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No. 90155-4

THE SUPREME COURT OF WASHINGTON

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**STATE OF WASHINGTON,**

Respondent,

vs.

**JEANNE BELLE BARRINGER,**

Petitioner.

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Review from Court of Appeals, Division Two, Case No. 43576-4-II

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**Respondent's Supplemental Brief**

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By:

  
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 ORIGINAL

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## I. ISSUES

- A. Is a 75 minute investigatory detention per se unreasonable and therefore unlawful?
- B. Does a lengthy detention, in absence of a formal arrest violate Washington State Constitution, Article 1, § 7?
- C. Was there a pretextual arrest in this case and does that violate the Washington State Constitution Article 1, § 7?
- D. Did Barringer voluntarily consent to the search of her purse?

## II. STATEMENT OF THE CASE

On February 29, 2012, at 7:26 p.m., WSP Trooper Hovinghoff began responding to a report of a one-car collision on State Route 12 near milepost 98 in Lewis County, Washington. 1RP 12-13; CP 4-5.<sup>1</sup>

At approximately 7:42 p.m., Morton Police Officer Royle arrived at the scene of the collision and observed a Chevy Blazer stuck in the eastbound ditch off the roadway, facing eastbound. 1RP 4-6; CP 5. Based on his observations, Officer Royle believed that the vehicle drove off the roadway into the ditch, and therefore the driver had committed a traffic infraction. 1RP 7; CP 5. Officer Royle contacted the occupants of the vehicle to determine if they needed medical attention and to investigate the collision. 1RP 7-8;

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<sup>1</sup> The CrR 3.6 hearing was transcribed in two volumes – 05/30/12 will be cited as 1RP and 06/1/12 will be cited as 2RP.

CP 5. He observed Barringer in the driver's seat and Michael Hartley in the back of the vehicle. 1RP 6; CP 5. Officer Royle asked what had happened, and Barringer said she drove off the roadway. 1RP 6; CP 5. Barringer provided her driver's license and said that the vehicle did not have insurance. 1RP 6; CP 5. Hartley verbally identified himself to Officer Royle. 1RP 6-7; CP 5. Officer Royle returned to his vehicle with Barringer's license. 1RP 6; CP 5.

At approximately 7:53 p.m., Trooper Hovinghoff arrived on the scene. 1RP 14; CP 5. It was snowing, and the roadway at the collision scene was covered with snow and ice. 1RP 14; CP 5. Trooper Hovinghoff contacted Barringer, who was seated in the driver's seat of the Blazer. 1RP 15-16; CP 5. Hartley was in the rear seat behind the driver's seat. 1RP 15-16; CP 5. Trooper Hovinghoff asked Barringer what had happened and if she and Hartley were injured. 1RP 16; CP 5. Barringer said she was driving and went into the ditch. 1RP 16; CP 5. She said that the vehicle did not have insurance. 1RP 16; CP 5. Hartley verbally identified himself, and Trooper Hovinghoff realized that he had witnessed Hartley driving the Blazer a little earlier that day. 1RP 17; CP 5.

Trooper Hovinghoff contacted Officer Royle and obtained Barringer's driver's license. 1RP 7; CP 5. Officer Royle had run

driver's checks on both occupants: Barringer had a valid driver's license but Hartley's license was suspended. 1RP 18; CP 6.

Trooper Hovinghoff returned to the Blazer and asked Barringer to exit the vehicle. 1RP 18; CP 6. Trooper Hovinghoff asked Barringer if Hartley was driving the Blazer earlier and she stated, "Yes, he was. He was driving." 1RP 18; CP 6.

Trooper Hovinghoff placed Hartley under arrest for driving while license suspended. 1RP 18; CP 6. Hartley told Trooper Hovinghoff that he did not want to get into trouble and had some information if the trooper would work with him. 1RP 19; CP 6. The trooper declined to make any offers or promises to Hartley. 1RP 50, 2RP 7; CP 9. Post *Miranda*, Hartley said that Barringer had an ounce of methamphetamine with her; Hartley had driven her to Rochester for the express purpose of buying it, and saw her with around \$1,000 before they went. RP 19-20; CP 6. Hartley said the drugs were probably on Barringer's person or in the Blazer. 1RP 19, 25; CP 6. He agreed to be named in a search warrant as providing this information. 1RP 19; CP 6. Hartley also admitted to driving the vehicle when it went into the ditch. 1RP 20; CP 6.

Trooper Hovinghoff believed Hartley to be a credible source based on the level of detail provided and the fact Hartley was

willing to be named in a warrant. 1RP 19-20; CP 6. At that point, Trooper Hovinghoff suspected that Barringer had committed the crimes of Making a False Statement to a Public Servant (by lying about who drove the vehicle into the ditch) and Possession of Methamphetamine. 1RP 21; CP 6.

Trooper Hovinghoff contacted Barringer and asked her when she last used drugs. 1RP 21; CP 6. Barringer replied that she had not used for months. 1RP 21; CP 6. She denied having any drugs in the vehicle. 1RP 21; CP 6. Trooper Hovinghoff asked Barringer for voluntary consent to search her person, explaining that Hartley said that she had just bought an ounce of methamphetamine in Rochester and was still in possession of it. 1RP 22; CP 6. Barringer consented; Trooper Hovinghoff patted down the outside of Barringer's clothing, finding nothing. 1RP 22-23; CP 7.

Trooper Hovinghoff next asked Barringer for consent to search the Blazer, which she stated she could not give because the vehicle did not belong to her. 1RP 23; CP 7. Trooper Hovinghoff then advised Barringer that she was being detained for the investigation of Possession of Methamphetamine and handcuffed her. 1RP 23; CP 7. The trooper read Barringer her constitutional rights, which she acknowledged understanding. 1RP 23; CP 7. He

placed her, handcuffed, in the back of Officer Royle's patrol vehicle. 1RP 24; CP 7. Barringer admitted Hartley had been driving when the vehicle went into the ditch. 1RP 24-25; CP 7. Trooper Hovinghoff believed he had probable cause to arrest Barringer for Making a False Statement to a Public Servant. 1RP 25.

Trooper Hovinghoff contacted Hartley, who consented in writing to the Blazer's search . 1RP 27; CP 7. Hartley said that the only thing of Barringer's in the vehicle was a purse. 1RP 26; CP 7. Barringer confirmed that the purse in the Blazer belonged to her. 1RP 27; CP 7. Trooper Hovinghoff told Barringer that Hartley had consented to the vehicle's search and asked if he could search her purse, which she refused. 1RP 27; CP 7. Trooper Hovinghoff advised that his other option was to apply for a search warrant, which the judge might or might not grant. 1RP 27; CP 7.

Trooper Hovinghoff searched the vehicle, found Barringer's purse, and placed the purse in his patrol vehicle to secure it while applying for a search warrant. 1RP 27; CP 7. Trooper Hovinghoff did not find anything of evidentiary value in the vehicle. 1RP 27-28; CP 7. Due to the poor weather and the road conditions along with the safety concerns, Trooper Hovinghoff directed that the towing

company tow the vehicle to the parking lot of McKenzie's Towing in Morton so he could continue the investigation. 1RP 28; CP 8.

Around 8:57 p.m., Trooper Hovinghoff requested assistance from Lewis County Sheriff's Deputy Chris Fulton and his canine partner. 1RP 29-30; CP 8. While waiting for arrival of the canine unit, Trooper Hovinghoff began writing a search warrant for the Defendant's person and her purse. 1RP 29; CP 8. Deputy Fulton arrived around 9:27 p.m. and led his canine around and inside the Blazer, around a couple of bags, and around Barringer's purse. 1RP 30-31; CP 8. The canine did not signal that it detected the presence of drugs. 1RP 31; CP 8.

At approximately 9:30 p.m., Deputy Sue Shannon arrived. 1RP 29; CP 8. Trooper Hovinghoff re-contacted Hartley in the presence of Deputy Shannon. 2RP 6; CP 8. Hartley recounted his earlier statement in more detail: he described the denominations in which Barringer had the \$1,000, that he had seen it shortly before they left for Rochester so she could make the purchase, and that Barringer told him about buying methamphetamine when they drove back. 1RP 31-32; CP 8. Based on training and experience, the level of detail provided, Hartley's level of cooperation, and Hartley's statement, Trooper Hovinghoff and Deputy Shannon

believed that Hartley was a credible source of information about the presence of methamphetamine. 1RP 32-33, 2RP 16-17; CP 8.

During the search warrant process, Barringer asked to go to the bathroom. 2 RP 7; CP 9. Trooper Hovinghoff asked if Barringer would consent to a strip search by Dep. Shannon, based on Dep. Shannon's concern that, in her experience, females can hide contraband in their private area. 1RP 33; 2RP 7; CP 8-9. Barringer consented to the search. 1RP 33; CP 9. The search and Barringer's use of the bathroom took about five minutes, and did not reveal anything of evidentiary value. 1RP 34; 2RP 9; CP 9.

Trooper Hovinghoff returned to working on a search warrant for the purse. 1RP 34; CP 9. After the bathroom break, Dep. Shannon sat with Barringer in the back of Officer Royle's patrol car. 2RP 9; CP 9. Deputy Shannon asked Barringer what she was concerned the trooper might find in the purse. 2RP 9-10; CP 9. Barringer replied that she had a small amount of marijuana in there. 2RP 10; CP 9. Deputy Shannon told Barringer that the trooper was not concerned about that; rather, he had been informed of a large quantity of methamphetamine. 2RP 10; CP 9. Barringer said that there was no methamphetamine in the purse and that she was worried only about the marijuana. CP 9. Barringer told Deputy

Shannon that Trooper Hovinghoff could look inside the purse if he disregarded the marijuana. 2RP 10; CP 9.

Trooper Hovinghoff told Barringer that he was not worried about a little marijuana. 1RP 35; CP 9. The trooper asked for voluntary consent to search the purse, informing her that he could not coerce her or make her any promises, and that the consent would have to be knowingly and voluntarily given. 1RP 35; CP 9-10. Barringer consented to the search, but told the trooper not to look in the front pocket. 1RP 36; CP 10. Trooper Hovinghoff responded that if she did not want to consent to a search of the whole purse, he would need to apply for a search warrant for the whole purse. 1RP 36; CP 10. Barringer told the trooper he could search the purse. 1RP 36, 2RP 11; CP 10.

In the front pocket of the purse, Trooper Hovinghoff located two plastic baggies containing white crystals and one broken glass pipe with white residue. 1RP 36; CP 10. Based on training and experience, Trooper Hovinghoff believed that the white crystalline substance was methamphetamine. 1RP 36; CP 10.

Barringer denied putting those items there and claimed she did not know where they came from. 1RP 36, 2RP 12-13; CP 10. However, she had told Deputy Shannon that she had control over

the purse the entire time it was inside the vehicle and that no one else had gotten into the passenger seat prior to Trooper Hovinghoff's arrival. 2RP 12; CP 10. At approximately 10:38 p.m., Trooper Hovinghoff placed Barringer under arrest for Possession of Methamphetamine. 1RP 37-38; CP 10.

Barringer challenged the search of her purse at a CrR 3.6 hearing. 1RP, 2RP. The trial court held the search was permissible and denied the evidence to suppress. CP 4-11. Barringer was convicted of Possession of Methamphetamine after a stipulated facts bench trial. CP 37-52.

The Court of Appeals in an unpublished opinion affirmed Barringer's conviction. *State v. Barringer*, COA No. 43576-4-II (2014).

### III. ARGUMENT

#### A. THIS COURT SHOULD NOT SET A PER SE TIME LIMIT FOR DETERMINING THE REASONABLENESS OF AN INVESTIGATORY DETENTION.

The State will focus this supplemental brief on why this court should not adopt a per se time limit for investigatory detentions and how Barringer's investigatory detention was reasonable. The State is not conceding any of the arguments it made in the Court of Appeals briefing, and makes this argument in the alternative. With

consideration for the limitation of space, the State will be relying on its briefing to the Court of Appeals regarding consent and the pretextual arrest issue. The State also provided a more detailed statement of the case in the briefing to the Court of Appeals, which touches more upon the facts necessary for the consent argument.

### **1. Standard Of Review**

A trial court's conclusions of law are reviewed de novo. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996). Conclusions of law entered by a trial court following a suppression hearing carry great significance for a reviewing court. *State v. Collins*, 121 Wn.2d 168, 174, 847 P.2d 919 (1993).

### **2. A Per Se Time Limit For Reasonableness Of An Investigatory Detention Is Not Appropriate Or Workable And The Diligence Of The Officer Is The Key Inquiry For Determination Of Whether A Search Is Reasonable.**

The United States and Washington State constitutions permit an officer to seize someone for investigative purposes without a warrant if the officer has reasonable suspicion that the person has committed a crime. See *Terry v. Ohio*, 392 U.S. 1, 21-24, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) (federal constitution); *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003) (same); *State v. Brown*, 154 Wn.2d 787, 796, 117 P.3d 336 (2005) (state

constitution). An officer must have some suspicion that the person he or she is detaining is connected to a particular crime and not a generalized suspicion that the person detained is up to no good. *State v. Bliss*, 153 Wn. App. 197, 204, 222 P.3d 107 (2009) (citation omitted). An officer must be able to identify “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Mendez*, 137 Wn. 2d 208, 223, 970 P.2d 722 (1999), *abrogated by Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007) (*citing Terry v. Ohio*, 392 U.S. at 21). When a court determines the reasonableness of the officer’s suspicion it looks at the totality of the circumstances. *Bliss*, 153 Wn. App. at 204.

An officer must diligently pursue his or her investigation to be within the scope of a *Terry* detention. *State v. Williams*, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984), *citing U.S. v. Place*, 462 U.S. 696, 709, 103 S. Ct. 2637, 77 L.Ed.2d 110 (1983). The length of the seizure must be limited: if the ensuing investigation dispels the officer’s suspicions, the stop must end, but the stop may persist or be extended if the officer’s suspicions are confirmed or further aroused. *Acrey*, 148 Wn.2d at 747. The courts have not placed a bright line time limit on when an investigative detention goes on to

long and becomes a custodial arrest. *U.S. v. Sharpe*, 470 U.S. 675, 685, 105 S. Ct. 1568, 84 L.Ed.2d 605 (1985). The United States Supreme Court acknowledge that while “a ‘bright line’ rule would be desirable, in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria.” *Sharpe*, 470 U.S. at 685.

Other jurisdictions hold to the totality of the circumstances rule, in particular the importance of considering the facts and circumstances regarding the officer’s diligence in regards to the length of the detention. *United States v. Conlenzo-Huffman*, 292 Fed. Appx. 361, 363-64 (2008); *In re D.M.*, 94 A.3d 760, 764-65 (2014); *State v. Alexander*, 784 N.E.2d 1225, 1231-32, 151 Ohio App. 3d 590 (2003); *Perez v. State*, 818 S.W.2d 512, 517 (1991); *Commonwealth v. Douglas*, 539 A.2d 412, 421, 372 Pa. Super. 227 (1987). In Ohio, the Court of Appeals ruled the 101 minutes that an item was seized was not in violation of Alexander’s Fourth Amendment rights because the DEA acted diligently in its investigation. *Alexander*, 784 N.E.2d at 1234. The Ohio court acknowledged that the amount of time for the investigatory detention was greater than that in *Place*, but found that the DEA did not unnecessarily delay the investigation, as it did not have its own

drug sniffing dog, but was able to get one rather quickly and that each step of the investigation independently showed promptness. *Id.* at 1232-34.

In the District of Columbia the Court of Appeals held that a 75 minute detention was not per se unreasonable. *D.M.*, 94 A.3d at 765. In *D.M.* the appellant argued that in accordance with *Sharpe* an investigatory detention of over one hour was approaching a level of per se unreasonableness. *Id.* The court disagreed, holding that while lengthy detention of more than an hour are more often, than not, unreasonable, a per se rule is not appropriate. *Id.* at 766. The police detained D.M. for over an hour to arrange a show-up identification. *Id.* at 763. The court ultimately held that D.M.'s lengthy investigatory detention was not reasonable due to the ability to employ less-intrusive means to accomplish the investigation. *Id.* at 767.

In Pennsylvania its Supreme Court held that a two hour initial investigatory detention, while considerably longer than some, was permissible considering the facts of the case. *Douglas*, 539 A.2d at 421. Douglas was asked to remain on the scene of a traffic fatality investigation. *Id.* at 421. There were indications that Douglas, one of the drivers, may have been consuming alcohol

prior to the incident. *Id.* The court found the officer was diligently pursuing the traffic investigation by talking to witnesses, taking measurements and later speaking to Douglas. *Id.* at 422. Douglas consented to a breath and blood test, and the court held that even after the lengthy investigatory detention, Douglas's consent was not coerced. *Id.* 422-23.

A per se rule does not take into account the facts and circumstances surrounding an officer's conduct. In some instances 20 minutes may be an unreasonable length for an investigatory detention, while in other circumstances a two hour detention would be completely reasonable. The State acknowledges Barringer's detention was lengthy, but each step the trooper took in this case was in attempt to confirm or dispel his suspicion that Barringer was in possession of methamphetamine. Trooper Hovinghoff received detailed information from Hartley. Hartley and Barringer had discussed the reason they were going to Rochester was for Barringer to purchase an ounce of methamphetamine and Hartley had seen her with \$1000 right before they left. 1RP 20; CP 6. While Hartley had not seen the methamphetamine, he told Trooper Hovinghoff Barringer had the methamphetamine either on her person or in the Blazer. 1RP 19-20, 25; CP 6. Additionally Hartley

was made no promises for the information he was providing and he was willing to be named in a search warrant. 1RP 19-20, 50; CP 6.

Trooper Hovinghoff contacted Barringer, asking for voluntary consent to search her person. 1RP 21-22; CP 6. Trooper Hovinghoff explained he had been told Barringer was in possession of methamphetamine. 1RP 22; CP 6. Barringer agreed to let Trooper Hovinghoff search her person. 1RP 22; CP 7. Trooper Hovinghoff did not find anything of evidentiary value but this did not dispel his suspicion because the drugs could still be in the car, the belongings inside of the car or inside her person.

Trooper Hovinghoff continued to detain Barringer and requested her permission to search the vehicle, which she stated she could not give because the vehicle did not belong to her. 1RP 23; CP 7. Trooper Hovinghoff obtained written consent to search the Blazer from Hartley. 1RP 25-26; CP 7. Trooper Hovinghoff asked Barringer if he could search her purse, which was located in the Blazer, and she said no. 1RP 26-27; CP 7. Trooper Hovinghoff advised Barringer that he only had two options, he could ask her for voluntary consent to search the purse or he could apply for a search warrant and the judge would have to determine if the

trooper could search the purse. 1RP 27; CP 7. The trooper found nothing of evidentiary value in the Blazer. 1RP 27-28; CP 7.

Due to the weather conditions and for safety concerns, it was determined that the Blazer would be towed to a parking lot in Morton. At approximately 8:57 p.m., Trooper Hovinghoff requested assistance from Deputy Fulton and his canine partner. 1RP 29-30; CP 8. It took a half an hour for Deputy Fulton to arrive and while waiting for Deputy Fulton, Trooper Hovinghoff began to work on a search warrant for Barringer and her purse. 1RP 29; CP 8. The canine was deployed around the Blazer, a couple of bags and Barringer's purse. 1RP 30-31; CP 8. The canine did not signal that it detected the presence of drugs. 1RP 31; CP 8.

After the canine failed to detect any drugs Trooper Hovinghoff spoke to Hartley again. 1RP 21. Hartley gave a greater detailed account of what had occurred. 1RP 31. Hartley described the money, denominations of twenties and fifties. 1RP 31; CP 8. Hartley explained he had witnessed Barringer with the money only 10 to 15 minutes prior to them leaving for Rochester. 1RP 31; CP 8. 1RP 31; CP 8. Barringer told Hartley they would look at the methamphetamine once they arrived home. 1RP 32; CP 8. At this

point Trooper Hovinghoff believed the methamphetamine was either inside of Barringer or inside of Barringer's purse. 1RP 33.

Trooper Hovinghoff asked Barringer for voluntary consent to be strip searched by Deputy Shannon. 1RP 33; CP 9. This was done in an attempt to confirm or dispel if Barringer had the drugs inside of her person. Barringer agreed to be strip searched. 1RP 33; CP 9. Barringer was transported to the Morton Police Department so she could use the bathroom and Deputy Shannon could perform the search. 1RP 10-11; CP 9. Nothing was located during the search, which took about five minutes. 1RP 34, 2RP 8-9; CP 9.

When Deputy Shannon and Barringer sat back in the patrol car and talked while Trooper Hovinghoff returned to work on his search warrant for Barringer's purse. 1RP 34, 2RP 9-10; CP 9. Trooper Hovinghoff explained canines are not 100 percent reliable and given the detailed information provided by Hartley, he wanted to continue to write out the search warrant. 1RP 34.

Barringer told Deputy Shannon she was in control of her purse prior to being removed from the Blazer. 2RP 12; CP 10. Barringer said Trooper Hovinghoff could look in her purse if he would disregard the marijuana inside of it. 2RP 10; CP 9.

Deputy Shannon told Trooper Hovinghoff Barringer was concerned about a small amount of marijuana in her purse. 2RP 10. Trooper Hovinghoff again requested voluntary consent for the purse, which Barringer gave. 1RP 35; CP 9-10. Trooper Hovinghoff located approximately 17 grams, over half an ounce, of methamphetamine in Barringer's purse. 1RP 36; CP 10.

Trooper Hovinghoff did act diligently in an attempt to confirm or dispel his suspicion. Hartley, who agreed to be named and was present until almost the very end of the investigation, gave a detailed accounting of what had occurred and told the trooper Barringer had methamphetamine either on her person or inside of the Blazer. Trooper Hovinghoff's actions, one step at a time, were in an attempt to either confirm or dispel his suspicion that Barringer was in possession of methamphetamine. The only way the trooper could fully dispel his suspicion was to search not only Barringer and the Blazer but also Barringer's purse. The trooper diligently went through the steps necessary to accomplish this, which did take some time.

When it became apparent that Barringer would not consent to his search of her purse, Trooper Hovinghoff began to write out a search warrant. During the process of writing out his search warrant

the canine was called, the vehicle had to be removed from the roadway due to the hazardous conditions and Barringer had requested to use the bathroom. While Trooper Hovinghoff was in the process of writing out the search warrant Deputy Shannon interrupted him and told the trooper that Barringer would consent to the search of the purse, which is why the search warrant was never requested.

The length of time, while longer than many cases, given the facts and circumstances presented here was not excessive. The trooper diligently attempted to confirm or dispel his suspicions. The scope of the investigative detention was permissible and this Court should affirm the Court of Appeals and the conviction.

#### IV. CONCLUSION

This Court should affirm Barringer's conviction and find that the investigatory detention, while long, was reasonable due to the trooper diligently investigating the possession of methamphetamine. Additionally this court should decline to entertain the argument regarding a pretextual arrest because nothing in this case suggests a pretextual nature for the initial contact of Barringer. This case was simply a traffic and/or community caretaking contact that escalated to an investigatory detention based upon information the trooper received while investigating the traffic accident. Further, this court should hold that Barringer did consent to the search of her purse.

RESPECTFULLY submitted this 7<sup>th</sup> day of November, 2014.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



by: \_\_\_\_\_  
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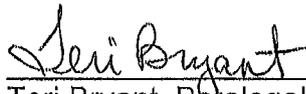
**SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON, Respondent,	)	NO. 90155-4
vs.	)	DECLARATION OF
JEANNE BELLE BARRINGER,	)	EMAILING
Petitioner.	)	
	)	
	)	
	)	
	)	

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Ms. Teri Bryant, paralegal for Sara I. Beigh, Senior Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On November 7, 2014, the Petitioner was served with a copy of the **Respondent's Supplemental Brief** by emailing same to Backlund & Mistry, counsel for the Petitioner at:  
[Backlundmistry@gmail.com](mailto:Backlundmistry@gmail.com).

DATED this 7<sup>th</sup> day of November, 2014, at Chehalis, Washington.

  
\_\_\_\_\_  
Teri Bryant, Paralegal  
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## OFFICE RECEPTIONIST, CLERK

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Attached is the Respondent's Supplemental Brief for filing in the above referenced case.

Thanks,

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