73107-6

COA No. 73107-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SEAN LAWARD GRAHAM,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF KING COUNTY

The Honorable Theresa B. Doyle

APPELLANT'S OPENING BRIEF

OLIVER R. DAVIS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

WASHINGTON CASES

CONSTITUTIONAL PROVISIONS

LAW REVIEW ARTICLES

STATUTES

UNITED STATES SUPREME COURT CASES

A. ASSIGNMENTS OF ERROR

1. In Sean Graham's trial on a charge of first degree assault, the court abused its discretion in denying the defense motion for a mistrial where multiple violations of the court's in limine ruling caused Mr. Graham's trial to be unfair.

2. Cumulative errors deprived Mr. Graham of a fair trial.

3. The sentencing court erred by imposing an exceptional sentence premised on the aggravating factor of "particular vulnerability."

4. The aggravating factor of particular vulnerability is unconstitutionally vague.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was a mistrial required when witness no. 1, King County Jail Officer John Hurt, violated the trial court's in limine order that the witnesses were not to refer to the Jail facility where Mr. Graham was housed as a disciplinary unit or a Jail unit where persons where housed because of past disciplinary problems?

2. Did the cumulative prejudice of this, and further error, violate Mr. Graham's right to a fair trial?

3. The State's trial theory was that Mr. Graham, while detained at the King County Jail in Kent, threatened to kill Jail guards in general, then a week later he specifically threatened Officer Gill Letrondo. The following day, he surprise-attacked Officer Letrondo by rushing at him and punching him in the head, causing him to fall prone and temporarily unconscious, then kicking him, ultimately all resulting in head lacerations and a subdural hematoma. Graham's crime of first degree assault, by intentionally attacking Letrondo with "force or means" likely to cause great bodily harm or permanent death under subsection (1)(a) of RCW 9A.36.011, was proved to the jury by the evidence of the threats, and by the evidence that his attack caused the aforementioned impairment and injuries. He first received a standard sentence, but then also an exceptional term.

To enforce Due Process, must this Court hold that under the standards of sufficiency of the evidence applicable to the Sentencing Reform Act (SRA), this defendant could not be *further* punished beyond the standard range under the notion that the officer became "particularly vulnerable" by going unconscious during the commission of the crime?

4. Is the statutory aggravating factor of particular vulnerability unconstitutionally vague under the Fourteenth Amendment, where it provides no notice, and contains no standards to protect against arbitrary, ad hoc enforcement?

C. STATEMENT OF THE CASE

1. Charges and State's theory of the case. The defendant Sean L. Graham was charged with one count of first degree assault for battery of King County Jail/Department of Corrections Officer Gil Letrondo while Graham was a detainee at the Kent Regional Jail. Graham was also charged with four counts of custodial assault (simple assault) as to Corrections Officers Michael Wells, Marcel Williamson, Michael Allen, and Timothy Wright, who were involved in responding to the incident. CP 1-11; CP 226-28.

According to the State's allegations, Sean Graham was a Jail detainee housed in the "Nora East" unit of the King County Jail in Kent (Regional Justice Center/RJC), in January of 2011. On January 9, Mr. Graham was disciplined by King County Jail (KCJ) Officer Gil Letrondo, who revoked his out-of-cell privilege for that day. Graham threatened Officer Letrondo, and said he would kill him. On January 10, Mr. Graham was angry and yelling about his punishment for Jail

rules violations. CP 1-11; Supp. CP ___ (Sub # 172 – State's trial brief, at pp. 5-6).

On January 11, in the afternoon, KCJ Officer Michael Wells was with Officer Letrondo near the duty station, adjacent to the detainee's shower area, when Mr. Graham exited his cell, and "approach[ed] [Officer Letrondo] at a very fast pace" and punched the officer twice, causing Letrondo to go unconscious and fall to the floor, prone. CP 1-11; State's trial brief, at pp. 5-6. Graham "continued to assault the unconscious officer" while he was lying on the ground unconscious, by kicking and stomping on him. State's trial brief, at p. 6. A note or letter was later found in Mr. Graham's cell in which he had written, on January 5, that he was angry and was "ready to kill" the Jail guards. CP 7-8 (affidavit); State's trial brief, at p. 8.

2. *Aggravating Factor(s).* In addition to the charge of assaulting Officer Letrondo with intentional "force and means" likely to produce great bodily harm or death, the State alleged an aggravating factor that Letrondo was 'particularly vulnerable' because Mr. Graham continued to physically assault Letrondo after he was prone on the floor and unconscious following Graham's first two punches. CP 1-11; CP 206; CP 199; 11/24/14RP at 119 (prosecutor's closing argument, in

reference to particular vulnerability, arguing: "What we are referring to is about when Officer Letrondo was on the ground, unconscious."). The jury also found the aggravating factor that Officer Letrondo was a law enforcement officer. CP 205.

3. *Sentencing*. At sentencing, the trial court imposed standard range terms, including a sentence of 277 months (the top of the standard range) on the first degree assault, with an additional 12 months for each aggravating factor for a total of 301 months incarceration. 1/9/15RP at 273-74; CP 229-40; CP 205, CP 206. Mr. Graham timely appealed his judgment and sentence.[1] CP 520-45.

[1] Mr. Graham is not challenging the 12 months of exceptional incarceration imposed for the law enforcement officer aggravating factor. However, although there were two aggravating factors, the issue of the particular vulnerability factor is fully consequential because the court imposed a discrete period of incarceration solely for that factor. Compare State v. Douglas, 173 Wn. App. 849, 856, 295 P.3d 812, review denied, 178 Wn. 2d 1004 (2013) (court need not reverse exceptional sentence if it is confident that trial court would impose same sentence based on any of the multiple aggravating factors alone).

D. ARGUMENT

(1). A MISTRIAL WAS REQUIRED BECAUSE THE REVELATION THAT MR. GRAHAM WAS BEING HOUSED IN A DISCIPLINARY OR HIGH SECURITY UNIT CAUSED INCURABLE PREJUDICE IN HIS PROSECUTION FOR VIOLENT ASSAULT.

(a). Pre-trial motion. Prior to trial, the court discussed Mr. Graham's concerns regarding the State's desire to refer to the Jail unit where Mr. Graham was housed as a segregated unit. 11/3/14RP at 49-53.

The prosecutor asserted that this was necessary in order to explain the physical layout of the cell area, to show that Mr. Graham was in a Jail area that took time for responding officers to get to, and to show that the defendant had "intent" because of his anger at Officer Letrondo for taking away his sole one hour out-of-cell privilege for persons in that unit. 11/3/14RP at 50-51, 54.

Mr. Graham argued that the State could elicit testimony about the physical layout of the area, but any facts showing Mr. Graham was housed in administrative segregation, or in a more restrictive area of the Jail, would be prejudicial by portraying him as "simply a dangerous guy." 11/3/14RP at 53.

The prosecutor assured the Court that it would not be discussing Mr. Graham's "disciplinary problems" or "disciplinary reasons" as to why the defendant was placed in this unit of the Jail. 11/3/14RP at 51, 54. The court stated that the term "segregated unit" was a more neutral, proper label. 11/3/14RP at 52-53.

(b). Multiple violations. The court's cautions were not followed. During the testimony of the State's first trial witness, KCJ Officer John Hurt, the prosecutor was asking Officer Hurt to explain what a security radio call, or "code blue," meant. The officer stated that this means that there is an emergency situation and officers should come to the location. 11/12/14RP at 9-10.

When the prosecutor asked what "security Nora East" meant, Officer Hurt replied, "So many different units at the Regional Justice Center. Nora East was primarily a disciplinary unit, or ---." (Emphasis added.) 11/12/14RP at 10.

The prosecutor, attempting to steer the witness away from the prohibited topic, directed him toward testifying that Nora East was the name of a geographical unit in the facility. 11/12/14RP at 10.

However, a short time later, when describing the multiple officers that moved through the outer doors in response to the code

blue, Hurt again stated that Mr. Graham was housed in the "disciplinary" unit.

> Q: As you were running down towards Nora East, were there others joining you or –
> A: Yes. There was – in fact, I vividly recall passing people along the way, which is typical during response time. Usually the first person to open a door will hold the door open as people can respond, and that way doors won't shut on responding staff.
> And this one was --- Nora East is --- like I said, it was a disciplinary or ---

(Emphasis added.) 11/12/14RP at 11. Testimony continued for a short period. During an immediate recess, the trial court stated that these two instances were violations of its order in limine directing that the Jail area be referred to only as a segregated unit. 11/12/14RP at 11-12. (In a subsequent recess, Mr. Graham's counsel moved for the mistrial.) 11/12/14RP at 42; see Part 1(c), infra.

Officer Hurt had remained in the courtroom when the parties argued about the initial violations of the in limine ruling. 11/12/14RP at 11-14. The court asked the witness if he had forgotten what he had been instructed, and the prosecutor assured the court that it had instructed all of its witnesses according to the court's ruling, and spoke with Officer Hurt about this specifically. 11/12/14RP at 14.

However, Officer Hurt later interjected that he and other Jail officers, after the assault incident, transported Mr. Graham to the King County Jail "where he was made an ultra security inmate and --." 1/12/14RP at 41-42.

The trial court sustained the defendant's objection to relevance and granted the motion to strike. 11/12/14RP at 41-2.

(c). Mistrial motion. Mr. Graham moved for a mistrial, based on the witness's statements made "despite repeated warning[.]" 11/3/14RP at 42-43. The prosecutor responded that the third comment was different from what the witness had been warned about, and that the comments were not prejudicial because the defense was arguing that the pressures of solitary confinement caused the defendant to lose control. 11/12/14RP at 44. The prosecutor also argued that a mistrial should not be granted where the State instructed "these witnesses, over and over again," and where it had taken a long time for the case to proceed to trial. 11/12/14RP at 45-46.

The trial court denied the mistrial motion, agreeing that the case was "proceeding along," and stating that it did not want to "derail" the case. 11/12/14RP at 46-47. However, the court directed

the prosecutor to provide the State's witnesses "with a list of banned terms." 11/12/14RP at 46-47.

(d). A mistrial was required for irregularities causing incurable prejudice, and Mr. Graham was also prejudiced by cumulative error. Mr. Graham's arguments of incurable prejudice support reversal under the mistrial standard, and the cumulative error doctrine; both issues are raised as assignments of error, and both turn on the question whether the defendant has received a fair trial. See Parts A(1), and B(1), supra.

Mr. Graham did not have a fair trial. The Supreme Court has said:

> If we are persuaded that . . . a witness for the state is deliberately trying to deprive the defendant of a fair trial, we will assume that he succeeded in his purpose and grant a new trial.

State v. Nettleton, 65 Wn.2d 878, 880 n. 4, 400 P.2d 301 (1965).

In this case, for some reason Officer Hurt did not respect the prosecutor's and the court's repeated instructions. In any event, regardless of the witness's purpose, because of the prejudice caused when the jury *heard* the witness's remarks – even if limited to the first *two* remarks -- Mr. Graham's trial was not fair because he was incurably prejudiced.

As to the mistrial standard, the trial court must grant a mistrial where an irregularity occurs and as a result the defendant's right to a fair trial is "so prejudiced that nothing short of a new trial can insure that the defendant will be tried fairly." State v. Mak, 105 Wn.2d 692, 701, 718 P.2d 407, cert. denied, 479 U.S. 995 (1986); State v. Weber, 99 Wn.2d 158, 165, 659 P.2d 1102 (1983). Where a trial court abuses its discretion in the denial of a defendant's mistrial motion, the defendant is entitled to a new trial. State v. Escalona, 49 Wn. App. 251, 256-57, 742 P.2d 190 (1987).

Further, the cumulative error doctrine allows this Court to reverse for multiple errors that together resulted in denial of the Due Process right of a fair trial. State v. Russell, 125 Wn.2d 24, 93-94, 882 P.2d 747 (1994), cert. denied, 514 U.S. 1129 (1995); State v. Alexander, 64 Wn. App. 147, 150-51, 822 P.2d 1250 (1992); U.S. Const. amend. 14, Wash. Const. art. 1, § 3. Under the doctrine, this Court has discretion under RAP 2.5(a)(3) to review all errors, even any inadequately preserved erros.[2] State v. Alexander, 64 Wn. App. at 150-51.

[2] The errors occurring here can be addressed as multiple errors of the trial court's in limine order causing incurable prejudice and requiring a mistrial, or as multiple evidentiary errors which resulted in cumulative prejudice that deprived Mr. Graham of a fair trial. The essential question is the same – that of a fair trial. U.S. Const. amend. 14.

In this case, the witness's statements caused prejudice that resulted in an unfair trial. In response to Officer Hurt's first two violations, and in discussing the mistrial motion, the State appeared to argue that the jury was already going to understand, based on "current events" and on opening statements, that Mr. Graham was in solitary confinement, and therefore the revelation that Nora East was a disciplinary unit carried no different impression. 11/12/14RP at 12, 43-44. The prosecutor also argued that the defense had made clear that its theory was that Mr. Graham was locked up for 23 hours a day in solitary confinement and it was those pressures that led him to do what he did. 11/12/14RP at 44-45.

In opening statement, the State had argued that Mr. Graham was angry because he had been deprived of his 1-hour per day time out of his cell, and the defense argued that Mr. Graham merely lost control, and did not intend a serious assault. See 11/12/14RP at 5, 15-17).

But the defense opening statement merely discussed the specific restrictions and stressful pressures that Mr. Graham was under, such as being told when he could eat, or bathe, and being locked in his cell for all but an hour. 11/12/14RP at 15-17. Defense counsel never mentioned "solitary confinement."

The revelation that Nora East was a "disciplinary" unit was not cumulative of some existing defense theory. The fact that Mr. Graham's counsel was resting the defense in part on a theory that the defendant's conditions in Jail caused him to lose control, rather than this being a planned assault with great intent to harm, did not mitigate the trial errors at all.

It was fully recognized during pre-trial motions that the segregated area that Mr. Graham was housed in might reasonably be viewed by the jury as used for persons as varied as Jail inmates who themselves required protection from others, or for general safety reasons. 11/3/14RP at 54-55. What the defendant, and the trial court, found prejudicial was discussion of the Nora East unit with a label that indicated Mr. Graham was being housed in the unit for disciplinary reasons. 11/3/14RP at 49-54.

The court repeatedly made clear its concern that the jury not infer or speculate that Mr. Graham had a history of violence, and that the label used for the unit should not imply "prior disciplinary problems," and that Mr. Graham must have a fair trial free from this prejudice. 11/3/14RP at 52-53, 55.

The purpose of the defendant's motion in limine was to make sure and distinguish any proper theory of the pressures of isolation, from improper ER 404(b)-type character and 'bad act' evidence about the fact, and the why, of Mr. Graham being housed in the Jail's disciplinary unit. 11/3/14RP at 53-54. This latter evidence would portray Mr. Graham, prejudicially, simply as a dangerous person.

The State's argument against the mistrial – that the fact of "solitary confinement" was going to be an overall topic of trial – was off the mark and not a tenable argument for the trial court to accept. State v. Rundquist, 79 Wn. App. 786, 793, 905 P.2d 922 (1995) (a court's exercise of discretion must be based upon tenable grounds and tenable reasons and must then fall within a range of acceptable choices given the facts and the law).

Mr. Graham's right to a fair trial was prejudiced to the degree that the Washington courts have established a mistrial is required. In assessing prejudice, a court should examine not just the seriousness of the irregularity; but also whether it was cumulative of properly admitted evidence; and whether it could have been cured by an instruction. State v. Escalona, 49 Wn. App. at 254-55 (new trial warranted where assault complainant testified that the defendant

"already has a record and had stabbed someone"); State v. Weber, 99 Wn.2d at 165-66; see also State v. Thompson, 90 Wn. App. 41, 46, 950 P.2d 977 (1998). The ultimate inquiry is whether the testimony, when viewed against the backdrop of all the evidence, so tainted the trial that the defendant did not receive a fair trial. State v. Weber, 99 Wn.2d at 164.

Here, the errors could not have been cured. The errors had the same effect as improper character evidence, which allows a lay jury to reason that the defendant had the bad or violent character to commit the crime charged. See, e.g., State v. Miles, 73 Wn.2d 67, 436 P.2d 198 (1968) (in robbery trial, police officer's testimony that said defendants planned to commit another robbery, was so prejudicial that its effect could not be erased by an instruction to disregard). Prejudicial inferences of "predisposition" to commit crimes are too prejudicial to be contained by a limiting instruction, because they are extraordinarily powerful. See, e.g., State v. Stith, 71 Wn. App. 14, 856 P.2d 415 (1993); see also Slough & Knightly, Other Vices, Other Crimes, 41 Iowa L.Rev. 325, 333-34 (1956). No curative instruction could erase the extreme prejudice of the witness's remarks in this case -- for a lay jury, this reasoning is too powerfully tempting to ignore.

Additionally, by definition, a mistrial does require that the trial commence with a new jury. If prejudice occurs that prevents the defendant having a fair trial, that result, though conflicting with the desire that the proceedings continue along, is warranted. See 11/12/14RP at 46-47. The violation of the court's in limine order should not be amenable to the prosecutor's arguments of judicial economy – particularly where the remarks carried the very same reversible prejudice to Mr. Graham that he argued, and that the trial court agreed, should not be interjected into the assault trial. See State v. Thompson, 90 Wn. App. at 46 (a trial irregularity is "sufficiently serious" for purposes of the prejudice necessary to require a mistrial or a new trial where it violates a motion in limine).

(e). It cannot be a factor that the prosecutor instructed his witnesses in good faith. The prosecutor did his level best to prevent the witness from violating the in limine order. Yet despite being carefully instructed by the prosecution by e-mail and discussion to refrain from mentioning the fact that the Jail's Nora East unit was a disciplinary unit, Officer Hurt violated the trial court's proscription. 11/12/14RP at 10, 11. This Court should not endorse any argument by the Respondent that the prosecutor's proper efforts to make the trial

court's ruling clear and understood by the witnesses, mitigates any harm in any way. It is true that the prosecutor appeared to have done his best to instruct the witnesses "over and over again." 11/12/14RP at 46. But the trial pivoted on the question whether the defendant was the sort of person who planned and executed a premeditatedly violent assault, and did so against a Jail guard. The prejudicial effect of the errors affected the jury, requiring a new trial.

(f). Reversal required. It was an abuse of discretion for the trial court to deny the mistrial motion. See Escalona, supra; State v. Rundquist, 79 Wn. App. at 793. Further, this is a case where the combined effect of the accumulation of errors requires a new trial, because the defendant's trial was unfair. Russell, supra, State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984). Reversal is required.

(2). THE SENTENCING COURT VIOLATED WASHINGTON STATUTE, THE SIXTH AMENDMENT, AND DUE PROCESS WHEN IT ERRONEOUSLY IMPOSED AN EXCEPTIONAL TERM PREMISED ON RCW 9.94A.535(3)(b) "PARTICULAR VULNERABILITY" AND RCW 9.94A.537(6).

(a). Facts. The primary prosecution witnesses consisted of Officer Michael Wells, who had been talking to complainant KCJ Officer Letrondo just before the incident; and Officer Letrondo, who testified that the defendant punched him several times, causing him to

fall to the floor. 11/13/14RP at 98; 11/17/14RP at 56, 112; 11/18/14RP at 34, 121. Additional corrections officers testified that when they responded to Officer Wells' code blue, Mr. Graham committed simple assault against them as the officers punched him, tried to bend his joints, and pepper-sprayed him. 11/13/14RP at 98, 109-10, 112-14; 11/17/14RP at 56, 66, 69, 112; 11/18/14RP at 34, 121.

Officer Wells was with Officer Letrondo when the incident commenced. 11/18/14RP at 34. When Officer Wells returned to the officers' duty station after taking a break, the two officers exchanged keys. Mr. Graham was in the adjacent shower area of the unit. 11/18/14RP at 48. While Officer Wells was reviewing the station's logbook, he looked up, and he observed Mr. Graham suddenly approach Officer Letrondo quickly from behind. Graham "swung and hit" Officer Letrondo with a closed fist, causing him to begin to stumble. 11/18/14RP at 49-50. Although Wells punched Graham in reaction, Mr. Graham struck Officer Letrondo a second time; he seemed to be focused on assaulting Letrondo. 11/18/14RP at 53.

As a result of being struck again, Officer Letrondo fell back against the glass partition of the station area, and fell to the ground. 11/18/14RP at 53-55. Officer Wells called a "code blue" over the radio,

and at the same time, Mr. Graham "started jumping up and down on top of Officer Letrondo, stomping on the upper part of his body here around the head and neck area." 11/18/14RP at 54-55. He did this several times. 11/18/14RP at 56.

Witnesses described Officer Letrondo variously as being conscious, semi-conscious, or unconscious when they observed Mr. Graham battering him while he was on the floor. 11/18/14RP at 34, 52-54 (Wells, testifying that the first punch caused Letrondo to be "dazed," and the second caused him to fall unconscious); 11/17/14RP at 112, 116; 11/13/14RP at 98, 106.

Officer Wells managed to get Mr. Graham off of Officer Letrondo, with assistance from the other KCJ officers who had arrived. 11/18/14RP at 56. Officer Letrondo, because of the attack, did not recall the assault itself. However, he did testify that Mr. Graham had threatened to kill him before the incident. 11/18/14RP at 131-2, 137-39.

A letter or note was located in Mr. Graham's cell in which the defendant, approximately a week earlier, had written that he wanted to kill lawyers and guards. 11/17/14RP at 35, 41, 46 (testimony of Officer Katie Hicks); Supp. CP ___, Sub # 181 (redacted exhibit 19).

(b). Argument for reversal. The SRA standards for "particular vulnerability" are not satisfied by the circumstance that during commission of the offense, the defendant rendered the victim temporarily unconscious on his way to inflicting the extent of injury that the prosecutor used to prove the intentional force necessary for this degree of assault.

(c). Exceptional sentences and aggravating factors generally; particular vulnerability. In general, exceptional sentences are reserved for commissions of the crime that are worthy of greater punishment than is standard for the offense, and thus matters considered by the Legislature in setting the standard punishment for the degree of a crime are not a proper basis for an exceptional sentence. State v. Stubbs, 170 Wn.2d 117, 123, 240 P.3d 143 (2010); State v. Saltz, 137 Wn. App. 576, 583, 154 P.3d 282, 285 (2007) (citing State v. Bartlett, 128 Wn.2d 323, 333, 907 P.2d 1196 (1995)).[3]

Particular vulnerability is an aggravating factor. RCW 9.94A.535(3)(b); see Laws 2010 c 274 § 402, eff. June 10, 2010) (in effect

[3] While assault in the first degree has a seriousness level of XII, assault in the second degree has a seriousness level of IV, and assault third degree has a seriousness level of III [assault fourth degree is a misdemeanor], each with a resulting lower standard range punishment. RCW 9.94A.515 (Laws 2010 c 227 § 9, eff. June 10, 2010).

at time of defendant's January, 2011 offense). However, "particular vulnerability" of a victim of an assault means both

> • that the defendant's physical attack on the victim was with knowledge of the victim's particular vulnerability; and
>
> • that this vulnerability was a substantial factor in the commission of the offense charged.

See State v. Suleiman, 158 Wn.2d 280, 290–92, 143 P.3d 795 (2006) (plea stipulation did not state defendant knew victim was particularly vulnerable, therefore exceptional sentence could only have found proper authorization with judicial factfinding, which the Sixth Amendment prohibits per Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004)); see, e.g., State v. Gordon, 172 Wn. 2d 671, 680, 260 P.3d 884, 888 (2011) (solitary victim of felony murder by assault hidden from view between two vehicles was particularly vulnerable to the attack by the group of multiple perpetrators); State v. Mitchell, 149 Wn. App. 716, 724, 205 P.3d 920 (2009) (particular vulnerability aggravating factor includes factual requirement that vulnerability was substantial factor in committing the offense).[4]

[4] Although the statutory aggravating factor of particular vulnerability at .535(3()(b) does not expressly state that any particular vulnerability must be a "substantial factor" in the commission of the crime, the post-Blakely legislative amendments of the exceptional sentence

Under the exceptional sentence statute, whether a particular aggravating factor is sufficiently supported by the record is a question of fact, and the question of whether the factor is sufficiently substantial and compelling to warrant exceptional punishment is a question of law. Suleiman, 158 Wn.2d at 291-92; RCW 9.94A.537(6).

With regard to the sufficiency of the evidence to support an aggravating factor, post-Blakely, the factor must be proved "beyond a reasonable doubt" and must be so reviewed on appeal.

> [The appellate courts] use the same standard of review for the sufficiency of the evidence of an aggravating factor [as for] the sufficiency of the evidence of the elements of a crime. State v. Yarbrough, 151 Wn. App. 66, 96, 210 P.3d 1029 (2009). Under this standard, [the courts] review the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the presence of the aggravating circumstances beyond a reasonable doubt. State v. Yates, 161 Wn.2d 714, 752, 168 P.3d 359 (2007)[, cert. denied, 554 U.S. 922 (2008)].

---

provisions codify the common-law requirements of those factors. State v. Williams, 159 Wn. App. 298, 309, 244 P.3d 1018 (2011) (citing Laws of 2005, ch. 68, § 1); see, e.g., State v. Jackmon, 55 Wn. App. 562, 567, 778 P.2d 1079 (1989) (broken ankle did not render victim more vulnerable; he was sitting down at the time defendant shot him) (cited by State v. Mitchell, 149 Wn. App. 716, 724, 205 P.3d 920, 924 (2009), aff'd, 169 Wn. 2d 437, 237 P.3d 282 (2010)).

State v. Zigan, 166 Wn. App. 597, 601–02, 270 P.3d 625 (2012). Differently stated, the factual findings necessary for an aggravating factor will be reversed on review where clearly erroneous. State v. Law, 154 Wn.2d 85, 93, 110 P.3d 717 (2005).

(d). The SRA standards for proving "particular vulnerability" beyond a reasonable doubt are not met by the fact that the defendant rendered the victim temporarily unconscious during the crime of intentionally committing assault with force or means likely to produce great bodily harm or death. This Court has recognized that the Washington cases have generally applied the "particular vulnerability" aggravating factor to circumstances where the defendant knowingly selects the victim because of the vulnerability, rather than where the victim becomes increasingly injured simply because of the commission of the crime itself. This Court of Appeals in State v. Barnett noted this, although also citing, and offering its own descriptions of, two cases which might seem to depart from the rule:

> We have generally applied the particular vulnerability factor to victims who are vulnerable at the time the attack begins. See [State v. Nordby, 106 Wn.2d 514, 518, 723 P.2d 1117 (1986)](defendant pleaded guilty to vehicular assault; victim, who was pedestrian pushing bicycle, was "completely defenseless and vulnerable"); State v. Bedker, 74 Wn. App. 87, 94, 871 P.2d 673 (1994) (four- to five-

> year-old victim of child rape was vulnerable); State v. Scott, 72 Wn. App. 207, 217, 866 P.2d 1258 (1993) (78–year–old victim who suffered from Alzheimer's disease was particularly vulnerable), aff'd sub nom. State v. Ritchie, 126 Wn.2d 388, 894 P.2d 1308 (1995). However, victims may be rendered particularly vulnerable by their attacker. See [State v.] Ogden, 102 Wn. App. [357]. 367–68, 7 P.3d 839 [(2000)] (victim rendered unconscious by repeated blows to the head) [, review denied, 143 Wn.2d 1012 (2001)]; State v. Baird, 83 Wn. App. 477, 489, 922 P.2d 157 (1996) (victim became particularly vulnerable after being beaten unconscious).

(Emphasis added.) State v. Barnett, 104 Wn. App. 191, 204, 16 P.3d 74, 81 (2001) (but *rejecting* finding of particular vulnerability because "Mr. Barnett chose Ms. M. because of their failed relationship, not because she presented an easy target for a random crime [by being 17 and home alone]. The evidence does not support a finding of particular vulnerability.").

(i). Ogden and Baird distinguished.

These last two decisions cited by Barnett are ones the Respondent may cite as showing that the prosecution proved particular vulnerability as a substantial factor beyond a reasonable doubt. But the Ogden and Baird decisions cannot be applied to the present case. These decisions pre-date Blakely, to a time when trial courts needed only find by a mere "preponderance of the evidence" that an

aggravating factor, such as particular vulnerability being a substantial factor, was established. See In re Personal Restraint of Hall, 163 Wn.2d 346, 351-52, 181 P.3d 799 (2008). Both Ogden and Baird were assessed on appeal under former RCW 9.94A.530(2) (which stated that: "[t]he facts shall be deemed proved at the [sentencing] hearing by a preponderance of the evidence."). Alone, this fundamental constitutional difference in the standards of proof leaves Ogden and Baird inapplicable to affirm the special verdict in this post-Blakely case, where the proof must be sufficient to allow the jury to find the factor proved *beyond a reasonable doubt*. See generally State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

If further distinguishing of Ogden and Baird were necessary, then Mr. Graham respectfully argues that the cases were not correctly reasoned, especially if applied to the facts of this case. In Ogden, this Court first noted the general rule that particular vulnerability cases "[t]ypically . . . involve victims who are particularly vulnerable before the attack began." State v. Ogden, at 367. The Court then made clear that it was deciding Ogden on its facts, rather than holding that any

time a victim suffered multiple blows and thus became vulnerable, the victim was particularly vulnerable. State v. Ogden, at 369.

Of course, the Ogden Court found particular vulnerability at sentencing. Ogden, at 360, 368. Consonant with the dramatically different pre-Blakely state of affairs, the matter was left to be assessed one way or the other by the sentencing court, and at its "discretion." Ogden, at 368.[5]

In the facts of Ogden, the charge was that the defendant committed first degree felony-murder where one Lapusan died in the course of the defendant's first degree robbery of him. The record indicated that Ogden "committed first degree robbery by unlawfully taking money from Lapusan's person by inflicting bodily injury upon

---

[5] In favor of the general rule, the Ogden Court cited State v. Jacobsen, 95 Wn. App. 967, 979–80, 977 P.2d 1250 (1999) (concluding that a five-year old victim was particularly vulnerable); [State v. Scott, 72 Wn. App. 207, 217, 866 P.2d 1258 (1993)] (concluding that a 78–year old victim who suffered from Alzheimer's disease was particularly vulnerable). State v. Ogden, at 367. The Court also noted cases that departed from the then-applicable standard under former RCW 9.94A.390(2)(b) that the particular vulnerability must be from youth, age, or disability or ill health, citing State v. Cardenas, 129 Wn.2d 1, 10–11, 914 P.2d 57 (1996) (concluding that pedestrian victim of vehicular homicide was particularly vulnerable); State v. Ross, 71 Wn. App. 556, 565–66, 861 P.2d 473 (1993), 71 Wn. App. 556, 883 P.2d 329 (1994) (concluding that women alone in offices open to the public are particularly vulnerable); State v. Hicks, 61 Wn. App. 923, 931, 812 P.2d 893 (1991) (concluding that sleeping victims are particularly vulnerable). Ogden, at 366-67.

him." State v. Ogden, 102 Wn. App. at 363-64. This Court reasoned that "after Ogden hit him on the head numerous times rendering him unconscious, Lapusan -- unlike other victims -- was unable to resist or avoid being stabbed and robbed, and Ogden knew this." State v. Ogden, 102 Wn. App. at 367.

Accordingly, the issue in Ogden involved a person who was particularly vulnerable to a taking, i.e., the robbery that was committed. Ogden was not charged with assault, and the case did not give this Court of Appeals the occasion to analyze whether someone who is assaulted by punching and stabbing could be deemed particularly vulnerable on grounds they were susceptible to being stabbed because the assault commenced with punching that caused unconsciousness. Ogden is not authority for application of the aggravating factor in this assault case.

Mr. Graham also respectfully argues that Ogden would not well-reasoned for purposes of application to the instant case, in so far as the Court also stated that "Ogden's actions in this case are indistinguishable from the actions of a perpetrator who finds a person lying on the ground immobilized, and seizes the opportunity to rob and stab the person to death, knowing that the victim is unable to resist."

Ogden, at 368. This statement may be tenable where Ogden involved robbery. However, if it were to be applied to an assault case (which Ogden was not) such as Mr. Graham's, the statement would simply beg the question presented here.[6]

The Baird case involved a defendant who struck his wife in the face, causing unconsciousness, followed by further, unfortunate facts. State v. Baird, 83 Wn. App. at 489. The crime was first degree assault, like this case, but charged under the alternative that Baird actually did cause great bodily harm.[7] State v. Baird, 83 Wn. App. at 487. Baird hit his wife in the face with a lead-lined glove while she was drying her hair in the bathroom. Mrs. Baird went unconscious gradually; she

---

[6] The complete facts of Ogden also included that while Lapusan was lying unconscious, Ogden "inflicted lacerations, contusions, and abrasions on his forehead, eyebrow, and the back of his shoulder; and carved an incision on his right upper eyelid." Ogden, at 368.

[7] The statute for first degree assault, RCW 9A.36.011, includes alternative means of committing the crime:

> (1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:
> (a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death; or
> (b) Administers [poison, etc.]; or
> (c) Assaults another and inflicts great bodily harm.
> (2) Assault in the first degree is a class A felony.

RCW 9A.36.011.

intermittently recalled the next thing being that the defendant helped her down the stairs to the first floor, where, some time later, she was discovered by paramedics bleeding profusely. Baird, 83 Wn. App. at 480.

Testimony of fact witnesses and experts allowed the jury to find that Mr. Baird, before calling 911, had deliberately cut off the victim's nose and secreted it, In addition he had carefully and symmetrically cut off her eyelids, but without injuring her eyes. A medical expert testified that this latter injury was certainly not caused by slashing. Baird, 83 Wn. App. at 480-82.

The trial court found that Mrs. Baird was particularly vulnerable because she was unconscious when Baird mutilated her face. Baird, 83 Wn. App. at 488. This Court properly found that the evidence, although conflicting. supported a factual determination that Mrs. Baird was unconscious. Baird, at 488. The Court then dismissed the defendant's perhaps conclusory argument that "it would set 'a dangerous precedent' " to apply particular vulnerability:

> Baird also argues that it would set "a dangerous precedent" if this court concluded the victim was particularly vulnerable because of the assault itself. But a victim beaten unconscious and then further assaulted is surely no less vulnerable than a sleeping victim. The trial court, therefore, did

> not err when it concluded Susan was particularly vulnerable.

Baird, at 489. The fact pattern of Baird makes it different from this case. This Court's reasoning and the facts of the case make clear the consequentiality of the fact that the first degree assault of which Mr. Baird was guilty was committed by the actual causing of great bodily harm by the infliction of the cutting injuries. Baird, at 487, 489. The question presented was whether that crime -- the actual causing of great bodily harm -- was committed on a victim who was particularly vulnerable, where she was unconscious, and the answer in that case, under those facts, had to be yes.

(ii). The prosecution theory of a single assault in this case.

This is very different from Mr. Graham's case. The charge put to this jury, and the State's trial theory, were that Mr. Graham surprise-attacked Officer Letrondo. He did so with a raining down of blows, by fists and kicking, that progressively and rapidly caused great bodily harm. Importantly, the extent of the harm caused was employed to persuade the jury that Mr. Graham was guilty on grounds that he committed the crime by intent, because he intended the result that occurred, at a minimum. Thus, under the jury instructions and the sole statutory alternative put to the jury, he was guilty of first

degree assault per RCW 9A.36.011, subsection (a), by assault with "force or means likely to produce great bodily harm or death." The record of the entire case leaves no doubt that the prosecution used the totality of Mr. Graham's conduct to prove him guilty of an attack which, with an intent formed well beforehand, used that degree of force and means equalling first degree assault, distinguishing this case from Baird.

For example, in **opening statement**, the prosecution announced that two days before the assault, the defendant promised that he would beat up Officer Letrondo "and kill him" if he opened the door to his cell. 11/12/14RP at 2. Consistent with the charge, the State said it would prove that Mr. Graham *approached* and *attacked* the officer while harboring the required intent to engage in assaultive conduct that would cause 'permanent' unconsciousness:

> [He] had the intent to inflict great bodily harm on Officer Letrondo; that he assaulted Officer Letrondo; and he did so with force and means likely to cause great bodily harm or death.

(Emphasis added.) 11/12/14RP at 3-4. Then, in the same breath, the State made clear its theory – which this Court should now deem untenable under the SRA – that the assault victim fit the "particular vulnerability" aggravating factor

> because when the defendant was assaulting Gill Letrondo, he lied on the ground, unconscious and motionless.

(Emphasis added.) 11/12/14RP at 3-4.[8]

Mr. Graham notes that the Ogden Court rejected Ogden's argument that Baird should be distinguished by the fact that in Baird there was a temporal break in between the initial hitting and the later injuries, which Ogden argued distinguished his case from Baird because it allowed the victim in Baird to be deemed particularly vulnerable to the later injuries. Ogden, at 368. This is not entirely accurate, where the Baird facts appeared to show not only some temporal, but also a spatial gap in a changed location in the home.

In this case, there was certainly no temporal or geographic break between the first blows and then the kicks and stomping. More significantly, this case is also unlike Baird because there, guilt was obtained under the alternative of actual bodily harm inflicted, and that harm was the cutting injuries surgically inflicted on a victim who they

---

[8] In additional opening statement, the prosecution previewed its proof that the defendant's intent, objective and purpose for the assaultive attack on January 11 had been to "specifically kill" Officer Letrondo, as further bolstered by the discovered January 5 letter in which he wrote of his readiness to "kill a guard." The prosecutor repeated the prediction that the jury would be able to find the "particular vulnerability" aggravating factor *based on* Officer Letrondo being motionless and on the ground. 11/12/14RP at 13.

could not be inflicted upon unless she was unconscious. Baird, at 480-81, 488-89. Baird was a case where the expert medical testimony allowed the jury to find that it was only because Mrs. Baird was unconscious – indeed, this Court reasoned that she must have been unconscious -- that the defendant could have committed the necessarily 'careful' and systematic cutting, a type of harm that could not be caused by a slashing attack. In this case, in contrast, there was a single violent attack, that showed one intent – the required first-degree intent -- rather than any targeting upon a victim who had lost consciousness, and was thereby vulnerable.

This was the sole theory from the beginning of the case, to the end. In **closing argument,** the prosecution returned to the theory previewed in opening that the planned goal and the increasingly high injury inflicted, showed the specific intent necessary for first degree assault. The State vociferously *fought* the defense theory of lesser fourth degree assault, arguing that the defendant was not someone who flailed or vented, or acted on the spur of the moment without intent to greatly harm. Rather, as attested to by his letter, oral threats, and conduct, Graham specifically planned an assault with the intent of the highest possible degree available under Chapter 9A.36. See 11/24/14RP

at 92-105 (State's closing argument that the letter and threats showed the pre-existing goal to cause great bodily harm or death, and if a person does these actions, "common sense tells us [that Mr. Graham] intended . . . to kill them or to greatly harm them."); 11/24/14RP at 92-93 (State's rebuttal closing argument that the defendant "wasn't out of control," but had the goal to commit the actions of first degree assault and then bided his time and waited, then struck).

The trial facts jibed solely with this manner in which the State said it would submit the case to the jury. See also Supp. CP ___ (Sub # 177A (State's proposed instructions based on WPIC 35.01-first degree assault, WPIC 10.01 - intent, and WPIC 2.04 - great bodily harm including significant impairment of function). There was no particular vulnerability in fact or law based on loss of consciousness, because that factor must *distinguish* the crime. It cannot be predicated on the very facts – intentional use of force or means likely to cause temporary loss of functioning -- that elevated the assault to assault in the first degree.

All of this demonstrates that this case is not Baird, or Ogden. This is certainly not a case in which the proof or the theory of guilt at trial can be portrayed after trial as involving a victim selected for attack because of a particular vulnerability. Instead this was an

assault that carried the intent, from the outset of the attack and before, to use such force and means that naturally rendered the victim prone, unconscious, and greatly injured.

If these facts allow a jury to find particular vulnerability, then any first degree assault by battery which progressively causes bodily injury, then serious bodily injury, and then great bodily injury, until the first degree is reached by proving the high required intent, will automatically warrant the extra punishment. Effectively, the standard range for this offense can be supplemented at government whim, whenever the prosecutor decides to charge the factor in addition to the base offense. In such circumstances, this Court's important ability to conduct appellate review, to determine whether (or not) the factor and the extra incarceration is warranted, becomes a non-existent, purely illusory power.

As serious as the defendant's conduct was, the supposed vulnerability by unconsciousness inhered in the State's proof of commission of the crime itself. It did not meet the SRA and RCW 9.94A.535's criteria for a compelling circumstance of particular vulnerability that was a substantial factor in the commission of the first degree offense, that would distinguish the crime from the

underlying, seriousness-level XII, assault. This was a single ongoing act and a single criminal offense of assault, committed in the first degree. The seriousness of the defendant's conduct elevated the battery to first degree assault under section .011 of Chapter 9A.36. and warranted the standard range punishment, but those same facts cannot form the basis for the additional 12 months. For example, a first degree assault by multiple gunshot wounds cannot be deemed "aggravated" by particular vulnerability simply because the first shot rendered the victim unable to dodge the second. The defendant was punished for his offense by the trial court's imposition of a standard range term, along with the 12 months for a law enforcement victim. Further punishment was unwarranted.

(3). THE PARTICULAR VULNERABILITY AGGRAVATING FACTOR IS UNCONSTITUTIONALLY VAGUE.

Reversal is required because the particular vulnerability aggravating factor is unconstitutionally vague under Due Process.

(a). <u>The aggravating factor is vague in violation of 14th Amendment Due Process</u>. A law violates the Fourteenth Amendment's Due Process vagueness doctrine if it fails to either: (1) provide the public with adequate notice of what conduct is proscribed; or (2) protect the public from arbitrary or <u>ad hoc</u> enforcement. <u>Spokane v.</u>

Douglass, 115 Wn.2d 171, 177, 795 P.2d 693 (1990); City of Bellevue v. Lorang, 140 Wn.2d 19, 30, 992 P.2d 496 (2000); State v. Williams, 144 Wn.2d 197, 203, 26 P.3d 890 (2001). Mr. Graham as the party challenging the statute has the burden of overcoming the presumption that it is constitutional. Douglass, 115 Wn.2d at 177.

A law is vague where it impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on a subjective basis, with the concomitant dangers of arbitrary and discriminatory application. Grayned v. City of Rockford, 408 U.S. 104, 109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). Laws which impart an uncommon degree of subjectivity to the jury's consideration of a fact may be invalidated on Due Process vagueness grounds. And a criminal statute that "leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case," similarly violates Due Process. Giacco v. Pennsylvania, 382 U.S. 399, 86 S.Ct. 518, 15 L.Ed.2d 447 (1966).

The aggravating circumstance of particular vulnerability violates Due Process vagueness prohibitions because its requirements are so subjective as to render the aggravating factor standardless. Prior to Blakely, courts relied on the faulty premise that aggravating

circumstances could not be challenged as impermissibly vague because they involved matters of judicial sentencing discretion. See, e.g., State v. Jacobsen, supra, 92 Wn. App. at 966. It was assumed that because judges had the experience to assess from the bench the "typical" case when deciding whether a given case met the criteria of the aggravating circumstance, this minimized the subjectivity of certain aggravating circumstances and reduced the likelihood of a Due Process violation. Nordby, supra, 106 Wn.2d at 518-19. However, given the now-irrefutable proposition that aggravating circumstances operate as elements of a higher offense -- which elements must therefore be found by a jury beyond a reasonable doubt -- the Due Process vagueness test must apply to SRA aggravating factors.

The United States Supreme Court has held, in the death-penalty context, that a sentencing provision is unconstitutionally vague in violation of the Eighth Amendment if it "fails to adequately inform juries what they must find to impose the death penalty and as a result leaves them and appellate courts with the kind of open-ended discretion which was held invalid in Furman v. Georgia, 408 U.S. 238, 33 L.Ed.2d 346, 92 S.Ct. 2726 (1972)." Maynard v. Cartwright, 486 U.S. 356, 361, 108 S.Ct. 1853, 100 L.Ed.2d 372 (1988). A vague sentencing factor

creates "an unacceptable risk of randomness," Tuilaepa v. California, 512 U.S. 967, 974, 114 S.Ct. 2630, 129 L.Ed.2d 750 (1994), and for this reason the "channeling and limiting of the sentencer's discretion . . . is a fundamental constitutional requirement for sufficiently minimizing the risk of wholly arbitrary and capricious action." (Citations omitted.) Cartwright, 486 U.S. at 362. As the Court explained in Cartwright:

> To say that something is 'especially heinous' merely suggests that the individual jurors should determine that the murder is more than just 'heinous,' whatever that means, and an ordinary person could honestly believe that every unjustified, intentional taking of human life is 'especially heinous.'

Cartwright, 486 U.S. at 364. The same problem of vagueness is presented in this case.

(b). The present case exemplifies the constitutional vagueness of the "particular vulnerability" aggravating factor. According to the State's theory of guilt below, Mr. Graham made a specific decision, gestating in his mind for as much as a week beforehand, to physically assault a Jail guard with such force and means, by use of fists and kicking, that would be likely to cause great bodily harm or death. He could have had *no notice* that his assault of Officer Letrondo, hitting and striking him in a repeated manner so as to rapidly leave him on the

floor with great injury, would not just be a first degree assault but also subject him to automatic punishment for an aggravating factor.

Further, if juries can find the aggravating factor under these facts and authorize sentencing courts to exceed the standard Legislative punishment for this seriousness-level XII crime, then there truly are *no adequate standards* to preclude arbitrary and ad hoc application of the factor. Here, reasonable minds will differ on what might establish a typical victim of first degree assault, compared to a particularly vulnerable victim. Neither the defendant, or a jury, can find criteria to know what makes one victim particularly vulnerable, and another not.

Considering similar undefined aggravators, the Ninth Circuit has held that the failure to narrow, by statutory standards, a vague aggravator is not cured by de novo appellate review. Valerio v. Crawford, 306 F.3d 742, 756-57 (2002), cert. denied sub nom. McDaniel v. Valerio, 538 U.S. 994 (2003). The Valerio Court reasoned that where it is an appellate court that performs some narrowing construction by applying standards of differentiation -- such as deciding in Washington what is a substantial and compelling basis for an exceptional sentence -- the court actually violates the defendant's Sixth Amendment jury trial

guarantee, because "the state appellate court is not reviewing a lower court finding for correctness; it is, instead, acting as a primary factfinder." Valerio. 306 F.3d at 756-57.

The impermissibly vague statutory direction to the jury by any instruction on how to determine whether Officer Letrondo was more vulnerable than the typical victim of the same offense renders the jury's special verdict too speculative and standardless to satisfy Due Process. This Court should reverse Mr. Graham's sentence and remand for resentencing within the standard range for first degree assault, because the RCW 9.94A.535(3)(b) aggravating factor of "particular vulnerability" is unconstitutionally vague.

E. CONCLUSION

Based on the foregoing, Mr. Graham asks that this Court reverse his conviction and sentence.

Respectfully submitted this 28th day of October, 2015.

s/ OLIVER R. DAVIS
Washington State Bar Number 24560
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101
Telephone: (206) 587-2711
Fax: (206) 587-2710
e-mail: oliver@washapp.org

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 73107-6-I
v.	)	
	)	
SEAN GRAHAM,	)	
	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF OCTOBER, 2015, I CAUSED THE ORIGINAL **OPENING 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:

[X] KING COUNTY PROSECUTING ATTORNEY [paoappellateunitmail@kingcounty.gov] APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	( ) ( ) (X)	U.S. MAIL HAND DELIVERY AGREED E-SERVICE VIA COA PORTAL
[X] SEAN GRAHAM 771921 PIERCE COUNTY CORRECTIONS 910 TACOMA AVE S TACOMA, WA 98402	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF OCTOBER, 2015.

X_____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710