

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

2016 JUN 20 AM 11:39

STATE OF WASHINGTON

STATE OF WASHINGTON )

Respondent, )

v. )

James C. Mathes )  
(your name) )

Appellant. )

No. 48401-3-11 BY JW  
DEPUTY

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, James C. Mathes, 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

See attached pages

Additional Ground 2

See attached pages

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

Date: 6-16-16

Signature: James Mathes

CERTIFICATE OF SERVICE

I certify that I mailed

1 copies of Statement of Addl Grounds

to R. Griffith

at G. Cook

Date: 6/27/16 Signed: JW

# ① ineffective assistance

in asking The Court To grant an ineffective assistance claim based on not only overall lack To participate in The adversarial process in general as well as lack To prepare or present a reasonable defense Theory, but failure by Counsel To properly prepare or argue motions as well

even in State's Reply brief on pages 35, 36, 39, 41, 43, 44 The State discusses multiple instances where not only did defense fail To object in a timely manner but how it affected defenses ability To preserve any of Those issues for appeal as well as defense Counsel's failure To ask The Court for any curative instruction To The jury in regard To issues surrounding misstated and incorrect statements by Detective Green Trial Transcripts pg. 543 lines 6-11 and pg. 544 lines 1-17 corrected by Detective Green and Mr. Enright outside The presence of The jury Trial Transcripts pg 546 lines 6-25 and pg 547 lines 1-18 yet when The jury returned defense never even asked for any type of curative instructions

with all These cumulative errors Combined This not only shows deficient performance by Counsel but a resulting prejudice as a result of That deficient performance and That but for Counsel's unprofessional errors, The result of The proceeding would have been different

## ② Tainted Crime Scene

According to Testimony of Deputy Kont Trial Transcripts pg 459 lines 6-25 and pg 460 lines 1-9, Testimony from Lieutenant Jan Gosen Trial Transcripts pg 402 lines 17-25, pg 403 lines 1-25 and pg 404 lines 1-8; Deputy Herrin Trial Transcripts pg 367 lines 15-25 and pg 368 lines 1-3, and Detective Greens Trial Transcripts pg 528 lines 3-11 and pg 529 lines 6-18, whenever an officer involved shooting occurs per Kitsap County Sheriff's office policy's and regulations The protocol is to have an outside agency conduct the investigation in this case The Washington State patrol to avoid any conflict of interest or any of the evidence being tainted

yet when Detective Hedstrom showed up at the Crime Scene to start her investigation not only was she ordered by Lieutenant Smith with the Kitsap County Sheriff's office as to how to proceed forward with her investigation but she was actually sent away from the Crime Scene not by Detective Green who was leading the entire investigation for the Washington State patrol Trial Transcripts pg 529 lines 10-18 but by lieutenant Earl Smith with the Kitsap County Sheriff's office Trial Transcripts pg 600 lines 18-25 pg 601 lines 1-2, 3-14, 17-21 pg 602 lines 10-15

The Trial Transcripts clearly show that the Kitsap County Sheriff's violated their own regulations, policies and protocols by involving themselves in the investigation process, further evidence of this being Detective Green's testimony Trial Transcripts pg 529 lines 10-25 pg 530 lines 11-12 pg 531 lines 6-16 and pg 532 lines 9-12 all this helping to determine that Detective Green was leading the investigation and that immediately upon showing up he started to mark a catalog evidence with little letters yet in a controlled Crime Scene that Detective Green is in control of on pg 580 lines 20-25 and 581 lines 1-3 it clearly states that not only has somebody prior to Detective Green contaminated this Crime Scene but the Detective had no idea how this tape got there or who put it there this only adding strength to the fact that prior to Detective Green starting

his investigation This entire Crime Scene had been  
Compromised

II would hope at The very least as The Court  
Reviews all This information That Some Sort of  
Curative instruction may be given as To Admissability  
of evidence and Testimony regarding possibly  
Tainted portions of This Crime Scene and That The  
Court would please Consider how This information  
Could and did effect The Total outcome in This  
Case

### ③ Overriding Policy - inadmissible evidence

if in fact This was a Secured Crime Scene according to The Trial Transcripts pg 530 lines 13-25 and 531 lines 1-16 according to Detective Green yet Trial Transcripts pg 530 lines 11-12 and pg 531 lines 12-14 say That he immediately started to identify, mark and letter any evidence and being The lead investigator with The Washington State patrol and The officer to start The investigation on pg 532 of The Trial Transcripts lines 5-13 he located a handgun in The front yard and marked such items as This with little designated letters again in Trial Transcripts pg 580 lines 18-25 and pg 581 1-3 clearly show That prior to Detective Green walking up The driveway into The front yard of a Secured Crime Scene where he found a handgun someone had arrived before him he's not sure who and put a piece of Tape on The gun to mark it as evidence Trial Transcripts pg 581 line 3 states The people on scene

not only was parts of This Crime Scene compromised Kitsap County Sheriff's office or other law enforcement officers contaminated evidence by overriding their own policies and protocols making all or part of That evidence inadmissible but as a result of That This scene was altered or modified from its original state which would also affect and pictures That were taken and entered as evidence and shown to The jury

again The cumulative errors That have occurred in regard to evidence being tainted and policies and protocols not being followed are without a doubt harmful and did prejudice The defense again respectfully asking The Court for some corrective or curative instruction in regard to These issues

#### ④ 6<sup>th</sup> Amendment - Laws of evidence - Hearsay rule

Although Detective Green was the lead investigator in charge of investigating a crime scene in which there was an officer involved shooting and according to trial testimony he had done sixty or seventy of these type of investigations in the trial transcripts pg 547 lines 3,4,5 when asked if he could determine between an entry and exit hole from a bullet did he state no he could not he also went further to say he was not trained to determine that.

The gun in question was supposedly sent to the Washington State Crime Lab to be tested trial transcripts pg 549 lines 1-3 and the record indicates that Detective Green did not do any testing on this weapon personally but sent it to be tested which would bring up hearsay issues. As the detective is testifying to the results of tests he did not perform according to the rules of evidence and in trial transcripts pg 555 lines 1-8 and pg 556 line 17 the defense and prosecution both discuss this issue yet in trial transcripts pg 556 prosecutor enright states that casings in pictures appear to be the same as what's in court lines 14-15

Trial transcripts pg 555 lines 9-25 and pg 556 lines 1-17 Detective Green does not identify casings as casing from the firearm that he seized but rather in trial transcripts pg 546 lines 7-25 and pg 547 lines 1-14 Detective Green states that the casings in question could be casings removed from the vehicle or maybe he says where they test fired the weapon "he's pretty sure" "he's not sure" trial transcripts pg 585 lines 1-3 in regard to this evidence he states "yep we were wrong on that one" in regard to statements made in front of the jury about exactly what was in manilla envelopes in evidence specifically two live rounds that in trial transcripts pg 547 lines 5-6 he states were never even sent to be tested yet in trial transcripts pg 543 four pgs prior he discusses the live rounds that he claims he never sent to be tested somehow winding up in the box containing all the evidence sent off to the crime lab

in trial transcripts pg 546 lines 20-23 why does Detective Green specifically remember "these packages"

When his testimony states that he never extracted casing from gun but sent it to the crime lab in fact with all the spent casings still in the gun and again in Trial Transcripts pg 547 lines 21-25 and pg 548 lines 1-18 Detective Green specifically and distinctly remembers sending several casings from this gun in separate manila packages yet when he looked at his report he agrees I was wrong on that and again changes his testimony

Not only does the 6<sup>th</sup> Amendment but the laws of evidence clearly discuss the right of confrontation and the importance of witness testimony but the hearsay rule as well the law also includes the importance of authentication of evidence and the fact that all evidence must be true on its face and if any of this evidence is probative in nature it should be irrelevant and inadmissible and that evidence that could mislead or confuse the trier of fact should be excluded

There are so many inconsistencies in Detective Green's testimony regarding the gun and bullets or casings that the record clearly reflects that not only was the defense confused or misled by his testimony the court and prosecution was as well how could the jury not be? in correction instruction I would hope that this evidence and testimony would be inadmissible as a result

Although many attempts were made to authenticate evidence there was a continued probative nature not only in the identification of the gun itself that was misstated in the record but the witnesses never did authenticate bullets or casings but simply relied on a report to determine what could have possibly happened a report from the crime lab making all this inadmissible

Clearly all evidence dealing with the gun and bullets were hearsay Detective Green did not test, package, take pictures or reports the crime lab did and there was no witness testimony involving anyone from the crime lab

Again I would ask the court for corrective and curative instructions regarding all these issues

## ⑤ inadmissible Hospital Statement

in The State's reply on pg 33 They discuss issues Surrounding ill will or bad faith and That waiver of my right To Counsel must be knowing, intelligent and Voluntary yet in The Trial Transcripts pg 45 lines 5-7 and pg 50 lines 24-25 it Clearly states That I was Sedated and just Coming out of Sedation and although The Hospital Reports state I had just Come out of Surgery after being shot multiple Times with Tubes going thru my Side To drain a Punctured lung and a Cast from my Shoulder To wrist ~~and~~ which was just Reconstructed in Surgery as well as a left shoulder with bullet wounds as well and The fact That in Deputy Gray's Testimony in Trial Testimony pg 55 pg lines 2-3 and in States Reply pg 31 it discusses me getting assistance from a nurse To make a phone call all This proving That not only was I extremely medicated but obviously in extreme pain from my injuries it would have been impossible To not know I was intoxicated under Duress

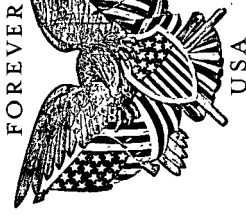
also in The record Deputy Gray Says That I made statements regarding being protected because They would finish The job This Clearly showing fear and duress on my part

I although intoxicated and under duress did ask for an attorney more Than once and not being familiar with exactly which words To use To invoke my ~~own~~ right To an attorney Correctly feel That it was ill will on The officers part To acknowledge my statements Considering my circumstances I believe The Courts Should determine all statements made in The hospital inadmissible Considering my intoxication level and my fear of further injuries and That I had been in a coma for approximately 12 days directly prior To some of These issues

I would ask The Court To Review The record and That any statements made while I was in The hospital and Their Cumulative effect on my Trial would be inadmissible



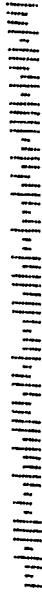
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