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COURT OF APPEALS
DIVISION II

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COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

BY _____
DEPUTY

STATE OF WASHINGTON)	No. 49794-8-II
)	
V.)	STATEMENT OF ADDITIONAL
)	GROUND RAP 10.10
WILLIAM ALVAREZ-CALO)	
)	

A. IDENTITY

William Alvarez-Calo hereby brings forth this Pro Se Statement of Additional Grounds for review.

B. GROUNDS AND ARGUMENT

GROUND ONE

i. Calo contends that his trial counsel was deficient for not obtaining a "Cultural Competency Evaluation" prior to proceeding with pretrial matters.

ii. During pre-trial matters, such as the 3.5 hearing, defense counsel challenged statement(s) that Calo had made to police including his eventual Miranda waiver. Following arguments from counsel, the court analyzed the information under the "Totality of the Circumstances" test. Initially the trial court GRANTED suppression. RP 516-525 22. The State

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pm 1/16/18

however, recognizing that defense counsel had mistakenly emphasized and provided briefing for the fact that police had probable cause to arrest and charge Calo after the initial interview, successfully pointed out that in the context of Miranda waiver's it is "Custody" that controls. The court therefore reversed itself and GRANTED the states motion for reconsideration. RP, 1085 - 1115 at 8.

iii. Despite the fact that appellant can and will point to the record establishing that he was in fact "in custody", Calo asserts that the failure to obtain the "Cultural Competency Evaluation" deprived the court from considering relevant facts toward the "Totalilty of the Circumstances". These relevant factors such as his foreign-born status, lack of understanding of the English language, and his admitted "dyslexia syndrome" (RP, 1113 at 24. THE COURT: "Hold on a second, I'm going to -- there was testimony that Mr. Calo was dyslexic."), would have shed light on such questions as why Calo would try to talk to police without an attorney and possibly why he would feel compelled to continue to answer their questions.

RP, 2559 at 18. DETECTIVE LES BUNTON/BY MS. GOODMAN (DIRECT):

Q. "Once those warrants had been served and those folks had been arrested, what was going on with the murder case?"

A. "Still running down any possible leads, which we didn't have any at that point, and just going back over the information that we had."

Q. "At some point did you get a lead?"

A. "Yes."

Q. "How did that happen?"

A. "My wife works for Lakewood Municipal Court. She gave me a call and said a defense attorney by the name of Kristen Fay said there was an inmate at the Pierce County Jail who was wanting to give information on a homicide."

Q. "Did they specify what homicide they wanted to give information on?"

A. "Yes. Said it was the one in Chocolate City, and that's the springbrook or McChord gate area of Lakewood."

Q. "Once you got the information that there was somebody who wanted to talk about this, what did you do?"

A. "I contacted -- well, I found out who the inmate was."

Q. "Okay, and who was the inmate?"

A. "That was William Alvarez-Calo."

iv. This line of questioning and testimony goes on to detail how this detective took "custody" of Calo and arranged for his transport to the police station. Though this testimony about whether Calo was in custody is not entirely part of the argument of why he should have been afforded a "Cultural Competency Evaluation", Calo is somewhat required to show how but for counsel error the outcome would have differed.

v. Although Calo is not necessarily alleging that he was mentally incompetent, ordinarily a post-conviction allegation that a condemned convict is incompetent, must be both raised and proved by the convict to overcome the presumption of

competency. *State v. Harris*, 114 Wn.2d 419, 789 P.2d 60 (1990). A person accused of a crime is held to be legally competent in Washington if he is "capable of properly understanding the nature of the proceedings against him and if he is capable of rationally assisting his legal counsel in the defense of his cause." RCW 10.77.010(6). Washington Law affords somewhat greater protection RCW 10.77.050. "The defendant was required to have both an intellectual and emotional appreciation of the ramifications and consequences of the crime charged." *State v. Gwaltney*, 77 Wn.2d 906, 468 P.2d 433 (1970).

vi. More recently, Washington courts have recognized that cultural competency evaluations are necessary if "it is apparent that the defendant struggled with the dynamic of being questioned through an interpreter." *State v. Ortiz-Abrego*, 187 Wn.2d 412, 413 (2016), citing *Sisouvanh*, 175 Wn.2d 607, 290 P.3d 942 (2012).

vii. Calo however, raises this issue in the context of an ineffective assistance of counsel claim. "When defense counsel knows or has reason to know of a defendant's incompetency, tactics cannot excuse failure to raise competency at any time 'so long as such incapacity continues'." In *Re Pers. Restraint of Fleming*, 142 Wn.2d 853, 867 P.3d 610 (2001), (Quoting RCW 10.77.050). To prevail on a claim of IAC, a defendant must show that his counsel's performance both fell

below an objectively reasonableness, and that the deficient performance prejudiced his trial. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). To establish prejudice, a defendant must show a reasonable probability that the outcome of the trial would have been different absent counsels deficient performance. State v. Thomas, 109 Wn.2d 222, 226 743 P.2d 816 (1987).

viii. It is without question that had Calo's statement(s) to police been suppressed, the outcome of the trial would have been different. RP, 378 at 5. DETECTIVE CATLETT (CROSS)

Q. "The murder occurred on November 12, 2012, and you had no leads by February 11, 2013?"

A. "That's correct."

ix. In the state of Washington the standard of review with regard to incriminating statements and custodial interrogations is the "totality of the circumstances" test. "Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived." Moran v. Burbine, 475 U.S. 412, 421, 106 S. Ct. 1135, 89 L.Ed.2d 410 (1986), (Quoting Fare v. Michael C., 442 U.S. 707, 725, 99 S. Ct. 2560, 61 L.Ed.2d 197 (1979) (emphasis mine)).

x. Calo's argument is that a **"Cultural Competency Evaluation"** would have provided relevant factors to establish whether Calo had in fact, the **"Requisite Level of Comprehension"** which ultimately would have been considered towards the **"Totality of the Circumstances"**, in deciding whether or not the court should uphold it's original suppression of Calo's statement(s). Calo was most certainly in custody, but he sought out the police. Calo was "minimally" advised not to go talk to the detectives, but shrugged it off. Despite incriminating himself at the first interrogation, police put the leash on him and let him run, sweeping up as much drug cartel info they could obtain. Then after multiple recorded statement(s) and interview(s), detective brought in the Miranda warnings while Calo was in the detectives car, in the front seat, and with no handcuffs on. This is typical TWO-STEP interrogation tactics which Calo raises in a separate Ground. Calo did not have the requisite level of comprehension and was taken advantage of.

xi. Calo requests that the court reverse his conviction(s) and ORDER a new trial where he can obtain a cultural competency evaluation. In the ALTERNATIVE, Calo would request a REMAND to obtain a cultural competency evaluation and a new 3.5 where the court could consider the additional relevant factors.

GROUND TWO

i. Calo contends that it was reversible error for the trial Judge to rely on his past experience and memory from two (2) previous trials involving Calo's codefendant's, to essentially provide testimony and make rulings on pre-trial evidentiary challenges. (ER 605).

ii. Superior Court Judge Cuthbertson, initially put both parties on notice by making a record that the court was not sure if it was an advantage or disadvantage having already heard the case twice. RP, 10 at 19.

iii. Judge Cuthbertson's bias becomes evident during the 3.5 hearing when defense counsel was challenging Mr. Calo's statement(s) to police. The following testimonial exchange took place between Judge Cuthbertson, defense counsel Emily Gause and, defense attorney Les Tolzin: RP, 484 at 23.

THE COURT: "No, I just fingered Yeto. I'm free. I'm out. Got it. Perfect. I want to get out. I will finger Yeto. Now I'm out. Oh, good, with my gun. With my dope. Go where I want to go. Come and pick me up. And, hey, by the way, give me some more money, would you, 'cause I'm running out of the money you gave me, 'cause I got other things to do when I finish this interview like go shopping, because I'm free to leave, because I fooled the heck out of everybody."

MS. GAUSE: "Well, It's pretty clear the detective's didn't think that."

RP, 507 at 8.

THE COURT: "Does his motive matter, Ms. Gause?"

MS. GAUSE: "Does Mr. Alvarez-Caló's motive matter?"

THE COURT: "Yeah."

MS. GAUSE: "yes and no."

THE COURT: "Okay."

MS. GAUSE: "In terms of was he in custody, was he free to leave --"

THE COURT: "His motive. His motive."

MS GAUSE: "Thats not the question and thats not what the case law --"

THE COURT: "Well, I'm asking you does it matter, okay?"

MS. GAUSE: "Your Honor, I believe that --"

THE COURT: "Ms. Gause, if I'm bound and determined to take over a drug operation and the way I do that is to finger Mr. X so you take him away for murder, does that matter if it's that or is I'm just dying to get out of jail?"

MS. GAUSE: "There's no fact's in evidence --"

THE COURT: "I'm just asking a hypothetical question."

MS. GAUSE: "That's pure speculation."

THE COURT: "Does motive matter?"

MS. GAUSE: "Your Honor --"

THE COURT: "Because if I'm really motivated and I'm going to put the finger on Mr. X and the lawyer has said don't do it, don't talk to the cop's, why don't you wait or whatever. I mean, does motive matter?"

MR. TOLZIN: "No."

RP, 509 at 19

THE COURT: "Sure it was, I mean, there was testimony that Mr. Jacinto say's, no, that wasn't the problem. It wasn't -- It wasn't Yeto and Juanito, It wasn't Yeto and Borrego, It wasn't Yeto and Marteen, It was Willie Calo got iced out -- let me finish - by Yeto, and he's pissed and he wanted to put the finger on Yeto."

MS. GAUSE: "Jacinto did not testify to that your Honor."

***IT SHOULD BE NOTED FOR THE COA, THAT MR. JACINTO
DID NOT TESTIFY AT ALL IN THE 3.5 HEARING***

THE COURT: "Well, I mean, that was the testimony and it was hearsay, but that's what changed their view. Because all of a sudden it wasn't just about driving a car, It was like, oh, my god, these guy's have a real beef."

iv. Judge Cuthbertson was not just asking a hypothetical question as he states. The information he was testifying to and the testimony from Jacinto he was referring to, was all from the previous trials involving Calo's codefendants. As defense counsel Ms. Gause stated: "Your Honor, there's no fact's in evidence." Judge Cuthbertson's memory should not have been considered towards the totality of the circumstances.

v. "The degree to which a Judge relies on his or her own personal experience on the record in the course of trial can also implicate ER 605." In Re Estate of Hayes, 185 Wn. App. 567, 342 P.3d 1161 (2015). ER 605 provides: "The Judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point." "A judge may testify at a post-trial hearing concerning a trial over which she presided; however, the Judge may not preside over such a hearing." Farrow v. United States, 580 F.2d 1339, 1342 (9th Cir. 1978); State v. Stein (In Re Stein), 94 Wn. App. 616, 972 P.2d 505, 510 (1999). "A Judge May not rely on his own observations outside of court or recollection of prior testimony from a different proceeding that is not in the record." Vandercook v. Reece, 120 Wn. App. 647, 83 P.3d 206 (2004). "Accordingly, the Judge who would offer his or her own

memory of oral testimony given at a different trial must testify as a witness, and he or she is not permitted to do that in a proceeding over which he or she is then presiding." United States v. Berber-Tinoco, 510 F.3d 1083, 1089-93 (9th Cir. 2007). cert denied. 555 U.S. 850 (2008).

vi. The testimony about taking over a drug operation was taken straight from the codefendant's defense presented at their trial's. Because the state, (most likely strategically), put the cart before the horse and tried the principals in the crime first, this allowed them to point back and put the blame on the snitch. Cuthbertson was unable to ignore his own memory.

vii. Calo contends that this was reversible error and requests that his conviction(s) be reversed and that he be afforded the opportunity to challenge his statement(s) before a fair and neutral Magistrate.

GROUND THREE

i. Calo contends that it was reversible error not to strike the entire testimony of witness Jiffary Mendez after the state had taken Mr. Mendez, during a recess in his direct examination, out into the hallway to "clarify" his testimony. In the alternative, If the court find's that cross examination was the proper remedy, Calo assert's that it was reversible error to then allow the state to also "reopen" It's direct examination of Mr. Mendez to elicit additional "clarified" testimony. Calo

contends that this was prejudicial due to the extent of it's unfairness and requires reversal.

ii. During direct examination of Jiffary Mendez, the state attempted to elicit testimony from Mr. Mendez about a telephone conversation he had over-heard but was not a party to. The court became concerned and requested counsel to Side-Bar. RP, 2370 at 24. The court then asked counsel to move on and "we can come back to this line." RP, 2371 at 4. Shortly following, the court announced it would take a short recess. RP, 2374 at 4. Upon re-convening, the court made a record of the day's previous Side-Bar's. After the court finished making a record of the Side-Bar's, the following exchange took place between the state, Ms. Goodman, defense counsel, and the court.
RP, 2376 at 19.

MS. GOODMAN: "I've been able to clarify with the witness. He was confused by my questions. So I will ask about the timing of those phone call's and whether or not he was present --"

MR. TOLZIN: "I want to know what he told her. I am a little bit concerned that counsel is clarifying his testimony."

RP, 2377 at 19.

MR. TOLZIN: "In other word's , they are having conversation's with him off the record about what their testimony -- In other word's, pointing out problem's with their testimony."

RP, 2378 at 7.

MR. TOLZIN: "I have a motion at this time to basically strike all of the testimony of this witness and instruct the jury to disregard."

RP, 2378 at 22.

THE COURT: "Yeah. I think the remedy in this case is cross examination."
(MOTION DENIED)

iii. It is unclear how the Court of Appeals would interpret "clarifying" a witnesses testimony during a recess while still under direct examination. Is it witness tampering, prosecutorial misconduct, or witness coaching? United States v. Sayakhom, **186 F.3d 928**, 945 (9th Cir. 1999). Holding: "Defendant did not show that the alleged coaching materially effected the outcome of the trial and stating' [C]ross-examination and argument are the primary tools for addressing improper witness coaching'."

iv. Calo would assert that it was more than simply coaching the witness. However, if the court is unwilling to agree with this argument, Calo would ask that these fact's and argument be considered as part-and-parcel of his alternative ground.

v. Calo alternatively argues that the trial court abused it's discretion when it allowed the state to "reopen" it's direct examination of the same witness, Mr. Mendez, to elicit further "clarified" testimony over defense objections. The following exchange took place. RP, 2460 at 7.

MS. GOODMAN: "Your Honor, I'd like to permission to reopen my direct with Mr. Mendez."

MR. TOLZIN: "We would object. I mean, I'm crossing only on what she asked questions about yesterday, and if they failed to present their case thats not the defendants fault. So we would object your Honor."

(THE MOTION TO REOPEN WAS GRANTED)

vi. Ordinarily, the trial court will allow the state to reopen after it has rested, if a party claims there is insufficient evidence for a particular charge and or element. In this matter, the defense made no such claim. Calo asserts that the prosecutors desire to reopen it's direct examination of a witness the state had admittedly been "clarifying" testimony with is highly suspect. Calo contends that this created an unusually high potential for unfairness. The standard for review appears to be set out in State v. Brinkley, 66 Wn. App. 844, 848, 837 P.2d 20 (1992). "Determination of whether the trial courts decision to allow the state to reopen constitutes an abuse of discretion depends to some extent on the potential for unfairness to the complaining party." "The defendant must show prejudice from the manner in which the evidence was introduced."

vii. Unfortunately we cant speculate what the jury would have decided had it not heard the "clarified" version of his testimony. The state reopened to elicit testimony about witness tampering. Despite the fact that the jury acquitted Calo of the witness tampering, there's no way to gauge the effects this had on the jury's deliberations as a whole. Calo contends that taken together the potential for unfairness was high enough to warrant reversal.

GROUND FOUR

i. Calo contends that he should not have been tried under the accomplice liability statute, nor should there have been given, a fatally flawed accomplice instruction. In the alternative, Calo argues that there was insufficient evidence, absent his incriminating statement(s), to support the charges under the Corpus Delicti Rule.

ii. According to witness and co-defendant Jiffary Mendez, the group of principals met at Willie Calo's garage to establish a plan to go carry out a cartel leaders orders. Mendez testified that at the garage, Willie Calo expressed his desire for the group to go to "Yeto"-aka-"Geto's" home to commit some sort of crime. Mendez's story changes several times from Willie Calo wanting them to only go tie up Yeto, to wanting them to kill Yeto. But what doesn't change is the fact that the group of principals ignored Willie Calo, said "F" Willie Calo, and went to carry out their own plan to Rob a stash house. The following testimony from Mendez supports these facts.

RP, 2456 at 12. JIFFARY MENDEZ / BY LES TOLZIN (CROSS)

Q. "Lets talk about another issue real quick. Lets talk about what the plan was. Plan was, you've said, to kill Yeto?"

A. "Yes."

RP, 2458 at 9. MENDEZ (CROSS)

Q. "The decision not to go kill Yeto had been made by the time you were getting in the car, correct?"

A. "Nobody wanted to kill Yeto."

RP, 2494 at 23. MENDEZ (CROSS)

Q. "In fact, when you all got in the car, there was a discussion about nobody wanted to go to Geto's right?"

A. "Yes."

Q. "And the decision was made to basically "F" Willie, right?"

A. "Yes."

iii. Contrary to Jifarry Mendez's testimony that it was all Willie Calo's plan or idea, witness and co-defendant Robert Smith testified that it was Mendez who was delivering the orders and plans. RP, 2000 at 14. ROBERT SMITH (DIRECT)

A. "I believe I was the last one there."

Q. "How long of a meeting took place before everybody left to do something?"

A. "I would say no more than five to 10 minutes, if that."

Q. "What was taking place?"

A. "The guy Jifarry Mendez was just explaining to me what was going to happen, like where we're going to go."

iv. The group of principals left Willie Calo and his garage. Instead of carrying out any orders or plans supplied by Willie Calo, the group decided to proceed to Chocolate City to rob a stash house. Because, RP, 2481 at 5. "ANSWER: Cause nobody wanted to kill nobody. We just wanted to rob and get some drugs and go home right?"

A. "Yes." The group of principals ultimately arrived at the stash house and encountered an armed Mr. Diaz-Solis. A shot was fired and Mr. Diaz-Solis died as a result.

v. Calo contends it was error to even charge him as an accomplice to the crimes the group committed and asserts that the accomplice instruction, number (14), contained the ambiguous "A crime" language ruled fatally flawed in Roberts and Cronin. RP, 2741 at 1. "A person is guilty of a crime."

vi. "Eventhough an accomplice need not have specific knowledge of each element of the principals crime in order to be convicted under this section; Nevertheless, knowledge by the accomplice that the principal intends to commit "a crime" does not impose strict liability for any and all offenses that follow." State v. Roberts, 142 Wn.2d 471, 14 P.3d 752 (2000).

vii. More recently courts have held that this error is not "harmless per se", but subject to a case by case analysis. State v. Carter, 154 Wn.2d 71, 76, 81-83 (2004). ¶9. "A trial Judge errs by giving the jury an accomplice liability jury instruction (109 P.3d 826) that refers to the defendants knowledge of "a crime", rather than "the crime". See State v. Cronin, 142 Wn.2d 568, 578-80, 14 P.3d 752 (2000); State v. Roberts, 142 Wn.2d 471, 14 P.3d 752 (2000). We have said: "It is a misstatement of the law to instruct a jury that a person is an accomplice if he or she acts with knowledge that his or her actions will promote any crime.... For accomplice liability to attach, a defendant must not merely aid in any crime, but must knowingly aid in the commission of the specific

crime charged." State v. Brown, 147 Wn.2d 330, 338, 58 P.3d 889 (2002). (citing Roberts, 142 Wn.2d at 509-13; Cronin, 142 W.2d at 578-80). Both Parties agree that the accomplice liability instruction that was given here was erroneous because it referred to Carter's knowledge of "a crime".

viii. Under the facts of Carter, the court ruled that the error was harmless because Ms. Carter actually took her group of merry robber's to the victims residence and knocked on the door before then walking away leaving the group there to commit the crime. Calo's case is distinguished by two factors. (1) Calo allegedly wanted the group to go some place completely different to commit a completely different crime, and (2) Calo did not participate and was not present at the scene of the crime. Calo further contends that this error meets the much higher threshold set out in, Waddington v. Sarausad, 555 U.S. 179, 190-91, 129 S. Ct. 823, 172 L.Ed.2d 532 (2009). The defendant "must show that the ailing instruction itself so infected the entire trial that the resulting conviction violates Due Process."

ix. Alternatively, Calo challenges his conviction on the basis of Corpus Delicti. Corpus Delicti pertains to the admissibility and sufficiency of the evidence and can be raised for the first time on appeal State v. Cardenas-Flores, ___ Wn.2d ___ (No. 93385-5)(2017).

x. It is a fact that prior to Calo informing his attorney that he had information about the crime, the detectives had no leads in the case. RP, 2559 at 18. DETECTIVE LES BUNTON / BY MS. GOODMAN (DIRECT).

Q. "Once those warrants had been served and those folks had been arrested, what was going on with the murder case?"

A. "Still running down any possible leads, which we didn't have any at that point, and just going back over the information that we had."

* SEE (SAG) PAGE (3) AT LINE 1 FOR THIS CONTINUED TESTIMONY*

xi. Without Calo's statement(s) to police there was no other independent evidence to suggest that he was an accomplice to the principals crimes. Police began paying Calo snitch money to help clean up the area cartel drug operations. During the course of this, Calo provided enough information to inculcate himself. Without these statement(s), there is insufficient evidence to support his conviction. Calo would present this assertion from the perspective opposed to admitting to the states theory of the case and all inferences that may be drawn.

xii. "Any departure from traditional Corpus Delicti Rule under RCW 10.58.035 pertains only to admissibility and not to sufficiency of the evidence required to support a conviction. The state must still prove every element of the crime charged by evidence independent of the defendants statements." State v. Dow, 168 Wn.2d 243, 227 P.3d 1278 (2010). "A defendants

incriminating statements are insufficient, alone, to establish that a crime took place." *State v. Zillyette*, 163 Wn. App. 124, 256 P.3d 1288 (2011) rev'd, 173 Wn.2d 784, 270 P.3d 589 (2012). "The corpus delicti rule requires corroboration of any statement made by the defendant, whether confession, admission, or even neutral description. The doctrine guards not only against coerced confessions, but against uncorroborated admissions springing from a false subjective sense of guilt." *State v. Aten*, 79 Wn. App. 79, 900 P.2d 579 (1995) emphasis mine. (Self serving statements of accused, remote in time, are not admissible." *State v. Gottstein*, 111 Wash. 600, 191 P. 766 (1920).

xiii. Calo also cites under GR 14.1, *State v. Syfrett*, (No. 47606-1-II)(2016) **unpublished**. Calo cannot provide the court with a paper copy of this opinion, however "Reference to the record and citation to authorities are not necessary or required." **RAP 10.10(c)**. Calo further cites under Federal Authority, *United States v. Lopez-Alvarez*, 970 F.2d 583, 589 (9th Cir. 1992). "On the other hand, we will reverse a conviction if our review of the evidence leads us to the conclusion that there are not sufficient probative facts from which a factfinder, applying the beyond a reasonable doubt standard, could rationally choose the hypothesis that supports a finding of guilt rather than the hypotheses that are

consistent with innocence."See United States v. Bishop, No. 89-50655 (9th Cir. 1992).

xiv. Calo requests the court of appeals to reverse his conviction based on the erroneous accomplice liability instruction and or in the alternative, under the Corpus Delicti Rule.

GROUND FIVE

i. Calo contends that the trial court committed reversible error by admitting, over defense objections, multiple sexually explicit and gruesome photographs.

ii. Ordinarily, the fact that photographs are gruesome and potentially inflammatory does not necessarily prevent their admission. State v. Pirtle, 127 Wn.2d 628, 655, 904 P.2d 245 (1995). cert. denied. 518 U.S. 1026, 116 S. Ct. 2568, 135 L.Ed.2d 1084 (1996). However, sexually-oriented testimony, like gruesome photographs, should be afforded careful scrutiny for unfair prejudice. Kirk v. Washington State University, 109 Wn.2d 448, 746 P.2d 285, 291 (1987). Photographs of this nature can be unduly prejudicial. State v. Kendrick, 47 Wn. App. 620, 736 P.2d 1079 (1987). "Accurate, though gruesome, photographic representations are admissible if their probative value outweighs their prejudicial effect. State v. Crenshaw, 98 Wn.2d 789, 806, 659 P.2d 488 (1983), Photographs such as the

these can constitute reversible error. *State v. Sargent*, 40 Wn. App. 340, 347, 698 P.2d 598 (1985).

iii. The court allowed the multiple depictions of the decedent's groin and pubic area, RP, 1423-1428, ruling that exhibit(s) 98 was cumulative, 97 was probative, and 96 was probative. The defense obviously stipulated that there was in fact someone who died, however Mr. Calo was not present for the actual crime. There was a medical examiner present to testify and establish the necessary element(s), and so the only purpose of showing the jury these photographs would appear to be atleast, to appeal to the passion and prejudice of the jury. Therefore Calo contends that this was reversible error.

iv. Calo request the court to reverse his conviction and to instruct the trial court to exclude these types of sexually explicit photographs.

GROUND SIX

i. Calo raises to preserve, the issue of unlawful TWO-STEP interrogation tactics, on the part of the investigating agency. Calo brings forth this ground separate and distinct from appellate counsel's issues. (errors may not be repetitive of counsels brief. *State v. Calvin*, 176 Wn. App. 1, 302 P.3d 509 (2013).

ii. An "accused incriminating statements made after receiving Miranda warnings, where warnings were not given until interrogation produced confession, held inadmissible at accused Missouri trial." Missouri v. Seibert, 542 U.S. 600, 604-06, 124 S. Ct. 2601, 159 L.Ed.2d 643 (2004), United States v. Williams, 435 F.3d 1148, 1157-58 (9th Cir. 2006).

iii. RP, 290 at 4. DETECTIVE JASON CATLETT

Q. "When dealing with a witness, do you advise people of their Miranda warnings?"

A. "I cant recall a time I ever advised a witness, no."

RP, 291 at 11

Q. "No, just what -- what did you know before you spoke with Mr. Alvarez a second time?"

A. "Um, I dont specifically remember everything that we had learned, it was more details. In talking with Mr. Uscanga, he was very reluctant to be completely honest because of his involvment in the crime as well, so it took multiple interviews with him to -- to get more and more truth out each time. And then each time I could go to Mr. Alvarez and kind of, um, confront him with discrepencies and then -- then it would force him to tell me more things."

RP, 386 at 11 CATLETT (CROSS)

Q. "Okay, so its fair to say that you knew on February 22, when he was in the custody of the pierce county jail transported to the lakewood municipal court, he was in custody?"

A. "Of course he was in custody."

Q. "You took custody of him?"

A. "Yes."

RP, 387 at 3

Q. "You never advised him of his Miranda warnings that day, did you?"

A. "No."

iv. "Nonetheless, we have recognize[d] the potential for abuse by law enforcement officers who might, under the guise of seeking 'objective' or 'neutral' information, deliberately elicit an incriminating statement from a suspect. Booth, 669 F.2d at 1238. To account for this risk, we apply an "objective" test to determine whether the questioning constituted interrogation. Washington, 462 F.3d at 1132. Seemingly routine biographical questions can constitute interrogation if, in light of all the circumstances, the officers should have known that their words or actions were reasonably likely to elicit an incriminating response. Booth, 669 F.2d at 1238. In making this determination, the focus is upon the defendants perceptions. United States v. Moreno-Flores, 33 F.3d 1164, 1169 (9th Cir. 1994). RP, 2663 at 5 DETECTIVE LES BUNTON

Q. "You were lying to him, right?"

A. "Not the entire time."

Q. "You lied to him during the course of that investigation, right?"

A. "Yes."

v. According to State v. Hickman, 157 Wn. App. 767, 238 P.3d 1240 (2010), citing Seibert, 542 U.S. 600, the trial courts ruling not to suppress Calo's statements resulted in a decision contrary to clearly established federal law. 28 U.S.C. § 2254(d)(1). The trial courts legal conclusions

regarding the adequacy of miranda warnings are issues of law we review de novo. State v. Daniels, 160 Wn.2d 256, 261, 156 P.3d 905 (2007), State v. Johnson, 94 Wn. App. 882, 897, 974 P.2d 855 (1999). The test for whether a constitutional error is harmless is whether the untainted evidence of the defendants guilt is so overwhelming that it necessarily leads to the same outcome. In Re Cross, 180 Wn.2d 412, 426, 705 P.2d 1182 (1985).

vi. Calo contends that the police utilized the TWO-STEP interrogation along with coercion to get him to incriminate himself. He asks the court to reverse his conviction with instructions to exclude any evidence gathered by these unlawful tactics.

GROUND SEVEN

i. Calo raises to preserve, the issue of prosecutorial misconduct during opening statements.

ii. During opening statements, the prosecutor began with the usual toeing of the line in terms of quantifying the standard of proof, by using the "jig-saw puzzle" analogy. RP, 1130 at 1. Then the prosecutor described to the jury that the defendant "had a problem" and was addicted to drugs. RP, 1133 at 19. This drew an objection from the defense which

was SUSTAINED. RP, 1134 at 5. The court provided a curative instruction and asked the jury to disregard the prosecutions last statement. (There was also a Sidebar.) The prosecutor then goes on to state to the jury that Willie Calo "spins a story" for the detectives. RP 1145 at 8. This also drew an objection that was sustained with a curative instruction that the jury disregard.

iii. "Jigsaw-Puzzle" analogy improper. *State v. Lidsay*, 180 Wn.2d 423, 435-36, 326 P.3d 125 (2014). Minimizing the importance of the [beyond a] reasonable doubt standard and the jury's role in determining whether the state ha[d] met its burden. *State v. Anderson*, 153 Wn. App. at 425, 431, 220 P.3d 1273 (2009).

iv. In stating that Calo "spins a story", the prosecution is both improperly expressing a personal belief in the accused' guilt, *State v. Case*, 49 Wn.2d 66, 298 P.2d 500 (1956), and improperly vouching for adverse witnesses credibility. *State v. Allen*, 176 Wn.2d 611, 631, 294 P.3d 679 (2013). "A prosecutor may not impart to the jury his belief that a government witness is credible." *United States v. Edwards*, 154 F.3d 915, 921 (9th Cir. 1998). Wash. Const. art. 1 § 22 and U.S. Const. Amend. V. and VI. Errors may be subject to harmless error analysis. *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L.Ed.2d 705 (1967).

v. The right to a trial by jury assumes the right to an unbiased and unprejudiced jury. State v. Stackhouse, 90 Wn. App. 344, 350, 957 P.2d 218, review denied, 136 Wn.2d 1002 (1998). Calo contends that the adversarial arm of prosecution at trial has become so engrossed in setting the stage by impugning the defendant and or his defense in the first instant that it stand to reason there may be an objective. It is of a personal belief that the reason for these types of hard openers is to assist in receiving clear and cogent data results from forward thinking services such as "D-Wave (systems) Inc., D-Wave (government) Inc., and or similar such Quantum Computing equipment services providers lending help to such buisnesses/ Agency's. It is believed that Pierce county may be utilizing such forward thinking and calculating services to secure convictions. Calo respectfully request the court to reverse his conviction based on prosecutor misconduct in opening statements. (Something to consider honorable Justices, Auditor Kelley's scandal, how Lindquist always survives and *****)

GROUND EIGHT

i. Calo raises to preserve for review, several exhibit(s), including both physical evidentiary items as well as reports that were offered and admitted over defense objections. (The trial court actually indicated it was concerned about appellate review. RP, 1301 at 18 - RP, 1304.)

ii. The court initially expressed concern because a prosecution witness had testified to, provided foundation for, and actually wrote on and signed during trial, an official report authored by someone else. RP, 1301 at 18. (Exhibit 82).

iii. The court then allowed, over defense objections, detective Johnson to testify about a bullet he received from the pathologist. His testimony, that defense counsel objected to, involved describing what bullet came from which wound and essentially laid the foundation for this bullet, (which had also been mishandled and mislabeled RP, 1369 at 17), when the detective was not even present for the autopsy. Defense counsel objected on the ground of personal knowledge. RP, 1366 at 17, 1367 at 20, SIDEBAR at 1368 at 8-23, RP, 1369 at 17-24. The court overruled.

iv. The court also allowed, over defense objections, several exhibit(s) that had been collected, examined, handled, and packaged by a different person or agency. On the basis of hearsay, personal knowledge, chain of custody, and or foundation, defense counsel objected to the following exhibits: Exhibit 215, 216, 217, 218, 220, and 222. RP, 1452-60.

Please note, the mishandled bullet came from a completely different case and victims head

RP, 1440 at 10 - RP, 1441 at 24

v. Authentication or identification of a document is a condition precedent to admissibility. ER 901(a), ER 602. Calo asserts that it was err to allow a different government witness to write on and sign a report authored by someone else and to also provide testimony and foundation for that evidence. A witness may not comment on the veracity of another witness. *State v. Montgomery*, 163 Wn.2d 557, 591, 183 P.3d 267 (2008). Testimony from law enforcement may be especially prejudicial. Admission of such testimony may be reversible error. *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001). ER 602, lack of personal knowledge, lack of foundation. *State v. LaFever*, 102 Wn.2d 777, 690 P.2d 574, 579 (1984). Overruled on other grounds by *State v. Brown*, 173 Wn.2d 570, 782 P.2d 1013, criticized, 787 P.2d 906 (1989). ER 611, reviewed for an abuse of discretion. *Peluso v. Barton Auto Dealerships Inc.*, 138 Wn. App. 65, 69, 155 P.3d 978 (2007). *Moreno*, 147 Wn.2d at 509.

vi. Calo asks the court to review these trial court decisions and to reverse his conviction based on an abuse of discretion.

GROUND NINE

i. Calo contends that the state should not have been allowed to elicit testimony about the cartel gang and low level cartel gang drug dealers over defense objections to violations of motions in limine.

ii. Calo is puerto rican born, he is not a mexican cartel/gang member. The principals in the crime were: four (5) african americans and one (1) mexican. Neither of which were part of the same gang, cartel, or organization. The stash house they went to rob may have been supplied by a drug cartel but the defendants were not cartel members.

iii. Defense counsel presented motions in limine and objections during trial to exclude testimony about cartel gang affiliations. RP, 1617 at 24 - 1622, RP, 1638 at 16-22. The court seems to reason that testimony about cartel gangs doesnt relate to the statutory definition of street gangs implicating ER 404(b). Calo asserts that the mexican cartel is MS13 and the Surenos gang. The cartel absolutely is a gang for purposes of 404(b).

iv. Because of First Amendment concerns, "evidence of criminal street gang affiliation is not admissible in a criminal trial when it merely reflects a persons beliefs or associatios." State v. Scott, 151 Wn. App. 520, 526, 213 P.3d 71 (2009). Accordingly, to admit gang affiliation evidence there must be a nexus between the crime and gang membership. RP, 2481 at 5.

Q. "ANSWER: Cause nobody wanted to kill nobody. We just wanted to rob and get some drugs and go home, right?"

A. "Yes."

v. Before admitting evidence under 404(b), 'the trial court must (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) **determine whether the evidence is relevant to prove an element of the crime charged**, and (4) weigh the probative value of the evidence against its prejudicial effect.'" State v. McCreven, 170 Wn. App. 444, 458, 284 P.3d 793 (2012).

vi. Calo contends that specifically the trial courts ruling that cartels dont meet the definition of a gang is wrong and that the evidence was not needed to prove a single element of the charged crimes. Calo therefore asks the court to reverse his conviction with instructions to exclude impermissible 404(b) gang evidence.

GROUND TEN

i. Calo raises to preserve the issue of trial counsels failure to object to testimony and evidence that Calo had been bailed out of jail multiple times in the past.

ii. The state elicited the following testimony from Alberto Mendoza-Ortega on REDIRECT without objection from the defense. RP, 1815 at 11.

Q. "Okay, but you had paid for bail money for Willie previously as well?"

A. "Yes."

Q. "Do you know how many times? How many times he had posted bail?"

A. "I remember three times."

iii. Calo contends that to allow testimony of previously being bailed out of jail on three occasions was inadmissible evidence of prior bad acts and or criminal history. State v. Acosta, 123 Wn. App. 424, 437-38, 98P.3d 503 (2004). Calo did not testify at trial therefore he did not stipulate to this sort of testimony and it violated his right to remain silent and his presumption of innocence. U.S. Const. Amend. V. and VI. The right to a trial by jury assumes the right to an unbiased and unprejudiced jury. State v. Stackhouse, 90 Wn. App. 344, 350, 957 P.2d 218, review denied, 136 Wn.2d 1002 (1998). Counsel was ineffective for not objecting. Strickland v. Washington, 466 U.S. 668.

iv. Calo asks the court to reverse his conviction with instructions to exclude any impermissible 404(b) evidence of prior bad acts.

GROUND ELEVEN

i. Calo contends that the court committed reversible error by not allowing the defense's proposed Petrich instruction.

ii. To return a guilty verdict, the jury must unanimously agree that the defendant committed the charged crime. State v. Petrich, 101 Wn.2d 566, 569, 683 P.2d 173 (1984). Where a defendant is charged with multiple counts of the same crime, the state must designate the acts upon which it relies to

prove its case. Alternatively, the court may instruct the jury to agree unanimously as to which acts support a specific count. State v. Kitchen, 110 Wn.2d 403, 409, 756 P.2d 105 (1988).

iii. Defense counsel proposed the instruction, RP, 2721-2723, because the state had charged both First Degree Burglary and First degree Attempted Robbery as predicates to felony murder. The importance of such an instruction is to know which predicate the jury relied on to return the guilty verdict on felony murder.... Because, "we have required substantial evidence of each alternative." Petrich, citing State v. Arndt, 87 Wn.2d 374, 553 P.2d 1328 (1976).

iv. "Failure to give an unanimity instruction in cases involving multiple counts violates the defendants state constitutional right to a unanimous jury verdict and his or her federal constitutional right to trial by jury. Wash. Const. art. 1 § 22, U.S. Const. Amend. VI. The court does not tolerate prejudicial constitutional error and will reverse unless the error was harmless beyond a reasonable doubt. Kitchen, 110 Wn.2n at 409. Chapman v. California, 386 U.S. 18.

v. Calo contends that this was reversible error requiring reversal and if either predicate is vacated for insufficient evidence, this will also require reversal of his other counts. Calo asks the court to reverse his conviction(s).

GROUND TWELVE

i. Calo contends that it was reversible error not to excuse a juror that defense counsel moved to excuse, after the juror had observed the defendant being escorted by two (2) Sheriffs Deputies with his hands behind his back. RP, 1773 at 20 through RP, 1780 at 18. (DEFENDANT OBSERVED IN SHACKLES)

ii. During a recess, a juror did not listen to the courts instructions and decided to go out into the hallway. The juror encountered the defendant and his armed escorts. It is believed that the court had 4 alternates, one of which had to be excused because he had gone home and searched the defendants name and discovered he worked with a relative of the defendant. The courts admonitions were lacking as the court rarely reminded the jurors not to do their own research or visit the scenes. So it stands to reason why the court would not grant a motion to exclude the offending juror.

iii. A criminal defendants presumption of innocence is violated where the defendant lacks the appearance of "A free and innocent man." State v. Finch, 137 Wn.2d 792, 844, 975 P.2d 967 (1999).(plurality opinion)(The defendants right to a fair trial was violated when he appeared before the jury in physical restraints.) "[G]iven their prejudicial effect, due process does not permit the use of visible restraints

if the trial court has not taken account of the circumstances of the particular case." *Deck v. Missouri*, 544 U.S. 622, 632, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2005). It is undoubted that the ancient right of one accused of a crime under an indictment of information to appear in court unfettered by restraints or shackles of any kind is still preserved in all its original vigor in Washington under Wash. Const. art. 1 § 22. *State v. Walker*, 185 Wn. App. 790, 344 P.3d 227 (2015).

iv. Calo contends that this was reversible error and asks the court to reverse his convictions and order a new trial.

GROUND THIRTEEN

i. Calo seeks to raise and preserve the issue of ineffective assistance of appellate counsel. Calo contends that counsel was ineffective for not assigning error to several of the issues he has raised in his SAG. Especially issues addressing juror instructions and GROUND TWO.

ii. *Douglas v. California*, 372 U.S. 353, 357, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1963), that "where the merits of the one and only appeal... as of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor." *Evitts v. Lucey*, "A first appeal as of right... is not adjudicated in accord with due process

of law if the appellant does not have the effective assistance of an attorney." 469 U.S. at 396, 105 S. Ct. 830, 83 L. Ed. 2d 821.

iii. Ms. Tabbut, appellant counsel of record has completed (19) criminal appeals between January 4, 2017 (Loughrey) - and July 25, 2017 (Dela Rosa). Appellate counsel has also previously terminated her public defender contract due to being overloaded and over burdened with cases. Calo is not trying to disparage his counsel, he only seeks to preserve this issue for review and to give the court relevant facts to consider.

iv. Calo does recognize that the majority of the errors in his case are attributed to the erroneous admission of his coerced confessions. There were many things wrong with the way detectives obtained them, but those issues were not the only reversible errors at trial. Calo asks the court to reverse his convictions and to order a new trial.

GROUND FOURTEEN

i. Calo contends that an accumulation of trial errors denied him his right to a fair trial. (Cumulative Error Doctrine).

ii. The cumulative error doctrine applies where a combination of trial errors denies the accused of a fair trial, even where any one of the errors, taken individually would be harmless. In Re Det. of Coe, 175 Wn.2d 482, 515, 286 P.3d

29 (2012). The test to determine whether cumulative error requires reversal of a defendant's conviction is whether the totality of circumstances substantially prejudiced the defendant and denied him a fair trial. *State v. Gallegos*, 286 Kan. 869, 190 P.3d 226 (2008). In other words, petitioner bears the burden of showing multiple trial errors and that the accumulated prejudice effected the outcome of the trial. *United States v. Solorio*, 669 F.3d 943, 956 (9th Cir. 2012). See also, *Parle v. Runnels*, 505 F.3d 922, 927 (9th Cir. 2007) Citing, *Chambers v. Mississippi*, 410 U.S. 284, 298, 302-03, 290 n.3, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). "The Supreme Court has clearly established that the combined effect of multiple trial court errors violated Due Process where it renders the resulting criminal trial fundamentally unfair... even where no single error rises to the level of a constitutional violation or would independently warrant reversal."

iii. Calo contends that the assignments of error he presents in both his counsel's brief, and in his Statement Of Additional Grounds, presents an accumulation of trial court errors warranting reversal under the cumulative error doctrine. He respectfully request the court to reverse his conviction and to order a new trial with instructions to exclude the evidence that requires exclusion.

QUESTION OF LAW

i. Calo presents a separate question of law for the Court of Appeals to decide. Calo contends that the question involves a issue of significant public interest and respectfully asks the court to address it.

CAN LAW ENFORCEMENT MAKE MONETARY PAYMENTS TO AN INFORMANT IN EXCHANGE FOR BOTH RECORDED AND UNRECORDED STATEMENT(S) ABOUT A PARTICULAR CRIME, THEN CHARGE THAT INFORMANT FOR THAT CRIME AND USE THOSE SAME RECORDED AND UNRECORDED STATEMENT(S) TO ESTABLISH PROBABLE CAUSE AND ADMIT THOSE STATEMENT(S) AS EVIDENCE AGAINST THE INFORMANT AT HIS CRIMINAL TRIAL?

ii. Calo was being paid to provide information on the very crime he was charged and convicted of. RP, 263 at 15.

DETECTIVE CATLETT / BY MS. GOODMAN (DIRECT)

Q. "Have you had a chance to review the records you keep regarding the financial compensation and Mr. Calo?"

A. "Yes."

Q. "And what do your records show?"

A. "He was paid one time \$200 in March, March 22nd, 2013, for information in this particular investigation. I wrote down this case number as the -- as the reason for that payment."

MR. TOLZIN: "I'm sorry, I didn't hear that last point."

A. "That I wrote down this case >>>"

iii. In the instant matter there are extensive challenges to Calo's statements to police, and for good reason. One of the things Calo would like to bring up, is that perhaps

the court should consider a possible Messiah violation versus a Miranda. The inquiries under Messiah and Miranda are distinct "The sixth amendment right to counsel arises from the fact that the suspect has been formally charged with a particular crime and thus is facing a state apparatus that has been geared to prosecute him." Arizona v. Roberson, 468 U.S. 675, 685 108 S. Ct. 2093, 2100, 100 L. Ed. 2d 704 (1988). The fifth amendment right against self incrimination is protected by the prophylaxis of having an attorney present to counteract the inherent pressures of custodial interrogation and exist regardless of the number of crimes under investigation or whether those crimes have resulted in formal charges." For example, a person need not yet be in custody for Messiah to apply, whereas he must for a Miranda claim. See Rhode Island v. Innis, 446 U.S. 291, 300 n.4, 100 S. Ct. 1682, 1689, n.4, 64 L. Ed. 2d 297 (1980). See Messiah v. United States, (1964) 377 U.S. 201, 206, 84 S. Ct. 1199, 1203, 12 L. Ed. 2d 246 (emphasis mine).

iv. Once the sixth amendment right to counsel has attached, the state may not properly interrogate the accused in the absence of counsel unless the accused validly waives his or her constitutional right. State v. Stewart, 113 Wn.2d 462,

780 P.2d 844 (1989). However, Calo initiated the contact with police which means it falls outside the General Rule Prohibiting custodial interrogations. Michigan v. Jackson, 475 U.S. 625, 636, 106 S. Ct. 1404, 89 L. Ed. 2d 631 (1986). Thus the key inquiry in determining whether a waiver is valid is whether the defendant knew of his rights during questioning, and the consequences of waiving those rights. State v. Medlock, 86 Wn. App. 89, 100, 935 P.2d 693 (1997), citing Patterson v. Illinois, 487 U.S. 285, 293, 108 S. Ct. 2389, 101 L. Ed. 2d 261 (1988). See RP, 2663 at 5. DETECTIVE LES BUNTON (CROSS).

Q. "You were lying to him, right?"

A. "Not the entire time."

Q. "You lied to him during the course of that investigation, right?"

A. "Yes."

v. "The United States Supreme Court observed that "Incommunicado interrogation" in an "Unfamiliar; Police dominated atmosphere", involves psychological pressures which work to undermine the individuals will to resist and to compel him to speak where he would not otherwise do freely." Maryland v. Shatzer, 559 U.S. 98, 103, 130 S. Ct. 1213, 175 L. Ed. 2d 1045 (2010).

vi. Calo assigns error to the police paying him for information only to then use it against him. He asks the court to resolve the legal question if police can do this. Calo respectfully asks the court to reverse his convictions based on the multiple trial court errors.

CONCLUSION

i. Above and beyond the Hyer expectation, "such officers are reminded that a fearless, impartial discharge of public duty, accompanied by a spirit of fairness toward the accused, is the highest commendation they can hope for. Their devotion to duty is not measured, like the prowess of the savage, by the number of their victims. Montgomery, 56 Wash. 443, 447-48, 105 P. 1035 (1909). Aleksandr Isayevich meets Defoe's Crusoe in Robin Williams Epilogue. Because even Sun Tzu would tire of tilting with windmills, says Aaron Burr. Per DOC Policy 590.500 (V), Calo recieved assistance in the prison law library to complete this (SAG) and hereby adopts it entirely as his own.

ii. He respectfully asks the court to review his issues and reverse his conviction(s).

iii. This Statement of Additional Grounds has been submitted in the interests of justice.

SUBMITTED this 16 day of JANUARY, 2018.



William Alvarez-Calo
Appellant Pro Se

FILED
COURT OF APPEALS
DIVISION II

2018 JAN 19 AM 11:44

STATE OF WASHINGTON

BY _____
DEPUTY NO. 49794-8-II

STATE OF WASHINGTON)
)
V.)
)
WILLIAM ALVAREZ-CALO)

**AFFIDAVIT OF SERVICE
BY MAILING**

I, William Alvarez-Calo, being first sworn upon oath, do hereby certify that I have served the following documents:

(Statement of Additional Grounds)

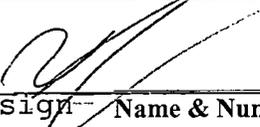
Upon:

Washington State Court of Appeals
Division Two
950 Broadway, Suite 300
Tacoma, Wa 98402

By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA. 99362

On this 16 day of JANUARY, 2018.



Signature Name & Number 395946

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.