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

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ISAIAH W. NEWTON, JR.,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

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**APPELLANT'S REPLY BRIEF**

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## **I. SUPPLEMENTAL STATEMENT OF THE CASE**

Isaiah W. Newton, Jr. was completely exonerated by the Court of Appeals on his appeal of his Burglary in the First Degree conviction. Mr. Newton's conviction for resisting arrest resulted in a sentence of 90 days in jail to be served concurrently with his felony conviction. He had served 134 days in custody awaiting trial and was given credit for time served.

The Court of Appeals found fault with two actions by the Trial Court. The Court of Appeals found the Trial Court erred by not granting a directed verdict of acquittal as a result of insufficient evidence of criminal intent on the part of Mr. Newton. The Trial Court also erred by giving the pattern inference of intent jury instruction, WPIC 60.05, 11A Washington Practice: Washington Pattern Jury Instructions, (Criminal).

The Court of Appeals also criticized the deputy prosecutor's conduct during the trial as "improper" because of prosecutorial misconduct during the trial.

Mr. Newton's conviction for resisting arrest resulted in a sentence of 90 days in jail to be served concurrently with his felony conviction. He served 134 days in custody awaiting trial.

## **II. LEGAL ARGUMENT**

The State makes two primary arguments in the Respondent's Brief:

1) That Mr. Newton was not "actually innocent" of the felony of which he was convicted; and 2) that Mr. Newton's conviction was not overturned "on the basis of significant new exculpatory information."

**A. Mr. Newton Was "Actually Innocent" of the Felony of Which He Was Convicted.**

The State completely ignores the plain meaning of "Actually Innocent," as defined by RCW 4.100.020 which reads, in pertinent part, as follows:

(1) Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the charging documents; . . .

RCW 4.100.020 does not reference misdemeanors; it speaks only of "felonies." The State argues that, because the Appellate Court which reversed Newton's conviction stated that the Trial Court could have found that ". . . Mr. Newton entered or remained unlawfully in the [alleged victim's]

bedroom beyond a reasonable doubt,” that somehow Mr. Newton is disqualified from seeking compensation pursuant to the wrongful incarceration state. Mr. Newton was neither charged or convicted of criminal charges. The State’s argument is premised on a “what if” or “might have been” argument because the fact is that Mr. Newton was not adjudged by the jury to have been guilty of the uncharged crime, criminal trespass, that is the basis of the State’s contention that Mr. Newton was not “actually innocent”. To deny Mr. Newton from compensation pursuant to the Wrongful Conviction Act as a result of an uncharged crime that was not referenced in the charging documents would render the statutory definition absurd, as it would require the court to ignore the reference to a person’s status of guilt or innocence as it pertains to “a felony.” How can someone not be “actually innocent” of a reversed felony conviction solely as a result of a purported, uncharged, misdemeanor criminal trespass when no such crime was ever charged? The State’s definition contradicts the plain meaning of the statute.

The statutory definition cannot be ignored, as the State seems to suggest. Mr. Newton did not engage in “any illegal conduct,” i.e., the felony crime of Burglary in the First Degree, as alleged in the charging documents. Criminal trespass was not mentioned in the charging documents. That result

argued by the State would seem to undermine the stated intent of the act as set forth in RCW 4.100.010 and would negate the reduction in compensation remedy of RCW 4.100.040(1)(a)(ii) which directly applies to this situation as it pertains to Mr. Newton's conviction for resisting arrest. Had Mr. Newton been convicted of criminal trespass, the effect would be a statutory reduction of compensation as set forth in RCW 4.100.040(1)(a)(ii).

In any event, the circumstances of a misdemeanor conviction that does not result in concurrent incarceration is irrelevant to the question of a wrongfully convicted felon's eligibility for compensation for a wrongful felony conviction. However, it is apparently relevant to the calculation of damages and thus demonstrates how the legislature harmonized the act.

Pursuant to RCW 4.100.040(1)(a)(ii), the remedy for time served concurrently as a result of a misdemeanor with a felony sentence that amounts to a "wrongful conviction" is to limit the compensation award to time served only upon the sentence which was imposed as a result of the wrongful conviction after the concurrent time had been served. A reading of RCW 4.100.040(1)(a)(ii) demonstrates why this is the only possible result. Any other result would render the words "During the period of confinement for which the claimant is seeking compensation" in the statute superfluous.



(1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:

...

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

...

Pursuant to the statute, the effect of any misdemeanor conviction is to reduce the amount of compensation awarded. How could the result be the more drastic disqualification from compensation that the State argues result from an uncharged misdemeanor which may or may not have resulted in a conviction.

The State also cites to a Ninth Circuit appeal from a habeas corpus petition that had been granted by a District Court, *Jones v. Taylor*, No. 13-36202, WL 4067217, in support of their position that Mr. Newton was not “actually innocent.” *Jones, supra*, concerned a federal habeas corpus petition collaterally attacking Mr. Jones’s conviction in Oregon State Court for molesting his then 9 year old sister. The District Court had granted the Petition on the basis primarily of the victim’s recantation of her trial testimony. The Court of Appeals for the Ninth Circuit reversed the grant of

the Petition for habeas corpus by the District Court. The Ninth Circuit admitted it was unsure as to whether it was even proper to consider the petition as it was a non-capital (death penalty) case. The case concerned the level of proof required by a Petitioner collaterally attacking his state court conviction to establish his probable “actual innocence” as the term is applied by the federal courts when evaluating habeas corpus petitions. Ultimately, the Court of Appeals denied the Petition because it found the victim’s recantation not persuasive.

The federal case law use of the term “actually innocent” in a federal habeas corpus proceeding provides no illumination as to the State Legislature’s intention in enacting RCW 4.100 et seq. They are entirely different proceedings. The federal habeas corpus procedure is designed to determine probable guilt or innocence after a conviction in state court preparatory to granting the Petition and releasing the prisoner from his sentence. The petitioner in *Jones v. Taylor, supra*, Mr. Jones, filed his habeas corpus petition to gain his freedom from incarceration pursuant to the federal habeas corpus statutes. That situation is entirely distinct from Mr. Newton’s action in seeking the state statutory compensation to which he is entitled. The only relevant definition of “actually innocent” is found in RCW

4.100.020. Thus, the State's citation to the federal cases of *Jones v. Taylor*, *supra*, *House v. Bell*, 547 U.S. 518, 555, 126 S. Ct. 2064, 165 L. Ed.2d 1 (2006), *Jackson v. Calderon*, 211 F.3d 1148, 1165 (9<sup>th</sup> Cir. 2000); and *Carringer v. Stewart*, 132 F.3d 464, 477 (9<sup>th</sup> Cir. 1997) provide no support for their position that Mr. Newton was not "actually innocent."

In the present case, Mr. Newton's innocence is absolutely established pursuant to the statutory definition. By citing to the Federal definition of "actually innocent" as it pertains to the grant or denial of a federal habeas corpus petition, the State is attempting to interject ambiguity where none exists.

The definition of "actually innocent" in the statute is not ambiguous. The definition requires no statutory construction or judicial interpretation. This court is to rely solely upon the statutory language. There is no statutory construction necessary. The Washington Supreme Court summarized the application and process of statutory construction in the case of *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005), as follows:

Statutory construction begins by reading the text of the statute or statutes involved. If the language is unambiguous, a reviewing court is to rely solely on the statutory language. *State v. Avery*, 113 Wash.App. 527, 532, 13 P.3d 226 (2000). Where statutory language is amenable to more than one reasonable interpretation, it is deemed to be ambiguous.

*State v. Keller*, 143 Wash.2d 267, 276, 19 P.3d 1030 (2001). Legislative history, principles of statutory construction, and relevant case law may provide guidance in construing the meaning of an ambiguous statute. *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wash.2d 224, 243, 59 P.3d 655 (2002).

Care must be taken to not find an ambiguity where none exists. The principals of statutory construction cannot even be considered by a court until it determines an ambiguity exists in the statute. Resorting to statutory construction without first finding the statute ambiguous is error. *Tesoro Mkt'g and Ref'g v. State Dept. of Revenue* 190 P. 3d 28, 164 Wn.2d 310 (2008) at footnote 3. The definition of “actually innocent” is not ambiguous, as set forth in RCW 4.100.020(2)(a). Mr. Newton qualifies under the statutory definition as being “actually innocent.”

**B. The “Significant New Exculpatory Information” in Mr. Newton’s Case Is the Court of Appeals Decision Acquitting Mr. Newton.**

The State is essentially arguing that the “Significant New Exculpatory Information” language of RCW 4.100.040 (1)(c)(ii) really means “significant new evidence.” There is no basis in the Wrongful Conviction Act for that conclusion. The broader meaning of “information” was chosen by the legislature in preference for the narrow meaning of “evidence.” It should be emphasized that Mr. Newton was adjudged innocent of the First Degree

Burglary Charge by the Court of Appeals. By comparison, if a felon is “... pardoned on grounds consistent with innocence,” he is eligible for compensation pursuant to RCW 4.100.040(c)(i). Why shouldn’t the same result occur when a conviction is reversed by the Court of Appeals on the ground the convicted felon was innocent have the same result if the statutes are to be harmonized.

The State ignores the plain meaning of the term “significant new exculpatory information” in an attempt to create ambiguity where none exists. Once again, this Court is limited to resorting to the plain and ordinary meaning of the statutory definition.

We give words in a statute their plain and ordinary meaning unless a contrary intent is evidenced in the statute. *Erection Co. v. Department Labor & Indus.*, 121 Wash.2d 513, 518, 1.852 P.2d 288 (1993). Where the statutory language is clear and unambiguous, the statute's meaning is determined from its language alone; we may not look beyond the language nor consider the legislative history. *Multicare Med. Ctr. v. Department of Soc. & Health Servs.*,

*C.J.C. v. Corporation of the Catholic Bishop*, 138 Wn.2d 699, 708, 985 P. 2d 262 (1999).

Clearly, the action of the Court of Appeals in reversing Mr. Newton’s conviction was the requisite “significant new exculpatory information.” The statute does not require any interpretation and its plain meaning clearly

encompasses the information contained in the Court of Appeals' decision.

Both the prosecutor and the trial court were absolutely convinced that Mr. Newton was properly convicted of the crime of Burglary in the First Degree, but both the trial court and the prosecutor were subsequently informed by the Court of Appeals that they were wrong. It took the Court of Appeals' decision to restore justice to Mr. Newton's case. That decision is clearly "significant new exculpatory information" as it required a dismissal upon remand.

The wrongful conviction statutes are not drafted to limit wrongful conviction claims to those individuals that present exculpatory evidence not produced at trial in a subsequent proceeding, such as a habeas corpus proceeding. If that was the legislature's intention it could have specifically limited the Wrongful Compensation statutes to specific "new" evidence, such as exculpatory DNA evidence not produced at trial, and it could have specifically limited the class of people intended to be compensated to that specific class of convicted felons, as has been done in a state such as Missouri. That seems to be the inference of the State's argument. But that argument, if accepted, contradicts the plain meaning of the Wrongful Compensation statutes and the phrase "significant new exculpatory

information” would not be given its plain and ordinary meaning as required.

**C. The Effect of the Resisting Arrest Conviction Is to Reduce the Compensable Time by 90 Days.**

Mr. Newton was sentenced to 90 days for his misdemeanor resisting arrest conviction. He served that time while awaiting trial prior to being sentenced upon the Felony.

RCW 4.100.040(1)(a)(ii) allows compensation for a wrongfully convicted person, but reduces the compensation for any time served concurrently. The statute reads in pertinent part as follows:

(1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:

...

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

...

Mr. Newton was incarcerated for 134 days before he was sentenced to prison. Although admittedly, the statutes in RCW 4.100 et seq. are confusing. The only way they can be harmonized and give effect to the Legislature’s intentions in enacting the act is to construe it as a whole while

interpreting related provisions in relation to each other.

Legislative acts are to be construed as a whole, giving effect to all the language used. *State v. S.P.*, 110 Wash.2d 886, 890, 756 P.2d 1315 (1988). Related statutory provisions are interpreted in relation to each other and all provisions harmonized. *S.P.*, 110 Wash.2d at 890, 756 P.2d 1315.

*C.J.C. v. Corporation of the Catholic Bishop*, 138 Wn.2d 699, 708, 985 P. 2d 262 (1999).

### **III. CONCLUSION**

Mr. Newton has demonstrated that he is entitled to a judgment imposing liability upon the State as alleged in the Complaint.

The intent of the Legislature in enacting the Wrongful Conviction statutory compensation scheme of RCW 4.100 et seq. is clearly set forth in RCW 4.100.010. The statute unequivocally states the broad intent of the legislation:

The legislature recognizes that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. Having suffered tremendous injustice by being stripped of their lives and liberty, they are forced to endure imprisonment and are later stigmatized as felons. A majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system. The legislature intends to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.



The intent of the legislation can only be given effect if Mr. Newton is awarded compensation pursuant to the act. He was, after all, imprisoned for a crime he didn't commit.

Mr. Newton requests reversal of the Trial Court's dismissal of the present case and remand back to the Trial Court for determination of damages.

**RESPECTFULLY SUBMITTED** this 30<sup>th</sup> day of September, 2015.

**LAW OFFICE OF DOUGLAS R. CLOUD**

A handwritten signature in black ink, appearing to read 'D.R. Cloud', written over a horizontal line.

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**COURT OF APPEALS,  
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**CERTIFICATE OF SERVICE OF  
APPELLANT'S REPLY BRIEF**

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## CERTIFICATE OF SERVICE

The undersigned declares as follows:

I am over the age of 18 years, not a party to this action, and competent to be a witness herein.

I am an employee of Douglas R. Cloud, Attorney at Law.

On the 30<sup>th</sup> day of September, 2015, I mailed via United States regular mail, postage prepaid, the documents titled (1) Appellant's Reply Brief and (2) Certificate of Service to the following:

Washington State Court of Appeals (the original and one copy)  
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The Appellant's Reply Brief and this Certificate of Service were emailed to Mr. Choate on this date and a copy mailed to him via United States regular mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of

Washington that the foregoing is true and correct.

**DATED** this 30<sup>th</sup> day of September, 2015.

  
CAROL A. FOCHT