

**FILED**

NOV 10 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 297276

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

---

STATE OF WASHINGTON,

Respondent,

v.

ISRAEL MORFIN,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR GRANT COUNTY

---

APPELLANT'S OPENING BRIEF

---

TANESHA LA'TRELLE CANZATER  
Attorney for Appellant  
Post Office Box 29737  
Bellingham, Washington 98228-1737  
(360) 362-2435

**FILED**

NOV 10 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 297276

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

---

STATE OF WASHINGTON,

Respondent,

v.

ISRAEL MORFIN,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR GRANT COUNTY

---

APPELLANT'S OPENING BRIEF

---

TANESHA LA'TRELLE CANZATER  
Attorney for Appellant  
Post Office Box 29737  
Bellingham, Washington 98228-1737  
(360) 362-2435

**TABLE OF CONTENTS**

A. ASSIGNMENTS OF ERROR ..... 1

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR..... 1

C. STATEMENT OF THE FACTS ..... 1

Substantive Facts..... 1

Procedural Facts ..... 3

D. ARGUMENT ..... 6

THE TRIAL COURT VIOLATED MR. MORFIN’S RIGHT  
TO A FAIR TRIAL WHEN IT NEGLECTED TO FULLY  
INVESTIGATE AN ALLEGATION OF JURY UNFITNESS..... 6

1. The trial court erred when it denied Mr. Morfin’s motion  
for a new trial..... 6

2. The trial court’s refusal to grant a new trial infringed upon Mr.  
Morfin’s constitutional right to a fair trial..... 7

E. CONCLUSION..... 14

# **TABLE OF AUTHORITIES**

## **United States Constitution**

<u>U.S. Const. amend VI</u> .....	7
<u>U.S. Const. amend XIV</u> .....	7

## **Washington State Constitution**

<u>Wash. Const. art. I sec. 3</u> .....	7
<u>Wash. Const. art. I sec. 22</u> .....	7

## **United States Supreme Court Cases**

<u>In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955)</u> .....	7
<u>In re Oliver, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948)</u> .....	7
<u>Irvin v. Dowd, 366 U.S. 717, 722, 81 S.Ct. 1639, 1642, 6 L.Ed.2d 751 (1960)</u> .....	7, 8
<u>Reynolds v. United States, 98 U.S. 145, 155, 25 L.Ed. 244 (1878)</u> .....	8
<u>Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654 (1960)</u> .....	8
<u>Tumey v. State of Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927)</u> .....	7

## **Washington State Supreme Court Decisions**

<u>State v. Charlton, 90 Wn.2d 657, 665, 585 P.2d 142 (1978)</u> .....	14
<u>State v. Davis, 141 Wn.2d 798, 824-25, 10 P.3d 977 (2000)</u> .....	7
<u>State v. Elmore, 155 Wn.2d 758, 773, 123 P.3d 72 (2005)</u> .....	10, 11, 12, 13
<u>State v. Jackman, 113 Wn.2d 772, 777, 783 P.2d 580 (1989)</u> .....	6
<u>State v. Lord, 117 Wn.2d 829, 887, 822 P.2d 177, cert. denied, 509 U.S. 856 (1992)</u> .....	14

Washington State Court of Appeals Decisions

Lian v. Stalick, 106 Wn.App. 811, 824, 25 P.3d 467 (2001) ..... 7

Marvik v. Winkelman, 126 Wn.App. 655, 661, 109 P.3d 47 (2005) ..... 6

Richards v. Overlake Hosp. Med. Ctr., 59 Wn.App. 266, 271,  
796 P.2d 737 (1990) ..... 7

Schneider v. City of Seattle, 24 Wn.App. 251, 255,  
600 P.2d 666 (1979) ..... 7

State v. Elmore, 121 Wn.App. 747, 752, 90 P.3d 1110 (2004) ..... 11

Federal Circuit Decisions

People v. Cleveland, 21 P.3d 1225, 1237-38 (Cal. 2001) ..... 8

Tinsley v. Borg, 895 F.2d 520, 523-24 (9<sup>th</sup> Cir. 1990) ..... 14

United States v. Thomas, 116 F.3d 606, 608 (2<sup>nd</sup> Cir. 1997) ..... 8, 9, 10

Washington State Statutes

RCW 2.36.110 ..... 10

Washington Court Rules

CrR 6.5 ..... 10

Miscellaneous

Jeffrey Bellin, *An Inestimable Safeguard Gives Way to Practicality: Eliminating the Juror Who “Refuses to Deliberate” Under Federal Rule of Criminal Procedure 23(B)(3)*, 36 U. Mem. L. Rev. 631 (2006) ... 10

David Brody, *Facing Allegations of Non-Deliberating Jurors*,  
25 Just. Sys. J. 239 (2004) ..... 9, 10, 14

A. ASSIGNMENTS OF ERROR

1. The trial court breached its duty to investigate allegations of juror unfitness when it neglected to interview Juror No. 7.

2. The trial court abused its discretion when it denied Mr. Morfin a new trial after it discovered that Juror No. 7 refused to deliberate.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Did Mr. Morfin receive a fair trial after the trial court allowed a potentially unfit juror, who refused to deliberate, to remain on the panel?

(Assignments of Error 1 & 2)

C. STATEMENT OF THE CASE

Substantive Facts

Israel Morfin (Mr. Morfin) and his friend Adrian Adame (Adame), were arrested and charged with the accidental shooting death of Manuel Arousa (Arousa). CP 1-3; CP 26-29; CP 40-43; CP 63-66; 12/3/10 RP 379. In exchange for a lesser charge, Adame agreed to testify against Mr. Morfin. 11/29/10 RP 6; 12/3/10 RP 377.

Adame told the court the accident occurred, when he and Mr. Morfin tried to collect an outstanding debt from Arousa. 12/2/10 RP 311. Adame and Mr. Morfin were riding around, one morning, listening to music, when they noticed Arousa's car parked in a driveway. 12/1/10 RP 105; 12/2/10 RP 319-320. Arousa was seated in the driver's seat and his friend John Wall (Wall) was seated in the front passenger seat. 12/1/10 RP 103.

Mr. Morfin mentioned to Adame that Arousa owed him money. 12/2/10 RP 321; 12/2/10 RP 333. He then parked beside Arousa's car in the driveway and got out. Adame also got out of the car. Arousa and Wall remained seated. 12/1/10 RP 105; 12/2/10 RP 333.

Adame walked around Arousa's car to where Wall was seated and ordered him to keep his hands visible. 12/1/10 RP 108; 12/3/10 RP 334. Adame then reached over Wall and removed the keys from the ignition. 12/1/10 RP 114. He then removed Arousa's stereo and speakers, and proceeded to put them in Mr. Morfin's car. 12/2/10 RP 334.

While Adame removed items from Arousa's car, Mr. Morfin confronted Arousa about the money he owed. 12/1/10 RP 109. Adame told the court that Mr. Morfin was a little upset and at some point, he hit Arousa in the head with a semi-automatic weapon. The weapon discharged and killed Arousa instantly. 12/2/10 RP 335; 12/1/10 RP 115; 12/1/10 RP 146. Adame realized something was wrong when he saw Arousa slumped over the steering wheel. 12/3/10 RP 366; 12/3/10 RP 393; 12/3/10 RP 395. He and Mr. Morfin ran back to the car and drove away. 12/3/10 RP 393-394. Wall ran home and telephoned police. 12/1/10 RP 117.

Adame asked Mr. Morfin to drive him to his aunt's house. 12/3/10 RP 398. On the way there, Adame told the court that Mr. Morfin blurted, "Fuck, Fuck, Fuck. It was an accident!" He did not intend to shoot Arousa. 12/3/10 RP 394-395. Mr. Morfin was visibly upset and spoke about his family in

Sunnyside. 12/3/10 RP 396. After he dropped off Adame, Mr. Morfin left the area and headed towards Sunnyside via Highway 24. 12/3/10 RP 397.

Local and State police were dispatched to be on the lookout for Mr. Morfin's car. 12/2/10 RP 210. Police spotted Mr. Morfin on Highway 24 in Adams County and attempted to stop him. 12/2/10 RP 213. Mr. Morfin continued on into Grant County, at speeds that ranged from 80 to 100 miles per hour. 12/2/10 RP 214-215; 12/2/10 RP 220. Somewhere near the interchange between Tri-Cities and Yakima, police pulled a spike strip onto Mr. Morfin's lane of travel and deflated his left front driver's side tire. 12/2/10 RP 228. Mr. Morfin abandoned his car and ran.

Police apprehended Mr. Morfin and placed him in custody. 12/2/10 RP 231. They searched his car and found roughly a pound of marijuana. 12/3/10 RP 383. Police also recovered the semi-automatic weapon. 12/1/10 RP 283.

#### Procedural Facts

The State charged Mr. Morfin with one count first-degree murder plus a deadly weapon enhancement, second-degree murder plus a deadly weapon enhancement, second-degree unlawful possession of a firearm, possession with intent to manufacture or deliver marijuana, and attempting to elude police. CP 1-3; CP 26-29; CP 63-66. Mr. Morfin pleaded not guilty and invoked his right to a jury trial.

During deliberations, the trial court received two notes from the

presiding juror. The first note read, “A juror requested - stated that he no longer is interested in voting or the process.” CP 269; 12/8/10 RP 858; 12/8/10 RP 867.

The court considered arguments and suggestions from both sides. 12/8/10 RP 860-862. It reasoned the situation would be quite different if the juror had said, “you know I really don’t like this process and I really don’t want to vote again.” 12/8/10 RP 870. The court then determined that the best approach would be to remind the jury, as a whole, of its duties. So, the court re-read the following instruction and released the jury to deliberate:

You have received the court’s instructions in this case. You know from those instructions that you are to consider all of the instructions, to consider them as a whole, and not place undue emphasis on any particular instruction. With that obligation in mind, I do want to point out to you two of the instructions regarding your duties from Instruction No.1. You must apply the law according to these instructions, whether or not you agree with them. And you must consult with one another and deliberate with a view to reaching a verdict. After an impartial consideration of the evidence with the other juror, each of you must decide the case for yourself.

CP 232-268.

Less than one hour later, the court received a second note that read, “Juror No. 7 refusing to deliberate.” CP 271. This time, the court interviewed the presiding juror. The following colloquy took place:

**COURT:** You made a statement, Juror #7 refusing to deliberate. On what did you base that?

**JUROR MAYER:** As we returned back to the jury room, we

were doing some voting, and it was basically voting and then we deliberated on the next phase and he was in his chair like this when we called for a vote.

**COURT:** Just a moment. When- for the record, when Mr. Mayer said, “like this,” he leaned back in his chair, crossed his arms over his chest, and dropped his gaze to his lap.

**JUROR MAYER:** His eyes were actually closed also. And when one of the other jurors indicated—I turned to my left, because he was sitting to my left, and saw that he was not responding to the vote, and we asked him if he was going to participate and he says, no he’s made up his mind.

**COURT:** Okay. Did he refuse to vote?

**JUROR MAYER:** He was willing to vote, but then as we were trying to find out where his stance, not on the issue, but on deliberating, he refused to even answer any questions.

**COURT:** Okay. Do I understand correctly, then Mr. Mayer, that when you say he’s refusing to deliberate, you mean that he’s refusing to speak what’s on his mind?

**JUROR MAYER:** Yes. He has said that he will not say anything.

**COURT:** Okay. Has the juror -- has Juror #7 refused to consider any issue that the jury is being called upon to consider? Such as by refusing to vote or refusing to -- well, I guess it would be refusing to vote on any issue.

**JUROR MAYER:** I believe that he stated he would vote, but he won’t talk.

**COURT:** Okay. And the last question: is that a fair summary for his attitude in general, that he will vote, but he will not talk?

**JUROR MAYER:** Yes. We discussed it and we have other jurors that don’t feel that it’s fair to the defendant.

12/8/10 RP 884-885.

The court reasoned that “at some point in the deliberation process, every member of the jury may say, ‘I’ve heard enough, I’ve decided the case for myself; I don’t have anything else to say.’” 12/8/10 RP 887-888. “If the juror, in addition to refusing to have anything say were to take the position that he did not care about whatever you all say, then the combination of those

two things would amount to a refusal to deliberate. And unfitness of the juror.” 12/8/10 RP 887-888.

The jury reassembled and found Mr. Morfin guilty of first and second-degree murder, unlawful possession of a firearm, possession of marijuana, and attempting to elude police. CP 277; CP 281; CP 283; CP 284; CP 210.

Mr. Morfin moved the court for a new trial. He argued his right to a fair trial was violated when the trial court failed to remove Juror No. 7. CP 289-335. The court denied the motion and sentenced Mr. Morfin to 476 months incarceration. CP 408. The court also imposed a variety of court fees and community custody obligations. CP 379-399. This appeal followed. CP 400.

#### D. ARGUMENT

##### THE TRIAL COURT VIOLATED MR. MORFIN’S RIGHT TO A FAIR TRIAL WHEN IT NEGLECTED TO FULLY INVESTIGATE AN ALLEGATION OF JUROR UNFITNESS.

1. The trial court erred when it denied Mr. Morfin’s motion for a new trial. Here, the trial court denied Mr. Morfin’s motion for a new trial after Juror No. 7 refused to deliberate.

A reviewing court will review the grant or denial of a new trial for an abuse of discretion, but we review it de novo if the motion for a new trial is based on an allegation of legal error. Marvik v. Winkelman, 126 Wn.App. 655, 661, 109 P.3d 47 (2005); see State v. Jackman, 113 Wn.2d 772, 777, 783

P.2d 580 (1989); Schneider v. City of Seattle, 24 Wn.App. 251, 255, 600 P.2d 666 (1979).

A trial court abuses its discretion when its decision is manifestly unreasonable, is exercised for untenable reasons, or is based on untenable grounds. Lian v. Stalick, 106 Wn.App. 811, 824, 25 P.3d 467 (2001). A reviewing court will afford greater deference to a decision to grant a new trial than to a decision to deny one. Richards v. Overlake Hosp. Med. Ctr., 59 Wn.App. 266, 271, 796 P.2d 737 (1990).

2. The trial court's refusal to grant a new trial infringed upon Mr. Morfin's constitutional right to a fair trial. Both the Federal and our State constitutions guarantee a criminal defendant's right to a fair trial. U.S. Const. amend. VI, XIV; Wash. Const. article I, §§ 3, 22; State v. Davis, 141 Wn.2d 798, 824-25, 10 P.3d 977 (2000). In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process. Irvin v. Dowd, 366 U.S. 717, 722, 81 S.Ct. 1639, 1642, 6 L.Ed.2d 751 (1960) citing, In re Oliver, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948); Tumey v. State of Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927).

A fair trial in a fair tribunal is a basic requirement of due process. In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). In the ultimate analysis, only the jury can strip a man of his liberty or his life.

Therefore, “a juror must be as indifferent as he stands unsworne.” Co.Litt. 155b. Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654 (1960). His verdict must be based upon the evidence developed at the trial. Irvin v. Dowd, 366 U.S. 717, 722 (1961).

This is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life, which he occupies. The theory of the law is that a juror who has formed an opinion cannot be impartial.” Reynolds v. United States, 98 U.S. 145, 155, 25 L.Ed. 244 (1878). And a juror who refuses to deliberate violates his or her sworn oath and compromises the jury’s constitutional role. See United States v. Thomas, 116 F.3d 606, 608 (2d Cir.1997).

A refusal to deliberate consists of a juror’s unwillingness to engage in the deliberative process; that is, he or she will not participate in discussions with fellow jurors by listening to their views and by expressing his or her own views. Examples of refusal to deliberate include, but are not limited to, expressing a fixed conclusion at the beginning of deliberations and refusing to consider other points of view, refusing to speak to other jurors, and attempting to separate oneself physically from the remainder of the jury. People v. Cleveland, 21 P.3d 1225, 1237-38 (Cal. 2001).

In a leading Federal case on the removal of a non-deliberating juror, United States v. Thomas, 116 F.3d 606 (2d Cir. 1997), the Second Circuit explained that where a juror is able to deliberate impartially, but refuses to do

so, that juror is “purposefully disregarding the court’s instructions on the law,” and failing to follow his oath as a juror. 25 Just. Sys. J. 239, 240.

The juror in Thomas yelled at other jurors, refused to participate in deliberations, and even pretended to vomit while other jurors were eating lunch. The trial court interviewed the panel, including the juror in question. A majority of the jurors told the court the juror was predisposed toward acquittal, refused to follow the law or to consider the evidence presented by the government, and refused to discuss the evidence with other jurors. Several other jurors told the court the juror did consider the evidence and the law and was simply not convinced as to the defendants’ guilt. When questioned by the court, the juror in question stated “that he needed ‘substantive evidence’ that established guilt ‘beyond a reasonable doubt’ in order to convict.” Id. at 240, citing, United States v. Thomas, 116 F.3d at 611.

The court removed the juror and the remaining jurors continued deliberations. The defendants appealed to the Second Circuit Court of Appeals on the ground that the juror was improperly removed. The Second Circuit found the trial court properly dismissed the juror because he purposefully disregarded the evidence when he refused to engage in the deliberative process. Id. at 241, citing United States v. Thomas, 116 F.3d at 617-18.

The Second Circuit recognized that this holding treaded closely upon the broad powers of the American jury. Thomas, 116 F.3d at 614. It

acknowledged that throughout American history, jurors have had the power to acquit for any reason. However, they did not have the right to do so. Thomas, 116 F.3d at 615. Jurors have a “sworn duty to follow the law.” Thomas, 116 F.3d at 616. And courts have a related duty to “forestall or prevent” refusals to impartially deliberate “by dismissal of the offending juror from the venire or the jury.” Id. at 241 citing Thomas, 116 F.3d at 616.

Once the potential for a “good cause” disqualification has been brought to the trial court’s attention, it becomes the court’s prerogative, or in some jurisdictions, duty, to investigate the issue. 36 U. Mem. L. Rev. 631, 642. Here, in Washington, trial courts have “a continuous obligation to investigate allegations of juror unfitness and to excuse jurors who are found to be unfit, even if they are already deliberating.” RCW 2.36.110; CrR 6.5; State v. Elmore, 155 Wn.2d 758, 773, 123 P.3d 72 (2005).

State v. Elmore is the seminal case in Washington that deals with the court’s duty to investigate juror misconduct where a juror is accused of nullification, refusing to deliberate, or refusing to follow the law. In that case, the trial court received two notes, one from the presiding juror and one from another deliberating juror. Each of the notes indicated that a third juror refused to follow instructions. Elmore, 155 Wn.2d at 763.

The trial court interviewed the two accusing jurors and concluded the third juror, who had refused to follow the law and to deliberate, had to be excused as unfit. Elmore, 155 Wn.2d at 764. Before the trial court actually

dismissed the juror, however, it questioned the juror to supplement the record. Elmore, 155 Wn.2d at 764. Over Elmore's objection, the court adhered to its decision to disqualify the juror and to replace him with an alternate.

The reconstituted jury convicted Elmore of first degree murder and other charges. Elmore, 155 Wn.2d at 766. Post-trial, Elmore moved the court for a new trial based on the juror's dismissal. The trial court denied the motion and Elmore appealed.

On appeal, he argued that the trial court erred when it dismissed the juror because there was evidence that the juror simply disagreed with the other jurors as to the credibility of witnesses and the merits of the case. State v. Elmore, 121 Wn.App. 747, 752, 90 P.3d 1110 (2004). Elmore asserted that because the notes from the accusing juror were ambiguous as to the source of conflict with the third juror, the trial court erred when it neglected to inquire further into the allegations of misconduct. Id.

Division Two Court of Appeals reversed the conviction and our Supreme Court affirmed the Court of Appeals's decision. In doing so, the Court set forth some general guidelines for a trial court faced with the need to investigate accusations of juror misconduct, with particular attention to the special problems that come with an accusation that a juror is engaging in nullification. Such a case is relatively rare, but it presents special problems, in part because the line between a refusal to follow the law and a decision based on the juror's perception of the facts is often a fine one. Elmore, 155 Wn.2d

at 770.

The guidelines set forth in Elmore begin as follows: First, if a juror or jurors accuse another juror of refusing to deliberate or attempting nullification, the trial court should first attempt to resolve the problem by reinstructing the jury. If that is ineffective and problems continue, any inquiry by the court should remain as limited in scope as possible, focusing on the process of deliberations rather than the content. Finally, if inquiry occurs, it should reflect an attempt to gain a balanced picture of the situation; it may be necessary to question the complaining juror or jurors, the accused juror, and all or some of the other members of the jury. Elmore, 155 Wn.2d at 774.

The facts in Elmore are somewhat analogous to the facts here. Like the trial court in Elmore, the trial court here received two notes from the presiding juror who complained that Juror No. 7 refused to deliberate.

12/8/10 RP 858; 12/8/10 RP 867.

The court considered counsels' arguments and then decided to remind the jury to adhere to its duties. 12/8/10 RP 861-862; 12/8/10 RP 870; 12/8/10 RP 873; CP 232-268. Under Elmore, this was appropriate. "Any investigation of alleged nullification by a particular juror risks violation of the cardinal principle that juror deliberations must remain secret. Elmore, 155 Wn.2d at 770. The better practice is to begin with the more cautious step of simply reinstructing the jury and then allowing them to continue with deliberations. Elmore, 155 Wn.2d at 775.

Unfortunately, less than an hour later, the court received a second note that read, “Juror No. 7 refusing to deliberate.” CP 271. This time the court decided to interview the presiding juror.

The presiding juror told the court that Juror No. 7 had made up his mind and had refused to participate in further deliberations. 12/8/10 RP 884-885. When called to vote, Juror No. 7 leaned back in his chair, crossed his arms over his chest, and dropped his gaze to his lap. 12/8/10 RP 884. The presiding juror went on to tell the court that the other jurors did not feel it was fair to Mr. Morfin. 12/8/10 RP 884-885.

The court reasoned that “at some point in the deliberation process, every member of the jury may say, ‘I’ve heard enough, I’ve decided the case for myself; I don’t have anything else to say.’” 12/8/10 RP 887-888. However, “if the juror, in addition to refusing to have anything to say were to take the position that he did not care about whatever you all say, then the combination of those two things would amount to a refusal to deliberate. And unfitness of the juror.” 12/8/10 RP 887-888.

Under Elmore, the trial court was required to determine whether there was any reasonable possibility Juror No. 7’s refusal to deliberate stemmed from an evaluation of the sufficiency of the evidence or from predisposed notions about Mr. Morfin. See State v. Elmore, 155 Wn.2d at 778. That could only have been accomplished by interviewing Juror No. 7. “Even if only one juror is unduly biased or prejudiced, the defendant is denied his

constitutional right to an impartial jury.” Tinsley v. Borg, 895 F.2d 520, 523-24 (9th Cir.1990) (internal quotations omitted).

The trial court breached its responsibility to investigate the allegation of juror unfitness. Moreover, the trial court based its decision to retain the potentially unfit juror on an incomplete and imbalanced record. Given the likelihood of unfairness, Mr. Morfin is entitled to a new trial. See State v. Lord, 117 Wn.2d 829, 887, 822 P.2d 177 (1991), cert. denied, 506 U.S. 856 (1992); State v. Charlton, 90 Wn.2d 657, 665, 585 P.2d 142 (1978).

E. CONCLUSION

For the reasons set forth above, Mr. Morfin respectfully asks this Court to reverse the trial court’s decision and to grant a new trial.

Respectfully submitted this 7<sup>th</sup> day of November, 2011.



Tanesha La'Trelle Canzater, WSBA# 34341  
Attorney for Appellant

**FILED**

NOV 10 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**TANESHA LA'TRELLE CANZATER, ESQUIRE**  
Law Offices of Tanesha L. Canzater  
Post Office Box 29737  
Bellingham, Washington 98228-1737  
(360) 312-9977 (home office); (360) 362-2435 (mobile)  
[Canz2@aol.com](mailto:Canz2@aol.com)

---

## **DECLARATION OF SERVICE**

November 7, 2011

Court of Appeals Case No. 297276  
Superior Court Case No. 09 1 00197 1

Case Name: *State of Washington v. Israel Morfin*

I declare under penalty and perjury of the laws of the State of Washington that on **Monday, November 7, 2011**, I filed an APPELLANT'S OPENING BRIEF plus one copy with Division Three Court of Appeals<sup>1</sup> and served copies of the same to the following counsel of record and/or other interested parties, by depositing in the United States of America mails an addressed postage paid envelope to the following:

DIVISION THREE COURT OF APEALS  
Renee S. Townsley, Clerk/Administrator  
500 North Cedar Street  
Spokane, WA 99201-1905

GRANT COUNTY PROSECUTING ATTORNEYS' OFFICE  
D. Angus Lee, Attorney at Law  
Post Office Box 37  
Ephrata, WA 98823-0037

WASHINGTON STATE PENITENTIARY  
Israel Morfin, #855482  
1313 North 13<sup>th</sup> Avenue  
Walla Walla, WA 99362

  
\_\_\_\_\_  
Tanesha L. Canzater, WSBA # 34341  
Attorney for Israel Morfin

<sup>1</sup> Copies of the verbatim reports of proceedings will be forwarded in a separate mailing.