

No. 80195-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RONALD QUISMUNDO,

Petitioner.

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2008 MAR -5 PM 4:58

ON REVIEW FROM THE COURT OF APPEALS, DIVISION ONE

SUPPLEMENTAL BRIEF OF PETITIONER

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
08 MAR -7 AM 7:51

M. RONALD R. CORPENTON  
CLERK

LILA J. SILVERSTEIN  
DAVID L. DONNAN  
Attorneys for Petitioner

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

**TABLE OF CONTENTS**

A. INTRODUCTION ..... 1

B. STATEMENT OF THE CASE ..... 2

C. ARGUMENT ..... 8

    1. THE LOWER COURTS FAILED TO APPLY THIS COURT'S BRIGHT-LINE RULE FROM *PELKEY* AND *VANGERPEN*, REQUIRING REVERSAL..... 8

        a. After it has rested its case-in-chief, the State may not amend an information to correct its failure to charge a crime. .... 8

        b. Allowing the State to reopen its case to amend the information would render the *Pelkey* rule a nullity and would encourage carelessness and sandbagging..... 10

        c. The remedy is reversal and dismissal without prejudice..... 11

    2. IN THE ALTERNATIVE, THIS COURT SHOULD REVERSE BECAUSE THE SECOND AMENDED INFORMATION IS DEFECTIVE..... 15

D. CONCLUSION..... 18

## TABLE OF AUTHORITIES

### **Washington Supreme Court Decisions**

<u>Auburn v. Brooke</u> , 119 Wn.2d 623, 836 P.2d 212 (1992).....	8, 11
<u>State v. Ackles</u> , 8 Wash. 462, 36 P. 597 (1894).....	8
<u>State v. Dallas</u> , 126 Wn.2d 324, 892 P.2d 1082 (1995) .....	14
<u>State v. Danforth</u> , 97 Wn.2d 255, 643 P.2d 882 (1982).....	16
<u>State v. Holt</u> , 104 Wn.2d 315, 704 P.2d 1189 (1985).....	14
<u>State v. Kjorsvik</u> , 117 Wn.2d 93, 812 P.2d 86 (1991)....	8, 11, 16, 17
<u>State v. Leach</u> , 113 Wn.2d 679, 782 P.2d 552 (1989).....	16
<u>State v. Markle</u> , 118 Wn.2d 424, 823 P.2d 1101 (1992)....	10, 12, 13
<u>State v. McCarty</u> , 140 Wn.2d 420, 998 P.2d 296 (2000) .....	11, 17
<u>State v. Pelkey</u> , 109 Wn.2d 484, 745 P.2d 854 (1987).....	passim
<u>State v. Purdom</u> , 106 Wn.2d 745, 725 P.2d 622 (1986).....	9
<u>State v. Schaffer</u> , 120 Wn.2d 616, 845 P.2d 281 (1993).....	9
<u>State v. Simon</u> , 120 Wn.2d 196, 840 P.2d 172 (1992) ..	5, 12, 13, 14
<u>State v. Vangerpen</u> , 125 Wn.2d 782, 888 P.2d 1177 (1995) .	passim

### **Washington Court of Appeals Decisions**

<u>Seattle v. Termain</u> , 124 Wn. App. 798, 103 P.3d 209 (2004) .	3, 4, 5, 13
<u>State v. Brinkley</u> , 66 Wn. App. 844, 837 P.2d 20 (1992) .....	10, 11
<u>State v. Clowes</u> , 104 Wn. App. 935, 18 P.3d 596 (2001) .....	16
<u>State v. Sisemore</u> , 114 Wn. App. 75, 55 P.3d 1178 (2002).....	16

State v. Washington, 135 Wn. App. 42, 143 P.3d 606 (2006) ..... 16

**Constitutional Provisions**

Const. art. 1, § 22 ..... 8

U.S. Const. amend. 6 ..... 8

**Rules**

CrR 2.1 ..... 1, 6, 9, 10

## A. INTRODUCTION

After the State rested its case against Ronald Quismundo, Mr. Quismundo moved to dismiss the charge against him because the information failed to charge a crime, thus violating his right to notice under article 1, section 22 of the Washington Constitution. In response, the State moved to reopen its case to amend the information and add the missing element, incorrectly arguing that amendment was proper because there was no prejudice. Mr. Quismundo properly argued that prejudice was irrelevant under this Court's decision in State v. Pelkey, 109 Wn.2d 484, 487, 745 P.2d 854 (1987).

Although Mr. Quismundo then argued that dismissal with prejudice was the appropriate remedy, he simultaneously provided the trial court with cases explaining that (a) the State may not amend a constitutionally defective information after resting its case, and (b) the proper remedy is dismissal without prejudice to the State's ability to refile the charge.

The trial court nevertheless granted the State's motion to reopen its case to amend the information, citing CrR 2.1 and the absence of prejudice. The trial court stated that if Mr. Quismundo could show prejudice to his defense, it would consider dismissing

the case without prejudice to the State's ability to refile the charge. Mr. Quismundo reiterated that prejudice was irrelevant, and preserved his objection to the untimely amendment of the constitutionally defective information.

The Court of Appeals affirmed the trial court's decision on the basis that Mr. Quismundo had incorrectly stated that dismissal with prejudice was the remedy for an information that failed to charge a crime. The Court of Appeals did not cite any cases for the proposition that the trial court has the authority to grant an improper State's motion to amend simply because the defendant made an improper request to dismiss with prejudice.

Mr. Quismundo asks this Court to apply Pelkey, reverse his conviction, and dismiss the case without prejudice to the State's ability to refile the charge.

#### B. STATEMENT OF THE CASE

Ronald Quismundo was tried for the crime of violating a court order. After the State rested its case, Mr. Quismundo moved to dismiss the charge because the amended information failed to charge a crime. RP 83. The defense attorney stated:

I'd like to address the court's attention to the amended information that's been filed on this matter. This is the official information that charges Mr. Quismundo with a crime.

I have reviewed the amended information several times. I don't believe the amended information alleges that Mr. Quismundo ever violated the order, or had contact with Kelly Quismundo.

I believe that it's missing an essential element of the crime, and I believe that under City of Seattle v. Termain, [124 Wn. App. 798, 103 P.3d 209 (2004)], where it's missing an essential element of the crime, it's insufficient to support a conviction. So at this point I'd move to dismiss the charge.

RP 83-84.

The prosecutor acknowledged that he committed a "scrivener's error" that resulted in the omission of an essential element of the crime. RP 84. Indeed, both the mens rea (willful) and the actus reus (contact) of the element were missing. The amended information lacked a main clause, and consisted only of several subordinate clauses strung together:

DOMESTIC VIOLENCE COURT ORDER VIOLATION, committed as follows: That the defendant, on or about the 31<sup>st</sup> day of May, 2005, with knowledge that he/she was the subject of a protection order, restraining order, or no contact order pursuant to RCW 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34, or a valid foreign protection order as defined in RCW 26.52.020, as per Snohomish County Judgment and Sentence #04-1-00021-6 ordered by Judge Bowden on February 18, 2004, protecting Kelly Quismundo and Snohomish County Judgment and Sentence #00-1-01330-7 ordered on November 9, 2000 protecting Kelly Quismundo, and said order being valid and in effect, and the defendant had at least two prior convictions for violating the provisions of a no contact order issued under RCW 10.99, 26.09, 26.10, 26.26, 26.50 or 74.34 or a valid foreign protection order as defined in RCW 26.52.020, and the victim was a

family or household member, as defined in RCW 10.99.020; proscribed by RCW 26.50.110, a felony.

CP 53.

Although the State had already rested its case-in-chief, the prosecutor argued that the State should be allowed to reopen to amend the information because there was no actual notice problem, and hence, no prejudice. RP 84-85. Mr. Quismundo argued that this was irrelevant:

This is not a scrivener's error. This [isn't] a period in place of a comma or something of that nature. This document is lacking an essential element alleging that Mr. Quismundo contacted Kelly Quismundo. The essential elements rule doesn't go into any kind of, "well, he should have known" analysis. That's what [the prosecutor] is asking the court to do. The essential elements rule makes it very clear that if the information is lacking an element, the charge will not be supported.

RP 85-86. Mr. Quismundo then stated that under Termain and the cases cited therein, the appropriate remedy was dismissal with prejudice. RP 86.

The trial court took a recess to read Termain and State v. Pelkey, 109 Wn.2d 484, 487, 745 P.2d 854 (1987). RP 86. Pelkey held that under article 1, section 22 of the state constitution, a criminal charge may not be amended after the State has rested its case in chief unless the amendment is to a lesser degree of the

same charge or a lesser included offense. Pelkey, 109 Wn.2d at 491. Termain, citing this Court's decision in State v. Simon, 120 Wn.2d 196, 199, 840 P.2d 172 (1992), held that the remedy for a constitutionally defective charging document is dismissal without prejudice to the prosecution for the refiling of charges. Termain, 124 Wn. App. at 803.

After the recess, the prosecutor stated, "Pelkey is a different situation, so that doesn't apply." RP 86-87. The prosecutor suggested three options: (1) allowing the State to reopen its case in order to amend the information – "the most expeditious and appropriate response and my request," (2) dismissal without prejudice, or (3) "simply proceed" on the defective information. RP 87-88.

Mr. Quismundo responded, "State v. Pelkey says very clearly that a criminal charge may not be amended after a state has rested its case in chief unless the amendment is to a lesser degree of the same charge or a lesser included offense." RP 89. He noted that this was a constitutional issue, and cited article 1, section 22. He again requested dismissal with prejudice. RP 89.

The court ruled:

Well, I'm going to grant the prosecution's motion to reopen the case and allow the prosecution to file a second information. If the defense wishes a continuance, they can certainly have the continuance.

[...]

The defendant has shown no prejudice or surprise or hindrance of his defense.

RP 89-90. The court went on to say that if the defendant could show prejudice or surprise or hindrance of his defense, the court would consider a motion to dismiss without prejudice. RP 90. The court based its decision on CrR 2.1, notwithstanding Mr. Quismundo's insistence that the court rule is circumscribed by the constitution, as explained in Pelkey. RP 91-93.

Mr. Quismundo then considered the court's offer of a continuance, and ultimately rejected it. RP 93-103. Mr. Quismundo reiterated, though, that he did "not wish to waive any kind of appeal issue." RP 103. The court stated for the record that Mr. Quismundo's "objection is noted and obviously you will be able to take appeal from the decision allowing the information to be so amended." RP 104.

The State filed a second amended information, adding the phrase "did violate the orders." CP 48. Mr. Quismundo was convicted as charged on the second amended information. CP 19-31.

The Court of Appeals affirmed the conviction, holding that the trial court did not abuse its discretion by granting the State's late motion to amend the information to add an essential element because Mr. Quismundo had mistakenly argued that the proper remedy was dismissal with prejudice rather than dismissal without prejudice. Slip Op. at 1. According to the Court of Appeals, "The trial court indicated that it would entertain a motion for dismissal without prejudice, but Quismundo never chose to make such a motion." Slip Op. at 3. The Court of Appeals did not address the fact that the trial court only stated it would entertain a motion to dismiss without prejudice if Mr. Quismundo could show he was prejudiced by the State's untimely amendment. RP 90.

Mr. Quismundo asks this Court to apply Pelkey, reverse his conviction, and dismiss the charge without prejudice to the State's ability to refile the charge.

### C. ARGUMENT

#### 1. THE LOWER COURTS FAILED TO APPLY THIS COURT'S BRIGHT-LINE RULE FROM PELKEY AND VANGERPEN, REQUIRING REVERSAL.

a. After it has rested its case-in-chief, the State may not amend an information to correct its failure to charge a crime. Article 1, section 22 of our state constitution<sup>1</sup> and the Sixth Amendment to the federal constitution<sup>2</sup> prohibit the State from trying an accused person for an offense not charged. State v. Pelkey, 109 Wn.2d 484, 487, 745 P.2d 854 (1987). An offense is not properly charged unless the information sets forth every essential element of the crime, both statutory and nonstatutory. State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). The charging document must contain: (1) the elements of the crime charged, and (2) a description of the specific conduct of the defendant which allegedly constituted that crime. Auburn v. Brooke, 119 Wn.2d 623, 630, 836 P.2d 212 (1992). "This doctrine is elementary and of universal application, and is founded on the plainest principle of justice." Pelkey, 109 Wn.2d at 488 (quoting State v. Ackles, 8 Wash. 462, 464-65, 36 P. 597 (1894)).

---

<sup>1</sup> "In criminal prosecutions the accused shall have the right ... to demand the nature and cause of the accusation against him ...."

<sup>2</sup> "In all criminal prosecutions, the accused shall ... be informed of the nature and cause of the accusation ...."

If the State fails to meet this “essential elements” rule, it may move to amend the information to correct the error at any time prior to resting its case-in-chief. Pelkey, 109 Wn.2d at 490; State v. Schaffer, 120 Wn.2d 616, 621, 845 P.2d 281 (1993). Timely motions to amend are liberally granted. See Pelkey, 109 Wn.2d at 490; CrR 2.1(d). In turn, a defendant may move to continue the case to meet the new charge. Id. Indeed, if the State has waited until the day trial has begun (or later) to amend the information, the court must grant a continuance if the defendant requests one. State v. Purdom, 106 Wn.2d 745, 749, 725 P.2d 622 (1986).

Once the State rests its case, however, it may not amend the information to correct its failure to charge a crime. State v. Vangerpen, 125 Wn.2d 782, 790-91, 888 P.2d 1177 (1995). This is a per se prohibition:

A criminal charge may not be amended after the State has rested its case in chief unless the amendment is to a lesser degree of the same charge or a lesser included offense. Anything else is a violation of the defendant’s article 1, section 22 right to demand the nature and cause of the accusation against him or her.

Pelkey, 109 Wn.2d at 491.

This prohibition applies regardless of whether the omission of an element was simply a clerical error. Vangerpen, 125 Wn.2d

at 790. Nor does it matter that the defendant was aware of the element despite its absence from the charging document. Id. Because the defect is constitutional, CrR 2.1's prejudice analysis does not apply. Pelkey, 109 Wn.2d at 490. Allowing the prosecutor to amend the information to meet the essential elements rule after the State has rested its case constitutes "reversible error per se even without a defense showing of prejudice." State v. Markle, 118 Wn.2d 424, 437, 823 P.2d 1101 (1992). Offering a continuance does not cure the error. See id. at 428.

b. Allowing the State to reopen its case to amend the information would render the *Pelkey* rule a nullity and would encourage carelessness and sandbagging. Here, the State circumvented the Pelkey prohibition by reopening its case solely to amend the constitutionally defective information. The prosecutor argues that because the amendment then technically occurred during the State's case-in-chief, there was no error. The State misses the point.

It is true that a trial court has the discretion to allow a party to reopen its case to present additional evidence. State v. Brinkley, 66 Wn. App. 844, 848, 837 P.2d 20 (1992). In exercising its discretion, the trial court is to weigh the equities, including the prejudice to the

opposing party. Id. at 848, 850-51. But under Pelkey, allowing amendment of a constitutionally defective information after the State rests is prejudicial per se. Pelkey, 109 Wn.2d at 491; Vangerpen, 125 Wn.2d at 791. Thus, allowing the State to reopen its case to amend a constitutionally defective information is always an abuse of discretion.

The State's proposed rule renders Pelkey a nullity, and would encourage poor behavior on both sides. There would no longer be an incentive for prosecutors to be careful when drafting charging documents, because they could amend them at any time without cost. As for defendants, if Mr. Quismundo's conviction is affirmed, the lesson will be to lie in wait and only challenge charging documents after verdict. If Mr. Quismundo had done that here, he would have won a reversal and dismissal without prejudice. See State v. McCarty, 140 Wn.2d 420, 425-28, 998 P.2d 296 (2000); Auburn v. Brooke, 119 Wn.2d at 636, 638; Kjorsvik, 117 Wn.2d at 106. This Court should resist the State's implied invitation to overrule Pelkey.

c. The remedy is reversal and dismissal without prejudice.

Where, as here, the trial court erroneously allowed the State to amend a constitutionally defective information after resting its case,

the remedy is reversal and dismissal of the charge without prejudice to the State's ability to refile the charge. Vangerpen, 125 Wn.2d at 792-93; Simon, 120 Wn.2d at 199.

Contrary to the Court of Appeals' assertion, the trial court did not offer the correct remedy. Slip Op. at 3. Rather, the trial court offered to consider dismissing the charge without prejudice if Mr. Quismundo could show he was prejudiced by the untimely amendment to the information. RP 90. As Mr. Quismundo repeatedly emphasized below, no such showing is required. RP 85-86, 91-93; Markle, 118 Wn.2d at 437; Vangerpen, 125 Wn.2d at 789-90; Pelkey, 109 Wn.2d at 491.

Vangerpen is on point. There, the prosecutor inadvertently omitted the element of premeditation from the information charging attempted first-degree murder. 125 Wn.2d at 785. There was no question that the defendant knew premeditation was an element of the crime despite its absence from the charging document. Indeed, after the State rested its case, the defendant made a motion to dismiss for failure to prove premeditation. Id. It was only after the trial court denied that motion that the defendant moved to dismiss based on the insufficiency of the information. The trial court then granted the State's motion to amend the information. Id. at 786.

As in Mr. Quismundo's case, the State in Vangerpen argued that amendment was proper because the omission was only a "scrivener's error" and the defendant was not prejudiced. Id. at 790. This Court stated, "we rejected this argument in Pelkey and again in Markle; we again do so here." Id. As in Vangerpen, the trial court in Mr. Quismundo's case erred in accepting the State's argument that untimely amendment of the information was proper because the omission was just a clerical error and Mr. Quismundo could not show prejudice. RP 89-93.

It is true that both parties were unclear as to the proper course of action, but that does not excuse the trial court's failure to apply the law. Although Mr. Quismundo requested dismissal with prejudice, the cases he provided to the trial court clearly stated that the proper remedy was dismissal without prejudice. RP 86; Simon, 120 Wn.2d at 199; Termain, 124 Wn. App. at 803. The prosecutor suggested three remedies, only one of which was correct. RP 87-88. The remedy the State fought for ("the most expeditious and appropriate response and my request") was improper under Pelkey. RP 87-88. The prosecutor incorrectly stated that Pelkey did not

apply, and wrongly argued that the trial court should engage in a prejudice analysis.<sup>3</sup> RP 84-85.

The Court of Appeals cites no authority for its holding that the trial court had the discretion to choose the prosecutor's incorrect remedy (granting the untimely motion to amend) simply because Mr. Quismundo also proposed an incorrect remedy. Both parties presented some correct statements of the law and some incorrect statements of the law. But rather than apply one party's incorrect statement of the law, it is the court's duty to apply the law properly. See State v. Holt, 104 Wn.2d 315, 321, 704 P.2d 1189 (1985) (constitutionally defective information requires dismissal); Vangerpen, 125 Wn.2d at 792-93 (Both defendant and State proposed incorrect remedy; this Court applied correct remedy, stating, "We could not express it more clearly. ... Dismissal without prejudice has been the consistent remedy imposed for reversible error based on an improper charging document."); Simon, 120

---

<sup>3</sup> Mr. Quismundo probably requested dismissal with prejudice because that was the remedy in Pelkey itself. As this Court explained in State v. Dallas, some cases in which the State moves to amend too late require dismissal with prejudice because of mandatory joinder violations. Dallas, 126 Wn.2d 324, 328, 892 P.2d 1082 (1995). Other cases, like Vangerpen and this case, require dismissal without prejudice to the State's ability to refile. Vangerpen, 125 Wn.2d at 792-93.

No case supports the State's position that it may amend a constitutionally defective information after it rests its case unless the defendant can show prejudice to his ability to meet the charge. Indeed, this Court has repeatedly rejected that view. See Vangerpen, 125 Wn.2d at 790.

Wn.2d at 199 (both parties proposed incorrect remedies; this Court applied correct remedy, dismissing without prejudice).

As a matter of law, the State may not amend a constitutionally defective information after it rests its case. Pelkey, 109 Wn.2d at 491. The proper remedy is dismissal without prejudice. Vangerpen, 125 Wn.2d at 792-93. Mr. Quismundo asks this Court to reaffirm Pelkey and Vangerpen, reverse the conviction for untimely amendment of a constitutionally defective information, and dismiss without prejudice to the State's ability to refile the charge.

2. IN THE ALTERNATIVE, THIS COURT SHOULD REVERSE BECAUSE THE SECOND AMENDED INFORMATION IS DEFECTIVE.

Even if this Court finds that the trial court properly allowed the State to amend the constitutionally defective information after resting its case, reversal is required because the second amended information is also defective. The charging document omits the "willful" element of the crime, alleging only that Mr. Quismundo "did violate the orders." CP 48.

There are three essential elements of the offense of violating a no-contact order: (1) the willful contact with another, (2) the prohibition of such contact by a valid no-contact order, and (3) the

defendant's knowledge of the no-contact order. State v. Clowes, 104 Wn. App. 935, 944, 18 P.3d 596 (2001); RCW 10.99.050(2)(a). As to the first element, "not only must the defendant know of the no-contact order; he must also have intended the contact." Id. at 944-45; State v. Washington, 135 Wn. App. 42, 49, 143 P.3d 606 (2006). Evidence that a defendant who knew of a no-contact order accidentally or inadvertently came into contact with the alleged victim is insufficient to satisfy this element. Clowes, 104 Wn. App. at 945. To the contrary, "willful" requires a purposeful act. State v. Sisemore, 114 Wn. App. 75, 78, 55 P.3d 1178 (2002) (citing State v. Danforth, 97 Wn.2d 255, 258, 643 P.2d 882 (1982)).

As Mr. Quismundo noted in his Statement of Additional Grounds to the Court of Appeals, a challenge to the sufficiency of the charging document is of constitutional magnitude and may be raised for the first time on appeal. SAG at 3-4 (citing State v. Leach, 113 Wn.2d 679, 691, 782 P.2d 552 (1989)). Because the sufficiency of the final amended information was raised for the first time on appeal, the Kjorsvik standard of review applies. This Court asks: (1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless

actually prejudiced by the inartful language which caused a lack of notice? Kjorsvik, 117 Wn.2d at 105-06; SAG at 3. If the answer to the first question is “no,” reversal is required without reaching the second question. McCarty, 140 Wn.2d at 425, 428.

Here, the answer to the first question is “no,” i.e., a necessary element of the crime is neither explicitly stated nor fairly implied. See id. at 428; CP 48. The phrase “did violate the orders” does not fairly imply that the State must prove willful contact. The orders themselves simply prohibit contact. Ex. 1 at 4 and 6; Ex. 2 at 5. Thus, the fair implication of the phrase “did violate the orders” is that the defendant came into contact with the protected party, regardless of whether the contact was purposeful or inadvertent. The “willful” element is not charged, either explicitly or implicitly. Furthermore, the information was redundant and confusing. SAG at 3. Because the second amended information was constitutionally defective, the conviction must be reversed and the case dismissed without prejudice. McCarty, 140 Wn.2d at 428.

D. CONCLUSION

For the reasons set forth above, Mr. Quismundo's conviction should be reversed and the charge dismissed without prejudice.

DATED this 5<sup>th</sup> day of March, 2008.

Respectfully submitted,



Lila J. Silverstein – WSBA 38394  
Washington Appellate Project  
Attorneys for Petitioner



David L. Donnan – WSBA 19271  
Washington Appellate Project  
Attorneys for Petitioner

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

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2008 MAR -5 PM 4:58

STATE OF WASHINGTON, )  
)  
Respondent, )

NO. 80195-9

RONALD QUISMUNDO, )  
)  
Petitioner. )

**CERTIFICATE OF SERVICE**

I, MARIA ARRANZA RILEY, CERTIFY THAT ON THE 5<sup>TH</sup> DAY OF MARCH, 2008, I CAUSED A TRUE AND CORRECT COPY OF THIS **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |     |   |                   |                                     |
|-----|---|-------------------|-------------------------------------|
| [X] | THOMAS CURTIS, DPA<br>SNOHOMISH COUNTY PROSECUTOR'S OFFICE<br>3000 ROCKEFELLER<br>EVERETT, WA 98201 | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |
| [X] | RONALD QUISMUNDO<br>12115 19 <sup>TH</sup> AVENUE SE, #J202<br>EVERETT, WA 98208                    | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON, THIS 5<sup>TH</sup> DAY OF MARCH, 2008.

X \_\_\_\_\_ 