67572-9

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No. 67572-9-I

COURT OF APPEALS
Division One
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

Vs.

Guy Adam Rook, Appellant

ON DIRECT APPEAL FROM THE KING COUNTY SUPERIOR COURT
The Honorable Cayce Presiding

STATEMENT OF ADDITIONAL GROUNDS

Guy Adam Rook
Appellant, In Pro Se

#293154 Cell-B-G-06
C/o Clallam Bay Correction Center
1830 Eagle Crest Way
Clallam Bay, Wa. 98326

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STATE OF WASHINGTON,
Respondent,

Vs.

Guy Adam Rook,
Appellant,

No. 67572-9-I

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Guy Adam Rook, have received 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 being considered on the merits.

STATEMENT OF RELEVANT FACTS

Appellant incorporates the Statement of the Case found in the brief of counsel for Appellant.

ADDITIONAL GROUNDS # 1. (Sufficiency of Evidence)

> "Evidence is sufficient to support a crime if, when taken in the light most favorable to the State, it is such that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State V. Huff, 64 Wa.App. 641 (1992).

Court of Appeals previously correctly observed there are (3) three alternative means of committing "Vehicular Assult", while operating a motor vehicle:

1. "Under the influence of intoxicating drug or alcohol;
2. Driving in a Reckless Manner; or
3. Driving with disregard for safety of others..." See State V. Roggenkamp, 153 Wn.2d 614 (2005); State V. Tang, 77 Wa.App. 644 (1995); etc...

State Charged Appellant with "vehicular assault" predicate on "Driving Under the Influence of Alcohol", or predicate on "Driving in a Reckless Manner". CP 100 . State Additionally charged "Hit and Run", without the required proof to convict. Jury returned a verdict of not guilty to "Hit and Run", and a special verdict of not guilty to "Vehicular Assault, in predicate to Driving Under the Influence of Alcohol". CP 181 at 192, 180 at 191.

Court found that Vehicular Assault predicate on Driving with Disregard for Safety of Others was a lesser included offense to the charged crime, baseing its decision on the disparative difference Court found in the Sentencing guidelines under RCW 9.94A.515, where "Driving with Disregard for Safety of Others carries substantially less time, and does not then result in a P.O.A.A. sentence, per statutes. CP 154 at 226.

The Jury was Directed in instruction #13, it did "not" have to find unanimously which alternative was proven under vehicular assault. However Jury was instructed in #22, that it had to find unanimously which of the alternative means was proven, for the special verdict form required, and the Jury found Unanimously that "Appellant was not under the influence".

Therefore this Court need not consider whether the Appellant was in fact intoxicated, CP 183 Jury clearly stated the Appellant was cleared of all allegations of driving "while under the influence", in the accident.

"There must be substantial evidence, ie., that quantum of evidence that is necessary to establish circumstances from which a Jury can reasonably infer the fact to be proven." State V. Fateley, 18 Wa.App. 99 (1977)

Therefore, the question is: "Was sufficient evidence given to show the Appellant was driving in a "Reckless Manner", necessary to support a finding of guilt in this case?"

"Reckless Manner" is not defined in the statutes. However, Case law has defined "To operate a vehicle in a 'reckless manner'" as:

> "Driving in a Rash or Heedless manner, indifferent to the consequences." State V. Partrige, 47 Wn.2d 640 (1955); State V. Fateley, 18 Wa.App. 99 (1977); State V. Bowman, 57 Wn.2d 266 (1960); State V. Hill, 48 Wa. App. 344 (1987); State V. Harvey, 57 Wn.2d 295 (1960); and State V. Roggenkamp, 153 Wn.2d 614 (2005); Ect....

Through the multitude of cases, the term "In a Reckless Manner" has now evolved, and is well settled to mean "Driving in a Rash or Heedless manner, indifferent to the consequences". This evolution culminated for the WIPC Instruction 91.03. See State V. Hill, 48 Wa.App. 344 (1987).

> "Heedless" means: "Conduct involving disregard for others rights or safety." See Black's Law 9th Edition.

Courts have upheld convictions for "Reckless Manner" wherein:

Driver refused to stop, Officer gave chase reaching speed of 90 mph, driver ran stop signs with disregard, made u-turns with disregard to the safety, drove through pastures, drove through the barbed wire fences, crashed into stumps, then ran on foot. State V. Ridgley, 141 Wa.App. 771 (2007)

Driver Refused to stop, speed radar at 87 mph, drove through multiple stop signs, etc... State V. Huntley, # 39676-9-II (2011)

Driver did not stop, ran three stop signs, drove into on-coming traffic, crossed multiple lanes, speeds of 90 mph, required spikes to stop car. State V. Tandecki, 120 Wa.App. 303 (2004)

Driver refused to stop, sped away from law enforcement, jumped from the vehicle leaving the car to deliberately crash. State V. Naillieux, # 28310-1-III (2010)

Driver refused to stop, speeds of 50 in 25 mph zones, ran stop signs, putting head down in passenger seat to hide. State V. Delmarter, 68 Wa. App. 770 (1993)

Driver was in on-coming traffic, speeding twice legal limit, passing another vehicle. State V. Roggenkamp, 153 Wn.2d 614 (2005)

Driver went into on-coming traffic, caused head-on collision. State V. Hill, 48 Wa.App. 344 (1987)

Driver(s) were deliberately speeding, disregarding 'Traffic Laws', or driving indifferent to the safety of others intentionally in a multitude of cases, Courts have found to support "Reckless Manner". See also State V. Morales, # 84197-7 (2012); State V. Farr-Lenzini, 93 Wa.App. 453 (1999); State V. Escobar, 30 Wa.App. 131 (1981); State V. David, 134 Wa.App. 470 (2006); State V. Hanna, 123 Wn.2d 704 (1994); State V. Randhawa, 133 Wn.2d 67 (1997)...Etc.

Court also found State v. Miller, 60 Wa.App. 767 (1991); State V. Hursh, 77 Wa.App. 242 (1995); and State V. McAlister, 60 Wa.App. 654 (1991) to be aberrations in the long string of cases, stretching back to 1938, that have rejected the term "Reckless Manner" to mean: "Willful or Wanton disregard for the safety of persons or property". See State V. Roggenkamp, 153 Wn.2d 614 (2005). This Court has clear understanding of the meaning of "Reckless Manner" required to find guilt under "Vehicular Assault".

Appellant stated that before he entered the intersection where the two vehicles collided, the passenger in his car being intoxicated, had knocked his required driving glasses off his face, effectively rendering Appellant legally blind, essentially incapacitated temporarily. The Witness willfully admitted this conduct, excepting fault for Appellant's inability to see the traffic signals. There was no evidence presented that contradicted this very relevant fact of incapacity, due to no fault of Appellant. There was no actual accident reconstruction done, thus actual speed Appellant was driving at the time could not be a determining factor the Jury relied upon to find "Reckless Manner", as such was not factually presented to the Jury. However, circumstan--tial evidence testified to by the medical personnel for both Appellant and an

alleged victim, was that Appellant was traveling 30-40 mph at the time of the collision, and the speed limit on 154th St. was 35 mph. This is not an excessive speed above the lawful limit, nor was Appellant cited for any kind of traffic violation(s), speeding, failure to stop, reckless driving, or even neglegent driving... The State did not prove Appellant was Driving indiffe--rent to the safety of others, or with disregard for any traffic laws. The Appellant was not committing any act which would show or support the Jury's finding that Appellant was driving in a "Reckless Manner".

Jury agreed the Appellant was not Driving under the influence of Alcohol, and the Jury found the Appellant had not committed an act of "Hit and Run" involving this accident. CP 180; CP 181

State did not have the required "Blood Test", for charging "Vehicular Assault", which is surprising as the Officer had done 500 DUI Arrest, and the alleged victim needed allegedly 20 stiches to the head, which clearly would result in vehicular assault charges, if the Appellant had been found to be drinking.

The Court considered a CrR 7.4 Motion on very similar facts presented to this Court, but did not want to render a directed verdict in this case, choosing to allow the Court of Appeals to remand the case on appeal. CP 189.

Whereby, Appellant has committed no conduct to have caused the accident, and was not driving in any manner different than a reasonable person would have drove in the same situation, Appellant asks this Court over-turn the verdict, finding Appellant had not drove in a "Reckless Manner".

ADDITIONAL GROUND # 2. (Ineffective Assistance-Conflict of intrest)

> "To prevail on ineffective assistance of counsel, proof counsel's performance was deficient, and the deficiency prejudiced the defense

must be shown. Strickland V. Washington, 466 U.S. 668 (1984); State V. McFarland, 127 Wn.2d 322 (1995). "We begin with strong presumptions of adequate and effective representation. McFarland, 127 Wn.2d at 335... Deficient performance is that which falls below an objective stand of reasonableness." State V. Horton, 116 Wa.App. 909 (2003). Prejudice occures when trial counsel's performance was so inadequate that there is a reasonable probability that the outcome of the trial would have been different, undermining confidence in the outcome. Srickland 466 U.S. at 694...

Appellant did file a pretrial grievance with the "Bar Association" over counsel's performance, and attorney client conflicts. Appellant did choose to terminate the counsel's representation, acting In Pro Se for a period, until it became clear the Court would not except In Pro Se Motions. RP 4-19-11.

Court although aware of the Grievance, and the clear conflicts between attorney and client, chose to reassign the attorney to the trial, without attempting to address the conflicts, over Defendnat's and Attorney's open objections to the arrangement. RP 11-22-10 Pg.24-25; RP 8-19-11 Pg. 41...

Court assignment of the conflicted counsel as Pro Se Standby Counsel without correcting the conflicts of interest, was unreasonable and then did violate the sixth amendment right to have the assistance of conflict free counsel during the proceedings. Appellant believes this Court should now remand this case, based on this abuse of discretion by the Court, which did clearly effect the Appellant's protected right to self represent.

"Sixth amendment 'assistance of counsel' at trial, representation free of conflicts." State V. Regan, 143 Wa.App. 419 (2008).

Herein, the Court clearly knew of the conflicts, where even counsel did address the Court, the Judge did nothing to correct these conflicts before trial. Court order conflicted counsel to assist while Defendant was In Pro Se, then Reassigned the conflicted Counsel at trial, whom presented this case to the Jury, even though he did not have the necessary time to then prepare a material part of the defense, prejudicing Defendant's rights.

"The Trial Court has a duty to investigate an attorney/client conflict of interest, if it knows or reasonably should have known such potential conflict existed, as the trial may have been effected. State V. Regan, 143 Wa.App. 419 (2008)(Mickens V. Taylor, 535 U.S. 163 (2002).

Herein, there is no question the Court had the required knowledge of the conflicts between the counsel and client, where both parties addressed the conflicts to the Court personally. This Court clearly chose to ignore the Court's duty deliberately, assigning the conflicted counsel back to the case, Even over counsel/clients' objections. RP 11-22-10

This being done while Appellant had a 21 page grievance pending on the attorney for his unprofessional conduct, and refusal to assist Appellant in the manner required as Standby Counsle to Pro Se Litigants.

Appellant had made the proper and necessary notice to the Court, where the Defendant had went Pro Se to avoid the conflicts with the counsel, the Court cannot reasonably claim that it did not have the required knowledge of the conflicts Pretrial, having merely ignore Court's duty to ensure conflict free counsel is provide, to protect the fair trial rights of the fifth amend. to the United States Constitution.

"We will reverse a defendant's conviction if he timely objected to an attorney conflict at trial, and trial court failed to conduct adequate inquiry." State V. Regan, 143 Wa.App. at 425...

Appellant did object to the reassignment of the conflicted counsel, and the Court did not inquire into the conflicts as required, Counsel was ineffe--ctive for not briefing the conflicts on record better, where counsel did tell the Court about being conflicted.

Appellant respectfully request this reversal, as he not only objected to this attorney being reassigned, but informed the Court he had pending the 21 page grievance, which precluded reassignment without inquiry.

ADDITIONAL GROUNDS # 3. (Ineffective Assistance-Material Witness)

> "Performance is not deficient when counsel's conduct can be charact--erized as legitimate trial strategy or tactics. State V. Kyllo, 166 Wn.2d 856 (2009).

Counsel's failure to bring alternative defenses constitutes Defiecient Performance, when the attorney either fails to conduct a "reasonable" investigation, nor makes a showing for failure as a strategic decision, necessary for the defense presented at trial.

Federal and State Constitutions require:

> "In all criminal proceedings, the accused shall enjoy the right... to have compulsory process for obtaining witness in his favor." U.S.C.A 6th, an Wash. Const. Art. 1 Sec. 22....

Counsel, although informed of witnesses proffered testimony, failed to call witness Traci Rectenwald for the trial, having her leave the Court house, when she showed up to testify. This is a Material eye witness that was necessary to the Defense case, where she was the only eye witness in the vehicle driven by Appellant. She had first hand knowledge of all the events that happened in the vehicle just seconds prior to the collison.

Additionally this witness admitted to causeing the accident in question through her actions and conduct, which would show the Jury Appellant did not drive in a reckless manner.

Witness Rectenwald provided statements pretrial, which Appellant stated on the record during the trial, "that Traci had knocked his required and necessary glasses off seconds before he enter the intersection, rendering Appellant legally blind at the time of the accident. Therefore these facts would have informed the Jury that Appellant was not driving in a "Reckless Manner", as required to find guilty under Vehicular Assault predicate on the "Reckless Manner" prong.

Therefore this was the sole "material eye witness" to the case, whom was claiming responsibility for the actions which caused the traffic accident, proving the Defendant was not guilty. See RP 6-16-11 at 13-14, 6-29-11 at 21-23... Appellant was not wearing glasses when the officer first seen him at the scene of the accident. RP,6-16-11 at 83.

> "Appellant failed to show prejudice, where the uncalled witness would have presented testimony cumulative to the evidence already presented." State V. Schaflander, 743 F.2d 714, 718 (9th Cir. 1984)

Herein, the witness was the sole source of the testimony, and would have corroborated the testimony offered by Appellant on the material issue, and the matter is not harmless, where the Jury would have been unable to then infer guilt from curcumstantial evidence, where direct evidence was offered through the live testimony. RPC 8.4 (d)

The Evidence was material to the issue and "ultimate fact", of the esse--ntial element "Reckless Manner", Appellants comprability for driving in a "rash or heedless manner", in this case Appellant was merely made temporarily blind by the loss of his required glasses. There was not any evidence given the Jury that Appellant was involved in some physical type altercation while attempting to drive an intoxicated person to her father.

Therefore the attorney not calling this witness, was not reasonable, an under these circumstances cannot be deemed a trial tactic, when the case eye witness was claiming responsibility for the cause of the accident.

No reasonable attorney would fail to put the witness on the stand, and such failure left the Jury to infer that appellant may have been somehow driving the vehicle in a Reckless Manner, which is the cause of the very conviction in this case, leading to the life sentence under P.O.A.A....

This is clearly prejudicial to the defense in these circumstances...

Both the State and Federal Constitutions give the Appellant the right to compel a material witness to the stand for testimony. Counsel should not be allowed to waive such constitutional rights of the defendant in open court, without the consent of the client to waive the constitutional rights, as this leads to the counsel prejudicing his client's constitutional rights without the client's approval. RPC 1.1

This is merely unreasonable conduct if the client is competent to make decisions, and competent to be tried for the crime, the client is competent to determine when or if he will waive his constitutional rights. The Counsel should not be given the authority to waive such rights without the consent of his client(s). RPC 1.2; RPC 1.4 (a)(1), (a)(2), and (a)(3)...

Additionally, since the attorney had contact with the witness, knew what the witness was claiming regarding knocking Appellant's glasses off, and had placed the witness on the witness list for the trial, witness was then not called to give eye witness first hand testimony to the Appellant being legally blind when they collided with the other vehicle, thereby not then driving in a reckless manner, in light of the evidence, the attorney was apparently working for the Plaintiff not the Defense in failure to call the witness to the stand. RPC 1.3

> "A permissive inference is constitutionally impermissible only when under the facts presented, there is no rational way the trier of fact could make the connection the inference permits. State V. Jackson, 112 Wn.2d 867 (1989); State V. Grayson, 48 Wa.App. 667 (1987).

Where the testimony of the eye witness show the Defendant "did not act with the intent to comit a crime", no rational competent Jury could infer that a Defendant was guilty of the crime, therefore no reasonable attorney would fail to call the witness which puts this fact in question. The case was such that the Material Witness was necessary to this Defendant's case.

"That a person who happens to be an attorney is present at trial along side the accused, however is not enough to satisfy the constitutional command." State V. Boyd, 160 Wn.2d 424 (2007).

"The Accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the necessary role to ensure that the trial is fair." State V. Boyd, 160 Wn2d 424 (2007).

Courts have long recognized that effective assistance of counsel rest on access to evidence, and in some cases expert witness test--imony are crucial elements to the Due Process right to a fair trial."State V. Greening, # 81449-0 (2010).

Question presented this Court is did the attorney know the witness was tesifying to the fact the witness caused the Defendant to become temporarly blinded, by knocking his glasses off while he was approching the traffic intersection where the accident happened, at the time he refused to call the Material Eye witness to testify? CP 189; CP54

Answer can be found in this attorney's own CrR 7.4 motion argument, as he claimed to have that knowledge about the witness, and still failed to call her to the stand, nor did he call her at the CrR 7.4 hearing to give the testimony on the Court records to support the motion. The Attorney did prejudice his client by failing to call the witness whom claimed to have caused the traffic accident the Defendant was convicted of causeing by his alleged driving in a reckless manner....

Second question is then "would the Jury's verdict have been different had the jury heard the testimony? This Court can not say the verdict would not have been effected, if the Jury was told by the responsible party that the party caused the accident by knocking off the drivers glasses, rendering the driver temporarily blind seconds before the collision.

Jury must assume that a driver in traffic will not immediately slam on the vehicles brakes, not knowing whom is immediately behind his vehicle, in effect causing a collison with the following cars, the second his eye

glasses where knocked from his face, and from testimony offered we see the driver had actually taken his foot from the gas, and attempted to recover the glasses, with the help of his passenger.

This does not support the Jury find of Reckless manner, where the driver was clearly concerned for the safety of all on the road with him, and was very concerned someone was hurt after returning from seeking help, while still blinded, per officers testimony.

> "Prejudice occures when trial counsel's performance was so inadequate that there is a reasonable probability that the trial outcome would have been different, undermining our confidence in the outcome." Strickland V. Washington, 466 U.S. at 694...

> "Attorney failed to exercise the customary skill and dilligence that a reasonable and competent attorney would exercise under similar cir--cumstances. State V. Visitacion, 55 Wa.App. 166 (1989); State V. Garrett # 37293-9-I (1997); State V. Thomas, 109 Wn.2d at 226...

Attorney herein failed to investigate the matter properly and call the material witnesses, which included Dr. Gross from the hospital, and Nurse VanMantra, both of who could have contradict the State's witnesses injury claims, and in trial testimony... The Attorney was not reasonable in presenting the defense in the case.

ADDITIONAL GROUNDS # 4. (Contributory Neglegence)

Defendant's conduct is not a proximate cause if some other cause was the sole cause of the accident. Hence, evidence is relevant (i.e., has a tendency to prove a fact of consequence to the action, if it tends to show the Defendant's conduct was not the sole proximate cause of the accident.) regardless of whether that conduct was neglegent.

> "A defendant's conduct is a proximate cause if, although it otherwise might have been a proximate cause, a superseding cause intervenes." "According to both the Washington Courts and the restatement of law,

(a) Superseding cause is an act of a 'third' person or other force which by its intervention prevents the actor (defendant) from being liable for harm to another which his antecedent negligence is the substantial factor in bring about". State V. Meekins, 125 Wa.App. 390 (2005)(Citing

A superceding cause relieves the actor (defendant) from liability, irrespective of whether his antecedent negligence was or was not a sub--stantial factor (i.e., aproximate cause) in bring about the harm. There--fore if... a superseding cause has operated, there is no need to determine whether the defendant's antecedent conduct was or was not a substantial factor (i.e., a proximate cause) in bringing the harm. Defendant shows as proximate cause Traci Rectenwald's admitted conduct, knocking the glasses off Appellant's face, with cause the temporary blindness, leading to the accident. This is the necessary conduct of a "third party" to relieve the Appellant's liability for causing the accident, thereby driving in any kind of "Reckless Manner" as the Jury erroneously found.

Contributory Negligence may be material to show the defendant's action did not cause the accident, therefore defendant can not be liable for the harm from the accident, which he committed no action to cause.

Herein, no evidence was presented the jury from which it was able to find "Reckless Manner" type driving by the Appellant, and the case clearly involved an act of contributory neglegence. The parties in fact were even wearing their seat belts at the time of the accident, therefore following even the small traffic laws, operating in the same manner any other reasonable, competent, calm person would drive.

The Jury does not show us what it believed the conduct of the Appellant was that it viewed as "Reckless Manner", nor does any evidence actually put forth, cause us to see "Reckless Manner", 35-40 miles per hour, temporarily

blinded by operation of a third party, taking his foot from the gas and then attempting to locate his required driving glasses, which all seem reasonable conduct, of a party whom was in control, and operating mindful of others safety and rights. Jury entered the finding the Appellant was not intoxicated per special verdict unanimous verdict finding, thereby such intoxication was not relied upon for the "Reckless Manner" finding.

In the facts of this accident, the third parties admitted conduct was the contributing factor, which leads to contributory neglegence, based on the fact the knocking off of Appellants glasses required for operation of the car, was the sole cause of the traffic collison presented, whereby the State had filed no traffic tickets for driving in any manner not lawful at the time of the accident. With testimony given that the vehicle was between 30-40 miles per hour in a 35 mile per hour zone, leads to an inference the driver was operating at 35 miles per hour, when the accident occurred. This Court should consider the contributory neglegence fact caused the accident, and Appellant should not be held to driving in a "Reckless Manner" in the case before this Court. There is no evidence of a "Rash or Heedless action by this driver, an there is evidence clearly showing contributory neglegence, as well as that the Appellant drove with care and respect for others on the road with him at all time, leading upto this accident... Appellant request this Court now in fact reverse his conviction with prejudice.

ADDITIONAL GROUNDS # 5. (Judicial Impartiality)

The appearance of Justice is lost, if the Judge acts unevenly for the favor of one party or the other in the case rulings. See United States V. Offutt, 348 U.S. 11, 75 S.Ct. 11 (1954)(In Re Murchison, 349 U.S. 133 S.Ct.

623 (1955). Supreme Court has recognized that to 'perform its high function in the best way' Judges must satisfy the appearance of justice.

"Due process, the appearance of fairness, and Cannon 3(D)(1) of the Code of Judicial Conduct requires disqualification of a judge who is biased aganst a party of whose impartiality may be reasonably questioned". State V. Perala, 132 Wa.App. 98 (2006). The Judge in the present case showed such clearly set bias against the In Pro Se Defendant, that it required Defendant except the reassignment of counsel, whereby the Judge told the Defendant that his very Defense motions would not be heard by the Judge, and directed the Defendant address all his issues to the Court of Appeals on the direct appeal, in fact the Judge showed personal bias, which in his statements presented would lead Defendant to conviction without a doubt in his Court room,the Appellant did not have the oportunity for a fair and justice trial before an impartial Judge, as our system of justice required. See RP 8/19/11 Pg. 5; Pg. 55

"A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonable, prudent, and disinterested person would of concluded that all parties obtained a fair, impartial, and neutral hearing" State V. Bilal, 77 Wa.App. 720 (1995)(quoting State V. Ladenburg, 67 Wa.App. 749 (1992). There is clear evidence by the Judges comments to the Defendant that the Judge was not neutral in this case, and therefore a neutral hearing was not provided, especially while the Defendant was In Pro Se.

In State V. Ra, 142 Wa.App. 868 (2008) the Court found the Judge did act improperly in comments, and actions, such as scolding the Defendant for agreeing, and commenting on Defendant's character, which is very similar to the conduct committed in this case. Judge even threatened the Defendant to apparently place him in fear for his safety, if he did not wear a shock

device in the trial, and then blocking the Defendant from commenting on the Court record, by theats to activate the shock device at the trail. See RP 4-14-11 Pg. 13 Ln. 22-23; RP 7-29-11 Pg.51 Ln. 23-25....

Appellant was blocked from objecting in the trail, even where he, the laymen in law knew objections should be made on the record, as if he even opened his mouth to speak to the Court, he might have been shocked by the Judge conducting the hearing, by use of the gaurds. Physical torture to get compliance is illegal in the United States, thereby impartiality is out the window, with any showing that Appellant fear physical torture by the Judge if he exercised his constitutional rights to participate in his defense.

Appellant was in fear of the Judge during the trial, and could not on the record address with the Judge, his belief the attorney/client conflict was effecting the Defense, especially when the attorney in mid-trial and without discussing the matter with Appellant, chose to send the only witness in Appellant's vehicle home without testimony. Had this Appellant not been in actual fear of retalitory actions by the Judge, the Appellant would of been able to address the Court, and have the matter preserved for the fact consideration of this Court properly.

The Judge cannot now deny these comments, nor that other comments are removed from the record by the transcriber, which tending to show the full extent of the impartiallity of this Judge in question toward the Appellant.

If this case is not dismissed with prejudice, it should be remanded for action by a different Judge, where the Appellant might receive a fair and just verdict, though a fair trial process...

ADDITIONAL GROUND # 5 (Jury Instruction Error)

Appellant touched upon the error in the Jury instruction where the Jury was given directly conflicting instructions in numbers 13 and 22, whereby the first instruction number 13 did not require the Jury to find unanimously the agrevating factors under which it found the Appellant guilty of "Vehiclar Assault".

Instuction number 22 however did specifically require this jury find unanimously what factor the verdict was rendered on before convicting the Appellant, therefore we know that the Jury found the Appellant guilty of only the "Reckless Manner" prong of Vehicular Assault.

The Specific issue is the fact the Jury was not properly instructed under all three prongs of Vehicular Assault, and such cannot be found to be Harmless error, where if the Jury had been presented the third prong for consideration, the Jury might have convicted solely upon the third prong of the Vehicular Assault, and therefore excluded the option of the three strike sentence the Court rendered, which only applied to the first two prongs of vehicular assault, not the third prong, which the Court erroneously listed as a lesser included offense, which could have weighed on the Jury, as they felt they could not consider the lesser until they excluded the greater, if they followed the instructions given, but it was proper for the Jury to have argued for the third prong at the time they were considering DUI and Reckless manner, as if they had such before them, the Jury might have found solely under

the third prong, which would have required a standard range sentencing issued, instead of the strike sentence.

Appellant feels the improper instruction materially did effect the proper consideration by the Jury of Vehicular Assault, and therefore this Court must now remand based on the error, where such error did effect the findings rendered, as the Jury did not have the chance to completely consider the crime before them, Due to the erroneously stated Jury instructions. Where multiple alternatives are available, and the Jury does not have to find but one alternative to convict, and as here the amount of time required for the sentence, is in fact at issue based upon the prong the Jury applies, as the P.O.A.A. only applies to two of the three prongs, then it is reversable error to only place the two prongs before the Jury, as the Jury verdict may not legally be based upon the amount of time the party may receive if he is convicted.

State did prejudice the Defendnat by only giving instuction on the two strike versions of vehicular Assault, and avoiding the driving without care prong, which the Court tried to then correct by adding it as a lesser included, but it was factually the third prong, requiring instruction in the direct charge.

Appellant, claims the remedy for such instruction error is to remand for resentencing under the erroneously ommitted prong, giving the lesser required sentence, if the conviction was to somehow be upheld on appeal.

ADDITIONAL GROUND # 6 (Cummulative Error)

The cummulative error doctrine applies when several errors occurred at trial court level, but none alone warrants the reversal. State V. Hodges, 118 Wa.App. 668 (2003).

Under the Cummulative error doctrine we may reverse the conviction if the combined errors effect the trial, effectively denying the defendant his right to a fair trial, even if each error standing alone would be harmless. see State V. Weber, 159 Wn.2d 252 (2006).

Cummulative error may warrant reversal, even were each of the errors standing alone would otherwise be considered to be harmless. State V. Greiff, 141 Wn.2d 910 (2000).

Where several errors resulted at trial level a defendant may be entitled to a new trial if cummulative errors resulted in a trial that was fundamentally unfair. In Re Pers. Restraiit of Lord, 123 Wn.2d 296 (1994).

Appellant herein claims that even if the multitude of the errors are found to be harmless standing alone, he is entitled to relief based on the Cummulative error Doctrine.

Dated This 1st day of July, 2012

Respectfully Submitted,

Guy Adam Rook

Appellant, Pro Se

No. 67520-9-I,
St. v. Rook

DECLARATION OF SERVICE BY MAIL
GR 3.1(c)

I, Guy A Rook, declare that, on this 1st day of July, 2012 I deposited the forgoing documents:

Statement of Additional Grounds

Motion to Supptement the Record

or a copy thereof, in the internal legal mail system of Clallam Bay Correction Center

And made arrangements for postage, addressed to: (name & address of court or other party.)

Prosecuting Attorney King County King Co. Pros/App Unit Supervisor W554 King Count Courthouse 516 Third Ave Seattle. Wa, 98104	Elaine Winters Washington Appellate Project 1511 3rd Ave Ste 701# Seattle, Wa. 98101-3635	Wash Court of Appeals One Union Square 600 University Street Seattle, Wa. 98101-4170

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Clallam Bay Correction Center (City & State.) on July 1st 2012 (Date)

Guy A Rook
Signature

Guy A Rook
Type / Print Name

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 JUL -3 AM 11:17