665383 IN THE STATE OF WASHINGTON COURT 665383

OF APPEALS DIVISION 1

ROY S. PORTER Petitioner V. STATE OF WASHINGTON Respondent	CASE NO. 66538-3-I STATEMENT OF ADDITIONAL GROUNDS PURSUANT TO RAP 10.10

COURT OF APPEALS DIV I STATE OF WASHINGTON FILED 2011 NOV 21 AM 11:03

I OPENING STATEMENTS: The Petitioner, Roy S. Porter Humbly ASK this Honorable court to Please NOT hold Him to The same standards as A lawyer since he is Acting Pro se, and has No Legal training. Please give this S.A.G liberal interpretations and hold them to less strigent standards Than those drafted by lawyers MALENG V. COOK 490 U.S. 488, 493, 109 S.Ct. 1923, 1926-27 (1989)

THE Petitioner seeks relief from the state of WASHINGTON who has Violated his 5th, 6th, and 14th AMendment rights to the united states constition. Also washington state constition Art. 1 § 3, 21 and 22

II FACTS Relevant to Petition:

Mr. Porter would like to adopt his Attorneys Direct Appeal facts. As well as Highlight a few Points:

Both the Alleged Victim Mr. Peterson and his accomplice George Jorden were drunk. VRP 11 as discussed in opening arguments and throughout trial both men were drunk and made threats to Mr. Porter. VRP. 11 Also Mr. Peterson gave conflicting statement on Febuary 10th and september 30th were he admitted other people NOT Roy came into the front of the house and shot, NOT Roy Porter see VRP. 12 Opening statements

No Gun was ever found, No spent bullet shells, And no bullet lead. The Police Never did an investigation into the Alleged bullet shot. VRP 14-15 Opening statements. George Jorden testified He caught only a glimpse of Roy Porter pulling something shiny out of His waist band. He thought it might be a gun. He Never saw Roy Porter shoot Anything. RP 104-105

Sydney Braithwaite a seattle Police officer, first to arrive at the scene even admits they can't Prove who shot a Gun or what gun the bullet came from, or if it even came from a Gun. RP 174-175. NO Attempt to collect the bullet or Paneling or do any ballistics; or trajectory investigation was Done at the intitial crime scene investigatio or at any other time. There is no Proof the hole is a bullet hole. The officer admitts its the Polices Job duty to collect this type of evidence RP 197-198.

Defense counsel requested a lesser included of Reckless endangerment. RP 212. ON NOV 18, 2010 using a a case that is factually inapplicable Prado 144 Wash APP 227 a division 3 case, the Honorable Judge Hayden denied Mr. Porter this lesser included.

III Argument

Issue ONe

The Police failed to collect the only Physical evidence that

That could be used to Prove
facts with certainty during
the INtial investigation when
a clear duty to collect obvious
exculpatory evidence exist this
conduct violated the Petitioners
I II
5th, 6th, and 14th Amendment rights

No Gun was found, Nor bullets
from the alleged crime scene.
The alleged victim and his friend
Mr. Jorden were drunk and changed
there statements. Despite the fact
that there is NO evidence proving
with a certainty that Mr. Porter
had a gun that was operable
and that He fired a gun. The
state was allowed to benefit
from the Police failing to do
their Job and use demonstrative
and non-scietific testimony to
illegally Prove Mr. Porter did have a
Gun and that the hole was
a bullet hole from his Gun.
Pictures are NOT scientific test
or results, Nor are testimonies
from Police who failed to do
the required ballistic test and
collect obvious evidence. If
Demonstrative untested picture
evidence and witness state Ment

are enough to prove scientifical facts, when untested physical evidence exist that can prove or disprove the disputed version of events with certainty but the police failed to do their tax payer paid for jobs and collect and test physical evidence to resolve the dispute. Then in light of the truth and any physical scientifical facts, a person, or group of drunk persons can come togather and say anything, make any accusation and inference and the state is allowed to get a conviction even if the convicted is innocent, and the physical unteste evidence would prove it

even if the evidence didn't prove actual innocence it would still be available in order for the defense to test, and prepare a proper defense and be able to rebut the states accusation and inferences made. In this case the defense was unable to prepare a proper defense, test or rebut the state illegal inferences made from the police failing to do their taxed payed jobs

A INvestigating officers are the first on the crime scene and a duty Does exist to collect obvious evidence. When a crime is first investigated, it is the Police who are first to arrive at the scene. IN most cases, No suspect has yet been charged with a crime and there exist no advocate for the defense. Thus, the task of gathering evidence is solely in the hands of the Police. The Power to determine what is seized and Preserved, and what is Not, Must Not be un checked. Too, often what is purported to secure formal stages are subverted and diluted during Police investigation. United State v Bryant 439 F.2d 642, 644 (D.C. Cir 1971)

A limited duty to seize would Minimize this danger. A duty to collect "clear and obvious evidence" does exist for the intial investigation of the crime scene." The Greater investigative Power and advantage of the government over the defense in a criminal case has been acknowledged by various commentators. "for example at the outset of a criminal case the advantage lies with the

state because of its ability to gain access to the facts" Michael L., in re 216 CAL. RPtr. 140, 02 P.2d 222, 228 (cal 1985) State v Wheelock 158 Vt. 302, 609 P.2d 972, 978 (1992) (Noting that in some situation, the Negligent failure to collect evidence might prejudice the defense); People v Vigil 718 P.2d 496, 503 (colo. 1986) (State agents supress evidence by failing to collect and preserve while performing routine procedures); State v Power 555 So.2d 888, 890 (Fla. Dist. ct. APP 1990) (Suggesting that failure to gather evidence may, in some circumstances be equivalent to destruction of evidence by affarmative act)

A criminal defendant an interest in obtaining a fair trial the state has an interest in the effectiveness of law enforcement, and revealing the truth in criminal Proceedings. When taking in account societies interest in having effective law enforcement, and in insuring that the truth in criminal Proceedings are revealed. In the interest of justice this Honorable court should Articulate a test that

the would determine if any Prejudice has occured.

B. Other Jurisdiction Have created A test

State v Daniels 114 NEV 261, 956 P.2d 111, 117 (Nev. 1998) Has created A two Part test. The first Part requires the defense to show that the evidence was "Material" Meaning that there is reasonable Probability that, had the evidence been available to the defense, the results of the Proceedings would have been diffrent. "constitutionally Material" evidence as evidence that posses "An exculpatory value that was apparent before [it] was destroyed [or lost] and that could not be ~~com~~ replaced by comparable evidence collected by other reasonably available means. It is a well established rule that ~~intention~~ Intentional suppression of material evidence is a due process violation.

Giglio v U.S 405 U.S. 150, 153-154 92 S. Ct. 763 765-766 31 L.E.d. 2d 104 (1972)

The first Part has obviously Been Met. There are a lot of discrepency's about who shot the Gun, or even if Roy Porter had a Gun. There is physical evidence of an alledged bullet hole which was Never proven to be what the police, or prosecution claimed it is. Even the trajector test would have been exculpatory to prove were the shooter was was when the alleged shot was fired, or even if the hole was a bullet hole. The State used this hole to prove Mr. Porter shot with intent to inflict great bodily harm, and was unlawfully In Possession of a fire arm. If the trajectory test proved it wasn't fired from were Mr. Porter was standing, he is acquited, or if it proved no't to be a bullet hole.

The second Part, if the evidence is Material, then the court must determine whether the failure to gather evidence was the results of gross Negligence, or a bad faith attempt to prejudice the defendants case. Ware supra at 685-686

If it is gross Negligence the defense is entitled to a presumption that the evidence would have been unfavorable to the state, so an instruction must be given to the Jury In cases of bad faith Dismissal of the charges are an available remedy based up on an evaluation of the case as an whole Daniel supra 956 P.2d 111, 117.

As Noted scales v city court City of Mesa 122 Ariz. 211, 234 594 P.2d 97, 100 (1979); "It is fundamentally unfair to allow the State to introduce conclusions as to contents of certain evidence against a defendent without allowing him to inspect it in a Manner that allows for meaningful rebuttal" Mr. Porters right to a fair trial was Prejudiced, and rights to present a defense because No Matter what the results of the scientific Mandatory test were, the defense couldn't combat the prosecutions claims as it stands this type of evidence could not be rebutted by the defense. This evidence did Not

exist for testing. Officer Braithwaite even admits it's the Polices duty to collect this type of evidence and Poeform test. RP 197-198. The state couldn't prove what this evidence was or was not, and argued with the states' stamp of authority to authenticate its ~~Vai~~ validity in proving guilt to the Jury <u>state v. Leslie</u> 147 Ariz. 38, 708 P.2d 719, 728 (Ariz 1985)

The washington courts have addressed a similar claim, but None like the instant case! Some folks raised Prosucutor faila to Preserve the evidence. This isn't the claim here. In <u>State v. Judge</u> 100 Wash.2d 706, 713 (1984) the state supreme court addresses an issue of Prosecutions failure to collect. They use an Arizona case <u>State v. Turrubiates</u> 25 Ariz. APP. 234 512 P.2d 427 (1975) to basically Hold the evidence which was not obtained cannot be Preserveo and the state isn't required to persue every angle to reserve all evidence.

The Arizona case Turrubiates Holds that Police are not require to uncover every leat to find exculpatory evidence Turrubiate does not hold however that the Police have not duty to collect obvious material evidence

The Judge case Held that Police or other investigators are not required to exhaustively pursue every angle on a case, to conduct every test, or search every exculpatory ~~ev~~ evidence. This is consistant with the Arizona turrubiates case. The Judge court did hold that the Police are required to collect and reserve that which comes into their possession as a tangible object or a sense impression, if it is reasonably apparent the object or sense impression potentional constitute material evidence. The Police do have a duty to collect the type of evidence such as the bullet and bullet hole in this case, and do trajectory testing. It is a tangible ~~and~~ object and sense Impression that in a shooting

case as the only piece of physical evidence potentially constitutes material evidence to prove facts with certainty so that justice may be done and disputes resolved.

conclusion

The evidence was not collecta in bad faith and Mr. Porter charges should be dismissed, or remanded for a new trial with instructions that notifies the jury that the defense is intitled to a presumption that the evidence in question is unfavorable to the state. Mr. Porter prays for relief and justice from this most honorable court.

Sincerely submitted

This 16 day of November, 2011

Roy S. Porter