

FILED
COURT OF APPEALS
DIVISION II

2015 JUN 11 PM 1:12

STATE OF WASHINGTON

BY C.
DEPUTY

STATE OF WASHINGTON,
RESPONDENT,

V.

JUSTIN FESSEL,
APPELLANT.

STATEMENT OF ADDITIONAL GROUNDS
CAUSE No. 46523-0-II
VEHICULAR ASSAULT
HIT AND RUN INJURY

CERTIFICATE OF SERVICE
I certify that I mailed
1 copies of SAG
to Dao Counsel
& Pro. Office
6/15/15 C. B.
Date Signed

ABUSE OF DISCRETION

At the defendants' trial, may 13th, in Direct Exam of officer Todd Young, he is asked about a particular phone that was found between a passenger seat and the door of the Buick.#395.

Officer Young is then asked if he secured the phone as evidence.#396.

He then states, "we did." The items that we collected from the vehicle for evidence, we would put into a paper sack and we would write on it and we would put it on a table next to the vehicle, because there were several items taken out of the vehicle.#397.

When asked if that particular item was placed into evidence, officer Young states, "no ma'am, it was not." #397.

He replies, "because we overlooked it when we were collecting all of the other bags of evidence off of that table, and so, several weeks later, detective____ or evidence tech, Brandon Hamilton had sent me an e-mail that said, "hey, I think you guys left a phone out there." #397.

Officer Young is then asked, "did you return to the building where the car was at and retrieve the telephone?" #397.

When asked when he returned, he states, "I had to look at my report, September 18th at 9:35." #397,398.

He is then asked if the condition was any different on the 18th of September as versus how you had initially located it on August 21st, 2013.#398.

Officer Young states, "it was in the/on the same table where we put all of the evidence, in the same bags that I had wrote on the bag where we had got it from, so it appeared it had been the same." #398.

He is then asked, so, this tape that's on here, Detective Young, where did this tape come from? #400.

Young states, "at the evidence unit after I collected it, we went and we put our evidence tape on it, the Red and White tape." #400.

The prosecution then moves the Court to have the phone entered into evidence as, Plaintiff's 40. #400.

The defense promptly objects, chain of custody relevance. #400.

Judge Clark over-rules.#401.

In the cross-exam, officer Young is asked if it's important for his reports to be complete and accurate. #402.

Officer Young states, "yes ma'am, we try that." #402.

Young is then asked if he wrote a report about executing the search warrant.

he indicates, "Hmmm, yes ma'am." #403.

Mrs. Carroll asks Young if he executes a search warrant on the 21st of August and wrote his report on September 10th. #403.

Young indicates, "yes."

Mrs. Carroll states. "so, in your report, you only mentioned finding a total of five cell phones." #403.

Young states, "yes ma'am." #404.

Mrs. Carroll asks, "in that initial report, there was no mention of any sixth cell phone. In fact, there's no mention of a sixth cell phone until you write another report on September 18th. #404.

Young states, "that's correct." #404.

Mrs. Carroll then states, "So, you just testified that you have a recollection of finding a sixth cell phone that Mrs. Bryant just showed you when you executed the search warrant on the 21st of August." #404.

Young answers, " yes ma'am, I do remember that, and it's also reflected in the Supplemental report I wrote." #404.

Mrs. Carroll then asks, " Okay, but when you wrote the report on September 10th, you had no memory of finding a sixth cell phone?" #404.

Officer Young answers, "I did not put that phone in the re---, I did not articulate

that in the reports, no ma'am." #404.

Young is then asked, "if you had a memory of it, is it something you would have included in that report?" #405.

He states, " I believe I just overlooked that one ma'am." #405.

Mrs. Carroll asks Young, "when you went back to this evidence bag and picked up this paperbag, did you look inside the bag?" #405.

Young states, "yes." #405.

Mrs. Carroll asks, "so, the other five phones that were mentioned in the first report, you said that those were logged into evidence." #406.

Young states, "yes." #406.

Young is then asked , "if thats' a different procedure then leaving them on a table in the evidence bag?" #406.

He indicates; "a different procedure, no, usually, we collect evidence, we try to gather everything and put it into evidence. Obviously, I made a mistake and overlooked the cell phone." #406.

Mrs. Carroll then asks, "So, when you put things into evidence, you give it to a tech, and they log it in?" #407.

Young states, " It depends. We, well, since we do our vehicles usually right there, we, we hand them right to the --or we give them to the evidence tech or we might take them back to our office, and then label them and put the evidence tape on them, and then at a later date, bring them into evidence, so it varies on, on what." #407.

Mrs. Carroll then asks, "but, once they're, once they're logged into evidence, then there's a record of who had accessed that particular piece of evidence?" # 407.

Young states, " yes ma'am."

Mrs carroll then asked, "and that, and that's important because it helps ensure that that piece of evicence is on the same condition as when it was found." #407.

Young states, ". that would be fair to say." #407.

1) Judge Clark abused her discretion by allowing evidence to be entered, when ther waws an obvious break in the chain of custody.

Judge Clark chose to let it be entered, even after it was raised, on February 19th, by the defendant. "That there was a cell phone that's not listed anywhere in any of the evidence logs." #43.

Not only was there no finding of it in evidence logs, or Supplemental reports, as of the dsate of February 19th, ther had been no Supplemental report of this phone being misplaced and found by anybody!

During officer Young's testimony, he gives conflicting accounts which prove's a breach in the chain of custody. He also states to the effect of his personal handling of evidence.

His claim of the phone being left on an evidence table, on a Brown paper bag from August 21st to September 18th also raises suspicion.

The defendant does not know how a Brown paper bag, that's used for evidence, with red and white evidence tape on it, also bearing officer Youngs P.S.N. and his account of where he found it, could be left on an evidence table, that is frequented by other investigating officers and evidence tech's, could be left for almost a month before it was found.

The chain of custody is needed to make sure that the evidence remains intact and untainted, in it's entirety, from the point of it's collection, up to it's use during trial. The facts and conflicting accounts suggest this is not where the phone was left.

ABUSE OF DISCRETION/PROSECUTORIAL MISCONDUCT

On February 19th, the defendant was set to stand trial, pro se.

A few days before trial, as the defendant was preparing, he noticed a Supplemental Report about the downloading of data, (from 6 phones) to a thumb drive.

The following morning, the defendant pointed this fact out to "stand-by" counsel, Mrs. Carroll, and asked her why he wasn't given this data and since he didn't have Direct contact with Mrs. Bryant, is she could request it.

The defendant explained that he knew of the phones and that one was his. And, that he dropped it inside the alledged victims' car when he tried to help Sheri Fessel out of the car through the passanger window. Also, he explains that he knew there were text messages to his brother saying, to keep the things that he stole and not to come around no more, he's through with him. He says, there also should be records of the call between the defendant and Sohayla Tayefernohajer, minutes before the accident.

Mrs. Carroll returns later to tel me that Jeannie Bryant says that I couldn't have CD's in jail and she wasn't using it, so, she don't know why I would need it.

The defendant then raises the issue the morning of trial to Judge Clark, with no luck. #43.

Jeannie Bryant states, " I was told by the jail that they would not allow CD's to go to Mr. Fessel." The State does not intend to rely on anything on the CD's, but because he is incarcerated, I had to follow jail rules, and I indicated the same to stand-by counsel, that they just won't allow him to have it." #44.

The defendant states, " He explained to Mr. Songer, which was the defense's P.I., and some of the reports say that he was on the phone with his wife at the time this happened and this would prove his state of mind, prior to the accident. #45.

Mrs. Bryant then states, " there were hundreds of pages of data that were taken from the phones. There was just-- It's overwhelming and I, I did not intend to use any of it. It was something that they had done. So, I have no idea what hes' talking about. #46.

The defendant states, " what may not be evidence to her could be evidence to the defense, though, especially pertaining to the defense of the defendant. I'm making a motion to compel Discovery. I asked for the thumb drive pertaining to the cell phones examined. #46.

Judge Clark states, "because the defendant wrote a motion to dismiss under CrR's 8.3 and 3.3, and because the defendant believed she abused her discretion, she is not going to entertain any motions as to Discovery at this time." #48.

The defendant then consults with stand-by counsel during recess to see if there is any way to get the phone data.

Stand-by counsel says; I can ask for a continuance and re-appoint her as counsel so that she can get it.

The defendant then requests a continuance and is granted such with Mrs. Carroll re-appointed as counsel. #87.

THIS WAS HIGHLY PREJUDICIAL TO THE DEFENSE OF THE DEFENDANT.

1) The withholding of evidence by prosecution is a clear violation of CrR 4.7, which force the defendant to choose between a justifiable pro se defense and his Right to a Speedy trial.

FURTHERMORE, The prosecutions claims of the defendant not being able to have CD's, or access to a computer does not release her from Proscutorial duties as stated in Omnibus and CrR 4.7, Discovery.

As record states, she does no more than speak to jail officials.

This is not fulfilling her duties to disclose and trun over all Exculpatory evidence, Discovery rules also state all evidences, not just exculpatory.

The defense is held to believe that since the prosecution withheld this evidence, it would have been beneficial to the defense and not the prosecution.

2) The statement from Judge Clark, moves the defense to believe that she already had her mind set on denying whatever the defense requested, no matter what evidence was established to back-up the defenses' claims, or what Court rules the prosecution was breaking, because of the defendants Motion to Dismiss.

The defendant feels these were made in a grudging manner and is not the proper conduct to be carried out by a trail judge. Also, not only was it improper, but threatening in nature.

ABUSE OF DISCRETION/PROSECUTORIAL MISCONDUCT

In Motions of Limine, on February 19th, and May 12th, Judge Clark, ruled that the defense would not be able to speak in any form about drugs, or their use. #72,73,171.

The Defense explained that this whole case evolves around drugs and their use. It was found through an interview between the Defense P.I. Bob Songer and James Fessel, that Jesse Fessel stole some items from the defendants' residence and traded them for drugs.

James Fessel, upon his entry into the E.R., admitted he had used methamphetamines, and gave a positive U.A. test while he was being treated. #71, 169.

The doctor who treated him personally remembered him admitting that he used Methamphetamine. # 170.

The defendant has personal knowledge, which he states for the record, of witness, Shandra Kryston, who was set to testify for the prosecution, using Methamphetamines, prior to the accident occurring. #71.

Just moments before the accident occurred, the defendant caught Jesse, James, Shari, and an associate named Glen, all smoking Methamphetamines in Shari Fessels vehicle, with Jesse driving.

During the search of both vehicles involved, there was an ounce of Heroin found in the vehicle owned by Shari Fessel, but being driven by Jesse Fessel, with James and Shari Fessel as passengers. #66.

A lot of text messages to and from Jesse Fessel speak about "Brown," referring to Heroin, which the prosecution "whited out." # 168.

James Fessel also states to the defense P.I. Bob Songer, that Jesse Fessel had used Heroin that morning before the accident. Mrs. Carroll states that there is an issue of proximate cause, and would like to be allowed to ask Jim Fessel, whether or not Jesse Fessel had used Heroin earlier that morning. #171.

She was denied. # 171.

The credibility of a witnesses pre-trial statements should have been taken into consideration by the prosecution, especially when there is evidence and proof, either before or during the time their statements were given. The prosecution was made clear of this and had statements not only by the defendant, but by multiple witnesses, including a doctor, that drugs

were used at the time surrounding the accident. The prosecution still moved forward with putting these people on the stand knowing that their testimony or recollection could be tainted, by their drug use.

In the end, Mrs. Bryant based her case on statements and interviews that were tainted. Given to investigating officers under the influence of drugs, from witnesses who had something to hide or a reason to mislead. The facts presented off and on the record show that Mrs. Bryant had knowledge of this before trial.

Shari, James, and Jesse Fessel were all felons and knew what type of consequences would follow if the Heroin was found in their vehicle. Which gives them more than enough reason to mislead the investigating officers at the scene.

This was prejudicial to my defense in more than one way:

1) By not being able to bring up that Jesse Fessel was under the influence of Heroin, as stated by witness James Fessel, and Methamphetamines as statements say by the defendant, the defense wasn't able to raise the issues of impairment caused by the use of these substances.

Common knowledge shows that drugs, especially Heroin and Methamphetamines can affect basic motor skills and reflexes.

Heroin is an Opiate, and the use can cause drowsiness and delayed reactions.

Methamphetamine is a stimulant and use can cause hallucinations, and/or frantic and psychotic behavior. The effects are even greater the longer a person has deprived themselves of sleep, causing a heightened state of paranoia, making users hear things that they did not hear and see things that they did not see.

All the statements given to the police, P.I.'s and on record of Jesse Fessel's actions, leading up to and after the accident, collaborate with multiple witness statements about his drug use. This led to his erratic driving and behavior as stated throughout the record.

During the examination of Connie Wallace, she explains that the Green car, which was driven by Jesse Fessel, was facing North, leaving in a hurry. # 215.

In the examination of James Fessel, he describes Jesse Fessel as the driver. #232.

He also states that he was "driving reckless and didn't have control of the car." #233.

When asked if he was driving in a straight line, he says, "not really," and indicates he was heading North. #233.

In cross-exam, James Fessel states that Jesse Fessel was, "speeding from right when he tool off from Justin's house and that he was going down the middle of the road." #214.

During Direct Exam of Michael Micheletti, he states that the vehicle Jesse Fessel was driving was parked along-side the curb, but was on the wrong side of the street. #344.

In Direct Exam of Shari Fessel, she states that there was another person in the vehicle just before the accident named Glen. #278.

When asked if she knew why he was in the car, she states, "Uh...".#279.

Mrs. Bryant says, "your're looking towards the judge, are you confused by the question?" #279.

Shari is looking at the judge because the question relates to the defendant finding Jesse, James, Shari, and Glen ding in the vehicle, which was smoking Methamphetamine. She was told, along with the rest of the witnesses that there would be No Reference to drugs or their use by anybody during the trial.

During cross-exam, Shari Fessel states that Jesse Fessel was speeding also. # 297.

In Direct Exam of Sohayla Tayefemohajer, she says, "he (Jesse) came flying around the corner, jumped out of the car with a bat, and started busting out all of the windows of the vehicles that were in the driveway. #366.

The defendant never got to face his initial accuser and put into question the credibility of Jesse Fessel, because he was in an intensive inpatient drug treatment facility. #177.

Also, the prosecution made sure that drugs were not brought up so that we could not show impairment and the reckless driving of Jesse Fessel also contributed just as much, if not more than the defendant to the cause of the accident.

2) Statements that were given to police at the scene, by Shandra Kryston,

were given under the influence of Methamphetamine.

The defendant stated at Motion's In Limine, on February 19th, that he had personal knowledge of her use of Methamphetamine, prior to the accident. # 70, 71.

Shandra tells the investigating officer that she heard me on the phone with someone saying; " The defendant was gonna ram them." She also told them she expected that it was Jesse Fessel, that the defendant was speaking with.

During an interview with the defense P.I. Bob Songer and Jeannie Bryant, she states that she had to give James Fessel C.P.R. and that she was trying to stop the bleeding. This was all found to be untrue after the testimony given by Kristie Calhoun.

Kristie Calhoun states that, "the 'skinny, blond lady' came after, that her son had already had a towel on the man with blood." #265.

When asked if the "Skinny lady" administered any medical attention or performed C.P.R., Mrs. Calhoun says, "No." #265.

Prosecution struck Shandra Kryston from testifying after the testimony of Kristie Calhoun. #272.

3) Not being able to provide the jury with James Fessels' witnessed use of Methamphetamine use, and his positive U.A.test, given during the treatment of his injury, didn't give the defense a chance to question his credibility, or his account of what he allegedly saw.

During Direct Exam, James Fessel was asked if he has seen the defendant in the other vehicle. He says, "No, I didn't." #234.

He is later asked if he needs glasses to read a statement. He says, yes, he needs a 200 prescription. #235.

The prosecution then asks, from your vantage point, did it appear that Justin was looking at Jesse? He says, "He looked like he was looking at both of us, you know, but straight at the car, basically." #237.

Not only does James Fessel's use of drugs bruise his credibility, but his use, mixed with his bad vision, raises Red flags. James Fessels' "vantage point", from where he gave his account from, was from the rear seat, as he states for the record.#230.

Mind you, the defendant was driving a four-wheel-drive Tahoe, and the

alleged victims' were driving a two-door, mid-sized Buick.

Even though Shari Fessel was witnessed using Methamphetamines first hand, She never offers-up any questionable actions, behaviors, or statements that could have been induced or affected by her use of drugs.

Unlike James Fessel's statements of what he allegedly had seen, or Shandra and Krystons' statements about what she allegedly heard, The only issue we raise with Shari Fessel is her credibility, because of her drug use at the time.

THEREFORE, the defendant concludes that if the issue of drug use would have been granted, the out-come of the trial would have ended differently.

SPEEDY TRIAL VIOLATION

Should the defendants trial have been held over for Detective Payne to be present for the through the whole trial?

On April 21st, 2014, my second trial date was held over until may 21st, 2014, because of a "unforeseen circumstance" occurred that involved Detective Payne's wife in a car accident. #122.

This happened after Mrs.Bryant was denied a continuance. #106.

She also states that there was two material witness warrants out for Shari and James Fessel. # 109. and Jesse Fessel isn't gonna be anticipated to testify either. #110.

The Court indicates that there was 51 days elapsed. #126. And Court was held over until 1:00 p.m., so that Mrs.Bryant could have more information.

When Court returns, Mrs.Bryant states Detective Payne's was held for 24 hours. #129. Mrs.Bryant then moves for a continuance under Criminal Rule 3.3(f). #129.

Mrs.Bryant states; "My officer as the accident reconstruction, is a material witness to the State. He is both fact witness and expert as far as his opinion. I need him with me at all times during the trial because he is obviously going to testify, not only to the observations that date, but any witness accounting of what was seen or observed." #130.

Mrs.Bryant then states; " There's no prejudice on the defendant. Actually, most of the prejudice is on me, because I have a number of witnesses, including medical individuals who are not going to be really happy. But, theres' no way around it. There is a valid reason. This is un, obviously, scheduled event, a car accident with the Detectives wife, the reasonable time-- now we're on the 51st day, I could ask the Court untill Wednesday, but I don't know if there's any guarantee that he would be available in that regard, so we would just ask for Monday, the 28th, which is within the 60 day speedy trial time. #130.

Mrs.Carroll repllies, "Well your Honor, Mr. Fessel's speedy trial rights are very important to him. You know, we have called ready, we're ready to go today; obviously, I am sympathetic to Detective Payne's situation and I, I would just ask the Court not to find good cause to continue because Mrs.Bryant needs him as her managing witness to be present for the entire trial, but that any decision the Court makes, teh Court makes only because Detective Payne couldn't testify as a witness at the trial. Obviously, we don't know the extent of his wife's injuries, this is a couple day trial, he wouldn't be needed until probably until Wednesday." #132.

Mrs.Carroll then states; " Well, I think he (Mr.Fessel) is prejudiced-- if there's -- you know, if he doesn't get it, hit his trial within speedy. And, as to Detective Payne being available to listen to all the witnesses, I -- in this case, we have interviewed all fo the -- I think all of the witnesses -- well, atleast all of the civilian witnesses who, who might testify, so I, I think the State has a pretty good appraisal of what the testimony would be, so I don't think that Detective Paynes' presence throughout the trial is as important as, you know, his testimony. I don't think, I have an argument that he's not a material witness for the State, so" # 134.

Mrs.Bryant states; " So, having him here to actually hear what the witness says and how that would play out in his analysis, which he would opine from the witness stand, I believe makes him that much more valuable and , and material to the State." #135.

The Court then sets the trial over to May 12th, 2014.

This Was Prejudicial To The Defendant:

1) The Court moved ahead and found an excluded period from April 21st to May 12th. The Court did this even after more than one option was raised by both defense and prosecution.

The prosecution suggested that trial be reset to the 28th of April. #135.

This would've gave Detective Payne a week to be ready for trial.

Mrs.Carroll suggests that it be reset to the 23rd of April, "and if we come back Wednesday and Mrs.Bryant has more information about Deputy Paynes' situation and he's not able to be present at all until sometime in the future, then I think the Court can consider the, the continuance for, good cause, but at this point, you know, kind of balancing Detective Paynes' family situation and Mr.Fessel's desire to go to trial, I guess I would ask the Court if the Court would consider -- resetting it to Wednesday." #139,140.

Mrs. Carroll then states; " I think we have established the unforeseen circumstance of Detective Payne not being available, but then, the reason we're going out farther if for Court congestion, and I don't know that that has been established enough to be able to continue the trial the way the Court is seeking to." #144,145.

The Court replies, " Well, the Court congestion wouldn't fit next Monday, but your argument might be better taken, if we go to the next Monday, which would be May the 15th. So, either May, may the 5th there wouldn't be an argument about Court congestion, may the 12th is just to keep it with the department that it's assigned to, so we're talking about a seven day--and more certainty that you'll get your trial on the 12th without haveing to shift it." #145.

Mrs.Carroll states; " So, we are not going to agree to a continuance, so-- so if the Court is finding-- so I think my argument, A, is that we haven't established besides some... We don't know for sure that there will be judges--a judge available Wednesday to hear this or a judge available Monday to hear this, if we're going to continue it, if the Court is going to find good cause for a Court set it to a readiness of May 1st." #145,146.

The Court asks; "with the trial on May 5th?" #146.

Mrs.Carroll says, "Again, we are objecting to the continuance." #146.

2) Detective Payne was not needed to sit through the whole trial. His testimony about the accident reconstruction could have been given on the last day of trial just like he did on the May 12th trial.

Mrs.Bryants' statement that Detective Payne was needed to hear what witnesses say or seen was misleading.

It was known by both the prosecution and the defense that:

A) There was no statements fo first-hand sight of the accident taking place. As of April 21st, ther was still material witness warrants out for James and Sheri Fessel, who had never been questioned by investigating officers or the prosecution. Jesse Fessel wasn't anticipated to tesify either. These were the only people involved who might ahvbe testimony about the accident and prosecution knew they wouldn't be present at trial on April 21st.

B) The prosecution already had knowledge that Detective Payne never interviewed any of the witnesses involved, or at the scene of the accident. In fact, the only person Detective Payne spoke with or interviewed was the defendant as the record reflects. #582.

The defendant concludes that his trial should not have been held over for Detective Payne to be present as a managing witness through the whole trial. His testimony could have been given any of the three days trial was set for.

In the end, letting Detective Payne sith through and listen to the whole trial, testimony of witnesses, he had no contact with, tainted his recollection of the statement made by the only person he questioned. The defendant, as the record projects. #648,649. SEE Exhibits A-G for prior speedy trial violations the defendant objected to.

PROSECUTORIAL MISCONDUCT

On May 13th, 2014, in the Direct Exam of Detective James Payne, Jeannie Bryant moved the Court, after some questions, to have Detective Payne declared as an EXPERT in the field of Accident Reconstruction. #466.

Judge Clark then says; "this is a practice I've seen from your office before, and I don't know of any authority for the Court to declare someone as an EXPERT. That is the ultimate decision for the jury."

By the prosecution doing this, the jury is let to ASSUME, The Court, not the jury determines whether the weight of said credentials provided is enough to determine a witnesses Expertise.

This is prejudicial to the defendant by allowing the jury to ASSUME, since it is offered up to the Court that it must be fact. Never leaving the jury to decide for themselves if it is fact or not.

1

Superior Court of Washington
for County of Clark

FILED

JAN 29 2014

405
Scott G. Weber, Clerk, Clark Co.

State of Washington
Plaintiff,

NO. 13-1-01542-1

vs.

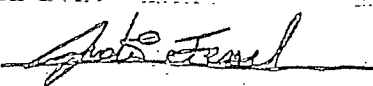
Justin Scott Fessel
defendant,

Motion and declaration for
Motion of Dismissal

Motion of Dismissal

Proceeding pro se, Justin Scott Fessel, the defendant, moves the above entitled court for Motion of Dismissal on case No. 13-1-01542-1, from mismanagement and prosecutor misconduct of said case, that severely prejudiced the defendants right to a fair and speedy trial. This motion is made pursuant to CrR 8.3 (b) and CrR 3.3 (c) (1), (6), (7) and is based upon the attached affidavit.

Dated this 24th January 2014



Justin Scott Fessel

Declaration

Justin Scott Fessel, declares and states that:

- (1) That I Justin Scott Fessel, was granted the right to proceed in court pro se on Wednesday Jan. 8th 2014. The Honorable Suzan Clark, acknowledged that I made my request knowingly and competently and granted said request.

- (2) I was then asked what my position was and for the record I stated, that I was ready to proceed with readiness, Jan. 9th 2014, and trial January 13th 2014.
- (3) Prosecution objected and said that they wanted a continuance based on accusations that I couldn't be ready for trial because;
(1) I hadn't produced defense's witness list, which I explained I didn't need to, that I would cross examine her list; (2) That I hadn't got a redacted copy of the police reports, which I explained to the court that I have read and taken notes of already and I didn't need a copy; (3) That the prosecutors office hadn't done all there witness interviews, to which there is no merit, to the prosecutor interviewing witnesses, to the strategy of the defendant defense; (4) That the P.I. hadn't finished all his interviews, which also I never requested.
- (4) After close scrutiny of the prosecutors frivolous claims, it becomes apparent that the prosecution was not prepared for trial, not the defendant, and that these claims were an effort to salvage a sinking prosecution.
- (5) The defendant stated that in *U.S. v. Moya-Gomez*, 860 F.2d 706 (7th Cir. 1988), "when the defendant first appears through counsel, his later decision to proceed pro se should not trigger a new preparation period". To interpret the statute otherwise would enable a defendant to postpone his prosecution by deciding on the eve of trial that he wants to dismiss his attorney and represent himself."
- (6) The Honorable Susan Clark ruled in defenses favor and denied at that time prosecutions, motion for continuance, and set over court for Jan. 9th 2014 readiness and referred.

both defense and prosecution to state v. Silva (2001) 107 Wash. App. 605, 27 P. 3d 663.

- (7) On Jan. 9th 2014, prosecution moved for Motion and Declaration for order of continuance; which upon close scrutiny, realistically held no legal merit, that lacked fact and was strictly accusational.
- (8) The prosecution scrutinized the defendant, by going as far as having him "1077nd", which is legal term for a Mental evaluation, after she knew the defendant was found competent the prior court date, Jan. 8th 2014.
- (9) The prosecutor then went on in her motion, citing state v. Silva (2001) 107 Wash. App. 605, 27 P. 3d 663; stating, "the state seeks a continuance of the matter to afford the defendant an opportunity to present a meaningful pro se defense." "We agree with the Ninth Circuit court of Appeals that a defendant, presumed to be innocent, cannot be confined to the four walls of his prison cell until trial and then be expected to appear on the day of trial, ready to represent himself, without some means by which to defend against the charges against him, An accused's right to represent himself would be meaningless." Silva at 622
- (10) If the prosecutor would've read the entire case law, state v. Silva (2001) 107 Wash. App. 605, 27 P. 3d 663; she would've read that the conviction was affirmed and that in state v. Silva; Silva claims that because he did not receive the resources he needed to prepare a meaningful pro-se defense until the expiration of his 60 day speedy trial period, the state deprived him of his state and federal constitutional right of access to the courts, thus compelling his dismissal. (4) Silva also claimed

the state impermissibly failed to provide him a investigator physical access to a law library or a person trained in the law to assist with research and access to a direct phone.

- (11) The defendant never made any such claims of being deprived of the appropriate tools to which he could coordinate a justifiable pro se defense. In fact the defendant was granted access to the law library on Oct. 31st, 2013, by Honorable Judge Scott Collier, and notified his prior attorney of her dismissal on Dec. 17th, 2013. The defendant made clear on record, Jan. 8th and 9th, 2014, that he was prepared for trial and that he needed no such redacted version of the police reports, and that it was his request to carry on with trial as scheduled.
- (12) After prosecutions equivalent of a court room tantrum and close scrutinizing of the defendant's competency, preparedness, and mental state, the prosecution was granted a continuance, over the objection of the defendant.
- (13) The court provided no legal merit to the granting of the prosecutions Motion for continuance, except for the assumption that because I was sentenced on another charge, the defendant's defense wouldn't be prejudiced. The defendant noted that the charge he was being held on was already sent in for appeal.
- (14) After the close reading of CrR 3.3 (6)(6) it states, the time during which a defendant is detained in prison or Jail outside the state of Washington or in a federal jail or prison and the time during which a defendant is subjected to conditions of release not imposed by a court of the state of Washington. Which they are referring to time elapsed of Sixty day speedy trial.

- (15) CrR 3.3 (c) (1) states that a defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment.
- (16) CrR 3.3 (h) (1) states, a continuance or delay may be granted as follows: (1) Upon written agreement of the parties which must be signed by the defendant or all defendants.
- (17) The prosecution then misled the court by stating that there had only been 19 days elapsed when she was there in court Oct. 31st 2013, when I stated for the record that my 60 day right to speedy trial was already being violated and objected to a continuance the judge concurred with defense to which the prosecution argued and the continuance was granted with another 42 days elapsed from Dec, 2nd 2013, the trial of the defendants other pending case, which carried it to Jan. 13th 2014.
- (18) The continuance was signed by one, Jeannie Bryant, wsba 17607, Honorable Judge Scott Lollier, one Heather Carroll, wsba 36706, but objected to sign by the defendant.
- (19) On Jan. 9th 2014 the prosecutor knowingly misled the courts into granting a continuance of another 37 days on objection of the defendant, in a last ditch effort to prepare her prosecution to which she already had 5 months to prepare for and it's all on record. So in total the trial now will have elapsed a total of 98 days by the time trial commences, in direct violation of CrR 3.3 (c) (1) and CrR 8.3 (b).
- 20 In state v. teens (1997) 89 Wash. App. 385, 948 P.2d 1336, reconsideration denied, review denied, 136 Wash. 2d 1003, 966 P.2d 902. The state appealed the Judges decision to dismiss charges and were denied. The court of appeals Brown, J., held

that trial court acted within its discretion in dismissing charges on ground that defendant was forced into position requiring him to choose between his rights to speedy trial and to fair trial with adequately prepared counsel. State v. [redacted] terms (2) states; trial court should grant dismissal of charges on basis of arbitrary action or governmental misconduct only if defendant is prejudiced to extent of denial of his or her right to a fair trial, CrR 8.3 (b). (3) states defendant is not required to show prejudice from denial of his right to speedy trial, CrR 3.3. (4) states; strict compliance with speedy trial rule is required CrR 3.3. (6) states; Only simple mismanagement by prosecution rather than intentional misconduct, is required for court to dismiss charges on basis of arbitrary action or governmental misconduct, CrR 8.3 (b).

(21) CrR 8.3 (b) states; the court in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused right to a fair trial. The court shall set forth its reason in a written order.

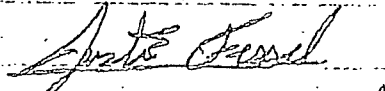
(22) The prosecution has succeeded in purposely misleading the courts for a continuance, in a manner that put prejudice on the defendants right to a fair and speedy trial, by violating the defendants right to speedy trial, which in return put a prejudice on the defendants, defensive strategy.

(23) With the above said evidence and information, the defendant is moving for a motion of dismissal on Case No. 13-1-01542-1, on the grounds of governmental misconduct, and case mismanagement, pursuant to CrR 8.3 (b), which is

retrospect, prejudiced the defendant to his right to speedy trial and his presentation of a unprejudiced defense.

I certify or declare under penalty of perjury, under the laws of the State of Washington the foregoing is true and correct:

signed at Vancouver, Washington on 24th day of January 2014


Justin Scott Fessel

The defendant has other issues through-out the case that cannot be raised because the material that would be used as evidence, was received through a Public Records Request, and is outside of the recorded record reviewed under Direct Appeal.

The defendant will reserve these issues, to be raised in Personal Restraint Petition, provided that he does not prevail on Direct Appeal.

The defendant moves this Court to grant relief in the form of DISMISSAL WITH PREJUDICE, or in the alternative, that the defendant be REMANDED for a new trial.

DATED this 15th day of MAY, 2015.

15/ Justin Fessel

Justin Fessel.