

No. 43040-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

JOHNNIE GERARD BROWN,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
PIERCE COUNTY

The Honorable Frank Cuthbertson, Judge

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR 1

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR 1

C. STATEMENT OF THE CASE 1

 1. Procedural Facts 1

 2. Testimony at trial 2

D. ARGUMENT 3

 THE CONVICTION MUST BE REVERSED AND DISMISSED
 BECAUSE THE STATUTE OF LIMITATIONS HAD RUN
 PRIOR TO THE PROSECUTION BEING COMMENCED AND
 THE STATE FAILED TO MEET ITS BURDEN OF PROVING
 THAT JURISDICTION SHOULD STILL RESIDE WITH THE
 COURT 3

 a. Relevant facts 4

 b. The statute of limitations barred the state’s
 prosecution for the offense and the state failed to
 meet the burden of proving to the contrary 10

E. CONCLUSION 17

TABLE OF AUTHORITIES

WASHINGTON SUPREME COURT

In re the Personal Restraint of Stoudmire, 141 Wn.2d 342, 5 P.3d 1240 (2000) 10-12

State v. Hodgson, 108 Wn.2d 662, 740 P.2d 848 (1987), cert. denied, 485 U.S. 938 (1988) 4, 11

State v. Hunley, __ Wn.2d __, __ P.3d __ (2012 WL 5360905) 15

State v. Mendoza, 165 Wn.2d 913, 205 P.3d 113 (2009) 16

State v. Willingham, 169 Wn.2d 2d 192, 234 P.3d 211 (2010) 14

WASHINGTON COURT OF APPEALS

State v. Clarke, 86 Wn. App. 447, 936 P.2d 1215, review denied, 133 Wn.2d 1018 (1997) 3

State v. Eppens, 30 Wn. App. 119, 633 P.2d 92 (1981) 11

State v. Glover, 25 Wn. App. 58, 604 P.2d 1015 (1979) 3, 11, 12

State v. Israel, 113 Wn. App. 243, 54 P.3d 1218 (2002), review denied, 149 Wn.2d 1013 (2003) 12

State v. Novotny, 76 Wn. App. 343, 884 P.2d 1336 (1994) 10, 11

State v. Walker, 153 Wn. App. 701, 224 P.3d 814 (2009) 10, 12-14

RULES, STATUTES AND CONSTITUTIONAL PROVISIONS

RCW 10.37.050 11

RCW 9A.04.080(1) 3, 12

RCW 9A.04.080(2) 12

RCW 9A.76.170(1) 1

RCW 9A.76.170(3)(b) 1

A. ASSIGNMENT OF ERROR

The statute of limitations for the bail jumping offense ran well before the commencement of the prosecution of appellant Johnnie Brown for that offense and the prosecution failed to prove that jurisdiction nevertheless should still reside with the court.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Brown was accused of committing the crime of bail jumping “on or about” May 15, 2002. He was not charged with that offense, however, until September 2, 2011, more than nine years later. The statute of limitations for bail jumping is three years.

Did the trial court err in refusing to dismiss the prosecution as time-barred even though the prosecution was commenced six years after the statute of limitation had run and the prosecution failed to prove that jurisdiction should nevertheless still reside with the court?

C. STATEMENT OF THE CASE

1. Procedural Facts

Appellant Johnnie G. Brown was charged by information with one count of bail jumping. CP 1-2; RCW 9A.76.170(1) and (3)(b). After arraignment before the Honorable Judge D. Gary Steiner on September 6, 2011, pretrial motions and a jury trial were held before the Honorable Frank Cuthbertson on December 6-9, 2011, after which Brown was found guilty as charged. CP 84; 1RP 1, 2RP 1, 3RP 1, 4RP 1, 65.¹

On February 3, 2012, Judge Cuthbertson ordered Brown to serve a standard-range sentence. CP 85-97; SRP 1-16. This appeal timely follows. See CP 102-13.

¹The verbatim report of proceedings consists of 5 volumes, which will be referred to as follows:

the volume containing the proceedings of September 6, 2011, as “1RP;”
December 6 and 7, 2011, as “2RP;”
December 8, 2011 (morning), as “3RP;”
December 8 (afternoon) and December 9, 2011, as “4RP;” and
February 3, 2012, as “SRP.”

2. Testimony at trial

Sometime in about August of 2001, attorney Michael Stewart was hired by Johnnie G. Brown to represent Brown in a criminal case. 2RP 36-38.² As part of that process, Stewart said, Brown signed several pretrial orders including one which had language on it saying “[f]ailure to appear will result in a warrant being issued for your arrest.” 2RP 44-45. For the 8 or so months the case was ongoing, Stewart said, Brown appeared in court probably 15 times, even though, “[c]ases get moved; dates get moved a lot frequently.” 2RP 47, 55. Brown also showed up for appointments at Stewart’s office. 2RP 47, 55.

Proceedings in that trial were ongoing although a jury had not been selected when, on the afternoon of April 22, 2002, the trial court issued a ruling that some “very important evidence” would be admitted, over defense objection. 2RP 48, 3RP 35-36. The next day, Brown did not appear in court. 2RP 48-49.

The trial prosecutor on that day, Greg Greer, testified that he had tried to use family members to get information about Brown’s whereabouts and that he believed law enforcement had searched jail populations to see if Brown was there. 3RP 38-39. The prosecutor did not, however, provide specifics about what he thought occurred. 3RP 38-39. The judge hearing the case at that time, the Honorable James Orlando, in contrast said he had also ordered the *prosecutor* to check to see if

²The jury was never informed of the nature of the charges (other than that they were felonies), but the parties discussed the fact that the underlying case involved allegations of child rape and incest for which Brown had been tried *in absentia*. 1RP 3, 2RP 5.

Brown was detained somewhere. 4RP 18.

Eventually a bench warrant issued for Brown for failing to appear for jury trial, alleging that it occurred on May 6, 2002, not April 23. 3RP 41-43. According to Greer, the trial judge had given Stewart and Greer some time to try to find Brown after he first did not appear that day the end of April, and after that had passed, a bench warrant had issued. 3RP 41-42. Judge Orlando, however, testified that he issued the bench warrant on at about 10:20 on May 6, the same day the trial was supposed to start, when by that time Brown had failed to appear. 4RP 15. A little later in May of 2002, Stewart reported back to the court that he had not been able to contact Brown. 4RP 18. At some point a nationwide warrant went out for Brown and he was found. 3RP 43.³

D. ARGUMENT

THE CONVICTION MUST BE REVERSED AND DISMISSED
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RCW 9A.04.080(1) sets forth what are commonly called “statutes of limitations.” See State v. Glover, 25 Wn. App. 58, 61, 604 P.2d 1015 (1979). Under the statute, “[p]rosecutions for criminal offenses shall not be commenced” after specific time periods, depending upon the offense.

³Testimony did not establish where or how he was found but there were discussions with the jury out indicating the prosecutor’s belief that he was found after being featured on “America’s Most Wanted,” a television show which broadcasts pictures and information of people who are being sought by law enforcement in the hopes watchers will call if they have relevant information. See e.g., State v. Clarke, 86 Wn. App. 447, 448, 936 P.2d 1215, review denied, 133 Wn.2d 1018 (1997).

RCW 9A.04.080(1). The “shall” is mandatory - so much so that, in criminal cases, the running of the statute of limitations is jurisdictional and an “absolute bar” to prosecution. State v. Hodgson, 108 Wn.2d 662, 667-68, 740 P.2d 848 (1987), cert. denied, 485 U.S. 938 (1988).

In this case, Mr. Brown’s conviction for bail jumping should be reversed and dismissed, because the statute of limitations had completely run on the offense prior to the prosecution being commenced. Further, the prosecution failed to meet its burden of proving that jurisdiction should nevertheless still reside in the court.

a. Relevant facts

On September 2, 2011, the prosecution filed the information charging Mr. Brown with bail jumping “on or about the 15th day of May, 2002[.]” CP 1-2. Brown was arraigned on the charge at a hearing before Judge Steiner on September 6, 2011. 1RP 1.

At that hearing, the prosecutor told the court that, in 2002, Mr. Brown had been facing child rape and incest charges and had “fled in the middle of trial,” after which Brown had been tried *in absentia*. 1RP 3, 2RP 5. According to the prosecutor, Brown had been “on the loose” until recently, when he had been brought back for sentencing in front of Judge Orlando. 1RP 2-5. The prosecutor also told the court the search for Brown was “extensive” and Brown was “found in Missouri” as the result of a TV show. 1RP 4.

The prosecutor told the court that, when the parties had appeared for sentencing in front of Judge Orlando, Brown had no attorney. 1RP 4. As a result, the prosecutor reported, the judge had declined to arraign

Brown on the bail jumping charge. 1RP 4. As a result, the prosecutor said, Judge Orlando had set the case over and that was how the bail jumping charge had ended up in front of Judge Steiner when the other case was in front of Judge Orlando. 1RP 4.

On December 6, 2011, the parties appeared for pretrial motions in front of Judge Cuthbertson on the bail jumping offense. 2RP 12. At that hearing, counsel argued that the court should dismiss the prosecution for bail jumping for various reasons. 2RP 12. During this discussion, he pointed out that Brown had been charged with bail jumping “nine years and a hundred and some days after he allegedly failed to appear for the trial of the underlying charge.” 2RP 12.

A little later, during the prosecution’s case in chief at trial, the prosecutor raised an objection to a potential witness defense counsel had disclosed the previous day. 3RP 3. That witness, Jeffrey Willis, had known the defendant since the early 1990's when they worked together. 3RP 14-15. Willis was going to testify that he had run into Brown in Washington state several times over the previous few years. 3RP 14-15.

The prosecutor objected that the court should exclude the witness, claiming that Brown’s “whereabouts for the past nine years” was not “relevant.” 3RP 15. The prosecutor then declared various places that he said Brown was believed to have lived during the intervening years, apparently based upon a motion which had been filed in the case in front of Judge Orlando by a company called Metro Bail Bonds. 3RP 15. The prosecutor said that Metro had tried over the years to find Brown and someone from that company could be called by the prosecution to testify

about the work they did on that. 3RP 15. But again, the prosecutor argued, the evidence was irrelevant because, “[t]he fact that he was in the area doesn’t prove or disprove anything.” 3RP 16.

The court asked counsel to respond and he did so, stating:

The relevance is that, Your Honor, the State is required to prove at trial why the Statute of Limitations in this case didn’t - - was tolled. This case is nine years, 110 days old by the time they file it, or approximately. . . The State has to show that tolling applied to, or else the statute runs. The statute on this case is three years.

3RP 17. When counsel said he had previously mentioned the issue at Brown’s arraignment “up in Judge Felnagle’s Court on September 2,” the prosecutor then declared, “if Judge Felnagle has already ruled on it, then it’s the law of the case.” 3RP 16-18. Counsel corrected himself, saying “[i]t was Judge Orlando.” 3RP 18.

The court then said it thought the defense witness was not timely disclosed. 3RP 18. The court also declared that it did not “think there’s any relevance at this point as to where Mr. Brown was in the intervening time period,” and that Willis’ testimony would lead to speculation by the jury about when Brown might have been in Pierce County. 3RP 18. As a result, the court excluded the witness. 3RP 18.

At that point, the prosecutor asked that the motion filed in the child rape case by Metro Bail Bonds “be made part of the record in this case as well.” 3RP 19. It was marked as Exhibit 12, but not presented to the jury. 3RP 19; see Supp. CP __ (Exhibit list, at 2)⁴ (attached as Appendix A for

⁴A supplemental designation of clerk’s papers including this document is being filed herewith. The document is attached for the Court’s convenience as Appendix A. Also included in the designation is Exhibit 12, the “Metro Bail Bonds” motion originally filed in the child rape case and filed in this case by the prosecution. 3RP 19. The document is

the Court's convenience).

After a brief recess, counsel again raised the issue, arguing that, at trial, the prosecution had the burden of proving jurisdiction and that the running of the statute of limitations issue was "jurisdictional." 3RP 20. He also pointed out that the issue could be raised for the first time even on appeal. 3RP 20.

When the trial court stated that it thought the issue had been ruled on by Judge Orlando already, counsel clarified that no such ruling had been made. 3RP 21. Counsel explained that he had appeared at the sentencing hearing in front of Judge Orlando because he saw that it was going to occur and that no defense counsel was assigned. 3RP 21. He had not, however, represented Brown at that time. 3RP 21.

In fact, because Brown had not had counsel at that hearing, Judge Orlando had asked counsel if he could step in and handle the sentencing but counsel had declined, stating he did not know enough about the case to do so. 3RP 21.

In **that** context, counsel explained, he had then pointed out that there were potential issues he could already see just glancing at the case, which whoever was appointed would need to research. 3RP 21. One of those was that there was a trial *in absentia*. 3RP 21. Another was whether the statute of limitations had run for the bail jumping offense. 3RP 21. Judge Orlando had speculated that, "if the State can show that he's absent [from the jurisdiction], then there would be tolling." 3RP 21. There was

attached for the Court's convenience as Appendix B.

no discussion of it further and no ruling by the judge, because the conversation was just a discussion of issues some future counsel might raise. 3RP 21.

In response, the prosecutor questioned whether the running of the statute of limitations was even “a jurisdictional issue that needs to be proved beyond a reasonable doubt.” 3RP 21-22. Instead, the prosecutor declared, the running of the statute should be treated as a “legal issue that would not be under the province of the jury.” 2RP 22. The court agreed, also stating, “I believe there has been a prior ruling on the jurisdictional issue.” 3RP 22.

The next day, counsel filed a “Memorandum in Support of Defendant’s Motion to Dismiss re: Jurisdiction.” CP 67-69. In that document, counsel again argued that the three-year statute of limitations for the bail jumping offense had run and that the issue was jurisdictional. CP 68. He also argued that the law required that “[t]he facts conferring jurisdiction . . . must be established” at trial. CP 69. And he reminded the court that it was the prosecution’s burden to prove that the statute of limitations was “tolled” - otherwise the court did not have jurisdiction over the case at all. CP 69.

During trial proceedings, counsel then asked the court to allow him to make an offer of proof on the issue, saying he wanted to present Brown’s testimony about where he lived over the nine-year period of time between the alleged conduct and the charging. 4RP 34.

Again, the prosecutor declared the evidence irrelevant for the jury. 4RP 34. The court, however, allowed counsel to make the offer of proof.

4RP 36. Counsel then called Brown to the stand. 4RP 36. Brown described living with someone in Puyallup for two years starting in 2002, then moving back to Tacoma with that woman for two years, from about 2004 to about 2006. 4RP 36. Brown said that, in about 2006, he moved to Ohio to live with his dad, which he did for about five months. 4RP 37. After that, Brown went to St. Louis, Missouri, where he lived for close to three years before he was ultimately arrested and returned to Washington state. 4RP 37.

The prosecutor cross-examined Brown about several different allegations, such as whether he had lived with a particular woman after a certain time period or had a child by her, whether he had gone by his brother's name and whether he had been to Canada or other places. 4RP 39-44. The prosecutor then explained that he had wanted to "check" Brown's version of events "versus what the State's offer of proof on this as a matter of law would be, which is contained in Exhibit 12," the motion from "Metro Bail Bonds" from the other case, filed in this case by the prosecutor. 4RP 44.⁵

The court did not reconsider its ruling. 4RP 44-45.

At the later sentencing, defense counsel again raised the issue, arguing that the charge should be "dismissed for lack of jurisdiction." SRP 3. He pointed out that the prosecution had failed to prove to the jury at trial that the statute of limitations had been "tolled." SRP 3. The prosecutor responded to other arguments counsel made on other issues but

⁵More discussion of the allegations contained in Exhibit 12 is presented in the argument section, *infra*.

said nothing about the statute of limitations. SRP 3-15. The court similarly did not mention the issue before imposing sentence. 3RP 3-15.

- b. The statute of limitations barred the state's prosecution for the offense and the state failed to meet the burden of proving to the contrary

Mr. Brown's conviction for bail jumping must be reversed, because the statute of limitations had run prior to commencement of the prosecution for that charge and the state failed to prove to the contrary.

As a threshold matter, this issue is properly before the Court. Counsel not only raised the issue below, he did so again and again. In fact, he tried to present testimony about it and made an offer of proof, even raising the issue again at sentencing. 2RP 12, 3RP 15, 20-22, 4RP 30-36, SRP 3; CP 67-69. The issue is more than well preserved for appeal.

In any event, the question of whether the trial court lacked jurisdiction because of the running of the statute of limitations is so constitutionally significant that it has repeatedly been declared to be a manifest error affecting a constitutional right which could be raised for the first time on appeal. See State v. Walker, 153 Wn. App. 701, 705, 224 P.3d 814 (2009); State v. Novotny, 76 Wn. App. 343, 345 n. 1, 884 P.2d 1336 (1994).

In fact, our highest court has not only granted relief on the issue on collateral review but has done so well after the normal one-year time limit for such review had passed, because of the serious constitutional dimensions of the issue. See In re the Personal Restraint of Stoudmire, 141 Wn.2d 342, 5 P.3d 1240 (2000). In Stoudmire, the Supreme Court reversed two convictions for indecent liberties because the prosecution

was commenced after the statute of limitations for the crimes had run. 141 Wn.2d at 345-46. Further, it did so even though the issue was raised in a successive personal restraint petition more than a year after the judgment was final. 141 Wn.2d at 345-46.

This is because the issue involved the Court's jurisdiction. The judgment and sentence for indecent liberties was "invalid on its face," the Court held, as the crime was charged after the statute of limitations for the crime had run. 141 Wn.2d at 345-46. As a result, the Court reversed and dismissed the charges. Id.; see also, Novotny, 76 Wn. App. at 345 n. 1 (reversing a conviction for third-degree rape of a child when the three-year statute of limitations had run for some of the charging period and the jury had rendered a general verdict).

The seriousness of the constitutional nature of the issue in criminal cases is also made clear by looking at the difference in result when a case is civil. In a civil case, the statute of limitations is only a statute of "repose" and its running serves only to limit remedies. See Hodgson, 108 Wn.2d at 667-68; State v. Eppens, 30 Wn. App. 119, 124, 633 P.2d 92 (1981). In stark contrast, in a criminal case, the running of the statute of limitations is jurisdictional and serves as "absolute bar" to prosecution. Eppens, 30 Wn. App. at 124; see Novotny, 76 Wn. App. at 345 n. 1.

Indeed, where the statute of limitations has run in a criminal case, not only does that divest the trial court of any jurisdiction over the crime but it also renders the entire proceeding void. See, e.g., Glover, 25 Wn. App. at 61-62 (information charging crime for which statute has run "fails to state a public offense"); RCW 10.37.050 (information "is sufficient if it

can be understood therefrom. . . [t]hat the crime was committed. . . within the time limited by law for the commencement of an action therefor[.]”); see also, Stoudmire, 141 Wn.2d at 345-46 (any judgment and sentence entered on a charge barred by the statute of limitation is outside the sentencing court’s authority).

Put another way, as this Court has noted, the running of the statute in a criminal case is, in fact, a “limitation upon the power of the sovereign to act against the accused.” Glover, 25 Wn. App. at 61 (quotations omitted).

In this case, at the time the proceeding was commenced for the bail jumping charge, the statute of limitations had already run. For the crime, the statute of limitations is found in a “catchall” provision contained in RCW 9A.04.080(1)(h). See Walker, 153 Wn. App. at 705. Under that statute, a charge may not be prosecuted “more than three years after its commission.” RCW 9A.04.080(1)(h); Walker, 153 Wn. App. at 705.

Here, more than nine years passed between the date of the alleged crime (April or May of 2002) and the filing of the information (in September of 2011). CP 1. Thus, without more information, the charging document on its face accused Brown of committing the crime more than six years after the state lost its authority to pursue him for that offense.

As noted below, however, there is an exception to the statute of limitations which sometimes may apply. Under RCW 9A.04.080(2), the statute of limitations stops running or is “tolled” when the defendant is “not usually and publicly resident within this state.” RCW 9A.04.080(2); see State v. Israel, 113 Wn. App. 243, 293-94, 54 P.3d 1218 (2002),

review denied, 149 Wn.2d 1013 (2003). Because tolling is an exception to the statute of limitations, proving that there has been tolling “is critical to the court’s jurisdiction.” Walker, 153 Wn. App. at 707. Absent such proof, the prosecution for an offense must be reversed and dismissed. See id.

Thus, the prosecutor was simply wrong in declaring below that the issue was not even “a jurisdictional issue” requiring sufficient proof. 3RP 21-22. The court was wrong in agreeing. See 3RP 22.

And both were also wrong in declaring Brown’s whereabouts for the years between when the crime was committed and the date of charging nine years later were “irrelevant.” See 3RP 15, 18, 21-22. Because the statute of limitations for the crime was three years and far more than that time had elapsed, the trial court was required to dismiss the case for lack of jurisdiction unless some exception to the statute was shown. Walker, 153 Wn. App. at 707.

Further, it is the prosecution which had the burden of proving such an exception. Walker, 153 Wn. App. at 707. As the Walker Court noted, “the proponent of an exception should bear the burden of proving that the exception exists.” 153 Wn. App. at 707. This was especially true because, absent such proof, the trial court has no jurisdiction over the crime. Id.

As a result, “when a statute of limitations challenge is raised, the State bears the burden of establishing that sufficient time is tolled to permit the matter to proceed.” Id.

Notably, the Walker Court reached this conclusion despite the prosecution’s argument that a defendant who flees the jurisdiction should

not “benefit” from so “shirking the authority of the trial court.” 153 Wn. App. at 707 n.3. Again, because the issue is the very jurisdiction of the court over the crime, the Court said, it is the prosecution which must bear the burden of proving that jurisdiction should still exist, i.e., that an exception to the running of the statute of limitations should apply. 153 Wn. App. at 707.

Thus, where, as here, the issue of the running of the statute of limitations is raised, the prosecution must prove that an exception applies or else the case must be dismissed. For the “tolling” exception, a person is not proven to be “not usually and publicly resident within this state” simply because there is evidence that the defendant was outside the state or even had to be extradited. See Walker, 153 Wn. App. at 707. Instead, tolling only occurs when the accused is *living* outside Washington, i.e., has relocated there. See, e.g., State v. Willingham, 169 Wn.2d 2d 192, 193-95, 234 P.3d 211 (2010). Put another way, “the statute of limitations is not tolled whenever the person charged is absent from the state, but only when the person is not usually and publicly resident within the state.” 169 Wn.2d at 195.

The State failed to meet that burden here. The only evidence the prosecution submitted to the court was Exhibit 12, the “Metro Bail Bonds” motion filed by the company’s attorney and with the owner’s letters attached. In all of the letters, the owner declared “facts” about what he was told by others or thought about trying to find Brown, where he thought Brown had been or was, the motivations of various family members, the suffering he thought the crime victims were experiencing, his opinion of

Brown's guilt and the culpability of the mother of the victims, whether Brown was using someone else's identification or name and the owner's admission that he had not read any of the allegations against Brown at the time his company bailed Brown out. App. B at Exhibits 1-5. The owner also included his beliefs about where people grew up, whether family members are "refusing" to divulge Brown's location, whether Brown was also a "drug dealer," who might be supplying Brown with drugs, and whether Brown might have been in Paris, France based upon some records someone who used to work for the company was said to have. App. B at Exhibits 1-5.

Finally, the owner wrote a letter to "give congratulations" for the arrest, again describing facts about conversations he said Brown had with the bail bonds staff, stating the owner's opinion again about Brown's history and guilt and the culpability of the mother of the victims, and failures to find Brown when "fugitive recovery agents searched residences in Salt Lake City, and Hawaii," which the owner said showed someone warning Brown in advance. App. B at Ex. 5.

Nothing in those letters proves that Brown was not "usually and publicly" resident in Washington at any particular time so that the statute of the limitations should toll. Instead, the letters are unsworn hearsay, full of the owner's opinions and declarations about what he said occurred or what people said. Due process would be violated by relying on such evidence even in the more informal context of sentencing on an issue where only a "preponderance" standard of proof is required. See State v. Hunley, __ Wn.2d __, __ P.3d __ (2012 WL 5360905) (slip opinion at

4); see also, State v. Mendoza, 165 Wn.2d 913, 920, 205 P.3d 113 (2009) (some degree of reliability is required for the minimal due process provided at sentencing).

The case was charged nine years after the offense, six years after the statute of limitations had passed. The prosecution bore the burden of proving some exception, as counsel repeatedly argued below. The prosecution failed to meet that burden with the evidence it presented. Because the statute of limitations had run and the prosecution failed to prove some exception should apply, the trial court erred in repeatedly refusing to dismiss the case for want of jurisdiction. Reversal and dismissal with prejudice is required.

E. CONCLUSION

For the reasons stated herein, this Court should reverse and dismiss the conviction for bail jumping, with prejudice.

DATED this _____ day of _____, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY EFILING/MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Appellant's Opening Brief to opposing counsel via this Court's efilng upload portal and to appellant by depositing the same in the United States Mail, first class postage pre-paid, as follows: Mr. Johnnie Lee Brown, DOC 989178, Coyote Ride CC. P.O. Box 769, Connell, WA. 98326-0769.

DATED this _____ day of _____, 2012.

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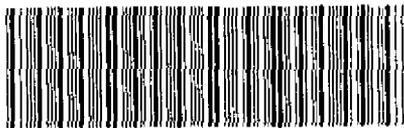
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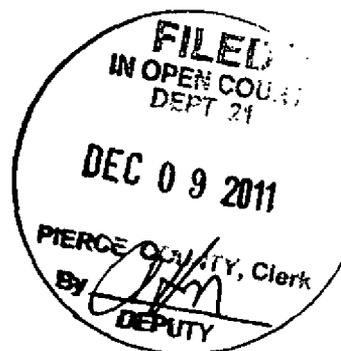
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11-1-03594-0 37659345 EXRV 12-12-11



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff

Cause No. 11-1-03594-0

vs.

EXHIBIT RECORD

BROWN, JOHNNIE GERARD,
Defendant

All Rec'd. Clerks Office 12/9/11
MJK

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|--------|-----|-------------------------------------------------------------------------------|-----|-----|------------------------------------------------------------------------------------------------|---------|----------------------------------|
| P | 1 | Order/establish conditions of release pending tr. Cause no. 01-1-03585-3 | | | | | ✓ |
| P | 1A | Order establishes conditions of release pending tr. Cause no. 01-1-03585-3 | Yes | No | Admitted | 12/7/11 | ✓ |
| P | 2 | Order for continuance of trial date, cause no. 01-1-03585-3 | | | | | ✓ |
| P | 2A | Order for continuance of trial date, Cause no 01-1-03585-3 | Yes | No | Admitted | 12/7/11 | ✓ |
| P | 3 | Scheduling conference order cause no. 01-1-03585-3 | Yes | No | Admitted | 12/7/11 | ✓ |
| P | 4 | Status conference order, cause no. 01-1-03585-3 | Yes | No | Admitted | 12/7/11 | ✓ |
| P | 5 | Request for reassignment for trial Cause no. 01-1-03585-3 | Yes | No | Admitted | 12/7/11 | ✓ |
| P | 6 | Motion and declaration /bench warrant Cause no. 01-1-03585-3 | Yes | No | Admitted | 12/7/11 | ✓ |
| P | 7 | Order authorizing issuance of bench warrant Cause no. 01-1-03585-3 | Yes | No | Admitted | 12/7/11 | ✓ |
| P | 8 | Bench Warrant, Cause No. 01-1-03585-3 | | | | | ✓ |

| P D | No. | Description | Off | Obj | Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn | Date | Rec'd by Clerk's Office |
|--------|-----|--------------------------------------------------------------------|-----|-----|------------------------------------------------------------------------------------------------|---------|----------------------------------|
| P | 8A | Bench Warrant, Cause no. 01-1-03585-3 | Yes | No | Admitted | 12/7/11 | ✓ |
| P | 9 | Affidavit of Gregory Greer Cause no. 01-1-03585-3 | | | | | ✓ |
| P | 10 | Information, Cause No. 01-1-03585-3 | | | | | ✓ |
| P | 11 | Decl. for determination of probable case Cause no. 01-1-03585-3 | | | | | ✓ |
| P | 12 | Metro Bail Bonds Motion to recover forfeited bail | | | | | ✓ |
| P | 13 | Copy of Pierce Co. Clerks Journal Entry, Cause No. 01-1-03585-3 | | | | | ✓ |
| P | 14 | Stipulation on Cause No. 11-1-03594-0 | Yes | No | Admitted | 12/8/11 | ✓ |

RUSSELL SELK LAW OFFICES

November 07, 2012 - 4:49 PM

Transmittal Letter

Document Uploaded: 430401-brownjappa.pdf

Case Name: State v. Brown

Court of Appeals Case Number: 43040-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

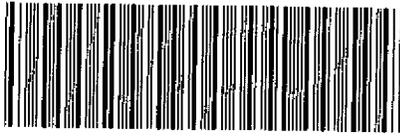
- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: ____
- Answer/Reply to Motion: ____
- Brief: ____
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: Appendix A to brief of appellant filed herewith

Comments:

No Comments were entered.

Sender Name: K A Russell Selk - Email: karecrite@aol.com

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01-1-03585-3 36681404 MT 06-29-11

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AM JUN 28 2011 PM
PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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

| | | |
|-----------------------|---|---------------------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Plaintiff, |) | NO. 01-1-03585-3 |
| |) | |
| and |) | METRO BAIL BOND MOTION |
| |) | TO RECOVER FORFEITED BAIL |
| JOHNNIE GERARD BROWN, |) | |
| |) | |
| Defendant. |) | |
| |) | |

I. MOTION

COMES NOW the Surety, METRO CITY BAIL BONDS, by and through its attorney of record, JOHN C. CAIN, and moves the above-entitled Court that it be granted the relief of reconsideration of the Order Forfeiting Bail entered on August 27, 2002. This motion is made pursuant to CrR 1.1, 1.2, 1.3, 7.8, and CR 60(11).

II. FACTS

The Defendant was arraigned on or about July 5, 2001. On May 29, 2002, guilty verdicts were returned on Counts 2 and 3 of the Third Amended Information. On July 2, 2002, a Motion for Forfeiture of Bail was filed and on August 27, 2002 the Order Forfeiting Bail was entered. Bail was in the amount of One Hundred

ORIGINAL

JOHN C. CAIN
ATTORNEY AT LAW
802 NORTH SECOND STREET
TACOMA WASHINGTON 98403
(253) 572-8338
FAX (253) 572-8460

1 Thousand Dollars (\$100,000). The Defendant, until recently, has
2 been a fugitive from justice.

3 The Surety continued to search for the Defendant and
4 through the efforts of its president, Dave Regan, the Defendant was
5 eventually captured in St. Louis, Missouri. Attached to and fully
6 incorporated herein by reference are letters written by Mr. Regan
7 that outline only some of his efforts to locate Mr. Brown. They
8 are as follows:
9

- 10 1. Letter dated May 7, 2010;
- 11 2. Letter dated August 2, 2010;
- 12 3. Letter dated February 18, 2011;
- 13 4. Undated letter, est. February 2011; and
- 14 5. Letter dated June 6, 2011.

13 **III. DISCUSSION**

14 The purpose of bail is to assure the appearance of a
15 criminal defendant at court proceedings. It is not intended to be
16 a revenue generating device for government. A bondsman is entitled
17 to equitable relief. See *State v. Mullen*, 66 Wn.2d 255, 401 P.2d
18 991 (1965). RCW 10.19.040 states as follows:
19

20 "If a forfeiture has been entered
21 against a person in a criminal case
22 and the person is returned to
23 custody or produced in court within
24 twelve months from the forfeiture,
25 then the full amount of the bond,
26 less any and all costs determined by
27 the court to have been incurred by
28 law enforcement in transporting,
locating, apprehending, or
processing the return of the person
to the jurisdiction of the court,
shall be remitted to the surety if
the surety was directly responsible
for producing the person in court or
directly responsible for

1 apprehension of the person by law
2 enforcement."

3 In this case, but for the efforts of the bondsman, the
4 Defendant would not have been captured. RCW 10.19.040 does not bar
5 relief being granted to the Bondsman even if a defendant has not
6 been returned within a year's time from the forfeiture. Rather, it
7 ensures that the Bondsman will be given relief if a defendant is
8 returned within a year's time. The Court may and should in this
9 case grant equitable relief to the Bondsman and return to him the
10 money forfeited minus the funds to be retained according to statute
11 and the actual costs which were incurred in returning the Defendant
12 to the Court's jurisdiction.

13 RESPECTFULLY SUBMITTED this 20 June, 2011.

14
15
16 
17 _____
18 JOHN C. CAIN, WSBA: #16164
19 Attorney for Surety
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28

EXHIBIT 1

Pierce County Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171

RE: Johnnie Gerard Brown, Case#01-1-03585-3

Dear Sirs:

We are in the process of locating Johnnie Gerard Brown. Some of the victims of Mr. Brown are now cooperating with us to locate Mr. Brown. Additionally, we are in the process of foreclosing on the Brown family home in West Memphis, Arkansas. Our initial information from the family is that Mr. Brown is in Quebec, Canada. We are now locating his exact location.

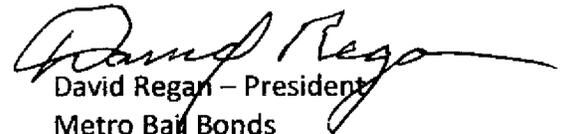
Mr. Brown currently has a 48 state warrant or at least he did when we searched his girlfriends residence in Hawaii in 2003. Mr. Brown was living with Ethylne Magalei, and she did in fact give birth to another child by Mr. Brown in 2004. Ethylne Magalei was the mother of the victims of Mr. Brown's sexual assaults. She clearly knew of the sexual assaults, and did nothing to stop them. She also has the current knowledge of Mr. Browns whereabouts, but will not disclose this to anyone. With the passage of a number of laws based on curbing terrorism, we are not permitted to access phone records of individuals. I need Ms. Magalei's phone records from 2004 thru 2009. We also searched her residence when she lived in Salt Lake City, Utah. Mr. Brown has threatened all of the Brown children, and warned them not to cooperate with bail enforcement, or law enforcement individuals. They are very scared of him, and have had problems in life, which can be attributed to Mr. Brown's sexual assault's on them.

I need several things in order to bring this case to a close: 1. A international warrant for Mr. Brown's arrest. He has been arrested since 2003 in Canada. He is under the name of Bobbie Brown A.K.A. Bobbie Cheatem, his older brother who died in 2002. 2. Phone tolls and a phone Tap on the number 253-232-2686, 3502 92nd Street – So. This is the number and address for Ethylne Magalei, Mr. Brown's wife and mother of his eight children. The phone tolls for this period of time would be quite helpful. The cost of any of these requests will be accepted by myself, including the warrant updated, and international coverage.

Mr. Brown was bailed out by my company, without really knowing the scope of his sexual assault and incest activities. I read the written charges against him and never would have bailed him on these charges. I have been contacted in the last year by the family members, and they would like to see Mr. Brown face his charges. I have agreed to pursue Mr. Brown until he is in custody. If you have any questions, I can be reached at the number below.

The foreclosure of the Brown family home, and the other pressures I'm applying to the Brown family, will probably result in a location on Brown. The existence of a valid warrant will help to insure that Mr. Brown will be brought to Pierce County for conclusion of this horrible case, and closure for the victims of Mr. Brown's assault's. Finally, providing Mr. Brown's fingerprints to an international police agency would probably disclose his arrest location. The warrant for Mr. Brown's arrest would not be useful, because Brown is using the identification of his deceased brother Bobbie Brown AKA Bobbie Cheatem, the warrant would have to be accompanied by the prints.

Sincerely Yours,



David Regan – President
Metro Bail Bonds
2204 NW 88th Street
Vancouver, Washington
(360) 574-9022

DATED: May 7, 2010

EXHIBIT 2

West Memphis Police Department
Attn: Major crimes unit
626 Broadway
West Memphis, Arkansas 72301

RE: Johnnie Gerard Brown – Child Molester, Armed Robbery, Drug Dealer

Dear Sirs:

I am a retired bail bondsman from the State of Washington. I was the largest Bail agent in Washington with seven offices and 28 employees. I arrested over 10,000 defendants during my bail bond career.

In 2001, I bailed Johnnie Brown out of the Pierce County Jail in Tacoma, Wa. Mr. Brown was accused and convicted in absentia of molesting the members of his family. The documentation of the prosecuting attorney is attached, and is in Exhibit I of this letter. I never read this document until about six months ago. I never would have bailed Mr. Brown if I would have known his crimes. I have never bailed out a known child molester.

On December 15, 2009, I received a call from one of the victims of Mr. Brown. She was his daughter Penina Brown, and is now 22 years old. She requested that I pursue, and arrest Mr. Brown. Mr. Brown failed to appear for court in May, 2002, and has been a fugitive since this time. Penina Brown has related to me that she has had nightmare's, and other problems associated with Brown's actions. I spoke with the other daughter's of Mr. Brown, and they shared the same sentiments. This case has bothered me personally and I'm requesting the assistance of the West Memphis, Police Department.

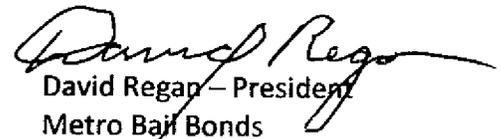
The entire Brown family grew up in West Memphis at 2210 Autumn. The Brown family mother Dorthea Brown died in 2002. The family members executed trust deed on this property to bail Mr. Brown out of jail. The family members have been instructed to give the location and whereabouts of Mr. Brown. (See Exhibit II). They know where Mr. Brown is, but have refused to divulge the location.

I have filed a formal foreclosure and intend to sell the Autumn house on the 15th Day of September, 2010. (See Exhibit III). The residence is occupied by Brown's sister Jacqueline. She moved from Tacoma to West Memphis in June. She and Mr. Brown were very close. I was told that Mr. Brown is probably residing at the Autumn residence.

Mr. Brown in the past has been a street level drug dealer, and has engaged in armed robberies. These are his only financial activities to support himself. He is probably under the identity of Eric Marlow Brown (brother) or Bobby Cheatem a brother that died in 2003, and resided at 2210 Autumn. Mr. Brown is supplied with drugs from Eric Brown, from his St. Louis residence. Eric Brown is a middle level supplier in St. Louis. The data on Bobby and Erich are in Exhibit IV.

I will offer a \$10,000 reward to any informant, fugitive recovery agent, relative of a police officer, etc. if they are responsible for his arrest. I want him to face the victims of his crimes and help them to bring closure to this horrible situation. I have included relevant information in Exhibit V. Please call me anytime day or night as often is necessary to arrest Brown.

Sincerely Yours,



David Regan - President
Metro Bail Bonds
(360) 574-9022

DATED: August 2, 2010

EXHIBIT 3

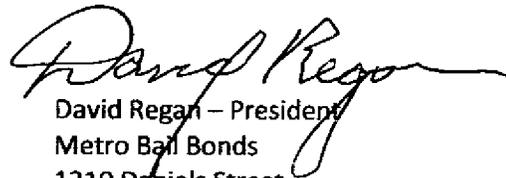
Crimestoppers
Lauren Wallin
930 Tacoma Ave So.
Tacoma, Wa 98402

RE: Johnnie Gerard Brown

Dear Ms. Wallin:

I have enclosed a letter which I wrote to Assistant Chief Michael Zaro at the Lakewood Police Department. I am offering a \$10,000 reward for information leading to the arrest of fugitive Johnnie Gerard Brown. Also, if there is a crimestoppers in St. Louis, there is a possibility he may be that area. Mr. Zaro, who I've worked with in the past on the Brown case, recommended that I call you for crimestopper coverage. If you should have any questions, or need any additional information on Mr. Brown, please feel free to contact me.

Sincerely Yours,



David Regan – President
Metro Bail Bonds
1210 Daniels Street
Vancouver, Washington 98660
(360) 574-9022

DATED: February 18, 2011

EXHIBIT 4

February, 2011

Lakewood Police Department
Assistant Chief Michael Zaro
9401 Lakewood Drive SW
Lakewood, Washington 98499

RE: Johnnie Gerard Brown

Dear Sir:

This letter will serve to offer \$10,000 to the person or persons who provide the information which leads to the arrest of Johnnie Brown. I understand that Crimestoppers is featuring Mr. Brown on the local Pierce County Website. In addition to the \$10,000 basic reward, I am prepared to also offer all reasonable costs incurred by those persons responsible, as well as extradition of Mr. Brown from out of State or out of Country. In short, I would like this person brought back to Pierce County to face his accusers, and to be sentenced.

On September 10, 2010, I foreclosed on the Brown's family home in West Memphis, Arkansas. The residence is now occupied by Jacqueline Brown, the oldest sister of Johnnie Brown. I offered her the house in exchange for information on the whereabouts of Mr. Brown. She denied knowing his current location, and related to me that his last location that she knew of was St. Louis. This was in 2007 and she has not heard of him since then. His brothers, Eric Marlow Brown and Michael Brown are both living in St. Louis. Eric Brown and Johnnie Brown have in the past been drug dealers for a living. If crime stoppers could feature this in St. Louis, it may very well yield some results.

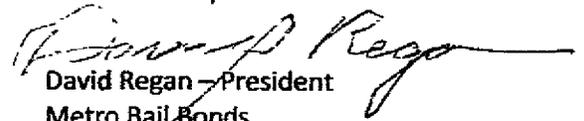
Finally, I've had a number of Johnnie Brown reports. The latest was in January, 2011, from Byron Gross a fugitive recovery agent for Bail Bond Companies in Pierce and King counties. Mr. Gross was a recovery agent for my company in 2002. He is a licensed cellular company, and has full access to phone records. He claims to have phone records for Johnnie Brown from Paris, France. He said that Brown was in the military service, and France was a area that he traveled in. I somewhat believe this. Mr. Gross wants a \$5000.00 up front fee to travel to Europe. I told him that I don't front money to bounty hunters. He also related to me that he had Mr. Brown in custody, but let him go because he wouldn't get paid. Gross was terminated as a recovery agent, because there was forfeitures he couldn't locate. My company was very fortunate in locating all forfeitures State wide, except Mr. Brown. Mr. Gross's number is (253) 583-6711, if you would like to question him regarding these representations. I would be willing to sign a contract with him, if he requires this.

Mr. Brown was arrested numerous times since his early teenage years. His warrant, in last checking, was good for all States. If Mr. Brown was out of the country, as Mr. Gross implies, than he would not be detained on his active warrants. I'm hoping there may be a way to activate these warrants on a international basis? Again, I will pay for the cost of arrest, lodging, and extradition to the US. He is probably engaging in this type of behavior in a foreign jurisdiction.

PAGE 1 -- JOHNNIE GERARD BROWN

Finally, I have read the show cause affidavit which you prepared for the Court, and I was quite upset that my company bailed this individual out of jail. I don't bail out criminals with this type of charge. I have spoken to all of the victims, and they have experienced many difficulties, as a result of Brown's actions. This has bothered me deeply, as I have five children of my own. I'm going to continue to pursue every lead that I may get, but I'll need assistance to capture him if he is out of the country. Please feel free to contact me, or use my name as you see fit in the pursuit of this individual.

Sincerely Yours,



David Regan - President
Metro Bail Bonds
1210 Daniels St
Vancouver, Washington 98660
(360) 574-9022

EXHIBIT 5

June 6, 2011

Lakewood Police Department
Chief of Police
9401 Lakewood Drive SW
Lakewood, Washington 98499

RE: St. Louis Arrest of Johnnie Gerard Brown

Dear Sirs:

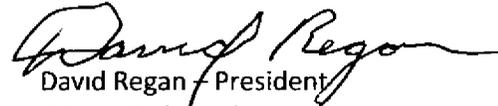
The purpose of this letter is to give congratulations and recognition to Assistant Police Chief Mike Zaro. In 2001, then Detective Zaro, arrested Mr. Brown on numerous child molestation charges. Mr. Brown was bailed by Metro Bail Bonds in Tacoma in 2001. Mr. Brown related to the office personnel that he had a domestic dispute with his spouse, and that was the basis for the charges. Mr. Brown subsequently failed to appear, and became a fugitive from justice. After reviewing the Court files and interviewing family members, it became apparent that Mr. Brown engaged in this behavior on a regular basis. Ethylene Magalei, the victims mother, assisted Brown in avoiding capture, and did have knowledge of Mr. Brown's sexual activities with the minor children. Our fugitive recovery agents searched residences in Salt Lake City, and Hawaii. In each case, Mr. Brown was living with Ethylene Magalei. She warned him in advance of the searches by Metro Bail Bonds.

First, after reading the facts of the case, it really impacted me in a personal way. I felt that Mr. Brown may be engaging in the same type of behavior. In September, 2010, I foreclosed on the Brown family home in West Memphis, Arkansas. I offered all of the Brown family the residence if they disclosed the whereabouts of Mr. Brown. I started having regular conversations with the Brown family members. Several of the family members became regular informants, and did provide some of the useful information provided to "America's Most Wanted" television program.

Second, in February, 2011, I wrote a letter to Mike Zaro regarding Mr. Brown. I offered a reward for his capture, as well as possible locations. Mr. Zaro then referred me to Lauren Wallin for the crimestoppers of Pierce County. In my letter to Lauren Wallin, I requested that my information be forwarded to the St. Louis crimestoppers. As a result of the efforts of Ms. Wallin, and Mike Zaro, Mr. Brown was featured on "America's Most Wanted" on the April 23rd program. On April 26th, I phoned in three addresses which I obtained from a confidential informant. They were 926 Locust Ave., Long Beach, Ca (Michael Brown's), 2210 Autumn Ave, West Memphis, Ark. (Jackie Brown's), and 3456 Miami Street #1, Saint Louis, MO (Erich Brown's girlfriends house). These addresses were taken off of mail sent to a girlfriend Brown had in Pierce County, and were obtained by my informant.

Finally, I would like to recommend Mr. Zaro for a commendation or above normal recognition in this case. He not only exhibited to me a high degree of professionalism, and effectiveness, but that he cared personally about the ultimate closure of this case. This was a great group effort in capturing a very dangerous and elusive fugitive.

Sincerely Yours,



David Regan - President

Metro Bail Bonds

1210 Daniels Street

Vancouver, Washington 98660

CC Assistant Chief Mike Zaro
Loren Wallin

RUSSELL SELK LAW OFFICES

November 07, 2012 - 4:51 PM

Transmittal Letter

Document Uploaded: 430401-brownjappb.pdf

Case Name: State v. Brown

Court of Appeals Case Number: 43040-1

Is this a Personal Restraint Petition? Yes No

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- Other: Appendix B to brief of appellant filed herewith

Comments:

No Comments were entered.

Sender Name: K A Russell Selk - Email: karecrite@aol.com

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pcpatcecf@co.pierce.wa.us