

NO. 70297-1-I

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

REC'D  
DEC 13 2013  
King County Prosecutor  
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

JEROME JOHNSON,

Appellant.

70297-1-I  
DEC 13 2013  
JCS  
MB

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

The Honorable Regina S. Cahan, Judge

BRIEF OF APPELLANT

JARED B. STEED  
Attorneys for Appellant

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

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A. ASSIGNMENT OF ERROR

The Judgment and Sentence contains a clerical error that must be corrected.<sup>1</sup>

Issue Pertaining to Assignment of Error

Under CrR 7.8(a), clerical errors in judgments may be corrected at any time by motion of any party or the court itself. No community custody was imposed as part of appellant's sentence. However, section 4.7 of the judgment and sentence, indicates community custody conditions are attached as Appendix H. No Appendix H is attached to appellant's judgment and sentence. Should this case be remanded for correction of what appears to be a clerical error?

B. STATEMENT OF THE CASE

The King County prosecutor charged appellant Jerome Johnson with one count each of second degree theft and forgery. CP 22-23. A jury found Johnson guilty as charged. CP 24-25; 5RP<sup>2</sup> 2-5. The trial court imposed concurrent standard range sentences of 12 months and one day on the theft and forgery counts. CP 57-66; 6RP 15.

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<sup>1</sup> The Judgment and Sentence is attached as an appendix.

<sup>2</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – January 2, 2013; 2RP – January 3, 2013 (morning session); 3RP – January 3, 2013 (afternoon session); 4RP – January 7, 2013; 5RP – January 8, 2013; 6RP – March 28, 2013.

No community custody sentence boxes were checked on Johnson's judgment and sentence, and the trial court made no contemporaneous statements at sentencing regarding the imposition of any community custody. CP 57-66; 6RP 15-20. However, section 4.7 of the judgment and sentence, indicates community custody conditions are attached as Appendix H. CP 61. No Appendix H is attached to appellant's judgment and sentence.

C. ARGUMENT

REMAND IS REQUIRED TO CORRECT A CLERICAL ERROR  
IN THE JUDGMENT AND SENTENCE

No community custody was imposed as part of Johnson's sentence. However, section 4.7 of Johnson's Judgment and sentence includes a checked box that states: "Appendix H for Community Custody conditions is attached and incorporated herein." CP 61. No appendix H is attached to Johnson's judgment and sentence.

Under CrR 7.8(a), clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time of its own initiative or on the motion of any party. Clerical errors are "mechanical mistakes, apparent on the record which do not involve matters of substance." State v. Casarez, 64 Wn. App. 910, 915, 826 P.2d 1102 (1992), aff'd sub nom. State v. Garza-Villarreal, 123 Wn.2d 42, 864 P.2d

1378 (1993). In Casarez, the judgment and sentence erred as to the dates of the offense. Id. The court held the judgment must be amended to reflect the correct dates because the error was evident from the record and did not involve matters of substance. Id. The error in this case is no different. It is apparent from the record that no community custody sentence was imposed and therefore no community custody conditions are attached to the judgment and sentence. Correcting this error does not affect the substance of the judgment and sentence. However, the accuracy of the official record is important. The judgment and sentence in Johnson's case should reflect the fact no community custody conditions were imposed as part of his sentence.

When a clerical error is discovered on appeal, the appropriate remedy is remand to correct the error. See e.g., In re Pers. Restraint of Mayer, 128 Wn. App. 694, 701, 117 P.3d 353 (2005) ("we deny Mr. Mayer's petition but remand the matter to the trial court for the sole purposes of correcting the statutory citation clerical error in the judgment and sentence"); State v. Moten, 95 Wn. App. 927, 929, 935, 976 P.2d 1286 (1999) (remand appropriate to correct scrivener's error referring to wrong statute on judgment and sentence form). Therefore, this Court should remand the case to correct this clerical error and make clear that no community custody conditions are attached to the judgment and sentence.

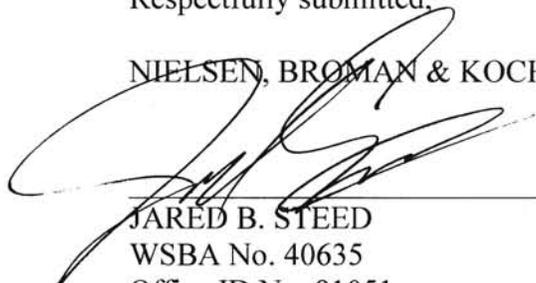
D. CONCLUSION

This Court should remand Johnson's case for correction of the clerical error in the judgment and sentence.

DATED this 13<sup>TH</sup> day of December, 2013

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A large, stylized handwritten signature in black ink, appearing to read 'Jared B. Steed', is written over a horizontal line. The signature is fluid and cursive, with a prominent loop at the end.

JARED B. STEED  
WSBA No. 40635  
Office ID No. 91051  
Attorneys for Appellant

## **APPENDIX**



FILED

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KING COUNTY  
SUPERIOR COURT CLERK  
KENT, WA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	No. 12-1-00566-1 KNT
Plaintiff,	)	
	)	
Vs.	)	JUDGMENT AND SENTENCE
	)	FELONY (EJS)
JEROME KEITH VASSAR	)	
AKA JEROME KEITH JOHNSON	)	
	)	
Defendant,	)	

I. HEARING

I.1 The defendant, the defendant's lawyer, Catherine Elliott, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: \_\_\_\_\_

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 1/8/2013 by jury verdict of:

Count No.: I Crime: Theft in the Second degree  
 RCW 9A.56.040(1)(a) & 9A.56.020(1)(b) Crime Code: 02562  
 Date of Crime: 5/18/2011 Incident No. \_\_\_\_\_

Count No.: II Crime: Forgery  
 RCW 9A.60.020(1)(b) Crime Code: 03004  
 Date of Crime: 5/18/2011 Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
 RCW \_\_\_\_\_ Crime Code: \_\_\_\_\_  
 Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
 RCW \_\_\_\_\_ Crime Code: \_\_\_\_\_  
 Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

[ ] Additional current offenses are attached in Appendix A

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**SPECIAL VERDICT or FINDING(S):**

- (a)  While armed with a firearm in count(s) \_\_\_\_\_ RCW 9.94A.533(3).
- (b)  While armed with a deadly weapon other than a firearm in count(s) \_\_\_\_\_ RCW 9.94A.533(4).
- (c)  With a sexual motivation in count(s) \_\_\_\_\_ RCW 9.94A.835.
- (d)  A V.U.C.S.A offense committed in a protected zone in count(s) \_\_\_\_\_ RCW 69.50.435.
- (e)  Vehicular homicide  Violent traffic offense  DUI  Reckless  Disregard.
- (f)  Vehicular homicide by DUI with \_\_\_\_\_ prior conviction(s) for offense(s) defined in RCW 46.61.5055, RCW 9.94A.533(7).
- (g)  Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.128, .130.
- (h)  Domestic violence as defined in RCW 10.99.020 was pled and proved for count(s) \_\_\_\_\_.
- (i)  Current offenses encompassing the same criminal conduct in this cause are count(s) \_\_\_\_\_ RCW 9.94A.589(1)(a).
- (j)  Aggravating circumstances as to count(s) \_\_\_\_\_: \_\_\_\_\_

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): \_\_\_\_\_

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	6	I	12+ to 14 months		12+ to 14 months	5 yrs and/or \$10,000
Count II	6	I	12+ to 14 months		12+ to 14 months	5 yrs and/or \$10,000
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 **EXCEPTIONAL SENTENCE**

- Findings of Fact and Conclusions of Law as to sentence above the standard range:  
Finding of Fact: The jury found or the defendant stipulated to aggravating circumstances as to Count(s) \_\_\_\_\_.  
Conclusion of Law: These aggravating circumstances constitute substantial and compelling reasons that justify a sentence above the standard range for Count(s) \_\_\_\_\_.  The court would impose the same sentence on the basis of any one of the aggravating circumstances.
- An exceptional sentence above the standard range is imposed pursuant to RCW 9.94A.535(2) (including free crimes or the stipulation of the defendant). Findings of Fact and Conclusions of Law are attached in Appendix D.
- An exceptional sentence below the standard range is imposed. Findings of Fact and Conclusions of Law are attached in Appendix D.

The State  did  did not recommend a similar sentence (RCW 9.94A.480(4)).

**III. JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.  
 The Court DISMISSES Count(s) \_\_\_\_\_

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION, VICTIM ASSESSMENT, AND DNA FEE:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
- Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(5), sets forth those circumstances in attached Appendix E.
- Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.
- Date to be set.
- Defendant waives right to be present at future restitution hearing(s).
- Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment in the amount of \$500 (RCW 7.68.035 - mandatory).  
 Defendant shall pay DNA collection fee in the amount of \$100 (RCW 43.43.7541 - mandatory).

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a)  \$ \_\_\_\_\_, Court costs (RCW 9.94A.030, RCW 10.01.160);  Court costs are waived;
- (b)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs (RCW 9.94A.030);  Recoupment is waived;
- (c)  \$ \_\_\_\_\_, Fine ;  \$1,000, Fine for VUCSA  \$2,000, Fine for subsequent VUCSA (RCW 69.50.430);  VUCSA fine waived;
- (d)  \$ \_\_\_\_\_, King County Interlocal Drug Fund (RCW 9.94A.030);  Drug Fund payment is waived;
- (e)  \$ \_\_\_\_\_, \$100 State Crime Laboratory Fee (RCW 43.43.690);  Laboratory fee waived;
- (f)  \$ \_\_\_\_\_, Incarceration costs (RCW 9.94A.760(2));  Incarceration costs waived;
- (g)  \$ \_\_\_\_\_, Other costs for: \_\_\_\_\_

4.3 PAYMENT SCHEDULE: The TOTAL FINANCIAL OBLIGATION set in this order is \$ 3,891.70 to date

Restitution may be added in the future. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing:  immediately;  (Date): \_\_\_\_\_ by \_\_\_\_\_ m.

12+ months/days on count I; 12+ months/days on count II; \_\_\_\_\_ months/day on count \_\_\_\_\_  
\_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_

The above terms for counts I & II are  consecutive  concurrent.

The above terms shall run  consecutive  concurrent to cause No.(s) \_\_\_\_\_

The above terms shall run  consecutive  concurrent to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: \_\_\_\_\_

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98.)

The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles.)

The TOTAL of all terms imposed in this cause is 12+ months.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6):  \_\_\_\_\_ day(s) or  days determined by the King County Jail.  
 For nonviolent, nonsex offense, credit is given for days determined by the King County Jail to have been served in the King County Supervised Community Option (Enhanced CCAP) solely under this cause number.  
 For nonviolent, nonsex offense, the court authorizes earned early release credit consistent with the local correctional facility standards for days spent in the King County Supervised Community Option (Enhanced CCAP).

4.5 NO CONTACT: For the maximum term of 5 years, defendant shall have no contact with Auburn Scarff Ford

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

HIV TESTING: The defendant shall submit to HIV testing as ordered in APPENDIX G. RCW 70.24.340.

4.7 (a)  COMMUNITY CUSTODY for qualifying crimes committed before 7-1-2000, is ordered for  one year (for a drug offense, assault 2, assault of a child 2, or any crime against a person where there is a finding that defendant or an accomplice was armed with a deadly weapon);  18 months (for any vehicular homicide or for a vehicular assault by being under the influence or by operation of a vehicle in a reckless manner);  two years (for a serious violent offense).

(b)  COMMUNITY CUSTODY for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months.

(c)  **COMMUNITY CUSTODY** - for qualifying crimes committed after 6-30-2000 is ordered for the following established range or term:

- Sex Offense, RCW 9.94A.030 - 36 months—when not sentenced under RCW 9.94A.507
  - Serious Violent Offense, RCW 9.94A.030 - 36 months
    - If crime committed prior to 8-1-09, a range of 24 to 36 months.
  - Violent Offense, RCW 9.94A.030 - 18 months
  - Crime Against Person, RCW 9.94A.411 or Felony Violation of RCW 69.50/52 - 12 months
    - If crime committed prior to 8-1-09, a range of 9 to 12 months.
- \_\_\_\_\_ months (applicable mandatory term reduced so that the total amount of incarceration and community custody does not exceed the maximum term of sentence).

Sanctions and punishments for non-compliance will be imposed by the Department of Corrections or the court.  **APPENDIX H** for Community Custody conditions is attached and incorporated herein.  **APPENDIX J** for sex offender registration is attached and incorporated herein.

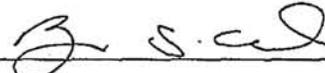
4.8  **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement, subject to the conditions set out in **Appendix H**.

4.9  **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is  attached  as follows:

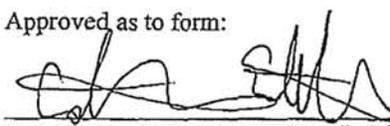
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The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 3/28/13

  
JUDGE  
Print Name: REGINA S. CAHLAN

Presented by:  
  
Deputy Prosecuting Attorney, WSBA#  
Print Name: Kathryn Meyers

Approved as to form:  
  
Attorney for Defendant, WSBA # 35244  
Print Name: Catherine Elliott

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF:

JEROME KEITH VASSAR

DATED: 3/29/13

[Signature]  
JUDGE, KING COUNTY SUPERIOR COURT

DEFENDANT'S SIGNATURE:  
DEFENDANT'S ADDRESS:

1820 SE 21ST PL Renton WA 98055

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK  
BY: [Signature]  
DEPUTY CLERK

CERTIFICATE REGINA S. CAHAN OFFENDER IDENTIFICATION

I, \_\_\_\_\_,  
CLERK OF THIS COURT, CERTIFY THAT  
THE ABOVE IS A TRUE COPY OF THE  
JUDGEMENT AND SENTENCE IN THIS  
ACTION ON RECORD IN MY OFFICE.  
DATED: \_\_\_\_\_

S.I.D. NO.  
DOB: NOVEMBER 10, 1967  
SEX: M  
RACE: B

\_\_\_\_\_  
CLERK  
BY: \_\_\_\_\_  
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JEROME KEITH VASSAR  
AKA JEROME KEITH JOHNSON

Defendant,

No. 12-1-00566-1 KNT

JUDGMENT AND SENTENCE,  
(FELONY) - APPENDIX B,  
CRIMINAL HISTORY

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
Fraudulent use of another person's id	6/21/2001	Adult	01c000052	Us Dct Sea wa
Bank fraud	6/21/2001	Adult	01c000052	Us Dct Sea wa
Bank fraud	6/21/2001	Adult	01c000052	Us Dct Sea wa
Conspiracy to distribute cocaine	8/1/1996	Adult	93cr00446	Us Dct Sea wa
Conspiracy to distribute cocaine	8/1/1996	Adult	93cr00446	Us Dct Sea wa

[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 3.28.13

REGINA S. CAHAN  
JUDGE, KING COUNTY SUPERIOR COURT

REGINA S. CAHAN

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JEROME JOHNSON,

Defendant,

No. 12-1-00566-1 KNT

ORDER SETTING RESTITUTION

The court ordered payment of restitution as a condition of sentencing. The Court has determined that the following person is entitled to restitution in the following amounts;

IT IS ORDERED that defendant make payments through the registry of the clerk of the court as follows:

Scarff Motors  
Attn: Owner/Manager  
PO Box 1106  
Auburn, WA 98071  
Invoice #C81753

AMOUNT: \$3,291.70

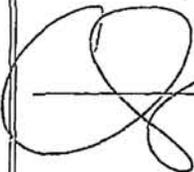
DONE IN OPEN COURT this 28 day of ~~January~~<sup>March</sup>, 2013.

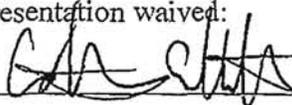
JUDGE

  
REGINA S. CAHAN

Presented by:

Copy received; Notice  
Presentation waived:

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Deputy Prosecuting Attorney

Attorney for Defendant

Order Setting Restitution  
CCN# 1239494

REF# 2110718602

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 12-1-00566-1 KNT
	)	
vs.	)	APPENDIX G
	)	ORDER FOR BIOLOGICAL TESTING
JEROME KEITH VASSAR	)	AND COUNSELING
AKA JEROME KEITH JOHNSON	)	
	)	
Defendant,	)	

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

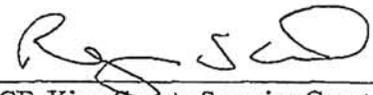
(2)  HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 3-28-13

  
 \_\_\_\_\_  
 JUDGE, King County Superior Court

REGINA S. CAHAN

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

---

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 70297-1-1
	)	
JEROME JOHNSON,	)	
	)	
Appellant.	)	

---

**DECLARATION OF SERVICE**

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

THAT ON THE 13<sup>TH</sup> DAY OF DECEMBER, 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] JEROME JOHNSON  
1820 SE 121<sup>ST</sup> PLACE  
RENTON, WA 98055

SIGNED IN SEATTLE WASHINGTON, THIS 13<sup>TH</sup> DAY OF DECEMBER, 2013.

X Patrick Mayovsky

RECEIVED  
12/13/13 1:23