COURT OF APPEALS
→ DIVISION TWO ←
STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II
2015 OCT -8 PM 1:35
STATE OF WASHINGTON

State of Washington, Respondent v. John Garrett Smith, Appellant	Court of Appeals No. 47205-8-II Clark County Superior Court No. 13-1-01035-6 STATEMENT OF ADDITIONAL GROUNDS FOR RELIEF OF JUDGMENT

TABLE OF CONTENTS

ii. Table of Cited Authorities
I. Identity of Moving Party — p.1
II. Statement of Relief Sought — p.1
III. Facts Relevant to Motion — p.1
IV. Grounds for Relief — p.1
A. Rulings Contrary to Evidence — pp.2-8
B. Exculpatory Evidence Withheld by State — pp.9-16
C. Forty-Nine Counts of Impeachable Perjury Disregarded — pp.17-21
D. Abuse of Discretion towards ASPERGER'S SYNDROME — pp.22-24
E. Deceptive, Malicious Slander by State — p.25
F. Failure of Court to Disclose Prior Bias — pp.26-28
G. Illegally-Obtained Evidence — pp.29-35
V. Summary-Conclusion — pp.35-36
Exhibits 1-9

I, John Garrett Smith, have received and reviewed the opening brief prepared by my attorney. Summarized in the enclosed document are the additional grounds for review that are not addressed in that brief.

• NOTE THAT ALL CITATIONS HEREIN FROM THE VERBATIM TRIAL RECORDS ARE EXPRESSED ACCORDING TO THE LEGEND: (RP, VOLUME #, PAGE #, LINE #).

I do hereby testify, under penalty of perjury, that the information presented in this document is true and accurate.

Respectfully Submitted on this 22nd day of September, 2015

[signature]

TABLE of CITED AUTHORITIES

WASHINGTON STATE CASES	page
• St. v. Christensen (102 P.3d 789, 2004)	30, 31, 32
• St. v. Constance (07-1-00843-8, 2011)	11
• Probate of Cresap, Jr. (08-4-003-22-2, 2012)	26
• St. v. Fafford (910 P.2d 447, 1985)	30, 32
• St. v. Faukhouser (D.V.II, 32386-9-II, 2006)	15, 20
• St. v. Gunwall (106 Wn.2d 54, 720)	32
• St. v. Hastings (1992) (WA.S. Ct. 2014)	35
• St. v. Hinton (280 P.3d 476, 169 Wn. App. II, 2012)	30
• St. v. Jackson (150 Wn.2d, 251, P.3d 217, 2003)	32
• St. v. Kipp (179 Wn.2d 718, 317 P.3d 1029, 2014)	35
• St. v. Lindsay & Holmes (326 P.3d 125, 180 Wn.2d 423, 2014)	25
• St. v. O'Neill (148 Wn.2d, 564, 2003)	32
• St. v. Plechner (40526-1-II, 2012)	2, 3
• St. v. Modica (164 Wn.2d 83, 186 P.3d 1062, 2008)	32
• St. v. Powell (126 i Wn.2d at 258)	6
• St. v. Roden (179 Wn.2d 893, 321 P.3d 1183, 2014)	32
• St. v. Simpson (95 Wn.2d 170, 622 P.2d 1199, 1980)	30
• St. v. Smith (155 F.3d 1051, 9th Cir.)	34
• St. v. Spencer (218 P.3d 924, 152 Wn. App 698)	16
• St. v. Thomas (150 Wn.2d 821, 83 P.3d 970, 2004)	6
• St. v. Townsend (147 Wn.2d 674, 2002)	32
• St. v. Young (123, Wn.2d 173, 1994)	30

FEDERAL CASES	page
• Brady v. Maryland (373 US 83, 1963)	9, 16
• Agurs v. US (427 US at 104)	7
• Berger v. US (295, US 78, 88)	7
• Fletcher v. Kalina (93 F.3d 653, 9th Cir, 1996)	16
• Giglio v. US (450, US 150, 1972)	10, 16
• Harlow v. Fitzgerald (457 US 800)	33
• Riley v. California (4th Dist, Div 1, 134 Sct., 2014)	31
• St. v. Dixon, WL 341 (Texas App. Ct. 2010)	30
• Wyoming v. Houghton (526 US @ 300)	35
• US v. Bagley (473 US 667, 1985)	10
• US v. Chapman (524 F.3d 653, 9th Cir. 2008)	16
• US. v. Cioni (649 F.3d 276 (4th Cir. 2011))	30
• US v. Davis (787 F. Supp. 2d, D. Or. 2011)	30
• US v. Finley (477 F.3d, 5th Cir., 2007)	30
• US v. Smith (978 F.2d 171)	30
• US v. Quintana (594 F. Supp. 2d, MD, Fla. 2009)	30
• US v. Zavala (541 F.3d, 5th Cir. 2008)	30
• Barber v. Warden (331, F.2d, 842, 1964)	28
• T. Collins (107 F.3d 1111, 4th Cir., 1997)	28

STATE STATUTES & RULES	page
• RCW 9.73.010, .020, .030, .050, .080	13, 30, 32, 35
• RCW 9A.16.020(6)	27
• RCW 9A.16.090	28
• RCWA 11.90.020(1)	33
• RPC 3.4 Fairness	11, 25
• RPC 8.4 Misconduct	16, 18, 25
• Code of Judicial Conduct (2011) CANONS	
Rule 1.2 [1, 3, 5], 2.3 [1, 5]	17, 18
Rule 2.11 (A) [1, 2, 3, 5]	26, 27
• WA St. Const., Art. I, §3 & §7	10, 13
• WPIC 16.02, 17.02, 18.10, 18.20	24

FEDERAL STATUTES & RULES	page
• 18 USCA §2701	29, 30
• 25 ALR 6th 201 (2007)	30
• 34 CFR 300.8 (c)(1)	22, 23, 24
• Am. Jur. 2d §203	29, 30
• US CODE 18, 2510	35
• US Const., amend. 4 & 14th	10, 13
• Webster's English Dictionary (3d Ed.)	34

I. IDENTITY OF MOVING PARTY

John Garrett Smith, Apellant, asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Appellant respectfully requests the Court of Appeals, Division II, to dismiss with prejudice the charge and conviction of Second Degree Attempted Murder, and to reverse the conviction of Second Degree Assault DV, and remand it to the Superior Court.

III. FACTS RELEVANT TO MOTION

Appellant was charged in Clark Co. Superior Court on June 3, 2013 with 2nd (not 1st) Assault DV following an uncharacteristic incident involving alcohol plus prescription pain medication, with his wife, Sheryl. On December 11, 2013, the Court escalated charges to 1st Attempted Murder based solely upon the contents of a private voice message recorded on the Appellant's cellular phone during the 6-2-13 incident. The recording was divulged to the police without permission or warrant. No life-threatening injuries were ever officially linked to the dispute by qualified personnel, and no weapons were involved. All charges were related to a singular event. On December 3, 2014, Appellant was found guilty via Bench Trial of 2nd Att. Mrdr. and 2nd Assault DV. On January 30, 2015, Appellant, with zero prior felony points, was sentenced to 144 months. Timely notice of appeal followed. Appellant's counsel submitted Appellant's Opening Brief on August 7, 2015 and amended it on Aug. 31, 2015. Due to structural errors in both versions inconsistent with the official record that could tend to mislead the Court, an additional, corrected and accurate Amendment is to be expected in a timely manner.

IV. GROUNDS FOR RELIEF

The Appellant will show in this document that in the trial record, substantial evidence was manifest to warrant dismissal with prejudice of the Attempt. Mrdr. charge and conviction, and a just, unbiased retrial of the assault DV charge and conviction. Specifically, as will be articulated below, the following grounds were manifest:

A. RULINGS WERE CONTRARY TO EVIDENCE,
B. EXCULPATORY EVIDENCE WAS WITHELD & REPLACED BY PERJURY,
C. FORTY-NINE COUNTS OF IMPEACHABLE PERJURY WERE DISREGARDED,
D. DISCRETION WAS ABUSED TOWARDS ASPERGER'S SYNDROME,
E. DECEPTIVE, MALICIOUS SLANDER WAS USED,
F. THE COURT FAILED TO DISCLOSE PRIOR BIAS, and
G. KEY EVIDENCE WAS OBTAINED ILLEGALLY.

IV. A - ERRORS OF LAW / Rulings Contrary to Evidence

The Court ruled that strangulation was the primary means of attempted murder.

In the record of trial there were a total of zero medical or professional testimonies that the complaining witness was ever strangled or lost consciousness on the night of 6-2-13. Zero.

In fact, the only attending medical testimony at the trial came from Elizabeth Crawford, Physician Assistant:

"There were no - she did not have visible injuries to her neck. She did not have restricted range of motion. And based on the MRI results, there were not ligamentous injuries ..." (RP, 2B, 468, 5-12).

Real evidence, including high-precision Magnetic Resonance Imaging analysis in this case proves beyond any doubt that strangulation did not occur, let alone to unconsciousness. Furthermore, the only licensed, Board-certified physician at the trial, Dr. Bruce Bell, M.D., testified that "injuries did not create a probability of death or permanent loss or impairment." (RP, 3A, 698, 2-6).

Now, consider the significant and immediate evidence present in an actual strangulation case.:

"At the scene, the detective noticed that her neck was red and appeared to have finger impressions on it." (State v. Plechner, 40526-1-II (2012)), yet keep in mind that here, there was no record of loss of consciousness.

Given the overwhelming criteria by which the State and Court alleged attempted murder regarding strangulation and unconsciousness, it is especially important that the ONLY testimony regarding these ideas came from the complaining witness 22 (twenty-two) days after the incident, 22 days after she committed an abundance of fraud and theft about which she committed impeachable perjury in the trial record, as verified herein.

In a case with absolutely no forensic evidence supporting strangulation and no mention of it by anyone at the time, consider the core rationale preferred by the State and Court in establishing grounds for attempted murder:

PA: "What he didn't know is if she was still alive" (RP, 3B, 826, 5-6)

PA: "He repeatedly ... strangled her. Then, he left her for dead." (RP, 3B, 826, 7-9)

PA: "He took a substantial step towards killing her by continuously ... strangling her to unconsciousness." (RP, 3B, 826, 21-24)

Judge: "What's clear from the audio recording is ... he says "I'll Kill you", he proceeds to ... strangle her until she loses consciousness." (RP, 827, 1, 21-23)

Judge: "The defendant intended to inflict not only 'great bodily harm' but death on his wife at the time that he began to ... strangle her." (Findings of Fact, p.4, 25-27),

P.A.: "The words alone don't elevate it to an attempted murder, but the words coupled with what follows it does." (RP, 3B, 828, 2-3)

P.A.: "Officers testified strangulations" (RP, 3B, 829, 12-14);

• [NOTE: NO OFFICERS TESTIFIED THIS, EVER.] •

P.A.: "And the strangulation: he strangled her to the point of unconsciousness. He's strangling the life out of her." (RP, 3B, 832, 24 to 833, 1, 6);

Judge: "At some point the argument resulted in Mr. Smith making a conscious decision to ... strangle his wife." (RP, 3B, 853, 35)

P.A.: "He indicates "I will kill you" and then begins ... strangling her to unconsciousness. That is a substantial step to murder." (RP, 3A, 667, 22 to 668, 2);

Judge: "After he formed intent to kill, he then continued to ... strangle her ... and ... apparently at some point, he strangled her into unconsciousness" (RP, 3B, 854, 23 - 855, 3)

On the record, the Appellant objected to these findings that contradicted evidence: "I take responsibility for what actually happened. The inferences of strangulation, of unconsciousness, of continued beatings — I totally disagree that the evidence supports that. It did not happen." (RP, 3B, 890, 18-22). Indeed, all evidence supports this conclusion (especially evidence that was withheld by the State as presented in this document).

So, where did the strangulation idea originate? It is no where to be found in ANY medical records. No attending medical personnel or law enforcement personnel/officials indicated it in any reports. In fact, any records that address it substantiate its non-existence.

How could this be? How could a "typical" strangulation without unconsciousness, hospitalization or requiring medical treatment, as in Plechner, solicit detailed, straightforward neck wound descriptions while an ostensibly "continuous" strangulation to virtual "death" leaves no evidence at all?

• The obvious, true and only valid answer is because it didn't happen. So, how and when does strangulation even enter the case at all?

What was happening during and in the aftermath of the incident, even at the hospital where the complaining witness was apparently dying?

- "She did say that she wanted to complete a business deal at the hospital before she talked to us." - Andy Hamlin, VPD (RP, 2C, 607, 10-11);
- "she said she had business dealings she wanted to complete." - A. Hamlin, VPD (RP, 2C, 609, 19-21).
- "She wanted to delay any further police interview until after a business deal was completed." - S. Aldridge, VPD, (RP, 2C, 653, 9-11);
- "She doesn't report a loss of consciousness when she goes to the hospital" or to anyone, "but now she does. Now, she says, "Oh, he choked me." But that's not the story she gave that night" (or for the next 22 days before she writes the Smith Affidavit from which she testifies). "Because after she liquidates bank deposits, vehicles and assets, she has reasons to exaggerate her symptoms. Because she has a financial motive" that has driven over a year's worth of fraud and theft that emerges in this trial "is perjury - impeachable perjury." defense (RP, 3B, 839, 24-840, 7).
- "There's NO medical evidence" or that "she reported on the night of the event that she was strangled. How do we know that? Because we have testimony from Elizabeth Crawford, Cassy Sappington, Andrew Guckenberg. No reported strangulation. NO STRANGULATION WHATSOEVER." - defense (RP, 3B, 836, 11-14);
- "Not once did she, or anyone, report that night that she'd been strangled." - defense (RP, 3B, 837, 4-5). Not once since that night has ANYONE reported with any proof that she was ever strangled. This is incredible: there was simply no strangulation.

The Appellant's step-daughter acknowledged that her step-Dad called her and said, "Mom's been drinking. I'm going to bed," 10 minutes before the incident. "Garnett testified that

his wife was drunk. The medical evidence is that Sheryl had a Ø.194 BAC three hours later at the hospital from a blood test. She was severely impaired." - defense, (RP, 3B, 838, 12-17);

Contrary to allegations at trial, the Appellant's descriptions were consistent, and the only ones consistent with facts. The arresting officer testified about his first comments:

"He said he was trying to sleep and Sheryl wouldn't leave him alone so he left. He had business meetings in the morning." - Officer Ly Young, VPD (RP, 2C, 511, 20-22);

"Trial exhibits No. 51 and No. 52 are official police photos of the defendant's hands." (RP, 3A, 778) This evidence proves that there were no injuries on the Appellant's hands even remotely commensurate with the "continuous beatings" alleged by the State; and he said, "My hands didn't show beatings. I've watched more fights in jail than the rest of my life combined, and everyone always has broken knuckles or blood. My hands didn't have that. The police even indicated it." (RP, 3B, 891, 9-13);

Furthermore, Officer Young testified, when asked, "Did you learn that Sheryl had an alcohol allergy?", "yes." (RP, 2C, 517, 4-5). Human faces, when beaten, do not swell up in universal, nearly uniform ball-like puffiness such as that visible in the face of Sheryl on 6-2 & 6-3-13 in trial photos No. 5, 6 and 9. Being beaten about the face produces swelling generally only at the site of specific blows. The observable injuries indicate only a few points of significant impact, consistent with the Appellant's testimony below, that could not produce a universal swelling of her entire face. Her photographic appearance is commensurate with an alcohol allergy, or "hives" as aggravated by a Ø.2+ BAC and consistent with initial discovery by Officer Young.

"The last really conscious decision I made that night was to go to bed. I knew that would be the responsible thing. (RP, 3A, 772, 20-22). "She pulled the back of my hair to wake me up. She had done that before. And as I was getting out of bed, I was just saying, "Don't do this now." So I called Skylar [step-daughter] and said "I need your help." (RP, 3A, 774, 3-4). "She pulled the front of my

hair. I remember falling on her and hitting something soft with my head. And my reaction to that is: I hit her next. I fell on her face with my head and I hit her to get her away. It was a right hand and a left hand to hit her and push her away, to get up and get away." (RP, 3A, 776, 7-14) It was a brief reactionary fight, not a prolonged attack or beating! BEFORE the telephone call. The State took it out of context. The statement is, "I'll kill you because you want to kill me." It is not a threat to kill. The statements that precede it are specific: "Look what you made me do!" "Your lip is cut!" She's drunk and screaming at him "Look what you DID to me!" The fight is over and now they're having a screaming match and he's looking for his phone (so he can "just leave"). And he's holding on to the cordless phone. This is NOT an assault that's occurring." [At no time in the voice mail is there anything which sounds like someone being punched or choked]. "This is the argument that occurs AFTER the fight is over. And there was no loss of consciousness. How do we know this? Because she is arguing with him... and on the '911' tape" [within a minute of the voice mail recording], "she says "he just left moments ago." defense- (RP, 3B, 839, 4-19).

• THE key point here is that NO EVIDENCE ANYWHERE OF ANY KIND supports the alleged "continuous beating and strangling to unconsciousness." The sole and yet thoroughly untenable grounds for the attempted murder conviction.

How, then, could a lawyer and judge so boldly profess such action "beyond a reasonable doubt" with such conviction? Is not evidence necessary to prove an element of the crime charged, lest the decision is unduly prejudicial? Abuse of discretion, by its very definition, occurs when a Court's "decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons." (St. v. Thomas, 150 Wn. 2d. 821, 856, 83 P.3d 970 (2004) and St. v. Powell, 126

(Wn.2d at 258). Is not the 1st LAW of criminal investigations that facts must flow from demonstratable evidence, and NOT the other way around, where evidence is modified, fabricated, or invented to fit a set of pre-determined perceptions or goals?" Lawyers, including judges, are ministers of justice whose aim is not to 'win a case', but that justice shall be done." (Berger v. US' 295 US, 78, 88).

"Creating testimony without regard to its uniformity to evidence is an act of MISCONDUCT contrary to this creed of ethics. Basing a conviction on such testimony "involves corruption of the truth-seeking function of the trial process" (Agurs v. US, 427 US at 104). "A conviction obtained by the knowing use of such perjured testimony is fundamentally unfair and MUST be set aside if there is ANY likelihood that the false testimony COULD HAVE affected the judgment..." Considering that the prosecution's opening and closing arguments and the Court's ruling were so heavily based on the strangulation premise that has zero evidenciary foundation, the propagation of such unfair and inaccurate claims constituted trial misconduct that justifies dismissal.

Furthermore, the Court contradicted its own decision that a substantial step was taken to commit murder when it decided that "the harm inflicted by the defendant... did not, in fact, result in a probability of death" (RP, 3A, 5, 6-11), and that the "force or means used in this case does not constitute a force or means likely to produce great bodily harm". Yet the requisite "substantial step" to kill was still somehow taken?

Again, illogic rules with wanton malice. In fact the Appellant's testimony is the ONLY one that matches forensic evidence. He was cognizant enough on 6-2-13 to stop the fight, call his own cellular phone one last time and leave his home BEFORE any remotely murderous acts took place, and while his wife was sufficiently intoxicated (>0.2 BAC) so as to render any accurate memory suspect, at best, per standard alcohol dilution metrics.

In summary, evidence in the trial record mandates that the charge and conviction be dismissed with prejudice for the following simple reasons:

(a) the decision that strangulation occurred at all, let alone during or after a recorded phone call, is ACTUALLY CONTRADICTED by authenticated evidence,

(b) there is no evidence in the record that the Appellant made ANY substantial step towards murdering his wife before, during or after the statement on the voice mail recording, and there "is no act ... being made that would support a charge of attempted murder" (RP, 1, 106, 22-24),

(c) indeed, no mention of strangulation was ever made by anyone involving this case until nearly a month later, after (as testimony referenced in this document verifies) the complaining witness had time to resolve business deals that involved (again, as the record shows as verified in this document) a variety of fraud against, and theft from, the Appellant (see RP 2A, 246; 9, 18-19 and 248, 13-22);

The Court flagrantly abused its discretion by utilizing fabricated testimony about events that overwhelming evidence proves did not happen — on 6-2-13 in the Appellant's home and family, and weighing such impeachable testimony above verifiable facts.

The Attempted Murder charge was overzealous without just cause or merit, and the conviction was a gross error of law contrary to evidence. On these grounds, the conviction for Attempted Murder must be dismissed with prejudice, and the conviction for Assault DV reversed and remanded, in order to reconcile such a blatant error of judgment contrary to foundational tenets of the law, and statutory obligations to a reasonable, fair trial.

IV. B – Withholding of Exculpatory Evidence and Corresponding Presentation of Knowingly Perjured Testimony and Falsified Evidence at Trial

The State withheld extensive exculpatory evidence in violation of US Const. amend. 14, Washington Const. article 1, § 3, and Brady v. Maryland (373, US 83, 83 S.Ct. 1194, 10 L.E.d.2d 215 (1963)), and such "suppression by the prosecution of evidence favorable to an accused . . . violates due process", warranting dismissal of the attempted murder conviction and reversal/remand of the assault conviction.

Furthermore, with respect to each "Brady violation" listed below and verified in the attached Exhibits to this document, the Prosecution compounded their indiscretion, at trial, by presenting knowingly perjured testimony and evidence contradictory to these irrefutable truths. Such flagrant acts of prosecutorial misconduct led to decisions based on unfounded heresy from consequently impeachable witnesses, all resulting in a complete falling down of the judicial process that can only be remedied with dismissal of an untenable conviction.

• Two weeks before trial, while incarcerated at Clark County Jail, the Appellant received long-awaited discovery evidence in the form of 20 data compact discs (CDs) and an 8 gigabyte (GB) memory stick. The Appellant's request to be allowed the necessary equipment to view this data was denied in court on 11-14-14 by Judge Lewis; further, by written order of Prosecuting Attorney Nugent, the Appellant was prohibited from releasing the evidence from his jail property. Post-conviction, in the Spring of 2015, the 'Pandora's Box' of previously suppressed discovery was inadvertantly given to the Appellant's employee, whom he had authorized to pick up his miscellaneous property from the jail after the Appellant was transported to prison.

The contents of the CDs and memory stick were never intended to be received by the Appellant. The un-redacted evidence that was inaccessible to the Appellant before the trial contained alarming quantities of evidence suppressed by the

State that has subsequently led to multiple federal and State investigations of the P.A. and the complaining witness with respect to perjured testimony, fabrication of police reports, medical/insurance fraud, and evidence tampering. Now, the Appellant is presenting just a portion of the most salient records that directly refute testimony from State's witnesses presented in the trial that led directly to the false attempted murder conviction, and obviously represent violations of disclosure codes of conduct (per Brady and Giglio v. U.S., 450, US 150, 1972)). Following is a brief list of the evidences of violation provided as Exhibits No. 1 through 9 in this document, that are then described in more detail in this part, as related to impeachable testimony at trial:

Exhibit No.			Description
1	-	3 pages	Vancouver Police Department Report # V13-8172 (Bates Stamps 39, 40, 41)
2	-	1 page	AMR Medical Report (Bates Stamp 44)
3	-	1 page	Peacehealth Record (Bates Stamp 62)
4	-	1 page	Hematology Report (Bates Stamp 71)
5	-	1 page	Search Warrant
6	-	2 pages	VPD Call Log Report (Bates Stamps 178, 179)
7	-	1 page	Trial Evidence Photo #3 with Fraud Testimony
8	-	1 page	Deposition Record
9	-	1 page	Notification of Evidence Tampering at Trial

The State cannot dispute that the Due Process Clauses of the US Const. amend. 14 and Wash. Const. art. 1, §3, mandate that it disclose exculpatory evidence to the defense, which includes impeachment evidence (see US v. Bagley,

473 US 667, 105 S. Ct. 3375, 87 L. Ed. 481 (1985)). Nor can the State dispute that the categories of evidence that fit within this definition include all of the Exhibits contained herein, and are firmly established as the germane topics in the trial record (e.g. police reports, medical records, search warrants, photographs submitted in trial, depositions, from trial witnesses, etc.) that were unlawfully not disclosed until at, or after, trial.

• More poignant still, relative to this case especially, from St. v. Constance (No. 07-1-00843-8 (2011)), "it is apparent that the Clark County Prosecuting Attorney's office (and agencies with which they work collaboratively, such as the Domestic Violence Prosecution Center) lack an understanding of their obligations under Brady and have intentionally structured their offices so that exculpatory evidence is NOT disclosed prior to trial" (10.3-8, 2011).

The Prosecution compounded and aggravated their Brady violations by proferring knowingly perjured testimony and falsified evidence (further violations of RPC 3.4(b)). The severity of these documented grievances was manifest in a wrongful decision by the Court that was heavily influenced by the State's deception as described for each Exhibit item below:

• Exhibit 1 - FIRSTHAND EYEWITNESS ACCOUNT SANS-STRANGULATION REPORTING

In VPD Report #V13-8172 (Bates Stamps 39, 40, 41), the officer on scene provides a thorough DV incident report for the 6-2-13 event. Note how the specific Box for "STRANGULATION" is left blank on page 1, and on p. 3, the entire 9 box and 8 rendering section mentions NOTHING about strangulation. It is no wonder the State withheld this evidence that unequivocally refutes their false claims.

• Exhibit 2 - Another Medical Report With NO MENTION of Ostensibly Life-Threatening Strangulation

In American Medical Response (AMR) report #4368790 from the 6-2-13 incident, once again there is no mention of any neck injury, but rather the confirmation of "unremarkable", hardly appropriate following "continuous strangulation to unconsciousness" as alleged by the State. Once again, the State withheld proof that debunks their preferred result in flagrant contradiction to law.

- Exhibit 3 – Doctor Confirmation that Any Possible Evidence of Strangulation or Coma Was Simply Not Present

The PeaceHealth Southwest Medical Center report further leaves out ANY indication of strangulation even though there is a pre-assigned box prompting any notes about neck status. Furthermore, the Glasgow Coma Scale record lists the maximum possible response rating of 15. This record again trumps the false allegations of life-threatening strangulation, which explains why the State withheld the record and the witnesses from the Appellant, and the Court.

- Exhibit 4 – Hematology Report provides Scientific Evidence Supporting Root Cause of Bloated Face

The hematology report from SW Washington Medical Center Laboratory Services provides a very telling timeline of Sheryl's White Blood Cell Count. The drop from 14.0 (thousand per microLiter) to under 12 (11.8) in the first 5 hours, followed by restoration to a normal level (7.2) 24 hours later is indicative of a rapid metabolism in response to a food or drug allergy such as gluten in alcohol, NOT recovery from a concussion. Sheryl's observable injuries, not the temporary bloating common to an alcohol reaction, indicate only a few points of impact, consistent with the defendant's testimony, that would not produce the universal facial swelling and launch the white blood cell reaction proven in hematological chemistry. The State withheld exculpatory evidence.

- Exhibit 5 – False Pretense in Search Warrant To Suppress Privacy Law Violation

While the note that the defendant's iPhone was "found in the possession" of the defendant may appear innocuos, it actually sidesteps the fact that the private cellular phone and its private message was really obtained only through "interception" and "divulging" without requisite permission in violation of the US Const. Amend. 4, Wash. Const. art. I, §7 and RCW 9.73 statutes. This is the subject of another part of this document. The State withheld information about their warrant in order to minimize their illegal actions.

- Exhibit 6 – VPD Call Log Report that Verifies the Appellant's Testimony and Renders the State's Invalid

The phone record trumps the complaining witnesses testimony as read from her Smith affidavit in the trial and validates the defendant's. Specifically, and most cogent;

- between 11:02 pm and 11:06 pm, the defendant calls his cellular phone (that had been belligerently taken by his wife while he slept) a total of 4 times (these are the "incoming from Polygentech" calls at 11:02, 11:04, 11:05 and 11:06) and 2 return calls were mysteriously made (at 11:03 and 11:05; "outgoing call to Polygentech").
- Then, in the final and recorded call, the majority of his comments are about "finding his phone so he can leave" (see RP, I, 70-71 and 2A, 204-206), which he does a minute before the '911' call is placed, unequivocal evidence that his wife was not "beaten and choked repeatedly to unconsciousness".

The State withheld these records because they refute the complaining witnesses' testimony about the night of 6-2-13.

• Exhibit 7 – Knowingly Falsified Photographic Evidence Submitted At Trial

Self-taken photographs No. 3 & No. 4 provided at the trial were unequivocally fraudulent. First the State failed to provide them in discovery, and they were only recognized by the Appellant and his family and employees at trial because the complaining witness had electronically distributed these self-taken ("selfie") photos during the weeks following the 6-2-13 event. Eyewitness testimony from 6-7-13 (the date the selfie photos were taken per the electronic date & time stamp on the transmittals but not revealed by the State at trial) is provided herein with Exhibit 7 and confirms the "doctored" nature of the unofficial pictures. Aside from the appearance of impropriety and Rule 8.4 misconduct on the part of the Prosecution with regards to withholding and then proffering photographic evidence created under false pretenses, the more salient result of the fraudulent activity is the establishment of grounds for impeachment of the sole complaining witness. Consider the record:

Sheryl: The photo "was taken by me." (2A, 257, 21)

defense: "Isn't it true that you accented these photographs and added oil to your face?" "And, again, Ms. Smith, did you put oil on your face to highlight the colors of these injuries?" (2A, 258, 7-9 and 2A, 262, 2-4) "Do you have an explanation as to why [your face] is so shiny?" "Isn't it true that you were actually in the hospital for 2 days", not 5?" (2A, 262, 6-7 and 2A, 246, 18-19)

The creased lines at the outer corners of Sheryl's eyes are obvious indications of make-up, not an authentically red or purple bruise that would not delineate along the eye's blinking line. The enclosed testimony testifies to impeachable fraud. How else could "fading", "greenish" bruises be reverted back to vivid red, maroon and purple

between about 3 and 5 pm? The photographs are faked.

- Exhibit 8 – Withheld Deposition Record (along with VPD report Ex. #6) Established Impeachable Perjury by State's Witness and Renders Audio Evidence Tainted

Vancouver Police Department Detective S. Aldridge testified at trial (and on the 3rd line from the top of p. 1/2 of Exhibit #6 of this document) that she was Cellebrite certified (RP 1, 72, 2) to manipulate the audio evidence when, in fact, per the attached sworn deposition (heretofore withheld from the Appellant until recovered post-trial), she testified that she had no such training. [NOTE: VPD has been unable to disprove claims of her perjury by means of any certifications].

This act of lawlessness is important because the original, authentic voice mail was never replayed directly from the phone, only copies (ostensibly of the unaltered original per Aldridge's testimony, see RP 1, 69, 21 and 2A, 206, 21). Disturbingly, at least two different versions of the recording are part of the Court record, each with a different number of lines of transcribed text, and different number of comments by the defendant (using the same Court Transcriptionist). Specifically, on 11-24-14 (RP 1, 70, 2 to 71, 7), only 10 comments by the defendant are included, but on 12-1-14 (RP 2A, 204, 17 to 206, 16) 15 statements are recorded. Neither recording is consistent with versions provided to the defendant through his counsel in the year before trial. How, then, can Aldridge claim both are "exact"? Indeed, they are not, as discussed next in Exhibit 9. Aldridge must be impeached for her perjured testimony about "exact" duplicates of the original when they are clearly not. As in St. v. Fankhauser (32386-9-II, 2006), discrepancies in recorded evidence "warrants dismissal of conviction based on audio tampering and perjury."

• Exhibit 9 - NOTIFICATION OF EVIDENCE TAMPERING AT TRIAL
Per the communication attached as Exhibit No. 9 to this document from a citizen attending the trial, the Clark County Deputy Prosecutor was notified of the discrepancies in the audio evidence presented to the court. The State's disregard of this public notice and willingness to proceed with knowingly perjured testimony and illegitimate evidence that was so pivotal in the Court's decision to convict flagrantly violates Brady due process, and warrants mistrial and dismissal of attempted murder and reverse/remand of the assault conviction.

• "The State's withholding of the medical examinations" and "significant problems with the way the police handled evidence"..." IN ORDER TO ADVANCE DECISIONS CONTRARY TO THESE EVIDENCES" are acts prohibited under Rule 8.4 - MISCONDUCT, including (a) dishonesty, deceit, misrepresentation, (b) prejudice, and (c) moral turpitude, or corruption, all of which establish cause for dismissal (see St. v. Clyde Ray Spencer, 152 Wn. App 698).
Given the imbalanced weight the Court already placed on State's witness testimony in spite of its discontinuity with forensic evidence (both presented at trial as well as withheld from it), the conviction must be dismissed with prejudice because, by all accounts, these acts represent "FLAGRANT PROSECUTORIAL MISCONDUCT" (see US v. Chapman, 524 F.3d 1073, 2008, 9th Cir. AND Fletcher v. Kalina, 93 F.3d 653, 655, 1996, 9th Cir.).
Directly and unequivocally, the brief amount of the total withheld discovery presented herein as Exhibits 1-9 are grounds for impeachment of Sheryl Smith, S. Aldridge and P.A. T. Nugent. Because the Court's decision turned so heavily on "credibility" (RP, 3B, 852, 2-4), there was falsified and unjust prejudice. "The combined impact of all the withheld evidence is sufficient to undermine confidence in the outcome" (Brady + Giglio) and the Court should now, therefore, grant relief by vacating the attempted murder conviction while reversing and remanding the assault conviction so that it may receive unbiased review.

Because the Court's decision was based upon unfounded heresy despite copious evidence, it is fundamentally challenged. Now, proof that the heretical testimony is from impeachable witnesses renders the entire case invalid by all legal measures, Constitutional, statutory and precedential.

IV. C – Repetitive and Striking Disregard for Evidence of Impeachable Perjury

On 3 distinct occassions during trial, the Court ruled to ignore 49 distinct acts of fraudulent perjury worthy of impeachment of State's witnesses. The blatant disregard for integrity in the judicial process was appalling, and warrants reversal of a compromised conviction.

Irrefutable evidence and testimony was provided at the time of trial showing that, immediately after the 6-2-13 incident, while under ostensible coma-like conditions, the Appellant's wife commenced and continues to commit State and federal crimes of usurping, identity theft, business fraud and embezzlement. These acts support financial motivation to exaggerate injuries and have destroyed any possibility of establishing a medical baseline reference for the complaining witness, which has severely skewed the Court's ability to decide justly. The fabrication of injuries expressed at the time of trial are illuminated in this document, including Exhibits No. 1, 2, 3, 4 and 7, and are also manifest as current medical fraud proceedings.

As will be shown in this part, the Court's repeated decisions to ignore these highly relevant acts has created extreme bias against the Appellant by substituting unfounded conjecture for truth.

The Court's decisions to strike the complaining witnesses' blatant impeachable behavior, and to enable continuing deception and fraud, is complicit misconduct against Rule 8.4 statutes that also violate Code of Judicial Conduct (2011) Canon Rules 1.2 [1, 3 & 5] and 2.3 [1 & 5], thereby compromising the trial.

In trial, the Court acknowledged that "if there's evidence that indicates that the witness might have a financial or other incentive to make things up about what happened on that date then they can bring that up because it goes to motive." (RP, 1, 103, 12-18).

"Credibility is always a relevant issue before the Court", especially with respect to impeachability of a witness committing perjury, "and in this particular case, the complaining witness has exaggerated the nature and extent of her injuries. The medical evidence indicated in this case that there was a cut lip, a non-displaced nose fracture, and a concussion. We were able to show the Prosecution in our research that

she actually made the claim for injuries that occurred in September of 2012" so there's no valid baseline for her injuries. "During the defense interview, she lied outright and said she was not involved in any litigation outside this case," but "she is suing in Skamania County for serious injuries, the same type of injuries that she's claiming in this case. So, the nature and extent of her injuries and her ability to testify truthfully about them is relevant. If you have a totally incredible witness that HAS LIED ABOUT EVERYTHING ELSE including the fact that she had prior injuries she's complaining of now, then that discredits her testimony when she says, "I was in a coma-like state from the time I was in the hospital until several months later" when, in fact, she was wheeling and dealing, transferring my client's businesses into her name and taking thousands of dollars out of accounts. So, you can't be in a coma (that NO ONE ELSE EVER KNOWS ABOUT) and suffer this traumatic pain and not be able to function while, at the same time, transferring all of the business assets into your name, take money out of bank accounts, and file a lawsuit vs. some other 3rd party for the same injuries you're (now) claiming my client did." (RP 1, 100; 2-3, 13-24; 101; 9-24; 102, 1). She sues for "severe and permanent personal injuries, medical expenses... loss... suffering" but then she lies while revealing her status quo, fraudulent financial strategy: "There's no insurance, there's no lawsuit" (RP 2A, 332, 21-23), where there is, indeed a lawsuit, even one for the same dubious injuries she is now claiming the Appellant caused and "she does this all while adroitly liquidating 100% of his possessions and assets."

• The quantity of fraud and perjury on the record is so obscenely massive that the following chart is used to concisely tabulate the extent of the manipulation that was ignored by the Court, as will be shown immediately after presenting these 49 counts of perjury from the trial record:

Record Location	Crime	Perjury/Fraud Description
1. RP, 2B, 347, 8-10	Business Theft	ecoASSET formed by Sheryl
2. RP, 2B, 348, 13-16	Cyber Theft	steals identity, IP, plans & web traffic
3. RP, 2B, 357, 11-13	Identity Theft	from T. Garret Smith, PE

[Perjury Table, continued]

RECORD LOCATION	CRIME	PERJURY/FRAUD DESCRIPTION
4. RP, 2B, 357, 1-12	Perjury	her resumé: "I didn't do that"
5. RP, 2B, 349, 14-15	Perjury	press release hoax
6. RP, 2B, 350, 11	Internet Theft	cyberspace fraud
7. RP, 2B, 352, 3-8	Perjury	claims material creation,
8. RP, 2B, 358, 6-10	Fraud	then denies ever seeing it
9. RP, 2B, 354, 21	Theft	"it's mine"
10. RP, 2B, 362, 22	Perjury	lies about Univ. of Phoenix
11. RP, 2B, 353, 14-18	Identity Theft	"I created it"
12. RP, 2B, 353, 23	Business Theft	denial of Interstate Theft
13. RP, 2B, 373, 20	Financial Fraud	perjury
14. RP, 2B, 358, 21-23	Business Theft	admission "yes, I did" steal
15. RP, 2B, 355, 3-4	Identity Theft	theft of resumé
16. RP, 2B, 356, 19-22	Business Fraud	"I co-founded his company"
17. RP, 2B, 364, 5-25	Perjury	"I didn't do that" (her resumé)
18. RP, 2B, 369, 16-18	Business Theft	"I made those materials"
19. RP, 2B, 367, 10	Fraud	"No, I didn't create ecoASSET"
20. RP, 2B, 351, 12, 24	Perjury	"I've never seen this before"
21. RP, 3A, 715, 19	Sabotage/Theft	creates ecoASSET/steals Stewardsmith
22. RP, 3A, 717, 8-10	Business Theft	deceitful takeovers
23. RP, 3A, 717, 23-24	Perjury/Fraud	"IT's impeachment"
24. RP, 3A, 718, 1	Fraud	impersonation as corporate member
25. RP, 3A, 718, 21	IP Theft	threatened patent attorney
26. RP, 3A, 719, 1-2	Theft	false IP claim
27. RP, 3A, 719, 13-16	Cyber Theft	unauthorized website takeover
28. RP, 3A, 719, 22-24	Theft	Fraud v. Stewardsmith
29. RP, 3A, 742, 20	Fraud	harassment of corporate employee
30. RP, 3A, 743, 15	ID Theft	Fraud v. JGS, PE
31. RP, 3A, 743, 24	Fraud	IMPEACHMENT is not collateral
32. RP, 3A, 751, 6-7	Corporate Theft	ecoASSET claims Stewardsmith's plans
33. RP, 3A, 751, 16	Cyber Theft	"it was identical"
34. RP, 3A, 751, 24	Business Theft	verified ecoASSET biz. license
35. RP, 3A, 752, 2, 3, 5	Web Diversion	perjury - not "just a project"
36. RP, 3A, 752, 6-10	Biz Theft	theft of FAX #
37. RP, 3A, 752, 11-13	Libel/Defamation	harassment on-line
38. RP, 3A, 753, 21-22	IP Theft	Stole trademarked info.
39. RP, 3A, 754, 2-10	Web Theft	for Financial Gain
40. RP, 3A, 756, 6-24	Biz Theft	ecoASSET page (trial #59)
41. RP, 3A, 757, 9-12, 18	ID Theft	100% plagerizing
42. RP, 3A, 758, 16-25	Business Theft	new startup w/ same IP

[Perjury Table, continued]

RECORD LOCATION	CRIME	PERJURY/FRAUD DESCRIPTION
43. RP, 3A, 760, 11-16	ID Theft	eco ASSET
44. RP, 3A, 760, 21-24	Fraud	Clean Tech Open
45. RP, 3A, 761, 22-25	Business Theft	plagerized IP
46. RP, 3A, 762, 8	Slander/Fraud	malice for gain
47. RP, 3A, 763, 21-25	Fraud v. Employee	motive for gain
48. RP, 3A, 767, 5-6	Fraud	claims Stewardsmith funding
49. RP, 3A, 768, 13-15	Financial Embezzlement	monetary theft

So, there are at least 49 counts of fraud, identity theft, business theft, intellectual property theft . . ." in the record, each one impeachable perjury" (RP, 3A, 715, 19). But how does the court rule?

(1) Court strikes testimony of Sheryl's business theft, fraud, IP theft as reported with evidence by Chairman of the Board of Directors despite how her action "goes to her motive to fabricate . . . to her exaggeration of her injuries for financial gain". (RP, 3A, 717-8 through 719-4, 720-8). This is judicial misconduct worthy of mistrial & dismissal.

(2) "Evidence which demonstrates improper motive on the part of the alleged victim is admissible under State v. Faukhouser" (Division II, 32386-9-II, 2006). "In this case, the evidence and the testimony shows that the complaining witness does not have CREDIBILITY and is motivated by financial gain to behavior that is criminal in nature." She has committed 49 counts of perjury on the stand in blatant denial of evidence. "Only after 22 days in which she" implemented "theft of business, identity, and intellectual property does she add strangulation and unconsciousness to her testimony that is supported by zero evidence of any kind." These inherently "did not concern a collateral matter" (Faukhouser, 13, 2006). Still, the Court rules: "The financial motive of the witness in this case could be relevant to IMPEACH her. However, the testimony does not meet the definition of relevant information,

so I strike the testimony. I won't consider it." (RP, 3A, 759, 3-19).

HOW CAN 49 COUNTS OF PERJURY NOT BE RELEVANT IN A TRIAL?

Of course, they cannot be irrelevant in any sound courtroom. This is unfiltered judicial misconduct warranting mistrial and dismissal.

(3) "The CEO of my client's company has testified based on personal knowledge" with comprehensive supporting evidence presented in trial "that [Sheryl] would have a substantial financial gain by my client remaining in custody." (RP, 3A, 764; 2-4, 20-23); Still, again, the court decides to turn away: "He hasn't indicated that he has any basis to make most of the statements that he is making. So, I'm striking the testimony." Any judge has a moral obligation to report crimes, yet the court in this case strikes 3 times in abject denial, burial and what can only be interpreted as complicit shielding of at least 49 proven counts of perjury worthy of impeachment in accordance with St. v. Faukhouser and basic ethics.

• In reaching his ultimate decision, the judge displays tyrranical audacity when he declares, "I indicate that I, in general, find Sheryl ... to be more credible than Mr. Smith." (RP, 3B, 852, 2-4). The Court's decision to suppress abundant evidence of ongoing fraud, theft and perjury shows a blatant disregard for all Canons of judicial integrity and must be over-ruled to effect dismissal of this horrifically prejudicial case.

Otherwise, the Court has just set a precedent and endorsed perjury as a means of ensuring the freedom to steal.

Who, then, will watch the watchmen?

IV. D — Abuse of Discretion Towards Asperger's Syndrome

According to the National Autism Society and the US Government, per 34 CFR 300.8(c)(1), "autism significantly affects verbal and non-verbal communication and social interaction, including characteristics of unusual responses to sensory experiences."

Furthermore, "while the high-functioning Autist may have committed a criminal offense, the question of INTENT must be addressed differently than at face value because words spoken by the individual, especially under duress, are often overly exaggerated or out-of-context, and reactions to misperceived events can be extreme beyond actual intent."

The Appellant argues that the Court abused its discretion when it determined that "the evidence... regarding his autism is of minimal use to the court" (RP, 3B, 853, 6-7). The Court callously overlooked the aforementioned textbook and federally-acknowledged trait when so wantonly judging the Appellant's attempt to murder, not based upon truthful, accurate physical evidence, but on a single, highly misunderstood word shouted in the heat-of-the-moment with a belligerent drunk woman who had startled him awake.

The Court did not give fair and reasonable weight to medical testimony that his expressions during the recorded phone call were not threats to kill, but overstated, pedantic commentary of an autistic person exclaiming about the nature of a fight and argument with his intoxicated wife. The Court abused its discretion by minimalizing the effects of autism on speech while under duress and taking the Appellant's statement out of context with the rest of the audio recording (RP, 1, 70, 19.24):

"Do you want to kill me!? Give me back my phone and I'll leave."

The Prosecuting Attorney abused her discretion by mocking the DSM-IV, ADA and World Health Organization-recognized disorder when she scoffed, "AND NOW HE'S AUTISTIC!" (RP 3B, 850, 18). The Prosecutor unprofessionally established unjust and discriminatory prejudice that warrants reversal to a fair trial.

The salient point is that Asperger's Syndrome (High-Functioning Autism) is NOT BEING PROFFERED AS AN EXCUSE

for any physical acts. It is a professional diagnosis that is legally recognized in worldwide jurisdictions and that is far more notorious for benevolent, eccentric achievement than violence. IT EXPLAINS BACKGROUND FOR A HIGHLY MIS-UNDERSTOOD STATEMENT THAT WAS MIS-USED BY THE STATE AND COURT TO PRE-DETERMINE AN INTENT TO COMMIT MURDER IN SPITE OF UNANIMOUS FORENSIC EVIDENCE THAT NO MURDEROUS STEPS ACTUALLY WERE TAKEN BY THE ASPERGIAN.

- This wanton abuse of a solitary comment to support a pre-determined outcome regardless of factual merit was unjust on 2 distinct fronts:
  - 1st, by ignoring an important Code of Federal Regulations about an increasingly prominent and relevant diagnosis that mandates fair discretion, and
  - 2nd, by falsely claiming that substantial steps happened following the statement although evidence clearly refutes that conjecture.

As documented in the trial record, the Aspergian defendant was done fighting by the time of the recording and was trying to end the conflict, to recover his phone and leave. Consider the PAST tense of the following:

"You're bleeding and your lip's cut!" (RP, 1, 70, 12)
"Look what you've done!" (RP, 1, 70, 23)
"Did you see what you did?" (RP, 2A, 204, 23)
"Look what you did!" (RP, 2A, 206, 1)
"Just give me my phone and I'll leave!" (RP, 2A, 70, 24)
"Just give me my phone and I'll go!" (RP, 2A, 205, 23)

No further violence occurs during or after the recording.

In trial testimony from Jeffrey Foster trained psychologist and licensed therapist, and President of the Autism Society of Washington (RP, 3A, 669-670), the following professional commentary is provided:

"Mr. Smith qualifies for "a diagnosis of High-Functioning Autism Spectrum Disorder, a.k.a. Asperger's Syndrome." (RP, 3A, 675, 9-11)

- "It would be typical of an autistic person" to react in "a knee jerk, defensive manner without much thought" if "awakened in a hostile manner by his wife" (RP, 3A, 675, 19-21);
- "It's a quite common persistent challenge in the world of autism therapy ..." that "in rapidly emergent social situations ... they're confused, they become self-protective and ... push people off." (RP, 3A, 676, 1-6);
- "It wasn't a long event, so he was able to pull himself together and leave the residence before the fight continued further." (RP, 3A, 676, 13-16);
- "It's quite common for autists in a ... perceived threat situation to make highly exaggerated threats" and "it is common for people with autism to make impulsive statements in the heat-of-the-moment." (RP, 3A, 677, 7-10);
- "...he was reacting reflexively in a self-protective manner without much ... planning ... or intent." (RP, 3A, 680, 22-24)

A single statement made by an Aspergian was maliciously and prejudiciously manipulated by the Court to compound this misrepresentation by claiming it was an intentional precursor to a substantial step to murder — a substantial step that, in overwhelming accordance with factual evidence presented at trial, never happened.

- While even a reasonable consideration of the 34 C.F.R. attributes of Autism should have rendered the chaos to its just place as a tragic domestic violence incident, the State and Court decided instead to mock and minimize a legally and professionally-recognized evaluation, and then force this case against evidence into an abusive decision.

These actions set dangerous precedents for the autistic population. On behalf of Autists and Aspergians in America and the State of Washington, the only just and civil remedy is dismissal of this wrongful conviction.

IV. E - DECEPTIVE, MALICIOUS SLANDER BY THE PROSECUTING ATTORNEY

On the record (RP, 1, 102, 11-12) in trial proceedings, the Prosecuting Attorney deceptively misled the Court in a malicious effort to disparage the Appellant and mask her client's illegal behavior, all in violation of RPC 3.4(e) and RPC 8.4.

Specifically, when P.A. Nugent said, "Your Honor, we have information that the defendant is being investigated by the Attorney General's office," she was not only attempting to wrongfully defame the Appellant's character, but also covering up the truth that the investigation was actually launched against her client, the complaining witness.

In fact, several stakeholders in the Appellant's businesses that have been lied to and extorted by the Appellant's wife have since filed extensive grievances against Nugent for her trial wrongdoings.

The Prosecting Attorney's behavior flies in the face of RPC 3.4, renders her impeachable, and demands retrial under professional, unbiased conditions. (See St. v. Lindsay and Holmes, 326 P.3d 125, 180 Wn. 2d 423, 2014). "Where the prosecutor's comments ... constituted impermissible personal opinions on defendant's credibility, and defendant was prejudiced by the prosecutor's improper comments," then mistrial is warranted.

Because the court "indicate(d) that" they "find Sheryl Smith... to be more credible than Mr. Smith" (RP, 3B, 852, 2-4) despite the plethora of perjury described in this document, conduct like the P.A.'s in this instance can only be considered prejudicial without just cause against the defendant, thereby inhibiting the administration of justice in this case.

The P.A. was lying and disparaging from her opening statements to her closing arguments. Such blatant acts of perjury are inappropriate in any fair court and warrant reversal and remand of all convictions.

IV. F – Judicial Misconduct Compounded By Court's Failure To Disclose Prior Bias

The presiding judge's impartiality in this case is questionable beyond reason on account of his precedent of ruling in favor of the complaining witness in a recent case that was raised during the trial. The dubious nature of his taciturn failure to disclose his prior involvement with such relevant subject matter violated multiple Codes of Judicial Conduct (2011), including Rule 2.11 (A)[1,2,3,5]. From the record at 28, 365,10 to 367,8:

defense: "Weren't you in fact the subject of a special needs trust?"
P.A.: "I'm going to object. Relevance."
defense: "She testified she didn't have any problems prior to the event."
Judge: "Well, I'll hear the offer of proof and I'll reserve on the objection."
defense: "Isn't it true that you were appointed a special guardian during your Father's probate because you were determined to be a special needs individual?"
witness: "No. It was dispensed as a regular trust." – Sheryl Smith
defense: "Isn't it true that when the probate was filed, you were appointed a special guardian ad litem under a "special needs" trust?"
witness: "And because there was no basis for a special needs, it was dismissed."
defense: "So, you're admitting that you were initially under a special needs trust?"
witness: "until circumstances were [changed]"
judge: "I'll sustain the objection."

Shockingly, it was discovered post-trial that it was the presiding Judge, R. Lewis, who had facilitated those very changes in circumstances in the Estate Probate of Victor Cresap, Jr., the complaining witnesses' Father, in Clark County Case No. 08-4-00303-22-2 in July, 2012.

Judge Lewis' taciturn presence at the Appellant's trial was in direct defiance of Washington's Code of Judicial Conduct (2011), Canon 2, Rule 2.11 regarding DISQUALIFICATION, which states that:

(A) A judge SHALL disqualify himself in ANY proceeding in which the judge's impartiality MIGHT reasonably be questioned including, but not limited to the following circumstances:

[5] A judge SHALL disclose on the record information that the judge believes the parties... MIGHT reasonably consider relevant to a POSSIBLE motion for disqualification, EVEN IF the judge believes there is no basis for disqualification.

Judge Lewis' failure or refusal to disclose his recent role in overturning a mental health order regarding the complaining witness is extraordinarily disturbing in light of 2 facts:

(1) Just weeks before the trial, another judge, S. Collier, had already recused himself from the Appellant's case specifically on account of Judge Collier's familiarity with the complaining witness from the aforementioned prior probate case (see RP. 1, 20, 5-6). If another judge made the professional, ethical decision to recuse himself from the Appellant's criminal case because he had prior knowledge of the complaining witnesses' mental health issues (due to which he had previously passed authority on to Judge Lewis in the said Probate case), then how could it possibly, under any analysis, be honorable or ethical for Judge Lewis NOT to AT LEAST disclose this trend and his direct participation in it, if not his own self-disqualification? Indeed this judicial behavior violated core Codes of Conduct;

(2) Aside from the disregard of the simple tenets of the Code itself, the judge's silence is especially troublesome from the vantage point of RCW 9A.16.020(6). In accordance with this statute and in conjunction with WPIC 16.02 and 17.02, the "burden of proof is on the State to prove beyond clear and reasonable doubt" that the Appellant was not acting to defend himself from a drunk, mentally ill person.

- Prong 1 is undisputed — Sheryl Smith was acutely intoxicated on the evening of 6-2-13 with a BAC greater than 0.2 at the time of the incident (Trial Exh. #37)
- Prong 2 is now alarmingly real — "special needs" designations are not arbitrary. Furthermore, in spite of the pattern of tacit complicitness to things like perjury exhibited in this trial's record, the undisputed

fact is that Sheryl Smith has taken liberty to commit at least 49 counts of perjury under oath (see PERJURY part of this document) while simultaneously moving to the position where she is now also under investigation for medical insurance fraud and for falsifying injury reports. Although Clark County Superior Court officials, for what reason(s) may never be revealed, deem her exempt from basic laws, other agencies enforce more authentic standards on conduct.

Nevertheless, in light of all of these, at best questionable if not felonious behaviors, the mental health stability of the complaining witness must be questioned as it was in her Father's Probate.

RCW 9A.16.090 must, then, by virtue of the severe intoxication and questionable mental capacity of the complaining witness combined with the startled incognizance of the defendant on the night of 6-2-13, lead to the fair dismissal with prejudice of any further exaggerated and unfounded claims of intent to murder.

And the myriad prejudices and disregard for ethical codes exhibited by the presiding judge must lead to at least his dismissal from this case. Anything less will perpetuate the ongoing failure to manifest reasonable justice.

- Consider Tean Collins (107 F.3d, 1111, 4th Cir., 3-797) in reference to Barbee v. Warden (331 F.2d 842, 4th Cir 1964):

> "More than 3 decades ago, we held that "failure of police to disclose impeachment evidence involves a 'question of fundamental fairness rising to the level of constitutional due process which cannot be brushed aside as mere error in evidentiary ruling."

If the police's failure to disclose vidates "due process" and challenges "fundamental fairness", then how much more troublesome when a judge "brushes aside" core judicial canons. If the boundary stones are this moveable, does it not undermine the foundation of the law itself?

IV. G - ILLEGALITY OF OBTAINED EVIDENCE RENDERING IT INADMISSIBLE

The topic of data retrieved from a cellular phone is a current affair of high legal interest. It is rich with federal and State precedents that echo and provide ballast for Privacy Laws that were seminal to our nation's origins (as the 4th Amend. to the US Const.) and bolstered in our State's (as Art. I, §7 and the "Privacy Act" of RCW 9.73) that further establishes the protection of private information for all citizens.

The Appellant's Opening Brief employs a stellar lineup of case law (Roden, Kipp, Christensen, Eaford and Porter) that must result in the dismissal of the Attempted Murder Charge if the integrity of the Privacy Act is to be upheld.

The purpose of this part of the Appellant's S.A.G. is to present in a complementary manner that this factor is, ultimately, really not about electronic messaging or voice mail recordings, as poignant as protection of the cellular phone is in modern society. It is much moreso simply about the privacy of ~~any~~ "sealed" message whose protection was first assured for the telegram (RCW 9.73.010), then postal mail (9.73.020) and, most recently, electronic communications (9.73.030).

For Kipp, the ACLU of WA provided, "Since 1909, the Privacy Act has protected sealed messages, letters and telegrams... in 1967 the legislature amended the act in order to keep pace with the changing nature of electronic communications, and in recognition of the fact that there was no law [then] that prevented EAVESDROPPING." (Wn.App. Div. II 2012)

The core of the State's Privacy Law framed in 1967 before the advent of cellular, text, cordless, internet or electronic mail technologies is unequivocally to bolster the federal and even more restrictive State laws. As RCW 9.73.030 states in its very title, "it is unlawful for ANYONE to DIVULGE private communications.

Relative to this case, VOICE MESSAGES are specifically protected via Am. Jur. 2d Telecommunications §203 - Accessing Voice Mail, and 18 USCA §2701 - Unlawful Access

to Stored Communications (see US v. Ciovi, 649 F.3d 276 (4th Cir. 2011)) where a conviction was for "illegally accessing unopened voicemails." Furthermore, in St. v. Dixon, WL 3419231 (Tex. App. Corpus Christi, 2010), the Court found that there was no "legally justifiable reason to search the cell phone because it was taken by another individual without the defendant's permission." Expectation of privacy in cell phones is further established in 25 A.L.R. 6th 201 (2007) and US v. Finley (477 F.3d 250, 72, 5th Cir. (2007) @ 259) which states that the defendant "should have reasonably expected to be free from intrusion from BOTH the government AND the general public".

• THESE RELEVANT PRECEDENTS ARE JUST THE TIP OF THE ICEBERG.

Washington's law and cases like St. v. Faford (910 P.2d 447) establish any transmission of sound as "divulging", as does US v. Smith (978 F.2d 171). If "eavesdropping" to overhear a conversation on a speaker phone as in St. v. Christensen (102 P.3d 789) is an inadmissible interception, then how can the deliberate, intentional opening and intercepting of a private voice mail (sealed by means of requisite button pressing in order to activate machine code to access and hear it) be admissible? Indeed, it cannot.

When that message was then "divulged" without permission by re-playing it for the warrantless police, RCW 9.73.030 violations only compounded. By virtue of the steps required to access any information stored on a private cellular phone, that information is even more protected than otherwise possibly accessible information (see Riley v. California, 4th Dist., Div. One, No. 13132, 2014, 134 S.Ct. 2473, 2014).

"Several lower courts have held that people have an expectation of privacy under the 4th Amendment in the content stored on their cell phones" (St. v. Hinton, No. 87663-1, W.S.Ct., 2014; see US v. Zavala, 541 F.3d 562, 577 (5th Cir. 2008), US v. Finley, 477 F.3d 250, 259 (5th Cir. 2007), US v. Davis, 787 F. Supp. 2d 1165, 1170 (D.Or. 2011), US v. Quintana, 594 F. Supp. 2d 1291, 1299 (M.D. Fla, 2009).

"WE RESOLVE THIS CASE UNDER OUR STATE CONSTITUTION, WHICH CLEARLY RECOGNIZES AN INDIVIDUAL'S RIGHT TO PRIVACY WITH NO EXPRESS LIMITATIONS" (St. v. Young, 123, Wn.2d 173, 180, 867 P.2d, 593 (1994), quoting St. v. Simpson, 95 Wn.2d 170, 178, 622 P.2d 1199 (1980)).

"It is well established that Article I, §7 is qualitatively different from the 4th Amendment and provides greater protections (Id., St. v. O'Neill, 148 Wn.2d 564, 584, 62 P.3d, 489 (2003); St. v. Jackson, 150 Wn.2d 251, 259, 76 P.3d, 217 (2003). See also St. v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986))." Washington's Privacy Act, Chapter 9.73 RCW, which prohibits ANYONE not operating under a court order from intercepting... private communications without the consent of all parties, is one of the most restrictive surveillance laws ever promulgated" (St. v. Roden, No. 87669-0, slip. op. at 3, Wash. Feb. 27, 2014, citing St. v. Faford, 128 Wn.2d 476, 481, 910 P.2d 447 (1996)).

In fact, "intercepting... telephone calls violates the Privacy Act" (St. v. Modica, 164 Wn.2d 83, 186 P.3d 1062 (2008). "Our legislature used sweeping language to protect personal conversations from intrusion. See RCW 9.73.030(1)(a) protecting private communication transmitted by telephone, telegraph, radio, or other device. Based on that broad language, this Court has consistently extended the statutory privacy in the context of new communications technology." (See Faford, 128 Wn.2d 476 (cordless phone); Christensen, 153 Wn.2d 186 (same); St. v. Townsend, 147 Wn.2d 674, 57 P.3d 255 (2002)(e-mails).

In this case, the Appellant's phone was taken from him while he slept. He had not forfeited any privacy expectation, but to the contrary, the calls placed to his own cellular phone were, in fact, cogent to the restoration of the very right to privacy that had been violated in the taking of his phone, and would be violated again early the next morning by the deliberate intrusion into his voice mail box. A private citizen's private communication on his private communication device was invaded, contrary to well-established and purposeful state law on several relevant layers both mechanically and electronically, manually taken and digitally entered, without permission.

Any evidence derived from this unlawful search without warrant, exception or consent is "fruit of the poisonous tree", and the subsequent conviction dependent on it must be overturned.

The following application of standard logic to the trial

record verifies how the Court's decision to allow use of the voice message strains the theory and intent of law and leads to absurd and chaotic results:

Referencing RP 2A, A, 166-169, in this case, the Court abused discretion by first deeming that the recording was not private, and, therefore, not interceptable or divulgable. Comments proferred by the P.A. included "This wasn't a private conversation" (RP 2A, 168, 11-12), and by the judge, "If Mr. Smith had in fact called his phone, or any phone, and left a voice mail message, then I would analyze the situation differently." Is not the hyper-technical absurdity of this anti-logic opposing the very heart of the Privacy Act? If the phone was not called then how could it have made and stored a recording able to be replayed? The claims of "inadvertancy" are untenable additions to the RCW and Constitutional laws that are simply not there. And, as the previously withheld phone log in Exhibit 6 of this document shows, the Appellant was very intentionally calling his phone, 4 times in 4 minutes. This is a simple call to sense and reason; to a "PLAIN READING" (Christensen) of the Privacy Act.

The Court ruled that because the voice recording was inadvertant, in the chaos of the melee, it was somehow an illegitimate recording, even though no where does ANY law (State or Federal) delineate the nature, source or intent of a private recording. The Appellant called his own phone that was taken by his drunk wife in order to locate it in the privacy of his own house, so that he could get it back "and leave" the home. Ironically, at 2A, 169, 10-15 RP, the Court contradicts itself by then acknowledging the privacy of the communication, but then somehow claims that it wasn't intercepted: "The private conversation also may have been recorded by the device but that private conversation was not being electronically intercepted ... by someone else, which is the definition of what is illegal under 9.73.030. The fact that someone later heard this inadvertant recording is not, in fact, the sort of thing the Privacy Act covers." So, the recording did, after all, contain private conversation, but it wasn't intercepted? Yet, somehow, the unauthorized opening of the iPhone to access, listen to, and then divulge the message was not, as Webster's defines, "OVERHEARING" it? (Webster's English Dictionary, 3rd Ed.)

HOW MUCH MORE CONTRARY TO ELEMENTARY DEFINITIONS OF "INTERCEPT" COULD THIS POSSIBLY BE? And how much more contrary to established interpretation of the Law could it be?

Would not our legal system collapse on itself under such wanton manipulation of even our own language? It is inappropriate to add restrictive, and especially subjective language that is not present in the law.

The Judge's logic would have the court believe that privacy is ONLY protected if the purveyor were employed or engaged by the State; however, that is NOT the intent of the Framers. The expectation of privacy under Wash. statute RCW 9.73 applies to ANYONE, and ALL personal information on ALL personal property, including, but not limited to, telegrams, printed mail, electronic mail, voice mail, video mail, and all other forms of personal, private communication related to prevailing technologies at the time of the events. NOTHING in either State or federal constitutions creates caveats of exemption pertaining to communication media, and such exclusion at this time for such a ubiquitous modem as voicemail is inconsistent and incongruous with every core, germane, seminal and most salient intent of the law.

In US Code 18,2510, "intercept" means the oral or other acquisition of the contents of ANY wire, electronic or oral communication through ANY means. This is consistent with Webster's definition of "intercept": "to see or overhear a message".

By every conceivable and rational definition, this was a private conversation in a private home about a private subject matter. "A private home is normally afforded maximum privacy protection" (St. v. Hastings (1992). Undisputed facts establish that the argument took place inside a private residence while the Appellant and his wife were home alone. "In determining whether a communication is "private", factors bearing on the reasonableness of the privacy expectation include duration, subject matter of the communication, and the location"... (St. v. Kipp, 179 Wn.2d 718, 317 P.3d, 1029 (2014)). A "reasonable expectation of privacy" is afforded against a violation of "clearly established statutory or constitutional rights of which a reasonable person would have known" (Wyoming v. Houghton, 526 US @ 300 and Harlow v. Fitzgerald, 457 US 800).

The Appellant's adult step-daughter had no permission or prior precedent to enter his mobile phone — per Christensen, "under a plain reading of the Telecommunication Privacy Act, a ... domestic ... exception could NOT be engrafted into the statute." In

Fafford, the Court "held that the defendant's neighbors violated the Privacy Act by EAVESDROPPING on a cordless telephone conversation and that any evidence gained through this violation was inadmissible ... we held the defendants had "reasonable expectation of privacy and that both the recordings and any information gathered from them should have been suppressed."

Whether or not an owner intentionally or inadvertantly engages recording devices has no bearing on the lawful expectation of privacy. From Christensen, "The statutory analysis favors privacy ... the term 'private' is to be given its ordinary and usual meaning — belonging to oneself ... SECRET ... intended only for the persons involved ... holding a confidential relationship to something ... a secret message, a private message, NOT OPEN TO THE PUBLIC."

And, in St. v. Smith (155 F.3d 1051, 9th Circuit), "an interception is the unlawful accessing of a private communication that's electronically stored." Consider the trial record:

"How did you get the phone that belonged to Garrett?" - defense
"The officer handed it over to me." - Step Daughter -
"And so you went into his phone and accessed his voicemail?"
"Yes."
"And he didn't give you permission to do that, did he?"
"No."
"And you weren't a party to the conversation, were you?"
"No."
"And so when you listened to that recording, you didn't have authority ... because you didn't have his permission, did you?"
"I guess not."
"Did you tell the officer what was on the phone before you handed it to [her]?"
"Yes."
"And you told [her] the fight had been captured on the phone?"
"Yes."
"And then you handed the phone to the officer?"
"Yes."
"And the officer played it?"
"Yes."
"The officer kept the phone after that?"
"Yes." @ (RP, 2B, 427, 15-24 & 428, 1-23)

Voice mails, like e-mails, have a heightened sense of security over text messages because a user must bypass several safeguards - they require more intrusion because they are "sealed". This was a private message simply because it was on a private cellular phone. PERIOD. It was clearly intercepted when an unauthorized adult pressed buttons to enter it and overhear it, to eavesdrop intentionally. It was then divulged contrary to Washington State law when its contents were replayed without the Appellant's consent and without a search warrant.

The Appellant's step-daughter took multiple device-accessing steps to "overhear" an "electronically stored", "sealed" and "private" message, and then "divulged" it to police, violating ALL PRACTICAL elements of RCW 9.73.030. Therefore, under statute 9.73.050, the recording cannot be used in any lawful trial.

The court's position is thoroughly untenable. It's hyper-technical weaving through RCW 9.73.030 is evident, yet it is inappropriate to wantonly insert intentions into the law that simply aren't there, that are inconsistent with copious case precedent, and are fundamentally contrary to foundational principles. The court has attempted to define a contour that comports with neither statutory, nor current case law.

In light of the singular and mammoth weight the recording had in the charging and convicting of attempted murder, the Court's decision to use it against all legal prudence warrants dismissal with haste and with prejudice.

V. SUMMARY - CONCLUSION

The cumulative error of the legal breeches from the trial record described in this S.A.G. is overwhelming against the Appellant's constitutional right to justice in a fair trial.

- 1st, there was a decision that specific murderous actions were taken (strangulation, beatings to unconsciousness) for which there is simply no element of forensic evidence. This was unfiltered error of law that must be over-ruled for the sake of integrity of the judicial process.
- 2nd, the State and the Court manifest their intent on murderous conviction by thoroughly twisting the context of ONE WORD spoken

under duress by a High-Functioning Artist, who seeks true accountability.

• 3rd, that duress was from a severely intoxicated person with a documented history of mental instability, a history that the Court is intimately familiar with and had an ethical duty to disclose, but boldly chose to conceal. This direct breech of moral codes of conduct must raise questions about the integrity of the entire trial. This was not a case of ignoring collateral to convict the guilty - it was a case of ignoring fact and evidence in order to radically over-convict in spite of the truth. And laws were broken to get there.

• 4th, at least 49 counts of perjury about interstate corporate theft, ID theft of a licensed Professional Engineer with timely, poignant intellectual property, embezzlement of hundreds of thousands in cash, luxury vehicles, and assets - all which served as motivation to outright lie about injuries and events that ostensibly occurred to cause them, with absolutely no regard for medical, electronic, or photographic evidence that unequivocally verifies a completely different story. As described in this S.A.G., the trial record testifies clearly to the veracity of these claims. Despite the State's relentless pursuit to cloud the trial with subjective opinion that constantly contradicts objective facts, the Court's almost inconceivable trio of decisions to grant a free pass to impeachable perjury and blatant fraud, the truth revealed at the trial on record remains unchanged.

• 5th, the unlawful interception and divulgement of a private, electronically-stored communication in violation of multiple Privacy Laws cannot change the truth.

• 6th, numerous 'Brady' violations where a corrupted prosecution illegally witheld exculpatory evidence cannot change the truth.

• 7th, the prosecution's numerous attempts on the record to disparage the Appellant contrary to ethical rules of professional conduct cannot change the truth.

The Court's abusive refusal to contend with impeachable perjury in the courtroom cannot change the truth.

The truth is simple: the Appellant momentarily mismanaged a chaotic domestic confrontation, but murder was never intended, nor was it attempted, nor was any evidence of it ever manifest in any way, before, during or after 6-2-13.

Mitigation is not required because the crime was never committed. That is the truthful foundation from which the charge and conviction of attempted murder can only, and must only, be dismissed with prejudice and with prudent haste.

JGS SAG

VANCOUVER POLICE DEPARTMENT

Case Number: V13-8172

Crime Classification: ASSAULT II-DV

DOMESTIC VIOLENCE REPORT

2013 JUN -4 A 9:34
CLARK COUNTY SHERIFF'S DEPARTMENT

Date/Time Occurred: 6/2/2013 Time Reported: 2315

Victim's Name: Sheryl S. Smith

Victim's Cell # 360-619-8185 Victim's Work #

Parent/Friend Contact Phone Number: SKylar Williams (daughter) 360-977-0934

First Person told about incident (not 911/police) Name/phone

Suspect's Name: John Garrett Smith

CRIME DESCRIPTION / EVIDENCE

VICTIM

- ☐ Angry
- ☐ Apologetic
- ☑ Crying
- ☐ Fearful
- ☐ Hysterical
- ☐ Calm
- ☐ Afraid
- ☐ Irrational
- ☐ Nervous
- ☐ Threatening
- ☐ Other: Explain

- ☑ Complain of Pain
- ☐ Bruise(s)
- ☐ Abrasion(s)
- ☑ Minor Cut(s)
- ☐ Laceration(s)
- ☐ Fracture(s)
- ☐ Concussion(s)
- ☑ Other: Explain
- ☐ **Strangulation** (complete questions bottom of page 3)

Severe swelling in face and cheeks

SUSPECT

- ☐ Angry
- ☐ Apologetic
- ☐ Crying
- ☐ Fearful
- ☐ Hysterical
- ☑ Calm
- ☐ Afraid
- ☐ Irrational
- ☐ Nervous
- ☐ Threatening
- ☑ Other: Explain

- ☐ Complain of Pain
- ☐ Bruise(s)
- ☐ Abrasion(s)
- ☐ Minor Cut(s)
- ☐ Laceration(s)
- ☐ Fracture(s)
- ☐ Concussion(s)
- ☐ Other: Explain
- ☐ **On Probation/Parole**
- ☐ **Probation Notified**

concerned about victim & step daughter

MEDICAL TREATMENT

- ☐ None
- ☐ Refused Medical Aid
- ☐ Paramedics / Unit Number
- ☐ Name(s) / ID Numbers:

- ☑ Taken to Hospital
- ☑ Hospital: PeaceHealth
- ☐ Will Seek Own Doctor, Hospital or Clinic:
- ☐ Physician Attending:

PHYSICAL EVIDENCE

Photos of Scene	☑ Yes ☐ No
Photos of Victim's Injuries	☑ Yes ☐ No
☐ Referred for Follow-up	
Photos of Suspect's Injuries	☐ Yes ☑ No
Weapon Used During Incident	☐ Yes ☑ No
Type of Weapon Used	
Weapon(s) Impounded	☐ Yes ☑ No
Firearm(s) Impounded for Safety	☐ Yes ☑ No
Drugs / Alcohol Involved	☐ Yes ☐ No
Victim Drugs ☐ Yes ☑ No / Dk	☑ Yes ☐ No
Suspect Drugs ☐ Yes ☑ No / Dk	☐ Yes ☑ No
Reporting Person:	☑ Victim ☐ Suspect
☐ Other	

V13-8172

39

Revised: 09/11

Exhibit 1, p. 1/3

WITNESSES

Witnesses Present During Domestic Violence? ☐ Yes ☑ No
Statement(s) Taken? ☐ Yes ☑ No
Elders Present During Domestic Violence ☐ Yes ☑ No
Children Present During Domestic Violence? ☐ Yes ☑ No Number present____Ages_____
Statement(s) Taken? ☐ Yes ☑ No
Witness Info. Listed In Continuation Report? ☐ Yes ☑ No

RELATIONSHIP BETWEEN VICTIM AND SUSPECT

Mark all that apply:

☐ Adult Relative ☑ Spouse ☐ Former Spouse ☐ Cohabitants
☐ Dating / Engaged ☐ Former Dating ☐ Same Sex ☐ Emancipated Minor
☐ Parent of Child from Relationship

Length of Relationship 2 Year(s), _____Month(s)
If Applicable, Date Relationship Ended:_____

PRIOR HISTORY

Prior History of Domestic Violence? ☐ Yes ☑ No
Prior History of Violence Documented? ☐ Yes ☑ No
☐ Police Report(s)
☐ Medical Report(s)
☐ Other_____

COURT ORDERS: ☐ Yes ☑ No
☐ Current ☐ Expired ☐ Served ☐ Pending Service
TYPE: ☐ No Contact Order ☐ Protection Order ☐ Other

Issuing Jurisdiction:_____
Order Number:_____ Expiration Date:_____

VICTIM GIVEN:

COMPLETED DOCUMENTS ATTACHED:
☐ Smith Affidavit ☐ Medical Release Form

CHILD PROTECTION SERVICES 993-7901 (**after hours 1-800-562-5624 / Press 9 for Police**)
☐ Needed ☐ Notified

ADULT PROTECTIVE SERVICES (1-877-734-6277)
☐ Needed ☐ Notified

Reporting Officer:	PSN:	DATE:
Wrefong	1455	6/3/2013

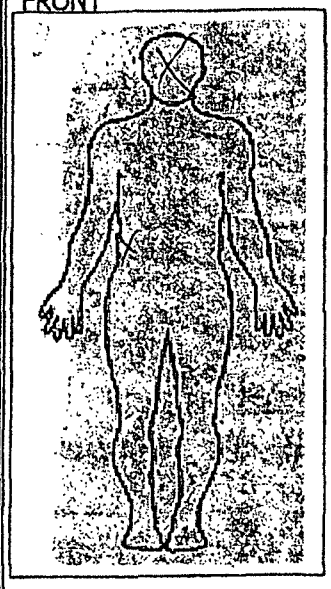
VI13-8172

Exhibit 1, p. 2/3

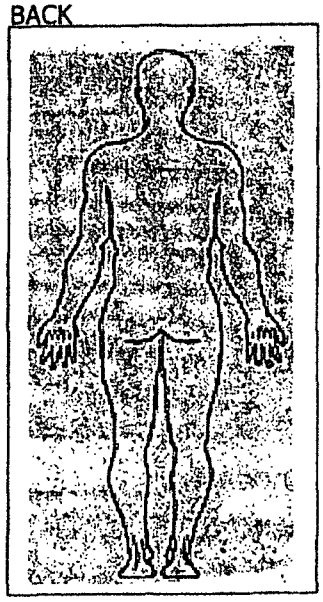
PLEASE DRAW ON DIAGRAM(S) THE LOCATION OF ANY INJURIES

VICTIM'S INJURIES

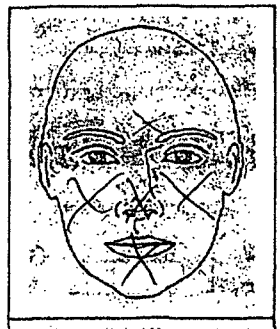
FRONT



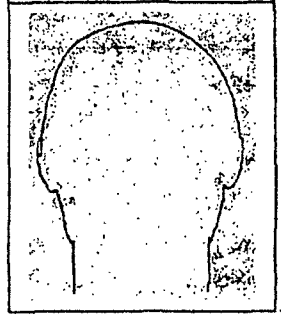
BACK



HEAD FRONT



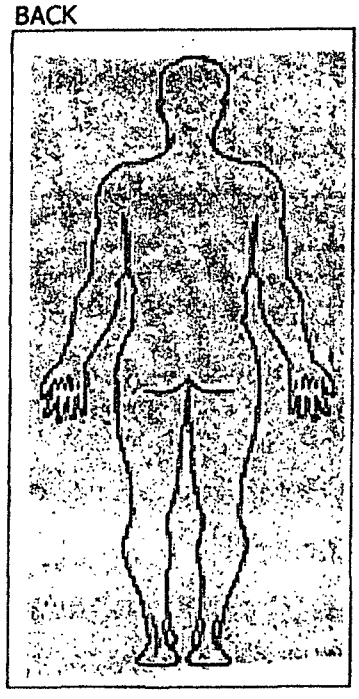
HEAD BACK



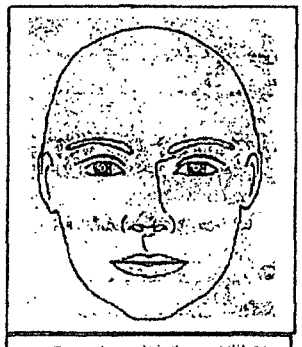
SUSPECT'S INJURIES

FRONT

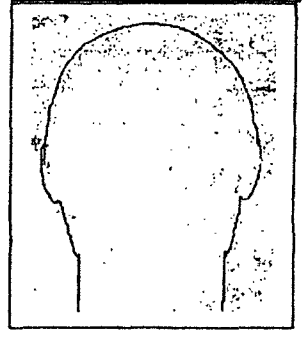
BACK



HEAD FRONT



HEAD BACK



Strangulation Questions for Victim and/or Officer Observations

- ☐ Difficulty/Pain Swallowing
- ☐ Change in Normal Voice
- ☐ Uncontrolled Urination/Defecation
- ☐ Petechiae (eyes, cheeks, behind ears)
- ☐ Loss of Consciousness
- ☐ Difficulty Breathing afterwards
- ☐ Vision problems during or after
- ☐ Loss of Breath during or after
- ☐ Visible Injury to neck/throat/behind ears

V13-81744

Exhibit 1, p. 3/3

AMERICAN MEDICAL RESPONSE
CLARK OPERATIONS
Patient Care Report

Case #: 4368790 **Unit ID:** 1618 **Date:** 6/2/2013

Dispatch Information 4368790

13150189

Time Call Received:	23:21:11	**Disposition:**	Transported-To Hospital
Time Dispatched:	23:21:17	**From Location:**	
Time Enroute:	23:22:10		
Time at Scene:	23:34:55		14607 SE Rivershore Dr, Vancouver, WA 98662
Time at Pt Side:	23:36:00	**Incident Location Type:**	Home/Residence
		To Location:	
Time Transporting:	23:46:33		PEACE HEALTH SOUTHWEST MEDICAL CENTER
Time Transport Arrived:	23:54:16		
Time Available:	00:00:00		400 NE Mother Joseph Pl, Vancouver, WA 98664
Final Response Mode:	No Lights and Siren	**Destination Type:**	
Final Transport Mode:	Lights and Siren	**Nature of Call:**	483 Assault_Unk Inj

Responder On Scene: Vancouver Fire .
ALS Assessment: AMR Paramedic

Patient Demographics 4368790

Name:	williams, cheryl	**DOB:**	1/4/1963
Address:	14607 SE Rivershore Dr	**Age:**	50 years
City, State, Zip:	Vancouver, WA 98662		
Phone:	**Cell:**	**Gender:**	Female
SSN:	xxxx-xx-	**Weight:**	80 Kg
	1 of 1		
		Ethnicity:	Caucasian

Physical Findings 4368790

Head	Head: Bleeding - Controlled
	Head: Edema/Swelling - Traumatic
	Head: Raccoon Eyes
Neck	Neck: Unremarkable
Chest	Chest: Unremarkable
Abdomen	Abdomen: Unremarkable
Pelvis	Pelvis: Unremarkable
Back	Back: Unremarkable
Extremities	Extremities: Unremarkable

History Of Present Illness 4368790

Patient's Complaint: facial pain and back pain after assault
Chief Complaint: Acute onset Pain

Physician:

Safety Equipment:

1370004002 032-23-55
WILLIAMS,SHERYL S 50Y/F
DOB: 01/04/63 NII IP 7113-01
Adm: 06/03/13
ATT: 4943 ROGOWAY,BENJAM

Exhibit 2, p. 1/1

PeaceHealth Southwest Medical Center
Vancouver, Washington

TRAUMA RESUSCITATION RECO

1370004002
TR13882

1370004002 032-23-55
WILLIAMS,SHERYL S 50Y/F
DOB: 01/04/63 EDQ ED
Adm: 06/03/13
PCP: 999 MISCELLANEOUS,P

LABEL

4ED

☐ TRAUMA TEAM ACTIVATION ☒ TRAUMA ALERT

MODE OF ARRIVAL: ☐ Helicopter ☒ Ambulance ☐ Other
TIME PAGED: 0059 ARRIVAL ED: 0004

Specialty	Name	Paged	Arrived
ER MD	Shotwell	0059	0004
Trauma Surg	Rogaway	0059	0007
Anesth			
Neuro			
Ortho			
Trauma PA			
Other			

PATIENT STATISTICS

NAME: Sheryl Williams
AGE: 50 SEX: ☐M ☒F HEIGHT: 5'8 WEIGHT: 160lbs LMP:
ALLERGIES: PCN
MEDS:
PMH:
TETANUS: ☒ UTD ☐ > 5 yrs ____ LAST ATE/DRANK: 30mins PTA
TIME: 0010

FAMILY

☒ Here ☐ Notified
NAME: Daughter Skyler 360 977 9038

MECHANISM OF INJURY

		YES	NO	UNK
☐ MVC				
☐ Driver	Safety Belt	☐	☐	☐
☐ Passenger	Air Bag	☐	☐	☐
☐ MCC				
☐ Driver	Helmet	☐	☐	☐
☐ Passenger				

☐ Fall ____ ft.
☒ Other Assault by Husband

PREHOSPITAL EVENTS

LOC
Etoh Hit c Closed fists pos Multiple times, BG 122
MEDS GIVEN:
BP 5/P P 70-80 R 24

☐ Airway ☐ O2 ☐ C Collar ☒ Spine immobilization ☐ Extremity splint/traction ☐ Dressings

GLASGOW COMA SCALE

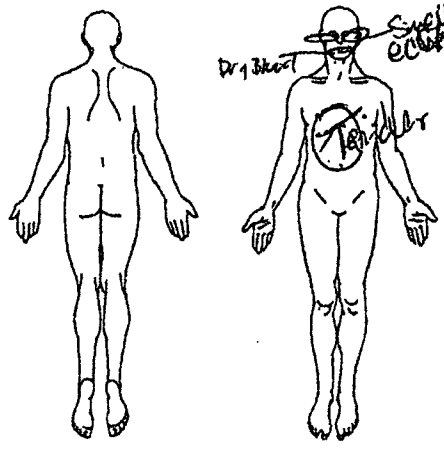
ADULT/CHILDREN (INFANT)

Eye Opening:	Spontaneous	4
	To voice	3
	To pain	2
	None	1
Verbal Response:	Oriented (coos, babbles)	(5)
	Confused (irritable cries)	4
	Inapp words (cries to pain)	3
	Incomprehen words (moans to pain)	2
	None	1
Motor Response:	Obeys commands (normal movements)	(6)
	Localizes pain (withdraws to touch)	5
	Withdraw pain	4
	Flexion pain	3
	Extension pain	2
	None	1
	TOTAL GCS	(15)

INITIAL V.S.

Time	0006
BP (R)	153/105
BP (L)	140/89
Heart Rate	93
Rhythm	SR
Resp Rate	20
SpO2	96
Temp	98.9

D - Deformity C - Contusion NS - No Sensation
AMP - Amputation L - Laceration DP - Decreased Pulse
A - Abrasion P - Paralysis



GSW - Gunshot Wound
SW - Stab Wound

INITIAL SURVEY	WNL	ABN
Airway	✓	☐ Intubated ☐ BVM
Breathing	✓	☐ Assisted ☐ Absent ☐ Labored
Circulation	✓	☐ Delayed Cap Refill. Pulse: ☐ Weak ☐ Absent
Pupils		☐ Unequal ☐ Fixed / Dilated
Head / Face		Swelling
Neck		☐ Deviated Trach ☐ JVD
Chest / Lungs	error	☐ Decreased ☐R ☐L ☐ Absent BS ☐R ☐L ☐ Subq Air ☐R ☐L tenderness
Cardiovascular	✓	tender
Abdomen	error	☐ Distended ☐ Rigid ☐ Bowel Tones ↓ ☒ Tender
Pelvis / Hips	error	☐ Unstable ☒ Tender
Extremities / CMS	✓	
Back / Spine	✓	
Skin		☐ Cyanotic ☐ Diaphoretic ☐ Pale ☐ Cold See above skin flow sheet
GI / GU		☐ Blood at Meatus ☐ ↓ Rectal Tone Guaiac ☐+ ☐- defer to MD

244PH 7/11 PAGE 1 OF 4

62

Exhibit 3, p. 1/1

Southwest Washington Medical Center Laboratory Services *Dr. Brad Jensen, Director*
400 NE Mother Joseph Place Vancouver, WA 98664 360-514-3177

Patient Name: **WILLIAMS, SHERYL S**
Med Rec No. **0322355**
D.O.B. **01/04/1963** *Age* **50Y** *Gender* **F**
Admitting Physician: **ROGOWAY, BENJAMIN J**

Location: **Inpatient**
Page **2** *of* **3**
Account: **1370004002**
AdmitDate: **06/03/2013**

Collected	06/03 00:21					*Expected Values*	*Units*
INR	0.99[2]					*0.90-1.10*	
Fibrinogen	242					*200-500*	*mg/dL*

HEMATOLOGY

CBC

Blood Collected	06/04/2013 05:29	06/03/2013 05:27	06/03/2013 00:21	*Units*	*Expected*
White Blood Cell Count	7.20	**11.80 H**	**14.00 H**	*10E3/uL*	*4.00-11.00*
Red Blood Cell Count	**3.51 L**	4.04	4.27	*10E6/uL*	*3.80-5.20*
Hemoglobin	**10.8 L**	12.5	13.3	*g/dL*	*11.6-15.5*
Hematocrit	**32.3 L**	37.0	38.7	*%*	*35.0-46.0*
Platelet Count	254	325	344	*10E3/uL*	*150-400*
MCV	92.1	91.5	90.5	*fL*	*80.0-100.0*
MCH	30.8	30.9	31.1	*pg*	*27.0-34.0*
MCHC	33.5	33.8	34.4	*g/dL*	*32.0-35.5*
RDW CV	12.9	13.0	12.9	*%*	*11.0-16.0*
Mean Platelet Volume	**7.1 L**	**7.1 L**	**6.9 L**	*fL*	*8.0-13.0*
Neutrophil Percent			68	*%*	*38.0-70.0*
Lymph Percent			24	*%*	*21.0-49.0*
Monocyte Percent			6	*%*	*3.0-11.0*
Eosinophil Percent			1	*%*	*0.0-7.0*
Basophil Percent			0	*%*	*0.0-1.0*
Absolute Neutrophil Count			**9.60 H**	*10E3/uL*	*1.80-7.00*
Absolute Lymph Count			3.40	*10E3/uL*	*1.00-3.40*
Absolute Monocyte Count			0.80	*10E3/uL*	*0.00-0.80*
Absolute Eosinophil Count			0.20	*10E3/uL*	*0.00-0.50*
Absolute Basophil Count			0.10	*10E3/uL*	*0.00-0.20*

[2]In the absence of a moderate to strong personal history of a bleeding disorder there is no evidence based information showing a relationship between a prolonged INR (up to 1.6) and risk for bleeding including from invasive procedures (Transfusion 2005, 45(9):1413-25).

Recommended targets for oral anticoagulant therapy:
Standard dose, 2.0-3.0
High dose, 2.5-3.5

LEGEND
*C = Critical A= Amended Report H= High L= Low * Footnote*
Absence of reference range indicates that a reference range has not been established for this analyte.

ORIGINAL

FILED

2013 JUL 19 PM 1:32

SCOTT G. WEBER, CLERK
CLARK COUNTY

District Court of Clark County

State of Washington

State of Washington **plaintiff,** **VS** **John Garrett Smith** **Defendant(s)**	**Search Warrant** 13-1-00003-2 mat 98

The people of the State of Washington, to any Sheriff, Police Officer, or Peace Officer in Clark County: Proof by written affidavit, under oath, made in conformity with the State of Washington Criminal Rules for Justice Court, rule 2.3, having been made to me this day by Vancouver Police Detective Sandra Aldridge, of the Domestic Violence Unit, that there is probable cause for the issuance of a search warrant on the grounds set forth in the State of Washington Criminal Rules for Justice Court, rule 2.3, Section (c) for the crime of Assault II DV, RCW 9A.36.021

You are therefore commanded, with the necessary and proper assistance, to make a diligent search, good cause having been shown therefore, of the following described property. within **10 days** of the issuance of this warrant:

NOT TRUE — misleading (suppression of RCW 9.73 violation)

1. Apple iPhone found in the possession of John Garrett Smith, to be examined and for the recovery of data to include but not limited to identifying information for the phone itself such as SIM, ESN and IMEI numbers, contact lists, incoming and outgoing calls and text messages, graphic/image files in common formats such as JPG, GIF, PNG or in any other data format in which they might be stored, pictures, movies files, emails, spreadsheets, databases, word processing documents, Internet history, Internet web pages, newsgroup information, passwords, encrypted files, documents, software programs, or any other data files, whether in allocated or unallocated space on the media, whether fully or partially intact or deleted, that are related to evidence of the crimes of Assault II DV, RCW 9A.36.021.

Are on this date at the following location to be searched:

Said items are currently located at the Vancouver Police Department Evidence Facility located at 2325 West Mill Plain Blvd., Vancouver, WA. Upon authorization of this search warrant, these items will be transferred to the Domestic Violence Prosecution Center, 1101 Broadway St.. Vancouver. Washington, 98661 for examination and analysis by qualified personnel.

Are located in the premises described above, and if you find same, or any part thereof, then bring same and items of identification to identify the residents and residence thereof before the Honorable District Court Judge Osler to be disposed of according to law.

This Search Warrant was issued 7/15/13 at 11:54am
by the Honorable Judge Juell Osler.
Date and time of execution: 7/16/13 @ 1327 HRS.
By Sandra Aldridge 1409.

322
KS

Exhibit 5, P. 1/1

remove the phone from the box without risk of losing the data on the phone.

I then returned to my office and attempted to complete a download of the phone using the Cellebrite UFED (Universal Forensic Extraction Device) as I am certified to use this equipment. I continued to run into problems and errors with this equipment and was not able to access the phone in this manner. I then returned to VPD West Precinct and was assisted again by Robert Barnes. Robert agreed to process the phone by using the Cellebrite Physical Analyzer software on his laptop computer. I provided Robert a copy of the search warrant and he proceeded to process the phone. Due to the large amount of information on the phone, Robert placed the report onto a thumb drive because it would not fit on a CD or DVD. The processing of the phone was completed on 07/16/13 and I obtained the phone, report and thumb drive from Robert on that date.

I then placed the information from the thumb drive on the hard drive of my assigned work computer and also placed the report in PDF format onto a CD. This CD was retained in temporary evidence until it could be properly packaged and placed into the VPD Evidence System. I reviewed the report and the phone information was documented as having an Apple ID of jgspe@me.com, phone number 503.203.2695, and serial number C39FCX2MDDP9. Through listening to jail phone calls placed by Garrett, I know he often uses the address of jgspe@me.com and also that "jgspe" stands for "john garrett smith professional engineer". The report also documents that the phone number 503.203.2695 is labeled as "Garrett Smith"; further confirming that this is indeed the phone used by and belonging to John Garrett Smith.

I also physically looked at the phone, took photos of several screens to document missed calls, placed calls, voice mail messages and text messages. These photos are uploaded into this report under the image tab. I then created a time line of activity on Garrett's phone for the night of the incident on 6/2/13-6/3/13. This activity is listed as follows: (I was able to establish that the contact listed in Garrett's phone as "Polygentech" is the home landline number 808-238-8471 at 14607 SE Rivershore Dr., Vancouver, WA. This is a Hawaii phone number but the Smith's were able to use it as a landline through services provided by Verizon.)

CALL LOG AND TEXT ACTIVITY

June 2nd, 2013

5:37 PM; incoming text from Skylar: "Are you on your way home?"
outgoing text back to Skylar: "Si senora - on I 205"

6:06 PM; incoming text from Skylar: "Ok I started the grill"
outgoing text back to Skylar: "Almost there"

6:16 PM; outgoing call to Samuel L. and Paul at 503-807-3798; lasting 1 minute

9:54 PM; incoming call from Sheryl! at 360-619-8185; missed call

9:55 PM; incoming call from Sheryl! at 360-619-8185; lasting 23 seconds

10:00 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:01 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:02 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:03 PM; incoming call from Sheryl! at 360-619-8185; lasting 13 seconds

10:03 PM; incoming call from Sheryl! at 360-619-8185; lasting 25 seconds

10:04 PM; incoming call from Sheryl! at 360-619-8185; lasting 37 seconds

10:05 PM; incoming call from Sheryl! at 360-619-8185; lasting 1 second

10:09 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:10 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:10 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:18 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:20 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:25 PM; incoming call from Sheryl! at 360-619-8185; lasting 9 minutes

10:36 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:37 PM; incoming call from Sheryl! at 360-619-8185; missed call

10:50 PM; outgoing call to Skylar at 360-977-9038 lasting 17 seconds.

10:52 PM; outgoing call to Sheryl! at 360-619-8185 lasting 36 seconds

10:54 PM; outgoing call to Sheryl! at 360-619-8185 lasting 35 seconds

10:56 PM; text from Skylar "You called?"

11:02 PM; incoming call from Polygentech at 808-238-8471; missed call

11:03 PM; outgoing call to Polygentech at 808-238-8471; canceled call

11:04 PM; incoming call from Polygentech at 808-238-8471; missed call

11:05 PM; incoming call from Polygentech at 808-238-8471; missed call

11:05 PM; outgoing call to Polygentech at 808-238-8471; lasting 29 seconds

11:06 PM; incoming call from Polygentech at 808-238-8471; missed call

11:10 PM; recorded voice mail message lasting 3 minutes from above missed call (this is the recording of the assault)

June 3rd, 2013

1:08 AM; incoming text from "bonnieatcoas..."; "Phone woke me! From Skylar.....What is happening? Mom

To whom it may concern,

I , Bonnie Smith , mother to John Garrett Smith , gave testimony in the December attempted Murder trial of our son .
After an oath to tell the truth , I spoke of our visit with his wife Sheerly on June 7, 2013 in her home. She had been discharged from the hospital .
I was very pleased that she stood up from her chair and walked to greet us. We hugged .
We visited for about an hour . Sheryl's mother and daughter were also present. To the best of my recollection, we left her Rivershore home approximately around 3 pm. Through experience and as a former Registered Nurse, I was very pleased that she was healing. Her black and blue eyes were fading and of that bluish, greenish, color...on schedule for such an injury days before Therefore, I was shocked and surprised when I first saw the enclosed photo dated June 7th,
5:13 pm. It was not what both my husband had seen. We perceived the picture to be "doctored".

I swear this to be the truth to the best of my knowledge and remembrance , August 27 , 2015

Bonnie Smith, Yachats , Oregon

Bonita M. Smith
Witnessed by Laurence R. Smith

#3 6/07/2013
5:13 PM
Sheryl @ home

Exhibit 7, p. 1/1

SA: Yeah.

JV: And have you been assigned, how long have you been assigned to the Domestic Violence Unit?

SA: Uh, since January of 2013, so a year, now.

JV: And are you, um, do you have any specialty training where you're able to testify in court as an expert in anything?

SA: No.

JV: And on the case regarding John Garrett Smith, um, you have a certain discovery that you produced as a result of this investigation? Could we just kind of talk about what, um, EPR reports, uh, that you produced and we can just kind of go through those one at a time so we're all making sure we're on the same - I think the first one I have is the, um, a 13 page EPR report that you produced on, uh, Jan-, uh, June 4, 2013?

SA: Correct.

SD: (Inaudible) Bates stamp, the same as ours.

JN: Ours is not Bates stamped, but I'll know.

JV: So this would be according to the Bates stamp I have starting on page 7-

SA: Uh-hmm.

JV: And then going through page-

SA: I have 19.

JV: I have 19, also.

JN: The Bates stamp is just something we do with discovery, so (inaudible)

SA: Okay.

Exhibit 8, p. 1/1

Golik email

This letter was emailed as seen below, with the subject "urgent evidence tampering in current trial" and then hand-delivered by the author -- me -- and Kent Steinmetz just after lunch the same day to Mr. Golik's office, received by a woman working behind the desk there. I wrote my phone number onto the printed copy before handing it to her. As of today (September 1, 2015) I have never heard from Mr. Golik or anyone associated with him.

(Tony Golik was the elected official above prosecutor Jennifer Nugent. Having been unsure at the time about the propriety of trying to contact the prosecutor herself, directly, we decided that contacting an elected official should always be OK.)

==========

From: Jamie (butnottoohot@hotmail.com)
Sent: Tue 12/02/14 8:50 AM
To: tony.golik@clark.wa.gov (tony.golik@clark.wa.gov)

Mr. Golik,

I attended yesterday's first day of trial in the John Garrett Smith case. I heard the June 2, 2013 voice mail recording played in court yesterday. It was played more than once and I heard it clearly each time.

On October 11, 2014, I met with Josephine Townsend along with two other men and she played the June 2, 2013 voice mail for us. A phrase in that recording struck me as poignant and I discussed it with the other men on a conference call the next day.

I bring this to your attention now because that phrase was not in the voice mail as it was played in court yesterday. I believe there were other significant differences as well.

I believe that the voice mail recording played in court yesterday was not the same recording played for us by Josephine Townsend on October 11, 2014.

Sincerely,

Jamie Jackson

cc: WSBA
cc: administrative office of the courts

Exhibit 9, p. 1/1

LEGAL MAIL

Certificate of Service

I hereby certify that on the date listed below, I caused a true and correct copy of my Statement of Additional Grounds for Relief to be served regarding Court of Appeals Division 2 Case No. 47205-8-II to the Court and my attorney via 1st Class US Mail as follows:

FILED
COURT OF APPEALS
DIVISION II
2015 OCT -8 PM 1:35
STATE OF WASHINGTON
BY
DEPUTY

- Mr. David C. Ponzoha
  Court Clerk
  Washington State Court of Appeals
  DIVISION TWO
  950 Broadway, Ste. 300
  Tacoma, WA 98402-4454

- Counsel for Appellant:

  Colleen A. Hartl
  Law Offices of John Henry Browne, P.S.
  108 S. Washington St., Ste. 200
  Seattle, WA 98104-3414

John Garrett Smith

9-28-15
DATE

@ Clallum Bay, WA