

NO. 79074-4
Consolidated with Nos. 78611-9 and 78876-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW R. RUTH,

Appellant.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
08 SEP -2 AM 8:09
BY RONALD R. CARPENTER
CLERK

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

The Honorable David F. Hulbert, Judge

PETITIONER'S SUPPLEMENTAL BRIEF

ANDREW P. ZINNER
Attorney for Petitioner

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>SUPPLEMENTAL ISSUE STATEMENT</u>	1
B. <u>SUPPLEMENTAL STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	4
1. WHERE THE SPECIAL VERDICT FORM FOR IMPOSING A "FIREARM" ENHANCEMENT INSTEAD ASKS JURORS TO FIND WHETHER AN OFFENDER WAS ARMED WITH A "DEADLY WEAPON," AN AFFIRMATIVE JURY RESPONSE AUTHORIZES THE TRIAL COURT ONLY TO IMPOSE A "DEADLY WEAPON" ENHANCEMENT.	4
a. <i>Summary of argument</i>	4
b. <i>Pertinent constitutional provisions</i>	5
c. <i>Washington's constitutional provisions provide broader protection of the right to a jury trial than the Sixth Amendment.</i>	5
i. <i>Textual language</i>	7
ii. <i>Textual differences</i>	7
iii. <i>State constitutional, statutory and common law history</i>	8
iv. <i>Structural differences</i>	12
v. <i>Whether the issue is of particular state interest or local concern</i>	13

TABLE OF CONTENTS (CONT'D)

	Page
vi. <i>Summary</i>	13
2. RUTH ADOPTS AND INCORPORATES BY REFERENCE THE ARGUMENTS OF PETITIONERS GRAHAM AND WILLIAMS- WALKER.	14
D. <u>CONCLUSION</u>	14

TABLE OF AUTHORITIES

	Page
 <u>WASHINGTON CASES</u>	
<i>In re Ellern</i> , 23 Wn.2d 219, 160 P.2d 639 (1945)	8
<i>McClaine v. Territory</i> , 1 Wash. 345, 25 P. 453 (1890)	12
<i>Pasco v. Mace</i> , 98 Wn.2d 87, 653 P.2d 618 (1982)	6-8
<i>Sofie v. Fibreboard Corp.</i> , 112 Wn.2d 636, 771 P.2d 711, 780 P.2d 260 (1989)	7, 10
<i>State ex. rel. Mullen v. Doherty</i> , 16 Wash. 382, 47 P. 958 (1897)	8, 10
<i>State v. Coma</i> , 69 Wn.2d 177, 417 P.2d 853 (1966)	10, 11
<i>State v. Conahan</i> , 10 Wash. 268, 38 P. 996 (1894)	12
<i>State v. Courtemarshe</i> , 11 Wash. 446, 39 P. 955 (1895)	12
<i>State v. Dhaliwal</i> , 150 Wn.2d 559, 79 P.3d 432 (2003)	7
<i>State v. Earls</i> , 116 Wn.2d 364, 805 P.2d 211 (1991)	6

TABLE OF AUTHORITIES (CONT'D)

Page

WASHINGTON CASES (CONT'D)

State v. Gunwall,
106 Wn.2d 54, 720 P.2d 808 (1986) 6, 7, 13

State v. Hicks,
163 Wn.2d 477, 181 P.3d 831 (2008) 5

State v. Hobble,
126 Wn.2d 283, 892 P.2d 85 (1995) 6

State v. Nguyen,
134 Wn. App. 863, 142 P.3d 1117 (2006),
review denied, 163 Wn.2d 1053 (2008) 11

State v. Recuenco,
163 Wn.2d 428, 180 P.3d 1276 (2008)
("Recuenco III") 4, 11, 12, 14

State v. Ruth,
No. 56318-1-I, 2006 LEXIS 1623 (July 31, 2006) 3

State v. Schaaf,
109 Wn.2d 1, 743 P.2d 240 (1987) 7, 12

State v. Smith,
150 Wn.2d 135, 75 P.3d 934 (2003),
cert. denied, 541 U.S. 909 (2004) 6-8, 13

State v. Strasburg,
60 Wash. 106, 110 P. 1020 (1910) 10

State v. Young,
123 Wn.2d 173, 867 P.2d 593 (1994) 12

TABLE OF AUTHORITIES (CONT'D)

Page

FEDERAL CASES

Blakely v. Washington,
542 U.S. 296, 124 S. Ct. 2531,
159 L. Ed. 2d 403 (2004) 2, 4

Washington v. Recuenco,
548 U.S. 212, 126 S. Ct. 2546,
165 L. Ed. 2d 466 (2006) 4

RULES, STATUTES AND OTHERS

Code of 1881, ch. 131, § 1890 8

Former RCW 9.94A.125 11

Laws 1961, ch. 138, § 1 10

RAP 10.1(g)(2) 14

RCW 9.41.010 1, 3

RCW 9.41.010(1) 1

RCW 9.94A.310 3, 11

RCW 9.94A.510 1

RCW 9.94A.602 1, 3, 11

RCW 9.95.015 10

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>RULES, STATUTES AND OTHERS (CONT'D)</u>	
U.S. Const. amend. 5	6
U.S. Const. amend. 6	4-7, 13, 14
Wash. Const. art. I, § 9	6
Wash. Const. art. I, § 21	5-8, 13, 14
Wash. Const. art. I, § 22	5-8, 13, 14

A. SUPPLEMENTAL ISSUE STATEMENT

May the trial court's imposition of a charged firearm sentence enhancement when the jury was instructed on and found only a deadly weapon enhancement be harmless error under Washington law?

B. SUPPLEMENTAL STATEMENT OF THE CASE

The state charged Matthew R. Ruth with two counts of first degree assault with "a .22 caliber handgun" as follows: "[A]t the time of the commission of the crime, the defendant . . . was armed with a firearm, as provided and defined in RCW 9.94A.510, RCW 9.41.010, and RCW 9.94A.602." CP 85.

The "to-convict" instructions required the jury to find that Ruth committed the assaults "with a firearm." Instructions 11, 13; CP 67, 69.

Jurors were also instructed that:

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of [the crimes].

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

Instructions 12, 14; CP 68, 70; RCW 9.41.010(1).

Finally, the court defined a "deadly weapon" as including "any firearm, whether loaded or not." Instruction 10; CP 66.

On the special verdict form, however, jurors were not asked to find whether Ruth was armed with a firearm when he committed the offenses. The forms instead read as follows: "Was the defendant Matthew Robert Ruth armed with a deadly weapon at the time of the commission of [crimes]." CP 49, 51. Defense counsel neither proposed nor objected to the special verdict forms. RP (12/8/2004) 284-85.

At sentencing, defense counsel argued that under *Blakely*¹ because the jury was discharged, the court was prohibited from using any sentencing enhancement at all and was restricted to sentencing Ruth within the standard sentencing range for first degree assault. RP (2/4/2005) 9.

The prosecutor disagreed, pointing out that in instructions 12 and 14 informed jurors the special verdict finding applied to a firearm and not a deadly weapon. RP (2/4/2005) 9-10. He also maintained that all evidence at trial showed Ruth used a .22 caliber handgun during the offenses. He called the discrepant language in the special verdict forms "a technical deficiency." RP (2/4/2005) 10. The trial court denied the defense motion, reasoning the jury was well-informed and unanimous in its understanding of what the special verdict called for. RP (2/4/2005) 11.

¹ *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

Defense counsel then argued that because the court instructed the jury a firearm was a "deadly weapon," and the jury found in the special verdict form only that Ruth was armed with a deadly weapon, the trial court was limited to applying deadly weapon enhancements. RP (2/4/2005) 11. The trial court denied the motion. RP (2/4/2005) 12-13.

Despite the jury's "deadly weapon" finding, the trial court made an additional factual finding in the Judgment and Sentence that "[a] special verdict/finding for use of a **deadly weapon** which was a **firearm** was returned on Count(s) I & II RCW 9.94A.602, 510, 310; 9.41.010." CP 30. The court therefore applied the 60-month firearm enhancement to each count. CP 32-35; RP (2/4/2005) 25-26.

On appeal, Ruth challenged the firearm enhancements as being contrary to the jury's verdicts. Brief of Appellant at 46-47. He also contended, based on the law at the time, the trial court's divergence from the verdicts could not be harmless error. The Court of Appeals rejected Ruth's arguments in an unpublished opinion. *State v. Ruth*, No. 56318-1-I, 2006 LEXIS 1623, at *20-*22 (July 31, 2006).

C. ARGUMENT

1. WHERE THE SPECIAL VERDICT FORM FOR IMPOSING A "FIREARM" ENHANCEMENT INSTEAD ASKS JURORS TO FIND WHETHER AN OFFENDER WAS ARMED WITH A "DEADLY WEAPON," AN AFFIRMATIVE JURY RESPONSE AUTHORIZES THE TRIAL COURT ONLY TO IMPOSE A "DEADLY WEAPON" ENHANCEMENT.

a. *Summary of argument*

A sentencing judge violates a defendant's Sixth Amendment right to a jury trial by imposing an enhanced sentence based on facts not reflected in the jury's verdict. *Blakely v. Washington*, 542 U.S. 296, 302-03, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004). But the Court more recently found subject to harmless error analysis a trial court's imposition of a firearm sentencing enhancement, despite a special verdict finding only use of a deadly weapon. *Washington v. Recuenco*, 548 U.S. 212, 222, 126 S. Ct. 2546, 2553, 165 L. Ed. 2d 466 (2006).

Although this Court did not directly reach the issue on remand, it held that in certain circumstances, Washington's constitutional rights to jury trial offer greater protection than the Sixth Amendment. *State v. Recuenco*, 163 Wn.2d 428, 440, 180 P.3d 1276 (2008) ("*Recuenco III*"). Ruth's case presents one of those circumstances. The more rigorous state constitutional rights to jury trial would be emasculated if a harmless error analysis could

excuse imposition of a "firearm" enhancement when the jury finds only the offender was armed with a deadly weapon. Consistent with Washington's broader constitutional jury trial rights, this Court should reject application of the harmless error rule.

b. Pertinent constitutional provisions

The framers of Washington's Constitution saw fit to guarantee the right to a jury trial in two provisions. Article I, section 21 declares in relevant part, "The right of trial by jury shall remain inviolate[.]" And a criminal defendant "shall have the right . . . to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed[.]" Article I, section 22.

The right to trial by jury under the federal constitution resides in the Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed[.]"

c. Washington's constitutional provisions provide broader protection of the right to a jury trial than the Sixth Amendment.

Our Supreme Court has in several contexts held the state constitutional rights to jury trial are broader than their federal counterpart. *See, e.g., State v. Hicks*, 163 Wn.2d 477, 492, 181 P.3d 831 (2008) (increased

protection of jury trials under state constitution allows the trial judge to find prima facie case of discrimination when state removes only remaining venire member from a constitutionally cognizable group); *State v. Smith*, 150 Wn.2d 135, 156, 75 P.3d 934 (2003) (finding although "*Gunwall* analysis"² shows jury trial rights under article I, sections 21 and 22 are generally broader than under the Sixth Amendment, right to jury trial does not extend to determination of prior convictions at sentencing), *cert. denied*, 541 U.S. 909 (2004); *State v. Hobble*, 126 Wn.2d 283, 298, 892 P.2d 85 (1995) ("The right to trial by jury under the Washington State Constitution is not coextensive with the federal right."); *Pasco v. Mace*, 98 Wn.2d 87, 100, 653 P.2d 618 (1982) (unlike federal constitution, article I, sections 21 and 22 guarantee jury trial for anyone accused of a crime); *cf. State v. Earls*, 116 Wn.2d 364, 374-75, 805 P.2d 211 (1991) ("resort to the *Gunwall* analysis is unnecessary because this court has already held that the protection of article 1, section 9 is coextensive with, not broader than, the protection of the Fifth Amendment.").

This Court uses six factors to determine whether state constitutional provisions provide greater protection than comparable federal rights: (1)

² This Court in *State v. Gunwall* articulated the test for determining whether state constitutional provisions afford more protection than their federal analogues. 106 Wn.2d 54, 61-62, 720 P.2d 808 (1986).

textual language; (2) significant differences in the texts of the federal and state constitutions; (3) state constitutional and common law history; (4) preexisting state law; (5) differences in structure between the federal and state constitutions; and (6) matters of particular state interest or local concern. *Gunwall*, 106 Wn.2d at 61-62. This Court will generally not make such a determination if these criteria are not discussed. *State v. Dhaliwal*, 150 Wn.2d 559, 575-576, 79 P.3d 432 (2003).

i. Textual language

The accused's state constitutional right to a jury trial for offenses is "inviolable." *State v. Smith*, 150 Wn.2d at 150. "The term 'inviolable' connotes deserving of the highest protection." *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 656, 771 P.2d 711, 780 P.2d 260 (1989) (state's limit on recoverable damages for tort violates right to trial by jury).

ii. Textual differences

While article I, section 22 and the Sixth Amendment have comparable language, article I, section 21 has no federal counterpart. *State v. Schaaf*, 109 Wn.2d 1, 13-14, 743 P.2d 240 (1987). This Court noted the "[s]ignificant differences" in the language of the state and federal constitutional jury trial provisions. *Pasco*, 98 Wn.2d at 97. That two different constitutional provisions guarantee Washington criminal defendants

the right to a jury trial demonstrates the general importance of the right. *Smith*, 150 Wn.2d at 151.

iii. State constitutional, statutory and common law history

Article I, section 21 maintains the right to jury trial as it existed at common law in the territory at the time of its adoption. *Pasco*, 98 Wn.2d at 96; *see State ex. rel. Mullen v. Doherty*, 16 Wash. 382, 384-85, 47 P. 958 (1897) ("The effect of the declaration of the constitution . . . is to provide that the right of trial by jury as it existed in the territory at the time when the constitution was adopted should be continued unimpaired and inviolate."). Having established article I, section 21 preserves inviolate the right to jury trial as it existed in 1889, it is necessary to examine the scope of the right under statute and at common law at the time of statehood. *In re Ellern*, 23 Wn.2d 219, 224, 160 P.2d 639 (1945). This assists courts in determining what the framers intended when they wrote article I, section 21, as well as section 22. *Smith*, 150 Wn.2d at 154.

"From the earliest history of this state, the right of trial by jury has been treasured, and this right has been protected even in courts of limited jurisdiction." *Pasco*, 98 Wn.2d at 99 (1982) (citing Code of 1881, ch. 131, § 1890, p. 320). The 1881 Code is the statutory foundation for the right to jury at the time Washington became a state. Chapter LXVI of the Code

described the "Rights of Parties Accused." Among the portions addressing the right to jury was section 3-766 providing: "On the trial of any indictment the party accused shall have the right . . . to a speedy public trial by an impartial jury[.]"

Section 4-767, in turn, limited the power of the judge by providing, "No person indicted for an offense shall be convicted thereof unless . . . by the verdict of a jury accepted and recorded in open court." Similarly, section 7-770 does not mention the jury, but defines the limits of the court's ability to impose punishment, "No person charged with any offense against the law shall be punished for such offense, unless he shall have been duly and legally convicted thereof in a court having competent jurisdiction of the case and of the person." Even before statehood, it was contemplated the sentence could not exceed that authorized by the verdict.

As to the division of labor and the jury's responsibility at trial, Ch. LXXXVII, section 316-1078 provided: "Issues of fact joined on an indictment shall be tried by a jury of twelve persons[.]" On the other hand, section 326-1088, provided: "The court shall decide all questions of law which shall arise in the course of the trial." Criminal procedure in Washington at the time of statehood, therefore, contemplated the jury as the fact-finding body.

This Court's decisions have also consistently recognized the jury's role as finders of fact. *Mullen*, 16 Wash. at 385 (quoting Code of 1881 section 248, which guaranteed to parties the right "in an action at law, upon an issue of fact, to demand a trial by jury."); *see Sofie*, 112 Wn.2d at 645 ("being close in time to 1889, [*Mullen*] provides some contemporary insight on the scope issue"); *State v. Strasburg*, 60 Wash. 106, 116, 110 P. 1020 (1910) (in striking down statute prohibiting criminal defendant from presenting insanity defense to jury, Court emphasized, "The question of the insanity of the accused at the time of committing the act charged being one of fact when sought to be shown in his behalf, it needs no citation of authorities . . . to demonstrate that it is, and always has been, a question of fact for the jury to determine.").

Consistent with this demonstrated intent by Washington's founders, lawmakers and this Court, the Legislature in 1961 charged juries with determining whether an offender is armed for purposes of sentencing enhancement. RCW 9.95.015; Laws 1961, ch. 138, § 1. Before that provision took effect, the parole board determined whether an offender possessed a deadly weapon at the time of the offense. *State v. Coma*, 69 Wn.2d 177, 184, 417 P.2d 853 (1966). This Court found the jury

deliberation room was "where the determination belongs." *Coma*, 69 Wn.2d at 185 (citing a recommendation of the Legislative Council).

Under the 1961 laws, a mandatory minimum term for being armed with a deadly weapon was available to the parole board only upon a specific finding by the trial judge or a special verdict by the jury. *Coma*, 69 Wn.2d at 186. This Court in *Coma* emphasized that, consistent with chapter 138, "the Board should refrain from [a]ny consideration of the use or non-use of a deadly weapon in its administrative determination fixing the time to be served[.]" *Coma*, 69 Wn.2d at 186.

The Sentencing Reform Act continued the practice of jury fact-finding of weapons enhancements, which is now codified in RCW 9.94A.602. *Recuenco III*, 163 Wn.2d at 438 (citing former RCW 9.94A.125 and .310); *see State v. Nguyen*, 134 Wn. App. 863, 870, 142 P.3d 1117 (2006) (observing courts historically were authorized to empanel juries "as demonstrated by the long line of cases involving habitual criminal proceedings, for which no statute authorizes jury trials."), *review denied*, 163 Wn.2d 1053 (2008).

Washington's constitutional, statutory and common law history mandate jury fact-finding, including for sentencing enhancement purposes. This well-established right would, however, be a hollow one if, through

harmless error analysis, a reviewing court could excuse a trial court's sentencing enhancement even where it directly conflicts with the jury's explicit finding.³

iv. *Structural differences*

The federal constitution grants limited powers while the state constitution limits the otherwise unqualified power of the state. *Schaaf*, 109 Wn.2d at 16. This fundamental difference "will always point toward pursuing an independent state constitutional analysis[.]" *State v. Young*, 123 Wn.2d 173, 180, 867 P.2d 593 (1994). To the extent the provisions

³ Ruth acknowledges this Court applied harmless error analysis to erroneous jury instructions at the time of the adoption of the state constitution. *See, e.g., State v. Courtemarshe*, 11 Wash. 446, 449-50, 39 P. 955 (1895); *State v. Conahan*, 10 Wash. 268, 268-69, 38 P. 996 (1894); *McClaine v. Territory*, 1 Wash. 345, 351-53, 25 P. 453 (1890). Justice Fairhurst relied on these cases to support her conclusion harmless error analysis applied in *Recuenco III*, where the trial court imposed a 36-month firearm sentencing enhancement even though the jury found Recuenco was armed only with a deadly weapon. 163 Wn.2d at 445-46 (Fairhurst, J., dissenting).

But in those cases, the instructional errors were: (1) failing to give a lesser included offense instruction the evidence supported (*Courtemarshe* check spelling); (2) improperly shifting the burden of proving justification to the defendant (*Conahan*); and (3) omitting an essential element (*McClaine*). Each error was qualitatively different than the error in Ruth's case. In none of those cases did this Court sanction a trial court's disregard for the jury's verdict as did the Court of Appeals in Ruth's case. *See Recuenco III*, 163 Wn.2d at 440 (absent a jury determination Recuenco was armed with a "firearm," trial court lacked authority to impose firearm sentence enhancement).

of article I sections 21 and 22 directly limit the state's otherwise plenary power, they warrant the rigorous enforcement of the jury trial guarantee. *Gunwall*, 106 Wn.2d at 66.

v. *Whether the issue is of particular state interest or local concern*

The conduct of criminal trial in state courts is a matter of particular state or local concern and does not require adherence to a national standard. *Smith*, 150 Wn.2d at 152. This Court is thus free to give full effect to the intent of the framers of the Washington Constitution.

vi. *Summary*

This discussion and application of the *Gunwall* factors warrants independent state constitutional analysis. Under this analysis, it is apparent from the rich history of jurors' preeminent role as fact-finders that applying a harmless error test to an erroneous weapons enhancement special verdict would undermine the intent of the framers of article I, sections 21 and 22. As demonstrated, the right to trial by jury under the federal constitution, embodied in the Sixth Amendment, is not as broad as Washington's right. Therefore, while the Sixth Amendment may permit a harmless error analysis here, article I, sections 21 and 22 do not. Ruth requests this Court to reject the use of harmless error in these circumstances. By ignoring the jury's

"deadly weapon" finding reflected in the special verdict form, the trial court violated Ruth's state constitutional right to jury fact-finding.

2. RUTH ADOPTS AND INCORPORATES BY REFERENCE THE ARGUMENTS OF PETITIONERS GRAHAM AND WILLIAMS-WALKER.

Where cases are consolidated for review, a party may adopt by reference any part of the brief of another. RAP 10.1(g)(2). Ruth adopts and incorporates Graham's arguments regarding the "law of the case" doctrine, prohibition against comments on the evidence and directing a verdict. Ruth further adopts and incorporates the supplemental arguments of Graham and Williams-Walker under *Recuenco III*.

D. CONCLUSION

Washington's right to jury fact-finding, embodied in article I, sections 21 and 22, is broader than the corresponding Sixth Amendment right. Applying a harmless error test to an erroneous special verdict form

contravenes the state jury trial right. This Court therefore should reject a harmless error test and find the trial court erred by imposing a firearms sentencing enhancement in the face of the jury's "deadly weapon" finding.

DATED this 29 day of August, 2008.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



ANDREW P. ZINNER
WSBA No. 18631
Office ID No. 91051

Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	NO. 79074-7
)	Consol. with Nos. 78611-9 and 78876-6
MATTHEW R. RUTH,)	
)	
Appellant.)	

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 29TH DAY OF AUGUST 2008, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITIONER'S SUPPLEMENTAL BRIEF** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- SPOKANE COUNTY PROSECUTING ATTORNEY'S OFFICE
PUBLIC SAFETY BUILDING, 1ST FLOOR
1100 WEST MALLON
SPOKANE, WA 99260

- SNOHOMISH COUNTY PROSECUTOR'S OFFICE
MISSION BUILDING
3000 ROCKEFELLER AVENUE
EVERETT, WA 98201

- SUSAN GASCH
GASCH LAW OFFICE
P.O. BOX 30339
SPOKANE, WA 99223

- SUSAN WILK
WASHINGTON APPELLANTE PROJECT
1511 3RD AVENUE
SUITE 701
SEATTLE, WA 98101

SIGNED IN SEATTLE WASHINGTON, THIS 29TH DAY OF AUGUST 2008.

x Patrick Mayovsky