

No. 39980-6-II

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

STATE OF WASHINGTON,

Respondent,

v.

RODNEY BRYSON,

Appellant.

FILED  
COURT OF APPEALS  
DIVISION II  
10 APR - 1 PM 1:05  
STATE OF WASHINGTON  
BY *[Signature]*  
DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable Gordon Godfrey  
The Honorable F. Mark McCauley

BRIEF OF APPELLANT

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PIII 3-5-10

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A. ASSIGNMENTS OF ERROR

1. The trial court violated Bryson's Sixth Amendment right to counsel and Fourteenth Amendment right to due process of law when it denied defense counsel's motion to withdraw based on a breakdown in communications.

2. The trial court violated Bryson's Sixth Amendment right to a defense and to compulsory process by denying his request for a continuance so he could call an expert witness.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. An accused person has the Sixth Amendment right to the effective assistance of counsel at all critical stages of the prosecution, which comprehends the right to conflict-free counsel. An accused person is denied the right to conflict-free counsel, and commensurately, his Fourteenth Amendment right to due process, when he is forced to proceed to trial with a lawyer with whom he has had a "complete breakdown in communications." The trial court refused to discharge Bryson's lawyer even though the lawyer advised the court that there had been a complete breakdown in his communications with Bryson. Was Bryson denied his Sixth Amendment right to counsel and Fourteenth Amendment right to due process of law? (Assignment of Error 1)

2. When the lawyer for an accused person informs the trial court of a conflict affecting the representation, the court has the duty under the Sixth Amendment to inquire into the conflict. Did the trial court's failure to inquire into the breakdown in communications between Bryson and his lawyer violate the Sixth Amendment?

(Assignment of Error 1)

3. An accused person has the Sixth Amendment right to compulsory process and to present a defense. Did the trial court violate Bryson's Sixth Amendment rights when it denied his motion to continue the trial date so that he could consult and call an expert witness necessary to present his defense? (Assignment of Error 2)

#### C. STATEMENT OF THE CASE

1. Bryson's arrest and ensuing charges. Rodney Bryson was outside his cousin's home when Hoquiam police arrested him on outstanding warrants. RP 39, 41.<sup>1</sup> During a search incident to Bryson's arrest, the arresting officer recovered a small white baggie which contained the residue of some white, crystalline substance. RP 41.

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<sup>1</sup> Citations are to a single volume of transcripts containing hearings on multiple dates between August 24, 2009, and November 9, 2009. An additional volume, containing a transcript of a hearing on September 28, 2009, is not cited.

When the baggie was delivered to Washington State Patrol Crime Laboratory ("WSPCL") for testing, it was leaking in the corner. RP 69. A forensic scientist repackaged the item and weighed the substance in the baggie. Id. The substance weighed .06 grams, or less than a tenth of a gram. RP 54. Although the forensic scientist detected the presence of methamphetamine in this tiny amount of residue, she also ascertained the presence of a cutting agent, dimethyl sulfone MSM. RP 64. The scientist did not conduct any testing to determine the percentage of methamphetamine relative to the cutting agent. RP 65.

The day before Bryson's arrest, Bryson had traded a pack of cigarettes to a friend, Jennifer, for various items of jewelry in a black cloth bag. RP 91. Also inside the black cloth bag was a tongue ring and an earring, which was inside a small plastic baggie. RP 92. This was the same baggie which Hoquiam police later sent off for testing. Id. Bryson sold the jewelry in the plastic baggie to another friend. RP 94. He was unaware that the baggie also contained methamphetamine residue. RP 94-95.

Based on this event, the Grays Harbor Prosecuting Attorney charged Bryson by amended information with one count of possession of methamphetamine. CP 6.

2. Bryson's request to discharge counsel and for expert testimony so he could present his defense. Prior to trial, Bryson requested the Hoquiam police send the substance in the baggie for testing to an independent expert in Seattle. CP 15-17. The Honorable Gordon Godfrey granted Bryson's request to appoint an expert and the Hoquiam Police Department was directed to transmit the item to Dale Mann, the expert retained by Bryson. Id.; RP 13. The State delayed in sending the material, and ultimately the court was obligated to continue the trial date within speedy trial so the independent testing could be done. RP 14-16.

On the eve of trial, Bryson received the test results from his expert. RP 18-19. Without any assistance from his attorney, Bryson had also requested the WSPCL testing protocol and thereby ascertained that they had failed to follow their own internal standards. RP 19-20. Bryson told the court he had not had time to prepare his defense. RP 19. John Farra, Bryson's counsel, also indicated to the court that Bryson had filed or was intending to file a bar complaint against him. RP 20.

The next day, Farra told the court,

As I indicated yesterday I thought there would be – become an impasse in regard to my relationship with Mr. Bryson. I still feel that after a short conversation

with him today. So I'm requesting a continuance first thing based upon what he has indicated that he wants done and continually indicated to me that he thought this was going to be done two months ago and I have no comment on that. And so I – I am indicating that this matter should be continued 60 days. His new attorney should then – I'm familiar with the process – attack – he wants someone to attack the protocol in regard to the process and he's pointed out to me a number of deficiencies that he feels are consistent with the reports that he received through some – I don't know how he got the reports, but he got all of the underlying reports from the Washington State Patrol Crime Lab and he's indicated that there's – they haven't followed the proper protocol.

As far as getting another attorney, he – we're not talking at all as far as communicating. If we have a trial tomorrow it's both – he can speak for himself but we're just not obviously on the same page as far as communicating. And I won't go deeper than that as far as what I set forth in my affidavit.

I think that is the problem, I think – and basically it's both of our positions, both my client and mine, that he should probably have another lawyer that now he can direct what he thinks is deficient in regard to the reports that we received. So I'm moving to continue the trial and also to have another attorney appointed.

RP 25-26.

The court asked whether Bryson was willing to waive his right to a speedy trial, to which he responded, "No, I'm not sitting in the jail for another 60 days." RP 27. The court ruled, "Trial is tomorrow then." *Id.* At this point, Farra interjected, "Just for the

record, we're not talking. So I do think he should have another lawyer but --" The court interrupted, and said, "Well, you'll just have to do the best you can. That's up to Mr. Bryson. I can't force you to talk. Trial is tomorrow. He wants a trial, speedy trial rights, he's entitled to it." Id.

At the pretrial conference the following morning, Farra informed the court, "My client has indicated that he was somewhat confused yesterday and he is willing to waive his right to speedy trial." RP 29. Farra explained,

[Mr. Bryson] specifically requests the continuance because he wants to have an expert examine this protocol. And like I said, I did find out since yesterday, I reviewed some of the notes and what he did, very simply, he contacted the Washington State Patrol and sort of a release of information process [sic] and he got this protocol released. And what his point is, which I don't have anything to refute as far as its validity is concerned, is that the protocol is not appropriate. And what he wants is an expert to in fact examine it . . . There's a number of things that he specifically indicates that it says on the bottom calculations are accurate and it says non-applicable and there's a number of other items that he specifically has listed that he feels an expert would in fact show that the legal process doesn't follow protocol and as such is not admissible.

So he again has indicated that he's now willing to waive any right of speedy trial to have an expert specifically look at what he wants to look at.

RP 30-31.

In response, the prosecutor asserted that since Bryson's expert had also detected methamphetamine in the substance, Bryson had not shown good cause to continue the trial. RP 31. The prosecutor did not identify any prejudice to the State as a consequence of the continuance. Id.

The court did not let Bryson speak at the hearing. Id. Farra then reiterated,

Mr. Bryson feels very strongly about this and there's nothing technically wrong with what he's indicating that he wants done. He just – like I said, for some reason has specific interest in this because it's obviously his case and he feels that there's a number of items that should properly be brought to an expert. And he's willing to – of course, he understands that he may have to pay for the jury today if he's found guilty, but he feels so strongly in reference to that he still wants to waive his right to be tried today and he wants it to be properly analyzed as I've indicated.

RP 31-32.

The court noted that the previous day, Bryson had been asked if he would be willing to waive his right to a speedy trial,

and he stated yesterday that no, he was not willing to do that. And now we have 30 jurors sitting across the hallway in the other courtroom ready to go. They've interrupted their work schedules, their family schedules, they arranged I'm sure for baby-sitters and home care for children. They've inconvenienced themselves and the Court is not about to continue it that the point [sic]. That's no good – good cause for a continuance. We're going to trial.

RP 32-33.

At trial that same day, Bryson was represented by Farra. He did not call any expert witness in his defense, and was convicted as charged. CP 28. Bryson appeals. CP 44.

D. ARGUMENT

1. THE TRIAL COURT'S REFUSAL TO APPOINT NEW COUNSEL DESPITE THE BREAKDOWN IN COMMUNICATIONS BETWEEN BRYSON AND HIS DEFENSE ATTORNEY DENIED BRYSON HIS RIGHT TO COUNSEL GUARANTEED BY THE SIXTH AMENDMENT.

a. An accused person has the Sixth Amendment right to conflict-free counsel. Accused persons are guaranteed the assistance of counsel at all critical stages of the proceedings against them. United States v. Wade, 288 U.S. 218, 226, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967); U.S. Const. amend. XIV.; Const. art. I, § 22. "The Sixth Amendment right to counsel contains a correlative right to representation that is unimpaired by conflicts of interest or divided loyalties." Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991); Wheat v. United States, 486 U.S. 153, 159-60, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988) (right to effective assistance of counsel contemplates right to conflict-free counsel). The failure to respect this elemental right violates the defendant's

right to due process. Wood v. Georgia, 450 U.S. 261, 271-72, 101 S.Ct. 1097, 67 L.Ed.2d 220 (1981).; U.S. Const. amend. XIV; Const. art. I, § 3.

b. The trial court denied Bryson his Sixth Amendment right to conflict-free counsel when it refused to discharge Farra despite a complete breakdown in communications. To justify appointment of new counsel, a defendant “must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant.” State v. Varga, 151 Wn.2d 179, 200, 86 P.3d 139 (2004). Even if present counsel is competent, a complete breakdown in communications can result in an inadequate defense. United States v. Nguyen, 252 F.3d 998, 1003 (9th Cir. 2001). “Similarly, a defendant is denied his Sixth Amendment right to counsel when he is ‘forced into a trial with the assistance of a particular lawyer with whom he [is] dissatisfied, with whom he [will] not cooperate, and with whom he [will] not, in any manner whatsoever, communicate.’” Id. (citation omitted); see also Douglas v. United States, 488 A.2d 121, 136 (D.C. App. 1985) (finding conflict of interest where defendant had filed complaint

against his court-appointed attorney with the Office of the Bar Counsel).

In determining whether a motion to appoint new counsel should be granted, courts must give deference to the opinions of current counsel:

[A]n attorney's request for the appointment of separate counsel, based on his representations as an officer of the court regarding a conflict of interests, should be granted[.] . . . An "attorney. . . in a criminal matter is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop in the course of a trial." . . . Second, defense attorneys have the obligation, upon discovering a conflict of interests, to advise the court at once of the problem . . . Finally, attorneys are officers of the court, and "when they address the judge solemnly upon a matter before the court, their declarations are virtually made under oath."

Holloway v. Arkansas, 435 U.S. 475, 485-86, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978) (citations omitted).

In this case, Farra told the court on three occasions that his relationship with Bryson had deteriorated to point of an "impasse" where they were no longer communicating with one another. RP 19-20, 25-26, 30-31. He told the court that Bryson planned to file a bar complaint against him. RP 20. He said, "[W]e're not talking at all as far as communicating." RP 25. In a similar circumstance, the Ninth Circuit has found there was "no question" that there was a

complete breakdown in the attorney client relationship. Nguyen, 262 F.3d at 1004 (attorney acknowledged to court that client “just won’t talk to me anymore”).

A key issue about which Bryson and Farra disagreed was how Bryson should be defended. Farra acknowledged to the court that he had no basis to refute the validity of Bryson’s request and challenges to the deficient protocol utilized by the WSPCL, but intimated that he was unprepared to make such arguments himself. RP 30-31. Critical stages under the Sixth Amendment “can include steps in the proceedings . . . where available defenses may be irretrievably lost.” Smith v. Lockhart, 923 F.2d at 1319 (citing Hamilton v. Alabama, 368 U.S. 52, 54, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961)).

The trial court seemed largely unconcerned about Bryson’s wish to consult and possibly call an expert to challenge the WSPCL’s failure to follow its own protocols for testing suspected controlled substances. See RP 32 (court comments, “I’m not stupid and I know what that means, that second test confirmed what the first test indicated that it was – contained methamphetamine”). The court believed this second confirmatory test meant that Bryson would not call his expert to testify. Id. The court failed to recognize

that Bryson's expert would undermine the reliability of the procedures used, possibly calling into question the very admissibility of the WSPCL forensic scientist's testimony, and certainly providing a basis to vigorously challenge the accuracy of the test results at trial. Further, the trial court presumed that the second test result would automatically be admissible, even though if Bryson confined the scope of the expert's testimony to evaluating the protocols used by the WSPCL, it may well not have been.

The trial court essentially prejudged the strategy it speculated Bryson's substitute counsel might use, determined it was unsound, and consequently forced Bryson to go to trial with counsel who could not function as the counsel Bryson was guaranteed by the Sixth Amendment. The court gave no deference whatsoever to counsel's judgment, even when counsel repeated that he and Bryson were "not talking." RP 27.

Under Holloway, once Farra advised the trial court of the breakdown in communications, the court was obligated to take some responsive action to ensure Bryson's Sixth Amendment right to counsel was protected. See Mickens v. Taylor, 535 U.S. 162, 168, 122 S.Ct. 1237, 152 L.Ed.2d 291 (2002) (reaffirming that "a defense attorney is in the best position to determine when a conflict

exists . . . he has an ethical obligation to advise the court of any problem, and . . . his declarations to the court are “virtually made under oath.”) (quoting Holloway, 435 U.S. at 485-86) Instead, the trial court forced Bryson to choose between his right to counsel and his speedy trial right.<sup>2</sup> In peremptorily denying the motion to substitute counsel, the trial court violated Bryson’s Sixth Amendment right.

c. The trial court failed to fulfill its duty to inquire into the conflict between Bryson and his counsel. Where the court learns of a conflict between an accused person and his attorney, the court has the “obligation to inquire thoroughly into the factual basis of the defendant’s dissatisfaction.” Smith v. Lockhart, 923 F.2d at 1320 (quoting United States v. Hart, 557 F.2d 162, 163 (8th Cir. 1977)). The court “must conduct ‘such necessary inquiry as might ease the defendant’s dissatisfaction, distrust, and concern.’” United States v. Adelzo-Gonzalez, 268 F.3d 772, 777 (9th Cir. 2001) (quoting United States v. Garcia, 924 F.2d 925, 926 (9th Cir. 1991)). This inquiry should “provide a ‘sufficient basis for reaching

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<sup>2</sup> The trial court obligated Bryson to make this “choice” between conflict-free counsel and a speedy trial without even advising him of the right he had given up by expressing his desire not to remain “in the jail for another 60 days.” RP 27. It is telling that once Bryson understood the right he unwittingly had sacrificed, he advised the court at the first possible opportunity that he was willing to waive his right to a speedy trial.

an informed decision.” Id. (quoting United States v. McClendon, 782 F.2d 785, 789 (9th Cir. 1986)). Thus the court “may need to evaluate the depth of any conflict between defendant and counsel, the extent of any breakdown in communication, how much time may be necessary for a new attorney to prepare, and any delay or inconvenience that may result from substitution.” Id.

On review of the denial of a motion to substitute counsel, the court considers three factors: “the adequacy of the [trial] court’s inquiry, the extent of any conflict, and the timeliness of the motion.” Id. But without a sufficient inquiry, a trial court’s denial of a motion to substitute counsel may require reversal.

For example, in Adelzo-Gonzalez, the defendant submitted three letters to the district court expressing his dissatisfaction with his appointed counsel. Id. The district court inquired into Adelzo-Gonzalez’s first and last motions (although not the second). The Ninth Circuit concluded this inquiry was inadequate.

The Court explained,

The district court asked only open-ended questions and put the onus on defendant to articulate why the appointed counsel could not provide competent representation. While open-ended questions are not always inadequate, in most circumstances a court can only ascertain the extent of a breakdown in

communication by asking specific and targeted questions.

Id. at 777-78. In contrast to the well-intentioned but insufficient effort of the district court in Adelzo-Gonzalez, the trial court here conducted no inquiry into the conflict between Bryson and Farra whatsoever, even though Farra's representations, as an officer of the court, were entitled substantial deference. Holloway, 435 U.S. at 485-86.

United States v. D'Amore, 56 F.3d 1202 (9th Cir. 1995), is a case that presents similar facts to this case. In D'Amore, the Court surmised that the district court had reached a tentative conclusion about the defendant's motion for substitution before it even held a hearing because at the start of the hearing, the district court indicated it had told defense counsel "yesterday" it expected the case to proceed as scheduled. Id. at 1205. On review, the Court chastised the district court, noting the court:

conducted no inquiry of the defendant or his lawyer regarding the conflict between them or the length of the necessary delay. Instead, D'Amore was merely given a chance to speak, after which the court reiterated what it had told Crawford the day before-- the case would proceed as scheduled.

Id.

The Ninth Circuit found this truncated inquiry unsatisfactory. Id. at 1205-07. Particularly in light of the absence of any adequate record to review the district court's decision, the Court concluded that it could not identify any "compelling purpose" that was served by denial of the motion. Id. at 1207.

In this case, the trial court asked no questions of Farra or Bryson regarding the conflict between them that could have afforded any reasonable basis for its decision. The court's sole question was whether Bryson was willing to waive his right to a speedy trial. RP 26-27. Upon hearing that Bryson did not want to "sit[] in the jail for another 60 days," the court peremptorily ruled, "Trial is tomorrow, then." RP 27. The court effectively held Bryson's right to counsel hostage to his desire to avoid further lengthy delays while in custody. The court did so without informing Bryson what was at stake; namely, Bryson's right to be represented by conflict-free counsel and to present a defense.

Ironically, Washington courts recognize that it is appropriate to grant a continuance over the defendant's objection, even beyond the expiration of the speedy trial period, where the continuance is necessary to ensure counsel will be adequately prepared for trial. State v. Campbell, 103 Wn.2d 1, 14-15, 691 P.2d 929 (1984), cert.

denied 471 U.S. 1094 (1985). The same principle that motivates courts to ensure that accused persons proceed to trial with effective counsel, even where this means lengthy delays to which the defendant does not consent, should, at a minimum, have prompted the trial court here to ensure that Bryson went to trial with conflict-free counsel. Instead, without even explaining its reasoning to Bryson, the trial court decided that because Bryson did not immediately consent to waive his speedy trial rights, Bryson was not entitled to substitute counsel.

The State may claim there was no error because Farra informed the court of this breakdown in communications on the eve of trial. But “even when the motion is made on the day of trial, the court must make a balancing determination, carefully weighing the resulting inconvenience and delay against the defendant's important constitutional right to counsel of his choice.” D’Amore, 56 F.3d at 1206. The trial court conducted no inquiry, balanced no interests, and, ultimately, failed to meaningfully exercise its discretion. The trial court’s ruling violated Bryson’s Sixth and Fourteenth Amendment rights. Bryson is entitled to a new trial with substitute counsel.

2. THE TRIAL COURT DENIED BRYSON HIS SIXTH AMENDMENT RIGHTS TO COMPULSORY PROCESS AND TO PRESENT A DEFENSE WHEN IT REFUSED TO CONTINUE THE CASE SO HE COULD CALL HIS EXPERT WITNESS.

An accused person has the right to compel the attendance of witnesses so he may present his defense.

The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The right[] . . . to call witnesses in one's own behalf ha[s] long been recognized as essential to due process.

Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). The right to compulsory process "is in plain terms the right to present a defense." Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967). Courts in Washington recognize the guarantee of compulsory process is a "fundamental right and one which the Courts should safeguard with meticulous care." State v. Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996) (citing State v. Burri, 87 Wn.2d 175, 181, 550 P.2d 507 (1976)).

In both criminal and civil cases, the decision to grant or deny a continuance rests within the discretion of the trial court. State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004).

Nevertheless, the “failure to grant a continuance may deprive a defendant of a fair trial and due process of law, within the circumstances of a particular case.” State v. Williams, 84 Wn.2d 853, 855, 529 P.2d 1088 (1975). “Additionally, a denial of a request for a continuance may violate a defendant's right to compulsory process if the denial prevents the defendant from presenting a witness material to his defense.” Downing, 151 Wn.2d at 274-75.

Downing was an appeal following a conviction by bench trial for child molestation in which the defense had sought to call an expert to reopen the question of the child witness's competency. Id. at 271-72. In this unique circumstance, the Legislature has issued a strongly-worded admonition to trial courts to disallow continuances unless there are compelling reasons, and to weigh any detriment that may be caused to a child victim by the continuance. Id. at 272; RCW 10.46.085. The Court concluded that although Downing's counsel had acted with diligence, the expert's testimony would have been cumulative and/or irrelevant. 151 Wn.2d at 275-76.

In contrast to Downing, the State advanced no reason why its case would be prejudiced by the minor delay sought by Bryson.<sup>3</sup> Moreover, Bryson's expert's testimony not only would have been relevant but absolutely material to challenging the State's proof of an essential element of the charged offense.

Finally, Bryson cannot be faulted for the timing of his continuance request. Bryson had been in court earlier in the month on a motion for dismissal because the State had delayed sending the controlled substances to Bryson's independent expert. CP 15-17. Bryson alerted the court of his new information regarding the State's failure to follow its testing protocols as soon as he received it. RP 30-31. Bryson obtained these protocols without any assistance from his attorney and identified the shortcomings in the State's analysis entirely on his own. In short, Bryson acted with diligence. In denying Bryson's request for a continuance, the trial court violated his right to compulsory process.

### 3. BRYSON'S CONVICTION MUST BE REVERSED.

A constitutional error is presumed prejudicial. Maupin, 128 Wn.2d at 924. On appeal, the State bears the burden of proving beyond a reasonable doubt that the result would have been the

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<sup>3</sup> It is hard to conceive what 'prejudice' the State may have imagined, as the State's only witnesses were government employees.

same absent the error. Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); State v. Easter, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996).

Bryson possessed a minute amount of methamphetamine residue. He articulated deficiencies in the WSPCL testing protocol that would have called into question the reliability of the State's forensic evidence. Even if this Court does not determine that automatic reversal is required based on the violation of Bryson's right to counsel, therefore, this Court should reverse Bryson's conviction based on the violation of his right to compulsory process and to present a defense.

E. CONCLUSION

For the foregoing reasons, Rodney Bryson requests his conviction for possession of methamphetamine be reversed.

DATED this 31<sup>st</sup> day of March, 2010.

Respectfully submitted:

  
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Attorneys for Appellant

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

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 39980-6-II
	)	
RODNEY BRYSON,	)	
	)	
APPELLANT.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31<sup>ST</sup> DAY OF MARCH, 2010, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- |                                      |     |               |
|--------------------------------------|-----|---------------|
| [X] HAROLD MENEFFEE, DPA             | (X) | U.S. MAIL     |
| GRAYS HARBOR CO. PROSECUTOR'S OFFICE | ( ) | HAND DELIVERY |
| 102 W. BROADWAY AVENUE, ROOM 102     | ( ) | _____         |
| MONTESANO, WA 98563-3621             |     |               |
| <br>                                 |     |               |
| [X] MICHAEL ROTHMAN, DPA             | (X) | U.S. MAIL     |
| PACIFIC COUNTY PROSECUTOR'S OFFICE   | ( ) | HAND DELIVERY |
| PO BOX 45                            | ( ) | _____         |
| SOUTH BEND, WA 98586-0045            |     |               |
| <br>                                 |     |               |
| [X] RODNEY BRYSON                    | (X) | U.S. MAIL     |
| 980569                               | ( ) | HAND DELIVERY |
| MCNEIL ISLAND CORRECTIONS CENTER     | ( ) | _____         |
| PO BOX 881000                        |     |               |
| STEILACOOM, WA 98388                 |     |               |

**SIGNED** IN SEATTLE, WASHINGTON THIS 31<sup>ST</sup> DAY OF MARCH, 2010.

X \_\_\_\_\_ 

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 Seattle, WA 98101  
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