IN THE APPEALATE COURT OF THE STATE OF WASHINGTON
DIVISION II CAUSE# 43591-8

STATE OF WASHINGTON,
Respondent,
v
Jeffrey Scott Ziegler,
Petitioner,

Clark County Superior Court
Cause# 05-1-01088-6

Statement of Additional Grounds for Review as Per RAP 10.10

I. IDENTITY OF MOVING PARTY

Jeffrey Scott Ziegler, Petitioner by and through pro se., asks this court for relief designated in Part II of this Statement of Additional Grounds for Review under RAP 10.10

II. STATEMENT OF RELIEF SOUGHT.

Petitioner prays this court Review this Statement of Additional Grounds for Review that are not addressed in attorneys brief

III. FACTS RELEVANT TO THIS MOTION.

1. The Judge Woolard's ruling conflicts with this courts opinion in State v Pelkey, 109 Wn.2d 484, 490, 745 P.2d 854 (1987)

2. The Judge Woolard's ruling is contrary to Federal Law in Spitsyn v Moore 345 F.3d 796 (9th cir. 2003)

3. The Judge Woolard's ruling conflicts with this State's Criminal Rules of Discovery Chapter 13 § 1301 et seq.,

4. The Judge Woolard's ruling is contrary to United States Supreme Court precedent set in BRADY v Maryland, 373 U.S. 83, 83 S.CT. 1194

10 L.Ed.2d 215 (1963)

5. The Judge Wickard's ruling is in conflict with RCW 4.16.180, in respects to equitable tolling.

6. The Judge Wickard's ruling is contrary to United States Supreme Court ruling in **Napue v Illinios**, 360 U.S. 265 (1959),in respects to prosecutorial misconduct.

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

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

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

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

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

NATURE OF COMPLAINT

MR. ZIEGLER PETITIONS THIS COURT ~~COMMISSION~~ THAT HE HAS A RIGHT TO DUE PROCESS OF LAW UNDER BOTH THE WASHINGTON STATE CONSTITUTION AND THE UNITED STATES CONSTITUTION AND, "AN UNBIASED JUDGE AND THE APPEARANCE OF FAIRNESS ARE HALLMARKS OF DUE PROCESS," AND ALSO THE BASIC REQUIREMENT OF DUE PROCESS INCLUDES A RIGHT TO AN UNBIASED JUDGE. SEE HAURT V. DILLARD, 17 F.3rd 285 (9th CIR. 1994).

MR. ZIEGLER ARGUES THAT JUDGE DIANE M. WOOLARD SHOULD HAVE RECUSED HERSELF AND RECUSAL WAS REQUIRED BASED ON THE APPEARANCE OF FAIRNESS DOCTRINE AND CJC CANON 3(D)(1). EVIDENCE OF THE JUDGE'S ACTUAL OR POTENTIAL BIAS MUST BE SHOWN BEFORE AN APPEARANCE OF FAIRNESS CLAIM WILL SUCCEED. STATE V. POST, 118 WN.2d 596, 619, 826 P.2d

599 (1992). ZIEGLER FURTHER CONTENDS THAT UNDER THE CJC, WHICH IS DESIGNED TO PROVIDE GUIDANCE TO JUDGES AND CANDIDATES FOR JUDICIAL OFFICE, "JUDGES SHOULD DISQUALIFY THEMSELVES IN A PROCEEDING IN WHICH THEIR IMPARTIALITY MIGHT REASONABLY BE QUESTIONED..." CJC CANON 3(D)(1); SEE ALSO STATE V. DOMINGUEZ, 81 WN. APP. 325, 328, 914 P.2d 141 (1996) (JUDGE MUST DISQUALIFY SELF IF "[HER] IMPARTIALITY MAY REASONABLY BE QUESTIONED.") ZIEGLER ARGUES THAT POTENTIAL BIAS IS INHERENT IN THE PRESENT CASE, RELYING ON THESE THREE CASES: BRENT V. STATE, 929 SO.2d 952 (MISS. CT. APP. 2005), CERT DENIED, 929 So.2d 923 (MISS. 2006); RUSSEL V. LANE, 890 F.2d 947 (7th CIR. 1989); RICE V. MCKENZIE, 581 F.2d 1114 (4th CIR. 1978). BOTH RUSSEL AND RICE INVOLVE

INSTANCES WHERE THE JUDGE ESSENTIALLY SAT ON THE APPEAL OF HIS OWN CASE.

THIS PRACTICE IS CLEARLY BANNED BY FEDERAL LAW AND PRACTICE. "[I]T IS ~~CLEARLY~~ CONSIDERED IMPROPER— INDEED IS AN EXPRESS GROUND FOR RECUSAL, SEE 28 U.S.C. § 47 - IN MODERN AMERICAN LAW FOR A ~~G~~ JUDGE TO SIT ON THE APPEAL FROM [HER] OWN CASE." RUSSEL, 890 F.2d AT 948. (CITING RICE, 581 F.2d 1114).

WHILE BRENT INVOLVED A JUDGE ISSUING THE SEARCH WARRANT AND DENYING A SUPPRESSION MOTION, IMPORTANT TO THE RESULT WAS THE "SAME JUDGE" THEN ACTING AS AN ASSISTANT DISTRICT ATTORNEY, HAD PREVIOUSLY PROSECUTED BRENT. BRENT, 929 So.2d at 955.

ZIEGLER, FURTHER SUBMITS THAT THE RIGHT TO A FAIR HEARING UNDER THE FEDERAL DUE PROCESS CLAUSE PROHIBITS ACTUAL BIAS AND "THE

PROBABILITY OF UNFAIRNESS." WITHROW V. LARKIN, 421 U.S. 35, 47, 95 S.CT. 1456, 43 L.Ed.2d 712 (1975) (QUOTING IN RE MURCHISON, 349 U.S. 133, 136, 75 S.CT. 623, 99 L.Ed. 942 (1955)).

IN CERTAIN INSTANCES, THE DUTY TO RECUSE IS NONDISCRETIONARY BECAUSE THE "PROBABILITY OF ACTUAL BIAS ON THE PART OF THE JUDGE OR DECISION-MAKER IS TOO HIGH TO BE CONSTITUTIONALLY TOLERABLE." WITHROW, 421 U.S. AT 47.

THESE INSTANCES INCLUDE WHERE THE ADJUDICATOR HAS A PECUNIARY INTEREST IN THE OUTCOME OR WHERE THE JUDGE HAS BEEN THE TARGET OF PERSONAL ABUSE OR CRITICISM FROM THE PARTY BEFORE [HER]. (EMPHASIS ADDED).

AN ASSERTION OF AN UNCONSTITUTIONAL RISK OF BIAS MUST OVERCOME A PRESUMPTION OF HONESTY AND INTEGRITY ACCRUING TO

JUDGES. SEE, WITHROW, 421 U.S. AT 47; SEE ALSO JONES V. HALVORSON-BERG, 69 WN. APP. 117, 127, 847 P.2d 945 (1993)(PRESUMPTION JUDGES PERFORM FUNCTIONS REGULARLY AND PROPERLY AND WITHOUT BIAS OR PREJUDICE).

ZIEGLER CITES MURCHISON, 349 U.S. 133, IN SUPPORT OF HIS ARGUMENT THAT DUE PROCESS WAS VIOLATED HEREIN. IN MURCHISON, THE JUDGE CONDUCTED SECRET GRAND JURY PROCEEDINGS, ACTING AS INVESTIGATOR, SOLE JUROR, AND CHARGING AUTHORITY.

THE JUDGE IN MURCHISON INTERROGATED TWO POLICEMEN. BASED ON THE "SECRET HEARINGS," THE JUDGE CHARGED MURCHISON WITH PERJURY AND THE SECOND POLICE OFFICER WITH CONTEMPT. THE SAME JUDGE THEN TRIED, CONVICTED, AND SENTENCED THE POLICE OFFICER'S.

ZIEGLER CONTENDS THAT, LIKE THE JUDGE IN MURCHISON, JUDGE WOOLARD ACTED AS PART OF THE INVESTIGORY PROCESS BY REVIEWING EVIDENCE

IN AN EX PARTE PROCEEDING; OR BEHIND CLOSED DOORS IN HER CHAMBERS WITH PROSECUTION AND DEFENSE ATTORNEYS; AT WHICH ZIEGLER WAS NOT ALLOWED TO BE PRESENT, (AND/OR THE JURY.) NOT ALLOWED TO PRESENT EVIDENCE; AND WAS NOT PROPERLY AND EFFECTIVELY ALLOWED CONFLICT FREE COUNSEL, IN MULTIPLE INSTANCES.

JUDGE DIANE M. WOOLARD HAS FURTHER VIOLATED MR. ZIEGLER'S CONSTITUTIONAL RIGHT TO BE AT ANY AND ALL PROCEEDINGS AGAINST HIM, AND/OR A PROTECTED LIBERTY INTEREST THEREIN, FARRETA V. CALIFORNIA, 422 U.S. 806, 95 S.CT. 2525 45 L.Ed.2d 562 (1975).

THIS ANALOGY TO MURCHISON DOES NOT FAIL. JUDGE DIANE WOOLARD DID NOT ALLOW ZIEGLER'S PRESENCE TO ALLOW WITNESS BEFORE HER; NEWLY DISCOVERED EXCULPATORY MATERIAL MEDICAL EVIDENCE;

NOR PROPER REPRESENTATION OF ACTUAL ARREST RECORDS; AND EFFECTIVE CONFLICT-FREE PUBLIC DEFENSE.

THE UNITED STATES SUPREME COURT REASONED THAT WHAT THE JUDGE LEARNED IN [HER] SECRET SESSIONS WAS "LIKELY TO WEIGH FAR MORE HEAVILY WITH [HER] THAN ANY TESTIMONY GIVEN" IN THE SUBSEQUENT "OPEN" HEARINGS. (EMPHASIS ADDED) MURCHISON, 349 U.S. AT 138. PROTECTIONS AGAINST PREJUDICE ARE SUPPOSED TO BE GIVEN OR AFFORDED TO DEFENDANT ZIEGLER.

RCW 4.12.050 PERMITS A PARTY TO CHANGE JUDGES ONCE AS A MATTER OF RIGHT, UPON A TIMELY MOTION, WITHOUT SUBSTANTIATING THE CLAIM OF PREJUDICE. THIS MEANS THAT A PARTY OR ATTORNEY CAN REPLACE THE ASSIGNED JUDGE "WITHOUT DEMONSTRATING WHY A "FAIR AND IMPARTIAL TRIAL IS IMPOSSIBLE" BEFORE THAT JUDGE.

Pg 9

IN ADDITION, THE JUDGES HONESTY AND INTEGRITY

SERVES AS A BULWARK AGAINST PREJUDICE." UNDER CJC CANON 3(D)(1), "JUDGES SHOULD DISQUALIFY THEMSELVES IN A PROCEEDING IN WHICH THEIR IMPARTIALITY MIGHT REASONABLY BE QUESTIONED."

IN SHORT, INDEPENDENT APPELLATE REVIEW, THE RIGHT TO FILE AN AFFIDAVIT OF PREJUDICE, AND "THE CODE OF JUDICIAL CONDUCT ADVANCES ZIEGLER'S RIGHT TO A FAIR AND DISINTERESTED JUDICIARY AND REDUCE THE RISK OF PREJUDICE." (EMPHASES ADDED) ZIEGLER CONTENDS THAT JUDGE DIANE M. WOOLARD HAS DEMONSTRATED A PATTERN OF ABUSE OF DISCRETION AND JUDICAL MISCONDUCT; DELIBERATELY CAUSING UNNECESSARY DELAYS AND WASTING JUDICIAL RESOURCES, AS DEMONSTRATED BY THE DECISION HANDED DOWN ON FEBRUARY 7th, 2012; AND HER CONTINUED DELIBERATE INDIFFERENCE TO THE CONSTITUTIONAL LAWS AND PRECEDENTS

OF THE WASHINGTON STATE COURTS, DISTRICT COURTS AND UNITED STATES SUPREME COURT'S PRECEDENTS.

AT THE VERY LEAST SHE HAS VIOLATED CJC CANON 3(D)(1)(a), BY IMPLICITLY RULING ON ~~HEARING~~ THE AFFIDAVIT OF PREJUDICE/REASSIGNMENT OF JUDGE/MOTION FOR ARREST OF JUDGMENT/MOTION FOR NEW TRIAL, ETC.; AND HAS MADE A BLATANT STATEMENT THAT SHE HAS "NO DESIRE" TO FOLLOW THE LAWS, STATUTES AND RCW'S SET IN PLACE BY WASHINGTON LAW MAKERS; AND LEGISLATURES; AND JUDICIAL COMMISSIONS; RESULTING IN A COMPLETE AND TOTAL FAILURE TO "DISPOSE OF THE BUSINESS OF THE COURT PROPERLY AND PROMPTLY."

DUE TO THESE VIOLATIONS THE HONORABLE JUDGE DIANE WOOLARD IN CLEAR VIOLATION OF CJC CANON 3 ~~(D)~~ ET AL; JUDGE WOOLARD SHOULD BE SEVERELY REPRIMANDED AND/OR NOT REINSTATED TO ELIGIBILITY

TO HOLD JUDICIAL OFFICE AND ALLOWED TO RULE WITHOUT IMPARTIALITY AND FAIRNESS.

ZIEGLER'S CASE(S) SHOULD BE PROPERLY REVERSED AND REMANDED AS PER PRECEDENTS.

I, JEFFREY SCOTT ZIEGLER, DECLARE UNDER PENALTY OF PERJURY ACCORDING TO WASHINGTON STATE CONSTITUTIONAL LAW, STATUTES AND RCW'S; AS WELL AS UNITED STATES CONSTITUTIONAL LAWS, AMENDMENTS, STATUTES AND PROVISIONS; THAT THE FOREGOING IS TRUE AND CORRECT.

DATED THIS 26th DAY OF November, 2012

SIGNED J. Scott Ziegler

JEFFREY SCOT ZIEGLER
DOC# 346270 UNIT# MA-42-U
PO BOX 2049 - AHCC
AIRWAY HEIGHTS, WA 99001

II. WHY WAS PREJUDICE AGAINST ZIEGLER INHERENT OF CLARK COUNTY SUPERIOR COURT?

Ziegler contends that had the State not governmentally mismanaged the following discovery of:

> (1)Actual Arrest Date, (2) Withheld discovery of Defendant's 22 letters and subpoena for a 3.5 hearing if prosecutor's intent to use them as defendant's testimony, (3) withheld discovery of Kaiser Washington, Kaiser California and The Vancouver Clinic Exculpatory Medical Evidence,(4) withheld discovery of State Witnesses New Statements claiming to have seen a doctor, (5) withheld lead detectives and officers reports

Ziegler would not have been prematurely forced to enter into a prejudiced trial violating Ziegler's Sixth Amendment of the U.S. Constitutional right to a fair and impartial trial. See **State v. Visitation**, 55 Wn.App. 166, 173, 776 P.2d 986 (1989);**State v. Maurice**, 70 Wn.App. 544, 546-48, 903 P.2d 514 (1995); **State v. Byrd**, 30 Wn.App. 794, 796, 638 P.2d 601 (1981); **Dorsey v. King County**, 51 Wn.App. 664, 668, 754 P.2d 1255 (1988).

In addition, Ziegler's defense counsel Jeffrey David Barrar, was sabotaged by the State and was very ineffective due to the with holding or suppression of all this discvoery and violated Ziegler's right to effective assistance of counsel. See **State v. Brooks**, 149 Wn.App. 373 (2009) at 376; "upheld trial court's decision to dismiss (for discovery mismanagement and violations under CrR 8.3) because the State: failed to provide a 60 page victims statement until the day before trial; failed to provide Jason Brook's statement to a Deputy from the night of the incident; failed to provide the lead detectives report, which likely would have revealed other witnesses that Natalie and Jason needed to interview; and failed to subpoena the victim for trial. ... Governmental mismanagement materially destroyed Jason's and Natalie's ability to obtain a fair trial." Circumstances surrounding Ziegler'case are very similar.

in Ziegler's case] "...[State] failed to provide Jason Brook's statement to a deputy from the night of the incident; failed to provide the lead detectives report, which likely would have revealed other witnesses that Natalie and Jason needed to interview; and failed to subpoena the victim to trial. Trial court tried to [achieve] compliance by granting continuances as an alternative to dismissal. Governmental mismanagement materially destroyed Jason's and Natalie's ability to obtain a fair trial." State v. Brooks, Id. at 376.

Ziegler faced similar but more egregorious damage as the State tried doing this mid-trial in front of jury by 22 letters written by Ziegler to his family which were turned over to State on June 10th 2005, but not presented to the defense as additional discovery until the middle of day one of trial in September 19th, 2005

In Carter v. Rafferty, 826 F.2d 1299,(3rdCir.1987) the importance of a prosecutor's failure to reveal exculpatory information concerning a ... written report of his examination of a key prosecution witness, but failed to inform the defense that the examiner had also made an oral report that was in conflict with the written report. This case is important not only because it demonstrates the stringency by which Brady violations are judged. The court of appeals considered the violation of such importance that it reversed Carter's conviction.

Relief must be granted where the prosecutor deliberately suppresses material facts, Pyle v. Kansas, 317 US 213 (1942);Wilde v. Wyoming 362 US 362 U.S. 607 (1960), or is guilty of connivance or actual fraud upon the defendant. Woollomes v. Heinze, 198 F.2d 577, 579 (9th Cir. 1952); U.S. ex rel. Almeida v. Baldi, 195 F.2d 815 (3rdCir.1952); Likewise, even the negligent suppression of material evidence by the govenment entitles the defendant to relief. U.S. v. Consolidated Laundries, 291 F.2d 563, 570-71 (2ndCir.1961). It is well settled law that the intentional suppression of evidence is a matter which may be presented to the trier of fact to show a conciousness of wrongdoing or weakness

in the government's case, U.S. v. Vole, 435 F.2d 774 (7thCir.1970);See generally Devitt & Blackmar, Jury Practice and Instructions, 3rd Ed. Sect. 15.09; Crim.Jury Instr. D.C. 2.45 citing Allen v. U.S., 492, 499 -500 (1896). Ziegler contends that State's suppression was deliberate.

If a prosecutor violates his Brady obligation, that violation is of sufficient magnitude that it subjects the prosecutor to profession al discipline. But that misconduct is magnified when the information is concealed to avoid triggering an agreement that would result in the dismissal of the charges against the defendant. That is misconduct of the gravest sort. Like the suppression of the medical evidence as proclaim to be inexistince by the State's own witness orally at trial contrary to State witnesses written intitial 2, 3, 4 original testimonies. Even after the State is ordered by trial judge at sentencing to produce this new exculpatory evidence, the prosecutor then claims "none is in existence, and even if there was, it wouldn't be exculpatory to the defense." VRP 425-434 Furthermore, State asks for no 3.5 at 9:17 a.m., then at 11:42 a.m. State says not needed preliminarily, but at 1:42p.m. presents suppressed defendant'22 letters, sanitizing ~~and sub-~~ ~~one of~~ the letters for use in trial; defense copies soo terrible they cannot even be read as handwritten on both sides of originals bleeds thru copies by copies; & Testimony of Aaron Holiday, Lead detective's for CAIC testifies that Redwood Care Center in Santa Rosa, California primary forensic interview was never seen by him due to[suppression, or negligence,] VRP 301 ~~ln24~~ ("That is correct, I never saw a written report from the advocacy center.";"No, I did not talk to Marina.";"No, I did not talk to Isabella." VRP ln14-21 pg 305-6 "All of your information about this case came through Jennifer Ziegler and Don Ziegler. Anybody else? ... -- I did not interview anybody else." Ln. 1,2 & 9. without these reports how is Ziegler's Attorney going to build case?

J. case

aaron Holiday speaks

Pg 15

State v. Brooks, at 378 "During Jason's 3.5 hearing, held the first day of trial,[Ziegler was never afforded one] his lawyer received 138 pages of new discovery,[as Ziegler's attorney was handed 22 pages of discovery] including statements to police that Jason made."[Ziegler was not afforded his statements] Id. at 379 "Counsel indicated he'd spoken to State's counsel many times to request additional discovery, requested dismissal under CrR 4.7(h)(7)"[Ziegler's counsel should have done the same] Id. at 380 "Filed motion to dismiss under CrR 8.3 Governmental Misconduct. In Natalie's pretrial hearing, counsel asked for dismissal based on governmental mismanagement, arguing that Natalie was forced to choose between effective assistance of counsel and her right to speedy trial." [as was Ziegler] ... failed to complete discovery before the first day of trial. [as was Ziegler's counsel ineffective] Id. at 382 "Trial court asked how defense could be able to effectively interview Grieg [for 3.5 hearing that should have been called for Ziegler] without his initial statement, specifically, it [the court] asked how defense counsel could cross-examine Grieg if counsel received a 60 or 70 page statement the day before trial ." [as Ziegler's counsel received 22 pages at trial]

Id. at 384 "Dismissal under CrR 8.3(b) requires a showing of arbitrary action or governmental misconduct, but governmental misconduct need not be of an evil or dishonest nature; simple mismanagement is enough." **State v. Dailey** **93** Wn.2d 454, 457, 610 P.2d 357 (1980) It also requires the defendant to show that such action prejudiced his right to a fair trial." **State v. Mitchell,** 132 Wn.2d 229, 240, 937 P.2d 587 (1997). Such prejudice includes the right to a speedy trial and the "right to be represented by counsel who has had sufficient opportunity to

... adequately prepare a material part of his defense.'" **Mitchell** 132 Wn.2d at 240. "The trial court described the prejudice that it found here as "a total failure to provide discovery in a timely fashion, one that would allow for adequate preparation!'" [as was prevalent in Ziegler's case as well][Id. at 388] Then Id at 389

"The plain language of the **Jacobsen** court appears to provide that it is, in fact, the prejudice to the defendant's right to a fair trial that **"must be material"**, rather than the evidence **"itself."** (emphasis added) **State v. Brooks,** 149 Wn.App. 373 (2009).

This "total failure to provide discovery" by the State made Ziegler's counsel ineffective and sabotaged constitutional rights forcing Ziegler to acquiesce to the State's limited product of discovery or no discovery provided prior to arraignment, prelimin ary hearing and or omnibus, put Ziegler in a position to abandon a bona-fide suppression motion. Further making Ziegler's attorney ineffective inhis failure to be able to assist his "client" in effective assistance of counsel by investigating into Ziegler's tenable facts of discovery of actual arrest date and exculpatory medical evidence. Forcing failure by Jeffrey David Barrar to be able to bring a plausible motion to suppress unfavorable evidence or permitting discovery of information such as the time and place of the offense and overt acts not specified in the indictment but upon which the State intends to rely at trial.

This suppression by State also prevents Ziegler's attorney from motioning for a bill of particulars which may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. The purpose of a bill of particualrs is to inform the defendant of the nature of the charges against him to avoid surprise at trial and to protect him from ... being prosec

... being prosecuted for an inadequately described offense. See **United States v. Carrier,** (2ndCir.1982); and **United States v. Previti,** "Abuse of discretion may be shown by establishing that the defendant was actually surprised at trial, that he was unable to adequately prepare his case, ... and that his substantial rights were thereby violated." e.g., **Rova,** 574 F.2d at 391; **United States v. Thelvis,** 474 F.Supp. 117 (N.D. Georgia 1979). aff'd 665 F.2d at 665 F.2d 616 (5thCir.) cert denied sub nom. **Evans v. United States,** 456 U.S. 1008, 102 S Ct. 2300, 73 L.Ed.2d 1303 (1982) A bill of particulars will not only flesh out a poorly drafted indictment [as in Ziegler's case] it will provide additional information that will be helpful in ... unearthing any attempts to suppress favorable information. [as in Ziegler's case] "[I]n an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a ... court may grant ... even in the absence of a showing of cause for the procedural default." **Wood v. Hall,** 130 F.3d 373, 379(9thCir.1997)(quoting **Murray v. Carrier, 477** U.S. 478,496 (1986)); And also: "'To be credible,' a claim of actual innocence must be based on reliable evidence not presented at trial." **Calderon,** 523 U.S. at 559; **Schlup,** 513 U.S. at 324. "Where the petitioner does present new evidence, the Court should "assess the probative force of the newly presented evidence in connection with the evidence of guilt adduced at trial." **Schlup,** 513 U.S. at 332.

"It has generally been recognized that a prosecutor is subject professional discipline for acts of misconduct committed in connect ion with the performance of his official duties." See **United States,** v. **Kelly,** 550 F.Supp. 901 (D.Mass.1982); **Price v. State Bar,** 30 CAL .3d 537, 638 P.2d 1311, 179 Cal. Rptr. 914 (1982); **In re Rachmiel,** 90 N.J. 646, 449 A.2d 505 (1982); **In re Conduct of Burrows,** 291 Or.

... 135, 629 P.2d 820 (1981).

The Model Rules of Professional Conduct/Model Code of Profes sional Responsibility; ABA Standards for Criminal Justice, The Prosecution Function;

> "std. 3-2.8(a)(a prosecutor should not intention ally misrepresent **matters of law or fact to the court**; std. 3-3.1(c) prosecutor should not know ingly use **illegally obtained evidence**; std.3-3.9 (a) a prosecutor should not institute or cause to be instituted **charges unsupported by probable cause**; std. 3-3.11(a) a prosecutor should not **fail to disclose exculpatory evidence**; std.3-5.6 (a) a prosecutor should not **knowingly offer false evidence.**" [as the State did in Ziegler's case.]

In finding the [State's witness's] perjured testimony required reversal, the ... court determined that "this court must be satis fied that: (1) the testimony given by a material witness was false, (2) the jury might have reached a different conclusion; and (3) the party seeking a new trial was surprised by the false test imony and unable to meet it, or did not know of its falsity until after trial." **McLaughlin, Supra,** 89 F.Supp.2d at 621. Pursuant to Federal Rule of Criminal Procedure 33, [counsel] moved for a new trial. The District Court granted the motion, on three seperate and independant grounds:

> "(1) a **material witness** for the prosecution had given **perjured testimony**; (2) the government had **withheld Brady material**; (3) **newly discovered evidence mandated a new trial." Id.at 621.**

"the impact of [State's Witness] false testimony so tainted the government's case that the jury verdict based on that false testi mony should not be permitted to stand." **Id. at 623.**

Ziegler alleges that his conviction has been obtained throug the use of perjured testimony. In **Mooney v. Holohan,** 294 U.S. 103 55 S.Ct. 340, 79 L.Ed. 791 (1935) Id. at 110, 55 S.Ct. at 341 79

... L.Ed. at 793 " ... the Court opined that:

> "Such a continuance [use of perjured testimony] by a State to procure the conviction and imprison ment of a defendant is as inconsistent with the rudimentary demands of justice as is obtaining of a like result by intimidation." **Id. 112,** 55 S.Ct. at 342, 79 L.Ed. at 794.

"The knowing use of perjured testimony by the prosecutor is a violation of constitutional preportions. Such misconduct should be brought, **without hesitation,** to the attention to the Court. Not only is the **"deliberate deception** of [the] court and jury by the **presentation of testimony known to be perjured."** Id. (See also **U.S. v. White,** F.2d 714 (8th Cir.1984) **improper,** the prosecutor **may not allow testimony known tohim to be false to stand uncorrected." Giglio v. United States,** 405 U.S. at 154-55, 92 S.Ct. at 766, 31 L. Ed.2d at 108-09; **Alcorta v. Texas,** 355 U.S. 28, 78 S.Ct. 103, 2 L. Ed.2d 9 (1957) "This standard applies not only to the testimony relating to the substantive aspects of a witness' testimony but also to testimony relating to a witness' credibility." **Naupe v. Illinois,** Id. at 422; 360 U.S. 264, 269, 79 S.Ct. 1173, 117, 3 L.Ed.2d 1217, 1221 (1959) In **Giglio,** the COurt reversed Giglio's conviction noting that: [T]he Government's case depended almost entirely on [State's witnesses] testimony; **without it there could be no indictment** and **no evidence to carry the case to the jury.** [State witness'] credi bility as a witness was therefore an important issue in the case, and evidence ... would be relevant to [State witness'] credibility and the jury was entitled to know of it." Id. at 154-55, 92 S.Ct. at 766, 31 L.Ed.2d at 109.

Perjured testimony rendeered Ziegler's counsel ineffective and had Ziegler known of the existence of this perjuered testimony his counsel could have submitted a discovery pretrial suppression motion which would have probably been successful as Washington does follow

coram nobis:"...**whose** purpose is to correct errors of fact ... which, if known at time judgment was rendered, would have prevented its rendition. ... to bring attention of court to, and obtain relief from, errors of fact, such as a valid defense existing in facts of case, but which, without negligence on defendant's part, was not made, either through duress or fraud ... where facts did not appear on face of record, and were such as, if known in season, would have prevented rendition of the judgment questioned." **Black's Law pg.**235

This governmental mismanagement rendered Ziegler's counsel very ineffective and Ziegler's case would most likely been dismissed at arraignment if Jeffrey David Barrar's cocounsel Mr. Simpson had had Ziegler's actual arrest date before Judge Robert Lewis at June 9th, 2005 hearing where cocounsel Mr. Simpson first raised "speedy trial" concerns(VRP 3-6 pg46-51)contained in Exhibit #2 Motion to Dismiss,& Pros. Attorney's packet Jeffrey Scott Ziegler v. Judge Diane Wooolard No.86443-8) **State v. Meckelson,** 133 Wn.App. 431, 436, 135 P.3d 991 (2006).

Ziegler's due process rights"requires the State to disclose evidence that is both favorable to him and material either to guilt or punishment." **United States v. Bagley**, 473 U.S. 667, 664, 105 S.Ct. 3375 87 L.Ed.2d 481 (1985)(quoting **Brady** v. **Maryland,** 373 U.S. 83,87 83 S.Ct. 1194 101 L.Ed.2d 215 (1963)). The deliberate attempt by the prosecutors to undermine the relationship between attorney and client and to subvert the right to effective assistance of counsel violates the Sixth Amendment and requires the dismissal of charges when prejud ice results therefrom. **United States v. Morrison,** 449 U.S. 361 (1981); **United States v. Henry,** 447 U.S. 264 (1980); **Weatherford v. Bursey,** 429 U.S. 545 (1977); **Boulas v. Superior Court,** 233 Cal. Rptr. 487 (Ct

The State failed to provide lead Detective Aaron Holiday's Report; & California Courtesy report from Redwood Care Center from Lead Detectives Ruben Martinez and Linda Morrissey; The State failed to provide the Vancouver Police Department's initial arrest information; The State failed to provide exculpulpatory medical reports from Kaiser, The Vancouver Clinic and Northern California Kaiser; The State failed to provide the suboenas for Ziegler's 3.5 hearing if State was intending to use the 22 letter's by Ziegler as testimony evidence. The State failed to issue subpoenas for Ruben Martinez and Linda Morrissey if State intended to use California Courtesy Reports as testimony evidence from State's witness forensic exvaluation/examination.

Production of all of this "exculpatory pretrial evidence" would likely have revealed these other witnesses that Ziegler and his defense counsel needed to have interviewed. This governmental mismanagement of discovery materially destroyed Ziegler's ability to obtain a fair trial multiplicitly due to CrR 8.3(b) and CrR 4.7(h)(7) discovery violations.

These violations by the State fundamentally handicapped Ziegler's right to effective counsel and his attorney's effectiveness: & "Establish an substantial prejudice against Ziegler caused by the violation of Ziegler's due process Constitutional Rights, for which he is entitled to relief. See In re Pers. Restraint of Lord, 152 Wn.2d 182, 94 P.3d 952

Ziegler contends that in light of State Prosecutor Kimberly Farr's prosecutorial conduct falling within the wide range of prosecutor abuse and showed flagrant governmental mismangement in both statute or Criminal Rules CrR 4.7(c)(1)/CrR 4.7 (h)(2) and is prime for dismissal under 8.3(b), CrR 8.3(b) is supported by a showing of preponderance of the evidence both: (1) arbitrary action or governmental misconduct, (2) actual prejudice affecting the defendant's right to a fair trial. **State v. Rohrich**, 149 Wn.2d 647, 654, 658, 71 P.3d 638 (2003); **State v. Wilson**,

It is Ziegler's contention the State intentionally concealed the exculpatory medical evidence, the new testimony, the lead detectives in California, and the lead detective in Washington's reports; thereby at tempting to avoid the production of records that would reveal the State 's misconduct prior to trial and during trial. This unitlateral suppres sion of evidence is improper. The ABA Prosecution Standards strongly condemn such actions. Standard 3-3.11(c) states that:

> "It is unprofessional conductfor the/a prosecutor intentionally to avoid pursuit of evidence because he or she believes it will damage the prosecution's case or aid the accused."

Prosecutorial misconduct has deprived Ziegler of his Constitution ally Protected Right to a Fair Trial, of Equal Protection of the Laws, and Due Process of Law. The prosecution has the affirmative obligation to respect the constitutional rights of a defendant, and to avoid con ductthat would violate those rights. "(The prosecutor) is the repre- sentative not an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligat ion to govern at all." Berger v. United States, 295 U.S. 78 (1935) "A trial is not a 'sporting contest' and the defendant is not a piece in a game of chess." Giles v. Maryland, 386 U.S. 66 (1967). The require ments underlying this obligation have been described by the United States Supreme Court as follows:

> "The untainted administration of justice is certainly one of the most cherished aspects of our institution...[F]astid ious regard for the honor of the administration of justice requires the court to make certain that the doing of justice be made so manifest that only irrational or perverse claims of its disregard can be asserted." Mesarosh v. United States, 351 U.S. 1, 14 (1956),(citing Communist Party v. Subversive Activities Control Board, 351 U.S. 115, 124 (1956).

THe prosecution obligation is also reflected in the ABA Standards for Criminal Justice. Standard 3-1.1, Standards for Criminal Justice The Prosecution Function (2nd Ed. 1980), states as follows:

(b)"The prosecutor is both an administrator of justice and an advocate. The prosecutor must excercise sound discretion in the performance of his or her functions. (c) The duty of the prosecutor is to seek justice, not merely to convict."

Failure to comply with that prosecutorial obligation subjects the indictment to dismissal. Some courts have given such importance to this requirement that they have dismissed the indictment "without regard to prejudice to the accused." UNited States v. McCord, 509 F.2d 334, 349 (D.C. Cir.), cert. denied, 421 U.S. 930 (1975); UNited States v. Banks 383 F.Supp. 389 (D.S.D. 1974). Other courts, however, "have demanded that there be some prejudice to the accused by virtue of the alleged acts of misconduct." UNited States v. Owen, 580 F.2d 365, 367 (9th Cir 1978). Finally, other cases have dealt with the cumulativr misconduct where the cumulative effect of the indiscretions operate to the prejud ice of the defendant. In Berger v. United States, 295 U.S. 78 (1935), the United States Supreme Court emphasized the importance of cumulative misconduct:

> "(W)e have not here a case where the misconduct of the of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronoun ced and persistent, with a probably cumulative effect upon the jury which cannot be disregarded as inconsequential." Id. at 89.

Improper investigation conducted in this case improperly discrimin ated against Ziegler's rights to a fair and impartial trial. The State and Ziegler's defense rendered ineffective by the State, failed to obtain and maintain evidence that was material tothe issues of this matter and as a result of improper investigation, the State has impaired defense and his counsel to be proficient is their ability to present a defense. "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense ... this right is a fundamental element of due process of law."**Washington v. Texas**, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967) under

... App.1987). The United States Supreme Court has emphasized the importance of such a violation by ordering dismissal of the prosecution in its recent decision in **Maine v. Moulton, supra.** In addition, the issue of prejudice is one that must be viewed inlight of that the Sixth Amendment right is held to be a **fundamental right.** This Sixth Amendment principle was emphasized by the United States Supreme Court almost fifty years ago in **Glasser v. United States, supra.** "The right to have assistance of counsel is **too fundamental and absolute** to allow courts to **indulge in nice calculations as to the amount of prejudice arising from its denial." Glasser v. U.S.,** 315 U.S. 60, 76 (1942). The State has violated its affirmative obligation to protect [Ziegler's] Sixth Amendment rights. Through such actions Ziegler has be deprived of [his] right to effective assistance of counsel. Accordingly, the indictment should be dismissed. "There is more at stake than just the liberty of this defendant. At stake is the honor of the government, public confidence in the fair administration of justice, and the efficient administration of justice." The United States Supreme Court in **Santobello v. New York,** 404 U.S. 257 (1971) Id. at 262-63.

The State must act in good faith when in pretrial preparation, prior to preliminary hearing,and prior to omnibus hearing. "The State cannot by its own unexcused conduct force a defendant to choose between his speedy trial rights and his right to effective counsel who has had the opportunity to adequately prepare a material part of his defense." **Price,** 94 Wn.2d at 814." (quoted from **State v. Brooks** 149 Wn.App. 373 ¶31[7-9] (2009) "Upheld trial courts decision to dismiss (for discovery violations and governmental mismanagement under CrR 8.3 and CrR 4.7(h)(7)) because the State: failed to provide a 60 page victims statement until the day before trial; [same as

The State's suppression of these discovery materials and then the subsequent delivery of some of the material discovery items on the day of trial is dismissable, and by the State's thereby attempting to avoid production of records, specifically medical records in the middle of a rape accusation, reveals the true extent of the State's ill intentions. This unilateral suppression of evidence is improper. The ABA Standards strongly condemn such actions. Standard 3-3.11(c) states that:

> "It is unprofessional conduct for a prosecutor intentionally to avoid pursuit of evidence because he or she believes it will damage the prosecution's case or aid the accused."

Presentation of improper evidence, specifically perjured testimony brought in the middle of trial; and/or as a basis for the initial indictment against Ziegler, is improper. ABA Standard 5.6(a), The Prosecutor Function provides that it is:

> "unprofessional conduct for a prosecutor knowingly to offer false evidence, whether by documents, tangible evidence, or the testimony of witnesses."

The ABA Model Code of Professional Responsibility, Disciplinary Rule 7-102(a)(4) provides that a lawyer shall not "knowingly use ... false evidence." This principle is also acknowledged by the United States Supreme Court: In **Napue v. Illinois**, 360 U.S. 264 (1959), the Court noted that the "principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted convction [is] implicit in any concept of ordered liberty." In **State v. Brooks**, the State was generally plagued by governmental mismanagement of discovery, but in Ziegler's case we have explicit evidence of willful and wanton prosecutorial misconduct in classic textbook exucution and delivery to the jury midtrial with flagrant multiple references to this improper evidence throughout remainder of trial.

Ziegler also brings issues of a biased judge which allowed this menagerie of prosecutorial misconduct and governmental mismanagement

Improper investigatory procedures have been the subject of court sanction. In People v. District Court, 656 P.2d 1287 (Colo.1983), the Colorado Supreme Court affirmed the trial court's reduction of a charge ... "as a sanction for failing to preserve [evidence] ... in a condition suitable for ... testing by the defendant ... [F]ailure to do so is tant amont to suppression of the evidence and ... the State must employ regular procedures to preserve evidence which a State Agent, in the regular perfor mance of his duties, could reasonably foresee might be favorable to the accused." In People v. Gillette, 629 P.2d 613 (Colo.1981), the court affirmed the dismissal of the prosecution because the authorities failed to do a test that could have been favorable to the accused."

> "Trial courts retain broad discretionary authority to prevent manifest unfairness in governmental procedures relating to the acquisition and preservation of evidence potentially favorable to the accused." Id. at 619.

In the proper excercise of its supervisory powers, this court can dismiss a prosecution on the basis of prosecutorial misconduct as well as for violations of the defendant's Constitutional rights to a fair trial and to due process of law. **United STates v. Hasting,** 461 U.S. 499 (1983) **United States v. Baca,** 687 F.2d 1356, 1359, n.1 (10thCir.1982); **United States v. Ramirez,** 710 F.2d 535 (9thCIr.1983 In **UNited States v. Hasting,** the United States Supreme Court discussed the basic nature of the supervisory power ... and the purposes of such powers as follows:

> "[G]uided by the considerations of justice, **McNabb v. United States, 318** U.S. 332, 341, 63 S.Ct. 608, 613, 87 L.Ed. 819 (1943), and in the exercise of supervisory powers, ... may, within limits formulate procedural rules not specifically required by the Constitution or the Congress. The purpose underlying use of the supervisory powers are threefold: to implement a remedy for violation of recognized rights, **McNabb,** supra, at 340, 63 S.Ct. at 612, **Rea v. United States,** 350 U.S. 314, 317, 76 S.Ct. Ct. 292, 294, 100 L.Ed.233 (1956); to preserve judicial integ rity by ensuring that a conviction rests on appropriate consi derations validly before the jury, **McNabb,** supra, 318 U.S. at 345, 63 S.Ct. at 615; **Elkins v. United States,** 364 U.S. 206, 222, 80 S.Ct. 1437, 1446, 4 L.Ed.2d 1669 (1960);and finally as a remedy designed to deter illegal conduct, **United States v**

Payner, 447 U.S. 727, 735-736, n.8, 100 S.Ct. 2439, 2446-47. n.8, 65 L.Ed.2d 468 (1980). Id. at 505.(emphasis added.)

The Court now should excercise its supervisory power and dismiss the convictions against Ziegler as a result of pervasive prosecutorial misconduct and governmental mismanagement under CrR 8.3(b) and 4.7(h)

"The Eighth even if the State were to try to argue its same argument from day one of Ziegler's trial that Ziegler had the opportunity to face this perjury by the State's witness under cross examination, McLaughlin at 624-25 says, "in essence,that McLaughlin was given the opportunity to to meet the false testimony at trial." Two significant points in the ... court opinion are also noteworthy:

> "First, the court refused to require the defense, prior to trial, to assume that a [State] witness would flatly lie, and accordingly saw no reason for the defense tohave prepared to meet false testimony. Second, and more broadly, the court held that "the mere opportunity for a defendant to cross-examine or impeach a witness does not meet or cure that witness's perjury." Id.

Finding that all three criteria for a new trial based on perjurous testimony had been met, the court set aside Mark McLaughlin's convicti on on this ground. Ziegler'meets these criteria and should also be set aside. However, in addition to the State's witnesses perjury, the court should also find that the Brady violations seperately require reversal.

Ziegler contends that the State's failure to produce multiple pieces of evidence prior to trial mandate reversal of the conviction pursuant to Brady. In order to determine whether a Brady violation warranted seting aside the conviction. The court made a two part inquiry. First, the prosecution must have failed to disclose evidence favorable to the defendant that is relevant either to guilt or punishment; the disclosure obligation, as the court noted includes both exculpatory and impeachment evidence." McLaughlin, supra, 89 F.Supp. at 625. Second, "the undisclosed evidence must be material, meaning that 'there is a sub stantial probability that, had the evidence been disclosed to the defense,

State v. Michielli, 132 Wn.2d 229, 239-40, 937 P.2d 587 (1997)(quoting **State v. Blackwell**, 120 Wn.2d 822, 831, 845 P.2d 1017 (1993)

"Discretion is abused if the trial court's decision is manifestly unreasonable or is based on untenable grounds." **Rohrich**, 149 Wn.2d at 654. Ziegler submits that the court should find that Clark County's decisions have been manifestly unreasonable "because the court, despite applying the correct legal standard to the support facts, adopted a view' that no reasonable person would take"! Id. (quoting **State v. Lewis**, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990)).

A decision is based on "untenable grounds" ..."if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." Id. Ziegler's counsel should have filed at the very least a notice of non-compliance: First, on speedy trial violations according to CrR 3.3 and second, for discovery, and/or supplemental discovery under 4.7. The State should have provided discovery at the very least prior to preliminary hearings such as arraignment and omnibus.

The mismanagement is "sufficient" due to the trial court's consis tent governemntal mismanagement of not making a decision to further compel the State to disclose actual arrest date and full disclosure of medical discovery information that was critical to the defense, this material exculpatory evidence proving actual innocence is demanded to be disclosed and produced pursuant to Criminal Rules CrR 4.7(a)(1)(v) CrR 4.7 (e)(1). Ziegler's exculpatory material medical evidence would have changed the outcome of the trial, was suppressed deliberately by the State who came forward with discovery materials on the first day of trial violating discovery rules, which was literally ignored by Ziegler's counsel, Jeffrey David Barrar, whom by his own ex-prosecutor arrogance, may have been blinded due to the State's failure to disclose or provide adequate discovery; still put Ziegler "between the right to a timely trial and the right to adequately prepared counsel." **State v. Brooks, at** 373¶7

149 Wn.2d 1, 9, 65 P.3d 657 (2003). "It is the State that knows the strength of its own case, its ability to sustain the striking of witnesses, and the prudence of dismissing its case to refile when it has assembled its materials. Certainly,the defense does not know the content of the lead detectives report, the contents of the victims statement, or the potential statements by newly discovered witnesses."**State v Brooks**,at 393, ¶44. "The trial court here faced very difficult decisions caused by the severe governmental mismanagement, which in turn affected the accused's ability to receive a fair trial." **State v. Brooks,** 149 Wn.App. 373 at 393 ¶45 (2009)

The same issues can be applied in Ziegler's case as the State did suppress content of the lead detectives California Courtesy reports from Ruben Martinez and Linda Morrissey; the contents of State witnesses new victem statements, and the potential statemnts of these new discovery witnesses; adding on the complications of the newly discovered medical evidence testimony by State's witness of a doctor in California; all of which "affected the accused's ability to receive a fair trial." Neither does the defense know that the State is intenting to use the "22 letters written by Ziegler" as the State did not produce them until day of trial when the State, had in fact, had them since June of 2005.

Compound all of this with the Judicial bias that was displayed by Judge Diane Woolard and the prosecutors of Clark County made even more evident by their actions against the Washington Supreme Court in the Writ of Mandamus action in WA Supreme Court, Cause#86443-8 Jeffrey Scott Ziegler v. Judge Diane Woolard and Ziegler's Motion to Dismiss under 8.3 (b) and CrR 3.3(h) Speedy Trial Violations;recently granted by This Court on February 7th, 2012 directing Judge to hear Ziegler's motion.

Ziegler contends that governmental mismanagement need not be ~~of an~~ evil or dishonest in nature; "simple mismanagement is sufficient."

the result of the proceeding would have been different." Interestingly the ... court set a higher standard for when a Brady violation warranted a new trial than for when a new trial is warranted by the perjury of the government witness. The district found that both pieces of the withheld evidence met the standards." Id. at 626 "The court concluded that "each piece of the undisclosed evidence, standing alone, was relevant to McLaughlin's guilt or innocence, favorable to McLaughlin, and material." Thus, the court found that the Brady violations stood as seperate basis to direct a new trial. Id. at 627

The court articulated a five-part test, which included a showing (1) the evidence was in fact discovered in the first trial; (2) the movant had acted diligently; (3) the new evidence was not merely " cumulative or impeaching,"(4) the new evidence was material; and (5) the new evidence "would probably produce an acquittal, were met. The court found that "[a] criminal defendant,who has no burden of proof at trial, cannot be held at fault for not anticipating the perjury of a chief government witness and searching for evidence through which he could prove that perjury." Id. at 628

PART III

Judge Woolard's rulings violated my Federal United States Const itutional 6th, 7th and 14th Amendment Rights; Washington State Constitution 1 § 7; and Washington Law RCW 9.73.030 through RCW 9.73.090 et seq.

Any evidence obtained in violation of RCW 9.73.030 et seq., which prohib its the intercepting or divulging Private Communication where the parties the reto have not consented, is excluded for any purpose, including impeachment. Washington Constitutional Article 1 § 7.

Petitioner claims the interception of his conversation by Vancouver Police Officer(s) or Clark County Sheriff's Department Officer(s), clearly violates RCW 9.73.030 through RCW 9.73.090, where's, even in RCW 9.73.090 (2) provides, that prior to the interception, transmission, or recording the offi cer shall obtain written or telephonic Authorization from a Judge or Majistrate who shall approve the interception. in pertinent Part.

Washington Privacy Act is one of the most restrictive in the nation. State v. O'neal, 103 Wn.2d 853, 878, 700 P.2d (1985)(Dore, J. Concurring in part, dis senting in part): TAPED RECORDED CONVERSATION Cunningham v. State, 23 Wn.App. 826, 598 P.2d 756 (1979): RCW 9.73.050 - any information obtained in violation of RCW - 9.73.050 or pursuant to any order issued under the provisions of RCW 9.73.040 shall be inadmissible in any Civil or Criminal Case in all Courts of general or limited jurisdiction in this State., except with the permission of the person whose rights have been violated or in a criminal action in which the defendant is charged with a crime.

RCW 9.73.060: Violating right of privacy - Civil Action - Liability for damages. Any person who, directly or by means of a delective agency or any other agent, violates the provisions of this chapter shall be subject to legal action for damages. The Act Prohibits interception or recording of any:

> Private Communication transmitted by Telephone,Telegraph, radio, or the other private device between two or more individuals between two points within or without the State by any device electronic or otherwise design ed to record and/or transmit, said communication regardless how such device

is powered or actuated, without first obtaining the consent of all participants in the communication...." RCW 9.73.030(1)(a).

Verbatim Report of Proceedings 260 - Cross by Mr. Barrar for the defense, of officer Sofianos: Mr. Barrar question: "And was part of your training at the Academy to listen into phone conversations?" Officer Sofianos replies, "No, not specifically." Prosecutor Farr, "Objection" Counsel Barrar Responds," I want to know if they got a judge to Authorize a Third-party consent to this conversation?" Prosecutor Farr responds," well, Objection, it's not necessary."

Defense Counsel Barrar continus his cross: Question: "Did you seek an order from a judge to listen into a Private Conversation?" Officer Sofianos, "No." VRP 261 Barrar Question: "Okay, Did -- did Mr. -- did you tell Mr. Ziegler you were listening on the line?" Officer Sofianos replies, "No." Mr. Barrar questions, "Did he ever give his consent to have you testify or listen -- first of all, did he ever give you consent to listen to the conversation?" Officer Sofianos replies, "No." Mr. Barrar questions, "and did he ever give his consent to have you testify as to the substance of that conversation? Officer Sofianos answers, "No." Barrar Questions, "At any point did Mrs. Ziegler say, "there's a police officer here listening to the conversation?" Officer Sofianos answers, "No."

At the conclusion of this particular cross-- Defense Counsel Barrar asks the Court: "Your Honor, we would move to strike all reference to the conversation as being in violation of the Washington Law against Third-party Consent and wiretap."

Prosecuting Attorney Farr responds with, "this is Standard Police Practice, is used all the time, it is not a violation of any law to have the phone tipped. VRP 261 at 18.

The Court responded, "Do you have any -- any authority other than 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. --that's our position, and we'd ask for a Mistrial. In pertinent part. (emphasis added)

It is clear from the Record both the Court abused its' discretion by allowing the substance of Officer Sofianos's illegally received information to be used and it's also clear ~~from the record~~ and convincing evidence Prosecutor Farr committed Prosecutorial Misconduct by stating on the record "it is not a violation of any law to have the phone tipped."

The Court recited State v. Corliss, 123 Wn.2d 656, 870 P.2d 317 (1994), However, dissenting opinion of Justice J. Utter's opinion is precisely what RCW 9.73.030 states -- tipping of a telephone receiver is in every relevant sense the functional equivalent of a person listening on an extension telephone. Therefore, 9.73.030 plainly read states, "it shall be unlawful for any individual, partnership, Corporation, Association, or the State of Washington, its agencies, and political subdivisions "to intercept" or record. Any : (a, Private Communication transmitted by telephone.)

This was a Private Conversation between myself and my wife, and the relevant question thus becomes: Did Officer Sofianos comply with RCW 9.73.030 and seek consent? If not, then his actions and the Court's ruling(s) on admissability of the statements violated Washington Privacy Law.

This clearly is a violation of Law, Violation of my United States Constitutional Rights; as well as a violation of my Washington State Constitutional Rights to privacy. -- this evidence is "fruit from the poisonous tree."

PART 8

Judge Woolard, by not filing "any" of my motions presented to the Clark County Superior Court, is in violation of the following fundamental guid ing principles behind the Rules of Appellate Procedure:

> "Interpretation: These rules will be liberally interpretated 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 compelling circumstances where justice demands, subject to the restrictions in RAP Rule 18.8(a)(b);and RAP 1.2 (a)(emphasis added, underlining 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, 322 893 P.2d 629 (1995); State v. Schaupp, 111 Wn.2d 34, 39, 757 P.2d 970 (1988); Alpi ne Industries, Inc., v. Gohl, 101 Wn.2d 252, 255, 676 P.2d 488 (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 appear and defend in person, or by counsel...and the right to appeal in all cases..." Const. Art. 1 § 22. This is an explict guarantee of the right to representation at trial and on appeal. See State v. Breedlove, 79 Wn.App. 101, 106, 900 P.2d 586 (1995)(The Washington State Constitution expressly guarante e's one's right to self-representation...")

Defendant has an undisputed right to file a pro se brief/motion in Washington. Rap 10.11(d), Adopted 83 Wn.2d 1193 (1976); State v. Jones, 57 Wn.2d 701, 703, 359 P.2d 311 (1961). 1st, 5th and 14th U.S. Constitutional Amendment Rights to Due Process, Access to the Courts, and to be heard. See Bounds v. Smith, 430 U.S. 814, 822, 52 L.Ed.2d 72, 97 S. Ct. 1491 (1977); Hatfield v. Bailleaux, 290 F.2d 632, 637 (9th. Cir. 1961)"The Court in its discretion, may hold an evidentiary hearing on a post-trial motion." See State v. Bandura, 85 Wn.App. 87, 931 P.2d 174 (1997)

THE CLAIMS BY PROSECUTING ATTORNEYS ARE MERITLESS

The Prosecuting Attorney/Judge Diane Woolard used every law to convict petiti oner of the alleged crimes, However, now when it has become incumbent upon the State to follow "Rules of Law," it chooses to ignore the very same laws and rules.

The Prosecuting Attorney calls this Court's attention to CrR 8.3 (c). Petition er Ziegler did not file a CrR 8.3(c) motion but a CrR 8.3(b)/CrR3.1(h) motion. The petitioner is not making an "insufficiency" claim but multiple speedy trial violat ions claim. Which is not timebarrable under or as determined by the Washington Sta te Supreme Court cause#86443-8 Jeffrey Scott Ziegler v. Judge Diane Woolard, which Mandamus Action Compelled Judge Diane Woolard to "Take Action" on Feb, 7th, 2012.

Petitioner Ziegler submitted to prosecuting attorney exhibits in writ of mandamu s action of his being sent out-of-state by Washington DOC in Dec., 2005 and was held "out-of-state" until June 29th, 2010. RCW 4.16.180 specifically states that when a person is sent out of state "no commencement of time shall be calculated until such person is returned back into the state." Wherefore Ziegler's motion is timely filed less than a year from his return back into state on June 29th, 2010 and filing of motion on November 1st, 2010 when it was placed in the AHCC Legal Mail as per GR 3.1

"[F]undamental priciples of due process prohibits a criminal defendant from being sentenced on the basis of information which is false, lacks minimum indicta of reliability, or is unsupported in the record. Information relied upon at sentencing "is false or unreliable" if it lacks "some minimal indictum of reliability beyond mere allegation." Petitioner asserts the State did not meet its burden through bare assertions, unsupported by the evidence. See State v. Mendoza, 162 P.3d 439 (Div.II 2007)(quoting State v. Ford, 137 Wn.2d at 479-82, 973 P.2d 452 (internal citations omitted) It is the duty and/or obligation of the prosecuting attorney, in order to prove criminal history at sentencing for the purpose of calculating offender scores the state must provide a certified copy of judgments. Mendoza, supra, CrR 7.1; RCW 9.94A.530(2).

In review of petitioner's offered evidence in judgment and sentence that the offender 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 per In re Pers. Restraint of Carter, 172 Wn.2d 917 (2011) Id. at 934, ¶31 In re Pers. Restraint of Lavery, 154 Wn.2d 249, 255, 11 P.3d 837 (2005).

OFFENDER SCORE WAS/IS CONTINUING TO BE INCORRECTLY CALCULATED, AND IS INVALID ON ITS FACE. RCW 9.94A.701(9); RCW 9.94A.505(5); RCW 9.94A.599 IN RE PERS. RESTR. OF GOODWIN, 146 Wn.2d 861, 866, 50 P.3d 618 (2002); STATE V. MISAKIAN, 103 Wn.2d 636, 639, 694 P.2d 654 (1985); MCCUIN V. DEPT. OF LABOR, 47 Wn.2d 563, 565, 288 P.2d 848 (1955)

AS TO THE LAST REQUIREMENT, A REFERENCE HEARING, IT IS EVIDENT ONE NEEDED SO AS PETITIONER CAN ESTABLISH IN OPEN COURT HIS INCORRECT OFFENDER SCORE, MOREOVER PETITIONER HAS ALLEGED IN HIS ORIGINAL MOTION A CLAIM OF NEWLY DISCOVERED EVIDENCE THAT JUDGE DIANE WOOLARD ORDERED PROSECUTOR KIMBERLY FARR TO FIND - OF WHICH, PROSECUTOR FARR CLAIMED, "NONE WAS IN EXISTENCE" CONTRARY TO HIS ~~DEF~~ PRIMARY WITNESSES' TESTIMONY. A COPY OF THIS EVIDENCE WAS FOUND THROUGH PRIVATE INVESTIGATION AND WAS INCLUDED IN PROSECUTOR'S PACKET OF EXHIBITS OF ACTIONS/NON-ACTIONS OF CLARK COUNTY SUPERIOR COURT PAGES #00-113. JUDGE DIANE WOOLARD WAS AWARE OF THESE NEWLY DISCOVERED DOCUMENTS.

Pg 37

PETITIONER HAS ALWAYS DECLARED THAT HE HAD NO CULPABILITY TO PRIMARY ALLEGED CHARGES. A REFERENCE IS NEEDED TO ALLOW THIS NEWLY DISCOVERED EVIDENCE TO BE SUPPORTED TO ASCERTAIN THE VALIDITY OF ETTELER'S ACTUAL INNOCENCE CLAIM - AND PRESENTATION OF DOCUMENTS THAT WERE SUPPRESSED DELIBERATELY BY PROSECUTING ATTORNEYS AT TRIAL, SENTENCING, RESENTENCING AND SUBSEQUENT APPEALS, WRITS AND PETITIONS AT GREAT AND COSTLY EXCESS TO THE PEOPLE OF THE GREAT STATE OF WASHINGTON.

THE STATE NEXT OUTLINES THE REQUIREMENTS OF CrR 7.8 (c)(2), ~~AND BY LAW AND RULE (PETITIONER IS FAITHFUL)~~ CLAIMING THE SUPERIOR COURT MUST TRANSFER A COLLATERAL ATTACK, UNLESS THE MOTION IS 1. TIMELY; THIS WAS ALREADY ADDRESSED IN WA SUPREME CAUSE #86443-8.

PETITIONER CLAIMS HE HAS MET ALL THREE REQUIREMENTS OF CCR 7.8(C)(2) AND BY LAW AND RULE PETITIONER IS ENTITLED TO THE RELIEF HE HAS SOUGHT. THE PROPER REMEDY IN THIS PARTICULAR CASE IS TO ACCEPT PETITIONER'S MOTION TO VACATE THE TRANSFER OF HIS MOTION; GRANT PETITIONER'S REQUEST TO WITHDRAW ANYTHING HE FEELS COMPELLED TO WITHDRAW; AND/OR GRANT AN EVIDENTIARY HEARING SO THE COURT CAN PROPERLY CALCULATE PETITIONER'S OFFENDER SCORE; GRANT A REFERENCE HEARING SO AS A JUDGE, JURY OR COURT OF ORIGINAL JURISDICTION CAN RULE ON THE NEWLY DISCOVERED EVIDENCE OF MEDICAL FORENSIC FACT(S); SO AS TO ASCERTAIN THE VERACITY OF STATE WITNESSES PERJURED TESTIMONY, THAT DID CHANGE THE OUTCOME OF ZACKERY'S TRIAL, WITHOUT ACTUAL EVIDENCE THAT IMPEACHES WITNESS TESTIMONY.

PART VI

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

IV. ARGUMENT

Pursuant to Title 2 et seq.

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

RAP 2.5 An aggrieved person may object to a ruling of a Judge or clerk, including transfer of the case to the court of appeals under rule 2-5(a)(3) by a Manifest Error of Constitutional directed to the judges of the court of Appeals Division II of Tacoma

Petitioner respectfully submits that an appeal needs to be decided on the Merits and S.A.G.R. asked; and that petitioner is entitled to review of prior decisions if:

1. The decision of the court of appeals is in conflict with a decision of the Supreme Court,or
2. The decision of the Court of Appeals is in conflict with another decision of the Court of Appeals, or
3. A significant question of law under the constitution of the State of Washington or of the United States is involved; or
4. The petition involves an issue of substantial public interest that should be determined by the Supreme Court.

These issues are such that intervention by the Court of Appeals of the State of washington is warranted in this particular case.

PETITIONER IS ENTITLED TO EQUITABLE TOLLING.

The Judge Wood 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 Wood 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 29th, 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 31, 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.

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

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

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

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

DOES **RCW 4.16.180** APPLY IN THIS PARTICULAR CASE?

Petitioner claims **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

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

Moreover, The Judge's reliance on RCW 10.73.090 is without merit. RCW 10.73.090 is a statute of limitation, and is subject to the doctrine of equitable tolling and the doctrine of equitable tolling applies to statutes of limitation, But not to time limitations that are jurisdictional, Unless of course the commissioner is claiming that he does not have subject matter jurisdiction?

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

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

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

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

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

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

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

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

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

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

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

In the case at bar, The prosecutor amended the charges at mid-trial with the approval of the trial court.

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

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

> [A] conviction obtained through use of false evidence, known to be such by representatives of the State must fall...the same result obtains when the State, althrough not soliciting false evidence, ALLOWS it to go uncorrected when it appears the principle that a state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept or ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness.

Id at 269

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

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

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

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

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

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

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

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

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

Brady, sets minimum constitutional standards under the due

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

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

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

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

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

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

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

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

Petitioner contends the prosecutors investigators knew of the Redwood Care Center prior to trial. This was information gleened from the victims mother.

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

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

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

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

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

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

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

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

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

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

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

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

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

> "Petitioner's papers are inexpertly drawn, 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

PBSO

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

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

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

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

It is evident from the record that the Judge's ruling is in conflict with State v Pelkey,

It is evident form the record the Judge's ruling in respects to equitable tolling is contrary to Federal case Law of Spitsyn v Moore.

It is abundantly clear that the Judge's ruling is contrary to Brady v Maryland.

It is evident the Judge's ruling is in conflict with RCW 4.16.180

And finally the Judge's ruling is contrary to the United States Suprme Court decision of Napue v Illinios.

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

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CONCLUSION

For the reasons put forth above, the petitioner respectfully requests that this Court grant his motion, and award any and all relief as provided for by law.

In addition, the petitioner respectfully requests that this Court review this S.A.G.R. on the merits and review pertinent parts of the record as DAVID Pachozhan Court Clerk "Denied" Without Hearings, Along with Rulings by Commissioner Bearse & Sidmeth; to Be Related.

Furthermore, the petitioner respectfully requests that this Court appoint counsel to argue any issues this Court finds meritorious.

Respectfully Submitted,

DATED 11-26-2012

JEFFREY SCOTT ZIEGLER

I, Jeffrey Scott Ziegler, hereby swear under penalty of purjury of the laws of the State of Washington, that I have read the contents of the above Motion, and it is true and correct to the best of my knowledge.

SUBSCRIBED, SWORN AND signed this 26 day of November 2012

RACHAEL SHOOK NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 04-30-16

Signature of NOTARY PUBLIC

IN AND FOR CITY OF Airway Heights

COUNTY OF Spokane