

COURT OF APPEALS  
DIVISION II

09 APR 27 AM 9:17

STATE OF WASHINGTON  
BY                       
DEPUTY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

No. 38207-5-II

COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Respondent,

vs.

JAMES BENEDICT STOCKHOLD,

Appellant

---

On Appeal from the Pierce County Superior Court  
Cause No. 08-1-01181-1  
The Honorable Sergio Armijo, Judge

---

STATEMENT OF ADDITIONAL GROUNDS FOR RELIEF

---

Prepared by,

James Stockhold, #808329  
Airway Heights Correction Center  
PO Box 2049 Unit LB46  
Airway Heights, WA 99001-2049

09 APR 27 AM 9:17

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

COURT OF APPEALS FOR WASHINGTON IN DIVISION TWO

THE STATE OF WASHINGTON, )  
Respondent, )  
vs. )  
JAMES BENEDICT STOCKHOLD, )  
Appellant. )

Ct. App. # 38207-5-II  
Case No. 08-1-01181-1

STATEMENT OF ADDITIONAL  
GROUNDS OF RELIEF

Additional Grounds for Relief No. 1: The prosecutor erred when violating RPC 3.8(d) suppression of favorable evidence denying defendant's rights to due process of law guaranteed by and through XIV Amendment of the United States Constitution.

Additional Grounds for Relief No. 2: The attorney erred when violating RPC 8.4(d) denying defendant's right effective assistance of counsel guaranteed by and through VI Amendment of the United States Constitution.

Additional Grounds for Relief No. 3: The trial judge erred when violating CJC 3(A)(5) denying defendant's right impartial jury guaranteed by and through VI Amendment U.S. Constitution.

ISSUES RELATING TO ADDITIONAL GROUNDS

1). Prosecutor's conceal witness/victim's mental illness, longterm LSD; Cocaine; and Methamphetamine hallucinations events involving memory recalling past experience; urine testing at the hospital night of incident; and doctor's mental evaluation report

2). Defense's effectiveness to move for a new trial when witness/victim jumped out-of-witness-box crying for the D.V.—

Counselor arms prejudice to defendant's right impartial jurors

1 3). Trial judge's prejudice allowing witness/victim mental  
2 disorder behavior, and officer's alter evidence photographs

3 FIRST WITNESS/VICTIM'S TESTIMONY

4 Ms. Kimberly Ann Temons testified, that she is under the  
5 doctor's treatment for mental disorder behavior. (RP, 51, at  
6 lines 6-10). She has lived with the defendant for four years in  
7 that relationship ended and February 25, 2008, or 26th I'm very  
8 confused now, when that-all happened. To pick up his stuff from  
9 my house. (RP, 51-54). She received a "no contact order" in the  
10 mail dated: October 20, 2005, against the defendant. (RP, 55-56)  
11 I'm not sure if the defendant initiated the physical contact.  
12 (RP, 57, at lines 14-17). A plant fell over. I fell somehow on  
13 the TV, I fell or broke it. The phone was thrown. That's what I  
14 can recall. I was hit and I remember I'm looking at the blood  
15 and then all the other stuff that fell over and my plant, big  
16 plant. (RP, 58).

17 Q. Ms. Temons, how long did the altercation last?

18 A. I'm not sure. Awhile. Long enough to where I got hurt.

19 Q. Did you fight back?

20 A. Yes, I did.

21 Q. At any point did you arm yourself?

22 A. Yes, I did.

23 Q. What did you arm yourself with?

24 A. I pulled a knife.

25 Q. Where did you get the knife, Ms. Temons?

26 Page - 2 - STATEMENT OF ADDITIONAL  
GROUNDS FOR RELIEF

1 A. From my drawer, the kitchen.

2 Q. It was a kitchen knife?

3 A. Yes.

4 Q. Did the defendant see that you had a kitchen knife?

5 A. Yes. And then he took it from me.

6 (RP, 59, at lines 1-16).

7 Ms. Temons testified, that she did not call 911, but went  
8 to her ex-employment to talk with the girls at work for about  
9 two-hours, before they told me to go to the ER. (RP, 60, at  
10 lines 1-15). I was cut up on my arms. I'm a hair stylist so I  
11 was worried about my arms. My lip, my inside, was jabbed from a  
12 tooth so I felt a hole so I didn't know what was going on. I was  
13 hit in the head a lot of times or a loud noise, I was stunned.  
14 That's what I know of my injuries. (RP, 62, at lines 19-24).  
15 That the Nurse call Detective Mark Retting, and he photographed  
16 the injuries. (RP, 63, at lines 4-22).

17 Ms. Temons testified, that she had received phone message  
18 "Happy Valentine's Day" and one for a threat. I've been writing  
19 "Love Letters" to the defendant. (RP, 65-68).

20 CROSS-EXAMINATION

21 Defense counsel questioned, Ms. Temons about the only interview  
22 I've had with you is out-in-the hallway before trial today, with  
23 DPA Lewis and DV—Counselor and Detective Retting, and I asked  
24 you if the defendant had come over to your house the said day  
25 and you said you didn't recall. Isn't that correct? (RP, 69).



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



THE COURT: Just a minute, just a minute. To the jury, please step out.

(Jury exits.)

THE WITNESS: I can't do this any more. I can't do this any more. I can't do this any more.

(Witness exits.)

THE COURT: Let's give it a few minutes and see if she's going to calm down a little bit.

(Recess.)

(Jury not present.)

THE COURT: Mr. Lewis.

THE STATE: Ms. Temons is prepared to continue the cross-examination. If I could go ahead and bring her in and have her on the witness stand, with the Court's permission we can bring back in the jury and recommence.

THE COURT: Mr. DeCosta, are you ready?

THE DEFENSE: Yes, Your Honor.

THE COURT: Counsel, I'm not going to tell you how to do your cross-examination. It's your job. But if you raise your voice at her, maybe it's intimidating.

THE DEFENSE: I don't mean to be intimidating, Your Honor.

(Witness is present.)

1 THE COURT: Let's get the jury back in. (Jury is present.)  
2 THE COURT: Please take your seats. I noticed, I think I noticed  
3 one of my jurors taking his notes into the jury room.  
4 Please leave the notes on the seat at all times.  
5 When you start deliberating, you can take your notes  
6 with you. Continue, Counsel.

7 (RP, 72-74).

8 Defense questioned Ms. Temons about the "Love Letters" &  
9 her statement to the Detective Rettig. State objected. Court  
10 denied the objection. "Love Letters" not admitted. (RP, 75-82).

11 Ms. Temons testified, to the Detective's report; phone  
12 messages; about the ten minutes of scratched with a knife into  
13 the side of defendant's van DV for Domestic Violence in front  
14 of the neighbors; and two-hours at the Beauty Salon to talk  
15 with her coworkers before going to the hospital, plus she did  
16 not call the Detective Rettig on 26th because she did not feel  
17 like it do to drug medications. (RP, 83-88).

18 SECOND WITNESS TESTIMONY

19 Detective Rettig testified, that when he got to the hospital  
20 Ms. Temons was getting a CATscan, she had cuts and bruises,  
21 that were they consistent with injuries observed on prior  
22 assaults. (RP, 91-95). State objected, and argument from both.  
23 (RP, 95-109). She had explained to me that they been arguing  
24 that defendant had accused her of seeing other men, sleeping  
25 around. I don't want to speak out of turn. She said that the  
26 defendant threatened to harm her if she testified against him.  
I photographed those injuries. (RP, 110-112).

1 Detective Rettig testified, that he had contact with Ms.  
2 Temons on February 27, 2008, at her home, the purpose was to  
3 observe and document if an assault had occurred, these photographs  
4 were taken at Kimberly Temons' home. It's a dining room very  
5 closely connected to the kitchen. She described to me at the  
6 hospital, and it was consistent with what we saw here, is that  
7 plants were knocked over. Prior to my arrival, she uprighted  
8 the large plant that you see there closest to the dirt, but  
9 she left dirt intact. She just wanted to upright the plant so  
10 the plant wouldn't be injured. There's a large printer and a  
11 large TV on the ground and the uprighted plant. Picture of the  
12 phone with the battery case removed and it looks like the  
13 battery is plugged in, during the same contact, I took pictures  
14 of her injuries, a shot of her elbow, forearm. That was a  
15 bruise that appeared. It wasn't able to be photographed in the  
16 emergency room. (RP, 120-122).

17 Q. Do you recall what phone messages 1 through 4 said?

18 A. No. 1 simply, "Hey, call me."

19 A. No. 2 simply, "Happy Valentine's Day."

20 A. No. 3 Just a hang up.

21 A. No. 4 "Die, die, die, kill, kill, kill. What kind of day"  
22 -- excuse me. "What kind of way is it to start a day off  
like that?"

23 Q. You indicated on the tape that you actually made the  
24 recording that the jury just heard on March 4, 2008,  
8-Days after February 25th incident?

25 A. I had a problem with the tape itself. I went to relisten to

1 it while I was writing my report and the machine literally  
2 ate the tape up. It was unable to be recovered.  
(RP, 124-126).

3 Detective Rettig testified, that he had called the defendant  
4 on February 26th and March 4th. That the defendant told him that  
5 he did not want to talk with the police. The next day, arrested  
6 the defendant. (RP, 128-132).

7 CROSS-EXAMINATION

8 Defense counsel questioned, that we met for the first time  
9 out-in-the hallway just before trial, with Ms. Temons, DPA Lewis,  
10 and DV—Counselor. That Ms. Temons telling me that she didn't  
11 remember what was said during the altercation. And you have no  
12 firsthand knowledge? I did not. So you don't know whether Ms.  
13 Temons picked up a knife and came after the defendant first, and  
14 those injuries she sustained were done in self-defense? No, I don't.  
15 So really what you have done is you've based your conclusions on  
16 what it was that Ms. Temons told you. Isn't that correct? Yes.  
17 When you went to her home that day, did you move anything around?  
18 Yes, I did. And then the fourth phone call was, "Die die, die,  
19 kill, kill, kill. Is that any way to start a day?" And you have  
20 a question mark. And we didn't get to hear it as clearly as you  
21 heard it because we listened to a reproduction. It was like  
22 somebody had said it to him. Wouldn't that be a fair assessment?  
23 Yes. (RP, 133-136).

24 LAST WITNESS ER-NURSE TESTIMONY

25 Saint Clare Hospital Registered Nurse Valinda Lou Walter

1 testified, the chief complaint from the patient was ex-boyfriend  
2 assault. The things that I noted that I could see in the triage  
3 chair was a laceration to the buccomucosal, which is inside the  
4 mouth. A bruise on her clavicle, skin tear on her right anterior  
5 lower leg and abrasions and skin tears on both hands on the  
6 dorsum, which is the top of the hand and the right forearm.  
7 (RP, 143-152).

8 ADDITIONAL GROUNDS AND ARGUMENT

9 Additional Grounds for Relief No. 1: The prosecutor erred  
10 when violating RPC 3.8(d) suppression of favorable evidence  
11 denying defendant's right to due process of law guaranteed by  
12 and through XIV Amendment of the United States Constitution.

13 Ms. Kimberly Ann Temons testified, that she was under the  
14 psychiatrist's treatment for mental disorder behaviors. (RP, 51,  
15 at lines 6-10). DPA Lewis has a duty and obligation to disclose  
16 all doctors' reports pursuant to RPC 3.8(d) states:

17 (d) make timely disclosure to the defense of all evidence or  
18 information known to the prosecutor that tends to negate the guilt  
19 of the accused or mitigates the offense, and in connection with  
20 sentencing, disclose to the defense and to the tribunal all miti-  
21 gating factors known to the prosecutor, except when the prosecutor  
22 is relieved of this responsibility by a protective order of the  
23 tribunal.

24 RPC 3.8(d)

25 The doctor's treatment for mental disorder behavior is shown as  
26 follows:

27 Q. Ms. Temons, how long did the altercation last?

28 A. I'm not sure. Awhile. Long enough to where I got hurt.

29 Q. Did you fight back?

30 A. Yes I did.

1 Q. At any point did you arm yourself?

2 A. Yes I did.

3 Q. What did you arm yourself with?

4 A. I pulled a knife.

5 Q. Where did you get the knife, Ms. Temons?

6 A. From my drawer, the kitchen.

7 Q. It was a kitchen knife?

8 A. Yes.

9 Q. Did the defendant see that you had a kitchen knife?

10 A. Yes. And then he took it from me.

11 (RP, 59, at lines 1-16)

12 The DPA Lewis' duty to disclosure of the doctor's treatments for her  
13 mental illness Amendment XIV § 1 states:

14 **§ 1 CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY STATES**

15 All persons born or naturalized in the United States, and subject  
16 to the jurisdiction thereof, are citizens of the United States  
17 and of the state wherein they reside. No state shall make or  
18 enforce any law which shall abridge the privileges or immunities  
19 of citizens of the United States; nor shall any state deprive any  
20 person of life, liberty or property, without due process of law;  
21 nor deny to any person within its jurisdiction the equal protection  
22 of the laws. (emphasis added)

19 XIV Amendment of the United States Constitution

20 A defendant's constitutional due process right to disclosure relates  
21 only to evidence which is favorable to the defendant and material to guilt  
22 or punishment. Brady v. Maryland, 373 U.S. 83, 87, 10 L. Ed. 2d 215, 83  
23 S. Ct. 1194 (1963). That DPA Lewis' first question to witness/victim was  
24 "Do you, Ms. Temons, have a mental illness and under doctor's treatment  
25 for mental illness" clear and convincing knowledge of concealed evidence.  
(RP, 51, at lines 6-10).

26 Page - 10 - STATEMENT OF ADDITIONAL  
GROUNDS FOR RELIEF

1 Additional Grounds for Relief No. 2:

2 Appellant was denied the right to effective assistance counsel  
3 guaranteed by the Sixth Amendment of the United States  
4 Constitution, and Article 1 § 22 of the Washington State  
5 Constitution

6 A. Washingtons Rule.

7 Article 1 § 22 of the Washington State Constitution  
8 guarantees an accused effective representation during  
9 all critical stages of proceedings against him. Coleman v.  
10 Alabama, 399 U.S. 1 (1970). Effective assistance of counsel  
11 is defined in various ways, the older cases requiring that  
12 the trial be reduced to a "farce or mockery." State v. Mode,  
13 57 Wn. 2d 829 (1961); Fleetwood v. Rhay, 7 Wn. App. 225 (1972),  
14 while the newer cases are adopting the test set out in  
15 State v. Meyers, 86 Wn.2d. 419, 424 (1976);

16 "After considering the entire record, can it be said  
17 that the accused was afforded an effective represen-  
18 tation and a fair and impartial trial." cf. State v.  
19 Robinson, 75 Wn.2d. 230 (1969), State v. Roberts,  
20 69 Wn. 2d 921 (1966), State v. Gilmore, 76 Wn. 2d 293  
21 (1969), State v. White, 5 Wn. App. 283 (1971), State  
22 v. Jury, 19 Wn. App. 256, (1978).

23 The test in Washington, however, does place a heavy burden  
24 upon the defendant, for he is required to prove both denial of  
25 effective representation; and that he was prejudiced thereby.

1 The Court in State v. White, supra, States: "Support exists  
2 for granting a new trial... Where Ignorance of law or  
3 inadequate pretrial investigation rather than deliberate  
4 valid theory or defense." Id at 289.

5 What is reasonably competent assistance of counsel will,  
6 of course, have to be developed on a case-by-case basis-  
7 State v. Roberts, Supra. At the onset, it is presumed that  
8 court appointed counsel is competent. State v. Piche,  
9 71 Wn.2d 583,591,432,P.2d 522 (1967). This presumption can  
10 be overcome by showing, among other things, that counsel  
11 failed to conduct appropriate investigations, either factual  
12 or legal, to determine what matters of defense were available  
13 or failed to allow himself enough time for reflection and  
14 preparation for trial. State v. White, Supra; Comment,  
15 Effective Representation- an Evasive notion masquerading as  
16 Procedure,39 Wash.L.Rev.819 (1964); ABA Standards, The defense  
17 Function 4.1 (Approved draft, 1971).

18 Our Supreme Court has stated that the Burden is on the  
19 Defendant to show Actual Prejudice. State v. Meyers, Supra;  
20 See comment,Ineffective assistance of counsel: Who bears the  
21 proof?, 29 Baylor L. Rev.29(1977).

22 Prejudice can only be determined from weighing the entire  
23 record.

24 B. THE FEDERAL INEFFECTIVE COUNSEL STANDARD; SIXTH ANENDMENT:

25 The United States Supreme Court, in applying the sixth-

1 Amendment guarantee of effective assistance of counsel, has since Glasser  
2 v. United States, 315 U.S. 60 (1942), rejected the actual additional  
3 requirement of showing actual prejudice, adopted by Washington Courts, after  
4 denial of effective assistance of counsel has been shown. Then court in  
5 Glasser held this determination unnecessary and said:

6 "The right to have the assistance of counsel is too fundamental and ab-  
7 solute to allow courts to indulge in nice calculations as to the amount  
of prejudice arising from its denial." at 75.

8 The 9th Circuit has recently reiterated this holding in Sanders v. Craven,  
9 488 F.2d 478 (9th Cir 1973). Sanders raised pursuant to a Habeas Corpus  
10 petition in the District Court claiming ineffective assistance of counsel  
11 since his attorney did not properly reserve his right to appeal. The  
12 District Court held any such error harmless since the only issue appeal-  
13 able was a constitutionally valid search and seizure. The 9th Circuit Court  
14 of Appeals reversed and held:

15 "The district judge may not circumvent the challenge of denial of  
16 effective assistance of counsel by, in effect, holding that any error  
17 would be harmless...we don't look to the merits of the deprived appeal,  
but must make a determination on the basis of whether there has been  
a loss of a constitutional right." 488 F2d at 480.

18 Moreover, several Supreme Court cases support this rule, Ceders v. U.S., 425  
19 U.S. 80 (1976), (wherein the court ruled that denial of defendants right to  
20 counsel during an overnight recess was entitled to reversal without a show-  
21 ing of prejudice); Herring v. New York, 422 U.S. 853 (1975); Reece v.  
22 Georgia, 350 U.S. 85 (1986).

23 Also, supportive of this rule is State v. Roberts, 69 Wn2d 921, 922 (1966),  
24 wherein the court held:

25 "That no conviction can stand no matter how overwhelming the evidence  
of guilt, if the accused is denied the effective assistance of counsel".

1 Harmless error tests like the one issued in Washington cases, simply do not  
2 apply to the sixth Amendment right to counsel, and the State may not fall  
3 below the standard by requiring showing of actual prejudice. Beasley v. U.S.,  
4 491 F.2d 687 (6th Cir. 1974); Cooper v. Fitzharris, 551 F.2d 1162 (9th Cir.  
5 1977).

6 Counsel should consider all steps which in good faith may be taken, conduct  
7 a prompt investigation of the case circumstances, and explore all avenues  
8 leading to facts relevant to guilt. A criminal defendant is denied effective  
9 assistance of counsel where the attorney commits omissions which no reason-  
10 ably competent counsel would have committed, such as failing to adequately  
11 acquaint himself with the facts of the case. Strickland v. Washington, 466  
12 U.S. 668 (1984), re-hearing denied, 467 U.S. 1267, on remand, 737 F.2d 894  
13 (11th Cir 1984), United States v. Cronin, 466 U.S. 648, on remand 839 F.2d  
14 1401 (10th Cir 1988).

15 Since the Strickland case established two prerequisite prongs in the  
16 determining of the effectiveness of counsel's performance which are: 1) Whether  
17 defense counsel's performance fell below an objective standard of reasonable-  
18 ness, and 2) Whether the deficiency prejudiced the defendant. Strickland at  
19 687, adopted by our Washington State Appeals Courts in State v. James, 48 Wn.  
20 App. 353, 739 P.2d 1161 (1987); State v. Sardinia, 42 Wa.App 540, 713 P.2d  
21 122 (1986).

22 The defendant's SIXTH AMENDMENT Right to counsel is substantial and funda-  
23 mental, rather than formal and is therefore made obligatory on the states  
24 by the Fourteenth Amendment. Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct.  
25 792, 9 L.Ed.2d 799 (1963); Pointer v Texas, 380 U.S. 400, 85 S.Ct. 1065, 13

26 Led.2d 923 (1965); Argersinger v. Hasmlin, 407 U.S. 25, 92 S.Ct. 2006, 32

1 L.Ed 2d 530 (1972).

2 1. Application of Strickland Standard:

3 The Strickland test is applicable where 1) The Attorney's errors or  
4 omissions during an inept attempt to present a defense, or 2) an Attorney  
5 engaged in an unsuccessful tactical maneuver that was intended to assist the  
6 defendant in obtaining favorable rulings. See e.g. Woodward v. Collins, 898  
7 F.2d 1027, 1029, (5th Cir. 1990) (counsel's tactical decision to investigate  
8 some issues and not others or to conduct virtually no investigation is  
9 controlled by Strickland, not Cronic).

10 2. Application of the Cronic Standard:

11 The United States Supreme Court in Cronic created an exception to the  
12 Strickland standard for ineffective assistance of counsel claims, and acknow-  
13 ledged in certain circumstances and situations that counsel's actual perfor-  
14 mance is so egregiously prejudicial that ineffective assistance of counsel  
15 will be presumed. United States v. Cronic, 466 U.S. 648 (1984) on remand,  
16 839 F.2d 1401 (10th Cir. 1988).

17 Thus, Cronic's test applies where counsel "utterly fails to subject the  
18 prosecutions case to a meaningful adversarial testing." Cronic at 659.

19 Adopted by Stand v. Dugger, 921 F.2d 1125, 1152 (11th Cir. 1991) (en banc)  
20 (citing Cronic, 466 U.S. at 658).

21 "Cronic presumes prejudice where there has been an actual breakdown  
22 in the adversarial process at trial". Toomey v. Bunnell, 898 F2d 741, 744  
(9th Cir. 1990)

23 Thus, both Strickland and Cronic agree where there is a actual or const-  
24 ructive denial of the assistance of counsel during a critical stage of the  
25 proceedings, i.e. where there is a complete breakdown of the adversarial

1 process, the defendant need not show prejudice. Strickland v.  
2 Washington, 466 U.S. at 692; Cronic, 466 U.S. at 659-60.

3 SPECIFIC ERRORS BY COUNSEL

4 Counsels performance falls short during the initial investi-  
5 gation of the case, as counsel never investigated Ms. Temons,  
6 her co-workers, doctors or neighbors. Furthermore, he failed to  
7 investigate her past or present mental illness, possible medi-  
8 cations or illegal drug use, which led to paranoid hallucinations.  
9 Ms. Temons mental health is drawn into question by the following  
10 statements made by her during the trial:

11 STATE: Regarding your testimony in the Steilacoom case, the pen-  
12 ding case, what did the defendant say to you?

13 TEMONS: Not to testify.

14 Q: Okay, did he indicate to you what would happen if you did?

15 A: Yeah

16 Q: What did he tell you would happen?

17 A: Threatened me.

18 Q: Do you recall how he threatened you?

19 A: No, but **he would have threatened**--he said there's people  
20 around. I work at the mall. Be careful. (RP, 61, 62)

21 The state opened the door in Ms. Temons testimony on direct  
22 examination stating:

23 STATE: Ms. Temons...do you suffer from any mental health issues?

24 TEMONS: Post-traumatic stress.

25 Q: Are you dealing with that right now?

1 A: Yes, I am. I'm under a doctor's care..." VRP (July 9, 2008)  
2 Bol. 2 at 51.

3 This witness' mental health illness history, as well as her  
4 propensity to attack the defendant; if having been fully inves-  
5 tigated, would have bolstered by law an affirmative defense of  
6 self-defense as RCW Title 9A.16 so holds.

7 The witness testified that she armed herself with a knife.  
8 VRP (July 9, 2008) Vol. 2 at 59. This would have, if properly  
9 instructed to the jury, shown that Mr. Stokhold was in reason-  
10 able fear for his life, and thus took necessary steps to accomp-  
11 lish such.

12 The defense counsel in its cross-examination never inquired  
13 into the alleged victims prior bad acts against Mr. Stockhold  
14 VRP (July 9, 2008) Vol 2 at 68-88. Such evidence is relevant  
15 under ER 401; its probativeness outweighed the prejudice as  
16 balanced under ER 403, and directly went towards the credibility  
17 of the witness and is admissable. State v. Dodd, 193 Wash. 26,  
18 36-37 (1937).

19 Thus, appellant asserts that counsel's failure to investi-  
20 gate and inquire into such evidence was prejudicial to the  
21 defendant. Therefore, this court should reverse.

22 2a) Counsel violated evidence rule 103 and defendant's 6th  
23 Amendment right to a fair trial when counsel failed to preserve  
24 the right to object to witness misconduct when said witness  
25 created an outburst which led to a trial irregularity. (RP, 72)

1 Where counsel failed to move for mistrial or at the very least  
2 curative instruction from the court after witness leaves the  
3 stand, unexcused, during cross-examination and ran into the open  
4 arms of the Domestic Violence Advocate in tears while crying  
5 "I can't do this" over and over. (RP, 72). At this point,  
6 defendant was so prejudiced that even curative instruction would  
7 not have helped; nothing short of a new trial at this point  
8 would have remedied the situation and guaranteed defendant  
9 a fair and impartial trial.

10 2b) Counsel violated defendant's 6th Amendment right to a fair  
11 and impartial trial when it failed to suppress fabricated  
12 crime scene photos. (RP, 135). using RCW 9A-72.150(1)(a)(b) as his vehicle.

13 2c) Counsel's performance falls short during the initial investi-  
14 gation of the case as counsel never investigated Ms. Temons  
15 until 5 minutes before trial (RP, 68), not leaving defense  
16 enough time to prepare. Furthermore, no investigation is conduc-  
17 ted with Temons' co-workers, doctors or neighbors, not to  
18 mention her past and present mental illnesses which include  
19 vivid paranoid hallucinations, possible use of psychiatric  
20 drugs, and illegal drug use.

21 2d) Counsel's failure to preserve defendant's right to object  
22 to the following statement made by the prosecutor during re-  
23 direct examination, a crucial stage in the trial:

24 Q: Ms. Temons, I don't want to suggest an answer to you. If you  
25 don't know, please answer yes or no. On the morning of  
26 February 26, was the defendant at your home? (emphasis added,  
RP, 88).

1 2e) Counsel failed to subpoena a handwriting expert for purposes  
2 of proving authorship of the love letters to the defendant while  
3 defendant's in jail awaiting trial on this case. This evidence  
4 could have been used to impeach Temons, the State's primary  
5 witness. WITNESS CLAIMS AUTHORSHIP OF THE LOVE LETTERS. (RP, 90)

6 2f) Counsel was deficient in not admitting love letters after  
7 witness Temons admits authorship (RP, 90). Such evidence could  
8 also have been used to impeach State's primary witness.

9 2g) Failing to object to defendant's rights being read at the  
10 end of the 3.5 hearing instead of the beginning prejudiced the  
11 witness and further supports the counsel's ineffectiveness.

12 This is supported by the following statement made in court:

13 Mr. DECOSTA: Well, what we should have done first I suppose  
14 is we should have informed Mr. Stockhold of his right to  
15 testify at this proceeding and we should do that for the  
16 record, Your Honor. But I can tell you Mr. Stockhold didn't  
17 want to testify, but I would like to make a record of that.

18 ADDITIONAL GROUNDS FOR RELIEF NUMBER 3: The trial judge erred  
19 when violating CJC 3(A)(5) denying defendant's right to impartial  
20 jury guaranteed by and through VI Amendment of the U.S. Consti-  
21 tution.

22 In determining whether a trial court abused its discretion  
23 in denying a motion for mistrial, a reviewing court will find  
24 abuse when no reasonable Judge would have reached the same  
25 conclusion. State v. Johnson, 124 Wn.2d 57 (1994)

26 A trial court should declare and grant a defendant a mistrial  
only when the defendant has been so prejudiced that nothing

1 short of a new trial can insure that the defendant will be tried fairly.

2 Id at 76

3 A reviewing court in determining the effect of an irregular occurrence  
4 during a trial examines three issues: 1) Its seriousness; 2) whether it  
5 involved cumulative evidence, and 3) whether the trial court properly  
6 instructed the jury to disregard it. Id 76

7 Our courts have long held that Due Process insures, among other things,  
8 a right to receive a fair trial. U.S.C.A. 5, 14 as well as Washington State  
9 Constitution Article 1 § 3.

10 To determine whether a trial was fair, the court should look at the  
11 trial irregularities and determine whether it may have had any influence  
12 on the jury. In doing so, the court should consider whether the irregularity  
13 could be remedied by a curative instruction. See generally State v. Gilcrest  
14 , 91 Wn.2d 603, 590 P.2d 809 (1979).

15 The Gilcrest court held that "a mistrial should be granted only when  
16 'nothing the trial court could have said or done' would have remedied the  
17 harm done to the defendant". . Further, it was stated that "

18 "The trial court must have the power to deal with irregularities,  
19 outbursts, and untoward incidents occurring within or without the  
20 courtroom during the trial of a criminal case. This rule is essen-  
21 tial to the very maintenance of our judicial system, and we have,  
in effect, said that in Smyser v. Smyser, 19 Wn.2d 42, 140 P.2d  
954; Turner v. Wenatchee Vinegar Co., 162 Wash 313, 298 PAC 683;  
and Kayser v. Foster, 138 Wash. 484, 244 P.708.

22 But this court cannot ignore that the quantum of irregularities  
23 must be considered on review. Attention must be given to the  
24 accused's predicament where, caught in the web of circumstances,  
at the trial over which neither court nor counsel has control or  
power to alter, he seeks a forum free from emotion and prejudice.

25 It is told over and over in the books that the law and the courts  
are powerless to make a correction unless the circumstances of

1 of abuse of discretion are apparent, item by item, to the review-  
2 ing tribunal. What then becomes substantial due process? How  
3 weigh the scales to measure the error, item by item, or in the sum?  
4 The oft repeated declaration of the rules reserving to the trial  
5 court broad discretionary powers to conduct a trial, preserve  
6 order and govern the order of proof, ought not to be used as a  
7 refuge wherein courts of review hide from the exigencies of due  
8 process. The mere utterance of this rule of broad discretion  
9 without critical examination of the circumstances which invoke it  
10 will tend in time to erode the fundamentals of due process pre-  
11 scribed by the Bill of Rights." State v. Swenson, 62 Wn.2d

12 It is clear in the record that Mr. Stockhold was prejudiced when Ms.  
13 Temons, after being examined on the issues of corresponding to the defendant  
14 by writing letters and mailing such to him from the alleged victim's work,  
15 got up and ran right into a Domestic Violence Advocates arms. The following  
16 is an except from the case-in-chief cross-examination:

17 MR. DECOSTA: Right. And was that Great Clips of DuPont?

18 Ms. TEMONS: Yes.

19 Q: Do you know the address of Great Clips of DuPont?

20 A: Not Offhand.

21 Q: Would it surprise you to learn it is 1225 Center Drive? Is that correct?

22 A: Yes.

23 Q: And you said that this isn't your return address on these letters. Yet  
24 defendant's Exhibit 31...30...29 and defendant's Exhibit No. 28 have  
25 what return address on the envelope?

26 A: The same.

Q: How did you know that?

A: I didn't write them. I sent them.

Q: Oh, you sent them?

A: Yes.

Q: Would you agree, and you've already said--

1 MR. DECOSTA: Do we need a recess, Your Honor?

2 Ms. TEMONS: I can't do this anymore. I can't do this anymore.

3 THE COURT: Just a minute, just a minute. TO THE JURY--Please step out...

4 Ms. TEMONS: I can't do this anymore. I can't do this anymore. I can't do this  
anymore.

5 WITNESS EXITS

6 THE COURT: Let's give it a few minutes and see if she's going to calm down  
a little bit. VRP (July 9, 2008) Vol. 2 at 72-73.

7  
8 See picture of demonstration at SAG 4-5.

9 Clearly, a mistrial should have been declared. As prejudice should be  
10 presumed due to the nature of this case's sensitivity, and as the witness was  
11 caught making facts up in her testimony which did place critical weight on  
12 her credibility and veracity. That scene occurred, which could reasonably  
13 have caused the jury to disregard and forget about her testimony, and ultima-  
14 tely focus on strictly her running and hugging a DV Advocate while crying.

15 There were no objections. The court never instructed the jury to dis-  
16 regard such catastrophic events, and thus violated CJC 2(A), and was prejud-  
17 iced as CJC (3)(a)(5) so holds.

18 The jury could have reasonably felt sorry for Ms. Temons, and thus  
19 found the defendant guilty based upon bias, unneutral and sympathetic gestures  
20 directly in favor of the critical state witness. Therefore, because it can-  
21 not be said that no prejudice occurred, Mr. Stockhold's conviction cannot  
22 stand and must be reversed.

23 NOTE: The following issues were identified as possible abuse of discretion  
24 by the court, but lack of time prevented defendant from briefing each  
25 issue. He asks that the Court be lenient in this matter.

1 3a) The Court failed to read defendant his constitutional rights until the  
2 conclusion of the 3.5 hearing. (RP, ~~39~~ ).

3 3b) The Court failed to provide curative instruction following a state's  
4 witness outburst. (RP, ~~72, 73~~)

5 3c) The Court denied defendant's constitutional right to a fair and  
6 impartial trial when the Court failed to maintain a forum free of emotion  
7 and prejudice. (RP, 72)

8 3d) The Court abused its discretion by embarrassing defense counsel following  
9 a trial irregularity creating an environment which hindered or curtailed  
10 defenses constitutional right to cross examine a witness. (RP, 73)

11 3e) The Court abused its discretion in failing to admit evidence in favor  
12 of the defense by not admitting love letters written by Ms. Temons. (RP, ~~74-82~~)  
13 (90)

14 3f) The Court abused its discretion in not making an inquiry if juror's  
15 notes were discussed after a juror took notes into jury room during a trial  
16 recess. (RP, 74)

17 3g) The Court abused its discretion in allowing a state employee to testify  
18 against defense as an interested party over defense objection. <sup>SENTENCING HEARING</sup> (RP, ~~8, 9~~)

19 3h) The Court failed to calculate offender score properly allowing offender  
20 to stipulate to an improper score. (RP, )(<sup>SENTENCING HEARING</sup>)

21 3i) The Trial Court abused its discretion in admitting re-enacted crime  
22 scene photos into evidence, a violation of RCW 9A.72.150(1)(a)(B). (RP, ~~135~~)

#### 23 CONCLUSION

24 Based upon the counsel's failure to investigate Ms. Temons mental ill-  
25 ness, and past domestic violence against Mr. Stockhold, coupled with the  
26 outburst and failure to instruct the jury on a curative instruction, as well

1 as the State's suppressed knowledge of her mental illness negating guilt and  
2 culpability of Mr. Stockhold, and finally, the defense lawyer's failure to  
3 properly instruct the jury on a self-defense claim, this appellant's Due  
4 Process Right to a fair trial, which is the ultimate question presented,  
5 has been violated. THEREFORE, it is respectfully prayed upon this court  
6 that a reversal of defendant's judgment and sentence be ordered, thus  
7 correcting a manifest injustice.

8  
9  
10  
11  
12 Respectfully submitted,

13 x James B. Stockhold

14 James Stockhold #808329  
15 Airway Heights Correction Center  
16 P.O. Box#2049 LB46  
17 Airway Heights, Wa. 99001-2049

18 DATED THIS 22<sup>nd</sup> DAY OF APRIL, 2009  
19  
20  
21  
22  
23  
24  
25

ORIGINAL

FILING  
COURT OF APPEALS  
DIVISION II

09 APR 27 AM 9:17

STATE OF WASHINGTON

BY SL  
DEPUTY

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

STATE OF WASHINGTON )

RESPONDENT )

v. )

JAMES BENEDICT STOCKHOLD )

APPELLANT )

No: 38207-5-11  
P.C. SUPERIOR CT # 08-1-01181-1

DECLARATION OF SERVICE  
BY MAILING

I, JAMES B. STOCKHOLD, PRO-SE, in the above entitled cause, do hereby declare that I have served the following documents;

STATEMENT OF ADDITIONAL GROUNDS

Upon:  
THE COURT OF APPEALS  
DIVISION II  
950 BROADWAY STE. 300  
TACOMA, WA. 98402-3694

PIERCE COUNTY S. CT.  
PROSECUTOR  
930 TACOMA AVE. S.  
TACOMA, WA. 98402

STEPHANIE C. CUNNINGHAM  
ATTORNEY AT LAW  
4616 25TH AVE. NE. NOSS2  
SEATTLE, WA. 98105

I deposited with the L-Unit Officer Station, by processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2049, Airway Heights, WA 99001-2049.

On this 22<sup>nd</sup> day of APRIL, 2009.

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

Respectfully Submitted,  
James B. Stockhold # 808329  
Petitioner