

NO. 80202-5

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

WILLIAM ROBINSON,

Appellant.

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SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CATHERINE SHAFFER

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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## TABLE OF CONTENTS

	Page
A. ISSUES PRESENTED .....	1
B. STATEMENT OF THE CASE .....	2
C. ARGUMENT .....	7
1. THE COURT OF APPEALS SHOULD BE AFFIRMED BASED ON THIS COURT'S PRIOR ORDER ON REMAND AND THE APPLICABLE CASE LAW. ....	7
2. EVEN IF THIS COURT WERE TO REVERSE ROBINSON'S EXCEPTIONAL SENTENCE, RECENT LEGISLATION DICTATES THAT A JURY MAY BE CONVENED UPON REMAND.....	13
D. CONCLUSION .....	16

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

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

Washington State:

In re Personal Restraint of Hall,  
\_\_\_ Wn.2d \_\_\_, 2008 WL 880285..... 11

In re Stranger Creek,  
77 Wn.2d 649, 466 P.2d 508 (1970)..... 13

State v. Cardenas,  
129 Wn.2d 1, 914 P.2d 57 (1996) ..... 8, 10

State v. Doney,  
142 Wn. App. 450, 174 P.3d 1261 (2008) ..... 15

State v. Hagar,  
158 Wn.2d 369, 144 P.3d 298 (2006)..... 5

State v. Hughes,  
154 Wn.2d 118, 110 P.3d 192 (2005),  
*overruled on other grounds*,  
Washington v. Recuenco, 548 U.S. 212,  
126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006)..... 9

State v. Nordby,  
106 Wn.2d 514, 723 P.2d 1117 (1986)..... 6, 8, 10

State v. Pillatos,  
159 Wn.2d 459, 150 P.3d 1130 (2007)..... 14, 15

State v. Robinson,  
129 Wn. App. 1019, 2005 WL 2219717..... 4

<u>State v. Robinson,</u> 137 Wn. App. 1057, 2007 WL 1041459.....	5
<u>State v. Suleiman,</u> 158 Wn.2d 280, 143 P.3d 795 (2006).....	5, 8, 9
<u>State v. Womac,</u> 160 Wn.2d 643, 160 P.3d 40 (2007).....	11

Statutes

Washington State:

Laws of 2005, ch. 68 .....	13
Laws of 2007, ch. 205 .....	14

A. **ISSUES PRESENTED**

1. In State v. Suleiman, this Court reversed the defendant's exceptional sentence, but remanded to the Court of Appeals to consider whether any error in imposing that sentence was harmless. In this case, which is identical to Suleiman in every relevant way, this Court granted the defendant's petition for review, and remanded to the Court of Appeals for reconsideration in light of Suleiman. In accordance with Suleiman and this Court's order upon remand, the Court of Appeals reconsidered this case and concluded that any error in imposing the exceptional sentence was harmless beyond a reasonable doubt. Should this Court affirm?

2. The Legislature has recently amended the Sentencing Reform Act to give juries the power to find facts for exceptional sentences. Even more recently, the Legislature has expressly provided that this jury procedure may be applied upon remand for resentencing or a new trial, regardless of when the original trial or sentencing occurred. This Court has already held that such procedural, remedial legislation may be applied retroactively without offending the state and federal constitutions. Even if this Court were to reverse the defendant's exceptional sentence, may a jury be impaneled upon remand?

**B. STATEMENT OF THE CASE**

The defendant, William Robinson, pleaded guilty to three counts of vehicular assault charged as a result of a crash in which Kristina Moss and two of her children – Zachary, age 12, and Olivia, age 8 – were injured. CP 7-17, 25. Robinson pleaded guilty to these charges knowing that the State would be seeking an exceptional sentence. CP 10-11, 30; RP (3/19/03) 7. As a part of his plea agreement, Robinson stipulated to the facts as contained in the certification for determination of probable cause, in the prosecutor's summary, and in a statement of additional facts (appendix C to plea agreement).<sup>1</sup> CP 27. The stipulated facts conclusively established the following.

Kristina, Zachary, and Olivia Moss were standing together on a sidewalk next to their bicycles when Robinson jumped the curb, drove through a mailbox post, and hit them. Zachary Moss "flew 6 to 8 feet into the air" when Robinson hit him, and the others were thrown about as well. CP 21. After plowing through the Moss family, Robinson did not stop; rather, he returned to the roadway and continued driving until he turned into the parking lot of a tavern,

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<sup>1</sup> Robinson's guilty plea form and its attachments, including the plea agreement and all documents containing stipulated facts, are attached as Appendix A.

where he was detained by a witness until police arrived. CP 21. Robinson was extremely intoxicated, having ingested a combination of alcohol and drugs including oxycodone, diazepam, and marijuana. CP 24.

As a result of the crash, Kristina Moss suffered broken bones and ligament damage, and Olivia Moss suffered a closed head injury. CP 25. Zachary Moss was by far the most seriously injured. The traumatic brain injury that he suffered rendered him severely disabled, and unable to perform for himself the most basic functions of day-to-day life. CP 25-26. Zachary Moss likely will never be able to walk, to feed himself, to take care of his own hygiene, or to communicate with other people in any meaningful way. CP 26.

In accordance with the terms of the plea agreement, the State sought an exceptional sentence on a number of bases, including that the Moss family, as pedestrians on a sidewalk, were particularly vulnerable victims of vehicular assault, and that Robinson knew or should have known of that vulnerability. CP 31-42. On May 2, 2003, the Honorable Catherine Shaffer imposed an exceptional sentence, finding, *inter alia*, that the victims were particularly vulnerable. RP (5/2/03) 48-49; CP 60-70.

The appellate proceedings in this case have been protracted and complex, and it is not necessary to recount the entire procedural history of this case for purposes of this brief.<sup>2</sup> The relevant events, however, are as follows.

On June 24, 2004, the United States Supreme Court issued its decision in Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), holding that juries, rather than judges, must find the facts underlying an exceptional sentence in the absence of a waiver or stipulation. Accordingly, in its first unpublished opinion in this case, in September 2005, the Court of Appeals affirmed Robinson's exceptional sentence on grounds that he had stipulated to the facts that supported it. State v. Robinson, 129 Wn. App. 1019, 2005 WL 2219717.

Robinson then filed his first petition for review. In July 2006, this Court stayed consideration of the petition pending a decision in State v. Suleiman, No. 76807-2. The Court issued its decision in Suleiman in October 2006, and held that where a defendant has stipulated to the facts underlying an exceptional sentence, but has

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<sup>2</sup> For a more detailed summary of the procedural history of this case on appeal, including complete copies of the appellate court dockets, see Respondent's Motion to Dismiss or Deny Petition for Review Due to Mootness, (No. 80202-5, filed 2/7/08).

not stipulated to the aggravating factor upon which the sentence is based, Blakely error has occurred if the aggravating factor was found by a judge rather than a jury. State v. Suleiman, 158 Wn.2d 280, 293-94, 143 P.3d 795 (2006). Accordingly, the Court reversed Suleiman's exceptional sentence, but remanded to the Court of Appeals to decide whether the Blakely error was harmless. Id. at 294-95.

In January 2007, this Court granted Robinson's first petition for review, and remanded the case to the Court of Appeals for reconsideration in light of Suleiman and State v. Hagar, 158 Wn.2d 369, 144 P.3d 298 (2006).<sup>3</sup> On remand to the Court of Appeals, after supplemental briefing on the issue of whether the Blakely error was harmless beyond a reasonable doubt, the Court of Appeals again affirmed Robinson's sentence. State v. Robinson, 137 Wn. App. 1057, 2007 WL 1041459.<sup>4</sup> In finding the Blakely error harmless beyond a reasonable doubt, the court first observed that this Court has previously held that pedestrians are vulnerable victims in vehicular assault cases. Robinson (No. 52447-0-1), slip

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<sup>3</sup> A copy of this Court's order granting Robinson's first petition for review is attached as Appendix B.

<sup>4</sup> A copy of the Court of Appeals' slip opinion upon remand is attached as Appendix C, and will be cited hereinafter as "slip op."

op., at 3 (citing State v. Nordby, 106 Wn.2d 514, 518, 723 P.2d 1117 (1986)). Accordingly, the court held that the facts to which Robinson stipulated established, beyond any reasonable doubt, that the Mosses were vulnerable victims:

The stipulated facts prove beyond a reasonable doubt that Robinson knew or should have known that these victims were particularly vulnerable when he drove his vehicle onto the sidewalk. Their particular vulnerability was certainly a substantial factor in the crime: had they been in another car, they might have been able to swerve and avoid Robinson, or might have been afforded some protection by their car's safety systems. Were the trial court, on remand to submit the aggravating factors to a jury, on this record, Robinson's sentence would have been the same.

Robinson, slip op. at 3-4.

Robinson filed a second petition for review in June 2007, which this Court granted on March 4, 2008.<sup>5</sup>

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<sup>5</sup> Between the filing of his second petition for review and this Court's consideration of that petition, Robinson was released upon completion of his sentence on December 10, 2007.

C. **ARGUMENT**

1. **THE COURT OF APPEALS SHOULD BE AFFIRMED BASED ON THIS COURT'S PRIOR ORDER ON REMAND AND THE APPLICABLE CASE LAW.**

This Court has granted Robinson's second petition for review to consider whether the Court of Appeals correctly performed a harmless error analysis with respect to the Blakely error. Despite this Court's recent decisions holding that Blakely error was not harmless in cases where the defendants went to trial, the Court should affirm in this case because Robinson pled guilty and stipulated to all of the facts establishing the aggravating factor.

The Court of Appeals' harmless error analysis is entirely consistent with this Court's directive upon remand in granting Robinson's first petition for review, in which the Court ordered the Court of Appeals to reconsider this case in light of State v. Suleiman. This case is procedurally identical to Suleiman, in which the defendant, as part of a plea agreement, stipulated to the facts underlying the aggravating factors giving rise to his exceptional sentence, but did not stipulate to the aggravating factors themselves. Therefore, because this Court in Suleiman specifically directed the Court of Appeals to perform a harmless error analysis on remand, there is no basis to reverse the harmless error analysis

in this case. Moreover, this Court's precedents establish that pedestrians are particularly vulnerable victims in vehicular assault cases. The Court of Appeals' decision is entirely consistent with these decisions as well.

In Suleiman, the defendant pleaded guilty to three counts of vehicular assault knowing that the State would be seeking an exceptional sentence. Suleiman stipulated to the facts underlying the exceptional sentence he ultimately received, but did not stipulate to the aggravating factors found by the trial court based on those stipulated facts. Suleiman, 158 Wn.2d 797-98. The Court of Appeals affirmed Suleiman's sentence based on one of the aggravating factors found by the trial court: that one of the victims was particularly vulnerable. Id. at 800. This Court recognized the continuing validity of this factor based on case law holding that "a vehicular assault victim can be particularly vulnerable where the victim was relatively defenseless." Id. (citing State v. Nordby, 106 Wn.2d 514, 518, 723 P.2d 1117 (1986)); see also Suleiman, 158 Wn.2d at 799 (noting that courts recognize "the particular vulnerability of some vehicular assault victims," citing State v. Cardenas, 129 Wn.2d 1, 10, 914 P.2d 57 (1996)).

Nonetheless, this Court held in accordance with State v. Hughes, 154 Wn.2d 118, 110 P.3d 192 (2005), *overruled on other grounds*, Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006), that even when a defendant stipulates to all of the facts supporting the aggravating factor of victim vulnerability pursuant to a plea agreement, as Suleiman had, Blakely error occurs if the defendant has not stipulated to the aggravating factor itself. Suleiman, 158 Wn.2d at 800-01. Accordingly, in reversing Suleiman's exceptional sentence, the Court issued the following directive:

We remand to the Court of Appeals for determination of whether the *Blakely* error was harmless.

Id. at 802.

This case is identical to Suleiman in every legally significant respect. Robinson, like Suleiman, pled guilty to three counts of vehicular assault knowing that the State would be seeking an exceptional sentence. CP 10-11, 30; RP (3/19/03) 7. As part of his plea agreement, Robinson, like Suleiman, stipulated to all of the facts underlying the aggravating factors upon which his exceptional sentence was based, but he did not stipulate to the aggravating factors themselves. CP 20-27. And, as in Suleiman, the Court of

Appeals has upheld Robinson's exceptional sentence on the sole grounds that the victims, as pedestrians, were particularly vulnerable to Robinson's crimes. Robinson, slip op. at 2-4.

Indeed, the only way in which this case materially differs from Suleiman is that here, the Court of Appeals has already performed the harmless error analysis that this Court directed it to perform on remand in Suleiman, and has already concluded that any Blakely error is harmless beyond a reasonable doubt. The Court of Appeals reached this conclusion easily based on the stipulated facts, which conclusively establish that Kristina Moss and her children were standing on a sidewalk when Robinson plowed into them, and based on this Court's precedent holding that pedestrians are particularly vulnerable victims in vehicular assault cases. Robinson, slip op. at 3-4 (citing Nordby, 106 Wn.2d at 518); see also Cardenas, 129 Wn.2d at 10.

In short, the Court of Appeals' conclusion here that the Blakely error was harmless is entirely consistent with this Court's holding in Suleiman and other controlling authorities. In fact, the Court of Appeals acted entirely in accordance with this Court's order on remand in granting Robinson's first petition for review, and reconsidered this case in light of Suleiman. See Appendix B. In

other words, the Court of Appeals did precisely what this Court asked it to do, and therefore, this Court should affirm.

Nonetheless, Robinson will argue that this Court's more recent decisions should dictate a different result. More specifically, Robinson will rely on this Court's decisions in State v. Womac, 160 Wn.2d 643, 160 P.3d 40 (2007), and In re Personal Restraint of Hall, \_\_\_ Wn.2d \_\_\_, 2008 WL 880285, holding that Blakely error generally cannot be harmless. But Womac and In re Hall are readily distinguishable from this case, and Robinson's reliance is misplaced.

In both Womac and Hall, the defendants went to trial and were convicted by juries. Womac, 160 Wn.2d at 647-48; In re Hall, 2008 WL 880285, at \*1. Accordingly, neither of these defendants stipulated to any facts at all. Therefore, in each case, the trial court engaged in judicial factfinding in order to find *all* of the facts underlying the exceptional sentence that each defendant received. Womac, 160 Wn.2d at 660; In re Hall, at \*1. This Court reversed the exceptional sentence in each case, and held that a harmless error analysis could not be performed because no procedure existed under which either exceptional sentence could be lawfully imposed. Womac, 160 Wn.2d at 662-63; In re Hall, at \*3-4.

Unlike the wholesale judicial factfinding that occurred in both Womac and Hall, the trial court in this case had before it a panoply of facts to which the defendant had agreed. These facts established, in accordance with this Court's precedents, that the victims were particularly vulnerable. Although there was no procedure by which *wholesale* judicial factfinding could occur, as in Womac and Hall, that is not what occurred in this case. Rather, this case is controlled by Suleiman, in which this Court correctly concluded that a harmless error analysis was entirely appropriate given the defendant's stipulation to all of the facts underlying the vulnerable victim aggravating factor.<sup>6</sup> In short, no procedure was needed because the defendant stipulated to the facts underlying the trial court's decision.

In sum, the Court of Appeals correctly performed a harmless error analysis in this case based on Suleiman and based on this Court's prior order on remand in granting Robinson's first petition for review. Therefore, this Court should affirm.

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<sup>6</sup> The Court recognized this distinction in Hall, in which the Court expressly declined to decide whether the lack of a jury procedure had any effect in cases where the defendant had either stipulated to the relevant facts or consented to judicial factfinding. In re Hall, at \*8 n.6.

2. **EVEN IF THIS COURT WERE TO REVERSE  
ROBINSON'S EXCEPTIONAL SENTENCE,  
RECENT LEGISLATION DICTATES THAT A JURY  
MAY BE CONVENED UPON REMAND.**

This case is controlled by Suleiman, in which this Court held that a harmless error analysis should be performed in a case procedurally identical to this one. But even if this Court were to overrule Suleiman<sup>7</sup> and hold that a harmless error analysis cannot be performed in this case, recent legislation dictates that a jury may be convened upon remand to consider whether the vulnerable victim aggravating factor is proved by the stipulated facts beyond a reasonable doubt.

In response to Blakely, the Legislature amended the Sentencing Reform Act to explicitly give juries the power to find aggravating facts upon which exceptional sentences could be based. Laws of 2005, ch. 68. In State v. Pillatos, this Court held that this legislation applied "to all sentencing proceedings held since it was signed into law by Governor Gregoire on April 15, 2005," but only in cases where the defendant had not yet pleaded guilty or a trial had not yet begun. State v. Pillatos, 159 Wn.2d 459,

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<sup>7</sup> In order to overrule Suleiman, this Court would have to conclude that that decision was incorrect and harmful. See In re Stranger Creek, 77 Wn.2d 649, 653, 466 P.2d 508 (1970).

465, 150 P.3d 1130 (2007). In so holding, the Court found that the new legislation was both remedial and procedural, not substantive, and thus its retroactive application would not be an ex post facto violation or otherwise unconstitutional. Id. at 470-74. Nonetheless, the Court concluded that the "triggering event" for application of this legislation, based on the statutory language, was "either the entry of the plea or the [commencement of] the trial[.]" Id. at 471.

In direct response to Pillatos, the Legislature again amended the SRA to explicitly provide that if a new sentencing hearing is required in any case affected by Blakely, a jury may be impaneled to consider any aggravating factors that supported the original exceptional sentence, so long as those factors are currently listed in RCW 9.94A.535(3). Laws of 2007, ch. 205, § 2. In enacting this amendment, the Legislature declared that "the superior courts shall have the authority to impanel juries to find aggravating circumstances in all cases that come before the courts for trial or sentencing, regardless of the date of the original trial or sentencing." Laws of 2007, ch. 205, § 1. This amendment took effect on April 27, 2007. Laws of 2007, ch. 205, § 3.

In this case, Robinson received an exceptional sentence because, *inter alia*, Kristina, Olivia and Zachary Moss were

particularly vulnerable victims of vehicular assault. The facts to which Robinson stipulated conclusively establish that the victims were pedestrians who were standing on a sidewalk when Robinson plowed into them. CP 16, 20-26. A victim's vulnerability is a valid aggravating factor under the current version of the SRA. RCW 9.94A.535(3)(b). This Court has already concluded that retroactive application of such procedural, remedial legislation is constitutional. See Pillatos, 159 Wn.2d at 470-74. Therefore, even if this Court were to overrule Suleiman and hold that a harmless error analysis cannot be performed in this case, a jury may be impaneled on remand for resentencing to decide whether the stipulated facts establish that the victims were particularly vulnerable.<sup>8</sup>

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<sup>8</sup> The fact that a jury may be impaneled upon remand again begs the question as to whether the Blakely error in this case was harmless, as the Court of Appeals found that it was. The stipulated facts conclusively establish that Kristina Moss and her children were standing on a sidewalk next to their bicycles when Robinson jumped the curb, crashed through a mailbox post, and plowed into them. CP 16, 20-21. This Court has previously held that pedestrians are particularly vulnerable to the crime of vehicular assault. Nordby, *supra*; Cardenas, *supra*. Thus, it seems a foregone conclusion that a jury would find that they were particularly vulnerable victims based on the stipulated facts.

This is but another reason that this Court should hold that any Blakely error here is harmless, as Division III of the Court of Appeals has already done in a recent case in the wake of the most recent legislation. See State v. Doney, 142 Wn. App. 450, 174 P.3d 1261 (2008).

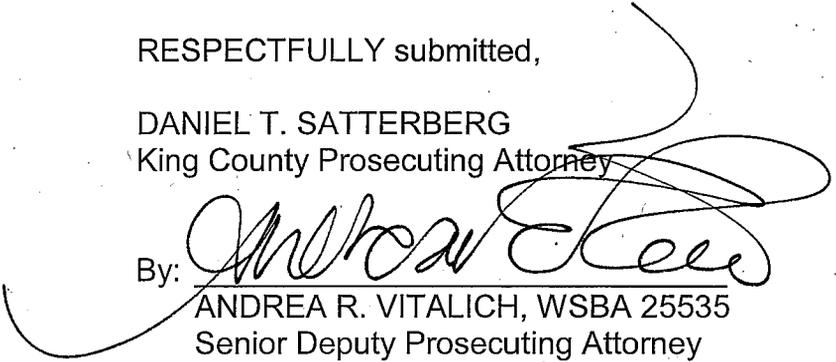
**D. CONCLUSION**

For all of the foregoing reasons, this Court should affirm. In the alternative, this Court should remand for resentencing, where a jury may then consider whether the stipulated facts establish that the victims were particularly vulnerable.

DATED this 10<sup>th</sup> day of April, 2008.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: 

ANDREA R. VITALICH, WSBA 25535  
Senior Deputy Prosecuting Attorney  
Attorneys for the Respondent

## **APPENDIX A**

Guilty Plea Form With Attachments

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 02-1-06035-4 KNT

Vs.

STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY (Felony)

ROBINSON, WILLIAM.  
Defendant.

1. My true name is WILLIAM ROBINSON

2. My age is 38. Date of Birth 11/12/64

3. I went through the 12<sup>th</sup> grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Carl Madigan

(b) I am charged with the crime(s) of VEHICULAR ASSAULT-3<sup>rd</sup> cl.

The elements of this crime(s) are as NOTED IN INFORMATION attached

1 5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE  
 2 FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY  
 3 PLEADING GUILTY:

4 (a) The right to a speedy and public trial by an impartial jury in the county where the crime  
 5 is alleged to have been committed;

6 (b) The right to remain silent before and during trial, and the right to refuse to testify against  
 7 myself;

8 (c) The right at trial to testify and to hear and question the witnesses who testify against me;

9 (d) The right at trial to have witnesses testify for me. These witnesses can be made to  
 10 appear at no expense to me;

11 (e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt  
 12 or I enter a plea of guilty;

13 (f) The right to appeal a determination of guilt after a trial.

14 6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I  
 15 UNDERSTAND THAT:

16 (a) The crime(s) with which I am charged carries a sentence(s) of:

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
I	15-20	—	10 years \$ 20,000
II	15-20	—	10 years \$ 20,000
III	15-20	—	10 years \$ 20,000

20 RCW 9.94A.030(23), (27), provide that for a third conviction for a "most serious offense" as  
 21 defined in that statute or for a second conviction for a "most serious offense" which is also a "sex  
 22

FORM REV 7/12/00

1 offense" as defined in that statute, I may be found a Persistent Offender. If I am found to be a  
2 Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without  
3 the possibility of early release of any kind, such as parole or community custody. RCW  
4 9.94A.120(4). The law does not allow any reduction of this sentence.

5 (b) The standard sentence range is based on the crime charged and my criminal history.  
6 Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. If  
7 my current offense was prior to 7/1/97: criminal history always includes juvenile convictions for  
8 sex offenses and also for Class A felonies that were committed when I was 15 years of age or older;  
9 may include convictions in Juvenile Court for felonies or serious traffic offenses that were  
10 committed when I was 15 years of age or older; and juvenile convictions, except those for sex  
11 offenses and Class A felonies, count only if I was less than 23 years old when I committed the crime  
12 to which I am now pleading guilty. If my current offense was a after 6/30/97: criminal history  
13 includes all prior adult and juvenile convictions or adjudications.

14 (c) The prosecuting attorney's statement of my criminal history is attached to this  
15 agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's  
16 statement is correct and complete. If I have attached my own statement, I assert that it is correct and  
17 complete. If I am convicted of any additional crimes between now and the time I am sentenced, I  
18 am obligated to tell the sentencing judge about those convictions.

19 (d) If I am convicted of any new crimes before sentencing, or if I was on community  
20 placement at the time of the offense to which I am now pleading guilty, or if any additional criminal  
21 history is discovered, both the standard sentence range and the prosecuting attorney's  
22 recommendations may increase. Even so, my plea of guilty to this charge is binding on me. I

FORM REV 7/12/00

1 cannot change my mind if additional criminal history is discovered even though the standard  
2 sentencing range and the prosecuting attorney's recommendation increase.

3 If the current offense to which I am pleading guilty is a most serious offense as defined by  
4 RCW 9.94A.030(23),(27), and additional criminal history is discovered, not only do the conditions  
5 of the prior paragraph apply, but also if my discovered criminal history contains two prior  
6 convictions, whether in this state, in federal court, or elsewhere, of most serious offense crimes, I  
7 may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must  
8 impose the mandatory sentence of life imprisonment without the possibility of early release of any  
9 kind, such as parole or community custody. RCW 9.94A.120(4).

10 Even so, my plea of guilty to this charge may be binding on me. I cannot change my plea if  
11 additional criminal history is discovered, even though it will result in the mandatory sentence that  
12 the law does not allow to be reduced.

13 (e) In addition to sentencing me to confinement for the standard range, the judge will order  
14 me to pay \$500 as a victim's compensation fund assessment. If this crime resulted in injury to any  
15 person or damages to or loss of property, the judge will order me to make restitution, unless  
16 extraordinary circumstances exist which make restitution inappropriate. The judge may also order  
17 that I pay a fine, court costs, incarceration, lab and attorney fees. Furthermore, the judge may place  
18 me on community supervision, community placement or community custody, impose restrictions on  
19 my activities, rehabilitative programs, treatment requirements, or other conditions, and order me to  
20 perform community service.

21 (f) The prosecuting attorney will make the following recommendation to the judge: \_\_\_\_\_  
22 Ch I+II 60 months Ch III 20 months

FORM REV 7/12/00

1 18-36 months Comm Custody, PAY: 500 WPA; Court Cts

2 INSTITUTION: 1000 - EMERGENCY RESPONSE COSTS

3 \$125. TOW LAD FRS. Alcohol/Drug Eval Treatment per final.  
4 See attached Plea Agreement and State's Sentence Recommendation for details

5 (g) The judge does not have to follow anyone's recommendation as to sentence. The judge  
6 must impose a sentence within the standard range unless the judge finds substantial and compelling  
7 reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal  
8 that sentence. If the sentence is within the standard range, no one can appeal the sentence.

9 (h) The crime of \_\_\_\_\_ has a mandatory minimum sentence  
10 of at least \_\_\_\_\_ years of total confinement. The law does not allow any reduction of this  
11 sentence. ~~If not applicable, this paragraph should be stricken and initialed by the defendant and the~~  
12 judge W.R. M

13 The crime of Vehicular Assault (dwi) is a most serious offense as defined by  
14 RCW 9.94A.030(23), and if the judge determines that I have at least two prior convictions on  
15 separate occasions whether in this state, in federal court, or elsewhere, of most serious crimes, I may  
16 be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must  
17 impose the mandatory sentence of life imprisonment without the possibility of early release of any  
18 kind, such as parole or community custody. RCW 9.94A.120(4). ~~If not applicable, this paragraph~~  
19 should be stricken and initialed by the defendant and the judge W.R. M

20 The crime of \_\_\_\_\_ is also a "most serious offense" and a  
21 "sex offense" as defined in RCW 9.94A.030(23) and (27), and if the judge determines that I have  
22 one prior conviction whether in this state, in federal court or elsewhere of a most serious sex offense  
as defined in that statute, I may also be found to be a Persistent Offender in which case the judge  
FORM REV 7/12/00

1 must impose a mandatory sentence of life without the possibility of parole. RCW 9.94A.120(4). [If  
2 not applicable, this paragraph should be stricken and initialed by the defendant and the judge \_\_\_\_\_

3 *[Handwritten initials]*

4 (i) The crime charged in Count \_\_\_\_\_ includes a firearm/deadly weapon sentence  
5 enhancement of \_\_\_\_\_ months.

6 This additional confinement time is mandatory and must be served consecutively to any  
7 other sentence I have already received or will receive in this or any other cause. [If not applicable,  
8 this paragraph should be stricken and initialed by the defendant and the judge *[Handwritten initials]* \_\_\_\_\_]

9 (j) The sentences imposed on counts I II III except for any weapons enhancement,  
10 will run concurrently unless the judge finds substantial and compelling reason to do otherwise or  
11 unless there is a special weapons finding. [If not applicable, this paragraph should be stricken and  
12 initialed by the defendant and the judge \_\_\_\_\_.]

13 (k) In addition to confinement, the judge will sentence me to a period of community  
14 supervision, community placement or community custody.

15 For crimes committed prior to July 1, 2000, the judge will sentence me to: (A) community  
16 supervision for a period of up to one year; or (B) to community placement or community custody  
17 for a period up to three years or up to the period of earned release awarded pursuant RCW  
18 9.94A.150(1) and (2), whichever is longer. [If not applicable, this paragraph should be stricken and  
19 initialed by the defendant and the judge *[Handwritten initials]* \_\_\_\_\_]

20 For crimes committed on or after July 1, 2000, the judge will sentence me to the community  
21 custody range which is from 18 months to 36 months or up to the period of earned  
22 release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, unless the judge finds

1 substantial and compelling reasons to do otherwise. During the period of community custody I will  
2 be under the supervision of the Department of Corrections, and I will have restrictions and  
3 requirements placed upon me. My failure to comply with these conditions will result in the  
4 Department of Corrections transferring me to a more restrictive confinement status or imposing  
5 other sanctions. [If not applicable, this paragraph should be stricken and initialed by the defendant  
6 and the judge \_\_\_\_\_.]

7 (l) If this offense is a sex offense committed after 6/5/96 and I am either sentenced to the  
8 custody of the Department of Corrections or if I am sentenced under the special sexual offender  
9 sentence alternative, the court will, in addition to the confinement, impose not less than 3 years of  
10 community custody which will commence upon my release from jail or prison. Failure to comply  
11 with community custody may result in my return to confinement. In addition, the court may extend  
12 the period of community custody in the interest of public safety for a period up to the maximum  
13 term which is \_\_\_\_\_ [If not applicable,

14 this paragraph should be stricken and initialed by the defendant and the judge *J.R.M.*]

15 (m) The judge may sentence me as a first-time offender instead of imposing a sentence  
16 within the standard range if I qualify under RCW 9.94A.030. This sentence may include as much as  
17 90 days of confinement plus all of the conditions described in paragraph (e). In addition, I may be  
18 sentenced up to two years of community supervision if the crime was committed prior to July 1,  
19 2000, or two years of community custody if the crime was committed on or after July 1, 2000. The  
20 judge also may require me to undergo treatment, to devote time to a specific occupation, and to  
21 pursue a prescribed course of study or occupational training. [If not applicable, this paragraph  
22 should be stricken and initialed by the defendant and the judge *J.R.M.*]

FORM REV 7/12/00

1 (n) This plea of guilty will result in revocation of my privilege to drive under RCW  
2 46.20.285 (1)-(3), (5)-(7). If I have a driver's license, I must now surrender it to the judge. [If not  
3 applicable, this paragraph should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

4 (o) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the  
5 judge finds I used a motor vehicle in the commission of this felony.

6 (p) If this crime involves a sexual offense, prostitution, or a drug offense associated with  
7 hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS)  
8 virus. [If not applicable, this paragraph should be stricken and initialed by the defendant and the  
9 judge *W. L. S.*]

10 (q) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a  
11 crime under state law is grounds for deportation, exclusion from admission to the United States, or  
12 denial of naturalization pursuant to the laws of the United States.

13 (r) If this crime involves a ~~sex offense or a violent offense~~ <sup>felony</sup>, I will be required to provide a  
14 sample of my blood for purposes of DNA identification analysis. [If not applicable, this paragraph  
15 should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

16 (s) Because this crime involves a sex offense, I will be required to register with the sheriff  
17 of the county of the state of Washington where I reside. I must register immediately upon being  
18 sentenced unless I am in custody, in which case I must register within 24 hours of my release.

19 If I leave this state following my sentencing or release from custody but later move back to  
20 Washington, I must register within 30 days after moving to this state or within 24 hours after doing  
21 so if I am under the jurisdiction of this state's Department of Corrections.

22 FORM REV 7/12/00

STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
(Felony) - 8

Page 14

Page 14

1 If I change my residence within a county, I must send written notice of my change of  
2 residence to the sheriff at least 14 days before moving and must register again with the sheriff  
3 within 24 hours of moving. If I change my residence to a new county within this state, I must send  
4 written notice of my change of residence to the sheriff of my new county at least 14 days before  
5 moving and I must give written notice of my change of address to the sheriff of the county where I  
6 last registered within 10 days of moving. If I move out of Washington state, I must also send  
7 written notice within 10 days of moving to the county sheriff with whom I last registered in  
8 Washington state. [If not applicable, this paragraph should be stricken and initialed by the  
9 defendant and the judge *PKJ* *my*]

10 (t) This plea of guilty will result in the revocation of my right to possess any firearm.  
11 Possession of any firearm after this plea is prohibited by law until my right to possess a firearm is  
12 restored by a court of record.

13 7. I plead guilty to the crime(s) of County I II + III  
14 VEHICULAR ASSAULT (dui)  
15 \_\_\_\_\_

16 as charged in the DAIG information. I have received a copy of that information.

17 8. I make this plea freely and voluntarily.

18 9. No one has threatened harm of any kind to me or to any other person to cause me to make  
19 this plea.

20 10. No person has made promises of any kind to cause me to enter this plea except as set  
21 forth in this statement.

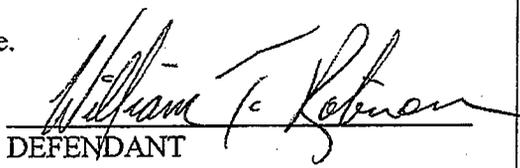
22 FORM REV 7/12/00

STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
(Felony) - 9

1 11. The judge has asked me to state briefly in my own words what I did that makes me  
2 guilty of this (these) crime(s). This is my statement:

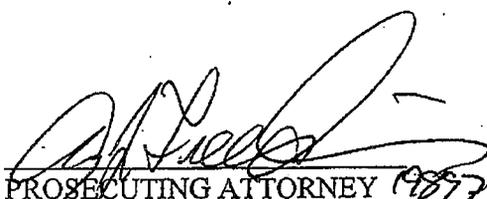
3 On Aug 21 2002 while in King Ct WA  
4 I drove a car while under the influence  
5 of drugs and alcohol I drove on a  
6 sidewalk and hit 3 people. The 3  
7 people were Kristina Moss who's left lower  
8 toe was broken and she had a minimally displaced  
9 fracture of her arm, Kevin Moss received  
10 a closed head ~~brain~~ injury and Zachary  
11 Moss received a traumatic brain injury  
12 and right femur fracture,

13  
14 12. My lawyer has explained to me, and we have fully discussed, all of the above  
15 paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on  
16 Plea of Guilty." I have no further questions to ask the judge.

17   
18 DEFENDANT

19 I have read and discussed this statement  
20 with the defendant and believe that the  
21 defendant is competent and fully  
22 understands the statement.

  
DEFENDANT'S LAWYER 14818

  
PROSECUTING ATTORNEY 19877

FORM REV 7/12/00

STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
(Felony) - 10

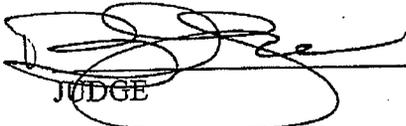
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The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 19<sup>th</sup> day of March, 2003

  
\_\_\_\_\_  
JUDGE

I am fluent in the \_\_\_\_\_ language and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
TRANSLATOR

\_\_\_\_\_  
INTERPRETER

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 02-1-06035-4 KNT
	)	
v.	)	
WILLIAM T. ROBINSON	)	INFORMATION
	)	
	)	
	)	
Defendant.	)	

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse WILLIAM T. ROBINSON of the crime of **Vehicular Assault**, committed as follows:

That the defendant WILLIAM T. ROBINSON in King County, Washington on or about August 21, 2002, did drive or operate a vehicle while under the influence of intoxicating liquor or any drugs, as defined in RCW 46.61.502, which conduct was the proximate cause of serious bodily injury to Zachary Moss;

Contrary to RCW 46.61.522(1)(b), and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse WILLIAM T. ROBINSON of the crime of **Vehicular Assault**, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

**Norm Maleng**  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104 3212  
(206) 296-9000 **Page 18**

1 That the defendant WILLIAM T. ROBINSON in King County,  
2 Washington on or about August 21, 2002, did drive or operate a  
3 vehicle while under the influence of intoxicating liquor or any  
4 drugs, as defined in RCW 46.61.502, which conduct was the proximate  
5 cause of serious bodily injury to Olivia Moss;

6 Contrary to RCW 46.61.522(1)(b), and against the peace and  
7 dignity of the State of Washington.

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COUNT III

And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
accuse WILLIAM T. ROBINSON of the crime of **Vehicular Assault**, a  
crime of the same or similar character as another crime charged  
herein, which crimes were part of a common scheme or plan and which  
crimes were so closely connected in respect to time, place and  
occasion that it would be difficult to separate proof of one charge  
from proof of the other, committed as follows:

That the defendant WILLIAM T. ROBINSON in King County,  
Washington on or about August 21, 2002, did drive or operate a  
vehicle while under the influence of intoxicating liquor or any  
drugs, as defined in RCW 46.61.502, which conduct was the proximate  
cause of serious bodily injury to Kristina Moss;

Contrary to RCW 46.61.522(1)(b), and against the peace and  
dignity of the State of Washington.

NORM MALENG  
Prosecuting Attorney

By: \_\_\_\_\_  
Andrew C. Herman, WSBA #25143  
Deputy Prosecuting Attorney

**Norm Maleng**  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000 **Page 19**

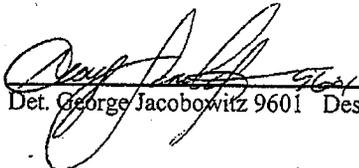
CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE AUG 26 2002

That George Jacobowitz is a Detective with the City of Des Moines Police Department, King County Washington and has reviewed the investigation conducted under Des Moines Police Department Case Number 02-2248.

There is probable cause to believe that **Defendant Robinson, W/M 111264** committed the crime(s) of: Vehicular Assault and Duty/ Injury Attended. This belief is predicated on the following facts and circumstances:

That on 8/21/02 at 1600 hours Defendant Robinson was operating his blue Toyota Corolla northbound on State Route 509 (Marine View Drive South) between South 230th Street and South 232nd Street, in the City of Des Moines, County of King. That Defendant Robinson drove his vehicle off the roadway and over a curb onto a raised sidewalk located adjacent to SR 509. Defendant Robinson's vehicle passed one pedestrian on the sidewalk and then struck one pedestrian and two bicyclists. One of the victims sustained life-threatening injuries and was air lifted to Harborview Medical Center. This victim is in critical condition and on life support. Two other victims sustained injuries, including multiple fractures and were transported to Harborview Medical Center via ambulance. One of these victims is in serious condition and the other in fair condition. Defendant Robinson continued driving a short distance and turned east onto South 230th Street. Defendant Robinson turned into the Yardarm Pub and stopped his vehicle in the parking lot. Witness Kundert immediately contacted Defendant Robinson and drove him back to the location of the injured subjects. Responding officers contacted Witness Kundert and Defendant Robinson at the scene. Officers determined probable cause for driving under the influence after interviewing Defendant Robinson and after the additional observations, including odor of intoxicants and the conducting of field sobriety tests. Officer Montgomery conducted three (3) field sobriety tests, the first one being the horizontal gaze nystagmus. Officer Montgomery's report indicates during this test he observed the onset of nystagmus prior to 45 degrees in both eyes. He also observed nystagmus at maximum deviation on both sides. Defendant Robinson was then asked to perform the one legged stand. During this test, Defendant Robinson had difficulty and had trouble maintaining his balance and swayed from side to side. During the third test, Defendant Robinson was asked to demonstrate the walk and turn test. Defendant Robinson was asked to put his right foot in front of his left foot with his hands at his sides. While this test was being explained to him, Defendant Robinson could not maintain his balance and kept stepping off to the side and moving his hands away from his sides to prevent himself from falling.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. Signed and dated by me this 23rd day of August, 2002, at Des Moines, King County, Washington.

  
 Det. George Jacobowitz 9601 Des Moines Police

Amended for Real Facts 3/17/03  
pursuant to Plea Agreement

CAUSE NO. 02-1-06035-4 KNT

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR  
CONDITIONS OF RELEASE

The State adopts and incorporates by reference the Certification for Determination of Probable Cause written by Detective George Jacobowitz under Des Moines Police incident number 02-2248.

On August 21, 2002 at 4:00 P.M., witness Mark Kundert was driving southbound on Marine View Drive South and heard a screeching sound through his driver side window. When looking towards the direction of the sound, Mr. Kundert saw an oncoming car swerve up on to the sidewalk striking a mailbox. As he saw the wooden mailbox post flying through the air, Mr. Kundert noticed 3 people standing on the sidewalk in the path of the car. Mr. Kundert then saw the car ~~colliding~~ through all three people. The young boy flew 6 to 8 feet into the air landing on top of the adjacent rock wall before falling onto the sidewalk below. He was unconscious on the sidewalk as witnesses wrapped his head to control the heavy bleeding while waiting for paramedics. The young girl was thrown off to the side of the car. Witness Susan Manley, who saw the collision when stopped in the southbound lane, saw the mother flying through the air landing on top of the rockery. Officers found her in dazed condition sitting on top of the wall near her children. According Ms. Manley, the car never slowed before or after the collision. Mr. Kundert ~~stopped~~ the car ~~stated that~~ *did after the collision, but did not stop.*

<sup>stated</sup> When seeing the car continue down the sidewalk and re-enter the roadway without stopping, Mr. Kundert turned around and followed it down the hill and into the parking lot of the Yardarm Tavern. Mr. Kundert immediately contacted the driver, later identified as defendant William T. Robinson, in the parking lot and drove him back to the scene of the collision. The defendant was the only occupant in the car.

1 Officer Haglund arrived at the scene within 3 minutes of the  
2 911 call along with the paramedics. Officer Haglund saw the two  
3 children lying on the sidewalk adjacent to the roadway with  
4 witnesses attempting to render First Aid treatment. A citizen at  
5 the scene pointed out the defendant as the driver involved. When  
6 contacted initially by Officer Haglund, the defendant provided  
7 his driver's license, admitted that he was driving the vehicle,  
8 and said that "I looked down to adjust my radio, I drifted off  
9 the road, when I looked up I hit the people." When asked why he  
10 continued driving to the bar around the corner, the defendant  
11 replied "I don't know." During that initial conversation at the  
12 scene, Officer Haglund noticed the odor of intoxicants on the  
13 defendant's breath and the slow and lethargic nature of his  
14 speech.

15 Officer Montgomery then assumed contact with the defendant.  
16 After acknowledging and waiving his constitutional Miranda  
17 rights, the defendant said that he thought he had only hit the  
18 curb without driving onto the sidewalk, that he did not realize  
19 that he struck several people on the sidewalk, and that he was  
20 not sure how his car ended up at the Yardarm Tavern before he  
21 returned to the collision scene.

22 When administering Field Sobriety Tests at the scene,  
23 Officer Montgomery noted the defendant's inability to complete  
24 the walk and turn test, his inability to maintain balance when  
25 turning, the odor of intoxicants on his breath, and his slurred  
26 speech. When listening to Officer Montgomery's instructions  
27 before starting Field Sobriety Tests, the defendant had trouble  
28 keeping his balance and swayed from side to side.

29 At the scene, Paramedic Supervisor Jeff Merritt drew a  
30 sample of blood from the defendant at 4:55 P.M., after the  
31 defendant verbally acknowledged his implied consent warning for  
32 blood. Officer Montgomery took possession on the sealed vials  
33 and preserved them in evidence for analysis at the Toxicology  
34 lab.

35 At the police station, Detective Jacobowitz interviewed the  
36 defendant at 8:00 P.M. after advising the defendant of his  
37 constitutional Miranda rights. During that interview, the  
38 defendant admitted drinking 2 beers at a friend's house within 2  
39 hours of the collision and taking a 5 milligram Valium tablet  
40 just one hour before. The defendant said that the Valium was  
41 prescribed to a friend of his. The defendant also claimed that  
42 he stopped on the sidewalk immediately after the collision.

43 Sergeant Collins of the Des Moines Police Department  
44 provided current information on the condition of all three  
45 victims currently hospitalized at Harborview Medical Center.  
46 Zachary Moss, who is 12 years old, remains in critical condition  
47 on life-support equipment with a severe head injury. Oliva Moss,

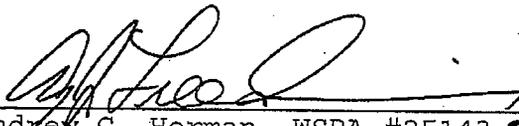
1 who is 8 years old, was listed in serious condition from head  
2 injuries. ~~The treating physicians performed a surgical procedure~~  
3 ~~to reduce pressure on her brain from internal cranial bleeding.~~  
4 ~~Kristina Moss, their mother, remains hospitalized with multiple~~  
5 ~~leg and shoulder fractures and a potential head injury.~~

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REQUEST FOR BAIL

The State requests bail in the amount of \$1,000,000, the amount set at first appearance based upon the gravity of the offense against all three victims and the resulting threat to community safety. If the condition of Zachary Moss deteriorates, the State will amend the charges to include one count of Vehicular Homicide. Additional conditions requested include no possession or consumption of any drug without a valid prescription in compliance with a treating physician's orders, no driving of a motor vehicle, and no contact with Kristina and Allen Moss and their children.

The defendant was previously booked into the King County Jail on 6-5-02 on a charge of Assault 4<sup>th</sup> degree - Domestic Violence. That pending matter is now scheduled for a pre-trial readiness hearing on 9-9-02. Per Court Services, the defendant admitted attending AA meetings in the past and moved to Western Washington from Mississippi in 1991. Court Services was unable to verify any references. According to the NCIC database on criminal history, the defendant was convicted in Mississippi for Burglary and Larceny of a Dwelling (1986) and sentenced to 5 years in prison.

  
Andrew C. Herman, WSBA #25143 8/26/02  
Freedheim #19897

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

WILLIAM T. ROBINSON,

Defendant,

No. 02-1-06035-4KNT

ADDITIONAL STATEMENT OF  
FACTS

APPENDIX C

The Washington State Toxicology Lab tested the defendant's blood sample. They found  
is contained the following:

Ethanol	0.01g/1100mL
THC	5 ng/mL
Carboxy-THC	29 ng/mL
Oxycodone	0.09 mg/L
Diazepam	0.28 mg/L
Nordiazepam	<0.05 mg/L
Meprobamate	<2.0 mg/L
Carisoprodol	2.2 mg/L

1 Nicotine/cotinine

2 The blood results show that the defendant ingested alcohol, marijuana, Valium, and the  
3 narcotic drug, OxyContin. The combination of these drugs is consistent with a person being  
4 greatly affected by the substances at the time of the collision, 55 minutes prior to the blood draw.  
5 The defendant did not have a prescription for the valium, but obtained the drug through a friend.

6 After striking the Moss family, the defendant returned to the road and drove his car to a  
7 parking lot and parked in front of the Yard Arm Pub. A witness, Mark Kundert, followed him.  
8 Mr. Kundert contacted the defendant and told him that he hit people. The defendant reacted as  
9 though he did not know he had struck anybody. <sup>Mr. Kundert stated he acted like he was in shock,</sup> He returned to the scene in Mr. Kundert's car  
10 and waited for the police. <sup>Mr. Kundert told him to get in the car, the defendant did so without</sup>  
<sup>argument.</sup>

11 Kristina Moss had been bicycling with her two daughters and son. They had just stopped  
12 on the sidewalk when the defendant <sup>hit</sup> plowed into them. The defendant lacked liability insurance  
13 at the time. <sup>They were standing next to their bikes and not wearing helmets,</sup>

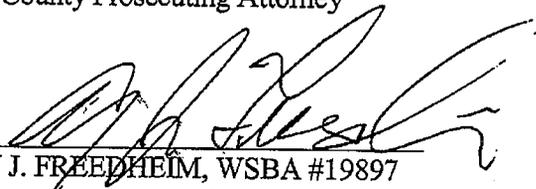
14 Olivia Moss, 8yO, suffered a closed head brain injury. She continues to suffer memory  
15 problems six months after the crash, but is recovering. Kristina Moss suffered a fracture of her  
16 left arm and her left toe. <sup>the arm fracture was minimally displaced fracture.</sup> She continues to recover from those and ligament injury to her ankle.

17 Zachery Moss was the most severely injured. The 12yO boy sustained a very severe  
18 traumatic brain injury and a right femur fracture. Six months after the collision he continues to  
19 show evidence of a very significant brain injury. He is minimally responsive and able to follow  
20 some very simple motor commands with his left arm. However, he remains dependent for all of  
21 his care including feeding, bathing, dressing, personal hygiene, and turning in bed and  
22 transferring. He is unable to move himself about in space and unable to communicate his  
23 thoughts. He cannot speak or vocalize, but answers simple "yes and no" questions appropriately

1 80% of the time. While it is too early to determine his overall prognosis, it is anticipated that he  
2 will remain a severely disabled person. It is unlikely that he will develop the ability to walk,  
3 communicate, or to become able to perform basic activities of daily living such as dressing, self-  
4 feeding, or independent toileting.

5  
6 DATED this 13 day of ~~February~~ <sup>March</sup>, 2003.

7 NORM MALENG  
8 King County Prosecuting Attorney

9  
10 By:   
11 AMY J. FREEDHEIM, WSBA #19897  
12 Senior Deputy Prosecuting Attorney  
13 Attorneys for Plaintiff  
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FELONY PLEA AGREEMENT

Date of Crime: 8-21-02 Date: 3-13-03

Defendant: Robinson, William Cause No: 02-1-06035-4 SEARCHED

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) I-III of the  original  amended information.

With Special Finding(s):  deadly weapon - firearm, RCW 9.94A.510(3);  deadly weapon other than firearm, RCW 9.94A.510(4);  sexual motivation, RCW 9.94A.835;  protected zone, RCW 69.50.435;  domestic violence, RCW 10.99.020;  other \_\_\_\_\_; for count(s): \_\_\_\_\_

DISMISS: Upon disposition of Count(s) \_\_\_\_\_, the State moves to dismiss Count(s): \_\_\_\_\_

REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:

The facts set forth in the certification(s) for determination of probable cause and prosecutor's summary *as amended and attached to Plea*  
 The facts set forth in  Appendix C;  \_\_\_\_\_

RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and  
 agrees to pay restitution in the specific amount of \$ \_\_\_\_\_  
 agrees to pay restitution as set forth in  Appendix C;  \_\_\_\_\_

OTHER: He will file no other changes.

CRIMINAL HISTORY AND OFFENDER SCORE:

a.  The defendant agrees to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation.

b.  The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, as follows:  
(1) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_  
(2) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_

c. The State's recommendation may change if the score used by the court at sentencing differs from that set out in Appendix A.

Maximum on Count(s) I-III is not more than 10 years each and \$ 20,000 fine each.

Maximum on Count(s) \_\_\_\_\_ is not more than \_\_\_\_\_ years each and \$ \_\_\_\_\_ fine each.

Mandatory Minimum Term(s) pursuant to RCW 9.94A.540 only: \_\_\_\_\_

Mandatory weapon sentence enhancement for Count(s) \_\_\_\_\_ is \_\_\_\_\_ months each; for Count(s) \_\_\_\_\_ is \_\_\_\_\_ months each. This/these additional term(s) must be served consecutively to each other and to any other term and without any earned early release.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing or violates the conditions of release.

William T. Robinson  
Defendant

Carl J. Wodman  
Attorney for Defendant 16818

[Signature]  
Deputy Prosecuting Attorney 19852

[Signature]  
Judge, King County Superior Court

# GENERAL SCORING FORM

## Felony Traffic Offenses

Use this form only for the following offenses: Attempting to Elude Pursuing Police Vehicle, Hit and Run - Injury Accident, Vehicular Assault, Vehicular Homicide by Being Under the Influence of Intoxicating Liquor or any Drug, Vehicular Homicide by the Operation of any Vehicle in a Reckless Manner, or Vehicular Homicide by Disregard for the Safety of Others

OFFENDER'S NAME <i>Robinson, William</i>	OFFENDER'S DOB <i>11/12/64</i>	STATE ID#
JUDGE	CAUSE# <i>02-1-06035-4</i>	FBI ID#

In the case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360).

**ADULT HISTORY:**

Enter number of Vehicular Homicide or Vehicular Assault convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other felony convictions ..... *0* x 1 = *0* (0)  
 Enter number of Driving While Intoxicated, Actual Physical Control, Reckless Driving, and misdemeanor Hit and Run - Attended convictions ..... x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

Enter number of Vehicular Homicide or Vehicular Assault dispositions ..... x 2 = \_\_\_\_\_  
 Enter number of other felony dispositions ..... x 1/2 = \_\_\_\_\_  
 Enter number of Driving While Intoxicated, Actual Physical Control, Reckless Driving, and misdemeanor Hit and Run - Attended convictions ..... x 1/2 = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Those offenses not encompassing the same criminal conduct)

Enter number of Vehicular Homicide or Vehicular Assault convictions *3 CT I, II, III This cause* ..... *2* x 2 = *4*  
*2 CT's*  
 Enter number of other felony convictions ..... x 1 = \_\_\_\_\_  
 Enter number of Driving While Intoxicated, Actual Physical Control, Reckless Driving, and misdemeanor Hit and Run - Attended convictions ..... x 1 = \_\_\_\_\_

**STATUS AT TIME OF CURRENT OFFENSES**

If on community placement at time of current offense, add 1 point ..... + 1 = \_\_\_\_\_

Total the last column to get the Offender Score  
 (Round down to the nearest whole number)

*4* (4)

*CT I, CT II & CT III*

<i>Veh Assault DUI</i>	STANDARD RANGE CALCULATION* <i>4</i>	<i>15</i>	TO	<i>20</i>
CURRENT OFFENSE BEING SCORED	<i>IV</i>	<i>4</i>		<i>15</i>
	SERIOUSNESS LEVEL	OFFENDER SCORE		LOW STANDARD SENTENCE RANGE
				<i>20</i>
				HIGH

\* Multiply the range by 75% if the current offense is an attempt, conspiracy or solicitation under RCW 9A.28.

• If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-18 or III-19 to calculate the enhanced sentence.

**APPENDIX B TO PLEA AGREEMENT  
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY  
(SENTENCING REFORM ACT)**

Defendant: **WILLIAM T ROBINSON**      FBI No.: **875342AA9**      State ID No.:  
DOC No.:

This criminal history compiled on: **August 28, 2002**

- |   |
|---|
| <input type="checkbox"/> None known. Recommendations and standard range assumes no prior felony convictions.              |
| <input type="checkbox"/> Criminal history not known and not received at this time. WASIS/NCIC last received on 08/21/2002 |

**Adult Felonies**

Offense	Score	Disposition
unknown	5/13/83	MS Pascagoula County - Ocean Springs - Guilty rec'd dept corr security parchman on 5/21/86 for 5 years confinement
<b>burglary and larceny of a building</b>		<i>discharge 4-16-91</i>

**Adult Misdemeanors**

Offense	Score	Disposition
Y02172908 KC	06/05/2002	WA SeaTac Municipal Court - PENDING <i>d/m w/o prejudice</i>
assault in the fourth degr		
I01732679 WS	01/16/2001	WA Grays Harbor District Court #2 - <del>PENDING</del>
speeding 5 mph over limit (ov		<i>Paid</i>
K00056821 KC	01/09/1992	WA Renton District Court - Guilty
<i>dwls 2nd degree amended to ↓</i>		
K00056821 KC	01/09/1992	WA Renton District Court - Guilty
no valid drivers license		

**Juvenile Felonies - None Known**

**Juvenile Misdemeanors - None Known**

**Comments**

Prepared by:

\_\_\_\_\_  
Sidnie Sebastian  
King County Office of the Prosecuting Attorney

STATE'S SENTENCE RECOMMENDATION

(NON-SEX OFFENSE ; COMMITTED on or after 7/1/2000; SENTENCE OVER ONE YEAR)

Date of Crime: 8-21-02

Date: 3-13-03

Defendant: Robinson, William

Cause No.: 02-1-06035-4

State recommends that the defendant be sentenced to a term of total confinement in the Department of Corrections as follows:

Count I 60 months, Count II 60 months, Count III 20 months, Count IV, Count V, Count VI

Terms on each count to run concurrently/consecutively with each other. Terms to be served concurrently/consecutively with: Terms to be consecutive to any other term(s) not specifically referred to in this form.

WEAPONS ENHANCEMENT - RCW 9.94A.310: The above recommended term(s) of confinement include the following weapons enhancement time: months for Ct. months for Ct. months for Ct. which is/are mandatory, served without good time and served consecutive to any other term of confinement. The total of all recommended terms of confinement in this cause is: months.

WORK ETHIC CAMP - RCW 9.94A.137: Defendant is legally eligible (range is not less than 12 months and 1 day; not more than 36 months; current offense is not VUCSA or VUCSA solicitation for crimes after 7/25/99; no current or prior violent or sex offense). Work Ethic Camp is/is not recommended. If not, why not:

DRUG OFFENDER SENTENCE ALTERNATIVE - RCW 9.94A.120(6)(a) Legal Eligibility: 1) no current or prior violent offenses, sex offenses; 2) no weapon enhancement; 3) if VUCSA "small quantity" of drugs, 4) not deportable. (If DOSA is recommended, use DOSA Recommendation form instead of this form.) Defendant is not eligible for DOSA because:

EXCEPTIONAL SENTENCE: RCW 9.94A.120(2); RCW 9.94(a).390. This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form. Supplemental Brief

NO CONTACT: For the maximum term, defendant have no contact with Moss family

MONETARY PAYMENTS: Defendant make the following monetary payments under the supervision of the Department of Corrections for up to 10 years pursuant to RCW 9.94A.120(12) and RCW 9.94A.145.

- Restitution as set forth in the "Plea Agreement" page and Appendix C.
X Court costs; mandatory \$500 Victim Penalty Assessment, recoupment of cost for appointed counsel.
King County Local Drug Fund \$; \$100 lab fee RCW 43.43.690.
\$1,000, fine for VUCSA; \$2,000, fine for subsequent VUCSA. Fine of \$;
Costs of incarceration in K.C. Jail at \$50 per day. RCW 9.94A.145(2); Extradition costs of \$;
Emergency Response Costs, 1000. RCW 38.52.430; Other \$125 Toxicology Lab fee (46.61.5054)

COMMUNITY CUSTODY (RCW 9.94A.120(11): Offenders sentenced to the custody of the Department of Corrections for certain offenses shall serve a term of community custody for the applicable period set forth below, the period of earned early release, or whichever is longer.

Table with 3 columns: Offense Type, Sentence Range, and Check box for largest applicable range. Rows include Sex Offense, Serious Violent Offense, Violent Offense, Crimes Against Persons, and Violation of Ch. 69.50 or .52.

Shall obtain drug/alcohol eval & follow treatment rec AIS Discretionary conditions recommended by the state: No poss/consumption alcohol or drug w/o written prescription under dr care; Attend DUI - victim panel, No entering a business where alcohol is primary commodity for sale, No driving w/o valid license, insurance, 12 mos ignition interlock device

Approved by: [Signature] Deputy Prosecuting Attorney WSBA No. 14897

## **APPENDIX B**

Order Granting First Petition for Review  
and Remanding to the Court of Appeals

# THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM T. ROBINSON,

Petitioner.

NO. 77893-1

**ORDER**

C/A NO. 52447-0-I

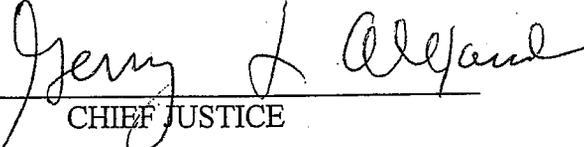
Department I of the Court, composed of Chief Justice Alexander and Justices C. Johnson, Sanders, Chambers and Fairhurst, at its January 3, 2007, Motion Calendar, considered whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is granted and remanded to the Court of Appeals Division One for reconsideration in light of *State v. Suleiman*, 158 Wn.2d 280 (2006), and *State v. Hagar*, 158 Wn.2d 369 (2006).

DATED at Olympia, Washington this 3<sup>rd</sup> day of January, 2007.

For the Court

  
CHIEF JUSTICE

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2007 JAN - 7 P. 4:23  
CLERK

## **APPENDIX C**

Court of Appeals Decision upon Remand

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 vs. )  
 )  
 WILLIAM T. ROBINSON, )  
 )  
 Appellant. )  
 \_\_\_\_\_ )

DIVISION ONE

No. 52447-0-1

UNPUBLISHED OPINION

FILED: April 9, 2007

RECEIVED

APR - 9 2007

Washington Appellate Project

**BAKER, J.** — Our Supreme Court remanded this matter to this court for reconsideration of our opinion in light of State v. Suleiman<sup>1</sup> and State v. Hagar.<sup>2</sup> We affirm Robinson's sentence, because the judicial fact finding in violation of Blakely v. Washington<sup>3</sup> was harmless error.

Both Suleiman and Hagar acknowledge that under Washington v. Recuenco,<sup>4</sup> Blakely error is subject to a constitutional harmless error analysis.<sup>5</sup> A harmless error under the constitutional standard occurs if the reviewing court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the

<sup>1</sup> 158 Wn.2d 280, 143 P.3d 795 (2006).

<sup>2</sup> 158 Wn.2d 369, 144 P.3d 298 (2006).

<sup>3</sup> 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d. 403 (2004).

<sup>4</sup> \_\_\_ U.S. \_\_\_, 126 S. Ct. 2546, 165 L. Ed. 2d. 466 (2006).

<sup>5</sup> Suleiman, 158 Wn.2d at 294-95; Hagar, 158 Wn.2d at 373 n.2.

absence of the error.<sup>6</sup> A constitutional error is presumed prejudicial and the burden is on the State to prove that it is harmless.<sup>7</sup>

Robinson argues on remand that because he pled guilty and was not afforded a jury trial, this court should not engage in speculation as to what a fictional jury would have concluded. Further, at the time of his guilty plea, there was no procedure available in our law for a jury to try issues of aggravating factors which might justify exceptional sentences. However, harmless error analysis always involves an inquiry into the hypothetical. The analysis here asks whether the evidence presented at a hypothetical jury trial would have resulted in the enhanced sentence beyond a reasonable doubt. Robinson suggests that in a jury trial, he would have contested, not stipulated, to the facts contained in his guilty plea, and that there is no way of knowing what evidence a jury would have heard. However, Robinson has never sought to withdraw his guilty plea; he only seeks resentencing within the standard range. We therefore assume that the same stipulated facts contained in his plea agreement would have been submitted to a jury. Therefore, we proceed with the harmless error analysis based on the record below.

The trial court ruled that each aggravating factor, standing alone, is sufficient to support the enhanced sentence. Therefore to sustain the sentence, the State need only demonstrate that one of the three factors would have been found by a jury beyond a reasonable doubt.<sup>8</sup>

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<sup>6</sup> State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985).

<sup>7</sup> Guloy, 104 Wn.2d at 425 (citing State v. Stephens, 93 Wn.2d 186, 190-191, 607 P.2d 304 (1980)).

<sup>8</sup> State v. Hughes, 154 Wn.2d 118, 134, 110 P.3d 192 (2005).

One of the factors supporting Robinson's enhanced sentence was the finding that his victims were particularly vulnerable. This aggravating factor justifies an exceptional sentence if the State shows (1) that the defendant knew or should have known (2) of the victim's particular vulnerability and (3) that vulnerability was a substantial factor in the commission of the crime.<sup>9</sup> Our Supreme Court has upheld a finding of particular vulnerability when the victim was a pedestrian pushing her bicycle along the shoulder of the road.<sup>10</sup>

Although he did not stipulate to the aggravating factor of particularly vulnerable victims, he did stipulate to all of the facts underlying that finding. All three victims were undisputedly pedestrians, which is sufficient for a finding of vulnerability under Nordby. In fact, the victims here were even more vulnerable than the Nordby victim. First, two of the three victims were children ages 8 and 12. Second, they were standing on a sidewalk with a curb, not on the shoulder of the road where they might be more alert to passing traffic.

The stipulated facts prove beyond a reasonable doubt that Robinson knew or should have known that these victims were particularly vulnerable when he drove his vehicle onto the sidewalk. Their particular vulnerability was certainly a substantial factor in the crime: had they been in another car, they might have been able to swerve and avoid Robinson, or might have been afforded some protection by their car's safety

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<sup>9</sup> Suleiman, 158 Wn.2d at 291-92.

<sup>10</sup> State v. Nordby, 106 Wn.2d 514, 518, 723 P.2d 1117 (1986). Despite the fact that the victim in Nordby was only 15 years old, the court found that her status as a pedestrian alone supported a finding of particular vulnerability. Nordby, 106 Wn.2d at 516 n.1.

systems. Were the trial court, on remand to submit the aggravating factors to a jury, on this record, Robinson's sentence would have been the same.

AFFIRMED.

Baker, J.

WE CONCUR:

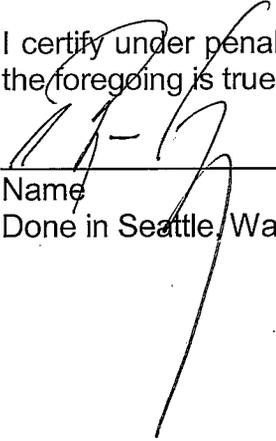
Azid, J.

Columan, J.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Supplemental Brief of Respondent, in STATE V. WILLIAM ROBINSON, Cause No. 80202-5, in the Supreme Court, for the State of Washington.

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

  
\_\_\_\_\_  
Name  
Done in Seattle, Washington

04-10-2008  
\_\_\_\_\_  
Date