

FILED
SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT OF WASHINGTON

THE STATE OF WASHINGTON,)
) No. 97681-3
 Respondent,)
) STATEMENT OF ADDITIONAL
 v.) AUTHORITIES
)
 JOHN JACKSON, SR.,)
)
 Appellant.)
 _____)

COMES NOW the petitioner, State of Washington, by and through its attorney, Jesse Espinoza, Deputy Prosecuting Attorney for Clallam County, and respectfully requests that the Court consider the following additional authority pursuant to RAP 10.8:

Related to the assertion in Appellant’s Supplemental Brief that judges are subject to unconscious bias:

Williams v. Pennsylvania, 136 S.Ct. 1899, 1917, 195 L.Ed.2d 132 (2016) (Chief Justice Roberts dissenting) (quoting 3 W. Blackstone, Commentaries on the Laws of England, 361 (1768) (“The biases of judges ‘cannot be challenged,’ according to Blackstone, ‘[f]or the law will not suppose a possibility of bias or favour in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea.”)).

In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955) (“A fair trial in a fair tribunal is a basic requirement of due process.”).

Jones v. Halvorson-Berg, 69 Wn. App. 117, 127, 847 P.2d 945, review denied, 122 Wn.2d 1019 (1993) (judge is presumed to perform his or her functions regularly and properly without bias or prejudice).

In re Bochert, 57 Wn.2d 719, 722, 359 P.2d 789 (1961) (bias or prejudice on the part of an elected judicial officer is never presumed).

State v. Belgarde, 119 Wn.2d 711, 715–17, 837 P.2d 599 (1992) (actual bias must be shown to disqualify a judge from presiding over a retrial following a reversal on appeal).

Howland v. Day, 125 Wash. 480, 490–91, 216 P. 864 (1932) (actual bias must be shown to disqualify a judge from presiding over a motion for new trial).

State v. Clemons, 56 Wn. App. 57, 782 P.2d 219 (1989), *review denied*, 114 Wn.2d 1005 (1990) (actual bias must be shown to disqualify a judge from presiding over a retrial following a mistrial).

State v. Palmer, 5 Wn. App. 405, 411–12, 487 P.2d 627, *review denied*, 79 Wn.2d 1012 (1971) (The trial court's decision on a nonmandatory disqualification motion must be upheld absent an abuse of discretion).

State v. Cameron, 47 Wn. App. 878, 884, 737 P.2d 688 (1987) (Casual and nonspecific allegations of judicial bias do not provide a basis for recusal).

United States v. Zuber, 118 F.3d 101, 104 (2d Cir. 1997) (“We traditionally assume that judges, unlike juries, are not prejudiced by impermissible factors.”).

Related to the issue of whether a hearing is constitutionally required before restraints may be used in pretrial hearings:

Trial of Christopher Layer, 16 How. St. Tr. 94 (K.B.1722) (Recognizing the right to appear at trial free from restraint but declining to have restraints removed at arraignment just so they could be put back on a minute later, and distinguishing Craneburn’s case that the authority for appearing free from restraint arraignment applied when a defendant was arraigned and tried at the same time).

United States v. Sanchez-Gomez, 859 F.3d 649, 679–80 (9th Cir. 2017) *vacated and remanded with instruction to dismiss as moot in U.S. v. Sanchez-Gomez*, 138 S.Ct. 1532, 1542, 200 L.Ed.2d 792 (2018) (Ikuta dissenting) (citing *Lee v. State*, 51 Miss. 566, 572, 1875 WL 4718, at *4 (1875) *overruled in part on other grounds in Wingo v. State*, 62 Miss. 311, 311, 1884 WL 3462, at *1 (1884); *State v. Temple*, 194 Mo. 237, 92 S.W. 869, 872 (Mo. 1906); *Rainey v. State*, 20 Tex.App. 455, 472 (1886))

(referring to *Layer's* case and the subsequent development of common law as consistent with the analysis in *Deck v. Missouri*, that the right to appear free from restraint did not apply to arraignment, 544 U.S. 622, 626, 125 S.Ct. 2007, 161 L.Ed.2d 953 (2005)).

Respectfully submitted this 9th day of June, 2020.

MARK B. NICHOLS
PROSECUTING ATTORNEY



JESSE ESPINOZA, WSBA No. 40240
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CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that on June 9, 2020, a copy of this document was served on the following via the Court’s e-filing portal:

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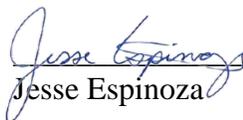
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