

**Case # 29021-2**

**Statement of Additional Grounds  
For Review**

**State of Washington  
v.**

**Rex Gregory**

**COPY**

FILED

MAR 08 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 29021-2-III  
COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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STATE OF WASHINGTON,  
Plaintiff/Respondent,

V.

REX GREGORY  
Defendant/Appellant.

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APPELLANT'S ADDITIONAL GROUNDS FOR REVIEW

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rejected  
rejected  
rejected

STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON, )  
 )  
 Respondent, ) No: 09-1-00177-6  
 ) 290212  
 v. ) STATEMENT OF ADDITIONAL  
 ) GROUNDS FOR REVIEW  
 Rex Gregory )  
 Appellant. )

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I, Rex Gregory, have received and reviewed the opening brief 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

Asotin County Superior Court Commissioner John Henry said, "I'm not going to be the judge to turn you loose on the community," which was printed in the Lewiston Morning Tribune for mass consumption and had the very real probability of contaminating the jury pool from the outset, and became a "fact per se." Such an extrajudicial comment violates CJC Cannon 3(a)(7), at the least.

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Additional Ground 2

The testimony of the police and multiple witnesses have many discrepancies. The police's 7:45 AM v. Charleesa Grayson's 6:35 AM; the officer's 2 officers being present v. JoDee Gregory's and Curtis Bauer's 3 officers present. Sgt Muszynski said he DID point out the Defendant swallowing and had merely disagreed with Defense's wording in the mistrial, yet Mr. Laws also asked, "Did you ever point that (swallowing) out to him (the Defendant)?" Also, the duplexes are adjoined so Chief Hastings could not have "kept an eye" on the Defendant's residence.

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

Dated this 7th day of March, 2011.

Respectfully Submitted,  
M. W. [Signature]  
Appellant

### Additional Ground 3

A judge has an Affirmative Constitutional Duty Obligation to ensure a Fair Trial for the Accused that is both a fundamental and a structural requirement in the history and tradition of our System of Law. In Washington v. Rex D. Gregory 09-1-00177-6, His Honor Judge Lutz was not just indifferent to Constitutional Law but undeniably damaged Due Process for me in Asotin County. Any other reasonable Judge would interpret these Acts/Omissions as deliberately indifferent and a direct Violation of Due Process that undermines Fair Trial Rights by removing the Legal Standard of Presumption of Innocence, and constitutes Structural and Fundamental Errors of Law. Thus an appearance of Prejudice by statements and conduct on the Record infused the Trial Proceedings with an Element of Bias from the outset. The unfortunate result is that no Fair Trial is possible in Asotin County and the State cannot prove otherwise in consideration of the earlier Mistrial WA v. Rex D. Gregory 09-1-00150-4. But for these Malfeasances, there is no doubt that the trial outcome would have been completely different, which will be obvious upon a more complete inquiry into a complete record, with regard to these facts:

In October 2009 during a Protective Order Hearing, the Accused stated that he "won't be able to go home or visit (his) sister-in-law (due to a 200' distance requirement);" His Honor Judge Lutz replied "You should have thought of that before," in front of the court, court officers and the public. This may have shown an appearance of Prejudice and reasonably

### Additional Ground 3 (Continued)

raised the question of His Honor's impartiality, which manifests the error of Bias.

His Honor Judge Lutz failed to hold any hearings on prior mistrial evidence before rendering a decision to allow everything in, altering an Evidentiary Rule or Procedure of Law for the Courts that completely affected the outcome of the final trial, and conveyed the appearance of Bias and Prejudice, considering that the Court Officers were all aware that His Honor Judge Acey had been removed from earlier Court Proceedings at the Accused's request.

This would raise a concern that His Honor's impartiality may reasonably be questioned after these various Fundamental and Structural Errors of Law that would have undermined at least the confidence of the Court Officers in the Proceedings; the appearance of impropriety would be a given with the other Court Functionaries, if not the Public itself, which would interject Bias, or the appearance of it, to an observant, uncontaminated Jury.

His Honor Judge Lutz did not admonish the Prosecutor Curt Liedkie in a Pre-Trial Hearing for yelling in the Court "He (the Accused) is a Child Molester!" in which the Accused attended by Video Teleconference and the Press was known to be present. Here, an element of doubt about Fair, Impartial, Objective Reasonableness begins to be Publicly Evident, Manifesting Unfair Advantage over the Accused.

His Honor Judge Lutz did not allow the Accused's Mental Health Counselor, Mark McKarcher, to testify on his

### Additional Ground 3 (Continued)

his observations and opinions of the Accused and his behavior with S.A.C., and her behavior and interaction with the Accused, and that in his overall professional opinion the Accused did not commit the alleged crimes. That denied a critical element of the Accused's Defense (goes to credibility, veracity of the Accused) and violated CJC Canon 3(a)(4) "Judges should accord to every person who is Legally Interested in a Proceeding, or that person's Lawyer, Full Right to be heard according to the Law" and in considering the foregoing, the cumulative effect to at least the Court Officers, and now the Jury, is one of Bias or Prejudice, creating a Loss of Rights, which alters completely the outcome of the Trial.

His Honor Judge Lutz did not issue a warning or attempt any form of control when the Prosecutor yelled over the Defense Counsel's Objection (relative to Transcripts from the prior Mistrial being used as study guides) in front of the Jury in court; violates CJC Canon 3(c)(2) "Judges having actual knowledge that a Lawyer has committed a Violation of the Rules of Professional Conduct should take Appropriate Action" as quoted; this created the Appearance of Bias, which is the denial of Rights, in front of the Jury.

His Honor Judge Lutz had said numerable times in the Pre-Trial Motions that he would not allow any of the Mistrial Record or references to it at all. He did not, however, admonish Prosecution for giving witnesses the Mistrial Transcripts to take home as Study Guides; CJC Canon 2 as quoted "Judges should avoid impro-

## Additional Grounds 3 (Continued)

priety..." at least the Court Officers would have been affected by His Honor's apparent indifference in the sum total of the Court's Proceedings at this point, undermining the Public's confidence in Fair Trial irrevocably after the newspaper article quotes.

His Honor made Extra-Judicial Remarks during Trial Proceedings when the Jury was not present, but the Court and its Officers were still assembled, as quoted "... even the Defendant (still) has rights" and LAUGHED; this was after he had been talking about Witness Rights to Due Process, as well. This would raise a reasonable belief that His Honor was Pre-Decided and brought Bias into the Proceedings undeniably at this point and especially with regard to the Court Officers, Causing a Deprivation of Rights. CJC Canon 2 (a) as quoted: "Judges should respect and comply with the Law and act at all times in a manner that promotes public confidence in the Integrity and Impartiality of the Judiciary..." (emphasis added) and CJC Canon 2 as quoted: "Judges should avoid Impropriety and the Appearance of Impropriety in all their actions." (Emphasis added) Canon 3 (a) (5) as quoted: "Judges shall perform judicial duties without Bias or Prejudice." CJC Canon 3 (a) (7) as quoted: "Judges shall not... make any public comment that might reasonably be expected to affect (a proceedings) outcome or impair its Fairness or make any nonpublic comment that might substantially interfere with a Fair Trial or hearing..." and, in consideration of the Cumulative Effect of these issues, CJC Canon 3 (d) (1) as quoted: "Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned..." emphasis added.

His Honor Judge Lutz was diligent in quoting Rules of



### Additional Grounds 3 (Continued)

Evidence to Defense Counsel, but allowed Prosecution to have latitude for Prosecutorial Advantage during the Rebuttal of Accused's wife... reasonable inference of conveying a "blessing" to Prosecution and a "curse" upon Defense, creating a Rights Deprivation in a Legal Matter at Issue in what is already a very Prejudicial type of charge, and Criminalization. The question of an Abuse of Discretion may rise, but CJC Canon 3 states as quoted: "Judges shall perform the duties of their Office Impartially and Diligently," emphasis added. His Honor did not remonstrate Prosecution's use of Accused's Mistrial Testimony in his Rebuttal Closing Statements which contradicted his earlier warning to Prosecutor to "stay strictly away from the Defendant's prior testimony." CJC Canon 3 (a) (1) "Judges should be Faithful to the Law..." as quoted. Our system of Law is a Procedural and Constitutional System; His Honor could not be unaware of his Affirmative Duty Obligation, and if he disagrees with our System of Law, needs to engage in Lawful Reform, not revolt.

His Honor imposed an Unlimited Fine, above what the Law allows as a punishment, manifesting Excessive Sentencing and Violating the Ban on Cruel and Unusual Punishment. Court Officers and the Public believe a Judge "knows more" about the law and is the "Supreme Court Officer," so the hostility manifested and deprivations caused would be presumed justified based on a reliance or belief that His Honor "knows something" we don't and has a "good reason" for his Extra-Judicial behaviors; CJC Canon 2 (a) as quoted: "Judges should Respect and Comply with the Law and Act at All Times in a Manner that promotes Public Confidence in the Integrity and Impartiality of

### Additional Grounds 3 (Continued)

the Judiciary," and indeed, in the Law itself. (Comment and emphasis added.)

His Honor Judge Lutz did not correct Error of Law regarding the Fact that Indigent Defense Counsel was simultaneously engaged in Prosecution of State of Washington v. Lonnie Cox as a Prosecutor at the time he was working as Defense Counsel in State v. Gregory, whose matters are at issue herein. See CJC Canons 2, 2(a), 3, 3(a)(1), and, most appropriately, CJC Canon 3(c)(2) as quoted: "Judges having Actual Knowledge that a Lawyer has committed a Violation of the Rules of Professional Conduct should take Appropriate Action," emphasis added. In a County like Asotin, a layperson would reasonably infer His Honor knew about the various cases in the Courts of this small town community.

His Honor allowed Prosecution to introduce a New Argument in Rebuttal Closing despite Defense Counsel's Objection. CJC Canon(s) 3 as quoted: "Judges shall perform the duties of their office Impartially and Diligently..." (emphasis added); Canon 3(a)(1) as quoted: "Judges should be Faithful to the Law and Maintain Professional Competence in it..." and Canon 3(a)(5): Judges shall perform Judicial Duties without Bias or Prejudice." The failure to Discharge a Legally Required Duty creates a Due Process Deprivation of Constitutional Rights Expectations; in this case, it was the final Prejudicial Nail in the Coffin of Bias that was an Engineered Result of His Honor's Prejudice that caused Hatred, Contempt, and Ridicule to enter the Court of Asotin County and spread to the Community in General: Fair Trial was not possible from the outset in Asotin County, and the

### Additional Grounds 3 (Continued)

State cannot now prove otherwise. These are all Events of Constitutional Magnitude, and "the entire history of this Case erodes Confidence in our system of Law," C.F. U.S. v. Bosch, 952 F2d 1546, 1515 (9th Circ. 1991). "Prejudice occurs when, but for deficient performance (His Honor's willful, deliberate, malicious misconduct(s)), there is a Reasonable Probability that the Outcome would have been Different," emphasis added. These Acts/Omissions created a chain of Systematic Errors that multiplied upon themselves until the General/Specific Intent was reached: Guilty Verdict at all costs; and the imposition of unjust and oppressive Excessive Punishment is a fair indicator of Judge Lutz's State of Mind. As criminal procedural law was not respected by the Court Officers and the Accused's Rights were violated, it should be impossible to legally convict an accused of an alleged violation of Criminal Law.

## Additional Ground 4

Defense Counsel rendered ineffective Representation to Mr. Gregory due to a Strickland Violation in which Counsel's Performance fell below an Objective Standard of Reasonableness. At first glance it may seem that the Issues from Additional Grounds 3 with regard to His Honor Judge Lutz's Prejudicial Remarks and Differential Treatment(s) of the Accused that introduced a Bias had influenced Defense Counsel, but further inquiry has revealed that Defense Counsel knowingly engaged himself as a Prosecutor in Asotin County and Defense Counsel on separate cases involving the same Courts and Court Officers, and did not recuse himself as would have been appropriate in these matters. *Strickland v. WA*, 466 U.S. 688 (1984), Counsel's Ineffective Representation and Deliberate Indifference being thus somewhat reasonably explained, the fact remains that no Motion for Mistrial was entered upon Prejudice for obvious Reasons, the Probability exists of a very different outcome of the Trial if a deprivation of Rights had not occurred. "As such claims may be heard on Appeal when the Determination doesn't require an expansion of the Record," the Accused wishes to present the following for the Court's Review and Consideration:

That Ineffective Assistance is an Issue of Constitutional Magnitude, and on the following grounds, Ineffective Assistance of Counsel is Affirmed:

Ineffective Assistance at Trial was rendered in the Lack of a Trial Strategy, and the violation of the Defendant's fundamental right to control/require Assistance from Counsel that is Vigorous, Assertive, and Adversarial to be effective. Counsel did not get a Video Record of Defendant going into Asotin County

## Additional Ground 4 (Continued)

Jail in spite of Accused's request to produce at Trial to challenge veracity of Court Officers engaged in Pre-Trial Arrest and Detainment of the Accused. Under RCP 1.2, Duty to Abide was not observed, contributing greatly to a Nonlegal Conviction. Prejudice occurs when, but for Counsel's Deficient Performance, there is a Reasonable Probability that the (trial) outcome would have been different." In re Personal Restraint of Pirtle, 136 Wn. 2d 467, 487, 965 P. 2d 593 (1998).

Counsel used "Bully Tactics" until His Honor Judge Lutz intervened; Counsel was objecting over and over, repetitiously vexing the Prosecutor and dropping questioning at a point seemingly advantageous (but not advantageous), introducing a Bias of the Jury against the Accused. This presented more Ineffective Assistance: Rebutted Effective Presumption, Deficient Performance upsetting Adversarial Defense, no tactical reason(s) existed for his conduct; Conflict: Negligence due to Ineffective Assistance due to no trial strategy.

"Counsel's performance is deficient when it falls below an Objective Standard of Reasonableness," State v. Stenson, 132 Wn. 2d 668, 705, 940 p.2d 1239 (1997) cert. denied U.S. 1008 (1998). In Trial Proceedings, Defense Counsel did not attempt to correct the Prosecution's misrepresentation of facts in a "duct taping incident," an element in witness veracity; this is a Conflict: Knowledge. To challenge veracity consistency is Counsel's Function. Ineffective Assistance in this crucial challenge goes to Conviction. As quoted: "Failure to Cross-Examine, object to instructions, present testimony, and object to sentencing are all subject to Ineffective Assistance of Counsel Analysis." State v. Kylo, 166 Wn. 2d 856, 862, 215 p.3d 177 (2009).

During the last half of the Prosecutor's Rebuttal Closing Statements,

#### Additional Ground 4 (Continued)

Defense Counsel sat with his head down and eyes closed, creating a Prejudicial Effect, introducing Bias. This is clearly deficient performance in a Defense Counsel's Function that upset Adversarial aspect of defense, there was no Tactical reason for conduct, and conflict is negligence. "Effective Assistance of Counsel is guaranteed" under Federal and State Constitutions: see U.S. Constitutional Sixth Amendment, Washington Court Article I, § 22; Appellant must show that (1) Counsel's Performance was deficient, and (2) the deficient performance Prejudiced him."

Defense Counsel Rick Laws was requested by the Appellant to fill out a Witness Statement regarding the incomplete transcripts and has not responded despite numerous efforts. Conflict: Mental State, Conflict: Knowledge; deficient in Defense Counsel's Function by Ineffective Assistance. "Had Court Officers acted as Constitutionally Mandated, there is a Reasonable Possibility that Trial outcome would have been different... the entire procedural history of this case erodes confidence in our system of law." Cf. U.S. v. Bosch, 952 F.2d ~~1546~~, 1515 (9th Circ. 1991). The ineffective assistance of Counsel precluded necessary objections being raised, however the issue may be considered on Appeal when the Trial Record establishes the Claim, and no necessity of prior objection being raised.

Defense Counsel seems to have his reasons, too: he acted as a Prosecutor in W.A. v. Lonnie Cox (Manufacture of methamphetamine with a child present) in December, 2009 - January, 2010 in Asotin County. The conflict presents as Mental State of Intent, affects informed decisions, knowledge, upsets adversarial element and is a Constitutional Violation of Statutory Duty Obligation to Ensure

### Additional Ground 4 (Continued)

Defendant's Rights under U. S. Constitution are protected by Action in Good Faith, Due Diligence to discharge Duty Obligation. Additionally, Powell v. Alabama (1932) upheld the Right to Appointed Counsel that is Effective, Vigorous, and Competent; this was not the case here.

## Additional Ground 5

The Defendant was interrogated, arrested, and brought to Asotin County Jail by an Asotin County Sheriff's Department Corrections Officer. The restraints were squeezed so tight (the officer used both hands to squeeze each manicle into the flesh of the Defendant's wrists) that they left marks visible for over 10 minutes and had cut off circulation even though they were worn for only about 2 minutes. After the restraints were removed, C.O. Rudy would not look at the Defendant's wrists to verify the marks and instead locked him in a holding cell for about an hour so the marks would dissappear. The Defendant believes that the Arresting Officer's name is Snyder and that he has since been hired by Asotin County as a Patrol Officer sometime around January, 2010. The interrogation and arrest by a non-certified police officer is, at best, a serious violation of police procedure.



#### Additional Ground #6

The honorable Mr. Lutz violated CrR 6.4(e)(1) by allowing the defense and prosecution each only 3 peremptory challenges during "voir dire." He also gave himself 3 peremptory challenges. This allowed further pollution of a jury already polluted from extra-judicial comments made by the honorable Mr. Henry and information Mr. Liedkie made available to members of the press by his unnecessary comments during hearings leading up to the trial, by limiting both the defense's and the prosecution's ability to rid the potential jury of possible prejudiced jurors that could give a biased verdict and allowing a person that would seem prejudiced to any reasonable person viewing both his treatment of both counsels and comments made from the bench towards the defendant, partial control of the selection of the actual jury. It is possible that, as Asotin County's municipal court judge, the honorable Mr. Lutz forgot that he was presiding in a superior court case, but any reasonably diligent judge would know that CrR 6.4(e)(1) specifically gives 6 peremptory challenges for offenses punishable by incarceration under DOC supervision, or would at least check.

The honorable Mr. Lutz also violated CrR 6.5 by not allowing even 1 peremptory challenge to any of the two alternate jurors. CrR 6.5 specifically gives one peremptory challenge for each alternate juror and does not distinguish between the superior and municipal courts. Any reasonably diligent judge would know this.

Additionally, one alternate juror was abhorrent to the defense as he stated at the beginning of his questioning in front of the other jurors, "if someone doesn't testify, then they must be guilty." He then proceeded to argue his point to Mr. Laws, who was trying to make the point to the entire potential jury that the defendant's right to remain silent included not having to take the stand for any reason, until both were interrupted by the judge. Any other reasonable judge would have dismissed this potential juror for cause at this time. This was not done. When questioned separately later, the potential juror began with the same opinion until it became obvious that he would be removed from the jury pool and changed his opinion according to what the honorable Mr. Lutz told him. All this violated the accused's right to an impartial jury, thus negating his fair trial rights.

# Kidnapping defendant plans to fight charge

## Clarkston man accused of holding girl in van

By Brandon Macz of the Tribune  
Tuesday, September 29, 2009

Rex D. Gregory broke down in tears before Asotin County Superior Court Commissioner John Henry on Monday as he was arraigned on one charge of second-degree kidnapping with sexual motivation.

Gregory, 36, of Clarkston, was arrested last week based on allegations he invited a 14-year-old girl into a van, where a witness said she was held down and released after shouting to be let go.

Richard Laws was appointed as Gregory's defense attorney Monday, and asked that his \$250,000 bond be lowered.

"He has no criminal history," Laws argued. "He's anxious to deal with these allegations, which he's denied from the very beginning."

Deputy Prosecutor Curt Liedkie argued two unrelated allegations of sexual misconduct between Gregory and a relative in 2008 and early 2009 made him a threat to the community and his bond should not be lowered. Henry decided in favor of the prosecution.

"I'm not going to be the judge to turn you loose on the community," Henry told Gregory, who appeared via video conference from the Asotin County Jail.

After Gregory's arraignment, Laws said his client was being charged based on testimony from a witness which didn't match statements made by the alleged victim. He said the alleged victim never claimed anything sexual was attempted either verbally or physically.

Should the case go to trial, Laws said he didn't believe prior allegations against Gregory could be used against him by the prosecution, especially since he was never charged in those matters.

"I don't believe those are admissible," he said. "He was cleared."

Gregory's next appearance in Asotin County Superior Court is set for Monday.

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*Macz may be contacted at [bmacz@imtribune.com](mailto:bmacz@imtribune.com) or*

1/14/2011

(208) 848-2275.

Kidnapping defendant plans to fight cha...