

70261-1

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No. 70261-1-I

IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON DIVISION ONE

STATE OF WASHINGTON

VS

DANIEL BATEMAN



Appeal From the King County Superior Court  
Honorable Judge Jean Rietschel

APPELLANTS PRO SE STATEMENT OF ADDITIONAL  
GROUNDS

Daniel Bateman  
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# TABLE OF CONTENTS

PAGE

Ineffective Assistance of Counsel.....	1
Administration of Justice.....	3
Pretrial Motions.....	5
Withholding Video Evidence.....	7
Miranda Rights Violation.....	10
Patrol Car Video Exhibit 13.....	12
Convicting Defendant with Prejudicial Testimony given by Kelsey Danielson.....	14
Prosecutorial Misconduct.....	17
Exhibit 20 shows that the Defendant Was not Driving the Vehicle to or From Wallgreens.....	22

TABLE OF CONTENTS

PAGE

Defendants only Witness Marisa Matera  
was Forced to Wear a Bright Red  
Jail Uniform during her testimony..... 26

Defendent requests a New Trial with  
a Different Attorney ..... 27

## The Defendant Claims Ineffective Assistance of Counsel

The defendant's attorney Brian James Todd made several noted trial errors when he failed to object to prejudicial testimony given by several witnesses for the state. The defendant wrote a motion to change counsel several months before trial was to begin. RP 5-11.

The court denied the defendant's motion, even though the defendant was very adamant about the complications that the defendant was experiencing with Mr. Todd. The defendant went into great detail about the communication problems with Mr. Todd to no avail.

Defense attorney Brian James Todd offered absolutely no counsel whatsoever to the defendant prior to trial. No trial preparations were made. The many various trial errors plagued through out the defendant's trial are the subsequent results of long term neglect by Brian James Todd.

The defendant wrote many letters of complaint to the court, the Washington BAR Association, The American Civil Liberties Union, The Federal Court at Division I and other public legal clinics. The defendant addressed these complaints with the court verbally, RP 10; and again RP 10 and 11 and 12 and 13 at the defendants sentencing. The defendant filed other letters of complaint to the court during court proceedings not available to reference from the Report of Proceedings that was made available to the defendant.

All the many trial errors listed throughout the defendants S.A.G. are reasons that verify the defendants claim of Ineffective assistance of Counsel. Granted that these errors did not take place, the defendants trial outcome, guilty, would have been innocente. For this reason reversal is just.

## Administration of Justice to Continue the Defendants Trial Date Against Defendants Consent Violates Defendants Right to a Fair and Speedy Trial

At the defendants Omnibus hearing December 7, 2012 the defendants attorney requested that the court would continue the defendants trial without defendants consent. The defense counsel had one soul reason, The fact that Brian James Todd had not consulted with the defendant at all whatso ever. The court record is very clear about this. However these court proceedings are not contained within the Report of Proceedings.

The defendant refused to sign or consent to any continuance that would delay the defendants right to a fair and speedy trial. The defendant objected & on court record to any further delays citing his Sixth Amendment Right to due Process of Law. The defendants objection was noted by the court, however the court granted Mr. Todds request to continue the trial.

This continuance granted by the court was prejudicial to the defendant's Sixth Amendment Right to a fair and speedy trial. For this reason the defendant requests that this conviction be reversed.

## Defendants Attorney Failed to Litigate Pre-Trial Motions Effectively to Satisfy Defendants Right to Due Process of Law

On RP 94 at 9-11, defendants attorney Mr. Todd called the defendants statement "spontaneous" therefore not subject to Miranda. Then on RP 95, line 19-21 the court considers the fact that Mr. Todd chose to concede as reason to rule in favor of the state. Mr. Todd actually argued to the court that the defendants statements were not subject to Miranda RP 94 at 9.

Then RP 103 at 14-20 the court addresses the 3.6 issue defendants attorney raised about the search and seizure of narcotics found in the defendants personal property at the jail. The court is very clear about its ruling on RP 103, stating that there is no present case law supporting Mr. Todd's argument.

On RP 108 at 3-15 the court is confused with the position of defense counsel. Mr. Todd then decides to adopt and stipulate for the purpose of defense Motion, This allows the state to admit prejudicial testimony and evidence into defendants trial.



On RP 110 at 17, the court challenged Mr. Todd's argument. The court's position was that the defendant drove Ms. Matera to the Wallgreens therefore providing sufficient evidence to prove accomplice liability. Defendant's attorney argued lack of knowledge. Defense failed to argue the fact that the defendant did not drive the car to or from Wallgreens. In fact, Mr. Todd's ~~in~~ statement to the court on RP 112 at 4-9 shows Mr. Todd's ineffectiveness to litigate the defendant's case. "And so, your Honor, I would say that just the mere fact that he drove Ms. Matera..." This is what the defendant's attorney said to the court. Apparently the defendant's counsel believed that the defendant drove to and from Wallgreens. By neglecting the defendant, Mr. Todd was never able to find and bring forth the truth. The defendant will ask the court to reverse these convictions based on ineffective assistance of counsel.

## Withholding Video Evidence until The day of Trial

All video evidence that the State prosecuted the defendant with was withheld until trial, Exhibit 13, 20, 21 and 22, and 16 and 17. These many videos were never given to the defense counsel to analyze. All videos were showed to the defendant and his counsel for the first time during the middle of trial.

Judge Kessler made an order at the defendant's Omnibus hearing regarding video and audio evidence. Please review the court record concerning this order.

The court ruled that all video and some audio evidence was to be turned over to the defendant's attorney by March 6th, this was not done until trial. RP 7. The defendant's attorney failed to address the complete problem about the video evidence involved. RP 26 ~~and 27~~ at 6-13 is the only time the court remotely talks about the defendant's counsel not being able to watch video surveillance tapes.

This brief conversation did not serve the purpose that the court stands for. There was no litigating by the defendant's attorney whatsoever. Mr. Todd failed to analyze this evidence, therefore he was unable to defend the defendant. Mr. Todd addressed the telephone records as part of Judge Kessler's order, and failed to address the second part of Judge Kessler's order, the video evidence, RP 7, 8, 9, 10 and 11. This video surveillance was the primary evidence that the State spoke about to connect the defendant to the crime.

The defendant's attorney failed to challenge the fact that the State disobeyed the court's order to produce the video surveillance tapes. Because Mr. Todd decided not to argue this issue the defendant did not receive a fair trial.

The importance of analyzing these videos is the only way to satisfy the defendants Sixth Amendment Right to due process of Law. By not litigating this issue Mr. Todd failed his duty to account for the defendants illiteracy of Law, resulting in extreme prejudice.

The defendants counsel failed to represent defendants Constitutional Rights.

Statement defendant made while in Police Custody Is Subject to Miranda Rights

RP 95 at 2-4, the court acknowledged that defendant was arrested and detained without being advised of Miranda Rights. RP 95, 7-9 the court states that defendant made a statement to the arresting officer. This statement defendant made to Officer Magnotti, RP 43 at 1-6 is subject to Miranda. Under, Miranda v. Arizona, this statement was gathered in direct violation of defendant's Constitutional Rights.

Then during trial on ~~p~~ RP 200 at 6-11, the prosecutor asked Officer Magnotti what question defendant asked him. Mr. Magnotti said "At some point he asked me what are you going to do with my dogs." This question was made by defendant after detained and arrested without knowledge of Miranda Rights, RP 200 at 5.

The prosecutor used this statement to prove that defendant had claimed ownership of stolen property. Defendant did not have any knowledge at all that the dogs were purchased illegally nor that they were stolen.

Then during prosecutor Maryman's closing statement she again refers to the statement defendant made while under arrest on RP 728 at 15-17. By Ms. Maryman's repeating this statement clearly demonstrates the importance of this statement. She bases defendant's guilt heavily on this prejudicial statement. Therefore if this statement was gathered illegally by the state and according to Miranda v. Arizona, it was because defendant was not read his rights by Officer Magnotti, RP 45 at 11-14 and RP 95 at 2-4, show that defendant was not advised of his rights. Based on this known fact reversal is just.

Officer Magnotti did not advise the Defendant he was being Recorded

During direct exam by Mr. Hamilton, the prosecutor asked Officer Magnotti whether he advised the defendant he was being recorded. RP 201 at 7-8, the prosecutor asked "And did you advise Mr. Bateman whether or not he was being recorded?". Officer Magnotti answers "yes". This is a very clear and direct answer.

Then during "Voi Dire Examination" the defendant's attorney asked a series of questions on RP 205 at 17-25, regarding ~~the~~ whether or not Officer Magnotti had independent recollection of advising the defendant he was being recorded. On RP 206 at 1-3, Officer Magnotti answered defense attorney's question with a simple and clear "No". There was no confusion to whether or not Officer Magnotti advised defendant he was being recorded. In fact Officer Magnotti said he reviewed the tapes from his patrol car and his report on RP 45 line 13-17. This record is very clear. Officer Magnotti did not advise the defendant he was being video recorded in the back of the patrol vehicle.

By admitting this video, marked exhibit 13, demonstrates a vindictive form of prosecutorial misconduct by Mr. Hamilton.

The defendant's attorney did question the validity of allowing this video, (exhibit 13) to be used by the State to prosecute the defendant on RP 192 line 8-25. Then RP 193, the defendant's attorney continues to argue that exhibit 13 should not be played if defendant was not advised he was being recorded.

Ultimately the court allows this prejudicial video to be shown to the jury, RP 206 and 207. Defendant's attorney objected to the admission, however the court allowed the video to play. This video evidence was gathered in direct violation of defendant's Constitutional Rights. The court made a mistake allowing the state to show this video to the jury. This video exhibit 13 was shown prejudicially to cause conviction of defendant against his right to due process, therefore reversal is required.



## Convicting Mr. Bateman with Prejudicial Testimony Given by Kelsey Danielson

On RP 272, durring redirect examination of Kelsey Danielson by the prosecutor, Ms. Maryman, leads the witness to admit hersay testimony. RP 272 at 9-12. The prosecutor asked "And she indicated to you that she did do that." Then Kelsey Danielsons answer at RP 272 line 12 is " She told me she did, yes." This testimony is prejudicial.

My attorney does not object to this violation of court rule. He allows this testimony to continue. The very next series of questions follow immediately there after, RP 272 at 16-23, then at this point my attorney objects. The objection is sustained by the court, but no instructions were given to the jury to disregard these prejudicial statements. This objection came late, therefore my attorney acted ineffectively to stop this line of questioning.

Infact durring Mr. Todds cross examination of Kelsy Danielson, Mr. Todd leads the states witness to admit damaging, prejudicial hersay testimony.

RP 269 line 1-21, is what appears to be ~~the~~ Mr. Todd trying to prove that Kelsey Danielson didn't know for sure what the cashier did or didn't do during the purchase at Nordstrom. What Mr. Todd did do, based on the record, is lead the witness to admit testimonial hearsay about what did or didn't take place during the purchase. RP 269 at 20-21 "I don't know that she checked for sure, but she said -- she told me that she did." Because my attorney engaged this response I am sure that under United States v. Cronin, "There are, however, circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified."

This line of questioning was very unprofessional and damaging to my defense. ~~Mr.~~ Mr. Todd's unreadiness to effectively cross examine this important witness shows that my Sixth Amendment was violated. Strickland v. Washington. Ineffective Assistance of Counsel.

Then during the prosecutors closing statement, Ms. Maryman repeats this hearsay to the jury. RP 714 at 2-5. Even though Mr. Todd objected to this line of questioning and the objection was sustained by the court, Ms. Maryman repeats this prejudicial testimony to the jury anyways. RP 714 at 3-4 "She testified that the store clerk confirmed she did."  
My attorney did not object again.

Then in order to reiterate this important tainted testimony Mr. Hamilton takes the liberty to repeat this objected and sustained hearsay. RP 775 at 12-13, "make sure you do a four-by-four search, and the sales clerk told her she did."  
Mr. Todd failed to object to this also. This is a clear example of the state prosecutors, both of them, acting together on separate occasions to admit hearsay testimony concerning the purchase at Nordstrom. This is prosecutorial misconduct, which violates my Sixth Amendment therefore reversal is required.

## Misidentification and Criminal Inference Invited by the Prosecutor during Direct Exam of Detective George Davisson

RP 411, the defendant's attorney makes an objection because the prosecutor said that "they" came back to do other transactions. This is the foundation that the prosecutor begins to lay in order to connect the defendant with Ms. Matera. Then RP 414 at 9-11, the prosecutor asks about the individual believed to be Mr. Bateman. This is where the prosecutor begins to identify the defendant as the bald white male by associating the defendant with Ms. Matera without any eye witness testimony. Detective Davisson was not there, identifying the defendant is prejudicial.

Then just moments later, RP 415, the prosecutor asks the detective "Where is Mr. Bateman at this point in time". The prosecutor took it upon herself to lead the witness to identify the defendant to the jury as the suspect in the video. This way of identifying the defendant to the jury is misleading and prejudicial.

Then again on RP 415, the prosecutor reiterates the same question as to the defendants whereabouts, claiming the identity of the ~~the~~ suspect as Mr. Bateman. Defense attorney did not object to this.

Then the prosecutor asks Detective Davisson how was he able to identify the suspects. RP 423 at 8-11, Mr. Davisson claimed to identify the defendant using Facebook and quote "there's also police history together."

This statement is prejudicial because it suggests that the defendant has been in trouble with the law, previously, which makes the jury think prejudicially toward the defendants character. This is a clear case where Mr. Todd failed to represent the defendants Constitutional Rights.

Then on RP 423 at 16-17, the detective says he identified Mr. Bateman by using "booking photos".

At this point the judge decides to end this line of questioning. RP 425, the judge said she was concerned because of the way the detective was testifying. Defense attorney offered an excuse as to why he didn't object which lacked substance. Mr. Todd called it a strategic decision. The jury was exposed to prejudicial testimony without being instructed to disregard. Mr. Todd failed his duties to address this issue during trial.

Then on redirect exam by Ms. Maryman, RP 467 at 23-25 and RP 468 at 1-6, the prosecutor asks again for detective Davisson to identify two people from the video that was not made available for the court to review. The AI video. Based solely on Mr. Davisson's recollection of a video he watched months prior, detective Davisson identified both the defendant and Ms. Matera as the people in the video. The video in question was never duplicated or downloaded from the "AI Mart", therefore the video Detective Davisson testifies about on RP 467 and 468, were never admitted into evidence.

This testimony forced the jury to believe that the suspect in the videos and pictures was Daniel Bateman, specifically exhibit 16 (Nordstrom video) exhibit 38 and 39 (still photos from Nordstrom video) exhibit 20 (video from Walgreens). Detective Davissons testimony about the Al Mart video RP 467, 468 is prejudicial, he also explains to the court that he could not download this video, RP 383 and 384. A lot of Detective Davissons testimony was suggestive, RP 413 at 11-12, "the bald, white male identified presumptively as Daniel Bateman." The prosecutor manipulated this statement, then led the witness with prejudicial questions like this, RP 415 at 15-16 "And as far as you can tell, where is Mr. Bateman?"

The jury was tainted by these statements, causing their minds to form bias opinions about the defendants innocence. Much of this testimony should have been objected to. The court failed to instruct the jury to disregard objected testimony. The result was that the defendant was convicted due to contaminated, manipulated and prejudicial testimony given by the lead detective in this case.

The court intervened when the defendant's attorney failed to. This example of complete disregard of defendant's Sixth Amendment right to due process is discussed thoroughly on page 423, 424, 425 and 426 of defendant's Report of Proceedings. Given these facts reversal is mandatory.



Exhibit 20 shows that the Defendant was not driving the Vehicle to or from Wallgreens

During Det. Davissens testimony he claims that the bald, white male gets out of the driver side door of the vehicle at Wallgreens. RP 404, 405. The video marked exhibit 20 does not support this claim.

Then on RP 412, and RP 413, the detective describes a false report to the jury of what is truly occurring on the video. RP 413 the detective says "The passenger door opened. And now the drivers door is going to open here or it hasn't already." This doesn't happen at all, exhibit 20 never shows the driver side door open at all.

Infact during Ms. Marymans cross examination of Ms. Matera on RP 587 at 19-21, the prosecutor points out to Ms. Matera "but it doesn't look like the front -- the driver's side door ever opens." In response to this question both Ms. Maryman and Ms. Matera engage in a long conversation exploring this fact. RP 588, 589, 590 and 591 are about who was actually driving "Walters" car that day.

my attorney for examination.

II) The prosecutor kept this video, exhibit 20 from my defense. Exhibit 20 was never given to

opened.

I) The prosecutor says on RP 587 at 19-21, that it looked like the driver side door never

ways in which I can support this claim.

In order to conceal these truths from the court, the prosecutors in this case went to great measure hiding, withholding, and manipulating exhibit 20. They did this to bury the true events that occurred at Wallgreens. I will reveal three ways in which I can support this claim.

by switching her questions.

This conversation leads to Ms. Wattera recalling the truth. When she begins to explain, Ms. Watterman on RP 590 at line 18-23, interrupts her testimony because the truth is coming to light, and that truth does not support her theory of guilt. Then on RP 591 the prosecutor is confronted with the truth again of Watters presence in the car that day. Again the prosecutor diverts the jury's attention from the truth by switching her questions.

The first time this video was shown to my defense was several days into the defendant's trial, RP 284. This way Mr. Todd could not examine exhibit 20 and discover the truth.

III) If viewed while the car is leaving the parking lot of Wallgreens, exhibit 20 will show that the bald, white suspect is located in the passenger side of the vehicle. The time stamp shows this

This is clear evidence that shows the defendant was not the one who drove Ms. Matera to Wallgreens. During Ms. Maryman's closing statement RP 707 she says that Mr. Bateman is an accomplice to this, that the defendant aided or abetted in this because quote from RP 707 at line 23 "Well, he drove Ms. Matera there." Ms. Matera was confused about who drove, but she was sure that Walter was in the car. Furthermore the Wallgreens video does not show the defendant driving at all. Ms. Maryman ignored the true facts in this case to portray Mr. Bateman as the driver when he clearly was not.

Based on Ms. Marymans own words durring her closing statement on RP 707-708, demonstrates the importance of the states theory. The prosuctors methods of distorting the true events of what can be seen in exhibit 20 violates my Sixth Ammendment and my Constitutional rights, therefore reversal is required,

Ordering the Defendants only Witness to Testify while wearing a Bright Red Jail Uniform caused Prejudice to Defendant

RP 514, the court and the defendants attorney decided to have Ms. Matera testify in the "regs" issued by the King County Jail when people are detained.

Exposing the jury to the fact that Ms. Matera was being jailed from the start of her testimony caused the jury to form prejudicial bias ideas about the truth of Ms. Materas testimony.

This effected the defendants Sixth Amendment right to a fair trial, For this reason reversal is just.

The Defendant addresses a written letter to the Court requesting a new trial with a different attorney

The defendant wrote a letter to Judge Jean Rietschel about concerns regarding trial errors and attorney disputes that affected Mr. Todd's loyalties to defending Mr. Bartemans Constitutional Rights.

RP 10, 11, 12 and 13, the defendant addresses attorney neglect before and during the days of trial.

The defendant formally spoke to the court about his problems with attorney Brian James Todd.

RP 11 at 12-17, the defendant explained to the court that Mr. Todd was not acting as an advocate for the defendant during the trial proceedings. In this case the defendant refers to a specific detail (Wallgreens Video) that Mr. Todd refused to litigate during trial.