

Received  
Washington State Supreme Court

MAY 18 2015  
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Ronald R. Carpenter  
Clerk

THE SUPREME COURT IN AND FOR WASHINGTON STATE

STATE OF WASHINGTON,  
Plaintiff,  
v.,  
JOHN P. BLACKMON  
Appellant.

No. 91269-6 COA.70955-1-I

MOTION REQUEST TO FILE  
SUPPLEMENTAL BRIEF

I. FACTS

COMES NOW, John Patrick Blackmon, PRO SE, and Appellant herein, moves This COURT requesting permission to file a supplemental brief Pursuant to RAP 10.1(h) raising arguments identified while further researching recently raised argument; Governmental Misconduct with regards to COBURN; for ANY and ALL of the following;

- (1.) There are numerous crucial points of argument not raised on issues of the Mistrial;
- (2.) These errors of argument were not raised due to Ineffective Appellate Counsel; lacking and or denial of any governmental misconduct and or prejudice.

II. ARGUMENT

DOES THE APPELLANT NOW HAVE SUFFICIENT  
JUSTIFICATION TO NOW REQUEST PERMISSION TO PRESENT  
THIS SUPPLEMENTAL BRIEFING?

The answer to this request should result in a simple Yes; that the TRUTH may be ascertained and proceedings justly determined. There are numerous points of argument that the Appellate Attorney has failed to raise on Direct Review and must now be argued for this COURT to make a proper determination on the merits. In re Pers. Restraint of Orange, 152 Wash.2d 814, 100 P.3d 291; Smith v. Robbins, 528 U.S. 259, 285, 120 S.Ct. 746, 145 L.Ed.2d 756(2000).

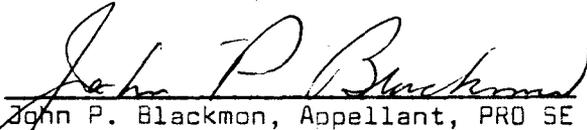
This COURT has the inherent authority to consider issues raised in a Supplemental Brief such as Appellant is requesting in order for This COURT to make a proper determination on the merits. Shoreline Cmty. Coll. Dist. No.7 v. Employment Sec. Dept., 120 Wash.2d 394, 402, 842 P.2d 938(1992).

### III. CONCLUSION

For the reasons herein stated, Appellant now makes request before This COURT to permit such arguments identified; to be presented as the argument of Dismissal currently before The SUPREME COURT OF Washington and to raise other arguments of Mistrial such as is in said APPENDIX A.

DATED This 14<sup>th</sup> day of MAY, 2015.

Respectfully Submitted,

  
John P. Blackmon, Appellant, PRO SE



APPENDIX A

ARGUMENT

DID THE APPELLATE COUNSEL FAIL TO RAISE THE TRIAL COURT ERROR ON THE CRUCIAL POINTS OF ARGUMENT WITHIN THE ARGUMENT OF A MISTRIAL PROPERLY?

As This COURT reviews this matter it will be seen that during testimony that there was a mention of a "previous trial" that had clearly caused a "tainting" of The JURY. In re Det. of Pouncy, 168 Wash.2d 393, 229 P.3d 676 (2010)(citing UnitedStates v. Brooks, 508 F.3d 1205, 1210 (9th Cir.2007), UnitedStates v. Torres-Galindo, 206 F.3d 136, 140 (1st. Cir.2000); UnitedStates v. Ortiz, 362 F.3d 1274 (9th Cir.2004) The COURT of APPEALS will review a Trial COURT's decision like this in their decision to "Deny The Mistrial" in this case for an "Abuse of Discretion" as was done here. State v. Rodriguez, 146 Wash.2d 260, 269, 45 P.3d 541(2002).

There was a ruling in the Trial COURT to "Deny the Mistrial" in regards to the mentioning of previous testimony made in previous trial(s) against the defendant and the Trial Judge stated it only happened once and by the defense counsel first. 3Rp591-92.

The FACT's of This Argument is that this violation started early on in the record by the Prosecutor making a statement to Jenifer, JLJ herein, having previously testifying in COURT. 1RP at 59.

The attorney of record, then asked JLJ a question, JLJ responding with an ill-intentioned statement that she previously testified. 2RP222

Then I.B. stated that her mother(JLJ) knew these accusations were true, @3RP448, and then I.B. stated that JLJ was in denial which was stricken from the record, but had caused a "tainting" of the JURY by those statements that "NO" curative instruction would fix. 3RP447-54.

The COURT's have established that the prosecutor may not appeal to the "passions of a JURY" so as to encourage a verdict based on emotion rather than "FACTS" and "evidence". State v. Belgarde, 110 Wash.2d 504, 507-08, 755 P.2d 174(1988); State v. Miles, 73 Wash.2d 68-71, 436 P.2d 198(1968).

I.B. then made a statement that she testified against the defendant previously by a sworn statement. 4RP545

The prosecutor then lead Detective Cori Shackleton, SHACKLETON herein, into stating that the exhibit that was being read was a transcript of a prior hearing. 5RP870

Then, Abuse by the prosecutor to violate Defendant's 5th Amendment Rights to not testify and remain silent by having SHACKLETON read previous testimony to the JURY when it should have been used ONLY to impeach the defendant at Trial. SRP871-929.(see also): Miranda v. Arizona, Supra (Right to Remain Silent).

When SHACKLETON stated that there was a need to refer to the police reports, the prosecutor made a flagrant and ill-intentioned statement in that it might be easier to refer to these "prior transcripts". SRP939.

These type of irregularities CAN NOT be cured by an instruction. State v. Perez-Valdez, 172 Wash.2d 818, 265 P.3d 853 (2011)(quoting State v. Post, 118 Wash.2d 596, 620, 826 P.2d 172, 837 P.2d 599 (1992)).

During the closing arguments, the prosecutor had continued this misconduct by stating "Prior COURT Hearings" that the Defendant and his Attorney were at, that I.B. made statements showing there was a "Previous Trial". SRP982, and mentions of prior hearing again. SRP1029

Arguments such as these, having an "Inflammatory effect" on This JURY is "Absolutely NOT curable" by any type of JURY Instruction. State v. Emery, 174 Wash.2d 763, 278 P.3d 653(2012)(quoting State v. Perry, 24 Wash.2d 764, 770, 167 P.2d 173(1946)).

This COURT will see that The Counsel had failed to object numerous times, and as such will be argued and addressed in accord to said violations as ineffective and incompetence of counsel that would require reversal. State v. Johnston, 143 Wash.App 19, 177 P.3d 1127 (2007)(quoting State v. Madison, 53 Wash.App 754, 763 770 P.2d 662 (1989)).(see also): State v. Sexsmith, 138 Wash.App 497, 509, 157 P.3d 901 (2007).

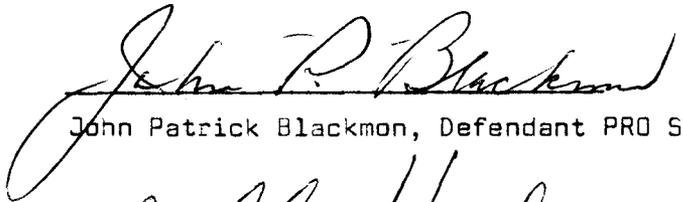
This Presiding Judge can not now presume knowledge that The JURY did not catch, comprehend, and or understand that there was a "previous trial" against this Defendant. State v. Womble, 93 Wash.App 599, 604, 969 P.2d 1097 (1999).(also see): State v. Levy, 156 Wash.2d 709, 721, 725, 132 P.3d 1067 (2006); State v. Boss, 167 Wash.2d 710, 720, 223 P.3d 506 (2009)(quoting State v. Becker, 132 Wash.2d 54, 64, 935 P.2d 1321 (1997)). There are many more showings riddled throughout This Cause and Record than a substantial likelihood that these errors and violations prejudiced The JURY's verdict; and whether The JURY's verdict was proper.

Russell, 125 Wash.2d @85, 882 P.2d 747 (quoting State v. Crane, 116 Wash.2d 315, 332-33, 804 P.2d 10(1991)), State v. Mak, 105 Wash.2d 692, 701, 718 P.2d 407 (1986); State v. Thompson, 90 Wash.App 41, 46, 950 P.2d 977 (1998); State v. Clemons, 56 Wash.App 57, 62, 782 P.2d 219 (1989)(see also):State v. Johnson, 90 Wash.App 54, 950 P.2d 981 (1998) and State v. Greiff, 141 Wash.2d 910, 921, 10 P.3d 390 (2000).

This COURT "must" make the proper ruling now and dismiss and or reverse "ALL" charges on This FACT alone.

DATED This 14<sup>th</sup> day of May, 2015.

Respectfully Submitted;



John Patrick Blackmon, Defendant PRO SE



Cullen Hankerson, Research Litigant Assistant

DECLARATION OF MAILING

GR 3.1

I, John P Blackmen on the below date, placed in the U.S. Mail, postage prepaid, 3 envelope(s) addressed to the below listed individual(s):

Ronald Carpenter, Clerk  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504

Cynthia Jordan, Attorney at Law  
921 W Broadway Ste 205B  
Olympia, WA 9

ANDREW ALS DORE DP.  
Snohomish County Prosecutor  
3000 Rockefeller Ave. MS504  
Everett, WA 98201

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. MOTION REQUESTING PERMISSION TO FILE SUPPLEMENTAL BRIEF
2. APPENDIX A - AN ARGUMENT (PORTION of Supplemental)
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 14th day of May, 2015, at Connell WA.

Signature

John P. Blackmen