FILED
COURT OF APPEALS
DIVISION II

2013 APR 29 AM 9:29

STATE OF WASHINGTON
BY _____
DEPUTY

COA NO. 44033-4-II

THE STATE OF WASHINGTON
PLAINTIFF

V.

LARNARD L. PINSON
APPELLANT/DEFENDANT

SUPPLEMENTAL BRIEF OF APPELLANT

ON APPEAL FROM THE SUPERIOR COURT OF PIERCE COUNTY

BEFORE THE HONORABLE JOHN R. McCARTHY

MR. LANARD L. PINSON
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TABLE OF AUTHORITIES PAGE

STATE CASES: WA.

STATE V. CHILDRESS.....6
STATE V. WALKER..... 6
STATE V. LADSON..... 7
STATE V. AVILA-AVINA..... 7
STATE V. TARICA..... 10
STATE V. McFARLAND..... 10
STATE V. VISITACION..... 12
STATE V. SADINA..... 12
STATE V. THOMAS..... 13
STATE V. LINDSAY..... 14
STATE V. JOSE GUSTAVO CHAVEZ-ROMERO..... 17
STATE V. HARVEY..... 19
STATE V. RAINEY..... 21
STATE V. DAWKINS..... 21

FEDERAL CASES:

HAWKMAN V. PARRATT..... 12

U.S. SUPREME COURT CASES:

WEEKS V. UNITED STATES..... 5, 6
DAVIS V. MISSISSIPPI..... 6
WONG SUN V. U.S..... 7
STRICKLAND V. WASHINGTON..... 8, 10, 12
BLOATE V. U.S. 16
UNITED STATES V. LABONTE,..... 19
HILL V. LOCKHART,..... 10
WILLIAMS V. TAYLOR..... 10
KIMMELMAN V. MORRISON..... 21
BELL V. QUINTERO,..... 21
UNITED STATES V. CRONIC,..... 21

UNITED STATES CONSTUTION:

U.S.C.A. CONST. AMEND. 14..... 5, 6, 24, 23
U.S.C.A. CONST. AMEND. 4..... 6,7,8
U.S.C.A. CONST.AMEND. 6..... 11,,13,15,16,17,19,20,21,23,24
U.S.C.A. CONST.AMEND. 5..... 13,14,15
WEST'S RCWA CONST. ART. I § 7..... 5,6,7,8,
WEST'S RWCA CONST. ART. I §22..... 11,13,19,20,21,23
WEST'S RCWA CONST. ART. I § 9..... 13,14,15,
WEST'S RCWA CONST. ART. I § 10..... 15,16,17

TABLE OF AUTHORITIES CONT. PAGE

OTHER LAWS:

WA. PRAC. §2406..... 9

RPC 1.2, 1.4..... 9

RCWA 9A.28.020..... 15 , 19

CrR 3.3..... 16,17

RCWA 9.92.020 9A.20.021..... 18

RCWA 46.20.308..... 20

RCWA 9..... 23

TABLE OF AUTHORITIES

	PAGE
STAEMENT OF FACTS.....	1
ISSUES PRESENTED.....	4
GROUND ONE.....	4,5,6,7,8
GROUIND TWO.....	8,9,10,11
GROUND THREE.....	11,12,13,14
GROUND FOUR.....	13,14,15
GROUND FIVE.....	15,16,17
GROUND SIX.....	18,19
GROUND SEVEN.....	19,20,21
GROUND 8.....	22,23,24
CONCLUSION.....	24,25

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

THE STATE OF WASHINGTON PLAINTIFF	NO. 44033-4-II PIERCE CO. NO. 11-1-05174-1
V.	APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS". RAP 10.10
LARNARD L. PINSON APPELLANT	

I. (STATEMENT OF FACTS RELEVANT TO APPEAL)

ON OR ABOUT JULY 12, 2011 THE APPELLANT WITH TWO FRIENDS-(NOT PARTY TO NCO)-WAS ATTEMPTING TO ABOARD PUBLIC TRANSIT-(BUS)-WHEN THE BUS DRIVER STATED, QUOTE, **"YOU CAN'T GET ON THIS BUS"**. APPELLANT RESPONDED, "YES I CAN MY 90 DAY SUSPENSION HAS EXPIRED". THE BUS DRIVER PICKED UP THE PHONE AND CALLED THE POLICE STATING THE APPELLANT WAS TRESSPASSING". APPELLANT, **MR. PINSON** THEN STATED TO HIS FRIENDS HE WOULD CATCH THE NEXT BUS. WHILE **MR. PINSON** WAS AWAITING THE ARRIVAL OF THE NEXT BUS OFFICER W. ROBINSON ARRIVED AND WALKED UP THE STREET APPREHENDED CASSANDRA DOILE, THE PERSON WHICH **MR. PINSON** DOES HAVE A VALID **(NCO)** AND WITH A USE OF FORCE BY GRABBING HER ARM AND DRAGGING HER TOWARDS **MR. PINSON**, CASSANDRA DOILE RESISTED AND PROTESTED BY STATING, QUOTE, **"I CANT GO NEAR HIM WE HAVE A NO CONTACT ORDER". UNQUOTE.** EVEN SO OFFICER W. ROBINSON FORCED CASSANDRA DOILE TO THE AREA OF **MR. PINSON**, AND TOLD MS. DOILE, QUOTE, **"EITHER YOU CAN GO TO JAIL OR TAKE A 90 DAY SUSPENSION"**. UNQUOTE. AND MS. DOILE DEPARTED. OFFICER W. ROBINSON THEN ASKED **MR. PINSON**, HAD HE BEEN DRINKING AND **MR. PINSON**, STATED YES EARLIER IN THE DAY". OFFICER W. ROBINSON THEN STATED WELL IT DON'T MATTERYOUR TRESPASSING ANY WAY **MR. PINSON STATED, "MY 90 DAY SUSPENSION HAS EXPIRED". TO WHICH OFFICER W.** ROBINSON STATED IT HAS BEEN EXTENDED FOR A YEAR". **MR. PINSON**, STATED

- "'I HAVE NOT BEEN SERVED WITH ANY NOTICE OF ANY ONE YEAR EXTENSION, TO NO AVAIL, OFFICER W. ROBINSON UNLAWFULLY ARRESTED **MR. PINSON.** ON FEBRUARY 7, 2012 **MR. PINSON** THROUGH COUNSEL FILED A TIMELY MOTION TO SUPPRESS ALL EVIDENCE OBTAINED INCIDENT TO THE UNLAWFUL ARREST. DUE TO MALICIOUS TACTICS BY THE STATE AND OR THE STATE ASSERTS AND OR AGREE THAT THE ARREST WAS INDEED UNLAWFUL AND THAT ALL EVIDENCE, I.E., REPORTS SHOULD BE SUPPRESSED, BECAUSE ON OR ABOUT 8-22-12 THE STATE MOVED TO DISMISS THE TRESSPASSING CHARGES, AND THE UNLAWFUL TRANSIT CONDUCT WITH PREJUDICE. ON FEBRUARY 14, 2012 THE STATE USED EVIDENCE OBTAINED FROM THE UNLAWFUL ARREST TO CHARGE **MR. PINSON** WITH FELONY VIOLATION OF A NO CONTACT ORDER, WHICH IS THE REASON **MR. PINSON** IS NOW UNLAWFULLY IMPRISONED HAD THE SUPPRESSION HEARING PURSUANT TO **CrR 3.5; AND 3.6** PROCEEDED THERE IS NO QUESTION IT WOULD HAVE BEEN DETERMINED BY THE COURT THAT THE ARREST WAS INDEED UNLAWFUL AND THAT ALL EVIDENCE, AND THE ARREST THERETO WOULD BE SUPPRESSED. AT WHICH POINT THE FALSE ALLEGATIONS OF FELONY VIOLATION OF A NO CONTACT ORDER WOULD HAVE ALSO BEEN SUPPRESSED AS THE ONLY THING SUPPORTING THIS FALSE ALLEGATION IS THE POLICE REPORT OF THE UNLAWFUL ARREST AND THE ARRESTING OFFICER'S TESTIMONY WHICH WOULD HAVE ALSO BEEN SUPPRESSED, GIVING NO SUBSTANCE FOR THE STATE TO CONNIVE THE FALSE ALLEGATIONS OF FELONY VIOLATION OF A NO CONTACT ORDER. TO PREVENT THE FALSE ALLEGATIONS OF FELONY VIOLATION OF A NO CONTACT ORDER FROM BEING SUPPRESSED THE STATE MOVED ON 8-22-12 TO DISMISS THE CRIMINAL TRESPASSING CHARGE WHICH IS THE REASON THAT **MR. PINSON** WAS UNLAWFULLY ARRESTED. THE ARRESTING OFFICER W. ROBINSON REPORT WOULD HAVE BEEN SUPPRESSED THEREWITH HIS TESTIMONY, WHICH IN REGARDS TO THE FALSE ALLEGATIONS OF FELONY VIOLATION OF A NO CONTACT ORDER WAS HEARSAY, BECAUSE HIS INFORMATION THAT TWO PEOPLE MAY BE CONSUMING ALCOHOL IN A **"BUS SHELTER"** WAS OBTAINED BY SOME UNKNOWN PERSON REPORTING THIS, WHEN OFFICER W. ROBINSON ARRIVED **MR. PINSON** WAS ALONE AND THE OTHER PARTY TO THE NO CONTACT ORDER WAS IN ANOTHER VINCINITY OF THE NEIGHBORHOOD AND WALKING IN ANOTHER DIRECTION, IT WAS NOT UNPON THE ACTS OF **MR. PINSON** THAT VIOLATED THE NO CONTACT ORDER BUT THE ACTS OF THE ARRESTING OFFICER W. ROBINSON WHEN HE WENT TO MS. DOILE'S AND WITH A USE OF FORCE AND AGAINST MS. DOILE WILL AND PROTEST, THAT, **"SHE COULD NOT BE WITH MR. PINSON BECAUSE OF A NO CONTACT ORDER".** BROUGHT

MS. DOILE TO WHERE MR. PINSON WAS WAITING ON PUBLIC TRANSPORTATION AS HE INFORMED HIS COMPANIONS THAT TOOK THE FIRST BUS THAT HE WAS UNLWAFULLY DENIED ACCESS TO. THE ARRESTING OFFICER'S ACTS IS WHAT CAUSED MR. PINSON TO BE IN CONTACT WITH MS. DOILE, HAD MR. PINSON NOT BEEN UNLAWFULLY DENIED ACCESS TO THE FIRST BUS-PUBLIC TRANSPORT HE WOULD HAVE NEVER BEEN IN CONTACT WITH THE ARRESTING OFFICER WHOM CAUSED THE NO CONTACT VIOLATION NOR WOULD HE HAVE BEEN UNLAWFULLY ARRESTED, NOR WOULD HE HAVE BEEN SUBSEQUENTLY MALICIOUSLY PROSECUTED FOR VIOLATING A NO CONTACT ORDER HE DID NOT VIOLATE NOR DID MR. PINSON HAVE THE INTENT TO VIOLATE A NO CONTACT ORDER NOR HAS THE STATE OR CAN THE STATE PROVE THAT MR. PINSON DID ANY ACT THAT WOULD PROVE HE HAD ANY INTENT TO VIOLATE THE NO CONTACT ORDER WHICH IS REQUIRED BY LAW, "MENS REA" AND THE "ACTUS REUS".

FURTHER MORE MR. PINSON'S TRIAL COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO PURSUE THE SUPPRESSION HEARING AFTER THE TRESPASS CHARGES WAS DISMISSED WITH PREJUDICE, BECAUSE THE ONLY SUBSTANCE TO THE FALSE ALLEGATIONS OF FELONY VIOLATION OF A NO CONTACT ORDER WAS DERIVED FROM ALL EVIDENCE OBTAINED INCIDENT TO THE UNLAWFUL ARREST AND IT WOULD HAVE BEEN SUPPRESSED THERE IS NO DOUBT MR. PINSON'S MOTION TO SUPPRESS WOULD HAVE BEEN GRANTED MR. PINSON'S TRIAL COUNSEL ALSO FAILED TO OBJECT TO THE ARRESTING OFFICER W. ROBINSON'S UNSUBSTANTIATED AND FALSE ALLEGATIONS THAT MR. PINSON WAS INTOXICATED OR THAT MR. PINSON HAD EVEN BEEN DRINKING, WHICH DID PREJUDICE THE MINDS OF THE JURY, BECAUSE IT CAUSED THE JURY TO BELIEVE THAT MR. PINSON HAD BEEN DRINKING WITH THE OTHER PARTY TO WHICH HE WAS ORDERED NO CONTACT, ALSO DEFENSE COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO CONTACT THE BUS DRIVER THAT UNLAWFULLY DENIED MR. PINSON ACCESS INTO THE BUS, BECAUSE THE BUS DRIVER WOULD HAVE BEEN ABLE TO TESTIFY THAT MR. PINSON WAS NOT WITH MS. DOILE WHEN HE TRIED TO ENTER THE BUS, BUT WAS WITH TO OTHER INDIVIDUALS, WHICH WOULD PROVE THAT MR. PINSON NEVER HAD THE INTENTIONS TO VIOLATE THE NO CONTACT ORDER, AND SHOW THAT THE BUS DRIVER'S UNLAWFUL DENIAL TO TRANSPORT MR. PINSON IS WHAT CAUSED MR. PINSON TO BE IN THE SAME NEIGHBORHOOD OF MS. DOILE'S, BECAUSE HE WOULD HAVE BEEN AT ANOTHER DESTINATION HAD HE BEEN GIVEN TRANSPORT. THIS MAKES THE BUS DRIVER A MATERIAL WITNESS TO THE FALSE ALLEGATIONS OF VIOLATION OF (NCO). MR. PINSON HAS BEEN MALICIOUSLY PROSECUTED AND IS NOW UNLAWFULLY IMPRISONED, AND APPEALS DUE TO THIS MISCARRIAGE OF JUSTICE AND PRAYS FOR VINDICAT-

--ED PURSUANT TO ART. I S 10 OF THE WASHINGTON STATE CONSTITUTION.

II. (ISSUES PRESENTED)

(A): WHETHER ALL EVIDENCE ILLEGALLY OBTAINED INCIDENT TO UNLAWFUL ARREST SHOULD HAVE BEEN SUPPRESSED, I.E., STATEMENTS AND ALL POLICE REPORTS?

(B): WHETHER DEFENSE COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO RESUBMIT DEFENDENT MOTION TO SUPPRESS UPON DEFEDENT TIMELY REQUEST AND WHEN THERE IS NO DOUBT MOTION TO SUPRESS WOULD HAVE BEEN GRANTED ?

(C): WHETHER DEFENSE COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO SUBPOENA WITNESS THAT WOULD HAVE PROVEN DEFENDANT WAS NOT WITH OTHER PARTY TO NO CONTACT ORDER WHICH WOULD HAVE PROVED DEFEDANT IS INNOCENT, THUS FAILING TO SUBPOENA A MATERIAL WITNESS ?

(D): WAS THE DOUBLE JEOPARDY CLAUSE VIOLATED WHEN DEFEDANT WAQS CONVICTED FOR TWO OFFENSES THAT IS THE SAME CRIMINAL CONDUCT ?

(E): WHETHER DEFENDANT SPEEDY TRIAL RIGHTS WAS VIOLATED AFTER TRIAL DID NOT COMMENCE FOR 6 MONTHS AHILE DEFENDANT WAS IN JAIL IN VIOLATION OF CrR 3.3 ?

(F): WHETHER A 29 MONTH SENTENCE FOR A GROSS MISDEMEANOR OF ATTEMPTED TAMPERING WITH A WITNESS WHICH IS AN ANTICIPATORY OFFENSE ?

(G): WHETHER DEFENSE COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO OBJECT TO PROSECUTOR'S WITNESS UNPROVEN ASSUMPTIONS THAT DEFENDANT WAS INTOXICATED OR HAD EVEN CONSUMED ANY ALCOHOL AND HEARSAY STATEMENTS AS TO TWO UNIDENTIFIED PERSONS CONSUMING ALCOHOL IN A BUS SHELTER ?

III. (GROUNDS)

(1): ON OR ABOUT JULY 12, 2011 THE APPELLANT WAS UNLAWFULLY ARRESTED ON

FEBRUARY 7,2012 DEFENDANT THROUGH COUNSEL IN DISTRICT COURT FILED A MOTION TO SUPPRESS ALL ILLEGALLY OBTAINED EVIDENCE INCIDENT TO THE JULY 12,2011 UNLAWFUL ARREST, DUE TO THE ILLEGALLY OBTAINED EVIDENCE DEFENDANT WAS UNLAWFULLY CHARGED WITH FELONY VIOLATION OF A NO CONTACT ORDER ON FEBRUARY 14, 2011, ON AUGUST 22, 2012 THE STATE MOVED TO DISMISS THE TRESSPASSING CHARGE WITH PREJUDICE DELIBERATELY PREVENTING THE DEFENDANT FROM SUPPRESSING THE UNLAWFUL ARREST AND THE ILLEGALLY OBTAINED EVIDENCE INCIDENT TO ARREST BECAUSE DEFENDANT MOTION TO SUPPRESS SUCH WAS NEVER HEARD BY THE COURT. APPELLANT ARGUES THAT THE POLICE REPORT SHOULD HAVE BEEN SUPPRESSED AND THEREWITH THE OFFICERS HEARSAY TESTIMONY OF THE INCIDENT TO UNLAWFUL ARREST.

A. (STANDARD OF REVIEW)

REVIEW BY A STATE COURT OF SUPPRESSION ISSUE IS DE NOVO. WA. CONST. ART. I § 7 AND 4th and 14th AMEND. CONST. U.S.C.A.

B. (ARGUMENT)

APPELLANT ARGUES, THAT THE STATE DELIBERATELY DISMISSED WITH PREJUDICE THE UNLAWFUL TRESSPASSING TO PREVENT HIM FROM SUCCEEDING WITH HIS MOTION TO SUPRESS THE UNLAWFUL ARREST AND ILLEGALLY OBTAINED EVIDENCE INCIDENT TO THE UNLAWFUL ARREST, AND THAT THE STATES ACTIONS AND OR DECISIONS TO DISMISS WITH PREJUDICE SHOULD BE ACCEPTED AS AN ASSERTION THAT THE ARREST WAS UNLAWFUL AND THAT ALL EVIDENCE OBTAINED, STATEMENTS, POLICE REPORTS, AND ANY AND ALL TESTIMONIES IS SUPPRESSED AVERTING PROSECUTION FOR CRIMES FORWHICH WAS ALLEGED BEING FELONY VIOLATION OF A NO CONTACT ORDER, THAT DERIVED FROM THE ILLEGALLY OBTAINED EVIDENCE INCIDENT TO THE UNLAWFUL ARREST. **WA. PRAC. §2406 THE EXCLUSIONARY RULE: THE EXCLUSIONARY RULE IS A JUDICIALLY-CREATED REMEDY WHICH RESULTS IN THE SUPPRESSION, AT A CRIMINAL TRIAL, OF EVIDENCE OBTAINED DIRECTLY OR INDIRECTLY THROUGH A VIOLATION OF A DEFENDANT'S CONSTITUTIONAL RIGHTS.** WEEKS V. UNITED STATES, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (19140.

THIS IS A DIRECT VIOLATION OF THE **4th AND 14th AMEND.CONST. TO THE U.S.C.A.** AND THE **WA. STATE CONST. ART. I § 7** AND VIOLATION OF THE **TREE OF THE POISONOUS FRUIT DOCTRINE.**

C. (CONTROLING LAWS)

WEEKS V. UNITED STATES, 232 U.S. 383, 34 S.CT. 341, 58 L.Ed. 652 (1914); DAVIS V. MISSISSIPI, 395 U.S. 721, 89 S.CT. 1394, 22 L.Ed.2d 676 (1969);

CITING AND ARGUING, STATE V. CHILDRESS, 35 Wn.App. 314, 666 P.2d 941 (1983): THE STATE HAS THE BURDEN OF DEMONSTRATING THAT A WITNESS' TESTIMONY IS SUFFICIENTLY INDEPENDENT OF AN ILLEGAL SEARCH SO THAT IT IS NOT SUBJECT TO THE EXCLUSIONARY RULE; FACTORS TO BE CONSIDERED INCLUDE THE DEGREE OF DIRECT RELATIONSHIP BETWEEN THE ILLEGAL SEARCH AND THE TESTIMONY OF THE WITNESS, THE DEGREE OF FREE WILL EXERCISED BY THE WITNESS, AND WHETHER EXCLUSION WOULD PERMANENTLY PREVENT BY THE WITNESS NO MATTER HOW UNRELATED IT MIGHT BE TO THE ILLEGAL SEARCH). AS HERE **MR. PINSON** WAS IN NO DOUBT UNLAWFULLY ARRESTED FOR UNLAWFUL TRESSPASSING HE WAS NOT ARRESTED FOR FELONY VIOLATION OF A NO CONTACT ORDER AND WAS NOT CHARGED WITH FELONY BVIOLATION OF A NO CONTACT ORDER UNTIL 7 MONTHS LATER FEBRUARY 14, 2012 BASED ON EVIDENCE DERIVING FROM THE UNLAQWFUL ARREST FROM WHICH APPELLANT FILED A TIMELY MOTION TO SUPPRESS. THE ILLEGALLY OBTAINED EVIDENCE INCIDENT TO ARREST OF THE FRIVOLOUS VIOLATION OF A NO CONTACT ORDER WAS NOT OBTAINED PURSUANT TO THE **"INDEPENDENT SOURCE DOCTRINE"** NOR WAS THERE **"INEVITABLE DISCOVERY"** BECAUSE APPELLANT DID NOT VIOLATE THE NO CONTACT ORDER. _____

STATE V. WALKER, 119 P.3d 399, 129 Wn.App 572 (WASH.APP. DIV.3 2005):"IF AN OFFICER FINDS GROUNDS FOR AN ARREST AS A RESULT OF AN UNLAWFUL STOP, THE ARREST IS TAINTED AND ANY EVIDENCE DISCOVERED DURING A SEARCH INCIDENT TO THE ARREST CANNOT BE ADMITTED". **U.S.C.A. CONST.AMEND. 4; WASH. CONST. ART. I § 7.**

UNDER THE **"FRUIT OF THE POISONOUS TREE FRUIT DOCTRINE,"** THE ECLUSIONARY RULE APPLIES TO EVIDENCE DERIVED DIRECTLY AND

-INDIRECTLY FROM ILLEGAL POLICE CONDUCT. DERIVATIVE EVIDENCE WILL BE EXCLUDED AS FRUIT OF THE POISONOUS TREE UNLESS IT WAS NOT OBTAINED BY EXPLOITATION OF THE ILLEGALITY OR BY MEANS SUFFICIENTLY DISTINGUISHABLE TO BE PURGED OF THE PRIMARY TAINT.

" TO PROVE THAT EVIDENCE DERIVED DIRECTLY OR INDIRECTLY FROM ILLEGAL POLICE CONDUCT WAS PURGED OF TAINT, THE STATE MUST SHOW EITHER THAT: (1) INTERVENING CIRCUNSTANCES HAVE ATTENUATED THE LINK BETWEEN THE ILLEGALITY AND THE EVIDENCE; (2) THE EVIDENCE WAS DISCOVERED THROUGH A SOURCE INDEPENDENT FROM THE ILLEGALITY; (3) THE EVIDENCE WOULD INEVITABLY HAVE BEEN DISCOVERED THROUGH LEGITIMATE MEANS." THE STATE HERE COULD NOT SATISFY ANY OF THE ABOVE REQUIREMENTS BECAUSE MR. PINSON WAS UNLAWFULLY ARRESTED FOR TRESSPASSING NOT FELONY VIOLATION OF A NO CONTACT ORDER BECAUSE HE DID NOT VIOLATE THE NO CONTACT ORDER BY ANY MEANS NOR BY INDEPENDENT MEANS.

"EXCLUSIONARY RULE" PROHIBITS INTRODUCTION INTO EVIDENCE OF TANGIBLE AND TESTIMONIAL EVIDENCE ACQUIRED DURING UNLAWFUL ARREST, AS WELL AS DERIVATIVE EVIDENCE, BOTHH TANGIBLE AND TESTIMONIAL, THAT IS PRODUCT OF PRIMARY EVIDENCE OR IS OTHERWISE ACQUIRED AS INDIRECT RESULT OF UNLAWFUL SEARCH." U.S.C.A. CONST. AMED. 4; WASH. STATE CONST. ART. I § 7.

HERE MR. PINSON/APPELLANT WAS IN NO DOUBT UNLAWFULLY ARRESTED FOR CRIMINAL TRESPASS, A CRIME THAT HAD NOT BEEN COMMITTED ON 7-12-11 HE WAS NOT ARRESTED FOR ANYTHING ELSE, ON FEBRUARY 7,2012 APPELLANT THROUGH HIS THEN DEFENSE COUNSEL CHANDRA CARLISLE, FILED A MOTION TO SUPPRESS EVIDENCE, AND REQUESTED IN THE RELIEF: ALL EVIDENCE OBTAINED DIRECTLY OR INDIRECTLY THROUGH THE EXPLOITATION OF AN ILLEGAL SEARCH MUST BE SUPPRESSED. CITING, WONG SUN V. U.S.,371 U.S. 471 (1963);STATE V. LADSON,138 Wn.2d 343,359 (1999);STATE V. AVILA-AVINA, 99 Wn.App. 9, 13-14 (2000).

THEN ON FEBRUARY 14, 2012 THE STATE FILED CRIMINAL CHARGES OF FELONY VIOLATION OF A NO CONTACT ORDER DEPENDING ON THE EVIDENCE ILLEGALLY OBTAINED 7-12-11 INCIDENT TO THE UNLAWFUL

-ARREST THAT WOULD HAVE BEYOND ANY DOUBT BEEN SUPRRESSED HAD THE STATE NOT DELIBERATELY DISMISSED WITH PREJUDICE THE ALLEGATIONS USED TO INITIATE THE UNLAWFUL ARREST, CRIMINAL TRESPASS. THE MOTION TO SUPRESS WAS SET ON THE MOTION CALENDER FOR FEBRUARY 14,2012 THE EXACT DAY THE FRIVOLOUS CHARGES OF VIOLATION OF NCO WAS FILED.

THE SUPPRESSION HEARING WAS NEVER HEARD, AND ON AUGUST 22,2012 THE STATE MOVED TO DISMISS WITH PREJUDICE THE CRIMINAL TRESPASS THE REASON FOR THE UNLAWFUL ARREST AND FROMWHICH THE ILLEGAL EVIDENCE WAS OBTAINED INCIDENT TO THE UNLAWFUL ARREST. THE REASON THE SUPPRESSION HEARING WAS NOT HEARD WAS NEVER GIVEN OR ADDRESSED. AND BASED ON THE ILLEGAL EVIDENCE OBTAINED INCIDENT TO THE UNLAWFUL ARREST **MR. PINSON/APPELLANT** WAS MALICIOUSLY TRIED AND CONVICTED FOR VIOLATION OF A FELONY NO CONTACT ORDER, A CRIME NEVER COMMITTED, AS DECLARED BY WASHINGTON STATE LAW AND U.S. SUPREME COURT LAW, **WASHINGTON STATE CONST. AND U.S. CONST.** ILLEGALLY OBTAINED EVIDENCE MUST BE EXCLUDED. **U.S.C.A. AMEND. CONST. 4 AND WASH. STATE CONST. ART. I § 7, THE MALICIOUS CONVICTION IS A COMPLETE MISCARRIAGE OF JUSTICE AND MUST BE REVERSED AND WITH AN ORDER TO DISMISS WITH PREJUDICE.**

GROUND II.: DEFENSE COUNSEL WAS IN NO DOUBT INEFEECTIVE FOR IGNORING **MR. PINSON'S** INCESSANT REQUEST TO FILE A MOTION TO SUPPRESS THE POLICE REPORTS AND TESTIMONY THAT IS POISONOUS FRUITS OF THE UNLAWFUL ARREST AND SEARCH OF APRIL 12,2011, AND THERE IS NO DOUBT THE MOTION TO SUPPRESS WOULD HAVE BEEN GRANTED BECAUSE THE LAW REQUIRES SUPPRESSION OF ILLEGALLY OBTAINED EVIDENCE, IT MUST BE EXCLUDED. AND THIS INEFFECTIVENESS MEETS ALL PRONGS IN **"STRICKLAND V. WASHINGTON"**_____ . ._____, AND FAILURE OF **MR. PINSON'S** TRIAL COUNSEL TO BRING A PRETRIAL SUPRESSION MOTION IS NOT A TRIAL TACTIC AND IS INEFFECTIVE ASSISTANCE OF COUNSEL. **MR. PINSON** HAS INDEED BEEN PREJUDICED BY HIS TRIAL COUNSEL'S INEFFECTIVENESS:

- A. (STANDARD OF REVIEW)

THE STANDARD OF REVIEW OF INEFFECTIVE ASSISTANCE OF COUNSEL IS A CONSTITUTIONAL ISSUE AND ALL CONSTITUTIONAL ISSUES IS REVIEWED DE NOVO.

B.(ARGUMENT)

MR. PINSON/APPELLANT, INFORMED TRIAL COUNSEL MATTHEW F, WAREHAM OF THE MOTION TO SUPPRESS FILED BY HIS TRIAL COUNSEL CHANDRA CARLISLE FEBRUARY 7 2012 AND THAT IT WAS NOTED TO BE HEARD FEBRUARY 14,2012 BUT WAS NEVER HEARD NOR WAS ANY REASON EVER GIVEN FOR THIS AND THAT IT SHOULD BE REFILED BECAUSE IT WOULD IN NO DOUBT DISPOSE OF THIS FELONY MATTER, AND MATTHEW F. WAREHAM REFUSED TO FILE THE PRETRIAL MOTION TO SUPPRESS BECAUSE IT WAS HIS BELIEF THAT **MR. PINSON** WAS GUILTY. **MR. PINSON/APPELLANT** AGAIN REQUESTED ADAMANTLY THAT TRIAL COUNSELOR WAREHAM FILE THE PRETRIAL MOTION TO SUPRESS BECAUSE HE WAS INNOCENT, THAT EVEN THOUGH BECAUSE OF HIS LOVE FOR THE OTHER PARTY TO THE NO CONTACT ORDER MS. DOILE, HE HAD PREVIOUSLY WITHOUT FELONY INTENT VIOLATED THE NO CONTACT ORDER, HE HAD NOT THIS TIME COMMITTED SUCH AN ACT. BUT TRIAL COUNSEL WAREHAM AGAIN REFUSED. **MR. PINSON** REQUEST FOR THE PRETRIAL MOTION TO SUPPRESS WAS INCESSANT AND HE EXPLAINED IN DETAIL **(SOMETHING MR WAREHAM SHOULD ALREADY KNOW)**-EVIDENCE UNLAWFULLY SEIZED INCIDENT TO AN UNLAWFUL ARREST MUST BE EXCLUDED, COUNSELOR WAREHAM BECAME BELLIGERENT AND MALICIOUSLY AND STATED, QUOTE,**"MY FINAL ANSWER IS NO!"**,UNQUOTE.

THERE IS NO DOUBT HAD TRAIL COUNSEL WAREHAM NOT BEEN MALICIOUS AND HAD HE PURSUANT TO **RPC 1.2 (a)** ADHERED TO HIS CLIENTS ADAMANT DECISION CONCERNING THE OBJECTIVE OF REPRESENTING HIM AS REQUIRED BY RULE **1.4 SHALL CONSULT WITH THE CLIENT AS TO THE MEANS BY WHICH THEY ARE TO BE PURSUED.** AND FILED THE MOTION TO SUPRESS THE MOTION TO SUPPRESS WOULD HAVE IN NO DOUBT BEEN GRANTED, AND THE MALICIOUS CHARGES OF FELONY VIOLATION OF A NO CONTACT ORDER WOULD HAVE BEEN DISMISSED WITH PREJUDICE BECAUSE IT HAD NOT BEEN COMMITTED.

C. (CONTROLLING LAWS)

STATE V. TARICA, 368, 798 P.2d 296,59 WnApp. 368 (1990):"FAILURE TO BRING A PRETRIAL SUPPRESSION MOTION IS NOT A TRIAL TACTIC AND IS "INEFFECTIVE ASSISTANCE OF COUNSEL". STATE V. MCFARLAND, 127 Wash.2d 322, 337, 899 P.2d 1251 (1995):"

A DEFENDANT WHO HAS A RIGHT TO COUNSEL IS ENTITLED TO THE "EFFECTIVE" ASSISTANCE BY THE LAWYER ACTING ON HIS OR HER BEHALF. THIS CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL APPLIES WHETHER COUNSEL IS RETAINED BY THE ACCUSED OR APPOINTED BY THE COURT. WHERE IT APPEARS DURING THE COURSE OF THE PROCEEDINGS THAT THE DEFENDANT'S RIGHTS WILL BE SUBSTANTIALLY IMPAIRED OR DENIED, COUNSEL MAY BE DISCHARGED OR REPLACED. THE APPROPRIATE REMEDY FOR A TRIAL CONDUCTED WITH THE INEFFECTIVE ASSISTANCE OF COUNSEL IS FOR THE CASE TO BE REMANDED FOR A NEW TRIAL WITH NEW COUNSEL.

HERE MR. PINSON/APPELLANT MEETS THE TWO PRONGED STANDARD (a) TRIAL COUNSEL'S FAILURE TO FILE A MOTION TO SUPPRESS, INITIATE, FOLLOW THROUGH, INVESTIGATE PREVIOUS FILED MOTION TO SUPPRESS ON FEBRUARY 7, 2012 WHICH WAS THE REASONS FOR MR. PINSON'S UNLAWFUL ARREST IN THIS MATTER, SHOWS BEYOND ANY DOUBT THAT MR. WAREHAM REPRESENTATION FELL ACUTELY BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, AND (b) BECAUSE THERE IS NO DOUBT THE MOTION TO SUPPRESS WOULD HAVE BEEN GRANTED, IF NOT FOR MR. WAREHAM/COUNSEL'S UNPROFESSIONAL DELIBERATE ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT, BECAUSE MR. PINSON IS 100% INNOCENT OF THE ALLEGATIONS OF VIOLATION OF A NO CONTACT ORDER. HILL V. LOCKHART , 474 U.S. 52, 106 S.CT. 366, 88 Led.2d 203 (1985); STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.CT. 2052, 80 L.Ed.2d 674 (1984);WILLIAMS V. TAYLOR, 529 U.S.-362, 120 S.CT. 1495, 146 L.Ed.2d 389 (2000).

CITING, AND ARGUING, STATE V. REICHENBACH, 152 Wn.2d 126, 101 P.3d-80 (2004): FAILURE TO CHALLENGE ADMISSIBILITY OF EVIDENCE WITH SUPPRESSION MOTION WAS INEFFECTIVE ASSISTANCE OF COUNSEL".

U.S.C.A. CONST.AMEND. 6 WASHINGTON STATE CONST. ART. I ß 22.

GROUND 3: DEFENSE COUNSEL WAREHAM, WAS INEFFECTIVE WHEN HE REFUSED AND FAILED TO CONTACT AND INTERVIEW DEFENSE WITNESS BEING,(BUS DRIVER THAT MADE COMPLAINT THAT MR. PINSON WAS TRESPASSING)--AND REFUSING TO SUBPOENA THE DEFENSE WITNESS WHOM IS FACTUALLY A "MATERIAL WITNESS AND WOULD HAVE BEEN ABLE TO PROVE BEYOND A DOUBT THAT MR. PINSON WAS NOT WITH MS. DOILE WHEN HE ATTEMPTED TO ENTER THE TRANSPORTATION BUS TO TRAVEL FROM THE PLACE OF HIS UNLAWFUL ARREST THUS DID NOT AND HAD NO INTENTION TO VIOLATE THE NO CONTACT ORDER. THUS DEFENSE COUNSEL WAS AGAIN ACUTELY INEFFECTIVE. U.S.C.A. 6; WASH.STATE.CONST. ART. I ß 22.

A. (STANDARD OF REVIEW)

ALL ISSUES OF CONSTITUTIONAL MAGNITUDE IS REVIEWED DE NOVO.

B. (ARGUMENT)

APPELLANT ASKED HIS TRIAL COUNSEL WAREHAM TO INTERVIEW THE TRANSIT BUS DRIVER THAT HAD MADE THE MALICIOUS PHONE CALL FALSELY ALLEGING THAT HE WAS TRESPASSING, BECAUSE WHEN THE BUS DRIVER HINDERED HIS ATTEMPT TO ENTER THE BUS HE WAS NOT WITH THE PARTY TO THE NO CONTACT ORDER MS. DOILE, BUT WAS WITH TWO OTHER PERSONS WITH A DESTINATION BEYOND HIS CURRENT SURROUNDINGS, AND THAT HAD HE NOT BEEN MALICIOUSLY DENIED ACCESS TO THE BUS HE WOULD HAVE NEVER BEEN NEAR MS. DOILE, AND HE WOULD NOT HAVE BEEN UNLAWFULLY ARRESTED, AND DURING THE UNLAWFUL ARREST THE ARRESTING OFFICER WITH FORCE BROUGHT MS. DOILE TO WHERE MR. PINSON WAS WAITING FOR TRANSPORTATION, CREATING THE ELEMENTS OF VIOLATION OF A NO CONTACT ORDER. TRIAL COUNSEL'S FAILURE TO SUBPOENA A MATERIAL WITNESS, INTERVIEW A MATERIAL WITNESS, WAS

ACUTE INEFFECTIVE ASSISTANCE OF COUNSEL SHOWING THAT WAREHAM PERFORMANCE WAS ACUTELY DEFICIENT AND THE ACUTE DEFICIENT PERFORMANCE ACUTEL PREJUDICED **MR. PINSON/APPELLANT** BECAUSE IF IT WAS NOT FOR THE ACUTE DEFICIENT PERFORMANCE OF DEFENSE COUNSEL WAREHAM THE OUTCOME OF THE PROCEEDINGS WOULD HAVE IN NO DOUBT BEEN COMPLETELY DIFFERENT BECAUSE **MR. PINSON** IS INNOCENT.:

C. (CONTROLLING LAWS)

STATE V. VISITACION, 55 **Wn.App.** 166, 776 **P.2d** 986 (1989):"CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL BASED ON FAILURE OF TRIAL COUNSEL TO CONTACT WITNESSES SATISFIED FIRST STEP OF ANALYSIS BY ESTABLISHING THAT COUNSEL'S REPRESENTATION WAS DEFICIENT, BUT REMAND WAS NECESSARY TO DETERMINE WHETHER COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED DEFENDANT. **U.S.C.A. CONST.AMEND. 6.**
IN WASHINGTON, THE EVALUATION OF A PETITION ALLEGING INEFFECTIVE ASSISTANCE OF COUNSEL INVOLVES A TWO-STEP PROCESS. THE PETITIONER MUST FIRST SHOW THAT HIS OR HER LAWYER FAILED TO EXERCISE THE CUSTOMARY SKILLS AND DILIGENCE THAT A REASONABLY COMPETENT ATTORNEY WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES. **STATE V. SARDINIA**, **42 Wash..App. 533, 539, 713 P.2d 122, REVIEW DENIED, 105 Wash.2d 1013 (1986)** CITING, STRICKLAND V. WASHINGTON, 466 U.S. 668, 687-88, 694, 104 S.CT. 2052, 2064, 2068, 80 L.Ed.2d 674 (1984).

SECOND, THE PETITIONER MUST DEMONSTRATE THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. **SARDINIA,42 Wash.App. at 539, 713 P.2d 122 (STRICKLAND, 466 U.S. at 694, 104 S.CT. at 2068).**

TO ESTABLISH DEFICIENT PERFORMANCE, VISSITACION SUBMITTED AN EXPERT AFFIDAVIT FROM A VERY EXPERIENCED WASHINGTON CRIMINAL DEFENSE ATTORNEY. THIS ATTORNEY STATED THAT UNDER THE CIRCXUMSTANCES OF THIS CASE, HE COULD NOT **"CONCEIVE OF ANY REASON, TACTICAL OR OTHERWISE, FOR NOT CONTACTING WITNESSES,"** VISITACION'S EXPERT'S OPINIONS ARE SUPPORTED BY **HAWKMAN V. PARRATT, 661 F.2d 1161 (8th Cir. 1981).** IN **HAWKMAN,**TRIAL COUNSEL ESSENTIALLY LIMITED HIS PRE-PLEA INVESTIGATION TO DISCUSSING THE CASE WITH THE PETITIONER , AND [55 Wn.App. 174] SECURING AND REVIEWING STATE

INVESTIGATION MATERIALS. TRIAL COUNSEL MADE NO ATTEMPT TO INDEPENDENTLY CONTACT OR INTERVIEW THE THREE "EYEWITNESSES" BEFORE ADVISING THE PETITIONER TO PLEAD GUILTY. THE COURT HELD: " THAT BY FAILING TO INVESTIGATE THE FACTS, PETITIONER'S ATTORNEY FAILED TO PERFORM AN ESSENTIAL DUTY WHICH A REASONABLY COMPETENT ATTORNEY WOULD HAVE PERFORMED UNDER SIMILAR CIRCUMSTANCES.

HAWKMAN, 661 f.2d at 1168-69; accord, STATE V. THOMAS, 109 Wash.2d 222, 230-31, 743 P.2d 816 (1987); JURY, 19 Wash.App. at 263-64, 576 P.2d 1302,(COUNSEL'S FAILURE TO ACQUAINT HIMSELF WITH THE FACTS OF THE CASE BY INTERVIEWING "WITNESSES" WAS AN OMISSION WHICH NO REASONABLY COMPETENT COUNSEL WOULD HAVE COMMITTED). U.S.C.A. CONST.AMEND. 6; WASHINGTON STATE CONST.ART. I § 22.

HERE MR. PINSON'S TRIAL COUNSEL WAREHAM REFUSED AND FAILED TO INTERVIEW A MATERIAL WITNESS [THE BUS DRIVER THAT HINDERED MR. PINSON ATTEMPT TO BOARD THE PUBLIC TRANSPORTATION AS SHE WOULD HAVE BEEN ABLE TO TESTIFY THAT MR. PINSON AND MS. DOILE THE OTHER PARTY TO THE NO CONTACT ORDER WAS NOT TOGHETHER AND WAS NOT BOARDING TOGHETHER]- THIS MATERIAL WITNESS WOULD HAVE PROVED MR. PINSON'S INNOCENSE BEYOND ANY DOUBT. THUS THERE IS NO DOUBT THAT TRIAL COUNSEL MR. WAREHAM WAS MALICIOUS AND ACUTELY INEFFECTIVE AND THUS THE ACUTE PREJUDICE CAUSED AN INNOCENT MR. PINSON TO BE CONVICTED FOR A CRIME HE HAS NOT COMMITTED.

GROUND 4:MR. PINSON'S RIGHTS NOT TO BE TWICE PUT IN JEOPARDY HAS BEEN VIOLATED, WHEN MR. PINSON WAS CONVICTED FOR, ATTEMPTED TAMPERING WITH A WITNESS, AND ATTEMPTED VIOLATION OF A NO CONTACT ORDER BY COMMITTING A SINGLE ACT OF MAKING A PHONE CALL TO A NONPARTY. VIOLATING CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY. US.C.A. CONST.AMEND. 5; WEST'S RCWA CONST ART. I § 9.

A. (STANDARD OF REVIEW)

UNDER "SAME EVIDENCE" RULE FOR DETERMINING WHETHER DEFEDANT'S DOUBLE JEOPARDY RIGHTS UNDER WASHINGTON CONSTITUTION ARE VIOLATED, COURT LOOKS TO WHETHER DEFEDANT WAS CONVICTED OF OFFENSES THAT ARE IDENTICAL IN BOTH LAW FACT AND IN LAW; IF EACH OFFENSE, AS CHARGED, INCLUDES ELEMENTS NOT INCLUDED IN THE OTHER, OFFENSES ARE DIFFERENT AND MULTIPLE CONVICTIONS CAN STAND. WEST'S RCWA CONST. ART. I § 9. REVIEW OF THIS ISSUE OF LAW IS DE NOVO.

B. (ARGUMENT)

MR. PINSON/APPELLANT, WAS ACCUSED OF MAKING A PHONE CALL TO HIS MOM INQUIRING OF THE WHEREABOUTS OF MS. DOILE AND HER SAFETY, BASED ON THE FOREGOING THE STATE CHARGED **MR. PINSON** WITH "ATTEMPTED TAMPERING WITH A WITNESS",; AND ATTEMPTED VIOLATION OF A NO CONTACT ORDER", BOTH CRIMES BEING ALLEGED BY THE EXACT SINGLE ACT. WHERE THE LEGISLATURE HAS PROVIDED A STATUTORY SCHEME DISTINGUISHING DIFFERENT DEGREES OF A CRIME, THE COURT OF APPEALS MAY DETERMINE THAT THE LEGISLATURE INTENDED A **"SINGLE"** PUNISHMENT FOR A HIGHER DEGREE OF A **"SINGLE CRIME"** RATHER MULTIPLE PUNISHMENTS FOR SEVERAL, SEPERATE, LESSER CRIMES. **U.S.C.A. CONST.AMEND. 5 WEST'S RCWA CONST. ART. I § 9. MR. PINSON** CORRECTLY ARGUES HERE THAT HE DID NOT ATTEMPT TO COMMIT ANY OF THE CRIMES AND THAT HE SHOULD HAVE EITHER BEEN CHARGED WITH ATTEMPTING TO TAMPER WITH A WITNESS, OR ATTEMPTED VIOLATION OF A NO CONTACT ORDER, NOT BOTH AND THE CHARGING OF BOTH HAS VIOLATED DOUBLE JEOPARDY, BECAUSE TO ESTABLISH AN INDEPENDENT PURPOSE OR EFFECT OF A PARTICULAR CRIME SO AS TO WARRANT SEPARATE PROSECUTION AND PUNISHMENT IN ADDITION TO ANOTHER CRIME IN COMPLIANCE WITH DOUBLE JEOPARDY, THAT CRIME MUST INJURE THE PERSON OR PROPERTY OF THE VICTIM OR OTHERS IN A SEPERATE AND DISTINCT MANNER FROM THE CRIME FOR WHICH IT ALSO SERVES AS AN ELEMENT. AND HERE **MR. PINSON'S** PHONE CALL A **"SINGLE ACT"** DOES NOT SATISFY THE REQUIRED DISTINCTION.:

C. (CONTROLLING LAWS)

MR. PINSON ARGUES AND CITES, **STATE V. LINDSAY, 288 P.3d 641 [WASH.APP.DIV.II 2012]:** "IF THE EVIDENCE PROVING ONE CRIME IS ALSO NECCESSARY TO PROVE A SECOND CRIME OR A HIGHER DEGREE OF THE SAME CRIME, THE COURT OF APPEALS CONSIDERS WHETHER THE FACTS SHOW THAT THE ADDITIONAL CRIME WAS COMMITTIED INCIDENTAL TO THE ORIGINAL CRIME WHEN CONSIDERING A DOUBLE JEOPARDY CLAIM. **U.S.C.A. CONST.AMEND. 5; WEST'S RCWA CONST. ART. I § 9. "IF ONE CRIME WAS INCIDENTAL TO THE COMMISSION OF THE OTHER, THE MERGER DOCTRINE PRECLUDES ADDITIONAL CONVICTIONS; BUT IF THE OFFENSES HAVE "INDEPENDENT PURPOSES" OR EFFECTS, THE COURT MAY IMPOSE SEPARATE PUNISHMENT.** TO ESTABLISH AN INDEPENDENT PURPOSE OR EFFECT OF A PARTICUALR CRIME IN COMPLIANCE WITH DOUBLE JEOPARDY, THAT CRIME MUST **"INJURE, THE PERSON OR PROPERTY OF THE**

VICTIM OR OTHERS IN A SEPERATE AND "DISTINCT" MANNER FROM THE CRIME FOR WHICH IT ALSO SERVES AS AN ELEMENT.

HERE MR. PINSON'S ALLEGED "ATTEMPT TO TAMPER WITH A WITNESS" WAS NOT A DISTINCT CRIME FROM THE UNSUPPORTED ALLEGATIONS OF "ATTEMPT TO VIOLATE A NO CONTACT ORDER", AS MR. PINSON NEVER MADE ANY REQUEST FOR THE OTHER PARTY TO THE NO CONTACT ORDER TO CALL HIM, WRITE HIM, TO SEND A MESSAGE TO HIM, TO MEET HIM, OR ANY OTHER ACT THAT WOULD BE AN ATTEMPT TO COMMIT VIOLATION OF A NO CONTACT ORDER, AND TAMPER WITH A WITNESS, WHICH UNDER THE ANTICIPATORY STATUTE THE ELEMENTS ARE NOT "DISTINCT" FROM ONE ANOTHER.

RCWA 9A.28.020:CRIMINAL ATTEMPT: DECLARES: "(1) A PERSON IS GUILTY OF AN ATTEMPT TO COMMIT A CRIME IF, WITH INTENT TO COMMIT A "SPECIFIC" CRIME, HE OR SHE DOES "ANY ACT" WHICH IS A "SUBSTANTIAL" STEP TOWARD THE "COMMISSION" OF THAT CRIME. ATTEMPT TO COMMIT CRIME CONSISTED OF TWO ELEMENTS, CRIMINAL INTENT AND OVERT ACT. "STATE V. HALL, 104 Wash.App. 56, 14 P.3d 884, REVIEW DENIED 143 Wash.2d 1023, 25 P.3d 1020; "WHEN ATTEMPT TO COMMIT A SPECIFIED ACT IS INCLUDED WITHIN A CRIME DEFINITION, THEN THE "ATTEMPT CONSTITUTES THE CRIME" RATHER THAN THE GENERAL CRIME OF ATTEMPT". HERE MR. PINSON/APPELLANT, WAS MALICIOUSLY PROSECUTED FOR THE CRIME OF ATTEMPT TWICE FOR ONE SINGLE ACT OF MAKING A PHONE CALL AND INQUIRING ONLY OF THE WHEREABOUTS OF THE OTHER PARTY TO THE NO CONTACT ORDER, MS. DOILE, WHOM ALSO THE STATE INTENDED TO CALL AS A WITNESS. AS IN "HALL", "ATTEMPT" CONSTITUTES THE CRIME, NOT THE GENERAL CRIME, THUS MR. PINSON HAS IN NO DOUBT HERE BEEN TWICE PUT IN JEOPARDY AND PUNISHED FOR ALLEGEDLY COMMITTING A "SINGLE ACT" OF "ATTEMPT" TO WHICH THERE IS NO DISTINCTION, INJURY TO PERSON, PROPERTY OR OTHERWISE, IN DIRECT VIOLATION OF U.S.C.A. CONST.AMEND. 5; WEST'S RCWA CONST. ART. I § 9.

GROUND 5 : MR. PINSON/APPELLANT RIGHTS TO A SPEEDY TRIAL WAS VIOLATED WHEN THE STATE DID NOT TAKE HIM TO TRIAL UNTIL 6 MONTHS AND 12 DAYS AFTER HE WAS ARRESTED AND CHARGED WITH FELONY VIOLATION OF A NO CONTACT ORDER ALSO VIOLATING CrR 3.3 THIS MALICIOUS PROSECUTION SHOULD HAVE BEEN DISMISSED WITH PREJUDICE IN ACCORDANCE WITH CONSTITUTIONAL LAW AND STATUTE AND WASH. STATE CONST. ART. I § X; U.S.C.A. CONST.AMEND. 6.

A. (STANDARD OF REVIEW)

WHETHER A COURT CORRECTLY APPLIED CrR 3.3 IS A QUESTION OF LAW REVIEWED DE NOVO.

B. (ARGUMENT)

MR. PINSON/APPELLANT, MADE INCESSANT OBJECTIONS TO TRIAL CONTINUANCES MADE AND THE MASS CONTINUANCES BY THE COURT, AND PROSECUTION WERE NOT JUSTIFIED UNDER 3.3 (d) (8), AND THAT, WITHOUT EXCLUDING THE PERIOD OF TIME COVERED BY THESE CONTINUANCES FROM COMPUTATION OF THE TIME FOR TRIAL, HIS RIGHT TO BE TRIED WITHIN THE TIME PROVIDED BY **CrR 3.3**, AND WITHIN THE SPEEDY TRAIL REQUIREMENTS OF **U.S.C.A. CONST.AMEND. 6; AND WEST'S RCWA CONST. ART.** I § 10 WAS VIOLATED. THE COURT MADE SEVERAL CONTINUANCES BEYOND THE 5 DAY LIMITATION ALLOWED FOR, "CROWDED COURTROOM, NO COURTROOM AVAILABLE, AND THE PROSECUTION CONTINUED TO ALLEGEDLY BE UNAVAILABLE FOR ONE REASON OR ANOTHER NONE OF WHICH IS COVERED BY **CrR 3.3 (d) (8).** THUS **MR. PINSON'S RIGHTS TO A SPEEDY TRIAL UNDER THE 3.3 STATUTE AND THE UNITED STATES CONSTITUTION** AMEND. 6 HAS IN NO DOUBT BEEN VIOLATED.

C. (CONTROLLING LAWS)

SIMPLY TO TRIGGER "SPEEDY TRIAL ANALYSIS ACCUSED MUST ALLEGE THAT INTERVAL BETWE N ACCUSATION AND TRIAL HAS CROSSED THE THRESHOLD DIVIDING ORDINARY FROM PRUSUMPTIVELY PREJUDICIAL DELAY **U.S.C.A. CONST.AMEND. 6; WEST'S RCWA CONST. ART. I § 10.** A MERE GENERALIZED REFERENCE TO DOCKET CONGESTION IS INSUFFICIENT TO JUSTIFY A DELAY IN SETTING OF TRIAL DATES; CITING,STATE V. MACK, 89 Wash.2d 788, 794-95, 576 P.2d 44 (1978); BLOATE V. U.S., 130 S.CT. 1345 (U.S. 2010) "SPEEDY TRIAL ACT OF 1974);

ART. VI. OF THE AMENDMENTS TO THE CONSTITUTION PROVIDES THAT "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE PREVIOUSLY ASCERTAINED BY LAW".

THE SPEEDY TRIAL **ACT OF 1974** REQUIRES THAT AN INDICTMENT BE DISMISSED IF THE DEFENDANT IS NOT BROUGHT TO TRIAL WITHIN A 70-DAY PERIOD, AND REQUIRES THE COURT, IN DETERMINING WHETHER TO DISMISS WITH OR WITHOUT PREJUDICE, TO "CONSIDER, AMONG OTHERS EACH OF THE FOLLOWING FACTORS:

(1) THE SERIOUSNESS OF THE OFFENSE; (2) THE FACTS AND CIRCUMSTANCES. HERE THE STATES **"LACKADAISICAL BEHAVIOR"** OVERALL, I.E., THE CRIME HAD NOT BEEN COMMITTED, THE INITIAL MOTION TO SUPPRESS WOULD HAVE PREVENTED ANY ATTEMPT TO MALICIOUSLY PROSECUTE AS IS THE CASE, AND THE STATES **"INCESSANT"** UNJUSTIFIED REQUEST FOR CONTINUANCES, AND THE COURT'S ABUSE OF DISCRETION IN **"INCESSANTLY"** GRANTING THE UNJUSTIFIED CONTINUANCES THAT CAUSE A FOUR MONTH TRIAL DELAYS, CLEARLY VIOLATING **U.S.C.A. CONST.AMEND. 6; WEST'S RCWA CONST. ART. I § 10** AND BEYOND ANY DOUBT IN VIOLATION OF **CrR 3.3 (b) (1) (i)** AND THE REMEDY REQUIRED HERE IS **CrR 3.3 (h): DISMISSAL WITH PREJUDICE.** NONE OF THE TRIAL COURT'S REASONS NOR THE PROSECUTION IS EXCLUDED BY **CrR 3.3** OVERALL AS TO REASONS FOR CONTINUANCES NOR THE AMOUNT OF DAYS ALLOWED FOR CERTAIN REQUEST FOR A CONTINUANCE. **6 MONTHS** AND **12 DAYS** IN **JAIL** INNOCENT ABOVE ALL THINGS IS AN EXCESSIVE AMOUNT OF TIME AND BEYOND ANY DOUBT VIOLATES **U.S.C.A. CONST.AMEND. 6; WEST RCWA CONST. ART. I § 10; CrR 3.3,** AND THE ONLY PRESCRIBED RELIEF ALLOWABLE HERE IS TO DISMISS WITH PREJUDICE. **STATE V. JOSE GUSTAVO CHAVEZ-ROMERO, 170 Wn.App. 568 (2012);BARKER V. WINGO, 92 S.CT. 2182, 407 U.S. 514 (1972)**"THE STATES ARE FREE TO PRESCRIBE A REASONABLE PERIOD CONSISTENT WITH CONSTITUTIONAL STANDARDS WITHIN WHICH A CRIMINAL DEFENDANT MUST BE BROUGHT TO TRIAL". THE STATE OF WASHINGTON HAS PRESCRIBED A TOTAL OF 60 DAYS IF THE DEFENDANT IS IN JAIL. WITH JUSTIFIED EXCLUSIONS, HERE THERE IS NO JUSTIFIED EXCLUSION AND TRIAL DID'NT COMMENCE FOR **6 MONTHS** AND **12 DAYS AFTER MR. PINSON AN INNCOCENT MAN WAS CHARGED.** THUS THERE IS NO DOUBT HERE THAT **MR. PINSON'S RIGHTS TO A SPEEDY TRIAL HAS BEEN VIOLATED, U.S.C.A. CONST.AMEND. 6; WEST RCWA CONST. ART. I § 10 CrR 3.3.**

GROUND 6 : MR. PINSON/APPELLANT, WAS INCORRECTLY SENTENCED TO 29 MONTHS FOR AN ANTICIPATORY OFFENSE OF ATTEMPTED TAMPERING WITH A WITNESS, WHICH IF IT HAD NOT BEEN ANTICIPATORY A CLASS C FELONY, BUT SINCE IT IS AN ANTICIPATORY OFFENSE AND "ATTEMPT" IT IS A GROSS MISDEMEANOR AND THE MAXIMUM PRESCRIBED PENALTY IS 12 MONTHS AND THIS MAXIMUM PENALTY CAN NOT BE EXCEEDED, AS HAS BEEN DONE HERE WITH 29 MONTHS.

A. (STANDARD OF REVIEW)

AN ILLEGAL OR ERRONEOUS SENTENCE MAY BE CHALLENGED FOR THE FIRST TIME ON APPEAL. REVIEW OF A STATUTE-SRA-IS DE NOVO. AND FOR AN ABUSE OF DISCRETION.

B. (ARGUMENT)

WEST'S RCWA 9,92.020, PUNISHMENT OF GROSS MISDEMEANOR: "EVERY PERSON CONVICTED OF A GROSS MISDEMEANOR FOR WHICH NO PUNISHMENT IS PRESCRIBED IN ANY STATUTE IN FORCE AT THE TIME OF CONVICTION AND SENTENCE, SHALL BE PUNISHED BY IMPRISONMENT IN THE COUNTY JAIL FOR A MAXIMUM TERM FIXED BY THE COURT OF UP TO THREE HUNDRED SIXTY-FOUR DAYS, OR BY FINE IN AN AMOUNT FIXED BY THE COURT OF NOT MORE THAN FIVE THOUNSAND DOLLARS, OR BOTH SUCH IMPRISONMENT AND FINE. "LAWS 2011, ch.96, REDUCED THE MAXIMUM SENTENCE FOR GROSS MISDEMEANOR BY ONE DAY, FROM A MAXIMUM OF ONE YEAR TO A MAXIMUM OF 364 DAYS. RCW 9A.20.021:"MAXIMUM SENTENCES FOR CRIMES COMMITTED JULY 1,1984, AND AFTER: "(2) GROSS MISDEMEANOR. EVERY PERSON CONVICTED OF A GROSS MISDEMEANOR DEFINED IN TITLE 9A RCW SHALL BE PUNISHED BY IMPRISONMENT IN THE COUNTY JAIL FOR A MAXIMUM TERM FIXED BY THE COURT OF UP TO THREE HUNDRED SIXTY-FOUR DAYS, OR BY FINE IN AN AMOUNT FIXED BY THE COURT OF NOT MORE THAN FIVE THOUSAND DOLLARS, OR BOTH SUCH IMPRISONMENT AND FINE. HERE THE APPELLANT WAS ILLEGALLY AND ERRONEOUSLY SENTENCED TO 29 MONTHS FOR A GROSS MISDEMEANOR EXCEEDING THE STATUTORY MAXIMUM BY 17 MONTHS, REQUIRING AUTOMATIC REMAND FOR RESENTENCING.

C. (CONTROLLING LAWS)

RCWA 9A.20.021. "MAXIMUM SENTENCES FOR CRIMES COMMITTED JULY 1,1984 AND AFTER. (2) GROSS MISDEMEANOR. MAXIMUM PENALTY 364 DAYS.
WEST'S RCWA 9A.28.020 CRIMINAL ATTEMPT: (d) GROSS MISDEMEANOR WHEN THE CRIME ATTEMPTED IS A CLASS C FELONY. NOT ONLY DOES THE 29 MONTHS EXCEED THE 364 DAYS MAXIMUM IT DOES NOT EXCEED BY JUST 17 MONTHS IT EXCEEDS BY 26 MONTHS, THIS IS WHY, PURSUANT TO RCWA 9.94A.595 ANTICIPATORY OFFENSES: "FOR PERSONS CONVICTED OF THE ANTICIPATORY OFFENSES OF CRIMINAL ATTEMPT, SOLICITATION, OR CONSPIRACY UNDER CHAPTER 9A.28 RCW, THE PRESUMPTIVE SENTENCE IS DETERMINED BY LOCATING THE SENTENCEING GRID SENTENCE RANGE DEFINED BY THE APPROPRIATE OFFENDER SCORE AND THE SERIOUSNESS LEVEL OF THE CRIME, AND MULTIPLYIN THE RANGE BY 75 PERCENT. 75 PERCENT OF [364 DAYS] IS 3 MONTHS. STATE V. HARVEY, 34 P.3d 850, 109 Wn.App. 157, (WASH.APP.DIV.2 2001); "COURT CAN NOT SENTENCE A DEFENDANT TO A BASE SENTENCE THAT EXCEEDS THE STATUTORY MAXIMUM."REVERSE AND REMANDED. UNITED STATES V. LABONTE, 520 U.S. 751, 758, 762, 117 S.CT. 1673, 137 L.Ed.2d 1001 (1997) "WASHINGTON LAW DOES NOT PROVIDE FOR THE INCREASE IN THE STATUTORY MAXIMUM SENTENCE FOR A CRIME. THUS MR. PINSON SHOULD HAVE BEEN SENTENCED TO 3 MONTHS AND GIVEN TIME SERVED.

GROUND 7 : DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO STATES WITNESS GIVING UNSUBSTANTIATED TESTIMONY THAT MR. PINSON WAS INTOXICATED OR HAD EVEN CONSUMED ALCOHOL AND HEARSAY TESTIMONY OF TWO PERSONS CONSUMING ALCOHOL IN A BUS SHELTER IN VIOLATION OF U.S.C.A. CONST.AMEND. 6; WEST'S RCWA CONST. ART. I § 22.

A. (STANDARD OF REVIEW)

STANDARD OF REVIEW IS DE NOVO.

B. (ARGUMENT)

STATE CALLED THE ARRESTING OFFICER TO TESTIFY ABOUT THE 7 12-11 UNLAWFUL ARREST FOR TRESPASSING, AND IMPROPERLY ELICITED HEARSAY TESTIMONY ABOUT THE

DISPATCHED CALL THAT ALLEGED THAT TWO PEOPLE MAY BE CONSUMING ALCOHOL IN A BUS SHELTER, AND THAT **MR. PINSON** WAS THIS PERSON EVENTHOUGH WHEN THE ARRESTING OFFICER ARRIVES HE DID NOT SEE **MR. PINSON** IN ANY BUS SHELTER NOR DID HE OBSERVE **MR. PINSON** DRINKING ANYTHING MUCH LESS ALCOHOL, DEFENSE COUNSEL WAREHAM REFUSED TO OBJECT UPON **MR. PINSON'S** INCESSANT REQUEST, AND FAILED TO OBJECT TO THIS HEARSAY, AND FAILED TO OBJECT TO THE OFFICER WITHOUT ANY EVIDENCE CIRCUMSTANTIAL OR OTHERWISE THAT **MR. PINSON** WAS INTOXICATED. THIS TESTIMONY IN NO DOUBT DID PREJUDICE **MR. PINSON/APPELLANT** IN THE MINDS AND EYES OF THE JURY, BECAUSETHIS HEARSAY TESTIMONY INSINUATED THAT **MR. PINSON** WAS INDEED WITH MS. DOILE IN A BUS SHELTER DRINKING WHICH IN NO DOUBT WOULD CAUSE ANY RATIONAL MINDED PERSON TO BELIEVE THAT **MR. PINSON** DID INTENTIONALLY VIOLATE THE NO CONTACT ORDER,-**[I MEAN SINCE HE WAS UNLAWFULLY CONSUMING ALCOHOL IN A "BUS SHELTER WITH MS. DOILE].** DEFENSE COUNSEL WAREHAM REFUSAL AND FAILURE TO OBJECT WAS IN NO DOUBT DEFICIENT AND THE PREJUDICE WAS ACUTE BECAUSE IT MADE ONE BELIEVE THAT **MR. PINSON** WAS DRINKING IN A PUBLIC BUS SHELTER,**["VIOLATING THE LAW"],** AND **["HE WAS WITH MS. DOILE WHOM HE WAS NOT SUPPOSE TO BE IN CONTACT WITH, AGAIN," VIOLATING THE LAW"]** THUS GUILTY AS CHARGED. THE ARRESTING OFFICER NEVER PERFORMED OR HAD PERFORMED ANY SOBRIETY TEST AND OR A **(BAC) WEST'S RCWA 46.20.308,** THE ARRESTING OFFICER DID NOT EVEN REQUEST A **(BAC)** TEST WHICH IS THE ONLY WAY IT COULD BE DETERMINED THAT **MR. PINSON** HAD INDEED BEEN CONSUMING ALCOHOL, AND WAS INTOXICATED. AND THE ARRESTING OFFICER NEVER STATED THAT HE DID IN FACT WITNESS **MR. PINSON** AND MS. DOILE IN ANY BUS SHELTER OR OTHERWISE CONSUMING ALCOHOL TOGHETHER THUS HIS TESTIMONY WAS COMPLETE HEARSAY AND IF IT WOULD HAVE BEEN OBJECTED TO AS **MR. PINSON** INCESSANTLY REQUESTED COUNSEL WAREHAM TO DO SUCH PREJUDICE WOULD NOT HAVE BEEN IMPLIED INSO DOING SPOILING AND OR CONTAMINATING THE MINDS OF THE JURY. VIOLATION OF **U.S.C.A. CONST.AMEND. 6; WEST'S RCWA CONST. ART. I § 22. RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND RIGHTS TO A FAIR TRIAL.**

C. (CONTROLLING LAWS)

KIMMELMAN V. MORRISON, 106 S.CT. 2574, 477 U.S. 365 (1986); BELL V. QUINTERO, 125 S.CT 2240 (2005) "COUNSEL'S FAILURE TO BJECT CONSTITUTED PER SE INEFFECTIVE ASSISTANCE OF COUNSEL UNDER>UNITED STATES V. CRONIC, 466 U.S. 648, 104 S.CT. 2039, 80 L.Ed.2d 657 (1984)>CRONIC ESTABLISHES THAT CERTAIN FAILINGS OF COUNSEL JUSTIFY A PER SE PRESUMPTION OF INEFFECTIVENESS, SEE > 466 U.S., at 658-659, 104 S.CT. 2039.

STATE V. RAINEY, 28 P.3d 10, 107 Wn.App. 129 (Div.3 2001); SEE > STATE V. DAWKINS, 863 P.2d 124, 71 Wn.App. 902, (WASH.APP.DIV.2 1993) "TRIAL COURT DID NOT ABUSE ITS DISCRETION BY HOLDING THAT DEFENSE COUNSEL'S FAILURE TO OBJECT TO INTRODUCTION OF **"TESTIMONY"** CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL.
HERE **MR. PINSON'S**, TRIAL COUNSEL WAREHAM ALLOWED THE PROSECUTOR TO OFFER FALSE HEARSAY TESTIMONY/EVIDENCE TO THE JURY THAT WRONGFULLY **"INCRIMINATED" MR. PINSON.** BECAUSE THE ARRESTING OFFICER DID NOT OBSERVE **MR. PINSON** AND MS DOILE IN ANY BUS SHELTER CONSUMING ALCOHOL, WHEN HE ARRIVED, THE ARRESTING OFFICER DID NOT OBSERVE ANYONE AT ALL CONSUMING ANY ALCOHOL AND ARRESTING OFFICER W. ROBINSON ASSUMPTIONS THAT DUE TO "RED EYES",ALLEGED BEER CANS IN A TRASH CAN",IS NOT ADMISSABLE TO A JURY WITH OUT THE PROPER FOUNDATION BEING LAID WHICH COULD ONLY BE THAT HE CAN **"READ MINDS"** BECAUSE WITHOUT A PROPER **(BAC)** TEST OR SOBRIETY TEST BEING COMPLETED THERE IS NO WAY SUCH A DETERMINATION CAN BE MADE. THIS FALSE/HEARSAY TESTIMONY DID BEYOND ANY DOUBT PREJUDICE **MR. PINSON** IN THE MINDS OF THE JURY, AND HAD IT NOT BEEN FOR THIS FALSE/HEARSAY EVIDENCE BEING PRESENTED TO THE JURY THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT, AND TRIAL COUNSEL'S FAILURE TO OBJECT ALLOWED THIS FALSE/HEARSAY EVIDENCE/TESTIMONY TO BE PRESENTED TO THE JURY, THUS DENYING **MR. PINSON EFFECTIVE ASSISTANCE OF COUNSEL SHOWING** (1) COUNSEL PERFORMANCE WAS DEFECTIVE, AND (2) THE DEFICIENT PERFORMANCE CAUSED MR. PINSON ACUTE PREJUDICE THAT RESULTED IN VIOLATION OF **U.S.C.A. CONST.AMEND. 6; WEST'S RCWA CONST. ART. I § 22 RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL.(1)**

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(1)see> report of proceedings pg. 105 at LINES 10 thru 25

GROUND 8 : PROSECUTOR CREATED ACUTE MISCONDUCT WHEN SHE ELICITED FALSE PREJUDICIAL TESTIMONY FROM HER COWORKER BY ASKING IRRELEVANT QUESTIONS SUCH AS: INCEST, TWO RELATED PERSONS HAVING SEXUAL RELATIONS, INFORMATION ABOUT PRIOR FALSE CRIMES DISMISSED AGAINST MR. PINSON, THE COURT ADMONISHED THE PROSECUTOR TO NO AVIAL, THIS EGREGIOUS MISCONDUCT BEFORE THE JURY DID BEYOND DOUNT CONTAMINATE THE MINDS OF THE JURY AND IT COULD NOT BE CURED BY INSTRUCTION OR OTHERWISE AND A MISTRIAL SHOULD HAVE BEEN GRANTED.

A. (STANDARD OF REVIEW)

REVIEW OF PROSECUTORIAL MISCONDUCT IS DE NOVO, FOR MANIFEST ABUSE OF DISCRETION.

B. (ARGUMENT)

THE FLAGRANT PROSECUTORIAL MISCONDUCT WAS COMMITTED BY EGGERTSEN AND JENNIFER LYNN SIEVERS BOTH PIERCE COUNTY PROSECUTORS AND THEY DID BY THE MEETING OF THE MINDS CONSPIRE TO CAUSE AN INNOCENT MR. PINSON INJURY AND DID SUCCEED IN THEY'RE ENDEAVOR BY HAVING AN INNOCENT MR. PINSON CONVICTED FOR A CRIME THAT HAD NOT BEEN COMMITTED, THE REASON THESE PROSECUTORS COMMITTED THIS OFFICIAL FLAGRANT MISCONDUCT IS, ON A PRIOR OCCASSION MR. PINSON WAS FOUND NOT GUILTY FOR THE EXACT OFFENSE WITH THE EXACT MS. DOILE AND PROSECUTOR LYNN SIEVERS WAS THE PRESIDING PROSECUTOR ON THE CASE THAT WAS DISMISSED WITH PREJUDICE. THESE PROSECUTORS CONSTRUCTED QUESTIONS BEFORE THE JURY ABOUT:"INCEST, RELATIVES RELATIONS, PARENT AND CHILD, SEXUAL IN NATURE,"(2). DEFENSE COUNSEL MADE A OBJECTION AND THE COURT SUSTAINED, STATING, "QUOTE, "MEMBERS OF THE JURY, I AM GOING TO HAVE TO DISCUSS THE OBJECTION AND QUESTIONS WITH THE LAWYERS. SO IF I COULD EXCUSE YOU TO THE JURY ROOM, PLEASE ?[RPS.PG.111] DEFENSE COUNSEL MOVED FOR MISTRIAL,[RPS.PG.112]. THE COURT NEVER DENIED THE MOTION FOR MISTRIAL THOUGH IT MAY BE PRESUMED SINCE HE DID NOT GRANT IT, BUT THE CURATIVE INSTRUCTION COULD NOT CURE WHAT THE PROSECUTION HAD DONE AS THE ONE THE COURT OFFERDED ONLY BOLSTERED THE IDEA THE PROSECUTORS WAS FORCING INTO THE JURY MIND, (1) THAT PROSECUTOR SIEVERS WAS AN EXPERT WITNESS, AND (2) AN EXPERT WITNESS CAN BE

(1) SEE > REPORT OF PROCEEDINGS PG. 108 thru 122. SEE>PG.120 at 13 thru 25.

BELIEVED ABOUT ANYTHING SHE TESTIFIES ABOUT. THE JURY CURATIVE GIVEN BY THE COURT WAS,"**MS. SIEVERS IS OBVIOUSLY A VERY QUALIFIED PROSECUTOR, TRIED CASES IN THIS COURT, KNOWS WHAT SHE IS DOING, VERY EXPERIENCED. THAT SHE HAS OFFERED SOME GENERAL EVIDENCE FROM OTHERE CASES THAT ARE UNRELATED TO THIS SPECIFIC CASE. THOSE GENERAL EXPERIENCES ARE NOT RELEBANT AND TO BE DISREGARDED AND NOT CONSIDERED BY THE JURY.** AND AGAIN SHOWING INEFFECTIVENESS DEFENSE COUNSEL WAREHAM AGREED TO THIS CURATIVE INSTRUCTION. DURING THIS OFFICIAL COURT HEARING OUTSIDE THE JURY PRESENCE, WE STILL GOT A PROSECUTING WITNESS ON THE STAND LISTENING TO EVERYTHING, NOT JUST ANY PROSECUTING WITNESS BUT ANOTHER PROSECUTOR WHOM HAD PREVIOUSLY HAD A NOT GUILTY VERDICT RETURNED AGAINST **MR. PINSON**, AND THE COURT ALLOWS THIS WITNESS/PROSECUTOR TO CONFER WITH THE PROSECUTOR OF THIS TRIAL AND PROSECUTOR SIEVERS BEGAN COACHING TRIAL PROSECUTOR HOW TO HANDLE THE CASE. **MR. PINSON,** SPEAKS UP AND IS ADMONISHED BY THE COURT, PROSECUTOR SIEVERS WITHOUT RESTRAINT TOLD THE TRIAL PROSECUTOR, "**QUOTE, "WE GOT THIS A SLAMDUNK WE ALREADY GOT WHAT WE WANTED BEFORE THE JURY."UNQUOTE.** AND AGAIN DEFENSE COUNSEL WAREHAM IS INEFFECTIVE BY NOT PROCEEDING WITH ANY OBJECTIONS, AND INSTEAD OF WAREHAMATTACKING WHAT THE PROSECUTORS HAD JUST CREATED IN THE MINDS OF THE JURY ON CROSS-EXAMINATION OF PROSECUTOR SIEVERS, HE ASKED IRRELEVANT QUESTIONS ABOUT A PHONE NUMBER, THIS COULD HAVE BEEN INVESTGATED PRIOR TO TRIAL AND ONLY FURTHER PREJUDICED **MR. PINSON** BY CAUSING THE JURY TO BELIEVE THAT **MR. PINSON** HAD INDEED MADE A PHONE CALL TO MS. DOILE. THIS PROSECUTORIAL MISCONDUCT WAS FLAGRANT AND ILL INTENDED AND MISTRIAL SHOULD HAVE BEEN GRANTED BECAUSE IT COULD NOT BE CURED.

C. (CONTROLLING LAWS)

IN RE PRP OF: EDWARD MICHAEL GLASMANN, 286 P.3d 673, 175 Wn.2d. 696 (2012) PROSECUTORS DENIED **MR. PINSON A FAIRTRIAL, THEREWITH THE COURT BY NOT GRANTING A MISTRIAL.** AND THE PROSECUTORS INFLAMED AND OR EXACERBATED THE MINDS OF THE JURY AND IT COULD NOT BE CURED, COMMITTNG, VIOLATION OF **RULES OF PROFESSIONAL MISCONDUCT, AND VIOLATION OF RCW 9 OFFICIAL MISCONDUCT, AND RCW 9 MALICIOUS PROSECUTION. U.S.C.A. CONST.AMEND. 6,> 14; WEST'S RCWA CONST. ART. I § 22.**

STATE V. SHARKEY, 289 P.3d 763 (2012); FURTHERMORE THE PROSECUTORS MISCONDUCT WAS FLAGRANT AND ILL INTENTIONED AND A MISTRIAL WAS THE ONLY REMEDY BECAUSE IT COULD NOT BE CURED.

THE PROSECUTORS VIOLATED U.S.C.A. CONST.AMEND. 6, and 14; AND WEST'S RCWA CONST. ART. I § 22 AND CRIMINAL LAWS PROHIBITING PFFICIAL MISCONDUCT, MALICIOUS PROSECUTION, AND CONSPIRACY TO INJURE A INNOCENT PERSON IN THIS CASE THE INNOCENT INJURED PERSON IS MR. PINSON.

IV. (CONCLUSION)

HERE WE HAVE AN INNOCENT MAN, WHO'S CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED AND THE LAWS OF THE UNITED STATES HAVE BEEN COMPLETED DISREGARDED BY THE STATE OF WASHINGTON INORDER TO OBTAIN A "CONVICTION OF AN INNOCENT PERSON", BECAUSE IT WAS NOT AN ISSUE TO THE PROSECUTION WHETHER HE WAS GUILTY OR INNOCENT BUT THAT HE HAD IN OTHER PROSECUTIONS BEEN FOUND NOT GUILTY, HE HAD TO THEM WON AND PROSECUTOR SIEVERS LOSS AND PROSECUTOR EGGERTSEN DID NOT WANT TO ADD TO THE (LOSS). SEE > DONNELLY V. DeCHRISTOFONA, 416 U.S. 637, 648-49, 40 L.Ed.2d 431, 440, 94 S.CT. 1868 (1974): "THE FUNCTION OF THE PROSECUTOR UNDER THE FEDERAL CONSTITUTION IS NOT TO TACK AS MANY SKINS OF VICTIMS AS POSSIBLE TO THE WALL. HIS FUNCTION IS TO VINDICATE THE RIGHT OF PEOPLE AS EXPRESSED IN THE LAWS AND GIVE THOSE ACCUSED OF A CRIME A FAIR TRIAL." JENCKS V. U.S., 353 U.S. 657, 1 L.Ed.2d 1103, 77 S.CT. 1007 (1957)> "THE INTEREST OF THE UNITED STATES IN A CRIMINAL PROSECUTION IS NOT THAT IT SHALL WIN THE CASE, BUT THAT JUSTICE WILL BE DONE." MR. PINSON HAS BEYOND ANY DOUBT HAS SUFFERED A GRAVE INJUSTICE THE TOTAL AFFECT TO HIM AND TO THE PEOPLE OF THE STATE OF WASHINGTON CAN.... NOT BE MEASURED NOR GIVEN ANY WEIGHT, THE DEPTH IS BEYOND COMPREHENSION, AND IF GIVES MISCARRIAGE OF JUSTICE A WHOLE NEW DEMENSION AND THE CONDUCT WAS BEYOND DOUBT "FLAGRANTE DELICTO". THIS MATTER IS NONREMANDABLE IT MUST BE DISMISSED EXIGENTLY. "MERE PUBLIC INTOLERENCE OR ANIMOSITY CANNOT CONSTITUTIONALLY JUSTIFY THE DEPRIVATION OF A PERSON'S PHYSICAL LIBERTY."

LOUIS D. BRANDEIS-U.S. SUPREME COURT JUSTICE-1856-1941: "CRIME IS CONTAGIOUS. IF THE GOVERNMENT BECOMES THE LAWBREAKER, IT BREEDS CONTEMPT FOR THE LAW."
WE AS A PEOPLE CAN NOT ALLOW "CRIME" TO BE THE RESOLUTION TO ALL OF OUR PROBLEMS."

A CRIME HAS BEEN COMMITTED AGAINST MR. PINSON AN INNOCENT MAN, AND AGAINST THE PEOPLE OF THE STATE OF WASHINGTON AND THE UNITED STATES, BECAUSE EVENTHOUGH SOME OF THE PEOPLE STRUGGLE WITH THIS LIFE, "WE ALL BELIEVE IN JUSTICE, NOT JUST FOR SOME BUT FOR ALL THE PEOPLE, THE APPELLANT PRAYS THIS COURT NOW CORRECT THIS MISCARRIAGE OF JUSTICE AND ALLOW JUSTICE TO PREVAIL, FOR THOUGH I HAVE FAULTERED IN MY PASS, I AM SINCERELY NOW INNOCENT.

RESPECTFULLY SUBMITTED,

I CERTIFY AND OR VERIFY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON SIGNED AND EXECUTED ON THIS 24th DAY OF APRIL 2013. AT MONROE, WA.

MR. LARNARD L. PINSON
898459
P.O. BOX 7001
MONROE, WA 98272-7001

4-24-13

DAVID PONZOHA, COURT CLERK
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STATE OF WASHINGTON

RE: STATEV. LARNARD L. PINSON
PIERCE CO. No. 11-1-05174-1
APPEAL No. 44033-4-11

DEAR MR. PONZOHA
PURSUANT TO RAP 10.10 AND DIVISION 2 order. PLEASE CONSIDER AND ACCEPT MYTIMELY FILED **S.A.G.** FILED WHITHIN THE TIME FRAME ESTABLISHED BY **RAP 10.10**

RESPECTFULLY SUBMITTED