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NO. 72890-3-I

COURT OF APPEAL OF THE STATE OF WASHINGTON

DIVISION I

WAYNE GODING,

Respondent/Cross-Appellant,

v.

CIVIL SERVICE COMMISSION of King County; KING COUNTY, a municipal corporation; KING COUNTY SHERIFF'S OFFICE, a department of King County,

Appellants/Cross-Respondents.

BRIEF OF APPELLANT KING COUNTY SHERIFF'S OFFICE

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ORIGINAL

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A. INTRODUCTION

The King County Sheriff suspended Detective Wayne Goding for one day and transferred him out of the Warrants Unit for refusing to follow a jail officer's directive to handcuff a prisoner before escorting him through an unsecured area of the jail. The issue in this case is whether the Civil Service Commission acted arbitrarily, capriciously, or contrary to law in finding that the Sheriff's decision was in good faith for cause.

In early 2012, Goding was a shuttle deputy in the Warrants Unit of the Sheriff's Office. His job involved transporting prisoners to and from regional jail facilities and working closely with Department of Adult and Juvenile Detention (DAJD) personnel in the booking process. Disputes arose between Goding and DAJD staff over booking procedures, and this created friction between the two agencies. In an effort to ease the tensions, the Sheriff's Office directed its shuttle deputies to be courteous and professional in their interactions with DAJD staff, and to follow jail instructions unless they were unsafe or illegal.

But in August 2012, Goding refused a DAJD officer's request to complete required paperwork when booking a suspect. The incident took place in front of inmates, DAJD officers, and Sheriff's

personnel, and was described as heated, aggressive and unprofessional. The Sheriff's Office issued Goding a written reprimand for discourtesy and insubordination, and again directed him to adhere to DAJD procedures without criticism or resistance. The DAJD also restricted Goding's access to certain secured areas of the jail.

The incident in this case took place on February 20, 2013. Goding was at the Kent jail facility (MRJC) to book a prisoner on a felony warrant for threatening to bomb or injure property. He became frustrated because jail staff declined to accept the prisoner due to poor health. While preparing to escort the prisoner out through the Sally Port of the jail, Goding refused a DAJD officer's request to follow jail policy and handcuff him, stating that it would be illegal to do so because the prisoner was deferred and was not under arrest. Goding then refused a DAJD sergeant's request to apply the handcuffs. It was only after a Sheriff's Office sergeant intervened that Goding complied, loosely applying the restraints to the prisoner before leaving the facility.

Goding's sergeant made an Internal Investigation Unit complaint against Goding over the incident. Following the contractual grievance process, the Sheriff found Goding

insubordinate, rejecting his claimed belief that handcuffing the suspect would have been illegal. He suspended Goding for one day and transferred him out of the Warrants Unit to a patrol position. Goding appealed to the Civil Service Commission.

Following a three-day hearing, the Commission concluded that the discipline was in good faith for cause. Goding appealed to King County Superior Court, which reversed, and this appeal followed.

B. ASSIGNMENT OF ERROR

The Superior Court erred in entering two orders ruling that the Civil Service Commission acted arbitrarily and capriciously in finding that the King County Sheriff's discipline of Deputy Wayne Goding was in good faith for cause under RCW 41.14.120. The King County Sheriff's Office assigns error to these two orders. *See* CP 1218-19; CP 1222-24.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Arbitrary and capricious action is willful and unreasoning action, taken without consideration and in disregard of facts and circumstances, and when there is room for two opinions, action is not arbitrary and capricious even though one may believe an erroneous decision has been reached. In this case, Goding

testified that he refused a jail directive to handcuff a prisoner because he believed it would be illegal to do so; however, there was also evidence that Goding's refusal was motivated by irritation and defiance, and was therefore unreasonable and insubordinate. Did the Civil Service Commission act arbitrarily and capriciously in choosing to discredit Goding's explanation and agree with other evidence indicating that he was insubordinate in refusing to follow a jail directive to handcuff a prisoner?

D. STATEMENT OF THE CASE

1. TO REDUCE TENSIONS, THE SHERIFF'S OFFICE DIRECTS GODING TO FOLLOW JAIL POLICIES AND REQUESTS.

Goding worked as a shuttle deputy in the Criminal Warrants Unit of the Sheriff's Office for nearly two years before the "handcuffing" incident of February 20, 2013. CP 1156. During that two year period, tension had developed between DAJD staff and Goding and his partner, Detective Matthews. CP 1156-57. There was a perception amongst jail staff that Goding resisted complying with jail policies and requests. CP 557.

In response, beginning in March 2012, the Sheriff's Office directed Goding and others in the Warrants Unit that they had to follow jail staff directions unless a request was unsafe or illegal.

CP 790. This directive emphasized that the shuttle deputies must be courteous with jail personnel and follow their directives, and if disputes developed, raise concerns with Sheriff's Office later rather than arguing with jail staff at the site:

> I expect any of our people working on the shuttle run to above all **be courteous and professional in all contacts with jail staff.** Anything less than a professional attitude and courtesy will not be tolerated regardless of the perceived "provocation".
>
> **Follow the jail staff directions** unless they make a request that is unsafe or illegal. . . .
>
> . . .
>
> Rather than getting into a conflict with jail staff about what you feel is "not your job", just do what they ask, and bring it to my attention later if you feel they are asking you to do something that is not appropriate for whatever reason. . . . [(bold and underline in original) CP 790].

This directive did not resolve the tensions. In July 2012, DAJD Operations Captain Jerry Hardy complained to the Sheriff's Office that two of its officers – apparently Goding and his partner Matthews – were "souring" the relationship between the two agencies. CP 1157. Hardy explained that "the working relationship is nonexistent", and that the jail was considering restricting the deputies' access. CP 1157.

2. FOLLOWING A HEATED DISPUTE WITH JAIL STAFF, GODING IS REPRIMANDED FOR REFUSING TO FOLLOW JAIL POLICIES.

The jail did ultimately restrict Goding's access following another incident on August 7, 2012. CP 824; 1157. Goding refused a DAJD officer's request to complete a "Superform" sheet when booking an inmate. CP 1138; 1156. A DAJD sergeant intervened, but Goding still refused to complete the form. Finally, Goding's own supervisor, Sheriff's Sergeant Porter, became involved. Porter had to ask Goding two times to complete the Superform, which he finally did. CP 1138. A number of witnesses characterized the incident as aggressive, heated, and "at least" unprofessional. CP 1138. Jail Captain Hardy, concerned about the potential for further conflict, limited the areas of the jail that Goding and his partner could access. CP 824.

The following day, Sheriff's Captain Hodgson wrote Goding and his partner stating that there was a "high level of concern" surrounding the continuing conflicts between them and jail staff. CP 825. He repeated the need for them to complete requested tasks without criticism or resistance:

> I have been informed of conflict that exists between the two of you and staff at the RJC jail. . . . [T]he issues revolve around your perceived resistance to compliance with jail

> policies and requests. . . . If you are asked to complete a task or observe a procedure in order to complete the processing of prisoners, the expectation is that you will complete that task, as requested, without criticism or resistance. [CP 824-25].

Hodgson also outlined a process for resolving disputes. For concerns of an emergent, safety nature that could not wait, Goding could contact his sergeant immediately. *Id.* Short of that, however, he was to raise issues with his sergeant after the fact and not try to work them out with jail staff on his own. *Id.* Captain Hodgson repeated these expectations to Goding and his partner in a meeting on August 14, 2012. CP 718.

In December 2012, following an internal investigation, the Sheriff's Office issued Goding a written reprimand over the Superform incident. CP 1139. The reprimand was based on sustained findings of discourteousness and insubordination or failure to follow orders. CP 1139. At that time, Captain Hodgson and the new Sergeant in the Criminal Warrant's Unit, Christopher Myers, repeated their expectation to Goding that he follow the direction of jail staff. CP 719. Goding did not accept responsibility his actions, but instead blamed the problems on jail staff. CP 236-37. He appealed his written reprimand to an arbitrator through his

collective bargaining agreement, and a decision is pending. CP 1157, 1162.

3. GODING REFUSES A JAIL DIRECTIVE TO HANDCUFF A PRISONER.

The incident at issue in this case occurred on February 20, 2013, near the end of Goding's shift. CP 940. Sheriff's Sergeant Myers called Goding and his partner, Detective Matthews, and asked that the two of them go to Enumclaw to pick up a suspect and take him for booking into the King County jail in Kent (MRJC). CP 940. The suspect, Harlon Phipps, was wanted on a felony warrant for threatening to bomb or injure property. CP 888, 1158.

Sergeant Myers was familiar with Phipps, and knew that he had medical concerns that could create "issues" with booking him. CP 922. When Goding and Matthews arrived to take custody of Phipps, Myers instructed Matthews that if there were medical problems with booking him, he was to call Myers on his cell phone so that he could talk to the nurse to see what needed to be done to get Phipps booked. CP 922.

On arrival at the jail, health staff evaluated Phipps and found him too medically unstable to be booked, meaning that he would have to be transported to a medical facility for treatment. CP 642,

722. One nurse who evaluated Phipps stated that Goding and Matthews were irritated by the decision, and were pushy and persistent in seeking to change it. CP 643. Another nurse felt that Goding and Matthews were "kind of hostile" (CP 649), and stated that there was a lot of "eye rolling" by Detective Goding. CP 720. Goding emphasized the seriousness of the charges against Phipps in an effort to get him booked. CP 643.

While still in the jail, Matthews phoned Sergeant Myers to tell him that the jail had declined Phipps for medical reasons. CP 922. Myers instructed Matthews to transport Phipps to Valley Medical Center and release him, and Matthews relayed this instruction to Goding. CP 723, 1158.

Goding had escorted thousands of prisoners into the Intake Transfer & Release section of the jail, and he had previously taken prisoners rejected for medical reasons out of the jail to medical facilities. CP 1159. In all of those instances, Goding had re-handcuffed the prisoner for the escort back through the sally port. CP 1159. Once outside, he would generally receive further instruction about whether the suspect was to be kept in custody or released. CP 1159. On February 20, 2013, however, he received

Myers' instruction to release Phipps at Valley Medical Center while they were still inside the jail. CP 1159.

Goding began escorting Phipps from the jail without chaining or handcuffing him. CP 723, 1158. A jail correction officer, Michael Ley, noticed that Phipps was not restrained and asked Goding to handcuff him. CP 560. Goding replied that the prisoner was no longer under arrest and that, in his view, it would be illegal to handcuff him. CP 723. Officer Ley explained to Goding that jail policy required that the prisoner be handcuffed while exiting, but Goding continued to argue that it would not be proper to handcuff Phipps. CP 723.

Officer Ley asked his sergeant, DAJD Sergeant Richardson, to intervene and explain the jail's policy to Goding. CP 351. Richardson told Goding that even those refused booking must be handcuffed on the way out. CP 351. This was necessary, Richardson explained, because the person had to pass through an unsecure jail area where officers could be handling weapons and other arrestees could be present. CP 358, 723. Goding replied that he would not handcuff Phipps unless "a sergeant" told him to. CP 723. To Richardson, this meant that his status as a jail sergeant wasn't good enough for Goding. CP 351-52; 723-24.

Sergeant Richardson learned that Detective Matthews, who was standing nearby, was still talking on the phone to Sheriff's Sergeant Myers. CP 724. Goding stated that "whatever Sergeant Myers says to do, I'll do." CP 723. Richardson then got on the phone with Myers to explain the situation. Without hesitation, Sergeant Myers agreed with Richardson that Goding should handcuff the prisoner, acknowledging that the jail's requirement had been in place for as long as he [Myers] had been with the Sheriff's Office. CP 353, 723. Richardson gave a "thumbs up" sign to Goding, and Goding proceeded to handcuff Phipps. CP 723. He placed the waist restraints on Phipps so loosely that they hung down to his knees, potentially allowing Phipps to simply step out of them. CP 355. Goding and Matthews then left the facility and transported Phipps to the hospital. CP 1159.

The following day, Sergeant Myers spoke with Goding about the incident. CP 923. When Goding expressed his view that it was not proper to handcuff Phipps, Myers explained that Phipps was in their custody and would remain in their custody until released at the hospital, and that it was the jail's policy to restrain prisoners moving through the sally port area. CP 923. According to Goding, Myers expressed that handcuffing Phipps was a "no brainer" and that

Goding was just being difficult. CP 941. Myers asked Goding what he would have done if he, Myers, had not been available by telephone. CP 923. Goding replied that he would have just "done it anyways" – i.e. handcuffed Phipps. *See* CP 923. Myers then ended the conversation, directing Goding to "follow the direction from ... jail staff and that if he had any issues with it, he would need to contact [him] afterwards." CP 923.

4. GODING RECEIVES A ONE-DAY SUSPENSION AND A TRANSFER TO PATROL FOR INSUBORDINATION.

In March 2013, Myers filed a complaint alleging insubordination against Goding with the Internal Investigations Unit (IIU) of the Sheriff's Office. CP 1034. The complaint asserted that Goding refused to restrain a prisoner at the direction of jail staff on February 20, 2013, thereby failing to obey a written directive from Captain Hodgson issued August 8, 2012. CP 1034. Following a Loudermill hearing[1] in September 2013, the King County Sheriff sustained the charges, issuing Goding a one day suspension and an immediate transfer to a patrol position. CP 1156.

[1] *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985).

5. THE CIVIL SERVICE COMMISSION UPHOLDS THE DISCIPLINE, AND THE SUPERIOR COURT REVERSES.

Goding appealed to the Civil Service Commission, and after a three-day hearing in January and February 2014, the Commission found that the Sheriff imposed the discipline in good faith for cause. CP 1163. The key issue was whether the King County Sheriff properly rejected Goding's defense that his refusal to handcuff Phipps was due to a legitimate concern over the lawfulness of his actions. CP 1159-60.

In rejecting Goding's defense, the Commission noted, in part, that (1) officer safety justified restraining persons in the Sally Port regardless of their arrest status; (2) escorting prisoners through the area unrestrained was unprecedented, and (3) Goding's demeanor and loose application of the restraints suggested that he was motivated by defiance as opposed to legitimate concerns with the lawfulness of the DAJD request. *See* CP 1159-1163.

Goding appealed to superior court, which reversed the Commission and ordered, in part, that Goding be reinstated to his prior position in the Warrants Unit. CP 1223. The King County Sheriff's Office then appealed to this court.

E. SUMMARY OF ARGUMENT

The Superior Court erred in determining that the King County Civil Service Commission acted arbitrarily and capriciously in finding that the King County Sheriff's discipline of Deputy Wayne Goding was in good faith for cause. Goding presented evidence that he acted reasonably in refusing a jail directive to handcuff a prisoner he believed was not under arrest. But there is sufficient evidence that the jail's directive was legitimate and lawful, that Goding did not reasonably believe otherwise, and that his refusal to adhere to it was motivated by defiance. The Civil Service Commission did not act arbitrarily and capriciously in crediting this evidence and finding that the Sheriff's discipline of Goding was in good faith for cause.

F. ARGUMENT

1. THE ARBITRARY AND CAPRICIOUS STANDARD GOVERNS APPELLATE REVIEW OF CIVIL SERVICE COMMISSION DECISIONS.

The Civil Service Commission is a statutorily created body whose members are appointed by officials outside the police force to ensure independence. RCW 41.12.030. Members of the classified civil service, including police officers, who are subjected to specified discipline may appeal to the Commission for a

determination of whether the discipline was made in good faith for cause. *See* RCW 41.14.120.

The judiciary's role in reviewing action taken by the Commission is severely limited. *Greig v. Metzler,* 33 Wn. App. 223, 226, 653 P.2d 1346 (1982). Superior Court review is a summary matter, and is confined to whether the discipline was made in good faith for cause. RCW 41.14.120; *Greig*, 33 Wn. App. at 226.

The Court of Appeals reviews the same record considered by the trial court, and must exercise independent judgment to determine whether the Commission acted arbitrarily, capriciously, or contrary to law. *Greig*, 33 Wn. App. at 226; *Eiden v. Snohomish County Civil Service Commission,* 13 Wn. App. 32, 37, 533 P.2d 426 (1975). The appellate court reviews the Commission's record, not the record or decision at the superior court. *See Greig*, 33 Wn. App. at 226.

The scope of review under the arbitrary and capricious standard is very narrow, and the party seeking to show arbitrary and capricious action carries a heavy burden:

> Arbitrary and capricious action has been defined as willful and unreasoning action, without consideration and in disregard of facts and circumstances. Where there is room for two opinions, action is not arbitrary and capricious even

> though one may believe an erroneous conclusion has been reached.

See Pierce County Sheriff v. Civil Service Commission, 98 Wn.2d 690, 695, 658 P.2d 648 (1983).

2. THE COMMISSION'S DECISION WAS BASED ON COMPETENT EVIDENCE AND WAS NOT ARBITRARY AND CAPRICIOUS.

The Civil Service Commission reached its decision after a three-day hearing in which it evaluated over 100 exhibits and heard the live testimony of seven witnesses. The key question in the Commission's view was whether the Sheriff had good cause to find Goding insubordinate for failing to follow jail practices in violation of repeated directives by the Sheriff's Office to do so. This, in turn, required the Commission to decide whether the Sheriff's Office properly rejected Goding's claim that he refused to follow the jail's instruction because he reasonably believed it was illegal. CP 1160.

Acknowledging that the decision was a close one (*id*), the Commission upheld the Sheriff's decision that Goding was insubordinate. CP 1162. This decision was properly based on the evidence and was not arbitrary and capricious.

a. <u>Goding did not reasonably believe the jail's directive was unlawful.</u>

No witness disputed that restraining prisoners escorted through the sally port area of the jail was an established, lawful practice that had been in place for many years. Goding had booked thousands of persons into the jail (CP 456-57), and he admitted he had never taken a person in custody through the sally port without restraints. CP 456. DAJD Sergeant Richardson testified that, in his 24 years of law enforcement, no officer had ever disputed the need to restrain an arrestee in that area. CP 359. Sheriff's Sergeant Myers testified that prisoners are restrained in the sally port area of the jail. CP 311-312.

Goding's claim that he lacked authority to handcuff Phipps because he was not "under arrest" was not credible. CP 1160-61. Despite the medical decline, the felony arrest warrant was still valid, and Phipps would remain under arrest until he was released at the hospital. CP 374-75; 923. Goding therefore had every right to place him back in handcuffs to escort him out of the jail. *Id.* Moreover, Phipps was wanted for threatening to bomb or injure property (CP 888), and Goding was preparing to take him through an unsecured jail area (the sally port) where officers could be handling weapons and other inmates could be present. CP 358, 723, 1160-61. Officer safety justified restraining Phipps in that area

regardless of his formal arrest status, and Goding admitted that officer safety is a valid reason to handcuff a suspect.[2]

b. Goding's past behavior allows an inference that his refusal to handcuff Phipps was motivated by defiance.

Goding's past behavior also suggests he did not reasonably believe he would be breaking the law by restraining Phipps, but was instead motivated by defiance. He had a documented history of failing to abide by jail instructions, and had already been issued a written reprimand for refusing to do so. CP 1139.

Even after the formal reprimand, Goding refused to acknowledge responsibility for his actions, instead blaming jail staff and claiming they were intentionally making his life difficult. CP 236-37. He acknowledged that his relationship with a number of jail personnel was "very cold" (CP 483), and the jail found it necessary to restrict his access due to conflicts and the deteriorating work relationship. CP 824, 1157. The problems were so pervasive that in the year before February 20, 2013, Goding's own superiors had to direct him at least four times of the need to follow jail instructions. CP 790, 824, 718, 719.

[2] *See* Goding's testimony at CP 450 ("[t]here's only two reasons to put someone in handcuffs, one, they're under arrest; or two, a safety reason, . . .").

Goding's behavior on February 20, 2013 was entirely consistent with his past conduct. He was visibly irritated with the jail nurses who declined to admit Phipps. CP 643. One nurse characterized his behavior as "kind of hostile." CP 649. He was persistent and pushy in an effort to get the nurses to change their decision, repeatedly rolling his eyes in apparent frustration. CP 720. Goding's refusal to handcuff the suspect unless his sergeant told him to was an affront to jail Sergeant Richardson. He viewed Goding's statement as a way of saying that Richardson's status as a jail sergeant wasn't good enough. CP 351-52. According to Richardson, Goding acted like "he's a Sheriff's deputy and we're jailers, and he can do what he wants and that he doesn't have to abide by our rules, that he's just above us." CP 360.

c. The fact that Goding made no attempt to speak with his Sergeant personally about the jail's directive indicates he was not genuinely concerned with the legality of his actions.

The Civil Service Commission also noted that Goding made no effort to speak directly with Sergeant Myers regarding his claimed concern over the legality of handcuffing Phipps. CP 1161. Instead, he relied on jail Sergeant Richardson to do the talking. It is reasonable to infer that had Goding been so concerned about the

lawfulness of his actions, he would have asserted his position more forcefully and explained his position to Myers directly. CP 1161.

Furthermore, Goding admitted to Sergeant Myers that had Myers been unavailable by phone on February 20, 2013, he would have followed the jail's instruction and handcuffed Phipps anyway. CP 653. Again, this suggests that Goding did not seriously believe he was being asked to do something unlawful. There was no need for him to defy the jail's directives and insist that his own hierarchy immediately intervene. That is exactly what the Sheriff's Office had repeatedly told Goding *not* to do. CP 718, 790, 824-25.

d. The loose, unsecure manner in which Goding applied the restraints to Phipps demonstrated a defiant demeanor.

Finally, when Goding did ultimately place the restraints on Phipps, he did it in a very unsecure manner that would have allowed him to simply step out of them if he wanted. CP 354-55; 1161. Jail Sergeant Richardson viewed Goding's conduct as defiant and only "for show." CP 354. The Civil Service Commission found that the manner in which Goding applied the restraints "casts doubt on the sincerity of his position" (CP 1161), and that is a reasonable inference from the evidence.

e. The discipline imposed was progressive.

After the Commission determined that the Sheriff's discipline was in good faith, it addressed whether the discipline was imposed for cause. CP 1162. Goding claimed the Sheriff's September 30, 2013 discipline letter in this case for the handcuffing incident did not reference the prior written reprimand for the Superform incident, and therefore the discipline for the handcuffing incident was not progressive in nature. CP 1162. The Commission properly rejected this argument. The record indicates that the discipline imposed for the handcuffing incident was based on the prior warnings and the actual discipline of Goding for the Superform matter, and was therefore progressive. CP 1162.

G. CONCLUSION

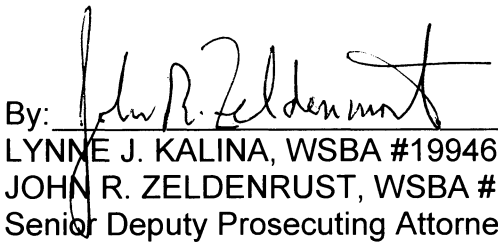
This case required a determination of Goding's intent in refusing the jail's request to handcuff Phipps. Was he so concerned about the legality of the request that he was justified in refusing to comply and insisting on an immediate opinion from his own command staff – a scenario that he knew was called for only in emergent situations that could not wait (CP 718) – or was he simply angry and irritated that the jail deferred the prisoner at the close of his shift, and did not want to bother with a jail directive he viewed as unreasonable and burdensome?

There was evidence supporting both scenarios, and this required a credibility determination by the finder of fact. The Civil Service Commission viewed the witnesses, heard the testimony, considered all of the exhibits, and decided that Goding was insubordinate and that the discipline imposed was in good faith for cause. This decision was based on competent, credible evidence and therefore was not arbitrary and capricious. For these reasons, the Sheriff's Office asks the court (1) to reverse the Superior Court orders dated November 12, 2014 and December 4, 2014, and (2) reinstate the March 11, 2014 decision of the King County Civil Service Commission.

DATED this 16th day of March, 2015.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney



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ORIGINAL

I, LUCIA TAM, hereby certify and declare under penalty of perjury under the laws of the State of Washington as follows:

1. I am a legal secretary employed by King County Prosecutor's Office, am over the age of 18, am not a party to this action and am competent to testify herein.

2. Pursuant to the January 28, 2015 agreement of the parties, I served by email the "Brief of Appellant King County Sheriff's Office " and this "Proof of Service" to the following counsel of record and assistants:

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3. I caused via ABC Legal Messenger the original and one copy to be filed with Court of Appeals, Division I at 600 University St, Seattle, WA 98101.

I declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 16th day of March, 2015.

By: _____
Lucia Tam
Legal Secretary