

FILED
COURT OF APPEALS
DIVISION II
COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

<p style="text-align: center;">STATE OF WASHINGTON</p> <p style="text-align: center;">BY _____ DEPUTY</p> <p>State of Washington Respondent</p> <p style="text-align: center;">Vs</p> <p>Jerry Lynn Davis Appellant</p>	<p style="text-align: center;">STATE OF WASHINGTON</p> <p style="text-align: right;"><u>No. 45274-0-II (Consol.)</u></p> <p style="text-align: center;"><u>Pierce County Superior Court</u> <u>Cause No's: 12-1-03559-0 and</u> <u>13-1-00377-7</u></p>
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Comes now Jerry Lynn Davis, pro se, pursuant to RAP 10.10 (e) with statement of additional grounds for the Courts review. **1. The Elements Do Not Support A Conviction For Burglary In Cause No. 12-1-03559-0; 2. Specific Performance of Guilty Plea Agreement (DOSA) Binding Contract.**

STANDARD OF REVIEW

Appellant is requesting to come before the Court in Pro Se to raise additional (supplemental) Ground(s) pursuant to RAP 10.10(e). Appellant is without a law library for research, and prays the Court will be liberally interpreted to promote justice and facilitate the decision of this matter on their merits. **RAP 1.2(c); Haines v. Kerner, 404 U.S 519 (1972).**

Further, Appellant fully incorporates all the information in Appellant's Opening Brief filed by attorney, Stephanie C. Cunningham, as if fully incorporated herein. Appellants' Attorney has also filed an **AMENDED OPENING BRIEF** that appellant incorporates all of the information in as if fully incorporated herein. Further, Appellant posted for mailing on March 27, 2014 a **PRO SE**

ADDITIONAL SUPPLEMENTAL GROUNDS pursuant to RAP 10.10(e) that Appellant is also incorporating herein for the Courts review in this Direct Appeal. **SPECIFIC PERFORMANCE OF GUILTY PLEA AGREEMENT (DOS) BINDING CONTRACT ISSUE.**

ADDITIONAL (SUPPLEMENTAL) GROUND I

In Appellant Counsels **AMENDED OPENING BRIEF** at p.10, she states in relevant part: “There is no indication in the record that Davis understood that the facts alleged in the Declaration would not support a conviction for either the original burglary charge or the amended charge of attempted burglary. In fact, by asserting that the Declaration contained sufficient facts, the record actually shows that Davis was unaware that the alleged facts would not support a burglary conviction”.

Appellant wishes to bring to the Courts attention Facts and Evidence from the reviewable record that demonstrates Appellant did not know the elements did not exist for him to be charged with a burglary, was wishing to have a fair trial to prove his innocence, but was deprived in doing so. For example: On March 28, 2013 a pro se motion to have victim and all states witnesses interviewed before trial starts under Brady vs. The State Of Maryland, 373 U.S. 83 (1963) was filed. The alleged victim, Mr. Duvall, refused to give a deposition so trial counsel informed the trial court that the defense intended to file a motion to depose Mr. Duvall. SEE: **ORDER CONTINUING TRIAL** filed on May 30, 2013; and again on July 25, 2013. Trial counsel never did file said motion to depose Mr. Duvall regarding his TRUTHFULNESS, the record shows. Mr. Duvall, the alleged victim in cause no. 12-1-03559-0 provided a hand written statement, the FRESHEST TIME OF HIS MEMORY, indicating 1. THAT A MAN CAME DOWN ON HIS PROPERTY FIRST AND THEN AWHILE LATER A MAN AND WOMAN CAME DOWN AND TURNED TO LEAVE

AND MR. DUVALL JUMPED OUT OF THE BUSHES WITH A GUN, FROM WHERE HE WAS CLOSELY WATCHING EVERYTHING, ORDERING EVERYONE TO THE GROUND AND STARTED FIRING SHOTS.

2. THAT MR. DAVIS THREATENED TO F----- KILL HIM-- TO GET AWAY... (While Mr. Davis was being shot at), yet the NEIGHBOR makes no mention of said threat in his hand written statement. And 3. MR. DUVALL STATES IN HIS WRITTEN STATEMENT THAT NOTHING FROM THE CAR BELONGED TO HIM AS STOLEN. Trial Counsel was ineffective for not addressing the original WRITTEN STATEMENT from the victim, Mr. Duvall that would have demonstrated the ELEMENTS for burglary did not exist. Trial Counsel should have questioned that the DECLARATION FOR PROBABLE CAUSE was different than the victims WRITTEN STATEMENT at time of incident. The victim refused Appellants requested deposition upon these assertions. Trial Counsel did not conduct an investigation in cause no: 12-1-03559-0 whatsoever that would have shown insufficient evidence to support a conviction, and failed to disclose to Appellant all these facts before making an informed decision to plead guilty. Appellant contends that a manifest injustice has occurred in this matter and should be reversed. Trial Counsel deprived Appellant of his right to face his accuser by failing to file the motion to depose the victim, Mr. Duvall, as demonstrated by the reviewable record. SEE: APPENDIX/EXHIBIT. Trial Counsel did get the trial court to **ORDER FOR TRANSFER OF PRISONER, RICKY LEE POWELL**, filed on July 25, 2013, only to continue the trial and send Appellants key witness back to prison. Appellant was picking jury and had planned on going to trial on August 5, 2013 when trial counsel advised Appellant that he failed to subpoena RICKY LEE POWELL and that a plea deal was in Appellants best interest at that point which took place on the day of trial and only giving Appellant 1 and a half hours to make up his mind to take a plea deal or lose at trial. SEE: **PLEA TRASCRIPTS, P.6, "1**

DON'T HAVE HIM (POWELL) UNDER SUBPOENA"...BUT THIS ALL FACTORS INTO MY DISCUSSION WITH MR.DAVIS ABOUT HIS RISK AT TRIAL".

Appellant has diligently been attempting to receive a copy of his entire (redacted) case files, but has not been very successful. SEE: **ATTACHED LETTER FROM DEPARTMENT OF ASSIGNED COUNSEL DATED MARCH 11, 2014**, where Appellant has finally been able to read the **DECLARATION FOR DETERMINING PROBABLE CAUSE**, for the first time and requested Appellant Attorney to file the **AMENDED OPENING BRIEF** for this courts just review. CrR 4.7(h) (3) provides in relevant part: "Further, a defense attorney SHALL be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court".

Appellant submits that perhaps trial counsels performance was deficient, that the standard for effective assistance of counsel was not met under the 6th amendment of the U.S. Constitution, and that appropriate relief is warranted.

Pursuant to the **ENGEL** case, Appellant prays for the Court to reverse the guilty plea conviction in cause no. 12-1-03559-0, because clearly the elements do not exist for a conviction, coupled with compelling facts and evidence from the record. **SEE**: APPENDIX. The Washington Supreme Court overturned the **ENGEL** decision.

ADDITIONAL (SUPPLIMENTAL) GROUND II

Amended
In the ~~A~~Opening Brief Appellant Counsel argued that Appellant was eligible for a DOSA sentence pursuant to RCW 9.94A.660 (1) (c), because his prior past violence was over 10 years ago. As a matter of law the Court could have given the Appellant a chance to embrace a much

needed treatment opportunity through a DOSA sentence, and still can, which would assist Appellant with his re-entry back into society as a foundation towards him attending college.

Appellant submits that in his plea agreement he did initial for a DOSA request and that the plea deal was stipulated to on this matter. Appellant did request DOSA, initialed for the Court to consider DOSA, and had counsel strongly request a DOSA sentence during the sentencing hearing. (8/22/13 RP7). Appellant advised the Court he was hoping for DOSA under the DOSA statute. (8/22/13 RP16). The plea agreement states at page 6 (t), in relevant part: "**The Judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660**". Appellant did qualify because his past violence was over 10 years as is required by law, Id. The DOSA matter was thereby stipulated to by expressed and implied Consent pursuant to the plea agreement contract papers filed in the Court on August 5, 2013 plea hearing that all parties signed. **SEE: Attached Exhibit, Guilty Plea Agreement.**

Presently Appellant consistently attends several recovery meeting's weekly, which has become his #1 priority, because nothing else in life will matter without being clean & sober. This is paramount.

Additionally, Appellant has been accepted into the Post-Prison Education Program, and will be attending college upon his re-entry back into society. Appellant understands that his #1 priority and college educational **HOPE** are not part of the record, but prays they may be somehow taken into consideration at this time to demonstrate Appellants' strong desire and determination for complete change.

Trial Counsel was correct in stating during the sentencing hearing at P.7, lines 6-22, which states in relevant part: "Mr. Davis reminds me that he wanted to ask for a DOSA, and he believes that Ms. Oliver stated that she would not oppose that but not support it either...

If Your Honor would see fit to grant a DOSA, I think Mr. Davis would be—would benefit from that. He needs help; he needs treatment; he needs to get home to his sister as soon as possible because he's invaluable aid to her with her disabilities.

....I think this is an individual who now that he has regained his facilities, his faculties, can be a worthwhile member of a society but he needs to learn the tools. He needs to gain the tools with which to deal with life and his mental state and not self-medicate with illegal drugs".

Appellant wishes to point out and help clarify an error regarding the States' position on Appellants' DOSA request. SEE: Sentencing Hearing, August 22, 2013, P.8. Lines 24-25. "This was a stipulated sentence based on reducing two cases".

Appellant submits that a "DOSA CONSIDERATION" was in fact agreed upon in the plea agreement by all parties who signed the contract, providing Appellant was legally eligible pursuant to RCW 9.94A.660. SEE: PLEA AGREEMENT, P.6 (t), that appellant initialed, which states: "The Judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660". The plea agreement is clear and unambiguous regarding the states position and error, and for the state to now argue otherwise, wouldn't that constitute a breach in the plea agreement that was in fact signed by all parties? Appellant is now requesting to receive "SPECIFIC PERFORMANCE" of his plea agreement contract regarding DOSA that Appellant contends was a BINDING CONTRACT" "under contract law and Due Process of Law.

CONCLUSION

Pursuant to RCW 9.94A.660(1)(c), the trial court made a legal error when the State misrepresented that Mr. Davis was not eligible for a DOSA sentence opportunity, and the Court failed to properly exercise its discretion under the sentencing statutes. Mr. Davis sentence should be reversed and his case remanded for resentencing of whether he should receive a sentence under the DOSA statute as was stipulated to in the signed guilty plea agreement contract. Specific Performance is warranted and the relief requested by Appellant.

DATED this 27th day of March, 2014.

RESPECTFULLY SUBMITTED


Appellant.

Jerry Lynn Davis, Pro Se
Cedar Creek Corrections Center
P.O. Box 37, DOC #368483
Littlerock, WA 98556-0037

APPENDIX/EXHIBITS

1. BRADY MOTION TO INTERVIEW ALL WITNESSES
2. ORDER CONTINUING TRIAL X3
3. 8/5/2013 MINUTES OF PROCEEDING
4. SEE: APPENDIX/EXHIBITS SUBMITTED ON MARCH 27, 2014 (FOR DOSA/COLLEGE)
5. Dept. of Assigned Counsel (Letter) dated March 11, 2014.

AM MAR 28 2013 PM

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

12-1-03559-0 40263298 MT 03-29-13

[Original]

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Pierce County Superior Court, State of Washington

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State of Washington,
Plaintiff,

Case No. 12-1-03559-0

7

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vs.

Motion To Have Victim And All

9

Jerry Lynn Davis,

States Witnesses Interviewed

10

Defendant - Petitioner.

Before Trial Starts Under Brady

11

vs. The State of Maryland, 373 U.S. 83,

12

10 1ed2d 215, 83 S. Ct. 1194 (1963)

13

14

Comes Now: The defendant herein and respectfully
moves this Court for an order under the U.S. Supreme Court in

15

16

Brady vs. The State of Maryland, 373 U.S. 83, 10 1ed2d 215,

17

83 S. Ct. 1194 (1963) to have victim and all state's witnesses

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interviewed before the start of trial, which is on or about 5-8-2013.

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That I am the defendant and that I have a 5th, 14th

20

Amendment right of due process under the U.S. Constitution

21

to interview the victim/victims and all the states witnesses

22

in this case. Trial Starts on or about May 8, 2013.

23

Dated this 26th day of March, 2013.

24

25

By: Jerry Lynn Davis

26

Jerry Lynn Davis, Defendant -

27

CC: File, and:

Petitioner

28

I certify mailing true
copy to prosecutor.



12-1-03559-0 40613683 ORCTD 05-30-13

NIC



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)

Cause No. D-1-03559-0

vs.)

ORDER CONTINUING TRIAL

JERRY LYNN DAVIS,)
Defendant)

Case Age 25 Prior Continuances 3

This motion for continuance is brought by state defendant court.
Upon agreement of the parties pursuant to CrR 3 3(f)(1) or
 is required in the administration of justice pursuant to CrR 3 3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: MOTION TO DENY ALLEGED VICTIMS NEEDS TO BE DRAFTED, DOCKETED AND HEARD.

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF <u>5/20/13</u>	IS CONTINUED TO: <u>7/25/13 @ 8:30 am Room 260 CAAT</u>			

Expiration date is: 8/20/13 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 30th day of MAY, 2013.

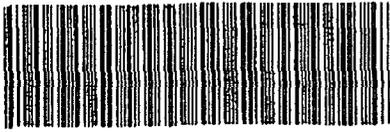
Defendant Jerry Lynn Davis
Attorney for Defendant/Bar #33603

Judge [Signature]
Prosecuting Attorney/Bar # 1862

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified Pierce County, Washington Court Reporter

This never was done!
No motion Filed.



12-1-03559-0 40928429 ORCTD 07-25-13

Motion 7/4/13
AG



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
JERRY L. DAVIES,)
Defendant)

Cause No. 12-1-03559-0

ORDER CONTINUING TRIAL

Case Age 272 Prior Continuances 4

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: *Defendant still needs to make motion for deposition of state's witnesses and needs prohibited to CB - a witness who has changed his tune.*

RCW 10 46 085 (child victim/sex offense) applies The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF:	IS CONTINUED TO: <u>7/29/13</u> @ 8:30 am Room <u>260</u> <u>COAJ</u>			

Expiration date is: 10/23/13 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 25th day of July 2013

[Signature]
Defendant
[Signature]
Attorney for Defendant/Bar # 33603

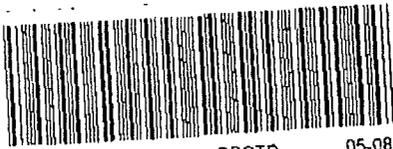
[Signature]
Judge
[Signature]
Prosecuting Attorney/Bar # 18412

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified Court Reporter

No motion ever filed to Depose Mr. Duvall.

MIC



12-1-03559-0 40492081 ORCTD 05-08-13

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
TERRY LYNN DAVIDS,)
Defendant)

Cause No. 12-1-03559-0

ORDER CONTINUING TRIAL

Case Age 144 Prior Continuances 2

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: DEFENSE NEEDS TO OBTAIN TRANSFER OF PRISONER/
WITNESS RICKY POWELL

RCW 10 46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>5/8/13</u>	IS CONTINUED TO: <u>5/30/13 @ 8:30 am Room 360 CRT</u>			

Expiration date is: 6/30/13 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 8th day of MAY, 2013

Terry Lynn Davids
Defendant
Michael
Attorney for Defendant/Bar #33603

Michael
Judge
Michael
Prosecuting Attorney/Bar # 18272

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified Court Reporter

Counsel never did issue a subpoena on my key witness Ricky Powell

RESERVING ALL RIGHTS TO PIERCE COUNTY VIOLATIONS BUREAU

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number. 12-1-03559-0

**MEMORANDUM OF
JOURNAL ENTRY**

vs.

Page 2 of 3

DAVIS, JERRY LYNN

Judge.
STEPHANIE A AREND

MINUTES OF PROCEEDING

Judicial Assistant/Clerk: Dan Vessels
Start Date/Time: 08/05/13 11:54 AM

Court Reporter JAN-MARIE GLAZE

August 05, 2013 11:53 AM Court in session. All parties present and ready to proceed. DPA Kathleen Oliver present in this matter for the State. Attorney James Schoenberger present with the Defendant who is out of custody. DPA Oliver calls the case 11:54 AM Attorney Schoenberger addresses the Court in this matter and requests the Court allow the Defendant to make a determination on a plea deal by 1:30. 11:55 AM Court inquires with State regarding their position on the plea request from Defense. DPA Oliver responds. 11:56 AM Court inquires with DPA Oliver regarding jury needs and pretrial matters. 11:58 AM Attorney Schoenberger addresses the Court regarding scheduling issue with one Defendant witness. 12:00 PM Court at recess until 1:30.

I was only given 1/2 hours to make up my mind.

End Date/Time: 08/05/13 12:00 PM

Judicial Assistant/Clerk Dan Vessels
Start Date/Time: 08/05/13 1:32 PM

Court Reporter JAN-MARIE GLAZE

August 05, 2013 01:32 PM Court reconvenes. DPA Oliver present for the State. Attorney Schoenberger present without defendant. Court inquires with Attorney Schoenberger regarding the location of his client. Attorney Schoenberger responds that he has no information regarding the location of his client. 01 34 PM Defendant appears in Court. Court informs parties jury administration will have jurors ready for voir dire at 1:45. Attorney Schoenberger informs the Court his client will accept a plea in this matter. Attorney Schoenberger will review the plea agreement with the defendant.

01.51 PM Court reconvenes. DPA Oliver addresses the court regarding a Plea in this matter 01:53 PM Attorney Schoenberger addresses the Court regarding entry of plea in this matter. 01:53 PM Court reviews Declaration of Probable Cause in this matter. 01:55 PM Court accepts amended information and begins colloquy with Defendant. 01:57 PM Court reviews Statement of Defendant on Guilty Plea with Defendant. 02.05 PM Defendant

JUDGE STEPHANIE A AREND Year 2013

000175

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 12-1-03559-0

**MEMORANDUM OF
JOURNAL ENTRY**

vs.

DAVIS, JERRY LYNN

Page 3 of 3

Judge:
STÉPHANIE A. AREND

MINUTES OF PROCEEDING

enters guilty to amended charge. 02:06 PM Attorney Schoenberger requests Court retain this matter for sentencing. 02:06 PM DPA Oliver requests sentencing proceed with the CD courts Court inquires with Attorney Schoenberger regarding time needed for sentencing. Attorney Schoenberger responds. 02:10 PM Court sets sentencing for August 22nd at 9:00 in CD1. 02:11 PM Court inquires with DPA Oliver regarding Conditions of Release. 02:11 PM Parties respond. Court issues ruling regarding PR on 12-1-03559-0 and will require a rider on 13-1-00377-7. 02:18 PM Court at recess.

End Date/Time: 08/05/13 2:19 PM



Pierce County

Department of Assigned Counsel

MICHAEL R. KAWAMURA
Director

949 Market Street, Suite 334
Tacoma, Washington 98402-3696
(253) 798-6062 • FAX (253) 798-6715
email: pcassgnncnsl@co.pierce.wa.us

March 11, 2014

JERRY DAVIS; #368483
CEDAR CREEK CORRECTIONS CENTER
P.O. BOX 37
LITTLEROCK, WA 98556-0037

RE: Request for Records Disclosure; State v. Davis, Pierce County Superior Court
Cause #'s: 12-1-03559-0 and 13-1-00377-7

Dear Mr. Davis:

I received your response letter, dated March 4, 2014, in regards to the final documents that were mailed to you on March 3, 2014.

Your letter states, "Mr. Schoenberger already has my discovery, police reports, etc., so will you please have him produce my discovery, as he is required to do."

In response to your recent letter, I've enclosed a printed copy of the Criminal Rule, CrR 4.7, Regulation of Discovery, see (h)(3). As referenced in the highlighted paragraph, **unless the prosecutor agrees to release redacted discovery or there is a court order, Defense attorneys are not permitted, by law, to provide a copy of the discovery.** As previously stated in the letters dated, January 21, 2014 and March 3, 2014, the Prosecuting Attorney's Office will not approve the release of redacted discovery, including police incident reports and narratives, on post disposition cases (i.e. once the case is closed). Your cases were closed/disposed of on August 22, 2013. Accordingly, this office is unable to release any copies of the discovery.

We previously provided you with Public Records Request forms and contact addresses for South Sound 911 (formerly LESA Records) and the Pierce County Prosecuting Attorney's office, for any requests regarding law enforcement incident reports and narratives. I have enclosed these forms again, for your convenience.

Aside from the previously enclosed documents Assigned Counsel has no further documents responsive to your request.

If you have any questions, believe we have somehow misunderstood your request(s) or wish to clarify your request, please do not hesitate to contact this office.

Sincerely,

Char Colwell, Legal Assistant
On Behalf of
Anne Smith
Program Manager/Public Records Officer

Enclosure(s) as indicated

