

COURT OF APPEALS DIVISION  
STATE OF WASHINGTON  
2014 MAY -9 PM 1:18

STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION 1

STATE OF WASHINGTON, )  
 )  
 Respondent, ) No: 70714-1-1  
 )  
 v. ) STATEMENT OF ADDITIONAL  
 ) GROUNDS FOR REVIEW  
 Derek Cartmell )  
 Appellant. )

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

Additional Ground 1

There were several motions brought forth by the defendant with supporting arguments that were supported by court rules that were denied. Denial of witness testimony that supported the defendants relying on a writ of habeas corpus. Along with defendant stating there is additional evidence available that will support the defendant's claims.

Additional Ground 2

Defendant claims there was intentional actions misleading the defendant with when the jury instructions were filed with the court clerk and when another copy was later delivered to the defendant. The court also went beyond the changing information when instructing the jury therefore violating WJPC readings. Along with reading case law in the instructions that did not comply with case.

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

Dated this 9th day of May, 2014.

Respectfully Submitted,  
Derek Cartmell  
Appellant

STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION 1

STATE OF WASHINGTON, )  
)  
Respondent, )  
)  
v. )  
)  
Derek Cartmell )  
Appellant. )

No: 70714-1-1  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

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COURT OF APPEALS DIV 1  
STATE OF WASHINGTON

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

Additional Ground ~~1~~ 3

The testimony of arresting officer on warrant for bail-jumping being allowed to testify for the bail-jumping charge. He has no personal knowledge of what happened on January 29th 2013 at the place the incident of bail jumping happened. Along with prosecution making false statements in his arguments and in his final brief. It was proven that defendant did not resist arrest.

Supplemental Addition to Appellate Attorney's  
Additional Ground 2

The court failed to do a proper pre-sentencing investigation that included evaluation of chemical dependency along with mental health screen. The state mislabeled facts of defense relying on a defense of insanity and whether there is a possibility of Drug Alternative programs. Defendant qualified for various programs including DASA, why was he not screened?

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

Dated this 4<sup>th</sup> day of May, 2014.

Respectfully Submitted,  
Derek Cartmell  
Appellant

## Statement of Additional Grounds 4

Denial of motions presented on June 3, 2013. Under CrR 3.1(f)(1) A lawyer for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in the case may request them by a motion to the court. 6-3-13 Defense motions/readiness PG4, The Defendant "Yeah, I have a Motion for services, other than a lawyer, for investigative services." PG5 The Defendant "Access to a secure line to interview potential witnesses." PG7 Mrs. Carmen (prosecution) "so I would ask that the court deny the motion for Additional Access to computers and secure telephone." The prosecution is suggesting to the court the secure telephone line be denied along with a investigator. I have a constitutional right that protects me from self-incrimination. Amendment V states "Nor shall be compelled in any criminal case to be a witness against himself." When the request was made for a secure telephone line and a investigator they were made in good faith to interview potential witnesses. The only phone that I was provided with allowed collect calls that are recorded, therefore any conversations were to be in violation of the 5<sup>th</sup> Amendment. PG9 The court "And so I'm denying your motions for investigative services, for the computer to research case law." PG10 The court "But in the sense that you would have the secure phone line, that's provided." The judge said that a secure phone line was provided in her statement. When I got back to the jail and requested

The verbatim report of proceedings are referred to as "RP". Motions in limine, General Motions and sentencing proceedings are referred to specifically by date.

The verbatim report of proceedings are referred to as "RP" motions in limine, general motions and sentencing proceedings are referred to specifically by dates.

to make phone calls on a secure line they told me to use the inmate phone. The prosecutor provided me with a "CD of jail house recordings" that contained all visits and all phone conversations. In a situation like this there is no way to properly interview potential witnesses that would protect me from possibly incriminating myself or others. I requested the services of an investigator and was denied. My attempts to properly interview my witnesses were fruitless.

Before the commencement of the trial defense stated he was not ready for trial and that there is additional evidence available. 6-11-2013 RP 21 Derek J. Cartmell "okay. I-I requested a-a motion for a continuance stating that I was not prepared and stating that there is additional - I believe that there is additional evidence out there that could be beneficial to my case. Security camera videos or stuff that is linked to the jail that happened on the 29th day of January, 2013." There was a request made clearly stating there is additional evidence along with the kind of evidence available.

On the second day of trial, 6/12/13 (Sury not present) RP 168 Testimony by defendants mother I didn't talk to him much, but he was going back and forth and seemed like he was high. And just didn't seem right. An I just felt I needed to turn him in." RP 170 "This is hard to remember under stress" RP 171 The court "Alright. I don't find that Mrs. Cartmell's testimony is relevant to the issues before the court.

Your mental state has not been introduced as a factor in failure to appear."

Defendant was not provided with a way to properly interview his witness prior to trial therefore witness was not aware as to the questions that were going to be asked of her. The defendant's response to omnibus sent on 5-13-2013 "3) Defendant is going to rely on a defense of insanity at the time of the offense." 3 (a) List's Lori Cartmell, Vickie Eclund, and Kelly Lemoinge as witnesses; 3 (c) "Defendant will submit to a psychiatric examination by a doctor selected by the prosecution". The court and the prosecution both had knowledge of defense relying on a insanity plea. The court abused its discretion when denial of defendant's witnesses testimony.

Defendant further states RP 21 "I have not been supplied with a secure line to interview witnesses. Every phone call I make has been recorded". The court is at that point aware that the defendant is not ready for trial and that defendant's witnesses have not been properly interviewed, also that there is hard evidence that would place the defendant at the court house on the 29<sup>th</sup> day of January 2013. According to the charging information which states, "On or about the 29<sup>th</sup> day of January, 2013, in the county of Island, State of Washington the above - name Defendant, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance

The verbatim report of proceedings are referred to as "RP".  
Motions in limine, General motions and sentencing proceedings are referred to specifically by date.

before a court of this state or of the requirement to report to a correctional facility for service of sentence, did fail to appear". The defendant was in the court house, checked in all the courtrooms, and was seen on camera doing that on the 29<sup>th</sup> day of January, 2013. With the services of a investigator evidence could of proved that the defendant made a attempt to be in court as directed. 6-11-13 RP22 Defendant put on the record denial of motions.

Defendant was not provided with adequate services or time to properly prepare a meaningful defense. The court abused its discretion when denial of requests. On these grounds I respectfully request a new trial or reversal of conviction.

Derek S. Cartmell  
Derek Cartmell

The Verbatim report of proceedings are referred to as "RP".  
Motions in limine, General Motions and sentencing proceedings are referred to specifically by date.

1           So due to those circumstances I don't think that I  
2           could get a fair trial and the numerous times that I've  
3           been in front of this Court on different matters; that I  
4           don't believe that it is-- There's going to be some  
5           biased opinions.

6           Also, Mr. Han - Judge Hancock, he --

7           THE COURT: It is "Judge Hancock." Okay?

8           THE DEFENDANT: Judge - Judge Hancock, he was  
9           referring to me, the Defendant, as leaving items -- This  
10          was in the previous trial -- insinuating that I was  
11          already guilty of the facts before the trial even  
12          happened, before there was any establishment of guilt.  
13          And the excessive bail that was set in that case, \$400,000  
14          for Possession of Stolen Vehicle.

15          Due to those facts, I don't think I could receive a  
16          fair trial.

17          THE COURT: Okay. I thought you had three  
18          motions.

19          THE DEFENDANT: Yeah. I have a Motion for  
20          Services, other than a lawyer, for investigative  
21          services --

22          THE COURT: Mm-hmm.

23          THE DEFENDANT: -- that I'd like to present.

24          THE COURT: A lawyer for investigative services.

25          Okay.

1 And what's your other motion?

2 THE DEFENDANT: Access to a Secure Line to  
3 interview potential witnesses.

4 THE COURT: Is there anything else you wish to  
5 say?

6 THE DEFENDANT: Hmm. No, ma'am. There's also a  
7 computer to review case law and also to review a CD that  
8 was collected from the prosecutor.

9 THE COURT: I'm sorry. The last one was?

10 THE DEFENDANT: Computer to review CD that was  
11 Jailhouse recordings and Court recordings.

12 THE COURT: Anything else?

13 THE DEFENDANT: No. That's it.

14 MR. CARMAN: Your Honor, I received the filings  
15 from Mr. Cartmell, copies of the filings from Mr. Cartmell  
16 for the Motion for Change of Venue.

17 We provided a written brief to the Court, which I'll  
18 largely rely on. I cited State v. Silva, for the motions  
19 for computer access and for a secure telephone line.

20 Again, I'll largely rely on the briefing. But  
21 Mr. Cartmell has, as far as I've been able to tell, the  
22 same access to legal materials and resources that any  
23 pro-se defendant who is held in custody in Island County  
24 has. Those procedures have been pretty carefully vetted  
25 and are being used fairly successfully, I believe.



1 I don't see any reason why Mr. Cartmell should be  
2 given anything above and beyond the standard access that a  
3 pro-se defendant would have.

4 He certainly hasn't made any kind of showing that  
5 he's being prejudiced by a lack of access to a secure  
6 telephone line or a computer.

7 As for the change of venue, Criminal Rule 5.2 is a  
8 permissive rule. So the Court is under no obligation to  
9 change the venue -- And certainly shouldn't -- based on  
10 the information that Mr. Cartmell has provided.

11 Yes, Your Honor did sign a search warrant in - I  
12 guess it would be the underlying chargings to the Bail  
13 Jump, the Possession of Stolen Vehicle, including  
14 Possession of Controlled Substances. Those search  
15 warrants were the basis for a 3.6 Hearing prior to his  
16 trial in the underlying cases.

17 Those search warrants were not-- Those search  
18 warrants had a number of typographical errors in them.  
19 They had the wrong dates, wrong charges, wrong header  
20 information for some of the search warrant information.

21 Judge Hancock heard that motion and refused to  
22 suppress any of the evidence because - for reasons outside  
23 the search warrants. The property had been abandoned was  
24 the holding that the Court had.

25 So I don't know that the search warrants themselves

1 have a ton of bearing here. The fact that they were  
2 approved by Your Honor in a different case really doesn't  
3 show anything in the way of prejudice. And there isn't  
4 any showing for Mr. Cartmell that he's going to have  
5 troubles getting a fair trial on this charge if Your Honor  
6 has signed search warrants with clerical errors in other  
7 cases or even signed bench warrants in 2006.

8 Mr. Cartmell has a lengthy criminal history and, as  
9 such, he's going to come into contact with a number of  
10 judges and justices in probably more than one  
11 jurisdiction. And if we start having changes of venue  
12 just because someone has been before a judge in another  
13 matter, we're going to be shuffling an awful lot of decks  
14 trying to get absolutely clean judges. And that's not  
15 the - the standard that we have here. It's just  
16 prejudice.

17 And I haven't heard anything from Mr. Cartmell  
18 factually that alleges prejudice.

19 So I would ask that the Court deny the Motion for  
20 Additional Access to Computers and Secure Telephone.  
21 Would ask the Court to deny the Motion for Change of  
22 Venue.

23 The other motion that I received was a Motion to  
24 Suppress evidence. The Court can hear that now, if Your  
25 Honor would prefer. I did address it in my briefing. But

1 it really looks like more of a Motion in Limine that can  
2 be heard a little farther down to the line, if the Court  
3 would prefer.

4 THE COURT: You did not mention-- Excuse me  
5 here.

6 Did you have your Motion to Suppress set for today?

7 THE DEFENDANT: Yes. I'm going to need a little  
8 more time to --

9 THE COURT: So you're striking that?

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. Is there anything else you  
12 wish to say in regard to the motions that are before the  
13 Court today?

14 THE DEFENDANT: Yes. I had received some case  
15 law books and access to some things.

16 THE COURT: Mm-hmm.

17 THE DEFENDANT: It takes two to three weeks to  
18 get any - anything back from the law library. And I don't  
19 have-- I feel like I'm at a severe disadvantage of not  
20 being able to look up the cases that they're referring to  
21 on anything, suppression hearings or the motions - the  
22 State's response for the motions for additional services.

23 I have a hard time looking up the case laws that -  
24 that the prosecution refers to if I don't have access to  
25 them - or in a timely manner.

1 THE COURT: Thank you.

2 Well, the case law that is mentioned is State v.  
3 Silva. I think it's "Silva" or "Silveira." I'm not sure.

4 But in any event, that sets forth the type of access  
5 that the Courts have determined is necessary for a pro-se  
6 defendant who's - pro-se defendant, a defendant who is  
7 representing himself. And you have all of those - access  
8 to those in - in the way that it's set forth in case law.

9 As to a computer for - for investigating cases or  
10 case law, even if we had a computer, you don't have those  
11 services on that computer. So that's - that's a non - a  
12 nonstarter right there.

13 As far as a computer to listen to CDs of whatever it  
14 happens to be, I believe that is available to you. I know  
15 that in other cases there have been computers, and they  
16 are-- You're allowed to look at - review the CDs that  
17 you might have on those computers. So I don't think I'd  
18 need to give that to you in a particular way because it's  
19 already available.

20 As to having a lawyer to investigate for you, there  
21 are other case laws -- I think Mr. Simpson would probably  
22 be the first to - to tell you -- that those - case law  
23 doesn't say that a lawyer has to be an errand boy, if you  
24 will. And so I'm denying your motions because - for the  
25 investigative services, for the computer to research case

1 law.

2 But in the sense that you would have the secure phone  
3 line, that's provided. And that you would have the access  
4 to a computer on a basis of what - when it's available to  
5 review your CDs, that's - that's already given to you. So  
6 I don't believe that I need to say it that you need it  
7 because those are already the standards and the  
8 guidelines.

9 As to Change of Venue, you have not given me anything  
10 that would say that you are unable to receive a fair trial  
11 in this county.

12 The fact that you are involved or have been involved  
13 in other cases, other criminal cases, doesn't mean that  
14 that's automatically your right to get a new venue.

15 You have, already, the right to affidavit a judge --  
16 One judge. Not both -- and it will be switched over to  
17 the other judge.

18 At the present time I have been the judge assigned to  
19 the case.

20 So that's - that's something that you can do, an  
21 Affidavit of Prejudice. But that's different than a  
22 change of venue.

23 I am denying the change of venue, as well.

24 MR. CARMAN: Your Honor, for purposes of the  
25 Readiness Hearing, the State's ready for trial. Trial is

Lt. S. M. Timm  
Jail Lieutenant  
Coupeville, Wa. 98239-5000  
360-678-4422  
Fax 360-679-7314

# Island County Correction Facility

April 16, 2013

From: Lt. S. M. Timm  
To: Inmate Cartmell, D. J.  
Subject: Inmate Grievance

I received your grievance dated 4/12/13. I reviewed your inmate request slips back to April 8<sup>th</sup>. I could not find one where you requested a "specific" legal book, text or reference material. Let me be clear; you need to state specifically the title of the legal book/material that you wish to review. Then, if it's available either from what we have in the facility or, the law library it will be provided to you.

Since you are acting Pro Se, calling or contacting witnesses is entirely your responsibility. We are not obligated to assist you in any way. You can write them, call them on the phone, or file with the Clerk's Office to have them subpoenaed. If you do not know how to accomplish all of the legal requirements for your case then, maybe you should consider asking for a public defender instead of going Pro Se.

When I reviewed your request slips, I did not find that you wrote "every day for over two weeks" to speak to the Chief as you alleged in your grievance. Just because you put on your request slip that you want to speak to the facility Administrator does not mean that he is obligated to honor that request. If he chooses to do so, it does not mean it will happen the same day as the request.

If you are not satisfied with this response you may appeal it, in writing, to the facility administrator.

S. M. Timm  
Lieutenant

ISLAND COUNTY PROSECUTING ATTORNEY  
GREGORY M. BANKS

David L. Jamieson, Jr., *Chief Civil Deputy*

*Deputy Prosecutors*

Eric M. Ohme

Daniel B. Mitchell

David E. Carman

Erin M. Lewis

Robert S. McKay

Christopher A. Anderson

Michele M. Graaff, *Office Administrator*

MEMORANDUM

TO: Derek Cartmell, Defendant  
CC: File  
FROM: David Carman, Deputy Prosecuting Attorney  
DATE: May 31, 2013  
RE: State of Washington vs. Derek Cartmell  
Island County Superior Court No. 13-1-00023-8 & 12-1-00250-0

Attached please find copies of the following:

1. CD containing jailhouse recordings; defense interviews & hearings recordings

Please sign the copy of this Memorandum acknowledging receipt of the above documents, retaining the copy for your records.

DEC:s

Enc:

Received: May \_\_\_\_\_, 2013

\_\_\_\_\_  
Derek John Cartmell, Defendant

1 THE COURT: Sure.

2 DEREK J. CARTMELL: Okay. I - I requested a - a  
3 Motion for a Continuance stating that I was not prepared  
4 and stating that there is additional-- I believe that  
5 there is additional evidence out there that could be  
6 beneficial to my case. Security camera videos or stuff  
7 that is linked to the Jail that happened on the 29<sup>th</sup> day  
8 of January, 2013.

9 You know, that I wasn't aware of how to get the - get  
10 the record of that because I, you know-- Them seeing me  
11 here on the 29<sup>th</sup> would benefit my case, I believe,  
12 substantially.

13 So... And I haven't been denied a secure telephone  
14 line to interview potential witnesses.

15 THE COURT: You have "not" been denied?

16 DEREK J. CARTMELL: I mean, I have not been  
17 supplied with a secure line to interview witnesses. Every  
18 phone call I make has been recorded. Every visit I have  
19 has been recorded.

20 So through-- Kind of hard to get a secure line if  
21 everything's recorded.

22 And, also, the-- I haven't been able to look up  
23 case law that pertains to the State's response to the  
24 Defendant's Motions for Additional Resources and to  
25 Suppress Evidence. I haven't been able to overview the



1 case law. It takes three weeks to get any books back from  
2 the law library.

3 So, you know, I'm - I'm not ready to go to trial  
4 one-hundred percent. And I just want that on the record.

5 And then, also, the Motion for Investigative Services  
6 that I made ex parte. I asked under CR - CrR Rule 3.1,  
7 Services Other Than a Lawyer, I requested a - a private  
8 investigator to do some investigation about getting the  
9 tapes and stuff that would benefit my case. And that was  
10 denied also.

11 THE COURT: Okay. Was that denied by Judge  
12 Hancock?

13 DEREK J. CARTMELL: Yes.

14 THE COURT: All right. Okay. That's part of  
15 the record.

16 Anything further?

17 MR. CARMAN: No, Your Honor.

18 THE COURT: All right.

19 Do you have any questions about the process of Voir  
20 Dire, sir?

21 DEREK J. CARTMELL: No, Your Honor.

22 THE COURT: All right. When we have the jury  
23 in, they'll be seated in the boxes - or the seats behind  
24 you. So you come up and sit on the other side of the desk  
25 there, and that way you're facing them.

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Granted  
Denied  
Granted  
Denied  
Granted  
Denied

23. \_\_\_\_\_  
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24. \_\_\_\_\_  
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25. \_\_\_\_\_  
\_\_\_\_\_

II. APPLICATIONS BY PLAINTIFF

Granted  
Denied

1. Defendant to state the general nature of his/her defense.

Granted  
Denied

2. Defendant to state whether or not he/she will rely on an alibi and, if so, to furnish a list of his/her alibi witnesses, their addresses and statements.  
*Have not been able to interview them yet.*

Granted  
Denied

3. Defendant to state whether or not he/she will rely on a defense of insanity/diminished capacity at the time of the offense.  
(a) If so, defendant to supply the names, addresses and phone numbers of his/her witnesses on the issues, both lay and professional.  
(b) If so, defendant to permit the prosecution to inspect and copy all medical reports under his/her control or the control of his/her attorney.  
(c) Defendant will also state whether or not he/she will submit to a psychiatric examination by a doctor selected by the prosecution.

Granted  
Denied

4. Defendant to disclose any reports or results or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons or any other reports or statements of experts which the defendant intends to use at a hearing or trial, and the names, addresses and qualifications of persons who conducted the tests. CrR 4.7(g)

Granted  
Denied

5. Defendant to appear in a lineup.

Granted  
Denied

6. Defendant to speak for voice identification by witnesses.

Granted  
Denied

7. Defendant to be fingerprinted.

Granted  
Denied

8. Defendant to pose for photographs (not involving a reenactment of the crime.)  
*Need to present at interview with Plaintiff witnesses.*

Granted  
Denied

9. Defendant to try on articles of clothing.

Granted  
Denied

10. Defendant to permit taking specimens of material under fingernails.

Minutes of the Board of Town Council, 1903

City of Washington, District of Columbia

Nov. 17th 1903

At a meeting of the Board of Town Council  
held at the City Hall, Washington, D.C.

Present: Mr. [Name], Mr. [Name], Mr. [Name], Mr. [Name], Mr. [Name]

The meeting was called to order by the Mayor at 7:30 P.M. The Mayor read the minutes of the previous meeting, which were approved. The Mayor then reported on the work of the Council during the past week. The Council then proceeded to consider the report of the Board of Public Works on the proposed extension of the street car line. The Council decided to refer the report to the Board of Public Works for their consideration. The Council then adjourned at 9:00 P.M.

Attest: My hand and the seal of the City of Washington, this 17th day of November, 1903.

Mayor [Name]  
City of Washington, D.C.

SCANNED

FILED

MAY 20 2013

DEBRA VAN PELT  
ISLAND COUNTY CLERK

In the superior court for Island County, Washington state of Washington, plaintiff vs. Derek John Cartmell, Defendant,	No. 13-1-00023-8 motion to provide secure Telephone line
--	--

comes now the defendant, Derek John Cartmell,  
moves the court to provide a secure telephone line  
for the purpose of interviewing potential  
witnesses.

39  
P

Dated May 19<sup>th</sup> 2013

Derek John Cartmell  
Derek John Cartmell  
Defendant Pro SR

motion to provide  
Secure telephone  
line

Derek John Cartmell prose  
Island County Corrections facility  
PO box 5000  
Coupeville, WA 98239

FILED

JUN 06 2013

DEBRA VAN PELT  
ISLAND COUNTY CLERK

In the Superior Court of Island County Washington  
State of Washington plaintiff

No. 13-1-00023-8  
motion for investigative  
services  
Ex-parte

v  
Derek John Cartmell  
Defendant pro se  
To: Court Clerk

59  
CW

Comes now the defendant Derek John Cartmell;  
petitioners the court for investigative services.

I Derek John Cartmell am requesting the  
court to grant me the services of a investigator  
to help me do research and interview potential  
witnesses.

Under CrR 3.1(f) "services other than a lawyer (1)  
A lawyer for a defendant who is financially unable to obtain  
investigative, expert, or other services necessary to an  
adequate defense in the case may request them by  
a motion to the court"

As you can see from previous motions and  
actions that I have presented to the court I  
do require some investigative help to properly  
present my case.

I respectfully submit this request

June 5<sup>th</sup> 2013

*Derek Cartmell*

Dated

Derek Cartmell

Defendant Pro se

Motion for investigative  
services Ex-parte.

Derek John Cartmell  
Island County Jail  
PO Box 52000  
Cammock, WA 98220

SCANNED

FILED

MAY 20 2013

DEBRA VAN PELT  
ISLAND COUNTY CLERK

SCANNED

In the superior court of Island County Washington State of Washington, Plaintiff	NO. 13-1-000-23-8
VS.	motion requesting
Derek John Cartmell, Defendant.	investigative services. Ex parte

To: The Clerk of the court;

Comes now the defendant, Derek John Cartmell, moves the court to request services other than a lawyer.

37  
A

I the defendant, Derek John Cartmell request the court to grant the services of a investigator, Chemical Dependency Evaluator, also a Mental Health Examiner other than prosecutions. I intend to have two professional opinions.

Cr R 3.1 (f) services other than a lawyer. (1) A lawyer for a defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense in the case may request them by a motion to the court. (2) upon finding the services are necessary and that the defendant is financially unable to obtain them, the court, or a person or a person agency to whom the administration of the program may have delegated by local Court rule, shall authorize the services

motion requesting  
investigative services

Derek John Cartmell  
Island County Jail  
Palm cmm 20

The motion may be made ex parte, and upon a showing of good cause the moving papers may be ordered sealed by the court, and shall remain sealed until further order of the court. The court, in the interest of justice and on a finding that timely procurement of necessary services could not await prior authorization, shall ratify such services after they have been obtained.

Dated May 19<sup>th</sup> 2013

Derek J. Cartmell  
Derek John Cartmell  
Defendant Pro Se





1 Q Okay. So then - then what happened?

2 Did - did he go to jail?

3 A Then the sheriffs and police and - came and arrested  
4 him.

5 Q When was the next time you seen him after that  
6 incident?

7 A Visiting. Probably February 15<sup>th</sup> or somewhere.  
8 Hmm.

9 Q Did you go see him while he was at the Island County  
10 Jail in December?

11 A Yes.

12 Q Okay. Do you recall the specific date at all?

13 A No.

14 Q Do you recall if he was mentally stable then?

15 A Yes, he was.

16 Q And then when was the next time you seen him after  
17 that?

18 A I don't know.

19 Q Did you see him after he bailed out of jail?

20 A No, I didn't.

21 DEREK J. CARTMELL: No further questions.

22 THE COURT: Anything further?

23 CROSS EXAMINATION

24 BY MR. CARMAN:

25 Q Mrs. Cartmell, do you have any training in mental

1 health treatment or evaluation?

2 A No.

3 Q Are you a psychiatrist or a psychologist?

4 A No.

5 Q All right. Is it safe to say that your concern  
6 regarding Derek in November was based on his use of drugs?

7 A Yes.

8 Q And you didn't see him in January of 2013?

9 A This is hard to remember under stress.

10 Q Sure.

11 How about-- Do you remember coming up to my office  
12 a couple of weeks ago and talking with me?

13 A Yes.

14 Q And back when we talked a couple weeks ago, you told  
15 me your birth date is January 25<sup>th</sup>?

16 A Yes.

17 Q Did you see Derek around your birthday?

18 A No. I didn't see him a week before the 29<sup>th</sup> and  
19 two weeks after the 29<sup>th</sup>.

20 Q So you don't know what was going on in- around Derek  
21 around January 29<sup>th</sup>?

22 A That's-- No, I-- No, I didn't.

23 Q And you saw him in - in jail in December?

24 A Yes. I --

25 Q How - how - how about if I try it a different way.

1           Did you go to visit Derek in Jail shortly after he  
2 was arrested in November?

3           A     Yes.

4           Q     And did he seem lucid?

5           A     Yes. He seemed well.

6           Q     He seemed well. Aware of what was going on?

7           A     Yes.

8                     MR. CARMAN: Nothing further, Your Honor.

9                     THE COURT: Anything further?

10                    DEREK J. CARTMELL: No, Your Honor.

11                    THE COURT: You may step down. Thank you very  
12 much.

13                    All right. I don't find that Ms. Cartmell's  
14 testimony is relevant to the issues before the Court.  
15 Your mental state has not been introduced as a factor in  
16 Failure to Appear. And so her testifying about-- She  
17 cannot even testify about a mental state. All she can  
18 testify to is that you appeared to be on drugs in  
19 November. And, again, that's not really relevant to the  
20 issues before the Court.

21                    All right. Thank you.

22                    Do you have any other witness, Mr. Cartmell?

23                    DEREK J. CARTMELL: Yes. Ms. Ecklund and  
24 Mr. LeMoigne.

25                    THE COURT: And are they here?

CASE NO. 13-1-23-8  
PLF'S/PET DEF/RESP  
Exhibit No. 11  
MARKED FOR IDENTIFICATION  
M.M.12 ADMITTED REJECTED  
DEP. CLERK

**FILED-COPY**  
JAN 30 2013  
DEBRA VAN PELT  
ISLAND COUNTY CLERK

**IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

vs.

**DEREK JOHN CARTMELL,**

Defendant.

NO. **13 1 00023 8**

INFORMATION CHARGING:

COUNT 1 - Bail Jumping (From Class B or C Felony)

COMES NOW GREGORY M. BANKS, Prosecuting Attorney of Island County, State of Washington, or his deputy, and by this Information accuses the above-named defendant of violating the criminal laws of the State of Washington as follows:

**COUNT I - Bail Jumping**

On or about the 29th day of January, 2013, in the County of Island, State of Washington, the above-named Defendant, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state or of the requirement to report to a correctional facility for service of sentence, did fail to appear or did fail to surrender for service of sentence in which a Class B or Class C felony has been filed, to-wit: Island County Superior Court Cause No. Island County Superior Court No. 12-1-00250-0; contrary to Revised Code of Washington 9A.76.170.

(MAXIMUM PENALTY (Failure to appear in Class B or Class C felony case)—Five (5) years imprisonment and/or a \$10,000 fine pursuant to RCW 9A.76.170 and RCW 9A.20.021(1)(c), plus restitution and assessments.)

1 JIS Code: 9A.76.170.3C Bail Jumping-Felony B or C  
2  
3

4 DATED: Tuesday, January 29, 2013.  
5  
6

7 GREGORY M. BANKS  
8 ISLAND COUNTY PROSECUTING ATTORNEY

9  
10 By: 

11 DAVID E. CARMAN  
12 DEPUTY PROSECUTING ATTORNEY  
13 WSBA # 39456

14 STANDARD SENTENCE RANGE: Assuming an offender score of 9+: 51-60 months  
15 confinement  
16

17 **DEFENDANT INFORMATION**

18 NAME: Derek John Cartmell		DOB: 05/07/1981			
19 ADDRESS: 1512 16th Street					
20 CITY, STATE, ZIP: Anacortes, WA 98221					
21 PHONE #(s): (360)333-4094		DRIV. LIC. NO. CARTMDJ192	DL ST WA		
22 SEX: M	RACE: W	HGT: 602	WGT: 208	EYES: BLU	HAIR: BRN
23 OTHER IDENTIFYING INFORMATION					

FILED-COPY

CASE NO. 13-1-23-8

DET. DEE/RESP

JAN 29 2013

Exhibit No. 10

MARKED FOR IDENTIFICATION

DEBRA VAN PELT  
ISLAND COUNTY CLERK

ADMITTED REJECTED  
M.M.Z DEP. CLERK

IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

NO. 12-1-00250-0

vs.

ORDER FOR BENCH WARRANT

DEREK JOHN CARTMELL,

Defendant.

THIS MATTER, having come on for hearing this day upon the motion of the Island County Prosecuting Attorney for an order directing the court clerk to issue a bench warrant; the court, having considered the files and records herein and being fully advised in the premises, and finding that:

[X] The defendant failed to appear on January 29, 2013  
for Jury Trial;

[ ] Other: \_\_\_\_\_

NOW, THEREFORE,

IT IS HEREBY ORDERED that the clerk of this court is directed to issue a bench warrant for the immediate apprehension and arrest of the above-named defendant. Bail is set at \$ 200,000.

Dated 1/29/13



JUDGE/COMMISSIONER OF THE COURT

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Presented by:

GREGORY M. BANKS  
ISLAND COUNTY PROSECUTING ATTORNEY

By:  \_\_\_\_\_

DAVID E. CARMAN  
DEPUTY PROSECUTING ATTORNEY  
WSBA #39456

25

## Statement of Additional Grounds 2

Proposed instructions to the jury were delivered on the 6<sup>th</sup> day of June 2013 to the defendant that were in compliance with WPIc 120.41, after the state had already filed a different set of proposed instructions to the jury, with the court clerk on June 4<sup>th</sup> 2013, Having done this to intentionally mislead the defendant.

Misleading the defendant violates the Rules of professional conduct, RPC 8.4 (c) states "It is professional misconduct for a lawyer to: engage in conduct involving dishonesty, fraud, deceit or misrepresentation." In RPC 8.4 (b) misconduct It is professional misconduct for a lawyer to: commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects", On RP 161 ~~Mr.~~ Carmen states "I did provide Mr. Cartmell what I thought I was being careful to describe as a "rough draft" of what might be my proposed Jury Instructions a couple weeks prior to the trial." This is the prosecution covering up his actions. The instructions were delivered to me at the jail less than a week before trial. The copy delivered to the defendant on June 6<sup>th</sup> 2013 complied with WPIc 120.41; which states WPIc 120.41 (1) "That on or about the \_\_\_\_\_, the defendant failed [to appear before the court] [or] [to surrender for service of sentence];" The June 6<sup>th</sup> instructions omitted the time, "(1) That on or about January 29, 2013 the defendant failed to appear before a court," is what it read. The charging documents also elicit

The Verbatim report of proceedings are referred to as "RP", Motions in limine, General Motions and sentencing proceedings are referred to specifically by date.



the time. The instructions did not contain *State v. Carver*, 122 Wn. App. 300, 306 (Div. 2, 2004). Defendant objected on RP 201 - RP 202 "It says 'I forgot' is not a defense. I never claimed that I had forgotten about the --" That is when the judge cut me off and went onto, The court: "Well, as a matter of fact, you didn't testify; but you had testimony from others."

My two witness's never testified to forgetting about a court date. Their testimonies supported me being at the courthouse on the 29<sup>th</sup> of January 2013 and talking with the court clerk. RP 180-RP 183 supports the Defendant Derek J. Cartmell being at the courthouse on January 29<sup>th</sup> 2013. The court abused its discretion when including instruction number 9 of the state's. There was no supporting evidence that the defendant forgot the court date. The defendant was there according to both the state's witness's and the defense witness's testimonies.

RP 202 Defendant objected to Instruction Number 7. WJPC 120.41 again does not mention the time only the date. Reading the instruction that deviates from the WJPC 120.41 is an abuse of discretion by the court.

The state further argued to use the instructions that were filed with the court clerk on the 4<sup>th</sup> of June 2013. There were no intentions by the state to use the instructions submitted on the 6<sup>th</sup> day of June 2013 to the defendant. It is clear

The Verbatim report of proceedings are referred to as "RP", Motions in limine, General Motions, and sentencing proceedings are referred to specifically by date.

that the prosecution intentionally did this to mislead the defense. Defendant did not receive the June 4<sup>th</sup> filed copy until June 7<sup>th</sup>. This left the defendant at a severe disadvantage getting a proper set of instructions together before the commencement of trial.

To further support this being done intentionally the state made sure to include in "State's motion in Limine filed June 4<sup>th</sup> number one "Filing of jury instructions on or before the first day of trial. CrR 6.15(a)". That court rule is a well know rule that seldom requires to be included into a motion in Limine. The state wanted to be sure to eliminate a manifestation of error due to filing. The intentions by the state were clearly to mislead the defendant.

The charging documents state the 29<sup>th</sup> of January 2013, the defendant failed to appear, the instructions that were read to the jury went beyond the charging documents therefore misleading the jury to believe I was not there. It was established that I was there on that 29<sup>th</sup> day of January 2013, not only by my witnesses but also by state's witness Detective Rick Felici. On RF 107 "Mr. Carmen" And why did you go looking for Derek Cartmell around the courthouse January 29<sup>th</sup>?" Dt. Felici "In the afternoon, hmmm, Detective Wallace and I received information he had been in the courtroom or the

The Verbatim report of proceedings are referred to as "RF". Motions in Limine, General Motions and sentencing proceedings are referred to specifically by date.


courthouse and then left the building and went  
somewhere on foot in the coupeville area."

RP 108 Mr. Carmen "And did you find him?"

Dt. Felice "we did not." Mr. Carmen "Did you find  
a vehicle that Mr. Cartmell was supposed to be in?"

Dt. Felice "yes". That clearly states that Derek  
Cartmell was at the courthouse on January  
29<sup>th</sup> 2013 trying to make the appearance, and  
that the court went beyond the charging documents  
when instructing the jury.

Due to the cumulative errors and the  
misconduct I respectfully request a reversal of  
conviction.

  
Derek S. Cartmell

The Verbatim report of proceedings are referred to as "RP".  
Motions in limine, General Motions and sentencing proceedings  
are referred to specifically by date.

IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

DEREK JOHN CARTMELL,

Defendant.

NO. 13-1-00023-8

STATE'S PROPOSED INSTRUCTIONS TO THE  
JURY

Respectfully submitted this 6th day of June, 2013.

GREGORY M. BANKS  
ISLAND COUNTY PROSECUTING ATTORNEY

By: \_\_\_\_\_  
DAVID E. CARMAN  
DEPUTY PROSECUTING ATTORNEY  
WSBA #39456

mb

NO. 1

To convict the defendant of the crime of bail jumping, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about January 29, 2013 the defendant failed to appear before a court;
- (2) That the defendant was charged with Possession of a Stolen Vehicle;
- (3) That the defendant had been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before that court;
- (4) That the defendant knew of the requirement to subsequently appear before the court on January 29, 2013 at the time the defendant was released or admitted to bail; and
- (5) That any of these acts occurred in the State of Washington, County of Island.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

FILED-COPY

JUN 04 2013

DEBRA VAN PELT  
ISLAND COUNTY CLERK

IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

DEREK JOHN CARTMELL,

Defendant.

NO. 13-1-00023-8

STATE'S PROPOSED INSTRUCTIONS TO THE  
JURY

Respectfully submitted this 4th day of June, 2013.

GREGORY M. BANKS  
ISLAND COUNTY PROSECUTING ATTORNEY

By:



DAVID E. CARMAN  
DEPUTY PROSECUTING ATTORNEY  
WSBA #39456

To convict the defendant of the crime of Bail Jumping, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about January 29, 2013 at 8:30 am, the defendant failed to appear before a court;

(2) That the defendant was charged with Possession of a Stolen Vehicle, Attempting to Elude a Pursuing Police Vehicle, and Possession of Methamphetamine;

(3) That the defendant had been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before that court; and

(4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

NO. 9

A person has knowledge of the requirement of a subsequent personal appearance if he or she was given notice of his court date. Forgetting about a required appearance or misreading a scheduling order is not a defense to a charge of bail jumping.



1 Your Honor, I would like to order - order a dismissal due  
2 to the prosecution misconduct.

3 THE COURT: What is his misconduct?

4 DEREK J. CARTMELL: Misleading the Defendant on  
5 the Proposed Jury Instructions.

6 They were filed on June 4<sup>th</sup>, the Proposed Jury  
7 Instruction, and at a later date I received the copy that  
8 he allegedly set - or that I copied from that has the time  
9 omitted from it.

10 I received that at a later date after it was filed.  
11 Therefore, seriously misleading the Defendant on the  
12 Proposed Jury Instructions.

13 THE COURT: All right. Go ahead.

14 DEREK J. CARTMELL: And, also, due to the fact  
15 on his Motion in Limine-- Or let me find it.

16 Yeah, the State's Trial Brief, it says that "The  
17 Defendant, when he was found, he resisted arrest and  
18 attempted to avoid capture again by trying to start the  
19 truck."

20 I-- Yesterday, when the officer was on the stand  
21 testifying, I asked him specifically if I tried to resist  
22 arrest and he said no, I did not.

23 And, furthermore, on a trial that happened on  
24 March 8<sup>th</sup>, 2013, the State said that I was attempting to  
25 elude a pursuing police officer in the Snohomish area and

1 requested a \$400,000 bail.

2 Now, that's-- Due to the officer's testimony  
3 yesterday, that is not the truth of what happened. There  
4 is nothing saying that I was attempting to elude a  
5 pursuing police vehicle on - on my arrest.

6 So, you know, due to prosecution misconduct, I'd  
7 order this case be dismissed.

8 THE COURT: Okay.

9 Thank you.

10 MR. CARMAN: Your Honor, I can give a little bit  
11 more information about the Jury Instructions.

12 I did provide Mr. Cartmell what I thought I was being  
13 careful to describe as a "rough draft" of what might be my  
14 Proposed Jury Instructions a couple weeks prior to the  
15 trial. And I described to him at that time that I was  
16 giving them to him because they had the citations to the  
17 WPICs at the bottom of the Jury Instructions to give him  
18 an opportunity to look at the proposed instructions, or at  
19 least the citations in the WPICs, so that he could help  
20 himself prepare for the Jury Instructions, which can be  
21 kind of a convoluted mess, frankly, in the WPICs.

22 I tried to be as specific as I could that those were  
23 not the Jury Instructions I was going to be filing  
24 necessarily; that I was going to be filing my proposed -  
25 my actual Proposed Jury Instructions the week before

1 trial, which I did.

2 And I got the final draft of the Proposed  
3 Instructions to Mr. Cartmell at the same time that I filed  
4 them with the Court, which would have been, I think, last  
5 Tuesday, Wednesday, Thursday of last week.

6 The intention was to get Mr. Cartmell a little bit  
7 more information, because he is a Pro Se Defendant, so  
8 that he could get on the ball and get his requests into  
9 the Jail to get the information because Mr. Cartmell has  
10 been pretty consistently complaining that it takes a while  
11 to get information back to a Pro Se Defendant.

12 It was not intended to mislead him. And the fact  
13 that I described them as a "rough draft" and not what I  
14 was going to be providing to the Court necessarily, I was  
15 trying to make that clear. Apparently, Mr. Cartmell  
16 missed that point.

17 As for the rest of his claims, the material in the  
18 Trial Brief is for the Judge's consideration. It's in  
19 support of legal argumentation. It's not evidence for  
20 this trial. It's not information that's going to get  
21 provided to the jury.

22 The jury's information is going to be the testimony  
23 that has been heard and will be heard today.

24 And I fail to see how there could be prosecutorial  
25 misconduct in providing additional information to the jury.

1 - or to the judge if it's not going to the jury and will  
2 not - cannot - affect a verdict in this case.

3 And the fact that there were warrants issued based on  
4 Mr. Cartmell's failures to appear, I'm failing to see how  
5 that has any effect on this trial either.

6 THE COURT: Your response.

7 DEREK J. CARTMELL: Your Honor, I didn't receive  
8 the copy that was the rough draft until after the date  
9 that it was filed. It doesn't have the prosecution's  
10 signature on it, but it says, "Respectfully submitted this  
11 6<sup>th</sup> day of June, 2013."

12 So I-- That's the rough draft he gave me after it  
13 was filed with the court - the Court Clerk. Therefore, I  
14 was misled that this was going to be the - the Proposed  
15 Jury Instructions from the State. And that left me, you  
16 know, hustling to get photocopies of and the corrections  
17 of what I needed them to be.

18 Yesterday at the - at the - when we were going over  
19 this, it was said that I copied the - the State's Proposed  
20 Jury Instructions, which I copied the ones that were the  
21 rough draft, because that's ones that I agreed with, that  
22 it was eliciting the time of 8:30, which is - under WPIC  
23 rules it just says the date. It doesn't have a specific  
24 time. And I was okay that rough draft.

25 And then when this came in after the-- Or it was--

1 It came in days after the 4<sup>th</sup>.

2 So, you know, that's - that's what my concern is, you  
3 know. That's put me at a severe disadvantage and  
4 misleading me to think that the rough draft is going to be  
5 going in, and it's dated after it was already filed. You  
6 know, that's-- That's not good in my eyes.

7 THE COURT: Anything else?

8 DEREK J. CARTMELL: No.

9 THE COURT: All right. The jury instructions  
10 can always be changed, even after they have been filed.  
11 That is just something that the Court has to look at and  
12 the Court has to make a decision as to what jury  
13 instructions go.

14 The fact that you argued that it should only be the  
15 date -- He argued it should be the date and the time of  
16 the trial beginning -- is part of the process.

17 So you had an opportunity to argue to the Court that  
18 it should just be the date. You had that opportunity  
19 right now.

20 It is not prosecutorial misconduct to change jury  
21 instructions. And, as a matter of fact, he did not even  
22 need to give you these copies or give you the cites to  
23 these copies. And - and I'm certain he's going to  
24 reconsider if he'll do this in the future.

25 But, nevertheless, what he was trying to do was get

1 you the cites.

2 You had the opportunity to look at those jury  
3 instructions. You told me you did. I gave you some books  
4 yesterday, also, to make sure you had the opportunity.

5 And the Court made the decision, as the Court has the  
6 discretion to do, to put the time in the jury instruction.  
7 That is 8:30 A.M.

8 It is borne out by one of the exhibits that was  
9 issued - that was entered that the trial starts at 8:30  
10 A.M. on the date designated. That is in the Notice for  
11 Trial Settings. That is also in the Local Court Rules.

12 So there is no prosecutorial misconduct in that  
13 regard.

14 The Trial Brief is only for me. The jury doesn't get  
15 the Trial Brief. I don't get to make the decision in this  
16 case. The jury does.

17 So it cannot affect the jury because that information  
18 is not going to the jury.

19 The fact that a bench warrant was issued back in  
20 March has really nothing to do with this trial today.

21 For whatever reasons that was issued, that was then.  
22 This is now. That information is also not going to the  
23 jury as far as why they may have thought the bench warrant  
24 was issued. The fact is: There was a bench warrant issue  
25 - issued when you failed to appear for Court. That's the

1 A Yes.

2 Q Did you drive Mr. Cartmell to Court January 29<sup>th</sup>,  
3 2013?

4 A No. Kelly did.

5 Q Okay. Were you in the car - in the vehicle with  
6 Mr. Cartmell and Kelly?

7 A Yes.

8 Q Okay. When you got to the courthouse, what happened?

9 A Hmm. We came to the courtroom and there was nobody  
10 here.

11 Q Did Mr. Cartmell wait at the car?

12 A No. He came in the courtroom into --

13 Q He came inside the courtroom?

14 A Yeah.

15 Q "Yes" or "no," please?

16 A Yes.

17 Q Okay. Now, when a person comes into-- When you  
18 come into the courtroom, okay, do you go through a metal  
19 detector?

20 A Yes.

21 Q Okay. Now, does Mr. Cartmell carry a pocket knife at  
22 all?

23 A I don't think so. I don't know.

24 Q Does he carry any metal in his pockets?

25 MR. CARMAN: Objection, Your Honor. Relevance.

1 THE COURT: Overruled.

2 THE WITNESS: Not that I know of.

3 Q (By Derek J. Cartmell) Not that you know of.

4 A Yeah.

5 Q Okay. So did you see Mr. Cartmell taking anything  
6 out of his pockets at the car that you guys left with?

7 A Yeah. Keys.

8 Q So keys are metal?

9 A Well, yeah. Yes.

10 Q Okay. Okay. So you were ahead of Mr. Cartmell when  
11 he came into the courtroom?

12 A Yes.

13 Q Okay. And where did you go when you came into the  
14 courtroom?

15 A Straight to this room.

16 Q Was anybody in this room?

17 A No.

18 Q And what time was this about?

19 A 1:30.

20 Q Did you check in the other courtrooms?

21 A Yes, we checked the next door one.

22 Q Okay. Did Mr. Cartmell-- Did you see him look into  
23 the courtrooms?

24 A Yes, I did.

25 Q Okay. And after - after that, what-- Do you recall



1 what happened?

2 Where did Mr.-- Oh, do you recall what happened?

3 A Hmm. We asked about the Court, why it wasn't in  
4 session. And then I went up to the prosecuting' attorney's  
5 office.

6 Q We asked? Mr. Cartmell asked somebody?

7 A Well, all three of us did.

8 Q And who is-- Who did these three ask?

9 A I think it was down here. But then I went upstairs  
10 and asked about it.

11 Q And where did Mr. Cartmell go?

12 A I don't know. I wasn't with him at that time.

13 Q Oh, So you're - you're not aware of where  
14 Mr. Cartmell went?

15 A Probably to the car.

16 MR. CARMAN: Objection, Your Honor.  
17 Speculative.

18 THE COURT: Speculation. Sustained.

19 Q (By Derek J. Cartmell) Okay. Did you see  
20 Mr. Cartmell leave the building?

21 A No. I didn't.

22 Q Okay. Then what-- Where did you go after you - you  
23 and Mr. Cartmell split up?

24 A I went up to the Prosecuting Attorney's Office.

25 Q And what did you do up there?

1 A Asked about the Court date, and why people weren't  
2 down here waiting for us.

3 Q Okay. And, hmm, do you recall ever having a  
4 conversation about a Court date with the bail bondsman?

5 A No, I don't recall it. I don't remember.

6 Q Okay. Okay. So the bail bondsman never informed you  
7 of when the Court date was?

8 MR. CARMAN: Objection, Your Honor. Asked and  
9 answered.

10 THE COURT: It's asked and answered, and it also  
11 calls for hearsay.

12 Sustained.

13 Q (By Derek J. Cartmell) So in your mind, in your  
14 opinion -- It's not professional -- did you attempt to bring  
15 the Defendant, Derek Cartmell, to Court on the time you thought  
16 it was going to be at?

17 A Yes, I did.

18 Q Okay. And you contacted personnel of the Court  
19 system, the prosecution's office --

20 MR. CARMAN: Objection, Your Honor. Leading.

21 THE COURT: Leading question.

22 Q (By Derek J. Cartmell) Did you --

23 THE COURT: Sustained.

24 Q (By Derek J. Cartmell) You asked about Mr. Cartmell's  
25 Court dates-- I mean, did his parents? Okay.

1 Q But while you were around, nobody talked with anyone?

2 A I didn't see anybody.

3 MR. CARMAN: Nothing further, Your Honor.

4 DEREK J. CARTMELL: Nothing further.

5 THE COURT: You may step down.

6 All right. Any other witnesses, sir?

7 DEREK J. CARTMELL: No.

8 THE COURT: Any rebuttal witnesses, Mr. Carman?

9 MR. CARMAN: No, Your Honor. Thank you.

10 THE COURT: All right. I will excuse the jury  
11 for a few minutes so that we can get the Jury Instructions  
12 ready for you.

13 THE BAILIFF: All rise.

14 (Jury exits the courtroom.)

15 THE COURT: Please be seated.

16 The jury instructions will be what we were talking  
17 about at this time. And the Court had agreement on all  
18 the jury instructions with the exception of the State's 7  
19 and the State's 9 as well as the Defendant's 11 and the  
20 Defendant's 8.

21 All right. I have indicated that I would not present  
22 Defendant's 8 because it is the WPIC 6.51 for expert  
23 witness testimony. There is no expert witness who  
24 testified.

25 And I have indicated that I will be taking or using,

1 excuse me, State's - State's Instruction No. 7 and State's  
2 Instruction No. 9.

3 I will take any objections at this time to the jury  
4 instructions.

5 MR. CARMAN: The State-- The Court's going to  
6 use the State's 7, which is the to-convict instruction in  
7 its entirety?

8 THE COURT: Right.

9 MR. CARMAN: And 9.

10 THE COURT: And we should be talking about --  
11 I'm sorry for doing this -- we should be talking about the  
12 Proposed Court's Instructions to the jury. And so that  
13 would be number 7 and No. 9 that were in dispute.

14 So I will take exceptions, if any, to the Court using  
15 the State's 7 and 9 and rejecting the Defendant's 8 and  
16 rejecting the Defendant's 11.

17 May I hear from you, Mr. Cartmell.

18 DEREK J. CARTMELL: Yes. I seem to have  
19 misplaced a document that I was looking for.

20 Oh. Are you going to be gonna - be using the State's  
21 No. 9, Your Honor?

22 THE COURT: Yes.

23 DEREK J. CARTMELL: Okay. I would like to  
24 object to that. I went over the State v. Carter, and it  
25 doesn't say anything about misreading Court Appearance

1           Scheduling Order. So that's-- I would like to reject  
2           that.

3           It says "I forgot" is not a defense. I never claimed  
4           that I had forgotten about the --

5           THE COURT: Well, as a matter of fact, you  
6           didn't testify; but you had testimony from others.

7           DEREK J. CARTMELL: And after reviewing, also,  
8           on the WPIC, I'd like to object to that, too.

9           THE COURT: Which one?

10          DEREK J. CARTMELL: The No. 11 -- I'd like to go  
11          with mine -- with the time being there.

12          And the time not being included in there. Because on  
13          the WPIC, it - it doesn't have the time in there. It says  
14          specifically the date in the brackets. There is nothing  
15          about time being included in that. It just has the date.

16          And, also, No. 4, the Defendant knew of the  
17          requirement to subsequently appear before the Court on  
18          January 29<sup>th</sup>, 2013. I'd like to include that.

19          THE COURT: Okay. Thank you.

20          The Court is rejecting the defense arguments, No. 1,  
21          on Instruction No. 7, the date of 8:30 A.M. is when the  
22          trial begins.

23          Jurors and other parties are not expected to wait  
24          around until somebody finally comes. There is a reason  
25          for a commencement time, and that commencement time is so

1 that everybody can get started in a timely manner.

2 So the State's theory of the case is that at 8:30  
3 A.M. on January 29<sup>th</sup>, 2013 that you did not appear, and  
4 that you did not appear until 1:00 or 1:30 that same day.

5 The Instruction No. 9 that the State has proposed,  
6 the Court believes that State v. Carver does stand for the  
7 proposition that is included in that with - in that  
8 instruction.

9 So I will give the instructions as I have provided to  
10 the parties. And we will call the jury back in at this  
11 time.

12 Excuse me just a moment.

13 MR. CARMAN: Your Honor, I did want to raise one  
14 more possibility for Mr. Cartmell on a limiting  
15 instruction.

16 The Court documents regarding Cause No. 12-1-250-0, I  
17 guess, technically have been admitted for a limited  
18 purpose and the limited purpose, I guess, would be proof  
19 of the elements of crime - of this crime but not to show  
20 conformity with criminal behavior.

21 I don't know if Mr. Cartmell wants a limiting  
22 instruction for that. I have one prepared, if  
23 Mr. Cartmell wanted to use it.

24 THE COURT: Would you provide that to  
25 Mr. Cartmell. I already had these printed up. So we'll

JUN 04 2013

DEBRA VAN PELT  
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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

DEREK JOHN CARTMELL,

Defendant.

NO. 13-1-00023-8

STATE'S MOTIONS IN LIMINE

COMES NOW the Plaintiff, State of Washington, by and through its attorney, David E. Carman, Deputy Prosecuting Attorney of Island County, with the following motions in limine for trial in the above-entitled matter:

1. Filing of jury instructions on or before the first day of trial. CrR 6.15(a).
2. Exclusion of witnesses so that they cannot hear the testimony of other witnesses. ER 615.
3. The Court to direct each party to clearly instruct their witnesses that they "are not to discuss the case or what their testimony has been or would be or what occurs in the courtroom with anyone other than counsel for either side." *United States v. Buchanan*, 787 F.2d 477, 485 (10th Cir. 1986), *grant of post-conviction relief reversed*, 891 F.2d 1436 (10th Cir. 1989), *cert. denied*, 494 U.S. 1088, 110 S.Ct. 1829, 108 L.Ed.2d 958 (1990) (citing ER 615).
4. No reference or description of a character trait of a person, unless previously approved by the Court via offer of proof. ER 404(a), 404(b), 405(a), 405(b), 608. The scope of this motion includes evidence that Defendant is a "law-abiding" citizen or opinions of the Defendant's character. *State v. Mercer-Drummer State v. Mercer-Drummer*, 128 Wn.App. 625, 116 P.3d 454 (Div. 2 2005). If the Court admits reputation evidence, the

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ISLAND COUNTY SHERIFF

IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

**DEREK JOHN CARTMELL,**

Defendant.

NO. **13 1 00023 8**

INFORMATION CHARGING:

COUNT 1 - Bail Jumping (From Class B or C Felony)

COMES NOW GREGORY M. BANKS, Prosecuting Attorney of Island County, State of Washington, or his deputy, and by this Information accuses the above-named defendant of violating the criminal laws of the State of Washington as follows:

**COUNT I - Bail Jumping**

On or about the 29th day of January, 2013, in the County of Island, State of Washington, the above-named Defendant, having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before a court of this state or of the requirement to report to a correctional facility for service of sentence, did fail to appear or did fail to surrender for service of sentence in which a Class B or Class C felony has been filed, to-wit: Island County Superior Court Cause No. Island County Superior Court No. 12-1-00250-0; contrary to Revised Code of Washington 9A.76.170.

(MAXIMUM PENALTY (Failure to appear in Class B or Class C felony case)—Five (5) years imprisonment and/or a \$10,000 fine pursuant to RCW 9A.76.170 and RCW 9A.20.021(1)(c), plus restitution and assessments.)


56  
51



1 JIS Code: 9A.76.170.3C Bail Jumping-Felony B or C

2  
3  
4 DATED: Tuesday, January 29, 2013.

5  
6  
7 GREGORY M. BANKS  
8 ISLAND COUNTY PROSECUTING ATTORNEY

9  
10 By:   
11 DAVID E. CARMAN  
12 DEPUTY PROSECUTING ATTORNEY  
13 WSBA # 39456

14 STANDARD SENTENCE RANGE: Assuming an offender score of 9+: 51-60 months  
15 confinement

DEFENDANT INFORMATION					
NAME: Derek John Cartmell			DOB: 05/07/1981		
ADDRESS: 1512 16th Street					
CITY, STATE, ZIP: Anacortes, WA 98221					
PHONE #(s): (360)333-4094			DRIV. LIC. NO. CARTMDJ192	DL ST WA	
SEX: M	RACE: W	HGT: 602	WGT: 208	EYES: BLU	HAIR: BRN
OTHER IDENTIFYING INFORMATION					

1 A Twelve-- 12-1-00250-0.

2 Q And is there a Defendant?

3 A Derek John Cartmell.

4 MR. CARMAN: Your Honor, at this time the State  
5 would move to admit Plaintiff's Exhibit 4.

6 THE COURT: That exhibit is admitted.

7 MR. CARMAN: And State would move to publish.

8 THE COURT: You may do so.

9 MR. CARMAN: (Publishes Exhibit 4 to the jury.)

10 Q (By Mr. Carman) Detective Felici, were you around the  
11 courthouse the rest of that day?

12 A Yes.

13 Q And did you see Derek Cartmell in and around the  
14 courthouse at all that day?

15 A No.

16 Q Did you look for Derek Cartmell around the courthouse  
17 that day?

18 A Yes.

19 Q And why did you go looking for Derek Cartmell around  
20 the courthouse January 29<sup>th</sup>?

21 A In the afternoon, hmm, Detective Wallace and I  
22 received information he had been in the courtroom - or the  
23 courthouse and then left the building and went someplace on  
24 foot in the Coupeville area.

25 Since a warrant had been issued, we checked the

1 general vicinity of the courthouse and Coupe - Coupeville, the  
2 surrounding streets and surrounding area, to see if we could  
3 find him.

4 Q And did you find him?

5 A We did not.

6 Q Did you find a vehicle that Mr. Cartmell was supposed  
7 to be in?

8 A Yes.

9 Q How many people were in that car when you found it?

10 A Two.

11 Q How many people were in the car that Mr. Cartmell was  
12 supposed to be in when you contacted it?

13 A There were two people associated. When we contacted  
14 it, that was just one.

15 Q Was that Derek-- Was that one person Derek  
16 Cartmell?

17 A No.

18 MR. CARMAN: Thank you, Detective Felici.

19 Nothing further, Your Honor.

20 THE COURT: Your witness.

21 DEREK J. CARTMELL: Your Honor, I would like to  
22 admit these into evidence --

23 THE COURT: Are they marked?

24 DEREK J. CARTMELL: Yes, they're marked.

25 THE COURT: All right.

### Statement of Additional Grounds 3

Defendants Motion in Limine, heard 6-11-13 RP16  
Derek J. Cartmell: "Your Honor, I believe that the events that happened three weeks later, that the jury is going to be highly misled to believe that that those RP17 events linked.

That it further states there in the motion in limine No. 2 about the officer's lack of knowledge of what happened on the 29<sup>th</sup> of January, 2013. He was not here. So he doesn't know what is going on on that day here at this courtroom. Under 703 his lack of knowledge, it -- It says under ER 602 or ER 602, lack of personal knowledge, a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter, I'm being tried for the 29<sup>th</sup> of January; not the February 21<sup>st</sup>. So letting his testimony in or any evidence about that, it would be highly prejudicial, I believe."

The court abused its discretion by allowing officer Malaby's testimony in. His testimony also violated the provisions of ER rule 602 "Lack of personal knowledge, A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge may, but need not, consist of the witness' own testimony." The testimony was allowed and the jury was misled.

Prosecution said in the states trial brief

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P65 "And, when the defendant was found, he resisted arrest and attempted again to avoid capture by trying to start a truck." Prosecution is focusing on the February 21<sup>st</sup> date. That is three weeks after the bail jumping incident. Furthermore. According to officer Malaby's testimony RP 134 question by Derek Cartmell "okay. Did Derek Cartmell resist arrest at all?" Officer Malaby "NO". The state linked the events by making false statements in the trial brief. There were no attempts to recant statements that proved to be false. Therefore the state is in violation under RPC 3.3 (a) "A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;"


RPC 3.3 (4) (c) IF the lawyer has offered material evidence and comes to know of its falsity, the lawyer shall promptly disclose this fact to the tribunal unless such disclosure is prohibited by Rule 1.6. "The prosecution used untrust<sup>facts</sup> to argue the allowance of officer's testimony. The statement was know to be false prior to trial. When the officer was interviewed by defendant. He stated the defendant did not resist arrest. Prosecution was present during interview.

The testimony swayed the jury to focus on the arrest that happened 3 weeks after the alleged bail jumping. Testimony of witness should of been excluded from trial. There was

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never any evidence to claim the officer has any personal knowledge of bail jumping charge until the 21<sup>st</sup> of february. Furthermore his testimony falls under EBrute 403 being cumulative evidence, that prejudiced the defendant. There was no probative value to consider in the testimony by officer Malaby that had to do with bail jumping on the 29<sup>th</sup> day of January 2013. Again officers testimony was admitted in violation of court rules and to directly confuse the jury along with prejudice the defendant.

Based on the before mentioned grounds I respectfully request a reversal of conviction or a new trial excluding testimony by officer Malaby.

  
Derek J. Cartmell

The Verbatim report of proceedings are referred to as "RF".  
Motions in limine, General Motions and sentencing proceedings,  
are referred to specifically by date.

1 I don't anticipate asking the Court to admit the  
2 reports themselves. They would be hearsay. Though we are  
3 going-- I am going to mark one of the reports in case  
4 Officer Malaby needs to have his memory refreshed.

5 But I do anticipate calling Officer Malaby to testify  
6 that he arrested Mr. Cartmell on the warrant that was  
7 issued for failing to appear to the trial.

8 It would fall under Evidence Rule 404(b), but it  
9 should be admissible as part of the - as an inseparable  
10 part of the crime charged or res gestae. It's-- This  
11 case is not just simply Mr. Cartmell failed to appear on  
12 January 29<sup>th</sup>.

13 It's also that I - I anticipate Mr. Cartmell is going  
14 to elicit evidence that he - he or someone for him  
15 appeared here in the afternoon of the day that the trial  
16 was supposed to happen, but that he didn't appear in front  
17 of any judge. The warrant was still issued. And that he  
18 was eventually arrested a few weeks later.

19 It's all the same series of events and it should all  
20 be admissible in order to give the jury a full picture of  
21 what happened in this case.

22 THE COURT: Mr. Cartmell.

23 DEREK J. CARTMELL: Your Honor, I believe that  
24 the events that happened three weeks later, that the jury  
25 is going to be highly misled to believe that - that those

1 events linked.

2 That it further states there in the Motion in Limine  
3 No. 2 about the officer's lack of knowledge of what  
4 happened on the 29<sup>th</sup> of January, 2013. He was not here.  
5 So he doesn't know what is going on on that day here at  
6 this courtroom.

7 Under 703 his lack of knowledge, it-- It says under  
8 ER 602 - or ER 602, lack of personal knowledge, a witness  
9 may not testify to a matter unless evidence is introduced  
10 sufficient to support a finding that the witness has  
11 personal knowledge of the matter.

12 I'm being tried for the 29<sup>th</sup> of January; not the -  
13 February 21<sup>st</sup>.

14 So in letting his testimony in or any evidence about  
15 that, it would be highly prejudicial, I believe.

16 THE COURT: All right. He was arrested on the  
17 bench warrant that was issued?

18 MR. CARMAN: Yes, Your Honor.

19 THE COURT: All right. That is part of the res  
20 gestae. That is, the elements of the crime, the whole  
21 story of the crime that has been alleged.

22 The arrest is part of the bench warrant. The bench  
23 warrant is part of the failure to appear and on down the  
24 line.

25 So those motions are denied.



from Snohomish County Sheriff's Department and any other information that involves other crimes wrongs or acts are more prejudicial than probative there are no previous or other current Bail Jumping charges to prove proof of motive or intent, plan, preparation, knowledge, absence of mistake or accident. Bringing all the other items up misleads the jury. The fact is I am being charged with Bail jumping on the day of January 29<sup>th</sup> 2013 I asked the court to stick with Events on that date.

II Motion to Exclude Testimony of Officer Adam J. Malaby of the Stanwood Police Department.

Under rule ER 602 "Lack of personal knowledge A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion by expert witnesses". The officer has no personal knowledge of what happened on January 29<sup>th</sup> 2013 in this case. Again I am being tried for Bail Jumping on January 29<sup>th</sup> 2013, what happened 3 weeks later does not appertain these two events. If the officer was not here at the Island County Courthouse on January 29<sup>th</sup> 2013 he should not be allowed to testify.

Defendant's motion 2 of 3  
in 1 minute.

Derek John Cartmell  
Defendant prose.  
Island county Corrections  
PO Box 5000  
Clyde Hill WA 98239

1-2

1 courthouse the afternoon of January 29. However, the full facts of this case also include  
2 evidence that the defendant did not remain at the courthouse; instead, he fled the building  
3 without appearing in front of a judge. In addition, although a warrant had been issued for the  
4 defendant's arrest, he remained at large for nearly a month. And, when the defendant was found,  
5 he resisted arrest and attempted again to avoid capture by trying to start a truck. That evidence  
6 is relevant and necessary to convey the full facts of this case to the jury, and exclusion would  
7 require the State to present a fragmented version of events. The evidence should, therefore, be  
8 admitted.  
9

### 10 11 **III. ER 609**

12  
13 The defendant's prior convictions for Possession of a Stolen Vehicle, Possession of  
14 Stolen Property in the Second Degree, and Making a False Statement to a Public Servant are  
15 admissible as impeachment evidence in the event the defendant testifies in this case. The  
16 defendant was convicted in Island County Superior Court case 12-1-00250-0 of Possession of a  
17 Stolen Vehicle, with an incident date of November 1, 2012. He was also convicted in the  
18 Snohomish County District Court, Evergreen District case 5353B-10D of Making a False  
19 Statement to a Public Servant, with an incident date of July 2, 2010. He was also convicted of  
20 two counts of Possession of Stolen Property in the Second Degree in the Whatcom County  
21 Superior Court in cause number 08-1-01375-1 (incident date October 16, 2008) and 08-1-00794-  
22 7 (incident date June 12, 2008).  
23

24 In addition, the defendant has identified a potential witness who has similar convictions.  
25 Kelly Le Moigne was convicted in Snohomish County Superior Court case 11-1-00981-0 of  
26  
27  
28  
29  
30

1 anything from probably the chest down.

2 Q Okay. Do you recall if the vehicle was  
3 operation-able?

4 A I have no idea.

5 MR. CARMAN: Objection, Your Honor. Relevance.

6 THE COURT: It's already been answered.

7 Overruled.

8 BY DEREK J. CARTMELL:

9 Q Your initial contact, you got intelligence that -  
10 that Derek Cartmell was on the property in Stanwood?

11 A I received notification from another deputy.

12 Q From another deputy?

13 A That Derek Cartmell was on the property, yes.

14 Q Okay. Did Derek Cartmell resist arrest at all?

15 A No.

16 DEREK J. CARTMELL: Okay. No further questions.

17 THE COURT: Anything further, Mr. Carman?

18 REDIRECT EXAMINATION

19 BY MR. CARMAN:

20 Q Officer Malaby, why - why were you and Deputy Boyce,  
21 why did you find it necessary to break the passenger window of  
22 that truck?

23 A Because Mr. Cartmell was not responding to verbal  
24 commands to unlock the window and slide over.

25 MR. CARMAN: Nothing further, Your Honor.

## Addition to Appellant Attorney's Brief

Under RCW 9A.44A.500 a person convicted of violation of the uniform controlled substances act under chapter 69.50 RCW, the underlying charges consisted of a possession of methamphetamine, that falls under RCW 69.50. It is stated in RCW 9A.44A.500 "sentencing hearing -- Presentencing procedures -- Disclosure of mental health services information (Effective until July 1, 2014). (1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction: ---", "unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW, a criminal solicitation to commit such a violation under 9A.28 RCW, or any felony where the court finds that the offender has a chemical dependency that has contributed to his or her offense."

The defendant asked for a chemical dependency evaluation by filed motion. Filed May 20, 2013 which states "I the defendant Derek John Cartmell request the court to grant the services of a investigator, chemical dependency evaluator, also a mental health examiner other than prosecutors. I intend to have two professional opinions."

The court has an obligation by law to have the

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defendant submit to chemical dependency evaluation. It was never done on Bail Jumping or the Biggest underlying charges. When a specific defendant has two previous possession of methamphetamine charges and one current charge for possession of methamphetamine it is blatantly obvious that he has a co-occurring substance abuse issue.

Next I would like to bring up the possible violations of law under RCW 9A.74A.500 and mental health issues. Under chapter 9.74A.500 "If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025 although the defendant has not established at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, the court shall order the department to complete a presentence report before imposing a sentence."

The defendant said in the omnibus application that was filed with the court clerk May 29, 2013. Number 3) "Defendant is going to rely on a defense of insanity at the time of the offense" and lists lay people as witnesses one was not permitted to testify at the trial (explained in statement of additional grounds I denial of Lori Cartmell's testimony). "Defendant will submit to a psychiatric examination by a doctor selected by the prosecutor." Defendant stated the same in Response to Omnibus, filed June 10, 2013. Not only did the defendant state he was going to rely on a insanity plea, He also

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made a motion to the court filed May 20, 2013.

On 6-12-13 after guilty verdict was reached and jury was excused, RP 240, Derek J. Cartmell "your Honor, I would like to request psychiatric evaluation. If-if it is three weeks from now that I get sentenced can I get a psychiatric evaluation and a chemical dependency evaluation?"

RP 240 "On the Defendant's Response to the omnibus order, I did state that Defendant is going to rely on a defense of insanity at the time of the offense. And also, that the Defendant will submit a psychiatric evaluation examination by a doctor selected by the prose-prosecution." And that was sent in on 5/18/2013.

Hmm. That was the written. When I sent in the original, I sent in another copy because I wasn't aware of the courtesy copy that Your Honor is supposed to receive. I sent a copy to you dated June 7<sup>th</sup> of 2013.

I would like to have these evaluations done before sentencing so then I could be sentenced to the - the recommended stuff that they - they recommend people with "RP 241" mental problems and drug - securing drug addictions."

The defendant is clearly stating he has a concern about his mental health and substance abuse issues. This is a defendant that is seeking to resolve his problems and asking for help (further elaborated in sentencing transcript).

Mr. Carmen RP 241 states "your Honor, the state

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did not, I guess, arrange for a mental health evaluation or psychiatric evaluation and made no motion to the court because I didn't have any indication or -from Mr. Cartmell's behavior that there was going to be any substance behind a claim of insanity or diminished capacity."

Mr. Carmen is not a Mental health professional so his personal opinion as to defendant having behavior that requires an evaluation has no substance. The law requires pre-sentencing investigations, the prosecution and the court denied the defendant of this right. They were not in the dark about the defense relying on a insanity plea.

Defense RP 242 "Your Honor, I would like to get sentenced at the most convenient date." The court: "Well" Derek S. Cartmell: "And get sentenced according to the law." The court: "Well, you're going to have to bring some motions before the court, sir."

As a pro se defendant and not a mental health professional I tried to express my need for a evaluation for both my co-occurring substance abuse problem and for my mental health problems. I asked for a private investigator drug evaluator, and a mental health evaluator with no success or help from the court.

According to RCW 71.05.025 (1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of (g)

The verbatim report of proceedings are referred to as "RP". Motions in limine, General Motions and sentencing proceedings are referred to specifically by date.

A mental disorder as defined in RCW 71.05.020 (26) "Mental disorder" means any organic mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions; RCW 71.24.025 (4) "chronically mentally ill adult" or adult who is chronically mentally ill" means an adult who has a mental disorder and meets at least one of the following criteria; (c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months."

By the display of actions that the defendant has taken throughout his adult life there should be no question as for him being a drug addict. There should be lots of questions concerning his mental stability. He shows signs of being intelligent and signs of severe clinical depression. For the court to not properly help fix the underlying problems and for denying him rights to pre-sentence evaluation is a severe abuse of discretion by the court.

The proper way to correct this mistake would be to remand for sentencing and order pre-sentence evaluations or to retry the case.  
Respectfully submitted,

*Derek S. Cartmell*  
Derek S. Cartmell

The verbatim report of proceedings are referred to as "RP."  
Motions in limine, General Motions and sentencing proceedings are referred to specifically by date.



1 a week.

2 THE COURT: All right. If they are -- And you  
3 find out differently -- so you could schedule it earlier.  
4 And even special set it.

5 MR. CARMAN: Certainly.

6 THE COURT: Okay. So we'll work on doing a  
7 special set as soon as those documents come in.

8 DEREK J. CARTMELL: All right.

9 Your Honor, I would also like to request psychiatric  
10 evaluation. If - if it is three weeks from now that I get  
11 sentenced, can I get a psychiatric evaluation and a  
12 chemical dependency evaluation?

13 On the Defendant's Response to the Omnibus Order, I  
14 did state that Defendant is going to rely on a defense of  
15 insanity at the time of the offense. And, also, that the  
16 Defendant will submit a psychiatric evaluation -  
17 examination by a doctor selected by the prose -  
18 prosecution. And that was sent in on 5/8/2013.

19 Hmm. That was the written. When I sent in the  
20 original, I sent in another copy because I wasn't aware of  
21 the courtesy copy that Your Honor is supposed to receive.  
22 I sent a copy to you dated June 7<sup>th</sup> of 2013.

23 I would like to have these evaluations done before  
24 Sentencing so then I could be sentenced to the - the  
25 recommended stuff that they - they recommend people with

1 mental problems and drug - occurring drug addictions.

2 THE COURT: Could you have your response?

3 MR. CARMAN: Your Honor, the State did not, I  
4 guess, arrange for a mental health evaluation or  
5 psychiatric evaluation and made no motion to the Court.  
6 Because I didn't have any indication or - from  
7 Mr. Cartmell's behavior that there was going to be any  
8 substance behind a claim of insanity or diminished  
9 capacity.

10 If Mr. Cartmell is looking for evaluations in support  
11 of a Sentencing recommendation that he might make, I think  
12 he would need to bring a request for funding to the Court  
13 on his own.

14 I'm not going to get involved in that. I don't know  
15 what kind of timeline he'd have to be looking at to get  
16 that though.

17 THE COURT: Timeline is probably going to be  
18 quite far off.

19 First of all, you're going to have to find somebody  
20 that you're will to have do it.

21 Then you're going to have to ask Court for money.

22 And you're also going to have to do a motion  
23 memorandum on the reasons why that it is relevant here.

24 So I'll wait for those types of documents.

25 All right. Thank you.

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I will set this, as I said, July 1<sup>st</sup>. It's-- If you're able to get it earlier, we'll do so. However, I'm not sure if Mr. Cartmell is really asking for a expedited hearing.

DEREK J. CARTMELL: Your Honor, I would like to get sentenced at the most convenient date.

THE COURT: Well...

DEREK J. CARTMELL: And get sentenced according to the law.

THE COURT: Well, you're going to have to bring some motions before the Court, sir.

DEREK J. CARTMELL: All right.

MR. CARMAN: (Proffering Order to Court for review and signature.)

THE BAILIFF: All rise.

(Court adjourned at 11:55 o'clock, A.M.)

FILED

MAY 20 2013

DEBRA VAN PELT  
ISLAND COUNTY CLERK

SCANNED

In the superior Court for Island County, Washington

State of Washington, plaintiff,

No. 13-1-00023-8

vs.

Derek John Cartmell,  
Defendant.

Defendant's Response to  
omnibus Application order

The defendant, Derek John Cartmell, hereby responds to the Omnibus Application Order request of the plaintiff as set out below:

28  
D

- 1) Was mistaken about the time.
- 2) No alibi witnesses.
- 3) Defendant is going to rely on a defense of insanity at the time of the offense.
  - a) Lori Cartmell 1512-16th St Anacortes WA 98221 (360) 293-3653
  - (ii) Vickie Ecklund (425) 583-8422
  - (iii) Kelly Lemoinge (425) 583-8422
- c) Defendant will submit to a psychiatric examination by a doctor selected by the prosecutor.
- 14) Defendant is competent to stand trial
- 15) Defendant has not been provided a secure telephone line to interview witnesses.
- 19) Defendant's prior convictions need to be proved.

20) Not Stipulated.

21) Defendant will not rely on intoxication for defense.

23) Additional items:

The Defendant reserves the right to supplement these responses and forward additional information.

Dated May 18, 2013

Derek John Cartmell  
Derek John Cartmell  
Defendant Pro Se

FILED

JUN 10 2013

DEBRA VAN PELT  
ISLAND COUNTY CLERK

In the Superior Court of Island County, Washington  
state of Washington, plaintiff, No. 13-1-CR0023-8

v.

Derek John Cartmell,  
Defendant.

Defendant's Response  
to Omnibus

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1) Was mistaken about the time.

2) No alibi witnesses.

3) Defendant is going to rely on a defense of insanity  
at the time of the offense.

a) Lori Cartmell, Vickie Ecklund, Kelly Lemoingre

c) Defendant will submit to a psychiatric examination by  
a doctor selected by the prosecution.

14) Defendant is competent to stand trial.

15) Defendant has not been provided a secure  
telephone line to interview witnesses.

19) Defendant's prior convictions need to be proved.

20) Not stipulated.

21) Defendant will not rely on a defense of intoxication.

The defendant reserves the right to supplement these  
responses & forward additional information.

June 7<sup>th</sup> 2013

Derek John Cartmell

Dated

Derek John Cartmell

copied on June 7<sup>th</sup> 2013

Defendant Pro se

Original sent to clerk

5-18-2013

Defendant's Response  
to omnibus

Derek John Cartmell  
Defendant Pro se  
Island County Corrections  
PO Box 5000  
Coulterville WA 98029

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Ⓟ

IN THE Appeals COURT FOR WASHINGTON  
IN AND FOR Division 1 COUNTY

State of Washington,  
~~Plaintiff~~ Respondent

No. 70714-1-1

v.

DECLARATION OF SERVICE BY  
MAILING

Derek John Cartmell  
Defendant. Appellant

I Derek J. Cartmell, the Defendant, in the above entitled cause, do hereby declare that I have served the following documents;

Statement of Additional Grounds 1, 2, and 3.

Supplemental Additional to Appellate Attorney's  
Brief. 78 pages

PARTIES SERVED:

CLERK OF THE COURT

PLAINTIFF / PROSECUTOR

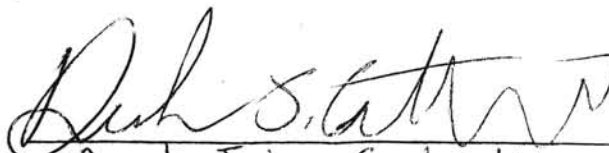
The Court of Appeals  
Division 1  
One Union Square  
600 University Street  
Seattle WA 98101-4170

That I deposited in with the Unit Officer's Station, by processing as Legal Mail, with First Class Postage at: Airway Heights Corrections Center

11919 W. Sprague Airway Heights, WA 99001

Dated this 6<sup>th</sup> day of May, 20 14

I certify under the penalty of perjury under the laws of Washington that the  
aforementioned is true and correct.

  
Derek John Cartmell  
(Signature)