

63729-1

63729-1

NO. 63729-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

KYLE E. PINNEY,

Appellant.

REC'D

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

The Honorable Mary E. Roberts, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The state's use of appellant's post-Miranda¹ warnings request for counsel, which terminated his interview with officers, violated the appellant's constitutional rights to due process and against self-incrimination as guaranteed by the federal and state constitutions.

2. The trial court erred by adding as a condition of community custody that the appellant undergo a mental health evaluation and follow all treatment recommendations.

Issues Pertaining to Assignments of Error

1. A police officer testified that appellant invoked his Miranda right to counsel, which ended the post-arrest custodial interrogation. Does this constitutional violation require a new trial?

2. Where there was no evidence the appellant suffered from mental health problems, or that the appellant's mental health played a role in commission of the crime, did the trial court exceed its statutory sentencing authority by adding as a condition of community custody that the appellant undergo a mental health evaluation and follow all treatment recommendations?

¹ Miranda v. Arizona, 384 U.S. 436, 483-85, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

B. STATEMENT OF THE CASE

1. *Trial Testimony*

Kyle Pinney and his friend, Jesse Bertram, were walking past Amber Sateren's house in Renton when a truck pulled up and Sateren and Matthew Cooper jumped out. 4RP 123-24, 143-44, 7RP 113-14, 139-40.² Sateren was screaming and she and Bertram discussed a problem Bertram had with Sateren's brother. 7RP 114-15, 119, 140-41. Steven Brewer emerged from Sateren's home looking like he was about to punch Bertram. Pinney intercepted Brewer, who confronted him about "talking behind his back" during what became a heated exchange. 4RP 144-45, 158-59, 7RP 114, 119-20, 140-41.

Pinney took his gun from his pants and held it pointed down toward the ground. 4RP 159-60, 7RP 120-21, 142-43. He carried the gun for self-protection because he had been robbed before and had to travel on the bus in bad neighborhoods. 7RP 129-30, 142-43, 172-79, 8RP 28-32. Pinney did not point the gun or threaten anyone with it. 4RP 161, 7RP

² Pinney cites to the verbatim report of proceedings as follows:

1RP – 5/15/2009; 2RP – 6/1/2009; 3RP – 6/2/2009; 4RP 6/3/2009; 5RP – 6/4/2009; 6RP – 6/8/2009; 7RP – 6/9/2009; 8RP – 6/10/2009; 9RP 6/11/2009; 10RP 6/26/2009.

143. He soon put it away and the meeting ended without incident. 4RP 130-31, 161-62, 7RP 114-15, 143.

Pinney spent the night at Bertram's house and visited with his mother the following day. 7RP 115, 144-45. Pinney's friend, Eric Warren, came over in the evening and they walked toward Bertram's home. 7RP 30-31, 145-47. On the way they saw Brewer following some distance behind them. 7RP 34-35, 147-48. Brewer was "[a]cting weird, talking to himself." 7RP 147. Warren described him as "really high" and "out of it, talking and just following us." 7RP 35.

Soon thereafter Warren stopped to chat with three friends. 7RP 36-37, 150. He became separated from Pinney and Brewer, who proceeded up the street toward an alley. 7RP 37-38, 151. Pinney described the alley as "[a]lmost pitch black." 7RP 151. He walked down the alley for about 100 feet, then turned around and noticed Warren was not nearby. 7RP 151-52. He assumed Brewer had also entered the alley because he could hear Brewer talking to himself. 7RP 152.

Pinney heard a shuffling sound nearby, turned, and saw the silhouette of someone move suddenly. 7RP 152. That someone was Brewer, who swung a fist that clipped Pinney in the head. 7RP 152, 179. Fearing for his life, Pinney pulled out his gun and when he saw another

sudden movement, he quickly fired three or four shots in self-defense. 7RP 152-54, 156, 165, 176-80, 8RP 64-65. Without looking to see what happened, Pinney ran out of the alley. 7RP 154-55, 168-69.

Meanwhile, Warren had arrived at the mouth of the dark alley in time to see "a big hand, arm, up to the other guy," heard gunshots, and ran. 7RP 38, 60-63.

Both he and Pinney ran to the same three friends Warren had spoken to moments before. 7RP 38, 63-64, 154-55. Warren heard Pinney say, "He better be dead." 7RP 38, 64. Pinney denied making that comment. 7RP 169. He said he told his friends, "I shot somebody. I've got to get out of here." 7RP 155. He and Warren walked down the street, where Pinney tossed the gun into some bushes. 7RP 38-40, 65-66, 155.

They returned to Pinney's mother's house, stayed for a short time, and went back to look for the gun because Pinney feared it would have his fingerprints on it. 7RP 40-41, 66-67, 156-57. Pinney could not find the gun, and he and Warren parted ways. 7RP 41-42, 157-58.

A neighbor observed Brewer's body in the alley the following evening and called police. 4RP 103-05. Brewer sustained gunshot wounds in the head, neck, and chest. 4RP 17, 5RP 140-160. He died as a result of the head and chest wounds. 5RP 171, 174-75.

Officers found a gun in some bushes and after further investigation, suspicion turned to Pinney. 4RP 20-24, 40-43, 7RP 80-82, 8RP 86-87, 92. He was arrested three days after the shooting. 7RP 81-83, 8RP 93-94. Detectives Yohann and Hansen interviewed Pinney later that day. 7RP 83-85, 8RP 94-95. Pinney admitted he first lied to them when he said he did not have an argument with Brewer the night before the shooting and spent the entire day of the shooting at his mother's home. 7RP 85-86, 162-65, 8RP 58-60. Only after being confronted with facts obtained during the investigation did Pinney admit he had been at Sateren's the night before the shooting and was with Warren on the day of the shooting. He said everyone who accused him of shooting Brewer was lying and out to get him. 7RP 87-90.

The detectives indicated to Pinney they did not believe him and encouraged him tell them what really happened. 7RP 90, 98. Detective Hansen told Pinney, "You might as tell us [sic] that you did it, but make up a reason . . . [I]ike [Brewer] started to fight with me." 8RP 97-98. Pinney instead maintained the others were out to get him. 8RP 98-99.

At this point in the direct examination, the following exchange occurred:

Q: How much longer did the conversation last with Mr. Pinney there after you made that statement to him?

A: You know, it didn't go on very much longer, and then he said, again, "Well, maybe I should have an attorney."

Q: So, when he said to you, "That maybe I should have an attorney," what did you guys do at that point?

A: We just ended the interview at this time.

Q: And why is that?

A: Because we had already explained to him once, you know, that -- earlier in the interview, he had already said something, 'Well, maybe I should have an attorney.' And I think it was Detective Yohann explaining to him the rules we played by, and told him that if he wants an attorney, you know, to tell us, and we'll stop the interview. We have to stop the interview.

Q: Okay.

A: And he started, he started talking again.

Q: About this conspiracy theory?

A: About, about the conspiracy.

Q: Okay.

A: So then the second time when he did that, we thought, "No, let's just end it. So we just ended the interview.

8RP 98-99.

In response, the prosecutor referred to Exhibit 70, the rights form

Hansen used during the interview:

[I]t says, "I have the right to talk to an attorney before answering any questions. I have the right to have an attorney present during

the questioning. I have the right to remain silent, and I have the right to an attorney."

And it also says, "I further understand that I have the right to exercise any of these rights at any time before or during questioning."

So is that exactly what he was doing; he was exercising his right to a lawyer, and that's why you stopped the interview?

8RP 99-100. Hansen answered, "Yes. Well, he hadn't actually exercised it. He was, he was again asking, asking us or making a statement, 'Well, maybe I should have an attorney.'" 8RP 100.

The detectives then escorted Pinney to the jail. On the way, according to Hansen, Pinney say, "Maybe I should talk to my attorney about this self-defense thing." 8RP 101. Pinney, in contrast, recalled telling the detectives he would like to talk to them about self-defense, but needed to contact his attorney first. 8RP 63.

2. *Procedure*

The state charged Pinney with first degree premeditated murder, as well as second degree intentional murder or felony (assault) murder. The state also alleged Pinney committed the offenses while armed with a handgun. CP 6-7. Consistent with Pinney's defense theory, the trial court gave self-defense instructions. CP 53-56.

The jury did not reach a unanimous decision as to first degree murder. CP 78. Jurors instead found Pinney guilty of second degree murder and also found he committed the crime while armed with a firearm. CP 76-77. The trial court imposed a standard range sentence, then added a 60-month firearm sentence enhancement. The court also ordered community custody for 24 months to 48 months and included as a condition thereof that Pinney undergo a mental health evaluation and follow all treatment recommendations. CP 97-104.

C. ARGUMENT

1. THE STATE VIOLATED PINNEY'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND THE RIGHT AGAINST SELF-INCRIMINATION BY ELICITING TESTIMONY PINNEY REQUESTED COUNSEL DURING THE INTERVIEW WITH POLICE.

The prosecutor asked Detective Hansen several times whether Pinney requested counsel during his interview after receiving the Miranda warnings. Hansen answered several times that he did. Commenting on a defendant's exercise of his right to remain silent or to have counsel present for an interview with police is constitutional error. Because the error was not harmless, Pinney's conviction should be reversed.

The Fifth Amendment, which applies to states through the Fourteenth Amendment, guarantees that a criminal defendant shall not be

compelled to be a witness against himself. State v. Easter, 130 Wn.2d 228, 235, 922 P.2d 1285 (1996). Nor may the State comment on a defendant's exercise of that right. Griffin v. California, 380 U.S. 609, 613-15, 85 S. Ct. 1229, 14 L. Ed. 2d 106 (1965). The Washington Constitution guarantees these same protections. Wash. Const., art. I, § 9; State v. Earls, 116 Wn. 2d 364, 374-75, 805 P.2d 211 (1991) (federal and state protections are coextensive).

The right against self-incrimination is liberally construed. Easter, 130 Wn.2d at 236. To protect this right, police must inform a suspect of his or her Miranda rights before a custodial interrogation. State v. Cunningham, 116 Wn. App. 219, 227-228, 65 P.3d 325 (2003).

The use of silence after Miranda warnings is fundamentally unfair and violates the constitutional right to due process. Doyle v. Ohio, 426 U.S. 610, 617-18, 96 S. Ct. 2240, 49 L. Ed. 2d 91 (1976); State v. Burke, 163 Wn.2d 204, 217, 181 P.3d 1 (2008). This is because "[t]he exercise of constitutionally guaranteed Miranda rights must be without penalty." State v. Curtis, 110 Wn. App. 6, 8, 37 P.3d 1274 (2002). The state penalizes an accused for invoking his rights when it elicits as substantive evidence of guilt testimony that the accused invoked his Miranda protections. Easter, 130 Wn.2d at 236. This penalty exists whether the testimony is the

defendant's or that of a state's witness: "The highly prejudicial suggestion that defendant's post-arrest silence is consistent with guilt . . . can be made just as effectively by questioning the arresting officer or commenting in closing argument as by questioning defendant himself." State v. Fricks, 91 Wn.2d 391, 396, 588 P.2d 1328 (1979).

These rules are not limited to the state's use of a defendant's invocation of the right to remain silent; instead, they apply equally to a request for counsel. See Wainwright v. Greenfield, 474 U.S. 284, 295 n. 13, 106 S. Ct. 634, 88 L. Ed. 2d 623 (1986) ("With respect to post-Miranda warnings "silence," we point out that silence does not mean only muteness; it includes the statement of a desire to remain silent, as well as of a desire to remain silent until an attorney has been consulted."). Curtis, 110 Wn. App. at 14 (prosecutor's question and officer's response violated defendant's Fifth and Fourteenth amendment rights because examination served "no discernable purpose other than to inform the jury that the defendant refused to talk to the police without a lawyer.")³ See also State

³ The Fifth Amendment and article I, § 9 guarantee a criminal defendant the right to be free from self-incrimination, including the right to silence. State v. Knapp, 148 Wn. App. 414, 420, 199 P.3d 505 (2009). The right of a accused to have counsel present during custodial interrogation "is an indispensable part of the protective privilege of the fifth amendment" State v. Tetzlaff, 75 Wn.2d 649, 651, 453 P.2d 638 (1969).

v. Borsheim, 140 Wn. App. 357, 372, 165 P.3d 417 (2007) (Miranda's procedural safeguards designed to protect the defendant from self-incrimination "include a warning by police of the right to remain silent and the right to an attorney, and an immediate termination of police questioning if an attorney is requested.").

As applied to Pinney's case, these rules call for reversal of the conviction. In response to the prosecutor's questions, Detective Hansen answered three different times that Pinney said he should have an attorney. The first time Hansen so testified, the prosecutor emphasized Hansen's answer by repeating it in his next question. The prosecutor asked, "So, when he said to you, 'That maybe I should have an attorney,' what did you guys do at that point?" 8RP 98. Hansen said, "We just ended the interview at this time." 8RP 99. At that point, the prosecutor referred the rights form Hansen used during the interview and again infused his question with Pinney's right to an attorney. Hansen answered that Pinney said, "Well, maybe I should have an attorney." 8RP 100. These repeated references to the exercise of a Miranda right, by both Hansen and the prosecutor, were error.

Two questions remain. The first is whether Pinney waived this argument by failing to object to the questions or testimony at trial. The

answer is no. This issue may be reviewed for the first time on appeal under RAP 2.5(a)(3) because it involves a manifest constitutional error. State v. Pottorff, 138 Wn. App. 343, 346, 156 P.3d 955 (2007); State v. Romero, 113 Wn. App. 779, 790-91, 54 P.3d 1255 (2002); Curtis, 110 Wn. App. at 11 (citing RAP 2.5(a)(3)); State v. Gutierrez, 50 Wn. App. 583, 588 n.1, 749 P.2d 213 (comment on silence manifest constitutional error under RAP 2.5(a)), review denied, 110 Wn.2d 1032 (1988).

The second question is whether Pinney's conviction must be reversed. The answer depends on whether the comments on Pinney's invocation were direct or indirect. Direct comments are reviewed under a constitutional harmless error standard. Romero, 113 Wn. App. at 790. State v. Nemitz, 105 Wn. App. 205, 215, 19 P.3d 480 (2001). Prejudice resulting from an indirect comment is reviewed using the lower, non-constitutional harmless error standard to determine whether no reasonable probability exists that the error affected the outcome. Romero, 113 Wn. App. at 790-91.

Direct comments occur when a witness or prosecutor specifically references invocation of a defendant's Miranda right. See e.g., Romero, 113 Wn. App. at 793 (officer directly commented in right to silence when he testified, "I read him his Miranda warnings, which he chose not to

waive, would not talk to me.”); Curtis, 110 Wn. App. at 13 (officer testified that Curtis asserted the right not to answer questions and to have a lawyer after he received the Miranda warnings).

Indirect comments, in contrast, occur when a witness or state agent refers to a comment or act by the defendant that could be inferred as an attempt to exercise the right to remain silent. See State v. Lewis, 130 Wn.2d 700, 705-06, 927 P.2d 235 (1996) (officer did not testify the defendant refused to talk, but rather that the defendant claimed he was innocent); State v. Sweet, 138 Wn.2d 466, 480-81, 980 P.2d 1223 (1999) (officer's testimony that defendant said he would take a polygraph test after discussing the matter with his attorney was an indirect reference to silence).

Under these examples, Hansen's testimony and the prosecutor's questions were direct comments on Pinney's rights. As such, they were constitutional error. This Court will find a constitutional error harmless only if convinced beyond a reasonable doubt any reasonable jury would reach the same result absent the error and where the untainted evidence is so overwhelming it necessarily leads to a finding of guilt. Easter, 130 Wn. 2d at 242. Constitutional error is presumed prejudicial and the State bears

the burden to prove that it was harmless. State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020 (1986).

This is a burden the State cannot meet. A comment on the defendant's invocation of his right to remain silent implies the defendant's guilt from the refusal to answer questions. Lewis, 130 Wn.2d at 705. Pinney's defense rested on the jury believing his testimony that he feared Brewer might kill him when he fired his gun into the darkness.

Jurors may have expected a person in this situation to cooperate with police by answering all questions posed. The prosecutor and Detective Hansen highlighted the absence of such cooperation by effectively telling the jury that, even after being encouraged to do so, Pinney declined to discuss self-defense and instead terminated the interview by mentioning counsel. Making matters worse, Hansen testified that once Pinney mentioned he might need to speak with counsel, he was handcuffed and returned to jail. 7RP 100. By linking silence and security, Davis underscored the improper message -- the guilty refuse to speak with police.

Pinney's case was stronger without Hansen's testimony and the prosecutor's questions. First, Pinney had reason to believe Brewer could attack him. State's witness Sateren told Detective Hansen that Brewer

came out of the house the night before the shooting and went right up to Pinney with an angry voice. 4RP 145. Sateren's boyfriend, Michael Moseley testified that Brewer came out of the house and "got up in [Pinney's] face" even after Pinney had already pulled his gun. 4RP 160-61.

Second, Brewer stood 6'-1" tall and weighed 188 pounds. 5RP 138-39. In contrast, Pinney was about 5'-9" and weighed 130. 7RP 153.

Third, both Warren and Pinney testified Brewer followed them, talked to himself, and acted strangely.

Fourth, the evidence supports Pinney's testimony that Brewer was near enough to land a blow. Warren testified when he looked down the alley, he saw that Brewer and Pinney were only about three feet apart. 7RP 45. The medical examiner testified the gun that fired the bullet into Brewer's head was only about 6 inches to 24 inches away. 5RP 141.

Without the improper direct comments, the state's evidence that Pinney did not act in self-defense was far from overwhelming. Unfortunately, however, the comments on Pinney's invocation of the right to counsel drew the jury's attention away from weaknesses in the state's case and improperly focused attention on Pinney's failure to explain he

acted in self-defense. This error likely had a significant impact at trial. It was not harmless beyond a reasonable doubt.

2. THE TRIAL COURT EXCEEDED ITS STATUTORY SENTENCING AUTHORITY BY ORDERING PINNEY TO UNDERGO A MENTAL HEALTH EVALUATION AND FOLLOW ALL RECOMMENDED TREATMENT.

As a condition of community custody, the trial court ordered Pinney to undergo a mental health evaluation and follow all treatment recommendations. CP 104. But there was no evidence Pinney suffered any mental health problems that may have contributed to his commission of the offense. The trial court's condition is therefore not statutorily authorized.

A trial court may only impose a sentence authorized by statute. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). Whether the trial court acts outside its statutory authority in imposing a community custody condition is an issue that may be raised for the first time on appeal. State v. Julian, 102 Wn. App. 296, 304, 9 P.3d 851 (2000), review denied, 143 Wn.2d 1003 (2001). An offender has standing to challenge conditions even though he has not been charged with violating them. State v. Riles, 86 Wn. App. 10, 14-15, 936 P.2d 11 (1997), aff'd., 135 Wn.2d 326, 957 P.2d 655 (1988).

Former RCW 9.94A.715(1)⁴ required a trial court to impose community custody on all offenders convicted of a crime against a person, such as second degree murder. Community custody conditions shall include those provided for in former RCW 9.94A.700(4),⁵ and may also include those provided for in former RCW 9.94A.700(5).⁶ Former RCW

⁴ The provision was repealed effective August 1, 2009. It applies to Pinney, who committed the offense February 23, 2008, by operation of the saving statute, RCW 10.01.040.

⁵ Former RCW 9.94A.700 was recodified as RCW 9.94B.050, effective August 1, 2009. The following conditions, unless waived by the court, were required under former RCW 9.94A.700(4):

- (a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;
- (b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;
- (c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- (d) The offender shall pay supervision fees as directed by the department; and
- (e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

⁶ Former RCW 9.94A.700(5) permitted a sentencing court to impose any or all of the following conditions of community custody:

- (a) The offender shall remain within, or outside of, a specified geographical boundary;

9.94A.715(2)(a). "The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community[.]" Former RCW 9.94A.715(2)(a).

As applied to Pinney, these statutes permitted the "mental health" community custody condition only if it reasonably relates to the circumstances of Pinney's offense. Under State v. Jones,⁷ it does not.

The Jones court overturned the trial court's community custody condition requiring alcohol abuse counseling and treatment. The court first observed the trial court was not authorized by former RCW 9.94A.700(5)(c) to order the condition because the evidence failed to show alcohol contributed to Jones' offenses. Jones, 118 Wn. App. at 207-08.

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

⁷ 118 Wn. App. 199, 76 P.3d 258 (2003).

The Court also acknowledged, however, that former RCW 9.94A.715(2)(b) permitted a trial court to order an offender to “participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender’s risk of reoffending, or the safety of the community[.]” Jones, 118 Wn. App. at 208. This condition also applies to Pinney.

The court harmonized that language with RCW 9.94A.700(5)(c), which required such affirmative conduct be “crime-related.” Jones, 118 Wn. App. at 208. It held alcohol counseling “reasonably relates” to the offender’s risk of reoffending, and to the safety of the community, only if the evidence shows that alcohol contributed to the offense. Jones, 118 Wn. App. at 208 (footnote omitted).

The same language analyzed in Jones applies to Pinney’s case. Just as there was no evidence alcohol contributed to Jones’ offenses, there was likewise no evidence mental health issues contributed to Pinney’s crime. The community custody condition requiring Pinney to obtain a mental health evaluation and follow recommended treatment is too broad and not reasonably related to the circumstances of Pinney’s offense. See State v. Parramore, 53 Wn. App. 527, 531, 768 P.2d 530 (1989) (trial court erred by imposing condition requiring submission to breathalyzer

because there was no evidence of any connection between alcohol use and Parramore's conviction for delivering marijuana).

For these reasons, the "mental health" condition should be stricken from Pinney's judgment and sentence. Jones, 118 Wn. App. at 207-08, 212.

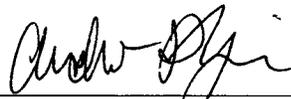
D. CONCLUSION

The state violated Pinney's rights to due process and against self-incrimination. This Court should reverse his conviction. The trial court also exceeded its statutory sentencing authority by imposing a community custody condition that was unsupported by the evidence. This Court should remand and strike the "mental health" condition of community custody.

DATED this 29 day of January, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



ANDREW P. ZINNER
WSBA No. 18631
Office ID No. 91051

Attorneys for Appellant

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

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
KYLE PINNEY,)
)
)
 Appellant.)

COA NO. 63729-1-1

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 29TH DAY OF JANUARY, 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] KYLE PINNEY
 DOC NO. 309651
 WASHINGTON STATE PENITENTIARY
 1313 N. 13TH AVENUE
 WALLA WALLA, WA 99362

SIGNED IN SEATTLE WASHINGTON, THIS 29TH DAY OF JANUARY, 2010.

x *Patrick Mayovsky*

FILED
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STATE OF WASHINGTON
2010 JAN 29 PM 4:05