Supreme Court No.: 93229-8

Court of Appeals State of Washington, Division II – No.: 46798-4-II

Pierce County Superior Court Cause No.: 13-2-06154-1

WILLIAM LOVE, as personal representative of the ESTATE OF CAMILLE LOVE, and JOSHUA LOVE, a single man,

Petitioners,

v.

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS, a governmental entity, et al.,

Respondents.

PETITIONERS' AMENDED PETITION FOR REVIEW

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I. IDENTIFY OF PETITIONERS

The Petitioners, William Love as Personal Representative of the Estate of Camille Love and Joshua Love, a single man, seek review of the Court of Appeals decision affirming the trial court's dismissal of their lawsuit against the State of Washington, due to insufficient service of process and a resulting expiration of the statute of limitations.

II. COURT OF APPEALS DECISION

The Court of Appeals decision was filed on May 10, 2016. The unpublished opinion is attached as Appendices 1 through 18.

III. ISSUES PRESENTED FOR REVIEW

A. Introduction to Issues

Long ago the Washington state's legislature adopted RCW 4.92.020, which identifies the Attorney General and his or her assistants as being the target for service of the Summons and Complaint in actions brought against the State of Washington. RCW 4.92.020 provides:

> Service of summons and complaint in said actions shall be served in the manner prescribed by law upon the Attorney General, **or by leaving the summons and complaint in the office of the Attorney General with an assistant attorney general**. (Emphasis added).[1]

[1] It is noted that use of the terms "served in the manner prescribed by law" in RCW 4.92.020 has been previously interpreted to recognize that the state can be successfully served in the absence of actual delivery to the Attorney General or one of his assistants, so long as the method of service used is lawfully permitted. See *St. Paul and Tacoma Lumber Co. v. State,* 57 Wn. 2d 807, 360 P.2d 142 (1961). In the *St. Paul* case, the Supreme Court held that the State was properly served under a statute permitting

Very little case law exists interpreting RCW 4.92.020. The only appellate opinion addressing service upon an assistant attorney general,(AAG), is the rather cursory opinion in *Landreville v. Shoreline Community College,* 53 Wn. App. 330, 766 P.2d 1107 (1989), which, (even if correctly decided), is factually distinguishable from what transpired in this case.

In this case, it is beyond dispute that the Petitioners' Summons and Complaint came into possession of a statutory target of service, i.e., an assistant attorney general. As explored below, after Petitioners' efforts to serve a copy of the Summons and Complaint at the Tacoma branch of the Attorney General's Office, an AAG, Garth Ahearn came into the possession of Petitioners' Summons and Complaint as evidenced by the fact he authored a detailed Answer. (Petitioners' Complaint and the State's Answer are attached hereto as Appendices 19 through 45). Significantly on the face of the attached Complaint, is a "received" stamp from "Office of the Attorney General Tacoma Service Unit" dated March 5, 2013. (Id. P. 19).

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service by publication. The *St. Paul* case tends to call into question *Landreville's* conclusion that strict compliance with RCW 4.92.020 is required.

On review of the defendant's Answer at Page 6 (CP 294) the following language appears, which almost appears to be a question and not an affirmative allegation:

> By Way of FURTHER ANSWER and FIRST AFFIRMATIVE DEFENSE, defendant alleges that the summons and complaint was the process served was insufficient [sic].[2]
> (Appendices p. 42)

Although the trial court questioned the testimony provided by the Petitioners' process server, the undisputed facts below established that on March 5, 2013 Stephen Currie, went to the Tacoma AG's office intending to serve the State. On arriving at the Tacoma AG's office Mr. Currie would have found a secured location with a small lobby area, with a glass delivery window in what is otherwise a locked facility. (A photo of the lobby area is attached at appendices 46.) The assistant attorney general's at that location work on the other side of a locked door. In other words, even though the statute requires that service of process occur at a specific location i.e. an office of the Attorney General, and upon a specific class of individuals, (assistant attorney generals), physical barriers within the

[2] Both the trial court and the Court of Appeals found this rather incoherent language sufficient to preserve an insufficient service of process defense, despite that under the terms of CR 12(b)(5) and CR 12(h)(1) such a defense, if not affirmatively pled in the Answer or raised by a CR(12) motion, is waived. *Northwest Admrs., Inc. v. Roundy,* 42 Wn. App. 771, 776, 713 P.2d 1127 (1986).

office location can prevent direct hand delivery of a Summons and Complaint to an assistant attorney general.[3]

At the delivery window there would have been a receptionist, who would, pursuant to established AG Office policies and procedures, take hand delivery of the documents. Pursuant to internal policy, once the receptionist receives the documents he should arrange delivery by calling an AAG to the secure receptionist area. On arriving at the reception area the AAG would pick up the documents off of a counter.[4] (AAG Glenn Anderson, who testified at an evidentiary hearing, testified he usually picks the Summons and Complaints off of the reception area counter). (RP Vol. IV p. 156-58).

Under such a system an AAG is not personally served a Summons and Complaint, but is subject to "second-hand service" through the receptionist.

Here, allegedly due to the absence of a "service stamp", the State has contended that this form of receptionist ("second-hand service") never occurred. However, the AAG never explained how and who delivered the

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[3] Service upon an AAG who happens to be traveling through the small lobby location would be dependent upon pure happenstance. As the Statute requires service at an AG's office, service cannot occur in the same building outside the offices physical confines, on the street, or at an AAG's usual place of abode.

[4] Allegedly a different "service stamp" is used, (other than a "received" stamp), by AAG personnel showing "evidence" of service on an assistant attorney general.

documents to Mr. Ahearn so he could file a detailed Answer. The trial court and the appellate court failed to recognize the absence of such information should have resulted in a determination that the State failed to rebut by "clear and convincing" evidence Petitioners' *prima facie* case of service.[5] This is presumptively because he received "second-hand service" of the documents by a person qualified under CR 4.

Due to the secure nature of the AAG office locations, the AG's office has created circumstances that almost guarantee that only "second-hand service" can occur through a "receptionist".

It is the public policy of the State of Washington that it is both acceptable and desirable that the State of Washington, be held accountable in lawsuits brought by citizens. See *Finch v. Matthews*, 74 Wn.2d 161, 176, 443 P.2d 833 (1968). "[T]he legislature takes the view that tort liability will have a salutary effect on the seriousness in which the state executes its responsibility". *Yonker v. DSHS*, 87 Wn. App. 71, 81 930 P.2d 958 (1997).

It is also the public policy in the State of Washington, that cases should be decided on their merits and not procedural traps which place

[5] It has been recognized that in the service of process context, that the failure to produce relevant evidence in a parties exclusive control, without satisfactory explanation, permits the drawing of a negative inference that the evidence would be unfavorable to the non-producing party. See *Northwick v. Long,* 192 Wn. App. 256, 264, 364 P. 3d 1067(2015).

form over substance. See generally, *Curtis Lumber Co. v. Sortor,* 83 Wn.2d 764, 766-67 522 P.2d 822 (1974).

This matter involves issues of "substantial public interest that should be determined by the Supreme Court". See RAP 13.4(b)(4).

B. Issues.

1. Given the Attorney General's Office is obligated to accept service on behalf of the State, should the Court find that "substantial compliance" with RCW 4.92.020 is sufficient, considering that the State has adopted policies, procedures, and security measures which serve to impede or deny access to AAGs for service?

2. Did the Trial Court and Court of Appeals err in finding that the plaintiff's "*prima facie*" case of service of process was rebutted by "clear and convincing evidence", given the heightened nature of such a standard, and the fact that the State failed to provide any evidence and/or explain how an assistant attorney general was able to provide a detailed answer to Petitioners' Complaint without being subject to at least second-hand service?

3. Considering the fact that the attorney general's office has adopted policies and procedures which either intentionally, or unintentionally, styme access to assistant attorney generals, at the statutorily designated service location, should service of process be

deemed complete when a process server tenders a Summons and Complaint at the AAG's office delivery window?

IV. STATEMENT OF THE CASE

A. Trial Court Proceedings

The lawsuit arises out of the horrific and tragic events occurring on February 7, 2010, which resulted in the death of Camille Love and the shooting of Joshua Love by gang members, all of whom were under the supervision of the Washington State Department of Corrections (DOC). (CP 2-5).

On March 5, 2013, Stephen Currie traveled to various locations within the City of Tacoma in order to serve the Summons and Complaint which had previously been filed. (CP 55-70). (CP 180-181). Petitioners' verified service by producing a copy of the first pages of the Summons and Complaint which clearly depicted a "received" stamps from the Attorney General's office, dated March 5, 2013. (CP 55-80).

On April 9, 2013 the State filed a detailed Answer to Petitioners' Complaint signed by AAG Garth Ahearn. In the State's Answer Mr. Ahearn painstakingly addressed each and every allegation in plaintiff's Complaint (CP 284-297).

Despite the fact that Mr. Ahearn obviously had possession of the Summons and Complaint when he drafted the Answer, on April 18, 2014,

the State filed a Motion for Summary Judgment coherently alleging for the first time that Petitioners' had failed to serve process in accordance with RCW 4.92.020. (CP 22-29). In support of the State's position it produced declarations from employees of Mr. Ahearn's office, which included, among other things a log allegedly kept at the Tacoma office relating tp receipt of Summons and Complaints at that location. (Appendices p. 47) Petitioners' responded to defendant's Motion for Summary Judgment arguing both that service had occurred and/or for the application of the doctrine waiver. (RP III P. 87).

On May 23, 2014 the trial court granted defendants' Motion for Summary Judgment and dismissed the State with prejudice. The trial court was apparently of the opinion that Petitioner's proof of service was inadequate because Mr. Currie had failed to get identification from the AAG who he contented accepted service. (RP I P. 19)[6] On June 2, 2014 Petitioners' filed a Motion for Reconsideration.

[6] Petitioners' counsel is unaware of any case or statute which requires the procurement of identification from the person served. It is Petitioners' position that the totality of the evidence, including the circumstantial evidence provided by the fact that defendant filed a detailed Answer, (along with the received stamped summons and complaint), was more than sufficient to create a "*prima facie*" case of sufficient service.

On June 23, 2014 the trial court heard the Motion for Reconsideration. The trial court ordered an evidentiary hearing so it could fully vet the service of process issue. (RP II P. 32-43).[7]

An evidentiary hearing occurred which spanned the afternoons of August 7 and August 8, 2014. During the course of the hearing, three witnesses were called (1) Martin Heyting, a clerical employee at Tacoma Attorney General's Office, (2) Stephen Currie, the "process server" and, (3) Glenn Anderson, an AAG from Tacoma location,(and AAG Ahearn's supervising attorney)0. (RP III P. 57 to RP IV P. 183). Mr. Heyting established that near the entry of the Tacoma Attorney General's Office, there is a glass partition (with a delivery slot), separating members of the public from the assistant attorney generals, and other staff, at the location. The door between the public reception area and the state offices are locked. (RP IV P. 157-58).

Although Mr. Heyting had no recollection of Mr. Currie, he testified about internal AAG office procedures relating to receipt and/or service of Summons and Complaints, and indicated that when someone

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[7] It is the fact of service that confers jurisdiction, not the return of service, or the absence thereof. See *In re Estate of Palucci*, 61 Wn.App. 412, 416, 810 P.2d 970 (1991) ; *Williams v. Steamship Mut. Underwriting Ass'n*, 45 Wn.2d. 206, 227, 273 P.2d. 803 (1954). When a return of service contains defects or irregularities the remedy is to amend the return. See *Williams, supra.* CR 4(g)(7) similarly provides that where a return of service is other than by publication "failure to make proof of service does not affect the validity of service." Thus there is nothing inappropriate with respect to Mr. Currie amending his proof of service which originally was factually accurate,(but incomplete).

such as Mr. Currie presented himself at the front window, pushing a Summons and Complaint through the delivery slot, he would only call an AAG to the reception area if the member of the public indicated that they were there for the purpose of serving process. (RP III P. 167-9; P. 74). Mr. Heyting subsequently volunteered that when someone approaches the front counter with a Summons and Complaint, he would specifically ask if they were simply dropping off the documents or wanted to serve an AAG. (*Id.* P. 81).

Although he had no specific recollection of the events, Mr. Heyting was the individual who made the log entry which the State asserted proved that service had not properly been performed. (*Id.* P. 74, P. 80-83) (Appendices p. 47).[8]

Mr. Ahearn's supervisor Glenn Anderson testified that he personally did not receive service of the Love Summons and Complaint but did admit that it was his determination to assign the case to Mr. Ahearn for defense. (*Id.* P.93). Given the fact that Mr. Anderson assigned Mr. Ahearn the responsibility of defending the case, one could assume that he actually reviewed the Summons and Complaint prior to making such a

[8] It is respectfully suggested that it would seem to be "implausible" that Mr. Currie, who on the same date successfully served the City of Tacoma, would have answered "no" to the question of whether or not he was presenting himself at the Attorney General's Office for the purpose of serving a Summons and Complaint. This is particularly so given that the sole purpose for this visit would be to accomplish that task.

determination. (RP III P. 102). Mr. Anderson also testified that when he accepts service of a Summons and Complaint, he is called to the reception area by a clerical employee and actually picks the documents up off the counter, and never is personally handed the documents by a process server (RP p. 157).

Mr. Currie testified that based on the "photo montage" of Tacoma AAG personnel, he identified Mr. Anderson as being the individual who the receptionist called to receive service of the Summons and Complaint. Mr. Anderson denied the accuracy of Mr. Currie's representation.

Despite the fact that an AAG obviously had been delivered a copy of the Summons and Complaint, (by some unexplained agency), the trial court denied reconsideration and never required Mr. Ahearn to disclose how he received a copy of the Summons and Complaint.

On September 26, 2014 plaintiffs filed a timely Notice of Appeal.

B. The Court of Appeals Decision

On May 10, 2016 the Court of Appeals, in an unpublished opinion, affirmed the trial court dismissal of Petitioners' Complaint. As stated at appendix Page 2, the reason the appellate court upheld the dismissal was, despite the fact that Petitioners' had established a *prima facie* case of proper service, the State had shown by clear and convincing evidence that service was improper. (*Id.* P. 10). In reaching such a conclusion, the

appellate court did not address the compelling facts that a copy of the Summons of Complaint was obviously delivered to the attorney general's office on March 5, 2013, and that Mr. Ahearn must have received a copy of the Summons and Complaint through some agency in order to craft his detailed Answer.

The Court of Appeals also rejected Petitioners' argument that the State was estopped and/or had waived an insufficient service of process defense.

Petitioners, strongly believing that the decisions of the appellate court, and the trial court were wrong, seek review by the Washington Supreme Court.

V. ARGUMENTS WHY REVIEW SHOULD BE ACCEPTED

A. Given that the Policies, Procedures, and Security Measures of the State of Washington Serve to Impede and/or Preclude Physical Delivery of a Summons and Complaint to an AAG, Should it be Found That Petitioners' Substantially Complied with Their Service of Process Obligations.

Ignored by the trial court, and the court of appeals, is the fact that under either party's version of the events, sufficient service of process occurred in this case. Either service of process was perfected by Mr. Currie through hand delivery of the Summons and Complaint to an AAG, or through the State's adoption of policies and procedures which

provide an implicit agreement that service upon an AAG can occur through another. In other words, under the State's own policies and procedures "second-hand" service is the norm and the *prima facie* evidence established that through some agency or individual, Mr. Ahearn received a copy of the Summons and Complaint prior to filing a detailed Answer.

It has long been the law of the State of Washington that substantial compliance with service requirements is sufficient when a defendant has clearly authorized service upon another, or when it has agreed to indirect service, even if a statute otherwise requires strict compliance. See, e.g., *Lee v. Barnes*, 58 Wn.2d 265, 267, 362 P.2d 237 (1961) (recognizing service is effective and sufficient when a person appointed by the defendant accepts service, even though the applicable statute did not appear to allow for service on that individual), *Thayer v. Edmonds*, 8 Wn. App. 36, 41-42, 503 P.2d 1110 (1972), rev. denied, 82 Wn.2d 1001 (1973) (service sufficient where defendant indicated that documents could be left at the door). As recognized in *Lee v. Barnes*, *supra*, "public policy, therefore, would not forbid defendants to appointment an agent to accept service ... in their behalf nor does it after service forbid them in person to acknowledge receipt of it ...."

By erecting physical barriers which prevents a process server from physically serving an AAG at the statutorily designated location, (absent a lobby ambush), the State has implicitly agreed that service upon its clerical/receptionist employees is acceptable and sufficient.

Indeed, by operation of its own policies and procedures it appears that the AG's office would find this to be the preferred and safest methodology for service. As indicated, there is nothing within the public policy of the State of Washington which would prevent the AG's Office from acquiescing, adopting or agreeing to statutorily noncompliant service. Further, "second-hand service", apparently preferred by the Attorney General's Office is a valid method of service under the laws of the State of Washington. See *Scanlan v. Townsend*, 181 Wn.2d 838, 336 P.3rd 1155 (2014); *Brown-Edwards v. Powell,* 144 Wn. App. 109, 111, 182 P.3d 441 (2008). As explained in *Scanlan,* under the terms of CR 4(c) any person over the age of 18 years of age, who was testimonially compliant and not a party, may serve process. As reiterated in *Scanlan,* CR 4(c) means "any person means any person." *Id.*

Clearly service through a receptionist, or other employees of the State of Washington, upon an AAG can be valid service. Second hand, or agreed alternative service, is permitted under the terms of RCW 4.92.020 because it allows for an AAG to be "served in the manner prescribed by

law". See, *St. Paul & Tacoma Lumber Co v. State,* 57 Wn.2d 807, 360 P.2d 142 (1961).

Here, it cannot be disputed, that whether it was through the auspices of the receptionist, or some other attorney general employee, the Petitioners' Summons and Complaint found its way to the hands of Mr. Ahearn who drafted a detailed Answer. It would seem highly improbable, if not implausible, that the person who actually delivered the Summons and Complaint to Mr. Ahearn would not be an appropriate person to serve process under CR 4(c). Even before Mr. Ahearn received the Complaint, it had to have found its way into hands of his supervisors who made the determination to assign the case to Mr. Ahearn.

Given such undisputable facts, the record below clearly established a *prima facie* case of proper service that was not rebutted by the defense by "clear and convincing evidence".

B. The Trial court and Court of Appeals Erred in Finding that Petitioners' *Prima Facie* Case of Proper Service was Rebutted by Clear and Convincing Evidence.

It is well established that when a defendant challenges service of process the plaintiff has the initial burden of proof to establish *a prima facie* case of proper service. A plaintiff can establish a *prima facie* case by providing a declaration of a process server. Then the challenging party must show by clear and convincing evidence that service was improper.

See *Northwick v. Long,* 192 Wn. App. 256, 264, 364 P.3d 1067 (2015). A "*prima facie*" case of service cannot only be established by testimony provided by the plaintiffs, but also the defendant's "admission is the best possible evidence..." See *Scanlan v. Townsend* 181 Wn.2d at 856, citing *Hamill v. Brooks,* 32 Wn. App. 150, 151-52, 649 P.2d 151 (1982).

In this case, neither the Court of Appeals nor the Trial Court properly credited the essential admissions by the defense when determining Petitioners' prima *facie case* had been rebutted by "clear and convincing evidence". By defendant's own "admission", (actions), of filing a detailed Answer, along with other proof the Petitioners' presented, a *prima facie* case of service was not subject to rebuttal by "clear and convincing evidence". The absence of any explanation by the State as to how Mr. Ahearn came into possession of Petitioners' Summons and Complaint undermined any notion that the defense provided "clear and convincing evidence" of improper service. Again, it is reiterated that when a party fails to produce relevant evidence within its control, without satisfactory explanation, a trial court is permitted to draw the inference that the evidence would be unfavorable to non-producing party. See, *Northwick v. Long*, 192 Wn. App. at 264. Had Mr. Ahearn not received delivery of the Summons and Complaint by a person qualified under CR

4(c), he certainly would have said so during the many proceedings in this case relating to service of process. [9]

A party trying to establish insufficiency of process does not present "clear and convincing" evidence of deficiency simply by submitting testimony which conflicts with that of the process server. See, *Leen v. Deomopolis,* 62 Wn. App. 743, 478, 815 P.2d 269 (1991). (The Court found that although a defendant challenged the process server's statement that he personally served the defendant, because the plaintiff submitted evidence corroborating service, the defense failed to present "clear and convincing evidence" of lack of service). See also, *Woodruff v. Spence,* 76 Wn. App. 207, 883 P.2d 936 (1994).

In this case, even assuming, that Mr. Currie's Declarations of Service, and testimony related thereto, were subject to credibility challenges, the undisputed facts, inclusive of the admissions by the defense, precludes a finding of "clear and convincing evidence" of improper service.

C. Service Should Have Been Deemed Complete at the Point Where Mr. Currie Tendered the Summons and Complaint at the Delivery Window.

[9] This question was left unanswered during the course of appellate oral argument.

While a party has no obligation to aid in service of process upon themselves, they do have a duty to accept service when tendered, and not to evade service. See *Thayer v. Edmonds* 8 Wn. App. at, 41-42.

The case of *Stevens v. City of Centralia,* 86 Wn. App. 135, 936 P.2d 1141 (1997) is eerily similar. In *Stevens* the plaintiff, attempting to file a statutory claim for damages, went to the city clerk's office and told the clerk he wished to file a claim. The clerk refused to accept the claim because it was not on a preprinted form provided by the City. After consulting with his attorney, the next day he returned to the clerk's office and insisted that a claim for damage be filed "as is", but it was too late. After the suit was filed the City moved to dismiss Stevens' case because he had failed to timely file an administrative claim with the City. The trial court agreed and dismissed the case.

On appeal in *Stevens* the Court took a dim view of the City's action and found that although it did not find the claim was "constructively filed," it was constructively accepted at the point Mr. Stevens "tendered" it to the city clerk's office for filing. Id at 152. The Court reasoned to hold otherwise would be inequitable. *Id.*

Similarly, given the fact that the Attorney General's Office has erected physical barriers at the statutory service location, Petitioners' Summons and Complaint should have been deemed served at the point it

was tendered to the receptionist whom, as a matter of internal policy, is to initially receive such documentation.

From that point on, neither Petitioners', nor their process server, had any ability to control whether or not the AG's preferred "second-hand" service actually occurs. There is nothing within the common law, nor any statute, which would suggests that a defendant can condition the propriety of service of process on either a process server making the right statement "I'm here to serve a lawsuit", or on a clerical employee remembering to ask – "are you here to serve".

It is respectively suggested that under such circumstances, as a matter of equity and public policy, and to balance the Attorney General's Office's security concerns with its obligation to accept service of process, that service under the circumstances of this case should have been deemed completed at the moment the paperwork was tendered to clerical staff.

VI. CONCLUSION

The Supreme Court should accept review of this case. It is the public policy of the State of Washington that the State be held accountable in tort under appropriate circumstances. Such public policies should also animate considerations of how the State is served process.

For the reasons stated above, it is humbly and respectively submitted that this case involves issues of important public interest and review should be granted by the Supreme Court.

Dated this 23rd day of June, 2016.

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CERTIFICATE OF FILING & SERVICE

I, Tiffany Dixon, hereby declare under the penalty of perjury under the laws of the State of Washington that the following is true and correct:

On the 23rd day of June, 2016, a true and correct copy of Petitioners' Amended Petition for Review was filed via electronic mail with the Washington State Supreme Court:

Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

In addition, a true and correct copy was sent via email and U.S. Regular Mail to:

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DATED at Tacoma, Washington this 23rd day of June, 2016.

Tiffany Dixon, Paralegal

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, June 23, 2016 12:11 PM
To: 'Tiffany Dixon'
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Subject: RE: Supreme Court No. 93229-8

Received 6/23/2016.

The filing fee for $200.00 was received on 6/15/2016.

Supreme Court Clerk's Office

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From: Tiffany Dixon [mailto:Tiffany@benbarcus.com]
Sent: Thursday, June 23, 2016 11:47 AM
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Cc: Paul Lindenmuth <Paul@benbarcus.com>; Ben Barcus <ben@benbarcus.com>; currievj@hotmail.com
Subject: Supreme Court No. 93229-8

Dear Clerk,

In accordance with your letter of June 13, 2016, attached for filing please find Petitioners' Amended Petition for Review with Appendices. The $200.00 filing fee was mailed separately on June 10, 2016. Could you please confirm receipt of the filing fee.

Thank you.

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Appendices

Filed
Washington State
Court of Appeals
Division Two

May 10, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WILLIAM LOVE, as Personal Representative of the ESTATE OF CAMILLE LOVE, and JOSHUA LOVE, a single man, Appellants, v. STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS, a governmental entity, CITY OF TACOMA, a municipal corporation and DOES 1-10 INCLUSIVE, Respondents.	No. 46798-4-II UNPUBLISHED OPINION

MAXA, J. – William Love and Joshua Love (collectively Love) appeal the trial court's summary judgment dismissal of their lawsuit against the State Department of Corrections (State) based on insufficient service of process and the expiration of the statute of limitations. Love delivered the summons and complaint to the Tacoma attorney general's office and it was stamped as received. However, the State asserted that service was insufficient because Love did not actually serve the summons and complaint on an assistant attorney general (AAG) as required under RCW 4.92.020.

Love initially argued that he had served a secretary at the attorney general's office, and the trial court granted summary judgment in favor of the State because no AAG had been served. Love filed a motion for reconsideration, and the trial court held an evidentiary hearing on the service issue. Love offered testimony that the receptionist at the attorney general's office had

presented a person who appeared to be an AAG to accept service, but the trial court found that the testimony was not credible. The trial court concluded that the State had presented clear and convincing evidence that service was insufficient and therefore denied reconsideration.

We hold that summary judgment was appropriate because (1) substantial evidence presented at the evidentiary hearing supported the trial court's conclusion that the State presented clear and convincing evidence of insufficient service; (2) the State was not estopped from asserting insufficient service because the trial court did not believe Love's evidence that the receptionist at the attorney general's office purported to present the proper person for service, and (3) the State did not waive its affirmative defense by waiting a year before moving for summary judgment on insufficient service.[1]

Accordingly, we affirm the trial court's grant of summary judgment in favor of the State.

FACTS

According to Love's complaint, on February 7, 2010 gang members who were under the supervision of the State shot and killed Camille Love and shot and injured Joshua Love. On February 7, 2013, William Love (as personal representative of Camille's estate) and Joshua Love filed a lawsuit against the State and the city of Tacoma[2] for various causes of action including negligence and wrongful death.

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[1] On appeal, Love also argues that (1) an AAG was properly served by secondhand service, (2) the doctrine of constructive service applies, (3) the State waived the statute of limitations affirmative defense by failing to affirmatively plead it, and (4) the statute of limitations did not run because it was tolled when Love served the city of Tacoma, another defendant. However, Love did not make these arguments in the trial court. Therefore, we decline to consider them for the first time on appeal. RAP 2.5(a); *Martin v. Johnson*, 141 Wn. App. 611, 623, 170 P.3d 1198 (2007).

[2] The trial court dismissed Love's claims against Tacoma on March 29, 2013.

Service of Complaint

On March 5, Stephen Currie delivered a copy of the summons and complaint to the Tacoma attorney general's office. In a declaration of service prepared on March 6, Currie stated that he served a "receptionist, a tall Caucasian male." Clerk's Papers (CP) at 184. In a later declaration signed on May 6, 2014, Currie stated:

> I approached the receptionist desk and asked who accepted service in their office. The receptionist left and returned with a tall Caucasian male who agreed to accept service on behalf of the Attorney General's office. The male who agreed to accept service was dressed in a suit and tie and he was wearing a badge, therefore I assumed he was the appropriate person to accept service.

CP at 118.

In April 2013, the State filed its answer to Love's complaint, in which it asserted insufficient service in its list of affirmative defenses.

Extent of Litigation

During oral argument on summary judgment, Love represented to the court that the parties had engaged in litigation, stating:

> We've had a couple of motions that have been heard by the Court, the motion to continue the trial date, as well as the motion to depose the defendants in the Department of Corrections. . . . We've had numerous requests for interrogatories and requests for production, and we've also engaged in depositions.

Report of Proceedings (RP) at 13. The State noted that it did not bring any motions prior to its motion for summary judgment. However, nothing in the appellate record provides information about what discovery or other litigation activities had occurred before the State filed its summary judgment motion.

Summary Judgment Motion

In April 2014, a year after it filed an answer, the State filed a summary judgment motion seeking dismissal of Love's lawsuit based on insufficient service and expiration of the statute of limitations. The State argued that Love did not serve the summons and complaint on an AAG as required under RCW 4.92.020.

Love's response in opposition to summary judgment argued that service was proper under RCW 4.28.080(9), which allows service on a company or corporation by delivering the summons to a secretary. Love argued, "In this action the summons and complaint were served upon the secretary at the attorney general's office." CP at 113. Love also argued that the State had waived its insufficient service affirmative defense by engaging in discovery on the merits.

The trial court granted summary judgment in favor of the State and dismissed Love's claims with prejudice.

Motion for Reconsideration/Evidentiary Hearing

Love filed a motion for reconsideration, arguing for the first time that an AAG was properly served as required by RCW 4.92.020. Love requested an evidentiary hearing to determine whether Currie had served an AAG. The trial court granted Love's request.

At the evidentiary hearing, Currie testified that his initial declaration of service from March 6, 2013 that said he served a male receptionist was incorrect. Currie testified that what really happened was that he told a female receptionist he had a summons and complaint to serve on "the appropriate party who will accept service on behalf of the Attorney General's Office." RP at 109. The receptionist left and brought an AAG from the back to accept service.

Currie described the AAG as a tall Caucasian male in a suit and tie. He said the AAG came from behind the glass window into the lobby area. And Currie claimed that he observed the AAG personally stamp the summons and complaint. Currie did not ask the AAG to identify himself. But based on photos provided by the attorney general's office, Currie identified the AAG he served as Glen Anderson.

Anderson testified that he was not wearing a suit and tie on March 5 because there was a quarterly meeting that day and he would not have worn a suit to the meeting, but would have worn slacks or khakis and a dress shirt. In response to Currie's statement in his second declaration that the person he served was wearing a badge, Anderson also testified that he never wears a badge or ID around his neck. The State submitted a staff photograph taken on March 5 that pictured Anderson wearing a light blue collared shirt without a jacket or tie and without a badge. Anderson also explained his procedure for accepting service and noted that he receives the paperwork and fills out the acknowledgment stamp at the counter behind a glass partition in the reception area.

Martin Heyting, a receptionist at the Tacoma attorney general's office, also testified at the evidentiary hearing. Heyting explained that there was an office protocol for accepting service. He said that he would ask a person to clarify if he was dropping off papers or serving the office. If someone came to the front desk to serve the attorney general's office, then Heyting would summon an AAG.

According to Heyting, if an AAG accepted service the summons and complaint would be stamped with a special "acknowledgment of receipt" stamp that had a spot for the AAG to sign to show who accepted service. RP at 86. In addition, the receptionist maintained a log to note

information about the case and which AAG accepted service. Heyting testified that the log page from March 5 indicated that the Love summons and complaint was received but not served. The log entry was in Heyting's handwriting.

The Love summons and complaint was stamped as received by the Tacoma attorney general's office and dated March 5, 2013, but it did not bear the "acknowledgment of receipt" stamp or an AAG signature.

After the evidentiary hearing, the trial court denied Love's motion for reconsideration. The trial court also entered written findings of fact and conclusions of law with regard to the evidentiary hearing. After reciting the evidence presented at the hearing, the trial court made the following finding of fact: "In light of all the evidence in the record, the Court finds that service was never completed by properly serving an AAG." CP at 230.

The trial court's conclusions of law included:

> 1. The plaintiffs failed to establish a prima facie case establishing they properly served the State.
> 2. The totality of the record establishes by clear cogent and convincing evidence the plaintiffs did not perfect service against the State by serving an AAG at any time.
> . . . .
> 4. The plaintiffs did not serve Mr. Anderson or any other AAG the summons and complaint.

CP at 230. The trial court also entered conclusions of law that the State was not estopped from raising the insufficiency of service defense and had not waived the defense. CP at 230.

Love appeals the trial court's grant of summary judgment in favor of the State.

ANALYSIS

A. STANDARD OF REVIEW

We review a trial court's order granting summary judgment de novo. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). We review the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. *Id.* Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Keck*, 184 Wn.2d at 370.

Although it may require factual considerations, the sufficiency of service of process is a question of law reserved to the trial court. *Harvey v. Obermeit*, 163 Wn. App. 311, 327, 261 P.3d 671 (2011). We review de novo whether service of process was sufficient. *Scanlan v. Townsend*, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014).

However, an evidentiary hearing may be required when affidavits regarding service present an issue of fact. *Harvey*, 163 Wn. App. at 327. We review a trial court's findings of fact and conclusions of law after such an evidentiary hearing to determine whether substantial evidence supports the findings of fact and whether the findings support the conclusions of law. *Id.* at 318.

B. SERVICE OF PROCESS UNDER RCW 4.92.020

Proper service of the summons and complaint is required to invoke personal jurisdiction. *Scanlan*, 181 Wn.2d at 847. Actual notice is not a substitute for proper service. *Ralph's Concrete Pumping, Inc. v. Concord Concrete Pumps, Inc.*, 154 Wn. App. 581, 585, 225 P.3d 1035 (2010). When a defendant challenges service of process, the plaintiff has the initial burden

of proof to establish a prima facie case of proper service. *Scanlan*, 181 Wn.2d at 847. The defendant then must show by clear and convincing evidence that service was improper. *Id.*

Chapter 4.92 RCW governs the process for bringing actions and claims against the State. RCW 4.92.020 is the applicable service statute: "Service of summons and complaint in such actions shall be served in the manner prescribed by law upon the attorney general, or by leaving the summons and complaint in the office of the attorney general *with an assistant attorney general*." (Emphasis added.)

When the legislature names a specific person to receive service, serving anyone other than the named person amounts to insufficient service. *See Nitardy v. Snohomish County*, 105 Wn.2d 133, 134-35, 712 P.2d 296 (1986) (holding that service on the secretary to the county executive is insufficient when the service statute specifically named the county auditor as the person to receive service in actions against the county); *Davidheiser v. Pierce County*, 92 Wn. App. 146, 150-56, 960 P.2d 998 (1998) (holding that even when the risk management office represented that it could accept service, service on that office was insufficient when the service statute required service on the county auditor or deputy auditor); *Meadowdale Neigh. Comm. v. City of Edmonds*, 27 Wn. App. 261, 262, 267, 616 P.2d 1257 (1980) (holding that service on the secretary to the mayor was insufficient when the service statute required service on the mayor).

Accordingly, "[b]ccause RCW 4.92.020 specifies that service can only be made upon the Attorney General or left with an Assistant Attorney General, leaving the summons and complaint with the administrative assistant [is] not sufficient" to constitute proper service. *Landreville v. Shoreline Cmty. Coll.*, 53 Wn. App. 330, 332, 766 P.2d 1107 (1988). And in light of the clear

language in RCW 4.92.020, it is unreasonable to rely on representations that service may be accepted by anyone other than the Attorney General or an AAG. *Id.*

C. SUFFICIENCY OF SERVICE ON AAG

Love argues that the trial court erred in granting summary judgment in favor of the State because Love met his burden to show proper service and the State failed to show by clear and convincing evidence that service was insufficient. We disagree.

1. Prima Facie Case of Proper Service

To make a prima facie case of proper service, the plaintiff may produce an affidavit of service that on its face shows that service was properly carried out. *Witt v. Port of Olympia*, 126 Wn. App. 752, 757, 109 P.3d 489 (2005). Or the plaintiff can establish proof of service by the written acceptance or admission of the defendant, his agent, or his attorney. *Scanlan*, 181 Wn.2d at 848.

But when a statute requires that a particular person be served, the affidavit of service must be sufficient to show that the specified person was served. *Witt*, 126 Wn. App. at 757-58. In *Witt*, the plaintiff was required to follow the direction of RCW 4.28.080(9) and deliver a copy of the summons and complaint to the "president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant" of those persons. *Witt*, 126 Wn. App. at 757 (quoting RCW 4.28.080(9)). The process server's affidavit of service merely stated that summons and complaint were signed by " 'the clerk at the Port Office.' " *Id.* at 758. The "clerk" was in fact a 17-year-old student intern. *Id.* at 755.

This court held that the plaintiff in *Witt* failed to make a prima facie case because she only showed evidence of service on a "clerk," rather than any of the named positions listed in RCW 4.28.080(9). *Id.* at 758. Further, even if the "clerk" was understood to be the equivalent of an "office assistant," the plaintiff gave no proof that the person served was the assistant to one of the persons named in the service statute. *Id.*

Here, in his initial opposition to summary judgment Love similarly failed to make a prima facie case. Love presented two declarations from Currie and the stamped summons and complaint to show proper service. However, taken together and even viewed in the light most favorable to Love, there was no evidence that Currie served an AAG as required. Currie's March 6, 2013 declaration of service stated he served "the receptionist, a tall Caucasian male." CP at 184. And his May 6, 2014 declaration stated he served "a tall Caucasian male who agreed to accept service on behalf of the Attorney General's office." CP at 118. Neither declaration shows that Currie served an AAG and Love initially did not even argue that he served an AAG. Accordingly, the trial court did not err in initially granting summary judgment in favor of the State.

On reconsideration, the trial court held an evidentiary hearing on whether Love had properly served an AAG. Currie testified that the declarations were incorrect and that he did in fact serve an AAG. He also identified Anderson as the person he served.

This testimony presented a prima facie case of proper service. A process server's sworn testimony that he served an AAG generally should be enough to establish a prima facie case,

even if that testimony is contradicted by other testimony and evidence.[3] Whether service *actually* occurred relates to the defendant's burden to show by clear and convincing evidence that service was improper. *Scanlan*, 181 Wn.2d at 847.

2. Clear and Convincing Evidence Showing Insufficient Service

Even though Love established a prima facie case showing proper service, the State presented clear and convincing evidence showing that service was insufficient. At the evidentiary hearing, the State presented strong evidence that Currie did not serve an AAG. Heyting and Anderson explained in detail the attorney general's office's service procedures and stated that an AAG would have signed the summons and complaint if actually served. No AAG signed Love's summons and complaint. And Anderson testified that he was not dressed in the way Currie described and was not wearing a badge as Currie claimed on the date of service.

The trial court made an express finding of fact that service was not completed on an AAG, and Love does not argue that substantial evidence did not support this finding. Further, the trial court made an express conclusion of law that "[t]he totality of the record establishes by clear cogent and convincing evidence the plaintiffs did not perfect service against the State by serving an AAG at any time." CP at 230. Love does not argue that the findings of fact do not support this conclusion of law. And the testimony of Heyting and Anderson at the evidentiary hearing strongly supported both the factual finding and the conclusion of law.

[3] The trial court made an express conclusion of law that Love failed to present a prima facie case that he properly served the State. However, the record does not support this conclusion.

We hold that the trial court did not err in concluding that the State presented clear and convincing evidence that Love did not serve the summons and complaint on an AAG. Accordingly, we hold that service of process was insufficient under RCW 4.92.020.

D. INSUFFICIENT SERVICE DEFENSE – EQUITABLE ESTOPPEL

Love argues that the State should be equitably estopped from asserting an insufficient service defense because Currie testified that he told the receptionist that he needed to serve an appropriate party and the receptionist presented a person who appeared to be an AAG.[4] We disagree.

Equitable estoppel requires (1) an admission, statement or act inconsistent with a claim afterwards asserted, (2) action by another in reasonable reliance upon that act, statement, or admission, and (3) injury to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission. *Lybbert v. Grant County,* 141 Wn.2d 29, 35, 1 P.3d 1124 (2000). The party asserting estoppel must show each element by clear, cogent and convincing evidence. *Id.*

Here, Currie testified that he told a female receptionist that he had a summons and complaint to serve on "the appropriate party who will accept service on behalf of the Attorney General's Office." RP at 109. According to Currie, the receptionist left and brought a person from the back to accept service. Love essentially claims that through this action the receptionist represented that the person presented to accept service was an AAG.

[4] The record does not reflect that Love argued estoppel in the trial court. However, the trial court entered an express conclusion of law that the State was not estopped from raising insufficiency of service. Therefore, we address this issue.

We need not decide whether estoppel would apply in the situation described in Currie's testimony – a receptionist producing a person represented to be appropriate to accept service – because the trial court found that Currie's testimony was not credible.[5] In other words, the trial court found after weighing the evidence that Currie's claimed interaction with the receptionist and service on the person the receptionist produced did not occur.

After the evidentiary hearing, the trial court summarized the evidence that was inconsistent with Currie's testimony, including (1) Currie's original declaration where he stated that he served the receptionist rather than an AAG, (2) the attorney general's office log showing that the summons and complaint were delivered but not served on an AAG, (3) the absence in Currie's second declaration of the details he provided at the hearing, and (4) Love's initial argument in opposition to summary judgment that service on a receptionist or secretary was good service. The trial court concluded, "[N]o, I have not found the evidence that I heard today was credible" and stated that Currie's current testimony "makes no sense" in the context of the other evidence. RP at 180.

We defer to the trial court's credibility determinations and weighing of the evidence after an evidentiary hearing. *Dave Johnson Ins., Inc. v. Wright*, 167 Wn. App. 758, 778, 275 P.3d 339 (2012). Because the trial court found that Currie's testimony was not credible, Love cannot show by clear, cogent and convincing evidence that he relied on an act that was inconsistent with the State's assertion of an insufficient service defense. Accordingly, we hold that the State is not

[5] *Lybbert*, 141 Wn.2d at 35-37, and *Landreville*, 53 Wn. App. at 331-32, suggest that when a special service statute clearly names a specific target of service, a plaintiff may have difficulty establishing the reasonable reliance requirement for estoppel.

equitably estopped from asserting an insufficient service defense and that the trial court did not err in granting summary judgment in favor of the State on this issue.

E. WAIVER OF INSUFFICIENT SERVICE DEFENSE

Love argues that the State waived its insufficient service defense because it engaged in discovery on other issues and filed its summary judgment motion a year after filing its answer. We disagree.

1. Legal Principles

In certain circumstances, a defendant may waive as a matter of law an affirmative defense, including insufficient service of process. *Lybbert,* 141 Wn.2d at 38-39. The doctrine of waiver is designed to foster and promote the just, speedy and inexpensive resolution of actions by preventing litigants from acting in an inconsistent fashion and employing delaying tactics. *Id.* at 39. It also is designed to "prevent a defendant from ambushing a plaintiff during litigation either through delay in asserting a defense or misdirecting the plaintiff away from a defense for tactical advantage." *King v. Snohomish County*, 146 Wn.2d 420, 424, 47 P.3d 536 (2002).

Waiver of an affirmative defense can occur in two ways: (1) if the defendant is dilatory in asserting the defense or (2) if assertion of the defense is inconsistent with the defendant's previous behavior. *Lybbert,* 141 Wn.2d at 39. Regarding the first type of waiver, a defendant is not dilatory in asserting the defense if it is first asserted in a timely filed answer. *King*, 146 Wn.2d at 424.

Regarding the second type of waiver, cases addressing inconsistent behavior fall into two categories: inconsistent behavior before filing an answer and inconsistent behavior after filing an answer. In *Lybbert*, the parties exchanged interrogatories regarding substantive issues and

engaged in other litigation activities for nine months *before* the defendant asserted an insufficient process defense in its answer. 141 Wn.2d at 32-33. In addition, the defendant did not answer interrogatories designed to ascertain whether the defendant was asserting an insufficient process defense. *Id.* at 42. Finally, the defendant waited until after the statute of limitations had run before asserting the defense. *Id.*

The Supreme Court held that the defendant's conduct was inconsistent with its assertion of an insufficient process defense and therefore that waiver applied. *Id.* at 44-45. The court stated that it was unacceptable for a defendant to "lie in wait, engage in discovery unrelated to the defense, and thereafter assert the defense after the clock has run on the plaintiff's cause of action." *Id.* at 45.

Similarly, in *Butler v. Joy*, the defendant filed a summary judgment motion (not on the basis of insufficient service) and engaged in depositions (unrelated to service) before filing an answer asserting an insufficient service defense. 116 Wn. App. 291, 294, 65 P.3d 671 (2003). The defendant's answer came six months after receiving the complaint and three months after the statute of limitations had run. *Id.* The court held that the defendant waived the insufficient service defense by engaging in inconsistent actions before asserting the defense. *Id.* at 298; *see also Blakenship v. Kaldor*, 114 Wn. App. 312, 315, 319-20, 57 P.3d 295 (2002) (finding waiver when the defendant propounded interrogatories and deposed the plaintiff before filing an answer over a year after suit was filed asserting an insufficient service defense).

On the other hand, in *French v. Gabriel* the Supreme Court held that the defendant did not waive the insufficient service defense by taking a deposition addressing other litigation matters *after* stating the defense in his answer. 116 Wn.2d 584, 594, 806 P.2d 1234 (1991).

The court stated that "once [the defendant] properly preserved his defense by pleading it in his answer, he is not precluded from asserting it by proceeding with discovery." *Id.*

In *King*, the Supreme Court noted that timely filing an answer raising an affirmative defense does not preserve the defense in perpetuity. 146 Wn.2d at 426. In that case, the court held that the defendant waived the insufficient claim filing defense through inconsistent actions taken *after* filing his answer by litigating the case on other grounds for four years, including extensive discovery, 18 depositions, a summary judgment motion (not on the basis of improper claim filing), four continuances at the defendant's request, and mediation, and only seeking dismissal on the basis of insufficient claim filing three days before trial. *Id.* at 423, 425.

2. Inapplicability of Waiver

Here, the State did not waive its defense through dilatory conduct because it asserted an insufficient service defense in its answer, which was filed a month after receiving the complaint. And Love does not argue that the State engaged in inconsistent behavior before filing the answer. Therefore, *Lybbert*, *Butler*, and *Blakenship* are inapplicable. The question is whether the State engaged in any inconsistent conduct after filing its answer that would support a finding of waiver.

Several factors are significant here. First, the State did not "lie in wait . . . and thereafter assert the defense after the clock has run on the plaintiff's cause of action." *Lybbert*, 141 Wn.2d at 45. The State asserted the insufficient process defense in its answer on April 9, 2013. The statute of limitations did not expire until May 8, which gave Love 29 days to properly serve the State.

Second, there is no evidence that the State engaged in any conduct that would have prevented Love from discovering the basis for the insufficient process defense asserted in its answer. Love does not contend that the State avoided answering interrogatories directed at the defense.

Third, Love claims that the parties engaged in discovery and other litigation activities for a year before the State filed its summary judgment motion, but the record does not indicate what took place during that year. There certainly is no claim that the State engaged in the type of extensive discovery that occurred in *King*. The court in *French* held that merely taking a deposition and engaging in other litigation activities did not give rise to a waiver when the defendants asserted an insufficient service defense in a timely answer. 116 Wn.2d at 594.

Fourth, the State gained no advantage from delaying the filing of its summary judgment motion for a year. The statute of limitations expired on May 8, 2013. Therefore, the result would have been the same if the State had filed its motion on May 9, 2013 instead of in April 2014.

Fifth, Love has cited no authority for the proposition that mere delay for a year in filing a summary judgment motion – in the absence of any other factors – is sufficient to waive an insufficient process defense when the defense is included in a timely filed answer. In *French*, the Supreme Court found no waiver when the defendant waited over a year after asserting insufficiency of service before moving to dismiss the case, even when the parties engaged in some litigation activities. 116 Wn.2d at 587-88, 594.

Given these factors, we hold that the State did not waive its insufficient service defense. Accordingly, we hold that the trial court did not err in granting summary judgment in favor of the State on this issue.

F. EVIDENTIARY HEARING FINDINGS OF FACT

Love assigns error to a number of findings of fact resulting from the evidentiary hearing, but fails to argue that the findings are not supported by substantial evidence or that they do not support the trial court's conclusions of law.

We generally consider an assignment of error waived when a party fails to provide an argument explaining the basis of the error. *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986). Because Love never discusses the assignments of error regarding the trial court's findings of fact, we decline to address them.

We affirm the trial court's grant of summary judgment in favor of the State.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

BRIDGEWATER, C.J.

SUTTON, J.

SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

WILLIAM LOVE, as Personal Representative of the ESTATE OF CAMILLE LOVE and JOSHUA LOVE a single man, **Plaintiffs,** **vs.** STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS, a governmental entity, CITY OF TACOMA, a municipal corporation and DOES 1-10 INCLUSIVE, **Defendants.**	NO. **COMPLAINT FOR DAMAGES**

COME NOW the Plaintiffs William Love, as Personal Representative of the Estate of Camille Love, (the Estate) and Joshua Love (Love), against the above-named Defendants, and state and alleges in this Complaint as follows;

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I. INTRODUCTION

1.1 This lawsuit arises from the murder of Camille A. Love and the assault and shooting of the plaintiff Joshua Love. The following named persons are members of the East Side Lokotos Surenos gang, (herein after gang members) operating primarily in Tacoma, Washington:

Saul Antonio Mex;

Eduardo Sandoval;

Jarrod Messer;

Dean Salavea;

Time Time;

Santiago Mederos; and

Richard Sanchez.

Each of the individuals named above were under the community custody and supervision of the Washington State Department of Corrections (DOC) on February 7, 2010, when Camille Love was murdered and Joshua Love was assaulted.

On February 7, 2010, Camille Love was driving a red vehicle on the way to a friend's house with her Brother Joshua Love riding in the passenger seat. The above referenced individuals were driving in stolen white van searching for members of a rival gang to retaliate against for an earlier shooting.

The gang members chased the victims for a short time before opening fire on the vehicle. Camille Love was struck several times and was mortally wounded. Her brother Joshua sustained multiple gunshot wounds but survived. Ms. Love was 20 years old at the time of her murder and

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was planning to attend college to become a veterinarian. Neither Ms. Love or her brother Joshua were gang members, they were innocent victims simply driving down the street in a red vehicle.

1.2 This lawsuit also arises from the negligent and grossly negligent acts and omissions committed by the DOC and its employees when it failed to adequately supervise and/or monitor Messer, Mex, Sandoval, Salavea, Time, Mederos and Sanchez who were all high risk felons or high violent offenders by the DOC well before the murder and assault.

Saul Mex was under DOC supervision since April of 2009. While under DOC supervision he was arrested for taking a motor vehicle and charged with felony drug possession. In August of 2010, while in custody Mex was involved in a gang fight and admitted to DOC that he was a member of the Surenos gang.

Edmardo Sandoval has been under DOC supervision since 2009. In November 2009 he was arrested for using a controlled substance while under DOC supervision. In January 2010 he tested positive for marijuana while under DOC supervision, a violation of the terms of his release. In February 2010 he failed to report to his mandatory meeting with his probation officer. In April 2010 he admitted to the DOC he was a member of the Surenos street gang. In August of 2004 he failed to report to his drug treatment program as mandated by the terms of his release.

Dean Salavea has been under DOC supervision since 2007. In August of 2007, while in custody, DOC placed Salavea in isolation for poor behavior with DOC staff members. In September of 2007, DOC noted that Salavea had a history of problems with violence, fighting and refusal to take his mental health medications. In January of 2008, Salavea told DOC he did not care if he was released and doubted he would comply with conditions of release. In May of 2008, Salavea failed to report to his probation officer on two separate occasions and failed to

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report for mental health treatment. In early February 2010, Salavea failed to report to his probation officer and failed to report for mental health treatment.

Time Time has been under DOC supervision since April of 2008. In April of 2008 Time failed to report to his probation officer. In August of 2008, Time was arrested for hit and run in Pierce County Washington. In April of 2009, Time failed to report to his probation officer and failed to notify the DOC of his change of address. In June of 2009, Time tested positive for Marijuana a violation of the conditions of his release.

Jarred Messer has been under DOC supervision since 2009. In February 2009, Messer failed to report to his probation officer and tested positive for marijuana. In April 2009, Messer admitted to being a member of the Sureneos gang; was witnessed shooting a gun, and was arrested with a gun in a nearby trashcan. In May of 2009, Messer failed to report to his Probation Officer.

Richard Sanchez has been under DOC supervision since 2004. In August 2004, Sanchez was arrested for malicious mischief. In September of 2005, Sanchez was arrested for Assault with a deadly weapon. In September 2008, Sanchez was arrested for possession of a firearm. Sanchez is an illegal immigrant and is currently wanted for his involvement in the murder of Camille Love and the assault and battery of Joshua Love.

Santiago Mederos has been identified as a member of the Sureneos and a participant in the murder of Camille Love and the assault and battery of Joshua Love. Mederos is currently being sought by law enforcement for his involvement in the crimes.

Given the gang members high offender classifications, the DOC was obligated by Washington State Offender Accountability Act (OAA) and the Departments own policies, rules

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and procedures to devote all known and available resources to supervising the gang members and protecting the public from their unlawful activities. The DOC blatantly and egregiously failed in this regard, and as a result improperly allowed the gang members to remain free for several months prior to the murder and assault. The DOC did virtually nothing to apprehend the gang members months before the murder and assault, while knowing that these felons has violated numerous conditions of their community supervision and that they posed a very serious risk of danger to the public at large. Camille Loves' death and Mr. Love's injuries were a direct and proximate cause of the DOC's negligent, grossly negligent and reckless acts and omissions when it failed to properly supervise and/or monitor the gang members, and when it failed to perform reasonable efforts to apprehend and arrest the gang members before the murder and assault on February 7, 2010.

This was not the first time that the DOC failed to supervise a known high violent offender where such failure caused the death and/or serious injury of an innocent citizen. In fact, the DOC has exhibited a pattern of such negligent, grossly negligent and/or reckless conduct and/or omissions over the past several years related to its obligation to monitor and supervise high risk violent felons and this has caused many innocent citizens, including several law enforcement officers, to die or becomes severely injured.

II. PARTIES AND JURISDICTION

2.1 Plaintiff William Love is at all relevant times hereinafter a resident of the State of Washington. Mr. Love is the personal representative of the Estate of Camille Love. Plaintiff brings this action on behalf of the Estate for the wrongful death of Camille A. Love.

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2.2 Plaintiff Joshua Love is at all relevant times hereinafter a resident of the State of Washington.

2.3 Defendant State of Washington Department of Corrections (DOC) is a governmental entity within the State of Washington (State). At all times material hereto the DOC was charged with supervising and monitoring the convicted felons listed in section 1.2 above. At all times material hereto, the DOC was liable for the acts and/or omissions of its employees and/or agents described herein under the legal theories of principle/agent, master/servant and/or respondent superior.

2.4 Defendant City of Tacoma (City) is a municipal corporation and/or governmental entity located in Pierce County Washington. At all times material hereto, the City was liable for the acts and/or omissions of its employees and/or agents described here.\, including those of its law enforcement officers, under the legal theories of principal/agent, master servant, and/or respondent superior.

2.5 The true names and capacities, whether individual, corporate, associate, governmental or otherwise, of Defendants sued herein as DOES 1-5, inclusive, are currently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names.

2.6 The true names and capacities of individual Defendants sued herein as DOES 6-10, inclusive are currently unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names.

2.7 Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendants designated as a DOES 1-10 are legally responsible in some manner for the events, incidents, and happenings described herein, and caused injuries and damages to Plaintiffs.

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Plaintiffs will seek leave of court to amend this Complaint to substitute the true names and capacities for the Defendants designated herein as DOES 1-10 when the true names have been ascertained or in the alternative dismiss said DOES 1-10 if their identities cannot be ascertained.

2.8 Plaintiff is informed and believes, and based thereon alleges that at all relevant times the individual DOE Defendants, Does 1-10, are and have been residents of the United States and the State of Washington.

2.9 Plaintiff reserves the right to amend this Complaint by adding additional plaintiffs and/or claims as appropriate against one or more of these defendants.

2.10 Pierce County is a proper venue for this action because the defendant is located and/or conducts its business in Pierce County, and because the murder and assault occurred in Pierce County.

III. SERVICE OF CLAIM FOR DAMAGES

3.1 Pursuant to RCW 4.92.100, Plaintiff the Estate of Camille Love properly served a completed signed and valid claim for damages on the State of Washington and its agency the DOC. More than (60) sixty days have elapsed since the date of service of the Estate's Claim for Damages and therefore the Estate's Claims are properly before the above-entitled Court.

3.2 Pursuant to RCW 4.96.020, Plaintiff the Estate of Camille Love properly served a completed signed and valid claim for damages on the City of Tacoma. A Complaint was sent to DOC which named The City of Tacoma as a Defendant, however; DOC acknowledged receipt of the complaint against the Tacoma Police Department and assigned a claim number of (#90070398). Subsequently a complaint was forwarded to the City of Tacoma. The DOC

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acknowledged receipt the complaint and assigned a claim number. More than (60) sixty days have elapsed since the date of service of the Estate's Claim for Damages and therefore the Estate's Claims are properly before the above-entitled Court.

3.3 Pursuant to RCW 4.92.100, Plaintiff Joshua Love properly served a completed signed and valid claim for damages on the State of Washington and its agency the DOC. A Complaint was sent to DOC which named The City of Tacoma as a Defendant, however; DOC acknowledged receipt of the complaint against the Tacoma Police Department and assigned the Claim Number of (#90070398). Subsequently a complaint was forwarded to the City of Tacoma. The DOC acknowledged receipt the complaint and assigned a claim number. More than (60) sixty days have elapsed since the date of service of the Plaintiff's Claim for Damages and therefore the Plaintiff's Claims are properly before the above-entitled Court.

3.4 Pursuant to RCW 4.96.020, Plaintiff Joshua Love properly served a completed signed and valid claim for damages on the City of Tacoma. More than (60) sixty days have elapsed since the date of service of the Estate's Claim for Damages and therefore the Plaintiff's Claims are properly before the above-entitled Court.

IV. RELEVANT FACTS

Facts Giving Rise to this Lawsuit.

4.1 On or about February 7, 2010, Camille and Joshua Love were traveling in a red car on their way to a friend's house on Portland Ave S. in Tacoma Washington. Camille was the driver and Joshua was the passenger. As they stopped at a traffic light several blocks from their

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destination, Joshua Love noticed a white van stopped in the lane beside them. Mr. Love noticed that a Hispanic male was staring at them from the van. Frightened, Camille Love attempted to speed away from the van but was not successful. The van caught up to the victim's car and the occupants of the van began shooting at the Love's vehicle.

4.2 Camille Love was struck several times and died at the scene. Her brother Joshua was struck twice and rushed to the emergency room at Tacoma General Hospital.

4.3 The Loves were innocent law abiding citizens on their way to a friend's home and were targeted simply because they were driving a red car. Mr. Love was seriously injured and traumatized by witnessing the death of his sister at the hands of violent offenders.

4.4 Saul Antonio Mex, Eduardo Sandoval, Jarrod Messer, Dean Salavea, Time Time; Santiago Mederos, and Richard Sanchez were the occupants of the white van and all members of East Side Lokotos Surenos gang. The gang members targeted the Loves because they were driving a red vehicle mistakenly believing they were from a rival gang.

4.5 Eduardo Sandoval was convicted of First Degree Murder, First Degree Assault and Conspiracy to Commit Murder in the First Degree. Sandoval was sentenced to seventy-five years in prison for his part in the crime.

4.6 Time Time was convicted of leading organized crime and was sentenced to twelve years in prison.

4.7 Saul Antonio Mex was convicted of murder in the first degree with a firearm enhancement. Mex was sentenced to thirty-five years in prison.

4.8 Dean Salavea was convicted of leading organized crime and was sentenced to eleven years in prison.

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4.9 Jarrod Messer was convicted of First Degree Murder and sentenced to thirty-five years in prison.

4.10 Richard Sanchez is an illegal immigrant and is currently wanted for his involvement in the murder of Camille Love and the assault and battery of Joshua Love.

4.11 Santiago Mederos is an illegal immigrant and is currently wanted for his involvement in the murder of Camille Love and the assault and battery of Joshua Love.

Facts Giving Rise to Claims Against The Department of Corrections.

4.12 At the time of the murder and assault, the gang members were convicted felons under the community custody and supervision of the Washington State Department of Corrections (DOC). The DOC's community custody and supervision services are performed by the Departments Division of Community Corrections, and were formerly referred to as the Department's probation and parole services.

4.13 According to the DOC's own written mission statement(s) and/or policies, the public's safety is the absolute priority when the DOC is monitoring and supervising convicted felons under its community corrections division.

4.14 The DOC's Division of Community Corrections exists to protect the community from the dangers posed by criminal offenders under the Department's supervision as directed by the courts and the laws of the State of Washington. The position of Community Corrections Officer (CCO) within this division is responsible for the assessment, supervision and control of high risk and high need offenders residing in the community.

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4.15 The DOC and its employees have known for several years that the failure to enforce and/or comply with DOC's own policies, rules and procedures with respect to monitoring and supervising convicted felons under its community custody may endanger the public's safety and cause serious and preventable injuries and death to innocent people.

4.16 One important purpose of the DOC's community custody supervision mandate is to hold offenders accountable to their imposed conditions as they resume life within the community after being incarcerated. To protect the public, the DOC's community correction policy requires that it swiftly sanction those high risk or high violent offenders who are non-compliant and/or who poses a safety risk to the public, including the imposition of more jail time against the offender if necessary.

4.17 At all time material hereto, Measer, Mex, Sandoval, Salavea, Time, Moderos and Sanchez were gang members with extensive prior criminal history, to include criminal convictions for drug possession, assault with a deadly weapon, protection order and/or no contact order violations, auto theft, eluding the police, reckless driving, obstruction, possession of a firearm, domestic violence, resisting arrest among others.

4.18 Each of the gang members have been under the DOC's supervision for years, some dating back to 2004. Each of the gang members had been sentenced to community supervision numerous times prior to the murder and assault. In addition, the gang members committed multiple violations of the conditions of their release from prison.

4.19 Each of the gang members have been classified by the DOC as high risk and dangerous offender, or a high violent offender, because of their gang ties, extensive criminal background spanning several years and because of the amount of harm they had caused to society by their

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previous criminal activities. By classifying the gang members as high violent offender, the DOC determined that they posted the greatest level of risk among other supervised felons to re-offend in the future. The DOC's own policy required that it should therefore devote a higher allocation of agency resources to monitor and supervise Messer, Mex, Sandoval, Salavea, Time, Mederos and Sanchez while they were under the authority and/or control of the Department's Community Corrections Division.

4.20 As an high violent offender, the DOC was legally obligated by the Washington State Offender Accountable Act (OAA), as well as the DOC's own policies, rules and procedures, to devote the highest allocation of agency resources to closely monitor and supervise the gang members and to protect the public from their unlawful activities.

4.21 By the end of 2009, the DOC knew that the gang members had significant prior history of repeatedly violation their conditions for community supervision by failing to report to DOC when required, failing to comply with chemical dependence treatment, failing to comply with mental health treatment, failing to pass drug test, changing residence without permission and by continuing to use illicit drugs.

V. CAUSE OF ACTION AGAINST ALL DEFENDANTS-NEGLIGENCE.

5.1 Plaintiff re-alleges all matters described above, and incorporates the same as if alleged in full.

5.2 The Defendants owed the Plaintiff's and the decedent a duty of care and a duty to act reasonably and carefully.

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5.3 The Defendants breached their duty of care and their duty to act carefully by negligently and or recklessly performing acts and/or omissions which ultimately caused the death of Camille Love and the assault and battery of Joshua Love. Joshua Love suffered serious and permanent injuries caused by the Defendants negligence.

5.4 As a result of the Defendants negligent, grossly negligent and/or reckless conduct and omissions, the Plaintiffs and/or the decedent were injured, suffered, and continue to suffer, physical disability and pain, emotional trauma, medical expenses, loss of earnings and earning capacity, loss of consortium and other damages.

VI. CAUSE OF ACTION AGAINST DEFENDANT STATE OF WASHINGTON.

6.1 Plaintiff re-alleges all matters described above, and incorporates the same as if alleged in full.

6.2 Defendant State of Washington by and through its Department of Corrections owed the Plaintiffs and the decedent a duty to act reasonably and carefully.

6.3 The defendant breached its duty of care and its duty to act carefully and reasonably by, among other things, failing to comply with the OAA and its own rules, policies and procedures with respect to the monitoring and supervision of the gang members.

6.4 The defendant breached its duty of care and its duty to act carefully and reasonable by, among other things, failing to adequately monitor and supervise the gang members, failing to timely request a Secretary Warrant for the gang members immediate apprehension and arrest,

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and failing to use all known and available resources to locate, search for and apprehend the gang members after warrants had been issued for their arrest.

6.5 As a result of this Defendant's negligent, grossly negligent and/or reckless conduct. Plaintiffs and decedent were injured, suffered, and continue to suffer, physical disability and pain, emotional trauma, medical expenses, loss of earnings and earning capacity, loss of consortium and other damages.

VII. CAUSE OF ACTION-WRONGFUL DEATH.

7.1 Plaintiffs re-alleges all matters previously described and they are incorporated by reference.

7.2 The defendants negligent, grossly negligent and/or reckless acts and/or omissions caused the wrongful death of Camille A. Love.

7.3 As a proximate cause of the defendants negligent, grossly negligent, reckless and/or tortuous conduct, the Estate of Camille A. Love, has suffered damages including the loss of the accumulation of income and incurred medical, funeral, and burial expenses, and the conscious pain, suffering, anxiety and fear of impending death experienced by the decedent, in such amounts as will be proven at trial together with interest thereon at the statutory rate from the date of death or the date the expenses were incurred.

7.4 As a proximate cause of the defendants negligent, grossly negligent, reckless and/or tortuous conduct the Estate's beneficiaries have suffered damages including economic loss, loss of consortium, destruction of the parent-child relationship and the loss of love, care, affection,

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companionship, instruction, protection, and guidance expected from a daughter and sister in such amounts will be proven at the time of trial.

VIII. CAUSE OF ACTION-NELGIGENT HIRING AND SUPERVISION.

8.1 Plaintiffs re-alleges all matters previously described and they are incorporated by reference.

8.2 Defendant State of Washington by and through its Department of Corrections, Defendant City of Tacoma and Does 1-10, have negligently and grossly negligently failed to properly hire, train and/or supervise its employees and/or its agents with due care and good judgment.

8.3 As a proximate cause of Defendants failure to properly hire, train and/or supervise its employees and/or agents, the Plaintiffs and the decedent were injured, suffered, and continue to suffer, physical disability and pain, emotional trauma, medical expenses, loss of earnings capacity, loss of consortium and other damages.

IX. CAUSE OF ACTION-TORT OF OUTRAGE.

9.1 Plaintiffs re-alleges all matters previously described and they are incorporated by reference.

9.2 Defendant State of Washington by and through its Department of Corrections has exhibited a pattern over the previous ten to fifteen years of failing to properly monitor and/or

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supervise its convicted felons, and as a result, they have killed and/or harmed numerous innocent citizens in Washington State, including plaintiffs.

9.3 This defendant's failure to supervise the gang members and its repeated failure to supervise many other convicted felons over the years, is extremely egregious and outrageous.

9.4 As a result of the defendants extreme and/or reckless conduct, the Plaintiffs and the estate's beneficiaries have suffered, and will continue to suffer, extreme and severe emotional distress.

X. CAUSE OF ACTION AGAINST THE DEFENDANT CITY OF TACOMA.

10.1 Plaintiffs re-alleges all matters previously described and they are incorporated by reference.

10.2 Defendant City of Tacoma, by and through its Police Department and/or law enforcement officers owed the Plaintiffs the duty of care and a duty to act reasonably and carefully.

10.3 Defendant City of Tacoma violated its duty of care and its duty to act reasonably and carefully by failing to arrest known gang members who posed a serious threat to the public.

10.4 As a result of this Defendant's negligent, grossly negligent and/or reckless conduct, Plaintiffs were injured, suffered, and continue to suffer, physical disability and pain, emotional trauma, medical expenses and loss of earning capacity.

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XI. PRAYER FOR RELIEF.

WHEREFORE, Plaintiffs pray for judgment against the Defendants, jointly and severally, as follows:

11.1 For all damages sustained by Plaintiffs in an amount proven at trial, including past and future medical expenses and other health care expenses, pain and suffering, both mental and physical, past and future permanent partial disability and disfigurement, loss of enjoyment of life, damages to property, past and future special and economic damages, loss of income and earning capacity, loss of consortium, destruction of the parent-child relationship and other damages;

11.2 Interest calculated at the maximum amount allowable by law, including pre and post-judgment interest;

11.3 A reasonable attorney's fee as allowed by law;

11.4 Costs and disbursements pursuant to statute; and

11.5 Other and further relief as this Court may deem just and equitable.

DATED this 4th day of February, 2013.

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Attorney for Plaintiff

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APPENDIX 7

The Honorable Garold E. Johnson

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

WILLIAM LOVE, as Personal Representative of the ESTATE OF CAMILLE LOVE and JOSHUA LOVE, individually, Plaintiffs, v. STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS, a governmental entity, CITY OF TACOMA, a municipal corporation and DOES 1-10 INCLUSIVE, Defendants.	NO. 13-2-06154-1 DEFENDANT STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS ANSWER TO PLAINTIFFS' COMPLAINT FOR DAMAGES

Defendant State of Washington Department of Corrections, in answer to Plaintiffs' complaint, admits, denies, and alleges as follows:

I. INTRODUCTION

1.1 Defendant admits Plaintiff Camille Love was killed and Joshua Love was shot on February 7, 2010. Defendant also admits Eduardo Sandoval and Dean Salavea were on supervision. Defendant has insufficient information to admit or deny all other remaining allegations contained in paragraph 1.1.

1.2 Defendant denies the allegations contained in paragraph 1.2.

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II. PARTIES AND JURISDICTION

2.1 Defendant admits the allegations contained in paragraph 2.1.

2.2 Defendant admits the allegations contained in paragraph 2.2.

2.3 Defendant admits Department of Corrections is a governmental agency. The remainder of the paragraph calls for a legal conclusion and no response is required. To the extent a response is required, the remaining allegations in paragraph 2.3 are denied.

2.4 No response is required.

2.5 Paragraph 2.5 fails to identify any persons by name so no response is required. To the extent a response is required, defendant denies the allegations contained in paragraph 2.5.

2.6 Paragraph 2.6 fails to identify any persons by name so no response is required. To the extent a response is required, defendant denies the allegations contained in paragraph 2.6.

2.7 Defendant denies the allegations contained in paragraph 2.7.

2.8 Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.8 and, therefore, denies the same.

2.9 Defendant denies the allegations contained in paragraph 2.9.

2.10 Defendant admits the allegations contained in paragraph 2.10.

III. SERVICE OF CLAIM FOR DAMAGES

3.1 Defendant admits plaintiffs filed a claim. As to the remaining allegations contained in paragraph 3.1, they require a legal conclusion and therefore, denies the same.

3.2 Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.2 and, therefore, denies the same.

3.3 Defendants admit sixty (60) days have elapsed and plaintiffs served a claim. The remainder of the paragraph calls for a legal conclusion and no response is required. To the extent a response is required, defendants deny the remaining allegations contained in paragraph 3.3.

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3.4 Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.4 and, therefore, denies the same.

IV. REVELANT FACTS

4.1 Defendant admits on February 7, 2010, Camille and Joshua Love were shot at. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4.1 and, therefore, denies the same.

4.2 Defendant admits Camille Love died and Joshua Love was shot. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4.2 and, therefore, denies the same.

4.3 Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.3 and, therefore, denies the same.

4.4 Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.4 and, therefore, denies the same.

4.5 Defendant admits the allegations contained in paragraph 4.5.

4.6 Defendant admits the allegations contained in paragraph 4.6.

4.7 Defendant admits the allegations contained in paragraph 4.7.

4.8 Defendant admits the allegations contained in paragraph 4.8.

4.9 Defendant admits the allegations contained in paragraph 4.9.

4.10 Defendant admits the allegations contained in paragraph 4.10.

4.11 Defendant admits the allegations contained in paragraph 4.11.

4.12 Defendant denies the allegations contained in paragraph 4.12.

4.13 This paragraph does not require a response because the Department's Mission Statement and policies speak for themselves.

4.14 Defendant denies the allegations contained in paragraph 4.14.

4.15 Defendant denies the allegations contained in paragraph 4.15.

4.16 Defendant denies the allegations contained in paragraph 4.16.

4.17 Defendants admit Saul Mex, Eduardo Sandoval, Dean Salavea, Time Time, Jarrod Messer, Richard Sanchez, and Santiago Mederos had criminal histories.

4.18 DOC admits Messer, Saul Mex, Eduardo Sandoval, Dean Salavea, Time Time, Jarrod Messer, Richard Sanchez, and Santiago Mederos had at one time or another been supervised by the department.

4.19 Defendant denies the allegations contained in paragraph 4.19.

4.20 Defendant denies the allegations contained in paragraph 4.20.

4.21 Defendant denies the allegations contained in paragraph 4.21.

V. CAUSE OF ACTION AGAINST ALL DEFENDANTS – NEGLIGENCE

5.1 Defendant reasserts its responses to the preceding paragraphs and deny the allegations contained in paragraph 5.1.

5.2 Paragraph 5.2 calls for a legal conclusion and no response is required. To the extent a response is required, defendants deny the allegations contained in paragraph 5.2.

5.3 Defendant denies the allegations contained in paragraph 5.3.

5.4 Defendant denies the allegations contained in paragraph 5.4.

VI. CAUSE OF ACTION AGAINST DEFENDANT STATE OF WASHINGTON

6.1 Defendant reasserts its responses to the preceding paragraphs and deny the allegations contained in paragraph 6.1.

6.2 Paragraph 6.2 calls for a legal conclusion and no response is required. To the extent a response is required, defendants deny the allegations contained in paragraph 6.2.

6.3 Defendant denies the allegations contained in paragraph 6.3.

6.4 Defendant denies the allegations contained in paragraph 6.4.

6.5 Defendant denies the allegations contained in paragraph 6.5.

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VII. CAUSE OF ACTION – WRONGFUL DEATH

7.1 Defendant reasserts its responses to the preceding paragraphs and deny the allegations contained in paragraph 7.1.

7.2 Defendant denies the allegations contained in paragraph 7.2.

7.3 Defendant denies the allegations contained in paragraph 7.3.

7.4 Defendant denies the allegations contained in paragraph 7.4.

VIII. CAUSE OF ACTION – NEGLIGENT HIRING AND SUPERVISION

8.1 Defendant reasserts its responses to the preceding paragraphs and deny the allegations contained in paragraph 8.1.

8.2 Defendant denies the allegations contained in paragraph 8.2.

8.3 Defendant denies the allegations contained in paragraph 8.3.

IX. CAUSE OF ACTION – TORT OF OUTRAGE

9.1 Defendant reasserts its responses to the preceding paragraphs and deny the allegations contained in paragraph 9.1.

9.2 Defendant denies the allegations contained in paragraph 9.2.

9.3 Defendant denies the allegations contained in paragraph 9.3.

9.4 Defendant denies the allegations contained in paragraph 9.4.

X. CAUSE OF ACTION AGAINST THE CITY OF TACOMA

10.1 Defendant reasserts its responses to the preceding paragraphs and deny the allegations contained in paragraph 10.1.

10.2 Paragraph 10.2 is not addressed to the State, therefore, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.2 and, therefore, denies the same.

10.3 Paragraph 10.3 is not addressed to the State, therefore, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.3 and, therefore, denies the same.

10.4 Paragraph 10.4 is not addressed to the State, therefore, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.4 and, therefore, denies the same.

XI. PRAYER FOR RELIEF

Defendant denies Plaintiffs are entitled to judgment against them and further denies that Plaintiffs are entitled to the relief sought in subparagraphs 11.1 – 11.5 on page 17 of Plaintiffs' complaint.

XII. AFFIRMATIVE DEFENSES

By Way of FURTHER ANSWER and FIRST AFFIRMATIVE DEFENSE, Defendant alleges that the summons and complaint was the process served was insufficient.

By Way of FURTHER ANSWER and SECOND AFFIRMATIVE DEFENSE, Defendant alleges

By Way of FURTHER ANSWER and THIRD AFFIRMATIVE DEFENSE, Defendant alleges that the plaintiffs have failed to file a claim against the State of Washington as required by RCW 4.92.100 and .110.

By Way of FURTHER ANSWER and FOURTH AFFIRMATIVE DEFENSE, Defendant alleges that the damages and/or injuries, if any, were caused by the fault of a nonparty for purposes of RCW 4.22.070(1). The identity of the nonparty is: Saul Mex, Eduardo Sandoval, Dean Salavea, Time Time, Jarrod Messer, Richard Sanchez, and Santiago Mederos.

By Way of FURTHER ANSWER and FIFTH AFFIRMATIVE DEFENSE, Defendant alleges that the plaintiffs' injuries/damages, if any, were caused by intentional conduct of Saul Mex, Eduardo Sandoval, Dean Salavea, Time Time, Jarrod Messer, Richard Sanchez, and

Santiago Mederos. The damages caused by the intentional conduct must be segregated from injuries/damages allegedly caused by fault.

By Way of FURTHER ANSWER and SIXTH AFFIRMATIVE DEFENSE, Defendant alleges that all actions of the defendant, State of Washington, herein alleged as negligence, manifest a reasonable exercise of judgment and discretion by authorized public officials made in the exercise of governmental authority entrusted to them by law and are neither tortious nor actionable.

By Way of FURTHER ANSWER and SEVENTH AFFIRMATIVE DEFENSE, Defendant alleges that the plaintiffs have failed to state a claim upon which relief may be granted.

By Way of FURTHER ANSWER and EIGHTH AFFIRMATIVE DEFENSE, Defendant alleges that the defendant at all times acted in good faith in the performance of its duties and is therefore immune from suit for the matters charged in plaintiffs' complaint.

By Way of FURTHER ANSWER and NINTH AFFIRMATIVE DEFENSE, Defendant alleges that the defendant is immune from suit for the matters charged in plaintiffs' complaint.

By Way of FURTHER ANSWER and TENTH AFFIRMATIVE DEFENSE, Defendant alleges that the claims against the defendant are barred by the doctrine(s) of absolute (quasi-judicial and or quasi-prosecutorial) immunity.

By Way of FURTHER ANSWER and ELEVENTH AFFIRMATIVE DEFENSE, Defendant alleges that the claims alleged under 42 U.S.C. § 1983 against the state employees are barred by the doctrine of qualified immunity.

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WHEREFORE, Defendant prays that Plaintiffs complaint be dismissed with prejudice as to the State of Washington Department of Corrections and that Plaintiffs take nothing by their complaint and that Defendant be allowed their costs and reasonable attorney fees herein.

DATED this 9 day of April, 2013.

ROBERT W. FERGUSON
Attorney General

GARTH AHEARN, WSBA No. 29840
Assistant Attorney General
Attorney for State

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

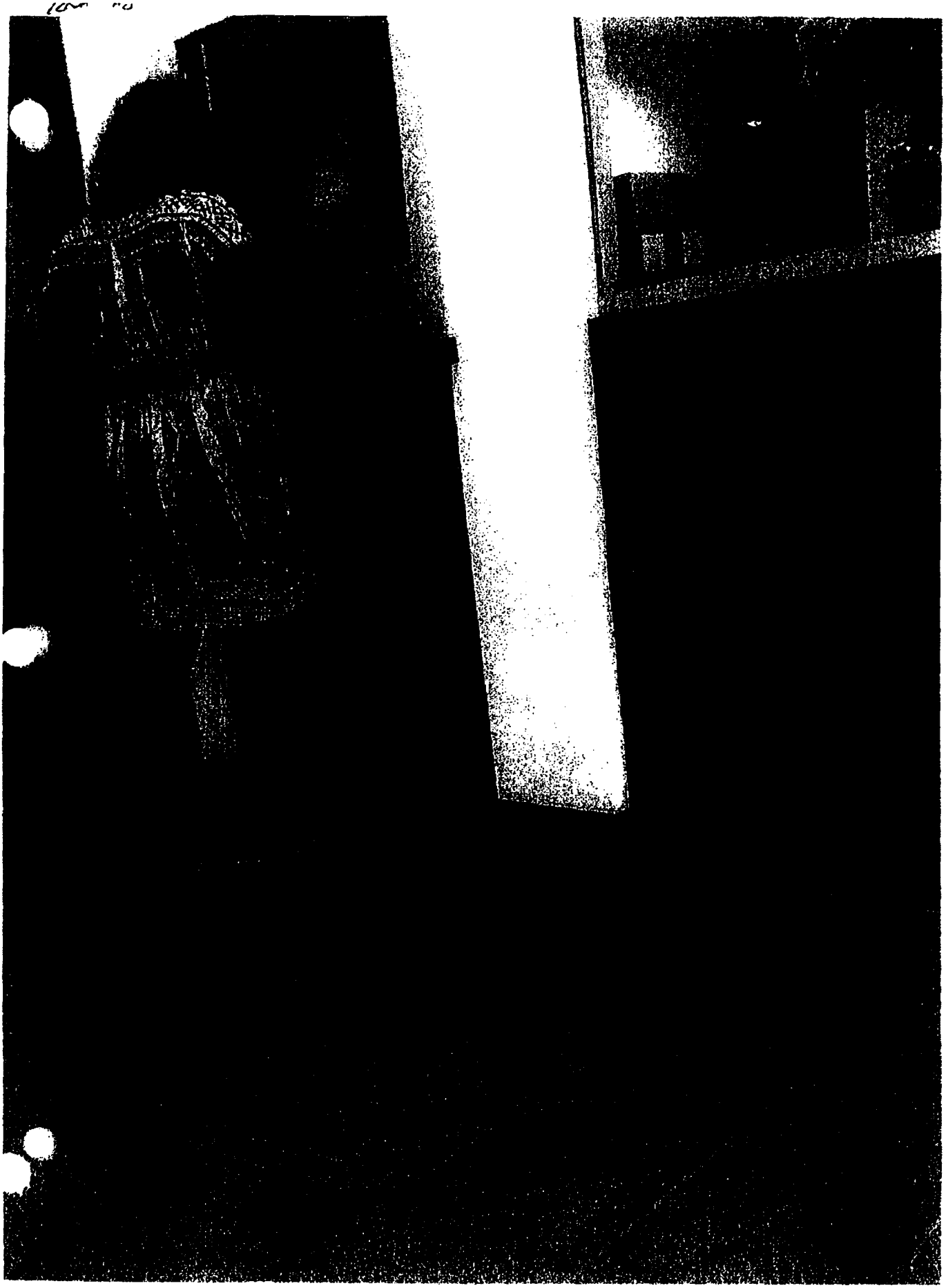
Vicky J. Currie Attorney at Law 535 Dock Steet, STE 209 Tacoma, WA 98402	X US Mail Postage Prepaid o Certified Mail Postage Prepaid o State Campus Mail o ABC/Legal Messenger	o UPS Next Day Air o By Fax o By Email o Hand delivered by:
Jean P. Homan City of Tacoma Attorney 747 Market Street #1120 Tacoma, WA 98402-3701	X US Mail Postage Prepaid o Certified Mail Postage Prepaid o State Campus Mail o ABC/Legal Messenger	o UPS Next Day Air o By Fax o By Email o Hand delivered by:

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

DATED this 9th day of April, 2013, at Tacoma, WA.

Jodi Elliott

JODI ELLIOTT, Legal Assistant



P000046

Log sheet for Garnishments/Summons & Complaints/Miscellaneous mail that comes into the office. Route all mail to Olympia: Debbie O'Dell, HWY - Lic Bldg., 7th Floor, Mail Stop 40100, Olympia WA 98504-0100:

Attorney Accepting Service	Date Recvd	Plaintiff/ Petitioner	Defendant/ Respondent	Cause # County	Description	Date Sent
Glen Anderson	1-18-13	Frank Reed Nordlund	DOC	Thurston County	S&C # 13-2-00068-4	1-23-13
Glen Anderson	1-18-13	Frank Reed Nordlund	DOC	Clallam County	S&C # 13-2-01230-2	1-23-13
Garth Ahearn	2-11-13	Dezhonae Emerson	DOC	Pierce	S&C Guardianship	
(not served)	3-5-13	Vicky Love	DOC	Pierce	S&C	3-6-13
Garth Ahearn	3-12-13	John Steiner	DOC	Pierce	Complaint/Motion/Declaration/Order	3-12-13
Peter Helmberger	4-8-13	Michael Kane	UDW	King	Summons & Complaint	4-8-13
Garth Ahearn	5-8-13	Dynamic Strategies	No State Entity CP Unit took acceptance of it	King	Summons & Complaint	5-8-13
Peter Helmberger	5-14-13	John Horn	DOC	Spokane	Summons & Complaint	5-15-13
Peter Helmberger	6-7-13	Melissa Corbin	State of WA	Pierce	Summons & Complaint	6-10-13
Matt Kuehn	6/28/13	Laura & John Gragg	DSHS	Thurston	13-2-01248-2 Summons & Complaint	7/1/13
Matt Kuehn	6/28/13	Veronica Bichner	DSHS	Thurston	13-CV-5491 KLS Summons & Complaint	7/1/13
(not summons/comp)	7/5/13	State of WA	Elizabeth Mathews	PCDC 3CC00242-9	Mot/Decl for Order for Show Cause re: Contempt, memo, order Show Cause	7/5/13
Not "served"	7/10/13	WA ESD	Jeffrey E. Jernigan	Pierce	Complaint/Cert. of Service/Summons	7/10/13
Garth Ahearn	7/17/13	HSBC Bank	Nelsen, Ridfield, et al	Pierce	Lis Pendens, Summons, Decl of Search, Complaint	7/17/13
No summ/compl	7/29/13	Linda Bates	Employment Security Dept	Thurston	Petition for Review from Office of Admin Hrgs Decision Denying Employ. Benefits	7/29/13
Eric Beckendorf	8-8-13	W. McLaughlin	Kitsap City + DES	Kitsap	Summons + Complaint	8-9-13
Matt Kuehn	8-7-13	HSBC Bank	Dept of	Pierce	Summons & Complaint	8/13/13
(No summons/complaint)	8/13/13	State of WA	Kameron Pavey	PCDC 3CC00050-9/2952	Mot/Decl for order to Show Cause & order to Show Cause	8/15/13
Garth Ahearn	8-30-13	Deutsche Bank National Trust	LNV, ESD, DSHS	13-2-09009-6	Summons & Complaint	8-30-13
No summons/complaint	9/5/13	Jeffrey Jernigan	Employ. Security	13-04300	Crossclaim, Decl of Service	9/5/13

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, June 23, 2016 12:11 PM
To: 'Tiffany Dixon'
Cc: Paul Lindenmuth; Ben Barcus; currievj@hotmail.com
Subject: RE: Supreme Court No. 93229-8

Received 6/23/2016.

The filing fee for $200.00 was received on 6/15/2016.

Supreme Court Clerk's Office

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From: Tiffany Dixon [mailto:Tiffany@benbarcus.com]
Sent: Thursday, June 23, 2016 11:47 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Paul Lindenmuth <Paul@benbarcus.com>; Ben Barcus <ben@benbarcus.com>; currievj@hotmail.com
Subject: Supreme Court No. 93229-8

Dear Clerk,

In accordance with your letter of June 13, 2016, attached for filing please find Petitioners' Amended Petition for Review with Appendices. The $200.00 filing fee was mailed separately on June 10, 2016. Could you please confirm receipt of the filing fee.

Thank you.

Tiffany Dixon
Paralegal
Law Offices of Ben F. Barcus and Associates, PLLC
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Tacoma, WA 98402
(253) 752-4444
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