

COURT OF APPEALS  
DIVISION II  
09 SEP -8 PM 12:19  
STATE OF WASHINGTON  
BY DEPUTY

COURT OF APPEALS, DIVISION II, STATE OF WASHINGTON

STATE OF WASHINGTON,  
Plaintiff,  
v.  
WAYNE A. MURPHY,  
Appellant,

Pierce Co. No. 07-1-04577-7  
Ct. App. No. 38690-9-II

STATEMENT OF ADDITIONAL  
GROUNDS

I. IDENTITY OF MOVING PARTY

1.0 The Appellant, WAYNE MURPHY, moves this Court for the relief designated in Part II.

II. RELIEF SOUGHT

2.0 The Appellant, WAYNE MURPHY, moves this Court for dismissal of cause No. 38690-9-II, based on the following evidence and record clearly demonstrating prejudice toward the Appellant receiving a fair trial.

III. STATEMENT OF ADDITIONAL GROUNDS

Assignment of Error No. 3: Wayne A. Murphy was denied effective assistance by defense counsel's failure to perform his duty according to law; namely in violation of Washington State Constitution Article I § 22; and the VI and XIV Amendment of the United States Constitution.

/////

1       1.       Defense Counsel's Failure to move for mistrial when he recognized  
2 that the police detective Todd Wimmer committed perjury when he gave an  
3 in-court inconsistent statement under oath and on the stand. Moreover  
4 recognizing the Officer gave falsified statements against the actual and  
5 factual physical evidence during MR. MURPHY'S ongoing jury trial.

6  
7       2.       Defense Counsel's Failure to move for mistrial when he recognized  
8 that the prosecutor's star witness committed perjury by giving inconsistent  
9 statements under oath, and while on the stand. Moreover, giving inconsistent  
10 statements in two different court proceedings dealing with MR. MURPHY as  
11 the defendant in an ongoing jury trial. The starwitness's name was Angelica  
12 Seabert.

13       3.       Defense Counsel's Failure to move for mistrial when he recognized  
14 during MR. MURPHY'S ongoing jury trial, that the police department had  
15 actually conducted an illegal search and seizure as the in court evidence  
16 revealed there was no valid warrant issued to do so; moreover, a legal  
17 warrant never actually existed.

18       IV.       LEGAL AUTHORITY AND ARGUMENT

19       In Strictland; Court held; In relevant part:

20       "A convicted defendant's claim that his counsel's assistance was  
21 so defective as to require reversal . . . has two components, (1) that  
22 counsel's performance was deficient, which requires a showing that counsel  
23 was not functioning as the counsel guaranteed; the defendant by the Sixth  
24 Amendment; and (2) . . . deficient performance prejudiced the defense." . .  
25 . . . . . which requires a showing that counsel's error's were . . . so  
26 serious as to deprive the defendant of a fair trial, a trial whose result  
is reliable."

STRICTLAND v. WASHINGTON, 466 U.S. 688, 80 L.Ed 2d 674, 104 S.Ct 2054  
(1984); See also Sanders v. Ratelle, 21 F.3d 1446, 1460, (9th Cir. 1994);

1 Coleman v. Calderon, 150 F.3d 1105 (9th Cir. 1998)(citing Strictland).

2 MR. MURPHY'S case clearly meets the Strictland requirements.

3 In fact, MR. MURPHY'S case hold the same weight as the Strictland case,  
4 because like Strictland, MR. MURPHY'S case clearly demonstrates that his  
5 defense counsel showed that (1) his performance was defecient by his own  
6 demonstrated actions that he was not functioning as the counsel guaranteed,  
7 MURPHY, by the Sixth Amendment of the United States Constitution; and (2)  
8 that MR. MURPHY'S counsel's defecient performance prejudiced MR. MURPHY  
9 from receiving a fiar trial.

10  
11 MR. MURPHY'S defense counsel's was required under the Sixth Amend-  
12 ment to provide his client with representation. MR. MURPHY'S defense counsel  
13 failed to function as the counsel guaranteed MR. MURPHY by demonstrating his  
14 inability to call for a mistrial when appropriate to protect his client  
15 from loss of liberty, and property, moreover, failed to demonstrate any  
16 type of strategy for his failing to call for mistrials in the multiple  
17 instances where it was clearly warranted for a mistrial to have been called.

18 Finally, by actions of MR. MURPHY'S defense counsel's lack of  
19 strategy combined with his own showing that he was not functioning according  
20 to the counsel guaranteed, MR. MURPHY, by the Sixth Amendment, MR. MURPHY  
21 was severely prejudiced towards receiving a fair trial.

22 V. CONCLUSION

23 Clearly, this case is a mess. Defense counsel's failures to perform  
24 lead to a series of mistakes which among the consequences, followed severe  
25 prejudice towards MR. MURPHY receiving a fair trial.  
26

1           And, for the foregoing reasons, and based on the evidence and  
2 the record, the Appellant, MR. WAYNE MURPHY, respectfully request this  
3 Court to grant a dismissal instead of any further unnecessary proceedings;  
4 or in alternative; provide any other relief the Appellant may be entitled  
5 to under the circumstances.

6           Thank you for your time, attention, and consideration in this  
7 matter.

8  
9 Dated this 28 day of August 2009.

Respectfully submitted,

10  
11 Wayne A. Murphy  
12 Wayne A. Murphy, Pro se  
13 #633365, D-W107  
14 Wash. State Pen.  
15 1313 N. 13th Street  
16 Walla Walla, WA, 99362

17  
18 **AFFIDAVIT**

19           I, Wayne Murphy, declare under penalty of perjury under the  
20 laws of the State of Washington that the foregoing information is true  
21 and correct to the best of my knowledge and belief.

22  
23 Wayne A. Murphy  
24 Wayne A. Murphy, Pro se  
25  
26

COURT OF APPEALS, DIVISION II, STATE OF WASHINGTON

STATE OF WASHINGTON.

Plaintiff,

v.

WAYNE A. MURPHY,

Appellant.

Pierce Co. No. 07-1-04577-7

Ct. App. NO. 38690-9-II

AFFIDAVIT OF SERVICE  
BY MAILING

I, WAYNE A. MURPHY, being first sworn upon oath, do hereby certify that I have served the following documents: Upon:

David Ponzohn, Court Clerk  
Court of Appeals, Division II  
950 Broadway, Suite 300  
Tocoma, WA 98402-4454

Stephanie C. Cunningham  
4616 25th Ave. N.E.  
Suite 552  
Seattle, WA 98105

PIERCE COUNTY PROSECUTOR  
930 Tacoma Ave S., Room 946  
Tacoma Washington 98402-2171

By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY  
1313 NORTH 13<sup>TH</sup> AVENUE  
WALLA WALLA, WA. 99362

09 SEP -8 PM 12:49  
STATE OF WASHINGTON  
BY DEPUTY  
COURT OF APPEALS  
DIVISION II

On this 28th day of August, 2009.

*Wayne A. Murphy*

Wayne A. Murphy, # 633365, D-W107  
Wash. State Pen.

1313 N. 13th Ave., Walla Walla, WA

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.

IN THE COURT OF APPEALS

THE STATE OF WASHINGTON )  
RESPONDENT )  
VS )  
WAYNE A. MURPHY )  
APPELLANT )  
\_\_\_\_\_ )

CASE NO:38690-9-II

09 SEP 17 11:15  
STATE OF WASHINGTON  
BY: [Signature] IDENTIFY  
COURT OF APPEALS

ISSUES TO AMEND ADDITIONAL GROUNDS: The Privacy Act  
R.C.W.9.73.090-R.C.W.9.73.090(1)(b) And Miranda Rights evidence by tape  
recording; Also in further support of miranda v. Arizona, citing State v. Courtney  
137.Wn.App.376,153 P.3d.238; Citing R.C.W.9.73.090 and the above statute  
requires that an arrested person must be "fully" informed of his or her  
Constitutional rights at the beginning of the police, detective  
interviews, recording, and that this statement must be included in the recording  
as evidence. In order to satisfy this statutory requirement, a recorded  
statement must include the reading of Miranda Rights "complete to end. Also see  
State v. Mazzante, 86, Wn. App. 425, 428, 936 P. 2d. 1206 (1997).

The Appellant Wayne A. Murphy was never fully informed of his rights, at the  
time of the police in custody interrogation, even though he had signed a  
Miranda waiver of his rights after his recording was made. The waiver never  
came first, but afterwards. This is believed to be in violation of the privacy  
act, and supporting Miranda vs, Arizona. The Miranda rights must be waived before  
any statements can be obtained, and not by deception, as to allow that statement

1 to flow without notification in Re;fifth Amendment, the protection against  
2 self-incrimination; nor shall be compelled in any criminal case to be a wit-  
3 ness against himself. Cases in support State v. Courtney 137 Wn.App.376,153 P.  
4 3d.238(Citing Mazzante)State v.Mazzante 86,Wn.App.425,936P.2d.1206[2]Priva-  
5 cy-Evidence-Recording Private Conversation-Custodial Statements-Advisement  
6 of Rights on tape-NecessityR.C.W.9.73.090(1)(b)(iii)Unambiguously requires  
7 that a sound or video recording of an arrested person being with a stateme-  
8 nt informing the person of his or her Constitutional Rights.

9 The requirements demands strict compliance.A reference on the recording to  
10 a prior advisement of rights is insufficient for purposes of the statute.T-  
11 he recording may not be entered in as evidence if the statement of rights  
12 are not included.On September 4,2007 at 10;25am Detective Todd Winner did  
13 conduct a taped statement of Mr.Murphy and had not given Miranda Rights,  
14 that tape recording was intered into evidence at at 1;30Mr.Murphy was arra-  
15 ined and charged with Arson in the First Degree and Felony Harassment.

16  
17 STATE V. MAZZANIE 86 Wn.App.425,936 P.2d.

18 [1-2]The "Privacy Act"R.C.W.9.73.090.governs the recording of custodial int-  
19 erviews and interrogations by the authoritiesR.C.W.9.73.090(1)(b)provides;

20  
21 Video and/or sound recording may be made of arrested person by police offi-  
22 ers responsible for making arrests or holding persons in custody before th-  
23 eir first appearance in Court.Such video and/or sound recording shall conf-  
24 form strictly to the following;

25 Mr. Murphy was arraigned on September 4th 2007, and at no time was Miranda wa-  
26 rning given to him and his bail was set at 500,000.

27 (i)The arrested person shall be informed that such recording is conduted, and

6  
1 so informing him or her that it would be included in the recording; Detective Todd Wimmer  
2 did not inform Mr. Murphy of his rights or to have counsel present or to remain silent on  
3 the tape. Michael Vignera v. State of New York 384, U.S. 436-76 Constitutional Law 226. Criminal  
4 law 518 (2)(iii) At the commencement of the recording the arrested person shall  
5 be fully informed of his or her Constitutional Rights, and such statements informing him  
6 of those rights shall be included in the recording;

7 The tape has no information of that fully informed right in Mr. Murphy of his Miranda  
8 Rights. Ernesto A. Miranda 384 U.S. 436-74 Constitutional Law 226 Criminal Law 412.1(4)41  
9 22(3). And (iv) The recording shall only be used for valid police or Court activities.  
10 Without the Miranda warning was played in front of the jury. Raymond L. Hayes v. State  
111 of Washington 373 U.S. 503-17 Criminal Law 519(1).

12  
13 MR. CHIEF JUSTICE WARREN: OPINION,

14 Miranda v. Arizona 384, U.S. 436 (1966) at 479. And Mr. Justice White, with whom Mr. Justice  
15 Harlan and Mr. Justice Stewart join, dissenting.; To summarize, we hold that, when an individual  
16 is taken into custody or otherwise deprived of his or her freedom by the authorities  
17 in any significant way and is subject to questioning, the privilege against Self-incrimination  
18 is jeopardized. Procedural safeguards must be employed to protect the  
19 privilege and unless other fully effective means are adopted to notify the person of  
20 his or her right to remain silent and to assure that the free exercise of that right  
21 will be scrupulously honored, the following measures are required.

22  
23 He must be warned prior to any questioning that he has the right to remain silent, that  
24 anything he says can be used against him in a Court of law, that he has the right to  
25 the presence of counsel (attorney), and that, if he asks for the same it will be provided  
26 if he cannot afford an attorney, or that one can be appointed to him or her, prior to  
27 any questioning if he or she desires.

1 Opportunity to exercise these rights must be afforded to him or her throughout  
2 the interview or interrogation. After such warnings have been given, and such opp-  
3 ortunity afforded him or her the individual may knowingly and intelligently wa-  
4 ive these rights and agree to answer questions or make a statement. But unless  
5 and until such warning and waiver are demonstrated by the prosecution at trial,  
6 no evidence obtained as a result of the interrogation can be used against him  
7 or her [foot note 48]

8  
9 The Appellant's charges should be reversed and or remand back for new trial.  
10 Respectfully requested by the Appellant.

11  
12  
13  
14  
15  
16  
17  
18  
19 Dated this 14th of September 2009

20  
21 Wayne A. Murphy Pro-Se 633365 D-West-107  
22 Washington State Penitentiary  
23 1313 N. 13th Ave  
24 Walla Walla, 99362  
25 Washington State.

26 Wayne A. Murphy  
27 APPELLANT PRO-SE

COURT OF APPEALS, DIVISION II, STATE OF WASHINGTON

COURT OF APPEALS  
DIVISION II

03 SEP 17 11:45

STATE OF WASHINGTON

STATE OF WASHINGTON.

Plaintiff,

v.

WAYNE A. MURPHY,

Appellant.

Pierce Co. No. 07-1-04577-7

Ct. App. NO. 38690-9-II

AFFIDAVIT OF SERVICE  
BY MAILING

I, WAYNE A. MURPHY, being first sworn upon oath, do hereby certify that I have served the following documents: Upon:

David Ponzohn, Court Clerk  
Court of Appeals, Division II  
950 Broadway, Suite 300  
Tocoma, WA 98402-4454

Stephanie C. Cunningham ✓  
4616 25th Ave. N.E.  
Suite 552  
Seattle, WA 98105

PIERCE COUNTY PROSECUTOR ✓  
930 Tacoma Ave S., Room 946  
Tacoma Washington 98402-2171

By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY  
1313 NORTH 13<sup>TH</sup> AVENUE  
WALLA WALLA, WA. 99362

On this 14<sup>th</sup> day of September, 2009.

Wayne A. Murphy  
Wayne A. Murphy, # 633369, D-W107  
Wash. State Pen.  
1313 N. 13th Ave., Walla Walla, WA

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.

ITS CONTENTS MAY BE UNCENSORED  
WASHINGTON DEPARTMENT OF CORRECTIONS FACILITY.

THIS WAS MAILED BY AN INMATE CONFINED AT A  
TACOMA WA, 98402-4454  
950 Broadway, Suite 300  
Court of Appeals Division II  
David Ponzohn, Court Clerk

SEABIS OUT



State of Washington Department of Corrections Facility  
City: Walla Walla, WA Zip: 99362  
Address: 1313 N. 13th Ave  
Facility Name: Wash. State Pen  
Unit: D Tier W Cell 107  
Name: Wayne A. Murphy DOC # 633365

Name WAYNE A. MURPHY #633365 DOC #  
Unit: D Tier W Cell 107  
Facility Name: WASHINGTON STATE PENITENTIARY  
Address: 1313 N. 13th Ave  
City: Walla Walla, WA Zip: 99362  
State of Washington Department of Corrections Facility



LEGAL MAIL  
**RECEIVED**  
SEP 08 2009  
CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

HON. DAVID PONZPHA, COURT CLERK  
Court of Appeals Div. II  
950 Broadway, STE 300  
Tacoma, WA 98402-4454

THIS WAS MAILED BY AN INMATE CONFINED AT A  
WASHINGTON DEPARTMENT OF CORRECTIONS FACILITY.  
ITS CONTENTS MAY BE UNCENSORED



C/O ~~Wilson~~ 7701 9/14/09 2140



 THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT

© USPS 2009

Verified legal mail 8-27-09 *Wilson*



LEGAL MAIL

LEGAL MAIL

 THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT

© USPS 2009