67843-4

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STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

COURT OF APPEALS DIV
STATE OF WASHINGTON
2012 SEP -6 PM 12: 22

STATE OF WASHINGTON )
Respondent, )
v. )
James Holmes )
(your name) )
Appellant. )

No. 67843-4-I
No. 10-1-01163-8

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

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

**Additional Ground 1**

The inconsistency of the states witness's and the detectives testimony/ Jennifer Brevig (Tame) Oct. 5 2011 p. 96 (L 16), Detective Gallagher 10-6-11 p. 225 (7-19)/ Jennifer Tame Oct. 5th 2011 p. 92 (17-19), Bryan Johnstone 10-5-2011 p. 136 (19-21)/ Jessica Brevig 10-5-11 p. 70 (1-13), Jay Shelton 10-6-11 p. 316 3 (L. 17) Ms. Tonya Davis 10-7-11 p. 110-111 (L 11-25)(1-7)

**Additional Ground 2**

Laboratory error
Maria Low Oct 6, 2011 p. 266 L 1-25, p. 292-93, p. 294 L 1-25 p. 295 L 1-14 p. 305-16 Exhibit 88

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

Date: Sept. 3, 2011 Signature: James R. Holmes

# Additional Ground 3

Fire Arm Allegations jury instructions
Oct. 10th 2011 p. 21 L. 17-25 p. 22(1-7)

I would like to point out the inconsistency of the testimonies that was presented at trial Alot was said as far as the things that was taken, the beatings that took place; the cover up of evidence and the mistakes that were made. I do fully understand that Mr. Stemler was only doing his job. But his focus was aimed at the wrong individual. Hopefully, as I point out decisive factors that occured within the trial, it will enable you to rectify the judgement the jury set upon me.

Cross References. Perjury: Chapter 9A.72 RCW
Chapter 5.28 Oaths and Affirmations
5.28.060 Affirmations equivalent to oath
Whenever an oath is required an affirmation as prescribed in RCW 5.28.050 is to be deemed equivalent there to, and a false affirmation is to be deemed perjury equally with a false oath.

Testimony: Jennifer Brevig (Tame) testified under oath that defendant and accomplices took her wallet, car keys, cell phone, as well as check books and perscription pills (Oct. 5th 2011 p. 96 (16)

Detective Callaghen testified under oath that him as well as Jennifer and Bryan Johnstone walk through the residence and Jennifer pointed out her cell phone, purse, check book, wallet, I.D. and her prescription bottle of pills.
Oct. 6th 2011 p.225 (7-19)

Jennifer testified that Bryan was pistol whipped in the mouth
Oct 5th 2011 p.92 (17-19)

Bryan Johnstone testified that he was not pistol whipped he was in fact kicked in the mouth
Oct 5th 2011 p.136 (19-21)

My only objective is to show the court the conduct of the state's witnessis as in Rule 608 Evidence of character and conduct of witness.
Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified
The aftermath of those testimonies should have been designed to my defense, but

either the jury over looked or simply ignored the fact that Jennifer and Bryan testimony didn't coincide with one another. As I live Read my transcripts over and over I've noticed that alot of testimony wasn't compatible with none of the states witnesses as well as the Detectives investigation.

Now to direct your attention to Jessica Brewing and Jay Shelton.

5.40.040 Proof of authenticity of signature to report or of certification.
For the purposes of RCW 5.40.020 and 5.40.030 any finding, report or record, or duly certified copy there of, purporting to have been signed by such an officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issue by such and officer or employee pursuant to law and the person signing same shall prima facie be deemed to have acted within the scope of his or her authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified

copy shall be primafacie evidence of his or her authority so to certify.

Testimony:

On March 8th 2010 Detective Callaghen interviewed Jay Shelton and Jessica Brewing in regards to show them a photo montage. On page 214 line 13-23 the Detective testified that he informed the witnesses of the instructions on the form of the photographic montages. Which was signed by each party. Exhibit 58 and 65 will show those signatures by each party involved.

Jessica testified under oath that she and Mr. Shelton never discussed the photo montage with each other
Oct. 5th 2011 p. 70 (1-13)

During Jay Shelton's testimony he also stated that he and Ms. Brewing never discussed the montage with each other, in fact during the trial they still didn't know who each other had picked
Oct. 6th 2011 p. 363 (17)

Now in the case of State v. Gomez (July 5th 2006) The police showed the montage to each witnes individually and gave each one an admonishment not to discuss the identification with each other. But Gomez failed to present any evidence other than speculation that they spoke to one another.

In a recorded interview that defense investigator Tonya Davis had with Jay Shelton he admitted that him and Jessica did in fact discuss the contents of the photo montage in the parking lot of the police station. Ms. Davis testified under oath of those facts.

Oct 7th 2011 p. 110-111 (11-25)(1-7)

Now id would like to speak on the states DNA specialist Ms. Mariah Low. Not to be ridicule of this woman's ability to do her job but the way she conducted the procedures concerning this case as well as others, leaves a great amount of room to be skeptical of her findings. She created a great deal of mistakes during the process, some that was easily detected and possibly more that weren't.

In my research ive read that the laboratory error rate of scientific evidence is a matter

that concerns the weight of the evidence and it's admissibility under ER 702 not it's admissibility under the Frye Standard. Expert testimony should be presented to the trier of fact only when the scientific community has accepted the reliability of the under lying principles. Scientists in the field must make the initial determination whether an experimental principle is reliable and accurate. Judges do not have the expertise required to decide whether a challenged scientific theory is correct, and therefor courts defer this judgment to scientists. The court does not assess the reliability of the evidence if there is a significant dispute between qualified experts as to the validity of scientific evidence, it may not be admitt The Castro analysis is inappropriate in jurisdictions utilizing the Frye standard of admissibility. The Core concern of Frye is only whether the evidence being offered is based on established scientific methodology This involves both an accepted theory and a valid technique to implement that theory. It is important to distinguish however, between the general acceptance

of the results of a particular study or of the laboratory testing procedures in the case befor the court. (prong 3 of the Castro analysis The Frye test is concerned only with the former - prongs 1 and 2. If the particular technique is sufficiently accepted in the scientific community at large, any remaining concerns about the possibility of error or mistakes being made in the case at hand can be argued to the fact finder. Prong III. Did the testing laboratory perform the accepted scientific techniques in analyzing the forensic samples in this particular case.

There is only one other issue I would like to elaborate on. It basically coincides with an argument Ms. Cyr presented to you in my opening brief. I would just like to add a few things I too have researched. No where in my jury instructions did the state specify the standard of proof concerning the firearm enhancements.
In Washington Official Reports
1) Criminal law - Firearm - Determination - Degree of Proof.
In order to enhance a defendant's punishment under RCW 9.95.040 the

defendant's possession of a deadly weapon must be proved by the State beyond a reasonable doubt. An instruction submitting a deadly weapon verdict should specify the standard of proof.

2) Criminal law - Weapon - Deadly Weapon - Appearance of Weapon - Effect

For purposes of enhancing punishment under RCW 9.95.040, a deadly weapon must exist in fact, and not merely be an object which appears to be a deadly weapon

3) Criminal law - Firearm - Determination - Degree of Proof - General Instructions

General instructions on presumption of innocence and the State's obligation to prove an underlying offense beyond a reasonable doubt are insufficient for a special verdict where the fact to be found is not an element of the crime charged.

A trial courts failure to require proof beyond a reasonable doubt on a firearm allegation is per se prejudicial and defendant meets his burden of showing prejudice on collateral review.

Absent an explicit instruction on the

standard of proof, jury could not be expected to apply the proper standard to the special verdict when the fact to be found, i.e. presence of a deadly weapon or firearm is not an element of the crime charged. There was no evidence presented at trial to further collaborate the testimony of the states witnesses that there was guns involved. And in order to prove a firearm enhancement, the state must introduce facts upon which the jury could find beyond a reasonable doubt that a weapon in question falls under the definition of a firearm.

I only ask the courts to look closely at the facts I've presented and so I now respectfully submit to you this statement of additional ground

Thank You

James Ray Holmes