

No. 34309-6-II

IN THE COURT OF APPEALS OF WASHINGTON

State of Washington,  
Respondent,  
Vs.

James S. Anderson,

Appellant.

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STATE OF WASHINGTON

ADDITIONAL GROUND FOR REVIEW  
PURSUANT TO RAP 10.10 - BRIEF

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A.

GROUND

1. DID THE STATE WITHHOLD EXCULPATORY EVIDENCE?

B. Some days after the jury returned its verdict, the prosecutor revealed to the trial court that an investigator from the district attorney's office had informed him of booking information for a Mr. Wayne Christopher Washington Jr., and further stated that Mr. Washington is also connected to Antwone Goolsby.  
RP: JUNE 10, 2005; RP 650.

Mr. Washington was at liberty at the time of this alleged offense that Defendant Anderson was found guilty of committing. RP 650-651 "[S]o he is not immediately eliminated as a possible suspect." 5RP 651.

The anonymous telephone call had indicated that Mr. Anderson was not guilty.  
See APPENDIX #3 #4

See RP641. The caller apparently did not have the correct name of the exculpatory evidence, having the first and middle names crossed, however, the prosecutor had known this fact before trial, and did not inform defense counsel.

The trial court was on point when it stated "[a]re any of the photographs that we have from the Safeway [store] capable of ruling Mr. Washington in or out?" 23 RP651.

Mr. Washington has two missing fingers on one hand, and the state knew that the suspect had his hands in his pockets. Furthermore, the police report states that the suspect is "250 pounds, and 6 feet." This does not fit the defendant's description.

To inform defense counsel before trial in regards to this key evidence may have created an investigation to clear defendant's

INNOCENCE.: Mr. Goolsby was obviously linked with Mr. Washington, 15 RP 653 ; 4 RP 654.

To forward defense counsel the photograph, and other discoverable materials in the States possession, may have matched that the State Exhibits:

State's witness Mr. Brewer changed his mind after identifying the defendant in the photo; Brewer identified the individual wearing the white hat as the defendant in State's Exhibit 30. RP 466;

State's key witness, Mr. Hunt testified that State's Exhibit 30 is Mitch Mitch, RP 510-511. Hence, this information in regards to Mr. Washington would solve the robbery mystery. 20 RP 651 ; RP 675 ; 20 RP 692.

The State interviewed Mr. Washington, and in this case, was in the best position to forward this evidence during discovery. RP 694-695; and may have mislead the tribunal, 5 RP 699. Cf. RP 650. No doubt, this information would have linked Mr. Goolsby with Mr. Washington with the robbery.

## C. ARGUMENT

### 1. THE STATE WITHHELD EXCULPATORY EVIDENCE OF DEFENDANT'S CLAIM OF INNOCENCE

In this case, the exculpatory evidence, Mr. Washington whom was linked to Mr. Goolsby and possibly linked to the robbery of the Safeway, in the possession of the prosecutor was unknown to the defendant.

The defendant argues that due to the anonymous phone call indicating his innocence, Mr. Washington's investigative booking information, connecting him to Mr. Goolsby, is so clearly supportive of a claim of innocence that gives the prosecution notice of a duty to produce, that duty should equally arise even if no request had been made. RP 650-651. See Thomas v. Cardwell, 626 F.2d 1375, 1382 n.24 (9th Cir. 1980).

Before, and after trial, a judge may be required to decide whether a nondisclosure deprived a defendant of due process. Logically,

the same standard must apply at both times. There is a significant practical difference between the pre-trial decision of the prosecutor, and the post-trial decision of the trial-court.

Since Mr. Washington "[i]s not immediately eliminated as a possible suspect," 5 RP 651, [w]e are dealing with an inevitably imprecise standard, and because the significance of the photograph of Washington was not predicted accurately until the entire record was complete, the prosecutor will resolve doubtful questions in favor of disclosure. But when, as in the present case, withholds the photograph, and other pertinent information, leaving questions by the trial court unresolved, the prosecutor has violated his constitutional duty of disclosure because based on the anonymous phone call indicating Mr. Washington as the robber of the Safeway, this omission is of sufficient significance to result in the denial of Mr. Anderson's right to a fair trial.

If evidence highly probative of innocence is in the prosecutor's file, he should be presumed to recognize its significance even if he has actually overlooked it. Cf. Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.

Ed. 2d 104; When evaluating the entire record, the insufficiency of evidence of guilt, and the additional evidence of innocence, there is justification for a new trial. "[I]f the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt," United States v. Agurs, 427 U.S. 97, 113, 96 S. Ct. 2392, 49 L. Ed. 2d 342, 355 (1976); United States v. Polizzi, 801 F.2d 1543, 1550 (9th Cir. 1986).

The defendant argues that the only evidence in the State's case-in-chief is unsubstantiated hearsay. No court would hesitate to reverse a conviction resting on absolutely no evidence. The State in its zeal to convict a defendant should not suppress evidence that may exonerate him. See Moore v. Illinois, 408 U.S. 786, 810, 92 S. Ct. 2562, 33 L. Ed. 2d 706 (1972).

The point is made that the role of the criminal prosecutor is not simply to obtain a conviction, 14 RP 671-672; RP 677-9 RP 678, but to obtain a fair conviction.

The prosecutor's actions in this case are intolerable, RP 650.

Possessed of knowledge that destroyed its case-in-chief, and its theory of the case, he had a duty to disclose the exculpatory evidence. Instead, he kept the facts of Mr. Washington secret, and it would have remained that way without the anonymous phone call. This error is in the face of a long-standing rule of constitutional stature, requiring disclosure, and then presented testimony in such a way to suggest the opposite of what he knew to be true: that Mr. Washington was pictured in State's Exhibits instead of the defendant, in the robbery of the Safeway store.

COULD THE ANONYMOUS CALLER  
BE DETECTIVE REEDBURN? RP 650;

He may have switched the name around to be less conspicuous. Indeed, such conduct by the prosecutor perverts the adversarial system, and endangers its ability to produce just results. This conviction should be reversed, unless this error can be

proven to be harmless beyond a reasonable doubt.

#### D. CONCLUSION

This Court should reverse, and remand for a new trial.

A.

GROUND

a.

DID THE STATES' KEY  
WITNESS COMMIT  
PERJURY DURING THE  
DEFENDANTS TRIAL?

B. The States' witness, Mr. Brewer, under oath testified that he was involved in robberies, implicating his little brother,

Monteece 2RP 426

Mr. Brewer honestly testified that he did not get out of the car during a supposed meeting at a deli, 22RP 438. However, Mr. Brewer stated that "Jody" told

him the defendant's nick-name, 1 RP 439, and Brewer didn't know the alleged meeting was taking place. Id. Hence, Brewer never met the defendant, nor talked to him. Id. at 11 RP 440. See also 7 RP 458.

Mr. Brewer apparently knew of the robbery [only] from what Jody told him, and this is objectionable as hearsay. 5 RP 442. Furthermore, Mr. Anderson was not present when Jody supposedly told him that Mr. Anderson was involved. 22 RP 444.

Obviously, Mr. Anderson would not be able to cross-examine anyone else to admit the hearsay, 17 RP 447, and there were no "straws to pick out of hat" as to any other robberies the defendant may have been involved in. Id. I.E., Brewer could not identify the defendant in the picture. ALL Brewer knew was that "he [Goolsby] told me." 18 RP 448.

Moreover, Goolsby never told Brewer that the defendant was involved. 2 RP 449

Whether the alleged meeting at the Deli took place in April or May, it was "pretty clear he doesn't know how to keep track of the time, date and place." 13 RP 453; 25 AP 455. Any other alternative, therefore, would violated the confrontation Clause, and Defendant's objection was sustained. 16 RP 456; 4 RP 457.

Mr. Brewer apparently did not see the robbery, nor was he present, i.e., he was not involved, and again, with no alternative, the State was forced to ask the same hearsay question again. 24 RP 457 - 458.

Plaintiff's Exhibit 27 is "BG." 7 AP 459. When Brewer tried to recognize the photograph, "Um, Jody or Dock." "I think that one is Jody." 16 RP 460 - 20 RP.

Plaintiff's Exhibit 30 is "Dock." 8 RP 461.  
Plaintiff's Exhibit 30 is "Jody." 20 AP 466.  
Plaintiff's Exhibit 27 is "BG and Dock." 3 RP 467. "BG was wearing a baseball hat..." 24 RP 459 "Dock was wearing baseball... hat." 11 AP 467. "Jody is Exhibit 27." 18 RP 467.

Upon cross-examination, Brewer testified that he lied to police to protect his little brother by confessing to robberies he did not commit. 2 RP 469; RP 481.

Mr. Brewer claimed he saw the defendant "only once," at the deli, and for only ten minutes while sitting in the car. 11 RP 471.

The State was willing to "work with" Brewer by charging him with 2 out of 5 robberies he admitted to commit, RP 477.

The pictures in State Exhibit was not suggested to Brewer to indicate the defendant, which leaves the prosecutor to implicate Mr. Anderson. 14 RP - 18 RP 478; 19 RP 480.

In sum, the only evidence presented by the State that defendant participated in the robbery of the Safeway was the in-court identification of the defendant

as one of the men in the surveillance photographs, the unsubstantiated hearsay statements of Mr. Goolsby presented through Mr. Brewer, and the presumption by Hunt that defendant had robbed the store because he supposedly had a stack of cash.

B. ON May 24, 2005, Mr. Hunt was duly sworn, and testified. RP 485. Mr. Hunt tried to implicate the defendant as a partner in robberies with him. RP 487.

Mr. Hunt stated that his obligation was "to tell the truth." 22 RP 494.

Mr. Hunt, however, testified under penalty of perjury, that he first saw the defendant "at the apartments on 38th Street." 3 RP 496.

Defendant, Mr. Anderson, eventually objected to this hearsay. 21 RP 497. Subsequently, Mr. Hunt was informed of the defendant's full name, as well as standby counsel's name. 14 RP 498.

Defendant properly objected to the State's questioning as to its relevancy of the pictures of him that were taken on July 22, 2004; the fact that the State did not have pictures of defendant at the time of the alleged robbery of the Safeway store. 16 RP 500. The date of the robbery was April 8, 2004.

Subsequently, Mr. Hunt implicated the defendant regarding the possibility of doing robberies together, yet, failed when stating "Jody" asked him to come and do robberies. RP 501.

In Sum, Mr. Hunt described State's Exhibit 27, 47, and 48, as "deck." 25 RP 499.

Mr. Hunt testified that he never did any robberies with the defendant, 24 RP 501, and stressed that he met the defendant on April 1, or 2nd, and that he saw the defendant a couple of days later at a car wash, RP 502.

There were no conversations with defendant at the car wash in regards to robberies. 11 RP 503.

The State's questioning continued as follows:

Q: "Did you have occasion to see Mr. Anderson again?"

A: "Yes."

Q: "Where was that?"

A: "Carmen's house."

Q: "When was that?"

A: "Maybe like two or three days after the car wash."

Mr. Hunt suddenly goes on to incriminate the defendant in regards to robberies, RP 505.

Yet, the defendant never discussed any robbery of Safeway, ERP 506.

Mr. Hunt insisted that he met defendant, on the first day, at the 38th Street Apartment,

19 RP 506. However, another sign of coaching was apparent when Mr. Hunt knew defendant was out-of-state, 23 RP 506, because he never saw the defendant again after the alleged encounter at Carmen's house. 21 RP 508.

Q: "When you said bring him back, what were you referring to?"

A: "Like from out-of-state."

Q: "What made you think he was out-of-state?"

A: "Because I didn't see him with Jody." 4 RP 509.

Mr. Hunt was [not] present at the robbery. 12 RP 509.

After describing States exhibit 27 as "BG and dock":

Q: 14 RP 570, "Which one of those two individuals is BG?"

A: "The one with the hat with the 'T' and the do-rag."

Q: "What color jacket is he

wearing?"

A: "White."

Q: "So does is the other individual?"

A: "Yes."

[The State did not describe what the other suspect, supposedly the defendant was wearing].

Moreover, Exhibit 30 did not implicate the defendant, 21-25 RP 510.

The white hat that Mitch-Mitch was wearing, 2 RR 511, became the defendant's hat, RP 512. Yet, the clothing belonged to Jody. RP. 513.

Upon cross-examination, Mr. Hunt swore that he was absolutely sure that the first time he saw the defendant was on the 1<sup>st</sup> and 2<sup>nd</sup> of April [2004]. 3 RP 515 ; 8 RP 515;

Q: "So it couldn't have been the 7th or the 6th or the 5th?"

A: "No."

This Honorable Court has reviewed the Defendants Appendix, and should conclude that the witness in this case testified falsely.

23 RP 516: "You never robbed a Safeway?"

A: "No."

Q: "You never was there?"

A: "Yes."

Mr. Hunt claimed that he had never robbed a Safeway, and then testified that he was the driver. @ RP 517.

The trial Court was on point again with its line of reasoning. RP 518-519. Mr. Brewer, of course, testified falsely in his participation in the

robberies to protect his brother.  
7 RP 519, and overruled the State's  
objection, 21 RP 519.

Mr. Hunt further perjured  
himself when testifying that the  
defendant told him that he robbed  
safeway at Carmen's house, RP  
522 - 7 RP 522.

This Court may reflect  
Mr. Hunt's testimony at  
RP 506:

### Direct Examination

Q: "Do you recall what  
Mr. Anderson said  
about the robbery?"

A: "No," 10 RP 506.

On April 1, 2004, defendant  
was supposedly carrying a gun, 23  
RP 522 - RP 523.

The defendant showed Mr. Hunt counsel's exhibit 5, and he miraculously testified that the picture was the defendant.

Q: "And how do you know that?"

A: "Because the facial hair and the hat."

Q: "You can see the facial hair?"

A: "By the neck. I never saw that picture."

Q: "... --" Like have you ever recognized somebody by that?"

A: "Yes."

Q: "... "So all you need to recognize a person by his mustache and a hat,

you know that's him?" 25RP524

A: "Yeah, I can see you, just, you know, riding on something, 'I can tell it was you.'"

Consequently, the state unsuccessfully saved its only unsubstantiated witness from perjury, RP 525-526, on re-cross, Mr. Hunt reinstated the pathological prevarication. 13 RP 526. The prosecution, again, failed to correct the false evidence when it re-appeared.

The court of appeals review of defendant's Appendix is substantial proof of his whereabouts on April 1, 2004. 15 RP 536; RP 550.

### C. ARGUMENT

2. A prosecutor's presentation of tainted evidence is viewed seriously, and its effects are exceedingly carefully scrutinized. A new trial is

required if there is any reasonable likelihood that the false evidence could have affected the judgment of the jury. *United States v. Polizzi*, 801 F.2d 1543, 1550 (9th Cir. 1986)

Evidence in this case clearly shows that the State's witnesses failed to clearly or accurately depict Mr. Anderson as the robber by the State's Exhibit photographs. See, e.g., *State v. Jamison*, 93 Wn.2d 794, 799, 613 P.2d 776 (1980) (citing *United States v. Butcher*, 557 F.2d 666, 669 (9th Cir. 1977); *United States v. Calhoun*, 544 F.2d 291 (6th Cir. 1976)).

Defendant's counsel has challenged the sufficiency of evidence which warrants reversal, remand for dismissal.

Mr. Anderson's alternative argument, is, rather, materiality of the false evidence must be judged by this Honorable Court in the context of the entire record. The United States Supreme Court has reasoned that "[I]f the verdict is already of questionable validity, additional evidence of relatively minor importance

might be sufficient to create a reasonable doubt." United States v. Agurs, 427 U.S. 97, 113, 96 S. Ct. 2392, 49 L.Ed. 2d 342, 355 (1976).

Defendant argues that there is "no additional evidence" that he participated in the robbery of the Safeway. It is clear from the record that the defendant is not depicted in the surveillance photographs; the un-substantiated hearsay statements of Mr. Goolsby presented through Brewer, and the false testimony of Hunt amounts to insufficiency of evidence. Moreover, It is well settled that a conviction obtained through the use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct. 340, 79 L.Ed. 791, 98 ALR 406 (1935); Pyle v. Kansas, 317 U.S. 213 43 S.Ct. 177, 87 L.Ed. 214 (1942).

ARGUMENT 3: defendant's related argument is that "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when

it appears, Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 1221, 3 L.Ed.2d 1217, (1959) (citing Alcorta v. Texas) (and cases cited therein)).

THE PROSECUTION  
VIOLATED THE DUTY  
TO CORRECT FALSE  
EVIDENCE WHEN  
IT WAS OFFERED.

The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. Brady v. Maryland, 373 U.S. 83, 86-87,

83 S.Ct. 1194, 10 W. Ed. 2d. 215, 218 (1963).

"[I]t is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false, and elicit the truth \* \* \* 'That the district attorney's silence was not the result of guilt or a desire to prejudice matters, little; for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair.'" Napue, 360 U.S., at 269, 270, 79 Sct., at 1221.

Mr. Brewer knew of the robbery only from what his partner Jody told him which is objectionable hearsay testimony, as well as Goolsby. RP 442; 17 RP 447. Anything else is a guess. 8 RP 461; 20 RP 466. Mr. Hunt also got his information from Jody. RP 501, yet he then testified that the defendant told him at Carmer's house, RP 522-7 RP 522, the exact opposite occurred. 10 RP 506. On re-cross, Hunt restated the false testimony, 13 RP 526, and it went uncorrected. Id.

Mr. Brewer's testimony should be banned from the record as inadmissible hearsay. Mr. Hunt's testimony amounted to perjury. RCW 9A.72.010; 020.

Defendant argues that Hunt's false testimony is material. State v. Carpenter, 130 Wash. 23, 28, 225 P. 654 (1924).

The Carpenter Court said that "[I]t has also generally been held that perjury may be based on testimony going to the credibility of the witness..." Id. at 26. See 3R. Anderson, "Wharton's Criminal Law and Procedure § 1309-12 (1957)"; 60 Am. Jur. 2d Perjury § 11 (1972).

In the present case, the record shows that Mr. Hunt's testimony is material because the language of the Carpenter Court reasoned that "the statement could have influenced the . . . [jury] upon the question at issue before it." See RCW 9A.72.020. This clearly affected his credibility as a witness and was material to Mr. Anderson's guilt or innocence.

There is no dispute that the State's witnesses, Mr. Hunt, and Mr. Brewer, "testified," and that if the jury had known the truth, they might have decided that no robbery had taken place. Therefore, the result of the untainted trial would have been an acquittal. This argument is particularly persuasive since "the evidence in the case was based upon testimony of two people who weren't there who said Goolsby told us this."  
RP 654.

These two "witnesses'" credibility was the main issue at trial, the subject of lengthy cross-examination which made the prosecutor's case as incomplete or weak, *inter alia*, not proven beyond a reasonable doubt. Testimony identifying Anderson as the robber has been left puzzling. In other words, can a person be in two places at the same time?

#### D. CONCLUSION

there is absolutely no evidence against

the defendant in this case. The un-substantiated hearsay of Mr. Goolsby presented [through] Mr. Brewer, and the perjured testimony of Mr. Hunt amounts to insufficient evidence.

Furthermore, the actual time defendant was in a County Jail in California, makes it impossible to affirm this conviction standing alone. The jury was not persuaded to believe the State's key witnesses asking questions in regards to the out-of-state incarceration:

"Is there 'records' that we can review that gives James Anderson's arrest in California in April 2004 and the date he was released." See Appendix #1 #2

The jury obviously [did not] have the 'records' of the defendant's arrest in California, or they would not have asked the jury question(s). Nevertheless, the State conceded that "they do have evidence on those issues that they can evaluate." RP 623.

The jury had "testimony" that the defendant's witness stated that the pro-se defendant "got out of the County

jail in Los Angeles on the Sixth of April.  
"She didn't say when you entered."

Mr. Anderson was incarcerated in  
Los Angeles from March 19, to April 6, 2004.  
Defendant's APPENDIX #1 RP. 550; 532-533.

The prosecutor knew that Mr.  
Anderson would receive an acquittal if the  
jury questions were answered, and stressed  
"that is all in evidence, your honor," and  
the court, correcting the prosecution, stated  
"that [the jury] does not have all the  
evidence because they do not have the  
defendants arrest date, RP 624.

The defendant informed the trial  
court that he should be able to show the  
jury proof the evidence is true in regards  
to his incarceration(s) date(s) in question.  
RP 625.

The trial court gave another hint  
in regards to the records that the jury  
could review that gives James Anderson's  
arrest in California in April 2004 and the  
date that he was released. RP 626.

Standby counsel sidetracked the issue for the State's benefit when he referred to the 'testimony' and not the actual records that would have proven the time in the County Jail beyond a reasonable doubt.

Ultimately, the trial court concluded that the "testimony" instead of the "records" would be Instruction No 1, RP 626.

The conclusion from review of the records reflect that standby counsel's solicited assistance relieved the prosecution of its "burden of proof beyond a reasonable doubt" standard which gave the State leverage, RP 627-628.

Not allowing the actual 'records' crucial to the prose defendant's whereabouts, evidence of his innocence, only "works for the State Your Honor," RP 629. And, as a consequence, Mr. Anderson was found guilty of a crime he did not commit, RP 632.

This Court should reverse, and dismiss this case.

A.

GROUND

3. DID THE DEFENDANT  
RECEIVE INEFFECTIVE  
ASSISTANCE OF COUNSEL?

B. The anonymous telephone call had indicated that Mr. Anderson is not guilty of the robbery, however, without an investigation, the State was prepared to proceed with sentencing. 19RP 642.

Detective Reidburn was present with booking information for a Mr. Wayne Christopher Washington Jr., and the prosecutor further stated that Mr. Washington is also connected to Antwone Goolsby. RP 650, 23RP 651.

To clear his innocence, Mr. Anderson requested a continuance to conduct an investigation. 15RP 653; 24RP 653.

The prosecution withheld exculpatory evidence from the defense which warranted the investigation, RP 654-655, "[g]iven the relative scarcity of the information linking Mr. Anderson to it, [crime], it seems to me that this is not an unreasonable thing to do." 18 RP 655.

There is no doubt in this Court's mind that the two suspects lied. 13 RP 657. The trial court granted the defendants motion for extension of time for an complete investigation. RP 658

WAS THERE A COMPLETE INVESTIGATION ?

The first investigator from the defense team was ineffective, and the defendant never received his witness' statements. 20 RP 658.

To obtain the photograph of Mr. Washington would be the key to solving the robbery case. 20RP651.

Mr. Anderson was once again on this lead to reclaim his innocence, and defense, knowing that the defendant would ultimately retain this photo, withdrew from the case by renewing his motion to withdraw. RP 659.

Mr. Anderson waived his right to speedy sentencing, RP 660, and the investigation was granted giving the defendant, without counsel, three months to discover the missing link that was secretly held by the prosecution, June 10 through September 23.

THERE WAS NO INVESTIGATION

With new defense counsel on board, the name of the person who may have committed the robbery "was not accurately relayed by previous counsel."

17 RP 668.

Defense counsel seemed to not know his role in the case, and there was no investigation by previous counsel, 20 RP 670, three months without any new leads. RP 671

No one contacted the defendant during the three months from the defense team, and everyone knew the actual name of the robber except new defense counsel. RP 650.

The prosecution was unconcerned, as always, of Mr. Anderson's innocence, and the court had to ask the State twice, 14 RP 671 - 672. See also 6 RP 674. No picture of Mr. Washington, of course, was ever matched to compare to States Exhibit's of the robbery of the Safeway store. RP 675.

Despite the motion granting a complete investigation, the prosecution argued irrelevantly that the information

of an investigation is more appropriate for "post judgment relief." RP 677 - 9 RP 678.

This would leave any defendant frustrated, whereas Mr. Anderson moved the court for a complete investigation again to clear his innocence, 8 RP 679, and the motion was granted for one month. 14 RP 680.

This made the prosecution frustrated as well, and it did not make matters better for the ineffectiveness of counsel. 18 RP 681; 19 RP 682 - 683.

Consequently, this investigation was placed in the hands of stand-by counsel, 15 RP 685 - 21 RP.

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Stand-by counsel: "My investigator has been out of town for the last three and a half weeks unexpectedly."  
RP 690.

Clearly, this motion by the pro-se defendant for an investigation, granted by the court, [was not] on the State, as well as standby counsel's agenda.

### THERE WAS NO INVESTIGATION

The trial court was correct when it explained this conclusion, RP 692. "[W]e have this anonymous phone call, and absolutely nothing else." RP 693

Standby counsel, who did not complete the investigation, side-tracked to the State's interest to discuss sentencing instead. 9RP 693. The irrelevant need for some "transcript for the investigation," RP 694, which also did not make any sense. Mr. Anderson knew that at this point, he was not going to retain Mr. Washington's photograph which was "good for the State." RP 694-695.

Seven months without an investigation, Mr. Anderson moved the court again for a complete investigation,

RP 696, and the court agreed, 1 RP 697.

Standby counsel showed his incompetency when, stated: "first of all, we didn't have the right name for a while."

THE COURT: "[I] think we straightened it out in September."

Standby counsel: "We did." RP 697.

Nevertheless, standby counsel continued to side-track the investigation, 16 RP, and the trial court corrected him submitting that "[+]he real reason why this whole thing has been delayed all of this time is to investigate ... " Id.

In straightening out the name back in September, Stand-by counsel continued to be somewhat up a tree as to the name of Christopher Wayne Washington. RP 698.

The prosecutor, misleading the tribunal, stated "I don't know who the guy is." 5 RP 699; Compare, RP 650, and, Hence, never intended to disclose exculpatory

evidence linking Mr. Goolsby with Mr. Washington to solve the mystery of the robbery of Safeway.

Standby counsel did not know the name of the suspect and contradicted himself when he stated "the name of the suspect didn't lead to anything." The prosecution was relieved and proceeded to sentencing, RP 700.

After the sentencing hearing, an inmate informed Mr. Anderson that Mr. Christopher Wayne Washington is being held at the Coyote Ridge Corrections Center in Cornell, Washington. The prose defendant continues to pursue leads in obtaining Mr. Washington's photograph.

### C. ARGUMENT

4. THE DEFENDANT  
RECEIVED INEFFECTIVE  
ASSISTANCE OF COUNSEL

The Sixth Amendment gives a

Criminal defendant the right to effective assistance of counsel. State v. White, 80 Wn. App. 406, 410, 907 P.2d 310 (1995); rev. denied, 129 Wn.2d 1012 (1996); See also State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

"Assistance of counsel is among those 'constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error.'" These principles apply equally to an attorney that a court has appointed as "standby counsel." State v. Benn, 120 Wn.2d 631, 666, 845 P.2d 289, cert. denied, 510 U.S. 944 (1993).

The Constitution guarantees a fair trial through the Due process Clauses, but defines the basic elements through several provisions of the Sixth Amendment. Strickland v. Washington, 466 U.S. 668, 685, 104 Sct. 2052, 80 L. Ed. 2d 674, 691 (1984).

The Strickland Court thus stated that "[T]he Sixth Amendment recognizes the

right to the assistance of counsel... " 466 U.S.,  
at 685, N. 4. Hence, Mr. Anderson's claim that  
counsel's assistance was so defective as  
to require reversal of a conviction has two  
components. First, the defendant must show  
that counsel's performance was deficient.  
Second, the defendant must show that the  
deficient performance prejudiced the defense.  
Id. at 687, N. 10, that is, "[c]ounsel's  
representation fell below an objective  
standard of reasonableness." Id. at 688, N. 11.

#### THERE WAS NO INVESTIGATION

Defense counsel was aware of the  
pro-se defendant's requested continuance  
to conduct an investigation to clear his  
innocence of the conviction. Previous  
counsel withdrew during the three month  
extension, and counsel supposedly did not  
relay Mr. Washington's name accurately.  
Without an investigation for the entire  
three months, counsel did not contact the  
defendant, and a new extension of time  
was granted for one month with a total  
of seven months without an investigation.

The defendant argues that given several continuances to conduct a complete investigation, RP 654-655, which seemed to the trial court "that this is not an unreasonable thing to do," and counsel's failure to conduct the investigation, is not the result of reasonable professional judgment. This omission is "[o]utside the wide range of professionally competent assistance." Strickland, 446 U.S., at 690, N: 16, 17. The Court thus reasoned that "...[c]ounsel has a duty to investigate..."

The defendant further argues that the challenged "reasonableness standard" has been met, and counsel's error had an effect on the judgment. RP:9 RP 693. We have this anonymous phone call, "[a]nd absolutely nothing else." RP 693, therefore, prejudice is presumed.

The defendant was left with absolutely no evidence of his innocence. There is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceedings, the anonymous phone call indicating defendants' innocence, would have been different. The trial court's decision reached would reasonably likely have been different absent the errors.

#### D. CONCLUSION

Both components of the inquiry has been shown in this case. There were no "strategic choices" made by standby counsel. The trial court reasonably surmised that the investigation due to the relative scarcity of the information linking Mr. Anderson to the crime, the perjured testimony, and then to have ineffective assistance of counsel, did not minimize the already apparent arbitrary and capricious actions. When standby counsel fails to take certain actions, not because he is "compelled" to do so, but because he is incompetent, RP 692-693, and RP 697, it is often equally difficult to ascertain the prejudice consequent upon his omissions. Reversible error.

The pro-se defendant, James S. Anderson humbly request that this Court reverse, and remand this case for instructions to dismiss with prejudice due to the insufficiency of evidence in this case.

The alternative would be to reverse and remand for a new trial, banning Mr. Brewer, and Mr. Hunts testimony as un-substantiated hearsay.

Respectfully submitted,

James S. Anderson  
James S. Anderson  
Attorney, pro-se.

**AFFIDAVIT**

STATE OF WASHINGTON )

COUNTY OF Walla Walla )

ss

COA. 34309-6-II

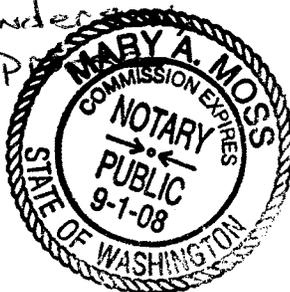
I, James S. Anderson, after first being duly sworn upon oath, and aware of the penalty for perjury, do hereby depose and say:

that I am competent to verify to these matters set forth herein, that the contents of these additional grounds for review pursuant to RAP 10.10, are true, correct, complete, and certain, appendix being admissible as evidence, not misleading, to the best of my personal knowledge, and sincere held spiritual convictions and creed.

I further certify that I mailed the enclosed brief to the court of appeals, counsel, and the State on the 26 day of October 2006.

SUBSCRIBED AND SWORN to before me, this 26<sup>th</sup> day of October, 2006.

James S. Anderson  
James S. Anderson  
Attorney, P.



MARY AMOSS  
Notary Public in and for the State of Washington. Residing in Walla Walla, Washington.

My Commission Expires: 9-1-2008

MINUTE ORDER  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

TE PRINTED: 12/20/04

-----  
SE NO. BA242561

E PEOPLE OF THE STATE OF CALIFORNIA  
VS.  
DEFENDANT 01: JAMES ANDERSON

-----  
INFORMATION FILED ON 02/28/03.

COUNT 01: 11350(A) H&S FEL - POSS NARCOTIC CONTROL SUBSTANC.

3/19/04 BENCH WARRANT IN THE AMOUNT OF \$50,000.00 RECALLED. (03/19/04).

ON 04/06/04 AT 830 AM IN CENTRAL DISTRICT DEPT 633

CASE CALLED FOR BENCH WARRANT HEARING

PARTIES: DAVID S. MILTON (JUDGE) STEFANIE PEREZ (CLERK)  
JANIS FONSECA (REP) ROBERT A. RABBANI (DA)

DEFENDANT IS PRESENT IN COURT, AND REPRESENTED BY STACY GRIFFITH DEPUTY PUBLIC DEFENDER

THE DEFENDANT IS ADVISED OF RIGHTS RE HEARING ON VIOLATION AND WAIVES RIGHTS TO A REVOCATION HEARING.

DEFENDANT AND COUNSEL ADMIT TO VIOLATION OF PROBATION IN OPEN COURT.

COURT FINDS DEFENDANT IN VIOLATION OF PROBATION.

PROBATION REVOKED

PROBATION REINSTATED.

PROBATION IS CONTINUED ON THE SAME TERMS AND CONDITIONS WITH THE FOLLOWING MODIFICATIONS:

AS TO COUNT (01):

SERVE ADDITIONAL 093 DAYS IN LOS ANGELES COUNTY JAIL

DEFENDANT GIVEN TOTAL CREDIT FOR 093 DAYS IN CUSTODY 062 DAYS ACTUAL CUSTODY AND 031 DAYS GOOD TIME/WORK TIME

PROBATION REPORT IS RECEIVED AND FILED.

PROBATION REFERENCE: X-1568Q18.

APPENDIX L

RICHARD SHUMSKY  
Chief Probation Officer

PROBATION DEPARTMENT

INSTRUCTIONS TO ADULT PROBATIONER

NAME JAMES ANDERSON PROBATION NO. 1868018

COURT NO. BA 242 561 COURT DATE 4-6-04

A copy of Court Order(s) is given 4-6-04 with the permanent instructions.  
(Date)

<input checked="" type="checkbox"/>	GRANTING
<input type="checkbox"/>	MODIFYING
<input type="checkbox"/>	RESTORING

- PROBATION OR
- DIVERSION OR
- DEFERRED ENTRY OF JUDGEMENT

In addition to the conditions of your grant of probation or diversion which are contained in the Court Order, you are instructed by the Probation Officer as follows:

1. To notify the Probation Officer before changing your address or employment.
2. To remain in Los Angeles County or county of residence unless permitted by the court or Probation Officer to go elsewhere. Request to leave the State should be made two months in advance.
3. To report to the Probation Officer in person as directed. The office is closed Saturdays, Sundays and holidays.
4. To obey all laws.
5. To notify the Probation Officer of any arrests within 24 hours after they occur.
6. If applicable, pursuant to Section 457.1 Penal Code or 11590 Health & Safety Code, you are required to register and provide proof of same within 30 days. Register according to your residence: Los Angeles City Limits -- LAPD, Parker Center, 150 North Los Angeles Street, 2nd Floor, Room 203; Unincorporated areas - "Public Counter", L.A. County Sheriff's Department, 12440 E. Imperial Hwy., Norwalk, CA; Other cities - local police station. You are required to present positive identification to the registering agency when you report for registration.
7. If applicable, pursuant to Section 290 Penal Code, you are required to register and provide proof of same within 5 working days of changing your address or name. Thereafter, you must re-register every year within 5 working days of your birthday verifying your name and address. Register according to your residence: (1) Los Angeles City Limits - LAPD Station policing the area where you live. (2) Unincorporated areas and cities policed by the Sheriff's Department - Note: If your conviction resulted from a crime against an adult, you must register with the Sheriff's Station where you reside. If your conviction involved a crime against a child (under 18 years of age) call (800) 299-8997 ext. 2900 for a recorded message announcing registration times and locations. (3) Other Cities - local police stations. You must present positive identification when you report for registration.
8. Other Instructions:

FAILURE TO REPORT IS A VIOLATION OF THE TERMS OF YOUR PROBATION.

You may be found in violation, or your probation may be revoked in your absence, if the court shall have reason to believe from the report of the probation officer, or otherwise, that the person so placed on probation is violating any of the conditions of his probation, or engaging in criminal practices, or has become abandoned to improper associates or a vicious life (1203.2 Penal Code), or if you are charged with and/or convicted of any new offense.

I hereby acknowledge receipt of a copy of the Court Order and above Permanent Instructions in this case(s).

I hereby acknowledge receipt of temporary instructions in this case(s). A copy of the Court Order will be provided at a later date.

[Signature]  
PROBATIONER  
5/5 / 2007  
20

[Signature]  
PROBATIONER  
20

by [Signature]  
DEPUTY PROBATION OFFICER

by \_\_\_\_\_  
DEPUTY PROBATION OFFICER

(See Reverse Side)

## MEMORANDUM

From: Susan Winnie, Judicial Assistant to the Honorable Bryan Chushcoff  
To: Timothy Jones, Deputy Prosecuting Attorney, Mr. James Anderson, and  
Mr. Steve Burgess  
Date: June 7, 2005  
Subject: State of Washington v. James Anderson, Cause #: 04-1-05095-4

Please be advised the Court received an anonymous voice mail telephone call yesterday. According to the court's telephone system, the call was received at 9:02 pm. I asked Judge Chushcoff to listen to the recording. He directed me to prepare this memo and to advise Tacoma Police Detective Reidburn. Detective Reidburn recorded the telephone message on a cassette tape recorder. A transcript of the telephone conversation is attached to this memo. This anonymous telephone message was saved and if counsel wants to listen to it, please contact me and make arrangements for all parties to be present in Court. Thank you.

APPENDIX 3

Hi, this is an anonymous phone call. I just want to say that Christopher Wayne Washington is the person who robbed the Safeway store on 4/8/04 around 3:45 a.m. in the morning at the 626 -- 6201 Sixth Avenue, Tacoma, for the Safeway store, and Christopher Wayne Washington is now in jail or prison for that robbery.

And I also want to say that James S. Anderson is innocent. He did not do the robbery for the Safeway store. Christopher Wayne Washington is the man you want for the robbery.

Thank you.

APPENDIX 4

4/8/04 10/11/04

**Subject S3: SUSPECT, UNKNOWN**

**Verified: No**

**PDA:**

Aliases:									
DOB:	Age:	20-25	Sex:	Male	Race:	Black	Ethnicity:	Non-Hispanic	
Height:	6'0"	Weight:	250	Hair Color:	Black	Eye Color:			
Address:				County:				Phone:	
City, State Zip:				Country:				Business Phone:	
Other Address:							Other Phone:		
Resident:	Unknown			Occupation/Grade:				Employer/School:	
SSN:				DOC No:				FBI No:	
State ID:				Local CH No:					
Driver License No:				Driver License State:				Driver License Country:	
Hair Length:				Glasses:				Facial Hair:	
Hair Style:				Teeth:				Facial Shape:	
Hair Type:				Speech:				Complexion:	
Appearance:	Casual			Right/Left Handed:				Facial Feature Oddities:	
SMT:							Distinctive Features:		
Attire:	white baseball hat/blue hooded sweatshirt/blue pants						Body Build:	HVY - Heavy	
Gangs:							Tribe Affiliation:		
Significant Trademarks:							Identifiers:		
Suspect Pretended to Be:				Modus Operandi:					
Place of Birth:				Habitual Offender:				Custody Status:	
Type of Injury:				Fire Dept Response:				Hospital Taken To:	
Medical Release Obtained:				Taken By:				Attending Physician:	
Hold Placed By:				Suspect Offense:	1201 - Robbery - Business - Gun				
Suspect Notes:									

**Weapon 1: Revolver**

Offense:	1201 - Robbery - Business - Gun		Serial No:		
Offender:	S1 - SUSPECT, UNKNOWN		OAN:		
Weapon:	Revolver		Automatic:		
Other Weapon:			Caliber:		
Action:			Gauge:		
Manufacturer:			Length:	8"	
Make:			Finish:	Silver	
Importer:			Grips:		
Model:			Stock:		
Weapon Notes:					

**Subject V1: [E] safeway**

**PDA:**

Aliases:									
DOB:	Age:		Sex:		Race:		Ethnicity:		
Height:	Weight:		Hair Color:				Eye Color:		
Address:	[REDACTED]			County:				Phone:	
City, State Zip:	[REDACTED]			Country:				Business Phone:	
Other Address:							Other Phone:		
Resident:				Occupation/Grade:				Employer/School:	
SSN:							Place of Birth:	000055	

APPENDIX 5

**SUPERIOR COURT OF WASHINGTON  
FOR PIERCE COUNTY**

BRYAN CHUSHCOFF, Judge  
Susan Winnie, Judicial Assistant  
Department 4  
(253) 798-7574

534 COUNTY-CITY BUILDING  
930 TACOMA AVENUE SOUTH  
TACOMA, WA 98402

October 14, 2005

Timothy Jones  
Deputy Prosecuting Attorney  
930 Tacoma Ave. S. #946  
Tacoma, WA 98402

Robert M. Quillian  
Attorney at Law  
2633A - Parkmount Ln. SW  
Olympia, WA 98502

James Anderson #2004260058  
4NC27  
901 Tacoma Ave. S.  
Tacoma, WA 98402

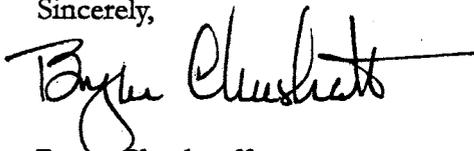
RE: *State v. James S. Anderson #04-1-05095-4*

Gentlemen:

I am in receipt of a letter and motion from Mr. Anderson. Enclosed, please find a copy of the same. In his motion, Mr. Anderson requests appointment of an investigator. It is my understanding from our last court hearing that Mr. Quillian *already has access* to an investigator. Is an investigator necessary to present Mr. Anderson's motion? Is it necessary because the Department of Assigned Counsel has determined not to allow the use of one of its investigators or to expend funds for a private investigator?

Because it is my understanding that such a motion is unnecessary, I hereby deny the motion without prejudice. Should my understanding be incorrect and should Mr. Quillian have need of such an order, he should renew this motion.

Sincerely,



Bryan Chushcoff  
Judge

Cc: Pierce County Clerk's Office for filing

APPENDIX 6