

70045-6

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STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
)  
Wendell Adams, Jr. )  
(your name) )  
Appellant )

No. 70045-6-I  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW  
Pursuant To R.F.P. 10.10

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

Additional Ground 1

1) Judicial Misconduct... The Due Process clause incorporate the common law rule that Judges must recuse themselves when they have a direct, Personal, Substantial Pecuniary Interest in a case. Tumey V. Ohio, 273 U.S. 510, 523, 47 S.Ct 437 71 L. Ed 749 (1927). Litzberg V. Health [170 Wn. App. 101] Services Acquisition Corp. 486 U.S. 847 108 S.Ct. 2194 102 L. Ed. 2d 855 (1988). Right to a fair trial is basic requirement of Due Process and includes right to an unbiased Judges. State V. Masley 8 Wnsh. App. 61, 70, 504 P.2d 1156 (1972)

Additional Ground 2

2) Elements: The Due Process clause of the fourteenth Amendment Mandates that the State Prove each essential element of a crime beyond a reasonable doubt. In re Winship 397 U.S. 358, 90 S.Ct. 1068 25 L. Ed. 2d 368 (1970); State V. Green 94 Wn. 2d 216, 220-21 616 P. 2d 628 (1980) Due Process indisputably entitles a defendant to a determination that he is guilty of every element of the crime beyond a reasonable doubt.

If there are additional grounds, a brief summary is attached to this statement. [To follow]...

Date: 11-21-13

Signature: Wendell Adams Jr.

## Additional Ground #1 Judicial Misconduct:

Appellant wishes to contend through this Supplementary Statement of additional ground that, Appellants protection under U.S.C.A. Const. Amend. 14. of Due Process was violated due to Judicial Misconduct. On February 4<sup>th</sup> 2013, Appellant started trial in the Courtroom of Honorable Judge Lori K. Smith. It was here that Honorable Judge Lori K. Smith stated on record that she knows the step-mother of the victim. RP pg. 43 Lines 9 thru 13, 2/4/13. Not only does your Honor know the step-mother of the victim, the Court deals with the Law Agency that the step-mother works for directly. With this being known to the record, Now your Honors impartiality and fairness is at question as to whether your Honor was bias or Prejudice toward Appellant.

The Due Process clause incorporated the common law rule that Judges "must" recuse themselves when they have a "direct, Personal, Substantial Pecuniary interest." Tumey v. Ohio, 273, U.S. 510, 523, 47 S.Ct. 437, 71 L.Ed. 749 (1927); Liljeberg v. Health [170 Wn. App. 101] Services Acquisition Corp. 486 U.S. 847, 108, S.Ct. 2194 100 L.Ed. 2d 855 (1988). Washington cases have long recognized that Judges "Must" recuse themselves when the facts suggest that they are actually or Potentially bias. Diimmel v. Campbell 68 Wash. 2d 697, 699, 414 P.2d 1022 (1966). (It is incumbent upon members of the Judiciary to avoid even a cause for suspicion of Irregularity in the discharge of their duties). In State ex. rel. McFerran v. Justice of Evangeline Starr, 32 Wash. 2d 544, 548, 202 P.2d 927 (1949). There can be no question but that the common law and the federal and our state Constitutions guarantee to a defendant a trial before an impartial tribunal

be it Judge or Jury. It quoted the courts 1898 decision in State ex. rel. Barnard v. Board of Education for its observation that the principle of impartiality, Disinterestedness, and fairness on the part of the judge is as old as the history of the Courts.

32 Wash. 2d at 549, 202 P. 2d 927 (quoting State ex. rel. Barnard v. Bd of Educ., 19 Wash. 8, 17, 52 P. 317 (1898)).

The appearance of Bias or Prejudice can be as damaging to Public Confidence in the administration of Justice as would be the actual Presence of Bias or Prejudice. State v. Madry 8, Wash. App. 61, 70, 504 P. 2d 1156 (1972). . . . Brister v. Tacoma City Council, 27 Wash. App. 474, 486 619 P. 2d 982 (1980). "The critical concern in determining whether a Proceeding appears to be fair, is how it would appear to a reasonably prudent and disinterested Person."

Brister 27 Wash. App. at 486-87 619 P. 2d 982 (citing; Chicago M., St. P. & Pac. R. R. v. State Human Rights Comm'n. 87 Wash. 2d 802 557 P. 2d 307 (1976)). Appellant understands that to prevail under the appearance of fairness doctrine, the claimant must Provide some evidence of the Judges or Decision Maker's actual or Potential Bias. State v. Post 118 Wash. 2d 596, 619 N. 9, 826 P. 2d 172 837 P. 2d 599 (1972). The Appellant has shown Evidence

of Judicial Misconduct, Bias and Prejudice, by reflecting and referring to the record as Appellant stated at the beginning of this Additional Ground. By these errors happening, this violates Appellant's guarantee Right of the U.S.C.A. Const. Amend. 14.

west's Washington Court Rules  
Code of Judicial Conducts (CJC)

Canon 2. Under this rule a Judge is disqualified whenever the Judges impartiality might reasonably be questioned, Regardless of whether any of the specific provisions of paragraph (A) 1 thru 5

Additional Ground # 2Elements:

Appellant wishes to contend through this Supplementary Statement of Additional Ground, that the evidence presented during Appellants trial was insufficient in Establishing the [Elemental Requirements necessary] to prove Appellants complicity Under Washington states [Statutory Definition] of Assault in the First degree, [Pursuant to RCW 9A.36.011]. which violates Appellants Due Process, under U.S.C.A. Const. Amend. 14.

The Due Process clause of the fourteenth Amendment mandates that the state Prove every essential element of a crime beyond a reasonable Doubt. In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Alvarez, 128 Wn.2d 1, 13, 904, P.2d 754 (1995). It is axiomatic that the state Prove every element of the crime charged. State v. Bernhard 71 Wn.2d 656, 430 P.2d 557 (1967); State v. Bryant 73 Wn.2d 168, 437 P.2d 398 (1968). Every Crime has two essential components, [The Actus Reus and The Mens Rea] The Actus Reus is the culpable act itself; The Mens Rea is the intent with which the Criminal act must be performed in order to constitute a punishable offense. State v. Utter, 4 Wn. App. 137, 139 479 P.2d 946 (1971). The Nexus between the Criminal act and the criminal intent is essential to the offense. The two are not independent of each other; The intent "must" be directed towards the act, vice-versa. Id. The state must Prove every element of a crime beyond a reasonable doubt for a conviction to be upheld. State v. Jackson, 137 Wn.2d 712, 727, 976 P.2d 1229 (1992); State v. McCullum, 98 Wn.2d 484, 493-94, 656 P.2d 1064 (1983) State v. Green 94 Wn.2d 216, 224, 616 P.2d 628 (1980) State v. Acosta, 101 Wn.2d 612, 615, 683 P.2d 1067 (1984).

When the words of a statute are clear and unequivocal, this Court must apply to the statute as written. King County V. Tax Payers of King County, 104 Wn.2d 15, 700 P.2d 1143 (1985)... Kintz, 167 Wn.2d 1cl, at [5]. "If language in a statute is subject to only one interpretation, then our inquiry ends." State V. Armendariz, 160 Wn.2d 106, 110, 156, P.3d 201 (2007). "Language deemed unambiguous when it is not susceptible to two or more reasonable interpretations." State V. Delgado, 148 Wn.2d 723, 726-27, 63 P.3d 729 (2003). "If a statute is unambiguous, the rule of lenity requires us to construe the statute in favor of the defendant, absent legislative intent to the contrary." State V. Jacobs, 154 Wn.2d 596, 601 115 P.3d 281 (2005).

[RCW 9A.08.010(1)(A)] Defines intent as: A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime... The crime of first degree assault and second degree assault, differ not just in the severity of the bodily harm inflicted upon the victim, but also in the requisite mental state of the accused. Through Appellant's trial state did not prove or find intent to inflict great bodily harm. A person is guilty of assault in the first degree if he or she with the intent to inflict great bodily harm...

[RCW 9A.36.011]. Assault in the second degree however, requires only that the assault itself, not the resulting "Bodily harm" be intentional. A person is guilty of assault in the second degree if he or she under circumstances not amounting to assault in the first degree, intentionally assaults another and thereby recklessly inflicts substantial "Bodily Harm" [RCW 9A.36.021(1)(c)].

The court found that Appellant shot at the victim. This evidence alone is insufficient to sustain a conviction

for first degree Assault, because there is no proof shown or found that the Appellant acted with the intent to inflict great bodily harm. Clearly the state was over reaching when they charged Appellant with Assault in the first degree. At best the evidence that was Presented, the appropriate charge would be and is assault in the second degree. State v. Walter, 114 Wn. App. 189 193, 56 P.3d 1001 (2002). The evidence presented during Appellants trial was insufficient to prove otherwise.

In Closing my Statement of Additional Grounds for review, Appellant is Seeking Justice from this Court.

From the Reasons stated above in Both of Appellants Additional Grounds, This court Must Reverse & Remand Convictions.

Respectfully Submitted this 21<sup>st</sup> day of November 2013

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