

66709-2

66709-2

SALVADOR A. CRUZ
1313 N. 13th Ave.
WALLA WALLA, WA. 99362

Division - 1
ONE UNION SQUARE
600 UNIVERSITY STREET
SEATTLE, WA. 98101-4170

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2013 MAY 20 PM 1:19

CASE# 66709-2-1

Salvador A. Cruz App. Vs. State of Washington Resp.

Dear Richard D. Johnson

I Sending you The Supplemental of Additional Grounds For Review;

I was Hopping From you to Answer my Letter back, I Still Could not take
any COPY Yet, I Guess would be No Possible At this time. I have kite
My Counselor, And Not, haven't Receive Any Answer.

So I Haven't Waive to My Supplemental, So Please Hope you would be able
to help me to take some Copies for myself and I would be able to pay for it

If you could, Over Here would be Hard and Difficult for me to Do it

Hope at the Same time that you would be able to receive MY Appeal Still

Respectfully, Mr. Cruz.

DATED THIS. 7 DAY OF MAY, 2010.

A. INTRODUCTION.

"Issue": dismiss of Denise Guijos's Charges with prejudice,
On 2000, respondent filed this action, of Rape of the Child and CH. Mol.
in first degree against the Appellant' Mr. Cruz, in the trial Court
(adult detention) King County Jail in Seattle WA, Record Shows that:
Charges obviously were, fruit of a Double Jeopardy as scheme
or plan by the State of Washington. (See Issue of Double Jeopardy)
please in first part of Mr. Cruz's SAGR.

On November 8, 2010 DG's Charges were dismiss by the State
of Washington in their own motion after DG's tried to jump off
of the bridge of the Courthouse, Record shows, that the Trial Court
Erred by failing to grant a mistrial for such irregularity after
being called mistrial by Mr Cruz in Three different occasions.

B. ASSIGNMENT OF ERROR.

1. Trial Court Erred by dismiss DG's Charges in their own
motion with prejudice, and by not granting motion for mistrial in
such serious irregularity, and when Exigent circumstances existed.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

1. Did the Trial Court err by denying and/or by failing to grant a
mistrial, and by Dismiss / Dismissing DG's Charges with Prejudice?

D. STATEMENT OF THE CASE

Statement of the case on Evidence In Proceeding from
November 8, 2010. Which reads as follows:

Mr. Richey: I will also let the Court know that the State is
planning to Dismiss the two counts involving DG. and not proceeding
on those, "THE COURT": Okay yeah, because obviously that was something
I did want to find out if what you wanted to do about that. There
were several possibilities. One dismissal, as you had, Two DECLARING
A MISTRIAL as to those but not as the other ones, and other (opinions)
Options. I wanted to see what the State want to do with that

Mr. Richey: WE ARE NOT GOING TO GO FORWARD. THE COURT: Okay,
Okay, Richey: And I can Make that Motion right now to

FILED
COURT OF APPEALS, DIV. I
STATE OF WASHINGTON
2011 MAY 20 PM 4:11

A. INTRODUCTION

"Issue; dismiss of Denise Guijos's Charges with prejudice,

On 2000, respondent filed this action, of Rape of the child and CH. Mol. in First degree against the Appellant Mr. Cruz, in the trial Court (adult detention) King County Jail in Seattle WA, Record Shows that:

Charges obviously were fruit of a Double Jeopardy as Scheme or plan by the State of Washington. (See Issue of Double Jeopardy) please in first part of Mr. Cruz's SAGR.

On November 8, 2010 DG's Charges were dismiss by the State of Washington in their own motion after DG's tried to jump off of the bridge of the Courthouse, Record shows that the Trial Court Erred by Failing to grant a mistrial for such Irregularity after being Called Mistrial by Mr. Cruz in Three different occasions.

B. ASSIGNMENT OF ERROR.

1. Trial Court Erred by dismiss DG's Charges in their own motion with prejudice, and by not granting motion for mistrial in such serious irregularity, and when Exigent circumstances existed.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

1. Did the Trial Court err by denying and/or by failing to grant a mistrial, and by Dismiss / Dismissing DG's Charges with Prejudice?

D. STATEMENT OF THE CASE

Statement of the case on Evidence In Proceeding from November 8, 2010. Which reads as follows:

Mr. Richer: I will also let the Court know that the State is planning to Dismiss the two counts involving DG and not proceeding on those, "THE COURT": Okay yeah, because obviously that was something I did want to find out if what you wanted to do about that. There were several possibilities. One dismissal, as you had, Two Declaring a mistrial as to those but not as the other ones, and other (opinions) options. I wanted to see what the State want to do with that

Mr. Richer: WE ARE NOT GOING TO GO FORWARD. THE COURT: Okay, Okay, Richer: And I can make that Motion right now to Dismiss the two Counts (RT. P. 4:4-25) and (RT. P. 5:1-4)

E. STATEMENT OF FACTS

1 of 20

Dismiss of DG's Charges w/ Prejudices, after all that Public Dreams, was Prejudice and the Prejudice Granted/Grant's for Reversal.

FILED
COURT OF APPEALS DIV.
STATE OF WASHINGTON
MAY 20 2011

THE COURT: Okay. And Mr. Cruz, you have the right to respond to that I assume you wouldn't have any objection to having those two counts dismissed, but I don't know. Mr. Cruz: Good morning your honor. If you could you explain to me the process, or the procedure you have in mind.

THE COURT: Well, "WHAT WE ARE DOING RIGHT NOW" IMMEDIATELY, is the state "HAS MOVED" TO "DISMISS" THE TWO COUNTS INVOLVING DG, ... (RT.P. 5:5-17)

Mr. Cruz: Your honor, I "INITIALLY", I show them the copy through which I WAS ARRESTED FOR THOSE CHARGES INITIALLY. The state want to bring up the same charges OF 1997 (RT.P. 5:24-25 & RT.P. 6:1-2). "See" (RT.P. 10:1-17)

A = THE TRIAL COURT ERRED BY FAILING TO GRANT MISTRIAL =

1. The Trial Court Erred, by failing to Grant Motion for Mistrial after such serious trial irregularity.

B. Did the Trial Court Erred by failing to grant a Motion for Mistrial after Jury learned by TV/Media, Press, Radio news and by their own "INFILTRATED LAP-TOP DEVICE WITHIN THE COURT-ROOM"?

This Jury misconduct upon the presence of a physical intrusion of such devices within the courtroom which was premeditated by the Jury members, "IS DECLARED INTRUSIVE UNDER THE FOURTH AMENDMENT" within an enclosed structure by obtaining as Jury did through Internet private and personal DG's and Mr. Cruz's Information.

C. STATEMENT OF THE CASE

Facts on Evidence as Record shows, From November 8, 2010 which reads as follows:

THE COURT: I received your Memorandum Mr. Richey, has Mr. Cruz gotten a copy of that as well?, Mr. Richey: I've just given him a copy, your honor. And I'm filing an original with the clerk right now. THE COURT: Okay and AWA, were you able to give Mr. Cruz "A COPY OF THE SEATTLE TIMES ARTICLE"? Thank you. So we need to talk about where we go from here (RT.P. 3:7-16)

Mr. Richey: The next step is to figure out what, if anything, the Juror know and the best way to do that is through a fact finding where we question them individually ... To ask ... what did you HEARD, SEE, what do you know, have you DISCUSSED that with ...

Other Juror, have you LEARNED ANYTHING SINCE THURSDAY... (RT. P. 3:17-25)

Mr. Richey: Before asking those questions it's the state position that we should instruct the Juror "NOT TO DISCUSS THEIR OPINION ABOUT THE MERITS OF THE CASE", THE FACTS OF THE CASE "IN OPEN COURT ROOM".

Obviously those beliefs and those conclusions concerning the verdict should be left in the Jury room. So somehow to inform the Jury "not to discuss" those opinions, not to discuss the facts of the case... (RT. P. 4:4-11)

The next thing... is talking to the juror individually about how much they heard, have heard about THE EVENTS of Thursday through talking to friend, to media or whatever.

Dr. STATEMENT OF FACTS

Mr. Cruz respectfully wanted to let Court of Appeals know that Record shows that Judge and Mr. Richey's previous conversation is totally a lie. Because the exact same day of "DG's Incident", and after lunch DBA-Richey v. and Judge Douglass A. North they both communicated, the Jury, letting the whole Jury know that the person who tried to jump out of the Courthouse Roof was DG, who also was one of the State witnesses and part of Mr. Cruz's Trial, These/That, was Prejudice was Harmful and without Cure.

Statement of Facts: Was taken also from Jury Trial Proceeding November 8, 2010. Which reads as follows:

Mr. Cruz: Your honor I just want to say briefly "AGAIN" that to me "THAT THIS IS A MISTRIAL" and that they going to learn somehow, and that I oppose to Continue. Court: I know what is your Decision

(RT. P. 12: 4-9). THE COURT: It may ultimately turn out to be a Mistrial... I have to find out what the Jury knows. (RT. P. 12:12-15)

THE COURT: Do you want to get the first juror in, please. (RT. P. 12:23-24)

THE COURT: First thing of all... I want to make clear to you that we don't want any opinions from you about the facts of the case or any indication of your thoughts "as you know there was some press coverage of events relating to this case on Thursday and I had of course asked the Juror "to try" and "avoid" reading anything in the press...

Or hearing anything or whatever about it. I realize that you may not have been able to avoid it, depending on what happened to you, and so I want to find out from you what, if you have you heard about the case in the "news media" since we were last here on Thursday morning. JUROR NO. 2: That was the ONLY information or not information, so the only thing I knew was REALLY WHAT YOU SAID TO US IN HERE THURSDAY AFTERNOON. WE HAD NO OTHER KNOWLEDGE OF IT OTHER THAN WHAT YOU SAID. (RT. P. 13: 1-17) (NOTE ANNIT. NEXT CHECK FOR JURY Misc.)

Mr. Cruz: Now... How often do you read the papers? (RT. P. 14: 17-18)
JUROR: I do get the paper delivered every day, but since this trial began the only section I've read "IS SPORTS" (RT. P. 14: 24-25 & RT. P. 15: 1). Mr. Cruz: For some reason did you hear any comment about what happened on Thursday afternoon? JUROR: Not other than what I have already mentioned.

Mr. Cruz: Your Honor, since that Thursday that was the last time we were all together here by the time I got to the cell where I'm at I was informed that the news had been broadcasted on television and I believe it was channel 7 in those news aside from the information that was provided in the news paper (RT. P. 7: 24-25 & RT. P. 8: 1-4).

Mr. Cruz: All I'm asking, your honor, is about the Trial and "IF YOU" Allowed to have the trial but to Change the Jury (RT. P. 17: 7-9).

Mr. Cruz: Your honor, ... I think it's going to be very hard for the jury not to learn about the issue ... So we can call this a "MISTRIAL" (RT. P. 6: 3-7). Mr. Cruz: Now the person's record (DG) "IT'S NOT THE FIRST TIME" "THIS PERSON TRIED TO KILL HERSELF" and she's tried to do it many times before, your honor ... And there's also more information about sex in all the documentation ... Some how ... due to some mental problems, tries alcohol according to what is stated in the statement. (RT. P. 6: 3-19)

Did the jury knew about DG'S Issue / Incident out of the Courthouse while she was trying to jump off the bridge?

Did the Judge Douglass N., Provided to the jury information ...

About D.G.'s and Mr. Cruz's Case within the Courtroom while the incident was taking place in the outside of the building?

Was a Jury Misconduct after Jury employs an INFILTRATED ELECTRONIC DEVICES to OBTAIN(ED) Information through "Internet" about D.G.'s, and Mr. Cruz's Case after Jury being Instructed not to do so in repeatedly times during the course of the Trial? Record Shows as follows:

Mr. Cruz: (Juror Interrogation): "When you say that you learned that information that it had to do with the case what was the information that you received? Juror: "The Judge" told "us" that it had to do with the case. Mr. Cruz: You are referring to this case? Juror: Yes (RT, P. 44: 12-18) (Appellant's Note: "This Government misconduct and improper act out of the court rules, was PREJUDICE, HARMFUL ect.)

Mr. Cruz: Before I continue, I have a question please. The person stated that you informed them that was what was happening outside had to do -- was related to this case and he's saying that he got that information Thursday afternoon. "Now you are asking" the question what they know when yourself "INFORMED" THEM ON THURSDAY after-noon. So I Don't understand how you want to ask the Juror what they know when yourself INFORMED THEM (RT, P. 45: 6-15).

Mr. Cruz: your honor, I think it was not necessary to tell them that it was related to this case, you could have said that they not to watch TV, or not to see it, or that they could get -- "that they could not get any information together or from any person but there was no need for you to "TELL THEM" THAT THE PERSON WHO WAS OUTSIDE WHO WAS THREATENING TO JUMP OFF THE BUILDING HAD TO DO WITH THIS TRIAL

THE COURT: WELL, that could be, Mr. Cruz, but at this point it's already happened I can't change what's already happened in the past. So at this point I think we need to continue to find out what the "JURY KNOWS"... Then "you" and Richoy can make your position clear to the Court and we can decide what we're going to do further.

Mr. Cruz: your honor, "WHAT THE JURY KNOWS IS WHAT YOU TOLD THEM" in this place that the person who was trying to jump was related to...

This case. Everybody knows, that the person wanted to jump off the bridge and you tell the jury that she's related to this case, but you didn't inform the jury that the person who tried to jump commit suicide many times before (R.T.P. 46:2-23) and (R.T.P. 49:1)

Did also DPA-Richey v., and D. McGuire the standby counsel, did they both informed the TV-MEDIA, PRESS, REPORTERS ect, about DG's and Mr. Cruz's case? Yes they both did. All that/ Thus was "PREJUDICE" was "IMPROPER" WAS REVERSIBLE ERROR and Error was Prejudice.

= JURY MISCONDUCT / INFILTRATED LAP-TOP DEVICE =

JUROR: So On Thursday afternoon, we were in the jury room and of course - And there were some people with ELECTRONIC MEDIA and they said: Hey, there's something going on at the court house. There was a person associated with the case in this building, that was on the "ROOF" "THREATENING TO JUMP" And we actually looked on the street and there was activity on the street and then the bailiff "CAME IN" IN SEVERAL TIMES. At one point we told her that we knew what was going on. Shortly after that she came back in and "said" that the Judge Instructions is to "TURN OFF ALL MEDIA". And so "EVERYBODY SHUT EVERYTHING OFF." "And we talk to each other for awhile".

Thus also was so "prejudice" and "without cure"; Thus was PREJUDICE, WAS ERROR and ERROR WAS REVERSIBLE

E. ARGUMENT

The Fifth and fourteenth Amendments both contain Due Process clauses prohibiting the deprivation of Life, Liberty or property without Due process of law in general, the Fifth Amendment clause is applied to federal officials the fourteenth Amendment clause applies to state government officials having liberty in addition to the constitutional rights.

The Ninth Circuit expressly declined to address whether the use of the DEVICES without violated the Fourth Amendment.

Many of the rights guaranteed by the First, Eight Amendments to the constitution have been held to be protected against state action by the Due process Clause of the Fourteenth Amendment.

A. INTRODUCTION

Issue: The Right To A Trial By Impartial Jury was violated. The 6TH Amendment to the U.S. Constitution in all criminal prosecutions, the accused shall enjoy the right to a Speed Trial and public trial, by an impartial jury of the state and district wherein the crime shall have been committed which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; To be confronted with the witnesses against him; To compulsory, To have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel for his defense. "Mr. Cruz was Denied His Sixth Amendment."

B. ASSIGNMENT OF ERROR

1. Trial Court Erred by violating the Appellant's right to a Trial by Impartial Jury, after jury learned about the whole gist of Mr. Cruz's Case.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

1. The / Did the Trial Court Err by violating the Appellant right to a Trial by Impartial Jury during the Course of the Trial?

D. STATEMENT OF THE CASE

During the Course of the Trial Jury learned the, the following Information which was so "PREJUDICE" To the Defendant/ Appellant. Record Shows from November 8, 2010 the facts on Evidence as follows:

JUROR: The only thing I've learned was actually "IN THIS ROOM" AND "IN THE JUROR ROOM LAST THURSDAY". What "WE" learned in the Jury room was that there was activity at the Courthouse, SOMEONE WAS ON TOP OF THE COURTHOUSE THREATENING TO JUMP... another Jurors looked out in the street... I could look out the window and see other people look out the window... There was activity going on outside we were asked to "QUIT LOOKING AT MEDIA AT ALL". We knew nothing more about it and then we came out here and we got instructions from the judge and "GOT ADDITIONAL INFORMATION FROM HIM" (R.T.P. 43:7-23) Mr. Cruz Thank You. You referred to the fact that what you learned related to the case, How do you explain that...

It was related to the case? JUROR: I learned one piece of information from the judge when the Jury was in the box... Thursday afternoon that whatever was going on, and that it was related to the case. I was surprised, I didn't know that it was (P. 44:3-8)

Mr. Cruz: When you say that you learned that information that it had to do with the case, what was the information that you received?

JUROR: The Judge told us that it had to do with the case. (RT. P. 44:12-16) Mr. Cruz: You are referring to this case? JUROR: Yes.

Mr. Cruz: Thank you sir. I don't have any other question. (RT. P. 44:17-20)

OTHER-JUROR: I didn't look at anything in the media. I did go into work and someone approached me and said, ARE YOU ON THAT RARE CASE? (RT. P. 32:17-19). (Appellant Note: A continuation check please how Record shows that Judge and this Juror are acting like the both do not know anything about Jury being already informed by the Judge).

THE COURT: Okay, I guess you had found out a little bit about what was going on and I think the Juror in the Jury Room had found out something on Thursday afternoon, right?

JUROR: Right. We knew that there was someone on top of the buildings and we looked out and we saw that... I knew that there was a lot of different trials going on here, so I didn't really think too much about it until you instructed us not to listen to the media. So I kind of assumed it was related to our trial. (RT. P. 32:22-25, &

(RT. P. 33:1-8) Mr. Cruz: Yes thank you your honor. Good morning, first of all, ma'am, how much information did you obtain, if you remember on Thursday afternoon? JUROR: Like I said, we knew somebody was on the building, and I don't know, Mr. Cruz: what did you hear about the person, what were the comments that you heard (RT. P. 33:17-25) JUROR: Let's see, "The only thing I remember" is the person had brown hair and was skinny and was wearing jeans

(RT. P. 34:1-3), Mr. Cruz: Did you find out about the name or who the person was... Thursday afternoon when you got home, any information from your family member? ... Any information that...

You got before you left the building with respect to the event of Thursday afternoon? Juror: "NO", Questions: The Jury knew that

- 1). DG's was related to Mr. Cruz's Case by the Same Judge Trial?
- 2). Did the Jury Saw how DG's Tried to Jump out of the Courthouse roof?
- 3). Did Jury Saw DG's Hair, Body, Clothing ect. Through the "Media"
- 4). Could be possible that the Jury also found DG's / State witness Name, The Reason why she did try to jump out of the Courthouse roof?

THE ANSWER: Yes, As the record shows all of these Information.

5). Did also the Judge Instructed the Jury not to read Newspaper, watch TV news, Media information, ect.?, Record Shows that Judge did it; Judge/Court: (Note: Judge Questioning one of the Jurors)

"I want to find out, as you know, there was some "news media" activity relating to this case on Thursday, and when I let you go I asked everybody not to read the newspaper, not to listen to the radio, or listen TV news and so on" (RT. P. 32: 8-13)

"Question: Did the Jury Followed the Judge Instructions, or they didn't follow it? Record on Evidence shows as follows:

Juror: I went to work on Friday, one of the gentlemen tried to say (m) something about the going on downtown I said stop talking, and he said really? I said yeah. Tim under court order. It seemed kind of thick in the room I said if you keep talking a big King County Deputy / Deputy is going to show up and haul you away (RT. P. 39: 22-25 & RT. P. 40: 1-7) (SAME JUROR):

Now on Sunday morning I went to breakfast with my wife, "we got the local paper" she read it to make sure there was nothing that "WENT ON HERE" and so I WAS ABLE TO READ SOME OF THOSE THINGS and I assumed that would be okay

- 1). He read news paper after being Instructed not to
- 2). He also make comment with his wife about the case is very clear as he asked his wife to make sure there was nothing on about the case
- 3). If Juror assured not to know anything about the Incident of DG's and Mr. Cruz's Case, then why he asked his wife to read the newspaper first to make sure nothing was on there? ...

ALSO; APPELLANT, DID CALL FOR JURY MISCONDUCT.

Did the trial court Erred by violating Mr. Cruz's right to a trial by Impartial Jury after the Jury Infiltrated a Intrusive Devices within the Courtroom to learn more about DG's Incident and Mr. Cruz's case?

E. STATEMENT OF THE FACTS

JUROR: So on Thursday afternoon, "WE" were in the Jury room -- and there were some people "WITH ELECTRONIC MEDIA", There was a person associated with the case HERE IN THIS BUILDING THAT WAS ON THE ROOF...

"THREATENING TO JUMP OFF" (RT. P. 40: 4-10)

Question: Did the Judge, DPA-RV, Mr. McGuire the Standby Counsel, AVA the Bailiff, knew about the Intrusive Device within the Courtroom before we even Questioned the Jurors to find out about what do they knew of DG'S and Mr. Cruz's case? Record shows as follows:

JUROR: The Bailiff came in "Several times". At one point we told her that "WE KNEW WHAT WAS GOING ON... SHORTLY AFTER THAT SHE CAME BACK IN AND SAID THE JUDGE INSTRUCTION IS TO TURN OFF ALL "MEDIA".

"EVERYBODY" SHUT EVERYTHING OFF and WE JUST TALKED TO EACH OTHER FOR A WHILE. (RT. P. 41: 18-25). Mr. Cruz: You mentioned that someone get some information in the computer, what was the information obtained?

ADIFFERENT JUROR: I was just somotion... Mr. Cruz: what type of commotion was that, or what was it that the Computer said. JUROR: it just said that somebody went to the top of the building (RT. P. 65: 4-12)

Mr. Cruz: Were you Instructed before leaving the courtroom not to go into any media means, or were you not told? JUROR: Ask the question again

Mr. Cruz: I'll Repeated again, Before living the court house after you met with the Judge, were you "Instructed" not to get any information from any Media?

JUROR: YES. Mr. Cruz: And the reason why you got the information "FROM THE COMPUTER", what was that reason when you were instructed not to do that?

JUROR: "I Did not do it myself". Somebody else in the room did it The INFORMATION..actually Happened early that afternoon "INSIDE THE JURY'S ROOM" AND SOMEBODY READ A PASSAGE (RT. P. 66: 19-25 & RT. P. 67: 1-25). (APPELLANT'S NOTE: Record shows that whole Jury Spend much time with the Intrusive Devices (See, RT. P. 41: 18-25) ... See also RULE 606

NOTE: Within this Jury Misconduct act, there's a lot more to point out, but this previous information is just to give an idea to the Court of Appeals about what was going on during the course of the Trial.

F. ARGUMENT.

The SIXTH Amendment to the U.S. Constitution guarantees that "IN all Criminal Prosecution, the accused shall enjoy right to a Speedy and Public Trial, By an Impartial Jury". Appellable Issue maximize when Juror are improperly Included or Excluded.

NOTE For The Appellant Requested About to / the Change of the Jury and/or Jury Changed and Call for Mistrial See Record on Evidence (RT.P. 6: 1-7) (RT.P. 7: 24-25 & RT.P. 8: 1-13) (RT.P. 9: 10-19) (RT.P. 12: 4-7) (RT.P. 14: 7-9) (RT.P. 21: 6-9), "And So On", See Also the filed Motions which were Deny to the Appellant by Court Total. Thank you.

G. CONCLUSIONS: For the reasons above The Court Of Appeals must Reverse and/or Vacate Mr. Cruz's Conviction.

CAMERAS IN THE COURTROOM ISSUE.

A. INTRODUCTION.

The Next following information was taken from Proceeding November 8, 2010 Record on Evidence shows and reads as follows; Live Introduction.

Mr. Pichove Your honor, according to the Court Rules and I appear to have left my rule book downstairs, but we're going to ask the Court that the Jurors, because they are sitting Jurors, Not to be FILMED... (RT.P. 11: 9-12)

B. ASSIGNMENT OF ERROR.

1. Trial Court Erred by Allowed "CAMERAS/MEDIA" IN THE COURTROOM, allowed Cameras WITHIN THE COURTROOM, was "Prejudice" and The Prejudice was reversible Error. (Record on Evidence from Nov. 8, 2010)

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

1. Did The Court, Trial Court Err by Allowing "CAMERAS/MEDIA", WITHIN THE Courtroom During Mr. Cruz's Trial? To allowed Media to be Filmed Mr. Cruz's Case Due to DS's Previous Incident at the Roof of the Courthouse was Improper, Prejudice, without Cure, was also an Act of Prosecutorial Misconduct Abuse of Governmental Power, Denial of Constitutional Equal Protection To...

The Appellant violating totally Mr. Cruz's Constitutional Rights.

D. STATEMENT OF THE CASE.

Mr. Richey: So I do note that there is a "CAMARA" IN THE "COURTHOUSE"; THE COURT: Right when the Camara showed up, "WE" explained to them that "WE" didn't want them to film the Jurors. "They can film ANYBODY ELSE IN THE COURTHOUSE" but they shouldn't film ANY MEMBER OF THE JURY. (RT. P. 11: 15-20)

THE COURT: Just a couple things... There may be "MORE MEDIA" COVERAGE OF things related to this Trial (P. 100: 2-4); from Nov. 9, 2010 Next Evidence on records shows as follows Richey: The Next matter is regarding filming. "I Have Spoken with the Camara Operator", she's a reporter as well... I Have Spoken with her about the facts that Miss Cabral and Miss well both cabrals are testifying and asked that they not be "FILMED" or PHOTOGRAPHED (RT. P. 57: 13). And So On. There's a lot different Media Issues But Mr. Cruz want to be Briefly.

E. STATEMENT OF THE FACTS

Record on Evidence Shows as follows From December 2, 2010 VOLUME VI.

Mr. Cruz: Just for the record, If there are no objection, you could question the Jury. The reason is because I was informed on two different occasions that yesterday in the afternoon or the Evening "I was on TV"... what appeared was my name, my picture, and it was amplified, and it's possible that it will be done today... it's the third or fourth occasion in which I've appeared on TV since the Denise Gujasa event (RT. P. 692: 6-19); Mr. Cruz: Your Honor, Mr. Richey says he's seen me talking on the TV CAMARAS and it's true. "I don't love it" BUT THERE'S ONE (THINKY) THING, I DIDN'T REQUEST THE CAMARAS TO BE HERE. AND I DIDN'T ASK THEM, EITHER TO HAVE A PICTURE OF MY FACE, AND I think that if anybody had more right to tell them not to do it, it was YOUR HONOR AND Mr. Richey the STATE. could have been -- been prevented from the day that the event on the bridge happened. COULD NOT BE AVOID AND THIS CASE COULD NOT BE PROTECTED EITHER. So I WANTED FOR THAT TO BE CLEAR ON THE RECORDS, THAT I HAVE NOTHING TO DO WITH WHAT THE STATE OR THE GOVERNMENT ALLOWED WITH RESPECT TO THE TV-CAMARAS. (RT. P. 694: 11-23)

* For more information, Important information or CAMARAS IN THE COURTROOM SEE PLEASE: Record Transcript Report from (11/18/2011) as follows: (RT Pgs. 3: 22-25 / 4: 1-4 / From: (Nov. 9, 2010 S.F.E.) Pgs. 5: 17-15 / 6: 3-11 / 6: 16-24 / and So On,

F. ARGUMENT

THE TBA, Standards for fair Trial and free Press provide guidelines for the conduct of Attorneys, Law Enforcement Officers, Judges, and Court personnel in the Criminal Trial, § 3.19 Discriminatory or Selective manner in violation of the Equal Protection clause of the United States Constitution See United States v. Barrios, 501 F.2d 1207 211 (2d Cir. 1974) see also, Vickroy v. Hopkins, 118 U.S. 356, 374, 6 S.Ct. 1064, 1073, 30 L. Ed. 270, 277 (1886), Comments: § 3.23. Counsel should instruct that all "media" inquiries are to be referred to his office. Ignoring the media completely can be as detrimental as "REVEALING" too much, and a hostile press can push the prosecutor to act when he might otherwise have declined prosecution. Statements by Counsel to the press are governed by several standards for "fair Trial" and Free Press § 8-1.1 (3rd Ed. 1992) and the ABA, Standards for the Defense functions⁽⁵²⁾ (52) Place restriction upon extra judicial statements by Counsel, ABA standards for Criminal Justice the Defense function § 4-1.4 (3rd Ed. 1992.) (See also) § 4.03; "FIFTH Amend violated" Under the "FOURTH Amendment" What is "Voluntarily" Exposed to the general public and observable without use of Enhancement Devices from an Unprotected area is not considered part of a person's private affair See Kovag 123 Wash. 2d at 182, 689, P. 2d 593, "Art. 2, Section 22" was also violated, Const. art. 1 § 7, in discussion of protection

CONCLUSIONS

For the reasons above, the Court must Grant a New trial, Reverse and/or vacate Mr Cruz's Conviction.

II. OPENING ARGUMENT

A. INTRODUCTION

Opening Argument Wasn't Transcribed, Appellant Requested in different occasions but All those were Deny it; Opening Argument Not an Evidence was totally Devastated, More Harmful, Prejudice, Improper, without care, than the Closing Argument. Such Closing Argument At Trial by DPA Richey v. McCruz

(Mr. Cruz's Correction: "CLOSING ARGUMENT" IT WAS TRANSCRIBED SORRY.)

They Both were Suppressed, Even After they both were Requested by Mr. Cruz.
In such Closing State Argument, DPA-Richard V. & Opening Arguments:

- (1). Did Attempt to prove Mr. Cruz's Guilt by showing that he associates with a lust and Sexual and Perverted Personal behaviors,
- (2). He also told the Jury that the Abuser of Mr. Cruz, Know how to select his victims happening always behind closed doors, (3). Richey V. applied the law before the jury which a single thing of this man has done was enough to convict Mr. Cruz.
- (4). DPA told the jury that Mr. Cruz had had Sexual Intercourse with Every single State witness (Child's) In this Case. (5). That Mr. Cruz had Intercourse with the witnesses through their anus (6). That Mr. Cruz Usually used was his penis, Mouth, fingers and all different kind of Methods. (7). That Mr. Cruz Also wait until the Minor's victims fall down to sleep by the Influence of the Drug and by the Influence of the Alcohol To Rape his victims, and Many more different thing. All these Prosecutorial Misconduct Was Prejudice, and the prejudice was harmful, Improper, without Reversible Cure, and Prejudice was Reversible Error.

Trial Court Erred by Allowing Prosecutorial Misconduct in Mr. Cruz's case
It was Error for — Independent Reasons:

1. Conviction was obviously Fruit of Prosecutorial Misconduct
2. Prosecutor's Improper Vouching for Closing and Opening Argument
3. Prosecutor Gave his personal Opinions during Closing Argument and Opening Argument
4. Prosecutor Express his own believed before the jury during Opening Argument
5. DPA, Also Disclosed Facts not on Evidence ect. ect. ect. During Opening Arg.

Thus Violated:

1. Mr. Cruz's Right To a fair Trial (Due Process)
2. Equal Protection clause of the 14th Amendment Violated it
3. Sixth and Fourteenth Amendment
4. Article I, Section 22 OF the Washington Constitution act.

(APPELLANT'S NOTE: Mr. Cruz NEEDS Close His "Opening Argument" Requesting The "Opening Argument" One More Time and the Others are Missing as well before Requested, which would be Very Important to Have them for Further Appeals.

B. As A STATEMENT OF THE CASE.

As Statement Of the Case Not on Evidence at this time: DPA-R.V. ecc

Failure To Present at the Stand the State witness Denise Gujosa (DG)
After used her Devastated Information of her case, Showing also Exhibits
which were out of Mr Cruz's and DG's Time, Exhibits which never fulfill
Evidence Rules 1002, 1003; Rule 1001, Is Covered in more detail in Tengland,
5c Wash. Practice: Evidence Law and Practice § 1001.1 To: 1001.5 (5th Edition)
DPA, Used Also Pictures From 1992-1999 I really Believed, where Mr Cruz
Wasn't with them living together Due To Mr. Cruz's Case in 1994 of Betsy and Mielly
Green where Veronica C., Jessica C., Denise Gujosa, Bev Pennington, Fawn Pennington,
Amber Bernet. (Fawn's Pennington Sister) Many From the YWCA also Testified on behalf
of the Defendant's/Appellant in such case, ect. Mr Cruz Ask Court of Appeals to
Check in all these witnesses Statement which were All "Suppressed" by the
State and Never Disclosed Till this Very Day, Check also all the Motions
which were so many, written Request, Trial Pre-hearings ect, which allowed to DPA
To Fabricated Incriminating Statements against Mr Cruz, being not able to Refute it
Due to the Extensive Number of previous Statement Suppressed. This was Harmful,
was Prejudice, was Error Especially when DG's and DPA R.V Did violate the
confrontation Clause / Clause Confrontation by Using / Discussing DG's case during
Almos the whole Trial, failure to Call witnesses at the Stand

Such Prosecutor's Misconduct was Prejudice / IMPROPER / HARMFUL,
For the next and for For Either of - Separate reasons.

1. Prosecutor; Highly Prejudicial Remarks Sexual Abuse from Mr. Cruz to Each
State witnesses before the Jury during the whole Opening Argument, was Error.
2. Prosecutor; Made Opening Arguments, Compounded with other Errors.
3. Prosecutor; Failure to Make Opening and Closing Argument to the Jury
4. Prosecutor; "Failure" to present during Opening and Closing Argument the
Non-Motile Sperm, Medical Exam Confirmation, Neither Gun as a Corpus Delicti
None of picture of it After Mr Cruz being searched and Seizured in different
occasions without a warrant Moreover In Court of Appeal Check in all the
initial statements and for Previous statements, then Court of Appeals "will"
find out that No one, Never either one of the State witnesses had have
Disclosed such "GUN" argument until Shelby Smith, Carole Hoffman, and R. Valer
Took Mr Cruz's Case Over. "Check in Gun Issue Please Ahead".

C. Conclusion.

For the reasons above, the Court must Reverse Mr. Cruz's Conviction of First Degree Assaults and/or Vacate Conviction.

FIREARM / GUN ISSUE, DURING COURSE OF THE TRIAL

A. INTRODUCTION. RECORD SHOWS: THAT,

1. Government During the Course of the Trial, did not sufficient (Present) Evidence to support claim of "Gun" and/or Aggravated Firearm Factor that was a Crime of violence in Support of Jessica's and Veronica's Cabral, when "Gun" Issues, were "Never Disclosed" by Any State witnesses during the Period of time, From: 1993 Through 2009, Until Shelby Smith, Carey Hoffman & Richey Came up, with Such State witnesses Statement till 2010, After they all Three Took 18 Months "To Delivery Discovery" and/or State wit. Statements, For the first time of Mr. Cruz's Incarceration, Since Nov. 13, 2008 Through April 28, 2010, when was in April 28, 2010 that Mr. Cruz Received Such Discovery by Shelby S. and Ann Samuel Before Judge Sharon Armstrong within the Courtroom, after Mr. Cruz had have been Requested it for all this Period of 18. Months, the exact same time which Discovery, Indictments, ect. were all DENY.

B. ASSIGNMENT OF ERROR.

1. Denial OF Conducting by The DPA, and Judge, (C.R. 3.5) to Suppress Gun was Error; Denial OF (C.R. 3.5) To Suppress "YES" was Error. Trial Court Erred by Denial OF (C.R. 3.5), to Suppress Gun Statement and the "YES"

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

1. Did The Trial Court Err by Suppressing and/or not Conducting the (C.R. 3.5) to Suppress the "Gun" Statement, Did the Trial Court Err by not Suppressing the "YES"

D. STATEMENT OF THE CASE

Concerning the C.R. 3.5 This shows record on Evidence from October 26, 2010. Pretrial Proceeding.

Mr. Richey: With regard to the 3.5 I had review those statements again yesterday and at this time I don't think I'm going to bother "conducting a 3.5" ITS just a waste of Everyone's time. We have more important Issues to cover ... I think a 3.5 is not a good use of time so I'm not going to ask the court to conduct that at this time. The Court's Okay. (RT.P. 3:25 & P.A. 1-10)...

CABRAL VERONICA DIRECT

Continuation of Statement of the Case: "GUNT SSJJE" (W/VERONICA CABRAL)

THE NEXT State witness Statement, was Taken from: Jury Trial Proceeding Transcript of "November 3, 2010" which Reads On Evidence as follows:

Richey: Was there another time that your relationship with the defendant had Problems in front of the Children? A: VERONICA: "I don't remember" Exactly when it was, BUT HE PUT A GUN AT MY HEAD and he said he was going to blow my brains out. And I told him if you want to do it, do it, just don't do it in front of my kids. Q: When you lived with the defendant, did he have a gun? A: Yes. Q: And where did he keep it? A: For a while he used to put it sometimes "on the sink in the bathroom and a lot of the times he used to CARRY IT "BEHIND HIS BACK". And other times "I don't know" where he had it. Q: HAD YOU SEEN THE GUN BEFORE THIS DAYS WHEN HE PUT IT TO YOUR HEAD? A: YES. Q: Now, had he ever threatened you with it before that day in front of your kids, children? A: "No". Q: Do you remember what House Happened? A: HE Threatened me with the "GUN" at the "APARTMENT IN BELLEVUE".

Q: Do you recall what led to him doing THAT? A: "I DON'T REMEMBER" But we had an Argument Because IF I used to get upset with him [INAUDIBLE], So He Accused me of Sleeping with Her (RT. P. 49: 6-25 & P. 50: 1-6)

Q: what was the Reaction of the girls when the defendant put a gun to your head? A: They don't say anything "they were probably afraid of him". (RT. P. 50: 10-13).

E. STATEMENT OF THE FACTS.

(Record on Evidence from Nov. 3, 2010 still). (Veronica Cross-Exam, by Cruz)

Q: Did you meet Mr. Carey Huffman, a Public Defender in the State of Washington? A: "I DON'T REMEMBER". Q: Did you have an Interview with Mr. Huffman, related to these incidents? A: What Incidents? Q: The problems you were talking about the Case of Threats, Guns and that Type of thing? (RT. P. 65: 18-25)

A: These Thing Happened until WE WERE LIVING IN BELLEVUE, NOT IN THE HOTEL (R-T P. 66: 1-2). NOTE TO MUCH TO POINT EVERYTHIN OUT, For More DETAILS OF "GUN" INFORMATION See Please Next Pgs As follows:

(From NOVEMBER 9, 2010 Record Shows on Evidence: AT: (RT P. 13: 12-16 / P. 13: 17-25 / 14: 1-6 / P. 14: 7-16 / P. 14: 18-25 & 15: 1-2 / P. 15: 13-17 & 15: 20-25 / ...)

(See Also Pgs) / 16:1-3 / 18:1-10 / 27:7-25 / 28:1-2 / Q: Can you explain how was the "GUN" A: IT WAS AN AUTOMATIC. Q: When you said automatic how do you know it was an automatic? A: BECAUSE YOU HAD TOLD ME. Q: DO YOU REMEMBER WHAT WAS THE CALIBER OF THE "GUN" THAT MR. CRUZ AS YOU SAID SUPPOSEDLY POINTED AT YOU, TO YOUR HEAD? A: I CAN'T KNOW THAT. (RT. P. 27:7-25 & P. 28:1-2)

Q: DO YOU REMEMBER ABOUT THE "GUN", WHICH WAY "IT WAS" THE "COLOR" OR SHAPE, "THE COLOR OR ANYTHING" THAT YOU CAN DESCRIBE ABOUT THE GUN?

A: I CAN'T REMEMBER EXACTLY. WELL, IT WAS "GREY". Q: DO YOU REMEMBER THAT DURING THE INTERVIEW WITH MR. HUFFMAN HAVING SAID TO HIM THAT IT WAS "A WHITE"? A: I CAN'T REMEMBER. Q: DO YOU REMEMBER WHEN MR. HUFFMAN ASKED YOU WHICH SHAPE IT WAS DO YOU REMEMBER YOUR ANSWER?

A: I CAN'T REMEMBER MY ANSWER. Q: DO YOU REMEMBER HAVING MADE A COMMENT THAT THIS WAS A "GUN" SIMILAR "IN A WESTER STYLE" ... Q: WHERE DOES YOUR EXPLANATION ABOUT THIS "GUN" COME FROM? ... A: YOU HAD THE GUN ... YOU HAD IT IN A BLACK CASE AT THAT POINT. Q: NOW DURING THE INTERVIEW THAT YOU HAD RECENTLY IN WEEKS OR DAYS PAST, HOW IS THEN THAT "YOU ARE NOT ABLE TO DESCRIBE THE GUN", THAT SUPPOSEDLY MR. CRUZ, POINTED AT YOUR HEAD ALL THE TIME? AND AS YOU SAID ... (RT. P. 29:5-2A)

(See Also): (RT. P. 29:25 & P. 30:1-11) and (P. 30:21-2A)

"Record shows", That this State witnesses statement is "Contradicted", "Inconsistent", the witness were lack of knowledge; Gun statement was Prejudice Harmful, and Prejudice was error, also without cure. (FROM NOV. 9, 2010) "V.C. BY MR. CRUZ", Record on Evidence in "Further RE. Cross", MR. CRUZ: I want to Repeat your honor,

THE POINTS YOU HAVE TOLD ME THAT YOU HAVE NINE QUESTIONS TO ASK, I'M GOING TO COUNT THEM ... AND THEN WE'RE DONE (RT. P. 60:3-8),

Q: MRS. CABRAL, FOR SOME REASON AT ANY MOMENT DID YOU HEAR MR. CRUZ TELLING JESSICA OR DENISE THAT HE WAS GOING TO BLOW THEIR BRAINS OUT WITH A "GUN"? A: NO, I DID NOT. Q: AT ANY TIME DID JESSICA COMMENT TO YOU ABOUT THAT SUBJECT MATTER? A: NO SHE DID NOT. (RT. P. 60:3-8 & 1-19-25, Same Page.)

Q: AT ANY MOMENT, DID MR. CRUZ THREATEN IN FRONT OF THE WHOLE FAMILY THAT THEY HEARD ABOUT ANY MISTREATMENT OR DEATH THREATS? A: I DO NOT RECALL THAT. Q: AT ANY TIME, MRS. CABRAL, DO YOU KNOW ANYBODY WHO WAS A WITNESS TO MISTREATMENT THAT HAPPENED IN FRONT OF THE FAMILY OR IN FRONT OF ...

Any Person and People that you Remember? A: "No, I do not remember"

Q: Many time do you remember Mr. Cruz with your Childrens? Mr. Richer:

Objection, THE COURT: Overruled A: I Recall You Spanking them once or

Twice. I don't Exactly recall the Dates, Q: At doz Time did you See Mr. Cruz

Pointing a "Gun" To your Children's Head? A: No I do not Recall, Q: The

right of the direct, Mrs. Cabral, Can you tell us if Mr. Cruz was Armed?

A: I do not know, Q: Can you tell if Mr. Cruz was under the influence

of Drugs that night? A: I Cannot, Mr. CRUZ: I Have no Further Questions

THE COURT: Okay Thank You, Ma'am. (R.T.P. 61:1-25 & R.T.P. 62:1-3), NOW:

JESSICA'S C. STATEMENT AT DIRECT CROSS EXAM. OF/ABOUT GUN=

(GUN ISSUE WITH Jessica C., "FROM: NOV. 9, 2010") STATEMENT OF FACTS

Richer: When you realized that it wasn't right, did you go and tell somebody?

A: No. Q: Why not? A: He said if I ever did held the me and kill me and

my family Q: Did he ever do anything to make you Believe that? A: Yes, Yeah

Q: What Did he do? A: He hold a gun to my head. Q: Do you remember what

color the "Gun" was; A: "Silver", Q: what did you think when he hold the "Gun" to

to your head? A: I just Remember being Scared, just being Scared and being

terrified (R.T.P. 83:1-15)

STATEMENT OF THE FACTS, FROM SAME: "NOV. 9, 2010" ON Evidence.

Mr. Cruz: I'm asking if she remember. That's all I'm doing

Jessica don't remember where the first time it started (R.T.P. 86:16-22)

Jessica don't Remember Approximately what year those incidents start happening

and in what place (R.T.P. 89:5-8) "but she guess WEAVER IN REASON" (See Pgs. 89:12-16)

Q: And in what Place if you Remember, A: I was going to Radmond Elementary

Certain Incidents happened at the apartment in Radmond up the hill from Radmond

Elementary... Some happened there [INAUDIBLE], Q: when these incidents... was

anybody there in the Apartment. A: I was there by myself, I don't know where the

others were (R.T.P. 89:5-22); "From Nov. 10, 2010" Record on Evidence, in this

Transcript which is all from (pages 5, Through 44) All what J. Cabral Remember is

as follows; Q: Jessica do you remember if during the Interview Mr. Heffner

asked you where these Events took place? A: I do not Remember what He

asked me, but I remember my answer Q: what did you answer Jessica?

A: I just remember in the "Bathroom" what had happened before I don't know what happened after, But I Remember you holding a gun to my head. Q: and this happened at the Redmond Apartment, A: I just remember you holding a "Gun" to my head and looking in the mirror, and that's what I remember. Don't really remember (INAUDIBLE) (RT. P. 5:11-23) A: I Don't Have an answer I do not know why you want to have a "Gun", A: I don't Remember him taking it out, I don't Remember anything, I just Remember his face in the mirror (RT. P. 7:1-25) A: you have the "Gun" on my head and I just Remember looking in the mirror and you standing behind me that's all I remember me (RT. P. 9:1-23). (Appellate's Note): On the Part of the Interview Jessica Cabral, from page "9" up to page "44" Do not Remember Nothing anymore and the a few things she said she remember are very much the same ones, the over and over again, Jessica C., also During the Cross Examination Transcript from November 10, 2010, she had answered a number of ("73") "I Don't know's" violating the Cross Examination Rule and for Confrontation as state witnesses at the Stand. This also was Prejudice;

D. ARGUMENT.

More Possession of a firearm by a felon does not meet the requirements as a "Crime of Violence" for purposes of Determining status as a career offender. U.S. v. Garcia Cruz, 40 F.3d 986 (9th Cir. 1994) See also U.S. v. Crowell, 997 F.2d 196 (6th Cir. 1993)

E. CONCLUSION.

For the reasons above, the Court must Grant a New Trial Reverse and for vacate Conviction which is fruit of a Double Jeopardy Thank You

(NOTE) Mr. Cruz Inform the Court of Appeals that the whole Issues hasn't been Raise yet, Completely. Still Missing as follows: ⁽¹⁾ Denial of Witnesses On Behalf of Mr. Cruz, ⁽²⁾ Alibi, Concerning Supremas Dices Tecum, ⁽³⁾ Sentencing Challenge, ⁽⁴⁾ State failure to Call State witness to testify, ⁽⁵⁾ Corpus Delicti Issue, ⁽⁶⁾ No witness, Exculpatory witnesses, CDIS, Suppression, etc. Mr. Cruz Did not do all that, Due to the Number of Pages allowed within the Supplemental Affidavit Grounds for Review Thank You So Much, I will Request finish it...