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ASSIGNMENT OF ERROR NO. 1

The appellant, Steven Tucker, challenges the sufficiency of evidence.

ASSIGNMENT OF ERROR NO. 11

The second assignment of error concerns the testimony of Trooper John McMullen and Ms. Pemberton's admissibility as experts and the admissibility in their testimony at trial.

ASSIGNMENT OF ERROR NO. 111

The appellant, Steven Tucker, challenges that there was Probable cause for his arrest. Supp. R.P. March 11, 2005.

ASSIGNMENT OF ERROR NO. IV

The forth assignment of error is the appellant challenge to the seizure of the medication in his motor vehicle at the scene of the accident.

ASSIGNMENT OF ERROR NO. V

The next Assignment of Error concerns the Jury's request for a definition of appreciable degree. The appellant, Steven Tucker, objected to the trial court giving an answer which says;

"The dictionary definition of appreciable is capable of being noticed, estimated, or measured; noticeable."

ASSIGNMENT OF ERROR NO. VI

The appellant, Steven Tucker, objected to Ms. Vingo arguing with a power point and continually showing a picture of the

deceased mother and daughter in wedding dresses. C.P. 34-35.

ASSIGNMENT OF ERROR NO 1
ISSUE NO. 1

The appellant, Steven Tucker, the appellant, specifically challenges the sufficiency of the evidence in regard to his conviction as to the two counts of vehicular homicide.

ASSIGNMENT OF ERROR NO. 11
ISSUE NO. 1

The appellant, Steven Tucker, challenges to the expertise of Officer McMullen; this was challenged at a Pre-Trial Hearing on March 11, 2005, and subsequently was challenged pursuant to his testimony at the trial occurring in Grays Harbor Superior Court.

ISSUE NO. II

The appellant challenges the testimony of Ms. Pemberton. R.P.225.

ASSIGNMENT OF ERROR NO. 111
ISSUE NO. 1

The appellant, Steven Tucker, challenged there was insufficient probable cause or legal sufficiency for his arrest.

ASSIGNMENT OF ERROR NO. IV
ISSUE NO. 1

The appellant, Steven Tucker, challenges the seizure of the medication, and the subsequent testimony allowed during the

trial by the State Patrol Officers as to the seizure and to the number and amount of medications.

ASSIGNMENT OF ERROR NO. V
ISSUE NO. 1

It is the appellant's position that the jury request and subsequent response by Judge Foscue was an unlawful comment on the evidence by the court.

ASSIGNMENT OF ERROR NO. VI
ISSUE NO. 1

The appellant, Steve Tucker, challenges the attempt by the Deputy Prosecuting Attorney, Andrea Vingo, to prejudicial the jury during the trial and the use of the PowerPoint during closing argument which lasted over 15 minutes and the jury was allowed to see those pictures constantly.

STATEMENT OF CASE

An Information was filed on April 20, 2004 charging Mr. Tucker with 2 counts of vehicular homicide. C.P.1-3. In that Information Mr. Tucker was accused of driving a motor vehicle in Grays Harbor County on August 6, 2003 causing the death of Michelle Burton. Similarly in count 2 he was charged on the same day of having driven a motor vehicle in Grays Harbor County and caused the death of Megan Otteson Burton both charges indicating that the time that he was operating the motor vehicle he was under the influence of alcohol and or drugs as defined by RCW 46.61.502. C.P.1-3. On October 6, 2004 a motion declaration for suppression of

evidence was filed on the behalf of the appellant, Steven Tucker. This motion challenged the seizure of a backpack located in Mr. Tucker's vehicle without legal justification or probable cause. C.P.4-5. Subsequently, on February 8, 2005 a motion was made on the behalf of the appellant, Steven Tucker, that there would be no other references in the testimony as to any other medications that Mr. Tucker was taking at the time of the alleged incident. C.P.6-7. This included a number of medications that Mr. Tucker was legally taking at the time of the accident. C.P.6-7. On March 2, 2005, the appellant, Steven Tucker, filed a motion and declaration challenging his arrest. C.P.10-12.

A hearing was then held before the Honorable Judge Gordon Godfrey on March 11, 2005. This matter came on to be heard to consider the motion to suppress and the motion challenging the arrest of the appellant, Steven Tucker. The issues concerned the seizure of Mr. Tucker's prescription drugs and whether in fact there was probable cause to arrest Mr. Tucker. The first witness called was Trooper Carson. Supp. R.P.5. Trooper Carson was notified that there was a 2 car collision on State Route 101. Supp. R.P.6. This involved a death. Supp. R.P.6. It took Officer Carson 35 minutes to drive to the area where the collision to place. Supp. R.P.6. The officer observed that the 2 vehicles had severe front damage; one was on the

west shoulder of the road and the other on the east shoulder of the road. Supp. R.P.7. Trooper Carson had a statement that Mr. Tucker indicated that he was driving Northbound when the back end of his vehicle broke loose. Supp. R.P.12. Mr. Tucker also indicated to the 3rd party that he takes prescription medication. Supp. R.P.12. Based upon Trooper Carson's observations, he believed that the Chevrolet Pick Up was Southbound and Mr. Tucker's motor vehicle was traveling Northbound. Supp. R.P.13. It looked like to Trooper Carson that the cars had sideswiped. Supp. R.P.13. Trooper Carson testified that he noticed a backpack in the Jeep in plain view sitting on the seat that he believed had prescription medications. Supp. R.P.14. Trooper Carson seized the prescription drugs. Supp. R.P.16. On cross-examination he indicated this was a Highway where the speed limit was 60 miles per hour. Supp. R.P.20. The officer also testified that he attempted to talk to Mr. Tucker and did not smell any order of intoxicants. Supp. R.P.21. Trooper Carson did conclude that Mr. Tucker was severely injured. Supp. R.P.21. Trooper Carson also indicated that he was inventorying the backpack. Supp. R.P.22. Trooper Carson testified that the container was a backpack and he admitted that he went through the backpack which was basically a closed container because he saw

prescription drugs. Supp. R.P.23. Trooper Carson also indicated that he seized the backpack and the prescription drugs before he was doing any inventory what so ever.

Supp. R.P.24. The motor vehicles were not removed until approximately 3:09 AM on August 7, 2003. Supp. R.P.27.

The second officer to testify was Trooper McMullen. Supp. R.P.31. Trooper McMullen was a so-called drug recognition expert. He had been in the Washington State Patrol for 8 years. He had gone through preliminary and post training courses at the Washington State Patrol Academy. Supp. R.P.32. The trooper testified that his training allowed him to evaluate individuals that possibly were under the influence of drugs or alcohol. Supp. R.P.33. Trooper Carson had testified that he had received the call from dispatch at 10:25PM on August 6, 2003. Supp. R.P.20. Trooper McMullen said that he had received the telephone from the State Patrol Communications at 11:49 PM on August 6, 2003. Supp. R.P.34. Trooper Carson had told Trooper McMullen that Mr. Tucker had crossed the centerline striking the other motor vehicle. Supp. R.P.34. There had been no tests on Mr. Tucker. Supp. R.P.35. Trooper McMullen had information that Mr. Tucker had prescriptions with him at the time of the accident. Supp. R.P.36. The only medication that jumped into Trooper McMullen's mind was Tramadol. Supp. R.P.36. It was his understanding that

this was muscle relaxers. The other drug that he recalled was Carisoprodol. Supp. R.P.37. This was also some type of muscle relaxers. Supp. R.P.37. Trooper McMullen then arrived at the Aberdeen Community Hospital. Supp. R.P.38. The physician at Community Hospital told Trooper McMullen that Mr. Tucker had been given Morphine and Dilaudid. Supp. R.P.39. The trooper did know that these were narcotic analgesics. Supp. R.P.40. Trooper McMullen then attempted to perform some tests on Mr. Tucker. He performed the horizontal gaze nystagmus test. Supp. R.P.40. The trooper testified that Mr. Tucker had a difficult time focusing on the stimulus. Supp. R.P.41. But he concluded that there were no clues present. Supp. R.P.41. He also noticed that Mr. Tucker's eyes were bloodshot and watery. During the conversation with Mr. Tucker he indicated that Mr. Tucker had specifically told him that he was headed home and he was hit by a vehicle that had crossed the line. Supp. R.P.42. Mr. Tucker also indicated that he had a number of medical problems. Based upon his alleged expertise and the fact that it was his opinion he should have seen the horizontal gaze nystagmus. Supp. R.P.43. Even though he did not know any of the drugs or the amounts he then placed Mr. Tucker under arrest for being under the influence of drugs. Supp. R.P.45.

During cross-examination Trooper McMullen admitted he only had 3 weeks of training. Supp. R.P.46. Trooper McMullen acknowledged that he was not a physician or an expert on medications. Supp. R.P.47. The trooper also admitted that by taking the horizontal gaze nystagnus test there weren't any clues of any effect of any drugs on Mr. Tucker. Supp. R.P.47. Trooper McMullen also acknowledged that he had reached his conclusion after approximately 3 hours and 32 minutes after the accident. Supp. R.P.47. Trooper McMullen was not aware of whether the paramedics had give Mr. Tucker any medication. Supp. R.P.48-49. Trooper McMullen was not aware of the amounts of the medication given by the Emergency Physician. Supp. R.P.49. Trooper McMullen also admitted that the list that Trooper Carson had given him he was not aware of the types of drugs or what influence they may have on an individual. Supp. R.P.50. During cross-examination the specific drugs were gone through and it was evident that Trooper McMullen was not aware of the types of drugs, the categories they fit into or their effects. Supp. R.P.51-56.

After testimony the parties argued the issues. The court denied the motions by the appellant, Steven Tucker. Supp. R.P.72.

Before the trial commenced a motion was made In

Limine by the appellant, Steven Tucker. C.P.26-27. This motion concerned a challenge to Trooper Carson's seizure of the medications and Trooper McMullen's qualifications and testimony. C.P.26-27. The matter came on to be tried on March 29,30,31,2005. The trial court was the Honorable Judge David Foscue. It is important to note that one of the assignment of errors concerns Ms. Vingo's placement on Power Point pictures of the two deceased in wedding dresses. Assignment of Error No. VI. Ms. Vingo begins her opening statement saying that Mr. and Mrs. Burton had just gotten married and they were all looking forward to having a new family. The deceased child was looking forward to having a new dad. This was objected to by the defense attorney. R.P.2. The first witness to be called by the State was Jeff Burton. R.P.8. The second witness called by the State of Washington was Mike Osgood a Grays Harbor County Sheriff Deputy. R.P.13. The officer did testify that it was obvious that Mr. Tucker was injured. R.P.17. The next witnesses called by the State of Washington was Trooper Carson. R.P.22. Trooper Carson was also was allowed to testify as to the backpack as the motion to suppress or limit his testimony was denied by Judge Godfrey previously. R.P.33.-34. Over objection Trooper Carson indicated a number of times that he thought Mr. Tucker's vehicle was over the center line. This was objected to and

over ruled by the trial court. R.P. 42-43. Trooper Carson was even allowed to testify over objection that Mr. Tucker was at fault. R.P.46. During cross-examination of Trooper Carson he again indicated that he found the backpack in Mr. Tucker's vehicle and seized it. R.P.49. Trooper Carson also indicated that there were a bunch of beer bottles around the truck of the Burtons. He also testified there was a beer between Ms. Burrton's legs in the vehicle. R.P.49. Trooper Carson had concluded that the two cars had sideswiped each other. R.P.51. During the break there was a conversation about exhibit #1 which was a wedding photograph of Mrs. Burton and her child Megan. R.P.55. The next testimony was of Officer Bigger. R.P.56. Trooper Bigger was allowed to testify as to the pills found in the motor vehicle, which were prescription drugs. R.P.62. This was objected to and is one of the assignments of error. R.P.62. The next individual to testify was Trooper Drake of the Washington State Patrol. R.P.67. He testified as to the medications which were seized out of Mr. Tucker's motor vehicle. Similarly Trooper Krantz, again, testified as to the seizure of the pills. R.P.74-75. The purpose of these witnesses was again to introduce the bottle of pills. R.P.79-80. After another Trooper testified the defense then objected to the shotgun approach that was being used by the State. R.P.92. It was the

position of the defense attorney that Ms. Vingo was introducing the prescriptions bottles for the prejudicial effect in reference to the charges against Mr. Tucker. R.P.92. The next witness called by the State of Washington was Trooper McMullen, who was the certified drug recaniction expert. R.P.110-1-1. As previously indicated we had a hearing on March 11, 2005 in regard to his expertise and admissibility of his testimony which was granted by Judge Godfrey. Trooper McMullen said that he came in contact with Mr. Tucker at approximately 1:50AM on August 7, 2003. This testimony was not admissible as he is not qualified as an expert. The State of Washington moved to have introduced his warning for a blood draw. This was objected to, but admitted to by the court. R.P.123. The blood draw occurred at 2:05AM on August 7, 2003. R.P.125. The State called other witnesses in regard to the chain of evidence and also the doctor that preformed the autopsies of Mrs. Burton and her child Megan Burton. The next witness called by the State of Washington was David Killeen, an employee of the Washington State Patrol, who was involved in criminal investigations involving motor vehicles. R.P.179.

The last witness called by the State of Washington was Melissa Pemberton, who was a forensic toxicologist with the Washington State Laboratory. R.P.216. The appellant,

Steven Tucker, had previously objected to the fact that she was qualified to testify and started to object in regard to her reaching conclusions in regard to the prescription Tramadol. R.P.225. Ms. Pemberton was allowed to testify as to what she thought a person's ability to react would be. R.P.226. She was also asked whether in fact this medication would affect a person's ability to stay in their correct lane of travel. This was objected to and finally sustained when the court indicated that he felt this was far enough. R.P.226. Mr. Farra, the defense attorney, made a continuing objection that she was not qualified to testify. The court agreed that the defense could have a continued objection. R.P.228. Basically, Ms. Pemberton was allowed to testify to anything. R.P.231-233. During cross-examination it was apparent that she was unqualified to give the opinions that she was allowed to testify. R.P.235-239.

The Appellant, Steven Tucker, after the State of Washington rested, challenges the sufficiency of the evidence.

R.P.247. The court was questioning whether in fact there was any evidence of intoxication. Obviously, the only argument by the State has in regard to that is that these, drugs, Tramadol and Carisoprodol. R.P.248. Again, the defense argued that the State of Washington didn't have any evidence or testimony that his driving was affected and the

States argument was based upon speculation and not consistent with the testimony. The trial court denied our motion.

We then made our own opening statement and the first witness to be called by Mr. Tucker in his defense was Lawrence Halpern who has a doctor's degree in pharmacology. R.P.258. Dr. Halpern testified that none of the medications that were alleged to have been consumed by Mr. Tucker would have any effect on his ability to drive a motor vehicle. R.P.260. Dr. Halpern testified in regard to other medications that were supposedly found in Mr. Tuckers blood draw. R.P.262. Dr. Halpern also was allowed to testify as to the troopers expertise as a drug recognition expert. This was specifically Trooper McMullen who he had in fact reviewed the testimony of that trooper on his March 11, 2005 hearing. R.P.271-276. Dr. Halpern was cross-examined and then during redirect examination again indicated that the amount of Marijuana in his system would not affect his ability to drive a motor vehicle. R.P.280. The next witness to be called by the appellant, Steven Tucker was Dr. Matheny. R.P.281. He was Mr. Tucker's doctor. He went through a description of the reasons that Mr. Tucker were prescribed the legal medications. R.P.281-194.

The last witness called by Mr. Tucker as a witness was Steven Tucker. R.P.298. Mr. Tucker testified as to the medications he took. He also indicated what he had done on the day of August 6, 2003. He specifically testified that he was not affected by any of the medications and made proper precautions in regard to the use of them prior to the trip. R.P.299-301. The last thing that Mr. Tucker remembers is that he was going the speed limit and going north on Highway 101 and he was approaching a turn which was a gradual Right hand turn. R.P.304. He remembers seeing some headlights. He believes that the motor vehicle was in his lane of travel when he saw it last. R.P.304-305. Mr. Tucker went on to indicate what injuries he received pursuant to the automobile accident. R.P.306. After the appellant, Steven Tucker, rested there was final arguments. It is important to note on page 307 of the Verbatim Reports of Proceedings that the defense attorney specifically objected to the picture and the power point showing the 2 individuals that were killed in the accident. R.P.307-308. Ms. Vingo's entire final argument was improper. A motion for a new trial was also made after Mr. Tucker was convicted. C.P.35. On page 326 of the Verbatim Report of Proceedings again special note was made of the fact that the Deputy Prosecuting Attorney was showing the 2 deceased people in their wedding dresses. This was

overruled by the court. R.P.326. She kept up this Power Point the entire closing argument. Subsequently, Mr. Tucker was found guilty and sentenced pursuant to the guidelines set for by the Sentencing Format. This Appeal then was filed on Mr. Tucker's behalf.

ARGUMENT AS TO ASSIGNMENT OF ERROR NO. 1
ISSUE NO. 1

A standard has been set forth a number of times pursuant to the rational of State vs. Green, 94 Wn. 2d 216 (1980). The Court of Appeals must look at the facts in the light most favorable to the State of Washington and no rational trier of fact could find that Mr. Tucker has taken part in the crime of vehicular homicide 2 counts as set forth in the Information. State vs. Tilton, 149 Wn. 2d 775, 72 P.2d 735 (2003). A look at the Information is necessary. C.P.1-3. Mr. Tucker is alleged to have driven a motor vehicle on August 6, 2003. That the driving of that motor vehicle was the approximate cause of the death of Michelle Burton and Megan Burton. The key facts as far as we are concerned are that at the time of driving the motor vehicle that Mr. Tucker is alleged to have been under the influence of drugs. This is pursuant to RCW 46.61.502. C.P.1-3. We have set forth details in reference to the testimony of the parties in the Statement of Case. It is clear; as Judge Foscoe indicated when we made our motion challenging the

sufficiency of the evidence after the State of Washington had rested its case that it is difficult to determine that Mr. Tucker was under the influence of any drug. R.P.248. Again, it is our position that the court upon examination of the entire record clearly would find that the appellant should not have been found guilty. This verdict was prejudicial based upon the use of the emotional reaction to the death of two individuals and the fact that Mr. Tucker was using prescribed medications.

ARGUMENT AS TO ASSIGNMENT OF ERROR NO. II
ISSUE NO. I&11

The appellant, Steven Tucker challenged the testimony of Trooper McMullen. C.P.26-27. The testimony of Trooper McMullen was set forth in the hearing in front of Judge Godfrey on March 11, 2005. The appellant, Steven Tucker, objected strenuously to the use of this non-expert and he was allowed to testify at the trial. His testimony was in the primary case against Mr. Tucker and he reached certain conclusions that were properly objected too and should have not been admitted for the purpose of trial. The best definition of a drug recognition expert was set forth in the testimony of Dr. Halpern. R.P.270-273. As Doctor Halpern indicated Drug Recognition Expert is a title on a police office which allows him to know about drugs without having studied them. That is exactly our feeling, this

person was not qualified and he was allowed to testify as an expert. He is not an expert. The Washington State Courts have allowed expert opinion on certain aspects of a motion vehicle accident. State vs. Burt, 24 Wn. App. 867, 605 P.2d 342 (1979). Test should be limited to the capability of the so-called expert witnesses. If the individual obviously does not know of the information to be testified too his testimony should not be allowed and this would be a violation of the discretion of the Trial Court. State vs. McMurray, 47 Wn. 2d 128, (1955). Testimony in this case was highly prejudicial and went to the jury's decision as to the effect of those medications. State vs. Thomas, 150 Wn. 2d 821, 83P.3D 970 (2004). The allowing of this testimony obviously had a material effect on the outcome. State vs. Bourgeois, 133 Wn. 2d. 389 945 P.2d 1120 (1997). It our position that Trooper McMullen's testimony and Ms. Pemberton should not have been allowed. Frye vs. United States, 293 F.1013, 1923. This has been recognized in a number of cases in the State of Washington. The case of State vs. Hettich, 70 Wn. App. 586, 854 P.2d. 1112 (1993) talks about a person testifying as to the effect of alcohol. David Predmore, who was working at the State Toxicology Lab, testified. Similarly in our case when the technician from the lab testified too there was not a proper background in reference to her testimony

concerning the requirements of Frey vs. United States,
Supra. There does not seem to be any case law of
Washington which now has adopted these State Patrolmen
turned experts. This is clearly not expert testimony.

ARGUMENT AS TO ASSIGNMENT OF ERROR No. 111&1V
ISSUES 1&1

As the seizure of the prescription drugs and the subsequent
arrest of Mr. Tucker are tied in regard to the factual
sequence of events, the appellant has consolidated these
issues. Again, we are requesting the Court review our
Statement of Case and the Verbatim Report of Proceedings in
reference to the information that the police officer had
when he determined that he was going to arrest Mr. Tucker.
It is clear from the testimony in this case that Trooper
Carson seized the backpack full of prescription drugs. The
sequence of events indicated that he just seized it and
latter on indicated that he was inventorying the backpack
pursuant to the seizure of the motor vehicle. This is
inconsistence with the facts and the laws of the State of
Washington. It is our understanding that they are not
claiming they had probable cause to seize the prescription
drugs. The police officers did not talk as to they even
considered to getting a Search Warrant. There is no
indication that the officer believed that the medications
were contraband. It is clear in this case that this was

bad faith on part of the police officer seizing the proscription drugs. In fact at this stage of the process there had been no arrest. State vs. Baragas, 56 Wn. App. 556 (1990). There is a Federal case that holds that absence police policies with the respect of opening containers during a so-called inventory search, the opening of such a container is insufficiently regulated and thus evidence has to be suppressed. Florida vs. Wells, 109 L. Ed. 2d 1 (1990). It seems clear that this was not an inadvertent discovery of items. The police officer looked and then looked into the backpack and saw what he believed to be legal prescription drugs. He had no other information to the contrary. State vs. Johnson, 16 Wn. App. 899 (1977). It should also be observed that the police officer had no other information that Mr. Tuckers driving was affected by any substance. It is clear in this case that there was an arrest. When there is an arrest without a Warrant there must be probable cause. State vs. Gonzales, Wn App. 388, 731 P.2d 1101 (1986). State vs. Dorsey, Wn. App. 459, 698 P.2d. 1109.

Our argument concerns both the seizure of the medications, which were legal prescription drugs, and the probable cause subsequently for his arrest by Trooper McMullen. It is clear that the seizure was improper and the use of the prescription drugs should have been suppressed. It is also

clear from the record that the use of prescription drugs were not for substantive evidence but for strictly prejudicial value. As previously indicated this is clearly error.

ARGUMENT AS TO ASSIGNMENT OF ERROR NO. V
ISSUE NO. 1

The fifth assignment of error concerns the instructions and the subsequent instruction given my Judge Foscue as to appreciable degree. It is clear from the request from the jury and the giving of this instruction that the jury was considering whether there was any evidence whatsoever as to whether in fact the prescription drugs affected Mr. Tucker and as such affected his driving when he was involved in the accident. It is our position that this puts an unreasonable emphasis upon this definition. The definition should not have been given. It seems that the Court of Appeals must look at a Jury Instruction to see if it correctly states the applicable law. This should be reviewed by the Court of Appeals. State vs. Pirtle, 127 Wn. 2d 628, 904 P.2d. 245 (1995). Also, given this instruction after the parties had argued did not allow the appellant, Steven Tucker, to argue all of the valid legal points. It would seem that this jury instruction relieved the State of its burden to proof all of the elements of the crime. State vs. Scott, 110 Wn. 2d. 682, 657 P.2d. 492

(1988). It is our position that the time that the instruction was given defining appreciable degree was in fact a comment on the evidence and showed an undue emphases on that particular part of the trial which seems to be the key. State vs. Stearns, 61 Wn. App. 810 P.2d. 41 (1991). The purpose of this constitutional provision is to prevent the jury from being influenced by the courts expression of its opinion of the evidence submitted. State vs. Swan, 114 Wn. 2d. 613, 790 P.2d. 610 (1990).

ASSIGNMENT OF ERROR NO. VI
ISSUE NO. 1

The final argument of Ms. Vingo was clearly prejudicial. R.P.307. The defense objected to the use of the Power Point when they showed the two individuals who were deceased in their wedding dresses on the Power Point in front of the Jury. As I indicated on the record Ms. Vingo indicated that the defendant stole the lives of the two people. This was on the screen as clearly prejudicial and improper. R.P.308. This particular use of the Power Point was continued until page 326 of the Report of Proceedings. The defense again objected and the court over ruled that objection. The defense again brought it to the court attention that it should not be allowed to remain on the Power Point. It was allowed by the court. R.P.327. The prosecuting attorney also argued that Mr. Tucker did not

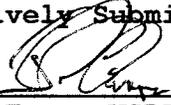
have even the necessary remorse to look at the jury in the face. R.P.348. This type of approach and argument should not be allowed. State vs. Phaliwal, 150 Wn. 2d. 559, 79 P.2d. 432 (2003). The appellant, Steven Tucker, must show misconduct in resulting prejudice. State vs. Harvey, 34 Wn. App. 737, 664 P.2d 1281 (1983). It is difficult to understand how this could be more prejudicial to show two people in wedding dresses for the entire closing argument of Ms. Vingo.

CONCLUSION

In conclusion, it is the appellant's position that there were a number of errors in his trial. The first one should be noted that the original contact by the Washington State Patrol Troopers indicated a desire to make illegal and improper decisions. They seized the medications without any legal justification whatsoever. As far as they knew the prescriptions were legal, which of course they were. Secondly, the so-called arrest is not based upon any type of legal probable cause or even legal justification. The testimony of Trooper McMullen can not be allowed. The conclusions of Ms. Pemberton are also improper and should not have been allowed. The prejudicial effect of the argument of Ms. Vingo and also her use of the Power Point clearly showed the theory and the acts of the Grays Harbor County prosecutors Office. This case was not fair, the

trial was not fair and the preliminary decisions by Judge Godfrey were not in accordance with the laws of the State of Washington or our State Constitution. Mr. Tucker did not receive a fair trial. This should be reversed and should be sent back for a new trial based upon the exclusion of evidence as indicated in our Brief herein. We respectfully request the Division Two of the Court of Appeals to do this.

Respectively Submitted by:



John L. Farra WSBA #4164

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COURT OF APPEALS
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STATE OF WASHINGTON
BY  DEPUTY

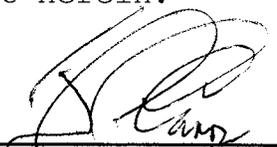
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II, AT TACOMA

STATE OF WASHINGTON] NO. 33335-0-11
Respondent,]
vs.] AFFIDAVIT OF SERVICE/
] AFFIDAVIT OF MAILING
] STEVEN TUCKER]
Appellant,]

DECLARATION

I, JOHN L. FARRA, being duly sworn deposes and says;
That I am the attorney for the appellant, Steven Tucker, and as
such hereby indicate that I did serve a copy of the Brief of the
Appellant on the Grays Harbor County Prosecutors Office on the
14 day of December 2005 by leaving a copy of the same at their
office in Montesano, Washington. In addition on the ___ day of
December 2005, I did send a copy to Mr. Tucker at Stafford Creek
Correction Center 191 Constantine Way GB34L Aberdeen, Washington
98520 on the 14 day of December 2005. As such, I have hereby
served or mailed to the necessary parties pursuant to court rule
the copy of the Brief of the Appellant herein.

Dated this 14 day of December 2005.


John L. Farra WSBA #4164

Affidavit of Service
Affidavit of Mailing

JOHN L. FARRA
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