

A.M. OCT/-5 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] DEPUTY

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

STATE OF WASHINGTON

Respondent.

v.

ERIN N. KELLY

Appellant.

05-1-03539.2

Court of Appeals Cause No. : 34543-9-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I ERIN N Kelly, 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.

FILED
COURT APPEALS
06 OCT 13 PM 12:08
STATE OF WASHINGTON

Additional Ground I

The Bail jumping statute 9A-76120 is a violation of "CONDITIONS OF RELEASE". MY CONDITIONS OF RELEASE CLEARLY QUOTE (RCW 10-19), WHICH REQUIRES 2 ADDITIONAL ELEMENTS, SINCE I DID NOT VIOLATE THE GUIDELINES

Additional Ground II

That were set before me, to be imprisoned me for guidelines that were never established nor agreed upon. Violates my due process Right 14th Amendment to the U.S. Constitution

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

Date: 10/5/06

Signature: [Signature]

To the board of appeals: This is a request for you to consider these additional issues. In the November trial, the prosecutor withheld exculpatory evidence, during testimony, Mathew Morison, inadvertently testified, that the merchandise, and box, were finger printed. During recess, there was much discussion about the finger prints. Ms. Watson said to the defense attorney, "I don't know what you're so worried about, your clients prints were not there anyway. We took a recess, and def. atty. called the finger print place and had the results faxed to the court room. Before resuming the trial, def. atty. objected, and asked for the case to be dismissed. The judge asked Ms. Watson about the finger prints, and she told the judge she had a suspicion of whom the box stuffer might be, and she wanted to check the prints, but it turned out to be a false alarm. Then, each time we took a recess, John continued his objections. The trial was almost over, when, at this point, the security guy from target had already testified that he saw me handle, both, the stainless steel can and the plastic clam shell, but we knew this couldn't be true. The jury, however, was never let in on the information, that my prints were NOT on the merchandise, and that the security guy could not be telling the truth. The prosecutor had to have known this. In her closing argument, she even demonstrated 'me, pushing down on the stainless lid for the jury'.

I believe the prosecutor had a duty to disclose this information. Re: Brady vs. Maryland and the prosecutor's duty to disclose, 40 V.Ch.L Rev (112).n.10. at 125 [(1972)]

Federal Rules of procedure 1101 Article IV Relevancy and its limits; Rule 401. Definition of "Relevant Evidence". "Relevant Evidence" is: Evidence having any tendency to make the existence of any fact that is of consequence to the determination, more probable or less probable, than it would be without the evidence.

Discovery II: The Rule of Brady --- Mooney vs. Holohan, 294 US 103, 55 Supreme Court 340, 79 L. Ed, 791 (1935) The undisclosed evidence demonstrates that the prosecutors case includes perjured testimony, and that the prosecution knew, or should have known.

The defendants right to a fair trial, mandated by the due process clause, of the 5th amendment to the constitution.

Federal Rules of Procedure—Preparing for adjudication, chap. 13, part C--- 'Discovery' states, in part, If omitted evidence creates a reasonable doubt that otherwise did not exist, 'Constitutional Error' has been committed.

1.40 V.Ch.L.Rev [112].n.10. at 125 (1972). See Federal Rules of Criminal procedure, pg. 33, Supp. App.

United States vs. Bagley.473.US 667,105 Supreme Court 3375.87 L.Ed. 481 (1985)

Defendants have the right to discover all exculpatory evidence at the hands of the prosecutor. Federal Rules of Criminal Procedure

Federal Rule 167---United States vs. Ahmad 53 f.R.D. 186 (MD.Pa 1971)

Rule 26.2

Rule of Brady vs. Maryland 373 US 83.83 Supreme Court 1194.10 L.Ed, 2nd 215 (1963)---The suppression of exculpatory evidence, violated Brady's right to a fair trial.

California vs. Trombetta, 467 US. 479.104 Supreme Court 2528.81.L.Ed. 2nd 413 (1984)

RCW-30-12-090--- false statements

RCW -9-72-090---perjury

Directly, after giving the jury instructions, the prosecutor additionally told the jury, that, (again, this is from my notes, and not a direct quote) it did not matter if I put the merchandise in the box, nor did it matter if I had any knowledge of it even being there, that they were to decide on only if I had paid for the box, and not the extra contents, and it did not matter if I knew that any of those items were there or not, and that their verdict was to be based solely on if I paid for just the box, and then left the store. These statements denied me of my 'due process' right to a fair trial.

The trial was based solely on intent, there is no dispute, that an actual theft had ever taken place. I did not conceal any items, nor did I even leave the store, so the only possible issue to be addressed is INTENT. There by, prosecution relieved themselves of proving any element of the crime.

During closing arguments, these remarks by the prosecutor, were gross misconduct, that denied me of a fair trial. The prosecutor improperly focused the juries attention on facts that did not exist. **(A PROSECUTORS CONDUCT MAY WARRANT REVERSAL IF IT CAN BE SHOWN THAT, IT WAS BOTH, IMPROPER AND PREJUDICIAL TO HIS RIGHT OF A FAIR TRIAL.)** State vs. Stenson, 132 Wn 2d 668-19940 P. 2d 1239 (1997) Cert denied, 523 US.1008 (1998) -RE: The prosecutors conduct was so flagrant and ill intended, that it invites an enduring and resulting prejudice.

examined the front of the coat (with and without a large mirror) and the back (with a large mirror) and informed the jury that this was doubt, she divided it in half, then again, she shined in one position on the piece. The jury was told that this was there (on the top), and that they were allowed that much room for doubt of my guilt and should still convict. Ms. Watson continued by telling them that she knew they were reasonable people, and that a reasonable person would have that much doubt and still convict, and since they were reasonable people, that although they had that much doubt, they should still convict. In 1977, the Supreme Court explicitly held, "that the due process clause" protects the accused against conviction, except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged". In *Winship*, supra 1185, at 304, the court held that proof beyond a reasonable doubt is among the essentials of due process, and required fair treatment.

A simple instruction that the jury will acquit "if they have a reasonable doubt of the defendants' guilt of the crime charged in the indictments is ordinarily sufficient" *State v. Lafferty*, 416 S.W.2d 157 (Mo. 1968), *State v. Hall*, 267 N.C. 90, 147 S.E. 2d 548 (1966) and cases cited C.J.S. Criminal Law 1268 at 657, n.83, *People v. Cage* 41 Ill. 2d 528, 244 N.E. 2d 200, 204 (1969). This court has repeatedly held that the legal concept of "beyond reasonable doubt" needs no definition, and that where an involved instruction on that concept is given it may be deemed prejudicial error.

State vs. Broom, 268 N.C. 293, 150 S.E. 2d 416 (1966), 9 Wig more, evidence 2500, 2512, 2514, 22 A.C.J.S. Criminal Law 572, 577, Dec. Dig. Criminal Law 329-333.

In *Holland vs. United States*, S 3201, (12), the U. S. Supreme Court wrote that a reasonable doubt was, "The kind of doubt that would make a person hesitates to act". A phrase that remains the only official vetted definition.

In all criminal cases, the state has the burden of proving all essential elements of the crime beyond a reasonable doubt. (Custan.edu/chap6.htm)

Constitutionality required by the 14th amendment, "due process clause", it is defined as not a mere "possible doubt", but an abiding conviction of the truth of a charge after considering the entire case.

Shifting the burden of proof:

The overall 'BOP' remains on the prosecution through out the entire trial. It never shifts to the defendant to prove his/her innocence. Example- intent, "1979", the law presumes, "That a person intend the ordinary consequences of his voluntary acts". Conclusive or mandatory presumptions, (whether rebutted or not), are generally unconstitutional.

Francis v Franklin 471 U.S.307,85L.Ed.,2nd344,105 S.Ct(1965).

The acts intend presumption that is mandatory, that is, it tells the fact finder that it must assume the existence of intent, the existence of factors listed in the statute unless the presumption has been rebutted, 281 Ill App.3d.at440. This court further concludes that once presumption has been triggered, the burden of persuasion shifts to the defendant to disprove the element of intent. Under the U.S. Supreme Court holding in FRANCIS V FRANKLIN Supreme Court ruled that mandatory burden shifting of presumption violates due process of law under the U.S. constitution, 281 Ill.app.3d at 442. *Re. Win ship* 397 U.S.358,364,25L.Ed.2d,368,375,90 S.Ct. 1068,1073 (1970), *People v Hester*, 131 Ill. 2d 91,99,100 (1989)

In *State creditor* Dec.1996,749,130Wn 2d,747,927,P2d,1129 The court concluded that the state must prove every element of the crime beyond reasonable doubt, and shifting the burden of proof to the defendant, requiring the defendant to disprove an essential element of the crime is invalid.

MY RIGHT TO DUE PROCESS WAS FURTHER INFRINGED by being denied my constitutional right to face my accuser—November 16th, 2005. At the close of the trial, we had no idea whom the ‘box stuffer’ was. During a side bar, Ms. Watson was asked about the finger print issue. She told Judge Chushcoff, that she had a suspect that she believed was the ‘box stuffer’ and that is why she sent the finger print people out to Target. Prior to trial, she discovered it was a false alarm, as it was the wrong guy.

When the charging document for the second trial was issued, it stated that a former Target employee was shown a photo montage of 6 pictures and identified Throm, on 10/26/05. If this occurred as Ms. Watson claims, how is it that no charges were filed until December 31st, 2005. More to the point, Ms. Watson had a positive I.D. on October 26th, 2005, why did she not have a clue who he was during the November 16th, 2005 trial? My understanding, is that October 26th, 2005, was prior to October 31st, 2005, when the exculpatory finger prints were taken, and well before November 16th, 2005, at which time Ms. Watson had no idea who the ‘box stuffer’ was.

At my sentencing hearing, Judge Chushcoff enlightened us to the fact that there had been an informant. As this would now make a little more sense, I was denied my constitutional right, to face my accuser, and, I believe, my ‘due process’ right was further violated by the perjured statements on the charging document, and at the November trial.

Directly after giving the jury instructions, the prosecutor additionally told the jury that, ‘regardless of whether you believe that defendant actually paid for the merchandise in the box, nor did it matter if I had any knowledge of it even being there, that they were to decide on only if I had paid for the box, and not the actual contents.’ It did not matter if I knew that any of those items were there or not, and that their verdict was to be based solely on if I paid for just the box, and then tell the store. These statements denied me of my ‘due process’ right to a fair trial.

The trial was based solely on intent, there is no dispute, that an actual theft had ever taken place. **I did not conceal any items, nor did I even leave the store, so the only possible issue to be addressed is INTENT.** There by, prosecution relieved themselves of proving any element of the crime.

During closing arguments, these remarks by the prosecutor, were grossly mischaracterized that denied me of a fair trial. The prosecutor improperly focused the jury's attention on facts that did not exist. **(A PROSECUTOR'S CONDUCT MAY WARRANT REVERSAL IF IT CAN BE SHOWN THAT, IT WAS BOTH, IMPROPER AND PREJUDICIAL TO HIS RIGHT OF A FAIR TRIAL.)** State vs. Stenson, 132 W. 2d 668-19940 P. 2d 1239 (1997) Cert denied, 523 US 1008 (1998)—RE! The prosecutors conduct was so flagrant and ill intended, that it invites an enduring and resulting prejudice.

The average juror must have a right to a prosecutor made an unconstitutional...
 is not a direct conf... A generalization from my notes Ms. Watson went to a...
 board at the front of the court room and drew a large circle. She drew a large circle...
 informed the jury that this was doubt, she divided it in half, then again, she shaded in one...
 portion on the pie slice. The jury was told that there was no room for doubt, and that they...
 were allowed this much room for doubt of my guilt and should still convict. Ms. Watson...
 continued by telling them that she knew they were reasonable people, and that a...
 reasonable person would have that much doubt and still convict, and since they were...
 reasonable people, that although they had that much doubt, they should still convict.
 In 1977, the Supreme Court explicitly held that the due process clause "protects the...
 accused against conviction except upon proof beyond a reasonable doubt of every fact...
 necessary to constitute the crime with which he is charged". In *Re Winship*, supra...
 1185, at 304, the court held that proof beyond a reasonable doubt is among the essentials...
 of due process, and required fair treatment.

A simple instruction that the jury will acquit if they have "A reasonable doubt of the...
 defendant's guilt of the crime charged in the indictments is ordinarily sufficient" *State v*...
Lafferty 410 S.W.2d 187 (Mo. 1968) *State v Hall* 267 N.C. 90, 147 S.E. 2d 548 (1966) and...
 cases cited C.J.S. Criminal Law 1268 at 657, n. 63, *People v Cage* 41 Ill. 2d 528, 244 N.E. 2d...
 209, 204 (1969). This court has repeatedly held that the legal concept of "beyond...
 reasonable doubt" needs no definition, and that where an involved instruction on that...
 concept is given it may be deemed prejudicial error.

State vs. Brown, 268 N.C. 298, 150 S.E. 2d 416 (1966) *Wigmore* evidence 25-1...
 2512, 2514, 22A C.J.S. Criminal Law 572-577; Dec. Dig. Criminal Law 329-333

In *Holland vs. United States*, S 3201, (12), the U. S. Supreme Court wrote that a...
 reasonable doubt was, "The kind of doubt that would make a person hesitates to act". A...
 phrase that remains the only official vetted definition.

*In all criminal cases, the state has the burden of proving all essential elements of the...
 crime beyond a reasonable doubt. (Cstanu.edu/chap6.htm)*

Constitutionality required by the 14th amendment, "due process clause", it is defined...
 as not a mere "possible doubt", but an abiding conviction of the truth of a charge after...
 considering the entire case.

Shifting the burden of proof:

The overall 'BOP' remains on the prosecution through out the entire trial. It never...
 shifts to the defendant to prove his/her innocence. Example- intent, "1979", the law...
 presumes, "That a person intend the ordinary consequences of his voluntary acts".
 Conclusive or mandatory presumptions, (whether rebutted or not), are generally...
 unconstitutional.

Francis v Franklin 471 U.S.307, 85 L.Ed. 2d 344, 105 S.Ct (1965).

The acts intend presumption that is mandatory, that is, it tells the fact finder that it must assume the existence of intent...
 the existence of factors listed in the statute unless the presumption has been rebutted. 281...
 Ill App.3d.at440. This court further concludes that once presumption has been triggered...
 the burden of persuasion shifts to the defendant to disprove the element of intent. Under...
 the U.S. Supreme Court holding in FRANCIS V FRANKLIN Supreme Court ruled that...
 mandatory burden shifting of presumption violates due process of law under the U.S...
 constitution. 281 Ill.app.3d at 442. *Re. Win ship* 397 U.S.358, 364, 25 L.Ed.2d.368, 375, 90...
 S.Ct. 1068, 1073 (1970), *People v Hester*, 131 Ill. 2d 91, 99, 100 (1989)

In *State creditor* Dec.1996, 749, 130 Wn 2d.747, 927, P2d.1129 The court concluded

PROSECUTIONS USE OF EDITED, ALTERED, AND DUBBED VIDEO:
violates RCW 9A-72.150, RCW 972-090- Altered Evidence, RCW's 10.37.140,
10.37.065, 10.37.070, Tampering with Evidence, The use of edited or altered video-
RCW 972.

FEDERAL RULES OF CRIMINAL PROCEDURE- Article IX. Authentication and Identification, Rule 901. The requirement of authentication as a condition precedent to admissibility is satisfied by evidence, sufficient to support a finding, that the matter in question, is what a proponent claims.

Rule 1009- requirement of the original Federal Rules of evidence: Requires originals or duplicates, (exact copies), in special circumstances. Edited or altered video tape, would not be an original, unless the fact that it was edited or altered, was the key to the trial. Law. Cornell.edu/rules/frc/rul

Specifically, the statement by Mathew Morrison, on 11/16/05, page 33, line 6, states: "The tape that was made, I believe, was dubbed by Syed", (in response to the question, 'Did you make a video in this particular instance'?

11/16/05—page 15, line 4-13: Re: Prosecutors statement, "He is asking about a tape that was created after officer Bundy was at the store. We do not know if it is the same tape, I mean, the tape, I believe, council is referring too".

11/16/05- page 16, lines 9-12, states: "Now, Ms. Watson has accurately pointed out, that what officer Bundy saw on the day in question, is not the same tape we are going to be watching today, at trial." --My constitutional right to a fair trial, was denied, by the submitted evidence of edited, and altered video, which influenced a prejudicial jury, in blatant disregard of RCW 9A-72.150, RCW 972-090, RCW 10.37.140, RCW 10.37.065, RCW 10.37.070, and RCW 972, along with Federal Rules of Evidence 1101.

ARTICLE IV: RELEVANCY AND ITS LIMITS, ARTICLE 1X; AUTHENTICATION AND IDENTIFICATION, RULE-1002, REQUIREMENT OF THE ORIGINAL. THE 5TH AMENDMENT TO THE CONSTITUTION: RE: THE DEFENDANT S RIGHT TO A FAIR TRIAL, MANDATED BY THE 'DUE PROCESS' CLAUSE.

Statutes-criminal law-construction-Rule of Lenity-**In general, under the rule of Lenity, ambiguous criminal statutes must be strictly and liberally constructed in favor of the defendant.**

Statutes – Construction: Ambiguous language will be given their plain or ordinary meaning.

State. U.S./ courts / opinions, app. Ct 2002.

1st district April Wn. 1993 613 Dec.

State vs. Johnson 66. Wn.app.297,831.pd1137.

Uncontrollable circumstances not being defined in the statute itself, courts must resort to the common law definitions.

Peasley V. Puget Sound Tug and Barge 13 Wn .2d.485, 504, 125 p2d 681 (1942).

State Vs. Krup 36Wn app 454, 457, 676, p2d. 507see RCW 9a.04.060, Common law provisions supplement criminal statutes. 72Wn app. 774, 776, 78, 868, p2d, 158, (1994).

State vs. Byrd

Bail jumping-legislative intent-house bill # 1227
States in part, that an affirmative defense has been added, so that persons trying to act responsibly are not punished.

In the absence of specific statutory definition, words in A statute are given their common law or ordinary meaning, Alvarez 128 2d at 111, state v smith, 117 Wn 263, 271, 814, p2d, 652 (1991), A non-technical word may be given its dictionary definition. State v Fjermstad 114 Wn.2d 828, 835, 791, p.2d, 897 (1990)

Webster's new world addition:

An – Meaning one, each, solo, per, as in one per customer.

A - meaning: one, each, per, singular, alone.

Reasonable - meaning: sensible, wise, ability to reason.

Doubt- meaning: to be uncertain, undecided. Unsettled point, wavering of opinion.

Bail- meaning: money deposited with the court to get an arrested person out of jail, to bear a burden. To help with financial difficulties. A bucket for dipping water (from a boat). to dip out. A hoop shaped handle for a bucket. To parachute from an aircraft. A jewelry finding attaching a chain and pendent.

Knowledge- the fact or state of knowing, range of information, the body of facts, knowingly. Shrewd, cleaver, secret understanding.

Dubbed- To insert, to make a new recording from an original, in order to make changes such as cuts or additions, to insert in to a tape.

Additionally 9A 76170 is unconstitutionally shifts the burden of proof to the defendant. To prove they were there rather than the prosecution proving they were not.

Statute, unconstitutionally shifts the burden of proof on an element of the crime to the defendant. IN RE. WINSHIP, 397 US 358, 364, 25 Led.2d 368, 90 s. ct. 1068 (1970); Sandstrom v Montana, 442 U.S. 510, 61 L. Ed 2nd 39, 99 s. ct. 2450 (1979) State v Roberts, 88 Wn 2nd 337, 562 p.2d 1259 (1977) county court of ulster cy.v. Allen, 442 U.S. 140, 60 L. Ed. 2d 777, 99 s. ct. 2213 (1979)

Bail jumping – elements:

A statute – construction- constitutional construction. The court will not adapt an interpretation that renders it unconstitutional.

BAIL JUMP HEARING STATEMENTS
 BAIL JUMPING: RCW 9A-70-176:

I WOULD ASK FOR POST TRIAL RELIEF ON MY NOVEMBER
 BAIL JUMPING CONVICTION BASED ON THE
 PROSECUTIONS FAILURE TO PROVE ALL ELEMENTS OF THE CRIME.

TO BE CONVICTED OF BAIL JUMPING ONE OF THE ELEMENTS OF THE CRIME IS THE
 THEFT IN THE SECOND DEGREE. I WAS CHARGED WITH THEFT IN THE FIRST DEGREE.
 BY OMITTING AN ELEMENT OF THE CRIME, THE PROSECUTOR HAS UNCONSTITUTIONALLY
 RELIEVED HIMSELF OF PROVING ALL ASPECTS OF THE CRIME.

EASTMAN: 129 WN 502
 STATE OF WASHINGTON VS. JOHNSON ;66 WN. APP. 297, 831, P29 & 1137

STATE OF WASHINGTON VS. BERGERON 65 WN. 2ND, 1985

STATE OF WASHINGTON VS. EMANUAL 42 WN. 2C, 799 819, 259, P2D 845 (1953 & 1942)

STATE OF WASHINGTON VS. BURD 125 WND 2D, 221, 237, 559, PG. 2D

HARMLESS ERROR DOES NOT APPLY IN TO CONVICT INSTRUCTIONS: IE:

STATE OF WASHINGTON VS. EASTMAN 129. WN 2D 497.503, 919 PD. 577 (1977)

WPIC 120.41 STATE VS. IBSEN 98 WN APP. 214, 989 END 1184

STATE OF WASHINGTON VS.. SMITH 131WN 2D 263, 258, 265, 930, R2D91

UNDER CURRENT COMMON LAW: "PERSONS ACT WITH KNOWLEDGE, WHEN THEY ARE AWARE THEIR
 ACTIONS COULD RESULT IN A CRIMINAL OFFENSE".

A KNOWLEDGE ELEMENT IS CODIFIED FOR THE CRIMES OF ESCAPE AND BAIL JUMPING
 AND PROVIDES AN AFFIRMATIVE DEFENSE.

"STATES IN PART THAT AN AFFIRMATIVE DEFENSE HAS BEEN ADDED SO THE PERSON TRYING TO
 ACT RESPONSIBLY IS NOT TO BE PUNISHED".

IN DETERMINING THE MEANING AND SCOPE OF A STATUTE, GENERAL
 PRINCIPLES OF STATUTORY CONSTRUCTION APPLY. THESE PRINCIPLES IN INTERPRETING
 A STATUTE, THE FUNDAMENTAL DUTY OF THE COURT IS TO ASCERTAIN AND CARRY OUT
 THE INTENT OF THE LEGISLATURE. STATE OF WASHINGTON LAVERVEZ: 128 wa 111,904, p2d,754 (1995)

RWC 9A 76170 IS

STATE VS. CHESTER: AUG 1997. 133wn, 2d 5, 940 p2d 374

BAIL JUMP HEARING STATEMENTS

TO BE CONSISTANT WITH DUE PROCESS, A PENAL STATUTE OR ORDINANCE MUST CONTAIN A CERTAIN STANDRD OF GUILT, SO THAT MEN OF REASONABLE UNDERSTANDING, ARE NOT REQUIRED TO GUESS AT THE MEANING OF AN ACTMENT.

SEATTLE V. DREW, 70 Wn 2d405, 408, 423, p2D 522 (1967)
 BELLEVUE V. MILLER 85Wn 2d 539, 543, 44, 536, P2d, 603 (1975).
 THUS THERE ARE DUAL PROCESS CONSIDERATIONS IN ANALYZING POTENTIONALLY VAGUE STATUTES.

PAPACHRISTOU V. JACKSON 405 U.S.156, 31L. Ed. 110, 92, 5 CT. 839 (1972)
 SEATTLE V. PULLMAN 82,Wn 794,797, 514. P2D 1059 (1973)

UPON MY RELEASE I WAS PROVIDED WITH PIERCE COUNTY SHERIFFE'S DEPARTMENT RELEASE FROM CUSTODY: WHICH CLEARLY STATES: YOU ARE HERE BY DIRECTED TO APPEAR AT : PIERCE COUNTY SUPERIOR COURT, RM. 550 / 560 IN THE COUNTY CITY BUILDING , TACOMA WASHINGTON.

INDETERMINING THE MEANING AND SCOPE OF A STATUTE, WE APPLY GENERAL PRICNIPLES OF GENERAL CONSTRUCTION. THOSE PRINCIPLE PROVIDE THAT IN INTERPERATING A STATUE, THE FUNDAMENTAL DUTY OF THE COURT IS TO ASSERTAIN AND CARRY OUT \

YOUR COURT DATE IS ON: JULY 19, 2005. at 1:30 PM.
 YOUR FAILURE TO APPEAR FOR THE COURT HEARING MAY RESULT IN THE ISSUANCE OF A BENCH WARRANT FOR YOUR ARREST / YOUR MONIES FOREITED AS BAIL.

IN ADDTION I WAS GIVEN AN ORDER ESTABLISHING RELEASE CONDITIONS: " FÁILURE TO APPEAR AFTER HAVING BEEN RELEASED ON BAIL, IS AN INDEPENDENT CRIME PUNISABLE BY 5 (FIVE) YEARS INPRISIONMENT OR \$10, 000.00 OR BOTH. (RCW 10.19)

RCW 10.19 IS THE PROPER RCW THAT I SHOULD HAVE BEEN CHARGED WITH .
 RCW 10.19 , THE FEDERAL BAIL JUMPING CHARGE, 18USC3146 AND THE COMMON LAW REQUIRE THE SAME ELEMENTS AS FOLLOWS:

- #1. THE PERSON ADMMITTED TO BAIL
- #2. FAILED TO APPEAR AS REQUIRED AND FOREFITURE HAS OCCORED.
- #3. PERSON DID SO KNOWINGLY AND WILLFULLY.

Criminal law-trial- instructions to jury-

Failure to instruct the jury on an essential element of the crime, relieves the state of the burden of proving each element of the crime beyond reasonable doubt.

State v Eastman 129, Wn.2d. 497, 503, 919, pd. 577,wpic, 120.41 (1996), State v Ibsen 98 Wn, app. 214, 989, END.1184 (1999) , State v Smith 131 Wn 2d. 263, 258, 265, 930, R2D.917 (1997), State v Johnson 100 Wn,2d 607, 623, 674, E2d, 145(1983), State v Bergstrom 65 Wn 2d.1 (1985), State v Emmanuel 42 Wn.2d 799, 819, 259, p.2d,845(1953), and, 42 Wn.2d at 81920, State v Wondrow, 88 Wn. 2d. 221, 237, 559, p2d. 548(1977), State v Goladay 78, Wn. 121. 139, 470, p.2d 191 (1970), State v Stephens 93 Wn. 2d at 191, State v Byrd 125 Wn.2d 707 (1995) State v Brown 94 Wn.app. 327, 339, n.3 E2d,112 (1999)

In closing , I believe in effectiveness of council further damaged my due process right to a fair trial. I understand that Mr. Austin was put in right in the middle of the case, there were numerous errors that damaged the jury's ability to come to fair decision.

Council failed to object to the addition of the bail jumping charge, council also failed to recognize that the state filed for A bench warrant after A quash hearing had already been scheduled. Council fail to provide A defense, because the truth did not fit in the act of nature pattern defenses, council refused to let me testify, because when he asked me what I was going to say on the stand, I told him I was going to tell the jury exactly what happened. He informed my that he could not let me do that because it did not fit in the guide lines of the affirmative defense. When I said to I didn't care I was telling the truth and we would let the jury decide, he refused to let me testify. I thought before the end of the trial the judge would at least ask me if I wanted to say anything, but I was tried twice and no one let me speak one word, not one.

Council failed to object to a number of other incidents. The altered video tape the jury was shown, the substitution of videos from trial one to trial two. Target personnel assureds us in trial one that we were given all the video, however A new tape seemed to surface in trial two , with out the benefit of due process (discovery) please note after the second trial I requested to view the second tape with A witness that had been at the first trial and seen the first tape, both defense council and council for the state refused, I also asked to go to the dac office or prosecutors office and view the tapes from there safes, both of these requests were denied. Since the tapes had booth been altered they never should have been allowed in to evidence,(federal rules of evidence)

Defense did object to the with holding of the finger print issue, the evidence was never given to the jury. Defense then failed to object when the state substituted a key witness in the second trial,(the finger print expert, allowing the substitute to testify as to what the original witness may or may not have seen.

Defense also failed to object when Jane Melby testified as an expert witness, while I am sure she is qualified, she is also the original prosecutor on this case and was privy to information that some one out side the case is nontraditionally I believe I recall her testimony to include A statement to the jury that " she did not have any personal knowledge of this case) which could not be possible as she was the prosecutor on this case at the time I was late for my pre trial conference and charged with bail jumping..

Council failed to object when having been charged with 1 st degree theft, I was tried on second degree, thus reliving the prosecutor of proving all the elements. In the closing of the second trial, the state instructed the jury of two things with were morally if not legally reprehensible. The first after the formal jury instructions, the state informed the jury that they had this much room for doubt, and could still convict, while drawing A pie and shading in about 20 % slice, while A very clever ploy , I do not think that our forefathers intended 20 to 25 % to depict (beyond reasonable doubt) the over all definition was warped and hallucinatory.

The second was to inform the jury that “ it didn’t matter if miss. Kelly knew the merchandise was in the box or not or if I had any thing to do with it, they were to base their decision solely on if I paid for the box and not the contents” Defense failed to object to this statement. This case was based entirely on intent no actual theft ever took place. This is an undisputed fact . I did not conceal any merchandise nor did I attempt to exit the store . So for the prosecutor to relive her self of proving the element of intent , in a trial base solely on intent, is unconstitutionally defective.

The November trial pattern jury instructions were failed to be objected to by either council, as they both provided the jury with different versions one being relived of the element of knowledge, thus further reliving the hidden element intent, or willfulness, the prosecutor relived her self of proving any thing, by shifting the burden on to the defense, which was then systematically dropped, when the defendant was not allowed to testify in her own behalf.

Thank you ,
Erin Kelly