

Statement of Additional  
Grounds

No. 43203-0-II

Mack Markussen

- (1) INEFFECTIVE ASSISTANCE OF COUNCIL (6 pages)
- (1) Judge Misconduct (Incompetent) (9 pages)
- (1) Prosecutor Misconduct (4 pages)
- (1) Speedy trial Violations (2 pages)
- (1) DNA (2 pages)
- (1) SENTENCING (9 pages)
- (1) Cell phone tower testimony (2 pages)

\* ON pages 123 (line 14-15)

Pages 125, 126, 127, 128, 132, 133, 134, 135, 136, 137

"State vs. Pierce Case No. 40777-9-II

Appeal overturned when "Pierce" was NOT  
GIVEN AN ATTORNEY when arrested. All pages  
above clearly show I WAS NEVER GIVEN AN  
ATTORNEY when I asked for one when I  
was arrested.

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COURT OF APPEALS  
DIVISION II  
2013 JAN 25 AM 11:54  
STATE OF WASHINGTON  
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COURT OF APPEALS  
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STATE OF WASHINGTON

BY CM  
DEPUTY

1 Copy of SAG via Email  
1 App. Counsel  
& 1 Pros. Office  
1/29/13 CM  
Date Signed

STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
)  
MARK AVEN MARKUSSEN )  
(your name) )  
)  
Appellant. )

No. \_\_\_\_\_

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Mark Markussen 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

- 1.) SPEEDY TRIAL RIGHTS VIOLATIONS
- 2.) INEFFECTIVE ASSISTANCE OF COUNSEL
- 3.) PROSECUTORIAL MISCONDUCT (Judge & Prosecutor)
- 4.) DNA
- 5.) SENTENCING (Same Code of Conduct, Enhancements, Persistent Offender?, Points at Sentencing)
- 6.) Jury Instructions, Note from Jury

Additional Ground 2

\* Please See Attached Pages to include all Page Numbers  
and inconsistencies of my Trial

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

Date: \_\_\_\_\_

Signature: Mark Markussen

\* STATEMENT OF ADDITIONAL GROUNDS \*

(1) INEFFECTIVE ASSISTANCE OF COUNCIL

- \* Page 24 (Line 7-10) AFTER 8 MONTHS OF DOING NOTHING BUT WAITING FOR ME TO TAKE A DEAL MR. FEIDLEY IS FINALLY REPLACED.
- \* Page 26 (Line 14-25) JUDGE IS CONCERNED ABOUT WHAT MY ATTORNEY IS DOING.
- \* Page 27 (Line 1-25) JUDGE IS TRYING TO TALK ME INTO KEEPING MR. FEIDLEY, MY FIRST ATTORNEY.
- \* Page 29 (Line 14-25) MR FOISTER'S VERY FIRST COMMENT WHEN ASKED BY THE JUDGE IF HE COULD REPRESENT ME WAS " I DON'T HAVE A CHOICE DO I "
- \* Page 48 (Line 1-25) STATE V. SPANERZ 1984 IS BROUGHT UP ABOUT OFFICERS TAKING VACATION AND NOT BEING AT TRIAL DATES.
- \* Page 69 (Line 25) I AM REFUSING TO WAIVE MY SPEEDY TRIAL RIGHTS.
- \* Page 70 (Line 2-25) JUDGE MAKES COMMENT ABOUT THE COMPETENCY OF ATTORNEYS
- \* Page 6 (Line 1-25) ATTORNEY COULDN'T EVEN ARGUE BAIL.
- \* Page 73 (Line 21-25) ATTORNEY DIDN'T EVEN SHOW UP TO REPRESENT ME.
- \* Page 76 (Line 18-25) MY ATTORNEY STILL HAS NOT GOTTEN ALL THE EVIDENCE PROSECUTOR HAS REFUSED TO GIVE HIM 13 MONTHS EARLIER (PICTURES, WITNESS LIST)
- \* Page 77 (Line 8-25) MY ATTORNEY BRINGS ON CO-COUNCIL SO HE CAN LEARN AND HE LETS HIM STAND UP AND SPEAK ON MY BEHALF, JUDGE WARNS HIM ABOUT GOING ON & ON AND HE WAS TERRIBLE.

(2)

\* INEFFECTIVE ASSISTANCE of Counsel \*

Cont p. 1

- \* Page 78 (Line 1-25) Attorney was terrible
- \* Page 79 (Line 1-25) Attorney was terrible.
- \* Pages 86, 87, 88, 89, 90, 91 (Line 1-25 on all) We had no witnesses, did not subpoena anyone, I gave my attorney a list of 11 people to be called at my trial, no one was called, our so called investigator didn't even show up to court or testify. Mr Foister said he was going to use the States list which some on those he didn't even cross examine, I had no witnesses on my behalf for my trial. I even got charged for tampering with a witness because I talked to my girlfriend on the phone and I had no idea she was on the States witness list, (which she was never even brought to court to testify) I didn't see the States witness list until 12/2/11 (three days before my trial)
- \* Page 98 (Line 2-25) I'm filing motions because my attorney refused to do it or any work
- \* Page 123 (Line 14-15) I was NEVER read my Miranda Rights
- \* Page 125, 126, 127, 128 (all) I was NEVER arrested at this point, was NEVER told my rights and the warrant they had was for pictures not DNA
- \* Page 132 (Line 25) I asked for an attorney and was NEVER GIVEN ONE.
- \* Page 133 (Line 1) Read Police Report & Statement after being arrested, once prosecutor heard I had asked for an attorney and NEVER GIVEN ONE the statement was thrown out.

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\* INEFFECTIVE ASSISTANCE of Counsel \*

Cont p. 2

\* Page 134 (Line 24-25) Did I EVER ASK FOR AN ATTORNEY?

\* Page 135 (Line 1, 4, 7, 8, 9, 25) OFFICER ADMITTED TO ME ASKING FOR ATTORNEY BUT NEVER GIVING ME ONE OR STOPPING THE INTERVIEW, Judge Said tape Sounded Like I was being Harassed during interview. I NEVER did receive an attorney until a few days later AFTER I was in Jail.

\* Page 136 (Line 1-25) all about Asking for Attorney

\* Page 147 (Line 15-25) harassed by officers

\* Page 151 (Line 1-24) my attorney doesn't EVEN know my name

\* Page 164 (Line 7-13) Judge tells both Attorneys they are really disorganized and he is having difficulties.

\* Page 167 (Line 4-14) my attorney doesn't have a clue.

\* Page 224, 225, 226, 227 (su pages) weapon charges were added 13 months AFTER arrest and 16 months AFTER incident, there was NEVER a weapon found or in evidence, all this one day before my trial and my attorney didn't even argue this.

\* Page 246, 247, 248 (su) Seizures in trial

~~xxxx~~ \* Page 256 (Line 14-25) \* Page 257 (Line 1-25) my attorney didn't have any witnesses and never once through my whole trial call a witness

~~xxxx~~ \* Page 285, 286 (su) States witness (my fiance Sydney Cables) is sitting in the Courtroom and nobody knows this but me. My attorney said he tried for months to find her. She would be testified as to my physical appearance on the night of this attack. I had no injuries or healing injuries and victim

(4)

\* INEFFECTIVE ASSISTANCE OF COUNSEL \*

Cont p. 3

- ~~xxxx~~ \* Said Shv. ~~xxxx~~ had beat the attacker's face with a pen & pencil holder and also bit him. Sydney Cables was never called as a witness for the State or for me again. Why no witnesses called on my behalf.
- \* Page 313, 314, 315 (AU) My Attorney lets an INTERN stand up in Court for my trial and starts asking questions, I FELT he hurt my case before we even started, EVEN the Judge warned him.
- ~~xxxx~~ \* Page 340 (line 5-11) Video Camera from neighbors house never checked to see video from morning of incident; Video alone could of proven I was not there!
- \* Page 341, 342, 343, 344, 345, 346 (AU) First officer arrived at victims home 10 minutes before 911 was even called, if he was in driveway 10 minutes before the call then she (victim) would of ran into his car when she was doing all this escaping she claimed to have been doing. She ran to the neighbors house at 8:25 am so she ran right past the police officer sitting in her driveway since 8:15 am? This same officer found video camera's at the neighbor's house but never went back to check the video which could of proved I was never there.
- \* Page 353 (line 6-16) text messages the victim received from other suspect (Jon Pen) were from day before incident, Not week earlier.
- \* Page 355, 356 (AU) 2<sup>nd</sup> officer also showed up at

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\* Statement of Additional Grounds \*

(1) INEFFECTIVE ASSISTANCE of Counsel

Cont p. 4

~~xxxx~~ \* Victims home which he Reported the time being 8:20 am. All these officers are at Victims home before she even calls 911 but didnt see her running out of her house or any suspect in Area.

~~xxxx~~ \* Page 364 (line 1-25) Page 363 (line 15-25) Statements again to "My Right to a Fair Trial"

\* Page 366, 367, 368, 369, 370 (su) I didnt have a chance in this trial, No Council, Evidence? and Just a Nightmare

~~xxxx~~ \* Page 380, 381, (su) Objections, Hearsay, Judge allowed!

~~xxxx~~ \* Page 383 (line 1-25) Objection again, finally Judge figures whats going on after Jury hears everything.

~~xxxx~~ \* Page 392 (line 1-25) My Attorney doesnt Ask "ONE" Question for a witness that says all this stuff about me, doesnt even Cross examine. Jury just kept looking at him like "What are you doing"

\* Page 414 (line 1-25) another witness for the State says all this Hearsay stuff about me and my Attorney again doesnt Ask "ONE" Question (Dani Morrison was witness)

~~xxxx~~ \* Page 574 (line 21-25) Judge is Reprimanding my Attorney because he didnt know what he was doing

~~xxxx~~ \* Page 575 (line 1-25) "Huge" my Attorney was never prepared for this trial or to even help me prove my innocence. I didnt have a chance and the Judge knew it as soon as the trial started!!!

"Huge"

\* Page 852 (line 11-13) my Attorney tells me to shut up

⑥

Statement of Additional Grounds

Cont. p. 5

① INEFFECTIVE ASSISTANCE OF COUNSEL

Page 853 (line 21-25) Attorney's Negative Comment of  
"I just want to get this case over this week"



\* Statement of Additional Grounds \*

(1) Judge. Misconduct (Incompetent)

- \* Page 35 (Line 19-25) Judge has no idea what's going on
- \* Page 36 (Line 1-25) Judge Comments about being Confused
- \* Page 37 (Line 1-25) Judge is Confused again.
- \* Page 42 (Line 2-20) Judge is Confused again.
- \* Page 56 (Line 1-25) Judge Comments on my Appeal during my trial and it's a joke to the Judge & Attorneys.
- \* Page 71 (Line 13-25) Judge again cannot figure out what's going on
- \* Page 73 (Line 5-9) Judge waiving my Rights again.
- \* Page 74 (Line 1-3) Judge waiving my Rights again
- \* Page 75 (Line 12-15) Judge Questions his own Rules about Common Sense
- \* Page 100 (Line 3-10) Judge admits Not understanding law
- \* Page 126 (Line 21-23) Judge is Confused again
- \* Page 158 (Line 6-8) Judge is Concerned about Court of Appeals
- \* Page 164 (Line 7-13) Judge tells both Attorneys they are really disorganized and he is having difficulties.
- \*\*\* Page 165 (Line 1-25) Judge doesn't have a clue what's going on and admits he been in trial for 4 days and he is tired.
- \* Page 218 (Line 1-25) Judge Says my Attorney doesn't have the enhancement information, he never got it until trial 13 months after I was arrested.
- \*\*\* Page 220 (Line 1-25) Judge Says I'm Guilty
- \*\*\* Page 223 (Line 1-25) Judge Says "How long is this circus going to go on now (Line 13-14)
- \* Page 235 (Line 1-9) Judge "Excuses"
- \*\*\* Page 236 (Line 15-17) Judge Calls my trial a Circus again

②

\* Statement of Additional grounds \*

Cont p 1

(1) Judge Misconduct (Incompetent)

- \* Page 244 (line 1-25) Judge allowing evidence in that my Attorney NEVER RECEIVED.
- \* Page 249 (line 8-10) Judge says "things are wrong"
- \* Page 291, 292, 293, 294 (all) Objection to Bruce Browns testimony as Hearsay, His whole testimony was hearsay, Judge over Ruled.
- \* page 305 (line 1-25) Judge allowing Hearsay after Objection
- \* page 306 (line 1-25) Judge allowing answers from witness after Objection.
- ~~\*\*\*~~\*) page 308 (line 1-25) Judge allowing hearsay again about if he "heard" her say if she feared for her life and if the gun was Real.
- \*) page 338 (line 22-25) Objection, Hearsay allowed
- \*) Page 357 (line 1-25) Objection again in favor of State (Banfield) Not allowing the word "fake gun in"
- ~~\*\*\*~~\*) Page 358 (line 1-25) Judge Slams my attorney again about talking about "the black plastic fake gun"
- ~~\*\*\*~~\*) page 364 (line 1-25) & page 363 (line 15-25) "My Right to A Fair Trial.
- ~~\*\*\*~~\*) page 365 (line 1-25) Unprofessional  
page 366 (line 1-25) Attorney Quotes "So I am unable to Question the victim (Terrie Cox) and being up her Credibility and all of her inconsistent Statements? (line 16-25)
- ~~\*\*\*~~\*) page 380, 381, 383, 384, 385 (all pages) Objection, Hearsay and Judge over Rules, Objections again. Judge let all this testimony go on and then admits he's wrong about letting all this testimony to be heard by

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\* Statement of Additional Grounds \*

Cont p. 2

(1) Judge Misconduct (Incompetent)

the Jury, this was huge because victim had said for 16 months that she NEVER saw her attackers face but while on the stand she says that when she walks into a bar from across the room she recognizes me and yells "Oh my God, that's the guy who attacked me."

\* Page 389 (line 1-25) again objection, Hearsay - Overruled.

\* Page 410 (line 8-25) 2 objections and Judge lets all these remarks in before finally saying all this testimony was inadmissible, a little late after Jury heard entire story.

\* Page 416 (line 1-25) Judge is laughing and totally unprofessional

\*\*\* Page 424 (line 1-25) Judge allowing testimony outside scope of witness

\* Page 430 (line 18-19) Judge is Confused again

\* Page 431 (line 18) Judge has no idea what's going on

\*\*\*\* Page 442 (line 1-25) Judge says produce the 911 operator to testify as to fake toy gun and when my attorney subpoenas the 911 operator the Judge ~~guard~~ Refuses to let her testify in court.

\* Page 443 (line 1-25) Judge again says produce 911 operator to testify and statement of police report of fake gun will be heard

\*\*\*\* Page 445 (line 1-25) (Huge) Judge has already determined that statement of fake toy gun was a typo before even hearing testimony

④ a statement of Additional Grounds

Cont p 3

(1) Judge misconduct (Incompetent)

\*) of 911 operator and that statement alone would be discredited every statement and lie the victim had told up to this point.

~~\*\*\*\*\*)~~ page 446 (line 1-25) Judge is Quoting Cases but my attorney is still arguing that this statement should be allowed and Judge is still saying no. "How can you not allow <sup>A</sup> subpoenaed witness to testify

\*) page 495 (line 9-25) Judge admits he not allowed to do it, "do what"

~~\*\*\*\*\*)~~ page 504 (line 12-13) Judge says and admits "I've never done trials this way"

~~\*\*\*\*\*)~~ page 573 (line 3-25) this trial was a circus. Judge is and has been confused since the beginning and why is he still allowing over a hundred pictures into evidence that we haven't even seen yet!

~~\*\*\*\*\*)~~ page 574 (line 1-20) At this point there is a circus going on in my trial and the Judge is not having control over it

~~\*\*\*\*\*)~~ page 576-577 (all) Judge is confused, overwhelmed and comments "this is not working" "I'm having trouble" and "I can't do my job"

~~\*\*\*\*\*)~~ pages 587, 588, 589, 590, 591, 592 (all pages) all this to get the 911 operator to testify about the Fake Gun and Judge will not let her testify even though we called her as a subpoenaed witness

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\* Statement of Additional Grounds \*

Cont p. 4

(1) Judge Misconduct (Incompetent)

~~xxxxx~~ Page 593, 594, 595 (all) this sums up how my  
Trial went, Judge had no control from start to  
Finish, on page 594 (line 24-25) & page 595 (line 1-  
3) that this Judge admits and Quote " LETS get  
ON & we'll have whatever happens, happens because  
I have no control over whats happening at this  
trial, Its pretty obvious!!!"

\* Page 699 - 700 (all) Objections over Ruled on  
Evidence we havent seen, hearsay, and also  
Cumulative

~~xxxxx~~ \* Page 746 (line 10-20) objection, Judge lets testimony  
in again and after Jury hears the entire story  
he then tells the Jury to Strike what you  
just heard, ?

~~xxxxx~~ \* Page 759 (line 11-25) & page 760 (line 1-25) Note  
from Juror that was given to the Judge during  
my trial and I was never told what it  
said or why a Juror would ask the Judge  
a Question, At the end of my trial one  
Juror did not sign the Verdict Sheet and  
Im wondering if that Juror was the one  
who wrote the Note to the Judge?

~~xxxxx~~ \* Page 769 (line 10-25) objection, this is no expert  
and Judge keeps letting him testify, finally  
Judge has Jury leave, and when they come  
back Judge lets a non expert keep testifying  
as a expert

\* Page 770 (line 1-25) Non non expert testifying as expert

(6)

\* Statement of Additional Grounds \*

Cont. P. 5

(1) Judge Misconduct (Incompetent)

\* Page 773 (line 1-25) Judge arguing about all the Non expert cell phone testimony with my attorney and allowing the entire testimony knowing he is not a expert to let the Jury hear it all.

\* Page 774 (line 1-25) this entire testimony killed me because the Non expert Admitted to Judge he wasn't an expert and everything he said was the opposite of the truth.

~~\*\*\*\*~~ Page 777 (line 17-21) objection, Judge over Rules and Comments " I DON'T EVEN KNOW WHAT THAT MEANS, BUT ITS OVERRULED, GO AHEAD"

~~\*\*\*\*~~ Page 778 (11-21) I didn't even have a chance in this trial, all this in front of the Jury. I NEVER had a fair trial to begin with and these statements are just one little part of my entire trial, my attorney even admits that none of this was fair.

\* Page 792 (line 3-25) Judge directing Prosecuting Attorney how to ask the Questions of the witness so my attorney won't object. Judge goes on and on about how to ask the Questions

\* Page 807 (line 19-20) Judges mind is Boggled

\* Page 810 (line 1-6) Had discussion without me being present? (line 10-11) all those legal issues?

\* Page 826 (line 15-20) Judge again Commences about being wrong

~~\*\*\*\*~~ Page 828 (line 5-25) this needs to be read, after all the

Read this

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a Statement of Additional Grounds a

Cont p. 6

(1) Judge Misconduct (Incompetent)

This is crucial for my case

Issues of Subpoenaing the 911 operator and their attorney showing up the morning that the 911 operator is about to take the stand the Judge is going on and on about her testimony not coming in. He says "it not coming in" 8 times just on this one page before she even gets in the courtroom.

829-842  
Need to read crucial for case

\* Page 829 through 842 (on) this whole part of the trial was so wrong that it was mind boggling. a subpoenaed witness was refused to testify when she had notes and a police report to clearly show that the alleged victim first said it was a fake gun and then 16 months later change her mind and say she thought she was going to die from being shot with a real gun. This whole part of my trial destroyed my chances of showing I was telling the truth all along and I was innocent

\* Page 843 (line 1-25) the Judge and prosecutor are so confused they dont even know what to charge me with  
Page 844 (line 8-10) Judge Confused again (line 18-19) Confused again, when was he not Confused, I didnt have a chance in this courtroom. (line 20-25) Confused again

\* Page 845 (line 24-25) Judge is Confused about something entirely different than what is going on and said.

\* Page 859 (line 9-25) page 860 (line 1-25) page 861 (line 1-25) this is all to unreal, Judge cannot make up his mind, Prosecutor is now screaming to bring back the 911 operator and all this in front of the jury again

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Statement of Additional Grounds

Cont P. 7

(1) Judge Misconduct (Incompetent)

\* Page 861 (Line 1-25) Judge cannot make up his mind if 9U operator is in or out after they both have already been excused

\* Page 865 (Line 1-25) Move to dismiss overruled, there was never a weapon in evidence and I was charged with 4 separate weapons charges, Not Right!

\* Page 866 (Line 1-6) No evidence and Jury gets to convict me on lies of alleged victim.

~~\*\*\*\*~~ \* Page 909 (Line 11-25) IM wasn't in the courtroom when things were being done

\* Page 921 (Line 21-25) Judge is already talking about the Court of Appeals before my trial is over.

\* Page 927 (Line 10-25) again I am not present in the courtroom, this is huge, altered property intake form of my DNA, this is unbelievable that IM not in the courtroom for all of this.

\* Page 928 (Line 1-25) this needs to be read, I have no idea what the three of them are talking about.

\* Page 929 (Line 1-25) again the judge keeps asking my attorney if I need to be in the courtroom for all of this, they seem worried about what's going on?

\* Page 932 (Line 1-25) I am not present in the courtroom for all of this and the prosecutor makes the comment "Im a little uncomfortable with us doing this without the defendant here"

\* Page 933, 934, 935, 936, 937 (SU this done while in my cell, they are talking to a juror, and who knows what else is going on

Huge Read

Huge



(4)

## Statement of Additional Grounds

Cont. P. 8

(1) Judge Misconduct (Incompetent)

\* Page 938 (Line 16-25) after Judge talks to Juror while I'm not present, all of a sudden now there's a verdict!!!

\* Page 939 (Line 3-25) form is left blank and Judge makes them go back to until it is filled in

\* Page 940 (Line 1-25) Judge is asking attorney if it is o.k. of how he handled the situation because he said it had never happened to him before. This needs to be read cause something is wrong here!

Read  
this  
whole  
page

## \* Statement of Additional Grounds \*

### (1) Prosecutor Misconduct

- \* Page 55 (Line 1-25) with holding evidence from my attorney.
- \* Page 76 (Line 19-25) 1 day before my trial and prosecutor still has evidence from 16 months earlier that she hasn't given or shown my attorney.
- \* Page 94 (Line 13-16) Prosecutor again admits pushing my trial back because she's not sure if she's ready for trial.
- \* Page 102 (Line 11-25) Prosecutor is adding witnesses on the day of my trial and my attorney just sits there looking stupid, not one of these witnesses were called to take the stand and Prosecutor had at least 32+ people on her list, we had zero (0)
- \* Prosecutor pointed at me in opening statement and called me a kidnapper, I have never received a copy of opening statements so I don't have the page numbers.
- \* Page 111 (Line 23-25) Prosecutor added 4 deadly weapon enhancements 1 day before my trial and 13 months after I was arrested
- \* Page 112 (Line 1-25) these charges were added and the paperwork wasn't even done yet for the charges.
- \* Page 113 (Line 1-25) this was done in vindictiveness because I wouldn't take a deal for 51 months.
- \* Page 114 (Line 1-7) Prosecutor admits she hasn't done paperwork on added charges and will do it the following day.
- \* Page 123 (Line 14-15) her expert witness officer

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\* Statement of Additional Grounds \*

Cont p 1

(1) Prosecutor Mis-Conduct

MC Shee admitted to Not Reading me my Rights When arrested.

\* Page 243 (line 17-25) Prosecutor still hasn't given my attorney all the evidence

\* Page 253 (line 2-8) still no weapon Enhancements on day of trial.

~~\*\*\*~~ Page 274 (line 1-25) she's trying to exclude 911 operator as being hearsay, this whole case was hearsay.

~~\*\*\*~~ Page 275, 276, 277, 278, 279 (All pages) all about 911 operator and letting the issue in about a Fake Gun.

~~\*\*\*~~ Page 284 (line 1-25) Prosecutor still hasn't given all the pictures she is using as evidence to my attorney on the 2<sup>nd</sup> day of trial

~~\*\*\*~~ Page 318 (line 1-25) again my attorney doesn't have all the evidence the prosecutor keeps submitting 2 days into my trial

\* Page 332 (line 4) she is continually Panicked and unprofessional

~~\*\*\*~~ Page 376 (line 1-25) Destroying Evidence?

Page 432 (line 8-9) Prosecutor has no idea what's going on.

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\* Statement of Additional Circumstances \*

Cont p. 2

(1) Prosecutor Misconduct

~~xxxx~~) Page 506, Page 507 (20 pages) for 16 months she (TERRE COX) says she had never seen the Attackers face or recognized who allegedly attacked her but after a short conference out of the Court room with the prosecutor she says in front of the Jury "It him, and points to me, maybe the prosecutor helped her remember.

~~xxxx~~) Page 573 (line 3-25) Prosecutor has now introduced 173 pictures into evidence and we haven't seen any of them, Judge is now angry that there were only supposed to be 50, How come this evidence was never given to my attorney before trial

~~\*)~~ Page 577 (line 1-17) more about evidence that she is introducing that we haven't even seen

~~xxxx~~) Page 581 (line 9-14) my trial is a laughing joke

~~xxxx~~) Page 626 (line 1-28) it was a picture of a white latex glove and all the gloves I used for work were blue latex and the prosecutor didn't want the Jury to see the difference in color of gloves

~~xxxx~~) Page 630 (19-25) officer Cheavers who took most of the pictures had died so any of the pictures he took which were most all of them should of never been able to have been used in Court, prosecutor picked out the pictures she needed and excluded the ones (like the latex white glove) that wouldn't work for her!

this was so wrong and judge let it happen

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Statement of Additional Grounds

Cont p. 3

(1) Prosecutor Misconduct

\* Page 632 (Line 9-15) Evidence again not given or shown to my attorney before trial. (Line 20-25)

\* Why did I not have an omnibus hearing?

*Evidence*  
\* Page 695 & 696 (su) again prosecutor is bringing in evidence 3 days into my trial (Line 9-10) my attorney states "I just got wind of this 8 minutes ago" How does my attorney represent me when the prosecutor keeps withholding evidence that is crucial to my case.

\* Page 788 (Line 5-25) Lead Detective didn't even do search and testified that "No gun or weapon was found, at scene or at my home" How did I get charged with 4 deadly weapons enhancements for a weapon that was never in evidence?

\* Page 789 (Line 1-2) No weapons were ever recovered, How am I charged with a weapon?

\* Page 885 (Line 8-11) Prosecutor again, "Guilty" and Judge tells Jury to disregard.

## Statement of Additional Grounds

### (1) Speedy Trial Rights Violations

\* Page 2 (Dec 3, 2010 - FEB 10, 2011)

69 days incarcerated without seeing an Attorney or having a Court date

\* Page 3 (Line 2) OVER 69 days

\* Page 8 (Line 1-8) State Asked for Continuence

because their witness was out of town on vacation, I objected to my Attorney and he agreed to let State Continue)

\* Page 44 (Line 1-25) again I did not waive my Rights for a Speedy trial.

\* Page 45 (Line 1-25) my Attorney waived my Speedy trial rights for me against my wishes.

\* Page 46 (Line 1-25) I am still Refusing to waive my Speedy trial Rights

\* Page 47 (Line 11-17) again the State has a witness not available for trial, That's Twice in 10 months

\* Page 49 (Line 4-25) Judge waived my Speedy trial Rights because Attorneys were not ready for trial.

\* Page 51 (Line 24-25) Judge Said officers must be Present and not on Vacation.

\* Page 53 (Line 6-25) All Continuences at this Point were because of Prosecutor

\* Page 57 (Line 17-18) Comment from Judge about me not waiving my Speedy trial Rights

\* Page 58 (Line 22-25) Judges Comment again about my Speedy trial Rights

\* Page 59 (Line 1-25) Judge again about my Speedy

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\* Speedy trial Rights Violations \*

Cont p. 1 \*) trial rights

\*) Page 73 (Line 17-25) Speedy trial Rights again are waived

\*) Page 65 (Line 21-25) my attorney didn't even show up for hearing, fill in attorney didn't have a clue to what was even going on and again my Speedy trial Rights were waived.

\*) Page 66 (Line 1-25) granted Continuance over my objection (Line 7-8) Continued again anyway

\*) Page 67 (Line 1-25) they sound too busy to do my trial after sitting in jail all this time, (Line 1-5) says that I am objecting to a Continuance and they are waiving my Rights for me anyway.

\*) Page 69 (Line 25) I am not willing to waive my Speedy trial Rights, I just want to go to trial.

\*) Page 70 (Line 1-25) Speedy trial again

\* Statement of Additional Grounds \*

(1) DNA

- ~~\*\*\*\*\*)~~ Page 563 (Line 1-25) Chain of Custody issues, DNA lady, who is expert doesn't know who collected DNA or who gave it to her.
- x) Page 564 (Line 1-25) is DNA collected or not, who is DNA from and are there warrants for DNA
- ~~\*\*\*\*\*)~~ Page 565 - 572 (all pages) I was "Suspect before I was a Suspect," these pages show that I was singled out by Vancouver police before they thought I was the person who did this, I cooperated fully and Det McShea used my naivety and trust against me.
- x) Page 657 (Line 8-10) 2 DNA Samples, who was the other person since it was not to be Terrie Cox's?
- x) Page 658 (Line 4-5) Mixed Sample of DNA, so again who is other person?
- x) Page 660 (Line 2-25) DNA not foolproof, Cigarette butts found on ~~Scene~~ were tested and were not my DNA so who's DNA was on the Cigarette butts? Why are these questions not being asked
- ~~\*\*\*\*\*)~~ Page 661 (Line 14-19) DNA Results were confirmed to not be my DNA?
- Huge ~~\*\*\*\*\*)~~ Page 663 (Line 1-25) Samples of DNA were not collected by DNA Expert, she is just trying to report what is going on (Huge)
- ~~\*\*\*\*\*)~~ Page 664 (Line 1-25) DNA was never collected by



②

\* Statement of Additional Grounds \*

Cont p. 1

(1) DNA

DNA Expert and had no idea as to the steps of the collection process at the scene, ~~xxxxxx~~ pages 665, 666, 667, 668, 669, 670 (all) 671, 672, 673, 674, 675, 676, 677, 678, 679 (all) this DNA expert was not an expert and I didn't have a chance since my attorney didn't get the answers needed to show that chain of custody and procedures were not followed, the odds number 970 guadalupera is a number that doesn't exist in our population yet, DNA expert admitted to mistakes, not testing other sample of DNA on victim and possibility of errors and a false positive.

DNA was inconc.

\* Page 739 (line 21-24) this was the object that alleged victim used to beat her attacker and make him bleed on her and drops down the hallway. "Why was this object ever tested for DNA"

Statement of Additional Circumstances

(1) "SENTENCING"

\* Page 966 (Line 1-25) ?

\* Page 967 (Line 1-25) is this Right!

\* Page 968 (Line 1-25) (Line 23-25) "Jury did a wrong thing, "Got issues with merger"

~~\*\*\*\*~~ \* Page 969 (Line 1-~~3~~<sup>3</sup>) Same Criminal Conduct (5-13) Score would be charged (Line 16) Judge is unprepared again (Line 17) prosecutor is unprepared too.

~~\*\*\*\*~~ \* Page 970 (Line 5-8) Judge is unprepared again and is concerned about merger issues in Appeal Court. (Line 24-25) my attorney is still agreeing merger

\* Page 971 (1-4) my rights to a fair sentencing?

\* Page 972 (15-25) I am so tired at this point of waiting I just want to be sentenced and again it is put over.

\* Page 976 (Line 19-25) this doesn't make sense!

Read this  
5  
\* Page 977 (Line 1-25) clearly shows one crime; at one place, to one victim in a matter of 10 minutes; how could this be four different crimes with four gun charges when there wasn't even a gun/weapon EVER in evidence, never was a weapon ever even found or produced at trial. The victim at first said a black plastic fake gun and then 16 months later said it was a real gun!

\* Page 978 (Line 1-25) again explaining how all this was not one crime!

~~\*\*\*\*~~ \* Page 980 (Line 1-25) explaining a whole different way to charge me?

\* Page 981-985 (all pages) this needs to be read

(2)

## Statement of Additional Grounds

Foot. p 1

### (i) Sentencing

\* Page 982 (Line 1-4) Merge.

\* Page 983 (Line 1-5) this wasn't a separate issue, this all happened at the same time, to the same person and at the ~~time~~ same time and day? (Line 9-12) How do half of the charges merge and the others don't, same crime? (Line 13-25) What?

\* Page 984 (Line 1-25) this is not right!

\* Page 986 (Line 1-25) None of this makes sense

\* Page 989 (Line 4-13) this was uncalled for before I am being sentenced

\* Page 991 (Line 10-13) it was proven I had zero criminal history and had never been in trouble prior to this incident (Line 22-25) Judge agrees

\* Page 992 (19-25) objection, Judge lets detective go on about what he thinks, that killed me for sentencing

\* Page 993 (Line 1-7) Judge asking about the law?

~~xxxx~~ \* Page 995 (Line 1-25)? (Line 20-22) never even been in trouble before at age 47.

this  
Page \* Page 996 (Line 1-25) this was a nightmare  
please read all of the page.

\* Page 997 (Line 1-25) Please Read

~~xxxx~~ \* Page 998 (Line 1-25) Judge commenting about circumstantial evidence and giving me 60 months for enhancements (not 72 mo.?)

\* Page 1000 (Line 16-25) Judge denying bail.

\* Page 1002 (Line 1-25) Changing their minds about my time.

③

Statement of additional grounds

Cont p. 2

(1) Summarizing

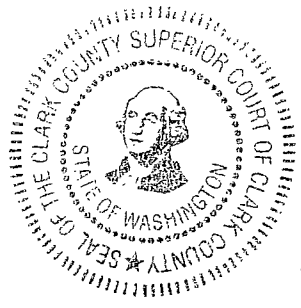
~~\*)~~ Page <sup>1006</sup> (line 1-2) ? (line ~~12~~ 2-25) What?

~~\*)~~ Page 1007 (line 1-25) Concurrent or not? they do not have any idea what they are doing

~~\*)~~ Page 1008 (line 1-25)? again they are so confused, is this Really Right?

13

Michael Foister



STATE OF WASHINGTON } ss  
COUNTY OF CLARK

S5

I, Scott G. Weber, County Clerk and Clerk of the Superior Court of Clark County, Washington, DO HEREBY CERTIFY that this document, consisting of 13 page(s), is a true and correct copy of the original now on file and of record in my office and, as County Clerk, I am the legal custodian thereof.

Signed and sealed at Vancouver, Washington this date:

3-9-12

Scott G. Weber, County Clerk

By [Signature] Deputy

FILED

MAR 08 2012

9:57

Scott G. Weber, Clerk, Clark Co.

Superior Court of Washington  
County of Clark

State of Washington, Plaintiff,

vs.

MARK ALLEN MARKUSSEN,  
Defendant.

SID: \_\_\_\_\_  
If no SID, use DOB: 1/22/1963

No. 10-1-01901-4 ✓

Felony Judgment and Sentence --

Prison

(FJS)

12-9-01417-4

355143  
3/9/12

- Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2, 5.3, 5.5 and 5.7
- Defendant Used Motor Vehicle
- Juvenile Decline  Mandatory  Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the deputy prosecuting attorney were present.

II. Findings

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court  **Finds:**

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon  
 guilty plea 12/8/2011  jury-verdict  bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	KIDNAPPING IN THE FIRST DEGREE	9A.40.020 / 9A.40.020(1)(b) / 9A.40.020(1)(c)	FA	8/17/2010
02	BURGLARY IN THE FIRST DEGREE	9A.52.020(1)(b)	FA	8/17/2010
03	ASSAULT IN THE SECOND DEGREE <b>MERGED</b>	9A.36.021 / 9A.36.021(1)(c)	FB	8/17/2010
04	ASSAULT IN THE SECOND DEGREE	9A.36.021 / 9A.36.021(1)(g)	FB	8/17/2010

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

Felony Judgment and Sentence (FJS) (Prison)(Nonsex Offender)  
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))

170  
M

The prior convictions for \_\_\_\_\_ are one offense for purposes of determining the offender score (RCW 9.94A.525)

The prior convictions for \_\_\_\_\_ are not counted as points but as enhancements pursuant to RCW 46.61.520.

**2.3 Sentencing Data:**

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term	Maximum Fine
01	5X	X	108 MONTHS to 144 MONTHS	78 (D) 1	114 MONTHS to 156 MONTHS	LIFE	\$50,000.00
02	5X	VII	67 MONTHS to 89 MONTHS	63 (D)	79 MONTHS to 101 MONTHS	LIFE	\$50,000.00
03	5X	IV	43 MONTHS to 57 MONTHS	12 (D)	55 MONTHS to 69 MONTHS	10 YEARS	\$20,000.00
04	5X	IV	43 MONTHS to 57 MONTHS	12 (D)	55 MONTHS to 69 MONTHS	10 YEARS	\$20,000.00

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are  attached  as follows: \_\_\_\_\_

**2.4  Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

- below the standard range for Count(s) \_\_\_\_\_.
  - above the standard range for Count(s) \_\_\_\_\_.
  - The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
  - Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury, by special interrogatory.
  - within the standard range for Count(s) \_\_\_\_\_, but served consecutively to Count(s) \_\_\_\_\_.
- Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

**2.5 Ability to Pay Legal Financial Obligations.** The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

- That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.
- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): \_\_\_\_\_
- The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

**III. Judgment**

3.1 The defendant is *guilty* of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2  The court *dismisses* Counts \_\_\_\_\_ in the charging document.

IV. Sentence and Order

It is ordered:

43 merges with Ct 1 (P)

4.1 Confinement. The court sentences the defendant to total confinement as follows:

(a) Confinement. RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

102 months on Count 01 54 months on Count 02
29 months on Count 03 29 months on Count 04

The confinement time on Count(s) contain(s) a mandatory minimum term of

The confinement time on Count 01, 02, 03, 04 includes 12 months as enhancement for firearm

deadly weapon VUCSA in a protected zone
manufacture of methamphetamine with juvenile present.

72 mos enhancements

Actual number of months of total confinement ordered is: 174 months

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively with any other sentence previously imposed in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: 19 days 2 days GT

(b) Credit for Time Served: The defendant shall receive 18 days credit for time served prior to sentencing for confinement that was solely under this cause number. RCW 9.94A.505. The jail shall compute earned early release credits (good time) pursuant to its policies and procedures

(c) Work Ethic Program. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
(2) the period imposed by the court, as follows:

Count(s) 1 36 months for Serious Violent Offenses
Count(s) 2,3,4 18 months for Violent Offenses
Count(s) 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,  
 v.  
 MARK ALLEN MARKUSSEN,  
 Defendant.  
 SID: \_\_\_\_\_  
 DOB: 1/22/1963

NO. 10-1-01901-4

**WARRANT OF COMMITMENT TO STATE  
 OF WASHINGTON DEPARTMENT OF  
 CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

**GREETING:**

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	KIDNAPPING IN THE FIRST DEGREE	9A.40.020/9A.40.020(1)(b) /9A.40.020(1)(c)	8/17/2010
02	BURGLARY IN THE FIRST DEGREE	9A.52.020(1)(b)	8/17/2010
03	ASSAULT IN THE SECOND DEGREE	9A.36.021/9A.36.021(1)(c)	8/17/2010
04	ASSAULT IN THE SECOND DEGREE	9A.36.021/9A.36.021(1)(g)	8/17/2010

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	KIDNAPPING IN THE FIRST DEGREE	<del>52</del> Days/Months + 24 <i>on house</i>
02	BURGLARY IN THE FIRST DEGREE	54 Days/Months + 24



COUNT	CRIME	TERM
03	ASSAULT IN THE SECOND DEGREE	29 Days/Months ← me
04	ASSAULT IN THE SECOND DEGREE	29 Days/Months

+12  
+12  
+12

These terms shall be served concurrently to each other unless specified herein:

total 174 months

The defendant has credit for ~~10~~ <sup>18</sup> days served. **18 DAYS CREDIT**

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable

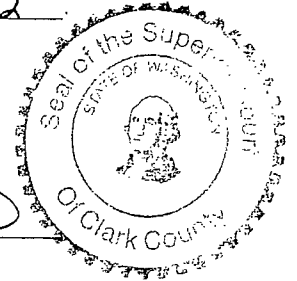
*Paul Mulnick*

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: March 8, 2012

SCOTT G. WEBER, Clerk of the  
Clark County Superior Court

By:

*Alyssa Frazer*  
Deputy



## \* Statement of Additional Grounds \*

### (1) Cell Phone tower testimony

\* Pages 711 through 726 (au) this testimony was given by a Non-expert in cell phone technology. When reading all the pages it clearly shows that I am in Portland, OR during the alleged attack on Teresa Cox. There is no possible way after tracking my calls on both my personal & business phones (cell) that I could of been in Vancouver, wa between 7:30 AM to 9:00 AM. I am still blown away with how this timeline played out and I was across the River in Portland, OR at 8:00 AM (8:07 AM) the first officer said he was at the residence at 8:15 AM and the Alleged Victim called 911 at 8:27 AM. There is no possible way all this could of happened like she reports it to have happened. Just this alone would warrant a second look at my trial

\* Pages 763 through 768 (au) again testimony by a Non expert who is testifying as an Expert on Cell phones & Cell phone towers

\* Page 769 (Line 10-25) objection, a Non expert is testifying as an Expert to Cell phone towers

\* Page 770 (Line 1-25) more Non expert testimony

\* Page 771 (Line 22-25) Ask if you are an expert and Question was answered "No, I'm Not". Why was this testimony even allowed in my trial

\* Page 772 (Line 1-25) more testimony by the Non-expert

②

Statement of Additional Circumstances

Cont p. 1

(1) Cell phone tower testimony

~~xxxxx~~ Pages 779 through 786 (su) I have been excluded from testimony that I was in Oregon during the time of the attack. I'm at least 20 minutes away from Victims Home at 8:07 AM which 911 was called at 8:25 AM, It is virtually impossible for me to even get to Victims Home from place of call at 8:07 AM to the time of 911 call at 8:25, Not including the fact that 3 different officers testified that they were on the scene of crime at 8:15 AM, 8:20 AM.

\* Page 855 & 856 (su) Judge allowing all this testimony by the officer who admitted she was not an expert

\* Page 857, 858, 859 (su) This is hard to listen to: so much misconduct going on.