

No. 40936-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Arnette Aulis,

Appellant.

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COURT OF APPEALS
DIVISION II
SEATTLE, WA

Lewis County Superior Court Cause No. 09-1-00663-1

The Honorable Judge Nelson Hunt

Appellant's Opening Brief

Jodi R. Backlund
Manek R. Mistry
Attorneys for Appellant

BACKLUND & MISTRY
P.O. Box 6490
Olympia, WA 98507
(360) 339-4870
FAX: (866) 499-7475

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ASSIGNMENTS OF ERROR

1. Ms. Aulis's conviction violated her Fifth, Sixth, and Fourteenth Amendment right to notice of the charges against her.
2. Ms. Aulis's conviction violated her state constitutional right to notice of the charges against her, under Wash. Const. Article I, Sections 3 and 22.
3. The Information was deficient because it failed to allege specific facts describing Ms. Aulis's alleged conduct.
4. Ms. Aulis's conviction was entered in violation of her state constitutional right to a jury trial.
5. The trial court erred by accepting Ms. Aulis's jury waiver without an affirmative showing that she understood her rights under Wash. Const. Article I, Sections 21 and 22.
6. The trial court erred by entering Finding of Fact No. 3.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. An accused person is constitutionally entitled to notice that is both legally and factually adequate. The Information in this case did not outline specific facts describing Ms. Aulis's alleged conduct. Was Ms. Aulis denied her constitutional right to adequate notice of the charge under the Fifth, Sixth, and Fourteenth Amendments and Wash. Const. Article I, Sections 3 and 22?
2. An accused person's state constitutional right to a jury trial is broader and more highly valued than her or his corresponding federal constitutional right. Here, the record does not affirmatively demonstrate that Ms. Aulis understood her right, under the state constitution, to participate in the selection of jurors, to a jury of twelve, to a fair and impartial jury, to be presumed innocent by the jury unless proven guilty, and to a

unanimous verdict. In the absence of such an affirmative showing, was Ms. Aulis's waiver of her right to a jury trial inadequate under Wash. Const. Article I, Sections 21 and 22?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Brandon Perrott was a convicted felon who used drugs and stole from people. RP (5/27/10) 48, 58, 80. He owed Arnette Aulis money because he had tried to pay rent to her using a stolen check. RP (5/27/10) 34, 45, 79.

Perrott call Ms. Aulis and told her that the pawn shop down the street from her would not accept his temporary identification. He said that if she came and used her identification, he could pay her some of what he owed her. Ms. Aulis went to the pawn shop and signed for the sale, and Perrott paid her \$40 from his proceeds. RP (5/27/10) 33-34, 45-46, 63-66.

A few days later, Ms. Aulis's husband, received some items from Perrott to pawn, again to pay the debt. They went to the same pawn shop that Perrott had taken Ms. Aulis to and sold the items. RP (5/27/10) 10-13, 65-66, 73.

Perrott had stolen all of the items in a burglary of Janet Plumb's residence. RP (5/27/10) 20-26, 43. The state charged Mr. Aulis with a crime stemming from the incident, and he plead guilty. RP (5/27/10) 75-

76. Ms. Aulis was also charged, and she contested it.¹ CP 1-2; RP (5/27/10) 5-94.

The Information alleged that Ms. Aulis “did knowingly initiate, organize, plan, finance, direct, manage or supervise the theft of stolen property for sale to others, or did knowingly traffic in stolen property,” contrary to RCW 9A.82.050(1). CP 2.

On May 20, 2010, the parties appeared for a trial confirmation hearing. They verified they were ready for trial. RP (5/20/10) 2-4. A Waiver of Jury Trial was filed, but not mentioned in court that day. Waiver of Jury Trial, Supp. CP. No mention of the waiver, much less a colloquy about it between the court and Ms. Aulis, appears in the Verbatim Report of Proceedings for that day. RP (5/20/10) 2-4.

The charge was tried to a judge the next week. Ms. Aulis’s attorney told the court that she had already waived jury trial. RP (5/27/10) 3. After hearing the evidence, the judge found Ms. Aulis guilty and sentenced her. RP (5/27/10) 95-97; RP (6/30/10) 101-104. She timely appealed. CP 19-31.

¹ The state also charged Ms. Aulis with a count of Residential Burglary, but dismissed it prior to trial. RP (5/27/10) 5; CP 1.

ARGUMENT

I. MS. AULIS'S CONVICTIONS WERE ENTERED IN VIOLATION OF HER RIGHT TO NOTICE UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS, AND UNDER WASH. CONST. ARTICLE I, SECTIONS 3 AND 22.

A. Standard of Review.

A challenge to the constitutional sufficiency of a charging document may be raised at any time. *State v. Kjorsvik*, 117 Wash.2d 93, 102, 812 P.2d 86 (1991). Where the Information is challenged after verdict, the reviewing court construes the document liberally. *Id.*, at 105. The test is whether or not the necessary facts appear or can be found by fair construction in the charging document. *Id.*, at 105-106. If the Information is deficient, prejudice is presumed and reversal is required. *State v. Courneya*, 132 Wash.App. 347, 351 n. 2, 131 P.3d 343 (2006); *State v. McCarty*, 140 Wash.2d 420, 425, 998 P.2d 296 (2000).

B. Ms. Aulis was constitutionally entitled to notice that was both legally and factually adequate.

A criminal defendant has a constitutional right to be fully informed of the charge he or she is facing. This right stems from the Fifth, Sixth, and Fourteenth Amendments to the federal constitution, as well as Article I, Section 3 and Article I, Section 22 of the Washington State Constitution. The right to a constitutionally sufficient Information is one that must be

“zealously guarded.” *State v. Royse*, 66 Wash.2d 552, 557, 403 P.2d 838 (1965).

A constitutionally sufficient charging document must notify the accused person of the essential elements of the offense and of the underlying facts alleged. The rule

requires that a charging document *allege facts supporting every element of the offense*, in addition to adequately identifying the crime charged. This is not the same as a requirement to ‘state every *statutory element* of’ the crime charged.

State v. Leach, 113 Wash.2d 679, 689, 782 P.2d 552 (1989) (emphasis in original). The *Leach* court addressed the rationale for requiring a statement of the essential facts when a defendant is charged by

Information:

Complaints must be more detailed since they are issued by a prosecutor who was not present at the scene of the crime. Defining the crime with more specificity in a complaint assists a defendant in determining the particular incident to which the complaint refers... [Where a citation is issued at the scene, the defendant] presumably know[s] the *facts* underlying [the] charges.

Id., at 699. Following *Leach*, the Supreme Court elaborated on this aspect of the essential elements rule:

The primary purpose is to give notice to an accused so a defense can be prepared. There are two aspects of this notice function involved in a charging document: (1) the description (*elements*) of the crime charged; and (2) a description of the specific *conduct* of the defendant which allegedly constituted that crime. As we recently made clear in *Kjorsvik*, the “core holding of *Leach* requires that the defendant be apprised of the elements of the crime

charged and the conduct of the defendant which is alleged to have constituted that crime.” *Leach* noted that often charging documents are written by alleging specific facts which support each element of the crime charged.

Auburn v. Brooke, 119 Wash.2d 623, 629-630, 836 P.2d 212 (1992)

(footnotes omitted, emphasis in original).

- C. The Information was factually deficient because it did not include specific facts supporting the allegation that Ms. Aulis knowingly trafficked in stolen property.

A conviction for first-degree trafficking requires proof that the accused person knowingly trafficked in stolen property. RCW 9A.82.010; RCW 9A.82.050. In this case, the Information alleged that Ms. Aulis “did knowingly traffic in stolen property,” but did not provide any facts apprising Ms. Aulis of the underlying conduct that formed the basis for the allegation. CP 2.

In the absence of any details outlining the alleged conduct, the charging document was factually deficient, because it did not provide “a description of the specific *conduct* of the defendant which allegedly constituted that crime.” *Brooke*, at 629-630 (emphasis in original). Nor can the underlying facts be inferred from the language used in the Information. CP 2. Accordingly, Ms. Aulis need not demonstrate prejudice. *Kjorsvik, supra*. Her conviction must be reversed, and the case dismissed. *Id.*

II. MS. AULIS’S CONVICTION WAS ENTERED IN VIOLATION OF HER RIGHT TO A JURY TRIAL UNDER WASH. CONST. ARTICLE I, SECTIONS 21 AND 22.

A. Standard of Review.

Constitutional questions are reviewed *de novo*. *State v. Schaler*, 169 Wash.2d 274, 282, 236 P.3d 858 (2010).

B. The state constitutional right to a jury trial is broader than its federal counterpart.

Wash. Const. Article I, Section 21 provides that “[t]he right of trial by jury shall remain inviolate...” Wash. Const. Article I, Section 22 (amend. 10) provides that “[i]n criminal prosecutions the accused shall have the right to. . . a speedy public trial by an impartial jury...” As with many other constitutional provisions, the right to a jury trial under the Washington State Constitution is broader than the federal right.² *See, e.g., City of Pasco v. Mace*, 98 Wash.2d 87, 97, 653 P.2d 618 (1982). Because the right is broader and more highly valued under the state constitution, a waiver of the state constitutional right must be examined more carefully than a waiver of the corresponding federal right.³

² The Sixth Amendment to the U.S. Constitution (applicable to the states through the Fourteenth Amendment) guarantees a criminal defendant the right to a jury trial. U.S. Const. Amend. VI; U.S. Const. Amend. XIV; *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).

³ Waiver of the federal jury trial right must be made knowingly, intelligently and voluntarily; the waiver must either be in writing, or done orally on the record. *State v. Treat*,

- C. Waiver of the state constitutional right to a jury trial requires affirmative evidence that the accused possessed a complete understanding of the right.

The scope of a provision of the state constitution is determined with respect to the six nonexclusive factors set forth in *State v. Gunwall*, 106 Wash.2d 54, 720 P.2d 808 (1986). Under *Gunwall*, waiver of the state constitutional right to a jury trial is valid only if the record shows that the defendant is fully aware of the meaning of the state constitutional right. This includes (among other things) an understanding of the right to participate in the selection of jurors, the right to a fair and impartial jury, the right to a jury of twelve, the right to be presumed innocent by the jury unless proven guilty by proof beyond a reasonable doubt, and the right to a unanimous verdict.

1. The language of the state constitution.

The first *Gunwall* factor requires examination of the text of the State Constitutional provisions at issue. Wash. Const. Article I, Section 21 provides as follows:

The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in

109 Wash.App. 419, 427-428, 35 P.3d 1192 (2001). The federal constitutional right to a jury trial is one of the most fundamental of constitutional rights, one which an attorney “cannot waive without the fully informed and publicly acknowledged consent of the client...” *Taylor v. Illinois*, 484 U.S. 400, 418 n. 24, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988). In the absence of a valid waiver of the federal right, a criminal defendant’s conviction following a bench trial must be reversed. *Treat, supra*.

any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

The strong, simple, direct, and mandatory language (“shall remain inviolate”) implies a high level of protection, and, in fact, the Court has noted that the language of the provision requires strict attention to the rights of individuals. In *Sofie v. Fibreboard Corp.*, the Supreme Court clarified the meaning of the term “inviolate:”

The term “inviolate” connotes deserving of the highest protection. [Webster’s Dictionary] defines “inviolate” as “free from change or blemish: pure, unbroken . . . free from assault or trespass: untouched, intact . . .” Applied to the right to trial by jury, this language indicates that the right must remain the essential component of our legal system that it has always been. For such a right to remain inviolate, it must not diminish over time and must be protected from all assaults to its essential guarantees.

Sofie v. Fibreboard Corp., 112 Wash.2d 636, 656, 771 P.2d 711 (1989).

Furthermore, the provision allows the legislature to authorize waivers in civil cases, but does not mention waiver in criminal cases. This suggests that the jury right in criminal cases must be stringently protected. In addition, Wash. Const. Article I, Section 22 (amend. 10) provides that “[i]n criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury...” Again, the direct and mandatory language (“shall have the right”) implies a high level of protection. The existence of a separate section specifically referencing criminal

prosecutions further emphasizes the importance of the right to a jury trial in criminal cases.

Thus, the language of Article I, Section 21 and Article I, Section 22 favors the independent application of the state constitution advocated in this case, and suggests that any waiver must be stringently examined.

2. Significant differences in the texts of parallel provisions of the federal and state constitutions.

The second *Gunwall* factor requires analysis of the differences between the texts of parallel provisions of the federal and state constitutions. The Federal Sixth Amendment and Wash. Const. Article I, Section 22 are similar in that both grant the “right to . . . an impartial jury.” But Wash. Const. Article I, Section 21, which declares “[t]he right of trial by jury shall remain inviolate . . .” and limits the legislature’s ability to authorize waiver of the right has no federal counterpart. The Washington Supreme Court in *Pasco v. Mace* found the difference between the two constitutions significant, and determined that the state constitution provides broader protection. The court held that under the Washington Constitution “no offense can be deemed so petty as to warrant denying a jury trial if it constitutes a crime.” This is in contrast to the more limited protections available under the federal constitution. *Pasco v. Mace*, at 99-100.

Thus, differences in the language between the state and federal constitutions also favor an independent application of the state constitution in this case. Waiver of the state constitutional right to a jury trial requires more than a waiver of the corresponding federal right.

3. Common law and state constitutional history.

Under the third *Gunwall* factor, this court must look to state constitutional and common law history. Article I, Section 21, Washington “preserves the right as it existed at common law in the territory at the time of its adoption.” *Pasco v. Mace*, at 96. *See also State v. Schaaf*, 109 Wash.2d 1, 743 P.2d 240 (1987); *State v. Smith*, 150 Wash.2d 135, 151, 75 P.3d 934 (2003).

In 1889, when the state constitution was adopted, there was a nearly universal understanding that the right to a jury trial in felony cases could not be waived. *See e.g., State v. Lockwood*, 43 Wis. 403, 405 (1877) (“The right of trial by jury, upon information or indictment for crime, is secured by the constitution, upon a principle of public policy, and cannot be waived”); *State v. Larrigan*, 66 Iowa 426 (1885); *Cordway v. State*, 25 Tex. Ct. App. 405, 417 (1888) (A defendant “may waive any... right except that of trial by jury in a felony case”); *United States v. Taylor*, 11 F. 470, 471 (C.C.Kan. 1882) (“This is a right which cannot be waived, and it has been frequently held that the trial of a criminal case before the court

by the prisoner's consent is erroneous"); *United States v. Smith*, 17 F. 510, 512 (C.C.Mass. 1883) ("The district judges in this district have thought that it goes even beyond the powers of congress in permitting the accused to waive a trial by jury, and have never consented to try the facts by the court...")

This tradition was rooted in the common law:

There can be no question that, at common law, the only recognized tribunal for the trial of the guilt of the accused under an indictment for felony and a plea of not guilty, was a jury of twelve men. 4 Black. Com. 349; 1 Chitty's Crim. Law, 505; 2 Hale's Pleas of the Crown, 161; Bacon's Abridg. tit. Juries, A.; 2 Bennett & Heard's Lead. Cas. 327 ... The trial of an indictment for a felony by a judge without a jury was a proceeding wholly unknown to the common law. The fundamental principle of the system in its relation to such trials was, that all questions of fact should be determined by the jury, questions of law only being reserved for the court...

A jury of twelve men being the only legally constituted tribunal for the trial of an indictment for a felony, it necessarily follows that the court or judge is not such tribunal, and that in the absence of a jury, he has by law no jurisdiction.

Harris v. People, 128 Ill. 585, 590-591 (Ill. 1889), *overruled in part by People ex rel. Swanson v. Fisher*, 340 Ill. 250 (1930).

The constitutional prohibition against waiver of the jury right was thought to be based in "the soundest conception of public policy." *State v. Carman*, 63 Iowa 130, 131 (1884). According to the Iowa Supreme Court:

Life and liberty are too sacred to be placed at the disposal of any one man, and always will be, so long as man is fallible. The innocent person, unduly influenced by his consciousness of innocence, and placing undue confidence in his evidence, would, when charged with crime, be the one most easily induced to waive his safe guards.

Carman, at 131.

The prohibition against jury waivers was also viewed as a natural limitation on an accused person's power to shape the proceedings. For example, in *Territory v. Ah Wah*, 4 Mont. 149, 168-173 (1881), the Montana Supreme Court considered the question of whether or not a defendant could waive a twelve-person jury:

Can a defendant, on his own motion, change the tribunal and secure to himself a trial before a jury not authorized by and unknown to the law?... “[T]he prisoner’s consent cannot change the law. His right to be tried by a jury of twelve men is not a mere privilege; it is a positive requirement of the law... The law in its wisdom has declared what shall be a legal jury in the trial of criminal cases; that it shall be composed of twelve; and a defendant, when he is upon trial, cannot be permitted to change the law, and substitute another and a different tribunal to pass upon his guilt or innocence... Aside from the illegality of such a procedure, public policy condemns it. The prisoner is not in a condition to exercise a free and independent choice without often creating prejudice against him.”...

“...[W]e think there would be great danger in holding it competent for a defendant in a criminal case, by waiver or stipulation, to give authority, which it could not otherwise possess, to a jury of less than twelve men,... Let it once be settled that a defendant may thus waive this constitutional right, and no one can foresee the extent of the evils which might follow; but the whole judicial history of the past must admonish us that very serious evils should be apprehended, and that every step taken in that direction would tend to increase the danger. One act or neglect might be

recognized as a waiver in one case, and another in another, until the constitutional safeguards might be substantially frittered away. The only safe course is to meet the danger in limine, and prevent the first step in the wrong direction. It is the duty of courts to see that the constitutional rights of a defendant in a criminal case shall not be violated, however negligent he may be in raising the objection. It is in such cases, emphatically, that consent should not be allowed to give jurisdiction.”

Territory v. Ah Wah, at 168-173 (citations omitted).

Despite the prevailing view, the Washington territorial legislature enacted a statute in 1854 allowing “[t]he defendant and prosecuting attorney with the assent of the court [to] submit the trial to the court, except in capital cases.” Laws of Washington, Chapter 23, Section 249 (1854-1862). This experiment did not survive the passage of the constitution: the framers did not include language permitting the legislature to provide for waivers in criminal cases.^{4, 5}

Prior to the adoption of our state constitution in 1889, the U.S. Supreme Court had ruled that (even in a civil case) “every reasonable presumption should be indulged against [a] waiver” of the fundamental right to a jury trial. *Hodges v. Easton*, 106 U.S. 408, 412, 1 S.Ct. 307, 27

⁴ Instead, they adopted the language of Article I, Section 21, which allowed the legislature to permit waiver only in civil cases.

⁵ Furthermore, the 1854 statute was implicitly repealed by the adoption of Wash. Const. Article I, Section 21, because the statute was repugnant to that provision of the constitution: “All laws now in force in the Territory of Washington, which are not repugnant to this Constitution, shall remain in force until they expire by their own limitation, or are altered or repealed by the legislature...” Wash. Const. Article XXVII, Section 2.

L.Ed. 169 (1882). Even by 1900 there was still disagreement in Washington on whether or not a defendant could waive her or his right to a jury trial. *See State v. Ellis*, 22 Wash. 129, 60 P. 136 (1900), *overruled in part by State v. Lane*, 40 Wash.2d 734, 246 P.2d 474 (1952).

These authorities suggest that the drafters of the constitution would have been loathe to permit a casual waiver of this important right. Thus, common law and state constitutional history favor the interpretation urged by Ms. Aulis.

4. Pre-existing state law.

The fourth *Gunwall* factor “directs examination of preexisting state law, which ‘may be responsive to concerns of its citizens long before they are addressed by analogous constitutional claims.’” *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wash.2d 791, 809, 83 P.3d 419 (2004) (quoting *Gunwall*, at 62).

As noted previously, the Territorial Legislature provided for jury waivers in noncapital criminal cases. Laws of Washington, Chapter 23, Section 249 (1854-1862). A similar statute (RCW 10.01.060) remains in effect, and is echoed in CrR 6.1. None of these authorities outline the requirements for such a waiver.

In *State v. Karsunky*, 197 Wash. 87, 84 P.2d 390 (1938), the Court held that waivers of the jury trial right were statutorily prohibited in felony

cases. In *State v. McCaw*, 198 Wash. 345, 88 P.2d 444 (1939), the Court held that this statutory prohibition also extended to misdemeanors. Subsequently, the Court held that a defendant could waive the right to a jury trial by pleading guilty. *Brandon v. Webb*, 23 Wash.2d 155, 160 P.2d 529 (1945). Finally, in 1966, the Supreme Court upheld a defendant's waiver of his right to a jury trial (based on a 1951 statute authorizing such waivers). In so doing, the Court noted that "Constitutional guarantees are subject to waiver by an accused if he knowingly, intentionally, and voluntarily waives them." *State v. Forza*, 70 Wash.2d 69, 70-71, 422 P.2d 475 (1966).

Analysis of the fourth *Gunwall* factor is consistent with the common law and state constitutional history: the right to a jury trial in Washington is highly valued, and waiver of that right has not been permitted until relatively recently. Accordingly, waivers of the state constitutional right must be treated with great care.

5. Differences in structure between the federal and state constitutions.

In *State v. Young*, 123 Wash.2d 173, 867 P.2d 593 (1994), the Supreme Court noted that "[t]he fifth *Gunwall* factor... will always point toward pursuing an independent State Constitutional analysis because the

Federal Constitution is a grant of power from the states, while the State Constitution represents a limitation of the State's power." *Young, at 180.*

6. Matters of particular state interest or local concern.

The sixth *Gunwall* factor deals with whether the issue is a matter of particular state interest or local concern. The protection afforded a criminal defendant contemplating a waiver of rights guaranteed by Wash. Const. Article I, Sections 21 and 22 is a matter of state concern; there is no need for national uniformity on the issue. *See Smith, at 152. Gunwall* factor number six thus also points to an independent application of the state constitutional provision in this case.

7. Conclusion: all six *Gunwall* factors favor Ms. Aulis's interpretation of the state constitutional right to a jury trial, and impose a heavy burden when the state seeks to show a waiver.

All six *Gunwall* factors favor an independent application of Article I, Sections 21 and 22 of the Washington constitution in this case. Each factor establishes that our state constitution provides greater protection to criminal defendants than does the federal constitution. To sustain a waiver, a reviewing court must find in the record proof that the defendant fully understood the right under the state constitution—including the right to participate in selecting jurors, the right to a jury of twelve, the right to a fair and impartial jury, the right to be presumed innocent by the jury unless

proven guilty by proof beyond a reasonable doubt, and the right to a unanimous verdict.⁶

D. The record does not affirmatively establish that Ms. Aulis waived his state constitutional right to a jury trial with a full understanding of the right.

Ms. Aulis's written waiver referred only to her "right to a jury trial in my case." Supp. CP. It did not make any reference to her right to participate in the selection of jurors, to a jury of twelve, to a fair and impartial jury, to be presumed innocent by the jury unless proven guilty, or to a unanimous verdict. Waiver of Jury Trial, Supp. CP. Nor is there any indication in the record that the trial judge reviewed the waiver with her. RP (5/20/10) 2-4.

In the absence of an affirmative showing that Ms. Aulis understood her state constitutional right to a jury trial, her waiver is invalid and her

⁶ Division II has held that *Gunwall* analysis does not apply to waiver of state constitutional rights: "*Gunwall* addresses the extent of a right and not how the right in question may be waived.... The issue here is waiver. Although Washington's constitutional right to a jury trial is more expansive than the federal right, it does not automatically follow that additional safeguards are required before a more expansive right may be waived." *State v. Pierce*, 134 Wash. App. 763, 770-773, 142 P.3d 610 (2006) (citations omitted). *Pierce* should be reconsidered. Although "it does not *automatically* follow that additional safeguards are required," *Gunwall* provides the appropriate framework for determining when such additional safeguards are required. *Pierce*, at 773. The *Pierce* court did not articulate *any* test for determining the requisites of a valid waiver under the state constitution. Because *Pierce* fails to outline any test for determining the validity of a state constitutional right, it should be reconsidered.

conviction was entered in violation of Wash. Const. Article I, Sections 21 and 22. The case must be remanded to the trial court for a new trial.

CONCLUSION

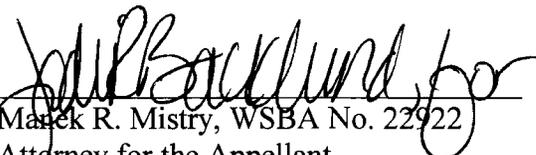
For the foregoing reasons, Ms. Aulis's conviction must be reversed and her case dismissed without prejudice. In the alternative, the case must be remanded for a new trial.

Respectfully submitted on December 6, 2010.

BACKLUND AND MISTRY



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant



Marek R. Mistry, WSBA No. 22922
Attorney for the Appellant

CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Opening Brief to:

Arnette Aulis, DOC #759580
Eleanor Chase House
427 W. 7th
Spokane, WA 99204

and to:

Lewis County Prosecutor
360 NW North St.
Chehalis, WA 98532

And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on December 6, 2010.

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

Signed at Olympia, Washington on December 6, 2010.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BY: [Signature]
DATE: 12/06/10
TIME: 10:00 AM
PLACE STAMP HERE