

**ORIGINAL**

No. 40053-7-II

**CERTIFICATE OF SERVICE**

I certify that I mailed  
copies of Supp. Petition  
to Edward Holm Thurston *(by fax)*  
& Thomas Doyle  
3/11/10 clay  
Date Signed

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

Respondant

vs.

ANTHONY C. CLEMONS

Pro-SE Petitioner

FILED  
COURT OF APPEALS  
DIVISION II  
10 FEB 22 AM 9:44  
STATE OF WASHINGTON  
BY [Signature]  
REFFLY

SUPPLEMENTAL BRIEF PURSUANT  
TO MOTION FOR NEW TRIAL

PERSONAL RESTRAINT PETITION

ANTHONY CLEMONS Pro SE

1830 EAGLE CREST WAY  
CLALLAM BAY, WA.  
98326-9723

-- TABLE OF CONTENTS --

TABLE OF AUTHORITIES ----	ii
ASSIGNMENTS OF ERRORS .....	I
ARGUMENT .....	2
CONCLUSION .....	9

AFFIDAVITS IN SUPPORT .....

A	---	OF	ANTHONY CLEMONS
B	----	OF	LURTIS WALKER
C	---	OF	AMANDA COSS
D	----	OF	PATRICK LAMP
E	---	OF	ASHLEY TRIANCE

## .. TABLE OF AUTHORITIES ..

### CASE LAW .....

(IN ORDER OF APPEARANCE)

- RUMMELL V ESTELLE, 590 F.2d 103,104 (5<sup>th</sup> CIR 1979)
- U.S. V. TUCKER, 716 F.2d 576 (9<sup>th</sup> CIR 1983)
- GOODWIN V. BALCOM, 684 F.2d 794 804-05 (11<sup>th</sup> CIR 1982)
- UNITED STATE V. PORTERFIELD, 624 F.2d 122-124 (10<sup>th</sup> CIR 1980)
- WOOD V. ZAHRADNICK, 578 F.2d 980 982 (4<sup>th</sup> CIR 1978)
- STATE V. VISITACION, 55 Wn.App. 166-176 P.2d (1989)
- STATE V. BYRD, 30 WASH App 794 638 P.2d 601 (1981)
- RICHTER V. HICKMAN, NO. 06-15614 (9<sup>th</sup> CIR 8/10/09)
- STRICKLAND V. WASHINGTON, 466 U.S. 668 691 (1984)
- CORRELL V. RYAN, 539 F.3d 938 949 (9<sup>th</sup> CIR 2008) <sup>CERT.</sup> DEN. SUB. NOM.
- SCHIRRO V. CORRELL, NO. 08-430 2009 WL 56214 (JAN. 12 2009)
- HENDRICKS V. CALDERON, 70 F.3d 1032 1040 (9<sup>th</sup> CIR 1995)
- JONES V. WOOD, 114 F.3d 1002 1013 (9<sup>th</sup> CIR 1997)
- DUNCAN V. ORNOSKI, 528 F.3d 1222 1234 (9<sup>th</sup> CIR 2008)
- HART V. GOMEZ, 174 F.3d 1067 1070 (9<sup>th</sup> CIR 1999)
- RILEY V. PAYNE, 352 F.3d 1313 1319-20 (9<sup>th</sup> CIR 2003)
- LINDSTADT V. KEANE, 239 F.3d 191 203 (2d CIR 2001)
- HARRIS V. WOOD, 64 F.3d 1432 1435 (9<sup>th</sup> CIR 1995)
- U.S. V. UALLARO, 816 F.2d 443 445 (9<sup>th</sup> CIR 1987)
- U.S. V. SITTON, 968 F.2d 947 960 (9<sup>th</sup> CIR 1992)
- STATE V. THOMAS, 109 Wn2d 222,230-31 743 P.2d 816 (1987)

CONTINUED . . .

RULES . . . .

RULES FOR PROFESSIONAL CONDUCT 1.1 ; 1.2(a) ; 1.3 ;  
1.4(a)(2)(4) .

OTHER . . . .

AISA STANDARDS FOR CRIMINAL JUSTICE 4-4.1  
(2d Ed 1980)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## -- ASSIGNMENT OF ERRORS --

1) FAILURE TO CONDUCT REASONABLE PRE-TRIAL  
INVESTIGATIONS.

2) FAILURE TO INVESTIGATE VICTIM OR  
WITNESSES.

3) FAILURE TO INVESTIGATE POTENTIAL WITNESSES  
FOR THE DEFENSE.

4) FAILURE TO PROVIDE EFFECTIVE ASSISTANCE  
TO ANTHONY CLEMONS (DEFENDANT) BY FAILING  
TO PRESENT A DEFENSE.

5) FAILURE TO CONSULT WITH CLIENT.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## .. ARGUMENT ..

THE RIGHT TO REASONABLY COMPETENT COUNSEL IMPOSES A CORRELATIVE DUTY ON DEFENSE COUNSEL TO UNDERTAKE REASONABLE STEPS TO INVESTIGATE ALL AVENUES OF DEFENSE: FAILURE TO CONDUCT A REASONABLE PRETRIAL INVESTIGATION MAY IN ITSELF AMOUNT TO INEFFECTIVE ASSISTANCE OF COUNSEL.

"PRETRIAL INVESTIGATIONS AND PREPARATIONS ARE KEYS TO EFFECTIVE REPRESENTATION OF COUNSEL."

RUMMELL V. ESTELLE, 590 F.2d 103, 104 (5th Cir. 1979)

AS WELL AS VIOLATING 'RULES OF PROFESSIONAL CONDUCT' 1.1, 1.2(a), AND 1.3; THE ABA STANDARDS FOR CRIMINAL JUSTICE 4-4.1 (2d Ed. 1980) ENTITLED, "DUTY TO INVESTIGATE," WHICH IN PERTINENT PART READ:

"IT IS THE DUTY OF THE LAWYER(S) TO CONDUCT A PROMPT INVESTIGATION OF THE CIRCUMSTANCES OF THE CASE AND TO EXPLORE ALL AVENUES LEADING TO THE FACTS RELEVANT TO THE MERITS OF THE CASE..."

THIS FAILURE VIOLATES THE BASIC PRECEPTS OF LAW.

U.S. V. TUCKER 716 F.2d 576 (9th Cir 1983)

COURTS HAVE REPEATEDLY STRESSED THE IMPORTANCE OF ADEQUATE CONSULTATION BETWEEN ATTORNEY AND CLIENT, THE INTERVIEWING OF IMPORTANT

1 WITNESSES, AND ADEQUATE INVESTIGATION OF  
2 POTENTIAL DEFENSES."

3 GOODWIN V. BALKCOM 684 F.2d 794 804-05 (11th Cir 1982)

4 UNITED STATES V. PORTERFIELD 624 F.2d 122-124 (10th Cir 1980)

5 WOOD V. ZAHRADNICK 578 F.2d 980 982 (4th Cir 1978)

6 IN STATE V. VISITACION 55 Wn App 166-176 P.2d (1989)

7 THE WASHINGTON COURT OF APPEALS FOUND THAT FAILURE  
8 TO INTERVIEW POTENTIAL DEFENSE WITNESSES  
9 CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL SEE ALSO

10 STATE V. BYRD 30 WASHAPP 794 638 P.2d 601 (1981)

11  
12 RICHTER V. HECKMAN No 06-15614 (9th Cir 2009)

13 SUPREME COURT LAW ON INEFFECTIVE ASSISTANCE OF  
14 COUNSEL CLAIMS, "COUNSEL HAS A DUTY TO MAKE REASON-  
15 ABLE INVESTIGATIONS OR TO MAKE A REASONABLE  
16 DECISION THAT MAKES PARTICULAR INVESTIGATIONS  
17 UNNECESSARY" ~~SEE~~ STRICKLAND V. WASHINGTON 466

18 U.S. 668, 691 (1984)

19 UNTIL A REASONABLE INVESTIGATION IS CONDUCTED  
20 COUNSEL IS NOT IN A POSITION TO MAKE CRITICAL  
21 STRATEGY DECISIONS OR SETTLE ON A TRIAL  
22 STRATEGY, CERTAINLY INCLUDING THE DECISION TO  
23 REST ON HIS CLIENTS TESTIMONY AND TO NOT CALL  
24 KEY DEFENSE EYE WITNESSES AT TRIAL OR INVEST-  
25 IGATE SAID WITNESSES PRIOR TO TRIAL..

26 "AN UNINFORMED STRATEGY IS NOT A REASONED STRATEGY."

27 CORRELL V RYAN 539 F.3d 938 949 (9th Cir 2008) (CERT DEN SUB NOM)

1 SCHRIRO V CORRELL NO 08-430, 2009 WL 56214 (JAN 12 2009)

2 "COUNSEL IS OBLIGATED TO ~~DO~~ CONDUCT A  
3 REASONABLE INVESTIGATION IN ORDER TO PRE-  
4 SENT THE MOST PERSUASIVE CASE HE CAN. COUNSEL MUST  
5 CONDUCT A PRETRIAL INVESTIGATION INTO THE AVAIL-  
6 ABILITY OF INDEPENDANT, OBJECTIVE SOURCES TO SUPPORT  
7 THE PART OF HIS CLIENTS TESTIMONY THAT HE KNOWS  
8 OR CAN REASONABLY EXPECT WILL BE CHALLENGED, AND SUB-  
9 SEQUENTLY TO PRESENT TO THE JURY ANY EVIDENCE  
10 HE FINDS THAT TENDS TO SHOW HIS CLIENTS INN-  
11 OLENCE, TENDS TO UNDERMINE THE PROSECUTORS CASE,  
12 OR RAISES REASONABLE DOUBT AS TO HIS CLIENTS GUILT  
13 UNLESS HE MAKES INFORMED, STRATEGIC DECISION  
14 THAT THE RISKS OF INTRODUCING SUCH EVIDENCE  
15 OUTWEIGH ITS BENEFIT TO THE DEFENSE,"

16 HENDRICKS V CALDERON 70 F.3d 1032 1040 (9th CIR 1995)

17 CLEARLY MR. SHACKLETON HAD NO REASONABLE TRIAL  
18 STRATEGY WHATSOEVER THAT WOULD OUTWEIGH THE  
19 BENEFIT OF CALLING THREE EYE WITNESSES TO TESTIFY  
20 ON HIS CLIENTS BEHALF AS TO HIS CLIENTS INNOCENSE.  
21 SUCH TESTIMONY IS IRREFUTABLY SUFFICIENT TO RAISE  
22 REASONABLE DOUBT IN THE EYES OF THE JURY AND WOULD  
23 HAVE GREATLY CHANGED THE VERDICT AT TRIAL--

24 "AN ATTORNEY MUST PROVIDE FACTUAL SUPPORT FOR THE  
25 DEFENSE WHERE SUCH CORROBORATION IS AVAILABLE'. FAILURE  
26 TO PURSUE SUCH CORROBORATING EVIDENCE WITH ADEQUATE  
27

1 PRETRIAL INVESTIGATION MAY ESTABLISH CONSTITUTIONALLY  
2 DEFICIENT PERFORMANCE." US. V. TUCKER 716 F.2d  
3 576, 594 (9th CIR 1983)

4 JONES V. WOOD 114 F.3d 1002 1013 (9th CIR 1997)  
5 "GRANTING AN EVIDENTIARY HEARING ON THE ISSUES  
6 OF HIS ATTORNEYS FAILURE TO INVESTIGATE BEFORE  
7 TRIAL AND HIS LAWYERS FAILURE TO TEST EVIDENCE."

8 IN SOME CIRCUMSTANCES SUCH CORROBORATION MAY TAKE  
9 THE FORM OF EYE WITNESS TESTIMONY OR CHARACTER  
10 WITNESSES.. SUCH AS WHAT WAS PROVIDED TO JAMES  
11 SHACKLETON PRIOR TO TRIAL FOR HIM TO INVEST-  
12 IGATE AND PREPARE AN ADEQUATE DEFENSE.. EXHIBITS  
13 A-E (SEE ATTACHED) ARE QUALITY EXAMPLES OF  
14 SOME OF THE EYE WITNESSES WHOSE INFORMATION WAS  
15 PROVIDED TO JAMES SHACKLETON..

16 "A LAWYER WHO FAILS ADEQUATELY TO INVESTIGATE AND  
17 INTRODUCE EVIDENCE THAT DEMONSTRATES HIS CLIENTS  
18 FACTUAL INNOCENSE, OR THAT RAISES SUFFICIENT DOUBT  
19 AS TO THE QUESTION TO UNDERMINE CONFIDENCE IN THE  
20 VERDICT, RENDERS DEFICIENT PERFORMANCE."

21 DUNCAN V. ORNOSKE 528 F.3d 1222 1234 (9th CIR 2008) (QUOTING  
22 HART V GOMEZ 174 F.3d 1067 1070 (9th CIR 1999)

23 WHERE DEFENDANTS STRATEGY IS TO WIN A CREDIBILITY  
24 CONTEST THE IMPORTANCE OF CORROBORATING THE ACCUSED  
25 TESTIMONY WITH PHYSICAL EVIDENCE IS PARAMOUNT.

26 LEAVING THE JURORS TO BELIEVE OR DISBELIEVE  
27 DEFENDANTS SOLELY ON THE BASIS OF THEIR OWN TESTIMONY  
28

1 WITHOUT SUPPORTING EVIDENCE, WHERE SUCH EVIDENCE  
2 COULD BE OBTAINED WITH DILIGENT INVESTIGATION,  
3 IS OBJECTIVELY UNREASONABLE. SEE EG. RILEY V PAYNE  
4 352 F.3d 1313 1319-20 (9th CIR 2003) "WITHOUT ANY  
5 CORROBORATING ~~AND~~ WITNESSES [RILEY'S] BARE TESTIMONY  
6 LEFT HIM WITHOUT ANY EFFECTIVE DEFENSE."  
7 WHICH IS CLEARLY THE CASE BEING BROUGHT BEFORE  
8 THIS COURT NOW. JAMES SHACKLETON EFFECTIVELY LEFT  
9 ME WITH ABSOLUTELY NO DEFENSE AT TRIAL WHEN  
10 THERE WAS SUBSTANTIAL CORROBORATING WITNESSES FOR THE  
11 DEFENSE READILY AVAILABLE..

12 HART 174 F.3d "DEFENSE COUNSEL FAILED TO INVEST-  
13 IGATE OR INTRODUCE INTO EVIDENCE THE RECORDS THAT  
14 FULLY CORROBORATED [THE WITNESSES] STATEMENTS. THUS  
15 THE JURY WAS LEFT TO DECIDE, WITHOUT BENEFIT OF  
16 SUPPORTING OR CORROBORATING EVIDENCE, WHETHER [THE  
17 WITNESSES] TESTIMONY WAS TRUTHFUL AND ACCURATE  
18 OR WHETHER IT WAS UNRELIABLE OR OFFERED SIMPLY IN  
19 AN EFFORT TO ASSIST A FORMER LOVER" LINDSTADT V. KEANE  
20 239 F.3d 191 203 (2d CIR 2001)

21 JONES V. WOOD 114 F.3d 1002, 97(9th CIR 1997)  
22 TO ESTABLISH A CLAIM OF INEFFECTIVE ASSISTANCE  
23 OF COUNSEL, A PARTY MUST PROVE THAT (1) HIS COUNSEL'S  
24 PERFORMANCE WAS DEFICIENT AND (2) THE DEFICIENT  
25 PERFORMANCE PREJUDICED THE DEFENSE. STRICKLAND V.  
26 WASHINGTON 466 U.S. 668, 687, 1984; HARRIS V. WOOD  
27 64 F.3d 1432 1435 (9th CIR 1995) A COUNSEL'S PER-  
28

1 PERFORMANCE IS DEFICIENT IF, CONSIDERING ALL  
2 THE CIRCUMSTANCES, IT FALLS BELOW AN OBJECTIVE  
3 STANDARD OF REASONABLENESS MEASURED UNDER PREVAILING  
4 PROFESSIONAL NORMS. I'd SEE ALSO UNITED STATES V. VACCARO  
5 816 F.2d 443 445 (9th CIR 1987) (DEFICIENT  
6 PERFORMANCE EXISTS IF "COUNSEL FAILED TO EXERCISE  
7 THE SKILL, JUDGEMENT, OR DILIGENCE OF A  
8 REASONABLY 'COMPETANT ATTORNEY'")

9 "IN ANY INEFFECTIVENESS CASE, A PARTICULAR  
10 DECISION NOT TO INVESTIGATE MUST BE DIRECTLY ASS-  
11 ~~E~~SSSED FOR REASONABLENESS IN ALL THE CIRCUMSTANCES,  
12 APPLYING A HEAVY MEASURE OF DEFERANCE TO COUNSEL'S  
13 JUDGEMENTS, "AND" INQUIRY INTO COUNSEL'S CONVERSATIONS  
14 WITH THE DEFENDANT MAY BE CRITICAL TO A PROPER  
15 ASSESSMENT OF COUNSEL'S INVESTIGATION DECISIONS ..."

16 STRICKLAND, 466 U.S. AT 691

17 UNITED STATES V. SITTON 968 F.2d 947 960  
18 (9TH CIR 1992) (INEFFECTIVE ASSISTANCE CLAIMS ARE  
19 ORDINARILY REVIEWED ONLY IN COLLATERAL PROCEEDINGS  
20 BECAUSE SUCH CLAIMS USUALLY CANNOT BE RESOLVED  
21 WITHOUT THE DEVELOPMENT OF FACTS OUTSIDE THE ORIGINAL  
22 RECORD)

23 THE RULES OF PROFESSIONAL CONDUCT

24 - 1.1 COMPETENC

25 A LAWYER SHALL PROVIDE COMPETANT REPRESENTATION TO  
26 A CLIENT. COMPETENT REPRESENTATION REQUIRES THE LEGAL  
27 KNOWLEDGE, SKILL, THOROUGHNESS, AND PREPERATION  
28

1 REASONABLY NECESSARY FOR THE ~~FOR~~ REPRESENTATION.

2 — 1.4 COMMUNICATION

3 (1) A LAWYER SHALL --

4 (2) REASONABLY CONSULT WITH THE CLIENT ABOUT  
5 THE MEANS BY WHICH THE CLIENTS OBJECTIVES ARE  
6 TO BE ACCOMPLISHED.

7 (4) PROMPTLY COMPLY WITH REASONABLE REQUESTS FOR  
8 INFORMATION.

9  
10 JAMES SHACKLETON, ATTORNEY FOR DEFENDANT ANTHONY  
11 C. CLEMONS, FAILED CONSIDERABLY IN RESPECT TO THESE  
12 BASICS OF PROFESSIONAL CONDUCT.

13 "WHERE DEFENDANT HAS SHOWN IN INEFFECTIVE ASSISTANCE  
14 OF COUNSEL, REVERSAL OF A CONVICTION AND REMAND FOR A NEW  
15 TRIAL IS REQUIRED."

16 STATE V. THOMAS 109 Wn.2d 222, 230-31 743 ●  
17 P.2d 516 (1987)

## ..CONCLUSION..

IN SUPPORT OF THE FACTS PRESENTED IN THE ARGUMENT OF THIS BRIEF EXHIBITS A - E ARE AFFIDAVITS OF DEFENSE WITNESSES WHO, HAD THEY BEEN PROMPTLY INTERVIEWED AND INVESTIGATED PRIOR TO TRIAL, WOULD HAVE PROVIDED A MORE THAN ADEQUATE DEFENSE FOR ANTHONY LEMONS AS IT STANDS THE RECORD WILL REFLECT THAT NO DEFENSE WHATSOEVER WAS PRESENTED AT TRIAL BY JAMES SHACKLETON WHICH CLEARLY DEMONSTRATES INEFFECTIVE ASSISTANCE OF COUNSEL.

MR. SHACKLETON'S PERFORMANCE PREJUDICED MR. LEMONS AND DENIED HIM HIS CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL. A GREAT MISARRANGE OF JUSTICE HAS BEEN DONE AND CAN ONLY BE RECTIFIED BY REVERSING ANTHONY LEMONS CONVICTION AND REMANDING FOR A NEW TRIAL..

DATED THIS 12TH DAY OF FEBRUARY 2010

— Anthony Lemons —  
ANTHONY LEMONS (PROSE)  
1830 EAGLE CREST WAY  
CLALLAM BAY, WA. 98326

EXHIBIT

— A —

AFFIDAVIT OF  
ANTHONY CLEMONS

## AFFIDAVIT

(Pursuant to 28 U.S.C. § 1746 No Notary Required)

I ANTHONY CLEMENS HEREBY DECLARE. James Shackleton Failed As Counsel to Provide the Following Assistance As would Be required and expected of Any Lawyer Defending His Client At Trial. I Dismissed Shackleton on 2 occasions so that I could hire Daniel Havier. Shackleton Refused to Dismiss Himself As Counsel or Being the issue up Before the Judge. Shackleton Failed to Raise Conflict of issues with the Judge. As He had Represented me Years Prior as we had significant Conflict of interest then. Shackleton Made Derogatory Comments About me Being A "NAZI" And spoke Down on How I Represented myself w/ my Tattoos. Shackleton Failed to Investigate My Case. He NEVER sent Any investigators to Collect Statements From Eyewitnesses that could have testified on my behalf to the Fact that No one present that Day had Any Physical Contact w/ JESSE COHEN whatsoever. Counsel NEVER called or Attempted to make Any Contact w/ Any of the individuals I Gave him As witnesses these individuals will testify to this. Those Witnesses in Question Are Patrick Lamp, Curtis Walker, Ashley Triance, Kelly Lapczynski, Mark Sheffield, Cathy Reeves, Kenneth O'Brien - the Neighbors on Either Side of the Residence of Kenneth O'Brien... 7403 FAIROAKS Loop SE Shackleton NEVER Attempted to Reach Amanda Goss. Amanda Goss had to Contact Shackleton herself I put Forth the effort to submit

A statement which Shackleton Refused to Submit As Evidence → told ME WAS NOT Admissible. Shackleton Refused to impeach Jesse Cohen on the Stand Stating He Did A Background check → there was no Criminal History. This is FALSE. JESSE COHEN is A FELON → has A History of Felony Fide, Breaking No Contact orders, Assault 4°, D.V., Etc. Etc. Most of which were Cases Against or involving AMANDA COSS who was Present the Day of the Alleged Assault. Shackleton Also Failed to Allow me to Participate in Jury Selection which I am entitled to. Shackleton Sat Side Bar w/ Prosecutor Jack Jones → Selected the Jury w/out Any input from myself. Counsel Failed to Submit Documentation & Affidavits Provided to Him that would Put in Perspective the Character & Motive of JESSE COHEN. Including Previous Actions And Threats Against myself & Amanda Coss. Attorney Failed to Establish my Alibi As to the whereabouts of myself & All parties concerned. Although I provided Shackleton w/ the necessary information to do so.

~~\_\_\_\_\_~~ Affidavit Continued →

I, Anthony Clemens, am over the age of majority and am also a U.S. citizen competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth. Affidavit pursuant to 28 U.S.C. § 1746 and DICKINSON V. WAINWRIGHT, 626 F.2d 1184 (1980) sworn as true and correct under penalty of perjury has full force of and does not have to be verified by notary public.

Respectfully submitted on this 13<sup>th</sup> day of October, 2009.

Anthony Clemens  
(Signature)

Anthony Clemens PRASE  
(Print or Type Name)

Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay WA 98326-4723

(Address)

AFFIDAVIT CONTINUED

AFFIDAVIT

(Pursuant to 28 U.S.C. § 1746 No Notary Required)

That information would have placed me in Shelton at 100 pm that afternoon & for the remainder of that day when the alleged assault took place at 300 pm in Olympia. Shackleton failed to object or cross examine the witnesses in this case about this time discrepancy. Shackleton also failed to object & /or cross examine Jesse Cohen when he testified to not knowing who I was prior to this alleged incident when I have known this witness ~~for~~ since 1986. This could have impeached the credibility of the witness. Counsel failed to address the time discrepancies when & where police were called & responded to & where the ambulance met the victim at. Victim claimed it met ~~him~~ ~~at~~ ~~some~~ where that conflicted w/ police reports.

Counsel James Shackleton was clearly deficient & highly prejudiced against me in this case aside from his lack of professional conduct counsel repeatedly stuttered or lost his train of thought while speaking to the jury during trial & selection. Shackleton would stop speaking w/out finishing his thoughts or change to something else in the middle of a fact or sentence. All this while the prosecutor spoke clearly & directly to the jury. Shackleton acted

As though he was under the influence or had not taken much needed medication.

James Shackleton Failed & Flat out Refused to file a Motion for New trial ~~on~~ on my behalf though he is still appointed as my counsel forcing me to do so pro-se to raise the issues my counsel would not raise prior to & during my trial. Shackleton told me I did not have a chance of winning my case anyway & that he had no reason or grounds to file anything further on my behalf.

Several Grievances have been filed against this Attorney in this matter myself included.

I, Anthony Lemons, am over the age of majority and am also a U.S. citizen competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth. Affidavit pursuant to 28 U.S.C. § 1746 and DICKINSON V. WAINWRIGHT, 626 F.2d 1184 (1980) sworn as true and correct under penalty of perjury has full force of and does not have to be verified by notary public.

Respectfully submitted on this 13<sup>th</sup> day of October, 2009.

Anthony Lemons  
(Signature)

Anthony Lemons PRO SE  
(Print or Type Name)

Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay WA 98326-9707  
(Address)

EXHIBIT

— B —

AFFIDAVIT OF

CURTIS WALKER

Case No. 08-1-02160-6 PRO PUBLIC #2

My name is Curtis Walker and I am writing this statement to tell you what happened on October 26<sup>th</sup> 2008. My friends, Anthony Clemons and Patrick Lamp, were at my house working on a car. Amanda Coss called Anthony and asked him to meet her at his dad's house so that she didn't have to be alone with her ex boyfriend while dropping off her son to him.

Anthony, Patrick and I all rode over to Anthony's dad's house which is down the road from my house. When we got there Amanda called her ex (Jesse) and waited outside of her jeep for him. When Jesse arrived he got out of his truck and started cussing and yelling at Amanda in front of their son. Jesse started to get close to Amanda so Anthony and Patrick got out of the car and asked him to stop. He stopped yelling. Amanda got her son in the jeep and drove off. Jesse got in his truck and left and we left behind him and we all went back to my house (including Amanda) then they left and went to Shelton. There was never any violence.

I certify under penalty of perjury of the laws of the State of Washington that the following statement is true and correct.

x Curtis Walker

11 / 4 / 09

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH.  
09 NOV -4 AM 8:06  
BY BETTY J. GOULD, CLERK  
DEPUTY

EXHIBIT

— C —

AFFIDAVIT OF

AMANDA COSS

MC PUBLIC #2

Re: 08-1-02160-6

Anthony Clemons

Vs.

State of Washington Jesse Cohen

FILED  
SUPERIOR COURT  
KINGSTON COUNTY, WASH.

09 SEP 25 PM 4:06

BETTY J. BOULD, CLERK

BY \_\_\_\_\_  
DEPUTY

On October 26, 2008 This day I had Anthony Clemons meet me at his father's house for the exchange of mine and Jesse Cohen's son I was picking my son up early so he could attend his cousins birthday party out in Shelton. Since Mr. Cohen lives in the same neighborhood as Mr. Clemons father I thought it would be a safe choice to have him meet me there due to recent verbal attacks to be my Mr. Cohen.

Anthony and his friend Patrick Lamp had been working on a car at their friend Curtis Walker's house about a mile down the road they drove the car they had been working on up to Anthony's dad's house to meet me before I called Mr. Cohen to let him know I was there. Mr. Clemons, Mr. Lamp and Mr. Walker sat in the car in the driveway and I waited outside my jeep for Mr. Cohen to arrive with our son. When Mr. Cohen arrived he shut his truck off got out of the vehicle threw his keys and his arms in the air then began to yell at me saying "what the fuck Amanda is this the way you got to be" "Fuck you, you fucking bitch" he then began to approach me he smelt like alcohol I was scared and I was trying to get my son away from him and in my jeep. At this point Mr. Clemons and Mr. Lamp got out of their vehicle and stood in front of Mr. Cohen so that I was able to get my son in the vehicle. Mr. Cohen stopped yelling and backed off and at no time did I see any physical contact between Mr. Clemons, Mr. Lamp or Mr. Cohen.

I drove out of the neighborhood when I looked in my mirror Mr. Cohen was behind me Mr. Clemons, Mr. Walker and Mr. Lamp were behind him and Mr. Cohen turned his vehicle back towards his parent's house and myself and the vehicle with Mr. Clemons, Mr. Lamp and Mr. Walker all left the neighborhood to drop the vehicle they were working on off. Around 1:00pm myself, my son and Mr. Clemons arrived at my Father's house in Shelton for my Nephew's birthday party.

I have also enclosed notarized documentation I used as records I kept of Mr. Cohen's behaviors leading to this event and ultimately the state of Washington awarding me complete custody of our son due to his irrational behavior patterns and history of violence against me.

I certify under penalty of perjury of the laws of the State of Washington that the following statement is true and correct.

*Amanda Cohen* SEPT 25, 2009

RE: GAVIN COHEN

AMANDA COSS PRO SE

VS

JESSE COHEN

TIMELINE OF EVENTS

Prior to May of 2008 I became involved w/ and started dating a man who had recently been released from prison. This individual is to be identified as Anthony C. Clemons. Mr. Clemons happened to be a childhood enemy of my son GAVIN's father Jesse E. Cohen (my ex). Mr. Cohen and Mr. Clemons met at my home in April 2008 so that Mr. Cohen could meet the man I was seeing, being as Mr. Clemons was present in and around my home and child. Mr. Cohen was cordial and polite but made it known his distaste for the fact that I was dating a "convict". Mr. Cohen was cooperative for the most part from that time forward till I moved in with Mr. Clemons to Shelton WA.

In the interim period Mr. Cohen was consistently drunk and would show up at my house unannounced to "check in on me" though we'd been apart for a number of years. There was a constant onslaught of verbal abuse directed at me at that time and minor threats to try and get me to do things for Mr. Cohen such as help him buy drugs or for me to drop the child support so he wouldn't be obligated to pay.

My move to Shelton was brought on by a number of events that put me and my son at risk. I agreed to help a family member and allow her to stay in my home temporarily she happened to be involved in activities that led to her being apprehended at my home. About the same time that this event occurred I was informed by the Department of Corrections that an individual to be identified as Charles C. Byram that assaulted and attempted to kill me was to be released and going to be living in the city of Tumwater where myself and my son also lived.

Mr. Clemons was a solid choice for support and had proved himself independent and reliable, he worked routinely, had a drivers license, his own place and was willing to take in myself and my son the issues I was having due to circumstance weren't an issue as far as Mr. Clemons was concerned.

I willingly admit that I failed to notify Mr. Cohen and the court through the proper channels and procedures. I had reason to believe that at that time my life was in danger as well as my child's safety was increasingly being put in jeopardy if I was to remain in Tumwater. I feel to this day that I made a correct decision and want it known that although I did not send the proper paperwork through appropriate channels that I did make the child's father aware of my decision verbally and kept him aware of my decisions, actions, and never tried to keep Mr. Cohen from seeing his son.

During the summer Mr. Cohen had GAVIN for two weeks and I had GAVIN for two weeks until school started in September. I had less dealing with Mr. Cohen than I had had before with the two week schedule. Sometime in July 2008 Mr. Cohen began working with All West Transportation (360) 943-4990 2640 Willamette Dr NE, Lacey WA. Child support began to come out of his paychecks and sending me

## MC PUBLIC #2

September 28, 2008

Attempted to arrange pick up with Mr. Cohen he became assaultive and uncooperative then immediately he began to verbally bash me stating "you're on drugs" "you aren't anything but a crack whore" "what type of person are you". Again he refused to return our son to me and instead brought him to my mother's where I came to pick him up.

October 12, 2008

Because of Mr. Cohen's recent aggressive and abusive behavior and fear of my safety I had my boyfriend, Mr. Anthony Clemons, as well as myself attempt to contact Mr. Cohen and he would not answer the phone or return the messages. The intent of the call was to determine whether or not Mr. Cohen was at his residence so I would know I could pick up Gavin as according to our parenting plan.

October 25, 2008

Mr. Dennis Cohen, Mr. Jesse Cohen's brother, contacts my boyfriend Mr. Anthony Clemons by phone. Mr. Dennis Cohen does not identify himself and begins to make comments such as "you need to quit hurting my nephew" and then threatens that "we have ways of taking care of this".

October 26, 2008

Upon meeting with Mr. Cohen to pick up Gavin, Mr. Cohen shut off his vehicle jumped out and threw his keys on top of the truck box in the bed of his truck. He then began yelling and said "what the fuck Amanda is this the way you got to be" "fuck you you fucking bitch" at this time he began to approach me while I tried to get Gavin into the vehicle safely, and Gavin and I drove away from Mr. Cohen's unpredictable behavior and aggression. This day I attempted to arrange for a third party, my boyfriend, Mr. Anthony Clemons to pick Gavin up to avoid having to have contact with Mr. Cohen for fear of my personal safety. Mr. Cohen refused to cooperate and when I arrived he became belligerent, assaultive and irrational. When Gavin and I returned home I asked him about his visit to his Uncle Dennis's house and that is when Gavin told me "you know my dad and Dennis never liked Anthony for a long time". This type of defamation in front of Gavin is completely inappropriate to the development and parenting of our son

November 3, 2008

Mr. Cohen called 6 times and left messages saying "I'm coming over to check things out for myself". He then sent a police officer to my residence to do a welfare check on my child. I was at my father's home for fear of my safety. When the officer arrived, my landlord, Heather Sundsten told the officer that I was at my father's with Gavin and she had just seen us Gavin was fine.

November 4, 2008

## MC PUBLIC #2

Text: see you next Tuesday. llll <assholio>

November 18, 2008 8:19pm

Text: I want to talk to him now u cant refuse to let me talk to him so let him talk to me <assholio>

November 18, 2008 8:20 pm

Text: was Gavin trying to answer the phone <assholio>

November 18, 2008 8:29 pm

Text: I will take that as a no pretty lame that my son isn't allowed to talk to me

November 19, 2008 12:30 pm

Text: No I want to but I'm working on the truck it wouldn't start this morning but have him call me later and I will see him on fri <assholio>

November 27, 2008 5:10 pm

Text: so ur not going to let me talk to my son on thanksgiving that's kinda fuked <assholio>

December 7, 2008

I requested Ms. Lapczynski ride with me to pick up Gavin. We waited in the car when Gavin came out I got out to put the back seat of my jeep down while Mr. Cohen cursed at Ms. Lapczynski and critized my vehicle. Again Gavin was upset and didn't want to talk to me.

December 17, 2008

Mr. Cohen leaves a phone message for me at 6:00 pm stating that "you refused to talk to me who knows where you are I could have picked up Gavin today". This day was a snow day at school so I told Mr. Cohen could have contacted me while in town at 3:30 and he could have had his visit with Gavin at the regular time school is out 3:30pm as in our parenting plan in section 3.11.

December 24, 2008 7:10 pm

Voice: "it would help if you answered your phone when is Gavin coming back?" parenting plan states a holiday starts at 7:00 am and ends at 9:00pm

December 28, 2008 7:24 pm

Voice: not very smart you driving like that with the kid in the car and not very smart period good luck"

Please see attached statement from Mr. Raymond Sheffield. When I picked Gavin up this evening I brought a friend Mr. Sheffield so that I felt safer while picking up Gavin. Mr. Sheffield waited in the vehicle. I called Mr. Cohen and asked him to send Gavin out. Mr. Cohen stared in the vehicle and had

# MC PUBLIC #2

Text: I hpe a doesn't stay there cause they r all over the both of you so go fuck ur selves.

January 14, 2009 3:27 pm

Text: what's the matter don't want to talk

January 14, 2009 3:30 pm

Text: u might want to let me talk to my son cause it might be permanent dumb ass like I said one down one to go maybe two

January 14, 2009 3:38 pm

Text: I got one now Anthony is the next one and I will get him or all the detectives will since he has been implicated with pockets so whatever

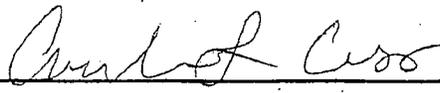
January 18, 2009 12:11 pm

Text where is Gavin obviously he want with u last night

January 22, 2009 6:04 am

Text: I need to know if Gavin is ok nobody want to let me know where he is or how he is. And I'm picking him up tomorrow so some one needs to let me know.

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

OLYMPIA WA FEB 9 2009 

Date and Place

Signature

believe that incredible pressure is being put on Gavin to provide his dad with as much information on me as possible.

I believe that my character is being slandered by Mr. Cohen. Due to the nature of Gavin's behavior and disrespectful name calling of me such as "my mom is crazy" or "my mom is stupid" while speaking of me to other males. Or Gavin will tell me that his dad doesn't like me or he thinks I am crazy.

I fear that due to Mr. Cohen's long term substance abuse he may also have the affects of mental health issues as well. His behaviors are over emotional with his son he depends on Gavin to be his confidant and to feel sorry for his woes. Gavin tells me about his father's fights with his girlfriend, the issues that Mr. Cohen has with his mother and father such as financial debts. Gavin also is made aware of when child support will be received by me how much it is and how broke his father is. All of this has no place in the mind of a healthy 7 year old child. Gavin has become progressively worried he acts out irrationally and is on constant defense of his father the inadmissible psychological and emotional turmoil Gavin has been experiencing at the hand of Mr. Cohen must be curbed and ceased to procure the healthy developmental skills and capabilities of Gavin.

Mr. Cohen's history of violence and substance abuse pushed its way into our son's life in summer of 2008 When Mr. Cohen in his drunken state asked Gavin for a TV remote when Gavin was noncompliant Mr. Cohen smacked him in his neck knocking him over. Upon Gavin's return home to me he complained of neck pain for 4 days. The experience of physical abuse was traumatic for Gavin in my opinion it has to be extremely difficult for a child to differentiate when a parent can be love and be overfriendly one moment to abusive and turbulent the next due to his level of sobriety.

I have incredible concern for Gavin's safety when I leave him in the care of Mr. Cohen despite court orders prohibiting Mr. Cohen he consumes alcohol continuously during and before his visits with Gavin. And additional to that he puts Gavin's life in direct danger as he drinks and drives with him in the car. When I confront Mr. Cohen with my concern he laughs it off and says things like "my dad did it all the time when we were kids and I'm still alive".

I can hardly fathom the lack of responsibility Mr. Cohen exudes. I fear for my son's life and safety as well as his physiological and emotional well being. There is clear evidence that Gavin is suffering from emotional abuse as well as mental and emotional turmoil. Mr. Cohen has warrants, violent history, and disregard for authority as well as orders of the court. All proven by his criminal history showing felony eluding, reckless endangerment, DUI, 2 counts of violation of no contact order and domestic assault.

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

Olympia WA FEB 9 2009 

Date and Place

Signature

EXHIBIT

- D -

AFFIDAVIT OF

PATRICK LAMP

## AFFIDAVIT

(Pursuant to 28 U.S.C. § 1746 No Notary Required)

On October 26<sup>th</sup> 2008 Sunday At Around 11am to 11:30 am  
I, Patrick Lamp, and Anthony Lemons and Curtis Walker left  
Curtis Walkers Home to meet Amanda Coss At Anthony Lemons  
Dads Home, 7403 Fair Oaks Loop SE, Olympia WA 98513  
We waited for Jesse Cohen to arrive to drop off his  
son Gavin Cohen. Jesse had caused previous problems with  
Amanda Coss, violating No Contact orders, Domestic Violence, & making  
verbal threats. Anthony & Amanda had cause for concern of  
Amanda's safety so we made sure she didn't have to meet  
Jesse by herself. Upon arrival Jesse Cohen jumped out of  
his truck & started yelling & screaming obscenities at  
Amanda & advanced upon her as she was trying to  
get Gavin in her Jeep. Anthony Lemons & me  
got out of the vehicle we were in & positioned ourselves  
between Mr Cohen & Amanda. Anthony Lemons told Jesse he  
was not welcome on the property & was to leave  
immediately. Jesse Cohen made some comments directed at Anthony  
but did get back in his truck & left right behind Amanda.  
Curtis Walker remained in the vehicle we came in & the  
3 of us left behind Mr. Cohen. At no time was there any  
physical contact between any of us present at Anthony's Dads

House except when Jesse hugged Gavin Goodbye. Jesse  
appeared to be drunk when he showed up. We  
all left Olympia prior to noon that day & I  
remained at Anthony Cohen's house in Shelton for the  
remainder of that day working on a vehicle. That  
was the only time I'd ever met or seen Mr. Cohen.  
I have not seen him since.

I, PATRICK LAMP, am over the age of majority and am also a U.S. citizen competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth. Affidavit pursuant to 28 U.S.C. § 1746 and DICKINSON V. WAINWRIGHT, 626 F.2d 1184 (1980) sworn as true and correct under penalty of perjury has full force of and does not have to be verified by notary public.

Respectfully submitted on this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Patrick Lamp  
(Signature)

Patrick Lamp  
(Print or Type Name)

\_\_\_\_\_  
(Address)

EXHIBIT

— E —

AFFIDAVIT OF

ASHLEY TRIANCE

AFFIDAVIT

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH.  
09 SEP 25 PM 3:52  
BETTY J. GOULD, CLERK  
BY \_\_\_\_\_  
DEPUTY

STATE OF WASHINGTON :  
COUNTY OF :  
Thurston :

SS:  
Case #  
08-1-02160-6

I, Ashley Triance, declare under penalty of perjury that the following statements within this affidavit are true and correct to the best of my

knowledge and has been executed on this 25 day of September, 2009

At Olympia In the county of Thurston Washington:

I am writing this statement on behalf of my brother Anthony Clemons in hopes of helping his appeal for a new trial. A lot of information was left out on the advisement of his lawyer that I believe will help him get a lesser sentence if not dismiss the entire charge. Jesse Cowen had every agenda to get my brother out of his ex's and child's life because they have had problems with each other since childhood. He has a history of stalking my former residence in hopes of finding Anthony or Amanda there. On four separate occasions I recognized his vehicle coming down the street and slowly passing by looking in windows and attempting



IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
AT DIVISION II

ANTHONY CLEMONS  
Appellant,  
vs.

WASHINGTON STATE  
Respondent.

**PROOF OF SERVICE**

FILED  
COURT OF APPEALS  
DIVISION II  
10 FEB 22 AM 9:44  
STATE OF WASHINGTON  
BY DEPUTY

I, ANTHONY CLEMONS, declare that of  
(Name of Inmate)

FEBRUARY 16, 2010, I deposited the following  
(Month) (Day) (Year)

PRP BRIEF (40053-7-II)  
(Name of Documents)

or a copy thereof, in the legal mail system of Clallam Bay  
Correction Center and made arrangements for postage to:

COURT OF APPEALS  
DIVISION II  
950 BROADWAY STE 300  
TALOMA WA 98402-3694

I declare under penalty of perjury under the laws of the State of  
Washington, pursuant to RCW 9A.72.085, and the laws of the United  
States, pursuant to Title 28 U.S.C. § 1746, that the foregoing is true and  
correct.

Executed on this 16<sup>th</sup> day of FEBRUARY, 2010.

Dated at Clallam Bay, Wa.

ANTHONY CLEMONS  
Pro se

GR 3.1(a)(b)(c)

Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326-9723