

67500-1

67500-1
SSD

NO. 67500-1-I

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

ANDREA LISTER,

Petitioner

v.

CITY OF SEATTLE,

Respondent.

BRIEF OF PETITIONER

Damon Agnos, WSBA No. 38662
Attorney for Petitioner

Law Office of Damon Agnos
100 West Harrison Street, Suite N440
Seattle, WA 98119
(206) 445-0224
damon@agnoslaw.com

2012/05/20 PM 1:21
COPIES
STAMP
FILED
JUN 11 2012
JUN 11 2012

TABLE OF CONTENTS

I.	ASSIGNMENT OF ERROR.....	3
II.	STATEMENT OF THE CASE.....	3
III.	ARGUMENT & AUTHORITIES.....	6
	1. Ms. Lister has a right to counsel in all critical stages of the proceedings...	6
	2. Ms. Lister was denied counsel at the July 1 hearing, which constituted a critical stage in the proceedings.....	7
IV.	CONCLUSION.....	8

TABLE OF AUTHORITIES

<i>Article I Section 22, Washington State Constitution.....</i>	6
<i>Evitts v. Lucey, 469 U.S. 387, 396 (1985).....</i>	6
<i>State v. Heddrick, 215 P.3d 201, 207 (2009).....</i>	6

I. ASSIGNMENT OF ERROR

The court denied Ms. Lister her constitutional right to an attorney at the RALJ hearing on July 1, 2011.

II. STATEMENT OF THE CASE

Ms. Lister was convicted of one count of false reporting and one count of violation of a child protective order in a trial in Seattle Municipal Court case 537310. She appealed her conviction and was assigned Theresa Griffin as her attorney for the appeal. Ms. Griffin filed a brief of appellant but both Ms. Griffin and Ms. Lister have stated that there was little to no communication between them.

On April 27, 2011, Ms. Griffin moved for withdrawal “due to a total breakdown of communication” with Ms. Lister. Appendix A. The court granted her motion. *Id.* Though there was no motion before the court for a continuance, the court added to its order, “No further continuances will be granted with respect to the oral argument date.” *Id.*

In the ensuing two months, both Ms. Lister and Ms. Griffin contacted the administrators for the Conflict Attorney Panel to request a new attorney. According to the court, attorney Damon Shadid e-mailed the court on June 30, one day before the hearing, to confirm that the oral argument date had been continued. In a reply e-mail, the bailiff informed him that the hearing had not been continued. Mr. Shadid replied that he had not been given discovery and could not represent Ms. Lister under those circumstances and thus would not be showing up for the hearing. RP 1, 3-4. Ms. Lister and Richard Greene,

the attorney for the City of Seattle, showed up for oral argument on July 1, 2011 in Judge Eadie's courtroom.

At the outset of the hearing, Ms. Lister declared, "I'm not representing myself." Id. at 1. She went on to state that she was dissatisfied with Ms. Griffin, whom she wished to have removed in December after she "hadn't contacted me for six months to work on the case" and who "only represented half of the case" by failing to appeal one of the counts. Id. at 1. Ms. Lister stated, "By law, I believe for criminal stuff I'm allowed to have counsel for this." She also stated, "I'm not a lawyer," and "I'm not prepared to oral argument, other than I'm not guilty and the job wasn't done." Id. at 1-2.

The Court asked the city's attorney, Richard Greene, for his position on the court's ability to proceed in light of the absence of counsel for Ms. Lister. The city argued that Ms. Lister was already provided counsel, and that her dissatisfaction with initial counsel shouldn't entitle her to additional counsel at public expense. Id. at 2.

The court noted Mr. Shadid's near-involvement in the case, and once again asked Mr. Greene again how the court should proceed. Mr. Greene said that the RALJ rules allow for a decision without oral argument. The Court asked for a citation for that rule, and Mr. Greene directed The Court to RALJ 8.4. The Court instructed Ms. Lister to read the rule. Id. 3-4.

Mr. Greene told the court that he'd like to submit a recent case that dealt with a situation similar to that in Ms. Lister's case. Id. at 6-7. The Court again told Ms. Lister to read the rule. Id. at 7. Ms. Lister stated that she had read the rule and that she was dissatisfied with the brief filed by Ms. Griffin, and then stated, "I do believe in a criminal matter I am to be represented at all times and I am not representing myself again, so for

due process reasons I respectfully request a continuance.” Id. at 8-9.

The Court inquired whether Ms. Griffin’s brief addressed the issue of the court’s instructions to the jury. Ms. Lister replied that she did not have a copy of the documents. The Court told her, “[I]t is your turn to stop now” and re-addressed the question to Mr. Greene. The Court attempted to answer his own question by reading aloud from the Brief of Respondent. He asked Ms. Lister to respond. Id. at 10-12.

Ms. Lister asserted that she had documents showing that the order was not served in court and made several other arguments towards the invalidity of her conviction. At this point, The Court began a long discussion/colloquy on the substance and merits of the arguments in the Brief of Appellant, reading aloud from the briefs and trial transcripts, skipping around within and between each, and asking Mr. Green and Ms. Lister for their thoughts. At various points in this colloquy, Ms. Lister protested that she had not been given any documents and that she was confused. Id. at 10-18

The Court instructed Ms. Lister to read *Seattle v. May*, the case that the city submitted at the hearing. Ms. Lister objected, stating “I don’t have any documents at all because I’ve not been supplied with any of those things.” The court told her, “You might want to look at this case. This is the case *City of Seattle versus Robert May*.” Id. at 18.

After Ms. Lister had read the case, and after offering Mr. Greene the opportunity to comment on the new authorities he had introduced, The Court offered Ms. Lister the opportunity to comment on RALJ 8.4 (and, presumably, *Seattle v. May*), telling her, “Without waiving any objection to your being here without a lawyer—let me hold that. I’m going to give you an opportunity to speak again.” Id. at 19.

Ms. Lister repeated her dissatisfaction with the work of Ms. Griffin and repeated

that, against her wishes, one of her charges was not appealed. She continued, “If I’m going to represent myself, I need to be provided with the proper documents and transcripts.” She added, “I’m intelligent, but not emotionally intelligent enough on criminal law and matters to fully represent myself before you.” Id. At 24-25.

The court stated that it was going to decide the case based on the briefs. It cited two cases for its decision against Ms. Lister on the issue of whether the no-contact order was valid for the purposes of her conviction. One of the cases was *State v. Noah*, which appears in the city’s brief. The other case was *Seattle v. May*, to which Mr. Greene had alerted the court earlier in the hearing. The court also decided against Ms. Lister on the issue of whether the jury instructions properly summarized the law regarding notice. The court dismissed Ms. Lister’s appeal. Id. at 25-35. Its dismissal order cites three authorities: *State v. Noah*, *Seattle v. May*, and *RALJ 8.4*. Appendix B.

III. ARGUMENT & AUTHORITY

1. Ms. Lister has a right to counsel in all critical stages of the proceedings

A defendant has a constitutional right to first appeal in criminal cases. Washington State Constitution, Article I, §22. In an appeal of right, a criminal defendant has a constitutional right to effective counsel. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). A complete denial of counsel during a critical stage in the proceedings is presumptively prejudicial and calls for automatic reversal. *State v. Heddrick*, 215 P.3d 201, 207 (2009), citing *United State v. Cronic*, 466 U.S. 648, 658-659 n. 25 (1984). A critical stage of the proceedings is “one in which a defendant’s rights may be lost, defenses waived,

privileges claimed or waived, or in which the outcome of the case is otherwise substantially affected.” *Heddrick* at 207, citing *State v. Agtuca*, 12 Wash.App. 402, 404, 529 P.2d 1159 (1974).

2. Ms. Lister was denied counsel at the July 1 hearing, which constituted a critical stage in the proceedings

Its invocation of RALJ 8.4 notwithstanding, the court held oral argument on the appeal while Ms. Lister was without counsel, and without Ms. Lister waiving her right to counsel. In fact, Ms. Lister repeatedly requested counsel. The court asked her to represent herself and to comment on the issues and authorities, some of which were newly introduced at the hearing.

The hearing lasted over 49 minutes. The court asked for the parties’ input on various arguments in the case. The court allowed the city to present new authorities and then instructed Ms. Lister to read those authorities, presumably so that she could argue their merits. The court did this despite Ms. Lister’s repeated protestations that she was neither prepared for oral argument nor capable of representing herself in a criminal matter. The court ignored her repeated demands that she be provided an attorney. The court refused her motion for a continuance so that she could obtain counsel. The court conducted an inquiry into whether evidence was presented to show that Ms. Lister had been given proper notice of the order she was convicted of violating. The court read from the transcripts and asked if the transcripts matched the city’s recollections. Throughout the hearing, Ms. Lister requested that she be provided counsel.

In its order dismissing the case, the court cited four authorities. Appendix A. Two

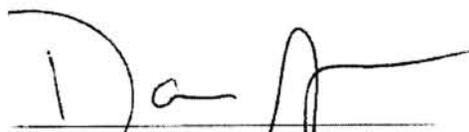
of those authorities—Seattle v. May and RALJ 8.4—were submitted by the city at the hearing. It is absurd for the court to claim that it decided the case based only on the briefing when the half of the authorities it cites were not in the briefing and were introduced at the hearing the court claims to have waived.

Thus, even if the 49-minute hearing the court conducted does not technically qualify as oral argument, the fact that the court considered arguments and authorities and decided the case in part on the basis of those arguments and authorities—and the parties comments on them—makes abundantly clear that this was a hearing at which “the outcome of the case [was] otherwise substantially affected.”

IV. CONCLUSION

Ms. Lister was denied counsel at a critical stage in the proceedings. Such a denial calls for automatic reversal. The Court of Appeals should reverse the Superior Court’s ruling on Ms. Lister’s RALJ appeal and remand her case to Superior Court.

Respectfully submitted this 30th day of August, 2012.

A handwritten signature in black ink, appearing to read "Damon Agnos", written over a horizontal line.

Damon Agnos, WSBA #38662
Attorney for Petitioner

RP 1

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

CITY OF SEATTLE,)	Cause No. 10-1-03976-3 SEA
)	
Plaintiff,)	Appeals No. 67500-1-I
)	
v.)	
)	
ANDREA LISTER,)	
)	
Defendant.)	
)	

VERBATIM REPORT OF
CD RECORDED PROCEEDINGS

July 1, 2011

HEARD BEFORE THE HONORABLE RICHARD EADIE

FOR THE PLAINTIFF: RICHARD E. GREENE
Seattle City Attorney's Office
700 Fifth Avenue, Suite 5350
P. O. Box 94667
Seattle, Washington 98124-4667

FOR THE DEFENDANT: PRO SE

T A B L E O F C O N T E N T S

PAGE NO.

July 1, 2011:

RALJ HEARING	3
COURT'S RULINGS	27

1 July 1, 2011

2 THE COURT: Ms. Lister, you're welcome to come up here if
3 you want to.

4 MS. LISTER: Oh, okay. Yes. Thank you, Your Honor. Just-

5 THE COURT: You want to bring your papers if you'd like
6 to.

7 MS. LISTER: And again, I've set my oral apology for the
8 one court date that I did miss.

9 THE COURT: Okay. Well, we're past that. We're here today
10 for trial—or for your hearing, your oral argument.

11 MS. LISTER: Right. And, I'm not presenting—representing
12 myself. And, there's a little confusion because the, uh,
13 public defender was dismissed. Uh, I was originally going
14 to dismiss her, if you recall, in December because she
15 hadn't contacted me for six months to work on the case.
16 And, then she, uh, was allowed to be dismissed. I missed
17 that court date. Uhm, and I had some issues with that. And,
18 so I've made every other court date and every court for
19 ever, whatever. And, I'm not-by-law, I believe for
20 criminal stuff, I'm allowed to have counsel for this. She
21 only represented half of the case in whatever she had
22 prepared for oral argument. And, when I let her know that I
23 was asking for both the charges to be totally looked into
24 because there's documentation to prove otherwise on both of
25 them, and there's multiple malfeasance from Superior

1 Juvenile Court that led to the case in Seattle Muni, which
2 is a collateral attack. And, nobody wanted to dig deep
3 enough to find the truth and present it. And, the Judge
4 said, it's not her job to instruct the jury properly,
5 whatever. And so, it's just compounded errors, and I don't
6 think it's fair for you to un-drag the errors until you
7 have all the documentation.

8 And I'm not a lawyer. I've done some pro se in family
9 law only 'cause I'm in the Court of Appeals. Because of
10 these judicial errors, which they're still reviewing
11 because there was a serious error done. So, I'm not
12 prepared to oral argument other—other than I'm not guilty,
13 and the job wasn't done. And whether that's part of the
14 system, I'm a victim of that system. And, I don't like
15 wasting your time either.

16 THE COURT: Mr. Greene, on the issue only of our ability
17 to go forward in this review of her criminal conviction in
18 the absence of counsel for the Defendant.

19 MR. GREENE: Well, Your Honor, it's our—it's—it's the
20 City's belief that the—the Defendant got the—got the
21 appointed counsel she was entitled to and that her
22 dissatisfaction with that counsel isn't grounds for her
23 getting yet another lawyer at public expense.

24 THE COURT: Well, that ship sailed, though. I mean, she
25 was allowed to withdraw and to get another attorney. That

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

happened at the last hearing.

MS. LISTER: And, if I may interject-

THE COURT: Excuse me. No.

MS. LISTER: Okay.

THE COURT: No, you may not.

MS. LISTER: All right.

THE COURT: You just wait till we finish our conversation.

MS. LISTER: Okay. I-

MR. GREENE: Well, Your Honor, again, it's-it's our position that-that-

THE COURT: Excuse me, Mr. Greene. Do you-do you-have you seen the order? Have you looked at the order, the last order that was entered?

MR. GREENE: Yes.

THE COURT: And, let me, for this purpose, say that was on April 27 when Counsel for the Appellant was here and allowed to withdraw, and she was allowed to withdraw for-as counsel, but no further continuances would be granted with respect to oral argument. And, sometime after that a lawyer by the name of Damon-

MS. LISTER: Thursday.

THE COURT: -Shadid just-

MS. LISTER: Yesterday.

THE COURT: No, you just-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. LISTER: Oh, okay.

THE COURT: -wait.

MS. LISTER: Sorry.

THE COURT: It's not your turn to speak or to interrupt anyone. Do you understand? Either me-

MS. LISTER: Sorry.

THE COURT: -or Counsel.

MS. LISTER: I'm sorry.

THE COURT: That was done on April 27, 2011. This Court is not privy to the remainder of the appointment process, but we have received—we received a notice from a lawyer, identified himself as a lawyer, by the name of the Damon Shadid and-S-H-A-D-I-D, and I recognize that as a lawyer practicing in Seattle—who sent to us first on June 30th an email saying, quote, "I just wanted to confirm that the court date tomorrow would be continued," close quote. And a response was made to that within 10 minutes, saying that the hearing will not be continued; it is set for 1:30 p.m. Friday. The order signing—signed at the last hearing stated that there will be no more continuances. That was Ms.—Lawyer Shadid responded to that on June 30 at 4:26 p.m., said, quote, "This is unfortunate as I have not even received discovery or entered an appearance. Based upon this information, I will not be entering an appearance on this case at all," period. And, it goes on, but I closed

1 the quote there.

2 So, that is the factual—Mr. Greene, that's kind of the
3 factual basis. Does—are we allowed by law to go forward
4 with this hearing when Ms. Lister's counsel has withdrawn
5 and obviously new counsel was not promptly appointed? I
6 would mention, before you have to answer that, that I did
7 check and see both the Appellant's and Respondent's briefs
8 have been filed. They were both late by a few days, but
9 they were both filed well before the first hearing date on
10 this case, which was December 10, over six months ago.
11 There have been three continuances in this matter, and then
12 a withdrawal of counsel at a hearing in which Ms. Lister
13 had notice but did not—

14 MS. LISTER: Right.

15 THE COURT: —appear. Was allowed to withdraw, but we
16 specified that no further continuances would be made. So,
17 that's kind of the record on how we get here.

18 I'm—I have read all the briefs. I have read cases cited
19 by the parties. I'm ready to proceed. But, I do have a
20 question as to whether, this being a criminal matter, and
21 Counsel, for whatever reason, whether it's a valid reason
22 or not, not appearing here; can we go ahead? Are we allowed
23 to?

24 MR. GREENE: Well, Your Honor, I think the RALJ rules
25 certainly authorize you to decide the case without oral

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

argument. So, I think you could do that. I'm-

THE COURT: What is--can you cite that rule to me, please?

MR. GREENE: You know, I didn't bring my book. I can--I can certainly find it for you. Probably easier than [inaudible].

MS. LISTER: If I may--

THE COURT: Not--

MS. LISTER: Okay, not yet.

THE COURT: No.

MR. GREENE: Yes. It's--it's Rule 8.4. It says that, either the parties can waive oral argument or you, on your own initiative, can decide that you can--you're going to decide the case without oral argument.

THE COURT: Rule 8.6?

MR. GREENE: 8.4.

THE COURT: Oh, 8.4, okay. 8.4. Okay. I'm going to hand this down--

MS. LISTER: Yes.

THE COURT: --just so you could--

MS. LISTER: May I [inaudible], please?

THE COURT: --take a look at that. It's the one in the upper corner there.

MS. LISTER: I can read it, yeah.

MR. GREENE: And, Your Honor, in connect with that, I'd like to actually hand forward another case that I'd like

1 you to consider. It's decided by the Supreme Court on
2 June 23rd, so a couple weeks ago. And here's a copy-

3 MS. LISTER: [Inaudible] nothing's been decided as of
4 yet.

5 MR. GREENE: It had to-

6 MS. LISTER: Oh.

7 MR. GREENE: -do with a similar-

8 MS. LISTER: I'll have to look at-oh.

9 MR. GREENE: -situation where-where Superior Court had
10 issued a-a no-contact order, and the defendant had been
11 charged with violating that in Municipal Court and-and
12 wanted to challenge that order in the criminal prosecution.
13 And the Supreme Court said, you cannot do that-

14 THE COURT: Okay.

15 MR. GREENE: -so.

16 THE COURT: All right. Take a moment to read-

17 MS. LISTER: Yes, please.

18 THE COURT: -that rule.

19 MS. LISTER: I-I can't-

20 THE COURT: And then you'll be-

21 MS. LISTER: -listen and read at the same time. Well,
22 I've read the rule, and while it is set for oral argument,
23 I guess the choice to waive it-mind it, you're the Judge
24 and you can do whatever you please; I'm pretty sure I've
25 experienced that-the case is not fully represented

1 properly. You're not fully aware. There's only one brief
2 towards one of the charges. The-the full case has not got
3 all the information before you. There is proof out there
4 that there was no restraining order served ever. And, that
5 proof has not been entered to you or anyone else. And,
6 because of a judicial error I feel I have a very good
7 relationship with actually Mr. Greene, who knows me from
8 before, and you yourself, Your Honor. And that, honestly, I
9 don't want this to become another case in the Court of
10 Appeals over something judicially that wasn't happen-not
11 that you would do that explicitly. But, if all the balls
12 are not before you, I don't know how many shots you can hit
13 to make the 18 holes.

14 And, properly the one thing she did she did very well.
15 But, she didn't put in all the documentation showing the
16 proof. It was not served. It was-a lawyer testified that
17 this was never served, and the Judge ignored that. So, I
18 was convicted on something. I was never served. It's cost
19 me extreme hardship, financial instability, and it's been
20 used against me again and again even though I was never
21 served. And it was actually dropped in Juvenile Court and
22 completely, the whole thing and whatever. And then my due
23 process, which I do believe in a criminal matter I am to be
24 represented at all times. And, I'm not representing myself
25 again. So, for due process reasons, I respectfully request

1 a continuance. This man—because of the problems I had
2 initially with the lawyer, which is why she did her part
3 done, completely, 50 percent, which she did very well. And
4 I applaud her and her son for that. And then there's the
5 other 50 percent she hasn't done. And, because of the
6 conflict of interest with the judicial—the people who are—
7 what is it—public defender associations that are involved
8 in my other case, it does take a little longer to get
9 somebody represented, and then for him to be shot down once
10 he got the case because of how slow sometimes she has
11 worked, and that was my issue, which I didn't fight her on
12 it, and I didn't want to cause a scene, and I didn't want
13 an issue in your courtroom, and I have a lot of emotional
14 issues because of this.

15 Mind you, I was doing, like, 18 credits of school work
16 and 13 last term, and so I have been very busy, not
17 disrespectfully to you. It was a blip in my schedule for
18 missing that date. And a lawyer is supposed to have your
19 best interest. And, I am not trying to just get a new
20 lawyer, get a new lawyer. But, if a lawyer is not versed or
21 not willing to look for the whole truth because maybe
22 because they are a public defender, then that's not a good
23 relationship. And if you were here on my position on this
24 side and you had a lawyer that only represented half your
25 interest, you intelligently would remove them or let them

1 remove themselves so that you could get the proper lawyer,
2 or a lawyer who is willing to do the full job, I guess.
3 Respectfully I would grant—I would like a continuance, and
4 I—I feel just as frustrated that six months of this time
5 has been wasted with Ms. Griffin, and we're kind of taking
6 the shuck of it.

7 THE COURT: Okay. Did Ms. Griffin not address in her
8 brief the issue of the Court's instructions to the jury?

9 MS. LISTER: Your Honor, I don't even have the copies of
10 the documents and what she's represented.

11 THE COURT: Okay. Let me—so, it is your turn to stop now.

12 MS. LISTER: Okay. Thank you.

13 THE COURT: And I'm going to—

14 MS. LISTER: Thank you.

15 THE COURT: —ask Mr. Greene a question.

16 MS. LISTER: Okay.

17 THE COURT: Mr. Greene, I thought I recalled that
18 Ms. Griffin had addressed the issue of the instructions.

19 MR. GREENE: Yes. Yes, she raised two issues. One was
20 that—one concerned the validity of the restraining order
21 and, which again, I think is—is controlled by this *May*
22 case. And the second was the—the jury instruction regarding
23 actual modus, which—

24 THE COURT: Right.

25 MR. GREENE: —which, as I put in our brief, I think—

1 THE COURT: Right.

2 MR. GREENE: -that's controlled by the *Van Tuyl* case.

3 THE COURT: Right. My collection from the record also was
4 that the restraining order was issued in Ms. Lister—at
5 least there was testimony before the jury that the
6 restraining order was—excuse me, it's either before the
7 jury or informed the Court that the restraining order had
8 been issued by—issued to Ms. Lister in open—when Ms. Lister
9 was in open court, and thereafter had been mailed to her by
10 her attorney. Is—do you—

11 MS. LISTER: No.

12 THE COURT: Do you recall that testimony?

13 MR. GREENE: Let's see. The order states—

14 THE COURT: The—your brief states at Page 18, quote,
15 "Pierce's attorney testified that the Defendant was present
16 on March 23, 2009, when the restraining order was issued by
17 the Court. The attorney read into the record that no
18 further service of the restraining order was required
19 because the Defendant was present in court." This is the
20 Report of Proceedings at 15. Additionally, the jury heard a
21 911 call placed by Defendant where she had acknowledged
22 that a restraining order was in place prohibiting her from
23 having contact with Pierce. That's Report of Proceeding,
24 the RP2 at 16. The previous references I made to the RP at
25 15 were RP2 at 15.

1 MR. GREENE: That's my understanding what the record
2 shows.

3 THE COURT: Okay. Now, Ms. Lister?

4 MS. LISTER: Yeah. Actually, I hold documents that show
5 that not only in that March hearing it was not specified,
6 and the only thing that was read in court openly says that
7 the mother is not to go to the home of either father, which
8 I never did. And, I was repeatedly told by attorneys to
9 call 911 when he had left the children with an unauthorized
10 babysitter that had not been background checked by CPS. My
11 attorney, Mr. Freeman, in the trial testified I was never
12 served, and it was not forwarded to me.

13 THE COURT: Okay.

14 MS. LISTER: And, then it becomes an issue in subsequent
15 hearings that they dropped the-the-the-I don't-the
16 contempt; they tried to contempt me on it, and they dropped
17 it because they-whatever. However, then Judge Kondo in this
18 case said, well, if it was written invalid, that's for her
19 attorney to go fix, and it's not our problem.

20 THE COURT: Okay. Okay. Just a minute, Ms. Lister. Then,
21 your attorney and Mr. Pierce's attorney both testified at
22 your trial in Municipal Court; is that correct?

23 MS. LISTER: No, that's not correct. Mr. Pierce's-

24 THE COURT: Did Mr. Pierce's-

25 MS. LISTER: -attorney was never there.

1 THE COURT: Excuse me? It says—maybe we should clarify
2 this. It says, Mr.—here “Pierce’s attorney testified that
3 Defendant was present on March 23 when the restraining
4 order was issued by the Court.” The reference there is then
5 to RP2 at 15.

6 MS. LISTER: Can I see the document that you’re reading,
7 sir?

8 THE COURT: Yes.

9 MR. GREENE: Part of the problem—

10 THE COURT: I’m reading the brief.

11 MS. LISTER: Right. I haven’t—I don’t have it.

12 MR. GREENE: —with this is that the entire trial wasn’t
13 transcribed.

14 MS. LISTER: It wasn’t?

15 THE COURT: Well—

16 MS. LISTER: That’s really—

17 THE COURT: Excuse me.

18 MS. LISTER: I’m sorry.

19 THE COURT: But, when there’s a reference to RP2, that’s
20 a report of proceedings—

21 MR. GREENE: Yes.

22 THE COURT: —so it must be—that part must have been.

23 MR. GREENE: I think—I think that was actually the—the
24 jury instructions and closing argument.

25 MS. LISTER: That’s thinking [inaudible].

1 MR. GREENE: But we never-

2 THE COURT: Jury-

3 MR. GREENE: -got a transcript of the-of the trial-

4 THE COURT: Okay.

5 MR. GREENE: -testimony.

6 THE COURT: It was jury instructions. It was, excuse me,
7 argument, probably argument then by the Prosecutor that
8 said-

9 MR. GREENE: That Mr. Pierce testified about that, I
10 think.

11 THE COURT: Yes.

12 MS. LISTER: That would be somewhat more accurate, yes.

13 THE COURT: Right. I-

14 MS. LISTER: Yeah.

15 THE COURT: If I didn't say that before, that's what I
16 meant to say.

17 MS. LISTER: No, it's not his attorney, yeah.

18 THE COURT: Oh, that Mr. Pierce testified. Okay.

19 MS. LISTER: Right.

20 THE COURT: No, I-

21 MS. LISTER: Yeah.

22 THE COURT: You-and it does say in the brief,
23 "Mr. Pierce's attorney." So, maybe that's a-

24 MS. LISTER: Yeah.

25 THE COURT: -misstatement.

1 MS. LISTER: There's a--there's a lot of compounding
2 errors. And that's why it--

3 THE COURT: Okay.

4 MS. LISTER: --maybe behoove us to transcribe--

5 THE COURT: Okay. Just--just a minute. The facts here--I'm
6 going to quote from a--one of the transcripts. I don't know
7 if this is RP2 or RP1. Well, let me see if I can find out.
8 Maybe that's worth doing. RP2, okay. I'm at RP2. It's in
9 the record as RP2 at Page 15. And, I'll read the part that--
10 first at Line 7 to 8. The Prosecuting Attorney test--argued,
11 quote, "The facts here go to Mr. Pierce's testimony that he
12 received a call on April 9, 2009, that she called, saying
13 something to the effect of, quote, 'You think you're that
14 smart? I know what you're trying to do'," close quote.
15 Well, actually that's the internal quote. And the argument
16 goes on, "And so, Mr. Pierce just hung up at that point."

17 Thereafter, the clerk put down at Page 18--or not
18 Page 18, still Page 15, Line 18, after the clerk advised
19 the Prosecutor that the Prosecutor has 10 minutes left for
20 argument, and the Prosecutor continues to argue, quote,
21 "And there is another order in here, and the reason why
22 this is in evidence is that on Page 2, and Mr. Freeman is
23 listed as his attorney"--

24 MS. LISTER: My attorney.

25 THE COURT: I'm--I'm reading this.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. LISTER: Oh, okay. Sorry.

THE COURT: Okay. Let me go back to the interruption.

MS. LISTER: Sorry.

THE COURT: We'll pick up, quote, "And Mr. Freeman is listed as his attorney, talks about this briefly, and I had him read into the record that the mother was present on the hearing for that order, present on 3/23/09 in court; restraining order entered 3/23/09. No further service of the 3/23/09 temporary restraining order is not required." That's a double neg-and quote for me, that's a double negative, I recognize.

MS. LISTER: Yeah. And-

THE COURT: And then returning to the quote, "So, they made a finding-the Court made a finding that she was there, that she was notified that there was a restraining order. Mr. Freeman said that while she was, his recollection was that she was told not to go near the home and also that there was a restraining order. So, it's not very clear as to what exactly his recollection was that the Judge said directly to Ms. Lister. Circumstantially, if we go back to Track 2 of the recordings and you listen to them, she does."

MS. LISTER: Excuse me, say that one-

THE COURT: Then there's an objection, and she-the Prosecutor continues, talk about the fact that she

1 recognizes that there is a restraining order. And then it
2 goes—I'm on Page 16 at Line 9 to 10, "I'm talking about, it
3 is Track 5 that the second call that he was—she does talk
4 about the fact that she—she knows that there is a
5 restraining order. And she makes some statement of that,
6 oh, okay, well, I'm not within 500 feet. Well, the order
7 actually doesn't have 500 feet; 100 yards of the father.
8 But, she makes no mention of that in Track 5, the second
9 call."

10 MS. LISTER: And—

11 THE COURT: Okay. No, no.

12 MS. LISTER: I'm sorry.

13 THE COURT: You'll have an opportunity.

14 MS. LISTER: I'm sorry. I do want to let you know I have—

15 THE COURT: You will have an—

16 MS. LISTER: —ADHD, so I do interrupt. I apologize.

17 THE COURT: Okay. So, it appears that the issue of—of
18 the—of Ms. Lister's knowledge of the entry of the order was
19 argued to the jury, and that there is a factual basis for
20 the argument, and the—and the jury found that she was.

21 MS. LISTER: And—

22 THE COURT: That's—

23 MS. LISTER: I'm sorry.

24 THE COURT: Okay.

25 MS. LISTER: Okay.

1 THE COURT: Okay. So, let me—and—and so, then, if I go
2 back to the RALJ brief of Respondent, Page 18, the
3 references to the attorney reading into the record that no
4 further service of the restraining order was required
5 because the Defendant was present in court is supported by
6 the record of the trial, which indicates that that was
7 argued to the jury. And even if we don't have a full
8 transcript of it, I think that an inference could be drawn
9 that if it was argued to the jury, that there was evidence
10 that would support that argument. Okay.

11 MS. LISTER: And—

12 THE COURT: And then the jury, by convicting, found that
13 all of the elements of the crime were met.

14 Let me just have just a moment—

15 MS. LISTER: Okay.

16 THE COURT: —Ms. Lister, to take a look at this case.

17 MS. LISTER: Yeah.

18 THE COURT: And—and you should take a look at it, too.

19 MS. LISTER: And, do—I don't have any documents at all
20 because I've not been supplied with any of those things.

21 THE COURT: Excuse me, Ms. Lister. If you will—I'm going
22 to read this case. You might want to look at this case.
23 This is the case of *City of Seattle versus Robert May*. I
24 think Mr. Greene—

25 MS. LISTER: Okay.

1 THE COURT: -just gave you-

2 MS. LISTER: Yes, yes.

3 THE COURT: -a copy of that.

4 MS. LISTER: Okay.

5 THE COURT: I'm going to take a look at it right now. If

6 you-

7 MS. LISTER: I do have the transcript of the 23rd that it

8 shows it wasn't read to me-

9 THE COURT: Okay.

10 MS. LISTER: -in the other court.

11 THE COURT: Okay. Ms. Lister, I want to stick to this

12 case.

13 MS. LISTER: Okay. We'll do this first. Okay.

14 THE COURT: Is there-Mr. Greene, is there any relevance

15 to the City v. May case other than the issue of a

16 collateral attack on an-on an order that may be improperly

17 entered but not void?

18 MR. GREENE: No, it just goes to the first issue.

19 THE COURT: Okay. Okay. Okay. Certainly without waiving

20 any objection to your being here without a lawyer,

21 Ms. Lister, you are-well, let me-let me hold that. I'm

22 going to give you an opportunity to speak again, but I'm

23 going to ask Mr. Greene again if he knows-has anything to

24 add to the reference to RALJ, was it 8.4?

25 MR. GREENE: 8.4.

1 THE COURT: I believe it was 8.4. RALJ 8.4 that the Court
2 can determine this appeal on its own motion after the—on
3 the briefs that have been submitted and directed there be
4 no oral argument once it has received the brief of
5 Appellant and the brief of Respondent. And for the record,
6 I've received brief of the Appellant and the brief of the
7 Respondent. They were filed in not quite a timely manner,
8 but not very far off of the case schedule and certainly in
9 time for oral argument on the first settle date, the first
10 date set for oral argument. And, I'm looking for—if you'll
11 give me just a minute—the case schedule.

12 MR. GREENE: I think it was back in December.

13 THE COURT: Yeah, the—

14 MR. GREENE: December 10, I think?

15 THE COURT: Yeah, the 10th was the first hearing. The
16 brief of the Appellant was filed on October 5, which I
17 think was two or three days after the date it was due. And,
18 the brief of the Respondent was filed on November 12th,
19 which was several days after the date it was due. The brief
20 of the Respondent was due under the case schedule on
21 October 29. It was filed in November. The Appellant's brief
22 was due on October 1. It was filed a few days late.

23 But, there was counsel representing Ms. Lister at that
24 time. There's no record of any objection to the late filing
25 of either brief. And, so there doesn't seem to be any issue

1 with respect to that. And, again, both were filed well
2 before the initial hearing, and that hearing was then
3 continued and then continued again, and then continued
4 again. The last time after it was continued, then there was
5 the withdrawal issue. The withdrawal was granted at a
6 hearing at which the withdrawing attorney was present. The
7 City was represented, but the—Ms. Lister was not present,
8 for no reason known to the parties at that time as to her
9 absence. And, the lawyer was allowed to withdraw, and a
10 condition was placed that there would be no further
11 continuances. And, it is my understanding, to the extent
12 that it may be relevant, that prompt application for
13 assignment of counsel was made to the Office of Public
14 Defense. The rest of the story has already been said in
15 terms of where we are today and how we arrived here today.

16 So, that was a very long statement after the—introducing
17 the question of, do you have anything more to say on that
18 issue, Mr. Greene?

19 MR. GREENE: No, Your Honor.

20 THE COURT: Okay. Ms. Lister.

21 MS. LISTER: Uh, still there are two charges, and only
22 one you have briefs represented in. There's a whole 'nother
23 charge that has not even been briefed and—

24 THE COURT: What was—

25 MS. LISTER: —represented properly.

1 THE COURT: What was that charge?

2 MS. LISTER: I don't even recall.

3 MR. GREENE: Resisting Arrest, I think.

4 MS. LISTER: No, it wasn't. That was dropped.

5 MR. GREENE: Oh, no, False Reporting.

6 MS. LISTER: I wasn't—I was—

7 MR. GREENE: False Reporting is what she was—

8 MS. LISTER: Yeah. They've got, uh, a thing for False

9 Reporting that she did not even address. And this is one of

10 the issues with the communication issue with this person.

11 THE COURT: Wait, just a moment.

12 MS. LISTER: There—

13 THE COURT: I don't recall anything in the—

14 MS. LISTER: Exactly.

15 THE COURT: —City's brief on False Reporting.

16 MR. GREENE: No, there wasn't any issue raised about

17 False Reporting, so we didn't, of course, respond to

18 anything.

19 THE COURT: Okay.

20 MS. LISTER: And that's why she's ultimately fired.

21 THE COURT: And there was a—a conviction for False

22 Reporting?

23 MS. LISTER: Yes.

24 MR. GREENE: Yes.

25 MS. LISTER: Inappropriately.

1 THE COURT: Okay. Okay.

2 MS. LISTER: And, I do hold the documents, the original
3 documents read by the Court and by Judge Charles Johnson,
4 the initial order, that I also have other stuff. And it
5 says, "The mother is restricted from going to the father's
6 home and restricted from discussing it." There's not given
7 a yardage. There's no yardage ever presented in it. It's
8 never read in court and further subsequent hearings.

9 THE COURT: Yeah.

10 MS. LISTER: You know, there's issues about picking up
11 the child—other child, what have you. And there's so many
12 things that have been cross-woven that—that many of the
13 things are not accurate, whether they were testified to by
14 Mr. Pierce, my domestic violence abuser, his—you know,
15 that's hearsay as far as I'm concerned because the
16 documents prove otherwise. And, these documents were
17 available. There's some issues with whether OPD will pay
18 for the proper process to get these documents. I'd sure
19 like to see a transcript of Ms. Kimi Kondo's whole complete
20 trial—I've never seen that—so that I can pick it apart and
21 prove from the other things. I mean, if I'm going to have
22 to represent myself, I need to be supplied with the proper
23 documents, the proper transcripts of everything. And, I did
24 60 days in jail. I lost my job, my income, my—everything,
25 my children over false allegations—

1 THE COURT: Right.

2 MS. LISTER: -when I was protecting my children. And, the
3 Supreme Court, Court of Appeals still is undecided on how
4 to fix such a rancid error that has been just compounding
5 and compounding. And, this is just a collateral attack,
6 which is now compounding. And I really-I believe that out
7 of all the judges in this building, that you have the most
8 intelligence to decide and be fair. I've been before
9 several judges. Some are very good, and some are not. And,
10 I don't fare well before a female judge, unfortunately.
11 There's a lot of, you know, women/women things.

12 But, the bottom line is, I have an issue of ADHD, and my
13 interruptions or what have you does irritate people, and
14 sometimes they don't-they overlook the actual facts because
15 of that, thinking I have an attitude or something else when
16 my children have been stolen. The only difference is the
17 State stole them, and I know the kidnapper. And, I don't
18 want to see this keep compounding because this-you know,
19 I've been without my children two and a half years. There's
20 so many improper things. I'm supposed to have visitation.
21 They-I haven't seen them. My son lost his college
22 scholarship a week ago, four year/full ride, because he's
23 not in my home for the College Bound Scholarship. There's
24 just so many things that just keep snowballing. And, I'm
25 not emotionally-I'm intelligent, but not emotionally

1 intelligent enough on criminal law and matters to fully
2 represent myself before you. And I just would rather you-if
3 there's a way so that the facts can come out that everybody
4 goes, wow, okay, rather than to have an appeal after an
5 appeal after appeal, which is very costly to all the courts
6 because I am indigent. I'd rather save your money and your
7 time, respectfully.

8 THE COURT: Okay.

9 MS. LISTER: Thank you.

10 THE COURT: Okay. Thank you. Let me just get to the-okay,
11 I am-I am going to exercise my discretion in this case and
12 decide this case based upon the briefs that have been
13 provided. And, I'll address those issues at this time. So,
14 Mr. Greene, you have no argument.

15 MR. GREENE: No.

16 THE COURT: That-that was a statement, not a question.

17 MR. GREENE: Oh, sorry.

18 THE COURT: You're not allowed to argue at this because
19 I'm going to decide it on the briefs. The briefs, by the
20 way, were filed in a timely manner and some time ago; I
21 mean, in October and November; Appellant's brief actually
22 in October of last year, and then the Respondent's brief
23 thereafter. I've read those briefs. I would say that the
24 Appellant's brief was well-written, good writer, was
25 persuasive until I read the responding brief, and two

1 particular cases.

2 And, the first issue is whether the—it was addressed in
3 the brief—was whether the order can be collaterally
4 attacked in the Municipal Court proceeding. And reading—
5 reading the cases, and I did rely on read—*State v. Noah*,
6 which is 103 Wn.App., 29, and, at particularly Pages 46 and
7 47, where the court discusses the distinction between an
8 order that is void because the court lacks jurisdiction and
9 one that is merely erroneous and stated, quote, "A court
10 does not lose jurisdiction by interpreting the law
11 erroneously," close quote.

12 I think that the—in reviewing this, that a good argument
13 could be made that the order issued in Juvenile Court
14 required that predicate finding of a protection of a child—

15 MS. LISTER: Yes.

16 THE COURT: —and—but relying on *State v. Noah*. And then,
17 a case that I have looked at today, perhaps for the first
18 time today—apparently—when was this—

19 MR. GREENE: June 23rd.

20 THE COURT: June 23rd.

21 MR. GREENE: So, just a couple weeks ago?

22 THE COURT: All right. Well, like, one week ago.

23 MR. GREENE: Or one week ago, yes.

24 THE COURT: The—the court—the Supreme Court then said in
25 very clear language, it says, quote, "For an order to be

1 void, the court must lack the power to issue the type of
2 order," close quote. And the—and it—excuse me, and the
3 court goes on to say immediately following that, quote,
4 "provided that such power that exists. Any error in issuing
5 an order may not be collaterally attacked. In sum," comma,
6 "May can challenge the validity of the underlying domestic
7 violence protection order only insofar as he can show the
8 order is absolutely void. The collateral bar rule precludes
9 him from arguing that the order is merely erroneous," close
10 quote.

11 And, in terms of an order protecting children as issued
12 by the Juvenile Court, they clearly have the right to issue
13 that kind of order.

14 MS. LISTER: But that's—

15 THE COURT: And—

16 MS. LISTER: —not what they issued.

17 THE COURT: And, they have the right power to—or have
18 jurisdiction over all of the parties, including the
19 Respondent here. It just appears to be clear that that
20 order was not void. It may well be that that order was
21 erroneous in the—

22 MS. LISTER: Yes.

23 THE COURT: —the way they—the way the order took out the—
24 what arguably is a—a required finding—

25 MS. LISTER: And—

1 THE COURT: -that would support the order. But, that is
2 an order that would be erroneous, not an order that would
3 be void. So, as to the first part of this-

4 MS. LISTER: But, it's-

5 THE COURT: -it is my conclusion that the-

6 MS. LISTER: It-

7 THE COURT: -that, in fact, the-the-the Respondent had a
8 legal duty to obey the order even though it may have been-

9 MS. LISTER: I did obey the-

10 THE COURT: -erroneously entered.

11 MS. LISTER: But, I did obey it.

12 THE COURT: As-as for the second-okay, and the issue of
13 having obeyed the order was one that was put before the
14 jury, and the jury decided that issue-

15 MS. LISTER: Your Honor-

16 THE COURT: -and, I cannot go behind that.

17 MS. LISTER: -they're not under the right statute even.

18 THE COURT: With respect to the instructions, again, I
19 was impressed by the brief of the Appellant because, as I
20 read the brief of the Appellant, I said to myself, yes,
21 that sounds right; how could they do that? But, I looked
22 back then and-at the authorities, and particularly *State v.*
23 *Van Tuyl*, T-U-Y-L, at 132 Wn.App., 750, at 758 and 70-759,
24 in which the court there, I think, addresses a comparable
25 situation here where the order on its face said, quote,

1 "Violation of this order with actual notice of its terms is
2 a criminal offense"—

3 MS. LISTER: And there's no notice.

4 THE COURT: —closed quote. And then goes on to state at
5 759, quote, "We conclude jury instructions 9 and 10
6 properly used the statutory language set forth in the
7 statute"—

8 MS. LISTER: And that's the issue.

9 THE COURT: —quote, "set forth in"—and that's the end of
10 the quote, and then they refer to the specific statute.

11 MS. LISTER: And it's the wrong statute.

12 THE COURT: Then, to continue the quotation, quote, "For
13 the knowledge element of the crimes charged, even if
14 erroneous, the error would be harmless under our facts."
15 And then it—end quote. And then it goes on to discuss some
16 evidence of notice.

17 But, what I take from that is that those are the jury
18 instructions were the general knowledge jury instructions
19 and did not instruct specifically stating that an element
20 of the crime was actual notice of its terms, but rather
21 knowledge of the orders set forth in the Jury
22 Instructions 9 and 10 there and the jury instructions in
23 this case.

24 So, I think that's binding. I don't—and I think the
25 Municipal Court properly instructed the jury, and,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

therefore-

MS. LISTER: They didn't.

THE COURT: -I think that the appeal of the Respondent in this case must be and is dismissed.

MS. LISTER: Must be what?

MR. GREENE: Thank you, Your Honor.

THE COURT: Dismissed.

MR. GREENE: Here's a proposed order.

MS. LISTER: What-what do you mean? You're going to dismiss my appeal, so, how do I appeal your decision 'cause I have proof of documents it was never served.

MR. GREENE: Well, you just go to the-

MS. LISTER: I have testimony-

MR. GREENE: -Court of Appeals with this.

MS. LISTER: Again. Yeah, thanks. Another two and a half years without seeing my kids. I've lost my job, my home, my everything because of this, because they didn't do things right. These documents, they didn't go and get before they filed the brief. That's why that woman was fired. Teresa did not do her full job. Like I said, she wrote a nice brief, but she did not state all the facts. And the first attorney didn't go and get this information either. And whether OPD prevents them from doing their job-

THE COURT: Do you need copies?

MS. LISTER: -I don't know. This is not fair, Your Honor.

1 There's proof-

2 MR. GREENE: So-

3 MS. LISTER: -to say that I-

4 MR. GREENE: So, we'll get you a copy of this-

5 MS. LISTER: -didn't commit this.

6 MR. GREENE: -so you can submit these. You'll need-

7 THE COURT: Right, right.

8 MR. GREENE: -a copy of this-

9 THE COURT: Yeah.

10 MR. GREENE: -to give to the-

11 MS. LISTER: Yes, I will.

12 MR. GREENE: -Court of Appeals. Okay.

13 THE COURT: Yeah.

14 MR. GREENE: So, we'll get you a copy of that.

15 MS. LISTER: And this is so wrong, because this just

16 compounds the errors. And respectfully, this is just a

17 compounding error of wrongdoing. Out of all the judges,

18 you're so fair; I don't see how you cannot [sic] ignore

19 this.

20 THE COURT: Well-

21 MS. LISTER: I'm not guilty, Your Honor. I'm not guilty.

22 I never had any criminal convictions until this, never-

23 THE COURT: Yeah.

24 MS. LISTER: -in my life.

25 THE COURT: Yeah, yeah.

1 MS. LISTER: How can you fix a judge's error when
2 somebody screws up and then that-that's all you get to rule
3 on? How do you fix an error that some other judge made?
4 Why-

5 THE COURT: You go back to the judge that you-

6 MS. LISTER: Right.

7 THE COURT: -believe made the error.

8 MS. LISTER: But-but, Judge Charles Johnson and all
9 those, none of the attorneys-OPD will not allow attorneys
10 to go and do that. They won't let them go back and forth
11 for that on a collateral attack, which this was a
12 collateral attack. They went-if you read-listen to the CD,
13 Teresa Conlan, Sam's attorney, called in and said I was
14 stalking him and made a false claim that didn't occur.
15 Police reports show otherwise, that they met me blocks away
16 and what have you. And, it was to stay away from the
17 father, and the father wasn't at home; he was at the bar.
18 And, I have all this proof, and it's in documentation, it's
19 in transcripts. Just because a judge and-and lawyers choose
20 to ignore this doesn't make it right or justice for me.

21 MR. GREENE: Thank you, Your Honor.

22 MS. LISTER: So, now what-

23 THE COURT: All right.

24 MS. LISTER: -procedure do I have to do to appeal this
25 again and the other charge that she didn't do-

1 MR. GREENE: Well, you-you-

2 MS. LISTER: -since I'm not an attorney?

3 MR. GREENE: -you seek discretionary review in the Court
4 of Appeals. And you've got to do that within-

5 MS. LISTER: Thirty days.

6 MR. GREENE: -30 days of today.

7 MS. LISTER: Fuck. This is-

8 THE COURT: Do we-do we have the right of appeal-

9 MS. LISTER: This is so costly to the City of Seattle
10 when we're all so broke.

11 THE COURT: -the advisement of right of appeals?

12 MS. LISTER: I don't get it. I don't understand it. What
13 a waste of financial money.

14 THE COURT: If you'll just wait for a minute. This case
15 is actually-has this case been remanded or-

16 MR. GREENE: Yes. I mean, that's the order-

17 THE COURT: -affirmed?

18 MR. GREENE: -is to remand it. But, again, it's not going
19 to-

20 THE COURT: Okay.

21 MR. GREENE: -happen for another-

22 MS. LISTER: What's remanded?

23 MR. GREENE: Well, the case would-would-once it's final
24 here, then it gets remanded to Municipal Court. But, again-

25 THE COURT: Okay.

1 MR. GREENE: -you've got-like I say, you've got 30 days
2 to [inaudible] discretionary review-

3 MS. LISTER: And I-

4 MR. GREENE: -to the Court of Appeals.

5 MS. LISTER: Yeah. I've-you know what I mean. And,
6 that'll take another two years.

7 MR. GREENE: So, that's your next step.

8 THE COURT: I would just say this, I-and I-

9 MS. LISTER: There's just proof out there-

10 THE COURT: -and I don't want to-

11 MS. LISTER: -everybody ignores.

12 THE COURT: -argue.

13 MS. LISTER: And I'm tired of it.

14 THE COURT: I think that this is the-the result that is
15 required by the record in this case-

16 MS. LISTER: And Your Honor-

17 THE COURT: -under the law.

18 MS. LISTER: -you don't have the full record, and that's
19 been the problem when public defenders defend people; they
20 don't want to get all the proof-

21 THE COURT: Right.

22 MS. LISTER: -that's required.

23 THE COURT: Yeah.

24 MS. LISTER: And, that's not fair to people who are
25 innocent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE COURT: Okay.

MS. LISTER: Respectfully, it's not fair-

THE COURT: Done the best today.

MS. LISTER: -your decision. I'm sorry.

THE COURT: Okay.

MR. GREENE: Thank you, Your Honor.

THE COURT: Okay. Thank you.

[Session ends.]

LEGEND OF SYMBOLS USED

- Indicates an incomplete sentence or broken thought.
- ... Indicates there appears to be something missing from original sound track or a break in the testimony when switching either from Side A to Side B or switching between tapes.
- [inaudible]
1. Something was said but could not be heard.
 2. Speaker may have dropped their voice or walked away from microphone.
 3. Coughing in background, shuffling of papers, et cetera, which may have drowned out speaker's voice.
- [sic]
1. The correct spelling of that word could not be found, but is spelled phonetically, or —
 2. This is what it sounded like was said.
- [No response.]
- There is a pause in proceedings, but no response was heard.
- [No audible response.]
- Possible that something was said, but word or words could not be heard.
- [Off-the-record discussion.]
1. Discussion not pertaining to case.
 2. Discussion between counsel and/or the Court, not meant to be on the record.

APPENDIX A

FILED
KING COUNTY WASHINGTON

APR 27 2011

SUPERIOR COURT CLERK
BY ANDREW T. HAVIS
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

City of Seattle

Plaintiff,

NO.

10-1-03976-3 SEA

vs.

Andrea Lister

Defendant.

ORDER ON RALJ MOTION

(CLERKS' ACTION REQUIRED)

The above-entitled Court, having heard a motion To Allow Counsel
Theresa Griffin to withdraw
due to a total breakdown
of communication between Ms. Lister
and Attorney Theresa Griffin.

IT IS HEREBY ORDERED that Attorney Ms. Theresa Griffin
shall withdraw as counsel for Ms.
Andrea Lister.

No further continuances will be granted with respect to the oral argument
date.

DATED: April 27, 2011

Richard D Eadie

JUDGE

RICHARD D. EADIE

Theresa Griffin
Attorney for Appellant

Richard Greave # 13496
Greave

Attorney for Respondent
Order on RALJ Motion (OR)

APPENDIX B

CLERK'S MINUTES

SCOMIS CODE: RALJHRG

Judge: Richard D. Eadie
Bailiff: Larry Brown
Court Clerk: Andrew Havlis

Dept. 33
Date: 7/1/2011

Digital Record: W-728
Start: 1:34:30
Stop: 2:23:43

KING COUNTY CAUSE NO.: 10-1-03976-3 SEA

CITY OF SEATTLE VS LISTER, ANDREA (APPELLANT/SMC)

Appearances:

Appellant Andrea Lister is present.

Appellant's counsel is not present.

Respondent City appearing by Assistant City Attorney Richard Greene

MINUTE ENTRY

On 4/27/2011, the Court allowed Appellant's lawyer Theresa Griffin to withdraw. At that time, the Court also ordered that there would be no more continuances of the oral argument date set for 7/1/2011.

On 6/30/2011, Appellant Andrea Lister's new lawyer, Damon Shahid, emailed the Court, indicating that he wished to confirm that the hearing date set for 7/1/2011 at 1:30 pm was continued.

The Court's bailiff emailed back indicating that the hearing date was not continued and would proceed as scheduled.

Mr. Shahid responded that he had not gotten the discovery in this matter and did not have enough time to prepare. Because of that he would not be appearing at the hearing on 7/1/2011. Also, he had never entered an appearance in this case and in light of not being able to be ready for the hearing on 7/1, he would not be entering an appearance.

CITY OF SEATTLE VS LISTER, ANDREA (APPELLANT/SMC)
King County Cause No. 10-1-03976-3 SEA

Appellant's request for new counsel and a continuance -- Denied.

The Court will decide this matter based upon the briefing and not hear oral argument.

The Court AFFIRMS the decision of the lower court and remands this matter to Seattle Municipal Court.

Order signed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

ANDREA LYNN LISTER

Petitioner,

v.

CITY OF SEATTLE

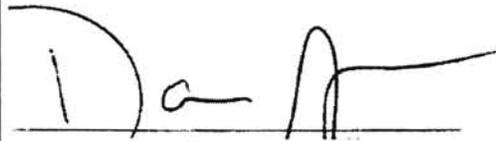
Respondent.

) NO. 67500-1-I

) PROOF OF SERVICE

I certify that on August 30, 2012, I delivered true copies of the Brief of Petitioner dated August 30, 2012 to counsel for respondent, Richard Greene, at richard.greene@seattle.gov and at 700 5th Ave. Ste. 5350, Seattle, WA 98124-4667.

Signed August 30, 2012 in Seattle, Washington.



Damon Agnos, WSBA #38662
Attorney for Petitioner

2012 AUG 30 PM 1:20
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

PROOF OF SERVICE

Law Office of Damon Agnos
100 West Harrison Street
Suite N440
Seattle, WA 98119
Tel: (206) 445-0224
Fax: (206) 299-3911
damon@agnoslaw.com