NO. 44923-4-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

STEVEN DANIEL KRAVETZ,

Appellant.

BRIEF OF APPELLANT

John A. Hays, No. 16654
Attorney for Appellant

1402 Broadway
Suite 103
Longview, WA 98632
(360) 423-3084

TABLE OF CONTENTS

Page

A. TABLE OF AUTHORITIES iii

B. ASSIGNMENT OF ERROR

1. Assignment of Error 1

2. Issue Pertaining to Assignment of Error 1

C. STATEMENT OF THE CASE

1. Factual History 2

2. Procedural History 6

D. ARGUMENT

THE TRIAL COURT DENIED THE DEFENDANT HIS CONSTITUTIONAL RIGHT TO TESTIFY WHEN IT FAILED TO REOPEN THE DEFENDANT'S CASE-IN-CHIEF AFTER THE DEFENDANT INFORMED THE COURT THAT HE WANTED TO TAKE THE STAND ON HIS OWN BEHALF 15

E. CONCLUSION 21

F. APPENDIX

1. Washington Constitution, Article 1, § 3 22

2. United States Constitution, Fourteenth Amendment 22

TABLE OF AUTHORITIES

Page

Federal Cases

Boykin v. Alabama,
395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) 15

Rock v. Arkansas,
483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) 15

State Cases

In re Stoudmire, 145 Wn.2d 258, 36 P.3d 1005 (2001) 15

State v. Robinson, 138 Wn.2d 753, 982 P.2d 590 (1999) 15-18

State v. Thomas, 128 Wn.2d 553, 910 P.2d 475 (1996) 15

Constitutional Provisions

Washington Constitution, Article 1, § 3 15

United States Constitution, Fifth Amendment 15

United States Constitution, Fourteenth Amendment 15

ASSIGNMENT OF ERROR

Assignment of Error

The trial court denied the defendant his constitutional right to testify when it failed to reopen the defendant's case-in-chief after the defendant informed the court that he wanted to take the stand on his own behalf.

Issues Pertaining to Assignment of Error

Does a trial court deny a defendant the constitutional right to testify under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, if it fails to reopen the defendant's case-in-chief after a defendant informs the court that he or she wants to take the stand on his or her own behalf?

STATEMENT OF THE CASE

Factual History

The defendant Steven Daniel Kravetz is an untreated, mentally ill 37-year-old man who, prior to his arrest, had lived his entire life with his mother. RP 230-231; CP 77-78. Although he is above-average intelligence he has never been employed (other than odd jobs), he failed to finish high school, he doesn't have a driver's license and he has never had friends his own age. *Id.* In 2005 the defendant's mother became worried that the defendant was suicidal so she called the police. RP 474-493. The responding officers took the defendant to a hospital for a mental health evaluation. RP 496-499; CP 77-78. During that process the hospital staff asked the defendant to provide a urine sample for drug analysis. *Id.* When the defendant refused they threatened to catheterize him to get the sample. *Id.* The defendant then went into a bathroom, ostensibly to provide the sample. *Id.* However, what he did was attempt to escape out the window. *Id.* Jail staff caught him before he escaped. *Id.*

According to later mental evaluation, this event created a delusional belief in the defendant's mind that he had been raped while in custody, that the Grays Harbor Sheriff's Office was the center of a conspiracy to prevent him from uncovering their criminal treatment toward him, that the Grays Harbor Sheriff's Office would again take him into custody and sexually abuse

him if they got the chance, and that evidence to support his claims was contained in files in the Grays Harbor County Court house. RP 713-719; CP 75-88. The defendant's beliefs on this issue were so persistent and paranoid that he constantly thought about little else over the next seven years. *Id.*

On March 9, 2012, the defendant decided to travel from his mother's home in Olympia to the Gray's Harbor County Courthouse in Montesano to see if he could surreptitiously obtain the file that he believed would support his claims. RP 497-498. He then dressed in clothing that would make him look as if he had business at the courthouse, took a briefcase, armed himself with a knife with which to defend himself should anyone attempt to apprehend him, and traveled to Montesano on the bus. RP 497-499. Once in Montesano he walked up to the courthouse and went inside. *Id.* While inside a number of courthouse employees saw the defendant standing about without any apparent purpose or reason and they became suspicious. RP 40-43, 54-55, 103-106. As a result one of these employees went over the sheriff's office to report her concerns. RP 41-43.

Based upon this report Deputy Polly Davin, who was in the squad room walked out to the first floor stairwell of the court house and saw the defendant standing by a window. RP 62-65. He matched the description of the reported suspicious person. *Id.* She then walked up to him, asked who he was, what he was doing, and told him that he was "creeping people out."

RP 66-67. The defendant responded that he was waiting for his lawyer. *Id.* Deputy Davin then asked the defendant for some identification and touched him on his elbow to guide him outside so they could continue their conversation. *Id.* Up to this point the defendant appeared calm. *Id.* However, when Deputy Davin touched his elbow and asked for identification the defendant pulled out his knife, grabbed Deputy Davin by the neck with his free hand, repeatedly tried to stab her with overhand blows of the knife to her face and upper body, and then continued the attack after knocking her to the floor. RP 68, 71-74. She responded by putting up one arm to try to ward off the blows and putting her other arm down to protect him from grabbing her pistol. *Id.* They then struggled for 5 to 10 seconds with Deputy Davin receiving cuts to her face and bruises to her body. *Id.*

At about this point in the attack Superior Court Judge David Edwards left his office and started walking down the stairs to go to lunch. RP 126. Seeing the defendant on top of Deputy Davin Judge Edwards ran down the stairs and pulled the defendant off the Deputy. RP 128-130. The defendant then focused his attention on Judge Edwards and began fighting with him. RP 135-137. During this encounter the defendant stabbed the judge in the back of his neck. RP 141. As he did so Deputy Davin got partially off the floor, pulled her .45 caliber pistol and ordered the defendant to stop. RP 73-74. The defendant then turned, grabbed the pistol from Deputy Davin's

grasp, and shot at her twice, hitting her once in the arm with a through and through wound. RP 73-74, 136-137. The defendant then left the courthouse at a brisk walking pace with both Deputy Davin and Judge Edwards on the floor with their wounds. RP 95-96; 138-139. There was a great deal of blood everywhere. RP 58.

A number of other female court employees had witnessed the attack and one had briefly tried to intervene physically but withdrew from the fight after seeing the pistol in the defendant's hand. RP 110-111, 146-149, 156-158,. After leaving the courthouse the defendant went to his attorney's office and asked them to call his mother to come give him a ride home as he did not have money for the bus. RP 199-205. They did call her and the defendant's mother later picked him up and took him home. RP 222-224. Both the staff in his attorney's office and the defendant's mother were unaware of what had transpired at the courthouse. RP 203-205, 222-224.

The next day law enforcement officers investigating the case came to believe that the defendant was the person who had attacked Deputy Davin and Judge Edwards. RP 277-291. In conjunction with law enforcement personnel from Mason and Thurston Counties Grays Harbor County Deputies went to the defendant's home, arrested him as he came out the back door, and searched the house pursuant to a warrant issued that day. RP 245-246, 304-306, 370-373. Inside the house they found the knife the defendant had used

in the attack and Deputy Davin's .45 caliber pistol as well as the briefcase and the clothing the defendant had used in the attack. *Id.* The deputies then took the defendant to the Mason County Sheriff's office where he consented to a lengthy video-taped interrogation in which he set out his delusional beliefs at length and admitted attacking both the deputy and the judge. RP 302-312, 383-390. The recording of the interview was later transcribed and copies of the transcription were provided to the jury while watching the video recordings. *See* Trial Exhibits 28, 29, 31, 32, 50.

Procedural History

By information filed April 4, 2012, the Grays Harbor County Prosecutor charged the defendant Steven Daniel Kravetz with one count of attempted second degree murder against Deputy Davin, one count of first degree assault against Deputy Davin, one count of disarming a law enforcement officer, and one count of first degree assault against Judge Edwards. CP 1-10. The first two counts against Deputy Davin included firearms enhancements and the last count against Judge Edwards included a deadly weapon enhancement. *Id.* The state later informed the court that counts I and II were actually alternative charges and that were the defendant convicted of both the court would be required to merge the first degree assault charge into the attempted murder charge. RP 547.

Shortly after charging, the court ordered a competency evaluation by

Western State Hospital. CP 32-33. Based upon this order two staff psychologists from Western State Hospital by the names of Dr. Marilyn Ronnei and Dr. Melissa Dannelet interviewed the defendant at the Mason County Jail, reviewed the available documentation and gave the defendant an Axis I diagnosis of "295.30 Schizophrenia, Paranoid Type." CP 75-88. In their opinion the defendant did have the capacity to understand the nature and quality of the charges against him. *Id.* However, they did not believe that he had the capacity to effectively aide his attorney in his own defense given his all encompassing fixation upon his delusional beliefs that he had been sexually assaulted in 2005 and that there was a grand conspiracy in Grays Harbor County to harm him. *Id.* The two psychologists also believed the defendant might benefit from the administration of psycho tropic medication but since neither was a medical doctor any decision on the administration of drugs would have to be made by a psychiatrist. *Id.*

Following the defendant's evaluation at the Mason County Jail the court ordered the defendant transferred to Western State Hospital for further analysis to determine whether or not he should be prescribed psycho tropic medication. CP 59-60. Once at Western State Hospital two psychiatrists by the names of Dr. Margaret Dean and Dr. Daniel Ruiz Paredes evaluated the defendant. CP 61-74; RP 740-772, 772-787. Although they also found that the defendant suffered from a significant mental illness, they disagreed with

Dr. Ronnei and Dr. Dannelet's Axis I diagnosis of "295.30 Schizophrenia, Paranoid Type." Rather, they gave him an Axis II diagnosis of "Schizotypal Personality Disorder (primary diagnosis)" and "No diagnosis" on Axis I. CP 70. The reason that they did not believe that the diagnosis of paranoid schizophrenia was correct was that the defendant did not suffer from either auditory or visual hallucinations, which would normally be a symptom of paranoid schizophrenia. RP 740-772, 772-787. Thus, neither psychiatrist believed that the defendant should be treated with psycho tropic medication. *Id.*

The two psychiatrists also varied from Dr. Ronnei and Dr. Dannelet's opinion as to competency. RP 740-772, 772-787. While they agreed that the defendant was above average intelligence and that he had the capacity to understand the nature and quality of the proceedings against him, and while they also agreed that the defendant had a delusional fixation upon his alleged treatment in 2005, they believed he had the capacity to compartmentalize this belief to the point that he could effectively aide and assist his attorney. CP 70-72; RP 740-772, 772-787. Thus they believed he was competent. *Id.*

Based upon the new reports by the two psychiatrists the court convened a competency hearing on August 29, 2012. RP 704-815. At that hearing the court took testimony from Dr. Ronnei, Dr. Dean, and Dr. Paredes, and considered the report of Dr. Ronnei and Dr. Dannelet as well as the

report of Dr. Dean and Dr. Paredes. *Id.* The court also considered an affirmation filed by the defendant's attorney concerning his difficulty in communicating with the defendant. CP 37-38, 100-102. Following argument by counsel the court found the defendant competent to stand trial. RP 805-812; CP 105.

The case eventually came on for trial before a jury beginning on March 26, 2013, and ending on April 3, 2013. RP 38. During the trial the state called 20 witnesses in its case-in-chief. RP 38-410. They testified to the evidence set out in the preceding factual history. *See* Factual History. The state then closed its case-in-chief after which the defense called two witnesses, including Dr. David Dixon. RP 429-293. Dr. Dixon testified that he is a forensic psychologist licenced to practice in the State of Washington, that he had evaluated the defendant and reviewed the case materials, and that in his opinion the defendant's mental illness prevented him from forming the requisite intent to kill. RP 445-474.

After the defense closed its case, the state called two witnesses in rebuttal: Dr. Brett Trowbridge, a forensic psychologist licensed in the state of Washington, and Dr. Marilyn Ronnei, who had also performed one of the competency evaluations. RP 493-543. They both testified that in their opinions the defendant did have the capacity on the day in question to form the requisite mental intent to commit the offenses charged. RP 493-515, 515-

543. In fact, the defense had originally retained the services of Dr. Trowbridge on the issue of the defendant's capacity to form the requisite intent but the state called him as a witness given his conclusions. *Id.*

After both parties closed their case but prior to the court instructing the jury, the defendant informed the court that he had wanted to testify, that he believed that he would be allowed to do so after the state finished their rebuttal witnesses and that his attorney had misinformed him concerning the matter. RP 567-573. The colloquy between the defendant and the court went as follows:

> THE DEFENDANT: Last time I had spoken with David Arcuri in the jail, he told me that regarding the presentation of the defense yesterday that he would call his witnesses and then the prosecution would call the rebuttal witnesses, but he never told me that the defense was required to rest, before the rebuttal witnesses, and I thought that I might have a chance to testify after the rebuttal witnesses, because he never informed me of that, so that's just – basically, that's maybe sort of affected my decision possibly to not testify, and so I'm just raising that he should have been more informative about me and that's all.
>
> THE COURT: Well, are you telling me that you wanted to take the stand and testify in your own defense and that somehow you misunderstood Mr. Arcuri's advice and as a result of that chose not to or are you just telling me you wanted an opportunity to rebut the State's rebuttal witnesses?
>
> THE DEFENDANT: No, I don't want to do that, but I just wanted to raise the fact that he did not inform me properly, so that I didn't have a chance to think about this as much as I could have.

RP 567-568.

At this point the court instructed the jury, including two instructions on second degree assault as lesser included offenses to the two first degree assault charges. RP 574-592. Counsel then presented closing arguments, and the jury retired for deliberations. RP 593-618, 619-649, 650-662. After six hours the court released the jury with instructions to return at 9:00 am the next morning to continue their consideration of the case. RP 669-670.

At 9:25 the next day the bailiff informed the court that the jury stated that it was deadlocked. RP 670-676. With the consent of both parties the court called the jury into the courtroom and asked the foreperson two questions: (1) whether or not there was a reasonable possibility that the jury might return verdicts on all the counts with further deliberation, and (2) whether or not there was a reasonable possibility that the jury might return verdicts on any of the counts with further deliberation. RP 676-677. The foreperson responded to the first question in the negative and the second question in the affirmative. *Id.* As a result and without objection from the parties, the court told the jury to return for further deliberation. *Id.*

The jury later indicated that they had reached verdicts, which were as follows:

> Count I: Not Guilty of Attempted Second Degree murder against Deputy Davin;
>
> Count II: Guilty of First Degree Assault against Deputy Davin;

Count III: Guilty of Disarming a Law Officer;

Count IV: Not Guilty of First Degree Assault against Judge Edwards;

Court II: Not guilty of Second Degree Assault as a lesser included offense to First Degree Assault as charged in Count II;

Count IV: Guilty of Second Degree Assault as a lesser included offense to First Degree Assault as charged in Count IV.

CP 304-309.

After the court read the verdicts the defense asked that the jury be polled. 680. The court then asked each juror two questions: (1) whether or not these were the verdicts of the jury, and (2) whether or not these were the verdicts of that individual juror. *Id.* Jurors one through eleven answered each question in the affirmative. RP 680-683. However juror number twelve answered the second question in the negative. *Id.* As a result the court, without objection from either party, refused to accept the verdicts, voided the verdict forms and told the jury to return for further deliberations. *Id.* At the request of both parties the court provided the jury with a clean set of verdict forms. RP 684-685.

The jury later returned the same verdicts on each count with the exception to the verdict form on second degree assault against Deputy Davin as a lesser included offense to the charge of first degree assault. CP 314-319. As to that verdict form the presiding juror originally wrote "not guilty" along

with the date and his signature. CP 318. However, he then crossed out each notation and wrote "Redundant" on the form. *Id.*

The jury also returned special verdicts that the state had proven the following beyond a reasonable doubt: (1) that the defendant was armed with a firearm during the commission of Count II, (2) that the defendant had committed Count II against a law enforcement officer who was in performance of her official duties, (3) that the defendant knew the officer was an officer and that the she was in the performance of her official duties, (4) that the defendant had discharged a firearm after removing it from a law enforcement officer, and (5) that the defendant was armed with a deadly weapon during the commission of Count IV. CP 320-323.

Based upon the special verdicts that (1) the defendant committed the offense in Count II against a law enforcement officer who was performing her official duties at the time of the offense, (2) that the defendant knew that the victim was a law enforcement officer at the time he committed the offense, and (3) that the victim's status as a law enforcement officer was not an element of the offense, the court imposed an exceptional sentence under RCW 9.94A.535(3)(v) and added 69 months to the top end of the defendant's standard range. CP 382-395. The defendant thereafter filed timely notice of appeal.

ARGUMENT

THE TRIAL COURT DENIED THE DEFENDANT HIS CONSTITUTIONAL RIGHT TO TESTIFY WHEN IT FAILED TO REOPEN THE DEFENDANT'S CASE-IN-CHIEF AFTER THE DEFENDANT INFORMED THE COURT THAT HE WANTED TO TAKE THE STAND ON HIS OWN BEHALF.

Under the due process clauses found in Washington Constitution, Article 1, § 3, and United States Constitution, Fifth and Fourteenth Amendments, all persons charged with a crime enjoy a series of fundamental rights, including the right to jury trial, the right to the presumption of innocence, the right to confront the state's witnesses, the right to call exculpatory witnesses, the right to compel witnesses to appear and the right to present exculpatory evidence. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *In re Pers. Restraint of Stoudmire,* 145 Wn.2d 258, 36 P.3d 1005 (2001). Another one of these fundamental rights of due process is the right to testify on one's own behalf. *Rock v. Arkansas*, 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987); *State v. Robinson*, 138 Wn.2d 753, 982 P.2d 590 (1999).

The right to testify is fundamental and as such the decision whether or not to testify lies solely with the defendant; it cannot be abrogated by either defense counsel or the court. *State v. Thomas*, 128 Wn.2d 553, 558, 910 P.2d 475 (1996). As the following analysis of *State v. Robinson*, *supra* explains, the remedy available to the defendant who is denied the right to testify

depends on how the deprivation occurs.

In *Robinson* a defendant convicted of second degree rape and unlawful imprisonment following a jury trial appealed the trial court's refusal to grant a motion for a new trial in which the defendant alleged that after the close of the defendant's case he informed his attorney that he wanted to testify on his own behalf but counsel ignored his demand, did not move to reopen his case-in-chief and simply proceeded with closing arguments. On appeal the defendant argued that trial counsel's failure to move to reopen to allow him to testify denied the defendant his right to effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment. He further argued that under the second prong of the *Strickland* standard prejudice should be presumed since trial counsel's failure denied him the fundamental right to testify on his own behalf.

In addressing these arguments the court first noted that the defendant had presented significant evidence that he had indeed demanded that counsel move to reopen the defense case in order to allow him to take the stand. Since the trial court had not resolved this factual issue, the appellate court ruled that the defendant was entitled to an evidentiary hearing to resolve his factual claims. However, the court rejected the defendant's argument that prejudice should be presumed. Rather, the court held that a defendant

claiming ineffective assistance of counsel based upon his trial attorney's actions preventing the defendant from testifying still had the burden of proving prejudice under *Strickland*. The court stated the following on this issue:

> We agree with these jurisdictions, and similarly decline to adopt a *per se* reversal rule. In order to prevail on his ineffective assistance of counsel claim, Robinson will therefore have to satisfy the *Strickland* test by proving that Kimberly's conduct was deficient (i.e., Robinson was actually prevented from testifying) and that his testimony would have a "reasonable probability" of affecting a different outcome. If Robinson meets this burden, he will be entitled to a new trial.

State v. Robinson, 138 Wn.2d 769-770 (citations omitted).

Although the decision in *Robinson* is clear about the standard of review and the burden of proof under a claim of ineffective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, the court did not specifically address what standard applied when it was the court that prevented the defendant from testifying. However in *Robinson* the court did take pains to distinguish prior cases in which a defendant was granted a new trial based upon proof that he was denied the right to testify by pointing out that the deprivation in those cases came at the hands of the court, not counsel. In his partial dissent in *Robinson*, Judge Alexander noted the following on this issue:

> Indeed, we have concluded in *State v. Hill*, 83 Wn.2d 558, 520 P.2d 618 (1974), that deprivation of a defendant's right to testify is *per se*

> prejudicial. The Court of Appeals has done likewise in *In re Detention of Haga*, 87 Wn.App. 937, 943 P.2d 395 (1997), *review denied*, 134 Wn.2d 1015, 958 P.2d 316 (1998).
>
> The majority attempts to distinguish the aforementioned cases by pointing out that the abridgment of the right to testify there was by the trial court and not counsel. While the majority is correct in observing that in Hill we held that the trial court's evidentiary ruling interfered with the defendant's right to testify, it was clear that we held that the defendant does not have to show that he or she suffered prejudice in order to obtain a new trial.
>
> . . .
>
> . . . I fail to understand why counsel's interference with the same fundamental right should be held to a different standard. Contrary to the majority's efforts to confine *Hill* to its facts, we stated broadly there that the constitutional right to testify "should be unfettered and unhindered by any form of compulsion." *Hill*, 83 Wn.2d at 564, 520 P.2d 618. We did not add, as the majority would have us do, the words "by a trial judge" to the end of that sentence.

State v. Robinson, 138 Wn.2d at 771-772 (Alexander, J., concurring in part and dissenting in part).

The clear implication of the majority's efforts in distinguishing the decision in *Hill* and *Haga* as well as the dissent is that when the trial court denies a defendant the right to testify prejudice is presumed and the defendant is entitled to a new trial. As the following explains this is precisely what happened in this case. In the case at bar, as in *Robinson*, the defendant claimed the right to testify just prior to the court instructing the jury. In the case at bar this occurred on the morning of the fourth day of trial after the state had presented its rebuttal witnesses the prior evening. However, in this

case, unlike *Robinson*, the defendant specifically informed the court that he had been denied his right to testify in the defense case-in-chief. This exchange went as follows:

> THE DEFENDANT: Last time I had spoken with David Arcuri [Defendant's counsel] in the jail, he told me that regarding the presentation of the defense yesterday that he would call his witnesses and then the prosecution would call the rebuttal witnesses, but he never told me that the defense was required to rest, before the rebuttal witnesses, and I thought that I might have a chance to testify after the rebuttal witnesses, because he never informed me of that, so that's just – basically, that's maybe sort of affected my decision possibly to not testify, and so I'm just raising that he should have been more informative about me and that's all.
>
> THE COURT: Well, are you telling me that you wanted to take the stand and testify in your own defense and that somehow you misunderstood Mr. Arcuri's advice and as a result of that chose not to or are you just telling me you wanted an opportunity to rebut the State's rebuttal witnesses?
>
> THE DEFENDANT: No, I don't want to do that, but I just wanted to raise the fact that he did not inform me properly, so that I didn't have a chance to think about this as much as I could have.

RP 567-568.

The exchange here is somewhat confusing because the defendant initially stated that he wanted the opportunity to testify but then later stated "No, I don't want to do that . . ." The confusion comes in determining what the defendant did not "want to do." A careful review of the court's question to the defendant reveals that the court was asking whether or not the defendant "wanted an opportunity to rebut the State's rebuttal witnesses." In

other words, the court was asking the defendant whether or not he had wanted to testify in sur-rebuttal. The defendant stated that he did not. However, the defendant was not complaining about the fact that he had been denied the opportunity to testify in sur-rebuttal. Rather, he was complaining about the fact that he had been denied the right to testify in his case-in-chief. Although the defendant attributed this deprivation to trial counsel's failure, the fact is that the jury had not yet been instructed and the trial court could have allowed the defense to reopen its case and call the defendant to testify in his own behalf.

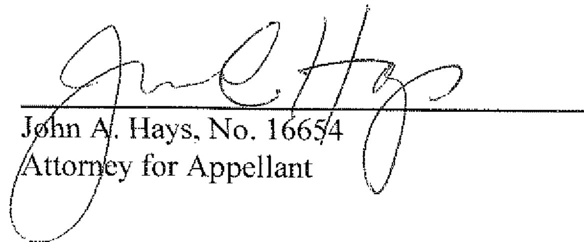
Instead of informing the defendant that he could still testify if he wanted to do so, the court immediately launched into a colloquy with defense counsel, who informed the court that the defendant had stated at the beginning of the trial that he would follow counsel's advise to refrain from taking the stand. The problem with this colloquy is that it was irrelevant. The issue at that time was not what the defendant had previously told counsel about testifying. Rather, the relevant issue was that the defendant wanted to testify at the point he informed the court. Thus, the court's confusing question regarding appearing in sur-rebuttal, and the court's colloquy with trial counsel denied the defendant his right to testify. Since this was the action of the trial court and not counsel prejudice is presumed and the defendant is entitled to a new trial.

CONCLUSION

The defendant's convictions should be reversed and his case remanded for a new trial based upon the trial court's failure to afford the defendant an opportunity to testify on his own behalf.

DATED this 21 day of January, 2014.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

WASHINGTON CONSTITUTION
ARTICLE 1, § 3

No person shall be deprived of life, liberty, or property, without due process of law.

UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

. . .

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

State of Washington, Respondent,	No. 44923-4-II
vs.	AFFIRMATION OF OF SERVICE
Steven Daniel Kravetz, Appellant.	

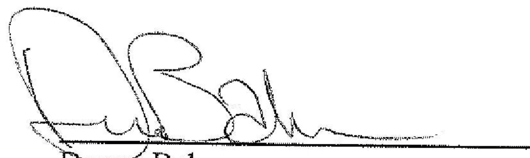
Donna Baker states the following under penalty of perjury under the laws of Washington State. On January 21, 2014, I personally e-filed and/or placed in the United States Mail the following document with postage paid to the indicated parties:

1. Brief of Appellant
2. Affirmation of Service

Steven Kravetz-DOC#320316
Monroe Correctional Complex
E231
P.O. Box 514
Monroe, WA. 98272

Gerald Fuller
Prosecuting Attorney
102 West Broadway
Room #102
Montesano, WA. 98563

Dated this 21st day of January, 2014, at Longview, Washington.



Donna Baker
Legal Assistant

HAYS LAW OFFICE

January 21, 2014 - 10:46 AM

Transmittal Letter

Document Uploaded: 449234-Appellant's Brief.pdf

Case Name: State vs Steven Daniel Kravetz
Court of Appeals Case Number: 44923-4

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers   Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): ________

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: ________

Comments:

No Comments were entered.

Sender Name: Cathy E Russell - Email: **jahayslaw@comcast.net**

A copy of this document has been emailed to the following addresses:

gfuller@co.grays-harbor.wa.us
donnabaker@qwestoffice.net