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**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

In re the Detention of:

DARIN DILLINGHAM,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

RESPONDENT'S OPENING BRIEF

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I. ISSUES PRESENTED

- A. **Is a unanimity instruction required where the State presented evidence of both a mental abnormality and a personality disorder as the basis of Dillingham's commitment as a sexually violent predator?**

II. STATEMENT OF THE CASE

Darin Dillingham was born on June 5, 1970. He was initially committed as a sexually violent predator (SVP) by stipulation in 2003. CP at 931-39. His convictions include Indecent Liberties Against a Child Under Age 14 by Forcible Compulsion (1985)(CP at 932); Indecent Liberties (1985)(CP at 934); Rape in the Second Degree (1985)(CP at 934); Indecent Liberties and Child Molestation in the First Degree (1989)(CP at 932-33); Communication with a Minor For Immoral Purposes (CP at 934) (1989); and Attempted Indecent Liberties by Forcible Compulsion (1993) CP at 933. After several years at the Special Commitment Center (SCC) he was granted a new trial pursuant to RCW 71.09.090.

At trial, the State presented the testimony of several witnesses, including that of Dr. John Hupka, a forensic psychologist with extensive experience in the diagnosis and risk assessment of sex offenders. 12/1/2011 RP at 229-235. In formulating his opinions in this case, Dr. Hupka considered roughly 8000 pages of materials consisting of roughly 20-years' worth of

police reports, probation officers' reports, mental health records, treatment records, and prior evaluations. 12/1/2011 RP at 236. These records contained the type of information commonly relied upon by mental health professionals in performing sexually violent predator evaluations. 12/1/2011 RP at 237. In addition, Dr. Hupka interviewed Dillingham on two occasions and administered at least one personality test. 12/1/2011 RP at 237. In formulating his opinion, he considered Dillingham's history of sexual offending, pointing to more than 13 separate victims, some of whom were victimized over lengthy periods of time, between 1985 and 1992. 12/1/2011 RP at 237-65. After four days of testimony, a unanimous jury committed Dillingham as an SVP. CP at 3.

III. ARGUMENT

Dillingham argues that his right to a unanimous jury was violated because there was neither a unanimity instruction nor a special verdict form requiring that the jury identify the precise basis for commitment—that is, whether he was likely to reoffend based on a personality disorder or a mental abnormality. While he concedes that no such instruction is required where there is substantial evidence to support either condition, he argues that no such substantial evidence was offered in his case, and as such reversal is required. His argument fails. The State presented substantial evidence of both a mental abnormality and a personality disorder that, acting together, resulted in his

having serious difficulty controlling his sexually violent behavior and made him likely to reoffend. As such, no unanimity instruction was required. This Court should affirm Dillingham's commitment as a sexually violent predator.

A. Standard of Review

A sexually violent predator (SVP) is defined as a person "who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." RCW 71.09.020(18). When examining a claim that a jury's verdict in an SVP case was based upon insufficient evidence, the court must determine whether the evidence, "viewed in a light most favorable to the State, is sufficient to persuade a fair minded rational person that the State has proven beyond a reasonable doubt that [Respondent] is a sexually violent predator." *In re Detention of Thorell*, 149 Wn.2d 724, 744-45, 72 P.3d 708 (2003).

B. Dillingham's Right To A Unanimous Jury Was Not Violated Where The State Presented Substantial Evidence Of Both A Personality Disorder And A Mental Abnormality

1. Dillingham's Argument Is Based On A Misrepresentation Of The Record And A Misapprehension Of The Evidence

Dillingham argues that his right to a unanimous jury was violated by the State's alleged assertion, in closing argument, "that any one of Mr. Dillingham's 'three conditions' (pedophilia nonexclusive abnormality,

substance abuse abnormality or antisocial personality disorder) sufficed as qualifying, sex-offense predisposing, mental illnesses for a verdict of SVP commitment. 12/6/11RP at 681,684-85.” Appellant’s Brief (hereinafter “App. Br.”) at 9.

Dillingham’s argument is based on a misrepresentation of the State’s argument, a misapprehension of the evidence, and a flawed understanding of the law. Although Dillingham repeatedly asserts that the State argued that any one of these condition, standing alone, was a sufficient basis for commitment,¹ he provides absolutely no evidence that the State at any time made this assertion, or used the evidence in this way. Dillingham’s only citation to the record in support of this assertion--12/6/2011 RP at 681, 684-85, made at pages 4 and 9 of his brief-- simply does not stand for the proposition that the State was attempting to argue that any one of the three

¹ This erroneous assertion is made throughout his brief: “In closing argument, the Assistant Attorney General (AAG) argued that Mr. Dillingham suffered from three illnesses, and told the jury that any one of them (the abnormality of pedophilia non-exclusive, substance abuse abnormality, or antisocial personality disorder) independently sufficed for SVP commitment under the instructions. 12/6/11 RP at 681, 684-85.” App. Br. at 3-4; “By that undisputed testimony Mr. Dillingham’s antisocial personality might properly have been an aspect of the expert’s multiple mechanisms which he used to elevate his actuarial assessment of Mr. Dillingham’s risk of re-offending. However, that is not how the State employed this evidence.” App. Br. at 12; “If even one juror relied on ‘personality disorder’ to find Mr. Dillingham to be an SVP (as the State gave the jury the option to do)...” App. Br. at 15; “...The AAG...continued to blur the choices in front of the jury and posit Mr. Dillingham’s antisocial personality as a fully qualifying, independent illness justifying indefinite commitment. In closing argument, the AAG expressly offered all three, arguing each was adequate in itself—as proving SVP illness.” App. Br. at 20.

conditions with which Dillingham had been diagnosed would, alone, form a sufficient basis for commitment.

In making this assertion, Dillingham does not make clear upon precisely what information on the designated pages he relies. In closing, the Assistant Attorney General (AAG) representing the State argued as follows:

Dr. Hupka diagnosed Mr. Dillingham is [sic] suffering from three conditions. First, the mental abnormality of pedophilia, nonexclusive type; and alcohol and cannabis abuse; and the personality disorder of antisocial personality disorder.

12/6/11 RP at 681. The AAG then went on to describe, first, the diagnosis of pedophilia and the evidence in support of that diagnosis (*Id.* at 681-684), the fact that both experts agreed that Dillingham suffers from the “condition” of alcohol and cannabis abuse (*Id.* at 684) and the fact that both experts agreed that Dillingham suffers from an antisocial personality disorder. *Id.* at 685. Thus while the State noted that Dr. Hupka had diagnosed Dillingham with these three conditions (12/6/11 RP at 681, 684) there is simply nothing on those pages suggesting that the State argued that each of these conditions, standing alone, formed a sufficient basis for commitment. Indeed, at the end of his initial closing argument, the AAG simply stated that the evidence demonstrated that Dillingham “suffers from a mental abnormality and a personality disorder, and these mental abnormalities [sic] and personality

disorder cause him serious difficulty controlling his sexually violent behavior...” 12/6/2011 RP at 694.

The State’s closing was consistent with the evidence. Dr. Hupka made clear in his testimony that, while Dillingham’s antisocial personality disorder and his substance abuse affected his volitional control, it is Dillingham’s pedophilia that predisposes him to commit criminal sexual acts. 12/2/2011 RP at 363-365.² Indeed, he testified on cross examination that “typically I wouldn’t consider just antisocial personality disorder as meeting the criteria without some kind of sexual deviance as represented by the pedophilia.” 12/2/2011 RP at 368. Consistent with this position, Dr. Hupka testified at length regarding the interrelationship between Dillingham’s various diagnoses and his sexual offending. When asked whether it was possible that Dillingham’s antisocial personality disorder was the only reason he committed sex offenses, Dr. Hupka noted that persons with a diagnosis of antisocial personality disorder “typically do commit lots of offenses,”

but typically when someone is antisocial they will engage in a broad variety of offenses...With Mr. Dillingham, most of his contacts with legal authorities have come about through his sex offense behaviors. So I do believe he’s an antisocial personality disordered man, but that’s not the whole story. He’s also a sexually deviant man...I think the particular

² Elsewhere, Dr. Hupka explained that pedophilia constitutes a mental abnormality under the law (12/1/2011 RP at 271-72. 275-292) and, as such, “affects “the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.” 12/1/2011 RP at 287-92; see also RCW 71.09.020(8).

problem with him is that you have the combination of sexual deviance, that is the attraction to children and the desire for coercive sex that he's shown...So he has this sexual deviance, and because of the antisocial personality disorder he's not the least bit motivated to change that sexual deviance...He's an irresponsible man who is quite content to live by his own rules. That's a formidable combination.

12/1/11 RP at 283-285. Likewise, Dr. Hupka explained that Dillingham's substance abuse was not an independent condition causing the difficulty of control and predisposition to the commission of sex offenses required for SVP commitment, but was a mere risk factor for his pedophilia. 12/2/11 RP at 363-66.

That the State had *not* attempted to argue that either Dillingham's antisocial personality disorder or substance abuse, standing alone, was a sufficient basis for commitment appeared to be understood by trial counsel for Dillingham. The defense stated in closing,

[f]irst off, let's be clear. Both experts stated that in Mr. Dillingham's case the antisocial personality disorder and the substance abuse do not meet this criteria [sic]. Neither one would predispose Mr. Dillingham to crimes of sexual violence...Both experts said antisocial personality disorder alone or substance abuse alone will not predisposes [sic] him to crimes of sexual violence. They could affect volitional control, they could work in part with the pedophilia, but alone they would not meet this criteria [sic]."

12/6/2011 RP at 697.

Dillingham's argument, based as it is on misrepresentations of both the arguments made and the evidence presented by the State, is not supported by the record and must be rejected.

2. There Is No Constitutional Impediment To Basing Commitment On An Antisocial Personality Disorder Alone

Nor is Dillingham's argument that commitment cannot be based on an antisocial personality disorder alone well taken. As discussed above, this is an argument that the State did not make in this case. Had the State pursued this avenue for commitment, however, there would have been no constitutional impediment to doing so.

RCW 71.09.020(18) specifically provides for commitment based on the presence of a personality disorder. An SVP is defined as:

Any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality *or personality disorder* which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(emphasis added). The legislature thus clearly intended that offenders suffering from personality disorders, as well as other mental disorders, be considered for commitment as a SVP.

The mere presence of a mental disorder is not, of course, sufficient for commitment, nor does a risk of recidivism alone qualify an individual for civil commitment as a sexually violent predator. In addition to demonstrating

that the person, as a result of a mental abnormality or personality disorder, is likely to reoffend, the State must prove that the person has “serious difficulty” controlling that behavior:

[A] diagnosis of a mental abnormality or personality disorder is not, in itself, sufficient evidence for a jury to find a serious lack of control. Such a diagnosis, however, when coupled with evidence of prior sexually violent behavior and testimony from mental health experts, which links these to a serious lack of control, is sufficient for a jury to find that the person presents a serious risk of future sexual violence and therefore meets the requirements of an SVP.

Thorell, 149 Wn.2d at 761-62. This link is established even if the individual’s risk is linked only to a diagnosed personality disorder. *Kansas v. Crane*, 269 Kan. 578, 579, 7 P.3d 285 (2000) (*overruled on other grounds by Kansas v. Crane*, 534 U.S. 407, 122 S.Ct. 867, 151 L.Ed.2d 856 (2002)). Accordingly, if the State can prove that Dillingham suffers from a personality disorder—here, antisocial personality disorder—that causes him serious difficulty controlling his sexually violent behavior, along with the other necessary elements, his civil commitment as an SVP is appropriate.

The appellate courts of this state have repeatedly rejected the argument that commitment cannot be based on an antisocial personality disorder alone. *See e.g. In re Young*, 122 Wn.2d 1, 38, fn. 12, 857 P.2d 989 (1993); *In re Thorell*, 149 Wn.2d at 728 (upholding commitments of Casper Ross and Ken Gordon, both of whom suffered from antisocial personality

disorders and neither of whom was diagnosed with a paraphilia) and *In re Sease*, 149 Wn. App. 66, 201 P.3d 1078 (2009) (upholding commitment of Michael Sease, who was diagnosed with an antisocial and borderline personality disorder, but not a paraphilia). The appellate courts of other states have reached the same conclusion.³ As noted by the *Thorell* Court, “there is no talismanic significance to a particular diagnosis of mental illness. No technical diagnosis of a particular ‘mental abnormality’ definitively renders an individual either an SVP or not...[I]t is a diagnosis of a mental abnormality, coupled with a history of sexual violence, which gives rise to a serious lack of control and creates the risk a person will likely commit acts of predatory sexual violence in the future.” 149 Wn. 2d at 762.

3. Sufficient Evidence Was Presented At Trial To Support Dillingham’s Commitment

Dillingham next appears to argue that there was insufficient evidence to show that Dillingham’s personality disorder, standing alone, both caused

³ See e.g. *In re Murrell*, 215 S.W.3d 96 (2007) (Missouri case upholding SVP civil commitment with no paraphilia diagnosis, ruling antisocial personality disorder (ASPD) is not too “imprecise” to serve as the basis for commitment); *In re Barnes*, 689 N.W.2d 455 (2004) (Iowa case upholding SVP civil commitment based on ASPD, finding that statute does not require the diagnosed condition to affect the emotional or volitional capacity of every person who is afflicted with the disorder); *In re Adams*, 223 Wis.2d 60, 588 N.W.2d 336 (1998) (Diagnosis of ASPD, uncoupled with any other mental disorders, may satisfy the “mental disorder” requirement of SVP statute); *In re G.R.H.*, 711 N.W.2d 587 (2006) (North Dakota case upholding SVP civil commitment based on ASPD); and *Hubbart v. Superior Court*, 19 Cal.4th 1138, 969 P.2d 584, 81 Cal.Rptr.2d 492 (1999) (The Supreme Court’s holding in *Foucha vs. Louisiana*, 504 U.S. 71; 112 S. Ct. 1780; 118 L. Ed. 2d 437; 1992 U.S. (1992) does not limit the range of mental impairments that may lead to the permissible confinement of dangerous and disturbed individuals.).

him to have serious difficulty controlling his sexually violent behavior, and made him likely to reoffend. App. Br. at 16-17. He then argues that, because the State's expert testified that Dillingham's ASPD was decreasing in intensity as he "approached his early 40's," he could not, by definition, be found to suffer from that disorder. App. Br. at 19-20.⁴

These arguments lack merit. First, there is no requirement that the State prove that his antisocial personality disorder, standing alone, makes him likely to reoffend, nor, as discussed above, did the State attempt to do so. Nor does the evidence support his contention his antisocial personality disorder had remitted such that he could no longer be said to suffer from the condition. In any case, the evidence was more than sufficient to show that Dillingham suffered from an ASPD, which, despite his age, persisted.

Dillingham argues that no reasonable jury could have found that he suffered from an antisocial personality disorder that, standing alone, made him likely to reoffend. App. Br. at 16-19. The law, however, imposes no such condition, and indeed it was not what the State argued. Dr. Hupka testified at length regarding the nature and extent of Dillingham's antisocial personality disorder. *See* 12/1/11 RP at 276-284. Where there is testimony at trial to the effect that the offender suffers from both a mental abnormality and a personality disorder, and where substantial evidence supports each, these two

conditions “are alternative means for making the SVP determination.” *In re Halgren*, 156 Wn.2d 795, 810, 132 P.3d 714 (2006). As this Court noted in its decision in that case, “[t]o force the State to elect or the jury to rely on only one...would unnecessarily introduce a requirement that is not present in the statute. It would also compromise the value of the clinical judgments of expert witnesses in this difficult area. Neither the constitution nor the statute requires this.” *In re Halgren* 124 Wn. App. 206, 215, 98 P.3d 1206 (2004). Affirming this Court’s decision on this issue, the Supreme Court noted that, “because both mental illnesses are predicates for the SVP determination, the two mental illnesses are closely connected...” and that “these two means of establishing that a person is an SVP may operate independently or may work in conjunction.” *Halgren*, 156 Wn.2d at 810.

An identical argument was rejected by this Court in *In re Ticeson*, 159 Wn. App. 374, 246 P.2d 550 (2011). The facts of *Ticeson* are virtually indistinguishable from those here. *Ticeson*, like *Dillingham*, had been diagnosed with both a paraphilia and a personality disorder. 159 Wn. App. at 388. The State’s expert testified that, while his personality disorder did not usually cause a person to engage in predatory acts of sexual violence, it caused *Ticeson* to have difficulty controlling his behavior. *Id.* at 378. While *Ticeson* did not contest either of these diagnoses, he argued on appeal that there was insufficient evidence to show that his personality disorder made him likely to reoffend and

that, as such, a unanimity instruction was required. *Id.*

This Court rejected this argument. Citing the Supreme Court's decision in *Halgren*, this Court noted that the State's expert had testified that Ticeson's personality disorder causes him serious difficulty controlling his sexually violent behavior. Such testimony, this Court found, "is sufficient to allow a rational juror to find Ticeson's personality disorder makes him likely to reoffend." 159 Wn. App. at 389. As such, the court found that there was substantial evidence to support either alternative means, and no unanimity instruction was required. *Id.* Likewise, Dr. Hupka testified here that, "someone with bad volitional control or poor volitional control... over the behavior would not be able to contain that sexual deviance... or not have the will power to resist the urge and desire to resist the urge to control that." 12/1/2011 RP at 289-290. Because of his ASPD, Dillingham "was not the least bit motivated to change [his] sexual deviance" or to take responsibility for it. ...He's an irresponsible man who is quite content to live by his own rules. That's a formidable combination." 12/1/11 at 283-285. Dr. Hupka also stated repeatedly that Dillingham's condition "causes him serious difficulty in controlling his sexually violent behavior." 12/1/2011 RP at 292; 12/2/2011 RP at 341. As such, no unanimity instruction was required.

Dillingham next argues that 1) the State's expert found that his ASPD was in remission; and that, 2) for this reason he could not, by definition, be found to suffer from an antisocial personality disorder because that condition is

defined as one that is “stable over time.” App. Br. at 19. This argument fails. First, his argument that the State’s expert found that his ASPD was “in remission” is not supported by the record. Dr. Hupka made clear that Dillingham’s ASPD was a “chronic, lifelong condition.” 12/1/11 RP at 276. While Dillingham’s behavior in custody was less flagrantly antisocial than it was when in the community, Dr. Hupka testified that Dillingham was “behaving in the way that antisocial fellows typically behave in custody. They don’t cooperate much with custody. He’s resisted being in treatment. He continues to take little responsibility for himself. He continues to show no—essentially no remorse, no empathy for his victims.” 12/1/11 RP at 282. Moreover, his behavior in custody can be explained by reference to the external structure that custody imposes: “In other words, guards, officers, people around them controlling what they do, telling them what to do, that they don’t have internally for themselves. That’s exactly the thing that they don’t have internally in terms of being able to control their impulse to take responsibility.” 12/1/11 RP at 282. Dr. Hupka also noted that Dillingham’s in-custody behavior had, for the most part, always been fairly good: “Guards, staff members around, barbed wire, can’t go anywhere. That kind of containment, it’s an external containment that supplies a structure that he lacks within. So he responds well to that.” 12/1/11 RP 292. Indeed, although repeatedly invited by the defense during cross examination to characterize Dillingham’s personality disorder as “in remission,” Dr. Hupka declined to do

so, saying instead the he “wouldn’t use the term remit” to apply to Dillingham and that his improved behavior was just “the typical evidence of...an antisocial fellow slowing down.” 12/2/11 RP at 374. The diagnosis of antisocial personality disorder, however, “still applies to him...The effects of his antisocial personality are decreasing, but the psychological makeup that made him an antisocial fellow to begin with I think is still there. Things like irresponsibility, things like lack of empathy or remorse, I think all of those things are still there. In order to say it is remitted, we’d have to see some substantial psychological change in someone. There is a difference between the acting out of the antisocial character and the underlying...psychological makeup of a person.” 12/2/11 RP at 374-375.

Applied to the facts of Dillingham’s case, it is clear that the State presented sufficient evidence both of Dillingham’s ASPD and of its link to his likelihood to reoffend.

C. A Unanimity Instruction Is Not Required Where The State’s Expert Determined That Dillingham Suffered From Only One Mental Abnormality

Dillingham argues that that, under *State v. Petrich*, 101 Wn.2d 566, 572, 683 P.2d 173 (1984),⁵ he was entitled to an instruction specifying which

⁵ *Petrich*, a criminal case, holds that where the state alleges that several distinct criminal acts have been committed by a defendant who is not charged for each act, the prosecutor must elect the acts she is relying upon, or the jury must receive a unanimity instruction.

of “two distinguishable facts—pedophilia non exclusive, and substance abuse” formed the basis of the State’s allegation that he suffered from a mental abnormality. App. Br. at 21. This is so, he argues, because the State, in closing, “as noted...posited both conditions as satisfying the mental abnormality requirement.” App. Br. at 21-22.

As with his assertion that the State argued that each of Dillingham’s three diagnoses, standing alone, was sufficient to support commitment, (*see infra*, pps. 2-7), this argument fails. Dillingham’s underlying assertion—that the State posited two separate mental abnormalities—is simply not supported by the record. Indeed Dillingham does not even attempt to make any citation to the record in support of this allegation, commenting only that the argument is “as noted.” Assuming that he is referring again to his earlier allegation that the AAG asserted in closing “that any one of Mr. Dillingham’s ‘three conditions’ (pedophilia nonexclusive abnormality, substance abuse abnormality or antisocial personality disorder) sufficed as qualifying, sex-offense predisposing, mental illnesses for a verdict of SVP commitment,” (App. Br. at 9) the AAG’s actual remarks do not support this assertion. *See infra* at 4; 12/6/11 RP at 681.

Moreover, even if Dillingham were correct that the State “proffered evidence of two distinguishable facts” in support of its contention that he suffered from a mental abnormality, no unanimity instruction would be

required. A virtually identical question was addressed in *In re Sease*, 149 Wn. App. 66, 210 P. 3d 1078 (2009), *review denied* 166 Wn.2d 1029, 217 P.3d 337 (2009). In *Sease*, there was no dispute that Sease suffered from one or, possibly, two personality disorders. *Id.*, 149 Wn. App. at 78. As such, the court determined, the jury “need only have unanimously found that the State proved that Sease suffered from a personality disorder that made it more likely that he would engage in acts of sexual violence if not confined to a secure facility. The jury need not have unanimously decided whether Sease suffered from borderline personality disorder or antisocial personality disorder.” *Id.*

While Dillingham argues at length that *Sease* was wrongly decided (App. Br. at 25-28), this argument is irrelevant because this case is controlled not by *Sease*'s “means within a means” analysis but by the “alternative means” doctrine adopted by the *Halgren* Court. Here, the State presented testimony that Dillingham suffered from one mental abnormality in the form of pedophilia (“Well, the mental abnormality I’m referring to is pedophilia as a mental abnormality.” 12/1/2011 RP at 275; *See also* 12/1/2011 RP at 272) and from a personality disorder—specifically, ASPD. While he also assigned a diagnosis of substance abuse (12/1/2011 RP at 274-75), he did not state that this condition constituted a mental abnormality under the law.

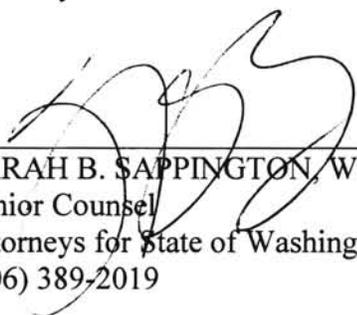
The State's expert testified that Dillingham suffered from both a mental abnormality (pedophilia) and a personality disorder (ASPD). In addition, he determined that Dillingham suffered from substance abuse, a condition he did not characterize as a mental abnormality or a personality disorder. While the pedophilia created the predisposition to commit sexually violent offenses, the other two conditions affected both his ability and his inclination to control this predisposition. Nothing that the State said in closing argument was at odds with this clear testimony. Dillingham's right to a unanimous jury was not violated, and there was sufficient evidence presented to sustain his commitment. This Court should affirm the trial court's order committing Dillingham as a sexually violent predator.

IV. CONCLUSION

For the foregoing reasons, the State requests that this Court affirm Dillingham's commitment as a sexually violent predator.

RESPECTFULLY SUBMITTED this 14th day of December, 2012.

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NO. 68147-8-I

WASHINGTON STATE COURT OF APPEALS, DIVISION I

In re the Detention of:

Darin Dillingham,

Appellant.

DECLARATION OF
SERVICE

I, Allison Martin, declare as follows:

On December 14, 2012, I sent via ABC Legal Messengers true and correct cop(ies) of Respondent's Opening Brief and Declaration of Service, postage affixed, addressed as follows:

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

DATED this 14th day of December, 2012, at Seattle, Washington.


ALLISON MARTIN

