

Q8841-5

Q8841-5

NO. 68241-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

BRYAN DORSEY,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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APPELLANT'S REPLY BRIEF

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#### A. MISREPRESENTATIONS OF FACT

Before responding to the State's legal arguments, Mr. Dorsey notes that the State misrepresented several factual issues in its response brief. First, the State alleges that both victims of the robbery identified the gun seized from Mr. Dorsey in California as the gun used in the robbery in Seattle. Resp. Br. at 6. However, Deloris Major was ultimately unsure whether the gun in the State's possession at trial was the same as the one she saw in February 2009. During her first day of testimony, Ms. Major testified she had been shown a gun that morning that "looked like the same one" used in the robbery. 3RP 443. The State cites this for support. Resp. Br. at 6. But the State neglects to mention that Ms. Major was shown the gun again the next morning and when she testified that day, she said the gun appeared different. 4RP 468 ("It looked like a little bit different. It seemed like the barrel was more smaller this morning than it was yesterday."); *see* 4RP 469 (viewing exhibit 12).

Next, the State sets forth that "Javonna [Williams] testified that Zaria [Thomas] lied about having been raped" by Ms. Major's grandson, Marcus Williams. Resp. Br. at 7. This statement is an oversimplification of Ms. Williams' testimony. Ms. Williams testified that she advised Ms. Thomas to file a police report and seek medical attention regarding the rape. 4RP 561. She continued,

it concerned me because she didn't do it . . . But I dropped her off so that she can get it done. And when she didn't do it . . . that's when it concerned me that she may have been lying about exactly how everything occurred. But I really don't know because I wasn't there.

4RP 561. Ms. Williams' actual testimony was that it occurred to her Ms. Thomas may have lied about "how everything occurred" but she could not be sure because she was not there.

Further, the State asserts that the "male [robber] was described as being in his mid-20's, black, short and slender—this matched the defendant's physical appearance." Resp. Br. at 4 (citing 3RP 342, 440; 4RP 481). The State accurately describes Ms. Major and her son's description of the male robber—"mid-20's, black, short and slender." But the State provides no authority for its statement that "this [description] matched [Mr. Dorsey's] physical appearance." In fact, Ms. Major and Mr. Curtis could not identify Mr. Dorsey from a photo montage or an in-person lineup. 2RP 144; 5RP 776-77, 796-97, 805-11. Therefore, the State was precluded from seeking an in-court identification. 2RP 146-47.

B. ARGUMENT IN REPLY

1. **Contrary to the State's argument on appeal, the prosecutor mischaracterized the jury's role as truth-seeking and made declaring the truth the theme of his argument.**

The State disingenuously asserts that the prosecutor's repeated argument urging the jury to declare the truth was merely a response to defense counsel's claim that certain witnesses were lying. The prosecutor's comments were not made in passing. The truth-seeking theme did not manifest only in rebuttal; rather, the prosecutor emphasized it extensively in his closing argument, which obviously preceded that of the defense. Moreover, the jury's general function as a truth-seeking body was the prosecutor's theme. His argument focused on this theme over determining witness credibility, which the State now alleges was the prosecutor's aim. For example, in his initial closing argument the prosecutor told the jury the case was a "search for the truth" and not a search for who is telling the truth. 6RP 673.

The State further argues that the prosecutor did not misstate the jury's role. Br. of Resp. at 14. But misstating the jury's role is precisely what Senior Deputy Prosecuting Attorney Jim Ferrell did throughout oral argument. There is no broader or more role-

defining statement than arguing the “search for the truth” is what “occurs in this courtroom and every courtroom in this building.” 6RP 962. In fact, the State concedes that this introduction to the theme was very broad. Br. of Resp. at 12 (quoting 6RP 962). The prosecutor introduced this theme in his initial closing remarks and then made it his first words to the jury on rebuttal—it was not a response to defense counsel’s closing—and it was about the jury’s fundamental (but false) role.

The State further seeks to minimize the error by arguing that pointing to mere use of the word “truth” is insufficient to show misconduct. Br. of Resp. at 14, 15-16. But Mr. Dorsey does not and need not resort to mere counting. Undoubtedly, truth-seeking was the theme that permeated the prosecutor’s argument. The prosecutor inserted the theme early in his argument by telling Mr. Dorsey’s jury that every jury’s job is “a search for the truth.” 6RP 962 (emphasis added). He returned to the theme of the jury’s role immediately after discussing the elements of the offense, commenting “what is this case about? It is all about that and was it him. That is the truth of the matter.” 6RP 965. In other words, the prosecutor told the jury that this case is all about getting to the “truth of the matter.” In refuting the defense, the prosecutor asked the jury to consider not what the State had proved, but “what would have to be true.”

6RP 966. Minutes later the prosecutor made plain the entrenched nature of his theme, arguing, “[T]his entire case is about a search for the truth.” 6RP 973. Tellingly, the prosecutor’s first words to the jury on rebuttal were, “[t]hat’s what this whole thing is about, what’s the truth?” 6RP 987 (emphasis added). He rhetorically asked the jury, “[w]hat is the truth? How do we find the truth?” 6RP 991.

These were not mere statements that happened to contain the word “truth.” These were repeated assertions that the jury’s role was not to determine whether the State had proved its case beyond a reasonable doubt but to declare the truth. Truth-seeking was the entire theme of the State’s argument.

Since Mr. Dorsey filed his opening brief, Division Two of this Court found prosecutorial error where the prosecutor argued to the jury “that they must ‘determine if [they] have an abiding belief in the truth of the charge . . . truth in what each of these defendants did.’” *State v. McCreven*, \_\_ Wn. App. \_\_, 284 P.3d 793, 807-08 (2012) (also holding trial court erred in overruling defense objection). Like the prosecutor in *McCreven*, here Mr. Ferrell focused on the jury’s (misplaced) function in seeking the truth. It was error in *McCreven*, and it is error here.

Likewise, in the recent case *State v. Berube*, this Court held “truth[-seeking] is not the jury’s job. And arguing that the jury should

search for truth and not for reasonable doubt both misstates the jury's duty and sweeps aside the State's burden." \_\_ Wn. App. \_\_, 286 P.3d 402, 411 (2012). Thus, that prosecutor's argument that the jurors should "search for the truth" was erroneous. *Id.* at 411-12 (comparing prosecutor's comments to those the Supreme Court held to be erroneous in *State v. Emery*, 174 Wn.2d 741, 751, 278 P.3d 653 (2012)). The same is true here.

Further avoiding acceptance of responsibility for the prosecutor's misconduct, the State argues the erroneous argument was not flagrant and ill-intentioned because the Supreme Court had not directly decided the issue and a panel of Division Two of this Court of Appeals had found an argument emphasizing the jury's truth-seeking role not to be misconduct. Resp. Br. at 14. However, at the time of trial in this case (October 2011), three published Court of Appeals decisions held such argument was error. *State v. Anderson*, 153 Wn. App. 417, 429, 220 P.3d 1273 (2009) (decided Dec. 2, 2009); *State v. Emery*, 161 Wn. App. 172, 193-94, 253 P.3d 413 (2011) (decided Apr. 13, 2011); *State v. Evans*, 163 Wn. App. 635, 645, 260 P.3d 934 (2011) (decided Sept. 13, 2011). *State v. Curtiss* was the only case holding a declare-the-truth argument to be acceptable. *State v. Curtiss*, 161 Wn. App. 673, 701-02, 250 P.3d 496 (2011) (decided May 6, 2011). Moreover, Washington courts have long held that a prosecutor commits misconduct by misstating the burden of proof. *E.g.*, *State v.*

*Warren*, 165 Wn.2d 17, 28, 195 P.3d 940 (2008); *State v. Gregory*, 158 Wn.2d 759, 859-60, 147 P.3d 1201 (2006) (arguments that shift the burden of proof to the defense constitute misconduct); *State v. Fleming*, 83 Wn. App. 209, 213-14, 921 P.2d 1076 (1996). As a quasi-judicial officer and representative of the State, Mr. Ferrell's argument that the jury's role was to seek the truth was clearly improper.

A limiting instruction could not have cured the prosecutor's extensive, thematic and ill-intentioned argument. Though the State presented strong evidence that a robbery occurred, its evidence that Mr. Dorsey participated in the robbery was equivocal. No victim identified Mr. Dorsey. Only biased witnesses placed Mr. Dorsey at the crime scene. Meanwhile, Mr. Ferrell repeatedly emphasized the jury's erroneous truth-seeking role without shedding any light on the jury's actual job—to assess whether the State had met its burden of proof. Like in *Evans*, the misconduct was prejudicial. *Evans*, 163 Wn. App. at 646-47.

Contrary to the State's argument, the improper conduct violated Mr. Dorsey's right to fair trial. Accordingly, the remedy is to remand this case for a new trial.

**2. The trial court's erroneous admission of hearsay relating to Mr. Dorsey's penchant for snakes and voodoo requires reversal because it was prejudicial.**

In his opening brief, Mr. Dorsey argued the court erred by admitting Zaria Thomas's out-of-court statement to a police detective that Javonna Williams told her the male involved in the robbery "has a thing for snakes; he does voodoo." Op. Br. at 18-20 (quoting 5RP 717-18). In response, the State argues Thomas' out-of-court statements were admitted as impeachment evidence, and thus was not hearsay. Resp. Br. at 22-24. But the State fails to respond to the fact that the use of Thomas' statements under ER 613 was limited to impeaching her testimony that she did not know the name of Williams' boyfriend, who went by Gemini. 5RP 708-11, 717-18. Thomas had made no prior inconsistent statement relating to the alleged robbers' habits or interests. Thus comments that the robber "has a thing for snakes; he does voodoo" was not related to this impeachment purpose. 5RP 717-18; *see* Resp. Br. at 23 discussing inconsistent statement rule).

Moreover, admission of the hearsay was prejudicial. First, contrary to the State's argument, this was not simply the admission of a single statement. Br. of Resp. at 18. It was read to the jury three times over Mr. Dorsey's specific objection. 5RP 717-18, 720, 721; *see* 5RP 720-21 (defense counsel objects to repetition of statement). Further, this

erroneously admitted hearsay formed the basis for the admission of the recording of Mr. Dorsey's telephone call to a "Lamont" discussing snakes. 6RP 852-60. The telephone call evidence was used to link Mr. Dorsey to the crime. Absent the erroneous admission of Thomas's out-of-court relation of Williams's hearsay that the robber "has a thing for snakes; he does voodoo," that jail call would have been irrelevant evidence. *See* 6RP 860-63 (excluding other parts of call).

In fact, the State's argument that the admitted hearsay is not prejudicial is particularly specious in light of the State's contention at trial that this evidence was "game, set, match" against Mr. Dorsey. 5RP 718.

**3. Mr. Dorsey's constitutional right to privacy was violated by the admission of recorded telephone calls.**

Mr. Dorsey relies primarily on his opening brief for his argument that admission of jail telephone calls violated his Article I, section 7 privacy right. Op. Br. at 21-27. However, Mr. Dorsey responds here to the State's argument that he waived this issue. Br. of Resp. at 26. Mr. Dorsey's argument presents a manifest constitutional error that can be raised for the first time on appeal under RAP 2.5(a)(3). This court reviews the alleged constitutional error *de novo* and is thus not at a disadvantage for the error having not been raised below.

**4. Cumulative trial errors denied Mr. Dorsey his constitutional right to a fair trial.**

As Mr. Dorsey argued in his opening brief, even if this Court disagrees that the above errors merit reversal, the cumulative effect of these errors denied Mr. Dorsey a fundamentally fair trial. Therefore, reversal is warranted on this separate basis. *See* Op. Br. at 27-28.

**5. The State concedes the Arkansas robbery statute is broader than the Washington offense.**

Mr. Dorsey argued in his opening brief that his three-strikes lifetime sentence should be reversed because his prior Arkansas offense is not comparable to a “most serious offense” in Washington. Op. Br. at 28-32. The State used a prior conviction for two counts of aggravated robbery in Arkansas to argue Mr. Dorsey is a persistent offender. However, as the State concedes, the Arkansas aggravated robbery statute is legally broader than Washington’s offense for robbery. Resp. Br. at 38. Under Arkansas law, “a robbery is complete when physical force is threatened, no actual transfer of property need take place.” *Id.* To the contrary, the offense of robbery in Washington depends upon an actual taking or transfer of property. RCW 9A.56.190.

The State argues, however, that Mr. Dorsey’s Arkansas conviction should count as a strike because it is comparable to attempted robbery in Washington. Resp. Br. at 33, 36, 38. Notably, based on the records

produced at sentencing, the State cannot even determine whether the out-of-state offense would qualify as attempted robbery in the first or second degree. Resp. Br. at 38. A lifetime sentence ought not to be premised on such ambiguities and insufficient information.

**6. Mr. Dorsey’s constitutional right to privacy was violated when the State obtained his fingerprints without a warrant.**

Mr. Dorsey’s Article I, section 7 privacy right was also violated when he was compelled to provide his fingerprints, post-trial but before entry of the judgment against him. Op. Br. at 33-36. The State argues a warrant is not required to obtain fingerprint evidence from a convicted felon. Br. of Resp. at 39, 42. However, the State ignores that Mr. Dorsey had no judgment against him at the time the court’s order was obtained. The jury had returned a guilty verdict, but the verdict had yet to be embodied in the judgment. Mr. Dorsey does not challenge the obtaining of fingerprints, DNA, or other personal identifying information subsequent to entry of a judgment against him, but before such judgment was considered or entered. *Cf. State v. Surge*, 160 Wn.2d 65, 74-75, 156 P.3d 208 (2007) (analyzing varying degrees of constitutional protection depending on individual’s status).

The State also spends considerable space arguing the issue should not be considered because Mr. Dorsey’s argument is “conclusory.” Br. of

Resp. at 39-42. But the State spends three pages confusing an argument that could be considered baseless (the examples provided by the State) with one that is merely succinct (Mr. Dorsey's argument here).

**7. Mr. Dorsey's argument that the fingerprint evidence linking him to the prior offenses was unreliable and should not have been admitted at sentencing is properly raised.**

In his opening brief, Mr. Dorsey argued, the fingerprint evidence should not have been admitted at sentencing on a secondary basis: because the expert's method of matching fingerprints was unreliable. Op. Br. at 36-40. Mr. Dorsey relied on extensive research demonstrating the unreliability of the ACE-V methodology used to compare his post-verdict fingerprints to those obtained from records relating to prior convictions and confinement. The State attempts to counter this authority in a single footnote. Resp. Br. at 46 n.28.

Rather than focus on the substance of Mr. Dorsey's claim, the State argues Mr. Dorsey has waived the issue. Resp. Br. at 44-47. But the State's argument ignores that Mr. Dorsey's argument is limited to the admission of the fingerprint evidence at sentencing. In *Ford*, our Supreme Court considered a challenge to a sentence raised for the first time on appeal. *State v. Ford*, 137 Wn.2d 472, 484-85, 973 P.2d 452 (1999). The *Ford* Court aptly reasoned:

Sentencing is a critical step in our criminal justice system. The fact that guilt has already been established should not result in indifference to the integrity of the sentencing process. Determinations regarding the severity of criminal sanctions are not to be rendered in a cursory fashion. Sentencing courts require reliable facts and information. To uphold procedurally defective sentencing hearings would send the wrong message to trial courts, criminal defendants, and the public . . . .

*Id.* at 484.

Contrary to the State's argument, this Court should consider on appeal whether Mr. Dorsey's sentence is erroneous because it is based on unreliable fingerprint analysis. Further, based on the authority and analysis set forth in Mr. Dorsey's opening brief, the Court should hold the fingerprint evidence should not have been admitted and the resulting sentence was erroneous.

**8. A prior offense that increases Mr. Dorsey's sentence is an element that must be found by the jury and not the sentencing court by a preponderance of the evidence.**

Mr. Dorsey respectfully disagrees with the State's argument that a mere preponderance finding by a judge is sufficient to guarantee his constitutional right to a jury trial and due process right to proof beyond a reasonable doubt. As stated in the opening brief, *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), holds that these constitutional rights require a jury to find, beyond a reasonable doubt, every fact essential to punishment, regardless of whether such

essential fact is labeled an “element.” The Washington Supreme Court decisions to the contrary are in conflict with our Supreme Court’s opinions and should not be followed. *See, e.g., State v. Anderson*, 112 Wn. App. 828, 839, 51 P.3d 179 (2002) (Court of Appeals need not follow Washington Supreme Court decisions that are inconsistent with cited United States Supreme Court opinions).

Based on the argument in Mr. Dorsey’s opening brief, a jury finding beyond a reasonable doubt should be necessary to a lifetime sentence enhancement. Op. Br. at 41-46. Mr. Dorsey’s sentence should be reversed and remanded for imposition of a standard-range sentence.

**9. Mr. Dorsey’s Equal Protection right was violated by classifying the persistent offender finding as a ‘sentencing factor’ that need not be proved to a jury beyond a reasonable doubt.**

Mr. Dorsey’s sentence should be reversed and remanded for imposition of a standard range sentence on a separately sufficient ground. The trial judge’s imposition of a sentence of life without the possibility of parole, based on the court’s finding of the requisite facts by a preponderance of the evidence, violated the equal protection clause where other prior convictions that increase the maximum sentence available are classified as elements that must be proved to jury beyond a reasonable doubt. Decisions to the contrary by this Court are in conflict with our

Supreme Court's opinions and the Equal Protection Clause and should not be followed. *See* Op. Br. at 47-53. Moreover, none of the cases cited by the State considered whether strict scrutiny review should be applied, and applied rational basis instead. *Compare* Op. Br. at 47-48 *with* Resp. Br. at 51 (citing *State v. Salinas*, 169 Wn. App. 210, 226, 279 P.3d 917 (2012) (applying cases that apply rational basis review); *State v. Langstead*, 155 Wn. App. 448, 451, 454, 228 P.3d 799 (2010) (applying rational basis review); *State v. Williams*, 156 Wn. App. 482, 497, 234 P.3d 1174 (2010) (same); *State v. Reyes-Brooks*, 165 Wn. App. 193, 207, 267 P.3d 465 (2011) (agreeing with *Williams*, which applied rational basis review). This Court should apply strict scrutiny and hold the sentencing procedure violated Mr. Dorsey's right to equal protection.<sup>1</sup> In the alternative, even under rational basis review, the prior Court of Appeals cases are wrongly decided as set forth in Mr. Dorsey's opening brief.

**10. The State failed to prove Mr. Dorsey was on community custody at the time of the offense.**

As noted in Mr. Dorsey's opening brief, the State bears the burden of proving an offender score by a preponderance of the evidence. *State v. Mendoza*, 139 Wn. App. 693, 699, 702, 162 P.3d 439 (2007); Op. Br. at 53-55; *cf. State v. Hunley*, \_\_ Wn.2d \_\_, 287 P.3d 584, 589 (2012)

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<sup>1</sup> The State fails to present any argument that the three strikes sentencing scheme survives strict scrutiny review under the Equal Protection Clause. *See* Resp. Br. at 51-58 (arguing for rational basis review).

(reaffirming allocation of burden of proof). Thus where the State asserts the defendant was on community custody at the time of the current offense, the State must prove that fact by a preponderance of the evidence in order to add a point to the offender score. In its response brief, the State does not disagree with these rules.

However, the State contends that Mr. Dorsey waived this issue even though he did not agree to add a point for community custody or agree with the State's proffered offender score. Resp. Br. at 59-60. Mr. Dorsey made no statements regarding being on community custody at the time of the offense committed here. The case law is clear that silence on the issue, or even agreement to the proposed score, does not waive argument as to a particular point on appeal. *State v. Lucero*, 168 Wn.2d 785, 788-89, 230 P.3d 165 (2010) (no waiver of sentencing argument absent defendant's affirmative agreement to particular facts); *State v. Mendoza*, 165 Wn.2d 913, 920, 205 P.3d 113 (2009) (even agreement with ultimate sentencing recommendation is not an affirmative acknowledgment of asserted facts);<sup>2</sup> *State v. Jackson*, 129 Wn. App. 95, 106, 117 P.3d 1182 (2005) (comparability may be raised on appeal where defendant neither disputed nor affirmatively agreed to State's evidence at sentencing). "[I]llegal or erroneous sentences may be challenged for the

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<sup>2</sup> Our Supreme Court recently reaffirmed this holding in *Hunley*, 287 P.3d at 590.

first time on appeal.” *Ford*, 137 Wn.2d at 477-78. Mr. Dorsey properly raises the issue here.

Next, the State contends it produced sufficient evidence to satisfy its burden. Resp. Br. at 60-61. To support its argument, the State relies only on Mr. Dorsey’s release date from custody on a prior conviction, March 3, 2008, and the judgment and sentence, which imposed a range of 24 to 48 months for community custody. *Id.* (citing Sentencing Exhibits 5 at p.4, and 8 at p.5). Here, the crime was committed almost 12 months after Mr. Dorsey’s March 2008 release. The State has no intervening evidence to show that Mr. Dorsey’s community custody term continued during this time. The State cites no authority indicating such speculation based merely off the judgment and sentence is sufficient to overcome its burden. In fact, the evidence here is not greater than the mere assertions deemed insufficient in *Hunley*, 287 P.3d at 591. The added point should be stricken and the matter remanded for the State to prove Mr. Dorsey’s offender score by a preponderance of the evidence.

**11. The erroneously imposed alternative community custody condition is illegal and should be stricken.**

In his opening brief, Mr. Dorsey argued that the trial court’s alternative imposition of a term of community custody should be stricken. Op. Br. at 55-57. Like in *State v. Boyd*, 174 Wn.2d 470, 275 P.3d 321

(2012), where the Court held that the trial court must impose a term of community custody based solely on the term of confinement imposed (and not the length that might actually be served), the trial court here erred by hedging its bets and imposing a term of community custody that would apply only if the lifetime sentence is not served.

The State argues in response that the issue is moot. Resp. Br. at 61-62. But the issue will only become moot once Mr. Dorsey serves his entire life sentence. Rather, the State's argument highlights Mr. Dorsey's challenge to the alternative sentence. The alternative term of community custody is unlawfully imposed because it conflicts with Mr. Dorsey's three strikes sentence and cannot actually be enforced unless the term of confinement imposed is not served. The term of community custody is not moot; it is in clear conflict with the sentence otherwise imposed and should be stricken.

Moreover, even if the issue were moot, it should be reviewed in the continuing and substantial public interest. *Hunley*, 287 P.3d at 588 (a case presents issues of continuing and substantial public interest based on (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question). Trial courts should be provided an authoritative statement discouraging the use of

alternative sentences. This issue is likely to re-occur without review because if it is moot in this case, it would be moot in all other persistent offender cases. The term of community custody should be stricken.

C. CONCLUSION

For the reasons set forth above and in Mr. Dorsey's opening brief, his conviction should be reversed because the trial was constitutionally unfair based on flagrant, ill-intentioned, and incurable misconduct; improperly admitted hearsay evidence and telephone calls from jail; and cumulative error.

Alternatively, Mr. Dorsey's sentence should be corrected based upon constitutional and legal errors raised.

DATED this 6th day of December, 2012.

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 68241-5-I
v.	)	
	)	
BRYAN DORSEY,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 6<sup>TH</sup> DAY OF DECEMBER, 2012, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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<input checked="" type="checkbox"/> BRYAN DORSEY 876290 WASHINGTON STATE PENITENTIARY 1313 N 13 <sup>TH</sup> AVE WALLA WALLA, WA 99362	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERY <input type="checkbox"/> _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 6<sup>TH</sup> DAY OF DECEMBER, 2012.

x \_\_\_\_\_ 

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