

67604-1

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STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)

Respondent,)

v.)

ANTHONY S. AQUININGOC
(your name))

Appellant.)

No. 67604-1-WAP

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, ANTHONY S. AQUININGOC, 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

ARGUMENT ATTACHED WITH PERTINENT CASELAW

Additional Ground 2

~~FILED~~
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I
2012 MAY 31 AM 11:34

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

Date: 5-25-12

Signature: [Signature]

NO. 67604-1-1/WAD

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY AQUININGOC,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 MAY 31 AM 11:34

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

RAP 10.10 STATEMENT OF ADDITIONAL GROUNDS

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Appellant, pro se

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(a) For the reasons set forth above, the successive state prosecution Of Mr. Aquiningoc violates those rights secured him by the Fifth Amendment to the Constitution of the United States as applied to The states by the Fourteenth Amendment and Articles I and VIII Of the Constitution of the State of Washington to be free from Being twice placed in jeopardy..... (?)

(b) By charging, and arraigning the defendant twice, without informing the court of previous charge for same criminal conduct, violates those rights secured him by the Fifth Amendment to the Constitution of the United States as applied to The states by the Fourteenth Amendment and Articles I and VIII Of the Constitution of the State of Washington to be free from being twice placed in jeopardy.....(?)

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(a) The prosecution misinformed the court that the initial charge of fourth degree assault, was never charged or filed against the defendant..... (?)

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AQUININGOC

A. INTRODUCTION

Anthony Aquiningoc was charged twice for the same crime.

There was no additional evidence to support a reason to drop "original" misdemeanor citation, while he was in the judicial due process for that charge.

A detective used the same probable cause in the original filed charge of Fourth Degree Assault Domestic Violence, to amend that charge to Assault in the Second Degree Domestic Violence.

The Whatcom County Prosecution re-charged Mr. Aquiningoc in Whatcom County Superior Court cause #11-1-00439-5 after, he was charged and arraigned by a Whatcom County Prosecutor in Bellingham Municipal Court on cause #CB74508

B. ARGUMENT

Anthony Aquiningoc was arrested April 11, 2011 he was charged for Assault 4 domestic violence.

On April 12, 2011 Anthony Aquiningoc was 'Arraigned' in Bellingham Municipal Court on Assault in the Fourth Degree cause #CB74508. At that time the state read probable cause to charge and hold Mr. Aquiningoc for the crime of Assault in the Fourth Degree.

Anthony pleaded not guilty; the court gave Mr. Aquiningoc a \$1000.00 cash only performance bail, and had Mr. Aquiningoc sign a no contact order that was entered on that day.

The court set a trial date, and ordered that Aquiningoc report to an assigned 'monitor' probation officer following a pre-trial release.

The very next day on April 13, 2011, a 'Detective' was going over weekly domestic cases, when she came across Mr. Aquiningoc's case. While reading the original arresting officer's reports, she felt that there were elements that fit for a more severe charge of Assault 2 Domestic Violence.

"That Detective" was filling in as an "acting sergeant" on 'that day'.

The real sergeant, who was assigned in that department, was on leave.

After the Fourth Degree Assault Domestic Violence charge was pulled from Mr. Aquiningoc's file, the state re-charged Aquiningoc with a new amended charge of Assault in the Second Degree Domestic Violence.

AQUININGOC

A. INTRODUCTION

The Prosecution misinforms the court that 'Aquiningoc was never charged with Assault in the Fourth Degree', also that 'THE POLICE ONLY ARRESTED AQUININGOC ON ASSAULT IN THE FOURTH DEGREE SO THAT THEY COULD BOOK HIM AND GIVE OTHER OFFICERS THE OPTION TO EVALUATE THE CHARGE'.

Furthermore the Prosecution misinformed the Court that Aquiningoc was arrested and booked, but never charged for both Assault in the Second Degree, and Assault in the Fourth Degree.

The Honorable Judge asked the Prosecution "IS THE ASSAULT IN THE FOURTH DEGREE A NON-EXISTENT CHARGE?"

The prosecution misinformed the Court by replying "CORRECT" IT WAS NEVER FILED.

The Prosecution deliberately misinformed the Court of the Original charge of Fourth Degree Assault never being charged or filed. When in fact, the Prosecution knew very well of the filing and charging of that citation, through her Motion in Limine "PRECLUDE DEFENCE FROM OFFERING EVIDENCE REGARDING INITIAL ASSAULT IN THE FOURTH DEGREE FILED AGAINST THE DEFENDANT.

The Defence failed to file a Motion to dismiss, based on the Prosecutions misinformation pertaining to the arresting officers original reports, and the Prosecutions allegation of the officers arresting Aquiningoc only to hold him for further review of charge by other officers.

On the witness stand Detective Pauline Rennick tells the court that she READ THE REPORT INVOLVING THE ASSAULT IN THE FOURTH DEGREE, and informs the Court, she felt: "IT WAS A GOOD CHARGE".

Detective Rennick also states: 'In her opinion there were elements in the report that supported an Assault in the Second Degree as well'.

DETECTIVE RENNICK WAS ACTING AS SERGEANT FOR THAT DAY, when she amended the charge of Assault in the Fourth Degree, based on her opinion, to an Assault in the Second Degree.

DETECTIVE RENNICK PERSONALLY TOOK ON THE INVESTIGATION OF HER AMENDED CHARGE of Assault in the Second degree.

During Detective Rennicks investigation, she interviews the victim's mother that initiated the arrest of Aquiningoc. DETECTIVE RENNICK IN HER OWN HANDWRITING WROTE OUT THE WITNESS STATEMENTS FOR HER. When asked on the stand, why did she write the statements for the witness? she said 'I had better handwriting than her'.

During Trial Detective Rennick states that she took letters from the Defendant to the Victim, sealed them into an envelope put evidence tape on it, dated it, put her initials on the tape, and impounded the evidence.

When asked why is there another officers initials on the re-opened and re-sealed envelope? Rennick replies that they needed to copy one of the letters for trial, and that there is a report filed on the incident.

During trial there was no record or report admitted into evidence or submitted as proof to this alleged officer opening the evidence and resealing it, nor was he in court to verify the act of doing so.

The DEFENCE ASKS THE COURT TO STRIKE THE TWO TAMPERED LETTERS IN THE ENVELOPE. BASED ON AUTHENTICITY OF LETTERS. The judge says that he will allow the evidence to be entered at that time.

The Defence failed to question the arresting officers on the stand, about pertinent information regarding their charging decision and report. The Defence never once challenges the prosecutions alleged information offered to the court during review of her Motion in Limine.

The Defence failed to object to the Prosecutor's comment about the Defendant being guilty because he never testified to his innocence.

The Defence failed to adequately represent Aquiningoc, by not showing the court that the Prosecution failed to prove intent of Assault.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. By arresting, charging and arraigning the Defendant on the misdemeanor charge of fourth degree assault, then two days later pull the charge out of Municipal Court, and recharge the Defendant in Superior Court with an Amended charge of Assault in the Second Degree without additional probable cause, or determination by the courts, violate the defendants Double jeopardy Fifth Constitutional right, and due process of the law?
2. Does it violate the Defendants ability to prepare adequately when the charging document is incomplete and information based on hearsay was held from defense?
3. If the prosecution misinforms the court, with information of the alleged charge, and that information was not available to the court, even though that information was basis for and pertinent to the charging document. Did the Defence fail to object, with a Motion for Dismissal of the charge, based on lack of intent determination, the prosecutions unavailable alleged documentation, and probable cause of charge?
4. When the prosecution misinformed the Court that the Officers, that arrested the Defendant on Fourth Degree Assault, did not charge him and file the citation, after the prosecution showed in her Motion in Limine that the Fourth Degree Assault was charged and filed against the Defendant. Did this prejudice the Defendant by informing the Court with falsified information? Was the Defendant prejudiced, and his due process rights violated when the prosecutions "alleged" charging information was not admitted to the Court, nor given to the defense for preparation in a timely manner?
5. Did the Prosecution prejudice the Defendant and violate his due process right, when she misinformed the court with hearsay evidence that the police arrested the Defendant on Fourth Degree Assault, so they could have something to hold him on, to enable other officers to review their reports for further charging, when there is no evidence, written record or testimony supporting misinformed information?
6. Was it a double jeopardy violation by the court, when it granted the prosecution the ability to charge the Defendant with multiple charges for the same incident under the same joinder and cause number?
7. When a police officer extracted evidence from impound, without informing the defense, then resubmitted back into impound, by the officer that was not in court, to testify nor was there any documentation of the officers action to support the reason for the evidence extraction available. Did this violate the defendant's due process right? Would the evidence be rendered inadmissible, tampered with and tainted in light of the Defence?

STATEMENT OF THE CASE

Anthony Aquiningoc was arrested and booked into jail on 4-11-2011. On 4-12-2012 he was arraigned in Municipal Court where prosecution read probable cause on Fourth Degree Assault cause #CB74508. Aquiningoc pleaded not guilty, he signed a no contact order, bail was set, and pretrial monitoring probation was assigned to him.

On 4-13-2011 a Detective was going over weekly police reports when she came across this particular case, and in reading the original arresting officers reports, in her opinion there were comments in the report indicating a more severe charge than the one already filed. So based on her opinion the charge was amended from Assault 4 to Assault 2.

On 4-14-2011 Aquiningoc was brought into Superior Court and charged with Assault 2. While in custody the Defendant was in conflict with his attorney, and on many occasions requested to be assigned to another attorney. Aquiningoc called the Prosecutors Office and made a formal complaint to the Public Defenders Chief Officer.

Aquiningoc also informed the Defence lawyer that he was not going to allow the Prosecution to violate his speedy trial right, and his request to do so was denied.

Aquiningoc filed a notice of speedy trial deadline CrR3.3 to the clerk, and prosecution. The notice was admitted, but the court granted the prosecution extension of time based on the prosecutions vacation time coming up. Before trial began, the Court was going over pretrial motions, when the prosecutions Motion in Limine came up, the Court had many questions about the Motion, and arguments arose from the vagueness of the motion.

During the argument the court addressed the initial Assault Four charge, when addressed the prosecution informed the court that Aquiningoc was never charged with the crime, and that citation was never filed. The court asks the Prosecution "So it is a non-existent charge?" The prosecution replies "Correct". Before jury selection Aquiningoc approaches the Court with a complaint that there was a conflict of interest with him and his attorney.

When asked what the conflict was, Aquiningoc informs the Court that the Defence lawyer is a victim of "strangulation the same crime Aquiningoc is ~~convicted~~^{CHARGED} on and going to trial for. When the court asked the Defence lawyer if the allegation was true, the Defence lawyer affirmed the assault against him. The Court Denied the Motion to Dismiss due to conflict of interest, and told the Defendant he did not see any grounds to dismiss his Attorney, or to continue the Court for a later date.

During jury selection Aquiningoc complains to the court that his Defence lawyer did not allow him to be involved with the selection of his jury peers, the Court denies his right to be involved, and allows the prosecutor and attorneys selection stay and proceed with trial. During trial the Defence never objected and allowed the Prosecution to prejudice the Defendant by stating to the jury Aquiningoc was guilty because he did not testify to his innocence.

In the court reporter transcripts, all of the opening statements made by the Defence lawyers had irreversible prejudice to the Defendant, and the reserved opening statements made by the Defence lawyer at the closing of trial, are missing in the Court Reporter Transcripts and unavailable for review for appeal.

AQUININGOC

The Defence failed to file a motion to dismiss, based on the Prosecutions alleged miss-information pertaining to the arresting officers original reports.

The prosecutions mislead the court to believe that the arresting officers arrested the Defendant based on 2 alleged charges that they filed in their reports.

The prosecution misinformed the court, that the arresting officers arrested the defendant and charged him with 4th degree assault, just so they could hold him, for further review on charging him.

The Defence argues in the discussion on the pre-trial motion in limine, that “we have the right to question the arresting officers, on why they only charged the Defendant with 4th degree assault.

The Defence never questioned the officers about that pertinent information regarding Defendants charge nor prove that what she said to the court during review of pre-trial motions was honest and correct and by the record.

The prosecution never addressed the alleged information regarding the arresting officers “charges” of both 2nd and 4th degree assaults during cross examination of the officers.

The evidence in trial was tampered with when the detective claims she sealed and impounded the evidence. She stated during trial, she did not open the sealed envelope, but stated another officer opened it to retrieve a page for photo-copying and then resealed it, after retrieving the document; he re-sealed and re-impounded the envelope into evidence.

The defense failed to object to the prosecutor’s comment about the defendant being guilty because he never testified to his innocence.

The defense also failed to adequately represent Aquiningoc by not showing the court, that the prosecution failed to prove intent of assault.

-VIOLATION OF SPEEDY TRIAL RIGHT-

(a) After the initial arrest on APRIL 11th 2011, and after the charge of "Fourth Degree Assault", was dropped , and Amended to "Assault Second Degree",

The prosecutor " DONNA BRACKE" contacted the Public Defender, DARREN HALL, representing AQUININGOC, and asked for an agreement, to extend the length of time between 2 to 3 weeks beyond AQUININGOC's [CONSTITUTIONAL 60 day SPEEDY TRIAL RIGHT]

DONNA BRACKE's reason for the extension of time, was that she was going on " vacation" for two weeks.

(b) Public Defender "DARREN HALL" contacted the defendant in Whatcom county jail, and informed Mr. AQUININGOC that he was going to agree and allow the prosecutor, the extension she requested for vacation time.

(c) Mr. AQUININGOC disagreed with the extension of time past his trial date, and his [CONSTITUTIONAL RIGHT TO A 60 DAY SPEEDY TRIAL] and argued strongly to Mr. HALL that it is not agreeable to him, and it would be violating his constitutional right, if he allowed it.

(d)" Mr. HALL" told "AQUININGOC", that he was going to go ahead and allow the prosecutor" DONNA BRACKE" her request for more time, even though AQUININGOC said it was unconstitutional to his rights, and strongly argued against it.

(e) AQUININGOC files 2 notices of speedy trial right's CrR 3.3 ,one to the prosecutor's office, and one to the county clerk's office. Both were filed and notarized.

(f) JUNE 6 2011 AQUININGOC, Mr. HALL, and prosecutor Mrs. DONNA BRACKE came before the Honorable Judge Mira, on a pretrial motion, to allow an extension of time beyond AQUININGOC's trial date for personal vacation time.

Even after admitting to receiving the defendants NOTICE OF SPEEDY TRIAL CrR 3.3 the judge allowed the continuance beyond 60 days.

AQUININGOC

DOUBLE JEOPARDY

The Double Jeopardy Clause of the United States Constitution forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.....

Aquiningoc was arrested and charged on April 11, 2011 for the crime of Assault in the Fourth Degree DV. CAUSE# CB74508

April 12, 2011 Aquiningoc was arraigned in Bellingham Municipal Court for Fourth Degree Assault DV.

During that time 'probable cause' was read by the state, and a 'not guilty' plea was entered by the defendant.

(April 12, 2011)

A no-contact order was signed by the defendant, bail was set, and pre-trial instructions were entered by the court on that day. CAUSE# CB74508

All of the above events occurred in Whatcom County Municipal Court on APRIL 12, 2011

On April 14, 2011 Aquiningoc was re-charged and re-arraigned for the same crime in Whatcom County Superior Court for the amended charge of Assault in the Second Degree DV. CAUSE# 11-1-00439-5

Aquiningoc's Double Jeopardy protection was violated when he was charged and arraigned twice for the same crime, in both Municipal and Superior Courts..

CONSTITUTIONAL VIOLATION

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; *nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb*; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The double jeopardy clauses of the Fifth Amendment and Const. art. I, 9 are interpreted in the same manner. Both clauses protect a criminal defendant against multiple punishments for the same offense imposed in separate proceedings

Prosecutorial Misconduct

Prosecution made errors, when she informed the Court that the original charge was not relevant to the trial.

Prosecution made errors, when she informed the Court, that it was not relevant, as to what the arresting officers felt, that the charge was only an assault 4, and not an assault 2.

Prosecution made errors, when she informed the Court, that the police arrested Aquinogoc with both assault 4, and assault 2, and that was in there report, that “the Court does not have”.

Proposition 8

Relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings...(People v. Luttenberger 1990),(People v. Amador 2000),(People v. Diaz 1992)

Supreme Court concluded that Proposition 8, which was passed by California voters in 1982 and commands that "relevant evidence shall not be excluded in any criminal proceeding,"

The right to challenge the truthfulness of recitals in a warrant follows from the command of Aguilar-Spinelli that the magistrate make a “detached and objective determination of probable cause...(Commonwealth v. Hall 1970)

The prosecution is not free to amend the “original charging document absent leave of court..(State v. Alvarado 1994)

Under a strict standard of construction the charging document that the alleged assault in the fourth degree, although not explicitly stating the element of “intent” was sufficient to withstand a challenge brought before verdict...(State v. Taylor 2000)

Unless the Prosecution intended to goad the Defendant into asking for a mistrial, the remedy available whose Constitutional right to seek a fair trial has been violated, is a new trial..CrRLJ 8.3(b)..(State v. Koerber 1996)

A charging document that does not articulate all of the elements of the crime with which the Defendant is charged, may violate due process rights..(State v. Wallway 1994)

Information must state facts constituting the offence in ordinary and concise language..(State v. Jeske 1976)

A challenge to the sufficiency of a charging document is of constitutional magnitude and may be raised for the first time on appeal..(State v. Campbell 1995)

AQUININGOC

Vindictive Prosecution

A vindictive prosecution occurs when ``the government acts against a defendant in response to the defendant's prior exercise of constitutional or statutory rights.''

(a) When the Prosecutor Ms. Bracke informed the Court that the arresting officers, charged Mr. Aquiningoc with Assault in the Fourth Degree, and Assault in the Second Degree, she vindictively falsified evidence.

Ms. Bracke tells the Court:

“IF YOU LOOK AT THEIR REPORTS, WHICH THE COURT DOESN’T HAVE, THE REPORTS THAT OFFICER MOYER AND OFFICER WOODWARD WROTE INDICATE TWO CHARGES, ASSAULT IN THE SECOND DEGREE, ASSAULT IN THE FOURTH DEGREE”

Ms. Bracke never provided the Court with this alleged testimony from the arresting officers, and alleged documentation, furthermore, she deliberately withheld direct evidence pertaining to the initial charged Assault in the Fourth Degree from the Jury, for fear that the defense would be able to argue, the fact, Mr. Aquiningoc was only charged with Assault in the Fourth Degree.

The truth of the factual evidence, is the Fourth Degree Assault, was the only charge that was “filed” against Mr. Aquiningoc, and there is no written information, or documentation for any further review necessary to change or amend the charge to Assault in the Second Degree.

(b) Ms. Bracke continues to vindictively inform the court:

“I DON’T KNOW IF THEY GAVE HIM THE ASSAULT FOUR CITATION AT THE JAIL TO HOLD HIM FOR REVIEW BY OFFICERS, BUT I DON’T THINK WE NEED TO GET INTO ALL THAT TO THE JURY”

Ms. Bracke falsified evidence and perjured herself by informing the court, of evidence and witness testimony that was never admitted or produced to the Jail or to the Court, before, or during the trial.

(c) The argument between the Prosecutor Ms. Bracke and Judge Snyder is lengthy, and the Courts argument, is concern about the arresting Officers original charging decision.

The court argues:

“I DON’T SEE ANY REASON WHY THEY COULDN’T SAY THAT WE CITED HIM FOR ASSAULT IN THE FOURTH DEGREE, AND THEY TOOK HIM TO JAIL, BECAUSE ‘HE’S CHARGED WITH ASSAULT IN THE FOURTH DEGREE’.”

Ms. Bracke argues to the court:

“I DON’T THINK I SHOULD EVEN HAVE TO ASK THEM THOSE QUESTIONS. I MEAN, HOW IS THAT GOING TO HELP THE JURY HERE OTHER THAN INFER THAT, SOMEHOW THAT’S ALL THEY THOUGHT IT WAS, WHICH THAT IS WHAT THE DEFENSE IS GOING TO DO. (OH THAT’S ALL WE THOUGHT IT

WAS). NOW WE'RE GETTING INTO AN ISSUE WHERE EVEN THOUGH THE REPORT SAYS, BOTH YOU KNOW. ANOTHER ISSUE IS TO, HOW'S "THAT RELEVANT" IN TERMS OF WE WROTE A CITATION?"

Ms. Bracke deliberately tried to "PRECLUDE THE DEFENSE FROM OFFERING EVIDENCE REGARDING INITIAL ASSAULT IN THE FOURTH DEGREE FILED AGAINST THE DEFENDANT" in her Motion in Limine.

Having direct knowledge of evidence supporting, that Mr. Aquiningoc was charged with Fourth Degree Assault, and the charge was "filed" then informing the court that the charges were never filed against the Defendant, is perjury.

Then filing a Motion in Limine to preclude the defense from offering this into evidence, is vindictive, and a violation of Constitutional Rights.

***State v. Korum*, 157 Wn.2d 614, 627, 141 P.3d 13**
(2006) (quoting) ***United States v. Meyer***, 810 F.2d 1242, 1245, 258 U.S. App. D.C. 263 (D.C. Cir. 1987)). Such a prosecution violates a defendant's due process rights. See ***Korum*, 157 Wn.2d at 627.**

AQUININGOC

STATEMENT OF ADDITIONAL GROUNDS

“FRANKS MOTION”

On July 18, 2011 the Prosecutor Ms. Bracke filed with the County Clerk of Whatcom County, a Motion in Limine, **“PRECLUDING DEFENSE FROM OFFERING EVIDENCE REGARDING INITIAL ASSAULT IN THE FOURTH DEGREE FILED AGAINST THE DEFENDANT.**

On July 19, 2011 the Prosecutor Ms. Bracke maliciously informed the Court, the Defendant Mr. Aquiningoc was not charged with Fourth Degree Assault, and the citation was never ‘filed’ against him.

It is clearly obvious that the Prosecutor Ms.Bracke had previous knowledge of the original charge of Fourth degree Assault that was “filed” against Aquiningoc when she argued with the Court that the charge was not filed.

Furthermore Ms.Bracke assures the court on record that the charge is non-existent.

CONCLUSION OF FACTS

Mr. Aquiningoc was arraigned and was physically present in front of a judge, April 12, 2011 in Whatcom County Municipal Court under cause #**CB74508** for the “Original citation of Fourth Degree Assault”.

The state provided the Court Probable cause , Aquiningoc pleaded not guilty, and was held on \$1000.00 bail.

Aquiningoc signed a no contact order, and court was scheduled for hearing.

WHATCOM COUNTY MUNICIPAL COURT CAUSE #CB74508

Under the Franks Motion:

FRANKS V. DELAWARE, 438 U.S. 154, 57 L. ED. 2D 667, 98 S. CT. 2674 (1978),

Supreme Court held that where a defendant makes a “substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth”, was included by the affiant in the warrant affidavit, and if the “allegedly false statement is necessary to the finding of probable cause”, the Fourth Amendment requires that a hearing be held at the defendant's request. If, at the hearing, the “Defendant establishes his allegations by a preponderance of the evidence”, the material misrepresentation will be stricken from the affidavit. If the affidavit then fails to support a finding of probable cause, the warrant will be held void and the evidence excluded. The Franks test for material misrepresentations has also been extended to material omissions of fact.

FRANKS V. DELAWARE

Under *Franks*, an omission in a search warrant affidavit may invalidate the warrant only if the omission was both material and made intentionally or with "reckless disregard for the truth." *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985). An omission is material if it was necessary to the finding of probable cause. *State v. Garrison*, 118 Wn.2d 870, 874, 827 P.2d 1388 (1992).

In *FRANKS V. DELAWARE*, 438 U.S. 154, 57 L. ED. 2D 667, 98 S. CT. 2674 (1978), THE SUPREME COURT HELD THAT WHERE A DEFENDANT MAKES A SUBSTANTIAL PRELIMINARY SHOWING THAT A FALSE STATEMENT KNOWINGLY AND INTENTIONALLY, OR WITH {103 Wn.2d 367} RECKLESS DISREGARD FOR THE TRUTH, was included by the affiant in the warrant affidavit, AND IF THE ALLEGEDLY FALSE STATEMENT IS NECESSARY TO THE FINDING OF PROBABLE CAUSE, THE FOURTH AMENDMENT REQUIRES THAT A HEARING BE HELD AT THE DEFENDANT'S REQUEST. *Franks*, at 155-56. If, at the hearing, THE DEFENDANT ESTABLISHES HIS ALLEGATIONS BY A PREPONDERANCE OF THE EVIDENCE, THE MATERIAL MISREPRESENTATION WILL BE STRICKEN FROM THE AFFIDAVIT. If the affidavit then fails to support a finding of probable cause, the warrant will be held void and the evidence excluded. THE FRANKS TEST FOR MATERIAL MISREPRESENTATIONS HAS ALSO BEEN EXTENDED TO MATERIAL OMISSIONS OF FACT. *United States v. Martin*, 615 F.2d 318 (5th Cir. 1980); *United States v. Park*, 531 F.2d 754, 758-59 (5th Cir. 1976).

INEFFECTIVE COUNCEL

1. Aquiningoc's right to effective assistance was violated on many occasions in this case. Aquiningoc had informed his lawyer that he was being charged twice for the same crime, and his lawyer told him he was incorrect without further investigating Aquiningoc's allegation.
2. Aquiningoc informed his lawyer that his speedy trial right would be violated if the Defense lawyer agrees to a continuance without the consent of Aquiningoc.
Aquiningoc files a notice of speedy trial deadline (CrR 3.3) on May 31, 2011 to protect himself against his Defence lawyer's decision, to agree to the prosecutions continuance.
3. Aquiningoc's Sixth amendment right to call particular witnesses to impeach and defend against prosecution witnesses was violated, when Aquiningoc's Defence lawyer informed the court that he would not be calling on the witnesses for trial, nor did Aquiningoc's Attorney subpoena pertinent witnesses that had direct relationship to Aquiningoc's.
4. Aquiningoc's Defence Attorney failed to put together a defense strategy with Aquiningoc, nor did he include him in the construction of any Defence.
5. Aquiningoc informed the court there was a conflict of interest with himself and his Defence lawyer, based on the fact that Aquiningoc's Attorney was an assault victim by strangulation two three years prior to Aquiningoc's trial. Aquiningoc's Defence attorney Darren Hall, informs the Court that Aquiningoc's allegation is correct and true. Aquiningoc motioned to the Court for a continuance to acquire a new attorney. The court denied the motion, stating it did not find any grounds to support the motion.
6. Aquiningoc's Defence attorney did not include him in his Constitutional right to jury selection. Aquiningoc approached the court with this complaint, the court denied his motion to reselection, based on the violated right to jury selection that was denied by Aquiningoc's Attorney. The court allows the jury selected by the prosecution to stand.
7. Aquiningoc's Defence attorney failed to object to Prosecutions prejudice comments on Aquiningoc's silence, and admission to guilt based on his right to remain silent.
8. Aquiningoc's Defence lawyer depended only on Prosecutions investigation of the case, and did not offer any other investigation to assist in Aquiningoc's defense.
9. Aquiningoc's Defence lawyer failed to submit any of the inconsistent police reports, C.S.I reports, and his personal investigator reports that were, pertinent to Aquiningoc's case. Nor was his investigator assigned to the case called in to trial.

AQUININGOC

TAMPERING WITH EVIDENCE (Authenticity of letter's)

During cross examination of Detective Rennick, the Defence Attorney Darren Hall asks when Detective Rennick received the two letters from Ashley Aquiningoc what did she do with them?

Rennick said that she made copies of them and impounded them as evidence.

Defence asks "Why did you do that?"

Rennick replied 'To provide a chain of custody, and to preserve the evidence.

Defence asks Rennick 'Did you alter the letters in any way?'

Rennick says 'No I did not'.

Defence asks Rennick 'Did you retrieve the envelopes I'm holding in my hands, labeled Exhibits 23 and 24, yesterday morning from the evidence room?'

Rennick replied 'Yes I did'

Defences ask Rennick 'And were they in the sealed condition when you retrieved them?'

Rennick replies 'No, they weren't in the same condition as when I initially impounded them.

The examination of Detective Rennick continues with her testimony saying that at a later date, when she made the photocopies of the letters, she didn't realize that one page of one of the letters, was not copied, so one page was missing. She continues to say on the stand, that when this came up for Trial, Sergeant "Munson", family crimes sergeant, was asked to go retrieve the letter and get the extra page, and in order to do that, he would have to go into impound, open and extract the evidence then reseal the evidence, and re-admit into impound.

Rennick continues to say that 'Munson resealed the evidence, and she saw that he initialed the evidence tape, and he made a report on the incident.

Defence Attorney Darren Hall then asks 'So when you retrieved "this" particular envelope, it was in the same condition as when you entered it into evidence?'

Rennick replies "Yes"

After the witness stepped down the Court asks, there were any 'objections to any of the exhibits?'

Defence Attorney Hall objects to the opened and resealed evidence, claiming that Rennick had no personal knowledge of officer Munson's mark on the envelope, and as to the issue of opening the evidence, so based on "Lack of Authentication" Defence would like to object to the entry of that envelope, and those letters.

The Court replies "At this point the court will admit the exhibits that have been offered".

The court continues to say "As to the envelope that was opened, I think it was properly authenticated by the recipient of the letter. It will be admitted at this time.

ARTICLE 1 Sec. 9. Rights of accused persons.

No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

The Double Jeopardy Clause of the United States Constitution entitles a defendant to dismissal with prejudice where there is a failure of proof.

CONCLUSION

For the foregoing reasons, Anthony Aquiningoc respectfully requests, this court to vacate judgement based on the proof of Double Jeopardy, and respectfully asks the Honorable Court for dismissal of charges, and immediate release from incarceration, or however the Honorable Court sees fit for remedy of error.

AQUININGOC

Motion to sever charged

On July 7, 2011 my Attorney Darren Hall, from the Public Defender's Office put together a Motion to Sever Charges.

The Motion had described how the Joinder of Charges, would prejudice the Defendant, and would prevent Aquiningoc from receiving a fair trial, and the Motion to Sever Counts would protect the defendants due process rights and eliminate prejudices the jury would have against him.

The court denied the motion, with no grounds or reason for doing so.

Double jeopardy protection under Amendment V of the United States Constitution, was violated by the Court, when granting the prosecution the ability, to charge Aquiningoc with multiple charges for the same incident under the same joinder and cause number.

Allowing the Prosecutor to join the charges, violated Aquiningoc's Constitutional rights to Due Process of the law.

AQUININGOC
COMPLAINT
(Authenticity of letters)

The Defence during Trial preserved the argument pertaining to the letters in exhibits 23 and 24 that were admitted into evidence.

Defence argues that the exhibits were not properly authenticated, and the chain of evidence was unconstitutionally broken, when officer Munson opened the evidence to photocopy a missing page that was not properly documented before impound by Detective Rennick.

There was a constitutional prejudice in doing this, without the defense be notified, or obtaining the necessary authorization to do so. This was a violation of the Defendants due process of the law.

The prosecution failed to inform the Defence of the extraction of documents, or give the defense time to evaluate and prepare the evidence as stated in ER 10.96.020.

The prosecution failed to provide the court with the affidavit of proof as stated in ER 5.45.020. and ER 10.96.030. (2) (a)(b) that the officer "Munson" did indeed open and reseal the evidence in question, as stated by Detective Rennick during Defense's cross examination of the witness.

(ER 5.45.020.)

A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

ER 10.96.020.

(1) when properly served with criminal process issued under this section, the recipient shall provide the applicant all records sought pursuant to the criminal process. The records shall be produced within twenty business days of receipt of the criminal process, unless the process requires earlier production.

ER 10.96.030.

(1) Upon written request from the applicant, or if ordered by the court, the recipient of criminal process shall verify the authenticity of records that it produces by providing an affidavit, declaration, or certification that complies with subsection (2)

(2) To be admissible without testimony from the custodian of records, business records must be accompanied by an affidavit, declaration, or certification by its record custodian or other qualified person that includes contact information for the witness completing the document and attests to the following:

(a) The witness is the custodian of the record or sets forth evidence that the witness is qualified to testify about the record;

(b) The record was made at or near the time of the act, condition, or event set forth in the record by, or from information transmitted by, a person with knowledge of those matters;

(d) The identity of the record and the mode of its preparation; and

(e) Either that the record is the original or that it is a duplicate that accurately reproduces the original.

(3) A party intending to offer a record into evidence under this section must provide written notice of that intention to all adverse parties, and must make the record and affidavit, declaration, or certification available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them. A motion opposing admission in evidence of the record shall be made and determined by the court before trial and with sufficient time to allow the party offering the record time, if the motion is granted, to produce the custodian of the record or other qualified person at trial, without creating hardship on the party or on the custodian or other qualified person.

(4) Failure by a party to timely file a motion under subsection (4) of this section shall constitute a waiver of objection to admission of the evidence, but the court for good cause shown may grant relief from the waiver. When the court grants relief from the waiver, and thereafter determines the custodian of the record shall appear, a continuance of the trial may be granted to provide the proponent of the record sufficient time to arrange for the necessary witness to appear.

(5) Nothing in this section precludes either party from calling the custodian of record of the record or other witness to testify regarding the record.

CONCLUSION

Based on ER 10 .96.030, ER 10.96.020, and ER 5.45.020 the defense respectfully asks the court to exclude exhibits 23, 24 for the lack of authenticity, for the breach of the chain of evidence, and for failure to provide the defense the constitutional right to prepare the evidence within its respected time limits.

Aquiningoc respectfully asks the court to strike the charges that resulted from the admissibility of these tampered letters, and remand the case for further proceedings.

AQUININGOC

UNITED STATES CONSTITUTION

AMENDMENT 5

The Double Jeopardy Clause of the Fifth Amendment declares that no person shall be subject to be twice put in jeopardy of life or limbs, U.S. Const. amend. V. It protects a defendant in a criminal proceeding against multiple punishments or repeated prosecutions for the same offense.

Prosecutor Ms. Bracke filed a Motion in Limine on July 18, 2011 in Whatcom County, precluding the defense from “offering evidence regarding (initial) Assault in the Fourth Degree (filed) against the defendant”.

On July 20, 2011 before trial started, during the courts review, on Ms. Bracke Pre-trial Motion in Limine, Ms. Bracke Misinformed the Court by saying there was ‘no charge filed’ against Mr. Aquiningoc for the initial Fourth Degree Assault.

THE PROSECUTION DELIBERATELY FALSIFIED INFORMATION PERTAINING TO THE ORIGINAL CHARGE OF (ASSAULT IN THE FOURTH DEGREE) BY TELLING THE COURT THAT CHARGE WAS “NOT FILED” AGAINST MR. AQUININGOC.

Clearly Ms. Bracke had direct knowledge from her motion, that the charge **was filed against the Defendant**. It was the very reason why she wanted to preclude the evidence before trial, for fear of hindering her prosecution, and violating the Defendants Constitutional rights.

The Fifth Amendment bars further prosecution only if the defendant can prove intent on the part of the prosecutor to subvert the protections afforded by the Double Jeopardy Clause. Only deliberate prosecutorial misconduct implicates double jeopardy principles.

ASSIGNMENT OF ERRORS

1. The court violated the prohibition against placing a person in double jeopardy for charging a person twice for the same crime.
2. Aquiningoc's speedy trial rights were violated, even after Aquiningoc filed a timely motion of speedy trial deadline CrR 3.3.
3. Aquiningoc's right to jury selection was denied, and violated by the court.
4. The court denied Aquiningoc his motion to continue to secure another attorney. Aquiningoc informed the court that his Attorney was a victim of Assault in the manner which Aquiningoc was on trial for, and felt there was a conflict of interest because of his personal experience; the court denied the motion, stating there was no basis for the motion.
5. The prosecution maliciously held back pertinent information that would have been relevant to the case, and would have supported the Defendant's protection from a double jeopardy violation.
6. The prosecution perjured herself by informing the court that the defendant, "Was never filed or charged for Assault in the Fourth Degree", when in fact the prosecutor was well aware of the Defendant being charged for Assault in the Fourth Degree and the charge was filed against Aquiningoc, evidence from her Motion in Limine precluding Defence from offering evidence regarding original charge filed against the Defendant is proof of knowledge of charged and filed crime.
7. A detective, after reading this case's original police report, amended and recharged Aquiningoc for a second time based on her "opinion" and without additional probable cause, or proof of intent.
8. Defence Attorney failed to file a motion to dismiss, based on lack of probable cause, and prosecutions misinformation pertaining to "original fourth degree assault" charge file against Aquiningoc.
9. Defence attorney failed to object to Prosecutions prejudice comment that Aquiningoc is guilty of these crimes, because he did not testify and say "I did not do this".
10. Defence Attorney failed to object to prosecutions prejudice comments during closing statements to the jury, that Aquiningoc is guilty because he did not testify.
11. The defense Attorney failed to challenge the prosecutors hearsay testimony pertaining to the charging documentation submitted by the arresting officer's, and the allegation that the police arrested Aquiningoc for both, Fourth degree Assault and Second degree Assault, and left the charging decision open for further review for the prosecution.
12. The court violated the prohibition against placing a person in double jeopardy for charging a person twice for the same crime.

These multiple errors and others discussed herein denied Aquiningoc his Constitutional rights, his right to be properly represented, and the protection of due process of the law.

EXHIBITS

- (A) ORDER TO RELEASE p.23 APRIL 14, 2011
- (B) DEMAND FOR DISCOVERY p.24 APRIL 18, 2011
- (C) MOTION TO CONTINUE TRIAL DATE ~~p.28-29~~ MAY 31, 2011
- (D) NOTE FOR DOCKET p.27 MAY 31, 2011
- (E) ORDER CONTINUEING TRIAL DATE p.25-26 JUNE 2, 2011
- (F) MOTION FOR SPEEDY TRIAL DEADLINE JULY 7, 2011 p.30-31
- (G) MOTION TO SEVER COUNTS p.32-38 JULY 7, 2011
- (H) STATES MOTION IN LIMINE p.39-40 JULY 18, 2011

FILED IN OPEN COURT
04-14 2011
WHATCOM COUNTY CLERK

By SK
Deputy

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

State of Washington, vs. <i>Anthony S. Aguenaga</i> Plaintiff, Defendant.	No. <u>11-1-439-5</u> ORDER TO RELEASE
--	--

This matter having come before the court and it appearing:

1. That the Defendant was taken into custody on the 4-14-11 day of 20, at 3 am/pm.
2. That charges have not been filed.

It is hereby Ordered that the Defendant be released on the 19 day of April, 2011, at 3 am/pm unless charges have been filed before that time, in accordance with CrR 3.2.1(f). The Prosecuting Attorney shall immediately notify jail or detention staff when the charge(s) against the defendant is/are filed.

SIGNED this the 4-14-11 day of 20.

[Signature]

Judge/Court Commissioner

[Handwritten mark]

PURSUANT TO CrR 4.7, the Plaintiff has the duty to disclose to the Defendant:

1. Any electronic surveillance, including wiretapping, of Defendant's premises, or conversations to which the Defendant was a party, and any record thereof.
2. Any expert witness Plaintiff will call at hearing/trial, their qualifications, the subject of their testimony, the basis of any opinion they may have regarding this case, and any reports they have submitted to Plaintiff.
3. Any information Plaintiff has indicating entrapment of Defendant.
4. Any information which Plaintiff has which tends to exculpate the Defendant.

THE DEFENDANT FURTHER DEMANDS:

1. That Defendant be given notice before any evidence or potential evidence relating to the above cause of action is released or destroyed by Plaintiff, or before any testing of said evidence occurs; and
2. That no law enforcement officials contact or question Defendant without the undersigned attorney being present.

PURSUANT TO CrR 4.7, The Plaintiff has the continuing duty to promptly disclose any additional material or information discovered following the filing of this Notice of Appearance.

The Defendant herein reserves all objections to process, service of process, the assertion of personal jurisdiction over the Defendant, and by this appearance does not waive said objection.

Monday, April 18, 2011

WHATCOM COUNTY PUBLIC DEFENDER

 FOR DLH

ATTORNEY FOR DEFENDANT, Bar No. 91001

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SCANNED 2

FILED
COUNTY CLERK

2011 MAY 31 AM 9:16

WHATCOM COUNTY
WASHINGTON

BY SN

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY**

THE STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 11-1-00439-5
vs.)	
)	
ANTHONY S. AQUININGOC,)	MOTION AND AFFIDAVIT FOR
)	ORDER CONTINUING TRIAL DATE
Defendant.)	
)	

COMES NOW, Dona Bracke, Deputy Prosecuting Attorney in and for Whatcom County, State of Washington, and moves the court for an **Order Continuing Trial Date** in this matter.

THIS MOTION is based upon the records and files submitted herein and upon the subjoined affidavit of Dona Bracke.



 Dona Bracke, #29753
 Deputy Prosecuting Attorney

1 STATE OF WASHINGTON)
) ss.
3 COUNTY OF WHATCOM COUNTY)

5 Dona Bracke, being first duly sworn upon oath, deposes and says: That she is a Deputy
7 Prosecuting Attorney in and for Whatcom County, State of Washington.

9 The trial is schedule to start on June 13, 2011, the prosecutor will be on vacation that
week and cannot have a trial scheduled then.

11 For these reasons, the State requests a continuance of the trial date.

13 DATED THIS 31st day of May 2011.



15
17 Dona Bracke, #29753
Deputy Prosecuting Attorney

19 SUBSCRIBED AND SWORN to before me this 31 day of May 2011.



21
23
25 NOTARY PUBLIC in and for the
27 State of Washington. My commission
29 expires on: May 29, 2013

SCANNED

FILED
COUNTY CLERK

2011 MAY 31 AM 9:16

WHATCOM COUNTY
WASHINGTON

BY SW

DECLARATION OF MAILING/DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the below date, a true copy of the foregoing was mailed or caused to be delivered, to:

DARRIN HALL

at the regular office or residence or pick up box in the Prosecutor's Office. DATED this 31 day of MAY 2011, at Bellingham, Washington.

Darrin Hall

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,)

Plaintiff.)

vs.)

ANTHONY S. AQUININGOC,)

Defendant.)

No.: 11-1-00439-5

NOTE FOR DOCKET

NOTE FOR MOTION DOCKET

Date of Hearing: **Thursday, June 9, 2011**

Please take note that the issue of law in this matter will be heard on the date set out in the margin and the Clerk is requested to note the same on the motion docket for that day.

Time of Hearing: **08:30 a.m.**

Nature of Motion:

BAIL REVIEW

**TO THE CLERK OF THE COURT;
and the Defendant's counsel of record:**

Counsel for Plaintiff:

DARRIN HALL
Attorney for Defendant

DONA BRACKE
Deputy Prosecuting Attorney

NOTE FOR DOCKET - 1

SCANNED

FILED IN OPEN COURT

06-02 2011

WHATCOM COUNTY CLERK

By [Signature]
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

vs.

ANTHONY S. AQUININGOC,

Defendant.

No. 11-1-00439-5

ORDER CONTINUING TRIAL DATE

THIS MATTER coming on regularly on the motion of the State of Washington, being represented by Deputy Prosecuting Attorney Dona Bracke, and the Court being fully advised in the premises, now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, a continuance of the trial date. The new trial date shall be July 11, 2011.

DATED this 2nd day of June, 2011.

[Signature]
JUDGE/COURT COMMISSIONER

Presented by:

[Signature]
Dona Bracke, WSBA #29753
Deputy Prosecuting Attorney

Order continuing trial date

SCANNED

DOCKETED M

SCOMIS CODES: MTHRG HCNTSTP STAHRG RWVHRG
HSTKIC SCVHRG PLMHRG
ARRAIGN DSMHRG HSTKSTP (Other)

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

STATE OF WASHINGTON, Plaintiff,
vs.
AQUININGOC, ANTHONY STEVE, Defendant

No. 11-1-00439-5
JUDGE/COMM MURA
REPORTER/CD QUINN
CLERK MILLER
DATE 06-01-2011 @ 8:30

This matter comes on for **STATUS/TRIAL DATE** _____ CC Interpreter appeared _____

State represented by DONA BRACKE Defendant represented by DARRIN L. HALL

Defendant appeared: yes no ; in custody: yes no ; Name as charged or _____

State requests BW Court authorizes issuance of Bench Warrant

Defendant is served with true copy of Information Read Waived **PLEA: NOT GUILTY**

Defendant acknowledged viewing/understanding advice of rights

Defendant acknowledged he/she was advised of basic civil & constitutional rights and penalty

The following are called, sworn & testified on behalf of State: _____

Court finds probable cause Probable cause found over weekend Probable cause previously found

Defendant requested counsel Referred to Assigned Counsel Office Court appoints PD

State makes recomm. re release requests bail of \$ _____ Defense counsel responds

COURT SETS BAIL AT _____ \$ _____ Court releases defendant on PR

Deft agrees to waive speedy trial rights *not to* **Waiver of Speedy Trial: FILED TO BE FILED**

Continued to: Thursday Calendar for plea *cont 6-2-11* Next Status Calendar Strike Trial Date Court 5 day bump

Friday Calendar for new trial date _____ Presence Waived Presence waived if order signed

Maintain Trial Date Status & Trial continued one week State/Defense moved to continue

THE DEFENSE: _____

THE STATE: _____

Arraign/Trial Setting/Fugitive Hearing set for _____

SET FOR TRIAL: / / **STATUS HRG:** / / **CONTINUED FROM:** / /

THE COURT: GRANTED / DENIED / SIGNED THE STATE'S / DEFENSE'S MOTION / ORDER

PREPARED ORDERS SIGNED:

- DEFT'S ACK/ADVICE OF RIGHTS
- ORDER ON FIRST APPEARANCE OF DEFT
- ORDER FOR PRE-TRIAL RELEASE
- ORDER TO RELEASE
- AGREED ORDER SETTING/CONTINUING TRIAL DATE
- AGREED OMNIBUS ORDER
- MOTION/ORDER FORFEITING BOND
- CONTINUED BY COURT TO _____ FOR _____
- NO CONTACT ORDER
- ORDER FOR BENCH WARRANT
- ORDER: QUASH WARRANT
- ORDER/WARRANT FUGITIVE COMPLAINT
- WAIVER OF EXTRADITION (4 ea. Jail=2/PA=1/CRT=1)
- STRICKEN PRIOR TO COURT By: _____

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[Handwritten signature]

7/8

SCANNED 2

FILED
COUNTY CLERK

2011 MAY 31 AM 9:46

WHATCOM COUNTY
WASHINGTON

BY SK

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

STATE OF WASHINGTON	NO. 11-1-00439-5
VS	NOTICE OF SPEEDY TRIAL DEADLINE
ANTHONY S. AQUININGOC	(C.R. 3.3)

To: The Clerk of the Court and prosecutor

Please take notice that ANTHONY S. AQUININGOC, appearing ProSe, seeks to formally inform the Courts, and to put on notice that April 22, 2011 was the date of my arraignment. I am represented by DARREN HALL and wish to continue this representation. According to (C.R. 3.3), the courts have 60 days from the date of commencement, to hold trial, in the above mentioned case, that date shall be calculated as JUNE 21, 2011. This notice is to inform you, the court, and prosecutor, ~~XXXX~~

Notice of speedy trial deadline 30
Pg 1 of 2

ANTHONY S AQUININGOC
311 GRAND AVE
BELLINGHAM WA 98225

29
I will not waive my right to Speedy Trial, and if assigned counsel waives this right, it will be met with a formal motion to object to Trial Settings.

DATED MAY 31, 2011

~~_____~~
DEFENDANT

ANTHONY S. AQUININGOC

31
Notice of speedy trial deadline
aa. 2 of 2

ANTHONY S. AQUININGOC
WASHTON COUNTY JAIL
311 GRAND AVE
BELLINGHAM WA 98225

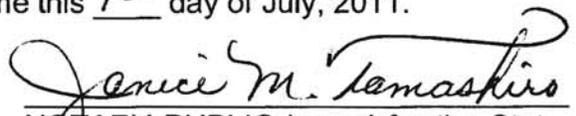
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1. I am the attorney for the Defendant in this matter.
2. Mr. Aquiniingoc is charged with Assault Second Degree, Assault Fourth Degree, and Malicious Mischief Third Degree in counts 1-3; and then four counts of Violation of a No Contact Order, three counts of Tampering with a Witness, and one count Bribing a Witness, counts 4-11.
3. Mr. Aquiniingoc was arraigned on April 22, 2011 for Assault Second Degree. The facts of the case supported, although the prosecutor did not charge at the time, the charges of Assault Fourth Degree (count 2) and Malicious Third Degree (count 3). On June 2, 2011, Mr. Aquiniingoc was arraigned on counts 2-11 under the above-entitled cause number.
4. CrR 4.3(a) authorizes joinder of counts where offenses are of the same or similar character or are based upon the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan. The defense has no objection to counts two and three being tried with count one, the Assault Second Degree.
5. The basis for counts 4-11 are for actions allegedly taken by Mr. Aquiniingoc while in custody on count 1. Moreover, they occurred days and weeks after his initial arrest on count 1 on April 11, 2011.
6. CrR 4.4 (b) requires that a defendant's motion to sever be granted when it determines that severance will promote a fair determination of guilt or innocence to each offense.
7. A severance of counts 1-3 from counts 4-11 will promote a fair determination of guilt or innocence as to each of the alleged events. Counts 1-3 should be severed and tried separately from counts 4-11.



DARRIN L. HALL

SUBSCRIBED AND SWORN to before me this 7th day of July, 2011.



NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.
My commission expires: 11/1/12

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MEMORANDUM IN SUPPORT OF DEFENSE MOTION TO SEVER COUNTS

Counts 1-3 are based on acts that occurred on April 11, 2011. Counts 4-11 are based on acts occurring after the initial arrest date. The evidence that the state will provide to support counts 4-11 will greatly prejudice Mr. Aquiniingoc's constitutional right to a fair trial. Counts 4-11 are not in the same course of conduct nor do they have anything to do with counts 1-3.

ARGUMENT

CrR 4.3(a) authorizes joinder of counts where offenses are of the same or similar character or are based upon the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan. In this case, the separate alleged incidents are not of the same or of the similar character, nor are they a part of a series of acts constituting a single or similar plan or scheme. The first event alleged, as reflected in Counts 1-3, involve a domestic dispute on April 11. These events ended with Mr. Aquiniingoc's arrest on April 11. The second event alleged, as reflected in counts 4-11, involve no contact order violations between April 12, and May 6, 2011. All charges are domestic violence related according to the state and with the same complaining witness. However, the alleged acts from April 12, through May 6, did not take place within the same course of conduct as the events on April 11.

Clearly the criteria for joinder have not been met. The only real purpose served in allowing these two separate events to be addressed in a single trial would be to prejudice the defendant. The court should refuse to validate the improper effort to join counts by officially severing Counts 1-3 from Counts 4-11. CrR 4.4 (b) requires that a defendant's motion to sever be granted when it determines that severance will promote a fair determination of guilt or innocence to each offense.

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Joinder must not be utilized in such a way as to prejudice a defendant. In State v. Smith, 74 Wn. 2d 744, 755 (1968) the landmark severance case in Washington, the Supreme Court, quoting from Drew v. United States, 331 F. 2d. 85, 88 (D.C. Cir. 1964) described the ways a defendant could be prejudiced by a joinder:

(1) he may become embarrassed or confounded in the presenting separate defenses; (2) the jury may use the evidence of one of the crimes charged to infer a criminal disposition on the part of the defendant from which is found his guilt of the other crime or crimes charges; or (3) the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find. A less tangible, but perhaps equally persuasive, element of prejudice may reside in a latent feeling of hostility engendered by the charging of several crimes as distinct from only one. Id. at 755.

The Smith court then listed some factors that could offset or neutralize the prejudicial effects of joinder:

(1) the strength of the State's evidence on each count, (2) the clarity of defenses to each count, (3) whether the court properly instructed the jury to consider the evidence of each crime, and (4) the admissibility of the evidence of the other crimes, even if they had been tried separately or never charged or joined. Id. at 755-56.

Any residual prejudice must be weighed against the need for judicial economy. State v. Kalakosky, 121 Wn. 2d 525, 538 (1993); State v. Bythrow, 114 Wn. 2d 713, 723 (1990); State v. Markle, 118 Wn. 2d 424, 439 (1992).

In the case at hand, prejudice will result from a single trial on all counts. The prejudice will occur because the jury will cumulate the evidence against the defendant and may use the evidence of one crime to infer a criminal disposition on the defendant's part as to another crime. The court should determine whether the four factors set forth in Smith could offset or neutralize the prejudicial effects of a joinder are compelling in this case.

1- Strength of the State's Case: The first prejudice-mitigating factor listed by the Smith Court, regarding whether the State's evidence is equal on each count, supports Mr.

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Aquiniingoc's request for severance. In counts 1-3, the prospective testimony will be of Ashley Aquiniingoc, her mother, as well as those officers present on April 11 responding to the Assault Second allegation. These counts present perhaps the weaker of the two cases against the defendant.

Counts 4-11, there is a little risk to the state of contested testimony, other than perhaps the defendant's own testimony. The State's case relies on the ability to introduce into evidence letters allegedly written by Mr. Aquiniingoc.

2-Clarity of Defenses to Each Count: The defenses applicable to the two asserted events are dissimilar, ranging from outright denial of the alleged event in counts 1-3, to the potential of explanation to counts 4-11 by the defendant. Mr. Aquiniingoc could be forced to take the stand in counts 4-11 opening the door to violate his Fifth Amendment right to remain silent as to counts 1-3. Although it is too early to make a decision regarding the defendant's testimony, it is very possible that he may elect to refrain from testifying regarding the event of counts 1-3 but need to testify regarding counts 4-11.

3-Limiting Instructions to the Jury: Regarding the third prejudice-mitigating Smith factor, the defense contends that if this factor was sufficient to overcome prejudice, then there would be no need for the court to ever grant a 4.4(b) several of offenses. Assuming the trial court properly instructs the jury, the defense maintains that a jury instruction will simply not be enough to overcome the prejudice toward Mr. Aquiniingoc that will result with the jury hearing all the evidence on all the charges.

4-The Admissibility of Evidence of Other Crimes if Tried Separately: The evidence of Counts 1-3 as to Counts 4-11 (or visa-versa) would be prohibited under ER 404 (b), which provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show conformity therewith. It may, however, be

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admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

To determine the admissibility of evidence under ER 404 (b) the court must determine (1) whether the evidence is relevant to prove any of the issues permitted by ER 404(b); (2) whether any prejudicial effect is outweighed by probative value; and (3) whether limitation of the purpose for which the jury may consider the evidence can be accomplished. State v. Vermillion, 66 Wn. App. 332 (1992); State v. Watkins, 53 Wn. App. 264, 270 (1985). In the context of a criminal case, ER 404(b) is generally applied to bar evidence that the defendant is of a criminal type and thus likely to have committed the crime charged. Teglund on Evidence, 4th Edition, at 418. The basic reasoning under this rule was explained in Michelson v. United States, 335 U.S. 469, 93 L.Ed. 168, 69 S. Ct. 213 (1948) in which the court said:

The state may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, when though such fact might logically be persuasive that he is by a propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so over-persuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise, and undue prejudice.

To allow the evidence of Counts 1-3 to be admitted in the trial of counts 4-11, and vice versus, would confuse and obstruct the individual determination of culpability as to each count and create an unfair attitude that the defendant is a "criminal type" with a propensity to commit crimes. This is exactly the kind of atmosphere that ER 404 (b) is intended to prevent.

Finally, judicial economy should not be a factor in this particular decision. Mr. Aquiniingoc's arrest for counts 1-3 was based on a specific set of facts involving his wife and mother-in-law. Indeed, without the mother-in-law's presence in this case, there is no

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way to know if the police ever would have been called on April 11. The mother-in-law cannot testify as to counts 4-11. Also, counts 4-11 involve, primarily, violations of court orders. Counts 4-11 also involve interpretations that only the state can assert through argument, (not through any witness.) It is clear that the other facts listed under Smith that the prejudice to Mr. Aquiniingoc in this case outweighs any claim of judicial economy.

Mr. Aquiniingoc is charged with eleven serious crimes. Each count carries a substantial punishment. Fairness requires an independent determination of guilt or innocence as to each count and as to each event involved. The prejudicial atmosphere that would come about with a multi-count trial that involves two separate events that took place on separate occasions is self-evident. A single trial would invite the jury to cumulate evidence and would prevent Mr. Aquiniingoc from receiving a fair trial. The prejudice-mitigation factors set out in Smith that could offset or neutralize the prejudicial effects of joinder do not apply in this case. The prejudice presented would not be outweighed by the need for judicial economy. The defendant's guilt or innocence to each separate event should rise or fall on its own merits without the added complexities and confusion caused by evidence of the other alleged events.

CONCLUSION

A severance of counts 1-3 from counts 4-11 will promote a fair determination of guilt or innocence as to each of the alleged events. Therefore, Count 1-3 should be severed and tried separately from Counts 4-11.

Respectfully submitted this 7 day of July, 2011.



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Attorney for Defendant

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DONA BRACKE,
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Deputy Prosecuting Attorney

CONCLUSION

I Anthony S. Aquingoc respectfully request this court order a new trial, or dismissal of all charges based on prejudices arising from, ineffective council, prosecution maliciousness and vindictiveness, multiple court errors, double jeopardy violations, police evidence tampering and Constitutional violation of due process of the law.

Or any other proceedings or remedy that satisfies the Court.

DATED this 25th day of May 2012

Respectfully submitted,



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