

69526-6

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No. 69526-6-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

SHAWN LLOYD,

Appellant.

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 MAR 27 PM 1:25

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

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court's refusal to appoint Shawn Lloyd an attorney violated the Sixth and Fourteenth Amendments and Article I, section 22.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The Sixth and Fourteenth Amendments and Article I, § section 22 guarantee an indigent criminal defendant the right to appointment of counsel. Where a defendant has waived the right to counsel but then asks that counsel be reappointed, so long as the request is made well before trial, the request must be granted as a matter of right. Here, Mr. Lloyd requested the reappointment of counsel several weeks prior to the start of his trial. Where the court nonetheless summarily denied Mr. Lloyd's motion, did the court deprive him of his right to appointment of counsel?

C. STATEMENT OF CASE

While Mr. Lloyd was sitting in the driver's seat of a car parked at the end of a dead-end street, he was approached by Bothell police Officer Steve Kerzman. 8/14/12 RP 53-57. Officer Kerzman learned the car was listed a total loss vehicle and thus could not be lawfully

driven on a public roadway. *Id.* at 58. When he learned Mr. Lloyd had a misdemeanor arrest warrant, Officer Kerzman arrested him. *Id.* 60.

The officer decided to impound the car. 8/14/12 RP 60-61. After calling a tow company, the officer conducted an inventory search of the car. *Id.* In the center console the officer found a plastic bag with a substance later identified as methamphetamine. *Id.* at 62,182.

The State charged Mr. Lloyd with possession of methamphetamine. CP 1.

Several months ahead of trial, and after a proper colloquy Mr. Lloyd waived his right to counsel. 3/28/12 RP 8-15. The court appointed stand-by counsel. *Id.* at 15.

Four months later, Mr. Lloyd asked the court to reappoint counsel. 7/20/12 RP 16. The court denied Mr. Lloyd's motion. *Id.* at 16-17.

Nearly one month later, during the course of a suppression hearing, Mr. Lloyd again asked that stand-by counsel be allowed to represent him. 8/14/12 RP 100. Saying "It's a done deal" the court again refused to reappoint counsel. *Id.* at 109.

A jury convicted Mr. Lloyd as charged. CP 34.

D. ARGUMENT

**By refusing to appoint counsel for Mr. Lloyd the trial court violated the Sixth Amendment and Article I, section 22.**

Following his initial waiver of counsel, but several weeks prior to the start of trial, Mr. Lloyd asked the court to reappoint counsel. The court summarily denied the motion. In doing so, the court denied Mr. Lloyd the right to be represented by counsel at all critical stages of the proceedings.

By way of the Fourteenth Amendment Due Process Clause, the Sixth Amendment right to counsel requires states appoint counsel for indigent defendants. *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963); *Powell v. Alabama*, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932). Article I, section 22 of the Washington Constitution explicitly guarantees a defendant the right to “appear and defend in person, or by counsel.” *State v. Madsen*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010). The United States Supreme Court has recognized the Sixth Amendment implicitly provides a right to self-representation. *Faretta v. California*, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

A valid waiver of counsel requires the trial court ensure the accused knowingly, voluntarily, and intentionally relinquishes this fundamental constitutional right. *Johnson v. Zerbst*, 304 U.S. 456, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938). Washington courts have held that once a person validly waives his right to counsel, there is no absolute right to reappointment and instead it is a question left to the trial court's discretion. *State v. Dewese*, 117 Wn.2d 369, 379, 816 P.2d 1 (1991). However,

[b]ecause self-representation is a grave undertaking, one not to be encouraged, the request for reappointment should be granted absent reasons to deny.

*State v. Canedo-Astorga*, 79 Wn. App. 518, 525, 903 P.2d 500 (1995) (internal citations and brackets omitted). Moreover, as with the exercise of its discretion to grant a request to proceed pro se, the court's discretion to deny reappointment lies on continuum with the greatest degree of discretion when a request is made on the eve or after trial as begun. *State v. Modica*, 136 Wn. App. 434, 443, 149 P.3d 446 (2006); *affirmed on unrelated grounds*, 164 Wn.2d 83 (2008). Conversely, the court's discretion is substantially limited with respect to requests made before trial, and such requests should be granted as a matter of law. *Id.*

Here Mr. Lloyd requested reappointment of counsel several weeks prior to the start of trial. 7/20/12 RP 16. There was o indication

Mr. Lloyd was seeking to delay trial or disrupt the proceedings. The sum of the court's ruling was "I'm going to deny the motion." *Id.* 17. The court offered no justification for its decision. Because the request was made weeks before trial, and the court offered no justification to deny the request, the court plainly abused its discretion. The request should have been granted as a matter of law. *Modica*, 136 Wn. App. at 443.

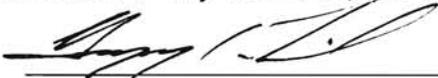
The presumption that counsel's assistance is essential requires [the] conclu[sion] that a trial is unfair if the accused is denied counsel at a critical stage of his trial.

*United States v. Cronin*, 466 U.S. 648, 659, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984). In such cases, reversal is required. *Id.* at 658-59. Here, Mr. Lloyd was denied the assistance of counsel throughout trial. This Court must reverse his conviction and remand the matter.

E. CONCLUSION

For the reasons set forth above, this Court should reverse Mr. Lloyd's conviction.

Respectfully submitted this 24<sup>th</sup> day of March, 2014.



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STATE OF WASHINGTON,	)	
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Respondent,	)	
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	)	
SHAWN LLOYD,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 26<sup>TH</sup> DAY OF MARCH, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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<input checked="" type="checkbox"/> SHAWN LLOYD 6109 S AINSWORTH AVE TACOMA, WA 98408	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 26<sup>TH</sup> DAY OF MARCH, 2014.

X \_\_\_\_\_ 

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