

~~No. 282015~~

40063-4-#

FILED

NOV 02 2009

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
B.

IN THE COURT OF APPEALS, DIVISION III,

OF THE STATE OF WASHINGTON

---

THE STATE OF WASHINGTON

Respondent

v.

PAULETTE MARGARETT MELVILLE

Appellant

---

RESPONSE TO PROSCUTORS RESPONSE TO PERSONAL RESTRAINT PETITION

---

Ms. Paulette Margaret Melville  
#749695  
Pine Lodge Correction Center for Women  
P. O. Box 300  
Medical Lake, WA 99022

## TABLE OF CONTENTS

APPELLANT’S ASSIGNMENT OF ERROR .....	1
ISSUES PRESENTED.....	1
STATEMENT OF THE CASE.....	2
ARGUMENT.....	2
A.    THE TRIAL COURT DID ERR IN DENYING THE APPELLANT’S MOTION FOR A NEW TRIAL BASED UPON AN ALLEGED JURY COERCION .....	2
B.    THE TRIAL COURT DID ERR BY ALLEGEDLY FAILING TO ABIDE BY SPOUSAL COMMUNICATION LAWS .....	2
C.    THE TRIAL COURT DID ERR IN FAILING TO GRANT THE APPELLANT A POST-TRIAL MOTION FOR RECUSAL BASED ON AN ALLEGED CONFLICT OF INTEREST SINCE THE TRIAL JUDGE SENTENCED HER DAUGHTER FOR A RELATED CRIME.....	3
D.    THE APPELLANT DID RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL ON THE TRIAL COURT LEVEL .....	3
E.    THE TRIAL COURT DID ERR IN DENYING THE APPELLANT’S SUPPRESSION MOTION BASED UPON THE RELIABILITY OF THE INFORMATION’S TIP ON THE SEARCH WARRANT AFFIDAVIT .....	3
CONCLUSION.....	4

I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court erred in denying the appellant's motion for a new trial based upon jury coercion.
2. The trial court erred in failing to abide by spousal communication laws.
3. The trial court erred in failing to grant the Appellant a post-trial motion for recusal based upon a conflict of interest since the trial judge sentenced her daughter for a related crime.
4. The appellant received ineffective assistance of counsel on the trial court level.
5. The trial court erred in denying the Appellant's suppression motion based upon the reliability of the information's tips on the search warrant affidavit.

II.

ISSUES PRESENTED

- A. Whether the trial court erred in denying the Appellant's motion for a new trial based upon alleged jury coercion.
- B. Whether the trial court erred in failing to abide by spousal communication laws.
- C. Whether the trial court erred in failing to grant the Appellant a post-trial motion for recusal based on an alleged conflict of interest since the trial judge sentenced her daughter for a related crime.
- D. Whether the Appellant received ineffective assistance of counsel on the trial court level.

- E. Whether the trial court erred in denying the Appellant's suppression motion based on the reliability of the informant's tip on the search warrant affidavit.

III.

STATEMENT OF CASE

For the purposes of this appeal the State accepted the Appellant's Statement of the Case.

IV.

ARGUMENT

- A. THE TRIAL COURT DID ERR IN DENYING THE APPELLANT'S MOTION FOR A NEW TRIAL BASED UPON AN ALLEGED JURY COERCION.

The Appellant has provided the Court with additional information that the court should consider, Affidavit of John Kloster and Second Affidavit of John Kloster, Juror Number Five (5), stating that there was coercion. The Court has failed to look at all reasonable factors.

- B. THE TRIAL COURT DID ERR IN FAILING TO ABIDE BY SPOUSAL COMMUNICATION LAWS.

The Appellant has provided the Court with additional information that the court should consider, William Melville Statement, retracting his earlier statement and thus proving that the Spousal Communication Law was never explained to him. The Court has failed to look at all reasonable factors.

C. THE TRIAL COURT DID ERR IN FAILING TO GRANT THE APPELLANT A POST-TRIAL MOTION FOR RECUSAL BASED ON AN ALLEGED CONFLICT OF INTEREST SINCE THE TRIAL JUDGE SENTENCED HER DAUGHTER FOR A RELATED CRIME.

The Appellant has provided the Court with additional information that the court should consider, Declaration of Amanda Dahlen. In Ms. Dahlen's statement she takes responsibility for items that were used against the Appellant to convict her. The Appellant has, also, provided the Court with statements, Motion and Affidavit for Recusal of Judge on Shortened Notice, showing that Judge Baker has made statements during the Appellant's daughter trial that clearly shows that Judge Baker has an abuse of discretion for the Appellant prior to her conviction. The Court has failed to look at all reasonable factors.

D. THE APPELLANT DID RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL ON THE TRIAL COURT LEVEL.

The Appellant has provided the Court with additional information that the court should consider, Order dated April 5, 2005, showing that the Appellant's daughter, Amanda Dahlen, was to be held in the Stevens County Jail so that she could testify at the Appellant Trial. The Appellant's attorney refused to allow Amanda Dahlen to testify even though the Appellant insisted that she testify. The Appellant has, also, provided the Court with additional information, Declaration of Amanda Dahlen. In Ms. Dahlen's statement she takes responsibility for items that were used against the Appellant to convict her. The Court has failed to look at all reasonable factors.

E. THE TRIAL COURT DID ERR IN DENYING THE APPELLANT'S SUPPRESSION MOTION BASED UPON THE RELIABILITY OF INFORMATION'S TIP ON THE SEARCH WARRANT AFFIDAVIT.

The Appellant has provided the Court with additional information that the court should consider, William Melville Statement, retracting his earlier statement. The Court has failed to look at all reasonable factors.

V.

CONCLUSION

For the reasons stated the Court should consider the Appellant request for a new trial.

Dated this 27<sup>th</sup> day of October 2009.



Paulette Margaret Melville

Appellant

#749695

Pine Lodge Correction Center for Women

P. O. Box 300

Medical Lake, WA 99022

**FILED**

NOV 02 2009

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III**

**THE STATE OF WASHINGTON,** ) **CASE NO. 282015**  
  ) **Plaintiff,** )  
  ) **CERTIFICATE OF SERVICE**  
**vs.** )  
  ) **PAULETTE MELVILLE,** )  
  ) **Defendant,** )  
  ) )  
\_\_\_\_\_

I, PAULETTE MELVILLE, The Defendant in the above-entitled cause, under the penalty of perjury, do hereby certify that on the date below, I sent copies of:

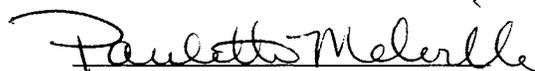
Response to Prosecutors Response to the Personal Restraint Petition

To:                   The Court of Appeals  
                          Division III  
                          N. 500 Cedar  
                          Spokane, WA 99201

Stevens County Prosecuting Attorney, Shadan Kkapri  
215 South Oak, Suite 114  
Colville, WA 99114-2862

By processing as LEGAL MAIL, with the proper postage affixed thereto, at the Pine Lodge Correctional Center for Women, P.O. Box 300 Medical Lake, WA 99022.

Date: October 27, 2009

  
Signature

RECEIVED

COPY ORIGINAL FILED

APR 22 2005

STEVENS COUNTY  
PROSECUTING ATTORNEY STEVEN'S COUNTY, WA  
SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS

STATE OF WASHINGTON, )  
Plaintiff, )  
vs. )  
PAULETTE M. MELVILLE, )  
Defendant. )

Cause No. 2005-1-00056-7

AFFIDAVIT OF JOHN KLOSTER

JOHN KLOSTER, being first duly sworn under oath deposes and states as follows:

I am a resident of Stevens County living in the Chewelah area. I deliberated on the jury that was empanelled in the matter State v. Paulette Melville. I got a message that I was contacted by way of two phone calls from Mr. Simeone on or around April 15<sup>th</sup>. I returned his call on April 18<sup>th</sup> and told him about the regret I had about the jury deliberation process. In particular, I advised Mr. Simeone that my vote as well as the vote of two other jurors was to acquit Ms. Melville of the charge of Possession with Intent to Deliver Oxycodone, Possession of Morphine and Possession of Methamphetamine.

I know when polled I told the court my vote was to convict. I did that for reasons that follow:

That night when I was deliberating, as the day grew long, the disposition of those jurors who wanted to convict Ms. Melville became very unpleasant. At around 10:30 p.m. the atmosphere was tense, almost unbearable. I no longer felt I was participating in a collegial process. Rather, I felt as though I was being coerced and harassed into changing my vote from not guilty to guilty. My honest opinion was to acquit Ms. Melville. Because of the pressure I was receiving, I at one point changed my vote thinking that the other two jurors on the side of

ROBERT A. SIMEONE

ATTORNEY AT LAW  
300 E BIRCH AVE PO BOX 122  
CHWELAH, WA 99109

1 acquittal would hold out for a while and give me an opportunity to join forces with them again  
2 after they expressed their positions to the other jurors. The three of us were feeling like we  
3 couldn't persuade the others to our position. However, as soon as I let the other jurors know that  
4 I would change my vote, the two jurors who were holding out with me, one juror from  
5 California, and one Ms. Philpot, almost immediately caved in on their position. It is my own  
6 feeling that they gave in against their will as did I.

7 I have lost a couple of nights sleep thinking about how I let my honest opinion be  
8 surrendered to the majority of the jurors who were voting to convict Ms. Melville. As it is, it is  
9 my belief that the jury deliberations were irregular and unfair. I do not believe Ms. Melville was  
10 guilty of some of the charges for which she was convicted.

11 DATED this 27 day of April, 2005.

12  
13   
14 \_\_\_\_\_  
15 JOHN KLOSTER

16 SUBSCRIBED AND SWORN to before me this 27 day of April, 2005.

17  
18   
19 \_\_\_\_\_  
20 NOTARY PUBLIC in and for the  
21 State of Washington, residing  
22 at \_\_\_\_\_

23 My Commission Expires: 5/1/07

M

**FILED**  
IN SUPERIOR COURT  
STEVENS COUNTY  
JUN 7 2 19 PM '05  
PATRICIA A CHESTER  
COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS**

STATE OF WASHINGTON,	)	
Plaintiff,	)	Cause No 2005-1-00056-7
	)	
vs	)	<b>SECOND AFFIDAVIT OF JOHN KLOSTER</b>
	)	
PAULETTE M MELVILLE,	)	
Defendant	)	

**JOHN KLOSTER**, being first duly sworn under oath deposes and states as follows

I submit this affidavit in clarification of that which I previously submitted in support of Paulette Melville's Motion for New Trial

My understanding from those who attended the hearing on Ms Melville's Motion for New Trial is that the court was concerned about the way I expressed myself in my previous affidavit In particular, it is my understanding that the court felt that I minced words when in my affidavit I stated I "felt" that I was being coerced

For purposes of clarification I will say I used the term "felt" to mean I was coerced I did not only feel I was coerced, I was coerced into changing my vote from not guilty to guilty Maybe an hour before I did change my vote I was visited in the jury room by some representative of the court The distinct effect upon me of that visit was that we had to finish our deliberation fast because it was getting late At that point the pressure from other jurors became unbearable for me and I was coerced into giving up my honest opinion by other jurors voting to convict, too

Therefore in response to the parsing of my syntax, I will only say that the court should read that previous affidavit as affirmatively stating that I changed my vote based upon the

85

coercion of my fellow jurors to make me change my vote An injustice has been done here In almost every sense of the word this was an injustice Ms Melville has been prejudiced as a result of the way the jurors coerced me into changing my vote That pressure continued through the time the jury was polled and I once again said that my vote was guilty The pressure was at that time existing so as to make me say that my vote was "guilty" and at that guilty was the verdict of the jury

I also understand that there was some uncertainty in the court's mind as to which of the convictions I claim were the result of coercion My answer to this is that my vote as to all of these convictions was the result of coercion As to my last statement in my first affidavit where I stated I do not believe Ms Melville was guilty of "some" of the charges for which she was convicted, what I meant was the felony convictions at trial It is these convictions, the felony convictions, to which the reference "some" was directed The conviction which wasn't a part of my thinking was the misdemeanor conviction for Possession of Marijuana.

I hope this affidavit clarifies that I cast my vote on the basis of coercion and that I surrendered my honest opinion as a result of coercion

I would be willing to provide the court with an oral statement to this effect as necessary

DATED this 3 day of <sup>June</sup>~~May~~, 2005

John C. Kloster  
JOHN KLOSTER

SUBSCRIBED AND SWORN to before me this 3 day of <sup>June</sup>~~May~~, 2005

Kevin Schalock  
OFFICIAL SEAL  
KEVIN SCHALOCK  
NOTARY PUBLIC  
STATE OF WASHINGTON  
MY COMMISSION EXPIRES  
JANUARY 13 2007  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Chehalis

My Commission Expires 1/13/2007

Handwritten initials and marks at the top left of the page.

FILED  
IN SUPERIOR COURT STEVENS COUNTY  
JUN 14 2005  
PATRICIA A CHESTER  
COUNTY CLERK

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  
27  
28  
29  
30

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS

STATE OF WASHINGTON, )  
Plaintiff, ) NO 2005-1-00056-7  
vs )  
DECLARATION OF AMANDA DAHLEN  
PAULETTE M MELVILLE, )  
Defendant )

90

ROBERT A SIMEONE  
ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

June 4, 2005

I swear under penalty of perjury and penalty of the law what I'm about to write is true.

I, Amanda Dahlen am responsible for anything that was located in my bedroom at 3941 B Hwy 292, Loonlake, WA. I sold and used meth. I also used marijuana and meth and oxy's. My safe had my grandma's marijuana and med's inside of it. I am the only person who had any access to my safe. Nobody had the code but me, I changed my code frequently. The reason my grandma had a key to my room was because the landlord had done work on our pipes in the basement and my room was the only way to access the basement. The pills that were found in the vent only me and Willy knew about. There was a deal worked with Cory and we got them. They were hidden from everybody. My mother - Paulette Melville - was unaware of the drugs and drug paraphenila in her home. She had actually kicked me out Feb 23<sup>rd</sup> because she didn't want it around at all. I snuck back in at about 3 or 4 am when everybody was asleep. She had no idea I was even in her home. All the phone →

Calls that were made through out the day couldn't of been my mom. She attended school from 9:30 am to about 6 pm. She would be gone all week long. That was all probably me or the other young girls who also live in the home, Kelley Dahlen and Rachelle Brown. We are all teenagers and we have many friends. That's why there would be traffic at our home. We run in and out all teenagers do.

Most of the t.v.'s and electronics located at the house were mine. All stuff that I've had. The list of names of money owed that's mine. It was a black Snickers pad from Staples "I think." I'm not positive where it was from but it was mine.

The day I was arrested I said whatever I could cause I really didn't want to go to jail. I made a lot of false ~~statements~~ statements to detective Erdman. I had about 3 hours of sleep in about 5 days. I was unaware of what I was saying.

Thank you for your  
time,

X Amanda Dahlen  
01.18.87.

Amanda Dahlen

**FILED**  
IN SUPERIOR COURT  
STEVENS COUNTY

JUN 7 2 19 PM '05

PATRICIA A CHESTER  
COUNTY CLERK

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  
27  
28  
29  
30

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS**

STATE OF WASHINGTON,	)	NO 2005-1-00056-7
Plaintiff,	)	
vs	)	<b>WILLIAM MELVILLE STATEMENT</b>
PAULETTE M MELVILLE,	)	
Defendant	)	

WILLIAM MELVILLE STATEMENT

**ROBERT A SIMEONE**  
 ATTORNEY AT LAW  
 300 E BIRCH AVE \* PO BOX 522  
 COLVILLE WA 99114-0522  
 (509) 684-5847

Mr. Robert Simpson

5/28/05

I swear under the penalty of perjury, that what is written here is a true statement.

On the night of February 20<sup>th</sup> I found my wife Paulette Melville with another man at her mother's house. Later that night I was pulled over and taken to jail for negligent driving & driving suspended. When I was pulled over I ingested a substantial amount of Methamphetamine, which altered my judgment.

When I was taken to the jail, I was given a U.A. which came up positive for Meth, oxycodone & marijuana. I was very upset with my wife and in a few hour rage I made up lies to put her in jail. I knew that there was meth, pills & money in the house. So I told detective Edman at the jail that every thing was my wife's. The truth is

that the meth was her daughter  
Anandis. She was seeking out of the  
house. It was not Paulette. The money  
found there was in fact her mother's  
(Georganne Dabell) from a settlement  
check she received months prior.  
The prescribed pills were also her  
mother's (Georganne) because of a prior  
neck surgery she endured.

I feel very guilty and ashamed  
of these lies, and now I am trying  
to make things right. I am sorry for  
telling these lies and please accept  
this letter as a true statement,  
because it is.

Signed

William J. Melville

DATED this 21 day of June, 2005'

William J. Melville  
WILLIAM MELVILLE

SUBSCRIBED AND SWORN to before me this 21 day of June, 2005

Brenda L. Keller

Notary Public  
State of Washington  
BRENDA L. KELLER  
My Appointment Expires Jul 15, 2008

NOTARY PUBLIC in and for the  
State of Washington, residing  
at Heintz  
My Commission Expires 7/15/08

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  
27  
28  
29  
30

AFFIDAVIT OF WILLIAM MELVILLE

ROBERT A SIMEONE

ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

FILED  
IN SUPERIOR COURT  
STEVENS COUNTY

JUL 6 4 29 PM '05

PATRICIA A CHESTER  
COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS

STATE OF WASHINGTON,  
Plaintiff,

vs

PAULETTE M MELVILLE,  
Defendant

Cause No 2005-1-00056-7

MOTION & AFFIDAVIT FOR RECUSAL OF  
JUDGE ON SHORTENED NOTICE

I. MOTION

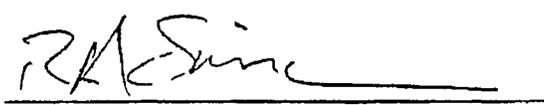
COMES NOW the Defendant Paulette Melville and requests that the Honorable Rebecca Baker, Judge recuse herself from any further proceedings in this matter

FURTHERMORE, Defendant requests that this motion be heard on shortened notice

II. BASIS

THIS MOTION is based upon the record and file herein, the sub-joined Affidavit of Robert A Simeone and upon the accompanying Memorandum of Defendant

DATED this 6 day of July, 2005



ROBERT A SIMEONE, WSBA#12125  
Attorney for Defendant

ROBERT A SIMEONE

ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

Handwritten marks at top left

115

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  
27  
28  
29  
30

109

III. AFFIDAVIT OF ROBERT A. SIMEONE

ROBERT A. SIMEONE, being first duly sworn under oath deposes and states as follows

I submit this affidavit that at Defendant's request that the Honorable Rebecca Baker, Judge recuse herself from any further proceedings in this cause

Ms Melville brought to my attention that a sentencing hearing involving her daughter Amanda Dahlen occurring on March 24, 2005, may have evidenced prejudice against her or at least a strong appearance of an unfairness that would prevail in any future proceedings over which Judge Baker may preside In follow-up to her request for action, I obtained a copy of the recording of that proceeding In pertinent part, comments that could infer a predisposition against her In the record are found at 12 06 00 - 12 06 20 and 12 09 48 - 12 10 32 The court's comments in those sections read as follows

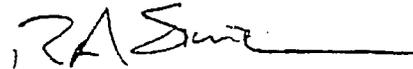
12 06 00

It sounds as though you have had some very poor influences upon you as you were growing up You no doubt love your mother and you have ties to her and always will It's going to be really hard for you to find your way out of a lifestyle that you have been really trained to be in It's going to take some serious changes

12 09 40

You probably have the option of choosing to go back and live with your mother if she is not in prison That is a path that I can predict for you is going to be getting you back to prison in no time Maybe not her but you Maybe she will not have a conviction on this pending charge I don't know how that is going to pan out We'll find out in a couple weeks But, whether she has a conviction or doesn't based on what's been outlined here, it's not a pretty sight for your future if you go back to that lifestyle So you've gotta make some very serious ch make those serious changes find some people that are going to be supportive to you in a clean and sober lifestyle

DATED this 6 day of July, 2005

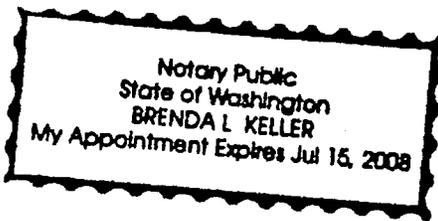


ROBERT A SIMEONE, WSBA #12125  
Attorney for Defendant

SUBSCRIBED AND SWORN to before me this 6 day of July, 2005

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  
27  
28  
29  
30

Brenda L Keller  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Heentus  
My Commission Expires 7/15/08



MOTION AND AFFIDAVIT FOR RECUSAL OF JUDGE

ROBERT A SIMEONE  
Page - 3 ATTORNEY AT LAW  
300 E BIRCH AVE • PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

T.  
R

FILED  
IN SUPERIOR COURT STEVENS COUNTY  
APR - 5 2005  
PATRICIA A CHESTER  
COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS

State of Washington  
Plaintiff/Petitioner

No 05-1-00056 - 7

vs  
Parlette Melville  
Defendant/Respondent

ORDER

I BASIS  
Respondent <sup>Parlette</sup> moved the court for the Stevens County Jail to  
keep Amanda Melville in custody until Parlette Melville  
has complete her trial proceedings scheduled on April 11, 05.

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds Good  
cause exists and further action is precluded in the  
presentment of this case.

III ORDER

IT IS ORDERED THAT Amanda M. Melville remain in the  
custody of Stevens County Jail until the  
completion of Parlette Melville's pending criminal  
charges.

30

DATED 5 Apr 05

~~\_\_\_\_\_~~  
Lomic Fee 346.04

Rebecca W. [Signature]

Judge / Commissioner  
[Signature]

Jail

FILED  
IN SUPERIOR COURT  
STEVENS COUNTY  
APR 4 2 27 PM '05  
PATRICIA A. C. ESTER  
COUNTY CLERK

~~DISTRICT~~ SUPERIOR  
IN THE DISTRICT COURT OF THE STATE WASHINGTON,  
COUNTY OF STEVENS

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 v )  
 PAULETTE MELVILLE, )  
 )  
 Defendant )

No 05-10056-7

MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION TO  
SUPPRESS EVIDENCE  
(Aguilar-Spinelli)

ARGUMENT

To establish probable cause, the affidavit must provide facts sufficient for a reasonable person to conclude that the defendant is probably involved in criminal activity *State v Cord*, 103 Wn 2d 361, 365-66, 693 P 2d 81 (1985) Affidavits in support of a search warrant are evaluated as a whole, in a commonsense, nonhypertechnical manner *State v Fisher*, 96 Wn 2d 962, 965, 639 P 2d 743, cert denied, 457 U S 1137 (1982) Doubts concerning the affidavits are resolved in favor to its validity *State v Partin*, 88 Wn 2d 899, 904, 567 P 2d 1136 (1988) Considerable deference to the magistrate's determination of probable cause is required *Cord*, 103 Wn 2d at 366

2- AFFIDAVIT IN SUPPORT OF  
DEFENDANT'S MOTION TO  
SUPPRESS EVIDENCE (Aguilar-Spinelli)

Ronnie Rae  
Attorney at Law  
1408 West Broadway Avenue  
Spokane, WA 99201  
(509)323-9000 fax (509)324-9029

21

1           Apart from these rules, the State must nevertheless satisfy the two-prong *Aguilar-Spinelli*  
2 test to obtain a warrant *Fisher, 96 Wn 2d at 965, Aguilar v Texas, 378 U S 108, 84 S Ct 1509,*  
3 *12 L Ed 2d 723 (1964), Spinelli v United States, 393 U S 410, 89 S Ct 584, 21 L Ed 2d (1969)*  
4 This test requires a showing 1) of the underlying circumstances from which the informant drew  
5 his conclusions, and 2) that either the information or the informant is reliable *Fisher, 96 Wn 2d*  
6 *at 965, Aguilar, 378 U S at 114, Spinelli, 393 U S at 415-16*

7  
8           The reliability of the informant is established by showing that the underlying  
9 circumstances from which the informant drew his conclusion so that a magistrate can  
10 independently evaluate the reliability of the manner in which the informant acquired his  
11 information (basis of knowledge prong), and the underlying circumstances from which the  
12 officer concluded that the informant was credible or his information was reliable (veracity  
13 prong), *state v Smith, 110 Wn 2d 658, 663, 756 P 2d 722 (1988), quoting from State v Jackson,*  
14 *102 Wn 2d 432, 435, 688 P 2d 136 (1984)* The affidavit is insufficient if it fails to meet either  
15 prong unless other police investigation corroborates the informant's tip, *State v Young, 123*  
16 *Wn 2d 173, 195, 867 P 2d 593 (1994)*

17           **A. Basis of Knowledge Prong**

18           Information showing the informant has personally seen the facts asserted and is passing on  
19 firsthand information satisfies the basis of knowledge prong *State v Smith, 110 Wn 2d 658,*  
20 *663, 756 P 2d 722 (1988), cert denied, 488 U S 1042 (1989)* Here, the informant was William  
21 Melville, Paulette Melville's husband Mr Melville was incarcerated for methamphetamine  
22 possession He stated to police that he had specific knowledge that Paulette Melville was  
23 trafficking in methamphetamine and prescription medications *Attached A* He also states that  
24  
25

3- AFFIDAVIT IN SUPPORT OF  
DEFENDANT'S MOTION TO  
SUPPRESS EVIDENCE (Aguilar-Spinelli)

Ronnie Rae  
Attorney at Law  
1408 West Broadway Avenue  
Spokane, WA 99201  
(509)323-9000 fax (509)324-9029

1 Paulette had been selling large amount of methamphetamine for approximately 6 months and  
2 that he rarely saw her sell amounts smaller than 1/16 of an ounce *Id* Throughout the affidavit  
3 Mr Melville continues to describe various locations where Mrs Melville allegedly kept her  
4 monies and/or contraband When the search was executed, there was left than 0 3 grams of  
5 methamphetamine on the premises A far cry of what was Mr Melville stated in the affidavit to  
6 obtain the search warrant

7  
8 Now I call attention to *Attachment B*, a handwritten letter from Mr Melville to Mrs Melville  
9 after he was released early for his cooperation with police This letter was transcribed for the  
10 Court's efficiency Original copies of the handwritten letter are attached as well In this exhibit,  
11 Mr Melville states that "someone" lied to the police In a letter written to his wife, he claims  
12 that someone, indicating himself, lied to the police about Paulette because "he was mad" and that  
13 he "will makes things right" *Id*, page 2 Mr Melville has failed to do so since Mrs Melville  
14 has discovered that she became pregnant while he has been incarcerated

15 The fact that Mr Melville cooperated with police to reduce his own jail time, and the fact  
16 that he signed a document stating that he lied because he was mad at his wife directly affects the  
17 basis of knowledge Here it is clear that the basis of knowledge was based on admitted lies Mr  
18 Melville, who admittedly lived at the residence, and who has been convicted of possession made  
19 this statement for his own benefit Due to the discrepancies in his own statements to police and  
20 then to his wife, the basis of knowledge prong is not met

21  
22  
23 **B Veracity Prong**

24 - Under the second prong of the *Agular-Spinelli* test, or the "veracity prong", the magistrate

25  
4- AFFIDAVIT IN SUPPORT OF  
DEFENDANT'S MOTION TO  
SUPPRESS EVIDENCE (Aguilar-Spinelli)

Ronnie Rae  
Attorney at Law  
1408 West Broadway Avenue  
Spokane, WA 99201  
(509)323-9000 fax (509)324-9029

1 must determine either, 1) the credibility of the informer, or 2) the reliability of the information  
2 on this particular occasion. If the informant is confidential, as in our case, there must be a  
3 stronger showing of credibility than if the source was identified. *State v Patterson*, 83 Wn 2d 49,  
4 52, 515 P 2d 496 (1973), quoting *US v Harris*, 403 US 573 (1971). Mr Melville is the 29 L Ed. 2d  
5 vengeful and starving husband of defendant Paulette Melville. (Please see attached B at pages 2  
6 and 3) William Melville appears both desperate and manipulative in his letter to his wife and it  
7 appears as though he would be willing to go great lengths, even lie to both the State Police and  
8 this Court, to gain freedom from his incarceration in Benton County.

10 Additionally, in regard to the search at 3941-B Hwy 292, Loon Lake, WA, the search  
11 warrant affidavit is completely devoid of any information which would show that the  
12 confidential informant has any credibility whatsoever, and thus fails the veracity prong of  
13 *Aguilar-Spinelli*. The affidavit states that the confidential informant is currently in custody for  
14 methamphetamine charges and is cooperating for "special consideration" pending  
15 methamphetamine charges (please see Attached A, page 5). It offers no other information vital  
16 for a judicial officer's ability to make an informed decision. (Clearly an admission that a person  
17 is facing felony charges illustrates his actions are not to be trusted and must be monitored or at  
18 least corroborated). The cooperating witness, who is now known to be the husband of the  
19 defendant, was admittedly using methamphetamine. He was living in the residence searched,  
20 and the drugs found on the scene are most likely drugs he was hiding from his wife.)

22 A magistrate may look at an informant's past performance to evaluate credibility,  
23 however, in the instant case nothing is set out in the affidavit to establish this informant's history.  
24 In fact, the very nature of the relationship, the marriage of Mr and Mrs Melville was withheld

25  
5- AFFIDAVIT IN SUPPORT OF  
DEFENDANT'S MOTION TO  
SUPPRESS EVIDENCE (Aguilar-Spinelli)

Ronnie Rae  
Attorney at Law  
1408 West Broadway Avenue  
Spokane, WA 99201  
(509)323-9000 fax (509)324-9029

1 The affidavit states that the name was withheld due to "fear of retaliation", yet in the police  
2 report, Mr Melville's name is freely listed as a witness on the first page of the police reports  
3 provided to counsel on March 28, 2005 (a copy of said warrant will be provided at oral  
4 argument) Mrs Melville asserts that the reason this information was originally withheld was  
5 because the truth of the informant's identity would have raised red-flags in the eye of a  
6 magistrate

7  
8 If the court finds there is no showing of credibility, they may look to the reliability spur  
9 of the veracity prong Under the reliability spur, the focus is on 1) the nature of the information  
10 by the confidential informant, and 2) the circumstances under which it was tendered *US v*  
11 *Harris*, 403 U S 573 (1971) An admission against penal interest is a way to show reliability In  
12 our case, however, the confidential informant was not making an admission against penal  
13 interest, he was cooperating for "special consideration" in pending felony drug cases

### 14 15 **C. Police Corroboration**

16 When an informant's tip fails the *Aguilar-Spinelli analysis*, either on the basis of knowledge  
17 of the veracity prong, probable cause can still be established by independent police investigation  
18 However, the investigation must point out suspicious activities or indications of criminal activity  
19 along the lines suggested by the informant "The investigation is insufficient if it only  
20 corroborated innocuous facts" *State v Huft*, 106 Wn 2d 206, 210, 720 P 2d 838 (1986), citing  
21 *State v Jackson*, 102 Wn 2d 432, 688 P 2d 136 (1984) The informant provided no such  
22 investigation There are no facts to supplement the information derived from the anonymous  
23 informant's tip, which severely lacking in its own right  
24

25  
6- AFFIDAVIT IN SUPPORT OF  
DEFENDANT'S MOTION TO  
SUPPRESS EVIDENCE (Aguilar-Spinelli)

Ronnie Rae  
Attorney at Law  
1408 West Broadway Avenue  
Spokane, WA 99201  
(509)323-9000 fax (509)324-9029

00029

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

**CONCLUSION**

The search warrant affidavit in the instant case is nothing more than a bare bones affidavit, which uses innocuous facts for the purpose of propping up an unsubstantiated confidential tip and therefore, does not meet either prong of *Agular-Spinelli*. We respectfully request that evidence seized from this search warrant be suppressed as fruit from the poisonous tree

Respectfully submitted this 31<sup>st</sup> day of March, 2005

RONNIE RAE, ATTORNEY AT LAW



Ronnie Rae, #34606  
Attorney for Paulette Melville

7- AFFIDAVIT IN SUPPORT OF  
DEFENDANT'S MOTION TO  
SUPPRESS EVIDENCE (*Agular-Spinelli*)

Ronnie Rae  
Attorney at Law  
1408 West Broadway Avenue  
Spokane, WA 99201  
(509)323-9000 fax (509)324-9029

APR 22 3 17 PM '05

PATRICIA A CHESTER  
COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS**

STATE OF WASHINGTON,  
Plaintiff,

Cause No 2005-1-00056-7

vs

PAULETTE M MELVILLE,  
Defendant.

**MOTION AND AFFIDAVIT FOR ORDER  
ARRESTING JUDGMENT AND IN THE  
ALTERNATIVE FOR NEW TRIAL**

**I. MOTION**

COMES NOW the Defendant, PAULETTE MELVILLE, by and through her attorney, ROBERT A SIMEONE, and moves the Court for an Order arresting that certain Judgment entered upon verdict of the jury April 13, 2005 wherein she was found guilty of certain criminal charges in the within cause

AND IN THE ALTERNATIVE Defendant moves this court for an order for a new trial

**II. BASIS**

THIS MOTION is based upon CrR 7 4, 7 5 as it pertains to the Motion for Arrest of Judgment upon insufficiency of proof of material element of the crimes of possession of controlled substances or possession with intent to deliver controlled substances

With regard to the Motion for New Trial this motion is based upon CrR 7 5(a)(1), (a)(5), (a)(7), and upon matters outside the record which facts shall be demonstrated by affidavit sub-joined

DATED this 19 day of April, 2005



ROBERT A SIMEONE, WSBA#12125  
Attorney for Defendant

**ROBERT A SIMEONE**

ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

59

III. AFFIDAVIT OF ROBERT A. SIMEONE

1 ROBERT A. SIMEONE, being first duly sworn under oath deposes and states as  
2 follows

3 After Ms Melville's conviction, her attorney Mr Rae gave notice to her that he would  
4 withdraw his representation

5 In speaking to Paulette on April 14<sup>th</sup>, she advised me that one of the jurors, a man named  
6 John whose last name she had forgotten at that time, had driven by the house of her parents in  
7 Loon Lake the night after the conviction The purpose of his visit was to communicate to her  
8 family some disappointment and regret that he felt as a result of the deliberation process that took  
9 place when he and the other jurors convened at her trial

10 I thereafter took it upon myself to learn the name of the juror whose last name is Kloster  
11 After two attempts, Mr Kloster called me back this day, April 18<sup>th</sup> at approximately 1 30 p m I  
12 told him that Paulette was once again my client He then began without any further introduction  
13 on my part to discuss the deep disappointment he had regarding the deliberation process In  
14 particular, Mr Kloster told me that he had reasonable doubt about the convictions that obtained  
15 His original reason for going by Ms Melville's home, he advised me, was to see whether or not  
16 there was any merit to the State's apparent claim at trial that Ms Melville was living in a  
17 relatively lush setting with many material possessions He went on however to tell me that he  
18 and two other jurors had reasonable doubt about charges that were brought against Ms Melville,  
19 one a Ms Phulpott and another juror from California He told me specifically that he felt the  
20 other jurors on the side of convicting towards the end of the deliberation process were hassling  
21 and coercing him and the other two into changing their vote Mr Kloster at one point after  
22 weakening decided to change his vote only because he felt the other two jurors who were holding  
23 out would maintain their position for at least a moment and try to give him an opportunity to  
24 return to his not guilty vote He was very surprised, he advised me in our phone call, to find that  
25 as soon as he elected to change his vote that the other two jurors, before there was even a chance  
26 for him to provide any more input, quickly gave in to the majority's position

27 Mr Kloster will be submitting his own separate affidavit which he writes or edits himself  
28 setting forth his personal reflections on what he feels is the unfairness of the deliberation process  
29 and the irregularity in the jury proceedings that took place He now regrets allowing coercion of  
30

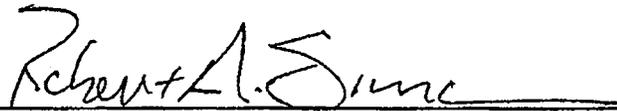
ROBERT A SIMEONE

ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

1 the other jurors to surrender his honest opinion to acquit Ms Melville He mentions to me that  
2 he has lost some sleep on at least a couple of nights about the way the deliberation took place

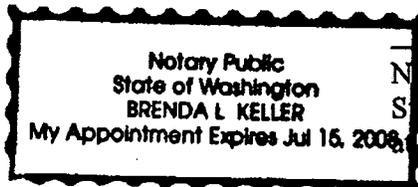
3 For the reasons set forth in this affidavit, there is ample basis for the court to arrest  
4 judgment or in the alternative to order a new trial

5 DATED this 19 day of April, 2005

6  
7 

8 ROBERT A SIMEONE, WSBA #12125  
9 Attorney for Defendant

10 SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of April, 2005



17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

  
NOTARY PUBLIC in and for the  
State of Washington, residing  
Asstata

My Commission Expires 7/15/08

102

FILED  
IN SUPERIOR COURT  
STEVENS COUNTY  
MAY 19 4 02 PM '05

PATRICIA A CHESTER  
COUNTY CLERK

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  
27  
28  
29  
30

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS

STATE OF WASHINGTON,	)	NO 2005-1-00056-7
Plaintiff,	)	
vs	)	<b>DEFENDANT'S MEMORANDUM</b>
	)	<b>ON MOTION FOR NEW TRIAL</b>
PAULETTE M MELVILLE,	)	
Defendant	)	

**I RELIEF REQUESTED**

Defendant requests that the court arrest the Judgment and the conviction that obtained against her in the foregoing prosecution and in the alternative order a new trial

**II. ISSUES BEFORE THE COURT**

1. *What Is The Standard Of Review Applicable To A Defendant's Motion For Arrest Of Judgment And In The Alternative For A New Trial?*
2. *Is The Defendant Entitled To A New Trial In This Matter Where A Juror Alleges That His Vote To Convict Was Rendered As The Result Of Coercion And That He Surrendered His Honest Opinion In So Doing?*

**III FACTS**

The applicable facts are set forth in Defendant's Motion and in the Affidavit of John Kloster on file In brief, the jury empanelled for Ms Melville's prosecution consisted of three jurors who were not persuaded to convict at a point late into the evening of the only day of their

DEFENDANT'S MEMORANDUM ON MOTION FOR NEW TRIAL

Page - 1 -  
**ROBERT A SIMEONE**  
ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

12

1 deliberation process One of the jurors voting not guilty, John Kloster, later stated he felt  
2 harassed and coerced into changing his vote to guilty By so doing, he surrendered his honest  
3 belief that Ms Melville's was not guilty of all these charges as set forth in his Affidavit He was  
4 so bothered by his involuntary turn around that he took it upon himself to visit the home of the  
5 Defendant's parents that next night so he could pass along an apology to Ms Melville for this  
6 mistake He thereafter voluntarily signed the Affidavit on file which is made a part of this  
7 motion

#### 8 IV. ARGUMENT AND DISCUSSION

##### 9 1. Standard Of Review: Abuse Of Discretion

10 The standard of review to be applied by an Appellate Court in considering the Trial  
11 Court's granting or denial of a Motion for New Trial is abuse of discretion State v Copeland,  
12 130 Wn 2d 244 (1996)

13 **Abuse of discretion** is shown where a court's decision is  
14 manifestly unreasonable, or exercised on untenable grounds  
15 or for untenable reasons

16 Richards v Overlake Hosp Med Ctr, 59 Wn App 266, 271, 796 P 2d 737  
17 (1990), review denied, 116 Wn 2d 1014 (1991)

18 As demonstrated below, there is ample cause to find juror coercion leading to prejudice  
19 to the Defendant As such, there is good cause to grant a new trial

##### 20 2. Juror Coercion

21 As a part of a Motion for New Trial Defendant must affirmatively show juror  
22 misconduct The facts in this case are that Mr Kloster has testified by affidavit that

24 That night when I was deliberating, as the day grew long, the  
25 disposition of those jurors who wanted to convict Ms Melville  
26 became very unpleasant At around 10 30 p m the  
27 atmosphere was tense, almost unbearable I no longer felt I  
28 was participating in a collegial process Rather, I felt as  
29 though I was being coerced and harassed into changing my  
30 vote from not guilty to guilty My honest opinion was to  
acquit Ms Melville

1 He went on to say with regards to the deliberation that

2 As it is, it is my belief that the jury deliberations were  
3 irregular and unfair I do not believe Ms Melville was guilty  
4 of some of the charges for which she was convicted

5 Although the law with regards to jury's resolution of disputed factual issues states that an  
6 adverse resolution does not provide a basis for granting a new trial because it is the function of a  
7 jury to weigh evidence, this case rises to a higher level than mere jury deliberation State v  
8 Castro, 32 Wn App 559 (1982) Nor is this merely a case where jurors' thought processes inhere  
9 in the verdict Castro, supra, State v Standifer, 48 Wn App 121 (1987) The conduct of Mr  
10 Kloster's fellow jurors here amounts to a duress that rises to a level where the Defendant's rights  
11 to a fair trial were prejudiced See generally State v Briggs, 55 Wn App 44 (1989) Prejudice to  
12 the defendant as was the core of the discussion in State v Duhaime, 29 Wn App 842 (1981)  
13 where the issue before the court was, *inter alia*, whether or not jurors' request to rescind a vote  
14 on premeditation entitled the defendant to a new trial The holding in Duhaime turns on the  
15 finding by the Supreme Court that reasons given by juror Welch, who during the penalty phase  
16 of the case asked to rescind his vote on premeditation, did not amount to juror misconduct  
17 Duhaime @ 857

18 However, in the instant trial, the statement by juror Kloster, totally unsolicited, is that  
19 juror coercion and nothing less was involved in his giving up his vote The Duhaime case made  
20 the distinction between thought processes which inhere in the verdict and the unacceptable  
21 deliberation that involved jury misconduct Duhaime supra @ 858

22 Indeed the facts of this case register more in the category of prejudice to the Defendant's  
23 right to fair trial rather than misgivings or regret Mr Kloster had about his thought processes  
24 State v Corral, 92 Wn 2d 143 (1979) There the court said the facts which inhere in the verdict  
25 i e , the facts which relate to a jurors motive, intent, belief or the effect of facts in a jurors mental  
26 process, cannot be considered by the trial court in granting a Motion for New Trial The court  
27 went on to discuss specifics of the case where a juror reported that a bailiff had a conversation  
28 with jurors that arguably could have influenced their verdict Corral @ 146 - 147 The Supreme  
29 Court said in ruling on a petitioner's motion that the trial court should have "attempted to  
30 discover what was said by the bailiff and examine the remarks for their possible prejudicial  
impact" Corral @ 148, citing State v Christensen, 17 Wn App 922 (1977) The court went on  
DEFENDANT'S MEMORANDUM ON MOTION FOR NEW TRIAL

Page - 3 -

ROBERT A SIMEONE

ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

00130

1 to say that such a procedure is anticipated by statute with regards to conversation between a jury  
2 and a bailiff

3 No such inquiry is provided for by statute in the instance case Rather, the court is faced  
4 in this instance with a juror who has asserted that his honest opinion was surrendered as a result  
5 of coercion Certainly, in the instance where a juror, for example, threatened the life of another  
6 juror if his vote were not cast a certain way, such would be the basis for a finding of juror  
7 misconduct leading to prejudice against the defendant The thought processes in such an  
8 egregious case would not "inhere in the verdict" While this case does not involve such extreme  
9 facts, it is somewhere beyond the realm of mere introspective workings of Mr Kloster's mental  
10 processes that caused him to give up his vote

11 **3. Criminal Rule 7.5 Calls For A New Trial In This Instance.**

12 Criminal Rule 7 5(5) requires that the defendant be given a new trial when the result was  
13 materially affected by misconduct of the jury The conduct of Mr Kloster's fellow jurors here  
14 rose to the level of misconduct that entitles Defendant Melville to a new trial

15  
16 **V. CONCLUSION**

17 Due to the extreme degree of irregularity in the way the remainder of the majority  
18 imposed its will upon the descending voter, juror misconduct has occurred in these deliberations  
19 have prejudiced Ms Melville's right to a fair trial Under such circumstances a new trial must be  
20 granted

21 Respectfully submitted this 15 day of May, 2005

22  
23 

24 ROBERT A SIMEONE, WSBA #12125  
25 Attorney for Defendant  
26  
27  
28  
29  
30

FILED  
IN SUPERIOR COURT  
STEVENS COUNTY

JUL 6 4 29 PM '05

PATRICIA A CHESTER  
COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS

STATE OF WASHINGTON,	)	Cause No	2005-1-00056-7
Plaintiff,	)		
	)	<b>MOTION &amp; AFFIDAVIT FOR RECUSAL OF</b>	
vs	)	<b>JUDGE ON SHORTENED NOTICE</b>	
	)		
PAULETTE M MELVILLE,	)		
Defendant	)		

**I. MOTION**

COMES NOW the Defendant Paulette Melville and requests that the Honorable Rebecca Baker, Judge recuse herself from any further proceedings in this matter

FURTHERMORE, Defendant requests that this motion be heard on shortened notice

**II. BASIS**

THIS MOTION is based upon the record and file herein, the sub-joined Affidavit of Robert A Simeone and upon the accompanying Memorandum of Defendant

DATED this 6 day of July, 2005

*Robert A Simeone*

ROBERT A SIMEONE, WSBA#12125  
Attorney for Defendant

**ROBERT A SIMEONE**

ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

109

*Handwritten marks*

*110*

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  
27  
28  
29  
30

III. AFFIDAVIT OF ROBERT A. SIMEONE

ROBERT A. SIMEONE, being first duly sworn under oath deposes and states as follows

I submit this affidavit that at Defendant's request that the Honorable Rebecca Baker, Judge recuse herself from any further proceedings in this cause

Ms Melville brought to my attention that a sentencing hearing involving her daughter Amanda Dahlen occurring on March 24, 2005, may have evidenced prejudice against her or at least a strong appearance of an unfairness that would prevail in any future proceedings over which Judge Baker may preside In follow-up to her request for action, I obtained a copy of the recording of that proceeding In pertinent part, comments that could infer a predisposition against her In the record are found at 12 06 00 - 12 06 20 and 12 09 48 - 12 10 32 The court's comments in those sections read as follows

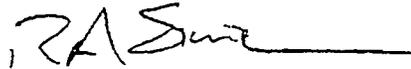
12 06 00

It sounds as though you have had some very poor influences upon you as you were growing up You no doubt love your mother and you have ties to her and always will It's going to be really hard for you to find your way out of a lifestyle that you have been really trained to be in It's going to take some serious changes

12 09 40

You probably have the option of choosing to go back and live with your mother if she is not in prison That is a path that I can predict for you is going to be getting you back to prison in no time Maybe not her but you Maybe she will not have a conviction on this pending charge I don't know how that is going to pan out We'll find out in a couple weeks But, whether she has a conviction or doesn't based on what's been outlined here, it's not a pretty sight for your future if you go back to that lifestyle So you've gotta make some very serious ch make those serious changes find some people that are going to be supportive to you in a clean and sober lifestyle

DATED this 6 day of July, 2005

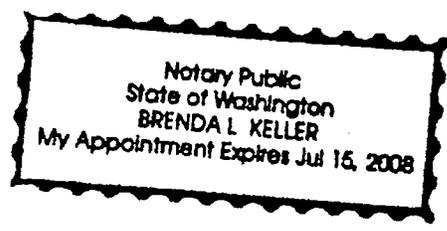


ROBERT A SIMEONE, WSBA #12125  
Attorney for Defendant

SUBSCRIBED AND SWORN to before me this 6 day of July, 2005

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  
27  
28  
29  
30

Brenda L Keller  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Heentus  
My Commission Expires 7/15/08



MOTION AND AFFIDAVIT FOR RECUSAL OF JUDGE

ROBERT A SIMEONE  
Page - 3 ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

FILED  
IN SUPERIOR COURT  
STEVENS COUNTY  
JUL 6 4 29 PM '05

PATRICIA A CHESTER  
COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF STEVENS

STATE OF WASHINGTON, ) NO 2005-1-00056-7  
Plaintiff, )  
vs ) MEMORANDUM IN SUPPORT OF MOTION  
PAULETTE M MELVILLE, ) FOR RECUSAL OF JUDGE  
Defendant )

I.

In State v. Greiff, 141 Wn 2d 910 (2000), law was cited that multiple errors, even if harmless will require a new trial where the cumulative effect of errors seriously impugn a defendant's right to a fair trial Greiff @ 141 Wn 2d 910, 929 (2000)

An appellate court will review a trial court's decision denying a motion to recuse for an abuse of discretion Smith v. Behr Process Corp, 113 Wn App 306, 340, 54 P 3d 665 (2002) A judge should disqualify himself from proceedings in which his 'impartiality might reasonably be questioned' CJC 3(D)(1) This includes instances where 'the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding' CJC 3(D)(1)(a) Whether a judge's impartiality might reasonably be questioned depends on whether a reasonable person with knowledge of the relevant facts would conclude that all parties obtained a fair, impartial, and neutral hearing Sherman v. State, 128 Wn 2d 164, 206, 905 P 2d 355 (1995)

A judge is presumed to perform her functions regularly and properly, without bias or prejudice Jones v. Halvorson-Berg, 69 Wn App 117, 127, 847 P 2d 945, review denied, 122 Wn 2d 1019 (1993) A party alleging judicial bias must support the claim with evidence of the

ROBERT A SIMEONE  
ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

110

1 judge's actual or potential bias State v. Dominguez, 81 Wn App 325, 328-29, 914 P 2d 141  
2 (1996)

3 An unpublished opinion, State v. DeGroff, 307 5A-8-II suggested that defense counsel's  
4 failure to make any record of the comments of the Judge in that case would have constituted  
5 inadequate professional representation, the court noting that in situations where improprieties  
6 occur off the record trial counsel should timely object to them on the record State v. Jones, 70  
7 Wn 2d 591 (1967), State v. Sullivan, Wn App 167 (1993)

8 Washington Supreme Court has held that where *ex parte* contacts occur in the presence of  
9 a third party, those contacts are to be reviewed under a constitutionally harmless error analysis, a  
10 lower standard from an appellant's stand point State v. Caliguri, 99 Wn 2d 501, 509 (1983)  
11 While this is not a case where *ex parte* contacts are even vaguely suggested, Defendant does  
12 contend that the same standard of review, i.e., constitutionally harmless error, would apply here

13 The Defendant must first at least raise the possibility of prejudice before the State bears  
14 the burden to show that communications complained of did not contribute to the verdict  
15 obtained State v. Bourgeois, 133 Wn 2d 407 (1997), Caliguri, supra @ 509 Once the potential  
16 for prejudice is shown, the State bears the burden of showing that the error was harmless beyond  
17 a reasonable doubt Bourgeois @ 407 This is an extremely high burden for the State to meet for  
18 even

19 The appearance of bias or prejudice can be damaging to  
20 public confidence in the administration of justice as would be  
21 the actual presence of bias or prejudice

22 State v. Dugan, 196 Wn App 346, 354, (1999)

23 The effect of an error will require a new trial where accumulated and effective errors  
24 seriously impugn Defendant's right to a fair trial State v. Greiff, 141 Wn 2d 910, 929 (2000) If  
25 the integrity and reliability of the proceedings, including Motion for New Trial, and the State's  
26 Motion to Deny Appeal Bail are put in question to such an extent that a reviewing in court is  
27 unable to say beyond a reasonable doubt that the court was not prejudiced, then the Judge should  
28 recuse him or herself and the matter be assigned to a new judge

ROBERT A. SIMEONE

ATTORNEY AT LAW  
300 E BIRCH AVE \* PO BOX 522  
COLVILLE WA 99114-0522  
(509) 684-5847

II. CONCLUSION

1 Wherefore the Defendant requests that the Honorable Judge Rebecca Baker recuse herself  
2 and that this matter be assigned to a new Judge for further proceedings including Defendant's  
3 Motion for Reconsideration of her Motion for New Trial, sentencing if necessary, and State's  
4 Appeal Bail Denial Motion

5 DATED this 6 day of July, 2005

7  
8 

9 ROBERT A SIMEONE, WSBA #12125  
10 Attorney for Defendant  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30