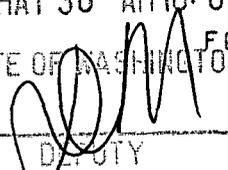


FILED
COURT OF APPEALS
DIVISION II

2017 MAY 30 AM 10:03 IN THE COURT OF APPEALS
STATE OF WASHINGTON FOR THE STATE OF WASHINGTON
DIVISION TWO

BY 
DEPUTY
State of Washington,
Respondant,

No. 49469-8-II

v.

Statement of Additional
Grounds For Review

Anthony E. Whitfield
Appellant.

I, Anthony E. Whitfield, 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.

ADDITIONAL GROUND NO.1

Did the trial court use a process to make determination of the case that demonstrated bias and violated the appearance of fairness doctrine?

ADDITIONAL GROUND NO.2

Should the trial judge after having violated the appearance of fairness doctrine, as well as appellate's rights to Due Process and Equal Protection under both the Washington State and United States' Constitutions be barred from presiding over any subsequent proceedings in this matter and should the Court of Appeals issue an order directing that all further proceeding be presided over by another judge?

ADDITIONAL GROUND NO.3

Did the trial court violate the appellate's right to due process under both the Washington State or United State's Constitutions?

ADDITIONAL GORUND NO.4

Did the tial court violate appellate's right to Equal Protection under either the Washington State or United State's Constitutions?

ADDITIONAL GROUND NO.5

Did the Thurston County Prosecutor, in arguing his case, commit affirmative misconduct and violate Appellate's Constitutional rights under the Fourteenth Amendment when it

presented argument to the court which it knew or should have known was untrue?

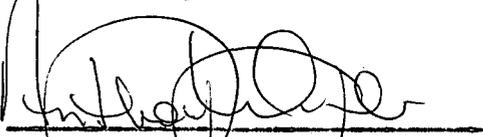
ADDITIONAL GROUND NO.6

Did the State spoliage evidence which resided in its possession and was material to making a true and accurate determination in regard to requested DNA testing and it's ability to determine guilt or innocence regarding appellate's conviction and violating his Constitutional rights under the Fourteenth Amendment?

ADDITIONAL GROUND NO.7

Does the Appellate Court need to order an evidentiary hearing allowing Appellant Whitfield to challenge the DNA of the alternative means to convict used by the State because the State purposefully destroyed the physical evidence in its possession which would allow him to challenge his conviction via DNA analysis?

Dated: May 20, 2017



Anthony F. Whitfield DOC# 876707
Coayote Ridge Corrections Center
PO Box 769: BB-15
Connell, WA. 99326-0769

I. STATEMENT OF
RELEVANT FACTS

Appellant, Anthony E. Whitfield incorporates by reference all facts contained within the Statement of the Case in the Brief of Appellant presented by his Attorney of Record John A. Hays. Appellant Whitfield further alleges that:

1.1 Appellant Whitfield supports all issues he has personal knowledge of with an Declaration attached as Exhibit 1.

1.2 Judge James J. Dixon uses a process in hearing legal actions presented by inmates which denies them even the appearance of fairness, demonstrates bias through predetermination, and denies inmate plaintiff/petitioner's the ability to have the standard practice of replying to the state's attorneys during oral presentation to the court. (See Exhibit 2).

1.3 The State of Washington has supplied a statutory procedure allowing a convicted felons the ability to seek post-conviction DNA testing to challenge their convictions. (See Exhibit 3).

1.4 As part of the action the State had blood draws taken from both Appellant Whitfield and from the alleged victims, (See

Exhibit 4, sub nums 35, 36). The State also issued material witness warrants regarding victims and sought their arrest. (See Exhibit 4, sub nums 81, 82). And, it appears that the State also sought to, and had the blood evidence destroyed, (See Exhibit 4, sub num 166).

1.5 The attorney for the State, Deputy Prosecuting Attorney Winder presented argument to the court she knew or should have known was untrue. (See Exhibit 5, pages 6-8).

1.6 There was evidence taken by the police which demonstrates Mr Whitfield was not HIV positive when he was in Oklahoma and would indicate that he was not the person who "exposed" the victims to HIV but had previously had a false positive, (See Exhibit 6).

1.7 The key victim which that State used to establish "intent" has subsequently contacted Appellant Whitfield and made claims of coercion and unlawful actions by the State, (See Exhibit 7).

1.8 The Deputy Prosecutor who originally tried the case against Appellant Whitfield has since left employment with the Thurston County prosecutor's Office under mysterious circumstances, which Mr Whitfield has heard was in part for witness tampering, (See Exhibit 1).

1.9 This Statement of Additional Grounds for Review is timely filed pursuant to GR 3.1 having been submitted to the COA Division II, by institutional legal mail from the CRCC in Connell, Washington prior to the due date.

II. ARGUMENT & PRESENTATION OF LAW

1. Did Judge Dixon Violate The Appearance of Fairness Doctrine In The Process He Used?

Our state's Code of Judicial Conduct (CJC) requires judicial fairness in order to preserve procedural due process and public confidence in our courts. Judges must not only be impartial but also appear impartial because judicial fairness is violated when the appearance of fairness is ignored. State ex rel. Mc Ferran v. Justice Court, 32 Wn2d 544, 549, 202 P.2d 927 (1949) ("The principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of the court." (quoting Bernard ex rel. Bernard v. Bd. of Educ., 19 Wash. 8, 17, 52 P. 317, 320 (1898))); Diimmel v. Campbell, 68 Wn2d 697, 699, 414 P.2s 1022 (1966) ("It is incumbent upon members of the judiciary to avoid even a cause for suspicion of irregularity in the discharge of their duties"). This is more than an idealistic sentiment. "Deference to the judgements and rulings of courts

depends upon public confidence in the integrity and independence of the judges." CJC, Cannon 1 cmt.

This Doctrine Applies
To Judicial Decision Makers

See e.g., State v. Finch, 137 Wn2d 792 808, 975 P.2d 967 (1997)("The appearance of fairness doctrine, however applies to judicial and quasi-judicial decision makers. The doctrine seeks to prevent the evil of a biased or potentially interested judge... This doctrine not only requires the judge to be impartial but 'it also requires that the judge appear to be impartial.")(citations omitted). See also e.g., State v. Gamble, 168 Wn2d 161 187-88, 225 P.3d 973 (2009),

"Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial, and neutral hearing. The law goes further than requiring an impartial judge; it also requires a judge to appear to be impartial.' 'Evidence of a judge's actual or potential bias must be shown before an appearance of fairness claim will succeed.' Under the Code of Judicial Conduct, designed to provide guidance to judges, '[j]udge's should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned.'" (citations omitted).

The Appearance Of Fairness Doctrine
As Applied To The
Case At Hand

During the "normal" course of proceedings a petitioner bringing an action, such as Mr Whitfield did here would during oral arguments be allowed to"

(1) Open with his case in major, followed by;

(2) The Respondant, in this case the State via the Thurston County Prosecutor's Office would provide Responding argument. This would be followed by;

(3) The Petitioner being allowed to close by Replying to whatever the Respondant presented to the court.

But this is not the process used by Thurston County Superior Court Judge Dixon during the August 31 2016 hearing re: Motion for Post-Conviction DNA Testing pursuant to RCW 10 73.170

During Mr Whitfield's hearing, Judge Dixon allowed Mr Whitfield to open, (See Exhibit 5, Pg.4-6). In his Opening, Mr Whitfield reiterated his pleadings for the Court demonstrating that:

(1) In their pleadings the State mischaracterizes both the science involved and the law regarding post-conviction DNA testing. (See Exhibit 5, pgs.4-5).

(2) That he clearly qualifies for post-conviction DNA testing under the plain language of the statute because: (a) He is convicted of a felony and serving a sentence. (b) the DNA testing would now be significantly more accurate than prior testing and provide significant new information. (c) He should as his pleadings demonstrate, show that DNA is relevant and material as to the identity of the perpetrator. And (d) The result of DNA testing would show his innocence and the State should not fear the results. (See Exhibit 5, pg.5).

(3) That the State's assertions in pleading regarding the status of HIV not having DNA is factually and scientifically incorrect, (Exhibit 5 pg.5), and Mr Whitfield makes a valid claim that the DNA fingerprint would demonstrate definitively that he was not the perpetrator. (Exhibit 5, pg.5).

(4) That the State had knowledge that it had previously drawn blood samples from all "victims" and had an affirmative duty to preserve the evidence. That the court still had jurisdiction and could always hold a reference hearing to determine if blood was drawn. And, that if the State had destroyed the blood evidence that court still had jurisdiction to hold a reference hearing on spoliation and if DPA Bruneau had committed affirmative misconduct in the original case. (See Exhibit 5, pgs.5-6).

Judge Dixon then allowed the State, represented by DPA Winder to respond orally. In her response Ms Winder was allowed to "relitigate" the original trial. (See Exhibit 5, pgs.6-8). However, at no point does the State deal with the standards set forth in RCW 10.73.170. Ms Winder as the State's representative spends her time playing on society's fears and prejudices regarding HIV and domestic violence. (See Exhibit 5, pgs.7-8). Petitioner believes that the State willfully misrepresented both law and fact to the court. He was ready to refute the State in his reply-closing argument. (See Exhibit 1).

But Petitioner Whitfield was denied the opportunity by Judge Dixon. (See Exhibit 5, Pg.8). Judge Dixon firmly pressed his thumb on the scales of justice by cutting Mr Whitfield off by immediately saying "The Court is ready to rule." This failure to allow Mr Whitfield to reply produced an incomplete hearing and record violating Mr Whitfield's right to due process, demonstrating bias by Judge Dixon, and requiring new proceedings in front of a new judge. See e.g., Bosede v. Mukasey, 512 F3d 946, 952 (7th Cir 2008),

"Our reading of the record leaves us convinced that the [judge] cared little about the evidence and instead applied whatever rationale he could muster to justify a predetermined outcome. See Kerciku, 314 F3d at 918.. [It] calls into question the fairness of the proceedings, and since we cannot be confident the... hearing... met the

minimum standards of due process, Bosedé is entitled to a new one. See *Floroiu v. GFonzales*, 481 F3d 970 (7th Cir 2007). And to avoid repetition of the same mistakes..., we urge the agency to refer this case to another judge. See *Niam v. Ashcroft*, 354 F3d 652, 660 (7th Cir 2004)."

Bias is further demonstrated by the process being the "norm" in cases where Judge Dixon has an inmate petitioner. (See Exhibit 2). This being the case, Judge Dixon violated the Appearance of Fairness doctrine and any further proceeding should be assigned to another judge.

But The Appearance of Fairness Doctrine
DoesN't Protect Constitutional Rights

See e.g., *Residents Opposed To Kittetas Turbine v. State Energy Facility Site Evaluation Council*, 165 Wn2d 275 314 (2008)("The appearance of fairness doctrine does not protect constitutional rights. *City of Bellevue v. King County Boundry Review Bd.*, 90 Wn2d 856, 863... (1978)('Our appearance of fairness doctrine, thought related to concerns relating to due proces is not constitutionally based.')"). So, the appellate court should also conduct both due process and equal protection analysis as follows.

2. Did The Trial Court Also Violate
Mr Whitfield's Fourteenth Amendment Rights
To Due Process & Equal Protection

Due process under the Washington Constitution provides the equivalent protections to that offered under the Fourteenth Amendment. See e.g., State v. McCormick 166 Wn2d 689, 699, ___ P3d ___ (2009) ("We have held Washington's due process clause does not afford broader protection than that given by the Fourteenth Amendment to the United States Constitution. In re Per. Restraint of Dyer, 143 Wn2d 384 394.. (2001).").

Due Process Contains Both
Procedural & Substantive Protections

See e.g., State v. Beaver, 184 Wn2d 321, 332. ___ P.3d ___ (2015),

"Freedom from bodily restraint is at the core of the liberty interest protected by the due process clause. Foucha v. Louisiana, 504 US 71, 80. (1992).. The due process clause of the Fourteenth Amendment provides that the State shall not 'deprive any person of life, liberty, or property without due process of law.' US Const. amendment XIV § 1. The due process clause confers both substantive and procedural protections. amunrud v. Bd. of Appeals, 158 Wn2d 208 216... (2006). The substantive component of the due process clause bars wrongful and arbitrary government conduct, notwithstanding the fairness of the implementing procedures. Foucha, 504 US at 80. Even if government conduct satisfied substantive due process, the procedural component of the due process clause requires that government action be implemented in a fundamentally fair manner. United States v. Salerno, 81 US 739, 746... (1987)."

The Beaver court [184 Wn2d at 336], went on to say: "Procedural due process requires that when the State seeks to deprive a

person of a protected interest, the State provides the individual adequate notice of the deprivation and a meaningful opportunity to be heard. Amunrud, 158 Wn2d at 216 Due Process is a flexible concept and calls for different procedural protections depending on the interests at stake. Matthews v. Eldridge, 424 US 319, 334... (1976)."

Due Process Also Protects
Property Interests In The Benefits Of Procedures

See e.g., Durland v. San Juan County, 182 Wn2d 55, 70-71, _____ P.3d _____ (2014),

"'Property' under the Fourteenth Amendment encompasses more than tangible physical property. US Const. amend. XIV; See Logan v. Zimmerman Brush Co., 455 US 422 430... (1982). Protected property interests include mall benefits to which there is a 'legitimate claim of entitlement.' Conrad v. Univ. of Wash., 119 Wn2d 519, 529... (1992)(quoting Roth, 408 US at 577). In Roth, the Supreme Court explained.

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have a legitimate claim of entitlement to it. 408 US at 577. Constitutionally protected property interests may be created through (1) contract, (2) common law, or (3) statutes and regulations. See Conrad, 119 Wn2d at 529-30.

In Kentucky Dept. of Corrections v. Thompson, the SuOpreme Court explained that statutes creating a liberty interest need not explicitly announce the interest but must contain mandatory language' giving rise to the entitlement. 490 US 454, 463... (1989)... We have applied the mandatory language test to determine whther a statute creates a protected property interest. Conrad, 119 Wn2d at 529-30 "

Equal Protection
Requires Like Treatment

See e.g., Am. Legion Post No. 149 v. Dept. of Health, 164 Wn2d 570 604, ___ P.3d ___ (2007),

"Equal protection under the law is required by both the Fourteenth Amendment to the United States Constitution and article 1, section 12 of the Washington Constitution. O'Hartigan, 118 Wn2d at 121. Equal protection requires that 'all persons similarly situated should be treated alike.' Id. (quoting City of Cleburne v. Cleburne Living Ctr., Inc., 473 US 432, 439... (1985))."

See also e.g., Mendiola-Martinez v. Arpio, 836 F3d 1239, 1260 (9th Cir. 2016)("The Equal Protection Clause of the Fourteenth Amendment is essentially a direction that all persons similarly situated should be treated alike." Lee v. City of Los Angeles, 250 F3d 668, 686 (9th Cir 2001)(quoting Cleburne v. Cleburne Living Ctr., 473 US 432, 439... (1985))). Both Due Process and Equal Protection claims are subject to review under the abuse of discretion standard.

A Court Can Abuse It's Discretion
In Multiple Ways

See e.g., Wade's Eastside Gun Shop v. Dept. of L&I, 185 Wn2d 270 277, 372 P.3d 97 (2016)("A court abuses its discretion... when it adopts a view that no reasonable person would, or when it

bases its decision of 'untenable grounds or for untenable reasons.'⁴⁴ (internal citations omitted). "A decision is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. a decision is 'manifestly unreasonable' if the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take,' and arrives at a decision 'outside of the range of acceptable choices.' [collecting cases]." State v. Dixon 159 Wn2d 65 75-76, 147 P.3d 991 (2006).

The United States Supreme Court has voiced similar sentiments See e.g., Arizona v. Washington, 434 US 497 n 28 (1978) ("If the record reveals a judge has failed to exercise the 'sound discretion' entrusted to him, the reason for... deference by an appellate court disappears."). See also Cooter & Gell v Hartmax Corp., 496 US 384, 405 (1990) ("A... court would necessarily abuse its discretion if it based its ruling on a clearly erroneous assessment of the evidence.") See also e.g., Phillipines v. Pimentel, 553 US 851, 864 (2008) (quoting ⁴⁴Koon v. United States... a court 'by definition abuses its discretion when it makes an error of law.⁴⁴). The Ninth Circuit also addresses abuse of discretion in United States v Decinces, 808 F.3d 785, 789 (9th Cir. 2015) ("A... court abuses its discretion when it makes an error of law or acts arbitrarily. [collecting cases] ").

DPA Winder's Misconduct In Argument
Violated Mr Whitfields Constitutional Rights

The United States Supreme Court again stated in Banks v. Dretke, 540 US 668, 696 (2004) saying: "Prosecutor's dishonest conduct or unwarranted concealment should attract no judicial approbation. See Kyles, 514 US at 440... ('The prudence of a careful prosecutor should not... be discouraged.')." This applies to both Mr Whitfield's Post-Conviction DNA proceedings and his original trial, as well as all the actions the Thurston County Prosecutor's Office has taken in-between the two proceedings.

It Also Includes Ms. Winder's Argument

(1) DPA Winder improperly tried to have the court treat Mr Whitfield's motion for post-conviction DNA testing under RCW 10.73.170, (See Exhibit 3), as a PRP subject to the rules of appellate procedure and the mandate issued in his original case. (See Exhibit 5, pg.6). But motions under RCW 10 73 170 are not subject to those rules and go to identifying innocent defendants who were wrongfully convicted. In line with both Washington State and Federal innocence jurisprudence the limitations DPA Winder attempts to enforce simply do not apply because they are superceded by the innocence claim. However, Judge Dixon violated Mr Whitfield's rights to due process and equal protect under the

Fourteenth Amendment by denying him the ability to reply to the State's argument for the record.

(2) A second time DPA Winder directed the court in the wrong direction when she directs it to Judge McPhee's findings of fact and conclusions of law from the original trial. (See Exhibit 5 pgs.6-7). Again with all deference due to Judge Mc Phee, his finding of fact and conclusions of law have no meaning and are moot in the context of the objective standards set forth by the Legislature in RCW 10 73 170 (See Exhibit 3). Again, Judge Dixon violated Mr Whitfield's Fourteenth Amendment rights by denying him the ability to reply to the State's argument.

(3) A third time DPA Winder misdirects the court to the trial proceedings, (See Exhibit 5 pg 7). She wrongfully identifies Mr Whitfield's request as moot saying that: "It does not matter at this point whether or not the DNA from -- even if there is DNA in an HIV strain which there has been no scientific basis for it, based upon the findings of fact entered by the bench in the bench trial."

But Mr Whitfield did in his Reply Brief provide Judge Dixon with extensive and long-running caselaw from the federal courts, especially derived from patent courts who have scientific expertise that it is now well settled scientific fact that HIV has DNA that can be tested. So, if the previously taken blood

samples are tested and show that they contain a different HIV DNA than that of Mr Whitfield it would be manifestly unreasonable and arbitrary for a court to say that Mr Whitfield was the source of exposure. Thus, Mr Whitfield would be innocent of even the alternative means. A third time Judge Dixon violated Mr Whitfield's Fourteenth Amendment rights by denying him the ability to reply to the State's argument.

(4) Finally, DPA Winder asserts this court has no jurisdiction over the victims. (See Exhibit 5, pg.7). She then preys upon the court's prejudice against in order to misdirect the proceeding. The trial court has all the jurisdiction it needs to order post-conviction DNA testing or to have evidentiary proceedings, including over the "victims" under RCW 2 08.010; .190. This is demonstrated in the reply brief, pages 7-8. So, in mistating the law as to the court's jurisdiction, wrapping herself the the "flag" of societal fear and prejudice regarding both domestic violence and HIV, DPA Winder violated Mr Whitfield's right to due process and equal protection under the Fourteenth Amendment as did Judge Dixon when he denied Mr Whitfield that ability to reply to the State's argument.

Does Ms. Winder's Misconduct Deserve
The Judicial Approbation It Received From Judge Dixon
Or Demonstrate Knowledge Of Spoliation
And Trial Misconduct

The Docket Sheet, (See Exhibit 4, sub num 35-56), clearly demonstrate the State sought blood samples in this action. It also shows that the State sought to have them destroyed, (See Exhibit 4, sub num 166). But, if the original samples have been destroyed this becomes a spoliation case and the Court should order sanctions. In deciding whether to provide a remedy for spoliation, a court's decision must be guided by consideration of (1) the potential importance of the missing evidence and (2) the culpability or fault of the adverse party. Tavai v. Walmart Stores, Inc., 176 WnApp 122, 135, 307 P.3d 811 (2013); Homeworks Const. Inc. v. Wells, 133 WnApp 892, 899, 138 P.3d 654 (2006).

The spoliation of the blood samples should be considered in light of other actions by the Prosecutor's Office. The include knowledge that Mr Whitfield had not been HIV positive when he was in Oklahoma, but the State had asserted to the court he had been. (See Exhibit 6; Exhibit 1). That the Prosecutor's Office had coerced at least one witness into testifying falsely in order to prove intent. (See Exhibit 7). And that the DPA who had prosecuted Mr Whitfield had his contract not renewed by the new elected prosecutor under mysterious circumstances and great political pressure to keep him by special interest groups such as the police guild. (See Exhibit 1). Generally these types of circumstances would allow for sanctions in favor of Mr Whitfield. See Homeworks Const. Inc. v. Wells, 133 WnApp at 898-99 The

federal courts take a similar approach, including dismissal. See e.g., Leon v. IDX Sys. Corp., 464 F3d 951, 958-962 (9th Cir. 2006)(collecting cases on sanctions for different levels of culpability when spoliation occurs.).

The State Opened The Door
For Spoliation Analysis In This Case

We can look to DPA Winder's misconduct during argument. While she fails to address any of the issues before the court she does try to misdirect the court allowing for this broader review. See e.g., Napue v. Illinois, 360 264 269 (1959),

"[I]t is established that a conviction obtained through false evidence, known to be such by the representatives of the State, must fall under the Fourteenth Amendment. [collecting cases]. . The same result obtained when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. [collecting cases].'. . 'It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and if it is in any way relevant to the case, the [prosecuting] attorney has the duty to correct what he knows to be false and elicit the truth."

This places an affirmative obligation on Ms Winder to correct rather than obfuscate during this proceeding. The failure for Ms. Winder to do so deserves the harshest sanctions this court can issue to include an evidentiary hearing on the blood samples, Mr Whitfield's medical condition in Oklahoma, and witness testimony as to coercion.

3. Did Judge Dixon
Abuse His Discretion?

The basic standard for if a petitioner should be granted postconviction DNA testing under RCW 10 73.170 is an objective one that Mr Whitfield clearly met the standard for. But, the light this standard must be viewed under is stated in State v. Crumpton, 181 Wn2d 252 264 332 P.3d 448 (2006),

"[T]he standard for postconviction DNA testing was properly articulated in Riofta to include a presumption in favor of the convicted individual. The trial court must look to whether DNA results, in conjunction with other evidence from the trial, demonstrate the individual's innocence on a more probable than not basis, assuming the DNA results would be favorable to the convicted individual."

As in Crumpton, Judge Dixon disregarded and failed to apply the objective standard set forth in RCW 10.73.170 and its presumption of favorable results. So, by definition the court abused its discretion in the same manner as our Supreme Court ruled in Crumpton requiring reversal. Additionally, as argued above his ruling was both manifestly unreasonable and made for untenable reasons or on untenable grounds.

III. CONCLUSION

3.1 Judge Dixon violated the appearance of fairness doctrine requiring new proceedings in front of a different judge.

3.2 The State violated Petitioner Whitfield's rights to due process and equal protections under the Fourteenth Amendment by misdirecting the court with argument it knew or should have known was in error of law and fact regarding Mr Whitfield's hearing on his motion for postconvict DNA testing, and while arguing for its previous alternative means conviction when it knew or should have known about the spoliation, witness coercion, and false argument but failed to correct the records as required by Napue.

3.3 Judge Dixon violated Mr Whitfield's rights to due process and equal protections under the Fourteenth Amendment by denying him the ability to reply to Ms Winder's oral argument providing for an incomplete proceeding and a insufficient record by which the appellate court to make ruling on the merits without an evidentiary hearing to flesh out the record. Thus Judge Dixon's ruling was both made for untenable reasons or on untenable ground but was also manifestly unreasonable.

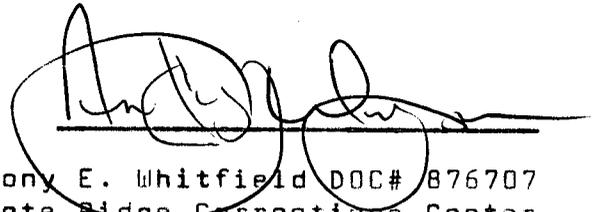
3.4 The State spoliated blood evidence material to accurate testing under RCW 10.73.170 and the appellate court should order an evidentiary hearing in order to dealing with the issues of spoliation, witness coercion, and false argument tainting the trial and demonstrative to Mr Whitfield's innocence regarding the DNA of the State's alternative means by "intent" conviction.

IV. OATH

I, Anthony E. Whitfield declare under penalty of perjury under the laws of the State of Washington the foregoing is true and accurate to the best of my knowledge.

Dated this 23rd day of May, 2017 at the Coyote Ridge Corrections Center, Connell, Washington.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anthony E. Whitfield', is written over a horizontal line. The signature is stylized and somewhat cursive.

Anthony E. Whitfield DOC# 876707
Coyote Ridge Corrections Center
PO Box 769: BB-15
Connell, WA. 99326-0769

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION TWO

State of Washington,
Respondant,

No. 49469-8-II

v.

DECLARATION OF:
ANTHONY E. WHITFIELD

Anthony E. Whitfield,
Appellant.

I, Anthony E. Whitfield, under penalty of perjury under the laws of the State of Washington do hereby declare and say that:

1. I am the Appellant/ Petitioner in the above referenced action, over the age of 18 years old, competent to testify as to the fact contained herein, and make this declaration in support of my Statement of Additional Grounds For Review made pursuant to RAP 10.10 in the above-referenced action.

2. In my hearing for post-conviction DNA test pursuant to RCW 10.73.170 held on Aug. 31, 2016 Judge Dixon used an irregular process in that he allowed me to present my case in major, then the state presented their case. But instead of allowing me to reply to the state's argument he cut me off and said he was ready to make ruling. I have since found that Judge Dixon uses this

process in all cases involving inmates against the state. I believe it denies even the appearance of fairness, demonstrates bias through predetermination, and denied me a complete hearing process and record hindering accurate appellate review. (See also Exhibit 2).

3. The State of Washington has supplied a statutory procedure allowing me as a convicted felon the ability to seek post-conviction DNA testing to challenge their conviction using an objective standard laid out in RCW 10.73.170. (See Exhibit 3).

4. As part of the underlying action which I seek relief from the State had blood draws taken from me and from the alleged victims, (See Exhibit 4, sub nums 35, 36). The State also issued material witness warrants regarding victims and sought their arrest, (See Exhibit 4 sub nums 81, 82). And, it appears that the State also sought to, and had the blood evidence destroyed, (See Exhibit 4 sub num 166). But now claims no knowledge of the blood draw or the destruction of samples.

5. The attorney for the State, Deputy Prosecuting Attorney Winder presented argument to the court she knew or should have known was untrue and affected my right to receive the benefit of the objective standard set forth in RCW 10.73.170, and to receive post-conviction DNA testing to demonstrate my innocence. (See Exhibit 5, pages 6-8).

6. During the original action there was evidence taken by the police which demonstrates that there was medical evidence that I was not HIV positive when I was in Oklahoma and would indicate that I was not the person who "exposed" the victims to HIV but had previously had a false positive, (See Exhibit 6). But despite this evidence the State argued that I was HIV positive in Oklahoma as evidence as to intent regarding "exposure" for my conviction denying me due process.

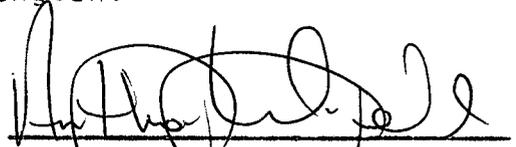
7 The key victim which that State used to establish "intent" has subsequently contacted me and made claims of coercion to testify falsily by the state and other unlawful actions by the State's representatives. (See Exhibit 7).

8. The Deputy Prosecutor who originally tried the case against me has since left employment with the Thurston County prosecutor's Office under mysterious circumstances, which I have heard was in part for witness tampering.

9. I also believe that the state has spoliated evidence that would aid me in demonstrating that I was wrongfully convicted that the appellate court whould allow me to have an evidenciary hearing to determine spoliation, and to challenge the DNA of their alternative means conviction in the alternative because to the State's destruction of evidence.

10. I submitted this Statement of Additional Grounds for Review timely pursuant to GR 3.1 on May 23, 2017, to the COA Division II, by institutional legal mail from the CRCC in Connell, Washington in accordance with institutional legal copy and legal mail policy.

Dated this 20th day of May, 2017 at the Coyote Ridge Corrections Center, Connell, Franklin County, Washington.

A handwritten signature in black ink, appearing to read "Anthony Whitfield", written over a horizontal line.

Anthony Whitfield DOC #876707
Coyote Ridge Corrections Center
PO Box 769: BB-15
Connell, WA. 99326-0769

EXHIBIT

2

(Exhibit 2)

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION TWO

State of Washington,
Respondant,

No. 49469-8-II

v.

DECLARATION OF:
MICHAEL W. WILLIAMS

Anthony E. Whitfield,
Appellant.

I, Michael W. Williams, under penalty of perjury under the laws of the State of Washington do hereby declare and say that:

1. I am not a party to the above referenced action and have no interest in it. I am over the age of 18 years old, competent to testify as to the facts contained herein, and make this declaration in support of the above referenced appellate action.

2. I have advanced dozens of actions against the State of Washington and its agencies on a pro se basis.

3. In virtually every case where I have been the plaintiff (except for those in front of Thurston County Superior Court James Dixon), the Judge has commented on the quality and accuracy of my pleadings and demeanor during oral arguments. Each other

Judge has participated in extensive questioning of both myself and the state's agent regarding our pleadings and argument.

4. In all cases except those in front of Judge Dixon I was allowed to open with my case in major and to orally reply to the state's response. Judge Dixon denied me the ability to reply and immediately cut me off saying he was ready to make ruling. While I frequently disagree with rulings, (some for and some against me), it is only in the two cases in front of Judge Dixon that I felt I was treated unfairly and the Judge was biased.

5. In my position as a law clerk at the CRCC law library I come in contact with several dozen inmates every day regarding legal actions. In discussing matter with them my experience with Judge Dixon is not unique but appears to be his regular practice with inmate litigants. I now believe that there is no way that Judge Dixon will ever allow an inmate petitioner to win an action. Given this I have since filed affidavit of prejudice in cases assigned to him and will continue to do so in the future.

Dated this 21st day of May 2017 at the Coyote Ridge Corrections Center, Connell, Washington.



Michael W. Williams DOC# 882945
Coyote Ridge Corrections Center
PO Box 769: 88-28
Connell, WA. 99326-0769

EXHIBIT

3

(Exhibit 3)

RCW 10.73.170

DNA testing requests.

(1) A person convicted of a felony in a Washington state court who currently is serving a term of imprisonment may submit to the court that entered the judgment of conviction a verified written motion requesting DNA testing, with a copy of the motion provided to the state office of public defense.

(2) The motion shall:

(a) State that:

(i) The court ruled that DNA testing did not meet acceptable scientific standards; or

(ii) DNA testing technology was not sufficiently developed to test the DNA evidence in the case; or

(iii) The DNA testing now requested would be significantly more accurate than prior DNA testing or would provide significant new information;

(b) Explain why DNA evidence is material to the identity of the perpetrator of, or accomplice to, the crime, or to sentence enhancement; and

(c) Comply with all other procedural requirements established by court rule.

(3) The court shall grant a motion requesting DNA testing under this section if such motion is in the form required by subsection (2) of this section, and the convicted person has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

(4) Upon written request to the court that entered a judgment of conviction, a convicted person who demonstrates that he or she is indigent under RCW 10.101.010 may request appointment of counsel solely to prepare and present a motion under this section, and the court, in its discretion, may grant the request. Such motion for appointment of counsel shall comply with all procedural requirements established by court rule.

(5) DNA testing ordered under this section shall be performed by the Washington state patrol crime laboratory. Contact with victims shall be handled through victim/witness divisions.

(6) Notwithstanding any other provision of law, upon motion of defense counsel or the court's own motion, a sentencing court in a felony case may order the preservation of any biological material that has been secured in connection with a criminal case, or evidence samples sufficient for testing, in accordance with any court rule adopted for the preservation of evidence. The court must specify the samples to be maintained and the length of time the samples must be preserved.

[2005 c 5 § 1; 2003 c 100 § 1; 2001 c 301 § 1; 2000 c 92 § 1.]

NOTES:

Effective date—2005 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2005]." [2005 c 5 § 2.]

Construction—2001 c 301: "Nothing in this act may be construed to create a new or additional cause of action in any court. Nothing in this act shall be construed to limit any rights offenders might otherwise have to court access under any other statutory or constitutional provision." [2001 c 301 § 2.]

Report on DNA testing—2000 c 92: "By December 1, 2001, the office of public defense shall prepare a report detailing the following: (1) The number of postconviction DNA test requests approved by the respective prosecutor; (2) the number of postconviction DNA test requests denied by the respective prosecutor and a summary of the basis for the denials; (3) the

number of appeals for postconviction DNA testing approved by the attorney general's office; (4) the number of appeals for postconviction DNA testing denied by the attorney general's office and a summary of the basis for the denials; and (5) a summary of the results of the postconviction DNA tests conducted pursuant to RCW 10.73.170 (2) and (3). The report shall also provide an estimate of the number of persons convicted of crimes where DNA evidence was not admitted because the court ruled DNA testing did not meet acceptable scientific standards or where DNA testing technology was not sufficiently developed to test the DNA evidence in the case." [2000 c 92 § 2.]

Intent—2000 c 92: "Nothing in chapter 92, Laws of 2000 is intended to create a legal right or cause of action. Nothing in chapter 92, Laws of 2000 is intended to deny or alter any existing legal right or cause of action. Nothing in chapter 92, Laws of 2000 should be interpreted to deny postconviction DNA testing requests under existing law by convicted and incarcerated persons who were sentenced to confinement for a term less than life or the death penalty." [2000 c 92 § 4.]

----- CHARGE INFORMATION -----

DEF01 WHITFIELD, ANTHONY EUGENE

RS	CNT	RCW/CODE	CHARGE DESCRIPTION	DV INFO/VIOL.	RESULT
				---DATE---	--DATE--
		10.99.020	DOMESTIC VIOLENCE--DEFINITIONS		
NG	19	9A.72.120	TAMPERING WITH A WITNESS	N	03/31/2004
		10.99.020	DOMESTIC VIOLENCE--DEFINITIONS		
G	20	9A.72.120	TAMPERING WITH A WITNESS	Y	04/08/2004
		10.99.020	DOMESTIC VIOLENCE--DEFINITIONS		
G	21	26.50.110(1)	PROTECTION ORDER VIOLATION (GM)	Y	03/29/2004
		10.99.020	DOMESTIC VIOLENCE--DEFINITIONS		
G	22	26.50.110(1)	PROTECTION ORDER VIOLATION (GM)	Y	03/31/2004
		10.99.020	DOMESTIC VIOLENCE--DEFINITIONS		
G	23	26.50.110(1)	PROTECTION ORDER VIOLATION (GM)	Y	04/08/2004
		10.99.020	DOMESTIC VIOLENCE--DEFINITIONS		
	901	NOTEPCN	766788963		

----- APPEARANCE DOCKET -----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
1	03/25/2004	PTR	PRE-TRIAL REPORT	03-25-2004PR
2	03/25/2004	PLMHR6 JDG03	PRELIMINARY APPEARANCE JUDGE RICHARD A. STROPHY CC BALES CR BESWICK	
3	03/25/2004	ADPC	AFFIDAVIT/DECLARATION PROB CAUSE	
3.1	03/25/2004	ORDPCA	ORD DETERMIN PROBABLE CAUSE	
4	03/25/2004	ORECRP	ORDER ESTABLISHING COND. OF RELEASE	
5	03/25/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
5.99	03/25/2004	ORNC	NO CONTACT ORDER	
6	03/25/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
6.99	03/25/2004	ORNC	NO CONTACT ORDER	
7	03/25/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
7.99	03/25/2004	ORNC	NO CONTACT ORDER (SEALED)	
8	03/26/2004	ORSD	ORDER SEALING DOCUMENT (NO CONTACT)	
-	03/26/2004	EXWACT	EX-PARTE ACTION WITH ORDER	
9.99	03/29/2004	RPT	REPORT SAFE TO BE AT LARGE	
-	03/29/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
-	03/29/2004	NOTE	PRELIM CAL	03-29-2004PR
10	03/29/2004	INFO	INFORMATION	
11	03/29/2004	ARRAIGN JDG05	INITIAL ARRAIGNMENT JUDGE RICHARD D. HICKS CC BERNDSON CR BESWICK	
12	03/29/2004	ORECRP	ORDER ESTABLISHING COND. OF RELEASE	
13	03/29/2004	ORSTD ACTION	ORDER SETTING TRIAL DATE *60 DAYS 3-29-04	05-24-2004J9
-	03/29/2004	NOTE	PRETRIAL/OMNIBUS	04-22-20044A
14	03/29/2004	ORSD	ORDER SEALING DOCUMENT (NO CONTACT)	
15	03/29/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
15.99	03/29/2004	ORNC	NO CONTACT ORDER DOM VIOL	
16	04/05/2004	VS	VICTIM STATEMENT	
17	04/06/2004	NTAPR ATD01	NOTICE OF APPEARANCE LANE, CHARLES WILLIAM IV	
18	04/16/2004	LTR	LETTER TO ROSENKRANZ FR COURT	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
18.1	04/19/2004	AMINF	AMENDED INFORMATION FIRST	
19	04/22/2004	MTHRG JDG04	MOTION HEARING JUDGE WILLIAM THOMAS MCPHEE CC MERRITT CR ONEAL	
20	04/22/2004	ORSD	ORDER SEALING DOCUMENT	
21	04/22/2004	ORECRP	ORDER ESTABLISHING COND. OF RELEASE	
22	04/22/2004	MTC	MOTION TO CONTINUE	
23	04/22/2004	DCLR	DECLARATION IN SUPPORT OF MOTION	
24	04/22/2004	ORCNTST ACTION	ORDER FOR CONTINUANCE: STIPULATED *LAST TD 11-24-04	10-25-2004J9
-	04/22/2004	NOTE	PRETRIAL/OMNIBUS	09-09-20044A
25	04/22/2004	AMINF	AMENDED INFORMATION SECOND	
26	04/22/2014	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
26.99	04/22/2004	ORNC	NO CONTACT ORDER DOM VIOL	
27	04/22/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
27.99	04/22/2004	ORNC	NO CONTACT ORDER DOM VIOL	
28	04/22/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
28.99	04/22/2004	ORNC	NO CONTACT ORDER DOM VIOL	
29	04/22/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
29.99	04/22/2004	ORNC	NO CONTACT ORDER DOM VIOL	
30	04/22/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
30.99	04/22/2004	ORNC	NO CONTACT ORDER DOM VIOL	
31	04/22/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
31.99	04/22/2004	ORNC	NO CONTACT ORDER DOM VIOL	
32	04/22/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
32.99	04/22/2004	ORNC	NO CONTACT ORDER DOM VIOL	
33	05/04/2004	OR	ORDER FOR WRITING EXEMPLAR	
-	05/04/2004	EXWACT	EX-PARTE ACTION WITH ORDER	
34	05/04/2004	MT	MOTION WRITING EXEMPLAR	
35	05/04/2004	OR	ORDER FOR BLOOD SAMPLE	
-	05/04/2004	EXWACT	EX-PARTE ACTION WITH ORDER	
36	05/04/2004	MT	MOTION FOR BLOOD SAMPLE	
37	05/04/2004	DCLR	DECLARATION OF J ERIKSON-MULDREW	
38	05/13/2004	NTTRS ACTION	NOTICE FOR TRIAL SETTING TRIAL DATE	10-25-2004J4
39	05/28/2004	PTMHRG JDG04	PRE-TRIAL MANAGEMENT HEARING JUDGE WILLIAM THOMAS MCPHEE CC DONNELLY	
40	06/22/2004	AMINF	AMENDED INFORMATION THIRD	
41	06/24/2004	NGPH JDG04	NOT GUILTY PLEA HEARING JUDGE WILLIAM THOMAS MCPHEE CC DONNELLY CR BEEHLER	
42	06/24/2004	ORECRP	ORDER ESTABLISHING COND. OF RELEASE	
43	06/24/2004	ORSD	ORDER SEALING DOCUMENT	
44	06/24/2014	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
44.99	06/24/2004	ORNC	NO CONTACT ORDER	
45	06/24/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
45.99	06/24/2004	ORNC	NO CONTACT ORDER	
46	06/24/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
46.99	06/24/2004	ORNC	NO CONTACT ORDER	
47	06/28/2004	NTHG ACTION	NOTICE OF HEARING PRETRIAL 11:00 AM	08-27-2004N4
48	07/06/2004	NTHG	NOTICE OF HEARING	08-27-2004

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
		ACTION	PRETRIAL HEARING	
49	08/17/2004	MM	MEMORANDUM RE MT REVOKE PHONE PRIV	
50	08/26/2004	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
51	08/27/2004	MTHRG JDG04	MOTION HEARING JUDGE WILLIAM THOMAS MCPHEE CC DONNELLY CR ONEILL	
52	08/27/2004	STLW	STATE'S LIST OF WITNESSES	
53	08/27/2004	ORRV	ORDER REVOKING PHONE PRIVILEGES	
54	08/27/2004	OOR	OMNIBUS ORDER	10-18-20041A
		ACTION	MOTIONS IN LIMINE	
55	09/09/2004	HCNTPA	CONTINUED: PLAINTIFF/PROS REQUESTED	09-16-20044A
		ACTION	PRETRIAL OMNIBUS* CASEY CC WOODS	
56	09/13/2004	STLW	STATE'S LIST OF WITNESSES 1 SUPLMTL	
57	09/16/2004	HSTKSTP	HEARING CANCELLED: STIPULATED POMEROY CC HERRON	
58	09/23/2004	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
59	10/04/2004	MM	MEMORANDUM IN SUPPORT	
60	10/05/2004	MTL	MOTION IN LIMINE	
61	10/07/2004	OR	ORDER FOR DEPOSITION OF WITNESS	
62	10/08/2004	OR	ORDER FOR DEPOSITION OF WITNESS	
-	10/08/2004	EXWACT	EX-PARTE ACTION WITH ORDER	
63	10/11/2004	MM	MEMORANDUM DEF OPPOS ER 404 EVID	
64	10/11/2004	OB	DEF OPPOSITION STATE MTN IN LIMINE	
65	10/12/2004	OR	ORDER FOR DEPOSITION	
-	10/12/2004	EXWACT	EX-PARTE ACTION WITH ORDER	
66	10/13/2004	WVJTD	WAIVER OF JURY TRIAL BY DEFENDANT	
67	10/13/2004	MTL	MOTION IN LIMINE	
68	10/13/2004	CR	CERTIFICATE OF JUDGE RE WITNESS	
69	10/13/2004	MT	MOTION ISSUE CERTIFICATE	
70	10/13/2004	CR	CERTIFICATE OF JUDGE RE WITNESS	
71	10/13/2004	MT	MOTION FOR CERTIFICATE	
72	10/13/2004	STLW	STATE'S LIST OF WITNESSES 2ND SUPP	
73	10/14/2004	AMINF	AMENDED INFORMATION FOURTH	
74	10/15/2004	SB	SUBPOENA	
75	10/15/2004	DFLW	DEFENDANT'S LIST OF WITNESSES	
76	10/15/2004	SB	SUBPOENA	
76.1	10/15/2004	MTCM	MOTION TO COMPEL	
77	10/18/2004	MTHRG JDG04	MOTION HEARING JUDGE WILLIAM THOMAS MCPHEE CC WOODS CR BEEHLER	
78	10/18/2004	STLW	STATE'S LIST OF WITNESSES 3RD SUPP	
78.99	10/18/2004	CP	COPY OF E-MAIL	
-	10/18/2004	EXWACT	EX-PARTE ACTION WITH ORDER	
79	10/19/2004	MTHRG JDG04	MOTION HEARING JUDGE WILLIAM THOMAS MCPHEE CC WOODS CR BEEHLER	
80	10/19/2004	ORECRP	ORDER ESTABLISHING COND. OF RELEASE	
81	10/19/2004	OR	ORDER FOR MATERIAL WITNESS WARRANT	
82	10/19/2004	WARO	WARRANT: OTHER MATERIAL WITNESS	
82.1	10/20/2004	SHRTBW	SHERIFF'S RETURN ON A BENCH WARRANT	
83	10/22/2004	OR	ORDER ALLOWING COPIES OF NCO	
-	10/22/2004	EXWACT	EX-PARTE ACTION WITH ORDER	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
84	10/25/2004	AMINF	AMENDED INFORMATION FIFTH	
85	10/25/2004	DFLW	DEFENDANT'S LIST OF WITNESSES 2ND	
85.1	10/25/2004	NJTRIAL	NON-JURY TRIAL	12-21-2004N4
		ACTION	SENTENCING HEARING 2:00 PM	
		APT	ACTUAL PROCEEDING TIME	23.75
		JD604	JUDGE WILLIAM THOMAS MOPHEE	
			CC DONNELLY CR BEEHLER	
86	10/25/2004	OR	ORDER ALLOWING COPIES OF NCO AMEND	
-	10/26/2004	TRMIN	TRIAL MINUTES (DAY 2)	
87	10/26/2004	ORECRP	ORDER ESTABLISHING COND. OF RELEASE	
-	10/26/2004	EXWACT	EX-PARTE ACTION WITH ORDER	
88	10/26/2004	ORQBW	ORDER QUASHING BENCH WARRANT	
-	10/26/2004	EXWACT	EX-PARTE ACTION WITH ORDER	
-	10/27/2004	TRMIN	TRIAL MINUTES (DAY 3)	
-	10/28/2004	TRMIN	TRIAL MINUTES (DAY 4)	
89	10/28/2004	AMINF	AMENDED INFORMATION SIXTH	
-	11/01/2004	TRMIN	TRIAL MINUTES (DAY 5)	
90	11/01/2004	MTDSM	MOTION TO DISMISS DEF.	
91	11/01/2004	MM	MEMORANDUM DEF SUPPORT DISMISSAL	
92	11/01/2004	MTL	MOTION IN LIMINE STATE	
93	11/01/2004	RSP	RESPONSE STATE RE MOTION TO DISMISS	
-	11/02/2004	TRMIN	TRIAL MINUTES (DAY 6)	
94	11/02/2004	MMATH	MEMORANDUM OF AUTHORITIES PLA	
95	11/02/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
95.99	11/02/2004	WTRC	WITNESS RECORD	
96	11/03/2004	MM	MEMORANDUM SUPPORT LESSER INCLUDED	
-	11/04/2004	TRMIN	TRIAL MINUTES (DAY 7)	
97	11/04/2004	EXLST	EXHIBIT LIST	
-	11/04/2004	STPORE	STIP&OR RET EXHIBTS UNOPND DEPOSTNS	
-	11/08/2004	TRMIN	TRIAL MINUTES (DAY 8)	
98	11/08/2004	ORECRP	ORDER ESTABLISHING COND. OF RELEASE	
99	11/08/2004	PRSIO	PRESENTENCE INVESTIGATION ORDER	
100	11/08/2004	ORSO	ORDER SEALING DOCUMENT COST BILL	
-	11/08/2004	WTRC	WITNESS RECORD	
-	11/08/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
101	11/30/2004	MM	STATE'S SENTENCING MEMORANDUM	
102	12/09/2004	FNFL	FINDINGS OF FACT&CONCLUSIONS OF LAW	
-	12/09/2004	EXWACT	EX-PARTE ACTION WITH ORDER	
102.1	12/14/2004	MM	DEFENDANT SENTENCING MEMORANDUM	
102.2	12/15/2004	OR	ORDER FOR PAYMENT OF WITNESS COSTS	
103	12/20/2004	PSI	PRE-SENTENCING INVESTIGATION REPORT	
104	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
104.99	12/21/2004	\$WCBA	WITNESS COST BILL ASSESSED	1099.77
105	12/21/2004	SNTHRG	SENTENCING HEARING	
		JD604	JUDGE WILLIAM THOMAS MOPHEE	
			CC DONNELLY CR BEEHLER	
106	12/21/2004	ORSO	ORDER SEALING DOCUMENT	
107	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
107.99	12/21/2004	ORRV	ORDER REVOKING/RESCINDING NCO	
108	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
108.99	12/21/2004	ORRV	ORDER REVOKING/RESCINDING NCO	
109	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
109.99	12/21/2004	ORNC	NO CONTACT ORDER	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
110	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
110.99	12/21/2004	ORNC	NO CONTACT ORDER	
111	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
111.99	12/21/2004	ORNC	NO CONTACT ORDER	
112	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
112.99	12/21/2004	ORNC	NO CONTACT ORDER	
113	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
113.99	12/21/2004	ORNC	NO CONTACT ORDER	
114	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
114.99	12/21/2004	ORNC	NO CONTACT ORDER	
115	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
115.99	12/21/2004	ORNC	NO CONTACT ORDER	
116	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
116.99	12/21/2004	ORNC	NO CONTACT ORDER	
117	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
117.99	12/21/2004	ORNC	NO CONTACT ORDER	
118	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
118.99	12/21/2004	ORNC	NO CONTACT ORDER	
119	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
119.99	12/21/2004	ORNC	NO CONTACT ORDER	
120	12/21/2004	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
120.99	12/21/2004	ORNC	NO CONTACT ORDER	
121	12/21/2004	VOID	VOID-SUB NUMBER VOIDED	
122	12/21/2004	VOID	VOID-SUB NUMBER VOIDED	
123	12/21/2004	CP	COPY OF J&S FROM STATE OF OKLAHOMA	
124	12/21/2004	JDSWC	JDGMT & SENT & WARRANT OF COMMITMT	
125	12/21/2004	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
126	12/21/2004	MTIND	MOTION FOR INDIGENCY	
127	12/21/2004	ORIND	ORDER OF INDIGENCY	
128	12/21/2004	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
129	12/22/2004	LTR	LETTER TO CT APPEALS W/NOTICE	
130	01/04/2005	ORWA	ORDER FOR WITHDRWL OF ATTORNEY	
		WTD02	DOYLE, THOMAS EDWARD	
		WTD03	PETHICK, PATRICIA ANNE	
		ATD04	TILLER, PETER B.	
-	01/04/2005	EXWACT	EX-PARTE ACTION WITH ORDER	
131	01/04/2005	LTR	LETTER TO COA RE ATTORNEY	
132	01/04/2005	NTHG	NOTICE OF HEARING	04-08-20055P
		ACTION	RESTITUTION HEARING	
133	01/07/2005	NTFC	NOTIFICATION OF FELONY CONVICTION	
134	01/10/2005	PNCA	PERFECTION NOTICE FROM CT OF APPLS	
135	01/10/2005	PNCA	PERFECTION NOTICE FROM COA/TILLER	
136	01/14/2005	MT	MOTION TO LIFT NO CONTACT ORDER	
137	01/14/2005	NTHG	NOTICE OF HEARING	01-21-20055P
		ACTION	MOTION TO LIFT NO CONTACT ORDER	
138.99	01/18/2005	ORRV	ORDER REVOKING/RESCINDING NCO	
-	01/18/2005	CNRSE	CONFIDNTL REPORT IN SEALED ENVELOPE	
139	01/21/2005	H5TKSTP	HEARING CANCELLED: STIPULATED	
			TABOR CC HERRON CR JONES	
140	01/24/2005	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
141	01/27/2005	CLP	CLERK'S PAPERS SENT 1-194	
142	01/27/2005	LTR	LETTER TO TILLER W/CLP INDEX	
143	01/27/2005	LTR	LETTER TO CT APPEALS W/1 VOL CLP	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
144	01/27/2005	CLP	CLERK'S PAPERS EXHIBIT INDEX	
145	01/27/2005	LTR	LETTER TO TILLER W/EXHIBIT INDEX	
146	02/03/2005	BL	BILL	
147	02/14/2005	LTR	LETTER TO CT APPEALS W/1 VOL EXH	
-	03/25/2005	VRPT	VERBATIM RPT TRANSMITTED 8 VOL BY CR BEEHLER FOR 10-25-04/10-26-04 10-27-04/10-28-04/11-01-04/11-02-04 11-04-04/11-08-04 HRGS	
148	03/25/2005	LTR	LETTER TO CT APPEALS RE 8 VOL TRAN	
-	03/28/2005	VRPT	VERBATIM RPT TRANSMITTED 1 VOL BY CR BEEHLER FOR 12-21-04 HRG	
149	03/28/2005	LTR	LETTER TO CT APPEALS RE 1 VOL TRAN	
-	04/04/2005	VRPT	VERBATIM RPT TRANSMITTED 1 VOL BY CR BEEHLER FOR 10-18-04 HRG	
150	04/05/2005	LTR	LETTER TO CT APPEALS RE 1 VOL TRAN	
150.1	04/08/2005	HSTKCC	HEARING CANCELLED: COURT'S REQUEST TABOR CC MERRITT	
151	04/08/2005	LTR	LETTER TO CT APPEALS W/8 VOL TRAN	
152	04/08/2005	HSTKSTP	HEARING CANCELLED: STIPULATED (MCPHEE) CC DONNELLY	
153	04/11/2005	LTR	LETTER TO CT APPEALS W/1 VOL TRAN	
154	04/13/2005	NTHG	NOTICE OF HEARING	05-06-20055P
-	04/15/2005	VRPT	ACTION RESTITUTION HEARING VERBATIM RPT TRANSMITTED 1 VOL BY CR O'NEILL FOR 08-27-04 HRG	
155	04/15/2005	LTR	LETTER TO CT APPEALS RE 1 VOL TRAN	
156	04/19/2005	LTR	LETTER TO CT APPEALS W/1 VOL TRAN	
156.1	04/27/2005	ORSR	ORDER SETTING RESTITUTION	
157	04/29/2005	LTR	LETTER TO CT APPEALS W/1 VOL TRAN	
158	05/06/2005	HSTKSTP	HEARING CANCELLED: STIPULATED TABOR CC BALES	
159	08/03/2006	ORNC	NO CONTACT ORDER MODIFIED	
160	03/19/2007	MND	MANDATE AFFIRMING	
161	03/19/2007	RCP	RECEIPT FOR EXHIBIT/UNOPENED DEPOS	
162	09/29/2008	DCSAP	DECISION FROM APPELLATE COURT	
163	06/22/2009	CROF	CERTIFICATE OF FINALITY	
164	03/26/2010	EXRECT	RECEIPT FOR EXHIBIT/UNOPENED DEPOS	
165	03/30/2010	RCP	RECEIPT(S) OPD	
166	04/11/2013	ORDST	ORDER SETTING RESTITUTION	
-	04/11/2013	EXWACT	EX-PARTE ACTION WITH ORDER	
167	04/11/2013	EXRECT	RECEIPT FOR EXHIBIT/UNOPENED DEPOS	
-	08/18/2014	ADM08		

=====END=====

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON,)	
)	COURT OF APPEALS
Plaintiff,)	NO. 49469-8-II
)	
vs.)	THURSTON COUNTY
)	NO. 04-1-00617-5
ANTHONY E. WHITFIELD,)	
)	
Defendant.)	
)	
)	
)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on July 20, 2016, the above-entitled matter came on for hearing before the HONORABLE JAMES DIXON, Judge of Thurston County Superior Court.

Reported by: Aurora Shackell, RMR CRR
Official Court Reporter, CCR# 2439
2000 Lakeridge Drive SW, Bldg No. 2
Olympia, WA 98502
(360) 786-5570
shackea@co.thurston.wa.us

APPEARANCES

For the Plaintiff:

CRAIG JURIS
Prosecuting Attorney
2000 Lakeridge Drive SW
Olympia, Washington 98502

For the Defendant:

ANTHONY E. WHITFIELD
(Appearing pro Se)
(Telephonic appearance)

1 JULY 20, 2016

2 THE HONORABLE JAMES DIXON, PRESIDING

3 * * * * *

4 (Defendant appearing telephonically)

5 THE COURT: The caption before the court is
6 Anthony Whitfield versus State of Washington. The
7 case is actually State of Washington versus Anthony
8 Eugene Whitfield, cause number 04-1-617-5.

9 Mr. Whitfield, good morning.

10 MR. WHITFIELD: Good morning.

11 THE COURT: The court took the bench moments
12 ago and was unaware that Mr. Whitfield was already
13 contacted telephonically. The court has had no
14 conversation off the record other than to express its
15 appreciation to no one in particular regarding the
16 computer being on this morning.

17 Mr. Whitfield is before the court appearing
18 telephonically. Also appearing here in court is
19 Mr. Craig Juris representing the State of Washington.
20 Mr. Juris, good morning.

21 MR. JURIS: Good morning, Your Honor.

22 THE COURT: The matter before the court
23 specifically is Mr. Whitfield's motion pursuant to
24 RCW 10.73.170 for entry of an order allowing for DNA
25 testing. The court has reviewed the entire file,

1 including the motion and amended motions filed by
2 Mr. Whitfield. The court will turn to the moving
3 party in this case, Mr. Whitfield, to make his
4 argument, after which the court will invite Mr. Juris
5 to provide a response on behalf of his client, the
6 State of Washington. Mr. Whitfield, go ahead,
7 please.

8 MR. JURIS: Your Honor, before we do that --
9 and I'm sorry to interrupt, and I'm not going to
10 address any of the facts of this. I just wanted to
11 make the court aware, and I apologize profusely both
12 to the court and to the defendant for this, I was
13 just assigned this file on Friday. I did file a
14 response brief, but it was only yesterday, so
15 Mr. Whitfield has not received a copy of that.

16 THE COURT: Okay.

17 MR. JURIS: I just want to make the court
18 aware of that factor.

19 THE COURT: I appreciate that. Mr. Whitfield,
20 the deputy prosecutor has just advised the court, as
21 you heard, that the State filed a responsive pleading
22 yesterday, and it is now the court's understanding
23 that you have not received a copy of that pleading.
24 If you wish a continuance, the court will grant that
25 continuance so as to allow you an opportunity to

1 receive and review the State's pleading. If you want
2 a continuance for that purpose, the court will grant
3 that request. What's your preference?

4 MR. WHITFIELD: Yes, Your Honor, we can do
5 that.

6 THE COURT: Okay. So the court is going to
7 continue this hearing. The court will ask -- will
8 direct its judicial assistant to determine when the
9 hearing will be, because this court has other
10 responsibilities presiding over the criminal
11 calendar, and, frankly, I don't know when this court
12 has another block of time to consider this motion.

13 So this court this morning is not going to advise
14 the parties of a new date and time for
15 Mr. Whitfield's motion. Rather, this court will
16 speak with its judicial assistant and thereby
17 determine another date and time, and then send
18 appropriate notice to the parties.

19 MR. WHITFIELD: Okay.

20 THE COURT: Okay. Mr. Whitfield, thank you.
21 Mr. Juris, thank you. Unless there is anything else
22 for the court to consider, this court is going to be
23 in recess. Anything further from the State,
24 Mr. Juris?

25 MR. JURIS: Just to inform Mr. Whitfield and

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the court and to make a record, after leaving the courtroom, I will go back to my office, and a copy of the State's response will be mailed to Mr. Whitfield this morning.

THE COURT: Okay. Thank you. Anything from your perspective, Mr. Whitfield?

MR. WHITFIELD: No, Your Honor.

THE COURT: Thank you. Court is in recess.

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, AURORA J. SHACKELL, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

- 1. I reported the proceedings stenographically;
- 2. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;
- 3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and
- 4. I have no financial interest in the litigation.

Dated this 1st day of December, 2016.

AURORA J. SHACKELL, RMR CRR
Official Court Reporter
CCR No. 2439

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON,)
) COURT OF APPEALS NO.
) 49469-8-II
Plaintiff,)
)
vs.)
)
ANTHONY E. WHITFIELD,) SUPERIOR COURT NO.
) 04-1-00617-5
Defendant)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on August 31, 2016,
the above-entitled and numbered cause came on for
hearing before JUDGE JAMES J. DIXON, Thurston County
Superior Court, Olympia, Washington.

Michelle L. Patton, Court Reporter
Certificate No. 2500
2102 Carriage Street SW #C
Olympia, WA 98502
(360)352-2506
michellepattonreporter@gmail.com

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A P P E A R A N C E S

FOR THE PLAINTIFF: MS. MEGAN WINDER
 DEPUTY PROSECUTING ATTORNEY
 2000 LAKERIDGE DRIVE SW, BLDG 2
 OLYMPIA, WASHINGTON 98502

FOR THE DEFENDENT: MR. ANTHONY E. WHITFIELD
 PRO SE

1 August 31, 2016

Olympia, Washington

2 Hon. James J. Dixon, Presiding

3 Appearances:

4 The Defendant; Megan Winder, Deputy Prosecuting Attorney
5 of Thurston County, Representing the State of Washington

6

7 Michelle L. Patton, Court Reporter

8

9

* * *

10 THE COURT: Good morning, everyone.

11 MS. WINDER: Good morning, Your Honor.

12 MR. WHITFIELD: Good morning.

13 THE COURT: The matter before the Court is
14 State of Washington versus Anthony Whitfield. Cause
15 number 04-1-617-5.

16 Mr. Whitfield, are you with us this morning?

17 MR. WHITFIELD: Yes, sir.

18 THE COURT: Good morning.

19 MR. WHITFIELD: Good morning, Your Honor.

20 THE COURT: And representing the State of
21 Washington is Ms. Winder.

22 Ms. Winder, good morning.

23 MS. WINDER: Good morning, Your Honor.

24 THE COURT: Specifically the issue before the
25 Court this morning is Mr. Whitfield's post-conviction

1 motion for DNA. Mr. Whitfield is asking the Court to
2 enter an order, amongst other things, that would
3 require DNA testing. This Court has reviewed the
4 record, and files, including the respective pleadings
5 filed by the parties, regarding this motion.

6 Mr. Whitfield was convicted in the latter part of
7 2014, December -- late December 2004, pardon me,
8 2004, of a variety of convictions, including, but not
9 limited to ten counts of assault in the first degree,
10 domestic violence with sexual motivation, and seven
11 counts of assault in the first degree with sexual
12 motivation.

13 The Court is prepared to hear the arguments of
14 the parties. The Court will hear from Mr. Whitfield,
15 who is the moving party. Then the court will hear
16 from Ms. Winder, representing the State of
17 Washington.

18 Mr. Whitfield, go ahead, please.

19 MR. WHITFIELD: Thank you, Your Honor. And
20 again, good morning, Your Honor; and to you too,
21 Ms. Deputy Prosecutor, Ms. Winder.

22 I have come here today asking for post-conviction
23 DNA testing as pursuant to RCW 10.73.170.

24 Since the state, in their briefing, has
25 mischaracterized both the science involved and the

1 laws, please let me summarize.

2 First, I qualify for testing under the plain
3 language of the statutes. One, I am convicted of a
4 felony and serving a sentence; and two, the DNA
5 testing now will be significantly more accurate than
6 prior testing, and provide significant new
7 information. Three, in my proceedings, I have shown
8 that the DNA is relevant and material as to the
9 identity of the perpetrator; and in this case, who
10 was not. And four, the result is more likely than
11 not to show my innocence, and the State should not
12 fear my results. As such, the Court should order
13 post-conviction DNA testing of the blood the State
14 has forcibly taken from me at the time of my trial.

15 And secondly, the state was wrong as to the
16 science, sir. HIV does, in fact, produce DNA. A
17 fingerprint, so to speak, if the DNA fingerprints
18 aren't the same, then I'm simply not the perpetrator
19 of the crime. Also in epidemiology, you look also to
20 the disease progression. And the State is already in
21 possession of information that one of the alleged
22 victims was the one who knowledgeably gave it to me,
23 because the State is the one who informed me.

24 And third, the state has knowledge that it drew
25 blood samples from all involved, and has an

1 affirmative duty to preserve them.

2 If they deny the blood was drawn, we can simple
3 subpoena the victims, and ask them, under oath, at a
4 reference hearing.

5 If the state destroyed the blood reference, we
6 still need a reference hearing for other purposes,
7 including Mr. Bruneau's misconduct in this case.

8 I think that sums it up, Your Honor.

9 THE COURT: Thank you.

10 Ms. Winder.

11 MS. WINDER: Your honor, first as a threshold
12 issue -- and I know the Court is probably more
13 familiar with the rules in appellate procedure than I
14 am. But based on the rules of appellate procedure, I
15 believe there was already an appeal that occurred in
16 this case, and a mandate that was handed down
17 affirming the conviction. I believe this would be a
18 personal-restraint petition.

19 However, if the Court is hearing this case on
20 merits, I would point the Court towards the findings
21 of fact and conclusions of law in this case.

22 The State had an opportunity last night to review
23 the -- peruse the court file; and I took a look at
24 the findings of fact and conclusions of law entered
25 by Judge McPhee on December 9, 2004.

1 As Mr. Juris identified in his briefing, the
2 statute under which the defendant was convicted,
3 specifically RCW 9A.36.011 indicates the defendant is
4 guilty if he administers, exposes, or transmits to,
5 or causes to be taken by another, poison, the Human
6 Immunodeficiency Virus as defined, et cetera.

7 At this point, Your Honor, when I looked at the
8 findings of fact and conclusions of law, there is no
9 indication in there that the defendant was convicted
10 based on the transmission. In fact, quite the
11 opposite.

12 Judge McPhee indicated in findings of fact,
13 sections 43 to 60, that the defendant acted with the
14 intent to expose each one of the identified victims
15 to HIV. There is no indication that transmission was
16 the basis for the conviction. As such, the
17 defendant's request is moot: It does not matter at
18 this point whether or not the DNA from -- even if
19 there is DNA in an HIV strain, which there has been
20 no scientific evidence to demonstrate that to the
21 Court, there is no basis for it, based upon the
22 findings of fact entered by the bench in the bench
23 trial. Unlike with the jury trial, Your Honor,
24 findings of fact are entered, so we do know what the
25 judge was thinking; we know the factual and the legal

1 analysis that the Court went through, in order to
2 find the defendant guilty beyond a reasonable doubt.

3 The State stands behind the other reasons
4 indicated in Mr. Juris' brief, not the least of which
5 at this point, the Court has no jurisdiction over the
6 victims. And this is an opportunity for continued
7 domestic violence, potentially, against these
8 victims, continued power and control. The State is
9 very concerned about that.

10 So I would ask the Court to deny the defendant's
11 motion, based on indications in the State's brief,
12 and based on the findings of fact and conclusions of
13 law entered by Judge McPhee on December 9, 2004.

14 THE COURT: Thank you. The Court is ready to
15 rule.

16 As the Court mentioned, when the Court took the
17 bench this morning, the Court has reviewed the file,
18 including the findings of fact, conclusions of law
19 that were entered by the trial court, and the charges
20 contained within the fifth amended information.

21 The information alleged that Mr. Whitfield, with
22 intent to -- with intent, either administered,
23 exposed or transmitted.

24 The findings of fact entered by the Court
25 included findings that Mr. Whitfield exposed, as

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)

COUNTY OF THURSTON)

I, Michelle L. Patton, CCR, Reporter of the Superior Court of the State of Washington, in and for the County of Thurston, do hereby certify:

That I was authorized to and did stenographically report the foregoing proceedings held in The above-entitled matter, as designated by counsel to be Included in the transcript, and that the transcript is a true and complete record of my stenographic notes.

Dated this 15th day of December, 2016.

Michelle L. Patton, CCR
Court Reporter
Certificate No. 2500

Olympia Police Department

- Suspect
- Victim
- Witness

Case # 04-2072

Date of Statement: 4/1/04

Time of Statement: 0820

Name of Person Being Interviewed: P [REDACTED] E [REDACTED]

Date of Birth: 12 [REDACTED] /35

Address: [REDACTED], Everely, Oklahoma

Interviewing Officer/Detective: Detective Paul Lower

Location of Interview: Via telephone

- 1 Q P [REDACTED], do you understand this statement is being recorded?
- 2 A Yes I do.
- 3 Q Okay and is this with your consent?
- 4 A Yes it is.
- 5 Q Could you please state and spell your full name for the tape recorder?
- 6 A My name is P [REDACTED] E [REDACTED] P [REDACTED] - E [REDACTED]
- 7 Q Okay do you have a middle initial mam?
- 8 A No I don't.
- 9 Q And what is your date of birth?
- 10 A 12 month, [REDACTED] '35 (12 [REDACTED] /35)
- 11 Q Okay and your home address?
- 12 A [REDACTED]
- 13 Q And that's in the state of Oklahoma?
- 14 A I'm in [REDACTED], Oklahoma.
- 15 Q Okay and what's your zip code out there?
- 16 A 73127
- 17 Q Okay and your home phone number, is that where I'm calling you at?
- 18 A It's [REDACTED]
- 19 Q Okay now we've talked about your grandson, Anthony or Tony...
- A Uh-huh (yes).

1 Q A little bit and you told me that when Tony was nine years old is when he first moved in
2 with you?

3 A Yes he was.

4 Q Okay and at the time he moved in, did he...did he have any disabilities or mental health
5 issues at that time?

6 A I couldn't see 'em but he had some kind of mentally problem as a youngster.

7 Q In fact at age 12, what happened at age 12?

8 A At age 12, I sent him to a place here called "Normal"

9 Q Normal?

10 A N O R M A N

11 Q Okay.

12 A It's a house for the mentally that graduates people with a problem.

13 Q Okay and he was there for how long?

14 A Thirty days.

15 Q Thirty days and did they diagnose him with any sort of disability or mental health issue?

16 A No. The only thing they say that this young man had a very strong hate, deep down in
17 him.

18 Q Okay and at some point after that, he moved to Lawton, Oklahoma to live with...

19 A Yes with his father.

20 Q With his father and then he returned back to your place?

21 A Yes within about three months.

22 Q In about three months and he lived there roughly till he was about 19 years old?

23 A Yes he did.

24 Q Okay and then he began moving in with other family members?

25 A Yes he did.

26 Q Okay and so about four and a half years ago is when you think he came up towards the
State of Washington?

- 1 A Yes he did.
- 2 Q Okay and at some point, did he tell you if he was HIV positive when he lived with you in
3 Oklahoma?
- 4 A No. I found out when he was incarcerated.
- 5 Q Who told you that?
- 6 A Tony called me from there.
- 7 Q From jail?
- 8 A Yeah.
- 9 Q Okay.
- 10 A Screaming and hollering an....
- 11 Q What did he tell you?
- 12 A He said "Grandma, I'm HIV" and it slipped me really from there I really don't know.
- 13 Q Okay about when was that. Do you remember?
- 14 A Um, no, I can't, I don't know what month?
- 15 Q Do you know how old he was roughly?
- 16 A He was 19, 20, or 21.
- 17 Q Okay and so he told you that the penal institution had informed him that he was HIV
18 positive?
- 19 A Yes they said when he came in he was negative. When he went to get a checkup
20 concerning a job down there cooking, is when they found that he was HIV.
- 21 Q Okay and at some point, when he was released, he went to a hospital?
- 22 A No, he came here.
- 23 Q He came to your place?
- 24 A Yes he did.
- 25 Q I'm sorry and he had an appendix problem?
- 26 A Yes he did.

1 Q And then he had to go to a hospital for that problem?

2 A Yes he had to go to Baptist Hospital here and have surgery.

3 Q And Baptist Hospital, is that in Oklahoma?

4 A Oklahoma City, Oklahoma.

5 Q Okay and is that like a big public hospital?

6 A Yeah, yes, it's a huge hospital.

7 Q So he went there for his appendix and what happened while he was there?

8 A Yes.

9 Q And what happened while he was there?

10 A They kept him overnight there.

11 Q Sure.

12 A Cause he had no insurance...

13 Q Sure...

14 A ~~And the doctor came in the second date and said "young man, Mr. Whitfield" one of was~~
15 ~~used, "who told you that you were HIV?" The clinic there, ----- He said~~
16 ~~"You're not HIV." He said "whoever told you that you need to sue them."~~

17 Q ~~And so the doctor indicated to Tony that he was in fact not HIV?~~

18 A No he wasn't.

19 Q And that...okay...and he told Tony to get a hold the institution that he was in and file
20 suit...

21 A He started out but we never did finish it?

22 Q Okay did you guys contact an attorney or how did you guys start off?

23 A I called someone here, I think it was ----- Porter

24 Q ----- Porter.

25 A He's a black lawyer.

26 Q Uh-huh (yes).

1 A And at that time I think he was out for money is the way he acted and financially we
2 wasn't able.

3 Q All right.

4 A And Tony ----- somebody, I can't think who that was.

5 Q Okay and....

6 A He just stopped it ----- cause he was grown and I figured it he wanted to do it,
7 you know, he had to do it cause I wasn't there. I was there when the doctor told him
8 that...that's the only place I've been with Tony.

9 Q Okay and didn't you tell me that was about the same time that Magic Johnson was
10 diagnosed?

11 A They was diagnosed together and I have a very religion daughter that was here with me
12 doing that time...

13 Q Uh-huh (yes).

14 A And she said "Mom," she said "God will heal Magic Johnson and Tony" those are the
15 words that she said.

16 Q Okay.

17 A And ah, he wasn't ever, you know, to my knowledge been HIV while he was here.

18 Q Okay and do you remember what penal institution he was in that told him he was HIV
19 positive?

20 A Let's see...I'm gonna say McCloud...

21 Q McCloud...

22 A McCloud, it's near Oklahoma City, a little tiny town.

23 Q Okay is that the county for Oklahoma City...McCloud?

24 A Yes.

25 Q Okay

26 A -----

27 Q Well I think that's all my questions. Is there anything else that you think that's important
28 while we have a statement going here?

A No, will you let him know that I called please?

1 Q Yes, let me turn this tape recorder off and I'll fill you in on all that here.

2 A Okay.

3 Q So I'm gonna stop the tape. It's now 8:26 roughly Pacific Coast Time.

4 Transcribed: PVL:kc

EXHIBIT

7

7

(Exhibit 7)

Hi Baby -

I couldn't find a pen
in the whole house! I
hate pencils. lol ☺

Your letters are so sweet,
I miss you so bad.
I never got over you,
and believe us talking
is GOD's plan daddy. I
I needed so bad to
talk to you, I need
some hope in this
fucked up world. Half
the time I don't even
want to be here! And
I could imagine how
you feel. I'm gettin you
out, I'm us angel...

~~Can it be a part of~~
~~your appeal?~~ Fuck that,
I was in shock and
they really made that
trial what they wanted
it to be. 20 something
people against you? Are
you fucking serious!

Hi Baby -

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in this whole house! I
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Your letters are so sweet,
I miss you so bad.
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I could imagine how
you feel. I'm getting you
out, I'm ur angel...

Can it be a part of
your appeal? Fuck that,
I was in shock and
they really made that
trial what they wanted
it to be. 20 something
people against you? Are
you fucking serious!

-2-

They really made me
say that, can't...
I'll take care of it,
I got you my love.

I never loved any man
like I love you. I'll
wish I could take
care of you on your
birthday... you love
my mouth on your
big dick, I loved
fucking you, kissing
you, hugging you. I
love everything about
you. I hate all these
bitches, especially
Nasty Webe, the dumb
whole."

I'm very close to God
now, and I believe
he got a plan for us.
I just asked for a
rainbow, if you're gonna
get out. It took 15 minutes,
but there's a bright
one outside." Thank
you Lord for bringing
me back to my
soul mate...

Daddy - I hate it here!
I have bitch ass
ladies at my door
tryin to fight me cause
the kids fight outside.
And their husbands
try to talk to me, it's
psycho - I'm moving!

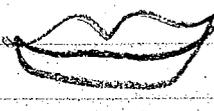
You bout to come live
with me and put
these niggas in check.

Gotta go to bed baby -

XOXO

XOXO

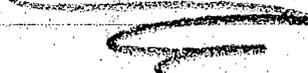
XOXO

kiss 

I Love You

Soooo Much

I Need You


Wifey

FILED
COURT OF APPEALS
DIVISION II

DECLARATION OF MAILING

2017 MAY 30 AM 10:03

GR 3.1 RE: COA # 44469-8-II

I, Anthony J. Sheffield on the below date, placed in the U.S. Mail, postage prepaid, B2 envelope(s) addressed to the below listed individual(s):

Washington Court of Appeals II
950 Broadway #300
Tacoma, WA. 98402-4454

Thurston County Prosecutor's Office
2000 Lake Road Dr SW
Olympia, WA. 98502-6090

John A Hayes,
attorney at law
1402 Broadway
Longview, WA. 98632

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. Statement of Additional Grounds for Review
2. _____
3. _____
4. _____
5. _____
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 23rd day of May, 2017, at Connell WA.

Signature [Handwritten Signature]