

COURT REPORTERS

DeG...

NO. 34779-2-II

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

STATE OF WASHINGTON,

Respondent,

v.

D.J.,

Appellant.

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

The Honorable Paul M. Boyle, Judge

BRIEF OF APPELLANT

DANA M. LIND
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P. M. 1/30-06

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A. ASSIGNMENTS OF ERROR

1. The trial court acted outside its authority in allowing restitution for items not authorized by statute.

2. The trial court acted outside its authority in ordering appellant to reimburse the Sumner Pioneer Cemetery for losses it had not incurred.

Issues Pertaining to Assignments of Error

1. Whether the trial court erred in requiring appellant to pay resetting fees that do not qualify as property loss or damage?

2. Whether the trial court erred in requiring appellant to pay estimated replacement costs of broken headstones to the Pioneer Cemetery when the cemetery neither owns the stones nor has any obligation to maintain them?

B. STATEMENT OF THE CASE

1. Procedural Facts

Juvenile appellant D.J. was charged with one count of first degree malicious mischief and ten counts of unlawful removal of a grave marker for vandalism occurring at the Sumner Pioneer Cemetery on September 24-25, 2006. CP 27-33; RCW 9A.48.070(1)(a), RCW 68.60.040(1). Under a separate cause number, D.J. was charged with one count of first degree malicious mischief and five counts of unlawful removal of a grave marker

for vandalism also occurring at the Pioneer Cemetery on September 25-26.
CP 1-5.

Pursuant to a plea agreement, D.J. pled guilty to one count of malicious mischief and one count of unlawful removal of a grave marker for each cause number. CP 7-14, 35-42. D.J. received dispositions of 30 days and 60 days, respectively, as well 450 total community service hours. The court further required D.J. to publicly apologize for his crimes at a televised Sumner City Counsel meeting and write several papers about the damaged grave markers. Regarding restitution, D.J. agreed one person would be allowed to testify as to all damages. CP 15-21, 43-49.

Following a restitution hearing on April 3, 2006, the court imposed \$170,737.31 in restitution, joint and several liability with D.J.'s co-defendant. CP 53-54. The amount was broken down as follows:

Pioneer Cemetery	\$158, 237.31
Eleanor Riser	\$4,500
Rod Schrengohst	\$8,000

CP 53-54. D.J. appeals the restitution order. CP 22-24, 55-57.

2. Restitution Hearing

Pioneer Cemetery operations supervisor John Wells testified and provided a written estimate regarding the purported damages incurred by

Pioneer Cemetery as a result of the vandalism. His estimate factored in three costs: (1) \$6,537.71 in labor to reset/repair markers; (2) \$63,900 in "resetting fees;" and (3) \$100,300 in estimated replacement costs for the headstones that were damaged. RP (4/3/06); Ex 1, attached as an appendix.

Approximately 303 headstones at the cemetery were affected by the vandalism. RP 20. The vast majority (280), however, were merely tipped over and otherwise undamaged. RP 21. Wells and his crew were able to reset these headstones either by hand or by the cemetery's monument-lifting device or backhoe. RP 5-6, 21; Ex 1.

To varying degrees, twenty-three of the stones were broken, however. RP 5, 20; Ex 1. Wells testified he and his crew had to glue them back together in order to stand them back upright. RP 5, 9, 11, 32.

Wells and two other employees "Dan" and "Kevin" completed the work of righting the pushed over stones and gluing the others back together. RP 12. Each worked 4, 8.5, and 8.5 hours on Sunday, September 25, earning double time at rates of \$51.02, \$44.51, and \$41.65 per hour, respectively, for totals of \$204.08, \$378.84, and \$354.03, respectively. Ex 1. Monday, September 26, they each came in early one hour to get a "jump on getting them placed back up and repaired" for totals of \$38.29,

\$33.41, and \$31.40 per hour, respectively. RP 17; Ex 1. Wells further estimated that he worked an additional 80 hours, 16 of which were actually spent repairing the stones during regular business hours on Monday and Tuesday, and the remainder spent doing "administrative work," i.e. preparing exhibit 1 and taking pictures of the stones, for a total of \$2,528.80. Wells likewise estimated that Dan and Kevin spent 8 hours each on Monday and Tuesday repairing the stones for totals of \$456 and \$433.76, respectively.¹ Ex 1; RP 18. Finally, Wells estimated that "Darlene" spent 80 hours at \$25.99 per hour on "administrative" work as well for a total of \$2,079.20. RP 19; Ex 1. Darlene assisted in compiling exhibit 1, taking pictures, and fielding telephone calls from families who had heard of the vandalism. RP 12, 33. According to Wells, the cemetery's labor costs all together were \$6,537.31.

As part of the cemetery's estimated damages, Wells also included a "resetting fee" for each of 303 the stones, ranging from \$100 to \$500 per stone, which he described as follows:

The resetting fee is a standard fee that the cemetery charges if a family was to come in for a service. We were to take that stone, send it in for what we call final inscription and then to reset that stone back up on the monument. That is a charge that each family would pay.

¹ All of the stones were righted and repaired by Tuesday. RP 19.

Some are more because they are physically larger that we had to move other monuments to be able to reset them, and some of the other -- you know, some of the ones that are more expensive, we put in our cost of repairing those stones.

RP 9-10; see also RP 32. Because the cemetery could not pass this "cost" onto the families, Wells claimed the city of Sumner² was out-of-pocket \$63,900. RP 10.

For the damaged/glued stones, Wells also obtained replacement cost estimates from a Tacoma monument company. RP 5, 9-10; Ex 1. Wells testified the amounts shown on the far right hand column of exhibit 1 are the amounts the families would have to pay to have their stones replaced. RP 11. At the time of the restitution hearing, none of the stones had actually been replaced. RP 8.

Wells acknowledged that it is the families who actually own the headstones, not the cemetery. RP 6-7. Accordingly, although he righted the pushed-over headstones and repaired the broken ones, neither he nor the cemetery had any obligation to do so. RP 7. Wells explained that it is the cemetery's responsibility to maintain the gravesites, i.e. mow around headstones and ensure level gravesites, but it is the families' responsibility to maintain the headstones. RP 6-7, 29. "[B]ecause the stone is owned

² Wells is employed by the City. RP 5.

by the families[,] [i]t is their responsibilities [sic] if something was to happen to it[.]” RP 7.

Wells testified that approximately five families had contacted the cemetery: (1) the Kincaid family who had not indicated they wanted their stone replaced, but which would cost \$8,200; (2) the Schrengohst family, which would cost \$8,000; (3) the Riser family, which would cost \$4,500; (4) the Canedy family, whom the cemetery was not pursuing due to lack of follow-through,³ but which would cost \$4,500; and (5) the Dobbler family, which would cost \$7,600.⁴ RP 25-28, 42; Ex 1. Despite any obligation to replace any of the stones, the cemetery sought \$100,300 to replace all of the 23 stones. RP 29-30.

Defense counsel asked the court to impose replacement costs only for the five families who had come forward. RP 41-43. Counsel also

³ About the Canedy family, Wells testified:

We were in contact with that family and since -- from the beginning, but since then they have not really followed through, and since it's not our responsibility, you know, it's up to the family to do what they want, we haven't really, you know, pursued them.

RP 28.

⁴ Only the Risers and Schrengohsts had contacted the prosecutor's office. RP 39. According to the prosecutor, the other three families had contacted the cemetery and hoped to be in contact in the future. RP 39.

questioned the legitimacy of the \$63,900 total in resetting fees as an "exorbitant amount of money" for three days of work by three employees. RP 41-43.

The court disagreed, however, and imposed the entire amount requested by the cemetery:

We have to be realistic about this. And the realism here is that there was an incredible amount of damage, and I have to determine how much that is by a preponderance of the evidence. And I find from looking at all this, I don't want to play games with one or two items. I think the restitution request in its entirety is responsible, and I'm going to sign the order for the total restitution in the amount of \$170,037.31.

RP 44.

C. ARGUMENT

THE TRIAL COURT ERRED IN IMPOSING RESTITUTION THAT WAS NOT STATUTORILY AUTHORIZED.

D.J. does not challenge that part of the restitution order granting the cemetery its labor costs in resetting and repairing the pushed-over and broken stones. The cemetery is still functioning and has lots for sale. RP 36. Nor does D.J. challenge that part of the order granting the Riser and Shrengohst families the estimated replacement costs for their families' headstones.

However, D.J. does challenge that part of the order granting the cemetery a "resetting fee" for each of the 303 headstones. What it cost to reset and/or repair the stones was already accounted for by the imposition of labor costs. The "resetting fees" are not damage incurred by the cemetery but profit the cemetery would not have made but for D.J.'s vandalism. It is pure windfall for the cemetery.

Finally, D.J. challenges that part of the order granting the cemetery the remaining estimated replacement costs (\$100,000 minus \$4,500 (Riser) minus \$8,000 (Schrengohst) = \$87,500). Although three other families had apparently come forward, they had not indicated their desire to have their stones replaced. In any event, the cemetery does not own the stones. Consequently, it is not entitled to restitution to replace them.

The power to impose restitution derives entirely from statute. State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999); State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). "[R]estitution is authorized only by statute, and a trial court exceeds its statutory authority in ordering restitution where the loss suffered is not causally related to the offense committed by the defendant, or where the statutory provisions are not followed.'" State v. Woods, 90 Wn. App. 904, 907, 953 P.2d 834, rev. denied, 136 Wn.2d 1021 (1998) (quoting State v. Vinyard, 50 Wn. App.

888, 891, 751 P.2d 339 (1998) (citing State v. Hartwell, 38 Wn. App. 135, 141, 684 P.2d 778, overruled on other grounds by, State v. Krall, 125 Wn.2d 146 (1994))). A challenge to a court's statutory authority to order restitution may be raised for the first time on appeal. State v. T.A.D., 122 Wn. App. 290, 293 n.7, 95 P.3d 775 (2004) (on appeal T.A.D. was not limited to specific objection raised at restitution hearing) (citing State v. Fleming, 75 Wn. App. 270, 276 n.3, 877 P.2d 243 (1994) (lack of trial court jurisdiction may be raised for the first time on appeal) (citing RAP 2.5(a)(1))).

The general authority to impose restitution is found in RCW 13.40.190,⁵ which requires the court to order juvenile offenders "to make restitution to any persons who have suffered loss or damage as a result of

⁵ RCW 13.40.190(1) provides in part that:

[T]he court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted. The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter. . . . If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution.

the offense committed" The term "restitution" is defined in RCW

13.40.020(22):

"Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense if the offense is a sex offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender

The statute's list of allowable items of restitution is exclusive. State v. Hefa, 73 Wn. App. 865, 867, 871 P.2d 1093 (1994); see also State v. Martinez, 78 Wn. App. 870, 882, 899 P.2d 1302 (1995) (this statute does not authorize compensation for all damages resulting from criminal activity. The legislature specifically limited its application to restitution for: property loss or damage; injury to persons; lost wages; and counseling). Thus, in Hefa, this Court held restitution imposed for lost wages that did not result from physical injury were unauthorized by statute. Hefa, 73 Wn. App. at 867.

Because RCW 13.40.190 mandates restitution to "persons" and RCW 13.40.020 defines restitution as reimbursement by the offender to the "victim," it has been held that one must be both a "person" and a "victim"

to be entitled to restitution. State v. A.M.R., 147 Wn.2d 91, 51 P.3d 790 (2002). Under RCW 13.40.190(4), a "victim" is defined as "any person who has sustained emotional, physical, or financial injury to person or property as a direct result of the offense charged." RCW 13.40.190(4). The common law meaning of "person" includes "both natural and artificial persons, and therefore corporations." In re Brazier Forest Prods., Inc., 106 Wn.2d 588, 595, 724 P.2d 970 (1986). Accordingly, the Supreme Court has held that insurance companies qualify as victims under the above definition. State v. A.M.R., 147 Wn.2d at 97.

The court's order of restitution was unauthorized in two respects. First, the resetting fees do not fit within the definition of restitution. They are not "easily ascertainable damages for injury to or loss of property." RCW 13.40.020(22). Rather, the fees represent what the cemetery would have made had 303 of its clients called requesting removal and resetting of their stones after final engraving. But that is not what happened in this case. There was no removal and engraving service. The vast majority of stones were simply reset by hand. Although a couple dozen required glue, the cemetery was already reimbursed for the costs of resetting and repairing the damaged stones by the imposition of \$6,537.31 representing its labor costs. To also grant the cemetery such "resetting fees" is to grant the

cemetery a windfall that would not have been possible but for the vandalism. The definition of restitution does not allow for such profiteering. This Court should reverse that portion of the restitution order.

Second, the cemetery is not a "victim" with respect to the damaged headstones and therefore not entitled to the remaining estimated replacement costs for the stones not belonging to the Riser and Schrengohst families. Because the cemetery neither owns the stones nor has any obligation to replace them, it has suffered no loss as a result of the crime charged. "[I]nsurance companies which pay claims to an insured because of loss suffered from burglary or theft can be said to have suffered a loss under the principles of subrogation." State v. Barnett, 36 Wn. App. 560, 562, 675 P.2d 626 (1984), rev. denied, 101 Wn.2d 1011 (1984). The cemetery stands in a very different position, however, because it neither owns the stones nor has it paid any funds to the families for whom it may consequently be subrogated. See, e.g., State v. Martinez, 78 Wn. App. 870, 899 P.2d 1302 (1995).

The cemetery is in a position analogous to that of the insurer in State v. Martinez. Martinez was suspected of burning down his own motorcycle shop. As a result, his insurer Universal denied his claim. Martinez sued Universal, but his suit was dismissed after he was convicted of arson. As

part of his sentence, he was ordered to pay Universal the costs of its arson investigation as well as its attorneys' fees in defending against the civil suit. The appellate court held these costs were unauthorized, however, because Universal was not a victim. It had not suffered any loss as a direct result of the crime charged. It was neither a victim of the arson nor had it paid any funds to a victim of the arson for which it could be subrogated. Martinez, 78 Wn. App. 884. The same is true here. As neither the owner nor the insurer of the stones, the cemetery has suffered no loss to property as a direct result of D.J.'s vandalism.⁶ This Court should reverse that portion of the restitution award granting the cemetery the estimated replacement costs of the stones.

Whether this remedy seems inequitable given the damage that occurred, compensation is not the primary purpose of restitution, and the criminal process should not be used as a means to enforce civil claims. State v. Barr, 99 Wn.2d 75, 79, 658 P.2d 1247 (1983); State v. Barnett, 36 Wn. App. at 563. Accordingly, if more families come forward and wish to pursue civil claims against D.J., they may do so. In the absence of any

⁶ To the extent the cemetery may have lost curb appeal by the damaged stones, any such damage is intangible and therefore not authorized by statute. Regardless, the state made no effort to prove such damages.

legal obligation to replace the stones on their behalf, however, the cemetery should not collect in their place.

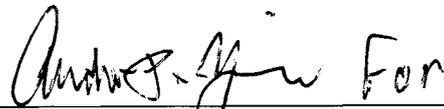
D. CONCLUSION

For the reasons stated above, the restitution order should be reversed and reduced by \$151,400.

DATED this 30 day of November, 2006.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in cursive script, appearing to read "Dana M. Lind For".

DANA M. LIND, WSBA No. 28239
Office ID No. 91051

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DEF. BRADLEY C. POOLE

DPA: FRED C. WIST

STATUS: R.H. 2-27-06

RESTITUTION INFORMATION

STATE OF WASHINGTON vs. DEVON K JAPHET
CAUSE NO. 05-8-01993-7

PIONEER
CEMETERY
(CITY OF SUMNER)

\$6537.31
\$63900.00
\$100,3000.00
\$170,737.31

LABOR TO RESET MARKERS
COSTS TO RESET MARKERS
COSTS TO REPLACE MARKERS
THAT WERE TOO DAMAGED TO
BE REPAIRED.

LABOR COSTS INCLUDE TIME (OVERTIME) TO RESET MARKERS, REPAIR
MARKERS AND GET ESTIMATES FOR REPAIR ON MARKERS THAT NEEDED TO
BE REPLACED.

THERE IS A PER MARKER FEE TO RESET THEM WHEN THEY ARE KNOCKED
OVER/FALL

JOINT AND SEVERAL:

CO-RESPONDENTS: JEFFREY READ 05-8-01992-9

CAROLYN J. SEYMOUR
Victim-Witness Advocate
02/15/06

Jeffrey Read 0580199209
 Devon Saphet 058019937

Pg.1 **Sept. 24, 2005 Saturday Night** **Pioneer Cemetery Vandalized**

Names	Year of Demise	Damage Results	Repaired	extensive damage **	Resetting	Repalcement Est.
F C Seman	1872	pushed over/ broken into 6 pieces			\$500.00	\$4,500.00
F C Seman		broken foundation/needs replaced				
M A Woolery	1877	pushed over/no damage			\$200.00	
Fred Woolery	1879	pushed over/no damage			\$200.00	
Jasper Woolery	1903	pushed over/no damage			\$200.00	
Otis Stone	1916	pushed over/no damage			\$200.00	
Emily Stone	1933	pushed over/no damage			\$200.00	
A H Woolery	1899	pushed over/no damage			\$200.00	
Lydia Guill	1926	pushed over/no damage			\$200.00	
Will George	1907	pushed over/no damage			\$200.00	
Thomas LaMar	1883	pushed over/broken into three pieces	Repaired	extensive damage **	\$400.00	\$4,500.00
Isaac Barr	1882	pushed over/broken into three pieces	Repaired		\$400.00	\$6,000.00
Edith Woolery	1933	pushed over/no damage			\$200.00	
Walter Woolery	1945	pushed over/no damage			\$200.00	
Ronald Finley	1937	pushed over/no damage			\$200.00	
Anna William	1892	pushed over/no damage			\$200.00	
Dora Woolery	1952	pushed over/no damage			\$200.00	
John Woolery	1924	pushed over/no damage			\$200.00	
Sarah E. Baker	1910	pushed over/no damage			\$200.00	
Rosa M Baker	1887	pushed over/no damage			\$200.00	
Flora Cheetham	1910	pushed over/no damage			\$200.00	
Reuben Baker	1912	pushed over/no damage			\$200.00	
Phoebe Walker	1911	pushed over/no damage			\$200.00	
James Walker	1917	pushed over/no damage			\$200.00	
Nancy Walker	1913	pushed over/no damage			\$200.00	
William Walker	1917	pushed over/no damage			\$200.00	
Claarence Bonney	1887	pushed over/no damage			\$200.00	
George Everett	1885	pushed over/no damage			\$200.00	
Kate Anderson	1978	pushed over/no damage			\$200.00	
Otto Anderson	1949	pushed over/no damage			\$200.00	
James Campbell	1977	pushed over/no damage			\$200.00	
Wilhelmina Campbell	1892	pushed over/no damage			\$200.00	
Ray Elmer Moriarty	1894	pushed over/no damage			\$200.00	

used to have double

Pg. 2		Sept. 24, 2005 Saturday Night Pioneer Cemetery Vandalized	
Maria Webster	1890	pushed over/no damage	\$200.00
Ruth McGarty	1880	pushed over/no damage	\$200.00
J W McGarty	1900	pushed over/no damage	\$200.00
John Thompson	1891	pushed over/no damage	\$200.00
Gow Alexander	1897	pushed over/no damage	\$200.00
Tani Yuki	1971	pushed over/vase holder broken *	\$100.00
Chiye Yuki	1936	pushed over/vase holder damaged *	\$100.00
Sakujiro Yuki	1984	pushed over-large chunk missing	\$100.00
William M. Kincaid	1870	pushed over/no damage	\$200.00
Elijah Meade	1899	pushed over/no damage	\$200.00
Joseph Betschart	1942	pushed over/no damage	\$200.00
Joseph Koltenbronn	1938	pushed over/no damage	\$200.00
Sophie Koltenbronn	1953	pushed over/no damage	\$200.00
Angus Cameron	1938	pushed over/no damage	\$200.00
Caroline Cameron	1938	pushed over/no damage	\$200.00
Fred Sitts	1945	pushed over/no damage	\$200.00
Bessie Marsh	1940	pushed over/no damage	\$200.00
Louis Marsh	1909	pushed over/no damage	\$200.00
Hermann Steuernagel (steurnagle) 1964		pushed over/no damage	\$200.00
Emmy Steuernagel (steurnagle) 1932		pushed over/no damage	\$200.00
Lucian Eberhart	1933	pushed over/no damage	\$200.00
Eleanor Eberhart	1979	pushed over/no damage	\$200.00
Fred Pendleton	1942	pushed over/no damage	\$200.00
Irene Pendleton	1991	pushed over/no damage	\$200.00
John Paulson	1940	pushed over/no damage	\$200.00
Louise Paulson	1978	pushed over/no damage	\$200.00
Walter Whitney	1937	pushed over/no damage	\$200.00
Margaret Whitney	1940	pushed over/no damage	\$200.00
Ferdinand Runge	1943	pushed over/no damage	\$200.00
Bertha Runge	1939	pushed over/no damage	\$200.00
Mary Druery	1888	pushed over/extensive damage	\$500.00
Lilie Maude Parker	1882	pushed over/ broken into 3 pieces	\$400.00
"		broken chips not found on Parker marker	\$2,000.00
		Repaired **	\$4,500.00
		Repaired *	\$5,000.00

Thomas Green	1932	pushed over/no damage		\$200.00
Elizabeth Green	1950	pushed over/no damage		\$200.00
Pg.3 Pioneer Cemetery Sat 24, 2005				
John Bachmann	1936	pushed over/no damage		\$200.00
Mary/Willis Langdon	1913	pushed over/no damage		\$200.00
Lucy Maranda	1902	pushed over/no damage		\$200.00
Susan Warner	1900	pushed over/chipped	pieces not repairable *	\$200.00
Harry Ryan	1888	pushed over/no damage		\$200.00
Jane Kincaid	1876	pushed over/no damage		\$200.00
Laura Kincaid	1877	pushed over/no damage		\$200.00
Meroe Kincaid	1878	pushed over/no damage		\$200.00
Peter Johnson	1936	pushed over/no damage		\$200.00
Anna Johnson	1940	pushed over/no damage		\$200.00
Mattie Mathews	1882	pushed over/no damage		\$200.00
Clarence Brunton	1957	pushed over/no damage		\$200.00
Lysle Brunton	1958	pushed over/no damage		\$200.00
Iva Atkinson	1961	pushed over/no damage		\$200.00
George Atkinson	1928	pushed over/no damage		\$200.00
Lydia Golden	1905	pushed over/no damage		\$200.00
Craig Golden	1939	pushed over/no damage		\$200.00
Amanda Fleetwood	1873	pushed over/no damage		\$200.00
Ivan Atkinson	1956	pushed over/no damage		\$200.00
George Atkinson	1898	pushed over/no damage		\$200.00
William Stewart	1885	pushed over/broken 6 pieces	Repaired *	\$400.00
Ann McArthur	1891	pushed over/no damage		\$200.00
Laura E. Siglar	1904	pushed over/no damage		\$200.00
Victor E. Siglar	1900	pushed over/no damage		\$200.00
J E "ED" Dyer	1947	pushed over/no damage		\$200.00
Jeannette Dyer	1948	pushed over/no damage		\$200.00
Linnie D. Parker	1900	pushed over/no damage		\$200.00
Name unreadable east of Orville Troup		Needs new concrete Foudation		\$200.00
Sarah Baker	1916	pushed over/no damage		\$200.00
Lena Johnston	1897	pushed over/ broken into 6 pieces - Repaired *		\$400.00
Gerald Emerson	1973	pushed over/no damage		\$200.00
				\$3,000.00
				\$2,200.00

Joyce E. Emerson	2000	pushed over/no damage	\$200.00	
Jeremiah Stilley	1924	pushed over/no damage	\$200.00	
Marte Huper	1944	pushed over/no damage	\$200.00	
Pg. 4 Pioneer Cemetery				
Peter Huper	1932	pushed over/no damage	\$200.00	
Martin Kaelin	1939	pushed over/no damage	\$200.00	
Frank LaJoie	1929	pushed over/no damage	\$200.00	
Eliza Maloney	1902	pushed over/ chipped Pieces unrepairable *	\$200.00	\$6,000.00
Thomas Fallowfield	1892	pushed over/ broken into 2 pieces & chipped - Repaired *	\$200.00	\$6,500.00
Charles Moriarty	1980	pushed over/no damage	\$200.00	
Ada Moriarty	1976	pushed over/no damage	\$200.00	
Barbara McEachran	1920	pushed over/no damage	\$200.00	
Maude Moriarty	1993	pushed over/no damage	\$200.00	
James Moriarty	2000	pushed over/no damage	\$200.00	
Isabelle Utas	1946	pushed over/no damage	\$200.00	
Edward Utas	1982	pushed over/no damage	\$200.00	
COLBURN	1892	pushed over/no damage	\$400.00	
Burglehaus Family	1917	pushed over/chipped pieces unrepairable *	\$500.00	
McLaren Family	1918	pushed over/chipped pieces unrepairable *	\$500.00	
Martha Canedy	1922	pushed over/extensive damage- Repaired **	\$250.00	\$4,500.00
Ralbur Candey	1916	pushed over/extensive damage- Repaired **	\$250.00	
Charles Moriarty	1891	pushed over- chipped *	\$400.00	Repair only
Daniel Dobler	1917	pushed over chipped all over *	\$250.00	\$1,000.00
Priscilla Harris Dobler	1921	pushed over- top chipped *	\$250.00	\$5,000.00
Gaisford (adelia)	1923	pushed over/no damage	\$250.00	\$2,600.00
Thomas Cole	1909	pushed over/no damage	\$200.00	
Evelyn Egan	1903	pushed over/no damage	\$200.00	
Daniel Herr	1911	pushed over - chipped Pieces unrepairable *	\$100.00	\$3,000.00
Theron Herr	1893	pushed over/ chipped Pieces unrepairable	\$100.00	
Harley Herr	1893	pushed over/ chipped Pieces unrepairable *	\$100.00	\$2,600.00
Cythia Herr	1937	pushed over/chipped Pieces unrepairable *	\$100.00	
Thompson (J V)	1908	pushed over	\$200.00	
Mariah Stilley	1923	pushed over/no damage	\$200.00	
Sarah E. Lenover	1894	foundation broken - needs to be replaced	\$400.00	\$4,500.00

"		Broken into 3 pieces- Repaired		
A.F. Stewart	1944	Pushed over/no damage	\$200.00	
Elsie Durgon Stewart	1976	pushed over/no damage	\$200.00	
John Kincaid	1897	pushed over/no damage	\$200.00	

Pg. 5 Pioneer Cemetery Vandalized

Son Scherting (John)	1946	pushed over/no damage	\$200.00	
Daughter Scherting	1950	pushed over/no damage	\$200.00	
Mother Scherting (Elizabeth)	1958	pushed over/no damage	\$200.00	
Dad Scherting (Andrew)	1949	pushed over/no damage	\$200.00	
Harvey Johnston	1908	pushed over/no damage	\$200.00	
James Schrengohst	1916	Pushed over - chipped Pieces unrepairable *	\$300.00	\$8,000.00
Tillie Schrengohst	1916	Pushed over - chipped Pieces unrepairable *	\$300.00	
Jerutia Stewart	1902	pushed over/no damage	\$200.00	
Anna Troup	1890	pushed over - broken into 2 pieces- Repaired	\$200.00	\$7,000.00
Carl Troup	1905	pushed over/broken into 2 pieces Repaired	\$200.00	
Leora V. Deatry	1944	pushed over/no damage	\$200.00	
Emile Deatry	1948	pushed over/no damage	\$200.00	
O J Kingery	1890	pushed over/no damage	\$200.00	
Sgt. Charles West		pushed over/no damage GAR 40th infantry Illinois	\$200.00	
William Kent	1945	pushed over/no damage	\$200.00	
Annie Kent	1954	pushed over/no damage	\$200.00	
William Kalp (Kaulp)	1944	pushed over/no damage	\$200.00	
Charles Nogleford	1944	pushed over/no damage	\$200.00	
Emelie (emily) Nogleford	1953	pushed over/no damage	\$200.00	
Charles A. Spencer	1993	pushed over/no damage	\$200.00	
Mary Richter	1945	pushed over/no damage	\$200.00	
George Richter	1971	pushed over/no damage	\$200.00	
Marie Balmer	1969	pushed over/no damage	\$200.00	
Ulrich Balmer	1945	pushed over/no damage	\$200.00	
Olive Hardefeldt	1883	pushed over/no damage	\$200.00	
John Clymer	1926	pushed over/no damage	\$200.00	
Eunice Clymer		pushed over/no damage	\$200.00	
Samuel Lott	1929	pushed over/no damage	\$200.00	
Nancy Lott	1924	pushed over/no damage	\$200.00	

Robert Lott	1888	pushed over/no damage	\$200.00
Alfred Lott	1888	pushed over/no damage	\$200.00
Ethel Lott	1888	pushed over/no damage	\$200.00
Fred Nevins	1920	pushed over/no damage	\$200.00
Dorothy Nevins	1920	pushed over/no damage	\$200.00

Pg. 6**Pioneer Cemetery Vandalize**

Saturday 9-24-2005

Mary Nevins	1918	pushed over/no damage	\$200.00
Anna Mather	1949	pushed over/no damage	\$200.00
Edward Mather	1960	pushed over/no damage	\$200.00
Ellen Conlon	1974	pushed over/no damage	\$200.00
Frank Conlon	1959	pushed over/no damage	\$200.00
Frank Spinning	1880	pushed over/no damage	\$200.00
Sidney Williams	1915	pushed over/no damage	\$200.00
W W Williams	1906	pushed over/no damage	\$200.00
Marion Williams	1920	pushed over/no damage	\$200.00
Fred Williams	1919	pushed over/no damage	\$200.00
Thomas Summer	1882	pushed over/no damage	\$200.00
Ethel Mahaffie	1981	pushed over/no damage	\$200.00
Ray Mahaffie	1967	pushed over/no damage	\$200.00
John McIlvaine (McIlvane)	1893	pushed over/no damage	\$200.00
Earl Burk		pushed over/no damage	\$200.00
Mary Dooly	1890	pushed over/no damage	\$200.00
Elizabeth Wilcox	1893	pushed over/no damage	\$200.00
Martha Weller	1891	pushed over/no damage	\$200.00
Clara Smith	1923	pushed over/no damage	\$200.00
Jeremiah Collins	1919	pushed over/no damage	\$200.00
Mary Collins	1927	pushed over/no damage	\$200.00
Fred Kling	1918	pushed over/no damage	\$200.00
Aldwyn Roberts	1933	pushed over/no damage	\$200.00
Thomas Roberts	1899	pushed over/no damage	\$200.00
David Roberts	1947	pushed over/no damage	\$200.00
Margaret Roberts	1961	pushed over/no damage	\$200.00
Alice Pugh	1939	pushed over/no damage	\$200.00

Lewis Pugh	1918	pushed over/no damage	\$200.00	
Wallace Hoyle	1917	* pushed over - chipped on top - Repaired	\$200.00	\$1,000.00
Harry Clymer	1918	pushed over/no damage	\$200.00	Repair only
Fredrick Conrad	1920	pushed over/no damage	\$200.00	
Johanna Conrad	1941	pushed over/no damage	\$200.00	
Grace Orton	1974	pushed over/no damage	\$200.00	

Pg. 7 Pioneer Cemetery Vandalized

Edward Orton	1975	pushed over/no damage	\$200.00	
Toney Surina	1914	pushed over/no damage	\$200.00	
Dr. J W Harris	1916	pushed over/no damage	\$200.00	
John Blackwell	1946	pushed over/no damage	\$200.00	
Susanna Blackwell	1955	pushed over/no damage	\$200.00	
Elizabeth Benson	1982	pushed over/no damage	\$200.00	
Roland Blackwell	1974	pushed over/no damage	\$200.00	
Flora Blackwell	1978	pushed over/no damage	\$200.00	
Yoshigi Suda	1916	pushed over/no damage	\$200.00	
Takematsu Suda	1967	pushed over/no damage	\$200.00	
Ida Mooney	1931	pushed over/no damage	\$200.00	
John Mooney	1930	pushed over/no damage	\$200.00	
Helen Mooney	1913	pushed over/no damage	\$200.00	
Job Fithian	1924	pushed over/no damage	\$200.00	
Zephaniah Swan	1917	pushed over/no damage	\$200.00	
Mary G. Swan	1916	pushed over/no damage	\$200.00	
Michael Sadler	1920	pushed over/no damage	\$200.00	
John Ellis	1918	pushed over/no damage	\$200.00	
L. L. Carr	1917	pushed over/no damage	\$200.00	
W. S. Carr	1911	pushed over/no damage	\$200.00	
Sarah Bedford	1917	pushed over/no damage	\$200.00	
William Bedfor	1916	pushed over/no damage	\$200.00	
William Morrell	1916	pushed over/no damage	\$200.00	
Adelia Gaisford	1923	pushed over/no damage	\$200.00	
Della Wright	1962	pushed over/no damage	\$200.00	
Thomas Wright	1942	pushed over/no damage	\$200.00	
W. E. Beckman	1917	pushed over/no damage	\$200.00	

Mabel Hanna	1935	pushed over/no damage	\$200.00
William Beckman	1925	pushed over/no damage	\$200.00
Rosa Beckman	1910	pushed over/no damage	\$200.00
Ray Nemeyer	1903	pushed over/no damage	\$200.00
Alfred Rand	1917	pushed over/no damage	\$200.00
Mary Rand	1925	pushed over/no damage	\$200.00
Esther Thompson	1922	pushed over/no damage	\$200.00

Pg. 8

Pioneer Cemetery Vandalized

John Thompson	1923	pushed over/no damage	\$200.00
Clara Rutledge	1914	pushed over/no damage	\$200.00
James Rutledge	1922	pushed over/no damage	\$200.00
Henry Scheyer	1913	pushed over/no damage	\$200.00
Sarah Byrd	1953	pushed over/no damage	\$200.00
Harvey Byrd	1946	pushed over/no damage	\$200.00
Thomas Brown	1918	pushed over/no damage	\$200.00
Amee (alice) Brown	1924	pushed over/no damage	\$200.00
Tony Rickert	1927	pushed over/no damage	\$200.00
Rudolph Michell	1928	pushed over/no damage	\$200.00
Elizabeth Nielsen	1979	pushed over/no damage	\$200.00
John Lee	1928	pushed over/no damage	\$200.00
R O Stevens	1913	pushed over - chipped	\$200.00
Charles Stevens	1917	pushed over - chipped base - pieces unrepairable *	\$200.00
Jess Oviatt	1923	pushed over/no damage	\$200.00
Susie Carter	1911	pushed over/no damage	\$200.00
Lena Laville	1948	pushed over/no damage	\$200.00
Anders Joel Sikstrom	1909	pushed over/no damage	\$200.00
John McKee	1907	pushed over/no damage	\$200.00
Emma Allen	1909	pushed over/no damage	\$200.00
August Gallert	1908	pushed over/no damage	\$200.00
Lizzie Magenton	1905	pushed over/no damage	\$200.00
Lucy Gervais	1920	pushed over/no damage	\$200.00
Edward Boles	1922	pushed over/no damage	\$200.00
Charley Frazier	1922	pushed over/no damage	\$200.00
Sarah Boles	1927	pushed over/no damage	\$200.00
		on top - pieces unrepairable *	\$6,500.00

Lawrence Nitka	1921	pushed over/no damage	\$200.00
John Laplante	1921	pushed over/no damage	\$200.00
Franz Styger	1921	pushed over/no damage	\$200.00
William McGlashan	1922	pushed over/no damage	\$200.00
Nellie Davis	1922	pushed over/no damage	\$200.00

Pg. 9 Saturday Night Sept. 24, 2005 Pioneer Cemetery Vandalized

Mari Myrand	1923	pushed over/no damage	\$200.00	
Asle Myard	1925	pushed over/no damage	\$200.00	
Levor Stave	1923	pushed over/no damage	\$200.00	
Ernest Lindsley	1922	pushed over/no damage	\$200.00	
Addie Sumey	1923	pushed over/no damage	\$200.00	
George Temby	1927	pushed over/no damage	\$200.00	
Bertha Temby	1946	pushed over/no damage	\$200.00	
Katie Gomersal	1930	pushed over/no damage	\$200.00	
John Kincaid	1897	pushed over/ damaged **	\$200.00	\$8,200.00
Adolph Grossmann	1930	pushed over/ damaged **	\$200.00	
Nancy Kincaid Grossmann	1914	pushed over/ damaged **	\$200.00	
			\$200.00	
			\$200.00	

Sunday Night Sept. 25, 2005 Pioneer Cemetery Vandalized

			\$200.00	
			\$200.00	
John Andrews	1908	pushed over/no damage	\$200.00	
Isabelle Andrews	1945	pushed over/no damage	\$200.00	
Mabel McGowan	1938	pushed over/no damage	\$200.00	
Lemuel Osgood	1938	pushed over/no damage	\$200.00	
Olice Osgood	1934	pushed over/no damage	\$200.00	
Emma Holst	1935	pushed over/no damage	\$200.00	
John Holst	1936	pushed over/no damage	\$200.00	
Charles Nolin	1935	pushed over/no damage	\$200.00	
Elin (ellen) Nolin	1947	pushed over/no damage	\$200.00	
Pauline Loeb	1953	pushed over/no damage	\$200.00	

Dan	1	\$33.41	\$33.41
Dan	(16)	\$28.50	\$456.00
Kevin	8.5	\$41.65	\$354.03
Kevin	1	\$31.40	\$31.40
Kevin	(16)	\$27.11	\$433.76
Darlene	80	\$25.99	\$2,079.20
Total labor costs			\$6,537.31
Pg. 11			
Labor			\$6,537.31
Resetting			\$63,900.00
Replacement			\$100,300.00
Total			\$170,737.31

*actual time
repair / reset
30 Apr 06*

all above data

303 gravesites total effected by the vandalism

26 gravesites dated before 1889

RESTITUTION DECLARATION

STATE OF WASHINGTON vs. JEFFREY B READ 05-8-01992-9
DEVON JAPHET 05-8-01993-7

The declaration represents the opinion and position of the victim or victim's representative. The Prosecuting Attorney will present this statement to the court but the court may or may not accept the amounts of loss represented, especially if supporting documentation is not included.

#1) Was any of your loss covered by insurance? YES NO (Circle one) If yes, please provide your insurance company information below:

Insurance Co _____ Adjuster _____
Address _____ Phone # _____
Policy # _____
Claim # _____
Paid by Insurance \$ _____ Deductible \$ _____

#2) List property or medical expenses for which you are claiming restitution, the value of the property and how it was damaged, e.g., stolen, broken.

Random damage by two (2) teenagers, how I don't know but, blunt force enough to bend the steel rods in my G. & G. Grandmother's headstone & shatter it. After 119 yrs that a travesty

#3) State how you calculated the monetary loss (e.g., repair estimate, replacement value, blue book, original purchase price, and please attach supporting documentation):

I went to the cemetery and consulted with John H on replacement value of same size at \$4,500.

Total loss **not** covered by insurance (i.e. deductible, over policy limits) _____
Total amount of loss covered by your insurance _____

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

2101 So 324th St # 85
10/3/05 - Federal Way, Wa 98003
Date and Place

Deanna Weitzel Riser
Signature

Return form to: Victim-Witness Assistance Service
5501 6th Avenue, Tacoma, WA 98406
Fax (253) 798-4019

PLEASE RESPOND BY

10-14-05

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

STATE OF WASHINGTON)

Respondent,)

vs.)

D.J.,)

Appellant.)

COA NO. 34779-2-II

NOV 30 2006
1:41 PM
DOCA
APPELLANTS

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF NOVEMBER 2006, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

KATHLEEN PROCTOR
PIERCE COUNTY PROSECUTING ATTORNEY
930 TACOMA AVENUE SOUTH
ROOM 946
TACOMA, WA 98402

DEVON JAPHET
12819 VALLEY AVENUE EAST
APT. 4
SUMNER, WA 98390

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF NOVEMBER, 2006.

x Patrick Mayovsky

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON)

Respondent,)

vs.)

D.J.,)

Appellant.)

COA NO. 34779-2-II

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF NOVEMBER 2006, I CAUSED A TRUE AND CORRECT COPY OF THE **DESIGNATION OF CLERK'S PAPERS AND EXHIBITS SUPPLEMENTAL** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- PIERCE COUNTY CLERK'S OFFICE
COUNTY-CITY BUILDING
930 TACOMA AVENUE SOUTH, ROOM 110
TACOMA, WA 98402

- KATHLEEN PROCTOR
PIERCE COUNTY PROSECUTING ATTORNEY
930 TACOMA AVENUE SOUTH
ROOM 946
TACOMA, WA 98402

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF NOVEMBER, 2006.

x *Patrick Mayovsky*