

FILED
COURT OF APPEALS
DIVISION II

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

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STATE OF WASH. CLERK
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DEPUTY

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 TAYLOR CONLEY,)
)
 Appellant.)

NO. 37970-8-II

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DEPUTY

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

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COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY ks
REPORT

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 TAYLOR TOM CONLEY,)
)
 Appellant.)

No. 37970-8-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Taylor T. Conley, 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

Members of Jury Seeing Defendant Taylor Conley in handcuffs.

Additional Ground 2

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

Date: 7.23.09

Signature: 

[Additional ground 1] Members of jury seeing Defendant Taylor Conley in handcuffs.

Which falls under "Appearance of fairness Doctrine", and violates Defendants right to a fair and impartial trial. Which is guaranteed by "6th and 14th amendments in the constitution. As well as Article I, Section 22 (Amendment 10) of the Washington State Constitution.

- [Sites] of State v. Roberts, 86 N J Super., at 162,206 A. 2d at 202
- Illinois V. Allen, 397 U.S. 337, 90 S. CT. 1057, 25 L. Ed. 2d 353 (1970)
- State v. Hartzog, 96 Wash. 2d 383 635 P. 2d 694 (1981)
- State V. Ollison. 68 Wash. 2d 65,411 P2d 419 (1966)
- State V Awyer, 60 Wash. 2d 83, 371 p2d 932 (1962)
- State V Williams, 18Wash. 47, 50, p 580 (1897)
- State V Tolley, 290 N.C. 349, 226 S.E. 2d 353 (1976)
- Snow V Oklahoma, 489 F. 2d 278 (10th Cir. (1973)
- Kennedy V Cardwell, 487 F. 2d 101 (6th Cir. 1973)
- United States ex rel. Stahl v Henderson, 472 F. 2d 556 (5th Cir. 1973)
- United States V. Rousitio, 455 F. 3d 366 (7th Cir. 1972)
- Dorman V United States, 435 F. 2d 385 (D.C. Cir. 1970)
- United States V Thompson, 432 2d. 997 (4th Cir. 1970)
- United States V Samual, 431 F. 2d. 911 (9th Cir. 1968)
- Blaie V. United States, 135 F. 2d 284 (D.C. Cir 1943
- People V. Thomas, 1 Mich. App. 118, 134 N.W. 2d 352 (1965)
- Commonwealth V. Brown, 364 Mass. 471, 305 N.E. 2d 830 (1973)
- State V. Borman, 529 S.W. 2d 192 (Mo. App. 1975)
- State V Roberts, 86 N.J. Super. 159, 206 A. 2d (200/1965)
- French V. State, 377 p.2d 501 (Okla. Crim. App. 1962)
- Thompson V. State, 514 S.W. 2d 275 Tex.Crim.App. (1974)
- Sparkman V. State, 27 Wis. 2d 92,133,N.W. 2d 776 (1965)
- Estelle, 425 U.S. at 503, 96 S. Ct. (1691)
- Samual, 431 F. 2d at 614
- Eaddy V. People, 115 Colo.488,492,174 p.2d, 717 (1946)
- Hickson V. State, 472 So. 2d 379, 383 (Miss. 1985)
- Zygaldo V. Wainwright, 720 F. 2d 1221,1223 (11th Cir. 1983)
- Hernandez V. Beto, 443 F. 2d 634,636-37 (5th Cir. 1971)
- State V. Crawford, 99 Idaho 87, 95-96, 577 p.2d 1135 (1978)
- United States V. Ferguson, 758 F.2d 843,854 (2d Cir 1985)
- Holbrook, 475 U.S. at 568-69, 106 S. Ct. 1340
- Williams , 18 Wash.,. at 51, 50 p.580
- People V. Duran, 16 Cal. 3d 282,290,545 P.2d 1322, 127 Cal. Rptr. 618, 90 A.L.R. 3d 1 (1976)

(Presumption of innocence "lies at the fundation of the administration of our criminal law") Visible shackling undermines the presumption of innoence and the related fairness of the the fact finding process. CF. Estelle, Supra, at 503, 96 S. Ct. 1691.

I suggest to the jury that the justice system itself sees a "need to seperate a defendant from the community at large." Holbrook, Supra at 569, 106 S. Ct. 1340; CF. State V Roberts, 86 N.J. Super., at 162,206 A. 2d, at 202 [A] defendant ought not to be brought to the bar in a contumelious manner; as with his hands tied together or ant other rark of ignominy and reproach... unless there be some danger of a rescous [rescue] or escape. "quoting 2 W. Hawkins, pheas *631 of the crown, ch. 28, S1 p. 308 (1716-1721) (Sections on arraignments) It is well settled that a defendant in a criminal case is entitled to appear at trial free from all bonds or shackles except in extraordinary circumstances. This is to ensure that the defendant recieves a fair and

impartial trial as guaranteed by the sixth and fourteenth Amendment of the United States Constitution and Article I, Section 22 (Amendment 10) or the Washington State Constitution.

See EG. Illinois V. Allen, 397 U.S. 337, 90 S.Ct. 1057, 25 L. Ed. 2d 353 (1970); State V. Hartzog, 96 Wash. 2d 383, 635 p. 2d 694 (1981); State V. Ollison, 68 Wash. 2d 65, 411 P.2d 419 (1966); State V. Sawyer, 60 Wash. 2d 83, 371 P. 2d.932 (1962); * 843 State V. Williams, 18 Wash. 47, 50 P. 580 (1897); State V. Tolley, 290 N.C. 349, 226 S.E. 2d 353 (1976); Snow V. Oklahoma 489 F. 2d 278 (10th Cir, (1973); Kennedy V Cardwell, 487 F. 2d 101 (6th cir. 1973); United States ex rel. Shahl V. Henderson, 472 F. 2d 556 (5th cir. 1973) United States V. Roustio, 455 F. 3d 366 (7th cir 1972); Dorman V United States, 435 F. 2d 385 (D.C. cir 1970); United States V Thompson, 432 F. 2d 997 (4th cir 1970); United States V Samual, 431 F. 2d 911 (9th cir 1968); Blaie V United States 136 F. 2d 284 (D.C. cir 1943); People V Thomas, 1 Mich. app.118, 134 N.W. 2d 352 (1965); Commonwealth V Brown, 364 Mass. 471, 305 N.E. 2d 830 (1973); State V Borman, 529 S.W. 2d 192 (Mo. App 1975); State V. Roberts, 86 N.J. Super. 159, 206 A. 2d 200 (1965); French V State, 377 p. 2d 501 (Okla. Crim. App. 1962); Commonwealth V. Cruz, 226 Pa. Super, 241, 311 A. 2d 691 (1973); Thompson V State 514 S.W. 2d 275 (Tex Crim. App. 1974); Sparkman v State, 27 Wis. 2d 92, 133 N.W. 2d 776 (1965)-Section 22, Art 1 of our constitution declares that, " in criminal prosecutions the accused shall have the right to appear and defend in person." The right here declared is to appear with the use of not on his mental but his physical faculties unfettered, and unless some impelling necessity demands the restraint of a prisoner to secure the safety of others and his own custody, the binding of the prisoner in irons is a plain violation of the constitutional guaranty.

Hartzog, 96 Wash. 2d at 398, 635 p 2d 694 (quoting Williams, 18 Wash, at 51, 50 P. 580)

*Courts have recognized that restraining a defendant during trial infringes upon this right to a fair trial for several reasons. The one most frequently cited is, that it violates a defendant's presumption of innocence. See Hartzog, 96 Wash. 2d at 398, 635 p. 2d 694 ("Restraints a bridge important constitutional rights, including the presumption of innocence")

-The presumption of innocence, although not articulated in the constitution, is a basic component of a fair trial under our system of Criminal Justice. Estelle, 425 U.S. at 503, 96 S. Ct. 1691.

-"The principal that there is a presumption of innocence in favor of the accused is the undoubted law, automatic and elementary and its enforcement lies at the foundation of the administration of our criminal law."

- Courts have recognized that the accused is thus entitled to the physical indicia of innocence which includes the right of the defendant to be brought before the court with the appearance, dignity, and self respect of a free and innocent man.

Kennedy, 487 F.2d at 104; Samual, 431 F. 2d at 614; Eaddy V. eople, 115 Colo. 488, 492, 174 p. 2d 717 (1946) Courts of other jurisdictions including our own have long recognized the substantial danger of destruction in the minds of the jury or the presumption of innocence where the accused is required to wear prison garb, is hand cuffed or is otherwise shackled. See Allen, 397 U.S. at 344, 90 S. Ct. 1057; Hartzog, 96 Wash. 2d at 398, 635 p. 2d 694; Hickson V. State, 472 So. 2d 379, 383 (Miss. 1985); Brewster V. Bordenkircher, 745 F. 2d 913, 916-18 (4th Cir. 1971) * 845 State V. Crawford, 99 Idaho 87, 95-96, 577 p.2d 1135 (1978); State V. Boyd, 256 S.W. 2d 765, 758, 179 So 764 (1938); Blair V. Commonwealth, 171 Ky. 319, 327-29, 188 S.W. 390 (1916)

-Shackling or Handcuffing a defendant has also been discouraged because it tends to prejudice the jury against the accused. See Boose, 66 Ill. 2d at 265, S Ill. Dec. 303; Kennedy, 487 F/ 2d at 105-06; Tolley, 226 S.E. 2d at 367. Measures which single out a defendant as particularly dangerous or guilty person threaten his or her constitutional right to a fair trial. Estelle, 425 U.S. at 506, 96 S. St. 1691; Elledge V. Dugger, 823 F. 2d 1439, 1451 (11th Cir. 1987); United States V Ferguson, 758 F. 2d 843, 854 (2d cir. 1985) The supreme court has stated that use of shackles (Handcuffs) and or prison clothes are "inherently prejudicial" because they are "unmistakable indications of the need to separate a defendant from the community at large." Holbrook, 475 U.S. at 568-69, 106 S. Ct. 1340 (emphasis added)

- When the court allows a defendant to be brought before the jury in restraints the "jury must necessarily conceive a prejudice against the accused, as being in the opinion of the judge a dangerous man and

one not to be trusted, even under the surveillance of officers." Williams, 18 Wash. at 51, 50p. 580; Kennedy, 487 F. 2d at 106.

The Supreme Court of California notes that the prejudice to a defendant is particularly apparent where the defendant is accused of a violent crime-when a defendant is charged with an crime, and particularly if he is accused of a violent crime, his apperance before the jury in shackles and or handcuffs is likely to lead the juror (s) to infur that his is a violent person disposed to commit crimes of the type alleged. People V. Duran, 16 Cal. 3d 282, 290, 545 p 2d 1322, 127 Cal. Rptr. 618, 90 A.L.R. 3d 1 (1976)

In conclusion, I deserve a new trial based on errors made by court and county officers in mishandling my trial and letting the jury see me in restraints when never once posed a threat to security in any way. I should be remended and given a new trial at least. With this error as well as all 5 issues raised by my appelant attorney.

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STATE OF WASHINGTON

BY _____
DEPUTY

DECLARATION OF DOCUMENT FILING AND MAILING/DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Two** under **Case No. 37970-8-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for **respondent Megan Hallin - Cowlitz County Prosecuting Attorney**, **appellant** and/or **other party**, at the regular office or residence as listed on ACORDS, or drop-off box at the prosecutor's office.



MARIA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: July 21, 2009