

No. 40271-8-II
Cowlitz Co. Cause No. 08-1-01451-4

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Appellant

v.

CRAIG ALLEN OLSON,

Respondent.

FILED
COURT OF APPEALS
DIVISION II
NOV 15 PM 2:45
STATE OF WASHINGTON
BY [Signature]

REPLY BRIEF OF APPELLANT

SUSAN I. BAUR
Prosecuting Attorney
DAVID PHELAN/WSBA #36637
Deputy Prosecuting Attorney
Attorney for Appellant

Office and P. O. Address:
Hall of Justice
312 S. W. First Avenue
Kelso, WA 98626
Telephone: 360-577-3080

01-21-11 1111

TABLE OF CONTENTS

I. ARGUMENT..... 1

 A. THE RESPONDENT’S *GUNWALL* ANALYSIS WAS INSUFFICIENT TO SHOW THAT ARTICLE I, SECTION 7 IS MORE RESTRICTIVE THAN THE 4TH AMENDMENT 1

 B. THE ARREST WARRANT IN THIS CASE DID NOT VIOLATE DUE PROCESS 4

II. CONCLUSION 6

III. APPENDIX..... 8

 RCW 9.94A.716..... 8

 RCW 9.94A.737..... 9

 Former RCW 9.94A.740..... 11

 18 U.S.C. § 4214..... 13

 18 U.S.C. § 3606..... 17

 Washington State Constitution, Article I, Section 7 18

 United States Constitution, 4th Amendment..... 19

TABLE OF AUTHORITIES

Cases

<i>Hocker v. Woody</i> , 95 Wn.2d 822, 631 P.2d 372 (1981)	2
<i>Morrissey v Brewer</i> , 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d 484 (1972)	6
<i>Sherman v. U.S. Parole Com'n</i> , 502 F.3d 869 (9 th Cir. 2007).....	1, 4, 8, 9
<i>State v. Campbell</i> , 103 Wn.2d 1, 691 P.2d 929 (1984), <i>cert. denied</i> , 471 U.S. 1094 (1985).....	2
<i>State v. Coahran</i> , 27 Wn. App. 664, 620 P.2d 116 (1980)	3
<i>State v. Gunwall</i> , 106 Wn.2d 54, 720 P.2d 808 (1986)	1, 2, 3, 4
<i>State v. Lampman</i> , 45 Wn. App. 228, 724 P.2d 1092 (1986)	3
<i>State v. Lucas</i> , 56 Wn. App. 236, 783 P.2d 121 (1989), <i>review denied</i> , 114 Wn.2d 1009 (1990)	2
<i>State v. Patterson</i> , 51 Wn. App. 202, 752 P.2d 945, <i>review denied</i> , 111 Wn.2d 1006 (1988)	3
<i>State v. Reichert</i> , 38954-1-II (2010)	2, 5, 8
<i>State v. Simms</i> , 10 Wn. App. 75, 516 P.2d 1088 (1973), <i>review denied</i> , 83 Wn.2d 1007 (1974)	3

Statutes

18 U.S.C. Section 4213	4, 5, 8
18.U.S.C. Section 3606.....	5
former RCW 9.94A.740.....	3, 4, 5, 6
RCW 9.94A.716.....	4, 5, 6
RCW 9.94A.737.....	7, 8
United States Constitution, Fourth Amendment.....	1
Washington State Constitution, Article I, Section 7	1, 2, 5

I. ARGUMENT

It appears that the respondent concedes the appellant's initial argument regarding the error made by the trial court in light of *Sherman v. U.S. Parole Com'n*, 502 F.3d 869, 880 (9th Cir. 2007). Considering the alternative issues raised by the respondent, the State makes the following replies.

A. THE RESPONDENT'S *GUNWALL* ANALYSIS WAS INSUFFICIENT TO SHOW THAT ARTICLE I, SECTION 7 IS MORE RESTRICTIVE THAN THE 4TH AMENDMENT

Article I, Section 7, of the Washington State Constitution offers no greater protection to individuals subject to community custody than the 4th Amendment to the United States Constitution. The Respondent contends otherwise, arguing that Article I, Section 7 offers greater protection. This analysis is made through *State v. Gunwall*, which first addressed the issue and laid out the appropriate method of analysis for determining whether such a basis may exist. 106 Wn.2d 54, 720 P.2d 808 (1986). The Respondent claims, through a *Gunwall* analysis, that there is an independent state constitutional ground for affirming the trial court's decision because Article I, Section 7 provides additional protections for probationers. This court recently found that no such additional protections for probationers existed. *State v. Reichert*, 38954-1-II, Pg. 9 (2010). That court also recognized the reduced expectation of privacy probationers experience, noting that "Washington courts have held that a

probationer has a reduced expectation of privacy because of the State's continuing interest in supervising them." *Id.* at 10, citing *Hocker v. Woody*, 95 Wn.2d 822, 826, 631 P.2d 372 (1981); *State v. Campbell*, 103 Wn.2d 1, 22, 691 P.2d 929 (1984), *cert. denied*, 471 U.S. 1094 (1985) .; *State v. Lucas*, 56 Wn. App. 236, 240, 783 P.2d 121 (1989), *review denied*, 114 Wn.2d 1009 (1990); *State v. Patterson*, 51 Wn. App. 202, 204-05, 752 P.2d 945, *review denied*, 111 Wn.2d 1006 (1988); *State v. Lampman*, 45 Wn. App. 228, 233, 724 P.2d 1092 (1986); *State v. Coahran*, 27 Wn. App. 664, 620 P.2d 116 (1980); *State v. Simms*, 10 Wn. App. 75, 85, 516 P.2d 1088 (1973), *review denied*, 83 Wn.2d 1007 (1974). Specifically within the *Reichert* case, the court focused on whether there were any specific citations to statutes or cases illustrating whether Article I, Section 7 was more protective than the Fourth Amendment, and in that case they found the Petitioner had failed to cite any such law. *Reichert*, Pg. 9.

The sole statutory or case specific basis cited by the Respondent regarding the *Gunwall* analysis is the "reasonable cause" requirement in former RCW 9.94A.740. Specifically, this provision is cited with regard to the "fourth" *Gunwall* factor that deals with pre-existing bodies of law, including statutory law. The "former" designation for RCW 9.94A.740 is important because the new version of that statute is fundamentally different. The provisions related to this case formerly contained in RCW 9.94A.740 have been recodified in RCW 9.94A.716. When the

legislature recodified former RCW 9.94A.740, they split subsection (1), and placed the section relating to the issuance of warrants in RCW 9.94A.716(1) and the section relied on by the respondent, the reasonable cause provision, and put it into subsection (2).

The split is significant because it denies the comparative analysis that the Respondent relies on to show that the state warrant requirement is stricter than the Federal warrant requirement when the opposite is true. Respondent argues that because the Federal Statute at issue in *Sherman*, 18 U.S.C. Section 4213 omits any requirement for reasonable cause for the issuance of a warrant, Washington law is more restrictive because former RCW 9.94A.740 did. That argument is based on a crucial misunderstanding of the purposes of the relevant sections. 18 U.S.C. Section 4213 governs only the issuance of the arrest warrant. This section is essentially the same as RCW 9.94A.716(1), the specific section of the new version of RCW 9.94A.740 that governs arrest warrants.

18 U.S.C. Section 3606 governs the legal basis for an arrest, specifically requires probable cause. Comparing 18.U.S.C. Section 3606 to the arrest (with or without warrant) provisions of RCW 9.94A.716 (2) shows that while the general language is similar, the Washington statute, which requires only reasonable cause, is actually less restrictive than the Federal statute, which requires probable cause. The ultimate result, if the court were to look at statutory protections as a *Gunwall* factor, the

Washington State statutes are actually less restrictive than the Federal statutes.

Washington State law is not more restrictive than the 4th Amendment regarding arrest warrants as applied to probationers. Considering requirement in *Reichert* that a *Gunwall* analysis on this issue have some specific citation to statutory or case authority, the respondent has failed to meet the burden of showing that Washington law is more restrictive. Aside from general references to Article I, Section 7 in other areas, the only specific authority cited for probationers was former RCW 9.94A.740. In light of the fact that the legislature has now recodified former RCW 9.94A.740 into RCW 9.94A.716 and separated the warrant provision from the arrest provision in the same way they are separated in the comparable Federal statutes, there is simply nothing to suggest that the *Gunwall* threshold has been met. If anything, Washington state law is less restrictive.

B. THE ARREST WARRANT IN THIS CASE DID NOT VIOLATE DUE PROCESS

As a threshold issue, this argument was not raised before the trial court and the record is not adequately developed for review. Specifically, the issues that the Respondent raises involve specific factual allegations as they relate to compliance with the notice provisions of due process. Because this issue was not raised, testimony was not elicited to answer these questions, specifically where and when the Respondent was informed of the allegations that formed the basis of the warrant.

Additionally, this argument is based on a fundamental misunderstanding of the requirements of *Morrissey v Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed. 2d 484 (1972). The Department of Corrections is required by statute to provide the full panoply of protections outlined in *Morrissey*, including: (1) written notice of the violation, the evidence presented, and the basis for any sanction (2) a hearing, (3) an interpreter or other assistant, (4) the right to testify or remain silent, (5) call witnesses and present evidence, (6) questions witnesses that appear and testify, (7) the right to appeal, (8) and that hearings officers report through a separate chain of command than community corrections officers. RCW 9.94A.737. These requirements almost exactly mirror the minimal due process protections required by *Morrissey*, 408 U.S. at 489. There is nothing in the record to suggest that the Department failed to adhere to any of those requirements.

There is no record upon which to evaluate the Department of Corrections compliance with such procedural safeguards since this issue was not raised at the trial court. Moreover evidence of a failure to comply with any of the *Morrissey* requirements would be irrelevant in this case, since the only question that relates to the current criminal prosecution is whether the warrant that the Respondent was arrested on was valid. The warrant was valid.

There is no suggestion in any case cited by the Respondent that a parole violator arrest warrant must contain notice of the allegations that

provide the basis of that warrant. Nor is there any such requirement, contrary to the Respondent's citation of *Morrissey* and *Sherman*. What is required under *Morrissey* is written notice of the allegations at a preliminary hearing. *Id.* at 489. That requirement is provided for under RCW 9.94A.737.

The brief discussion in *Sherman* that relates to the need for notice within the warrant discusses it only in the context of the requirements of 18 U.S.C. Section 4213. *Sherman* does **not** hold that such a requirement is required under the 14th Amendment. Nor does *Morrissey*. The "requirement" is statutory and that does not apply to the warrant at issue in this case. Nor is there a reason to impose such a requirement, since written notice is already addressed in RCW 9.94A.737.

II. CONCLUSION

Article I, Section 7, provides no greater protection of the rights of probationers regarding arrest warrants than the 4th Amendment. This has been recognized by Washington State courts repeatedly, most recently in *Reichert*. The only probationer specific *Gunwall* argument made by the respondent only highlights that Washington State law is less restrictive than corresponding Federal law in these matters. The Respondent has failed to meet the threshold requirement of *Gunwall* and there is no basis for this court to find that Article I, Section 7 is more restrictive than the 4th Amendment. There is no reason to provide additional protections to probationers.

The due process issue is improperly raised before the court and should not be evaluated. The due process issue was not raised at the trial court level and as such, there is no record upon which to evaluate the State's compliance with the requirements of *Morrissey*.

Insofar as an examination of such compliance is possible, it is clear that at the least, the Department of Corrections complies by statute with the requirements of *Morrissey*. The requirement that notice be contained within the body of the warrant is a requirement of the federal statute at issue in *Sherman*, not a constitutional requirement. The "notice" requirement discussed in *Morrissey* relates only to notice AFTER arrest, i.e. at a preliminary hearing. There is no requirement that the warrant itself provide notice of the specific violations.

Accordingly, the State requests that this court reverse the trial court and remand the case.

Respectfully submitted this 12th day of November, 2010.

SUSAN I. BAUR
Prosecuting Attorney

By:


DAVID L. PHELAN/WSBA # 36637
Deputy Prosecuting Attorney
Representing Appellant

III. APPENDIX

RCW 9.94A.716

Community custody--Violations—Arrest

(1) The secretary may issue warrants for the arrest of any offender who violates a condition of community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation.

(2) A community corrections officer, if he or she has reasonable cause to believe an offender has violated a condition of community custody, may suspend the person's community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community custody status.

(3) If an offender has been arrested for a new felony offense while under community custody the department shall hold the offender in total confinement until a hearing before the department as provided in this section or until the offender has been formally charged for the new felony offense, whichever is earlier. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community custody.

(4) A violation of a condition of community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.

RCW 9.94A.737

Community custody--Violations--Hearing—Sanctions

- (1) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.
- (2) The hearing procedures required under subsection (1) of this section shall be developed by rule and include the following:
 - (a) Hearing officers shall report through a chain of command separate from that of community corrections officers;
 - (b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;
 - (c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;
 - (d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and
 - (e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(3) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

Former RCW 9.94A.740

Community custody violators—Arrest, detention, financial responsibility

(1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section. The community custody inmate shall be removed from the local correctional facility, except as provided in subsection (3) of this section, not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification that the inmate is available for movement to a state correctional institution.

(3) The department may negotiate with local correctional authorities for an additional period of detention; however, sex offenders sanctioned for community custody violations under RCW 9.94A.737(2) to a term of confinement shall remain in the local correctional facility for the complete term of the sanction. For confinement sanctions imposed under RCW 9.94A.737(2)(a), the local correctional facility shall be financially responsible. For confinement sanctions imposed under RCW 9.94A.737(2)(b), the department of corrections shall be financially responsible for that portion of the sanction served during the time in which the sex offender is on community custody in lieu of earned release, and the

local correctional facility shall be financially responsible for that portion of the sanction served by the sex offender after the time in which the sex offender is on community custody in lieu of earned release. The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody, community placement, or community supervision. For confinement sanctions imposed under RCW 9.94A.737(2) (c) or (d), the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate. If the department's use of bed space in local correctional facilities of any county for confinement sanctions imposed on offenders sentenced to a term of community custody under RCW 9.94A.737(2) (c) or (d) exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs.

18 U.S.C. § 4214
Revocation of parole

(a)(1) Except as provided in subsections (b) and (c), any alleged parole violator summoned or retaken under section 4213 shall be accorded the opportunity to have--

(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time; except that after a finding of probable cause the Commission may restore any parolee to parole supervision if:

(i) continuation of revocation proceedings is not warranted; or

(ii) incarceration of the parolee pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations;

(iii) the parolee is not likely to fail to appear for further proceedings; and

(iv) the parolee does not constitute a danger to himself or others.

(B) upon a finding of probable cause under subparagraph (1)(A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause except that a revocation hearing may be held at the same time and place set for the preliminary hearing.

(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

(B) opportunity for the parolee to be represented by an attorney (retained by the parolee, or if he is financially unable to retain counsel, counsel shall be provided pursuant to section 3006A) or, if he so chooses, a representative as provided by rules and regulations, unless the parolee knowingly and intelligently waives such representation.

(C) opportunity for the parolee to appear and testify, and present witnesses and relevant evidence on his own behalf; and

(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds substantial reason for not so allowing.

For the purposes of subparagraph (1) of this subsection, the Commission may subpoena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, or in which such person may be found.

(b)(1) Conviction for any criminal offense committed subsequent to release on parole shall constitute probable cause for purposes of subsection (a) of this section. In cases in which a parolee has been convicted of such an offense and is serving a new sentence in an institution, a parole revocation warrant or summons issued pursuant to section 4213 may be placed against him as a detainer. Such detainer shall be reviewed by the Commission within one hundred and eighty days of notification to the Commission of placement. The parolee shall receive notice of the pending review, have an opportunity to submit a written application containing information relative to the disposition of the detainer, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section to assist him in the preparation of such application.

(2) If the Commission determines that additional information is needed to review a detainer, a dispositional hearing may be held at the institution where the parolee is confined. The parolee shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel as provided in subsection (a)(2)(B) of this section.

(3) Following the disposition review, the Commission may:

(A) let the detainer stand; or

(B) withdraw the detainer.

(c) Any alleged parole violator who is summoned or retaken by warrant under section 4213 who knowingly and intelligently waives his right to a hearing under subsection (a) of this section, or who knowingly and intelligently admits violation at a preliminary hearing held pursuant to subsection (a)(1)(A) of this section, or who is retaken pursuant to subsection (b) of this section, shall receive a revocation hearing within ninety days of the date of retaking. The Commission may conduct such hearing at the institution to which he has been returned, and the alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf, and, unless waived, shall have counsel or another representative as provided in subsection (a)(2)(B) of this section.

(d) Whenever a parolee is summoned or retaken pursuant to section 4213, and the Commission finds pursuant to the procedures of this section and by a preponderance of the evidence that the parolee has violated a condition of his parole the Commission may take any of the following actions:

(1) restore the parolee to supervision;

(2) reprimand the parolee;

(3) modify the parolee's conditions of the parole;

(4) refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(5) formally revoke parole or release as if on parole pursuant to this title.

The Commission may take any such action provided it has taken into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole, and the seriousness thereof, or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

(e) The Commission shall furnish the parolee with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the revocation hearing. If parole is revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and reasons for such action, a copy of which shall be given to the parolee.

(f) Notwithstanding any other provision of this section, a parolee who is found by the Commission to be in possession of a controlled substance shall have his parole revoked.

18 U.S.C. § 3606

Arrest and return of a probationer

If there is probable cause to believe that a probationer or a person on supervised release has violated a condition of his probation or release, he may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. A probation officer may make such an arrest wherever the probationer or releasee is found, and may make the arrest without a warrant. The court having supervision of the probationer or releasee, or, if there is no such court, the court last having supervision of the probationer or releasee, may issue a warrant for the arrest of a probationer or releasee for violation of a condition of release, and a probation officer or United States marshal may execute the warrant in the district in which the warrant was issued or in any district in which the probationer or releasee is found.

Washington State Constitution, Article I, Section 7

INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

United States Constitution, 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Appellant,

v.

CRAIG ALLEN OLSON,

Respondent.

)
)
)
)
)
)
)
)
)
)

NO. 40271-8-II

NO. 08-1-00782-8

AFFIDAVIT OF SERVICE

BY _____
DEPUTY

STATE OF WASHINGTON

10 NOV 15 PM 2:45

COURT OF APPEALS
DIVISION II

DAVID L. PHELAN, being first duly sworn, on oath deposes and says: that on November 12th, 2010, I served the following:

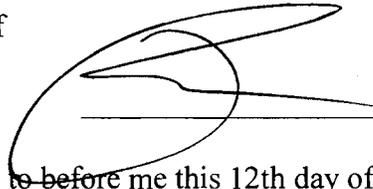
JOHN HAYS, Defense Attorney
1402 Broadway St
Longview, WA 98632-3714

AND

David C. Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

with a copy of the following documents:

1. Appellant's Reply Brief
2. Affidavit of Service



SUBSCRIBED AND SWORN to before me this 12th day of November, 2010.



Fredericka Moore

Notary Public in and for the State
of Washington residing in Cowlitz
Co. My commission expires: *02 09 14*

AFFIDAVIT OF SERVICE