



**TABLE OF CONTENTS**

Page

A. TABLE OF AUTHORITIES ..... iv

B. ASSIGNMENT OF ERROR

    1. Assignment of Error ..... 1

    2. Issues Pertaining to Assignment of Error ..... 2

C. STATEMENT OF THE CASE

    1. Factual History ..... 3

    2. Procedural History ..... 5

D. ARGUMENT

**I. THE TRIAL COURT VIOLATED THE DEFENDANT’S  
    RIGHT TO DUE PROCESS UNDER WASHINGTON  
    CONSTITUTION, ARTICLE 1, § 3 AND UNITED STATES  
    CONSTITUTION, FOURTEENTH AMENDMENT WHEN IT  
    FOUND THAT THE DEFENDANT’S COMPETENCY WAS  
    IN QUESTION BUT LATER ALLOWED THE CASE TO  
    PROCEED TO TRIAL WITHOUT A FINDING THAT THE  
    DEFENDANT WAS COMPETENT ..... 10**

**II. THE TRIAL COURT VIOLATED THE DEFENDANT’S  
    RIGHT TO DUE PROCESS UNDER WASHINGTON  
    CONSTITUTION, ARTICLE 1, § 3 AND UNITED STATES  
    CONSTITUTION, FOURTEENTH AMENDMENT WHEN IT  
    ENTERED JUDGEMENT OF CONVICTION FOR ASSAULT  
    IN THE SECOND DEGREE IN COUNT IV BECAUSE  
    SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THIS  
    VERDICT ..... 15**

E. CONCLUSION ..... 19

F. APPENDIX

1. Washington Constitution, Article 1, § 3 .....	20
2. United States Constitution, Fourteenth Amendment .....	20
3. RCW 10.77.050 .....	20
4. RCW 10.77.060 .....	21

**TABLE OF AUTHORITIES**

Page

***Federal Cases***

*In re Winship*,  
397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) ..... 15, 16

*Jackson v. Virginia*,  
443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) ..... 17

***State Cases***

*Seattle v. Gordon*, 39 Wn.App. 437, 693 P.2d 741 (1985) ..... 12, 14

*State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996) ..... 16

*State v. Baeza*, 100 Wn.2d 487, 670 P.2d 646 (1983) ..... 15

*State v. Flieger*, 91 Wn.App. 236, 955 P.2d 872 (1998) ..... 14

*State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980) ..... 17

*State v. Johnson*, 12 Wn.App. 40, 527 P.2d 1324 (1974) ..... 16

*State v. Lawrence*, 108 Wn.App. 226, 31 P.3d 1198 (2001) ..... 11

*State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972) ..... 16

*State v. Neal*, 144 Wn.2d 600, 30 P.3d 1255 (2001) ..... 12

*State v. Ortiz*, 104 Wn.2d 479, 706 P.2d 1069 (1985) ..... 11

*State v. Ritts*, 94 Wn.App. 784, 973 P.2d 493 (1999) ..... 14

*State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) ..... 16

*State v. Woods*, 143 Wn.2d 561, 23 P.3d 1046 (2001) ..... 12, 13

*Constitutional Provisions*

Washington Constitution, Article 1, § 3 ..... 10, 15, 18  
United States Constitution, Fourteenth Amendment ..... 10, 15, 18

*Statutes and Court Rules*

RCW 9A.36.021 ..... 17  
RCW 10.77.010 ..... 10  
RCW 10.77.050 ..... 10, 11  
RCW 10.77.060 ..... 10-13

## ***ASSIGNMENT OF ERROR***

### ***Assignment of Error***

1. The trial court violated the defendant's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment when it found that the defendant's competency was in question but later allowed the case to proceed to trial without a finding that the defendant was competent.

2. The trial court violated the defendant's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment when it entered judgement of conviction for assault in the second degree in Count IV because substantial evidence does not support this verdict.

*Issues Pertaining to Assignment of Error*

1. Does a trial court violate a defendant's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment if it finds that the defendant's competency is in question but later allows the case to proceed to trial without a finding that the defendant is competent?

2. Does a trial court violate a defendant's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment if it enters judgement of conviction for an offense unsupported by substantial evidence?

## STATEMENT OF THE CASE

### *Factual History*

On February 20, 2005, Vancouver resident Michelle Anderson told her husband Robert Anderson that she wanted a divorce. RP107-109.<sup>1</sup> According to Ms. Anderson her relationship with Mr. Anderson had been deteriorating over a long period of time and by February 20<sup>th</sup> she had finally decided to end the marriage. RP 109, 137-140. After telling her husband that she wanted a divorce, she drove over to her friend Christoher Concannon's house. RP 109. Mr. Concannon provided guitar lessons to the Anderson's son. RP 131. In fact, Mr. Concannon and Ms. Anderson knew each other from high school and had a brief sexual relationship during that period of time. RP 84-86. Prior to February of 2005, Mr. Anderson had suspected that his wife and Mr. Concannon were having an affair. RP 95. Both Mr. Concannon and Ms. Anderson denied it and Mr. Anderson later apologized for making the accusation. RP 96.

About 15 or 20 minutes after Ms. Anderson got to Mr. Concannon's house Mr. Concannon opened the front door in order to smoke a cigarette on the porch. RP 88. As he opened the door he encountered Mr. Anderson who tried to walk into the house. *Id.* Mr. Concannon told Mr. Anderson that he

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<sup>1</sup>The record in this case includes five continuously numbered verbatim reports referred to herein as "RP x" with "x" as the page number.

could not come inside and told him to go wait in the driveway and he would send Ms. Anderson out to talk to him. RP 89. After a few minutes Ms. Anderson exited the house to talk to her husband. RP 90. During that conversation Ms. Anderson told her husband to go back home to the children, and that she would meet him there to talk after retrieving her purse and keys from inside Mr. Concannon's house. RP 112-113. Ms. Anderson then went back into the house. *Id.*

About 15 minutes later both Mr. Concannon and Ms. Anderson were standing in the living room when they saw the defendant open the front door and enter. RP 113. As the defendant did this Mr. Concannon stepped toward him and said "I told you not to come in my house . . . Oh, shit, he's got a gun." RP 121. At this point Mr. Concannon turned, ran down the hall, entered the first bedroom, slammed the door, and vaulted through the closed window, thereby making his escape while leaving Ms. Anderson to her fate. RP 113-115. In fact, the defendant was holding a silver .357 magnum in his left hand although he did not point it at Mr. Concannon or in any way threaten Mr. Concannon. RP 94, 118.

According to Ms. Anderson, after Mr. Concannon made good his escape Mr. Anderson grabbed her by the throat, pushed her up against the wall, and put the gun to her head telling her that he was going to kill her. RP 114-115. He repeated this threat a number of times. *Id.* He then put the gun

to his own head and told her that she was going to have to watch him kill himself. RP 116-117, 166-167. Within a few minutes they both began to hear sirens. RP 115. Mr. Anderson then threw Ms. Anderson to the floor, grabbed her by the arms, and led her down the hall to a position that he later described to an officer outside as “a position of cover and concealment.” RP 115, 225.

The first two officers who arrived broke through the front door but quickly retreated when they determined that Mr. Anderson was holding Ms. Anderson hostage. RP 202-241. These officers called in a swat team with a hostage negotiator. *Id.* After a couple hours of negotiation Mr. Anderson released his wife. RP 231. A little more than an hour later he gave himself up to the police. RP 233. Although the police did not hear Mr. Anderson ever threaten his wife, they did hear him repeatedly threaten to kill himself. RP 224, 234. In fact, according to Ms. Anderson, after her husband took her down the hall he did not again threaten her other than to tell her that she was going to have to watch him kill himself. RP 166-167.

### ***Procedural History***

By information filed February 25, 2005, and later amended before trial the Clark County Prosecutor charged defendant Robert Allen Anderson with one count of first degree burglary, one count of first degree kidnaping, one count of second degree assault against Ms. Anderson, one count of

second degree assault against Mr. Concannon, and one count of unlawful imprisonment. CP 112-113. Each count included a firearms enhancement. *Id.* Although the court initially appointed an attorney to represent the defendant, by March 2, 2005, the court had accepted a notice of substitution by two retained attorneys CP 6.

On July 6, 2005 the defendant appeared before the court, stated a number of complaints against his retained attorneys, and stated that he wanted to “fire” them. RP 1-9. In fact, his attorneys had previously filed a “Motion re: Representation” so stating. CP 48-51. The defendant did not ask for appointed counsel. RP 1-19. Based upon the fact that the defendant had not approached another attorney seeking other representation the court signed a written order requiring that “counsel remain on the case.” CP 55. In fact they stated orally and by affidavit that they were willing to continue to represent the defendant. CP 49, RP 1-19. At this hearing defense counsel also stated that the defendant had apparently suffered a seizure in the jail, that his mental condition had deteriorated, that he was suffering from memory loss, and that they did not believe him competent to proceed. RP 13-19. In response to the defense attorneys’ statements the court ordered Western State Hospital to evaluate the defendant’s competency. CP 67-69. On the last page of the order, dated July 19, 2005, the court wrote the following finding of fact:

It is further a finding of the court that competency has been put in issue and that speedy trial time will toll.

CP 69.

Although the defendant was eventually sent to Western State Hospital, appellate counsel can find no evidence in the record that Western State Hospital ever performed a competency evaluation. CP 85-86, 87-89, 90-92, 107. In fact an October 10, 2005, report from the Clark County Corrections Department made in response to the defendant's request for release based upon his deteriorating medical condition<sup>2</sup> contains the following notation:

He has not been evaluated by Western State Hospital at this time.

CP 105.

Appellate counsel has been unable to find anything in the record to indicate that the court held a hearing to determine the defendant's competency, or ever even referred to the question of competency. RP 1-453, CP 1-321. In fact, Supplemental Clerk's Papers in this appeal includes every minute sheet filed by the Superior Court Clerk in this case, apart from those marked with a number and included as a document. SCP 1-15. These minute

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<sup>2</sup>Prior to this case the defendant suffered a severe heart attack and had undergone bypass surgery. RP 134-135. His heart problems continued while incarcerated in jail requiring his transfer to the hospital. CP 105-106. Based upon these medical problems the defendant unsuccessfully moved to be released. CP 105-106.

sheets do not mention any hearing at which the issue of competency was addressed. *Id.* Supplemental Clerk's Papers also include the "Copy Case" from the superior court file. SCP 16-20. The "Copy Case" is the clerk's master index generated with each superior court file. *Id.* It contains a list of every document filed, a notation for every instance in which the case was called in court, and various other pieces of information. *Id.* Appellate counsel can find no notation to indicate that the court ever entered either an oral or a written order finding the defendant competent. *Id.*

This case eventually came on for trial on November 30, 2005, and December 1, 2005. RP 22. During trial the state called seven witnesses, who testified to the facts contained in the preceding *Factual History*. RP 84, 106, 187, 194, 236, 257, 266. The defendant then took the stand on his own behalf. CP 316. In his testimony the defendant admitted he took a pistol into Mr. Concannon house, but denied every threatening anyone with it or intending to do anything with it other than kill himself. RP 318-341. He also denied ever threatening his wife, touching her, or holding her against her will. RP 316-318.

Following instruction and deliberation the jury returned "guilty" verdicts on all counts, along with special verdicts finding that the defendant had been armed with a firearm when his committed each offense. CP 245-256. At sentencing both parties agreed that Counts II and III merged. (the

kidnapping and assault of Michelle Anderson). RP 420-452, CP 290. In addition, the defense requested that the court use its discretion as recognized in *State v. Davis*, 90 Wn.App. 776, 954 P.2d 325 (1998), and find that Count I and Count IV merged in spite of the burglary anti-merger statute. RP 433-451. The court denied the request. RP 450-451.

The court then sentenced the defendant to 36 months on Count I, 72 months on Count II, and 15 months on Count IV. CP 292-293. In doing so the court used the bottom end of the standard range for each sentence. *Id.* The court then added 156 months in firearms enhancements to each sentence (60 months enhancement on Count I consecutive to 60 months enhancement on Count II consecutive to 36 months enhancement on Count IV). CP 293. The court thereby imposed sentences of actual confinement of 192 months on Count I, 228 months on Count II, and 171 months on Count IV. CP 293. The defendant thereafter filed timely notice of appeal. CP 304-321.

## ARGUMENT

**I. THE TRIAL COURT VIOLATED THE DEFENDANT'S RIGHT TO DUE PROCESS UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3 AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT WHEN IT FOUND THAT THE DEFENDANT'S COMPETENCY WAS IN QUESTION BUT LATER ALLOWED THE CASE TO PROCEED TO TRIAL WITHOUT A FINDING THAT THE DEFENDANT WAS COMPETENT.**

Under RCW 10.77.050 mental incapacity stands as an absolute bar to trying a case, receiving a verdict, or sentencing a defendant on a criminal matter. This statute states: "No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues. RCW 10.77.050.

Under RCW 10.77.010(14) the legislature has defined the term "incompetency" as follows:

(14) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

RCW 10.77.010(14).

In the first part of RCW 10.77.060(1)(a) the legislature created the following procedure for raising questions of competency.

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental

condition of the defendant.

RCW 10.77.060(1)(a) (in part).

The ultimate decision whether or not a person is competent lies within the sound discretion of the trial court. *State v. Ortiz*, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985). In *State v. Lawrence*, 108 Wn.App. 226, 31 P.3d 1198 (2001) the court stated the following about competency and the court discretion in ultimately determining this issue:

It is fundamental that no “incompetent person may be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.” RCW 10.77.050. Indeed, “the conviction of an accused while he is legally incompetent violates his constitutional right to a fair trial under the Fourteenth Amendment’s due process clause.” A defendant is competent if he has the capacity to understand the nature of the proceedings against him and to assist in his own defense. In reviewing a trial court’s decision on competency, we grant the trial court great deference. We will not reverse the trial court unless we find that the court abused its discretion.

*State v. Lawrence*, 108 Wn.App. at 231-232.

However, while the ultimate decision on competence for the purposes of RCW 10.77.050 lies within the discretion of the trial court, the is not true of the decision whether or not to perform an evaluation under RCW 10.77.060(1)(a). The language is specific and states that the court “shall” order a competency evaluation “on its own motion or on the motion of any party.” Although the language of this statute appears to make the “motion of any party” sufficient to trigger the required evaluation this reading is

incorrect. Rather, the moving party bears the burden of producing evidence sufficient to call the defendant's competency into question, thereby triggering the required evaluation under RCW 10.77.060(1)(a). In *State v. Woods*, 143 Wn.2d 561, 23 P.3d 1046 (2001) the Washington Supreme Court stated the following on this issue:

A defendant is "incompetent" if he or she "lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect." RCW 10.77.010(14). As we noted in *Lord*, the defense bears the "threshold burden" of establishing that there is reason to doubt the defendant's competency. *Lord*, 117 Wn.2d at 903, 822 P.2d 177. We further observed in that case that although "considerable weight" should be given to the attorney's opinion regarding the client's competency, that opinion is not necessarily dispositive. *Id.* Instead, the ultimate question for the trial court is whether there is a "factual basis" to doubt the defendant's competence. The question before us, then, is whether the record reflects that there was a "factual basis" for the trial court to doubt the competency of Woods. If there was such a basis, the trial court should have granted the continuance. If not, there was no error in denying the motion for continuance.

*State v. Woods*, 143 Wn.2d at 604-605.

While the trial court "shall" order an evaluation if the moving party meets the "threshold burden of establishing that there is reason to doubt the defendant's competency," the decision whether or not the evidence rises to this level does lie within the trial court's discretion. *Seattle v. Gordon*, 39 Wn.App. 437, 441, 693 P.2d 741 (1985). An abuse of discretion occurs when the trial court's exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons. *State v. Neal*, 144 Wn.2d 600, 30 P.3d

1255 (2001). For example, in *Woods* the defendant had been convicted of aggravated first degree murder and the state was seeking the death penalty. After the guilt phase of the trial the defendant's attorney requested a continuance to seek an evaluation on the defendant's competency. The only facts counsel gave for making the request was that the defendant had instructed the attorney to not present mitigating evidence during the penalty phase and had informed the media of the same. The court found this insufficient evidence to meet the "threshold burden" that would trigger a required competency evaluation under RCW 10.77.060(1)(a).

By contrast in the case at bar trial counsel specifically indicated their belief that the defendant was not competent based upon the fact that the defendant had suffered a seizure in the jail, that the defendant had attempted to kill himself, that his mental condition had deteriorated, and that he was suffering from memory loss. RP 13-19. In response to the defense attorneys' statements the court entered the following finding of fact:

It is further a finding of the court that competency has been put in issue and that speedy trial time will toll.

CP 69.

It is true that the trial court ordered a competency evaluation at Western State Hospital when it entered this finding, thereby fulfilling part of the requirement of RCW 10.77.060(1). However, the record does not contain

any evidence that this evaluation was ever performed. To interpret this statute to only require that the court order the evaluation but not require that the evaluation be performed would be an absurd interpretation of the legislature's intent and render the statute meaningless thereby violating one of the primary rules of statutory construction that the court must construe statutes to avoid rendering a provision meaningless or in a way that allows an absurd result. *State v. Ritts*, 94 Wn.App. 784, 787-88, 973 P.2d 493 (1999).

As was mentioned above, to determine whether or not a person is competent lies within the sound discretion of the trial court. *Seattle v. Gordon, supra*. While an abuse of discretion occurs when the trial court's decision is manifestly unreasonable or based upon untenable grounds or reasons, it also occurs when the trial court refuses to exercise its discretion at all. *State v. Grayson*, 154 Wn.2d 333, 111 P.3d 1183 (2005) (refusal to apply court's discretion to consider a DOSA for a person otherwise qualified constitutes an abuse of discretion). *See also State v. Flieger*, 91 Wn.App. 236, 955 P.2d 872 (1998) (court allowing jail staff to determine level of restraints necessary during trial of in custody defendant constituted refusal to exercise discretion, thus an abuse of discretion). In this case the trial court's failure to assure that Western State Hospital performed a competency evaluation and the trial court's failure to exercise its discretion to determine whether or not the defendant was competent constituted a failure to exercise

discretion that is thus an abuse of that discretion.

The only available remedy at this point in time is to reverse the defendant's conviction and remand the case with instructions to hold a competency evaluation to determine if the defendant is currently competent. If the trial court ultimately determines that the defendant is competent, then a new trial can proceed. However, there is not way for this court or the trial court to determine whether or not the defendant was competent as the time competency was put in issue because (1) a defendant's competency changes over time, and (2) no evaluation was performed to determine what the defendant's competency was at the time competency was put at issue. Thus, the defendant requests that this court reverse his conviction and remand the case for a new trial once an appropriate finding of competency is entered.

**II. THE TRIAL COURT VIOLATED THE DEFENDANT'S RIGHT TO DUE PROCESS UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3 AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT WHEN IT ENTERED JUDGEMENT OF CONVICTION FOR ASSAULT IN THE SECOND DEGREE IN COUNT IV BECAUSE SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THIS VERDICT.**

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25

L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: “[The] use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* In addition, evidence that is equally consistent with innocence as it is with guilt is not sufficient to support a conviction; it is not substantial evidence. *State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996).

“Substantial evidence” in the context of a criminal case means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227, 228 (1970)). This includes the requirement that the state present substantial evidence “that the defendant was the one who perpetrated the crime.” *State v. Johnson*, 12 Wn.App. 40, 527 P.2d 1324 (1974). The test for determining the sufficiency of the evidence is whether, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of

fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980).

In the case at bar the state convicted the defendant in Count IV of second degree assault against Christopher Concannon under RCW 9A.36.021(1)(c), which required the state to prove that the defendant “intentionally assaulted” Mr. Concannon “with a deadly weapon.” CP 113. However, the record is completely devoid of any evidence that the defendant directed any of his actions against Mr. Concannon. The defendant did not shoot at Mr. Concannon although he apparently had time to when Mr. Concannon ran down the hall, the defendant did not chase Mr. Concannon, the defendant did not point the gun at Mr. Concannon, and the defendant did not direct any words at all, let alone threats to Mr. Concannon. Rather, the evidence shows that the defendant’s actions were focused solely upon his wife. In fact, as Mr. Concannon’s testimony revealed the defendant did not express any animus toward Mr. Concannon in any way during the whole incident. It is true that Mr. Concannon was extremely frightened when he saw that the defendant was holding a gun to his side. However, Mr. Concannon’s fright cannot be substituted for the missing evidence of the defendant’s intent to assault Mr. Concannon.

Absent substantial evidence to prove that the defendant intended to

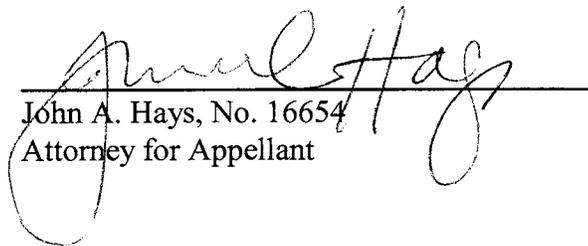
assault Mr. Concannon, the trial court violated the defendant's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment when it entered judgment of conviction on this count.

## CONCLUSION

The trial court's failure to assure that a competency evaluation was performed on the defendant and the trial court's failure to exercise its discretion on the issue of the defendant's competency violated RCW 10.77.070 and the defendant right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment. As a result the defendant is entitled to a new trial. In addition the trial court violated the defendant's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment when it entered judgment of conviction on the assault against Mr. Concannon because the verdict of guilty was unsupported by substantial evidence. This court should reverse this conviction and remand for dismiss of this charge.

DATED this 12<sup>th</sup> day of July, 2006.

Respectfully submitted,

  
John A. Hays, No. 16654  
Attorney for Appellant

**APPENDIX**

**WASHINGTON CONSTITUTION  
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**UNITED STATES CONSTITUTION,  
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

**RCW 10.77.050**

No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.

## RCW 10.77.060

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant. The signed order of the court shall serve as authority for the experts to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant. At least one of the experts or professional persons appointed shall be a developmental disabilities professional if the court is advised by any party that the defendant may be developmentally disabled. Upon agreement of the parties, the court may designate one expert or professional person to conduct the examination and report on the mental condition of the defendant. For purposes of the examination, the court may order the defendant committed to a hospital or other suitably secure public or private mental health facility for a period of time necessary to complete the examination, but not to exceed fifteen days from the time of admission to the facility. If the defendant is being held in jail or other detention facility, upon agreement of the parties, the court may direct that the examination be conducted at the jail or other detention facility.

(b) When a defendant is ordered to be committed for inpatient examination under this subsection (1), the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court shall consider: (i) Recommendations of the expert or professional persons regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the examination authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional

person shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis of the mental condition of the defendant;

(c) If the defendant suffers from a mental disease or defect, or is developmentally disabled, an opinion as to competency;

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, an opinion as to the defendant's sanity at the time of the act;

(e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant should be evaluated by a county designated mental health professional under chapter 71.05 RCW, and an opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(4) The secretary may execute such agreements as appropriate and necessary to implement this section.

FILED  
COURT OF APPEALS  
DIVISION II

06 JUL 26 PM 1:34

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,  
DIVISION II**

6 STATE OF WASHINGTON, )  
7 Respondent, )  
8 vs. )  
9 ROBERT ALLEN ANDERSON, )  
10 Appellant, )

**CLARK CO. NO.0505-1-00493-2  
APPEAL NO: 34291-0-II  
AFFIDAVIT OF MAILING**

11 STATE OF WASHINGTON )  
12 COUNTY OF CLARK ) vs.

13 CATHY RUSSELL, being duly sworn on oath, states that on the 24<sup>TH</sup> day of JULY, 2006,  
14 affiant deposited into the mails of the United States of America, a properly stamped envelope  
directed to:

15 ARTHUR CURTIS  
16 CLARK COUNTY PROSECUTING ATTORNEY  
17 1200 FRANKLIN ST.  
VANCOUVER, WA 98668

ROBERT A. ANDERSON #790622  
WA STATE PENITENTIARY  
P.O. BOX 520  
WALLA WALLA, WA 99362

and that said envelope contained the following:

- 18 1. BRIEF OF APPELLANT
- 19 2. AFFIDAVIT OF MAILING

DATED this 24<sup>TH</sup> day of JULY, 2006.

Cathy Russell  
CATHY RUSSELL

22 SUBSCRIBED AND SWORN to before me this 24 day of JULY, 2006.



Heather Chittock  
NOTARY PUBLIC in and for the  
State of Washington,  
Residing at: Longview, WA  
Commission expires: 11-04-2009