

67410-2

67410-2

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2012 APR -2 AM 11:46

No. 67410-2-1

COURT OF APPEALS
DIVISION ONE
OF THE STATE OF WASHINGTON

WARREN E. BELL, Appellant,

v.

SNOHOMISH COUNTY, Respondent.

OPENING BRIEF OF APPELLANT

Mr. Warren E. Bell
3027 So. 220th St.
Des Moines, WA 98198

TABLE OF CONTENTS

Table of Contentsi

Table of Authoritiesii

I. Assignment of error1

 Assignment of error

 No.1 The Trial Court abused its discretion when it denied plaintiff's Motion to Vacate the defendants Motion for Summary Judgment Order entered on November 9th, 2010. The Trial Courts decision rested on untenable grounds and was manifestly unreasonable.

 Issues Pertaining to Assignment of Error

 No. 1. Defendants filed an improper Motion for Summary Judgment inappropriately under CR-56 (c). The defendant failed to file and provide the Declaration of Mary Halberg which their Motion claimed it used as Evidence Relied upon.

 No. 2. The Trial Court granted defendants Motion for Summary Judgment on an incomplete record.

II. Statement of the Case 2

III. Argument 4

Iv. Conclusion 8

V. Appendix 10

TABLE OF AUTHORITIES

Coggle v. Snow, 56 Wn.App. 499, 507, 784 P.2d 554
(1994) ...6,7,8

Cummins v. Lewis County, 156 Wn.2d 844, 133 P.3d
458 (Wash.05/04/2006) ...7

Green v. City of Wenatchee, 148 Wn.App. 351, 368,
199 P.3d 1029 (2009) ...7

Hall v. State Farm Mutual Automobile Insurance
Co., 132 Wash.App. 1042 (Wash.App. Div.2,
04/25/2006) ...5

In re Marriage of Flannagan, 42 Wn.App. 214, 221,
709, P.2d 1247 ...7

Lewis v. Bell, 45 Wn.App. 192, 196, 724 P.2d 425
(1986) ...6

Lindgren v. Kimzey, 58 Wash.App. 588, 595, 794
P.2d 526 (1990); Review denied, 116 Wash.2d 1009,
805 P.2d 813 (1991) ...8

Lindgren v. Lindgren, 58 Wn.App. 588, 596, 794
P.2d 526 (1990) ...5

Penderson's Fryer Farms Inc., v. Transamerica
Insurance Co., 922 P.2d 126, 83 Wash.App. 432
(Wash.App. Div.2, 09/06/1996) ...7,8

People State Bank v. Hickey, 55 Wn.App. 367, 372,
777 P.2d 1056 (1989) ...5

Smith v. Myers, 90 Wn.App. 89, 99, 950 P.2d 1018
(1998) ...7

State v. Keller, 32 Wn.App. 135, 140, 647 P.2d 35
(1982) ...7

Tellevik v. Real Property, 120 Wn.2d 68, 90, 836
P.2d 111, 845 P.2d 1325 (1992) ...7

I. Assignment of Errors

1. The Trial Court abused its discretion when it denied plaintiff's Motion to Vacate on June 16th, 2011, the defendants' Motion for Summary judgment Order entered on November 9th, 2010. The Trial Court rested it's decision on untenable grounds and was manifestly unreasonable.

Issues Pertaining to Assignment of Errors

1. The defendant Snohomish County filed it's Motion for Summary judgment on September 9th, 2010, improperly. The defendant did not comply with CR-56(c); because they failed to include a declaration of Mary Halberg, who's declaration was referenced in defendants' Motion for Summary Judgment as: "EVIDENCE RELIED UPON". This act by the defendant prejudiced plaintiff because when plaintiff moved for a second attempt for and extension of time to retrieve this missing declaration he was denied by the Court, because the defendant refused to provide the missing Declaration. The defendant also failed to move the Court for a continuance under CR-56(f).

2. The Trial Court rendered a decision by granting defendant their Motion for Summary Judgment Order on an incomplete Record of the Motion. Pursuant to CR-56(c); Summary judgment is appropriate ONLY if the Pleadings, affidavits, dispositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR-56(c). The Court must consider ALL facts submitted and ALL reasonable inferences from them in the light most favorable to the nonmoving party.

II. Statement of the Case

On September 9th, 2010, defendant Snohomish County filed a Motion for Summary Judgment and on November 9th, 2010, the trial court granted defendants' Order of Dismissal. Shortly thereafter; Plaintiff filed a Motion to Vacate the defendants' Motion for Summary judgment and Order, pursuant to CR-60 (b)(4) and (11). SEE: EXHIBIT-1, Because the defendant failed to include or provide a declaration that it based its Summary Judgment Motion on ("Declaration of

Mary Halberg"), which is referred to as:
"EVIDENCE RELIED UPON" in the defendant's Motion
For Summary Judgment at page 6, Line 16. SEE:
EXHIBITS-2,3, and 4.

Plaintiff moved the court for an Extension of
time in order to obtain the missing declaration,
but was denied by the defendant, then during the
hearing for the Motion of Summary Judgment the
court denied plaintiff's second request for an
Extension of time.

The defendant failed to file a proper motion
for Summary Judgment and failed to move the court
for a continuance in order to refile a proper and
appropriate Motion For Summary Judgment pursuant
to: CR-56 (f).

The trial court signed defendants' Motion For
Summary Judgment Order Granting it based on an
incomplete Record of the facts of the case.

The trial court and the defendant prejudiced
plaintiff from receiving a full and fair hearing.
The trial court abused its discretion when it
exercised its decision on untenable grounds and
or for untenable reasons, or when its
discretionary action was manifestly unreasonable.
SEE: EXH-3.

III. Argument

1. The trial Court abused its discretion when it denied plaintiff's Motion to Vacate the defendants' Motion For Summary Judgment Order entered on November 9th, 2010. The trial courts' decision rested on untenable grounds and was manifestly unreasonable.

A. Defendant filed an improper Motion For Summary Judgment inappropriately under CR-56(c). The defendant failed to file and provide the declaration of Mary Halberg which the defendants' motion used as Evidence Relied upon.

Pursuant to CR-60 Relief from Judgment or Order, (b) Fraud (4) Fraud, Misrepresentation, or other misconduct of an adverse party. The defendant failed to properly file its Motion for Summary judgment on September 9th, 2010, by not being in compliance with Civil Rule CR-56(c), where the defendant failed to attach and include a declaration that it based its Summary Judgment Motion on. SEE: EXHIBIT-2, at page 6, Line 16, (IV. EVIDENCE RELIED UPON), where Mary Halberg's declaration was not provided. This is Fraud and

Misrepresentation and not being in compliance with the Washington State Superior Court Rules, misleading the Court and the Plaintiff.

SEE: Hall v. State Farm Mutual Automobile Insurance Co., 132 Wash.App. 1042 (Wash.App. Div.2, 04/25/2006) at ¶ [35]; Summary judgment is appropriate ONLY if the pleadings, affidavits, dispositions, and admissions on file demonstrate the absence of any genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR-56(c).

Washington Courts have held that in order for a Party to prevail on a motion to Vacate under CR-60 (b)(4), "the fraudulent conduct or misrepresentation must cause the entry of the judgment such that the losing party was prevented from fully and fairly presenting its case or defense." Lindgren V. Lindgren, 58 Wn.App. 588, 596, 794 P.2d 526 (1990) (citing Peoples State Bank v. Hickey, 55 Wn.App. 367, 372, 777 P.2d 1056 (1989)).

Here, Plaintiff shows fraud and misrepresentation by the defendant. SEE: EXHIBIT-1 and EXHIBIT-2. When the defendant filed its

'Motion For Summary Judgment improperly it prejudiced Plaintiff, and the defendant failed to move the Court for a continuance pursuant to CR-56(f); which allows a party to request a continuance in order to obtain affidavits, conduct depositions, or conduct further discovery when the party knows of the existence of a material witness and can show good reason why he or she can not timely obtain the witness affidavits. Coggle v. Snow, 56 Wn.App. 499, 507, 784 P.2d 554 (1994); and Lewis v. Bell, 45 Wn.App. 192, 196, 724 P.2d 425 (1986).

B. The trial Court granted defendants Motion For Summary Judgment on an incomplete Record.

In this case, the trial Court granted defendants Motion For Summary Judgment when the defendants' Motion was filed improperly for plaintiff to oppose. The defendants' Motion was not in compliance with CR-56 (c). The defendant failed to provide the trial Court and the plaintiff a complete and proper Record for it's Summary Judgment.

The trial Court abused its discretion when its decision rests on untenable grounds, or is

manifestly unreasonable. Green v. City of Wenatchee, 148 Wn.App. 351, 368, 199 P.3d 1029 (2009).

SEE: Tellevik v. Real Property, 120 Wn.2d 68,90 838 P.2d 111, 845 P.2d 1325 (1992); Smith v. Myers, 90 Wn.App. 89, 99, 950 P.2d 1018 (1998); Coggle, 56 Wn.App at 504. Manifest abuse of discretion occurs when the Court bases its decision on untenable grounds. Coggle, 56 Wn.App. at 507.

Washington Courts have held that the relief provided under CR-60 (b)(11), will only be granted in "extraordinary circumstances". SEE: In re Marriage of Flannagan, 42 Wn.App. 214, 221, 709 P.2d 1247; and State v. Keller, 32 Wn.App. 135, 140, 647 P.2d 35 (1982).

The trial Court ruled on an incomplete record which prejudiced plaintiff. SEE: Cummins v. Lewis County, 156 Wn.2d 844, 133 P.3d 458 (Wash.05/04/2006); at ¶ [29]; Summary judgment is proper where the '**entire record**' demonstrates, SEE ALSO: Pederson's Fryer Farms Inc., v. Transamerica Insurance Co., 922 P.2d 126, 83

Wash.App. 432 (Wash.App. Div.2, 09/06/1996) at ¶
[82]; Generally, an appellate Court will not
disturb a trial Court's disposition of a motion
to Vacate unless that Court abused its
discretion. Lindgren v. Kimzey, 58 Wash.App. 588,
595, 794 P.2d 526 (1990); Review denied, 116
Wash.2d 1009, 805 P.2d 813 (1991). A trial Court
abuses its discretion when it is exercised on
untenable grounds or for untenable reasons, or
when the discretionary act was manifestly
unreasonable. Lindgren, 58 Wash.App. at 595
(citing Coggle v. Snow, 56 Was. App. 499, 507,
784 P.2d 554 (1990)).

IV. Conclusion

Wherefore, Plaintiff respectfully prays that
this Honorable Appellate Court reviews all the
pertinent related documents provided by the
Plaintiff and any other Court Records and
concludes that this case should be reversed
because Plaintiff was not provided a fair hearing
by the Court because the Defendant did not file a

proper and appropriate Motion for Summary Judgment pursuant to CR-56 (c), and that Plaintiff's Motion to Vacate the Defendant's Summary Judgment Order should also be reversed because the Defendant committed Fraud and misrepresentation by with holding and denying Plaintiff a complete copy of their Motion for Summary Judgment, failing to provide all pertinent documents referenced by the Defendant in their Motion, and that the Trial Court signed the Order when the Record was incomplete.

The Trial Court clearly abused its discretion on untenable grounds and for untenable reasons and their decision is manifestly unreasonable.

Plaintiff further prays that this Court award him his expenses incurred and all cost for the filing of this appeal and Statutory Attorney Fees.

RESPECTFULLY SUBMITTED This 29th day of MARCH 2012.



Mr. Warren E. Bell
3027 So.220th St
Des Moines, WA 98198

A P P E N D I X

EXH-1

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



CL14764117

WARREN E. BELL
Plaintiff,

NO.10-2-06003-9
MOTION TO VACATE
CR 60 (b) (4), (11)

2011 MAR 25 PM 12:55
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

FILED

v.

SNOHOMISH COUNTY,
Defendant.

NOW COMES, the Plaintiff, Pro Se and prays to this Honorable Court to vacate
The defendants motion for Summary Judgment.

I.

RELIEF REQUESTED

The Plaintiff moves this court for an Order vacating the Judgment entered in this
cause of action. In addition, moves for Summary Judgment Granting Plaintiff Complaint
for Penalties, Cost and Attorneys Fees. This motion is made because the County has
violated the PRA and CR 60 (b) (4) (11).

B. PLAINTIFF'S GROUNDS THAT WOULD ALLOW THE COURT TO
VACATE THE COUNTY'S ORDERS PURSUANT TO CR 60(b) (4) OR (11).

CR 60(b) (4) states in part:

39

On Motion and upon such term as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reason:...(4) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party...(11) any other reason justifying relief from the operation of the judgment.

Washington courts have held that, for a party to prevail on a motion to vacate under CR 60(b) (4), "the fraudulent conduct or misrepresentation must cause the entry of the judgment such that the losing party was prevented from fully and fairly presenting its case or defense." Lindgren v. Lingren, 58 Wn. App 588, 596, 794 P.2d 526 (1990) citing Peoples State Bank v. Hickey, 55 Wn. App 367, 372, 777 P.2d 1056 (1989). Moreover, the courts have held that the party attacking the judgment must establish the fraud or misrepresentation by "clear, cogent, and convincing evidence." *Id.*)

Washington courts have also held that the relief provided under CR 60(b) (11) is restricted in most instances where grounds for vacation are not listed in any other provision of CR 60(b) and will only be granted in "extraordinary circumstances." See In re Marriage of Flannagan, 42 Wn. App. 214, 221, 709 P.2d 1247 (1985); State v Keller, 32 Wn. App. 135, 140, 647 P.2d 35 (1982).

II.

AFFIDAVIT

Plaintiff has filed a Substantive response to Snohomish Counties motion for Summary Judgment. (Plt's motion to vacate). With affidavit to controvert the facts established in

defendant motion for Summary Judgment, plaintiff is able to demonstrate that a genuine issue of material fact exists,

Snohomish County neglected to mail all declaration to plaintiff in a timely manner. **Mary Halberg** is entered Plaintiffs complaint. (Snohomish County Motion for Summary Judgment)P-6, Line-18. Defendant motion is based on the Declaration of Mary Halberg, The County has relied upon evidence of Mary Halberg. Snohomish County filed and served its motion for Summary Judgment, Calendar Note, and declaration. However failed to provide supporting declaration for Mary Halberg. No reasonable excuse has been put forth here. The defendant has failed to identify why there is no declaration and gave no explanation for such a failure. Mary Halberg's Declaration is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril. Moreover, there are no records to show the court, that Mary Halberg declaration was ever mailed. This is an act of misrepresentation, misconduct. This fraudulent action of defendant has prevented plaintiff from "fully and fairly" presenting his defense.

Defendant has not attempted to controvert this fact. The defendant noncompliance with discovery substantially prejudices plaintiff's ability to prepare for trial.

It is apparent that the defendant is attempting to defraud the court by claiming in its declaration of R.Lynne Jardine that "the re mailing declaration in support of the County Summary Judgment needs not an affixed declaration of service. Snohomish County filed and served its Motion for Summary Judgment, Calendar Note, However, failed to provide all supporting declaration. The county relied upon this evidence of **Mary Halberg**, that has not been provided and defendant has not attempted to controvert this fact. Moreover ,when a non moving party fails to controvert relevants facts supporting a summary

Judgment motion, those facts are consider to have been established," Cent.Wash.Bank. Bankv.Mendelson Zeller.inc., 113 Wn.2d 346,354,779 P.2d 697 (1989).citing Washington Osteopathic Med.Ass'n v.King Cy.med.Serv.corp., 78 Wn.2d 577.579.478 P.2d 228 (1970).

Per CR 56(e), the Sworn or certified copies of all papers or part thereof referred to in an affidavit shall be attached there to or served therewith.

Plaintiff cannot respond to defendants, affidavit to set forth facts showing that there is genuine issue for trial. Because defendant failed to file or has rest upon the allegations or denials of his pleadings. **(On the missing declaration.)** Defendant has failed to respond to plaintiffs allegations. It is anticipated that defendant argument at hearing will be that based upon the defendants list, which the county filed on August 9, 2010 the declaration was mailed without an affixed declaration of service.

On September 9, 2010, Snohomish County filed for Summary Judgment stating if Pleading, Depositions and Admissions on file with affidavits show no genuine issue as to material facts, the moving party is entitled to judgment as a matter of law. **CR 56 (c)** Evidence relied upon. Is the declarations of varies Snohomish County employees Barbara Gidos, **Mary Halberg**, Michel Swenson, Det. James Haley, Det.Matthew Trafford and Gail Bennett.

(1) Plaintiff has not been provided with the declaration of Mary Halberg in support of the County Summary Judgment motion. None of the Counties declarations of service indicates the mailing of (Halberg) declaration to plaintiff.

(2) Snohomish County neglected to mail declarations to the Plaintiff, in a timely manner.

(3) Snohomish County filed a re mailing of documents (36) days later to Fraudgently convince the court that plaintiffs documents was mailed to him on September 9, 2010.

Plaintiff has brought to the court attention, that not all declaration in support of defendant's motion for summary Judgment was received. More over, plaintiff has Shown fraud On the Counties part through "Clear, Cogent and Convening Evidence's as required under **CR (b) (4)** and Washington, case law.

Finally, because plaintiff's allegations do represent an "extraordinary circumstance," the Court does have grounds to vacate under **CR 60 (b) (11)**.

III. CONCLUSION

Therefore, plaintiff respectfully requests that he be granted his Motion and Order against the Defendants, Sanction them, and award Plaintiff Judgment, for all the relief he is requested in his public Disclosure Complaint.

Respectfully submitted this 23rd day of March 2011.

**I declare under penalty of perjury under the laws of the State of Washington
that the forgoing is true and correct to the best of my knowledge.**

Signed at Seattle, Washington this 23rd day of March - 2011.

By: Warren E Bell
Warren E. Bell
Plaintiff Pro Se
410 4th Ave
Seattle WA 98104

1 plaintiff.¹ Copies of the Requests are attached as Exhibit A-1 and A-2 to the Gidos

2 Declaration. Plaintiff requested the following records:

- 3 1. Request No. A-1: Module log for the period of April 5 and 6, 2005, for the
4 signature of Fred R. Young, whether he was working in 3 north on those
5 days; and
6 Request No. A-2: Module Log for the period of April 5, 2005, for the name
7 Jacquelyn Hall, whether she was working in Booking and or 3 North on that
8 day;
9 2. Request No. A-1: Any reviewing reports and supervision reports by Fred R.
10 Young of April 5 and 6, 2005, while as the Wall Street Building Sergeant;
11 and
12 Request No. A-2: Any reviewing reports and supervision reports filed by
13 Jacquelyn Hall of April 5, 2005;
14 3. Request No. A-1: Report of Sergeant's Records signed by Fred. R. Young
15 for April 5 and 6, 2005;
16 4. Video Recording by Sergeant Fred R. Young of April 6, 2005, and Reports
17 of the Videotape Recording;
18 5. (A-1) Snohomish County Corrections Daily Assignment Schedule of April 5
19 and 6, 2005, of Mr. Fred R. Young; and
20 (A-2) Snohomish County Corrections Daily Assignment Schedule for April
21 5, 2005, of Ms. Jacquelyn Hall.

22 Exhibit A to Gidos Declaration.

23 / The plaintiff did not explain the purpose for which he was seeking these documents.
24 Moreover, plaintiff did not indicate that he was looking for records related to himself or to
25 any specific incident in which he was involved. \

26 The plaintiff's PRA request was processed by Barbara Gidos. At the time of the
request, Ms. Gidos was Technical Services Supervisor for the Snohomish County Sheriff's
Office ("SCSO"). Ms. Gidos processed PRA requests received by the SCSO.

¹ The Snohomish County Jail is managed by the Corrections Bureau of the Snohomish County Sheriff's Office. Supervision of the bureau is the responsibility of the Snohomish County Sheriff. SCC 2.15.010. Therefore, even though the request was sent to the jail, the responding agency was the Snohomish County Sheriff's Office.

1 On July 10, 2009, Barbara Gidos sent plaintiff a letter indicating that the SCSO was
2 processing the Request and that a further response would be made no later than July 31,
3 2009. A copy of the July 10, 2009, letter is attached as Exhibit B to the Gidos Declaration.
4 Ms. Gidos determined that July 31, 2009, was a reasonable amount of time in which to
5 respond because the records that had to be gathered and reviewed from 2005 and included a
6 video. Gidos Declaration.

7 Between July 10, 2009, and July 14, 2009, Ms. Gidos and Michel Swenson, a SCSO
8 Corrections Bureau Assistant, searched for records responsive to the above PRA request.
9
10 Gidos and Swenson Declarations.

11 On July 14, 2009, jail staff transmitted all records responsive to the request to
12 Barbara Gidos for review and determination of whether any of the records were exempt
13 from disclosure. Gidos Declarations. The documents responsive to the records consisted of
14 the following:

15 Eight (8) pages of Module Logs for April 5 and 6, 2005 (Paragraph 1 of Request);

16 Six (6) pages of Daily Assignment Schedules for April 5 and 6, 2005 (Paragraph 5
17 of Request); and
18

19 Video taken by Sgt. Young of inmate extractions² on April 5 and/or 6, 2005
20 (Paragraph 4 of Request).

21 Gidos Declaration.

22 Ms. Gidos was unable to review the video because it was not a standard VHS tape
23 or DVD. Therefore, she asked the SCSO Computer Forensics Unit to review and copy it.
24

25 _____
26 ² Inmate extractions are instances where an individual inmate is required to be removed from his or her cell for purposes of jail cell or inmate searches.

1 On August 5, 2009, SCSO sent a second letter to plaintiff indicating that SCSO was
2 processing the Request and that a further response would be made by no later than August
3 31, 2009.³ A copy of the August 5, 2009, letter is attached as Exhibit C to the Gidos
4 Declaration. The extension of time was required because Ms. Gidos was unable to review
5 the video. Gidos Declaration.

6 As of August 21, 2009, the SCSO Computer Forensics Unit had not yet been able to
7 review and copy the requested video.) Id. Therefore, Ms. Gidos sent another letter to
8 plaintiff indicating that SCSO was trying to copy the requested video, and stated that SCSO
9 would respond no later than September 10, 2009. A copy of the August 21, 2009, letter is
10 attached as Exhibit D to the Gidos Declaration.

11 On August 27, 2009, after borrowing equipment from another jurisdiction, the
12 SCSO Computer Forensics Unit's was finally able to review and copy the tape. Haley
13 Declaration. There were no images of plaintiff on the video. See Haley and Gidos
14 Declarations.

15 On September 2, 2009, Ms. Gidos sent a letter to the plaintiff indicating that he
16 would have to send \$3.50 for the requested records. A copy of the September 2, 2009,
17 letter is attached as Exhibit E to the Gidos Declaration. The \$3.50 represents copying costs
18 of \$.25 for fourteen (14) pages of records. Because the video was exempt, it was not
19 included in the total cost.
20
21
22

23
24 ³ Plaintiff alleges that he received a letter from the Snohomish County Sheriff's Office (SCSO) on July 27,
25 2009, that denied his request. However, it appears this was done in error, as the SCSO had not yet reviewed
26 the requested video tape, had not received any money for copying costs, and had not transmitted any
documents, as stated in the letter. Moreover, the August 5, 2009, letter clearly indicated that the records
search was not yet complete.

1 On October 16, 2009, Barbara Gidos received a phone call from the plaintiff. He
2 asked why he had not received the records requested in his public disclosure request dated
3 July 1, 2009. Ms. Gidos explained that she mailed a letter to him on September 2, 2009,
4 advising that 14 pages were ready for him and to send a check or money order in the
5 amount of \$3.50. The plaintiff stated that he did not receive the letter and asked what
6 address it was mailed to. Ms. Gidos replied that she had mailed it to the address provided
7 on the plaintiff's PRA request of July 1, 2009, specifically, 9411 Olson Pl. S.W. Seattle,
8 WA 98106. The plaintiff stated that the address he provided was no longer good and gave
9 SCSO a new address in order to re-mail the letter. The new address he gave was 10235 -
10 32nd Ave. SW, Seattle, WA 98146. Ms. Gidos told Mr. Bell that she would send him
11 another letter, but that she could not mail the records until she had received the requested
12 money. Gidos Declaration.

14 On October 16, 2009, SCSO sent a letter to the new address, 10235 – 32nd Ave. SW,
15 Seattle, WA 98146, requesting a check or money order in the amount of \$3.50, and
16 notifying him that if the SCSO did not receive payment by October 30, 2009, the plaintiff
17 would need to resubmit his request. A copy of the letter is attached as Exhibit F to the
18 Gidos Declaration.

20 On October 21, 2009 at 10:50 a.m. the plaintiff came to the SCSO's reception area
21 on the 4th Floor of the County Courthouse in order to pick up the documents. The plaintiff
22 paid \$5.00 cash for the records, and received a receipt, his change, and the requested
23 documents. A copy of the receipt is attached as Exhibit G to the Gidos Declaration.

1 The October 21, 2009, transmittal letter included the pages of responsive records
2 and explained the exemption for the video. Copies of the letter of transmittal and records
3 are attached as Exhibit H to the Gidos Declaration.

4 Plaintiff filed a lawsuit on October 27, 2009, under Snohomish County Superior
5 Court Cause No. 09-2-10127-1 – one week after SCSO provided all responsive documents
6 that were not otherwise exempt from disclosure. That case was dismissed on January 14,
7 2010. Plaintiff filed the immediate lawsuit on July 2, 2010: NO. 10-2-06003-9.

9 III. STATEMENT OF THE ISSUES

- 10 1. Does the PRA require Snohomish County to provide plaintiff a record that is not
11 an “identifiable public record?”
- 12 2. Can plaintiff obtain a “jail record” under the PRA?
- 13 3. Did Snohomish County fail to promptly respond to plaintiff’s request under the
14 PRA when a response letter was provided to the plaintiff within four days from
15 receipt of the plaintiff’s request?

17 IV. EVIDENCE RELIED UPON

18 This motion is based upon the Declarations of Barbara Gidos, Mary Halberg,
19 Michel Swenson, Det. James Haley, Det. Matthew Trafford, and Gail Bennett.*

21 V. AUTHORITY AND ARGUMENT

22 Summary judgment is appropriate “if the pleadings, depositions, answers to
23 interrogatories and admissions on file, together with the affidavits, if any, show that there is
24 no genuine issue as to any material fact and that the moving party is entitled to judgment as
25 a matter of law.” CR 56(c). A material fact is one upon which the outcome of the litigation

A
S&J
K

1 depends in whole or in part. Morris v. McNicol, 83 Wn.2d 491, 494, 519 P.2d 7 (1974).
2 Moreover, Washington courts have held that summary judgment is an appropriate
3 procedure in PDA cases and courts may conduct a hearing under the PDA based solely on
4 affidavits. See Spokane Research & Defense Fund v. City of Spokane, 155 Wn.2d 89, 106,
5 117 P.3d 1117 (2005).

6 “The moving party bears the initial burden of showing the absence of an issue of
7 material fact.” Ames v. City of Fircrest, 71 Wn. App 284, 289-90, 857 P.2d 1083 (1993)
8 citing Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989).
9 However, “if a defendant movant meets this burden, the plaintiff must respond by making a
10 prima facie showing of the essential elements of its case.” Id. at 290. If the plaintiff fails to
11 make a prima facie showing, “there is no genuine issue of fact as to the essential element in
12 question and the trial court should grant the defendant’s motion for summary judgment.”
13 Id. at 290.

14
15 I. SNOHOMISH COUNTY DID NOT VIOLATE THE PRA BY FAILING TO
16 PROVIDE PLAINTIFF CERTAIN RECORDS BECAUSE THE RECORDS
17 AT ISSUE ARE NOT SUBJECT TO DISCLOSURE UNDER THE PRA.

18 Plaintiff requested several records from the SCSO under the PRA. The SCSO provided
19 all responsive documents. At issue are two records: (1) an incident report signed by Officer
20 Hatchell (the “Report”)⁴, attached to plaintiff’s complaint as Exhibit E, and (2) a video
21 taken by Fred R. Young.
22

23
24 _____
25 ⁴ A copy of the Report was ultimately located in a litigation file maintained by the Prosecuting Attorney’s
26 Bennett Declaration. The record was thereafter provided to the plaintiff on November 9, 2009. Plaintiff’s
Complaint.

1 The Report is not an “identifiable record” under the PRA and the video, as a jail
2 record, is exempt from disclosure. Therefore, Snohomish County did not violate the PRA
3 by failing to provide the Report and the video pursuant to plaintiff’s PRA request.

4 A. The Report Is Not an “Identifiable Public Record” under the PRA.

5 The PRA obligates an agency to provide nonexempt “identifiable records.”

6 Specifically, RCW 42.56.080 states:

7 Public records shall be available for inspection and copying, and agencies shall,
8 upon request for identifiable public records, make them promptly available to any
9 person including, if applicable, on a partial or installment basis as records that are
10 part of a larger set of requested records are assembled or made ready for inspection
11 or disclosure. Agencies shall not deny a request for identifiable public records solely
12 on the basis that the request is overbroad. Agencies shall not distinguish among
13 persons requesting records, and such persons shall not be required to provide
14 information as to the purpose for the request except to establish whether inspection
15 and copying would violate RCW 42.56.070(9) or other statute which exempts or
16 prohibits disclosure of specific information or records to certain persons. Agency
17 facilities shall be made available to any person for the copying of public records
18 except when and to the extent that this would unreasonably disrupt the operations of
19 the agency. Agencies shall honor requests received by mail for identifiable public
20 records unless exempted by provisions of this chapter. (Emphasis added).

21 The Attorney General’s PRA-Model Rules, chapter 44-14 WAC, defines an
22 “identifiable record” as one that agency staff can “reasonably locate.” (Emphasis added).
23 Specifically, WAC 44-14-04002(2) states “[a] plaintiff must request an ‘identifiable record’
24 or ‘class of records’ before an agency must respond to it. RCW 42.17.270/42.56.080 and
25 42.17.340 (1)/42.56.550(1). An ‘identifiable record’ is one that agency staff can reasonably
26 locate.”

27 In the recent Washington case Neighborhood Alliance of Spokane county v. County
28 of Spokane, 153 Wn.App 241, 224 P.3d 775 (2009), the court examined the reasonableness
29 of an agency’s search for responsive records. In Neighborhood Alliance, the court held that

1 “[a]n agency fulfills its obligations under the PRA if it can demonstrate beyond a material
2 doubt that its search was reasonably calculated to uncover all relevant documents.” Id at
3 257. (Citing Weisberg v. U.S. Dep’t of Justice, 745 F.2d 1476, 1485 (D.C. Cir.
4 1984)(quoting Weisberg v. Dep’t of Justice, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983)).
5 The court held further that “the agency must show that it ‘made a good faith effort to
6 conduct a search for the requested records, using methods which can be reasonably
7 expected to produce the information requested’.” Id at 257. (Citing Oglesby v. U.S. Dep’t
8 of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990)). Finally, the court, again relying on
9 Weisberg stated that “the issue to be resolved is not whether there might exist any other
10 documents possibly responsive to the request, but rather whether the *search* for those
11 documents was *adequate*.” Id at 257. (Citing Weisberg, 745 F.2d at 1485). “The adequacy
12 of the search, in turn, is judged by a standard of reasonableness.” Id at 257.
13

14 The County’s search for the Report was reasonable. On average there are
15 approximately 325 reported incidents a month at the jail. Each reported incident results in a
16 minimum of one incident report and can include more than one incident report. Incident
17 reports can number from two (2) to approximately forty (40) pages. Swenson Declaration.
18

19 Because of the volume and size of incident reports, they are archived off-site. The
20 only reasonable means of searching them in an efficient manner is through an electronic
21 Reports Database. Certain information from each incident report is entered into the Reports
22 Database, in order to make the archived incident reports searchable. Swenson Declaration.
23

24 The information entered into the Reports Database for incidents occurring before
25 June 1, 2008, consisted of the following fields: Date, Time, Location, Report Type, Inmate
26

1 Name, Staff Involved and Description, and the following ten toggle boxes: Use of Force,
2 OC Used, Chair Used, Injury, Medical Responded, Hospital Transport, I/M Assault, Staff
3 Assault, PD Notified, and Sexual Assault. Swenson Declaration. A copy of a screen shot
4 for the Report at issue in the Records Database is attached to Ms. Swenson's Declaration as
5 Exhibit A.

6 When searching for a report on the Reports Database, the search is limited to the
7 information included in the fields and the toggle boxes. The field, "Staff Involved," refers
8 to the name of the staff involved as listed in the incident report. Swenson Declaration.

9
10 Using the Reports Database and the names and dates provided by the plaintiff in his
11 PRA request, Ms. Swenson was unable to locate any reports in the Reports Database that
12 were responsive to plaintiff's PRA request. Swenson Declaration.

13 The only staff listed in the Report at issue is Officer J. Hatchell. Swenson
14 Declaration.

15 The Report Database is the only efficient way by which to search the hundreds of
16 pages of archived incident reports that are maintained offsite. The County searched its
17 Report Database for the Report using the search terms plaintiff provided – Fred R. Young
18 and Jacquelyn Hall.⁵ However, because neither Sgt. Young nor Officer Hall were listed as
19 "Staff Involved" in the incident report or in the Reports Database, the County's search of
20 the Reports Database did not locate any incident reports that satisfied plaintiff's request.
21

22 Under the direction of the chapter ~~41~~⁴⁹-14 WAC and the holding in Neighborhood
23 Alliance, because the County's search was reasonable and it did not locate the Report, the
24

25 _____
26 ⁵ Had the plaintiff simply requested all incident reports related to him, the County's search of the Reports Database would have located the Report.

1 Report as requested by plaintiff is not an “identifiable record” under the PRA. Therefore,
2 the PRA does not require the County to provide the Report in this instance or subject the
3 County to penalties for not providing the same to plaintiff under these facts.

4 B. As a Jail Record, a Video that Does Not Include Any Images of the Plaintiff is
5 Exempt from Disclosure by RCW 70.48.100(2).

6 State and local agencies must disclose public records upon a public records act
7 request, unless a record falls within certain enumerated exemptions. See Limstrom v.
8 Ladenburg, 136 Wn.2d 595, 963 P.2d 869 (1998). One such enumerated exemption is
9 found at RCW 42.56.510.

10 RCW 42.56.510 states that the PRA shall not affect an agency’s duty to withhold
11 information as required in any other law. Specifically, RCW 42.56.510 states that
12 “[n]othing in RCW 42.56.250 and 42.56.330 shall affect a positive duty of an agency to
13 disclose or a positive duty to withhold information which duty to disclose or withhold is
14 contained in any other law.” RCW 70.48.100(2) is a law that requires Snohomish County
15 to withhold certain information.
16

17 RCW 70.48.100(2) requires that jail records be held in confidence. Specifically,
18 RCW 70.48.100(2) states as follows:

19 (2) Except as provided in subsection (3) of this section the records of a person
20 confined in jail shall be held in confidence and shall be made available only to
21 criminal justice agencies as defined in RCW 43.43.705; or

- 22 (a) For use in inspections made pursuant to RCW 70.48.070;
23 (b) In jail certification proceedings;
24 (c) For use in court proceedings upon the written order of the
25 court in which the proceedings are conducted;
26

1 (d) Upon the written permission of the person.

2 (Emphasis added).

3 In the immediate instance, the plaintiff requested video recordings taken by Sgt.
4 Fred R. Young on April 6, 2005. The requested video shows a number of jail cell
5 extractions of various inmates. None of the images contained on the video are of the
6 plaintiff. Haley and Gidos Declarations.

7 The video also includes approximately thirteen (13) seconds of what appears to be a
8 syringe sticking out of a jail cell mattress ("syringe video"). However, the syringe video
9 was taken by Sgt. Ball, not Sgt. Young. Gidos Declaration.⁶ As such, the syringe video
10 was not responsive to plaintiff's PRA request. Moreover, there was no way for SCSO staff
11 viewing the video to know that the syringe video was related to plaintiff as the syringe
12 video did not include any dialogue describing the incident and plaintiff's PRA request did
13 not reference anything related to an incident involving a syringe in a mattress.

14 Had plaintiff simply requested video related to an incident involving a syringe in a
15 mattress, the syringe video would have been responsive to his PRA request. However, the
16 plaintiff requested only "Video Recording by Sergeant Fred R. Young of April 6, 2005."
17 To that end, SCSO staff reviewed the video taken by Fred R. Young looking for images of
18 the plaintiff - as noted, none were found.

19 Although the video images of jail extractions taken by Sgt. Young on or about April
20 6, 2005, are responsive to the Request, the video is exempt from disclosure by RCW
21 70.48.100(2).
22
23
24

25 ⁶ From plaintiff's complaint, it is clear that the plaintiff's sole argument regarding the video is focused on
26 these thirteen (13) seconds, despite the fact that the thirteen (13) seconds were not taken by Sgt. Young.

1 RCW 70.48.100(2) makes records of inmates confidential unless the inmate is the
2 subject of the record. In this instance, the video consists of the jail records of inmates other
3 than the plaintiff. Accordingly, under RCW 70.48.100(2), these images are exempt from
4 disclosure.

5 This information was conveyed to the plaintiff in the October 21, 2009, letter from
6 the SCSO. Specifically, the letter states that “[t]he video did not contain any images of
7 Warren Bell and is exempt under RCW 70.48.100(2).”

8 As described above, the SCSO was initially unable to review these recordings.
9
10 Thereafter, after careful review by the SCSO, the SCSO determined that none of the
11 recordings included images of the plaintiff. Haley and Gidos Declaration. Therefore, the
12 video images taken by Fred R. Young on April 6, 2005, are exempt from disclosure as they
13 include “the records of a person confined in jail,” RCW 70.48.100(2), and do not include
14 any images of the plaintiff.

15 II. SNOHOMISH COUNTY HAS COMPLIED WITH RCW 42.56.520.

16 Snohomish County responded to the plaintiff’s request within four days of receiving
17 the same and therefore complied with RCW 42.56.520.

18 RCW 42.56.520 requires agencies to promptly respond to requests for public records.
19 Specifically, RCW 42.56.520 states in part that:

20
21 [w]ithin five business days of receiving a public record request, an agency...must
22 respond by either (1) providing the record; (2) acknowledging that the agency, the
23 office of the secretary of the senate, or the office of the chief clerk of the house of
24 representatives has received the request and providing a reasonable estimate of the time
25 the agency, the office of the secretary of the senate, or the office of the chief clerk of
26 the house of representatives will require to respond to the request; or (3) denying the
public record request.

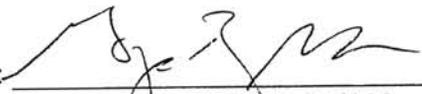
1 In the immediate instance, the SCSO Bureau of Corrections received the Request on
2 July 6, 2009. Thereafter, on July 10, 2009, the SCSO sent the plaintiff a letter indicating
3 that the request had been received and that the SCSO "will respond again in reference to
4 this request no later than July 31, 2009." Accordingly, the SCSO complied with RCW
5 42.56.520 when it responded within four days of the Request.

6 VI. CONCLUSION

7 Because plaintiff failed to request an "identifiable record" and also requested a record
8 that is exempt from disclosure, the County did not violate the PRA by failing to provide the
9 Report and the video to the plaintiff pursuant to his PRA request. Accordingly, Snohomish
10 County complied with the PRA and plaintiff's complaint should be dismissed.

11
12 Respectfully submitted this 8 day of September, 2010.

13
14 MARK K. ROE
Snohomish County Prosecuting Attorney

15
16 By: 
17 George B. Marsh, WSBA #26188
18 Deputy Prosecuting Attorney
Attorney for Snohomish County

EXH 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

| | |
|--|---|
| Warren E. Bell, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> Snohomish County, <p style="text-align: center;">Defendant.</p> | No. 10 2 06003 9 ORDER GRANTING SNOHOMISH COUNTY'S MOTION FOR SUMMARY JUDGMENT |
|--|---|

This matter came before the Court on motion of the defendant, Snohomish County, for summary judgment dismissing plaintiff's complaint in this cause.

The Court heard the oral argument of counsel for the defendant, George B. Marsh, and of Warren Bell, pro se. The Court considered the pleadings filed in the action. Specifically, the Court considered the following declarations submitted in support of the motion for summary judgment:

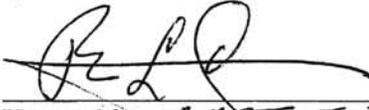
- Declaration, with attachments, of Barbara Gidos;
- Declaration, with attachments, of Michel Swenson;
- Declaration of Gail Bennett;
- Declaration of Detective James Haley;
- Declaration of Detective Matthew Trafford;

1 The Court being fully advised in the premises, and it appearing that that there is no
2 genuine issue of material fact and the defendant herein is entitled to judgment as a matter of
3 law, now, therefore,

4 IT IS HEREBY ORDERED :

- 5 1. Defendant's motion is granted.
6 2. The action is dismissed with prejudice.
7 3. Defendant is awarded its statutory attorney's fees and costs.
8 4. _____
9 _____
10 _____

11 DONE IN OPEN COURT this 9 day of November, 2010.

12 
13 Honorable CASTLEBERRY

14 Presented By:

15 Mark K. Roe
16 Snohomish County Prosecuting Attorney

17 By: 
18 George B. Marsh, WSBA #26188
19 Deputy Prosecuting Attorney
Attorney for Snohomish County

20
21 Approved as to Form;
22 Notice of Presentation Waived:
23

24 _____
25 Warren Bell, Pro Se

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

| | |
|---|--|
| Warren E. Bell, Plaintiff, vs. Snohomish County, Defendant. | No. 10-2-06003-9 SNOHOMISH COUNTY’S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT |
|---|--|

Plaintiff has not filed a substantive response to Snohomish County’s Motion for Summary Judgment.¹ Accordingly, the court should grant Snohomish County’s Motion for Summary Judgment, as discussed more fully below.

ARGUMENT

I. Without Affidavits to Controvert the Facts Established in Snohomish County’s Motion for Summary Judgment, Plaintiff is Unable to Demonstrate that a Genuine Issue of Material Fact Exists.

The Washington Supreme Court has held that “[i]f the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to his case, then

¹ Plaintiff did however file a Motion to Extend Time, which motion and responses are on file and discussed herein.

1 the trial court should grant the motion [for summary judgment].” Hines v. Data Line
2 Systems, Inc., 114 Wn.2d 127, 148, 787 P.2d 8 (1990). Moreover, “[w]hen a nonmoving
3 party fails to controvert relevant facts supporting a summary judgment motion, those facts
4 are considered to have been established.” Cent. Wash. Bank v. Mendelson-Zeller, Inc., 113
5 Wn.2d 346, 354, 779 P.2d 697 (1989), citing Washington Osteopathic Med. Ass’n v. King
6 Cy. Med. Serv. Corp., 78 Wn.2d 577, 579, 478 P.2d 228 (1970). Finally, per CR 56(e), the
7 nonmoving party “may not rest upon the mere allegations or denials of his pleadings, but
8 his response...must set forth specific facts showing that there is a genuine issue for trial.”
9

10 In this instance, plaintiff has made no attempt to controvert any of the facts
11 established in Snohomish County’s Motion for Summary Judgment. Accordingly, the court
12 should grant the County’s motion.
13

14 II. The Court Should Not Allow the Plaintiff Additional Time to File a Response.

15 Because plaintiff failed to file a substantive response to the County’s motion, it is
16 anticipated that his main argument at hearing will be that he needs more time to prepare his
17 response. The court should deny this request.
18

19 A. Plaintiff’s Motion to Extend Time Fails under Both CR 6(b) and CR 56(f).

20 Preliminarily, it should be noted that the plaintiff has not cited the authority under
21 which he is seeking this continuance. To the extent it is under CR 6(b), plaintiff has failed
22
23
24
25
26

1 to properly note his motion.² In the event plaintiff attempts to rely on CR 56(f), he has not
2 met his burden to show a continuance is warranted.

3 Washington courts have repeatedly held that:

4 Under CR 56(f) a trial court may properly deny a motion for continuance if: (1) the
5 requesting party offers no good reason for the delay in obtaining the evidence
6 sought, (2) the requesting party fails to indicate what evidence would be established
7 through more discovery, or (3) the evidence sought fails to raise an issue of material
8 fact.

9 Olson v. City of Bellevue, 93 Wn.App. 154, 165, 968 P.2d 894 (1998).

10 The immediate lawsuit is nearly identical to the one that plaintiff filed on October
11 28, 2009, under Snohomish County Superior Court Cause No. 09-2-10127-1, in which
12 plaintiff filed his own motion for summary judgment. Accordingly, plaintiff has had a year
13 to prepare. Moreover, the County has already given plaintiff additional time to prepare a
14 response. Therefore, plaintiff has “no good reason for any delay in obtaining the evidence
15 sought.” Id. More importantly, plaintiff has failed to indicate what additional evidence
16 would be established or how the evidence will raise an issue of material fact. (Plaintiff has
17 only requested filed pleadings, which as noted above cannot be relied upon to demonstrate
18 that there is an issue of material fact.) Accordingly, it is within the court’s sound discretion
19 to deny plaintiff’s motion to extend time.³

20 It is also worth noting that the County’s motion for summary judgment is based
21 upon the defenses listed in the County’s answer which the County filed on August 9, 2010.
22

23 _____
24 ² Plaintiff clearly knows how to properly note a motion having successfully done so twice previously: (1)
25 Note for Motion for Summary Judgment (Snohomish County Superior Court Cause No. 09-2-10127-1) and
26 (2) Note for Default Judgment in this matter.

³ The court’s denial of a motion for continuance will be upheld absent an abuse of discretion. See Qwest
Corp. v. City of Bellevue, 161 Wn.2d 353, 166 P.3d 667 (2007).

1 Accordingly, plaintiff has been aware of the County's position for over two and a half
2 months.

3
4 B. Plaintiff Is Familiar with the Superior Court Civil Rules.

5 Although plaintiff is a pro se litigant, he is well versed in the Superior Court Civil
6 Rules as well as the Rules of Appellate Procedure. In the first iteration of this lawsuit,
7 Snohomish County Superior Court Cause No. 09-2-10127-2, plaintiff filed his own motion
8 for summary judgment, argued that the County's motion for dismissal under CR 12(b)(6)
9 was improperly noted, and appealed the court's order of dismissal. See Docket for
10 Snohomish County Superior Court Cause No. 09-2-10127-2. In another civil action against
11 the County, Snohomish County Superior Court Cause No. 08-2-01800-6, plaintiff was party
12 to two separate County motions for summary judgment and participated in discovery.⁴ See
13 Docket for Snohomish County Superior Court Cause No. 08-2-01800-6. Finally, as
14 previously noted, plaintiff properly noted and moved for a default judgment in this matter.
15 For these reasons, there is little doubt that plaintiff is able to successfully navigate the civil
16 legal system. Accordingly, he should not be afforded any accommodations as a pro se
17 litigant.
18
19

20
21 **CONCLUSION**

22 Plaintiff failed to file a response to the County's motion for summary judgment.
23 Because he cannot rely on mere allegations in his pleadings, he cannot establish that there is
24

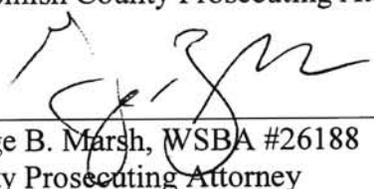
25
26 ⁴ The County has provided the documents requested in plaintiff's motion to extend time.

1 a genuine issue of fact. Accordingly, the County's motion for summary judgment should
2 be granted.

3 In the event that the plaintiff requests additional time to file a response at the
4 hearing on the County's motion, such request should be denied.

5
6 Respectfully submitted this 28th day of October, 2010.

7
8 MARK K. ROE
9 Snohomish County Prosecuting Attorney

10 By: 
11 George B. Marsh, WSBA #26188
12 Deputy Prosecuting Attorney
13 Attorney for Snohomish County
14
15
16
17
18
19
20
21
22
23
24
25

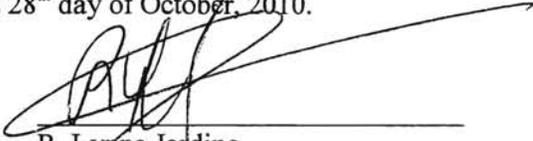
DECLARATION OF SERVICE

I, R. Lynne Jardine, hereby certify that on the 28th day of October, 2010 I served a true and correct copy of the foregoing Snohomish County's Reply In Support Of Motion For Summary Judgment upon the person/persons listed herein by the following means:

| | |
|--|---|
| <p>Plaintiff pro se: Warren E. Bell 14436 34th Avenue South, Apt. 2 Tukwila, WA 98168 ./phone ./fax ./email</p> <p>AND</p> <p>Warren E. Bell Inmate No. 629335 R-1 Cell B09L Washington Correction Center P. O. Box 900 Shelton, WA 98584</p> | <p><input type="checkbox"/> Electronic Filing <input type="checkbox"/> Facsimile <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service</p> |
|--|---|

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 28th day of October, 2010.



R. Lynne Jardine
Legal Asst. to George B. Marsh,
Deputy Prosecuting Attorney

DECLARATION OF SERVICE BY MAIL

I, Mr. Warren E. Bell, declares and says:

That on the 29th day of MARCH, 2012, I deposited the following documents in the U.S. Mail, by First Class Mail Pre-Paid Postage, under Cause No. 67410-2-I.

APPELLANT'S OPENING BRIEF, AND EXHIBITS-1,2,3, and 4.

Addressed to the following:

George Bradley Marsh
Civil Div. Snohomish County Prosecutor
3000 Rockefeller Ave
Everett, WA 98201-4046

Court of Appeals Division I
One Union Square
600 University Street
Seattle, WA 98101-4170.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 APR -2 AM 11:46

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

DATED THIS 29th day of MARCH, 2012, in the City of Des Moines, County of King, State of Washington.

Warren E. Bell

Mr. Warren E. Bell
3027 So. 220th St.
Des Moines, WA 98198

DECLARATION OF SERVICE BY MAIL: