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No. 67500-1-I

In the Washington State Court of Appeals, Division I

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City of Seattle, Respondent,

vs.

Andrea Lister, Appellant.

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Reply Brief of Appellant

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## I. Argument

**A. The lower court violated Ms. Lister's constitutional right to counsel on appeal because the court did not decide the RALJ appeal solely on the parties' briefing where the court allowed the State to introduce and argue a case that had not been briefed, and based its decision to affirm conviction on that case.**

The State is correct in pointing out that RALJ 8.4 allows a court to decide an appeal without oral argument, and that deciding an appeal without oral argument is not error. Respondent's Brief at 4. However, the State mischaracterizes the nature and substance of what actually transpired at the oral argument on July 1, 2011.

Ms. Lister has a constitutional right to counsel at any proceeding where her "rights may be lost, defenses waived, privileges claimed or waived, or in which the outcome of the case is otherwise substantially affected." *State v. Heddrick*, 166 Wn.2d 898, 910, 215 P.3d 201 (2009). The State cites to *State v. Louie* for the proposition that denial of counsel "must result in some discernible prejudice to the effectiveness of legal assistance ultimately furnished the accused." 68 Wn.2d 304, 309, 413 P.2d 7 (1966). However, the very next sentence in that case is central to the issue presented in this case: "In short, the courts must look to substance rather than labels in ascertaining whether constitutional rights to the assistance of counsel have been violated." *Id.*



If the lower court had simply dismissed Ms. Lister and the State's presence at oral argument and decided the case on the briefing, there would likely be no error. However, the court not only allowed the State to proffer legal authority at oral argument that was not included in the State's briefing, the court asked Ms. Lister to read that authority (*Seattle v. May*, 171 Wn.2d 847, 256 P.3d 1161 (2011)), and respond to it. RP 18. Essentially, the court forced Ms. Lister to be her own attorney, despite repeated objections and requests to for representation.

These actions fly in the face of the federal and state constitutions, which protect a defendant's right to representation on appeal by a person educated and trained in the law and the art of advocacy. Asking Ms. Lister to read case law not previously briefed and respond to it goes far beyond striking oral argument and deciding the case on the briefing. Ms. Lister herself indicated to the court that she was not "intelligent enough on criminal law and matters to fully represent [herself] before [the court]." RP 25.

Thus, although the State contends that this hearing was for oral argument and procedural in nature only, the facts show that what transpired at the hearing was far beyond just a procedural formality that may be waived by the rules. In fact, the court turned it into a proceeding where the outcome of the case was substantially affected by the State's introduction of *Seattle v.*



*May*. This is evidenced by the lower court's reliance on that case as authority to affirm Ms. Lister's municipal court conviction.

Substance must prevail over labels. The proceeding that took place on July 1, 2011 was not just an oral argument, but rather a substantive proceeding where Ms. Lister's rights were compromised, and which substantially affected the outcome of the case. Therefore, the lower court should be reversed and this matter remanded.

## II. Conclusion

Because the lower court's denial of counsel during the proceeding on July 1, 2011 violated Ms. Lister's constitutional rights, the lower court should be reversed and this matter remanded.

Respectfully submitted,

Date: 1/11/2013

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