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STATE OF WASHINGTON  
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No. 40708-6 II

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

---

**GREGORY W. CHAPMAN,  
Appellant,**

**vs.**

**STATE OF WASHINGTON,  
Respondent.**

---

**APPELLANT'S OPENING BRIEF  
UNDER RAP 2.2 (a)**

---

**Gregory W. Chapman 929253  
P.O. Box 769  
Connell, WA, 99326**

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**APPENDIX**

- “A”..... Motion for relief from judgment Department one.
- “B”..... States order Denying Defendants Motion for new trial and a motion for DNA Testing.
- “C”..... Verbatim report of proceedings Page No.5 line 1-9

**EXHIBIT**

- “1”..... Defendant’s motion objecting to States request for a telephonic hearing.
- “2”..... Defendant’s attorney Mr. John Dotherty requesting DNA testing at appellants sentencing hearing December 3, 2001, Pg. 6 Line 1-25.
- “3”..... Clerks papers Defendant’ motion requesting that this motion re: Consolidated with the motion filed May 22, 2009, sub# 143 and request for DNA testing filed February 26, 2010, sub# 153-154.

## **ASSIGNMENT OF ERROR**

Did the Trial Court violate Mr. Chapman's Constitutional? Rights by failing to determine his motion for new trial and motion for DNA testing under innocence on a more probable than not basis as held in State v Riofta, 166 Wn.2d 358, 209 P.3d 469 (2009) (3). The answer is yes.

## **ISSUE**

The trial Court committed reversible error by not granting Mr. Chapman's motion for DNA testing by not basing its decision upon R.C.W 10.73.170 and the authority held in State v Riofta , 166 Wn.2d 358, 209 P.3d 469 (2009) innocent on a more probable than not basis.

## **STATEMENT OF THE CASE**

The Appellant Gregory W. Chapman was granted a hearing on the merits of his motion for relief from judgment and motion for DNA testing by the Thurston County Superior Court Dept. 1, (see Appendix "A").

This hearing was held March 18, 2010, telephonic. The State proposed an order denying Mr. Chapman's motion for relief from judgment and motion for DNA testing and the Trial Court subsequently denied Appellant's motion for relief from judgment and his motion for DNA testing (see Appendix "B").

The Appellant Mr. Chapman filed an objection dated February 25, 2010 (see Exhibit "1"), and also objected orally during the telephonic hearing held March 18, 2010 (see Appendix "C").

## **ARGUMENT**

A Trial Court denial of a convicted felons post-conviction motion for DNA testing under R.C.W 10.73.170 is appealable as a matter of right under Rap 2..2 (a), because it is a final order made after a judgment.

The Appellant Mr. Chapman motions the Trial Court for a new trial and for DNA testing under RCW 10.73.170, which Dept. 1 of the Trial Court granted and ordered a hearing to be held on the merits. This hearing was held on March 18, 2010, telephonic.

The Trial Court ordered the State to propose a stipulated order denying motion for new trial and motion for DNA testing, which was not stipulated to by the Appellant, however the Trial Court denied Appellant's Motion on a standard not authorized by RCW.10.73.170, which authorizes post-conviction DNA testing, if the results are favorable to the Appellant and shows innocence's on a more probable than not basis viewed in light of the evidence as a whole at the time of trial.

Here in the Appellant's case the evidence consists of some kind of injury on the alleged victim's leg that was never identified by a licensed physician to be a knife injury and the alleged victim Mr. Wilcox told Detectives, Police, Prosecutor, and my own defense counsel and he was certain, 100% certain that this first knife, the double edge knife, was the knife that caused the injury to his leg.

But when this knife was tested, just to determine if blood was on this knife and the results came back negative, the focus changed to this second knife.

When this knife, a single edge curved blade was tested just for blood and the results came back testing positive. Mr. Wilcox expected testimony changed from this first knife that tested negative for blood to this second knife that tested positive. The State had two forensic experts who indentified blood and cut marks in the clothing.

Here, in the Appellant's case he seeks a motion for a new trial and motion for DNA testing of a knife that was alleged to injure the alledged victim for which he was convicted

The Appellant has time over shown that a post-conviction DNA test will show that he is innocent on a more probable than not basis that he is not the perpetrator in this crime.

The Appellant basis his motion for DNA testing on the fact that it could show if the alledged victim Mr Wilcox is not the donor of the blood on the knife that he testified, that injured him at the time of trial.

Then this knife did not cause the injury to his leg, and if this knife did not cause the injury to Mr. Wilcox's leg, then this knife did not cause the tear in Mr. Wilcox's jeans, and it has never been established by any expert physician at the time of the trial that the injury to Mr. Wilcox's leg was in fact caused by a knife of any sort.

The Trial Court simply has its own reasoning, of why the Appellant should not be granted a DNA test, and considered its opinion on a standard not authorized by RCW.10.73.170.

The trial Court must grant a motion if it concludes the Appellant has shown the likelihood that the DNA would demonstrate innocence's on a more probable than not basis, State v Thompson, 155 Wn. App. 294, in Division 1, that Appellate Court held in Thompson, (supra at (4) that a Trial Courts denial of a convicted felons post-conviction motion for DNA testing under RCW 10.73.170 is reviewed for abuse of discretion that Court further held...supra at (5) that a convicted felons posts-conviction motion for DNA testing under RCW 10.73.170 does not fail to meet the procedural requirements of the statue merely because the

item to be tested could have been, but was not tested prior to the defendant's trial.

The statute allows DNA testing either on advance in technology to produce significant new information the Appellant satisfies both procedural and substantive requirements.

At the Appellant's sentencing hearing the Appellant requested DNA test to which the Trial Court grants but never conducts (see Exhibit "2").

To satisfy the substantive requirement the Appellant must demonstrate, that a DNA test considered with evidence at the time of trial as a whole, favorable in its results, would show innocence on a more probable than not basis.

That requirement is satisfied here because the evidence at the time of the trial consists of an injury that was never identified, being caused by a knife and the *blood* was never matched to being the alleged victim. And a torn pair of jeans from which was opinioned to be cut by a knife, but inconclusive as to being certain. A handgun that was recovered from the alleged victim who stated Mr. Chapman made him take it, ordered him to rob the store to get money. Wilcox stated he owed Mr. Chapman for a drug debt, this handgun was examined for finger prints and none belonging to Mr. Chapman was found, not even a partial print. Clearly this fact at the time of trial, with favorable DNA testing, would have swayed the jury into finding the Appellant innocent, on a more probable than not of being found in possession of this firearm.

The Trial Court on the March 18, 2010 hearing never considered the Appellant request for DNA testing under the standards held in RCW 10.73.170 or under legislative intent.

The Washington State Supreme Court held in State v Riofta, 166, Wn.2d 358, 209 P.3d 469 (2009), that the meaning of a statute is a question of law that is review “De novo”.

The Supreme Court further held that the purpose of RCW 10.73.170, which authorizes post-conviction DNA testing upon the motion of a convicted felon to obtain DNA evidence that would support a petition for post-conviction relief. To determine the probability that a petitioner could demonstrate his innocence with the aid of favorable DNA testing results. Court’s must consider the evidence at trial along with any newly discovered evidence and the impact that exculpatory DNA test could have in light of this evidence. Here, in the Appellant’s case, the Trial Court did not follow the Washington State Supreme Court holdings in Riofta, they did not follow any authorize code of law, the Trial Court abuses its discretion, by trying to get the Appellant to waive his right to challenge a substantial Constitutional violation, that affects his liberty interests.

The fourteenth Amendment of the United States Constitution, and Article (1) section (3) of the Washington State Constitution, guarantees the right to due process and a right to be tried fairly and without abuse from the powers of the State.

However, the Appellant’s instant case, that is not the case. The Trial Court wants the Appellant to waive his right to appeal this matter, which violates due process and his right to appeal, which is guaranteed under the Washington State Constitution article (1) section (22).

The Court of Appeals Division 1, State v Thompson, 155 Wn. App. 295, held in construing a statute, the fundamental objective of the Court is to carry out the legislature intent and give effect to the statute plain meaning.

The plain meaning rule requires Courts to consider legislature purpose or polices appearing on the face of the statue as well as back ground facts of which judicial notice can be taken in this case. It cannot be shown by the State that the Trial Court used this standard in considering the Appellant's March 18,2010 hearing on his motion for a new trial and motion for DNA testing, based on the statue RCW 10.73.170, the Trial Court failed to properly consider the Appellant's motion for a new trial, and motion for DNA testing under RCW 10.73.170, which this statue holds that the Court MUST grant the motion if it concludes the Appellant has shown the likelihood that the DNA test would demonstrate innocence on a more probable than not basis. RCW 10.73.170 (1) allows a convicted person currently serving a prison sentence to file a motion requesting DNA testing with the Court that entered the judgment on conviction, and the person requesting testing must satisfy both procedural and substantial requirements.

RCW 10.73.170 (2) (3) states: The motion must state the basis for request, explain the relevance of the DNA evidence sought, and comply with applicable rules in RCW 10.73.170 (a) (c). If the petitioner satisfies these procedural requirements, the Court must grant the motion if the Court concludes the petitioner has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

That's the standard the Trial Court should have been held to on considering the Appellant's motion for new trial, and motion for DNA testing, under RCW 10.73.170 (see Exhibit "3"). This Court is compelled to follow the Washington State Supreme Court's authority held in *State v Riofa*, 166 Wn.2d 358, 209 P3d 467 (2009), which holds that the Trial Court must grant Appellant's motion for DNA testing if both procedural and substantive requirements are shown and the Appellant shows that

the DNA test considered with evidence at the time of trial would demonstrate innocence on a more probable than not basis.

### CONCLUSION

The Trial Court's decision denying Appellant's motion for a new trial and motion for DNA testing was abuse of its discretion and the Trial Courts failure to properly determine the Appellant's motion for DNA testing, under RCW 10.73.170. The Trial Court's decision should be reversed and a DNA test should be granted to determine Appellant's innocence on a more probable than not basis standard as held in this statute RCW 10.73.170.

Dated this 10 day of December 2010.

  
Gregory W. Chapman  
Appellant, Pro-se

CASE NO. 40708-6 II CHAPMAN

APPENDIX "A"

A

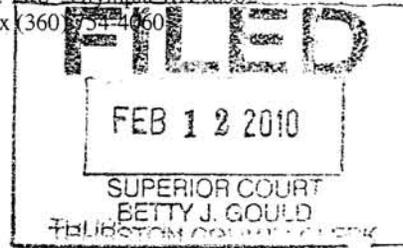
# Superior Court of the State of Washington For Thurston County

**Paula Casey, Judge**  
Department No. 1  
**Thomas McPhee, Judge**  
Department No. 2  
**Richard D. Hicks, Judge**  
Department No. 3  
**Christine A. Pomeroy, Judge**  
Department No. 4



**Gary R. Tabor, Judge**  
Department No. 5  
**Chris Wickham, Judge**  
Department No. 6  
**Anne Hirsch, Judge**  
Department No. 7  
**Carol Murphy, Judge**  
Department No. 8

2000 Lakeridge Drive SW • Building No. Two • Olympia WA 98502  
Telephone (360) 786-5560 • Fax (360) 754-4060



February 12, 2010

Gregory W. Chapman, DOC #929253  
Stafford Creek Corrections Center  
191 Constantine Way H-3-B-56  
Aberdeen, Washington 98520

Thurston County Prosecuting Attorney  
2000 Lakeridge Drive SW  
Olympia, WA 98502-6045

Re: *State of Washington v. Gregory Wayne Chapman*  
Thurston County Cause No. 01-1-01443-2  
Motion for Relief From Judgment

Dear Parties:

This case recently has come to this court's attention. This court heard this criminal case in 2001. Mr. Chapman appealed to the Court of Appeals, which ultimately dismissed the appeal. On July 18, 2005, this court entered an order modifying Mr. Chapman's sentence. He appealed again. After some proceedings not relevant here, the Court of Appeals issued a mandate terminating review on March 20, 2009.

On May 22, 2009, Mr. Chapman filed a motion for relief from judgment and requested a motion hearing on June 9, 2009. No action was taken. Mr. Chapman subsequently exercised due diligence to receive a hearing on this matter. He sent four letters to the Court Clerk that explain the problem (dated 6/25/09, 7/29/09, 8/13/09, and 8/31/09). Still, no action was taken or has been taken to date. Mr. Chapman filed a "Petition Against State Officer" with the Washington Supreme Court, Cause No. 84175-6, regarding this issue of failure to hold a hearing on this matter.

This court concludes that procedural error resulted in a failure to consider Mr. Chapman's relief from judgment. This matter should be heard in an expedited fashion, unless the Supreme Court action precludes further hearings by this Court.

Sincerely,

**PAULA CASEY**

Paula Casey  
Administrative Judge

PC/rdz;dkr

cc: Thurston County Clerk's Office

Washington State Supreme Court Deputy Clerk Susan L. Carlson  
(Supreme Court Cause No. 84175-6)

CASE NO. 40708-6 II CHAPMAN

APPENDIX "B"



**THURSTON COUNTY**

**WASHINGTON**

SINCE 1852

**EDWARD G. HOLM  
PROSECUTING ATTORNEY**

2000 Lakeridge Drive S.W.  
Olympia, Washington 98502  
(360) 786-5540  
Fax: (360) 754-3358

May 21, 2010

Gregory Chapman, #929253  
Stafford Creek Corr Ctr  
Unit H-3-B-56  
191 Constantine Wy  
Aberdeen, Wa 98520-9504

Re: State of Washington v. Gregory Wayne Chapman, 01-1-01443-2

Dear Mr. Chapman:

Pursuant to Judge Tabor's letter of May 6, 2010, I have prepared the Order Denying Defendant's Motion for New Trial and Motion for DNA Testing.

I am enclosing said order for your review and signature. Please sign and return the order to this office in the self-addressed, self postage envelope no later than June 4, 2010.

I will provide you with a conformed copy once the order has been signed and entered with the Court.

Very truly yours,

  
Andrew Toynbee  
Criminal Trials Division Chief

Encls. as stated



**THURSTON COUNTY**

**WASHINGTON**

SINCE 1852

**EDWARD G. HOLM  
PROSECUTING ATTORNEY**

2000 Lakeridge Drive S.W.  
Olympia, Washington 98502  
(360) 786-5540  
Fax: (360) 754-3358

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September 3, 2010

Washington State Court of Appeals  
Division II  
David C. Ponzoha  
905 Broadway, Ste 300  
Tacoma, WA 98402-4454

Re: Case #40708-6-II Gregory Chapman

Dear Mr. Ponzoha:

This letter is in response to your letter of September 1, 2010 the Motion for Judgments on Pleadings filed by Mr. Chapman.

The Superior Court of Thurston County entered an Order Denying Defendant's Motion for New Trial and Motion for DNA Testing on June 17, 2010 under Superior Court Cause Number 01-1-01443-2, a certified copy of which is enclosed for the record. Also, enclosed is a certified copy of a letter dated May 6, 2010 from the Honorable Gary Tabor which addresses the request for appointment of counsel.

After the June 17, 2010 order was entered it was Mr. Toynbee's impression that a copy of said Order and correspondence would have been forwarded to your Court.

We believe that these documents that are enclosed satisfies the State's response, unless further directed by your Court.

Sincerely,

A handwritten signature in black ink, appearing to read "J. C. Skinder", is written over a large, stylized circular graphic element.

John C. Skinder  
Deputy Prosecuting Attorney

encl: May 6, 2010 letter from Honorable Judge Tabor  
June 17, 2010 Order Denying Defendant's Motion for New Trial and Motion for DNA Testing  
cc: Gregory Chapman

'10 JUN 17 P2:11

BETTY J GOULD CLERK

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

**IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR THURSTON COUNTY**

STATE OF WASHINGTON,

Plaintiff,

NO. 01-1-01443-2

vs.

GREGORY WAYNE CHAPMAN,

Defendant.

ORDER DENYING DEFENDANT'S  
MOTION FOR NEW TRIAL AND MOTION FOR  
DNA TESTING #5

THIS MATTER, having come before the court for a hearing on the defendant's Motion for a New Trial and Motion for DNA Testing on March 18, 2010, the defendant representing himself pro se, and appearing via telephone; the plaintiff represented by Deputy Prosecuting Attorney J. Andrew Toynbee; and the Court having reviewed the court file, the pleadings presented by both parties, and having heard argument of both parties; now it is

HEREBY ORDERED, ADJUDGED and DECREED, that that the defendant's motions are DENIED, as they are both time-barred and successive. Further, it is

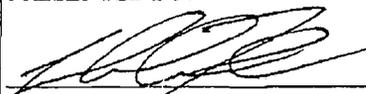
HEREBY ORDERED, ADJUDGED and DECREED, that the defendant's request for appointment of counsel is DENIED, based on the Court's finding that the defendant's motions are both time-barred and successive.

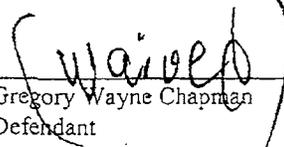
DATED this 17<sup>th</sup> day of June, 2010

  
JUDGE

PRESENTED BY:

APPROVED FOR ENTRY:

  
J. ANDREW TOYNBEE, WSBA#22582  
Deputy Prosecuting Attorney

  
Gregory Wayne Chapman  
Defendant

COPY TO PROSECUTING ATTORNEY

ORDER DENYING DEFENDANT'S  
MOTION FOR NEW TRIAL AND  
MOTION FOR DNA TESTING

Edward G. Holm  
Thurston County Prosecuting Attorney  
2000 Lakeridge Drive S.W.  
Olympia, WA 98502  
360/786-5540 Fax 360/754-3158

CASE NO. 40708-6 II CHAPMAN

APPENDIX "C"

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

STATE OF WASHINGTON, )  
 )  
 Respondent, ) COA CAUSE NO.  
 ) 40708-6-II  
 vs. )  
 ) NOTICE OF FILING OF  
 GREGORY W. CHAPMAN, ) VERBATIM REPORT OF  
 ) PROCEEDINGS  
 Appellant. )  
 ) (RAP 9.5)  
 )

DECLARATION

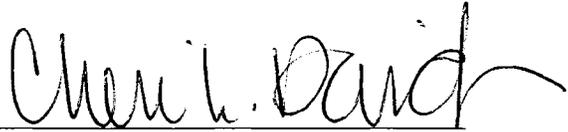
I, CHERI L. DAVIDSON, official court reporter, filed the verbatim report of proceedings for March 18, 2010 and provided a copy to pro se appellant Gregory W. Chapman, who arranged for transcription. The transcript was computer-generated and an ASCII disk was filed.

CERTIFICATE OF SERVICE

I certify that on September 14, 2010, I caused a true and correct copy of this Notice to be served on the following in the manner indicated below:

GREGORY W. CHAPMAN (x) U.S. mail  
No. 929253 ( ) E-mail  
Coyote Ridge Corrections Center  
PO Box 769  
Connell, WA 99326

PROSECUTOR'S OFFICE ( ) U.S. mail  
2000 Lakeridge Drive SW (x) E-mail  
Olympia, WA 98512

  
CHERI DAVIDSON  
Official Court Reporter

COPY



A P P E A R A N C E S

For the Plaintiff: J. ANDREW TOYNBEE  
Deputy Prosecuting Attorney  
Thurston County Prosecutor's Office  
2000 Lakeridge Drive SW  
Olympia, WA 98502

For the Defendant: GREGORY W. CHAPMAN  
(Telephonically) Pro Se  
Coyote Ridge Corrections Center  
PO Box 769  
Connel, WA 99326

1 MARCH 18, 2010

2 THE HONORABLE GARY R. TABOR, PRESIDING

3 \* \* \* \* \*

4 MS. LORD: The last remaining matter from the  
5 9 o'clock calendar is calendar item two, State versus  
6 Gregory Chapman, with Mr. Toynbee.

7 THE COURT: How about number 16? Did we do  
8 that?

9 MS. LORD: Number 16? Yes, there was an order  
10 handed forward to continue it until March 25th.

11 THE COURT: Okay. Mr. Toynbee, are you  
12 willing to initiate the calling then to Mr. Chapman?

13 MR. TOYNBEE: Yes.

14 THE COURT: I want this on the record.

15 I am told that at some point in time courtrooms  
16 here hope to be equipped with telephones that will  
17 allow two-way communication. I am always troubled  
18 when we try to set up a telephone conference call  
19 from the courtroom under our present system. It only  
20 works one way. If I'm talking the person on the  
21 other end can't talk. If they're talking I can't  
22 talk. It just makes it very difficult, but we'll do  
23 our best.

24 (Mr. Toynbee placed call to Mr. Chapman.)

25 THE COURT: This is Judge Tabor. Mr. Chapman,

1 can you hear me?

2 MR. CHAPMAN: Hello? Hello?

3 THE COURT: I asked if you could hear me.

4 UNIDENTIFIED SPEAKER: My speaker has problems  
5 in here. I'm gonna have to put him off speaker.  
6 This is the Thurston County Courthouse?

7 THE COURT: Yes.

8 UNIDENTIFIED SPEAKER: All right. I have to  
9 make sure. I'll pass the phone back.

10 MR. CHAPMAN: Hello.

11 THE COURT: Mr. Chapman, this is Judge Tabor.  
12 Can you hear me?

13 MR. CHAPMAN: Yes, sir.

14 THE COURT: The problem with our communication  
15 system is it's only one way at a time. If I'm  
16 talking you can't speak and if you're speaking I  
17 can't, and so we'll have to pause to make sure that  
18 someone isn't trying to say something.

19 In any event, this is a hearing that was set up by  
20 the State in Cause 01-1-1443-2 based upon your  
21 motion. I understand that you are objecting to this  
22 telephonic hearing. Do you wish to state that  
23 objection on the record?

24 MR. CHAPMAN: Yes, I would, sir.

25 THE COURT: Go right ahead.

1 MR. CHAPMAN: Yes, I'm objecting to this  
2 telephonic hearing because I have exhibits and other  
3 stuff I would like to present to the Court  
4 personally. I can't over the telephonic hearing. I  
5 believed I would have counsel, so this is why I'm  
6 objecting to it, sir.

7 THE COURT: You said you believed you would  
8 have counsel. Are you requesting counsel here?

9 MR. CHAPMAN: Yes, sir, I would.

10 THE COURT: Let me hear the State's response.

11 MR. TOYNBEE: Your Honor, under the rules of  
12 -- under the criminal rules I don't believe that a  
13 petition such as this entitles him to court-appointed  
14 counsel. This is a subsequent petition. He has had  
15 -- he was pro se during the trial. He waived the  
16 right to counsel at that time. He's been represented  
17 at least twice on direct appeal, and he's presented  
18 this same motion in varying forms at least three  
19 times prior to today's hearing, so under the  
20 circumstances I don't believe that he is entitled or  
21 the Court has authority to appoint counsel on this  
22 case.

23 THE COURT: Mr. Chapman, you said that you  
24 wanted to submit documentation or exhibits.

25 MR. CHAPMAN: Yes, sir.

1 THE COURT: I have an extensive file here.  
2 Would those documents be something other than what is  
3 already in the file?

4 MR. CHAPMAN: Yes, sir.

5 THE COURT: Can you give me an example?

6 MR. CHAPMAN: Well, I'm not really prepared  
7 right now, sir, to do that because I was hoping that  
8 I would be represented by counsel and have time to  
9 talk to him to show him what I was trying to present  
10 to the Court.

11 THE COURT: Well, I had not previously been  
12 aware that you were requesting counsel. I heard the  
13 State's objection. I have read the State's response  
14 to your motion for relief of judgment. It does  
15 appear that there are issues that I will have to  
16 resolve involving whether or not this petition is  
17 barred under the doctrine of successive petitions or  
18 whether or not there is relief authorized under your  
19 request for DNA testing.

20 I did set up this hearing today. Well, actually  
21 the State set it up, but I allowed for the hearing to  
22 go forward telephonically today to hear any  
23 objections you had to a telephonic presentation. I'm  
24 going to take under advisement whether or not counsel  
25 can be appointed in this case. I will communicate

1 with you by written order as to my decision in that  
2 regard.

3 MR. CHAPMAN: Okay.

4 THE COURT: And also as to whether or not you  
5 would be allowed to appear here. I'll tell you in  
6 advance that it is possible for you to submit  
7 exhibits without appearing, but I'll reserve that  
8 until I decide whether or not counsel is going to be  
9 appointed.

10 MR. CHAPMAN: Okay. Your Honor, sir, I have  
11 some things that I would like to put on the record.  
12 If you don't mind I would like to read them.

13 THE COURT: How long is what you want to read?

14 MR. CHAPMAN: It's a couple of pages, Your  
15 Honor.

16 THE COURT: All right. Go ahead.

17 MR. CHAPMAN: Okay. Your Honor, I would like  
18 to first start off with some things I wrote down so  
19 that I would not forget to cover all the aspects of  
20 my case due to the fact that I am on medication that  
21 affects my ability to stay on point regarding issues.  
22 Therefore, I would ask this Court for its patience  
23 and would respectfully request that I be able to  
24 finish saying what I need to say and ask that I not  
25 be interrupted.

1 I will talk about six events that had a direct  
2 effect on the outcome of my trial and the guilty  
3 verdict involving the blood evidence on the knife.  
4 It is the evidence against me not being the blood of  
5 my supposed victim, Curtis Wilcox, as stated by the  
6 prosecutor, Phillip Harju. First and foremost I  
7 should be entitled to the following rights under the  
8 15th, 6th, and 14th Amendment of the United States  
9 Constitution, and Article 1, Subsection 22 of the  
10 Washington State Constitution, these rights of due  
11 process, effective assistance of counsel, and a fair  
12 trial. I was the only one that tried to protect my  
13 rights when I tried to get my trial attorney, Mr.  
14 John Doherty, to do DNA testing or any other testing  
15 necessary to prove my innocence before my trial and  
16 after my conviction at sentencing.

17 The first point I would like to cover is the newly  
18 discovered evidence. That is evidence that should  
19 have been discovered before my trial by my attorney.  
20 The record reflects the importance of DNA testing  
21 because the blood on the knife used as the evidence  
22 the prosecutor stated to my judge and my jury was not  
23 that of Curtis Wilcox, the alleged victim, albeit too  
24 late to have the jury hear this information regarding  
25 the blood evidence. However, the trial judge, Daniel

1           Berschauer, did recognize the importance of the  
2           blood. Case law says that the trial judge is in the  
3           best position to evaluate the evidence and what  
4           weight the evidence should receive and even said as  
5           much at my sentencing when I asked Mr. Doherty to  
6           request DNA testing. On December 3rd, 2001, when  
7           Judge Berschauer talked about what evidence the jury  
8           and he relied upon to convict me, the judge made it  
9           very clear, stating "The knife had blood on it.  
10          Pardon the old phrase, but if it walks like a duck,  
11          if it quacks like a duck, it probably is a duck."  
12          The judge went on further to say, "The jury found  
13          beyond a reasonable doubt based upon the evidence  
14          that when they had people testify to blood, when they  
15          saw the hole in Mr. Wilcox's leg, that was enough for  
16          them to conclude that Mr. Chapman was guilty."

17                Your Honor, the supposed hole in Mr. Wilcox's leg  
18                and if it was put beside it -- the prosecutor blew  
19                this picture up to make a nickel look like a half  
20                dollar. Mr. Wilcox was not taken to any hospital for  
21                stitches or to be examined by any doctor even though  
22                Mr. Wilcox stated the knife skipped off his bone in  
23                his leg, stating it was a deep wound.

24                Judge Berschauer also stated "If, in fact, the DNA  
25                tests come out indicating that the blood on the knife

1 is not Mr. Wilcox's, a motion can be brought at that  
2 time, as you are well aware, upon newly discovered  
3 evidence, and the Court can consider it at that  
4 time." What I understood Judge Berschauer was  
5 stating was that if I could prove the blood on the  
6 knife was not the alleged victim's I would receive a  
7 new trial.

8 In addition, when you look at the State's closing  
9 arguments to the jury, which I believe is  
10 prosecutorial misconduct, it shows how important the  
11 blood on the knife was for the State's case and how  
12 they relied on the blood evidence on the knife to get  
13 a conviction. Any one of the statements on their own  
14 might not be grounds to overturn my conviction, but  
15 when combining all of these statements that the  
16 prosecutor made before the jury and trial judge, you  
17 can see the importance of the blood evidence on the  
18 knife.

19 The prosecutor states, "I briefly want to talk  
20 about the credibility of witnesses before I go. I  
21 think after listening to his testimony that this  
22 picture of Mr. Chapman, the way he was dressed, the  
23 way he was acting, and the fact that he had a loaded  
24 firearm with him and the fact that he had threatened  
25 both Mr. Wilcox and his girlfriend just to talk to

1 him, again there's enough direct and circumstantial  
2 evidence to corroborate Mr. Wilcox's story and his  
3 testimony here; the fact that we recovered the knife,  
4 we have the gun, there is blood on the knife."

5 Your Honor, there was never any gun recovered from  
6 me. The gun was in Mr. Wilcox's possession, the  
7 alleged victim. This gun did not have my  
8 fingerprints, not even a partial print to prove this  
9 gun was in my possession.

10 The prosecutor goes on to say, "Mr. Wilcox may  
11 have been confused when he gave his statement to  
12 Detective Johnson, but he testified under oath what  
13 he recalled happening and the knife in question."  
14 Again, after his testimony and after you look at the  
15 scientific evidence, it does show that there was  
16 blood on the curved knife, and from the cut marks the  
17 crime lab person said that it was the curved knife  
18 that stabbed him.

19 It then goes on to say, "I think the scientific  
20 evidence supports his testimony and his recollection  
21 of how he got stabbed on this particular occasion."  
22 Originally, Your Honor, Curtis Wilcox stated to the  
23 police and Detective Johnson that he was stabbed with  
24 a knife from my apartment that had a straight double  
25 edge, but when this knife was tested for blood there

1 was none. But when the second knife was tested that  
2 had a curved blade edge, it tested positive.  
3 Wilcox's whole story changed to the second knife, and  
4 no one told me anything about this change until the  
5 day of trial when Mr. Wilcox took the witness stand,  
6 and my attorney didn't object to this change.

7 When you look at the entire record, I did not  
8 receive due process, effective assistance of counsel,  
9 or a fair trial by the State in light of all the  
10 statements to the jury during the prosecutor's  
11 closing arguments about the blood on the knife being  
12 the alleged victim's and then reassuring the jury no  
13 other testing of the blood is needed in this case and  
14 it is the victim's blood on the knife.

15 The prosecutor also committed misconduct by  
16 telling my jury and trial judge that DNA testing  
17 could not be performed because there was a backlog of  
18 cases at the Washington State Patrol Crime Lab that  
19 needed DNA testing, but when the forensic scientist,  
20 Mr. Christopher Sewell, took the witness stand and my  
21 defense attorney, Mr. Doherty, questioned him about  
22 why DNA testing wasn't performed, Mr. Sewell gave the  
23 following statement. This is a question by Mr.  
24 Doherty: "Were you asked to do any DNA testing in  
25 this case?" Mr. Sewell's answer was: "It was

1 requested initially by the Olympia Police Department,  
2 yes." Back to my attorney: "But you didn't do  
3 that?" Mr. Sewell: "That is correct." Attorney:  
4 "Can you tell me why you didn't do that?" Mr. Sewell  
5 said, "That decision was made through myself in  
6 consultation with Mr. Harju for the Prosecutor's  
7 Office."

8 Your Honor, all along the prosecutor has made  
9 excuse after excuse, going so far, so far as to tell  
10 Judge Berschauer that he had spoken with my old  
11 defense counsel after I had him replaced 25 days  
12 prior to my trial and that he stated to him I would  
13 not waive my speedy, my right to speedy trial to get  
14 the blood DNA testing, but the prosecutor didn't  
15 speak with my new counsel, Mr. Doherty.

16 The prosecutor in his closing argument clearly  
17 states, "Another red herring here is the DNA. The  
18 fact is that we could have done DNA testing, that's  
19 true. Does that change the facts that occurred on  
20 September 5th and 6th? The answer is no. Not all  
21 scientific tests were done in this case, but do you  
22 need a laboratory expert or forensic scientist to  
23 tell you that Curtis Wilcox was stabbed through his  
24 blue jeans into his shorts, through his leg, and that  
25 there's going to be blood there? Do you need an

1 expert to tell you that was Curtis Wilcox's blood?  
2 We know he was stabbed. We know from the testimony  
3 that there were no injuries to Mr. Chapman, so the  
4 blood that is there is the victim's blood in this  
5 case. It doesn't require any more testing."

6 On July 18th, 2005, Your Honor, I was brought back  
7 to the Superior Court for a resentencing hearing  
8 because the Court of Appeals remanded one of my  
9 charges back for retrial. At this resentencing I  
10 tried to raise this issue, DNA issue, because now the  
11 blood on the knife was DNA tested and the crime lab  
12 results show the blood was mine and not that of  
13 Curtis Wilcox as the prosecutor stated throughout my  
14 trial. When in front of the resentencing court  
15 judge, who knew nothing about my case, the prosecutor  
16 stated -- after I told the judge the blood was not  
17 Curtis Wilcox's the prosecutor stated, "The two  
18 knives were recovered after the fact and my sense  
19 would be that Mr. Chapman must have cut himself at  
20 some point." But at my trial in 2001 the prosecutor  
21 states, "We know from the testimony that there were  
22 no injuries to Mr. Chapman, so the blood that is  
23 there is the victim's blood in this case. It doesn't  
24 require any more testing."

25 But wait. The forensic scientist, Mr. Sewell,

1 stated from the very start there was not going to be  
2 DNA testing done, period, so a backlog of cases -- I  
3 wouldn't waive my speedy trial rights in order for  
4 the prosecutor to get the blood tested. The  
5 prosecutor spoke with my old defense counsel, and  
6 there wasn't going to be any DNA testing from the  
7 start.

8 The State in their own briefing states the  
9 following: "The third issue raised in defendant's  
10 PRP allege he received ineffective assistance of  
11 counsel from both his attorneys because they failed  
12 to obtain the DNA test results before trial. The  
13 records show that the evidence was not available to  
14 any of the defendant's attorneys because it was at  
15 the crime lab which, due to a backlog of cases, was  
16 unable to perform DNA testing before trial."

17 Okay. My attorney, Mr. Doherty, didn't know how  
18 to get access to the evidence before my trial. This  
19 would imply that the prosecutor, the forensic  
20 scientist, and my attorney all made up their minds  
21 and decided the blood on the knife was my alleged  
22 victim's, Curtis Wilcox. The testimony of the  
23 prosecutor was to assure the jury to trust him  
24 because he said the fact is we could have done DNA  
25 testing on the blood, but do you need an expert or

1 forensic scientist to tell you that it's Curtis  
2 Wilcox's blood on the knife? No, I know the blood on  
3 the knife was Curtis Wilcox's and I don't need more  
4 testing, as if he had some kind of inside information  
5 on the blood evidence, therefore just trust him. The  
6 prosecutor not only denigrated my defense as a sham  
7 but he also called my defense counsel's attempt to  
8 question witnesses in order to -- still again  
9 vouching for Curtis Wilcox's memory and testimony as  
10 being more credible or reliable under oath and  
11 asserted his own personal opinion as to the  
12 credibility of the scientific evidence, further  
13 bolstering and vouching for Wilcox's credibility,  
14 stating "Somehow Mr. Doherty will have you believe he  
15 was told to change his testimony based on what the  
16 experts are going to testify to. There is nothing in  
17 this record to support that allegation. His  
18 testimony is that he thought about it and thought  
19 about the knife being drug across his leg. The  
20 evidence in this case is you had Mr. Vaughn, the  
21 forensic scientist, testify that his report was not  
22 done and the report date in fact to the prosecutor  
23 was Monday, the 12th. He said he may have talked to  
24 the prosecutor the Friday before we interviewed Mr.  
25 Wilcox, last week some time. Members of the jury, do

1 not be fooled by this. I will call it a lawyer  
2 trick, that somehow we told the victim to change his  
3 testimony based on scientific evidence."

4 With all the events that happened in my case at my  
5 trial regarding the blood on the knife and the  
6 arguments by the State to the jury and how even the  
7 trial judge was fooled by the blood evidence as being  
8 the alleged victim's blood, it is no wonder the jury  
9 was able to find me guilty. My attorney was not  
10 acting in my best interest by not having blood DNA  
11 testing before my trial as I requested. Further, all  
12 case law says the State should not have been vouching  
13 for the credibility of their key witness's testimony,  
14 nor vouching for the credibility of evidence, nor  
15 expressing their own personal opinion as to my guilt.

16 Thank you very much, Your Honor.

17 THE COURT: All right. I did allow you to  
18 place all that on the record without interruption at  
19 your request.

20 MR. CHAPMAN: Thank you, sir.

21 THE COURT: I have indicated that I'll take  
22 the matter under advisement and I'll rule by letter  
23 opinion.

24 MR. CHAPMAN: Sir, is it possible to get the  
25 transcripts to this hearing we have going on right

1 now?

2 THE COURT: I'll consider that as well.

3 MR. CHAPMAN: Well, I mean, if you don't, sir,  
4 is there still a way I can get those transcripts?

5 THE COURT: I'm sure there is. There's a  
6 court reporter that has been taking down everything  
7 that was said.

8 MR. CHAPMAN: Okay. Well, then I have nothing  
9 else.

10 THE COURT: All right. Mr. Toynee, anything  
11 else?

12 MR. TOYNEE: Only, Your Honor, that he has  
13 now argued his entire case and so he has waived this  
14 objection to the telephonic hearing.

15 MR. CHAPMAN: No, I still would like to object  
16 to this telephonic hearing.

17 THE COURT: Okay. I've noted your objection.  
18 I said I'll rule on that and your request for  
19 counsel.

20 MR. CHAPMAN: All right.

21 MR. TOYNEE: Does the Court wish me to  
22 respond to the merits at this time?

23 THE COURT: I do not.

24 MR. TOYNEE: All right.

25 THE COURT: I do have your brief. At this

1 time we'll conclude this hearing then. Thank you  
2 very much, Mr. Chapman.

3 MR. CHAPMAN: Thank you, sir.

4 MR. TOYNBEE: Thank you, Your Honor.

5 (Proceedings were concluded.)  
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CASE NO. 40708-6 II CHAPMAN

EXHIBIT "1"

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

STATE OF WASHINGTON,	)	CAUSE NO. J1-1-01443-2
	)	
Plaintiff,	)	DEFENDANT'S MOTION ON OBJECTION TO
	)	STATE'S REQUEST FOR A TELEPHONIC
vs.	)	HEARING DATED FOR MARCH 11th, 2010.
	)	
GREGORY W. CHAPMAN,	)	
	)	
Defendant.	)	

---

1. IDENTITY OF MOVING PARTY

The above named defendant, GREGORY W. CHAPMAN, appearing, pro se, now comes before this court to ask for the relief as designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

That this court accept this motion for review to grant this objection for a telephonic hearing and to have Mr. Chapman returned back to the trial court in person and person so that he can adequately present his case with the representation of adequate counsel so that Mr. Chapman can exercise his right, constitutionally, to prepare and present a defense against the opposing party.

DEFENDANT'S MOTION REQUESTS TO  
REOPEN HEARING.

### 3. FACTS RELEVANT TO MOTION

On February 12th, 2010 the Superior Court of Thurston County by the Honorable Administrative Judge Paula Casey addressed a legal letter stating in relevant part: "This court concludes that procedural error resulted in a failure to consider Mr. Chapman's relief from judgment. This matter should be heard in an expedited fashion, unless the Supreme Court action precludes further hearings by this Court." 11.

Dated February 19th, 2010 the deputy prosecuting attorney, J. Andrew Toyne, presented a notice of hearing for the motion for relief from judgment to be heard on March 11th, 2010 for a telephonic hearing. Mr. Chapman timely submits this motion objecting to the State's request for a telephonic hearing based on the argument submitted below in Part 4.

### 4. GROUNDS FOR RELIEF AND REMEDY

The Sixth Amendment of the United States Constitution affords any defendant in relevant part that: "In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense."

The Fourteenth Amendment of the United States Constitution provides that: ". . . 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 laws."

The Washington State Constitution gives the same similar meaning. For under this state constitution at art.1, sec.22 the state constitution

DEFENDANT'S MOTION SUBMITTED TO  
PROSECUTOR GENERAL

reads in relevant part for the rights of the accused: "In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel." Then the Washington state constitution based on due process provides that: "No person shall be deprived of life, liberty, or property, without due process of law."

It should be undebatable that our United States Constitution and the decisions of the United States Supreme Court interpreting the constitution are the supreme law of the land. State v. Halston, 133 Wn.2d 534, 539, 946 P.2d 397 (1997). This state constitution in Washington also recognizes this fact at art.1, sec.2 of where it provides: "The Constitution of the United States is the supreme law of the land."

A statute is presumed constitutional, State v. Macolek, 101 Wn.2d 259, 263, 676 P.2d 995 (1984), if possible, a court will construe a statute so as to render it constitutional. State v. Reyes, 104 Wn.2d 35, 41, 706 P.2d 1135 (1985). Since said, the statutory provisions at RCW 2.06.080 based on oath of office provides in relevant part that: "Every judge of the superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the state of Washington. . .".

The prosecutor in this matter has submitted a pleading, for a telephonic hearing dated for March 11th, 2016. The constitutional elements of procedural due process, and thus of fair hearing, are notice, opportunity to be heard or defend before competent tribunal in orderly proceeding adapted to nature of case, opportunity to know claims of

DEFENDANTS' RIGHTS CONCERNING TO TELEPHONIC HEARINGS.

opposing parties and to meet that, and reasonable time for preparation of one's case. *Cuddy v. State, Dept. of Public Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617 (1968).

Mr. Chapman contends and does disagree that a telephonic hearing should be held on March 11th, 2010 because entering into the legal arena with the State would automatically be in the State's favor since the State will have the upper hand and clear advantage of the situation since the State is far more familiar with the law than Mr. Chapman. In order for Mr. Chapman to enjoy the privileges of his constitutional rights as discussed above, Mr. Chapman needs to be present in the flesh and person before this court so that Mr. Chapman can have the guidance by adequate counsel, whom as well as the State, is more familiar with the law so that this will be a level playing field for both parties. On the telephonic hearing, it would be simply impossible for Mr. Chapman to discuss, in private, any type of strategy with his counsel while on the telephone. Mr. Chapman's attorney/client privilege would be clearly violated. The Supreme Court in this state has had a long standing rule based on due process stating: "his guaranty is not limited to judicial proceedings, but extends to every kind of proceeding that may effect one's rights." *State v. Moore*, 7 Wash. 173, 34 P. 461 (1893). As discussed above, Mr. Chapman does have a right to defend himself with counsel, U.S. Const. 6th amend.; Wash. Const. art.1, sec.22, and have the right to be heard, U.S. Const. 14th amend.; Wash. Const. art.1, sec.3.

DEFENDANTS' MOTION OBJECTING TO  
TELEPHONIC HEARING.

CONCLUSION

Mr. Chapman respectfully ask that this court deny the telephonic hearing set forth for March 11th, 2010 and request that Mr. Chapman be reversed and remanded back to this trial court with adequate counsel to prepare a defense against any claim brought by the State.

DECLARATION

Pursuant to RCW 9A.72.030, I, GREGORY W. CHAPMAN, do hereby certify by the laws of the state of Washington understanding the penalty of perjury that the contents within this motion is true, accurate and complete to the best of my knowledge and that the following parties below were served the same:

Thurston County Superior Court Clerk's Office  
2000 Lakeridge Dr. S.W. Bldg. 2  
Olympia, Washington 98502

Honorable Administrative Judge Paula Casey  
2000 Lakeridge Dr. S.W. Bldg. 2  
Olympia, Washington 98502

Thurston County Prosecuting Attorney's Office  
2000 Lakeridge Dr. S.W.  
Olympia, Washington 98502

Gregory W. Chapman 929253  
Stafford Creek Corrections Center  
RD-3-56-L  
191 Constantine Way  
Aberdeen, Washington 98520

DATED this 25th day of the month of February, 2010.

Respectfully Submitted By:

Gregory W. Chapman  
Mr. Gregory W. Chapman 929253  
Stafford Creek Corrections Center  
RD-3-56-L  
191 Constantine Way  
Aberdeen, Washington 98520

DEFENDANT'S MOTION OBJECTING TO  
TELEPHONIC HEARING.

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

STATE OF WASHINGTON,	)	CAUSE No. 01-1-01443-2
	)	
Plaintiff,	)	COURT'S ORDER DENYING TELEPHONIC
	)	HEARING BUT REMANDING DEFENDANT
vs.	)	FOR HEARING SCHEDULED FOR MARCH 11, 2010
	)	
GREGORY W. CHAPMAN,	)	
	)	
Defendant.	)	

---

THIS MATTER having come before this court based upon the above name defendants motion requesting the denial of the telephonic hearing, but, to remand the above name defendant back to the trial court with adequate counsel for representation for the hearing dated for March 11th, 2010. After reviewing the facts in this matter, this court made itself very familiar with the matter herein.

THEREFORE, IT IS HEREBY ORDERED:

That the telephonic hearing be denied and the reverse and remand of the above name defendant be granted. This court so orders the person, GREGORY W.

COURT'S ORDER DENYING TELEPHONIC  
HEARING.

CHAPMAN, to appear in flesh and person before this court with adequate representation of defense counsel in this matter. The transport of the defendant, GREGORY W. CHAPMAN, will be effective immediately from the facility of the Department of Corrections institution at Stafford Creek Corrections Center to the Thurston county jail.

DONE IN OPEN COURT this \_\_\_\_ day of the month of \_\_\_\_\_, 2010.

---

JUDGE

Presented By:

Gregory W. Chapman  
Gregory W. Chapman, Pro se

Approved to Form, Entry & Contents:

---

Thurston Co. Prosecuting Attorney

---

WSBA No.

COURT'S ORDER DENYING TELEPHONIC  
HEARING.

DECLARATION OF SERVICE BY MAIL  
GR 3.1

I, \_\_\_\_\_, declare and say:

GREGORY W. CHAPMAN

That on the 25 day of February 25, 2010, I deposited the following documents in the Stafford Creek Correctional Center Legal Mail System, by First Class Mail pre-paid postage, under cause No. \_\_\_\_\_:

01-1-01443-2

DEFENDANT'S MOTION OBJECTING TO STATE'S REQUEST FOR A TELEPHONIC HEARING

DATED FOR MARCH 11th, 2010 (5 pages) and COURT'S ORDER DENYING TELEPHONIC

HEARING BUT REMANDING DEFENDANT FOR HEARING SCHEDULED FOR MARCH 11th, 2010

(2 pages) and CRIMINAL NOTICE OF HEARING (1 page) and DECLARATION OF SERVICE

BY MAIL (1 page).

addressed to the following:

Thurston County Superior Court Clerk's Office

Honorable Administrative Judge Paula Casey

Thurston County Prosecuting Attorney's Office

Gregory W. Chapman

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 25 day of February, 2010, in the City of  
Aberdeen, County of Grays Harbor, State of Washington. 10

Gregory W. Chapman

Gregory W. Chapman  
DOC 929253. Unit H-3-B-56  
Stafford Creek Corrections Center B-2-56-L  
191 Constantine Way  
Aberdeen, WA 98520-9504

1  
2  
3 SUPERIOR COURT OF WASHINGTON  
4 FOR THURSTON COUNTY

5 STATE OF WASHINGTON,

Plaintiff,

NO. 01-1-01443-2

6 vs.

7 GREGORY W. CHAPMAN

Defendant.

CRIMINAL NOTICE OF HEARING  
(NTHG)

Clerk's Action Required

9 TO: THURSTON COUNTY CLERK and to all other parties listed herein:

10 PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date  
11 indicated below before the Criminal Presiding Department of the above-entitled court. The  
12 Clerk is directed to note this issue on the calendar checked below.

12 Bench/Judge Copies: Deliver to Superior Court, Building 2, Rm. 150  
13 Filing Deadlines: 5 court days preceding the scheduled hearing date [CrR 8.1]  
14 Court Address: 2000 Lakeridge Drive SW, Building 2, Olympia, WA 98502.

14 Calendar Date: March 4th, 2010

Day of Week:

15 Time:

- 15  9:00 a.m.  
16  10:30 a.m.  
17  1:30 p.m.

- Monday  
 Tuesday  
 Wednesday  
18  Thursday  
19  Friday

17 Action:

- Miscellaneous Motions (9:00 Thursday)

Motion: \_\_\_\_\_

- RALJ Appeals (9:00 Tuesday)

Motion: \_\_\_\_\_

- 20  Other: Motion to deny telephonic hearing

21 Special Setting:

- To be heard on March 4th, 2010, at an 9:00 am / pm before Judge Paula Casey

22 Type of Hearing:

Defendants request to deny  
23 telephonic hearing

Approved by (required): \_\_\_\_\_

Scheduling Coordinator/Judicial Assistant

24 A copy of this document was properly addressed and mailed,  
25 postage pre-paid, to the attorney for the plaintiff/defendant on  
26 February 25, 2010 I certify (or declare) under penalty of  
perjury under the laws of the State of Washington that the  
foregoing is true and correct.

27 Dated: February 25, 2010

28 Signature: Gregory W. Chapman

Dated: February 25, 2010

Signed: Gregory W. Chapman

Defendant  Atty for Plaintiff  Atty for Defendant  
WSBA # \_\_\_\_\_ (if attorney)

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

CASE NO. 40708-6 II CHAPMAN

**EXHIBIT "2"**

1 on that knife. If DNA testing proved that the blood on  
2 the knife was not from Mr. Wilcox, one, it raises a  
3 question of what knife was he cut with. And two, I think  
4 it raises questions about his credibility as a witness.  
5 And based on that, I think that would be potentially  
6 sufficient new evidence to move for a new trial.

7 THE COURT: Let me ask you this question: As I  
8 recall your argument, you put that to the jury. You told  
9 them that the State has failed in its assembly of  
10 evidence; they failed to meet their burden of proof in  
11 one large part.

12 Your argument to the jury was, they failed because  
13 they did not get a DNA sample and prove with certainty  
14 that the blood found on the pants, the blood found on the  
15 knife tip, was Mr. Wilcox's blood. Now, the jury found  
16 beyond a reasonable doubt, based upon the evidence, that  
17 when they had people testify to blood, when they saw the  
18 hole in Mr. Wilcox's leg, that was enough for them to  
19 conclude that Mr. Chapman was guilty.

20 What makes you think that this court should find,  
21 on the outside chance of next to none, that this would  
22 have any relevance to the decision-making process?

23 MR. DOHERTY: Well, Your Honor, I guess I do  
24 intend to try to have these items tested, no matter what  
25 happens today. I believe that if it is definitively

CASE NO. 40708-6-II CHAPMAN

**EXHIBIT "3"**

See Clerks papers Defendant's motion requesting that this motion re:  
Consolidated with the motion filed may 22, 2009 Sub#143 and request for DNA  
testing filed February 26, 2010 Sub# 153-154.

COURT OF APPEALS  
DIVISION II

10 DEC 15 PM 2:00

STATE OF WASHINGTON

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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

Gregory W. Chapman,  
Appellant,

No. 40708-6 II

vs.

DECLARATION OF SERVICE

State of Washington,  
Respondent.

I, Gregory W. Chapman, declare as follows:

That I am over the age of eighteen (18), that on the 10 day of December 20 10, I deposited the foregoing an original and or true copy of: Appellants Opening Brief and attached Appendix's and Exhibit's, and a Declaration of Service. To the listed parties listed below, via the method that is marked.

Addressed to:

ATTN: David Ponzoha  
Clerk of the Court of Appeals Division II  
950 Broadway, STE 300, MS TB-06  
Tacoma, WA, 98402-4454

U.S. regular mail Postage Prepaid  
 Legal Messenger  
 Facsimile

Thurston County Superior Court Clerk  
2000 Lakeridge Dr, SW, Bldg 2  
Olympia, WA, 98502

U.S. regular mail Postage Prepaid  
 Legal Messenger  
 Facsimile

Thurston County Prosecuting Attorney  
2000 Lakeridge Dr, SW, Bldg 2  
Olympia, WA, 98502

U.S. regular mail Postage Prepaid  
 Legal Messenger  
 Facsimile

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Connell Washington, on the 10 day of December 2010.

Gregory W. Chapman  
Gregory W. Chapman  
Appellant, Pro Se