

FILED
COURT OF APPEALS
DIVISION II

2019 FEB 13 PM 4:19

STATE OF WASHINGTON
BY _____
DEPUTY

NO. 44558-1-II

**COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II**

STATE OF WASHINGTON,

Respondent,

vs.

CHRISTOPHER EUGENE SETZER,

Appellant.

**STATEMENT OF APPELLANT
ADDITIONAL GROUNDS FOR REVIEW**

**Christopher E. Setzer- Pro Se
Represented Appellant,**

**PO Box 113
Carson, WA 98610
(541) 400-8696**

TABLE OF CONTENTS

CONTENTS	page
A . IDENTITY OF APPELING PARTY	1
B . OATH OF APPELLANT	2
C . STATEMENT OF THE CASE	2
1. PROCEDURAL HISTORY	2,3,4,5,6,7,8
2. FACTUAL HISTORY	9,10,11,12
D . AFFIDAVIT IN SUPPORT OF STRUCTURAL ERRORS	13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28
E . ASSIGNMENT OF ERROR, violation of appellant's constitutional rights to due process	29
1. The Trial Court and Trial Counsel Erred, allowing structural error to occur at Trial	29
2. Issues Pertaining to Assignment of Jury Trial Error	29,30
3. The Trial Court Erred when it Dismissed the Defendant's Personal Restraint Petition	30
4. The Trial Court Erred when it Dismissed the Defendant's Personal Restraint Petition	31
ARGUMENT.....	32,33,34,35,36,37
F. STATEMENT OF RELIEF SOUGHT	37,38
G . CONCLUSION	39
H . Document Evidence in Support of Additional Grounds for Relief	40,41,42,43,44,45,46,47,48

TABLE OF AUTHORITIES

Authorities **Page**

Rules

RAP 16.12 4
RAP 16.4 (C)(2)(3) 35

RCW

RCW 2.36.065, 18,32,33,34

FEDERAL CASES

" **Irvin v. Dowd,**
366 U.S. 717, 722, 81 S.Ct. 1639,1642, 6L.Ed.2d 751 (1961). 36

United States v. Eubanks,
519 F.2d 513, 517 (9th cir . 1979). 36

United States v. Allsup,
566 F.2d 68, 71 (9th cir.1977). 36

Smith v. Phillips,
455 U.S. 209, 217, 102 S.Ct. 940, 945-46, 71 L.Ed.2d 78 (1982). 36

Arizona v. Fubminante,
499 U.S.279,307-08, 111 S.Ct. 1264, 113 L.Ed.2d 302(1991). 36

Brecht v. Abrahamson,
507 U.S. 619, 630, 113 S. Ct. 1710, 1717, 123 L Ed.2d 353(1993). 36

FEDERAL CASES

CONTENTS

page

."Church v. Kinchelse, 767 F .2d 639, 643 (9th Cir. 1985) (citing Strickland, 466 U.S. at 694,for 80L.Ed.2d at 698, 104 S.Ct.at 2068). 35

STATE CASES

State v. Marsh, 106 Wn.APP. 801,24P.3d 1127,94A.L.R.5th 753, review denied 145 Wn.2d1012, 37 P.3d 291 (2001). 34

State v. Tingdale, 117 Wn.2d 595, 817 P.2d 850 (1991). 34

, Strickland v. Washington, 466 U.S. at 687, 80 L.Ed.2d at 693, 104 S.Ct.at 2064- 65. 34

state v. Cobb, 22 Wn. App. 221, 589 P.2d 297 (1978). 35

State v. Johnson, 29 Wn.APP. 807, 631 P.2d413(1981). 3

CONSTITUTIONAL PROVISIONS

CONTENTS	page
UNITED STATES CONSTITUTION 14TH AMENDMENT.....	18,,34
UNITED STATES CONSTITUTION 6TH AMENDMENT	18,36,37
Washington state Constitution article, 1 subsection, 3	18,33,35
Washington state Constitution article, 1 subsection, 22	33

STATE OF WASHINGTON }
 Respondent, }
 vs. }
 CHRISTOPHER E. SETZER }
 Appellant, }
 _____ }

NO. 44558-1-II
 STATEMENT OF ADDITIONAL
 GROUNDS FOR REVIEW

A . IDENTITY OF APPELING PARTY :

I, Christopher E. SETZER , the Defendant and Appellant in this case having received, read and reviewed the opening brief prepared and filed by the appellant's attorney in this appeal, Mr. John A. HAYS, Appellant's Additional Grounds for Review, Have NOT been Addressed within the Appellant's Direct Appeal Brief. Appellant understands that the Appeals Court will Review this statement of Additional Grounds for Review, Affidavit and Declaration, when my Appeal is Considered on its Merits, Please Note: Appellant, pleads for the Appeals Court to give consideration to this appellant's Statement of Additional Grounds for Review, Affidavit and Declaration, Made by the Appellant, CHRISTOPHER E. SETZER, herein and after referred to as, APPELLANT, within this appeal.

B . OATH OF APPELLANT :

**I, Christopher E. SETZER , the undersigned Appellant, being first duly sworn,
on oath, do hereby depose, State and summarize the following as set forth
herein and below :**

C . STATEMENT OF THE CASE :

1 . PROCEDURAL HISTORY

Defendant, is a resident of the State of Washington, current mailing address ,
PO Box 113, Carson, WA 98610

Defendant sentenced, by the Superior Court, state of Washington, County of Clark

Defendant proceeded to a jury trial on November 26, and November 27, 2007

Defendant was convicted of the crime of, felony telephone harassment on November 27,

2007, The defendant, was sentenced to a standard range judgment and sentence on

April 18, 2008, by Judge, Roger Bennett, Judge, Bennett Ordered the defendant shall

be allowed to remain out of custody pending appeal outcome, on the same conditions,

signed and dated by Judge, Roger Bennett on this 18th day of April, 2008,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

Defendant' s TRIAL COURT COUNSEL was Steven Thayer, attorney at law 514 W. 9th St,
Vancouver, WA 98660

Defendant, Appealed the conviction and the decision of the Trial Court, the Defendant
filed a notice of appeal on April 24, 2008, with the Court of Appeals Division II

The Defendant, Did Inform the Trial Court Judge: Roger Bennett, on April 24, 2008,

CITING AND DECLARING THE FOLLOWING ASSIGNMENT OF ERRORS:

"Unfair jury name drawing by Court Clerk, Ms. Linda Conn?, True Last Name Unknown",

Jury Misconduct, Insufficiency of Evidence, Any Errors Made by Defendant's Attorney,

Any Other Errors Made by the Trial Court, Pleading Filed with the Court in a Motion,

And Declaration for an Order Authorizing The Defendant to Seek Review at Public Expense,

And Providing for Appointment of an Attorney on Appeal, See, 5 pages, original court

copy's herein attached as, " Document Evidence of, Assignment of Errors " ,

signed and dated, on April 24, 2008, by Defendant . SEE Pg -41,42,43,44,45,46,47.

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

Defendant's court-appointed counsel was, attorney at law, Anne M. CRUSER, PO Box 1670, Kalama, WA 98625, the conviction was affirmed by this court in, State v. Setzer, 152 Wn. App. 1004 (2009), this opinion was not published, Appellant, appealed this Denial to the Supreme Court, retaining attorney at law, Mr. John A. Hays, 1402 Broadway, Longview, WA 98632, Review was denied by the Supreme Court. State v. Setzer, 170 Wn.2d 1006 (2010). Defendant's, filed a Personal Restraint Petition under Court of Appeals Case No.42816-4-II. On October 9, 2012, The Court of Appeals Ordered the Personal Restraint Petition, Transferred, to the Superior Court of Clark County, for a decision on the merits, directing the Superior Court, to comply with RAP 16.12 by entering a finding of fact, conclusions of Law, and an Order Deciding the Petition, The Superior Court heard fact-finding testimony on the matter on December 6, 2012, and issued a written memorandum opinion and order, denying relief and dismissing appellant's personal restraint petition.

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

**Appellant, NOW APPEALS the Trial Court's Dismissal of his Personal Restraint Petition,
through a Direct Appeal of that Dismissal, Appeal No. 44558-1-II**

2 . FACTUAL HISTORY :

I, Christopher E. SETZER the Appellant, was accused of felony telephone harassment,
On the afternoon of November 14, 2006, at 5:27 PM, an information was filed with the
Vancouver city police department, it accused the appellant of making a telephone call
at 11:45 AM to, Duane A. McCallum, an employee of Richey's Tires, Owned and operated
by DAVE MONTEI, business located at 10512 E. mill Plain Blvd, Vancouver, WA 98664
At approximately 6:09 PM November 14, 2006, appellant was contacted by Vancouver
city police officer SHIPP, MCAVOY agency case number 06 – 22488, officers Shipp, informed
the appellant of the accusations being made , and asked him if he had made the
phone call, the appellant admitted to making the phone call, however, when officers Shipp,
asked the appellant if he had made any threats during the phone call, The appellant
Informed Officer Shipp, that he DID NOT threaten to physically harm, assault, nor threaten,
even if I have to kill you ? To, Duane McCallum , nor did the appellant threaten any other
person there or elsewhere,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

Appellant went on to inform officers Shipp that he had made the telephone call at 11:45 AM that morning to inform Duane McCallum of the appellant intent to seek damages plus costs, for property damage to a new 2006,Toyota pickup, occurring on the prior day of November 13, 2006, and that appellant intended to seek a civil action against, Duane McCallum, and Richey's tire factory for this damage, Duane McCallum then denied that he had damaged the truck in any way, and that he would see me in court and tell it to the a judge, and that I would seek legal red dress, and have him served through legal process of service, the appellant, then hung the phone up, that ended the telephone conversation, officers Shipp, then informed the appellant, not to return to Richie's tire factory, appellant stated that he understood he was not to return to Richie's tire factory, this ended officers, Shipp's contact with the appellant on November 14, 2006, approximately 5 months later, appellant was summonsed to court and charged with felony telephone harassment, Please Note the Following Factors: **The appellant is accused of making a threatening phone call at 11:45 AM, The incident, is not reported to police until 5:27 PM ?, Five hours and 42 minutes later, The incident, is reported to police by, DAVE MONTY, NOT BY, DUAN MCCALLUM ?,**

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

Dave Monty, stated in the report to officer Shipp, that the appellant ,had been previously reported and arrested for making threats to kill Beaverton Toyota Employees, in Beaverton Oregon,

Vancouver Police Department, incident report, Case No.06-22488, Statement of,

Reporting officer, Shipp MCAVOY, statement of Dave Monty,

On November 13, 2006, at approximately 1100 hrs S1 – Christopher Setzer came to Richey's tires to have some work done on his 2006 Toyota Tacoma (WA/B 50134B). Christopher had been referred to Richie's tires from Toyota of Beaverton after he had made threats to kill employees there in a separate incident. According to Dave . This incident of threats was reported to Beaverton police and Christopher was arrested.,

Vancouver Police Department, incident report, Case No.06-22488, Statement of,

Reporting officer, Shipp MCAVOY, statement of, Shipp MCAVOY

I contacted Beaverton police records division to inquire about a possible report in which Christopher was arrested for similar circumstances, The Beaverton records division advised that they were unable to locate any recent report in which Christopher was arrested for a similar offense.,

(Factor ;)

Please Note, Dave Monty fails to report and inform officers Shipp, in this incident report, that he personally viewed Christopher Setzer, Park his 2006 Toyota Tacoma pickup, in the parking lot of his business on November, 13 2006, and for more than two hours, After he had Ordered the appellant to leave his business or he would call the police, Certainly if this were the case, Dave Monty would have reported it to the Police that very day,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

However Dave Monty DID NOT,

Additionally, Dave Monty does NOT Report ,Nor does he Offer this Accusation in his Report and Statement to Officer Shipp, Dave Monty knowingly gave a False , misleading and wrongful statement to Officer Shipp, MCAVOY on November 14, 2006 at approximately 5:27 PM,

Appellant hereby denies all accusations regarding a threat to kill any person or individual At, Beaverton Toyota prior to the day of November 14, 2006, or on any other day within Appellant's lifetime,

Appellant hereby Denies Ever Being Accused, Reported, or Arrested, by Beaverton Oregon police Department, or any other law enforcement agency, On this Accusation of Dave Monty's, Appellant hereby denies all accusations regarding a threat to kill Duane McCallum and or any other person or individual At Richey's Tire Factory on this 14th day of November 2006, Duane McCallum knowingly gave a false , misleading and wrongful statement to Officer Shipp, MCAVOY on November 14, 2006 at approximately 5:27 PM,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

Approximately 2 months prior to this incident of November 14, 2006, defendant Purchased a new 2006 Toyota Tacoma TRD four-wheel-drive pickup from Beaverton Toyota dealership, appellant paid Beaverton Toyota, an additional \$3000.00 dollars to have a toy tech suspension kit installed at the dealership the same day I bought the vehicle, Trusting that the suspension kit was correctly installed and in proper working order The appellant, next purchased a set of four MTR Goodyear 10 ply traction tires for the sum of \$ 1370.86 US dollars, appellant then used the tires for approximately 5 weeks, At which time the appellant went back to the place of purchase, American tire factory, To have my tires rotated, at that time I was informed that I had severe tire damage to The two front tires on the pickup, and that there were some bolts loose, and that it appeared that the front end bolts had not been completely tightened, and that the Dealership failed to give the vehicle an alignment after they installed the suspension kit, The appellant, then contacted Beaverton Toyota dealership and informed the dealership Of the same, which they denied at the time, and then wanted me to bring the vehicle Back to Beaverton Toyota to be looked at, evaluated, and possibly fixed if they deemed it was something they had done or caused, the appellant explained the diagnosis given by American tire factory and explained that they had retightened the loose bolts on the front end,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

the cross member and driveline chassis bolts, and advise that the vehicle needs an Alignment, and two new MTR Goodyear 10 ply tires, due to the severe wear and rubber loss on the outside edges of both front tires, defendant then advised Beaverton Toyota that he would Pay out of his pocket for the two tires and the alignment and simply bill them for the for the amount of services rendered to fix the vehicle, Beaverton Toyota then informed The appellant, that they would not pay for these services to fix the vehicle, if appellant chose to do that, Appellant then suggested, that Beaverton Toyota contact American tire factory to discuss the diagnosis given and that Beaverton Toyota should contact and inquire of the mechanic who installed the suspension kit, to ask this individual if he recalled doing an alignment on this vehicle after he installed the suspension kit, before the dealership states, they did not cause this damage, additionally appellant did offer a civil action against Beaverton Toyota dealership, if they refused to rightfully pay for these damages, Approximately 2 days later I received a phone call from Beaverton Toyota dealership Who informed me that they had spoken to American tire factory and were satisfied With their diagnosis of the vehicle, who additionally informed me that they had spoken

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

To the their mechanic at the dealership who had installed the suspension kit and The mechanic stated he had forgotten to give the vehicle an alignment after the installation of the suspension kit, Beaverton Toyota Dealership then offered to pay for the two new tires and the alignment of the vehicle, However they made a demand that I have the work done at Richey's Tire Factory, Refusing to pay for the service if the appellant took the vehicle to American tire factory, where the Appellant had purchased the tires from originally or anywhere else, in addition Beaverton Toyota dealership had arranged to paid for the two new tires and the alignment, and informed the appellant that they had made an appointment at Richie's Tire Factory on, November 13, 2006 at 10:45 AM . **PLEASE NOTE : this is the true reason why the Defendant was Referred to Richey's Tire Factory and Dave Monty's Business, NOT Because the Defendant had Threatened to kill Any Person at the Beaverton Toyota dealership, nor any other place within the United States, Dave Monty knowingly gave a False , misleading and wrongful statement to Officer Shipp, MCAVOY on November 14, 2006 at approximately 5:27 PM,**

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

When Christopher arrived, he pulled his truck into the shop Bay, and was told to wait in the waiting room of the business as the work was completed, Chris was there for only a few minutes, when he said he did not have time to stay and have the work completed, Christopher then asked for the two(2) new tires, which Toyota of Beaverton had paid for.

Please Note, Dave Monty fails to report and inform Officer, Shipp that the defendant, had accused Duane McCallum of damaging his new 2006 Toyota Tacoma, on the prior day of November 13, 2006, at approximately 10:55 AM ,and that this was the True reason why the defendant had complaint and wanted to leave Richie's tire factory and this business, " NOT, Because the 'Defendant Did Not Have Time to Stay and have the work Completed,"

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

On the morning of November 26, 2007, the Appellant DID then and there inform his trial court attorney, Steven W. Thayer that he had just eye witnessed the court clerk draw jury venire names in a non-random and unfair way, defendant did in fact discuss the matter with trial court counsel and did instructed him to raise an objection on the matter with the court, However "Trial Counsel Failed to Raise an Objection", PLEASE NOTE : as Testimony to this Fact, There were a Total of FIVE Personal Friends Associated with the States Complaining Witnesses and Richie's Tire Factory business, and TWO of the first TWELVE jurors Drawn, had Appointments, the VERY SAME DAY of TRIAL, With Richie's Tire Factory and" Duane McCallum ' the States Complaining Witness" , ONE woman had an appointment at 11:30 AM, this woman was stricken from the jury, However Another Woman was NOT DISMISSED, This Woman WAS ALLOWED TO SET ON MY JURY, SHE WAS ALLOWED TO ATTEND HER SCHEDULED APPOINTMENT At, 4:30 PM, At, Richie's Tire Factory business, ON November 26th, 2007, and in fact the judge, Roger Bennett, Even Released the jury Early so that she could make her appointment, NOTE : EVEN AFTER the Defendant, had INFORMED his Attorney, Steven W. Thayer, that the Defendant was POSITIVE and SURE the CLERK had NON-RANDOMLY DRAWN the JUROR NAMES, and Defendant DID INSTRUCTED HIS ATTY., Steven W Thayer to STRIKE this juror, From the Jury, and

NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

MOTION THE COURT FOR A MISTRIAL , Attorney, Steven W. Thayer, FAILED TO DO,
AS INSTRUCTED BY THE DEFENDANT, and FAILED TO PROPERLY EVALUATE and RAISE
the APPROPRIATE OBJECTIONS and MOTIONS REQUIRED UNDER UNITED STATES
CONSTITUTIONAL LAW, The woman I confronted about the matter on November 26th,
2007, and while she was in the very act of non-random jury name drawing , As
the Trial Court took a Recess AT and from, 9:32:55 AM To 9:49:02 AM), SEE, 11/26/2007,
Original Trial Court Transcript of Proceedings - Pg 224, - 6, Judge Roger Bennett left the
courtroom, the Clerk, Mrs. DORENE SHINABARGER left the courtroom, the prosecutor
left the courtroom, and right behind him my Attorney, left the courtroom?, telling me
he would return shortly to begin the trial!, Leaving the bailiff and myself alone in the
courtroom, no other people were within the courtroom, a few minutes passed by and
a side door opened A Lady walked in, of Whom Judge, Roger Bennett makes Reference
to As" LINDA ",SEE, 11/26/2007,Original Trial Court Transcript of Proceedings, SEE herein
Attached Document Evidence Pg 48,
Pg 224, at12-13-14-15, Dated November 26th, and 27th 2007, "LINDA, set Down at the
Clerk's Desk and Court Bench ' At Approximately, 9:37 AM, LINDA" DID bend down under
the Bench and Appeared to be arranging something ?, And I say appeared because I could
Not see underneath the wooden bench for that period of time,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

LINDA, then straightened upright , Arranged the Bench, And reach back down under the bench, and picked up the Wooden Jury Name Selection Box and set it ON the BENCH, AS I NOTED, and TESTIFIED to, THE CLERK , DID NOT Spin the Box, THE CLERK DID NOT Shake the Box, and in Fact was very Careful Setting the Box in Place UPON the BENCH, she then unlatched and opened the top door, reached into the left-hand corner very carefully drawing out Several Slip of yellow paper,, after the Clerk wrote the names down, she turned back around and gave me the same look, a condescending glare, followed by a smile and head nod by LINDA CONN, the clerk, she then Carefully Reached Back into the Left-Hand Corner of the Box, Drawing out several more slips of yellow paper?, It was at that very point that I voiced my objection and concern to," LINDA " About Her Procedural Miss-Conduct !... I asked her aren't there some RULES Here, Doesn't my Attorney Need to be Present , while you're Drawing those Names?, Aren't you Supposed to Spin that Box at Least One Time Lady?," Certainly you're NOT Supposed to Reach into the Same Corner Twice?, She just smiled at me, Refusing to provide me an answer, however the bailiff offered that the Defendant should take the matter up with his attorney, Trial Court Counsel, STEVEN W.THAYER attorney-at-law,514 W. 9th St. Vancouver WA 98660,

NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

And by the time the Defendant was able to find Mr. Thayer, and INFORM Him of this Fact and my Concern, the Jury Venire Names were Already Drawn and Arranged, and LINDA had already Exited the Courtroom Leaving the Defendant in the Court Room Alone, Where There is NO Doubt in my Mind, THAT IF MR. THAYER, would have been in the COURTROOM, DEFENDING ,the DEFENDANT, and watching the Trial Court Proceedings, Making Sure, All Laws, Rules, and Proper Procedures were Being Followed, as the law requires, and IN Particular that, LINDA CONN?, The CLERK, Drawing the juror Names in this case, DID SO in a Lawful, procedurally correct, Constitutionally Correct, Fair and Ethical Manner, "SEE 12/06/2012, RP - 68 lines 15, through ,25 ",

(Q. Do you recall Mr. Setzer at some point complaining to you about how the clerk was selected jurors out of the jury box ? (A. Chris complained about the jury selection.

I think he complained --- I'm not sure because I really don't have a good memory,

obviously, of what happened five years ago. But, I believe I do remember him saying

something about the clerk picking jurors --- jurors' names out of the box. but I don't

remember specifically what the Concern Was,? "SEE 12/06/2012,RP-69 lines 1through 5

(A. based on, or really even if he did it for sure. But I am not here --- I'm not trying --- I

wouldn't say that he didn't complain about it because he may well have.

I KNOW HE COMPLAIND ABOUT THE JURY SELECTION PROCESS. I REMEMBER THAT.

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

In other words Steven W Thayer trial court counsel, Admits for the Record, that his CLIENT, CHRISTOPHER E.SETZER DID in fact inform him of on November 26th, 2007, that he had Personally Viewed the Court Clerk, VIOLATE RCW 2.36.065, AT this jury trial in Clark County Superior Court, cause No.07-1-00433-5, in Violation of Stationary Rules for Criminal Procedure, and with many stationary Rules involving criminal procedures, the random selection of a jury is also a due process rights guaranteed under Washington Constitution, article 1, section 3, and United States Constitution, 14th AMENDMENT , Where Attorney at Law, STEVEN W.THAYER , Should have provided Reasonable competent and effective legal counsel to the Defendant and Appellant in this case, as the law requires an officer of the court and legal representative of a Client to provide Effective Assistance of Counsel Under the SIXTH AMENDMENT,

"SEE 12/06/2012, RP-86 lines 1 through 25," (Q. okay. And in fact, it's part of due process under Article 1, section 3, defendant also has a constitutional right to a randomly selected jury?

(A. yes. (Q. is that correct? You do not remember the court --- the court clerk selecting the jurors' names out of the box in this case, do you? **(A.I DON'T.** (Q. okay. You have no basis upon which to Dispute the Defendant's Claims that you were not even in the courtroom when that occurred?

(A. I DON'T.

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

(Q. okay. And, in fact, if you knew that the clerk had NOT Randomly selected the venire, you would object, would you not? (A. if I knew for a fact that that had happened, yes.(Q. okay. And as a matter of fact, all reasonable defense attorneys would object if they knew that the clerk had not randomly selected the jury?

MS. BARTLETT : objection. Calls for Speculation.(. JUDGE, JOHNSON : Overruled. WITNESS :

I would you agree with that. If they knew that. "SEE 12/06/2012, RP-87 lines 1 through 25,"

BY MR HAY'S(continued.) (Q. THE DEFENDANT MADE A CLAIM TO YOU THAT THE JURY VENIRE IN THIS CASE HAD NOT BEEN RANDOMLY SELECTED, DIDN'T HE ? (A. I --- he may --- I THINK HE DID.

But I am not sure, and I --- I (Q. right, you --- okay --- (A. can I --- can I just --- I'm sorry.

(Q. no, you --- you've answered. JUDGE JOHNSON : well, I think if you were trying to

complete your answer, please go ahead. WITNESS : I don't remember exactly what Chris

complained about. I know that he made a Complaint about how --- I think --- I'M ALMOST

POSITIVE, but I'm not a hundred percent sure that HE COMPLAINED ABOUT HOW THE — THE

CLERK MAY HAVE SELECTED THE NAMES. BY MR HAY'S(continued.) (Q. In other words, that they

had Not been Randomly Selected? (A. no, I didn't say that. JUST THAT HE MADE A

COMPLAINT ABOUT IT. I don't really know the nature of the complaint. He was complaining about it,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

counsel. That's "SEE 12/06/2012, RP-88 lines 1 through 10," (A. all I can --- and I'm not hundred percent sure, but I'll, for purposes of the discussion, I THINK HE DID COMPLAIN ABOUT THAT ,TO SOME EXTENT. (Q. okay. YOU DID NOT INQUIRE OF THE CLERK, OR GO INTO THAT ISSUE, DID YOU? (A. NO. (Q. okay. It is possible, during VOIR DIRE, for one venire member to answer a question, and through that answer, TAINT the Entire Jury Venire, isn't it? (A. I --- yeah, Anything's Possible.

"SEE 12/06/2012, RP-89 lines 1 through 25," (Q. you do not have to make that motion in front of the venire, do you? (A. no. (Q. you can have the venire taken out, and then you can make your motion? (A. yes. (Q. so they would not know what you had done? (A. if that was the case, that's what we would do. (Q. And so, it would not hurt your standing in front of the venire to make a motion to disqualify --- disqualify the entire venire, provided that they were not in the courtroom? (A. right. (Q. okay. We had **Three** or **Four** or even **Five** people on this venire that had some connection with this tire place, isn't that correct? (A. about **Four**, I think. (Q. okay. And this is out of thirty-how many venire members? What's typical in court then? (A. **32**. (Q. **32?** (A. I believe. (Q. so we've got more than Ten Percent of the jurors "SEE 12/06/2012, RP-90 lines 1 through 16," that have got a connection with the tire place? (A. could have been more than that if we'd have gone through the

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

Whole panel. (Q. which was an odd thing, was it not? **(A. not necessarily. It depends on the business question, as you know.** (Q. it certainly tweaks your interests. **(A. YES.** (Q. okay. **(A . WHAT IT SUGGESTED --- WELL, I,LL STRIKE THE ANSWER.** (Q. you were aware that the defendant was in significant pain all during this process, is that correct? **(A. I think Chris is in pain all the time. I think he's chronically in pain. "SEE 12/06/2012, RP-90 lines 22 through 24,"** (Q. and takes significant opiates to control that PAIN, or attempt to control that PAIN? **(A. I know he probably takes the medication.** "SEE 12/06/2012, RP-92 lines 8 through 17," (Q. okay. Have you worried about their ability to function in the courtroom during a trial if they are using drugs? **(A. if they are using drugs, yes.** (Q. okay. Did you ever ask Chris what medications he was using? **(A. NO, I don't --- I don't know if we did or not. I really can't remember discussions that we had about that issue, seven or six or years ago. The appellant hereby states attorney-at-law, STEVEN W.THAYER, TRIAL COURT COUNSEL, WHOSE LEGAL REPRESENTATION fell BELOW the standards of a reasonable, competent, effective, trial court lawyer, and that attorney's Ineffectiveness Created and Caused Prejudiced to the Defendant in this Case at bar, in addition, As the Case at Bar has Cited, the Right to a Randomly Selected, Unbiased Jury**

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

IS A Fundamental and Critical Component of Due Process under both the State, and the Constitution of the United States, and that" NO" Reasonable Trial Court Lawyer would Fail to Object, and Motion for a Mistrial, Particularly when the Clerk's intentional actions failed to follow required proper lawful legal procedure in pulling the venire names out of the box for the potential jury, when the clerk was viewed Not following required protocol and proper procedure and did pull juror names out of the box in a non-random and constitutionally unlawful manner, with a Bias Favoring the State. Thus, in the case at bar, trial counsel's failure to object fell below the standard of a reasonably prudent trial attorney. In addition, as the case law sets out, the denial of that right to a randomly selected jury, and by extension, trial counsel's failure to object, is presumed prejudicial Thus, the factual allegations contained herein are given in support of the assignment of structural error in the case at bar, Again this was not Mrs. Dorene Shinabarger, this was the woman the judge refers to as Linda?, Of whom the appellant made reference to on April 24, 2008 in a Clark County legal document and declaration in this case, Referencing this CLERK as " Linda Conn ", SEE original trial court copy of the trial court transcript of proceedings pages 224 ,for the 26th and 27th of November 2007 jury trial, 11/26/2007,

NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

pg- 224 line, 12 The Court: Could you have Linda bring me a yellow pad?.Pg- 224

line, 14 The Clerk: A WHAT ?.Pg- 224 line, 15 The Court: A yellow pad from Linda!.

" LINDA CONN ?True last name unknown " , Please provide the last name of LINDA ?,
the Clark County Superior Court Clerk ?, And/or " Judge Roger Bennett's " assistant,
Linda , last name unknown? ", Linda conn? and/or Linda Armstrong ?, Clark County
office of Names and Ballots Clerk/administrator ?.

It was not until the fact-finding hearing of December 6, 2012 that I became aware that
the state was in fact going to state differently, and say that Mrs. Dorene Shinabarger,
had drawn the juror names; "SEE 12/06/2012 RP-46 lines 14 through 22, (Q. is this document
familiar to you?, (A.(reviews the document and shakes her head.),)(A. It's familiar as to--
this is what WE DID. This is what I did when I was in court, RP-48 lines 18 through 22, and
then their names were on a piece of paper. WE would put them in a box, a wooden box,
and then WE would tumble the box and then just randomly pull out a name and put them
on the chart. When in fact Superior Court Clerk Dorene Shinabarger DID NOT draw the
jury names and in fact her testimony is that she has NO recollection or memory of drawing
the names in this jury trial," SEE 12/06/2012,RP-50 lines 8 through 15, (Q. okay. Are the-- the
names, are they-- are they-- the pieces of paper folded in the box? (A. I DON'T Remember.

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

(Q. okay. Okay. Now, this trial of Christopher Setzer's was approximately 5 years ago.

Do You Have Any Specific Recollection of It? **(A.NO, "SEE 12/06/2012,RP-54 lines 2 thru 22,**

(Q. ever had to leave a trial and have somebody else come in and replace you? **(A. um, if I did,**

I DON'T REMEMBER.(Q. possibly? (A I AM SAYING IT'S A POSSIBILITY, YES. (Q. and it does

occasionally happen when a clerk becomes ill or gets called out or something happens that

somebody--- **(A.YES (Q.--- has to go in and replace them. (A. YES (Q. you have no idea**

whether that happened at this date? **(A. I DO NOT.(Q. because the point is to have a random**

selection, is it not? **(A. That's correct. "SEE 12/06/2012,RP-55 lines 1 through 4, (Q. Okay.**

You Don't Know That Their Random When They are Handed to You? **(A. I --- THEY'RE JUST**

NAMES THAT ARE HANDED TO ME. I MEAN, I DON'T HAVE ANY IDEA. . "SEE 12/06/2012

,RP-55 lines 18 through 25, (Q. OF your own memory? You don't ---**(A. OH, NO.**

(Q. --- Remember who the trial judge was? **(A. NO. (Q. or who the defense --- or, who**

the prosecutor was? (A. NO.

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

"SEE 12/06/2012,RP-56 lines 1 through 25, (Q. okay. There are times when you pull names out, write them down and then pull names out again without spending the box, is that correct? **(A. I have done that, yes.** (Q. and times when you pulled more than one name out at a time? **(A. At a time?** (Q. yes. **(A. no** (Q. just one at a time? **(A. one at a time.** (Q. okay. And do you know that all other clerks follow that procedure? **(A. to the best of my knowledge, yes.** (Q. even though you're not there to see that? (Pause). **(A. let me put it this way: that's what they are instructed to do, that is how were trained to do it.** (Q. you left in 2008 of September, prosecu -- or, from the clerk's office? **(A. that's correct.** (Q. why was that? **(A. I WAS FIRED . Neither DID Mrs. Shinabarger. have a recollection of MR. SETZER accusing her of non-random, non-procedural and unlawful misconduct during the trial in this case?, THAT IS BECAUSE SHE IS NOT THE PERSON OR CLERK THAT I ACCUSED ON NOVEMBER 26th, 2007, I ACCUSED LINDA CONN ,? OF NON-RANDOM JURY NAME DRAWING PRACTICES, PROCEDURES AND MISCONDUCT ON NOVEMBER 26th, 2007,"SEE 12/06/2012,RP-57 lines 8 through 25, JUDGE JOHNSON :**

I do have a question. You are using a different system now where a computer selects the names and puts them in a certain order, but at the time, of course, there was this box and so on --- do you recall what information was on the slips of paper? WITNESS : the names

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

of the prospective jurors. JUDGE JOHNSON : was there any other personal information on those, such as an appointment at a business or anything of that nature on the little slips of paper?

WITNESS : NO. JUDGE JOHNSON : would you have any other information, other than what was on the slips of paper, as you drew the names out? WITNESS : NO. **Appellant hereby asserts that**

Superior Court clerk, DORENE SHINABARGER, PROVIDES IN ACCURATE AND MISLEADING TESTIMONY IN THIS CASE, SHE ADMITS NUMEROUS TIMES TO HAVING NO SPECIFIC KNOWLEDGE OR MEMORY OF THE TRIAL PROCEEDINGS IN THIS CASE, Yet she is willing to ANSWER!, Judge Barbara Johnson, AS IF, SHE Remembers Very CLEARLY ?, and in FACT, one of the clerks, DORENE SHINABARGER, HAS NO MEMORY TO CLEARLY RECALL UPON FROM, AND IN FACT THIS IS THE VERY SAME TESTIMONY THAT, JUDGE BARBARA D JOHNSON, RELIES UPON AND USES TO OPINION that the defendant RECEIVED a FAIR and CONSTITUTIONALLY CORRECT LAWFUL LEGAL TRIAL, HOWEVER the DEFENDANT, DID NOT RECEIVE A ETHICALLY FAIR and CONSTITUTIONALLY CORRECT LAWFUL LEGAL TRIAL, additionally there was" NO " CLARK COUNTY SUPERIOR COURT CLERK NAMED: " Linda CONN,? LAST NAME UNKNOWN " IN ATTENDANCE AT THE FACT-FINDING HEARING THAT THE COURT OF APPEALS DIVISION II ORDERED,ON DECEMBER 6, 2012, FOR QUESTIONING ,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

Appellant now feels, there is a Definite Question of newly Discoverable Evidence in this Case, as to the facts, and missing testimonies involved with this person and individual named, " LINDA CONN? ' Last name unknown?", Clark County Superior Court Clerk? OR NOT ?, Also please see attached, motion and declaration for order authorizing the defendant to seek review at public expense, and providing for the appointment of attorney on appeal # 5 pages signed and dated in Clark County Washington on the 24th day of April 2008 by Christopher E. SETZER, defendant pro se, Superior Court No.07-1-00433-5, Note, PLEASE SEE" ASSIGNMENT OF ERRORS, " : INSUFFICIENCY OF EVIDENCE, JURY MISCONDUCT, UNFAIR JURY NAME DRAWING BY COURT CLERK "Linda CONN ?, And any other errors within the court's file record made by my attorney and others "SEE, 5 pages, original court copy's herein attached at Pg 40 thru 47 as, " Document Evidence of, Assignment of Errors, signed and dated, on April 24, 2008, BY DEFENDANT FOR THE REASONS SET OUT IN THIS SAG BRIEF THIS COURT SHOULD reverse the decision of the trial court, grant the defendants PRP, vacate his conviction, and remand the case for a new trial, On the Legal Grounds Stated Herein , Appellant Hereby Prays for Relief, and Pleads for this Conviction to be Overturned, Reversed and a New Trial to be Granted in this Case,

NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW
"AFFIDAVIT "

Dated This 12th Day of February 2014, in Stevenson Washington, 98648

[Handwritten signature]
2/12/2014

Respectfully and Sincerely Submitted
by : Appellant Pro-Se

x _____
Christopher E.SETZER
PO Box 113
Carson, WA 98610
(541) 957-621

Notary Public Acknowledgment :

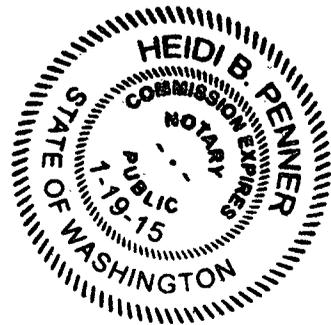
ON this Day, personally appeared before me, Christopher E. SETZER known to me to be the same individual described herein to execute the within and foregoing instrument, document and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes herein described and mentioned.

Given under my hand and official seal this 12 Day of February, 2014,

x Heidi B. Penner

Notary Public in and for the State of Washington residing at, County of Skamania

My appointment expires 1-19-15.



**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

D . ASSIGNMENT OF ERROR, Violation of Appellant's Constitutional Rights to Due Process,

**1. THE TRIAL COURT AND COUNSEL ERRED, ALLOWING STRUCTURAL ERROR AND NON -
PROCEDURAL MISCONDUCT TO OCCUR IN THE JURY SELECTION PROCESS OF THIS
TRIAL, THUS , VIOLATED AND DENIED THE DEFENDANT OF HIS CONSTITUTIONAL
RIGHT to DUE PROCESS, AND IN TURN, THE DEFENDANT RIGHT TO EFFECTIVE ASSISTANCE
OF COUNSEL.**

**2. DOSE the TRIAL COURT, AND TRIAL COUNSEL ERR, if they ALLOW, the CLERK of
the COURT "LINDA CONN", to USE an UNLAWFUL, NON- PROTOCOL PRACTICE and
PROCEDURE, MISCONDUCT to SELECT and DRAW JUROR NAMES, AND TO THE
EXISTENCE OF SUCH DEFECTS, CAUSED STRUTURAL ERROR, AND DEPRIVED THE
DEFENDANT of the RIGHT TO A FAIR AND IMPARTIAL JURY, WHERE TRIAL COURT
COUNSEL, STEVEN W THAYER WAS INFORMED BY THE DEFENDANT AND AWARE
OF SUCH DEFECTS and MISCONDUCT, HOWEVER, STEVEN W THAYER, FAILED to
INFORM THE TRIAL COURT, AND JUDGE ROGER BENNETT OF SUCH VIOLATIONS
AND DEFECTS, AND FAILS to MOTION THE TRIAL COURT, FOR A "MISTRIAL" IN
THE CASE AT BAR, SUGGESTS FAILURE TO OBJECT AND MOTION FOR A 'MISTRIAL,
As DIRECTED to DO, BY THE DEFENDANT, DID KNOWINGLY AND WILLINGLY ALLOW
PREJUDICE AND STRUTURAL ERROR TO OCCUR AT TRIAL,**

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

**WHEN ALL REASONABLE DEFENSE ATTORNEYS WOULD OBJECT IF THEY KNEW
THAT THE CLERK HAD NOT RANDOMLY SELECTED THE JUROR NAMES, THEREFORE,
STEVEN W. THAYER , DENIED THE DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL,
THAT CAN BE REMEDIED, ONLY BY A REVERSAL OF THIS CONVICTION.**

**3. THE TRIAL COURT ERRED WHEN IT DISMISSED THE DEFENDANT'S PERSONAL RESTRAINT
PETITION BECAUSE THE EVIDENCE PRESENTED AT THE FACT-FINDING HEARING OF,
DECEMBER 6, 2012 PROVIDED THAT TRIAL COURT COUNSEL, STEVEN W THAYER FAILED
TO STRIKE AND DISQUALIFY THE ENTIRE JURY VENIRE, AND MOTION FOR A MISTRIAL IN
THIS CASE, COUNSEL, STEVEN W THAYER ADMITS, THE DEFENDANT INFORMED HIM HE
HAD VIEWED THE CLERK NON-RANDOMLY DRAW JUROR NAMES OUT OF THE BOX,
RESULTING IN TWO PERSONAL FRIENDS OUT OF THE FIRST SIX JURORS DRAWN, WITH A
TOTAL OF FIVE PERSONAL FRIENDS DRAWN, IN A JURY POOL OF 32, OR ROUGHLY 10%,
THUS, CREATING A SEVERE BIAS FAVORING THE STATE, THEREFORE, STEVEN W. THAYER
DENIED THE DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL, THAT CAN BE REMEDIED,
ONLY BY A REVERSAL OF THIS CONVICTION.**

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

4. THE TRIAL COURT ERRED WHEN IT DISMISSED THE DEFENDANT'S PERSONAL RESTRAINT PETITION BECAUSE, TESTIMONY EVIDENCE PRESENTED AT THE FACT-FINDING HEARING OF, DECEMBER 6, 2012, PROVIDED THAT THE COURT CLERK, DORENE SHINABARGER, TESTIFIED TO HAVING NO INDEPENDENT RECOLLECTION AND NO MEMORY OF THIS TRIAL PROCEEDING WHAT SO EVER, AND HAS NO MEMORY OF DRAWING THE JUROR NAMES FOR THIS JURY TRIAL THE CLERK DID NOT KNOW IF THE SLIPS OF PAPER WITH THE NAMES OF POTENTIAL JURORS HAD BEEN DELIVERED TO THE COURT ALREADY THE RESULT OF RANDOM SELECTION OR , NOT ?, The clerk, DORENE SHINABARGER, ADMITS TO BEING FIRED FROM HER POSITION AS CLARK COUNTY CLERK?, AS IS ARGUED SUPPORTED BY THE RECORD IN APPELLANT'S AFFIDAVIT, YET JUDGE BARBARA D. JOHNSON, QUESTIONS THE CLERK, AND RELIES ON HER TESTIMONY ALMOST ENTIRELY WHEN CONCLUDING THE FACTS IN THIS CASE AT BAR ?, HOWEVER THE RECORD HAS ESTABLISHED THE FOLLOWING IN THESE PROCEEDINGS, THAT THE CLERK'S, RECOLLECTION AND MEMORY OF THE LEGAL PROCEEDINGS ARE NOT ACCURATE NOR CORRECT, THEREBY CREATING A PREJUDICE AND BIAS FAVORING THE STATE, AND FOR THE REASONS SET OUT IN THIS THE APPELLANT'S SAG BRIEF, REVERSE THE DECISION OF THE TRIAL COURT, AND GRANT THE DEFENDANTS PERSONAL RESTRAINT PETITION.

ARGUMENT

The **SIXTH AMENDMENT** to this, the **UNITED STATES of AMERICA** , known to Americans as "**THE CONSTITUTION** ", is a very important part of the United States Bill of Rights, That specifically sets forth Rights related to criminal prosecution, the Supreme Court has **APPLIED** and **HELD** the **PROTECTION** of this **AMENDMENT** to the States, through **THE DUE PROCESS CLAUSE** of the **14th AMENDMENT**, As the Case at Bar, alleges the defendant personally viewed, the clerk of the court, intentionally violate **RCW 2.36.065**, which states as follows: it shall be the duty of the judge of the Superior Court to ensure continued random selection of the master jury list and jury panel, which shall be done without regard to whether a person's name originally appeared on the list of registered voters, or on the list of licensed drivers and identity card holders, or both the judge shall review the process from time to time and shall cause to be kept on file with the County Clerk a description of the jury selection process. Any person who desires may inspect this description in this said office. Nothing in this chapter shall be construed as required uniform equipment or **METHOD THROUGHOUT THE STATE**, **SO LONG AS A**

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

FAIR AND RANDOM SELECTION OF THE MASTER JURY LIST AND JURY PANELS ARE ACHIEVED, RCW 2.36.065, As with Many Stationary Rules Involving Criminal Procedure, THE RANDOM SELECTION OF A JURY IS ALSO A DUE PROCESS RIGHT GUARANTEED UNDER WASHINGTON CONSTITUTION, ARTICLE 1, SECTION 3, which states as follows: no person shall be deprived of life, liberty, or property, without due process of law. WASHINGTON CONSTITUTION ARTICLE, 1 SECTION, 22 , and in criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the allegations against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face-to-face, to have the compulsory process to compel the attendance of witnesses and his own behalf, to have a speedy public trial by an impartial jury in the county in which the offense is charged to have been committed and the right to appeal in all cases; provided, the route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in a country through which the said car coach train boat or other public conveyance may pass and the trip or voyage, or in which the trip or voyage may begin and terminate, and no instance shall in the accused person

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

Before final judgment be compelled to advance Monies or Fees to Secure the Rights

**Herein Guaranteed. And United States Constitution 14th amendment. State v. Marsh,
106 Wn.APP. 801,24P.3d 1127,94A.L.R.5th 753, review denied 145 Wn.2d 1012, 37 P.3d
291 (2001).And as with the denial of other constitutional rights, the denial of this right is
presumed to be prejudicial.**

**State v. Tingdale, 117 Wn.2d 595, 817 P.2d 850 (1991). DEFENDANT ARGUES IN HIS AFFIDAVIT,
that TRIAL COUNSEL'S PERFORMANCE FELL BELOW THAT GUARANTEED BY CONSTITUTIONAL LAW
AND THAT OF A REASONABLE COMPETENT DEFENSE ATTORNEY AND THAT COUNSEL'S CONDUCT
ALLOWED ERRORS AND CAUSED PREJUDICE, Strickland v. Washington, 466 U.S. at 687, 80 L.Ed.2d
at 693, 104 S.Ct.at 2064- 65. where there is a REASONABLE PROBABILITY that, BUT FOR TRIAL
COUNSEL'S ERRORS, THE RESULT IN THE PROCEEDINGS WOULD HAVE BEEN DIFFEREN'T
additionally, THE DEFENDANT, ARGUES IN HIS AFFIDAVIT, THAT HE PERSONALLY VIEWED, THE
TRIAL COURT CLERK, LINDA CONN, INTENTIONALLY VIOLATE RCW 2.36 .065, and that this,
UNLAWFUL ACT DID CAUSE STRUCTURAL ERROR AND DEFECT TO OCCUR AT TRIAL, THAT
Lose CAUSED PREJUDICE TO THE DEFENDANT, WITH A BIAS FAVORING THE STATE, WHERE
DEFENDANT'S TRIAL COUNSEL WAS INEFFECTIVE, THE DEFENDANT HEREIN STATES THIS**

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

CONVICTION WAS OBTAINED UNLAWFULLY, AND IN VIOLATION OF RAP 16.4 (C) UNLAWFUL NATURE OF RESTRAINT, (2) The Conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution the United States or the Constitution or laws of the state of Washington. (3) Material Facts Exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, and sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government; or any other.

A REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME."Church v. Kinchelse, 767 F .2d 639, 643 (9th Cir. 1985) (citing Strickland, 466 U.S. at x 694,for 80L.Ed.2d at 698, 104 S.Ct.at 2068). Arguably, the standard under the Washington Constitution is identical, As in state v. Cobb, 22 Wn. App. 221, 589 P.2d 297 (1978) (counsel must have failed to act as a reasonable prudent attorney); State v. Johnson, 29 Wn.APP. 807, 631 P.2d413(1981) (where counsel's ineffectiveness assistance fell below the standard and did cause prejudice to the client and the defendant, in addition to allowing more than five personal friends of the state's complaining witness, to be seated as prospective jurors, and allowed one of the state's complaining witnesses, best friends, set and serve on the jury, going to an appointment the very day of trial, 11/26/2007,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

where the state's complaining witness work at, and then she came back to the trial, to set on my jury, and take testimony from the same friend she had just done business with at Richey's Tire Factory the day before ?, As Appellant's Affidavit Cites THEREFORE DUE PROCESS REQUIRES THAT A DEFENDANT BE TRIED BY A FAIR AND IMPARTIAL JURY, CAPABLE AND WILLING TO DECIDE A CASE SOLELY ON THE EVIDENCE BEFORE IT, The SIXTH AMENDMENT RIGHT to jury trial "Guarantees to the criminally accused a Fair Trial by a panel of Impartial, 'Indifferent' Jurors. ". Irvin v. Dowd,366 U.S. 717, 722, 81 s.Ct. 1639,1642, 6L.Ed.2d 751 (1961). "Even if' only One Juror is Unduly Biased or Prejudiced,' the Defendant is Denied his Constitutional Right to an Impartial Jury." United States v. Eubanks, 519 F.2d 513, 517 (9th cir . 1979); see also United States v. Allsup, 566 F.2d 68, 71 (9th cir.1977).Due Process Requires that the Defendant be Tried by Jury Capable and Willing to Decide the Case Solely on Evidence Before it, Smith v. Phillips, 455 U.S. 209, 217, 102 s.Ct. 940, 945-46, 71 L.Ed.2d 78 (1982)., The Error in the Case at Bar, arguably rises to the level of Structural Error. while trial court error occurs during the presentation of the case to the jury and thus can be assessed in the context of other evidence presented," Arizona v. Fubminante, 499 U.S.279,307-08, 111 S.Ct. 1264, 113 L.Ed.2d 302(1991), structural errors "infect the entire trial process. " Brecht v. Abrahamson, 507 U.S. 619, 630, 113 S. Ct. 1710, 1717, 123 L Ed.2d 353(1993).,

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

RAP 16.4 (C) (3)., ADDITIONALLY, there was" NO CLARK COUNTY SUPERIOR COURT CLERK NAMED " LINDA CONN,? LAST NAME UNKNOWN " IN ATTENDANCE; PRESENT AT THE FACT-FINDING HEARING THAT THE COURT OF APPEALS DIVISION II ORDERED ON DECEMBER 6, 2012, FOR, QUESTIONING , APPELLANT, NOW FEELS AS THAT THERE IS A DEFINITE QUESTION OF NEWLY DISCOVERABLE EVIDENCE IN THIS CASE, AS TO THE FACTS, AND MISSING TESTIMONIES INVOLVED WITH THIS PERSON AND INDIVIDUAL NAMED,"LINDA CONN? ' TRUE LAST NAME UNKNOWN?", CLARKCOUNTY SUPERIOR COURT CLERK ?, THAT DID INTENTIONALLY DEPRIVE THE DEFENDANT OF HIS SIXTH AMENDMENT RIGHT, TO DUE PROCESS, AND IN TURN, THE DEFENDANT WAS DEPRIVED AND DENIED HIS GUARANTEE CONSTITUTIONAL RIGHT TO A FAIR TRIAL BY A PANEL OF " IMPARTIAL, 'INDIFFERENT, JURORS. "

STATEMENT OF RELIEF SOUGHT :

I, Christopher E. SETZER , Appellant, hereby Applies for Relief from the Conviction, Judgment and Sentence cause No.07-1-00433-5, to include ALL PORTIONS of PENALTIES PUNISHMENT of CONFINEMENT and IMPRISONMENT, and to INCLUDE the UNLAWFUL NATURE OF RESTRAINT that MAY BE IMPOSED THEREIN, Appellant, HEREBY APPLY FOR

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW**

**RELIEF FROM ANY TRIAL COURT ERRORS, STRUCTURAL ERRORS, PROCEDURAL ERRORS,
AND ANY MISS CONCLUSIONS OF FACT, AND ANY MISS CONCLUSIONS OF LAW MADE BY
THE TRIAL COURT'S, JUDGE ROGER BENNETT, AND JUDGE BARBARA D JOHNSON, OR
APPELLANT'S ATTORNEY. IN THIS CASE, APPELLANT HEREBY PLEADS FOR RELIEF FROM
UNLAWFUL NATURE OF RESTRAINT, ON THE LEGAL GROUNDS STATED HEREIN, FOR THE
REASONS SET OUT IN THIS SAG BRIEF THIS COURT SHOULD REVERSE THE DECISION OF
THE TRIAL COURT, GRANT THE DEFENDANTS PERSONAL RESTRAINT PETITION, VACATE HIS
CONVICTION, AND REMAND THE CASE FOR A NEW TRIAL, ON THE LEGAL GROUNDS STATED
HEREIN, APPELLANT HEREBY PRAYS FOR RELIEF, AND PLEADS FOR THIS CONVICTION TO BE
OVERTURNED, REVERSED AND A NEW TRIAL TO BE GRANTED IN THIS CASE.**

CONCLUSION

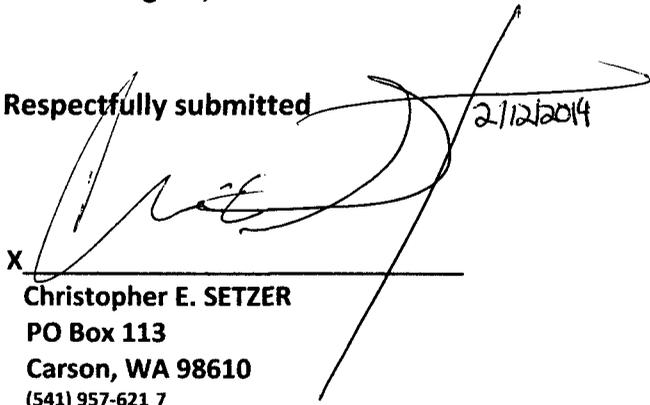
The Defendant's Claims Are Established Through Factual Witness Testimonial and Evidence Given In Support of the Defendant Legal Right To the Reversal of This Conviction, the Defendant Is Entitled to Relief from Unlawful Nature Of Restraint, for the Following Reasons And Arguments Set out in This SAG Brief, This Court Should Reverse the Decision of the Trial Court, and Grant the Defendant's Personal Restraint Petition, Vacate His Conviction, and Remand the Case for a New Trial.

Dated this 12th Day of February, 2014, in Stevenson Washington, 98648

Submitted
by : Appellant Pro-Se

Respectfully submitted

X



Christopher E. SETZER
PO Box 113
Carson, WA 98610
(541) 957-621 7

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

**In the Superior Court of the State of Washington
In and For the County of Clark**

STATE OF WASHINGTON

Case No. 07-1-004335

vs

Request / Motion for Consideration
by JUDGE Roger Bennett
Stated Below.

Christopher E SETZER
Defendant

Comes now the defendant ~~/Christopher E SETZER~~ and requests / moves the Court to

Respectfully ASK
the Court & the Honorable, ROGER BENNETT
to grant me the motions I do seek.
① wave Filing Fees on appeal notice. ② Grant me
an appeal Attorney. ③ seek Review at Public expense.

Dated this 24 day of April 2008

X Christopher E Setzer
Defendant Pro se

Name Christopher E SETZER
Address Po Box 113
Carson wa 98610
Phone No 360-268-3553

NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

STATE OF WASHINGTON,)	
Plaintiff,	)	Superior Court No. <u>07-1-00433-5</u>
)	
v.)	
	)	NOTICE OF APPEAL TO
<u>Christopher E SETZER</u>,	)	THE COURT OF APPEALS -
Defendant.	)	DIVISION II

Defendant seeks review by the Court of Appeals of the State of Washington, Division II, of the judgment and sentence, and every part thereof, entered on 4/18/2008 in Clark County Superior Court. A copy of the judgment and sentence is attached.

DATED this 24 day of April, 2008

Respectfully submitted, Pro SE DEFENDANT

Chris C. [Signature]
~~XXXXXXXXXX~~ - ~~XXXX~~

Attorney for Plaintiff:
____ County Prosecuting Attorney

Name and Address of Defendant:
Christopher E SETZER
PO Box 113
Carson wa 98610
(360) 268-3553

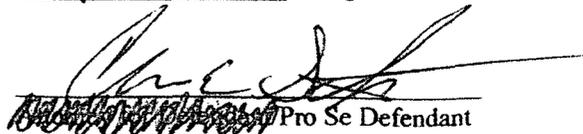
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

STATE OF WASHINGTON,	)	Superior Court No. <u>07-1-00433-5</u>
Plaintiff,)	
)	
v.	)	MOTION AND DECLARATION
	)	FOR ORDER AUTHORIZING THE
	)	DEFENDANT TO SEEK REVIEW
<u>Christopher E SETZER,</u>	)	AT PUBLIC EXPENSE AND
Defendant.	)	PROVIDING FOR APPOINTMENT
	)	OF ATTORNEY ON APPEAL

A. MOTION

COMES NOW the defendant and moves the Court for an order allowing the defendant to seek review at public expense and providing for appointment of attorney on appeal. This motion is based on RAP 2.2(a)(1) and is supported by the following declaration.

DATED this 24th day of April, 2008


Pro Se Defendant

MOTION AND DECLARATION FOR
ORDER AUTHORIZING THE DEFENDANT TO
SEEK REVIEW AT PUBLIC EXPENSE AND
PROVIDING FOR APPOINTMENT
OF ATTORNEY ON APPEAL

B. DECLARATION

I was tried and convicted of telephonic Harassment ~~that to kill~~ before the Honorable ROGER BENNETT. A judgment and sentence was entered in this matter on 4/18/2008. I desire to appeal the conviction and the judgment imposed. I believe that the appeal has merit and is not frivolous and make the following assignments of error: INSUFFICIENCY OF EVIDENCE) JURY MISCONDUCT,) UNFAIR JURY NAME DRAWING BY COURT. Clark, miss Lind, Conn., my other errors in the File Record by Attorney. & others. I have previously been found to be indigent. The following declaration provides information as to my current financial status:

- 1.) That I am the defendant in the above-captioned cause;
- 2.) That I do/do not own any real estate (if so, appraised value is approximately \$ 0 and rental income is \$ 0);
- 3.) That I do/do not own any stocks, bonds, or notes (if so, value is approximately \$ 0);
- 4.) That I am/am not the beneficiary of a trust account or accounts (if so, income therefrom is approximately \$ 0);
- 5.) That I own the following motor vehicles or other substantial items of personal property:

ITEM	VALUE/AMOUNT OWED ON ITEM
<u>1* Toyota Tacoma 06</u>	<u>35,000</u>
_____	_____
_____	_____

- 6.) That I do/do not have income from interest or dividends (if so, amount is approximately \$ 0);

MOTION AND DECLARATION FOR
 ORDER AUTHORIZING THE DEFENDANT TO
 SEEK REVIEW AT PUBLIC EXPENSE AND
 PROVIDING FOR APPOINTMENT
 OF ATTORNEY ON APPEAL

**NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

7.) That I have approximately \$ 0 in checking account(s),
\$ _____ in savings account(s), and \$ 500.00 in cash;

8.) That I am/am not married (if so, my spouse's name and address is:
_____);

9.) That the following persons are dependent on me for their support:

NAME	RELATIONSHIP	AGE
<u>Christopher F. Solge</u>	<u>son</u>	<u>7</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

10.) That I have the following substantial debts or expenses:

NAME	AMOUNT OWED	MONTHLY PAYMENT
<u>Rent</u>	_____	_____
<u>light</u>	_____	_____
<u>wash Surges</u>	_____	_____
<u>gas</u>	_____	<u>\$1200</u>

11.) That I am personally receiving public assistance from the following sources (or was until I was incarcerated):

AGENCY OR PROGRAM	AMOUNT OF ASSISTANCE
<u>0</u>	_____
_____	_____
_____	_____

MOTION AND DECLARATION FOR
ORDER AUTHORIZING THE DEFENDANT TO
SEEK REVIEW AT PUBLIC EXPENSE AND
PROVIDING FOR APPOINTMENT
OF ATTORNEY ON APPEAL

12.) That I am/am not employed (if so, take-home pay is approximately \$ 0 per month.);

13.) That I have no substantial income other than what is set forth above;

14.) Other circumstances affecting my financial position include:

medical Bill's

15.) I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.

16.) That I will immediately report to the Court any change in my financial status which materially affects the Court's finding of indigency.

17.) I certify that review is being sought in good faith. I designate the following parts of the record which are necessary for review:

() Pre-trial hearing Date(s): _____

Judge(s): _____

() Trial, excluding Date(s): _____

Judge(s): _____

() Post-trial hearing Date(s): _____

Judge(s): _____

* Sentencing hearing(s) Date(s): 4/18/08

Judge(s): R. BENNETT

* Other: Date(s): _____

See Attached Judge(s): _____

Pages 1, 2, 3
of this motion

MOTION AND DECLARATION FOR
ORDER AUTHORIZING THE DEFENDANT TO
SEEK REVIEW AT PUBLIC EXPENSE AND
PROVIDING FOR APPOINTMENT
OF ATTORNEY ON APPEAL

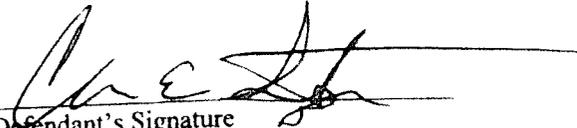
18.) That the foregoing is a true and correct statement of my financial position to the best of my knowledge and belief.

For the foregoing reasons, I request the Court to authorize me to seek review at public expense, including, but not limited to, all filing fees, attorney's fees, preparation of briefs, and preparation of verbatim report of proceedings as set forth in the accompanying order of indigency, and the preparation of necessary clerk's papers.

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

SIGNED in Clark Co., Washington this 24 day of April.

2008


Defendant's Signature

MOTION AND DECLARATION FOR
ORDER AUTHORIZING THE DEFENDANT TO
SEEK REVIEW AT PUBLIC EXPENSE AND
PROVIDING FOR APPOINTMENT
OF ATTORNEY ON APPEAL

NO. 44558-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

1 MR. THAYER: Perfect.

2 THE COURT: -- including the first three rows.

3 MR. RICHARDSON: All right.

4 THE COURT: So your might as well (inaudible).

5 MR. THAYER: Thank you, Your Honor.

6 (RECESS TAKEN FROM 9:32:55 TO 9:49:02)

7 (PERSPECTIVE JURORS ENTER COURTROOM)

8 THE COURT: We're dealing with the original
9 information that was filed in this case?

10 MR. RICHARDSON: Yes.

11 MR. THAYER: Yes, Your Honor.

12 THE COURT: Could you have Linda bring me a yellow
13 pad?

14 THE CLERK: A what?

15 THE COURT: A yellow pad from Linda.

16 (PERSPECTIVE JURORS CONTINUE ENTERING COURTROOM)

17 THE COURT: Good morning, Ladies and Gentlemen.
18 Welcome to Department 1 of the Superior Court. I'm Judge
19 Bennett. We are here for a criminal trial, which it's
20 anticipated will last two days. The first step in
21 selecting a jury for the trial is to have all jurors
22 please stand and each raise your right hand.

23 THE CLERK: You and each of you do solemnly swear or
24 affirm that you will well and truly answer all questions
25 asked of you by Court or Counsel touching qualifications

CERTIFICATE OF SERVICE

Clark County Superior Court cause No.07-1-00433-5
Court of Appeals No. 44558-1-II

FILED
COURT OF APPEALS
DIVISION II
2014 FEB 13 PM 4:19
STATE OF WASHINGTON
February 12, 2014
BY _____
DEPUTY

I Christopher E. SETZER state the following under the penalties of perjury under the laws of the state of Washington the same to be true and correct that On February, 12 2014, I personally placed in the FedEx/UPS mail the Following and **Foregoing, Legal Document SAG Brief of Appellant, on February 12, 2014**, postage prepaid to the indicated parties stated below:

CC :(1.) COURT OF APPEALS

Division II
950 Broadway, Suite 300
Tacoma, WA 98402

CC: (2.) Rachael Rogers Probstfeld
Clark County prosecuting attorney's office
PO Box 5000,
Vancouver, WA 98666

DATED This 12th Day of February 2014 IN Stevenson WA 98648.

Sincerely,



x _____
Christopher E.SETZER- pro se
PO Box 113
Carson, WA 98610
(541) 957-6217