

No. 897565

SUPREME COURT OF THE STATE OF WASHINGTON

COURT OF APPEALS DIVISION II No.43591-8-II

Jeffrey Scott Ziegler,

Petitioner,

v.

State of Washington,

Respondent.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2011 FEB 18 A 8 26
BY RONALD N. CARPENTER
CLERK

MOTION FOR DISCRETIONARY REVIEW, RAP 13.1(a)

Pro Se Jeffrey Scott Ziegler

DOC# 886970, Unit H3-A-75-L
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520-9504

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Table of Cases

A. IDENTITY OF PETITIONER

Comes Now, Jeffrey Scott Ziegler, asks this court to accept review of the decision or part of the decision designated in part B of this motion.

B. CITATION TO COURT OF APPEALS DECISION

Petitioner seeks review of the decision of the Court of appeals in case:

It stated pg.1 Facts:...three sentence hearings (Ziegler was never remanded as per 2007 Unpublished Opinion—Judgment and Sentence Correction) pg.2 Analysis CrR Transfer of Motions(Ziegler argues errors in trial court transferring 2010 Motion to Dismiss and 2012 Motion Objecting to Transfer to this court CrR 7.8(c) (2)without notice and an opportunity to be heard.)Contrary to Court precedents Court of Appeals stated: "we need not revisit this issue[s].Smith,144 Wn.App. 860,863(2008); Statement of Addition Grounds(SAG) pg.3 claims 1-5:"The first & sixth claims have no merit, and we do not consider the other claims;we find no error. a copy of that decision is attached to this motion as Appendix ;pg.5(2)State Request for Reversal "The State asks this court to reverse the trial court's denial of May 2012 motions & remand for further proceedings[per]trial court erred in entering an order of dismissal..."[We] determined...this opinion will not be printed."

C. ISSUES PRESENTED FOR REVIEW

To justify review, a COA decision must be in conflict with a Supreme Court decision, RAP 13.4(b)(1), another COA, (b)(2), present a significant question of law under a constitution, (b)(3), or involve an issue of substantial public interest, (b)(4).

Sentencing Issues/Invalid Judgment & Sentence

(1)in conflict with Labar, 128 Wn.app.343;115 p.3d 1038(2005) remand & appeal (Wash.Ct.app.,Apr.17, 2007)"II.Out-Of-State Convictions Comparibility Analysis [4][5] ¶14 We review a challenge to the classification of an out-of-state conviction de novo. State v. McCorkle, 88 Wn.App. 485, 493, 945 P.2d 736 (1997), aff'd, 137 Wn.2d 490, 973 p.2d 461(1999). When prior out-of-state convictions are used to increase an offender score, the State must prove the conviction would be a felony under Washington law.Fmr RCW 9.94A.360(3)(2000), recodified as RCW9.94A.525, LAWS of 2000, ch.28,§15;Cabrera,73 Wn.App.at 168-69.See also State v. Duke, 77 Wn.App.532, 535-36, 892 p.2d 120(1995)(for eign conviction could not be included in offender score because State failed to prove underlying conduct met statutory elements under Washington law).. The State bears the burden of establishing the classification of prior out-of-state convictionsState v. McCorkle, 137 Wn.2d 490, 495, 973 P.2d 461 (1999);Ford,137 Wn.2d472,479/Morley,134Wn.2d588 —(1a)in conflict with Almandarez-Torres v. U.S.,523U.S.224,247,118S.Ct.1219(1998).Th The Supreme Court held that prior convictions are sentence enhancements..."Apprendi v New Jersey, 530U.S.466, 120 S.Ct.2348,(2000);In Wheeler,145Wn.2d116,34P.3d799(2001)cer denied, 535U.S.996(2002);Ring v. Arizona, 536U.S.584,122S.Ct.2428,(2002)stating:"If a State makes an increase in a defendant's punishment..that fact...must be found by juryId602.

Sentencing/Invalid Judgment and Sentence

(2) in conflict with community custody condition 16 which prohibits the purchasing, possessing, or perusing pornographic material without prior approval is vague because it leaves the definition of "pornographic materials" up to a therapist and/or CC O. Citing State v. Bahl, 164 Wn.2d 739, 193P.3d678(2008).& U.S.Const. Amendment 1

(3a) in conflict with community custody condition 14 which states: "you shall submit to "plethysmograph" examinations, ... at the direction of your community corrections Officer." State v. Land, 172 Wn.App.593,295P.3d 782(2013) violates Constitutional right to be free from bodily intrusions...it may not be viewed as a routine monitoring tool subject only to the discretion of community custody officer." 172Wn.App.606.

(4a) in conflict with State v. Land, Id. "mere possession of drug paraphernalia is not a crime.(citing State v. George, 146 wash.App.906,918,193P.3d693(2008) And prohibiting it does not serve as a monitoring function...Condition must be stricken because it is not crime related.

(5a) in conflict with State v. Land, 172Wn.App.782..."The trial court, not the [DOC] is required to reduce an offenders term of community custody to ensure that the total sentence is within the statutory maximum." West's RCWA9.94A.74(9) citing Blakely v. WA. 542 U.S.296,124S.Ct.2531(2004); See also U.S.v.Booker, 543U.S.220,125S.Ct.738(2005) and RCW9.94A.400 results in a presumptive sentence that is clearly excessive...RCW9.94A.010

(3) in conflict with In re...Carter, 172Wn.2d917,(2011) Actual Innocence Doctrine Murray v. Carrier, 477U.S. at 496; Sawyer, 505, U.S. at 372, 348; Justice Black Once said, "[It] is never too late for courts...to look straight through procedural screens in order to prevent forfeiture of life or liberty in flagrant defiance of the Constitution." Brown v. Allen, 344U.S.443, 554, 73S.Ct.397(1953); ... "whether the Constitutional error undermined the accuracy ." Id. at 170-71 (quoting Smith v. Murray, 477U.S.527 538-39,106S.Ct.2661(1986) Unlawfully restraining someone for the remainder of his life or her life under a persistent offender sentence would represent a manifest injustice necessitating that we look through procedural screens such as the timebar to prevent a forfeiture of liberty." See Mathew Mattingly, actually less guilty: the extension of the Actual Innocence Doctrine (Exception) to the sentencing phase of non-capital cases 93 Ky.L.J. 531, 544-46(2004)

(4) in conflict with RCW9.94A.701(9) "[T]he terms of community custody specified by this section shall be reduced by the court whenever an offender standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime..." State v. Zavala-Reynoso, 127Wn.App.119,110P.3d827(2005) and RCW 9.94A.505(5)/RCW 9.94A.701(9)/RCW 9.94A.599; In re Davis, 67Wn.App.183P.2d(1992)

D. STATEMENT OF THE CASE

State v. Hardesty, 129 Wn.2d303,315,915P.2d1080(1996)
State v. Broadway, 129Wn.2d118,942P.2d363(1997)
State v. Bepple, 85Wn.2d378,380,535P.2d813(1975)

See ~~attached~~ Motion Objecting to Transfer

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED under RAP 13.4(b)

See ~~Attached~~ Motion Statement of Additional Grounds for Review

WASHINGTON SUPREME COURT
CAUSE # 897565

Court of Appeals Div. II

Cause # 43591-8-II
(Clark County Superior Court
Cause # 05-1-01088-6)

MOTION For Discretionary Review /
(Petition For Review)

Exhibits

CLERK

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2014 FEB 18 A 8:17
BY SHILOH R. DANFORTH

TO: CLARK COUNTY PRESIDING JUDGE

P.O. Box 5000, Franklin Center
Vancouver, Washington
98666-5000

CLARK COUNTY PROSECUTOR'S OFFICE
Mr. Kimberly Farr - Deputy Prosecutor
P.O. Box 5000, 1013 Franklin
vancouver, Washington 98666-5000

CLARK COUNTY SUPERIOR COURT CLERK
1200 Franklin St., First Floor
P. O. Box 5000
Vancouver, Washington 98666-5000

CLARK COUNTY TRIAL JUDGE
Honorable Judge Diane Woolard
P.O. Box 5000, 1200 Franklin
Vancouver, Washington 98666

RECEIVED
SUPERIOR COURT
STATE OF WASHINGTON
2010 FEB 18 A 8:17
BY RYAN L. CARPENTER
CLERK

FROM: JEFFREY SCOTT ZIEGLER
AIRWAY HEIGHTS CORRECTION CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

RE: MOTION TO DISMISS PURSUANT TO CrR 3.3(h); and CrR 8.3(b)

TO ALL NAMED PARTIES ABOVE:

OCTOBER 29, 2010

Enclosed please find the Notice/Motion/Memorandum/Affidavit w/ attachments that I have prepared for resolution by the Superior Court. I do want to make it clear that I feel my trial judge will not be impartial to me and I am requesting that this Superior Court's presiding judge hear this motion.

Due to the irregularities in the proceedings, I feel it is very important that this mater receive this Court's utmost and urgent attention. The interests of justice so require it and nunc pro tunc orders to remedy these very irregularities which deprived the defendant of several personal rights where the ending result was prejudice which cannot be isolated.

Also, note that I would like the presiding judge to know that I have not prepared a proposed order due to the gravity and nature of the motion contents, therefore I felt it would be better to leave this order up to the individual judge assigned to entertain this motion on the merits.

Please note the motion for the date on the note for docket and enter an order of transport so I may be present during the hearing.

Sincerely,

Jeffrey S. Ziegler-pro se

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2010 FEB 18 A 8:17
BY RSHALDI R. CARPENTER

~~IN THE SUPERIOR COURT~~ IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
CLERK IN AND FOR CLARK COUNTY

STATE OF WASHINGTON,]
] Plaintiff,] No. 05-1-01088-6
] vs.] NOTICE OF MOTION AND MOTION TO
] DISMISS INFORMATION FOR IRREGULARITIES
JEFFREY S. ZIEGLER,] IN THE PROCEEDINGS DEPRIVING DEFENDANT
] OF A SPEEDY TRIAL; MEMORANDUM OF POINTS
Defendant.] AND AUTHORITIES IN SUPPORT THEREOF;
] AFFIDAVIT OF JEFFREY S. ZIEGLER
]

TO: CLARK COUNTY SUPERIOR COURT CLERK; and
TO: CLARK COUNTY PROSECUTING ATTORNEY

PLEASE TAKE NOTICE that on November 29, 2010 at the hour of 9:00
am, or as soon thereafter as counsel can be heard, Defendant Jeffrey S.
Ziegler, pro se, will move this Court to dismiss the information and said
subsequent convictions due to irregularities in the proceedings preventing
the Defendant from receiving a: (a) proper and timely probable cause hearing;
(b) a timely arraignment hearing; and (c) a speedy trial.

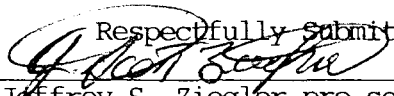
The irregularities rendered government misconduct to which a
claim for relief may be granted according to long standing laws.

This motion will be based upon this Notice, the attached memo-
randum of points and authorities, the affidavit of Jeffrey S. Ziegler, the
pleadings and records on file herein, and upon such other and further
argument as may be presented to the Court at the hearing of this matter.

////

JEFFREY S. ZIEGLER-886970-NB-27-U
AIRWAY HEIGHTS CORRECTION CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

1 Dated this 29th day of October, 2010.

2 Respectfully Submitted,
3 
Jeffrey S. Ziegler-pro se

4 MOTION

5 Defendant Jeffrey S. Zieger, pro se, hereby moves the Court for
6 an order of dismissal of the information and subsequent convictions due
7 to irregularities in the case proceedings depriving the Defendant of his
8 right to: (a) have probable cause determined in a timely manner; (b) have
9 his arraignment hearing occur within fourteen (14) days; and (c) a speedy
10 trial. Such irregularities renders the entire conviction void as a matter
11 of law.

12 Further, this motion comes by way of the Defendant's invoking
13 of this Court's jurisdiction pursuant to CrR 3.3(h) and CrR 8.3(b) to hear
14 the claims raised herein which violated the provisions of the Sixth and
15 Fourteenth Amendments to the United States Constitution and Const. art.
16 1, section(s) 3 and 22. See also 18 U.S.C.A. §§ 3161 and 3162.

17 Dated this 29th day of October, 2010.

18 Respectfully Submitted
19 
Jeffrey S. Ziegler-pro se

20
21 MEMORANDUM OF POINTS AND AUTHORITIES
22 1. INTRODUCTION.

23 The widespread, pervasive and willful failure to comply with
24 the strict time restrictions found in the Superior Court Rules often times
25 go unpunished leaving the Defendant's and Public's interest violated.

26 As such, Mr. Ziegler's case is a classic example of a conviction

1 counts of Child molestation in the first degree in violation of RCW
2 9A.44.083. See Affidavit of Mr. Ziegler at ___; Attachment 1 at 1; Attachment
3 5.

4 4. On May 20, 2005 (15 days after Mr. Ziegler was arrested)
5 Mr. Ziegler was brought before the Court for his arraignment proceeding.
6 See Affidavit of Mr. Ziegler at 2; Attachment 1 at 2; Attachment 2 at
7 VRP 3-6.

8 5. On June 9, 2005 Mr. Ziegler was brought before the Court
9 for an omnibus proceeding. See Affidavit of Mr. Ziegler at ___; Attachment

10 3. During this omnibus proceeding the following events relevant to this
11 motion occurred:

12 PROSECUTOR: Next up will be Jeffrey Ziegler, that's No.
13 31 on your criminal docket.

14 MR. FARR: Your Honor, this matter is on for omnibus which
15 Mr. Barrar has spelled out and I'm presenting to the
16 Court...[a]nd it's on for a state motion for a continuance
17 because Detective Aaron Holladay will be out of town during
18 the time period of the presently given trial of 7/11. He is
19 gone from 7/7 to 7/19.

20 MR. SIMPSON: And, Your Honor, Defense has no objection to
21 a continuance as long as the trial is set within speedy.

22 THE COURT: Well, was Mr. Ziegler being held on this matter?

23 MR. SIMPSON: Yes, Your Honor...

24 THE COURT: Well, the reason I asked is the May 20th the
25 scheduling order says trial was set for July 11th, which
26 was 6 days elapsed.

MR. SIMPSON: I think -- is that an error, the 66?

MR. FARR: That's what we were trying to figure out as well,
whether that was supposed to be 56, because he was in custody,
obviously it shouldn't be 66.

MR. SIMPSON: May, June, July --

THE CLERK: When was the trial set originally?

MR. FARR: It was set on 5/20 for July 11th.

MR. SIMPSON: I calculated 52, but mine can't be trusted.

THE COURT: May 20th a July 11th trial would have been 41 days
elapsed.

MR. FARR: Then I don't know why it's --

THE COURT: No, no, no, wait, wait wait. Never mind. I'm
reading the wrong date here...May 20th July 11th would have
been 52 days elapsed.

1 MR. SIMPSON: That's what I got.
THE COURT: I don't know where we got --
2 MR. SOMPSON: Yeah, I think 66 was an error.
MR. FARR: The difficulty is, again, the officer's going
3 to be gone till the 19th.
THE COURT: Well, that would be the 60th day. Will he be
4 back on the 19th?
MR. FARR: I -- well, he -- my -- my notes from the
5 secretary indicate gone from 7th through 19th, so I
think the 19th he would still be gone.
6 THE COURT: (Pause; reviewing calendar.) Set it for July 25th.
That's within the cure period, and I find there is good
7 cause for the continuance. So July 25th, 9:00. July 21st
at 1:30 will be the new readiness date.
8 THE CLERK: So it will stay at 52 days since it's within the
cure?
9 THE COURT: Well, the trial -- and you may want to prepare --
THE CLERK: Do you want me to do one of the trial resetting
10 notices instead of a scheduling order?
THE COURT: May 20th was the -- yeah, May 20th was the
11 arraignment date. I'm setting the matter for July 25th, which
actually is 6 days elapsed. I'm doing so because I find
12 good cause to continue the matter outside the speedy trial
rule because of the planned vacation of the necessary
13 witness, that's within the cure period allowed by the court
rules. So I will reset the trial date to that day...
14 See Affidavit of Mr. Ziegler, Attachment 2 at VRP 3-6.

15 6. On July 18, 2005, the defense lawyer sought a 60 day continuance
16 asserting that Mr. Ziegler had an incident in the jail which the lawyer
17 was prevented from communicating with Mr. Ziegler. See Affidavit of Mr.
18 Ziegler, Attachment 3 at VRP 9-11.

19 The trial court reset the speedy trial date to September 19, 2005.
20 Id. at VRP 10. (No record was made of whether prejudice would occur).

21 7. On September 9, 2005 the state sought a continuance for a couple
22 of weeks asserting that it needed time to have the alleged victim and her
23 mother arrive from California. The trial court granted a continuance but
24 did not make record of the new speedy trial date and further did not make
25 any record of whether or not Mr. Ziegler would be prejudiced. The defense
26 lawyer objected to and opposed this continuance. See Affidavit of Mr.

1 Ziegler, Attachment 4 at VRP 14-15.

2 The following chart is illustrative of the irregularities in the case
3 proceedings establishing that the strict and explicit time restrictions of
4 CrR 3.2.1; CrR 4.1(a)(1), and CrR 3.3(b)(1)(i) were not adhered to causing a
5 deprivation of Mr. Ziegler's right to be afforded a trial had upon due
6 process of law:

7	ARREST	DATE: May 5, 2005	No information filed
8	PRELIMINARY APPEARANCE DATE:	May 13, 2005	Violates <u>CrR 3.2.1</u> . because it
9			is 8 days after the arrest and
10	INFORMATION	DATE: May 17, 2005	not within the 48 hours mandated
11	ARRAIGNMENT	DATE: May 20, 2005	by Court rule
12			Filed by State/4 Counts
13			Trial is set for July 11, 2005
14			which is 72 days after arrest and
15			56 days from the arraignment.
16			The arraignment is in violation
17	OMNIBUS	DATE: June 9, 2005	of <u>CrR 4.1 (a)(1)</u> because it was
18			not held 14-days after the
19			defendants arrest date. This
20			hearings setting of the trial
21			date for July 11, 2005 violates
22			the mandate of <u>CrR 3.3(b)(1)(i)</u>
23	CONTINUANCE	DATE: July 18, 2005	because the date is outside of
24			60 day speedy trial rule
25			Rest trial date for July 25,
26			2005. This hearing is void as a
			matter of law because the trial
			date set on May 20, 2005 at the
			arraignment for July 11, 2005 was
			violation of the speedy trial
			rule by 16 days(due to very
			irregularity in the arraignment
			date the speedy trial clock has
			to start on the arrest date)
			There was no record made as to
			whether or not the defendant
			would be prejudiced by the push
			This hearing was conducted 69
			days from arraignment and 74
			days from the arrest and since
			the previous continance is void
			this one is also void in law

////

1 The above chart illustrates that: (1) Ziegler was never afforded the
2 opportunity to have a preliminary appearance hearing conducted within 48
3 hours after his arrest; (2) Ziegler's case has never had any determination
4 of probable cause conducted within the first 48 hours (in fact, the case has
5 not one iota of evidence supporting that any determination of probable cause
6 ever occurred which nullifies the entire case); (3) Ziegler was deprived of
7 his right to be arraigned within 14 days from his initial arrest date, and
8 due to the irregularities of the proceedings set out in (1) and (2) supra,
9 the speedy trial rule operated from the initial date of arrest, not from the
10 arraignment, and therefore the trial court's trial date of July 11, 2005(72
11 days after Ziegler's arrest) deprived Ziegler of his right to due process of
12 law and a speedy and public trial; and (4) the subsequent trial court
13 proceedings are null and void as a matter of law and in violation of due
14 process of law.

15 A thorough analysis of the facts in this case clearly demonstrate
16 that Ziegler was not afforded due process of law related to and during the
17 preliminary appearance and arraignment hearings and in turn Ziegler's right
18 to have probable cause determined was never conducted and Ziegler's right
19 to a speedy and public trial was denied -- all structural errors subjecting
20 the convictions to be automatically reversed with an order of dismissal with
21 prejudice entered as a sanction to the State for its governmental misconduct
22 and mismanagement of the case which resulted in prejudice to Ziegler's
23 constitutional rights -- ill intended or inadvertance -- these convictions
24 must be reversed in the interest of justice and out of an abundance of
25 caution to Ziegler and the public.

26 ////

1 3. ARGUMENT AND AUTHORITY.

2 MR. ZIEGLER IS ENTITLED TO A REVERSAL OF HIS CONVICTION ACCOMPANIED WITH
3 AN ORDER DISMISSING THE CHARGES WITH PREJUDICE DUE TO THE GOVERNMENT'S
4 MISMANAGEMENT OF THE CASE PROCEEDINGS WHERE SAID IRREGULARITIES CAUSED MR.
5 ZIEGLER TO BECOME DEPRIVED OF HIS RIGHT TO: (1) HAVE A PRELIMINARY
6 APPEARANCE HEARING CONDUCTED WITHIN 48 HOURS AFTER HIS ARREST; (2) HAVE A
7 PROBABLE CAUSE DETERMINATION CONDUCTED WITHIN 48 HOURS OF HIS ARREST; (3)
8 HAVE A TIMELY ARRAIGNMENT HEARING WITHIN 14 DAYS OF HIS ARREST; AND (4) A
9 SPEEDY AND PUBLIC TRIAL AS AFFORDED UNDER DUE PROCESS OF LAW.

10 The Washington State Constitution contains a Supremacy clause which
11 declares that "[t]he Constitution of the United States is the supreme law of
12 the land." Const. art. 1, § 2. Further, our State Constitution renders that
13 this supremacy clause as set forth in the State Constitution is "mandatory,
14 unless by express words they are declared to be otherwise." Const. art. 1 §
15 29.

16 The Due Process clause of the Fourteenth Amendment to the United
17 States Constitution guarantees that "...no state shall...deprive any person
18 of life, liberty, or property, without due process of law..." U.S.C.A XIV.

19 Washington's constitution compliments this Federal due process clause
20 by the enactment of its own private rights provision which holds that, "[n]o
21 person shall be deprived of life, liberty, or property, without due process
22 of law." Const. art. 1, section 3.

23 However, unlike the federal constitution of the United States, our
24 Washington constitution contains an administration of justice clause which
25 states that, "[j]ustice in all cases shall be administered openly, and
26 without unnecessary delay." Const. art. 1, section 10.

A. The right to have a preliminary appearance hearing where
probable cause is determined by a judge within the first 48 hours
after an arrest is mandatory under the plain language of CrR
3.2.1(a) anything else would be to render the rule meaningless.

1 (i) STANDARD OF REVIEW. The statutory construction and interpretation
2 are questions of law that are reviewed de novo. State v. Farnsworth, 133 Wn.
3 App. 1, 11, 130 P.3d 389 (Div.II 2006). As with statutes, the plain meaning
4 of a rule's language must be considered. Also see Department of Licensing v.
5 Lax, 125 Wn.2d 818, 822, 888 P.2d 1190 (1995). When construing a statute or
6 rule, it should be read in its entirety, giving effect to all language so
7 that no portion is rendered meaningless or superfluous. Also see State v.
8 Keller, 143 Wn.2d 267, 277, 19 P.2d 1030 (2001). In addition, each provision
9 in a statute or rule should be viewed in relation to other provisions to
10 harmonize them. Id.

11 The Supreme Court, in desiring that all trials proceed in an orderly
12 manner, has set the structural framework within which a trial must occur
13 within. This framework can be codified as the Criminal Rules of the Superior
14 Court (CrR).

15 The expectation expressed in the rule surrounding a preliminary
16 appearance hearing is found under CrR 3.2.1(a) which holds:

17 A person who is arrested **shall have a judicial determination**
18 **of probable cause no later than 48 hours following the person's**
19 **arrest**, unless probable cause has been determined prior to such
20 arrest.
21 CrR 3.2.1(a)(emphasis added).

22 Ziegler was arrested on May 5, 2005 and was not brought before the
23 Court for his preliminary appearance hearing until May 13, 2005 (8 days
24 after his arrest occurred and 6 days after the preliminary appearance was to
25 have taken place). On May 13, 2005, without authority of law due to the
26 strict requirement that a determination of probable cause be made within 48
hours of the arrest -- not 8 days later, the docket shows that the trial
court never determined any probable cause as required before holding Ziegler

1 and making him answer to the charges -- the trial court's clerk docket entry
2 shows that on May 13, 2005 there was a "waiver of probable cause hearing"
3 entered. See Affidavit of Mr. Ziegler, Attachment 1 at 2 (sub#2).

4 This apparent waiver is in violation of due process of the law as
5 found under CrR 3.2.1(a); U.S.C.A. XIV; and Const. art. 1, section 3 as it
6 was made during a time when the trial court had let the 48 hours lapse which
7 the real probable cause determination was to be made in. Nothing in the rule
8 allows the trial court, eight days later, to bring Ziegler in and have a
9 mock preliminary appearance hearing and then enter a waiver of the probable
10 cause determination. To hold otherwise would be to render the constitutions,
11 procedural rules, and well settled laws by our forefathers completely and
12 utterly meaningless.

13 The State government, as a quasi-judicial person within the term had
14 a clear duty to ensure that Ziegler's constitutional and procedural rights
15 were upheld and that a probable cause determination occurred within the
16 mandatory 48 hours under CrR 3.2.1. By the government's failure to do so it
17 has completely mismanaged its case resulting in prejudice to Ziegler who as
18 to date has not had any determination of probable cause made in his case and
19 therefore the actions of the State constitute misconduct, bad-faith, false
20 assurances, and deception committed upon both the court and Ziegler requiring
21 a reversal of the convictions and a dismissal with prejudice order entered
22 as the sole remedy.

23 To the extent that the State argues that the defense lawyer is to
24 blame for the failure to have a determination of probable cause hearing in
25 the required 48 hour period, it is not the function of the defense lawyer to
26 act as a judicial officer or prosecutor, that function is entirely left with

1 the state prosecutor to make sure of. Even assuming, arguendo, that it was
2 the function of the defense lawyer in Ziegler's case to make sure the 48
3 hour clock was not breached, the defense lawyer contributed to the error by
4 "sleeping" on his clients rights and the invited error doctrine does not
5 preclude this issue from being raised. No law authorizes any defense lawyer
6 to attend a hearing 6 days after allowed by court rules and then waive the
7 defendant's right to have probable cause determined prior to forcing the
8 defendant to be held to answer to the charges -- to hold to such a theory is
9 absurd. Since there was not ever a probable cause determination and the
10 preliminary hearing was not conducted within the first 48 hours as required
11 by law, then it is safe to say that Ziegler's due process of law rights and
12 constitutional safeguards have been tossed away resulting in a complete
13 miscarriage of justice which a fair and impartial trial was not had and the
14 interest of both the public and justice require reversal as the only proper
15 remedy to the state for the mismanagement.

16
17 B. The right to be arraigned within 14 days after the arrest
18 is guaranteed under CrR 4.1(a) and since the state failed to
19 have Ziegler arraigned in that 14-day period of time, the law
20 requires that the speedy trial rule operates from the actual
21 date of the arrest, not arraignment, and therefore Ziegler was
22 deprived of his right to a speedy and public trial.

23 The strict requirement that a person be arraigned within 14 days of
24 an arrest can be found in CrR 4.1(a) (1) which holds in relevant part:

25 The defendant **shall be arraigned not later than 14 days**
26 **after** the date the information...is filed in the adult
division of the superior court, if the defendant is (i)
detained in the jail of the county where the charges are
pending...
CrR 4.1(a)(1)(emphasis added).

1 A judgment, unless void on its face, is given every reasonable
2 intendment of validity and will not be set aside upon a motion, except upon
3 a clear showing or irregularity, together with a prima facie showing of a
4 meritorious defense. State v. Price, 59 Wn.2d 788, 790, 370 P.3d 979(1962)
5 (citing State v. Williams, 51 Wn.2d 182, 316 P.2d 913 (1957)(and cases cited
6 therein).

7 Irregularities which can be considered on a motion are those relating
8 to want of adherence to some prescribed rule or mode of proceeding. Such
9 irregularities consist of either omitting a procedural matter that is
10 necessary for the orderly conduct of a trial, or doing it at an unreasonable
11 time or in an improper manner. Muscek v. Equitable Savings & Loan Ass'n, 25
12 Wn.2d 546, 171 P.2d 856(1946)(and cases cited therein).

13 In Price, the Supreme Court held that:

14 we have held that the denial of a constitutional right in
15 connection with an arraignment is an irregularity within the
16 meaning of RCW 4.72.010(3)...

17 Price, 59 Wn.2d at 791(citing State v. Taft, 49 Wn.2d 93, 297 P.2d 1116
18 (1956)

19 Although Price dealt with a motion to vacate the judgment, and Mr.
20 Ziegler's motion seeks dismissal for government misconduct and mismanagement
21 the errors in the cases are identical where the untimely arraignment hearing
22 had prejudicial effects on the defendants.

23 When the rules have not been followed and, through no fault or
24 connivance of Ziegler, and a delay has occurred between the filing of the
25 charges (or arrest of the defendant) and the time Ziegler was brought before
26 the court, the question presented becomes: what is the applicable date from
which to calculate the period in which Ziegler was to be brought to trial?

1 The United States Supreme Court has said that the right to a speedy
2 trial, guaranteed under the Sixth Amendment to the United States Constitution,
3 which was made applicable to the states in Klopper v. North Carolina, 386 US
4 213, 18 L.Ed.2d 1, 87 S.Ct. 988(1967), attaches when an information is filed,
5 or when the defendant is arrested and held to answer, whichever occurs
6 earlier. United State v. Marion, 404 US 307, 30 L.Ed.2d 468, 92 S.Ct. 455
7 (1971).

8 This concept has been embodied in the ABA Standards Relating To Speedy
9 Trial § 2.2(Approved draft, 1968), which provides the time for trial should
10 commence to run from the date the charge is filed, unless the defendant has
11 continuously been held to answer for the crime (or one based on the same
12 conduct or arising from the same criminal episode) prior to the filing.

13 A majority of our Supreme Court have on several occasions indicated
14 that the ABA Standards should be consulted where a hiatus appears in CrR 3.3.

15 The ABA Standards also provide that failure to bring the matter to
16 trial, no matter how serious the allegations, within the time limited should
17 result in an absolute discharge. State v. Striker, 87 Wn.2d 870, 874, 557
18 P.2d 847 (1976)(citing ABA Standards Relating To Speedy Trial § 4.1).

19 A speedy trial in criminal cases is not only a personal right which
20 is protected by the federal (Sixth Amendment) and state (const. art 1, § 22)
21 constitutions, it is also an objective in which the public has an important
22 interest. Some of the considerations which affect the interests of society
23 generally are mentioned in a Note, Speedy Trials: Recent Developments
24 Concerning a Vital Right, 4 Ford: Urb. L.J. 351, 353 (1976). The author
25 states:

26 "A defendant in a criminal case can achieve definite advantages
through delay. Once trial starts, stale cases are more easily

1 challenged by defense attorneys on cross examination. Juries
2 are often disenchanted with offenses that have occurred in the
3 remote past. If prosecution witnesses become unavailable over
4 long periods of time or prosecutorial ardor should wane, the
5 guilty benefit at society's expense.

6 Aside from affecting the probabilities of obtaining a
7 conviction, the speedy trial has significant impacts upon the
8 quality of judicial action and the possibilities of future criminal
9 conduct. The tendency to postpone trial adds to the court congestion
10 and the backlog of cases. To dispose of such backlog, plea bargaining
11 is frequently utilized. In the interest of expediting matters
12 accused persons receive lighter sentences than those they actually
13 may have deserved. A second impact of delay is to weaken the
14 deterrent effect that the criminal justice system should have on
15 would-be criminals.

16 Finally, the speedy trial right is intricately related to the
17 needs of a well ordered society in several other respects. Guilty
18 persons released on bail for too long tend to commit other crimes
19 or flee the jurisdiction of the courts altogether. Defendants who
20 are not bailed must spend "dead" time in local jails exposed to
21 conditions destructive of human character. For those who are
22 eventually found innocent, their potential to be contributing
23 members of society through any kind of employment is lost during
24 pre-trial incarceration. On the other hand, the possibility of
25 rehabilitating those who are eventually found guilty is diminished
26 since correction procedures cannot be started until after trial.
These non-productive conditions are achieved at a great financial
expense to society."

Striker, 87 Wn.2d at 876-77.

The above authority works both ways, not only does society loose out
when a speedy trial has not occurred, but the defendant also loses his very
important right to mount a proper and timely defense to the State's allega-
tions -- nobody wins when a trial's procedural time restrictions are not
followed -- even society loses out on justice.

The next determination made under CrR 3.3(c)(1) is what is the proper
arraignment date from which the trial time must be determined.

In Greenwood, this question was answered which is that if a defendant
is in jail, then the arraignment must occur within 14 days. State v.
Greenwood, 57 Wn.App. 854, 858, 790 P.2d 1243(1990)(citing CrR 3.3(c)(1)).

The strict mandate on CrR 4.1(a)(1) required that Ziegler be arraigned

1 promptly after the arrest occurred according to the supreme law of the land
2 as located in Marion, supra.

3 The Greenwood court further went on to state in relation to the
4 language of CrR 4.1 that "we are dealing with a rule which demands strict
5 compliance, and, if not followed, requires dismissal of the charges."
6 Greenwood, 57 Wn.App. at 860 (citing State v. Durham, 13 Wn.App. 675, 679,
7 537 P.2d 816 (1975)).

8 Greenwood also went on to hold that a defendant is not required to
9 show prejudice to obtain a dismissal where the trial is held beyond its time
10 constraints. Id. at 860(citing State v. Williams, 85 Wn.2d 29, 32, 530 P.2d
11 225 (1975)).

12 Ziegler's case establishes through the record currently before this
13 Court that the delay between the date of Ziegler's arrest (May 5, 2005) and
14 the date of the initial arraignment (May 20, 2005) requires application of
15 the speedy trial rule set forth in United States v. Marion, 404 US 307, 30
16 L.ed.2d 468, 92 S.Ct. 455 (1971), which holds that the speedy trial rule
17 "attaches when an...information is filed, or when the defendant is arrested
18 and held to answer, whichever occurs earlier." Id.

19 In this case the speedy trial rule operated from the date of the
20 actual arrest on May 5, 2005 since Ziegler was not brought before the court
21 in the required 14 days period and arraigned.

22 The Supreme Court of the United States in Groppi (which deals with a
23 change of venue motion) addressed the issue of failing to accord a defendant
24 with a fair hearing holding:

25 The failure to accord an accused a fair hearing violates even
26 the minimal standards of due process...
Groppi v. Wisconsin, 400 US 505, 509, 27 L.Ed.2d 571, 577, 91 S.Ct. 400(1971)

1 Furthermore, the federal law holds that the defendant must also be
2 brought to trial, when detained or arrested, not later than 60 days after
3 his arrest. See 18 U.S.C.A. §§ 3161 and 3162 commonly known as the Speedy
4 Trial Act of 1974.

5 An analysis of this case demonstrates that:

6 (1). That there was a delay between the arrest of Ziegler (May 5, 2005), and
7 the arraignment hearing (May 20, 2005) which was 15 days, not 14 as required;
8 See Affidavit of Ziegler at ___; Attachment 1 at 2; Attachment 2 at VRP 3-6;

9 (2) That the delay between the arrest and arraignment rendered irregularities
10 in the proceedings that caused an omission of the timely arraignment hearing
11 which was necessary for the orderly conduct of the trial rendering the
12 arraignment hearing as having been conducted at an unreasonable time and in
13 an improper manner and not within the mandated 14 days as CrR 4.1 holds.

14 (3). The delay of the arraignment hearing (even for one day) resulted in an
15 outright denial of Ziegler's constitutional rights in connection with the
16 arraignment which is further evidence of an irregular proceeding.

17 (4). That the speedy trial time, due to the irregularities, began to run at
18 the time Ziegler was arrested, not from the arraignment hearing, and because
19 of said date the trial court's May 20, 2005 (reaffirming the date on June 9,
20 2005) setting the speedy trial for July 11, 2005 (72 days after Ziegler's
21 arrest) denied Ziegler his constitutional and procedural right to a speedy
22 and public trial within a 60 day window after the arrest. See Affidavit of
23 Mr. Ziegler, Attachment 1 at 2; Attachment 2 at VRP 3-6.

24 (5). That the trial court's setting of the speedy trial date on June 9, 2005
25 for the date of July 25, 2005 was another violation of Ziegler's right to a
26 speedy and public trial. Id.

1 (6). That Ziegler has a meritorious defense establishing that his personal
2 and public constitutional right to have a speedy trial was violated and that
3 had these errors not have occurred in the proceedings the case conviction
4 would not have been made because the case would have been dismissed which
5 would comport to the holdings of Marion, Price, Striker, Greenwood, ABA
6 Standards Relating To Speedy Trial, and Muscek.

7 (7). That Ziegler need not show prejudice and the burden now shifts to the
8 State to produce evidence establishing that the arraignment was conducted in
9 an orderly fashion.

10 (8). That Ziegler is entitled to an absolute discharge of the convictions
11 based upon the states failure to bring the matter to trial within the 60
12 days required under due process of law.

13
14 C. THE STATE'S INACTIONS BY FAILING TO DISCLOSE TO THE TRIAL
15 COURT THAT BOTH THE PRELIMINARY APPEARANCE AND ARRAIGNMENT
16 HEARING WERE UNTIMELY RENDERING THEM AS IREGULARITIES AFFECTING
17 THE COMMENCEMENT DATE OF THE SPEEDY TRIAL DATE RENDERED FRAUD
18 UPON THIS COURT WHICH ALLOWS ZIEGLER TO ENTERTAIN THE ARGUMENT
19 THAT THERE IS NO EXPECTATION IN THE FINALITY OF THE JUDGMENT
20 BECAUSE THE STATE KNOWINGLY COMMITTED FRAUD.

21 Mr. Ziegler does not have any expectation of finality in his case
22 convictions due to the state's engagement in the practice of fraud in order
23 to mislead the trial court as to the actual timeliness of the preliminary
24 appearance and arraignment proceedings. This use of misleading and false
25 dates was perpetuated for the sole purpose of starting the speedy trial date
26 from the arraignment hearing and further to bypass any dismissal with prejudice
due to Ziegler's constitutional and procedural right to a speedy trial date
having been violated.

Our Supreme Court has outlined the nine elements needing to be met on

1 a claim establishing that fraud was committed. Those nine factors are:

2 (1) A representation of an existing fact; (2) its materiality;
3 (3) its falsity; (4) the speaker's knowledge of its falsity or
4 ignorance of its truth; (5) the speaker's intent that it should
5 be acted on by the other party; (6) the other party's ignorance
of its falsity; (7) the other party's reliance on the truth of
the representation; (8) the right of the other party to rely
upon it; and (9) consequent damage.

6 State v. Hardesty, 129 Wn.2d 303, 318, 915 P.2d 1080 (1996).

7 The evidence shows that the prosecutor represented to the trial court
8 at the omnibus hearing (which was 20 days after the arraignment and 28 days
9 after the preliminary appearance hearing took place) that the trial date was
10 set at the arraignment hearing on May 20, 2005 for July 11, 2005 and that the
11 July 11, 2005 and July 25, 2005 dates for the trial were within the speedy
12 trial time restriction. See Affidavit of Mr. Ziegler, Attachment 2 at VRP
13 3-6. Therefore, the first element of an existing representation of fact has
14 been satisfied. The issue now turn on the remaining eight elements.

15 The prosecutors statements that the trial dates of July 11, 2005 and
16 July 25, 2005 were within the speedy trial rule and that no violation had
17 occurred was material as it weighed directly upon the speedy trial dates
18 validity and allowed the trial court to infer that the arraignment date was
19 a timely hearing which was where the speedy trial time operated from. Id.

20 Therefore, the second element of establishing the statements materiality
21 has been satisfied and the question now turns on the remaining seven elements.

22 The state prosecutor knew that Ziegler was arrested on May 5, 2010
23 and that he did not get brought before the trial court for his preliminary
24 appearance hearing until May 13, 2005, which was 8 days after Ziegler's
25 arrest and 6 days past the time requirement of 48 hours of Ziegler's arrest
26 within which a probable cause determination was to be made, in fact, the

1 prosecutor knows that Ziegler has not ever to this day had a determination of
2 probable cause made rendering the entire process null and void as a matter of
3 law. The prosecutor also knew that Ziegler was not arraigned until 15 days
4 after his arrest date of May 5, 2005 which establishes that Ziegler was not
5 brought before the court within the required 14 days for an arraignment and
6 establishing that the prosecutor knew, or should have known, that such a
7 delay rendered the speedy trial rule to operate from the date of Ziegler's
8 arrest, not from arraignment, which makes the July 11, 2005 and July 25, 2005
9 speedy trial dates outside of the 60 days rendering the prosecutor's blank
10 and unsupported statements that the proceedings leading up to the omnibus
11 were all according to procedure false. Therefore, the third element has been
12 satisfied and the issue turn now on the remaining six.

13 The record before this court consisting of the docket sheet (which no
14 doubt the trial folder in the state's possession retains the relevant and
15 necessary documents) establishes that the prosecutor knew that the statements
16 claiming that all prior proceedings up to omnibus were procedurally sound
17 and within the time restrictions were false. Therefore, the fourth element
18 has been satisfied and the issue now turns on the remaining five.

19 It is clear that the prosecutor intended to have the trial court rely
20 upon the statements set forth above in order to ensure that the case was not
21 dismissed with prejudice for a deprivation of a speedy trial and further to
22 allow for the speedy trial date to run from the arraignment hearing instead
23 of the arrest date which substantially changes the picture of what remedy is
24 required. Therefore, the fifth element has been established and the issue
25 now turns on the remaining four.

26 The defendant, Mr. Ziegler, not being versed in law was ignorant to

1 the procedural violations occurring in relation to the preliminary hearing,
2 arraignment hearing and the speedy trial. Therefore, the sixth element has
3 been established and the issue now turns to the remaining three.

4 Ziegler relied upon the dates of these procedural hearings as being
5 in compliance with the prescribed laws of Washington State and was none the
6 wiser. Therefore, the seventh element has been satisfied and the issue now
7 turn to the remaining two.

8 Ziegler, as a non educated man in the law had a right to rely upon a
9 state prosecutors assertions that the case procedural issues were all by the
10 board and timely. Therefore, the eighth element has been satisfied and the
11 issue now turn on the remaining issue -- consequent damage.

12 The consequent damages are quite apparent in the record that Ziegler
13 was not afforded due process of law during the preliminary appearance and
14 arraignment hearings and that the irregularities of those proceedings caused
15 Ziegler's constitutional and procedural rights under due process of law to
16 be afforded a speedy trial to become violated in a major way where the only
17 remedy would be to reverse the convictions and enter a dismissal order with
18 prejudice as a sanction.

19 Ziegler will directly argue that the nine elements of fraud have been
20 fully developed and satisfied and Ziegler adopts and incorporates the above
21 record in support of his claim establishing that the state engaged in the
22 practice of fraud upon this court. Therefore, the charges and subsequent
23 convictions need reversed and dismissed with prejudice for fruvad which was
24 the only reason the convictions were entered.

25 ////

26 ////

1 D. ZIEGLER'S DEFENSE LAWYERS' CONDUCT RENDERED DEFICIENT
2 PERFORMANCE BY NOT OBJECTING TO THE PRELIMINARY APPEARANCE
3 AND ARRAIGNMENT HEARING DATES WHICH CAUSED ZIEGLER TO BE
4 DEPRIVED OF HIS RIGHT TO A SPEEDY TRIAL AND THEREFORE THE
5 LAWYERS' PERFORMANCE RENDERED PREJUDICE.

6 Ziegler had the right to receive effective assistance of counsel at
7 his preliminary appearance and arraignment hearings. U.S. Const. Sixth
8 Amendment; Const. art 1, section 22. The invited error doctrine does not bar
9 review of a claim of ineffective assistance of counsel. State v. Studd, 137
10 Wn.2d 553, 551, 973 P.2d 1049 (1999); State v. Gentry, 125 Wn.2d 570, 646-47,
11 888 P.2d 1105 (1995); State v. Doogan, 82 Wn.App. 185, 188, 917 P.2d 155
12 (1996).

13 To prevail on an ineffective assistance of counsel claim, counsel's
14 conduct must have been deficient in some respect, and that deficiency must
15 have prejudiced the defense. Doogan, 82 Wn.App. at 188 (citing Strickland v.
16 Washington, 466 US 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674(1984)).

17 Defense counsels' were both ineffective in failing to enforce Mr.
18 Ziegler's rights and ensure that both the preliminary appearance hearing and
19 arraignment hearing was conducted in a timely manner. There cannot be any
20 reasonable explanation as to why two lawyers would allow the state to proceed
21 forward at each hearing when the hearings were outside of the strict
22 requirements. The irregularities in the proceedings caused a snowball effect
23 where the speedy trial date was not within the 60 days, there was no factual
24 determination of probable cause, and the speedy trial right enjoyed by Mr.
25 Ziegler was violated. Such performance is not strategic and was deficient
26 performance where Ziegler's constitutional right to due process of law, a
speedy trial, and effective counsel were all violated rendering the deficiency
prejudicial.

1 Accordingly, any argument by the state suggesting that defense counsel's
2 decision to allow the proceedings to move forward when they deprived Mr.
3 Ziegler of his right to a determination of probable cause within 48 hours and
4 an arraignment hearing within 14 days from the arrest -- both of which did
5 result in prejudice to Ziegler -- should be rejected.

6
7 E. GOVERNMENT MISCONDUCT IN MISMANAGING THE CASE PREJUDICED
8 ZIEGLER'S RIGHT TO REGULARITY IN THE PROCEEDINGS, A PROBABLE
9 CAUSE DETERMINATION BEFORE ALLOWING A CONVICTION TO OCCUR,
10 AND A SPEEDY TRIAL AND THEREFORE ZIEGLER'S RIGHT TO A FAIR
11 TRIAL WAS VIOLATED REQUIRING A DISMISSAL WITH PREJUDICE ORDER
12 TO BE ENTERED AS A SANCTION TO THE STATE.

13 In Delvin, the court held that, "[a] fair trial consists not alone in
14 observance of the naked forms of law, but in recognition and just application
15 of its principles." State v. Delvin, 145 Washington Territory 44, 51, 258 P.
16 826, 829 (1927)(quoting State v. Pryor, 145 Washington Territory 216, 121 P.
17 56 (1927)).

18 A prosecutor is required to ensure that a defendant receives a fair
19 trial. Even without an objection, if the misconduct cannot be remedied and
20 is material to the outcome of the trial, the defendant has been denied his
21 due process right to a fair trial. State v. Suarez-Bravo, 72 Wn.App. 359,
22 367, 864 P.2d 426 (1994)(citing State v. Davenport, 100 Wn.2d 757, 762-63,
23 675 P.2d 1213 (1984)).

24 The provisions of CrR 3.3(h) hold:

25 A charge not brought to trial within the time limit determined
26 under this rule shall be dismissed with prejudice. The State
shall provide notice of the dismissal to the victim and at the
court's discretion shall allow the victim to address the court
regarding the impact of the crime. No case shall be dismissed
for time-to-trial reasons except as expressly required by this
rule, a statute, or the state or federal constitution.

CrR 3.3(h).

1 This rules requirement that a conviction be dismissed with prejudice
2 if not brought to trial in a timely manner is not restrictive to any class of
3 crimes and encompasses due to the language Ziegler's crimes.

4 The provisions of CrR 8.3(b) holds:

5 The court, in the furtherance of justice, after notice and
6 hearing, may dismiss any criminal prosecution due to arbitrary
7 action or governmental misconduct where there has been prejudice
to the rights of the accused which materially affect the accused's
right to a fair trial.

8 CrR 8.3(b).

9 In order for a dismissal under CrR 8.3(b) to be entered, there are
10 two requirements that a defendant must establish: (1) arbitrary action or
11 government misconduct, State v. Blackwell, 120 Wn.2d 822, 831, 845 P.2d 1017
12 (1993)(citing State v. Lewis, 115 Wn.2d 294, 298, 797 P.2d 1141(1990)).

13 However, government misconduct "need not be of an evil or dishonest
14 nature; simple mismanagement is sufficient." Blackwell, 120 Wn.2d at 831;
15 State v. Michielli, 132 Wn.2d 229, 240, 937 P.2d 587, 592-93 (1997); State v.
16 Starrish, 86 Wn.2d 200, 205, 544 P.2d 1 (1975).

17 Second, the defendant must establish that the misconduct affected the
18 defendants rights rendering the misconduct prejudicial. State v. Cannon, 130
19 Wn.2d 318, 328, 922 P.2d 1293 (1996).

20 There is no time restrictions to bringing a claim under CrR 8.3(b)
21 or CrR 3.3(h).

22 In Ziegler's case it is clear that the irregularities in both the
23 preliminary appearance hearing which is supposed to occur within 48 hours
24 and where probable cause is determined; and in relation to the arraignment
25 hearing which is supposed to be conducted within 14 days after the arrest or
26 filing of an information whichever is earlier and is the cornerstone for the

1 setting up of the speedy trial date; that mismanagement occurred in the case
2 where the speedy trial right was deprived by the State's mismanagement that
3 there can be no disputing that government misconduct occurred resulting in
4 substantial prejudice to Ziegler's constitutional rights.

5 Therefore this court is in a good position to evaluate this claim
6 and do the right thing and find government misconduct to the point of where
7 a dismissal with prejudice order should be entertained as a sanction to the
8 State. Discharge under CrR 8.8 is appropriate.

9
10 F. THE TRIAL COURT HAS INHERENT POWER TO ENTER JUDGMENT NUNC
11 PRO TUNC TO REMEDY THIS TYPE OF VIOLATION.

12 The law has been well settled that "[w]ashington courts have inherent
13 power to enter judgments nunc pro tunc." State v. Petrich, 94 Wn.2d 291, 616
14 P.2d 1219 (1980). It has also been well settled law that a judgment entered
15 in a proceeding which does not comport to procedural due process is void.
16 See Sheldon v. Sheldon, 47 Wn.2d 699, 702, 289 P.2d 335 (1955); English v.
17 Long Beach, 35 Cal.2d 155, 217 P.2d 22; 18 A.L.R.2d 547 (1950).

18 In Martin, our Supreme Court had this to say in relation to void
19 proceedings and court's inherent power:

20 If rights have vested under a faulty rule, or a constitution misinterpreted,
21 or a statute misconstrued, or where, as here, **subsequent events demonstrate**
22 **a ruling to be in error**, prospective overruling becomes logical and intergral
23 part of the stare decisis by enabling courts to right a wrong without doing
24 more injustice than is sought to be corrected...The courts can act to do that
25 which ought to be done, free from fear that the law is being undone."
26 State ex rel. Washington State Finance Committee v. Martin, 62 Wn.2d 645,
666, 384 P.2d 833 (1963).

27 Therefore, and due to the errors of law in this case where the rules
28 were not followed and prejudice was ensued, this court should enter a nunc

1 pro tunc order dismissing the case with prejudice for the government's
2 depriving Ziegler of his right to regularity in the proceedings and a speedy
3 trial. The interest of justice requires this structural error to be remedied
4 at the government's expense.

5
6 G. ZIEGLER OBJECTS TO THIS COURT'S TRANSFER OF THIS MOTION
7 TO THE COURT OF APPEALS AS A PERSONAL RESTRAINT PETITION.

8 To the extent that this Court decides to transfer this motion to
9 the Court of Appeals as a Personal Restraint Petition, Mr. Ziegler hereby
10 objects based upon State v. Smith, 144 Wn.App. 860 (2008).

11
12 H. TO THE EXTEND THAT THE COURT DOES TRANSFER THE MOTION TO
13 THE COURT OF APPEALS AS A PERSONAL RESTRAINT PETITION MR.
14 ZIEGLER IS ENTITLED TO BENEFIT FROM THE PRINCIPLES OF EQUITABLE
15 TOLLING BECAUSE HIS DEFENSE TEAM PERPETUATED DECEPTION UPON
16 MR. ZIEGLER, MADE FALSE ASSURANCES AS TO THE VALIDITY OF THE
17 PROCEEDINGS, AND HAVING FULL KNOWLEDGE IN THE LAW, ACTED IN A
18 BAD-FAITH MANNER WHICH RESULTED IN AN UNLAWFUL IMPRISONMENT
19 AND ENSUING PREJUDICE.

20 The time limit in RCW 10.73.090 is not a jurisdictional requirement,
21 which authorizes application of the principles of equitable tolling to be
22 applied to Ziegler's case. The Supreme Court has "previously referred to the
23 time limit in RCW 10.73.090 as a statute of limitation." In re Pers. Restraint
24 of Bonds, 165 Wn.2d 135, 140, 196 P.3d 672 (2008)(citing In re Pers. Restraint
25 of Benn, 134 Wn.2d 868, 938-39, 952 P.2d 116 (1998)).

26 The Court of Appeals has expressly held that "RCW 10.73.090
functions as a statute of limitation and not as a jurisdictional bar, and is
thus subject to the doctrine of equitable tolling." In re Pers. Restraint of
Bonds, 165 Wn.2d at 140 (citing In re Pers. Restraint of Hoisington, 99

1 Wn.App. 423, 431, 993 P.2d 296 (2000).

2 Equitable tolling of a statute of limitation is appropriate when
3 consistent with the policies underlying the statute and the purposes
4 underlying the statute of limitation. The purpose underlying the time limit
5 in RCW 10.73.090 is strictly to manage the flow of post-conviction collateral
6 relief petitions by requiring collateral attacks to be brought promptly. In
7 re Pers. Restraint of Bonds, 165 Wn.2d at 141.

8 Equitable tolling is a remedy that permits a Court to allow an
9 action to proceed when justice requires it, even though a statutory time
10 period has elapsed. Id. at 141.(citing In re Pers. Restraint of Carlstad,
11 150 Wn.2d 583, 593, 80 P.3d 587 (2003). Equitable tolling acts as an
12 exception to the statute of limitations.

13 Our Supreme Court has adopted a framework to determine when
14 equitable tolling should apply in the civil context, and all three divisions
15 of the Court of Appeals have adopted and incorporated this analysis into the
16 criminal cases. See Millay v. Cam, 135 Wn.2d 193, 206, 955 P.2d 791 (1998).

17 In Millay, our Supreme Court set the standard for determining when
18 equitable tolling should be allowed when justice requires it and when the
19 predicates for equitable tolling have been met. These predicates are: (1)
20 bad-faith; (2) deception; and (3) false assurances. In re Pers. Restraint of
21 Bonds, 165 Wn.2d at 141(citing Millay).

22 Mr. Ziegler argues, with the record supporting his claim which is
23 adopted and incorporated by reference herein, that equitable tolling should
24 be applied in this case due to the irregularities in the proceedings which
25 establish that Ziegler was deceived as to the validity and timeliness of the
26 preliminary appearance and arraignment hearings, was further deceived into

1 thinking that he had the required determination of probable cause in his
2 case, was further deceived that the speedy trial was had (when it is clear
3 that it was not).

4 Ziegler points out that the deception arose from the well-trained
5 lawyers false assurances that his rights were being upheld and that there
6 was no errors. See Affidavit of Ziegler at 1-3.

7 Ziegler also adds that due to the false assurances which lead to
8 Ziegler being deceived as to his rights, the lawyers on both sides, as well
9 as the court, engaged in actions that are paramount to bad-faith and thus,
10 the doctrine of equitable tolling should be applied to his case where the
11 interest of justice so require it because Ziegler has, through demonstrative
12 evidence, established and satisfied all three predicates needing to be met
13 to benefit from the doctrine of equitable tolling.

14
15 CONCLUSION AND RELIEF REQUESTED.

16 Ziegler seeks the following relief from this Court:

- 17 1. The finding that the preliminary appearance hearing was irregular, and
18 not held within the required 48 hours from arrest;
- 19 2. That Ziegler never had a determination of probable cause made in his
20 case;
- 21 3. The finding that the arraignment hearing was irregular, and not held
22 within the required 14 days after Ziegler's arrest and because of such
23 irregularity, the speedy trial began to run from the date of the arrest;
- 24 4. The finding that the trial court's initial trial date of July 11, 2005
25 was not within the time requirement of 60 days and therefore Ziegler was
26 deprived of his right to a speedy trial setting;

- 1 5. The findng that the state mismanaged the case to the point where Ziegler
- 2 was deprived of due process of law in relation to the preliminary appearance
- 3 and arraignment hearings, a finding of probable cause, and a speedy trial
- 4 and that the mismanagement, inadvertent or otherwise, amounted to government
- 5 misconduct which allows this Court to dismiss the case based upon this motion
- 6 supported by affidavit of Mr. Ziegler and the relevant portions of the case
- 7 record;
- 8 6. The finding that even though Mr. Ziegler is not required to make any
- 9 showing of prejudice, Ziegler has demonstrated that substantial prejudice
- 10 has resulted from the irregularities and mishandling of the case by the
- 11 government;
- 12 7. The finding that the government misrepresented its position in relation
- 13 to the proceedings timeliness;
- 14 8. The finding that an evidentiary hearing must take place at the Clark
- 15 County Courthouse;
- 16 9. The finding that Ziegler is required to be at the evidentiary hearing and
- 17 the state is required to enter an order of transoprt to have Ziegler brought
- 18 back to the Clark County Jail pending resolution of this motion;
- 19 10. The finding that the speedy trial right was violated and therefore an
- 20 order of dismissal with prejudice of the convictions is required under the
- 21 letter of the laws of both Washington State and the Federal United States.

22 Dated this 29 day of October, 2010.

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24 _____
25 Jeffrey S. Ziegler-pro se

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

STATE OF WASHINGTON,

Plaintiff,

] NO. 05-1-01088-6

vs.

JEFFREY S. ZIEGLER,

Defendant,

] AFFIDAVIT OF JEFFREY S. ZIEGLER IN
] SUPPORT OF MOTION TO DISMISS WITH
] PREJUDICE DUE TO IRREGULARITIES IN
] THE PROCEEDINGS RESULTING IN THE
] PREJUDICE TO ZIEGLER'S RIGHTS

STATE OF WASHINGTON]

] SS: Jurat

COUNTY OF SPOKANE]

I, Jeffrey S. Ziegler, the above named defendant appearing pro se
hereby depose, decalre and say:

1. That I am the above entitled defendant and am familiar with
the facts and records contained therein and am able to testify to the facts
set forth herein.

2. See a true and correct copy of the clerks papers index as
Attachment 1;

3. See a true and correct copy of the June 9, 2005 Verbatim
Report of Proceedings as Attachment 2;

4. See a true and correct copy of the Verbatim Report of
Proceedings conducted on July 18, 2005 as Attachment 3;

5. See a true and correct copy of the Sept, 9, 2005 Verbatim
Report of Proceedings as Attachment 4;

6. See a true and correct copy of the initial charging

JEFFREY S. ZIEGLER-886970 -NB-27-U
AIRWAY HEIGHTS CORECTION CENER

P.O. BOX 2049

AIRWAY HEIGHTS, WA 99001

1 information as Attachment 5.

2 7. I further, after just learning the applicable laws, decalre
3 that I was never brought to my preliminary appearance hearing within 48
4 hours from my arrest on May 5, 2005. That there also was never a determination
5 of probable cause made in my case. In fact, my preliminary appearance
6 hearing did not take place until May 13, 2005 which is 8 days after the
7 actual arrest and in violation of the requirement of CrR 3.2.1(a) and (b),
8 and that this rendered the May 13, 2005 preliminary appearance hearing an
9 irregularity within the meaning of the court rules..

10 8. I further decalre that I was never arraigned within 14-days of
11 my arrest on May 5, 2005, in fact, I was not arraigned until May 20, 2005
12 which is 15 days after I was arrested. That due to this irregularity in the
13 proceeding, I am able to benefit from the rule that the speedy trial clock
14 operated from the date of my arrest on May 5, 2005, not May 20, 2005 the
15 date of my arraignment. This further establishes that I was initially given
16 a speedy trial date that was not within the required 60 days period as
17 mandated by CrR 4.1(a)(1) and therefore I was deprived of my right to have
18 a speedy trial.

19 9. That my lawyers, the court, and the State all told me that the
20 hearings were being conducted as per the rules and my rights were not being
21 violated -- such assertions according to law -- were false assurances to
22 which I was then deceived into thinking that my rights were being upheld --
23 when, in fact, they were being completely violated. This was bad-faith on
24 the part of the court, state, and defense lawyers which deprived me of my
25 personal rights guaranteed under the constitutions of Washington and the
26 United States, as well as violated my rights to assure the proceedings were

1 conducted within the parameters of the mandated timelines of the procedural
2 rules of the Superior Court.

3 10. That I was not afforded due process of law because of the
4 government's mismanagement of the case amounting to misconduct and therefore
5 I should be allowed to have this Court act impartial and in the interest of
6 justice reverse the convictions and dismiss the charges with prejudice as
7 a sanction to the state which is authorized under CrR 3.3(h) and CrR 8.3(b).

8 11. That I am using CrR 3.3(h) and CrR 8.3(b) as my vehicle and
9 those provisions are exempt from any time limits within which to bring this
10 motions contents before the court.

11 12. That the doctrine of equitable tolling applies to my case.

12 13. That I will object to any transfer of this motion to the
13 court of appeals as a personal restraint petition due to the contents of
14 this motion which required adjudication and resolution by this Court.

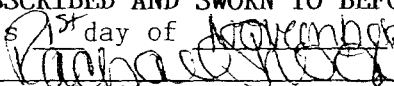
15 14. That I am seeking to at minimum obtain an evidentiary hearing
16 to resolve this matter with my body present at the hearing through this
17 Court's transport order entered.

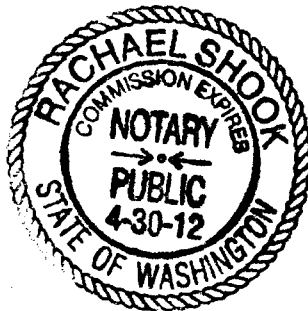
18 I, Jeffrey Ziegler, declare under penalty of perjury under the
19 laws of the State of Washington that the foregoing is true and correct.

20 Dated this 1st day of November 2010


Jeffrey Scott Ziegler

Pro se

21 SUBSCRIBED AND SWORN TO BEFORE ME
22 this 1st day of November, 2010

23 Notary Public



ATTACHMENT 1

CASE#: 05-1-01088-6 JUDGMENT# 05-9-07609-6 JUDGE ID: 8
 TITLE: STATE OF WASHINGTON VS ZIEGLER, JEFF SCOTT
 FILED: 05/17/2005 APPEAL FROM LOWER COURT? NO

RESOLUTION: CVJV DATE: 09/20/2005 CONVICTED BY JURY
 COMPLETION: JODF DATE: 08/22/2007 JUDGMENT/ORDER/DECREE FILED
 CASE STATUS: APP DATE: 09/19/2007 ON APPEAL

ARCHIVED:

CONSOLIDT:

NOTE1:DOB 07-24-69

NOTE2:**COA #34280-4-II **COA #36819-6-II** (2 VOLS)

----- PARTIES -----

CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	ARRAIGNED
PLA01	STATE OF WASHINGTON		
DEFO1	ZIEGLER, JEFFREY SCOTT		
ATPO1	PROS ATTY		
ATDO1	BARRAR, JEFFREY DAVID		
BAR#	18281		
ATDO2	TABBUT, LISA ELIZABETH	APPEAL	
BAR#	21344		
ATDO3	HAYS, JOHN A.	APPEAL2	
BAR#	16654		

----- SENTENCE INFORMATION -----

DEFO1 ZIEGLER, JEFFREY SCOTT

DEF. RESOLUTION CODE: CVJV DATE: 09/20/2005 CONVICTED BY JURY

TRIAL JUDGE: DIANE WOOLARD

SENTENCE DATE : 08/22/2007 SENTENCED BY WOOLARD

SENTENCING DEFERRED : NO APPEALED TO : DATE APPEALED :

PRISON SERVED.....	X		
PRISON SUSPENDED.....		FINE.....	\$ 500.00
JAIL SERVED.....		RESTITUTION.....	\$ TBS
JAIL SUSPENDED.....		COURT COSTS.....	\$ 110.00
PROB/COMM. SUPERVISION.....		ATTORNEY FEES.....	\$ 2,200.00
		DUE DATE :	PAID : NO

----- SENTENCE DESCRIPTION -----

CT I: 198 MOS TO LIFE, CT II: 198 MOS TO LIFE, CT III: 318 MOS TO LIFE, CT IV: 318 MOS TO LIFE, CT V: 318 MOS TO LIFE, CT VI: 198 MOS TO LIFE, CONCURRENT, CTS 318 DYS, COMMUNITY CUSTODY ON CTS 1,2,3,4,5,6 FOR RANGE OF 36 MOS TO LIFE.

8-22-07 RESENTENCING CT I: 198 MTHS TO LIFE, CT II: 198 MTHS TO LIFE, CT III: 318 MTHS TO LIFE, CT VI: 198 MTHS TO LIFE. 800 DAYS CTS, COMM CUSTODY 36 MTHS TO LIFE ON CTS 1,2,3 & 6

----- CHARGE INFORMATION -----

DEF01 ZIEGLER, JEFFREY SCOTT

RS	CNT	RCW/CODE	CHARGE DESCRIPTION	DV INFO/VIOL.	RESULT
				---DATE---	--DATE--
			----- ORIG INFOR		05/17/2005
	1	9A.44.073	Rape of A Child	N	12/01/2004
		NOTE	THRU 05-01-05		
	2	9A.44.073	Rape of A Child	N	12/01/2004
		NOTE	THRU 05-01-05		
	3	9A.44.083	Child Molestation	N	12/01/2004
		NOTE	THRT 05-01-05		
	4	9A.44.083	Child Molestation	N	12/01/2004
		NOTE	THRU 05-01-05		
			----- SECOND AMENDED		09/20/2005
G	1	9A.44.083	Child Molestation	Y	12/01/2004 09/20/05
		9.94A.030	SENTENCE REFORM ACT DEFINITIONS		
		NOTE	BETWEEN 12-01-04 & 05-01-05		
G	2	9A.44.083	Child Molestation	Y	12/01/2004 09/20/05
		9.94A.030	SENTENCE REFORM ACT DEFINITIONS		
		NOTE	BETWEEN 12-01-04 & 05-01-05		
G	3	9A.44.073	Rape of A Child	N	12/01/2004 09/20/05
		9.94A.030	SENTENCE REFORM ACT DEFINITIONS		
		NOTE	BETWEEN 12-01-04 & 05-01-05		
G	4	9A.44.073	Rape of A Child	N	12/01/2004 09/20/05
		9.94A.030	SENTENCE REFORM ACT DEFINITIONS		
		NOTE	BETWEEN 12-01-04 & 05-01-05		
G	5	9A.44.073	Rape of A Child	N	12/01/2004 09/20/05
		9.94A.030	SENTENCE REFORM ACT DEFINITIONS		
		NOTE	BETWEEN 12-01-04 & 05-01-05		
G	6	9A.44.083	Child Molestation	N	12/01/2004 09/20/05
		9.94A.030	SENTENCE REFORM ACT DEFINITIONS		
		NOTE	BETWEEN 12-01-04 & 05-01-05		
	901	NOTEPCN	657583413		

----- APPEARANCE DOCKET -----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
	05/13/2005	PLMHRG	PRELIMINARY APPEARANCE	05-20-2005CB
			RELEASE DENIED/\$75,000 + COND TBS	
		ACTION	ARRAIGNMENT #8	
3 1	05/13/2005	RORIS	ROR INTERVIEW SHEET	
2 2	05/13/2005	WV	WAIVER OF PROBABLE CAUSE HEARING	
1 3	05/13/2005	DAPAT	ORDER APPOINTING ATTORNEY	
		ATD01	BARRAR, JEFFREY DAVID	
2 4	05/17/2005	INFO	INFORMATION	
2 5	05/17/2005	NT	NOTICE OF SPEC PUNICHMNT PROVSN	
	05/17/2005	ADM03	MOST SERIOUS OFFENSE	
	05/20/2005	ARRAIGN	INITIAL ARRAIGNMENT	07-07-2005
		ACTION	#8 READINESS HEARING	
	05/20/2005	MTHRG	MOTION HEARING	
1 6	05/20/2005	ASTD	ASSIGNMENT OF TRIAL DATE	07-11-2005TB

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
/ 7	05/25/2005	CIT ACTION	CITATION OMNIBUS #8	06-09-2005C
2 8	06/06/2005	MT	MOTION / AFDVT FOR ORDER OF CONT	
/ 9	06/06/2005	CIT ACTION	CITATION MT FOR CONTINUE #8	06-09-2005C
	06/09/2005	OMNHRG ACTION	OMNIBUS HEARING #8 READINESS HRG	07-21-2005
4 10	06/09/2005	OMAPA	OMNIBUS APPLICATION OF PROS ATTY	
/ 11	06/09/2005	ASTD	ASSIGNMENT OF TRIAL DATE	07-25-2005TB
/ 12	06/13/2005	STLW	STATE'S LIST OF WITNESSES	
/ 13	06/13/2005	SB	SUBPOENA - J.ZIEGLER	
/ 14	06/13/2005	SB	SUBPOENA - M.N.S	
/ 15	06/13/2005	SB	SUBPOENA - I.J.S	
/ 16	06/13/2005	SB	SUBPOENA - D.ZIEGLER	
/ 17	07/12/2005	CIT ACTION	CITATION (IC) CHANGE OF PLEA #8 1:30PM	07-18-2005CP
/ 18	07/18/2005	CIT ACTION	CITATION (IC) CHANGE OF PLEA #8 1:30PM	07-18-2005
	07/18/2005	MTHRG	MOTION HEARING WVD SPEEDY TRIAL, TRIAL CONTD 8 READINESS	09-15-2005RS
/ 19	07/18/2005	WVSPDT	WAIVER OF SPEEDY TRIAL	
/ 20	07/18/2005	ASTD	ASSIGNMENT OF TRIAL DATE	09-19-2005TB
/ 21	09/07/2005	CIT ACTION	CITATION P-CONTINUANCE OF TRIAL #8	09-09-2005C9
	09/09/2005	MTHRG	MOTION HEARING MOTION TO CONTINUE - DENIED	
/ 22	09/12/2005	STLW	STATE'S LIST OF WITNESSES	
/ 23	09/12/2005	SB	SUBPOENA - J.ZIEGLER	
/ 24	09/12/2005	SB	SUBPOENA - MNS	
/ 25	09/12/2005	SB	SUBPOENA - IJS	
/ 26	09/12/2005	SB	SUBPOENA - D.ZIEGLER	
2 27	09/14/2005	RPT	REPORT OF RESTITUTION	
	09/15/2005	MTHRG	MOTION HEARING TRIAL IS READY TO PROCEED	
22 28	09/19/2005	PLPIN	PLAINTIFF'S PROPOSED INSTRUCTIONS	
/ 29	09/19/2005	JYP	JURY PANEL	
2 30	09/20/2005	OTHER	STATE'S PROPOSED GENERAL QUESTIONS	
3 31	09/20/2005	TRMM	TRIAL MEMORANDUM - STATE	
29 32	09/20/2005	PLPIN	PLAINTIFF'S PROPOSED INSTRUCTIONS SECOND INSTRUCTIONS FILED	
2 33	09/20/2005	AMINF	AMENDED INFORMATION SECOND AMENDED	
2 34	09/20/2005	CTINJY	COURT'S INSTRUCTIONS TO JURY	
/ 35	09/20/2005	JYN	JURY NOTE @ 4:00 P.M.	
/ 36	09/20/2005	JYN	JURY NOTE @ 4:30 P.M.	
/ 37	09/20/2005	JYN	JURY NOTE @ 5:06 P.M.	
/ 38	09/20/2005	JYN	JURY NOTE @ 5:12 P.M.	
7 39	09/20/2005	LGS	LOG SHEET	
2 40	09/20/2005	JTRIAL JDG08	JURY TRIAL JUDGE DIANE M. WOOLARD CLERK'S IN COURT RECORD	
/ 41	09/20/2005	EXLST	EXHIBIT LIST	
/ 42	09/20/2005	VRD	VERDICT CT 1 - GUILTY	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
/ 43	09/20/2005	VRD	VERDICT CT 2 - GUILTY	
/ 44	09/20/2005	VRD	VERDICT CT 3 - GUILTY	
/ 45	09/20/2005	VRD	VERDICT CT 4 - GUILTY	
/ 46	09/20/2005	VRD	VERDICT CT 5 - GUILTY	
/ 47	09/20/2005	VRD	VERDICT CT 6 - GUILTY	
/ 48	09/20/2005	MM ACTION	MEMORANDUM OF DISPOSITION 8 SET PSI/SENTENCING DATE NO BAIL HOLD	09-21-2005FA
	09/21/2005	MTHRG ACTION	MOTION HEARING #8 SPC SET 3:30 PM SENTENCING	10-25-2005TB
/ 49	09/21/2005	PRSID	PRESENTENCE INVESTIGATION ORDER	
/ 50	09/21/2005	MM	MEMORANDUM OF DISPOSITION	
8 51	09/22/2005	DRAU	ORDER AUTHORIZING REIMBURSEMENT TO PETTY CASH FUND	
3 52	09/22/2005	DRAU	ORDER AUTHORIZING REIMBURSEMENT TO PETTY CASE FUND	
4 53	10/03/2005	DRAU	ORDER AUTHORIZING REIMBURSEMENT F/ OUT OF STATE EXPENSES-SHILO INN	
10 54	10/03/2005	DRAU	ORDER AUTHORIZING REIMBURSEMENT F/ COURT OF STATE WITNESS EXPENSES	
3 55	10/03/2005	DRAU	ORDER AUTHORIZING REIMBURSEMENT F/ TRAVEL EXPENSES	
3 56	10/03/2005	DRAU	ORDER AUTHORIZING REIMBURSEMENT F/ OUT/STATE EXPENSES-RED LION HOTEL	
	10/25/2005	HSTKPA	CANCELLED: PLAINTIFF/PROS REQUESTED	
/ 57	10/26/2005	LTR	LETTER FROM RETA W SUNNY FARR	
	10/27/2005	NT ACTION	NOTICE PER DEPT #8 SENTENCING SPECIAL SET @ 3:30 PM #8	11-18-2005TB
/ 58	10/28/2005	CIT ACTION	CITATION SENTENCING #8 3:30PM**SPC SET**	11-08-2005TB
	11/08/2005	MTHRG ACTION	MOTION HEARING #8 SENTENCING 3:30PM SPEC SET	11-22-2005TB
// 59	11/18/2005	CNRSE	CONFIDENTIAL REPORT IN SEALED ENVELOPE	
	11/18/2005	PSI	PRE-SENTENCING INVESTIGATION REPORT	
	11/22/2005	HSTKDA ACTION	HEARING CANCELLED:DEF/RESP REQUEST #8 SENTENCING 3:30PM SPEC SET	12-08-2005TB
/ 60	11/22/2005	MM	MEMORANDUM OF DISPOSITION	
	12/08/2005	SNTHRG	SENTENCING HEARING 318 MOS TO DOC, CR 210 DYS	
/ 61	12/08/2005	MM	MEMORANDUM OF DISPOSITION	
2 62	12/08/2005	DRHIV	ORDER FOR HIV (AIDS) TEST	
3 63	12/08/2005	NR	NOTIFICATION REGISTRATION(SEX OFF.)	
/ 64	12/08/2005	ADR	ADVICE OF RIGHTS	
	12/08/2005	NTRA	COURT ORAL NOTICE RIGHT OF APPEAL	
/ 8 65	12/08/2005	FJS	FELONY JUDGMENT AND SENTENCE	
	12/08/2005	WC	WARRANT OF COMMITMENT	
2 66	12/08/2005	ORAH	OR FOR PROTECT FROM CIVIL HARASSMEN	
2 67	12/08/2005	ORAH	OR FOR PROTECT FROM CIVIL HARASSMEN	
2 68	12/08/2005	LTR	LETTER TO COURT	
/ 69	12/08/2005	LTR	LETTER TO COURT	
/ 70	12/08/2005	LTR	LETTER TO COURT	
9 71	12/08/2005	LTR	LETTER TO COURT	
	12/15/2005	ADM06	COLLECTION FEE ASSESSED	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
1 72	12/15/2005	NTFC	NOTIFICATION OF FELONY CONVICTION	
19 73	01/11/2006	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
1 74	01/11/2006	AFSR	AFFIDAVIT/DECLARATION OF SERVICE OF NOTICE OF APPEAL	
5 75	01/11/2006	MT	MOTION F/ORDER AUTHORIZING REVIEW AT PUBLIC EXPENSE & PROVIDING FOR APPOINTMENT OF ATTORNEY ON APPEAL	
3 76	01/11/2006	ORIND	ORDER OF INDIGENCY & AUTHORIZING REVIEW AT PUBLIC EXPENSE & FOR APPOINTMENT OF ATTORNEY ON APPEAL	
1 77	01/12/2006	TRLC	TRANSMITTAL LETTER - COPY FILED NACA/ORIND TO COA	
2 78	01/18/2006	LTR	LETTER TO ATTY RE APPT ON APPEAL	
		ATD02	TABBUT, LISA ELIZABETH	
2 79	01/26/2006	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
2 80	01/26/2006	AFML	AFFIDAVIT OF MAILING	
1 81	01/30/2006	CRRSP	CORRESPONDENCE FROM COA #34280-4II RE UNTIMELY FILING OF NACA/SET FOR DISMISSAL 02-10-2006	
2 82	02/02/2006	INX	INDEX - CLERK'S PAPERS	
1 83	02/02/2006	LTR	LETTER TO ATTY RE CLERK'S PAPERS	
1 84	02/13/2006	TRLC	TRANSMITTAL LETTER - COPY FILED	
	02/13/2006	CLP	CLERK'S PAPERS SENT TO COA	
1 85	02/17/2006	RTRCM	RETURN RECEIPT - CERTIFIED MAIL CLP TO COA	
1 86	02/21/2006	CRRSP	CORRESPONDENCE FROM COA RE "CONFIDENTIAL" DOCUMENTS	
1 87	03/03/2006	INVV	INVOICE VOUCHER TO OPD	
	03/03/2006	\$CLPA	CLERK'S PAPERS - FEE ASSESSED	42.50
	03/03/2006	\$CA	COSTS ASSESSED PSTG - CLP	8.45
	03/15/2006	\$CLPR	CLERK'S PAPERS - FEE RECEIVED	42.50
	03/15/2006	\$CR	COSTS RECEIVED PSTG - CLP	8.45
1 88	03/31/2006	NT	NOTICE OF FILING OF VERBATIMS L WILLIAMS	
3 89	03/31/2006	INVV	INVOICE VOUCHER TO OPD FOR V/B	
2 90	03/31/2006	TRLC	TRANSMITTAL LETTER - COPY FILED ADVISE COA OF FILING OF V/B	
1 91	04/10/2006	TRLC	TRANSMITTAL LETTER - COPY FILED	
	04/10/2006	VRPT	VERBATIM RPT TRANSMITTED TO COA	
1 92	04/14/2006	RTRCM	RETURN RECEIPT - CERTIFIED MAIL V/B TO COA	
1 93	06/06/2006	INVV	INVOICE VOUCHER TO OPD	
	06/06/2006	\$CA	COSTS ASSESSED PSTG - V/B	11.40
	06/19/2006	\$CR	COSTS RECEIVED PSTG - V/B	11.40
2 94	09/15/2006	LTR	LETTER TO CLERK FROM DEFT FATHER	
1 95	09/22/2006	LTR	LETTER FROM CLERK TO DEFT FATHER	
	12/19/2006	ADM06	COLLECTIONS FEE ASSESSED	
2 96	12/20/2006	LTR	LETTER FROM DEFT TO CLERK	
2 97	12/21/2006	LTR	LETTER FROM CLERK TO DEFENDANT	
3 98	07/02/2007	MT	MOTION TO MODIFY LFO'S	
4 99	07/03/2007	RSP	RESPONSE FRM D#8 - D-MOTION DENIED	
10 100	07/09/2007	MND	MANDATE FROM COURT OF APPEALS	
	07/09/2007	DCSAP	DECISION FROM APPELLATE COURT	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
/ 101	07/12/2007	CIT	PUBLISHED OPINION/REVERSED ON TWO COUNTS/REMANDED COA #34280-4-II CITATION	08-22-2007C
		ACTION	#8 RESENTENCE	
102	07/13/2007	ORTRP	ORDER TO TRANSPORT & MOTION	
2 103	07/16/2007	ORTRP	ORDER TO TRANSPORT & MOTION	
	08/22/2007	NT	NOTICE	08-22-2007FA
		ACTION	DECISION FROM CRT OF APPEALS/SET	
		ACTION	HRG #8	
	08/22/2007	SNTHRG	SENTENCING HEARING	
/ 104	08/22/2007	MM	MEMORANDUM OF DISPOSITION	
/ 105	08/22/2007	FJS	FELONY JUDGMENT AND SENTENCE	
-	08/22/2007	WC	WARRANT OF COMMITMENT	
/ 106	09/19/2007	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
2 107	09/19/2007	CRML	CERTIFICATE OF MAILING	
3 108	09/27/2007	ORIND	ORDER OF INDIGENCY	
		JDG08	JUDGE DIANE M. WOOLARD	
/ 109	10/03/2007	TRLC	TRANSMITTAL LETTER - COPY FILED EFILED NACA/ORIND TO COA	
6 110	10/04/2007	MTIND	MOTION FOR INDIGENCY	
3 111	10/04/2007	PROR	PROPOSED ORDER/FINDINGS	
			ORIND SIGNED 9/27/07 - NO ACTION	
2 112	10/10/2007	LTR	LETTER TO ATTY RE APPT ON APPEAL	
		ATD03	HAYS, JOHN A.	
2 113	10/10/2007	PNCA	PERFECTION NOTICE FROM CT OF APPLS	
/ 114	10/23/2007	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
2 115	10/25/2007	INX	INDEX TO CLERK'S PAPERS	
/ 116	10/25/2007	LTR	LETTER TO ATTYS RE CLERK'S PAPERS	
/ 117	11/05/2007	TRLC	TRANSMITTAL LETTER - COPY FILED	
	11/05/2007	CLP	CLERK'S PAPERS SENT TO COA	
/ 118	11/05/2007	RCP	RECEIPT(S) FOR UPS SHIPPING CLP TO COA	
	11/19/2007	NT	NOTICE OF FILING OF VERBATIM L WILLIAMS / 09/20/06	
/ 120	11/19/2007	TRLC	TRANSMITTAL LETTER - COPY FILED ADVISE COA OF FILING OF VERBATIMS	
/ 121	11/29/2007	TRLC	TRANSMITTAL LETTER - COPY FILED	
	11/29/2007	VRPT	VERBATIM RPT TRANSMITTED TO COA	
/ 122	11/30/2007	RCP	RECEIPT(S) FOR UPS SHIPPING V/B TO COA	
	12/19/2007	ADM06	COLLECTIONS FEE ASSESSED	
/ 123	01/04/2008	INVV	INVOICE VOUCHER TO OPD	
	01/04/2008	\$CLPA	CLERK'S PAPERS - FEE ASSESSED	30.50
	01/04/2008	\$CA	COSTS ASSESSED SHPPG	8.00
	01/24/2008	\$CLPR	CLERK'S PAPERS - FEE RECEIVED	30.50
	01/24/2008	\$CR	COSTS RECEIVED SHPPG	8.00
/ 124	02/26/2008	DSGCKP	DESIGNATION OF CLERK'S PAPERS SUPPLEMENTAL	
/ 125	02/28/2008	INX	INDEX - CLERK'S PAPERS	
/ 126	02/28/2008	LTR	LETTER TO ATTYS RE CLERK'S PAPERS	
/ 127	03/04/2008	TRLC	TRANSMITTAL LETTER - COPY FILED	
	03/04/2008	CLP	CLERK'S PAPERS SENT TO COA	
/ 128	03/05/2008	RCP	RECEIPT(S) FOR UPS SHIPPING	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
5 128A	07/24/2008	RQ	SUPP CLP TO COA REQUEST - PUBLIC DISCLOSURE	
/ 129	07/30/2008	INVV	INVOICE VOUCHER TO OPD	
	07/30/2008	\$CLPA	CLERK'S PAPERS - FEE ASSESSED	10.00
	07/30/2008	\$CA	COSTS ASSESSED SHIPPING	4.20
// 130	07/31/2008	LTR	LETTER TO DEFT IN RESPONSE TO PUBLIC DISCLOSURE REQUEST	

=====END=====

ATTACHMENT 2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	Superior Court
	)	No. 05-1-01088-6
v.)	
)	
JEFFREY SCOTT ZIEGLER,	)	Court of Appeals
	)	No. 34280-4-II
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

Volume I



June 9, 2005

BEFORE: THE HONORABLE ROBERT LEWIS, Judge

APPEARANCES: Mr. Kim Farr, Deputy Prosecuting Attorney,
on behalf of the State of Washington; and
Mr. Jeff Simpson, Attorney at Law, on
behalf of the Defendant.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	Superior Court
	)	No. 05-1-01088-6
v.)	
)	
JEFFREY SCOTT ZIEGLER,	)	Court of Appeals
	)	No. 34280-4-II
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, June 9, 2005, before the HONORABLE ROBERT LEWIS, Judge.

APPEARANCES: Mr. Kim Farr, Deputy Prosecuting Attorney, on behalf of the State of Washington; and
Mr. Jeff Simpson, Attorney at Law, on behalf of the Defendant.

P R O C E E D I N G S :

(The following proceedings took place 06/09/05:)

PROSECUTOR: Next up will be Jeffrey Ziegler, that's No. 31 on your criminal docket.

MR. FARR: Your Honor, this matter is on for omnibus which Mr. Barrar had spelled out and I'm presenting to the Court.

MR. SIMPSON: Your Honor, I'm appearing on behalf of Mr. Barrar this morning.

MR. FARR: And it's on for a State motion for a continuance because Detective Aaron Holladay will be out of town during the time period of the presently given trial of 7/11. He's gone from 7/7 to 7/19.

MR. SIMPSON: And, Your Honor, Defense has no objection to a continuance as long as the trial is set within speedy.

THE COURT: Well, was Mr. Ziegler being held on this matter?

MR. SIMPSON: Yes, Your Honor --

MR. FARR: With 70- --

MR. SIMPSON: -- I --

MR. FARR: 75,000 bail.

THE COURT: Well, the reason I asked is May 20th the scheduling order says trial was set for July

1 11th, which was 66 days elapsed.

2 MR. SIMPSON: I think -- is that an error, the
3 66?

4 MR. FARR: That's what we were trying to figure
5 out as well, whether that was supposed to be 56,
6 because since he was in custody, obviously it
7 shouldn't be 66.

8 MR. SIMPSON: May, June, July --

9 THE CLERK: When was the trial set originally?

10 THE COURT: It was set for July 11th.

11 MR. FARR: It was set on 5/20 for July 11th.

12 MR. SIMPSON: I calculated 52, but mine can't be
13 trusted.

14 THE COURT: May 20th a July 11th trial would have
15 been 41 days elapsed.

16 MR. FARR: Then I don't know why it's --

17 THE COURT: No, no, no, wait, wait, wait. Never
18 mind. I'm reading the wrong date here.

19 THE CLERK: (Inaudible.)

20 THE COURT: May 20th July 11th would have been 52
21 days elapsed.

22 MR. SIMPSON: That's what I got.

23 THE COURT: I don't know where we got --

24 MR. SIMPSON: Yeah, I think 66 was an error.

25 MR. FARR: The difficulty is, again, the

1 officer's going to be gone till the 19th.

2 THE COURT: Well, that would be the 60th day.
3 Will he be back on the 19th?

4 MR. FARR: I -- well, he -- my -- my notes from
5 my secretary indicate gone from 7th through the
6 19th, so I think the 19th he would still be gone.

7 THE COURT: (Pause; reviewing calendar.) Set it
8 on for July 25th. That's within the cure period,
9 and I find there's good cause for the continuance.
10 So July 25th, 9:00. July 21st at 1:30 will be the
11 new readiness date.

12 THE CLERK: So it will stay at 52 days since it's
13 within the cure?

14 THE COURT: Well, the trial -- and you may want
15 to prepare --

16 THE CLERK: Do you want me to do one of the trial
17 resetting notices instead of a scheduling order?

18 THE COURT: May 20th was the -- yeah, May 20th
19 was the arraignment date. I'm setting the matter
20 on for July 25th, which actually is 66 days
21 elapsed. I'm doing so because I find good cause to
22 continue the matter outside the speedy trial rule
23 because of the planned advance vacation of the
24 necessary witness. That's within the cure period
25 allowed by the court rules.

1 So we'll reset the trial date to that day.
2 and the readiness hearing to the 21st at 1:30.
3 Previous dates are stricken.

4 Is there an omnibus application for the
5 defendant?

6 MR. SIMPSON: Not at this time, sir.

7 MR. FARR: Could we have the due date, then,
8 of --

9 THE COURT: We'll use July 12th as a cutoff date.

10 MR. FARR: Okay. Thank you.

11 *(Proceedings recessed this 9th day of June, 2005.)*

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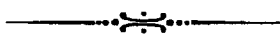
ATTACHMENT 3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	Superior Court
	)	No. 05-1-01088-6
v.)	
)	
JEFFREY SCOTT ZIEGLER,	)	Court of Appeals
	)	No. 34280-4-II
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

Volume II



July 18, 2005

BEFORE: THE HONORABLE ROBERT LEWIS, Judge

APPEARANCES: Mr. Kim Farr, Deputy Prosecuting Attorney,
on behalf of the State of Washington; and

Mr. Jeff Simpson, Attorney at Law, on
behalf of the Defendant.

*Linda Williams, Official Court Transcriber
13321 P.E. Knapp Court
Portland, Oregon 97236-5491
phone (503) 761-1240, fax (503) 762-8244*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
)
 Plaintiff,) Superior Court
) No. 05-1-01088-6
 v.)
)
JEFFREY SCOTT ZIEGLER,) Court of Appeals
) No. 34280-4-II
 Defendant.)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, July 18, 2005, before the HONORABLE ROGER A. BENNETT, Judge.

APPEARANCES: Mr. Kim Farr, Deputy Prosecuting Attorney, on behalf of the State of Washington; and

 Mr. Jeff Barrar, Attorney at Law, on behalf of the Defendant.

*Linda Williams, Official Court Transcriber
13321 P.E. Knapp Court
Portland, Oregon 97236
phone (503) 761-1240, fax (503) 762-8244*

P R O C E E D I N G S :

(The following proceedings took place 07/18/05:)

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3 MR. FARR: Your Honor, this was set for trial
4 July 25. We thought we had an opportunity today to
5 proceed. I think there's going to be a motion to
6 continue and a waiver.

7 MR. BARRAR: That's correct, Your Honor, I spoke
8 with Mr. Ziegler several times last week and we
9 believed we had worked out a resolution to the
10 case. It's my understanding that over the course
11 of the weekend he had an incident in the jail where
12 they've now put him in a high-risk environment and
13 they've added lithium and Wellbutrin to his
14 medications.

15 He has had a change of heart about how to
16 proceed and I would like to continue the trial date
17 because now I'm kinda dealing with a different guy,
18 to put it simply.

19 He's willing to waive. I'd like to see how
20 the new medications affect his processing of
21 information.

22 THE COURT: The trial date right now is July
23 25th. How far out do you want to go?

24 MR. BARRAR: Given the medications, Your Honor,
25 we'd ask for another sixty days if possible.

1 THE COURT: How far, sixty, did you say?

2 MR. BARRAR: Yes, please.

3 THE COURT: (To clerk:) Yeah, sometime in mid- to
4 late September, if possible.

5 And is there a waiver?

6 MR. BARRAR: Yes, Your Honor, he's still signing
7 at this point. I discussed a waiver would be
8 necessary to allow the medications to take effect.

9 *(Pause in proceedings; completing paperwork.)*

10 THE CLERK: (Listing available dates for
11 counsel.)

12 MR. BARRAR: You go ahead and call it.

13 MR. FARR: Well, because I don't have my calendar
14 here, so it's a shot in the dark, but the end of
15 September would be fine.

16 THE COURT: Okay, September 19th.

17 MR. BARRAR: Thank you, Your Honor.

18 THE COURT: I'm going to make the commencement
19 date August 1st.

20 MR. BARRAR: Thank you.

21 THE COURT: So that would be 31 and 19, 50 days
22 on speedy trial.

23 MR. FARR: And the readiness, Your Honor?

24 THE COURT: That would be the 15th of September.

25 MR. BARRAR: And we can go ahead and strike the

1 readiness for this Thursday. Thank you.

2 *(Proceedings recessed this 18th day of July, 2005.)*

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ATTACHMENT 4

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
)
 Plaintiff,) Superior Court
) No. 05-1-01088-6
 v.)
)
JEFFREY SCOTT ZIEGLER,) Court of Appeals
) No. 34280-4-II
 Defendant.)

VERBATIM REPORT OF PROCEEDINGS

Volume III

September 9, 2005

BEFORE: THE HONORABLE DIANE WOOLARD, Judge

APPEARANCES: Mr. Kim Farr, Deputy Prosecuting Attorney,
 on behalf of the State of Washington; and

 Mr. Jeff Barrar, Attorney at Law, on
 behalf of the Defendant.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
)
 Plaintiff,) Superior Court
) No. 05-1-01088-6
 v.)
)
 JEFFREY SCOTT ZIEGLER,) Court of Appeals
) No. 34280-4-II
 Defendant.)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for hearing in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, September 9, 2005, before the HONORABLE DIANE WOOLARD, Judge.

APPEARANCES: Mr. Kim Farr, Deputy Prosecuting Attorney, on behalf of the State of Washington; and

Mr. Jeff Barrar, Attorney at Law, on behalf of the Defendant.

P R O C E E D I N G S :

(The following proceedings took place 09/09/05:)

MR. SHANNON: Ziegler. I don't have a file on Mr. Ziegler.

THE COURT: Well, Mr. Farr's case, I understand.

MR. FARR: We're here on Mr. Ziegler today. We have a trial -- this is my motion. We have a trial set for the 19th. We've made contact or attempted to make contact with the mother and victim and find out they have moved to the state of Texas. So we are -- I don't think we're going to be able to get them up here for the prerequisite necessities for the trial date of the 19th.

We have sufficient time within the speedy trial to bump this for a couple weeks, and that's what the State would ask.

THE COURT: Well, it appears there's ten days on the speedy trial.

MR. FARR: Ten days left?

THE COURT: (No audible response.)

MR. FARR: Oh. I thought there was more than that.

THE COURT: So, Mr. Barrar?

MR. BARRAR: Mr. Ziegler is opposed to a continuance, Your Honor, but we do understand that

1 the new commencement date was August 1st, I
2 believe.

3 THE COURT: Well, I don't -- okay. So I've got
4 the commencement date of August 1st and a trial
5 date of the 19th. Leaves us at 50 days, is what
6 we've got on the trial date.

7 MR. FARR: (Inaudible) custody sixty days
8 (inaudible).

9 THE COURT: Uh-huh.

10 MR. FARR: Well, so the most we could get would
11 be through the week of October 3rd, I think. And
12 I'm --

13 THE COURT: That's true.

14 MR. FARR: -- gone for the week of October 3rd.

15 THE COURT: And I don't have any trials set for
16 October 3rd. We could move you to another
17 department, but you're gone, so I guess we're set.

18 MR. FARR: All right. All right, well, I thought
19 I'd (inaudible).

20 MR. BARRAR: Thank you.

21 MR. FARR: Thank you very much, then, Your Honor.

22 THE COURT: Okay.

23 *(Proceedings recessed this 9th day of September, 2005.)*

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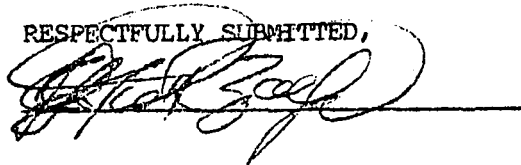
SUPPLEMENT TO THE AFFIDAVIT

The facts before this Court show that the State has misled this Court by excluding those medical records which calls into question the state of mind of the prosecutor who tried this case.

As to the matter of Judge Diane W. Woolard not recusing herself as was requested in the Notice to the Court/Memorandum/Affidavit, "A criminal defendant may move for a change of judge based on a affidavit of prejudice." See State v. Parra, 122 Wn.2d 590, 594, 859 P.2d 1231 (1993). Judge Woolard Did not follow her recusal as stipulated in Affidavit's request stating her prejudice. Also, RCW 4.12.050 "permits a party to change judges once as a matter of right upon timely filing motion without substantiating a claim of prejudice." See State v. Torres 85 Wn.App. 231, 932 P.2d 186. Defendant did make an request for "once as a matter of right" change of Judge Woolard.

Dated this 6th day of February, 2011

RESPECTFULLY SUBMITTED,



DOC#886970 Unit#NB-27-U

Airway Heights Corr. Ctr.

P. O. Box 2049 - 11919 W. Sprague Ave.,

Airway Heights, WA 99001

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Dept 8

FILED

2011 AUG 24 AM 10:00

SCOTT G. WEBER, CLERK
CLARK COUNTY

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SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR Clark County COUNTY

STATE OF WASHINGTON,	)	No. <u>05-1-01088-6</u>
Plaintiff,)	
v.	)	MOTION FOR IN-CAMERA
	)	REVIEW HEARING AND
<u>Ziegler, Jeffrey Scott</u>	)	RELEASING CLIENT FILE
Defendant.)	

Defendant Jeffrey Scott Ziegler moves this court for an in-camera review hearing of his client files in possession of defense counsel Jeffrey David Barrar, WSBA # 18281, and an order for counsel to timely provide the files to this defendant.

This motion is supported by the attached declaration and memorandum, and all documents previously filed are incorporated by reference.

DATED this 18th day of August, 2011.

Signed *Jeffrey Scott Ziegler*
Ziegler, Jeffrey Scott, Defendant

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

STATE OF WASHINGTON,)
)
Plaintiff,)
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v.)
)
Ziegler, Jeffrey Scott,)
)
Defendant.)
)
_____)

No. 05-1-01088-6
DEFENDANT'S DECLARATION AND
MEMORANDUM IN SUPPORT OF
MOTION FOR IN-CAMERA REVIEW
HEARING AND ORDER RELEASING
CLIENT FILES

Defendant declares under penalty of perjury under the laws of the State of Washington the following to be true and correct to the best of defendant's knowledge:

1. I am the defendant in this case, am over the age of 18, and am competent to give this declaration.
2. I make this declaration in support of my motion seeking in-camera review of my client files and an order to release them to me.
3. I am currently seeking appellate review of my case and have been unsuccessful in my attempts to receive my client file from my attorney Jeffrey David Barrar, WSBA # 18281.
4. I am seeking to obtain my entire client file(s) in accordance

1 with CrR 4.7(h)(3),(6), and WSBA opinions 181, 1114, and 2117.

2 5. After in-camera review of my file(s) I am seeking an order from
3 this court to my attorney directing my attorney to provide all files minus
4 attorney theories, opinions and conclusions.

5 6. I am not requesting vital information on the alleged victim(s),
6 i.e., medical records, social security number, address, telephone numbers,
7 or other such private information.

8 MEMORANDUM OF LAW

9 Defendant seeks his client file maintained by his attorney pursuant to
10 Criminal Rule 4.7(h)(6):

11 In Camera Proceeding. Upon request of any person, the court may
12 permit any showing of cause for denial or regulation of disclosure,
13 or portion of such showing, to be made in camera. A record shall be
14 made of such proceedings. If the court enters an order granting relief
following a showing in camera, the entire record of such showing shall
be sealed and preserved in the records of the court, to be made avail-
able to the appellate court in the event of an appeal.

15 Defendant seeks an order from this court in accordance with WSBA
16 opinion 2117:

17 CrR 4.7(h)(3)-Analysis

- 18 ••• the file, in its entirety, belongs to the client, subject only
19 to the limited exceptions contained in the formal opinion [181]
and copying cost must be born by the attorney since the original
20 file belongs to the client either upon request or ending of the
representation.
21 ••• An appointed counsel ...[a]t the conclusion of representation...
22 the obligation of the attorney is to turn the file over to the
[indigent] client. An indigent client in such circumstances can-
not be charged a supplemental fee in order to obtain material
23 in their files... WSBA 2117 pp.2-3 (2006).

24 Further, WSBA opinion 181 supports defendant's request to this court:

25 II. Responding to a former client's request for files
26 a. Conclusion: At the conclusion of a representation...the file
generated in the course of representation, with limited exceptions,

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must be turned over to the client at the client's request, and if the lawyer wishes to retain copies for the lawyer's use, the copies must be made at the lawyer's expense.

WSBA opinion 1114 is further instructive:

The Committee was of the opinion that under that rule (CrR 4.7(h) (3) and (7), in light of the facts presented in your inquiry, a court order should be obtained directing the withdrawing lawyer to transfer the papers as requested by the client.

Finally, CrR 4.7(h)(3) provides in part:

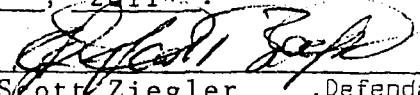
a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by...order of the court. State v. Rafay, 167 Wn.2d 644.

CONCLUSION

It is necessary that this court conduct an in camera review of defendant's client file and determine what is and what is not appropriate as a matter of law to release to defendant.

In consideration of the above facts, court rules, WSBA opinions and case law, defendant requests this motion be granted in all respects and that defendant's file(s) be provided to him immediately.

DATED this 18th day of August, 2011.

Signed 
Jeffrey Scott Ziegler, Defendant
DOC#886970 Unit#886970
Airway Hts. Corr. Ctr.,
P.O.Box 2049-11919 W. Sprague Ave.,
Airway Heights, WA 99001

//



Formal Opinion: 181

Year Issued: 1987

RPC(s): 1.16

Subject: Asserting Possessory Lien Rights and Responding to Former Client's Request for Files

At the conclusion of the representation of a client, the client often requests a copy of the "file." If the lawyer's fees remain unpaid, the lawyer may want to assert lien rights. If no lien rights are claimed, a question often arises as to what parts of the file must be provided and whether the lawyer can charge the client for the expense of copying the file. The Rules of Professional Conduct shed light on both questions.

I. The attorney's possessory lien.

A. Issue: What are the ethical limitations on a lawyer's right to assert a lien on the papers or money of a client or former client?

B. Conclusion: A lawyer cannot exercise the right to assert a lien against files and papers when withholding these documents would materially interfere with the client's subsequent legal representation. Nor can the lien be asserted against monies held in trust by the lawyer for a specific purpose or subject to a valid claim by a third party.

C. Discussion: Attorneys have a "retaining" or a "possessory" lien under RCW 60.40.010 against papers or money in the lawyer's possession. In contrast to a "charging" lien under RCW 60.40.010(4) on a judgment obtained for a client, the retaining lien on papers or money cannot be foreclosed. *Ross v. Scannell*, 97 Wn.2d 598, 647 P.2d 1004 (1982). The lien "may merely be used to embarrass the client, or, as some cases express it to 'worry' him into the payment of the charges." *Gottstein v. Harrington*, 25 Wash. 508, 511, 65 P. 753 (1901).

The client, however, retains an absolute right, in civil cases at least, to terminate the lawyer at any time for any reason, or for no reason at all. RPC 1.16(a)(3); *Belli v. Shaw*, 98 Wn.2d 569, 657 P.2d 315 (1983). Upon termination of the relationship, RPC 1.16(d) requires that:

A lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled. . . . The lawyer may retain papers relating to the client to the extent permitted by other law.

If assertion of the lien would prejudice the former client, the duty to protect the former client's interests supersedes the right to assert the lien.

A client's need for the files will almost always be presumed from the request for the files. But this need does not mean that in every case the assertion of a lien will prejudice the client. If there is no dispute about fees and the client has the ability to pay the outstanding charges, it is proper for the lawyer to assert the lien. In this situation, it is the former client's

TO: HONORABLE DIANNE M. WOOLARD
CLARK COUNTY SUPERIOR COURT
P.O. BOX 5000
VANCOUVER, WA 98666

FROM: JEFFREY ZIEGLER-886970-NB-27-U
AIRWAY HEIGHTS CORRECTION CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

RE: CAUSE #05-1-01088-6 MOTION TO DISMISS FOR VIOLATION OF SPEEDY TRIAL RULE

Dear Ms. Woolard;

December 9, 2010

I would like to take this peaceful time to place you upon proper notice that pursuant to Const. art. 4, § 20 and RCW 2.08.240, you have 90-days within which you must act and rule or transfer my motion to dismiss to the court of appeals as a personal restraint petition.

I filed my motion pursuant to RAP 12.2 which said that I may file a motion under court rules after the mandate had already been issued so long as that motion did not raise issues already decided by the Court of Appeals. IN this case the court of appeals has not heard that issue, that issue is ripe for review and there is no other reason outside of malice that would cause you not to act upon the motion.

I caused this motion to be deposited into the AHCC federal mail system logged legal mail which makes that the day of the motions filir under the mailbox rule. This leaves you now have only 41 days left to hear this motion or transfer that to the court of appeals as a PRP.

Sincerely,


Mr. Ziegler

SUPPLEMENT TO THE AFFIDAVIT

COMES NOW, Jeffrey Scott Ziegler, and moves to supplement the Affidavit in support of the Motion to Dismiss due to speedy trial violations..

In the memorandum in support of the Motion to Dismiss, Mr. Ziegler was detained by law enforcement on May 5, 2005 which started the clock within which the State had 60 days to have Mr. Ziegler brought to trial. That period lapsed before Mr. Ziegler was finally brought to trial. Thus, a dismissal is warranted.

In support of that factual statement of when Mr. Ziegler was detained which is material to the start time for speedy trial to commence, Mr. Ziegler supplements the record with the records which are to be affixed to the Affidavit as Attachment 6. (See enclosed attachment).

During this case, this Court also asked the State to produce the medical records. The State's response was that none existed. Since this case deals with an allegation of rape of a child, then the medical records would be of the utmost importance to scientifically determine whether or not a rape did occur or if the allegation was based on improper motives. Enclosed as for the convenience of this Court is a partial set of those medical records which the State claimed "does not exist," which are to be affixed to the Affidavit as Attachment 7. (See attachment.)

Since Mr. Ziegler is having difficulties in securing the entire set of records he moves this Court under FR 706 to appoint a "special master" to investigate into the factual existence of the medical records in this case. See Delaney v. Canning, 84 Wn.App. 492, 923 P.2d 475 (1997). Mr. Ziegler also asks that this Court produce those medical records in their entirety once an in camera review has been conducted.

SUPPLEMENT TO THE AFFIDAVIT

The facts before this Court show that the State has misled this Court by excluding those medical records which calls into question the state of mind of the prosecutor who tried this case.

As to the matter of Judge Diane M Woolard not recusing herself as was requested in the Notice to the Court/Memorandum/Affidavit, "A criminal defense defendant may move for a change of judge based on a affidavit of prejudice." See State v. Parra, 122 Wn.2d 590, 594, 859 P.2d 1231 (1993). Judge Woolard Did not follow her recusal as stipulated in Affidavit's request, stating her ~~the~~ prejudice. Also, RCW 4.12.050 "permits a party to change judges ~~a~~ once as a matter of right upon timely filing motion without substantiating a claim of prejudice." See State v. Torres 85 Wn.App. 231, 922 P.2d 186. Defendant did make an request for ~~the~~ "once as a matter of right" for change of Judge Woolard.

Dated this 6th day of February, 2011

RESPECTFULLY SUBMITTED,



DOC#000970 Unit#AF-27-U

Airway Heights Corr. Ctr.

P. O. Box 2042 - 11819 W. Sprague Ave.,

Airway Heights, WA 99001

COURT OF APPEALS, DIVISION II, OF WASHINGTON

STATE OF WASHINGTON,
RESPONDENT,

v.

JEFFREY SCOTT ZIEGLER
PETITIONER.

~~V. 12~~

MOTION TO RECONSIDER
OBJECTION TO TRANSFER
OF RECHARACTERIZED CR
7.8 MOTION

I. IDENTITY

I, JEFFREY SCOTT ZIEGLER, PRO SE, ASK
THIS HONORABLE COURT FOR RELIEF AS IS
PROPERLY AND RESPECTFULLY REQUESTED
AS PER RULE OF APPELLATE PROCEDURE
17.2 ^{ET SEQ.} (C), AND CR 59 ^{ET SEQ.},

THIS MOTION TO RECONSIDER PETITIONER'S
OBJECTION TO TRANSFER OF RECHARACTERIZED
CR 8-3(b)/CR 33(h) INTO RELABELLED CR 7.8
MOTION IS VALID AND PROPERLY BEFORE THIS
COURT AS AFFIDAVIT OF PREJUDICE AGAINST THE
TRANSFERRING JUDGE WERE PROPERLY SUBMITTED AND FILED,
AND "PRIOR NOTICE TO TRANSFER" IS WASHINGTON PRECEDENCE.

CR 59

STATEMENT OF RELIEF SOUGHT

PETITIONER CONTENDS THAT UNDER THE CIRCUMSTANCES OF WHICH PETITIONER'S CYR 7.8 MOTION WAS RECHARACTERIZED AND THEN TRANSFERRED AS A PTP TO THE COURT OF APPEALS WITHOUT "ANY PRIOR NOTICE" VIOLATES "ALL" COURT PRECEDENTS AND THAT:

- (1) PETITIONER SHOULD BE GIVEN THE OPPORTUNITY TO OBJECT TO THE TRANSFER,
- (2) AGREE TO DISMISS HIS HIS MOTION,
- (3) OR SEEK DISMISSAL ONCE THE MOTION IS TRANSFERRED.

PETITIONER WAS "NOT" GIVEN THOSE OPPORTUNITIES; ~~IS~~ "REMAIND" IS APPROPRIATE BECAUSE THE COURT NOR THE PROSECUTING ATTORNEY GAVE PETITIONER NOTICE THAT IT "MIGHT" TRANSFER HIS NEWLY RE-CHARACTERIZED CYR 7.8 MOTION TO THE COURT OF APPEALS TO BE CONSIDERED AS A PERSONAL RESTRICTION PETITION.

FACTS RELEVANT TO MOTION

PETITIONER FILED HIS CYR 8.3(b)/CYR 3.3(h) (NOW CYR 7.8)

MOTION IN THE SUPERIOR COURT ON NOV. 1ST, 2010.

THE PROSECUTING ATTORNEY DETERMINED PETITIONER'S 8.3(b)/3.3(h) MOTION WAS MISLABELED, AND RE-LABELED PETITIONER'S MOTION INTO A CYR 7.8 MOTION.

THE PROSECUTOR SOUGHT TRANSFER OF THE NEWLY RE-LABELED MOTION (CYR 7.8) TO THE COURT OF APPEALS.

PETITIONER WAS "NOT" GIVEN "NOTICE OF INTENT" TO TRANSFER HIS CYR 7.8 MOTION.

GROUND'S FOR RELIEF AND ARGUMENT

TRANSFER OF PETITIONER ZIEGLER'S CYR 7.8 MOTION WITHOUT "ANY PRIOR NOTICE" IS CONTRARY TO WASHINGTON SUPREME COURT PRECEDENT IN CITY OF SEATTLE V. KLEIN, 161 Wn.2d 354... (2007) AND,

CONTRARY TO UNITED STATES SUPREME COURT PRECEDENT IN UNITED STATES V. CASTRO, 540 U.S. 375

383, 124 S. CT. 786, 157 L. ED. 2D 778 (2003).

THE WASHINGTON SUPREME COURT HELD: "NOTICE IS REQUIRED BEFORE DEPRIVATION OF A SUBSTANTIAL RIGHT." ID. AT 554. PETITIONER WAS NOT APPRAISED OF THE FACT THAT ANY REVISIT OF HIS ISSUE WILL BE CONSIDERED AN SUCCESSIVE PETITION IN THE COURT OF APPEALS, VIOLATING RCW 10.73.140.

PETITIONER CONTENTS THE TRANSFER OF HIS CR 7.3 MOTION WILL RELIEVE THE STATE OF ITS BURDEN TO RESPOND TO THE ALLEGATIONS MADE BY PETITIONER. THE BURDEN OF PROOF IS ON THE STATE, BY THE STATE NOT RESPONDING ~~AND~~ ^{THE STATE} WILL IN EFFECT PLACE PETITIONER IN PREJUDICE OF THE SUBSEQUENT PETITION RULE.

THIS COURT'S DECISION IGNORING PETITIONER'S MOTION TO VACATE TRANSFER AS A PRP IS NOW

CONTRARY TO COURT OF APPEALS DIV. I RULING
IN RE. VASQUEZ, 108 W.M. APP. 307, 313-14 (2001) THAT
A (C.R. 7.8 MOTION TRANSFERRED) TO COURT OF APPEALS
WILL BAR SUBSEQUENT PETITIONS.)

THE TRANSFER OF PETITIONER'S C.R. 7.8 MOTION
WILL HAVE FUTURE COLLATERAL CONSEQUENCES.
THIS COURT'S RECENT RULING CLAIMING THAT
TOIVER V. OLSEN, 109 W.M. 2D 607 ⁽¹⁹⁸⁷⁾ AND STATE V. WINSTON,
105 W.M. APP. 378 (2001)... "GIVE SUPERIOR COURT RIGHT TO
TRANSFER AND TRANSFER IS PROPER" IS "CONTRARY"
TO STATE V. SMITH, 144 W.M. APP. 860... (DIV. II 2008), AND
UNITED STATES SUPREME COURT PRECEDENT OF UNITED
STATES V. CASTRO, 540 U.S. 375, 383... (2003)

WHERE THAT COURT HELD:

"A RECHARACTERIZING OF A PROSE MOTION,
REQUIRES GIVING PETITIONER NOTICE OF INTENT TO
RECHARACTERIZING MOTION, A WARNING THAT THE

RECHARACTERIZING COULD SUBJECT IT TO SECOND OR SUCCESSIVE MOTION RULE, AND AN OPPORTUNITY TO WITHDRAW OR AMEND THE MOTION BEFORE SUCCESSIVE MOTION RULE RESTRICTIONS CAN APPLY."

AGAIN, THIS COURT OF APPEALS DIV II RULING IS COMPLETELY CONTRARY TO WASHINGTON STATE SUPREME COURT RULING OF CITY OF SEATTLE V. KLEIN, SURRA.

(NOTICE IS REQUIRED) BEFORE DEPRIVATION OF A SUBSTANTIAL RIGHT.)

PETITIONER IS NOT BARRED OBJECTING TO THIS TRANSFER OF HIS CrR 7.8 MOTION PURSUANT TO RAP 7.2 (C) REMAND) IS APPROPRIATE IN THIS PARTICULAR CASE TO ALLOW THE SUPERIOR COURT TO RULE ON PETITIONER'S CrR 7.8 MOTION.

PETITIONER'S WASHINGTON STATE CONSTITUTIONAL RIGHT ARTICLE 1 § 3, 22 (DUE PROCESS) AND UNITED STATES CONSTITUTIONAL AMENDMENT RIGHT 14 WILL BE AND/OR HAS BEEN VIOLATED.

CONCLUSION

PETITIONER WAS ALREADY FOUND NOT TIME BARRED BY RCW 4.16.190 AND THE WASHINGTON STATE SUPREME COURT RULING IN CASE # 26443-7 JEFFREY SCOTT STEGLER V. JUDGE DIANE WOOLARD, ON FEBRUARY 7th, 2012.

PETITIONER PRAYS FOR AN "ORDER TO VACATE" THE TRANSFER OF HIS CYR 7.8 MOTION TO THE COURT OF APPEALS DIV. II, (AND ALL SUBSEQUENT MOTION(S) TO VACATE, MOTION(S) TO ARREST JUDGMENT(S), PREASSIGNMENT OF JUDGE(S), AFFIDAVIT(S) OF PREJUDICE, ETC.) THAT JUDGE DIANE WOOLARD HAS ERRONEOUSLY SUBMITTED TO THE COURT OF APPEALS AGAINST "AFFIDAVITING OF JUDGE" PRECEDENTS; AND WITHOUT "PROPER NOTICE" PRECEDENTS.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF PURSUANT TO 28 U.S.C. § 1746.

AFFIDAVIT

STATE OF WASHINGTON }
COUNTY OF SPOKANE } S.P.

CLACK COUNTY Superior Court
CAUSE # 05-1-01088-6

I, JEFFREY SCOTT ZIEGLER, BEING FIRST
DULY SWORN ON OATH DEPOSES AND SAYS THE HEREBY
(PRESENTED) ARGUMENT AND ALL APPLICABLE LAWS,
STATUTES, CODES AND CRIMINAL RULES, AS QUOTED
THEREIN, TO BE CORRECT AND TRUE.

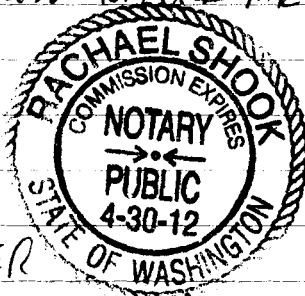
THAT I AM THE PETITIONER/DEFENDANT,
ACTING BY AND THROUGH PROSE., HAVE A UNITED
STATES CONSTITUTION RIGHT TO THE REMEDY
REQUESTED IN PART II OF THIS MOTION AND
ORDER.

DATED THIS 26th DAY OF APRIL, 2012

DOC# 886970 UNIT# MA424 SIGNED: [Signature]
P.O. BOX 2049 - AHCC-AIRWAY HTS, WA 99001 JEFFREY SCOTT ZIEGLER, PROSE.

SUBSCRIBED AND SWORN BEFORE ME THIS 26th DAY OF April 2012

NOTARY
SEAL



Rachael Shook
NOTARY PUBLIC INAM FCC
STATE OF WASHINGTON
RESIDING AT [Signature]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLALLAM

JEFFREY SCOTT ZUCKER,
PETITIONER,

v.

STATE OF WASHINGTON,
RESPONDENT.

CAUSE # 05-1-01088-6

MOTION TO VACATE TRANSFER
PETITIONER'S REPLY TO THE
STATE; TRANSFER OF MOTION TO
VACATE; TRANSFER OF REASSIGNMENT OF JUDGE
TO IDENTITY

COMES NOW, JEFFREY SCOTT ZUCKER, PETITIONER,
BY AND THROUGH COUNSEL, HICKLEY RECHY'S TO THE STATE'S
INITIAL AND SUPPLEMENTAL REPLY. PETITIONER
SEEKS RELIEF AS DESIGNATED IN PART II OF THIS
REPLY.

II. RELIEF SOUGHT

PETITIONER PRAYS THAT COURT ACCEPTS HIS
MOTION TO VACATE TRANSFER OF PETITIONER'S
~~MOTION TO VACATE AND MOTION FOR REASSIGNMENT OF JUDGE -~~
~~CIT TO MOTIONS~~ ALLOW PETITIONER "TO BE
HEARD" AND BE GRANTED A REFERENCE HEARING
SO AS PETITIONER CAN ESTABLISH IN OPEN COURT
HIS SPEEDY TRIAL VIOLATION CLAIMS, BRADY DISCOVERY

VIOLATION CLAIMS, AND HIS CLAIM OF INADEQUATE
DEFENDER SCOPE INVALIDATING JUDGMENT AND
SENTENCE, AND AFFIRMED PETITIONER HIS U.S.
CONSTITUTIONAL RIGHT TO HEARING OF PETITIONER'S
NEWLY DISCOVERED EVIDENCE IN THIS COURT
OF ORIGINAL JURISDICTION.

III. RELEVANT FACTS

PETITIONER FIRST FILED A MOTION TO DISMISS
HIS CONVICTIONS IN THIS COURT ON NOV. 1ST,
2010. ON MARCH 7TH, 2017 JUDGE WOOLARI
ON ORDER FROM WA SUPREME COURT (CASE
86413-8 (WRIT OF HABEAS CORPUS J.S. Z. V.
JUDGE DIANE WOOLARI) FINALLY "TOOK ACTION"
AND SENT ZEWER'S RECHARACTERIZED (CR 8.3(b)
/ 3.3(h) MOTION INTO A (CR 7.8 MOTION (WITH-
OUT PRIOR NOTICE GIVEN TO PETITIONER AS
REQUIRED BY WELL ESTABLISHED (ASK LAW.)

TO THE COURT OF APPEALS DIV. II AS A PRP.

PETITIONER WAS NEVER PROVIDED A NOTICE OF INTENT FROM THE PROSECUTING ATTORNEY OF HIS/HER INTENTIONS TO TRANSFER PETITIONER'S MATTER TO THE COURT OF APPEALS, DIV. II.

THE PROSECUTING ATTORNEY, IN DOING SO VIOLATED, CYR 7.8 et seq.; RCW 10.73.140; WA SUPREME COURT DECISION AS WELL AS UNITED STATES SUPREME COURT PRECEDENT.

IV. ARGUMENT

PETITIONER CLAIMS AS HIS PASTIM CASE - CITY OF SEATTLE V. KLITZ 161 Wn.2d 554, 106 P.3d 1149 (2007); AND UNITED STATES V. CASTRO 540 U.S. 375, 383, 124 S.Ct. 786, 157 L.Ed.2d 778 (2003)

(PETITIONER IS ENTITLED, BY LAW, A NOTICE, REQUIRED BEFORE DEPRIVATION OF A SUBSTANTIAL

RIGHT, BLETNIK SUPRA AT 161 WM.28554.

PETITIONER CONTENDS A RECHARACTERIZATION OF HIS PRO SE MOTION REQUIRES GIVING PETITIONER "NOTICE OF INTENT" TO RECHARACTERIZATION COULD/WOULD SUBJECT IT TO SECOND OR SUCCESSIVE MOTION RULE. PETITIONER IS ENTITLED TO A WARNING.

PETITIONER CONTENDS HE IS ENTITLED TO AN OPPORTUNITY TO EITHER WITHDRAW OR AMEND THE MOTION "BEFORE" SUCCESSIVE MOTION RULE RESTRICTIONS CAN APPLY. CASTRO, SUPRA AT 540 U.S.375. (EMPHASIS ADDED)

IN THE PRESENT CASE, PETITIONER WAS NEVER PROVIDED NOTICE BY THE PROSECUTING ATTORNEY.

PETITIONER CONTENDS UNDER "STARE DECISIS", THE LOWER COURTS "MUST FOLLOW" WASHINGTON SUPREME COURT PRECEDENT.

THE PERTINENT QUESTION HERE IS, "DID" THE PROSECUTING ATTORNEY PROVIDE PETITIONER "NOTICE"

OF INTENT TO RECHARACTERIZE CR 9.3(b)/3.3(b)
MOTION INTO A CR 7.8 MOTION, AND "DID THE
PROSECUTING ATTORNEY / JUDGE DEANE WOOLARD] PROVIDE
PREVIOUS "NOTICE OF INTENT" TO TRANSFER HIS
CR 7.8 MOTION TO THE COURT OF APPEALS?" (REPHRASED)

IF SO, THEN PREVIOUSER'S MOTION TO VACATE
IS MOOT. HOWEVER, IF NOTICE "WAS NOT GIVEN,"
THEN THE PROSECUTING ATTORNEY / JUDGE DEANE WOOLARD
DID NOT ADHERE TO THE RULES OF LAW AS SET FORTH
IN KLEIN & CASTRO SUPRA THIS BEINGS AN ALLEGANCE
AGAINST THE RULE OF LAW BY THE PROSECUTING
ATTORNEY / JUDGE DEANE WOOLARD.

THE PROSECUTING ATTORNEY / JUDGE DEANE WOOLARD
SWORE AN OATH TO UPHOLD THE CONSTITUTION AND
LAWS OF THE STATE OF WASHINGTON AND THE UNITED
STATES OF AMERICA.

~~CR 5 BY SERVICE, FILING AND SIGNATURE OF PARTIES.~~

CR 5 SMALL GOVERN SERVICE AND FILING OF WRITEN

NOTICES... IN CLERICAL CAUSES. ALL PLEADINGS, MOTIONS

AND LEGAL MEMORANDA SIGNED BY AN DEFENDANT

PLEADING PRO SE, UNLESS AN ATTORNEY HAS BEEN ASSIGNED

AS PER RULE 3-1] ATTORNEY SHALL INCLUDE THE ATTORNEY'S

WA STATE BAR ASSOC'N. MEMBERSHIP NUMBER SIGNATURE

Block. [AMENDED BY ORDER, 1ST, 1990.]

CR 5 (e) FILING WITH THE COURT DEEMED: THE FILING

OF PLEADINGS AND OTHER PAPERS WITH THE COURT AS REQUIRED

BY THESE RULES SHALL BE MADE BY FILING THEM WITH THE CLERK

OF THE COURT, EXCEPT THAT THE JUDGE MAY PERMIT THE PAPERS

TO BE FILED WITH HIM OR HER, IN WHICH EVENT THE JUDGE

SHALL NOTE THEREON THE FILING DATE AND FILING WITH TRANSMIT

THEM TO THE OFFICE OF THE CLERK. PAPERS MAY BE FILED BY FAX

WITH TRANSMISSION IF REQUESTED ELSEWHERE IN THESE OR OTHER

RULES OF COURT.

AS AIRWAY HEIGHTS COLLECTION CENTER (WISCONSIN)

AND LAW LIBERIAN ALL NO LONGER RECEIVING TRANSMISSIONS

AND/OR TYPE PART II, OR SUPPLES; WA COURTS AND AGREEMENTS

HANDWRITTEN IN THE MOTIONS, PLEADINGS ETC..

THE PROSECUTING ATTORNEY/JUDGE DEAN WOODLAND
USED EVERY LAW TO CONVICT PETITIONER OF THE
ALLEGED CRIME(S), HOWEVER, NOW WHEN IT
HAS BECOME INCUMBERT UPON THE STATE TO FOLLOW
THE "RULES OF LAW", IT CHOOSES TO IGNORE THE
VERY SAME LAWS AND RULES HE SWORE TO UPHOLD.

THE PROSECUTION ATTORNEY CHOOSES TO IGNORE
CASELAW AND WELL-ESTABLISHED COURT PRECEDENT--
THEN WANTS TO CLAIM PETITIONER IS MISAPPLYING
THOSE VERY SAME RULES THAT THE COURT OF APPEALS
WASHINGTON SUPREME COURT AND UNITED STATES SUPREME
COURT SET AS PRECEDENT(S); THAT IS "NOTICE" IS REQUIRED.

PROSECUTION ATTORNEY'S CLAIMS OF PETITIONER
MISAPPLYING CrR 9.3(b)/3.3(h), AND TIME-BARRED
IS MERITLESS.

THE PROSECUTION ATTORNEY CALLS THIS COURT'S
ATTENTION TO CrR 9.3 (c). PETITIONER ZIEGLER
DID NOT FILE A CrR 9.3(c) MOTION BUT A CrR 9.3(b).

ZIEGLER IS NOT MAKING AN "INSUFFICIENCY"
CLAIM BUT MULTIPLE SPEEDY TOTAL VIOLATION(S) CLAIM,
WHICH IS NOT TIMEBARRED UNDER CR 4.3(b)/CR 3.3(h)
AS WAS DETERMINED BY THE WASHINGTON STATE SUPREME
COURT UNDER CAUSE # 96443-8 J.S.F. V. JUDGE
DEANE WOOLARD, MANDAMUS ACTION COMPLETED FEB.
7TH, 2012 - RULING IN FAVOR OF PETITIONER ZIEGLER.

THE PROSECUTOR ATTORNEY THEN CALLS TO THE
COURT ABOUT ZIEGLER BEING "TIME BARRED", YET,
ZIEGLER SUBMITTED TO PROSECUTOR ATTORNEY EXPERTS
IN WORDS OF MANDAMUS ACTION; OF HIS BEING SENT
OUT OF THE STATE OF WASHINGTON BY WA DOC IN DEC
OF 2005 AND WAS "OUT OF STATE" UNTIL JUNE 29TH,
2010. RCW 4.16.180 SPECIFICALLY STATES THAT
WHEN A PERSON IS SENT "OUT OF STATE" NO
COMPLETMENT OF TIME SHALL BE CALCULATED UNTIL
PERSON IS RETURNED BACK INTO THE STATE.

WHEREFORE EXHIBIT (YR 9.3(b)/3.3(h))

MOTION IS TIMELY FILED ON NOVEMBER 1ST, 2010
WHEN IT WAS PLACED IN THE APCC LEGAL MAIL
UNDER OR 3.1.

THE PROSECUTING ATTORNEY FURTHER CLAIMS OR
CALLS THIS COURT'S ATTENTION TO CYR 7.8(2)(2) WHICH
STATES IN PERTINENT PART:

"THE COURT SHALL TRANSFER A MOTION FILED BY A
DEFENDANT TO THE COURT OF APPEALS FOR CONSIDERATION
AS PERIODIC REVIEW UNLESS THE COURT
DETERMINES THAT THE MOTION IS NOT BACKED
BY RCW 10.73.020." (EMPHASIS ADDED)

THE PROSECUTING ATTORNEY FURTHER CLAIMS "IN OTHER
WORDS, THE SUPERIOR COURT MUST TRANSFER A COLLATERAL
ATTACK UNLESS THE MOTION IS:

1. TIMELY (FILED WITHIN ONE YEAR)
2. A SUBSTANTIAL SHOWING OF RELIEF
(WRIT OF HABEAS CORPUS CASE # 2011-2)
3. RESOLUTION OF THE MOTION WILL
REQUIRE A HEARING.

PETITIONER ASSERTS HE HAS MET ALL THREE REQUIREMENTS; AND THE PROSECUTING ATTORNEY HAS APPARENTLY OVERLOOKED THIS INFORMATION REPEATEDLY AS THE MAJOR ALLEGED BY CONTINUED NEGLIGENCE ARGUMENTS FROM THE PROSECUTING ATTORNEY'S OFFICE.

"THE FUNDAMENTAL PRINCIPLES OF DUE PROCESS PROHIBITS A CRIMINAL DEFENDANT FROM BEING SENTENCED ON THE BASIS OF INFORMATION WHICH IS FALSE, LACKS A MINIMUM INDICIA OF RELIABILITY, OR IS ~~SUBJECT~~ UNSUPPORTED IN THE RECORD. INFORMATION RELIED UPON ~~AND~~ ^{IN} SENSANCING "IS FALSE OR UNRELIABLE" IF IT LACKS "SOME MINIMAL INDICIA OF RELIABILITY BEYOND MERE ALLEGATION"

PETITIONER ASSERTS THE STATE DID NOT MEET ITS BURDEN THROUGH BARE ALLEGATIONS, UNSUPPORTED BY THE EVIDENCE. SEE STATE V. MENDOZA, 162 P3D 439, (WA NO. DIV 2, 2007) (QUOTING STATE V. FELLS) 137 WA 70

THE COURT CLERK, BY NOT FILING "ANY" OF MY
MOTIONS PRESENTED TO THE PRESIDING JUDGE OF THE
CLACK COUNTY SUPERIOR COURT IS IN VIOLATION OF THE
FOLLOWING FUNDAMENTAL GUIDING PRINCIPLES BEHIND
THE RULES OF APPELLATE PROCEDURE:

(A) INTERPRETATION: THESE RULES WILL BE LIBERALLY
INTERPRETED TO PROMOTE JUSTICE AND FACILITATE THE
DECISION OF CASES ON THE MERITS. CASES AND ISSUES
WILL NOT BE DETERMINED ON THE BASIS OF COMPLIANCE OR
NONCOMPLIANCE WITH THESE RULES EXCEPT IN COMPULSION
CIRCUMSTANCES WHICH JUSTICE DEMANDS, SUBJECT TO THE
RESTRICTIONS IN RULE 18.8(b); AND RAP 1.2 (a) (EMPHASIS ADDED)

UNDER THIS RULE, COURTS WILL OVERLOOK TECHNICAL
DEFICIENCIES IN FAVOR OF DECIDING ISSUES IN THE INTEREST
OF JUSTICE. SEE STATE V. OLSON, 126 Wn.2d 315, 322-24, 273
P.2d 629 (1995); STATE V. SCHAUB, 111 Wn.2d 34, 39, 757 P.2d
970 (1988); ALTRON INDUSTRIES, INC. V. GOHL, 101 Wn.2d
252, 255, 676 P.2d 486 (1984) (APPLYING RAP 1.2 (a)).

DEFENDANT'S RIGHT TO FILE PRO SE MOTIONS
IS A PERSONAL RIGHT THAT CANNOT BE WAIVED.

THE WASHINGTON CONSTITUTION PROVIDES: "IN CRIMINAL PROSECUTIONS, THE ACCUSED SHALL HAVE THE RIGHT TO APPEAL AND DEFEND IN PERSON, OR BY COUNSEL... AND THE RIGHT TO APPEAL IN ALL CASES...". CONST. ARTICLE I § 22. THIS IS AN EXPLICIT GUARANTEE OF THE RIGHT TO REPRESENTATION AT TRIAL AND ON APPEAL. SEE STATE V. BREADLOVE, 79 Wn. App. 101, 106 P.2d 386 (1995) ("THE WA STATE CONSTITUTION EXPRESSLY GUARANTEES ONE'S RIGHT TO SELF-REPRESENTATION...")

DEFENDANT HAS AN UNDELETED RIGHT TO FILE A PRO SE BRIEF/MOTION IN WASHINGTON. RAC. NO. 11 (D), ADOPTED 83 Wn. 2d 1183 (1970); STATE V. JONES, 57 Wn. 2d 701, 703, 359 P.2d 311 (1961).

1ST, 5TH AND 14TH U.S. CONSTITUTIONAL AMENDMENTS RIGHTS TO DUE PROCESS, ACCESS TO COURTS, AND TO BE HEARD.

BOUND V. SMITH, 430 U.S. 814, 822 52 L.Ed.2d 72, 97 S.Ct. 1491 (1977); HAFIELD V. BAILLEUX, 290 F.2d 632, 637 (9th Cir. 1961)

08 339
WA PRACTICE
BOOKS

§ 434 RULING ON ALTERNATIVE MOTIONS: ... WHEN THE TRIAL COURT IS PRESENTED WITH A MOTION FOR ARREST OF JUDGMENT AND, IN THE ALTERNATIVE, A MOTION FOR NEW TRIAL, IT MAY DO ONE OF FOUR THINGS:

"(1) DENY THE MOTION FOR ARREST OF JUDGMENT AND DENY THE MOTION FOR NEW TRIAL; (2) DENY THE MOTION FOR ARREST OF JUDGMENT BUT GRANT THE MOTION FOR A NEW TRIAL; (3) GRANT THE MOTION FOR ARREST OF JUDGMENT BUT DENY THE MOTION FOR NEW TRIAL; OR (4) GRANT THE MOTION FOR ARREST OF JUDGMENT AND GRANT THE MOTION FOR A NEW TRIAL."

THUS, IF A MOTION FOR A NEW TRIAL IS PRESENTED WITH A MOTION FOR ARREST OF JUDGMENT, AND IF THE MOTION FOR ARREST OF JUDGMENT IS GRANTED, THE JUDGE MUST ALSO RULI ON THE MOTION FOR A NEW TRIAL, DETERMINING WHETHER IT SHOULD BE GRANTED IF THE ORDER ARRESTING THE JUDGMENT IS VACATED OR REVERSED, AND MUST SPECIFY THE GROUNDS FOR GRANTING A NEW TRIAL. THE COURT IN ITS DISCRETION, MAY HOLD AN EVIDENTIARY HEARING ON A POST-TRIAL MOTION." SEE STATE V. BANDURA, 85 WA.2D 97, 931 P.2D 174 (1997) (QUOTING WA PRACTICE VOL. 13 P. 338, 339.)

AT 479-82, 973 P.2D 452 (TENTATIVE CRIMINAL OFFENSES)

IT IS THE DUTY AND/OR OBLIGATION OF THE PROSECUTING ATTORNEY, IN ORDER TO PROVE CRIMINAL HISTORY AT SENTENCING FOR THE PURPOSE OF CALCULATING OFFENSE SCORES, THE STATE MUST PROVIDE A CERTIFIED COPY OF THE JUDGMENTS. MENDOZA, 56 PWA, CR 7.1; RCW 9.94A.500 & 9.94A.530(2).

IN REVIEW OF PETITIONER'S OFFERED EVIDENCE IN JUDGMENT AND SENTENCE. PETITIONER POINTS OUT MY OFFENSE SCORE OF 9 POINTS IS INCORRECT AS IT SHOULD BE 8 POINTS AS 96 CALIFORNIA OFFENSE HAS NOT GONE THROUGH A PROPER AND CORRECT "COMPARABILITY ANALYSIS" AS IN IN RE REEF. REVERSAL OF CAREER, 172 W.2D 917 (2011)

PD. AT 934, 9131 IN RE PERS. RESTRICTION OF LAVERY, 154 W.2D 267, 255, 111 P.3D 937 (2005)

A PLAIN READING OF THIS INFORMATION IS IN ORDER HERE, AND DEMONSTRATES PETITIONER'S

947, 59 L. Ed. 2d 636, 99 S. Ct. 1426 (1979).

BRADY SETS A MINIMUM CONSTITUTIONAL STANDARD

UNDER THE DUE PROCESS CLAUSE WITH RESPECT TO PRETRIAL
DISCLOSURE AND APPLIES TO BOTH STATE AND FEDERAL PROSECUTORS.

IND. AT 630. THE PRINCIPLES ESTABLISHED IN BRADY WERE
LATER HELD TO APPLY TO IMPRACHMENT EVIDENCE, AS
WELL AS TO EXCULPATORY EVIDENCE. UNITED STATES V.

BAILEY, 473 U.S. 667, 676 (1985); GELTJON V. UNITED
STATES, 405 U.S. 150, 154 (1972).

IN UNITED STATES V. AUTEN, 630 F.2d 478,
482 (5th Cir. 1980). THE FIFTH CIRCUIT HELD THAT
"BRADY REQUIRES DISCLOSURE OF EVIDENCE TO THE ACCUSED
ON THE ISSUE OF GUILT AS WELL AS EVIDENCE WHICH SERVES
TO IMPRACH THE TESTIMONY OF ADVERSE WITNESSES." GUERRA
V. JOHNSON, 90 F.3d 1075 (5th Cir. 1996) (AFFIRMING THE
GRANT OF HABEAS RELIEF WHERE THE STATE FAILED TO DISCLOSE
IMPRACHMENT EVIDENCE). THUS, A PROSECUTOR IS REQUIRED

CONSTITUTIONALLY TO DISCLOSE NOT ONLY EVIDENCE THAT IS EXCULPATORY, BUT "EVIDENCE THAT THE DEFENSE MIGHT HAVE USED TO IMPEACH THE GOVERNMENT'S WITNESSES BY SHOWING BIAS OR INTEREST." BAGLEY, 473 U.S. at 676.

IN THE PRACTICAL SETTING, BRADY REQUIRES THE "DISCLOSURE OF ANY INFORMATION 'FAVORABLE TO THE ACCUSED' ... WHICH RELATES TO WHETHER THE FAILURE TO DISCLOSE IT WOULD AFFECT THE OUTCOME OF THE UPCOMING TRIAL." SARAVIAN 233 F.R.D. 12 (CITING UNITED STATES V. SULLIVAN, 36 F.3d 24 1196, 1197-97 (C.D. CAL. 1994)).

INFORMATION IS "FAVORABLE TO THE ACCUSED" IF IT "RELATES TO GUILT OR PUNISHMENT" AND "TENDS TO HELP THE DEFENSE BY EITHER BOLSTERING THE DEFENSE CASE OR IMPEACHING POTENTIAL PROSECUTION WITNESSES." IS. "[COURTS IN THIS JURISDICTION TOOK WITH DISFAVOR ON NAUGHTY READINGS BY PROSECUTORS OF THE GOVERNMENT'S OBLIGATIONS UNDER BRADY." UNITED STATES V. EDWARDS, 171 F.3d 29 88, 89-90 (D.D.C. 2002) (CITING UNITED STATES V. PAGES, 861 F.2d 730, 737 (D.C. CIR. 1986)).

A. Rule 16: Rule 16 Requires Production of Documents
"When the Government's possession, custody, or control."
FED. R. CRIM. P. 16(a)(1)(B)(i), 16(a)(1)(E). As Judge Freedman of
this Court recently declared, "The Government" [in Rule 16] includes
any and all agencies and departments of the executive
branch of the government and their subdivisions, not just
the Justice Department, the FBI, and other law
enforcement agencies." UNITED STATES V. SAFARIAN, 23 F.R.D.
12 (D.L.C. 2005)

"... in discrepancies on which Safarian relies the Ninth
Circuit has held that documents are in the possession,
custody, or control of "the government" for purposes of Rule
16 (1) when the agency that holds the documents (a) is (a) involved
in the investigation of the defendant, or (2) when
the prosecutor has "knowledge of and access to the documents."
UNITED STATES V. SANTIAGO, 46 F.3d 825, 873-74 (9th Cir. 2005)
(quoting UNITED STATES V. BRYAN, 868, 63, 69 F.2d 1032, 1036 (9th Cir. 1937).

IV. THE TRIAL COURT ERRED WHEN IT DENIED AN EVIDENTIARY HEARING ON A POTENTIAL BRADY VIOLATION.

"A TRIAL COURT SHOULD GRANT AN EVIDENTIARY HEARING IF THE DEFENDANT TIMELY SUBMITS PRIMA FACIE EVIDENCE THAT HE IS ENTITLED TO A NEW TRIAL." STATE V. D.T.M., 78 W.V. 216, 221, 896 P.2D 106 (1995) NEVERTHELESS, HERE THE COURT DID NOT GRANT THE REFERENCE HEARING. THIS WAS ERROR AND THIS COURT SHOULD REVERSE ~~THE~~ TRANSFER OF PETITIONER'S (VR 7.8 MOTION TO THE COURT OF APPEALS AND REMAND) FOR AN EVIDENTIARY HEARING.

"SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE TO AN ACCUSED UPON REQUEST VIOLATES DUE PROCESS WHERE THE EVIDENCE IS MATERIAL EITHER TO GUILT OR TO PUNISHMENT, IRRESPECTIVE OF THE GOOD OR BAD FAITH OF THE PROSECUTION BRADY V. MARYLAND, 373 U.S. 83, 87, 83 S. CT. 1194

10 L. ED. 2D 215 (1963). BRADY OBLIGATIONS INCLUDE NOT ONLY EVIDENCE REQUESTED BY THE DEFENSE, BUT ALSO FAVORABLE EVIDENCE NOT SPECIFICALLY REQUESTED BY THE DEFENSE. UNITED STATES V. AGURS, 427 U.S. 97, 119, 96 S. CT. 2392, 49 L. ED. 2D 342 (1976).

TO ESTABLISH A BRADY VIOLATION, A DEFENDANT MUST DEMONSTRATE THE EXISTENCE OF THREE ELEMENTS: (1) THE EVIDENCE AT ISSUE MUST BE FAVORABLE TO THE ACCUSED, EITHER BECAUSE IT IS EXCULPATORY, OR IT IS IMPEACHING; (2) THE EVIDENCE MUST HAVE BEEN SUPPRESSED BY THE STATE, EITHER WILLFULLY OR INADVERTENTLY; AND (3) PREJUDICE MUST HAVE ENSUED. STATE V. MULLEN, 171 W.V. 2D 881, 259 P.3D 158, 165 (2011).

MR. ZIGLER MEETS THE REQUIREMENTS TO ESTABLISH A PRIMA FACIE BRADY VIOLATION.

VII. ZIEGLER IS ENTITLED TO A CR 7.8 EVIDENTIARY HEARING -

A PARTY MAY BE RELIEVED FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING ON THE GROUNDS OF NEWLY DISCOVERED EVIDENCE WHICH BY DUE DILIGENCE COULD NOT HAVE BEEN FOUND IN TIME TO MOVE FOR A NEW TRIAL UNDER RULE 7.5, OR ANY OTHER REASON JUSTIFYING RELIEF. CR 7.8(b)(2)(5). (EMPHASIS ADDED). RELIEF UNDER CR 7.8(b)(5) IS LIMITED TO CIRCUMSTANCES NOT COVERED BY ANY OTHER SECTION OF THE RULE. STATE V. BRAND, 120 W.2d 365, 369, 842 P.2d 470 (1992).

A TIMELY CR 7.8 MOTION REQUIRES THE TRIAL COURT TO DETERMINE WHETHER (a) THE DEFENDANT HAS MADE A SUBSTANTIAL SHOWING HE IS ENTITLED TO RELIEF OR (b) RESOLUTION OF THE MOTION WILL REQUIRE A FACTUAL HEARING. CR 7.8(c)(2). IT IS WITHIN THE COURT'S DESCRIPTION TO HOLD AN EVIDENTIARY ON

A POST-TRIAL MOTION. STATE V. BANBURA, 85 Wn. App. 87, 94, 931 P.2d 174 (1997). A RULING ON A CrR 7.8 MOTION IS REVIEWED FOR ABUSE OF DISCRETION. STATE V. HALDESTY, 129 Wn.2d 303, 317 915 P.2d 1080 (1996). HERE, THE TRIAL COURT ABUSED ITS DISCRETION ^{IN} BY DENYING AN EVIDENTIARY HEARING IN LINKING A PERSONAL RESTRAINT PETITION TO A POST-CONVICTION MOTION. THE [WA] SUPREME COURT HAS HELD THE PURPOSE OF A REFERENCE HEARING IS TO RESOLVE GENUINE FACTUAL DISPUTES, NOT TO DETERMINE WHETHER THE PETITIONER ACTUALLY HAS EVIDENCE TO SUPPORT HIS ALLEGATIONS. INVERICK, 118 Wn.2d 876, 886, 828 P.2d 1086 (1997). THE COURT STATED:

"... IF THE PETITIONER'S ALLEGATIONS ARE BASED ON MATTERS OUTSIDE THE EXISTING RECORD, THE PETITIONER MUST DEMONSTRATE THAT HE HAS COMPETENT ADMISSIBLE EVIDENCE TO ESTABLISH THE FACTS THAT ENTITLE HIM TO RELIEF. IF THE PETITIONER'S EVIDENCE IS BASED ON KNOWLEDGE IN THE POSSESSION OF OTHERS, HE MAY NOT SIMPLY STATE WHAT HE THINKS THOSE OTHERS WOULD SAY, BUT MUST PRESENT THEIR AFFIDAVITS OR OTHER CORROBORATIVE EVIDENCE. THE AFFIDAVITS, IN TURN, MUST

ANY BUT MUST PRESENT THEIR AFFIDAVITS OR OTHER COLLABORATIVE EVIDENCE. THE AFFIDAVITS ~~IF THEY~~ MUST CONTAIN MATTERS TO WHICH THE AFFIANTS MAY ~~COMPETENTLY~~ COMPETENTLY TESTIFY... ID. 845-846.

IN BOTH PETITIONER ZIEGLER'S ORIGINAL MOTION TO DISMISS AND PETITIONER ZIEGLER'S WRIT OF MANDAMUS TO COMPEL JUDGE DEANE WICKARD TO HEAR MOTION TO DISMISS, PETITIONER ZIEGLER STATED WITH PARTICULARITY FACTS AND EVENTS, ALL OF WHICH WERE DOCUMENTED, COMPETENT, AND ADMISSIBLE EVIDENCE.

UNFORTUNATELY, PETITIONER ZIEGLER'S REQUEST FOR A HEARING ON NEWLY DISCOVERED EVIDENCE WAS INARTFULLY PHED. THE "NEWLY DISCOVERED" EVIDENCE HE REFERENCED WAS HIS POST-JUDGMENT DISCOVERY OF

IN ITS ESSENCE, HE ASKED THE COURT FOR AND THE COURT CONSIDERED AN EVIDENTIARY HEARING

UNDER THE CATEGORY OF "OTHER REASONS JUSTIFYING RELIEF"

TO BUILD THE RECORD FOR EITHER A BRADY VIOLATION
OR A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL /
^{OR} COUNSEL MADE INEFFECTIVE BY SUPPRESSION OF BRADY MATERIALS BY STATE.

ZERULAN'S DECLARATION AND SUPPORTING DOCUMENTATION
SUPPORTED THESE ISSUES, AND A FULL EVIDENTIARY
HEARING WOULD HAVE RESOLVED ANY FACTUAL DUBIOUS
THAT EITHER THE STATE DELIBERATELY WITHHELD
EXCULPATORY EVIDENCE OR THAT DEFENSE COUNSEL
POSSESSED A COPY BUT FAILED TO UTILIZE THE EXCULPATORY
MATERIALS.

I THE COURT ERRORED WHEN IT DENIED AN EVIDENTIARY
HEARING ON AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

A MOTION FOR A NEW TRIAL BASED ON [F.A. OF C.] REQUIRED
THE DEFENDANT TO ESTABLISH FACTS SHOWING DEFICIENT
PERFORMANCE AND RESULTING PREJUDICE." See, Strickland

V. WASHINGTON, 466 U.S. 668, 687, 104 S.Ct. 1052, 80 L.Rd. 28
674 (1984). "DEFENSE COUNSEL DOES NOT RECEIVE EFFECTIVE
ASSISTANCE OF COUNSEL IF HE DERIVES A CRIMINAL DEFENDANT
OF A SUBSTANTIAL DEFENSE BY HIS OWN INEFFECTIVENESS OR
INCOMPETENCE." STATE V. ADAMS, 91 Wn.2d 86, 90, 586
P.2d 1168 (1978).

HERE, THE TRIAL COURT RECEIVED ARGUMENTS AND
MOTIONS FOR, AND DECIDED BY THE WASHINGTON
SUPREME COURT BY WRIT OF MANDAMUS TO COMPEL THE
GRANTING OF AN EVIDENTIARY HEARING. IT RECOGNIZED
AND AFFIRMED THE NEED FOR A EVIDENTIARY HEARING
ON FEBRUARY 7th, 2012

ZERULLI'S COUNSEL

CONCLUSION

"IF THE PROSECUTION HAS ANY DOUBT, IT

SHOULD TURN THE CONTESTED MATERIAL OVER TO THE TRIAL COURT FOR A REFRIGAL BROADY

RULING" ~~RE UNITED STATES V. OXMAN~~, 740 F.2D

1298, 1316 (3rd Cir 1984)

DEFENDANT MAY BE ENTITLED TO DISCLOSE

OF INFORMATION BEYOND THAT WHICH PROSECUTOR IS

SELECTIVELY OBTAINED TO DISCLOSE UNDER CRIMINAL

DISCOVERY RULES ONLY UPON SHOWING OF MATERIALITY

OF INFORMATION TO THE PROSECUTION OF DEFENSE, AND ONLY

IF DEFENDANT'S DISCOVERY REQUEST IS REASONABLE. ~~SEE~~

V. NORBY, 122 WASH.2D 258, 346, 852 P.2D 210 (1992)

A DEFENSE ATTORNEY WITH A DUTY TO MAKE REASONABLE

INVESTIGATIONS WOULD TAKE AND WORK DILIGENTLY TO THE

DEFENSE INTEREST. STATE V. O'CONNELL, 137 WASH.2D 777

81,93, 152 P.3D 349 (2007). AT A MINIMUM, TESTIMONY

DRUDGE COURSE MUST CONDUCT AN INVESTIGATION TO DETERMINE

THE REASONABLE TRANSFER OF DEFENSE TO

PROCEEDING ON THE LIMITED INFORMATION THE STATE HAS PROVIDED, WOULD PREMATURELY FORCE THE DEFENDANT TO ENTER INTO A NEGOTIATED SETTLEMENT OR SET THIS CASE FOR TRIAL. VEGETATION, VEGETATION MAINTENANCE, DOLSKY, AND BYRD ALL COUNSEL AGAINST SUCH IMPROVIDENT ACTIONS. STATE V. VEGETATION, 55 WASH. APP. 166, 173, 776 P.2D 986 (1987), STATE V. MAINTENANCE, 77 WASH. APP. 544, 546-48, 903 P.2D 514 (1995), STATE V. BYRD, 30 WASH. APP. 774, 776, 638 P.2D 601 (1981), DOLSKY V. KING COUNTY, 51 WASH. APP. 664, 666, 754 P.2D 1855 (1986)

IN ADDITION, FORCING THE DEFENDANT TO ACQUIESCE TO THE STATE'S LIMITED PRODUCTION, RISKS THAT THE DEFENDANT WOULD ABANDON A BONA FIDE SUPPRESSION MOTION. FAILURE TO BRING A PLAUSIBLE MOTION TO SUPPRESS ~~IS~~ IS DEEMED INEFFECTIVE ASSISTANCE

OF COURSE, IT IS APPARENT THAT A MOTION WOULD
LIKELY HAVE BEEN SUCCESSFUL TO BRING STATE V.
WELCHERSON, 133 WASH. (2D) 431, 436, 135 P.3D 991
(2006).

THE STATE HAS NOT PROVIDED DISCOVERY TO
DEFENDANT. (CR 4.7 (e)), ALLOWS THE COURT IN
ITS DISCRETION, TO REORDER DISCOVERY UPON A SHOWING
AND PARTICULARITY TO THE DEFENSE. IN ADDITION, CR
4.7 (d)(3) REQUIRES THE STATE TO DISCLOSE INFORMATION
WHICH TENDS TO NEGATE THE DEFENDANT'S GUILT.

FURTHER, THIS INFORMATION IS DISCOVERABLE UNDER
CR 4.7 (c)(1) WHICH STATES, "THE PROSECUTIVE ATTORNEY
SHALL, UPON REQUEST OF THE DEFENDANT, DISCLOSE ANY
RELEVANT MATERIAL AND INFORMATION RELEVANT TO
(1) IDENTIFIED BRANCHES AND STRUCTURE."

"THE STATE IS OBLIGATED TO DISCLOSE RELEVANT
EVIDENCE, INCLUDING EMPLOYMENT EVIDENCE." STATE V.

VI. SOHL, 1155 WASH. ACC. 270, 274, 62 P. 38 900

(2003) PRESENTS AN ALTERNATE TO UNREASONABLE DELAY THEORY
THE VIOLATION OF CONSTITUTION AND 1155 WASH. ACC. 270, 274, 62 P. 38 900.

FALLURE TO DISCLOSE A PROMISE OF ASSISTANCE MAY
ALSO VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT, II.

2. FAILURE TO CONDUCT A (PROPER INVESTIGATION)
CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL

AT THE JUNCTION, THE STATE HAS NOT (PROVIDED)
DEFENSE COUNSEL ENOUGH INFORMATION TO CONDUCT
A PROPER INVESTIGATION. FAILURE TO CONDUCT A
PROPER INVESTIGATION CAN LEAD TO A CLAIM OF
INEFFECTIVE ASSISTANCE OF COUNSEL RE: DELTA
VESTIGATOR, MAURICE BYRD, AND DUNSON

~~FOR~~ TO RECEIVE THE CONTENTS OF [E.A.C.], AN
VESTIGATOR SUBMITTED STATEMENTS FROM FIVE WIT-
NESSES, INCLUDING M. AND N, ALL OF WHOM STATED
THAT THEY WERE NEVER CONTACTED BY THE COUNSEL.

MR. VESTALION ARGUED THAT M. AND N.'S LATER STATEMENTS EXCLUDED HIM. THE STATE (CONTINUED) THAT MR. VESTALION'S TITHE COUNSEL MADE A TACTICAL DECISION NOT TO CALL M. AND N. BEFORE WITH 1971 POLICE STATEMENTS WERE CONTRARY TO MR. VESTALION'S VERBICAL EVIDENCE. ID. AT 172. VESTALION HELD THAT MR. VESTALION'S ATTORNEY'S REFUSAL TO CONTACT AND INTERVIEW M. AND N. AS WITNESSES, ALTHOUGH THE COUNSEL FEEL THAT M. AND N. SHOULD NOT BE BRING FORTH DUE TO THEIR EARLIER POLICE STATEMENTS, FULLY BELIEVE CONSTITUTIONAL RIGHTS. ID. AT 174.

THE FACTS OF MAURICE ARE AS FOLLOWS: 900 MR. MAURICE TESTIFIED THAT THE VEHICLE "JUST TOOK OFF LIKE IT WAS ON ICE," AND "THE ONLY THING JUST TOOK OFF" AT TOTAL, THE STATE'S ACCIDENT INVESTIGATOR TESTIFIED HIS EXAMINATION REVEALED NO (OR EXISTING) MECHANICAL PROBLEMS. DEFENSE COUNSEL DID NOT CALL ANY EXPERT WITNESSES ON THE QUESTION OF THE VEHICLE'S

MECHANICAL CONDITION: STATE V. MAURICE, 77 WASH.
APP. 544, 546 43, 903 (SD WA 1995)

MR. MAURICE MCGOWAN [I.A.C.C.], PASSENGER DRIVER
HIS ATTORNEY'S FAILURE TO INVESTIGATE HIS CLAIM
THAT A MECHANICAL FAILURE CAUSED HIM TO LOSE CONTROL
OF THE VEHICLE AND TO COLLIDE, DEFENSE MECHANICAL
OR ACCIDENT RECONSTRUCTIONIST AS AN EXPERT WITNESS.

ID. AT 550. THIS RECONSTRUCTIONIST STATED THAT HE HAD
RECOMMENDED TO THE PROSECUTION'S TOTAL ATTORNEY
THAT A FORENSIC MECHANICAL EXPERT BE RETAINED TO
EVALUATE THE PRE-ACCIDENT CONDITION OF THE VEHICLE. ID. AT
551. MAURICE HELD THAT, GIVEN MR. MAURICE'S TESTIMONY
THAT A MECHANICAL MALFUNCTION CAUSED HIM TO LOSE CONTROL
OF HIS PICKUP, HIS ATTORNEY'S FAILURE TO HAVE ^{THE} VEHICLE
INSPECTED BY A MECHANIC BEFORE TRIAL COULD NOT BE JUSTIFIED.

ID. AT 552

THE FACTS OF BYRD ARE AS FOLLOWS:

AFTER DRINKING, MR. BYRD AND MR. MILLER PICKED UP THE PROSECUTING WITNESS WHO WAS HITCHHIKING. AFTER SOME SEXUAL ACTIVITY, THE PROSECUTING WITNESS WAS PICKED UP ON THE HIGHWAY IN A HYSTERICAL CONDITION. THE PROSECUTING WITNESS STATED THAT SHE WAS FORCED INTO AN AGREEMENT AND COERCED THROUGH FEAR TO ENGAGE IN SEXUAL ACTIVITY. MR. BYRD AND MR. MILLER CLAIM SHE CONSENTED.

STATE V. BYRD, 30 WASH. 2D 714, 796, 633 P.2D 601 (1981)

IN AN AFFIDAVIT IN SUPPORTING MR. MILLER'S COMPLAINT OF INEFFECTIVE ASSISTANCE OF COUNSEL, MR. MILLER'S NEIGHBOR STATED THAT HE WAS AWAKENED BY THREE PEOPLE "IN A ^A JEWEL MOOD." MR. MILLER STATED THAT HE GAVE THE NEIGHBOR'S NAME TO HIS TOLAL LAWYERS, BUT THE NEIGHBOR WAS NOT CONTACTED. ID. AT 798. THE BYRD COURT HELD, THE FAILURE OF TOLAL COUNSEL TO INTERVIEW AND CALL THE NEIGHBOR AS A DEFENSE WITNESS, COULD NOT BE JUSTIFIED. ID. AT 800.

THE FACTS OF DORSEY ARE AS FOLLOWS: MR. DORSEY CLAIMED HIS ATTORNEY FAILED TO INVESTIGATE HIS CASE, THUS PROVIDING [I.A.O.F.C.]. HIS ATTORNEY STATED THAT HE BELIEVED IT UNNECESSARY TO DECLASS WITH MR. DORSEY EITHER THE FACTS OF THE CASE OR ALTERNATE DEFENSES BECAUSE HE FELT SO STRONGLY THAT THE EVIDENCE WOULD BE SUPPRESSED.

THE ATTORNEY ALSO STATED THAT HE DID NOT INTERVIEW ANY WITNESSES OR SEEK TO DEVELOP EXCULPATORY EVIDENCE TESTIMONY. DORSEY V. KING COUNTY, 51 WASH. APP. 664, 668, 754 P.2D 1255 (1988). DORSEY HELD THAT THIS ACT FAILED THE PERFORMANCE PRONG OF [I.A.O.F.C.] IV AT 675.

THE STATE'S DISCLOSURE HAS LARGE GAPS. THE REQUESTED INFORMATION IS VITAL TO A FULL AND CONSTITUTIONALLY SUFFICIENT INVESTIGATION OF WHAT OCCURRED. ~~AT THE START~~ WITHOUT SUCH, THE RISK THAT A PLEA OR VERDICT WILL BE REVERSED IS A TRUE CONCERN.

3. FAILURE TO MAKE A MOTION TO SUPPRESS CAN CONSTITUTE

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STATE V. MECKELSON, 133 WASH. APP. 431, 436 (2006)

(COUNSEL'S FAILURE TO BRING A PLAUSIBLE MOTION TO SUPPRESS
IS DEEMED INEFFECTIVE IF IT APPEARS THAT A MOTION WOULD
LIKELY HAVE BEEN SUCCESSFUL IF BROUGHT). STATE V.

KLINGEL, 96 WASH. APP. 619, 980 P.2D 282 (1999) (DE-

FENSE COUNSEL PROVIDED [I.A. OF C.] IN NOT BRINGING
MOTION TO SUPPRESS MARIJUANA FOUND IN STORAGE SHED

BEHIND DEFENDANT'S CABIN; THERE WAS NO REASONABLE
BASIS OR STRATEGICAL REASON FOR COUNSEL'S FAILURE

TO BRING MOTION TO SUPPRESS, AND THERE WAS AT
LEAST A REASONABLE PROBABILITY THAT A MOTION

TO SUPPRESS WOULD HAVE BEEN GRANTED).

CONCLUSION

BASED ON THE AFOREMENTIONED, DEFENSE COUNSEL
URGES THIS COURT TO ISSUE AN ORDER COMPELLING THE
STATE TO COMPLY WITH ITEMS NUMBERED #1 THROUGH #
OF THE DEFENDANT'S REQUEST FOR SUPPLEMENTAL DISCOVERY

SO, ALL THIS PROVES ZERULLI'S CLAIM
OF DENIAL OR "ACCESS TO THE COURTS" WAS RAISED
ON DIRECT APPEAL BUT DENIED BY DAVID BONZELA,
OF THE COURT OF APPEALS DIV. II.

FURTHERMORE, RAP 16.11 STATES IF ISSUES
RAISED ARE NOT PRIVILEGED - GROUNDS FOR APPOINTMENT
OF COUNSEL EXIST AND § 50:26 - RULE 16.7 CASE
LAW - CONSTITUTIONAL GROUNDS/ISSUES RAISED FOR
FIRST TIME: E.G. → IN RE. NICHOLS, 171 W.N.2d
370 (2011) WL 1598634 "IF DEFENDANT ESTABLISHED
"ACTUAL PREJUDICE," STATE AND DEFENDANT WERE
ALLOWED TO PRESENT AFFIDAVITS WITH RELEVANT
INFORMATION OUTSIDE THE EXISTING RECORD IN
A PRP PROCEEDING AND BALANCING TEST FOR
DETERMINATION OF APPLICABILITY OF EXCLUSIONARY
RULE "DID NOT APPLY" (EMPHASES ADDED)

V. CONCLUSION

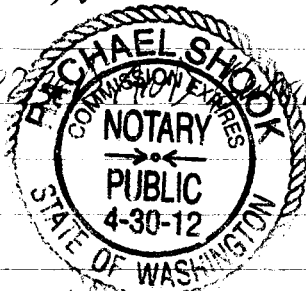
PETITIONER PRAYS THIS COURT ACCEPTS HIS MOTION AND VACATES THE TRANSFER OF PETITIONER'S CIVIL 7.6 MOTION, ALLOWS PETITIONER TO PLEAD HIS MOTION TO DISMISS, GRANT AN EVIDENTIARY HEARING ON THE INCORRECT OFFENSES GRANTED AND PARTIALLY INVALID 5 BS; AND PRESENT NEWLY DISCOVERED EVIDENCE REGARDING ACTUAL INSURANCE.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS AND CONSTITUTION OF THE UNITED STATES PURSUANT TO 28 U.S.C. § 1746 THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED 26th of APRIL 2012 SIGNED Jeffrey Scott Zeller

JEFFREY SCOTT ZELLER

SUBSCRIBED AND SWORN TO BEFORE ME THIS 26th DAY OF April 2012



Michael Shook

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON RESIDING AT Spokane

SEAL

MY COMMISSION EXPIRES

4/30/12

No. 43591-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Jeffrey Ziegler,

Appellant.

Clark County Superior Court Cause No. 05-1-01088-6

The Honorable Judge Diane M. Woolard

Appellant's Opening Brief

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ASSIGNMENTS OF ERROR

1. The trial court erred by transferring Mr. Ziegler's post-trial motions to the Court of Appeals without notice and an opportunity to be heard.
2. The trial court erred by summarily denying Mr. Ziegler's May 2nd post-trial motions without a hearing.
3. The trial court erred by adopting Finding of Fact No. 3.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Due process requires notice and a meaningful opportunity to be heard before a government deprives any person of life, liberty, or property. In this case, the trial court transferred Mr. Ziegler's post-trial motions to the Court of Appeals without advance notice and in the absence of a meaningful opportunity to be heard. Did the trial judge violate Mr. Ziegler's right to procedural due process under the Fourteenth Amendment and Wash. Const. Article I, Section 3?
2. Under CrR 7.8, a post-trial motion for relief from judgment may not be summarily denied by the superior court. Here, the superior court summarily denied Mr. Ziegler's May 2nd post-trial motions. Did the trial court err by summarily denying Mr. Ziegler's post-trial motions for relief from judgment?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Mandate and Opinion (2007), Supp. CP. Following a new sentencing hearing, he appealed again. The judgment and sentence was affirmed, but the case was remanded for removal of a condition of community custody.

Mandate and Opinion (2009), Supp. CP. Following denial of a Petition for Review, the Court of Appeals issued a mandate on March 13, 2009.

Mandate and Opinion (2009), Supp. CP.

Mr. Ziegler subsequently filed a Motion to Dismiss, alleging a violation of his right to a speedy trial.¹ Motion to Dismiss (11/10/2010), Supp. CP. The trial court took no action. Response to Defendant's Motion (11/30/2010), Supp. CP. Mr. Ziegler also filed a Motion for *In-Camera* Review (8/24/2011). The court took no action on this motion as well. Response to Defendant's Motion (8/29/2011), Supp. CP.

Mr. Ziegler then sought mandamus relief from the Supreme Court. *See* Correspondence from Supreme Court (12/30/2011), Supp. CP; Copy – Defendant's Supreme Court Motion (1/3/2011), Supp. CP. On February 7,

¹ In addition, he apparently filed a Personal Restraint Petition in the Supreme Court. The Petition was transferred to the Court of Appeals and later dismissed. Order Dismissing Petition, Supp. CP.

2012, the Supreme Court issued an order granting Mr. Ziegler's petition for a writ of mandamus and directing the trial judge "to act upon Petitioner's motion to dismiss his convictions." *See Order (2/7/12)* (Appendix B, attached to Preliminary Response to Defendant's CrR 7.8 Motion, Supp. CP).

Following the Supreme Court's order, the trial judge elected to treat Mr. Ziegler's motion to dismiss as a CrR 7.8 motion and ordered it transferred to the Court of Appeals. *Order re: CrR 7.8 Motion (3/7/12), Supp. CP.* Mr. Ziegler filed a pleading objecting to this action.² *Motion of Objection to Reclassification of CrR 8.3 Motion into a CrR 7.8 Motion Without Prior Notice, Supp. CP.* The trial judge elected to treat this motion as a CrR 7.8 motion as well, and transferred it to the Court of Appeals.³ *Order re: CrR 7.8 Motion (3/27/2012), Supp. CP.*

On May 2, 2012, Mr. Ziegler filed a set of documents that included a "Motion for Arrest of Judgment Pursuant to CrR 7.4(b)...", a "Motion for New Trial/Hearing Pursuant to CrR 7.5," and a "Motion to Vacate Transfer(s)..." *D-Motion New Trial/Arrest of Judgment, Supp. CP.* He

² Later, he filed a Notice of Appeal addressing this same decision. *Notice of Appeal, p. 1 (4/24/12), Supp. CP.*

³ Mr. Ziegler responded by filing a Notice of Appeal. *Notice of Appeal, p. 2 (4/24/12), Supp. CP.*

requested a reference hearing, sought appointment of counsel, asked that he be transported from prison, and enclosed an affidavit of prejudice. D-Motion New Trial/Arrest of Judgment, Supp. CP.

The trial judge responded by entering an order denying Mr. Ziegler's motions without holding a hearing.⁴ Findings of Fact, Supp. CP. Mr. Ziegler timely appealed. CP 20.

ARGUMENT

THE TRIAL COURT VIOLATED MR. ZIEGLER'S FOURTEENTH AMENDMENT RIGHT TO PROCEDURAL DUE PROCESS.

A. Standard of Review

Alleged constitutional violations are reviewed *de novo*. *Bellevue School Dist. v. E.S.*, 171 Wash.2d 695, 702, 257 P.3d 570 (2011). The interpretation of a court rule is an issue of law, reviewed *de novo*. *State v. McEnroe*, 174 Wash. 2d 795, 800, 279 P.3d 861 (2012). Court rules are to be interpreted using the rules of statutory construction. *Id.* A court rule should be interpreted in such a manner as to avoid constitutional infirmity. *State v. Eaton*, 168 Wash. 2d 476, 480, 229 P.3d 704 (2010); *State v. Coleman*, 151 Wash. App. 614, 622, 214 P.3d 158 (2009).

⁴ Included was a finding that "[t]he Court of Appeals, Division II, also received the defendant's Motion to Vacate Transfer of Petitioner's CrR 7.8 Motion and found the superior court acted within its authority and the transfer was proper." Findings of Fact, Supp. CP.

ARG
B.

The trial judge infringed Mr. Ziegler’s right to procedural due process by transferring his post-trial motions to the Court of Appeals without prior notice and an opportunity to be heard.

The state and federal constitutions prohibit the government from “depriv[ing] any person of life, liberty, or property, without due process of law...” U.S. Const. Amend. XIV; Wash. Const. Article I, Section 3. The “touchstone” of this provision “is protection of the individual against arbitrary government actions, whether in denying fundamental procedural fairness (procedural due process) or in exercising power arbitrarily, without any reasonable justification in the service of a legitimate government interest (substantive due process).” *Craddock v. Yakima County*, 166 Wash. App. 435, 442, 271 P.3d 289 (2012).

The fundamental requirements of procedural due process are notice and an opportunity to be heard. *In re Bush*, 164 Wash.2d 697, 705, 193 P.3d 103 (2008). The opportunity to be heard must be at a meaningful time and in a meaningful manner. *Mansour v. King County*, 131 Wash. App. 255, 264, 128 P.3d 1241 (2006).

In the absence of adequate notice and a meaningful opportunity to be heard, society cannot be confident in the outcome of a proceeding.

CrR 7.8 governs post-trial motions for relief from judgment. Under CrR 7.8(2), the trial court “shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint

petition” unless certain conditions are met. CrR 7.8 must be interpreted in a manner consistent with the procedural due process protections provided by the constitution. *Eaton*, at 480. Accordingly, a post-trial motion may not be transferred to the Court of Appeals unless the moving party is provided notice and given a meaningful opportunity to contest the transfer. *Bush*, at 705; *Mansour*, at 264.

Here, the Supreme Court directed the trial judge to act upon Mr. Ziegler’s post-trial motions. *See* Order (dated 2/7/12) (Appendix B, attached to Preliminary Response to Defendant’s CrR 7.8 Motion, Supp. CP). Instead, the trial court transferred the motions to the Court of Appeals. Order re: CrR 7.8 Motion (3/7/12), Supp. CP; Order re: CrR 7.8 Motion (3/27/2012), Supp. CP. This was accomplished without prior notice, and without an opportunity to contest the transfer.

Mr. Ziegler deserved notice and a meaningful opportunity to be heard before the trial judge transferred his motions to the Court of Appeals. When the Supreme Court ordered the trial court to act on his motions, he was entitled to believe he would finally receive a decision on the merits, including a chance to present evidence that related to his claims. *See* Order (2/7/12) (Appendix B, attached to Preliminary Response to Defendant’s CrR 7.8 Motion, Supp. CP).

By transferring Mr. Ziegler's motions to the Court of Appeals without notice and an opportunity to be heard, the trial court violated his Fourteenth Amendment right to procedural due process. *Bush, at 705; Mansour, at 264.* Instead of denying Mr. Ziegler's May 2nd motions, the trial judge should have realized her error, granted the motions, and addressed the merits of his claims.⁵

For these reasons, the trial court's Findings of Fact, Conclusions of Law, and Order must be vacated. The case must be remanded for a decision on the merits of all the motions Mr. Ziegler presented.

⁵ In the alternative, the trial court should have followed the dictates of CrR 7.8 and transferred the May 2nd motions to the Court of Appeals. CrR 7.8(2).

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Jeffrey Ziegler, DOC #886970
Airway Heights Corrections Center
P.O. Box 1899
Airway Heights, WA 99001

With the permission of the recipient, I delivered an electronic version of the brief, using the Court's filing portal, to:

Clark County Prosecuting Attorney
prosecutor@clark.wa.gov

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on September 13, 2012.



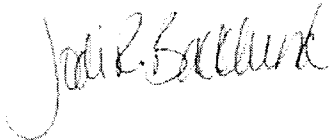
Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

CONCLUSION

For the foregoing reasons, the trial court's order must be vacated and the case remanded for resolution of Mr. Ziegler's post-trial motions.

Respectfully submitted on September 13, 2012,

BACKLUND AND MISTRY

Handwritten signature of Jodi R. Backlund in cursive script.

Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

Handwritten signature of Manek R. Mistry in cursive script.

Manek R. Mistry, WSBA No. 22922
Attorney for the Appellant

ROUGH DRAFT - APPEALANT BRIEF

Defense against a summary judgment (CR 55(c)) for incarcerated pro se prisoner litigants:

- 1.) Pro se prisoner litigants are functioning under the unique handicap of incarceration {See Rand v. Rowland 154 F.3d 952 (9 Cir 1998); Jacobsen v. Filler, 790 F.2d 1362 (9 Cir 1986) etc.}
- 2.) 1st, 5th/14th US Constitutional Amendments rights to ^{DUE PROCESS,} access the courts, and to be heard: Bounds v. Smith 430 US 814 822 52 L.Ed2d 72 97 S.Ct. 1491 (1977); Hatfield v. Bailleaux, 290 F.2d 632 637 (9 Cir 1961); In Ex Parte, Hull 312 US 546, 85 LEd 1034, 61 S.Ct. 540 (1941); Johnson v. Avery 393 US 483, 485, 89 S.Ct. 747, 21 L.Ed2d 718 (1969); Lewis v. Casey 518 US 343 346 116 S.Ct. 2174 135 LEd2d 606 (1996); Whalem/Hunt v. Early 233 F.3d 1146 (9 Cir 2000)?; Woff v. McDonnell, 418 US 539 576 41 LEd2d 935 94 S.Ct. 2963 (1974) etc. Also Phillips v. Husband and Jacobsen v. Filler; 4th US Const. Amend. protection: Joint Anti-Fascist Comm. v. McGrath (proper)
- 3.) "Extraordinary Circumstances" cause irregularities extraneous to the court under grounds of deprivation of legal property (papers, etc.) via interference from the state (WDOC) (confiscation of legal property in Ad/Seg etc.) and deny "meaningful access to the courts" under restricted law library access (also extraordinary circumstances induced irregularities). Under extraordinary circumstances (E/c's), equitable tolling can/may be applicable to statutory filing times (statutes of limitations) and can REVERSE default/summary judgments under CR 60(b)(1) or (11) for causing unavailability to submit procedural filings timely. See Barr v. MacGugan 119 WnApp 43 47 78 P.3d 660 (2003); Espinoza-Matthews v. California, 432 F.3d 1021 (9 Cir 2005); Rand v. Rowland (supra)
- 4.) ~~They~~ "Irregularities" are grounds for vacation of default/summary judgments. See CR 60(b)(4) & (11) for Irregularity cause. Irregularities are the irregular proceedings that deny or are the want of normal filings, procedures, due process, which denied a Fair Trial of the merits of a case (by summary judgment typ.) See Topliff v. Chicago Ins. Co., 130 Wash App 301, 122 (Wn App. Div 3, 2005); State v. Littlefair 112 Wn App 749 51 P.3d 116 (2002)
- 5.) "Fair Notice of Requirements" Rule applies to Summary Judgment notice of motion for summary judgment. Hudson Rule requires Fair Notice of Requirements. Klingeale v. Eikenberry 849 F.2d 409 (9 Cir. 1988) also is controlling. See Rand v. Rowlands also for good analysis.

1 10 L.Ed.2d 215 (1963)

2 5. The ~~Judge Winkler's~~ ^{COURT OF APPEALS} ruling is in conflict with RCW 4.16.100, ^{190/120} in
3 respects to equitable tolling.

4 6. The ~~Judge Winkler's~~ ^{COURT OF APPEALS} ruling is contrary to United States Supreme
5 Court ruling in Napue v Illinois, 360 U.S. 265 (1959), in respects to
6 prosecutorial misconduct.

7 7. Petitioner submits his original motion and incorporates it by
8 reference, the facts of the motion are layed out in part of the
9 original motion and it would be redundant to relist the issues.

10 8. Petitioner submits as evidence "e-mails" of DOC Correctional
11 Program Manager Gary Bohon in response to law library access while
12 petitioner was being housed out of State, stating his concerns of
13 facing serious lawsuits, because of lack of adequate access to legal
14 materials.

15 9. Petitioner submits as evidence "e-mail" responses of Jo Jansen
16 MLIS, Librarian of Corrections Corporation of America outlining her
17 concerns about the inadequate legal materials.

18 10. Petitioner submits as evidence "e-mail" responses from
19 Catherine L. Georg of Washington Department of Corrections outlining
20 her concerns that "J.C. Miller" was supposed to have loaded the
21 software to the computer once it was sent overnight delivery back on
22 January 28, , She further states "makes one wonder exactly how
23 long it's been since the COMPUTER and BOOKS were UPDATED" (which
24 worries me)

25 11. IT IS undisputed that the prosecuting attorney violated the
26 rules of discovery chapter 13 § 1306. et seq.,.

1 12. It is undisputed that the prosecutors obligation to disclose
2 pursuant to § 1309, Petitioner contends that CrR 4.1 et seq., was
3 intentionally violated.(specifically CrR 4.5, 4.6 & 4.7)

4 IV. ARGUMENT

5 Pursuant to Title ~~2~~ et seq.

6 A. Relief under this title, A person may seek
7 relief, other than a decision of the case
8 on the merits by motion as provided in
9 title ~~2~~.

9 RAP ~~2.5~~. An aggrieved person may object to a ruling of a *Judge*
10 or clerk, including transfer of the case to the court of appeals under
11 rule ~~2-5(a)(3)~~. by a *Manifest Error of Constitution* directed to the
12 judges of the court *of Appeals Division II of Tulalum*

13 Petitioner respectfully submits that *an appeal needs to be*
14 *decided on the merits and S.A.R. as well*; and that petitioner is
15 entitled to review of prior decisions if:

- 16 1. The decision of the court of appeals is in
17 conflict with a decision of the Supreme Court, or
- 18 2. The decision of the Court of Appeals is in
19 conflict with another decision of the Court
20 of Appeals, or
- 21 3. A significant question of law under the
22 constitution of the State of Washington or
23 of the United States is involved; or
- 24 4. The petition involves an issue of substantial
25 public interest that should be determined by
26 the Supreme Court.

23 These issues are such that intervention by the *Court of Appeals* of
24 the State of Washington is warranted in this particular case.

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PETITIONER IS ENTITLED TO EQUITABLE TOLLING.

The ~~Judge~~^{Court of Appeals} claims that petitioner is not entitled to equitable tolling of the time limit because of prison conditions was not properly before ~~her~~ because he did not raise the issue for the first time in his motion, for discretionary review" (footnote 1 86085-8/2 of commissioner's ruling.)

Petitioner contends ~~Judge~~^{Court of Appeals} misapprehends petitioner's brief, in that he claims petitioner's properly raised issue of equitable tolling was not properly before the court, When in fact, that precise issue was raised in the court of appeals and was ruled on contrary to petitioner's offered evidence.

It is an undisputed fact that petitioner was housed out of state while he was in his direct appeal process, petitioner was return to the state on June 24th, 2010.

Time allegedly expired on March 13, 2012, however Ninth circuit ruling in Spitsyn v Moore 345 F.3d 796 (9th cir. 2003) adds 90 days for filing, which would calculate approximately to June 13, 2010.

Pursuant to GR ~~21~~, a motion/petition is filed upon deposit into institution mail.

Petitioner deposited his Personal restraint Petition into the institution mail on June 21, 2012, approximately 7 days late from the 365 day and 90 day of Spitsyn, totals 455 days required to file, according to RCW 10.73.090 and Spitsyn, supra.

Petitioner was faced with extraordinary circumstances and irregularities in being denied access to the courts, while housed out of state, which was against his will and DOC recommendations.

1 Petitioner contends the out-of-state e-mails submitted as evidence of
2 his denial of access to the courts by Washington department of
3 Corrections (thereafter known as WDOC) and Corrections Corporation of
4 America (thereafter known as CCA) a private for profit prison will in
5 effect give back petitioner 48 days for the first denial of law
6 library access, plus an additional 120 days for the second denial of
7 law library access see **Exhibit 1** , giving petitioner back 168 days
8 minus the 7 for the alleged late filing, which amounts to 161 days,
9 Early in filing his Personal restraint Petition. Even if we don't
10 count **Spitsyn's** additional days, Petitioner would have 71 days early
11 filing.

12 Petitioner contends he is entitled to equitable tolling when it
13 is an undisputed fact that petitioner requested additional 90-120 day
14 extension in the year on 2005 direct appeal, filed on August 24, 2006
15 because of multiple issues of denial of Access to the Courts, In that
16 While petitioner was housed at Stafford Creek Correction Center prior
17 to him being housed out of state, That institution law library was
18 being "retiled" see **Exhibit 2**

19 Immediately after his denial for extension of time to file, the
20 Court of Appeals denied petitioner's initial brief see # 34290-4.

21 WDOC, immediately housed petitioner out of state, despite
22 petitioner filing "Emergency Grievance" to WDOC out of state
23 representative James Thatcher with claims against "HIS"
24 recommendations to sent petitioner out of state while petitioner was
25 in his direct appeal process see **Exhibit 3**

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DOES RCW 4.16.180 APPLY IN THIS PARTICULAR CASE?

Petitioner claims ^{Amcl of 190} ~~RCW 4.16.180~~ applies in this particular case, in that petitioner WAS house OUT OF STATE.

RCW 4.16.180 state in pertinent part:

STATUTE TOLLED BY ABSENCE FROM STATE.

If the cause of action shall accrue against any person...who is a resident of this State and shall be OUT OF STATE, or concealed therein, such action may be commenced within the terms herein respectively limited after the coming, or RETURN of such person into the State, or after the end of such concealment; and after such cause of action shall have accrued, such person shall depart from and reside out of this state, or conceal himself, The time of his absence or concealment **shall not be deemed or taken as any part of the TIME LIMIT for the commencement of such action** Emphasis added...

Accordingly,petitioner's appeal process did not start until he was returned from out of state. To rule otherwise is to ignore the above stated law.

With that being said, petitioner was return to Washington and housed at Airway Heights Correction Center (thereafter known as AHCC) on June 29, 2012. Petitioner filed June 21, 2012 pursuant to GR **31**.

These undisputed facts outlines the extraordinary circumstances petitioner was placed under by the WDOC in his attempts to forestall his transfer out of state and his attempt to notify the court of the denial of access to the courts that petitioner was experiencing at the hands of WDOC'S failed experiment of housing inmates out of state, which cost this State Millions of dollars.

It is undisputed that petitioner's claim of denial to the courts

1 was raised on direct appeal, however denied by Court of Appeals Clerk
2 David Ponzoha of Division II.

3 Moreover, The ^{Court of Appeals} ~~Judge's~~ reliance on RCW 10.73.090 is without
4 merit. RCW 10.73.090 is a statute of limitation, and is subject to the
5 doctrine of equitable tolling and the doctrine of equitable tolling
6 applies to statutes of limitation, But not to time limitations that
7 are jurisdictional, Unless of course the commissioner is claiming that
8 he does not have subject matter jurisdiction?

9 The doctrine of equitable tolling still permits this Court to
10 allow an action to proceed when Justice requires it, even though a
11 statutory time period has nominally elapsed. State v Duvall 86 Wash.
12 App. 871, 874, 940 P.2d 671 (1997), review denied 134 Wn.2d 1012, 954,
13 P.2d 276 (1998)

14 As such the one-year statute of limitation of RCW 10.73.090 should be
15 equitably tolled in this particular case. see also In re Pers.
16 Restraint of Hoisington, 99 Wn.App. 423, 993 P.2d 296 (2000); Miller v
17 New Jersey State Dep't of Corrections, 145 F.3d 616, 617-18 (3rd cir.
18 1998)

20 DOES THE AMENDING OF CHARGES MID-TRIAL VIOLATES
21 WASHINGTON CONSTITUTION ART 1 § 22?

22 State v Pelkey 109 Wn.2d 484, 490, 745 P.2d 854 (1987) opined
23 that a court cannot sustain an interpretation of a court rule which
24 contravenes the Constitution. CrRLJ 1.1 "These rules shall not be
25 construed to affect or derogate from the Constitutional rights of any
26 defendant"

1 In the present case, it is an undisputed fact that the
2 prosecuting attorney amended the charges in mid-trial, Allowed by
3 Judge Woolard contrary to Pelkey, supra.

4 The PELKEY court opinioned that the trial judge violated Art. 1 §
5 22 of the Washington State Constitution by allowing the state to Amend
6 the information against the defendant after the State completed
7 presentation of it's case in chief.

8 Art 1 § 22 of the WA. State Const. provides in pertinent part:

9 "In criminal prosecutions the accused shall have the
10 right...to demand the nature and cause of the
accusation against him..."

11 Under this constitutional provision, an accused person must be
12 informed of the charges he or she is to meet at trial and cannot be
13 tried for an offense not charged. State v Carr, 97 Wn.2d 436, 438, 645
14 P.2d 1098 (1982)

15 In State v Rhinehart, Wn.2d 923, 602 P.2d 1188 (1979) stated "an
16 amendment during trial stating a new court charging a DIFFERENT crime
17 violates this provision. State v Lutman, 26 Wn.App. 766, 614, P.2d 224
18 (1980) that court concurred with Carr, it held "the court ruled that
19 ...could not be amended during trial..." "The court ruled that the
20 amendment charging different crime violated the constitutional
21 provisions against being tried for an offense not charged."

22 **It** is fundamental that an accused must be informed of the charge
23 he is to meet at trial and cannot be tried for an offense not charged,
24 Lutman, at 767.

25 In the case at bar, The prosecu**or** amended the charges at
26 mid-trial with the approval of the trial court.

1 DID THE PROSECUTING ATTORNEY COMMIT PROSECUTORIAL
2 MISCONDUCT, BY USING TESTIMONY HE KNEW TO BE FALSE?

3 Napue v Illinois, 360 U.S. 264 (1959), perhaps the leading case
4 has stated unanimously:

5 [A] conviction obtained through use of false
6 evidence, known to be such by representatives of
7 the State must fall...the same result obtains
8 when the State, although not soliciting false
9 evidence, **ALLOWS** it to go uncorrected when it
10 appears the principle that a state may not
11 knowingly use false evidence, including false
12 testimony, to obtain a tainted conviction,
13 implicit in any concept of ordered liberty, does
14 not cease to apply merely because the false
15 testimony goes only to the credibility of the
16 witness.

17 Id at 269

18 But because, prosecuting attorney Farr knew or should have known
19 that both witnesses testimony was untrue, thereby amending charges in
20 mid-trial to add more charges that weren't in the original information,
21 petitioner was prejudiced by this prosecutorial misconduct.

22 Petitioner contends that there is a reasonable likelihood that
23 perjured testimony could have affected the jury. Due to the
24 significance at trial of the perjured testimony and the central role of
25 credibility in this case without that false testimony the outcome would
26 have been different.

27 The Supreme Court has held repeatedly that a prosecutor's failure
28 to correct a witness's false testimony, violates due process. Giglio v
29 United States, 405 U.S. 150 (1972); Giles v Maryland, 386 U.S. 66
30 (1967); Mooney v Holohan, 294 U.S. 103 (1935) (per curiam)

31 The principles of the Mooney, supra is not punishment of society

1 for misdeeds of a prosecutor, but avoidance of an unfair trial. The
2 prosecutors business is not merely to achieve victory, but to establish
3 JUSTICE and TRUTH. In this particular case there was neither by the
4 prosecuting attorney, it is evident that he was seeking a "win" at all
5 costs, relying on false testimony, amending charges mid-trial, and
6 interlia Non-disclosure of exculpatory evidence helpful to the defense.

7 "If the court finds a presumption of vindictiveness, the 'BURDEN'
8 shifts to the prosecution to rebut it by PRESENTING evidence of
9 independant REASONS or INTERVENING CIRCUMSTANCES, that demonstrates
10 that the prosecutor's decision and tactics was motivated by a
11 legitimate purpose"; (See Exhibit 4.); and See (Exhibit 5)

12

13 DID THE PROSECUTING ATTORNEY VIOLATE PETITIONER'S
14 UNITED STATES FEDERAL AND WASHINGTON STATE'S
15 CONSTITUTIONAL RIGHTS TO DUE PROCESS AND COMMIT A
16 BRADY v MARYLAND VIOLATION?

17 Brady v Maryland 373 U.S. 83, 83 S.CT. 1194, 10 L.Ed.2d 215
18 (1963) That court held that irrespective of the good or bad faith of the
19 prosecution, The governemtn MAY NOT suppress evidence favorable to the
20 defendant when requested, provided that evidence is material either to
21 guilt or to punishment. Id at 87, 83 S.CT. at 1196-97, 10 L.Ed.2d at
22 218.

23 Brady, imposes an affirmative DUTY upon the prosecutor to produce
24 such evidence, as either direct or impeaching evidence. The Brady, rule
25 is not merely "a dicoverly rule, but **"A RULE OF FAIRNESS AND MINIMUM
26 PROSECUTORIAL OBLIGATION"** Emphasis added.

Brady, sets minimum constitutional standards under the due

1 That statement alone would make one to think that "evidence" from
2 the prosecutor is contrary to his allegation of "force".

3 The prosecutor claims penetration, penetration with "force",
4 multiple times.

5 The withheld evidence from ~~Redwood~~ Redwood Care Center would have shown,
6 there was no physical damage, hence "force" to penetrate and/or the
7 alleged rape could not have happened.

8 Moreover, then written and oral reports would have demonstrated
9 that the victims stated "nothing happened", and that is precisely why
10 there is no medical evidence in this case.

11 The State's medical expert could not say with absolute certainty
12 rape occurred. That is why the State offered no Physican's report of
13 physical examinations, however the state argued rape of a child.

14 The State did not offer proof of their claim, then withheld
15 evidence that is favorable to the defense. A classic BRADY violation.

16 In a light most favorable to the State, it may claim the
17 prosecutor knew nothing of the ~~Redwood~~ Redwood Care Center, until the later
18 stages of trial, ~~except that State Witness DHCS Holladay~~ testified.

19 However, preparation BEFORE trial, this pertinent information
20 could have been used to impeach the victim(s) and the testimony would
21 have demonstrated prior inconsistent statements, but because of the
22 BRADY violations by prosecuting attorney Farr, Petitioner was
23 prejudiced by the withholding of this vital evidence.

24 Petitioner contends the prosecutors investigators knew of the
25 ~~Redwood~~ Redwood Care Center prior to trial. This was information gleaned from
26 the victims mother.

1 process clause with respects to pretrial discovery and applies to both
2 State and Federal prosecutors. Id at 630

3 Brady, also held held that evidence of relatively minor
4 importance might be sufficient to create a reasonable doubt.

5 In the present case, the prosecutor withheld his knowledge of the
6 Medical reports; & Redwood Care Center Detective Reports; (Exhibit 6)

7 The courts have acknowledged the unquestioned requirement of fair
8 play by a prosecutor. It is clear that an unconstitutional deprivation
9 of due process exists, where the State, even in good faith, suppress
10 evidence favorable to an accused. Brady, supra.

11 petitioner contends prosecutor farr violated his discovery
12 obligations pursuant to CrR 4.7, by failing to disclose oral and
13 written admissions allegedly made by the victims and the names and
14 addresses of persons known to have relevant information in the truth
15 finding process; such as Kaiser Permanente; Vancouver Clinic, etc.

16 Petitioner was deprived of a fair trial by the prosecutors
17 failure to disclose information held by the Redwood Care center,
18 information that would have demonstrated petitioner's innocence.

19 The State did not offer one piece of physical evidence, this was
20 a case of credibility. Prosecutor Farr knew that if the information
21 from Redwood Care center would have been brought to light, he had no
22 conviction, based on forensic medical data & perjured testimony.

23 Prosecutor Farr even went as far as making claim of medical
24 expertise he did not possess when he claims once a hymen is broken, it
25 often times repairs itself. I can only assume that was his explanation
26 as to why there was no physical evidence.

1 Petitioner contends that if the evidence was known to him "prior"
2 to trial, it would have been used to impeach the victims offered
3 testimony at trial and showed the prior inconsistent statements made
4 that prosecutor Farr offered to the jury, which he personally knew was
5 false.(See Exhibit 4 VRP pg430-432)et al)

6 The ruling in MOONEY, supra states where the court ruled on what
7 nondisclosure by a prosecutor violates due process:

8 "it is a requirement that cannot be deemed
9 to be satisfied by mere notice and hearing,
10 if a State has contrived a conviction
11 through the pretense of a fair trial which
12 in truth is but used as a means of
13 depriving a defendant of liberty through a
14 deliberate deception of court and jury by
15 the presentation of testimony known to be
16 perjured. Such a contrivance by a State to
17 procure the conviction and imprisonment of
18 a defendant is as inconsistent with the
19 rudimentary demands of justice, as is the
20 obtaining of a like result by
21 intimidation".

22 quoted/cited Brady, 10 L.ED.2d at 218

23 Pyle v Kansas, 317 U.S. 213, 215, 216, 87 L.Ed.2d, 214,216, 63
24 S.CT. 177.

25 "Petitioner's papers are inexpertly drawn,
26 but they do set forth allegations that his
 imprisonment resulted from perjured
 testimony, knowingly used by the State
 authorities to obtain his conviction, and
 form the deliberate suppression by those
 same authorities of evidence favorable to
 him. These allegations sufficiently charge
 a deprivation of rihts guaranteed by the
 federal constitution, and, if proven,
 would entitle petitioner to release from
 his present custody"

 quoting MOONEY, 294 U.S. 103

1 In other words, the suppression of evidence favorable to the
2 accused was in itself sufficient to amount to a denial of due process.

3 In the present case, the prosecutor withheld favorable
4 exculpatory evidence from petitioner.

5 To rule otherwise would be to ignore the long list of standing
6 precedent set in Washington State law as well as Federal Supreme Court
7 precedent.

8 The pertinent question here is "Did the prosecutor withhold
9 exculpatory evidence? Did the prosecutor use false testimony to obtain
10 a conviction at all costs?

11 It is evident from the record that the ~~Judge's~~ ^{Court of Appeals} ruling is
12 in conflict with State v Pelkey,

13 It is evident from the record the ~~Judge's~~ ^{Court of Appeals} ruling in
14 respects to equitable tolling is contrary to Federal case Law of
15 Spitsyn v Moore.

16 It is abundantly clear that the ~~Judge's~~ ^{Court of Appeals} ruling is contrary
17 to Brady v Maryland.

18 It is evident the ~~Judge's~~ ^{Court of Appeals} ruling is in conflict with RCW
19 4.16.180 / 4/16/90

20 And finally the ~~Judge's~~ ^{Court of Appeals} ruling is contrary to the United
21 States Supreme Court decision of Napue v Illinois.

22 Petitioner has set forth his evidence for this court to accept
23 his discretionary review and rule in his favor.

24 //

25 //

26 //

RECORDED

FILED
SEP 20 2005
of Anne Morrison, Clerk, Clark Co.

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

Case No. 05-1-01088-6

State of Washington

Plaintiff

Kim Farr

Attorney

Cause of Action:

Rape I; Rape I

Child Molestation I; Child Molestation I

Jeffrey Scott Ziegler

Defendant

Jeffrey Barrar

Attorney

Judge: Diane M. Woolard

Reporter: CD

Clerk: J. Olson

Date: September 19 - 20, 2005

Judicial Assistant: Dayle Rae

Jurors Duly Impaneled and Sworn @ 11:35 a.m. September 19, 2005

1. Jean Johnson	2. Margaret Tweet	3. Kathleen Allman
4. Tamara Rupp	5. Jeff Van Sloten	6. Paul Rawlings
7. Veronica Zeggert	8. John Ryan	9. Phillip Brekke
10. Joseph Ramp	11. Donald Nelson	12. Dorothy Betzing

Alternate Juror: Debra Barrett

8:20 a.m.	Clerk pre pulls 26 juror names placing them on the jury chart.
8:57 a.m.	Prospective Juror Brandon Boyd added to the juror list.
9:13 a.m.	Court calls case for trial. Kim Farr presenting as counsel on behalf of the State of Washington. Defendant Jeffrey Ziegler presenting in custody and with his attorney Jeffrey Barrar. Detective Aaron Holladay present at counsel table with Kim Farr.
9:14 a.m.	State's Motion in Limine. No objection to exclusion of witnesses, victim's past sexual behavior, prior victimization, evidence implicating others.
9:17 a.m.	No 3.5 hearing.
9:19 a.m.	Defense Counsel was advised by jail staff he was not allowed to speak alone with his client. Court will allow Mr. Barrar time to speak with his client alone in the courtroom with the officers present. Mr. Farr and the Detective will leave the courtroom while counsel speaks alone with his client. Court goes off record.
9:31 a.m.	Court reconvenes. All parties are present and ready to proceed.

39

	Defense Counsel advised his client to take the State's deal in this case. Defendant addresses the court regarding the requests he's made for his defense, hiring an investigator not done. Defendant wanting to call character witnesses but is told this is not admissible. State has to prove their case beyond a reasonable doubt.
9:37 a.m.	Court asks Mr. Ziegler if he is confident in going forward with trial today.
9:38 a.m.	Kim Farr giving the facts of the case to the Court.
9:46 a.m.	Defense Counsel addresses does Mr. Farr intend to offer the DVD, play it for the jury. State does not anticipate playing them, but admitting the box as Girls Gone Wild and having the girls identifying the box. Defense would object to details of the video.
9:49 a.m.	Court in recess to obtain the additional list of juror names.
10:07 a.m.	Court reconvenes. Kim Farr presenting as counsel on behalf of the State of Washington. Defendant Jeffrey Ziegler presenting in custody and with his attorney Jeffrey Barrar. Detective Aaron Holladay present at counsel table with Kim Farr. Thirty four prospective jurors ushered into the courtroom by the Bailiff.
10:09 a.m.	Court welcomes all prospective jurors. Court gives the Oath to Jurors for Voir Dire.
10:10 a.m.	Court seats the jurors as listed on the jury panel.
10:15 a.m.	Court gives general instructions to all prospective jurors in the courtroom. Each juror is cautioned to pay close attention during the voir dire process, answering all questions.
10:18 a.m.	Introduction of Kim Farr and Detective Aaron Holladay from the Child Abuse Intervention Center.
10:18 a.m.	Introduction of Jeffrey Barrar and the defendant Jeffrey Ziegler.
10:18 a.m.	Court's reading of the Information two counts of Rape of a Child First Degree and two counts of Child Molestation First Degree. Jurors are instructed by the court the defendant is presumed innocent in this matter, the State has the burden to prove all elements of the crime beyond a reasonable doubt.
10:20 a.m.	Court's general questions of all prospective jurors.
10:21 a.m.	Court's reading of the witness list.
10:22 a.m.	Court's general questions of the prospective jurors. Court asks if anyone will have trouble being a fair and impartial juror in this case.
10:24 a.m.	Voir Dire Begins. Plaintiff Counsel Kim Farr Voir Dire.
10:37 a.m.	Defense Counsel requesting that statement be stricken, court instructs the jurors the State has the burden to prove their case beyond a reasonable doubt and gives such cautionary statement.
10:43 a.m.	Defense Counsel Jeff Barrar Voir Dire.
11:02 a.m.	Court asks Erma Hurst if she can serve today. She says she can be fair but it is a sensitive subject. Court and Counsels will speak with Denise Cole and Erma Hurst in public.
11:04 a.m.	Barbara Shannon is ill with allergies with the air conditioning system.
11:05 a.m.	Plaintiff Counsel asks if there are any other jurors who wish to speak privately, Geraldine DeMers.
11:06 a.m.	Court instructs all prospective jurors they are to keep an open mind and are not to speak to one another about this case.
11:07 a.m.	Individual voir dire of jurors in chambers with the Court and Counsels.
11:28 a.m.	Challenges Begin.
11:32 a.m.	Court seats the jury panel.
11:33 a.m.	Court gives special instructions to the Alternate Juror.
11:34 a.m.	Court excuses all other prospective jurors to the first floor to the jury room making sure they are released for the day.
11:35 a.m.	Jurors Duly Impaneled and Sworn by the Court.
11:35 a.m.	Court gives cautionary instructions to the jury panel.
11:38 a.m.	Court instructions on the attorney's functions during the course of the trial, the court's function during trial.
11:41 a.m.	Court excuses the jury panel for lunch recess.
11:42 a.m.	Statements by the defendant on the telephone, phone call made to the mother. State asking for preliminary ruling for admissibility of the statements. He was not in custody and not being interrogated. He was being interrogated by his wife at the time. Those are the facts stipulated, but object to foundation. Preliminarily don't need a 3.5 in this situation; he was not in custody and not being interrogated by a police officer.
11:44 a.m.	State has twenty some letters in its possession. There is only one of the letters being sought for admission. State will show to Defense during the lunch hour. Defense Counsel will give to his client for review during the lunch hour for his

	client to review.
11:45 a.m.	Court in lunch recess.
1:41 p.m.	Court reconvenes. Kim Farr present as counsel for and on behalf of the State of Washington. Detective Aaron Holladay is present seated at counsel table with Kim Farr. Defendant personally present and appearing with his attorney of record Jeffrey Barrar.
1:42 p.m.	State addresses the court regarding the letters the defendant wrote to the mother previously. The state has found one of the letters to be appropriate to this case, sanitized. Letter presented herein. Court asks counsel if this matter can be addressed at break. There are paragraphs on page three that indicate starting with the language ...I see no reason going on living another day. Ask to go on to up to the fourth page...I didn't want to lose anybody I wish this wouldn't happen. Court will take a look at it and make a decision later.
1:48 p.m.	Jury Present in the Jury Box.
1:49 p.m.	Plaintiff Counsel Opening Statement.
2:17 p.m.	Defendant Counsel Opening Statement.
2:22 p.m.	Plaintiff Counsel Case-in-Chief.
2:23 p.m.	Plaintiff Witness: Jennifer Ann Ziegler, sworn by the Court.
2:25 p.m.	Witness identifies the defendant as seated at counsel table. Witness is the wife of defendant. Married July 19, 2002 after their son was born.
2:36 p.m.	Plaintiff Proposed Exhibits 1 through 6, 9 and 10.
2:38 p.m.	Defense Counsel Objection as to relevance. Time period is relevant. Witness last left the home August 24 th or 25 th of 2005. Voir Dire of the witness requested and granted. Defense Counsel similar objection. Court will address at break.
2:40 p.m.	Plaintiff Counsel continues with direct examination of Jennifer Ziegler. Witness on May 3, 2005 woke up to go to work, found her husband on her daughter Marina's bed asleep with her.
2:44 p.m.	Defense Counsel Objection as non-responsive. Conform to the question.
2:45 p.m.	Defense Counsel Objection as hearsay and non-responsive sustained.
2:46 p.m.	Defense Counsel Objection as hearsay sustained.
2:47 p.m.	Defense Counsel Objection as hearsay sustained.
2:50 p.m.	Defense Counsel Objection as non-responsive sustained.
2:51 p.m.	Defense Counsel Objection as non-responsive and move to strike overruled.
2:57 p.m.	Court excuses the jury for afternoon recess.
2:57 p.m.	Court stating the children's statements may be coming in under the hearsay excited utterance.
2:59 p.m.	The photographs, discussion of the photos. State needs to ask the witness more questions regarding the pictures. The photographs proposed exhibits 1, 2, 3, 4, 5, 6, 9 and 10 do they accurately reflect her home in May 2005. Prior answer was some things are different. Defense Counsel asks her if some things are different. No Objection. Court admits 1 through 6, 9 and 10.
3:01 p.m.	Court in recess.
3:21 p.m.	Court reconvenes. Kim Farr present as counsel for and on behalf of the State of Washington. Detective Aaron Holladay is present seated at counsel table with Kim Farr. Defendant personally present and appearing with his attorney of record Jeffrey Barrar.
3:24 p.m.	Jury Present in the Jury Box.
3:24 p.m.	Plaintiff Witness Jennifer Ziegler retaking the witness for continuation of direct-examination.
3:31 p.m.	Plaintiff Proposed Exhibit # 13 shown to the witness for identification.
3:38 p.m.	Plaintiff Proposed Exhibit # 11 unsealed and identified by the witness.
3:42 p.m.	Plaintiff Proposed Exhibit # 14 shown to the witness for identification.
3:49 p.m.	Defense Counsel Cross-examination of Jennifer Ziegler.
4:10 p.m.	Plaintiff Counsel Objection relevance sustained.
4:11 p.m.	Defense Counsel Objection as non-responsive sustained.
4:12 p.m.	Plaintiff Counsel Re-direct examination.
4:14 p.m.	Defense Counsel Objection relevance sustained.
4:14 p.m.	Plaintiff Witness: Marina Saravia, sworn by the Court.
4:18 p.m.	Witness identifies the defendant as seated at counsel table.
4:38 p.m.	Plaintiff Proposed Exhibit # 12 shown to the witness for identification.
4:39 p.m.	Defense Counsel Cross-examination of Marina Saravia.
4:46 p.m.	Court excuses the jury for the evening with instructions not to discuss this case with anyone. The jurors are to return to the jury room by 8:15 a.m. tomorrow morning.

4:47 p.m.	Court in evening recess.
** Tuesday September 20, 2005 **	
8:58 a.m.	Court reconvenes. Kim Farr present as counsel for and on behalf of the State of Washington. Detective Aaron Holladay is present seated at counsel table with Kim Farr. Defendant personally present and appearing with his attorney of record Jeffrey Barrar.
8:59 a.m.	State moves to seek to Amend the Information based upon the interviews with the children. The original charged Rape I against Marina does not stand. But the testimony gives two separate incidents of child molestation I. Testimony by Isabella is expected in the police reports based upon information by Isabella is three Rape of Child I. Only one Rape I filed. State is Amending to two counts child molest against Marina and adding two more counts of Rape Child against Isabella. Base upon <i>Pelkie Uteraz</i> and <i>James</i> . Multiple acts against child Isabella. Defendant claims none of these acts occurred. State asking for the Amendment, or after the child's testimony. Defense strongly objects to the Amendment. They had three, four or five incidences to interview the girls. Either they had all the information or they didn't. To come forward at trial and then amend the information at trial. They had officers in California interviewing the child. She came to court and said something different. Defense interview with the children was based upon those counts. Ask court to oppose the amendment.
9:07 a.m.	With regard to the amendment, talking about what is apparently or alleged continuing course of conduct on children by Mr. Ziegler. Sometimes what we hear or they are capable of testifying in front of a thirteen person jury, does not rob defense of making the state prove their case beyond a reasonable doubt. Court provisionally allowing the amendment but making it until the testimony of Isabella. As to Marina, she has testified, that's it.
9:11 a.m.	Jury Present in the Jury Box.
9:11 a.m.	Plaintiff Witness: Isabella Saravia, sworn by the court. March 28, 1995.
9:18 a.m.	Witness identifies the defendant as seated at counsel table.
9:25 a.m.	Plaintiff Proposed Exhibit #12 shown to the witness for identification.
9:34 a.m.	Plaintiff Proposed Exhibit #11 shown to the witness for identification.
9:53 a.m.	Court excuses the jury for morning break. Court in morning recess.
10:06 a.m.	Court reconvenes. Kim Farr present as counsel for and on behalf of the State of Washington. Detective Aaron Holladay is present seated at counsel table with Kim Farr. Defendant personally present and appearing with his attorney of record Jeffrey Barrar.
10:09 a.m.	Jury Present in the Jury Box.
10:10 a.m.	Plaintiff Witness Isabella Saravia retaking the witness stand for cross-examination.
10:13 a.m.	Plaintiff Counsel Objection sustained.
10:13 a.m.	Plaintiff Counsel Objection to the form of the question.
10:21 a.m.	Plaintiff Counsel Re-direct examination.
10:22 a.m.	Defense Counsel Re-cross examination.
10:26 a.m.	Plaintiff Witness: Donald Edward Ziegler, sworn by the Court.
10:31 a.m.	Defense Counsel Objection to the leading questions sustained.
10:33 a.m.	Defense Counsel Objection to the leading questions.
10:34 a.m.	Court is authorizing some leading questions at this point.
10:35 a.m.	Defense Counsel Objection to the leading questions and find hostile witness.
10:36 a.m.	Defense Counsel Objection non-responsive, yes or no question.
10:37 a.m.	Defense Counsel Objection non-responsive overruled.
10:38 a.m.	Defense Counsel Objection asked and answered overruled.
10:39 a.m.	Defense Counsel Objection asked and answered overruled.
10:39 a.m.	Defense Counsel Objection non-responsive.
10:40 a.m.	Defense Counsel Objection asked and answered sustained.
10:41 a.m.	Defense Counsel Objection asked and answered overruled.
10:45 a.m.	Defense Counsel Cross-examination of Donald Ziegler.
10:46 a.m.	Plaintiff Witness: Deputy Bill Sofianos, sworn by the Court.
10:53 a.m.	Plaintiff Proposed Exhibit # 11 shown to the witness for identification.
10:54 a.m.	Plaintiff Exhibit #11 offered. Defense Counsel voir dire of the witness. Witness placed the exhibit inside the first bag.

	The second bag unknown by the witness. Chain of custody issue, counsel objection. Goes to the weight and not the admissibility. Court admits the exhibit. Exhibit #11 admitted.
11:02 a.m.	Defense Counsel Cross-examination of Deputy Bill Sofianos.
11:04 a.m.	Defense Counsel moves to strike all third party conversations in violation of Washington law. Jury excused to the jury room. State argues standard practice of law enforcement, phone tap used in police practice, case law supporting it. It is legal behavior and his statements are admissible. Defense argues he is listening into a conversation he has no permission listening into. Request for mistrial. State does not want this issue brought before the jury again. State had its authorities ready to argue yesterday.
11:06 a.m.	Court will take a break; come back to the exhibit #11 the vibrator. It is something that is unique to this case. Ms. Ziegler and Isabella Ziegler identified the exhibit. Court will have Officer Sofianos step down and the state to call its next witness.
11:10 a.m.	Jury Present in the Jury Box.
11:10 a.m.	Plaintiff Witness: Officer Edward Roy Kingray, sworn by the Court.
11:13 a.m.	Plaintiff Proposed Exhibit #13 shown to the witness for identification, moves for admission. Exhibit #13 admitted. State moves to publish Granted.
11:14 a.m.	Plaintiff Witness: Detective Aaron M. Holladay, sworn by the Court.
11:21 a.m.	Plaintiff Exhibits 1, 2, 3, 4, 5, 6, 9 and 10 shown to the witness for identification.
11:22 a.m.	Plaintiff Exhibit #12 shown to the witness for identification.
11:23 a.m.	Plaintiff Exhibit #9 shown to the witness for identification.
11:23 a.m.	Plaintiff Exhibit #12 admitted.
11:27 a.m.	Defense Counsel Objection hearsay. Court excuses the jury for lunch with instruction to return to the jury room by 12:15 p.m.
11:28 a.m.	Court concerned about a few things. Court will resume the offer of proof at 12:30 p.m.
11:35 a.m.	Court in lunch recess.
12:15 p.m.	Clerk and counsels present.
12:32 p.m.	Defendant present with custody.
12:40 p.m.	Court reconvenes. Kim Farr present as counsel for and on behalf of the State of Washington. Detective Aaron Holladay is present seated at counsel table with Kim Farr. Defendant personally present and appearing with his attorney of record Jeffrey Barrar.
12:40 p.m.	Defense presents to the Court, statements made by Don Ziegler to Detective Holladay that will be offered thru Detective Holladay are offered to impeach Don Ziegler testimony, not for the truth of the statements themselves. To impeach Don Ziegler's testimony, does the average juror understand what to impeach mean. Defense will explain to the jurors during closing argument. Dayle will take up as a Jury Instruction.
12:41 p.m.	Second Amended Information, Isabella Saravia has testified. Mr. Ziegler waives formal reading of the Second Amended Information and enters a continuing Not Guilty Plea to the Six Counts.
12:44 p.m.	Coming back to Detective Holladay, his testimony contrary statements Don Ziegler made to him. State will probably bring back on Officer Sofianos for the cell phone issue. Court noting defense issue is preserved, court will allow the officer testify as to what Mrs. Ziegler heard. State saying defense argued that this was illegal, and ask the court rule this admissible commenting it is constitutional and legal. Defense will object and the court will overrule.
12:53 p.m.	Jury Present in the Jury Box.
12:53 p.m.	Plaintiff Witness Detective Aaron Holladay retaking the stand for continuation of direct examination.
12:54 p.m.	Cautionary Instruction prior to the testimony given to the Jury.
12:57 p.m.	Defense Counsel Cross-examination of Detective Aaron Holladay.
1:06 p.m.	Plaintiff Counsel Re-direct examination.
1:07 p.m.	Defense Counsel Re-cross examination.
1:08 p.m.	Plaintiff Counsel Objection overruled.
1:09 p.m.	Plaintiff Witness recalled Deputy Bill Sofianos, remaining under oath.
1:10 p.m.	Court has admitted the testimony of the telephone conversations between Jeffrey Ziegler and Jennifer Ziegler. Court so

	informs the jury herein. Witness had contact with Mrs. Ziegler again but not what we are here for today.
1:11 p.m.	Defense Counsel Cross-examination of Deputy Bill Sofianos. First report on the fifth a little after midnight, the middle of his shift.
1:12 p.m.	Plaintiff Counsel Objection relevance; court directs to rephrase the question.
1:14 p.m.	Plaintiff Counsel Objection as hearsay; Court will give leeway as it is cross-examination.
1:17 p.m.	Plaintiff Counsel Re-direct examination.
1:18 p.m.	Defense Counsel Re-cross examination.
1:19 p.m.	Plaintiff Counsel recalling its witness: Jennifer Ziegler, remaining under oath.
1:20 p.m.	Defense Counsel Objection re interview in California. May ask the question but not great detail.
1:21 p.m.	Defense Counsel Cross-examination of Jennifer Ziegler.
1:22 p.m.	Plaintiff Counsel Re-direct examination.
1:22 p.m.	Plaintiff Counsel RESTS.
1:22 p.m.	Defense Counsel Case-in-Chief.
1:22 p.m.	Defense Witness: Detective Aaron Holiday, remaining under oath.
1:23 p.m.	Plaintiff Counsel Cross-examination of Detective Holladay.
1:23 p.m.	Defense Counsel Re-direct examination.
1:24 p.m.	Defense Counsel asks for a brief recess granted.
1:24 p.m.	Jury excused to the jury room.
1:24 p.m.	Defense Counsel has consulted with his client several times; it is against his advisement that his client takes the witness stand. His client wishes to take the stand in this trial. Defense Counsel has advised him not to. Court advises the defendant in these matters that upon counsel's expertise the State has the burden to prove their case beyond a reasonable doubt and he is subject to cross-examination. Defendant has discussed his options with counsel, his decision is to take the witness stand and he understands he is subject to cross-examination. He has a right to take the stand.
1:27 p.m.	Court in afternoon recess.
1:33 p.m.	Court reconvenes. Kim Farr present as counsel for and on behalf of the State of Washington. Detective Aaron Holladay is present seated at counsel table with Kim Farr. Defendant personally present and appearing with his attorney of record Jeffrey Barrar.
1:33 p.m.	Defendant again asked if he understands he has the right to remain silent, defendant waives that right and wishes to take the stand. Defense Counsel believes his client knowingly and intelligently waives his right.
1:35 p.m.	Defense Witness: Jeffrey Scott Ziegler, sworn by the Court.
1:39 p.m.	Plaintiff Counsel Objection as irrelevant, Defense Counsel moving to strike.
1:43 p.m.	Plaintiff Counsel Cross-examination of Jeffrey Ziegler.
1:45 p.m.	Defense Counsel Objection as outside the scope of direct examination sustained.
1:45 p.m.	Defense Counsel Objection as outside the scope of direct examination sustained.
1:46 p.m.	Defense Counsel Objection as outside the scope of direct examination sustained.
1:46 p.m.	Defense Counsel Objection as outside the scope of direct examination sustained.
1:47 p.m.	Defense Counsel Objection overruled.
1:48 p.m.	Defense Counsel Objection as outside the scope of direct examination sustained.
1:49 p.m.	Defense Counsel RESTS.
1:49 p.m.	No Rebuttal Witnesses from the State.
1:50 p.m.	Jury excused for afternoon recess.
1:50 p.m.	Sheila Kim from office of Jeff Barrar will assist Mr. Barrar with Jury Instructions. Court and Counsels will meet in the jury room to review the Jury Instructions.
2:18 p.m.	Court reconvenes. Kim Farr present as counsel for and on behalf of the State of Washington. Detective Aaron Holladay is present seated at counsel table with Kim Farr. Defendant personally present and appearing with his attorney of record Jeffrey Barrar.
2:20 p.m.	Plaintiff Counsel has no objections or exceptions to the Court's Instructions to the Jury.
2:21 p.m.	Defense Counsel has no objections or exceptions to the Court's Instructions to the Jury.
2:24 p.m.	Court has the Bailiff remove the notebooks from the juror chairs.
2:26 p.m.	Jury Present in the Jury Box.
2:27 p.m.	Court reads the Court's instructions to the jury. Court informs the jury there are now six counts charged. The jurors are told to follow the Jury Instructions. Court proceeds by reading the Court's Instructions to the Jury.
2:40 p.m.	Plaintiff Counsel gives Closing Argument.
3:24 p.m.	Defense Counsel gives Closing Argument.
3:38 p.m.	Plaintiff Counsel Rebuttal.

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

STATE OF WASHINGTON)

Cause No.: 05-1-01088-6

Plaintiff)

JUDGEMENT AND SENTENCE (FELONY)

v.)

APPENDIX F

ZIEGLER, Jeff Scott)

ADDITIONAL CONDITIONS OF SENTENCE

Defendant)

DOC No. 886970)

CRIME RELATED PROHIBITIONS

STANDARD CONDITIONS:

1. You shall report to and be available for contact with the assigned Community Corrections Officer as directed.
2. You are to pay a community placement/supervision fee as determined by the Department of Corrections.
3. You shall remain within or outside of a specified geographical boundary as ordered by your Community Corrections Officer.
4. Your residence location and living arrangements shall be subject to the prior approval of your Community Corrections Officer and shall not change without the knowledge and permission of the Officer.
5. You shall not possess, use or own firearms, ammunition or deadly weapons. Your Community Corrections Officer shall determine what those deadly weapons are.

6. You shall not possess, use, or deliver drugs prohibited by the Uniform Controlled Substance Act, except by lawful prescription.

SPECIAL CONDITIONS:

1. You shall not have any direct or indirect contact with the victim, including, but not limited to, personal, verbal, telephonic, written or through a third party without prior written permission from your Community Corrections Officer, therapist, and the Court, after an appropriate hearing.
2. You shall not loiter in parks, arcades, malls or any area routinely used by minors as areas of play/recreation.
3. You shall not enter or remain in areas where children are known to congregate.
4. You shall not have any contact with minors. This provision shall not be changed without prior written approval of your Community Corrections Officer, therapist and the Court, after an appropriate hearing.
5. Your employment location and arrangements shall be subject to the prior approval of your Community Corrections Officer and shall not be changed without the knowledge and permission of your Officer.
6. You shall not possess or consume alcohol.
7. You shall submit to urine, breath, or other screening whenever requested to do so by the program staff or your Community Corrections Officer.
8. You shall not possess any paraphernalia for the use of ingestion of controlled substances.
9. You shall not be in any place where alcoholic beverages are the primary sale item.
10. You shall take antabuse per your Community Corrections Officer's direction, if so ordered.
11. You shall attend and successfully complete all inpatient and/or outpatient phases of any treatment program established by your Community Corrections Officer and/or treatment facility, if available.
12. You shall participate in sexual deviancy treatment as directed by your Community Corrections Officer and you shall not terminate treatment until successfully discharged by the therapist.
13. At the request of your Community Corrections Officer, and at your own expense, you shall submit to periodic polygraph examinations. Said examinations will be used to ensure

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compliance with the conditions of the Community Corrections Officer.

✓

14. You shall submit to plethysmograph examinations, at your own expense, at the direction of your Community Corrections Officer.

15. You shall register as a sex offender with the sheriff's office in the county of residence as defined by RCW9A.030.

✓

16. You shall not possess/use pornographic material or equipment of any kind.

17. You shall sign necessary release of information documents as required by the Department of Corrections.

18. You shall not associate with people known to be on probation, parole, or community placement.

19. You shall submit to HIV/DNA testing as required by law.

DATE

JUDGE, CLARK COUNTY SUPERIOR COURT

KS / sy

11/17/2005
Page 3

- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.
- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
- Defendant shall not accept employment in the following field(s):

- Defendant shall not possess burglary tools.
- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide.
- Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
- Defendant shall not possess a checkbook or checking account.
- Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
- Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
- Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
- Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
- Defendant shall not have any contact with minors. Minors mean persons under the age of 18 years.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. "Cooperate with" means the offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.
- Defendant shall submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.

- A special verdict/finding for use of **firearm** was returned on Count(s) _____
RCW 9.94A.602, 510
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on
Count(s) _____. RCW 9.94A.602
- A special verdict/finding of **sexual motivation** was returned on Count(s) _____
RCW 9.94A.835
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on
Count(s) _____, RCW 69.50.401 and
RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school
grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public
park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of,
a civic center designated as a drug-free zone by a local government authority, or in a public housing
project designated by a local governing authority as a drug-free zone.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person
driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a
vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful
imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not
the minor's parent. RCW 9A.44.130
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s).
RCW 9.94A.607.
- The crimes charged in Count(s) _____ is/are Domestic Violence
offense(s) as that term is defined in RCW 10.99.020:
- A special verdict/finding that the defendant committed a crime involving the manufacture of
methamphetamine when a juvenile was present in or upon the premises of manufacture was
returned on Count(s) _____. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining
the offender score are Count(s) _____. RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate
Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score
are (list offense and cause number): _____

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

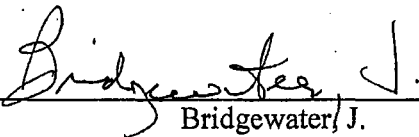
CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	Adol Adult, Juv.	TYPE OF CRIME
1. EVADE PEACE OFFICER: DISREGARD SAFETY	N/A	SANTA ROSA/CA	2/7/96	A	Felony

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score).
RCW 9.94A.525
- The court finds that the following prior convictions are one offense for purposes of determining the
offender score RCW 9.94A.525: _____
- The following prior convictions are not counted as points but as enhancements pursuant to
RCW 46.61.520: _____
- The State has moved to dismiss count(s) _____

36819-6-II


In conclusion, we affirm Ziegler's judgment and sentence following his resentencing with one exception. The trial court shall correct condition 5 to read "You shall not possess, use or own firearms or ammunition."

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

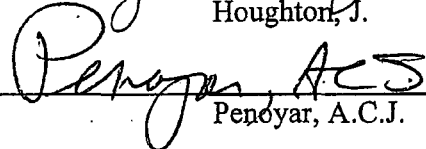


Bridgewater, J.

We concur:



Houghton, J.



Penoyar, A.C.J.

Wilén, Jerome H. (DOC)

From: Georg, Catherine L. (DOC)
Sent: Monday, March 15, 2010 2:00 PM
To: Bohon, Thomas G. 'Gary' (DOC)
Subject: RE: Washington law computer problem
Attachments: RE: Computer- OOS AZ - Law Library ; RE: Computer- OOS AZ - Law Library

The person who originally set up the computer was Tony Kramer (back in the day)... he no longer works in that capacity. The computer was shipped to HQ in December and re-built by David Spice (it arrived regular mail, broken and uninsured - and was here more than 6 weeks). David does not work in the capacity (where he would help) to load software. JC was supposed to have loaded the software to the computer once it was sent overnight delivery back on January 28. It most definitely would have been preferable for JC to indicate he couldn't get the computer to work. Makes one wonder exactly how long it's been since the computer and books were updated (which worries me).

A few thoughts (partially because David Spice indicated the computer is ancient, and partially because DOC IT has had trouble assisting AZ as a result of location). The offenders are estimated to be out only another 90-120 days? I am highly doubtful that we will be able to acquire/secure resources to configure another computer to send to AZ (especially considering the 6+ weeks it took to get it 'fixed' last time). To my knowledge, there's nothing saying we guarantee law library accessibility via computer. If the books are up to date (other than convenience for offender access), why continue to mess with the computer if it's that old and that much trouble? If you want my two cents, I say ship the books and scrap the computer. The books can be shredded or shipped when the offenders return. The computer can be shipped back to IT, who will likely surplus it. There, I said it. Please keep me in the loop on your decision.

From: Aggers, Kennyth L. (DOC)
Sent: Monday, March 15, 2010 1:07 PM
To: Bohon, Thomas G. 'Gary' (DOC); 'Jansen, Jo'
Cc: Georg, Catherine L. (DOC); Miller, James C. Jr. (DOC); Combes, Timothy P. 'Tim' (DOC)
Subject: RE: Washington law computer problem

Nope. Have no idea. Let's ask Tim. Maybe he knows.
Tim, can you help out?

Kenny Aggers, CRT 1
Out of State & Jail Facilities Unit
PO Box 41149
Olympia, WA 98504
Phone: (360) 725-8924
Fax: (360) 586-7273

From: Bohon, Thomas G. 'Gary' (DOC)
Sent: Monday, March 15, 2010 12:57 PM
To: 'Jansen, Jo'
Cc: Aggers, Kennyth L. (DOC); Georg, Catherine L. (DOC); Miller, James C. Jr. (DOC)
Subject: RE: Washington law computer problem

Good afternoon. I'm unfamiliar with the exact setup of the computer, but we can see about figuring it out.

Kenny, do you recall who was working on this computer while it was up here? Thanks.

Gary Bohon, Correctional Program Manager
HQ Classification Unit
Washington State Department of Corrections

Can you help with this problem? We need a tool to open the side of the WA computer. It is not sending a signal to the monitor and I wanted to check if there were any wires loose before we send it back to them.

Are you on Red Rock today??

Thank you

Jo Jansen MLIS
Librarian
Corrections Corporation of America
Red Rock Correctional Center
1750 E. Arica Rd.
Eloy, AZ 85131
T: 520-464-3800
E: jo.jansen@correctionscorp.com

"we do not state these propositions in the comfortable belief that what people read is unimportant. we believe rather that what people read is deeply important; that ideas can be dangerous; but that the suppression of ideas is fatal to a democratic society. freedom itself is a dangerous way of life, but it is ours."

-from the american library association's freedom to read statement
www.ala.org

From: Bohon, Thomas G. 'Gary' (DOC) [<mailto:tgbohon@DOC1.WA.GOV>]
Sent: Friday, March 26, 2010 12:39 PM
To: Jansen, Jo; Spice, David V. (DOC)
Cc: Georg, Catherine L. (DOC); Miller, James C. Jr. (DOC); Marquis, Rose E. (DOC); Combes, Timothy P. 'Tim' (DOC); Aggers, Kennyth L. (DOC)
Subject: FW: Washington law computer problem

David, I understand that we can't just go mailing stuff off willy-nilly, but she's trying to fix this for us so we don't have to pay to have it shipped up here again to be fixed (especially if it's an easy fix). In addition, having the law library computer not in working order for this amount of time puts us at a great liability with regards to offenders having constitutional access to the courts.

Jo, I've got one of these sets in my garage. If you give me your address I'll mail it to you. You're doing us a favor, I'm not going to ask you to spend \$25 to help us out.

Gary Bohon, Correctional Program Manager
HQ Classification Unit
Washington State Department of Corrections

From: Spice, David V. (DOC)
Sent: Friday, March 26, 2010 12:31 PM
To: Bohon, Thomas G. 'Gary' (DOC); Jansen, Jo; Combes, Timothy P. 'Tim' (DOC); Aggers, Kennyth L. (DOC)
Cc: Georg, Catherine L. (DOC); Miller, James C. Jr. (DOC); Marquis, Rose E. (DOC)
Subject: RE: Washington law computer problem

We do not have tools we can send however here is a link to Sears where she can pick up one.

http://www.sears.com/shc/s/p_10153_12605_00947486000P?vName=Tools&cName=HandTools&sName=Screwdrivers&psid=FROOGLE01&sid=IDx20070921x00003a

From: Bohon, Thomas G. 'Gary' (DOC)
Sent: Friday, March 26, 2010 11:23 AM
To: Jansen, Jo; Spice, David V. (DOC); Combes, Timothy P. 'Tim' (DOC); Aggers, Kennyth L. (DOC)

Gary Bohon, Correctional Program Manager
HQ Classification Unit
Washington State Department of Corrections

From: Jansen, Jo [mailto:Jo.Jansen@correctionscorp.com]
Sent: Monday, March 29, 2010 4:15 PM
To: Bohon, Thomas G. 'Gary' (DOC)
Subject: RE: Washington law computer problem

Mr Bohon,

No, they can not get it out of the books. There is no way to search the case law. The WA Reports that we have are only supplements and there are hundreds of them, there may be a complete set but most are boxed up, they also do not go back to when WA case law begins. There is also no way to Shepardize the law.

I have been printing specific case law, statutes, penal code, RCW, and WAC and anything else if they know what it is they need. With out the computer they have no access to any of these things.

We have been out of compliance for some time as Mr JC Miller is fully aware of.

Please, have them image another computer and send it down. I will return this one.

I currently have an Informal Grievance that I recently replied to. I also have an inmate who has been Barred For Time, due to his inability to use legal resources to do his research and wants a statement to send to the court so that he can get back into the court process. I can only state my involvement and referred him to JC Miller, but Mr Miller is not returning phone calls, his email is full and there has been no response from him.

Thank you,

Jo Jansen MLIS
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-from the american library association's freedom to read statement
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From: Bohon, Thomas G. 'Gary' (DOC) [mailto:tgbohon@DOC1.WA.GOV]
Sent: Monday, March 29, 2010 3:13 PM
To: Jansen, Jo
Subject: RE: Washington law computer problem

Oy. Okay, thanks for the info. I'll see what we can do about it from here.

For the record, can they get what they need out of the books? Or is it just that the computer is easier to use than the books?

Gary Bohon, Correctional Program Manager
HQ Classification Unit
Washington State Department of Corrections

Federal Reporter Federal Appendix Disc 1 thru 3 Aug 2009 WPC28301(all)
Only Disc 3 of 3 Oct 2009 WPC28305
Only Disc 3 of 3 Dec 2009 WPC28307

Federal Reporter only disc 18 of 18 Dec 2009 WPC17162
Federal Reporter discs 1-18 Aug 2009 WPC17141-171158 (complete)

These are the only discs I have.

Can you verify with your West representative what discs and law we should have on this computer?
Who will they send the updates to? I would be happy to have them sent to my attention.

I don't know if WA includes in the computer specific to WA like the RCW and WAC. I know that CA includes their DOM and Title 15 on their computers as does Hawaii with something similar.

What ever you normally load on the computer would be great.

Thank you,

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From: Bohon, Thomas G. 'Gary' (DOC) [<mailto:tgbohon@DOC1.WA.GOV>]
Sent: Thursday, April 01, 2010 9:07 AM
To: Jansen, Jo
Subject: RE: Washington law computer problem

Jo, we're going to get you the new computer. It'll be ready to mail out tomorrow. We only need to know a couple of things:

- (1) Do you have all of our updated law library CDs to be loaded on the machine once you get it?
- (2) Aside from those CDs, does anything else need to be on the hard drive? What about Premise?

Anything else? If you can get me something back today, that'll work great. Thank you very much.

Gary Bohon, Correctional Program Manager
HQ Classification Unit
Washington State Department of Corrections

From: Bohon, Thomas G. 'Gary' (DOC)
Sent: Wednesday, March 31, 2010 4:25 PM
To: Spice, David V. (DOC); Marquis, Rose E. (DOC); Combes, Timothy P. 'Tim' (DOC)
Cc: 'jo.jansen@correctionscorp.com'; Georg, Catherine L. (DOC); Miller, James C. Jr. (DOC); Aggers, Kannyth L. (DOC)
Subject: FW: Washington law computer problem

Can we please get them a new computer? We're going to face serious lawsuits if we don't.

Clark County Sheriffs Office

707 W 13TH Street
Vancouver, WA 98660 (360) 397-2211
(360) 397-6074 (FAX)

Case No
05-6390
Report ID
06/10/2005 09:54 1239
RCN

Supplemental Incident Report

Records Center

707 W 13TH Street
Vancouver, WA 98660 (360) 397-2211
(360) 397-6074 (FAX)

DOR
06/10/2005
Officer Assaulted Non Disclosure
Distribution Other
KIM FARR - CAIC

CAIC-PA

int	pDis	sDA	dEnt	MC	Concl	Case	F/U	Ret	Let	
		110								
Status							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Administrative Information

Location 7917 NE 151ST AV		City VANCOUVER		State WA	Zip Code				
Local Geo	State Geo	Precinct	Geo						
Rep Date 06/10/2005	Rep Time 09:30	From Date	From Time	To Date	To Time	Category	Class	Premise	
Dom Viol <input type="checkbox"/>	DV Card <input type="checkbox"/>	Child Abuse <input checked="" type="checkbox"/>	Arson <input type="checkbox"/>	Homicide <input type="checkbox"/>	Gang <input type="checkbox"/>	Weapons <input type="checkbox"/>	Alcohol <input type="checkbox"/>	Drugs <input type="checkbox"/>	Computer <input type="checkbox"/>

Article

Item # 1	Loss/Action EVIDENCE	IBR Type RECORDS	NCIC Category	Type	Quantity 22	Caliber	Drug Type
Drug Quantity	Drug Measure	Loss Value	Color	Color			
Description INMATE LETTERS WRITTEN BY J ZIEGLER							
Brand							
Model							
Serial No		Owner Applied No (OAN)					
Miscellaneous 22 LETTERS WRITTEN BY JEFF ZIEGLER TO							
Rec. Date 06/10/2005	By PSN 1239	Rec. Agcy VPD	Rec. Value				
Location 7917 NE 151ST AV		City VANCOUVER		State WA	Zip Code		

Narrative

Evidence

The following items were placed into the CCSO evidence system:

22 handwritten letters by Jeff Ziegler to his [REDACTED], and [REDACTED], and [REDACTED].

Narrative

On 06/08/05 I learned from Renata Rhodes of CPS that [REDACTED] had been receiving mail from [REDACTED] Jeff Ziegler.

On 06/09/05 I spoke with [REDACTED] by telephone. [REDACTED] said [REDACTED] had received approximately 22 written letters from Jeff that came from the Clark County Jail. [REDACTED] agreed to give the letters to me to be placed into CCSO evidence.

Reporting Officer
Holladay, Aaron
Approving Officer

PSN
1239
PSN

Agency/Case Number
CCSO
05006390
Report ID
06/10/2005
09:54 1239
Ref Case Number

Clark County Sheriffs Office

Case No.
05-6390

Narrative

On 06/10/05 I went to 7917 N.E. 151st St. and met with [REDACTED]. [REDACTED] gave the letters to me. I brought the letters back to CAIC and briefly read through some of them. The letters in general summary are about religion, forgiveness, and prayer.

Recommendation

Forward report to CAIC Senior Prosecutor Kim Farr for review.

I certify or declare under penalty of perjury under the law of the state of Washington, that to the best of my knowledge the attached report(s), documents, and information contained therein are true, correct, and accurate. (RCW 9A.72.085)

Reporting Officer
Holladay, Aaron
Approving Officer

PSN
1239
PSN

Agency/Case Number
CCSO
05006390
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06/10/2005
09:54 1239
Ref Case Number

Report printed by: 3299

Page 2 of 2

1 have to go through an academy and so forth?

2 A. Yes.

3 Q. And was part of your training at the academy to
4 listen into phone conversations?

5 A. No, not specifically.

6 Q. Was there any discussion at the academy about what
7 was necessary to listen into a phone conversation?

8 MR. FARR: Objection --

9 THE WITNESS: To just listen in (inaudible).

10 MR. FARR: -- as to relevancy.

11 MR. BARRAR: I want to know if they got a judge
12 to authorize a third-party consent to this
13 conversation.

14 MR. FARR: Well, objection, it's not necessary.

15 THE COURT: Continue.

16 BY MR. BARRAR: (Continuing)

17 Q. Did you seek an order from a judge to listen into
18 a private conversation?

19 A. No.

20 Q. How was this different from tapping a phone?

21 A. Ms. Ziegler held the phone out to where I could
22 hear. That was pretty much it.

23 Q. Okay. Did -- did Mr. -- did you tell Mr. Ziegler
24 you were listening on the line?

25 A. No.

1 Q. Did he ever give his consent to have you testify
2 or listen -- first of all, did he ever give you consent
3 to listen to the conversation?

4 A. No.

5 Q. And did he ever give his consent to have you
6 testify as to the substance of that conversation?

7 A. No.

8 Q. At any point did Ms. Ziegler say, There's a police
9 officer here listening to the conversation?

10 A. No.

11 MR. BARRAR: Your Honor, we would move to strike
12 all reference to the conversation as being a
13 violation of the Washington law against third-party
14 consent and wiretaps.

15 THE COURT: Okay. Let's take the jury out for a
16 minute, please.

17 (Jurors exit courtroom.)

18 MR. FARR: Your Honor, this is a (standard police
19 practice) that is used all the time. This person
20 was not in custody. He did not direct her to ask
21 him any questions. It is not a violation of any
22 law to have the phone tipped. It's used as police
23 practice, we're taught about it in (prosecutor
24 classes). We have (case law that supports it,
25 although I didn't bring it because I figured he'd

JAN
JAN
16

FRANCHI

WA

RECCA

STANLEY

WATSON

PROSE

DEPT FOR NEWS, CALIF.

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(raise it yesterday) rather than raising it in front of the jury, as a preliminary matter.

And so it is completely legal behavior to do and his statements are admissible.

THE COURT: Do you have any -- (any authority) other that (you think) this is (akin) to a wiretap? Is --

MR. BARRAR: It's absolutely akin to a wiretap. He's listening into a conversation where he does not have permission to listen to the conversation, and he "cannot testify" as to the "substance of that conversation."

It's no different from having a wire. It's no different at all. That's our position, and we'd ask for a mistrial.

THE COURT: Well, I have so (noted) your position. Are we through with this witness so we can go on to another witness and we --

MR. FARR: Yes.

THE COURT: -- can discuss this a little bit later?

MR. FARR: Well, at least I am.

MR. BARRAR: I have a lot more cross.

MR. FARR: Well, I don't want the issue to come up again as to this "illegality of this wiretap."

Handwritten notes:
Barrar
LEGAL
CANNOT
FARR
SUBSTANCE
OF THAT
CONVERSATION