

111717 PM 12:03
STATE OF WASHINGTON
DEPUTY

**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON

RESPONDENT,

v.

REED L STONE

APPELLANT

STATEMENT OF ADDITIONAL GROUNDS

**Court of Appeals No. 40695-1-II
Superior Court of Pierce County No. 09-1-02012-6**

Reed L Stone #736825
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

11 MAY 17 PM 12:03
STATE OF WASHINGTON
BY _____
DEPUTY

**COURT OF APPEALS
DIVISION II
IN THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

THE STATE OF WASHINGTON)
COUNTY OF PIERCE) ss. DECLARATION OF MAILING

I, Reed Stone state that on this 16 day of May, 2011, I deposited in the mail of the United States of America a properly stamped envelope containing a copy of the following described documents.

Statement of Additional Grounds for Review

I further state that I sent these copies to the following addresses:

Court of Appeals Division II
950 Broadway Ste. 300
Tacoma, WA 98402-3694

Dated 5/16/2011



Reed Leroy Stone, DOC# 736825 Signature

Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326-0769

TABLE OF AUTHORITIES
In the Order Referenced

CrR 8.3(b)2.

RCW 9A.16.079.

STATE v. MATSON,
22 Wn. App. 114, 121, 587 P.2d 540 (1978).....9.

STATE v. GALISIA,
63 Wn. App. 833, 822 P.2d 303, (1992).....10.

STATE v KELLER,
30 Wn. App. 644, 637 P.2d 98510.

CrR 4.7(a)(2)(iii).....11.

6th and 14th Amendments to the U.S. Constitution11.

STRICKLAND v. WASHINGTON,
466 US 688, 687 (1984).....11.

BRUBAKER v. DICKSON,
310 F.2d 30, (1962)12.

TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR.....1.

II. STATEMENT OF THE CASE2.

Confidential Informant/Entrapment.....2.

Ineffective Counsel4.

Prosecutorial Misconduct7.

IV. ARGUMENT.....9.

Entrapment9.

Ineffective Counsel11.

Prosecutorial Misconduct.....12.

Indefinable yet Crucial12.

V. CONCLUSION.....13.

EXHIBIT I
Affidavit of Thomas W. Belander
Affidavit of Jason L. Russell

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

| | | |
|---------------------|---|---|
| STATE OF WASHINGTON |) | |
| |) | |
| Respondent, |) | |
| |) | No. <u>40695-1-II</u> |
| v. |) | |
| |) | |
| Reed Leroy Stone |) | STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW |
| |) | |
| Appellant. |) | |

I, Reed Stone, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

I. ASSIGNMENTS OF ERROR

1. Entrapment: The actions of and statements by the confidential informant (CI) who was introduced to Mr. Stone as Harley and subsequently identified during trial as Tara Nicole Faubacker, constituted entrapment, but due to a lack of investigation or preparation, Mr. Stone's attorney never requested the appropriate jury instruction, an inaction which is so calamitous to Mr. Stone's right to a fair trial as guaranteed by the sixth and fourteenth amendments to the Constitution of the United States, reversal is the only equitable remedy.
2. Ineffective Counsel: The actions and inactions of Mr. Stone's Attorney, Mr. Kent Underwood, were deficient enough and serious enough to require a new trial for Mr. Stone.
3. Prosecutorial Misconduct: Many unsupported inflammatory, prejudicial, and misleading statements were made by the prosecutor. Though individually each respective act may not be considered egregious enough to require reversal, and

1 did not require a jury instruction due to no objection having been made, the
2 accumulative effect was so prejudicial that no curative instruction could have
3 repaired the damage, thus the case should be remanded and subsequently
4 dismissed pursuant to CrR 8.3(b).

- 5
6 4. Though not easily classified or supported by one with very little legal knowledge,
7 the combination of the above three errors have created conditions which made
8 receiving a fair trial an impossibility for Mr. Stone. Due to the severity of this
9 error it must be explored, yet due to its nature, the exploration will be
10 exceptionally brief.

11
12 **II. STATEMENT OF THE CASE:**

13 **Relative to Entrapment:** Sometime during either June or July of 2008, Mr. Stone
14 was introduced to a girl who called herself Harley, but who was, in fact, Tara Nicole Faubacker,
15 the Confidential Informant (CI), and who will be hereinafter refer to as the (CI). Shortly after
16 being introduced, the (CI) told Mr. Stone she wanted to buy some Methamphetamine, at which
17 time he informed her that he did not sell the stuff. She then stated how extremely important it
18 was that she find a steady source and she could provide a lot of steady business. After restating
19 his position of not selling meth, Mr. Stone turned and walked away. The next day, the (CI) again
20 visited Mr. Stone and reiterated how important it was for her to buy some meth, and couldn't he
21 please sell her some, even if it was only initially a tiny bit, to which Mr. Stone again told her no.
22 Despite Mr. Stone's insistence that he did not sell drugs, she visited him eight to ten more times
23 over the next nine or ten months, and called him multiple times a week and on some days more
24 than once. In court, Mr. Stone testified that he had known the (CI) for about six months, (RP
25 904) which was not said to misinform anyone, his memory is just not very good with that kind
26 of information. A month or so after her first visit the (CI) began putting a lot of effort into trying
27 to make friends with every one of Mr. Stone's friends who might happen to be on the property
28 when she was. On one occasion she even went to every person there and asked what their
29 favorite sandwich was, then purchased and delivered each person's respective favorite. (Please
30 see Thomas Bolander's subjoined affidavit). After a few months of what Mr. Stone began
31 regarding as her nearly intolerable begging, the (CI) became much friendlier and even began
32

1 limiting the number of times she would ask to be sold some meth. She also began altering her
2 tack between using a sort of high pitched plea, to very direct and rather vulgar references to all
3 the fun they could have sharing whatever amount of meth he would sell her. During a number of
4 her subsequent phone calls she began to openly refer to the possibility of some sexual activities
5 if Mr. Stone would ever begin helping her with her meth supply problem. Though her personal
6 visits rarely lasted more than an hour to an hour and three quarters, and her phone calls about
7 fine to ten minutes, the accumulative effect of her constancy was becoming so tiresome to Mr.
8 Stone, (RP 904) as well as his girlfriend Natasha Penland and a number of his other friends. Mr.
9 Stone is very aware he has a problem with anger. It is very difficult to make him angry, due to
10 his propensity to keep negatives within himself. When he does succumb to anger, however, it
11 can be extremely explosive, which is why he is always on guard to keep away from any type of
12 confrontation or other sources of potential ire. As he was finding it harder and harder to endure
13 the (CI) and her constant begging, he began looking for ways to rid himself of her without
14 confrontation. Somewhere around the first week of April, 2009, the (CI) showed up in the early
15 evening and quickly cornered Mr. Stone. She appeared to be rather excited about something
16 when she called Mr. Stone over to look in the bag she was carrying. What he discovered was
17 Sudafed, cold tablets which contain Pseudoephedrine, an ingredient which Mr. Stone was aware
18 is used in the manufacture of Methamphetamine. At that point Mr. Stone stormed out of the
19 house, and began seriously considering how to make the (CI) go away and stay away. She
20 obviously wanted him to sell her some Methamphetamine, so he thought if he did she would go
21 away, but how to keep her from coming back? If the meth he sold her was total junk, she would
22 certainly not come back for more. Not realizing the inherent stupidity of that idea, he went into
23 the guest house and called a friend, Mr. Jason L. Russell, who he thought would get him some
24 meth. (Please see Mr. Russell's subjoined affidavit). After explaining the situation, Mr. Russell
25 indicated he could get some meth and some caffeine, which he suggested as a cut. Mr. Stone
26 agreed, left the guesthouse and walked around the property while waiting for Mr. Russell to
27 arrive. (RP 199). Mr. Stone then made up about a quarter gram consisting of about ten percent
28 meth and ninety percent caffeine, which he then sold to the (CI). He did not see the (CI) again
29 for about a week and a half, when upon arriving home from work very early in the morning he
30 found the (CI) and another female, Tammy, (RP 1002), in the kitchen. So angry about her
31 having come back, he yelled at both of them to get out of his kitchen, off his property and to
32

1 never come back. (RP 873) About two or so hours later, he was awakened and served with a
2 search warrant and arrested.

3
4 **Relative to Ineffective Counsel:** Prior to the trial, Mr. Stone's attorney, Mr. Kent
5 Underwood, would only meet with Mr. Stone for a short period of time after certain court
6 appearances either in a courthouse hallway (RP 8), or while walking to Mr. Underwood's car.
7 On those occasions Mr. Underwood would not listen to anything Mr. Stone felt was crucial to
8 his defense, but rather simply reiterated the terms of the plea bargain. (RP 8), Mr. Stone
9 attempted to call Mr. Underwood on a number of occasions but was only able speak to his
10 secretary, (RP 7, 8). Knowing Mr. Underwood was ill prepared to present a viable defense, Mr.
11 Stone attempted to replace him prior to trial, but it took Mr. Stone until just prior to the
12 commencement of the trial to raise the required fee. (RP 5, 18) Though Mr. Stone is very
13 intelligent, he will be the first to admit he is not fast on his feet, which makes him partially to
14 blame as to why his motion to replace counsel was denied by Judge Linda C. J. Lee, (RP 18) to
15 be hereinafter known as the Judge. Her main reason was stated as: "This case has been dragging
16 on way too long." (RP 18) Though the Judge stated she felt Mr. Underwood was more than
17 capable of adequately representing Mr. Stone, (RP 18), with only a few examples, it will be
18 shown that he was not only incapable, but deficient to the point of depriving Mr. Stone of his
19 rights to a fair trial. During the trial, the State intended to prove Mr. Stone was guilty of
20 possessing a controlled substance, and manufacturing a controlled substance with the intent to
21 deliver. The State's case can be broken into two parts; one was the methamphetamine, the
22 ingredients used in the manufacturing methamphetamine, and the related tools found on the
23 premises and the fact that Mr. Stone knew what an extraction was. (RP 947) The other was that
24 Mr. Stone was in control of the premises and therefore the ingredients and paraphernalia. (RP
25 992) The evidence which was found in the kitchen consisted of cold pills containing
26 pseudoephedrine, (RP 942) and receipts for them; (RP 942) 26.3 grams of pseudoephedrine, (RP
27 942, 944), the main ingredient necessary in the manufacturing of methamphetamine, which
28 allegedly had been extracted from the cold pills; acetone, (RP 943) a coffee grinder, (RP 943)
29 coffee filters, (RP 944) a funnel, (RP 943) a baggie with .7 grams of methamphetamine in it,
30 (RP 947) a heart container with Methamphetamine, (RP 945) a milk carton with the plastic
31 tubing and a pipe attached, (RP 948) a knife, (RP 948), and Pyrex dishes, (RP 944) In the
32

1 bedroom some baggies with residue of methamphetamine, (RP 945, 948) a jar of caffeine, (RP
2 948) a Pyrex dish containing methamphetamine, (RP 948) and a pipe with burn marks. (RP 949)
3 In the garage, starter fluid, (RP 945) brake cleaner, (RP 945) and lithium batteries, (RP 944) In
4 the laundry room, a respirator, (RP 945); and the contamination in the house in general. (RP
5 945) Mr. Stone's defense did not question what was found but rather to whom did a number of
6 the identified items belong and who performed the extraction. It is by looking at each of those
7 elements that the significant ineffectiveness of Mr. Stone's attorney becomes extremely clear.
8 The cold pills which the prosecutor claimed were evidence that Mr. Stone was the manufacturer
9 as follows: "The defendants were doing the extraction phase of the manufacturing
10 methamphetamine. Most of the evidence that we saw indicates that." (RP 942) After identifying
11 the pseudoephedrine tablets she states: "Those are what you start with, your pseudoephedrine
12 that you extract. I mean, the tablets that you extract the pseudoephedrine out of. And the bottom
13 corner there, where it says item No. 9, that was an exhibit that you have in evidence, and I ask
14 you to look at it. It's receipts for pseudoephedrine. And these particular tablets, it says on the
15 receipt, are 24-hour tablets." In order to purchase Sudafed tablets, one has to sign a register, but
16 Mr. Underwood never bothered to subpoena the records of who had purchased either those pills
17 or any Sudafed on any date close to April 14. Because neither Mr. Stone, his codefendant, nor
18 anyone who may have been observed on the property during the two month surveillance, (RP
19 129) had purchased any Sudafed, a fact which would have severely diminished the State's case
20 and more than likely altered the verdict. As for the starter fluid, (RP 945) brake cleaner, (RP
21 945) and a respirator, (RP 945) there were a number of people ready, willing and able to testify
22 that not only did Mr. Stone very often paint cars and perform general mechanical repairs
23 himself, he allowed his friends to work on their cars which they often did because Mr. Stone
24 possessed nearly every hand, power, and air tool necessary to complete almost any repair job,
25 and a respirator is essential when painting; starter fluid can be extremely useful when working
26 on an engine, as is brake fluid for brake jobs; but Mr. Underwood called no witnesses. (RP 40)
27 As for the extraction itself, the defense intended to prove it was not Mr. Stone who had done the
28 extraction, owned or was in control of a number of the items often related to both the
29 manufacturing and the sale of illegal drugs. Rather, it was two girls who Mr. Stone had caught
30 in the kitchen upon his arrival home from work. Only one witness, Thomas Bolander, was
31 called to corroborate that fact, but it was not Mr. Underwood who called him, but Mr. Ryan,
32

1 attorney for Ms. Penland. In fact when Mr. Bolander arrived, both the prosecutor and Mr. Ryan
2 interviewed him extensively, but Mr. Underwood asked him nothing. Even the prosecutor knew
3 how important certain witnesses were to Mr. Stone's case as evidenced when she stated in her
4 rebuttal closing arguments, "...and the defense counsel was saying, 'Well, where were all the
5 witnesses?' Well apparently, according to the defense there were eyewitnesses. Tammy and
6 Tara. Where were they? They could have easily come in here and said, 'We were there during
7 the night. We brought this. We didn't bring that.' They didn't testify. And then what about
8 Reed's boss? He could have substantiated the fact --." (RP 1002, 1003). It was only after that
9 statement that Mr. Stone became aware the (CI) could have been called to testify. If Mr. Stone's
10 boss had been called, he could have testified that Mr. Stone had been in his employ for years,
11 was very reliable, and made enough money to support two drug habits without having to take
12 the risk of manufacturing and selling methamphetamine. It is also evident that not investigating
13 any part of the case against Mr. Stone was not the only reason Mr. Underwood did not plan to
14 call any witnesses, (RP 40), because he apparently did not even know at least some of what was
15 disclosed in discovery as evidenced by his stating how important it was for the (CI) to be
16 produced, (RP 197), and prosecutor's response that "...the defense is asking us – asking the
17 State to disclose the confidential informant and produce the confidential informant." (RP 201),
18 and that, "Disclosure has already occurred, and it occurred way before this brief was ever
19 written. The defense knows, as well as the State knows, that the confidential informant is Tara
20 Nicole Faubacker. The contract that she was working was given to the defense as discovery."
21 (RP 201, 202). Tara Nicole Faubacker was the confidential informant, and though it cannot be
22 verified, Mr. Stone was told by a Pierce County Official that the (CI) was wearing a wire the
23 evening Mr. Stone sold her the methamphetamine, as well as despite the police denying it, there
24 were finger prints found on many items in the kitchen that belonged to neither Mr. Stone nor,
25 Mr. Stone's codefendant, Ms. Penland. In reference to Mr. Underwood's performance, whether
26 or not the official's statement can be verified or not is irrelevant. What is important is Mr.
27 Underwood not calling the (CI), because at worst, even if she employed her fifth amendment
28 rights against self incrimination, that fact would have strongly indicated that Mr. Stone's version
29 of events surrounding the extraction was the valid one. Mr. Underwood could have also
30 established the length of time and the types of inducements (CI) found necessary to employ
31
32

1 before Mr. Stone would sell her methamphetamine, and thus establishing that an entrapment
2 instruction was warranted.

3
4 **Relative to Prosecutorial Misconduct:** There are two incidents in her closing
5 arguments where the prosecutor oversteps her bounds and makes statements which are what the
6 jury is supposed to determine, not her, one of which was, “The defendants were doing the
7 extraction phase of manufacturing methamphetamine.” (RP 942) And the other was, “...they
8 ran the acetone through the ground-up tablets, and there you go.” (RP 944) She also draws
9 attention to the receipts and knowing they can be tracked, she still insinuates they are somehow
10 tied to Mr. Stone. (RP 942) The prosecutor’s most consistent misconduct is her numerous
11 inflammatory and prejudicial statements about what was found. “...lots of coffee filters with the
12 pink residue in them that tested positive for pseudoephedrine.” (RP 944) An untrue statement
13 evidenced when she identified there were actually two of them, Exhibit 2-A and 2-B. (RP 944,
14 945) Another extremely prejudicial statement the prosecutor made right after tying the lithium
15 batteries to stage 2, (RP 944) identifying a number of chemicals found, (RP 945) a respirator
16 that she would certainly want in a contaminated house is her statement, “Finished
17 methamphetamine. Item no. 10 is a couple of plastic baggies that had some methamphetamine
18 in it.” (RP 945) Taken by itself that attempt to tie ingredients with the finished product without
19 any evidence to that effect might not be too prejudicial, but tied with her statements that, “But
20 methamphetamine is not new, is not new to these defendants. They were both living in a house
21 with the meth items. Meth was all over the kitchen.” (RP 948) What was really found in the
22 kitchen was a baggie with .7 grams of methamphetamine in it, (RP 947) and a heart container
23 with Methamphetamine, (RP 945). Immediately after that gross exaggeration the prosecutor
24 states, “If you look at the picture closely, you can see there’s the – looks like a milk carton with
25 the plastic tubing and a pipe attached to it. Finally Defendant Stone admitted that he knew what
26 it was and he knew what it was for.” (RP 948) The truth of the matter is there was no finally. She
27 asked Mr. Stone about, “...the thing that looks like a milk jug with tubing and a pipe attached to
28 it?” (RP 907) Mr. Stone’s answer was he had seen it before and identified it as a pipe with
29 tubing in it. (RP 907) After stating he did not know who it belongs to he was asked if he knew
30 what it was for and he answered, “For smoking....” (RP 908) And when asked smoking what,
31 without any hesitation indicated he answered, “Meth.” (RP 908) None of that question and
32

1 answer session indicates that, “Finally Defendant Stone admitted that he knew what it was....”
2 (RP 948) Right after the incorrect characterization of Mr. Stone’s evasiveness, the prosecutor
3 again indulges in more extremely inflammatory and prejudicial exaggerations when she states:
4 “There’s power everywhere. There’s a scale with with more baggies on it.” (RP 948) And she
5 then goes on with: “That’s the baggy of meth, .7 grams, right here the scale and more baggies
6 and more baggies.” (RP 948) The truth is, “We had a scale on the kitchen countertop right near
7 the baggies.” (RP 954) That is quite a difference, a scale and more baggies and more baggies, as
8 apposed to a scale near baggies. Right after that she states, “Additionally, there were items all
9 over their bedroom too.” (RP 948) The fact is a Pyrex disk with residue on it was found in a
10 closet. A bottle of caffeine was also in that closet. (RP 949) Two baggies with residue and a pipe
11 was found in a nightstand, but to her that becomes, “There is meth related items all over the
12 house. (RP 949) To be fair, she always did follow up her extreme exaggerations with the truth,
13 but it was somewhat veiled, and the accumulative effect was extremely inflammatory,
14 prejudicial, and misleading, especially so because immediately after claiming there is meth
15 related items all over the house, she states: “They knew what methamphetamine was and they
16 knew they were extracting it. So all the evidence of manufacturing a controlled substance,
17 methamphetamine, has been proven beyond a reasonable doubt.” (RP 949) There are more
18 instances, but just piling on will not bolster the truth about the prosecutors tack to mislead, and
19 unfairly prejudice the jury about what was found and what the defendants were doing. One final
20 question of potentially critical misconduct concerns the possibility of some misinformation
21 being used to gain a tactical advantage as evidenced by statements made by the prosecution
22 about the. (CI) “Deputy Nordstrom told me that the confidential informant was not readily
23 available, and so the State dismissed the two delivery charges. Therefore, the CI, the
24 confidential informant, is no longer a witness of the State.” (RP 202) Subsequently the
25 prosecutor attempted to undermine the defense’s version of events knowing full well that Tara
26 was the (CI) she stated: “Well apparently, according to the defense there were eyewitnesses.
27 Tammy and Tara. Where were they? They could have easily come in here and said, ‘We were
28 there during the night. We brought this. We didn’t bring that.’ They didn’t testify.” (RP 1002,
29 1003) The other aspect of that is the prosecutor using the buy made by the (CI) as evidence,
30 stating: “...that Defendant Penland was willing to sell a pipe with methamphetamine in it, very
31 small amount for \$40. She doesn’t have a job. For a profit, it’s a huge motivator. (RP 1001)
32

1
2 **III ARGUMENT**

3 **Entrapment:** Because Mr. Stone's defense attorney for this appeal stated that the
4 entrapment issue would only apply to a charge of the sale of meth, which the State dismissed
5 prior to trial. Please see attached Exhibit 1. If that is the actual case, then no form of protection
6 against an unwarranted search and seizure exists. Hypothetically, if a law enforcement person
7 wanted to see what someone had in their home, all he would have to do is get a person to go to
8 that residence and demand, at gun point even, to be sold some form of illegal drug. Not many
9 people would refuse such a demand when threatened with the possibility of being shot, and even
10 if that person knew nothing about drugs or where to obtain them, the (CI) could help with that,
11 or even do the buy for them, as long as the (CI) left that residence with a buy, and left some
12 behind to be found the next day, and all that would be necessary for that to be accepted as
13 legitimate is for the sale part of the charge to be dropped. As a reality of that is hoped beyond all
14 hope to be false, the following argument of entrapment is valid, and there is no doubt that Mr.
15 Stone was entrapped as defined in RCW 9A.16.070, as follows:

- 16 (1) In any prosecution for a crime, it is a defense that:
17 (a) The criminal design originated in the mind of law enforcement
18 officials, or any person acting under their direction, and
19 (b) The actor was lured or induced to commit a crime which the actor
20 had not otherwise intended to commit.
21 (2) The defense of entrapment is not established by a showing only that law
22 enforcement officials merely afforded the actor an opportunity to commit
23 a crime

24 Mr. Stone was obviously not thinking about selling methamphetamine as evidenced by
25 the length of time it took for the (CI) to acquire a buy. A refusal to sell a controlled substance
26 over an eight to ten month period of time could certainly not be considered normal reluctance
27 and thus the crime did originate in the mind of law enforcement, and Mr. Stone was obviously
28 induced to commit the crime. As for Mr. Stone not admitting being guilty of the current charges
29 against him, in STATE v. MATSON, it states "an instruction on <<entrapment>> is proper only
30 where the defendant has admitted that the crime took place." STATE v. MATSON, **22 Wn.**
31 **App. 114, 121, 587 P.2d 540 (1978)**. Though Mr. Stone does not admit to the UNLAWFUL
32

1 MANUFACTURING OF A CONTROLLED SUBSTANCE or to POSSESSION OF A
2 CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, the requirement to do so is
3 clarified in STATE v. GALISIA, which states, in reference to STATE v. MATSON. “In so
4 stating, however, Matson failed to distinguish circumstances where a defendant admits that the
5 activity on which a charge is based took place....,” STATE v. GALISIA, **63 Wn. App. 833, 822**
6 **P.2d 303, (1992)**. STATE v. GALISIA, goes on to clarify; “In fact, earlier cases refer not to the
7 ‘crime’ charged but to the ‘act’ charged. The distinction between denying that an event occurred
8 and denying that the event resulted in criminal liability is critical.” Further clarification is given
9 in STATE v. GALISIA as follows: “It is enough that a defendant admit acts which, if proved,
10 would constitute the crime.” STATE v. GALISIA, and Mr. Stone has admitted to having sold an
11 amount of caffeine with a small amount of methamphetamine in it to the (CI). He has not,
12 however, and does not admit that the crime originated with him, because he was badgered,
13 hounded, and offered the possibility of sex to make the sale, and he only committed the act in
14 total frustration resulting in an overwhelming desire to just make the constant, relentless
15 pressure go away.

16 In STATE v KELLER, **30 Wn. App. 644, 637 P.2d 985** the Washington State Court of
17 Appeals ruled that the Court erred when it did not give the jury an entrapment instruction, and
18 thus reversed the conviction based on the fact that it took an informant and a police officer an
19 hour, and the pressure of how far they had driven before the defendant would finally sell them
20 some marijuana. In Mr. Stone’s case, it did not take the informant an hour to convince him to
21 sell the (CI) some methamphetamine; it took her well over eight to ten months or so worth of
22 multiple phone calls a week, consisting of begging and nagging and offering possible sexual
23 favors as well as six or seven visits consisting of between one and one and a half hours during
24 which time the (CI) was also continuously hounding him to sell her some methamphetamine.
25 The (CI) also tried very hard to ingratiate herself with Mr. Stone’s friends, and other than during
26 her second to last visit, his answer was always that he did not sell and would not sell her drugs.
27 The (CI) bringing Sudafed tablets into the house was the final blow which caused Mr. Stone to
28 decide he had to do something, and his reasoning, though flawed, was to make her go away
29 without a confrontation by selling her a bunch of caffeine mixed with a little bit of meth. The
30 hope was the sale would make her go away and the extremely poor quality would induce her to
31 stay away. The circumstances surrounding the (CI) efforts and the statements in the subjoined
32

1 affidavits; as well as the acquisition of phone and other records of the informant's activities as
2 required by CrR 4.7(a)(2)(iii), will leave no doubt that Mr. Stone was not merely afforded an
3 opportunity to commit a crime, but that the crime originated in the mind of law enforcement
4 officials and/or the (CI), and that Mr. Stone was most certainly lured and induced into
5 committing the crime due to the magnitude of repetition and the consequential extreme sense of
6 frustration resulting in an overwhelming desire to just make the begging stop and the beggar go
7 away. As such because all the evidence against Mr. Stone was obtained upon a warrant based
8 solely on Mr. Stone having sold a small amount of methamphetamine mixed with a much larger
9 amount of caffeine to a (CI) who had employed entrapment to acquire the drugs, the "fruit of
10 the poison tree," doctrine should apply. If the Court does not find a dismissal to be warranted,
11 this case should most certainly be remanded.

12
13 **Ineffective Counsel:** Mr. Underwood's refusal to conduct any investigation or even
14 listen to those who attempted to inform him of aspects beneficial to a viable defense, is within
15 itself indisputable evidence that his counsel was so deficient that counsel was not functioning as
16 the 'counsel' guaranteed by the Sixth Amendment. His not even being aware of certain
17 extremely important factors disclosed to him as part of discovery most assuredly identifies his
18 deficient performance as being so serious as to deprive Mr. Stone of his rights to due process
19 and a fair trial as guaranteed by the Sixth and Fourteenth Amendments of the United States
20 Constitution? STRICKLAND v. WASHINGTON, establishes a two part test for determining
21 the quality of Counsel. The first part is whether or not counsel's performance was deficient and,
22 the second part is if the deficient performance prejudiced the defense so as to deprive the
23 defendant of a fair trial. STRICKLAND v. WASHINGTON 466 US 688, 687 (1984). A stated
24 factor in STRICKLAND for determining quality of Counsel is his, "...duty to make reasonable
25 investigations or to make a reasonable decision that makes particular investigations
26 unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly
27 assessed for reasonableness in all the circumstances," STRICKLAND v. WASHINGTON The
28 only aspect of Mr. Stone's case investigated by Mr. Underwood was what deal the prosecution
29 was offering. He made no attempt to investigate anything beneficial to a viable defense. He
30 totally ignored all attempts to inform him of numerous aspects of Mr. Stone's case and of the
31 existence of numerous viable witnesses with the potential of creating extremely strong and well
32

1 supported evidence that would have most certainly strongly impacted the verdict. Thus, as
2 stated in STRICKLAND: "...counsel's representation fell below an objective standard of
3 reasonableness." STRICKLAND v. WASHINGTON. If Mr. Underwood had interviewed the
4 (CI), he would have known entrapment was a viable defense. By also interviewing Mr. Stone's
5 employer, Mr. Bolander, Mr. Russell, or any of the many others who could have added
6 significant viability to the defense claims that the extraction was not done by Mr. Stone and
7 much of the other evidence was brought onto the premises by those who had performed the
8 extraction. There were also witnesses available who could have testified that the nature of Mr.
9 Stone's property was such that it was normal for people to come unannounced and go into the
10 garage to work on their car, go into the kitchen to make something to eat, and that calling the
11 police when someone was there without a specific invitation would have been totally out of
12 character. All of this leaves no question but that Mr. Underwood, as stated in
13 STRICKLAND: "...prejudiced the defense so as to deprive the defendant of a fair trial."
14 STRICKLAND v. WASHINGTON. In BRUBAKER v. DICKSON, when discussing the lack
15 of inquiry, which in Mr. Stone's case included everything he suggested concerning interviewing
16 witnesses or any of the suggestions made about a viable defense, the following conclusion is
17 stated: "...trial counsel failed to prepare, and that appellant's defense was withheld not through
18 deliberate though faulty judgment, but in default of knowledge that reasonable inquiry would
19 have produced, and hence in default of any judgment at all.⁴⁸ The omissions alleged by
20 appellant 'were not mere mistakes of counsel or errors in the course of the trial. If true, they
21 constituted a total failure to present the cause of the accused in any fundamental respect. Such a
22 proceeding would not constitute for the accused the fair trial contemplated by the due process
23 clause....'" BRUBAKER v. DICKSON, 310 F.2d 30, (1962) These factors leave no question
24 but that Mr. Stone's case should be remanded.

25
26 **Prosecutorial Misconduct:** Due to the unfortunate situation of only being given access
27 to the law library a little over a week ago, Mr. Stone does not have any more time and can thus
28 only beg the Courts pardon for not being able to present any rulings relevant to a legally sound
29 argument related to Prosecutorial Misconduct. As such Mr. Stone can only ask that the Court
30 find what has been stated of importance enough to warrant an additional briefing on this matter.
31
32

1 **Unclassified Factors:** Facets about which Mr. Stone possess neither the legal
2 knowledge to define a single fitting heading nor the wherewithal to discover if any legal
3 precedence even exist for a dichotomy of Ineffective Counsel, Prosecutorial Misconduct and
4 Procedural errors but which are so crucial to the case, they must be stated, though briefly as
5 follows: During the two months Mr. Stone's property was under surveillance, (RP 129) prior to
6 the search warrant, no suspicious activities were observed, (RP 95, 129) thus the probable cause
7 for the search warrant was based solely on the actions and statements of the (CI), who was
8 required to spend months employing various tactics to induce Mr. Stone to sell her drugs, and
9 who subsequently by the mere act of the State dropping the delivery charges, became a non-
10 entity which Mr. Stone was under the impression he could neither confront, nor question, yet
11 her actions and statements not only provided the State with the basis upon which to acquire a
12 search warrant they also empowered the prosecutor to tell the jury that because Mr. Stone had
13 sold drugs in the past, it is reasonable to assume he would do so in the future. Due to the
14 ineffectiveness of his counsel, Mr. Stone was not even made aware that the CI could have been
15 called to testify until the State brought it up during closing arguments. Being incapable of
16 encasing those factors within a single legal appellative limits the definition to one of having
17 created a strong sense that there existed an adversarial disparity akin to arming one combatant
18 with a tooth pick with which to defend himself against a double edged sword.

19
20 **IV CONCLUSION:**

21 With apologies for the above totally non legal reference, Mr. Stone prays that the Court
22 will find dismissal to be the most appropriate remedy, but if that is not the finding of the Court,
23 then remand is most certainly warranted.

24
25
26 
27 Reed L. Stone 736825