

72851-2

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FILED
COURT OF APPEALS
DIVISION ONE

JUL 11 2016

THE COURT OF APPEALS OF THE STATE OF WA
DIVISION ONE

STATE OF WASHINGTON
Respondent,

No. 72851-2-1

v.

DERICK OWUSU
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
STATE OF WASHINGTON, KING COUNTY

APPELLANT'S OPENING BRIEF

DERICK OWUSU
Pro se Appellant

A.H.C.C
P.O. Box 2049
Airway Heights, WA 99001

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1 A. INTRODUCTION

2 This is a direct appeal proceeding under RAP 10.2(a), brief
3 of appellant. Appellant Derick Owusu is appearing by and through
4 Self-Representation (pro se). Appellant asserts in this appeal
5 violations of his federal and state constitutional rights arising
6 from his prosecution in King County Superior Court, Cause No.
7 14-1-01308-2 SEA for allegedly identity theft (numerous counts).
8 Specifically, appellant assigns errors of denial of his motions to
9 proceed pro se at trial. The trial court denied his requests
10 for pro se as untimely. However, it permitted pro se in his
11 other cases. The requests were made simultaneously.

12 Respondent in this appeal is the State of Washington;
13 deputy prosecuting attorney Lindsey M. Grieve.

14 Appellant Derick Owusu now respectfully moves
15 this Court to Reverse and Remand his convictions
16 because the trial court failed to grant his right to pro se
17 at trial. For the reasons discussed below, appellant's
18 relief sought should be granted.

19 B. ASSIGNMENT OF ERROR

20 1. The trial court erred in denying Mr. Owusu's
21 motions to discharge counsel for substitution of appointed
22 counsel on 06/09/2014, 06/17/2014, 09/26/2014, and
23 10/20/2014.

24 2. The trial court erred in entering the order of
25 10/03/2014, denying Mr. Owusu's motion to proceed pro se
26

1 as untimely.

2 C. ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

3 Does the refusal by a court appointed attorney,
4 for the accused, to present a defense clearly
5 supported by law constitute a meritorious reason to
6 have counsel dismissed or replaced? (Assignment of
7 Error 1).

8 The question before this Court is whether a
9 defendant in a state criminal trial has a consti-
10 tutional right to proceed without counsel once he
11 voluntarily and intelligently elects to do so. Stated
12 another way, the question is whether a state may
13 constitutionally hale a person into it's criminal courts
14 and there force a lawyer upon him, and even when
15 he insists that he wants to conduct his own
16 defense? (Assignment of Error 2.)

18 D. STATEMENT OF THE CASE

19 1. Charges and Appointment of Counsel

20 In the year of 2012, Mr. Owusu was charged with
21 identity theft in the first degree (three counts), under
22 cause number 12-1-02366-9 SEA: CP 28-29. He was
23 booked in jail and posted bail.

24 On 03/27/2014, the Bellevue Police Department
25 (BPD) arrested Mr. Owusu for allegedly Patronizing a
26

1 prostitute and booked him in jail under cause number
2 14-1-02092-5 SEA: CP 12-13.

3 Subsequently, the BPD applied for a search
4 warrant for his apartment at the Bravern Condo-
5 miniums wherein he lived. The search warrant allegedly
6 yielded credit cards under names besides Derrick
7 Owusu. The state then charged Mr. Owusu with
8 possession of a stolen vehicle, attempt to elude a
9 pursuing police vehicle, forgery (two counts), identity
10 theft in the first degree (counts), identity theft
11 in the second degree (counts), and possession of
12 stolen mail under cause number 14-1-01308-2 SEA:
13 CP 14-18.

14 The court appointed counsel, Jeffrey B. Goldman
15 to represent Mr. Owusu.

16 2. Mr. Owusu made Several Motions to 17 Discharge Counsel and to be Appointed 18 a Substitute Counsel

19 On 06/09/2014, at a motions hearing, Mr. Owusu
20 made a motion to discharge Mr. Goldman and to be
21 appointed a substitute counsel.¹ RP (June 09, 2014) at 2.

22 THE DEFENDANT: YOUR HONOR ... FOR ONE, THERE'S
23 VERY POOR COMMUNICATION. WE JUST DON'T SEEM

24 ¹The record consists of many proceedings as dates listed
25 from one proceeding to another. This brief will refer to the
26 the date in which the citation to the record is made, along
with the page number. E.g., RP (June 06, 2014) at 20.
References to the designated clerk's papers will also be

1 to get along.

2 I strongly feel like he moves the court
3 in a way that will allow the state to win
4 motions against me.

5 I have made several requests of Mr.
6 Goldman to get a bail reduction hearing set
7 and other motions, and it's been up to this day
8 there's been nothing done. And everytime he
9 tells me he'll do it, but it's never done. Based on
10 these reasons, I just don't want him repre-
11 senting me anymore.

12 THE COURT: I always ask counsel on these
13 kind of hearings regarding of what the reason
14 is, whether they have anything to say?

15 MR. GOLDMAN: Well, I would agree with Mr.
16 Owusu that communication's broken down. I am
17 his first counsel . . . We just sit down to dis-
18 cuss the case, and it's just -- we're not
19 connecting.

20 RP (June 09, 2014) at 6. The attorney had no intent
21 of defending Mr. Owusu and even conceded to his allega-
22 tions.

23 THE COURT: Mr. Goldman is very competent
24 counsel. He's new on some cases. He's not new on
25 at least one of them. I think that . . . Mr.
26 Owusu you and Mr. Goldman need to talk further
before I would seriously even consider a motion
to discharge. I don't know that discharging
counsel would lead to any different results. The
motion's denied.

27 RP (June 09, 2014) at 7

28 On 06/17/2014, the court reconvened to hear the State's
29 Motion's to Join Offenses for a Consolidated Trial. RP (June
30 17, 2014) at 3. When the court reconvened, Mr. Owusu filed
referred by page number. E.g. CP 1-2.

1 a motion to discharge counsel. Id. The root of the motion
2 was authored as follows:

3 In my defense, he has no relevant information
4 objecting to the state's motions to join
5 cause # 12-1-02366-9 and 13-1-14221-
6 SEA.

7 Based on these many reasons, I am making this
8 request that Jeffrey B. Goldman is no longer
9 welcome in representing me.

10 See Order Terminating Counsel, Appendix A.

11 The court's inquiry of the motion:

12 THE COURT: ... Finally, you say you'd like
13 to discharge Mr. Goldman because he has
14 no relevant knowledge about the state's motion
15 to join the 12 and 13 cause numbers, but he
16 has, in fact, filed a brief. It's quite compre-
17 hensive and talks about all the facts in your
18 case and why it shouldn't be joined. So I do-
19 not think that's right. I think he has shown
20 an extensive knowledge of the facts in your
21 case and he's defending you on that motion to
22 join.

23 So I'm going to deny your motion to dis-
24 charge again, and we're going to move forward
25 with this.

26 RP (June 17, 2014) at 18-20.

At the omnibus hearing on 09/26/2014, Mr. Dwusu
read into the record another motion to discharge counsel.

RP (September 26, 2014) at 13. Mr. Dwusu had become
frustrated and doubtful whether the attorney filed his
individual motions previously. On leave of the court, Mr.
Dwusu read the motion into the record: 'THE DEFENDANT:
I have a motion to discharge counsel.' THE COURT: All right

1 Mr. Owusu? Id.

2 THE DEFENDANT: The court appointed Mr.
3 Goldman to counsel me ... His assistance
4 is malicious.

5 Mr. Goldman have done little or nothing
6 to help. More specifically, he has produced
7 zero motions to dismiss the many false
8 allegations against me on numerous police
9 doing racial profiling ...

10 The attorney has spent over the past
11 six months writing with the many conti-
12 nuances he sought. Outside of court, Jeffrey
13 will inform me he is "ready for trial." But
14 [at] the omnibus hearings, as soon as he learns
15 the prosecutor is having witness unavailability
16 issues, Goldman will move the court for a
17 continuance along with her.

18 This is obvious that I find Mr. Goldman
19 aiding the prosecutor to keep me in confine-
20 ment. During legal consultations, the attorney
21 will interrogate what I advice to be my
22 defense as if we were in trial and he was
23 the prosecutor.

24 I've become very concerned about his
25 capability. I figured then this attorney
26 means harm.

For the court's record, Jeffrey B.
Goldman is fired. Nothing done or represented
by this attorney is intended to defend me.

RP (September 26, 2014) at 13-15.

THE COURT: But as far as I understand it, Mr.
Goldman has been working diligently to prepare

I think that ... in my judgment, having
seen Mr. Owusu numerous times and indivi-
dually managing Mr. Owusu's case as I have
over the past several months, there isn't one
who would get along with Mr. Owusu and so
the motion to discharge is denied.

RP (September 26, 2014) at 6.

1 Again, the court did not explore into the issues raised
2 concerning counsel's Response to State's Motion to
3 Join and simply put the onus on Mr. Owusu.

4 **3. Mr. Owusu made two Legitimate Requests**
5 **For Self-Representation on 09/26/2014**
6 **and 10/03/2014**

7 09/26/2014. At this omnibus hearing, Mr. Owusu
8 requested to proceed pro se. RP (September 26, 2014)
9 at 25. Mr. Owusu unequivocally and voluntarily asser-
10 ed his right for self-Representation and he did so
11 knowingly and intelligently, and in a timely fashion.
12 Id. at 25-26. The court deferred ruling on the
13 motion and ordered Mr. Owusu to come back
14 "next Friday." Id. at 26. The colloquy was as follows:

15 THE COURT: you're prepared to go pro se
16 without any interruption in the trial date?

17 THE DEFENDANT: I will proceed pro se right
18 now if you get rid of this guy. And I'm not
19 Equivocal. I am certain.

20 THE COURT: you understand that you would be
21 proceeding pro se and you would have no counsel,
22 but I would not continue the case?

23 THE DEFENDANT: I am certain, **yes** indeed.

24 THE COURT: Yeah. Well, I'm going to have you
25 sleep on that. We'll talk about it next week.
26 Next Friday.

27 ²Part of the record was transcribed in a manner as
28 if Mr. Owusu was talking over the court and there were also
29 some spelling errors. Mr. Owusu asserts that although frus-
30 tuated, he did not talk over the court.

1 THE DEFENDANT: I don't need anymore time to
2 decide that. I thought about this. I've had
the last month and a half to think about it.

3 AP (September 26, 2014) at 25-26.

4 ³10/03/2014. The court reconvened after Judge
5 Rogers deferred ruling on Owusu's motion to go pro
6 se. After establishing that the request was unequivocal,
7 knowing and intelligent, the court, however, denied the
8 motion as untimely. In the court's authored order, it
9 stated:

10 ⁵Mr. Owusu's request is untimely, at least for
11 14-1-02092-5 and 14-1-01308-2. These cases
12 are on the eve of trial. His request to go pro
13 se is Denied. The Court will consider his
14 request in the joined cases 12-1-02366-9 at
a later time once the first trials are completed.

Order On Oral Motion for Pro se Status, Appendix B.

15 This case: 14-1-01308-2 SEA was then assigned
16 to Judge Dean Lum. Although trial did not commence
17 until 10/22/2014. Appendix C. At the conclusion of
18 the trial, Mr. Owusu was found guilty on 12 counts,
19 CP 100-106 and 108-112, and sentenced to a total
20

21 ³The record for 10/03/2014, though, emphasized to
22 Nelson Broman & Koch, it was never ordered. Mr. Owusu
23 have arranged with CR Kennedy to have this hearing trans-
cribed

24 ⁴Despite denying the right as untimely for cause
25 numbers 14-1-01308-2, the court later allowed Mr. Owusu to
26 represent himself in the remainder cases shortly before
the jury rendered guilty verdicts in this case: 14-1-01308-2.
Mr. Owusu represented himself with no sign of disruptive behavior

1 of seven years in prison. Owusu appealed.

3 E ARGUMENT

4 1. Rights of the Accused

5 The Constitution of the United States
6 Amendment 6 provides in part:

7 In all criminal prosecutions, the accused
8 shall enjoy the right to ... the assistance of
9 counsel for his defence.

10 Similarly, The Constitution of the State of Washington
11 Article I Section 22 explicitly provides in part:

12 In criminal prosecutions, the accused shall
13 have the right to appear and defend in person
14 ...

15 2. The trial court Erred in denying Mr. 16 Owusu's Motions to Discharge Counsel 17 and Appoint a Substitute Counsel 18 depriving Him of His Sixth Amendment 19 and WASH. CONST. Art. I Section 22

20 Whether to grant a defendant's request for
21 substitution of appointed counsel is a matter addressed
22 to the trial court's discretion. *State v. Schaller*, 143,
23 Wn. App. 258, 267, 171 P.3d 1139 (2007). A def-
24 endant seeking substitution of appointed counsel be-
25 cause of dissatisfaction of counsel must show good cause
26 such as conflict of interest, an irreconcilable conflict,

1 or a complete breakdown in communication. *Id.* at 267-
2 68. It is not enough that the defendant has
3 lost confidence or trust in counsel. *State v.*
4 *Stenson*, 132 Wn. 2d 668, 940 P.2d 1239 (1997).
5 The defendant and counsel must be at odds as to
6 prevent the representation of an adequate defense.
7 *Schaller*, 143 Wn. App.

8 When reviewing a trial court's denial of a
9 defendant's motion[s] for substitution of appointed
10 counsel with whom the defendant claims to have had
11 an irreconcilable difference, an appellate court
12 considers (1) the extent of the conflict, (2) the
13 adequacy of the trial court's inquiry into the conflict,
14 (3) the timeliness of the defendant's motion for sub-
15 stitution of counsel, and (4) the effect the conflict
16 had on the representation provided. *In re Pers.*
17 *Restraint of Stenson*, 142 Wn. 2d 710, 724, 16,
18 P. 3d 1 (*Stenson II*); *Schaller*, 143 Wn. App. 270.
19 If the representation was adequate, prejudice must
20 be shown.

21 As enumerated in *Stenson II*, the factors a trial
22 court utilizes to determine whether to grant a sub-
23 stitute counsel [177 P. 3d 1146] are "(1) the rea-
24 sons given for the dissatisfaction, (2) the court's
25 own evaluation of counsel and (3) the effect of any
26 substitution upon the scheduled proceedings." *Stenson*

1 II, Wn. 2d at 723.

2
3 a. Irreconcilable Conflict

4
5 i. The refusal by Mr. Goldman to engage
6 in a motion to dismiss and set a bail
7 reduction hearing for Mr. Owusu
8 prompted substitution of counsel

9 One of the reasons Mr. Owusu gave for his dissa-
10 tisfaction with the appointed attorney was: "In my de-
11 fense, he has no relevant information objecting to the
12 state's motion to join cause numbers 12-1-02366-
13 4 SEA and 13-1-14221-6 SEA." Appendix A, pg. 2.
14 Rather, Goldman had objected but his response
15 ostensibly contributed to the state's request: "The
16 above fact pattern is typical for an individual
17 committing the alleged crime." CP 22-24 Pg 3. (under
18 cause no. 12-1-02366-9 SEA)

19 The root of the 2013 information was that
20 "On 10/11/2013, the defendant used the identity of
21 James Pankey to attempt to cash a forged check."
22 States Motion to Join Offenses for a Consolidated
23 Trial. The state had requested bail in the amount of
24 \$20,000.00. Appendix D. Furthermore, the state went

25 ⁵ The state's motion to join was not listed in the
26 clerk's papers. References to this motion will be referred to
by name and page number.

1 before Judge Kessler, and underlied this as a new charge,
2 in part, to find Mr. Owusu in violation of cause
3 number 12-1-02366-9 bail conditions. *Id.* Misleadingly,
4 the court increased that bail from \$10,000 to
5 \$100,000.

6 ⁶In the face to face visit, Mr. Owusu and Mr.
7 Goldman reviewed the government's discovery and
8 learned that Owusu was not the suspect depicted in
9 the Bank of America surveillance images committing this
10 crime charged, that is, 10 Theft 1/ cause no. 13-1-
11 14221-6. Mr. Owusu then requested that a motion to
12 dismiss this information supersede Goldman's response.
13 But said Goldman, "No, I'm not gonna do that." Owusu
14 repeatedly asked Goldman to schedule cause no. #
15 12-1-02366-9 for a bail reduction hearing ("In his
16 2012 case, the bond had been increased... because
17 he committed this new crime."); Appendix D. The
18 attorney opposed and said, "That is not necessary, I'm
19 not gonna do that."⁸

20 The refusal by appointed counsel for a criminal
21 defendant to present a defense clearly unsupported
22 by law or precedent does not constitute a meritorious
23

24 ⁶As ordered by the court, Mr. Owusu requested a
25 face to face visit with the attorney. See RP (June 04, 2014)
26 at 7. Mr. Owusu never once refused to talk with the
attorney. Unlike Schaller. (The court held that defendant's
refusal to talk with his attorney did not constitute comm. breakdown

1 reason to have counsel dismissed or replaced. A criminal
2 defendant may not raise the issue of another person's
3 involvement in the crime unless there is a train of
4 facts and circumstances which tend clearly to point
5 to someone other than the defendant as the guilty
6 party. In re Lord, 123 Wn. 2d 296, 316, 868 P.2d
7 835, (1994), Mak, 105 Wn. 2d at 716-17; State v.
8 Maupin, 128 Wn. 2d 918, 927-28, 913 P. 2d 808
9 (1996).

10 On 10/30/2014 when granted pro se status for
11 cause numbers 12-1-02366-9 and 14-1-02012-5,
12 Mr. Owusu moved to dismiss the information on ac-
13 count that he was racially profiled and not the sus-
14 pect depicted in the Bank of America surveillance images.

15 Certified photos of Mr. Owusu and still photos
16 of the suspect depicts two different black
17 males. Mr. Owusu has a "mole" on the fore-
18 head just above his right eyebrow.

19 The mole that is apparent on "Owusu DOL"
20 photo and booking photo is absent on the
21 "three of the suspect photo stills from
22 Bank of America videos." (internal documentation

23 7 The attorney was so hostile that Mr. Owusu filed a
24 1983 Civil Rights Complaint against him. See Owusu v. King
25 County Superior Court, et al. Case No. C14-1357-ASL-MAT.
26 Mr. Owusu sought an order from the District Court to
dismiss the attorney. The attorney had refused to withdraw.

8 Mr. Owusu subsequently have sued the City of
Bellevue for false arrest, false imprisonment, and Racial
Discrimination. See U.S. District Case No. C15-1006-JLR-
JPP. Service was ordered on 03/29/2016 directing the
18 U.S. Marshal to summon the detectives.

1 omitted.)

2 Motion and Declaration for Pretrial Dismissal (12-1-
3 02366-9) CP 100-142. On 04/15/2015, the prose-
4 cutor Ms. Grieve conceded and dismissed this infor-
5 mation. Appendix E⁹

6 Here, in light of existing Washington case
7 law on this subject, the refusal by Mr. Goldman to
8 file a motion to dismiss this case and set a bail
9 reduction hearing was a meritorious reason to
10 have counsel dismissed or replaced. And Goldman's
11 refusal to set forth these requests placed defendant
12 and counsel at odds warranting substitution of
13 appointed counsel.

14 ii. The CrR 3.6 hearing was critical to
15 Mr. Owusu's defense and proved that
16 its omission and self-defense
17 theory by counsel was spiteful

18 Another reason Mr. Owusu was steadfast in dis-
19 charging counsel was due to his "Self-Defense" Theory.
20 RP (June 20, 2014) at 9. Concerning cause no. 14-1-
21 02092-5 SEA, the state charged Mr. Owusu with
22 Assault in the third degree: "That the defendant on
23 03/27/2014, did assault Ben Richey, a law enf
24 enforcement officer. CP 12-14. Upon arrest, the BPD
25 detectives James Brach and Richey, applied unreasonable
26 excessive force that resulted in a contusion to Mr.

1 Owusu's upper extremity, indulged to beating him,
2 resulting in severe abrasions unto his face. Mr.
3 Owusu was rushed to the OHMC Emergency where he
4 was diagnosed. Thereupon, Det. Richey falsely alleged:
5 "Derick grabbed unto my genitals . . ." As the heart
6 of the assault 3. The doctor's report alarmed that this
7 matter was purported to immune both the detectives
8 from Mr. Owusu's potential civil claims. Here, at the
9 case management hearing, Mr. Goldman was asserting
10 a Self-Defense Theory:

11 THE COURT: And what's the nature of --

12 MR. GOLDMAN: . . . A self-defense argument.

13 THE COURT: On the assault in the third degree?

14 MR. GOLDMAN: That is correct, Your Honor.

15 RP (June 20, 2014) at 9.

16 [MR. GOLDMAN:] Well the fact of the matter
17 is . . . it is a self-defense case . . .

18 Regardless of the state's analysis to the
19 defense argument, it is key to Mr. Owusu's
20 rights that he is able to present his self-
21 defense case to the jury.

21 RP (June 20, 2014) at 11.

22 For in a very real sense, it was never Mr. Owusu's
23 defense but, the state's assault case could easily and
24 effectively be proven by the strategy of self-defense.

25 Id.

26 20

1 Once granted pro se (CP 21 under no 14-1-02092-5) Mr. Dwusu
2 rectified the language. Per the order on Omnibus Hearing
3 dated 10/22/2014: "The general nature of the defense
4 is: police brutality/general denial — defendant is not
5 claiming self-defense." Appendix F. Moreover, Mr.
6 Dwusu moved for a CrR 3.6 hearing. Appendix F. And
7 a motion to dismiss The Assault 3. CP 68-166.
8 Though the motion to dismiss was denied, the
9 CrR 3.6 hearing was critical to Mr. Dwusu's defense:

10 JUDGE SCHAPIRA: I found that "two dis-
11 tint things in Detective Richey's testimony
12 before the court are improbable."

13 MS. GRIEVE: I think that is an issue for
14 the jury.

15 JUDGE SCHAPIRA: This goes to the heart of
16 the assault 3.

17 MS. GRIEVE: ... One of the remedies is ...
18 suppression of specific evidence or to
19 dismiss. Dismissal is an extreme remedy.

20 JUDGE SCHAPIRA: Okay, I'll just eliminate
21 the detective then. And we'll see if you
22 can proceed with your case. He cannot
23 testify about his injury.

24 MS. GRIEVE: You're essentially dismissing the
25 assault charge?

26 JUDGE SCHAPIRA: ... That is my ruling.

1 RP (March 31, 2015) at 100 - 108 (under 14-1-02092-5/
2 73658-2-I).

3 The suppression was critical as the jury found
4 Mr. Owusu, NOT GUILTY of the Assault in the third
5 degree, CP 167. Contrarily, Mr. Goldman had indicated:
6 "No motion to suppress evidence pursuant to 3.6.
7 hearing shall be made." Appendix G. For without a
8 suppression of the detective's false testimony, a
9 guilty verdict was likely. Mr. Goldman's inadequate
10 and malicious representation in the assault case, was
11 carried out in this case: 14-1-01308-2.

12
13 iii. Mr. Goldman conspired with Ms.
14 Grieve to reveal the attorney-client
15 communication between him and Mr.
Owusu

16 In the motion and Declaration Directing Change of
17 Attorney, Mr. Owusu stated therein: "There is a conspiracy
18 here; the public defender is only appointed to investi-
19 gate me, gain knowledge, and forward it for prosecution"
20 CP 52-55 Pg 293. During the voir dire process on
21 10/22/2014, Mr. Goldman, upon the state's request, seized
22 Mr. Owusu's notes that he had been making for him
23 for selecting the jury members that he preferred, and
24 dismissing the one's he didn't like. RP (October 22,
25 2014) at 11. Pretexually, the state alleged that Mr.
26 Owusu had taken her trial brief out of the courtroom.

1 Mr. Owusu was given upon request, a copy of the state's trial
2 brief by Goldman. Mr. Owusu had been communicating with
3 counsel during the *viore diore* by notes. This is what the
4 state wanted. These notes consisted of the prospective jury
5 members which Mr. Owusu was directing towards the panel.
6 The notes also consisted of interrogatories for the state's
7 witnesses. Appendix H.⁹ Mr. Goldman upon the state's
8 request, seized and revealed to the prosecutors [Ms. Grieve
9 and Mr. Marchesano] the notes. *Id.*

10
11 MS. GRIEVE: I have seen the defendant being
12 taking notes... I know earlier today he had
13 taken notes with witnesses names on them and
14 defense counsel brought that to our attention
15 and redacted that information...

16 And that's the state's concern. I know
17 the defendant's been looking through the jury
18 information sheets, and defense counsel's
19 been helpful...

20 MR. GOLDMAN: ... So I earlier in the day,
21 Mr. Owusu had written down some names...
22 There was a, I guess short dispute... Mr.
23 Owusu has a lot of redacted discovery in
24 his possession... And you know, the risk
25 here for him losing access to basically
26 all the papers he has and not being able
27 to take notes in court if he proceeds this
28 way. And I think he gets that at this point!

29 THE COURT: Doesn't that impinge on some
30 Sixth Amendment issues? I've actually never
31 came across this, but you know. The fact

23

32 ⁹ Upon the court's instruction of the state to
33 return Mr. Owusu's notes, the state withheld
34 the central part of the notes and never returned
35 it in full. Attached in Appendix H is all Mr. Owusu

1 he's been taking his own notes ... he should
2 A, know who the witnesses are against him
3 and B, know how to prepare and help his
4 attorney cross examine. I don't know how
5 he would be able to do that unless he
6 was able to discuss and memorize the
7 names of the people against him.

8 So what's the state's position? you
9 have further refinement of this issue?

10 Ms. GRIEVE: Defense counsel, I think has
11 done a very good job of trying to police
12 what paperwork leaves this courtroom

13 THE COURT: That being said, I don't think
14 I'm going to police the defendant's personal
15 notes. I think there's a pretty good argument
16 that -- that's privileged work product.

17 AP (October 22, 2014) at 11-16. The prospective jury
18 members that Mr. Owusu anticipated were subsequently
19 dismissed by the prosecution. The appointed counsel
20 was intriguing against Mr. Owusu.

21 The Supreme Court observed that a defendant
22 cannot receive effective representation unless he is able
23 to confer with his attorney in private. *State v. Cory*,
24 62 Wn 2d at 374. See also *State v. Granacki* 90 Wn.
25 App. 598, 959 P. 2d 667 "No conviction can stand no
26 matter how overwhelming the evidence of guilt, if the
accused is denied the effective assistance of counsel."
Cory at 376. (citing *Glassier v. United States*, 315 U.S.

1 60, 76, 62 S. Ct. 457, 467, 86 L. Ed 680 (1942)).

2 The motion And Declaration Directing Change of
3 Attorney was substantial truth and should have been
4 granted. According, Mr. Owusu's convictions must be
5 reversed.

6
7 iv. The trial court's inquiry into The
8 Conflict was inadequate

9 When a defendant raises a seemingly substantial
10 complaint about counsel, The judge "has an obligation
11 to inquire thoroughly into the factual basis of defendant
12 dissatisfaction." *Hurt* 557 F. 2d at 163; see also
13 *Hudson*, 686 F. 2d 826, 824 (9th Cir. 1982), cert.
14 denied 461 U.S. 916, 103 S. Ct. 1986, 77 L. Ed 2d
15 285 (1983); Schwarzer, *Dealing with incompetent*
16 *counsel -- The trial judge's role*. *Harv. L. Rev.* 663,
17 652, (1980). The trial court must make the kind of
18 inquiry that might ease the defendant's dissatisfaction,
19 distrust, or concern. *Hudson*, 686, F. 2d at 824. That
20 inquiry must be on the record. (quoting *Smith v. Lochhart*
21 923 1314, 1320 (8th Cir. 1991))

22 In *United States v. Adelzo-Gonzalez*, 260 F. 3d
23 772; (9th Cir.) the defendant argued that denial of his
24 motions to substitute court appointed counsel deprived
25 him of his Sixth Amendment right to counsel. The Court
26 of Appeals found that the district court did not make an

1 adequate inquiry and failed to recognize material break-
2 down in trust and communication between defendant
3 and his court-appointed attorney. Despite clear indi-
4 cations of an irreconcilable conflict between defendant
5 and the attorney the court denied defendant's requests
6 for a new attorney on three occasions. Defendant
7 stated that he and the appointed counsel "were not
8 getting along," ... and that counsel had threatened to
9 sink defendant for 105 years ... The appointed counsel
10 opposed defendant's motions ... counsel openly called
11 defendant a liar and suggested that he had been
12 coached by someone. The Court of Appeals held that
13 the district court's emphasis on counsel's competence
14 and capacity to provide adequate representation, rather
15 than on the status and quality of the attorney-client
16 relationship, was misplaced. The Court of Appeals
17 (1) Reversed the District court's denial of two of def-
18 endant's motions to substitute counsel, (2) vacated
19 defendant's convictions and sentence, and (3) Remand
20 for further proceedings.

21 The same is true here. The trial court failed to
22 recognize material breakdown in trust and communication
23 between Mr. Owusu and Mr. Goldman. Mr. Owusu
24 expressed: "This is obvious that I find Mr. Goldman
25 aiding the prosecutor to keep me in confinement." RP
26 (September 26, 2010) at 14. Hence, Counsel openly stated:

1 'And I think he gets that at this point.' RP (October
2 22, 2014) at 13. The Court itself stated: "I've actually
3 never come across this." Id., at 13. Yet it refused
4 to appoint a different attorney. The trial court failed
5 to recognize material breakdown in trust and com-
6 munication. Moreover, the trial court's emphasis on counsel's
7 competence was misplaced. In cause no. 14-1-02092-5
8 e.g., the CrR 3.6 hearing was critical to Mr. Owusu's
9 defense and proved that it's omission and self-defense
10 theory by counsel was spiteful. Moreover, the refusal by
11 Goldman to engage in a motion to dismiss cause no.
12 13-1-14221-6, rather his Response ... was denied.
13 Whereas Mr. Owusu, a layman (by pro se), argued these
14 motions successfully. Now, Mr. Goldman's motions, from
15 every aspect, argued before the trial court in this case:
16 14-1-0308-2 SEA was denied. Erroneously, counsel was
17 not competent. Cf: RP (June 09, 2014) at 7. And discharging
18 counsel would have absolutely led to different results.
19 Id. The denial, of Mr. Owusu's motions to substitute
20 counsel deprived him of his Sixth Amendment right to
21 effective assistance of counsel. This Court should there-
22 fore Reverse and Remand Mr. Owusu's convictions in
23 accordance with *Adelzo - Gonzalez*,

v. Mr. Owusu's motions for substi-
tution of counsel were timely

24
25 Mr. Owusu's first motion for substitution of the
26 court appointed counsel was fairly brought on 06/29/2014

1 at a preliminary hearing. Next on 08/17/2014, 09/26/2014
2 and (the Motion and Declaration Directing Change of
3 Attorney) 10/20/2014, before the jury was sworn and
4 impaneled. Therefore, Mr. Owusu's motions to discharge
5 counsel for appointment of a substitute counsel were
6 made timely.

3. Mr. Owusu's Right to Self-Representation was Unjustifiably Denied and His convictions Requires Reversal by Law

11 Accused defendants have an explicit right to
12 Self-Representation under the Washington Constitution
13 and an implicit right under the Sixth Amendment to
14 the United States Constitution. WASH. CONST. art I
15 Section 22 ("the accused shall appear and defend in
16 person"); *Foretta v. California*, 422 U.S. 806, 819 95
17 S.Ct. 2525, 45 L.Ed. 2d 562 (1975). This right
18 is so fundamental that it is afforded despite its detri-
19 mental impact on both the defendant and the adminis-
20 tration of justice. *Foretta*, 422 U.S. at 834, 95 S.Ct.
21 2525; *State v. Vermillion*, 122 Wash. App. 844, 51
22 P.3d 188 (2002). "The unjustified denial of the [pro-
23 se] right requires reversal." *State v. Stenson*, 132
24 Wash. 2d 669, 737, 940 P.2d 1234 (1997) (emphasis
25 added).

1 When a defendant requests pro se status, the
2 trial court must determine whether the request is
3 unequivocal and timely. *Stenson*, 137 Wash. 2d at
4 737, 940 P.2d 1239. Absent a finding that the re-
5 quest was equivocal or untimely, the court must
6 determine if the defendant's request is voluntarily,
7 knowing and intelligent, usually by colloquy. *Faretta*,
8 422 U.S. at 835, 95 S. Ct. 2525; *State v. Stegal*,
9 124 Wash. 2d 719, 881 P.2d 979 (1994).

10 Mr. Owusu made two legitimate motions to
11 represent himself on 09/26/2014 and 10/03/2014.
12 Though the court deferred its decision on 09/26,
13 he renewed his request on 10/03, when the court
14 reconvened. As such, these motions must be considered
15 separately.

16 09/26/2014. Owusu's motion for pro se status
17 on 09/26/2014 was unequivocal and timely. As Judge
18 Rogers asked him: "Are you ready to proceed without
19 any interruption in the trial date?" Owusu answered:
20 "I will proceed right now if you get rid of this guy
21 and I'm not equivocal. I'm certain." RP (September
22 26, 2014) at 25. Further questioning by Judge
23 Rogers also revealed that Mr. Owusu was not asking
24 for a continuance: "You understand that... I would
25 not continue the case?" Owusu answered: "I am
26 certain, yes, indeed." RP (September 26, 2014) at

1 25-26. As this motion was made at the omnibus
2 hearing, the only conclusion that can be drawn is
3 that Owusu's motion was both unequivocal and timely.

4 The motion was also knowing and intelligent.
5 Heretofore, at the 06/17/2014 hearing Mr. Goldman
6 had indicated that he had a paralegal appointed for
7 redacting discovery for Mr. Owusu. RP (June 11,
8 2014) at 8. Hereto, Mr. Owusu had received the
9 government discovery, reviewed it and now had
10 inside information on his cases. The government
11 discovery also included computation of his offender
12 score and the punishment he was facing. As such,
13 Owusu was no longer in the dark but understood
14 the very charges against him. This is knowing and
15 intelligent.

16 However, the court deferred ruling. RP (September
17 26, 2014) at 26.

18 10/03/2014. Owusu's second legitimate request
19 for pro se status was unequivocal, timely, voluntary,
20 knowing and intelligent, and the trial court had
21 advance notice. RP (September 26, 2014) at 26. The
22 trial court therefore abused its discretion by failing
23 to grant Owusu pro se status on 10/03/2014. Its
24 sole reason is that "This request is untimely."
25 Order On Oral Motion for pro se Status, Appendix B.
26 As Owusu's motion was made at the omnibus hearing

1 and unaccompanied by a motion for a continuance, the
2 only conclusion that can be drawn is that Owusu's
3 requests were timely. As such, the trial court erred
4 in entering the order of 10/03/2014, denying Mr.
5 Owusu's motion to proceed pro se as untimely.

6 In *State v. Vermillion*, supra, the defendant
7 charged with Robbery in the first degree in the
8 very King County Superior Court, requested to
9 represent himself. The trial court, denied his requests.
10 This very Court of Appeals, Kennedy J, held that:
11 Trial court was required to grant defendant's
12 request to exercise his right to self-representation;
13 where defendant made request [just] six days before
14 jury selection. Vermillion did not request that the trial
15 be continued, and he was courteous and respectful
16 to the court; thus, there was no indication that his
17 purpose was to delay the trial or obstruct the orderly
18 administration of justice. This Court reversed
19 Vermillion's convictions and remand for a new trial
20 because the trial court failed to uphold Mr. Vermillion's
21 constitutional right to self-representation.

22 Herein Owusu's case, the jury was not impaneled
23 until 10/22/2014: almost four weeks from his request
24 on 09/26/2014 for pro se status. Appendix C.
25 Owusu did not request that his trial be continued and
26 he was courteous and respectful to the court. Cf. Rp

1 (June 09, 2014) at 13. Thus, there was no indication
2 that his purpose was to delay or obstruct the orderly
3 administration of justice.

4 In *State v. Madson*, 108, Wash. 2d 446, 229
5 P.3d 714, the defendant was convicted in (this)
6 King County Superior Court of three counts of vio-
7 lating a no-contact order. Defendant appealed. The
8 Supreme Court held that (1) the trial court had discre-
9 tion to defer ruling on the defendant's first motion to
10 proceed pro se and (2) the trial court abused its dis-
11 cretion when it denied defendant's second request to
12 proceed pro se. The judgment entered was reversed
13 and remanded.

14 Here, the trial court had discretion to defer
15 ruling on Mr. Owusu's request on 09/26/2014. How-
16 ever, the court erred in entering the order of 10/03/2014
17 denying Mr. Owusu's second request as untimely. The
18 trial court abused its discretion.¹⁰ Accordingly, Mr.
19 Owusu's sentence must be vacated and remanded to
20 allow self-representation.

21 The Court of Appeals review a trial court denial
22 of a request for self-representation for a abuse of
23 ¹⁰The trial was scheduled for 10/14/2014. However,
24 the court took notice sua sponte that the prosecutor was
25 still in trial with a different defendant. Buying in her
26 minute trial to conclude the court, sua sponte,
continued Owusu's trial to 10/16/2014. APPENDIX I. Again,
on 10/16/2014, the court continued the trial to 10/20/2014
32 for Griever's minute trial to end. The jury was not
sworn and impaneled until 10/22/2014.

1 discretion. Breedlove, 79 Wash. App. at 106, 900 P.2d
2 586. Discretion is abused if the trial court's decision
3 is manifestly unreasonable or is exercised on untenable
4 grounds, or for untenable reasons. State v. Blackwell,
5 120 Wash. 2d 822, 830, 845 P.2d 1017 (1993). In
6 this context a court's discretion lies along a contin-
7 uum corresponding to the timeliness of the request:

8 (a) if made well before trial... and
9 unaccompanied by a motion for a contin-
10 uance, the right of self-representation
11 exists as a matter of law...

12 Fritz, 21 Wash. App. at 361, 585 P.2d 173. "Where
13 a court is put on notice that the defendant wish
14 to assert his right to self-representation but it
15 nevertheless defers ruling, the timeliness of the
16 request must be measured from the date of the
17 initial request [i.e. 09/26/2014]." Breedlove, 71
18 Wash. App. at 109, 900 P.2d 586.

19 Owusu's motion to proceed pro se falls in the
20 first category of cases discussed by Fritz because it
21 was made well before the trial and unaccompanied
22 by a motion for a continuance. Rp (September 26,
23 2014) at 25-26.
24
25
26

1 a. The denial of the right on
2 07/31/2014 as equivocal and made
3 to obstruct the proceedings is
4 mooted

5 i. The court's appraisal of Mr. Owusu's
6 charges was contrary to estab-
7 lished case law

8 On 07/30/2014, at the omnibus hearing, Mr.
9 Owusu made a motion to represent himself. RP
10 (July 30, 2014) at 11-12. The court upon apprising
11 Mr. Owusu the seriousness of his charges went over-
12 board by threatening him with a "life sentence"
13 to deter him from going pro se.

14
15 THE COURT said: "And you representing your-
16 self - you would almost certainly be facing
17 the rest of your life in prison. so I would
18 strongly suggest that you think about that.

19 RP (July 30, 2014) at 18. The court deferred ruling. Follow-
20 ing the next day, [07/31/2014] the court reconvened
21 for ruling but Mr. Owusu withdrew the motion. The following
22 was exchanged:

23 THE DEFENDANT: your honor, I don't wish
24 to go pro se ...

25 THE COURT: What I understand you to say is
26 you wish to go forward with a lawyer. I
think that is a wise choice...

1 nP (July 31, 2014) at 6-7.

2 Once the issue is raised, the court should assume
3 responsibility for assuring that the defendant un-
4 derstands the risk of self-representation. *City of*
5 *Belleveue v. Acrey*, 103 Wash. 2d 203, 211 691 P.
6 2d 957 (1984). At minimum, a defendant should be
7 apprised of the seriousness of the charge, the maxi-
8 mum potential penalty involved, and the existence of
9 technical, procedural rules governing the presentation
10 of the accused defense. *Id.*

11 Here, the trial court apprised Mr. Owusu with
12 a life sentence. nP (July 30, 2014) at 12. The whole
13 courtroom (everybody) was shaken and looked at Mr.
14 Owusu foolishly. *Id.* at 18. Judge Rogers comment was
15 a threat, deterring Mr. Owusu from going pro se. Cf.
16 nP (July 31, 2014) at 6. But with identity theft in the
17 first degree being the seriousness of his charges, 10 years
18 imprisonment is the maximum penalty. In fact, Mr.
19 Owusu was not facing a life sentence. Mr. Owusu,
20 realizing this, reasserted going pro se:

21 THE DEFENDANT: I'd like to go pro se ...
22 [I'm] making up my mind right now.

23 THE COURT: Mr. Owusu ... you request to go
24 pro se until I outline the perils of going
25 pro se, and you claim your mind ... The
26 motion's denied.

1 Ap (July 31, 2014) at 15. Judge Rogers apprising of Mr.
2 Owusu's charges was not right. In the court's authored
3 order of 07/31/2014, denying the request, he reasoned:

4 ¹¹ In several hearings, Mr. Owusu has made
5 equivocal requests for counsel, in that he
6 has repeatedly changed his mind among
7 the choices of firing Goldman, representing
8 himself, and going forward with Mr. Goldman.

9 This court concludes that Mr. Owusu, whom
10 the court has granted great latitude in
11 speaking directly is only requesting pro
12 se status to obstruct the proceedings.

13 The trial court's conclusions were "contrary to,
14 or involved an unreasonable application of, clearly
15 established case law, as determined by the Supreme
16 Court . . . See *Bellevue v. Acrey*, *supra*; *Faretta* at
17 835. Upon finding that the trial court's apprising of
18 Mr. Owusu's charges was not sound, this court
19 should measure the timeliness of his requests from
20 07/30/2014, as enumerated in *Fritz*,

21
22
23
24 ¹¹ The Court's equivocal finding concerning "firing
25 Mr. Goldman . . . and going forward with Goldman," is not
26 accurate. On 06/09/2014, 06/17/2014, 09/26/2014 and
36 10/20/2014, the court denied Mr. Owusu's motions to discharge
36 counsel

1 ii. There is no evidence in the record
2 that Mr. Owusu requested to
3 represent himself for obstructing
4 the proceedings

5 The right may not be exercised for the purpose
6 of delaying the trial or obstructing justice. *State v.*
7 *Breedlove*, 79 Wash. App 101, 106, 900, P. 2d 586
8 (1995); *State v. Luvene* 127 Wash. 2d 690, 699,
9 900 P. 3d 960 (1993).

10 There is no indication in the record that Mr.
11 Owusu made any of his request for the purpose of
12 delaying the trial. Nor is there any indication in
13 the record that Owusu made the request for the
14 purpose of obstructing the proceedings. Rather,
15 there is indicia of an earnest intent for self-
16 representation. Mr. Owusu had attended the CrR 3.6
17 hearing in this case: 14-1-01308-2, with two individ-
18 dually authored briefings and ready to represent him-
19 self. Besides his motion to discharge counsel was his
20 Motion to Suppress Evidence allegedly seized from his
21 Bravern Condominium Unit, Individually authored. As
22 Judge Lum approached the bench, Owusu handed these
23 motions. Judge Lum refused to accept it; thus
24 precluding this motion from entering the clerk's file.
25 However, Mr. Owusu provided copies to the prosecutors
26 [Ms. Grieve and Mr. Marchesano]. Relevant to the
31

1 Motion to Suppress Evidence, the following went
2 stated on the record:

3 THE DEFENDANT: ... I made a Motion
4 to Suppress ...

5 And I think ... Your Honor even
6 witnessing the beginning ... I attempted
7 to turn in some motions that you refused
8 to accept ...

9 RP (October 28, 2014) at 105. Moreover, Mr. Owusu
10 was prepared to cross-examine witnesses on his
11 own;

12 MR GOLDMAN: You know, Your Honor ...
13 Mr. Owusu is requesting the opportunity
14 ... to cross examine detective Newell
15 himself.

16 THE COURT: The motion is denied, counsel.
17 He has experienced counsel. That's why
18 he has counsel to ask questions ... so
19 the motion is denied.

20 RP (October 20, 2014) at 55-56.

21 b. A state cannot constitutionally
22 hale a person into it's criminal
23 courts and there force an attorney
24 upon him

25 In the famous *Faretta v. California*, 422 U.S.

26 806, 807, 95 3, Ct. 2525 2527 45 L. Ed 2d 562
38

(1975), the defendant charged with grand theft auto well before trial, requested that he be permitted to represent himself. . . . The trial court in a preliminary ruling accepted accused waiver of counsel but, later . . . reversed such ruling. Throughout the trial, the judge required that the defense be conducted only through the appointed lawyer . . . A jury found the accused guilty as charged . . . On grant of certiorari, the Supreme Court Mr. Justice Stewart, held that a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elect to do so, and that a state may not force a lawyer upon him when he insists that he wants to conduct his own defense. Accordingly, the judgment was vacated and remanded. *Faretta v. California*, supra, answered the question whether "a state may constitutionally hale a person into its criminal courts and there force a lawyer upon him . . . (Assignment of Error 2.)" The Court answered no: The language and spirit of the Sixth Amendment shall be an aid to a willing defendant — not an organ of the state interposed between an unwilling defendant and his right to defend personally. To thrust counsel upon the accused against his considered wish, thus violates the logic of the Amendment . . . It is true that when a defendant chooses to have

1 a lawyer manage and defend his case, law and tradition
2 may allocate to counsel the power to make "binding
3 decisions of trial strategy in many cases cf: *Henry v.*
4 *Mississippi*, 379 U.S. 443, 451, 13 L. Ed 2d 409, 85
5 S. Ct. 564; *Brookhart v. Janis*, 384 U.S. 1, 7-8, 16
6 L. Ed 2d 314 86 S. Ct. 1245; *Fay v. Noia*, 372 U.S.
7 391, 439 9 L. Ed. 2d 837, 83 S. Ct. 822. This
8 allocation can only be justified, however, by the def-
9 endant's consent, at the outset, to accept counsel as
10 his representative. An unwanted counsel "represent"
11 the defendant only through a tenuous and unaccept-
12 able legal fiction. Unless the defendant has acquiesced
13 in such representation, the defense presented is not
14 the defense guaranteed him by the Constitution,
15 for, in a very real sense, it is not his defense.

16 Here, the state unconstitutionally haled Mr.
17 Owusu into its criminal court and there forced its
18 attorney upon him. Vehemently, Mr. Owusu insisted
19 on representing himself and did not want the
20 state's counsel:

21 THE DEFENDANT: Your honor, I'm not intending
22 to obstruct any of the proceedings. I want
23 to say though, if I proceed pro se, assuming
24 the risk, at the end . . . if I'm found guilty,
25 that is something that I'm held responsible
26 for.

1 THE COURT: Right.

2 THE DEFENDANT: Not [the] attorney... so
3 my question is, why can I not represent
4 myself? It's a very painful thing to bear
5 knowing that someone is false representing
6 me.

7 THE COURT: He's your attorney, sir.

8 THE DEFENDANT: He's not my attorney, He's
9 against my will.

10 RP (October 21, 2014) at 97-98 and 101.

11 F. CONCLUSIONS AND RECOMMENDATION

12 CONCLUSIONS

- 13
- 14
- 15 A. The trial court erred in denying Mr. Owusu's
16 motions to discharge counsel and appoint
17 a substitute counsel.
- 18 B. There was clearly an irreconcilable
19 conflict warranting substitution of
20 appointed counsel.
- 21 C. Mr. Owusu's right to Self-Representation
22 was unjustifiably denied and his convictions
23 requires reversal by law.
- 24 D. Mr. Owusu's evocation of his right to Self-
25 Representation on 09/26/2014 and
26 10/03/2014 was timely valid and the trial
court erred in denying it as untimely.

1 RECOMMENDATION

2
3 1. The Court of Appeals should (i) Reverse
4 the trial court's denial of Mr. Owusu's
5 right to represent himself in the 14-1-
6 01308-2 SEA, (ii) Vacate Mr. Owusu's
7 convictions and sentence and (iii) Remand
8 for Self-Representation.

9 Dated this 27th day of June, 2016

10 Respectfully submitted.

11
12 
13 DERICK OWUSU
14 PROSE APPELLANT
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APPENDIX A

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12-1-02366-9 SEA
13-1-14221-6 SEA
14-1-02092-5 SEA
14-1-02308-2 SEA

SUPERIOR COURT OF WASHINGTON, KING COUNTY

DERICK OWUSU

(Defendant)

V

State of WA
(Plaintiff)

No: 

Order Terminating Cause

FILED
KING COUNTY, WASHINGTON

JUN 17 2014

SUPERIOR COURT CLERK

BY *Anne Smart*
DEPUTY

I, Derick Owusu, the Defendant, moves the court for an order to terminate representation from Jeffrey B Goldman, WSBA #39747.

This has become necessary because the public defender has failed to file all my requested court hearings and motions. I have repeatedly asked J Goldman to schedule cause #14-1-02092-5 SEA for a Bail Reduction Hearing. Secondly Goldman has pushed my trial dates set for 6/12/2014 to 8/11/2014 without my consent or knowledge. This is the second consecutive time he has done this without my consent. It appears to me that Goldman is aiding the court in a manner that will allow the Prosecution to easily win motions against me. In my defense, he has no relevant information objecting to the state's motion to join cause #12-1-02366-9 SEA and 13-1-14221-6 SEA.

It is obvious that Goldman is reluctant to release me the Discovery for all of the cause numbers. I have spent the past two months asking him for these discoveries and every time he becomes elusive.

Based on these many reasons, I am making this request that Jeffrey B Goldman, WSBA #39747, is no longer welcome in representing me.

DONE IN COURT June 17, 2014

Derick Owusu
(Defendant)

FILE

(Judge)

APPENDIX B

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FILED
KING COUNTY, WASHINGTON

OCT 03 2014

SUPERIOR COURT CLERK

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

STATE OF WASHINGTON

NO. 12-1-02366-9
13-1-14221-6
141020925
141013082 ✓

V.

DEREK OWUSU

ORDER ON ORAL MOTION FOR
PRO SE STATUS

Mr. Owusu made an oral motion at the last minute at his last hearing to go pro se. Some context is necessary. He is charged under four cause numbers with many counts. He has tried to fire Mr. Goldman in the past. On July 31, 2014, in front of this Court, he acted equivocally, in moving to fire his lawyer, withdrawing the motion, asking to hire his own lawyer (he is indigent, his request was to pick his own public defender, not contemplated under Hampton), and finally, losing those motions, to go pro se. That motion was denied as equivocal, see Orders on Motion to Go Pro Se, 7/31/14, all cause numbers, and because it was made purely for the purpose of disruption. These were separate and independent grounds.

HON. JIM ROGERS
KING COUNTY SUPERIOR COURT
CHIEF CRIMINAL JUDGE DEPT. 45
KING COUNTY COURTHOUSE
SEATTLE, WASHINGTON 98104

1 This Court, in its current capacity as Chief Criminal Judge, sees many, many motions by
2 defendants to represent themselves. This Court always has in mind the standards in State v

3 Madsen:

4 Criminal defendants have an explicit right to self-representation under the Washington
5 Constitution and an implicit right under the Sixth Amendment to the United States
6 Constitution. WASH. CONST. art. I, § 22 (“the accused shall have the right to appear and
7 defend in person”); Faretta v. California, 422 U.S. 806, 819, 95 S.Ct. 2525, 45 L.Ed.2d 562
8 (1975). This right is so fundamental that it is afforded despite its potentially detrimental
9 impact on both the defendant and the administration of justice. Faretta, 422 U.S. at 834, 95
S.Ct. 2525; State v. Vermillion, 112 Wash.App. 844, 51 P.3d 188 (2002). “The unjustified
denial of this [pro se] right requires reversal.” State v. Stenson, 132 Wash.2d 668, 737, 940
P.2d 1239 (1997) (emphasis added).

10 However, both the United States Supreme Court and this court have held that courts are
11 required to indulge in “ ‘every reasonable presumption’ against a defendant's waiver of his
12 or her right to counsel.” In re Det. of Turay, 139 Wash.2d 379, 396, 986 P.2d 790 (1999)
13 (quoting Brewer v. Williams, 430 U.S. 387, 404, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977)). As
14 a request for pro se status is a waiver of the constitutional right to counsel, appellate courts
15 have regularly and properly reviewed denials of requests for pro se status under an abuse of
16 discretion standard. E.g., State v. Hemenway, 122 Wash.App. 787, 792, 95 P.3d 408 (2004).
Discretion is abused if a decision is manifestly unreasonable or “rests on facts unsupported
in the record or was reached by applying the wrong legal standard.” State v. Rohrich, 149
Wash.2d 647, 654, 71 P.3d 638 (2003).

17 The right to proceed pro se is neither absolute nor self-executing. State v. Woods, 143
18 Wash.2d 561, 586, 23 P.3d 1046 (2001). When a defendant requests pro se status, the trial
19 court must determine whether the request is unequivocal and timely. Stenson, 132 Wash.2d
20 at 737, 940 P.2d 1239. Absent a finding that the request was equivocal or untimely, the
21 court must then determine if the defendant's request is voluntary, knowing, and intelligent,
22 usually by colloquy.^{FN2} Faretta, 422 U.S. at 835, 95 S.Ct. 2525; State v. Stegall, 124
23 Wash.2d 719, 881 P.2d 979 (1994). Even if a request is unequivocal, timely, voluntary,
24 knowing, and intelligent, a court may defer ruling if the court is reasonably unprepared to
25 immediately respond to the request. Again, the court shall indulge in “ ‘every reasonable
presumption’ against a defendant's waiver of his or her right to counsel.” Turay, 139
Wash.2d at 396, 986 P.2d 790 (quoting Brewer, 430 U.S. at 404, 97 S.Ct. 1232).

FN2. A colloquy is unnecessary if there are independent, identifiable facts that show
whether the request is voluntary, knowing, and intelligent.

1 This presumption does not give a court carte blanche to deny a motion to proceed pro se.
2 The grounds that allow a court to deny a defendant the right to self-representation are
3 limited to a finding that the defendant's request is *505 equivocal, untimely, involuntary, or
4 made without a general understanding of the consequences. Such a finding must be based
5 on some identifiable fact; the presumption in *Turay* does not go so far as to eliminate the
6 need for any basis for denying a motion for pro se status. Were it otherwise, the
7 presumption could make the right itself illusory.

8 A court may not deny a motion for self-representation based on grounds that self-
9 representation would be detrimental to the defendant's ability to present his case or concerns
10 that courtroom proceedings will be less efficient and orderly than if the defendant were
11 represented by counsel. Similarly, concern regarding a defendant's competency alone is
12 insufficient; if the court doubts the defendant's competency, the necessary course is to order
13 a competency review. *In re Fleming*, 142 Wash.2d 853, 863, 16 P.3d 610 (2001); RCW
14 10.77.060(1)(a).

15 Madsen, 168 Wn.2d at 503-505.

16 Now Mr. Owusu, on the eve of two of these four very complex cases, seeks to go pro se
17 again, apparently because this Court will not discharge Mr. Goldman. This request is untimely.

18 This Court is aware that Madsen went to great lengths to ensure that the right to represent
19 oneself is not illusory. Being simply less efficient and orderly is not enough to deny the right,
20 having concerns about a defendant's ability to present one's case is not enough to deny the right.
21 The case law is not well developed as to whether a defendant's clear desire to avoid trial and stall
22 cases as long as possible is sufficient or not to deny the right.

23 As noted, this Court has presided over many such requests and they are almost invariably
24 granted. Almost. The most common reason for denying the right to represent oneself is
25 equivocation. In the past, Mr. Owusu has acted equivocally in invoking his constitutional right to
represent himself.

The second most common reason is timeliness. Over many hearings, counsel have
worked hard to interview many witnesses and prepare for trial on all cases. This has made it

HON. JIM ROGERS
KING COUNTY SUPERIOR COURT
CHIEF CRIMINAL JUDGE DEPT. 45
KING COUNTY COURTHOUSE
SEATTLE, WASHINGTON 98104

1 possible for the first two of these cases to go to trial in less than a week and a half after months of
2 preparation.

3 Mr. Owusu's request is untimely, at least for 14-1-020925 and 14-1-013082. These cases
4 are on the eve of trial. His request to go pro se is Denied. The Court will consider his requests in
5 the joined cases 121023669 and 131142216 at a later time once the first trials are completed.
6 These last two cases are set in December.
7

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9 Dated October 2, 2014

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13 Hon. James E. Rogers
14 Chief Criminal Judge
15 King County Superior Court
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HON. JIM ROGERS
KING COUNTY SUPERIOR COURT
CHIEF CRIMINAL JUDGE DEPT. 45
KING COUNTY COURTHOUSE
SEATTLE, WASHINGTON 98104

APPENDIX C

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**State of Washington v. Derick Owusu
King County Cause No. 14-1-01308-2**

Date: 10/23/14

Judge: Dean S. Lum
Bailiff: Sung Kim
Court Clerk: Gary Povick

Digital Record: E 713

Continued from: 10/22/14

MINUTE ENTRY

Defendant and respective counsel are present.

9:16:08 Court convenes

Jury panels absent

Defense counsel's renewed motion to withdraw is denied.

9:22:07-9:45:12 Recess

Initial and supplemental jury panels are both present and blended into one panel.

Jury selection continues.

Prospective jurors 22 & 26 are excused for hardship.

10:44:02-11:09:03 Recess

Jury selection continues.

Defendant's challenge for cause of prospective juror 61 is reserved.

Jury panel absent

Defendant's challenge for cause of prospective juror 72 is granted.

The Court and counsel discuss scheduling.

12:06:06-1:53:25 Recess

State of Washington v. Derick Owusu
King County Cause No. 14-1-01308-2

Jury panel present

Defendant's challenge for cause of prospective juror 61 is granted.

Jury selection continues.

2:23:45 The following jurors are sworn and impaneled:

1. Kevin Smith
 2. Richard Kopczynski
 3. Brunye Adams
 4. Denise Forsyth
 5. Paul Moore
 6. Tyrrell Morris
 7. Kristina Meyers
 8. Bernadette Gero
 9. Neil Zimmer
 10. Scott Meyer
 11. Mark Seligman
 12. Debra Quinones
- Alt. 1- J. Golubich
Alt. 2- John Messina

The jury is instructed and admonished.

Jury absent

Defendant's exhibit 7 ID Only for Pretrial Only

Defendant's objection to use of photos in Defendant's exhibit 7 for opening statement is overruled.

2:48:59-3:13:00 Recess

Jury present

3:19:00 The State makes opening statement.

3:35:50 Defendant makes opening statement.

3:38:20 Paul Lemmon is sworn and examined on behalf of the State.

State's exhibit 1 ID Only

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APPENDIX D

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CAUSE NO. 13-1-14221-6 KNT

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR
CONDITIONS OF RELEASE

The State incorporates by reference the Certification for Determination of Probable Cause prepared by Detective Jim M Lindquist of the Bellevue Police Department for case number 13-49748.

The State requests bail set in the amount of \$20,000.00. The defendant's criminal history includes convictions for attempting to elude (2008); VUCSA (2009); and juvenile adjudications for TMV (2004); attempting to elude (2004); assault 4 (2005); theft 2 (2005); and VUCSA (2005). Additionally, the defendant has three ID theft 1 charges pending from 2012 at the Maleng Regional Justice Center. In his 2012 case, the bail has been increased four times because the defendant failed to appear for hearings and because he had committed this new crime. Given that, the amount of bail requested is necessary to help ensure the defendant's return to court and protect public safety and prevent further offenses.

Signed and dated by me this 19th day of November, 2013.



Christine W. Keating, WSBA #30821
Deputy Prosecuting Attorney

Prosecuting Attorney Case
Summary and Request for Bail
and/or Conditions of Release - 1

Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385
(206) 296-9010 FAX (206) 296-9009

APPENDIX E

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CLERK'S MINUTES

SCOMIS CODE: JTrial \$JFA 12 Person

Judge: Palmer Robinson
Bailiff: Cheryl Cunningham
Court Clerk: Melissa Ehlers

Dept. 41
Date: 4/15/2015

Digital Record: E835

KING COUNTY CAUSE NO.: 12-1-02366-9 SEA

State of Washington vs. Derick Owusu

Appearances:

State is represented by Joseph Marchesano and Lindsey Grieve
Defendat pro se

MINUTE ENTRY

This cause comes on for jury trial. Defendant is charged in Count I-III with Identify Theft in the First Degree and Count IV to be dismissed.

9:55:09 Court Convenes.

State's motion to dismiss Count IV is Granted.

State's motion for Fourth Amended information is Granted. Defendant acknowledges receipt and enters pleas of not guilty.

9:57:11 Defendant's motion to dismiss due to discovery issues- Reserved.
Court hears oral argument.

10:08:17 State addresses the Court that their witness for the 3.5 hearing is only available this morning.

Court shares with the parties at this time they she will be attending Judicial Conference the week of April 27th.

10:09:50 Court would like to move forward with the 3.5 hearing.

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APPENDIX F

FILED
KING COUNTY, WASHINGTON

DEC 22 2014

SUPERIOR COURT CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON COUNTY OF KING

STATE OF WASHINGTON,

vs.

Derrick Owen

Plaintiff,

Defendant

NO. 14-1-02092-5 SEA

ORDER ON OMNIBUS HEARING

Charge: A3, ^(OOR) prostitution w/ escape

Trial Date: 1/28/15

Expiration: 2/27/15

Estimated length of trial: 5 days

In Custody Out of Custody

An omnibus hearing was held on this date.

1. CrR 3.5:

- No custodial statements will be offered in the state's case-in-chief, or in rebuttal.
- The statements of defendant will be offered in state's rebuttal case only.
- The statements referred to in the state's omnibus application will be offered and:
 - May be admitted into evidence without a pretrial hearing, by stipulation of the parties.
 - A pretrial hearing shall be held.

2. CrR 3.6:

- No motion to suppress evidence pursuant to CrR 3.6(a) shall be made.
 - Defendant will move to suppress evidence. Moving party shall comply with CrR 3.6, 8.1 and CR 6. The motion shall be heard, immediately before trial, by the trial judge.
- 3.6 briefing provided to state on 12/22/14*

3. CrR 4.7:

- Plaintiff has provided the defense with all discovery required by CrR 4.7(a).
- Defendant has provided the plaintiff with all discovery required by CrR 4.7(b).

78

Plaintiff shall provide the defense with _____
_____ by _____, 200__.

Defendant shall provide plaintiff with _____
_____ by _____, 200__.

Witness interviews shall be completed by _____, 200__. No party may
impede opposing counsel's investigation of the case, CrR 4.7(h)(1).

The general nature of the defense is police brutality general
 Discovery orders: denial - defendant is not claiming
self defense

4. Plaintiff will move to amend the information to _____.
Defense shall be served a copy of the proposed amended information ___ days
before the trial date.

5. Motions *in limine* are reserved for the trial court.

6. Proposed jury instructions shall be served and filed when the case is called for trial,
CrR 6.15(a).

7. Other motions not specifically referenced in this order shall be noted before the chief
criminal judge or criminal motions judge, and shall comply with CrR 8.1, CrR 8.2, CR 6 and
CR 7(b) unless expressly agreed by the parties in writing.

8. _____

DONE IN OPEN COURT this 22 day of December, 2014

Submitted: _____
DEPUTY PROSECUTING ATTORNEY
WSBA# _____

JUDGE _____
GENIE OWUSA, Pro Se
ATTORNEY FOR DEFENDANT
WSBA# _____

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

Date and Place Interpreter

APPENDIX G

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FILED
KING COUNTY, WASHINGTON

JUN 20 2014

SUPERIOR COURT CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON COUNTY OF KING

STATE OF WASHINGTON,

vs.

Derick Owusu

Plaintiff,

Defendant

NO. 14-1-02092-5 SEA

ORDER ON OMNIBUS HEARING

Charge: A3, ID the f+2, escape 3, perjury ^(OOR)

Trial Date: ~~8/13/14~~ 8/13/14

Expiration: ~~9/12/14~~ 9/12/14

Estimated length of trial: 4 days

In Custody Out of Custody

An omnibus hearing was held on this date.

1. CrR 3.5:

- No custodial statements will be offered in the state's case-in-chief, or in rebuttal.
- The statements of defendant will be offered in state's rebuttal case only.
- The statements referred to in the state's omnibus application will be offered and:
 - May be admitted into evidence without a pretrial hearing, by stipulation of the parties.
 - A pretrial hearing shall be held.

2. CrR 3.6:

- No motion to suppress evidence pursuant to CrR 3.6(a) shall be made.
- Defendant will move to suppress evidence. Moving party shall comply with CrR 3.6, 8.1 and CR 6. The motion shall be heard, immediately before trial, by the trial judge.

3. CrR 4.7:

- Plaintiff has provided the defense with all discovery required by CrR 4.7(a).
- Defendant has provided the plaintiff with all discovery required by CrR 4.7(b).

37

- Plaintiff shall provide the defense with _____ by _____, 200__.
- Defendant shall provide plaintiff with _____ by _____, 200__.
- Witness interviews shall be completed by _____, 200__. No party may impede opposing counsel's investigation of the case, CrR 4.7(h)(1).

The general nature of the defense is self-defense.

Discovery orders: Defense counsel has not interviewed all officers. There are four officers to be interviewed. One is scheduled for today one does not return on vacation until

4. Plaintiff will move to amend the information to _____ Defense shall be served a copy of the proposed amended information _____ days before the trial date.

5. Motions *in limine* are reserved for the trial court.

** Defendant's motion to dismiss for speedy trial violation is denied.*

6. Proposed jury instructions shall be served and filed when the case is called for trial, CrR 6.15(a).

7. Other motions not specifically referenced in this order shall be noted before the chief criminal judge or criminal motions judge, and shall comply with CrR 8.1, CrR 8.2, CR 6 and CR 7(b) unless expressly agreed by the parties in writing.

8. Ofc Brack unavailable on 6/30 + 7/1, Ofc McAnally to St. Fygn on same week of trial, Ofc McAnally unavailable 7/12
Det Newell unavailable 6/30, Det Richey available 6/26
 DONE IN OPEN COURT this 30 day of June, 2014.

Montenegro is scheduled for today.
Richey has stated he is available 6/27/14
Brack is out of the office until 6/23/14
McAnally has not responded.

JUDGE

Submitted:

DEPUTY PROSECUTING ATTORNEY
 #SBA# 42951

ATTORNEY FOR DEFENDANT
 #SBA# 39747

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

Date and Place

Mr. O'waise moved for a continuance at the hearing + find witness Fidele Abalos.

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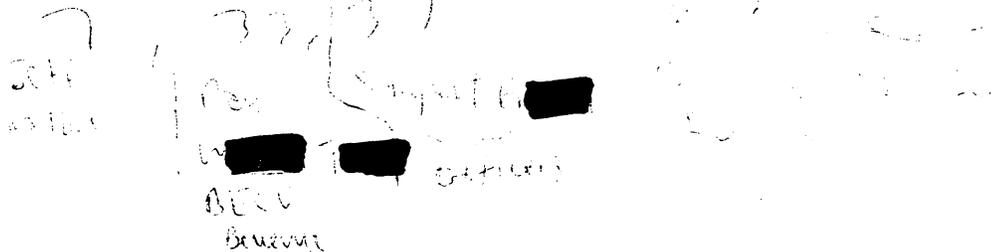
APPENDIX H

Prejudicial

- # 37 - P. - lice
- # 19 - Banker/Quartz
- # 24 - Sec. Guard
- # 21 - Attorney

Favors

- # 27 W [redacted] - [redacted] - Joe Egg Ros ~~1953~~
- # 27 - W [redacted] - DWLS
- ~~# 67~~
- # 7 - B [redacted] - DUI
- # 20 - E [redacted] O [redacted] - Age [redacted] Sales mkt/Bank
- # 8 - G [redacted] M [redacted] - Age [redacted]
- # 71 - R [redacted] Public School Teacher
- # 59 - Staircase victim
- # 55 - CFU - C [redacted]
- # 15 - Elementary Assistant Principal
- ~~# 4~~ - K [redacted] - English Teacher



Information obtained from lease file

- Employer / Costco
 - Move in date
 - Rent ~~payment~~ amount \$1780
 - Account balance
 - Copy of rental application
-

- McAnnelly's altered statements.
- U Ite's false id
- No proof for text msg of invitation
- ~~Did Richey work~~

2

Did Richey specifically patrol on the premises
of the Brevern?

★ So if he didn't patrol the Brevern and had
access with other fob keys to the building,
how could he identify the keys from Owners?

If I ~~discuss~~ a plea bargain from the state at this point,
will it in terms effect my innocence in trial or could
it be used against me?

APPENDIX I

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FILED
KING COUNTY, WASHINGTON

OCT 14 2014

SUPERIOR COURT CLERK

**SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY**

STATE OF WASHINGTON
Plaintiff/Petitioner

vs

OWUSU, DERICK
Defendant/Respondent
CCN: 1809445

NO. 14-1-01308-2 SEA

ORDER CONTINUING TRIAL

(ORCTD)
(Clerk's Action Required)

This matter came before the court for consideration of a motion for continuance brought by

Plaintiff Defendant The Court

It is hereby ORDERED that the trial, currently set for 10/14/2014 is continued to 10/15/2014.

Upon agreement of the parties [CrR 3.3(f)(1)] Required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

Plaintiff's counsel in trial; No judicial availability; Defense counsel in trial;

Other: _____

It is further ORDERED:

Omnibus hearing date is: _____ Expiration date is: 11/14/2014

Expiration date remains the same

DONE IN OPEN COURT this 14 day of October, 2014.

Judge Jim Rogers

Approved for entry:

Deputy Prosecuting Attorney WSBA No.

Attorney for Defendant WSBA No.

I agree to the continuance:

Defendant (signature required only for agreed continuance)

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 under the laws of the State of Washington that the foregoing is true and correct.

King County, Washington
Interpreter

64

FILED
KING COUNTY, WASHINGTON

OCT 16 2014

SUPERIOR COURT CLERK

**SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY**

STATE OF WASHINGTON
Plaintiff/Petitioner

vs

OWUSU, DERICK
Defendant/Respondent
CCN:1809445

NO. 14-1-01308-2 SEA

ORDER CONTINUING TRIAL

(ORCTD)
(Clerk's Action Required)

This matter came before the court for consideration of a motion for continuance brought by

- Plaintiff
- Defendant
- The Court

It is hereby ORDERED that the trial, currently set for 10/16/2014 is continued to 10/20/2014.

- Upon agreement of the parties [CrR 3.3(f)(1)]
- Required in the administration of justice [CrR 3.3(f)(2)] for the following reason:

- Plaintiff's counsel in trial;
- No judicial availability;
- Defense counsel in trial;

Other: _____

It is further ORDERED:

- Omnibus hearing date is: _____
- Expiration date is: 11/19/2014
- Expiration date remains the same

DONE IN OPEN COURT this 16 day of October, 2014.

Judge Jim Rogers

Approved for entry:

Deputy Prosecuting Attorney WSBA No. _____

Attorney for Defendant WSBA No. _____

I agree to the continuance:

Defendant (signature required only for agreed continuance)

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 under the laws of the State of Washington that the foregoing is true and correct.

_____ King County, Washington
Interpreter

2016 JUL 12 PM 12:42
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

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STATE OF WASHINGTON
COURT OF APPEALS, DIV. ONE

STATE OF WASHINGTON,

Respondent,

No: 72851-2-I

v.

DECLARATION OF SERVICE

DERICK OWUSU

Appellant

FILED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
2016 JUL 12 PM 12:42

I, Derick Owusu, certify that a copy of the Opening Brief of Appellant, and any other attachments was served by mail on the persons listed below:

Prosecuting Attorney, King County
King County ProslAPP Unit Supervisor
14554 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. Executed this 27th day of June, at Airway Heights, Washington.


DERICK OWUSU
Appellant, Prose
A.H.C.C.
P O BOX 2349
AIRWAY HEIGHTS, WA 98001