

No. 49443-4-II

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

JAMES EDWARD STEINER,  
Appellant.

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

The Honorable David L. Edwards, Judge

REPLY BRIEF OF APPELLANT

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**A. ARGUMENT IN REPLY**

In its response, the State argues that Mr. Steiner, albeit probably mentally ill to some degree, was nevertheless able to assist counsel in his defense and that he has not overcome the presumption of competency. Brief of Respondent (BR) at 13-15.

Our Supreme Court has held that the Fourteenth Amendment's due process clause prohibits the conviction of a person who is not competent to stand trial. *Drope v. Missouri*, 420 U.S. 162, 171, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975); *Pate v. Robinson*, 383 U.S. 375, 378, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966). The constitutional standard for competency to stand trial is whether the accused has “ ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding’ ” and to assist in his defense with “ ‘a rational as well as factual understanding of the proceedings against him.’ ” *Dusky v. United States*, 362 U.S. 402, 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960) (quoting Solicitor General Rankin for the U.S.).

Washington law affords greater protection by providing that “[n]o incompetent person may be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.” RCW 10.77.050. “Requiring that a criminal defendant be competent has a

that it had been destroyed. RP at 283-84.

The full picture of the delusional nature of Mr. Steiner's perception, leading to the conclusion that he was unable to assist counsel, came to full fruition during sentencing when he engaged in a lengthy religious monologue referring to Jesus, God, Moses, angels, Disciple Peter, Pontius Pilate, and obscure biblical figure Malchus. RP (9/9/16) at 15-17. Mr. Steiner had a multi-page prepared statement from which he read, and was eventually interrupted and stopped by the judge.

If Mr. Steiner's inability to meaningfully assist counsel was not evident during his trial testimony, it became abundantly clear during sentencing that Mr. Steiner is profoundly delusional and was not able to assist counsel during his trial. This Court should resist the State's attempt to characterize Mr. Steiner's request to show the dash cam – evidence that the State would have introduced with or without Mr. Steiner's motion – as evidence that he was able to assist his attorney. The record shows that Mr. Steiner's belief of the existence of other videos, his belief that the officer was wearing a bombardier jacket, and his denial of clearly audible statements are not merely *de minimis*, corky beliefs but clearly delusional beliefs that fundamentally interfered with his defense.

## **B. CONCLUSION**

The Court abused its discretion by failing to order another

modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel.” *Godinez v. Moran*, 509 U.S. 389, 402, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993). The two-part test for legal competency for a criminal defendant in Washington is as follows: (1) whether the defendant understands the nature of the charges; and (2) whether he is capable of assisting in his defense. *State v. Hahn*, 106 Wash.2d 885, 894, 726 P.2d 25 (1986); *State v. Ortiz*, 104 Wash.2d 479, 482, 706 P.2d 1069 (1985).

Here, Mr. Steiner’s competency was not initially challenged by either party, although even at the onset of the trial there was some question about his competency to assist counsel during trial. The State’s argument in response however, emphasizes minor aspects of Mr. Steiner’s behavior. The State argues that he had the ability to assist counsel as demonstrated by the fact that he “filed numerous letters with the Court” and filed a motion “for the production of the officer’s ‘dash cam’ footage”. RB at 14.

Mr. Steiner’s testimony demonstrates that although he was initially able to relate his version of what occurred, his delusional comprehension of the case became increasingly apparent as his testimony continued. RP at 252-84.

Mental illness is often a fluid situation with the condition of the afflicted changing repeatedly over time. *Indiana v. Edwards*, 554 U.S.

164, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008). Here, Mr. Steiner's testimony became increasingly bizarre, characterized by his repeated insistence that the "dash cam" video -- introduced as Exhibit 1 -- had been altered or doctored in some way. RP at 271, 272. Mr. Steiner persisted in his insistence that "something is wrong with this video" to the extent that the judge had to tell him to be quiet. RP at 272. Mr. Steiner's bizarre, unsupported claims continued; he insisted that the officer was wearing a bombardier jacket at the time of the incident, despite clear video evidence that she was wearing a standard uniform. RP at 277. He also denied that he said "you're serving it up on a regular basis bitch", despite the audio portion of the video containing that statement. RP at 282. He continued to insist that the video had been tampered with, that the times do not match up with the dispatch reports, the time the taser was discharged also does not match, and that the jury needs to be aware of that. RP at 282-83. He also insisted that other videos existed, stating:

We don't even have the whole video. Where is all the rest of the video? Where is the Harner video? Where is the Dairy Queen video? Where is the video when they pulled into the motel? Where is all of the video?

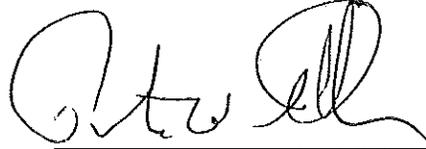
RP at 283

When asked on cross examination, "[y]ou don't actually know there is any other video do you?", he insisted that there was other video or

competency evaluation. Accordingly for the reasons stated herein and in the opening brief of appellant Mr. Steiner's convictions should be reversed and remanded.

DATED: July 25, 2017.

Respectfully submitted,  
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'Peter B. Tiller', written over a horizontal line.

PETER B. TILLER-WSBA 20835  
Of Attorneys for Edward Steiner

**CERTIFICATE**

I certify that I sent by JIS a copy of the Reply Brief of Appellant to Clerk of Court of Appeals and to Mr. Jason Fielding Walker, Prosecuting Attorney's Office, and mailed copies, postage prepaid on July 25, 2017, to appellant, Edward Steiner:

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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on July 25, 2017.

DATED: July 25, 2017.

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