



THE LAW OFFICES OF

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CLERK APPELLATE COURT

IN THE COURT OF APPEALS OF  
THE STATE OF KANSAS

102241

IN THE MATTER OF:

D M-T, Juvenile

Date of Birth: January 30, 1991

Case # 04 JV 1646

This letter, on behalf of D M-T, is submitted to the court in accordance with Supreme Court Rule 6.09(b).

Appellant's brief was filed August 14, 2009. *State v. Bowers*, ---P.3d---, 2009 WL 3047838 (Kan.App). was decided September 25, 2009. I hereby supplement our brief at **Page 10, D. The trial court should have asked if DM-T wanted a jury trial to protect his rights**, with the following citations from *Bowers*, page 2:

*"Bowers' attorney's request for a bench trial cannot serve as a valid waiver of Bowers'*

*right to a jury trial. Defense counsel can only waive the rights of a defendant if those*

*rights are not inherently personal, fundamental rights. An attorney may not waive a*

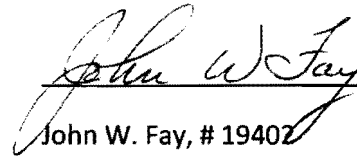
*defendant's constitutional rights unless the record establishes the attorney has discussed*

*the matter with the defendant and the defendant has voluntarily waived those rights. Larraco,*

*32 Kan.App.2d at 1001. Further, the advisement regarding a jury trial must come from*

*the court and not from counsel."*

The record is silent as to the court advising DM-T of his jury trial rights. Therefore, his conviction should be overturned and remanded for a new trial.

  
John W. Fay, # 19402

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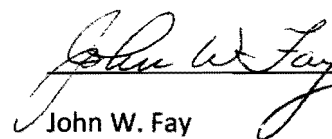
913-321-2400

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Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2009, I sent via U.S. Mail, a true and accurate copy of the above letter to Attorney General Six, 120 S.W. 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor, Topeka, KS. 66612-1597 and to ADA Sheri L. Courtney, Wyandotte County Courthouse, 710 North 7<sup>th</sup> Street, Kansas City, KS 66101.

  
John W. Fay