70955-1

70955-1

No. 70955-1-I

COURT OF APPEALS
Division I
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

V.

JOHN BLACKMON,

Appellant,

STATEMENT OF ADDITIONAL GROUNDS

John Blackmon, Pro Se
Coyote Ridge Correction Center
P.O. Box 769 / 1301 N. Ephrata Ave
Connell, WA. 99326-0769

TABLE OF CONTENTS

TABLE OF AUTHORITY

WASHINGTON APPELLANT CASES

WASHINGTON STATE SYPREME CASES

TABLE OF AUTHORITY

WASHINGTON STATE SUPREME CASES (Cont.)

UNTIED STATES SUPREME CASES

TABLE OF AUTHORITY

VERBATIM REPORT OF PROCEEDINGS

July 2, 2013 Page 1-97	1RP
July 3, 2013 Page 98-315	2RP
July 5, 2013 Page 316-504	3RP
July 8, 2013 Pages 505-808	4RP
July 9, 2013 Page 809-1043	5RP
July 10, 2013 Page 1-10	6RP
July 15, 2013 Page 1-12	7RP
August 7, 2013 Page 1-11	8RP
Sept. 9, 2013 Pages 1-56	9RP
July 1, 2013 Pages 1-197	10RP (Voir Dire)
July 2, 2013 Pages 1-158	11RP (Voir Dire)
Clerk's Papers	CP
Line	Ln.

COURT OF APPEALS
Division I
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, V. JOHN BLACKMON Appellant.	COA No. 70955-1-I STATEMENT OF ADDITIONAL GROUNDS

I, John Blackmon, have received and reviewed the opening briefing prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand this court will review the Statement of Additional Grounds for Review while my appeal is considered on the merits.

ADDITIONAL GROUND I

1. THE TRIAL COURT ERRED CLOSING THE COURT TO PUBLIC ACCESS, WHERE TRIAL COURT FAILED TO CONDUCT REQUIRED ANALYSIS.

Article 1, Section 10 of the Washington Constitution promises that justice in all cases shall be administered openly, and without unneccessary delay.

> "as a constitutional mandate, article I, Section 10 looms larger than a court rule. see Rauch v. Chapman, 16 Wash 568, 574, 38 P. 253 (1897)(noting article 1, Section 10 and provisions of the organic law are alike declared to be mandatory)."

Indeed, we have recognized that court rules concerning access to the court records and proceedings must be construed consistant with consitution guarantees of openiness. see Seattle Times Co. V. Serko, 170 Wn.2d 581, 598, 243 P.3d 919 (2010)(vacating sealing order under GR-15 for failure to con--duct constitutionally required analysis); see also State V. Duckett, 141 Wa. App.797, 173 P.3d 948 (2007).

> "Under Seattle Times Co. V. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982), a court must undertake the five part constitutional anal--ysis before entering a order sealing records. The Court of appeals was thus correct in concluding that there can be no ser--ious dispute that the trial court in this case erred by failing to conduct a bone-club hearing before entering its sealing order under public's article I, Section 10 right to open court procee--dings. see State V. Beskurt, 176 Wn.2d 441, 293 P.3d 1159(2013).

The trial court sealed records from counsel and the public in this case, without conducting the constitutionally required Bone-Club analysis, therefore the trial court abused the discretion.

> "Court have long recognized that access to evidence, and in some cases expert witnesses are fundamental to the fair trial rights. State V. Boyd, 160 Wn.2d 424, 153 P.3d 54 (2007).

Therefore, sealing of the records by the trial court in the present case deprived appellant his rights to open administration of justice, and Due Process of Law, where the process is well settled on records of the court being sealed, and that process was not followed herein. There is showing that depriving the defense counsel of the records effected this case verdict, therefore actual prejudice is established, in the abuse of discretion of the trial court sealing.see Court Docket Sub# 110;

2. THE TRIAL COURT ERRED NOT ENSURING VENIRE WAS NOT TAINTED BY THE IMPROPER COMMENTS.

The trial court addressed jurior #46 during the second day of voire dire, after the jurior informed the judge's clerk of improper comments the jurior overheard about appellant that morning in the star-bucks coffee shop on Colby Avenue. 11RP85 Ln. 10-11; 11RP135 Ln. 7;

The trial court heard the potential jurior claim she attempted to cover her ears once she relized the comments involved appellant's case, and immediately contacted the judge's clerk, which is commend--able, however the record established the jurior contacted the clerk in the courthouse hallway, where the other venire panel members were present, and potentially the other members would be subject to the conversation between Jurior #46 and the clerk. 11RP86; 11RP126; 11RP83;

The trial court excluded jurior #46 for cause based upon the prejudicial nature of the comment the jurior overheard, however the court failed to take even a minimal step to ensure none of the other venire panel members were subjected to the prejudicial comments at the coffee shop, or in the hallway of the courthouse. The court is required to take some steps to ensure that the fair trial is protec--ted, and since the trial court found exclusion necessary for jurior #46, then prejudice of the comments were established, and action was necessary. 11RP75 Ln. 9; 11RP80 Ln. 22; 11RP81 Ln. 6;

> "A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonable prudent and disinter--ested person would conclude that all parties had obtained a fair, impartial, and nuetral hearing." State V. Bilal, 77 Wa. App. 720, 893 P.2d 674(1995).

The trial court failed to ensure appellant received a fair trial, where the court knew of potential for tainting comment in the presence of potential juriors, and it took no steps on this record to ensure any tainted juriors were not selected to serve on the jury, where the trial court failed to pole the venire panel regarding the comments knowing to the judge from jurior #46.

> "A trial court should not enter into the frey of combat or assume the role of trial counsel." Edege--nissen V. Crystal Mountain Inc, 93 Wn.2d 127, 606 P.2d 1214 (1980).

However, the trial court does have an obligation to protect the right to fair trial under the Fifth amendment, and this instance the trial court failed to ensure the fundamental right with knowingly tainting comments, and entered into the frey of battle, where the trial judge stated that there is only a single coffee shop in the city, therefore it should not be assumed the prosecutor was there making the comments. However, there is three star--buck coffee shops in the city, therefore it could be infered that the judge goes to the Colby Avenue coffee shop for his coffee needs, and therefore it might have been the judge or a court staff member making these comments, and the judge did not want to discover the source, or take any steps to ensure the fair trial rights.

> "CrR 4.6(c)(1) states that 'if the judge after examination of any jurior is of the opinion that grounds for challenge are present, he or she shall excuse a potential jurior where grounds for challenge for cause exist, not withstanding the fact that neither party to the case exercised such a challe--nge. In fact, the judge is obligated to do so. State V.

Davis, 175 Wn.2d 289, 290 P.3d 43 (2012).

Thereby, we should find the judge was then required to ensure the venire panel was not tainted by the same information used for exclusion of Jurior #46, as the record is silent on whether other potential jurior venire panel members were in Star-Bucks on Colby Avenue at the time known to the court, or the hallway of the court while the jurior #46 spoke openly to the court's clerk regarding these improper comments on the appellant's being a pervert.

The appellant did not receive the required fair trial instance, where there is nothing proving that the jury did not contain bias juriors, who were subject to the same tainting as jurior #46.

3. THE APPELLANT COUNSEL ERRED CITING RP 587, WHERE PROSECUTOR VIOLATED THE MOTION IN LIMINE RULING AT RP 596

As addressed in appellant counsel's brief the record clearly shows the defense counsel moved for mistrial, and almost immediately after the jury returned to the courtroom, the State's attorney does deliberately, intentionally, and willfully violate the ruling again regarding mention of the prior trial.

The appellant counsel cited to RP 587 in the "Opening Brief of Appellant" at page 33, however the prosecutor's comments was actually made at RP 596, just after the objections and mistrial motion ruling for defense was addressed by the court.

> "A prosecutor should not use arguments calculated to inflame the passions or prejudice of the jury" State V. Hecht, COA# 71059-1-I 319 P.3d 836 (2014).

However, the only argument being addressed here is to correct appellant counsel's error in citing the report of proceedings, and

the court should defer to appellant counsel's opening briefing regarding to arguments for prosecutorial misconduct, as appellant may only argue issues not presented by the counsel.

4. THE TRIAL COURT ERRED BY FAILING TO ENSURE A FAIR AND IMPARTIAL JURY, WHERE CAUSES EXISTED IN VENIRE PANEL's QUESTIONAIRES FOR CAUSE.

A defendant is guaranteed a fair trial before an impartial jury by the Sixth amendment and Fourteenth amendment. Ross V. Oklahoma, 487 U.S. 81, 85, 108 S.Ct. 2273 (1988).

This right is violated by the inclusion on the jury of a bias jurior, whether the bias is actual or implied. Morgan V. illinois, 504 U.S. 719, 729, 112 S.Ct. 2222 (1992)(inclusion of a singal bias jurior invalidates a death sentence).

> "Moreover, this court has used implied bias to reverse a conviction. In Leonard V. United States, 378 U.S. 544, 84 S.Ct. 1696 (1964), the court held that prospective juriors who heard the trial verdict announced in the first trial should be automatically disqualified from second trial on similar charges. Smith V. Phillips, 455 U.S. 209, 102 S.Ct. 940 (1982).

The record showed a jurior who claimed he could not be impartial under these types of charges, where he had prior molestations as a young child in his life, and the trial court failed to dismiss this jurior for cause pretrial, allowing the impartial jurior to render a guilty verdict agaist the appellant. CP 492-514; 11RP106 Ln. 5 thru 107 Ln. 3;

The record shows two other members who disclosed young child type sexual abuse, who both should have been excluded for cause by

trial judge, however both were allowed to render verdict in this sexual abuse case, with the court knowing of the implied bias of the jury the trial court seated. CP 492-514; Jurior #14, 15, 5, 28,

The record also shows clearly that the forman of the jury is extensively involved as a "victim advocate" for over eleven (11) years, and held bias towards child sex abuse defendants, however he was allowed on the jury in this case, showing actual bias this jury, and some members of the jury felt compelled to vote guilty, even when they admitted the state's case is week. CP 492; 11RP94 Ln. 19;

Shurely this court would not support having an actual advocate for the victim on the jury, and still claim the jury impartial, as required under the fair trial rights, otherwise why not allow the state to provide victim advocates in every jury deliberation, as a advocate for the victim will be clearly impartial in the verdict of the case. 11RP94 Ln. 19 thru 11RP95 Ln. 10; 11RP62 Ln. 4-13; 11RP60 Ln. 4;

The juriors admitted their own bias in the physical records of the case, yet the trial court did nothing to ensure a fair and impartial trial was provided. CP 492-514; CP 436-491; 11RP48; 11RP50;

Several selected juriors held implied bias, especially in the type of case being tried, and although they likely would have been impartial to other types of charges, they could not be impartial to charges similar to there past sexual abuse by family.

> "Aprospective jurior must be excused for cause if the trial court determines that the jurior is actually or impliedly biased." State V. Gosser, 33 Wa. App. 428, 433, 656 P.2d 514 (1982).

The trial court should have taken the steps necessary to a fair trial by excluding from the panel juriors who had been touched as children, or who had personal interest in the trial, such victim advocates, police officers, judges, etc..., which was not done, and it only take one bias jurior in the jury room to taint the process, and deprive appellant his fair trial.

Appellant believes that the victim's advocate is sufficient to warrant a new trial, even if sexual abuse victims and jury members who openly stated they could not be impartial would not warrant the reviewing court providing a new trial process, where without victims advocates in the jury room there was two prior hung juries in this case, showing that the errors committed here likely effected fair trial rights, where the victim's advocate never spoke of sexual abuse as a child.

5. THE TRIAL COURT ERRED NOT HOLDING A REQUIRED HEARING ON THE WARRANTLESS ARREST, DEPRIVING DUE PROCESS OF LAW.

The record established the detective's meeting with witnesses MP on January 10, 2012, being informed of the allegations involving IB, a friend of MP. 5RP840 Ln. 21; 5RP852 Ln. 2;

The detective contacted IB the next day at her school for an interview, then immediately goes to appellant's home to initiate a warrantless arrest of appellant Jan. 11, 2012. 5RP841; 5PR852 Ln. 2;

> "Following a warrantless arrest, the fourth amendment requires a judiacial determination of probable cause within 48 hours of arrest." County of Riverside V. McLaughlin, 500 U.S. 44 111 S.Ct. 1661 (1991).
>
> "The sole focus of the inquirey is whether probable cause existed to justify both the warrantless arrest and result-

-tant detention pending further proceedings." State V. KKH, 75 Wa. App. 529, 878 P.2d 1255 (1994)(citing Gerstein V. Pugh, 420 U.S. 103, 95 S.Ct. 854 (1975).

Probable cause for arrest as it normally is understood is defined in terms of circumstances sufficient to warrant a prudent person in believeing the suspect had committed or was committing a crime.

> "An arrest warrant is issued by a magistrate upon a showing of probable cause exists to beleive that the subject of the warrant has committed an offense and thus the warrant prim--arily serves to protect an individual from an unreasonable seizure." Steagald V. United States, 451 U.S. 204, 101 S.Ct. 1642 (1981).

The trial court never required probable cause established upon record before release of appellant on bond January 13, 2012 under a set of conditions, while the arresting officer continued to obtain evidence to support probable cause and the warrantless arrest, were appellant was never asked, or informed of his rights by counsel at any hearing prior to the trial.

The trial court errors depriving appellant of his fouth amend--ment rights, and ignored established proceedures found in Crr 3.2.1 which specified what type of hearing was required to establish the cause for the warrantless arrests.

> "Article 1, section 7 poses an almost absolute bar to the warrantless arrest, searches, and seizures with only a few limited exceptions." State V. Byrd, 178 Wn.2d 611, 310 P.3d 793 (2013); State V. Bonds, 174 Wa. App. 553, 294 P.3d 663 (2013); State V. Valdez, 167 Wn.2d 761, 224 P.3d 751 (2009)

The trial court was required to hold the probable cause type hearing under CrR 3.2.1, within 48 hours of the arrest, and there was no such hearing provided the appellant to establish cause in this case, where appellant never was asked any questions about a probable cause, nore informed that he was entitled to a "Gerstein" hearing on the matter before bond.

The probable cause was not established until January 27, 2012 in the records, therefore the appellant's arrest was illegal, and the evidence should have been surpressed, where such come as the "fruit of a tainted tree."

> "In absence of extringent circumstances, the fourth amend--ments prohibits police from consensual entry into a susp--ects home in order to arrest the suspect." State V. Eserjose, 171 Wn.2d 907, 259 P.3d 172 (2011).
>
> "The state bears the burden of proving that the extrigent circumstances exception applies." State V. Smith 165 Wn.2d at 513, 199 P.3d 386 (2009).

The trial court erred not following provisions protecting the appellant from improper warrantless arrest, therefore appellant's seizure was not lawful, and the evidence obtained through the error should be surpressed, as such effected trial verdict.

Did the judge follow the required process, set by the court's own rules in this case, if not the appellant's rights are violated in this instance, which requires the relief.

6. THE TRIAL COURT ERRED ALLOWING THE IMPROPER WITNESS COACHING BEFORE THE JURY.

The trial court must ensure (1) the witnesses memory needs refreshing, (2) opposing counsel has the right to examine the writing, and (3) the trial court is satisfied that the witnes is not being coached." State V. Little, 57 Wn.2d 516, 521, 358 P.2d 120 (1961); ER 612;

> "A witness is not coached if the witness is using the notes to aid, and not to supplement his own memory." State V. little 57 Wn.2d at 521, 358 P.2d 120 (1961).

It should not be necessary for us to state that an attorney, including a prosecutor, may not coach a witness, i.e., urge a witness to create testimony, under guise of refreshing the witness's recoll--ection under ER 612. see State V. Delarosa-flores, 59 Wa. App. 514, 517, 799 P.2d 736 (1990); RPC 3.4 (fair competition in the adversary system is secured by prohibitations against...improperly influencing witnesses). 4RP565 Ln. 15-25; 1RP57 Ln. 25; 2RP178 Ln. 18; 4RP597;

The prejudice is established in the case where the prosecutor deliberately, willfully, and intentionally directed witnesses for a specific section of writings to be read into the record through the witnesses, which showed the witnesses were not testifying from an independant memory of the events, therefore several of the statements the jury was subjected to are read into the records by witnesses on state's requests and directions, which effected the jury verdict in this case. 4RP600; 4RP602; 4RP604; 4RP606; 4RP598; 4RP611; 4RP613;

However, the primary question of law being set before this court herein is whether the trial court followed the required steps

each time testimony was refreshed in the presence of the jury, or even if the trial judge followed the steps of law even a single time on the record as required.

> "Failure to adhere to the requirements of an evidentry rule can be considered an abuse of discretion." State V. Foxhoven, 161 Wn.2d 174, 163 P.3d 786 (2007).

The trial court failed to get even a minimum offer of proof on record showing the memory needed refreshed, and the witness was not being coached by the reading of the notes. 1RP51; 1RP55; 1RP56 Ln. 25;

> "An offer of proof severs three purposes: (1) It informs the court of the relevant legal theory under which this evidence is offered; (2) It gives the specific nature of the evidence so the court can assess its admissibilit; and It creates a record for review." State V. Griswold, 98 Wa. App. 817, 991 P.3d 697 (2000).

The trial court was required to (1) ensure the witness memory needs refreshed, and state such into the record; (2) Provide the oposing counsel the writing for examination before admission into the jury presence or trial proceedings; (3) ensure the witnes is not being coached, and is not reading directing from the notes or writings during the questioning; (4) ensure the witness has their own independant memory to testify from. This is the established and required process for ER 612 admissions.

The trial court took none of these basic required steps in the trial to ensure a fair proceeding, and that the law was then followed under Due Process of ER 612.

This record supports that testimony was read directly from the

notes, police reports, and documents into the record before this jury, therefore the jury verdict was effected by the error of the trial court, where prior there was two hung juries. 5RP859 Ln. 12;

> "Trial court abuses discretion when the trial rules upon unsupported facts, takes a view no reasonable person would take, appies the wrong legal standards, or bases its ruling on an erroneous view of the laws." State V. Lord, 161 Wn.2d 267, 156 P.3d 1261 (2007)

The trial court applied the wrong legal standard under ER 612, by failing to follow required provisions of the court rules under this case.

"A discretionary decision rests on untenable grounds or is based on untenable reasons if the trial court relies on unsupported facts or applies the wrong legal standards. Mayer V. Sto Indvs. Inc, 156 Wn.2d 677, 684 132 P.3d 115 (2006)(citing Fisons, 122 Wn2d 355, 858 P.2d 1054 (1992); see also State V. Rohrich, 149 Wn.2d 647, 654 71 P.3d 638 (2003).

> "Improper vouching occures when the state placed the weight of the government behind a witness or the evidence." United States V. Roberts, 618 F.2d 530 (9th Cir. 1980).

The trial court choice of conduct in this case cased predice to the defense, where evidence was read directly into the records, and witnesses were coached before the jury as to wh8ich line to of directly read from, therefore the jury likely gave greater weight where the state directed specific testimony in their presence for state's benifit. 4RP530 Ln. 9; 4RP543; 5RP871 thru 5RP928; 4RP545; 4RP544;

The trial shows this error clearly, and new trial should prevail.

7. THE TRIAL COURT ERRED ALLOWING TESTIMONY IN VIOLATION OF RULINGS OF THE UNITED STATES SUPREME COURT ON HEARSAY.

There are several statements testified to by the detective in the case which were obtained through her investigation, and contact with the witnesses. 5RP859 Ln. 12; 3RP421 Ln. 21; 1RP42 Ln. 8; 1RP20 Ln. 3;

> "Statements made during an ongoing investigation are testi--monial, and excluded." United States V. Davis, 547 U.S. 813, 126 S.Ct.2266 (2006).
>
> "So are statements that are products of police intitiated contacts." State V. Tyler, 138 Wa. App. 120, 155 P.3d 1002 (2007).

Therefore, absent a court finding that each hearsay testimony statements are admitted under a hearsay exception, the jury would be subjected to improper testimony, all of which placed the weight of the government behind the hearsay statements in the minds of a jury, thereby the verdict was effected. 1RP20 Ln. 21; 3RP 393; 5RP848;

> "The record must show in someway the court, after weighing the consequences of admission, and made a consious decision to admit or exclude the evidence." State V. Carlton, 82 Wa. App. 680, 919 P.2d 128 (1996); State V. Tharp, 96 Wn.2d 591, 637 P.2d 961 (1981).

The record supports admission of no testimonial obtained hear--say in this case, therefore admission is prejudicial error. 5RP862;

8. THE DEFENSE COUNSEL WAS INEFFECTIVE IN SEVERAL AREAS, AND SUCH EFFECTED THE FAIR TRIAL AND JURY VERDICT.

> "Sixth amendment guarantee to assistance of counsel attached when the state intitiated the adversarial proceedings against

the defendant." State V. EveryBodyTalksAbout, 161 Wn.2d 706, 166 P.3d 693 (2007).

The state's arrest of defendant without warrant on Jan. 11, 2012 intitiated adversarial proceedings in this case.

> "The right to counsel is specific to a particular case, and protects the accused throughout the proceedings, and following conviction. McNeil V. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204 (1991).

The appellant was represented by counsel, however the counsel failed to ensure appellant's rights were protected.

> "To prevail on an ineffective assistance of counsel's perfor--mance was deficient, and the deficiency prejudiced the defense must be shown. Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

Where the attorney failed to object to prejudicial comments on the record before the jury, there is a required showing the counsel's conduct was ineffective, and sufficient to warrant a new trial, with counsel who will ensure such comments and testimony is not allowed into the verdict rendered.

> "We begin with an presumption that adequate and effective representation." State V. McFarland, 127 Wn.2d 322, 899 P.2d 1251 (1995).

The counsel is presumed to act effectively, and the appellant must establish counsel's conduct was below a reasonable standard which is assited in this case by two prior aquitals for hung jury verdicts under different counsel, who was effective. Therefore the current counsel's conduct must be questioned, where counsel failed

to take even the most basic steps to ensure exclusion of the case statements and testimony, which was not admitted prior.

> "Deficient performance is that which falls below an obje--ctionable standard of reasonableness." State V. Horton, 116 Wa. App. 909, 68 P.3d 1145(2003).

Prejudice is established when trial counsel's performance is so inadequate that there is a reasonable probability that the out--come of the trial would have been different, undermining the confidence in the outcome." Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

That a person wo happens to be an attorney is present along--side the accused however is not enough to satify the constitutional command. The Sixth amemndment recognizes the right to the assistance of counsel, because it envisions the counsel play the critical role to the adversarial system to produce just results. An accused is entitled to the assistnace of an attorny, whether retained or who is appointed, whom plays the role necessary to ensure that the trial is fair." State V. Boyd, 160 Wn.2d 424, 158 P.3d 54 (2007).

> "Sixth amendment right to effective assistnace of counsel advances the Fifth amendment right to a fair trial." In Re PRP Brett, 142 Wn.2d 868, 16 P.3d 601 (2001).

Court have long recognized that effective assistnace of the trial counsel rests on access to evidence and in some cases the expert witnesses are crutial elements of Due Process right to a fair trial." see State V. Boyd, 160 Wn.2d 424 (2007).

> "That right to effective assistnace of counsel includes a reasonable investigation by the defense counsel." see Strickland V. Washington, 466 U.S. 668,(1984).

These indictum requirements of effectiveness are not present in applleants case. The counsel failed to call an expert witness to describe memory issues with the child victim, and why victim's testimony changed between the various trials.

Apparently the defense counsel did not even investigate this testimony of the victim, or investigate the discrepancy in their witnesses prior testimony during trial, and was totally unprepared for the testimony in the current trial proceedings.

> "Court found defense counsel's failure to object to the sentencing courts incorrect conclusion that defendant's prior conviction were compatible to be ineffective" see State V. Thiefault, 160 Wn.2d 409, 158 P.3d 580 (2007).

The counsel was ineffective for failing to question venire's panel regarding Jurior #46 improper comments being heard. SAG #2;

The counsel was ineffective for failing to object to State's conduct with witnesses being coached. SAG #6; 4RP565 Ln. 15-25; CP 413;

The counsel was ineffective for allowing a victim's advocate selected on the jury, and elected as the jury foreman, where the victim's advocate is not impartial under the charges in this case, and the impartiality could be simply challenged for cause. CP 492-514;

The counsel was ineffective for coaching witnesses for the defense, which is not allowed in a trial process. 1RP47; 5RP854; 5RP862;

The cousel was ineffective for for failing to challenge for cause several sexual abuse victims the court selected to jury in a sexual abuse case. CP 492-514; Jurior #5, #14, #15, #26, #28, #31, #37;

The counsel was ineffective for failing to call expert for explaination how time effected the victims accounts of events,

where there was a clear showing that the victim testified diff--erently at each of the three trials in this case.

The counsel was ineffective for failure to surpress the evidence obtained in violation of illegal arrest. SAG #5;

The counsel was ineffective for failing to challenge trial judge, where counsel explained to client judge was bias due to the multiple hung juries, and the judge has been now recused on this case after the trial completion for his bias.

The counsel was ineffective for allowing hearsay testimonial statements into the case, without proper exception hearing, and rulings regarding admission. SAG #7; 1RP57; 1RP47 Ln. 4; 5RP854; 5RP871-928;

The counsel was ineffective due to extreme Federal case load, where she could not even be present for hearings. 6RP1-10; 7RP1-12;

> "Evidence causes unfair prejudice when it is more likely to arouse an emotional response, than a rational decision by the jury." State V. Cronin, 142 Wn.2d 586, 14 P.3d 752 (2008)(citing State V. Gould, 58 Wa. App. 175, 791 P.2d 569 (1990).
>
> "Once the accused has been characterized as a person of abnormal bent, driven by biological inclinations, it seems relatively easy to arrive at the conclusion that he must guilty." State V. Saltarelli, 98 Wn.2d 358, 655 P.2 697 (1982).

The counsel's conduct in this case warrants at minimum the new trial, where appellant can have a fair hearing, with counsel that will take the steps necessary to provide the impartial jury, and reasonable investigation. CP 492-514; SAG #2; SAG #4; SAG #6; SAG #10;

9. THE TRIAL COURT ERRED BY ENTERING A SENTENCE EXCEEDING STATUTORY MAXIMUM TERM ALLOWED.

An offender's sentence cannot exceed the statutory maximum term for the class of crime the offender was convicted. RCW 9A.20.021. The appellant was convicted of class-B & class-C felony crimes. The total statutory maximum sentence for a class-B felony is 10 years or 120 Mo. term. RCW 9A.20.021. The total statutory maximum sentence for class-C felonies is 5 years or 60 month term. RCW 9A.20.021.

RCW 9.94A.505(5) directs "community custody be considered part of an offender's sentence".

> "A court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime". State V. Pannell, 173 Wn.2d 222, 267 P.3d 352 (2011).

The court imposed a sentence of 116 months plus 36 months for the two class-B felonies, for a total of 152 months per count, exceeding a statutory imposed 120 month maximum term. RCW 9A.20.021.

The court imposed a sentence of 60 months plus 36 months for the three class-C felonies, for a total of 96 months per count, exceeding a statutory imposed 60 month maximum term. RCW 9A.20.021.

> "A court commits reversible error when it exceeds its sentencing authority under the SRA". State V. Hale, 94 Wa. App. 46, 971 P.2d 88 (1999).
>
> "The appropriate remedy when this occurs is generally to remand for re-sentencing". In Re Sentnecing Jones, 129 Wa. App. 626, 120 P.3d 84 (2005)

Calculation of a crime's statutory maximum penalty includes both

time imprisioned and time on community custody. See State V. Sloan, 121 Wa. App. 220, 87 P.3d 1214 (2004). RCW Title 9.95 provisions demonstrate the restrictive nature of community custody, where it defines community custody as that "portion of an offender's sente--nce subject to controls including crime related prohibitations and affirmative conditions from the court, ISRB, or Department of Corr--ections".

The appellant should be sentenced to community custody, and it should place conditions of the court on appellant upon release, but for the court to impose such conditions and community custody upon appellant, the court must sentence appellant within the statutory maximum term allowed under 9A.20.021, which must include the term of community custody within the total sentence issued, which was not done herein this case.

In the Laws of Washington 2009, Chapter 375, Section 5 there the legislature made clear "the court not Department of Correction is required to correct such error as presented herein by appellant.

The courts recently ordered "remand with either amendment or re-sentencing" to correct this very issue, and the appellant should be given the same remedy. see In Re PRP Green, 170 Wa. App. 328, 283, P.3d 606 (2012).

The sentencing court should reduce appellant's sentence terms to allow for the 36 month community custody term on each count, where a release to community custody would be in the best interest to society with appellant having some period of active supervision, under those conditions imposed by the court, and access to the Phase-II Sexual Offender Treatment and DOC release programs upon release.

However, that is a decision within the sound discretion of the sentencing court, and the reviewing court should merely order that the sentence be corrected to comply with RCW 9A.20.021 statutory maximum term for each count. If the sentnecing court agrees that a term of community custody would best serve the community in a case such as this, then the sentencing court must impose a term of total confinement incustody of 84 months plus 36 months community custody on each of the class-B felony counts, and 24 months plus 36 months on each of the class-C felony counts, not to exceed 120 months for a class-B offense and 60 months for a class-C offense.

The trial court specifically questioned the legallity of this sentence the court issued, and was misinformed by the State's very attorney that the court could exceed the statutory maximum terms of RCW 9A.20.021 during the hearing. 9RP34 Ln. 4-12;

Since it is clear the sentence imposed exceeded the court's own lawful authority, corrections must be made to the sentence.

10. THE JURIOR #14 ERRED BY LYING TO COUNSEL WHEN QUESTIONED TO BE SELECTED FOR THE JURY.

The jurior #14 completed a questionaire, where she disclosed an issue of childhood sexual abuse between ages 13-15, however she did not disclose any kind of shooting related crimes or issues. There is a point when the counsel is addressing jurior #14 about a shooting she disclosed, and Jurior #14 first properly responds "I don't know what you are talking about." 11RP102 Ln. 11-25;

However, after a few minutes to form a story the jurior #14 just randomly speaks, interrupting counsel question to another jurior and

says "ma'am I remember", then the jurior goes on to describe a very elaborate shooting involving a cousin and two six year old children sometime in the past. 11RP103 Ln. 17-25; 11RP104;

This might not be concerning in this case had the jurior told of a shooting crime in the questionaire, in addition to or instead of disclosing being molested for over two (2) years as a child. see CP 492-514;

The attorney appears to have simply made another mistake asking the Jurior #14 about a shooting the jurior never mentioned, instead of asking about the molestion the jurior experianced as a child that would potentially allow for dismissal for cause of jurior #14, and since Jurior #14 did not correct the attorny's mistake by telling the attorney there was no mention of a shooting crime on the questions Jurior #14 answered, we must assume the jurior had motives for now creating a shooting story, and those motive appear to involve that jurior's disclosure of being molested as a 13-15 year old child, as the case before the jurior involved similar sexual crimes.

The defense counsel would have challenged the jurior for cause, had the jurior not created the shooting story to hide the real crime she disclosed on the questionaire.

The presumtion of a fair, impartial jury must be shown under all aspects of the proceedings, and if there is a reasonable inference in the record that some portion of the trial is not fair, then we must provide the appellant relief from the unfairness of the trial, and the best way for this court to provide an impartial jury would be to remand for a new trial proceeding, with jurior #14 included, as the jurior had some motive in telling the counsel a lie in voir dire.

3.

CONCLUSIONS

The reviewing court should consider these issues and a combining with Appellant Counsel's issues under the "cumulative error doctrine". Cumulative error and prejudices of these issues warranting a dismissal with prejudice of the said conviction and cause.

The trial judge has been recused for prejudice after this cause trial, therefore that should be weighed into the cumulative error, where if cause existed to prejudice the judge from the cause, there are valid questions disputing the "fair trial doctrine".

An exhaustive evidential hearing should be conducted to bear witness to the issues raised from "the fruit of the poisonous tree doctrine", hearsay testimony from multiple witnesses, juror bias and prejudice, lack of quality investigation techniques, lack of physical evidence, and especially DNA or pregnancy tests.

This court will find that no "timely" information nor determination of probable cause was properly preserved on record in the said cause justifying a suppression of evidence. Any probable cause was not properly acquired in this case and became information that was acquired as "fruit from the poisonous tree doctrine".

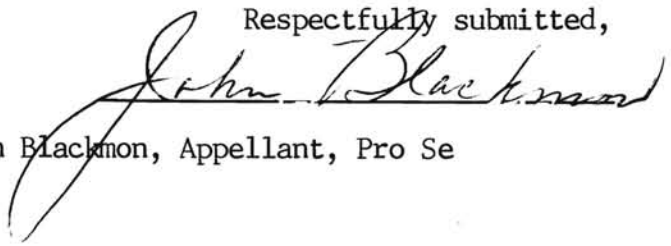
For the reasons stated in the statement of additional grounds, the appellant should be granted the relief of an evidentiarary hearing or a new trial with this case reversed and remanded to the Superior Court.

The records, transcripts, and clerk's papers filed for review are full of errors, and several instances of improper conduct in the record are not cited due to space and time constraints placed on the Appellant, who is a mere laymen of law, and did his best to comply with the rules.

Thank the honorable Court for the time spent reviewing the Statement of Additional Grounds, hopefully it is helpful in correcting these errors.

DATED this 29th day of June, 2014.

Respectfully submitted,



John Blackmon, Appellant, Pro Se

CERTIFICATE OF SERVICE

GR 3.1

I certify that on the date below I caused to be mailed the foregoing documents by the Prison Legal Mail system at Coyote Ridge Corrections Facility.

I declare under the penalty of perjury that I have notified the parties with a STATEMENT OF ADDITIONAL GROUNDS in the mail system by first class postage.

The following persons were notified:

Court of Appeals Div. I
One Union Square
600 University St.
Seattle, WA 98101

John Henry Browne
Attorney at Law
200 Delmer Building
108 South Washington Street
Seattle, WA. 98104

John L. Juhl, #18951
Deputy Prosecutor Attorney
Snohomish County Prosecutor Office
3000 Rockefeller Ave. M/S 504
Everett,WA 98201

EXCUTED on this 29th day of June, 2014 at Connell, Washington.

John Blackmon

JOHN BLACKMON
Coyote Ridge Corrections H-B-08
P.O. Box 769 1301 N. Ephrata Ave.
Connell, WA 99326-0769
PETITIONER, PRO SE