

Set 11-7-13

No. 67776-4-I

IN THE COURT OF APPEALS
DIVISION I

IN RE THE PERSONAL RESTRAINT PETITION OF:

BRYCE HUBER,

Petitioner.

PETITIONER'S REPLY BRIEF

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2013 SEP 26 11:14:19
SUPERIOR COURT
STATE OF WASHINGTON
CLERK

TABLE OF CONTENTS

I. REPLY ARGUMENTS1

 A. INTRODUCTION1

 B. IF THIS COURT DOES NOT STRIKE APPENDIX 3 TO THE STATE’S RESPONSE, IT SHOULD CONSIDER THE DEFENSE DECLARATIONS THAT REFUTE SAVAGE’S CLAIMS.....2

 C. HUBER IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIMS4

 1. *Counsel slept through trial.*4

 2. *Counsel failed to propose the proper lesser included offense instructions.*6

 3. *Huber’s right to testify.*8

 4. *Failure to prepare and investigate.*9

II. CONCLUSION.....10

TABLE OF AUTHORITIES

Cases

<i>Burdine v. Johnson</i> , 262 F.3d 336 (5 th Cir. 2001), <i>cert. denied</i> , 535 U.S. 1120, 122 S.Ct. 2347, 153 L.Ed.2d 174 (2002).....	5
<i>Javor v. United States</i> , 724 F.2d 831 (9th Cir. 1984)	5
<i>State v. Berlin</i> , 133 Wn.2d 541, 947 P.2d 700 (1997)	6
<i>State v. Gamble</i> , 154 Wn.2d 457, 114 P.3d 646 (2005)	6
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, <i>reh'g denied</i> , 467 U.S. 1267, 104 S.Ct. 3562, 82 L.Ed.2d 864 (1984).....	1

Statutes

RCW 9A.32.060.....	6
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Rules

RAP 16.11.....	1
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I. REPLY ARGUMENTS

A. INTRODUCTION

Huber challenges his conviction on the ground that he was denied his Sixth Amendment right to the effective assistance of counsel. His challenge began as a Motion for Relief from Judgment in the King County Superior Court. He has argued that his trial attorney was ineffective in four ways: 1) he slept through portions of the trial, 2) he failed to seek lesser included offense instructions, 3) he refused to prepare and call Huber as a witness, and 4) he did not properly prepare and investigate the case. As to the first, claim, Huber need only show that his lawyer slept through portions of the trial. Prejudice is then presumed. On the remaining claims, Huber must not only show that his counsel's performance was deficient but also that counsel's deficient representation was "prejudicial to the defense." *Strickland v. Washington*, 466 U.S. 668, 684, 104 S.Ct. 2052, 80 L.Ed.2d 674, *reh'g denied*, 467 U.S. 1267, 104 S.Ct. 3562, 82 L.Ed.2d 864 (1984).

Huber has challenged the transfer to this Court and the motion is pending before the panel assigned for argument. As to all three claims, there are disputed issues of fact which require remand for an evidentiary hearing because Huber's claims cannot be determined solely on the record before this Court. RAP 16.11.

In evaluating these three claims, it is important to note that in on page 31 of the State's response, the State says:

It was undisputed at trial that Bushaw's murder was premeditated: two men who had lingered in the area for a considerable time approached Bushaw as he crossed a busy street: both men, without provocation, began firing at him.

State's Response to Personal Restraint Petition (State's Response) at 31.

This is simply not true. The entire defense was that neither co-defendant Brandon Chaney nor Huber knew that the State's star witness, John Sylve, intended to shoot the victim, Steve Bushaw, and that the decision to do so was a decision made by Sylve alone. *See* Motion for Relief from Judgment, Declaration of James Roe at 3. This defense was competently presented by attorney James Roe for Chaney. As a result, the jury could not agree that Chaney was an accomplice to a premeditated murder. It was not presented competently by Huber's attorney, Anthony Savage, who was literally dying of cancer during the trial, and thus, Huber was convicted of premeditated murder rather than first degree manslaughter.

B. IF THIS COURT DOES NOT STRIKE APPENDIX 3 TO THE STATE'S RESPONSE, IT SHOULD CONSIDER THE DEFENSE DECLARATIONS THAT REFUTE SAVAGE'S CLAIMS

The State attached a declaration signed by Savage in March 2011 in a different case. The declaration is apparently intended to refute

Huber's assertion that Savage was sleeping during trial. Motion for Relief from Judgment, Declaration of Huber at 2. Huber has moved to strike that declaration and the motion is pending before the panel assigned for argument.

If, however, this Court does not strike Savage's declaration, it should consider the defense declarations in *In Re the PRP of Lui*, No. 85459-6, rebutting Savage's assertions. Huber has attached the relevant responsive declarations in *Lui*. In that case, like this one, the defense alleged that Savage repeatedly dozed off during trial, suffered from serious health issues, appeared to lack the ability to concentrate on the issues, failed to prepare the witnesses and did almost no investigation in the case. And all of this was in 2008, well before Savage was diagnosed with cancer. These declarations provide significant corroboration for Huber's claim that by the time of trial in this case, Savage was so ill that he was sleeping through trial and was otherwise negligent in his representation of Huber.

Regrettably, some lawyers continue to practice when age or other circumstances diminish their faculties. Savage, in his prime, enjoyed an excellent reputation. But this Court cannot ignore the evidence presented here, and in *Lui*, that Savage may have undertaken work that he could no longer perform competently.

C. HUBER IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIMS

1. *Counsel slept through trial.*

The State does not dispute that if Savage slept during any portion of the trial, that conduct is inherently prejudicial and no separate showing of prejudice is required. Rather, the State attached the declaration from the *Lui* case, states that Roe does not mention this fact and has Baird state only that he “did not observe Mr. Savage sleeping during trial.” State’s Response, Appendix 1 at 7.

This is insufficient to defeat Huber’s claim that he is entitled to an evidentiary hearing on this issue. Baird’s declaration is not contradictory to Huber’s. Baird is careful to avoid saying that Savage did not sleep during trial. This is likely because neither Roe nor Baird were in a position to observe Savage as completely as Huber. Roe and Baird were responsible for presenting their own witnesses and their own cases. Thus, they had to concentrate on other courtroom matters. Moreover, neither one had the same motive to closely observe Savage. Huber, on the other hand, was seated right next to Savage and his performance was vitally important to him.

Even the partial transcripts of the telephone conversations submitted by the State support Huber’s claim that Savage was in such poor health that he was not accurately assessing what was happening at trial.

State's Response, Appendix at 4. As of July 26, 2011, Savage still had not interviewed Stephanie Cossalter, a person the State believed was an essential witness against Huber. On August 10, 2011, Savage told Huber that Roe's careful deconstruction of the phone records was boring and confusing the jury. State's Response, Appendix at 6. But, of course, the jury did not find Roe's client guilty. Even after Cossalter testified, Savage was telling Huber "he had a shot." State's Response, Appendix at 7.

Unlike other claims of ineffective assistance, if Savage slept through any portion of trial, Huber does not need to show actual prejudice – it is "presumed." *See, e.g., Burdine v. Johnson*, 262 F.3d 336 (5th Cir. 2001), *cert. denied*, 535 U.S. 1120, 122 S.Ct. 2347, 153 L.Ed.2d 174 (2002), and *Javor v. United States*, 724 F.2d 831, 833 (9th Cir. 1984) (both holding that a sleeping or unconscious counsel is no counsel at all; hence, no showing of prejudice is required) and cases cited at page 7 of Huber's Motion for Relief From Judgment. Thus, Huber is entitled to an evidentiary hearing to determine the following: Did Savage sleep through portions of the trial and is Huber's statement corroborated by Savage's medical records? The resolution of this issue requires an evidentiary hearing. During that hearing, the trial court can determine Huber's credibility on this point as well as assess whether any other trial

participant or observer was close enough or observant enough to refute Huber's declaration.

Huber is entitled to evidence that would corroborate his statement that Savage was sleeping. In this case, Huber has presented evidence that Savage was seriously ill and had been prescribed a "narcotic analgesia." This medication could clearly have affected Savage's performance because his doctor advised Savage that it was "unrealistic" for him to think he could work during that period.

2. *Counsel failed to propose the proper lesser included offense instructions.*

As argued by attorney Jennifer Winkler in her Opening Brief at pages 12-19, the State is simply wrong when it states that "as a matter of strategy and logic," Savage did not propose any lesser included offense instructions.

First, the prosecutor suggests that the only lesser included offense instruction that could have been given was second degree murder, but that is incorrect. Huber was also entitled to an instruction on first degree manslaughter, a lesser included offense of premeditated murder. *State v. Berlin*, 133 Wn.2d 541, 543, 947 P.2d 700 (1997). A defendant is guilty of first degree manslaughter when he engages in reckless conduct that results in the death of another. RCW 9A.32.060(1)(a). In this context,

recklessness means disregarding a substantial risk that death may occur.

State v. Gamble, 154 Wn.2d 457, 467-68, 114 P.3d 646 (2005).

There was certainly evidence that Huber knew that participating in a confrontation with Bushaw had substantial risk. Huber knew that Sage Mitchell and Lonshay Hampton were very upset about the robbery. All of the men in his party had been drinking. Thus, Savage was just flat out wrong when he said that lesser included offense instructions were not merited. Huber was entitled to argue that he did not know that Sylve was going to kill Bushaw, but that he ignored the substantial risk that might happen after an evening of drinking and trash-talking with persons who believed Bushaw had robbed them. Huber's position is supported by the evidence introduced at trial by his co-defendant, Chaney. In addition, Huber's own phone calls support this claim. On August 19, 2011, Huber reiterates to his mother that he wants to testify because there was no "plan" to kill Bushaw.

Furthermore, in this case, there is likely no set of circumstances in which a counsel's failure to ask for the lesser included offense instruction would have been reasonable. Huber was at the scene. Bushaw was killed. The only question in this case was who planned the murder and if Huber participated in such a plan. The State fails to ask the critical question of the prejudice analysis – which is not whether there was sufficient evidence

to convict – but whether it is reasonably likely that the result would have been different if the lesser included instruction had been given to the jury. Because Huber was not the shooter and did not participate in any plan to kill Bushaw, there is a reasonable likelihood that Huber would have been convicted of the lesser included offense of manslaughter rather than premeditated murder had the jury been properly instructed.

3. *Huber's right to testify.*

Huber's claim that Savage prevented him from testifying is not "unsupported." Huber's telephone conversations during and after trial confirm his wishes. On August 19, 2011, he told his mother he wanted to take the stand. State's Response, Appendix at 7. The issue in this case was what Huber knew about the shooter, Sylve, and what was planned in relationship to Bushaw. As even Huber recognized in his phone calls, he was at the scene of a murder. See Declaration of Suzanne Elliott at 1-5. His only defense was that he did not intend or premeditate the murder committed by Sylve, a man he did not know who had a gun that Huber did not know about. Only Huber could establish those facts.

Apparently, Savage's only reason for not calling Huber to testify was because Savage was not prepared. See the attached Declaration of Elliott at pages 1. That is what he told both Huber and his mother. *Id.* at 1, 2, 4, 5. But, it was Savage's duty to be prepared to meet the State's case.

Finally, the question is not whether Savage “coerced Huber into remaining silent.” State’s Response at 23. The question is whether he failed to honor Huber’s absolute right to testify on his own behalf. The record supports Huber’s claim. Immediately after trial, Huber told a friend that he wanted to “take the stand” because the trial was “a sinking ship”, but that “he really didn’t want to talk to me about it.” He understood Savage’s position but disagreed with it. And, as Huber told his friend, it was not as if he could have an argument with his lawyer in front of the jury. See Declaration of Suzanne Lee Elliott at 4.

4. *Failure to prepare and investigate.*

The State does not dispute that Savage did not undertake an independent investigation of the evidence against Huber. Rather, the State suggests that such an investigation was unnecessary because the evidence against Huber was so overwhelming and because Savage, in his prime, had been a skilled litigator. However, neither of these justifications is compelling or an excuse for not performing an investigation.

The evidence against Huber on the State’s charge – premeditated murder – was not overwhelming. As discussed in the previous briefing, the case was based upon the testimony of the shooter who had to implicate Huber and Chaney in order to avoid a lengthy prison sentence. Had Savage devoted the required time and effort into preparing for trial, he

would have interviewed the witnesses, reviewed the phone records, prepared Huber to testify and proposed a lesser included offense instruction. But, because of his failing health, he failed to discharge his duties to Huber.


As a result, Huber was convicted of premeditated murder while the jury could not agree on the charge against Chaney. Chaney was also present at the scene – in fact, he was the one who picked up Sylve at the airport. He also participated in conversations with Sylve and Mitchell prior to the crime – conversations that Huber was not present for. Thus, the evidence against Chaney was perhaps stronger than the evidence against Huber. The difference was that Chaney’s attorney actually prepared for trial and meaningfully attacked the State’s evidence.

II. CONCLUSION

This Court must either reverse the conviction outright or remand for an evidentiary hearing.

DATED this 25th day of September, 2013.

Respectfully submitted,


Suzanne Lee Elliott, WSBA #12634
Attorney for Bryce Huber

CERTIFICATE OF SERVICE

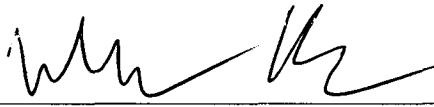
I hereby certify that on the date listed below, I served by First Class United States Mail, postage prepaid, one copy of this brief on the following:

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5 IN THE COURT OF APPEALS, DIVISION I

6 STATE OF WASHINGTON,

NO.: 67776-4-I

7 Respondent,

DECLARATION OF SUZANNE LEE
ELLIOTT

8 vs.

9 BRYCE HUBER,

10 Appellant.
11

12 I, Suzanne Lee Elliott, hereby declare as follows:

- 13 1. I am counsel for Bryce Huber.
14 2. After receiving the State's response brief, I requested and received additional recordings
15 from the King County Jail of Mr. Huber's calls to family and friends.
16 3. I have reviewed those calls and the relevant transcribed portions are set forth below.
17 4. Excerpts of call No. **1316451421_208**

18 HUBER: Yeah, but the prosecutor and the lead detective they worked, they, they painted
19 a picture, man, you know?

20 CARL: Yeah.

HUBER: A picture, and my attorney didn't do anything to, to change that picture.

21 CARL: Yeah, I know, that's what I was saying, man. They're painting you up.
Remember, I was telling you?

22 HUBER: Yeah.

CARL: I was like, you need to, you need to like to get some character witnesses.

23 HUBER: I tried. I talked, I talked to him about that and he didn't want to do it.

24 CARL: Fuckin', you know what I mean? You, if you're going up against a jury, or
whatever, they want to see what, you know, what the fuck (unintelligible).

25 HUBER: I told him, I told him that I wanted to have character witness and this other
witness. And then I told him at the end, "I want to take the stand." And he was like, "No.
That's not a good idea." I was like, "Well, this is a sinking ship..."

SUPPLEMENTAL DECLARATION OF SUZANNE
LEE ELLIOTT - 1

LAW OFFICE OF
SUZANNE LEE ELLIOTT
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-0291

1 CARL: Right? Dude. Fuckin' a.
2 HUBER: "...I'm not trying to go down with it. But, he didn't really want to talk to me
3 about it." So...
4 CARL: What the fuck man? You just, man that's just, you shoulda fired him. You
5 shoulda fuckin', you shoulda fired him dude. You should fuckin' (unintelligible)
6 HUBER: I know man.
7 CARL: Huh?
8 HUBER: I didn't really know what to do because he was telling me "I think we've got a
9 shot. I think we've got a shot." And I was like, "Well..."
10 CARL: I don't know man. I mean, fuckin', is it, it's not, man, you shoulda fuckin' fired
11 him and fuckin' got a, you know, extension, you know, 'cause they would've given
12 (phonetic) you a extension and all.
13 HUBER: Yeah.
14 CARL: But.
15 HUBER: It sucks man.
16 CARL: Yeah, it does suck. I mean. You know, you're not really sure what to do in the
17 exact time, you know. That does suck though. But, yeah, I mean like, it sounds like, you
18 know, like I was telling you as far as on the internet. And you know, fuckin'
19 (unintelligible) on the internet, it ain't gonna sound good in the courtroom.
20 HUBER: Yeah.
21 CARL: Fuckin', but yeah, I don't know man. You gotta try, try to get an appeal going.
22 HUBER: Yeah I'm going to.

14 5. **Excerpt from call No. 1316386672_208**

15 MOM: Because, if I see it, it still hinges on – to me, that, like how did they have
16 reasonable doubt when they didn't reasonable about – how did he not know and you did,
17 what the guns were gonna happen.
18 HUBER: Yeah.
19 MOM: I don't get that. How did that? I mean, obviously you were involved. But how did
20 you know that a person was gonna get murdered? I don't – if he didn't know, then how
21 would you know? You know? I don't get that. How – how that's not reasonable doubt.
22 HUBER: Well, I think if he gets off that'll be –
23 MOM: Better for you?
24 HUBER: Yeah, because I can still call him as a witness and he would not be somebody
25 that's charged with the crime anymore. You know?
MOM: Mhmm.
HUBER: He's my connection to everything that happened and then what I think might
have to be brought out is the phone records from that day, and previous days, showing
that I never talked to anybody else involved. I didn't even talk to Sage that day. I didn't
talk to Sage the day before. You know? So they're gonna have to bring that out to the
other judges.
MOM: Did you talk to Sage like earlier and then he talked to the guy and
HUBER: I don't think I – I looked through the phone records, I don't think I talked to
Sage for like a week.
MOM: Well then how did they do that? I don't get it. And you did not know Sylve, right?

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HUBER: Nope. Never met him.
MOM: You never talked to him?
HUBER: Nope.
MOM: I don't get that. I just don't know how that happened. I don't get it, but whatever.
HUBER: Yeah, so.
1316055886_207
HUBER: The real thing is that my lawyer fuckin' didn't even put up a fight.
LIZ: Really?
HUBER: He just fuckin' rolled over. I was giving him all these suggestions and things that I wanted him to say.
LIZ: Mhmm.
HUBER: Like he caught the lead detective in a lie. You know? And I wanted him to fuckin' pound that in the closing arguments. And he said he was gonna mention it. He didn't even mention it. You know?
LIZ: What do you mean the lead detective lied?
HUBER: He said – okay – he said – they were really trying to paint a picture that I was out to get dude, right?
LIZ: Right.
HUBER: So they – he said that I said that no, when they interviewed me, that no I said that no, he was not my friend, you know. He was my co-worker. Right? That's what they said I said.
LIZ: Right.
HUBER: So then – but there was another document that said when they interviewed me that I didn't say anything. I refused to answer any questions and I just said I wanted a lawyer. And I didn't – I refused to answer any questions. So, they're like which was it? Did you refuse to answer questions or did you supposedly say "he's not my friend; he's my coworker." You know? Because both of them were stated by the lead detective. The lead detective was stuttering and stumbling over his words. And I wanted him to fuckin' bring that out. Like pound it into the jury at closing, you know?
.....
HUBER: The only that connects me with the crime is the cell phone record that shows that I, I was the last person to talk to the victim on the phone and that he told his mom that he was going to – his mom and dad – he told them that he was going to meet me for a drink. But they didn't know, they never met me, that's just what they said. You know? He said "I'm going to meet Bryce for a drink."
LIZ: How does that? How do you get convicted off of that shit?
HUBER: The fuckin' dude said that I - -
LIZ: Oh so you mean the co-defendant or the other?
HUBER: The dude that told, part of the deal was to say that me and the other guy planned this murder, you know?
LIZ: Oh. So basically to get off on a lighter sentence they said that you did something regardless of whether or not you did it.
.....
HUBER: And, to tell you the truth, I think if I had a lawyer that was really fighting for me that I would be – that they would have had a - I would have a hung jury too. But, my lawyer didn't do shit. So. Here I am. I can appeal it.

1 **6. Excerpt from call No. 1316054946_135**

2 HUBER: And I woulda had a chance. I woulda had a chance if it wasn't for – if ,you
3 know – if he was really – man, my like the public defenders that I had that told me that I
4 couldn't win, one of them, he was coming. He was watching my case. And, he's like, he
5 was a good lawyer, but, you know, he, he told me, he tried to get rid of the case. Anyway,
6 he told my mom he was like man, he's terrible. He's not – he's not doing anything. They
7 told my mom that. You know. The other lawyer - -

8 FRIEND: That's stupid man

9 HUBER: My lawyer was clearly better than the other lawyer but the – everybody could
10 tell the other lawyer was trying hella hard. You know, he was working everything. My
11 lawyer, man, he didn't want – he didn't take any of the suggestions I was doing. I was
12 giving him all kinds of stuff and he was just like, “aww, let me handle this.” There's to - -

13 FRIEND: No, no, no, no, no. Your my lawyer, I'm paying your stupid ass to defend me,
14 so you do what I tell you to do. Period.

15 HUBER: But the thing is. You can't – I mean, in the middle of court you can't fuckin'
16 just have a argument with him.

17 FRIEND: No. You certainly can't. No.

18 **7. Excerpt from call No. 1315929662_207**

19 MOM: I'll tell you what, what Tony said. He said – let me get my notebook, it has those
20 questions – pretty much: the grounds for appeal – what grounds do you have for appeal?
21 – he said of course you, he thinks, he thinks you should appeal. And I go, “Well what
22 grounds do we have?” And he said – you're not gonna believe what he said – he said,
23 “Well, bad representation.” He said, “I thought I did a good job, but you could appeal
24 that.” His voice is almost, his voice has changed again.

25 HUBER: Yeah?

MOM: So he's not doing well.

HUBER: Oh okay.

MOM: It came back he said the last week of the trial. So, he – I think that it's a good, he
probably just had no energy to do anything. I don't know. So, I don't know about your - -

HUBER: What else did he say?

MOM: What else did he say about the what?

HUBER: The appeal.

MOM: That's it.

.....
MOM: “Cause I thought Roe did a decent job compared to Tony. But, it's a different
person too. And then I said, you know, I just asked – I didn't grill him like Dad says “Did
you tell-ask him why he didn't get Sage up there and have him say...” You know, Dad
had – Dad should have been an attorney. “Why didn't he do this?” “Why didn't he do
that?” It's easy to say that afterwards. He goes “that's all these guys every time they
make mistakes.” But why didn't, basically Bryce felt he should've gotten on the stand
and he goes, “well we weren't prepared for that until the last day.” He wanted to do it at
the end and he said “we weren't prepared for that.” So, I kind of understand that. You
can't just do that because they could – I don't know – we don't know what would've

1 happened. It could have been worse. I mean, it couldn't have been worse. (Laughs). It
could've been the same.

2 HUBER: It couldn't have been worse. I got the worst.

3
4 8. Excerpt from call No. **1315195950_135**

5 HUBER: I gotta get some more information first. I'm gonna talk to my lawyer on
Tuesday.

6 LIZ: Yeah. Your lawyer better be all like up in it.

7 HUBER: I've, I'm, my lawyer, I don't think he really fought that hard for me.

8 LIZ: I don't think so either. I'm not trying to lie. So.

9 HUBER: I mean, it was a hard case to win. But, I don't feel like he fuckin' - -

10 LIZ: I just think it was, I don't know.

11 HUBER: I think it was a huge waste of money to - -

12 LIZ: Yeah.

13 HUBER: - - be paying him. You know?

14 LIZ: Yeah. I think he thought - I think you could've gotten better representation but I
don't know. He's a (unintelligible), but I don't know. I just felt like he just wasn't there -
like he was like, I don't know, into like actually doing it. You know what I mean?

15 HUBER: Yeah.

16 LIZ: I know he's old and all, but (Laughs). If he knew it then, I don't know.

17
18 HUBER: You know my co-defendant got a mistrial.

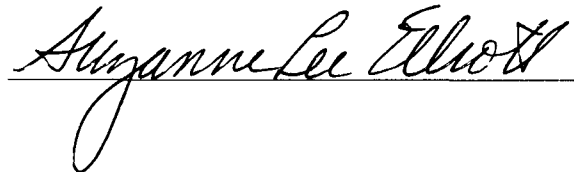
19 MALE: No. I know. I seen that.

20 HUBER: He, he took the stand and I didn't, you know? And, I talked to Tony about it
and he didn't want me to. I know why he didn't, but I - I wrote him - Tony, he's a good
lawyer but he's so old I don't think he gives a fuck anymore. And, he fuckin', I don't
know man. I don't think he really gave a shit if I got off or not. You know?

21 9. In addition, I reviewed the responsive brief and attachments on the Washington Court's
22 website in In Re the PRP of Lui, No. 85459-6. Attached are true and accurate copies of the
23 relevant responsive declarations from that case.

24 I declare under penalty of perjury under the laws of the State of Washington that the
25 foregoing is true and correct.

26 9/25/13
Date



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

STATE OF WASHINGTON,
Plaintiff/Appellee,

vs.
SIONE P. LUI,
Defendant/Appellant.

KING COUNTY NO.: 07-1-04039-7SEA

**DECLARATION OF SIONE LUI FOR
PERSONAL RESTRAINT PETITION**

Sione Lui declares as follows:

- 1) I am the defendant in this case.
- 2) I first contacted attorney Anthony Savage in 2001 after the police questioned me about Elaina Boussiacos' death. I contacted him again after I was arrested in April, 2007.
- 3) Mr. Savage kept promising that he would meet with me at length, but he showed up at the jail only a few times and never for more than an hour.
- 4) During the trial, I would often pass notes to Mr. Savage asking why he was doing things a certain way or why he was not asking certain questions or calling certain witnesses. He never gave me any clear answers.
- 5) Even before his falling accident, Mr. Savage was not very alert during the trial. He dozed off several times. On the day of his accident, he seemed really out of it. He hardly talked at all.

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When he returned to court the next Monday, he said to me "I'm doing okay because I'm on medication." But he still seemed slower mentally and physically than he was before.

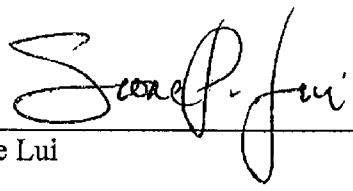
6) I would be willing to testify to these facts at an evidentiary hearing.

I swear under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Monroe, Washington:

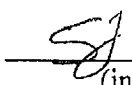
12-8-10

Date



Sione Lui

DECLARATION OF SIONE LUI - 2


(initials)
LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

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

STATE OF WASHINGTON,

Plaintiff/Appellee,

vs.

SIONE P. LUI,

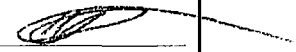
Defendant/Appellant.

KING COUNTY NO.: 07-1-04039-7SEA

DECLARATION OF RAY TAYLOR

Ray Taylor declares as follows:

- 1) I am the owner or part owner of several companies in Orem, Utah, including Muddy Boys Dry Wall.
- 2) I met Sione Lui in high school and have been friends with him even since then.
- 3) After Sione was charged with the murder of Elaina Boussiacos I flew out to Washington several times during the pretrial proceedings to visit Sione and his wife Celese and to offer my support.
- 4) Sione was frustrated that his lawyer, Anthony Savage, would not come to the jail to meet with him. Sione had many things he wanted to explain.
- 5) I attended several meetings with Mr. Savage and Celese Lui at Savage's office. I had several specific questions for Mr. Savage, including how he planned to deal with the DNA and the dog tracking evidence. He never gave any clear answers. Sometimes in mid sentence he


(initials)

1 would seem to forget what we were talking about. He would give vague responses, such as,
2 "they don't have anything on him. All they have is a big story." Sometimes, he didn't seem
3 to recall things that we had just discussed.

4 6) At one point, Mr. Savage said that he didn't know much about DNA evidence. He also said
5 that the dog tracking evidence was a "non-issue." When I pushed him about whether we
6 shouldn't get expert witnesses regarding those matters he always answered "I don't think we
7 need that."

8 7) Mr. Savage said he was taking the case for only \$25,000, which he characterized as
9 essentially "charity work." He said he was doing this case to keep himself involved in court
10 proceedings. He felt that appropriate fees would really be somewhere between \$100,000 and
11 \$150,000. He told us that he did not plan to put in more time or effort than what he had
12 contracted to do. He seemed to view our visits as an annoyance.

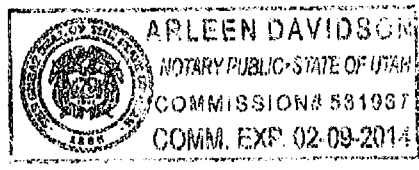
13 8) I would be willing to testify about these points at an evidentiary hearing.

14 I swear under penalty of perjury under the laws of the State of Washington that the foregoing is
15 true and correct.

16 Signed in Orem, Utah:

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18 Oct/7th/2010
19 Date

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21 Ray Taylor
22 Ray Taylor



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Arleen Davidson
Notary Public
State of Utah
County of Utah

(initials)
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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON,
Plaintiff/Appellee,
vs.
SIONE P. LUI,
Defendant/Appellant.

KING COUNTY NO.: 07-1-04039-7SEA
DECLARATION OF GRANT MATTSON

Grant Mattson declares as follows:

- 1) I am the father of Celese Lui. I was a vice president of Spencer Technologies, a medical device company, before I retired.
- 2) I attended most of Sione Lui's trial. I was present on the day that court was cancelled because Sione's lawyer, Anthony Savage, had fallen and hurt himself. Mr. Savage could hardly stand up. He seemed quite disoriented mentally. Because he had so much difficulty moving, my son Colin and I helped him through the courthouse to the street. We then waited until his assistant returned with her car, and then carefully lowered him into a seat.
- 3) Mr. Savage did not seem a whole lot better, mentally or physically, when court resumed the following Monday. He was still talking and moving very slowly. It was obviously very difficult for him to get into or out of a chair.


(initials)

DECLARATION OF GRANT MATTSON - 1

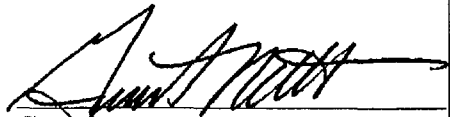
LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

- 1 4) Even before his accident, Mr. Savage did not look particularly alert at many points during the
2 trial. He appeared to have difficulty following the proceedings.
3 5) I would be willing to testify about these points at an evidentiary hearing.
4

5 I swear under penalty of perjury under the laws of the State of Washington that the foregoing is
6 true and correct.


7 Signed in Woodinville, Washington:

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9 10-5-10
Date


Grant Mattson

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DECLARATION OF GRANT MATTSON - 2


(initials)
LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

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

STATE OF WASHINGTON,

Plaintiff/Appellee,

vs.

SIONE P. LUI,

Defendant/Appellant.

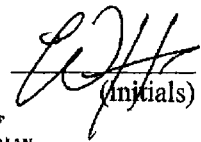
KING COUNTY NO.: 07-1-04039-7SEA

DECLARATION OF WILLIAM HARRIS

William Harris declares as follows:

- 1) I am the son of Sione Lui's sister, Paini Harris. At the time of Sione's trial, I was living with Celese Lui and helping with Sione's heating business. I am now working as a landscaper in Honolulu, Hawaii.
- 2) I attended much of Sione's trial. Even before his falling incident, Anthony Savage did not seem to be very alert during the trial. After his fall, Mr. Savage's speech was noticeably slower than it had been before. This was true even after the court took a break for a few days so that Mr. Savage could recover from the accident. Mr. Savage also had great difficulty moving around for the remainder of the trial.
- 3) I was present during Sam Taumoefolau's testimony. He spoke in broken English. He seemed to have difficulty understanding and responding to the questions from Mr. Savage.
- 4) I would be willing to testify about these points at an evidentiary hearing.

DECLARATION OF WILLIAM HARRIS- 1

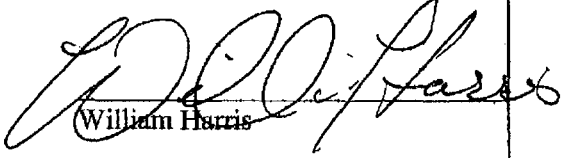

(initials)

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

1 I swear under penalty of perjury under the laws of the State of Washington that the foregoing is
2 true and correct.

3 Signed in Honolulu, Hawaii:

4
5 11/8/2010
6 Date


William Harris

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

STATE OF WASHINGTON,

Plaintiff/Appellee,

vs.

SIONE P. LUI,

Defendant/Appellant.

KING COUNTY NO.: 07-1-04039-7SEA
DECLARATION OF JOAN BYERS

Joan Byers declares as follows:

- 1) I am the mother of Celese Lui, Stone Lui's wife. I watched all of Stone Lui's trial. I was present on the day that Judge Trickey cancelled the proceedings because of Anthony Savage's accident. On that day, Mr. Savage was barely able to move, even with a walker. Grant and Colln Mattson had to help him into a car. He had great difficulty walking.
- 2) Mr. Savage did not seem much better when court resumed again the following Monday. He seemed to be in pain all of the time. He could barely get out of his chair for the closing arguments.
- 3) I would be willing to testify about these points at an evidentiary hearing.

I swear under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DECLARATION OF JOAN BYERS- 1

 (initials)

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

1 Signed in Lynnwood, Washington:

2 10-26-10

3 _____

4 Date

Joan Byers

Joan Byers

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DECLARATION OF JOAN BYERS- 2

JB

(initials)

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

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

STATE OF WASHINGTON,

KING COUNTY NO.: 07-1-04039-7SEA

Plaintiff/Appellee,

vs.

DECLARATION OF FALEPAINI HARRIS

SIONE P. LUI,

Defendant/Appellant.

Falepaini Harris declares as follows:

- 1) I am the sister of the defendant Sione Lui. I go by the nickname Paini.
- 2) I testified at the trial of this case in 2008. I had previously given a taped statement to the Honolulu Police on May 31, 2001. I have reviewed the transcript of that statement and my trial testimony before giving this declaration.
- 3) As I testified at trial, I live in Honolulu, Hawaii. Sione called me after Elaina disappeared and asked me to come to Washington to help him. He picked me up at Seatac airport early in the morning on Thursday, February 8, 2001. Before we could get home, Sione received a call from the police asking to meet with him, so we went there first.
- 4) Later that day, we drove to the Kinko's copy shop in a mall near Sione's house so that he could make more copies of missing person flyers. He pointed out to me posters he had put up throughout the neighborhood. I see that I explained this to the Honolulu police when they interviewed me.

- 1 5) I was aware that Sione had been going out with his friends postering and searching every
2 night since Monday. I remember him going out on Thursday, the first night I was there,
3 because I was a bit afraid to stay in the house by myself. But I told him he should go out
4 anyway because it was important to find Elaina. I told this to the Honolulu police as well.
- 5 6) At the time I gave my statements to the Honolulu police in March, 2001, I knew nothing
6 about any dog tracking evidence in Sione's case. I had left Seattle a day or two after Elaina's
7 body was found. I did not know why the Honolulu police were asking me questions about
8 Sione putting up flyers.
- 9 7) I recall the police coming to search Sione's home while I was staying there. I do not
10 remember them asking my permission for the search, or telling me that I had a right to refuse
11 the search. If they had said anything like that to me, I would have told them that I was the
12 wrong person to ask. I was only a guest in Sione's home and I would not have felt it was my
13 place to decide who could or could not come into the home. I would have left such decisions
14 to Sione.
- 15 8) Before I testified at trial, I had only one brief conversation with Sione's lawyer. That took
16 place in the hallway outside the courtroom, shortly before I testified. The lawyer asked me
17 some questions about my upbringing. The male prosecutor spent more time interviewing me
18 in his office before I testified.
- 19 9) Had I been asked about these things at trial, I would have testified consistently with this
20 declaration. I would testify to the same things at a new trial or an evidentiary hearing.

21 I swear under penalty of perjury under the laws of the State of Washington that the
22 foregoing is true and correct.

23
24 8/31/09 Honolulu, HI
Date and Place

Falepaine Harris
Falepaine Harris

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

STATE OF WASHINGTON,

Plaintiff/Appellee,

vs.

SIONE P. LUI,

Defendant/Appellant.

KING COUNTY NO.: 07-1-04039-7SEA

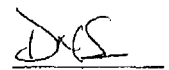
**DECLARATION OF DENISE SCAFFIDI
FOR PERSONAL RESTRAINT
PETITION**

Denise Scaffidi declares as follows:

- 1) I am a private investigator licensed to practice in the State of Washington since 1996.
- 2) On May 2, 2007, Anthony Savage assigned this case to me. At that time he could provide me only with the certification for determination of probable cause. He said that Sione and Celese Lui would go through the certification and prepare their responses to it. Unusually, the arrangement in this case was that I would bill the client and his family directly rather than getting paid by Mr. Savage.
- 3) On May 17, 2007, I sent a preliminary investigation plan to Mr. Savage. Ex. A. It included recommendations to contact a dog tracking expert, and to interview Eva Marie Gordon and Elaina Boussiacos's mother. Mr. Savage was not interested in having me follow up with those tasks.

DAS
(initials)

- 1 4) On May 18, we had our first conference meeting at Mr. Savage's office with Celese and
2 Sione (who was out of custody at the time). Mr. Savage told me that not to follow up on the
3 dog expert. My notes for that meeting include the following: "Anthony Savage doesn't care
4 about the K-9. Dog end of list." Shortly after that meeting, I interviewed Sam Taumoeofolau
5 and Paul Finau.
- 6 5) From then on, my work on the case was mainly with Celese Lui, her mother Joan Byers and
7 her mother's husband Rickie Byers. Mr. Savage gave me very little direction. He generally
8 discouraged the investigative ideas that I and the family came up with.
- 9 6) On February 12, 2008, I sent a memo to Mr. Savage summarizing some further work that
10 Celese and her parents wished to have me perform. This included, among other things,
11 locating the gym employee who first reported seeing the victim's car in the lot; locating a
12 defense dog tracking expert; and investigating the current status and reputation of detective
13 Denny Gulla.
- 14 7) I was aware that significant impeachment information on Denny Gulla was available. I had
15 investigated his credibility and history of misconduct in at least two other cases. Mr. Savage
16 was not interested.
- 17 8) Although Mr. Savage did not direct me to do this, I did end up contacting dog expert Van
18 Bogardus. He would have testified that it was very unlikely that a dog could follow a scent
19 through an urban area 11 days after the fact. I prepared a report on this and provided it to
20 Mr. Savage. I gave Mr. Bogardus the phone number for Mr. Savage and then contacted Mr.
21 Savage to explain the witness' availability for court and what the witness would testify to,
22 which would completely contradict Mr. Schurman's story of tracking Mr. Lui many days
23 after the body was found. The family was prepared to pay Bogardus's fees and I checked
24 that his schedule permitted him to testify at trial. Mr. Savage declined to follow up with that.

25 
(initials)

DECLARATION OF DENISE SCAFFIDI - 2

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

1 He told me that he did not believe that the State's dog tracking expert would have any sway
2 with the jury.

3 9) Throughout the pretrial period, Celese would often talk with me about her concerns regarding
4 Anthony Savage. She was questioning whether he was the right attorney for the job. She
5 was particularly concerned about his disinterest in the investigation that Celese believed
6 needed to be done. I encouraged her to discuss these concerns with Mr. Savage.

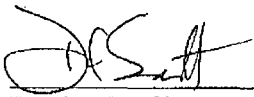
7 10) In my declaration dated October 9, 2009, I set out information provided to me by juror Clare
8 Comins. He was not willing to sign a declaration confirming that information. I attempted to
9 contact other jurors but was able to reach only two others. I explained to Mr. Zuckerman that
10 I would need accurate contact information to locate the remaining jurors.

11 11) I would be willing to testify at a new trial or an evidentiary hearing.

12 I swear under penalty of perjury under the laws of the State of Washington that the foregoing
13 is true and correct.

14 Signed at Seattle, Washington:

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17 10/11/2010
18 Date and Place

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18 Denise Scaffidi

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CASE NAME: Sione Lui
CAUSE NO. 07-1-04039-7 SEA
DATE: May 17, 2007
INVESTIGATION PLAN

After reviewing the clients comments regarding the Certification and Information, I recommend that the following investigation be conducted:

1. Go to scene, photograph, measure distances between health club, copy center, the client's home and any other locations that the client patronizes in the immediate area.
2. Research weather, temperature and rain/snow fall between February 2, 2001 and February 14, 2001.
3. Contact a K-9 expert regarding the probability of tracking a scent 9-12 days after an incident taking into account that the subject of interest lives in the neighborhood.
4. Carefully review discovery concerning evidence collected and the exact object of clothing where the client's DNA was located. Interview the scientist involved in these tests and determine the source (bodily fluid, hair, etc.) of the DNA and if possible, ascertain the age of the source.
5. Interview witness Sam (last name unknown), Eva Marie and Elaina's mother.
6. Ascertain whether or not Elaina was a member of the health club where her car was located and whether or not she went to the gym on the morning of February 2, 2001 prior to her plans to drive to the airport. If so, attempt to ascertain her demeanor and the clothes she was wearing at the gym, particularly whether the shoes she wore that day might have been worn at the gym. The second bag inside Elaina's car is possibly a gym bag used after work-outs.
7. Further work as determined by Mr. Savage after review of complete set of Discovery.

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

STATE OF WASHINGTON,
Plaintiff/Appellee,

vs.

SIONE P. LUI,
Defendant/Appellant.

KING COUNTY NO.: 07-1-04039-7SEA

**DECLARATION OF SEMISI
TAUMOEFOLAU**

Semisi "Sam" Taumoefolau declares as follows:

- 1) I am a friend of the defendant, Sione Lui. My first name is Semisi but I go by the nickname of Sam.
- 2) Before Sione's trial, I was interviewed by defense investigator Denise Scaffidi, who prepared a written report, and by Detective Christina Bartlett and prosecutor Kristin Richardson, who took a taped statement from me that was later transcribed. The defense lawyer, Anthony Savage, did not talk with me before the day of my testimony. I did not know what questions he planned to ask me. We spoke briefly in the hallway shortly before I testified. The only guidance he gave me was that he would ask me questions and I should give truthful answers.
- 3) I do not feel that my testimony went well. For one thing, my first language is Tongan, just as Sione's is. I have trouble expressing myself clearly in English, especially under pressure. Tongan grammar is very different from English. I tend to use the wrong pronouns, such as

1 "they" or "he" instead of "she." I also sometimes use the wrong tense of a verb, such as
2 "was" instead of "is." Even when I use the right word, people seem to have trouble
3 understanding my accent. Sione has similar problems with English. Another problem with
4 my testimony was that I was asked to describe places Sione and I walked to, but the map in
5 the courtroom did not show many of the locations. Also, I was never asked about several
6 matters that may have been important.

7 4) In preparing this declaration, I have reviewed my trial testimony and my prior statements. I
8 will go through the trial transcript and explain points that were not brought out, or that were
9 confusing.

10 5) At page 1740, Mr. Savage had me start explaining where Sione and I went on Tuesday,
11 February 6, 2001. He had me refer to trial Exhibit 91, which is attached to this declaration as
12 Ex. A. That put me in a difficult position, because Exhibit 91 goes south only to about NE
13 178th Street, and west only to the Woodinville Athletic Club, which is at about 140 Ave. NE.
14 See Ex. B for the street names. As discussed below, many of the points I had to describe
15 were south and/or west of anything on Exhibit 91.

16 6) As I started to explain at page 1740, Sione and I first went to the Kinko's to have more
17 missing person flyers made.¹ Mr. Savage asked me if I saw the Kinko store on Exhibit 91
18 and I answered "no." He then asked me where it would be and I said "It would be at this
19 kitty corner on the bottom here."

20 7) On pages 1741-42, Mr. Savage asked me to show the route we followed. I kept having to
21 wave my hand vaguely at places that were not on the map. I was a little flustered trying to
22 explain where we went without being able to show the jury. I see that my testimony included
23 the following: "We covered the business areas down in the main drag. Down - its not this
24

25 ¹ According to the transcript, I say we went to Kinko's "because we still have that alternate to pick up." I would not
use the word "alternate." I probably said "order."

1 picture, down below. When we come down here, we cut across to drop the order in, we keep
2 going here because it take them a while. We come here, this restaurant across the street here
3 and there is the finish of the business area. We cut across and come back here, over here.
4 There is the restaurant and I kept myself at this point about the restaurant.”

5 8) I can explain with Ex. C what I was trying to say. This Google map shows most of the area.
6 As I will explain, some of the buildings shown here were still under construction in 2001.
7 The key buildings and our direction of travel are shown on this map. Sione and I left his
8 house on foot and walked south on Woodinville-Duvall road. We put up flyers at businesses
9 on either side of the road. This main street makes a sharp turn to the west after the QFC and
10 then becomes NE 175th Street. We continued to put up flyers at such places as the 7-11 and
11 the Farmer's Supply. We then cut across NE 175th to the Kinko's where we dropped off the
12 flyer so that they could make more copies. Because there was a wait for the copies, we left
13 Kinko's with the remaining flyers we had and followed NE 175th west to the end of the
14 business area which is at the intersection with Woodinville Snohomish Road NE. We then
15 came back east a bit to the Mexican Restaurant. As I explained in my statement to the police,
16 I wanted to take a good look at the Mexican Restaurant because a co-worker of mine had said
17 he saw suspicious people hanging out there.

18 9) According to the transcript at page 1742, I then said: “We walked behind the restaurant. See
19 the side street here, the side street there where the post office, and at the time this
20 construction here. That is where we cut through to this cover, this area, and go back out to
21 pick up the materials from the Kinko.”

22 10) What I was trying to explain was that we walked north from the Mexican restaurant past the
23 post office. We then headed northeast along the Woodinville Snohomish Road past a
24 construction area, which is now the fire station. We then cut through the parking lot of the
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1 Woodinville Athletic Club and covered that business as well as others on the way back to the
2 Kinko's.

3 11) I was not shown a picture of the Athletic Club or the parking area during my testimony. I
4 have now been shown a copy of Trial Exhibit 34, which is Ex. D to this declaration. That
5 shows the side of the club facing me as I approached it from the Woodinville Snohomish
6 Road. I went directly to the entrance on that side of the building. I did not ask anyone
7 whether that was the main entrance. We then went through the trees near the dumpster and
8 into the next shopping area, which included the Kinko's. The line drawn on Trial Exhibit 92
9 shows the approximate path we took. See Ex. E to this declaration.

10 12) Mr. Savage did not ask me where we went after we returned to the Kinko's and picked up
11 more flyers. Instead, he turned to a different subject. I could have explained that we then
12 walked north out the back door of the Kinko's and into the next shopping area which
13 included the Top Foods store, the AT&T and the Barnes and Nobles. We put up flyers
14 throughout that area and then cut through the parking lot and onto a street that took us east
15 through the Park & Ride. We then came out onto the Woodinville Duvall Road again and
16 headed north to Sione's house. Ex. C shows the route we took.

17 13) The prosecutor asked me some more questions about the postering. I told him "If you give
18 me a map where it is showed the whole area, it would probably help." See page 1760.

19 14) I was trying to explain to the prosecutor why the Mexican restaurant was important to me.
20 According to the transcript I said: "About the Friday night dinner, a coworker would tell me
21 that they went to have dinner at the restaurant. The restaurant is just down the street,
22 Mexican restaurant in the main drag." Page 1761. What I was trying to say was that a co-
23 worker told me that on Friday, February 2, he and his wife were at the Mexican restaurant
24 and some suspicious people were there. They heard on the news about Elaina's
25

1 disappearance so they suggested to me that maybe it would be a good idea to look for her car
2 near the restaurant.

3 15) When the prosecutor was asking me about Thursday night, February 8, the transcript gives
4 my answer as "On Thursday night, after I went there and we talk to the morgue and the sister,
5 we have a dinner was brought and we went and get some fast food there." See p. 1767. The
6 word "morgue" should be "mother." The court reporter probably didn't hear me correctly. I
7 was talking about a conversation Sione and I had with Elaina's sister and mother. It then
8 says we asked "him" where we should look further for Elaina. I meant to say "them." As I
9 said above, I have trouble getting English pronouns correct.

10 16) On the same page, the prosecutor suggested that I had told Denise Scaffidi something
11 different about Thursday. He must have been thinking of the part of her report that says:
12 "On Thursday the witness was unable to help Lui but again on that Friday he went back up to
13 help Lui." Ex. F at p. 6. What I was saying to Ms. Scaffidi was that I could not go postering
14 with Sione on Thursday. But I did go with Sione to get some food for everyone.

15 17) The prosecutor then asked me to explain in detail where Sione and I went on Tuesday when
16 we were putting up flyers. See p. 1768-69. I had a hard time again because we were still
17 using the same exhibit. On page 1769, I said "This is - I don't know where is this come to."
18 I was saying that I could not tell where the main road went because it was not on the map.
19 That made it hard to explain where the businesses were.

20 18) The prosecutor asked me if I put a flyer in the front window of the athletic club and I said
21 "Where they allowed to put it in." Page 1773. I do not know what they considered to be the
22 front window. As I said above, I went to the one facing the Woodinville Snohomish Road
23 because that was the way I approached the club.

1 19) When the prosecutor asked me, I explained that Sione and I drove again to the Kinko's on
2 Wednesday to make more copies and then put up more flyers in the area. Page 1774-75.
3 Again, it was difficult to show where we went because much of it was not on the map.

4 20) As I explained to the defense investigator before trial, Sione's right arm was badly injured
5 around the time of Elaina's death. See Ex. F at p. 2. He broke it playing rugby in the fall of
6 2000. When he and Elaina moved to Woodinville, I had to help move the heavy things. I
7 dealt with the washer and dryer. I was a little worried about Sione trying to change a tire on
8 February 2, 2001, because his right arm was still in bad shape. He had to work the jack and
9 with one hand. That's part of why it took so long.

10 21) Sione was not able to play guitar or ukulele at the time because of his injury. He had to rent
11 a bass to play at the luau on Saturday, February 3. I was not asked about that at trial.

12 22) Had I been asked the appropriate questions, I would have testified to everything that is in this
13 declaration. I would now be willing to testify to these things at an evidentiary hearing or a
14 new trial.

15
16 I swear under penalty of perjury under the laws of the State of Washington that the
17 foregoing is true and correct.

18
19 SEP 21st 2009
Date and Place Bellevue, WA

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

STATE OF WASHINGTON,
Plaintiff/Appellee,

vs.

SIONE P. LUI,
Defendant/Appellant.

KING COUNTY NO.: 07-1-04039-7SEA

DECLARATION OF RICHARD POPE

Richard Pope declares as follows:

- 1) I represented Sione Lui in his divorce from Julie Lui. I also represented Elaina Boussiacos in her divorce from James Negron. At the time, I was an attorney licensed to practice in the State of Washington.
- 2) When I learned that Sione Lui had been charged with the murder of Elaina Boussiacos, I sent an email to Anthony Savage informing him that I had information that would be useful to his case. An accurate copy of that email, dated April 25, 2007, is attached as Exhibit A. Mr. Savage responded by letter, assuring me that he would sit down and talk with me as soon as he had received discovery. An accurate copy of his letter, dated April 26, 2007, is attached as Exhibit B. Mr. Savage never did contact me.

11/18/2010
RAP

(initials)

DECLARATION OF RICHARD POPE - 1

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

APP. 20

- 1 3) On June 11, 2007, after failing to hear from Mr. Savage, I sent a timeline of events to Celese
2 Lui. An accurate copy of it is attached as Exhibit C. Mrs. Lui told me that she planned to
3 pass this on to Mr. Savage.
- 4 4) Had Mr. Savage been interested, I would have been willing to provide him with all of the
5 information on which I based my timeline. I would also have been willing to testify at trial.
6 I am now willing to testify at an evidentiary hearing or a new trial.

7 I swear under penalty of perjury under the laws of the State of Washington that the foregoing is
8 true and correct.

9 Signed in Bellevue, Washington:

10 November 18, 2010
11 Date

12 Richard Pope, Jr.
13 Richard Pope

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24 11/18/2010
25 RP
(initials)

DECLARATION OF RICHARD POPE - 2

LAW OFFICE OF
DAVID B. ZUCKERMAN
1300 Hoge Building
705 Second Avenue
Seattle, Washington 98104
(206) 623-1595

Subj: **Fwd: Sione Lui Case -- I was Divorce Lawyer for Him (and also for Elalna earl...**
Date: 4/25/2007 5:21:12 P.M. Pacific Daylight Time
From: RPope98155
To: RPope98155

See what's free at AOL.com.

Forwarded Message:

Subj: **Sione Lui Case -- I was Divorce Lawyer for Him (and also for Elaina earlier)**
Date: 4/25/2007 5:20:38 P.M. Pacific Daylight Time
From: RPope98155
To: loophole@integraonline.com

Tony,

I see that you are representing Sione Lui in the murder charges that were recently filed against him. I followed the news pretty intently six years ago, and was pretty surprised to see that they ended up charging him over six years later.

I was Sione's lawyer in the King County Superior Court dissolution case with his ex-wife that was finalized on December 18, 2000. I was also Elaina's lawyer in the Pierce County Superior Court dissolution case with her ex-husband that was finalized back sometime in 1996. I have all of the documents from both of these files.

I would certainly be willing to discuss Sione's case with you and provided his file to you, since you are representing him for the murder case. I would strongly prefer to have a release form (doesn't have to be too complicated) signed by Sione to have permission to talk with your office and give the file to you. There are some things about the case that were very interesting, and which may or may not be relevant to the criminal charges you are handling.

As for Elaina's case, I would think that attorney-client privilege would still apply, even though she is dead. On the other hand, there are a number of interesting things which I have knowledge of, that I think I could talk about (i.e. that are not based on what Elaina told me, but what I know about from other sources).

Please contact me at your convenience.

Sincerely,

Richard Pope
1839 151st Avenue, S.E.
Bellevue, Washington 98007
(425) 747-4463

See what's free at AOL.com.

EXHIBIT A

ANTHONY SAVAGE, P.S.
LAWYER WSBA2208
615 SECOND AVENUE, SUITE 340
SEATTLE, WASHINGTON 98104-2200
(206) 662-1662
FAX (206) 662-1665
LOPHOLF@INTEGRADLINE.COM

April 26, 2007

Richard Pope
1839 151st Ave S.E.
Bellevue, WA 98007

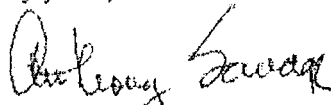
Re: State v. Sione Lui

Dear Richard:

Many thanks for your e-mail of April 25, 2007. I have passed the same onto Sione and Celese.

I'd like very much to sit down and talk with you after the fog clears away and the furor dies down. I have yet to receive the discovery, but anticipate being able to do so within the next week. Please be assured that I will call upon you and appreciate your wiliness to help.

Very truly yours,



ANTHONY SAVAGE

AS: kc

cc: Mr. and Mrs. Sione Lui

EXHIBIT B