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70107-0

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

DAVID S. SOLOMONA,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

No. 70107-0-I

Cause 11-1-01460-2 KNT

Statement of Additional
Grounds Via RAP 10.10

OPENING STATEMENT

The Petitioner ask this Most Honorable Court to please not hold him to the same standards as a Lawyer. The Petitioner is a Pro Se Litigant, and untrained in the law. Please give these pleadings liberal interpretations. Maleng v. Cook, 490 U.S. 488 (1989).

The Petitioner presents Four issues of Constitutional Magnitude, that require an evidentiary hearing. The Petitioner is filing a Personal Restraint Petition to consolidate with this RAP 10.10 because collateral evidence is crucial to decide the issues presented in this SAG.

The Petitioner asserts his State and Federal Constitutional Rights to Due Process of Law, Equal Protection, Proof Beyond a Reasonable Doubt, Fair Trial, and rights to effective assistance of counsel have been violated.

II. ISSUES PRESENTED

1.) The State did not present sufficient evidence to prove the Petitioner was convicted of two prior violations of a no contact order, which elevates the current no contact order violations, to felonies, and increase the offender score.

2.) on 10-3-12, DPA Baker Abused his power when attempting to induce the Petitioner to waive his Appeal rights on an unrelated case, Cause number 11-01130-1 KNT (Robbery Case), by offering a plea for two counts verses four.

3.) While in the Care of the King County Jail, on 2-14-11 Detective Cynthia Sampson, was aware that the Petitioner from 1/17/11 - 1/20/11 violated the no contact order against the Mother of his Children, Carey Solomona, by calling her Cell phone.

The Law Enforcement did not block the cell number, or stop Mr. Solomona from calling the Cell phone number, and instead committed gross police misconduct by letting the violations stack up for Sentencing entrapment and manipulation purposes. This is unethical and the Petitioners plea agreement is for only the violations committed after 1/20/11.

4.) Defense Counsel is ineffective for failing to investigate whether Ms. Solomona felt induced to not testify, when the Father of her Children vented his legal stress and Family related frustration over the Phone. This is crucial for a coherent and competent decision to be made about whether to plea, and negotiations.

III. FACTS RELEVANT TO THE SAG

During this incident the Petitioner and Carey Solomona were married. They have two children. On 1/10/11 the Petitioner was served in the Seattle Municipal Court with No Contacted order 172673, and was taken into custody, booked into KJC, on a DV Harassment charge.

At the same time Detective Cynthia Sampson was performing a Robbery investigation against the Petitioner. The Detective was in contact with Ms. Solomona through her cell phone number, the same one used in the county jail by the Petitioner. (Exhibit One Certification of Probable Cause).

As Part of the Detective Robbery investigation - allegedly - she requested the Petitioners phone records from 1/10/11 - 1/20/11. On 1/31/11 the Detective received a CD of the Jail calls. The Detective learned that out of 76 calls, the Petitioner called his wife 11 times. Once on 01/17/11, Six times on 1/19/11, and Four times on 1/20/11.

The conversations was about their children, family disputes, and the need for a hired lawyer. Mr. Solomona expressed how heart broken and betrayed he felt by his own wife taking his kids to Alaska, effectively removing them from his life. The Detective had this information on 2-14-11, but did not block, as required by Jail policy, the Cell phone number, instead let the violations stack up, for later use by Law Enforcement. (Exhibit One).

The Petitioner wanted his family back, as a man trying to repair the damage done, and bleed his heart out to his wife, saying he was going to take the harassment case to trial. The Petitioner said "The fact is, if you don't, if a person doesn't show up, then really there's nothing." (Exhibit One).

Originally, the Petitioner went to trial, and was found guilty by jury verdict on 5/26/11 of 8 counts of Domestic violence Felony violation of a no contact order: Count I 1/17/11 - 1/21/11; Count II 1/22/11 - 1/28/11; Count III 1/29/11 - 2/5/11; Count IV 2/6/11 - 2/12/11; Count V 2/6/11 (Double Charged same as count IV); Count VI 2/20/11 - 2/26/11; Count VII 2/27/11 - 3/4/11; Count VIII 3/5/11 - 3/7/11; Plus count IX one count of Tampering with a witness 1/17/11 - 3/7/11. (Exhibit TWO 2011 Judgment and Sentence).

On April 16, 2012 this Most Honorable Court reversed and remanded for a new trial.

On remand DPA Baker sent an e-mail to defense counsel Brian Todd, in relations to a plea bargain. Stating "The witnesses were cooperative" "He was repeatedly offered plea deals for much less time and rejected all of them. This is his chance to make a better decision. The State feels no need to continue to hammer Mr. Solomona with every count if he is willing to take responsibility and frankly we would prefer to spend our resources elsewhere." "This has the added benefit to Mr. Solomona of putting him in MUCH better position should he prevail on appeal on the Robbery case." (Exhibit 3 8-9-12 DPA BAKER). Even though the Robbery was known about during the original proceedings, the State on remand used the Robbery as a threat to charge as a free crime aggravator to give even more time than originally sentenced.

On 10-3-12 DPA BAKER CHANGED his tone, and instead of wanting Mr. Solomona to be successful in life if he takes responsibility for his actions, DPA Baker now offers to allow Mr. Solomona to plead to Two counts versus Four, if he will drop his unrelated Robbery appeal. (Exhibit Four 10-3-12 DPA BAKER).

On 2-4-13 defense Counsel Brian Todd filed a Pretrial brief, Counsel states that he went to the King County District Court to get the documents and evidence of the alleged two prior convictions of a no contact order, that are being used to elevate the current violations to felonies, but there are no such documents, not even a Judgment and sentence. The Defense asked for a knapstad hearing. (Exhibit Five 2-4-13 pretrial brief).

ON 2-4-13 before the Honorable Suzanne Parisien, Judge, Dpa Baker, Defense counsel Todd, and the Petitioner, in open court the Knapstad motion was addressed. Vol. I RP 5 - 31. The trial Judge found that a docket printout is sufficient proof of prior criminal history. IRP 30.

On 2-15-13 the Court addressed the Petitioners pro se motion to withdraw the plea agreement, and denied the motion, then proceeding with sentencing. Vol. II RP 1 - 13. (Exhibit Six Pro Se Motion).

IV. ARGUMENT

A. THE STATE MUST PROVE THE PRIOR CRIMINAL HISTORY WITH SUFFICIENT EVIDENCE

Constitutional Due Process requires the State to prove every element of a crime beyond a reasonable doubt. State v. Summers, 107 Wn.App. 373, 381 (2001). In Sentencing the State must meet it's burden of proof, by establishing the existence of prior convictions. State v. Hunley, No. 861358 (11/01/12). The best evidence to establish a defendants criminal history is the production of a certified copy of the Judgment and sentence. State v. Bergstrom, 167 Wn.2d 87 (Wash.2007). Outside materials other than the official records are not proof of a prior conviction. State v. Murdock, 91 Wn.2d 336 (1979). "The records and proceedings of any court of the United State, or any state or territory, shall be admissible in evidence in all cases in this state when duly certified by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed." RCW 5.44.010.

Mr. Solomona was charged with the crimes of violation of a no contact order under RCW 26.50.110(1), (5):

"the following provision is a gross misdemeanor, except as provided in subsections (4) and (5) of this section."

"(5) is a Class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter..."

The language in this statute is very specific that the order which was issued must be issued pursuant to the list of statutes. This list is normally set out in the charging document that gives the defendant notice of the crime with which they are being charged. In the Matter of the Personal Restraint of Ness, 70 Wn.App. 817, 821 (1993). These elements that are set out in the information would give the presumption that a plea is knowing, intelligent, and voluntarily made. Id.

However, in this case, there is absolutely no official record of the charge that the Petitioner was allegedly charged with. There is absolutely no official record of the charge which the Petitioner allegedly plead. Also, there is absolutely no record of the charge which the petitioner was supposed to be aware of, nor the notice of the prohibited statutes, to prevent him from violating said contact order.

As defense Counsel wrote in the Pretrial Brief "There is no official record of any statement of defendant on plea of guilty in this case. It is impossible to say whether the plea made by the defendant was knowingly, intelligently, or voluntarily made. Also, there is no way to say whether the defendant was convicted properly and beyond a reasonable doubt of the crime of violation of a no contact order pursuant to statute.

"Because it is impossible to prove that the defendant has been convicted by the King County District Court of a Predicate crime, the case before this Court

cannot proceed as a felony. The request would be to dismiss this case in this court and proceed on only the witness tampering charge. However, counsel would concede that if the court finds that proof is lacking of a predicate conviction in this case, that the counts would then be downgraded to misdemeanors."

During the Knapstad Motion hearing, Defense Counsel explained that he was trying to investigate for trial preparation the alleged prior two no contact order violations, he wanted to see if they were even valid. There however, is no official record of the Two prior convictions. Also, to see if the order was pursuant to the proper statutes, I RP 6-8. All documents are destroyed, and the only proof given was a docket printout from the internet. The Judge abused her discretion by not granting the motion, and accepting a plea for felony no contact order violations.

The State did not prove the existence of the two priors beyond a reasonable doubt, can not prove that the statute was even correct on the charging information, or notice was given to the defendant. This works on an element and sentencing level. Not only is the two prior gross misdemeanor conviction for violating a no contact order, elements that elevate the current charges from misdemeanor's to felonies, it also must be proven for sentencing purposes.

CONCLUSION

This Court must vacate the Felony no contact orders completely, or reduce to misdemeanors. The Court may also allow the Petitioner to withdraw the plea, and give instructions that the State may not charge for the felony no contact violations.

B. THE STATE APPLIED VINDICTIVE INDUCEMENT TACTICS DURING NEGOTIATIONS

The "Legislature has placed limitations on the prosecutor's discretion, and prosecutor acts within authority delegated by legislature." State v. Lewis, 115 Wash.2d 294 (1990). Rcw 9.94A.411 outlines the prosecutors powers to charge and negotiate pleas. "This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendants criminal conduct, but decline to charge crimes which are not necessary to such an indication." RCW 9.94A.411(2)(i)(ii).

The prosecutor in this case abused his authority by attempting to induce the Petitioner to drop his constitutional appeal of right on an unrelated conviction, by offering to allow him to plead to two counts, one violation of a no contact order and one witness tampering. This is the maximum the charges should have been in the first place. The law enforcement set back and allowed the Petitioner to violate the no contact order, when jail policy demands, the number is blocked, and the Petitioner is placed in segregation for the violation. This gross police misconduct extends to the prosecution in using the extra charges for sentence manipulation and entrapment, then trying to use this misconduct to induce the petitioner to drop his robbery appeal. This is a violation of the rules of professional conduct. RPC 3.4(b); 8.4(b)(c)(d).

In Miles v. Dorsey, 61 F.3d 1459 (10th Cir. 1995), The Court found the prosecutor's actions legal when offering to not prosecute Defendants family for related charges if he accepted plea. However, using an unlawful inducement as in this case is not legal, and the Petitioner must be allowed to benefit from the plea offer of only two counts versus the unconstitutional four.

Exhibit three proves that Dpa Baker, did not believe the State should beat down Mr. Solomona with every count, and if he takes responsibility the State would give him a plea that is consistent with the offense. Ultimately to help him with his robbery appeal if successful. Then as displayed in exhibit four, based off of no new facts, the Prosecutor attempts to induce Mr. Solomona to drop his robbery appeal to take a plea that should have been the original plea offer, for two counts. The State cannot attempt to have the petitioner waive his appeal rights on an unrelated plea upon a successful appeal, especially when the plea for two counts is really what the plea must be in the context of the charge.

Mr. Solomona was talking with his wife, about family issues, this is not a typical type of violation, nor was there any witness tampering. The State just sat back and illegally created this case against Mr. Solomona, this is not right, and must not be tolerated by this court. This is a type of official overreaching. U.S. V. restrepo, 994 F.2d 173 (5th Cir. 1993); U.S. V. ESTRADA-PLATA, 57 F.3d 757 (9th.Cir.1995).

CONCLUSION

This Court must vacate the extra counts and give the Petitioner the benefit of the more lenient plea for two counts, or allow the Petitioner to withdraw his plea.

C. THIS PLEA IS THE RESULT OF GROSS LAW ENFORCEMENT MISCONDUCT

"No matter what the defendant's past record, and present inclination to criminality... certain police conduct to ensnare him into further crime is not to be tolerated by an advanced society... The power of the government is abused and directed to an end for which it was not constituted when employed to promote rather than detect a crime." J. Franfurter Sherman V. U.S., 356 U.S. 369 (1958).

A defendant who fails to show an entrapment claim can still claim outrageous conduct, if he is subject to law enforcement conduct that is repugnant to the American Justice system. Shaw v. Winters, 796 F.2d 1124 (9th.Cir.1986).

Sentencing entrapment focuses on the Petitioner's Predispositions, like in this case the State knew the Petitioner would call his wife. Then instead of following policy, infracting, place in segregation, and block the cell number, the State sat back collected charges to use for sentencing gerrymandering. U.S. v. Connell, 960 F.2d 191 (1st.Cir.1992). In fact the plea being challenged consist only of the counts performed after the call from 1/17/11 - 1/20/11 were discovered by the Law enforcement. This is outrageous gross misconduct that is repugnant to the American Justice system.

In U.S. v. Garza-Juarez, 992 F.2d 896 (9th.Cir.1993), the ninth circuit upheld a downward departure entered in by the sentencing court, although there was no entrapment defense, the seriousness of the participation was increased by the influence of an agent. This influence like in the instant case played a pivotal role in the defendant continuing to commit crimes.

The State should have offered the reduced plea of two counts not as an illegal inducement to forfeit an unrelated appeal, but in-light of the outrageous misconduct. The trail counsel should have known about this aspect of the law, and used it as a bargaining chip, or made a motion at the plea hearing. U.S. V. Jones, 18 F.3d 1145 (4th Cir. 1994); State v. Lively, 130 Wn.2d 1, 9 (1996).

As Demonstrated in the facts, Detective Cynthia Sampson knew about the violations since 2-4-11, but allowed the violations to continue. (Exhibit ONE). This is not acceptable, and a violation of the Policy and procedures of the Jail implemented for safety. Mr. Solomona at this point is in custody, and the Jail

has a responsibility to uphold safety concerns. Would the state allow for Mr. Solomona to run around in the Jail and commit theft, or assaults? No they would not, he would be stopped. The same applies for a known violation of the no contact order, on the jail phone, repeatedly to the same cell phone number. This is a CrR 8.3(b) violation and these charges must be dismissed.

Conclusion

The Petitioner ask that he either be allowed to benefit from the original two count plea, or have these charges dismissed in the alternative due to Government misconduct. In the alternative he should be allowed to withdraw his plea because of counsel failure to research and motion on this aspect of the law.

D. DEFENSE COUNSEL IS INEFFECTIVE FOR FAILING TO INVESTIGATE MS. SOLOMONA

In State v. Rempel, 114 Wn.2d 77 (Wash.1990), our state Supreme Court reversed and remanded a witness tampering conviction identical in function to the instant case. Rempel was in jail, called the Woman that put him in jail, begged for her to drop the charges, asked why she is doing this, and made insinuations for her to tell the police "he had not done this." 785 P.2d at 1137. This is the functional equivalent of what was said in the instant case. Mr. Solomona was talking to his wife, and saying he would take the harassment charge to trial, and said if a person doesn't show there is no case. This is saying please do not show up, drop the charges, you are my wife, we can work this out. Same thing.

The State Supreme court said "The literal words do not contain a request to withhold testimony. No express threat, nor promise of reward." 785 P.2d at 1138. This is similar to this case, no threat, no promise, just a request to have the charges dropped by not showing up.

The State Supreme court said that a lay person's perception that the charges can be dropped by a complaining witnesses is not witness tampering. The same thing occurred in this case, the lay person believed the charges could be dropped by his wife not showing up, which is not true, so it does not constitute witness tampering.

The Supreme court guided the reviewing court to focus more on the entire context of the words used. The context matter's because the alleged victim must feel inducement by ill means.


In this case the alleged victim did not feel induced, and never planned on testifying in the harassment case anyway, and did not, yet a jury still found Mr. Solomona guilty originally. On remand Defense counsel should have interviewed MS. Solomona and asked her if she felt any inducement. This would have effected the Petitioners decision to go to trial, or to take a plea. Defense counsel is ineffective for failing to perform this function, he did not provide competent representation. The Evidence is also insufficient to support the witness tampering charge. State v. Sandoval, 171 Wn.2d 163 (2011).

Conclusion

This Court Must allow the Petitioner to withdraw his plea, or vacate the Witness tampering charge based on insufficient evidence.

Sincerely Submitted,

This 29th Day of October, 2013.


David S. Solomona

70107-0

H

EXHIBIT ONE

probable Cause

The State Supreme court said that a lay person's perception that the charges can be dropped by a complaining witnesses is not witness tampering. The same thing occurred in this case, the lay person believed the charges could be dropped by his wife not showing up, which is not true, so it does not constitute witness tampering.

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Conclusion.

This Court Must allow the Petitioner to withdraw his plea, or vacate the Witness tampering charge based on insufficient evidence.

Sincerely Submitted,

This 29th Day of October, 2013.

X _____

David S. Solomona

CAUSE NO.

11-1-01460-2 KJT

CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

That Cynthia Sampson is a(n) Detective with the King County Sheriff's Office and has reviewed the investigation conducted in the King County Sheriff's case number(s) 11-024030;

There is probable cause to believe that David S. Solomona (06/02/1980) committed the crime(s) of Felony Violation No-Contact Order x three counts (26.50.110).

This belief is predicated on the following facts and circumstances:

A1 David Solomona and V1 Carey Solomona are married and have two children in common. There is currently a valid, served no contact order which lists Carey as the protected party and David as the respondent. Order #172673, out of Seattle Municipal Court was issued to David in court on 01/10/11 with an expiration date of 01/10/13. David has the following two prior court order violation convictions:

Y40129719 KCP CN AUK 05/01/04 VIOLATION OF PROTECTION ORDER
04-1-03422-8 S1 S17 08/01/04 PROTECTION ORDER VIOLATION

In both of these cases Carey Solomona (Terrence) is the listed victim.

David currently has the following PENDING DV Harassment case against him in Seattle Municipal Court (Carey is also the listed victim in this case):

564100 SPD CN SMC 10/29/10 HARASSMENT

On 01/10/11 David was served in Seattle Municipal court with the above listed No-Contact Order, #172673, and was taken into custody and booked into KCJ on the DV Harassment charge. At the same time I was conducting a robbery investigation under KCSO #11-005643 in which David was a suspect. I subsequently forwarded charging documents for Robbery 1 against David to the KCPAO and he was arraigned on that charge on 01/18/11. During my investigation of the robbery I spoke to Carey Solomona, who recently moved to Alaska with her and David's children. I called her on several occasions on her cell number of 206/375-4857.

As part of my robbery investigation I requested all recorded phone calls that David made from the jail between 01/10/11 and 01/20/11. On 01/31/11 I received a CD of all of David's recorded calls during this period and I began to listen to his phone calls, a total of 76 calls. I discovered that David called Carey's cell number of 206/375-4857 and spoke to her on the phone a total of 11 times. The following is a list of the date/times/duration of these calls:

Certification for Determination
of Probable Cause

ORIGINAL

Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

- 1 01/17/11, 1316 hrs, 1:0 minute duration
- 01/19/11, 0844 hrs, 14:47 min
- 2 01/19/11, 0918 hrs, 14:34 min
- 01/19/11, 1115 hrs, 10:47 min
- 3 01/19/11, 1311 hrs, 4:28 min
- 01/19/11, 1739 hrs, 14:40 min
- 4 01/19/11, 1953 hrs, 13:46 min
- 01/20/11, 0940 hrs, 12:35 min
- 5 01/20/11, 0957 hrs, 14:58 min
- 01/20/11, 1019 hrs, 5:27 min
- 6 01/20/11, 1208 hrs, 14:41 min

7 During these calls David and Carey talk about a variety of subjects,
 8 including their children, the fact that Carey moved with them to Alaska, and
 the fact that David needed Carey to find him an attorney to work on his case.
 9 During phone calls from 01/20/11 at 0940 hrs, 0957 hrs, 1019 hrs and 1208 hrs
 Carey and David engage in a conversation related to Carey's recent medical
 10 issue. During these conversations David repeatedly implies that Carey is
 lying to him about the details and insists on her getting the medical records
 11 for him to look at. At one point he asks her to call the doctor on 3-way,
 seemingly so he can confirm her story. At one point David says, "I don't give
 a fuck what you told me..I'm sensing you've got something to hide here."
 12 During the phone call from 1208 hrs David repeatedly blames Carey for taking
 away his kids from him and states, "My own wife took my kids from me and took
 13 off." To this, Carey tells him that she didn't know what was going to happen
 if she stayed. Carey told David, "Things were outta control" and also says,
 14 "I felt like there was no other way..you were hurting me over and over
 again." In one phone call David tells Carey that he plans on taking the
 15 Harassment case to trial and adds, "..the fact is, if you don't, if a person
 doesn't show up, then really there's nothing." David appeared to be reminding
 16 Carey that if she failed to show up for the Harassment trial the case would
 get dropped.

17 Under penalty of perjury under the laws of the State of Washington,
 18 I certify that the foregoing is true and correct. Signed and dated
 By me this 14th day of February, 2011, at Kent, Washington.



Certification for Determination
 of Probable Cause

ORIGINAL

Prosecuting Attorney
 W 554 King County Courthouse
 Seattle, Washington 98104-2312
 (206) 296-9000

EXHIBIT

TWO

2011 J+S

has a responsibility to uphold safety concerns. Would the state allow for Mr. Solomona to run around in the Jail and commit theft, or assaults? No they would not, he would be stopped. The same applies for a known violation of the ^{no contact order} violation, on the jail phone ^{repeatedly} to the same cell phone number. This is a CrR 8.3(b) violation and these charges must be dismissed.

Conclusion

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 11-1-01460-2 KNT

vs.

JUDGMENT AND SENTENCE
(FELONY) - APPENDIX A

DAVID S. SOLOMONA,

ADDITIONAL CURRENT OFFENSES

Defendant,

2.1 The defendant is also convicted of these additional current offenses:

Count No.: V Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
RCW 26.50.110(1),(5) Crime Code 0458B
Date Of Crime 02/06/2011 THROUGH 02/12/2011 Incident No. _____

Count No.: VI Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
RCW 26.50.110(1),(5) Crime Code 0458B
Date Of Crime 02/20/2011 THROUGH 02/26/2011 Incident No. _____

Count No.: VII Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
RCW 26.50.110(1),(5) Crime Code 0458B
Date Of Crime 02/27/2011 THROUGH 03/04/2011 Incident No. _____

Count No.: VIII Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
RCW 26.50.110(1),(5) Crime Code 0458B
Date Of Crime 03/05/2011 THROUGH 03/07/2011 Incident No. _____

Count No.: IX Crime: TAMPERING WITH A WITNESS-DOMSESTIC VIOLENCE
RCW 9A.72.120 Crime Code 04737
Date Of Crime 01/17/2011 THROUGH 03/07/2011 Incident No. _____

Date:

7/8/11



JUDGE, KING COUNTY SUPERIOR COURT

FILED
KING COUNTY, WASHINGTON

JUL 08 2011

SUPERIOR COURT CLERK
BY LEANNE SYMONDS
DEPUTY

COPY TO COUNTY JAIL JUL 08 2011

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	No. 11-1-01460-2 KNT
Plaintiff,)	
)	JUDGMENT AND SENTENCE
Vs.)	FELONY (FJS)
)	
DAVID S. SOLOMONA,)	
)	
Defendant,)	

I. HEARING

I.1 The defendant, the defendant's lawyer, DANIEL FELKER, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Kristina Solomona, Ruta Tausili, Saga Solomona

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on ~~06/07/2011~~ 5/26/2011 by Jury Trial of:

Count No.: I Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
RCW 26.50.110(1),(5) Crime Code: 0458B
Date of Crime: 01/17/2011 THROUGH 01/21/2011 Incident No. _____

Count No.: II Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
RCW 26.50.110(1),(5) Crime Code: 0458B
Date of Crime: 01/22/2011 THROUGH 01/28/2011 Incident No. _____

Count No.: III Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
RCW 26.50.110(1),(5) Crime Code: 0458B
Date of Crime: 01/29/2001 THROUGH 02/05/2011 Incident No. _____

Count No.: IV Crime: DOMESTIC VIOLENCE FELONY VIOLATION OF A COURT ORDER
RCW 26.50.110(1),(5) Crime Code: 0458B
Date of Crime: 02/06/2011 THROUGH 02/12/2011 Incident No. _____

Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a **firearm** in count(s) _____ RCW 9.94A.533(3).
- (b) While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.533(4).
- (c) With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
- (e) **Vehicular homicide** Violent traffic offense DUI Reckless Disregard.
- (f) **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 46.61.5055, RCW 9.94A.533(7).
- (g) **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.128, .130.
- (h) **Domestic violence** offense as defined in RCW 10.99.020 for count(s) I-IX _____.
- (i) **Current offenses encompassing the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).
- (j) **Aggravating circumstances** as to count(s) _____:

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in **Appendix B**.
- One point added for offense(s) committed while under community placement for count(s) _____

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	9	V			60 TO 60 MONTHS	5 YRS AND/OR \$10,000
Count II	9	V			60 TO 60 MONTHS	5 YRS AND/OR \$10,000
Count III	9	V			60 TO 60 MONTHS	5 YRS AND/OR \$10,000
Count IV	9	V			60 TO 60 MONTHS	5 YRS AND/OR \$10,000

Additional current offense sentencing data is attached in **Appendix C**.

2.5 **EXCEPTIONAL SENTENCE**

- Findings of Fact and Conclusions of Law as to sentence above the standard range:
Finding of Fact: The jury found or the defendant stipulated to aggravating circumstances as to Count(s) _____.
Conclusion of Law: These aggravating circumstances constitute substantial and compelling reasons that justify a sentence above the standard range for Count(s) _____. The court would impose the same sentence on the basis of any one of the aggravating circumstances.
- An exceptional sentence above the standard range is imposed pursuant to RCW 9.94A.535(2) (including free crimes or the stipulation of the defendant). Findings of Fact and Conclusions of Law are attached in Appendix D.
- An exceptional sentence below the standard range is imposed. Findings of Fact and Conclusions of Law are attached in Appendix D.

The State did did not recommend a similar sentence (RCW 9.94A.480(4)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.
 The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(5), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs (RCW 9.94A.030, RCW 10.01.160); Court costs are waived;
- (b) \$100 DNA collection fee (RCW 43.43.7541)(mandatory for crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs (RCW 9.94A.030); Recoupment is waived;
- (d) \$ _____, Fine ; \$1,000, Fine for VUCSA \$2,000, Fine for subsequent VUCSA (RCW 69.50.430); VUCSA fine waived;
- (e) \$ _____, King County Interlocal Drug Fund (RCW 9.94A.030); Drug Fund payment is waived;
- (f) \$ _____, \$100 State Crime Laboratory Fee (RCW 43.43.690); Laboratory fee waived;
- (g) \$ _____, Incarceration costs (RCW 9.94A.760(2)); Incarceration costs waived;
- (h) \$ _____, Other costs for: _____.

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 600. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; (Date): _____ by _____ .m.

60 months/days on count I-VIII months/days on count _____ ; _____ months/day on count _____

51 months/days on count IX; _____ months/days on count _____ ; _____ months/day on count _____

The above terms for counts I - IX are consecutive concurrent.

The above terms shall run CONSECUTIVE CONCURRENT to cause No.(s) _____

The above terms shall run CONSECUTIVE CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: _____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 60 months.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): 135 days or _____ days determined by the King County Jail.

For nonviolent, nonsex offense, credit is given for days determined by the King County Jail to have been served in the King County Supervised Community Option (Enhanced CCAP) solely under this cause number.

For nonviolent, nonsex offense, the court authorizes earned early release credit consistent with the local correctional facility standards for days spent in the King County Supervised Community Option (Enhanced CCAP).

4.5 NO CONTACT: For the maximum term of 5 years, defendant shall have no contact with Casey Solomon (DOB 7/11/74) Third party contact allowed to arrange for child visitation.

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) COMMUNITY CUSTODY for qualifying crimes committed before 7-1-2000, is ordered for one year (for a drug offense, assault 2, assault of a child 2, or any crime against a person where there is a finding that defendant or an accomplice was armed with a deadly weapon); 18 months (for any vehicular homicide or for a vehicular assault by being under the influence or by operation of a vehicle in a reckless manner); two years (for a serious violent offense).

(b) COMMUNITY CUSTODY for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months.

- (c) **COMMUNITY CUSTODY** - for qualifying crimes committed after 6-30-2000 is ordered for the following established range or term:
- Sex Offense, RCW 9.94A.030 - 36 months—when not sentenced under RCW 9.94A.507
 - Serious Violent Offense, RCW 9.94A.030 - 36 months
 - If crime committed prior to 8-1-09, a range of 24 to 36 months.
 - Violent Offense, RCW 9.94A.030 - 18 months
 - Crime Against Person, RCW 9.94A.411 or Felony Violation of RCW 69.50/52 - 12 months
 - If crime committed prior to 8-1-09, a range of 9 to 12 months.


Sanctions and punishments for non-compliance will be imposed by the Department of Corrections or the court. **APPENDIX H** for Community Custody conditions is attached and incorporated herein. **APPENDIX J** for sex offender registration is attached and incorporated herein.

4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement, subject to the conditions set out in **Appendix H**.


4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, .480.** The State's plea/sentencing agreement is attached as follows:


The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 7/8/11



 JUDGE
 Print Name: _____

Presented by:

 Deputy Prosecuting Attorney, WSBA# 41998
 Print Name: David Baker

Approved as to form:

 Attorney for Defendant, WSBA # 18828
 Print Name: Daniel Felker



RIGHT HAND
FINGERPRINTS OF:

DAVID SIONA SOLOMONA

DEFENDANT'S SIGNATURE:
DEFENDANT'S ADDRESS:

17815 152nd Pl SE

Renton, WA

98058

DATED: 7/8/11

[Signature]
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK

BY: [Signature]
DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

OFFENDER IDENTIFICATION

S.I.D. NO. WA17656774
DOB: JUNE 2, 1980
SEX: M
RACE: A

CLERK

BY: _____
DEPUTY CLERK

EXHIBIT

THREE

8-9-12

BAKER

A defendant who fails to show an entrapment claim can still claim outrageous conduct, if he is subject to law enforcement conduct that is repugnant to the American Justice system. Shaw v. Winters, 796 F.2d 1124 (9th.Cir.1986).

Sentencing entrapment focuses on the Petitioner's Predispositions, like in this case the State knew the Petitioner would call his wife. Then instead of following policy, infracting, place in segregation, and block the cell number, the State sat back collected charges to use for sentencing gerrymandering. U.S. v. Connell, 960 F.2d 191 (1st.Cir.1992). In fact the plea being challenged consist only of the counts performed after the call from 1/17/11 - 1/20/11 were discovered by the Law enforcement. This is outrageous gross misconduct that is repugnant to the American Justice system.

In U.S. v. Garza-Juarez, 992 F.2d 896 (9th.Cir.1993), the ninth circuit upheld a downward departure entered in by the sentencing court, although there was no entrapment defense, the seriousness of the participation was increased by the influence of an agent. This influence like in the instant case played a pivotal role in the defendant continuing to commit crimes.

The State should have offered the reduced plea of two counts not as an illegal inducement to forfeit an unrelated appeal, but in-light of the outrageous misconduct. The trial counsel should have known about this aspect of the law, and used it as a bargaining chip, or made a motion at the plea hearing. U.S. V. Jones, 18 F.3d 1145 (4th Cir. 1994); State v. Lively, 130 Wn.2d 1, 9 (1996).

As Demonstrated in the facts, Detective Cynthia Sampson knew about the violations since 2-4-11, but allowed the violations to continue. (Exhibit ONE). This is not acceptable, and a violation of the Policy and procedures of the Jail implemented for safety. Mr. Solomona at this point is in custody, and the Jail



Brian Todd <btodd72@gmail.com>

David Solomona

Baker, David-PAO <David-PAO.Baker@kingcounty.gov>

Thu, Aug 9, 2012 at 9:42 AM

To: "Brian Todd (btodd72@gmail.com) (btodd72@gmail.com)" <btodd72@gmail.com>

Hello Mr. Todd,

Thank you for your continued efforts, advocacy on this case, and taking the time to discuss the matter with me. As you know Mr. Solomona was previously convicted after a jury trial of 8 counts of Felony Violation of a Court Order and 1 count of Tampering with a Witness. Mr. Solomona appealed and the State's appellate unit conceded the issue, which has allowed Mr. Solomona the opportunity to have another trial.

However, the State has no issues proving all 9 of those charges against the defendant a second time. The primary evidence consists of recorded conversations between him and his wife. The witnesses were cooperative and mostly law enforcement members and/or persons less than sympathetic to Mr. Solomona. There are well over 100 phone calls containing hours and hours conversations during which Mr. Solomona and his wife call each other by name, discuss the no-contact order, and discusses how it is important for her not to appear at the trial on the Harassment charge.

That said, Mr. Solomona was convicted of 14 felony counts over the course of last year. He was repeatedly offered plea deals for much less time and rejected all of them. This is his chance to make a better decision. The State feels no need to continue to hammer Mr. Solomona with every count if he is willing to take responsibility and frankly we would prefer to spend our resources elsewhere.

So, if Mr. Solomona wishes to take advantage of this unique situation the State will agree to let him plea to just 4 counts (see below for details) and run then concurrent to each other and the Robbery charge. This has the added benefit to Mr. Solomona of putting him in a MUCH better position should he prevail on his appeal on the Robbery case.

Plea offer:

11-1-01460-2 KNT	Standard Range
Count I: DV-FVNCO	60 Months
Count II: DV-FVNCO	60 Months
Count III: DV-FVNCO	60 Months
Count IV: DV Tampering with a Witness	51 to 60 Months
Total Recommendation:	60 Months

Agreed 60 months concurrent on each count and concurrent to cause number 11-1-01130-1 KNT (the Robbery case).

If Mr. Solomona persists in refusing to take responsibility for his actions we will go to trial as we original did with the 9 counts we originally proved and can prove again. The difference being that now Mr. Solomona has many more convictions. This makes 6 of convictions eligible for the free crimes aggravating circumstance. The State would then seek to run one or more of the counts consecutive to each other and

to the Robbery. To be clear, Mr. Solomona was sentenced on his Robbery case to 189 Months. The State's recommendation after trial/refusal to take responsibility could result in Mr. Solomona being sentenced to a total period of confinement that far exceeds 189 Months. For example, if the State requested that this case run consecutive to the Robbery (which is the minimum additional time the State could request), the State's recommendation would be for Mr. Solomona to serve 249 months.

11-1-01460-2 KNT	Standard Range
Count I: DV-FVNCO	60 Months
Count II: DV-FVNCO	60 Months
Count III: DV-FVNCO	60 Months
Count IV: DV-FVNCO	60 Months
Count V: DV-FVNCO	60 Months
Count VI: DV-FVNCO	60 Months
Count VII: DV-FVNCO	60 Months
Count VIII: DV-FVNCO	60 Months
Count IX: DV-FVNCO	51 to 60 Months
Total Recommendation:	60 Months plus the Robbery (189)
With Free Crimes aggravator:	60+ Months plus the Robbery (189)

The total State's recommendation would depend on the precise outcome at trial and the nature of the testimony and defense. However, in any result the State would at least seek to run these charges consecutive to the Robbery case and perhaps request that one or more counts consecutive to each other as well.

This offer remains available until the defendant confirms the matter for trial by completing omnibus paperwork, or until earlier modified or withdrawn.

Please let me know your thoughts.

Thanks again.

Take care,

David

*David Baker
Deputy Prosecuting Attorney
Domestic Violence Unit - Norm Maleng Regional Justice Center
Email: David-PAO.Baker@kingcounty.gov
206-205-7378
Fax: 206-205-7450*

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**EXHIBIT
FOUR**

^{that}
Exhibit three ~~is~~ proves Dpa Baker did not believe the State should beat down Mr. Solomona with every count, and if he takes responsibility the State would give him a plea that is consistent with the offense. Ultimately to help him with his robbery appeal if successful. Then as displayed in exhibit four, based off of no new facts, the Prosecutor attempts to induce Mr. Solomona to drop his robbery appeal to take a plea that should have been the original plea offer, for two counts. The State cannot attempt to have the petitioner waive his appeal rights on an unrelated plea upon a successful appeal, especially when the plea for two counts is really what the plea must be in the context of the charge.

Mr. Solomona was talking with his wife, about family issues, this is not a typical type of violation, nor was there any witness tampering. The State just sat back and illegally created this case against Mr. Solomona, this is not right, and must not be tolerated by this court. This is a type of official overreaching. U.S. V. restrepo, 994 F.2d 173 (5th Cir. 1993); U.S. V. ESTRADA-PLATA, 57 F.3d 757 (9th.Cir.1995).

CONCLUSION

This Court must vacate the extra counts and give the Petitioner the benefit of the more lenient plea for two counts, or allow the Petitioner to withdraw his plea.

C. THIS PLEA IS THE RESULT OF GROSS LAW ENFORCEMENT MISCONDUCT

"No matter what the defendant's past record, and present inclination to criminality... certain police conduct to ensnare him into further crime is not to be tolerated by an advanced society... The power of the government is abused and directed to an end for which it was not constituted when employed to promote rather than detect a crime." J. Franfurter Sherman V. U.S., 356 U.S. 369 (1958).



Brian Todd <btodd72@gmail.com>

Solomona

1 message

Baker, David-PAO <David-PAO.Baker@kingcounty.gov>

Wed, Oct 3, 2012 at 1:16 PM

To: "Brian Todd (btodd72@gmail.com) (btodd72@gmail.com)" <btodd72@gmail.com>

Hi Brian,

Just wanted to check in with you on this as I will be out of the office for a good portion of tomorrow for a training (probably from 9am on). My understanding (needs to be confirmed with Brad though) is that Mr. Solomona has three options at this point:

1. Withdraw his appeal on the Robbery and plea to 2 counts on my case which guarantees a reduction in the amount of time he faces.

or

2. Plea to 4 counts on my case (as originally noted) and take his chances on the appeal on the Robbery.

or

3. Take my case to trial and take his chances on getting even more prison time as noted in my original email...

I'll be around this afternoon if you want to discuss and possibly in GA tomorrow morning for an 8:30.

If you can please let me know what you would like to do tomorrow. I would like to either set it for a plea date a week or two out, or set the case for trial.

Thanks,

David

*David Baker**Deputy Prosecuting Attorney**Economic and Violent Crimes Unit - Norm Maleng Regional Justice Center**Email: David-PAO.Baker@kingcounty.gov**206-205-7378**Fax: 206-205-7450*

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EXHIBIT

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EXHIBIT

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FILED

13 FEB 04 AM 9:00

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CASE NUMBER: 11-1-01460-2 KNT

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
Plaintiff,)	No. 11-1-01460-2 KNT
)	
vs.)	DEFENDANT'S PRETRIAL BRIEF
)	
DAVID S. SOLOMONA,)	
Defendant.)	

I. FACTS

I, Brian J. Todd, state and declare as follows:

I am over the age of eighteen, not an interested party in this matter, competent to be a witness herein and that the matters set forth in this declaration are based upon my own personal knowledge.

I am the attorney for the defendant, Mr. Solomona, and I have reviewed the discovery and investigation materials. The following are the undisputed material facts which the Court needs for the determination of this motion and the undisputed material facts do not establish a prima facie case of guilt.

The defendant, David Solomona, was convicted of Assault in the Second Degree in 2000 for assaulting Carey Solomona, the defendant's wife. As a result of that conviction, there was a

DEFENDANT'S PRETRIAL BRIEF- 1

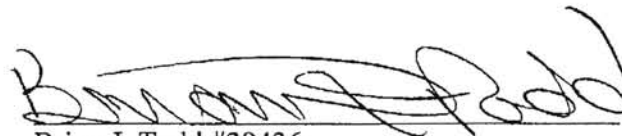
Law Office of Brian J. Todd
6523 California Avenue SW #179
Seattle, Washington 98136-1833
(206) 778-0750
FAX (206) 937-6419
Btodd72@gmail.com

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2 no-contact order issued that prohibited the defendant from contacting Carey Solomona. After its
3 issuance, the defendant was convicted in King County Superior Court under case 04-1-03422-8
4 SEA of violating the order. There is a also a notation on the defendant's criminal history from
5 King County District Court cause number Y40129719 that indicates that Mr. Solomona was
6 again convicted of violating the order. The State has charged the defendant with eight counts of
7 violation of a no contact order. As a result of the allegations that Mr. Solomona has been
8 previously convicted twice of violating a no-contact order, these allegations before this Court are
9 being charged as a felony. RCW 26.50.100(5).

10 The undersigned counsel went to the King County District Court to get documents and
11 evidence of the prior conviction of a no-contact order under Y40129719. The undersigned was
12 told by the court staff that there were no documents in existence which would substantiate a
13 conviction in this case. The district court did provide a copy of the docket and a copy of all
14 documents which are now in their possession. These have been attached to this motion.

15 However, there is no original charging document showing the exact crime with which
16 Mr. Solomona was charged. Additioanlly, there is no statement of defendant on plea of guilty
17 and no judgment and sentence in this case which specifically sets out the crime and facts that the
18 defendant was convicted of.

19 DATED this ____ day of February, 2013 in Seattle, Washington.

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22 Brian J. Todd #29436
23 Attorney for the Defendant.

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II. ISSUES

STATE V. KNAPSTAD MOTION: The defendant makes a motion to dismiss pursuant to State v. Knapstad. The issue is whether the Court should dismiss the charge against Mr. Solomona because there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. In the alternative, the charges in this case should be tried as misdemeanor counts and not felony counts.

ARGUMENT

THE COURT SHOULD DISMISS THE CHARGE OF FELONY VIOLATION OF A NO CONTACT ORDER AGAINST MR. SOLOMONA BECAUSE THE UNDISPUTED FACTS DO NOT ESTABLISH A PRIMA FACIE CASE OF GUILT.

A Washington defendant should initiate a [Knapstad motion] by sworn affidavit, alleging there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. State v. Knapstad, 107 Wn.2d 346, 356, 729 P.2d 48 (1986). The affidavit must necessarily contain with specificity all facts and law relied upon in justification of the dismissal. Id. at 356. Unless specifically denied, the factual matters alleged in the motion are deemed admitted. Id. at 356. The State can defeat the motion by filing an affidavit which specifically denies the material facts alleged in the defendant's affidavit. Id. at 356. If material factual allegations in the motion are denied or disputed by the State, denial of the motion to dismiss is mandatory. Id. at 356. If the State does not deny or dispute the undisputed facts or allege other material facts, the court is required to ascertain in the omnibus hearing whether the facts the State relies upon, as a matter of law, establish a prima facie case of guilt. Id. at 356. If the motion is granted the court must enter a written order setting forth the affidavits and other

1
2 materials it has considered and its conclusions regarding the insufficiency of the evidence. Id. at
3 356. Since the court is not to rule on factual questions, no findings of fact should be entered. Id.
4 at 356.

5 Mr. Solomona is charged with the crime of violation of a no contact order under RCW
6 26.50.110(1), (5) in this case. See State's charging document. The elements of this crime are
7 very specifically set out in RCW 26.50.110.

8 That section begins:

9 "Whenever an order is granted under this chapter, chapter 7.90, 9.94A, 10.99, 26.09,
10 26.10, 26.26 or 74.34 RCW, or there is a valid foreign protection order as defined in RCW
11 26.42.020, and the respondent or person to be restrained knows of the order, a violation of any of
12 the following provisions is a gross misdemeanor, except as provided in subsections (4) and (5) of
13 this section[;]"

14 The section which differentiates the felony offense from the misdemeanor offense is in
15 subsection (5) of this statute. It reads:

16 "A violation of a court order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09,
17 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020,
18 is a class C felony if the offender has at least two previous convictions for violating the
19 provisions of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26,
20 or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous
21 convictions may involve the same victim or other victims specifically protected by the orders the
22 offender violated."
23

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2 The language in this statute is very specific that the order which was issued must be issued
3 pursuant to the list of statutes. This list is normally set out in the charging document that gives
4 the defendant notice of the crime with which they are being charged. In the Matter of the
5 Personal Restraint of Ness, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993). These elements that
6 are set out in the information would give the presumption that a plea is knowing, intelligent, and
7 voluntarily made. Id.

8 However, in this case, there is absolutely no official record of the charge that the
9 defendant was originally charged with. There is absolutely no official record of the charge to
10 which the defendant plead. Also, there is absolutely no record of the charge which the defendant
11 was of an the statutes with which he was convicted of violating.

12 There is no official record of any statement of defendant on plea of guilty in this case.
13 It is impossible to say whether the plea made by the defendant was knowingly, intelligently, or
14 voluntarily made. Also, there is no way to say whether the defendant was convicted properly
15 and beyond a reasonable doubt of the crime of violation of a no-contact order pursuant to statute.

16 Because it is impossible to prove that the defendant has been convicted by the King
17 County District Court of a predicate crime, the case before this court cannot proceed as a felony.

18 The request would be to dismiss this case in this court and proceed on only the witness
19 tampering charge. However, counsel would concede that if the court finds that proof is lacking
20 of a predicate conviction in this case, that the counts would then be downgraded to
21 misdemeanors.

22 Outside materials other than the official court records are not proof of a prior
23 conviction. See State v. Murdock, 91 Wn.2d 336, 588 P.2d 1143 (1979). Additionally, "The

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2 records and proceedings of any court of the United States, or any state or territory, shall be
3 admissible in evidence in all cases in this state when duly certified by the attestation of the clerk,
4 prothonotary or other officer having charge of the records of such court, with the seal of such
5 court annexed.” RCW 5.44.010.

6 In establishing the defendant's criminal history for **sentencing purposes**, the State must
7 prove by a **preponderance of the evidence** that a prior conviction exists. *Emphasis added.*
8 RCW 9.94A.110; State v. Ammons, 105 Wn.2d 175, 186, 713 P.2d 719, 718 P.2d 796, cert.
9 denied, 479 U.S. 930 (1986). An out-of-state conviction may not be used to increase the
10 defendant's offender score unless the State proves it is a felony in Washington. State v. Weiland,
11 66 Wn. App. 29, 831 P.2d 749 (1992). While the best evidence of a prior conviction is a certified
12 copy of the judgment, State v. Descoteaux, 94 Wn.2d 31, 614 P.2d 179 (1980), the State may
13 introduce documents of record or transcripts of prior proceedings to establish the defendant's
14 criminal history. State v. Herzog, 48 Wn. App. 831, 834, 740 P.2d 380 (1987); State v. Herzog,
15 112 Wn.2d 419, 771 P.2d 739 (1989). However, this is not a SENTENCING issue. This is a
16 trial issue and the State is required to prove every single element of the offense **beyond a**
17 **reasonable doubt**. State v. Summers, 107 Wn. App. 373, 381, 28 P.3d 780 (2001). The above
18 cases do not apply to this situation.

19 Because there is no official record of the actual conviction of the defendant, the State is
20 unable to prove the element of a predicate conviction beyond a reasonable doubt and the charge
21 against Mr. Solomona should be tried as a misdemeanor, not a felony.
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3.5 ISSUES: The State has indicated they do not plan to use statements of the defendant against him in their case in chief.

3.6 ISSUES: There do not appear to be any CrR 3.6 issues. No CrR 3.6 motion was noted in the omnibus order and the defense does not intend on asking that any evidence be suppressed.

III. DEFENSE WITNESSES

The defense gives notice of the following witnesses:

1. David S. Solomona, Defendant

The defense endorses all State's witnesses.

IV. PRE-TRIAL MOTIONS IN LIMINE

1. The defense moves in limine to preclude the State from referring to Carey Solomona as the "victim." This is a legal term and there are alternative terms that can be used to refer to this person including Ms. Solomona.

4. The defense reserves the right to make additional motions in limine as they may arise.

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V. DISCLOSURE OF DEFENSE

The defense intends to rely on general denial.

VI. DISCOVERY REQUESTS

1. The defense requests any follow-up reports that have been generated in this case.

VI. CONCLUSION

For the above stated reasons, Mr. Solomona respectfully requests the Court grant the relief requested above.

DATED this 4th day of February, 2013.


Brian J. Todd #29436

RCW 26.50.110
Violation of order — Penalties.

(1)(a) Whenever an order is granted under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

[2009 c 439 § 3; 2009 c 288 § 3; 2007 c 173 § 2; 2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]

Notes:

Reviser's note: This section was amended by 2009 c 288 § 3 and by 2009 c 439 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding -- Intent -- 2009 c 439: See note following RCW 26.50.060.

Findings -- 2009 c 288: See note following RCW 9.94A.637.

Finding -- Intent -- 2007 c 173: "The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2007 c 173 § 1.]

Short title -- 2006 c 138: See RCW 7.90.900.

Application -- 2000 c 119: See note following RCW 26.50.021.

Severability -- 1995 c 246: See note following RCW 26.50.010.

Finding -- 1991 c 301: See note following RCW 10.99.020.

Violation of order protecting vulnerable adult: RCW 74.34.145.

DD7020SX MMG
10/04/2012 1:38 PM

KCDC-SO DIV (AUK)
D O C K E T

PAGE: 1

DEFENDANT
SOLOMONA, DAVID SIONA T
17815 152ND PL SE
RENTON WA 98058

CASE: Y40129719 KCP
Criminal Non-Traffic
Agency No. CCN1724423

Home Phone: 2068410312

AKA SOLOMANA, DAVID S

CHARGES

Violation Date: 05/01/2004	DV Plea	Finding
1 26.50.110.DV VIOLATION OF PROTECTION O Y		Guilty

TEXT

S 05/03/2004 Case Filed on 05/03/2004 Charge 1 is DV-related
DEF 1 SOLOMONA, DAVID SIONA T Added as Participant
MOT INC Set for 05/03/2004 01:33 PM in Room 1F with Judge DEP
U PER 5/3/04 BOOKING SHEET DEFENDANT BOOKED NEW CHARGE
1F RJC 3:52 JUDY EILER JUDGE, S KIM PROSECUTOR
PRESENT WITH ATTORNEY STUDEMAN
INCUSTODY KING COUNTY JAIL
COPY OF COMPLAINT SERVED UPON DEFENDANT, DEFENSE ACKNOWLEDGES
RECEIPT, WAIVES FORMAL READING, ENTERS P/NG
SET FOR PRETRIAL 5/17/04 1:30
COURT ENTERS FINDING OF PROBABLE CAUSE
STATE REQUESTS NCO BE ISSUED, VICTIM PRESENT, REQUESTS NO
NCO BE ISSUED GRANTED, COURT DOES NOT ISSUE NO CONTACT ORDER
CONDITIONS OF CONDUCT ENTERED:
NO VIOLATIONS OF CRIMINAL LAW
NO USE OF ALCOHOL OR NON PRESCRIBED DRUGS
PROMPT APPEARANCE AT ALL SCHEDULED HEARINGS
COMPLIANCE WITH ALL ORDERS OF THE COURT
NO POSSESSION OF FIREARMS/WEAPONS
S PTR NN Set for 05/17/2004 01:30 PM
in Room 1F with Judge DEP
U STATE FILES COMPLAINT
S MOT INC: Held
U 05/05/2004 COURT SETS BAIL \$5000.00 BONDABLE
S 05/06/2004 BON 1 A-AFFORDABLE BAIL BONDS Added as Participant BJS
04127100603 Appearance Bond Posted for DEF 1 5,000.00
Posted by: A-AFFORDABLE BAIL BONDS
U 05/14/2004 5/05/04 STATES RESPONSE TO REQUEST FOR DISCOVERY AND STATES DXM
REQUEST FOR DISCOVERY FILED
AND PROOF OF COMPLIANCE WITH FIREARM SURRENDER ORDER-
AFFIDAVIT OF NON SURRENDER ATTACHED TO STATES RESPONSE
05/17/2004 1F RJC 2:21 P.M JUDGE J. EILER, PROSECUTOR KIM EMF
DEFENDANT PRESENT WITH ATTY. STUDEMAN-ACA
AGREED MOTION TO CONTINUE
GRANTED
S PTR NN Set for 05/25/2004 01:30 PM
in Room 1F with Judge DEP
PTR NN: Held

Docket continued on next page

DEFENDANT
SOLOMONA, DAVID SIONA T

CASE: Y40129719 KCP
Criminal Non-Traffic
Agency No. CCN1724423

TEXT - Continued

U 05/25/2004 1F RJC 1:54 J EILER JUDGE, WYATT PROSECUTOR DXM
PRESENT WITH ATTORNEY STUDEMAN, DEFENSE REQUESTS CONTINUANCE
GRANTED, COURT ADVISES LAST CONTINUANCE
RESET PRETRIAL TO 6/15/04 1:30
COURT SETS SPEEDY AS 9/13/04, WAIVER FILED
S PTR NN Set for 06/15/2004 01:30 PM
in Room 1F with Judge DEP
PTR NN: Held
U 06/15/2004 1F RJC 3:20 RICK BATHUM JUDGE, WYATT PROSECUTOR
PRESENT WITH ATTORNEY STUDEMAN
DEFENSE REQUESTS CONTINUANCE, STATE NO OBJECTION
COURT RESETS PRETRIAL TO 6/29/04 1:30
S PTR NN: Held
06/16/2004 PTR NN Set for 06/29/2004 01:30 PM
in Room 1F with Judge DEP
U 06/29/2004 RJC 1F 0205 JUDGE EILER/ PROS KIM CMK
DEF PRESENT WITH STUDEMAN - ACA
PLEA OF GUILTY FILED - RIGHT ADVISED - ACCEPTED
CONTINUE FOR SENTENCING
NOTICE GIVEN
S SEN NN Set for 07/21/2004 09:30 AM
in Room 1F with Judge DEP
U NOITCE MAILED TO BONDING CO
S PTR NN: Held
U 07/21/2004 RJC - 1F 11:29 JUDGE BATHUM DPA CALVO NLD
DEF APPEARS W/ATTY NADEAU OF ACA.
S Finding/Judgment of Guilty for Charge 1
Case Heard Before Judge BATHUM, RICK W
Judge BATHUM, RICK W Imposed Sentence
Court Imposes Jail Time of 364 Days on Charge 1
with 334 Days Suspended, and
0 Days Credit for time served
Monitored Unsupervised Probat. : 24 M
Monitored Unsupervised Probat. : 480.00
MON Review Set for 05/21/2006
DUI Electronic Home Monitoring : 30 D
No Criminal Violations : 24 M
No Alcohol or Drugs : 24 M
Domestic Violence Treatment : 60 D
No Firearms/Possess Firearms : 24 M
U MON. PROBATION - SIGNAL PACKET GIVEN TO DEF.
SET REVIEW 90 DAYS - MAIL NOTICE.
COMMITMENT ISSUED ALONG W/CONDITIONS OF CONDUCT - FAXED TO
JAIL.
S SEN NN: Held
07/22/2004 Accounts Receivable Created 480.00
Case Scheduled on Time Pay Agreement 1 for: 480.00
REV Set for 10/20/2004 09:30 AM
in Room 1F with Judge DEP

Docket continued on next page

DEFENDANT
SOLOMONA, DAVID SIONA T

CASE: Y40129719 KCP
Criminal Non-Traffic
Agency No. CCN1724423

TEXT - Continued

S 07/22/2004 Appearance Bond WIK151858 Exonerated 5,000.00 NLD
U SCREENPRINT FAXED TO A AFFORDABLE BAIL BONDS
S Order created on 07/22/2004 NO CONTACT entered by
BATHUM, RICK W expires on 07/21/2007
08/25/2004 Notice Issued for REV on 10/20/2004 09:30 AM LLC
U 10/20/2004 1F RJC 11:20 JUDGE BATHUM, PROS. SHERMAN, PROB. GARCIA EMF
DEFENDANT NOT PRESENT - NOT TRANSPORTED
CONTINUE TO MONDAY 10/25/04 AT 9:30 A.M.
S REV N Set for 10/25/2004 09:30 AM
in Room 1F with Judge DEP
REV: Held
U 10/21/2004 PHONE CALL TO JAIL OFFICER KOHLER - DEFENDANT CANNOT BE JMW
TRANSPORTED TO 1F HERE AT THE RJC AS HE IS ON THE 11TH
FLOOR IN SEATTLE JAIL (DISCIPLINARY SECTOR). ARRANGEMENTS
NEED TO BE MADE FOR TRANSPORT TO SEATTLE.
10/25/2004 1F RJC 11:20 JUDGE PHILLIPSON, PROS. GAHAN, PROB. GARCIA EMF
DEFENDANT IN CUSTODY SEATTLE JAIL - NOT TRANSPORTED
AS DEFENDANT IS CURRENTLY IN DISCIPLINARY SECTION
CASE TRANSFERRED TO JAIL DIVISION FOR REVIEW HEARING
PAPERWORK FAXED TO SEATTLE - JAIL DIVISION
EMAIL SENT TO SEATTLE DIVISION
S REV N: Held
U 10/30/2004 PER JAIL INFORMATION - SENTENCE HAS EXPIRED ON THIS CHARGE EAM
S 11/01/2004 OTH COURT Set For 11/03/2004 09:00 AM In Room JAI
11/03/2004 OTH COURT: Not Held, Continued
Proceedings Recorded on Tape No. J11032004
U IN CUSTODY HEARING HELD @ KCCF BEFORE JUDGE MARK CHOW
PA JULIE KLINE PD MARY ORTEGA
DEFENDANT IN ANOTHER COURT
S OTH COURT Set For 11/05/2004 09:00 AM In Room JAI
11/05/2004 OTH COURT: Not Held, Continued
Proceedings Recorded on Tape No. J11052004
U DEFENDANT IN ANOTHER COURT
S OTH COURT Set For 11/10/2004 09:01 AM In Room JAI
11/10/2004 OTH COURT: Held
Proceedings Recorded on Tape No. J11102004
U IN CUSTODY HEARING HELD @ KCCF BEFORE JUDGE CHOW
PA JULIE KLINE PD MARY ORTEGA
BAIL SET AT \$10,000 - COURT ORDERS CASE TO BE SET ON
11/12/2004 RJC/DV COURT - PAPERWORK SENT VIA MAIL
S REV Set for 11/17/2004 09:30 AM DXM
in Room 1F with Judge DEP
11/15/2004 Notice Issued for REV on 11/17/2004 09:30 AM MMH
U 11/17/2004 DEFENDANTS NOTICE THAT WAS PRINTED ON 11/15/04 REC'D AT DXM
RJC ON 11/15/04. NOT ENOUGH TIME TO SEND OUT, DEFENDANTS IN
CUSTODY.
1F RJC 11:13 RICK BATHUM JUDGE, CALVO PROSECUTOR
PRESENT WITH ATTORNEY DOLAN, SET ASIDE
11:41 RESUME.

Docket continued on next page

DEFENDANT
SOLOMONA, DAVID SIONA T

CASE: Y40129719 KCP
Criminal Non-Traffic
Agency No. CCN1724423

TEXT - Continued

U 11/17/2004 COURT REVIEWS CASE. COURT IMPOSES 90 DAYS JAIL, STATE REQUEST DXM
CONSECUTIVE JAIL TIME, DEFENSE REQUESTS CONCURRENT
COURT IMPOSES JAIL TIME CONCURRENT TO OTHER CHARGES
COURT ADVISES 20 MONTHS JURISDICTION
COURT STRIKES EHM CONDITION
COURT ASKS ABOUT PROBATION FEES - WAIVED AT THIS TIME
COPY OF ORDER GIVEN TO PROBATION
COMMITMENT ISSUED FOR 14 DAYS WORK RELEASE.
S MON : Imposed on 07/21/2004 canceled
Review set for MON on 05/21/2006 canceled
EHM : Imposed on 07/21/2004 canceled
Revoked Suspended Jail : 90 D
Active Supervised Probation : 20 M
ACT Review Set for 07/17/2006
U COPY OF ORDER UPON REVIEW GIVEN TO PROBATION ALONG WITH
ORIGINAL SENTENCING ORDER.
S REV: Held
11/18/2004 PRB 1 ALBER, DAVE Added as Participant YXM
U 12/06/2004 11/16/04 JAIL PAPERWORK REC'D FROM SEATTLE DIVISION DXM
03/22/2005 EMAIL REC'D FROM JUDGE, SET FOR REVIEW AND SUSPEND PROBATION
S REV Set for 04/25/2005 08:45 AM
in Room 1F with Judge DEP
Notice Issued for REV on 04/25/2005 08:45 AM MMH
U 04/22/2005 DEF DID NOT PAY, REMOVED FROM TIME PAY SMH
S Case Removed from Time Pay Agreement 642 81232 1
Case Obligation Selected for Collections
U 04/25/2005 1F RJC 10:30 JUDGE R. BATHUM, PROS. CALVO, PROB. ALBER EME
DEFENDANT PRESENT WITH ATTY. JAMES-ACA
THERE IS AN ALLEGATION OF VIOL. NO CONTACT ORDER
DEFENSE DENIES ALLEGATION
COURT FINDS THAT PREVIOUS ORDER ENTERED IS NOT VALIDE
NEW NO CONTACT ORDER ENTERED
PROBATION IS REINSTATED
CASE CONTINUE ON PROBATION
S Order modified On 04/25/2005 NO CONTACT modified
termination date from blank to 04/25/2005
Order created on 04/25/2005 NO CONTACT entered by
BATHUM, RICK W expires on 07/21/2006
Order created on 04/25/2005 NO CONTACT entered by
BATHUM, RICK W expires on 07/21/2006
U ORDER APPOINTING COUNSEL/ORDER OF RECOUPMENT FILED BY ACA
UPDATED REPORT FILED FROM PROBATION
S REV: Held
U 04/28/2005 RETURN OF RECALLED NO CONTACT ORDER FILED (DCORAUTO) ECR
05/04/2005 NOTICE OF APPEARANCE ; REQUEST FOR DISCOVERY; PETITION FOR
DEFERRED PROSECUTION; DEMAND FOR SPEEDY TRIAL; DEMAND FOR
JURY TRIAL; MOTION TO MAKE MORE DEFINITE AND CERTAIN;
MOTION FOR JOINDER OF OFFENSES, FILED. (DCORAUTO)
S 06/15/2005 Collections: 1st Notice Prepared TNM

Docket continued on next page

DEFENDANT
SOLOMONA, DAVID SIONA T

CASE: Y40129719 KCP
Criminal Non-Traffic
Agency No. CCN1724423

TEXT - Continued

S 07/20/2005 Case Obligation Assigned to ALLIANCEONE RECEIVABLES for Colle TNM
ctions

07/21/2005 ATY 1 ASSOC COUNSEL, FOR ACCUSED Added as Participant TLD

U 09/07/2005 MOTION TO RECALL NCO FILED BY ADVOCATE MMG
MOTION TO RECALL NCO FILED BY VICTIM (SWDAMMG) ECR

S 09/12/2005 MOT Set for 09/29/2005 08:45 AM MMG
in Room 1F with Judge RWB
Notice Issued for MOT on 09/29/2005 08:45 AM MMH

U 09/29/2005 NOTICE OF HEARING FILED (DCORAUTO) ECR
PROBATION FILES UPDATE FOR TODAYS HEARING DXM
1F RJC 9:41 PRO TEM JUDGE STEAD, PROS. KLINE EMF
DEFENDANT PRESENT WITH ATTY. STUDEMAN-ACA
DEFENSE MOTION TO RECALL NO CONTACT ORDER
VICTIM PRESENT WITH D.V ADVOCATED
1F RJC 9:25 PRO TEM JUDGE STEAD, PROS. KLINE
STATE DEFERS TO THE COURT
MOTION GRANTED
NO CONTACT ORDER RECALLED

S Order modified On 09/29/2005 NO CONTACT modified
termination date from blank to 09/29/2005
Order modified On 09/29/2005 NO CONTACT modified
termination date from blank to 09/29/2005

U UPDATED REPORT FILED FROM ACT & T SOUTH

S MOT: Held

U 10/05/2005 RETURN OF RECALLED NO CONTACT ORDER FILED (DCORAUTO) ECR
10/10/2005 NO CONTACT ORDER ISSUED ON 4/25/05 RETURNED EMF
10/12/2005 NOTICE OF WITHDRAWAL FILED (DCORAUTO) ECR

S 10/19/2005 ATY 1 ASSOC COUNSEL, FOR ACCUSED Removed AZB

U 11/07/2005 DEFENDANT REPORTED NEW ADDRESS TO PROBATION - DOCKETED YXM
03/14/2006 ACCOUNT VERIFIED AND REFERRED TO ALLIANCEONE FOR GARNISHMENT. DSA
ACCOUNT IN GARNISHMENT-DO NOT REMOVE FROM COLLECTION

05/18/2006 RECEIVED UPDATED REPORT FROM KC PROBATION INDICATING TLD
DEFENDANT IS IN COMPLIANCE AND REQUESTING THAT PROBATION BE
TERMINATED AND THE CASE TO REMAIN OPEN UNTIL THE END OF
JURISDICTION.

05/19/2006 CASE SET FOR FINAL REVIEW

S REV Set for 06/26/2006 08:45 AM
in Room 4A with Judge RWB

05/22/2006 Notice Issued for REV on 06/26/2006 08:45 AM RLM

U 06/26/2006 4A RJC 10:25 JUDGE R. BATHUM, PROS. BEARDSLEY, PROB. ALBER EMF
DEFENDANT NOT PRESENT
CASE REVIEWED
CASE CLOSED
FILE IN 2006 CLOSED

S Accounts Receivable Changed to 0.00
Authorized by EMF with Adjustment Code: CO
Case Obligation Removed from Collections
Case Disposition of CL Entered
REV: Held

Docket continued on next page

DEFENDANT
SOLOMONA, DAVID SIONA T

TEXT - Continued

S 06/26/2006 Case Disposition of CL Entered NLD
 07/14/2006 Case Disposition Changed to Open SZU
 PYR 1 ALLIANCEONE Added as Participant
 06194100075 Appearance Bail Posted for DEF 1 42.02
 Posted by: ALLIANCEONE
 U CASE ALREADY CLOSED, MONEY POSTED IN BAIL TO BE REFUNDED
 ALLIANCEONE STATEMENT 06-27-2006
 S Appearance Bail Marked Payable 42.02
 07/18/2006 CNS 1 ALLIANCEONE Added as Participant BJS
 Court Chk Ref 10151 for Bail Refund 42.02
 to Payee: ALLIANCEONE
 08/01/2006 PYR 2 ALLIANCEONE Added as Participant SZU
 06213100008 Appearance Bail Posted for DEF 1 42.02
 Posted by: ALLIANCEONE
 U ALLIANCEONE STATEMENT 07-07-2006
 S Appearance Bail Marked Payable 42.02
 U CASE ALREADY CLOSED, MONEY POSTED IN BAIL TO BE REFUNDED
 S CNS 2 ALLIANCEONE Added as Participant DLM
 Court Chk Ref 10158 for Bail Refund 42.02
 to Payee: ALLIANCEONE
 U 07/05/2011 LETTER RECVD FROM DEFENDANT- REQUESTS COPY OF DOCKET AND MXE
 PROBABLE CAUSE STATEMENT- STATES HIS GIRLFRIEND WILL PAY FOR
 THIS IF THERE IS ANY FEE
 07/06/2011 DUE TO AGE OF CASE FILE IS NO LONGER AVAILABLE-
 DISCIS DOCKET RECALLED FROM ARCHIVE AND IS ALL THAT IS
 AVAILABLE
 PUBLIC ACCESS DOCKET PRINTED - PHONE CALL TO CASSANDRA
 (DEFENDANTS GIRLFRIEND) TO ADVISE REQUESTED DOCUMENTS ARE
 READY TO PICK UP AND COST

COLLECTION STATUS

Status Date	Status Description	Cln Amt
06/26/2006	Cleared/Removed, Full Adjustment	

ADDITIONAL CASE DATA

Case Disposition
 Disposition: Closed Date: 06/26/2006

Parties

Bondsman	A-AFFORDABLE BAIL BONDS
Consolidation Payee	ALLIANCEONE
	ALLIANCEONE
Probation Officer	ALBER, DAVE
Payor	ALLIANCEONE
	ALLIANCEONE

Docket continued on next page

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10/04/2012 1:38 PM

KCDC-SO DIV (AUK)
D O C K E T

PAGE: 7

DEFENDANT
SOLOMONA, DAVID SIONA T

CASE: Y40129719 KCP
Criminal Non-Traffic
Agency No. CCN1724423

ADDITIONAL CASE DATA - Continued

Personal Description

Sex: M Race: A DOB: 06/02/1980
Dr.Lic.No.: SOLOMDS208LB State: WA Expires: 2007
Employer: SHARPLES H.S/BAKER
Height: 6 Weight: 230 Eyes: BRO Hair: BLK
Identifying Information: TAT RT & LT 4ARMS/CCN:1724423/
TAT: "SOLO" R FINGERS/SAMOA-RA
04/2011 RJC JAIL

Hearing Summary

Held	IN CUSTODY HEARING	ON 05/03/2004 AT 01:33 PM IN ROOM 1F WITH DEP
Held	PRE TRIAL	ON 05/17/2004 AT 01:30 PM IN ROOM 1F WITH DEP
Held	PRE TRIAL	ON 05/25/2004 AT 01:30 PM IN ROOM 1F WITH DEP
Held	PRE TRIAL	ON 06/15/2004 AT 01:30 PM IN ROOM 1F WITH DEP
Held	PRE TRIAL	ON 06/29/2004 AT 01:30 PM IN ROOM 1F WITH DEP
Held	SENTENCING	ON 07/21/2004 AT 09:30 AM IN ROOM 1F WITH DEP
Held	REVIEW	ON 10/20/2004 AT 09:30 AM IN ROOM 1F WITH DEP
Held	REVIEW	ON 10/25/2004 AT 09:30 AM IN ROOM 1F WITH DEP
Held	IN-CUSTODY HEARING	ON 11/10/2004 AT 09:01 AM IN ROOM JAI WITH MCC
Held	REVIEW	ON 11/17/2004 AT 09:30 AM IN ROOM 1F WITH DEP
Held	REVIEW	ON 04/25/2005 AT 08:45 AM IN ROOM 1F WITH DEP
Held	MOTION TO RECALL NCO	ON 09/29/2005 AT 08:45 AM IN ROOM 1F WITH RWB
Held	REVIEW	ON 06/26/2006 AT 08:45 AM IN ROOM 4A WITH RWB

End of docket report for this case

EXHIBIT
SIX

**EXHIBIT
SIX**

FILED
KING COUNTY, WASHINGTON

FEB 15 2013

SUPERIOR COURT CLERK
BY: PAMELA ANZAI
DEPUTY

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

STATE OF WASHINGTON

Petitioner,

vs.

DAVID S.T. SOLOMONA

Respondent.

NO. 11-1-01460-2 KAT

DEFENDANT'S MOTION TO WITHDRAW
GUILTY PLEA.

1
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3 STATE OF WASHINGTON

CASE NO: 11-1-01460-2411

4 PLAINTIFF

Motion to withdrawl

5 VS

of Guilty plea under

U.S. v. Couto 311 F.3d

7 David S. Solomona

179 (2nd Cir. 2002)

8 DEFENDANT

9
10 I Hear comes the defendant

11 pro se, moves this court to grant the relief herein

12 sought on page two, section 1.1.1 of this document.

13
14 1.1 Grounds

15 The authority of the court to grant this

16 motion for the defendants attorneys failure

17 to conduct a BRADY interview with all states

18 witnesses before the defendants plea of guilty

19 under U.S. v. Couto, 311 F.3d 179 (2nd Cir. 2002)

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27 ORIGINAL

1 111 Relief Sought

2 The defendant David S. Solomon in prose,
3 asks this court to grant him the right to
4 withdraw his plea of guilty entered on 4th
5 day of February 2013, in KING COUNTY court,
6 in the state of Washington, and enter a plea
7 of NOT GUILTY.

8
9 02-15-2013

David Solomon
David S. Solomon

10 Date

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FILED
KING COUNTY, WASHINGTON

FEB 15 2013

SUPERIOR COURT
BY: PAMELA ANZAI
DEPUTY

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

STATE OF WASHINGTON

Petitioner,

vs.

DAVID S.T. SOLOMONA
Respondent.

NO. 11-1-01460-2KNT

DEFENDANT'S MOTION TO DISMISS CASE.

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STATE OF WASHINGTON } CASE: 11-1-01460-2 KNT
Plaintiff } Motion to dismiss
vs } case due to due process
violation. Denied to have
David S. Solomona } All state witnesses and
Defendant } victims interviewed
before the start of my
trial

Comes now: The defendant asking King County Superior Court Judge to dismiss the stated case due to due process right violation for denying to have all state witnesses and victims interviewed before the start of trial under Brady vs The state of Maryland 373 U.S 83 S. Ct at 1196 at 10 LED 2d 218. Suppression of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or punishment. Under case law Butler vs Maroney 319 F. 2d. 622 (3rd) Cir 1963 and Ashley vs Texas 319 F 2d 80 5th Cir 1963 for failure to disclose matters affecting defendants pre trial preparation or the development of defense theories. The defendant has given a motion to the Superior Court, my attorney and the prosecuting attorney.


No. 70107-0-I
DAVID S. SOLOMONA 807395 AY-A-90
Stafford Creek Correctional Center
191 Constantine Way
Aberdeen, WA 98520

RE: copy of EXHIBITS RAP 10.10
I CANNOT get copies of my SIX
EXHIBITS UNTIL TOMORROW. I AM

Sending my SAG out now (enclosed).
I will send ALL SIX EXHIBITS tomorrow.
The counselors have not been available

for 3-days. Please grant me a small extension
Thank you.

10-29-13
P.S. will you send me
a stamp & filed copy
of my SAG?


DAVID S. SOLOMONA