No. 33814-2-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DENNIS WALLACE PATTERSON,

Appellant.

On Appeal from the Stevens County Superior Court
Cause No. 15-1-00005-0
The Honorable Allen Nielson & Patrick Monasmith, Judges

OPENING BRIEF OF APPELLANT

STEPHANIE C. CUNNINGHAM
Attorney for Appellant
WSBA No. 26436

4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

WASHINGTON STATE COURTS

FEDERAL & OTHER STATE COURTS

OTHER AUTHORITIES

I. ASSIGNMENTS OF ERROR

1. Section (1)(b) of the disorderly conduct statute, RCW 9A.84.030, is overbroad and infringes on constitutionally protected areas of speech under the First Amendment to the United States Constitution and article I, section 5 of the Washington Constitution.

2. Dennis Patterson was convicted under a section of the disorderly conduct statute that is constitutionally overbroad on its face.

3. The State failed to meet its constitutional burden of proving beyond a reasonable doubt that Patterson acted with intent to disrupt an assembly or meeting of persons, which is a required element of the crime of disorderly conduct.

4. The State failed to meet its constitutional burden of proving beyond a reasonable doubt that Patterson acted with intent to interfere with, obstruct or impede the administration of justice, which is a required element of the crime of interference with court.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where the plain language of section (1)(b) of the disorderly conduct statute, RCW 9A.84.030, prohibits disruptions of

meetings or gatherings, but does not limit violations by time, place or manner, and therefore broadly applies to protected speech and conduct, is the statute unconstitutionally overbroad under the First Amendment to the United States Constitution and article I, section 5 of the Washington Constitution? (Assignments of Error 1 & 2)

2. Where the State's evidence failed to prove that Dennis Patterson intended to disrupt or interfere with court proceedings, but rather intended only to exercise his constitutional right to petition the government for a redress of grievances, did the State fail to meet its burden of proving all of the elements of the charged crimes beyond a reasonable doubt? (Assignments of Error 3 & 4)

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The State charged Dennis Wallace Patterson by Amended Information with one count of disorderly conduct (RCW 9A.84.030) and one count of interference with court (RCW 9.27.015). (CP 35-36) The charges arose from an incident in a courtroom of the Stevens County Superior Court, when Patterson stood in the gallery and read a statement of grievances against the sitting judge,

Gina Tveit. (CP 10-11) At arraignment, the trial court entered a plea of "not guilty" on Patterson's behalf after Patterson declined to state his plea. (RP 15, 35-36)

The trial court granted Patterson's request to proceed pro se. (RP 20, 29-32) But the court denied Patterson's motions to dismiss for lack of a prima facie case, lack of jurisdiction, and selective prosecution. (CP 44-49, 50-167, 187-88, 253-56; RP 38-46, 271-76) The court granted the State's motion in limine to exclude evidence pertaining to the substance of Patterson's grievance against Judge Tveit and other Stevens County officials. (RP 81-84, 88-89, 125-26, 136)

The jury convicted Patterson as charged. (CP 273, 274; RP 300) The trial court imposed a suspended sentence totaling 365 days, ordered payment of only mandatory legal financial obligations, and directed that Patterson shall "not disrupt court either directly or indirectly" and shall have "no criminal law violations." (CP 282, 283, 285; RP 319-20, 322) If Patterson complies with the terms of the suspended sentence, then the "verdict shall be vacated and [the] charges shall be dismissed." (CP 286; RP 319-20, 324) Patterson timely appealed. (CP 290)

B. SUBSTANTIVE FACTS

Dennis Patterson strongly believes that several elected Stevens County officials, including judges, the prosecuting attorney, and the sheriff, are not authorized to perform the duties of their offices, because they have not complied with State laws relating to taking, filing and bonding their oaths of office. (RP 45; CP 50-167, 298-99) Patterson believes deeply that they are in violation of the law and that any actions they perform as officeholders are void. (CP 50-55, 298-99) Patterson has brought his concerns to the attention of County and State officials by both written and verbal communications, but has not had his concerns addressed to his satisfaction. (CP 58-167, 298-99; RP 294) Believing that these Stevens County elected officials, including District Court Judge Gina Tveit, were acting outside the bounds of the law, Patterson concluded that he had no other option than to present his grievance in person to Judge Tveit in her courtroom before she called a session to order. (RP 35, 83, 294; CP 299-300)

Accordingly, on Monday, January 5, 2015, Patterson and several of his compatriots gathered peacefully in the gallery of Judge Tveit's courtroom. (RP 153, 165-66) Monday mornings are reserved for the court's infraction docket, and the courtroom is open

to the general public and to persons who hope to have their traffic tickets resolved. (RP 148-49, 150) On a normal Monday morning, the bailiff makes an announcement when Judge Tveit enters the courtroom, then Judge Tveit will make some introductory remarks and call the first case on the docket. (RP 149-50)

But on that Monday, when Judge Tveit entered the courtroom, Patterson immediately began to speak. (RP 151, 166, 184-85, 257; Exh. 1; Exh. 2) He told the Judge that his intent was to peacefully redress a grievance, then he began to read his written statement. (RP 151, 166, 184-85, 256; Exh. 1; Exh. 2) Judge Tveit informed Patterson that he was disrupting the court and that he could not speak from the audience, and she ordered him to stop. (RP 151-52, 166-67; Exh. 1; Exh. 2) Patterson continued to read his grievance, so Judge Tveit called a recess and left the bench. (RP 152, 166-67; Exh. 1; Exh. 2) A Deputy Sheriff who had been stationed in the courtroom approached Patterson, put his hand on Patterson's shoulder, and told him to leave the courtroom.[1] (RP 152, 167; Exh. 1; Exh. 2) Patterson kept trying to read his

[1] Stevens County Sheriff Kendle Allen was aware that a group of people planned to attend court and read a statement to the judge, so he decided that a Deputy should be present in the courtroom in case there was a disturbance. (RP 220-21, 226)

grievance and did not leave the courtroom. (RP 167-68; Exh. 1; Exh. 2)

As Patterson explained that he only intended to peacefully address Judge Tveit, the Deputy physically pushed Patterson out of the courtroom and placed him under arrest. (RP 168, 169, 175) Judge Tveit returned to the courtroom after Patterson was removed, but a woman from Patterson's group stood and began to read the grievance statement. (RP 153, 170) The woman was eventually escorted out, and Judge Tveit called the first case and the docket proceeded as it normally would. (RP 153, 170)

Judge Tveit testified that she has a duty to maintain control of the courtroom, and that order is important for effective and efficient administration of court business. (RP 245) She felt she needed to recess when Patterson was speaking because he would not stop talking and she could not begin hearing cases on her docket. (RP 247) Judge Tveit testified that the litigants on the docket had to wait for their cases to be heard, but that the entire episode was over in less than 20 minutes. (RP 249)

Judge Tveit acknowledged, however, that there is no procedure in place for a citizen to directly address a judge if they have a grievance or issue with that judge. (RP 242, 248) And a

sign posted outside the courtroom specifically forbids contact or conversation with a judge outside the courtroom. (RP 268; Exh. 210)

IV. ARGUMENT & AUTHORITIES

A. SECTION (1)(B) OF THE DISORDERLY CONDUCT STATUTE IS OVERBROAD AND INFRINGES ON CONSTITUTIONALLY PROTECTED AREAS OF SPEECH UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 5 OF THE WASHINGTON CONSTITUTION.

The First Amendment to the United States Constitution provides that:

> Congress shall make no law … abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Freedom of speech is also a preferred right under article I, section 5 of the Washington Constitution. State v. Coe, 101 Wn.2d 364, 375, 679 P.2d 353 (1984) (citing Alderwood Assocs. v. Washington Envtl. Coun., 96 Wn.2d 230, 244, 635 P.2d 108 (1981)).[2]

The protection of free expression has been characterized in First Amendment jurisprudence as a "fundamental" liberty. "Of that freedom one may say that it is the matrix, the indispensable

[2] Art. 1, § 5 of the Washington Constitution states: "FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right."

condition, of nearly every other form of freedom." Palko v. Connecticut, 302 U.S. 319, 327, 58 S. Ct. 149, 82 L. Ed. 288 (1937). The First Amendment contemplates that "the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market[.]" Abrams v. United States, 250 U.S. 616, 630, 40 S. Ct. 17, 63 L. Ed. 1173 (1919) (Holmes, J., dissenting).

In general, the First Amendment prevents the government from prohibiting speech or expressive conduct. State v. Halstien, 122 Wn.2d 109, 121, 857 P.2d 270 (1993) (citing R.A.V. v. City of St. Paul, 505 U.S. 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305, 317 (1992)). The choices that government may make in an effort to regulate or prohibit speech are limited. *See* Consolidated Edison Co. of New York, Inc. v. Public Service Comm'n of New York, 447 U.S. 530, 538, 100 S. Ct. 2326, 65 L. Ed. 2d 319 (1980).

Such a regulation is unconstitutionally "overbroad if it sweeps within its prohibitions free speech activities protected under the First Amendment." Halstien, 122 Wn.2d at 121 (citing R.A.V., *supra.*). And the Washington state constitution, "like the federal constitution, does not tolerate an overly broad statute which

sweeps within its proscriptions all forms of abusive, contemptuous, or insolent words" or conduct. State v. Reyes, 104 Wn.2d 35, 43, 700 P.2d 1155 (1985); Halstien, 122 Wn.2d at 122.

The overbreadth doctrine is "aimed at preventing any 'chilling' of constitutionally protected expression." Halstien, 122 Wn.2d at 122. "As a result, courts will permit facial overbreadth challenges when the statute in question chills or burdens constitutionally protected conduct." Halstien, 122 Wn.2d at 122.

In conducting an overbreadth analysis, a court's first task is to determine whether the statute reaches a substantial amount of constitutionally protected speech or conduct. City of Tacoma v. Luvene, 118 Wn.2d 826, 839, 827 P.2d 1374 (1992). Criminal statutes in particular are given careful scrutiny and may be facially invalid if they "'make unlawful a substantial amount of constitutionally protected conduct ... even if they also have legitimate application.'" City of Seattle v. Huff, 111 Wn.2d 923, 925, 767 P.2d 572 (1989) (quoting City of Houston v. Hill, 482 U.S. 451, 459, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987)). A statute is overbroad when it is unconstitutional as applied to a hypothetical context, even if constitutional as applied to the litigant. Luvene, 118

Wn.2d at 840.[3]

Courts have allowed regulation of protected speech in certain circumstances. Bering v. Share, 106 Wn.2d 212, 221-22, 721 P.2d 918 (1986). For example, speech in public forums is subject to valid time, place, and manner restrictions which "'are content-neutral, and narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.'" Bering, 106 Wn.2d at 222 (quoting United States v. Grace, 461 U.S. 171, 177, 103 S. Ct. 1702, 1706, 75 L. Ed. 2d 736 (1983)). And speech in nonpublic forums may be restricted if "'the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint-neutral.'" Seattle v. Eze, 111 Wn.2d 22, 32, 759 P.2d 366 (1988) (quoting Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788, 806, 105 S. Ct. 3439, 87 L. Ed. 2d 567 (1985)).

However, "freedom of speech, though not absolute, is nevertheless protected against ... punishment, unless shown likely

[3] An overbreadth challenge allows "'attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity.'" Broadrick v. Oklahoma, 413 U.S. 601, 612, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973) (quoting Dombrowski v. Pfister, 380 U.S. 479, 486, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965)).

to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Terminiello v. City of Chicago, 337 U.S. 1, 4, 69 S. Ct. 894, 93 L. Ed. 1131 (1949) (citation omitted)). As a result,

> There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.

Chaplinsky v. State of New Hampshire, 315 U.S. 568, 571-72, 62 S. Ct. 766, 86 L. Ed. 1031 (1942).

On the other hand, political speech in particular "is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 339, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010). And while the First Amendment also protects the "right of the people peaceably to assemble" that right "does not guarantee a silent meeting. A meeting may be interrupted by loud voices." State v. Ervin, 40 S.W.3d 508, 515 (Tenn. Crim. App. 2000). Thus, free speech often "demands some sacrifice of efficiency." Hill, 482 U.S. at 464 n. 12.

Under section (1)(b) of RCW 9A.84.030, a person is guilty of the crime of disorderly conduct if the person "[i]ntentionally disrupts any lawful assembly or meeting of persons without lawful authority[.]"[4] This statute is not narrowly tailored and by its plain language criminalizes a significant amount of protected speech and conduct.

Other State courts have struck down statutes similar to RCW 9A.84.030(1)(a) for overbreadth. For example, in City of Houston v. Hill, the United States Supreme Court considered the constitutionality of an ordinance that made it unlawful to "in any manner oppose, molest, abuse or interrupt" a police officer. 482 U.S. at 455. The Court concluded at the outset that this language prohibited verbal interruptions and, therefore, implicated constitutionally protected speech under the First Amendment. 482 U.S. at 461. The Court first noted that the ordinance was not limited in any way to fighting words or obscene language. 482 U.S. at 462. Instead, the ordinance imposed a blanket prohibition on speech that interrupts an officer in any manner. 482 U.S. at 462.

[4] The State originally charged Patterson under several subsections of RCW 9A.84.030, but the trial court found an insufficient factual basis for all but section (1)(b). So the jury was instructed, and convicted Patterson, on this alternative alone. (CP 35-36, 265, 273; RP 40-41)

Expressly clarifying that the Constitution prohibits making such speech a crime, the Court explained that "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." 482 U.S. at 462-63. While the Court acknowledged the difficulty of drafting precise laws, it reiterated that it would invalidate those laws "that provide the police with unfettered discretion to arrest individuals for *words or conduct* that annoy or offend them." 482 U.S. at 465 (emphasis added).

In People v. Rapp, the Michigan Supreme Court struck down a Michigan State University (MSU) ordinance that made it a crime to "disrupt the normal activity ... of any person, firm, or agency ... carrying out service, activity or agreement for or with the University." 492 Mich. 67, 75, 821 N.W.2d 452, 456 (2012). The court, relying heavily on the Hill opinion, invalidated the ordinance:

> The MSU ordinance prohibits disruptions but does not specify the types of disruptions that are prohibited. Thus, the plain language of the ordinance allows its enforcement for even *verbal* disruptions. Moreover, like the ordinance that the United States Supreme Court invalidated in Hill, the verbal disruptions that the MSU ordinance criminalizes are not limited to those containing fighting words or obscene language. Instead, the MSU ordinance explicitly criminalizes any

> disruption of the normal activity of persons or entities carrying out activities for or with MSU. Not only does the ordinance fail to limit the types of disruptions that are prohibited, it also protects a much broader class of individuals than the ordinance at issue in Hill. The plain language of this ordinance allows it to be enforced against *anyone* who disrupts in *any* way *anyone* carrying out *any* activity for or with MSU. Like the ordinance in Hill, which was "admittedly violated scores of times daily," the MSU ordinance could be violated numerous times throughout any given day given that there are seemingly infinite ways in which someone might "disrupt" another who is engaged in an "activity" for or with MSU. Thus, we believe that this ordinance, just like the ordinance in Hill, "criminalizes a substantial amount of constitutionally protected speech[.]"

821 N.W.2d at 456-57 (footnotes omitted) (emphasis in original) (quoting Hill, 482 U.S. at 466).

Likewise, RCW 9A.84.030(1)(b) criminalizes disruptions both verbal and behavioral, and imposes a blanket prohibition on speech and conduct that interrupts any sort of meeting or gathering. The statute could be applied to criminalize *any* type of speech or behavior for *any* purpose in *any* location that interrupts or disturbs *any* group of two or more people gathered for *any* reason. There are no time, place or manner limits whatsoever. See Rapp, 821 N.W.2d at 456-57; State v. Coe, 101 Wn.2d at 373 ("[s]ince the trial court's order contained no temporal or geographic limits, it cannot be characterized as a time or place restriction. Nor did it constitute

a valid 'manner' restriction on the loudness of speech (*e.g.,* the use of sound trucks or loud shouting designed to disrupt rather than communicate)").

Like the ordinances struck down in Hill and Rapp, RCW RCW 9A.84.030(1)(b) is facially overbroad. The section of the disorderly conduct statute under which Patterson was convicted sweeps too broadly in banning protected forms of expressive conduct. Accordingly, Patterson's conviction must be reversed.[5]

B. THE STATE FAILED TO PROVE THAT PATTERSON INTENDED TO DISRUPT OR INTERFERE WITH COURT PROCEEDINGS, BUT INSTEAD PROVED HE INTENDED ONLY TO EXERCISE HIS CONSTITUTIONAL RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF HIS GRIEVANCES.

"Due process requires that the State provide sufficient evidence to prove each element of its criminal case beyond a reasonable doubt." Luvene, 118 Wn.2d at 849 (citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)). Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable

[5] See State v. Immelt, 173 Wn.2d 1, 14, 267 P.3d 305 (2011), where the Court found an ordinance to be overbroad and reversed the defendant's conviction under that statute, noting: "[w]e need not decide whether Immelt's particular conduct would constitute protected speech."

doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Salinas, 119 Wn.2d at 201.

"A person is guilty of disorderly conduct if the person … Intentionally disrupts any lawful assembly or meeting of persons without lawful authority[.]" RCW 9A.84.030(1)(b) (see also Jury Instruction 6, CP 265). And a person is guilty of the crime of interference with court if he or she intentionally interferes with, obstructs or impedes the administration of justice by resorting to a "demonstration" in "a building housing a court of the state of Washington." RCW 9.27.015 (see also Jury Instruction 7, CP 266). Both statutes require an intent to disrupt or interfere. But the evidence did not establish this intent.

"The right to petition government for redress of grievances is 'among the most precious of the liberties safeguarded by the Bill of Rights.'" Farr v. Blodgett, 810 F. Supp. 1485, 1489 (E.D. Wash. 1993) (quoting United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222, 88 S. Ct. 353, 356, 19 L. Ed. 2d 426 (1967)). And "the right to petition applies with equal force to a person's right to seek redress from all branches of government." Blodgett, 810 F.

Supp. at 1489 *(citing* California Motor Transport Co. v. Trucking Unlimited*,* 404 U.S. 508, 510, 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972)).

The evidence presented in this case clearly established that Patterson went to Judge Tveit's courtroom to exercise his constitutionally protected right to petition the government for a redress of his grievances. (RP 166, 175, 256) His intent to simply read a statement was known ahead of time by Stevens County officials, including Sheriff Allen. (RP 174, 220-21) Patterson also made this intent clear as he began to speak, before Judge Tveit reached the bench. (RP 175, 256) He did not interrupt any of the other litigants during presentation of their cases, and did not interrupt Judge Tveit's colloquies with any of the other litigants. (RP 151, 157, 166, 257) Patterson merely tried to make a short statement to Judge Tveit. There is no evidence that his intent was to cause a disruption or to interfere with the day's proceedings. Instead, the evidence proves beyond a reasonable doubt that Patterson intended only to exercise his fundamental First Amendment right to present his grievances to Judge Tveit in a manner he believed was necessary and proper. (RP 242, 268, 294)

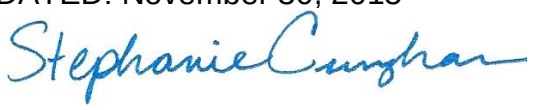
The reviewing court should reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998). Because the State failed to present sufficient evidence to prove that Patterson acted with the intent of disrupting or interrupting court, Patterson's convictions must be reversed and dismissed.

V. CONCLUSION

The United States Supreme Court has stated that "[t]he First Amendment recognizes, wisely we think, that a certain amount of expressive disorder not only is inevitable in a society committed to individual freedom, but must itself be protected if that freedom would survive." Hill, 482 U.S. at 472. Section (1)(b) of the disorderly conduct statute criminalizes nearly all "expressive disorder" without limitation. Consequently, that section of the statute must be stricken as unconstitutionally overbroad, and cannot support Patterson's conviction for disorderly conduct. Furthermore, the evidence clearly established that Patterson did not intend to disrupt or interrupt court proceedings, but rather

intended to seek redress by expressing his firmly held grievance. Accordingly, Patterson's convictions for disorderly conduct and interference with court must be reversed and dismissed on this ground as well.

DATED: November 30, 2015



STEPHANIE C. CUNNINGHAM
WSB #26436
Attorney for Dennis W. Patterson

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, vs. DENNIS WALLACE PATTERSON, Appellant.	Appeal No. 33814-2-III Stevens Co. No. 15-1-00005-0 CERTIFICATE OF SERVICE

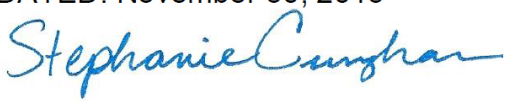
I, Stephanie C. Cunningham, court-appointed counsel for Appellant Dennis Wallace Patterson, certify that I provided PDF copies of the OPENING BRIEF OF APPELLANT, the VERBATIM REPORT OF PROCEEDINGS, and this CERTIFICATE OF SERVICE, via e-mail attachment sent to:

Appellant Dennis W. Patterson at berrybestfarm@yahoo.com
Respondent State of Washington at lradzimski@co.stevens.wa.us
Respondent State of Washington at jtaylor@co.stevens.wa.us

This method of service is by prior agreement of the parties.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: November 30, 2015



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Dennis W. Patterson

STEPHANIE C. CUNNINGHAM
ATTORNEY AT LAW
4616 25TH AVENUE NE, NO. 552
SEATTLE, WASHINGTON 98105
(206) 526-5001 ♦ SCCAttorney@yahoo.com