

---

STATE OF WASHINGTON,	)	No. 103209-9
Respondent,	)	
	)	PETITIONER'S
v.	)	STATEMENT OF
	)	ADDITIONAL
JACOB DIMAS,	)	AUTHORITIES
Petitioner	)	(RAP 10.8)

---

In *State v. Schlenker*, \_\_P.3d\_\_, 2024 WL 3713771

(2024), the Court of Appeals addressed a person's right to counsel when he appeared for numerous pretrial hearings from jail, separated from his attorney, without advance protocols for confidential communication with counsel. The same error occurred in Mr. Dimas's case.<sup>1</sup>

*Sclenker* expressly disagreed with Division Two's analysis of this same error in this case. *Id.* at 11 (citing *State v. Dimas*, 30 Wn. App. 2d 213, 544 P.3d 597 (2024)). It ruled

---

<sup>1</sup> Pet. for Review, at 13-17.

*Dimas* was wrong when it analyzed the manifest nature of the constitutional error because it improperly “shifted the burden to Dimas to show” that his inability to confer with counsel would have made a concrete difference at trial. *Id.* at \*11.

In finding constitutional error, *Schlenker* held the trial court is obligated to “make sure that attorneys and clients have the opportunity to engage in private consultation” and must “provide guidance to the accused and his counsel about how to confer.” *Id.* at 7. Although Mr. Schlenker objected, the Court of Appeals ruled that courts “must not place an unreasonable expectation on a defendant to interrupt a proceeding to assert his right to confer with counsel.” *Id.*

*Schlenker* further recognized that “the fundamental right to assistance of counsel could not be lost without a specific waiver rather than the failure to object.” *Id.* at \*10. Therefore,

defendants may “raise [the] inability to confer with counsel for the first time on appeal. *Id.*

Like *Schlenker*, the trial court did not advise Mr. Dimas before any of his substantive pretrial hearings that he had the right to confidentially communicate with counsel at any time. It did not “make sure” they “ha[d] the opportunity to engage in private consultation.” *Id.* It did not “provide guidance ... about how to confer privately.” *Id.* Mr. Dimas did not “specific[ally] waive[.]” his fundamental right to the assistance of counsel. *Id.* at 10.

*Schlenker* explicitly conflicts with *Dimas* and explains the Court of Appeals’ flawed reasoning in Mr. Dimas’ case, highlighting the need for this Court’s review. RAP 13.4(b)(2).

Counsel certifies this pleading complies with RAP 18.17  
and contains 342 words.

DATED this 23rd day of August 2024.

A handwritten signature in black ink, appearing to read 'Nancy Collins', written in a cursive style.

---

NANCY P. COLLINS (28806)  
Washington Appellate Project (91052)  
Attorneys for Petitioner

Statement of Additional  
Authorities

Washington Appellate Project  
1511 Third Avenue, Suite 610  
Seattle, WA 98101  
(206) 587-2711

### DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date the original of the document to which this declaration is affixed/attached was filed in the **Washington State Supreme Court** under **Case No. 103209-9** and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ Respondent Lauren Boyd, DPA  
[lauren.boyd@clark.wa.gov]  
[cntypa.generaldelivery@clark.wa.gov]  
Prosecuting Attorney Clark County

☐ Attorney for other party



TREVOR O'HARA, Legal Assistant  
Washington Appellate Project

Date: August 23, 2024

# WASHINGTON APPELLATE PROJECT

August 23, 2024 - 1:30 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 103,209-9  
**Appellate Court Case Title:** State of Washington v. Jacob Gabriel Dimas  
**Superior Court Case Number:** 21-1-00220-6

### The following documents have been uploaded:

- 1032099\_Briefs\_20240823132815SC656376\_5541.pdf  
This File Contains:  
Briefs - Petitioners Additional Authorities  
*The Original File Name was washapp\_82324\_10.pdf*

### A copy of the uploaded files will be sent to:

- cntypa.generaldelivery@clark.wa.gov
- lauren.boyd@clark.wa.gov

### Comments:

---

Sender Name: MARIA RILEY - Email: maria@washapp.org

**Filing on Behalf of:** Nancy P Collins - Email: nancy@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:  
1511 3RD AVE STE 610  
SEATTLE, WA, 98101  
Phone: (206) 587-2711

**Note: The Filing Id is 20240823132815SC656376**