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**Case #328694**

**Statement of Additional Grounds  
for Review**

State of Washington  
v.  
**John Mark Crowder**

COURT OF APPEALS  
DIVISION THREE  
OF THE STATE OF WASHINGTON

**FILED**

OCT 15 2015

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

STATE OF WASHINGTON )

Respondent, )

v. )

John Mark Crowder )

(your name) )

Appellant. )

No. 32869-4-III

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

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

Additional Ground 1

Cumulative Prosecutorial Misconduct:  
Please see attached.

Additional Ground 2

Court Error: Please see attached.

If there are additional grounds, a brief summary is attached to this statement. - III, IV : Please see attached.

Date: 10.12.15  
Form 23

Signature: John M. Crowder

**FILED**

OCT 15 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
B.

Thank you for the opportunity to provide you with this Statement of Additional Grounds to supplement the Appellant's Brief written by Andrea Burkhart. There are 4 main areas I would like to address: 1) Cumulative Prosecutorial Misconduct; 2) Court Error pertaining to the Delivery of Marijuana to Minors; 3) Insufficient Evidence to Support the Verdict regarding the conviction of Rape; and 4) Ineffective Assistance of Counsel.

**Cumulative Prosecutorial Misconduct**

I believe the actions on the part of the prosecutor in the case, Anita Petra, were designed to prejudice the jury to view me as a criminal throughout the trial. Ms. Petra continually attempted to sway the jury through inflammatory declarations, theatrical gestures, as well as through other improper statements and unethical behavior. Due to the lack of evidence and an inadequate investigation, I believe she knew that to prevail in this case she would need to play on the jury's emotions. Examples of these improper behaviors include:

- **Manipulation.** The original allegations the teenagers provided regarding the events of that night, which are documented in the initial police reports, changed dramatically over the course of the case and after private contacts with the prosecutor. An example is the change in Miss Deleon's statements regarding where she allegedly vomited, as outlined later in this document.
- **Withholding witnesses:** My attorney, Scott Johnson, had repeatedly demanded the ability to interview key State witnesses whom the prosecutor withheld until a matter of days before the trial. The prosecutor even met with one State witness on the Monday (9/8/2014) prior to the start of trial on the very evening she had been emailing with Mr. Johnson who said he was available any night that week for interviews. (Mr. Johnson's CRR 8.3 MOTION TO DISMISS, email correspondence dated 9/8/14)

The prosecutor did not attempt to contact my attorney to meet with the witness and important information was "revealed" by the witness that night which supported the

State's case. This conversation was not audio taped at the very least to show good faith on the part of the prosecutor.

- Speedy trial rights: My speedy trial rights were set to expire on 10/30/14, and the prosecutor was allowed to set the trial dates by my attorney with the condition that whichever date was set must be adhered to due to the tight schedule of the defense counsel. If the trial would have required a continuance due to the withholding of witnesses, it would have resulted in the violation of my right to a speedy trial. (Mr. Johnson's CRR 8.3 MOTION TO DISMISS, email correspondence dated 9/3/14)
- Dramatic fabrication in closing argument: The depiction of events provided to the jury during closing was not based upon testimony and evidence, but rather a story derived to fit with Miss Deleon's menstrual blood locations in the Jeep. Ms. Petra said herself, (Vol 4, page 547, line 21) "it is where her blood was found that paints the picture of exactly what happened in this case". Ms. Petra went on to elaborate this fabrication by using emotional theatrics throughout the closing arguments which were not supported by the record, but designed to persuade the jury to view me in the worst possible light.

"He leans over. Hey, you boys want to smoke some weed? They're like, yeah, let's do that. He says, okay. We need to get rid of these other kids that are here." (Vol 4, page 550, line 19-22) This direct quote by the prosecutor during closing arguments is an example of "facts" that were made up and not supported by testimony or evidence.

- Improper remarks and actions: The prosecutor made statements and provided information that was designed to cast a derogatory shadow on my character. Examples of this include:
  - When referring to DNA results located in the Jeep, the prosecutor tells the jury in her closing arguments "And there was a trace amount of something else in there. You can't rule out John Crowder as the person that was trace in there." (Vol 4, page 561, line 4). But, in fact, the DNA expert did testify that "no conclusions at all can be drawn from the trace component DNA". (Vol 4, page 500, lines 8-10)
  - "the man right there did this to her"(Vol 4, page 564, line 12)
  - "Don't give in to that smoke screen." (Vol 4, page 556, line 17)
  - "This is what happened." (Vol 4, page 557, line 5) Again, from this point the prosecutor proceeded to tell a story not based upon evidence.
  - "It's time for justice to be served" (Vol 4, page 564, line 24-25)
  - Miss Deleon "swore to tell the truth. And she did." (Vol 4, page 547, line 1-2)
  - Showing the jury pictures of yard weeds in our back patio (Vol 3, page 334-335)

- Showing the jury pictures of my open gun safe without any related weapons located there. (Vol 3. Page 334-335) I was a legal gun owner with no restrictions.
- The prosecutor slowly showing Miss Deleon's soiled shorts to the jury although it was documented through DNA expert testimony that there was no semen detected in the shorts, (Vol 3, page 373, line 14) and that my DNA was not even located in the Jeep where the crime allegedly occurred.

Evidence that was not relevant to the case or that caused the jury to view me unnecessarily in a negative light should not have been admitted.

In addition to the above misleading statements and prejudicial actions, the prosecutor also made remarks to persuade the jury that my attorney and I were attempting to mislead them. In her closing argument (Vol 4, page 595, line 8) Ms. Petra told the jury, "don't get fooled" by the information the defense counsel had provided them.

- Misconduct and mismanagement by prosecutor and law enforcement:
  - Detective Runge testified that he tried to interview those who were present that night but that they were unavailable. He testified that he did attempt to locate the individuals present but did not put that in his report and had theories why this did not occur. (Vol 3, page 405, line 21)
  - He also made statements that implied I was a criminal, such as stating "rap sheet on the subject" (Vol 3, page 355, line 4)
  - Detective Runge also said I appeared "excited" when told I was accused of rape by law enforcement, when Detective Cantu had written in his official report that I appeared "shocked" instead.
  - Law enforcement failed to attempt to retrieve text messages of the teenagers (Vol 3, page 390) who testified that they had been texting each other after that night and before my arrest.
  - The 2 other males present that night were not swabbed for DNA. (Vol 4, page 501, line 19-24)
  - No rape kit conducted by law enforcement.
  - Law enforcement failed to test any alleged weapon as to prove operability, which is required by law to support the firearm enhancement.
  - Alleged bb guns/air soft pistols were not collected or examined even though they were referred to throughout the trial. (Vol 3, page 402, line 3)
  - Miss Deleon alleged that she vomited all over me; however no clothing was located/confiscated or tested to support this claim. (Vol 3, page 399)
  - Detective Rung testified that the teenagers told him they smoked out of a specific device; however this device was not seized. (Vol 3, page 400-401)
  - Midway through trial, Deputy Korten changed his recollection from his original written statement to a new belief that I was under the influence of

marijuana when I pulled up to him in the Jeep that night. I had allegedly just provided the teens substantial amounts of marijuana in the garage while I was showing them our mustang and was driving them back down the road. I had voluntarily pulled up beside the deputy, rolled down the window and spoke with him for a couple of minutes with the 2 teenage boys in the backseat. His official report had stated that he did not believe I was under the influence of marijuana but after the prosecutor had met with him privately during the trial he changed his story to reflect that now he did believe I was under the influence of Marijuana. My attorney became aware of this new recollection just prior to Detective Korten's testimony.

### **Court Error – Delivery of Marijuana to Minors**

On the final day of the trial (9/19/14), my attorney submitted a motion to the Court to request the dismissal of the charges that I provided marijuana to the teenagers due to a lack of evidence. The Judge initially granted the motion, then reversed his decision and denied the motions. (Vol 4, page 516, line 9 "grant the motion"; Vol 4, page 518, line 2 "I'm going to deny the motion. Perhaps it will be appealed and reversed, I don't know.")

I believe if the Court had maintained the original decision to dismiss these charges it would have greatly influenced the Jury's decision regarding the additional charge of rape because it would have reflected upon the teenagers' credibility as well as the perception of my character as a person.

### **Insufficient Evidence to Support the Verdict – Rape**

My belief is that the prosecutor hastily filed the initial charges against me based solely upon Miss Deleon's statements, and when the lack of supportive evidence from the Jeep became apparent she was faced with the decision of whether to amend/drop the charges or to contrive a story designed to manipulate the jury's emotions. Examples of the lack of evidence to support the charges against me include:

- Miss Deleon indicated that she was not wearing underwear, and after an "hour-long rape" without a condom no evidence of semen found in her shorts. (Vol 4, page 503, line 13)
- "Unknown male" DNA located with Miss Deleon's menstrual blood. (Vol 4, page 501, line 10-12)
- The DNA expert testified, "And then I was able to exclude John Crowder as the minor contributor." (Vol 4, page 495, line 8)
- Documented Erectile Dysfunction through doctor's records
- No DNA of mine located in the Jeep at all.
- Lack of vomit DNA evidence:

- Miss Deleon claimed that she had vomited all over the Jeep and my face. (Vol 2, page 182, line 13)
- However, the only vomit found in the Jeep was proven through DNA testing to be a descendent of mine, such as one of my 4 children. (Vol 4, page 509, lines 3-14)
- No vomit found on any clothing. (Vol 3, page 399)
- Miss Deleon's story later changed to vomiting outside of the Jeep. Law enforcement testified that no vomit was found. (Vol 3, page 413, line 3, and line 23)
- Firearm enhancement:
  - During the jury's deliberation on Monday, 9/22/14, they called in a question regarding whether an air soft pistol would be considered a firearm. This question provides some insight into their discussions and the question of whether an air soft pistol qualifies as a firearm. In addition, law enforcement never had the bb guns/air soft pistols of the teenagers' in their possession, whether to analyze them in any fashion or to determine whether they were operable.
  - Law enforcement did not test any alleged weapon at all for operability. There was no indication that I ever touched a weapon that night, and only Miss Deleon testified to ever seeing me with a gun.

### **Ineffective Assistance of Counsel**

From the initial contact with Mr. Johnson it was evident that he had full confidence that the case would prevail due to the outlandish allegations and a lack of evidence. He made numerous comments such as "no jury in the world would convict with this lack of evidence", "you are the boy with the golden case", and "a case like this is the dream of a defense attorney". I have no doubt he believed this but unfortunately it led to an overconfidence that impacted his ability to adequately represent the case at trial.

- Bifurcation. I believe that the separation of the charges would have had a tremendous impact on this case. This issue was not raised or requested by Mr. Johnson. I believe that the social perception of such an egregious crime allegation as rape unjustly influenced the jury's decision over whether I provided marijuana to these teenagers and visa-versa. It leads to thinking similar to, "if a person would provide marijuana to teenagers, he may likely be the kind of person to rape someone".
- Private investigators. Mr. Johnson indicated that he had private investigators at his disposal but did not initiate their services prior to trial due to the belief that it was unnecessary. The involvement of the investigators could have resulted in additional information that law enforcement neglected, such as researching text messages between the teens and contacting other individuals involved such as the person the

teens said sold them the marijuana earlier that night. They also may have brought to the surface significant information pertaining to Miss Deleon's troubled and concerning reputation in the small community in which she lives.

- Character witnesses. Mr. Johnson made the decision to dismiss all the defense's character witnesses for a number of reasons. One reason was to ensure the right to a speedy trial, as he was unable to represent the case after the 9/15/14 trial dates chosen by the prosecutor before the speedy trial timeframe ran out on 10/30/14. Due to his prior professional commitments, Mr. Johnson put it on record at an earlier hearing that the prosecutor could set the dates but they needed to be adhered to. On Thursday, 9/11/14, the prosecutor requested a continuance only several days prior to the start of trial, stating in part this was due to a desire to interview defense witnesses, as well as for Mr. Johnson to have the opportunity to interview the State's witnesses, as he had been demanding. (Mr. Johnson's CRR 8.3 MOTION TO DISMISS, email correspondence dated 9/3/14)

At the 9/11/14 hearing, Mr. Johnson told the Court he would dismiss the defense character witnesses to counter the prosecutor's request regarding continuing the trial.

- Another reason Mr. Johnson did not call character witnesses was due to the belief that they were not needed because of the lack of evidence to support the charges. My wife would have testified to seeing me at least twice throughout the night, while I came in to check on how she, my son and my grandson were doing at the home. She would have testified conclusively that the marijuana found in the garage and confiscated 6 days after the night in question was delivered the day before my arrest and that we had spoken several times about ordering more from the agency which provides it through my medical marijuana license. She would have testified to the lack of any vomit on my clothes, and seeing me very early the next morning in the same clothes with no vomit on them. The neighborhood kids present that night would have testified that I walked them home at times that night so the Jeep had been left unattended.
- The prosecutor delayed Mr. Johnson's ability to interview the State's witnesses which reflects very poorly on the prosecution but also causes a situation in which the defense is unprepared to take the case to trial. In his MOTION TO DISMISS, Mr. Johnson states, "the inability to have interviews until the eve of trial and the State conducting interviews without the defense, when the defense had requested it has prejudiced Mr. Crowder. Mr. Crowder now has to deal with brand new stories that are much different than previous stories. With this information coming days before trial, Mr. Crowder cannot be adequately prepared to defend the case". (Mr. Johnson's CRR 8.3 MOTION TO DISMISS, page 3).



My wife is employed as a social worker with an agency that is currently located in the same building with the agency where one of the jurors is also employed. She and my wife have spoken for hours about the case since the conviction. Among many concerning issues related to the methods the jury came to their decision of my guilt included a desire for character witnesses because they wanted to know more about who I was as a person.

Also, the juror told my wife that she and another juror were surprised they were chosen for the jury because during jury selection they both had raised their hands indicating that they would hold it against a defendant if the person did not testify on their own behalf, and that they did. I did not testify on my own behalf at trial per the advice of my attorney.

The juror also said that the jurors agreed they "wanted another story" as to how the locations of Miss Deleon's menstrual blood came about in the Jeep and they had only received the story provided by the prosecutor because Mr. Johnson had reminded them only to consider the evidence presented to them. She acknowledged that the stories of the teenagers were greatly inconsistent throughout, but that they did not expect them to be credible because they were teenagers.

When my wife mentioned my documented erectile dysfunction, the juror said they had discussed that but figured I could have "popped a pill or something", which was not in testimony or evidence.

The juror said there was no evidence presented that I had left the Jeep unattended that night, and because they did believe I handled my own children in a protective manner that night, I must have been the one that raped Miss Deleon because I "would not allow someone to rape her" in my Jeep.

Lastly, my wife talked with her about the fact that none of my DNA was located in the back of the Jeep, but instead DNA was found of an "unknown male" along with Miss Deleon's menstrual blood. The juror stated that they had discussed this, and that although my DNA was "not there, it really was there" because it was my Jeep. Therefore, it did not matter to the jury that my DNA was not found in the Jeep because in their perspective it was there anyway because the Jeep belonged to me. It is clear that the jury made numerous assumptions and did not adhere to considering only the evidence provided. The evidence clearly proves that that my DNA was not located in the Jeep, but rather an "unknown male" DNA was found with Miss Deleon's menstrual blood.

There is absolutely no doubt in my mind, or in the minds of numerous others who know me and my character, that the combination of the above factors persuaded the jury through a dramatic display of misleading and mishandled information to decide my guilt. From the moment the charges were filed, I believe there was a determination in the mind of the prosecutor that above any ethical or moral considerations there must be a "win" in this case for the prosecution. Ms. Petra's responsibility to the public is not only to prosecute those who have committed crimes, but

it is also to protect the rights of those who have not. I believe that Ms. Petra's personal biases and intensively driven career ambition impacted her ability to perform her duties in good faith and blinded her ability to place the pursuit of justice and truth first. This, in combination with a severely flawed investigation and overconfidence on the part of my counsel, led to a perfect storm of people, circumstances and events that led to my conviction of these truly repugnant crimes.

I understand that it is not possible to have a perfect trial, but every individual is entitled to a fair trial. I did not receive a fair trial. I will never stop voicing my innocence and I will never stop the fight for my exoneration of these crimes.

Thank you so much for your consideration of these statements.

Respectfully,

John M. Crowder