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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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STATE OF WASHINGTON
COURT OF APPEALS, DIVISION 2

STATE OF WASHINGTON, Clark County Superior Court Respondent,	)	No: 49363-2-11
v.	)	STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW
Chris McNicholas Appellant.	)	

I, Chris McNicholas, have received and reviewed the opening brief 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.

Additional Ground 1

Inefective assistance of council for failing to move to strike Mrs. Lanes' testimony. Also failing to ask for a motion for speedy sentence so as the defendant could have had the opportunity to be transported up to Cowlitz County Superior Court to achieve a resolution to those pending charges so that he could then be considered for screening for a posible DOSA sentence - was granted from Cowlitz County both Judges for five seperate cause numbers.

Additional Ground 2

There are several addional reasons why I feel I did not receive a fair trial, and abuse of discretion for not allowing to be screened for DOSA is one of them. But also I have taken the time to out-line most of my particular agruments on additional attached paper. However, I will also add at this time The courts stipulation suspected forged checks (RP 865-866). Along with Kim Hitts opinion on signature should not have been allowed; (RP 780).

☒ There are additional grounds, a brief summary is attached to this statement.

Dated this 15 day of June, 2017.

Respectfully Submitted,

Chris McNicholas
Appellant

Statement of Additional Grounds Continued: 6/15/17

I. Government mismanagement of the case:
Preaccusatorial Delay; and a need for "Parole Evidence"
A.) CrR 8.3(b) & RCW 10.46.090
1.) Due-Process: In United States v. Lovasco, 431 U.S. 783, 789, 97 S. Ct 2044, 52 L. Ed 2d 752 (1977). The United States Supreme Court held that preaccusatorial delay can result in a due-process violation even where the statute of limitations {172 Wn.2d 289} has not expired. Although the statute of limitations provides a definitive legislative limit, due process may also be implicated by preaccusatorial delay. Id. (quoting United States v. Marion, 404 US. 307, 324, 92 S. Ct. 455, 30 L.Ed. 2d. 468 1971); The court said its role was circumscribed.
We are to determine only whether the action complained of here, compelling respondent to stand trial after the Government delayed indictment to investigate further - violates those "fundamental conceptions of justice which lie at the base of our civil and political institutions," and which define "the community's sense of fair play and decency." Lovasco, 431 U.S. at 790 (citations omitted). Lovasco also stated that "Proof of prejudice is generally a necessary but not sufficient element of a due process claim, and... the due process inquiry must consider the reasons for the delay as well as the prejudice to the accused."
B.) Standard of Review:
1.) Whether due process rights are violated by a preaccusatorial delay is a question we review de-novo Id at 138-39 (Citing State v. Warner, 125 Wn. 2d 876, 883, 889 P. 2d 479 (1995)
C.) These Prong Test:
1.) The defendant must show actual prejudice by the delay.
2.) If the defendant shows actual prejudice, the court must determine the reasons for the delay.

3.) The court must weigh the reasons for the delay and the resulting prejudice to determine whether fundamental conceptions of justice will be violated by allowing the prosecution to proceed.

Ultimately, the test suggested by the U. S. Supreme Court is "Whether the action complained of... violates those fundamental conceptions of justice which lie at the base of our civil and political institutions. State v. Calderon, 102 Wn. 2d 348, 352-53, 684 P. 2d 1293 (1984).

D.) Negligent Delay: {172 Wn. 2d 291}

The jurisprudence of this court and the better reasoning of the fourth and Ninth Circuits support adopting the approach that negligent delay can violate due-process. See Howell, 904 f. 2d at 895; Moran, 759 f. 2d at 782. The core question is whether the action by the government violates fundamental conceptions of justice. Lovasco, 431 U.S. at 790; Calderon, 102 Wn. 2d at 353.

E.) Facts and Procedural History: On April 22, 2014 Mrs. Audine Hitt and Mr. Chris McNicholas entered into both a verbal, along with a contractual agreement to have a large, and very complex construction remodel project on her home. Both parties verbally agreed upon specific details about the project, including approximate start dates, completion estimates, monthly payment schedule and amounts, alternate housing arrangements, holidays etc. Approximately six month's into there agreement Mr. McNicholas attempted to contact Mrs. Hitt by phone and was instructed by a female at Mrs. Hitt's residence, via telephone, that all work was to cease and disist until further notice. The woman identified herself as working for the Vancouver Police dept, or possibly the Clark County Sheriffs office. Either way the female on the phone identified herself

as law inforcement and ended the conversation by addin specifically; "no further attempts are to be made to try and contact Mrs Hitt directly or indirectly." Maybe one or two weeks later, in October 2014 Mr McNicholas was provided with a No-contact order, via a courier, again with specific instruction's, that included verbal demands that the courier stated "All contractual work is to cease and desist pending a court hearing." Mr. McNicholas was able to contact his Attorney, Andrew Lahaun where Mr. McNicholas was told "he had a good contract," and that "the no-contact order was a attempt to breech that contract by the daughter Kim Hitt;" Mr Lahaun advised Mr. McNicholas to "Attend that hearing in 48 hours and contest it." However, Mr. McNicholas was scheduled to be out of town the next day and was unable to attend. Nine months later in June 2015 Mr McNicholas was arreste and charged with Theft, I.D. Theft, & multiple counts of forgery Approximately five-six months later, Mr McNicholas was informed by than Attorney Mrs. Heather Caroll that the prosecutor assigned to the case, Mrs. Michell Niesel, showed up to work and quit unexpectantly, and that their verbal offer for 366 days was no longer available. Twenty One months after receiving the no-contact order Mr. McNicholas was put on trial. Due to those delays and significant time laps Mrs. Audine Hitt was found to be un-fit to testify due to her showing early signs of dementia. Her physical Health had also deteriorated significantly, affecting her posture and appearance, causing her to look particularly vulnerable. Mrs Hitt was never again in a position to corroborate Both the verbal and written agreement between herself & Mr. McNicholas. Her limited testimony due to her confused, & vulnerable condition had a substantially profound contradicting affect on the facts relating to the evidence on the case, along with a exstremely

high prejudicial impact imposed upon the character of the defendant. Due to the preacussatorial delay along with the governments mismanagement of the case both caused a due-process violation therefore the <u>eleven counts should be</u> dismissed with prejudice.

II. <u>Prosecutorial Misconduct:</u>

A.) <u>Exculpatory evidence;</u>

1.) The state had over 270 known comparable handwriting samples to provide to the FBI handwriting expert, however, they only decided to send less than 1/3.

2.) The states expert along with the defense expert both testified that "no difinitive conclusion could be reached mostly due in part to the fact that they "did not have enough known comparable samples." (RP 885-89) (RP 1647)

3.) The state failed to send one particular check in for analysis, but yet charged the defendant with forgery on that particular check number. (RP 914-946)

B.) <u>Attempt to shift burden:</u> (RP. 2079-2107)

1.) Closing argument the state attempted to shift the burden onto the defense for failing to call witness Brandon Reed

2.) State refering to checks as being forged (RP 865-66.)

C.) <u>Deputy Brady Spaulding Testimony:</u>

1.) Efficaciously presented to lead the jury to believe or let it be known that the defendant had simular charges pending in another county; (RP 1187-89) witness testified to seizing the defendants truck in Cowlitz County and asigning a case number; (Highly Prejudicial).

2.) Prevaricative testimony with regards to search warrant (RP 1190-91) Deputy Spaulding failed to ID the defendants truck and obtaining a search warrant, only that he applyed for a warrant.

3.) Deputy Spaulding gave highly prejudicial testimony about refering to evidence being found in defendants truck which was a pending charge against defendant in another county. (RP 1199-1203) Refering to Betsy Miller.

4.) Testimony given pertaining to evidence handed over from Deputy Spaulding to Clark County. (Exibit 68, 69, 70 RP 1273-1413) admitted hearsay evidence Corporate documents drawn up by Rob fairchild sales Representitive for PCV. RP(1474) Objection to files from truck being admitted; (RP 1076-1087)

5.) E.R. 901 & Rule 406; Authentieity personal knowledge of job folders & ER 406 Habit Evidence; (RP 1077-1140).

III. Cumulative Error:

A.) Charging Document; Not allowed into evidence:

1.) Sworn affadavit by Mrs. Hitt stating she wrote some checks to the defendant "for Minor Repairs." State argued against charging document.

2.) Seven originally charged forgery counts originated from charging document; sworn affadavit, later dismissed. {not to Jury

3.) Validity of Sales Contract and the courts ruling to Not allow defense proposed definition by websters.

B.) Discovery Deadline Violations:

1.) CrR. 2.1 Alternate definition forgery (RP 409-427 D.) prejudicial RCW 9A.60.020(1)(B)

2.) photos' (RP 529-530)

3.) Defense was not notified about the redacted/removed affidavit, prosecutorial misconduct; (RP 599).

4.) Temporary Protection Order; (RP 440-448).

C.) Procedural Error:

1.) Allowing three pending cases under another cause number to trac/providing motive for 404(b) evidence testimony raised the prejudicial level up considerably. (RP 186-89)(247) 2.) Judge Vanderwood agreeing to draft up the facts and conclussions pending the hearing for joinder and failing several times to provide those to the defense in a timely manner so as to include in successfully arguing against 404(b).

3.) In ruling for the state to be allowed to introduce certain evidence under 404(b) Judge vanderwood in part based his

analysis on incorrect evidence from the dept of L&I. There was no judgement against the defendants bond, testimony from L&I was that All debts against bond was paid in full. Along with miss-applying the 404(b) rule under his analysis "Simularities," when the evidence of prior conduct must demonstrate not merely similarity in results, but such occurrence of common features that the various acts are naturally to be explained as caused by a general plan of which the charged crime and the prior misconduct are the individual manifestations. (RP 295-297)

(RP 394-403) 4.) Motion to exclude Mr. Szymanski testimony. (RP 440-448) 5.) Vapo and protection order found in the defendants truck; (prejudicial) Not admitting affadavit proposed by state, along with the temporary protection order highly prejudicial.

6.) Motion to seek evidence found folders in defendants truck to prove motive & intent.

(RP 764-70) 7.) Evidence found in defendants truck exhibit 51 objection

IV. Article 1) § 7.) fourth Amendment Violation:

A.) fruit of the poisonous tree doctrine;

facts and procedural history: The defendants truck was seized without a warrant on January 23rd 2015 by Deputy Brady Spaulding of the Cowlitz Count Police Dept. Under direct examination the state asked (RP 1188-1192) "At some point did you apply for a search warrant to search the vehicle?" A: "yes" Deputy Spaulding never testifies to, at anytime being granted a search warrant. The defendant showed up at a hearing within 30 days to contest the warrantless seizure of his truck along with his corporations' private papers. (Ref case no: A15-267) The prehearing conference was held on March 11, 2015. On April 14, 2015 a continuance was granted to the prosecutors' office, represented by Ms. Gigler until such time as the criminal case was fully adjudicated. On October 31, 2016 the Cowlitz county Sheriffs office, represented by Sgt Ryan Cruser that the state was ready to proceed. On November 30th 2016 A

final hearing was held. On January 5th 2017 the defendant was granted a order of dismisal to have the truck and all seized property inside to be returned.

1.) Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652. Before the Supreme Court, Weeks contended that the seizure of his private papers violated the fourth and fifth Amendments. But Justice Day; (who had also written the Adams decision), for a unanimous court, dealt only with the fourth Amendment. The Court had no doubt but that, given Weeks' timely motion for return of the illegally seized evidence, a conviction based upon that evidence could not stand.

B.) fifth Amendment violation:

1.) A privelage against self-incrimination;

In Andresen v. Maryland, State authorities had searched the defendants law office and corporate offices, pursuant to search warrants for documents relating to the business crime of a fraudulent land sale. There was no question that some of the papers were both incriminating and made by the defendant. The defendant objected to the introductions of the papers at his trial on the ground that there admission compelled him to testify against himself in violation of the fifth Amendment. The defedant in this case felt "compelled" to "produce" the sales Contract between himself and Mrs. Audine Hitt.

2.) Rule 16: What are the provisions relating to defendants who are Corporations, partnerships and other business associations

3.) The Boyd Case; 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 Was later characterized by the court as "the leading case on search and seizure." If the Boyds were to peevail on fourth Amendment grounds, several issues had to be resolved in their favor:

1.) Whether the forced production of papers was a search within the meaning of the fourth Amendment.

2.) Whether the protections of the fourth amendment extend to the forfeiture proceedings.

3.) Whether competent but illegally obtained evidence must be excluded.

The Court, per Justice Bradley, held that the forced production was a search and seizure because it "effects the sole object and purpose of search and seizure," that the search was unreasonable because it was directed toward mere evidence of crime, and that the fourth Amendment protections were applicable because the proceeding was of a "quasi"-criminal nature." But most significant for our present purposes is Justice Bradleys' treatment of the third issue, "The most creative, and most controversial, feature of his opinion," wherein he linked together the fourth and fifth Amendments. Quote: "They throw great light on eachother, for the unreasonable searches and seizures" condemned in the fourth amendment are almost made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the fifth amendment; and compelling a man "in a criminal case to be a witness against himself," which is condemned in the fifth amendment, throws light on the question as to what is an "unreasonable search and seizure" within the meaning of the fourth Amendment. And we have been unable to perceive that the seizure of a mans private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself.

He thus concluded "that the notice to produce the invoice... and the law which authorized the order, were unconstitutional and void, and that the inspection by the district attorney of said invoice, when produced in obedience to said notice, and its admission in evidence by the court, were erroneous and unconstitutional proceedings."

Justice Miller, joined by the Chief Justice, concurred on the ground that it was "quite clear" the proceedings' below had violated the Boyd's privelege against self-incrimination. They thus deemed it inappropriate for the court to "assume that the action of the court

below, in requiring a party to produce certain papers as evidence on the trial, authorizes a unreasonable search or seizure of the house, papers or effects of the party." Upon this and other ground many commentators were critical of the Boyd decision; (Corwin, The Supreme Court's Construction of the Self-Incrimination Clause), and not entirely without reason. But there is no denying the fact that Boyd "was part of the process by which the fourth Amendment... has become more than a dead letter in the federal Courts. (Abel v. United States, 362 U.S. 217, 80 S. ct, 683 4 L. Ed. 2d 668 (1960) Brennan J, dissenting).

The continued vitality of Boyd was cast into doubt some years later in Adams v. New York, 192 U.S. 585, 24 S. ct. 372, 48 L. Ed. 575 (1904), where state officers executing a warrant for policy slips also seized other papers, which were admitted at trial to "identify" Adams' "handwriting" on the policy slips. "Boyd was distinguished on the questionable ground that it was limited to that situation in which a positive act was required on the part of the defendant."

V. Fed. R. Evidence 404(b): Deputy Brady Spaulding:

A.) When Police testify in court about illegally obtained evidence pursuant to fed. R. Evid 404(b) in order to prove an essential element of the crime, such as knowledge or intent, the evidence is being used as direct evidence to obtain a conviction, and thus is an example of when the rationale for exclusion is, in the courts view, "strongest." Calandra, 414 U.S. at 348. (RP 1189-1203)

B.) State v. DeVincentis; August 14, 2003 150 WN. 2d 11- 404(b) prohibits admission of evidence to prove a defendant has a "Criminal Propensity" - Common scheme or plan. The trial court must always begin with the presumption that the evidence of prior bad acts is inadmissable.

C.) State v. Lough 125 WN. 2d 847, 889 P. 2d 487 (1995) No 60646-3 404(b) Thus provides that prior misconduct is not admissable to show that a defendant is a "Criminal Type", and is thus likely to have committed the crime to which he/she is presently charged.

1.) Additionally, the party offering the evidence of prior misconduct has the burden of proving by the preponderance of the evidence that the misconduct actually occurred. There are two different situations wherein the "Plan" exception to the general prior bad acts evidence may arise. One is where several crimes constitute constituent parts of a plan in which each crime is but a piece of the larger plan. A simple example would be a prior theft to aquire a tool or weapon to perpetrate a subsequently executed crime. The other situation arises when an individual devises a plan and uses it repeatedly to perpetrate seperate, but very simular crimes. The similarity is not merely coincidental, but indicates that the conduct was directed by design. To establish common design or plan, for the purposes of Wash. R. Evid 404(b), the evidence of prior conduct must demonstrate not merely similarity in results, but such occurrence of common features that the various acts are naturally to be explained as caused by a general plan of which the charged crime and the prior misconduct are the individual manifestations.

2.) The true test of admissibility of unrelated crimes is not only if they fall into a specific exception, but whether the evidence is relevant and necessary to prove an "Essential ingrediant" of the crime charged.

D.) Limited Instruction:

1.) The Jury instruction to consider 404(b) testimony to prove theft-one, was insufficient to eliminate peopensity.

VI. Same Criminal Episode:

A.) 130 Wn. 2d 1001, 925 P.2d 990, 1996 Wash. Lexis 569;

1.) Court of Appeals holding that under former CrR 4.3, all of the related offenses should have been prosecuted in a single proceeding; The court affirms the decision of the trial court to dismiss the prosecution.

a.) The Superior Court of Yakima County, No. 93-1-00511-9,

f, James Gavin J. on 10-27-93.

3.) Procedural Posture: Theft charges were dismissed because they were not included in defendants first prosecution; State had to join charges together because they arose out of the same criminal enterprise and the state was aware of them when first charges were brought.

4.) The purpose of the mandatory joinder rule is to protect a defendant from successive prosecutions, particularly when they are used to "harass." (RP 3-56) Unmistakable "Onus," punitive effect.

a.) Mutiple Counts - prejudicial and cross admissibility.

5.) {81 Wn. App. 610} {915 P. 2d 1119} Munson, J - In this case the court is asked to decide a question of Law; Whether the Joinder Rule, CrR 4.3 {81 Wn. App. 611} Requires the State to file charges against a defendant as to all related offenses of which knowledge prior to trial of any of the charges.

The State contends the court erred in construing the mandatory Joinder Rule, former CrR 4.3(c), to require joinder of offenses if they are part of a "Common Scheme or Plan." ie 404b In interpreting rules relating to Joinder, we look to the policies the rule is intended to further. These policies are well summarized in the commentary to 2 American Bar Ass'n (ABA), Standards for Criminal Justice (2nd edition Supp. 1982).

Note: 130 Wn 2d 1009, 928 P. 2d 412, 1996 Wash Lexis 656;

Nature of Action: Prosecution for multiple counts of theft by deception, money laundering, and leading organised crime, Court of Appeals: Holding that the defense of "good faith claim of title" is inapplicable to theft by deception and that the convictions were supported by sufficient evidence, the court affirms the judgment - (Criminal Ipersonation) (Sales Contract) Good faith defense

Before can convict on theft by deception, it must find the defendant obtained control over the property of another by color or aid of deception. Such a finding necessarily includes a implied finding that the defendant did not obtain control over the

property openly avowedly under a good faith claim of title.

VII. Double Jeopardy: & "Legal Efficacy" State v. Baldwin (2002)

A.) ID-Theft and forgery; Theft-1 and forgery

1.) The state moved to Amend charging document to include the Alternate definition of forgery. (RP 409-427)

Question; 2.) Rule 18.14: Motion on the merits (should there have been

3.) Reversible Error for a court to treat the two offenses ID-Theft and forgery as seperate crimes.

B.) 8.3 Dismissal: 81 Wn. App. 773, 916 P. 2d 458 (1996) Affirmed the dismissal of the trafficking counts and reversed the dismissal of the theft count, holding that the defendant could not be convicted of trafficking in and Theft of the same items of property. (RP 406-408)

State; "I don't have to prove that the defendant is the person who actually forged the document; I just have to prove that he put off as true a document that he knew to be forged."

C.) Same Evidence Test:

1.) By this test, a defendant cannot be convicted of offenses that are identice both in fact and in law.

D.) The merger doctrine:

1.) Applies only when the legislature clearly indicates that to prove a particular degree of a crime, the state must prove not only that the defendant committed that crime, but that the crime was accompanied by an act which is defined as a crime elsewhere in the criminal statutes. It is relevant only when a crime is elevated to a higher degree by proof of another crime proscribed elsewhere in the criminal code.

2.) Blockburger and "Same Evidence" test, while significant indicators of legislative intent, are presumptive rather then dispositive of the question whether two offenses are the same. Since the legislature has authority to prescribe punishments, courts should also look to statutory language and legislative intent to determine whether the legislature intended; (within Constitutional bounds) for the same act. The presumption accorded by the same evidence and

blockburger tests should, however, be overcome only by "Clear Evidence"

3.) The merger doctrine is relevant only when a crime is elevated to a higher degree by proof of another crime proscribed elsewhere in the criminal code; (Theft-1 by means of forgeries)

4.) State v. Dingman (149 Wn App 648, 202 P.3d 388 (2009 Wash app Lexis 550) Wash Ct App 2009; On retrial the court was directed to dismiss one category of charges because convictions for both money laundering & Theft violated double jeopardy in circumstances that demonstrated that the two offenses violated the "Same Evidence Test;" The theft defendant committed required that he obtain payments under a construction contract and exert control over the funds in a manner inconsistent with the terms of the contract, and the crime of the theft was not completed until the earmarked funds were misallocated; The facts of the case showed that the act of theft (fund misallocation) could not be completed w/o money laundering; i.e. ID theft (check depositing and misdirection of funds.)

5.) State v. Joy - Kenneth Ralph Joy: 121 Wn. 2d, 333; 851 P. 2d 654; 1993 Wash Lexis 94 No 59305-1. Challenges the sufficiency of evidence; does the contractors conduct satisfy the definition of "exerts unauthorized control," established by RCW 9A.56.010 The court of appeals reasoned that one cannot steal his or her own property, that title to the funds passed to defendant when paid to him. The court of Appeals said "The payments here were advanced payments pursuant to a contract, within the contract price." State v. Joy 65 Wn App 33, 40, 827 P. 2d 1065, Review granted, 119 Wn. 2d 1018 (1992) The court then examined the evidence, and came to the conclusion that there was insufficient evidence of a trust or agency relationship as to all of the counts.

Referencing: State v. Green 94 Wn. 2d 216, 221, 616 p. 2d 628. State v. Aven 121 Wn 2d 339, 109 Wn 2d 303, 310-11, 745 P. 2d 479 (1987). State v. Salinas, 119 Wn. 2d 192, 201, 829 P. 2d 1068. Under the cases cited above, this precludes an entrustment or agency relationship.

VIII. Title five Evidence / Corporations:

A.) A corporation is a "person" for purposes of due process. Pacific Coast Vinyl; (P.C.V) and Green Tech Innovations; (G.T.I) are both registered corporations with the State of Washington.

1.) Title 23(b) Washington Business Corporation Act; 23b.030.020: General Powers: Unless its articles of incorporation provide otherwise, every corporation has "perpetual duration and succession" in its corporate name. (G.b) To make contracts, incur liabilities, borrow money, issue its notes, bonds, and other obligations which maybe convertible into or include the option to purchase other securities of the corporation and secure any of its obligations by mortgage or pledge of any of its property, franchise, or income.

2.) Business and Corporate Law > Agency Relationships > Authority to act: When a Corporation names some person as its manager, and as such allows him in a large measure to control all its business transactions, "It" must be held responsible for the acts of such manager in the name of the company untilit has been affirmatively shown by it that as a matter of fact such acts were unauthorized. (UBRA); The Uniform Business Records as evidence Act.

State v. DeVries, 109 Wn. App. 322, 34 P. 3d 927 (2001) Wn. Business Records as Evidence 5.45.020. Need for "Parole Evidence" to an action brought to enforce a partly oral contract.

Business Corporation Model Act: A statute prepared as model act by the National Conference of Commissioners of Uniform State Laws, which has been adopted in Alaska, Idaho, Kentucky, Louisiana, Tennessee and Washington. Authority; Am J 2d Desk Book, Document 129.

3.) Unconscionability in consumer sales contracts - A defense to actions at Law and under the UCC. 41 Wash. L. Revised. 621.

a.) 62A.2-313. Express warranties by affirmation, promise, description, sample. Annotations - Annotated Revised Code of Wash. Article a sales part 3 general obligation and construction of contract.

IX. Ineffective assistance of counsel:

A.) The motion in Limine; 23A.02(1) fed. R. Crim. P. 12(b)(4). The rule provides: At the defendants request; At the arraignment or as soon afterward as practicable, the defendant may, in order to have a opportunity to move to supress evidence under rule 12(b)(3)(C), request notice of the governments intent to use (in its evidence-in-chief at trial) any evidence that the defendant maybe entitled to discover under rule 16.

1.) failing to move to supress evidence found in defendants truck up in Cowlitz County.

2.) failing to move to strike Mrs. Lane's testimony

3.) failing to object to subpoena bank records on the basis that the defendant had a fourth Amendment interest in the records kept by the bank because they are merely copies of personal records that were made available to the banks for a "limited purpose" and in which he has a reasonable expectation of privacy.

4.) failing to call aditional witnesses particularly chase bank fraud dept gentleman defendant was working with; Along with Attorney Andrew Lahaun who adviced me after receiving no-contact order. 9A.60.020(1)(B).

5.) failing to have a hearing for a offer of proof that a prior bad act probably occurred. 404(b) failing to argue that the facts were wrong in that all these 404(b) witness where they received a "product" ie; a warranty, where Mrs. Hitt was to receive a large remodel "service," that information would have taken the "similarity" prong out of the requirement. To say "all cases involve contracting services that were not rendered," to be considered as part of the courts analysis is factually incorrect.

6.) failing to file a motion to receive a "lasting Hearing." RP 161 along with perpetuation depositions for Mrs. Hitt & 404(b) witnesses.

7.) failing to file a motion under Crawford. The express language of Crawford v. Washington, 541 U.S. 36 (2004) States that "Business Records" are not testimonial. But there is no reason in law or logic why the absence of a business or public record should be treated differently; thus, a public record is the functional equivalent of a business record for

purposes of the confrontation clause. State v. N. M. K, 129 Wn. App. 155, 118 P. 3d 368 (2005). Seattle Univ. Law Review: 28 Seattle U. L. Rev 301 (2005) a.) Crawford v. Washington: The end of victimless Prosecution? Where testimonial evidence is at issue, the Sixth Amendment requires unavailability and a prior opportunity for cross-examination. Crawford v. Washington, 541 U.S. 36, 124 S. ct 1354, 158 L. Ed 2d 177 (2004). Authority for #5). Hearing for offer of proof to allow evidence to prove a common scheme or plan. Jane Doe v. Corp of the President of the Churd of Jesus Christ of Latter-Day Saints 141 Wn, App 407, 167, P.3d 1193.

8.) failing to raise argument for fourth Amendment; Protectiv Privacy Interest. 181 Wn App 897 State v. Reeder (1-2014). 167 Wn 2d State v. Patton (2008) State v. Parker (1998) 139 Wn 2d 486

9.) failing to file a motion for a "Daubert Hearing," with regards to the handwriting expert analysis. Where the reliability o' the handwriting expert analysis evidence has been credibly challenged should be considered an error of law.

a.) "Studies show that subjectivity and bias are a grave problem in forensic science. The common perception that crime lab test results are strictly objective is not correct. Subjectivity and contexual bias can influence forensic experts." Professor Greg Hampikian Boise St.

10.) failing to object to "A manifest Error," RAP 2.5(a)(3) affecting a constitutional right 2.3 (E) and RCW 10.79.050 illegally seized property State ex rel Schillberg v. Everett Dist Court 90 Wn. 2d 794 799-99 585 P. 2d 1177 (1978).

B.) A time for trial rule; violation where the court set A "no exceptions" trial date in June 2016 However one week later granted another month continuence to the state to accomidate a witness.

1.) Defense objects to the redactions w/o authority made by the State exhibits 23-24 (RP 1994)

X. Jury Instructions and Questions:

A.) Deputy Spaulding testimony; (RP 1187-92) and regards to a Rule 41 violation where it further requires an officer to prepare an invete ry of the items seized and, upon completion of the search, to give the

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person from whom the property was taken a copy of the warrant and a receipt of the property taken. Particularly when he testifies?

1.) Is it considered direct evidence when a police officer testifies about a letter found in defendants truck;(Helen McGinnis), that was considered 404(b) evidence?

B.) Chain of custody on exhibits along with Authenticity, ER 901 stipulations made by the defendant when in fact he really had no idea what he was stipulating to or why. (RP 857) & (RP 1077-1140)

Question: If the theft-one count is indicative to the forgery counts how could 404(b) evidence be allowed to prove theft only? Should the tape recordings been authenticated to help boulster the weight given to the testimony? Prosecutorial misconduct. (Delay)

Question: Does the charge "Working as a unlicensed contractor impermissibly broadened the original charges? Or would the relation back doctrin Apply?

Question: Cousels failure to challenge improper aggregation of charges

Question: Going over the questioning & examining Voir Dier of Jurors?

Jury Instructions:

1.) Jury Instruction for 404(b) evidence insufficient to cover propensity and highly prejudicial.

2.) (RP 2041-43) Jury Instructions Dates of April 1 2014-Sept 30 2014 stending far beyond what the evidence presented and giving a inference that Theft-1 & ID theft occured way before and long after the 9 counts of forgery. (50 days difference) Also implying crimes were taking place before contract was signed

3.) Identification or financial information (RP 2043)

4.) Instruction #33 (RP 2059) "The victims vulnerability also must be a substantial factor."

5.) Alternate Instruction to 34(1) over long period of time

6.) Instruction #1 "And any other factors that affect your evaluation or belief of a witness."

7.) State v. Goss (8-18-2016) 92274-8: Must specify the lower limit; (Theft) objection to the specificity of the

Charging document. Whose seriousness is determined by the quantity of damages. The information must specify any factor which makes the conduct illegal, or which increases the penalty.

8.) Instruction #10 and using The term common scheme or plan infers the defendant committed more than one count of theft.

9.) Instruction #34 Identity theft - 1 major economic offense infers more than $1500 and infers multiple counts - 9 counts forgery yet only one count ID-Theft why?

10.) Instruction #35 "Lengthy" Vague.

11.) Instruction # 37 & 38 Number of counts being told to the jury back to back implies 21 counts total, prejudicial.

B.) Georgetown Law Journal: Jury Instructions; "There are no convincing reason to believe that Jury instructions in fact constrain jury behavior in all or even most cases; (Limited Instruction to 404(b)).

XI. Sentencing: 9.94A.535 Departure from guideline; Reviews RCW 9.94A585

A.) Abuse of discretion by the court for not allowing screening for chemical dependency evaluation to be considered for possible (DOSA) sentence, in part due to pending charges in Cowlitz County and possible interfering with a DOSA sentence.

i.) Defense failed to ask for speedy sentence waiver to then allow the defendant to be transported up to Cowlitz County to resolve pending charges; (Ultimately received DOSA sentence via Judge Evans) after being sentenced in Clark County. Defendant is considering a 7.8 motion seeking ammended sentence for DOSA upon scoring a 2.5 on chemical dependency screening at his current location.

B.) Exceptional Sentence: Prolonged period of time, jury decides based off of wrong jury instruction dates 4-1-2014 - 9-30-2014 (RP - 2041 - 2043). Blakely v. Washington - Did the court act without authority when it entered the defendants 22 judicial findings of fact that were not reflected in the jury's Special verdicts - Blakely 542 US at 298 Apprendi 530 US at 490; U.S. Const. Amend. VI, XIV Const. art. 1 sec 21 22. The State must submit to a jury any fact

upon which it seeks to increase punishment;

1.) Alleyne v. United States U.S. 133 S ct. 2151 2155 186 L.Ed. 2d 314 (2013). State v. Dyson 2015 WL 4652226 at 5-6 Wash Ct App August 6 2015. Thus an exceptional sentence cannot be based on facts found by the judge.

2.) Did the court further act without authority when it entered the judicial fact finding that "Substantial and Compelling Reasons" justified the exceptional sentence.

3.) A jury finding of an aggravating circumstance does not in itself, increase the standard range. The standard range is only increased when the jury finding is combined with the judicial finding of substantial and compelling reasons. RCW 9.94A537. The phrase "Substantial & Compelling Reasons" is not defined in the SRA. State v. Fisher 108 Wn 2d 419. 423- State v. Nordby, 106 Wn 2d at 521 N.

C.) first time offender waiver 9.94A.650:

1.) State v. Ronald Duane Johnson Jr; 97 Wn App. 679, 988 P.2d 460, 1999 Wash. App Lexis 2056 NO 23166-2-11, October 15, 1999 Court of appeals holding that the defendant qualified as a first time offender and that the conditions attached to the community supervision sentence were statutorily authorized, even though they were not related to the defendants crimes.

Outcome: The court of appeals affirmed the sentence, holding the trial court; (Cowlitz County Superior Court) was within its discretion in ordering drug treatment and random drug testing as part of a treatment authorized by statute for first time offender alternative sentence even though treatment was unrelated to defendants crimes.

Headnotes: Washington official Reports; The fact that a criminal defendant is simultaneously convicted of multiple felonies does not prevent the trial court from exercising its discretion to sentence the defendant as a first time offender under RCW 9.94A.120(5) if the defendant qualifies under the definition of "first time offender" set forth in RCW 9.94A.030 (23). State v. Raymond Welty; Div two 44 Wn App. 281; 726 P.2d 472; 1986 Wash. App. Lexis 3786 NO 9416-9-11 Prosecution for five nonviolent felonies.

D.) Same Criminal Conduct:

1.) State v. Johnson 180 Wn App 92 March 17, 2014 Opinion; Superior Court ruled two out of five counts forgery encompassed same criminal conduct even though they occured on different days.

2.) Merging Counts;

3.) Exceptional Sentence downward.

Sincerely;

Chris McNicholas