULE WAIVER FILED NEW COMM DATE TODAY NEW EXP DATE 03-08-2006 DAYS	JXH
11/08/2005	MASTER CALENDAR SCHEDULED FOR 01/25/2006 AT 830 IN COURTROOM 1002	JXH
01/20/2006	DF: MONTGOMERY, MARKEYES DEVOR (789349) DEFENDANT NOT PRESENT. DL: 9:30 CLK:TD ATTY:M.JENSEN.	TSD
01/20/2006	CONTINUANCE REQUESTED BY THE CITY-OFFICER NOT AVAILABLE-GRANTED. LIST WED FOR DEF TO SIGN PAPERWORK.	TSD
01/25/2006	DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT DL: 9:20 CLK:TD ATTY:T.ALLMAN.	TSD
01/25/2006	SPEEDY TRIAL RULE WAIVER FILED NEW COMM DATE 01/25/06, NEW EXP DATE 04/23/06.	TSD
01/25/2006	MASTER CALENDAR SCHEDULED FOR 02/28/2006 AT 830 IN COURTROOM 1002	TSD
02/28/2006	MASTER CALENDAR HRNG SCHDLD FOR 02/28/2006 AT 830 IN DEPT 1002, CANCELLED!	SLE
02/28/2006	DISPOSITION HEARING SCHEDULED FOR 02/28/2006 AT 1000 IN COURTROOM 1103	SLE
02/28/2006	DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT CLK SLE: DL:11:23, DEFENDANT'S STATEMENT ON SUBMITTAL (CONDITIONAL) HAS BEEN WITHDRAWN AND A NEW ONE SUBMIT-	SLE

TED (BAC .23)

02/28/2006 DA: ALLMAN, THERESA (1000010182) PRESENT	SLE
02/28/2006 CHARGE # 1 115602000 (D.U.I.) GUILTY FINDING ENTERED	SLE
02/28/2006 CHARGE # 1 115602000 (D.U.I.) SUSPENDED SENTENCE	SLE
02/28/2006 JURISDICTION END DATE SET TO 02/26/2011	SLE
02/28/2006 DEFENDANT REFERRED/RELEASED TO TIME PAY OFFICE	SLE
02/28/2006 DEFENDANT REFERRED/RELEASED TO TIME PAY OFFICE	SLE
02/28/2006 DEFENDANT REFERRED/RELEASED TO TIME PAY OFFICE	SLE
02/28/2006 CASE REFERRED TO PROBATION	SLE
02/28/2006 TO BE GIVEN CREDIT FOR TIME SERVED	SLE
02/28/2006 DEFENDANT REPORTING TO JAIL- CHECK SCHEDULED FOR 03/29/2006 AT 845 IN COURTROOM 1103	SLE
03/03/2006 DATA SENT ELECTRONICALLY TO DOL ON CHARGE # 1	B
03/16/2006 NOTICE OF APPEAL FILED ON 03/15/2006, SUPRCT CAUSE# 61031951	SXP
03/23/2006 TRANSCRIPT ISSUED	SXP
03/27/2006 YAKIMA CNTY JAIL COMMITMENT SCHEDULED 03/28/06	BJK
03/29/2006 DF: MONTGOMERY, MARKEYES DEVOR (789349) DEFENDANT NOT PRESENT - CLK SLE: OTR - DEFT HAS REPORTED TO SERVE HIS 10 DAYS IN RENTON JAIL PER BAILIFF WK. FILE NOT IN COURT ON 03/29/06.	SLE
04/05/2006 YAKIMA CNTY JAIL RELEASE 04/05/06	BJK
05/31/2006 REVIEW PROBATION HEARING SCHEDULED FOR 06/30/2006 AT 900 IN COURTROOM 1103	JRR
05/31/2006 REVIEW HEARING SCHEDULED FOR FTC-CD EVAL-TX, VIC PANEL, FTR MPS PER PC LINDA LUITEN	JRR
06/30/2006 DF: MONTGOMERY, MARKEYES DEVOR (789349) PRESENT CLK KLM. CASE CONTINUED FOR DF TO OBTAIN COUNSEL. DF REFERRED TO OPD. MPS REPORT IN COURT.	KLM
06/30/2006 REVIEW PROBATION HEARING SCHEDULED FOR 07/14/2006 AT 900 IN COURTROOM 1103	KLM
07/14/2006 DF: MONTGOMERY, MARKEYES DEVOR (789349) DEFENDANT NOT PRESENT CLERK KLM MPS REPORT IN COURT FILE FTR-MPS FTC-CDAT/DUIV DEF IS NOT CURRENTLY HELD IN KING CO/ YAKIMA CORRECTIONAL SYSTEM PER BAILIFF WK	LBS

07/14/2006 BENCH WARRANT # 990313948 ISSUED 07/14/2006 LBS  
 07/29/2006 LICENSE HOLD NOTICE SENT TO DOL B  
 08/09/2006 BENCH WARRANT ADD ON CALENDAR SCHEDULED FOR 08/11/2006 KLM  
 AT 900 IN COURTROOM 1103  
 08/10/2006 NOTICE OF APPEARANCE FILED BY TDA: THERESA ALLMAN, ALS  
 WSBA# 20878  
 08/11/2006 DF: MONTGOMERY, MARKEYES DEVOR (789349) DEFENDANT NOT SLE  
 PRESENT - CLK SLE: DL:11:17, DEFT FTA FOR BWADD, DO NOT  
 RE SET DEFT TO BE BOOKED INTO JAIL. DEF NOT HELD IN KC  
 JAIL ON 8/11/06

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 \*\* Warrants \*\*

Wrnt Nr	Issued	Served	Wrnt/ Clrn Type	Description
990313948	07/14/2006		BW	BENCH WARRANT

Reasons: FAIL TO APPEAR AT PROBATION/PRE SENTENCING  
 Rstrcs: NO PR FTA-RVPB FTC-CDAT/DUIV FTR-MPS  
 Warrant issued by: JUDGE GEORGE HOLIFIELD

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 \*\* Accounting Summary \*\*

Post Date	Bail Amount	Type	Paid	Method	Status	DC	Posted By
09/16/2004	500.00	BAIL	500.00	CA	E	P	MONTGOMERY, W

Chg Sq#	Obl Type	Orig Obl Amount	Obl Bal Due	TP	Status
1	BRTH	125.00	125.00		45D
1	DIAS	103.00	103.00		45D
1	FINE	5000.00	850.00		45D
	BALW	10000.00	10000.00		

\*\* Total due on this case: 11078.00 \*\*



1 was revoked and defendant was ordered to serve this sentence on work crew.<sup>4</sup> At that  
2 time, a review hearing was set for September 18 to determine if defendant had completed  
3 the work crew.<sup>5</sup> Defendant did not appear at that hearing, and the work crew obligation  
4 had not been completed so the court continued the case for one week.<sup>6</sup> On September 25,  
5 the court received a probation report indicating that defendant still had not completed the  
6 work crew obligation.<sup>7</sup> The court then issued a warrant for defendant's arrest.<sup>8</sup>

9 **C. ARGUMENT.**

- 10 1. Because defendant has affirmatively avoided the court's jurisdiction, he has  
11 waived his right to appeal.

12 If a defendant flees the jurisdiction of the court pending an appeal, he waives his  
13 constitutional right to appeal.<sup>9</sup> Several rationales have been offered in support of this  
14 rule. A litigant who withdraws himself from the power of the court to enforce its  
15 judgment also withdraws the questions which he had submitted to the court's  
16 adjudication.<sup>10</sup> A defendant who flees the jurisdiction of the court is attempting to set the  
17 terms upon which he will surrender and is a contempt of the court's authority.<sup>11</sup> The

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21 <sup>3</sup> Docket.

22 <sup>4</sup> Docket.

23 <sup>5</sup> Docket; Alternative to Confinement Commitment Referral (attached).

24 <sup>6</sup> Docket.

25 <sup>7</sup> Docket; Probation Services Division Status Report (attached).

26 <sup>8</sup> Docket.

27 <sup>9</sup> *State v. Johnson*, 105 Wn.2d 92, 97, 711 P.2d 1017 (1986); *State v. Koloske*, 100  
28 Wn.2d 889, 892, 676 P.2d 456 (1984) (*overruled on other grounds*, *State v. Brown*, 113 Wn.2d  
29 520, 540, 782 P.2d 1013, 787 P.2d 906 (1989)); *State v. Mosley*, 84 Wn.2d 608, 609-10, 528  
P.2d 986 (1974).

<sup>10</sup> *Johnson*, 105 Wn.2d at 97.

<sup>11</sup> *Mosley*, 84 Wn.2d at 610.

1 likelihood that an absconding defendant will not appear in the event a new trial is ordered  
2 most likely makes the appeal moot.<sup>12</sup>

3 Defendant's failure to appear at the review hearing on September 18, 2006  
4 demonstrates that he is affirmatively avoiding the jurisdiction of the court. He has  
5 withdrawn himself from the power of Seattle Municipal Court to enforce its judgment.  
6 His refusal to submit to the authority of the court is a contempt. Because defendant may  
7 never reappear his appeal probably is moot. Defendant has thereby waived or forfeited  
8 his constitutional right to appeal. This appeal should be dismissed.  
9  
10

11 2. Application of the "fugitive disentitlement" doctrine does not violate a state  
12 constitutional right to appeal.

13 Defendant may contend that dismissing the appeal of a defendant who absconds  
14 during the pendency of the appeal is incompatible with the constitutional right to appeal.  
15 In *State v. Johnson*,<sup>13</sup> the Supreme Court, in applying the doctrine, stated:  
16  
17

18 Finally, if the appealing defendant flees the jurisdiction of the court  
19 pending an appeal, the defendant waives the right to prosecute the appeal.  
20 *State v. Koloske*, 100 Wn.2d 889, 676 P.2d 456 (1984); *State v. Mosley*, 84  
21 Wn.2d 608, 528 P.2d 986 (1974). Defendants who affirmatively avoid the  
22 court's jurisdiction waive their appeal and cannot claim a violation of  
23 Const. art. 1, § 22 (amend. 10). *State v. Sweet*, 90 Wn.2d 282, 581 P.2d 579  
24 (1978).

25 . . . By failing to appear at the court-ordered probation revocation  
26 hearing and failing to submit to the court's authority within the 30-day  
27 period allowed by the Court of Appeals, Johnson affirmatively waived his  
28 right to prosecute his appeal. *State v. Koloske*, *supra* at 892; *State v. Mosley*,  
29 *supra* at 609.

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<sup>12</sup> *State v. Handy*, 27 Wash. 469, 471, 67 Pac. 1094 (1902).

<sup>13</sup> 105 Wn.2d at 97-98.

1 Although not discussing the issue in great detail, the court in *Johnson* rejected the  
2 suggestion that dismissing the appeal of an absconding defendant violates his  
3 constitutional right to appeal. Courts in other jurisdictions where the right to appeal a  
4 criminal conviction is constitutional rather than statutory also have rejected this  
5 argument.<sup>14</sup> Application of the “fugitive disentitlement” doctrine does not violate the  
6 state constitutional right to appeal.  
7

8  
9 3. The “fugitive disentitlement” doctrine is not based on any uniquely federal  
10 court considerations.

11 Defendant also may contend that this doctrine’s application in Washington is based  
12 on federal cases that do not account for the state constitutional right to appeal. *State v.*  
13 *Handy*,<sup>15</sup> which appears to be the seminal case on this issue, relies on three out-of-state  
14 court decisions and one United States Supreme Court decision. *Johnson*,<sup>16</sup> which seems  
15 to be the most recent case applying the doctrine, relies on three Washington decisions and  
16 a dissenting opinion in a United States Supreme Court case. The doctrine does not appear  
17 to be grounded on federal precedent.  
18

19  
20 The fugitive dismissal rule is based on several rationales, including the need to  
21 ensure enforcement of the appellate court’s orders, the desire to uphold the dignity and  
22 efficiency of the court system, the view that escape or absence waives or forfeits any  
23  
24

25  
26 <sup>14</sup> See *Commonwealth v. Elbridge*, 97 Mass. 543 (1867) (defendant’s escape from jail  
27 waives his right to appeal under Massachusetts Declaration of Rights, article 12); *Powell v. State*,  
28 99 Tex. Crim. 276, 269 S.W. 443, 448 (1925) (statute requiring dismissal of appeal of defendant  
29 who escapes is not unconstitutional as violating the constitutional right to appeal).

<sup>15</sup> 27 Wash. at 470-71.

1 entitlement to relief and the belief that a threat of dismissal deters defendants from fleeing  
2 or remaining at large.<sup>17</sup> None of these considerations are distinctly related to federal  
3 courts or whether the right to appeal is constitutional rather than statutory. The “fugitive  
4 disentitlement” doctrine does not rely on federal precedent and is not based on any  
5 uniquely federal court considerations.  
6

- 7  
8 4. If defendant wishes to invoke the “deported alien” exception to the rule  
9 requiring dismissal of the appeal of a fugitive from justice, defense counsel  
10 must establish that defendant has been deported.

11 In *State v. Ortiz*,<sup>18</sup> the court held that the rule calling for dismissal of an appeal by  
12 an absconding defendant does not apply to a defendant who has been deported. None of  
13 the rationales for the rule applies to a defendant who has been forcibly removed from the  
14 court’s jurisdiction.<sup>19</sup> The burden of invoking this exception, *i.e.*, establishing that a  
15 defendant has been deported, rests with defense counsel.<sup>20</sup>  
16

17 If defendant seeks to avoid dismissal of this appeal on the basis of the *Ortiz*  
18 exception, defense counsel must establish that defendant has been deported.  
19

- 20 5. Defendant’s subsequent appearance will not revive his right to appeal.

21 Defendant may well argue that this appeal should be reinstated once he reappears  
22  
23

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24 <sup>16</sup> 105 Wn.2d at 97.

25 <sup>17</sup> Annotation, *Effect of escape by, or fugitive status of, state criminal defendant on*  
26 *availability of appeal or other post-verdict or post-conviction relief—state cases*, 105 A.L.R. 5<sup>th</sup>  
27 529 § 2 [a], at 554 (2003); *see also* 5 W. LaFave, J. Israel & N. King, *Criminal Procedure* §  
28 27.5(c), at 921 (2<sup>nd</sup> Ed. 1999).

29 <sup>18</sup> 113 Wn.2d 32, 774 P.2d 1229 (1989).

<sup>19</sup> *Ortiz*, 113 Wn.2d at 34-35.

<sup>20</sup> *State v. Rosales-Gonzales*, 59 Wn. App. 583, 585, 799 P.2d 756 (1990).

1 and again submits himself to the authority of the court. This contention was rejected in  
2 *Johnson*. "Once the right to appeal has been waived, as here, it is forfeited. It cannot be  
3 reactivated by an appearance subsequent to waiver."<sup>21</sup> Nor will defendant be permitted to  
4 raise in a collateral attack on his conviction any issue he could have raised in this  
5 appeal.<sup>22</sup>

6  
7 Defendant probably will be apprehended or will have the arrest warrant quashed  
8 eventually. His arrest or the quashing of the arrest warrant should not act to reinstate this  
9 appeal.  
10

- 11 6. Defendant should, however, be given a limited time period in which to  
12 surrender.

13  
14 The usual procedure in situations where a defendant has absconded during the  
15 pendency of his appeal is to provide him with a short period in which he can avoid  
16 dismissal of his appeal by surrendering.<sup>23</sup> Defendant should be given a limited period of  
17 time, perhaps until November 2, 2006, to return to custody to avoid dismissal of his  
18 appeal.  
19  
20  
21  
22  
23

24 <sup>21</sup> *Johnson*, 105 Wn.2d at 98.

25 <sup>22</sup> *In the Matter of the Personal Restraint of Rountree*, 35 Wn. App. 557, 558, 668 P.2d  
1292 (1983).

26 <sup>23</sup> See *Johnson*, 105 Wn.2d at 94 (defendant given 27 days to surrender in order to defeat  
27 motion to dismiss appeal); *State v. Nason*, 20 Wn. App. 433, 434, 579 P.2d 366 (1978)  
28 (defendant given 10 days to return to custody, either voluntarily or involuntarily); but see *State v.*  
29 *Beck*, 23 Wn. App. 640, 598 P.2d 400 (1979) (grace period not required before appeal can be  
dismissed).

1 **D. CONCLUSION.**

2 Based on the foregoing argument, defendant's appeal should be dismissed unless  
3 he is returned to custody by November 2, 2006.

4  
5 Respectfully submitted this 11<sup>th</sup> day of October, 2006.

6 **THOMAS A. CARR**  
7 **SEATTLE CITY ATTORNEY**

8 By Richard Greene  
9 Richard Greene  
10 Assistant City Attorney  
11 WSBA #13496

MUNICIPAL COURT OF SEATTLE  
DOCKET  
Case Status: WRNT

r295002

CITY OF SEATTLE, Plaintiff

\*\* DOMESTIC VIOLENCE \*\*  
\*\* O/S WARRANT \*\*

Vs.

KLEIN, STEPHEN BARTLETT , Defendant

Address: 19626 FILBERT RD  
BOTHELL, WA 98012  
206 854/3037 (Home)

Case No: 480244  
File Loc: REC  
Def No: 15320  
Incident No: 5551612  
Custody: OUT  
Rltd Grp No:  
Co-Def's:

DOB: 01/03/1957 Age: 49 Sex: M Race: W Lang:

DOL: ██████████

Sentencing Judge:

Prosecutor:

Defense Attorney: SAMUEL, ANNA

206 674/4700

Interpreter:

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\*\* Charges \*\*

Chrg Doc No: Type: BK Viol Date: 12/30/2005 Filing Date: 12/30/2005

Chrg 1: ASSAULT  
12A.06.010 Plea: NG Find: G Status: AF  
Disposition: APPEAL FILED

BAIL BAIL NOT FORFEITABLE NCH  
Start:12/31/2005 Due:12/31/2005 End:04/05/2006 OBLIGATION COMPLETED  
Amt:20,000 Susp: Curr:  
Rmks:CUST PD \$43 W/CRED CARD CONF#091749 PER PHONE REQ  
NHC050306.

BAIL BAIL NOT FORFEITABLE CXT  
Start:12/30/2005 Due:12/30/2005 End:12/31/2005 APPEARED IN COURT  
Amt:950 Susp: Curr:

FINE PAY FINE SJG  
Start:03/29/2006 Due:03/27/2008 End:  
Amt:5,000 Susp:5,000 Curr:

JAIL COMPLY WITH JAIL SENTENCE SAF  
Start:08/03/2006 Due:03/27/2008 End:  
Jail:365 Susp:265 Unit:Days Cfts:Y  
Rmks:8/3/06: TEN DAYS OF SUSPENDED SENT REVOKED. DEF ORDERED  
TO DO JCRW(10 DAYS) OLD BAL 365/275.. NEW BAL 365/265.

JCRW	WORK CREW IN LIEU OF JAIL	SAF
	Start:08/03/2006 Due:03/27/2008 End:	
	Jail:10 Susp: Unit:Days Cfts:N	
Other Case Obligations:		
BALW	BAIL ON A WARRANT	SAF
	Start:09/25/2006 Due: End:	
	Amt:1,000 Susp: Curr:1,000	
CCFE	CRIMINAL CONVICTION FEE	IVR
	Start:03/29/2006 Due:03/27/2008 End:05/03/2006 PAID IN FULL	
	Amt:43 Susp: Curr:	
CADD	REPORT ADDR CHANGE TO COURT IN WRITING W/IN 24HR	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
DVTX	DOMESTIC VIOLENCE TREATMENT	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
EHMP	EHM PRIOR TO ADJUDICATION	SJG
	Start:03/27/2006 Due:03/27/2008 End:	
EHMP	EHM PRIOR TO ADJUDICATION	SJG
	Start:03/23/2006 Due:03/29/2006 End:03/29/2006 OBLIGATION COMPLETED	
MHDT	COMPLETE MENTAL HEALTH DIAGNOSIS AND TREATMENT	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
NCLV	NO CRIMINAL LAW VIOLATIONS	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
NCOW	COMPLY WITH WRITTEN NO CONTACT ORDER	SJG
	Start:03/29/2006 Due:03/28/2008 End:	
	Vctm:ROY, TERESA D 06/17/1965	
	Conditions:STAY ONE THOUSAND FEET FROM VICTIM	
	Vctm:FREDERICKSON, MICHAEL 03/13/1957	
	Conditions:STAY ONE THOUSAND FEET FROM VICTIM	
	Vctm:BOYER, MICHAEL 05/03/1967	
	Conditions:STAY ONE THOUSAND FEET FROM VICTIM	
NCOW	COMPLY WITH WRITTEN NO CONTACT ORDER	SJG
	Start:12/31/2005 Due:06/29/2006 End:03/29/2006 CANCELLED	
	Vctm:ROY, TERESA D 06/17/1965	
	Conditions:NOT TO COME WITHIN 500FT ONE CIVIL STANDBY AUTHORIZED	
	Vctm:FREDERICKSON, MICHAEL 03/13/1957	
	Conditions:	
	Vctm:BOYER, MICHAEL 05/03/1967	
	Conditions:	
NOWP	NO WEAPONS	SJG
	Start:03/29/2006 Due:03/27/2008 End:	
OTHR	OTHER OBLIGATION	SJG
	Start:12/31/2005 Due:06/29/2006 End:03/29/2006 STRICKEN	
	Rmks:12/31/05: CONDITIONS OF RELEASE: NCLV, NCOW, NOWP,	
	PHONE BLOCKS	
	03/23/06 COURT IMPOSES TWO AHO'S AND EHMP.	

PROB PROBATION SAF  
Start:03/29/2006 Due:03/27/2008 End:

PROB PROBATION SJG  
Start:03/29/2006 Due:03/29/2008 End:03/29/2006 STRICKEN

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\*\* Scheduled Hearings \*\*

S	Date	Time	Crtrm	Type	Tape	Judge	Prosecutor	Date	Clk
H	12/31/2005	10:05	KCJ2	ICA		EISENBERG, A	FAULKNER, W	12/30/2005	TMO
H	01/11/2006	13:30	1002	IDVPTH		BONNER, F	HAYDEN, S	12/31/2005	CXT
H	01/27/2006	8:30	1002	RDNSS		BONNER, F	KILPATRIC, K	01/11/2006	TSD
H	01/31/2006	8:30	1002	MASTER		BONNER, F	FINKLE, M	01/11/2006	TSD
H	02/09/2006	10:00	1002	MOTION		BONNER, F	FAULKNER, W	02/01/2006	JXH
H	02/16/2006	10:00	1002	MOTION		BONNER, F	KENNY, J	02/14/2006	JXH
R	02/17/2006	8:30	1002	RDNSS				02/16/2006	JXH
C	02/22/2006	8:30	1002	MASTER				01/31/2006	JXH
H	02/22/2006	8:30	1002	MASTER		BONNER, F	KILPATRIC, K	02/16/2006	JXH
H	02/22/2006	9:00	1003	JURY		MAMIYA, R	ROBERTSON, R	02/22/2006	JMM
H	03/10/2006	10:00	1003	RDNSS		HANKINS, D	ROBERTSON, R	02/22/2006	JMM
H	03/17/2006	10:00	1003	RDNSS		WILSON, S	ROBERTSON, R	03/10/2006	SJG
H	03/21/2006	9:00	1003	JURY		MAMIYA, R	HOM, G	02/22/2006	JMM
H	03/22/2006	9:00	1003	JURY		MAMIYA, R	HOM, G	03/21/2006	SJG
H	03/23/2006	9:00	1003	JURY		MAMIYA, R	ROBERTSON, R	03/22/2006	JMM
H	03/29/2006	9:00	1003	SENT		MAMIYA, R	ROBERTSON, R	03/23/2006	SJG
H	08/03/2006	13:30	1003	DVREV		MAMIYA, R	AMAN, H	07/07/2006	JRR
H	09/18/2006	9:00	1003	REVIEW		MAMIYA, R	AMEN, H	08/03/2006	SAF
W	09/25/2006	9:00	1003	STATUS		MAMIYA, R	AMAN, H	09/18/2006	JXH
C	11/09/2006	13:30	1003	RV_PB				10/11/2006	JRR

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\*\* Events \*\*

Date	Description	
12/30/2005	DEFENDANT BOOKED. BA# 205050936	TMO
12/30/2005	IN-CUSTODY ARRAIGNMENT SCHEDULED FOR 12/31/2005 AT 1005 IN COURTROOM KCJ2	TMO
12/31/2005	DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT DL: 11:21 CLK: CXT. AOD: M. ODAMA. DFNS MTN FOR RELEASE - DENIED. CITY MTN TO SET BAIL AT \$20,000 - GRANTED.	CXT
12/31/2005	DEF SCREENED-CASE REFERRED TO ACA FOR ASSIGNMENT	CXT
12/31/2005	PROBABLE CAUSE FOUND BY COURT	CXT
12/31/2005	CHARGE # 1 12A060100 (ASSAULT) NOT GUILTY PLEA ENTERED	CXT
12/31/2005	NO CONTACT ORDER WITH ROY, TERESA D DOB 06/17/1965	CXT
12/31/2005	IN CUSTODY DOMESTIC VIOLENCE PRE-TRIAL HEARING SCHEDULED FOR 01/11/2006 AT 1330 IN COURTROOM 1002	CXT

01/09/2006 NOTICE OF APPEARANCE FILED BY ACA ATTY. ARTHUR T. ALMEREZ WSBA# 27411 ON 1-6-06	RDM
01/11/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT DL 2:20 CLK:TD ATTY:A.ALMEREZ. TRIAL SETTING: SEE PRE-TRIAL ORDER FOR NOTED MOTIONS AND RULINGS.	TSD
01/11/2006 DEF MOTION FOR REDUCTION OF BAIL OR PR-DENIED. (CS EVENT)	TSD
01/11/2006 MASTER CALENDAR SCHEDULED FOR 01/31/2006 AT 830 IN COURTROOM 1002	TSD
01/27/2006 DF: KLEIN, STEPHEN BARTLETT (15320) DEFENDANT NOT PRESENT: DL 9:35AM	JXH
01/27/2006 CONTINUANCE REQUESTED BY DEFENSE DENIED	JXH
01/31/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT DL 10:21AM DF ATTY PRESENT ALMEREZ.	JXH
01/31/2006 CONTINUANCE REQUESTED BY THE CITY ATTY IN TRIAL GRANTED.	JXH
01/31/2006 MASTER CALENDAR SCHEDULED FOR 02/22/2006 AT 830 IN COURTROOM 1002	JXH
01/31/2006 MOTION FILED BY ATTY REBECCA ROBERTSON ON 01/31/6 (CS DOCUMENT FILED WITH MASTER CALENDAR CLERK	TXH
02/01/2006 MOTION HEARING SCHEDULED FOR 02/09/2006 AT 1000 IN COURTROOM 1002	JXH
02/09/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT CLERK LBS DEF ATTY A.ALMEREZ DEF MOTION TO MODIFY NCOW - LIFTING ADDRESS FROM NCO - RESERVED CASE MAY BE REDOCKETED IF DEF CAN PROVIDE PROOF THAT VICTIM NO LONGER RESIDES THERE	LBS
02/13/2006 MOTION FILED 02/10/6 SIGNED 02/17/06 /TO RESCH. (CS EVENT)	TXH
02/14/2006 MOTION HEARING SCHEDULED FOR 02/16/2006 AT 1000 IN COURTROOM 1002	JXH
02/16/2006 DF: KLEIN, STEPHEN BARTLETT (15320) DEFENDANT NOT PRESENT. DL 10:37AM STRIKE HRG. BACK ON MASTER CAL.	JXH
02/16/2006 MASTER CALENDAR SCHEDULED FOR 02/22/2006 AT 830 IN COURTROOM 1002	JXH
02/22/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT CASE CALLED AT MASTER TRANS TO COURTROOM 1003	JMM
02/22/2006 JURY TRIAL SCHEDULED FOR 02/22/2006 AT 900 IN	JMM

COURTROOM 1003

02/22/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT JMM  
CLERK:JMM, DL:10:04 & 10:20. DFNS ATTY: MR. ALMEREZ  
CITY MOTION TO MAINTAIN CASE IN COURTROOM 1003 - GRNT.  
JOINT MOTION TO CONTINUE CITY ATTORNEY IN TRIAL - GRNT

02/22/2006 DFNS MOTION TO MODIFY NCOW TO RMV ADDRESS ONLY FROM JMM  
NCOW - GRANTED. ORDER MODIFYING NCOW S/F (CS EVENT)

02/22/2006 SPEEDY TRIAL RULE WAIVER FILED NEW COMMENCEMENT JMM  
DATE:2/22/2006, NEW EXP DATE:5/21/06

02/22/2006 READINESS HEARING SCHEDULED FOR 03/10/2006 AT 1000 IN JMM  
COURTROOM 1003

02/22/2006 JURY TRIAL SCHEDULED FOR 03/21/2006 AT 900 IN JMM  
COURTROOM 1003

02/28/2006 MOTION AND AFFIDAVIT FOR EXONERATION AND SPECIFYING LKP  
REASONS FOR SURRENDER FILED 02/28/06 BY HENRY'S  
BAILBONDS, FORWARD TO COURTROOM 1003 (CS EVENT)

03/10/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT SJG  
DL: 10:21 CLK SJG DEFENSE SETS 2ND READINESS,  
POSSIBLE DISPOSITION:

03/10/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT SJG

03/10/2006 READINESS HEARING SCHEDULED FOR 03/17/2006 AT 1000 IN SJG  
COURTROOM 1003

03/17/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT JMM

03/17/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT JMM  
CLERK:JMM, DL:11:56. PARTIES READY, CASE PROCEEDING  
TO TRIAL.

03/21/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT SJG  
DL: 11:19 CLK SJG PRELIMINARY MOTIONS

03/21/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT SJG

03/21/2006 DEFENSE MARKS EXHIBIT #1, LETTER FROM GARY FAVERO SJG  
(ONLY FOR 3.5/3.6 HRG).

03/21/2006 MOTIONS IN LIMINE; 3.5/3.6 HEARING SJG

03/21/2006 OF: SUNDIN, CASEY L (4236) TESTIFIED SJG

03/21/2006 CITY MARKS EXHIBIT #2, STATEMENT FORM #05-551612, SJG  
PAGE 1 OF 2; ADMITTED. CITY MARKS EXHIBIT #3, EVENT  
HISTORY #S0551612; ADMITTED.

03/21/2006 DF: KLEIN, STEPHEN BARTLETT (15320) TESTIFIED SJG

03/21/2006 ARGUMENTS/RULINGS SJG

03/21/2006 DL: 4:16 PROSPECTIVE JURORS ESCORTED INTO COURTROOM, COURT GIVES OVERVIEW, CITY/DEFENSE AND WITNESSES INTRODUCED TO COURT, JURORS SWORN-IN.	SJG
03/21/2006 VOIRE DIRE (CS EVENT)	SJG
03/21/2006 DL: 5:13 JURY PANEL SELECTED, SWORN-IN AND COURT READS INSTRUCTIONS. JURY EXCUSED FOR THE DAY.	SJG
03/21/2006 JURY TRIAL SCHEDULED FOR 03/22/2006 AT 900 IN COURTROOM 1003	SJG
03/22/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT	JMM
03/22/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT CLERK:JMM, DL:00:00:00. COURT RESUMED WITH JURY TRIAL FROM 3/21/06.	JMM
03/22/2006 DFNS RAISED ISSUE RE: NOTICE TO COMPEL (COURT WILL REVIEW NOTES IN-CAMERA. DFNS RAISED ISSUE RE: PRIOR INCIDENTS OF VIOLENT BEHAVIOR:	JMM
03/22/2006 COURT WILL ALLOW THE FOLLOWING TO BE TESTIFIED TO RE: VIOLENT BEHAVIOR: 1.HIT IN FACE (NOV.) 2.CHASED WITH KNIFE 3.CHASED WITH KNIFE - STUCK IN DOOR NOTHING AS TO DRUGS.	JMM
03/22/2006 DEFENSE EXHIBIT# 4 (NOTES) MARKED - ONLY	JMM
03/22/2006 JURY TRIAL PROCEEDING	JMM
03/22/2006 OPENING STATEMENTS: CITY DEFENSE CITY PRESENTS ITS EVIDENCE	JMM
03/22/2006 OF: SUNDIN, CASEY L (4236) TESTIFIED	JMM
03/22/2006 PLAINTIFFS EXHIBIT# 3 (SPD LOG) MARKED	JMM
03/22/2006 WT:BOYER, MICHAEL (CITY) TESTIFIED	JMM
03/22/2006 PLAINTIFFS EXHIBIT# 5 (911 TAPE) MARKED ONLY - PLAYED IN OPEN COURT	JMM
03/22/2006 WT:FREDERICKSON, MICHAEL (CITY) TESTIFIED	JMM
03/22/2006 PLAINTIFFS EXHIBIT# 5 (911 TAPE) PREVIOUSLY MARKED REPLAYED IN OPEN COURT	JMM
03/22/2006 CITY MOTION TO ADMIT PLAINTIFFS EXHIBIT 5 - GRANTED CITY RESTED JURORS EXCUSED FOR THE EVENING. CASE CONTINUED ONE DAY TO COMPLETE THE BALANCE OF JURY TRIAL.	JMM

03/22/2006 JURY TRIAL SCHEDULED FOR 03/23/2006 AT 900 IN COURTROOM 1003	JMM
03/23/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT	JMM
03/23/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT CLERK:JMM, DL:9:50. COURT RESUMED WITH BALANCE OF JURY TRIAL.	JMM
03/23/2006 CITY PROVIDED COURT WITH REDACTED COPY OF 911 TAPE. REDACTED COPY TO BE MARKED AS PLAINTIFFS EX 5 AND ADMITTED. (CS EVENT)	JMM
03/23/2006 PLAINTIFF'S EXHIBIT# 5 (REDACTED COPY 911 TAPE) MARKED, ADMITTED	JMM
03/23/2006 DEFENSE EVIDENCE (CS EVENT)	JMM
03/23/2006 DF: KLEIN, STEPHEN BARTLETT (15320) TESTIFIED	JMM
03/23/2006 PLAINTIFF'S EXHIBIT# 5A (REDACTED COPY OF 911 TAPE) PLAYED IN OPEN COURT	JMM
03/23/2006 DEFENSE RESTED DISCUSSION - JURY INSTRUCTIONS EXCEPTIONS TO INSTRUCTIONS COURT READING INSTRUCTIONS	JMM
03/23/2006 CLOSING ARGUMENTS: CITY'S DEFENSE CITY'S REBUTTAL	JMM
03/23/2006 DL: 2:55 JURY RETURNS WITH VERDICT OF GUILTY. CITY MOVES TO SET BAIL - DENIED. DEFENSE MOVES TO SET SENTENCING OVER - GRANTED W/NEW CONDITIONS OF RELEASE.	SJG
03/23/2006 NO CONTACT ORDER WITH FREDERICKSON, MICHAEL DOB 01/01/1905	SJG
03/23/2006 NO CONTACT ORDER WITH BOYER, MICHAEL DOB 01/01/1905	SJG
03/23/2006 SENTENCING SCHEDULED FOR 03/29/2006 AT 900 IN COURTROOM 1003	SJG
03/27/2006 EHM ENROLLMENT REPORT/EHM STARTED 03/27/06. COURT ORDERED SHOULD DEFENDANT FILE AN APPEAL HE IS ORDERED TO ENROLL IN EHM.	SJG
03/29/2006 CASE REFERRED TO PROBATION	BXA
03/29/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT DL: 10:10 CLK SJG VICTIM ROY PRESENT AND ADDRESSES THE COURT. COURT IMPOSES SENTENCE AND SHOULD DEFENDANT POST APPEAL BOND ALL CONDITIONS WILL BE STAYED WITH THE EXCEPTION OF JAIL PER THE COURT.	SJG
03/29/2006 DA: ALMEREZ, ARTHUR T (1000010160) PRESENT	SJG

03/29/2006 CHARGE # 1 12A060100 (ASSAULT) GUILTY FINDING ENTERED	SJG
03/29/2006 CHARGE # 1 12A060100 (ASSAULT) SUSPENDED SENTENCE	SJG
03/29/2006 JURISDICTION END DATE SET TO 03/27/2008	SJG
03/29/2006 TO BE GIVEN CREDIT FOR TIME SERVED	SJG
03/29/2006 NO CONTACT ORDER WITH ROY, TERESA D DOB 06/17/1965	SJG
03/29/2006 NO CONTACT ORDER WITH FREDERICKSON, MICHAEL DOB 03/13/1957	SJG
03/29/2006 NO CONTACT ORDER WITH BOYER, MICHAEL DOB 05/03/1967	SJG
03/29/2006 PER THE COURT SHOULD DEFENDANT POST APPEAL BOND HE WILL BE REQUIRED TO BE PLACED ON EHM PENDING APPEAL.	SJG
03/29/2006 EHM REPORT CITING TERMINATION; REMOVED FROM EHM STRICKEN AFTER THREE (3) DAYS.	SJG
04/04/2006 NOTICE OF APPEAL FILED ON 03/31/2006, SUPRCT CAUSE# 61040160	SXP
04/05/2006 BOND EXONERATED	SJG
04/07/2006 BOND RETURNED TO SURETY	RMS
04/09/2006 DEFENDANT BOOKED. BA# 206013947	TXC
04/13/2006 TRANSCRIPT ISSUED	SXP
07/07/2006 DOMESTIC VIOLENCE REVIEW SCHEDULED FOR 08/03/2006 AT 1330 IN COURTROOM 1003	JRR
07/07/2006 REVIEW HEARING SCHEDULED FOR FTC-NCO, NEW VIOLATION PER PC GARRIN ROSS	JRR
07/31/2006 DEF PHONED FOR PHONE # TO OPD (CS EVENT)	RRS
08/02/2006 STATUS/REVIEW REPORT RECEIVED FROM GARRIN ROSS	JMM
08/03/2006 DF: KLEIN, STEPHEN BARTLETT (15320) PRESENT FTR LOC: 2:38. CLK SAF. DEF ADMITS ALLEGATIONS OF NEW CONVICTION.	SAF
08/03/2006 DA: SAMUEL, ANNA (1000008842) PRESENT	SAF
08/03/2006 GARIN ROSS, MPS COUNSELOR, PRESENT AND ADDRESSED COURT	SAF
08/03/2006 CHARGE# 1 12A060100 (ASSAULT) 10 Days OF SUSP COMPLY WITH JAIL SENTENCE REVOKED	SAF
08/03/2006 REVIEW HEARING SCHEDULED FOR 09/18/2006 AT 900 IN COURTROOM 1003	SAF

08/04/2006 NOTICE OF APPEARANCE FILED BY ACA: ANNA I SAMUEL, WSBA# 23444 ALS

09/18/2006 STATUS/REVIEW REPORT RECEIVED FROM MPS COUNSELOR C. BELL DANIEL. MAK

09/18/2006 DF: KLEIN, STEPHEN BARTLETT (15320) DEFENDANT NOT PRESENT. DL 9:56. CASE CONT FOR VERIFICATION OF WORK CREW JXH  
MPS FILE IN CT AND RETAINED

09/18/2006 OBLIGATION REVIEW DATE SCHEDULED FOR 09/25/2006 AT 900 IN COURTROOM 1003 JXH

09/25/2006 DF: KLEIN, STEPHEN BARTLETT (15320) DEFENDANT NOT PRESENT. DL 11:57. CLK SAF. MPS REPT IN COURT AND RETAINED. SAF

09/25/2006 STATUS/REVIEW REPORT RECEIVED FROM CAROL BELL. SAF

09/25/2006 BENCH WARRANT # 990316012 ISSUED 09/25/2006 SAF

10/11/2006 REVIEW PROBATION HEARING SCHEDULED FOR 11/09/2006 AT 1330 IN COURTROOM 1003 JRR

10/11/2006 REVIEW PROBATION HEARING HRNG SCHDLD FOR 11/09/2006 AT 1330 IN DEPT 1003, CANCELLED! JRR

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 \*\* Warrants \*\*

Wrnt Nr	Issued	Served	Wrnt/ Clrn Type	Description
990316012	09/25/2006		BW	BENCH WARRANT

Reasons: FAILURE TO APPEAR FOR OBLIGATION REVIEW HEARING  
 Rstrcs: NO PR (FTA/STATUS, FTC/WORKCREW)  
 Warrant issued by: JUDGE RON MAMIYA

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 \*\* Accounting Summary \*\*

Post	Bail				
Date	Amount	Type	Paid	Method	Status: DC:Posted By
02/03/2006	20000.00	BAIL	20000.00	BO	E HENRY'S BAIL BONDS

Chg	Obl	Orig Obl	Obl	TP	
Sq#	Type	Amount	Bal Due	Status	
	BALW	1000.00	1000.00		

\*\* Total due on this case: 1000.00 \*\*



IN THE MUNICIPAL COURT OF THE CITY OF SEATTLE

FILED  
AUG 03 2006  
COURT RWB

THE CITY OF SEATTLE  
Plaintiff,

ALTERNATIVE TO CONFINEMENT (ATC)  
COMMITMENT REFERRAL

Vs.

Klein, Stephen

Defendant,

Case No. 480244

Interpreter needed for (Identify language) \_\_\_\_\_

Judge B. Maniyya

Circle Courtroom to which reports should be sent:

# 302 / 901 / 902 / 903 / 1001 / 1002 1003

1101 / 1102 / 1103 / KCJ2 / KCJN

Charge(s) Assault

Defendant to serve a total of 10 days on the selected program(s):

\_\_\_\_\_ days ELECTRONIC HOME MONITORING (EHM) or  EHM with BREATHALYZER  
for \_\_\_\_\_ days of sentence (=JEHM or JEHB or EHM or EHMB obligation)

I understand I must report in person to the BI Incorporated Electronic Home Monitoring Program Office  
immediately after leaving court, or within 36 hours (or the next working day) after release from jail/ custody or if  
referred from night court, whichever is sooner.

Status Check Date: \_\_\_\_\_, 200\_\_\_\_\_

10 days WORK CREW for \_\_\_\_\_ Days of sentence (= JCRW obligation)

(defendant initials here) I understand I must perform Work Crew duties in a manner directed by the site  
supervisors and with reasonable care, as set up through the Seattle Municipal Court Probation Office. I understand  
that I will be doing strenuous physical work in all types of weather conditions. To the best of my knowledge, I have  
no health conditions that will prohibit me from performing this work. I understand I must report in person to the  
Seattle Municipal Court Probation Office immediately after being leaving court, or within 36 hours (or the next  
working day) after release from jail/ custody or if referred from night court, whichever is sooner.

Status Check Date (if one is scheduled): 9-18, 2006

\_\_\_\_\_ COMMUNITY SERVICE HRS for \_\_\_\_\_ Days of sentence (= JCSH obligation)

(defendant initials here) I understand I must perform Community Service Hours as directed by and at  
an agency approved by Seattle Municipal Court Probation Office. I understand I must report in person to the Seattle  
Municipal Court Probation Office immediately after leaving court, or within 36 hours (or the next working day)  
after release from jail/ custody or if referred from night court, whichever is sooner.

Status Check Date (if one is scheduled): \_\_\_\_\_, 200\_\_\_\_\_

Defendant's Acknowledgement: I agree to serve the imposed jail time in the alternative  
manner described above. I understand that failure to comply with all terms and conditions  
of this alternative to confinement may result in a warrant for my arrest and my immediate  
confinement to jail.

Defendant Signature [Signature]

Date 8-3-06

Address x 19626 Filbert Rd

Phone (hm) x 06 854 3037

City/ State x Bothell Wa 98012

Phone (wk) x

Original: Court file

Copy: Defendant

Copy: BI, EHM Vendor, with J&S and work sheet

PROBATION SERVICES DIVISION STATUS REPORT

Page 1  
Cases: 480244

Court: # 1003  
Date: 09/25/2006  
Time: 09:00AM

Date: 10/11/2006

MCIS Def Num: 15320

Defendant: Stephen Bartlett Klein

Tracker: 143417 DCB: 01-03-1957

19626 Filbert Rd  
Bothell, WA 98012

1 Prior Reviews

OFFENSE INFORMATION

Cases	Start	End	Judge	Offenses
480244	03-29-06	03-27-08		ASSAULT

CURRENT SITUATION/STATUS

On 8/7/06, Mr. Klein was sanctioned 10 days Work Crew. On 8/7/06, a Mr. Klein completed a Work Crew intake, and was given an obligation due date of 9/18/06.

On 9/18/06, the Court granted Mr. Klein a one week continuance to complete the remaining two days of Work Crew.

RATIONALE

To date, Mr. Klein has completed 8 days of Work Crew.

RECOMMENDATIONS

The Department's requests the Court take action if the defendants does not appear to address the balance outstanding.

I declare under penalty of perjury under the laws of the State of Washington that the preceding is true and correct.

*COPY*

\_\_\_\_\_  
Carol Ecll-Daniel Date \_\_\_\_\_ Seattle, WA  
Community Service & Work Crew Program Coordinator