

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

APR 19 2011  
11:07 AM  
STATE  
BY DM

STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
)  
Bradley D. Kenyon )  
(your name) )  
)  
Appellant. )

No. 40842-2-II

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Bradley D. Kenyon, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Trial Court erred by imposing the School Bus Stop enhancement 69.50.435  
(A) State failed to prove C-st & Olympic Hwy N. was a School Bus Stop.  
(B) State failed to prove School Bus Stop was within one thousand feet  
of alleged delivery of methamphetamine.

Additional Ground 2

Ineffective Assistance of Counsel

If there are additional grounds, a brief summary is attached to this statement.

Date: 4-19-11

Signature: Brad Kenyon

## SUMMARY

### Grounds 1-(a)-1

Washington Laws 1996  
RCW 69.50.435 Sec. 2(f)(3)

#### **"School Bus Route Stop" means a School Bus Stop as designated on maps submitted Superintendent of Public Instruction**

No maps, print out, or testimony from the Superintendent of Public Instruction, or representative from the School District was ever presented to establish C St and Olympic Hwy N. was ever a School Bus Stop. Officer Maiava even state's, The actual Bus Stop is at C St and Adams as documented by the School District and where He knows it to be and has seen people at. [Vol II Trial RP 178-179]

Over objection Judge state's Im going to allow the continued questioning as to where He measured and what He did, But as to whether its a Official Bus Stop or not will be under further testimony from someone who has the capacity to know so its not hearsay. But there is still no evidence as to a designated Stop yet. [Vol II Trial RP 139]

Officer Maiava state's He believed Olympic Hwy N. and C St to be the Bus Stop and that was the distance He measured to when measuring from the alley parallel with the trailer. Then the State presents exhibit No. 4, and asks Officer Maiava if He recognized it. Officer Maiava state's this is the print out I received from the Shelton School District Bus Garage listing Bus Stops in that area. [Vol II Trial Rp 139-140]

State asks Officer Maiava are you familiar with locations that are in the print out received from the Shelton School District Transit, and do you know that Stop at C St and Adams to be a School Bus Stop based on your experiance as a Shelton Police Officer? Officer Maiava answers Yes to both questions. [Vol II Trial RP 143]

Although exhibit No. 4, shows that C St and Adams is listed as a School Bus Stop, "C St and Olympic Hwy N." is not listed as a School Bus Stop. No testimony from someone who has the capacity to know was ever heard and no evidence designating "C St and Olympic Hwy N." as a Bus Stop was presented. Since the Enhancement was based on "C St and Olympic Hwy N." being a Bus Stop, and the only measurement taken, State has not met the Elements of RCW 69.50.435 Sec. 2(f)(3) and the conviction should be REVERSED.

See Exhibit 1, School Bus Stops Shelton Schools.

## SUMMARY

### Grounds 1-(b)-1

Washington Laws 1996  
RCW 69.50.435 Sec. 2(a)(3)

Within one thousand feet of a  
School Bus Route Stop designated  
by the School District

Officer Maiava testified he believed C St and Olympic Hwy N. to be the Bus Stop and that was the distance he measured to when measuring from the alley parallel with the trailer. [Vol II Trial RP 139]

Officer Maiava testified that he measured from the alley parallel with the trailer is where I started. [Vol II Trial RP 176]

Officer Maiava state's the actual Bus Stop is at C St and Adams as documented by the School District and where he knows it to be and has seen people at. [Vol II Trial RP 178-179]

Officer Maiava testified: And from here I can see down the alley way. And I had a visual on her the entire time going down here. Now at the point where you would, I GUESS, Turn into the driveway of this trailer is when Detective Inkerbarger had called and said I have her, I can see her. At that point I left this location and let him monitor her as she went into the trailer. [Vol II Trial RP 117]

Officer Maiava only measured from the alley to C St and Olympic Hwy N. that he believed to be a Bus Stop. [Vol II Trial RP 139] No measurement was taken to the actual Bus Stop C St and Adams. [Vol II Trial RP 178-179] No measurement was taken of the driveway. [Vol II Trial RP 117] No measurement was taken to the undisclosed location of the alleged delivery of methamphetamine, Only stated as inside the trailer.

Because there were no direct measurements between the actual School Bus Stop and the trailer, No measurements of the driveway or to where the actual alleged crime took place inside the trailer, The actual disrance is unclear to foreclose a rational conclusion beyond a reasonable doubt that the offense took place within one thousand feet of a School Bus Stop. The crime occurred inside the trailer is not the exact site. Where the record is devoid of any evidence of a measurement from the School Bus Stop to the exact site of the crime, The evidence is insufficient to support a School Zone Enhancement. Therefore the Enhancement should be reversed.

## SUMMARY

### Grounds 1-(b)-2

Division III of our Court held that the terminal point for the School Zone Enhancement must be the actual site where the offense was committed. *State V. Clayton*, 84 Wash. App. at 318, 322, 927 P.2d 258 (1996) The record was "Devoid of any evidence of the measurement to the exact site where the crimes occurred". *Id.* The crime occurred in a room within the defendants house. *Id.* at 320, 927. P.2d 258.

*U.S. V. Applewhite*, Nos. 94-3028, 94-3058. (09/05/1995, 12/19/1995)

*U.S. V. Johnson*, Nos. 93-3149, 93-3150. (12/08/1994, 02/07/1995)

*State V. Jones*, No. 34414-9-II. (08/28/2007)

*State V. Clayton*, Nos. 13741-4-III, 13750-3-III. (12/10/1996)

*State V. Abramson*, No. 35481-1-II (07/22/2008)

# EXHIBIT 1

7:20 am	DARTMOOR @ BALBRIGGAN
7:21 am	BARNBY \ DALKEITH
7:25 am	RAINBOW DR @ MASON LK RD, STOP SIGN
7:38 am	SHELTON HIGH SCHOOL
7:40 am	OAKLAND BAY JR

Route: 126	
Stop Time	Location
7:00 am	OTTER ST@ FIR
7:02 am	OTTER ST@ OAK
7:02 am	JOHNSON PARK
7:04 am	432/434 E WALNUT ST
7:05 am	536 E WALNUT ST
7:08 am	CAPITAL PRAIRIE @ CAPITAL HILL
7:14 am	3511 E JOHNS PRAIRIE RD
7:14 am	3481 JOHNS PRAIRIE RD
7:17 am	2257 E JOHNS PRAIRIE RD
7:17 am	2100 JOHNS PRAIRIE(MCRA)-PULL IN/TURNAROUND
7:18 am	E JOHNS PRAIRIE RD @ JOHNS CREEK DR
7:19 am	JOHNS PRAIRIE RD @ RHODODENDRON PL
7:20 am	E JOHNS PRAIRIE RD @ CHALLENGER DR
7:20 am	E JOHNS PRAIRIE RD @ WILBURS WAY
7:21 am	935 JOHNS PRAIRIE RD(sub shop)
7:22 am	250 EAGLE RIDGE RD (AT STOP SIGN)
7:23 am	HIAWATHA BD @ ROCK WAY
7:33 am	SHELTON HIGH SCHOOL
7:37 am	OAKLAND BAY JR
7:42 am	OMS

Route: 135	
Stop Time	Location
7:10 am	1125 N 13TH ST
7:11 am	N 13TH ST@CONNECTION ST
7:11 am	BIRCH ST@13TH ST
7:13 am	C@ADAMS
7:14 am	C@MONROE
7:14 am	W D ST @ MADISON ST
7:15 am	ADAMS@E
7:16 am	2025 ADAMS ST
7:17 am	2120 ADAMS ST
7:24 am	SHELTON SPRINGS RD @ SPRINGWOOD
7:25 am	1190 E SHELTON SPRINGS RD
7:26 am	CHERRY PARK
7:27 am	ISLAND LK MANOR ENTRANCE
7:30 am	311 ISLAND LAKE DR
7:33 am	1461 E ISLAND LAKE DR
7:34 am	1340 ISLAND LAKE DR
7:34 am	1193 ISLAND LAKE DR
7:41 am	SHELTON HIGH SCHOOL
7:43 am	OAKLAND BAY JR
7:46 am	OMS

Route: 137	
Stop Time	Location
6:42 am	300 FREDSON RD
6:43 am	330 W FREDSON RD
6:44 am	50 W FREDSON RD
6:47 am	GOLDENPHEASANT & STORY RD (PULLOFF)
6:50 am	381 DELIGHT PARK RD
6:51 am	DELIGHT PARK&DELIGHT CT (TURNAROUND)
6:53 am	471 DELIGHT PARK RD
6:54 am	DELIGHT PARK RD @ KELLY RD
6:55 am	GOLDEN PHEASANT RD @ INSELS RD
6:56 am	560 GOLDEN PHEASANT RD
6:57 am	390 GOLDEN PHEASANT RD
7:02 am	CASCADE AVE @ UNION ST
7:04 am	W WYANDOTTE AV @ S 3RD ST
7:05 am	WYANDOTTE @ 6TH
7:06 am	1019 WYANDOTTE AVE
7:07 am	VISTA VIEW CT @ GRANDVIEW AV
7:09 am	7TH @ SUNSET
7:10 am	S7TH ST@ MERIDIAN
7:24 am	SHELTON HIGH SCHOOL
7:26 am	OAKLAND BAY JR

No. 40482-2-II

COURT OF APPEALS, DIVISION II

---

STATE OF WASHINGTON

Respondent

vs.

BRADLEY D. KENYON

Appellant

---

SUPPLEMENT TO APPELLANT BRIEF

---

APPEAL FROM THE SUPERIOR COURT FOR  
MASON COUNTY

The Honorable Theodore F. Spearman, Visiting Judge  
Cause No. 09-1-00398-0

---

Bradley D. Kenyon #284547  
Stafford Creek Correctional Center  
191 Constantine Way H1 B54  
Aberdeen, WA. 98520

## INTRODUCTION

Under the Standanrds of Ineffective Counsel, the Landmark case used is Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674(1984). Within the standards, are several subsections that describe the various acts to justify ineffective assistance of counsel.

The First is the "Failure to Prepare and Conduct Adequate Investigation." Under this standard, Mr.Valley, failed to use the court appointed investigator to contact witnesses and get their depositions, failed to contact and interview witnesses who could impeach the State's witnesses, failed to subpeona and present witnesses that could support Mr.Kenyon's defense, and continously came to court unprepared, denying Mr.Kenyon a proper defense.

The Second is the " Failure to Impeach or Confront State's Witnesses or Reveal Ulterior Motives." Under this standard, Mr.Valley, failed to impeach the CI's testimony, when she admitted to using drugs, violating her agreement for being a CI, failed to impeach the Officers conflicting testimony to the search of the CI, failed to address the fact that no evidence log or record of the recorded money was ever presented, failed to object to calling the defendant on the phone, failed to present defendant's phone records showing no call was ever made to his phone from their number, and failed to share the state's evidence with the defendant to prepare a proper defense.

The Third is the "Failure to Communicate, see also (failure to prepare)." Counsel failed to discuss any defense plan with Mr.Kenyon or follow any requests made by the defendant.

The Fourth is the "Failure to Present Expert Witnesses." Counsel failed to call a representative from the School District, to provide an actual and legal description of where the school bus stop in question, really was.

The Fifth is the "Failure to Adequately Present Defense's Case." Counsel failed to present evidence in favor of the defendant, failed to contact or subpoena defendant's witnesses, failed to object to the state's call to the defendant, and failed to address the fact that the state never produced any logs or records of phone calls, marked money or amounts of money being used.

The Sixth is the "Failure to Rebut the Prosecutor's Character Assassination/Take Your Side." Counsel did not provide evidence, call witnesses or provide a proper defense, as shown in his statement, that he believed the jury would not believe the witnesses, even though he had not talked to them.

The Seventh is the "Failure to Act with Loyalty/Counsel with a conflict of Intrest." Counsel failed to share the state's discovery and discuss the defense plan with the defendant, failed to provide evidence to impeach testimony of the CI, failed to show up for meetings with the defendant, and failed to remove himself from the case when he found out that the CI was someone who he had outside contact with.

The defendant will prove through case law and court transcripts that he was prejudiced by the ineffective assistance of counsel, denying him a fair trial. That the jury was denied all the information to make a proper judgement of the case. He will show that if witnesses had been called and evidence provided, that it was impossible for him to have committed the crime, since he was not there.

## ARGUMENTS

The right to effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. *Id.* (quoting Wilson v. Mintzes, 761 F.2d 275,285(6th Cir. 1985). That a defendant cannot be forced to choose between incompetent counsel and no counsel at all implicates the fundamental fairness and accuracy of the criminal proceeding and a showing of prejudice is therefore not required. Trial counsel shall maintain close contact with the client throughout the preparation of a case, discussing (inter alia) the investigation, potential legal issues, that exist or develop and the development of a defense theory.

In State v. Jury, 19 Wash.App. 256,263, 576 P.2d 1302(1978); the court held that the failure of counsel to adequately acquaint himself with the facts of the case by interviewing witnesses, failure to subpoena them, and failure to inform the court of the substance of their testimony, both at the time of argument on the motion for continuance and for new trial, were omissions which no reasonably competent counsel would have committed. A lawyer who fails adequately to investigate, and to introduce into evidence, records that demonstrate his client's factual innocence, or that raise sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance.

When alleging ineffective assistance of counsel, the defendant must show deficiencies in the attorney's performance. Deficient performance occurs when counsel's performance falls below an objective standard of reasonableness. State v. Stenson, 132 Wn.2d 688,705, 940 P.2d 1237(1997). Defense counsel's failure to adequately interview witnesses or investigate the facts may fall below the standard of reasonableness. State v. Visitacion, 55 Wash.App. 166,174, 776 P.2d 989(1989). The decision to call a witness is generally a matter of legitimate trial tactics and will not support a claim of ineffective assistance of counsel. Washington v. Byrd, 30 Wash.App. 794, 638 P.2d 601(1981). But, the presumption of counsel's competence can be overcome by showing,

among other things, that counsel failed to conduct appropriate investigations, either factual or legal, to determine what matters of defense were available, or failed to allow himself enough time for reflection and preparation for trial. State v. Wilson, 29 Wash.App. 895(1981). Counsel must undertake sufficient investigation to subject the states case to a meaningful adversarial test. State v. Falkner, No. 36692-1-I(Wash.App. Div. I 1997). When counsel does not develop the defense theory of the case because he fails to investigate the scientific evidence supporting the State's case, the omission cannot be justified as a strategic decision. Strickland, 466 U.S. at 696. Rather, that kind of failure is evidence that counsel did not prepare for trial. Henderson v. Sargent, 926 F.2d 706,711(8th Cir. 1991). While reviewing, courts presume that trial counsel is effective, that presumption may be overcome if counsel fails to investigate factual or legal defenses or sufficiently investigate the facts to discover defenses. See State v. Jury, 19 Wash.App. 256,263, 579 P.2d 1302, review denied, 90 Wash.2d. 1006 (1978); accord Dorsey v. King County, 51 Wash.App. 664,674, 754 P.2d 1255, review denied, 111 Wash.2d 1022(1988).

The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the state's accusations. The right to confront and cross-examine a witness, and call witnesses, and to call witnesses in one's own behalf have long been recognized as essential to due process. Chambers v. Mississippi 410 U.S. 284(1973). A defendant shows prejudice by his attorney's ineffectiveness by demonstrating there is a reasonable possibility that but for counsel's unprofessional errors, the result of the proceeding would have been different. As Strickland teaches, the right to effective assistance of counsel ensures that defendants have a fair opportunity to contest the charges against them. A defendant has a valid claim whenever he has been denied that opportunity, regardless of the law on which counsel's error is based. Kimmelman v. Morrison, 477 U.S. 365(1986).

A defendant can make out a claim of ineffective assistance of counsel only by pointing out specific errors made by the trial counsel. Counsel's performance is presumed prejudicial where "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing." United States v. Cronin, 466 U.S. 648, 658n.26 to 661(1984). "A defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case (propensity burden of proof)...A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 693-94. "And in Strickland v. Washington, 466 U.S. 668(1984); the court held that a new trial must be granted when evidence is not introduced because of the incompetence of counsel only if 'there is a reasonable probability' as 'a probability sufficient to undermine the confidence in the outcome.' Ibid." United States v. Bagley, 473 U.S. 667, 682(1985).

A defendant has a right to conflict free representation under the Sixth amendment. To establish a Sixth amendment violation, the defendant must show that an actual conflict of interest adversely affected his lawyers performance. A defendant must prove actual conflict, not just a possibility of conflict through a factual showing of evidence on the record. A claim of conflict of interest on the part of trial counsel is a mixed question of law and facts, that some effect of counsel's handling of particular aspects of the trial was likely to have prejudiced the outcome. However, if there is only a possibility of conflict, a defendant must meet the "performance and prejudice" standard of Strickland. The proper focus of such inquiry is on the nature and extent of the conflict between defendant and counsel. By these definitions of the law, and the following description of defense counsel's deficient performance and errors, we will prove that the defendant was prejudiced and denied a fair trial as proscribed by the Sixth amendment of the United States Constitution.

## FAILURE TO PREPARE AND CONDUCT ADEQUATE INVESTIGATION

No aspect of an attorney's advocacy "could be more important than the opportunity finally to marshal the evidence for each side before submission of the case to Judgement." Herring v. New York, 422 U.S. 853, 862 95 S.Ct. 2550(1975).

In this case, Mr.Valley continuously came to court unprepared, which made him unable to provide Mr.Kenyon a proper defense, as seen in the court transcripts(ct), in [Vol. I SVRP Dec. 2,2009, pgs. 3,6; Vol. VI VRP Nov. 30,2009, pgs. 31-33; Vol. I SVRP Feb. 23,2010, pgs.3-9]. Counsel also failed to use the court appointed investigator, which Mr. Kenyon was charged for, to investigate and contact witnesses favorable to Mr.Kenyon's defense, and subpoena them to ensure their presence in court. See Exhibit 2, court appointed investigator Morse, Nov. 4,2009, [Vol. XVII VRP June 3,2010, pg.311]; see also [Vol. I SVRP Feb. 23,2010, pgs. 3-10,15,16; Vol. XIII VRP Feb. 9,2010, pgs. 107-08]. Mr.Valley failed to call, attempt to call, or interview witnesses who could provide favorable testimony to impeach the state's witnesses testimony. He further made accusations as to what the witnesses would testify too, without ever talking to them. See Exhibits 3-7, [Vol. I SVRP Feb.23, 2010, pgs. 8-9; along with, Vol. I SVRP Feb. 23,2010, pgs. 3-10,15,16, Vol. XIII VRP Feb. 9, 2010, pgs. 107-08].

Counsel has a duty to make reasonable investigations or make reasonable decision that makes a particular investigation unnecessary. There was no reasonable decision, that could be made not to investigate witnesses that would be favorable to Mr.Kenyon. Prejudice results where there is a reasonable probability that, but for counsel's errors, the result would have been different. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all circumstances." Wiggins v. Smith, 539 U.S. 510,

521(2003); quoting Strickland, 466 U.S. 690-94. A lawyer's duty to conduct a thorough investigation of possible mitigating evidence is well established. Porter v. McCollum, 588 U.S. \_\_, \_\_ (slip op at 10)(2009); Rompilla v. Beard, 545 U.S. 374,387(2005); Wiggins, 539 U.S. at 522-23; Williams v. Taylor, 529 U.S. 362,369(2000); Strickland v. Washington, 466 U.S. 668,688(1984)." Counsel's unconsidered decision to fail to discharge this duty cannot be strategic, and must be looked upon as a complete failure to provide a proper defense, by his failure to prepare.

The state's witnesses testified that they called Mr.Kenyon to arrange the buy of drugs, that he allegedly sold to the CI. Counsel failed to submit the phone records that Mr.Kenyon had, that would have shown that call was never made to his phone. With all of these errors, it clearly demonstrates that Mr.Valley had failed to properly investigate and adequately prepare a defense that would prove Mr.Kenyon's innocence and prevented the prejudice that was created in this case.

**FAILURE TO IMPEACH OR CONFRONT STATE'S WITNESSES**  
**OR REVEAL ULTERIOR MOTIVES**

Evidence of partiality is always relevant...exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. "A defendant's right to impeach a prosecution witness with evidence of bias or a prior inconsistent statement is guaranteed by the constitutional right to confront witnesses. ...Thus, any error excluding evidence is presumed prejudicial and requires reversal unless no rational jury could have a reasonable doubt that the defendant would have been convicted even if the error had not taken place." Davis v. Alaska, 415 U.S. 308, 316-18(1974).

Counsel failed to present phone records of Mr. Kenyon's, that would have shown that there was no phone call made to his phone at the time the officers claim they made to him.(ct)[Vol. I SVRP Feb. 24,2010, pg. 49] Exhibit 8. Counsel failed to impeach the CI when she admitted to using drugs and violating her agreement to work as a CI with the police.(ct)[Vol. I SVRP Feb. 24,2010, pg. 62,lines 10-15, Vol. II VRP Feb. 24,2010, pg. 175]. Counsel also failed to impeach the CI, when on two occasions, she was unable to be found and warrants had to be issued to get her to come to court and testify, violating her contract to be a CI.(ct)[Vol. I SVRP Feb. 24,2010, pg. 62, lines 7-9,37-39, Vol. XI VRP Feb. 4,2010, pgs. 87-88]. Counsel failed to impeach the conflicting testimony of the officers about searching the CI, before and after the alleged buy.(ct)[Vol. I SVRP Feb.23,2010, pgs. 51,61,78-79,88,90-91,96-99, Vol.II VRP Feb.24,2010, pgs. 112-113,126,167-168]. Counsel failed to object and question the fact that no logs or records were produced to substantiate the officers testimony as to the logging of the drugs, any logs or records of amounts of money or demonination of the bills, and that they had no proof of any money that was supposedly used, whatsoever.

Where a witness is central to the prosecution's case, the defendant's conviction demonstrates that the impeachment evidence presented at trial likely did not suffice to convince the jury that the witness lacked credibility, and that therefore, any impeachment evidence not introduced at trial takes on greater significance. Horton v. Mayle, 408 F.3d. 570,580(9th Cir. 2005). Unlike the other evidence used to impeach the eyewitnesses, such as inconsistent statements and general attacks on their credibility, evidence of their motives would have

established a real incentive to lie, explaining why their testimony may have been fabricated. The failure to adduce such evidence, or even to question the witness regarding their applicable interests in their testimony, undermines our confidence in the jury's verdict and establishes a reasonable probability that, but for counsel's failure to elicit the reason for the witnesses to fabricate evidence, the result would have been different. See Silva v. Brown 416 F.3d. 980, 987 (9th cir.2005 " Reyoso v. Girubino 462 F.3d 1099, 1112-13 (9th cir. 2006).

In this case, much like the Personal Restraint Petition of Thomas 116 Wn. App 1002 (2003); The court should find Mr. Valley's representation, was a lot like Rossback's failure to perform a combination of actions that established his representation was not reasonable under the circumstances. In Thomas's PRP there were no eyewitness testimony to substantiate the CI's buy, as she was out of the view of the officer, from the driveway until her return, there was unrefuted evidence that many people at the house sold drugs over this period of time, and only evidence of the sale was from the CI, who had had a run-in with the Petitioner before this event occurred and was not on good terms with him, and where the sole issue was whether Petitioner sold drugs to the CI on this occasion. VCP at 761-62. Other than there is no evidence anyone was selling drugs from the house, and that the CI was trying to get out of another charge, this is just like what happened with Mr. Kenyon. The Superior Court's conclusions centered around Rossback's investigation and preparation of the case, including his failure to use available resources for investigation and the failure to secure or attempt

to secure the presence of witnesses necessary to Thomas case. The Superior Court found that Rossback did not use the DAC investigator to locate witnesses and did not contact Adriana Kennedy, who offered allegedly could have offered testimony to impeach Salizar. Given that the only evidence of the sale was Salizar's testimony, Rossback's failure to locate witnesses either to impeach her or to dispute the evidence of the sale, supports the conclusion of ineffective assistance. Specifically, Rossback's failure to subpoena Anderson or to attempt to call Fein, who allegedly could have provided favorable testimony, supports the Superior Court's conclusion that Rossback's representation was not reasonable under the circumstances. The above evidence, along with evidence that Rossback did not attempt to impeach Salizar with Bordman's testimony and failed to share the state's discovery with Thomas, supports the Superior Court's conclusion that Rossback's performance fell below an objectable standard of reasonableness.

The Superior Court concluded that Thomas has shown by a preponderance of the evidence that a court could not have confidence in the outcome of the trial and that, but for Rossback's accumulated errors, the result of the trial would have been different, VCP at 762. Given the circumstances of this case, the evidence supports the Superior Court's conclusion that defense counsel's deficiencies prejudiced Thomas. Since, the Washington Appellate Court affirmed the decision that Thomas had proven his counsel ineffective, it should find, that Mr. Kenyon has proven his counsel was ineffective, and that he be remanded back for re-trial.

Failure to Communicate, What We Have Here is a;

(see also: Failure to Prepare)

"In Strickland, we explicitly noted that a Lawyer has a duty to consult with the defendant on important decisions...in the course of the prosecution. *Id.*, at 688."

Counsel failed to share State's discovery and discuss a defense plan with the defendant and examine the evidence to refute the statements made by the CI, and her summary of the transaction with the officers. Counsel continually failed to come to appointments made while defendant was in custody awaiting trial, and would not follow-thru with requests made by the defendant to contact witnesses and investigate evidence that could prove his innocence.

Failure to Present Expert Witnesses

"Expert testimony is admissible if it will assist the trier of fact to understand the evidence or to determine a fact in issue." State V. Swan, 114 Wn. 2d 613, 655, 790 P.2d. 610 (1990), cert. denied 498 U.S. 1046 (1991).

Counsel failed to call or subpoena a representative from the School District to provide evidence of the actual School Bus Stop in question, and its actual location, to show that the police had taken its measurements from the wrong location and that the School Bus Enhancement was wrongfully applied.

"(Counsel) failed to present expert witnesses who could... explain the significance of the mitigating evidence to the jury.

EACH OF THESE FAILURES WERE UNREASONABLE UNDER PROFESSIONAL NORMS AND INDEPENDENT CONSTITUTE DEFICIENT PERFORMANCE." BELMONTES V. AYERS, 529 F.3D 834 (9TH CIR. 2008).

TRIAL ATTORNEY'S FAILURE TO OBTAIN AND PREPARE EXPERT WITNESS WAS CONSTITUTIONALLY DEFICIENT. COUNSEL DID NOTHING TO PROCURE SERVICES, FAILED TO PROVIDE NECESSARY DATA TO ASSIST IN EVALUATION AND TESTIMONY, INCLUDING AN OUTLINE OF THE THEORY OF DEFENSE. BLOOM V. CALDERON, 132 F.3D. 1267, 1271 (9TH CIR. 1997). COUNSEL IS DEEMED INEFFECTIVE FOR FAILING TO INVESTIGATE AND PRESENT EXPERT EVIDENCE IN MITIGATION. NO "STRATEGIC CHOICE" OBTIATED THE NEED TO INVESTIGATE. HENDRICKS V. CALDERON, 70 F.3D. 1032, 1043 (9TH CIR. 1995).

AS YOU CAN SEE FROM THE CASES LISTED, BY COUNSEL FAILING TO CALL EXPERT WITNESS, HIS PERFORMANCE BECAME DEFICIENT AND HE PREJUDICED THE CASE.

#### FAILURE TO ADEQUATELY PRESENT DEFENSE'S CASE

A DEFENDANT HAS A DUE PROCESS RIGHT TO PRESENT EVIDENCE FAVORABLE TO HIMSELF ON AN ELEMENT THAT MUST BE PROVEN TO CONVICT HIM. THE CONSTITUTION GUARANTEES CRIMINAL DEFENDANT'S A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE. WHEN DEFENSE COUNSEL FAILS TO PRESENT EVIDENCE OR WITNESSES IN FAVOR OF THE DEFENDANT, HE VIOLATES THE DEFENDANT'S RIGHTS AND PREJUDICES THE CASE.

MR. VALLEY, REPEATEDLY FAILED TO PRESENT EVIDENCE AND WITNESSES TO SUPPORT MR. KENYON'S INNOCENSE, FAILED TO IMPEACH THE PROSECUTIONS WITNESSES, AND FAILED TO OBJECT AND SHOW THAT

THERE WAS NO EVIDENCE, IN THE FORM OF LOGS OR RECORDS, THAT WOULD HAVE SUPPORTED THE PROSECUTIONS ALLEGATIONS, FAILED TO SUBPOENA WITNESSES FOR THE DEFENSE, AND FAILED TO FILE A MOTION FOR MISTRIAL, WHEN IT WAS FOUND OUT THAT THE CI WAS SOMEONE HE HAD OUTSIDE CONTACT WITH, THAT CREATED A CONFLICT OF INTEREST, AS SEEN IN (CT) [VOL.VI VRP Nov.30, 2009 PGS 31-33; VOL. I SVRP FEB. 23, 2010. PG. 3-9, 15-16; VOL. I SVRP FEB. 24, 2010 PG. 49; VOL. II VRP FEB. 24, 2010 PGS. 110-114; VOL. XIII VRP FEB. 9, 2010 PGS. 107-108] EXHIBIT 8.

A DEFENDANT HAS "THE RIGHT TO PRESENT THE DEFENDANT'S VERSION OF THE FACTS AS WELL AS THE PROSECUTION'S TO THE JURY SO IT MAY BE DECIDED WHERE THE TRUTH LIES." "THE RIGHT OF THE DEFENDANT TO PRESENT EVIDENCE STANDS ON NO LESSER FOOTING THAN OTHER SIXTH AMENDMENT RIGHTS THAT WE HAVE PREVIOUSLY HELD APPLICABLE TO THE STATE'S." WASHINGTON V. TEXAS, 388 U.S. 14, 18, 19, 87 S.Ct. 1920 (1967).

"THE QUESTION IS NOT WHETHER COUNSEL'S CHOICES WERE RELEVANT, BUT WHETHER THEY WERE REASONABLE. STRICKLAND, 466, U.S. AT 688. IN STRICKLAND, WE EXPLICITLY NOTED THAT A LAWYER HAS A DUTY TO CONSULT WITH THE DEFENDANT ON IMPORTANT DECISIONS... ID, AT 688." ROE V. FLORES-ORTEGA, 528 U.S. 470 (2000).

MR. VALLEY, FAILED TO PRESENT A PROPER DEFENSE BY THESE STANDARDS, WHICH PREJUDICED MR. KENYON'S RIGHT TO A FAIR TRIAL.

FAILURE TO REBUT THE PROSECUTIONS CHARACTER ASSASSINATIONS  
TAKE YOUR SIDE

"THE ADVERSARIAL PROCESS PROTECTED BY THE SIXTH AMENDMENT REQUIRES THAT THE ACCUSED HAVE 'COUNSEL ACTING IN THE ROLE OF AN ADVOCATE'." UNITED STATES V. CRONIC, 466 U.S. 648 (1984); QUOTING ANDERS V. CALIFORNIA, 386 U.S. 738, 743 (1967).

COUNSEL FAILED TO PRODUCE WITNESSES THAT COULD HAVE IMPEACHED THE STATE'S WITNESSES WHEN QUESTIONING THE CI, APOLOGIZED TO HER FOR HAVING TO QUESTION HER, SHOWING A PARTIALLY TOWARDS THE PROSECUTION INSTEAD OF HIS CLIENT. AS PREVIOUSLY DISCUSSED, HE CONTINUALLY FAILED TO PRODUCE EVIDENCE AND WITNESSES THAT WOULD HAVE PROVEN MR. KENYON'S INNOCENSE AND AT ONE POINT EVEN ADMITTED THE PREJUDICE CAUSED BY HIM.

HAD THE JURY "CONSIDERED THE ADDITIONAL HUMANIZING EVIDENCE THAT (COUNSEL) COULD AND SHOULD HAVE PRESENTED THROUGH LAY WITNESS TESTIMONY, THERE (WAS) A REASONABLE PROBABILITY THAT THE JURY WOULD HAVE COME TO A DIFFERENT CONCLUSION." BELMONTES V. AYERS, 529 F.3d. AT 866.

"COUNSEL'S UNPROFESSIONAL ERRORS SO UPSET THE ADVERSARIAL BALANCE BETWEEN DEFENSE AND PROSECUTION THAT THE TRIAL WAS RENDERED UNFAIR AND THE VERDICT RENDERED SUSPECT." STRICKLAND V. WASHINGTON, 466 U.S. 668, 686 (1984).

## Failure To Act With Loyalty/Counsel With A Conflict Of Interest

A lawyer has an overarching duty of complete loyalty to his or her client. Burger V. Kemp, 483 U.S. 776 (1987). "Consistent with Mickens V. Taylor, 535 U.S. 162(2002) we hold that a defendant asserting a conflict of interest on the part of his or her counsel need only show that a conflict adversely affected the attorney's performance to show a violation of his or her Sixth Amendment right." State V. Dhaliwal, 79 P.3d 432, 438(Wash. 2003) "A criminal defendant's Sixth Amendment right to counsel includes the right to be represented by an attorney with undivided Loyalty. See Wood V. Georgia, 450 U.S. 261,271(1981). This guarantee is so important that, unlike other Sixth Amendment claims, when a defendant alleges an unconstitutional actual conflict of interest, 'prejudice must be presumed.' Delgado V. Lewis, 233 F.3d 976, 981(9th Cir. 2000)(citing Cuyler V. Sullivan, 466 U.S. 335, 350(1980)). Harmless error analysis does not apply." Lockhart V. Terhune, 250 F.3d. 1223(9th Cir. 2001).

Counsel failed to act with loyalty and committed a conflict of interest by counsel apologizing to the CI, for having to ask her these question, and asking the court to preclude the state from mention of the material witness warrant for Ms. Giles because she could not be found, which violates her wes-net agreement for being a CI and being available to testify, which would have impeached her credablility. (ct)[Vol. I SVRP Feb. 23, 2010, pg. 38; Vol. I SVRP Feb. 24, 2010, pg. 62, lines 7-9]. Counsel created an irreconciable conflict of interest by not accepting Mr. Kenyon's collect calls, failing to show up for

appointments that were made, failing to investigate and provide evidence that would be favorable to Mr. Kenyon's defense, failing to contact and subpoena witnesses that could impeach the state's witnesses and favorable to him, failed to share state's discovery and discuss a defense plan, continually failing to get any evidence for Mr. Kenyon. He failed to motion for him to be excused, when he found out who CI was and that he had outside contact, which he told the court would prejudice the trial.

"Of the many ethical requirements placed upon lawyers, one of the most significant is loyalty to the client." Washington Legal Foundation V. Legal Foundation of Washington, 271 F.3d 835, 843 (9th cir. 2001). "Reversal is always necessary where a defendant shows an actual conflict of interest adversely effecting his lawyer's performance." Prejudice need not be shown. State V. Martinez, 53 Wn. App. 7009,713 (1989), citing in re Richardson, 100 Wn. 2d. 669,677 (1983), Holloway V. Arkansas, 435 U.S. 475 (1978), Cuyer V. Sullivan, 466 U.S. 335 (1980), Wood V. Georgia, 450 U.S. 261 (1981).

Superior Court abused it's discretion  
in denying Kenyon's motion for a continuance  
and request to substitute Counsel

In D'Amore, 56 F.3d at 1202 (9th cir. 06/12/1995) The reviewing of a motion to substitute appointed Counsel, is focused on three considerations.

- (1) The adequacy of the Court's inquiry.
- (2) The extent of the conflict between the defendant and counsel.
- (3) The timeliness of the motion and extend of any inconvenience or delay that would result from granting the motion.

(1)

The Court failed to conduct an adequate inquiry. The record fails to show any "compelling purpose" that was served by depriving Kenyon from substitute counsel and a continuance. Further more the Court established its failure to conduct an inquiry by its own statements while addressing the primary reasons for denying Kenyon's motion for a continuance and new counsel. Judge Spearman's primary reason for denying the motion for a continuance or new counsel was ~~Kenyon had plenty of time, witnesses had the opportunity to be in~~ court if they wanted to assist. Judge Spearman stated: "Im not going to delay this case. We have fifty-some people out here ready to go with this. I traveled here to go with this today. You reclused the other Judge, or the other Judge has reclused them-selves. I don't know which was affidavit, or how it happened. Nevertheless, I'm denying your request.

During Kenyon's objection to denying the request, and rudely being cut-off during relaying the facts of the case. Judge Spearman

stated: Very well. Well your objection is noted. It's on record. if I'm making an error, The Court of Appeals will correct this, if it gets that far. Then proceeded on. [Vol I SVRP Feb 23, 2010 Pg 2-10]

(2)

All the evidence before the Court showed a complete breakdown of communication and conflict which substantially interfered with the presentation of an adequate defense. See Walker, 915 F.2d at 483-84, also [Vol I SVRP Feb 23, 2010 Pg 2-10]

(3)

The Court did not conduct any inquiry into the extent of any inconvenience or delay that would result from granting Kenyon's motion or how long of a continuance was needed. Because it was not known how long Kenyon's new counsel would have required to prepare for the trial, and what inconvenience this would have caused for the witnesses or the Court, it cannot be said that the consequences of delay justified denial of Kenyon's motion.

This did prejudice Kenyon's trial and forced him to proceed with counsel who would not assist him.

(Attorney conflict of interest on CI)

Had I known she was the informant, I could and absolutely would have spoken with her about this case. Mr. Kenyon's ability to defend has been prejudiced, your Honor. [Vol X Feb 1, 2010 Pg 68]

And acquiescence by defense counsel may be unethical as well. [Vol X Feb 1, 2010 Pg 68]

They have with-held from me the ability to interview a witness. De facto and de jure prejudice to Mr. Kenyon. [Vol X Feb 1, 2010 Pg 76]

Another thing as far as prejudice goes, and I've said this before, Not---yes, I have run into this person out in the community [Vol X Feb 1, 2010 Pg 76]

But the state--I--I take issue with the--the state's assertion that it's my burden to show prejudice. I have shown prejudice. [Vol X Feb 1, 2010 Pg 78]

To further his prejudice, and conflict, counsel informed Mr. Kenyon he attends group meetings with the CI. for substance abuse.

### "Conclusion"

The fact that Mr. Valley violated the standards of effective assistance of counsel, by failing to properly investigate the evidence, failing to contact and subpoena witnesses who could impeach the state's witnesses and give favorable testimony on Mr. Kenyon's behalf, failed to impeach the state's witnesses and at one point, even admitted to the prejudice of the trial, shows that this trial violated Mr. Kenyon's Sixth amendment rights and proves ineffective assistance of counsel.

Since there was a cumulative set of errors by counsel, we look to Thomas V. Hubbard, 273 F.3d 1164 (9th cir. 2001),<sup>11</sup> in analyzing prejudice in a case in which it is questionable whether any single trial error examined in isolation is sufficiently prejudicial to warrant reversal, this court has recognized the importance of considering the cumulative effect of the multiple errors and not simply conducting a balkanized issue-by-issue harmless error review." *Id.* at 1178

"Errors that might not be so prejudicial as to amount to a deprivation of due process when considered alone, may cumulatively produce a trial setting that is fundamentally unfair." Matlock V. Rose, 731 F.2d 1236,1244 (6th cir. 1984).

From the cumulative set of errors that have been explained, along with the defendant's dissatisfaction with his attorney, the court erred in not granting his motion for continuance and appointment of different counsel, due to irreconcilable conflict of interest. This follows along the lines of what happened in

U.S. V. WALKER, 915 F.2d 480 (9th Cir. 1990). "OUR PREVIOUS DECISIONS DEMONSTRATE THAT THE PROPER FOCUS OF SUCH INQUIRY IS ON THE NATURE AND EXTENT OF THE CONFLICT BETWEEN DEFENDANT AND COUNSEL, NOT ON WHETHER COUNSEL IS LEGALLY COMPETENT. WHILE THE DISTRICT COURT MAY HAVE BELIEVED THAT THE LEGAL COMPETENCE OF WALKER'S ATTORNEY WAS THE BASIS OF HIS COMPLAINT AND TAILORED ITS INQUIRY ACCORDINGLY, SUCH A BELIEF ONLY WOULD DEMONSTRATE THE INADEQUACY OF THE COURT'S INQUIRY INTO THE TRUE CAUSE OF WALKER'S DISSATISFACTION. WE FIND, THEREFORE, THAT THE DISTRICT COURT'S INQUIRY INTO WALKER'S COMPLAINT WAS INADEQUATE. WALKER MADE A PRIME FACIE SHOWING OF AN IRRECONCILABLE CONFLICT BETWEEN HIMSELF AND HIS APPOINTED ATTORNEY. THESE CONTENTIONS WERE NOT DISPUTED, YET THE COURT SUMMARILY DENIED THE MOTION. WILLIAMS, 594 F.2d at 1260. THE RESULT OF THIS DENIAL WAS THAT WALKER WAS FORCED INTO A TRIAL WITH THE ASSISTANCE OF A PARTICULAR LAWYER WITH WHOM HE WAS DISSATISFIED, WITH WHOM HE WOULD NOT COOPERATE, AND WITH WHOM HE WOULD NOT ... COMMUNICATE.

UNLIKE WALKER, MR. KENYON WAS TRYING TO COMMUNICATE, BUT HIS ATTORNEY WOULD NOT ACT ON WHAT HE WAS TELLING HIM, FAILED TO CONTACT THE WITNESSES OR OBTAIN THE EVIDENCE NEEDED TO PROVE HIS INNOCENCE. TO FORCE A DEFENDANT TO PROCEED TO TRIAL WITH COUNSEL WHO REFUSES TO COOPERATE OR PROVIDE A PROPER DEFENSE, VIOLATES THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO A FAIR TRIAL.

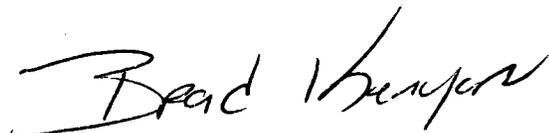
IN BROWN V. CRAVEN, 424 F.2d 1166 (9th Cir. 1970), WE HELD THAT TO COMPEL ONE CHARGED WITH A GRIEVOUS CRIME TO UNDERGO A TRIAL WITH ASSISTANCE OF AN ATTORNEY WITH WHOM HE HAS BECOME

EMBROILED PRIOR TO TRIAL IN IRRECONCILABLE CONFLICT, IS TO DEPRIVE HIM OF THE EFFECTIVE ASSISTANCE OF ANY COUNSEL WHATSOEVER.

THE ATTORNEY CLIENT RELATIONSHIP IS ACCORDED SPECIAL PROTECTION OF ITS IMPACT ON THE TRUTHFINDING PROCESS. IN GIDEON V. WAINWRIGHT, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); THE SUPREME COURT HELD THAT A DEFENDANT IN A STATE COURT PROCEEDING COULD NOT GET A FAIR TRIAL UNLESS HE HAS ASSISTANCE OF COUNSEL AT TRIAL. BUT REPRESENTATION AT TRIAL IS WITHOUT SUBSTANCE IF THE DEFENDANT DOES NOT HAVE CONFIDENCE IN HIS ATTORNEY'S ABILITY TO REPRESENT THE DEFENDANT'S BEST INTERESTS. HE, THEREFORE, WILL HAVE TO RELY ON HIS ATTORNEY'S ADVICE FOR THE MOST BASIC DECISIONS IN A CRIMINAL TRIAL, WHETHER TO PLEAD GUILTY, WHETHER TO TESTIFY, WHETHER TO PRESENT A DEFENSE, AND WHICH WITNESSES TO CALL. IF THE DEFENDANT DOES NOT TRUST HIS ATTORNEY, HE MAY BE UNWILLING TO FOLLOW HIS ATTORNEY'S ADVISE IN THESE MOST IMPORTANT AREAS.

FROM THE FACTS PRESENTED FROM THE COURT TRANSCRIPTS AND THE CASE LAW PRESENTED, WE NOW MOVE THAT THE COURT FIND THAT MR. KENYON'S COUNSEL WAS INEFFECTIVE IN HIS PREPARING AND PRESENTING OF THE CASE, THAT THE COURT ERRED IN NOT ALLOWING A CONTINUANCE AND REPLACEMENT OF COUNSEL, THAT PREJUDICED HIS TRIAL AND VIOLATED HIS SIXTH AMENDMENT RIGHT TO A FAIR TRIAL. THIS IS WHY WE MOVE THAT THE APPELLATE COURT EITHER VACATE HIS SENTENCE OR REMAND HIM BACK FOR A RE-TRIAL.

DATED THIS 19 DAY OF April, 2011.



# EXHIBIT 2



Courts Home | Search Case Records

Home | Summary Data & Reports | Resources & Links | Get Help

Superior Court Case Summary

Court: Mason Co Superior Ct  
Case Number: 09-1-00398-0

Sub	Docket Date	Docket Code	Docket Description	Misc Info
-	10-15-2009	FILING FEE ASSESSED	Filing Fee Assessed	200.00
-	10-15-2009	CONFIDENTIAL REPORT IN SEALED ENVELOPE	Confidential Report In Sealed Envelope	
1	10-15-2009	AFFIDAVIT/DECLARATION PROB CAUSE	Affidavit/declaration Prob Cause	
2	10-15-2009	ORDER FOR PRETRIAL RELEASE ACTION	Order For Pretrial Release Arraignment 1pm/delv Meth	10-22-2009M
3	10-15-2009	PRELIMINARY APPEARANCE	Preliminary Appearance	
4	10-16-2009	INFORMATION	Information	
5	10-22-2009	NOTICE OF HEARING ACTION	Notice Of Hearing Arraignment 9/delv Meth	10-26-2009M
6	10-22-2009	ORDER FOR DELIVERY OF PRISONER	Order For Delivery Of Prisoner	
-	10-22-2009	EX-PARTE ACTION WITH ORDER JDG0001	Ex-parte Action With Order Judge Amber L. Finlay	
7	10-22-2009	HEARING CONTINUED: STIPULATED	Hearing Continued: Stipulated	
8	10-26-2009	ORDER APPOINTING ATTORNEY ATD0001	Order Appointing Attorney New Sergl, Ronald E.	
9	10-26-2009	ORDER SETTING OMNIBUS HEARING ACTION	Order Setting Omnibus Hearing Omnibus 9am/delv Meth/*odp*	11-09-2009M
-	10-26-2009	ORDER TO APPEAR PRETRIAL HRG/CONF ACTION	Order To Appear Pretrial Hrg/conf Pretrial 9am/continued To 12-7-09	11-30-2009M
-	10-26-2009	ORDER SETTING TRIAL DATE ACTION	Order Setting Trial Date Trial/delv Meth/arr 10-26-09	12-15-2009CT
		ACTION	60 Day Rule/fsd 12-28-09	
		ACTION	Reset -new Counsel To 12-22-09	
10	10-26-2009	INITIAL ARRAIGNMENT	Initial Arraignment	
11	10-27-2009	ORDER FOR DELIVERY OF PRISONER	Order For Delivery Of Prisoner 11-9	



Search | Site Map | eService Center

About Dockets

Directions About Dockets Disclaimer

Mason Co Superior Ct  
Location: 419 N 4th St, Fl 2  
Shelton, WA 98584-3419  
Map & Directions  
360-427-9670[Phone]  
360-427-8443[Fax]  
Visit Website

-	10-27-2009	EX-PARTE ACTION WITH ORDER COM0001	Ex-parte Action With Order Commissioner Richard Adamson	
12	10-27-2009	ORDER FOR DELIVERY OF PRISONER	Order For Delivery Of Prisoner 11-30	
-	10-27-2009	EX-PARTE ACTION WITH ORDER COM0001	Ex-parte Action With Order Commissioner Richard Adamson	
13	11-04-2009	ORDER EXPENDING PUBLIC FUNDS	Order Expending Public Funds	
-	11-04-2009		Funds For Investigator	330.00
-	11-04-2009	EX-PARTE ACTION WITH ORDER JDG0001	Ex-parte Action With Order Judge Amber L. Finlay	
-	11-06-2009	COSTS ASSESSED	Costs/morse Inv	330.00
14	11-09-2009	ORDER APPOINTING ATTORNEY ATD0002	Order Appointing Attorney Conflict Foley, James Patrick	
15	11-09-2009	MOTION HEARING ACTION	Motion Hearing Reset Trial Dates/new Counsel	11-12-2009M
16	11-12-2009	ORDER APPOINTING ATTORNEY ATD0003	Order Appointing Attorney Conflict Valley, Eric	
17	11-12-2009	ORDER SETTING OMNIBUS HEARING ACTION	Order Setting Omnibus Hearing Omnibus 9am/delv Meth	11-23-2009M
-	11-12-2009	ORDER TO APPEAR PRETRIAL HRG/CONF ACTION	Order To Appear Pretrial Hrg/conf Pretrial 9am/delv Meth	12-07-2009M
-	11-12-2009	ORDER SETTING TRIAL DATE ACTION	Order Setting Trial Date Trial/delv Meth/new Counsel 11-12	12-22-2009CT
		ACTION	60 Day Rule/fsd 1-11-10	
		ACTION	Reset Under 90 Day Rule To 1-26-10	
18	11-12-2009	MOTION HEARING	Motion Hearing	
19	11-17-2009	BONDS RECEIVED	Bonds Received Js Bb	32,500
20	11-23-2009	ORDER SETTING OMNIBUS HEARING ACTION	Order Setting Omnibus Hearing Omnibus 11am/delv Meth	11-30-2009M
21	11-23-2009	MOTION HEARING	Motion Hearing	
22	11-30-2009	OMNIBUS APPLICATION OF PROS ATTY	Omnibus Application Of Pros Atty	
23	11-30-2009	ORDER SETTING OMNIBUS HEARING ACTION	Order Setting Omnibus & Pretrial 1pm/delv Meth	12-02-2009M
24	11-30-2009	MOTION HEARING	Motion Hearing	
25	12-02-2009	OMNIBUS HEARING	Omnibus Hearing	
26	12-02-2009	SUBPOENA	Subpoena 4	

# EXHIBIT 3

July 10 2010

To Whom it may concern:

Brad Kenyon's lawyer didn't  
try to contact me as a witness  
on his case.

Sam J. Sorensen  
Sam J. Sorensen  
July 10 2010

message <sup>365</sup> 877-9852

# EXHIBIT 4

July 10 2010

To Whom it may concern;

Brad Kenyon's Lawyer never  
Contacted me in regards to his case.

I would appreciate if someone would  
Contact me in regards to this.

Jason Trujillo

JASON TRUJILLO

Message # 360-877-9852

# EXHIBIT 5

August 30, 2010

To Whom it May Concern:

This is to confirm that no attempts to reach / contact me were ever made by court appointed Attorney Eric Valley, in regards to **Brad Kenyon's** case.

Furthermore, I had called Eric Valley's Law Office (#426-4959) and left numerous voice messages requesting Eric return my call in regards to **Brad Kenyon's** case, before and during the actual trial date. Not once were my calls returned.

On one occasion, while I was at the Mason County Courthouse on unrelated business, I noticed Eric Valley was outside, at which point I introduced myself to him. Eric confirmed he had received my voice messages. Eric also assured me that he would be contacting me in regards to **Brad Kenyon's** case. But as I have stated above, Eric never made any attempt to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lesli Toth', with a long horizontal flourish extending to the right.

LESLI TOTH  
(360) 490-5449  
360 E LIBBY RD  
SHELTON WA 98584

# EXHIBIT 6

25 September 2010

To Whom It May Concern:

On behalf of Brad Kenyon receiving a fair trial, I placed calls to his attorney, Eric Valley, and never received any return calls. I only knew about the trial because Brad called me collect from lockup the weekend before trial.

I showed up the three trial days but was not allowed in the courtroom as I was a witness. Yet I was never informed I was a witness as Mr. Valley never talked to me. I made several attempts to talk to the attorney at the trial but he never responded.

I fail to understand how this could have been a fair trial when Brad never even had fair representation.

Thank you,

A handwritten signature in black ink that reads "Jason Kenyon". The signature is written in a cursive style with a large, sweeping initial 'J'.

Jason Kenyon

# EXHIBIT 7

To Whom It May Concern:  
re: Brad Kenyon trial

I am Brad's mother and was never contacted by his attorney for Brad's trial even though I was on the witness list.

I was home the day the supposed crime took place and know it did not happen.

Ginger, Brad's wife, contacted me several times to advise the trial was postponed but never the attorney. Because of the postponements, my trip south to benefit my arthritis was put off for two months and still no word from the attorney.

Sincerely,  
Sandra Kenyon  
1506 Olympic Hwy. N.  
Shelton, Wa. 98584  
(360) 490-0536

AFFIDAVIT

I, Sandra K. Kenyon, declare on oath and say under penalty of perjury that the following facts are true and correct: I am over the age of 18, of sound mind, and I am competent to testify.

I have first-hand knowledge of the following facts:

I was never once contacted by Brad's attorney regarding testimony for his trial or for any other reason. I don't even know his attorney's name. Only have a cell phone and always have it with me so didn't miss any calls.

Was planning on leaving for Texas months earlier. I stayed home all that time waiting for the trial to be able to testify but it kept being post-poned - but not a word from the attorney or anyone from his office - ever.

Jason Kenyon, my other son, was at Brad's trial everyday but they wouldn't let him in the courtroom. Brad's attorney refused to talk to him altho Jason kept seeking him out. The attorney never contacted any of the witnesses.

After I finally left for Texas, the trial was held and again I was not contacted.

---

I am retired after spending the last 28 years of employment at the Thurston County Sheriff's office and swear this statement to be true and correct.

**CONCLUSION**

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

Done this 11<sup>th</sup> day of April, 2011. at ~~Shelton, Washington.~~  
Donna, Texas

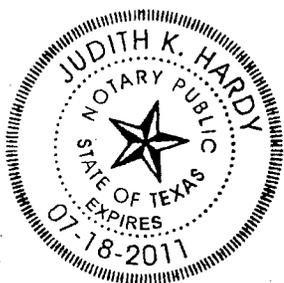
Signature Sandra K. Kenyon  
Print Name Sandra K. Kenyon  
Address 1506 Olympic Hwy N.  
Shelton, wa. 98584  
Phone (360) 490-0536

422 S. Val Verde Rd,  
Donna, Texas  
78537

SUBSCRIBED AND SWORN before me this 11 day of April, 2011.

Judith K. Hardy  
Notary Public in and for the State of ~~Washington.~~ TEXAS

My commission expires: 07-18-2011



AFFIDAVIT

I, Sandra K. Kenyon, declare on oath and say under penalty of perjury that the following facts are true and correct: I am over the age of 18, of sound mind, and I am competent to testify.

I have first-hand knowledge of the following facts:

on Sept. 2nd, ~~2000~~ I was home all day with my 12 year old granddaughter. We were upstairs in the apartment over my house, cleaning out the bedroom, sitting in front of the window with a clear view of Brad's trailer. As usual, the door and window were wide open - due to the heat it generated.

My son, Jason Kenyon, was outside helping his brother, Brad Kenyon, build side racks on Brad's large trailer to be able to move Ginger's belongings from the place she had been living. Mikey Sparr was also there, alternating with helping my sons ~~and~~ with the trailer and my granddaughter and I with packing things.

For the most part the trailer was blocking out driveway so no one could get in or out.

Never once did Brad ~~or~~ anyone else go into his trailer. Brad went into my home once to use the bathroom.

Brad's friends Jason + Jamie & their son stopped in the alley in their vehicle for a few moments. Ginger also stopped by to see how they were doing on the trailer as she had to be out that day. The only time Brad left was when they picked up

Ginger's belongings to take to her storage unit. When I wasn't upstairs in front of the window, I was sitting outside on a bench across from Brad's open trailer door.

At no time did Brad ever go into his trailer.

The reason everyone remembers this day so well is because it is Brad and Ginger's anniversary.

I am retired with my last 28 years of employment with the Thurston County Sheriff's office and I swear this statement to be true.

**CONCLUSION**

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

Done this 11<sup>th</sup> day April, 2011, at ~~Shelton, Washington,~~  
Donna, Texas

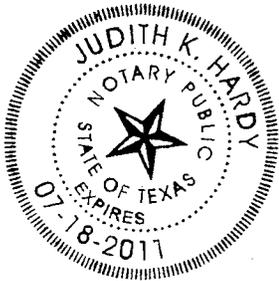
422 S. Val Verde Rd.  
Donna, Texas  
76531

Signature Sandra K. Kenyon  
Print Name Sandra K. Kenyon  
Address 1506 Olympic Hwy. N.  
Shelton, Wa. 98584  
Phone 360-490-0536

SUBSCRIBED AND SWORN before Me this 11<sup>th</sup> day of April, 2011.

Judith K. Hardy  
Notary Public in and for the State of ~~Washington.~~ TEXAS

My commission expires: 07-18-2011



# EXHIBIT 8



Customer Account Number Bill Period Bill Date  
 Ginger Kenyon 160208280 Aug 11- Sep 10 Sep 14, 2009

A14 of 40

# Call details

(360) 402-4113 (Continued)

470  
4186

Date	Time	Phone Number	Call Destination	Rate Type	Minutes Used	Total Charges
544	09/01 07:44 PM	253-330-6057	TACOMA,WA	MM/PU	79	<i>MM/PU 79 min</i>
545	09/01 08:52 PM	360-485-9298	Incoming	NW/CW/PU	1	<i>1 min</i>
546	09/01 11:04 PM	360-485-9298	Incoming	MM/PU	1	<i>1 min</i>
547	09/01 11:59 PM	253-777-6145	Incoming	NW/PU	2	<i>2 min</i>
548	09/02 11:20 AM	253-777-6145	TACOMA,WA	PU	1	<i>1 min</i>
549	09/02 11:25 AM	253-777-6145	TACOMA,WA	PU	1	<i>1 min</i>
550	09/02 11:45 AM	360-485-9298	Incoming	MM/PU	2	<i>2 min</i>
551	09/02 11:46 AM	360-485-9298	OLYMPIA,WA	MM/PU	2	<i>2 min</i>
552	09/02 11:57 AM	360-485-9298	OLYMPIA,WA	MM/PU	2	<i>2 min</i>
553	09/02 12:04 PM	360-485-9298	Incoming	MM/PU	1	<i>1 min</i>
554	09/02 01:43 PM	360-280-6922	OLYMPIA,WA	PU	1	<i>1 min</i>
555	09/02 02:10 PM	360-528-0626	OLYMPIA,WA	PU	1	<i>1 min</i>
556	09/02 02:11 PM	360-528-0626	OLYMPIA,WA	PU	1	<i>1 min</i>
557	09/02 06:51 PM	360-485-9298	OLYMPIA,WA	MM/PU	1	<i>1 min</i>
558	09/02 06:52 PM	360-485-9298	Incoming	MM/PU	2	<i>2 min</i>
559	09/02 06:53 PM	360-485-9298	Incoming	MM/PU	1	<i>1 min</i>
560	09/02 06:53 PM	360-485-9298	Incoming	MM/PU	1	<i>1 min</i>
561	09/02 06:54 PM	360-485-9298	Incoming	MM/PU	1	<i>1 min</i>
562	09/02 06:57 PM	253-576-0603	TACOMA,WA	MM/PU	5	<i>5 min</i>
563	09/02 09:34 PM	360-485-9298	OLYMPIA,WA	MM/PU	1	<i>1 min</i>
564	09/02 09:35 PM	360-485-9298	OLYMPIA,WA	MM/PU	2	<i>2 min</i>
565	09/02 09:38 PM	360-485-9298	OLYMPIA,WA	MM/PU	1	<i>1 min</i>
566	09/02 09:40 PM	253-576-0603	TACOMA,WA	MM/PU	1	<i>1 min</i>
567	09/02 09:42 PM	253-576-0603	TACOMA,WA	MM/PU	6	<i>6 min</i>
568	09/02 10:10 PM	360-485-9298	Incoming	MM/PU	1	<i>1 min</i>
569	09/02 10:15 PM	360-485-9298	Incoming	MM/PU	1	<i>1 min</i>
570	09/02 10:21 PM	360-485-9298	OLYMPIA,WA	MM/PU	1	<i>1 min</i>
571	09/03 12:28 AM	360-350-2426	OLYMPIA,WA	NW/PU	1	<i>1 min</i>
572	09/03 10:00 AM	360-463-0621	SHELTON,WA	PU	1	<i>1 min</i>
573	09/03 01:40 PM	360-489-2223	OLYMPIA,WA	PU	1	<i>1 min</i>
574	09/03 04:56 PM	360-970-3477	OLYMPIA,WA	MM/PU	1	<i>1 min</i>
575	09/03 04:57 PM	360-970-3477	OLYMPIA,WA	AM/PU	1	<i>1 min</i>
576	09/03 05:47 PM	360-463-6186	SHELTON,WA	PU	2	<i>2 min</i>
577	09/03 08:31 PM	360-470-0354	ELMA,WA	NW/PU	1	<i>1 min</i>
578	09/03 08:50 PM	866-363-4136	Toll Free Call,WA	NW/AM/PU	1	<i>1 min</i>
579	09/03 08:51 PM	866-363-4136	Toll Free Call,WA	NW/AM/PU	1	<i>1 min</i>
580	09/03 10:14 PM	360-440-8355	BREMERTON,WA	NW/PU	1	<i>1 min</i>
581	09/03 11:22 PM	360-485-9298	OLYMPIA,WA	MM/PU	6	<i>6 min</i>
582	09/04 12:42 AM	360-463-1594	SHELTON,WA	NW/PU	1	<i>1 min</i>
583	09/04 12:43 AM	360-485-9298	OLYMPIA,WA	MM/PU	1	<i>1 min</i>
584	09/04 12:57 AM	360-485-9298	Incoming	MM/PU	1	<i>1 min</i>

No calls AT time OF call.

MM - Sprint Mobile to Mobile PU - Plan/Promotional Usage NW - Night and Weekends CW - Call Waiting  
 AM - Off Network - Included in America Plan