

COURT OF APPEALS
DIVISION THREE
OF THE STATE OF WASHINGTON

FILED

NOV 21 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
CHRISTOPHER M. FOLEY)
(your name))
)
Appellant.)

No. 302199

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, CHRIS FOLEY, 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

PROSECUTORIAL MISCONDUCT /
DENIAL OF CONSTITUTIONAL RIGHTS

Additional Ground 2

FAILURE TO PROVIDE TIMELY DISCOVERY AND DENIAL OF
CONSTITUTIONAL RIGHTS: PROSECUTORIAL MISCONDUCT /
GOVERNMENTAL MISMANAGEMENT

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

Date: NOVEMBER 21ST 2012
Form 23

Signature: [Handwritten Signature]

Original

FIRST ADDITIONAL GROUNDS FOR CONSIDERATION:
PROBABLE CAUSE REPORT FOR
SEARCH WARRANTS

MY ARGUMENT OF THE REPORT IS HOW THE SHERIFF'S DETECTIVES PURPOSELY AND MALICIOUSLY MISSTATED WITNESS STATEMENTS, TWISTED AND EXAGGERATED EVENTS AND ACTIONS. THERE IS ALSO ALOT OF INFORMATION AND EVENTS THAT WERE OMITTED TO CREATE THE CIRCUMSTANCES TO SUIT THEM.

FIRST OFF ARE MY HERESY STATEMENTS OF ROSSELL'S ACCOUNT OF LEAVING HIS EX-WIVES. I WAS ASKED, IN MY OPINION, WHAT I BELIEVED HE MAY OF DONE, WHEN I WAS TOLD THAT HE WAS REPORTED MISSING. I OFFERED MY OPINION AT THE REQUEST OF THE DETECTIVES, WHICH I KNEW ONLY FROM ROSSELL'S ACCOUNT. I CAN'T SUBSTANTIATE THE EVENTS AS TRUTH OR FICTICIOUS. I COULD ONLY OFFER MY OPINION BY HIS RECOLLECTION OF HIS PAST. THIS POSSIBLE SCENARIO SEEMS TO FIT HIS CURRENT RELATIONSHIP, THAT I KNEW FIRSTHAND AS UNSTABLE.

HE STATED THAT WITH HIS FIRST WIFE, THAT THEY DID NOT GET ALONG, AND THAT HE

RESENTED HIS FIRST MOTHER-IN-LAW AND HER CONSTANT INTUSSION AND INVOLVEMENT IN THEIR LIVES, RELATIONSHIP, AND FINANCES. HE NEVER EXPLAINED VERY MUCH DETAIL, ONLY GENERALIZED STATEMENTS.

HE TOLD ME WHEN HE FINALLY LEFT, IT WAS AFTER THE JUDGE WHO PROCEEDED OVER THEIR DIVORCE AWARDED HER ALL THEIR PROPERTY AND ASSETS TO HER INCLUDING A 3/4 TON TRUCK AND HOUSEHOLD FURNITURE AND LEFT HIM WITH THE BILLS. HE STATED TO ME HE LEFT WITH HIS CLOTHES THAT HE COULD CARRY IN A BAG, AND WENT TO CALIFORNIA ON A BUS TO GO WORK WITH HIS UNCLE KELSO. HE ALSO NEVER MENTIONED HIS EX-WIFE'S INFIDELITY.

HIS SECOND WIFE SEEMED LIKE A SIMILAR SITUATION, EXCEPT SHE DIDN'T KNOW HE HAD PURCHASED A FIFTH-WHEEL TRAILER, WHICH HE HAD STORED ON HIS COUSIN'S PROPERTY. HE ALSO PURCHASED HIS 1978 ONE TON CHEVROLET DUALY TRUCK AND INVESTED MONIES IN REBUILDING THE TRANSMISSION, A NEW EXHAUST SYSTEM, PLUS NEW TIRES. ACCORDING TO HIM, THIS WAS DONE WITHOUT HER KNOWLEDGE. HE STATED SHE DIDN'T KNOW HE WAS LEAVING, AND SHE TESTIFIED UNDER OATH, THAT SHE BELIEVED HE LEFT TO SEATTLE TO WORK WITH BOE COLLUMON, WHEN HE ACTUALLY WENT TO COLORADO TO WORK WITH BOB, UNCLE HANK, AND MY BROTHER. HE DIDN'T WANT HER TO KNOW WHERE HE WAS GOING, AND

SHE DIDN'T. THESE WERE STATEMENTS TOLD TO ME BY RUSSEL IN HIS WORDS. I HAVE NO IDEA IF IT WAS TRUTH OR FICTICIOUS. HONESTLY, WHO CARES? HOW IS IT THAT THIS INFORMATION SHOULD SOMEHOW BE USED AGAINST ME? ISN'T THIS JUST HERESY, AND INADMISSABLE?

HE ALSO CONFIDED THAT HE THOUGHT OF LEAVING HIS CURRENT WIFE, AND ASKED FOR MY OPINION OFTEN ABOUT THIS. HE WAS ALSO VERY RESENTFUL OF CHRISTINE RAY'S PARENTS, AND THEIR CONSTANT INTERUSION IN HIS RELATIONSHIP WITH HIS WIFE AND DAUGHTER. THIS IS VERY SIMILAR TO HIS FIRST MARRIAGE, WHICH IS WHY IT CAME TO MY MIND. CHRISTINE RAY WAS ALSO STATED THAT SHE HATED RUSSEL, HIS BI-POLAR MOOD SWINGS, AND HOPED THAT HE WOULD DIVORCE HER. SHE HAS STATED THIS ON NUMEROUS OCCASIONS. ISN'T THIS JUST HERESY, AS WELL?

HOW CAN IT BE ADMITTED, TWISTED BY THE PROSECUTOR, AND MISSTATED TO THE JURY, THAT SOMEHOW I WAS TRYING TO MISLEAD THE DETECTIVES AND ATTEMPT TO DRAW ATTENTION AWAY FROM ME. ALL I DID WAS TRY TO OFFER INFORMATION THAT MIGHT BE HELPFUL TO THE DETECTIVES, WHEN THEY LEAD ME TO BELIEVE THIS WAS A MISSING PERSON'S CASE.

I ALSO MENTIONED THAT HE THOUGHT OF REACQUIRING HIS COMMERCIAL CDL. LICENCE AND RETURN TO DRIVING TRUCKS. THIS WAS ALSO MENTIONED BY OTHERS. HOW IS IT THAT THIS CAN BE MANIPULATED

By the prosecution and tried to help their weak case. Everything is circumstantial, so they had to create suspicious circumstances.

The same applies to statements given by Officer Chris Wissett, where he stated in our phone conversation that my sister in law Christine Ray and myself were considered suspects, her for being the spouse, and myself because we no longer spoke because of previous disagreements, and constant insistence from Jory Ray. Later on, Officer Chris Wissett recanted his statement, trying to either cover his mistake or was conveniently forgetful. Either way, this prompted me to invoke my constitutional right to hire counsel to insure my rights. I should of invoked my Fifth Amendment and said nothing and offered no cooperation, but I tried to help, and they manipulated everything I offered to use against me.

My choice to hire counsel to accompany me to the interview has also been referred to many times as suspicious behavior. How can maintaining my constitutional rights be deemed suspicious and used against me? Throughout this negligent investigation, the detectives and prosecutor have repeatedly taken ordinary actions and continued them to represent suspicious acts. They have continued to attempt to create acts of circumstances.

THEY MAKE REFERENCE TO ME REMOVING THE CANOPY FROM MY TRUCK AND HOW SUSPICIOUS IT IS, BUT CONVENIENTLY OMIT FROM THE REPORT THAT I PICKED UP A MOTORCYCLE THAT I HAD PURCHASED, OR THE FACT THAT I MOVED MY LOOSENECK TRAILER. THEY ALSO REFER HOW I DID THIS IN FRONT OF THEM, WHILE THEY WERE IN THE ADJACENT PROPERTY. I HAD NOTHING TO HIDE, SO WHY NOT DO WHAT I NORMALLY DO? HOW IS THIS RELEVANT? THEY MADE A POINT OF STATING ALSO THAT I CLOSED THE DOOR TO MY GARAGE WHILE DOING THIS. THEY NOTE THIS AS A SUSPICIOUS ACT, BUT HOW DO YOU CLOSE A ROLL-UP DOOR IN A GARAGE THAT IS LESS THAN SEVENTEEN FEET DEEP, WITH A TRUCK THAT IS OVER TWENTY-TWO FEET LONG? IT'S RATHER CONVENIENT HOW THAT INFORMATION WAS OMITTED.

THEY CONTINUE TO REFERENCE THE FINDING OF A OXID BOARD, WITH WHAT APPEARED TO BE BLOOD UPON IT, BUT DO NOT INCLUDE HOW THE FORENSIC TEAM STATE THAT IS WAS NOT THE INSTRUMENT THAT CAUSED THE INJURY TO RUSSELL'S SKULL, BUT WAS PROBABLY WAS NEAR HIM AT SOME POINT. THE DETECTIVE STATES HE BELIEVES THIS MAY BE THE WEAPON. BUT ISN'T PROBABLE CAUSE FOR A SEARCH WARRANT SUPPOSED TO BE BASED UPON FACTS?

WHEN INTERVIEWING MY NEICE MEIGHAN LUCAS THEY ATTEMPT TO SHOW SOME BEHAVIORAL CHANGES AND CHANGES TO MY ROUTINE. THEY CLAIM THAT WE USUALLY EAT DINNER TOGETHER AND WATCH TV. IN THE LIVINGROOM

EACH EVENING, BUT AFTER JUNE 22ND, 2010, THAT I WOULD GO DIRECTLY TO MY ROOM AFTER OUR DINNER TOGETHER. THEY CONVENIENTLY LEAVE OUT THAT MY NEICE MELHAN LUCAS WAS NOT THERE ON THAT WEDNESDAY EVENING, FRIDAY EVENING, OR THAT MY NEICE AND NEPHEW CAME HOME LATE IN THE EVENING ON SATURDAY JUNE 26TH, BUT THAT WE WERE TOGETHER THAT EVENING RIDING MOTORCYCLES. THEY PURPOSELY OMIT THE REAL FACTS, IN AN ATTEMPT TO SOME HOW MAKE MY ACTIONS APPEAR SUSPICIOUS. THEY'RE CREATING CIRCUMSTANCES BY MISSTATING FACTS. THIS IS BOTH MALICIOUS AND DECEITFUL.

THEY CONTINUE BY STATING THAT MY DEPARTURE TIME, AND TIME THAT I WENT TO SLEEP DEFERRED FROM MY OWN STATEMENT. I NEVER MENTIONED THESE EXACT TIMES TO MY NEICE, AND OTHER STATEMENTS WERE TAKEN OUT OF CONTEXT. THEY CONVENIENTLY FORGOT TO MENTION ALSO HOW THEY DID NOT RECORD THE INTERVIEW WITH MELHAN LUCAS, OR HAVE MY NEICE READ OVER THEIR REPORT TO CONFIRM OR DENY THE ACCURACY OF THEIR REPORT.

WHEN MY ATTORNEY AND INVESTIGATOR INTERVIEWED MY NEICE MELHAN, THEY HAD HER READ THROUGH THE STATEMENT SHE SUPPOSEDLY GAVE TO THE DETECTIVES. AFTER READING THROUGH IT, SHE WAS SHOCKED TO DISCOVER WHAT THEY HAD WRITTEN AS HER WORDS. MOST OF WHAT WAS WRITTEN WAS TAKEN OUT OF CONTEXT, MISCONSTRUED, OR DELIBERATELY FALSIFIED. LATER WHEN SHE TESTIFIED DURING THE TRIAL, MORE OF THE DEVIATIONS WERE BROUGHT TO LIGHT, PROMPTING THE PROSECUTOR TO TRY TO IMPEACH

HER TESTIMONY, IN FEAR OF SHOWING THEIR DELIBERATE DECEIT. ONCE MORE THEY WERE CAULD CREATING CIRCUMSTANCES TO SUIT THEIR CASE.

THEY CONTINUE TO SHOW THIS WHEN THEY COMMENT ABOUT ME SUGGESTING TO MY NEPHEW MICHAEL LEAS, THAT WE COULD SWAP THE FRONT TIRES FROM HIS TRUCK TO MINE TO DETERMINE IF HIS FRONT END OF HIS TRUCK WAS GOING OUT OR IF IT WAS JUST HIS TIRES THAT WERE OUT OF BALANCE. A TASK THAT MIGHT TAKE ONE HOUR. I HAD JUST HAD MY TIRES REBALANCED RECENTLY, AND THOUGHT IT COULD BE A QUICK DIAGNOSIS.

ONCE AGAIN, THEY TWIST IT AS SOME DIVIOUS ACTION TAKEN TO SOMEHOW CONCEAL EVIDENCE. WHICH, BY THE WAY, WAS NEVER EVEN SAMPLED OR TESTED, OR PHOTOGRAPHED FOR ANY COMPARISON. I SUPPOSE ITS EASIER TO CREATE CIRCUMSTANCES, THEN OBTAIN FACTUAL EVIDENCE.

THE DETECTIVES STATED THAT MY NEKE WAS VERY SCARED OF ME, WHICH CONTRADICTS WHAT SHE ACTUALLY STATED TO MY ATTORNEY, WHICH WAS RECORDED, TRANSCRIBED, AND AFFIRMED BY HER AS AN ACCURATE STATEMENT. THE DETECTIVES CONTINUE TO SHOW A PATTERN OF MISSTATING WITNESS STATEMENTS TO CREATE THESE CIRCUMSTANCES IN ORDER TO CREATE A CASE.

THEY COMMENT ABOUT HOW THEY BELIEVE I WAS SHAKEN WHEN I SAW THE SHERIFFS AND W.S.P. SCOURING THE ADJACENT PROPERTIES, BUT FORGET TO MENTION HOW I GAVE THEM PERMISSION TO SEARCH THROUGH MY PROPERTY, AT THAT AT ONE POINT, THEIR SHERIFFS ACTUALLY

DID WALK THROUGH MY PROPERTY. WHEN I HIRED MY COUNSEL TO ACCOMPANY ME DURING MY INTERVIEW, HE HAD SENT THE SHERIFFS A NOTICE STATING THAT HE WAS REPRESENTING ME, AND THAT ANY PERMISSION TO SEARCH MY PROPERTY WAS RESCINDED. MY ATTORNEY TOLD THEM THEY COULD PROCEED TO SEARCH ALL MY PROPERTY, OUT-BUILDINGS, TRAILERS, VEHICLES, PLUS MY HOME ANYTIME, AS LONG AS I WAS PRESENT, OR MY ATTORNEY, WHICH MY WIFE AND I TRIED SEVERAL TIMES TO DO WITH THE DETECTIVES, ONLY TO BE STOOD-UP. I EVEN WENT TO THE LENGTH OF BUILDING A DOG PEN TO CONTAIN MY SIX DOGS, TO CONVENIENCE THEIR SEARCH EFFORTS. HOW CONVENIENT THAT THEY LEAVE OUT ANY COOPERATION THAT I EXTENDED TO THEM. THEY CONTINUE TO CREATE CIRCUMSTANCES TO CREATE A CASE THAT NEVER EXISTED.

THEY ATTEMPT TO EXPLAIN AN INCIDENT THAT OCCURED AT A JOBSITE WHEN I STOPPED BY TO DROP OFF SOME LADDERS FOR THE CREW, PLUS SIGN OVER A TITLE TO OUR COMPANY FLATBED TRAILER, AND PICK UP SOME OF MY PERSONAL TOOLS. I WENT THERE IN AN ATTEMPT TO DISSOLVE SOME OF OUR COMPANY ASSETS AND TERMINATE OUR BUSINESS RELATIONSHIP. THEY TRY TO INSKUATE THIS TUMULTUOUS RELATIONSHIP BETWEEN US AND ALL THIS TENSION, WHEN IN ALL REALITY HIS FEELINGS WERE HURT BY ME FOR TRYING TO ISOLATE MYSELF FROM HIM. HE WAS UPSET AND ACTING OUT, AND HE THREATENED TO HIT ME WITH A HAMMER, AND AS I TRIED TO LEAVE, HE PULLED IT FROM ITS HOLSTER.

AND I REACTED BY PUNCHING HIM ONE TIME IN HIS RIGHT EYE WITH A LEFT JAB. I HIT HIM HARD ENOUGH TO KNOCK HIM DOWN, BUT NOT ENOUGH TO HURT HIM. HE FELL TO THE GROUND, AND LEFT ME ALONE AND MY FATHER-IN-LAW STEPPED IN BETWEEN US, AND THAT I LEFT. THERE WAS NO VIOLENCE, NO RECORDS OF PRIOR ALTERCATIONS, NO FIGHTING BETWEEN US, AND NO OTHER INTERACTIONS OR EXCHANGES BETWEEN US FOR WHAT MAY HAVE BEEN A YEAR OR SO.

ONE NEXT INTERACTION WAS AT A GAS STATION WHEN I WAS FUELING UP MY TRUCK, WHEN HE PULLED IN TO THE PUMPS ACROSS FROM ME. WE TALKED SOME, AND I ATTEMPTED TO SETTLE THESE HARD FEELINGS BETWEEN THE TWO OF US. HE EVENTUALLY BECAME ENRAGED AND WOULDN'T TRY TO TALK ANY LONGER AND HE EVENTUALLY WENT HIS WAY, AND I PROCEEDED TO WORK.

THIS WAS THE LAST TIME WE HAD ANY EXCHANGES OR ANY INTERACTIONS TOGETHER. SINCE THAT TIME, I AVOIDED HIM COMPLETELY, AND HE DID THE SAME. THESE WERE ISOLATED INCIDENTS, AND CERTAINLY NO MOTIVE TO TAKE ANYONE'S LIFE.

THEY CONTINUE TO MISLEAD THE JUDGE IN THE REPORT WHEN THEY ATTEMPT TO INFER THAT SOME INCIDENT OCCURRED IN MY SHOP, RESULTING IN ROSSEL ALLEGEDLY BEING STRUCK BY A "4X4", EVEN THOUGH I DENY IT EVER OCCURRING. HIS OWN WIFE DENIES IT EVER OCCURRING, PLUS HIS IN-LAWS AS WELL. THEY STATE IT AS SOME FACT AND ARE PURPOSELY DECEPTFUL IN MISLEADING THE JUDGE INTO BELIEVING THAT THIS INCIDENT WAS SOMEHOW FACTUAL.

TWO YEARS PRIOR, DURING OUR INTERACTION AT THE JOBSITE, HE WAS LEFT WITH A BRUISE AROUND THE AREA OF HIS EYE THAT WAS STRUCK. NOW, ACCORDING TO HIS ALLEGED STORY, HE IS STRUCK IN THE FACE BY A 3/4" SQUARE BOARD OF SOME UNKNOWN LENGTH OR WEIGHT AND INCURS NO BRUISING, NO BROKEN EYE SOCKET, CHEEK BONE, OR NOSE, OR ANY DAMAGE TO THE SKIN, BUT INSTEAD HAS A BLOOD SPOT ON HIS EYE, LIKE A BROKEN OR BURST BLOOD CAPILLARY. THIS INJURY SOUNDS RIGHT ON WITH HIS STORY TO HIS WIFE, WHERE HE STATED THAT HE POKED IT AT WORK WITH SOME DEBRIS WHILE SCRAPING. CURIOUS WHY THEY DIDN'T MENTION THIS? I AM.

THEY CONTINUE TO SHARE SOME EXCERPTS FROM MY INTERVIEW, BUT TWIST IT UP TO FIT THEIR STORY THAT RUSSEL SUPPOSEDLY TOLD HIS FATHER. IN MY INTERVIEW I DESCRIBED ANOTHER STORY, WHEN THEY ASKED IF RUSSEL WAS EVER ON MY PROPERTY OR IN MY SHOP. I NEVER EVER SAW RUSSEL ON MY PROPERTY AND HE WAS CERTAINLY NEVER IN MY GARAGE, BUT I MENTIONED SEEING A DARK SILHOUETTE ON THE FENCELINE OF MY PROPERTY BUT I COULD NOT ASCERTAIN WHAT IT WAS. I WAS WORKING IN MY SHOP ON MY TRUCK IN THE EVENING AND FINISHED UP TO EAT DINNER WITH MY WIFE. THEY TRY TO INFER THAT SOMEONE WAS IN MY SHOP, WHICH NEVER HAPPENED AND THEY ATTEMPT TO INCULCATE THAT IT HAD.

THEY TRY TO MISREPRESENT ME BY SAYING THAT I CONTRADICT MYSELF BY SAYING 'I'M NOT A COP OWNER'. I SAID I WILL NOT CALL THEM AND GET THEM INVOLVED.

IN OUR FAMILY BUSINESS, BUT I WILL CALL THE SHERIFFS TO DO SOMETHING ABOUT SPEEDERS ON THE PUBLIC ROADS AROUND MY PROPERTY. I BELIEVE THAT TO BE QUITE DIFFERENT. NOT CONTRADICTORY. THEY'RE BLATANTLY MISCHARACTERIZING ME.

THEY MISSTATE THE FACTS WHEN THEY WROTE THAT RUSSEL & I HAD NUMEROUS FIGHTS AND ASSAULTIVE BEHAVIOR IN THE PAST. FOR BEING AS CLOSE AS WE WERE, AND FOR BEING FRIENDS FOR TWENTY ONE YEARS, WE ONLY HAD EXACTLY "ONE FIGHT", THAT COULD BE LABELED PHYSICAL AND I WOULDN'T LABEL IT AS ASSAULTIVE. ONLY ONE PUNCH WAS THROWN.... I'D CALL THAT QUITE CONSTRUCTIVE. I ALSO TRIED REPEATEDLY TO APOLOGIZE, BECAUSE I FELT TERRIBLE FOR LETTING IT GO THAT FAR.

THEY STATED THAT TWO PEOPLE HEARD THIS ALLEGED STORY OF THIS "4x4" INCIDENT, AND THAT THERE IS NO CONNECTION BETWEEN THEM, THERE ACTUALLY IS, BUT THEY DON'T TELL THE JUDGE THIS. THEN FORGET TO MENTION THAT RUSSEL IS FRIENDS WITH MARK EMMERT, AND MARK'S WORKING WITH TOM JOHNSON WHO IS FRIENDS WITH RUSSEL RAY'S BOSS MIKE CLARK. THIS IS, IN MY OPINION, THE GREATEST POSSIBILITY OF THIS ALLEGED STORY MAKING ITS WAY TO MARK EMMERT. MIKE CLARK WAS IN CONTACT WITH TOM JOHNSON ON MY JOB BY THE REQUEST OF JERRY RAY.

THIS IS THE CHAIN OF INFORMATION THAT FED JERRY RAY WITH THE DATES OF MY SCHEDULED VACATION, WHEN

I WOULD BE LEAVING FOR CALIFORNIA, THE DURATION THERE, AND MY DATE OF RETURN. JOEY RAY KNEW MY SCHEDULE AS WELL AS I DID. IT PROVED TO WORK OUT WELL FOR HIM.

MY ACTIONS NEVER CHANGED, NEVER DIVERGED FROM MY CHAOTIC PATTERNS AND MY BEHAVIOR CERTAINLY NEVER CHANGED. I BELIEVED MYSELF TO BE A SUSPECT BECAUSE I WAS TOLD SO DIRECTLY BY DEP. CHRIS WITSETT, NOT BECAUSE OF SOME MANIFESTED WILT, LIKE THE PROSECUTOR IS TRYING TO INSINUATE. THEY BELIEVE ME TO BE WORRIED ABOUT LAW ENFORCEMENT MATCHING TIRE TREAD PATTERNS, BUT FAIL TO INCLUDE MY COOPERATION! IN ALLOWING THEM TO SEARCH ALL OF MY PROPERTY, EVERY VEHICLE, EVERY TRAILER, EVERY BUILDING, PLUS MY HOME. THATS NOT CONCERN! THATS COOPERATION! I CONTINUED TO COOPERATE RIGHT UP UNTIL THEY ARRESTED ME. THEY HAVE MISLEAD THE JUDGE ON SO MANY STATEMENTS, ITS NO WONDER HE ALLOWED THESE SEARCH WARRANTS, AND WHY THE PROSECUTOR FOUGHT SO HARD TO EXCLUDE THIS REPORT FROM MY ATTORNEY.

HOW CAN THEY SUGGEST THAT THERE WAS A VIOLENT STRUGGLE AND MASSIVE LOSS OF BLOOD ON RUSSELLS' PROPERTY, WHEN THE FORENSIC DOCTORS AND CRIME SCENE PERSONNEL COULDN'T ASCERTAIN! WHAT EXACTLY HAPPENED, THE SEQUENCE IN WHICH IT OCCURED, HOW HE DIED EXACTLY, AND NEVER DID ANY TESTS TO QUANTIFY ANY AMOUNTS OF BLOOD FOUND.

DO SPARSE BLOOD DRIPS INDICATE MASSIVE BLOOD LOSS? HOW ABOUT ON GRASS WHERE IT HAD BEEN WATERED WITH SPRINKLERS. LAST TIME I CHECKED, BLOOD DILUTES IN WATER LIKE FOOD COLORING, AND LOOKS AS THOUGH IT IS MORE THAN IT ACTUALLY IS. THEY NEVER EVEN DID ANY TESTS TO DETERMINE SATURATION, SO CAN YOU QUANTIFY MASSIVE BLOOD LOSS?

I BELIEVE ALL THESE SEARCH WARRANTS ARE VOID AND FICTITIOUS, BECAUSE THE DETECTIVE DARREN HIGASHIYAMA PURPOSELY MISSTATED THE FACTS TWISTED AND CONTORTED STATEMENTS, AND BLATANTLY CREATED OTHER STATEMENTS TO ASPERSE ME AND OBTAIN THESE WARRANTS. HAD THEY ACCURATELY DIPICTED THE TRUTH AND TRUE STATEMENTS, I WOULD LIKE TO BELIEVE THAT THE JUDGE WOULD NEVER HAD GIVEN PERMISSION TO THE DETECTIVES FOR THESE SEARCH WARRANTS WITH INFORMATION THAT WAS CREATED BY THE SUSPECT'S DETECTIVES. THE REPORT SHOULD OF BEEN BASED ON FACTUAL STATEMENTS AND EVENTS, INSTEAD OF THESE DETECTIVES' IMAGINATION. I ASK YOU TO READ THE REPORT AND COMPARE IT TO THE STATEMENTS GIVEN DURING THE TRIAL, AND CONSIDER FINDING THESE WARRANTS VOID, AND REMOVING THEM, AS WELL AS THESE HERESY STATEMENTS.

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SECOND ADDITIONAL GROUNDS FOR CONSIDERATION:
PROSECUTORIAL MISCONDUCT AND
GOVERNMENTAL MISMANAGEMENT FOR
FAILURE TO PROVIDE TIMELY DISCOVERY
AND "TRIAL OF (INDIVIDUAL'S) RIGHTS."

MY SECONDARY ADDITIONAL GROUNDS FOR
IS PROSECUTORIAL MISCONDUCT AND GOVERNMENTAL
MISCONDUCT/MISMANAGEMENT. THE KITTITAS COUNTY
PROSECUTOR'S OFFICE HAVE CONDUCTED THEMSELVES ARBITRARILY
ARBITRARILY, AND RECKLESSLY. THE ACTS OF MISCONDUCT
BY THIS PROSECUTOR HAVE BEEN RECURRENT, PERSISTENT
AND REPRISABLE.

THIS ABRUPT PROSECUTORIAL BEHAVIOR HAS
BEGUN SINCE MY UNWARRANTED ARREST ON MARCH
18TH, 2011 UNTIL THE THIRD SCHEDULE OF MY TRIAL
DATE, AND CONSEQUENTLY FOUR DAYS INTO MY TRIAL. THE
PROSECUTOR AND ADJOINING AGENCIES HAVE CONTINUED TO
WITHHOLD DISCOVERY, AND FAIL REPEATEDLY TO DELIVER
TIMELY AND COMPLETE DISCOVERY. BECAUSE OF THE
ANTICIPATED DELAY AND TACTICS, MY ATTORNEY HAS
FILED MULTIPLE DISCOVERY MOTIONS AND SEVERAL
MOTIONS TO COMPEL DISCOVERY. THE KITTITAS

(2)

COUNTY PROSECUTOR'S OFFICE HAS FAILED TO PROVIDE TIMELY, COMPLETE, ACCURATE AND/OR OF SUCH POOR QUALITY AS TO NOT BE REASONABLY CONSIDERED DISCOVERY.

SEVERAL OF THE DOCUMENTS PROVIDED WERE OF SUCH POOR QUALITY AS TO RENDER THEM UNREADABLE. VIDEO EVIDENCE SUCH AS THE TEVACO VIDEO, WAS NOT CAPABLE OF BEING OPENED AS WELL AS PHOTOGRAPHIC EVIDENCE, AND THE PHOTOGRAPHIC EVIDENCE WAS OF SUCH POOR QUALITY AS TO MAKE IT IMPOSSIBLE TO DETERMINE WHAT THEY DEMONSTRATE NOT ONLY IN TERMS OF DISCOVERY, BUT ALSO AS TO WHETHER OR NOT THIS WAS HOW THEY WERE PROVIDED TO THE JUDICIAL OFFICERS FOR REVIEW.

MY ATTORNEY HAS RECEIVED SEVERAL EMAILS PICTURING THE PROSECUTOR'S OFFICE DELAYS IN PRODUCING EVIDENCE, AND FAILURE TO PROVIDE REPORTS FROM THE MEDICAL EXAMINER, PATHOLOGIST, ANTHROPOLOGIST, AND CERTAIN PORTIONS OF THE DENTAL EXAM. THE REPORT FOR THE DENTAL EXAM WAS PROVIDED ON APRIL 21ST, 2011 THOUGH IT LACKED SUPPORTIVE MATERIALS.

THE KITTITAS COUNTY PROSECUTOR'S OFFICE HAS BEEN SO NEGLIGENT AND INCOMPETENT IN THEIR INVESTIGATION THAT WITHHOLDING DISCOVERY AND FAILING TO PROVIDE TIMELY DISCOVERY ACCORDING TO COURT ORDERS HAS BEEN ONE OF THE TACTICS TO DELAY MY TRIAL AND EXTEND THEIR INVESTIGATION TIME. THIS HAS BEEN THEIR PRACTICE TO FORCE ME TO FORFEIT

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my CONSTITUTIONAL RIGHTS TO A SPEEDY TRIAL, AND THE RIGHT TO BE PROPERLY NOTIFIED OF THE ALLEGATIONS AGAINST ME, AND THE RIGHT TO BE ADEQUATELY PREPARED BY COUNSEL.

I BELIEVE THE PROSECUTOR'S OFFICE HAS VIOLATED MY FOURTH, FIFTH, SIXTH AND FOURTEENTH U.S. CONSTITUTIONAL AMENDMENTS AND ARTICLE I, SECTION THREE, SEVEN & TWENTY-NINE, AND THE TENTH AMENDMENT TO THE WASHINGTON STATE CONSTITUTION IN A TACTIC TO DELAY MY TRIAL TO AFFORD THEMSELVES MORE TIME TO CREATE A CASE THAT TWELVE MONTHS OF PRIOR NEGLIGENT INVESTIGATION HASN'T ALLOWED THEM.

CR 4.7(a) OUTLINES THE PROSECUTORIAL OBLIGATION IN DISCOVERY WHICH PROVIDES IN RELEVANT PART THAT, THE PROSECUTING ATTORNEY SHALL DISCLOSE TO THE DEFENDANT THE FOLLOWING MATERIALS AND INFORMATION WITHIN THE PROSECUTING ATTORNEY'S POSSESSION OR CONTROL NOT LATER THAN THE OMNIBUS HEARING:

- (i) THE NAMES AND ADDRESSES OF PERSONS WHICH THE PROSECUTING ATTORNEY INTENDS TO CALL AS A WITNESS AT TRIAL... TOGETHER WITH ANY WRITTEN OR RECORDED STATEMENTS AND THE SUBSTANCE OF ANY ORAL STATEMENTS OF SUCH WITNESSES;
- (iv) ANY REPORTS OR STATEMENTS OF EXPERTS MADE IN CONNECTION WITH THE PARTICULAR CASE, INCLUDING RESULTS OF PHYSICAL... AND SCIENTIFIC TESTS...;
- (v) AND BOOKS, PAPERS, DOCUMENTS, PHOTOGRAPHS OR TANGIBLE OBJECTS WHICH THE PROSECUTING AUTHORITY INTENDS TO USE IN THE HEARING OR TRIAL OR WHICH

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WERE OBTAINED FROM OR BELONGED TO THE DEFENDANT. THE PRINCIPLES UNDERLYING CRR 4.7 REQUIRE MEANINGFUL ACCESS... BASED ON FAIRNESS AND THE RIGHT TO ADEQUATE REPRESENTATION. THE DISCOVERY RULES ARE DESIGNED TO ENHANCE THE SEARCH FOR TRUTH AND THEIR APPLICATION BY THE TRIAL COURT SHOULD "INSURE A FAIR TRIAL TO ALL CONCERNED, NEITHER ACCORDING TO ONE PARTY AN UNFAIR ADVANTAGE NOR PLACING THE OTHER AT A DISADVANTAGE.

THEY FAILED TO COMPLY WITH THE COURT'S DISCOVERY ORDERS AND CRR 4.7 AS OF JULY 28TH, AUG 2ND, AUG 16TH, DESPITE SEVERAL MOTIONS TO COMPLY AND COMPEL FROM MARCH 18TH, 21ST, 25TH, APRIL 7TH, 11TH, 14TH, 25TH, MAY 6TH, 13TH, JUNE 10TH, JULY 19TH, AND JULY 28TH, FORCING ME TO CHOOSE WHICH OF MY RIGHTS TO FORFEIT AND CONTINUE MY TRIAL FROM 11TH 24TH TO JUNE 31ST, AND EVENTUALLY TO AUG 9TH, 2011, AND DESPITE ALL THIS, THEY STILL COULD NOT PROVE HOW RUSSEL DIED, WHEN HE DIED, OR SHOW ANY RESPONSIBILITY OF MYSELF CAUSING HIS DEATH OR SHOWING ANY INTERACTION BETWEEN US SINCE OUR VERBAL EXCHANGE IN 2009.

THE PURPOSE OF THE DISCOVERY IS TO ENABLE THE RESPONDENT TO PROPERLY PREPARE TO DEFEND AGAINST THE ALLEGATIONS FILED HEREIN AND TO ADEQUATELY PREPARE TO EVALUATE ALL WITNESSES WHO MAY TESTIFY IN THIS CASE, AND TO ELIMINATE THE ELEMENT OF SURPRISE OR THE NEED FOR CONTINUANCE OF THE TRIAL. THEY DENIED

ME THIS ABILITY, AND IN DOING SO MY SPEEDY TRIAL RIGHTS.

COURTS HAVE LONG RECOGNIZED THAT EFFECTIVE ASSISTANCE OF COUNSEL, ACCESS TO EVIDENCE, AND IN SOME CIRCUMSTANCES EXPERT WITNESSES, ARE CRUCIAL ELEMENTS OF DUE PROCESS AND THE RIGHT TO A FAIR TRIAL. THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION REQUIRES THAT PROSECUTORS MAKE AVAILABLE EVIDENCE "FAVORABLE TO AN ACCUSED".... WHERE THE EVIDENCE IS MATERIAL EITHER TO GUILT OR TO PUNISHMENT. THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ADVANCES THE FIFTH AMENDMENT RIGHT TO A FAIR TRIAL.

THAT RIGHT TO EFFECTIVE ASSISTANCE INCLUDES A "REASONABLE INVESTIGATION" BY DEFENSE COUNSEL. IT ALSO GUARANTEES EXPERT ASSISTANCE IF NECESSARY TO AN ADEQUATE DEFENSE. IN CRIMINAL PROSECUTION THE PURPOSE OF THE DISCOVERY RULE IS TO PREVENT THE DEFENDANT FROM BEING PREJUDICED BY SURPRISE, MISCONDUCT, OR ARBITRARY ACTION BY THE GOVERNMENT.

THE DISCOVERY RULE IS TO PROVIDE FOR ACCELERATED DISCLOSURE OF INFORMATION WHICH ULTIMATELY MUST BE REVEALED AT TRIAL AND ITS PURPOSE IS TO PREVENT LAST-MINUTE SURPRISE, TRIAL DISRUPTION AND CONTINUANCES. THE FAILURE OF THE PROSECUTOR TO TIMELY PROVIDE DISCOVERY IS OF CONSTITUTIONAL MAGNITUDE. I WAS DENIED

MY RIGHT TO A FAIR AND UNBIASED TRIAL WHERE THE PROSECUTOR FAILED IN FIRST INSTANCE TO COMPLY WITH THIS RULE BY DISCLOSING TO ME ADDITIONAL INFORMATION OBTAINED FROM WITNESSES AND WHERE I WAS THEN DENIED ANY REASONABLE OPPORTUNITY TO INVESTIGATE AND REBUT NEWLY DISCOVERED INFORMATION.

FURTHERMORE, THE PROSECUTOR'S OFFICE DECISION TO FAIL TO MEET ITS DISCOVERY OBLIGATIONS, AND FAILURE TO COMPLY WITH THE DISCOVERY RULES. WHEN TAKEN TOGETHER, COMPROMISE DEFENSE COUNSEL'S ABILITY TO ADEQUATELY PREPARE FOR TRIAL - A DENIAL OF MY RIGHT TO COUNSEL (WHICH IS) AN INGREDIENT OF A FAIR TRIAL. LIKEWISE THE ABILITY OF COUNSEL TO OBTAIN EVIDENCE AND TO IMPEACH WITNESSES EFFECTIVELY IS PART OF MY RIGHT TO A FAIR TRIAL.

THE PROSECUTION IN THIS MATTER, WITH LESS THAN 18 DAYS BEFORE THE FIRST SCHEDULED TRIAL HAD FAILED TO DISCLOSE THE AUTOPSY REPORT COMPLETE LAB REPORTS, COMPLETE REPORTS FROM LAW ENFORCEMENT OFFICERS WHO INVESTIGATED THIS MATTER, AND MATERIALS FROM THE INVESTIGATION WHICH INCLUDE INTERVIEWS WHICH WERE CONDUCTED AND NOT PROVIDED. ONCE AGAIN, NOW WITH LESS THAN SEVEN DAYS BEFORE THE THIRD SCHEDULED TRIAL DATE, HAS INDICATED SIGNIFICANT EVIDENCE WHICH WAS IN THE STATE'S POSSESSION FOR MORE

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THAN A YEAR WAS BEING TESTED AND REPORTS WERE SUPPOSED TO BE FORTHCOMING. THEIR DECISION NOT TO COMPLETE TESTING AND THEN TO DO SO ON THE EVE OF MY TRIAL, AND FAIL TO PROVIDE CRITICAL EVIDENCE IN ITS POSSESSION, SPECIFICALLY A CELL PHONE WHICH WOULD HAVE BEEN IN THE POSSESSION OF THE PERSON WHO COMMITTED THIS OFFENSE AND OBTAIN PHONE NUMBERS OF DECENDANT'S FRIENDS' CELL PHONES. THIS DECISION NOT TO COMPLETE TESTING AND THEN TO DO SO ON THE EVE OF TRIAL, AND TO WITHHOLD EVIDENCE IS EXACTLY THE TYPE OF MISMANAGEMENT AND MISCONDUCT THAT SHOULD WARRANT DISMISSAL.

THIRD ISSUE OF ADDITIONAL GROUNDS
FOR CONSIDERATION:

PROSECUTORIAL MISCONDUCT FOR
EXTRA-JUDICIAL STATEMENTS TO THE MEDIA AND
CONSTITUTION VIOLATIONS OF MY FOURTH, FIFTH
AND SIXTH AMENDMENTS.

MY THIRD ISSUE OF ADDITIONAL GROUNDS
IS PROSECUTORIAL MISCONDUCT FOR EXTRA-JUDICIAL
STATEMENTS TO THE MEDIA. THESE STATEMENTS TO THE
MEDIA PROVIDED THE PROSECUTOR WITH A POWERFUL
WEAPON TO PREJUDICE MY RIGHT TO A FAIR
TRIAL. THE PROSECUTOR USED THIS OCCASION TO
IMPROPERLY CHARACTERIZE CHARGES, DISPARAGE MYSELF
DISCLOSE UNSUBSTANTIATED EVIDENCE, AND EMPLOY
INFLAMMATORY RHETORIC THAT PRESUMED GUILT. THE
PROSECUTOR USED THESE PRESS RELEASES TO MAKE
IMPROPER ACCUSATIONS AGAINST MYSELF IN AN ATTEMPT
TO SABOTAGE MY NAME AND STANDING IN THE LOCAL
COMMUNITY.

THE PROSECUTOR HAS A "SPECIAL DUTY" NOT
TO MISLEAD, BUT THIS IS THE EXACT UNETHICAL
BEHAVIOR HE HAS LOWERED HIMSELF TO. THE

PROSECUTOR'S USE OF FALSE AND MISLEADING STATEMENTS AND ALLEGED EVIDENCE WAS UNETHICAL, AND VIOLATED DUE PROCESS AND MY FOURTH AMENDMENT RIGHT.

FOR INSTANCE, THE KNOWING USE OF PERJURED TESTIMONY, HERESY, RUMORS, AND UNSUBSTANTIATED EVENTS THAT NEVER OCCURRED, WHETHER UNSOLICITED OR NOT, DEPRIVED MYSELF OF A FAIR TRIAL. WHEN THE EVIDENCE AND STATEMENTS WERE MATERIAL TO GUILT AND PUNISHMENT. ALSO VIOLATIVE OF DUE PROCESS IS THE USE OF PHYSICAL EVIDENCE THAT CREATED A FALSE IMPRESSION OF A MATERIAL FACT.

MISREPRESENTING FACTS TO THE COURT, THE PRESS, AND WITHHOLDING THIS AFFIDAVIT AND DISCOVERY FROM DEFENSE COUNSEL WAS NOT ONLY UNETHICAL, BUT SHOULD BE GROUNDS FOR REVERSAL. THIS REPRESSIVE BEHAVIOR BY THE PROSECUTOR MAY BE CONSIDERED AS A VIOLATION OF MY SIXTH AMENDMENT RIGHT FOR DENYING ME AN IMPARTIAL JURY BY POISONING MY JURY POOL, KNOWING THAT IT IS A SMALL SOURCE, AND THAT PEOPLE USUALLY BELIEVE WHAT IS WRITTEN IN THE PAPERS AND MEDIA.

MY ATTORNEY FILED A MOTION TO ORDER THE RESTRICTION OF THESE EXTRA-JUDICIAL STATEMENTS ON MARCH 25TH, 2011 FROM THE PROSECUTOR AFTER MY ATTORNEY MARK McCRAIN OBSERVED THE DEPUTY

PROSECUTOR PAUL SANDERS PROVIDE THE AFFIDAVIT TO BOB OWENS, A REPORTER WITH THE DAILY RECORD, OUR LOCAL NEWSPAPER. THE DPA THEN SAID "THERE, NOW YOU CAN WITNESS THAT I GAVE THESE TO THE MEDIA!" THE DPA HAS CONDUCTED HIMSELF ARROGANTLY, ARBITRARILY, AND ABUSIVELY, ESPECIALLY CONSIDERING THAT MY COUNSEL WAS DENIED ANY ACCESS TO THIS AFFIDAVIT OR ANY DISCOVERY SHOWING ANY GUILT OR RESPONSIBILITY IN THIS MATTER.

AT THAT HEARING MY ATTORNEY REQUESTED THE STATE COMPLY WITH THE BENCH-BAR-PRESS WIDELINES. THE STATE RESPONDED FIRST THAT IT WAS NOT REQUIRED TO DO SO, BUT THAT IT WOULD NEVERTHELESS DO SO AND THE COURT REJECTED THE REQUESTED ORDER IMPOSING THOSE IMPORTANT PRINCIPLES ON THE PARTIES. AT THE CONCLUSION OF THAT HEARING IS WHEN MY ATTORNEY OBSERVED THE DPA HAND THE AFFIDAVIT TO A REPRESENTATIVE OF THE LOCAL MEDIA. (BOB OWENS) THE MEDIA PROMPTLY PUBLISHED THE DOCUMENT IN ITS ENTIRETY.

THE STATE IN ITS ATTEMPT TO INFLUENCE MY POTENTIAL JURY HAD VIOLATED THE BENCH-BAR-PRESS AND CAUSED A DISTINCT LIKELIHOOD THAT THE PRETRIAL PUBLICITY HAD PREJUDICED ME FROM RECEIVING A FAIR TRIAL. A "FAIR TRIAL" CERTAINLY IMPLIES A TRIAL IN WHICH THE ATTORNEY REPRESENTING

THE STATE DOES NOT THROW THE PRESTIGE OF HIS PUBLIC OFFICE, INFORMATION FROM HIS RECORDS, AND THE EXPRESSION OF HIS OWN BELIEF OF GUILT INTO THE SCALES AGAINST THE DEFENDANT. THESE ARROGANT ACTS OF THE PROSECUTOR AND HIS EXTRA-JUDICIAL STATEMENTS HAVE THREATENED MY RIGHT TO A FAIR TRIAL AND THE ADMINISTRATION OF JUSTICE, AND ANY POSSIBILITY OF ENSURING AN IMPARTIAL JURY.

THE RECKLESS ACTS OF THIS PROSECUTOR AND HIS PUBLICITY TACTICS HAVE INHERENTLY CAUSED THE VERY REAL RISK THAT AN INNOCENT PERSON HAS BEEN WRONGED AND A GUILTY PERSON WAS RELEASED FROM PUNISHMENT BY VIRTUE OF THIS POTENTIAL PREJUDICE THAT THE PROSECUTOR HAS BECAUSE.

KITTITAS COUNTY IS A SMALL, RURAL COMMUNITY OF 40,000 WHERE NEWS TRAVELS FAST, AND BAD NEWS TRAVELS FASTER STILL. THERE IS ONE LOCAL PAPER WHICH IS BOTH THE PAPER OF RECORD FOR THE COUNTY, BUT ALSO THE PRINCIPLE SOURCE OF BOTH ONLINE AND PRINT NEWS. WITH APPROXIMATELY ONE MURDER TRIAL PER DECADE, THE MERE ALLEGATION BECOMES "THE TALK OF THE COUNTY" AND IS AMPLIFIED WHEN THE WEIGHT AND AUTHORITY OF THE PROSECUTOR'S OFFICE AND THE COUNTY'S SHERIFF DEPARTMENT IS PLACED BEHIND THE ALLEGATIONS. THIS ISSUE WAS FURTHER MAGNIFIED

AND COMPOUNDED WHEN THE TELEVISION REPORTERS FROM THE YAKIMA TELEVISION STATIONS ARRIVE, CAUSING A SENSATION EACH AND EVERY TIME THEY APPEAR IN THE COURTHOUSE. FOLLOWED BY THEIR SENSATIONAL HEADLINES: "MISSING ELLENBURG MAN FOUND DEAD.... HIS BROTHER-IN-LAW WAS ARRESTED FOR THE MURDER."

MY RIGHT TO A FAIR TRIAL HAS BEEN FOREVER DAMAGED BY THE STATE'S DECISION TO PROVIDE A DETECTIVE'S CREATED AFFIDAVIT TO THE MEDIA. (BEFORE PROVIDING ANYTHING TO THE DEFENSE). THIS ACTION HAS RESULTED IN A NEAR-IMMEDIATE STORY (POSTED THE SAME DAY THE AFFIDAVIT WAS PROVIDED TO THE REPORTER), WHICH READS: AFFIDAVIT: MURDER SUSPECT, VICTIM IN FEND.

THE STATE, THROUGH ITS RELEASE OF THIS INFORMATION, HAS COMMENTED ON MY PRESUMPTION OF INNOCENCE, RIGHT TO REMAIN SILENT, AND COMMENTED ON THE EVIDENCE WHILE SERVING NO LEGITIMATE LAW ENFORCEMENT PURPOSE. NOTHING IN THIS TACTIC SEEMT TO INFORM THE COMMUNITY OF THE CHARGES, BUT INSTEAD SERVED ONLY AS A MEANS TO INFLUENCE PUBLIC OPINION, SOMETHING THAT HAS FOREVER DAMAGED MY RIGHT TO A FAIR TRIAL.

THERE WERE OTHER AVAILABLE REMEDIES THAT WOULD HAVE EFFECTIVELY MITIGATED THE PREJUDICIAL PUBLICITY AND CONSIDER THE EFFECTIVENESS OF THE ORDER IN QUESTION TO ENSURE AN IMPARTIAL JURY.

AS A RESULT OF THE STATE'S DECISION NOT TO COMPLY WITH THE BENCH-BAR-PRESS GUIDELINES AND ISSUE A POLICE REPORT AS A PRESS STATEMENT IN AN ATTEMPT TO INFLUENCE MY POTENTIAL JURORS, IT IS HARD TO IMAGINE THERE IS A REMEDY WHICH WOULD PROVIDE A MEANS TO A FAIR AND IMPARTIAL TRIAL. HAD THIS COURT INSTRUCTED THE PARTIES TO COMPLY WITH THE GUIDELINES, PERHAPS SOMETHING ELSE COULD HAVE BEEN CRAFTED.

AS A RESULT OF THE DAMAGE ALREADY DONE, I HAVE BEEN DENIED A FAIR AND IMPARTIAL TRIAL AND CONSEQUENTLY A DENIAL OF MY FIFTH AND SIXTH AMENDMENT. BASED ON THE MEDIA COVERAGE, THE STATE'S COMPLICITY IN PROVIDING INFLAMMATORY PUBLICITY TO POTENTIAL JURORS, THE PRETRIAL PUBLICITY AND INFLAMMATORY NATURE OF THE PUBLICITY, THE DEGREE TO WHICH THE PUBLICITY WAS CIRCULATED, THE LENGTH OF TIME THE PUBLICITY HAS BEEN PRESENTED TO THE PUBLIC, THE LENGTH OF TIME BETWEEN THE PUBLICITY AND THE IMPENDING TRIAL, THE FAMILIARITY OF THE FACTS TO THE PROSPECTIVE JURORS AND THE RESULT AND EFFECT UPON THEM, THE CONNECTION OF GOVERNMENT OFFICIALS WITH THE RELEASE OF PUBLICITY, THE SEVERITY OF THE CHARGE AND THE SIZE OF THE VENUE, I WAS INCAPABLE OF RECEIVING A FAIR AND IMPARTIAL TRIAL IN KITTITAS COUNTY AND VENUE SHOULD OF BEEN CHANGED TO YAKIMA COUNTY, BUT WAS OPPOSED BY AN

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OVERZEALOUS Deputy Prosecutor LOOKING TO SEIZE AS MUCH ATTENTION FOR HIS UPCOMING RUN FOR JUDGE AFTER MY TRIAL. THIS MATTER HAS BEEN BEFORE THE CITIZENS OF KLITMAS COUNTY FOR MORE THAN TEN MONTHS BEFORE THE TRIAL, WITH POSTERS IN EVERY SHOP, GROCERY STORE, TELEPHONE POLE IN KLITMAS COUNTY AND WITH SIGNIFICANT MEDIA COVERAGE IN ALL FORMATS.

THE ONLY REMEDIES REMAINING THEN SHOULD OF BEEN THE CHANGE OF VENUE TO YAKIMA COUNTY IN AN ATTEMPT TO RECEIVE A FAIR TRIAL. NOW, THE ONLY REMEDY I CAN CONCERN IS A REVERSAL.

My FOURTH ADDITIONAL GROUNDS IS FOR PROSECUTORIAL MISCONDUCT AND JUROR PREJUDICE AND IRREGULARITIES:

My ADDITIONAL GROUNDS IS FOR PROSECUTORIAL MISCONDUCT AND JUROR PREJUDICE/IRREGULARITIES. My PRESIDING JUROR OR JUROR FOREMAN WAS A MAN NAMED JON LUDDAT, WHO HAD LISTED HIS OCCUPATION ON HIS JURY QUESTIONNAIRE AS BANKER AND DID NOT DISCLOSE THAT HE IS ALSO A REPORTER/WRITER FOR THE DAILY RECORD. THIS IS THE NEWSPAPER OF RECORD FOR KITTITAS COUNTY AND ALSO THE PAPER WHICH RAN SEVERAL PRE-TRIAL STORIES WHICH CONTAINED INFORMATION WHICH WAS NOT ADMITTED IN THE TRIAL.

FURTHER, WHICH PUBLISHED DAILY FRONT-PAGE STORIES ABOUT THIS CASE DURING THIS TRIAL. THIS PRESIDING JUROR, JON LUDDAT, HAS BEEN A WRITER FOR THE PAPER FOR MORE THAN TEN YEARS AND WAS THE PAST SPORTS EDITOR ACCORDING TO MATERIALS THAT MY ATTORNEY AND INVESTIGATOR WERE ABLE TO SOURCE FROM NEWSPAPER EXHIBITS THAT ARE TRUE AND ACCURATE COPIES, RE-PRINTS, AND ARTICLES PRINTED DIRECTLY FROM THE DAILY RECORD.

NEWSPAPER AND WEBSITE.

VOIR DIRE EXAMINATION PROTECTS A DEFENDANT'S RIGHT TO AN IMPARTIAL JURY AND A FAIR TRIAL BY EXPOSING POSSIBLE BIASES, BOTH CONSCIOUS AND UNCONSCIOUS, ON THE PART OF PROSPECTIVE JURORS. RESTRICTIONS ON VOIR DIRE CAN VIOLATE THE SIXTH AMENDMENT AND DUE PROCESS GUARANTEES. INTENSIVE VOIR DIRE, INCLUDING ELABORATE QUESTIONNAIRES AND EXTENSIVE SCREENING, ARE TYPICALLY EMPLOYED IN CERTAIN TYPES OF CASES, PARTICULARLY HIGH-PROFILE CASES INVOLVING WIDE MEDIA COVERAGE, SUCH AS MINE TRIAL. JUDGES ARE AFFORDED VERY BROAD DISCRETION IN CONTROLLING THE NATURE AND SCOPE OF JUROR QUESTIONING. MY ATTORNEY HAD PREPARED A QUESTIONNAIRE THAT WAS MORE EXTENSIVE AND REASONABLY CALIBRATED TO DISCOVER A LIKELY SOURCE OF PREJUDICE, RATHER THAN PURSUING A SPECULATIVE WILL-O-THE-WISP. A JUDGE NEED NOT PERMIT SPECIFIC QUESTIONS DESIGNED TO ILLUMINATE JUROR'S FEELINGS AND ATTITUDES AS LONG AS MORE GENERAL QUESTIONS ADDRESS AREAS OF CONCERN.

HOWEVER, WHILE THE CONSTITUTION "DOES NOT DICTATE A CATECHISM FOR VOIR DIRE, GENERAL QUESTIONS AS TO A JUROR'S ABILITY TO BE FAIR AND FOLLOW THE LAW MAY BE INSUFFICIENT TO DETECT DISQUALIFYING PREJUDICE. WHEN IMPROPER OR PREJUDICIAL REMARKS ARE MADE BY ONE PROSPECTIVE JUROR OR JURY

FOREMAN, AND OVERHEARD BY OTHERS MAY PREJUDICE A DEFENDANT'S ABILITY TO RECEIVE A FAIR AND IMPARTIAL TRIAL.

THE PRESIDING JUROR, A JOURNALIST FOR THE DAILY RECORD, HAD PUBLISHED TWO STORIES DURING THE TRIAL. THIS JUROR DID NOT DISCLOSE ON HIS JURY QUESTIONNAIRE THAT HE WAS EMPLOYED AS A JOURNALIST FOR THE DAILY RECORD. THE NEWSPAPER SUPPLIED A FULL-TIME WRITER TO ATTEND EACH DAY OF PRE-TRIAL AND EACH DAY OF THE EIGHT-DAY TRIAL. THE NEWSPAPER RAN A FRONT-PAGE STORY EACH DAY OF THE TRIAL AND MAINTAINED THE STORY ON THEIR WEB PAGE WITH A RUNNING TIME-LINE AS WELL AS DETAILED INFORMATION FROM THE TRIAL. ALL THE INFORMATION SUPPLIED TO THE NEWSPAPER AND CURRENT INFORMATION WAS PUBLISHED AND WOULD BE KNOWN TO THIS REPORTER/JUROR AND MUCH OF THIS INFORMATION WAS NOT RELEASED TO THE JURORS TO CONSIDER. GIVEN THE COURT'S INSTRUCTION TO THE JURY AND THIS JUROR'S CONNECTION TO THE COVERING NEWSPAPER, THERE IS A JURY IRREGULARITY SUCH THAT A NEW TRIAL SHOULD OF BEEN GRANTED.

ADDITIONAL FACTS WERE SUPPLIED AT THE TIME OF A HEARING FOR MY CRR 7.4/CRR 7.5 MOTIONS ON AUGUST 29TH, 2011 REGARDING POTENTIAL JURY MISCONDUCT AND ADDITIONAL INFORMATION BEING SUPPLIED TO A JUROR. IN SHORT, MY COUNSEL HAD BEEN CONTACTED BY A COMMUNITY MEMBER

WHO INDICATED A JURY MEMBER WAS ENGAGED IN A CONVERSATION WITH ANOTHER COMMUNITY MEMBER REGARDING THE FACTS OF THIS CASE CONTRARY TO THE COURT'S INSTRUCTIONS. APPARENTLY THIS JUROR WAS OVERHEARD DISCUSSING THE CASE AND ENGAGED IN A CONVERSATION REGARDING THE FACTS THEREOF. IT WAS UNCLEAR WHETHER THE COMMUNITY MEMBER SUPPLIED ADDITIONAL FACTS TO THIS JUROR. HOWEVER THIS MATTER WAS WIDELY COVERED IN THE NEWS-PAPER. (DAILY, FRONT-PAGE STORIES)

CR 7.5 PROVIDES FOR A NEW TRIAL FOR ANYONE OF THE FOLLOWING CAUSES WHEN IT AFFIRMATIVELY APPEARS THAT A SUBSTANTIAL RIGHT OF THE DEFENDANT WAS MATERIALLY AFFECTED BY

- (1) RECEIPT BY THE JURY OF ANY EVIDENCE, PAPER DOCUMENT OR BOOK NOT ALLOWED BY THE COURT;
- (2) MISCONDUCT OF THE PROSECUTION OR JURY;
- (3) NEWLY DISCOVERED EVIDENCE MATERIAL FOR THE DEFENDANT, WHICH THE DEFENDANT COULD NOT HAVE DISCOVERED WITH REASONABLE DILIGENCE AND PRODUCED AT THE TRIAL;
- (4) ACCIDENT OR SURPRISE;
- (5) IRREGULARITY IN THE PROCEEDINGS OF THE COURT, JURY, OR PROSECUTION, OR ANY ORDER OF COURT, OR ABUSE OF DISCRETION, BY WHICH THE DEFENDANT WAS PREVENTED FROM HAVING A FAIR TRIAL;
- (6) ERROR OF LAW OCCURRING AT THE TRIAL AND OBJECTED TO AT THE TIME BY THE DEFENDANT;
- (7) THAT THE VERDICT OR DECISION IS CONTRARY

TO LAW AND THE EVIDENCE; (8) THAT SUBSTANTIAL JUSTICE HAS NOT BEEN DONE. BECAUSE OF THESE IRREGULARITIES AND MISCONDUCT OF THE PROSECUTION AND JURY, I BELIEVE THE ONLY REMEDY IS REVERSAL.

RESPECTFULLY SUBMITTED ON NOVEMBER 19TH, 2012

Chris M. Foley
CHRIS M. FOLEY # 352358

FILED

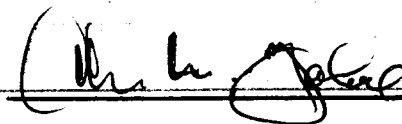
NOV 21 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

APPELLATE COURT FOR THE STATE OF WASHINGTON
DIVISION III

AFFIDAVIT OF MAILING

I CHRISTOPHER FOLEY AM PROVIDING AN AFFIDAVIT OF MAILING TO THE APPELLATE COURT OF WASHINGTON STATE ON THIS 19TH DAY OF NOVEMBER, 2012. I HAVE DEPOSITED MY SAC AND THIS AFFIDAVIT OF MAILING (PROOF OF SERVICE) INTO THE MAIL OF THE UNITED STATES THROUGH THE MAIL SYSTEM OF AIRWAY HEIGHTS CORRECTIONAL FACILITY.



CHRIS M. FOLEY

11-19-12