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NO. 71507-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

DEANDRE STEPHAN EATON,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE WILLIAM DOWNING

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. Probable cause to arrest is based on the facts and circumstances within an officer's knowledge at the time of arrest, including the officer's particular training and expertise. In this case, the detectives had experience with firearms crimes and gang crimes, saw the defendant in an area known for gang activity holding his waistband in a manner consistent with concealing a gun, and found a pistol along his path that appeared to have been recently discarded. Given the totality of the circumstances, did police have probable cause to arrest the defendant for unlawful possession of a firearm?

2. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. Here, Eaton clutched his waistband in a manner consistent with concealing a firearm, surveillance video showed a person matching his description near the dumpster where the pistol was found, and when asked why he had a gun he told police that he was stuck and it didn't matter. Viewing the evidence and reasonable inferences in the light most favorable to

the State, was there sufficient circumstantial evidence for a rational trier of fact to find that Eaton had possession of a firearm?

**B. STATEMENT OF THE CASE**

1. PROCEDURAL FACTS

The State charged the defendant, Deandre Stephan Eaton, with unlawful possession of a firearm in the first degree. CP 1. After a pre-trial CrR 3.6 hearing, the trial court found that probable cause existed for Eaton's arrest and consequently admitted evidence of a glove found on Eaton's person and his statements to police. CP 111-14. Eaton was subsequently found guilty after a trial by jury. CP 48. The trial court imposed a prison-based special drug offender sentencing alternative consisting of 18 months of confinement and 24 months of community custody. CP 83-91. Eaton appeals. CP 115.

2. SUBSTANTIVE FACTS

At 10:00 p.m. on October 31, 2012, Seattle Police Detectives Joshua Rurey, Robert Thomas, and Officer Jeremy Pinkerton were on an emphasis patrol in the Rainier Valley area of South Seattle.

3RP 46, 149.<sup>1</sup> Halloween night is known to law enforcement for increased gang crimes and violence. 3RP 148.

As police drove southbound on Rainier Avenue South they saw a group of five people, including Deandre Eaton, standing in front of the entrance to South Lake High School. 3RP 48-50; 4RP 152. After passing by the group, Thomas turned the car around and drove through the parking lot toward Eaton and his companions. 4RP 152. The group began running away as police approached. 4RP 154. The detectives followed. 4RP 154.

Two people broke away from the group and ran across an open field while Eaton and the remaining two people ran southbound along the back side of the school. 3RP 55, 57; 4RP 155. Rurey used a spotlight to illuminate Eaton and the two people with him as they ran away and around the corner of the building. 3RP 56.

Eaton appeared to be clutching something in his waistband as he ran. 3RP 57. His arms were not moving in a typical running fashion and both hands were in front of him at his waistband.

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<sup>1</sup> The verbatim report of the trial court proceedings consists of five volumes, which will be referred to in this brief as follows: 1RP (3/6/13, 3/13/13, 9/23/13, 11/22/13, 1/24/14); 2RP (10/17/13); 3RP (10/21/13); 4RP (10/22/13); 5RP (10/23/13).

3RP 58. Rurey and Thomas have training and experience in recognizing suspects furtively carrying firearms. 4RP 83, 155. Rurey's training in this area includes a course by the Federal Bureau of Alcohol, Tobacco, and Firearms, in addition to other bulletins and presentations. 4RP 83. Both detectives have experience investigating suspects trying to keep a firearm in place while running in a similar manner to Eaton. 3RP 58-59; 4RP 155.

After Eaton rounded the corner of the south side of the school, the detectives drove to that area. 3RP 59. They found it suspicious that Eaton was no longer clutching his waistband and that he and the other two people were now walking calmly, even with police present. 3RP 60-61.

Police contacted the group of three and asked to speak with them. 4RP 157-58. Eaton assumed a "bladed stance," which police interpreted as readiness to fight or flee. 4RP 158. He reached for his waistband, which caused concern that he might be retrieving a gun. 4RP 157-58. All three individuals were frisked for weapons and none were found. 4RP 159.

Detective Rurey backtracked along the route Eaton had taken to flee from police to see if Eaton had discarded something, since it appeared he no longer needed to run. 4RP 8. The

detective saw a pistol lying on top of some trash bags in a dumpster on the south side of the school; a cigarette butt was wedged between the grip of the gun and a trash bag. 4RP 10. The gun was resting on its left side and the barrel was pointing toward the rear of the dumpster. 4RP 10. The cigarette was in a vertical position. 4RP 10. Rurey announced that he had found a gun. 2RP 35. Eaton was placed in handcuffs. 4RP 164.

The dumpster in which the gun was found was tall. 4RP 11. It hit Rurey, who is about six feet in height, in the middle of his chest. 4RP 11. Eaton is six feet four inches tall, while the male and female with him were just over five feet tall and five-and-a-half feet tall. 4RP 39. When Detective Rurey announced that he had found a gun, the male who was with Eaton turned around and gave Eaton a sharp look. 4RP 104.

Shortly after finding the pistol, Rurey and Thomas heard gunshots near the front of the school. 4RP 13. They ran to that area but did not find anything amiss. 4RP 13. On the way back, Thomas found a "CAT" brand glove on the ground near the back side of the building where Eaton had run. 4RP 168. A matching glove was found on Eaton's person subsequent to his arrest. 4RP 168-69.

At the precinct, Thomas spoke with Eaton after reading him his constitutional rights.<sup>2</sup> 4RP 172. Eaton said he was walking to a nearby apartment complex, denied passing through the fields behind the school, and denied running from police. 4RP 174-75. When Thomas told Eaton that there was surveillance video, Eaton's body slacked, his shoulders drooped, and his head bowed. 4RP 175. Thomas said that the video showed him putting the gun in a trash can; Eaton said that this was probably going to mess things up for him. 4RP 176-77. When Thomas asked Eaton why he had a gun, Eaton said "I'm stuck. It doesn't matter" and "This is not the first time I have done something like this." 4RP 177-78.

Surveillance video and still images from the video showed a person who appeared to be Eaton, with the same clothing he was wearing that night, standing at the dumpster at the time of the incident. 4RP 38, 90. For purposes of establishing Eaton's predicate felony conviction, the trial court read a stipulation to the jury, as agreed by the parties, that noted Eaton had been convicted

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<sup>2</sup> On appeal, Eaton does not contest the trial court's findings of fact and conclusions of law with respect to CrR 3.5. The court found that all of Eaton's responses to questions, with the exception of his silence in response to a question about the "CAT" glove, were admissible pursuant to CrR 3.5, but the court excluded on evidentiary grounds his statement about his t-shirt being for a deceased friend. 2RP 135; CP 109-10 (CrR 3.5 conclusions of law 3-6).

of residential burglary as a juvenile, a serious offense under the law. 5RP 28-29; CP 47.<sup>3</sup>

Forensic evidence was offered as well. The latent fingerprint examiner testified that a firearm's surface, combined with friction from the way a gun is typically carried in clothing or a holster, often prevents recovery of identifiable prints. 4RP 138. There were no recognizable fingerprints found on the firearm, magazine, and cartridges; however, some fingerprint ridge detail was present. 4RP 141. The DNA analyst testified that a person could touch an object without leaving DNA behind. 5RP 25. Female DNA was found on the cigarette. 5RP 20. The DNA on the gun was composed of a mixture from four or more contributors, at least one of whom was male. 5RP 22-24.

### **C. ARGUMENT**

1. POLICE HAD PROBABLE CAUSE TO ARREST EATON BASED ON THE DETECTIVES' EXPERTISE AND THE FACTS AND CIRCUMSTANCES OF THIS INCIDENT.

Eaton contends that he was arrested without probable cause and that the glove found on his person and his post-arrest

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<sup>3</sup> The jury was instructed that this conviction may be considered only in deciding whether that particular element of the charged crime had been established. CP 45.

statements should have been suppressed for that reason. His claim should be rejected. Based on the totality of the circumstances, including Rurey and Thomas' training and experience, there was probable cause to arrest Eaton and this evidence was properly admitted.

a. Facts From CrR 3.6 Hearing.

The detectives were patrolling an area of south Seattle that they knew from experience as a high crime area. 2RP 14, 82-83. Rurey had investigated numerous crimes there, such as shootings, illegal firearms possession, assaults, and gang crimes. 2RP 14. Thomas was familiar with that area due to the number of investigations he had conducted there as a patrol officer and as a detective, including gang investigations. 2RP 83.

As police passed by the group in front of the high school, members of the group reacted to law enforcement presence.<sup>4</sup> It was late at night, the school was closed, and the group did not appear to have a legitimate purpose for being there. 2RP 16, 130.

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<sup>4</sup> Rurey saw some people turn their heads away from the police car. 2RP 16. Thomas recalled that the group turned and looked at the police car as it passed. 2RP 84.

Eaton stood out from the others as he ran away from police along the back side of the school. 2RP 25. He was taller and he moved differently. 2RP 25; CP 112 (finding of fact 5). Eaton had both hands at the front of his waistband, his arms were not moving in an ordinary fashion, he hunched over, and he was not running as quickly as the others. 2RP 26; CP 112 (finding of fact 5).<sup>5</sup> Although Eaton was wearing baggy pants, the way he ran was not consistent with trying to hold up his pants. 2RP 55. Rather, it appeared that Eaton was trying to retain something in his waist area and that his efforts to do so were slowing his pace. 2RP 87, 107; CP 112 (finding of fact 5).

Based on their observations, training, and expertise, Rurey and Thomas suspected that Eaton was carrying a firearm. 2RP 67-68, 87; CP 112 (finding of fact 5). Rurey has worked for the Seattle Police Department for nine years and has been a detective with the gang unit since 2009. 2RP 6-8. He has extensive gang-specific training and is familiar with Central and South Seattle. 2RP 8-9. Rurey has conducted foot pursuits where people held their waistband, trying to keep a firearm in place, in the

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<sup>5</sup> Detective Rurey testified that Eaton ran with his elbows in toward his side and his arms not moving as he ran, while Detective Thomas testified that Eaton ran with his elbows extended outward. 2RP 26, 108.

same manner as Eaton. 2RP 67-68. He also has training on how to recognize a person who is furtively carrying a firearm and trying to retain it in position. 2RP 68. In Rurey's experience, people carry firearms in their waistband almost all of the time. 2RP 32. Similarly, Thomas has worked for the Seattle Police Department for nine years and has participated in a standard training regimen, including firearms training. 2RP 78-80. He also has training and experience with gang investigations in Seattle's Central District and Rainier Valley. 2RP 80-83.

Rurey found it significant that Eaton was casually walking, instead of running, when police saw him again on the south side of the school. 2RP 61-62; CP 112 (finding of fact 7). This suggested that something had transpired during the time that Eaton was out of the detectives' sight that negated his need to run. 2RP 62.

While tracing the path Eaton took when running from police, Rurey found a pistol in a dumpster near the school. 2RP 33-34. The gun appeared to have been placed there quite recently. 2RP 66-67, 132. There was nothing on top of the pistol, a cigarette was nestled alongside it, the dumpster did not appear to have been recently disturbed, and it was along the path Eaton had taken as he fled police. 2RP 66-67, 132. Eaton was placed under arrest with

handcuffs when Rurey announced that he had found a gun.

2RP 35, 114; CP 113 (conclusion of law 5).

b. Police Developed Individualized Probable Cause To Arrest Eaton.

Washington courts review the denial of a motion to suppress by “determining whether substantial evidence exists to support the trial court’s findings of fact, and whether those findings support the trial court’s conclusions of law.” State v. Ross, 106 Wn. App. 876, 880, 26 P.3d 298 (2001). Substantial evidence is a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Unchallenged findings are treated as verities on appeal. Ross, 160 Wn. App. at 880. Conclusions of law are reviewed de novo. State v. Acrey, 148 Wn.2d 738, 745, 64 P.2d 594 (2003).

A warrantless arrest is lawful if police have probable cause to believe that a suspect has committed or is committing a felony. RCW 10.31.100. Probable cause to arrest exists when the facts and circumstances within the arresting officer’s knowledge are sufficient to warrant a person of reasonable caution to believe that

an offense has been committed. State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996). The standard is not what an ordinary citizen would consider probable cause, but what a reasonable, cautious, and prudent officer would consider probable cause. State v. Todd, 78 Wn.2d 362, 367, 474 P.2d 542 (1970). As a result, an officer need not have evidence to prove every element of a crime beyond a reasonable doubt. State v. Knighten, 109 Wn.2d 896, 903, 748 P.2d 1118 (1988). Further, a finding of “probable cause is not negated merely because it is possible to imagine an innocent explanation for observed activities.” Graham, 130 Wn.2d at 725.

In determining whether probable cause exists, an officer’s particular training and experience can be significant. See State v. Cole, 128 Wn.2d 262, 289, 906 P.2d 925 (1995).<sup>6</sup> Courts consider the arresting officer’s special expertise in identifying criminal behavior as part of the probable cause calculus. State v. Scott, 93 Wn.2d 7, 11, 604 P.2d 943 (1980).

Here, probable cause to believe that Eaton had committed a crime was established based on Rurey’s and Thomas’ experience,

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<sup>6</sup> (overruled on other grounds by In re Detention of Petersen v. State, 145 Wn.2d 789, 801, 42 P.3d 952 (2002)).

training, and observations.<sup>7</sup> At the time of this incident, both had worked in law enforcement for about nine years. 2RP 6-8, 80-83. They had investigated suspects fleeing on foot while holding their waistbands, trying to keep a firearm in place. 2RP 67-68, 87. Rurey learned that individuals almost always carry firearms in that location. 2RP 32. The way Eaton held his waistband on this occasion was consistent with both detectives' experience watching others conceal firearms. 2RP 67-68, 87. Moreover, firearms and gang training were components of their continuing education, as police officers and as detectives. 2RP 7-9, 79-83. In short, the detectives' prior knowledge formed their ability to recognize a person furtively carrying and trying to retain a gun. 2RP 68, 87.

Furtive movements support a finding of probable cause. State v. Huff, 64 Wn. App. 641, 647, 826 P.2d 698 (1992). Both detectives noticed that Eaton exhibited unusual mannerisms as he ran: it appeared he had something heavy that he was trying to conceal and prevent from dropping to the ground, he ran more slowly than the others, and his movement appeared to be hindered

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<sup>7</sup> In addition to written findings of fact and conclusions of law, the trial court incorporated by reference the oral findings and conclusions announced at the end of the CrR 3.6 hearing. CP 113.

by the object he had secreted in his waistband. 2RP 26, 86-87, 131.

The area where this incident happened is well known for firearm-related crimes and crimes of violence. 2RP 14. Although presence in a high crime area by itself is not sufficient for probable cause, it is a relevant factor in determining whether probable cause exists. State v. Larson, 93 Wn.2d 638, 644-45, 611 P.2d 771 (1980). Each detective in this case had extensive experience patrolling the area of this incident and they knew it had a high crime rate. 2RP 9, 14, 82-83.

The suspicious circumstances surrounding the encounter with Eaton also contributed to probable cause. Late at night in an area known for gang activity, Eaton was standing near the doorway to a high school that was closed. 2RP 13, 16, 130. There did not appear to be a legitimate purpose for his presence there. 2RP 130. Once police presence was discernible, Eaton's reaction was to bolt. 2RP 131. Fleeing from police is an element of probable cause. Graham, 130 Wn.2d at 726. Next, Eaton circled the building in such a way that the police vehicle could not follow him. 2RP 131. Once detectives regained sight of him on the south side of the building, he was walking casually instead of running. 2RP 27, 62;

CP 112 (finding of fact 7). Detectives reasonably inferred that something had changed that no longer made it necessary for Eaton to run, such as discarding an object that he had wanted to conceal. 2RP 62, 132.

Furthermore, Rurey's belief that the pistol he saw in the dumpster had recently been placed there was based on objective, articulable evidence. 2RP 66-67, 133; CP 112 (finding of fact 10). The gun was in a dumpster on school grounds and it was sitting on top of trash bags with nothing on top of it. 2RP 66-67. For all these reasons, it was the detectives' belief that Eaton was clutching a firearm as he ran. 2RP 67-68, 87; CP 112 (finding of fact 5).

Eaton cites to State v. Grande to support his contention that the glove found on his person and the statements he made post-arrest should have been suppressed. 164 Wn.2d 135, 187 P.3d 248 (2008). Grande is distinguishable. The facts of Grande provide the backdrop for the court's ruling, that probable cause to arrest is not established where there is no evidence other than the smell of marijuana emanating from a car to link a passenger to an illegal substance. Id. at 146-47. The court's analysis in Grande focused on the requirement that police associate a crime with an individual person to establish probable cause. Id. at 145.

In contrast to the scenario in Grande, the facts in the present case establish individualized probable cause to arrest Eaton. The detectives noted several differences between Eaton and his companions, which led to a belief informed by experience that Eaton had possession of the firearm when he was a convicted felon: his manner of running was atypical, he ran more slowly than the others, and he held his waistband in a manner consistent with secreting a firearm. 2RP 26, 67-68, 87. There is no evidence in the record that similar movements were observed from the two people who fled police with Eaton.

The totality of the circumstances, including the detectives' combined training and experience and the facts and circumstances of this particular incident, justified the trial court's finding that Eaton's arrest was supported by probable cause. Eaton's claim fails.

2. SUFFICIENT EVIDENCE SUPPORTED EATON'S CONVICTION FOR UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE.

Eaton asserts that there was insufficient evidence to support his conviction for unlawful possession of a firearm in the first degree, contending that the State did not present sufficient

evidence to prove he had a firearm in his possession or control. This argument fails. Based on Eaton clutching his waistband while running away from police, the surveillance video showing a person matching Eaton's description standing at the dumpster where the gun was found, and Eaton's statements to police, a rational trier of fact could infer that he possessed the pistol in this case.

a. A Rational Trier Of Fact Could Find That Eaton Had Possession Of The Pistol.

The Washington State Supreme Court explained the standard to use when reviewing a claim of insufficiency of the evidence in State v. Thomas:

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Circumstantial evidence and direct evidence are equally reliable. Credibility determinations are for the trier of fact and are not subject to review. This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.

150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (internal citations omitted).

A reviewing court evaluates whether the record contains sufficient evidence “from which a factfinder could reasonably infer a defendant’s guilt under the beyond a reasonable doubt standard.” State v. Bridge, 91 Wn. App. 98, 100, 955 P.2d 418 (1998). In determining whether there is sufficient evidence, the reviewing court determines not “whether *it* believes the evidence at trial established guilt beyond a reasonable doubt,” but whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (italics added).

To convict Eaton of unlawful possession of a firearm in the first degree, the jury had to find that he had a firearm in his possession or control after having previously been convicted of a serious offense. RCW 9.41.040(1)(a). At trial, ample circumstantial evidence was offered to show that Eaton had the pistol in his possession.

Eaton was the only person whom the detectives saw running in a manner consistent with concealing a firearm in his waistband. 3RP 57-59; 4RP 155. Both detectives have training and experience recognizing when a suspect is carrying a gun. 3RP 58-59; 4RP 83, 155. Each testified that the way Eaton was

using his hands to clutch his waistband was consistent with hiding a firearm in that location. 3RP 58-59; 4RP 83, 155. The pistol appeared to have been placed in the dumpster recently and Eaton was the only person tall enough to have put it there; his companions were both much shorter than he. 3RP 68-69; 4RP 12, 39.

A rational trier of fact could infer that Eaton ran from police at first, but that he felt comfortable walking once he had had a chance to discard the pistol. His behavior is indicative of no longer needing to flee, and his demeanor when police contacted him on the south side of the school supports that inference. 3RP 60-61; 4RP 8. Moreover, the fact that he had dropped a glove made it more likely that he had discarded something else, such as a gun. 4RP 168-69.

Viewing the evidence in the light most favorable to the State, the video and forensic evidence presented at trial supports a guilty finding. Rurey testified that the surveillance video appeared to show Eaton standing near the dumpster where the gun was found. 4RP 38-39. The jury viewed the video, along with still images taken from the video, and made an independent determination as to the value of that evidence. 4RP 17, 19, 38. There were no identifiable fingerprints on the pistol, but there was testimony explaining why

fingerprints are rarely recovered from firearms. 4RP 138. Similarly, the jury heard evidence that the absence of DNA on an item does not mean that a person did not touch the item. Furthermore, at least one of the contributors to the DNA on the gun itself was male.

When considered in context, Eaton's statements present additional evidence of guilt. When Thomas asked Eaton why he had a gun, Eaton responded "I'm stuck. It doesn't matter." 4RP 177. He denied running from police or going around the back of the school, which both detectives testified they saw him do. 3RP 55-57; 4RP 155, 174-75. Further, Eaton's posture changed when he was told there was surveillance video: he slumped his shoulders and bowed his head. 4RP 175. These statements only inculcate Eaton in the crime.

There was sufficient evidence presented at trial implicating Eaton in possession of the pistol. Therefore, viewing the evidence in the light most favorable to the prosecution and taking all reasonable inferences therefrom, a reasonable trier of fact could find that Eaton possessed a firearm beyond a reasonable doubt.

D. **CONCLUSION**

For the foregoing reasons, Eaton's conviction for the crime of unlawful possession of a firearm in the first degree should be affirmed.

DATED this 7<sup>th</sup> day of October, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

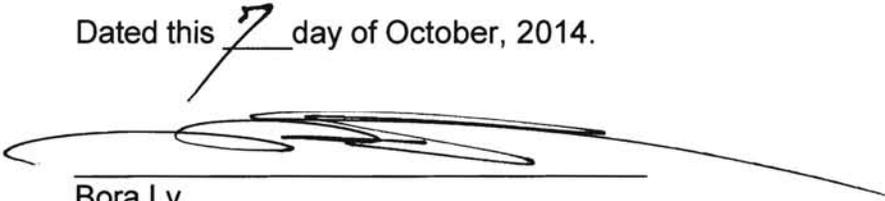
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Sarah Hrobsky, the attorney for the appellant, at Washington Appellate Project, 1511 3rd Ave, Suite 701, Seattle, WA, 98101, containing a copy of the Brief of Respondent, in State v. Deandre Stephan Eaton, Cause No. 71507-1, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 7 day of October, 2014.

A handwritten signature in black ink, appearing to read "Bora Ly", is written over a horizontal line. The signature is stylized and extends to the right of the line.

Bora Ly  
Done in Seattle, Washington