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NO.34835-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

TED * JENSEN,

Appellant.

07 MAR -8 PM 1:20
STATE OF WASHINGTON
BY
DEPUTY

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

The Honorable James Warme

ADDITIONAL GROUNDS FOR REVIEW

(R.A.P. 10.10)

OF APPELLANT

TED * JENSEN, #903680
Appellant/Defendant

c/o MCC/WSR, C-436
P.O. Box 777
Monroe, WA 98272-0777

ADDITIONAL GROUNDS

(Title of Issues)

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COURT OF APPEALS
DIVISION TWO
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, v. TED * JENSEN Appellant.	)))))	CAUSE NO. 34835-7-II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW (R.A.P. 10.10)

I, TED * JENSEN, have recieved and reviewed the opening brief prepaired by my attorney. Summarized below are the additional grounds for review that are not addressed in that breif. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

1) During all pre-trial hearings the court denied the Defendant his right to participate, and be confrounted by his accusers. The court and both the Prosecutor and the defendant's assigned counsel refused to acknowledge or accommodate for the defendant's extreme hearing loss and inability to understand or follow what was said during these discussions.

At three hearings the defendant was physically brought into court, but not even aware that the proceedings had begun until he was directly addressed by the Judge and removed from the courtroom.

The defendant made numerous complaints to the court, the prosecutor and to his assigned counsel, Mr. Copeland, all written

notes and letters I wrote to each were summarily disreguarded, when I expressed my concerns to the assigned attorney Mr. Copeland, and asked him to tell me what had gone on in court and to explain to me what was discussed and decided, I was simply told that "he did not have the time to explain and that it was not important".

A person accused of a crime and who is the object of a criminal proceeding by the court has a right to be present and to understand what is taking place during all phases of the criminal proceedings in which he is accused of being guilty.

Any person who speeks a different language is provided an interpeter who translates orally from one language into another, a person who is totally deaf is provided with a interpeter who signs or in another way translates what is said into a fashion that is understood by each defendant as the situation warrants.

In the case now being reviewed the defendant was denied all consideration by all court officers that he was physically handicaped and unable to understand or derive any meaningful diolog from the court proceedings leading up to his trial.

The right to be present at court proceedings and to be present when motions are made or decisions are made is a founding cornerstone of our court system, at the very least interpetation of this is the right to be informed by his appointed attorney of what is being said and what has been decussed and decided.

Additional Ground 2

2) The defense was denied timely and or inteligable Discovery, specifics of the physical evidence to be entered and used against the defendant at trial and the expected line of questioning or the expected testimony of the state's witnesses to be used against him.

- Transcripts of the Statements made by the "victim" G. Snapp, and other witnesses called by the prosecutor were withheld, and delayed, (even in one significant case until the day prior to the start of the trial)...Susan Meyer...and when provided were paraphrased and incomplete. During testimony the line of questioning was completely different and the testimony changed from the statements made.
- Verbatim transcripts of the interview by the Police with

the defendant were incomeplete, abridged and not the same statements given as testimony by the officer's called to testify by the state to convict the defendant.

- The interview and statements given by the defendant were made against the defendant's will, and under duress while he was bleeding in a "clear holding cell", as the only way that he would be allowed to have access to water or tissues, and to be released to return to the emergancy room for further treatment and care. And after the defendant had expressly requested to have an attorney present before and during any and all questioning, he waived no rights.
- The transmitted copies of Photos used as evidence during the trial by the state were not possible to reproduce by the defense in a manor that could be reviewed due to a known differance in the "computer systems" (updated in the prosecutor's office) and those used by the defense counsel being incompatible.

** The defendant was denied effective counsel in these and other matters that resulted in his subsequent conviction by:

- the assigned attorneys failure to review the "discovery given" until after the trial had begun, or making an attempt to reproduce the photos used by the prosecution prior to the start of the trial...and to make known his total lack of ability to reproduce the copies to the court and the in a timely mannor to allow correction of the error instead of the judges decision that it was to late to come forth with the problem at that time.

Without the defendant and his assigned counsel being provided complete and inteligable discovery by the State's Prosecutor, the defense was significantly disadvantaged in it's ability to review and prepair a competent defense. The actions alone prejudiced the trial and had a direct bearing on the outcome of the defendant's trial ending in his conviction.

Additional Ground 3

3) The defendant was not provided a complete listing of the

State's witnesses to be called at the trial, their statements or the expected line of questioning and the expected testimony to be sought.

- this ommition by the state severly limited the defense in it's ability to adequately prepair any defense or present focused examination of these witnesses, as is also a fundamental right guaranteed to the defendant.
- this also prevented the defense the option of providing informed examination or evidence of false testimony and statements given during the trial by these state's witnesses upon which the jury relied on to reach it's verdict and decision. Or to question targeting significant changes in their statements given to police prior to the trial and their testimony when serveral variations occured which had such an importance as to even enfluance the decision to file charges.

*** Simply the defendant was denied his right of discovery preventing competent and informed questioning of the witnesses and testimony/evidence used against the defendant during the trial.

Additional Ground 4

4) The defendant was denied his right to call or have the court serve notice to appear as witnesses for his defense, or that had firsthand knowledge related to the people and events of the alledged crime.

- the defendant was told expressly by his court appointed counsel that (7) witnesses including the Emergancy Room Dr. who attended him upon his arrivial at the hospital and prior to his arrest and detention would be testifying.
- the defendant provided a detailed listing of (12) witnesses who had firsthand knowledge of the defendant and the "victims" relationship, their activities immediately prior to the confrontation which happened on 01 November, 2005, or were in posession of documents which existed and would prove the testimonies given as fact or fiction - true or false.
- this exception to the defendant's right to call witnesses in his own behalf even extended to the clear violation

of position, court proceedure, or office in the fact that the State's Prosecutor herself called the attending physician, (a defense witness), during the trial and informed him that he did not need to appear and was not needed at the trial. Even the assigned counsel for the defense refused to note to the court that this had been done when he informed the defendant what had happened...instead the defendant's counsel without discussion with his cliet, stated to the court that the defense would not call any witnesses and rested it's case without offering any defense or discussion with the defendant.

- further the court's assigned defense counsel specificly acted counter to the defendant's clearly stating his wish to testify in his own behalf since no other witnesses were to by called for his defense...instead of Mr. Copeland, informing the court of the defendant's wish to testify, Mr. Copeland, stated to the judge, "well your honor, it looks like we'll be finished well within the three days as expected, in fact we should be done before noon".

-- (This crutial witness excused by the state prosecutor was served a summons by the court as a witness for the defense, how con justice and the rights of the accused be applied or protected if the prosecutor is allowed to chose the defense witnesses to be used?

As the attending M.D. for the defendant first to have contact with the defendant after the event, he could have presented factual testimony as to the defendant's wounds and their extent of damage to him. He also could have given reliable information as to the extent that they likely would have effected or impaired his actions or reasoning immediately upon receiving such a tramatic head wound.

** But on no common understanding should the prosecutor be the agent to or allowed by logic to dismiss such an indispensible witness to the defense without the knowledge of the defendant...and upon all expectations and statements made to him by his trial attorney that this person would be present and called to testify for the defense.

*** (SEE APPENDIX "A") ***

Additional Ground 5

5) The defendant was denied his right to present evidence in his defense of the charges brought against him in this matter.

- The defendant's court assigned counsel, Mr. Copeland, and the "Investigator" selected by him - suppressed and purposely ommitted to collect and present physical evidence known to them and easily available to secure, documents indispencible to the defendant's ability to prove his statements and the statements given at trial on the witness stand while sworn to tell the truth, fraudulent and knowingly untrue testimony given to the jury during the trial.
- The defense attorney also failed to obtain D.O.C. documents that expressly stated and proved that the defendant was released on 02 December, 2004 from DOC custody after serving "the Maximum Term of Confinement" on cause # 02-1-1110-5, without being required to report to or being transfered to Community Custody. And also existing documentation that clearly shows that the 2001 cause # 01-1-511-5, and it's 12 month supervision condition has been completed and satisfied in olympia, WA and is not a current condition and no longer in effect. Reguardless of the wants of the prosecutor and the Longview, WA DOC officer. The defendant at the time of the crime charged against him was not required by court order or any relating Judgement and Sentence to be on Community Custody Statis, all conditions had been met and completed.

** (These documents still exist and are available, and should be considered when the court considers the prosecutor's "Cross Appeal" questioning these documents in the above named case).

i) In paragraph (2) two of this section, the documents described consist of four signed documents dated within a 3½-4 week period prior to the incident of 01 November, 2005. They are: 1) the guest sign-in sheet at the American Legion Hall, in Longview, WA ...in which the defendant signed the "victim" in the day that they met 4 weeks before the conflict, the defendant had set an interview to apply and seek assistance for Snapp, from the Veteran's Assistance Fund, for repairs to Mr. Snapp's R.V., and emergancy funds for gas and hygiene

needs. 2) the 1st Baptist Church in Kelso, WA in which the defendant brought both G. Snapp, and Susan Meyer, as guests to a quarterly budget meeting and banquet dinner, in which they were signed-in as guests, the defendant as their sponcer also sought to secure clothing, food, food vouchers and gasoline funds for each from the paster. 3) The Community House in Longview, WA the defendant accompanied and sponcered both S. Meyer and G. Snapp, (as they both had been forbidden entry or services for behavior and rule infractions for both meals and the "God's Closet" clothing bank run by the community house. The defendant and both Meyers and Snapp, had to sign-in and further the defendant had to sign a statement that he would accompany them both while they were on the Community House premises and be responsible for their actions. 4) The F.I.S.H. food bank and assistance program, the defendant offered transportation and referances to be assisted with food and funds for their immediate needs.

- All documents were easily obtained and thedefendant explained in detail the location of each tand the importance of the information contained in each, the dates that each occured to enable the defense attorney to repute the testimony given under oath by the "victim" G. Snapp, that he had only met the defendant and Ms Susan Meyer, 2-3 days before the incident of 01 November, 2005, and ahd only accompanied him "one time to the Salvation Army, it was safe, it was a sanctuary".
  The defendant provided his attorney 70 days prior to the trial additionally who to contact to obtain the documents, however, this very relavent evidence was totally ignored by the defense counsel and the "investigator" who was directed to only seek "Charactor Referances" from persons who had little or no firsthand knowledge of the Defendant or the "victim" G. Snapp.

• Evidence was present in the courtroom but not mentioned or entered that would have if presented to the jury would have been enough to disprove the State's theory that the Defendant had begun the altercation by "stabbing Mr. Snapp,

in the back while he knelt inside the R.V. to put on his shoes.

*** Present in the courtroom, in seperate paper bags, were both the defendant's and the "victim's" clothing obtained as evidence by the policefrom the parties as they received medical attention, and placed in the "Chain of Evidence" but never mentioned or presented. (The condition of the victim's clothing was known to the prosecutor, who had a mandate by law to acknowledge to the court and jury, any evidence that was known and would midagate the charge against the accused. Not to purposely focuse on testimony which was known to be untrue.

This evidence would have been sufficant toprove:

1. That the "victim" G. Snapp, had received no stab wound to back in the right shoulder area, and any scrape or broken skin would have happened by some other means, such as falling or striking his back against the wall and window handle above Ms Meyer's bed area. But most clearly not in an unprovoked atack by the defendant while his back was turned.

- This would have ner the needs of the defense to cause significant doubt on the presented line of events as presented by the State's Prosecutor, and also convencing doubt upon the credibility of the testimony given by the victim Mr. Gary Snapp, as a beliveable witness to solely base their decision to enter a finding of guilt.

** The court also was not offered any findings of D.N.A.

** The defendant did consent to giving a D.N.A. sample to the Longview, P.D. for compairison of samples taken from the clothing of both parties, the blood inside the R.V., and the knife given from the defendant's pocket upon first contact by the officers at the Wal-Mart with him.

A) The blood samples taken from the inside of the R.V. did not include any from the defendant.

B) The blood samples from the defendant's shoes would/did not match the victim's or the blood inside the R.V.

C) The defendant's clothing would have shown the blood to be his own and not that of the victim, and also the extreme amount of blood loss the defendant had sustained...suporting that if the defendant had continued into the R.V. to "attack" G. Snapp, as he testified his blood would have

certainly been detected in the amount of blood shown in the photo evidence entered by the prosecutor at trial.

=> D) The knife taken and entered as evidence of the Defendant being "armed with a deadly weapon", was specificly tested. (It was a knife that had two blades, both one-sided, both with a blade length of less than 3 inches, that were curved in such a arc that did not allow for "stabbing", and the blades both serrated with 3/8 inch teeth the entire length of the blades that were not at any time of it's existance sharpened or edged in such a way to by considered a cutting edge - the knife was for display only and not a tool or assault weapon).

- Upon state testing during the 90+ days prior to trial, no traces of the victim's blood type was found - no traces of any type of blood or tisue were found of any kind and certainly with a curved and serrated edge of the type the knife used as evidence by the state would have had both if it had ever been used at any time as the prosecutor had convinced the jury it had been.

E) Items taken from the victim G. Snapp, would have shown that he was fully clothed, shirt, jacket, shoes.

- The wounds described by the victim's Doctor, ie...left forarm, top of the foot ect. would have been visible on the clothing worn by the victim showing that he had his shoes on when he kicked at the defendant, and also had his shirt/jacket on when he tried to hit the defendant and the slieve was also cut.
- This evidence would have shown that thevictim was dressed in a manor to go outside to confrount the accused as both the defendant, state's witness-Susan Meyer and also the state's witness and Wal-Mart, security guard, Edward Nelson, testified he did. But, quite diferent than Mr. Gary Snapp, the "victim" testified and the prosecutor used as the basis of her arguments and theory of a stalking, jealous attack by a snubbed lover.

If this evidence gathered by the police at the scene and at the hospital for the express purpose of being used during the trial was used, the verdict would have been NOT-GUILTY.

Additional Ground 6

6) The defenant was given false and conflicting information and instruction by his court appointed counsel, that prevented him from making competent or informed decisions prior, during and after the trial. Thus putting the defendant at a disadvantage and denying him of adequate assistance of counsel. ie...

- the defendant was told before the first trial date set (January 2005 - within the 60-day limit) that the "victim" Snapp, had left the state and moved to California. He could not be found or contacted, and would not return. "It's now just a matter of going to court, don't worry about a defense".
- The defendant was told by his assigned attorney that the witnesses for the state, Trudy Wade, Charles Wade and Susan Meyer, were homeless and did not have a contact address so could not be found, that they also were of no concern, they would not be appearing in court so the state has no case.
- The night before the trial began, the prosecutor visited the defendant with the assigned counsel for the defense and made the Plea offer of "Attempted 1° assault" and drop everything else, with a sentence of 190 months.
- The defendant's attorney told him that he should not even consider the time, it would be 120 months not 190. "Not to say anything, to anyone, but the prosecutor was calculating the sentence as a "class A" crime and that the attempted assault was a "class B", so the time was not an issue to worry about. Taking a Plea Offer was not an option to the defendant, he had set the only Plea he would consent to would be - 4° assault, and possibly a misdeminor harrassment with the return of all property taken.

  The issue is that the defendant's attorney at all stages of his trial did not put forth an effort to prepair of present a defense of the charges against him, and actively ignored the information, questions and requests made by his client, while misleading him with false information keeping the defendant confused and uninvolved - abandoned -.

- The defendant was told by his attorney several times during the trial both orally and in writing that he'd have every oppertunity to testify before it is over if he wanted.
- The court was never informed of the defendant's intentions to take the stand and to testify, the defendant's attorney ignored all attempts to have the court reconize that he wanted to do so. The attorney simply stated that the defense had no witnesses to call and that the defense would rest.
- This was in direct violation of the defendant's right to testify in his own behalf, and crutial when the fact that the court assigned attorney for the defense offered no defense, called no witnesses, and even refused to challange testimony given against the defendant.

* In no way at any point during his involvment in this case did the attorney, Mr. Copeland, endever to protect the defendant's rights or to actively take a roll in prepairing a defense for the accused. At all times and in all instances Mr. Copeland, excluded the defendant's involvement at every stage of the court proceedings. to the point of never having an interview or any discussions related to the case, trial or what had or was happening during the hearings. Mr. Copeland, received but refused to act or present in the defendant's behalf motions and information sheets prepaired and mailed to him and to the court by the defendant...in effect the assigned counsel blocked all efforts by the defendant to access and address the court acting counter to his office and denying "due process" to his client in this matter. (Since the actions and events of this trial, Mr. Copeland, has within 5 months of the completion of the court proceedings, quit practicing law in the state of Washington, and moved to Indiana. It can only be thought that his interests and plans were centered on his planned move and leaving the state and his law/court interests to someone else to correct after he was gone.

- The defendant was expressly told by the court appointed counsel, that the knife obtained by the Longview, police at the "scene" was tested for D.N.A. and since no evidence of the victim's blood/tissue or any type of blood or tissue had been found..."it was of no issue at all, and he would not waste any time on it at all since it was not used in the crime it would no be used in the trial".
- The prosecution did enter this knife into evidence and use it to convince the jury that the defendant was armed with a deadly weapon.

  The jury entered a special verdict that resulted in an additional (6) six years confinement in prison - without any good time.

** It was specificly the court assigned counsels responcibility to challange this during the trial, which he pointedly refused to do saying, "it's an appeal issue, bring it up then".

=> In the Washington State sentencing Reform Atct of 1981, (CRIMES AND PUNISHMENTS).

9.94A.602. Deadly Weapon Special Verdict--Defination.

8) <u>Knifes</u> - "To prove a deadly weaponsentence enhancement for a crime committed with a knife having a blade shorter than three inches, <u>the state must prove</u> that the knife had a capacity to cause the victim's death <u>and was used in a way that was likely to produce or could have easily and readily produced death</u>. **State v. Zumwalt (1995) 79 Wash.App. 124, P.2d 319.**

** The defendant's attorney refused to challange the prosecutor's effort's resulting in effectively abandoning his client.

** It was the duty of the court to inform the jury of this relivent defination and rule of law, but it neglicted to do so placing the defendant at a distinct disadvantage.

** This error resulted in an additional finding of sentence enhancement for being armed with a deadly weapon, and (6) six additional years prison time added to his sentence.

- The defendant's court assigned counsel directly told him not to worry about the Harrassment and Car Prowl charges,

he was not hoing to do anything with them, "they were just added by the prosecutor to push a reason to take a plea. Mr. Copeland, did as he said, he did not offer any defense of either of these charges.

=> The result was being found guilty of (2) additional charges without the benifit of any legal representation, and 2 more sentence points, and 2 more years additional sentance enhancement with no good time.

- The court appointed defense attorney when told of a co-worker, who was very well known to the defendant for an extended period of time with several verbal conflicts. Simply wrote in big lettering across the papers to be used as questions and comments during the trial (ignored without comment or action by Mr. Copeland the entire trial) "SIT DOWN AND SHUT UP!!", he refused to inform the court, and said it's an issue for appeal. Then turned away and acted as if the defendant did not exist from that point on.

Additional Ground 7

7) The court Judge errored in his decision to supress all information and referances to the state's witnesses and the victim's acknowledged and commonly known daily usage and sales of Meth, Herion and prescription pills, stating that he would not allow referance to "BAD HABITS" as a means to side track the issues.
However, this same trial judge did allow these witnesses to make continued referance to the defendant's past use of over the counter inhalants, as the "Huffer", and directly casting doubt of his character in this unrelated labeling and derogatory mannor.

- The addmitted use and sales of Meth and Herion is not a "bad habbit", it is daliy felonious and criminal behavior in total disreguard of existing laws and socially accepted behavior which would reasonably impair judgement and reasoning of the parties involved.

** During trial no referance to the defendant's prior bad acts or even unrelated convictions is allowed by law. This is unaceptable for the court judge to rule in such a bias way that prejudiced the jury by it's simplely being.

This unfairly enhanced the prosecutor's successful efforts to prejudice the jury by refering to the defendant in an improper and demeaning mannor, (known to the prosecutor it's probable bias effects towards the defendant).

Additional Ground 8

8) The defendant was denied his right to ask witnesses who testified against him questions while on the stand.

- During the trial the defendant's appointed attorney refused to acknowledge all questions the defendant had written and put to him that were specificly directed to points brought out during the trial testimony, (8-10 pages).
- The court assigned attorney refused to listen to or consult with the defendant during all phases of the trial as issues, statements, discussions and exibits were presented. (Often in a angry and agressive way such as writing "sit down and shut up!!" Knowing of the defendant's extreme hearing loss.
- Refusing to talk to the defendant or to discuss with him at court breaks and recesses what had transpired at points that he had missed or not understood.
- The defendant's attorney refused to allow the defendant to to view or discuss any photos or other evidence presented for the defense to review as it was entered, the defendant was at and during all points that are protected rights, excluded from participating by both the state and his attorney. (By the defense counsel refusing [often by saying "I don't have the time to talk with you or explain all that"]).
- It is a fundimental responcibility of the defendant's attorney to make sure that his client is informed of what transpires during the trial and the pre-trial proceedings. Even more so when it is well known and reconized by all parties, the state, the trial judge and the defendant's attorney, his physical handicaps/limitations that prevent him from hearing because of distance, quick speach, soft or low voice...(the defendant was left out and not aware or informed of much of the testimony given, statements made and most all court discussions as if he were not present there in the court room and had no interest in what was happening and it did not matter at all).

*** (SEE APENDIX "B")

Additional Ground 9

9) The defendant was charged and held in custody for a crime based on false and misleading statements in the "Information and Probable Cause" sheet filed by L.P.D. Lt. Tim Deisher.

- This information sheet was used as the sole source of consideration during the defendant's arraignment for proceeding with prosecution, bail setting and conditions of release, granting the defendant with his release on his own reconnance or to remand the defendant to remain in custody until trial.
- The statements made by the arresting L.D.P. officer, Lt. Tim Deisher, (in writting) in the information, probable cause sheet. Listing the conditions, events and actions of the parties involved in the alledged criminal activity which occured in the parking lot of Wal-Mart, on the morning of 01 November, 2005. These sworn to events were proven false by Lt. T. Deisher's own testimony during the trial.

** (They were based entirely on conjecture, fourth and fifth hand hearsay made by unenvolved, unnamed person's, with unknown and unvarifiable information)

- The officer made the statements and presented them to the court as fact by his own firsthand knowledge and experance. (Knowningly doing so under penality of perjury), to influance the court and prosecutor in such a was as to support his false and bias information.

=> Lt. T. Deisher, testified under oath (3) three consecutive times facts completely opposite to his written "information" and sworn statements of fact beginning with the first sentence of this cornerstone of the State's case.

** (SEE Information and Probable Cause Sheet, L.P.D. Incident Number: L05-29519, written by Lt. Deisher, and the testimony of State's witness, Susan Meyer).

Additional Ground 10

10) The defendant's right to a "speedy and timely trial" was violated in knowing disreguard of his Constitutional Rights, set Federal Laws regulating trial time limits and the Washington State Court rules ie...CrR 3.3.

- The actual date that the trial began was 94 days after the Appellant's arrest on this charge, and 88 days after his arraignment and "commencement" date.

(a) CrR 3.3 - TIME FOR TRIAL

General Provisions.

(1) Responsibility of Court. It shall be the responsibility of the court to ensure a trial in accordance with this rule to each person charged with a crime.

(b) Time for Trial.

(1) Defendant Detained on Jail. A defendant who is detained in jail shall be brought to trial within the longer of:
(i) 60 days after the commencement date specified in this rule, or
(ii) the time specified in subsection (b)(5).

(5) Allowable Time After Excluded Period. If any period of time is excluded pursuant to section (e), the allowable time for trial shall not expire earlier than 30 days after the end of that period.

(e) Excluded Periods. The following periods shall be excluded in computing the time for trial:
(1) Competency proceedings, (2) Proceedings on unrelated charges,
(3) Continuances. Delay granted bythe court pursuant to section (f).
(4) Period between dismissal and refiling, (5) Disposition of related charge, (6) Defendant subject to foreign or federal custody or conditions, (7) Juvenile proceedings, (8) Unavoidable or unforeseen circumstances, (9) disqualification of judge.

(f) Continuances. Continuances or other delays may be granted as follows:
(1) Written agreement. Upon written agreement of the parties, **which must be signed by the defendant or all defendant's,** the court may continue the trial date to a specified date.
(2) Motion by the Court or a Partie. On motion of the court or a party, the court may continue the trial date to a specified date when such continuance is required in the administration of justice **and the defendant will not be prejudiced in the presentation of his defence. The motion must be made before the time for trial has expired.** The court must state on the record or in writing the reasons for the

continuance. The bringing of such motion by or on the behalf of any party waives that party's objection to the requested delay.

(g) Cure period. The court may continue the case beyond the limits specified in section (b) onmotion of the court or a party made within five days after the time for trial has expired. **Such a continuance may be granted only once in the case upon a finding on the record or in writing that the defendant wil not be substantially prejudiced** in the presentation of his defense. **The period of delay shall be for no more than 14 days for a defendant detained in jail,** or 28 days for a defendant not detained in jail, **from the date that the continuance is granted.** The court may direct the parties to remain in attendance or be on-call for the rrial assignment during the cure period.

- After two trial date extentions/continuances, and after the 60 day limit had expired, the court granted an additional 30 day continuance at the prosecutor's request. (for not being prepaired, the victim had not returned to Washington from California [and stated in writing he did not wish or plan to], the victim had not been questioned or interviewed by the prosecutor or defense attorney, state witnesses ie...Susan Meyer, Charles Wade and Trudy Wade had not been located and were transecate without a contact address.
- The defense attorney at the time of the request informed the court:
  1) that the request was being made at a time that the 60-day trial time limit had already expired, and
  2) that the defendant was not agreeable to any additional extentions, and was not consenting to the continuance.
  3) The defendant was **not asked to and did not sign a waiver** to allow for the trial to be reset a second time past the 60-day trial time limit.
  4) The defendant himself followed the proper proceedure to contest the trial date being set past the 60-day time limit by:
     a) informing the court and his attorney in writing that he did not consent to the trial date, and in no way waived his right to a speedy trial, either inplied or in writting.

b) The defendant also complied to court proceedure by notifying the court within 10-days, in writting the court date was past the 60-day trial time limit, and he did not consent to the trial setting either by implied or actual consent in writting.

c) The further requested in writting to the defense counsel, that the issue be set for docket and court review. The court and the prosecutor were sent copies of the defendant's hand written motion for review and docket setting. (No responce or reply was ever received from either the court or the defendant's attorney by the defendant, and no review or resetting of the trial date occured).

Additional Ground 11

11) The defendant was denied his right to be tried during trial by an unbiased and impartial jury.

- The defendant upon his being informed of the jurors who had been selected informed his trial attorney, Mr. Copeland that Ms Marsh, was a co-worker, who the defendant had known for almost a year. (Ms Marsh, was selected as the alternate juror, and had all the offices and attended the other jurors during all hearings, discussions, recesses and had uninhibited and continual contact with all jurors for the entire time of the defendant's trial.

=> Washington State Court Rules.

CrR 47 Jurors

b) Alternate Jurors. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall subject to the same examination and challanges, shall take the same oath, and have the same functions, Powers, facilities, and provilages as the regular jurors.

** (Each side is entitled to one peremptory challange... R.C.W. 4.44.140, Peremptory challenge defined).

** (A challenge for cause is an objection to a juror, and may be particular; that the juror is disqualified from serving in the action on trial...R.C.W. 4.44.150(2).

** A challenge for implied bias may be taken for any or all of the following causes, and not otherwise:

1) Consanguinity or affinity within the fourth degree to either party.
2) Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, to a party; or being a member of the family of, or a partner in business with, or in the employment of wages with or of a party, or being surity or bail in the action called for trial, or otherwise for a party. R.C.W. 4.44.180

** A challenge for actual bias may be taken for the cause mentioned in **R.C.W. 4.44.170(2).** But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he or she may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but that the juror cannot disregard such opinion and try the issue impartially. R.C.W. 4.44.190.

** **R.C.W. 4.44.170.** Particular Causes for Challenge. Particular causes for challenge are of three kinds:

1) For such a bias as when the existence of the facts is ascertained, in judgement of law disqualifies the juror, and which is known in this code as implied bias.
2) **For the existence of a state of mind on the part of the juror in reference in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.**

The selected "alternate Juror" Ms Marsh, and the defendant had an ongoing daily relationship as co-workers while employed at the Foster Farms Plant in Kelso, WA 98626, during the earlier part of the 2005 year. The relationship was one of supervisory staff and production worker, in which Ms Marsh, worked in the position of "Quality Control", and the defendant was employed as a production worker on the R.O.T.I.S. line.

The interaction between Ms Marsh and the defendant was one of constant disagreement and intervention by floor supervisors that often resulted in Ms Marsh, being asked to leave the area so that the defendant could continue with his duties.

The situation grew to the point that when Ms Marsh, and the defendant had the same break period it was decided by office staff that if Ms Marsh were in the smoking area first, the defendant would not enter to avoid discussions of work proceedures, and simularly when the defendant was in the area first, Ms Marsh would wait.

Further, Ms Marsh, being in a position of interaction with office personel and the floor supervisors, was informed of confidential information which would have biased her state of mind to the point that she could not function in an impartial mannor in relation to the defendant. ie...the defendant was on daily reporting and often had to submit 3-4 U/A's a week, often resulting in his being as much as 2-2½ hours late, the defendant was required to leave the work sight each Thursday at noon to drive to Vancover V.A. Hospital for a weekly aftercare program for Drugs/Alcohol Treatment, the defendant had been assaulted and treated in the Emergancy Room of the Hospitial for a fractured left cheekbone which was extremely swollen and brusied black for over 90 days and would tend to bias Ms Marsh when in a possition to discuss with the other jurrors and to form an oppinion as to the state's prosecution and the defendant's attorney not presenting any witnesses or defense. (Her opinion could not be impartial towards the defendant and her discussions with other jurors could not have avoided inclinations towards her state of mind and actual bias resulting from her firsthand knowledge and interactions with the defendant).

Ms Marsh, by her refusal to state to the court her knowledge and relationship with the defendant alone should be an example of her state of mind. The omission of making known to the court that she had an oppertunity to the knowledge of his prior term in prison for an assault with a daedly weapon, and seeing the defendant daily with a swollen and brused face and cheek. would have been on it's own merit enough to disqualify her as eligable to serve on the defendant's jury.

The defendant did all he was allowed to inform the court prior to the beginning of the trial by his efforts to insist his court appointed attorney bring the matter to the courts attention. (The defendant's attorney simply stated that it was not his concern

and could not take the time to listen, to, "SIT DOWN AND SHUT UP" across the note paper the defendant used to attempt to have questions asked by writing them for his attorney.

Every effort was made to have the court and attorney acknowledge the defendant who explained the adverse conditions the had existed between the defendant and Ms Marsh. The defendant was ignored by both court and attorney, (Both worked for Foster Farms). *** (SEE APPENDIX "C") **Additional Ground 12**

12) The court errored in not giving the jury a "NO DUTY TO RETREAT" instruction when the prosecutor's closing focused on exactly the elements included and that make this instruction so important in her efforts to obtain a conviction.

By focusing on the fact that the defendant should have left when he "had disarmed the victim two times" in her opinion, and without considering the defendant's frame of mind as being afraid to again turn his back on a person who has already attacked him twice with two different weapons, (a metal flashlight and a knife).

The defendant used only the "force" and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the defendant...at the time of...the incident.

In State v. Wooten, 87 Wn. App. 821, 945 P.2d 1144, "Force was defined as necessary when 'no reasonably effective alternative ...appeared to exist and...the amount of force used was reasonable to effect the means as a reasonably prudent person would use"

In this incident, "no reasonable effective alternative appeared to exist and the amount of force used was reasonable to effect the end of the threat to the defendant's life and well being, under the ciucumstances as the appeared to the defendant at the time and place of the incident".

** In Wooten, (3) Criminal Law - Self Defense - Agressor - Instruction - No Duty to Retreat - Test.

A defendant charged with an assaultive crime is entitled to a "no duty to retreat" instruction if:

(1)the defendant raises the theory of self-defense, (2) the defendant was not in retreat at the time the charged crime was perpetrated, (3) the defendant was assaulted in a place where the defendant had a right to be, and (4) in the absence of the

instruction thejury could conclude from the evidence that flight would have been a reasonably effective alternative to the defendant's use of force.

The prosecutor committed misconduct in closing argument. because her focusing on (4) above, closing was focused on defendant's not leaving after having disarmed the "victim" of two weapons, but by his own testimony continued to be actively involved by hitting and kicking the defendant, the court errored by not giving the jury a "no duty to retreat" instruction. The prosecutor by purposely omitting the instruction, and the defendant's attorney in not reconizing these errors when the defendant tried to strongly insist that he raise the issue be buought up to the judge and to the jury. The defense attorney was ineffective in his assistance by allowing the defense to be so disadvantaged by the prosecutor's manipulation of the jury and disreguarding the defendant's interests in seeking a quick ending to the trial.

Wooten further states in (4) Criminal Law - Trial - Instructions - Harmless Error - Test.

> (4) An instructional error in a criminal trial is harmless only if it is trivial, formal, or merely academic and a reviewing court is convinced beyond a reasonable doubt that the jury would ahve reached the same result had the error not occurred.

As the issues refered to the conditions of the No Duty To Retreat Instruction were the basis of the state's closing efforts to obtain a guilty verdict from the jury, it can not be considered a "harmless error" and without the instruction being given to the jury they would have had no option to consider the prosecutor's presentation as anything but sound reasoning based on her experance in law. They were biased by her statements and a diferant verdict is very likely if the instruction was given.

Additional Ground 13

13) The evidence and testimonies given during the trial before the court and jury were not based on fact, consistant testimony or conclusive in nature with one another but conflicting.

The conviction was reached without satisfying the requirement of the state "proving beyound reasonable doubt" the charges aginst the defendant.

- The statements given by all the state's witnesses were completely oppisite accountings of the "same event". The victim, states knowing the defendant 2-3 days the same time he states he has known Susan Meyer, a person who was living in the R.V. with him. The victim states that Susan Meyer, was not in the R.V. when the altercation transpired, S. Meyer, testifies that the event took place on the bed she was sleeping in when the "victim" woke her stating he was going out to confrount the defendant at his car. S. Meyer, further states that the victim was swinging the metal flashlight and hitting the defendant in the head, shoulder and chest areas as he was reentering the R.V. The "victim" G. Snapp, states he never left the R.V. and was "stabbed" from behind by the defendant.
- The officer in charge of the arrest and the filing of the "Information and Proable Cause Sheet", admitted that he gave two different accountings, one in writing to the court, and one on the stand to the jury during trial, both completely differant. (One stating the victim never left the R.V., and one that the victim, G. Snapp, left the R.V. and went out to confrount the victim.
- The Wal-Mart security guard testified that the defendant had permission to stay in the parking lot. Also that the defendant had signaled to him by "flashing his lights" prior to being out of his sight (using binoculars) for 15 to 20 secounds, when he ran back to his car and went directly to the frount of the store and asked him for assistance for himself and for the victim, to call for the police and medical help quickly while he was bleeding severly from the head.
- Another Trudy Wade, testified she had "seen" the defendant run on foot right in frount of her and to the direction of Mc Donalds or the oppisite side of the parking lot than the security guard, Edward Nelson, watched him go with binoculars "directly to his car and to the store frount", which she states she saw her husban go to, (Ms Wade, also testified she had gone to sleep using Herion, as she and her husband do every night in the van in the parking lot,

also answering that "yes" she and her husband would have been considered legally under the influance of herion at the time of the incident, but since they used it every day their systems were different and they were just used to it.

- The testimony that was given by each of the L.P.D. officers was personal conjecture, misquoted heresay, and completely unrelated input of the contents of a "statement" said to have been taken from the defendant even when the rights protecting the defendant from giving any such statement were not at any time voided or waived by the defendant. The testimony and the said transcript of the statements do not match, the erronious testimony given was off tract and used to confuse the issues in a mannor as to bias the jury against the defendant, without refferance to the evidence presented. Ie...the defendant said he was a 6th degree black belt in some type of martial art, no refferance to any black belt was made at any other point except by this officer. The dialog given by another officer that the defendant said he was a physic and went into a trance of some kind to see what Susan Meyer was doing or feeling. This is unfocused gossip, not supported in any means by any relavence to the charge or the events of the crime. The heresay relating of a statement given by the defendant in which a "verbatim" transcript was to have been provided in the prosecutions discovery, simply does not exist. And what does in no way reflects what was given as testimony by the police officers in court and UNDER OATH and PENALTY OF PERJURY. Another of the fictious imaginations given by the officers is easily verified as being made up and impossible to have ever had come to pass, the testimony was given that the night prior to the incident, "the defendant had attended a halloween party at the V.F.W. lodge drinking", but the V.F.W. hall in Kelso, WA does not not have any bar or any type of options to serve drinks, and the greater fact is that the V.F.W. did not and does not have a halloween party as an event. The defendant did not attend any type of party at any location. He spent the night babysitting

with a friend and handing out candy to "trick or treaters" at the location of 303 17th Ave. Longview, WA.

** In U.S. v. Frederick, 78 F.3d 1370 (1996)

4. Criminal Law..KEY..1169.1(1)

   In evaluating whether inadmissible testimony heard by jury was prejudicial, Court of Appeals must ordinarily consider a number of factors, including nature of information that juror heard, what steps, if any, were taken, and weight of evidence against the defendant.

8. Witnesses..KEY..414(2)

   Testimony of victim about what she told officer in an out-of-court interview was heresay that was not admissible under exception for prior consent statements offered to rebut charge of recent fabrication or improper influence or motive. Fed.Rules Evid.Rule 801(d)(1)(B), 28 U.S.C.A.

- Similar conclusions of law are clear in:

  312 F.3d 962, 231 F.3d 488, and 160 F.3d 511

Additional Ground 14

14) The defendant was denied his right to be "adiquately" represented by an attorney. The attorney assigned by the court offered Ineffective Assistance throughout the entire proceedings and trial resulting in the defendant having no defense and in essence no protections of his rights, no participation in the trial, with witnesses, or evidence. If any other attorney had been assigned to the defense the likelyhood of the same jury concluding with a verdict of Guilt is remote and unlikely.

- The counsel knew the Petitioner/Defendant had a right to participate and be informed of all decisions and discussions that took place in all pre-trial proceedings. The assigned counsel knew full well the defendant's inability to hear, and the physical limitations of distance, tone, and rate of speach that caused his inability to understand what is or was said at the individual hearings prior to and during the trial. But took no action in his behalf, and refused saying he did not have the time to discuss what had go on, it was not important.
- The assigned attorney knew that the defendant did not waive his right to a speedy trial, that he had not been offered a waiver to consent to setting the trial date outside the 60-day limit (three) times.

- The assigned attorney refused to act on the defendant's written letters and motions to request a court review of the date set for trial, (past time limit for speedy trial), and refused to answer or contact the defendant on this matter, and many efforts by the defendant.
- The assigned attorney when informed by the defendant that the jury selection included a co-worker who had daily knew the defendant on an almost daily basis, and had many conflicts with the defendant, some ending in office and floor supervisory intervention. Refused to inform the court telling the defendant in writing to, "SIT DOWN AND SHUT UP!!", as his only responce failing to protect his clients rights and putting the defendant at an irreversable disadvantage throughout the trial due to having a bias jury member.
- The assigned attorney knew the defendant had the right to have witnesses called to testify on his behalf at the trial, but refused to contact or issue summons to named who had firsthand knowledge of the events and parties involved in the incident. And prepaired no defense and called no witnesses for the defense. Though many were listed in detailed outline of their involvment expected testimony and benifit to the defense. Even the defendant's attending M.D. at the emergancy room was dismissed by the prosecutor by phone and the defendant's assigned counsel refused to cite the defendant's interests and the handicap this put on the defense. The court's assigned counsel, abandoned the defendant and offered no assistance or efforts to the defense of the charges at issue.
- The defense attorney had the oppertunity to review the discovery provided by the prosecutor, but did not do so until after the start of the defendant's trial. The defense was nulified by the defense attorney's unenvolvment to the point that the trial judge remanded his failure to bring the issues of incompatible computer systems not allowing for the reproduction of photos, and documents sent to him as "discovery", and overruling his protests continuing the trial without the defense having prior access to proper review of the state's case aginst the defendant.

- The defense was not provided a complete listing of the State's witnesses, their expected testimonies or given complete transcripts of statements given, and not given adiquate notice to allow the defense to interview or contact and interview those prospective witnesses until days before the start to the trial and in one instance the day prior with no time to prepare responce or defenses. The assigned counsel did not protect the defendant's interests or rights by even a minimal effort to contest to the court this ploy by the prosecution to use witnesses previously unavailable to the defense. The court used it's discretion to rule against the defense when witnesses come forward to testify as witnesses for the defense.
- The defense attorney purposely misdirected the "investigator" to seek charater referances instead of obtaining existing documents known to the defense attorney to be of indispensible importance to the defendant's chalanges and defense of of testimonies given against his buring the trial, and even more importantly during the sentencing phase of the trial. Evidence was surpressed by both the defense attorney and the prosecutor. Physical evidence was present in the courtroom and the defendant's attorney refused to referance it. Ie...the clothing taken from both the defendant and the "victim", D.N.A. test results, specifics of the "knife" used to enhance the defendant's sentence by six years and relative information provided in the photos entered by the prosecutor as to number andlocation of weapons readily avalible to the "victim" during the altercation he testified he hit and kicked and fought with the defendant the whole time.
- The assigned attorney gave the defendant false and misleading information during the trial and few short times he talked with him prior to the actual trial. Often telling the defendant to "NOT MENTION IT TO ANYONE", ie...the differance in what the prosecutor said and what could happen, the importance of lesser charges and the knife issue, the fact that he would call no witnesses and also not allow the

the defendant to take the stand and testify in his own behalf. And that he had obtained the documents that were needed - and yes, they would help.

- The assigned attorney knew that the referances made by the state's witnesses about the defendant's past habits unrelated to the issues at bar, were not allowed by law and did not make any objections even though the court had ruled that the defense could not use the same tactics by refering to the state's witnesses and their daily use of Meth and Herion, it was refferanced that the defendant was a "huffer" and he was not granted protection against derogatory referances made by the state's witnesses which had an effect of putting the defendant in a bad "light" outside the issues of the trial and charges at bar. The defense attorney made no effort to protect his clients interests or bring to task the violations of his rights.
- The defnse attorney knew that the self admitted daily use and sales of both Meth and Herion, by the state's witnesses was Daily Felonious, criminal activity done in open disreguard of State Laws and civil mores in a heavily occupied public place. And not simply "Bad Habit's" as the court determined, and was a significant issue that put the state at an advantage in mental attitude and state of mind issues the jury was likely to consider.
- The court assigned attorney knew that the dfendant was mandated the right to question witnesses who testified against him, but pointedly refused to acknowledge any of 8-10 pages of specific questions the defendant wrote during the trial targeting issues and statements made during the testimonies which would have disproved the state's theories and proven the defendant's state of mind and intentions, and resulted in a verdict of not-guilty by the jury.
  The defense counsel purposely was an active participant in putting the defendant at disadvantage and denying the basics of a proper or an adiquate defense during the trial.
- The assigned attorney for the defense refused to upon the admission of Lt. T. Deisher, that he had perjured his statements made in the Information and Probable Cause Sheet,

to pursue impeachment of further testimony from this witness, and allowed the state to base and found it's theory on the information given by a witness who during his own testimony addmitted that he based it on heresay and had no firsthand knowledge even of interviewing the sources he refered to. This is significant in that it allowed the jury to be exposed to known false information and testimony while giving implied credibility to the office the witness had by his possition as a police officer, and not subject to the same laws and restraints as the defendant. If the defendant's attorney had made issue it would have cast a greater bearing in the substance and credibility of each witness as they gave testimony on the stand. Thus, the impartiallity would have been better preserved and not prejudiced as it was without the issue pursued in the interest of justice and in the interests of the defendant.

- The assigned counsel for the defense abandoned the defendant's interests in his reconizing and being informed of the need for a "No Duty to Retreat" instruction to the jury when the prosecutor use the specific elements of the defendant not leaving the area where he was attacked and had disarmed G. Snapp, the "victim" twice, and that the defendant had made no effort to "retreat" or turn his back and leave. The statements made by the prosecutor were aimed at and had the effect of leaving the jury with the distinct oppinion that a reasonable alternative to the incident was for the defendant to have left and since he did not he was the instigator and propagator of the event. And reached the verdict of Guilty on this basis.

Many other blatant and intentional neglect of the court assigned counsel's efforts and representation of the defendant were inefficent and had he offered even minimal assistance the defendant would have not been found guilty of first degree assault with a deadly weapon. If the defendant had had any other attorney assigned the end results would not have been the same. By the actions of Mr. Copeland, and the actual lack of action in the defense of his client, the defendant's Constitutional Right to be represented by an attorney in a competent mannor, as such a person who had paid the actual

monies and retainer fees , instead of being assigned by the court as indigent would have received.

Mr. Copeland, knew prior to the defendant's trial and during all phases that it was to have been one of his last cases he would be required to participate in, he had planned and secured the goal moving himself and his practice to the state of Indiana, and was only finalizing the move itself at the time of the trial. Mr. Copeland did not have the need or "time" to expend in a case which he would be paid the same amount reguardless of the outcome. He should have excused himself from the case, and requested that the defendant be assigned another attorney without the "pressing" personal matters which were his main concerns.

- As late as the year 2000, our great U.S. supreme Court held that ALL counsel are presumptively prejudicial if the **"... deprive the defendant of a substantive or procedural right to which the law entitles him." WILLIAMS v. TAYLOR, 529 U.S. 362, 120 S.Ct. 1494, 1513(2000).** The court went on to opine that the foregoing did not rewrite **STRICKLAND v. WASHINGTON, 466 U.S. 668,** but simply strengthened **STRICKLAND.**
- The nest year after the very straight forward holding by the U.S. Supreme Court in **WILLIAMS v. TAYLOR, supra,** the high court further held that, the defendant's counsel can be held accountable for ALL deprivations of "...substantive or procedural right[s] to which the law entitles [his client] him..." **GLOVER v. U.S., 531 U.S. 198, 203, 121 S.Ct. 696, 148 L.Ed.2d 604, 610 (2001).**
- The determinative question as articulated in **STRICKLAND v. WASHINGTON, supra,** is "...but for counsel's unprofessional errors, would the result of the proceedings been different..." receives a resounding oad unequivocal yes, ther is no way that the results would have not been different and more efficacious to the Appellant/Defendant. GLOVER v. U.S. 198, 203, 121 S.Ct. 696, 148 L.Ed.2d 604, 610 (2001).

Additional Ground 15

15) The sentencing court errored in ruling to allow the existing sentence after agreeing to the sentence imposed originally including

specifically to the conviction being "one act" and counts 1,2, and 3, being counted as one crime and the enhanceemnt for Possesing a 'deadly weapon', being sentenced to run concurrently as one crime and not consecutively. The decision to allow the prosecutor to challange the sentence given without a proper process of appeal required by all parties. And even more damaging because the time limit mandated was expired without any prior notice of intent or objection raised by the prosecutor to the 240 months the original sentence imposed and the additional imposition of 24 more months by changing the weapon enhancement from concurrent (as agreed upon) to consecutive, enhancing the sentence from 240 months to 264 mnoths.

- The time limit allowed for any challange to the sentence imposed had past.
- The prosecutor was bound by the same proceedure and rules of appeal as the defendant, and no intent was filed in a timely mannor, or notice of changing an existing sentence.
- The ULA (Uniform Rules of Criminal Proceedure)...Master Edition #10, § 3-208 - [Appellate Review of Sentence] reads:
  (a) Either party to a criminal case may appeal from the length or nature of teh sentence imposed by the trial court. An appeal pursuant to this section <u>must be taken within the same time and in the same manner as other appeals in criminal cases</u>.

Comment

This section authorizes either the defendant or the prosecution to seek appellate review of the sentence. The appeal authorized by this section is to be taken in the same mannor as other appeals in criminal cases, and it is expected that, **if a defendant appeals from both his conviction and his sentence, all issues would be raised in a single appeal.**

- The prosecutor and the court improperly changed and enhanced an existing sentence given on agreement of all parties after discussion at the original sentencing. The change to run all three weapon enhancements consecutive was unlawful and done without due process of proper court proceedure and should be resended as an issue of it's own merit, and the original 240 month confirmed outside of the Courts findings on appeal cited in the appeal attorney's brief and these "additional grounds for review".

** The time pursuant to court rules if an issue is to be contested or appealed is set at a 30-day limit to submit a notice of intent or the issue is considered as record, and in almost all cases stands as entered, sentencing being one of the firmist standing.

- *** The date of the original sentencing was 5-12-06, (the conditions and enhancements were brought to issue in court and it was specificly agreed by both parties the charges as well as the weapon enhancements were to be served concurrently, and that the wording in the Judgement and Sentence was clear and no questions would arise).

- *** The date the "Amended" sentence was sought and entered was 8-18-06, (98-days transpired without the prosecutor making issue or appealing the decision the trial judge entered at the original sentencing, the issue at point was the error in the state imposing 48 months for both count (2) and for count (3) 'class "C" Felonies' in which the sentence for a Deadly Weapon Enhancement is 12 months and not the 48 months given and recorded in both sentencings).
  It was not an issue to change the 48 months to the correct term of 12 months, then change the agreed imposition from concurrent to consecutive. This change imposed an increase of 24 months total confinement from the 240 month term given to a term of 264 months without any due process or review by and through the appeal process at the decision of the state prosecutor only.

- At issue again is the fact that the defendant (as known by all parties, prosecutor, judge and defense attorney) was unable to hear or follow all the dialog and was under the express understanding the issue was settled as it was outlined in the Motion that the defense attorney had provided the defendant with. At no time did the defendant know that the sentence was at issue or being put so as to increase the sentence already given by an additional (2) two years, without the option of earning any good time credits for it. An increase of sentence time is an issue which should have been held in a different mannor.

=> The sentences should read:

Count (2). . . 34 Months - 12 DWE, 24 Harassment,

Count (3). . . 24 Months - 12 DWE, 12 Vehicle Prowling,

Not 70 months on count (2), and 60 months on court (3).

- Also it should be noted and corrected that the prosecutor entered count (2) as HARAssment--<u>PREV CONV/DTH THRT</u> when no previous convictions exist as a felony or with a death threat. It is only another sample of the prosecutor enhancing the crime and elements to be included in consideration of severity has added without the defendant's knowledge or

being informed due to his inability to hear or understand what was said, if indeed it was brought out in the court hearing, and of the assigned attorney's disreguard of the importance of the proceedings to his client, the particulars presented by the prosecutor, without any interest in voicing objections in the protection of the defendant's rights and interests or results of neglecting to do so.

- Without the assistance of the appointed counsel, the defendant was unable to bring issue to any actions that occured during the hearing, as he was himself not able able to hear the the proceedings as they transpired and his attorney refused to discuss what had been decided with him as "unimportant".

*** (SEE APENDIX "E") ***

Additional Ground 16

16) The State's Motion by the prosecutor for "Cross Appeal" has not followed set and estabilished time limits, and should be considered abandoned and "moot", with the issues raised remaining as the sentencing judge determined at the original sentencing on the 12th of May, 2006, in open court.

- The state has produced no action in the matter and failed to file it's "Brief" in the time premitted by the related court rules. (The original "Notice of Intent" was filed in May 2006, by the State prosecutor, and her failure to follow-up is of disparate advantage to the State if allowed to be pursued at this late time if the other intentional delays invested by the same source are to be considered against the inconviences already imposed upon the Appellant and his Appeal counsel to date in this case to date).

*** (SEE APENDIX "F") ***

Additional Ground 17

17) The court errored in it's finding of the defendant being armed with a "Deadly Weapon" and adding an additional (6) six years to the defendant's sentence as a result of the Deadly Weapon Enhancement.

- The state failed to meet the criteria required to prove the knife used as evidence and presented to the jury was indeed a "Deadly Weapon" by definition or actuallity.

-> In support of, I reference:

CRIMES AND PUNISHMENTS

SENTENCING REFORM ACT OF 1981

9.94A.602. Deadly Weapon Special Verdict--Definition

. . .For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, belly, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, **any knife having a blade longer than (3) three inches,** any razor with an unguarded blade, any metal pipe or bar used as a club, any explosive, and any other weapon containing poisonous gas.
[1983 c 163 § 3. Formerly RCW 9.94A.125]

1. Validity

Deadly weapons statute, under which a knife was deadly as a matter of law only if its blade was over three inches in length, but a dagger was per se deadly reguardless of its blade length, was not unconstitutionally vague as applied to defendant who was arrested on a drug charge while carrying a straight, fixed blade that was 2 3/4 inches long, was pointed and sharp-edged on two sides, and was partially serrated on both sides near the base; **persons of ordinary intelligence would agree that the defendant's weapon was a dagger, because it was primarily designed for stabbing, and distinction between knife and dagger was sufficient** to protect against arbitrary enforcement. STATE v. LEATHERMAN, (2000) 100 Wash.App. 318, 997 P.2d 929, publication ordered.

6. Constructive Possesion

Simply constructivly possessing a weapon on the premises sometime during the entire period of illegal activity IS NOT ENOUGH TO ESTABLISH A NEXUS BETWEEN THE CRIME AND THE WEAPON, as will allow sentence enhancement on basis that defendant or accomplice was armed with a deadly weapon during offense. STATE v. JOHNSON, (1999) 94 Wash.App. 882, 974 P.2d 855.

=> **Defendant in constructive possession of a deadly weapon is not armed with a deadly weapon for purposes of enhancement statute.** STATE v. MILLS, (1995) 80 Wash.App. 231, 907 P.2d 316.

7. Per Se Deadly Weapons

There is a certain class of instruments that require nothing more than their existence for proof of thier nature, for example, a loaded firearm or a **knife with a blade over three inches;** therefore, if one os armed with such device, as courts have defined armed, then it follows that this is a "Deadly Weapon". State v. Samaniego (1994) 76 Wash.App, 882 P.2d 195.

8. Knifes

*** **To prove a deadly weapon** sentence enhancement **for a crime committed with a knife having a blade shorter than (3) three inches, state must prove** that the knife had a capacity to cause victim's death **and was use in a way that was likely to produce or could have easily and readily produced death**. STATE v. ZUMWALT, (1995) 79 Wash/App. 124, 901 P.2d 319.

12. Accessibility and Availability

=> A deadly weapon must be accessable and readily available, and a **nexus must be established between the defendant** or accomplice, **the weapon, and the crime**, as requirements for sentence enhancement based on having been armed at the time of the affense. STATE v. SCHELIN (2002) 147 Wash.App. 562, 55 P.3d 632.

14. Nexus

Deadly weapon enhancement is an enhancement to a sentence stemming from an underlying crime, and thus **the weapon must be tied to the crime; there must be a nexus between the defendant, the weapon, and the underlying crime.** State v. Schelin (2000) 104 Wash.App. 48, 14 P.3d 893, Review granted in part, 143 Wash.2d 1019, 25 P.3d 1020, affirmed 147 Wash.2d 562, 55 P.3d 632.

18. Presumptions and burden of Proof

*-> Rule that enhanced punishment under mandatory minimum sentencing provisions of § 9.95.040 **requires proof beyond reasonable doubt that the defendant was armed with an actual deadly weapon when he committed the crime, Court of Appeals was required to determine whether, as a matter of law, facts where sufficient to prove that defendant was armed for purposes of enhancement statute;** this was a question of law that Court would review de novo. STATE v. MILLS (1995) 80 Wash.App. 231, 907 P.2d 316.

- The knife used by the state to obtain a deadly weapon enhancement was never considered to be the instrument used during the crime.
- The knife used by the state for the deadly weapon enhancement had a blade of less than (3) three inches in length.
- The knife used by the state for its deadly weapon enhancement had a single edge, was curved to render usless as a "stabbing"

instrument, and had no sharpened blade capable of slicing or cutting. It had never been sharpened at any time.

- The knife used by the state for deadly weapon enhancement had been tested for D.N.A., blood and tissue samples to match the "victim". The results were that the knife in evidence did not test positive for any traces of any type of D.N.A., blood or tissues of any kind and had never been used in a mannor that could have produced them.
- The knife entered by the state as evidence for a deadly weapon enhancement was never displayed during the incident in any mannor, and was not the type of knife described by the state's witness, Susan Meyer, or the victim, or found in the location testified they had seen it placed.
- The knife entered by the state was not at the scene of the incident but placed in the defendant's pocket before exiting his car in the frount of the Wal-Mart to seek help from the employeed security guard for the "victim". (Testimony of Edward Nelson).
- The knife used by the prosecution to secure a deadly weapon enhancement, in no concevable way satisfies the mandatory criteria for a "deadly weapon", and the enhancement imposed should be voided and the (6) six years added to the sentence imposed deducted from the total sentence in this case.

=> Further, it is a mandatory element of first degree Assault that a weapon have been included, the state did not prove the defendant had or used a deadly weapon intentionally, or that the instrument used was the defendant's and not the "victim's. Without this element the Appellant asks that the conviction and Guilty Verdict be reversed.

Additional Ground 18

18) The court errored in its setting of the Appellant/Defendant's restitution beyond his PAST, PRESENT or Likely FUTURE income or resources will be able to satisfy.

- The court did adjust the defendant's restitution to an amount possibly within the defendant's perceived means to pay. However, the court also imposed a 12% interest per year on the $30,000.00 ordered. 12% of 30,000.00 compounded for the defendant's sentence and term of confinement, (22 years), places the amount

the court imposed at over $130,000.00, over $100,000.00 more than the defense agreed to, and in violation of set standards used in setting such court imposed monitary judgements in which the "victim" himself is at no loss of funds or resources due to existing insurance for conditions long established that the defendant had no involvment in complicating or causing. The prosecutor knowingly entered the extra conditions without the defendant understanding or being informed of the added burden imposed which he will not be able to satisfy and so remain in debt and on probation for the remainder of his life. Never able to obtain a statis in life that would not be considered as destitute or an indigent pauper, burdening the government for basic needs and basic living resources.

- The Court is aware of its error, and should be remanded for the abuse that the state through its prosecutor subjected the court rules and laws mandating that the court imposed debts not burden the defendant or his family with unattainable amounts.
- It is asked that the Appellant be granted additional consideration of financial means and assets, and the restitution be reset within the defendant's ability to repay. *** (SEE APENDIX "G") ***

Additional Ground 19

19) The Court and State failed to meet all time limits and guidelines set by law and court proceedures to provide the Appellant/ Defendant with required documents enabiling the Appellant and his counsel to proceed in a mannor reasonably expected for the Appeal process to proceed.

- The State and court prosecutor are in violation of safeguards and protections in place to protect the Appellant and the Appeal process by undue delay which results in extending the time that the Appellant is required to remain in total confinement when the state is faced with the very real and likely outcome that the Appeal will be decided in the defendant's favor and freed if the appeal process were to run its course as timely as it is designed to do.
- The failure of the state and prosecutor to meet these requirments puts the Appellant's efforts and resources at a distinct disadvantage.

Additional Ground 20

20) The State has failed to provide the requwsted documents and materials noted in the Appellant/Defendant's "Motion and Declaration for order allowing the defendnat to seek review. . . and provide attorney for appeal". These documents being needed to effectively assist in the efficient and complete preparation of issues for review, filing of briefs and responces required for the appeal.

- The State failed to produce the requested transcripts of Pre-trial hearings, (for review of defense attorneys motions, a review of the courts rulings of law on motions, and issues as the defendant's inability to hear or comprehend the court or the issues as they were presented and discussed, and the inability of the state and defense attorney to contact the "victim" Gery Snapp, due to leaving Washington, and informing the court of his intention not to return to the state or to be present in court at trial).
- The State failed to provide transcripts of the "Arrainment/ Probable Cause Hearing". (This would have established the fraudulent sworn statements brought before the court to bias the court to pursue prosecution of the charges against the defendant, and also the defendant's request to proceed "PRO-SE", which was granted by ignored throughout the entire court process for this cause.
- The State failed to produce the requested transcripts of the jury selection which would have shoun the court and the attorney was aware of the relationship between the defendant and the juror Ms Marsh.
- The State failed to produce the transcripts of the Pre-arrest questioning of the defendant by the L.P.D. while at the Longview Police Department of 01 November, 2005. (This was used by each of three Officers called as state witnesses who testified against the defendant, and and is needed to challange the evidence given against him.

*** (SEE APPENDIX "H")

Additional Ground 21

21) The Appellant has been denied credit for 40 days of the time spent in the Cowlitz County Jail.

- From the arrest date of 01 November, 2005 until 11 December, 2005 the appellant was arrested and held on bail on cause # 05-1-01388-5, there was no other new charges, and was not released at any time to another jurisdiction.
- The defendant is entitled to be credited with all time spent in custody on the charge-sentence he is currently appealing, at no time was the defendant released or otherwise not held in full custody from his arrest on 01 November 2005 until the present and full credit and credit incured during the time until trial is not exempt or at the custody jails discretion to apply to the sentence imposed.

*** (SEE APPENDIX "D")

COURT OF APPEALS
DIVISION II
07 MAR -8 PM 1:20
STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS
DIVISION TWO
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**CAUSE NO. 34835-7-II**
Respondent,	)	
V.	)	DECLARATION OF MAILING
TED * JENSEN,	)	
Appellant.	)	

I, TED * JENSEN, declate that on the 6th day of March, 2007, Ideposited the foregoing (STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW), or a true copy thereof, in the internal mail system of the MONROE CORRECTIONAL COMPLEX - WSR-UNIT and made arrangements for Postage Fees, for the U.S. Postal Service.

These documents are addressed to:

Washington State Court of Appeals, Div. II
950 Broadway, Suite # 300
Tacoma, WA 98402-3094

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 6th day of March, 2007

Ted * Jensen

Ted * Jensen, #903680

Petitioner/Appellant (pro-Se)