

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

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

THE STATE OF WASHINGTON,

Plaintiff,

v.

JAMES SIMMONS,

Defendants.

NO. 06-1-10363-3 SEA

MOTION FOR ORDER TO VACATE
JUDGMENT PURSUANT TO CrR 7.8(c)

I. RELIEF REQUESTED

COMES NOW, the above named Defendant by and through his attorney, Christopher A. Morales of Preble Law Firm, P.S., and respectfully moves the court to Vacate the judgment of the court in his previous action dated September 24, 2007, and set for a new trial.

II. STATEMENT OF GROUNDS

I, Christopher A. Morales, bring this motion on behalf of my client, James Simmons to vacate the judgment as to defendant James Simmons entered on September 24, 2007. This Motion is brought pursuant to, CrR 7.8 (c)(1) and is supported by the attached declarations, the notice of termination supplied by the King County Sheriff's Office, and the records and files in

1 this case.

2 This motion is proper under CrR 7.8 (c)(1) which states,

3 “Motion. Application shall be made by motion stating the grounds upon which
4 relief is asked, and supported by affidavits setting forth a concise statement of the
5 facts or errors upon which the motion is based.”

6 In the present case, the defendant has been denied employment because of a conviction in
7 this court, and is thus under personal restraint. The defendant was convicted of Possession with
8 intent to manufacture or deliver cocaine, RCW 69.50.401, on August 28th 2007. Defendant
9 unsuccessfully appealed. There have been no other collateral attacks against the judgement.
10

11 The defendant was convicted based upon the testimony of Sheriff’s Deputy James
12 Schrimpsheer. The defendant was not informed at the time of trial that Deputy Schrimpsheer was
13 under investigation by the King County Sheriff’s Department for acts of dishonesty despite a
14 timely request for all exculpatory evidence in the prosecutor’s possession by Simmons’ attorney,
15 Teresa Conlan. (Please find attached declaration and documents marked Exhibit A).
16

17 III. STATEMENT OF FACTS

18 On November 7th, 2006 Defendant, James Simmons, was waiting for a bus at a Metro bus
19 Shelter near the intersection of 45th Avenue and 11th Street NE, Seattle. Deputy James
20 Schrimpsheer then approached Mr. Simmons. Harsh words were exchanged, and Mr. Simmons
21 was arrested for possession of cocaine and assault in the third degree of Officer Schrimpsheer. At
22 trial Deputy Schrimpsheer was cross-examined about the numerous discrepancies in his police
23 report, including the identification by the officer of the defendant at bus stops that did not exist.
24

25 The defense was not, however, able to question Deputy Schrimpsheer about the charges of
26 dishonesty currently pending at the time of trial, charges that ultimately led to his dismissal from

1 the Sheriff's Department just two months after the defendant was convicted. The defense was
2 never informed of these matters, despite a request to the prosecutor's office for all exculpatory
3 materials.

4 This case was brought before the superior court, and a verdict was handed down August
5 28th, 2007. The defendant was sentenced to 12 months and one day in prison. The defendant
6 was released from prison on February 27th, 2009. The defendant appealed his conviction and his
7 conviction was upheld, based on the testimony of Deputy Schrimpsheer.

9 IV. STATEMENT OF ISSUES

10 Did the Prosecutor's office fail to turn over material exculpatory or impeaching evidence
11 as required under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)?
12

14 V. LEGAL ARGUMENT

15 In *Brady v. Maryland* the Supreme Court of the United States stated, "Due process
16 requires the State to disclose evidence that is both favorable to the accused and material either to
17 guilt or to punishment." 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (citation omitted).
18 Washington Courts have also held that the State has a duty to provide all evidence that is
19 exculpatory or that impeaches. *In re Pers. Restraint of Brennan*, 117 Wn. App. 797, 72 P.3d 182
20 (2003). "The evidence at issue must be favorable to the accused, either because it is exculpatory
21 or because it is impeaching;" *Id.* at 805. The failure to turn over the evidence that Deputy
22 Schrimpsheer was under investigation for dishonesty by the King County Sheriff's Office is
23 reversible error.
24

25 In the present case, the prosecuting attorney did not turn over evidence of previous
26

1 misconduct by Deputy Schrimpscher. The prosecutor's office failed to disclosed that deputy
2 Schrimpscher was under investigation by the King County Sheriff's Department, his own
3 employer, for charges he had been dishonest in other cases. This failure to reveal highly relevant
4 and probative information about the state's sole witness is reversible error. The Washington
5 State Supreme Court has held,

6
7 . . . evidence is "material" and therefore must be disclosed under Brady only if 'there is a
8 reasonable probability that, had the evidence been disclosed to the defense, the result of the
9 proceeding would have been different.'

10 *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 396, 972 P.2d 1250 (1999) quoting *United*
11 *States v. Bagley*, 473 U.S. at 682. The Court further has defined reasonable probability as well.
12 "A 'reasonable probability is a probability sufficient to undermine confidence in the outcome.'"
13 *State v. Benn*, 120 Wn.2d 631, 649 (1993) (overturned on other grounds) quoting *Bagley*, at 682.

14 The information withheld by the prosecutor was material in that Mr. Simmons'
15 conviction was based on the testimony of one witness, Deputy Schrimpscher and evidence
16 collected by the same man. When the conviction draws from the personal reputation of Deputy
17 Schrimpscher, knowing whether that source can be trusted is vital to the jury. The prosecution's
18 failure to provide information that cast such serious doubt on the reliability of the deputy,
19 deprived the jury of highly significant information in making their judgments of credibility.
20 Without the information from the Sheriff's office, Mr. Simmons was reduced to asserting his
21 word, the word of a criminal defendant, against an officer of the law. Had the jury been informed
22 that the King County Sheriff's Office also had reason to doubt Deputy Schrimpscher's
23 truthfulness, the case would have gone differently.

24
25 Nor can the prosecution claim ignorance as a defense. Case law is quite clear that in
26 cases such as the current case,

1 *Brady* requires only that prosecutors discover and disclose "any favorable
2 evidence known to the others acting on the government's behalf in the case,
3 including the police." . . .the prosecution cannot avoid *Brady* by keeping itself
4 ignorant of matters known to other state agents.

5
6 *Gentry*, at 399 (citations omitted). Thus, the prosecutor's office failed to comply with its duty to
7 turn over the information to the defendant as required by *Brady*.

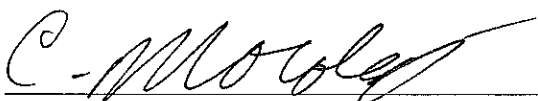
8 **V. AUTHORITY**

- 9 1. CrR 7.8[c]
10 2. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)
11 3. *In re Pers. Restraint of Brennan*, 117 Wn. App. 797, 72 P.3d 182 (2003)
12 4. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 396, 972 P.2d 1250 (1999)
13 5. *State v. Benn*, 120 Wn.2d 631, 649 (1993)
14

15
16 **V. CONCLUSION**

17 Mr. Simmons currently lives with a conviction on his record. The sole witness against
18 him is a man who was fired for dishonesty. Because the prosecution withheld material evidence
19 of the dishonesty of Deputy Schrimpsheer, and because such evidence seriously undermines the
20 confidence in the verdict justice demands the court vacate the verdict of the court.
21

22 RESPECTFULLY SUBMITTED this 15th day of December, 2009.

23
24 
25 CHRISTOPHER A. MORALES WSBA# 41364
26 Attorney for Plaintiff

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

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

STATE OF WASHINGTON)	CAUSE NO. 06-1-10363-3 SEA
)	
v.)	AFFIDAVIT OF ATTORNEY
)	
James Simmons,)	
Defendant)	
)	
)	
)	

TO: The Clerk of the above entitled court, and
TO: All other parties and their counsel of record.

COMES NOW the attorney of record for James Simmons in the above-named case,
Teresa L. Conan, who makes the following declaration:

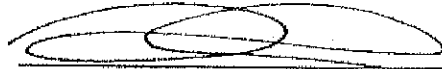
I did not receive written or oral information from the prosecuting attorney's office
indicating that the arresting officer, Deputy/Officer Schrimpsheer, was under an active internal
investigation for dishonesty in carrying out his official duties.

My office sent out a notice of appearance and demand for discovery on 12/12/06 which
included a request for all exculpatory evidence among other evidentiary demands. (see # 7 of
attached document).

Exhibit A

1 I declare under penalty of perjury under the laws of the State of Washington that
2 the foregoing is true and correct to the best of my knowledge.

3 DATED this November 16th, 2009.
4

5 

6 Teresa L. Conlan, WSBA No. 31026
7 Attorney of record under above named cause number
8 for James Simmons
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

STATE OF WASHINGTON

CAUSE NO. 06-1-10363-3 SEA

Plaintiff,

vs.

JAMES EDWARD SIMMONS

Defendant.

NOTICE OF APPEARANCE AND
DISCOVERY DEMAND PURSUANT TO CrR 4.7

Ct. Date: 12/18/2006
Ct. Time: 8:30 AM
Purpose: Confirmation of New Counsel

TO: CLERK OF THE SUPERIOR COURT
NORM MALENG, Prosecuting Attorney
FILING DEPUTY in the above matter

YOU WILL PLEASE TAKE NOTICE that the undersigned is appearing as counsel for the above named defendant.

YOU ARE HEREBY REQUESTED to provide the discovery of the following materials as provided for by statute cited above, so that a timely decision may be made regarding selection of a trial date, setting of any pretrial motions, or changing the plea; said materials to be provided no later than one week prior to the date set for Omnibus Hearing;

1. The names and address of person(s) whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;
2. Any written or recorded statements and the substance of any oral statements made by the defendant, or made by any co-defendant if the trial is to be joined;
3. Any reports or statements of experts made concerning or as the result of any physical or mental examinations, and any scientific tests, experiments, or comparisons;
4. Any record of prior criminal convictions, known to the prosecuting attorney, of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the trial or sentencing;
5. A complete list of any book, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the defendant or any co-defendant;
6. Any child hearsay statements intended to be introduced;

Page 1 of 2

NOTICE OF APPEARANCE AND
DEMAND FOR COMPLETE DISCOVERY

Northwest Defenders Association
900 4th Avenue Suite 3700
Seattle, WA 98164
(206) 674-4700 Fax: (206) 674-4702

WAL 6-10543
Bin / Client ID: 202455

7. Any evidence which might be exculpatory and the preservation of same;
 8. Any information which indicates duress, entrapment, diminished capacity or insanity;
 9. It is further requested that the State produce in court any experts or technicians whose reports, maintenance record, tests, or opinions it intends to rely upon, pursuant to CrR 6.13 (b) (3) (iii);
 10. Any electronic surveillance, including wiretapping, of the defendant's premises or conversations to which the defendant was a party and any record thereof;
 11. Any relevant material and information regarding any searches and seizures in this case and the relationship, if any, of any witness to the prosecuting authority.
- The request for the above materials is not intended to be all-inclusive, and the request is on-going.

DATED: 12/12/2006

NORTHWEST DEFENDERS ASSOCIATION
for: Teresa L Conlan
Lawyer
Wash. State Bar No.: 31026

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

THE STATE OF WASHINGTON,

Plaintiff,

NO. 06-1-10363-3 SEA

v.

DECLARATION OF JAMES SIMMONS

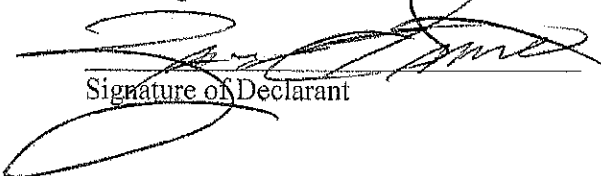
JAMES SIMMONS,

Defendants.

Since being flown into the city of Seattle in the year 2007 to perform IT Consulting, I James Simmons found myself being arrested and subsequently convicted and sent to prison for a crime that I did NOT Commit, and now for the very first time in my life being faced with having a felony conviction on my record, I can now no longer utilize my skillset, as a IT Professional to support myself any longer, and now find myself being reduced to having to sleep in the shelters and the streets of the city of Seattle for almost two years. I have been searching for work since my 2007 release from incarceration and have found that this felony conviction has basically completely destroyed any possibility of my EVER being able to work as an IT Professional for most companies again. I have been hired then fired almost IMMEDIATELY based on the information about the conviction that is on my record, The most recent hiring and immediate dismissal happened the month of August when I was hired for a contract through Modis IT for a contract in Pittsburgh . I also can NEVER again work for the Majority of the Fortune 500 companies who in the past have contracted me for my services.

I have also been turned away from the Majority of attorney's assistance due to my inability to pay them for services rendered. My having to face being sent to prison and upon my release, having to deal with the hard reality of what having a felony conviction means to a man of almost 50 years of age, whom has dedicated over 30 years of his life to becoming a reputable IT Consultant and now find myself being reduced to having to become a new member of the homeless population, has now created a need to be treated for Post Traumatic Stress Syndrome. A Disability that not only is very costly but also psychologically as well as mentally damaging to my overall health and welfare.

I declare under penalty of the laws of the state of Washington that the foregoing is true and correct. Signed this 4th day of December, 2009, at Sea Hle, Washington.


Signature of Declarant

JAMES SIMMONS
Print or Type Name

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

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

In re:

THE STATE OF WASHINGTON,

Plaintiff,

vs.

JAMES SIMMONS,

Defendent.

NO. 06-1-10363-3 SEA

ORDER TO VACATE
(PROPOSED)

THIS MATTER having come before the Honorable Greg Canova, judge of the above entitled court, upon the motion of Mr. Simmons to vacate judgment of guilt entered August 28th, 2007; and the court finding that the motion was timely and that the prosecuting attorney's office did withhold required exculpatory evidence in violation of law; now, therefore, it is hereby

ORDERED that the motion to vacate is granted. And the matter referred to the King County Prosecuting Attorney's Office for trial or dismissal of the charges against Mr. Simmons.

DATED: _____, 2009.

GREG CANOVA, JUDGE

Preble Law Firm, P.S.
Attorneys at Law
State & Sawyer Building, Suite 101
2120 State Avenue N.E.
Olympia, Washington 98506
(360) 943-6960 FAX: (360) 943-2603

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

Presented by:

CHRISTOPHER A. MORALES, WSBA #41364

Approved:

, WSBA #
Attorney for State of Washington

Preble Law Firm, P.S.
Attorneys at Law
State & Sawyer Building, Suite 101
2120 State Avenue N.E.
Olympia, Washington 98506
(360) 943-6960 FAX: (360) 943-2603