COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ROBERT J. MADDAUS, Appellant.	NO.41795-2-II AMENDED STATEMENT OF[fn.1] ADDITIONAL GROUNDS FOR REVIEW

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

Additional Ground 1

THE TRIAL COURT VIOLATED MR. MADDAUS'S RIGHTS TO: DUE PROCESS UNDER THE FIFTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 3; EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 22; EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT, WHEN IT FAILED TO DISMISS THE CHARGES AGAINST MR. MADDAUS FOR GOVERNMENTAL MISCONDUCT PURSUANT TO CrR 8.3.

Mr. Maddaus's, Appellate Counsel, Jodi R. Backlund, in the Appellant's Opening Brief (pgs. 38-42), stated Mr. Maddaus's case must be remanded back to the Superior Court to determine whether or not government misconduct infringed his Sixth and

fn.1: On January 17, 2012, this Court, issueed a ruling stating: Appellant may amend his statement of additional grounds for review, and may append copies of the Power Point slides to which he objects to his statement.

Fourteenth Amendment right to counsel in a manner that pervaded the entire proceedings.

However, there is clearly already enough evidence in the record before this Court to establish governmental misconduct, warranting the reversal and dismissal of Mr. Maddaus's charges.

In his Supplemental Motion and Declaration to Continue, filed 12-17-10, Mr. Maddaus's trial Attorney, Mr. Woodrow, states that: "On Tuesday I went to the prosecutor's office to speak to a prosecutor. I was advised by the receptionist that they had a letter written by Maddaus and addressed to me that was being held by the prosecutor's office. Bruneau directed the receptionist to make a copy of the letter and envelope. I was never notified. Why did the prosecutor keep a copy of this letter. Why was it read when clearly it was addressed to me. I was never advised of the letter until I just happened to drop by a day later. The original letter is in my office and was given to me by Maddaus a few months ago. Maddaus has a copy in his cell. The question is how did this letter get to the prosecutor's office and why did they read it[1] (fn.[1]The prosecutor had to have read the letter. There was no signature on it and one would have to be familiar with the case to conclude that this was written by Maddaus.) and why did they copy it and keep the copy in their office in an unsecured location." "The letter goes into detail about the allegations surrounding the crimes Maddaus is charged with. I need time to investigate this serious allegations. I have read cases that call for a dismissal of a case based upon the violation of attorney client priviledge. The letter should have been mailed to me without a copy being made by the prosecutor. It should not have been read. My understanding is the letter is being "maintained" by the receptionist behind his desk. Anyone in the office could read the document. I examined the original to make sure my copies were accurate. This may result in the disqualification of the prosecutor's office now. Later I intend

to ask this court to dismiss this action based upon the invasion (ongoing) of the attorney client priviledge. Another inmate has been litigating an issue surrounding copies that are made of their legal work. That inmate is asserting that the jail is making a copy of his work and sharing this with the prosecutor. It appears after reviewing Mr. Harkom's declaration that there appears to be a lot of confusion over use of the copy machine. This issue may involve Maddaus. At this point it is too early to tell. There are also issues over searches and seizures of legal paperwork by the jail. I have not had an opportunity to explore these issues with Maddaus. Maddaus did have his legal work copied and he had copies of the letter in question in his cell." "If counsel is not granted a continuance of the trial date in his opinion based upon conducting numerous trials including murder trials both as a prosecutor and as a defense attorney for nearly 20 years he will be ineffective as an attorney for Mr. Maddaus.". Supplemental Motion and Declaration to Continue, filed 12-17-2010, CP 209-210.

In his Motion and Declaration to Continue and Dismiss, filed 12-20-2010, Mr. Maddaus's trial Attorney, Mr. Woodrow, states that: "I had requested that Maddaus prepare a detailed time-line of the events surrounding his actions regarding his current charges. He undertook this chore and produced the first installment which is now sitting in the prosecutor's office sometime in September or August." "In order for Maddaus to make copies of the letters and materials he must give these documents to a gaurd (Thurston County Deputy Sheriffs / Court Officers) and the gaurd will copy the items." "The documents are taken and sometimes kept overnight." "The letter in question was not sent by an inmate. All inmate mail is censored. Due to Maddaus' (witness) tampering charges all of his mail is censored. 250 pages or so of mail was copied and given (without warrant or court order) to Detective Johnstone and provided to counsel as part of discovery a few days before Maddaus last trial. What this means

is the jail is used to copying and giving Mr. Maddaus' mail to law enforcement. This letter in question was in an manilla envelope. This envelope had a label on it. The address was written by a felt tip marker. I do not believe inmates have access to labels and felt tip pens." "Sometimes Maddaus would hand me his material and sometime he would mail his material. There was a time when Maddaus would tell me mailed me a letter but I did not receive it. Usually a couple weeks later I would receive the letter in question." "The phone that Maddaus use to was an intercom. Maddaus would have to yell into the device in order to speak with me. Maddaus would tell me that my responses could be heard by others in the tank.". Motion and Declaration to Continue and Dismiss, filed 12-20-2010, CP 273-277.

On 12-16-10, @ 10:41 AM, Sgt. Dhuyvetter, with the Thurston County Sheriff's Office, assigned to work at the Thurston County Jail, sent an email to Prosecutor Bruneau, requesting any information on the letter from Maddaus to his Attorney, that had been received by the Prosecutor's Ofiice. Because, Maddaus, had filed a grievance, alleging that our staff had made extra copies of his legal materials and provided them to your office. See email attachments to Motion to Dismiss 8.3(b), filed 01-07-11, CP 373.

On 12-16-10, @ 11:30 AM, Prosecutor Bruneau, in response to Sgt. Dhuyvetter's email, directed Isaac Jarrett, the receptionist that was maintaining custody of the letter, to "enlighten the Sgt. as to what came to us in the mail.". Email Attach., CP 375.

On 12-16-10, @ 11:36 AM, Prosecutor Bruneau, replied to Sgt. Dhuyvetter, stating in part: "Isaac Jarrett, our receptionist, will enlighten further."..."There are many possible suspects: the defendant himself as well as every inmate in the jail. I have received an **unprecidented number** of kites from inmates offering up information about Maddaus in exchange for leniency. Thus, I suspect that the stuff -- assuming it's legitimate -- came from an inmate, if not Mddaus himself. Of course, Maddaus and his

lawyer may blame jail staff -- that's what they do.". (emph. added), Email Attach., CP 374.

On 12-16-10, @ 11:40 AM, at the direction of Prosecutor Bruneau, Isaac Jarrett, replied to Bruneau, stating: "Done, I faxed him a copy of everything including the declaration.". An hour and 29 minutes later @ 1:09 PM, Bruneau responds: "Wait a minute -- you didn't send a copy of the "letter", did you?". Email Attach., CP 376.

On 12-16-10, @ 1:16 PM, Prosecutor Bruneau, emailed Sgt. Dhuyvetter, frantically stating: "I just learned that Isaac Jarrett mistakenly forwarded you a copy of the "letter". Please do not review it. Please erase it. Assuming it is truly a communication from Maddaus to his lawyer it is "privileged", and no one should invade that relationship. I don't know if it is legitimate, but don't review the "letter".". At 1:18 PM, Bruneau, sends Sgt. Dhuyvetter another email stating: "Sgt. would you please acknowledge receipt of this request and your acknowledgement. My thanks.". At 1:58 PM, two-hours and 20 minutes after Mr. Maddaus's letter to his Attorney, was faxed to the jail, Sgt. Dhuyvetter replied stating: "I acknowledge receipt of this message. The letter has not been reviewed. After receipt of your e-mail I have shredded the documents...". Email attachments to Motion to Dismiss 8.3(b), filed 01-07-11, CP 371.

On December 21, 2010, at a Motion to Continue and Dismiss hearing, based upon the "letter", Prosecutor Bruneau stated to the Judge: "The letter that we're referring to came to the office through the US mail. It had no return adress on it. One of the duties of Mr. Jarrett is to open all incoming mail and direct it appropriately. Apparently he opened that letter. He reviewed it, determined that it was some kind of coorispondence from Maddaus to Woodrow. He told me about it. **I told him I don't want to see it. I don't want to hear about it. Don't talk to anyone about it and let's just freeze-frame this thing,** seal it up copy it, send

a copy to Mr. Woodrow so he knows what's been going on, and seal it up because it might be evidence of wrong -- certainly evidence of wrongdoing. **But it might be evidence of a crime.**". Motion Hearing RP (12-21-10) 70.

In a Thurston County Sheriff's Office, Incident Report, dated, 12-21-10, Sgt. K. Clark states: "On December 21, 2010, Judge Pomeroy explained to me that she wanted the letter held in the Thurston County Sheriff's Office evidence system until it could be determined whether or not the existence of the letter constituted a conspiracy to violate the attorney client priviledge of a defendant who is currently being held in the custody of the Thurston County Jail for murder. Judge Pomeroy advised that the letter was to be held indefinately because at this time the consequence of the letter could not be fully anticipated." "On December 21, 2010, I contacted Isaac Jarrett at the Prosecutor's Office. Mr. Jarrett explained that on December 14, 2010, he was sorting mail that was delivered to the Thurston County Prosecuting Attorney's Office. Mr. Jarrett said that when he opened this letter which had no return address but was addressed to the Thurston County Prosecuting Attorney's Office, he discovered what appeared to be a photocopy of a letter that was written by a defendant who is currently being held in the Thurston County Jail to his attorney. Mr. Jarrett **realized the potential ramification of the letter immediately and took steps to limit the letters circulation.**" "Mr. Jarrett said that he provided a photcopy of the letter to the defense attorney in question and he maintained the document he had received **until he received further instruction from his chain of command** and the court. Thurston County Sheriff's Office, Incident Report No.10-06838-12, Attachment to Motion to Dismiss 8.3(b), filed 01-07-11, CP 366-367.

The following transpired at the December 21, 2010, Motion to Continue and Dismiss, hearing concerning the letter:

Woodrow: " And I was handed the letter that's in the sealed

envelope, and I was advised that the envelope is being maintained by the receptionist there, and to me that's an unsecured location for the envelope. Anyone can read this letter. It's a letter that is addresses to me, and it's titled "Richard Woodrow, Attorney at Law" with my address. The body of the letter contains information only my client had. There was no signature on the letter. In my opinion, the only way anyone could have ascertained the letter came from my client was to read the letter, and that person would have had to have had detailed knowledge of the facts of this case to put the letter with the facts of this case...". RP (12-21-10) 50.

Woodrow: "If I get a envelope, a letter addressed to another attorney, I put it in the mail and send it to the attorney. I don't keep a copy of it. I don't read it. But that's what happened here. For somebody to come before this court and say that they know it was Mr. Maddaus who wrote it, unsigned, they just know, that he read it just like screening it is simply untrue. It takes somebody who is intimately involved in this case to be able to ascertain that Maddaus wrote this letter." "Your Honor, that doesn't even matter. What matters is they knew it came from Mr. Maddaus addressed to me, and they kept a copy of the letter in their office.". RP (12-21-10) 51.

Woodrow: "And I'm asking at the end of my motion that it be taken by the Thurston County Sheriff's Office, kept over there and considered an item of evidence. It should not be sitting behind the receptioist desk, and that's where I saw him take it from and put it back." "Your Honor, why wasn't I called? Why didn't I receive a phone call right away on this issue? ... No one let me know this item is sitting in the prosecutor's office until I happened to go in there. I find that to be wrong. And I think that what it shows is they knew something was going on and they knew that this was going to be a big thing, and what Mr. Bruneau does in his response is pooh-pooh this... Well, in all the cases I cited in my memorandum to dismiss, they all have held

that prejudice is presumed if the state has attorney-client information. It's presumed. I don't need to prove it. It's presumed.". RP (12-21-10) 52-53.

Woodrow: "I'd like to have these contents fingerprinted. I'd like this to be treated as evidence of a crime. It shouldn't just be pooh-poohed as the prosecutor wants this to happen. It should be taken seriously.". RP (12-21-10) 53.

Woodrow: " So -- and the copies are done according to my understanding by correctional officers who come to the inmates, pick up their work, copy it and then bring it back to the inmates. The inmates don't make copies themselves. Mr. Maddaus has a copy of that letter in his cell. I have the original in my office.". RP (12-21-10) 54.

Woodrow: "And Your Honor, the outside of the envelope that the letter came in is a manilla envelope like that one, perhaps a little larger. There's a white label on it, and written with a felt tip pen is "Thurston County Prosecuting Attorney's Office." Now, it's my understanding that inmates do not have access to the white labels." "Mr. Maddaus is in maximum as you can tell. He's in whites. He's been there forever basically. He goes from one maximum tank to another one, from E to H and back again. Those are tanks. So all of his envelopes are opened and reviewed by the staff to make sure there's no uncensored information getting out. This goes to rebut the assertions from Mr. Bruneau that it's Mr. Maddaus mailed this envelope or some cohorts of him from the jail. It's not possible that happens.". RP (12-21-10) 55-56.

Woodrow: "And also the jail routinely give uncensored information to Detective Johnstone. Detective Johnstone gave me almost 300 pages of letters written to and from Mr. Maddaus right before the last trial. **So I know Detective Johnstone was getting copies of Mr. Maddaus's letters produced by the jail,** and so that just shows that it was not Mr. Maddaus.". (emph. added.) RP (12-21-10) 56.

Woodrow: "As I stated in my motion, I don't know how it got there. I don't want to throw out a hypotheses, unlike the prosecutor. I mean, he's willing to do that, but I don't want to do that. I want to wait until there's something to base any assertions that I am going to make later on." "I end in my motion by saying, you know, I've been doing murder trials for about twenty years or so, well, both for the state and for the defense, and I feel if the Court does not grant the motion to continue the trial based upon all the things that I have alluded to that I will represent Mr. Maddaus, but I will in effect be ineffectual for him. I will not be able to do the best job that I can based upon my experience as being a defense attorney. And I don't want that to happen. That's why I'm putting all these things out there and all I'm asking for is a fair deal.". RP (12-21-10) 64-65.

Bruneau: "Finally, Your Honor, the -- if you will, it seems to me this entire motion is based upon this hoopla created by the defense concerning this letter that came to the office of the prosecuting attorney on December 14th.";

Court: "Where is the original right now?";

Bruneau: "It's locked up in a drawer in the prosecutor's office.";

Court: " Any objection to asking the sheriff's office department to take custody of this?";

Bruneau: "No. No. Your Honor, if you will bear bear with me.". RP (12-21-10) 69.

Bruneau: "This is quite fitting, and should not be surprising that someone, like Mr. Maddaus, or one of his friends partisans or associates in jail would jump start this thing to get it off track so that his counsel can stand up in feined outrage and allege some sort of wrong doing. There is no reason that this prosecution should not continue, This is bogus. It's a non issue. It's collateral to what's going on here.". RP (12-21-10) 70-71.

Woodrow: "You know, Mr. Bruneau says regarding that letter

that, you know, he said do this, do that. My response is that may be true I don't know. But we need to hear about that under penalty of perjury. And he ended by saying I directed Mr. Jarrett to send a copy of the letter to Mr. Woodrow. Well, that didn't happen. I had to show up to actually get a copy of this letter." "So what I want, Your Honor, is simply a fair deal to be able to prepare my case effectively, to not be ambushed by the State..." ... "There's a letter written by my client addressed to me that the prosecutor kept a copy of even though he shouldn't have. He should have just contacted law enforcement if he thought it was a crime and given a copy to them and get it out of the prosecutor's office. Now it could be read by anybody.". RP (12-21-10) 73-74.

Woodrow: "And what I -- also, Your Honor, the fact that the letter's there **is it compromises our defense to this case.** I mean, I need to talk to Mr. Maddaus. Perhaps we need to assert a different type of defense in this case since the State knows what we were talking about regarding this case.". (emph. added.), RP (12-21-10) 74.

Court: "I believe that the only thing I will order is that the sheriff's office take control of this alleged letter, and it will be locked in their evidence -- the evidence custodian will come forward and take it from the prosecutor's office within -- by five o'clock today. They'll be called immediately to take control." "And further, **I'm not saying that -- I don't believe a formal hearing needs to be heard before this,** but it will be given, and further, whether or not this is to be investigated, because as I understand it, there is information -- there is technology available to show which copier made a copy of certain original documents. And I don't know if that is still my understanding or not. But that may be -- **there may be a crime here,** but it doesn't delay this case at all.". (emph. added), RP (12-21-10) 79.

On January 5, 2011, when the jury panel was about to be dismissed for juror misconduct, the following occurred:

Defendant: "Yeah, at this time I'd like to fire my counsel. I need new counsel." "I've asked him to do several things. A letter, I don't know, somehow from me to Mr. Woorow made it to the prosecutor's office. Now, it might be possible that Mr. Woodrow could have been the one to send that letter himself. I didn't do it.". RP 263-264.

Court: "Excuse me, Mr. Maddaus. I am not going to allow it at this late date. We will begin. I believe I will not allow you to fire Mr. Woodrow. We are not going to have new counsel. I have already ruled on the letter. I believe that you wanted to talk about the incident of striking the panel, but at this time I will not entertain that motion.". RP 264.

Woodrow: "Your Honor, last I heard Mr. Maddaus had indicated he didn't want me to be his attorney, and **he's the one paying me.** So -- and I'm not going to work for free. So I don't know what my position is. Your Honor, says I should be here Monday, I'll be here Monday.";

Court: "You will be here Monday.";

Woodrow: "I'll just let the Court know that I'm not going to be happy about working for free. And I'm going to do a little research and see what my position should be.". RP 268-69.

On January 6, 2011, at a pretrial hearing, the following occurred:

Court: "In, essence, Mr. Maddaus, you wanted to have a new attorney; is that correct?";

Defendant: "Correct.". RP (01-06-11) 3.

Court: "What exactly do you want?";

Defendant: "Governmental misconduct on the letter, that there should have been a hearing to find out where the letter came from, how it got to the prosecutor's office, stuff like that. You ruled that, oh, whatever. It's no big deal. To me it's a big deal.

Everything, my whole side of every everything, I said to my attorney about this case, I wrote him on paper. If the prosecution has that, **why am I even here. Let's just go strait -- strait to sentencing because they know my whole trial, evertything.** They know everything. Every confidence that I've taken with my attorney they know. I've sent him over 275 pages of hand written documents, letters and stuff like that. I don't know what they have or what they don't have. I don't believe I can get a fair trial.". RP (01-06-11) 4-5.

Defendant: "I don't believe that my attorney's ready to go to trial. My attorney's told me that he's not ready to go to trial. He says he can't give me fair representation at this time. I don't know what else to do. I mean, if your attorney tells you that what do you do?" ... "He says he can't give me fair representation at trial. Would you want to got to trial with an attorney that says he can't fairly represent you at trial?". RP (01-06-11) 6.

Bruneau: "One of the basis for the -- well, one of the basis for the last motion to continue was the explicit reference to the fact that the deputy prosecutor, me, handling the case had been fired, which was inaccurate. I have been -- my employment with the office has been continued for a month in order for me to handle this particular case and another case. Certainly it would be of tacticle avantage to get me off this case because I'm ready to go. And I dare say Mr. Woodrow is ready to go.". RP (01-06-11) 8-9.

Court: "He is unhappy with what happened. He is not unhappy with the representation. The representation has been vigorous, and in fact, counsel for the defense **filed the appropriate motions** on the letter incident. It is the court that ruled a certain way that Mr. Maddaus takes umbrage with.". RP (01-06-11) 11.

The State's four key witnesses all, significantly, changed, from the statements they gave law enforcement, their testimony

on the stand: Daniel Leville, RP 1041-1152; Falyn Grimes, RP 1177-1233; Jesse Rivera, RP 1266-1320; and Mathew Tremblay, RP 1321-1409 & 1779-1793.

ARGUMENT

Under CrR 8.3(b), a trial court may dimiss an action when the State's action constitutes misconduct that has prejudiced the defendant. The rule states the following:

> The court in the furtherence of justice after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or government misconduct when there has been prejudice to the rights of the accused which materially affect the accused's rights to a fair trial. The court shall set its in the order. CrR 8.3(b).

To support dismissal under this rule, defendant first must show arbitrary action or governmental misconduct. The arbitrary action or mismanagement need not be evil or dishonest; simple mismanagement is enough. State v. Garza, 99 Wn. App. 291, 295, 994 P.2d 868 (2000).

The correctional officers and court officers, working at the Thurston County Jail, are Thurston County Sheriff's Deputies. In this case, these officer's may or may not have been placed in an investigative role by detectives or prosecutors. However, it does not matter, any intrusion by the State violates the defendant's right to effective assistance of counsel. Whether or not the officers were acting at the request of detectives or prosecutors is of no consequence. State v. Willis, 64 Wn.App. 634, 640, 825 P.2d 357 (1982). The officers (jail gaurds / court officers) are employees of the state through the county and they owe an obligation to the state. Fare v. Michzel, 442 U.S. 707, 720, 62 L.Ed.2d 197, 99 S.Ct. 2560 (1997).

The prosecution is not entitled to have a representative present to hear the conversations of accused and counsel. We consider it equally true that a defendant and his lawyer have

a right to talk together by telephone without their conversations being monitored by the prosecution through a secret mechanical device which they do not know is being used. It would not be an answer to say that the accused cannot complain of the interception of his telephone conversations with his counsel if he had on other occasions ample personal consultation with his lawyer, face to face, which no person overheard. That fact would not erase the blot of unconstitutionality from the act of intercepting other consultations. State v. Cory, 62 Wn.2d 371, 375, 382 P.2d 1019 (1963), quoting, Coplon v. United States, 89 U.S.App.D.C. 103, 191 F.2d 749 (cert. den. 342 U.S. 926, 72 S.Ct. 363, 96 L.Ed. 690 ( )).

The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial. We think it is further true that the right to have assistance of counsel is so fundamental and absolute that its denial invalidates the trial at which it occurred and requires a verdict of guilty therein to be set aside, regardless of whether prejudice was shown to have resulted from the denial. A defendant in a criminal case may not be legally found guilty except in a trial in which his constitutional rights are scrupulously observed. No conviction can stand, no matter how overwhelming the evidence of guilt, if the accused is denied the effective assistance of counsel, or any other element of due process of law without which he cannot be deprived of life or liberty. State v. Cory, supra, at 376, quoting, Glasser v. United States, 315 U.S. 60, 76, 62 S.Ct. 457, 467, 86 L.Ed. 680 (1942).

There is no way to isolate the prejudice resulting from an eavesdropping activity such as this. If the prosecution gained information which aide it in the preparation of its case, that information would be as available in the second trial as in the first. And if the investigating officers and the prosecution

know that the most severe consequence which can follow from their violation of one of the most valuable rights of a defendant, is that they will have to try the case twice, it can hardly be supposed that they will be seriously deterred from indulging in this very simple and convenient method of obtaing evidence and knowledge of the defendant's trial strategy. Cory, supra, at 377.

Prejudice can manifest itself in several ways. It results when evidence gained through interference is used against the defendant at trial. It also can result from the prosecution's use of confidential information pertaining to the defense plans and strategy, from government infuence which destroys the defendant's confidence in his attorney, and from other actions designed to give the prosecution an unfair advantage at trial. Garza, supra, at 298, quoting, United States v. Irwin, 612 F.2d 1182, at 1187 (9th Cir. 1980).

In Mr. Maddaus's case, the prejudicial arbitrary actions and governmental misconduct / mismanagement is clear: The Jail procedure which required him to turn his confidential attorney client materials over to a sheriff's deputy to have legal copies made, and then an extra copy of his statement to his attorney was provided to the prosecution; He was forced to communicate via a intercom-phone, where other inmates could hear, with his attorney, which is most likely where the "unprecidented amount of kites" came from; The Prosecutor maintained a copy of Mr. Maddaus's "letter" (statement) to his attorney in his office for at least a week, even though he thought it was evidence of a crime; The Prosecutor, directing, the receptionist to fax a copy of the "letter" to the Jail; The factual misstatements the Prosecutor provided to the Judge about what was done (disproven by e-mails) with the letter, and other factual misstatements by the Prosecutor in the other issues raised later in this SAG. Brings into question if the Prosecutor's witnesses changed their statements

because of information the State gained from Mr. Maddaus's statement to his Attorney; All the above caused Mr. Maddaus to lose all confidence in his Attorney and resulted in him trying to fire his Attorney and seek new counsel.

In this case, the only just remedy, is the dismissal of Mr. Maddaus's charges with prejudice.

Additional Ground 2

THE TRIAL COURT VIOLATED MR. MADDAUS'S RIGHTS TO: DUE PROCESS UNDER THE FIFTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 3; EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 22; EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT, WHEN IT FAILED TO GRANT A CONTINUANCE, MISTRIAL, OR DISMISS THE CHARGES AGAINST MR. MADDAUS FOR DISCOVERY VIOLATIONS AND GOVERNMENTAL MISCONDUCT UNDER CrR 4.7 AND CrR 8.3.

In his Motion To Dismiss, filed 01-31-11, Mr. Maddaus's Attorney, Mr. Woodrow, asked the trial Court to dismiss Maddaus's case due to prosecutorial mismanagement and misconduct or to declare a mistrial because of the State's failure to disclose material relevant facts and impeachment evidence. CP 385-387.

In this Motion to Dismiss, filed 01-31-11, Mr. Woodrow states: " The state had in its possession since **"once upon a time"**[1] (fn.[1]"Prosecutor's response made in court to the querry of his receipt of the information regarding Tremblay driving Maddaus back to the scene of the crime") information from their star witness Mathew Tremblay. Tremblay testified that he told the detectives and the prosecutor of the new information and that he came back to the crime scene with Maddaus so Maddaus could see if Petersen was really dead. Maddaus got out of the vehicle and shot Petersen in the head. Tremblay believed Maddaus had pulled the trigger. Now Tremblay believes the gun misfired or jammed. The prosecutor's failure to give discovery to the

defense **prejudiced the defense** because Maddaus was unable to secure the presence of witnesses to testify on the issues surrounding Tremblay's testimony such as the timing between the gunshots and the sounds of the vehicle leaving the crime scene. If the defense had known this was an issue they could have canvassed the crime scene area and sought out witnesses that would have indicated that Tremblay's new evidence was impossible." "If given this information in a timely manner the defense could have sought out additional witnesses mentioned in the discovery. The defense did not do this because the crime scene was not an issue. These witnesses have moved. Some will not speak with the defense unless subpoenaed. The witnesses that lived along the different route away from the crime scene testified to by Tremblay cannot be tracked down during trial. Police witnesses called and released or not called **will not testify** to the routes they took to the crime scene. Some of these officers may have drove down the same route Tremblay said he took. There is not enough time. If the state had told the defense Tremblay said he took Maddaus back to the crime scene then the defense could have interviewed him on this new information and been better prepared at trial. The defense interviewed Tremblay three times.". Motion To Dismiss, filed 01-31-11, CP 386.

"The prosecutor had in his possession information on an endorsed defense witness. This information only came to the attention of the defense when the prosecutor cross examined Kyle Collins. Det. Johnstone gave notes to the prosecutor which indicated the interview with Collins happened sometime in November of 2010. This late receipt of discovery kept the defense from investigating the veracity and accuracy of Johnstone's statement. Furthermore the defense may have chosen not to have called Collins as a witness. The prosecutor said that Collins was asking for a deal. Only this prosecutor would have had that information. This information was that Collins tried to get a deal with the state

to testify against Maddaus. Collins, in fact, gave a statement. The defense did not get this information from the state.". Motion To Dismiss, filed 01-31-11, CP 387.

"This motion incorperates by reference the other motion regarding the prosecutors misconduct and mismanagement. Such as the attorney client privileged letter he read and kept in his office. The communication during court with counsel and Maddaus. The prosecutor's lame excuse that he was only joking when there have been no jokes exchanged between counsel and the state.". Motion To Dismiss, filed 01-31-11, CP 387.

The following transpired at Mr. Maddaus's trial on January 24, 2011, testimony of Mathew Tremblay:

Mr. Tremblay, testified that he and Mr. Maddaus took a different route and that Maddaus had him drive back to where Shaun Peterson was laying because Mr. Maddaus was concerned about whether or not Shaun was dead. RP 1351. Mr. Tremblay, also states that Mr. Maddaus got out of the car, ran over to Mr. Peterson and he thought Maddus shot Mr. Peterson in the head. RP 1351.

Woodrow: "Your Honor, I have a motion to bring.". RP 1352.

Woodrow: "Your Honor, Mr. Tremblay gave three statements to law enforcement. I spoke with him twice. I don't know how many times the prosecutor spoke with Mr. Tremblay. I spoke with him three times. Last time was perhaps a month ago, maybe twenty days ago. We went over his entire statement each time. This is the first time he brought up this whole circuitous route where he turns back, goes back toward Capitol Boulevard, goes around a couple of blocks, comes back and then says for the first time That Mr. Maddaus got out of the vehicle, runs over to Mr. Peterson's body and he thinks maybe shot him again or stood over the body. This is the first time this has ever come up. I cannot effectively cross-examine him on this issue. I need to look at timelines, when -- what Mr. Wallace said because if I had known he was saying all of this stuff, I could have asked different questions

of Mr. Wallace regarding the timelines involved.". RP 1353.

Court: "Who is Mr. Wallace?";

Woodrow: "He's the person who was the first civilian witness on the scene. How much time elapsed because this is the first time he says Mr. Maddaus went back to check to see if Mr. Peterson was dead. I don't know how long the state's had this information, but the first time I heard it is now. I've never had a chance to ask questions of anybody else regarding this information so I'm asking the state to put on the record when did they first hear about this. It was not made -- it was not part of discovery given to me ever.". RP 1354.

Bruneau: "Your Honor, when I spoke to Mr. Tremblay **once upon a time**, he made made some remarks that he thought that Mr. Maddaus had looked at the body, not in the detail that he testified to here today. I did not regard his remarks about watching Mr. Maddaus as evidence favorable to the defense on the issue of guilt; rather, I attributed it to Mr. Tremblay's confusion because of **the lack of an aerial photograph to describe his statement.** So this essentially -- the detail that he provided here today during his testimony was new information for me.". RP 1354.

Woodrow: "Your Honor, I had Mr. Tremblay draw a picture of the entire homicide scene. He drew it, and I believe he even signed his name to it. He never talked about this at all, period.". RP 1354.

Court: "Then you can Cross-examine him.";

Woodrow: "On what? I have no information. This is the first time I've heard of this.";

Court: "Okay.";

Woodrow: "Period.";

Court: "You're going to have to deal with it. We're in recess till --". RP 1355.

Woodrow: "Your Honor, if I had been told this information by the state earlier, I could have asked these questions of Mr.

Trmeblay. He was in custody this entire period of time. I've asked him questions about this information. He's never volunteered it to me. The state's never given me this information.";

Court: "I see nothing wrong, and in fact, the only thing I'm going to require is that if you have Mr. Wallace's phone number, you may give it up to the defense. But we're going forward at 1:30. We're in recess.". RP 1355.

During cross-examination by Mr. Woodrow, Mr. Tremblay admits that no where in his first statement does he mention any of this new information. But, he believes that he had mentioned it to the detectives at the detectives' headquarters. RP 1382-1384.

Mr. Tremblay, testifies that he never mentions any of this new information in his second statement to the police either, but that he assumes that he mentioned it to Mr. Woodrow and his private investigator Mr. Wilson. RP 1385-1387.

Mr. Woodrow, cross-examined Mr. Tremblay to the following:

Q: How about -- now, you talked to Mr. Bruneau about this case right?

A: Correct.

Q: Did you ever mention that to him?

A: Yeah.

Q: When?

A: When I met with him back like in September, August, September.

Q: And that's when you told Mr. Bruneau --

A: That's the only time -- that was the first time I spoke with Mr. Bruneau.

Q: Last time too?

A: No, I spoke with him once recently.

Q: So and recently as well. That is when you explained to Mr. Bruneau everything about what you testified here today?

A: Yes.

Q: Did you guys use a diagram?

A: Not -- **yes, we used a diagram.** RP 1387.

Mr. Tremblay, testified that when he gave his statement he was hoping that he wouldn't get charged. RP 1387-1391.

The following transpired at Mr. Maddaus's trial, on January 26, 2011, testimony of Kyle Collins:

Mr. Collins, testified that sometime between January 28, 2010 and February 22, 2010, he ran into Mr. Tremblay. Mr. Tremblay, got into Mr. Collins's car and they went and got high. While getting high, Mr. Collins and Mr. Tremblay, had a conversation about the homicide on November 16, 2009. Mr. Collins, testified that Mr. Tremblay "started crying, said it was an accident, and that he was the one that shot Shaun Peterson." "He said that Shaun had handcuffs on, and he told him to stop, and when Shaun stopped to turn around, he said his handcuffs caught caught on his belt loop and that he thought Shaun had a gun and so he just panicked and shot." "He was very upset by that.". RP 1651-1653.

Mr. Collins, testified, when was with Jesse Rivera in around June of 2010, he asked Mr. Rivera what happened on November 16, 2009, because he had heard he was there. Mr. Rivera, told Mr. Collins that the reason Shaun Peterson had handcuffs on is because "Falyn wouldn't let him in the house without handcuffs on.". Mr. Rivera, told Mr. Collins, that Bobby Maddaus, Dan Leville, Falyn Grimes, and himself, were in the house when the gunshots happened and that Matt Tremblay and Shaun Peterson were outside. RP 1653-1656. Mr. Rivera, told Mr. Collins, "that Dan and Falyn tried not to get him involved as much as possible, so they all came up with a story to leave him out as much as possible.". RP 1658.

On Prosecutor Bruneau's, cross-examination, he introduces for the first time evidence that Mr. Collins tried to get a deal in exchange for saying that Mr. Maddaus told him he killed Shaun Peterson. RP 1658-1654.

Woodrow: "Your Honor,, Im going to object to this whole

line of questioning. I never received any discovery on this issue.". RP 1664.

Court: "The question I was inquiring about is whether or not there was an interview by Mr. Johnstone to this witness, and you have indicated yes.";

Bruneau: "Yes.";

Court: "But also you have indicated that Nr. Woodrow indicated he was not given a copy of any of this information; is that correct?";

Bruneau: "No. There was no report generated.";

Court: "There was no report generated.";

Bruneau: "When I learned that Kyle Collins was going to be a witness, I learned from Detective Johnstone that Mr. Collins had solicitated -- well, had asked Landwehrle to talk to Detective Johnstone, and Johnstone went and talked to him, and that's when Collins offered up Mr. Maddaus. And no deal was made obviously.". RP 1665.[fn.2]

Court: "And when was this accomplished?";

Bruneau: "**It was the week of November** -- somtime between November 1st and 5th of 2010.";

Court: "All right. Bring the jury back. Bring the witness back.". RP 1666.

Woodrow: "Your Honor, I have a couple of matters to put on the record. I haven't ever received anything from Detective Johnstone about an endorsed witness. He's been an endorsed witness for some time. If they have information, they're required to give me information on any witness, period. State v. Lord, a capitol case is clearly on point. If they're going to cross somebody on anything, I need to get it so I can be prepared for trial. I don't have notes, I don't have anything. And the State's been sitting on this information for some time because Mr. Collins -- Mr. Collins has been an endorsed witness for at least a month, perhaps longer. I think it's been longer. And I don't get anything?

fn.2: In his Motion To Reconsider DNA, filed 09-28-10, Mr. Woodrow, states at pg.2(2.)(F.), that Mr. Collins will be testifying that Mr. Tremblay told him that Mr. Tremblay killed Peterson. Supp. CP.

The first I hear about it it is when he's asked questions about some kind of deal he made or tried to make to give up Mr. Maddaus. Mr. Bruneau walks around here saying you're going to say he's the killer of Mr. Peterson, and the first time I hear about it is right now? That's completely unfair, unwarranted. It's un -- it's improper. It's unethical. I don't know how many adjectives I can use to explain this. If I had done this to the state, I would be sanctioned. But we sit here here with him withholding this information, the first time I hear about it is right now? That's improper. I'd like to see this officer's notes before Mr. Collins is called back to the stand so I can properly redirect him.";

Court: "Does the officer have any notes?";

Bruneau: "I've got notes I received from Detective Johnstone right here."; (See, Johnstone Notes re Collins Exhibit No.258, Supp. CP)

Court: "Okay. Make a copy and give it to counsel. Let's make a copy now, and then we'll bring the jury back. All right. We'll take a five-minute recess. We're going to go through.". RP 1666-1667.

On January 31, 2011, a hearing was held on the Defense's Motion To Dissmiss or in the alternative declare a Mistrial. The following occurred:

Prosecutor Bruneau, stated that during the pendency of this case he had received kites from inmates looking for a deal in exchange for information on Maddaus. Some of this information he passed on to Woodrow, and in some situations **"I simply threw them out because it was nothing I was interested in.".** RP 1804.

Bruneau, said that reason he didn't provide the defense the information about Mr. Collins looking for a deal in exchange for different testimony is because he didn't know if it was his obligation to provide that information to the defense. RP 1804-1805.

Mr. Woodrow, stated that "Basically now I believe I am talking to the Court of Appeals at this time. But Bruneau had discovery from the defense on Mr. Collins.". Mr. Bruneau, knew

Mr. Collins was going to testify exactly oppostie of the information he had provided Detective Johnstone. Mr Bruneau, **was aware** of it because he said no to the deal being offered up. RP 1805-1806.

Woodrow: "We were surprised. I think the **jury is aware of that** also. I'm flabbergasted that the prosecutor can say with a strait face that he didin't think this was important information for us to have." "You know, Your Honor, this by itself is enough for a mistrial to be declared, how we got ambushed not only with this, but also with the information from Mr. Tremblay.". RP 1806.

If we would have had the Tremblay information in a timely manner we could could have canvassed the crime scene area and secured more witnesses. We tried but we can't now. RP 1806-1807.

Woodrow: "And just so the record's clear, this case has been pending for on year. And then for the prosecutor's saying even more when he gets information that he decides it's not exculpitory, that's not his decision to make; that's my decision to make. I know what's exculpitory, what's inculpitory. He does not know that. And he throws this information away, thereby forever removing this information from his file, I think is simply inappropriate. And so I'm asking that this case be dismissed. I think the prosecutorial misconduct is clear. And if Your Honor doesn't want to do that, then I think the appropriate remedy is a mistrial. RP 1807.

Mr. Woodrow Motioned for a continuance, RP 1352. The Judge, denies it saying "Your going to have to deal with it." "I see nothing wrong," "But we're going forward at 1:30.". RP 1355. Then, the Judge says "So it's not enough for a dismissal or a mistrial so I deny it.". RP 1808.

ARGUMENT

The state has a continuing duty to promptly disclose discoverable information. CrR 4.7(h)(2): State v. Greiff, 141 Wn.2d 910, 919, 10 P.3d 390 (2008).

Under CrR 4.7(h)(7), the court can dismiss an action where a party has failed to comply with discovery rules. In addition, under CrR 8.3(b), a trial court can dismiss an action when the State's action that constitutes misconduct has prejudiced the defendant. That rule states the following:

> 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 to a fair trial. The court shall set forth its reasons in the order. CrR 8.3(b).

Governmental misconduct need not be of an evil or dishonest nature, simple mismanagement is enough. State v. Blackwell, 120 Wn.2d 822, 831, 845 P.2d 1017 (1993); State v. Michielli, 132 Wn,2d 229, 239, 937 P.2d 587 (1997).

Discovery rules are intended to prevent a defendant from being prejudiced by surprise, misconduct, or arbitray action by the state. Dismissal under CrR 8.3 or 4.7 is generally available only when the defendant has been prejudiced by the prosecutor's actions. State v Cannon, 130 Wn.2d 313, 328, 922 P.2d 1293 (1996).

Actual prejudice can be shown if the State's belated interjection of new facts into a case forces the defendant to choose between the right to a speedy trial and the right to prepare an adequate defense. State v. Krenick, 156 Wn.App. 314, 321, 231 P.3d 252 (2010), citing; State v. Sherman, 59 Wn.App. 763, 770-71, 801 P.2d 274 (1990); and State v Michielli, at 239.

A defendant is denied his Sixth Amendment right to counsel if the actions of the state deny the defendant's attorney the opportunity to prepare for trial. "Such preparation includes the right to make a full investigation of the facts and law applicable to the case.". State v. Smith, 67 Wn.App. 847, 861, 841 P.2d 69 (1992), quoting; State v. Burri, 87 Wn.2d 175, 180, 550 P.2d 507 (1976).

In United States v. Irwin, 612 F.2d 1182 (9th Cir. 1980),

the Ninth Circuit held: Prejudice can manifest itself in several ways. It results when evidence used through through the interference is used against the defendant at trial. It can also result from the prosecution's use of confidential information pertaining to defense plans and strategy, from government influence which destroys the defendant's confidence in his attorney, and from other actions designed to give the prosecution an unfair advantage at trial. Id. at 1187.

In State v. Oughton, 26 Wn.App. 74, 612 P.2d 812 (1980), this Court held that: "the trial court should have granted the defendant a continuance when the prosecutor introduced surprise testimony", Id. at 75.; "the United States Supreme Court has expressed the philosophy behind rules such as 4.7(h)(2) in language particularly appropriate in this case."The adversary system of a trial is hardly an end in itself; "It is not yet a poker game in which players enjoy an absolut right always to conceal thier cards until played.". Williams v. Florida, 399 U.S. 78, 82, 26 L.Ed.2d 446, 90 S.Ct. 1893 (1970).", Id. at 79.; "Generally speaking, the trial court has broad discretion to choose the appropriate sanction for violations of the discovery rules. CrR 4.7(h)(7). Likewise, the granting of a continuance is ordinarilly a matter of discretion. However, if actual prejudice to the defendant is shown because of the denial of a continuance, reversable error has occurred. State v. Eller, 84 Wn.2d 90, 95, 524 P.2d 242 (1974).", Id. 79-80.; "Because the prosecuting attorney failed in the first instance to comply with the discovery rules and because the defendant was denied any reasonable opportunity to investigate and rebut newly discovered inforormation, we hold the defendant was denied his right to a fair and unbiased trial.". Id. at 80.

The following case is on point with Mr. Maddaus's case: In State v. Dunvin, 65 Wn.App. 728, 829 P.2d 799 (1992); An informant, Ben Buis, informed officer miller of a grow operation on Mr. Dunvin's property in exchange for $50.00. "At trial,

defendant called Buis as a witness. Buis stated that he had never seen any marijuana growing on or near the Dunivin property. On cross examination the state questioned Buis about the information he gave police and showed him the receipt for $50, where upon Buis denied any knowledge of the conversations with Officer Miller. This was the first time Dunivin heard about Buis' participation in the investigation.", Id. at 730. The defense moved for a mistrial and was eventually granted on by the trial court. The trial court then noted that the irregular procedure had "a material impact on the fairness of the trial and undermines the Court's confidence in the verdict...", ID. at 731. This Court agreed with the trial court's reasoning and affirmed the order for a new trial. Id. at 731.

In Mr. Maddaus's case, the State's failure to provide, significant substantial evidence to the defense until the last possible moment, is clearly governmental misconduct and mismanagement of the case, by the prosecutor's office and the police department. Providing evidence, for the first time, during the direct or cross-examination of a witness is clearly prejudicial to a fair trial. The defense was surprised and unable to defend against these late disclosures. Mr. Maddaus, was forced to give up his speedy trial rights and ask for a continuance, even though one wasn't granted, so the defense could try and recover. Witnesses were unable to be located because this evidence was disclosed so late. Now, they might never be able to be located, and even if found, might not remember anymore. Mr. Maddaus's rights to due process, effective assistance of counsel, equal protection of the laws, and to a fundamentally fair proceeding, were violated by the State's actions. Therefore, the reversal and dismissal, with prejudice, of all Mr. Maddaus's charges is the only just remedy.

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Additional Ground 3

THE INFORMATION IN THE AFFIDAVIT FOR PROBABLE CAUSE, RELIED UPON BY THE JUDGE IN ISSUING THE SEARCH WARRANT OF MADDAUS'S HOME, WAS FACTUALLY FALSE, VIOLATING MR. MADDAUS'S RIGHTS TO: UNLAWFUL SEARCHES UNDER THE FOURTH AMENDMENT AND ARTICLE I, SECTION 7; AND DUE PROCESS UNDER THE FIFTH AMENDMENT,FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 22.

On November 19, 2009, at 1:00 PM, Prosecuting Attorney, David Bruneau, and Detective Johnstone, signed and submitted, to the Horable Judge, Carol Murphy, the Affidavit of Probable Cause to issue a Search Warrant for Mr. Maddaus's home. Based upon the alleged facts contained in this Affidavit, Judge Murphy, issued the Warrant to search Mr. Maddaus's home on November 19, 2009, at 1523 HRS. See Affidavit for Search Warrant and Search Warrant, attached to Motion to Suppress and Memorandum In Support of Motion to Suppress, filed 07-02-10. Supp. CP, and CP 4-13.

On page 3, paragraph 3, of the Affidavit For Search Warrant, it states in relevant part:

"The detail that Maddaus had someone steal drugs/money from him is also confirmed by a Thurston County Sheriff's Office report (Case #09-6743). This report states that Jessica R. Abear (8/09/84) **reported** that she was assaulted by Maddaus while being confronted about her possibly involvement in the robbery. Maddaus displayed a handgun. During the same incident Abear was also assaulted with a paintball gun."...., CP 6, (emph. added).

On July 7, 2010, Prosecutor Bruneau, filed the Plaintiff's Memorandum of Authorities (Joinder and 404(b) Evidence). In which, Mr. Bruneau states, in his "II. STATEMENT OF FACTS", at page 3, line 18: "The defendant's precise movements between November 16 and 27th (the day of his capture) are not known. However, it seeme that he physically **stayed away** from the residence at 10220 179th Ave. and that he had his associates doing his bidding.", (emph. added). At line 20, supra: "On November 19, 2009, investigators executed a search warrant at the defendant's residence

at 10220 179th Ave SW. They noted the smell of pepper spray, and the smear of paintball on the wall of the living room. However, at that time **they were unaware** of the **ordeal** of **Jessica Abear** from days earlier. However, the officers did locate a .380 handgun and a set of handcuffs.". Plaintiff's Memorandum of Authorities, filed 07-07-10, CP 113, (emph. added).

On January 12, 2011, Deputy Claridge (the Deputy that took the report "(Case #09-6743)" referenced in the Affidavit For Search Warrant at issue, CP 6), testified that on November 13, 2009, (approx. 6 hours after the alleged assault of Jessica Abear) he was dispatched to a disturbance call where he tried talking with Jessica Abear, but she didn't want to talk to him and declined to answer any questions he had. RP 567-570. Deputy Claridge, also, did not see any injuries on Ms. Abear. RP 571.

On January 13, 2011, Jessica Abear, testified that on 11-13-09, she told Deputy Claridge, that she didn't want to talk with him and she had nothing to say to him. RP 664. Ms. Abear, testified that the reason she allowed the police to interview her and take pictures of her injuries two weeks later is because she didn't have any choice. The police wouldn't leave her alone so she talked to them, that the police already knew what happened. RP 665-666.

On January 18, 2011, Detective Johnstone, the Affiant in the Affidavit For Search Warrant of Maddaus's home and the lead investigator in Mr. Maddaus's case, testified that on November 19, 2009, when he executed the Seach Warrant of Maddaus's home. He did not know anything about Jessica Abear, and her name had never been mentioned before. RP 819-820. Detective Johnstone, also testified that when he took pictures of Ms. Abear on 11-25-09, there was still a lump on her forhead, supposedly from where she was struck in the head by the butt of a gun, but that this alleged injury wouldn't lend itself to a photograph. RP 826. Mysteriously, this alleged injury was severe enough to still be present two

weeks after it allegedly happened but was overlooked by Deputy Claridge, RP 571; and Wayne Hayes, RP 1677-78; six hours after it allegedly occurred.

On August 12, 2010, Mr. Maddaus, moved the trial court to supress the evidence seized during the search of his home. RP (08-12-10) 54-61, Motion and Memorandum in Support of Motion to Suppress, filed 07-02-10, Supp. CP. The trial Court Judge, Christine Pomeroy, denied the Motion to Suppress, stating in part: "but it (the Affidavit) also goes into very detailed situations about the assault that occurred on Ms. Abear.". RP (08-12-10) 60-61.

ARGUMENT

The Fourth Amendment provides that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the things to be seized". U.S. Const. Amend. IV. The Fourth Amendment is applicable to the states through the action of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643, 6 L.Ed.2d 1081, 81 S.Ct. 1684 (1961). Washington's Constitution provides that "No person shal be disturbed in his private affairs, or his home invaded without authority of law." Washington Constitution Article I, Section 7.

Under both provisions, search warrants must be based on probable cause. State v. Young, 123 Wn.2d 173, 195, 867 P.2d 593 (1994). Evidence seized pursuant to a search warrant issued without probable cause must be suppressed. State v. Neth, 165 Wn.2d 177, 183-186, 196 P.3d 658 (2008). Furthermore, evidence tainted by the initial unlawfulness must also be suppressed as "fruit of the poisonous tree". State v. Eisfeldt, 163 Wn.2d 628, 640-641, 185 P.3d 580 (2008)(citing Wong Sun v United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)).

An affidavit in support of a search warrant "must state the underlying facts and circumstances on which it is based in order

to facilitate a detached and independent evaluation of the issuing magistrate.". State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). Under the Fourth Amendment, factual inaccuracies or omissions in a warrant affidavit may invalidate the warrant if the defendant establishes that they are (a) material and (b) made in reckless disregard for the truth. State v. Chenoweth, 160 Wn.2d 454, 462, 158 P.3d 595 (2007)(citing Franks v. Delaware, 438 U.S. 154, 155-156, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

In Mr. Maddaus's case, it is clear that the "factual inaccuracies" in the Affidavit for the Search Warrant of Mr. Maddaus's home were "(a) material", Judge, Pomeroy, denied the Motion to Suppress because of them when she stated: "but it also goes into very detailed situations about the assault that occurred on Ms. Abear"; and were "(b) made in reckless disregard for the truth", the Affidavit, for the search of Mr. Maddaus's home, sworn to and signed by Detective Johnstone and co-signed by Prosecutor Bruneau, states that: a report taken by Deputy Claridge states that Jessica R. Abear **reported** she was assaulted by Maddaus...; In his pleadings, filed 07-07-10, Prosecutor Bruneau, states that on 11-19-09, the investigators executing the search warrant were unaware of the Jessica Abear ordeal; Detective Johnstone, testified the first time he heard of Ms. Abear was on 11-24-09; Deputy Claridge, testified that Ms. Abear refused to speak with him or answer **any** questions that he had; Ms. Abear, testified that she told Deputy Claridge, that she didn't want to talk with him and she had nothing to say to him.

These, proven material and factual inaccuracies, that were made in reckless disregard for the truth by Prosecutor Bruneau, and Detective Johnstone. Should, also, bring into question the truthfulness of all the other alleged facts, in the Affidavit, from witnesses that could have been but were not called to testify by the State, i.e. Emerald Akau, Mark Grimes, Irene Cudinski.

Since, the information, in the Affidavit, relied on by Judge, Murphy, for issuing the search warrant and by Judge, Pomeroy, for denying Mr. Maddaus's, Motion To Suppress, were, clearly, material and factual inaccuracies, made in reckless disregard for the truth. The search warrant for Mr. Maddaus's home was invalid.

Because, the search warrant for Mr. Maddaus's home is invalid, all of the evidence seized from Mr. Maddaus's home on 11-19-09, must be suppressed as fruit from the poisonous tree.

Since, the illegally seized, highly prejudicial, evidence was presented at Mr. Maddaus's trial and used by the jury to convict him, Mr. Maddaus's, convictions were secured in violation of his constitutional rights.

These factual misstatements, by Prosecutor Bruneau, and Detective Johnstone, are blatent governmental misconduct. Warranting the reversal and dismissal, with prejudice, all of Mr. Maddaus's convictions, or at least, all of his convictions must be reversed and remanded for a new trial, without all of the illegally obtained evidence.

Additional Ground 4

THE TRIAL COURT VIOLATED MR. MADDAUS'S RIGHTS TO: DUE PROCESS UNDER THE FIFTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 3; EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 22; EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT: RIGHT TO APPEAL UNDER ARTICLE I, SECTION 22, WHEN IT DENIED HIM A CONTINUANCE TO ADEQUATELY PREPARE FOR TRIAL.

On 12-17-10, Mr. Maddaus's, trial Attorney, Mr. Woodrow, filed a Supplemental Motion And Declaration To Continue, and on 12-20-10, he filed a Motion And Declaration To Continue And Dismiss. Mr. Woodrow, was not prepared to go to trial and needed more time to prepare because of discovery violations by the State,

and he needed time to investigate the governmental misconduct / intrusion into the attorney client privilege, raised as Additional Ground 1 of this Statement of Additional Grounds. See Supplemental Motion And Declaration To Continue, filed 12-17-10, CP 208-214; and Motion And Declaration To Continue And Dismiss, filed 12-20-10, CP 273-277.

In his Supplemental Motion And Declaration To Continue, filed 12-17-10, and at a pre-trial hearing on 12-21-10, Mr. Woodrow states: "I end my motion by saying, you know, I've been doing murder trials for about twenty years or so, well, both for the state and for the defense, and I feel if the Court does not grant the motion to continue the trial based upon all the things that I have alluded to to that I will represent Mr. Maddaus, but I will in effect be ineffectual for him. I will not be able to do the best job that I can based upon my experience as being a defense attorney. And I don't want that to happen. That's why I am putting all these things out there and all I am asking for is a fair deal.". RP (12-21-10) 64-65, CP 213.

The trial Court Judge, Christine Pomeroy, denied the motions to continue. RP (12-21-10) 79.

ARGUMENT

When an experienced trial attorney, like Mr. Woodrow, notifies the court that they will be ineffective for their client if they are not granted a continuance. The only just thing to do is grant that continuance.

Mr. Woodrow, had legitimate reasons, that were not the fault of the defense's, for needing a continuance. For example, late discovery from the State, and needing time to evaluate and investigate the governmental misconduct / intrusion into the attorney-client privilege. To expect an attorney to be able to do all of those things, still be able to prepare for a month long murder trial, and take care of the needs of all his other clients, is

definately unreasonable.

There are many instances, in this case, where Mr. Woodrow, may have been ineffective as Mr. Maddaus's, Attorney, because of the trial Court's denial of a continuance. The State, may try and argue on appeal, that since Mr. Woodrow, failed to object, Mr. Maddaus, has waived or loses his right to raise those issues on appeal. Mr. Maddaus, has a constitutional right to due process, effective assistance of counsel, and a direct appeal, and it cannot be said that he has waived those rights, absent a knowing and voluntary waiver.

Also, the State, should not be allowed to create a situation that causes a criminal defendant's attorney to become ineffective, and then later argue that the defendant has waived the right to raise the issues caused by that ineffectiveness.

Mr. Woodrow, notified the the Court, that he would be ineffective if he was not granted a continuance. The State fought against the continuance. The trial Court, denied the continuance, and Mr. Maddaus, was forced to go to trial with ineffective counsel. So any instances of ineffective assistance of counsel, in this case, are because of the trial Court's decision, and not the fault of Mr. Maddaus, or his Attorney.

Because the trial Court violated, Mr. Maddaus's, constitutional rights, when it refused to grant him a continuance to adequately prepare for trial, Mr. Maddaus's, convictions must be reversed and remanded for a new trial.

Additional Ground 5

THE TRIAL COURT VIOLATED MR. MADDAUS'S RIGHTS TO: DUE PROCESS UNDER THE FIFTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 3; EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 22; EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT; RIGHT TO APPEAL UNDER ARTICLE I, SECTION 22, WHEN IT WOULD NOT ALLOW MR. MADDAUS TO FIRE HIS ATTORNEY AND RETAIN NEW COUNSEL.

As previously discussed in Additional Ground 4, Mr. Maddaus's, trial Attorney, Mr. Woodrow, notified Mr. Maddaus and the Court, that he would be ineffective as Mr. Maddaus's, Attorney, if he was forced to proceed to trial. RP (12-21-10) 64-65, CP 213.

On January 05, 2011, Mr. Maddaus, fired his **retained** Attorney, Mr Woodrow. RP 263-264.

The trial Court Judge, Christine Pomeroy, would not allow Mr. Maddaus, to fire his **retained** Attorney. RP 264.

On January 06, 2011, a hearing was held concerning Mr. Maddaus, firing his Attorney. At this hearing, Mr. Maddaus, stated: "My attorney's told me that he is not ready to go to trial. He says that he can't give me fair representation at this time. I don't know what else to do. I mean, if you attorney tells you that what do you do?" ... "He says he can't give me fair representation at trial. Would you want to go to trial with an attorney that says he can't fairly represent you at trial?". RP (01-06-11) 6.

ARGUMENT

Mr. Maddaus, paid for his own trial Attorney. When, that Attorney, told Mr. Maddaus and the Court, that he would be ineffective and not able to do the job that he had been hired by Mr. Maddaus to do, Mr. Maddaus, fired his Attorney. The trial Court Judge, Christine Pomeroy, would not allow, Mr. Maddaus, to fire his Attorney and hire a different attorney.

Mr. Maddaus, is not aware of any authority in Washington State that authorizes any superior court judge to choose who a person accused of a crime may hire as their attorney.

The State, may try and argue that because of the closeness of the trial date, that Mr. Maddaus, should not have been allowed to fire his Attorney. This argument fails, shortly after Mr. Woodrow, notified Mr. Maddaus and the Court that he would be unable to fulfill his part of the contract and defend Mr. Maddaus in the manner that he had been hired to, Mr. Maddaus, notified the

trial Court and fired Mr. Woorow. The trial Court would not allow Mr. Maddaus to fire his Attorney and retain a new one, and forced him to continue to pay Mr. Woodrow.

There are many instances in this case where Mr. Woodrow may have been ineffective as Mr. Maddaus's, Attorney, and the State may try to argue on appeal that Mr. Maddaus has waived or loses his right to raise those issues because his Attorney failed to object. Mr. Maddaus, has a constitutional right to due process, effective assistance of counsel, and a direct appeal, and it cannot be said that he has waived those rights, absent a knowing and voluntary waiver. Since the trial Court forced Mr. Maddaus to proceed with an Attorney it knew would be ineffective, any instances of ineffective assistance of counsel are because of the trial Court's decision and not Mr. Maddaus's fault.

Because the trial Court violated, Mr. Maddaus's, constitutional rights, when it would not allow him to retain counsel of his choice and forced him to proceed with an Attorney it knew would be ineffective, Mr. Maddaus's convictions must be reversed and remanded for a new trial.

Additional Ground 6[fn.3]

MR. MADDAUS'S RIGHTS TO: DUE PROCESS UNDER THE FIFTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 3; EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 22; EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT; TRIAL BY IMPARTIAL JURY UNDER THE SIXTH AMENDMENT AND ARTICLE I, SECTION 22; DIRECT APPEAL UNDER ARTICLE I, SECTION 22, WERE VIOLATED BECAUSE OF ALL THE ISSUES INVOLVING THE POWER POINT PRESENTATION AS INDICATED BELOW.

The errors concerning the Power Point prsentation used in Mr. Maddaus's trial are: Prosecutorial misconduct for the trial Prosecutor using computer technology to circumvent the evidence rules and put factual misstatements and highly prejudicial

fn.3: On May 18, 2012, Mr. Maddaus, received from the Thurston County Superior Court Clerk's Office, a copy of the clerk's papers including all of the Power Point slides that were filed with the Court. There appears to be only 399 slides (978-579=399), and slides are missing. CP 579-978.

evidence in front of the jury without it first being properly admitted into evidence, for not filing a copy of the Power Point presentation with the trial Court or providing a copy to the defense; Ineffective assistance of counsel for Mr. Maddaus's trial Attorney not objecting to the Power Point presentation; Judicial misconduct for the trial Court, Judge, allowing such a clear error to occur in her courtroom; Prosecutorial misconduct of the State's Appellate Counsel for not filing all of the Power Point slides as ordered by this Court, and for the spoilation, tampering, and hiding of evidence for removing the slide at issue from the Power Point presentation prior to filing it with the trial Court; Denial of a complete and accurate record for appeal.

Mr. Maddaus, adopts and incorperates all that has previously filed pertaining to these issues, with these issues, but he will not reiterate it all for the sake of brevity. Please see: Motion To Perfect The Record For Review, submitted 11-22-11; Reply To Respondent's Response To Motion To Perfect The Record For Review, submitted 12-08-11; Appellant's Second Motion To Perfect The Record For Review, submitted 01-04-12; Reply To State's Response To Appellant's Second Motion To Perfect The Record For Review, submitted 01-20-12; Motion To Modify Commissioner's Ruling, submitted 01-22-12; Motion To Compell, submitted 02-28-12 (All of the above were submitted with the Court of Appeals, Division II).

Mr. Maddaus, has argued exstensively to try and get these issues properly before this Court. The record is still incomplete, and in fact, these issues have become more confusing because there was never a hearing to clarify what has transpired with the evidence that was used in this case.

Throughout, Mr. Maddaus's, trial, the Prosecutor, Mr. Bruneau, used a Power Point presentation to display, on a six foot by six foot screen, evidence and exhibits to the jury. This Power Point presentation was not filed with the trial Court or provided to the defense.

Before, Prosecutor, Bruneau, would put pictures on the Power

Point screen, he would first move to admit it, then he would move to publish it. RP 507-508, 696 (Mr. Maddaus, uses these two instances as examples of what happened every time, but does not cite every instance for the sake of brevity).

Whenever, the State was using an exhibit for illustrative purposes only, Prosecutor Bruneau, would notify the Judge and the jury, and then the Judge would make sure that the jury knew that the exhibit was for illustrative purposes only. RP 742-743, Exhibit No.159 (Tokarav 7.62 mm, admitted 01-13-11), CP 745 & 889, RP 1468-69; Exhibit No.237a (Transcription of Jail Phone Calls, admitted 01-25-11) Supp. CP; and Exhibit No.239 (Telephone Record Summary, admitted 01-25-11) Supp. CP.

The jurors in Mr. Maddaus's case, were instructed that the attorney's arguments are not evidence, but the jurors were never instructed that what was used in the Power Point presentation during closing arguments was a visual aide, demonstrative evidence, or a summary of the evidence and not actual evidence.

During closing arguments, Prosecutor Bruneau, put factual misstatements in front of the jury (see Appendix A (On 05-10-12, Mr. Maddaus, designated all of the Power Point slides filed with the trial Court, but has also attached a few of the slides to this SAG for this Court's convenience)), while simutaneously stating: "To Dan Leville and Falyn Grimes he said you guys will protect me.". CP 915 , RP 1997. This misstatement is clearly not what was said in the phone call. RP 1491.

Prosecutor, Bruneau, used computer generated graphics in the Power Point presentation to alter photos that were admitted into evidence. Then, he presented those, highly prejudicial, altered versions to the jury without first admitting them into evidence, or explaining to the jury that what they were seeing was not evidence. See Append. B (Exhibit No.148), CP 731 ; Append. C (Exhibit No.149), CP 732 & 939; Append. D (Never given an exhibit No.), CP 978.

The Prosecutor's Office, has not maintained custody of the Power Point presentation used in Mr. Maddaus's trial. Prosecutor,

Bruneau, was terminated and took the Power Point presentation with him, as work product, when he left. See Reply To State's Response To Appellant's Second Motion To Perfect The Record For Review, Attachment K, submitted 01-20-12.

Because the Power Point presentation used in Mr. Maddaus's case was not filed with the trial Court or provided to Mr. Maddaus's trial Attorney, Mr. Woodrow, none of the slides were available for appellate review. (Mr. Maddaus, is also stating later in this SAG, that this has denied him his right to a direct appeal under Article I, Section 22 of the Washington State Constitution and due process under the Fifth and Sixth Amendment to the U.S. Constitution.

On 12-15-11, this Court, granted Mr. Maddaus's, Motion To Perfect The Record For Review and ordered the State to file copies of all the Power Point slides with the trial Court.

In the State's Respone To Appellant's Motion To Perfect The Record, DPA, Carol La Verne, states: "He alleges that one of the slides in that presentation showed a red circle with a slash through it superimposed over his photograph and the word 'guilty' written beneath it. He contends that this is an exhibit that was never introduced into evidence and was both improper and prejudicial. I have not seen this Power Point presentation, but will assume arguendo that such a slide was shown during closing argument.". Supra.

In DPA, Carol La Verne's, Declaration, she states: "Therefore, with this declaration is a copy of the order from the Court of Appeals and 426 pages of Power Point slides. To the best of my knowledge, this represents all of the Power Point slides that were shown to the jury during the trial. I do solemnly swear and affirm, under the penalty of perjury under the laws of the State of Washington, that the above is true and correct.". Supra; CP 576-577.

Not all of the Power Point slides used in Mr. Maddaus's trial were filed with the trial Court, so Mr. Maddaus, submitted his Appellant's Second Motion To perfect The Record For Review. Supra.

In the State's Response To Appellant's Second Motion To Perfect Record, DPA, Carol La Verne, states: "The slides filed

with the court were paper print outs. (Apparently they were not counted correctly. Staff in the prosecutor's office counted 426 pages but the clerk's office counted only 403 pages.)". ... "He is apparently concerned with the slide containing his photo, a circle and a slash across the photo, and the word 'guilty' at the bottom. His counsel is now in possession of that slide, as well as the rest of the slides, and can provide him with assistance in reviewing them.". Supra.

On 05-11-12, Mr. Maddaus, received from Ms. Backlund, allegedly, all of the pages of Power Point slides that were filed with the trial Court on 12-16-11. Mr. Maddaus, has counted the pages of slides many times, and there is only 400 pages of slides that were used in Mr. Maddaus's trial. Also, the slide that DPA, Carol La Verne, described perfectly on at least two occasions "the slide containing his photo, a circle and a slash superimposed over it, with the word GUILTY beneath it", is still not there. See Power Point slides, CP 579-978.

Because of all the issues surrounding the handling and filing of the Power Point presentation, and since it was never filed until almost a year after Mr. Maddaus's trial. Mr. Maddaus, in his motions to perfect the record, repeatedly requested that the State certify into the record that it has maintained custody of the Power Point presentation since Mr. Maddaus's trial, and that it has not been edited or tampered with. The State refuses to do so. Supra.

The Power Point presentation is still incomplete. There is nothing in the record that can suffice to certify or authenticate that what was filed with the trial Court on 12-16-11, and provided to Mr. Maddaus on 05-11-12, is a complete or accurate record of what was shown to the jury in Mr. Maddaus's trial.

ARGUMENT

The Washington State Rules of Evidence are clear on the requirements of evidence: ER 901(a) Provides that the requirement of authentication or identification as a precedent to admissability is satisfied by evidence sufficient to support a finding that the

matter in question is what the proponent claims; ER 901(b)(1) Provides that the person authenticating or idetifying the matter, must have personal knowledge of it.

Even though, DPA, Carol La Verne, swore under the penalty of perjury, that to the best of her knowledge the 426 pages of slides she filed with the Court on 12-16-11, represents all of the slides that were shown to the jurors at Mr. Maddaus's trial. DPA, La Verne, was never a part of or present during Mr. Maddaus's trial, and she has **no** actual **knowledge** of what was shown to the jury in Mr. Maddaus's trial. This compounded with the fact that the Thurston County Prosecutor's Office did not maintain custody of the Power Point presentation, makes it clear that DPA, La Verne's, Declaration, cannot satisfy the requirement that Power Point is what it is purported to be under ER 901 and RCW 5.44.040. Also, DPA, Carol La Verne's Declaration is inaccurate, she only filed 399 slides that were used in Mr. Maddaus's trial. See Power Point slides, CP 579-978.

The State has engaged in the spoilation, alteration, and concealment of evidence, by not filing all of the Power Point slides as ordered by this Court, and the deception of the parties by alleging that they have. At least one of the slides: the photo of Mr. Maddaus, wearing a wig, with a big red circle and slash over his face and the word GUILTY in in big red capital letters below it, is still missing. See Power Point slides, CP 579-978.

Using computer graphics to create and show these types of exhibits to the jury severely prejudiced Mr. Maddaus. After a month long trial, the jury is consciously or subconsciously trained into wrongly thinking that everything they are being shown on the Power Point screen is evidence, unless they are told otherwise. Showing the jury exhibits like that heavily influenced the jury, either consciously or subconsciously to vote "GUILTY" on all charges. Exhibits like these are far more prejudicial and influential than the jury seeing a defendant in shackles being escorted by armed guards to and from jail. This clearly denied Mr. Maddaus his right to a fair trial by an impartial jury.

The Power Point presentation used by Prosecutor, Bruneau, to summarize the evidence in his closing arguments is just like the summary charts discussed in Lord and Yates, infra. Technology has advanced to where Power Point presentations make it easier to summarize the evidence rather than on a board or chart.

In State v. Lord, 117 Wn.2d 829, 822 P.2d 177 (1991), the Washington Supreme Court said: "Illustrative evidence is appropriate to aid the trier of fact in understanding the evidence, where the trier of fact is aware of the limits of the accuracy of the evidence. Norris v. State, 46 Wn.App. 822, 827, 733 P.2d 231 (1987). Lord at 855. Because a summary chart submitted by the prosecution can be a very persuasive and powerful tool, the court must make certain that the summary is based upon, and fairly represents, competent evidence already before the jury. United States v. Conlin, 551 F.2d 534, 538 (2nd Cir.), cert denied, 434 U.S. 831 (1970). This does not mean, however, that there can be no controversy as to the evidence presented. Rather, the chart must be a substantially accurate summary of evidence properly admitted. The jury is then free to judge the worth and weight of the evidence summarized in the chart. Epstein v. United States, 246 F.2d 563, 570 (6th Cir.), cert. denied, 355 U.S. 868 (1957). Lord at 855-856.;

The fact that summary charts can be a very persuasive tool also gives rise to concerns associated with their use. The jury might rely on the alleged facts in the summary as if these facts had been proved or as a substitute for assessing the credibility of witnesses. United States v. Scales, 594 F.2d 558, 564 (6th Cir.), cert. denied, 441 U.S. 946 (1979). There is also the possibility that the jury will treat will treat the summary as additional evidence or that the summarry will provide extra summation for the government. United States v. Lemire, 720 F.2d 1327, 1348 (D.C. Cir. 1983), cert. denied, 467 U.S. 1226 (1984). These reservations have led to the requirement of "guarding instructions" to the effect that the chart is not itself evidence, but is only an aid in evaluating the evidence. Scales at 564; Lemine, at 1347. Such instructions are

not the only protection against the concerns sometimes associated with summary charts. The trial court has a duty to ensure that such charts are substantially accurate. The court fulfills this duty, in part, by allowing the defense full opporunity to object to any portions of the summary chart before it is seen by the jury. Lemire, at 1348.". Lord, at 856.

The Washington Supreme Court re-affirmed its holding in Lord, in State v. Yates, 161 Wn.2d 714, 168 P.3d 359 (2007): "The court ensures that the prosecution's summary chart is substantially accurate ... by allowing the defense full opportunity to object to any portions of the summary chart before it is seen by the jury. Additionally, to guard against the possibility that the jury will treat the summary as additional evidence the trial court must instruct the jury that the chart itself is not evidence, but is only an aid in evaluating the evidence. During the course of the State's case, information regarding the evidence was posted on the chart after the evidence was presented. Before the additions were revealed to the jury, the trial court permitted the defense to contest the accuracy of the new information. Additionally, the court repeatedly instructed the jury that the chart itself was not evidence,". Yates, at 772-773.

In Mr. Maddaus's case, the Court never gave any guarding instructions about the Power Point summarization; never instructed the jury that what they were seeing was not evidence; did not make sure what was being shown to the jury was accurate evidence already before the jury; and never gave the defense an opportunity to object to the summary before it was shown to the jury.

The same issues happened in State v. Sublett, 156 Wn.App. 161, 231 P.3d 231 (2010). In that case, this Court, stated it could not address this issue on direct review because it would require examination of matters outside the record. Id. at 199. Therefore, Mr. Sublett, has lost his constitutional right to a direct appeal of those issues.

The same Judge (Christine Pomeroy), and the same Prosecutor

(David Bruneau), that were involved in State v. Sublett, supra, were involved in Mr. Maddaus's case. Judge, Pomeroy, Knew or should have known, that what was happening in her courtroom was violating Mr. Maddaus's rights, and she should not have allowed it to happen. Prosecutor, Bruneau, knew or should have known, what he was doing was violating Mr. Maddaus's rights, and was prosecutorial and governmental misconduct.

Mr. Maddaus's, trial Attorney, Mr. Woodrow, was ineffective for not objecting to: The Power Point presentation not being filed; Not being able to preview it before it was shown to the jury; And, to the factual misstatements, altered evidence, and prejudicial slides. However, as previously stated in this SAG, Mr. Woodrow, warned the Court that he would be ineffective if forced to got to trial when he was.

As previously indicated, Mr. Maddaus, has tried to perfect the record for appeal. Under Article I, Section 22, of the Washington State Constitution, Mr. Maddaus, has a right to a direct appeal of his convictions. This right includes a complete and accurate record for appeal. Article I, Section 22, provides more protection, to Washington's citizens, than its Federal counterparts. See State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986).

Of course, an evidentiary hearing to establish facts into the record, as to what has transpired with the Power Point presentation, should have happened, but it has not.

Even so, all the above issues have clearly established prosecutorial misconduct, judicial misconduct, governmental misconduct, and ineffective assistance of counsel. Thereby, violating Mr. Maddaus's rights to due process, trial by impartial jury, effective assistance of counsel, and a direct appeal. Therefore, Mr. Maddaus's, charges must be dismissed with prejudice or reversed and remanded for a new trial.

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Additional Ground 7

MR. MADDAUS'S RIGHTS TO: DUE PROCESS UNDER THE FIFTH AMENDMENT, FOURTEENTH AMENDMENT, AND ARTICLE I, SECTION 3; EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT, FOURTEENTH AMENDMENT, AND ARTICLE I, SECTION 22; EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT, WERE VIOLATED BECAUSE HIS CASE WAS HELD BEFORE A BIASED JUDGE.

At a pre-trial hearing, the trial Court Judge, Christine Pomeroy, stated that she preassigned herself to Mr. Maddaus's case. RP (04-30-10) 10.

At a pretrial motion hearing, Mr. Woodrow, requested a contiinuance until September 2010, Prosecutor, Bruneau, requested May, 2010. Judge, Pomeroy, set it for May, 2010. RP (01-20-10) 16-20.

At a pretrial hearing, Mr. Woodrow, requested a continuance for three months, Mr. Bruneau, requests it not go beyond October, 04, 2010. Judge, Pomeroy, sets it for Oct. 04, 2010. When, asked why, she stated, because the State proffered it. RP (08-23-10) 23-34.

At a pretrial hearing concerning the violation of the attorney client privilege, Judge, Pomeroy, said: "And further, I'm not saying that a formal hearing doesn't need to be heard before this," ... "there may be a crime here but it doesn't delay this case at all.". RP (12-21-10) 79. Even though, Judge, Pomeroy, knew that Mr. Maddaus's rights had been violated so bad that it may constitute a crime, she was pushing the case through.

Judge, Pomeroy, consistantly rules in favor of the Prosecutor. RP 499-520. Judge, Pomeroy, offers up an argument for the Prosecutor: "Court: Counsel do you wish to respond? I believe that it is not being offered for the truth of the matter but only what was stated. Is that correct.". RP 522-523. Mr. Woodrow, states: "a fair playing field is all I am asking for.". RP 998-990. Judge, Pomeroy, never rules on Mr. Woodrow's objection RP 1069-1070.

Mr. Woodrow, asks to be heard outside the jury, but gets denied. RP 1095-1098. Then, Mr. Bruneau, asks and the Judge removes the jury so he can be heard. RP 1127-1129. Then, Mr. Woodrow, asks to

be heard, and Judge Pomeroy, denies it. RP 1210.

Mr. Woodrow, tries to impeach, Ms. Grimes, with how she conspired with the other witnesses to give false statements. Judge, Pomeroy, waits until Ms. Grimes gets back on the stand, and tells her how to avoid the questioning by reading the Court Rule to her. RP 1211-1218.

When, Mr. Tremblay, testifies to the information that the State never provided to the defense, Mr. Woodrow, motions for a continuance, but is denied. RP 1350-1354. Judge, Pomeroy's reasoning was: then you can cross examine him; Mr. Woodrow, says on what he has no info.; Judge, Pomeroy, says, you're gonna have to deal with it, I see nothing wrong. RP 1355.

Mr. Woodrow, asks to be heard outside the jury, but isn't allowed. RP 1544. Judge, Pomeroy, makes a bunch of rulings all in favor of the State, and then allows Mr. Bruneau, to yell at the witness and call him a liar. RP 1555-1581.

When, the defense, was ambushed with the "Collins" information, that was withheld by the State. RP 1664-1667. Judge, Pomeroy, said: "All right. We'll take a five minute recess. We're going to go through.". RP 1666-1667. Again, Judge, Pomeroy, was pushing the case through, regardless of how bad Mr. Maddaus's rights were violated.

The defense, was put in a position of trying to get witnesses because of the State's Brady violations, but Judge Pomeroy, wasn't allowing any leeway. RP 1767-1768. Prosecutor, Bruneau, asks to be heard outside the jury and is immediately granted it. RP 1781.

Judge, Pomeroy, wouldn't allow the defense to play the recording that was allegedly supposed to have Mr. Peterson's voice on it. After, the State, resting their whole case on that somehow Mr. Maddaus heard Mr. Peterson's voice on it. RP 1788-1799. CP 382-384.

The above instances are just a small portion of the many instances where Judge Pomeroy, showed her bias. Mr. Maddaus, cites only these for the sake of brevity.

ARGUMENT

The right to a fair hearing under the federal due process clause

prohibits actual bias and "the probability of unfairness". State v. Chamberlin, 161 Wn.2d 30, 38, 162 P.3d 389 (2007)(quoting, Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L. Ed.2d 712 (1975)).

A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial and neutral hearing. State v. Ryna RA, 144 Wn.App. 688, 705 (2008) (quoting, State v. Ladenburg, 67 Wn.App. 749, 754-55, 840 P.2d 228 (1992)). Moreover, we find inappropriate the trial Court's proposal of theories for the State to use in admitting improper ER 404(b) evidence. A trial court should not enter into the "fray of combat" or assume the role of counsel. Ryna RA, supra, (quoting, Eged-Nissen v. Crystal Mountain, Inc., 93 Wn.2d 127, 141, 606 P.2d 1214 (1980)).

"The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial.". State v. Post, 118 Wn.2d 596, 618, 826 P.2d 172, 837 P.2d 599 (1992).

In this case, Mr. Maddaus, respectfully asserts that a reasonably prudent and disinterested person viewing the entirety of the proceedings would conclude that the trial Court harbored actual or potential bias against Mr. Maddaus. The facts outlined above, as well as the record itself, establish more than a potential for bias. The trial Court's remarks to counsel, interuption of and denial of examinations, tolerance of the State's misconduct, favoring of the State, and entering into the fray of combat for the state, all show clear and actual bias and prejudice towards Mr. Maddaus. Therefore, Mr. Maddaus's, convictions must be dismissed with prejudice or reversed and remanded for a new trial in front of an unbiased Judge.

Additional Ground 8[fn.4]

MR. MADDAUS'S RIGHTS TO: DUE PROCESS UNDER THE FIFTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 3; EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT, FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 22; EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH

fn.4: Mr. Maddaus, apologizes to this Court and all parties for him having to reduce the rest of this SAG from line and a half to single line. It is necessary to be able to fit within the 50 page limit. He has already had to not be able to raise too many issues to comply with the 50 page limit.

AMENDMENT; AND A DIRECT APPEAL UNDER ARTICLE I, SECTION 22, ARE BEING VIOLATED BECAUSE OF AN INCOMPLETE RECORD FOR DIRECT REVIEW.

The trial Court, Judge, Christine Pomeroy, refused to allow Mr. Maddaus's, trial Attorney, Mr. Woodrow, an opportunity to have a hearing or investigate the intrusion into the attorney-client privilege (Additional Ground 1).

At a December 21, 2010, pretrial motion hearing, Mr. Woodrow, stated that he would like to have the letter, and the envelope fingerprinted, and he needed the Court to authorize him to be able to go into the Jail to see how copies are made, if there were any searches, who had access to Maddus's cell and legal papers, and to be able to subpeona people to testify. Mr. Woodrow, clearly, advised the Court that he could not investigate the issues without the Court's authority, and he needed more time because he was trying to prepare for trial. RP (12-21-10) 53-54; CP 208-213.

Judge, Pomeroy, stated that Mr. Maddaus's rights to attorney-client privilege had been violated so bad that it may constitute a crime and ordered the Thurston County Sheriff's Office to take custody of the letter. Judge, Pomeroy, also stated that she believed a formal needed to be held, but she wasn't going to let anything delay the case. RP (12-21-10) 79; CP 365-368.

While a public disclosure request, to find out how many copies were being made when inmates were requesting legal copies, was pending. The Thurston County Jail, destroyed the evidence by replacing the photocopier used for making legal copies, without saving the hard drive data.

In Decmber, 2010, after, Mr. Woodrow, asked for permission to be able to investigate how legal copies were made at the Jail, the Thurston County Jail put out a memo stating that they had been advised by their legal counsel to stop making legal copies in the manner that they had been.

Because, the Prosecutor's Office, was in possession of Mr. Maddaus's 52 page statement to his Attorney, the State's four key witnesse changed their testimony from the statements they gave law enforcement. Daniel Leville, RP 1041-1152; Falyn Grimes, RP 1177-1233; Jesse Rivera, RP 1266-1320; and Mathew Tremblay, 1321-1409 & 1779-1793. CP 273-277.

Mr. Maddaus, was forced to communicate with his Attorney on a speaker phone where other inmates could hear both sides of the conversation. CP 274, Motion And Declaration To Continue And Dismiss. Some of Mr. Maddaus's pnone calls to his Attorney were recorded and monitored by the Prosecutor's Office and police officers.

In an e-mail, Prosecutor Bruneau, stated that he had received an unprecidented number of kites from inmates offering up information about Maddaus in exchange for leniency. CP 374. Then, later he testtified that: some of this information he passed on to Woodrow, and in some situations "I simply threw them out because it was nothing I was interested in.". RP 1804. The kites that Mr. Bruneau threw away had exculpitory information about Mr. Maddaus's case and information that would show that informants had been placed around

Mr. Maddaus in order to gain information from his calls to his attorney. That is why Mr. Bruneau wasn't interested in them and threw them away.

In January, 2011, after Mr. Woodrow asked for a hearing and to be able to investigate the intrusion into the attorney-client privilege, the Thurston County Jail removed the speaker phone that Mr. Maddaus had to use and even changed the phone company in order to get rid of the evidence.

As previously stated in Additional Ground 6 of this SAG, the Power Point presentation is still incomplete and has been tampered with. CP 579-978 (978-579=399). There is nothing in the record that certifies or authenticates that it is what it is purported to be. CP 576-577. Mr. Maddaus, adopts and incorperates all that has been previously submitted and argued concerning the Power Point presentation into this argument.

Mr. Maddaus, had tried to get this Court to send him back to the trial Court to perfect the record that should already be there. See Motions To Perfect The Record, supra.

Argument

This Court, may not be able to adequately evaluate all of the issues raised because of the State's misconduct, spoilation, violations of the evidence rules, failure to follow this Court's order, and the trial Court's refusal to hold hearings to establish facts into the record for appellate review.

At a minimum the Federal Constitution requires that the State provide the litigant "an opportunity to present his claim fairly". Rose v. Moffit, 417 U.S. 600, 616, 94 S.Ct. 2437, 41 L. Ed.2d 341(1974).

The Fourteenth Amendment, Section 1 of the United States Constitution provides "...No state shall enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law." The right to access the courts is founded in the due-process clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. Wolf v. McDonnell, 418 U.S. 539, 576-77, 94 S.Ct. 2963 (1974).

Under Article I, Section 22, Washington State's citizens have a constitutional right to a direct appeal. This right, includes the right to a complete and accurate record of all the evidence presented to the jurors. Article I, Section 22, offers more protection than its Federal counterparts. See, State v. Gunwall, 106 Wn.2d 54 (1986).

A criminal defendant is constitutionally entitled to a record of sufficient completeness to permit effective appellate review of his claims. State v. Thomas, 70 Wn.App. 296, 298-99, 852 P.2d 1130 (1993); State v. Tilton, 149 Wn.2d 775, 781, 72 P.3d 735 (2003); Coppedge v. United States, 369 U.S. 438, 446, 82 S.Ct. 917, 8 L. Ed.2d 21 (1962).

Mr. Maddaus, only has a constitutional right to one direct appeal. After that, he has access to the court's but at a different standard

for review and relief. Mr. Maddaus, should be able to have all of his issues he is trying to raise reviewed under the standard of a direct appeal. He should not have to try and raise them in a PRP at a later date. When, more evidence could be destroyed or lost, and people's memories may have faded. For all the reasons stated above and in this SAG, Mr. Maddaus, has been denied his right to due process and a direct appeal. Therefore, all his convictions must be dismissed with prejudice or remanded for a new trial.

Additional Ground 9

MR. MADDAUS'S CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED BECAUSE OF ALL THE CUMLATIVE ERRORS.

All of the errors in Mr. Maddaus's case have had the combined effect of denying him his constitutional rights and to a fundamentally fair proceeding.

CONCLUSION

Mr. Maddaus, is a layman of the law and prays this Court will not hold him to the standards of a lawyer and construe his pleadings liberally. See, Haines v. Kerner, 92 S.Ct. 594, 404 U.S. 519, 30 L. Ed.2d 652 (1972). Mr. Maddaus, has done his best to make this pleading as easy to read and understand as he can. He has tried to provide this Court with relevant case law, even though this Court notified him, on 10-26-11, that all he must do is "identify" and "discuss" the issues. He hopes that this Court will not penalize him if he has failed to include authority or applied the wrong ones. Mr. Maddaus, has many more issues that he wanted to raise in this SAG, but was unable to because of the 50 page limit. Mr. Maddaus, did not receive a numbered copy of the Clerk's papers until 05-18-12, (it appears that only 399 slides were filed with the trial Court, CP 579-978). He has had to hurry and go back through this SAG and label all the places where he wasn't able to cite the number of the clerk's papers because he didn't have them. He hopes he has not missed any or made any errors, and if so, this Court will understand.

In closing, in the Washington Supreme Court's recent ruling, In re Pers Restraint of Stenson, No.83606-0 (05-10-12)(where the same Prosecutor, David Bruneau, used the same unlawful tactics and misconduct as he has done to Mr. Maddaus), Mr. Stenson, was finally granted due process, justice, and relief from his unlawful convictions. That is if you consider 18 years on death-row and almost being executed in 2008, due process and justice. Oddly, if Mr. Stenson, had been sentenced to life without parole, instead of the death penalty, he would have never gotten his convictions overturned. Only because of his death sentence was he given such high-caliber attorneys and his case given such close scrutiny. Mr. Maddaus, isn't sure which is worse, life in prison or death, but it should not matter. All of Washington State's citizens should be afforded the same due process and protections of the law. For all the above reasons, Mr. Maddaus, respectfully requests, that this Court dismiss all his convictions with prejudice or remand them for a new trial.

RESPECTFULLY SUBMITTED, on this 23rd day of May, 2012.

Robert J. Maddaus, Pro Se
DOC# 975429, WSP
1313 N. 13th Ave.
Walla Walla, WA 99362

APPENDIX- A

DEFENDANT FALSE ALIBI ATTEMPT

11/26/08, contact with Farmer, "on a tattoo"

Jail telephone calls

Conspiracy With Chelsea Williams to tamper With Witnesses, December 16 – 18, 2006

- Theodore Farmer "tattoo"
- Dan Leville & Falyn Grimes "you guys…"
protect me"
- Shawn Ruth … "I don't lie for anyone."

APPENDIX- B

EXHIBIT 148

APPENDIX- C

EXHIBIT 149

EXHIBIT 149

APPENDIX- D

EYEWITNESSES TO EVENTS
TELEPHONE RECORDS
MOTIVE
THREATS TO KILL
JAIL PHONE CALLS
FALSE ALIBI ATTEMPT
DISGUISE AND COVER-UP
FUGITIVE

CERTIFICATE OF SERVICE

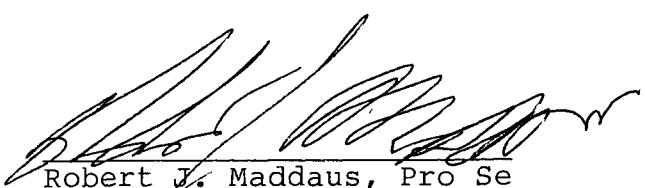
I, Robert J. Maddaus, certify under penalty of perjury, under the laws of the State of Washington, that I served the attached AMENDED STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW, on the parties listed below, at the addresses indicated, by placing the same in the United States Mail, first class postage pre-paid.

David C. Ponzoha, Court Clerk,
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Jodi R. Backlund,
Attorney at Law
P.O. Box 6490
Olympia, WA 98507-6490

Carol La Verne, DPA,
Thurston County Pros. Office
2000 Lakeridge Dr. SW
Olympia, WA 98502

EXECUTED, on this 23rd day of May, 2012.



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May 23, 2012

David C. Ponzoha, Court Clerk,
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Re: State v. Maddaus, Court of Appeals No.41795-2-II;
Thurston County Superior Court Cause No.09-1-01772-1.

Dear Mr. Ponzoha:

Enclosed, is my Amended Statement of Additional Grounds. Will you please file it for me.

I have also enclosed a copy of the Order of your Court, allowing me to file an amended statement of additional grounds.

Thank you for your time and assistance in this matter.

Sincerely,

Robert J. Maddaus, Pro Se,
DOC# 975429, WSP
1313 N. 13th Ave.
Walla Walla, WA 99362

cc: My File