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FEB 05 2010

King County Prosecutor
Appellate Unit

NO. 63808-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

THOMAS RANDALL,

Appellant.

FILED
COURT OF APPEALS DIVISION
STATE OF WASHINGTON
2010 FEB -5 PM 4:20

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

The Honorable Jeffrey Ramsdell, Judge

BRIEF OF APPELLANT

JENNIFER J. SWEIGERT
Attorney for Appellant

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

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A. ASSIGNMENTS OF ERROR

1. The court improperly commented on the evidence in instructing the jury that “A person knows or acts knowingly or with knowledge with respect to a fact,” omitting the second half of the first sentence of the pattern instruction. CP 47 (Instruction 19).

2. The court erred in finding appellant knew or should have known the victim was particularly vulnerable. CP 78.

3. Appellant’s state and federal constitutional rights to have the jury determine facts supporting an exceptional sentence beyond a reasonable doubt were violated.

4. The court erred in entering judgment of guilt and imposing the exceptional sentence. CP 78.

Issues Pertaining to Assignments of Error

1. Under article IV, section 16 of Washington’s constitution, courts may not comment on the evidence by instructing a jury that a disputed factual issue has been resolved. The first sentence of jury instruction 19 read simply, “A person knows or acts knowingly or with knowledge with respect to a fact.” Was this instruction an impermissible comment on the evidence?

2. Under the Sentencing Reform Act, as well as the Washington and United States Constitutions, facts supporting an

exceptional sentence must be proved to a jury beyond a reasonable doubt. Special verdict form C in this case read, “Did the victim know, or should have known, that the victim was particularly vulnerable or incapable of resistance?” Because the special verdict form asked about the victim’s knowledge, rather than appellant’s, is the exceptional sentence unsupported by the jury’s verdict?

B. STATEMENT OF THE CASE

1. Procedural Facts

The King County prosecutor charged appellant Thomas Randall with one count of first-degree theft and one count of witness tampering. CP 17-18. As to the theft, the State also alleged the aggravating factors that the crime was a major economic offense and the victim was particularly vulnerable. CP 17-18. The jury acquitted Randall of witness tampering but found him guilty of theft and answered “yes” to the special verdict forms. CP 22-25. The court imposed an exceptional sentence of 25 months. CP 74.

2. Substantive Facts

During the summer of 2003, Randall’s grandfather Cecil¹ died, leaving his grandmother Elizabeth a widow. 5RP² 78-79. Shortly thereafter,

¹ Because most of the individuals involved in this case share last names, first names are used except for appellant Randall. No disrespect is intended.

² There are 12 volumes of Verbatim Report of Proceedings, referenced as follows: 1RP – Mar. 23, 2009; 2RP – Mar. 25, 2009; 3RP – Mar. 26, 2009; 4RP – Mar. 26, 2009

Randall's father Steven was diagnosed with lung cancer and died as well. 5RP 10-11. At his father's behest, Randall agreed to take over his father's role as a support to Elizabeth and as her attorney-in-fact. 10RP 80. Randall and his grandmother grew quite close. 5RP 12. He helped her as needed, went places with her, and always answered her phone calls, sometimes ten per day. 6RP 87.

On September 22, 2003, Randall accompanied his grandmother to attorney Michael Zuccarini, where they began the process of probating his grandfather's estate and also executed a durable power of attorney, effective immediately, a revocable trust, and a pour-over will. 5RP 113, 120, 142. Randall became his grandmother's attorney-in-fact and co-trustee of the trust with independent powers. 5RP 127-28, 145-46. As attorney-in-fact, Randall had the power to make gifts to lineal descendants, but gifts to himself were limited to the annual taxation limit of \$12,000. 5RP 150, 152.

Zuccarini testified Randall did most of the talking at his meetings with Elizabeth, and he did have some concerns about her competency. 5RP 116-17. However, after interviewing her alone, he was "confident" she was competent to execute the estate-planning documents. 5RP 116-17. He testified Elizabeth had no confidence in her daughters, but had great

(continued); 5RP – Mar. 30, 2009; 6RP – Mar. 31, 2009; 7RP – Mar. 31, 2009 (continued); 8RP – Apr. 1, 2009; 9RP – Apr. 2, 2009; 10RP – Apr. 6, 2009; 11RP – Apr. 7, May 15, June 5, July 10, 2009; 12RP - June 19, 2009.

confidence in Randall. 5RP 125. Elizabeth told Zuccarini she needed help with her husband's estate and was worried about her daughters "looting" her.³ 5RP 113.

Around that same time, Elizabeth's estranged daughter Julie filed a guardianship petition and attempted to probate her father's estate on her own. 5RP 23-24, 46, 168-69. Geriatric specialist Judith Newman interviewed Elizabeth, concluding she suffered from dementia and paranoia. 3RP 4-5, 7, 24, 27. However, both the guardian ad litem and Elizabeth's physician reported she did not need a guardian. 5RP 24-25. In light of these reports, Julie and her husband did not wish to go to trial, and the court entered an order declaring Elizabeth competent to manage her own affairs. 5RP 25, 49.

Elizabeth and her husband were products of the depression, who invested their savings by purchasing real estate. 5RP 41, 57. They bought land and homes with cash, avoiding credit or indebtedness of any kind. 5RP 55. According to Julie, Elizabeth Randall had never used any sort of credit or debit card. 5RP 55. The couple's retirement income came from contract

³ After her husband's death, Elizabeth's daughters found several thousand dollars hidden in her house. 5RP 17. They claimed they talked to Randall and decided to give it to Steven, who had lung cancer, to help with his bills. *Id.* Randall denies approving this arrangement and testified one of his aunts kept most of the money. 10RP 81. No one told Elizabeth of this decision. 5RP 43.

sales of their various properties to supplement social security and pension funds from their school district jobs. 5RP 74-75.

In the two years after the trust and power of attorney documents were executed, Randall lost his job at a mortgage company and was hospitalized with diabetes and depression. 8RP 61, 86. He testified and repeatedly told others that he and Elizabeth used her money together. Some of the money he gave to Elizabeth to keep in a safe at her home at her request. 8RP 115. Some was used for Randall's medical bills and living expenses with Elizabeth's permission. 8RP 84, 87. He also explained Elizabeth wanted her money spent so that her daughters would not get their hands on it. 8RP 103-05.

Randall and his fiancée, Daphne Eastman explained Elizabeth gave Randall her home in Port Hadlock. 6RP 29. Randall put the deed in Daphne's name to ensure that she and their son would be taken care of if he died, since he had recently been diagnosed with diabetes and also was subject to a judgment lien. 6RP 36-37. Their plan was to fix up the Port Hadlock house so that either it could be sold for income or Elizabeth could move in with them when she was no longer able to live on her own. 6RP 83.

After the couple moved in, they began fixing up the house, using money also given them by Elizabeth. 6RP 43-44. While living there, the couple bought groceries and other items using debit/ATM cards on

Elizabeth's account, and got cash from her account to pay both Randall's bills and Elizabeth's. 6RP 44-47. Elizabeth constantly referred to her money as "our money" or "Randall money." 6RP 81.

Daphne's parents were searching for retirement property close to their daughter and grandchild, so Randall sold them Elizabeth's Marrowstone Island property. 6RP 102-06. Daphne's father Richard Eastman told the detective he understood Randall to be selling the property on behalf of his grandmother. 6RP 127. However, at trial he testified Randall said Elizabeth gave him the property. 6RP 105.

Despite Elizabeth's falling out with her daughter, Julie's husband Jon continued to visit Elizabeth regularly. 5RP 84-85. On a trip in September, 2005, he passed by the Port Hadlock property and saw that it appeared lived in. 5RP 28. An investigation on the internet showed quitclaim deed transfers of the Port Hadlock and Marrowstone Island properties in return for "love and affection."⁴ 5RP 86.

Jon then went to see Elizabeth to make sure everything was all right. 5RP 87. Elizabeth told him she was permitting Randall, his fiancée, and their children to live in the Port Hadlock house temporarily because Randall's Bothell home had burned. 5RP 85. She did not understand the

⁴ This turned out to be incorrect. Daphne's father paid \$33,000, what he considered to be fair market value, for the property. 6RP 113. Later, he settled with Elizabeth's new guardian by paying an additional \$10,000. 6RP 123.

quitclaim deeds, although she had signed them. 5RP 87, 108. Jon then took Elizabeth to the bank to check on her accounts because she was no longer getting any statements. 5RP 88. She should have had at least \$150,000 from real estate sales. Instead, the bank manager showed that \$100,000 from her accounts had been spent in the past four months, and only \$16,000 remained. 5RP 88-89. Jon helped Elizabeth transfer the remaining money to a new account and called Adult Protective Services and the police. 5RP 90, 92. He tried to explain to Elizabeth that it appeared Randall had taken nearly all of her money. 5RP 91. Elizabeth asked, "Why would he do that to me? I've never done anything to him." 5RP 91.

A social worker with Adult Protective Services filed a second guardianship petition in September, 2005, and Guardian ad Litem Apolonio Buyagawan visited Elizabeth. 7RP 20. When he attempted to discuss her finances and the deeds of her property with her, Elizabeth instructed him to do nothing, saying she would handle it herself. 7RP 21.

Buyagawan also talked with Randall. 7RP 24. Randall told Buyagawan he did not understand himself to have power of attorney until Elizabeth was incapacitated. 7RP 25. Randall told him Elizabeth had \$150,000 in 2003 when the power of attorney was signed, and that \$40,000 in legal fees from the first guardianship petition were paid from that amount. 7RP 26. He explained he also withdrew \$15,000 cash for Elizabeth because

she wanted to keep it in her safe at home. 7RP 29. Randall said any other money he spent was for the children. 7RP 30. Randall accepted responsibility for all cash withdrawals in Jefferson County (Elizabeth lived in Kirkland and did not stray far from home) and cooperated with the guardianship process. 7RP 41, 43. However, he was unable to provide an accounting of the money spent from Elizabeth's accounts. 10RP 140.

The second guardianship petition was granted, and on December 21, 2005, Randall's power of attorney was dissolved. 5RP 93. In March, 2006, Randall and Daphne broke up and moved out of the Port Hadlock home. 6RP 49. Daphne transferred the home to Elizabeth's current guardians. 6RP 94-95.

The State's investigator summarized the activity on Elizabeth's six bank accounts. Two of the accounts were in Elizabeth's and her late husband's names only, and there was very little activity on these accounts. 7RP 48-49. They showed regular deposits from social security and monthly cash withdrawals of \$750. 7RP 50. Two of the accounts were in the name of the Elizabeth Randall trust, with Randall listed as a trustee. 7RP 48-49. Two other accounts were in Elizabeth's name but listed Randall as power of attorney. 7RP 48-49. These accounts showed frequent ATM and debit card activity as well as money taken from an annuity and paid to an investment fund. 7RP 52; 8RP 6, 9-10. ATM withdrawals, in-person withdrawals, debit

card purchases, and checks written on these accounts between December 2003 and December 2005 totaled \$299,217.67. 8RP 24. Additional uses of the bank cards not included in that tally totaled another \$85,000.00. 8RP 25. Over the course of late 2004 and early 2005, the address for sending statements was changed from Elizabeth's Kirkland home to Randall in Port Hadlock. 8RP 26-28.

Accounts of Elizabeth's competency during the charging period varied. Daphne testified Elizabeth had no problems understanding the quitclaim deeds and no problems driving. 6RP 84-85, 86. She testified she did not see a decline in Elizabeth's mental functioning over the years. 6RP 80. Detective Jack Keesee from the Kirkland police interviewed Elizabeth in October 2005 and found that while she might have trouble caring for the house alone, there was nothing unusual about her physical appearance. 8RP 43-44. She did claim to have met him before, although they had not met. 8RP 38. When he returned a week later, she did not recognize him. 8RP 45. She claimed not to know that two of her properties had been transferred to Daphne and her parents. 8RP 49. By 2007, Elizabeth also required assisted living and guardianship of her person. 5RP 34; 9RP 72. However, at the time of the first guardianship petition in the fall of 2003, both the guardian ad litem and Elizabeth's physician reported she did not need a guardian. 5RP 24-25. The court's dismissal of the first guardianship petition in

February, 2004, declared Elizabeth competent to manage her own affairs.
5RP 25, 49.

C. ARGUMENT

1. THE JURY INSTRUCTION DEFINING KNOWLEDGE
WAS AN IMPROPER JUDICIAL COMMENT ON THE
EVIDENCE.

Washington's Constitution explicitly prohibits judicial comments on the evidence. Const. art. IV, § 16.⁵ The purpose of article IV, section 16 is to prevent the jury from being unduly influenced by the court's opinion regarding the credibility, weight, or sufficiency of the evidence. State v. Eisner, 95 Wn.2d 458, 462, 626 P.2d 10 (1981) (quoting State v. Jacobsen, 78 Wn.2d 491, 495, 477 P.2d 1 (1970)). Judicial comments on the evidence are reviewed de novo and are manifest constitutional error that may be raised for the first time on appeal. State v. Jackman, 156 Wn.2d 736, 743, 132 P.3d 136 (2006) (citing State v. Levy, 156 Wn.2d 709, 719-20, 132 P.3d 1076 (2006)); RAP 2.5. The court's knowledge instruction in this case was an improper comment on the evidence because it impliedly resolved a question of fact. Reversal is required because the State cannot negate the presumption of prejudice.

⁵ Article IV, section 16 provides, "Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law."

a. The Knowledge Instruction Was an Improper Comment on the Evidence Because It Appeared to Resolve the Disputed Fact of Randall's Knowledge.

Under article IV, section 16, an instruction improperly comments on the evidence if it “resolves a disputed issue of fact that should have been left to the jury.” State v. Eaker, 113 Wn. App. 111, 118, 53 P.3d 37 (2002) (citing State v. Becker, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997) (reversible error where special verdict form stated that a youth program was “a school,” a highly contested and critical fact); see also Jackman, 156 Wn.2d at 744 (article IV, section 16 violation where instructions referenced victims’ birth dates, a critical element of the crime); Levy, 156 Wn.2d at 721 (article IV, section 16 violation where instruction used the word “building,” improperly suggesting to the jury that the apartment was a building as a matter of law).

The mere implication that a factual issue has been resolved violates article IV, section 16. “All remarks and observations as to the facts before the jury are positively prohibited.” State v. Bogner, 62 Wn.2d 247, 252, 382 P.2d 254 (1963) (quoting State v. Walters, 7 Wash. 246, 250, 34 P. 938 (1893)). Any remark that has the “potential effect of suggesting that the jury need not consider an element of an offense” may be a judicial comment. Levy, 156 Wn.2d at 720; see also Jackman, 156 Wn.2d at 744 (judge need not expressly convey his or her personal feelings on an element of the offense; it is sufficient if they are merely implied) (citing Jacobsen, 78

Wn.2d at 495; State v. Lampshire, 74 Wn.2d 888, 892, 447 P.2d 727 (1968)).

By omitting half of the pattern jury instruction defining knowledge,⁶ the court improperly commented on the evidence in violation of the Washington Constitution. CP 47. The first sentence of the instruction reads simply, “A person knows or acts knowingly or with knowledge with respect to a fact.” CP 47. This omits the second half of the sentence from the pattern instruction, which should read, “A person knows or acts knowingly or with knowledge with respect to a fact *when he or she is aware of that fact.*” 11 Washington Practice: Washington Pattern Jury Instructions: Criminal WPIC 10.02 (3d Ed. 2008). By omitting the second half of the sentence, the court appears to declare the knowledge element is satisfied as a matter of law. It “resolves a disputed issue of fact that should have been left to the jury.” Eaker, 113 Wn. App. at 118.

Challenged jury instructions are considered within the context of the jury instructions as a whole. Jackman, 156 Wn.2d at 743. But the remaining

⁶ Instruction 19 states in full:

A person knows or acts knowingly or with knowledge with respect to a fact. It is not necessary that the person know that the fact, circumstance or result is defined by law as being unlawful or an element of a crime. If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

CP 47 (emphasis added).

instructions did not mitigate the effects of this improper comment. The very next sentence of the same instruction also emphasized the idea that the requisite guilty knowledge is presumed. The jury was instructed that a person need not know that the facts constitute a crime. CP 47. Instead, a person need only know the facts exist, which appears proved by the first sentence of the instruction stating, “A person knows or acts knowingly or with knowledge with respect to a fact.” CP 47. Thus, viewed in the context of the rest of the knowledge instruction, the first sentence violates article IV, section 16 because it appears to improperly resolve a disputed factual issue.

b. This Judicial Comment on the Evidence Requires Reversal of the Conviction.

Washington courts adhere to a “rigorous standard” when reviewing judicial comments on the evidence. State v. Lane, 125 Wn.2d 825, 838, 889 P.2d 929 (1995). Once it is established that a remark or instruction constitutes a comment on the evidence, the reviewing court presumes prejudice. Jackman, 156 Wn.2d at 743. This presumption arises because of the great influence judicial comments have on a jury’s appraisal of a case:

[I]t is a fact well and universally known by courts and practitioners that the ordinary juror is always anxious to obtain the opinion of the court on matters which are submitted to his discretion, and that such opinion, if known to the juror, has a great influence upon the final determination of the issues.

Lane, 125 Wn.2d at 838 (quoting State v. Crotts, 22 Wash. 245, 250-51, 60 P. 403 (1900)). Therefore, the burden rests on the State to show the defendant was not prejudiced unless the record affirmatively shows no prejudice could have resulted. Jackman, 156 Wn.2d at 743; Lane, 125 Wn.2d at 838. The State fails to meet its burden, and the error is therefore prejudicial, when the jury conceivably could have determined an element was not met had the court not made the comment. See Jackman, 156 Wn.2d at 745.

Without the improper knowledge instruction, the jury could conceivably have not only rejected the particular vulnerability finding, but also found Randall not guilty of theft. Randall's defense was that the money he received from his grandmother was a gift. 11RP 67-68. Whether the jury accepted this defense rested largely on their assessment of two disputed facts: 1) the extent and timing of Elizabeth's mental impairment and 2) Randall's knowledge of that impairment. Thus, the comment affected not only the special verdict on particular vulnerability, but also the jury's verdict of guilt on the theft charge itself by resolving the factual issue of Randall's knowledge, a key to his defense. Cf. State v. Corn, 95 Wn. App. 41, 54, 975 P.2d 520 (1999) (no abuse of discretion to grant new trial when improper comment on the evidence went to the essence of the defense and indicated evidence of defense was insufficient). The State cannot prove this comment

on the evidence could not have affected the jury's verdict. Therefore, this Court should reverse Randall's conviction.

2. THE EXCEPTIONAL SENTENCE IS UNSUPPORTED BY THE JURY'S VERDICT BECAUSE THE JURY DID NOT FIND RANDALL KNEW ELIZABETH WAS PARTICULARLY VULNERABLE.

“[U]nder both the Sixth Amendment to the United States Constitution and article I, sections 21 and 22 of the Washington Constitution, the jury trial right requires that a sentence be authorized by the jury's verdict.” State v. Williams-Walker, ___ Wn.2d ___, ___ P.3d ___, slip op. at 7 (No. 78611-9, filed Jan. 14, 2010). An exceptional sentence should be reversed on appeal when “the reasons supplied by the sentencing court are not supported by the record which was before the judge,” or “those reasons do not justify a sentence outside the standard sentence range for that offense.” RCW 9.94A.585(2).

The special verdict form on the “particularly vulnerable” aggravating factor asked the jury, “Did the *victim* know, or should have known, that the victim was particularly vulnerable or incapable of resistance?” CP 24 (emphasis added). Thus, there is no jury verdict regarding *Randall's* knowledge. Without a jury finding that Randall knew his grandmother was particularly vulnerable, his exceptional sentence should be reversed because it is unsupported by the record. RCW 9.94A.585(2). Additionally, without a

jury's finding to support it, the exceptional sentence violates Randall's right to a jury trial under the state and federal constitutions.

Under RCW 9.94A.535, an exceptional sentence above the standard range may be justified based on a jury finding of one of a list of exclusive factors, including that the defendant "knew or should have known that the victim. . . was particularly vulnerable or incapable of resistance." RCW 9.94A.535(3)(b). To prove a victim's vulnerability as an aggravating factor justifying an exceptional sentence, the State must prove "(1) that the defendant knew or should have known, (2) of the victim's particular vulnerability, and (3) that vulnerability must have been a substantial factor in the commission of the crime." State v. Suleiman, 158 Wn.2d 280, 291-92, 143 P.3d 795 (2006) (emphasis omitted); State v. Jackmon, 55 Wn. App. 562, 566-67, 778 P.2d 1079 (1989).

The jury ordinarily must find the facts supporting an aggravated sentence beyond a reasonable doubt. RCW 9.94A.535(3); RCW 9.94A.537(3), (6). If the jury unanimously finds the alleged aggravating circumstances beyond a reasonable doubt, the trial court may depart from the standard range "if it finds . . . that the facts found are substantial and

compelling reasons justifying an exceptional sentence.” RCW 9.94A.537(6).⁷

The requirement of a jury finding is constitutionally mandated. Under the Sixth Amendment, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Blakely v. Washington, 542 U.S. 296, 301, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) (quoting Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)). The “statutory maximum” is “the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.” Blakely, 542 U.S. at 303 (emphasis omitted). When an aggravating factor is used to increase the available punishment for a crime, that factor becomes an element of a greater offense that must be charged and proved to the jury beyond a reasonable doubt. Blakely, 542 U.S. at 302 n.5; Ring v. Arizona, 536 U.S. 584, 609, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002). Washington’s constitution provides even greater protection of the jury trial right and also

⁷ RCW 9.94A.537(6) states:

If the jury finds, unanimously and beyond a reasonable doubt, one or more of the facts alleged by the state in support of an aggravated sentence, the court may sentence the offender pursuant to RCW 9.94A.535 to a term of confinement up to the maximum allowed under RCW 9A.20.021 for the underlying conviction if it finds, considering the purposes of this chapter, that the facts found are substantial and compelling reasons justifying an exceptional sentence.

requires aggravating factors be proved to a jury beyond a reasonable doubt. Williams-Walker, ____ Wn.2d at ____, slip op. at 6-7.

The requirement of a jury verdict is relatively precise. For example, the court may not impose a firearm enhancement where the jury's verdict found only that the defendant was armed with a deadly weapon, not specifically a firearm. State v. Recuenco, 163 Wn.2d 428, 440, 180 P.3d 1276 (2008) (Recuenco III). Therefore, the jury's verdict that the victim knew of her particular vulnerability is insufficient to support the court's finding that this aggravating factor applied to Randall. Even if the court declines to reverse Randall's conviction, his exceptional sentence should be vacated and the case remanded for resentencing. See Williams-Walker, ____ Wn.2d at ____, slip op. at 14 (harmless error doctrine does not apply when sentence is not authorized by jury's verdict) (citing Recuenco III, 163 Wn.2d at 440, 442).

D. CONCLUSION

For the foregoing reasons, Randall respectfully requests this Court reverse his conviction, or in the alternative, remand for resentencing without the invalid aggravating factor.

DATED this 5th day of February, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC


JENNIFER J. SWEIGERT
WSBA No. 38068
Office ID No. 91051

Attorney for Appellant

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

STATE OF WASHINGTON,)
)
 Respondent,)
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)
)
 v.)
)
THOMAS RANDALL,)
)
)
 Appellant.)

COA NO. 63808-4-I

FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
2010 FEB -5 PM 4:20

DECLARATION OF SERVICE

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

THAT ON THE 5TH DAY OF FEBRUARY, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] THOMAS RANDALL
 DOC NO. 332635
 STAFFORD CREEK CORRECTIONS CENTER
 191 CONSTANTINE WAY
 ABERDEEN, WA 98520

SIGNED IN SEATTLE WASHINGTON, THIS 5TH DAY OF FEBRUARY, 2010.

X Patrick Mayovsky