

Case # 317625

**Statement of Additional Grounds
for Review**

State of Washington

v.

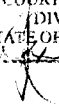
Richard Eugene Cornwell, Jr.

ORIGINAL

COURT OF APPEALS
DIVISION THREE
OF THE STATE OF WASHINGTON

FILED

MAY 15 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: 

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
Richard Eugene Cornwell, Jr)
(your name))
)
Appellant.)

No. 317625

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Richard Cornwell, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

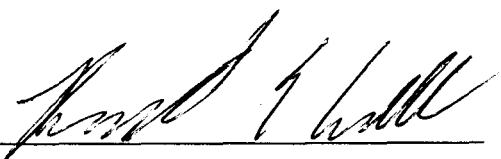
Additional Ground 1

See Attachment 5

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 5-11-14
Form 23

Signature: 

Additional Ground 1 Due Process

The trial Court violated the Defendant's Right to Due Process Under Washington Constitution, Article, 1, §3, and United States Constitution, Fourteenth Amendment, when it Entered Judgment against Him for a Crime Unsupported by Substantial Evidence.

As a part of the due process rights guaranteed under both the Washington Constitution, Article, 1, §3 and United States Constitution, Fourteenth Amendment, the state must prove every element of a Crime Charged beyond a reasonable doubt.

State v. Baeza, 100 Wn.2d 487, 488, 670 P.2d 646 (1983);

In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970).

As the United States Supreme Court explained in Winship:
[The] use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law." In re Winship, 397 U.S. at 364

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. State v. Moore, 7 Wn. App., 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. In addition, evidence that is equally consistent with innocence as it is with guilt is not sufficient to support a conviction; it is not substantial evidence.

State v. Aten, 130 Wn.2d 640, 937 P.2d 210 (1996)

"Substantial evidence" in the context of a criminal case means evidence sufficient to persuade "an unprejudiced thinking mind of the truth of the fact to which the evidence is directed."

State v. Taplin, 9 Wn. App. 545, 513 P.2d 549 (1973) (quoting)

State v. Collins, 2 Wn. App. 757, 759, 470 P.2d. 227, 228 (1970)).

This includes the requirement that the state present substantial evidence "that the defendant was the one who perpetrated the crime."

State v. Johnson
12 Wn.App 40, 587 P.2d 1324 (1974)

The test for determining the sufficiency of the evidence is whether "after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt?"

Jackson v. Virginia, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 540

Additional Ground 2
Prosecutor Misconduct

Mr. Cornwall argues that the Prosecutor committed misconduct in the following Closing Argument:
Pg. 440 Line 17, thru Pg 441. Line 18;

But to address the knowingly. I will draw an analogy and you can decide whether it's a silly analogy or not or if it-- if it fits; but it's one that, perhaps kind of the only one that I can think of that-- that works somewhat well is for any of you who are parents or have been-- or you're-- a parent, you're always a parent but if you have had children, possibly some of you might have had children who like Cookies or Candy and like to indulge in them when they weren't supposed to, like between meals. And some of you may have had Cookie Jars and maybe you as a child had maybe done the same. But you know, the picture of the child getting into the cookie jar when he or she isn't supposed to. Mom or dad comes on the scene and sees the cookie jar lid off and some crumbs about and calls for Junior or June and asks, you know, have you been into the cookie jar? And the child says no or doesn't answer. But you see cookie crumbs on their face. Okay. Do you need an admission do you need a statement from that child to know that they were in the cookie jar? Common sense and good judgment tells you no. They've got the evidence written across their face so whether or not they make an admission to you, whether they ate the cookie or not they get crumbs on their face you know that they were into the cookie jar.

State v. Thomas

142 Wn. App 589

The State carries the burden of proof beyond a reasonable doubt. I'm not trying to diminish that one bit. But when the defendant puts on a case, you look at that case with the same eye that you would the State's case. You ask the same question of it. Does it hold water? Does it make sense? And then you have just these two versions of events.

And when one doesn't then you know the truth...
You know what they say is the truth, so return
a verdict that reflects it.

A prosecutor commits misconduct by misstating the
Jury's role or the burden of proof.

State v. Miles, 139 Wash. App. 879, 890, 162 P.3d 1169, 1174 (2007);

State v. Fleming, 83 Wash. App. 209, 213, 921 P.2d 1076 (1996)

Thus, a prosecutor may not improperly shift the burden of
proof by arguing that the jury can a the defendant
only if it finds that the state's witness lied or was
Confused

Additional Ground 3 Presumption of Innocence

Taylor v. Kentucky

436 U.S. 478, 98 S.Ct. 1930, 56 L.Ed.2d 468 (1978)

"The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." Coffin v. United States, 156 U.S. 432 (1895)

[I]n a criminal case the term [presumption of innocence] does convey a special and perhaps useful hint and above the other form of the rule about the burden of proof, in that it cautions the jury to put away from their minds all the suspicion that arises from the arrest, the indictment, and the arraignment, and to reach their conclusion solely from the legal evidence adduced. In other words, the rule about burden of proof requires the prosecution by evidence to convince the jury of the accused's guilt, while the presumption of innocence, too, requires this, but conveys for the jury a special and additional caution (which is perhaps only an implied corollary to the other) to consider, in the material for their belief, nothing but the evidence, i.e., no surmises based on the present situation of the accused. This caution is indeed particularly needed in criminal cases."

State v. Gonzales

139 Wn.App. 895, 170 P.3d 645

[4] A criminal defendant's right to a fair trial includes the right to presumption of innocence.

[5] It is the duty of the Court to give to the presumption of innocence by being alert to any factor that could undermine the fairness of the fact-finding process.

Additional Ground of Ineffective Assistance of Counsel

PR of Habert
138 Wn. App. 924 (2007)

When defense counsel fails to identify and present the sole available defense to the charged crimes and there is evidence to support that defense, a defendant has been denied a fair trial due to Ineffective Assistance of Counsel

State v. Pittman
134 Wn. App. 376 (2006)

Defense Counsel's failure to request a lesser included offense instruction constitutes ineffective assistance of counsel if the record supports giving the instruction and there is no legitimate strategic or tactical reason for not requesting the instruction.

State v. Thomas
109 Wn. 2d 222, 226, 743 P.2d 816 (1987)

Counsel's performance is deficient when it falls below an objective standard of reasonableness.

In re Brett
142 Wn. 868, 16 P.3d 601 (2001)

Trial Counsel's failure to conduct a reasonable investigation into existing medical and mental conditions was ineffectiveness of Counsel.

Additional Grounds Double Jeopardy

Washington Constitution Article, 1 § 9

No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense

On Count's 3 & 5 VZCSA- Poss w/ Int Del Meth, the standard range (Not including Enhancements) is 60-120 month and with enhancements is 120-180 months, these are the same charge, which is a violation of the "Double Jeopardy Clause"

On Count's 8 & 9, Possessing a Stolen Firearm, the standard range is 60-80 months, which are the same charge, Double Jeopardy Clause.

U.S. v. Ocampo
919 F.Supp.2d 898 (2013)

The Double Jeopardy Clause protects against a second prosecution for the same offense after conviction

The Double Jeopardy Clause protects against multiple punishments for the same offense.

State v. Tracer
173 Wn2d 708, 272 P.3d 199

Double Jeopardy Clause bars:

- (1) A second prosecution for same offense after acquittal;
 - (2) A second prosecution for the same offense after conviction; and
 - (3) Multiple punishments for the same offense.
- U.S.C.A. Const. Amend.

Ashe v. Swenson

397 U.S. 436, 90 S.Ct. 1189, 95 L.Ed.2d 469 (1970)

The "same evidence" test is not Constitutionally required. It was first expounded after the adoption of the Fifth Amendment. The "Same Evidence" test may once have been defensible at English Common Law, which for reasons peculiar to English Criminal Procedure, severely restricted the power of prosecutors to combine several charges in a single trial. In vivid contrast, American Criminal Procedure generally allows a prosecutor freedom, subject to judicial control, to prosecute a person at one trial for all the crimes arising out of a single crime transaction.

The Fifth Amendment to the Constitution of the United States provides in part: Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.
U.S.C.A. Const. Amend. 5

Additional Ground &
Evidence Certification
From WSP Lab.

Rule 6.13 Evidence

(a) Rules of Evidence. The Rules of Evidence are applicable to Criminal prosecutions.

(b) Test Reports by Experts

General (1)

(1) General. The official written report of an expert witness which contains the results of any test of a substance or object which are relevant to an issue in a trial shall be admitted in evidence without further proof or foundation as prima facie evidence of the facts stated in the report if the report bears the following certification:

1. I performed the test on the (substance)(object) in question.
2. The person from whom I received the (substance)(object) in question is _____;
3. The document on which this certificate appears or to which is attached is a true complete copy of my official report; and
4. Such documents is a report of results of a test which report and test were made by the undersigned who has the following qualifications and experience _____;

Signature

Title

Business & Phone

(2) Exclusion of Test Reports:

The Court shall exclude test reports otherwise admissible under section (b) if:

(i) a copy of the certified report or certificate has not been delivered or mailed to the defendant or the defendant's lawyer at least 14 days prior to the trial date or, upon a showing of cause, such lesser time as the Court deems, or

(ii) in the case of an unrepresented defendant, a copy of this rule in addition to a copy of the certified report or certificate has not been delivered or mailed to the defendant at least 14 days prior to the trial date or, upon a showing of cause, such lesser time as the Court deems proper, or

(iii) at least 7 days prior to the trial date, or, upon a showing of cause, such lesser time as the Court deems proper, the defendant has been delivered or mailed a written demand upon the prosecuting authority to produce the expert witness at trial.

Additional Ground 1
Conflict of Interest

There was a conflict of interest because of the issue of the Defense Counsel Richard Wernette + two daughter's dated Defendant's Son for quite some time and the defendant asked if it was a conflict of interest and was informed "NO".

Washington Court Rules
Title 1, Rule 1.8

(a) there is no interference with the lawyer's Independence of professional judgement or with the Client-lawyer relationship.

Stat v. Sanchez
171 Wn.App. 518, 888 P.3d 351 (2013)

The Sixth Amendment right to Counsel includes the correlative right to representation that is free of Conflict of Interest.
U.S.C.A. Const. Amend 6

Additional Ground 8

Credibility of Jesse Quintana

How good is the credibility of Jesse Quintana, when he is a known drug dealer (C.P. 193, 2-4) and a known drug addict (C.P. 189, 3-13), and is known by the Walla Walla Police Department, County Sheriff Office and by the Court's by his Criminal history with drugs?

Jesse Quintana has been arrested numerous times for Heroin and Methamphetamine and has "NO TRACK RECORD" with Law Enforcement as a Creditable Confidential Informant.

"Veracity" prong of test for determining validity of Search warrant based on informant's tip is satisfied by showing that informant has proven "track record" by providing accurate information to police in the past. (State v. Taylor, 74 WnApp 111, 572 P.2d 53).

When the so called controlled buy was done it was out of sight of "All Surveillance" and the Confidential Informant's Recording is "Inaudible and muffled", so did Jesse Quintana actually buy said drugs from Mr. Cornwell or someone else in the house, because there were at least (6) other people in the house at the time of the said buy. The Confidential Informant Recording is untrustworthy and did the State prove that the voice is that of Mr. Cornwell "no", the State assumed it was and by the word of Mr. Jesse Quintana, which is "Hearsay" and no proof of said buy.

57 A.L.R. 3d 746

§3 General Rule that recording is admissible unless inaudible portions or omissions are substantial as to render recording as whole untrustworthy.

Wyoming v. Houghton
526 U.S. 295, 301-02 (1999)

In determining whether a particular governmental action violates the Fourth Amendment guarantee against unreasonable searches, Supreme Court inquires, First, whether the action was regarded as an unlawful search or seizure under the common law when the Amendment was framed, and whether that inquiry yields no answer, Court must evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for promotion of legitimate governmental interests. U.S.C.A. Const. Amend. 4