FILED

MAY 20 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By ____________

COURT OF APPEALS
DIVISION THREE
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
[illegible])
(your name))
)
Appellant.)

No. 31077-9-[illegible]

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Patrick [illegible], have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Th[illegible] when it [illegible] the [illegible] that resulted in the [illegible] mistrial [illegible] that she was unable to logically correlate all [illegible] testified to [illegible] : Pages 1-31

Additional Ground 2

[illegible] engaged in [illegible] requested [illegible] False and perjured testimony [illegible] Pages 31-49

If there are additional grounds, a brief summary is attached to this statement.

Date: April 22, 2013

Signature: [illegible]

Form 23

1.
2.
3.
4.
5. Ground #1 Statement of Facts:
6. The Court abused its discretion when it allowed
7. The Bench Trial to proceed in an unorthodox manner that allowed
8. State and Defense witnesses to testify out of order. This caused
9. a disjointed and confusing Flow of evidence that the Court
10. was not able to Follow logically. The trial Judge became
11. so confused that she become incapable of keeping the Facts
12. straight in this case. Thus, it become prejudiced to
13. appellant.
14. The Court explained in detail to appellant at the
15. beginning of Trial about the "Realtime" software and how it
16. helps the Court keep track of what everyone testified to
17. during the trial. RP. 24-26.
18. appellant asserts that the Court made so many errors
19. in its Findings of Facts in the Court's Verdict, that it is
20. Clear that the Court failed to compare any witness
21. testimony to Police report testimony during the Trial.
22. The court made its First irrational mistake on the
23. First day of trial, when the State told the Court that they
24. may be seeking a lengthy recess in the Trial on the
25. 12th day of Trial due to not having all evidence items DNA
26. tested. RP. 88-91

1. The Court should have declared a mistrial at that point.
2. so that the Defense could prepare For Trial Knowing what all the
3. evidence was before Trial started. RP. 88-91
4. On the third day of trial the court states "I am so totally
5. confused by some of the Prior testimony at this point."
6. RP. 550 LN13. The Court states "I've never done a case
7. where we are waiting For evidence as we're taking testimony."
8. RP. 555. In the Judge's 18 years on the Bench she has
9. never allowed a case to proceed in such a disjointed
10. Fashion. On June 1, 2012, the Defense requests a special hearing
11. before the Court, telling the Court that the Defense has just
12. learned From the State that they were submitting three (3)
13. more DNA Buccal swabs For comparison Testing. RP 560-583
14. Defense tells the Court that they were aware of the Hat
15. mishandling when they reviewed the America's Most Wanted
16. Video a month before trial started. RP 564. The State tells
17. the Court they are surprised that Defense had Known all along
18. about the Hat contamination. RP 565 LN15. The Defense tells the
19. Court that the Video comes through discovery. RP. 572 LN16.
20. The Court has to Know that discovery comes through the
21. State has to be reviewed by the State before it is turned
22. over to Defense. Yet the court states; "I don't think anybody
23. did anything wrong." RP 579 LN-12. The Court also stated
24. exceptional representation by all attorneys. RP. 1371
25. Appellant asserts the Court erred in the Following Counts'
26. Verdicts and that all of these errors were Prejudicial to appellant.

1. Court's Verdict # 2-B. Court states, "Ms-Benner walked to the
2. Front door, Flipped off the lights and turned to walk back to the
3. cash register." RP.1382
4. This is a Fabricated Finding of Fact by the Court. Not one witness
5. testified that Teresa Benner "Flipped off the Lights." The Police
6. report dated 11-7-92 by Officer Calderwood, states Teresa Benner
7. was in the Back room when the suspect entered the
8. store.
9. Steve and Teresa Benner got together with Kathy Ward to
10. discuss the upcoming trial and rehearse their stories For
11. their testimony. All of them Forgot that they told the
12. Police in 1992, that Teresa was in the back room with
13. Steve and their two children. All of them testify that the
14. store was well lighted. There is absolutely no evidence that
15. the lights were ever Flipped off. RP.99, 110, 209, 212, 251, 254,
16. 280 LN 3-20.
17. Court's Verdict # 2-C. stated; "The intruder walked briskly
18. behind Teresa Benner and caught up with her." "The man
19. was carrying sunglasses. RP.1382
20. This is again a Fabrication of Finding by the Court. The
21. 1992 Police report states Teresa Benner was in the Back of
22. the store. RP.280. All witnesses stated the robber was wearing
23. dark sunglasses the entire time that he was in
24. the store. He was never carrying the sunglasses. RP.99,
25. 132-135, 210, 226, 238, 251-254, 269, 274, 283, 288.
26. Court's Verdict # 2-D. stated; "The man wore sunglasses the

1. was wearing a disguise that consisted of a Fake beard, a hat
2. and sunglasses. He referred to the beard multiple times.
3. RP. 99, 103, 105, 104.
4. The robber was also at the cash register For a good
5. deal of time, and the robber's back would have been
6. Facing Mr. Benner all of that time because Mr. Benner
7. was in the Back room the whole time with his children.
8. The cash register was at a transaction counter
9. which was outside and in Front of the back room
10. area. RP. 101-102.
11. Mr. Benner completely contradicts himself and commits perjury
12. when he stated that he was able to see the Front of the
13. robber much of the time. He makes this perjured statement
14. in order to substantiate his claim of burning the man's
15. Face into his memory. He had already Forgotten that he
16. had twice stated the man was behind him most of the time.
17. RP: 103, LN 17-18, 104-LN-4, 105-LN 12-14, 110-LN 15-19.
18. Mr. Benner testified that Kathy Ward, his wife Teresa Benner
19. and himself all helped with the composite sketch drawing done
20. by SGT. McMillen. RP 112-113. The Prosecution had to lead
21. Mr. Benner in this line of questioning because they had the
22. Police reports that stated only Steve and Teresa Benner helped
23. SGT. McMillen prepare the First sketch.
24. Mr. Benner goes on to testify that he did not feel the
25. sketch was a very good rendition of the individual.
26. State's exhibit 117. Yet there was no evidence that

1. appellant. Not one witness at the Kid's Fair
2. robbery said to Officer Calderwood, "Hey, you know
3. he was your height!" RP 99-138, 234-235, 283,
4. 287-288, 292 LN 10-17.
5. This is proof again that the court did not cross
6. reference the witness's testimony to see the
7. contradictions.
8. The Court's Verdict #2 states: Heather Bender stated the
9. suspect was 5'-11, wearing a trucker's Hat that said
10. "Solid Gold" on it, wearing sunglasses and carrying a
11. backpack. RP 1385.
12. This is a False Finding of Fact because Ms. Bender's
13. Statements were contradictory during her testimony and
14. to the police reports in 1992 and 1993.
15. Ms. Bender states the suspect was "Kind of slight
16. and probably my height." "I'm 5'-11." She then states
17. that "In my mind's eye the hat had Solid Gold
18. across it." But then she went on to say she
19. might have gotten the "Solid Gold" off the T.V.
20. RP 145-148.
21. Ms Bender states later on in her testimony that the
22. suspect did not appear "any taller than me, and I'm
23. 5'-8, but he was not short." She said she would
24. not put him under 5'-5." RP 150-152.
25. Ms. Bender stated that the suspect's Face was
26. "Seared into her memory." RP 148 LN 14-16.

1. Court's Verdict #12, states; Michele Cole saying the
2. intruder was 5'-10. RP.1387
3. This is a False Finding of Fact because every Police
4. report and the 911 Tape recording all say Michele Cole
5. stated the suspect was 5'-8" to 5'-9". RP 164, 312,
6. 326, 433, 759.
7. The Court clearly cited the 5'-10" height because it
8. was the closest to appellant's actual height of 6'-1".
9. But that 5'-10" height the court chose is Contradicted
10. by every Police report in 1992.
11. Court's Verdict #17, stated; Michele Cole did not Know
12. what a pin number was and the usage of Pin numbers was
13. not common in 1992 RP.1387
14. Ms Cole committed perjury when she testified that she
15. did not Know what a "Pin number" was. RP.165
16. Det. Fojtik testified, referring to his 1992 Police Report
17. of 11-7-92, that Ms Cole told him she "Pretended"
18. not to Know what a Pin number was. RP 758-759,
19. start at LN 24-1
20. The Court Fabricated its Finding on the Pin Number
21. issue because Det. Fojtik's testimony proves that
22. Michele did Know what a Pin Number was and she lied.
23. The Court's claim that Pin numbers were not in wide
24. usage in 1992 is also False. ATM. machines were in wide
25. usage back then. Every bank branch of every major
26. bank had installed ATM's by 1992 ATM

1. cards were issued to anyone with a checking or
2. savings account at a bank. It took a Pin
3. number to work with the ATM card For any
4. banking transactions. Every credit card that
5. had cash advance credit lines also had a pin
6. number. The only thing that did not exist in
7. 1992 was debit cards!
8. The Court made a False Finding of Fact about
9. the existance of Pin Numbers in 1992.
10. Appellant would like the appeals Court to
11. take notice that the trial Court could not even
12. see the contradictions in its own Findings of
13. Fact. In Court's Verdict #10, The Court said
14. Ms Cole stated the suspect was 5'-10. RP1387.
15. In Court's Verdict #32, RP1388, The Court now
16. states Ms Cole stated the suspect was 5'-8".
17. The Court was so confused it could not keep
18. its on Findings of Fact straight.
19. The Court erroed in Court's Verdict #41, when it
20. stated defendant was at least somewhat Familiar
21. with the Spokane area because he visited the Spokane
22. area in 1978 For several Days. RP 1390.
23. This is a False Finding of Fact because appellant
24. Testified he had only spent 6 hours in the Spokane
25. area in 1978. He did not even Know where his
26. brother lived in Spokane. Appellant testified he

1. went Fishing and camping with his brother to a lake that
2. he estimated to be 60 miles North of the Spokane Area. RP 1211
3. The only time appellant left his brother's house is when they
4. traveled north to the lake to go Fishing. The Court's
5. assumption that 6 hours spent at one house 14 years earlier
6. than when the crime happened in 1992 makes a person
7. Familiar with the Spokane area is just not true.
8. Court's Verdict # 47 stated appellant was traveling
9. around California, Oregon and "Washington" doing
10. reconnaissance For Bank robberies. RP 1391
11. This is a False Finding of Fact by the Court.
12. appellant testified that he only committed bank robberies in
13. Oregon and California. The Court Fabricated the claim that
14. appellant did recon in Washington State. RP 1128, 1245,
15. 1252.
16. Court's Verdict # 53 stated defendant was absent From
17. his job November 4 through November 8. RP. 1392
18. This is a False statement by the Court. Appellant
19. testified that he was laid off November 4, 5, 6. and that the
20. weekends would be normally scheduled days off. RP 1245-1249
21. The Court is trying to twist the Facts about the days
22. appellant was laid off inferring that they were taken
23. off intentionally, which they were not.
24. Court's Verdict 58-63. The Found that appellant was
25. urging his sister-in-Law in a phone call to remember that
26. he was Fishing with his brother and Ken Houser on the day

1. of the Robbery and murder. The Court Claimed that Mike Gibson
2. and Ken Howser's testimony mirrored what testimony
3. should be per the phone call conversation.
4. This is a False Finding of Fact by the Court.
5. appellant admitted to making that phone call. He never once
6. said "Tell Mike and Ken to say we were Fishing." There
7. is no mention of conflicts with Native American Fishing.
8. There is no mention of 1992 being the last year a
9. person could retain a catch of chum Salmon.
10. appellant said that he didn't even know if they
11. were Fishing that day himself. It was just in general that
12. we Fished every Free weekend in the summer and Fall months.
13. appellant was not aware of what his 1992 Real Telephone
14. employment records indicated at that time about his weekend
15. overtime hours. RP1392-1394. RP1214-1215, 1270 LN 9-12,
16. RP 1280 LN 23-25, RP1284-1287.
17. If appellant was trying to rig an alibi defense he would
18. have had the pictures that defense submitted as proof of the
19. Chum Salmon fish catch on 11-7-92, dated on the back of the
20. pictures. They were not dated because they were submitted on
21. the integrity of the defense witnesses Mike Gibson and
22. Ken Howser's recollections of that phenomenal Fishing trip.
23. This was not a regular Fishing trip. It was the single best
24. Fishing trip that appellant, Mike Gibson and Ken Howser ever
25. experienced fishing together. It has always stood out in
26. all our minds for that reason. We have all reminisced

about that fantastic day of fishing many times over the years.

Appellant wants to advise the court that he has lost page 13 of his S.A.G. Brief. Appellant is trying to fill in the blank of what he believes he wrote for page 13, so that it will continue to page 14.

The State asserted that Ken Howser visited appellant every week while appellant was incarcerated at the County Jail in Spokane.

Appellant explained that Mr. Howser did not start to visit him until he was in Spokane for 4 or 5 months. The County Jail visiting records prove that fact.

Mr. Howser is a lifelong resident of Spokane. His loyalty is to the Spokane community first and foremost. Mr. Howser had no contact with appellant for that first 4-5 months because he had to make sure in his mind that appellant could not possibly be responsible for this crime. Once he felt confident of that fact, he sent a letter dated 9-12-2011 (approximately) advised that he wanted to visit appellant.

1. Appellant believes Mr. Howser did not start visiting him at the
2. Jail until October 2011.
3. The Phone Call that the State submitted as evidence is edited
4. From its original content. State's Exhibit 140, RP 1263,
5. RP 1267 LN 19-20. It is only a portion of the conversation and
6. it is taken out of the true context of the entire conversation.
7. The Jail recorded every phone call, every visit, and read
8. every letter appellant sent out and recieved, and there is no
9. other single piece of evidence the State can produce that
10. would show that appellant was trying to coach his alibi
11. witnesses.
12. Appellant asserts that He and Mr. Howser came to absolute
13. conclusions that we caught the Chum Salmon on the
14. weekend of 11-7-92 in totally different ways as our respective
15. testimony shows. Appellant's conclusion came From a
16. review of Discovery evidence of his employment records.
17. Mr. Howser researched certain events to make sure his
18. recollection was correct and to make sure it was not at
19. a later date in November 1992. It was the key date of
20. 11-2-92 as the cutoff date For Native american Net
21. Fishing to end, that allowed Mr. Howser to Know For
22. certain that we all Fished the next available weekend.
23. Had that cutoff date been 11-9-92, then he would have
24. testified that we caught our Chum Salmon on the
25. weekend of 11-14-92. Because Mr. Howser remembered that
26. we caught our Salmon the First weekend after the

1. end of the American Native Net Fishing closure which was
2. 11-2-92.
3. The Court erred because it found our testimony
4. mirrored each other, which is not true. Appellant asserts
5. that there are no contradictions in any of the Defense
6. witnesses testimony. RP-692-753, RP 1210-1216, RP 1236-1239
7. RP1248-1253, RP1267-1268, RP1284-1287
8. Appellant asks this Honorable Court: Is there a particular
9. event in your Past that is so memorable to you that you can
10. recall clearly that event, but you are not sure of the exact
11. date because it happened so long ago? But you were able to
12. research it via a calander, the internet, etc. and then
13. determine the exact date. For example, when the Chicago
14. Bears won the Superbowl in the 1980's. You may have
15. watched the game at a Superbowl party you attended
16. and you rember great plays in that game and sharing
17. it friends or Family. But there is no way you can say
18. what the exact date was that the game was played.
19. However, a little research on the internet tells you the
20. exact date and time the game was played. That simple
21. innocent research confirmed the event date for you.
22. Well that is exactly what happened for both appellant
23. via his employment records, and for Ken Hauser via the date
24. the Native Americans were supposed to stop commercial
25. netting operations; 11-2-1992. There was no collusion to rig
26. an alibi defense.

1. Court's Verdict #71 stated appellant was released From
2. Prison in 2007. RP 1396
3. This is a False statement of Fact by the court. The
4. State, Det. Johnston and the Court are incapable of getting
5. their Facts right. Det. Johnston stated in his police report
6. that appellant was released in 2007. Det Johnston had spent
7. months reviewing appellant's parole File and 3665 pages
8. of FBI documents on appellant's Bank Robbery operation.
9. Appellant's parole File clearly shows appellant was released
10. from Prison on 5-31-2006.
11. The state cited Det. Johnston's 2007 release date on cross
12. examination of appellant and appellant advised the correct
13. release date as 5-31-2006. RP. 1250-1251. But the court
14. paid no attention to this Fact and went with the 2007 estimate.
15. This is proof that the court cannot get even the simplest of Facts
16. correct, so is it possible for the court to get the really
17. important Facts correct?
18. Court's Verdict # 76, stated that on 11-10-92 a Few Fibers
19. were seperated out to send to Coeur d'Alene for their use. RP1397
20. The Court erred on this Finding of Fact because it acknowledges
21. some of the Fake Beard Fibers were seperated out, but will
22. not acknowledge that that portion seperated out could
23. contain DNA on them. Both James Currie and Lorraine Heath
24. testified that it only takes one billionth of a gram to
25. detect a DNA profile. RP 967-969, 1067-1068, RP 1094 LN 14-25.
26. Both the Sunglasses and the BASE Ball hat had multiple DNA

1. mixtures on them that were unknown. RP959-962. So how
2. can the Court refuse to consider that the unknown
3. portion of the Fake Beard hair Fibers sent to Idaho
4. authorities and Lost, could not contain one Billionth of a
5. gram of DNA on them. This is potential exculpatory evidence
6. that the Court cannot disregard. To do so is prejudicial to
7. appellant.
8. The Fake Beard hair Fibers sent to Idaho are one of three
9. pieces of positive or exculpatory evidence that has been
10. Lost in this case. The Handcuffs used in the Key Fair
11. robbery had one print on them From the robber that came
12. back unknown when they were entered into the AFIS
13. system by the Idaho State Crime Lab.
14. The two white hairs Found on the Black Baseball cap
15. were sent to the WSP Crime Lab in 2004 for DNA Testing.
16. On 6-13-2006, when the Crime Lab was Finally reading to do
17. the testing, they Found that the envelope that was supposed
18. to contain the White Hairs, was empty.
19. The handcuffs From the Idaho robbery that had the
20. robber's Fingerprint on it and therefore his DNA From the oils
21. in that Fingerprint were destroyed in 1998 when the Statute
22. of Limitations ended.
23. The Fake Beard hair Fibers sent over to Idaho were also
24. lost or destroyed in 1998. RP421-428, RP 450-454,
25. RP 297-303.
26. The Court has refused to consider any of this potential and

1. positive Forensic evidence in this case. That is a gross
2. abuse of discretion by the Court and Prejudicial to
3. appellant. The unknown Fingerprint Found on the
4. handcuff is absolute proof that appellant did not do
5. that crime. appellants prints have been on File in the
6. AFIS System since 10-4-72, when appellant was
7. drafted into the U.S. Army. Also appellant had multiple
8. Convictions in the mid to Late 1970's in which his
9. Fingerprints were again entered into the AFIS system.
10. The State and the Court assert the same person is
11. responsible For both crimes. RP 400.
12. The State has tried to muddy the waters on the
13. Fingerprint on the handcuffs by claiming it was not a
14. good print. They Know that the evidence was destroyed
15. in 1998 and therefore, the Defense cannot have it tested.
16. But Idaho authorities testified that it was a good print,
17. and that they submitted it to the Idaho Crime Lab For testing.
18. RP 295-297. There is no reason For Idaho authorities to
19. lie about the validity of the Fingerprint. But there is
20. every reason For Spokane authorities to lie about the
21. print. They had seven (7) latent unknown prints that
22. they recovered From the Cole Crime Scene and none of
23. them matched appellant. appellant's prints were not
24. Found on the Sunglasses, Hat, or shell casings. RP 606-607.
25. If all or most of the witnesses had stated the suspect was
26. 6' to 6'2 and 180 to 195 LBS, 35-40 years old, then there would

1. be a more reasonable belief that appellant could be the
2. right suspect. But every witness said the suspect was
3. 5'8" to 5'9", 140-160 LBS, and 30 or younger. The odds
4. of 4 independent people from (2) crime scenes describing
5. the exact same tight range description and all being so far
6. off from appellants size 6'1", 195, 40 years old, is about
7. a billion to one.
8. The State has argued that all the witnesses gave an
9. estimation only and that it was not exact. But they all
10. gave the exact same estimation!
11. The State asked Defense witness Dr. Devenport, who is
12. a leading expert on Witness identification, that if a bunch
13. of people who see events and describe them similarly
14. and who are unknown to each other, is that a positive
15. indication? And she answered "YES." RP 835 LN 14-17.
16. Michele Cole, Steve and Teresa Benner, and Kathy Ward
17. all saw the same suspect and they described him as 5'8" to 5'9",
18. 140-160 LBS, and about 30 years old. RP 283, 287-288, 312-314,
19. 432-436, 759-760.
20. Teresa Benner stated it best about all the contradictions that
21. the state's eyewitnesses were making regarding the description
22. of the suspect, when she stated that whatever was in the
23. police reports would be the most accurate. RP 236 LN 8-11.
24. Ms Cole testified that the suspect had "Blue Eyes," they
25. were not Brown. RP 189. The Court refused to even
26. consider that fact. Ms. Cole said she was just 2½ feet

1. away from the suspect and she got a real good look at
2. him for about 4 minutes. RP 162, LN 10, 164, LN 1-4, RP 189, LN 19-21
3. Ms. Cole also testified and stated to police that the suspect
4. had a baby face, it was unusual to have such a clear baby
5. face complextion for a grown man. There were no wrinkles,
6. pots or shadows of beard growth. RP 187, 163, 435, 436
7. RP 760.
8. appellant asserts that Ms. Cole clearly had a memory burn
9. of the suspects very very baby face with no shadow of a
10. beard growth and no scar. She also testified that
11. appellant does not have a baby face and that she saw no
12. scar on the suspects face. RP 201 LN 17-25.
13. The Court completely ignored the fact that Ms. Cole stated
14. appellant does not have a baby face. And appellant asserts that
15. the Court had pictures dating back to 1992, and none of those
16. picture show appellant had a baby face. RP 190, defense Exhibit
17. 206, Picture #4, RP 697, defense Exhibits D-213, D-214 with
18. appellant in the middle of the picture of 3 men holding Cheem
19. Salmon.
20. The Court completely ignored the fact that Ms. Cole committed
21. perjury multiple times on the Witness stand. And the Court
22. considered completely contradictory statements as fact set in stone.
23. Ms. Cole took less than 1/10 of 1 second to identify appellant
24. after the Prosecution identified appellant by name and asked the
25. Court to have appellant stand up to be identified. Appellant was
26. the only person standing in the Courtroom making it

1. impossible For Ms Cole not to be able to identify appellant
2. RP 167.
3. Ms. Cole lied when she testified, "I noticed his Eyes."
4. RP 167-168, 196-198. Set. Johnston testified as to what
5. Ms. Cole really said when she viewed the photo montage
6. he showed her on 4-19-2011. RP 513-515, 530-537.
7. The Court also stated "I know I'm relying on Realtime
8. a lot because Becky is getting it. RP 185.
9. Appellant argues that if the Court is relying on Realtime
10. so much, how can it miss so many contradicting
11. statements by the State's eyewitnesses?
12. Ms. Cole also stated that she looked at (8) pictures
13. in the photo montage Set. Henderson showed her on 4-19-2011.
14. But the State's Exhibit 125, RP 510-511, is a 6 picture montage.
15. RP 167 LN 23-LN 4 at RP 168, RP 182 LN 14-21. Correction, I meant
16. to say Set Johnston showed her on 4-19-2011.
17. The Court Failed to consider that Ms Cole told Defense
18. Counsel that appellant looked 50 years old to her in the
19. Photo montage Set. Johnston showed her on 4-19-2011. That
20. was appellant's 1994 Driver's license picture and appellant was
21. 41 years old in that picture. RP 198.
22. Appellant asserts Ms Cole thought suspect was 30 at time of
23. murder, its 20 years later, therefore the picture in the montage
24. must be of appellant at age 50. She was just trying to
25. think quickly hoping to come up with a right answer.
26. Ms. Cole Falsely identified Hugh Kmuttgen on 12-14-93,

1. just 13 months after the crime, and she was 85-90%
2. sure it was him, yet she turned out to be 100% wrong.
3. Steve and Teresa Benner also identified Hugh Knuttgen
4. that same day, and they said he was very similar, the
5. closest yet to the suspect of all the pictures they had
6. looked at. And they were 100% wrong. And now nearly
7. 20 years later they claim appellant is the right guy.
8. RP 441-448
9. On cross examination Mrs. Cole denied identifying
10. Hugh Knuttgen until Defense Counsel presented her with the
11. evidence to prove she had in fact identified him. RP193-194.
12. Mr. Benner also denied ever identifying Hugh Knuttgen.
13. RP 131. Now this is the only time Mr. Benner has ever been
14. robbed and the only person he ever identified in 18½ years
15. was Hugh Knuttgen. Mr. Knuttgen was in picture #4,
16. the same seating appellant's picture was put in 18½ years
17. later! Appellant asserts that you would remember an identification
18. like that. That you would be calling the Police and asking
19. if they were going to arrest the guy you identified,
20. especially when your wife also identified that same guy.
21. Appellant asserts that Steve Benner lied about not
22. remembering that he identified Hugh Knuttgen in order to
23. make it look like he had never falsely identified anyone
24. in the Past.
25. Appellant has already proved that Mr. Benner lied
26. during his testimony when he claimed suspect was

1. behind him most of the time and then claimed he saw the
2. robber from the front most of the time.
3. Ms Benner also claimed not to remember identifying
4. Hugh Knuttgen in 1993 RP 229-230 LN 24-8. Yet
5. on further cross exam, she admits she did say he looked
6. similar. Yet she can't recall the rest of the comments
7. she made on the only picture identification she ever made
8. in this case. RP 237-238
9. Ms Benner works for the Post Falls City Hall and
10. City Hall is synonymous with Law and Order. RP 516
11. Mr. & Mrs. Benner have been Married for 32 years. RP 206
12. Ms. Benner claimed she was not good with pictures, but
13. she is pretty good with faces RP 269. She also claimed
14. she recognized appellant when he was being brought
15. into the court room area.
16. Appellant was in handcuffs and escorted by (3)
17. Spokane County Sheriff's deputy. Mr. & Mrs Benner, Kathy
18. Ward and Michele Cole were all talking before court
19. as appellant was paraded before them outside the Courtroom
20. in Handcuffs and escort. RP 272-273.
21. Kathy Ward testified that the Benner's and her hoped
22. that any information that they could give would help Ms. Cole.
23. RP 272 LN-7 - RP 273 to LN 7.
24. The Benner's owned the Kids Fair store in Coeur d'Alene.
25. That robbery was never solved. The Benners never received
26. any Justice in their Robbery.

1. Det. Johnston contacted the Benners and told them
2. that appellant had been arrested. RP 230 LN 16-22
3. Teresa Benner claims she never looked on the internet
4. about this case after appellant was arrested. RP 230 LN 9-15
5. Appellant asserts that Ms. Benner lied when she
6. claimed never to look at any newsmedia articles on this
7. case after appellant was arrested. Her husband told her
8. he picked the # 4 guy in the photo montage. They
9. both Testified they did not remember picking out Hugh
10. Knuttgen in 1993. Ms Benner eventually admitted
11. she did I.D. Knuttgen in 1993 in a vague way.
12. RP 230 LN-2-8. RP 131-132
13. It is simply not believable that two educated people
14. like the Benners would not look at any media info
15. on this case after an arrest was made. They are probably
16. aware that the statute of Limitations ran out on their
17. robber in 1998. Det. Johnston told them that they have
18. appellant's DNA at crime scene. Ms. Benner is very
19. pro Law and Order because she works at City Hall.
20. The Benners adopt a "CSI" mindset which says if
21. they have a guy's DNA at a crime scene, it must
22. be the right guy.
23. The Benners see appellant led in handcuffs to court
24. So they know who to identify when asked to do so.
25. They get justice for their crime as well as Ms. Cole
26. because Police say same guy did both crimes!

1. as appellant was led back to court after a recess
2. on 5-29-2012, Steve and Teresa Benner sat on a bench
3. outside the Courtroom with their heads together
4. bent down talking. Appellant heard Steve Benner
5. tell Teresa Benner "That's him, that's the guy I
6. identified in Court!"
7. Teresa Benner simply co-signed her husband's
8. identification of appellant in Court in order to get
9. Justice For their robbery in 1992 that was never
10. solved. The Fingerprint on the handcuffs in the Kid's
11. Fair robbery proves that the Benners are wrong about
12. their identification of appellant.
13. Teresa stands by her sketch drawing of suspect in 1992
14. that shows the guy completely disguised up. Based on that
15. sketch, it would be impossible to identify a person 5 months
16. later, let alone 20 years later. RP 238-239.
17. She can't remember or can't recall most details of the
18. Robbery in 1992, but she can remember a Face that
19. was disguised up. RP 229-239
20. Ms Benner testified that she was able to look at Robber's
21. Face in 1992 when he directed her to go into the back
22. room. But she is lying when she says this because the
23. Police report From 1992 said she was already in the
24. back room. So he was never physically right next
25. to her. RP 218, RP 280 LN 4-5.
26. Teresa Benner committed multiple counts of perjury

1. during her testimony and the 1992 Police reports prove
2. that. Therefore, her identification of appellant is
3. highly suspect at best and should not be allowed.
4. Kathy Ward also viewed appellant as he was
5. brought into Court along with the Benners and Ms. Cole.
6. Kathy Ward testified that she picked out someone
7. in the photo montage. It was not appellant. It was
8. a best guess she testified. The State never even
9. asked her if she saw the man who robbed them
10. in 1992. They already knew her answer would be
11. "NO", that's why they never asked her. RP 264-266
12. The only reason Kathy Ward testified that Teresa
13. Benner was heading back to the back room when
14. the robber entered the store is because that is what
15. the Benners convinced her actually happened as they
16. preped for this trial. All of them Forgot what they
17. told police in 1992. And it is understandable that
18. they would Forget. It was 20 years ago. But when
19. you can't remember, you don't lie, you just tell the
20. Truth and say you don't remember.
21. Michele Cole, Steve and Teresa Benner and Heather Bender all
22. chose to lie and try and make up facts to help the state
23. convict an innocent man all because Det. Johnston and
24. the news media said "He's the guy, we got his DNA at
25. the crime scene."
26. Ms. Cole testified that her husband was in a wrestling

1. hold during the struggle, and her husband was bigger
2. than the suspect. She said her Husband was 5-10, and
3. 170 LBS. RP170, 188, 199. Appellant in his shoes would have
4. been at Least 4 inches taller and 25 LBS heavier than
5. Brian Cole on 11-7-92 RP526-527.
6. The weight listed on appellant's Driver's license From
7. 1994 is actually his weight From February 1992.
8. appellant Recieved his First Driver's license in 1992. On
9. April 18-20, 1994, appellant applied for a rec'd a
10. replacement driver's license. That replacement license
11. used the description on the 1992 license. By 1994,
12. appellant weighed 195-200 LBS.
13. Appellant was never allowed to posess his discovery
14. documentation per Court order in order to make it
15. as difficult as possible For appellant to prepare his
16. defense. So appellant is recalling purely From his memory
17. when he applied for a recieved a replacement Driver's
18. License. But if you Look at Defense Exhibit 205, it
19. should endicate an issue date somewhere between
20. 4-18-94 to 4-20-94.
21. Appellant testified that he was 6'1", and 195 LBS in
22. 1992 at the time this incident would have happened.
23. With a hat and shoes on, appellant would have stood
24. at almost 6'3" tall. RP1234-1235
25. Ms. Cole should have been able to see that suspect
26. was 4-5 inches taller than her husband and 25 LBS

1. heavier if it was actually appellant that was in
2. this belly to belly "bear hug" wrestling hold she
3. witnessed. But she said they looked the same
4. height and Brian Cole was bigger! RP 170, 188, 189.
5. Appellant asserts the reason she did not see a person
6. who was much larger than Brian Cole is because it
7. was not appellant. It was a guy she and everyother
8. witness described as 5'8" to 5'9" and 140-160 LBS.
9. Ms. Cole stated the suspect had sunglasses in his
10. Breast Coat pocket. But she lied. She never saw any
11. sunglasses at all. RP 176, 184, 314
12. Ms. Cole lied when she testified about the demeanor
13. of the Suspect. RP 179-181, 191-192, 312, 438-439.
14. Ms. Cole Fabricated her testimony about what she told
15. Police about subject possibly being on Drugs. RP. 190, 438.
16. Ms Cole lied about not remembering that she identified
17. Hugh Knuttgen in 1993, until confronted by Defense
18. Counsel with her actual statements From 1993. RP. 193.
19. Ms. Cole lied about being on her scooter the whole
20. time during the robbery. RP 160, 192, 438, 757.
21. Ms Cole claimed there were lots of things she did not
22. remember From 1992. But appellant asserts that she does
23. know because the Defense had the Police reports to contradict
24. all her Fabricated statements. RP 186-201.
25. When Ms. Cole was getting caught in her lies, by
26. Defense Counsel, she adopted the same "I don't know,"

1. "I can't remember" strategy that Steve and Treso
2. Benner used. RP 126-137, 229-239.
3. Appellant asserts that Michele Cole has a crystal clear
4. memory of the night Brian Cole was murdered and that
5. her claims of "I don't remember are False."
6. Defense Counsel asked Ms. Cole about the rubber
7. bands that held on the Fake Beard. Ms. Cole instantly
8. replied with perfect clarity; "Not rubber bands."
9. "Just elastic bands that went all the way around
10. his head to hold it on." RP185
11. Appellant argues that For Ms. Cole to retain that
12. very specific knowledge about a minute detail like
13. the elastic bands that would have been hidden by the
14. hat the suspect was wearing for most of the time,
15. Michele Cole would have to have a very very good
16. recollection of the event. Therefore her claims of "I don't
17. remember" are False. And her contradictory versions of
18. what she said or remembers are Fabricated lies.
19. The Court grossly abused its discretion by
20. refusing to cross reference all of the contradictory statements
21. made by the State's eyewitness and expert witnesses. It
22. had an obligation to do so as the Trier of Fact.
23. The America's Most Wanted Video was played in
24. court so that everyone could see that the Hat was
25. mishandled. Ms. Blumhorst explained to the Court
26. that there was an interview with Dean Morton. He

1. was a Spokane Barber Shop owner. The information he
2. provided law enforcement was discredited after the
3. segment aired on T.V. in 1993. RP 1009
4. Mr. Morton is proof that normally, honest, Law
5. abiding citizens will lie to the Police for reasons
6. unknown to us all. We can only guess at best as
7. to what motivated Mr. Morton to make up his story
8. to the Police about the Cole murder case.
9. However it is not hard to understand what
10. motivated the State's eyewitnesses to lie in this case.
11. Ever since the advent of the "CSI" television Franchises,
12. the public and even Law enforcement believe that if you
13. Find a person's DNA at a crime scene, then that
14. means the person is guilty.
15. In this case the Police and the News media made
16. sure that the witnesses knew that they connected
17. appellant to the crime scene via DNA evidence.
18. Appellant asserts that Michele Cole, Steve Benner
19. and Teresa Benner all adopted this "CSI mindset"
20. of guilty because of the allegation of DNA evidence.
21. But the DNA evidence is on a very small piece of Fake
22. Beard Hair Fiber, that has been altered from its original
23. Form Found at the crime scene, that could be worn by
24. anybody. It is not intimate DNA that could only come
25. from that actual person such as blood or semen,
26. or skin beneath Fingernails.

1. Appellant asserts that there is a preponderance of evidence
2. to show that Michele Cole, Steve Benner, Teresa Benner
3. and Heather Bender all gave False testimony knowingly
4. and with malace. Because the Court refused to cross-
5. reference all the contradictory testimony by the
6. witnesses, it constituted a dereliction of Duty by the
7. Trier of Fact.
8. The Court erred by not accepting Teresa Benner's
9. statement about all her contradictory statements when
10. she stated, "Whatever would have been in the Police
11. record would probably have been the most accurate at
12. the time." RP 236 LN 10-11.
13. That same statement should be applied to all the
14. eyewitnesses' testimony because this case is 20 years
15. old. Common sense says people will Forget what was
16. said 20 years ago. The Police reports are the most accurate
17. account.
18.
19. Ground #2 Gross Prosecutorial Misconduct.
20. In 2004 Sgt. Henderson sent a pair of sunglasses,
21. a black baseball hat, and a envelope that contained
22. two (2) white hairs Found on the hat, to the WSP Crime Lab.
23. for DNA testing.
24. On June 13, 2006, James Currie, a WSP Crime Lab Tech.,
25. performed DNA testing on the sunglasses and the Black baseball
26. hat. He Found a mixture of 2 DNA profiles on the sunglasses

1. and a mixture of at least (3) DNA profiles on the Hat.
2. When he opened the envelope marked "2 white Hairs",
3. the envelope was empty. There were no white Hairs.
4. RP. 958-965.
5. Det. Henderson testified that he collected (2) white hairs
6. From the Black Baseball Hat the night of the crime at
7. the crime scene. But he could not remember where the
8. white Hair Fibers were Found on the hat. RP. 426-428.
9. The Court record shows that Det. Henderson did not
10. even list the White Hair strands on his request sheet
11. to the crime lab.
12. The State objected to the characterization as
13. "Hairs" until there is better Foundation. But the
14. State already Knew that the white hairs were lost and
15. that the defense was now at a disadvantage because
16. potential exculpatory evidence was lost. RP 426 LN 10-11.
17. Det. Henderson already had 19 years experience with
18. the Sheriff's dept. by 1992, and appellant asserts that
19. Det. Henderson was qualified to determine if the White
20. Hairs were in Fact hairs or lint as the State would
21. later claim in their closing argument. RP 326, 426, 1358-1359.
22. appellant asserts that Prosecutor Hazel Knowingly lied to
23. the court in his closing argument when he said the white
24. hairs were in Fact lint. RP 1358-1359.
25. On May 17, 2012, 12 days before trial started, Mr. Hazel
26. lied to the Court when he talked about the "White Hairs" and

1. he enlisted Det. Johnston in his lie to deceive the Court
2. about the existence of the white hairs and their testability.
3. He had already turned over the 2006 WSP Crime Lab
4. report that detailed the DNA testing results on the Hat,
5. sunglasses, and the Fact that the white hairs were missing,
6. 10 months before trial started. Mr. Hazel can't claim he
7. didn't Know the white hairs were missing because the
8. State had Known that since 2006.
9. Det. Johnston did a case File review in Sept. 2007,
10. so he was also Fully aware, because the 6-15-2006
11. DNA report results was in that case File. RP 64-66, 506.
12. Mr. Hazel stretched his lies about the white hairs out
13. for the full course of the trial. He did this because he knew
14. it was lost potential exculpatory evidence.
15. On June 1, 2012, Ms. Blumhorst For the Defense,
16. requested a special hearing before the Court. She tells the
17. Court that Mr. Hazel called her at 5:05 Pm on 5-31-2012,
18. and told her the State was submitting DNA swabs on
19. three (3) people that the State thought might have
20. contaminated the Black Baseball Hat. RP 560-562.
21. Appellant wants the Court to Know that the Court
22. Transcripts have been edited to remove incriminating
23. remarks made by Mr. Hazel to the court during this
24. special hearing on 6-1-2012.
25. Mr. Hazel told the court that he had just Found
26. out about the hat contamination "yesterday" and let

1. Ms. Blumhorst Know in "Realtime" as soon as he
2. Knew. He used the term "Realtime" at least 5-6 times
3. as he tells the court about his dilligence in keeping
4. Defense Counsel in the Loop about new Discovery
5. evidence. But all of this has been removed From the
6. Court Transcripts. RP.562
7. The Court warned Mr. Hazel that as an officer of
8. the Court he better be... Then stopped short of
9. Finishing its sentence. That has also been removed.
10. appellant asserts that Ms. Blumhorst can give a sworn
11. statement about what Mr. Hazel really said.
12. A few minutes later in this hearing Mr. Hazel now
13. tells the Court that he just Found out about the
14. hat contamination "This week". RP.566 LN14
15. But Ms. Blumhorst heard Mr. Hazel very clearly when
16. he kept repeating to the court how he let Defense Counsel
17. Know in realtime as soon as he knew. So Ms. Blumhorst
18. wanted to get it on Record that Mr Hazel was lying to
19. the court about when the State knew the hat was
20. contaminated and that they withheld Discovery evidence
21. From the Defense until it suited the States needs to
22. disclose said evidence to Defense. We are three (3) days
23. into trial at this point.
24. Ms Blumhorst told the Court: "It's difficult to
25. comprehend the idea that this would have been evidence
26. obtained within 35 minutes of recessing yesterday." RP.564.

1. Defense knew about the contamination of the hat at least
2. one month before trial. and the America's Most Wanted
3. Video that clearly shows the hat contamination comes
4. through the State. RP566-567
5. The state had a copy of this tape since 1993.
6. They obtained another copy from Mo-Cole on 1-25-2011.
7. RP 993 LN 14, RP 986-999, 1018-1020.
8. Mr. Hazel tells the court that reason the State is
9. submitting new Buccal swabs obtained from Det. Henderson,
10. Trevor St. John, and supposedly John Walsh, is for
11. Comparison purposes for possible exclusion. RP 560-588.
12. appellant asserts that there is absolutely no proof at
13. all that they actually obtained John Walsh's DNA swab.
14. RP 986-989
15. appellant asserts that Prosecutor Hazel and Det. Johnston
16. are lying to the Court about the real reason they are
17. in a panic to get the DNA profiles of the (3) people
18. who handled the hat. and the court transcripts and
19. Video prove that other people handled the hat as well.
20. after appellant was arrested on May 4, 2011, Det. Johnston
21. sent the Hat and sunglasses back to the WSP Crime Lab
22. For retesting to see if they could match appellant's DNA
23. to any of the mixtures of DNA found on them in 2006.
24. Lorraine Heath never re-tested those items. She just did
25. a comparison of the profiles on record and determined
26. that appellant could be a potential contributor to the

1. but only at a probability of 1 in 2. That means
2. half the people in the United States could be a
3. contributor. Ms. Heath sent a conclusion report of
4. the DNA results to Det. Johnston dated 8-12-2011. CP 303.
5. This was a two page report. On the second page of
6. that report under the "Remarks" section, Ms. Heath
7. noted that "assuming Patrick Gibson as a potential
8. contributor, a second partial DNA profile was detected.
9. It was entered into CODIS and the WSP DNA
10. database and came back unknown."
11. Appellant asserts that the State and Det. Johnston
12. never read the "Remarks" section of that 8-12-2011
13. WSP Crime Lab report until May 20, 2012, just 9 days
14. before trial started.
15. The state knows that part of the Fake Beard was sent
16. to Idaho authorities and lost or destroyed. They know
17. there was no documentation to say how much was sent.
18. They know the white hairs from the Hat were lost.
19. They know the Handcuffs that had the robber's one
20. Fingerprint on it was destroyed in 1998. They know
21. the Hat has at least 3 and maybe 4 DNA mixed
22. profiles in it. And they know the sunglasses had at
23. least 2 DNA mixed profiles on them. They also know
24. the Fingernail clippings from Brian Cole were
25. contaminated by a Crime Lab Tech named Kathy Fritz.
26. They Fear that the Defense will claim that the

1. unknown DNA profile found in the Hat listed in the
2. 8-12-2011 WSP Crime lab report is the actual perpetrator
3. of this crime. That the Defense will argue that there
4. is 2 different DNA's at the Crime scene, one unknown
5. and one belonging to appellant. That appellant does
6. not match the physical description, not even close,
7. and the fingerprint on the handcuff plus the (7) prints
8. at Cole murder scene are not appellants.
9. So the state decided to get the known people who touched
10. the hat in 1993 from the america's most wanted program.
11. The State had to review that tape before they turned
12. it over to Defense a month before trial. The State does
13. not turn over discovery evidence without reviewing it
14. first. How would they know if they are turning over the
15. right discovery unless they review it first.
16. Det Johnston admitted he watched it on 12-5-2011,
17. when he got a copy from Ms. Cole. The state never
18. planned to use the DNA evidence in the Hat because
19. they knew a 1 in 2 probability will not fly in
20. any Court in the Land.
21. So the State and Det. Johnston lied to the Court on
22. June 1, 2012 about when they knew that hat was
23. contaminated, and they lied to the Court about what
24. the real reason was that they was doing the new DNA
25. testing.
26. Ms Bluemhorst knew that Mr. Hazel and

1. Det. Johnston were lying and she went to work to
2. prove to the Court that they were lying.
3. On June 11, 2012 the trial was halted and a 30
4. day recess was ordered. On July 10, 2012, the
5. trial resumed.
6. Ms. Blumhorst proved that Det. Henderson put a copy
7. of the America's Most Wanted Video covering the Cole
8. Murder case in his case File Both in 1993. RP 996-997.
9. Ms. Blumhorst proved that on May 25, 2012, the
10. State and Det. Johnston were already making arrangements
11. to obtain the DNA Buccal swabs From Henderson,
12. St. John and Walsh. RP 1026-1028 This up to (6)
13. days before the State notified Defense Counsel on 5-31-2012.
14. This proved that Ms. Blumhorst statement at RP 864,
15. LN 18-20 was 100% accurate.
16. On May 29, 2012, the First day of trial, Mr. Hazel
17. advise the Court that there may have to be a trial recess
18. at the 12th day of the Trial. The DNA Testing he is talking
19. about is on the (2) hairs From Brian Cole's shirt, and the
20. Liquid sample From the lense of the sunglasses. RP 63-72
21. Mr. Hazel makes no mention to the Court that they
22. have already collected (2) Buccal swabs From Henderson
23. and St. John and were seeking a third one From
24. John Walsh to submit For DNA testing. RP 88-94
25. By not telling the court on May 29, that they are collecting
26. even more evidence For testing, the State and Det. Johnston

1. are willfully deceiving the Court and withholding
2. evidence From the Defense.
3. The Prosecutors, Ms. Hozel and Mr. Driscoll, conspired
4. with Det. Mark Henderson, Det. Lyle Johnston and
5. Deputy Trautman to rehearse their testimony to
6. specifically not mention the Black Baseball Hat
7. when they testified, unless specifically asked by
8. Defense Counsel.
9. On May 30, 2012, the State Called Det. Henderson to
10. Testify. He testified For 1 hour and 20 minutes. Mr. Driscoll
11. asked him to give a description of the suspect. He
12. gave a vague description with no mention of the
13. Hat that he sent for DNA testing in 2004, and took
14. to the America's Most Wanted Program in 1993.
15. RP. 326-327, RP 313.
16. When Mr. Driscoll questioned Deputy Trautman and
17. asked him for a description From his report, He also
18. left the hat out of his description. On cross examination
19. he was Forced to admit to a hat. RP 311-312, 313-314.
20. On May 31, 2012, the State called Det. Johnston to
21. testify. He testified For over one hour and not once is
22. there a mention of the Black Baseball Hat. RP-504-550.
23. However, Det. Johnston does commit perjury when he
24. testified. He lied about how appellant was arrested.
25. And there was absolutely no reason to lie about this
26. simple Fact. But it proves that Det. Johnston will

1. lie, cheat and conspire with the prosecution to coach
2. other witness testimony, specifically Det. Henderson and
3. Deputy Trautman, in order to convict an innocent
4. person of a crime he did not commit. RP 519, LN 10-24,
5. RP 547-548, starting at LN 24.
6. Det Johnston also lied on his sworn "affidavit of
7. the Statement of Facts" to obtain an arrest warrant. He
8. stated that appellant had ties to Idaho and Montana, that
9. appellant was charged and convicted of 14 counts of Bank
10. Robbery, that appellant had been convicted of a weapons
11. offense. All of the statements are false. RP 522-526,
12. RP 1220.
13. Det. Johnston also purposely withheld discovery evidence
14. that was specifically requested by the Defense. RP 535-537
15. There was absolutely no reason for Det. Johnston to
16. commit these perjuries and withhold evidence. The truth
17. would have sufficed.
18. Because the court record proves that Det. Johnston will
19. lie and commit perjury and other crimes in a criminal case,
20. appellant asserts that the photo montage presentations
21. administed by Det. Johnston are highly suspicious and
22. not credible.
23. Det. Johnston had to have at least (4) seperate photo
24. montages made up to show to (4) seperate witnesses.
25. They were Michele Cole, Steve and Teresa Bunner, and
26. Kathy Ward. The reason he needed at least (4) montages

was that if each witness selected a suspect from the montage and signed off on that suspect, you would need a clean montage for the next witness to view.

Det. Johnston had appellant's picture put in the #4 position in the montage. That is the same position that Hugh Knuttgen was in in the 1993 montage in which he was selected by Ms. Cole, Steve and Teresa Benner in 1993.

Ms. Cole was drawn to appellant's picture by a mark or something by appellant's ear. RP 513-514. Det. Johnston put exactly what Ms. Cole said to him because he did not know what she would say at trial, in his report.

Ms. Cole makes up a complete lie about how that montage viewing progressed. Also, what is very interesting is that she states twice (2) that she looked at an 8 picture montage, and State's exhibit 125 is a 6 picture montage. RP 167-168 182, 195-198. Ms. Cole claims to not remember that she asked Det. Johnston about a mark by appellant's ear on his picture. She also claims to make a substantial comment to Det. Johnston at the time of the montage viewing that completely contradicts Det. Johnston's version of how that viewing proceeded per his Police Report.

Appellant asserts that if Ms. Cole had made those comments about the "eyes" and that "that is the man, but I need to see him in person," Det. Johnston would have put that on his report and his testimony.

1. Appellant asserts Det. Johnston put some type of mark
2. on appellant's montage picture to draw Michele Cole's
3. attention to his picture and then he supplied a clean
4. copy of the montage For state exhibit 125. Ms. Cole
5. did not sign off on the montage she viewed. The
6. montage viewing had NO Video taping of the showing.
7. Det. Johnston and Ms. Cole both tell different stories about
8. the viewing. And the Court records prove that Both
9. Det. Johnston and Ms. Cole committed perjury on the
10. witness stand!
11. Appellant asserts that Det. Johnston also coached Mr. Benner
12. during the photo montage viewing of appellant's picture.
13. Mr. Benner testified he did not remember ever identifying
14. Hugh Knuttgen in 1993. RP131, 416-418. Mr. Benner also
15. said that it was the "eyes in the composite sketch
16. From the Cole murder case that stood out to him and
17. made him think that sketch was a better rendition of
18. the suspect than the one he participated in developing.
19. RP118, 132-133. Mr. Benner is lying because he never saw
20. the Robber's eyes because he wore dark sunglasses the
21. whole time - and He testified the robber was behind him
22. most of the time.
23. Each time Steve Benner is shown a photo montage he
24. picks out the prime suspect even though they don't look
25. anything alike each other.
26. Appellant asserts that the State knowingly allowed

1. Michele Cole, Steve Benner, Teresa Benner and Heather Bender
2. to give False and at times perjured testimony. The State
3. thoroughly reviewed all the Police reports on the witness
4. statements before they turned them over to Defense as
5. discovery.
6. Each of these witnesses gave testimony that was contradictory,
7. False or perjured. That is especially true of Michele Cole
8. and Steve Benner with regards to their 2011 photo montage
9. viewing. RP 1333-1334
10. When it suited the State, the prosecution would ask their
11. witnesses; "is it possible it was this or that." RP 264,
12. LN 11-13, RP 413 LN 18-24.
13. But when it suited the State to let their witnesses
14. commit perjury, they had absolutely no problem with
15. that. Examples: RP 145 LN 5 "Backpack," RP 440 LN 17-18
16. RP 102 LN 13-14, RP. 282 LN 5-6, RP 176 LN 12-19, RP 314
17. LN 11-19. RP 179-180, LN 19-2, RP 312, LN 2-12. These are just
18. a very small portion of the lies and False statements that
19. the State knowingly allowed their eyewitnesses to testify
20. under oath to. There are dozens more examples in the
21. witness testimony.
22. It is illegal and gross prosecutorial misconduct For the
23. State to knowingly allow their witnesses to give False and
24. perjured testimony. This proved to be grossly prejudicial
25. to appellant, especially in light of a Judge who was
26. admittedly confused and seemingly incapable of cross-

referencing witness testimony to actual statements made 13 months to 19½ years earlier to police.

Appellant asserts that WSP Crime Lab Supervisor Lorraine Heath was in collusion with the Prosecution and Det. Johnston regarding her conclusions on the probability of appellant's DNA being in the Black Baseball Hat. Ms Heath over estimated ability to deconvolute the DNA mixture in the Hat. And Ms. Heath gave very contradictory statements specifically meant to accomodate the State's position that appellant is guilty. RP. 1055-1057, 1067-1068.

Ms. Heath stated that if more than one person wore the Fake beard, their DNA should show up also. But then she says some people are super shedders and some people can have significant contact with an item and leave no DNA. This is to explain away why John Walsh's DNA is is not on the hat.

Ms. Heath also stated she does not know whose DNA is on the lost portion of the Fake Beard sent to Idaho authorities on 11-10-92. RP 1083 LN 24 to 1084-LN 6.

Ms. Heath also admitted that she refused to turn over discovery evidence specifically requested

by the Defense. RP 1090 LN 6 - 1091 LN 3-

Both James Currie and Lorrain Heath testified that it only takes one billionth of a gram of DNA to detect a profile- RP 967 LN 4-12 RP 1594 LN 14-19.

appellant testified as to how his DNA ended up on the Fake beard hair fibers and the state offered no rebuttal because the state had 3660 pages of F.B.I. documents from appellant's Bank Robbery Operation that verified every word appellant testified to about using hired help in the Bank Robberies and supplying disguises to all his help when needed. RP 1220-1230, RP 1231, LN 1 through 16.

appellant asserts that because all his disguises were kept together in a duffel Bag in a storage Unit in Portland Oregon, that his DNA could easily be on the Fake beard via "Locards Exchange". But most likely it is a beard that appellant tried on and then gave to his hired help to use.

In all five banks that appellant used help to hold the lobby, the help was the exact size and weight and age of the suspect in the Cole Murder case and Kids Fair robbery. In fact Mr. Williamson, who Det. Johnston listed as a suspect in this case

1 is the exact same size as the suspect. But there
2 is no evidence that Det. Johnston ever showed
3 Williamson's picture to the eyewitnesses in this case.
4 RP 59. Appellant wants to assert that to his
5 Knowledge, Mr. Williamson had nothing to do with
6 this crime. RP1221-1231 ending at LN16 on RP 1231.
7
8 Summation:
9
10 The trier of Fact engaged in a gross abuse
11 of discretion by Failing to check her Findings
12 of Fact on Witness testimony to Police report
13 referenced testimony using the "Realtime" software
14 she promised appellant she would rely on.
15 The Court allowed the Trial to become disjointed,
16 allowing witnesses to testify out of order. This
17 caused the court to become so confused that it
18 become incapable of keeping the Facts straight.
19 For the court to come to the conclusions that it
20 did, it had to conclude that all the eye witnesses
21 were telling the truth and that all the law enforcement
22 testimony that referred to their police reports in 1992,
23 1993 and 2011, were all lies!
24 The court had to conclude that the Idaho Police
25 and the Idaho State Crime lab lied about the

unknown Fingerprint left by the robber was in Fact a lie. And since it was a lie, there was absolutely no reason to mention it in the Court's Findings.

The Court had to Conclude that the (2) white hairs that came From the Black Hat and were later lost, were also a lie, and therefore there was no reason to mention them in it's Findings.

The Court had to conclude that there was absolutely no chance at all that the Handcuffs, the (2) White hairs, and the unknown amount of the Fake beard sent to Idaho on 1-10-92 could not possibly contain the one billionth of a gram of DNA needed to be detected. Therefore they offered no potential or positive exculpatory evidence in this case, so it was alright to completely ignore them all.

The Court had to conclude that it was perfectly legal For Det. Johnston to commit perjury on the witness stand and in his sworn Affidavit of Facts. It had to Conclude that it was alright For him to conspire with the prosecution to lie and deceive the Court and to coach the States witnesses on how to

testify and not mention the Black Hat unless asked by Defense on Cross Examination.

And Finally, the Court had to Conclude that it was perfectly alright For the Prosecution to engage in gross Prosecutorial Misconduct by lying to the court, withhold discovery evidence until it suited their need to tell Defense about it, and allow their witnesses to lie on the witness stand, thereby depriving appellant of a Fair trial.

Conclusion

Based on the foregoing Facts, appellant respectfully asks this Court to reverse his conviction without Prejudice based on insufficiency of evidence, perjured testimony of the States witnesses, and lost or destroyed positive and potential exculpatory evidence. Also Gross Prosecutorial misconduct that so prejudiced the appellant that he was Unable to receive a Fair trial. In the alternative, appellant requests a new trial.

Respectfully submitted this 22 day of APRIL 2013. Patrick K Gibson

Patrick Gibson
992321 DG1
Collam Bay correction center
1830 Eagle Crest Way
Clallam Bay, WA 98326

1
2 CERTIFICATE OF SERVICE
3
4 I, PATRICK K. GIBSON, APPELLANT, COURT OF
5 APPEALS NO. 31077-9, DO HEREBY CERTIFY
6 UNDER PENALTY OF PERJURY UNDER THE LAWS
7 OF THE UNITED STATES AND THE STATE OF WASHINGTON,
8 THAT A TRUE AND CORRECT COPY OF THE APPELLANT'S
9 STATEMENT OF ADDITIONAL GROUNDS WAS SENT
10 BY FIRST CLASS MAIL, POSTAGE PREPAID, ON
11 MONTH May, DAY 16, 2013 TO:
12 THE COURT OF APPEALS, DIVISION III, 500 N. CEDAR ST.,
13 SPOKANE, WA 99210-2159
14
15
16
17 PATRICK K GIBSON
18 992321-DG-1
19 CLALLAM BAY CORRECTIONS CTR
20 1830 EAGLE CREST WAY
21 CLALLAM BAY, WA 98326
22
23
24 Patrick Gibson
25

( )

FILED

AUG 19 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By________

No. 31077-9-III

Court of Appeals

Division III

of the State of Washington

State of Washington, Respondent

v.

Patrick K. Gibson, Appellant

RAP 10.8 Motion of Additional authorities in Support of appellant's Statement of Additional Grounds Filed on May 22, 2013.

Patrick Gibson
992321
1830 Eagle Crest WAY
Clallam Bay, WA 98326

Appellant Files additional Authorities per this Rap 10-8 motion to support his Statement of Additional Grounds brief Filed on May 22, 2013.

1.) State v Burden, 104 Wash. App. 507 (2001)

Appellant asks this Court to apply Burden ruling to the lost exculpatory Fingerprint evidence on the Handcuffs listed at the Following pages in his S.A.G. Page 17 - LN 10-13, Page 36, LN 19-20, Page 37, LN 5-8.

Washington Courts have held that "Evidence is Materially Exculpatory only if it meets a two Fold test. 1.) Its exculpatory value must have been apparent before the evidence was destroyed, and 2.) the nature of the evidence leaves the defendant unable to obtain comparable evidence by other reasonably available means."

Appellant also asks the Court to apply the Burden Rule to the additional lost potential exculpatory evidence based on the "Bad Faith" standard, to the lost White

Hairs and the lost portion of Fake Beard sent to Idaho authorities as detailed in his S.A.G. at pages 16-19.

2.) State v Jones, 183 P.3d 307, (2008)
State v Miles, 162 P.3d 1169 (2007)
State v Henderson, 998 P.2d 907, (2000)

Appellant asks the Court to apply these case rulings to appellant's claims of Prosecutorial Misconduct based on the "Cumulative Effect" of incidents of Prosecutorial Misconduct as detailed in appellant's SAG at Pages 31-46.

In the Jones case 183 P.3d 307, the court Found 1.) Prosecutor committed misconduct.
2.) There was a substantial likelihood that numerous instances of prosecutorial misconduct had a cumulative effect of depriving defendant of a Fair trial.

3.) Bay v Jensen, 196 P.3d 753
Homer v Homer, 93 P.3d 124
State v Rohrich, 71 P.3d 638
State v Marks, 955 P.2d 406

Appellant asks the Court to apply these case law rulings to Appellant's Claim of "Abuse of Discretion by the Trial Court which was the Trier of Fact, and the "Cumulative Effect" as detailed in appellant's SAG at pages 1-31, 46-48.

Appellant also asks for special emphasis in applying and considering abuse of discretion on the issues of "Blue Eyes" and "Baby Face" raised in Appellant's SAG at Page 19, start at LN 24, to Page 20, end at LN 19.

Washington Courts have ruled that "abuse of Descretion" occurs when Trial Courts decisions are manifestly unreasonable or based on untenable grounds or reasons.

In Rohrich, 71 P.3d 638, the Court stated "abuse of Discretion" occurs when

Decisions based on "Untenable Grounds" or made for "Untenable Reasons" if it rests on Facts unsupported in the Record.

Appellant has detailed these issues in his SAG about the Trier of Fact Fabricating Findings of Fact in the Court's Verdicts, SAG Pages 3-18.

Respectfully Submitted

Patrick Gibson

August 14, 2013

Certificate of Service

I, Patrick K. Gibson, appellant, Court of Appeals No 31077-9-III, Do hereby certify under Penalty of Perjury under the Laws of the United States and the State of Washington, that a true and correct copy of appellant's RAP 10.8 Motion of Additional authorities in Support of his Statement of Additional Grounds, was sent by First Class mail, Postage prepaid on August 14, 2013 to:

The Court of Appeals
Division III
500 N. Cedar ST.
Spokane, WA 99210-2159

Patrick Gibson
August 14, 2013

Patrick Gibson
992321
1830 Eagle Crest WAY
Clallam Bay, WA 98326

FILED
DEC 02 2013
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By____________

No. 31077-9-III

Court of appeals
Division III
of the State of Washington

State of Washington, Respondent

VS

Patrick K. Gibson, appellant

Rap 10.8 Motion of additional authorities in Support of appellant's Statement of additional Grounds Brief Filed on May 20, 2013.

Patrick Gibson
992321
Clallam Bay Correctional Ctr
1830 Eagle Crest WAY
Clallam Bay WA, 98326

Appellant Files this additional authorities per Rap 10.8 motion to support his Statement of additional Grounds brief Filed on May 20, 2013.

1.) Appellant asks the Court to apply State v Wright 557 P.2d 1. Specifically, Appellant asks the court to apply Ruling # III of Wright case detailing the range of Sanctions available to the court for lost or destroyed evidence. Appellant asks the Court to apply this directly to the lost evidence listed in his S.A.G. (Statement of additional Grounds) at pages 16, 17, 31-33, 36, 47. That specific lost evidence consists of Part of the Fake beard hair Fibers sent to Idaho authorities, 2 white hairs From baseball hat, handcuffs with unknown print From robber and zip ties From Idaho crime scene listed in ER 404(b) evidence and outlined in SAG at the above listed pages.

In Further support of the lost evidence, appellant asks the Court to apply "Reasonable Possibility" as stated in State v Vaster 659 P.2d 528. Also People v Nation 26 Cal 3d 169 and Crockett v State 95 NEV 859.

Appellant also asks the Court to take note that in the Vaster ruling 659 P.2d 534, at (4) the court stated "In light of the unusually detailed eyewitness identification and the "Exact match-up" between petitioner and the original description, we are not inclined to find that a reasonable possibility exists.

Appellant asks the Court to apply that analysis to the description given by all witnesses in this case as detailed in the S.A.6. at pages 6, 7, 8, 9, 10, 18, 19, 20, 21, 22, 26, 27, 28, 36, 37.

In further support of the "Lost Evidence", appellant cites U.S. v. Bryant 142 US APP DC 132, State v Boyd 629 P.2d 930. In Boyd the court stated "missing tape recording would have been favorable to defense." Appellant asks the Court to apply that analysis possibility to the lost evidence in this case, and specifically the handcuff with the robber's fingerprint on it as detailed in the SA6 at pages 16, 17, 31-33, 36, 47.

2.) Appellant asks the Court to apply State v Bridge 955 P.2d 418, to the fingerprint

evidence on the lost handcuffs print listed in the S.A.G. at pages 17, 18, 46, 47.

Appellant asks the Court to apply Bridge case to this case based on the Court's wording in Bridge that "Fingerprint evidence alone was sufficient to support conviction if a jury could "reasonably conclude" that Fingerprint could only have been imprinted at time the crime was committed."

Appellant asks the Court to apply State v. Wilson, 231 P.2d 291, and the Court's wording, "a Fingerprint is therefore in reality an unforgeable signature", to the handcuff Fingerprint listed in the S.A.G. at pages 17, 18 which reference RP 297-303.

Respectfully submitted

Patrick Gibson
November 26, 2013

Certificate of Service

I, Patrick K. Gibson, appellant, Court of appeals No. 31077-9-III, do hereby Certify under Penalty of perjury under the Laws of the State of Washington and the United States, that a true and correct copy of appellant's RAP 10.8 Motion of Additional Authorities in Support of his Statement of additional Grounds, was sent by First Class Mail, Postage Prepaid, on November 26, 2013 to:

The Court of appeals
Division III
500 N. Cedar St
Spokane, WA 99210-2159

Patrick Gibson
November 26, 2013

Patrick Gibson 99232
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