

TABLE OF CONTENTS

	Page
A. <u>ARGUMENT IN REPLY</u>	1
REVERSAL IS REQUIRED BECAUSE STOVALL WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND COMPULSORY PROCESS WHERE DEFENSE COUNSEL WENT TO TRIAL WITHOUT CONDUCTING A REASONABLE INVESTIGATION AND CONSEQUENTLY FAILED TO PRESENT THE TESTIMONY OF AN EXPERT WITNESS VITAL TO STOVALL'S DEFENSE	1
B. <u>CONCLUSION</u>	3

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. McFarland,
127 Wn.2d 322, 899 P.2d 1251 (1995) 3

RULES, STATUTES, OTHER

RPC 1.1 2

RPC 1.3 2

U.S. Const. amend. 6 3

Wash. Const. art. 1, section 22 3

A. ARGUMENT IN REPLY

REVERSAL IS REQUIRED BECAUSE STOVALL WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND COMPULSORY PROCESS WHERE DEFENSE COUNSEL WENT TO TRIAL WITHOUT CONDUCTING A REASONABLE INVESTIGATION AND CONSEQUENTLY FAILED TO PRESENT THE TESTIMONY OF AN EXPERT WITNESS VITAL TO STOVALL'S DEFENSE.

The State places the blame entirely on Stovall, arguing that defense counsel's performance cannot be considered deficient because Stovall "failed to inform her of the existence of the doctor." Brief of Respondent at 7. The record, however, substantiates that defense counsel appeared for trial unaware that Stovall had a doctor to testify on his behalf due to her failure to conduct a reasonable investigation and communicate with Stovall to prepare his defense. Defense counsel all but admitted that she failed to meet with Stovall until the day of trial:

Well, your Honor, my client is indicating to me that he would like to call a witness of which I was previously unaware, a physician who cannot be subpoenaed in record time to be brought to testify; and I haven't notified the prosecutor because I'm just learning of it. My client does not wish to proceed at this time without that doctor's testimony, so I assume that we are asking to set this matter over.

3RP 4-5.

It is evident that Stovall did not previously inform defense counsel about the doctor because she gave him no opportunity to do so until he

was brought to court for trial. Consequently, due to her lack of diligence, defense counsel was unprepared on the day of trial and her belated attempt to contact the doctor failed.¹

The State argues further that “the record does not reflect if the doctor appeared as a witness” and that it is likely that defense counsel “decided that his testimony was not going to be helpful.” Brief of Respondent at 7 - 8. To the contrary, the record establishes that after Stovall’s testimony, the court inquired about other witnesses:

THE COURT: Any additional witnesses, Ms. Mansfield?

MS. MANSFIELD: No, Your Honor. We were not able to reach the physician.

5RP 78-79.

Contrary to the State’s assertion that defense counsel made a strategic decision not to call the doctor to testify, the record substantiates that defense counsel failed to obtain the doctor as an expert witness. The record indicates that a subpoena was served upon Dr. Emery Chang on April 14, 2008. CP 92-93. It is therefore not unexpected that Dr. Chang could not be reached in time to testify the very next day. To Stovall’s

¹ A lawyer is required to act with reasonable diligence and promptness in representing her client and is compelled to provide competent representation, which requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. RPC 1.1, 1.3

detriment, defense counsel rested without the benefit of Dr. Chang's expert testimony critical to his defense. 5RP 78 - 79.

Defense counsel's lack of diligence and preparation was deficient because her representation fell below an objective standard of reasonableness and Stovall was prejudiced because there is a reasonable probability that the outcome would have been different but for counsel's deficient performance. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).

B. CONCLUSION

For the reasons stated here, and in the opening brief, this Court should reverse Mr. Stovall's conviction because he was denied his constitutional rights to effective assistance of counsel and compulsory process. U.S. Const. amend VI; Wash. Const. art. I, section 22.

DATED this 16th day of March, 2009.

Respectfully submitted,

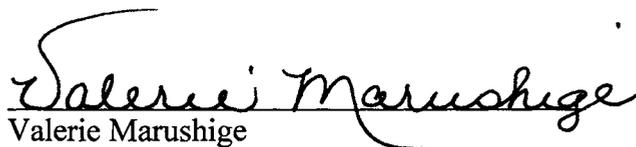

VALERIE MARUSHIGE
WSBA No. 25851
Attorney at Law

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Thomas C. Roberts, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402.

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

DATED this 16th day of March, 2009 in Kent, Washington.


Valerie Marushige
Attorney at Law
WSBA No. 25851

FILED
COURT OF APPEALS
DIVISION II
09 MAR 17 AM 11:48
STATE OF WASHINGTON
BY 
DEPUTY