

In The Court of Appeals of The State of Washington
Division I

State of Washington
Respondent

v.

Daryl S. Hart
Appellant

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2010 SEP 29 AM 10:52

On Appeal From The Superior Court of The State
of Washington For King County

The Honorable Carol A. Shapira, Judge

Statement of Additional Grounds

Daryl S. Hart #276452
Pro Se

Daryl S. Hart
Washington State Penitentiary
1313 N. 13th Ave.
Walla Walla, Wa.
99362

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CONSTITUTIONAL PROVISION

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Fed.Rules of Evidence ER609(B). 2,3

CONCLUSION. 8

I S S U E 1

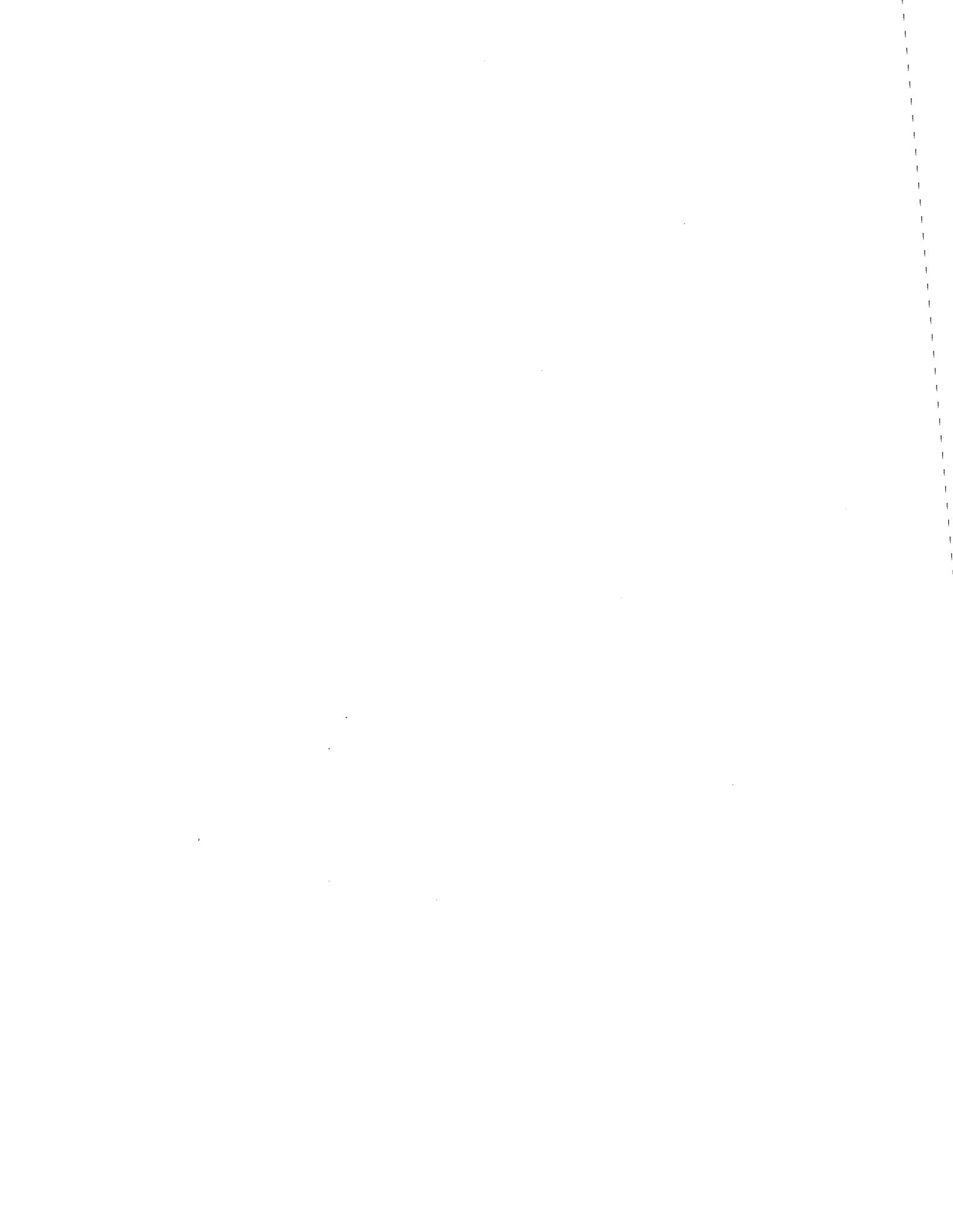
Was Mr. Hart Deprived of His Sixth and Fourteenth Amendment Rights when the Judge gave Him an Exceptional Sentence? Apprendi v. New Jersey cite as 120 S.Ct. 2348(2000); Blakely v. Washington cite as 124 S.Ct. 2531 (2004)

Under the Sixth and Fourteenth Amendment of the United States Constitution "A Criminal Defendant is entitled to jury determination that he is guilty of every element of the crime he is charged with beyond a Reasonable Doubt." U.S. Const. Amend. XIV; Blakely v. Washington cite as 124 S.Ct. 2531(2004)

In a Criminal Prosecution the Judge's role in sentencing is constrained at its outer limits by facts alleged in indictment and found by jury; Other than the fact of **prior conviction**, any fact that increases a penalty for a crime beyond the statutory **Minimum and Maximum** must be submitted to a Jury, and proved beyond a Reasonable Doubt. **Apprendi v. New Jersey, cite as 120 S.Ct. 2348(2000)**. It is Un constitutional for Legislature to remove from jury the assessment of facts, other than the fact of prior Conviction, that increased prescribed range of penalties to which criminal defendant is exposed, and such facts **must** be established by proof beyond reasonable doubt. **U.S. Const. Amend. XIV; Apprendi v. New Jersey, cite as 120 S.Ct. 2348(2000)**.

Relevant inquiry in determining whether finding is essential element of offense which **must** be decided by jury beyond Reasonable Doubt is one not of form, but of effect, namely whether required finding exposes defendant to greater punishment than that authorized by jury's guilty verdict. A criminal defendant has right to have jury verdict based on proof beyond Reasonable Doubt. **U.S. Const. Amend. VI, XIV; Apprendi v. New Jersey cite as 120 S.Ct. 2348(2000); Blakely v. Washington cite as 124 S.Ct. 2531(2004)**.

In the present case Mr. Hart was entitled to have his case heard in front of a jury as well as have a jury decided if and how he should



be sentenced, by the judge denying Mr. Hart that right (which he did not waive) she violated Mr. Hart's **Fifth, Sixth, and Fourteenth Amendment Rights to Due Process** which is guaranteed through the **United States Constitution. U.S. Const. Amend. V, VI, XIV**

"With regards to **Federal Law**, the **Fifth Amendment's Due Process Clause** and the **Sixth Amendment's** notice and jury trial guarantees require that any fact other than Prior Conviction that increases the penalty for a crime **Must** be charged in an indictment, submitted to a jury, and proved beyond a reasonable doubt. **The Fourteenth Amendment "Commands"** the same answer when a **State Statute** is involved. **Jones v. United States** 526 U.S. 227, 119 S.Ct. 1215, 143 L.Ed.2d 311; **The Fourteenth Amendment Right to Due Process** and the **Sixth Amendment Right to trial by jury**, taken together, entitle a criminal defendant to a jury determination that he is guilty of every element of the crime with which he is charged beyond a reasonable doubt. **In Re Winship**, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368.; **U.S. Const. Amend. V, VI, XIV.**

"A sentencing judge exceeds his proper authority when he inflicts punishment that the jury's verdict alone does not allow, as the jury has not found all the facts which the Law makes essential to the punishment." **Blakely v. Washington** cite as 124 S.Ct. 2531 (2004); "The **Sixth Amendment Right to trial** is not a limitation on **Judicial Power**, but a reservation of jury power that limits judicial power only to the extent that the claimed judicial power infringes on the province of the jury." **U.S. Const. Amend. VI; Blakely v. Washington** cite as 124 S.Ct. 2531 (2004).

In the present case the sentencing judge erred when she sentenced Mr. Hart to **280 months** 40 months more than what was allowed. An **Exceptional Sentence** has to be found by a jury (See **Apprendi v. New Jersey** and **Blakely v. Washington**). The state **Erronously** Calculated Mr. Hart's offender score at 2 and the sentencing judge **Erronously** agreed with this calculation this argument would also fall under a claim for **Ineffective Assistance of Counsel** seeing how Mr. Hart's own Attorney fail to properly correct or recognize this error. Mr. Hart had one Felony conviction back in **1981**; **Federal Rules of Evidence: Rule 609(B)** states "Evidence of a Conviction

under this rule is Not admissible if a period of more than **Ten** years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction. However, evidence of a conviction more than **Ten** years old as calculated herein, is Not admissible. **Fed. Rule of Evidence 609(B)**. The state erroneously gave Mr. Hart an offender score of **2** to increase his sentencing range when Mr. Hart should have been sentenced from **0**. Mr. Hart's **1981 Conviction** under the new **SRA** enacted back in **1985** and under **E.R. 609(B)** "**washed-out**" thus putting his offender score at **0** and by Mr. Hart's score being a **0** he should have been sentenced to the minimum of **240 months of confinement**, anything over would be considered an exceptional sentence and would be a violation of his **Sixth and Fourteenth Amendment Rights**. **U.S. Const. Amend. VI, XIV**. "A state scheme that keeps from the jury facts exposing defendants to greater or additional punishment may raise serious **Constitutional Concerns**." **McMillian v. Pennsylvania**, 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986).

I S S U E 2

Was Mr. Hart Deprived of His Fifth Amendment Rights when the Detectives neglected to read him his Miranda Rights? *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966)

The **Fifth Amendment** provides "that an individual not be deprived of Life, Liberty, or Property, without **Due Process of Law** nor be compelled to give **Self-incriminatory Testimony.**" U.S. Const. Amend. V; The **Fifth and Fourteenth Amendment** **Due Process** protections apply to all **Show-ups, Line-ups, and Photo Identification** procedures. U.S. Const. Amend. V; U.S. Const. Amend. XIV.

Under the **Fifth Amendment**, prior to interrogation a defendant **must** be given a warning about his **Constitutional Rights**; Also the **Prosecutor** may not use statements, whether **Exculpatory or Inculpatory**, stemming from **Custodial Interrogation of a defendant** unless it demonstrates the use of **Procedural Safeguards** effective to secure the privilege against **Self-incrimination.**; U.S. Const. Amend. V; *United States v. Smith* cite as 694 F.Supp.2d 1242 (2009); *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966). Any statements made by the defendant after being taken into custody are inadmissible, under the **Fifth Amendment**, if no **Miranda** Warnings have been given prior to questioning. U.S. Const. Amend. V; *United States v. Smith* cite as 694 F.Supp.2d 1242 (2009); *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966).

"Whether a person was in Custody and entitled to **Miranda Warnings** is a mixed question of **Law and Fact.**" *United States v. McDowell*, 250 F.3d 1354, 1361 (11th Cir. 2001). An Appellate court reviews a trial court's factual finding for clear error, and its application of the law to those facts **de novo**. A defendant is considered to be in custody when, "**Under the totality of the circumstances, a reasonable man in his position would feel a restraint on his Freedom of movement...to such extent that he would not feel free to leave.**" *McDowell* at 1362. The **Fifth Amendment** Also protects against **Custodial Interrogations** when no **Miranda** Warning regarding **Constitutional Rights** have been Provided. U.S. Const. Amend. V

In the present case Mr. Hart's **Fifth Amendment Rights** were violated when **Detectives Giesynski and Steiger** ask Mr. Hart to come down to the office to review and sign his transcribed statement, at that point Mr. Hart was not under arrest and once the Detectives started Interrogating Mr. Hart it became a **Custodial Interrogation** which is a **Violation of Mr. Hart's Federal Constitution Fifth Amendment Rights.** U.S. Const. Amend. V; In the



Certificate for Probable Cause the Detectives had stated that Mr.Hart had to sign his statement(See **Certificate For Probable Cause**),If Mr. Harts alleged **Confession** was not **Coerced and Under Duress** why would the Detectives reinterview Mr.Hart if **DNA** evidence linked him to the crime.Mr.Harts **Confession** was induced by **Coercion** from the Detectives which a^re is a **Violation** of his **Fifth Amendment Rights** and are **Not Admissible** as evidence against him.. In order to uphold the **Constitutional Rights** to silence recognized in the **Fifth Amendment**, the **United States Supreme Court** in **Miranda v.Arizona**, **384 U.S. 436,86 S.Ct. 1602,16 L.Ed.2d 694(1966)**,held that before a defendant **Custodial Statements** may be admitted as **Substantive Evidence** the **State** bears the **burden or proving** that prior to questions the **police** informed the defendant that:"(1)**He has the absolute right to remain silent**,(2) **Anything that he says can be used against him**(3)**He has a right to have counsel present before and during questioning**,and(4)**If he can not afford counsel,one will be appointed to him.**" Mr.Hart was deprived of all these rights when the **Detectives** did not read him his **Miranda Rights** and took a **Coerced Confession**.

The **Fifth Amendment** to the **United States Constitution** provides"**[N]o person shall be compelled in any criminal case to be a witness against himself..**" Also **Article 1 sec.9** of the **Washington Constitution** provides that"**[N]o person shall be compelled in any criminal case to give evidence against himself.**" Prior to the admission of any **Confession** made to the police,the **State** has the **burden of proving** that the **waiver** of the **State and Federal Rights** to silence was **"Knowing and voluntary."**

The **Fifth Amendment** remains the **Constitutional** standard,and as such continues to govern the **admissibility** for **Impeachment purposes** of statements taken in **violation** of **Miranda**,the **admissibility** of the **"Fruits"**of such statements,and the **admissibility** of statements challenged as **UnConstitutional** **UnConstitutionally** obtained despite the **Interrogator's** compliance with **Miranda**;Colorado v.Connelly,479 U.S.157,107 S.Ct. 515,93 L.Ed.2d 473(1986).
U.S.Const.Amend.V

Exhibit 1: For ISSUE 2



CAUSE NO. 09-1-05294-4 SEA

SEATTLE
POLICE
DEPARTMENT

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

GENERAL OFFENSE #	84-331489
UNIT FILE NUMBER	H84-196

That Micahel Ciesynski is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 84-331489;

There is probable cause to believe that Daryl S. Hart committed the crime(s) of Murder within the City of Seattle, County of King, State of Washington.

This belief is predicated on the following facts and circumstances:

On Sunday, August 12, 1984, Queen Hart became concerned because she had not seen her neighbor and friend, Nora T. Gracey (dob 1/29/14), 7912 46th Ave. S., Seattle, WA, for a couple of days. Queen and Gracey had lived next door to each other for approximately fourteen years. The women would look after each other.

At 9:30 a.m. on Sunday, August 12th, Queen knocked on Gracey's back door and received no answer. Queen could hear Gracey's small dog barking. Around 8:00 p.m. that same day, still having not seen Gracey, Queen returned to Gracey's house and noticed the back door was now open about two inches. Queen knocked on the door and could hear the dog barking toward the front of the house but the dog did not come to the door. The front door was locked.

Queen got her son, Daryl Hart (dob 7/12/59), and together Daryl and Queen entered Gracey's kitchen and noticed that the house appeared messy and that a kitchen drawer was open. Concerned, Queen and Daryl left Hart's house and sought the assistance of a neighbor, Louis Steiner. Together, Queen, Daryl and Steiner reentered Gracey's house and discovered Gracey dead in her bedroom.

The police responded shortly after 8:00 p.m. Gracey lay face-up on her bed in a pool of blood. She wore only a nightgown. She appeared to have been stabbed. In addition, numerous superficial cuts were noted on her neck. The knife drawer in the kitchen was open several inches. No murder weapon was recovered.

Gracey's bedroom appeared to have been ransacked. Drawers were open and items were strewn on the floor. In addition, jewelry boxes were on the bed, near Gracey's body, and appeared to have been gone through.

An autopsy was performed the next day. The cause of death was two stab wounds to Gracey's chest area. In addition, Gracey had been strangled. The strangulation resulted in the fracture of cartilage in her neck. Gracey also had multiple, superficial cuts to her neck.

Spermatozoa was found on Gracey's right inner thigh. A swab was taken. No injuries were noted to the vagina or the perineum and no sperm was found inside of Gracey.

Both Queen Hart and Daryl Hart were interviewed by the police. Daryl related that he had last seen Gracey on Thursday evening when Gracey and Terry Stewart, Gracey's son, were driving to the store and Stewart asked Daryl to keep an eye on Gracey's house.

Gracey's son, Stewart, was interviewed by the police. Stewart related that he and his mother had dinner at her house on Friday, August 10th, with friends. Stewart then stated that he and Gracey traveled to Portland Friday evening and spent all of Saturday in Portland, returning to Gracey's home around 9:00 p.m. on Saturday, August 11th. Stewart had dinner and fell asleep on Gracey's couch. Gracey woke him at 10:30 p.m. and he returned to his own home. Stewart did not see his mother again. Stewart was asked to submit to a polygraph examination, which he did. The examination showed no deception.

On August 29, 1984, probation officer Randy Fillingham called the police to report that his parolee, Daryl Hart, was very upset by Gracey's murder and that Daryl was concerned that he might be blamed for it because he had just gotten out on parole.





**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

INCIDENT NUMBER	84-331489
UNIT FILE NUMBER	H84-196

The investigation into Gracey's murder "went cold" until 2002 when Seattle Police cold case detectives submitted the swab from Gracey's right thigh to the Washington State Patrol Crime Lab (WSPCL). A full male DNA profile was obtained. The profile was entered into the DNA database with no results.

In 2007, Seattle Police Cold Case Detective Mike Ciesynski reopened the investigation into Gracey's murder. Ciesynski contacted Daryl Hart and Terry Stewart and obtained buccal swabs from both men. Det. Ciesynski submitted the swabs to the WSPCL.

On August 10, 2009, the crime lab matched the sperm from Gracey's right inner thigh to Daryl Hart. The odds of someone else having the same DNA profile is 1 in 34 quintillion. Stewart was excluded as being a contributor to this DNA.

On August 13, 2009, Det. Ciesynski reinterviewed Daryl Hart. Hart reiterated what he had told police in 1984 about last having seen Gracey when she went to the store that Thursday, August 9, 1984. Hart stated that he considered Gracey like a mother to him and that he had no romantic or sexual interest in her.

On August 21, 2009, Daryl Hart came to the Seattle police Homicide office to review and sign his transcribed statement. Hart was advised of Miranda by Det. Ciesynski and was interviewed by Ciesynski and Det. Cloyd Steiger. During the interview Detectives Ciesynski and Steiger confronted Hart with the DNA evidence. Hart initially denied that he had any involvement in Nora's death but then confessed killing her. Hart stated that he came to Nora's home and that she let him in the back door. Hart stated that he only remembers arguing with Nora and that Nora pushed him away. Hart stated that he grabbed a knife from a kitchen drawer and forced Nora into the bedroom. Hart stated that he did not rape Nora but that he masturbated while he was holding her down. Hart then stated that after he killed Nora he opened up drawers and jewelry boxes to make it look like a burglary.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 27 day of August, 2009, at Seattle, Washington.

Michael J. Ciesynski



I S S U E 3

Was Mr. Hart Deprived of His Sixth And Fourteenth Amendment Rights to Due Process and Effective Assistance of Counsel? Gideon v. Wainwright, 372 U.S. 335, 392, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963)

The Sixth Amendment provides that "[I]n all criminal prosecutions, the accused shall enjoy the right..to have the Assistance of Counsel for his defense." U.S.Const.Amen.VI; This provision is guaranteed to individuals in the state through the Fourteenth Amendment. U.S.Const.Amend.XIV; Gideon v. Wainwright, 372 U.S. 335, 342, 83 S.Ct. 792, 9 L.ed.2d 799 (1963). The right to Counsel is "One of the most fundamental and cherished rights guaranteed by the Constitution." United States v. Salemo, 61 F.3d 214, 221-22 (3rd Cir.1995).

An Ineffective Assistance claim presents a mixed question of Law and Fact, requiring a De Novo review. In Re Fleming, 142 Wn.2d 853, 865, 16 P.3d 610 (2001). An Appellate claiming Ineffective Assistance must show (1) That Defense Counsel's conduct was deficient, meaning that it fell below an objective standard of reasonableness; and (2) That the deficient performance resulted in prejudice, meaning "A reasonable possibility that, but for the deficient conduct, the outcome of the proceeding would have differed." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

There is a strong presumption of adequate performance; However, this presumption is overcome when "There is no conceivable legitimate tactic explaining counsel's performance." Any court strategy "Must be based on reasoned decision-making.." In Re Hubert, 138 Wn.App. (24, 929, 158 P.3d 1282 (2007). Furthermore, there must be some indication in the record that counsel was actually pursuing the alleged strategy.

In the present case the performance of Mr. Hart's Attorney fell below an objective standard of reasonableness, and "There is reasonable probability that, but for [His] counsel's errors, he would not have plead guilty and would have insisted on going to trial." Wamack v. Del Papa, 497 F.3d 998, 1002 (9th Cir.2007); Smith v. Robbins, 528 U.S. 259, 285, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000). Mr. Hart's Guilty Plea was involuntary and Counsel should not have forced an Involuntary Plea.



The **Sixth Amendment** Right to Counsel attaches at a critical stage of a Criminal proceeding which occurs after the Formal Initiation of Criminal Proceedings involving an actual Confrontation between a representation of the State and the defendant. The **United States Supreme Court** has determined that all identification procedures are critical stages requiring the presence of Counsel, which in a Criminal Prosecution may deprive the defendant of a Fair Trial. **U.S. Const. Amend. VI; Moore v. Illinois, 434 U.S. 220, 98 S.Ct. 458, 54 L.Ed.2d 424 (1977)**

In the present case Mr. Harts Attorney not only Neglected his duties as Counsel he also fail to provide Mr. Hart with **Effective Assistance** that was **Non-Prejudicial and Non-Bias**. The **Fourteenth amendment** prohibits any **State** from depriving any person of **Life, Liberty, or Property, Without Due Process of Law**. **U.S. Const. Amen. XIV**; The **Sixth Amendment** Guarantees a defendant the Right to the **Effective assistance of Counsel** in all Criminal Proceeding (**I.E. Sentencing, Pretrial, ETC.**) **U.S. Const. Amend. VI**. Mr. Harts Counsel not only fail to motion the court to have a **Psychiatric Evaluation done by Western State (Seeing that Mr. Hart had been Dealing with Substance Abuse for the Last 25 Years)**; He also fail to address the terms of Mr. Harts **Plea Agreement**, But neither one of those are more **Ineffective** than Mr. Hart's attorney failing to ask for a **Lesser Included To the Plea** which would have been **Murder 2 and Manslaughter in the First Degree**; On not **One** but **Two** occasions Mr. Hart ask to have new Counsel appointed because counsel was **Not Effective**. Mr. Harts Plea was done under the **Coercion and Trickery of His Counsel (See Number 11 Of Statement of Defendant on Plea of Guilty)**. By Pleading Guilty Mr. Hart never gave up His **Sixth Amendment Right To Effective Assistance of Counsel**; (See Court Minutes on 11-30-2009, and 12-16-2009, Defendants Motion to Discharge Counsel). Nor did Mr. Harts Attorney Properly Investigate the Alleged **Confession** that was given under **Duress and Coercion and Intimidation by Detectives Ciesynski and Steiger**. Mr. Hart on Numerous Occasions told the Sentencing Judge that he was not happy with his Attorney and that he was not aware of the conditions set out in his **Plea agreement**. Had Mr. Harts Attorney properly went over the material and evidence, with Mr. Hart and provided him with **Effective Counsel** which is applicable through the **Sixth and Fourteenth Amendment** Mr. Hart would not have **Plead**



Guilty to a First Degree Murder that lacks Sufficient Evidence. Mr. Hart ask this Honorable Court to find that his Counsel was Ineffective and his Rights under the Sixth and Fourteenth Amendment were Violated. U.S. Const. Amend. VI; U.S. Const. Amend. XIV

CONCLUSION

For The Foregoing Reasons Mr. Harts Conviction and Sentencing should be Reversed and Remended to the Trial Court to have his Sentencing done in accordance with the Federal Constitutional Law and In compliance with the United States Supreme Court Ruling in Apprendi and Blakely.



I, Daryl S. Hart declare under penalty of perjury
that the following is true and correct to the best of my
knowledge and has been executed on this 24 day of
Sep, 2010, at Washington State Penitentiary
in the County of Walla Walla, Washington.

Daryl S. Hart
Daryl S. Hart #276452

Subscribed and Sworn to before me this 24th day of
September, 2010.



Jaci L. Hoppen
Notary Public in and for
the State of Washington,
Residing in Walla Walla, WA
My Commission expires 12-31-11



Exhibit 2: For Issue 3

ORIGINAL COURT MINUTES

PAGE #: 32

SEATTLE COURTHOUSE
KING COUNTY SUPERIOR COURT
CASE SCHEDULING CALENDAR CALENDAR DATE: 11/30/2009

JUDGE:

COURT CLERK: ~~SUTTON S. ARMSTRONG~~

LYNN HARKEY Melissa Ehlers

CASE NO: 09-1-05294-4 SEA

DEFENDANT: HART, DARYL SPENCER

TRUE NAME:

CCN: 585979

EXP: ~~01-29-10~~

2/14/10

DPA: C. Petersen

ATD: G. Davis

present

CO-DEFENDANTS:

CHARGE: MURDER 1

ARR DATE: 09/08/2009

LOC: 4E10LC05

INT:

COMMENCE DATE: 11-30-09

TRIAL SET EXP:

MOTION JUDGE #: HON. 000

AFFIDAVIT:

Defendant's motion to discharge counsel is Denied

MOTION TO CONTINUE Granted

Not Recorded Court Reporter:

FTR/AUDIO: DR E1201 Start Time: 22430 End Time:

Scheduling hrg held (STAHRG) Omnibus Date: TrialDate:

Agreed continuance to 12/16/09 (HCNTU).

State's motion for issuance of bench warrant - Granted/Denied. Bail is set at \$ (MTHRG)

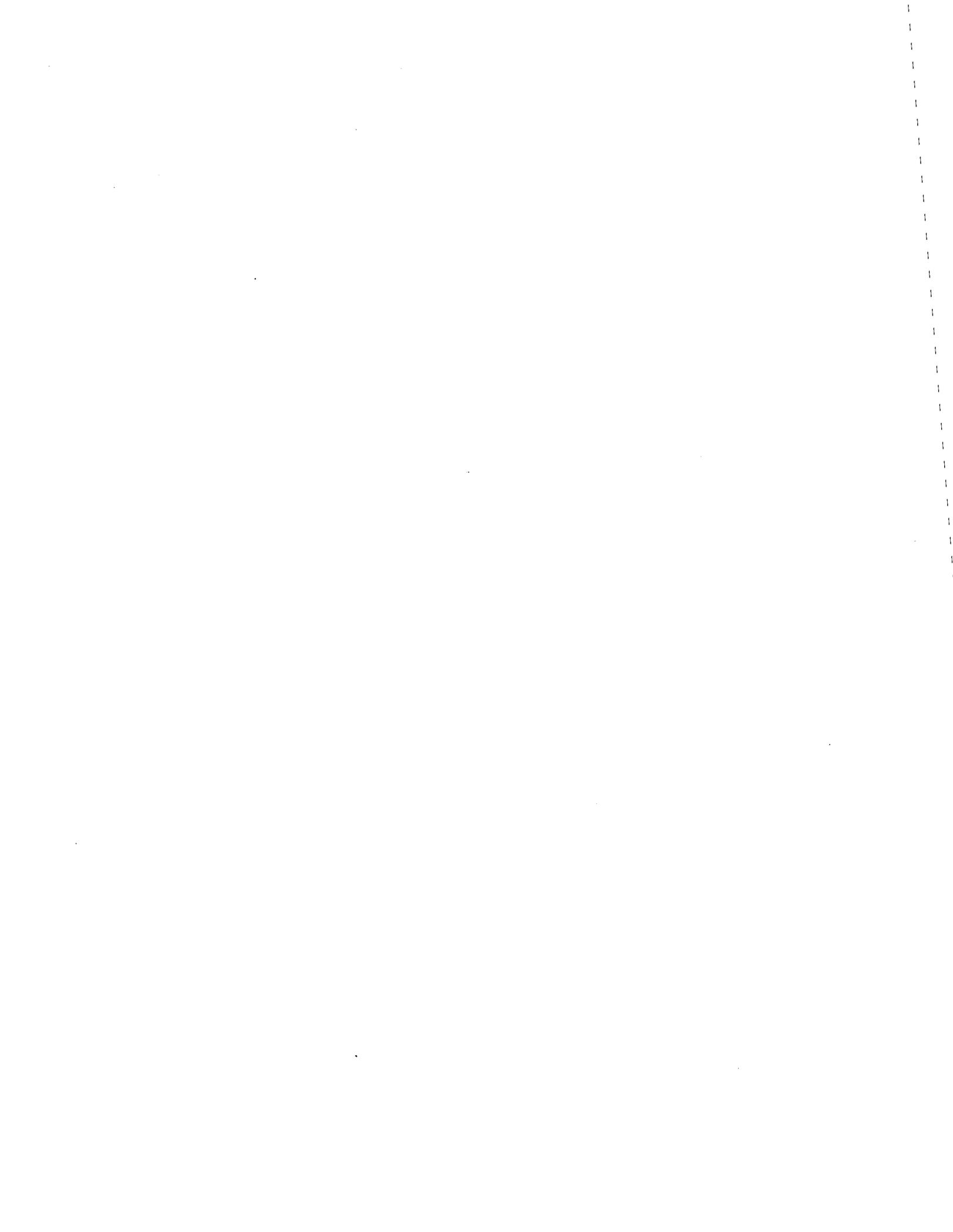
State's motion to dismiss this cause - Granted (DSMHRG) / Denied (MTHRG).

Deft's motion to quash outstanding bench warrant - Granted/Denied (MTHRG).

Referred to Plea Judge (AST). Transferred to Drug Court (HSTKIC).

Stricken. Pled Guilty (HSTKIC).

Order is signed



ORIGINAL COURT MINUTES

PAGE #: 28

SEATTLE COURTHOUSE
KING COUNTY SUPERIOR COURT
CASE SCHEDULING CALENDAR, CALENDAR DATE: 12/16/2009

JUDGE: SHARON S. ARMSTRONG

COURT CLERK: LYNN HARKLEY

CASE NO: 09-1-05294-4 SEA

DEFENDANT: HART, DARYL SPENCER
TRUE NAME:
CCN: 585979
EXP: 02-14-10

PRESENT

DPA: C CARLSTROM
ATD: G DAVIS

PRESENT

CO-DEFENDANTS:

CHARGE: MURDER 1
ARR DATE: 09/08/2009
LOC: 4E10LC05
INT:
COMMENCE DATE: 12-16-09
TRIAL SET EXP:
MOTION JUDGE #: HON. 000
AFFIDAVIT:

*DEF'S MOTION TO DISCHARGE
COUNSEL - DENIED*

Not Recorded Court Reporter:
FTR/AUDIO: DR E1201 Start Time: 3:00:03 End Time:

Scheduling hearing held (SPAHRG). Omnibus Date: 1.27-10
Trial Date: 2-8-10

Agreed continuance to _____ (HCNTU).

State's motion for issuance of bench warrant - Granted/Denied. Bail is set at
\$ _____. (MTHRG)

State's motion to dismiss this cause - Granted (DSMHRG) / Denied (MTHRG).

Deft's motion to quash outstanding bench warrant - Granted/Denied (MTHRG).

Referred to Plea Judge (AST). Transferred to Drug Court (HSTKIC).

Stricken. Pled Guilty (HSTKIC).

Order is signed



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RECEIVED
JUN 21 2010

STATE OF WASHINGTON,

Plaintiff,

v.

DARYL HART,

Defendant.

Nielsen, Broman & Koch, P.L.L.C.

VERBATIM REPORT
OF PROCEEDINGS

Cause No. 09-1-05294-4 SEA
Appeal No. 65166-8-I

TRANSCRIPT

Of proceedings had in the above-entitled cause before the
HONORABLE SHARON S. ARMSTRONG, Superior Court Judge, on Monday,
November 30, 2009.

APPEARANCES:

FOR THE STATE: Craig Petersen, Deputy Prosecuting Attorney

FOR DEFENDANT: Gary Davis, Attorney at Law

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1 plea by accepting the offer or setting a trial date by the 16th,
2 so - -

3 THE COURT: Yes Sir.

4 MR. HART: Your Honor, can I speak for the record please?

5 THE COURT: Okay, if your lawyer - -

6 MR. HART: At this - at this time I would like to get rid
7 of Mr. Davis. He's not - - he is not being upfront with me at
8 all in none of this case. He's went behind my back and told
9 stuff to my mom. He's came to me with a kind of a threatening
10 plea (inaudible), if you don't take the deal, the deal's off as
11 of today.
12

13 I have, you know, I need to see something in writing
14 before I sign anything. I mean he's, my parents were going to
15 hire another attorney - - he's went and told them stories and
16 told me stories, and right now ma'am, that's - - that's not
17 helping me. My life is on the line here. And I want somebody
18 that's going to represent me to the best of their ability, and
19 right now ma'am, I don't feel he's doing that. If anything, he's
20 hurting my case. And I'm just saying, and also for the record
21 ma'am, I'd like to - - I'd like to have the discovery, I've never
22 had the discovery in my possession.
23

24 THE COURT: Mr. Davis, anything you want to add?
25

1 MR. DAVIS: No. I mean I've already gone through the
2 discovery with Mr. Hart. He already understands all the - - all
3 the evidence (inaudible). I brought the discovery with me when I
4 saw him on the face-to-face. He's reviewed his own statement - -
5 in fact there was a DVD that I've also reviewed.

6 I've also, which reflects the 100 page transcript of his
7 confession really corresponds with all - - everything that's on
8 the DVD stuff. He's asked me to contact his mother in order to
9 provide her and update information, which I've already done on
10 several occasions. She is not - - I've also talked to her, later
11 this afternoon, or later this morning, about the fact that she
12 was debating whether to bring in another counsel, but she's not
13 going to do it. And I have already spoken to the new counsel, or
14 the attorney that they were thinking about doing, and he's not
15 taking the case. And the thing is we're not asking to withdraw
16 from this case. So it's a fairly straightforward situation.
17 He's just got to decide whether he wants to set a trial date or
18 enter a plea.

19
20 THE COURT: Your motion to discharge counsel is denied.
21 But I will set this hearing over for a couple weeks for you to
22 consider the offer and decide how you want to proceed.

23 MR. HART: Yes, ma'am.

24 THE COURT: So the new date is the 16th of December.
25

1 MR. DAVIS: December 16th.

2 MR. HART: Also who, just for the record also ma'am, who
3 else would I talk to because I mean this is - - I mean my life is
4 on the line here like I stated. And he's not - - I mean every
5 time I need to see this gentleman, I never see him when I need to
6 see him. He comes up, you know, he comes to me at the last
7 minute.

8 THE COURT: Sir, you have 14, 18, 16 days to figure out
9 what you want to do next.

10 MR. HART: That's all I need to know, Your Honor. Thank
11 you very much.

12 THE COURT: Okay. Thank you.

13 (Proceedings Concluded.)
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1 STATE OF WASHINGTON)
2 KING COUNTY SUPERIOR COURT) ss.
3)

4 I, CATHY L. SWANSON, an Official Transcriptionist for the
5 King County Superior Court, State of Washington, hereby certify
6 that the foregoing pages, 1 through 6, inclusive, comprise a
7 full, true and correct transcript of the proceedings in the
8 above-entitled cause to the best of my ability; that I am not
9 related to any of the parties to this litigation and have no
10 interest in the outcome of said litigation.

11 DATED this 18th day of June, 2010.

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14 CATHY L. SWANSON
15 Official Transcriptionist
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RECEIVED
JUN 21 2010
Nielsen, Broman & Koch, P.L.L.C.

STATE OF WASHINGTON,

Plaintiff,

v.
DARYL HART,

Defendant.

VERBATIM REPORT
OF PROCEEDINGS

Cause No. 09-1-05294-4 SEA
Appeal No. 65166-8-I

TRANSCRIPT

Of proceedings had in the above-entitled cause before the
HONORABLE SHARON S. ARMSTRONG, Superior Court Judge, on
Wednesday, December 16, 2009.

APPEARANCES:

FOR THE STATE: Carla Carlstrom, Deputy Prosecuting Attorney
FOR DEFENDANT: Gary Davis, Attorney at Law

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1 he has not given me any indication as to what he wants to do and
2 so I'm not sure what - - what he would like to do.

3 The Court had heard a motion to substitute counsel at the
4 last meeting, I - - I asked the Court not to, or to not allow
5 that substitution, that was granted. And so I have the paperwork
6 completed, depending on what Mr. Hart wants to do, and so I will
7 defer to Mr. Hart as to which - -

8 MR. HART: Can I address the Court, Your Honor?

9 THE COURT: Do you want to plead guilty or do you want to
10 set your case for trial?
11

12 MR. HART: I'll like to move for trial. I'd like to
13 address the Court too, Your Honor.

14 THE COURT: Okay.

15 MR. HART: If I may. For the record, I do have some
16 motions here, one for your, one for this gentleman here, and one
17 for the prosecutor, for my discovery. Like I said once again, I
18 have not seen none of the discovery, I would like to know what
19 the State does have against me.

20 Number two, for the record, I would like to have this man
21 quick calling my mom, harassing my mother. He's been calling and
22 falsifying information. Like I said, Your Honor, I'm looking at
23 a lot of time right now so I really don't give a - - you know - -
24 excuse my French, I really don't care. I do not want this man on
25

1 my case. If I do get a chance, I am going to do something to
2 this man. So far Your Honor, this man has not done nothing but
3 lie the whole time since day one we've been together.

4 So in my best interests, I have called OPD, they already
5 posted, sent you something over, because I called them, and they
6 told me okay were sending (inaudible) the bar association, and
7 I'm also asking for direct Your Honor, if I can get a 15 day
8 continuance because I'm waiting for a plea, a thing from them.
9 Because I reported him to his - - to his supervisor, also to the
10 bar association and also to OPD. I talked with them today, they
11 said they were supposed to have sent you something over in regard
12 to that.

14 Once again, Your Honor, this man is, you know, he's
15 harassed my mom, he's misleading her with falsified information
16 and he's - - every time I need to see him, he doesn't come like
17 until the day before I go to Court. Like I said, I have a few
18 motions right here that I'd like to serve at this time. If I
19 may, and I also have another piece of paper here that was just
20 given to me yesterday.

21 Like I said, I don't have a chance to talk to this man
22 whatsoever and in my best interests ma'am - - like I said, I know
23 I'm looking at some time here. I'd rather be represented by
24 somebody that's going to help me out.

25

1 I know, I know I'm accused of horrific crime, I
2 understand that. I'm willing to pay my consequences if need be,
3 but I'd rather be represented by counsel in a fashion that's more
4 appropriate. I mean he's ineffective counsel, he's - - and
5 lawyer misconduct - -

6 THE COURT: Thank you, sir. Mr. Davis, anything?

7 MR. DAVIS: Yes, Your Honor. We've had contact with the
8 Office of Public Defense. We've already informed them that I'm
9 still on this case. There hasn't been a substitution of counsel.
10 There is not going to be a referral to another attorney at this
11 time.
12

13 With respect to the Washington State Bar Association,
14 he's free to do whatever he wants to for that. The - - my
15 experience with this sort of thing is that the Washington State
16 Bar Association will not take any action on this sort of thing
17 based on these types of complaints. In any event, the - - what
18 he refers to is his mother - - the thing is that his mother calls
19 me, leaves messages for me to call back, and so that's what I've
20 done and so I've just simply answered whatever questions she has
21 regarding his status at this point.

22 MR. HART: That's not right, Your Honor.

23 THE COURT: Mr. Hart, please.
24
25

1 MR. DAVIS: So, with respect to the trial date or plea
2 date set, we're ready to go either way on this, and I've already
3 filled out the paperwork on it. And all I need to know - - well,
4 it sounds like it's going to be a trial date, so I've already
5 completed that and I'm going to hand that over to Ms. Carlstrom
6 in order to get the dates for this.

7 Now I'm - - I'm gone until the 11th of January, so I'm
8 not sure when the expiration date is, If we can set the trial
9 date out as far as reasonable - - reasonably possible so that
10 allows me some time to at least get up and rolling on the trial
11 notebook.

12
13 THE COURT: I think it's currently February 14, is that
14 right?

15 MS. CARLSTROM: His expiration?

16 THE COURT: Yeah. Mr. Hart, I'm denying your motion to
17 substitute counsel. I think we've been through this at least
18 once before, possibly more. And I'm going to set your case for
19 trial.

20 MR. HART: For the record Your Honor, may I have you hand
21 these to you - -

22 THE COURT: Yeah, I don't know what they are. You can
23 hand them to the Bailiff.

24 MR. HART: They're for my discovery.
25

1 THE COURT: Okay.

2 MR. HART: I have not seen them (inaudible).

3 THE COURT: You can hand them to the Bailiff.

4 MR. HART: Yes, Your Honor.

5 THE COURT: Mr. Hart, right now your expiration is
6 February 14 - -

7 MR. HART: Yes, Your Honor.

8 THE COURT: - - and if we set the case or set the trial
9 before expiration, that would be sometime in early February.

10 MR. HART: Yes, Ma'am.

11 THE COURT: Is that your request, or do you wish to set
12 it out further?

13 MR. HART: I'm still trying to get new counsel, ma'am.
14 I'm still trying to (Inaudible) so I'm not, right now I guess - -

15 THE COURT: Let's set it February 8.

16 MS. CARLSTROM: Okay.

17 MR. HART: And also, Your Honor, may I ask one more
18 question?

19 THE COURT: Yes, if you give me just a minute please.
20 Let's set omnibus January 22nd.

21 MR. DAVIS: I mean it will have to be.

22 THE COURT: January 22nd.

23

24

25

1 MS. CARLSTROM: January 22nd, okay. And then, I'm sorry
2 did the Court say the expiration is currently the 14th?

3 THE COURT: It is.

4 MS. CARLSTROM: Okay.

5 MR. DAVIS: I'm assuming you're not going to sign this
6 right?

7 THE COURT: I will indicate that you received a copy but
8 refused to sign. Counsel, we'll look at these motions here;
9 probably file them in the Court file and then figure out what to
10 do with them.

11 MR. DAVIS: This appears - - these appear to be a
12 duplicate, well, actually maybe, it's one of the same motion on
13 three - - on three separate pages. If the Court wants me to go
14 ahead and file (inaudible).

15 THE COURT: Sure, we can just. It's my practice to file
16 in the Court file whatever the Defendant wants to give me. Well,
17 my Bailiff can make you copies and send them on to you, okay.

18 MS. CARLSTROM: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. DAVIS: Thank you, Your Honor.

21 (Proceedings Concluded.)
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1 STATE OF WASHINGTON)
2 KING COUNTY SUPERIOR COURT) ss.
3)

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11 DATED this 18th day of June, 2010.

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14 CATHY L. SWANSON
15 Official Transcriptionist
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