

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
BY DM
DEPUTY

STATE OF WASHINGTON
RESPONDENT

CASE NO. 35572-8-II

v.

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

GREGORY STEVEN ROBINSON

RAP 10.10

APPELLANT.

I, GREGORY ROBINSON HAVE RECEIVED AND REVIEWED THE OPENING BRIEF PREPARED BY MY ATTORNEY. SUMMARIZED ATTACHED 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.

SEE ATTACHED TO THIS STATEMENT

DATE _____ SIGNATURE Gregory S Robinson

THE APPELLANT GREGORY S, ROBINSON HEREIN ASSIGNS AS ERROR THE FOLLOWING AS VIOLATING MY RIGHTS UNDER THE CONSTITUTIONS OF TH UNITED STATES AND OF THIS STATE.

#1 The court abused its discretion and violated Mr Robinson constitutional right to due process, when it frist denied defence counsel Ms Helen Whitener motion to supress any in-court identifi cation by the victim .

Secondly allowed other witness testimony as to identity, based on a pothomontage that was impermissibly suggestive. The out of court photomontage proceedure and the in-court identif ications were tainted and highly predjudicial to Mr Robinson.

FACTS RELIVENT TO ISSUE

On July 17, 2006 a motion was brought before Judge Hickman in the frist trial. This motion was brought by the defence to supress any in-court identification by the victim in this case. Please review the argument, and the Judges ruling set forth in the following, report of proceedings, (RP:46, line 8-25) (RP:47, line 1-17) (RP:48 , line 13-25) (RP:49 line 1-19) (RP:50, line 18-25) (RP:51. line 1-22) (RP;53, line 1-17. In her argument counsel for the defence makes clear that any attempt at an in-court identification by the victim in this case would be tainted improper and highly predjudicial. Judge Hickman denied the motion, in his ruling he frist states; if she, the victim does (in reference to an identification) I think there is an abundance of impeachment material here for her credibility on identity to be brought out, (RP53, line 7-9). He futher states: I think there is plenty of opportunity for defence council to remedy any miricle IDs in her opion that might occur off the stand, (RP53 line 15-17). These statements by Judge Hickman clearly indicate that he was aware of the high risk of a mis-identification and the substantial likely hood of predjudice that would be the result of such an mis-identification , but he felt that impeachment would remedy; **A TRIAL COURT ABUSES ITS DISCRETOIN WHEN ITS DECISSION IS MANIFESTLY UNREASONABLE, OR BASED ON UNTENGABLE GROUNDS.**

This case is one based exclusively on identification, As stated in **STATE V, HASTINGS WN(1992) AND STATE V, SMITH(1983)** A Witness in-court identification is relevant evidence and admiss ible if it has an orgin independant of any previous improper iden tificaton proceedure. Relevant factors to consider in determining whether the testimony had an independant orgin include #1 the wit ness prior opportunity to observe the suspect, #2 the existence of any discrepancy between the defendants appearance and any pre-con frontation description #3 any prior identification of someone else #4 any prior identification by photograph #5 the witness failure to identify the defendant previosly, #6 the laspe of time between the crime and the identification #7 and whether the witnes previously knew the defendant; **(UNITED STATES V, WADE 1967.**

In this case the day after the incident accured May 10, 2005 the victim in this case was shown a photomotage put together by the lead detective in this case Jason Temple, Mr Robinson and five other black man ment to look like Mr Robinson were pictured in this photomontage the victim view the montage and stated NO! she did not identifi Mr Robinson as the suspect, nor did she ident ify any of the other man. The only eye witness in this case is the victim. At the time of this incident the only description that was

provide of the suspect was that he was black and 40ish. On 9-12-2005 the victim was interviewed by the then defence attorney Jack McNiesh (RP 13-16) where the victim then stated that the suspect was over six feet tall and had a short afro. This is a case where the suspect wore no disguise and the victim claimed that she recognized him yet she did not identify Mr Robinson in the photomontage nor was she able to describe Mr Robinson. based on the history of the investigation before Judge Hickman his decision to deny defence motion to suppress an in-court identification was manifestly unreasonable and based on untenable grounds that amount to an abuse of discretion.

THE STANDARD OF REVIEW FOR A PHOTOMONTAGE IS WHETHER THE IDENTIFICATION PROCEDURE WAS SO IMPERMISSIBLY SUGGESTIVE AS TO GIVE RISE TO A VERY SUBSTANTIAL LIKELY HOOD OF IRREPARABLE MIS-IDENTIFICATION. (SIMMONS V, UNITED STATES)

Approximately 4 months after Detective Temple first presented the photomontage to the victim and she stated no. Temple revisited Ms Copeland. he again showed her the same photomontage and then repeatedly ask her what she meant when she previously said no? it was at some point during this interview that Ms Copeland's statement changed from no to i dont know .RP:765.

This out of court procedure was improper, impermissibly suggestive and a violation of Mr Robinson's rights to due process.

at the time of this second interview with the victim Mr Robinson had been charged and was represented by counsel, Mr Robinson's attorney should of been present at this interview to protect Mr Robinson constitutional rights against any potential prejudice that might of accrued.

The photo line-up admonition that was read to the witness in this case states ; the suspect may or may not be depicted in the line up. Detective Temple's second visit to Ms Copeland, showing her the same group of photos, and his line of questioning was a clear indication to Ms Copeland the first the person that we want you to identify is in this group of photos and also that your previous statement of NO! is not the right answer, this was a clear impropriety in the photographic line up procedure and impermissibly suggestive. (RP 379 line 4-20)(RP;397,398,399)

At the time that detective Temple assembled the photomontage the only suspect description he had was that of a black man 40ish and information of the suspect's name Mr Robinson, RP:361,362,363, . during questioning Mr Temple was ask ; in regards to the other five men in the photo line up what criteria did you use in putting together the rest of them? his response was ; a black male that look like Mr Robinson RP:337 line 9-24. in that the detective did not have a prior physical description to construct a photo line up it was error and prejudicial for him to construct a line up with all the men in it meant to look like Mr Robinson. this was impermissibly suggestive.

This same photomontage was raised as being tainted in that the photo of Mr Robinson was not the one most recent and that the detective could of used the most recent photo.

This same montage was used during trial as a source of identification in the questioning of witness Randy Hamilton. because this ruling by Judge Hickman was not disturbed from the first trial it played a major factor in the outcome of the second trial in which Mr Robinson was convicted, there were several sworn testimony given at the first trial that changed at the second trial

indicating that there was a manifest of this miscarriage of justice.

It was an further abuse of decription for the court to allow an in-court identification ,when the suspect in this case was described as being a black man and Mr Robinson was the only black man in the court room,and he was seated next to the defence attorney.

I am unable to refer to the report of the proceedings from the frist trial because i have been denied access to that part of the transcripts,but i feel it is of the utmost importance for this court to review those records in order to see the full scope of my arguement.

The only remedy for a violation of Mr Robinson constitutional rights to due process and and an abuse of the courts dicretion of th is magnitude is to vacate this judgement and sentence and remand for a new trial.

ISSUE #2

The court abused its dicretion and violated Mr Robinson constitutional rights when:**DURING JURY DELIBERATION**,it allowed contact with the jurors ,video evidence and equipment to be set up in the jury room ,and viewed out side the goverening of the Judge,The defence and the state.

FACTS RELEVANT TO ISSUE

On September 21,2006 the lury durring its deliberation sent out a note and asked the court to review one of the tapes EXHIBIT #5 (PLEASE REVIEW RP:811-814). the state recomended to the court that the tape,a tv /vcr be sent back into the jury room,with the approval of both Mr Robinson the defendant and defence counsel.

The court frist voices its concern that the jurors might destroy the tape,The pro secutor frist says that hes close by and could by and assist if needed.

defence counsel states that she spoke to Mr Robinson in-reguards to the prior trail and the logistical ,problems she ran into when durring the frist trial the jury asked durring deliberation to again here portions of the 911 tape.She further states that were, ok with the states suggestion,that every exhibit they are suppose to touch ,they can play ,replay listen to whatever portion they want , because thats what they are supposed to do durring deliberation.RP:812.The court allowed a machine to be brought into the jury room ,when the court asked who would operate the machine the prosecutor suggested that it be the court secretary Lupe.

The court asked the defence counsel if there was a problem running the machine would defence have a problem with staff coming down to work or do what ever they have to do.Ms Whitener responded that Mr Robinson concern was that he didnt want the state to be prese without his attorney also being present.Judge Armijo allowed this stating if its by agreement lets do it .bring the machine the apparatus,whatever it is show lupe how it works and if it gets stuck the prosecutor is going to have to send his staff not himself to straighten it out.RP:813.The court was told by the prosecutor that they video that the jury wanted to review was Exhibit number#5 he further stated that this was the only video that the jury was previously shown.The court the tells the prosecutor Mr Lane that he would want to instruct his staff that they cannot talk about any, thing except trying to fix the apparatus,whatever you call it. or whatever it is.RP:815.

The sixth and the fourteenth amendments to the united states constitution and washington constitution (ARTICLE I, SECTION 22 guarantee a defendant the right to a fair and impartial jury; (STATE V. DAVIS. The right to a fair and impartial jury is protect ed by the procedures, contained in Chapter 4.44 RCW. These protect ions govern not only the information that may be conveyed to a jury ,but also the manner in which the information may be delive rd. Durrign deliberation limitations on outside contact are espec ially restrictive because at that point the jury is engaged in judging the facts. SEE Eg, RCW 4.44.300 (care of jury while deliber ating) CrR 6.7 (CUSTODY OF JURY) The court abused its discretion when it allowed outside staff members to come in contact with the jury durrign deliberation by entering into the jury room to set up and instruct Lupe in how to operate the TV/VCR, It further abused its discretion by allowing Lupe to enter the jury room durrign deliberation to opporate the machine. none of these state employ ees that entered the jury room were vior dired to see if any of them knew any members of the jury or could in any fashion prejud ice the jury ,It was error for the Judge to depend on the prosec utor to instruct his workers not to talk or communicate in any fashion with jury members. Judge Armijo was not present durrign this proceedure and neither was Mr Robinson or defence councel, There was no record of any kind made of what took place in the jury room while all of these members not apart of the jury were present, nor was any one questioned after the fact on the record as to what took place, Without such a record it is not possible to say that the jury was not in some fashion tainted ,and that this error was harmless beyond a reasonable doubt.

Parte of the trial Judges duty is to protect the defendant against unlawful or predjudicial proceedures durrign the trial, By allowi ng the jury to view the tape in the jury room in an abridged form ,the manner of replay constitutes harmful error (UNITED STATES V, BINDER 2002. On 9/11/2006 a motion in-lime brought forth by the state asking the court to allow him to remove the video from evidence so that he could then make still paper photos from the tape, so that the jury could take the photos back into the jury room durrign deliberation was granted SEE RP:16-19. The photos were admitted into evidence and the jury had constant access to them. Any review of the video evidence should of been done so in open court, so that the Judge had control over the replay ,to protect against undue repetition in that undue repittion of the replay gives undue emphasis on that part of the evidence .As stated in UNITED STATES V, KOONTZ 2002, this form of replay unduly emphasized identification evidence directed at the central issue. In this case identification is the central issue..

The right of a criminal defendant to be present at every stage of his trial is guaranteed by the due process clause of the fifth amendment, the confrontation clause of the six amendment and in the state cases, by the fourteenth amendment, or some combination therof. SEE Eg Illinois v. allen US 1970. Snyder v, Massachusetts US 1934. Bustamante v, Eyman F2d 9thcir 1972. This right can not be waviied by counsel. SEE UNITED STATES V, KUPAU F2d 9th cir 1974.

The court did not seek Mr Robinson personal approval on this moti on and it was Ineffetive asistence of trial counsel to agree to this request, simply because it was an incovinuce to her and not in the best intrest of her client. The Prosecutor Mr Lane further

participated in misconduct when he falsely identified the exhibit that at the jury requested to replay. The court asked Mr Lane what was exhibit number five? Mr Lane said that it was the tape made up by Detective Baker from the three original videos, the only tape that the jury was shown. SEE RP:813-814. This statement by Lane was false and misleading. As evident from the list of exhibits number five is ENHANCED VIDEO of exhibit 6A and exhibit 6A is of the defendant's white Nike shoes. These shoes were a central part of the state's evidence and disputed by the defence had defence counsel known what the jury really wanted to view there is no way of knowing what her response would have been. Mr Lane knew and as an officer of the court it was required of him to inform all parties. Based on the above facts and argument the only remedy is for the court to vacate judgement and sentence and remand for a new trial.

(ISSUE#3)

The court erred and abused its discretion when it improperly responded to the jurors' question during deliberation. In doing so the court violated Mr Robinson's constitutional right to a unanimous verdict by an impartial uncoerced jury.

FACTS RELEVANT TO ISSUE

On 9/21/06 well into the jury deliberation the jurors sent out a question (I AM UNABLE TO REFER TO THE RECORD FOR THE COURT TO REVIEW THE EXACT WORDING OF THE QUESTION BECAUSE I HAVE BEEN DENIED THAT PORTION OF THE RECORD). Based on my best recollection the question was WE HAVE REACHED A VERDICT ON TWO OF THE COUNTS AND WE ARE AT AN EMPASS ON THE REMAINING FOUR CAN WE DO THIS? WHAT DO WE DO? SEE RP815-818. In response the Judge first states that he is thinking of giving WPIC 4.70 the probability of verdict type of instruction. Defence counsel ask the court what does this instruction say, and the court reads it. He then states that after reading this instruction to the jury if the presiding juror answers no to the probability of reaching a verdict he would stop there and if they said yes, then he would send them back into deliberation. RP:815. Prosecutor Lane states that he is opposed to the giving of this instruction, because he did not think that the jury indicated that they were deadlocked. He asked that the jury be told to continue to deliberate until the next day. The court ask Lane to go through that again the judge says are you saying they haven't reached a verdict? he then repeats a portion of the jury question--we have reached a verdict on two counts, we are split on four counts, then he says I guess the word is where do we go. can we have it this way? and he ask Lane so you don't think they have indicated they are deadlocked, Lane says no, that he spoke to defence counsel and that she agreed that the continue to deliberate would be an appropriate instruction. Defence attorney confirms that she is ok with that response. RP:817. The court then says: I guess that I read too much into it, and will do as you both say. Mr Robinson through his attorney states that the court is not answering the jurors' question, The prosecutor states that it is not appropriate to tell the jurors that they can take certain action in regards to the verdict, Mr Robinson again ask the court to answer the jury question, The court ruled that it would agree with both counsel, and in response to the jurors' question the court's response was to simply continue to deliberate.

(ARGUMENT)

Jury Commission Recommendation #38 App H states; trial judges should make every effort to respond fully and fairly to questions from the deliberating jurors. Judges should be careful not to pressure the jury or state or imply any view of the case. In this case the judge clearly feels that the question from the jury

Was an indication that the jury was deadlocked, And He was correct The jury said that on the remaining four counts they were at an IMPASSE, the blacks law dictionary defines the word Impasse as a point in labor negotiations at which agreement cannot be reached. The judge in this case states clearly states that he feels the jury is at an impasse he then allows the attorneys to change his mind. By not answering the jury question in this case, and simply saying to continue to deliberate, was a false indication to the jurors that first no they could not be at an impasse and secondly that they must come to an agreement. This was pressure from the court. The jury instructions did not contain an instruction as to what to do in the case of an impasse so they sought the courts help, the courts response constitute coercion. The right to a fair and impartial jury demand that a judge refrain from exerting coercive pressure upon the jury deliberations. After deliberation has begun the court shall not instruct the jury in such a way as to suggest the need for agreement. Even a subtle instruction suggesting that a juror who disagrees with the majority should abandon his or her conscientiously held opinion for the sake of reaching a verdict invades the defendants right to have each juror reach a verdict uninfluenced by factors outside the evidence. By telling the jury to continue to deliberate once deadlock and confusion was clearly expressed, the court in this case abused its discretion and denied Mr Robinson a unanimous verdict by an impartial uncoerced jury. The proper remedy in this case would be vacation of judgement and sentence and remand for a new trial.

(ISSUE #4)

The prosecutor committed flagrant, prejudicial misconduct, and deprived Mr Robinson of his constitutional right to a fair trial

It is well-settled that as quasi-judicial officers, prosecutors must not just act as advocates but also have a duty to ensure that an accused receives a fair trial. BERGER V. UNITED STATES, 295 U.S. 78 (1935). STATE V SUAREZ BRAVO 72 Wn. App 1944. As part of that duty, prosecutors are required to refrain from engaging in conduct at trial which is likely to produce a wrongful conviction. STATE V, CLAFLIN 38 Wn (1984). When a prosecutor commits misconduct he does more than violate a prosecutors duties, he also deprives the defendant of his state and federal constitutional due process rights to a fair trial. Even absent objection below, misconduct compels reversal where misconduct is so flagrant and prejudicial it could not have been cured by instruction. STATE V, BROWN 132 Wn 1998.

In this case the prosecutor committed misconduct which compels reversal by misstating the standard of the of proof in several ways. In closing argument the prosecutor told the jury circumstantial evidence is one of those things that you all heard that maybe you cant necessarily put your finger on exactly what it means, and we see all these legal phrases in books and movies, and we see them but we dont necessarily know what they mean, and Id like to give you an example of what circumstantial is. Suppose you go to bed at night and you look out side and you see the ground is covered in a blanket of snow, its absolutely pristine. Thers not a mark in the anywhere. Its quiet. You go to bed. You wake up the next morning and you look outside and out there on the grass or should I say out there on this

blanket of snow that was pristine the night before, now marked in it there are a bunch of foot prints across the snow, across your yard. Did you see someone walk across your lawn last night? No you were sleeping. Did you hear anyone walk across your lawn? NO. Do you know that someone walked across your lawn last night? YES. And how do you know that? Because the circumstances tell you. The circumstances tell you. That is what circumstantial evidence is, and the reason this is important is because if you've seen tv shows or movies where they talk about circumstantial evidence and the guy who's just been arrested said oh they don't have nothing on me, all they've got is circumstantial evidence, nothing more, but guess what? Here's a news flash. The instruction tells you that circumstantial evidence is every bit as good as direct evidence, and what that means is that if the circumstances convince you beyond a reasonable doubt, even if there were nothing else you are still convinced beyond a reasonable doubt. Circumstantial evidence is every bit as good as direct evidence. Circumstantial evidence comes into play where we're trying to determine what's in someone's head, what's their mental state? For example the crime of burglary, I have to prove that he intended to commit a crime against Ms Copeland. How do you prove what's someone's intent is? How do you prove what's in their mind? You can't read their minds the circumstances tell us what is in someone's mind. RP: 718, 719, 720 Then on rebuttal closing argument the prosecutor says, what does beyond a reasonable doubt mean? Does it mean beyond any doubt? No. Does it mean beyond any shadow of a doubt? No. That's absolutely not what that means. Beyond a reasonable doubt. Do I have to prove to a hundred percent degree of certainty that this happened and that it happen the way I say it happen? IN order for you to believe one hundred percent beyond a shadow of a doubt, beyond any doubt, the only way you could possibly believe it to that degree is if you were there, and none of you were there. and I'm not trying to suggest to you that beyond a reasonable doubt is a low standard. It's a high standard, but it's not to the degree of proving it beyond any doubt a hundred percent certainty. You are not required to have that degree of certainty. Mr Lane goes on to state A reasonable doubt is one for which a reason exists, and let's think about about the word 'reason' Reason doesn't mean any old thing. Reason means thought about. If you act reasonably, you thought about it. It means you've used reason in coming to your decision. More of the instruction tells you that it is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If after such consideration you have an abiding belief in the truth of the charges, you are convinced beyond a reasonable doubt. That means if you believe in your heart of hearts that he is the person then you are convinced beyond a reasonable doubt. SEE: RP, 760, 761, 762.

The arguments misstating the standard were improper and relieved the prosecutor of the full weight of its constitutional burden.

These arguments were flagrant prejudicial misconduct. Every attorney has the duty not to misstate the law. SEE: STATE V, DAVENPORT, 100 Wn 2d 757, 763, 675 p.2d 1213 (1984) Misstatements of the law are especially egregious when they are from the prosecutor, because there is the such extreme potential for such misconduct to have great effect on the jury. SEE: DAVENPORT, 100 Wn.2d at 763, STATE V, REEDER, 46 Wn 888, 892, 285 p.2d 884 (1955). The prosecutor in this case uses analogy and misstates what the circumstantial evidence requirement, while these examples may assist, in explaining of the decision before the jury, they may not be

Illustrative of the degree of certainty required. Further the prosecutors comparison erroneously misstated the standard in another way by focusing on the certitude the jury would need to take action, rather than to hesitate to act. The use of such analogies has generally been condemned. **SEE: STATE V, ESTES, 418 A.2d 1108 1115 (Me. 1980)**. The Washington Supreme Court has made it clear that failure to properly define the standard of reasonable amounts to improperly relieving the prosecution of the full weight of its burden of proving each element of a crime by that standard and is such a serious error that it is grievous constitutional failure. **SEE: STATE V, McHENRY 88 Wn.2d 211, 214, 558 P.2d 188 (1977)**. These arguments were misconduct which was so flagrant and prejudicial that no instruction could cure it, and this court should so hold and should reverse. Counsel was also ineffective in failing to object and request that a proper instruction be given. While generally the decision whether to object or request instruction is considered trial tactic that is not the case in egregious circumstances if there is no legitimate tactical reason for counsel's failure. **SEE: STATE V, MADISON, 53 Wn App 754, 763-64, 770 P.2d, 662 (1989)**. Here there could be no tactical reason for failing to object to such serious misstatements of the prosecution's burden of proof.

(ISSUE#5)

It was prosecutorial misconduct and a violation of Mr Robinson 5th amendment right to due process, when the prosecutor **IPERMISSIBLE VOUCHER FOR WITNESS TESTIMONY, CREDIBILITY**.

As a general rule a prosecutor may not express his opinion of the defendant's guilt or his personal belief in the credibility of a government witness. Vouching consists of placing the prestige of the government behind a witness through personal assurances of the witness's veracity or suggesting that information not presented to the jury supports the witness testimony. **UNITED STATES V, NECECHEA 9th (1993)**. An expert may not offer an opinion on an ultimate issue of fact when it is based solely on the expert's perception of the witness's truthfulness. An expert's opinion as to the defendant's guilt invades the jury's exclusive function to weigh the evidence and determine credibility. **STATE V, FITZGERALD 39 Wn (1985)**. In closing prosecutors may argue facts in evidence and draw reasonable inferences therefrom, but may not state personal belief about a defendant's guilt or innocence or witness credibility. **STATE V, REED, 102, Wn.2d, 140, 145, 689, P.2d (1984)**.

FACTS RELEVANT TO ISSUE).

Verndeleao banks was a government witness whose testimony was at question as to truthfulness and credibility throughout the trial, Banks' testimony was crucial in this case because without it the state could not have made the circumstantial arguments that it did. In rebuttal closing arguments the prosecutor makes the following statements in effort to convince the jury of banks' truthfulness; Now the question you're going to ask yourselves is why should we believe V, banks? She's a drug dealer a drug user a prostitute a thief. Why should we believe her? You should believe her because she came forward, again she came forward with information. She was told before Detective Temple talked to her she was given a letter saying hey we don't have any indication that you had any involvement in this thing, but regardless of what you tell us you're not going to be charged with anything. so she had carte blanche to put it all out there, everything that she

Knew, and she put it all out there. If she was wanting to lie she would have said things like yeah the defendant was driving the truck when it crashed into the tree. She didn't say that. She said she crashed it into the tree, the defendant took off, leaving his vehicle to be collected by the police. Odd behavior yeah. It's odd, unless you consider the fact that he would have known that the police were looking for him and so he left the scene. He walked but he left his truck. The prosecutor goes on; V, Banks did not hold back she put it all out there. She told you lots of bad things about herself, not very complimentary things, She was not sugarcoating anything and that's why you can believe her. What's she getting, and I'll ask you allow you to take a look at the agreement she made. It's a three-page document where she agreed to provide truthful cooperation. What she gets out of it is instead of a 40-something month recommendation she's going to get a 30-something month recommendation, big deal. Considering what she brings to the table which is very important background in regards to this case, that's a very small price to pay to give someone who has committed a property crime like attempted theft, a deal to testify in this case, truthful. RP: 781, 782, 783. The prosecutor goes on to say; You may have a hard time accepting the testimony of Verndeleao Banks but remember she has nothing to gain because she's already been told she's not going to be charged with anything out of this. All she stands to gain is a favorable sentencing recommendation and again if she were simply trying to please the state she would come in and say yep that's the tool belt I saw the defendant wearing wouldn't she? yet if she were wanting to help the state and do everything she could even though it wasn't true, she would say the defendant was driving the truck or the defendant confessed to me that he ripped the lady off. She didn't come in and or V, Banks didn't come in and testify to that because the defendant did not confess to her, She didn't come in to talk about the crime because she didn't know about the crime itself. If she wanted to lie and make herself look good for the state she would have come in and made up all kinds of things that implicated the defendant in the crime, itself, rather than simply provide some of the background. RP: 785, 786.

(ARGUMENT)

It is well settled that the prosecution is not allowed to use improper tactics even in response to similar tactics by the defense.

UNITED STATES V, SARKISIAN 9th cir 1999.

The prosecutor in this case knowingly misstates the facts about this case and Banks testimony, he purposely withheld information about Banks and the deal the state made with Banks for her testimony, on more than one occasion Mr Lane states his personal opinion, and impermissible vouches for the truthfulness of Banks testimony. Defence counsel was ineffective in failing to object to the prosecutor improper cross-examination and vouching. vacation of judgement and sentence is the proper remedy.

(ISSUE#6)

The court erred and abused its discretion when it first limited the defence ability to explore the agreement that states witness interdict into in exchange for her testimony, and secondly limited the defence ability to impeach the same witness on her full criminal history.

(FACTS)

On July 12, 2006 in front of Judge Hickman the trial Judge for the first trial, in the form of a motion in-limine the state motion the court to suppress with a few exceptions Banks prior convictions **SEE MOTIONS, IN LIMINE 7/17/06-7/18/06**, Judge HICKMAN. RP: 12, 13, 21. The state further asked the court to limit the defense ability to explore the deal that the state made with Banks, for her testimony RP: 15, 16, 21. This issue was argued extensively by the defense RP: 30, 31.

The court signed and granted the states motion with several conditions RP:29. And a written order was made (SEE:STIPULATIONS FOR PRESENTATION AS EVIDENCE AT TRIAL, JULY 18, 2006 number 3,4,5,6,7. Mr. Robinson and defence counsel waived the right to sign the stipulation. On 9/11/06 At the second trial in front of Judge Armijo defence attorney states that in light of the prior courts ruling of this matter we agree to the orders. Because of this ruling at trial the defence was not allowed to expose to the jury all the potential sources of bias that the states witness had to give favorable testimony for the state. Bias is always relevant in assessing the witness, credibility. The Washington Supreme Court has held that preventing a defendant from fully and effectively cross examining a states witness is a violation of the defendants constitutional rights under the confrontation clause (STATE V, GOLOY Wn 2d (1985). ER RULE 609 A-2 states for the purpose of attacking the credibility of a witness in a criminal case evidence that the witness has been convicted of a crime shall be admitted, if it involved dishonesty or false statement, regardless of the punishment. In this case as supported by the record there was clearly reason for the court to be concerned about the states witness banks and the truth about her testimony and the agreement that she entered into with the state, by limiting the defence to explore this in front of the jury the court aided the state in keeping the truth from the jury, the prosecutor further committed mis conduct when in closing he argued to the jury that witness banks only committed a property crime like attempted theft, RP 783. As stated by the prosecutor himself in , RP (JULY 17 2006) at 35. the state can not succeed in its motion to keep evidence out, and then argue to the jury that because the evidence is not there guilt or in this case truth must be the logical inference, although the court allowed the state to keep parts of Ms Bank criminal history out Mr Lane new the truth and should of been prohibited from making that argument. Ms Banks testimony was crucial to the states case and the conviction of Mr Robinson, and because of this the only remedy for the courts error and abuse of discretion as well as the violation of Mr Robinson constitutional rights is to vacate judgement and sentence and remand for a new trial.

(ISSUE # 7)

The trial court erred and abused its discretion when it allowed the states witness Verndeleao Banks attorney Leslie Tolzin who was also a states witness to be present during banks testimony.

FACTS

On July 17, 2006 Judge Hickman granted the defense motion to exclude witness from the court room while not testifying. Because of the extensive doubt and the states inability to produce the signed agreements the state added Mr Tolzin to its witness list, there intention was to have him testify to the agreement, the state then motions the court to allow Mr Tolzin to be in the court while Ms Banks testified also for the state. Defense counsel objected based on the prior court ruling to exclusion of all witness, that this would be a clear conflict of interest. RP (JULY 17, 2006) at 20-25. Judge Hickman ruled that he would allow Mr Tolzin to be present. The judge failed to weigh the probative value of his ruling against the prejudicial effect this would have towards Mr Robinson. On more than one occasion during the process of the trial Mr Tolzin did talk with Ms Banks about her testimony. Mr Robinson had also at this time filed a grievance with BAR ASSOCIATION against Mr Tolzin for mis-conduct in the form of allowing his client and the state to make false statements so Mr Tolzin had more than a vested interest in the outcome of this trial, and as with any other witness he should not of been allowed in the court room.

(ISSUE # 8)

The court erred and abused its discretion, they erroneously allow 404(B) evidence of other crimes, wrongs or acts, in the form of testimony from states witness Banks about supposed prior drug use. RP:13,14,

FACTS

On July 17, 2006 in front of Judge Hickman the Judge in the first trial the state motion the court to be allowed to use 404(B) evidence in regards to Mr Robinsons alleged prior drug use. Based on the victims statement that the person who committed this crime told her that his motive for doing the crime was to obtain money for drugs. State informant/witness Banks claimed to have knowledge of Mr Robinsons past drug usage. The state ask the court to allow the testimony by way of a balancing test. the probative value he says goes first to identity, he says that the state is not seeking to bring in this information to show conformity with that conduct, in fact this is not even a drug case. and he concedes that there may certainly be some prejudice involved the state is using for a purpose other than conforming the evidence. his other reason is motive in fact he states that this is the states theory of the case. RP(JULY, 17, 2006) at 13, 14, 15. The court understood the motion to be, your wanting to be allowed to explore drug usage by the defendant because that's what the victim is going to be testifying to, as to what his motive was for this alleged crime, and you want to bring banks to be able to discuss this in terms of her being involved with drug usage and in debt to drug dealers because you want to use that not only for motive but for identity purposes to connect what the victim is saying with what he was doing so that there, is a nexus there between the two. RP(JULY 17, 2006) at 21, 22. Defense counsel states that she would not be opposed if its being offered for the limited purpose of identity or motive. how ever if counsel intends to show that its proves that Mr Robinson more or less character type of evidence that he was acting in conformity with the crime that he has been charged with I would object, and ask that a limiting instruction in regards to the way the jury can use that information. RP(JULY 17, 2006) at 30. Judge Hickman ruled that the parties have stipulated under rule 404(B) that evidence of drug usage can be testified to be the victim and by Ms Banks as long as it goes to identity and motive and there is a limiting instruction to the jury. RP(JULY 17, 2006) at 38. Defense counsel asked the court in regards to no. 4 I would ask that the language, probative value of such evidence substantially outweighs any prejudicial effect, as I don't believe the court made that ruling. If I remember correctly, it has to do with drug usage and my client and I stipulated to that. Therefore the court didn't do a balancing test in regards to that stipulation. Since this is going to become a part of the record and maybe an issue of appeal, I'll ask that that language be removed. RP:(JULY 17, 2006) at, 14. The court asked the state if they had any objection to taking out the probative value of such evidence substantially outweighs? that was not my ruling. I did it based on stipulation between the parties. the court ruled that he would remove that language. RP (JULY 17, 2006) at 14, 15. The written order regarding this motion read; by agreement of both parties and pursuant to ER404(B) evidence of the defendant drug usage may be introduced at trial but only for the purpose of establishing identity and motive, the jurors shall receive a limiting instruction directing that they may consider such evidence for the purpose of establishing identity and motive and that they may not consider such evidence for any other purpose. Jury instruction #6 read evidence of the defendants drug usage maybe considered for the solely for the purpose of establishing identity and motive and may be considered for no other purpose. The trial court erred in in not performing the balance test. 404(B) evidence of other crimes or bad acts is admissible as proof of motive

opportunity intent preparation plan knowledge identity or absence of mistake or accident. **STATE V. CAMPBELL 78 Wn App. 813, 821, 901, P.2d 1050 (1995)**. In applying ER 404(B) a trial court must establish the relevance of the evidence and identify its permissible purpose, then balance (on the record) the probative value of the evidence against its prejudicial effect. **STATE V. DENNISON 115 Wn.2d 609, 801, P.2d 193 (1990)**. Mr Robinson did not sign or agree to this stipulation, even if he had the judge failed to perform the second stage of this test. Further ER 404(B) excludes evidence of character or prior conduct that is offered for no other reason than to suggest that the current alleged offense conforms with the prior conduct and that guilt is therefore more likely. **STATE V. RUSSELL 125 Wn.2d at 81**. This is exactly what occurred in this case, this case is one based solely on identity, the state witness had no direct or other wise information about the crime or who committed it, this being so her testimony about Mr Robinson doing drugs with her prior sometime prior to and sometime after this crime took place not only amounts to impermissible hearsay it also suggests that because Mr Robinson did drugs he is also guilty of the present crime, through the entire trial the prosecutor used testimony by banks that Mr Robinson did drugs to prove conformity. Further in that Mr Robinson plead not guilty to the crime that put every element of the crimes charged to question, in that the usage of Mr Robinson doing drugs was apart of the evidence that the state used to prove its case, the truth as to Ms Bank testimony was for the jury to decide therefore the jury instruction constitutes impermissible comment on the evidence and the court in its ruling to allow this 404(B) evidence aided in relieving the state of the full burden of having to prove its case beyond a reasonable doubt, violating Mr Robinson's constitutional right to due process. Remedy for abuse of discretion and violation of Mr Robinson's right to due process is to vacate judgment and sentence and remand for a new trial.

(ISSUE #9)

The trial court erred and abused its discretion violating Mr Robinson's constitutional right to due process when it ruled that Detective Jason Temple could testify that he contacted witness Kirby Christopher by telephone, but all statements made by Kirby Christopher to Detective Jason Temple during such telephone contact however are excluded from evidence as such statements would be inadmissible hearsay. See Supplemental order motions in limine, Judge Hickman.

FACTS

There was a pretrial motion hearing held in front of presiding Judge Lisa Warswick. My DAC, Department of Assigned Counsel, Mr John McNeish requested to be removed from my case stating a possible conflict of interest. That conflict brings that a material witness by the name of Kirby Christopher had been located. That he was in the state of New Orleans and that this witness could provide important evidence to this case. Christopher had been represented by the Pierce County DAC on several occasions in the past and at that present time had several warrants out for his arrest. Warswick asked how they knew where Christopher was located, and this is where I first heard that Detective Jason Temple had been in contact with KC by telephone, and that during that conversation he had questioned him in regards to knowing me, by name or other wise. KC said that he did not. Mr McNeish felt that this information was of important exculpatory value. Warswick did not agree that there was a conflict of interest issue and denied defense counsel's motion to withdraw. Defense counsel then sought a material witness warrant for KC and asked the court for another continuance so that he could if need be fly to where KC was located and get his statement. Warswick granted this motion.

On JUNE 29, 2006, preservation video deposition of Detective Jason Temple defense attorney asked temple, is it true subsequent investigation on your part determined that the phone number called belonged to a Kirby Christopher? Temple's response was yes. Whitener then asked him, did you have contact at all with Mr Christopher? In your investigation? yes, what contact was that? telephone contact. At that point the state objected and asked the court permission to voir dire the witness, to determine the detective's ability to identify the person on the phone as being Kirby, when asked temple said no. Defense counsel asked, now in your report you did indicate that the person you contacted was Kirby correct? correct, how did you determine that it was Kirby? He identified himself as Mr Christopher and provided a correct last known address for himself. So you did in fact try to verify the person you were speaking to on the phone as the person you had left messages for, would that be accurate? yes. **SEE RP VIDEO DEPOSITION (JUNE 29, 2006) at 39, 40, 41.** This issue was brought before Judge Hickman at the first trial, after temple first testified in open court that he did contact Kirby and in questioning him about Mr Robinson was told by Kirby that he did not know Mr Robinson. The state prior to the second trial sought the court's ruling to exclude the telephone conversation that Temple had with Kirby stating that it was hearsay because temple is not a voice expert and could not know for a fact that it was Kirby that he spoke to. This issue was again raised in front of Judge Armijo, because Judge Hickman made an oral ruling that the detective could testify to what he knew, Armijo did not become familiar with the prior court's rulings and thus made a ruling that based on the fact that Detective Temple is not a voice expert he could not testify to what was said during his conversation with Kirby. Again the order read Temple could testify that he contacted Kirby by telephone, however all statements made by Kirby to Temple are excluded from evidence as such evidence would be inadmissible hearsay. Based on the court's ruling the state was able to in front of the jury simply ask the detective, were you able to determine who that number belonged to? yes, and who was that? Kirby Christopher.

It was error on the court to knowingly allow the state to withhold possible exculpatory evidence from the hearing of the jury, that being Detective Temple's prior testimony and statement that Kirby had told him that he did not know Mr Robinson, the court further erred and abused its discretion in its ruling that if Detective Temple could not testify to what was said because he is not a voice expert and could not say for a fact that it was indeed Kirby that he spoke to, then how can the court allow him to testify that he did in fact contact Kirby by telephone. The trial court in its ruling improperly limited the cross examination of the witness, once the witness testified on direct to making contact with Kirby the state opened the door. Further this conversation was all apart of the detective's police report and the trial court under RCW 5.45.020 may admit business records made in the regular course of business if the source of information, method, and time of preparation justify the admission.

(ISSUE #10)

The court erred and abused its discretion by ruling that evidence of exculpatory value obtained by Detective Temple during his investigation be excluded as inadmissible hearsay. It further erred in limiting the defense's ability to cross examine the witness.

(FACTS)

During the first trial cross examination of Detective Temple by defense attorney Whitener it was revealed that following up on the address that witness Kirby Christopher cell phone led him to, Detective Temple went to that address looking for Kirby, Once out there he did not find him but he did speak to the neighbor/manager of the housing area, Temple testified that the neighbor told him that Kirby used to live there as a care giver but the person he used to take care of had passed away and Kirby did not live there no more in fact had not lived at that residence for some time,

This was a very important piece of discovery in that the state in effort to show some type of connection between Mr Robinson and Kirby had created a huge aerial map in which they identified and indicated on the map addresses of the places involved they then drew lines to connect the addresses to show a connection, Once it was revealed that Kirby did not live at that address and was not living there for sometime the question to everyone became why is that address on the map? and why is the state saying that it is Kirbys address? The jury realized that they were being deceived and, this played a huge role in the first trial resulting in a hung jury, At the second trial in front of Judge Armijo on September 14, 06 the following proceedings were held out of the presence of the jury; the state moved the court to exclude any statements made by the neighbor as blatant hearsay, in that the state was seeking this ruling prior to Temple's testimony the court makes the point that we don't know what statements were made, the prosecutor states that he can tell the court what statements were made at the prior trial. RP (9-14-06) at 269, 270, Defense argues that it is not hearsay, it's not being offered for the truth of the matter asserted, The court ruled that the statements were hearsay. RP, at 270. The defense asked the court to clarify its ruling, RP at, 271 272 273 274, the defense in its argument states that what's going on here is that this court does not have the background in regards to this case and the state has continuously brought motions limiting the defense's ability to explore things, the defense in this case is that other individuals could have committed this offense so every single motion that the state has brought so far has been tying the defense's ability to explore those issues. RP, at, 274. Defense further argues that in regards to the crucial issue in this case with the individual named Kirby Christopher there is an aerial map that has this individual's address on it the state is going to be showing or attempting to show that my client somehow had a connection to this individual but they have no testimony or evidence indicating that connection, but the state is asking the court to prohibit me from exploring the fact of why is this person's name on the map? why is his address even on the map?. RP, at 275. This issue is further argued .RP, at, 276, 277, 278. The court ruled that testimony will be that Kirby Christopher is a person on the cell phone testimony will be that he lived in a certain address, testimony will be that the officer went there and could not find him. The state further asks the court to rule that the defense not be able to ask anything about what a neighbor said to Detective Temple about how long Kirby had been gone from that residence and what he was doing at that residence, Judge Armijo says ok I'll make that ruling. RP, at 277, 278. On direct Temple testified, Detective

Does the phone record of Kirby include an address? yes, And did you have occasion to go out to that address? yes. And were you able to locate Kirby at that address? no. Thank you. RP, at 331. During trial the state displayed a aerial map that Temple testified to being true and correct, there was hand writing on the map which Temple said he put there to associate addresses on the map with names. The court was aware that prior statements and prior testimony by Temple had verified that Kirby did not at the time of the crime or some months prior live at the address that the state was indicating that he did on the map, **SEE EXHIBIT #14** the aerial map. This case is one of identification and circumstantial evidence, thus every circumstance was relevant. The fact that Kirby did not reside at the address on the map was crucial, information obtained by the detective during the normal course of his investigation, it was also part of his report and prior testimony. The state asked Temple if he went to Kirby's residence, once that question was asked it opened the door to cross examination for defense to explore the truth of the matter. For review of the rest of this argument please see :RP, at 338, 339, 340, 341. It was error and an abuse of the court's discretion, to limit the defense from cross examination of

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this witness. It was further flagrant prosecutorial mis-contact for Mr Lane to purposely mislead and set out to deceive the jury, in regards to Kirby Christopher living at the address that he indicated on the map. Having heard prior testimony and read Temple's police reports Mr Lane was aware that he did not reside at that residence, The trial Judge did not become familiar with the prior courts ruling in this matter nor did he weigh the importance of this statement before he made his ruling, in not doing so the court abused its discretion and violated Mr Robinson's rights to due process, I ask that the court therefore vacate judgement and sentence and remand for a new trial.

(ISSUE #11)

There was insufficient evidence to prove Mr Robinson was guilty of possession of stolen property, and error on the court to allow Mr Robinson to be convicted of this crime.

FACTS

In a second amendment of information Mr Robinson was charged in count #5 with possession of stolen property in the 2nd degree (as stated in the information; a crime of the same or similar character and /or a crime based on the same conduct or on a series of acts connected together or so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others committed as follows; That GREGORY STEVEN ROBINSON, in the state of Washington on or about the 9th day of May, 2005 did unlawfully feloniously and knowingly possess a stolen access device issued to Janice Copeland and withheld or appropriated said access device to the use of any person other than the true owner or person entitled thereto contrary to RCW 9A.56.140(i) and 9A.56.160 (i)(C). and pursuant to RCW.9.94A.525(17). the crime .

PLEASE NOTE THAT I AM UNABLE TO REFER TO THE RECORD IN REGARDS TO THE PROSECUTOR'S OPENING STATEMENT WHERE HE TOLD THE JURY THAT THE STANDARD OF POSSESSION REQUIRED FOR HIM TO PROVE HIS CASE DID NOT REQUIRE ACTUAL POSSESSION. IN THAT MY APPELLANT ATTORNEY FAILED TO OBTAIN THIS PORTION OF THE RECORD, AND THE COURT FURTHER DENIED MY PRO-SE MOTION FOR THESE RECORDS. I DO BELIEVE THAT THIS COURT NEEDS TO REVIEW THIS PORTION OF THE RECORD IN THAT IT IS DIRECTLY RELATED TO THE ERROR IN WHICH I AM RAISING.

In his closing argument the prosecutor states; possession of stolen property in the second degree under count #v requires that the person knowingly retained or possessed property that had been stolen, and in this case clearly the property had been stolen from Ms Copeland and the person using the bank card at the machines knew that the property was stolen, that the person withheld it or appropriated it to their own use in other words someone other than the owner. They were actually using the card at the machine and I have to prove that that property was an access device. In this case the state did not meet this burden of proof. No stolen items were ever found in Mr Robinson's possession the only person that ever had any type of credit cards as the evidence and testimony revealed was the states witness banks SEE RP, at, 753, 754, 755. JURY INSTRUCTION #22 reads, a person commits the crime of possessing stolen property in the second degree when he knowingly possesses stolen property which either 1) exceeds \$250 in value, or, 2) Is a stolen access device. possessing stolen property means knowingly to receive, retain, possess, conceal or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner. Jury instruction number #23 reads, to convict the defendant of the crime of possessing stolen property in the second degree as charged in count V, each of the following elements of the crime must be proved beyond a reasonable doubt, The 4th element is that the stolen property was an access device. instruction number 22 is an erroneous jury instruction in that

it gives the jury the option of finding Mr Robinson guilty of possession of stolen property in the second degree even if he did not possess an access device. By saying the stolen property exceeds \$250 in value. In the to convict instruction #23 property exceeding \$250 in value is not an element, and should not of been stated as an option in instruction #22. Its intent was to confuse and mislead the jury.

An ambiguous jury instruction that is subject to a construction that permits an erroneous interpretation of the law requires reversal **STATE V, LEFABER, 128 Wn, 2d. 896, 902, 913, P. 2d. 369, (1996).**

An instruction that mis-represents the elements of an offense violates due process and maybe challenged for the first time on appeal, **STATE V, STEIN, 94 Wn. App. 616, 623, 972 P. 2d. 505. (1999).**

FEDERAL RULE #30 permits a criminal conviction to be overturned on direct appeal for plain error in the jury instruction, even if the defendant failed to object to the erroneous instructions. Further retrial following reversal for insufficient evidence is unequivocally prohibited and dismissal is the remedy.

(ISSUE #12)

Mr Robinson was erroneously charged and convicted of Theft in the second degree, in that the prosecutor erroneously aggregated each theft.

FACTS

In a second amended charging information Mr Robinson was charged with Theft in the second degree. The charging information read in part, that GREGORY S ROBINSON in the state of Washington on or about the 9th day of May 2005 did unlawfully, feloniously and wrongfully obtain or exert unauthorized control over property other than a fire arm and/or service to wit money of a value exceeding \$250, belonging to another with intent to deprive said owner of such property and/or services contrary to RCW, 9A.56.020(1)(A), AND 9A.56.040(1)(A).

In this case the susoect was accused of obtaining money from two different ATM machines at two different locations using a credit card stolen from Ms Copeland, the victim in this case. One withdrawal was for \$100, and the other was for \$200, for a total over \$250. Jury instruction #20 states that a person commits the crime of theft in the second degree when he commits theft of either, 1) property exceeding \$250 in value, or 2) an access device. Jury instruction #21 the to convict instruction states, to convict the defendant of the crime of theft in the second degree as charged in count IV each of the following elements of the crime must be proved beyond a reasonable doubt (1) that on or about the 9th day of May 2005 the defendant wrongfully obtained or exerted unauthorized control over property of another or the value thereof (2) that the property exceeded \$250 in value. Instruction #34 value states; value means the market value of the property or services at the time, and in the approximate area of the act, when any series of transactions which constitute theft, is part of a common scheme or plan, then the sum of the value of all transaction shall be the value considered in determining the degree of theft involved and amount of value. The prosecutor in his closing told the jury; The next count is count IV, theft in the second degree. That requires that the person stole another's property with intent to deprive them of it, and I have to prove the value was more than \$250. If your looking at this and your going well he took \$200 from one machine, that doesnt meet this \$250 element, and he took \$100 from another machine, that doesnt meet this element, so how can there be a theft in the second degree? Heres how One of the instructions that you have tells you what value means, the instruction says that you can aggregate values. In other words you can take \$100 from bank machine number one and the \$200 from bank machine number two put them together and that equals \$300, as long as those two separate takings were committed in the same course of events. **RP, at 714, 715, 716.** The accused must be charged according to the charging information, in this case the

charging information says that the theft was money of a value exceeding \$250. Theft of an access device is not apart of the charging information Therefore theft of an access device never should of been put to the jury as an alternitve means of meeting the element required for the jury to convict Mr Robinson of theft in the second degree. Jury instruction #20 is an erroneous instruction. Under .Washington Pattern Jury Insuctions, 11-A 2nd edition ,WPIC 79.20 the instruction used in this case says in its note for use ,IF A COMMON SCHEME OR PLAN IS ALLEGED FOR THE PURPOSE OF AGGREGATING, THE EXSISTENCE OF A COMMON SCHEME OR PLAN IS A SEPARATE ELEMENT THAT MUST BE SET OUT SEPARATELY IN THE ELEMENTS INSTRUCTION. The state failed to adhere to this rule and did not meet its burden . the instruction was misleading and confusing to the jury. Futher in that the state did not follow the rule set forth the jury was not allowed to aggregate the thefts ,this being so niether the theft of \$100 nor the theft of \$200 meet the standard of theft in the second degree. Jury instrutions must be formulated so that they fairly and adequately cover the issues presented, correctly state the law and are not misleading. CHUMAN V, WRIGHT 76 F.3d.292,294.9th cir 1996.

(ISSUE #13)

The state erroneously charged Mr Robinson with both theft and possession of stolen property, and it was error of the court to allow Mr Robinson to be convicted of an erroneous charge.

FACTS AND ARGUEMENT

Mr Robinson as charged and argued to the Jury with both theft of money and an access device and possession of the same money and access device. this constitutes error of a constitutional magnatude.

While dual conviction are not barred by double jeopardy. Another doctrine nevertheless prevents both convictions from standing, under this doctrine on can not be both the principal theft and the reciver of stolen goods STATE V, HANCOCK, 44 Wn. App, 297 3d, 721. P2d. 1006 1986.

Instruction #20 in this case says A person commits the crime of theft in the second dgree when he commits theft of either: 1) PROPERTY EXCEEDING \$250 IN VALUE OR 2) AN ACCESS DEVICE.

Instruction #22 says : A PERSON COMMITS THE CRIME OF POSSESSING STOLEN PROPERTY IN THE SECOND DEGREE WHEN HE KNOWINGLY POSSESSES STOLEN PROPETY WHICH EITHER: 1) EXCEEDS \$250 IN VALUE, OR 2) IS A STOLEN DEVICE.

In his closing arguement the prosecutor told the jury , its not robbery just because someone takes property that doesnt belong to them, its only theft, and in this instance the credit cards were in Ms Copelands apartment, He futher states; there was intent to steal the property not only the credit card--or bank card. SEE :RP, at 712.

If the state charges both theft and possession arising out of the same act. the fact finder must be instructed that if it finds that the defendant the taking crime it must stop and not reach the possession charge, on if the fact finder does not find sufficient evidence of the taking can it go on to consider the possion charge. MILANOVICH V, UNITED STATES, 356 U.S. 551 81 S. ct, 728, 5L. ed. 2d. 773 (1961).

There can be no doubt that the way the jury was instructed and the way the state presentted its case the jury that the jurors felt that they could reach a verdict of guilty on both charges for either the money or the stolen access device. They were misinformed, the trial court should of instructed the jury that the could convict on either theft or possession, and had the jury been properly informed there is no way we can now say on witch count if any the jury wuold of convicted. This was a prejudice that no curative instruction could of cured. HEFLIN V, UNITED S, 358, U.S. 415. has made it clear that it is plain error to allow the jury to convict an accused of the taking and possessing of the same money or in this case property. and under , MILANOVICH V, UNITED STATES 356. U.S. 551. The proper appellate remedy is to remand for a new trial, 506. F2d. 352, 354. see also UNITED STATES V, GADDIS

(ISSUE #14)

The court erred and abused its discretion when it denied Mr Robinsons motion that the court rule that these charges fall under same criminal conduct.

FACTS

Mr Robinson was charged with six crimes in this case, in the charging documents the state in each case states ; a crime of the same similar character and /or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and or so closely connected in respect to time and occasion that it would be difficult to separate proof of one charge from proof of the others.

The state in there opening, in there case in chief and in there closing because this case is one they built on circumstantial evidence relied and but to the jury that one event took place in furtherance of the other and therefore it all made since, the state then puts before the jury that they can aggregate the theft and possession only because they were done in the course of criminal conduct, RP, 714, 715, 716.

At the sentencing hearing Mr Robinson told the court that he believed that his current offences merit the same criminal conduct statute and therefore should only count as one offender score that being two points the highest for the crime of the robbery, RP, at 844, 845, 846, Mr Robinson ask the court to perform the three step analysis as demanded by law once the offender score is challenged, in regards to the same criminal conduct. Judge Armijo refused to do the analysis and did not make a finding in regards to the same criminal conduct as required. RP at, 850. the state asked the court to make a ruling that these crimes are separate courses of criminal conduct. The court made no such finding on the record. Also the state in its argument fails to support its claim that these crimes do not meet the standard of same criminal conduct. RP, AT, 838, 839, 840. Once challenged and requested by either party the court must perform the analysis, Had the court done so they there is no doubt that the court would of ruled these crimes the same criminal conduct, and as to the burglary the state raises the anti-burglary statute, the law requires that the court make a ruling on the record that the anti-burglary statute does or does not apply, in that the Judge in this case just simply refuse to do any of this he also violates Mr Robinson right to due process. Justice can only be served by this court vacating the sentence and remand for resentencing under the same criminal conduct application and the proper offender score.

Counsel was further ineffective when she submitted a calculation of the defendants offender score to the state, on on the court record that she first did not discuss with her client and secondly that she knew her client was in disagreement with., RP at 834, 836, 837, this created prejudice that Mr Robinson could not overcome.

(ISSUE # 15)

The court erred and abused its discretion when it precluded the defense from questioning the victim as to her contact with black people in that this is a case of identification, where the victim failed to identify Mr Robinson as the suspect previously and during the first trial the victim testified that she knew only one other black person and that was a friend of her sons and he was of mix race. her ability to tell one black person from another was relevant. RP 695, 696.

(ISSUE #16)

It was error and an abuse of discretion when the court allowed impermissible hearsay testimony ; During direct of Detective Jason Temple, the state in regards to one of the witnesses, Randy Hamilton and his viewing of the

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Photographic line up the prosecutor asked Temple: okay and so after he looked at those photographs what did he say to you? Temple states: that he said NO. (R.P. at 335) Temple stating what the witness said to him amounts to impermissible hearsay and violated Mr. Robinson's right to due process.

(ISSUE #17)

It was state and prosecutor misconduct to reference Mr. Robinson's 'in-custody' status during trial in front of the jury.

(FACTS)

On 9/18/06 the prosecutor called the Pierce County Jail Record Officer to testify. Correction Officer Steven Berry. Robinson was in custody at the Pierce County Jail and had been since May 15/05 the day of his arrest. The state went before Judge Armijo and ask to be allowed to show Mr. Robinson's booking photo to the jury. To show that his appearance could of changed since he had been in jail for over a year and not subject to the outside elements. Judge Armijo granted the state's request. During direct the prosecutor ask Officer Berry: (Q) Did you have occasion to bring another booking record with you? (A) YES I DID. (Q) What was that (A) Gregory Robinson. (Q) I'm showing you exhibit #50 for identification. Is this the same document that you were referring to a moment ago that you brought with you in regards to Gregory Robinson? (A) YES. IS THAT IN FACT A RECORD OF THE PIERCE COUNTY JAIL? (A) YES. (Q) KEPT IN THE COURSE OF JAIL BUSINESS. (A) YES. (Q) AND DOES THAT DOCUMENT SET FORTH THE DATE THAT GREGORY ROBINSON WAS TAKEN INTO CUSTODY? (A) YES. (Q) AND WHAT DATE IS THAT? (A) 5/15/05. (Q) DOES THAT DOCUMENT SET FORTH A RELEASE DATE FOR GREGORY ROBINSON? (A) THIS PARTICULAR ONE

DOES NOT? (Q) WHAT DOES IT INDICATE? (A) THIS SHOWS NO RELEASE DATE. (Q) DOES THAT MEAN THAT HE HAS NOT BEEN RELEASED? (A) NOT AS OF THE DATE THIS WAS PRINTED. (Q) AND WHEN WAS THAT? (A) LAST WEEK. (RP, AT. 440-444. DEFENSE COUNSEL ARGUED BEFORE JUDGE ARMILJO THAT THE STATE ELICITED INFORMATION FROM THE WITNESS THAT MR ROBINSON HAD NOT BEEN RELEASED SINCE HIS BOOKING DATE, WHICH LEAVES OPEN REASONS AS TO WHY HE'S NOT BEEN RELEASED. SUCH AS HE'S GUILTY THAT'S WHY HE'S IN JAIL. (RP, AT. 450) SHE FURTHER STATES: THEIRS A CONSTITUTIONAL ISSUE ABOUT THE DEFENDANT, BEING SHACKLED IN FRONT OF JURORS, PRETTY MUCH WE ADDRESS THAT BY MAKING SURE THAT THE JURORS ARE NOT AROUND WHEN THAT HAPPENS, BUT NOW WE HAVE THEM KNOWING THAT MR ROBINSON HAS BEEN IN CUSTODY FOR OVER A YEAR WHILE THEY'RE ALREADY GOT A JAILER SITTING IN THE COURT ROOM EVERY DAY WITH HIM WHICH GIVES THE APPEARANCE THAT HE'S SUPPOSED TO BE DANGEROUS' (RP), 452..

THE SIXTH AND THE FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND WASHINGTON CONSTITUTION ARTICLE I, SECTION 22, GUARANTEE A DEFENDANT THE RIGHT TO A FAIR AND IMPARTIAL JURY. ONCE THE JURY WAS TOLD THAT NOT ONLY HAD MR ROBINSON BEEN ARRESTED FOR THIS CRIME, BUT THAT HE HAD AT THAT TIME BEEN IN JAIL FOR OVER 1 1/2 YEARS FOR THE CRIME, MR ROBINSON WAS PREJUDICED AND THERE WAS NO WAY TO CURE THE PREJUDICE THAT THIS CREATED IN THE MINDS OF THE JURORS. IT WAS MISCONDUCT FOR THE PROSECUTOR TO ELICIT THIS TESTIMONY AND AN ABUSE OF DISCRETION FOR JUDGE ARMILJO TO ALLOW THIS WITHOUT WEIGH THE PREJUDICIAL EFFECT THIS WOULD HAVE TOWARDS MR. ROBINSON. THIS AMOUNTS TO A PLAIN CONSTITUTIONAL ERROR, AND A VIOLATION OF MR ROBINSON'S RIGHTS. THE REMEDY IS TO VACATE JUDGEMENT AND SENTENCE, AND,

REMAND FOR A NEW TRIAL.

(ISSUE #18)

TRIAL COUNSEL WAS INEFFECTIVE, VIOLATING MR ROBINSON'S 6TH AMENDMENT AND FOURTEENTH AMENDMENT TO EFFECTIVE ASSISTANCE OF COUNSEL. AT TRIAL.

(FACTS.)

TRIAL COUNSEL HAD SEVERAL WITNESSES ON THE DEFENSE WITNESS LIST, INCLUDING A HANDWRITING EXPERT, AND THE HOTEL MANAGER OF THE GOLDEN LION AND THE DEFENSE MAIN ALIBI WITNESS, SHAWN GARCIA. DEFENSE COUNSEL WAS AWARE OF MR ROBINSON'S REQUEST THAT ALL OF THESE WITNESSES TESTIFY, IN THAT THEIR STATEMENTS CONTAINED CRUCIAL EXCULPATORY EVIDENCE. IT WAS NOT UNTIL THE DAY IN TRIAL WHEN DEFENSE ATTORNEY CLOSED TOID SHE MAKE THE COURT AND MR ROBINSON AWARE THAT NONE OF THESE WITNESSES WERE AVAILABLE TO TESTIFY.

THERE WAS NO TACTICAL REASON FOR THIS.

IT WAS INEFFECTIVE ASSISTANCE OF COUNSEL, WHEN TRIAL COUNSEL FAILED TO DISCLOSE MATERIAL FACTS, OR MISREPRESENTATION OF MATERIAL FACTS TO DEFENDANT.

FAILURE TO OBJECT TO ERRONEOUS JURY INSTRUCTION.

1 APPELANT ROBINSON, RAISES THE ISSUE THAT VIOLATION OF HIS
2 SPEEDY TRIAL RIGHTS DENIED HIM A FAIR TRIAL.

3 STATEMENT OF RELEVANT FACTS

4 From the first time I appeared in court and was arraigned
5 to the time of my final trial, there were approximately
6 fourteen continuances granted by the court. There were
7 several reasons stated as to the purpose for these ongoing
8 motion to continue, among those reasons were, vacations
9 by the prosecutor and vacations by my court appointed
10 attorneys, their kids graduations and other personal
11 reasons.

12 Although initially acting on the advice of my attorney
13 I signed in agreement of the motions to continue, it soon
14 became clear that there were no just reasons for these
15 ongoing delays, and the delays were starting to negatively
16 effect my defense, so I asked to address the court and
17 did so in front of Judge Lisa Warswick the presiding
18 Judge. I in open court went on record and objected to
19 any further continuances in my case. Expressing again
20 among other reasons how these delays were effecting
21 my ability to present my defense.

22 Judge Warswick on more than one occasion ordered in
23 writing and stated for the record that there were to
24 be no more continuances in this case. Each time she would
25 violate her own order and grant another continuance.

26 Ultimately the delays did in fact materially effect

1 speedy trial right are explained by UNITED STATE
2 COURT IN BARKER V. WINGO.

3 #1 THE LENGTH OF THE DELAY:(In this case the total length of
4 the delay exceeded a one year time span.

5 "Delays of over a year have been considered sufficient
6 to invoke the full Barker analysis.SEE:UNITED STATES V.
7 DIFRANCESCO,604.F2d.769(2d cir 1979).

8 #2 THE REASON FOR THE DELAY:(In this case the reasons
9 offered for the ongoing continuences are not justifiable.
10 Further more there were several trial readiness proceeding
11 where the state went on the record as well as in writing
12 stating that they were to proceed to trial,To then turn
13 and ask the court for further delays is an obvious stall
14 tactic and can only be viewed as a purposeful delay by
15 the prosecution to gain an tactical advantage.

16 "The United States Supreme Court has held
17 that an intentional delay undertaken by
18 the state to gain tactical advantage over
19 the accused is also violative of due process
20 SEE:STATE V. LOVASCO,431 U.S 783,795,790,97Sct
21 2044,52 L Ed.2d.752.

22 #3 THE DEFENDANTS ASSERTION OF HIS RIGHT:(In this case
23 Mr Robinson made every effort available to him to assert
24 his speedy trial rights,Verbally and by signing OBJECTION
25 at the time of the proceedings.

26 #4 PREJUDICE TO THE DEFENDANT:(In this case actual damage

1 my defense, thus the outcome of my trial, resulting in
2 an unjust conviction.

3 ARGUMENT

4 Both the Federal and the State constitutions guarantee
5 an accused a speedy trial. STATE V. BOSECK, 45 Wash, App. 62,
6 723 P.2d. 1182 (1986) (citing U.S. CONST. AMEND, 6; WASH CONST
7 ART, 1, sec 22.

8 The US SUPREME COURT has determined that deprivation of the
9 constitutional right to a speedy trial is to be measured
10 by four factors, including the length of the delay, the
11 prejudice to the defendant, the reason for the delay, and
12 whether the defendant has demanded a speedy trial. SEE
13 BARKER V. WINGO 407 U.S. 514, 92 Sct. 2182, 33 LEd. 2d. 101 (1972).

14 By comparison the individual states are left free to
15 prescribe a reasonable period, consistent with constitution
16 standards, during which an accused must be afforded his
17 right to a speedy trial. This is what Washington has done
18 in CrR 3.3. SEE, STATE V. POULOS 31 Wn App. 241, 640 P.2d 735
19 (1982).

20 A claim that an accused has been denied the cons
21 titutional right to a speedy trial is subject to
22 a balancing test, which must be applied on an ad
23 hoc basis, wherein the conduct of both the prose
24 cutor and the defendant are weighed. The four
25 factors to consider in determining whether a defen
26 dant has been deprived of his constitutional,

1 to the defendants case as a result of the delays consisted
2 of Mr Robinson main alibi witness Ms Shanon Garcia becoming
3 unavailabe to testify(The witness had moved and could
4 not be found.Also the memories of key state witness as
5 to the exact time and places that events took place had
6 faded.in a case built on circumstancial evidence,this
7 testimony or lack thereof was crucial.The delays in this
8 case were extremely prejudicial to Mr Robinson.

9 REMEDY

10 A Defendant who has been denied his speedy trial rights
11 or was not brought to trial within the time prescribed
12 by CrR 3.3 generally moves for dissmisal,In this case
13 vacation of judgement and sentence is the only remedy.

14 Also;Under Criminal Rule 8.3 (B)

15 The court in the furtherance of justice,after
16 notice may dismiss any criminal prosecution
17 due to arbitrary action or goverment misconduct
18 when there has been prejudice to the rights
19 of the accused,which materially affected
20 the accused right to a fair trial.

21 Govermental misconduct however need not
22 be of an evil or dishonest nature simple
23 mismanagement is sufficient.SEE:STATE V.

24 MICHIELLI.AT 239.

JUDGE FAILED TO ADMINISTER JURY OATH.

Rcw.4.44.260 ;WHEN THE JURY HAS BEEN SELECTED ,AN OATH OR AFFIRMATION SHALL BE ADMINISTERED TO THE JURORS IN SUBSTANCE THAT THEY AND EACH OF THEM WILL WELL AND TRULY TRY THE MATTER IN ISSUE BETWEEN THE PLAINTIFF AND THE DEFENDANT.

AND A TRUE VERDICT GIVE ACCORDING TO THE LAW AND EVIDENCE AS GIVEN THEM ON TRIAL.

[2003] C406 § 14;code 1881 § 220,1877 p46§ 224;1869,p54 §229 rr § 338.

IN THIS CASE IN JUDGE SERGIO ARMIJO COURT AFTER THE VIOR DIRE OF POTENTIAL JURORS WAS COMPLETE AND A JURY WAS SELECTED,JUDGE ARMIJO FAILED TO LEGALLY IMPANEL THE JURY BY ADMINISTERING THE OATH OR AFFIRMATION AS REQUIRED BY LAW.

JUDGE ARMIJO DID SWEAR IN THE JURY PANEL FOR VIOR DIRE, THIS OATH REFERRED TO THE OATH GIVEN AT THE BEGINNING OF VOIR DIRE, NOT THE OATH GIVEN AT THE END OF VIOR DIRE. THE FORMER OATH IS SET OUT IN 6 WASH.PRAC,WPI6.01(3d ed.1989) AND DESCRIBED IN 11 WASH.PRAC,WPIC app.C,AT 629 (1977). THE LATTER OATH IS DESCRIBED IN CrR 6.6 and RCW 4.44.260.

WHEN THE JURY PANEL IS SWORN FOR VIOR DIRE:THE DEFENDANT IS GIVEN AN UNAMBIGUOUS AND READY DISCERNIBLE SIGN THAT TRIAL IS BEGINNING AND HE OR SHE WILL HAVE THE OPPORTUNITY TO PARTICIPATE IN JURY SELECTION.70 WASH.App.at 211.

CONCLUSION .IN A JURY TRIAL OF A CRIMINAL CASE,JEOPARDY DOES NOT ATTACH UNTIL THE JURY HAS BEEN BOTH IMPANELED AND SWORN. AS REQUIRED BY LAW:SEE DOWNUM V. UNITED STATES,372 US. 734 (1963):ILLINOS V.SOMERVILLE,410 U.S. 458 (1973).

THERE CAN BE NO JEOPARDY WHEN THE JURY WAS NOT LEGALLY IMPANELED AND SWORN.STATE V.HEROLD,68 WASH.654,656,123 P. 1076 (1912).

ACCORDING TO STATE AND FEDERAL CONSTITUTION THE JURY IN THIS CASE DID NOT HAVE THE LEGAL ATHORITY TO TRY AND RENDER A VERDICT. VACATION OF JUDGEMENT AND SENTENCE IS THE ONLY REMEDY.

RIGHT TO REMAIN SILENT

APPROXIMATELY 1 DAY AFTER MY ARREST , DETECTIVE JASON TEMPLE THE LEAD DETECTIVE IN THIS CASE CAME TO SEE ME, AT THE PREICE COUNTY JAIL WHERE I WAS IN CUSTODY. HE READ ME MY MARANDA RIGHTS, THEN ASKED IF I WISHED TO SPEAK WITH HIM? I REPLYED NO! NOT WITHOUT AN ATTORNEY. NO FURTHER QUESTIONS WERE ASKED.

DURING TRIAL THE ~~state~~ ASKED TEMPLE IF HE HAD AT SOME POINT WENT TO SPEAK TO THE DEFENDANT? HE RESONDED, YES. THE STATE THEN ASKED WHAT IF ANY RESPONSE DID THE DEFENDED GIVE? TEMPLES RESPONDED THAT THE DEFENDED SAID THAT HE DID NOT WISH TO SPEAK TO HIM.

THIS QUESTION AND ITS RESPONSE IN FRONT OF THE JURY VIOLATED MY 5th AMENDMENT CONSTITUTIONAL RIGHT TO REMAIN SILENT. ALSO MY 14th AMENDMENT CONSTITUTIONAL RIGHT TO DUE PROCESS.

#1-POST-ARREST SILENCE FOLLOWING SUCH WARNINGS(MIRANDA) IS INSOLUBLY AMBIGUOUS: MORE OVER IT IS FUNDAMENTALLY UNFAIR TO ALLOW THE ARRESTEES SILENCE TO BE USED, AT TRIAL AFTER HE HAD BEEN IMPLIEDLY ASSURED, BY THE MIRANDA WARNINGS THAT SILENCE WOULD CARRY NO PENALTY.

#2-SILENCE AT THE TIME OF ARREST MAY BE INHERENTLY AMBIGUOUS EVEN APART FROM THE EFFECT OF MIRANDA WARNINGS, FOR , IN A GIVEN CASE THERE MAYBE SEVERAL EXPLANATIONS FOR THE SILENCE, THAT ARE CONSISTANT WITH THE EXISTENCE OF AN EXCULPATORY EXPLANATION.

#3-ADMISSION OF EVIDENCE OF SILENCE AT THE TIME OF ARREST HAS A SIGNIFICANT POTENTIAL FOR PREJUDICE IN THAT THE JURY MAY ASSIGN MUCH MORE WEIGHT TO THE DEFENDANTS PREVIOUS SILENCE THAN WARRANTED

#4-THE COURT OF APPEALS HAS HELD THAT INQUIRY INTO DEFENDANTS PRIOR SILENCE IMPERMISSIBLY HAS PREJUDICES THE DEFENDANTS DEFENCE, AS WELL AS INFRINGED UPON MY 5th & 14th CONSTITUTIONAL RIGHTS.

IN THIS PARTICULAR CASE THERE WAS NO PROBATIVE VALUE TO THE STATES VIOLATION, ITS SOLE PURPOSE WAS TO INFER TO THE JURY THAT THE DEFENDANTS SILENCES WAS AN INDICATION OF GUILT. THE GRAVE OVERTONES OF THIS STATEMENT COULD ONLY INSTILL PREJUDICE IN THE MINDS OF THE JURORS. (VACATION OF JUDGEMENT & SENTENCE IS THE ONLY REMEDY.

MIRANDA V. ARIZONA, 384. u.s. 436, 86s ct 1602 16L ed. 2d. 694 10 (1966)
 DOYLE V. OHIO, 426 u.s. 610, 617, 49L. ed. 2d 91, 96s. ct. 2240 (1976) .
 STATE V. HALE, U.S. (1975)
 MICHIGAN V. TUCKER U.S. (1974)
 RALEY V. OHIO U.S. (1959).
 5th & 14th CONSTITUTIONAL AMENDMENTS.

20

PERJURED TESTIMONY

02/24/72 GIGLIO V. UNITED STATES

As long ago as MOONEY V. HOLOHAN, 294 U.S. 103, 112 (1935), The United States Supreme Court has made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.

This was reaffirmed in PYLE V. KANSAS, 317 U.S. 213 (1942). In NAPUE V. ILLINOIS, 360 U.S. 264 (1959), the court said, the same result obtains when the state although not soliciting false evidence, allows it to go uncorrected when it appears.

Thereafter BRADY V. MARYLAND, 373 U.S. at 87, held that suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecution." See American Bar Association, Project on Standards for Criminal Justice, Prosecution Function and Defense Function §3:11(a).

When the "reliability of a given witness may well be determinative of guilt or innocence," nondisclosure of evidence affecting credibility falls within this general rule. NAPUE, SUPRA, AT 269.

A new trial is required if "the false testimony could... in any reasonable likelihood have affected the judgment of the jury NAPUE, SUPRA, AT 271

In this case as typified by MOONEY V. HOLOHAN, the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the prosecution knew, or should have known, of the perjury. In a series of subsequent cases the court has consistently held that a conviction obtained by knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. It is this line of cases on which the court of appeals placed primary reliance. The court applies strict standards of materiality not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth seeking function of the trial process.

DEMARCO V. UNITED STATES. (1991)
GIGLIO V. UNITED STATES. (1972)
MOONEY V. HOLOHAN. (1935)
PYLE V. KANSAS. (1942)
NAPUE V. ILLINOIS (1959)
UNITED STATES V. AGURS. (1976)

In this particular case the prosecutor first committed perjury in regards to the date and the entire deal that the state offered state witness, BANKS)

The prosecution was in possession of several investigative reports and interviews with witness banks. The prosecution was also present during sworn testimony of banks during the first trial. Court records clearly show how banks changed her statement several times, and the prosecution can not say that she was not

fully aware that banks was not being truthful under oath.

The prosecution purposely mislead and set out to deceive the jury, in regards to a Kirby Christopher, having heard prior testimony and read the investigative report of Detective Jason Temple, the prosecution was well aware that Mr Christopher did not reside at the residence that the prosecution indicated by means of an aerial map and testimony to the jury.

DETECTIVE EDWARD BAKER(TACOMA POLICE DEPARTMENT)

DETECTIVE BAKER WAS CALLED BY THE STATE TO TESTIFY AS AN EXPERT WITNESS, TO LAY THE FOUNDATION TO THE VIDEO TAPES THAT WERE ADMITTED INTO EVIDENCE. ALSO TO EDUCATE THE JURY AS HOW THE TAPE ARE MADE , AND PUT TOGETHER FOR THE PURPOSE OF TRIAL

A CONSIDERABLE AMOUNT OF TIME WAS SPENT BY THE STATE EXPRESSING THE EXPERIENCE AND EDUCATION THAT QUALIFIED BAKER AS AN EXPERT.

DETECTIVE BAKER IS AN VIDEO EQUIPMENT EXPERT, HE IS NOT AN IDENTIFICATION EXPERT, NOR WAS THERE AT ANY TIME AN OFFER OF PROOF THAT WOULD ESTABLISH HIM AS ANYTHING OTHER THEN AN VIDEO EQUIPMENT EXPERT.

DURING THE FIRST TRIAL WHILE BEING QUESTIONED THE DETECTIVE STAY WITHIN THE SCOPE OF HIS EXPERTISE. THE RESULT OF THAT TRIAL WAS A HUNG JURY.

DURING THE SECOND TRIAL BAKER WENT OUTSIDE THE SCOPE OF HIS EXPERTISE, BY EXPRESSING HIS OPINION AS TO THE SIMILARITIES BETWEEN THE FACIAL FEATURES OF THE PERSON IN THE VIDEO AND THE DEFENDANT, ALSO HIS OPINION AS TO SIMILARITIES IN THE SHOES THAT THE PERSON IN THE VIDEO WAS WEARING AND THOSE THAT THE DEFENDANT WAS WEARING AT THE TIME HE WAS ARRESTED AND BOOKED INTO THE COUNTY JAIL, DAYS LATER.

THIS WAS AN ABUSE OF DISCRETION ON THE PART OF THE STATE, ALSO A VIOLATION OF THE DEFENDANT'S RIGHT TO DUE PROCESS.

WASHINGTON PRACTICE EVIDENCE LAW(702.33) STATES:

THE TRADITIONAL RULE HAS BEEN THAT NO OPINION TESTIMONY LAY OR expert IS APPROPRIATE ON THE ISSUE OF WHETHER THE ACCUSED IS THE PERSON DEPICTED IN A PHOTOGRAPH OR ON VIDEO TAPE.

THE COURTS HAVE REASONED THAT THE JURORS ARE CAPABLE OF COMPARING THE DEFENDANT TO THE PERSON IN THE PHOTOGRAPH FOR THEMSELVES.

DETECTIVE BAKER'S IDENTIFICATION OPINION TESTIMONY WAS IMPINGING UPON THE PROVINCE OF THE JURY

WHEN A PARTY SEEKS TO INTRODUCE EXPERT TESTIMONY ON PERSONAL PHOTOGRAPHIC IDENTIFICATION- WHETHER TO PROVE OR DISPROVE SIMILARITY, HE SHOULD FIRST BE REQUIRED TO MAKE AN OFFER OF PROOF TO THE COURT OUTSIDE THE PRESENCE OF THE JURY.

ALSO FAIRNESS REQUIRES THAT THE DEFENSE BE GIVEN ADEQUATE NOTICE OF SUCH TESTIMONY TO CHECK THE FINDING AND CONCLUSIONS OR TO OBTAIN AN EXPERT TO ASSIST THE DEFENDANT TO CONTRADICT STATEMENTS OF OPINION.

UNITED STATES V. BROWN, 501 F.2d 146 (9th Cir 1974)
UNITED STATES V. CAIRNS (9th Cir 1970)

DECLARATION OF SERVICE BY MAIL
GR 3.1(c)

I, Gregory S. Robinson, declare that on this
7 day of August, 2007, I deposited the

foregoing document(s):

RAP. 10.10. Statement of Additional
Grounds for Review

or copy(s) thereof, in the internal legal mail system of the Stafford Creek

Corrections Center with first class postage affixed, and addressed

as follows:

KATHLEEN PROCTOR, PIERCE COUNTY PROSECUTOR (ATTY. OFC)
930 TACOMA AVE S RM 146 TACOMA WA 98402-2171

REBECCA W. BARNES (ATTORNEY AT LAW)
P.O. BOX 1401, MERCER ISLAND WA 98040-1401

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

Dated this 7 day of August, 2007 at

ABERDEEN WASHINGTON

/s/ Gregory S. Robinson # 863396