

NO. 63713-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

LARRY MARSTON,

Appellant.

REC'D

SEP 07 2010

King County Prosecutor
Appellate Unit

FILED
COURT OF APPEALS
DIVISION ONE
SEP 7 2010

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

The Honorable James E. Rogers, Judge

BRIEF OF APPELLANT

KARI DADY
CHRISTOPHER H. GIBSON
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENT OF ERROR</u>	1
<u>Issue Pertaining to Assignment of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. <u>Procedural Facts</u>	1
2. <u>Substantive Facts</u>	2
a. <u>The alleged crimes</u>	2
b. <u>Pretrial rulings</u>	5
C. <u>ARGUMENT</u>	10
MARSTON WAS NOT GIVEN REASONABLE ACCESS TO ADEQUATE RESOURCES TO ENABLE HIM TO PREPARE A MEANINGFUL DEFENSE.....	10
D. <u>CONCLUSION</u>	19

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Bebb
108 Wn.2d 515, 740 P.2d 829 (1987)..... 12, 13

State v. Dougherty
33 Wn. App. 466, 655 P.2d 1187 (1982)..... 12, 13, 17

State v. Hahn
106 Wn.2d 885, 726 P.2d 25 (1986)..... 10

State v. Nicholas
55 Wn. App. 261, 776 P.2d 1385 (1989)..... 14, 17

State v. Silva
107 Wn. App. 605, 27 P.3d 663 (2001)..... 11, 12, 14, 15, 16, 17

FEDERAL CASES

Bounds v. Smith
430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977)..... 11, 12

Faretta v. California
422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)..... 10, 12, 13, 17

Milton v. Morris
767 F.2d 1443 (9th Cir. 1985) 11, 18

RULES, STATUTES AND OTHER AUTHORITIES

Title 9, RCWA..... 15

Title 10, RCWA..... 15

Washington Practice, Vol. 12 15

Washington Practice, Vol. 13 15

TABLE OF AUTHORITIES (CONT'D)

	Page
U.S. Conts. Amend VI.....	8, 10, 18
Wash. Const. Art. 1, § 22	11, 18

A. ASSIGNMENT OF ERROR

The trial court erred in denying Appellant's motions for access to relevant legal materials.

Issue Pertaining to Assignment of Error

Appellant represented himself against charges of assault and harassment. During trial preparations, the jail where appellant was held removed its law library and replaced it with a Westlaw workstation. Appellant was unable to effectively navigate Westlaw for legal materials, his repeated requests for assistance using Westlaw were refused, and the jail would not allow appellant to receive legal materials from his standby counsel. Under the circumstances, were appellant's due process rights to have effective means to prepare his defense violated?

B. STATEMENT OF THE CASE

1. Procedural Facts

The King County Prosecutor charged appellant Larry Marston with assault in the first degree -- domestic violence and two counts of misdemeanor harassment. CP 88-89. Marston waived his right to counsel and standby counsel was eventually appointed. 1RP¹ 3-9; 2RP 5-7.

¹ There are 14 volumes of verbatim report of proceedings referenced as follow: 1RP - 7/15/2008 and 8/6/2008; 2RP - 10/13/2008; 3RP - 1/5/2009; 4RP - 1/21/2009, 1/30/2009, 2/6/2009, 2/19/2009, 4/1/2009, and 4/10/2009; 5RP - 3/2/2009; 6RP - 4/24/2009 and 5/11/2009; 7RP -

Following a jury trial before the Honorable James E. Rogers, Marston was found guilty as charged, including being armed with a deadly weapon during the assault. CP 90-93. Marston was sentenced to 132 months of confinement. CP 117, 123. Marston appeals. CP 127.

2. Substantive Facts

a. The alleged crimes

Marston moved into Paulette Neville's home on Beacon Hill in April 2008. 11RP 52-53. Marston and Neville were acquaintances at the time and occasionally smoked crack cocaine together at Neville's home. 8RP 21-22. Marston worked in downtown Seattle and began renting a room from Neville in order to cut down on his commute time. 11RP 53. Marston paid Neville \$200 in rent each month. 11RP 54. Marston expressed concern to Neville about the overall condition of the house; dog feces littered the floor, people left rotting food and garbage in the kitchen, and Marston often had to step over sleeping crack smokers when he left early in the morning for work. 11RP 56, 62-63. Marston lived in the upstairs portion of the house, and Neville lived in the basement. 8RP 34.

One of the harassment charges involved a conversation Marston and Neville had about drinking Marston's milk. 11RP 64. Marston

5/12/09; 8RP - 5/18/2009; 9RP - 5/19/2009; 10RP - 5/20/2009; 11RP - 5/26/2009; 12RP - 5/27/2009; 13RP - 6/19/2009; and 14RP - 9/11/2009.

regularly drank large quantities of milk, and shared his milk with Neville. 11RP 64. Marston testified that milk is a popular beverage with crack smokers because it soothes the upset stomach caused by inhaling the smoke. 11RP 64-65. Marston explained that sometimes Neville would sip his milk while smoking crack and then forget to put it back in the refrigerator. 11RP 65. Marston awoke early one morning for work and discovered his milk was missing. 11RP 65. He wanted to make sure it was not sitting out and turning sour in Neville's room, so he opened her door and looked in her room. 11RP 65. Marston did not see any milk, so he shook Neville a little to wake her and ask if she knew what had happened to the milk. 11RP 66. Neville explained that someone else drank the milk. 11RP 66. Marston then left and characterizes the encounter as an "uneventful and benign incident." 11RP 66. Neville, on the other hand, claimed that Marston had pulled the covers off her "in a rage" and put his fist in her face. 8RP 32.

The other harassment charge arose in the context of a disagreement over access to laundry facilities. Before moving in, Marston talked with Neville about the laundry facilities in the house and Neville said she would be getting a washer and dryer. 11RP 70. Marston later learned Neville spent money allocated for a washer and dryer on crack instead. 11RP 71. Marston confronted Neville about this while she was smoking

crack with three other men in the basement of the house. 11RP 73, 75. Marston was also distressed about the poor living conditions in the house and said something to the effect of, “the best thing that can happen is pour that alcohol all over this place and set it all on fire.” 11RP 76. Marston explained that his comment was not a threat. 11RP 76. Rather, it was his observation about the deteriorating condition of the house in general. 11RP 76. Neville claimed, however, that Marston had threatened to set the house on fire. 8RP 35.

Finally, the assault charge arose in the context of Neville's eviction of Marston from the house. Neville obtained a protection order against Marston on June 15, 2008. 11RP 88. Neville wanted Marston to move out immediately, but police explained to her that he had 20 days to move out of the house because he was a tenant. 11RP 88.

Tension between Marston and Neville peaked on June 29th. 11RP 109. Marston had his car packed and was almost ready to move out of the house. 11RP 117. That night at around 10:00 p.m., Marston was in bed reading when the lights went out. 11RP 119. His first thought was that Neville was “messing” with him. 11RP 120. Marston went outside to see if the power was off anywhere else in the neighborhood, but the lights were out only at Neville's house. 11RP 121. Marston tapped on the

window outside Neville room downstairs, but there was no response. 11RP 121.

Marston went back inside the house and walked downstairs to check the electrical breaker. 11RP 122. Marston noted that earlier that day Neville had broken the door that separated the upper portion of the house from the basement, so he just pushed a little on the door and it opened. 11RP 123. Marston had a flashlight and went directly to the electrical panel. 11RP 124. He saw that the breaker had been manually turned off. 11RP 124. Marston explained that he became aware of someone standing behind him, turned around, and was hit on the head. 11RP 126. Marston fell down and then Neville lunged at him with a knife. 11RP 129. He and Neville struggled for a few moments and during this time Neville's heart was pierced by the knife. 11RP 130-31. The struggle stopped and both Marston and Neville went outside. 11RP 134. Marston called 911 to get Neville medical assistance. 11RP 137.

b. Pretrial rulings

Marston filed a number of motions requesting additional supplies and assistance accessing legal resources. The court held a hearing to address Marston's motions on January 5, 2009. David Meyer, Marston's standby counsel, explained that he would not do legal research for Marston: "I'm not pro se counsel, even under the case law, I'm not a

delivery boy, I don't do research, I can assist in filing these [motions] and I can assist in getting these to the appropriate persons, but that means they've got to come to me first." 3RP 8-9.

Marston had submitted a motion requesting a Washington Court Rules book. 3RP 20. Meyer had given Marston a copy of the Washington Court Rules, as well as Tegland's Handbook on Evidence, at the hearing with the intent that Marston could take the materials back to the jail. 3RP 21. Counsel for King County Jail, Nancy Balin, objected to Marston receiving these materials because they were available for use on the jail's Westlaw workstation. 3RP 22. The court declined to rule on Marston's motion for a rule book and stated, "I'm not going to decide that one. The motion on the Washington rule book and the Tegland, I'm not going to decide that one. I'm going to leave that to the jail at this point." 3RP 35.

At a hearing on February 6, 2009, Marston again asked the court for access to the court rules. Balin continued to emphasize that Marston was not entitled to a book because "everything Mr. Marston needs to adequately prepare his defense is on the [Westlaw] workstation." 4RP 58. Marston asked the court to allow him to use an actual Washington Court Rules book because he was unable to access the materials that he needed on Westlaw. 4RP 119.

Marston explained that he did not know how to input information into Westlaw in a manner that would allow him to retrieve pertinent rules and case law:

[MARSTON]: I actually did bring a note, a piece of paper, you know, when you look on the Westlaw computer, you know, you see three boxes. You're supposed to put the case in. I brought this piece of paper like that. Three case cites. Three sets of boxes. And Mr. Meyer, I don't mean to drag you into this, Mr. Meyer, but [I] asked him to enter the information and give me an idea how to do it. And I think -- well, anyway, that didn't happen neither. So I don't know if Mr. Meyer's law research or perhaps he has someone do it for him, but I have also mentioned I have trouble looking up rules.

4RP 119.

Marston made a formal request for the court to appoint a paralegal to help him with legal research on March 27th:

I have stated in court documents and in open court, on the record that I am not literate on the jail law library computer. My standby counselor will not do paralegal work for me. My defense investigator does not do paralegal work. The State has accused me of first degree assault. I need case law to support my position and information to be able to argue many different matters.

Supp. CP __ (sub. no. 132, Order Authorizing Expert, 4/16/09). The trial court denied Marston's request. Id.

In a later conversation on April 24th regarding Marston's continuing request for assistance with the Westlaw computer station at the jail, Balin responded that Marston had received sufficient guidance.

[BALIN]: But making a record that under the cases addressed in the Sixth Amendment rights for pro se inmate what the correctional facility is required to provide is either standby counsel or a law library or in our case being more modern, a Westlaw workstation. Mr. Marston's actually been accorded more than what is required in that he has standby counsel, has had standby counsel throughout, and also has had Westlaw access, besides all of this audio and video stuff, which I myself haven't seen. So the jail has more than provided what is required to provide. One thing we don't [see] in the early cases, what was required, was a legal assistant to help with research. That's before we had things like Westlaw workstations. The jail doesn't have an employee who is a paralegal or a lawyer or anyone who can sit down with Mr. Marston and go through it. That's why they provided such step-by-step simple illustrative instructions. I don't know what else we can do.

6RP 18-19.

The trial court inquired whether the jail would permit standby counsel to sit at the jail computer and assist Marston with entering information into Westlaw and Balin replied, "I doubt it. I don't know."

6RP 20. The court responded:

The jail does not have a legal library. Now, [at a] legal library might be someone, Mr. Marston, who would say well, if you are looking for the rule on relevance you should look to the rules of evidence. Look to rule 401, 402, 403. And that person would provide in a way sort of research advice What I think we are talking about here is technically can the jail provide assistance with, actually, I have a citation. How do I type it in so the case appears on the screen?

[BALIN]: I will find out.

[THE COURT]: That mechanical step is the only step the jail I would like to see it provide.

[BALIN]: I understand.

....
[THE COURT]: Yeah, jail's not required to provide research assistance because I understand that jail because King County library is no longer in the jail. The jail does not employ such a person. If the jail does not have such a person, Ms. Balin, then the next question I would have is whether, I hate to put this on you, Mr. Meyer, but whether Mr. Meyer can be there, and see if he can figure out how to type in citation to bring it up.

[BALIN]: I will find out.

[MEYER]: Your Honor, I have two problems with that. One is, I have difficult time with the county computer systems to begin with. I don't generally use them. We are no longer on county e-mail. And so I'm familiar with the ones that we use within our office, and so I don't know how much help I would be.

....
[BALIN]: In order to assist the Court I will see if we can assign someone those duties in this case only.

[THE COURT]: Right. This should be like five or ten minutes.

6RP 20-23.

Later that afternoon Balin sent an email to the court and the parties requesting that the court not order the jail to provide Marston with an assistant to help him navigate the Westlaw station. Supp. CP __ (sub. no. 147, Letter from Defendant, (attachment at 1), 5/19/09). Balin claimed that Marston's claim that he did not understand how to access legal information on Westlaw was "inconceivable" given the amount of time that he had already spent on the computer. Id. Further, Balin claimed that the jail "does not have any staff tasked with the duties to provide instructional aid to inmates using the workstation." Id. Balin ended the

email by pointing out that Marston had the opportunity to be represented by counsel if he found the situation unsatisfactory: “If Mr. Marston finds he would be better served to be represented by counsel because of this or some other issue, that remains his choice.” Id.

On April 27th, the court denied Marston’s motion for expert services on the grounds that he had adequate access to legal materials via the Westlaw workstation: “Defendant has access to legal materials through the jail computer. Defendant therefore has access to the means necessary to prepare his defense to this charge. Defendant has not demonstrated the necessity for a paralegal to assist him in preparing his defense” Supp. CP __ (sub. no. 186, Order Denying Expert Services, 6/29/09).

C. ARGUMENT

MARSTON WAS NOT GIVEN REASONABLE ACCESS TO ADEQUATE RESOURCES TO ENABLE HIM TO PREPARE A MEANINGFUL DEFENSE.

The Sixth Amendment guarantees a criminal defendant the constitutional right to waive the assistance of counsel and proceed pro se. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975); State v. Hahn, 106 Wn.2d 885, 889, 726 P.2d 25 (1986). The United States Supreme Court held that even prisoners seeking *post-conviction* relief have a right to “adequate, effective, and meaningful” access to courts. Bounds v. Smith, 430 U.S. 817, 822, 97 S.Ct. 1491, 52 L.Ed.2d 72

(1977). The Ninth Circuit concluded that the rights to notice, confrontation, and compulsory process recognized in Faretta mean, “at a minimum, that time to prepare and some access to materials and witnesses are fundamental to a meaningful right of representation.” Milton v. Morris, 767 F.2d 1443, 1446 (9th Cir. 1985).

In Milton, the defendant did not have adequate materials to prepare his defense where the most recent books in the county jail were twenty-seven years old, and jail officials prohibited him from having contact outside the jail. Milton, 767 F.2d at 1444-45. “An incarcerated defendant may not meaningfully exercise his right to represent himself without access to law books, witnesses, or other tools to prepare a defense.” Milton, 767 F.2d at 1446. The court concluded that Milton’s due process rights were violated when he was tried without having a meaningful opportunity to prepare his defense. Milton, 767 F.2d at 1447.

Washington courts have recognized that article 1, section 22 of the Washington State Constitution affords a pro se pretrial detainee an even greater right of access to the courts than the federal constitution provides. State v. Silva, 107 Wn. App. 605, 609, 27 P.3d 663 (2001). Article 1, section 22 “affords a pretrial detainee who has exercised his constitutional right to represent himself, a right of reasonable access to state provided

resources that will enable him to prepare a meaningful pro se defense.” Silva, 107 Wn. App. at 622.

“Just as the right to appointed counsel is not satisfied unless the representation is meaningful, the right to represent oneself cannot be satisfied unless it is made meaningful by providing the accused the resources necessary to prepare an adequate pro se defense.” Silva, 107 Wn. App. at 620-21. The court ruled that the trial court had discretion to determine what “measures are necessary or appropriate to constitute reasonable access.” Silva, 107 Wn. App. at 622.

Our Supreme Court has cited Bounds for the proposition that “in order to ensure a meaningful pro se defense, the State must allow the defendant reasonable access to legal materials paper, writing materials, and the like.” State v. Bebb, 108 Wn.2d 515, 524, 740 P.2d 829 (1987). The court in Bebb noted that although “the Spokane County Jail contains no law library, another acceptable method of providing this access is by appointing standby counsel, even over the objection of the accused.” Bebb, 108 Wn.2d at 524-25, (citing Faretta v. California, 422 U.S. at 834 n. 46; State v. Dougherty, 33 Wn. App. 466, 655 P.2d 1187 (1982)). Standby counsel provided Bebb with law books, a copy of whatever cases he requested, and other materials he needed to prepare for trial. Bebb, 108

Wn.2d at 518, 526. The judge also ordered that Bebb receive an annotated copy of the Washington code. Bebb, 108 Wn.2d at 518.

The court concluded that appointment of standby counsel would amount to constitutionally sufficient access to the courts because at the time standby counsel's role included assisting with legal research and procuring legal materials. Bebb, 108 Wn.2d at 525-26. Faretta and Dougherty supported this expansive view of standby counsel's responsibilities. Faretta stated that standby counsel's role was "to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." Faretta, 422 U.S. at 834 n. 46. Likewise, the court in Dougherty presumed that standby counsel would assist accessing legal materials: "The function of standby counsel is to aid the accused if and when help is requested Standby counsel will also assist the defendant in acquiring legal materials necessary to prepare for trial." Dougherty, 33 Wn. App. at 471.

In State v. Nicholas, the court concluded that the defendant was not deprived of meaningful access to legal materials where the trial court appointed an attorney "to assist Nicholas in any capacity that the defendant desired" and had provided funds to hire a "runner" to do legwork at the law library. State v. Nicholas, 55 Wn. App. 261, 268, 776

P.2d 1385 (1989). Nicolas made no apparent effort to use the services available to him to prepare his defense. Nicholas, 55 Wn. App. at 268. The court concluded that because Nicholas “declined to use the means placed at his disposal, the failure to provide physical access to a law library is of no significance.” Nicholas, 55 Wn. App. at 269.

The court in Silva noted that the role of standby counsel “has not been clearly delineated in Washington case law” and took the opportunity to clarify the role. Silva, 107 Wn. App. at 626. Standby counsel must serve the traditional role of providing advice when solicited, being able to resume representation if requested, and provide assistance to the accused in preparing the defense. Silva, 107 Wn. App. at 628. The court held, “unless otherwise ordered by the trial court, standby counsel is not required to actually perform research and errands on behalf of pro se defendants.” Silva, 107 Wn. App. at 629. Standby counsel’s role is limited to “giving advice about procedure, appropriate law books, and research material, rather than actually performing research services for the defendant.” Silva, 107 Wn. App. at 629.

Although defendant Silva did not have physical access to the law library and standby counsel refused to perform research services, the court concluded that Silva was not deprived of appropriate legal materials:

[T]he library services provided by the jail allowed Silva to ask general legal questions of a law librarian or request materials on general legal topics and issues. He was given relevant materials that enabled him to browse the law germane to his case and to identify additional legal issues, from which he could then request additional legal materials. Moreover, Silva was provided a copy of every case and legal publication he requested by citation. Thus, well before the expiration of his speedy trial period, Silva was provided the following legal materials:

- 1) Washington Court Rules;
- 2) Title 9, RCWA;
- 3) Washington Practice, Vol. 12;
- 4) Title 9A, RCWA;
- 5) Title 10, RCWA;
- 6) Washington Practice, Vol. 13;
- 7) Copies of all cases he requested.

Silva, 107 Wn. App. at 623-24.

Here, Marston did not have appropriate access to legal materials necessary to prepare effectively for trial. Unlike the defendant in Silva, the jail prohibited Marston from receiving a copy of Washington Court Rules and Tegland's Handbook on Evidence. 3RP 20-21. The jail claimed that the Westlaw workstation should be Marston's only avenue of accessing legal materials. 3RP 22.

Yet, the Westlaw workstation was not the functional equivalent of providing access to a law library. Marston repeatedly told the court and standby counsel that he did not understand how to properly input legal citations into Westlaw. Further, he did not know how to properly word searches in order to pull up material relevant to his case. As a result, his searches returned thousands of “hits” rather than a few relevant ones. The court recognized that the jail’s hand-out explaining the basic features of using Westlaw was not adequate and ordered that someone briefly show Marston how to navigate the system and access materials. 6RP 20-23.

The jail claimed hardship and did not comply with the court’s request. Supp. CP __ (sub. no. 147, supra). The trial court acknowledged some hesitancy to challenging the jail’s obstinate position: “I’m not ruling on it. I need to, again -- the problem I have with the jail-- with dealing in this area of the jail policies is that they are trying to deal with a wide variety of people. I only have one specific case. So I’m trying to give some deference to their policies” 3RP 35. The trial court erred by taking a deferential stance to the jail policies instead of ensuring that Marston had appropriate access to legal materials to "enable him to prepare a meaningful pro se defense.” Silva, 107 Wn. App. at 622. .

As the court acknowledged in Silva, browsing through relevant material in order to find law germane to the case is how most pro se

inmates conduct legal research. Silva, 107 Wn. App. at 623. Skimming the table of contents or index in a book is a search function that any literate individual can perform on their own. In contrast, the Westlaw workstation sets up an additional hurdle of requiring users to input information in a very specific way in order to access any relevant information. Law students and lawyers who use Westlaw often receive hours of classroom training and have access to customer support features unavailable to inmates. The Westlaw system, while addressing the security and budget concerns of the jail, is not a constitutionally sufficient means of providing meaningful access to legal materials, particularly when, as here, no meaningful instruction on how to use the on-line database is provided. The barriers to using Westlaw imposed by the jail and acquiesced to by the trial court thwarted Marston's legitimate and earnest attempt to prepare his defense to the charged offenses.

Moreover, unlike standby counsel in Dougherty, Faretta, and Nicholas, Marston's standby counsel was not directed by the trial court to assist Marston in his trial preparations upon request. Rather, following Silva, Meyer limited his role to providing technical direction to Marston about proper trial procedure. Meyer did not assist Marston with accessing legal materials. Meyer acknowledged that he was not adept with Westlaw and characterized any assistance that he would offer as the "blind leading

the blind.” 6RP 22. Even if Meyer had given Marston a list of relevant books to access on Westlaw, such as specific volumes of Washington Practice or the RCWA, Marston was unable to access the material on Westlaw because he had received no meaningful instruction on use of this on-line database.

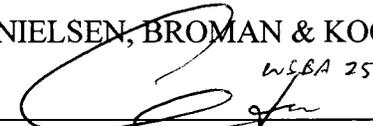
Marston was deprived of his constitutional rights under the Sixth Amendment and article I, section 22 to reasonable access to materials for trial preparation. Reversal of Marston’s convictions is necessary. Milton, 767 F.2d at 1447.

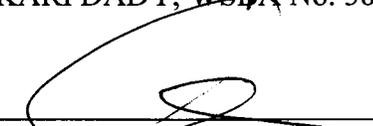
D. CONCLUSION

Marston was deprived of reasonable means to prepare and present a defense. He did not have a meaningful way to familiarize himself with either the court rules or the rules of evidence prior to trial, and had no meaningful access to the relevant statutes and cases. Marston was deprived of his right to prepare a defense to the charges against him and therefore this Court should reverse his convictions.

DATED this 7th day of September 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

KARIDADY, WSBA No. 38449


CHRISTOPHER H. GIBSON, WSBA No. 25097
Office ID No. 91051

Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 63713-4-1
)	
LARRY MARSTON,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 7TH DAY OF SEPTEMBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] LARRY MARSTON
DOC NO. 983709
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN, WA 98520

SIGNED IN SEATTLE WASHINGTON, THIS 7TH DAY OF SEPTEMBER, 2010.

x *Patrick Mayovsky*

FILED
CLERK OF COURT
2010 SEP -7 PM 4:14