

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

STATE OF WASHINGTON,	)	No. 65702-0-I
Respondent,	)	
v.	)	STATEMENT OF
	)	ADDITIONAL GROUNDS,
	)	PURSUANT TO
HOLLIS JAY SIMMONS,	)	RAP 10.10
Appellant.	)	

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 COURT REPORTER  
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I, Hollis Jay Simmons, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in the 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

DID THE TRIAL COURT DEPRIVE MR. SIMMONS OF A FAIR TRIAL WHERE ERRONEOUS EVIDENCE OF LAW WAS PRESENTED, AND THE COURT REFUSED TO GIVE A CURATIVE INSTRUCTION AS REQUESTED

Under Washington Constitution Article 1, section 22, an accused is entitled to a fair and impartial jury that bases its verdict on competent legal evidence. Article 1, section 22, provides in relevant part: "the accused shall have the right to...trial by an impartial jury..." Wash. Const. Art. 1, section 22.

Washington's Constitution Article IV, section 16, provides that the Court 'shall declare the law.' Thus, for an officer to testify to the jury on the

law, usurps the role of the trial judge. Ball v. Smith, 87 Wash.2d 717,722-23, 556 P.2d 936 (1976). It is the sole province of a judge to instruct the jury on the relevant legal standards. Burkhart v. Wash. Metro Area Transit Auth.,112 F.3d 1207,1213 (D.C. Cir. 1997).

The Trial Court Abused It's Discretion By Refusing To Give A Curative Instruction. A trial Court abuses its discretion if its decision is manifestly unreasonable or based on untenable ground or untenable reasons. In re Littlefield, 133 Wash.2d 39, 940 P.2d 1362. In this case, the trial Court charged the jury that all information needed to decide the case would come from the witness stand, the exhibits, or the Courts instructions. RP 84. The Court charged that the lawyers remarks, statements, and arguments are not evidence and they should disregard any remarks, statements, or arguments which are not supported by the evidence or the law as given by the Court. RP 86. After hearing testimony from an officer asserting an erroneous statement of law, the Court refused to give a curative instruction declaring the law. RP 115,183,184. The Court's reasoning was that the Attorney could certainly make a point to the jury what was legal and wasn't legal. RP 183,184. This reasoning is contrary to

Washington's Const. Art. IV, section 16.

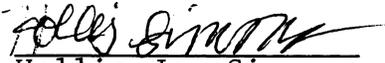
In this case, the testimony of Officer Kallis concerning what constitutes a crime is very prejudicial because it is an officer's duty to uphold the laws and officer's testimony often carries a special aura of reliability. State v. Demery, 144 Wash.2d 753,759, 30 P.3d 1278 (2001). Furthermore, contrary to officer Kallis's belief, it is not illegal to possess aspirin whether wrapped tightly in plastic or not. Thus, Mr. Simmons contends that an improper finding of guilt may be implied from an erroneous conclusion that it is against the law to possess aspirin, a uncontrolled substance. RP 115,178.

Under the circumstances of this case, it is manifestly unreasonable for the Court not to give a curative instruction when requested. RP 183,184; United States v. Daoud, 741 F.2d 478,480-82 (1st Cir. 1984)(the trial Court erred in refusing to give a curative instruction); Littlefield. Further, a curative instruction would have been sufficient in this case because officer's Kallis's testimony was crucial to the facts of this case. Therefore, the Court's failure to provide a instruction clarifying the law that it is not illegal to possess aspirin deprived Mr. Simmons of a fair trial.

For all of the reasons stated in this brief,  
as well as brief file by appellant counsel, Mr.  
Simmons humble asks this Court to reverse his  
conviction.

Dated this 22, day of October 2010.

Respectfully Submitted,



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Stafford Creek Corr. Ctr.  
191 Constantine Way  
Aberdeen, WA. 98520

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Stafford Creek Correction Ctr.  
191 Constantine Way  
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October 22, 2010

Richard D. Johnson, Clerk  
Court Of Appeals, Div. One  
One Union Square  
600 University Street  
Seattle, WA. 98101-4170

Dear Mr. Johnson,

Enclosed please find a Statement of Additional Grounds  
prepared for Case No. 65702-0-I.

I thank you in advance for your time in filing this for  
me!

Respectfully,

  
HOLLIS JAY SIMMONS  
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