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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

No. 66709-2-1

STATE OF WASHINGTON,

RESPONDENT,

V.

SALVADOR A. CRUZ.

APPELLANT.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

THE HONORABLE DOUGLAS A. NORTH JUDGE

ADDITIONAL GROUNDS FOR REVIEW OF APPELLANT

SALVADOR A. CRUZ
PRO SE APPELLANT

WASHINGTON STATE PENITENTIARY
1313 N 13TH AVE.
WALLA WALLA, WA 99362

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Dated July 3, 2012

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A. *Introduction*

Mr. Cruz files this issue in his *Additional Ground for Review* brief as Fruit of illegal arrest and being extradited when no *Exigent Circumstances* existed, nor probable cause, or an arrest warrant, as the records show. Where having been formally charged due to the denial of representation of counsel for the first 71 days of his detention, and also due to the excessive abuse of state power and the ineffective representation of counsel Carey Huffman, who, along with DPA Shelby Smith, denied appellant a trial for a 22-month period. This gave time for *underworld* evidence to arise.

B. *Assigment of Error*

1. The State of Washington erred by denying Mr. Cruz, the right to counsel during the first 71 days of his encarceration during warrantless searches when no pro probable cause existed nor exigent circumstances.

C. *Issue Pertaining to Assigment of Error*

1. Did the State of Washington err by denying Mr. Cruz the right to counsel during the first 71 days of his encarceration, during warrantless searches when no probable cause exited, and appearing for first time before the Judge Sharon Armstrong at the 72nd day after being arrested?

2. It was ineffective assistance of counsel to have withdrawn his obligations as guardian of the law, misrepresenting Mr. Cruz for almost two years. Thus depriving Mr. Cruz of the rights guaranteed under the fourth, sixth, and fourteenth amendments to the United State constitution and article 1, Section 2.2 of the Washington Constitution.

D. Statement of the Case

1. November 13, 2008, the same day that the appellant finished serving a 100-day sentence in a federal prison in Texas, for illegal reentry. The appellant was extradited to the city of Seattle, WA., and transferred to the King County Jail. For his first 71 days in custody, Mr. Cruz went without legal representation by an attorney. He appeared for the first time in Superior Court before Judge Sharon Armstrong 72 days after arriving in the city of Seattle.

After 72 days, upon his first appearance in court, the State of Washington filed charges against the defendant. According to information provided by ICE agents, the charges were only for a DUI and for *Probation Violation* in Seattle, WA.

After having appeared in court 72 days later for the first time, there were no allegations by DPA Shelby Smith that the appellant had previously been arrested or had been in trouble with the law, which was also confirmed by attorney Carey Huffman and Mark G., the first two attorneys who represented the appellant.

For the 20 months when the appellant was represented by Carey H, the first attorney who took the case after 71 days; the appellant constantly asked him, over this entire period, for him to turn over Discovery to him, to show him probable cause for arrest, and/or an indictment, and to be brought to a *speedy trial*, repeatedly (evidence in *records suppressed*) records suppressed.

Carey H. failed to present the abovementioned evidence requested over 20 months, and Carey H. and DPA Shelby Smith claimed not to be ready to go to trial during this entire lengthy period.

The *record shows* that the reason why Carey H. and DPA Shelby Smith would not go to a speedy trial or a normal trial over this lengthy period was the lack or absence of discovery, lack of audiovisual recordings, and lack of *joint interviews*, Carey H. and Shelby Smith being aware that these did not exist.

There were no police reports available, or detective reports, or interviews with *key witnesses*, or any information on potential witnesses. He had failed in all these aspects, and what is more, there was no police case containing the allegations, nor was there a case number available, ect, ect.

There were no *exigent circumstances* to incriminate the appellant. From November 13, 2008, to June 25, 2009, according to evidences shown in records, in the *Verbatim Report of CD Recorded Proceedings of June 25, 2009 CD DR E835 heard before the Judge Palmer Robinson.*

E. Statement of Facts

1. The following facts were taken from the evidentiary hearing on the motion for discovery and the *motion to dismiss.*

June 25, 2009, in this hearing, the state being aware that Mr. Cruz had been extradited back in early August of 2008, for a total of eleven months by June 25, 2009, the *record shows as follows:*

Mr. Huffman, the first attorney after the first 71 days that Mr. Cruz was in custody, claims that no discovery items have been turned over to him, and that even after his second try after requesting them on April 9, he says they do not exist and he does not have them in his custody R.P. 4:18-21. DPA Shelby Smith correctly claims not to have them R.P. 5:1.

After several continuances and after the appellant was repeatedly denied a speedy trial, a new trial date was set for July 7, R.P. 5:9. Mr. Huffman argued that there was prejudice R.P. 5:11. Mr. Huffman stated that he had requested the notes and the *audiovisual recording* and *joint interviews* and he was informed that they did not exist or they did not have them, and he repeated and said *I think the phrase that I was provided with is, "They don't exist."* and the Court responds Okay. R.P. 6:2-8. Shelby Smith also confirmed that she did not have tapes related to any of the cases, stating that it is fair to assume that they do not exist, and the court responds okay R.P. 6:14-17. The court adopted the idea as agreement that none of these evidences existed, and Shelby S. stated that that was fair R.P. 7:5-11.

The court/judge also confirmed that there were no *recorded interviews of Brandi Beck and Christina Olson,* which was confirmed by Ms. Smith on two different occasions. R.P. 7:12-16 *(state witnesses).*

The court was likewise informed by statements by Ms. Shelby that after all this time, no information existed about Carrie Todd or Detective Krebs of the police department. Mr. Huffman too stated that it did not exist, after having requested discovery, R.P. 7:12-24; and R.P. 8:1-23

There was no report from Detective Gardner from Kirkland, who Ms. Shelby claimed was deceased, R.P. 9:3-6. (Additional note, it was Detective Gardner who allegedly interviewed Brandi Beck, Christina Olson, Brandi B.'s sister, Rene Beck, Brandi and Christina's mom, and also Doug Beck, Rene Beck's spouse, all of the same family).

The court also brought to light that there were, notes existed given by Ms. Dakoto to Detective Garner from the accusers, denying sexual abuse by Mr. Cruz, R.P. 9:7-9.

The *record shows* too that Ms. Shelby Smith claimed not to have anything or have any information. She tried to offer the excuse that it was an old case, R.P. 9:10-14. Ms. Smith stated she had no interview with Maria King, *Mr. Cruz's sister,* nor any transcript or recording of Mr. Cruz, R.P. 11:1-6. (Additional note, these transcripts do exist but have been suppressed by the state to date.)

Mr. Huffman stated that he was informed that there was a *filure to register case*, and after requesting them, he was informed that they did not exist or they did not have them, R.P. 11:7-17. Ms. Smith stated that there were files for Mr. Cruz and that they had been copied and would be turned over to Mr. Huffman, R.P. 11:19-20 (Additional note, the first discovery was not turned over to the appellant until April 28, 2010, Evidences in records, in *pretrial hearings* that they have refused to turn over to the appellant, hearings on evidence before Judge Sharon Armstrong).

Ms. Smith, questioned by Judge Palmer R. on what her conclusions as evidence were regarding whether this was a King County case, Ms. Shelby stated that she knew nothing about this, R.P. 12:10-14.

Mr. Huffman states he has no information on the case and [unintelligible] case number exists (appellant correction) and no case number exists after the court asks him if there is a pending case, R.P. 13:13-15. Ms. Smith again agrees and states that it does not exist, R.P. 13:20-25.

Mr. Carey H. again agrees that Exigent informations and/or failure *to register charge* do not exist, R.P. 14:1-2. The court acknowledges that there is no evidence up to this point.

Ms. Smith affirms, stating that she had not yet contacted the police department after all this time, when questioned by the court, R.P. 14:14-15.

After this, Ms. Smith states; *I did not personally contact Kirkland in regards to the request. This is what the request says, "Kirkland Det. Krebs report no identifying crime report number was provided in discovery. Duplicate investigation involving Christina and Brandi." So there's no Kirkland police number. So, that would suggest to me that's there's no Kirkland police report,* R.P. 14:17-23.

The Court gave Mr. Huffman the opportunity to argue on all these unconstitutional/non-constitutional acts with prejudice in two ways; one, making it clear that the case had begun in the month of November without an exact date, but the court responds that it began in 2000, R.P. 15:10-18 (Additional note, this date is very inconsistent with other statements).

Mr. Huffman goes on to describe that there is prejudice also because of the absence of all the abovementioned materials, and Mr. Huffman states that there has been severe prejudice to Mr. Cruz because of the missing items, R.P. 22:1-9. Mr. Huffman also confirms once again that he still does not have discovery and that he needs it, R.P. 22:22-23. Mr. Huffman claims *Mismanagement of the Discovery,* saying: *Mismanagement of the discovery "alone" is sufficient to show a justification for dismissal under this section,* R.P. 25:1-5.

Mr. Huffman had previously contacted the King County detective, reporting to him that no *main file* existed related to Mr. Cruz's case, and that the *main file* no longer existed, R.P. 25:15-20.

The court was likewise *concerned about the delay,* R.P. 28:24-25. And finally, the court denied the *motion without prejudice*, agreeing that Ms. Smith had failed to comply with Rule 4.7(d), R.P. 29:10-13.

Ms. Smith once again states that there is no existing criminal report number, R.P. 29.

F. *ARGUMENT*

1. The State of Washington erred by denying Mr. Cruz, the right to counsel during the first 71 days of his encarceration during warrantless searches and seizures when no exigent circumstances existed nor probable cause.

A. The Sixth Amendment to the United States Constitution provides that the accused shall enjoy the right to have the assistance of counsel for his defense in all criminal prosecutions. The guaranty of the right to counsel applies to "Critical stages of criminal proceedings where counsel's "presence" is indispensable to protect the defendant's right to a fair trial. United States v. Wade, 388 U.S. 218, 87 S. Ct 1926, 18 L.Ed. 2d 1149 (1967). Kirby v. Illinois, 406 U.S. 682, 92 S.Ct. 1877, 32 L.Ed. 2d 411 (1972).

The right to assistance of counsel under the Sixth Amendment attaches after the formal initiation of criminal procedings against the accused. CrR3.1(b)(1): "The right to counsel shall accrue as soon as feasible after the defendant is taken into custody, "appears before a committing magistrate" or is formally charged, whichever occurs earliest," CrRLJ 3.1(b)(1), Kirby v. Illinois, 406 U.S. 682, 92 S.Ct. 1877, 32 L.Ed. 2d 411 (1972).

A person has a right to counsel in every critical stage of the proceeding involving an actual confrontation between a representative of the state and the accused, CrR3.1(b)(2). A lawyer shall be provided at every stage. CrRLJ 3.1(b)(2) (A lawyer shall be provided at every critical stage.)

The denial by the state of counsel for the first 71 days that the appellant was in custody was an error. The *record shows* that the state had no evidence in its power until June 25, 2009, even though the State of Washington was aware of the arrival of the appellant and/or that he would arrive in Seattle since August, 2008.

I. *Denial of right to counsel during the first 71 days was reversible error.*

A. It was error because under the sixth amendment the State of Washington failed to provide the right to counsel and charges were fruit of ilegal arrest for either of 3 separate reasons, and record shows.

1. Arrest Illegal because no exigent circumstances and no warrant

2. Arrest illegal because record shows no probable cause

3. Arrest illegal because probable cause for the seizure of the item of mere evidence of crime wasn't examined and mere evidence do not existed by the time of the arrest.

B. Error was prejudicial because Jury might not have convicted on remaining Evidece after of all this time

II. Denial of motion to dismiss charges without prejudice and to compel with Discovery being denying counsel 71, days

A. It was reversible error on either of 6 Grounds

1. Product of Miranda violation

2. Fruit of Illegal Arrest

3. Sixth Amendment violation

4. Fifth Amendment, violation as fruit of Double Jeopardy in Part.

5. Rule 4.7/CrR 4.7 violation

6. Article 1, Section 7 differs from the Fourth Amendment violation.

B. Error was Prejudicial because Jury might not have convicted on remaining evidence, after all this period of time.

III. Even if each error was not separately prejudicial, the combined effect of the six errors was prejudicial.

The Fourth Amendment to the United States Constitution provides the right of the people to be secure in their persons, houses, papers and

effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported "by oath" or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. Amend. IV.

The Fourteenth Amendment further guarantees that no state shall "deprive any person of life, liberty, or property, without due process of law... U.S. Const. Amend. XIV.

The fourth Amendment security of one's privacy against unreasonable searches and seizures is "fundamental to our concept of ordered liberty" and as such applicable to the states through the due process clause of the Fourteenth Amendment. Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct 1444, 20 L.Ed 2d 491 (1968). Constitutional provisions of fourth Amendment, New York v. P.J. Video, Inc. 475 U.S. 868, 106 S.Ct. 1610, 89 L.Ed. 2d 871 (1986), on remand 68 N.Y. 2d 296, 508 N.YS 2d 907, 501 N.E. 2d 556 (1986) (There is no higher probable cause standard required by the "First Amendment" for issuance of a warrant).

Evidence obtained by means of an unlawful search and seizure is inadmissible against a defendant in a criminal prosecution. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct 1684, 6 L.Ed. 2d 1081 (1961) (Primary Evidence; Wong Sun v. United States, 371 U.S. 471, 83 S.Ct 407, 9 L.Ed 2d 441 (1963) (derivative evidence).

As part of a *Double Jeopardy* abovementioned case will be cause for argument in the following defendant's case, and to explain more clearly, charges were again filed against the appellant related to Jessica Cabral due to misrepresentation on the part of Carey Huffman, public defender, for almost 20 months, due to the failure of the State to provide an attorney for the first 71 days of custody in King Co., and the excessive accumulation of State Power in violation of the V. Amendment, and ineffectiveness as a guardian of the law of Carey Huffman.

On 12/04/2009, the Appellant's *motion In RE: Of ineffective assistance* was heard before Judge Sharon Armstrong, because Carey Huffman had refused him an appropriate defense and to take appellant to a speedy trial, refused to turn over *discovery, indictment,* probable cause, a reason, or something to show what the appellant had been charged with, and this was refused by both of them, Shelby Smith as well; on April 10, 2010, another motion was heard before Judge Sharon A. *In RE: Of ineffective assistance,* for *Failed to visit, and no* communication existed and in which the appellant, for the entire almost 20-month period of his representation, formally visited the appellant on about three or four different times.

Other motions were also heard before Judge Sharon A. to replace counsel C. Huffman *In RE: Of Ineffective assistance and conduct as well due to with lack of due diligence*, existing evidence, and many others in *Pretrial Hearings* that have been denied to date, from November 13, 2008 to May 18, 2010, when the appellant was declared and authorized to represent himself as a *"Pro-Se, Self-representation"* during the approximately six-week trial.

Double Jeopardy, it was never clarified that the State, from the start and knowingly, committed, through Carey H.'s negligence and the State's abuse of power, but all this evidence is and/or will be found in records before Judge Sharon Armstrong, on the abovementioned dates, which have been refused to the defendant.

To emphasize the non-existence of *probable cause*, an *indictment*, and/or exigent circumstances, Carey H. testified to the appellant, and was recorded on the record before Judge Sharon A., that there were no previous records or any information on Mr. Cruz.

The Attorney who took Mr. Cruz's case after C. Huffman, Mark G, in one of his letters, which the Appellant still has in his power, said he could find no criminal record for the Appellant, in all the searching he had done. No company working in the state had any information either.

But all he had been informed about and knew was that the charges against Mr. Cruz were only for one child on a child molestation, which is completely different from what the state was proceeding on.

As a *Scheme or Plan* of conspiracy, the appellant lays out for the Supreme Court of Justice some of the case numbers and alleged information that the state supposedly gathered and that were turned over to the appellant, which are very inconsistent with the summary that will appear after these numerous and vague case numbers, which cannot confirm any truth.

The following case numbers may have been invented so that they could say in each hearing before the judge that a lot of work remained to be done, in order to have time to suppress all the initial statements, which will be detailed below, under another Issue. Case numbers in which the state confirms charges include: 97326D; 972137870; 9782791; 971580(o); 97150230; 97002791; 97158231 dated 6-22-97; 97156231; 971015622; 9710157222, which is a certification by DBA Norm Maleng, which is not at all consistent with the statement of Weapons, Threats, ect. by V. Cabral, J. Cabral that the state has suppressed, related to all the previous informations from 1997, including all the statements given by the defendant, which were never brought to light.

Other Case Numbers; 98001269, which is for Oceana Jacob, Brandi Beck, and K. Olson, where this document, which the appellant still has in his power, shows the charge for Oceana J. as Molestation by rape in "the first degree" and not communication with a minor, as DPA Richey V. presented it at trial, as well as Shelby S. who had in her power the report as first-degree aggravated rape of Oceana J.; another that apparently came from the detective holding ID#885983 belonging to "Detective Gardner," dated 2-00-98, which they here claim to have by the day of the month of February/98, but by June 25, 2009, did not exist on the hearing date *before the Judge* Palmer Robinson, as the *record shows* according to Shelby Smith and Carey Huffman.

The report shows, in the same document as detective R. Krebs, personal number (262), a report that allegedly already existed as of 6-15-98 "*record shows*" on June/25/2009 that Shelby Smith and Carey Huffman showed before Judge Palmer Robinson that they did not exist and were not in their power, until they were possibly invented on "April-28-2010," which was the first light and the first time that discovery, probable cause, and an indictment, ect., physically existed, after having been requested by C. Huffman and Mr. Cruz from November 13, 2008 to April 28, 2010, when he physically received a document and requested by C. Huffman after 72 days, which was the first appearance by Mr. Cruz in court, and no discovery was ever turned over to him, because by April 28, 2010, when discovery for the charges was first brought to light, C. Huffman was no longer representing Mr. Cruz.

Other case numbers; 98289552, for Elaine Hood, which did not physically exist on June 25, 2010, and is one of the five *items suppressed* by the state and turned over after the conclusion of trial, weeks later. This argument will be presented under the *Double Jeopardy Issue*, because these five items refer to Mr. Cruz's previous arrest on alleged rape charges for Jessica Cabral and Dennise Guijosa.

Other case numbers; 98001269, dated 11/1/97 to February, 1998, states on 8-09-98, on page 1 of 1 (one of page one), that audio recordings of Detective Garner exist, but in a hearing held on June-25-2009 before Judge Palmer Robinson, the *record shows* that, on the contrary, they do not exist; other: 98001279; 0107015-J; 0107015-C; 970021979; 000780297; 105700231; 01071200; 940030996; 940003148; 941057231; 97R0041317; 97R0043701; 070097; 972137870; 12071197; 9780015622; 9800120069; 971055474 or, 97105474; 17236629; 971528231; 97158268; 795571, on pages 2 of 3, dated, in which appears the name of Wendy Strange, daughter of Carol Strange. This report only says in a two-line part, that Wendy Strange on 3/21/09 only said this:

Wendy Strange clarifies that Carol Strange, her mom, does not believe that Mr. Cruz molested Jessica Cabral or Denise Guijosa; then, in a report dated 02-25-97, *Page 13 of 3-20-09 Discovery Mail*, that she speaks of or remembers molestation by Jerry Poloquin, Beverly Pennington's ex-boyfriend, due to molestation by rape that he committed with Fawn Pennington; Amber Barnet; Jessica Cabral; and Dennise G.

The Appellant asks that all this *scheme or plan* by the state, with intent to prejudice, harm the appellant by conspiracy in order to incarcerate him, be investigated, since the Appellant was not allowed to use it in his defense...

SUMMARY/CONCLUSION, OF THE STATE REPORTS.

On reports that presumably the State/DPA's Shelby Smith and Richey Vale turned over to the defendant, but on June 25, 2009, Shelby Smith, questioned before Judge Palmer Robin, could not show its existence, while on the other hand, DPA Richey V. delivered this copy to defendant Cruz after the conclusion of trial, that is, as fruit of *Statement Suppressed.* The document in the Appellant's power *record shows as follows:*

Case No. 158268; Monday 08/98 I called Kerry. I left a message including my phone number to the Northend Station; Monday 08/09/98 I took a "recorded" statement from Kerry Tood. Refer to Kerry attached statement for further details. Monday, 08/23/98 I received Kerry's statement back from being typed. Monday, 10/11/98 I called Carol's. I talked to Carol's daughter Wendy S. Wendy told me to call 222-7481 to reach Carol, Carol will be at this number later today. Monday 10/11/98 I called Carol I took a recorded statement from her. Tuesday, 10/12/98, I turned in Carol's statement for typing. I completed the additional entries on my laptop. Monday, 11/15/98 I rec215
ived Carol's statement from typing, ect.

But seen logically, if they had really had all this information, which has never been disclosed to date, then on June 25, 2009, before Judge Palmer Robin, when questioned about information, any interviews, police reports, ect., they would have shown it, don't you think?

Miranda warnings were never given, before or after the arrest for extradition, though the appellant was questioned by arresting officers for 20 minutes or more, which is construed as illegal, which aggravated the situation of the arrest, affecting his fundamental rights by depriving him of liberty.

The Due Process clauses of the Fifth and fourteenth Amendment that have traditionally been central to the protection of personal liberty and property rights. First, the Due Process clause of the fourteenth Amendment became the vehicle for incorporation of fundamental rights of the bill of rights as limitations on state action. Second; The Due Process clauses have been interpreted by the Court to impose a sustantive limitation when government regulation burdens life, liberty or property.

Art. 1, § 9, cl. 3 Prohibits the federal government from passing ex post facto laws. Art. 1, § 10, cl. 1 imposes a similar limitation on the states. This prohibition against retrospective punishment seeks to assure that legislative acts give fair warning of their effect, allowing individuals to rely on their meaning until charged. Remember that evidence arose for the first time on April 28, 2010.

The appellant states that he has never been shown an arrest warrant to date, nor was one turned over to him on April 28, the date when Discovery and/or legal papers were delivered to him by the state for the first time; probable cause was not turned over to him before April 28 either, and those that exist or may exist do not constitute *"exigent circumstances"*; Evidence, the *record shows* that they did not exist even before the hearing held before Judge Palmer Robin on June 25, 2009, until inconsistent statements, the *record shows* and they are contradictory from one witness interview to another ect. They likewise did not arise for the first time until April 28, 2010.

G. CONCLUSION. For the reasons above this Court should reverse Mr. Cruz Conviction.

A. *INTRODUCTION*

Double Jeopardy as fruit of a scheme or plan by the state, and an act of conspiracy by state witnesses, was the result of an erroneous conviction by entering trial against the appellant, again, after being arrested *record shows* on June 21, 1997 by officer C. Dubransky J. The state suppressed all the initial statements after the appellant requested them *by motions, writing*, and in open court before Judge Sharon Armstrong, and before Judge Douglass A. North, who completely ignored the appellant, and the state refused to resolve these concerns.

Evidence that will be presented under this issue includes confirmation of the appellant's previous arrest because of statements made by *key witnesses* and potential witnesses, which are the basis of this issue presented by the appellant, who asks the Supreme Court of Justice to hear the call and do justice.

B. *ASSIGMENT OF ERROR*

1. Trial Court Erred by Exercising Double Jeopardy Agains the Appellant was reversible error because charges were fruit of Illegal Detention

ISSUE PERTAINING TO ASSIGMENT OF ERROR

1. Did the Trial Court Err by Exercising Double Jeopardy Against the Appellant, after Mr. Cruz pleaded guilty to the lesser offense before Judge Ricardo Martinez back in 1997 in offense of Jessica Cabral when no exigent circumstances exist?

C. *STATEMENT OF THE CASE*

On June 21, 1997, *Suppressed records shows*/the 5 *Items (Five)* that were turned over to the defendant, weeks after conclusion of trial by DPA Richey V. Under Brady v. Maryland, 373 U.S. 83, 83 S.Ct 1194, 10 L.Ed.

2d 215 (1963), The state has an obligation to provide any information within the prosecuting attorney's knowledge which is material or tends to negate the defendant's guilt as to the offense charged.

All the statements made by the appellant and all the witnesses who testified for him were also suppressed, as well as all the police and legal information that was done in court.

All the *Pre-Hearing* before Judge Sharon Armstrong was suppressed related to charges of first-degree aggravated rape of Fawn Pennington, Amber Barnet, Jessica Cabral and Denise Guijosa[1], where the appellant was initially represented only on charges for Fawn P. and Amber B. by Attorney Antonio Salazar Law Offices, Patrick O. Cantor and his group; and was later represented by Attorney Jeffrey H. Smith, when he was working as Law Offices of Smith & Roberson.

Jeffrey H. Smith & Roberson know all about the appellant Mr. Cruz's prior arrest, it was they who, after pursuing investigation of charges against the appellant by Fawn P., Amber B., Jessica C., and Denise Guijosa, including the charges by Veronica Cabral on June 21, 1997, *suppressed records show* that no relevance, scientific truth, or verbal truth about these charges was found; which is why after it came to Judge Armstrong Sharon's conviction/attention, she decided to give the case to Judge Ricardo Martinez[2]. "*Suppressed records shows*" that:

On June 21, 1997, charges never existed. The information obtained by Armstrong Sharon, Judge, Judge Ricardo Martinez, Jeffrey Smith, and Antonio Salazar are not consistent with that which was used at trial.

1. The appellant will prove and provide, in the *statement of the facts,* the testimony of witnesses related to *Double Jeopardy* against the appellant.
2. The appellant reminds the Supreme Court that thus far all these statements remain suppressed by the state.

Otherwise, neither Judge Ricardo Martinez nor Judge Sharon A. would have agreed to make an offer to the appellant to plead out to lesser charges of communication with a minor on the matters of Jessica C. and Denise Guijosa, Fawn P. and Amber B. and simple non-felony harassment in the matter of Veronica Cabral, Jessica C.'s mom, and Denise G. charges that were filed by the state the night of June 21, 1997, when the appellant was arrested outside the house of Carol Strange, mother-in-law of Veronica Cabral and grandmother of Jessica C. and Denise G.

Carol Strange, who called the police on June 21, 1997, and reported sexual abuse of Jessica Cabral and Denis Guijosa, threats to Veronica Cabral, and aggravated kidnapping of Veronica Cabral, in trial testimony, as shown in records and police reports of the night of June 21, 97, as conspiracy by agreement with the state, denied having reported the abuse by rape to officer C.J. Dubransky.

(Additional note). Please see the police report turned over and brought to light the first time on April 28, 2010, case number 156231, dated 6/23/97, *Page 3 of 3 Type of Incident Kidnapping/DV District,* C-2. Officer- Dubransky C. *Number 04692 – Unit 2-C-27.*

Please also see another police report, inconsistent with trial testimony by witnesses Veronica Cabral, her mother-in-law Carol Strange, and officer Dubransky, dated 6/22/97, at 1:00, under the same case number, 156231 – *For Number 226-G-9, District C-2,* which is inconsistent with the previous report and never mentions the defendant's possession of weapons or abuse inflicted on Jessica C. or D.G.

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3. This statement, which was turned over after the deadline under Rule 4.7 (CrR), is greatly inconsistent with Carol Strange's statement during the trial phase.
3. See interview on pink paper, P. 3, lines 1-16, of the statement turned over to the appellant by Richey V., during the first or second week after trial started, without giving Mr. Cruz time to prepare his case.

See abovementioned police statements and compare with written materials given by witness Veronica Cabral. *Record shows/police report,* which is utterly inconsistent with trial testimony and the five *"Items suppressed"* by the state, which are very partial, and with interviews done by Carey Huffman, Mr. Cruz's first public defender, supplied to him by the state after 71 (seventy-one days) of Mr. Cruz's time in custody; with the statements of Jessica C. herself in her interview with Shelby Smith and Carey H., with statements made by Veronica Cabral at trial under cross-examination by the defendant, and statements made by Carol Strange, as well as documents produced by the state itself. The Appellant will show the prior arrest on the night of June, 1997, for charges of alleged molestation by aggravated rape of Jessica Cabral and Denise Guijosa. The Appellant will also include in the *Statement of Facts* the testimony of Denise Guijosa, who stated to the State and Benito Cervantes on October 13, 2010[5] that she never testified in any interview where she mentioned even one occasion, that is, she does not mention any molestation by rape or that Mr. Cruz ever touched her body maliciously as an act of misconduct, as the State said to the Jury.

Denise Guijosa, on the other hand, claims in her interview that her grandmother Carol Strange called the cops P. 27:8-17; Denis G. also talks about daily housework, and more importantly, states that Veronica Cabral went to get Jessica C. every day at school, and likewise, that she took her there in the morning P. 34: 4-10, unlike what the state or Jessica Cabral said, that when she was allegedly molested was after school, and Benito Cervantes refused to go to the school to investigate who really picked up Jessica C., which the state was unable to prove.

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5. The Appellant asks that the negligence of a state witness on October 13, 2010 be taken into account, when they had no police report or interview with D.G.

All the statements of witnesses who testified for Mr. Cruz, which have been suppressed to date, as well as all Judge Ricardo Martinez and Sharon Armstrong's information, and the Initial Statements given by Jessica C., Denise G., Veronica C., Fawn P., Amber B., Carol S., Maria Dolores King, and all Jeffrey H. Smit and Robertson's Office's information, which the Appellant requested before Judge Sharon Armstrong repeatedly throughout his incarceration, as well as before Judge Douglass A. North, in writing, by motions, *in open Court Room*, as shown in the Record, were always denied and suppressed by the state, shirking its obligations under Brandy and Brady and others that exist and were also violated, they denied the def. a fair trial, which was substantial and influenced to injurious effect the determination of the jury's verdict, which violates *due process under* *Brandy, Bartholomew v. Wood, C.A. 9 (Wash.) 1994, 34 F. 3d 870, Certiorari Granted, Reversed, 116 S. Ct. 7, 516 U.S. 1, 133 L.Ed. 2d1, Rehearing Denied 116 S.Ct. 583, 516 U.S. 1018, 133 L.Ed. 2d 505, on Remand 96 F. 3d IASI, Constit. Law 4594(A); Criminal Law (1998).*

In one of its pleadings the State confirms that it suppressed the *five items* turned over weeks after trial in two of its pleadings, undated and without page numbers, as they were always turned over to the defendant by Richey V., reading:

In its pleading in Spanish; "The State does not deny having suppressed the five items, but the defendant cannot show prejudice or show that the evidence is favorable or impeachment material."

The defendant likewise filed motions showing prejudice and dismissal of charges under CrR 8.3(b) 7.5, and *under Brady's violation*, which were denied.

In the *Statement of Facts*, the above issues will be explored more fully, especially that of *Double Jeopardy...*

D. *STATEMENT OF FACTS*

The following facts were taken/the following evidence, copied and brought evidentially supplied by witnesses, police reports, motions to dismiss charges, pleadings filed by the Appellant and the state, and statements have been suppressed to date that clearly state the double charge as fruit of *Double Jeopardy* and accusation for crimes of Jessica Cabral and of the attempt by the state to introduce charges for Denise Guijosa also as *Double Jeopardy as well*, but which was not possible, and was dismissed with prejudice.

1. *HISTORY OF MR. CRUZ'S AND THE STATE WITNESSES, BACKGROUND*

In 1994, the appellant was charged by Molly Green with the first-degree aggravated rape of her daughter Natalie Green, the potential witnesses for the appellant were Veronica Cabral, Jessica Cabral, Beverly Pennigton, Fawn Pennington's mom, and Amber Barnet.

In 1995, the unanimous trial of the appellant was held, represented by Alfredo Lopez, and the appellant wins at trial; at the time of the accusation by Molly Green, the Appellant was living at the YWCA, many adults, boys, and girls who lived in the Family Village building supplied their signatures and testimony for the Appellant, which were compiled by attorney Alfredo Lopez.

After Mr. Cruz had lived only four months at the YWCA, when he was charged, he had to leave the building because of the charges, after winning his case in 95, he left for Alaska to work. Eighteen months later, Veronica Cabral moves to an apartment building, while Mr. Cruz was still in Alaska working as a fisherman fishing boat.

Beverly Pennington, Fawn and Amber help Veronica Cabral with a Ford van to move her property to the new apartment building. Mr. Cruz never again lived with V. Cabral, J. Cabral, D. Guijosa after the four months at the YWCA, and in 1997 for two months at

Carolyn Strange's house in Fall City, which makes a total of six months. On February 28, 97, after two months in Fall City, Bev Pennington, who owed 90% of the value of the Toyota Tercel car and cash, and after personal problems, accuses Mr. Cruz, after having been a witness for Mr. Cruz in 1995 and 1994, of raping F. Pennington and A. Barnet.

Carolyn Strange becomes upset with Bev P. and Jerry Poloquin, the boyfriend of Beverly P., the mom of Fawn and Amber. Carolyn S. after questioning Jessica C. and Denis Guijosa about misconduct towards them from 1994 to 1997 when she met them, the answer was that nothing bad happened, Carolyn S. decides to put up her house title to bail out Mr. Cruz, Mr. Cruz is released, Carolyn pursues her investigations, Carolyn, V. Cabral, J. Cabral, D. Guijosa again testify for Mr. Cruz and against Bev P. and Jerry Poloquin.

Carolyn S. finds out that Jerry literally raped Fawn Pennington and Amber Barnet, Fawn's sister, that he also raped J. Cabral and Denise G., that is, Veronica Cabral's two daughters, who in the past trial now testified against the defendant.

On June 21, 1997, after Mr. Cruz went to visit Veronica and Carolyn Strange at Veronica's request, as shown in the records, Veronica decides to leave voluntarily with Mr. Cruz, 2 or 3 hours after calling on the phone, Carol thinks that Mr. Cruz is kidnapping V. Cabral, she calls Officer Dubransky. The night of June 21, 1997, Mr. Cruz is accused of the following charges:

Breaking into de house, DV, non-felony harassment, attempted homicide, and four counts of aggravated rape of Jessica C., Denise G., and Veronica Cabral, all of these, and now Mr. Cruz is Arrest, taken to King County J.

Jeffrey Smith who now is representing Mr. Cruz in...

Together before Judge Sharon Armstrong, pursues investigations with his company Smith and Robertson; there is nothing relevant to incriminate the defendant; Judge Sharon Armstrong decides to transfer the case to Mtz, Judge Ricardo Martinez.

Judge R. Martinez makes an offer on August 18, 1997[8], Judge Ricardo Martinez raises his hand, indicating his promise to Mr. Cruz that if he pleads out at that time, he promises to release Mr. Cruz within a half an hour or 45 minutes, Mr. Cruz pleads out to the four double charges for Jessica Cabral, Denise Guijosa, Fawn Pennington, and Amber Barnet for communication with minors for immoral purposes, and for Veronica for lesser charges of Harassment and, according to the state, fourth-degree assault. Mr. Cruz goes to Mexico on probation after calling and leaving a message for the DOC offices in Bellevue.

Mr. Cruz is detained in Texas, heading for Seattle, WA (this statement is in federal records), the Federal Court informs Mr. Cruz that the extradition will be only for a "DUI" and DOC probation.

2. *THE FOLLOWING FACTS WERE BROUGHT OUT OF THE FIVE SUPPRESS ITEMS.*

Weeks after end of trial, the Court turned five items over to the defendant, which had never been turned over to the defendant before trial, although the appellant requested them for months prior, through motions, pleadings, and in prehearings, before Judge Sharon Armstron and Judge Douglass A. North. These were always refused by the state, even if the state were to argue the opposite, by using logic we will arrive at this outcome.

First. If they had already been turned over and if a *disclosed* had already been done, why turn them over again if this had in fact already been done.

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8. This date is still in question, because the original records and initial statements, as well as the *Radio Transmition Report ect,* are *Suppressed by State.*

Second; If the state had really fulfilled their obligations before trial, then the appellant would have used all this information to rebut the witnesses' inconsistencies in their statements where they denied Mr. Cruz's previous arrest.

After the state alleged that Mr. Cruz was never arrested for the charges he now faces for Witness J. Cabral, having suppressed all exculpatory evidences, the witnesses themselves testify the following in their own statements:

Jessica Cabral, told T.K. September 4th, 1997 as related to Det. Elaine Hood; *Jessica told me that there was someone who had touched her when I asked her who that was she said her dad. I asked what his name was and she said "Sal" "Sal was actually a man living with her father" and "not her dad."*[9] *She talked about Sal living "with" the family when he did the touching*[10]. *"She said when I was talkin' to her at that time he was in jail. She said he was in jail for touching me in a way I didn't like."*

She just said he...he touched her in a way she didn't like, she said that he touched her when she was in the Fourth grade, um in her room, again when asked what...what he did she said he touched me in a way I didn't like.[11] *P.R. P. 1 of 3: 6-12 and case No. 98-289552.*

Carol Strange stated the following in an interview with Det. Elaine Hood:

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11. Note that there was never any mention of death threats, statements about firearms, or that a gun was put to her head as she said at trial.

10. Here in this other paragraph she emphasizes that Mr. Cruz lived with the family but Mr. Cruz was not the head of household and this may be something different.

9. The appellant hopes this part will be clarified, because the only two men who were around the family were Jerry Peloquin, who raped J. Cabral, D. Guijosa ,F. Pennington, and Amber B., the other is Carol's son.

DET: Was there a time when Jessica came to you and told yo Sal has been touching her?; Ah, yes I asked...when, ah, Sal was gone with Veronica I asked Jessica to tell me, you know and she didn't want to. and about I finally got her to tell me that yes he had molested her. P.R.P. 2 of 3.

DET: Okay. And from that time...this was...was this the same day the las day everybody saw Sal the day he was arrested? That he took Veronica in the car...took her away from the house, WIT: Yea.

DET: Okay. And after Jessica told you did you tell Veronica or who did you tell?; WIT: It came up a few hours later when Veronica came home. And I told Jessica you have to tell your mom, you have to tell about him. She gave me the permission to tell. And I told Veronica tha he had been molesting the girls. DET: Are you aware that I have tape recorded this conversation? WIT: Yes P. 2 of 3: 6-13, pages turned over to appellant after trial.

Veronica Cabral; in her interview with Det. Elaine Hood:

DET: Is this the same day, you were telling me earlier, that Jessica told Carolyn that something had happened to her?; WIT: Yeah. I didn't know that, but um when they arrest him I came in the house and she told me...My friend told me, "You gonna press charge"? And I say, Yeah" and she told me about everything, and I say, "Yeah what is about everything"? And she say...was whe she told me that Jessica told her that, um, Jessica told her that he molest her, that he touch her private part.

DET: Did you talk to Jessica?, WIT: Yes. DET: And what did she tell you? WIT: Um, he say...she told me the same, that, um she molest him, and um... DET: That he molested her?; WIT: Yeah. WIT: And, I press the...was when I press the charge, PRP 7 of 10: 3-12.

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12. Note that thus far no allegation has arisen of firearms or threats; no struggle with J. Cabral.

In the interview that K.T. had with Det. Elaine Hood, J. Cabral, where the one who brings up and talks about the topic of killing Ms. Jessica C. is the Detective, who says: *both were real afraid that he was gonna kill them; kill their mother, or take them away so they'll never se their mother again P.R,P 3 of 3: 2.*

But subsequently to this, Det. Elaine H. says, *Um Jessica made some statements during group, in fact she wrote a letter*[13], which reads as follows: Jessica writes to the appellant; *Sal I think that what you did was wrong. It scared me when you said you would kill my mom and take us away. If you didn't that we would still probably be a family, but no, you decided to chose the wrong thing. I still kind of miss in one way because you are always nice, and you would always buy us things and take us places that I liked about you, and hate you...and then, I hate you in a way...in a way for doing this, um, I thought you wouldn't maybe a good person, P.R, P. 3 of 3: 2-3.*[14] (Additional footnote)

Jessica C., in her interview with Carey H. and Shelby Smith, *Record shows that* what is written in the above letter was inconsistent with the interview, Corey H. Question: (Sal) *Threatend to take you away from your mom?* and witness J. Cabral responds: *I don't remember.* (no visible page number)

Jessica, in her interview with Carey Huffman and Shelby Smith, who claim to have been together during each stage of all these interviews and to have recorded them; witness Jessica Cabral states the following:

NOTE. Note that at no time does Jessica indicate in her letter that she hates the appellant for molesting her, threatening her with a weapon, or physically abusing her.

14. Besides the fact that this statement is completely inconsistent with the interview of J. Cabral with Shelby Smith & Carey H., it is likewise very inconsistent with what she testified at trial, the state is still keeping the rest of the statements suppressed.

13. The statements that Elain H. claims were made by J. Cabral and the letter is fruit of the same because they suppressed all this information after trial.

C. Huffman asks: *Staring when you were 8, that was the first time that you remember some sort of touching going on between you an Sal?; CABRAL: Yeah. HUFFMAN: And Sal stopped living with you when you where 11?; CABRAL: Um, my grandma um, was the one who asked me if um, I was being sexually abused, and she from that point on, I just remember HIM BEING ARRESTED ONE DAY, and I didn't see him after that until I was about 16 or 17, R.T. 5:13-18. HUFFMAN: Okay. And so it was after Carolyn Strange asked you if there was something happening between you and Sal. CABRAL: Yeah, R.T. 5:22-24.*

HUFFMAN: And do you remember, you mentioned something about Sal getting arrested, do you remember when Carol asked you, not the date, but was that the day that Sal got arrested: CABRAL: I was about 11 and that was the day that Sal got arrested. HUFFMAN: And that was the day that Carol asked you? CABRAL: Yes[15]*. R.T. 6:2-7.*

HUFFMAN: From the time that Sal, let me rephrase this, before Sal got arrested on the day YOU TOLD YOUR GRANDMA about being touched by Sal did he ever move out of the house.....CABRAL: I don't remember, R.T. 22:4-8.

HUFFMAN: Do you remember Sal always living with you up until the point that you told your grandma Sal was toching you? CABRAL: I don't remember. I JUST KNOW he was constantly there..... <u>WHEN I REMEMBER HIM BEING OUT OF MY LIFE, WAS WHEN MY GRADMA ASKED ME THAT NIGHT, AND HE GOT ARRESTED.</u> And then from that point on, I don't remember. You know, I remember him seeing him when I was sixteen or seventeen[16]*. R.T. 22:9-14. Record shows* that:

On page forty-three, Jessica Cabral gives clear confirmation of police arrival to take a report.

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16. Three points should be noted. 1. That Mr. Cruz was arrested because of J. Cabral's report that same night. 2. That he was in custody in King C. 3. That he was released by Judge R. Martinez.

15. The night Carol asks J. Cabral *record shows was June 21, 1997.*

Jessica states that all that is asking her and Jessica remembers herself answering yes, she remembers the police car lights all over the place and the policeman seated next to her. She doesn't remember having spoken with her mom, but she does remember having spoken with her grandmother, and she again remembers the policeman seated next to her and the lights of the police car or cars outside the house, R.T. 43:1-9. She doesn't remember speaking with anyone in further detail about the incident, nor does the remember if Denise was there at the time, but she does again remember the policeman seated next to her, R.T. 43:14-19.

Carey H. represents to her that she said that Denise G., her sister, had watched Mr. Cruz doing things to Jessica, and Carey H. assumes that this means contacts, touching her body, and she answers yes. R.T. 43:21-22.

In Benito Cervantes's interview with Denise Guijosa;

That the State mentioned cannot achieved the statement, which is 44 pages long, which the appellant has in his power to date. Everything the witness testified as an adult and without being influenced by anyone, everything she testified to in the October 13, 2010 interview with private investigator Benito Cervantes and prosecutor R.V.; *record shows* that all this was favorable to the defendant.

Even when the investigator, as seen in the questions shown in the interview, tried to lead the witness to testify against the appellant, it did not take place. And as evidence of this, Denise Guijosa responds:

Mr. Cervantes: Okay are you here today because anybody has coerced you or threatened you to be here? R.T. 22:24-25.

Ms. Guijosa: No. It's my choise. No one can make me do anything I don't want. R.T. 22:2-3. Ms. Guijosa: You are lucky I'm even here. R.T. 22:5.

Regarding the previous arrest for the charges, if any, Denise says, when questioned in the interview: *Mr. Cervantes: Okay. Do you recall when Sal last lived with your family?...*

Ms. Guijosa: At Carol's house. After she found out what he did, she called the cops on him. Mr. Cervantes: Okay. And can you just tell me who found out? Ms. GUIJOSA: Carol. Mr. CERVANTES: That's when Carol found out what Sal did? Ms. GUIJOSA: Yeah. R.T. 27:8-17.

In her next statement, Denis G. recants, *Record shows* that Denis Guijosa notes that Mr. Cruz never had the function of taking Jessica Cabral, her sister, to school and back, when the touching of Jessica C's body alleged by the state is alleged to have happened.

Mr. Cervantes: Do you remember anything? Ms. GUIJOSA: Going to church. Mr. RICHEY: Where did you go to church? R.T. 33:24-25. I mean not the church, but was that when you were in Redmond or Fall City? R.T. 34:1-2.

Ms. GUIJOSA: When I was in Redmond. Mr. CERVANTES: Do you recall anything about the daily functions of your family, like who cleaned up, who did dinner? Can you tell me, you know, basically what you recall about "SAL" involvement in that, those functions?

Ms. GUIJOSA: Well, my mom cooked. SHE DROPPED MY SISTER OFF EVERY DAY AT THE SCHOOL AND PICKED HER UP. Mr. RICHEY: YOUR MOM DROPPED JESSICA OFF? MS. GUIJOSA: YEA. This information shown in records for Denise Guijosa is connected to the five items that were suppressed by the state and that it turned over weeks after the conclusion of the trial, in the interview with Veronica Cabral and Det. Elaine K. Hood.

The police report shows this: Veronica C: *I moved in the same area in Redmon like four blocks away from the family village some apartments tha is Heritage Woods. DET: What year did you move there? Veronica C: About June or July nineteen ninety-five. DET: And then did he move in there with you? VERONICA C: Ah, it was like he move in there with me BUT HE WASN'T IN THERE HE WAS WORKING IN ALASKA, HE LEFT TO ALASKA AFTER HIS FIRST CASE WAS DONE. HE WENT TO ALASKA TO WORK. DET: Okay, R.T. Page 4 of 10:1-12.*

The following information was taken from *Jury Trial Proceedings NOEVEMBER 4, 2010* as evidence of Previous arrest of the appellant for charges related to Jessica Cabral and Denise Guijosa.

FURTHER RECROSS-EXAMINATION/VERONICA CABRAL

Veronica Cabral brought/took Jessica for an assessment with a counsel. She took her on the 27th and Denise on September 10, regarding the case related to molestation of her daughters. R.T. 18:17-24. Which is linked *record shows* with exhibit No. 25 P. 19:5. Mr. Cruz more specifically asks her when she brought to Veronica C.'s attention, or when it was brought to her attention, about the sexual assault of Jessica C. and Denise G., and Veronica asks if this is about what Mr. Cruz did to Jessica, P. 19:11-14 (R.T.). Veronica found out the next night that Mr. Cruz was arrested R.T. 19:16-21. Veronica C. states that the night of Mr. Cruz's arrest was on June 21st. R.T. 19:25 and R.T. 20:1.

Veronica found out about the allegation in June when Mr. Cruz was arrested on June 21, and speaking about the 21st of June, Veronica says that this is correct after the arrest that same in the night, R.T. 20:2-16.

Veronica again confirms that Mr. Cruz was arrested on June 21, according to what she stated, answering that that is correct, R.T. 21:9-11.

Mr. Cruz questions Veronica on what happens during this period, what was the process between June 21 and August 18 when detective Roberth Thomsom had begun an investigation with Carolyn Strange related to Jessica and Denise. R.T. 21:15-25.

Mr. Cruz again questions her on what happened during the period of the allegation of Jessica and Denise, R.T. 22:1-3.

Veronica explains the procedure that she believes was followed when an allegation has been formally reported, R.T. P. 22:4-7[17].

17. Veronica explains her theory, *Misleading the Jury,* trying, it is possible to deny that the appellant was accused of charges in *agree* with state.

Mr. Cruz questions Veronica about how much time it took her to report the allegations against Mr. Cruz to the police, and she confirms that she contacted the police to press charges on June 21, 1997 regarding the allegation, and affirms that that is correct. R.T. 22:13-19.

Veronica also confirmed that she made a formal report to allow others to enforce the law. R.T. 22:23-24.

Q: And do you mean that during this period of time in which Mr. Cruz was in jail until Agust 18th in King County Jail, did you say that you didn't do any report is that what you mean?

A: A report was made[18].... Once again confirming and having information since June 21 R.T. 22:25 and R.T. 23:1-11. Veronica again agrees with Mr. Cruz that Mr. Cruz was arrested after finding out about the problem between Mr. Cruz and Jessica, and confirms having known, or finding out after walking inside the house;

Q: How did you continue the process, you know, after the report you receive about Mr. Cruz and Jessica?

A: When I walk in the house, WE WAIT A LITTLE BIT UNTIL THE COP CAME IN TO MAKE THEIR REPORT OF WHAT YOU DID TO ME IN THE CAR, AND LATER WE MADE THE REPORT OF YOU ABUSING JESSICA, R.T. 30:9-19.

Veronica C. stated that she had never discussed this subject with Jessica and claimed not to know anything, given that Jessica has wished not to discuss the subject to date regarding what happened, and she never received a document or a statement about how things supposedly happened, she responds , NO, RT. 40:5-1.

Veronica states that she can't say what happened, filing allegations on June 21, 1997, reporting that Mr. Cruz had molested Jessica, R.T. P. 41:15-22.

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18. Trying again to be evasive and make a mislead of the jury, she tries to explain judicial processes without answering specifically before the jury.

Mrs. Cabral stated that she had no further information besides what she heard from Jessica C., claiming that that was all. R.T. 42:11-13.

She didn't receive any personal information as a mom either, and Exhibit 25, shown by the State, relevantly and evidential, Veronica stated that it was only an *enrollment kids on a counseling service,* after which there is a (sic) R.T. 43:2-7.

THE STATE WAS AWARE OF PREVIOUS ARREST

Was the State/*Trial Court* aware?

Before his first appearance in a courtroom, which was 72 days after the arrest and detention of the appellant in King County, the appellant filed in writing before Judge Sharon Armstrong and DPA Shelby Smith, with C. Huffman present, at a pre-hearing, placing it on the record verbally as well on many occasions.

The State, in one of the documents it delivered to the appellant in Spanish, where the *record shows* (C.T.) that the state was aware, says: On June 21, 1997, the defendant arrived at the house and took Veronica away in his car. The defendant assaulted Veronica and was arrested for domestic violence[19]. Veronica told Carol Strange that during the time that she was away, the defendant had sexually abused her. Carol called the police, and in June of 1997, charges for harassment (for molesting them) and for domestic violence were filed against the defendant.

Veronica C. took Denise and Jessica for therapy or counseling to K.T., at the time, Denise reported to K.T. that the defendant had touched her... And Jessica also reported to K.T. that the defendant had molested her, sexually assaulted her; Also in police reports, Mr. Dubransky reported the alleged abuse. See Dubransky's Police R.

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19. *Record shows* that neither domestic violence nor assault was proven by Officer C. Dubransky, after saying he took pictures that he never showed.

In numerous other pleadings written by the state, they show that they are aware of the previous accusations from June 21, 1997, and of the arrest where Judge Ricardo Martinez made an offer to Mr. Cruz months after arrest, for the massive aggravated charges against him at the same time related to Fawn P., Amber B., Jessica C., and Denise G. including Veronica Cabral, these witnesses in 1994-1997 testified at trial, in interviews, ect, for the appellant.

After the *Trial Court* denied all the witnesses for the appellant, about 25 different witnesses, who are still alive and who got together to pay Atty. Jeffrey H. Smith and Roberson/"Law Offices of Smith & Robertson," the best witnesses at this point will be the statements, a large amount of which are still suppressed by the state, since 1997 and some others until 2010.

LAW OFFICES OF SMITH & ROBERSON/STATEMENT ON RECORD/Judge Sharon A.

During Mr. Cruz's incarceration, Benito Cervantes, private investigator, reported Mr. Cruz's arrest to Jeffrey H. Smith. J. Smith visited Mr. Cruz in King County. Upon seeing Mr. Cruz, J. Smith quickly remembered his representation as his attorney in 1997. J. Smith told Mr. Cruz that someone had entered his office and stolen his computer with all the information on Mr. Cruz; Jeffrey H. Smith, during the visit, assured Mr. Cruz that if he gave him $20,000 cash, he would certainly find the information and would represent Mr. Cruz on the case[20].

CAREY HUFFMAN, STATEMENT ON RECORDS BEFORE JUDGE SHARON A.

After 72 days of Mr. Cruz's incarceration, the first attorney to represent Mr. Cruz was Carey Huffman. Mr. Cruz quickly reports to him that the charges related to Jessica C. and Denise Guijosa are double jeopardy.

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20. The appellant does not have in his power the Transcripts from Nov. 13, 2008 to May 18, 2010 because they were denied to him. Mr. Cruz filed notice to the Supreme C.

Suppressed Clerk's Transcripts/Record shows that after a while, C. Huffman proceeded to contact Jeffrey H. Smith, Att., to find out about it. J. Smith confirmed to C. Huffman that he had represented Mr. Cruz on the Jessica C. and Denise G. cases as well in 1997.

C. Huffman reported to Mr. Cruz and Judge Sharon Armstrong about the information provided by J. Smith to C. Huffman. But C. Huffman stated the following before Judge Sharon A., that J. Smith had also told C. Huffman that someone entered his office and had stolen from his computer the information in particular related to the Jessica C. and Denise G. matters.

The big question would logically be: If Jeffrey Smith represented Mr. Cruz in the Fawn Pennington, Amber B., Jessica Cabral, Denise Guijosa, and Veronica Cabral matters in 1997, why did only the incriminating information from Jessica C. and Denise G. appear?

Why is it that the arrest on the night of June 21, 1997 appears, charges against the appellant, ect., but according to the state the way the case finished up does not appear? Because if witnesses confirm the arrest, Jeffrey Smith, Mr. Cruz's police reports, statement given by witnesses during trial, ect, state because the *record shows* such. Why is it that after filing charges and after Mr. Cruz is arrested for investigations/allegations, why is it that Mr. Cruz is released, as records show, on August 18, 1997?

CAROLYN STRANGE CONFIRMS THE ARREST JUNE 21, 1997

This information was compiled from the *VERBATIM TRANSCRIPT OF TRIAL PROCEEDING* FROM 11/16/2010. *Record shows*

Carol Strange stated that the night of Mr. Cruz's arrest, those present were: Carolyn, Gracie, Chad *an a lot of (INAUDIBLE)* V. Cabral, Jessica Cabral. R.T. P. 9:21-22. Carolyn states that Gracie was present when she told Jessica to tell her mom what Sal…

Had done, R.T. 10:1-3. Carol testified that Jessica told her that Sal had molested her. R.T. 10:8. Carol says she means the same night of the arrest (June 21, 1997) and affirms that this is correct R.T. 10:11-13.

Carolyn claims she called the police and spoke with Jessica so that she would tell her mom what had happened. R.T. 15:7-10. Carolyn confirms that she is talking about the same night of Mr. Cruz's arrest. R.T. 15:12-13.

Carolyn testifies that it was the same day of Mr. Cruz's arrest that she asked Jessica if anyone had touched her or done inappropriate things to her, and Jessica said yes, and confirms that it was the night of the arrest when she asked her, R.T. 21:11-16.

Record show that Carolyn also confirms that it was during the night at a different point of the day R.T. 21:17-18. Carolyn testifies that she did not speak with Jessica about this at night, but she spoke with her during the day, she thinks, but at night she just asked Jessica to tell her mom, and promised Jessica that she would not tell anyone because supposedly Carolyn had to get permission first, R.T. 22:1-5.

Mr. Cruz asks Carolyn if she had promised not to talk about something as serious and corrupt as that and not to speak or say it and to keep quiet? She answers yes. R.T. 22:6-10. Mr. Cruz questions Carolyn so she can explain why, before making the police report, or to the police, she didn't wait for Mr. Cruz to return with Veronica to confirm whether something had happened or nothing had happened? R.T. 24:5-10. Mr. Cruz questions Carolyn about whether she remembers the day or night when she reported that Mr. Cruz had touched Jessica with his hands, "*Record shows*" that Carolyn testifies that it was the night of June 21 when he was arrested, or when Mr. Cruz was arrested. R.T. 26:17-24. Carolyn also confirms that she spoke with Veronica C. that same night, the night of the arrest, after Mr. Cruz was arrested. R.T. 27:7-13. Carolyn testifies that she left the house after speaking with Jessica, and Veronica headed inside the house and does not remember if Mr. Cruz was already in the back seat of the police car; R.T. 27:20-23.

Carolyn testifies that Jessica told her, the night that she spoke with her, that Mr. Cruz had touched her inappropriately. R.T. 29:7-8. *Record shows* that Carolyn now contradictorily claims that Jessica did not tell her at night, but during the day[21]. *Mr. Cruz, Q: And now you say she tells you earlier that day? Carolyn, A: Yes, that's what I said all along.*

Mr. Cruz, Q: So, Jessica did not tell you this the night of the arrest? Carolyn, A: "No she told me that earlier." Record shows that there is no doubt that Carolyn insisted to Jessica Cabral on two other occasions that Veronica Cabral should be aware of the allegation, which confirms that Veronica found out the night of June 21, 1997. R.T. 31:17-25.

There is even more evidence that shows the appellant's arrest, but the best witnesses would be those that Mr. Cruz was not allowed to call, and the Large Amount of Statements that the state has suppressed to date from Judge Ricardo Martinez, Judge Sharon Armstrong, Jessica C., Denise G., Carolyn Strange, Fawn P., Amber B., Beverly Pennington, Jerry P., Maria Dolores King, and many witnesses who have testified for the defendant. As well as all the initial statements from 1997, the *Police radio transmition reports,* ect., which were never disclosed even though the appellant requested them, as the records show. There are many witnesses who could prove the previous arrest, but Mr. Cruz was not allowed to call them.

E. <u>*ARGUMENT*</u>

1. Trial Court Erred by Exercising Double Jeopardy Against The Appellant, After Mr. Cruz Pleaded Guilty To The Lesser Offense Before Judge Ricardo Martinez, in 1997 in Offense of Jessica Cabral When No Exigent Circumstances Exist.....

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21. This testimony means that the exhibit that the prosecutor used, to which Mr. Cruz objected, about the *laundry room*, is doubly irrelevant, because in the interview with Carey H., witnesses say it was in *bedroom*.

AMENDMENT V [1791]. No shall any person be subject for the same offence to be twice put in Jeopardy of Life or Limb; Nor shall be compelled in a criminal case to be a witness against him-self, nor be deprived of Life, Liberty, or Property without Due Process of Law.

As product of fruit of aggravated charges filed by witness Jessica Cabral, on *two counts* of first degree rape with aggravating factors (*Aggravating Factors*) after a reasonable doubt under RCW 9.94A.120. and charged again as records show, *Record shows* that because he was persecuted a second time and because of the way that aggravating factors were added, Washington State constitutional law determines an act of *Double Jeopardy,* an automatic violation of the *FIFTH AMENDMENT.*

In S.A. HEALY CO. V. OCCUPATIONAL SAFETY REVIEW COM'N, 96 F3d 906 (7th Cir 1996); US V. STOLLER, 78 F3d 710 (1st Cir. 1996), under the *Double Jeopardy* clause, it says 1). *Double Jeopardy Clause prohibits cumulative punishments imposed in separate proceedings. 2). Under Double Jeopardy Clause, defendant who already has been punished in criminal prosecution may not be subjected to additional civil sanction to extent that second sanction, may not fairly be characterized as remedial, but only as deterrent or retribution. 3). Penalty designed to deter wrongdoing is "punishment" subject to prohibition against double jeopardy.*

GREEN V. US, 355 US 184, 2 Led 2d 199, 87 SCt 221 (1961). The constitutional right not to be place in double jeopardy, being a vital safeguard in American Society, should not be given a narrow, grudging application.

AMENDMENT IV [1791]. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the

Place to be searched, and the person or things to be seized.

AMENDMENT VIII [1791]. Shall not be cruel and unusal punishment inflicted., US V. AGUILERA, 179 F3d 604 (8th Cir. 1999). The Double Jeopardy Clause prohibits the government from subdividing a single criminal conspiracy into multiple violations.

I. The Trial Court Committed Reversible Error by Exercising Double Jeopardy Against the Appellant.

A. It was Error because Double Jeopardy Committed by Trial Court, was Fruit of Illegal Arrest and Illegal Charges For 5 Independent Reasons.

1. The uncontradicted evidence shows that the state witnesses declared assuring the previous arrest of Mr. Cruz in offense of J. Cabral, the night of June 21, 1997 and of the charges.

2. It was Error Because the State wasn't ignorant of what they were doing after Mr. Cruz has put that on records before Judge Sharon Armstrong several times and before the Judge Douglass A North as well.

a). by Letters, b). by writing, c) Through Mr. Carey Huffman, d). before DPA's, Shelby Smith and Richey V., e). Through Standby Counsel and Inv., Benito C.

3. It was Error Because Trial Court Deny all the witnesses on behalf of Mr. Cruz, a) by Motions, b) by Supoenas duces tecum c) by request in open courtroom before both Judges Sharon A. and Douglass A. North, d) Even Trial Court Deny Mr. Cruz' witnesses after have explained, how potential they would be at Trial, witnesses who've "Hired" previous *Mr. Cruz's Attorneys, and who've Helped Mr. Cruz to Paid the money off for their services, not allowing them to testify and/or to proved this Double Jeopardy.*

4. It was Error because Trial Court/State, Suppressed the Five items till weeks after the Trial, and Did Suppressed all the initial statements from 1997, which never has been disclosed till this very day.

a) The statements or Records, of Judges Sharon Armstrong, & Ricardo Mtz.

b) Jeffrey H Smith/Law Office of Smith & Roberson, c) Mr. Cruz' statements which appellant give/gave to Jeffrey Smith and to the State and police enforcement as well, d) The statements of all witnesses who gave their statements on behalf of Mr. Cruz e) They suppressed also the whole statements/Initial statements, of J. Cabral, V. Cabral, D. Guijosa, Maria D. King which is Mr. Cruz's sister, Carolyn S. ect, ect, where the state likewise gave itself the power to use statements that had never previously existed in this form;

5. It was Error Because Trial Court enter Judgment with Aggravating Factor in J:S, Cabral Two Counts, By Wrong Evidence.

a) Error because GUN wasn't fruit of Illegal Arrest, Corpus Delicti never were found and evidence were brought before the Jury as scheme or plan b) Periods of Time are contradicted and witnesses doesn't agree with it c) narration about the within time of Mr. Cruz in Alaska by witnesses of the state are so confused and out of place. d) Probable Cause', Indictments, Information on 5/Five, Suppressed Items are vage and contradicted with the Statement Made by the state witnesses during the course of the trial, and if all these Documents would be real then by June, 25-2009 at the hearing before Judge Palmer Robinson were shown but State didn't have any, nothing.

B. "ERROR WAS PREJUDICIAL," Because Jury might not have convicted on remaining evidence.

II. Exercising Double Jeopardy Against Mr. Cruz Was Reversible Error.

A. It Was Error On Either of 9 Grounds.

1. Violate Fifth Amendment

2. Fruit of Illegal Arrest

3. Violate Fourth Amendment

4. Violates Mr. Cruz's Right to Due Process by failure to disclose Evidence that is material to the issue of guilt and is exculpatory

5. Violates The Due process clause cause prosecutor's knowing use of perjured Testimony, of Their witnesses

6. VIII Amendment as to Punishment

7. IX Amendment, The Enumeration in the Constitution

8. XIV Amendment, VIOLATED

9. Under A Brandy Violation DPA failed to disclose Evid.

B. "ERROR WAS PREJUDICIAL" Because Jury Might Not Have Convicted On Remaining Evidence

III. Even If Each Error was not Separately Prejudicial, The Combined Effect of The Nine Errors Was Prejudicial...

When the power of government are arrayed agains an individual, courts must be vigilant to ensure that the individual is not punished twice for the same offense through an artifice in which one punishment masquerades as a civil saction. Yet the fear of potential abuse should not be allowed to sweep away common sense. See US. V STOLLER Cite as 78 F 3d 710 (1st Cir. 1996).

A Brandy violation has three components: (1) The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) That evidence must have been suppressed by the State, either willfully or inadvertently, and (3) Prejudice must have ensued. In re Brennan (2003) 117 Wash. Ap. 797, 72 p. 3d 182. Criminal Law. 1992.

AMENDMENT IX [1791]. The enumeration in the constitution, of certain rights, shall not be construe to deny or disparage other retained by the people. See also XIV AMENDMENT [1868]

F. CONCLUSION

For the reasons above, the Court must reverse Mr. Cruz Conviction, Respectfully Submitted.

A. INTRODUCTION.

Mr. Cruz presents this Issue due to *Prosecutorial Misconduct* allowed by the *Trial Court* during *Closing Argument,* which affects the constitutional rights clause provided by law.

B. *ASSIGNMENTS OF ERROR.*

1. Trial Court Erred By Allowing Governmental Prosecutorial Misconduct During Closing Argument, Was Reversible Error.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Did The Trial Court Err By Exercising Prosecutorial Misconduct During Closing Argument Violating Mr. Cruz Right To Due Process?

C. STATEMENT OF THE CASE.

1. Overview

On December 7, 2010, during *Closing Argument Governmental prosecutorial misconduct* was exercised when the state presumed to have full knowledge of the case personally. Taking precedents over constitutional law and affecting the appellant to a Fair Trial and violating constitutional rights to equal protection.

The Persecutor caused *misleading* to the Jury, and leaned towards the credibility of his witnesses, caused irreparable harm by contaminating the jury without any cure and influencing the Jury's decision.

D. *STATEMENT OF FACTS*

The following facts were compiled from the *verbatim report of CD recorded proceedings VOLUME VII December 7, 2010 CD DR W764 December 8, 2010, CD DR W764 & JANUARY 21, 2011, CD DR W764.*

Mr. Richey V. during *Closing Argument*, addresses the jury as follows, the defendant taking advantage of his attractiveness.

The defendant had towards abusing these young women. He relied on his charm R.T. 936:4-6. He relied on the trust that these families place...

in him to allow him into their house. He relied on control, and I taked about that in opening statement; How control to Mr. Cruz is everything. He relied on their humiliation and their guilt R.T. 936:7-12.

He relied on warnings and threats, to achieve his goal, the abuse of six girls over three and a half years, and the effects were devastating. R.T. 936: 14-16. We saw Jessica Cabral. Jessica was the girl who was exposed to the defendant for the longest period of time; had the most exposure and the most chronic molestation. The charging period that we have charged is 1993 to 1997; ***"Four years"*** *of her life. And when the abuse became so chronic that she didn't even—or, excuse me—he didn't even bother with the ruse like he used with Fawn[22]. R.T. 936: 19-25.*

He just dragged her from the bed, held her dow, put his hand over her mouth R.T. 937:2-5. This man stole Jessica Cabral's childhood R.T. 937:11-12. Now the legislature of the State of Washington has decided that the thing that he did to Brandi, to Jessica to Kristina and to Oceana the charges and the degrees and the counts and all that stuff do not match up at all. One of the first thing you want to do is draft up a chart about everything and how it fits together. R.T. 937:15-23.

FRAUDALENT MISREPRESENTATION: Is a False statement that is know to be false is made recklessly without knowing or caring whether it is true or False and that is intended to induce a party to detrimentaly Rely on it. Also termed Fraudalent Representation; Deceit.

(RECORD SHOWS)

22. Inconsistent statement; 1). J. Cabral testified for the defendant in 1995 at Trial on similar cases in the Betsy Green case. 2). In 1997, J. Cabral again testifies against Fawn P. and Amber B., 3). Mr. Cruz lived 4-6 mo. w/ J.C.

Richey V. DPA Claimed to the Jury that Mr. Cruz had had *intercourse* with the witnesses, because anything with the *genitalia*, no matter how *slight*, is *intercourse,* he says to the Jury that they heard it also from Patty Hikida and that the legislature had so decided R.T. 939:7-18. He said to the Jury that the defendant "*sticks*" his finger inside the *genitalia* of Brandy B., only ten years old and that it was penetration/and having sex with Brandi B, R.T. 939:20-25. He said to the Jury that the method that Mr. Cruz usually used was his mouth, mouth-to-vagina contact, and that it was *sexual intercourse,* R.T. 940:1-5. He told the Jury that *Mr. Cruz Rubbing his penis on the anus* of Fawn and Jessica, R.T. 940:6-7. Richey V. confirmed to the Jury that that was evidence that once the mouth goes to the area it is *sexual intercourse,* R.T. 940:11-14. R.V. explained to the Jury that Patty Hikida "stuck" the camera into the anus of Brandi B.[23], but the defendant is *bubbing his penis on her anus,* R.T. 940:20-22.

R.V. stated that it was chronic molestation making the defendant a *pattern of gratifying Mr. Cruz sexual desires* and claimed that the legislature has used it to assure for specific acts *that slip through the cracks,* to criminalize this *behavior*. R.T. 941:1-6[24] Richey V: *Im asking you,* (he asks the Jury) *to pay attention to the evidence that came from these witnesses,* R.T. 944:1-3[25] Richey V. asks the Jury to take into account the child's birthdate of January 24th 1997 as the time marked when Mr. Cruz began to molest Jessica C. R.T. 945:8-13.

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25. *Mr. Prosecutor*, knowing that the witness was denied over 20 witnesses, and that not even one testified on Mr. Cruz's behalf, R.V. asks them to listen to the witnesses.

24. *Prosecutor, 1). Gave his personal opinions, misliding the Jury about the law and 2). expressed his opinion as to veracity of witnesses.*

23. Keep in mind that Patty H. stuck the camera in her, she was the one who raped her because *record shows* from November 15, 2010 Patty H. Testified before the Jury that Brandi *She had a normal physical exam.* R.T.P. 33:11-13

Before the Jury, Richey V. Informs the Jury that Fawn P. and Amber B. report to Jerry Peloquin the alleged molestation by rape that was reported to detective R. Thomson on February 26, 1997 R.T. 945:23-25[26]. R.V. tells the Jury that Jerry Peloquin reported Beverly Pennington, Bev. P., to Det. Thomson and says before the Jury that the report of Fawn P. Amber B., he knows that it has been weeks and weeks but that he will bring it all back, R.T. 946:1-3. The Jury hears that the defendant was arrested by Det. R. Thomson in *springtime* and the Jury knows, finds out that Mr. Cruz *bails out*, R.T. 946:4-5[27].

Richey V. states that he knows of the Previous arrest of Mr. Cruz for charges related to Jessica C. before the jury by saying: *June 21st of 1997, Jessica reports the abuse to Carol Strange, and on that same day the defendant is arrested for that conduct. Towards Veronica, and I'm not going to go into that whole sideshow again, "but" there was a lot goin on that day, R.T. 946:5-9.*

(ADDITIONAL NOTE BY DEF.) (Richey V. confirms knowing about the previous arrest and having concrete information and not being ignorant of the *scheme or plan* to convict Mr. Cruz for the same crimes related to Jessica C. again).

Richey V. mentions to the Jury that J. Cabral *enters counseling* in Sep. or October of 1997 R.T. 946:10-12; He says that Doug Beck, Renee Beck and Brandi B., Kristina O. moved to a new house on Feb 7-8, R.T. 946:12-17.

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27. Richey V. abuses his discretion and indiscretion, 1) the Jury never heard that Mr. Cruz pleaded out to lesser cases related to J.C., D.G., F.P., and A.B.; before Judge Martinez in 1997. 2) R.V. tells the Jury about Mr. Cruz's previous conviction for R. [illegible]

26. 1). It was Jerry P. who molested J. Cabral, Denise G., Fawn P., and Amber B., after Carolyn Strange investigated when Bev. Penington put Mr. Cruz in jail and that was when CPS took away F.P. and A.B. (*see Bellevue Crime Report*). Richey V. used all of Jerry P. and Roberth Thomson DET.'s testimony, Jerry P. was on the witness list as well, as *scheme or plan*, but he was never called to testify, and R.V., Never asked the *Court Trial* to show Evid. without Jerry P. Present at Trial.

Richey V. tells the Jury that after a *week or so,* Mr. Cruz calls from Mexico, T.R. 947:1-2. On *Mar 5th, 98, The Detective shows pictures of the defendant to renee, Kristina, and Brandi, and the girls all deny touching, deny it, de detective leaves, but Brandi and Kristina admits on May 14, 98.,* R.T. 947:3-7., Brandi goes to the hospital later on May 20 Brandi goes to Patricia Hikida, Brandi *enters counseling* and Jessica C. suddenly arrives at the same place with the same counsel (and they know each other) R.T. 947:7-13, Richey V. tells the Jury in this *country the word a child—a single child—is enough to convict this man* R.T. 948:1-2,

Richey V. claims to the Jury that all they say "happened *behind closed doors,*" "if he had" done it in front of people, R.V. says to the Jury, it wouldn't be an Issue but he did it "alone," R.T. 948:6-8.

Richey V. asks the Jury to infer, based on the months and years that Mr. Cruz repeatedly abused them, which Mr. Cruz was doing for his sexual desire, he tells the Jury not to check all that at the courtroom door when they leave, but to check it at the door when they enter the courtroom, and certainly to take it with them to the *Jury deliberation* room. R.T. 949:8-14, R.V. claims to the Jury that all this happened in Washington, firstly, where *Mr. Cruz licked J.C. vagina* and where Mr. Cruz put his *penis* in her behind, he calls it *anus*. And he claims to the Jury that it happened in Redmond, Fall City, et cetera, R.T. 949:19-24.

R.V. states that the *penis in the anus occurred in J. Cabral bunk bed in Redmon at the YWCA*. R.T. 951:19-21[28]; (ADDITIONAL NOTE) (THE WHOLE *Closing Argument* was *FRUIT OF THE POISONOUS TREE DOCTRINE UNDER XIV. AMENDM.,* please check the rest of the *Prosecutorial Misconduct* in the *Closing Argument*, without regard for the weight or the damage *irremediable and without "CURE."*

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28 This statement was made by Richey V., not on evidence, Records shows that J. Cabral said that it happened at the Apartments and at Carol' House

Pages/numbers that follow confirm *Prosecutorial Misconduct* during *Closing Argument as follows:*

Please check on Pages:

952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/.

E. ARGUMENT

1. Trial Court Erred By Allowing By Exercising Governmental Prosecutorial Misconduct During Closing Argument Affecting Mr. Cruz's Right To Due Process.

I. Allowing/Exercising Prosecutorial misconduct during Closing Argument was Reversible Error

A. It Was Error For 5 Independent Reasons.

1. Conviction Was Fruit Of Prosecutorial Misconduct

2. Prosecutor' Improper Vouching For Credibility Of Prosecution Witnesses.

3. Prosecutor Personally Assured The Jury Concerning Witnesses Credibility

4. Prosecutor Tainted The Whole Jury During Closing Argument

5. Prosecutor Expressively Gave His Personal Opinions Before The Jury, Regarding Defendants Guilt At Every Stage Of Closing Argument

B. Error Was Prejudicial Because Jury Might Not Have Convicted On Remaining Evidence.

II. Allowing To Exercised Prosecutorial Misconduct Was Reversible Error.

A. Error Was Prejudicial For 3 Independent Reasons.

1. Prosecutor Assumed Prejudicial facts Not in Evidence

2. Prosecutor Misleading The Jury About The Law

3. Prosecutor Also Insinuate' Possesion of Personal Knowledge of Facts Not Offered in evidence

BOYD V. FRENCH, 147 F3d 319 (4th Cir. 1998), A prosecutor should "refrain" from stating his personal opinions during argument and misleading the Jury about the law.

F. CONCLUSION

For the reasons above, The Court Must Reverse Mr. Cruz Conviction According To Their Own Decision, Fairness Please.

Trial Court Erred By Failure To Disclose Evidence.

A. INTRODUCTION

Failure To Disclose Evidence Violates Defendant's Fundamental Due Process Rights.

B. ASSIGNMENTS OF ERROR

1. Trial Court Erred By Failured To Disclose Evidence Was Reversible Error.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did The Trial Court Err By Failure To Disclose Evidence After A Disclosure Request By Defendant?

C. STATEMENT OF THE CASE

1. Overview

After 72 days in custody in King C., Mr. Cruz appears for the first time in a court before Judge Sharon Armstrong. Mr. Cruz requests statements of charges, probable causes, legal papers before Judge Sharon A., through Carey H., first attorney who represented Mr. Cruz, after beginning to request the Information, Shelby Smith does not respond to this call, Mr. Cruz makes his request on the record before the Judge, there is no answer, on June 25, 2009, before Judge Palmer R. Motions to compel Shelby S. with discovery are filed. He has no Information, interviews, police reports, nothing;

5. Prosecutor Also Mentioned The Appellant Previous Conviction But Jury Never Hear That Mr. Cruz Pleaded Guilty To The Lesser Offense Before Judge Martinez, Back On 1997

6. Prosecutor Argued Facts Not In Evidence During Closing Argument

C. Prosecutorial Misconduct During Closing Argument Was Improper

A. It Was Improper For Either Of 3 Separate Reasons.

1. Improper Because Prosecutor Directly Expressed His Opinions As To Veracity On Behalf Of His Witnesses.

2. Improper Because Prosecutor Injected Personal Beliefs About The Evidence Into Closing Argument.

3. Prosecutor Also Mischaracterized The Evidence In So Many Repeatedly Occasions During Closing Argument And Trial, as Scheme Or Plan Of Conspiracy

II. Performing Prosecutorial Misconduct During Closing Argument Was Reversible Error.

A. It Was Error On Either Of 4 Grounds.

1. Equal Protection Clause Of The 14th Amendment Violated

2. Accumulation Of Excessive Power And Tyranny During Closing Argument, These Acts Violates Constitutional Rights

3. RCW 10.58.090 Protection Violated

4. Prosecutorial Misconduct During Closing Argument May Be Grounds, And Improper Voching As Well, For Reversing Conviction

III. Even If Each Error Prejudicial, The Combined Effect Of The Four Errors Was Prejudicial.

One of Mr. Richey V., DPA's irremediable acts was asking the jury to Find the Appellant Guilty, Richey V. Reaches the mind of the whole jury to find guilt as an act of misconduct and indiscretion where no instruction or Cure would remedy the harm; Richey V. says:

Sometimes proof beyond a reasonable doubt comes from forensic evidence, DNA, from the mouths of the young women who suffered sexual abuse. You have heard, and I'm asking you to find him guilty. Thank you. R.T. 999; And Mr. Cruz gave his objection.

And now take a look at another abuse of discretion, among many committed by staff of Northwest Transcriber, Barbara A. Lane, who did not sign her certification at the end of page one thousand twenty-nine; Barbara A. Lane Erases the multiple times that Mr. Richey V. asks at the end of closing where at other times he asks the Jury repeatedly to find Mr. Cruz guilty, in:

BELL V. EVATT, 72 F3d 421 (4th Cir. 1995); Prosecutor's closing argument may be grounds for reversing conviction., US. V. NICKENS, 955 F2d 112 (1st Cir. 1992) US V. IGLESIAS, 915 F2d 1524 (11th Cir. 1990), it is improper for prosecutor to inject personal beliefs about evidence into closing argument....

US. V. TOMBLIN, 42 F3d 263 (5th Cir. 1994), Statement in closing "Argument" that PRESUPPOSE defendant's Guilt can be the sort of foul blows long held improper., US V. DISPOS-O-PLASTICS, INC. 172 F3d 275 (3rd Cir. 1999) & US. V. RUDE, 88 F3d 1538 (9th Cir. 1996), 1). Prosecutors improper vouching for credibility of prosecution witness "TAINTED" Trial and required reversal of conviction. 2). "Vouching" occurs where prosecutor personally assures Jury concerning witness's credibility or expresses personal opinion regarding defendant's Guilt.

DUBRIA V. SMITH, 197 F3d 390 (9th Cir. 1999) AUS V. GARCIA-GUIZAR, 160 F3d 511 (9th Cir. 1998), Prosecutor are not allowed to state their "belief" or "opinion" regarding the "guilt" of a defendant., CHAPMAN V. CALIFORNIA, 386 US 18, 23-24, 17 LEd2d 705, 87 SCt 824 (1967), 1) "HARMLESS BEYOND REASONABLE DOUBT" standard presumes prejudice and place burden on beneficiary of errors to prove beyond reasonable doubt that error did not contribute to verdict; 2). Harmless plain errors are harmful; 3). Harmless constitutional error test is stringently applied, resolving all reasonable doubts against government.

Carey H. represents Mr. Cruz until April, 2010. Neither Carey H. nor Shelby S. ever turns over any evidentiary document of the charges. The persecutor Shelby S. and Carey H. refuse to take Mr. Cruz to trial this whole time. Shelby S. is not prepared, there are no Documents.

On April 28, 2010, the appellant asks Judge Gonzales to act as Pro-Se. Mr. Cruz admits to Judge Gonzales that he knows nothing about the law, but he tells Judge Gonzales that if he gives him time to learn, then Mr. Cruz will represent himself. The Judge agrees to give Mr. Cruz time.

Carey H. is dismissed for ineffectiveness; Judge Sharon A. decides to give the case to Judge Douglass A. North, Shelby S. leaves the case, Richey V. takes it. From late February, 2009, to October of 2010, discovery and evidence in general were constantly requested on countless occasions; Conclusion: From Nov. 13, 2008 to December, 2010; Discoveries of Defense Attorneys, Witnesses, Judge Sharon A. (*Records-Transcripts*), Witnesses on behalf of Mr. Cruz, complete police reports, *Radio Transmition Police Report ect, ect,* requested by the appellant have never to date been disclosed for all the events of 1997, and those that did appear were altered.

D. STATEMENT OF FACTS

Statements that have remained suppressed to date are the following: Jessica C., Veronica C., Carol Strange, Fawn P., Amber B, Maria King, Jerry P., Officer Carroll Dobransky, Officer Sam Speight, Robert Thomson-Det., Antonio Salazar Attorney, Jeffrey Smith of Law Offices of Smith and Roberson, Doug B., Kristina Olsen's cousin, Kristina Olsen's aunt Ms. Rita, Records of Pre-hearings before Judge Sharon Armstrong, and the most important ones too, which are the Transcripts before Judge Ricardo Martinez who dropped from first degree to a lesser degree the Charges related to Jessica C., Denise G., Fawn P., and Amber B., including charges related to Veronica Cabral; Witnesses who testified on behalf of

The defendant, and all their statements have remained suppressed to date, which is why charges were again filed against Mr. Cruz by Witness Jessica C., *Record Shows* that: On

December 14, 2010 was the last *request by motion* to give adequate information, to minimize surprises at trial or at the last moment, was *deny*, they never replied. Check Pleadings filed by Mr. Cruz as pro se, as well as all the Motions presented before Judges.

Seen logically, if the new 5-Items that Richey V. swears, in information given on January 9th 2011, come *from Veronica C. 6/2/99 (Attachmen 4) Carol Strange 10/11/99 (Attach-5) (Kerry Todd on 8/9/99 (Attachment-6)*

Sumaries or Joint Interviews of J. Cabral and Denise G. (Attachment 7 & 8, if they had ever really existed, *Record shows* in *Hearing* with Judge Palmer R., that by June 25, 2010, Shelby Smith *and or* Richey V. would have presented them.

Now Kerry Todd, Kim Jacowitz, Officer Sam Speight, Maria King, Van Tran, and others to be mentioned in the future, if possible, none of them was presented, called to testify as evidentiary and/or potential witnesses before the Jury.

In other words, Richey V. used all these people's testimony at Trial and before a Jury, as "*scheme or plan,*" but that the DPA never presented to corroborate his Investigations, statements ect.

Moreover, the Jury heard about them and Mr. Cruz, but they were never known and it was not requested to introduce those statements at any *Pretrial hearing* 1). Without Oath, 2). Without the witnesses not being present.

Medical Records were suppressed, all of them, when Richey V. and *Trial Court* denied them, and this arbitrary action was sustained by Judge Douglass A. North, violating the constitutional provision, and depriving the defendant of a Fair Trial, after having been placed completely at a disadvantage, due to the deprival of each item requested by Mr. Cruz.

E. ARGUMENT

§ 2.22, it is the policy of the department of justice to present evidence that directly negates "GUILT"; U.S.A.M. § 9-11-334.

The ABA Standards assert a similar position stating that "NO" prosecutor should knowingly fail to disclose to the gran jury evidence that would substantially negate "GUILT." STANDARDS For Criminal Justice Std. 3.3.6. The Supreme Court, however, has a different view. In United State v. Williams, 504 US. 36, 112 SCt 1735, 118 L. Ed. 352 (1992); (Government failed to present exculpatory evidence in its possesion to the grand jury). Williams had indicted on several counts knowingly misrepresenting his assets to a financial institution in violation of 18 U.S.C. § 101A; (See) United State v. Williams, 50A US. 36, 112 S.Ct 1735, 118 L. Ed. 352 (1992)

The district court dismissed the indictment because the government had "Failed" to disclose substantially exculpatory evidence in its possesion to the grand jury, specifically evidence in the defendant's general lodgers, tax returns and testimony in his chapter-11 Bankruptcy proceedings that directly negated an element of the charged offense. The Supreme Court found no prosecutorial duty to disclose such information regardless of how substantial it may be.

(See) United State v. Williams, 504 US. 36, 53. CF. United States v. Regan, 103 F. 3d 1072, 1081 (2d Cir. 1997). Indictment valid when prosecutor had no obligation to inform grand jury of informant's Criminal Histories and general untrustworthiness)

(See) United State v. Byron, 994 F. 2d 747, 74B (10th Cir. 1993). Indictment valid when, during presentation of exculpatory evidence, only 14-Jurors present and two slept because indictment.

§ 2.27 The court Ruled that the submission of the transcript to the gran Jury, serve no other purpose than calculated prejudicial (See) United State v. Samango, 607 F. 2d 877, 883.

Additionally, a second transcript of another witness was found to be prejudicial and deceptive, giving the grand Jury no information of that witnesses deficiencies, which included a history of drug abuse. This second transcript was also the only evidence against peripheral conspirator (See) United State v. Samango, 607 F. 2d 877, 883.

The indicting grand Jury heard one live witness, a DEA agent whose testimony consisted of hearsay, conclusion, and characterization. Several grand Jurys also questioned why certain witnesses had not been supoenaed leading the court to the conclusion that the gran Juror did not even know it was within their power to call witnesses (See) United State v. Samango, 607 F. 2d 877, 883-844. In dismissing the indictment, the ninth cir. stated; The cumulative effect of the above errors and indiscretions, none of which alone might have been enough to tip the scales operated to the defendant's prejudice by producing a biased grand Jury, United State v. Samango, 607 F. 2d 877, 884. The court Affirmed the district court's dismissal, holding that the manner in which the prosecution obtain the indictment represented a serious Threat to the integrity of the Judicial process (See) United States v. Samango, 607 F. 2d 877, 885. The cumulative abuse doctrine was reaffirmed in United State v. Hogan.

§ 2.27, Cumulative abuse one it became clear to defense attorney's that insolated rule violations were apt to be viewed as mere "Technical Trial" matters necessity logic and creative thought brought about a different approach this was exemplified in United State v. Samango, 607 F. 2d 877 (9th Cir. 1979), Hughes v. Johnson, 191 F 3d 607 (5th Cir. 1999), A defendant's right to due process is violated when, upon a request for exculpatory evidence, the government conceals evidence that is both FAVORABLE TO THE DEFENDANT AND MATERIAL TO THE DEFENDANT'S GUILT OR PUNISHMENT.

US V. HAESE, 162 F3d 359 (5th Cir. 1998), Defendant's convictions must be reversed on due process Grounds where the government knowingly elicits, or fail to correct, materially false statement from its wit.

I. Trial Court Erred by failured to Disclose Evidence Denying the Motions was Reversible Error.

A. It was Error for either of 3 Separate Reasons

1. Acumulative Abuse

2. Abuse of Discretion

3. Knowingly Uses Perjured Testimony, of J. Cabral, V. Cabral, Carol S., Officer Dobransky, Did used also Denis Guijosa's statement in every stage of the trial, even at Closing Argument, when Richey V. knew that they dismissed Denise Charges in their own Motion which also was, a Dismiss with Prejudice.

B. Error was Prejudicial because Jury might not have convicted on remaining evidence.

II. Denial of Motions to Disclose Evidence was Reversible Error

A. It was Error on Either of 3 Grounds

1. Violates a Defendant's Right To Due Process

2. CrR 4.7 Obligations Violated

3. Coviction Must Be Reversed On Due Process Grounds.

B. Error Was Prejudicial Because Jury Not Have Convicted On Remaining Evidece

III. Even If Each Error Was Not Separately Prejudicial, The Combined effect Of The Two Errors Was Prejudicial.

Prosecutor kept all the exhibits used during the Course of the Trial, Medical records, Counselor Information ect until last moment, CrR 4.7 (h)(2)

This court has declared that "Promptly" in this Rule, means at te moment of

Discovery or Confirmation, even when that occurs during the trial, the prosecuting attorney elect to keep this information from defense counsel and from the trial judge until "The witness" revealed it on the stand. This tactic not only falls within conduct barred by CrR 4.7 (h)(2), it also runs contrary to the principles behind broad criminal discovery accepted in this state. The decision in Brandy v. Maryland. 373 U.S. 83, 10 L.Ed.2d 215 (1976) Clearly established, the government's obligation to provide evidence in it's possession that is both favorable to the accused and material to guilt or punishment. United State v. Argus, 427 U.S. 97, 49 L.Ed 2d 342, 96 S. Ct 2393 (1976).

Richey V. also suppressed all the undrafted discovery that he turned over to Mr. D. McGuired, *Standby Counsel*, which were on average about eight to ten; In these folders or Black Books there were a great number of interviews and re-interviews.

TRIAL COURT ERRED BY DENYING Mr. Cruz, MOTION FOR A MISTRIAL Based on Denise Guijosa, STATE WITNESS INCIDENT, WAS REVERSIBLE ERROR.

ARGUMENT AS FOLLOWS:

GROUNDS; SIXTH, FOURTEENTH Amendments, Equal Protection Clause, Equal protection Substantially Identical under the Fifth and Fourteenth Amend. were violated, Article 1, Sec. 3 and 22 as well.

1. Two Motions were filed For a Mistrial Denying Mr. Cruz Motions:

After the Jury found out about the Incident where supposedly the Witness D.G. tried to take her own life it was devastating, without remediable cure.

The "Error" was devastating and prejudicial because:

a) The Jury observed the event during the lunch break

b) The Jury was informed by Judge Douglass A. North upon its return, as

Plan, Scheme by informing the Jury of the event and explaining to the jury that this witness was related to Mr. Cruz case.

c). Judge denied repeatedly having informed the Jury

d). Three members of the Jury revealed what the Judge had done when Mr. Cruz in questioning they confirmed that they knew only what the Judge had reported to them about the event that was taking place outside the building.

e). Judge admitted having informed the Jury, after this was confirmed in front of him by the different members who accused him of it.

JURY MISCONDUCT

a). At the time of the commotion caused by Denise G., when the Jury came back from lunch break and after being held in the courtroom; 1). This was when the Judge informed them within the courtroom 2). After informing them, Judge Douglass A.N., he supposedly gave instructions to the Jury not to view *Modia/TV, Press, Hear Radio ect.* 3). It was illogical to inform the Jury, after he himself was the informant 4). After the instructions, the Jury paid attention to the Judge after already having been contaminated. 5). The Judge asks the Jury to go to the meeting room, on break, and perhaps a minute after being instructed, after receiving instructions, "THE JURY" in its entirety starts getting information from one of its members who had a "LAPTOP" computer, they extract information "By Internet" and the whole jury starts to read the information on Denise G.'s case. 6). Three days pass. Monday morning, when Jury was questioned, this is when several members admit having seen the information on the Internet, which was very widespread, the Jury in an act of Erroneous Conduct, Act of Misconduct; 1). The whole rest of the Jury lied and only three of them admitted having gotten information from the "Internet."

2). Based on *Jury Misconduct*, and abuse of indiscretion, Mr. Cruz requests by Motion a change of Jury, he makes a record before the Judge too, but it was denied. 3). For a Fair Trial after the Jury used the "LAPTOP" after refusing/*refused* the instructions given by the Judge, and after having been informed by the Judge himself, the right thing was to accept a "*Mistrial*."

STANDBY COUNSEL AND RICHEY V. MISCONDUCT.

1). The *Press, Media/TV, ect* is informed that Denise G. wanted to take her life in order not to face Mr. Cruz, but the truth is that according to information, she did it due to pressure from Richey V. to force her to testify. 2). McGuired D., *Standby Counsel*, along with Richey V., reported that Denise Guijosa came into Mr. Cruz's life at the age of three. 3). They also report that on Monday morning it will be confirmed if there will be a *mistrial* or not. 4). They mention Mr. Cruz's alleged molestation to the media, and they give complete information

JUDGE DOUGLASS A. NORTH AND RICHEY VALEY-DPA

1). Monday morning, after the weekend is over, a large number of TV cameras in the hallways and inside the court are waiting for Mr. Cruz, Family members of the Jury and the Jury become aware of the matter again. 2). The Judge and Richey V. accept the *TV NEWS*, after asking them to make an appearance, as *plan, scheme* against Mr. Cruz. 3). Judge asks the cameras, which remain throughout the course of trial on Monday, to aim their cameras only at Mr. Cruz, "NOT" the Jury. 4). After all of this, Mr. Cruz appears constantly and every day for about 2 weeks on television, on *TV-NEWS*, his photo, name, charges ect. 5). After two weeks, Mr. Richey seeks a way to again prejudice Mr. Cruz. Now he has an interview with *TV/Media* and *Press*. He reports to them that Mr. Cruz is not "*ACCURATE*," that it is possible informs the

That it is very possible that he will no longer be allowed Pro-se, ect, and again, Mr. Cruz, with this information, given by Richey V. and Mr. Cruz, again appears *on TV.*

CONCLUSION: Reversible Error (SEE FILES FOR INF. PLEASE & RECORD)

TRIAL COURT ERRED BY DENYING MR. CRUZ'S MOTION FOR SPEEDY TRIAL

I. Denial of Motion For A Speedy Trial was Error.

1. (NOTE) STATEMENT NOT ON EVID; Not on Evidence Cause Appellant Attorney, Mr. Zinner & Judge Douglass A. North Deny The whole Pre-Trial Hearings, Before Sharon Armstrong Judge; After Requested them for so many different times, from Nov. 13, 2008 Through May 18, 2010.

2. Denial of Speedy Trial for 18th Months was Reversible Error.

A. It was Error for 3 Independent Reason

1. Abuse of Discretion; 2. Violation of a Defendant's Speedy Trial Rights.

ARGUMENT

1. Supreme Court reviews a trial court's Order Denying a motion to dismiss for speedy trial purposes for manifest abuse of Discretion.

2. A Defendant has no duty to bring himself to trial, rather, the defendant's appearance in court depends upon the efforts of the prosecutor and law enforcement officials.

3. For purposes of dismissing a charge based on a violation of a defendant's speedy trial rights, the defendant has the burden to show his or her amenability to service of process. CrR 3.3, (See) City of Seattle v. Guay, 76 P. 3d 231 (Wash. 2003)

Conclusion: Grounds For Dismiss Charge(s)/Vacate.

Trial Court Erred By Denying Mr. Cruz's Subpoenas Duces Tecum

I. Denial of Subpoenas Duces Tecum was Error,

A. Error was Reversible.

1. Trial Court Deny Mr. Cruz's To Call Witnesses on His behalf.

Mr. Cruz prepared Subpoenas Duces Tecum, pleadings, and non-Duces Tecum motions too, in order to: 1). Get information from airlines from the Seatac, WA, Airport; 2). From the Fishing Company Alutian Dragon and Artic Alaska, now Ocean Peace; and this was denied: a). To prove that Mr. Cruz was not in the U.S., in Mexico. b). To establish the times that do not match up with the state's accusations against the defendant.

The subpoenas were prepared by Private Investigator Benito Cervantes, but Judge forced Mr. Cruz to go to Trial in October, 2010, refusing to wait for this information to be sent by the airlines and fishing companies.

The Supoenas Duces Tecum were signed at the prehearing by the Judge before DPA Richey V., *Standby Counsel* D. McGuired, and Benito C. But Mr. Cruz was never informed if they were sent.

SUBPOENAS DUCES TECUM were also prepared to call Witnesses on behalf of Mr. Cruz, over twenty of them, but as *scheme or plan Trial Court/*Douglass A North denied them.

ARGUMENT

Constitutional Law affirms; *Defendant has right to present his own witnesses to stablish a defense, and this right is a fundamental element of Due Process of Law U.S.C.A. Const. Amend. 5*

Constitutional Law; Defendant's Due Process Right to present his own witnesses to stablish defense will not be violated

Constitutional Law; Prosecution's suppressing of requested evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, Irrespective of the good faith or bad faith of the prosecutor U.S.C.A. Const. Amend. 5. (See) US. V. WADLINGTON, 233 F 3d 1067 (8th Cir. 2000)

§ 9.10 (b)(2)

Subpoenaed a witnesses and keep her incommunicado to prevent her appearance at trial, Court have condentiary hearing to determine whether prejudice result 287.1 or have ruled the misconduct harmless.

Trial Court Erred by filing charges for rape and molestation in the first degree related to Brandi B.

A. INTRODUCTION

Mr. Cruz presents his defense on this Issue, where the Appellant was found guilty, by the Persecutor and his witnesses and found guilty by the Jury by being contaminated, but refuted by science, showing the contrary.

B. *STATEMENT OF THE CASE*

This Evidence was taken from the *Verbatim Report of CD Recorded Proceedings From November 15, 2010* with Patricia Hikida. *Patricia Hikida have a Bachelor of Science in Nursing from Seattle University. She have a Master's of Nursing From University of Washington in the field of psychosocial nursing. R.T. 7:11-15. She in May, 1998 she was working at the Harborview Sexual Assault Center, R.T. 14:21-22. Richey V. asked if during that period of time she have a patient name Brandi Beck, R.T. 14:24-25. R.V. hand it to Hikida Exhibit, "30" asking if she recognize that Document, R.T. 15:3-5. She said that looks like a document dictated after having done physical exam, and interview of a child and the parent, R.T. 15:6-8.*

R.V. ask if she able to tell if that is a report that she would have dictated, R.T. 15:11-12; She answer I signed it, R.T. 15:13.

Richey V. asked Hikida if Exhibit "30" does it appear to be consistent with the type of information that she would provide during the course of one of her evaluations of a child, R.T. 15:14-16.

Hikida declared this A: I previously reviewed this document and it does look like my dictation, R.T. 15:17-18. Richey V. offer State exhibit "30" under business records and recorded recollection, R.T. 17:4-5.

Medical Provider at Medalia at Greenlake found two episodes of vaginitis and a urinary tract infection, R.T. 18:22-25; Richey V. said tha Brandi B. was abused and Jury heard, R.T. 20:24.

She said, Hikida that Three months before February 1998 saw Brandi R.T. 21:1-3; Hikida start to misleading the Jury with Brandi's history about what she likes, R.T. 21:16-25, R.T. 22:1-25 and R.T. 23:1-9.

Brandi told Hikida that she was there with her because Brandi was touched, R.T. 24:14-15. Brandi told Hikida that Salvador touched her with his hands, R.T. 26:20-22, Brandi told Hikida that that any other part of her body touched her, R.T. 26:25-25, ect, ect.

STATEMENT OF FACTS HIKIDA DIRECT.

Exam were normal, R.T. 29:4. All the tissue appeared to fall into place normally to indicate no damage to the fine tissue, R.T. 29:9-11.

Inner vagina cheked with colposcope looking through the hymenal opening was normal, herrial body normal which is the area between the external genitalia and the anus, R.T. 29:16-19; Anus Normal rogation R.T. 29:20; Richey asked if any abnormal findings there and Hikida answer "NO," R.T. 33:2-3; Richey asked Hikida, what conclusion were you able to draw from this examination? Hikida answer A: That she had a normal physical exam, R.T. 33:13. Hikida said that there

Was not penetration into the vagina and didn't tear tissue, R.T. 34:8-10; Reene Beck declared that appellant put fingers inside the/her vagina or fingers inside her genital area a 28 year old male inside R.T. 37:5-10[29]*...*

CROSS-EXAMINATION BY Mr. Cruz:

Hikida said that she remember Brandi set she was touched, R.T. 40:1-4; Hikida not to have independent recollection of what's in that dictation; R.T. 40:9-10; Brandi told Hikida that she was touched, R.T. 41:4; Hikida said Brandi's anal examination was normal; R.T. 43:17-18.

Hikida said that Brandi her examination, both the genitalia and the anus were normal; R.T. 44:15-16; Hikida said there was no physical tears in Ms. Brandi's case; R.T. 45:17; Hikida, there was no finding of evidence of any type of damage to the tissue, R.T. 46:10-11.

Hikida said, in this case there is not evidence to trauma to that issue surrounding the vagina, R.T. 51:7-8. Hikida declared that there is no specific history that this child had vaginal penetration, R.T. 52:5-7.

Hikida declared, that all she can say is that her exam was normal, R.T. 52:20-21. Hikida say, And again I will repeat, this was a normal exam there was not evidence of any trauma to her genial or anal area, R.T. 57:2-4; Hikida, In this case ther is on the first page of the dictation I dictated "not thought to have occurred" and that all I can testify, R.T. 57:10-13. Hikida I found that she had a normal exam, R.T. 59:5.

Hikida say the same thing that nothing had happened to Brandi Beck. See pages 60, 61, 62, 63, 67, 68, End of Cross and Recross Examination.

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29. Hikida makes it clear that the statement is inconsistent with the plan of Renee B. and Brandi B., as well as with Richey V.'s statement.

NOTE; Mr. Cruz still has even more issues to present, and the appellant asks the Court of Appeals to please indicate to him if there is any way to present the rest. The remaining issues do not appear because of the excessive number of pages in the SAG thus far.

But the appellant hopes for an answer about whether he will have a chance to do so at some time or not.

Issues remaining to be heard are:

1. Denial of new Interviews state witnesses see please filed motion request from September 17, 2010 page 1 of 3.

2. Inconcistent statements of J. Cabral, V. Cabral, Carol S.

3. Inconsistent statements of Kristina O., Renee B., Brandi B.

4. Denial of constitutional provision as a pro-se, to a fair trial.

5. Suppressed of CrR 3.5, is on records too (check transcript)

6. Denial of Motions, Defendent filed 110—(one hundred and ten) different motion, and 90% or more were deny (see files) please

7. Inconsisten Police Reports as to Dates, Years, Places, ect.

8. Check please Kristina Olsen in Cross-Examination, she gave her statement saying; A: That this statement say something different. R.T. P. 47:17-19, see page, 48-411. Focus on (Lines: 21-24) Please, Renee B., she declared the same thing.

9. Other Issue to raise Richey V. Opening Statement, and others.

Appellant/Petitioner couldn't finish Because of the Number of pages already within the SAG.

CONCLUSION: For the reasons above within the SAG, This Court should reverse the conviction and/or dismiss charges.