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

STATE OF WASHINGTON

Plaintiff,

v.

Jeffrey Nelson

Defendant.


No. **20-1-06432-3KNT**

- I. MOTION FOR AN ORDER TO CHANGE JUDGE, AFFIDAVIT OF PREJUDICE, AND IN THE ALTERNATIVE, DISQUALIFICATION OF A JUDGE
- II. DECLARATION IN SUPPORT TO CHANGE JUDGE PER RCW 4.12.040, RCW 4.12.050, CrR 8.3(B) AND CrR 8.3(A) IN THE ALTERNATIVE

**I. MOTION**

The undersigned, based on the following declaration, respectfully moves the court for an order regarding a change of judge pursuant CrR 8.3 (b), RCW 4.12.040, RCW 4.12.050 and CrR 8.3(a) in the alternative.

Signed and, on DATED this 3<sup>rd</sup> day of September 2020,

  
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Alan E. Harvey, WSBA # 25785  
ATTORNEY FOR Jeffrey Nelson

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## II. DECLARATION

I, Alan Harvey make the following declaration:

1) I am Alan E. Harvey, attorney for Jeffrey Nelson in the above-entitled action. I am over the age of eighteen (18), I am competent to testify to the facts set forth herein and make this declaration upon personal knowledge. I am making this statement of my own free will.

2) Based upon the record in this matter, the facts set out below, and after consultation with my client, I believe that a fair and impartial hearing and/or trial in this case cannot be had before King County Superior Court Judge Veronica Galvan, the next currently scheduled hearing is set to occur on the 22<sup>nd</sup> of September 2020. There have been no discretionary decisions per RCW 4.12.050 or RCW 4.12.040, that preclude this motion.

3) On the 20<sup>th</sup> of August 2020 Jeffrey Nelson was a Police Officer employed by the City of Auburn. On the 24<sup>th</sup> of August 2020, Jeffrey Nelson had been placed on administrative leave prior to appearing in King County Superior Court.

4) On the 20<sup>th</sup> of September 2020, King Count Special Deputy Prosecuting Attorney Mark Larson filed a Motion for Order for Summons in this matter. On the same date Mr. Larson filed an Information and Certification of Probable Cause. The Certification of Probable Cause and Information were incorporated by reference into the Motion for the Order for a Summons. Mr. Larson cited to CrR 2.2 as a basis for his request that a Summons be issued. Mr. Larson's documentation in

1 support of his Motion for a Summons contained no evidence of criminal history  
2 relating to Jeffrey Nelson. It is apparent that no evidence was provided to the  
3 court outside of the written Motion for a Summons in this matter. Mr. Larson  
4 provided no evidence to the court on his Motion for a Summons regarding that  
5 Mr. Nelson was believed to be at risk of not appearing on a Summons. Mr.  
6 Larson provided no evidence in the documentation provided to the court that if  
7 the Mr. Nelson were not working in his capacity as law enforcement that Mr.  
8 Nelson was a risk of committing a violent offense. Mr. Larson provided no  
9 evidence to suggest Mr. Nelson had attempted to contact witnesses or was risk  
10 of doing the same. Mr. Larson provided no evidence that Mr. Nelson was a  
11 threat in any way to the administration of justice. Mr. Larson indicated in his  
12 Summary of the Case attached to the Certificate of Probable Cause that CrR 2.2  
13 requires that bail and a warrant only be imposed if there is evidence that the  
14 accused is in custody, is a flight risk, is a *risk to commit a violent offense or will*  
15 *tamper with witnesses or evidence*. Mr. Larson indicated to the court that “There  
16 is no evidence to support a request for bail under this rule” with the additional  
17 indication “provided that Officer Nelson is not working in law enforcement as an  
18 officer.” On the 20th of September 2020, King County Superior Court Judge  
19 Catherine Shaffer, after reviewing and considering all of the above facts provided  
20 by Mr. Larson authorized an Order for Summons in the matter and ordered only  
21 that Mr. Nelson surrender his firearms. No bail amount was set in line with the  
22 facts and the law.  
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1 5) The Information alleged two counts in this matter, one count of Murder in the  
2 Second Degree, on the theory that Jeffrey Nelson committed the crime of Murder  
3 in the Second Degree pursuant to RCW 9A.32.030(1)(b), i.e. that while he was  
4 engaged in the commission of a felony assault, and, in the course of and/or in  
5 furtherance of the felony assault, or in immediate flight therefrom, he allegedly  
6 caused the death of a person.

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8 6) It understood that Mr. Nelson surrendered all of his firearms prior to his  
9 appearance in King County Superior Court on the 24<sup>th</sup> of September 2020.

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11 7) Mr. Nelson appeared at 8:30 a.m. at the RJC at 8:30 a.m. before Superior Court  
12 Judge Veronica Galvan in line with his Summons. A transcript of the  
13 proceedings has been included as exhibit #A. Exhibit A is a true and accurate  
14 copy of a transcript of the proceedings. Judge Galvan moved forward with  
15 arraignment and Mr. Nelson was arraigned on the original Information and  
16 pleaded not guilty to Count 1: Murder in the Second Degree and Not Guilty to  
17 Count 2: Assault in the First Degree.  
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21 8) On the 24<sup>th</sup> of August 2020, Mr. Larson provided no new facts during his  
22 presentation to Judge Galvan. In line with CrR 2.2, Mr. Larson provided  
23 information to Judge Galvan, that was essentially identical to his filings before  
24 Judge Shaffer. Mr. Larson's presentation before Judge Galvan covered the  
25 exact same criteria that is set out in CrR 2.2, but this time the criteria covered  
26 was addressed in reference to CrR 3.2.1. As there were no new facts, Mr.  
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1 Larson made a recommendation in line with his written recommendation for the  
2 application for summons.

3  
4 On the 24<sup>th</sup> of August 2020, Judge Galvan heard from Ms. Elaine Simons, on  
5 behalf of the alleged victim in line with RCW 7.69. Ms. Simons offered no new  
6 evidence or facts relevant to any factor set out in CrR 3.2.1.

7  
8 On the 24<sup>th</sup> of August 2020, I indicated to the court that Mr. Nelson was not a  
9 flight risk due to being aware for 15 months that the matter was being  
10 investigated. Further, I confirmed to the court that Mr. Nelson had complied with  
11 the Order to Surrender his firearms. I indicated to the court that Mr. Nelson was  
12 not currently working in his capacity as an Auburn Police Officer and would be at  
13 home in compliance with the terms of his administrative leave. The clear  
14 indication being that Mr. Nelson would be subject to termination of his  
15 employment if he violated the terms of his administrative leave. On the 24<sup>th</sup> of  
16 August 2020, the Judge Galvan was provided with no new facts to support an  
17 imposition of bail pursuant to CrR 3.2.1 than were considered four days earlier by  
18 Judge Shaffer. On the contrary Judge Galvan was provided only facts that  
19 would support release upon personal recognizance.  
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24 9) On the 24<sup>th</sup> of August 2020, the video media were located inside the courtroom.  
25 From communications received prior to the hearing it is understood that Judge  
26 Galvan controlled the process and the courtroom in which Jeffrey Nelson was  
27 located.

1 10) On the 24<sup>th</sup> of August 2020 Judge Galvan agreed that both parties were right  
2 regarding their interpretations as to CrR 3.2.1.

3 Judge Galvan indicated the CrR does presume release in noncapital cases  
4 because there is a presumption of innocence and that this based upon  
5 fundamental principles the constitution. However, the court then indicated that  
6 she was surprised that Mr. Larson was arguing from a “principled standpoint”  
7 and then referred to other cases. There was a clear reference to some other  
8 unrelated matter, not Mr. Nelson’s, where a case 25 years old and there was a  
9 bail request. At no time during the hearing was this reference tied to Mr.  
10 Nelson. There was no factual relationship and no known legal relationship per  
11 CrR 3.2.1 made by Judge Galvan to Mr. Nelson’s case. Judge Galvan then  
12 commented on her experience of 17 years and that she had not seen in my  
13 memory a filing by summons for the charge of murder in the second degree. At  
14 time during the hearing was this fact associated with the facts in Mr. Nelson’s  
15 matter and the application of CrR 3.2.1.

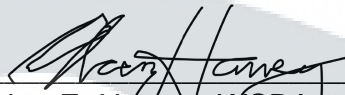
16 Judge Galvan, before the media and open court accused Mr. Larson of “  
17 turning itself into **pretzels** to explain to me why the rule applies” to Officer  
18 Nelson. The court indicated “I know the rule applies.” The court then stated  
19 that Mr. Nelson’s matter was an “intentional murder.” This statement is not  
20 supported by the filing of a Murder in the Second Degree as currently charged.  
21 The court then focused on Mr. Nelson’s profession and that “merely wearing a  
22 uniform means that somehow he cannot be violent in any other circumstance  
23 is not an argument that sits well with this court.” The court concluded by  
24 indicating merely due to the nature of the offense and without any new facts Mr.  
25 Nelson was a “flight risk.” The court then indicated that due to the nature of  
26 his profession Mr. Nelson was likely to commit violent offenses.

27 From a review of the record it appears that the lack of evidence to support any  
factors under CrR 3.2.1 and solely based upon Mr. Nelson’s profession a bail of  
\$500,000 was imposed. It also appears that the court admonished the

1 assigned prosecutor for making a ethical and legal request based upon the  
2 facts. It appears from the record there is also evidence as set out above of  
3 actual bias in this matter.

4 **I UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF**  
5 **WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT**

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7 Signed at Vancouver, Washington, on DATED this 3<sup>rd</sup> day of September 2020.

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11 Alan E. Harvey, WSBA # 25785  
12 ATTORNEY FOR Jeffrey Nelson  
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