



statement to charge Mr. Ewing. Mr. Ewing's wife testified that she was drunk when police badgered and threatened her into a statement, Mr. Ewing's wife's testimony and statement should have been attacked on all fronts. This court shall not only ask the questions why counsel failed to investigate the conduct of police concerning how the statements were obtained by police, but why would the prosecution allow these statements once it was brought to light the manner they were obtained? And where was the judge? This court should also question his Honor as well as the prosecutor's abuse and discretion. There are many questions of governmental misconduct apparent in this case. It seems that as soon as it became a question as to how information was obtained by police, the court should've conducted a hearing into the manner of how it was obtained. The state's sole witness contradicted the state's entire theory, and trial counsel failed Mr. Ewing during questioning. Mr. Ewing also feels this court should be aware that during the trial process, Mr. Ewing was seen being transported while in restraints by a jury member. The Court was made aware of this fact, this fact has been ignored not only by the trial court and trial counsel but also Mr. Ewing's appellate counsel Ms. Selk. Mr. Ewing has made many attempts to contact Ms. Selk to date, Ms. Selk has chosen to completely ignore Mr. Ewing's attempts of contact. Mr. Ewing has made Ms. Selk completely aware of being seen in restraints by jurors and requested she address the issue; Mr. Ewing wrote Ms. Selk a detailed chain of events regarding the 'restraint juror issue' only to be ignored. It's Mr. Ewing's belief that Ms. Selk is in a far better position to obtain information to address this issue for this court's review. Mr. Ewing will address the above stated issue and others throughout this statement of additional grounds (R.A.P. 10.10). Mr. Ewing will ask this court to view these issues for their cumulative effects of an unfair trial atmosphere.

#### Statement of relief sought

Mr. Ewing asks this court to review these statements of additional grounds for review in a less stringent standard than formal pleadings drafted by lawyers. The Second Circuit's logic applies "with special force in the context of 'Pre Se' litigants". A document filed 'pro se' is to be liberally construed, and a pro se complaint, however artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. See, ERICKSON v. Pardus, \_\_\_ U.S. \_\_\_, 127 S Ct 2197, 2200, 167 L.E.D.2d1081

(2007) (percurium) (quoting ESTELLE v GAMBLE, 4294.5.97, 106, 97 S. Ct. 285, 50L.E.d.2d.251 (1976) (internal citations omitted); see also CORJASSO v AYERS, 278F33d 874, 878 (9<sup>th</sup> Cir. 2002) Pro se habeas petitioners may not be held to the same technical standards as litigants represented by counsel”); UNITED STATES v SEESING, 234F.3d 456,462 (9<sup>th</sup> Cir. 2001) (Pro Se complaints and motions from prisoners are to be liberally construed).

Mr. Ewing also asks this court to review the cumulative effect of all errors addressed in both Ms. Selk's opening brief as well as the issues addressed here. The cumulative effect of multiple errors is constitutionally infirm even if errors, considered individually would not be considered harmful. Mark V. Bladgett, 970 F. 2d G14, 622 (9<sup>th</sup> Cir. 2007). See also State v. Weber, 159 wn.2d wa 2d 252, 239 P.3d 646 (2005) citing Brown v. United States, 411 U.S. 223 23-32.

### Ground One

Mr. Ewing was deprived of his 14<sup>th</sup> amendment right to due process when governmental misconduct denied him a hearing to uncover police misconduct.

During the examination of the State's witness, information was brought to light concerning possible police misconduct (RP129) the state's witness claimed that her statement against Mr. Ewing was “not freely given” that government officials used threats to gather their information used to gain charges against Mr. Ewing. These threats came in the form of taking her children away from her (see RP 129,130). The police's psychology ploy was clearly designed to elicit incriminating responses against her husband Mr. Ewing. The trial court should have stopped the trial and exercised caution and addressed the question of whether Mr. Ewing's wife's statements were voluntary or coerced by the government officials. The trial court failed their duty in addressing the incriminating statements to the police. The government/court has a duty to the accused. The trial court failed Mr. Ewing's rights to due process. The police are agents of the state that work directly for the prosecutor.

### Questions

- 1) Should the court have allowed this trial to proceed once the state's witness confessed on the record that her testimony was not freely given?
- 2) Was it an abuse of the trial courts discretion when the court chose not to investigate the allegations of police misconduct?
- 3) Was it prosecutorial misconduct for the state not asking for a hearing to investigate into the allegations of the state agents/police misconduct?
- 4) In all fairness, should this court remand this case back to the trial court for a hearing to bring to light possible due process violation? The Constitutional violations that occurred at trial.
- 5) Should this court remand this case back to trial court for a hearing to uncover if the police's conduct was directed by and through the prosecutor's office?

A prosecutor may not order police officers to do what the prosecutor may not do RPC 5-3, State v Miller, 600 N.W. 2d 457, 464 (1999). Prosecutors will be responsible for police officers' contact with a represented individual if the orders ok with knowledge of the specific conduct, ratifies the conduct involved. There can be no argument that the State was unaware of the issue. The information of the government agents conduct came out under examination. This same witness was ultimately proclaimed a hostile witness. The court failed its duties. His Honor should not have allowed such information to go unquestioned, due process of an accused demands more.

### Ground Two

Mr. Ewing was denied his 6<sup>th</sup> Amendment right to effective assistance of counsel when counsel failed to request a hearing into the issue of governmental misconduct denying Mr. Ewing his due process and a fair trial.

Mr. Ewing received deficient representation in violation of the sixth amendment right to effective

assistance of counsel and his rights of due process argued in ground one.

### Legal principals

The Sixth Amendment guarantees the right to the effective assistance of counsel, see eg., McMann v. Richardson, 397 U.S. 759, 771 1.14 (1970). To prevail on a claim of ineffective assistance of counsel an appellant must show (1) that trial counsel's performance was defective; and (2) a reasonable probability that, but for the deficient performance, the outcome of the proceeding would've been different. See, Strickland v. Washington, 466 U.S. 668 694 (1984).

Recently the United States Supreme Court decided two important cases that emphasize the need for competent legal representation during all critical stages of a criminal case. See Missouri v. Frye, ---U.S.--- S Ct 1376 (2012). As the court explained in Frye; Mr. Ewing asks this court as a matter of law, should Mr. Ewing's trial counsel have investigated the State's alleged victims' testimony that the police held her children hostage until she gave a statement RP, pg. (129,130,138). This appellant asks this court to use its authority to remand this case back to the trial court to conduct a hearing in the furtherance of justice. Pursuant to CrR (8.3) (b) after a notice and hearing a court may dismiss any criminal prosecution due to arbitrary action of governmental misconduct when there has been prejudice to the right of the accused, such as a right to a fair trial. RAP 8.3 except where prohibited by statute, the appellate court had the authority to issue orders before or after acceptance or review of an original action under title of those rules to ensure effective and equitable review inclusion er authority to grant injunctive or other relief to a party State v. Bell, Ariz., 169, 531 p.2d 545 (1975), rule 32 has its aim, the establishment of proceedings to determine the facts underlying a defendant's claim for relief when such facts are not otherwise available, Rule 2.2 is reviewed with this aim in mind, we are of the opinion that the preclusion of post-conviction under this rule on grounds that the matter is still able to be raised on direct appeal applies only to those matters in which a sufficient amount of factual basis exists in the record for the appellate court to resolve the matter. As Mr. Ewing has stated above, there is sufficient record RP, pg. 129/130/138. This court should remand this case back to the trial court, appoint Mr. Ewing new counsel and conduct a hearing and uncover the hidden incident of government misconduct by police that led to

his arrest and conviction. Two things must be shown before a court can require a dismissal of charges under 8.3 (b) first a defendant must show arbitrary action or governmental misconduct State v. Blackwell, 120 wn.2d 822,831,845 P.2d 10.17 (1993) citing State v. Lewis, 115 Wash 2d 294, 298, 797 P.2d 1141 (1990). Government misconduct need not be of an evil or dishonest nature; simple mismanagement is sufficient Blackwell 120 wn.2d 1017 (emphasis added). The second necessary element a defendant must show before a trial court can dismiss charges under CrR 8.3 (b) is prejudice affecting the defendants right to a fair trial. See State v. Cannon 130 wash.2d 313, 328, 922 P.2d 1293 (1996). Such prejudice includes the right to a speedy trial “and the right to be represented by counsel who has had sufficient opportunity to adequately prepare a material part of his defense. State v. Price, 194 Wash.2d 810, 814, 620 P.2d 1994 (1980). A trial courts power to dismiss a charge is reviewable under the court’s manifest abuse of discretion standard see State v. Warner 125 Wash.2d 876, 882, 889 P.2d, 889 P.2d 479 (1995) “discretion is abused when trial courts discretion is manifestly unreasonable or is exercised on untenable grounds of for untenable reasons”. Blackwell, 120 Wash.2d at 830, 845 P.2d 1017. State v. Getty the state as well as appellant has the burden of proving that any prosecution error was harmless beyond a reasonable doubt. Getty, 55 wn.app at 155,56. Grounds Three ~~Grand 3~~. Counsel plead wrong defense Trial counsel was aware of information prior to trial and had a duty to make the appropriate plea for his client of self-defense of another. The state star witness corroborated this defense. RP. Pg. (136) Mrs. Ewing’s entire testimony is littered with substantial information that suggest Mr. Ewing’s sole intent was only to prevent his enraged and intoxicated wife from driving off with his son RP.pg 133. Trial counsel should never have presented a defense of not guilty alone. Attorney’s have a duty to investigate their client’s case so as to enable them to make professional decisions that merit distinction as “informed legal choices”. See Elmore v. Ozmint, 661 F.3d 783, 858 (4<sup>th</sup> Cir. 2011). Careful evaluation of available tactical options are a necessity and counsels lack of preparation and research cannot be considered the result of deliberate informed legal strategy. Hyman v. Aiken, 824 F.2d 1405, 1416 (4<sup>th</sup> cir. 1987). The presumption that counsels choices were part of an overarching strategy does not overcome the failures of .....attorneys....to be familiar with readily available documents necessary to an understanding of his client’s case. Trial counsel, as well as the court were in possession of statements

from Ms. Ewing that lent weight to a plea of self-defense as well as self-defense of another Rp 133, 134 the state's only true witness stated on record the appellant Mr. Ewing's sole intent at the time of the incident was to prevent her from driving away with his child while drunk. Ms. Ewing testified she "drank a half gallon" Rp 130. What husband and father would not be upset at the thought of an intoxicated loved one wanting to drive off with his child? The state's entire case was bias, nothing more than exaggerations and court room theatrics. Had counsel effectively defended Mr. Ewing, counsel would have plead Mr. Ewing's defense appropriately of self-defense, and self-defense of another, Mr. Ewing's child. Trial counsel failed to conduct reasonable pre-trial investigation see eg. Sanders v. Ratelle, 21F.3d 1446, 1457 (9<sup>th</sup> cir. 1994).

**Ground Four** Ineffective assistance of Counsel. Failure to question witness

Suppressed from the record is Ms. Ewing's second statement, counsel's failure to protect due process by allowing the statement to be hidden from the trier of fact violated due process and left jurors ignorant of actual events. Pursuant to RAP 2.5 (a)(3) an appellant may raise a due process violation for the first time on appeal, he need only make a plausible showing that the error...had a practical and identifiable consequence in the trial. State v. Lamar, 180 wn32d 576-593, P.3d 46 (2014). An error has practical and identifiable consequences if "given what trial court knew at the time the court could have corrected the error". State v. Ultarg, 167 Wh.2d 91, 100, 217 p.3d 756 (2009), as corrected (January 2010). Here, given what the government and trial counsel knew, the court could have corrected the constitutional error Id. Although Ms. Ewing's testimony is clear that her husband's true intent and motive at the scene of the incident was to prevent her from driving drunk with his child, counsel failed to move the court to reveal Ms. Ewing's second statement. The court, and trial counsel was aware that information favorable to the defense was needed to support Mr. Ewing's defense. The suppressed statement was the government's catalyst to a bomb of information that was unmanaged and blown out of proportion. The Sixth Amend. Of the Constitution not only provides that an accused shall enjoy effective assistance of counsel, but also have an opportunity to confront all witnesses against him. Similarly, Article 1, section 22 of the Washington Constitution provides that the accused shall have the right to meet the witnesses against

him face to face. Even though Mr. Ewing was not deprived<sup>of</sup> the opportunity to meet his accuser face to face, he was denied effective counsel by counsel's failure to tease out the suppressed version of events included in the suppressed statement. Mr. Ewing's due process demanded more. Counsel's failure to protect Mr. Ewing's trial. There was ample information suppressed. Mr. Ewing wished to impeach the witness's credibility with and would have shed light on his defense. The FIFTH and FOURTEENTH Amend. Of the Const. of due process concerning a fair trial was violated not allowing the jury to hear all the facts by shielding, and suppressing the record of his accuser. Mr. Ewing asks this court (1) Was his 6<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> Amend. Due process violated for fair trial when the court failed to reveal information within Ms. Ewing's 2<sup>nd</sup> statement? Found within the record on RP.pg.119, 120 the court has a discussion of validity of a signature, and Ms. Ewing's memory of the second statement, but no players involved chose to reveal the context, or information within. See RP119,120. Why Mr. Ewing's attorney chose not to vamp on an opportunity to address a statement containing information that contradicted Ms. Ewing's first statement that her testimony revealed was given under the influence RP 119, 120, Completely boggles the mind. What possible strategy could counsel have intended by not challenging contradicting information? There can be no strategic understanding for counsel making it easier for the state to convict his client. By denying the suppressed contradicting statement in possession of the state, the state's government agents were free to testify to a cherry-picked version of events and not allowing the trier of fact an opportunity to base a decision on all information in possession of the government at the time of the trial, Counsel's failure to investigate and tease out the suppressed information at a critical stage of the trial from the only true witness who could have information supporting his defense, denied his right to face his accuser on critical facts held within the suppressed information. Couch v. Booker, 632 F.3d 241 (6<sup>th</sup> Cir. 2011) (trial counsel was ineffective by failing to consult with expert or to investigate causation of defense in murder prosecution); In re: Edwards, S., 173 Cal. App. 4<sup>th</sup> 387 (2009) WL IIII (2008) 1<sup>st</sup> Dist. (2009) (Failure to investigate exculpatory evidence, including evidence that might be used to impeach key prosecution witnesses, render deficient representation). Had Mr. Ewing's attorney moved the court to reveal the suppressed statement<sup>and</sup> executed his duties effectively with competent effective representation, the outcome would have been different. See State v. Punsulan, 156

wn,d 875 (2006). Furthermore, why would Mr. Ewing's own counsel hinge his entire defense "solely" on a statement made before Ms. Ewing "sobered up". Trial court should have allowed jurors the opportunity to consider all information. There is substantial state and federal "precedent", case law that support a duty of counsel to protect and investigate a client's defense. The failure of counsel upon review can only be seen as ineffective and deficient. Mr. Ewing's conviction is a miscarriage of justice bought with fear and ignorance from another not wanting to lose her child, the price of keeping her child, was her dignity by feeding into the state's demands. This case is appalling. The tactics employed by the government, go beyond the pale. Mr. Ewing is not versed in court room theatrics. Mr. Ewing was advised by counsel to sit silently while his attorney offered little protection. The record reflects pages of direct and redirect questioning of all witnesses except by Mr. Ewing's only defense witness. Counsel's entire questioning of the only true witness consists of 32 words, that include "a" and "the". Ms. Ewing's testimony was her husband's defense. Counsel failed Mr. Ewing. Sadly, you cannot unbreak an egg, the only recourse left for justice to address the issue above is this court to remand this issue back to the trial court pursuant to CrR 8.3(b) to address the matter in open court and on record. CrR 8.3 (b) authorizes a court to dismiss charges when dismissal is "in the furtherance of justice". Two things must be shown before a court can require dismissal of charges under CrR 8.3 (b). First, a defendant must show arbitrary action or governmental misconduct State v. Blackwell, 120 wn.2d 822, 831, 845 P.2d 10 17 (1993). Citing State v. Lewis, 115 Wash.2d 294, 298 797 P.2d 1141 (1990) governmental misconduct need not be of an evil or dishonest nature; simple mismanagement is sufficient Blackwell 120 wn.2d at 831, P.2d 1017 (emphasis added). The second necessary element, a defendant must show before a court can dismiss charges under CrR 8.3 (b) is prejudice affecting the defendant's right to a fair trial, see State v. Cannon, 130 wn.2d 313, 328 922 P.2d 1293 (1996). Such prejudice includes the right to a speedy trial and the right to be represented by counsel who has sufficient opportunity to adequately prepare a material part of his defense. State v. Price, 94 Wash.2d 810, 814 620 P.2d 1994 (1980). A trial court's power to dismiss charges is reviewable under the manifest abuse of discretion standard. State v. Warner 125 Wash.2d 876, 882, 889 P.2d 479 (1995) discretion is abused when the trial court's discretion is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons Blackwell, 120 Wash.2d at

830,845 P.2d 1017. State v. Getty, the state has the burden of providing that any prosecution error was harmless beyond a reasonable doubt. Getty, at SS wn. App at 155, 56. Mr. Ewing is attaching a "sworn declaration" in support of all issues contained within this brief. If this court feels it needs further declarations in support of this issue or others, please direct Mr. Ewing as needed. Thank you!

### Ground 5

#### Mr. Ewing was denied due process due to government misconduct.

On day three of trial, Mr. Ewing was being escorted by government officials to trial. Mr. Ewing was in shackles. After leaving the jail, Mr. Ewing was leaving court house and loaded onto an elevator. After reaching the floor on which court was to be, the elevator opened to a corridor/common area where vending machines are located. Transporting officers then proceeded to take Mr. Ewing while still in restraints to a public area and back to jail. The transporting government officials failed to investigate if any jurors were on break in the common area or utilizing or accessing vending machines prior to leading Mr. Ewing off the elevator. Had government transport officers performed their duties, they would have discovered a juror was standing at a vending machine staring at Mr. Ewing's restraints. Mr. Ewing informed his attorney about the encounter upon entering the court room. Counsel advised Mr. Ewing not to address the court on the matter, advising Mr. Ewing that he believed that it would be a mistake, that he felt they had prevailed already and he did not wish to start a trial over. Mr. Ewing's counsel was wrong. Mr. Ewing was found guilty and given eleven years in prison. After this sentence was imposed, Mr. Ewing asked counsel again to request a new trial and address the juror seeing him in restraints but counsel chose to stand mute on the matter. Mr. Ewing feels this court should also know that a second incident occurred that was witnessed by C/O Boyle ~~for Mr. Boyle~~. Mr. Boyle was upset when jurors witnessed an excessive police presence during trial when Mr. Ewing was about to be cuffed and transported back to jail. Concerning the incident was in view of all jurors, Officer Boyle was mad and stated this could cause a mistrial, and stated he was going to address the court concerning the incident. Mr. Ewing never hear a word from the court on the incident. Mr. Ewing also made his trial counsel aware of this issue but again, counsel failed. Mr. Ewing's due process and fair trial. 8.3 (b). allow for this

to be returned to the trial court to uncover the facts surrounding this incident and address this issue accordingly. State v. Michelli, 132 n.2d 229, 937 P.2d 587 (1997) CrR.8.3(b) authorizes a court to dismiss charges when dismissal is in the furtherance of justice. Mr. Ewing knows that on remand, the trial court after due diligence will find after inquiries that Mr. Ewing was prejudiced due to governmental misconduct due to transport officer's negligence. The court will be satisfied by a preponderance of the evidence that a constitutional error occurred that worked to actual and substantial prejudice that inherently resulted in a complete miscarriage of justice. See In re Personal restraint of Cook, 114 wn.2d 802 812, 792 P.2d 506 (1990).

**Ground Six**

Mr. Ewing was denied effective counsel for failing to move for a mistrial when government officials allowed a juror to view Mr. Ewing while shackled and being transported by a police presence.

Mr. Ewing was denied his Sixth Amend. Const. right of effective trial counsel when counsel failed to bring to light for the record, the due process violations that are argued in ground 5. The exclusion of criminal defense evidence undermines the central truth seeking aim of the criminal defense system, because it deliberately distorts the record at risk of misleading the jury into convicting an innocent person. See In re-Winship, 397 U.S. 1970 the Sixth Amendment guarantees the right to effective assistance of counsel, see eg; McMann v. Riachardson, 397 U.S. 759, 771n.14 (1970). Decision due to misapprehension of the law is not strategic. In re Brett, 142 wn.2d868, 873 16p.3d 601 (2001). Counsel ineffective for doing too little when preparing for trial; Pirtle v. Morgan, 313 F.3d 1160. 169-73 9<sup>th</sup> Cir. (2002) counsel ineffective for failing to request a necessary jury instruction cert denied 539 U.S. 916 (2003), to prevail here, petitioner need not show that counsel's deficient conduct more likely than not altered the outcome in the case. Strickland 466 U.S at 693. Rather he must establish that there is reasonable probability that absent counsel's deficiencies the outcome of the trial might well have been different. See, Strickland, 466 U.S. at 695. The ultimate focus of inquiry must be where result is being challenged. Strickland, 466 U.S. at 696. A reasonable probability "need only be a probability sufficient to undermine confidence in the outcome." Dietrich v. Ryan, 677 F.3d 958, 1057 (9<sup>th</sup> Cir.) (2012) quoting

Strickland, 466 U.S. at 694 This court in the interest of Mr. Ewing should vacate Mr. Ewing's conviction and remand this case back to the trial court as argued under authority in ground five.

this Appellant would also ask this court for an additional 30 days to complete additional grounds for review, those

Respectfully

X Lucas R. Ewing

Date 8-29-19

13

I, Lucas R. Ewing, declare and swear upon penalty of perjury the information given within this statement of additional grounds (RAP10.10) to be true and correct to the best of my knowledge.

Respectfully,

Date 8-29-19

X Lucas R. Ewing

Lucas R. Ewing

Pro-Se