

SUPREME COURT NO. 84739-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

BOBBY RAY THOMPSON,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Gerald L. Knight, Judge

SUPPLEMENTAL BRIEF OF RESPONDENT

DAVID B. KOCH
Attorney for Respondent

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>SUPPLEMENTAL ISSUE STATEMENTS</u>	1
B. <u>SUPPLEMENTAL STATEMENT OF THE CASE</u>	1
1. <u>Trial Proceedings</u>	1
2. <u>Motion for DNA Testing</u>	8
C. <u>ARGUMENT</u>	11
THE COURT OF APPEALS PROPERLY REFUSED TO CONSIDER THOMPSON'S STATEMENT, BUT EVEN IF CONSIDERED, IT DOES NOT CHANGE THE OUTCOME.	11
D. <u>CONCLUSION</u>	20

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

<u>In re Bradford</u> 140 Wn. App. 124, 165 P.3d 31 (2007).....	19
<u>State v. Gray</u> 151 Wn. App. 762, 215 P.3d 961 (2009).....	18, 19
<u>State v. Hill</u> 123 Wn.2d 641, 870 P.2d 313 (1994).....	15
<u>State v. Riofta</u> 166 Wn.2d 358, 209 P.3d 467 (2009).....	9, 12, 18, 19
<u>State v. Schatmeier</u> 72 Wn. App. 711, 866 P.2d 51 review denied, 124 Wn.2d 1019 (1994).....	14
<u>State v. Teran</u> 71 Wn. App. 668, 862 P.2d 137 (1993) review denied, 123 Wn.2d 1021 (1994).....	15
<u>State v. Thompson</u> 155 Wn. App. 294, 229 P.3d 901 (2010).....	8, 9, 10, 13, 18, 19

FEDERAL CASES

<u>Lego v. Twomey</u> 404 U.S. 477, 92 S. Ct. 619, 30 L.Ed.2d 618 (1972).....	14
<u>Miranda v. Arizona</u> 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).....	13, 14

TABLE OF AUTHORITIES (CONT'D)

Page

OTHER AUTHORITIES

State v. Reldan
373 N.J. Super 396, 861 A.2d 860 (2004)
review denied, 868 A.2d 1031 (2005) 14

RULES, STATUTES AND OTHER AUTHORITIES

CrR 3.5 15

N.J.S.A. 2A:84A-32a.d.(5) 14

RCW 10.73.170 1, 8, 9, 11, 13, 14, 15, 20

A. SUPPLEMENTAL ISSUE STATEMENTS

1. At trial, the defense moved to exclude respondent's post-arrest statement to police as substantive evidence of his guilt. The prosecution did not oppose the motion, which was granted. The parties agreed the statement could only be used to impeach respondent if respondent testified at trial, which he did not. In considering a post-conviction motion for DNA testing under RCW 10.73.170, can a trial court properly consider evidence expressly excluded at trial?

2. Even if the statement is considered, DNA testing indicating respondent is not the source of semen left by the rapist would demonstrate respondent did not commit the crime for which he has been convicted. Is respondent entitled to testing under the statute?

B. SUPPLEMENTAL STATEMENT OF THE CASE

1. Trial Proceedings

The charge in this case stemmed from the events of April 13, 1995. 1RP 35. The victim, J.S., went out with friends that evening. She had recently given birth and this was her first night out in some time. At her fiancée's suggestion, she went out drinking and dancing with her fiancée's cousin and his friend. 1RP

55-59. The three stopped at a bar and J.S. had one drink. 1RP 78. They then drove to another bar, the Riviera in Lynnwood, where J.S. had 11 more drinks. 1RP 59, 79. In the months leading up to this night, J.S. had only consumed an occasional glass of wine. 1RP 79.

At one point, a man approached J.S. and said hello. J.S. ignored him. 1RP 60. Later, however, the same man approached her just before 2:00 a.m., when the Riviera was about to close. 1RP 61. He told her there was an after hours party across the street. 1RP 62. J.S. told the two men with whom she had arrived that she was going to check out the party. 1RP 62.

J.S. and the man walked across the street to the Landmark Hotel and entered a room. 1RP 64-65. Nobody else was in the room, so J.S. told the man she was leaving. 1RP 66. The man then struck her in the head with his fist, knocking her unconscious. 1RP 66.

When J.S. regained consciousness, she was partially nude and being raped. 1RP 67-68. When she tried to fight back, the man beat her. 1RP 69. She tried to get away, but the man pulled her to the floor and raped her again. 1RP 69. He hit her some more and tried to strangle her. 1RP 70. J.S. was screaming for

help. At one point, the man tried unsuccessfully to rape her anally. 1RP 72. J.S. ran into the bathroom, but the man followed her, hitting her head against the wall and knocking her out again. When she awoke, she was in the tub, and the man was trying to drown her. She did not remember anything else at the hotel thereafter, including how she got out of the room or how she was discovered. 1RP 71-73.

At trial, on direct examination by the prosecutor, J.S. identified Thompson as the man who introduced himself in the bar, walked with her to the Landmark, and repeatedly raped her. 1RP 60-62. On cross-examination, however, she conceded that the day after the attack, she told a detective she probably could not identify the attacker. 1RP 80. She also conceded telling a defense investigator that she thought the attacker was 5' 7" or 5' 8" tall, although she could not be sure of his height. 1RP 79-80, 83. She testified she was unsure of the attacker's hair color, although it might have been blond, and she was unsure if he had facial hair. 1RP 80, 83-84.

When asked if she understood that Thompson was 6' 3" tall, J.S. responded that she was only 4' 9", so everyone looked tall to her. 1RP 81, 83. She agreed that Thompson has black hair and a

moustache. 1RP 81; 2RP 54-55. In an attempt to explain her uncertainty about the rapist's appearance, she then added that she had been raped in the dark and she saw the rapist at the bar "[j]ust for a brief second." 1RP 81.

One or more individuals apparently heard J.S.'s screams for help. Just before 3:00 a.m., Lynnwood Police were dispatched to the Landmark to investigate a reported "domestic dispute" in room 111. RP 35-36. That room was registered to Thompson. 2RP 86-87. Officer Ronald Erue was the first to arrive. 1RP 34, 36. A hotel security officer showed Erue the location of the room, which was on the same floor as the front desk and just around the corner. 1RP 37. Through the closed door, Erue could hear the shower running but no voices. 1RP 37-38.

Erue returned to the front desk and two other officers arrived. They heard a door opening down the hall and looked to see what was happening. 1RP 38. They saw Thompson physically removing J.S. from room 111 and pushing her out a nearby emergency exit door. 1RP 39-40; 2RP 39, 53-54. When J.S. saw the officers, she became hysterical and claimed that Thompson had beaten and raped her. 1RP 40-41, 53-54. Thompson was placed under arrest. 2RP 54.

J.S. was treated at a nearby hospital. She had been badly beaten and was suffering memory problems. 2RP 7, 23. Her face was severely swollen, including her eyes and ear canals, all of which were swollen shut. And she had multiple bruises on her body, including her neck and vaginal area. 2RP 10-13, 20, 24-25.

The hospital conducted a full rape examination, including vaginal swabs for later testing. 2RP 13. J.S. reported that the rapist beat her with his fists. 2RP 12, 33. The doctor who treated J.S. indicated that if the rapist used his fists, he would expect the rapist to have injuries to his hands. 2RP 20.

The Lynnwood Police sent a crime scene technician to gather evidence from room 111. 2RP 44. There were numerous bloodstains in the room and on the bed sheets. 2RP 46-47. The sheets were collected for testing. 2RP 48.

Washington State Patrol Crime Lab Forensic Scientist Greg Frank tested the items collected in the case, including the bed sheets, a bloody washcloth, and swabs from the rape kit. 2RP 67, 75. Using blood enzyme tests, Frank concluded that blood on the sheets may have come from J.S. It did not come from Thompson. 2RP 71-74, 78. One bloodstain also contained semen, but Frank was unable to determine the donor. 2RP 74, 77-78.

All of the swabs from the rape kit showed the presence of acid phosphatase, high concentrations of which are found in semen. 2RP 75-76. Frank found sperm on three swabs, but because it was mixed with J.S.'s body fluids, he could not determine the source of the semen. 2RP 77. Frank testified that no DNA testing was done on any of this evidence because, based on a backlog at the lab, there was insufficient time to obtain DNA results by the start of trial. 2RP 78-80.

A clerk at the Landmark Hotel testified that Thompson had registered under the Loram Corporation and a Minnesota address. He was one of many employees staying at the hotel. In all, the company had reserved twelve or thirteen rooms. 2RP 88. The clerk saw police taking Thompson away the morning he was arrested, but testified she had no idea who had been in room 111 that morning. 2RP 88-89.

During closing argument, defense counsel focused on the main trial issue – “whether Mr. Thompson was the one who did this.” 2RP 99. Counsel discussed the fact there were several employees from the corporation staying at the Landmark, implying that another employee could have accessed the room earlier, and emphasized that police merely saw Thompson pushing J.S. out of

room 111. 2RP 99. Counsel noted J.S.'s level of intoxication. 2RP 101-102. Counsel pointed out that J.S. indicated the rapist might have had blond hair, was between 5' 7" and 5' 8", and may not have had facial hair. In contrast, Thompson has black hair, is 6'3" tall, and has a moustache. 2RP 99-100, 102. Moreover, there was no evidence of any injuries to Thompson's hands. 2RP 100.

Counsel also focused on the absence of DNA evidence, pointing out that such testing would have conclusively revealed who raped J.S. 2RP 100-101. Counsel concluded by arguing:

Where is the reasonable doubt here? The reasonable doubt here is whether it was Mr. Thompson that was even involved in this incident, or was Mr. Thompson in the wrong place at the wrong time pushing this woman out the door. He gets arrested, but [J.S.] says it was somebody else that did it. That is a reason to doubt this case and is a reason to return a verdict of not guilty. Thank you.

2RP 103.

On July 25, 1995, a Snohomish County jury convicted Thompson of Rape in the First Degree, and he was sentenced to 280 months in prison. CP 129, 133. Thompson's conviction was affirmed on appeal. CP 118-128.

2. Motion for DNA Testing

On October 20, 2006, Thompson filed a motion under RCW 10.73.170 asking that evidence gathered in his case be subjected to DNA testing. CP 89. Thompson noted that his defense at trial was that he did not commit the rape and argued that DNA testing would prove his innocence while revealing the rapist's true identity. CP 91-92.

On November 30, 2006, the Honorable Gerald Knight denied Thompson's motion on three grounds: (1) the court's belief that evidence collected from the crime scene had been destroyed; (2) the court's belief – based on case law at the time – that Thompson was required to demonstrate DNA testing was unavailable at his trial; and (3) the court's belief that DNA testing could not demonstrate Thompson's innocence. CP 44-45, 59-60.

Thompson appealed, and the Court of Appeals reversed. CP 39-43; State v. Thompson, 155 Wn. App. 294, 229 P.3d 901 (2010). The Court rejected Judge Knight's first reason for denying Thompson's motion because evidence from the scene was available for testing.¹ Thompson, 155 Wn. App. at 301. The Court

¹ Based on representations from the Linwood Police Department, Judge Knight believed the evidence in question had

rejected Judge Knight's second reason because the fact evidence could have been tested prior to trial is not a procedural impediment to current testing under RCW 10.73.170. Id. (citing State v. Riofta, 166 Wn.2d 358, 365-366, 209 P.3d 467 (2009)).

The Court of Appeals also rejected Judge Knight's third reason – that there was no likelihood DNA testing could demonstrate Thompson's innocence. The Court reasoned that because the victim only had intercourse with the rapist the night she was attacked, DNA results excluding Thompson as the source of the collected semen would likely establish his innocence. Thompson, 155 Wn. App. at 296, 303-304.

In arguing that DNA testing would not demonstrate Thompson's innocence, the State urged the Court of Appeals – as it had urged Judge Knight – to consider a statement Thompson made to police shortly after his arrest, in which Thompson claimed he and the victim had consensual sexual intercourse. See Brief of

been destroyed in 2001. CP 59, 61, 83-84, 87-88. Following Judge Knight's ruling, however, Thompson contacted the Washington State Patrol and discovered that agency had stain samples from several items he wished to have tested, including slides containing spermatozoa from the rapist. CP 9-11.

Respondent, at 15-18 (statement attached to BOR as appendix B); CP 60.

At Thompson's trial, the court granted an unopposed defense motion to preclude the State from using this statement as evidence of Thompson's guilt. The parties stipulated that the State could only use the statement to impeach Thompson's testimony if he took the stand. 1RP 7, 18-19. Because the evidence could not be used by the State to prove its case, there was never a CrR 3.5 hearing to determine whether Miranda² requirements had been met. 1RP 18.

The Court of Appeals declined to consider the statement in determining whether Thompson qualified for DNA testing because it had not been admitted below. Thompson, 155 Wn. App. at 304 n.27.

The State sought review of the Court of Appeals' decision on multiple grounds. See generally Petition for Review. This Court granted review only on whether Thompson's excluded statement could be considered in determining whether he was entitled to DNA testing. See Order Granting Review (dated 11/3/2010).

² Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

C. ARGUMENT

THE COURT OF APPEALS PROPERLY REFUSED TO CONSIDER THOMPSON'S STATEMENT, BUT EVEN IF CONSIDERED, IT DOES NOT CHANGE THE OUTCOME.

Washington's DNA testing statute, RCW 10.73.170, provides:

(1) A person convicted of a felony in a Washington state court who currently is serving a term of imprisonment may submit to the court that entered the judgment of conviction a verified written motion requesting DNA testing, with a copy of the motion provided to the state office of public defense.

(2) The motion shall:

(a) State that:

....
(iii) The DNA testing now requested would be significantly more accurate than prior DNA testing or would provide significant new information;

(b) Explain why DNA evidence is material to the identity of the perpetrator of, or accomplice to, the crime, or to sentence enhancement; and

(c) Comply with all other procedural requirements established by court rule.

(3) The court shall grant a motion requesting DNA testing under this section if such motion is in the form required by subsection (2) of this section, and the convicted person has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

In State v. Riofta, this Court closely examined the statute's procedural and substantive requirements. Regarding the substantive requirements found in subsection (3) – the only requirements now at issue in Thompson's case – this Court explained:

In determining whether a convicted person “has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis,” a court must look to whether, viewed in light of all of the evidence presented at trial or newly discovered, favorable DNA test results would raise the likelihood that the person is innocent on a more probable than not basis. The statute requires a trial court to grant a motion for post-conviction testing when exculpatory results would, *in combination with the other evidence*, raise a reasonable probability the petitioner was not the perpetrator.

Riofta, 166 Wn.2d at 367-368 (italics in original; underlining added). This Court made a similar statement later in its opinion:

To determine the probability that a petitioner could demonstrate his innocence with the aid of favorable DNA test results, courts must consider the evidence produced at trial along with any newly discovered evidence and the impact that an exculpatory DNA test could have in light of this evidence. . . .

Id. at 369 (emphasis added).

In Riofta, this Court was not required to expand on what it meant by “the evidence presented at trial” or “the evidence

produced at trial.” In Thompson’s case, however, the Court of Appeals ruled that the State could not rely on his post-arrest statement because “the statement was not admitted at trial.” Thompson, 155 Wn. App. at 304 n.27. In other words, the State could not use Thompson’s statement following his arrest because that evidence was expressly excluded below.

This is the proper rule. Surely the evidence the State uses in opposition to DNA testing must be admissible. In the Court of Appeals, the State argued that the proper inquiry is not whether evidence would be admissible at a criminal trial, but whether it is admissible in a proceeding to determine whether DNA testing should be ordered. See Brief of Respondent, at 17. Under the State’s approach, well-established bars to the use of improper evidence in criminal cases simply do not apply to motions for DNA testing. See Id. (State argues that even if Thompson’s statement obtained in violation of Miranda, statement should be considered).

It is difficult to imagine this is what the Legislature intended when it enacted RCW 10.73.170. Under the State’s approach, testing could be denied based on “proof” no jury could ever consider in assessing the defendant’s guilt or innocence.

The Washington Legislature could have drafted RCW 10.73.170 to allow consideration of evidence regardless whether it was introduced at trial. See N.J.S.A. 2A:84A-32a.d.(5) (New Jersey post-conviction DNA testing statute; “The court in its discretion may consider any evidence whether or not it was introduced at trial.”). Our Legislature chose not to include that language. But even if such language were present, it is questionable whether it would include consideration of evidence expressly excluded at trial. See State v. Reldan, 373 N.J. Super 396, 861 A.2d 860, 864-867 (2004) (noting the use of such evidence might be fundamentally unfair), review denied, 868 A.2d 1031 (2005). The State has cited to no case from any jurisdiction holding that evidence ruled inadmissible below can prevent DNA testing where statutory requirements are otherwise met.

The prosecution, as proponent of Thompson’s statement, bore the burden to prove voluntariness and compliance with Miranda. Lego v. Twomey, 404 U.S. 477, 487-89, 92 S. Ct. 619, 30 L.Ed.2d 618 (1972); State v. Schatmeier, 72 Wn. App. 711, 716, 866 P.2d 51, review denied, 124 Wn.2d 1019 (1994); State v. Teran, 71 Wn. App. 668, 671-672, 862 P.2d 137 (1993), review

denied, 123 Wn.2d 1021 (1994), abrogated on other grounds by State v. Hill, 123 Wn.2d 641, 644-645, 870 P.2d 313 (1994).

As previously noted, there was no CrR 3.5 hearing in Thompson's case. A defense motion to preclude use of the statement resulted in the prosecutor stipulating, and the court ordering, that the statement would not be used as substantive evidence. 1RP 7-8, 18-19. The defense agreed the statement could be used if Thompson took the stand and testified, but even then only for possible impeachment. 1RP 19. Thompson did not take the stand, however, so the statement was and remains inadmissible under the trial court's ruling.

This Court should hold that in considering a defendant's motion for DNA testing under RCW 10.73.170, the trial court may not consider evidence excluded at the defendant's trial.

Were this Court to agree with the State, however, and hold that the trial court could properly consider Thompson's excluded statement, it would not affect the outcome in Thompson's case. RCW 10.73.170 requires testing when exculpatory results would, in combination with the other evidence, raise a reasonable probability Thompson was not the perpetrator. Riofta, 166 Wn.2d at 367-368. There were several weaknesses in the State's own evidence that,

when combined with a DNA test excluding Thompson as the source of the semen, satisfy this standard.

First, J.S. had consumed 12 drinks in the hours immediately preceding the rape, undermining her ability to recognize the man who raped her. 1RP 59, 78-79.

Second, shortly after the rape, J.S. told a detective she probably could not identify her attacker, and her trial testimony supported this. Explaining her uncertainty, she testified that she had seen the rapist in the bar “[j]ust for a second” and it had been dark in the hotel room. 1RP 80-81.

Third, J.S. described the rapist as 5’ 7” or 5’ 8” tall, possibly with blond hair, and she was unaware whether he had facial hair. Thompson, however, is 6’ 3” tall, with black hair and a moustache. 1RP 79-84; 2RP 54-55.

Fourth, the rapist beat J.S. with his fists, and the doctor who treated her testified he would expect the rapist to have injuries to his hands. 2RP 13, 20, 33. Yet, there is no evidence Thompson’s fists showed any signs that he administered such a brutal beating.³

³ In the Court of Appeals, the State minimized the significance of this point because Thompson provided “no evidence of the *absence* of injuries to his hands.” Brief of Respondent, at 13 (emphasis in original). Common sense dictates, however, that had

Fifth, Thompson was just one of many employees from the Loram Corporation staying at the Landmark. The company had reserved at least a dozen rooms at the hotel. 2RP 88. This raises the specter that someone other than Thompson may have known when he was away from the room and gained access. The hotel clerk testified she had no idea who had been in room 111 the morning of the rape. 2RP 88-89.

Sixth, other than J.S.'s questionable identification of Thompson as the rapist, not a single individual testified to seeing Thompson at the Riviera, seeing Thompson with J.S. after she left the Riviera, or seeing Thompson with her as she arrived at the Landmark Hotel. Thompson was only seen with J.S. after the rape occurred leaving room 111 and attempting to remove her from the hotel. 1RP 39-40; 2RP 39, 53-54.

In light of these circumstances, a DNA test result showing that the only semen found on J.S., or anywhere else at the scene, belonged to someone other than Thompson most certainly would "raise a reasonable probability the petitioner was not the perpetrator." Riofta, 166 Wn.2d at 367-368. The Court of Appeals

there been any injury to Thompson's hands, the State would have presented that critical evidence at trial.

properly found this to be the case: “there was no evidence that anyone other than the rapist had intercourse with the victim; thus, DNA results excluding the defendant as the donor of the sperm would provide new information about the rapist’s identity and likely establish his innocence.” Thompson, 155 Wn. App. at 296.

Thompson’s statement to police – in which he offered an explanation that he and J.S. had consensual sex – does not change this result. The rapist left his semen behind. DNA test results excluding Thompson as the source of that semen would demonstrate that Thompson and J.S. never had sex. Therefore, regardless of the explanation Thompson offered shortly after his arrest, it would show definitively that he is not the rapist.

In a recent post-Riofta case, State v. Gray, 151 Wn. App. 762, 215 P.3d 961 (2009), the Court of Appeals reversed the trial court’s denial of DNA testing despite strong evidence Gray was the rapist. He matched the physical description of the rapist, he was nearby at the time of the rape, a canine tracked Gray’s scent from the rape scene to the location of his arrest, and two eyewitnesses identified Gray from a photomontage. Gray, 151 Wn. App. at 766-767, 772-775.

Although no semen was available for DNA analysis in Gray, testing could be done on hair samples, clothing, and vaginal/anal swabs collected shortly after the rape. Because there had been only one assailant, and testing could show the presence of DNA on these items did not match Gray, he was entitled to have the tests conducted. Id. at 774. In Thompson's case, the Court of Appeals noted that because the rapist's semen is available for testing, "favorable DNA results here would be even stronger evidence of innocence than in *Gray*" Thompson, 155 Wn. App. at 304.

Indeed, even in cases where the defendant *confesses*, DNA may demonstrate a high probability of innocence. In In re Bradford, 140 Wn. App. 124, 127-132, 165 P.3d 31 (2007), testing excluding the defendant as the source of DNA found on a mask used to cover the rape victim's face required a new trial despite the defendant's confession to the crime. See also Riofta, 166 Wn.2d at 377-378 (Chambers, J., concurring in dissent) (discussing fallibility of confessions and eyewitness testimony as revealed by DNA testing).

Of course, Thompson never confessed to raping J.S. Even if this Court considers Thompson's post-arrest statement, he denied any wrongdoing in that statement. DNA results showing

someone else was the source of the rapist's semen would confirm that.

D. CONCLUSION

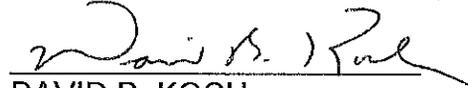
The Court of Appeals correctly declined to consider a statement the trial court excluded as evidence of Thompson's guilt. The State should not be permitted to avoid DNA testing based on evidence ruled inadmissible at trial.

Even if the statement is considered in Thompson's case, it makes no difference. He is still entitled to testing under RCW 10.73.170 because there was only one rapist and DNA results excluding him as the source of the rapist's semen would demonstrate he is not the perpetrator.

DATED this 30th day of November, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



DAVID B. KOCH
WSBA No. 23789
Office ID No. 91051

Attorneys for Respondent

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)

Petitioner,)

v.)

BOBBY R. THOMPSON,)

Respondent.)

NO. 84739-8

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF NOVEMBER 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF RESPONDENT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SETH FINE
SNOHOMISH COUNTY PROSECUTOR'S OFFICE
3000 ROCKEFELLER AVENUE
EVERETT, WA 98201
- [X] BOBBY RAY THOMPSON
DOC NO. 739120
COYTOE RIDGE CORRECTIONS CENTER
P.O. BOX 769
CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF NOVEMBER 2010.

x Patrick Mayovsky

2010 DEC -1 AM 8:21
CLERK
STATE OF WASHINGTON