

NO. 63808-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

THOMAS P. RANDALL,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JEFFREY RAMSDELL

BRIEF OF RESPONDENT

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A. ASSIGNMENTS OF ERROR

Assignments of Error of Appellant Thomas P. Randall –

1. The Knowledge Jury Instruction was an improper comment on the Evidence because it appeared to resolve the disputed fact of Defendant's knowledge.

2. The Exceptional Sentence is unsupported by the Jury's verdict because the Jury did not find that Defendant knew that victim Elizabeth Randall was particularly vulnerable.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On February 14, 2008, the State filed an Information charging Defendant Thomas P. Randall with one count of Theft in the First Degree. CP 1-6. The Information also charged that the Theft was aggravated by two factors: that the Defendant knew or should have known that the victim of the Theft was particularly vulnerable or incapable of resistance, and that the alleged crime was a major economic offense. CP 1-2. On March 12, 2008, the State filed an Amended Information against the Defendant that essentially charged the same offense and aggravators, with some slight typographical corrections. CP 7-8. A Second Amended Information was filed on November 21, 2008, and a Third Amended

Information on March 25, 2009. CP 9-10, 17-18. The Third Amended Information kept, in Count I, the original charge of Theft in the First Degree, in violation of RCW 9A.56.030 (1) (a) and 9A.56.020 (1) (a), and the original aggravators. It also added that the alleged victim's vulnerability was a "substantial factor" in the offense. The Third Amended Information also added a Count II, which charged the Defendant with Tampering with a Witness, Daphne Eastman, in violation of RCW 9A.72.120, between on or about October 1, 2008 and on or about November 30, 2008.

The Defendant was tried before a jury in King County Superior Court, the Honorable Jeffrey Ramsdell presiding, with testimony beginning on March 26, 2009. 3RP 3.¹ After arguments from the attorneys and instructions from the trial court, on April 8, 2009, the jury found Defendant Thomas P. Randall guilty of Theft in the First Degree, but acquitted him of Witness Tampering. CP 22, 25. The jury also found that the victim of the Theft in the First Degree was a vulnerable victim, and that the Theft in question was a major economic offense. CP 23-24.

¹ The State will use the same system of reference to the 12 volumes of trial transcript as was employed by Defendant in his Opening Brief, that is: 1RP – March 23, 2009; 2RP – March 25, 2009; 3RP – March 26, 2009; 4RP – March 26, 2009 (cont.); 5RP – March 30, 2009; 6RP – March 31, 2009; 7RP – March 31, 2009 (cont.); 8RP – April 1, 2009; 9RP – April 2, 2009; 10RP – April 6, 2009; 11RP – April 7, May 15, June 5, July 10, 2009; and 12RP – June 19, 2009.

A sentencing hearing was held on July 10, 2009. Judge Ramsdell sentenced the Defendant to an exceptional sentence of 25 months' imprisonment on Count I. CP 71-79. Judge Ramsdell also imposed the \$500 Victim Penalty Assessment and the \$100 DNA collection fee. *Id.*² Defendant Thomas P. Randall filed a Notice of Appeal of his conviction and sentence with the Superior Court on July 10, 2009. CP 70-79.

2. SUBSTANTIVE FACTS

a. Introduction

The allegations in the Third Amended Information and the evidence adduced at trial center on the Defendant and his dealings with his grandmother, Dora Elizabeth Randall. Ms. Randall, who usually went by "Elizabeth" or "Betty," was born in 1924. 4RP 32. Elizabeth Randall and her husband Cecil lived in the Rose Hill neighborhood of Kirkland, where they lived at 8724 126th Ave. NE in a house that they had built themselves. 3RP 25, 37. There they raised four children, the oldest of whom, a son Thomas, died at age 28 in a motorcycle accident in 1974. 4RP 36-37. Another son, Stephen, died of lung cancer on September 6, 2003: Defendant Thomas Randall is the son of Stephen Randall. 4RP 11-12.

² A restitution hearing was subsequently held on January 4, 2010, but as restitution is not a part of the instant appeal, neither the Defendant or the State has included the restitution hearing or the Order Setting Restitution as part of the record on appeal.

The Randalls also had two daughters: Cecelia or “Ceci,” and the youngest child, Julie. 4RP 26, 32. Julie married Jon Boe, and at the time of the trial lived in Anacortes, Washington. 4RP 24.

Julie Boe testified about life growing up as Elizabeth Randall’s daughter. Cecil Randall had been a carpenter and Elizabeth Randall did not work outside the home while her children were young. 4RP 37. Later, both Cecil and Elizabeth took jobs as custodians for the Lake Washington School District, and received small pensions from the State of Washington upon their retirement. 4RP 38.

Julie Boe told the jury that her parents were “more than frugal,” and that it was “hard for them to part with money.” 4RP 38-40. Elizabeth Randall made many of her children’s clothes, and many of the rest she bought at second-hand stores. 4RP 38. The Randalls only had older used cars, and Cecil was able to work on them himself. 4RP 39. The elder Randalls did not incur any debt, and never used a credit or debit card, or an ATM card. *Id.* Instead of investing in mutual funds or saving money, Cecil and Elizabeth Randall purchased real estate as their investment, and they owned several properties around Washington. 5RP 72.

Julie Boe testified that she first noticed a problem with her mother’s memory in about 1994. 4RP 46. Elizabeth Randall would ask the same questions “over and over again.” *Id.* Her mother told Julie that

she was worried about her memory too. *Id.* Elizabeth Randall was apologetic, and told her daughter she was afraid she'd end up in a nursing home like her (Elizabeth's) mother. *Id.*

Over the years after 1994, Elizabeth Randall "progressively got worse." 4RP 47. In addition to her deteriorating memory, she also became "more negative," according to her daughter. *Id.* On September 11, 2001, Julie Boe was living in the Washington, D.C. area, where her husband Jon, who was in the Navy, was stationed at the Pentagon. She called her parents to reassure them that she and Jon were all right in the wake of the terrorist attacks that day, and spoke with her mother. *Id.* Speaking of the day's events, Elizabeth Randall commented to her daughter that she saw "that there were some fires," and wondered "how the fires were started." *Id.*

Not too long after that conversation, the Boes decided to move back to Washington State. 4RP 48. Julie Boe told the jury her relationship then with her parents was a good one, "like it always had been." *Id.* Julie and her husband would help her parents with various things, such as Jon Boe's helping the elder Randalls with their federal income taxes for the year 2002. 4RP 48-49.

The summer of 2003, when she was 79 years old, was a tough time for Elizabeth Randall. Her husband of some 50 years, Cecil Randall, died

on July 22, 2003. 5RP 9. Then her son Stephen Randall died of lung cancer on September 6, 2003. 5RP 1-11.

Around this time, in late summer 2003, Defendant Thomas Randall became an increasing presence in the life of Elizabeth Randall, his grandmother. 5RP 12. According to Julie Boe, the Defendant had not been around his grandmother very much prior to that time. *Id.* The Defendant was then working for Irwin Mortgage, and Julie Boe and her husband had been discussing the Defendant's handling the purchase of a new home for them. 5RP 12-13. After several incidents in which the Defendant was "very nasty" and hostile with Julie Boe, her husband Jon and she decided not to use Thomas Randall to handle their mortgage. 5RP 13-15. The Defendant was not pleased at this decision. 5RP 15.

When Stephen Randall died in September 2003, less than two months after Cecil's passing, Elizabeth Randall was left without someone near at hand to assist her, and her daughter Julie considered how to "step in and help her with what needed to be done." 5RP 18-19. Elizabeth Randall drove a very old Chevrolet Nova, but only to a few stores near her in Kirkland. 5RP 18-19. She never drove her car on a freeway. *Id.*

Julie Boe consulted with her mother's personal physician, a Dr. Carr, as part of formulating an approach to the care of Elizabeth. 5RP 18. When they spoke by telephone in September 2003, Dr. Carr told

her that her mother was “toddler-like” and “incompetent,” and that she needed help “day in and day out.” 5RP 19-21. Someone that Julie Boe spoke with about this time recommended that she consult with a woman called Judith Newman about Elizabeth Randall, and Ms. Boe did so.

Judith Newman is a certified Geriatric Mental Health Specialist with over 20 years of experience, and she is part of the Geriatric Regional Assessment Team at Evergreen Health Care. 3RP 3-5. After speaking with Julie Boe, Ms. Newman went to Kirkland to visit Elizabeth Randall at her home on September 16, 2003. 3RP 7-9. They spoke for about 90 minutes, during which time Elizabeth Randall was “[g]uarded, suspicious, distrustful.” 3RP 10. One of the subjects Elizabeth Randall brought up was her Social Security payments: she was very worried that that amount would be reduced since her husband Cecil had died, and brought the subject up “a couple of times at least.” 3RP 20-21. Ms. Newman said she had to explain it to Ms. Randall several times. 3RP 20.

After being with Elizabeth Randall on this visit, Judith Newman concluded that she had dementia and paranoia. 3RP 24. Ms. Newman explained that she found paranoia frequently in Alzheimer’s and other dementia patients. *Id.* Elizabeth was clearly estranged from her daughters, Cecelia and Julie. 3RP 39. Judith Newman also told the jury

that people with dementia can compensate, and appear to be normal.

3RP 28.

Ms. Newman also contacted Adult Protective Services (APS) because she was concerned that Elizabeth Randall could be being financially exploited and/or neglecting her own care. 3RP 29. During her interview of Elizabeth Randall, she noticed that Ms. Randall was still driving a car. 3RP 22. Ms. Newman later wrote to the Washington State Department of Licensing (DOL) to express her opinion that Ms. Randall's continued driving posed a risk. 3RP 29-30.

b. Elizabeth Randall's Legal Documents Of September 22, 2003

It was about this same time that the Defendant was coming forward to take a more prominent part in his grandmother's life. 5RP 12. The Defendant, who was born on June 12, 1976, and was 27 years old when his father died in September 2003, arranged with a Bellevue law firm, Smith and Zuccarini, to draft several legal documents for the management of Elizabeth Randall's financial affairs. 5RP 112-13; 10RP 74. Michael J. Zuccarini, the partner in charge of drafting these documents for the law firm, testified at trial about a General Durable

Power of Attorney, a Last Will, and an Elizabeth Randall Revocable Trust Agreement he drafted for Elizabeth Randall.³

On September 22, 2003, Elizabeth Randall and the Defendant came to the Bellevue offices of Smith and Zuccarini so that she could execute the various documents that Michael Zuccarini had drafted for her. 5RP 112-55. She executed a General Durable Power of Attorney (hereinafter “DPOA”) that authorized Thomas Randall to act as her attorney-in-fact. RP5 142-53. Although Section 1 of this DPOA made it effective only upon the disability of Elizabeth Randall, she signed an “Authorization of Attorney-in-Fact of Elizabeth Randall” that same day that empowered her grandson to act as her attorney-in-fact effective immediately. 5RP 147. Mr. Zuccarini explained to the jury that having the DPOA for his grandmother made the Defendant a fiduciary, with the corresponding fiduciary duty to exercise his control for the benefit of his principal, Elizabeth Randall. 5RP 152-53.

Michael Zuccarini testified that the most important document he prepared for Elizabeth Randall for her review and signature on September 22, 2003 was a Revocable Living Trust Agreement (“RLTA”) to establish the Elizabeth Randall Revocable Trust. 5RP 119-20. The RLTA and

³ Zuccarini testified that Elizabeth Randall’s current Guardians waived the attorney-client privilege with respect to his trial testimony. 5RP 112.

attachments provided that Elizabeth Randall and the Defendant would serve as co-trustees of the Elizabeth Randall Revocable Trust, thereby providing that both had power over the trust assets. 5RP 125-27. As a trustee of the Trust, the Defendant served as a fiduciary, and was held to a “very high standard to exercise that control for the benefit of Elizabeth,” according to Mr. Zuccarini. 5RP 128-29. He also told the jury that the RLTA was generally intended to serve as an estate planning and financial tool for Elizabeth Randall, designed to transfer almost all of her assets, both real and personal, into the Revocable Living Trust for efficient transmittal to her heirs upon her death. 5RP 120-33. Elizabeth Randall was the sole beneficiary during her lifetime. 5RP 130.

The RLTA had many provisions in its 18 pages (plus several pages of addenda). Article 7 of the RLTA is entitled “Trustees,” and Subsection 7.05 is headed “Guide to exercising discretion of trustees.” The first subsection under that, Subsection 7.05 (a), is headed “Settlor.” It reads in its entirety as follows: “The primary purpose of settlor is to provide for her own needs and comfort in life, at her accustomed standard of living.” 5RP 133-34.

A third document executed by Elizabeth Randall on September 22, 2003 was the Last Will of Elizabeth Randall. 5RP 153-54. Michael Zuccarini, who also drafted this Will, testified that it is what is known as a

“pour over” will. 5RP 155. The main effect of the Will is to “pour over” into the Elizabeth Randall Revocable Trust any assets of hers that were not yet part of that Trust. *Id.*

c. The First Elizabeth Randall Guardianship Petition

After hearing what Dr. Carr and Judith Newman had to say about her mother, and based on her own continued concern about her mother’s ability to manage her own affairs in the wake of the death of her husband and son Stephen, Julie Boe filed a petition in King County Superior Court for a guardianship to be instituted for Elizabeth Randall. 5RP 23. A Guardian Ad Litem was appointed in the Guardianship proceeding. 5RP 25. The petition for guardianship was contested by Elizabeth Randall. 5RP 83.

Dr. Carr, Elizabeth Randall’s personal physician, submitted a report to the Court. 5RP 24. The general thrust of his report was at odds with his previous telephone conversation with Julie Boe, who told the jury that Dr. Carr “changed his mind.” 5RP 24-25. His report to the Court recommended against a guardianship, and the Guardian Ad Litem agreed with Dr. Carr. *Id.*

The King County Superior Court directed that it be set on the trial calendar. 5RP 83. Faced with this change of heart by Dr. Carr and with the fact that they had already spent \$20,000 in attorney's fees, Julie and Jon Boe decided they could not proceed any further with the petition for Guardianship. They settled the case, and the petition was formally dismissed in February 2004. 5RP 25-26.

d. Elizabeth Randall From September 2003 To September 2005

Defendant Thomas Randall served as the attorney-in-fact for his grandmother Elizabeth Randall and as a trustee of her revocable trust for more than two years after the signing of the DPOA and the RLTA on September 22, 2003, until he was removed from both positions by Court order of December 21, 2005. 9RP 51-54. Much of the State's evidence at trial was devoted to detailing the extent to which the Defendant depleted the assets of his grandmother's estate during this period. 7RP 45-50; 8RP 7-27. This evidence focused on the funds in various bank accounts in Elizabeth Randall's name at U.S. Bank and Key Bank (particularly at the former), and on real property that she and her late husband owned. *Id.*

During this time period, September 2003 to September 2005, Defendant Thomas Randall was essentially the only member of her family

that was in touch with Elizabeth Randall, save for the occasional visit by Jon Boe every couple of months. 5RP 26-27, 84-85. After the DPOA and the RLTA were signed on September 22, 2003, most of the cash assets belonging to Elizabeth Randall were held by her in four accounts at U.S. Bank: she and the Defendant were authorized signators on all four accounts. On two of these accounts, the Defendant was an authorized signator by virtue of the DPOA, and on the other two, by virtue of his status as a Trustee of the Elizabeth Randall Living Trust. 7RP 47-50.

Jim Hardtke, an Investigator with the King County Prosecuting Attorney's Office, reviewed all of the bank records from these bank accounts of Elizabeth Randall during this period. 7RP 46-50. He performed several different analyses of withdrawals from those U.S. Bank accounts. He made a schedule of all of the ATM withdrawals from one of the U.S. Bank accounts, and found 217 such withdrawals made between December 23, 2003 through November 1, 2005, for a total withdrawal of \$82,269.50. 8RP 7-10. From another U.S. Bank account, there were 125 ATM withdrawals, totaling \$48,224.50, between January 14, 2004 and December 14, 2005. 8RP 10-11. The grand total for all ATM withdrawals from these accounts for those periods was \$130,494. 8RP 16-17.

Mr. Hardtke also found a number of “customer withdrawals” from these U.S. Bank accounts for the period March 9, 2004 to October 4, 2005. 8RP 12-13. He only tallied those withdrawals for which the Defendant himself signed for the withdrawal, or where his identification was used to make the withdrawal. *Id.* These withdrawals totaled \$38,550. 8RP 12-13, 17-18. Mr. Hardtke also found checks on these U.S. Bank accounts made payable to Daphne Eastman, the Defendant’s girlfriend (and formerly his fiancée) most of this period: these totaled \$12,500 for the period February 12, 2004 to November 2, 2005. 8RP 22.

Jim Hardtke also found a U.S. Bankcard credit card associated with these Elizabeth Randall/Thomas Randall U.S. Bank accounts, that could be used as either a debit card or a credit card. 8RP 14. Used in either way, it acted as an instant withdrawal against the bank account. *Id.* Mr. Hardtke was able to schedule out by category many of these debit/credit card withdrawals during the time the Defendant was a signator on his grandmother’s accounts. So in the category of “Shopping,” he found a total of \$44,357.12 of such withdrawals, based on charges at places like Costco, Fred Meyer, Home Depot, and the like. 8RP 18-19. Mr. Hardtke found “Auto Costs” of \$29,488.90, and “Groceries” totaling \$14,076.79, along with several other categories. 8RP 21-24.

Mr. Hardtke totaled up all the withdrawals he found from these four U.S. Bank accounts, including the ATM withdrawals, cash customer withdrawals, checks to Daphne Eastman and debit/credit card withdrawals. The grand total came to \$299,217.67. 8RP 14-24. He also testified that in addition to all the amounts that made up the \$299,217.67, there were other miscellaneous charges on the U.S. Bank debit/credit card totaling another approximately \$85,000. 8RP 25.

Jim Hardtke also testified about the bank statements for the Elizabeth Randall bank accounts at U.S. Bank and Key Bank. Before December 2004, they had all been sent to Elizabeth Randall at her home in Kirkland. 8RP 25-28. Starting in early December 2004, however, the address to which the bank statements for each of these accounts was changed to was the address in Port Hadlock where the Defendant was living. *Id.* By the middle of 2005, none of the bank statements were being sent to Elizabeth Randall. *Id.*

In addition to all the funds drained from Elizabeth Randall's U.S. Bank accounts during this time, the evidence at trial also showed that the Defendant ended up disposing of some of his grandmother's real property. He arranged for a house and lot in Port Hadlock, Washington, on the Olympic Peninsula, to be transferred from Elizabeth Randall to his girlfriend and then-fiancée, Daphne Eastman, by means of a quitclaim

deed dated July 30, 2004, with the consideration shown as “love and affection.” 6RP 28-35. Daphne Eastman did not pay anything for this house. 6RP 37. She testified that the Defendant told her his grandmother was going to give them the Port Hadlock house, and that he wanted the house in her name because he had diabetes, and wanted their son to be taken care of. 6RP 29, 36. The Defendant also told her that “there was a lien on something for him,” as further explanation of why the house would be in her name and not his. 6RP 36.

The Defendant arranged for the sale of one other real estate parcel owned by his grandmother. This was a lot on Marrowstone Island, not far from Port Hadlock. 6RP 104. The Defendant told Richard Eastman, his girlfriend’s father, that his grandmother had given him the lot, and he offered to sell it to Richard Eastman and his wife as the site for a potential retirement home for the couple. 6RP 104-05. The Defendant and Richard Eastman eventually came to an agreement for the Eastmans to purchase the property for \$33,000. 6RP 106.

The Defendant directed Richard Eastman how to fill in the quitclaim deed, and because the former worked for a mortgage company, Mr. Eastman deferred to his knowledge of real estate practice. 6RP 109-12. The quitclaim deed recited that consideration for the land was “love and affection.” 6RP 112. Also at the direction of the Defendant, a

Real Estate Tax Affidavit executed at the same time recited that the property was a “gift to son-in-law and daughter-in-law.” 6RP 114-16. In actuality, Richard Eastman did pay \$33,000 for the property. 6RP 112-13.

e. September 2005 And Second Guardianship Petition

On several of his occasional visits to Elizabeth Randall in 2005, Jon Boe heard his mother-in-law mention that the Defendant’s house in Bothell had “burned down,” and he was then living in the Port Hadlock house. 5RP 85. On one of his trips to Willapa Bay for his graduate school studies, Jon Boe decided to return home to Anacortes via Port Hadlock. *Id.* Mr. Boe testified that the house was “definitely being lived” in, and had “three pretty nice vehicles” parked in the yard. *Id.*

On his return home, he told his wife Julie what he had seen. 5RP 85-86. Julie Boe searched the website for Jefferson County, and found in the public records the quitclaim deeds from Elizabeth Randall for the Port Hadlock and Marrowstone Island properties, both of which listed the consideration as “love and affection.” *Id.* Jon Boe decided to drive down to Kirkland to speak with Elizabeth Randall in person. 5RP 87.

Jon Boe met with his mother-in-law in late September, 2005. *Id.* He showed Elizabeth Randall copies of the two quitclaim deeds of her

property, and asked her about them, but she did not know what they were. 5RP 87. He asked her if she knew what a quitclaim was, and she said she did not know. *Id.* Jon Boe explained to Elizabeth Randall that “these pieces of paper basically gave her property to these people.” *Id.* He went on to testify: “And, she didn’t have a concept of what that really meant. She didn’t understand that she had done it.” *Id.*

Jon Boe persuaded her to accompany him to her U.S. Bank branch in Kirkland. 5RP 88. Elizabeth Randall was not getting any bank statements at her house, and according to Jon Boe, there were no such bank statements at her house. *Id.* They explained that to U.S. Bank personnel, and asked them to show her and Jon Boe statements for her accounts there. *Id.* The assistant branch manager called Ms. Randall’s bank statements up on his computer, but could only access the previous four months of activity. 5RP 88-89. Even the records from that limited time frame showed the transfer of roughly \$100,000 from Elizabeth Randall’s accounts at U.S. Bank. *Id.*

The U.S. Bank records showed a total of only about \$16,000 remaining in these accounts. RP5 89. Jon Boe talked it over with the bank manager at U.S. Bank, and decided it would be prudent to leave about \$500 in the U.S. Bank accounts so as “to not arouse suspicion right away.” 5RP 90. They then took the remainder of the funds out of U.S.

Bank via a bank check, and deposited it into the Totem Lake Branch of Key Bank, which Elizabeth Randall used “for her day-to-day checks.” *Id.*

Jon Boe talked with Elizabeth Randall after the trip to U.S. Bank, and “kept trying to tell her what we had discovered today.” 5RP 91. He told her that “apparently a lot of money was gone from her bank accounts,” and added that he believed it was the Defendant who was the cause, since he had access to those accounts. *Id.* At one point, Ms. Randall asked her son-in-law why the Defendant had done this to her, and what had she ever done to him. *Id.* Mr. Boe added: “But then a few minutes later it was gone. I mean, she’d forget about it.” *Id.*

Jon Boe contacted the Kirkland Police about his mother-in-law. 5RP 92. Within a day or two of the bank visit, he also called Adult Protective Services (APS) to report suspected elder abuse. *Id.* He met with Apolonio Buyagawan (who goes by “Lonny), who then worked for APS, and showed him the bank statements and quitclaim deeds he had found pertaining to Elizabeth Randall. 7RP 17.

Lonny Buyagawan then tried to set up a meeting with the Defendant to discuss the allegations Jon Boe had made. 7RP 23. He made several attempts to set up such a meeting, and “repeatedly” asked the Defendant to bring records to such a meeting, including a record of expenses he should have been maintaining under the DPOA. 7RP 22-24.

After a month or so, and on Mr. Buyagawan's third attempt, the Defendant agreed to meet with him at the APS offices. 7RP 22-23.

At this meeting, which took place in November 2005, Lonny Buyagawan showed the Defendant the records that Jon Boe had provided him, and asked the Defendant to give his version of what had happened. 7RP 23-24. The Defendant was "very evasive." 7RP 24. He brought "no records at all" to the meeting with Mr. Buyagawan. 7RP 25. At one point during this meeting, the Defendant claimed that some of the cash he had withdrawn from his grandmother's account was taken by him to her so she could store it in a safe in her house, at her request. 7RP 29. The Defendant further claimed that there was about \$15,000 in cash in his grandmother's safe. *Id.*

APS also contacted Judith Newman, the certified Geriatric Mental Health Specialist who had examined Elizabeth Randall in October 2003, to interview her once again. 3RP 30. Ms. Newman did so at Ms. Randall's house in Kirkland on October 18, 2005, a meeting that was arranged with the help of Jon Boe. 3RP 30-31. Judith Newman found Ms. Randall to be "even thinner" than she had been two years earlier, and described her teeth as "scary": she testified that they were "all brown and wilted and broken." 3RP 31. Elizabeth Randall kept smiling during this meeting, which Judith Newman described as "an inappropriate affect." *Id.*

Ms. Newman concluded that Ms. Randall's condition "was greatly deteriorated" from her condition of two years earlier. 3RP 32.

The Washington Attorney General's Office filed a petition for a guardianship to be established for the estate of Elizabeth Randall, but not for her person. 8RP 99-101. Attorney Karl Flaccus was appointed Guardian Ad Litem (GAL) by the Court in early November 2005. After he investigated, he recommended that a guardianship of Elizabeth Randall's estate be established, and that the Defendant be removed as her attorney-in-fact and as Trustee of her Revocable Living Trust. 8RP 118-19.

There was a hearing on the Attorney General's Petition for Guardianship on December 21, 2005. 9RP 49. The Court imposed the guardianship over the estate of Elizabeth Randall, and appointed Puget Sound Guardians as the Guardian for Elizabeth Randall's estate. 8RP 118-21. The Court removed the Defendant as her attorney-in-fact, and also removed both him and his grandmother as trustees for the Elizabeth Randall Living Trust, appointing Puget Sound Guardians as "successor sole trustee" of the Trust. 8RP 119-21.

The Order entered by the Court after the hearing on December 21, 2005 also imposed some further duties on the Defendant. It required him to "submit a final accounting and detailed inventory" of Elizabeth

Randall's estate." 8RP 122. The Court's Order further required the Defendant to provide "all supporting documentation." *Id.* Finally, this Order authorized Puget Sound Guardians to investigate Elizabeth Randall's finances and the management of the Elizabeth Randall Living Trust. 8RP 121.

f. After A Guardian Is Appointed For Elizabeth Randall In December 2005

Puget Sound Guardians attempted to get Elizabeth Randall's estate in order after being appointed her guardian on December 21, 2005, so that they could file the inventory they were required to file within 90 days. 9RP 55. Puget Sound Guardians attempted to get information pertaining to Ms. Randall's assets from the Defendant, but in the end received only "a very minimal amount of documents that were turned over." 9RP 56-57. The Defendant never did provide the accounting required by the Court Order of December 21, 2005, and the new guardians had problems in doing the inventory of Ms. Randall's estate, owing to the difficulty of researching her properties and her bank accounts. 9RP 59. In January 2006, Puget Sound Guardians found \$700 left in one of Elizabeth Randall's U.S. Bank accounts, and about \$4,000 left in two Key Bank accounts. 9RP 59-60, 110.

Puget Sound Guardians discovered that nothing at all had happened with the estate of Cecil Randall, thus preventing the transfer of the real estate held jointly with Elizabeth Randall to her. 9RP 62. Dianne Klem, the Executive Director of Puget Sound Guardians was appointed as administrator of Cecil Randall's estate. Puget Sound Guardians also found that federal income tax returns had not been filed for Elizabeth Randall for the years 2003, 2004, and 2005. 9RP 61. Interest and IRS penalties had piled up in the meantime. 9RP 61-62.

After Puget Sound Guardians was appointed Guardian of the estate of Elizabeth Randall, she continued to live by herself at her house in Kirkland, where personnel from Puget Sound Guardians would visit her from time to time. 5RP 33. Lorene Summers of Puget Sound Guardians went to visit her at her house soon after the guardianship was established. 9RP 134-44. She testified that there were no gutters on the fascia boards on the west side of the house, and "a good amount of moss buildup." 9RP 140. There was only one gutter in the back that was attached to the house, and it was full of moss and debris. *Id.*

With assistance from Puget Sound Guardians, as well as now-resumed relations with her daughter Julie and her family, Elizabeth Randall was able to stay in the family home in Kirkland for approximately one year after the Guardian was appointed. 5RP 31. A fierce winter

storm in December 2006, however, knocked out the power to her house. 5RP 34-35. Elizabeth Randall had to move in temporarily with daughter and son-in-law, the Boes, in Anacortes. *Id.*

This arrangement soon proved unworkable. Elizabeth Randall's dementia by this time caused her to be increasingly "combative" and "delirious," as well as "frantic and disoriented." 5RP 34. After a very short stay at their home, the Boes had to call for paramedics to take Elizabeth Randall to the emergency room at a local Anacortes hospital. 5RP 35. The Boes then had her transferred to Group Health in Redmond. *Id.*

After Elizabeth Randall was admitted to Group Health, doctors there concluded that it was not safe for her to return to her house, and that she should be discharged to a facility. 9RP 72. Group Health therefore petitioned the Court for a guardian of her person to be appointed, and in March 2007, Puget Sound Guardians was appointed guardian of her person in addition to already being guardian of her estate. 9RP 71-72. Elizabeth Randall never went home again. *Id.*

After Elizabeth Randall went to live with Julie and Jon Boe in December 2006, Lorene Summers of Puget Sound Guardians went and secured the house. 9RP 157. She also did a thorough search of the house to see if there was anything of value there. Ms. Summers testified that she

found a total of about \$2,000 in cash in the house, mostly in the many bags she came across scattered through the house, including \$700 in one bag. 9RP 160-61. She also told the jury that she had heard that there might be a safe in the house, and she looked for one. 9RP 161. She did not find a safe, or any indication that there had ever been one in the house. 9RP 161-62.

Elizabeth Randall was discharged from Group Health to a long-term care, skilled nursing facility, Gardens of Issaquah. 9RP 73. Because her cash had been so depleted by the Defendant, she had total assets of less than \$2,000, and could therefore qualify for Medicaid. 9RP 74-75. In fact, since her monthly income was about \$1,200 per month, and the care at such a facility costs between \$6,000-\$8,000 a month, Elizabeth Randall could not have paid for such care by herself. *Id.*

Elizabeth Randall was a Medicaid patient for most of 2007. 9RP 75. Accepting Medicaid payments for long-term care means that the State of Washington gets a lien on her estate to the extent of such payments, that Elizabeth Randall or her estate will eventually have to pay off. 9RP 79. A Medicaid patient also faces a smaller available selection of facilities: most memory care facilities, for instance, are private pay facilities. 9RP 80. Dianne Klem of Puget Sound Guardians testified that

Gardens of Issaquah would not have been her first choice as a facility for Ms. Randall, as it does not specialize in memory care. *Id.*

Eventually, Elizabeth Randall received payment on a promissory note. 9RP 73. Puget Sound Guardians was then able to place her in a facility specializing in memory care, Somerset in Everett. *Id.* Puget Sound Guardians was also finally able to sell the Randall house in Kirkland in January 2008 for about \$600,000. 8RP 77-78.

Elizabeth Randall is now living in a facility called Ashley Gardens in Mount Vernon. 8RP 73. Her physician from November 2007 to January 2009, Dr. Marcus Kuypers, told the jury that when he first saw her, she was “in the advanced stages of dementia.” 9RP 19. He later characterized her condition as “advanced or moderate to advanced dementia,” and testified that she would have little ability to remember the events of the previous five years. 9RP 21.

g. The Defendant’s Testimony At Trial

After the State rested, the Defendant took the stand in his own defense. On cross examination, he admitted that he had had a fiduciary duty to his grandmother not only as a trustee of her trust, but also by virtue of the power of attorney he held for her. 10RP 167. He also admitted that

he may have “broken” his fiduciary duties, but denied stealing from his grandmother. 10RP 188.

Asked about the 342 ATM withdrawals totaling \$130,494 from his grandmother’s U.S. Bank accounts, the Defendant admitted that all of these withdrawals were made by him or by Daphne Eastman at his direction, though he claimed his grandmother was with him for some of these withdrawals. 10RP 184-85. He also claimed that some of the cash he withdrew he gave to his grandmother to put in her safe: in this regard, he agreed that he told Lonny Buyagawan of APS that there was about \$15,000 in her safe when they met in November 2005. 10RP 183. When asked what he did with all this cash, especially given that he did not have to pay rent on the Port Hadlock house and had his living expenses covered by the charges/debits on the U.S. Bank card, the Defendant could only respond, “I don’t know. I brought a lot of cash to my grandmother’s house. It was in the safe.” 10RP 190. He also admitted that, with the possible exception of his former fiancée, Daphne Eastman, there was no other witness to the fact that his grandmother had a safe stuffed with cash in her basement. 11RP 13-14.

The Defendant valued the Port Hadlock house that he claimed his grandmother had given him at around \$225,000 as of 2004, when it was deeded to Daphne Eastman. 11RP 7. He agreed that, between the ATM

withdrawals, the debit/credit card withdrawals, the cash withdrawals at the bank, and the Port Hadlock house that the Defendant claimed his grandmother gave to him, he ended up with over \$500,000 of her assets in the roughly two-year period during which he held the DPOA and was a Trustee of the Elizabeth Randall Living Trust. 11RP 7-9. The Defendant admitted that despite coming into possession of so much of his grandmother's assets, he never did fix the gutters on her house. 11RP 9-11. He also admitted that in spite of the amount of his grandmother's money he spent between late 2003 and late 2005, as of his testimony in April 2009, he had nothing to show for all the money he had spent. 11RP 15.

h. The Jury's Verdict And Sentencing

At the close of all the evidence, the jury was instructed and retired to its deliberations. On April 8, the jury returned its verdicts. It found the Defendant guilty as charged of Theft in the First Degree as charged in Count I of the Information. CP 22. The jury also answered in the affirmative to the question of whether the Theft in the First Degree charged in Count I constituted a "major economic offense" and whether the victim was particularly vulnerable or incapable of resistance. CP 23-24. The Verdict Form C erroneously phrased the second interrogatory

as: “Did the victim know, or should have known, that the victim was particularly vulnerable or incapable of resistance?” (emphasis added), instead of asking whether the Defendant knew or should have known. CP 24. The jury acquitted the Defendant of the charge of Tampering with a Witness as charged in Count II. CP 25.

Sentencing was held on July 10, 2009. The Defendant’s Offender Score was 0, and with a seriousness level of II for Theft in the First Degree, his standard range was 0-90 days. CP 72. Based on the two aggravators that the jury found in connection with the Theft conviction, Judge Ramsdell found substantial and compelling reasons why the Defendant should receive a sentence above his standard range. CP 72, 78. The trial judge also specifically found, as reflected in Appendix D to the Judgment and Sentence, “Findings of Fact and Conclusions of Law for Exceptional Sentences,” that: “The Court concludes that either of the aggravators found by the Court would justify an exceptional sentence, with his offender score being 0.” CP 78. He sentenced the Defendant to twenty-five (25) months in custody. CP 74. Judge Ramsdell also ordered the Defendant to pay restitution in an amount to be determined at a restitution hearing to be held at a future date. CP 73. Finally, the Court ordered Defendant to pay the \$500 Victim Penalty Assessment and the \$100 DNA Collection Fee, but waived all non-mandatory legal financial

obligations. CP 73. The Defendant filed his notice of appeal to the Court of Appeals that same day, July 10, 2009. CP 70.

C. **ARGUMENT**

1. **THE JURY INSTRUCTION DEFINING KNOWLEDGE DOES NOT REQUIRE REVERSAL OF THE DEFENDANT'S CONVICTION FOR THEFT.**

The Defendant's first argument on appeal is that Jury Instruction 19, which defined "knowingly," constituted an improper judicial comment on the evidence. To frame this issue properly, the proper WPIC instruction must be compared to the instruction actually given to the jury here. WPIC No. 10.02 ("Knowledge-Knowingly-Definition") reads as follows:

A person knows or acts knowingly or with knowledge with respect to a *[fact] [circumstance] [or] [result]* when he or she is aware of that *[fact] [circumstance] [or] [result]*. [It is not necessary that the person know that the *[fact] [circumstance] [or] [result]* is defined by law as being unlawful or an element of a crime.]

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

[When acting knowingly [*as to a particular fact*] is required to establish an element of a crime, the element is also established if a person acts intentionally [*as to that fact*].]⁴

Court's Instruction No. 19 read as follows:

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance or result.

It is not necessary that the person know that the fact, circumstance or result is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact. (emphasis added).

CP 47. In essence, then, the "Knowingly" instruction read to the jury here differed from WPIC 10.02 only in omitting the words "**when he or she is aware of that fact, circumstance or result**" at the end of the first sentence. There was no objection to this instruction at trial. 11RP 33-45. The general rule in Washington is that objections to jury instructions cannot be raised for the first time on appeal unless the instructional error is of constitutional magnitude. *State v. Dent*, 123 Wn.2d 467, 478-79, 869 P.2d 392 (1994).

In order to justify his raising this alleged instructional error for the first time on appeal, the Defendant invokes the Washington Constitution's

⁴ In the "Note on Use" section just below WPIC 10.02, the first line reads: "Use bracketed material as applicable."

prohibition against a judge's commentary on factual matters at trial to argue that this point may be raised for the first time on appeal.⁵ In *State v. Levy*, 156 Wn.2d 709, 719-20, 132 P.3d 1076 (2006), the Washington Supreme Court held that, because judicial comments on the evidence are explicitly prohibited by the Washington Constitution, the defendant there did raise an issue of constitutional magnitude in claiming such a judicial commentary on the evidence in the court's instructions to the jury. The State respectfully submits that the Defendant's claim that Instruction No. 19 constituted a comment on the evidence by the trial judge is without merit.

“Jury instructions are sufficient when they allow counsel to argue their theory of the case, are not misleading, and when read as a whole properly inform the trier of fact of the applicable law.” *State v. Sibert*, 2010 WL 653868 *6 (February 25, 2010), quoting *Bodin v. City of Stanwood*, 130 Wn.2d 726, 732, 927 P.2d 240 (1996). Jury instructions must inform the jury that the State bears the burden of proving every essential element of a criminal offense beyond a reasonable doubt. *Sibert*, 2010 WL 653868 at *6; *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.2d 240 (1996). The Defendant is not claiming the jury instructions given

⁵ Art. IV, § 16 of the Washington Constitution, captioned “Charging Juries,” reads: “Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.”

here were misleading, or that they relieved the State of proving every essential element of the Theft charge beyond a reasonable doubt: instead, the Defendant's claim is entirely based upon the claim that the instruction in question constituted an impermissible judicial comment on the evidence.

The Defendant's claim that this truncated first sentence of the "Knowingly" instruction was equivalent to a judicial comment on the evidence is extremely tenuous. The Defendant argues thus in his Opening Brief (at 12): "By omitting the second half of the sentence, the court appears to declare the knowledge element is satisfied as a matter of law. It 'resolves a disputed issue of fact that should have been left to the jury.' [State v.] Eaker, 113 Wn. App. [111] at 118 [2002]." How exactly a sentence reading "A person acts knowingly or with knowledge with respect to a fact, circumstance or result" constitutes a judicial declaration that "the knowledge element" is satisfied as a matter of law is left unexplained. If anything, this first sentence of the "Knowingly" instruction, as given, is more incoherent than anything else.

Moreover, an appellate court reviews jury instructions *de novo*, within the context of the jury instructions as a whole. *State v. Jackman*, 156 Wn.2d 736, 743, 132 P.3d 136 (2006); *State v. Levy*, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006). The Defendant's argument completely

ignores the very first instruction given to the jury here. That instruction, which was WPIC 1.02, reads in pertinent part:

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

CP 28-29. In other words, the trial judge here explicitly instructed the jury, in his very first instruction to them, that he was not commenting on the evidence in any fashion, and that if they thought that he was, they should disregard it entirely. The alleged judicial commentary on the evidence in the instructions to the jury here is particularly dubious when compared with those situations where Washington appellate courts have found such comments on the evidence. In *Jackman*, the defendant was prosecuted for various crimes, such as sexual exploitation of a minor, in which the victims' status as a minor was an element of the crimes charged, and the "to convict" instructions contained the victims' birth dates. The Washington Supreme Court concluded that such instructions did in fact constitute judicial comments on the evidence "because they allowed the jury to infer that the victims' birth dates had been proved by the State." *Jackman*, 156 Wn.2d at 744. In *Levy*, the defendant was charged with first

degree robbery and first degree burglary. The to-convict instructions in that case told the jury that the State must prove the defendant had “entered or remained unlawfully in a building, *to-wit: the building of [the victim]*”; that he had taken “personal property *to-wit: jewelry*, from the person or in the presence of another, *to-wit: [names of victims]*”; and had been “armed with a deadly weapon, *to-wit: a .38 revolver or crowbar.*” *Levy*, 156 Wn.2d at 716. The Supreme Court agreed that some of these references were improper judicial commentary that relieved the State of its burden to prove certain elements of the crimes charged. *Levy*, 156 Wn.2d at 716-17. There was nothing close to this sort of factual determination in the “Knowingly” jury instruction given in the instant case.

The omission of the last part of the first sentence of the pattern WPIC instruction on “Knowingly” in the case at bar did not conceivably relieve the State of any of its burden of proof. The Defendant was convicted only of Theft in the First Degree: “knowingly” is not even an element of that crime. The to-convict instruction given to the jury here did not include “knowledge” or “knowingly” as an element, and the Defendant does not cite that as error on appeal. CP 41. The situation here is therefore totally different from the judicial comments on the evidence in the to-convict instructions in *Jackman* and *Levy*.

One of the aggravators alleged in connection with the Theft in the First Degree count did include a knowledge element. Instruction No. 18 instructed the jury that:

For purposes of a special verdict alleged in Verdict Form C, the State must prove beyond a reasonable doubt that the defendant knew or should have known that the alleged victim of the current offense, Elizabeth Randall, was particularly vulnerable or incapable of resistance due to advanced age, disability, or ill health.

CP 46. The Washington Supreme Court has held that a jury does not even have to be instructed on the term “knowledge” when that word is used to define a criminal offense. *State v. Scott*, 110 Wn.2d 682, 691-92, 757 P.2d 492 (1988). The instruction on the knowledge of the Defendant to establish the “vulnerable victim” aggravator was straightforward and clear. As this Court has held: “The test for determining if jury instructions are misleading is not a matter of semantics, but whether the jury was misled as to its function and responsibilities under the law.” *State v. Brown*, 29 Wn. App. 11, 18, 627 P.2d 132 (1981). The jury was not misled here, the inadvertent omission of the twelve words from the “Knowingly” did not constitute judicial commentary on the evidence, and the Defendant’s argument is without merit.

2. THE ERROR IN THE JURY'S VERDICT ON THE "VULNERABLE VICTIM" AGGRAVATOR DOES NOT REQUIRE REVERSAL OF THE DEFENDANT'S EXCEPTIONAL SENTENCE FOR THEFT.

The Defendant's second point on appeal is his claim that the exceptional sentence of twenty-five (25) months in custody is not supported by the jury's verdict. That argument, in turn, is based on the fact that the "Verdict Form C (Special Verdict)" read:

We, the jury, having found the defendant guilty of Theft in the First Degree as defined in Instruction 13, return a special verdict by answering as follows:

Did the victim know, or should have known, that the victim was particularly vulnerable or incapable of resistance?

Answer: Yes
(yes or no)

The Presiding Juror's signature was below. CP24. The Defendant's entire argument on this issue is that because this verdict form asked "Did the victim know..." rather than "Did the Defendant know ...," there is no jury verdict supporting a finding that the Defendant knew Elizabeth Randall was a vulnerable victim. This argument is the exaltation of form over substance in a nearly pristine form, and is without merit.

The Third Amended Information charged in pertinent part, as part of the "Aggravating Facts" section of the Theft in the First Degree charged

in Count I, that “The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance due to advanced age, disability or ill health and this vulnerability was a substantial factor in the offense” CP 17-18. As has already been discussed, *supra*, Instruction No. 18 told the jury the State “must prove beyond a reasonable doubt that the defendant knew or should have known that the alleged victim of the current offense, Elizabeth Randall, was particularly vulnerable or incapable of resistance due to advanced age, disability, or ill health.” CP 46. In addition, the State’s closing argument framed the issue in terms of the Defendant’s knowledge of his grandmother’s vulnerability. 11RP 50.

The jury was therefore clearly instructed that it had to find that the Defendant knew or should have known of Elizabeth Randall’s vulnerability. There can be no serious doubt that, in returning its Special Verdict C, the jury was making a finding that the Defendant knew his grandmother was vulnerable. The literal finding in Special Verdict C, that Elizabeth Randall knew, or should have known that she was particularly vulnerable or incapable of resistance, is simply nonsensical. The scrivener’s error in the Verdict Form C, putting “victim” in where “Defendant” was clearly meant, does not in any way undermine the jury’s finding.

The Defendant relies mainly on the Washington Supreme Court's opinion in *State v. Williams-Walker*, 167 Wn.2d 889, 225 P.3d 913 (2010). In *Williams-Walker*, several cases in which defendants received five-year firearm enhancements were consolidated for review. In each of the cases, the jury had returned a special verdict finding that the defendant was armed with a firearm during the commission of the offense for which the defendant was convicted. In order to qualify for the five-year firearm enhancement, however, a jury's special verdict must also specify the type of weapon used. *Williams-Walker*, 167 Wn.2d at 897-98. Where a jury's special verdict simply states that the defendant used a "deadly weapon" in committing the crime, "this finding signals the trial judge that only a two-year "deadly weapon" enhancement is authorized, not the more severe five-year firearm enhancement." *Williams-Walker*, at 898. In each of the three cases consolidated in *Williams-Walker*, the trial court had submitted to the jury the special verdict form for a deadly weapon enhancement, not the form for a firearm enhancement, and thus when those juries answered the special verdict forms in the affirmative, they were only authorizing a deadly weapon enhancement, not the more severe firearm enhancement.

The Supreme Court held that imposing the more severe, five-year firearm enhancement under these circumstances violated article I, sections 21 and 22 of the Washington constitution.⁶ *Williams-Walker* at 895-900. The Court further held the imposition of such an unauthorized sentence could never be harmless, and thus a harmless error analysis was inapplicable. *Id.* at 900-02. All of the consolidated cases were therefore remanded for resentencing.

The State respectfully submits that the case at bar can be distinguished from those discussed by the Supreme Court in *Williams-Walker*. In each of those consolidated cases, the enhancement submitted to the jury was actually insufficient to justify the five-year firearm enhancement subsequently imposed, in that the verdict forms failed to specify the type of weapon used in the underlying offense. The language used was instead actually the appropriate language for the two-year deadly weapon enhancement. It was therefore impossible to support the five-year firearm enhancement actually imposed when the jury specifically found only the deadly weapon enhancement.

Here, by contrast, there was no such insufficiency in the jury's special verdict. The erroneous substitution of the word "victim" where the

⁶ Article I, § 21 of the Washington Constitution, entitled "Trial by Jury," provides that "The right of trial by jury shall remain inviolate" Article I, § 22, entitled "Rights of the Accused," contains a lengthy list of rights guaranteed to defendants in criminal cases.

word “Defendant” should have been does not in any way evince the jury’s decision to impose a special verdict other than the “vulnerable victim” aggravator that had been pled, that the jury had been instructed on, and that closing argument discussed. In light of all the circumstances here, there is no doubt that the jury in this matter, in returning its Verdict Form C, was actually finding that the Defendant had the requisite knowledge for the “vulnerable victim” aggravator to apply, and was not finding some other, lesser enhancement. It did not therefore violate the Defendant’s constitutional rights for Judge Ramsdell to sentence him pursuant to the jury’s finding of the “vulnerable victim” aggravator as well as the “major economic offense” aggravator.

Moreover, the trial judge indicated during sentencing that either one of the two aggravators found by the jury would justify an exceptional sentence here. 11RP 146. That finding was incorporated into the Appendix D to the Judgment and Sentence, “Findings of Fact and Conclusions of Law for Exceptional Sentences.” CP 78. There is no reason for a remand for resentencing under these circumstances.

D. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court affirm the Defendant's conviction for Theft in the First Degree and the sentence imposed by the trial court.

DATED this 5th day of May, 2010.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer J. Sweigert, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the **Brief of Respondent**, in STATE V. THOMAS P. RANDALL, Cause No. 63808-4-I, in the Court of Appeals, Division I, for the State of Washington.

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


MONICKA LY-SMITH
Done in Seattle, Washington

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Date

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