

65933-2

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No: 65933-2-I

In The Court Of Appeals For The State Of Washington Division I

State of Washington
Respondent

V.

Bernard Woods
Appellant

Statement of Additional Grounds

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938127

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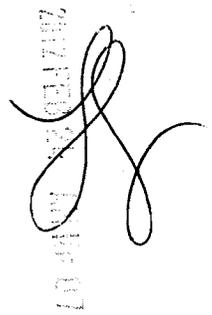
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Was Mr. Woods Fourth Amendment Rights violated when the arresting officer did an Illegal Search and Seizure outside of their jurisdiction?

The Fourth Amendment provides that “The right of the people to be secure in their person, houses, papers, and effects against unreasonable Search and Seizures, shall not be violated.” U. S. Const. Amend.IV. Mr. Woods contends that his State trial error lies as a violation of Federal Constitutional Rights, and State Law. *Lewis v. Jeffers*, 497 U.S. 764, 780, 110 s.ct. 3092, 3102, 111 L.Ed.2d 606(1990). *Pulley v. Harris*, 465 U.S. 37, 41, 104 s.ct. 871, 874-75, L.Ed.2d 29(1984). Mr. Woods respectfully request this Honorable Court to consider whether his State conviction violated the Constitution, Law, or Treaties of the United States. 28 U.S.C. 2241; *Rose v. Hodges*, 423 U.S. 19, 21, 96 s.ct. 175, 177, 46 L.Ed.2d 162(1975). “The Fourth Amendment protects personal Constitutional Rights which may not be vicariously asserted against “Unauthorized Intrusions.” *Alderman v. United States*, 394 U.S. 165, 174-175, 22 L.Ed.2d 176, 89 s.ct. 961(1969). The Prima Facie Burden of proving the ultimate Illegality should be distinguished from the burden to prove taint flowing from that Illegality. “[W]hen an illegal Seizure has come to light; [The Government] has the ultimate burden of persuasion to show that its evidence is untainted.” *Alderman v. United States*, 394 U.S. 165, 174-175, 22 L.Ed.2d 176, 89 s.ct. 961(1969). The second Clause of the Amendment further establishes protection to tangible things by proving that no warrant shall issue but those “particularly describing the place to be search, and the person’s or things to be seized.” *Katz v. United States*, 389 U.S. 347, 88 s.ct. 507(1967).

In the present case before this Honorable Court Mr. Woods Fourth Amendment Rights were violated when Seattle Police Officers Entrapped him outside of their jurisdiction (Burien) with a warrantless sting operation to purchase Narcotics. Mr. Woods was merely a passenger in the vehicle that the officers pulled him out of at Gunpoint. At no point and time did the driver (Ms. Tasha McKinion) give consent to the officers to search her vehicle, neither she nor Mr. Woods was the primary subject of an investigation. The Officers happen to stumble upon Mr. Woods’ number by dialing multiple random numbers until they came across what they were looking for, this alone is a form of Entrapment and a violation of Mr. Woods’ Constitutional Rights. A criminal defendant is entitled to suppress evidence if the state violates his or her Fourth Amendment Rights against Illegal Search and Seizure. U.S. Const. Amend.IV; *Mapp v. Ohio*, 367 U.S. 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684, 86 Ohio Law Abs. 513 (1961); *Duncan v. Louisiana*, 391 U.S. 145, 20 L. Ed. 2d 491, 88 S. Ct. 1444 (1968) (Fourth Amendment is applicable to state action). If an affiant excludes material information from an affidavit supporting the issuance of a search warrant either deliberately or with reckless disregard for the truth, the court may require such information be included in the record for a new determination of whether probable cause existed. If the affidavit as supplemented then fails to support a finding of probable cause, the warrant is void and the evidence secured pursuant to it is deemed a fruit of an illegal search which must be excluded. Not only did the Officers not

have Jurisdiction to authorize such Entrapment but they were outside of their Legal Geographical Boundaries that are set out by Federal and State Law. The Officers in this present case did not have or ask for permission from the county of Burien to even do such an unlawful Entrapment thus not giving the proper common-law courtesy to Burien Police Department. "When the government's conduct during a sting operation is sufficiently outrageous, the courts will not allow the government to prosecute the crimes which are the result of that conduct." *United States v. Mosley*, 965 F.2d 906, 908 (10th Cir. 1992). Under those circumstances, a defendant may assert the outrageous governmental conduct defense, which is based on the Due Process Clause of the Fifth Amendment to the United States Constitution. U.S. Const. Amend.V; In considering whether the government's means of influencing the defendant into participating in the scheme is substantially coercive to the point of being outrageous, the coercion must be particularly egregious before it will sustain an outrageous conduct defense. "The outrageous governmental conduct defense "is an extraordinary defense reserved for only the most egregious circumstances. It is not to be invoked each time the government acts deceptively or participates in a crime that it is investigating. Nor is it intended merely as a device to circumvent the predisposition test in the entrapment defense." *Mosley*, 965 F.2d at 910. The issue of whether a law enforcement agent's conduct is outrageous is reviewed De Novo. *United States v. Diggs*, 8 F.3d 1520, 1523 (10th Cir. 1993). "Government creation of the crime occurs when there has been excessive governmental involvement in generating a new crime solely to prosecute it or in inducing a defendant to become involved in the crime for the first time, rather than merely interposing itself in an ongoing criminal enterprise. Excessive governmental involvement occurs when the government engineers and directs the criminal enterprise from start to finish and the defendant contributes nothing more than his presence and enthusiasm." *United States v. Russell*, 411 U.S. 423, 431-32, 36 L. Ed. 2d 366, 93 S. Ct. 1637(1973).

Article I Section 7 prohibits police from requesting the name of a passenger for investigatory purposes without an articulable suspicion of criminal activity, the State adopted this provision from that of the Fourth Amendment which would be a Fourth Amendment Search and Seizure violation when a warrant has not been issued. The Officers had no authority to search a vehicle that one did not belong to Mr. Woods, two that he was not driving and three that was not a part of their sting operation, by them doing this they violated Mr. Woods' as well as Ms. McKinion' Fourth Amendment Right to Search and Seizure as well as their Fourteenth Amendment Right to Due Process. Mr. Woods Trial Attorney made multiple Suppression request because the officers went above and beyond their legal jurisdiction so much so that they went to Burien to make this Illegal Sting. *State v. Afana*, 169 wn.2d 169, 233 p.3d 879(2010) "Holding that the arresting officer's was not justified in making a warrantless search of the defendants vehicle incident to the passenger's arrest or the defendants unsecured presence at the scene and that there does not exist a good faith exception to the exclusionary rule under State Constitutional Law." The "Authority of Law" requirement of Washington's Constitution is satisfied by a valid warrant. It is always the States burden to establish that such an exception applies, the State has fail to show an exception here thus violating Mr. woods' Federal and State Constitutional Rights. The only remedy that can be satisfied is a Reversal and Remand back to the Trial court for a dismissal. If the vehicle had been

Mr. Woods the officers still would have³ to have a warrant to even search the vehicle, the Officers had no prior knowledge of Mr. Woods even having Narcotics until after dialing multiple numbers and then stumbling upon his, this is equivalent to the Police dialing over Twenty different Numbers with the last name starting with the letter W until they came across what they wanted, or someone who they could set up a buy from this would not even be considered as a pre-text stop. "A person has been "seized" within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. A Fourth Amendment seizure occurs whenever an officer specifically identifies himself as a drug enforcement officer by flashing his badge a second time, and makes the suspect aware that he is the focus of a drug investigation. Although the Constitution does not require proof of knowledge of a right to refuse as the sine qua non of an effective consent to a search, such knowledge is highly relevant to the determination." *United States v. McKines* 933 F.2d 1412 (1990). Washington's exclusionary rule is merely categorical, thus while the State's exclusionary rule also aims to deter Unlawful Police action, its paramount concern is protecting an individual's Fourth Amendment Rights, therefore if a Police Officer has disturbed a person's rights the court does not ask whether the Officers belief that this disturbance was justified, was objectively reasonable, but simply whether the Officer had the requisite authority of Law if not any and all evidence Seized unlawfully will be suppressed. U.S. Const. Amend.VI Questions of Law addressed by a Trial Court in ruling on a Criminal defendant's motion to suppress evidence are reviewed De Novo. "Evidence discovered in a Warrantless Search of a Motor vehicle made incident to the arrest of a vehicle occupant is rendered unlawful." *Arizona v. Gant*, U.S. 129 s.ct. 1710, 172 L.Ed.2d 485(2009). A statue in derogation of the Common-Law must be "Strictly Construed" and no intent to change that law will be found unless it appears with clarity. In general Washington is Governed by the Common Law to the extent the Common Law is not inconsistent with Constitutional, Federal, or State Law. *Potter v. Washington State Patrol*, 165 wn.2d 67, 196 p.3d 691(2008)

The Fourth Amendment to the United States Constitution prohibits police from "conduct[ing] a search unless they first convince a neutral magistrate that there is probable cause to do so" and obtain a warrant. *New York v. Belton*, 453 U.S. 454, 457, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981); see also U.S. Const. amend. IV. A warrantless search is permitted, however, if it occurs "incident to a lawful arrest." *United States v. Robinson*, 414 U.S. 218, 224, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973). "To qualify for the exception, (i) the arrest must be lawful, and (ii) the subsequent search must not exceed the scope permitted by the exception." *United States v. Wesley*, 352 U.S. App. D.C. 264, 293 F.3d 541, 545 (D.C. Cir. 2002). In reviewing the court's suppression order, "we review de novo the court's conclusions of law." In contrast, we "review findings of historical fact only for clear error and . . . give due weight to inferences drawn from those facts." *Ornelas v. United States*, 517 U.S. 690, 699, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996).

Was Mr. Woods' Sixth Amendment Rights violated when the Trial Court gave him an Exceptional Sentence and Excessive conditions that was not found by a Jury?

The Sixth and Fourteenth Amendment of the United States Constitution "A Criminal Defendant is entitled to jury determination that he is guilty of every element of crime with which he is charged, beyond a reasonable doubt." U.S. Const. Amend.VI; U.S. Const. Amend.XIV. *Apprendi v. New Jersey*, 147 L.Ed.2d 120 s.ct. 2348(2000). The court is bound by the United States Supreme Court's interpretation of federal constitutional law. When the United States Supreme Court decides an issue under the United States Constitution, all other courts must follow that Court's rulings. When the issue involves the interpretation and application of the federal constitution, the court is bound to follow the decisions of the Supreme Court of the United States, which have passed on this issue. The appellate court reviews allegations of Constitutional violations and questions of law De Novo. The Fourteenth Amendment Right to Due Process and the Sixth Amendment Right to trial by jury, taken together, entitle a criminal defendant to a jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt. *In re Winship*, 397 US 358, 364, 25 L Ed 2d 368, 90 S Ct 1068(1970). The historical foundation for these principles extends down centuries into the common law. While judges in this country have long exercised discretion in sentencing, such discretion is bound by the range of sentencing options prescribed by the legislature. See *United States v. Tucker*, 404 US 443, 447, 30 L Ed 2d 592, 92 S Ct 589.

In the present Case before this Honorable Court Mr. woods was given an exceptional Sentenced that (1) was not found by a jury and (2) that was given using points that were washed-out. The Trial court abused its discretion and exceeded its power when it sentenced Mr. Woods off the scale and sentencing him with 14 points, 8 of those points being washed-out by State and Federal Statue thus leaving Mr. Woods' score at 7. With Respect to this honorable Court taking a look at Federal Rules of Evidence E.R. 609 (B) and (D) which states: Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence. Also, Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence. The Trial Court used points that Mr. Woods had already served a sentence for to impose a sentence using points that he has been punished for as well as that should have been washed would be considered as

Double Jeopardy thus violating his Federal Constitutional Rights. This case is not about the Constitutionality of a determinate sentence but only about how it can be implemented in a way that respects the Sixth Amendment. The Framers' paradigm for criminal justice is the Common-Law ideal of limited state power accomplished by strict division of authority between Judge and Jury. This power also went towards Exceptional Community Custody or Excessive Conditions, there is a narrow exception to the cause requirement which allows the court to consider a claim otherwise abusive when it is demonstrated that the alleged Constitutional violation probably has caused the conviction by Entrapment of an innocent person and the failure to entertain the claim would result in "A Fundamental Miscarriage of Justice." "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time served in the community subject to controls placed on the offender's movement and activities by the department. Offenders supervised on community custody include those subject to community placement (as defined in RCW 9.94A.030), drug offender sentencing alternative (as described in RCW 9.94A.505), community custody max, first-time offender waiver (as described in RCW 9.94A.505), or a work ethic camp program (as defined in RCW 9.94A.030), and those sentenced to community custody by the court for crimes committed on or after July 1, 2000, whose sentence is less than one year of confinement. "The guarantees of Jury Trial in the Federal and States Constitutions reflect a profound judgement about the way in which Law should be enforced and Justice administered...If the defendant preferred the Common-sense judgement of a jury to the more tutored but perhaps less sympathetic reaction of the single Judge, he was to have it." *Duncan v. Louisiana*, 391 U.S. 145, 20 L.Ed.2d 491, 88 s.ct. 1444(1968).

The historic inseparability of verdict and judgment and the consistent limitation on judges' discretion highlight the novelty of a scheme that removes the jury from the determination of a fact that exposes the defendant to a penalty exceeding the maximum he could receive if punished according to the facts reflected in the jury verdict alone. The Constitution requires that any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. By the holding in *Jones v. United States*, 526 US 227, 143 L Ed 2d 311, 119 S Ct 1215(1999) that with regard to federal law, the Fifth Amendment's Due Process Clause and the Sixth Amendment's notice and jury trial guarantees require that any fact other than prior conviction that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proved beyond a reasonable doubt. The Fourteenth Amendment commands the same answer when a state statute is involved. U.S. Const. Amend.VI, U.S. Const. Amend.XIV; Given that, with respect to the punishment of criminal defendants, the United States Supreme Court has recognized a distinction between facts in aggravation of punishment and facts in mitigation of punishment, core concerns animating the jury and burden-of-proof requirements, under the Federal Constitution's Sixth Amendment and under the due process clause of the Constitution's Fourteenth Amendment, are absent from a mitigation-of-punishment scheme, as a judge is not (1) exposing a defendant to a deprivation of liberty greater than that authorized by the verdict according to statute, or (2) imposing upon the defendant a greater stigma than that accompanying the jury verdict alone. With respect to criminal prosecution and sentencing, a state statutory scheme

cannot stand under the Due Process clause of the Federal Constitution's Fourteenth Amendment, as (1) the state scheme allows a jury to convict a defendant of an offense on the basis of the jury's finding beyond a reasonable doubt, and (2) after a subsequent and separate proceeding, then allows the judge, under a state statute, to impose punishment identical to that which the state provides for crimes by a preponderance of the evidence which has been raised in the United States Supreme Court. Since there is no ambiguity in the state's sentencing scheme the Supreme Court will not be persuaded by the state's argument that the required finding of bias, and purpose is not rather a traditional sentencing factor, under the state scheme, a judge's finding, on the basis of a mere preponderance of the evidence, can and will be reviewed by the Higher Court De Novo as an abuse of discretion. The nation's founders had not been not prepared to leave criminal justice to the State, this was why the jury-trial guarantee had been one of the least controversial provisions of the Constitution's Bill of Right under the Constitution, all the facts which existed in order to subject a defendant to a legally prescribed punishment ought to be found by the jury. The Federal Constitution's Sixth Amendment, which guarantees the right to a jury trial, (1) by its terms is not a limitation on judicial power, but a reservation of jury power; and (2) limits judicial power only to the extent that the claimed judicial power infringes on the province of the jury. Every criminal defendant has the right to insist that the prosecutor prove to a jury all facts legally essential to the punishment. Nevertheless, "[a] reason offered to justify an exceptional sentence can be considered only if it takes into account factors other than those which are used in computing the standard range sentence for the offense." *State v Gore*, 143 Wash 2d 288, 315-316, 21 P3d 262, 277 (2001). When a judge imposes an exceptional sentence, he must set forth findings of fact and conclusions of law supporting it. 9.94A.120 (3). A reviewing court will reverse the sentence if it finds that "under a clearly erroneous standard there is insufficient evidence in the record to support the reasons for imposing an exceptional sentence." This rule reflects two longstanding tenets of common-law criminal jurisprudence: that the "truth of every accusation" against a defendant "should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors," 4 W. Blackstone, Commentaries on the Laws of England 343 (1769), and that "an accusation which lacks any particular fact which the law makes essential to the punishment is . . . no accusation within the requirements of the common law, and it is no accusation in reason," 1 J. Bishop, Criminal Procedure 87, p 55 (2d ed. 1872). These principles have been acknowledged by courts and treatises since the earliest days of graduated sentencing. The harmless error doctrine does not apply to structural errors; rather, structural errors are subject to automatic reversal. A structural error is a defect affecting the framework within which the trial proceeds. A defect that results in a structural error infects the entire trial process. When a judge imposes an exceptional sentence not based on the facts reflected in the jury verdict or admitted by the defendant, the court commits fatal error. The Sixth Amendment Right to a trial by jury is no mere procedural formality, but a fundamental reservation of power in the Constitutional structure. *State v. Fero*, 125 Wn. App. 84, 104 P.3d 49, (2005).

In *Appendi*, the U.S. Supreme Court addressed judicial factfinding with respect to facts that would expose a defendant to a sentence in excess of the statutory maximum. Similarly, in *Blakely*, the Court examined judicial factfinding that exposed a defendant to a sentence in excess of the standard statutory range of sentences, based on a judicial determination of substantial and compelling reasons justifying an exceptional sentence. *United States v. Polk*, 508 F.Supp.2d 89(2007)

Was Mr. Woods' Fourteenth Amendment Right's violated when the Trial Court used an Illegal Seizure for the Base of his Conviction?

The Fourteenth Amendment to the United States Constitution provides "That no state shall deprive any person of life, liberty, or property without due process of law, nor deny to any person the equal protection of the Laws within its Jurisdiction." U. S. Const. Amend.XIV. A Constitutional error is presumed prejudicial, to overcome the presumption the State must establish beyond a reasonable doubt that the error was trivial, formal, or merely academic, that it did not prejudice the accused, and that it in no way affected the final outcome of the case. A Constitutional error is harmless only if the reviewing court is convinced beyond a reasonable doubt that any jury would reach the same result absent the error. *Morrisette v. United States*, 342 U.S. 246, 72 s.ct. 240, 96 L.Ed. 288(1952).

In the present case before this Honorable Court Mr. Woods' Rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution were violated by Seattle Police Officers when they Entrapped him and set up a sting operation outside of their jurisdiction this alone is also a form of Judicial Misconduct on the Seattle Police Department. "Under the Due Process Clause defendants are presumed innocent, and the Government must prove guilt beyond a reasonable doubt." *In Re Winship*, 397 U.S. 358, 362, 90 s.ct. 1068, 25 L.Ed. 2d 368(1970). Such an error is not Harmless unless it can be shown that the error did not materially affect the trial, A Due Process violation invades the presumption of innocence. *Sandstrom v. Montana*, 422 U.S. 510, 99 s.ct. 2450, 61 L.Ed. 2d 39(1979). The Officers testified that the alleged money they retrieve by an Illegal Seizure from the car that did not belong to Mr. Woods could not be produced they only had a copy of a copy supposedly of the alleged money this was also a violation because it cannot be said that the money was ever put in Mr. Woods' hands. The United States Court Of appeals for the Ninth Circuit has recognized the importance of considering the Cumulative Effect of multiple errors and not simply conducting a balkanized, issue-by-issue harmless error review. A procedural Due Process violation occurs when an official deprives an individual of a Liberty or Property interest without providing appropriate procedural protections. Liberty interests may either be located in the Constitution itself or may arise from an expectation or interest created by state laws or policies. State regulations may give rise to a constitutionally protected liberty interest if they contain substantive limitations on official discretion, embodied in mandatory statutory or regulatory language.

Once it is determined that Due Process applies, the question remains what process is due. A fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. In determining whether due process requirements have been satisfied--whether an appropriate hearing has been provided at a meaningful time and in a meaningful matter--a court should consider: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such

interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. It is not always clear, however, whether and to what extent a pre-deprivation hearing is required or whether a post-deprivation hearing will suffice. Furthermore, whether it is pre- or post-deprivation, the question of what process is due is more easily asked than answered. In the criminal law context, the deprivation of liberty based on fabricated evidence is a violation of a person's Constitutional right to Due Process. The Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. There is a Constitutional Right not to be deprived of Liberty as a result of the fabrication of evidence by an investigating officer. Those charged with upholding the law is prohibited from deliberately fabricating evidence. There is a Constitutional Right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigatory capacity. The court concludes that this Due Process right applies with equal force.

Individuals are protected under the Constitution and its Amendments. The Bill of Rights, adopted at the same time as the Constitution, protects individuals from actions of the Federal government. As originally interpreted, the Bill of Rights did not apply to the relationship between individuals and state and local government. It was not until the passage of the Fourteenth Amendment after the Civil War that rights protected under the Bill of Rights became applicable to the states. If a local sheriff conducts an Unlawful Search, it is a violation of the Fourteenth Amendment, which applies the doctrine of the Fourth Amendment through the due process clause of the Fourteenth Amendment.

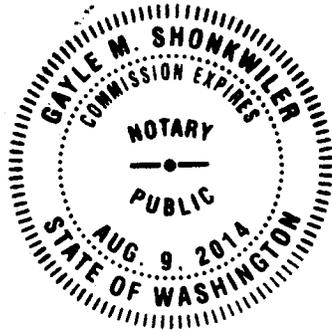
Conclusion:

For the Foregoing Reason's it is Respectfully Requested of this Honorable Court to Reverse and Remand Mr. Woods Case back to the Sentencing Court For a Dismissal Due to the Use of Illegally Seized Evidence and the Seattle Police Department abusing the Authority given to them an going outside of their Jurisdiction to Entrap Mr. Woods to build a case for Narcotics without the proper Authorization and Warrant.

I Bernard Woods declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge being executed on this 17th day of February, 2011. At Coyote ridge Correction Center.

Bernard Woods
Bernard Woods Pro Se
938127

Subscribed and Sworn to before me on this 17th day of February, 2011.



Gayle M Shonkwiler
Notary Public in and For the
State of Washington
Residing in Grant County
My Commission Ex. 8-9-2014

CERTIFICATE OF SERVICE

I, Bernard Woods, being first duly sworn on oath,

depose and say:

That I am a citizen of the United States over the age of eighteen years and competent to be a witness herein.

That on the 17 day of Feb, 2011, I delivered true and correct copies of the following documents in the above-entitled cause, to which this certificate is

attached, by US Mail:

ONE UNION SQUARE
600 UNIVERSITY WAY
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K.C.P. Off. King County Superior Court ~~Seattle~~ King County Superior
510 3rd Ave Sea WA 98101
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Bernard Woods

Signed