

No. 36093-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

ARDEN GIBSON,

Appellant.

STATE OF WASHINGTON  
BY AG  
DEPUTY  
COURT CLERK  
JULY 11 2011

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On Appeal from the Superior Court  
of the State of Washington for  
Pierce County

The Honorable Serjio Armijo, Judge

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STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

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Respectfully submitted,  
BY THE PETITIONER:

Arden C. Gibson  
ARDEN GIBSON #953052 PRO-Se Litigant  
AIRWAY HEIGHTS CORR. CENTER  
P.O. BOX 2019 (K) Unit-10-L  
AIRWAY HEIGHTS, WA. 99001

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )

Respondent, )

v. )

ARDEN CURTIS GIBSON, )  
(your name) )

Appellant. )

No. 36093-4-11

STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW

I, ARDEN CURTIS GIBSON, 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

See Attached Brief in compliance with (RAP)10.10

Additional Ground 2

See Attached Brief in compliance with (RAP) 10.10

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

Date: October 10, 2007.

Signature: Arden C. Gibson

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

ARDEN C. GIBSON,  
Appellant-Petitioner,  
v.  
STATE OF WASHINGTON,  
Appellee's-Respondents.

Cause No. 36093-4-II

APPELLANT'S STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW. Pursuant to  
(RAP) 10.10.

I. IDENTITY OF MOVING PARTY:

Comes Now, the appellant-petitioner Arden Gibson, respectfully submits and requests the court to consider this 'Statement of Additional Grounds for Review' in compliance with (RAP)10.10.

II. RELIEF REQUESTED:

Appellant-Petitioner asks this court to apply appropriate relief by granting this 'Statement of Additional Grounds' to be reviewed with the direct appeal in order to preserve the interest of justice to seek relief which is requested in compliance with the direct appeal opening brief.

III. STATEMENT OF ADDITIONAL GROUNDS:

**Ground One:** Whether appellant's Fourteenth Amendment Rights were violated by withholding defendants 'Exculpatory Evidence' under the Brady v. Maryland Standards?

(STATEMENT OF ADDITIONAL GROUNDS)



Therefore, under these requirements the state violated the defendant right to obtain fair due process for the following failures of (1) the state deliberately exchanged the appellant's 'exculpatory evidence' which was at the time a 'fire place poker' which was a [long heavy fire place poker] to a [small short fire place poker] which my requested witness 'Ms. Vera Jean' an attorney witnessed the [original long fire place poker] before the state deliberately exchanged it into a [small fire place poker] and therefore, the court record which has indicated that witness Ms. Vera Jean was also taken off the record. Thus, this has prejudiced the effect of the validity of the trial proceedings because the jury was misled to what the evidence which appeared to be a [short fire place poker] which in contrast was in actuality a [long fire place poker]. See. **See In re Cook**, 114 Wn.2d 802, 792 P.2d. 506 (1990); See **Hill v. United States**, 368 U.S. 424, 428, 7 L.Ed.2d 417, 82 S.Ct. 468 reh'g denied, 369 U.S. 808, 7 L.Ed.2d 556, 82 S.Ct. 640 (1962); Also see **United States v. Addonizio**, 442 U.S. 178, 185, 60 L.Ed.2d 805, 99 S. Ct. 2235 (1979). Also see CP Pgs. 240 and 241 regarding missing testimony of appellant's witness Ms. Vera Jean.

Accordingly, under the prejudice test the court must determine whether this was an inherently miscarriage of justice and a violation against a defendants Due process of clause rights to present evidence which would support his testimony for fairness of the trial. See **In re Cook**, 114 Wn. 2d 802 (1990).

[B] **Whether appellant's Sixth Amendment Rights were violated by trial counselor's cumulative error's for failing to provide appellant's requested eyewitnesses?**

Under the standards the reviewing court must review the record in

whole contents and apply the analysis which is announced in case law of the **Strickland v. Washington**, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct 2052 (1984).

Under this threshold requirement a conviction would be reversed for the ineffectiveness which trial counselor perform at the trial proceedings which counselor's performance was deficient and caused prejudice against the defendant. See **State v. Thomas**, 109 Wn.2d 222, 226, 743 P.2d 816 (1987).

Appellant contends and relies on the claims which counsel failed to call appellant's requested eyewitnesses who are identified as [Mr. Paul Bufalini, Dr. Reed, Donald Nelson, Linda Pennington, Walter Harris and Tony Leach]. However, the prosecution used witness Linda Pennington and Walter Harris as witnessess in behalf for the state's claims while the appellant was denied any and all of his request for his witnesses which there testimony would have provided a reasonable doubt for the jury to find the appellant not guilty of the charge. Thus, this should raise a legal question of law to this reviewing court whether counselor's which failed to raise such objections in light of the trial proceedings would also constitute a claim for cumulative errors. If so, would this be incomppliance with the **Strickland** rule, which appellant has the burden to show that even though counselor performed as a deficient counsel thus, this would have changed the result of the trial proceedings which the appellant would have not been found guilty of the charge.. See **United States v. Agurs**, 427 U.S. at 104, 112-113, 49 L.Ed.2d 342, 96 S.Ct. 2392 also see **United States v. Valenzuela-Bernal**, Supra, 872 -874, 73 L.Ed.2d 1193, 102 S.Ct. 3440. Thus, under this rule the court should be more than convieneced that appellant's claim regarding the effectiveness of his trial

was deficient which clearly changed the outcome of the appellant's trial proceedings, because appellant has a constitutional right for fair due process which includes the right to disclose exculpatory evidence and the right to have witnesses to testify at a trial proceedings in for a defendants behalf after an investigation which counselor must conduct. See **Rummel v. Estelle**, 590 F.2d 103, 104 (CA 5 1979)). Accordingly, appellant claims that his trial counselor's performance clearly fell below an objective standard of reasonableness and was not undertaken for legitimate reasons of trial strategy or tactics to refuse appellant the Sixth Amendment rights for his requested eyewitnesses which would have clearly weighed the credibility factors in appellant's favor to find appellant not guilty of the charge which he was convicted for. See **State v. Saunders**, 91 Wn. App. 575, 958 P.2d 364 (1998); also see **State v. Mc Farland**, 127 Wn.2d 322, 336, 899 P.2d 1251 (1995).

Moreover, the record clearly would indicate factors which trial counselor's failure to make timely objections to evidence factors on the other bad acts or to prejudicial evidence in general. See **State v. Dawkins**, 71 Wn. App. 902, 863 P.2d 124 (1993); ER 404(b).

Accordingly, the reviewing court should apply appropriate relief for counselor's deficiency performances in violation of appellant's Sixth Amendment rights for an effective assistance of counsel and therefore, this court should render an automatic reversal in this appeal regarding this specific claim.

[C] **Whether the trial court abused its discretion under the clearly erroneous standards?**

Under this rule the reviewing court should apply the elements which

a trial court decisions or ruling is reviewed as a de novo review of the claim for an 'Abuse of Discretion'. See **Scott v. Trans-Sys.**, 148 Wn.2d 701, 64 P.3d 1 (2003); also see **Willener v. Sweeting**, 102 Wn.2d 388, 393, 730 P.2d 45 (1986). In addition, this reviewing court may also apply the analysis of many so-called "abuse of discretion" questions which can be broken down into questions of fact and the conclusions of law these facts support. See **State v. Karpenski**, 94 Wn. App. 80, 102, 971 P.2d 553 (1999).

Here, appellant asserts claims for the court to coonsider under the analysis for the abuse of discretion to be applied inregards to the claims

(A) Appellant received an unfair trial because of the pre-trial publicity factor; (B) appellant asserts an unfair trial because of the jury which was empanelled was improper; (C) appellant asserts that the trial had constituted racial and an unimpartial proceedings; (D) appellant asserts that the prosecutor committed prosectorial misconduct during the pretrial and trial proceedings and finally, appellant asserts the claim which the court failed to allow the appellant with a change of venue because of the effects of the pretrial publicity.

Therefore, under these factors which appellant claims for this court to review under the abuse of discretion standards this would arise to more than just a mere harmless error this would become a cause and prejudice or and actual prejudice which the reviewing court is required to correct any trial courts errors of the law. See **State v. Broadway**, 133 Wn.2d 118, 136, 942 P.2d 363 (1997).

Furthermore, appellant provides with a cognizable showing to the reviewing court which is supported by the trial transcripts in compliance with (RAP) 9.2 which would more than demonstrate that appellant's did have in fact the allegations which is claimed within claims (A) through (E) in the aboved paragraph which is needed to be reviewed in order to preserve the interest of justice in order to prevent an inherently gross miscarriage of justice. See **In re Cook**, 114 Wn.2d 802, 812, 792 P.2d 506 (1990); also see **State v. Sloan**, 121 Wn. App. 220, 223, 87 P. 3d 1214 (2004).

Accordingly, this reviewing court should consider this timely filed 'Statement of Additional Grounds' in compliance to the (RAP)10.10 and reverse appellant's criminal conviction in order to preserve the interest of justice as a matter of law.

**V. CONCLUSION:**

Wherefore, appellant respectfully requests that this reviewing court to except this 'Statement of Additional Grounds' in compliance with (RAP) 10.10 with appellant opening brief and to grant appropriate relief by granting this brief and the opening brief relief sought which has been requested to reverse the criminal conviction and either remand for a trial or outright reverse the conviction and dismiss with prejudice the charge and immediately release the appellant from confinement.

Accordingly, It should be so Ordered.

Dated this 10 October, 2007.

Respectfully submitted,  
BY THE APPELLANT-DEFENDANT:

  
ARDEN CURTIS GIBSON # 953052  
AIRWAY HEIGHTS CORR. CENTER  
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AIRWAY HEIGHTS, WA. 99001

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STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON, )  
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 Respondent, )  
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 v. )  
 )  
 ARDEN CURTIS GIBSON, )  
 )  
 Petitioner. )

No: 36093-4-II

**CERTIFICATE OF SERVICE**

I, ARDEN CURTIS GIBSON, Petitioner in the above entitled cause, under the penalty of perjury, do hereby certify that on the date noted below, I sent copies of: My timely filed 'Statement of Additional Grounds for Review' of one (1) original to the court, One copy to the opposing party with one copy to my appellant counsel with this certificate of service by mailing.

To:  
Clerk: David Pozoha                      Appellant's Counsel                      Kathleen Proctor  
Court of Appeals Division      Dare Morris                      Pierce County Prosecuting  
950 Broadway, Suite 300      1908 E. Madison Street                      930 Tacoma Ave, South RM 946  
Tacoma, WA. 98402                      Seattle, WA. 98122                      Tacoma, WA. 98402

By processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2019, Airway Heights, WA 99001- 1899

Dated this 10 day of October, 2007.

Respectfully Submitted,

Arden Gibson  
Petitioner

Arden C. Gibson  
Signature