

663,76-3

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10/26/11  
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NO. 66376-3-1

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

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STATE OF WASHINGTON,

Respondent,

V.

RASHID ALI HASSAN QODAH.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

THE Honorable Michael Heavey, Judge

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STATEMENT OF ADDITIONAL GROUNDS

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RASHID ALI HASSAN QODAH  
PRO SE, APPELLANT

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MCC-MSU  
P.O BOX 7001  
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2 COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION I  
3

4 STATE OF WASHINGTON, )  
5 Respondent. )  
6 V. )  
7 RASHID ALI HASSAN, )  
8 Appellant. )  
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11  
12 I, Rashid Ali Hassan, have reviewed the opening brief by my attorney, Mr. Andrew  
13 Zinner. Presented below are the additional grounds for review that he has not addressed  
14 Or that I do not believe have been addressed adequately in Mr. Sinner's brief, RAP 10-  
15 10 (a).  
16

- 17  
18 1. JUDICIAL MISCONDUCT  
19 2. PROSECUTORIAL MISCONDUCT  
20 3. DENIED RIGHT TO ASSISTANCE OF COUNSEL  
21 4. ERRORS OF CONSTITUTIONAL MAGNITUDE  
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1  
2  
3 GROUND

4 JUDICIAL MISCONDUCT

5  
6 (A) By allowing the prosecutor to inform His Honor of legal definition of "Delivery,"  
7 Judge Heavey literally gave up his discretion on the bench as what will and will not be  
8 Allowed in his court, thus allowing prosecutor Jason Simmons to act as a judge and  
9 Prosecutor. Judge Haevey instead of violating the code of ethics and few cannons the  
10 Judge could have called a brief recess and gone to the Judges Chamber to look up the  
11 legal definition of "delivery" as well as the Seattle Municipal Code for the misdemeanor  
12 charger of Drug -traffic Loitering 12A. 20.050 SMC. See 1 RP 62 Line 8 - 1 RP 63  
13 Line 4.

14  
15 (b) Judge Heavey admits ha should have sustained the defenses objection and states  
16 "The only excuse I could offer is maybe I was sleep or something" 2 RP 50.

17 (c) After realizing his errors were constitutional magnitudes, he further Prejudiced the  
18 defendant Hassan by calling errors "marginally possibly prejudicial" See 2 RP 6, 7

19 This judicial misconduct and this judge's prejudicial action have caused the whole

20  
21 Judicial System to be held in Disrepute.

22 **Definition**

23 Oxford American Dictionary 2008 edition (On page 745 ) Marginally as of minor  
24 Importance. **Possibly** ( on page 951) as: capable of existing, happening, being done.

25 Oxford American 2008 edition defines (on page 960) **prejudicial as:** harmful to some  
26 One, detrimental.

1  
2 This judicial misconduct and the judge's highly prejudicial action are  
3 not only detrimental to the defendant, and errors of constitutional magnitude, they also  
4 **puts the whole judicial system in Disrepute.**

5  
6 GROUND 2

7 PROSECUTOR'S MISCONDUCT DENIED RIGHT TO FAIR TRIAL

8  
9 Failure to obey the pretrial ruling is error requiring reversal, U.S. Vs. Gonzales, 164 F  
10 3d 1285 (10<sup>th</sup> Cir 1999) moreover, aside from prejudicing Mr. Hassan's right to a fair  
11 Trial, but deliberately eliciting testimony about the marijuana and the field test, after the  
12 Court ruled such evidence inadmissible, and was excluded.

13 Com V. Cavallerio, 71 AD2d 338, 422 N.Y. 2d 177 (1967) US V. Regiero, 20 F 3d  
14 1387, 40 Fed. R. Evid. Serv 657, 1994 Fed App. 0091p(6<sup>th</sup> Cir 1994) People v.  
15 Hammock, 182 A.D. 2d 1114, 583 N.Y.S 2d 89 (4<sup>th</sup> Dept 1992), People v. Stewart,  
16 92 A.D. 2d 226 459 N.Y.S (2 Dept 1983); People v. Strong, 404 Mich 357,273 N.W 2d  
17 70 (1987)

18  
19 Mr. Simmons admits "violations of ruling is frankly 100% my fault, I failed to inform  
20 this witness of the pretrial ruling." 1Rp 114-115. Mr. Simmons intentionally  
21 misleads the jury by telling, "putting this item in their mouth is really a tell tell sign of  
22 crack cocaine dealing and uncommon with any other activity." 1RP 57 Line 9-21.

23  
24 **Q: Is it possible Mr. Hassan handed over some candy and cigarettes to this people**  
25 **and was in fact not breaking the law.?**

1  
2 (A) The police and the prosecutor use the word “transaction” to mislead, the jury.  
3 Transaction means to carry out business, business deal 2RP 66 Line 25 Through 2 RP 66.  
4 Officer Harris testimony, what an actual narcotics transaction looks like. As described by  
5 Drug Task Force Veteran Officer Martin John Harris: “A quick meeting, a quick hand –  
6 to-hand exchange, money, someone taking the rocks, giving the rocks.” 2 RP 9 line2.  
7

8 (B) Sgt Hazard answered question to in response...Answered in response to the  
9 question of what happened on Oct 27. So Sgt Hazard is on the stand testifying to things  
11 that happened in October. They are “**rote answers to rote questions.**” 2 RP 67 line2.  
12 On page 999 Webster’s New Collegiate dictionary defines “Rote” as “the use of memory  
13 usually with little intelligence.”

14 In 2 RP 72 when discussing in closing argument considering witness testimony and  
15 creativity, Mr. Simmons talks about a jury may consider concerning a witness testimony  
16 and credibility,... Consider these things: the opportunity of the witness to observe or  
17 ; the quality...memory while testifying...any personal interest that the witness may have  
18 in the outcome, bias, prejudices, and also the reasonableness of the witness testimony...  
19 what did officer Hazard see that day? He saw Mr. Hassan provide something from his left  
20 breast pocket...2 RP 73 at (7) (8) the prosecutor admits that officer Hazard didn’t see a  
21 lot of things. RP2 73 at 10 prosecutors admits that officer Hazard didn’t actually see the  
22 item. He couldn’t explain how big or small it was or what color it was (referring to item.  
23 passed to person in group) a prudent professional prosecutor would know that in order for  
24 a person to be arrested for SMC 12A. 20. 050. **Drug Traffic Loitering.** First there must  
25 be and actual crime committed and observed by the (Sgt Hazard – AKA Officer Hazard).  
26

1 And even though this veteran police officer viewing over 1,000 transactions and 5 yrs  
2 experience in the drug task force, who was using equipment he was familiar with, (10 by  
3 50 binoculars), has stated under oath he saw a group of people and looked away, then  
4 later turned toward the group of persons , and 3 different transactions took place, which  
5 lead to the arrest of Mr. Hassan. Why Mr. Hassan was arrested when as the observing  
6 officer states “he could not identify the item Mr. Hassan gave these 3 people”? Yet this  
7 officer could order Mr. Hassan's arrest because he a “sensed a crime may has been  
8 committed.”  
9

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13 **GROUND 3**

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15 **DENIED RIGHT TO ASSISTANCE OF COUNCIL**  
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19 All criminal defendant have the right to effective assistance of counsel. U.S. v.  
20 Cronic, 466 U.S. 668 (1984); Strickland v. Washington, 466 U.S. Const. Amend. 6;  
21 Wash. Const. art. 1 § 7. The aim of the 6<sup>th</sup> Amendment is to guarantee an effective  
22 advocate for each defendant. Wheat v. U.S. 486 U.S. 159 (1988).  
23

24  
25 “Mr. Hassan’s constitutional right to fair trial had been prejudice. First of all,  
26 testimony elicited was not only excluded but, also inadmissible, because it does not meet  
the “frye” standard. Since defense counsel’s motion to exclude the testimony was

1 granted, defense counsel was entirely unprepared to conduct a thorough, cross  
2 examination, regarding the unreliability of such test. In fact, no cross examination was  
3 prepared at all. Defense counsel was entirely unprepared to respond to the testimony,  
4 effecting Mr. Hassan's right to effective assistance of counsel." **Motion to dismiss**  
5 **pursuant to CrR 8.3(b)**. page 3-4. Also see 2 RP 45 line 21.  
6  
7

### 8 **WITHOUT A COUNSEL AT CRITICAL STAGE**

9  
10  
11 Miss Cavallo quiet after I got convicted, and was appointed a new attorney. The trial  
12 court abused its discretion by defective appointment.

13 Sixth Amendment's right to counsel at every step in the criminal prosecution thereafter.  
14 The assistance of counsel is to be available at the "critical stage" in the criminal  
15 prosecution, those steps at which substantial right of the accused may be affected "by  
16 counsel's absence." **Mempa v. Rhay**, 389 U.S. 128 (1967).  
17

18 I was appointed a new attorney Miss Mordekhova who had no knowledge of critical  
19 stage of my case, who had little if any information concerning my case, and was without  
20 any record or transcripts. **Cronic (1984)**. **Automatic violation of the Sixth**  
21 **Amendment of the U.S. Constitution, in much the same fashion as failure to appoint.**  
22 As in **Gideon v. Wainwright**, 372 U.S. 335 (1963). Such a state action that "prevent  
23 [counsel] from assisting the accused during critical of the proceeding."  
24

25 Fourteenth Amendment fully incorporated with the Sixth Amendment Right and  
26 accordingly required the state to make appointed counsel available to indigent defendant  
in all felony cases. **State v. Tinkham**, 74 Wn App 102, 109-10, 871 p 2d 1127 (1994).

1 (Citing Gardner v. Florida, 430 U.S. 349, 358 (1977), and the right to counsel extended  
2 to sentencing as forcefully as the guilty phase of the trial. Tucker v. Day, 969 F 2d  
3 155,159 (1992).  
4  
5

6 **GROUND 4**  
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9 ERRORS OF CONSTITUTIONAL MAGNITUDE  
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11  
12 No crime in fact happened, Stg. Hazard simply over reacted out of possible frustration  
13 or need to make an arrest. If Stg. Hazard did believe any crime occurred, why didn't he  
14 immediately detain or arrest the alleged "other people" after Hassan had entered Kelley's  
15 Tavern? Because there was no crime committed in front Sgt. Hazard. Only after Mr.  
16 Hassan's illegal arrest was any drugs or evidence found that could be used to detain him.  
17 **R.C.W. 10.31.100**, an officer may arrest a person without a warrant for committing a  
18 misdemeanor when the offense is committed in the presence of officer.  
19

20 **Question:** Is it now illegal in Washington State to share Lemon Drops with other  
21 persons? Since Hazard did not "detain or make any attempt to identify any of the  
22 alleged other people," that were surrounding Mr. Hassan, could he have possibly have  
23 held them for blood test or an U.A. to verify the veracity of his claim that Hassan was  
24 committing a misdemeanor offense in the presence of officer? A prudent professional  
25 law enforcement officer of the court would say **YES!** Unless of course these law  
26 enforcement cumulatively knew they screwed up and chose to illegally arrest Mr. Hassan

1 with hopes of finding evidence that could lend to a charge instead of a misdemeanor a  
2 felony. “Subterfuge”

3 Add to this keystone cop mentality of having no evidence of any violation except  
4 Sgt.Hazard sense that a crime had been committed. Especially since Srg.Hazard admits  
5 he did not see anyone give Hassan any money, nor could he identify what was actually  
6 given to these people who surrounded Mr. Hassan in front of Kelley’s Tavern.

7 Stg. Hazard is an anti-crime team member, he states he looked away briefly and when  
8 he returned his attention to Kelley's Tavern, a group of loiterers were surrounding  
9 Hassan. 1Rp 26. Hassan reached into his left breast pocket and handed “something.”  
11 (emphasis added) to a man on crutches. 1RP 28. Hassan than handed some thing to  
12 another man, who inspected “it” and popped it into his mouth, then Hassan handed  
13 something to a black lady who inspected and popped it in to her mouth,” these items were  
14 too small for Hazard to see or identify, 1RP 29-39

15 This officer cannot simply assume innocuous but arguable action amount for probable  
16 cause. When in fact he himself admits he saw no money exchanged and he could not see  
17 what was given the alleged other person.

18 **In Henry v. U.S., 98 4 L Ed 2d 134, 80 S Ct 168.** Officer Hazard had only  
19 suspicions and lacked enough facts to show any probable cause. **People v. Allen, (1985**  
20 **1<sup>st</sup> Dept) 109 App Dir 2d 24 489 N.Y S. 2d 749, 749-56** (Mere reaching toward pocket  
21 on seeing officer not probable or suspicion).

22 How is a person guilty of Drug-traffic Loitering just because he or she decides to  
23 remained in public place to have a Beer ? And while having a cigarette outside Kelley's  
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26

1 he is approached by three different persons panhandling for money, and as a result, he  
2 gave them cigarettes, and candy to appease these panhandlers.

3 Hassan was not inducing, enticing or procuring another to engaged in any unlawful  
4 conduct, he simply wanted to have a Beer.

5 Hazard illegally detained Hassan because he “felt” or “sensed” a crime have been  
6 committed, yet at the same time Hazard admit he did not see any one give Hassan money,  
7 1RP 39, was Hazard too far away from the scene to accurately and factually see what  
8 Hassan gave to these **conveniently unidentified people?** Because once again **Hazard**  
9 **admits the “item” was too small for him to identified them,** 1RP 42.

10 The law “**plain view doctrine,**” is presented in the 1990, U.S. Supreme Court case of  
11 Horton v. California, 496 U.S. 128, S Ct 2301. The three limits on plain view doctrine;  
12 (1) the officer must be in place were she or he has right to be ; (2) the object must be in  
13 plain view and it must be “immediately apparent” that it is illegal or evidence of a crime,  
14 and; (3) not only must the officer be plainly seen, but she or he must have a lawful right  
15 of access to the object.

16 State v. Ortega, 159 Wn App 889, 248 P2d review granted 171 Wn 2d 1031 (2011),  
17 the prosecutor used this case to misguide the appellate court. The prosecutor stated “in  
18 Ortega, the officers conducted a “similar” narcotics operation in the Belltown  
19 Neighborhood Id at 893, just like in Hassan case, the surveillance officer watched  
20 Ortega conduct three hand to hand transaction Id at 892-893. The surveillance officer  
21 radioed his arresting team, informing them that there was probable cause to arrest Ortega  
22 and his lookout for Drug traffic Loitering, Id at 893, the arrest team detained both  
23 suspects.

1 In Hassan case Hazard ordered his arrest team to seek out Hassan in Kelley's Tavern.  
2 The difference is there was no crime committed, there was no lookout person, no money  
3 was passed between anyone, the only legal reason for having Hassan detained without  
4 evidence or any legal proof of any crime having been committed was based on Hazard's  
5 training and experience, "he had gut feeling or "sensed" that a crime may have been  
6 committed." Hazard maintained radio contact with the arresting team, relaying his  
7 observation of Hassan's "potential" (emphasis added) narcotics transactions, 1RP 46.  
8 It's a sad day in America when a police officer's authority depends on their direct  
9 knowledge that a person has committed a crime, without any legal evidence. The only  
11 evidence leading to Hassan's arrest was that Hazard's "sensed" afforded him knowledge that  
12 a crime was committed." As the respondent claimed (on page 10 line 5) an officer's sense  
13 are used in lieu of state law. **Ex:** If anyone in Seattle decides to hold any type of can of  
14 beverage in their hands, they better not get in the driver's seat of any vehicle or they are in  
15 danger of being "detained and arrested" for DUI or DWI simply because a **Seattle**  
16 **Police Officers "senses afforded him knowledge that a crime was committed."** If in  
17 fact as the respondent claimed, the arrest of Hassan was still lawful, because officers also  
18 had a probable cause to arrest him for a felony of "delivery of a controlled substance,  
19 and possession of a controlled substance with the intent to deliver," then why didn't  
20 Hazard detain and arrest the other alleged persons that Hazard testified were  
21 surrounding Hassan? Prior to and leading up to Hassan's arrest. The only legal evidence  
22 to detain Hassan was that Hazard "sensed" a crime might have been committed. Isn't  
23 paramount and/or equal to saying "I kinda sorta think a crime might have happened?"  
24 But I didn't see any **money** change hands, and I couldn't identify what the alleged  
25  
26

1 other people put in their mouth, but we will arrest Hassan any way, because even though  
2 I looked away for a moment , in my experience as a police officer I think something  
3 illegal **might have gone down.** Even though I was not able to identify what was given  
4 to the other people. Not only is this a violation of Hassan's rights as citizen, the action  
5 by the police officers is very reminiscent of Nazi Germany. Allowing a citizen to be  
6 arrested based only on "feeling" or "sense" that some thing "might have happened," Is a  
7 travesty of justice, any time a police officer is able to abuse the trust and the power given  
8 him under the color of law, by allowing this illegal search, detainment and arrest of  
9 Hassan to be affirmed, **put the whole judicial system in disrepute.**

## 12 **Conclusion**

13 What is the next step for the judicial system in Washington State? Shall we arrest all  
14 disabled persons? How about people who we just don't want to be around, because they  
15 have the wrong skin color or because they don't want to be harassed or arrested by the  
16 Seattle Police Department.

18 The state in their brief talk about "probable cause," they keep mentioning that in other  
19 words (state's respond page 17 line 3) an arresting officer has probable cause to arrest ~~✗~~  
20 a defendant even if another officer actually observed the crime. This is based on what  
21 the state calls the "fellow officer rule," which provides where police officers are acting  
22 together as a unit, the cumulative knowledge of all the officers involved may be  
23 considered to decide whether there is probable cause to apprehend a subject. There in  
24 lies the problem. Only one officer in this "unit" "thought he may have seen something."

26 Then during the trial the prosecution very cleverly introduced information that the court  
deemed inadmissible to be used at trial to be heard in front of the jurors.

1 A crime had happened? if this were valid arrest, then why weren't the others persons  
2 who allegedly received these **unidentified items**, were not arrested or questioned, or held  
3 for investigation to strengthen the veracity of Mr. Hassan's arrest ?....

4 Because the officers may have been tired or bored and needed to get an arrest? This  
5 was a flagrant violation of both State and federal Laws. As well as an enormous  
6 violation of Mr. Hassan's constitutional rights.

7 Because of the flagrant violation of constitutional magnitude, denial of right to  
8 assistance of counsel the prosecutor's admission of violation of pretrial ruling,  
9 compounded with judicial misconduct, Mr. Hassan prays that the court will dismiss all  
11 charges with prejudice or remand for retrial..  
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19 RASHID ALI HASSAN QODAH  
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TO: RICHARD JOHNSON

Court Administrator \ Clerk  
Court of Appeals Division 1

*No. 66376-3 I, St. v. HASSAN*

Enclosed please find:

Motion for Additional Grounds, please file it so it may be heard at next available open Docket. Four copies of proof of service of mailing. I have sent copies of this motion to The following.

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