COURT OF APPEALS DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent;	No. #43995-6-II PIERCE COUNTY SUPERIOR COURT CAUSE NO. 11-1-03845-1
V.	
RONALD HODGE HOLTZ, APPELLANT.	STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Ronald H. Holtz, Appellant moves this Court in A Appellate Review of Pierce County Superior Court Judge Kathryn Nelson For Constitutional and Procedural errors. These additional grounds are supported by the Court filings and the record. Though this brief is filed in propia personam Appellant looks to Counsel to Support RAP 10.10(F) these meritorious issues and to produce the requested records to aid in Support of listed/unlisted grounds pursuant to RAP 10.10(e). Appellant incorporates all papers, pleadings, exhibits, Motions, herein. [RAP 1.2(c) requests acceptance of Exh. #1-4]

DATE: 6/6/13 Signature: RONALD HOLTZ

-STATEMENT OF FACTS-

The Following ARE inserts From A CrR 3.6 Motion to Suppress by Defendant Ronald Holtz and Filed on June 6, 2012 by Defense Attorney Sean P. Wickens, WSBA #24652, before Judge J. M. McCarthy Pierce County Superior Court Cause No. #11-1-03845-1 ON RECORD -

on September 19, 2011 at 9:33pm, Milton officer Peterson was seen at the Sunshine Motel. He came down to room #116, where "Clare Strain" had been yelling or loud, while having drinks with Friends. He said, "Hello" to everyone as I was inside Room #117 with "Shonda". Another car pulled up at the office and then went next door. I heard the new officer Morales (Previously thought name to be Gonzales) ask For "Clare Strain" by name. She asked, "What is this About"? They began to talk from the door. I attempted to walk out the door and down the hallway, when I was told by the new officer, I couldn't leave and then "Peterson said, "The same". I asked, "Why was I being detained and was I under arrest". They said, "No". So, I continued A Few steps. The officers told me loudly not to move or I, was going to be ARRESTED but his hands moved to his weapons. I requested to know the "Probable Cause" and asked was it A "Terry Stop"

OR WAS my I.d. NECESSARY, WAS THERE ANY CRIME COMMITTED??

I WAS told to shut up by OFFICER MORALES. OFF. "PETERSON" ASKED, FOR my I.D. AND WALKED AROUND THE CORNER into THE OTHER ROOM. I WAS told to STAY in THE ROOM. AFTER A while HE BROUGHT it BACK. HE SAID OR ASKED ME, "did I go by ANY OTHER NAME OR HAVE A NICKNAME"? HE ASKED did I ASSAULT "CLARE STRAIN", I SAID, "No! SHE WAS yelling but THAT's ALL OR talking loud". I REACHED FOR my I.D. but HE didn't RETURN it FOR A while/FEW minutes AS HE ANSWERED A FEW OF my QUESTIONS. Why WAS I being held, WAS I under ARREST, FOR what? HE SAID, I WASN't under ARREST AND they WERE trying to figure out something CAUSE they WERE looking FOR SOMEONE THAT I KINDA RESEMBLED but they WANTED to MAKE SURE, it WASN't ME. [SEE; JUNE 4, 2012 Pg. #40 Ln. 1-17 AT #13, (A) THE FIRST time BECAUSE they didn't KNOW who HE WAS "FROM" ELLIOTT."] WHEN I told them, "I'd like to LEAVE". HE SAID, "WHEN OFFICER MORALES COMES BACK FROM THE OFFICE". I ASKED, "Could I get my I.D. AND light A CIGARETTE"? HE SAID, "YES," OF COURSE AS HE HANDED ME my I.D. Upon lighting it, OFF. MORALES, WAS WALKING BACK. HE SAID, "Put THAT out, NOW!!"

I CAME out THE DOOR AND BEGAN to COMPLAIN ABOUT not being ABLE to LEAVE. I STATED, "YOUR VIOLATING ALL OF OUR RIGHTS, THERE IS NO CRIME HERE OR PROBABLE CAUSE to TREAT US LIKE THIS". HE told ME to, "Shut up!"

HE BROUGHT "CLARE" out in HANDCUFFS to SIT on THE STEP. THEN BEGAN to ARGUE with EVERYONE, "Why would THE CLERK "CONNIE" LIE"? WE ALL told him, out of JEALOUSY AND probably MISSEEN SOMETHING FROM A DISTANCE OR just lied out of ANGER towards THE WOMEN. Who KNOWS, but nobody

pushed "Clare". He told us all to shut up, Shonda, Me, Ira, Clare, Stephanie... He then turned to "Clare" yelling very intimidatingly, "Is this your boyfriend"? ~~twice~~ and then, "Yeah! This is your boyfriend!?" She said, "yes"! I was then placed under arrest, For 4° Assault Domestic Violence. While sitting in the parking lot and in Route to Fife jail, I heard officers talking over the radio asking Fife jail Could they identify "Ronald Holtz Keal" if they seen him. Upon arrival off. Larkins came out to identify me, He then informed officers that I couldn't be held in the jail due to medical reasons. [see; Sept. 5, 2012 Pg. #227 ln. 6-12 only "Keal" would be in AFIS (only name "Keal" would come up in Fife prior to being booked "Holtz" name never been arrested under nor in Fife - He could only have me I.D. by Larkins) I was taken to Pierce Co. Jail where off. Larkins had to wait two (2) hrs. to find a Lakewood No Contact Order as I was only charged with Violation of a No Contact. "C/O Call" told me that they'd make sure I stayed so, they had to use the assault eventhough the victim said there wasn't one inorder to have "Probable Cause" for the No-Contact Order Violation."

ARGUMENT:

- THE TRIAL COURT FAILED TO SUPPRESS ALL EVIDENCE OF THE FRUITS OF THE POISONOUS TREE FROM THE UNLAWFUL SEARCH AND SEIZURES. 4th AMENDMENT, ART. 1, SECT.

-4-

7 OF THE WASHINGTON STATE CONSTITUTION.

-A WARRANTLESS SEARCH OF A MOTEL REGISTRY IS UNLAWFUL.-

It is quite obvious in light of PRESENTED FACTS that the Motel Registry on 9/19/11 at the Sunshine Motel in Fife Washington WAS VIEWED. SEE (CAD) REPORT: A) CALL 21:33:36 Physical MALE AND FEMALE. B) 21:34:40 AT 1 min. 4 SEC. "CLARE JANE STRAIN" 08/15/1962 C) 21:34:43 NO MALE REGISTERED to ROOM.

No less than (3) seconds later the REGISTRY, No male has been listed. This is A CALL in to dispatch FROM OFFICER MORALES with information he could've only obtained FROM the REGISTRY AS spoken to dispatch by him. ONCE running Ms. STRAIN's name not only did A (SODA) ORDER COME up but A No Contact ORDER with "Ronald Keal" that lead to the ARREST OF "Ronald Holtz" on Suspicion. However, can be deemed No other than FRUITS the that initial unlawful search. Connie Elliott (CLERK) at the Motel, testifies to giving it to him per his demand, He testifies to being called by dispatch / Knowing dispatcher A. Reynolds, and Prosecutor ERICA Eggertsen admits to his being on the (CAD) REPORT with dispatch. (A) CONNIE ELLIOTT: 6/4/11 Pg. #38 Ln. 1-25; Pg. #46 Ln. 15-25; Pg. #47 Ln.

1-25 [B) -VOIR DIRE EXAM.- Sept. 5, 2012: Pg.# 250 Ln. 11-25; Pg.# 251; Pg.# 252 Ln. 5-12.] Even during impeachment REFusing to provide prior description OF him "specifically" and AS the Sole FIFE OFFICER. [C) SEE; Pg.# 253 Ln. 12-25; Pg.# 254 Ln. 1-15.] Both OFFICERS ARRIVED AT SAME time with MORALES viewing REGISTRY [D) Pg.# 266 Ln. 23-25; Pg.# 267 Ln. 1-25; Pg.# 268 Ln. 1-25; Pg.# 269 Ln. 1-25; Pg.# 270 Ln. 1-10.] Pros. ERICA Eggertsen: Admits to "MORALES" being on (CAD) REPORT with dispatch. [E) SEE; 6/11/12: Pg.# 20 Ln. 20-25.] SEE; Sept. 5, 2012 - OFFICER MORALES' own admissions during impeachment STATE and show that not only WAS he taking the initial CALL, in contact AT THAT time with dispatch, knows dispatcher "A. Reynolds", but inADVERTENTLY PROVIDES ALL information to, that it WAS, in fact, him [F) SEE; SEPT. 5, 2012 - Pg.# 163 - Pg.# 167 (Specifically Pgs. #165 Ln. 1-25 & Pg.# 166 Ln. 1-25).] Then he substantiates the fact that when Running "Ms. STRAIN'S" NAME, the No Contact ORDER with "Ronald KEAL" came up. Which ARE "Fruit From the POISONOUS TREE." [G) SEE; Pg.# 145 Ln. 22-25; Pg.# 146 Ln. 1-20.] He goes on to ALLEGE that he NEVER ASKED "STRAIN" FOR identification OR iF She WAS REGISTERED to ROOM. Then how WAS it truly Found that She WAS not only A victim but "THE" victim yet, AS it is known, there WAS no ASSAULT. [H) SEE; Pg.# 152 and # 153.] PLEASE SEE impeachment OF OFFICER "MORALES" [I) SEE; Pg.# 154 - Pg.# 178.].

OFFICER MORALES had no BASIS OF LAW to initiate A "Fishing EXPedition" OR to breach the Rights OF those when he MERELY had to pose A Simple question, "which ROOM"? REFERENCING: STATE V. Hoopii, 2011 Wash. App. LEXIS 1247 (Wash. Ct. App. May 23, 2011); SEE; P.3d, 162 Wash. App. 1003 (2011); Division I No.# 66730-1-I. The inFORMATION in A Motel REGISTRY IS A

PRIVATE AFFAIR PROTECTED by Art. 1§7, OF the State Constitution. Absent An "individualized" OR "particularized Suspicion" About the target OF the SEARCH OR A Valid Exception to the WARRANT Requirement, A WARRANTless SEARCH OF A REGISTRY, IS unlawful. In viewing A decision on A Motion to Suppress the Fruits OF A SEARCH, WE treat unchallenged findings AS VARITIES And determine whether the Courts conclusions OF Law.

WE REVIEW CONCLUSIONS OF LAW DE NOVO.

As held by Washington Court of Appeals II And The Supreme Court, STATE V. JORDEN, 160 Wn.2d 121, 130, 156 P.3d 893 (2007). INFORMATION Contained in A Motel Registry including ones WHEREABOUTS AT the Motel IS A PRIVATE AFFAIR under state Consitution, And A government TRESPASS into such INFORMATION IS A SEARCH. Evidence which led OFFICERS to defendants room WAS unlawfully obtained and should've been excluded. STATE V. SURGE, 160 WASH. 2d 65, 156 P.3d 208 (2007). OFFICER MORALES CAME straight to the OFFICE Requesting the Registry FROM Connie Elliott (CLERK) in AN ATTEMPT to simply jump AHEAD without performing his job. He had no ARTICULATE, PARTICULAR, nor individualized Suspicion OR fact that A CRIME had been committed. He WAS simply being lazy on A true investigation and then blatantly FABRICATED, that later he called in to find "ALIASES" And "Felony CHARGES". This in itself IS Police misconduct which Art. 1§7, IS to deter, vitiate, And protect Citizens Constitutional Rights. STATE V. CHENOWETH, 160 WASH. 2d 454, 472 n. 14, 158 P.3d 595 (2007). SEE, JORDEN - Id. AT 127-28, 156 P.3d 893. ~~STATE V. LOUTH-AM~~, 158 Wn. App. 732, 740-41, 242 P.3d 954 (2010). It being SETTLED

that this provision is often more protective than the 4th amendment in the search and seizure context. State v. Jackson, 150 Wn. 2d 251, 259, 76 P.3d 217 (2003). Our state's exclusionary rule, moreover, is generally less permissive than it's federal counterpart, the rule having been described as "nearly categorical." State v. Winterstein, 167 Wn. 2d 620, 629-30, 220 P.3d 1226 (2009). That rule is intended to protect individual privacy against unreasonable governmental intrusion, to deter police from acting unlawfully, and to preserve the dignity of the judiciary by refusing to consider evidence that has been obtained through illegal means. State v. Bonds, 98 Wn. 2d 1, 12, 653 P.2d 1024 (1982). "If the initial stop was unlawful, the subsequent search and fruits of that search are inadmissible as fruits of the poisonous tree." State v. Ladson, 138 Wn. 2d 343, 359, 979 P.2d 833 (1999). "When an unconstitutional search or seizure occurs, all subsequent uncovered evidence becomes "fruit of the Poisonous Tree" and must be suppressed." State v. Miles, 244 P.3d 1030, 159 Wn. App. 282 (Wash. App. Div. 1, 2011). All evidence from the point of unlawful search must be suppressed and dismissed. State v. Bluehorse, 159 Wn. App. 410 (2011). See, Brown, 422 U.S. at 601 n. 6 ("A person has a Fourth Amendment Right "to be released from unlawful custody following an arrest without a warrant or probable cause) Evidence that would not have come to light but for illegal actions of the Police...

OFFICER MORALES ALREADY ADMITS THAT UPON RUNNING "MS. STRAIN'S" NAME A NO CONTACT ORDER CAME UP WITH IT FOR "RONALD KEAL" [SEE; SEPT. 5, 2012 PG. #145 LN. 22-25 & PG. #146 LN. 1-25]. HOWEVER, HE FAILED TO OFFER THE ACCURATE TIME IT TOOK PLACE YET, THE (CAD) REPORT DOES, UPON ARRIVAL. THIS LEAD TO THE MOTEL REGISTRY'S INFORMATION BEING "FRUIT FROM THE POISONOUS TREE" WHICH THE TRIAL COURT SHOULD HAVE SUPPRESSED [SEE; EXH. #3-CAD] THE RISE AND FALL OF PROBABLE CAUSE, 1979 U. ILL. L. 763, 763....

- "MR. HOLTZ" WAS NOT LINKED TO AN (A.K.A.) KEAL" UNTIL 9/19/11 AT 11:56pm - BOOKING I.D. #20112620B3 -

NOTE: PROSECUTOR E. EGGERTSEN, SEPT. 6, 2012 PG. #356 LN. 20-22 - AN ADMITTANCE -.

THE APPELLANT COULD CHRONOLOGICALLY LIST THE CONTRADICTIONS, INCONSISTENCIES, IMPEACHMENT STATEMENTS, OR FLAT OUT FABRICATIONS OF OFFICERS. OFFICERS "MORALES" AND "PETERSON" RANGING FROM: 6/4/12, 6/11/12, 7/25/12, TO SEPT. 4th, 5th & 6th, 2012, AS WELL AS THE 9/19/11 POLICE REPORT. RECOGNIZING THESE WERE THOUGHT UP INORDER TO ATTEMPT TO DISSOLVE DEFENSES OF "INEVITABLE DISCOVERY DOCTRINE" AND GIVE RISE IN SUBSTANTIATING REASON FOR PROBABLE CAUSE FOR ARREST ON AN INITIAL CHARGE, BROADENING SCOPE OF INVESTIGATION, JUSTIFYING UNLAWFUL SEIZURE, OR BRINGING ATTENTION AWAY FROM THE "REGISTRY" VIOLATION. THUS, PREVENTING A POSSIBLE JUDICIAL DECISION TO SUPPRESS AT CrR 3.6 HEARING WHICH NOT ONLY PREJUDICED DEFENDANT ON THIS DATE BUT FROM THE TIME OF ARREST AND ALL PROCEEDINGS. CONTRARY, TO ALL

OFFICERS testimony FOR judicial EFFICIENCY Appellant presents inFORmation FROM LESA Records and Automatic Fingerprint IdentiFication System (APIS) (which identiFies a subject Automaticly at the time of booking). "Mr. Holtz" name WAS legally changed in FEBUARY OF 2010 but I.D. WAS not obtained until issue date: 2/17/11 which WAS MAILED: 2/21/11 to PARENT's and not Found till RELEASE FROM PIERCE County jail 8/29/11 FOR probation violation. THEREFORE, "Mr. Holtz" WAS not ARRESTED in this name until 9/19/11 AS A MATTER OF FACT, AS STATED and shown. [SEE; Fingerprint Specialist "Kimberly Howard" testimony: Sept. 4, 2012 - Pg.#85 ln. 7-18; 22-25; Pg.#86 ln. 1-14 & ln. 19; Pg.#104 ln. 20-25 (ln. 9); Pg.#105 ln. 10-25; Pg.#106 ln. 1-25; (Specificly ln. 19-25);] THEREFORE, all OFFICERS and prosecutions prior statements should be STRUCK due to lack OF Foundation with no factual basis nor merit in law AS CREDITABLE testimony OR EVIDENCE AS it has been prejudicial OF A Constitutional magnitude.

- ILLEGAL SEARCH AND SEIZURE, UNLAWFUL DETENTION -

Mr. Holtz, WAS held without being under ARREST FROM 21:33:36 to 21:54:49 A total OF 21 minutes. OFFICERS informed "Holtz" and Strain" that they WERE not under ARREST but not FREE to go EITHER AS OFFICER PETERSON admits to possessing "Holtz" identiFication and he did request it. His testimony states nothing about when it WAS returned [SEE; Sept. 4, 2012 - Pg.#123 ln. 1-25; Pg.#124 ln. 1-5; Pg.#126 ln. 21-25; Pg.#127 ln. 1-25

Pg.# 128 ln. 1-9; Pg.# 129 ln. 1-6 — Sept. 5, 2012 - Pg.# 216 ln. 23-25; Pg.# 217 ln. 1-13; Pg.# 224 ln. 1-9; Pg.# 225 ln. 9-14. NOTE: no one else was asked for I.D. - Pg.# 229 ln. 6-13; Pg.# 230 ln. 1-2 - No one else was questioned - ln. 7-19 - And did not go to office to question Elliott - ln. 25; Pg.# 231 ln. 1-9].

The taking of Holtz I.D. and detainment was unlawful violating his 4th amendment Constitutional Right and Art. 1§7, of Washington State Constitution by this seizure of I.D. as well as person. State v. Beito, 147 Wn. App. 504, 195 P.3d 1023 (2008)(Police approached passenger in vehicle and asked for identification and ran warrant check and found warrant; search incident to arrest resulted in possession of stolen credit card; Police blocked door so defendant could not exit; under totality of circumstances a reasonable person would not have felt free to terminate the encounter or refuse to answer). If not been seized, warrant nor cards would've been discovered. State v. Rankin, 108 Wn. App. 948, 33 P.3d 1090 (2001); State v. Brown, 154 Wn.2d 787, 117 P.3d 336 (2005).

Any subsequent evidence that the State obtained from that contact is the fruit from the poisonous tree and should have been suppressed, including any evidence of Mr. Holtz' identity. Retaining defendant's I.D. card to determine the existence of outstanding warrants, A consensual encounter becomes an investigatory stop. State v. Thomas, 91 Wn. App. 195, 200-201 (1998) Following State v. Dudas, 52 Wn. App. 832, 764 P.2d 1012 (1988)(seizure after deputy retains pedestrian's ID card for four minutes) and State v. Aranguren, 42 Wn. App. 452, 457 (1985); State v. Coyne, 99 Wn. App. 566 (2000)(retaining license

to do WARRANT CHECK AFTER citizen RESPONDS to lost COAT Report constituted SEIZURE); STATE V. CRANE, 105 WN. App. 301 (2001); STATE V. GLEASON, 70 WN. App. 13, 851 P.2d 731 (1993) (SEIZURE WHERE police demanded ID upon CONTACTING DEFENDANT.)

EXAMPLES:

STATE V. BARNES, 96 WN. App. 217 ("REQUEST to WAIT", REGARDLESS OF EXACT WORDS, WHILE OFFICER checked out WHETHER WARRANT WAS pending); STATE V. Soto-GARCIA, 68 WN. App. 208 41 P.2d 1271 (1992) (REASONABLE PERSON would not FEEL FREE to LEAVE AFTER OFFICER ASKED him IF he had COCAINE on his PERSON). Police saying "WAIT RIGHT HERE" IS A detention. STATE V. Elwood, 52 WN. App. 70 (1988); Police CALLING out "CAN I talk to you A minute" while DEFENDANT WALKING AWAY and, when DEFENDANT within ARM'S LENGTH OF OFFICER, demanding IDENTIFICATION and ASKING why he WAS THERE CONSTITUTED detention. STATE V. GLEASON, 70 WN. App. 13, 851 P.2d 731 (1993).

A SEIZURE OF AN individual IS A "TAKING POSSESSION OF A person such that he OR she IS not FREE to LEAVE. STATED ANOTHER WAY, A SEIZURE OCCURS WHENEVER A LAW ENFORCEMENT OFFICER MEANINGFULLY RESTRICTS A CITIZEN'S FREEDOM OF MOVEMENT, HOWEVER BRIEF it might BE. STATE V. Harrington, 167 WN. 2d 656, 222 P.3d 92 (2009). OFFICERS held "MR. Holtz" without AUTHORITY OF LAW inORDER to

Attempt to identify him by seizing his ID, threatening him, telling him that he couldn't leave, and blocking the doorway for a time. Even when hearing five eyewitnesses attest to there being no assault. STATE V. EISFELDT, 163 Wn.2d 628, 635, 185 P.3d 580 (2008); STATE V. CHRISTY, 142 Wn.App. 197 (2007).

The Fruits From this unlawful search, seizure, and lengthy detention require Suppression. Timothy P. O'Neill, Rethinking Miranda: Custodial Interrogation As A 4th Amend. Search and Seizure, 37 UC DAVIS L. Rev. 1109 (2004).

- BROADENING THE SCOPE OF THE SEARCH DUE TO NO PROBABLE CAUSE. -

Once finding that there was no assault by way of victim and "eye witnesses", officers broadened their illegal search due to unlawfully obtained information From Motel Register of "Clare Strain" & "Ron Keal" having a No Contact order. So, their true intent had to come Forth. A search For "Ronald Keal"!

No assault attested by (5) eye witnesses, including the so-called victim. [See; June 4, 2012 – Pg. #20 Ln. 10-15; Sept. 4, 2012 – Pg. #119 Ln. 1-3; Pg. #118 Ln. 14-23; Pg. #122 Ln. 20-25; Sept. 5, 2012 – Pg. #216 Ln 23-25 & Pg. #217 Ln. 1-13; Pg. #202 Ln. 1-25 & Pg. #203 Ln. 1-3] "Elliott" admits officers didn't know who "Holtz" was [June 4, 2012 – Pg. #40 Ln. 1-17 but Ln. #13; However, she Elliott was not taken out to identify him "Mr. Holtz". See; Pg. #47 Ln. 1-25 & Pg. #48 Ln. 1; Pg. #20 Ln. 7-8; Sept. 4, 2012 – Pg. #123 Ln. 1-25; Sept. 5, 2012 – Pg. #229 Ln. #6-13; Pg. #230 Ln. 7-19

Pg. #230 Ln. 25; Pg. #231 Ln. #1n. 1-9 - SEE; illegal SEIZURE where OFFICER MORALES admits to CALLING "Holtz" out of ROOM but does not mention OFFICER PETERSON is ALSO in the ROOM SEE; Pg. #175 Ln. 2-25; yet, PETERSON inADVERTENTLY ADMITS to BEING in there to SEE "Shonda" just PASS Holtz - SEE; Pg. #229 Ln. 6-13 & Pg. #230 Ln. 1-2; PLEASE SEE; ATTORNEY Kent Underwood's ARGUMENT on these ISSUES; Pg. #294 Ln. 1-25 & Pg. #295 Ln. #1-21] [A] SEARCH which is REASONABLE AT it's inception MAY VIOLATE the Fourth AMENDMENT by VIRTUE OF it's intolerable intensity and SCOPE ... The SCOPE OF the SEARCH must be STRICTLY tied to and justIFIED by the CIRCUMSTANCES which RENDERED it's initiation permissible TERRY V. OHIO, 392 U.S. 1, 18-19, 88 S.Ct. 1868, 20 L.Ed 2d 889 (1968) with out PROBABLE CAUSE and A WARRANT, A POLICE OFFICER CAN not ARREST A SUSPECT, and he CAN not CONDUCT A BROAD SEARCH. STATE V. SETTERSTROM, 183 P.3d 1075, 163 WASH. 2d 621 (2008). STATE V. GARVIN, 207 P.3d 1266, 166 WASH. 2d 242 (2009). Mr. Holtz, would HAVE ACTED SIMILARLY AS in DOREY iF not SEIZED by OFFICERS in ROOM, on THRESHOLD, by REQUESTED ID, OR being told he WAS not under ARREST but could not LEAVE. FOR Almost (30) minutes. SEE; STATE V. DOREY, 145 WN. APP. 423, 186 P.3d 363 (2008) (RESPONDING to report OF A "disturbance" police ASKED MAN FOR identiFICATION, who then left while police CHECKED FOR outstanding WARRANTS, which WERE FOUND; ARREST WAS UNLAWFUL, and EVIDENCE OF drugs SUPPRESSED, AS police had no PARTICULAR ARTICULABLE SUSPICION OF involvement in CRIMINAL ACTIVITY.)

HOWEVER, due to the illegally imposed ACTIONS OF OFFICERS they'd come with FOREKNOWLEDGE and A hidden AGENDA covered partly by A FALSE CALL OF AN ASSAULT by AN "ANONYMOUS TROUBLEMAKER" and BROADENED their

search from this false basis. Instead of limiting their search and then leaving, once no assault was found from the initial call. STATE V. IBARRA, 61 Wn. App. 695, 812 P.2d 114 (1991). (The concern that information provided to police may be coming from an "Anonymous troublemaker" remains when a citizen informant is unidentified to the magistrate; even after identification, there must be a heightened demonstration of credibility) Id. LEE, 147 Wn. App. 894, 205 P.3d, informant must be reliable under "totality of circumstance test" to support TERRY detention, as compared to ARREST requiring informant to meet (Aguilar/Spinelli Test). STATE V. RANKINS, 151 Wn. 2d 689, 695, 92 P.3d 202 (2004). For a seizure to pass constitutional muster, "That seizure must be based on 'specific and articulate' objective facts, that give rise to a reasonable suspicion." STATE V. BAILEY, 154 Wn. App. 295, 300, 224 P.3d 852 (2010) quoting; TERRY [SEE; Exh. #2 - ELLIOTT A.F.f.d.]

It is only apparent that the information deriving from the viewing of the Registry coupled with, the illegal seizure of Mr. Holtz' person/property has violated his 4th Amendment Constitutional rights and violation of Wash. St. Const. Right of Privacy Art. 1§7, Automatically imply the exclusionary of evidence seized. STATE V. ATOHA, 169 Wn. 2d 169 (2010).

The Origin of the Exclusion Rule; IN Boyd v. U.S., 116 U.S. 616 (1886). ARIZONA V. GANT, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009). STATE V. IBARA-CISNEROS, 165 Wn. 2d 1036, 205 P.3d 131 (2009) 2011 WASH. LEXIS 823 (Oct. 20, 2011). In CISNEROS, Sua Sponte Applying the Attenuation doctrine 'as an exception to the exclusionary rule' where his right to privacy was galvanized through his brother's RAVA, 145 Wn. App. At 518. [By cell phone.] Court of

Appeals erred by relying on this basis to allow cocain-evidence in against defendant, when it is well established that the burden is upon the state to demonstrate sufficient attenuation from the illegal search to dissipate its taint. Courts should not consider grounds to limit application of the exclusionary rule. When the state at a Washington Superior Court Criminal Rule 3.6 Hearing offers no supporting facts or argument STATE V. IBARRA-RAYA, 145 Wn. App. 516, 187 P.3d 301 (2008). Art. 1§7, provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law". Just as in IBARRA-CISNEROS and RAYA, "Mr. Holtz' rights to privacy were galvanized purely through "Ms. Strain's" in the Motel Registry and "Shonda" in Room #17 where he was upon officer's arrival as well as a guest STATE V. DAVIS, 937 P.2d 1110, 86 Wash. App. 414, rev. den. 950 P.2d 478 (Wash. 2d 1028 (1997); STATE V. JORDEN, 156 P.3d 893, 160 Wn. 2d 121 (2007); STATE V. EVERETT, 142 Wash. App. 1031 (Wash. App. Div. 2 - 01/15/2008); STATE V. Haapii, 2011 Wash. App. LEXIS 1247 (Wash. Ct. App. May 23, 2011). In Contrast, the state exclusionary rule is constitutionally mandated, exists primarily to vindicate personal privacy rights, and strictly requires the exclusion of evidence obtained by unlawful government intrusion. STATE V. Nusbaum, 107 P.3d 768, 126 Wn. App. 160 (2005).

Therefore, as we have recently explained, our state constitutional provision requires an exclusionary rule that "provides a remedy for individuals whose rights have been violated." Winterstein, 167 Wn. 2d at 632 (emphasis added). "[W]henever the right is unreasonably violated, the remedy must follow." Id. (quoting White, 97 Wn. 2d at 110). The remedy that is embodied in the exclusionary rule is exclusion of evidence that has been obtained in violation of the defendant's

privacy Rights. The Court must take into account that, though once called by "Ms. Elliott," Probable Cause does not allow officers to search the Motel Registry without a warrant. Especially, when alternatives were simply in forming them of Room #116 and pointing. Thus, as in recent rulings, 2012 Wash. App. LEXIS 3:: STATE V. Monaghan :: July 11, 2011. Wash. State Constitution Art. 1§7, The Court however, is unconcerned with the reasonableness of a search but instead requires a warrant before any search, whether reasonable, or not. This creates an almost absolute bar to warrantless arrests, searches, and seizures, with only limited exceptions. The distinction between Wash. St. Const. Art. 1§7, and the Fourth Amendment arises because the word "reasonable" does not appear in any form in the text of Wash. St. Const. Art. 1§7, as it does in the Fourth Amendment. Understanding this significant difference between the Fourth Amendment and Wash. St. Const. Art. 1§7, is vital to properly analyze the legality of any search in Washington. In light of these consistant Rulings in Washington State Courts, one must analyze the Fruits of the illegal search of the Registry, extending to the unlawful seizure of "Mr. Holtz" for almost (30) minutes, and his subsequent arrest. When there was no Fourth degree Assault or Victim nor had he ever been identified prior to this warrantless arrest. The only just remedy by law is Suppression and dismissal. City of Seattle v. Holifield, 170 Wn.2d 230, 240 P.3d 1162 (2010). CrR 8.3(b)....
THE RISE AND FALL of PROBABLE CAUSE, 1979 U. Ill. L. 763, 763....

CONNIE ELLIOTT'S IN-COURT IDENTIFICATION WAS IMPERMISSABLY SUGGESTIVE AND PREJUDICED ALL PROCEEDINGS.

In-Court eyewitness identification is suppressible when pretrial identification procedures are so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. State v. Williams, 27 Wash. App. 430, 618 P.2d 110 (1980), review granted, affirmed 96 Wash. 2d 215, 634 P.2d 868. [SEE; Exh. #2 - ELLIOTT'S AFF'd]

Deciding whether there is a substantial likelihood of irreparable misidentification from a suggestive procedure requires the Court to consider: (1) the opportunity of the witness to view the criminal at the time; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated at the confrontation; and (5) the time between the crime and the confrontation. STATE V. Kinard, at 428, 36 P.3d at 573. Manson v. Brathwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977). The line-up is preferable, but if not feasible, a photographic montage is acceptable. STATE V. NETTLES, 81 Wn.2d 205, 500 P.2d 752 (1972). Although showups are generally suspect, they are not per se unnecessarily suggestive. Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972); 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967).

Alleged "eyewitness" "Connie Elliott" admits officers didn't know who "Holtz" was [June 4, 2012 — Pg.#40 Ln.1-7 but Ln.#13; However, she "Elliott" was not taken out to identify him "Mr. Holtz". See; Pg.#47 Ln.1-25 & Pg.#48 Ln.1; Pg.#20 Ln.7-8; Sept. 4, 2012 - Pg.#123 Ln.1-25; Sept. 5, 2012 - Pg.#229 Ln.#6-13; Pg.#230 Ln.7-19; Pg.#230 Ln.25; Pg.#231 Ln.1-9; "Elliott's impeachment concerning the time of the alleged crime, admits to not paying attention to seeing who pushed "Ms. Strain", See; Pg.#280, Pg.#281, Pg.#282 Ln.1-16; "Elliott's" statement provides absolutely no description, See; Pg.#286 Ln.10-25; Pg.#287 Ln.1-18; Pg.#290 Ln.1-24. June 4, 2012 - again Handwritten statement on the night of "Holtz" arrest 9/19/11 after told to write what she seen. Pg.#526 Pg.#53 - NOTE: "Elliott's IN-Court identification admits to not identifying "Holtz" at the seen, not seeing him since 9/19/11 - 6/4/2012 approx. 9 months, and identifies him in Court (in jail scrubs) being the only person sitting next to the Attorney "Sean Wickens" with leg irons on. See; Pg.#47 Ln. 23-25; Pg.#48 Ln.15 Pg.#34 - 35 Ln.1-17; Pg.#39 Ln.25 & Pg.#40 Ln.1-4; Wickens Argument denied Pg.#57 Ln.11-25; Pg.#58 & Pg.#59 Ln.1-5 — See; Aug. 30th 2012 - Voir dire In Court ID. Pg.#4 Ln.14-22; Pg.#8 Ln.4-15].

It has be well established that an In-Court identification is not only impermissibly suggestive but to not be identified until in Court is extremely prejudicial, violating the procedures of due process. This places the basis of arrest as insufficient evidence where the Court has abused it's discretion, as the trial Court based it's decision on untenable grounds and exercised discretion in a manner that is manifestly unreasonable. State v. Stenson, 132 Wn.2d 668, 701, 940

P.2d 1239 (1997); STATE V. ZUCKER, 112 Wn.App. 130, 140, 48 P.3d 344 (2002). A Court abuses it's discretion when it admits or excludes evidence based on an error of law. LOPEZ-STAYER V. Pitts, 122 Wn.App. 45, 51, 93 P.3d 9004 (2004). (1) "Ms. Elliott" at 9:30pm in the dark, over 75-100 feet through a parking lot of cars, "Ms. Strain's" 5"6', 205lb. pound frame with her back in the threshold of the door facing out and a light shining from the room obstructing any visibility. (2) "Ms. Elliott" stated at 6/4/12 hearing that she didn't pay attention to the person "only the push" and turn-to call 9-1-1. (3) "Ms. Elliott" did not give an accurate prior description or any, for that matter in her handwritten statement other than, "THE MAN". (4) At the 6/4/12 hearing there would/could be no other question of certainty as the "in-court identification" was impermissibly suggestive. "Holtz" was the only one in court next to his attorney, wearing jail grays, leg shackles, and the court roster showing person, attorney, court, and time outside of the room. Also, on the electronic board on the first and second floor of Pierce County Courthouse with web links on the internet as public information. "Ethics" - The prosecutor is to inform the witness that the defendant is to be at the hearing. (5) It had been from 9/19/11 to 6/4/12, (9) months almost a full year since "Ms. Elliott" made her initial call with no description of Mr. Holtz, where she did not identify him either.

However, it is the state's burden to prove the identity of

An alleged suspect yet, there was no lineup, photographic montage, nor a "show up" identification. Why? For the arbitrary prejudicial method of an in-Court identification which is impermissibly suggestive and unconstitutional. An identification procedure violates due process if it is impermissibly suggestive and creates an "irreparable probability of misidentification." State v. Ramires, 109 Wn. App. 749, 761, 37 P.3d 343 (2002). The presentation of a single photograph is impermissibly suggestive as a matter of law. This very same act was committed with "Mr. Holtz" being the single face/photo/person in the Courtroom on June 4, 2012. State v. Maupin, 63 Wn. 887, 896, 822 P.2d 355 (1992). Whether the flawed protocol created a 'substantial likelihood of irreparable misidentification' and violates due process, however, depends on the totality of the circumstances. Id. at 896-97. Our review is de novo. State v. Rogers, 44 Wn. App. 510, 515, 722 P.2d 1349 (1986).

The States case was based upon officer Morales information gathering the statement of "Connie Elliott" stating, "the man pushed "Clare" yet, without any identification of the alleged culprit and both being impeached from September 4, & 5th 2012, with statements made June 4, 2012. Where Motion to Suppress due to lack of probable cause was denied based upon their manipulation of the Court, at time they were deemed truthful.

To impeach a witness is to discredit her veracity. Blacks Law Dictionary, 768 (8th Ed. 2004).

Any party, including it's own witness. ER 607; STATE V. Hancock, 109 Wn.2d 760, 763, 748 P.2d 611 (1988). Impeachment must, however, undermine the credibility of a witness upon whose credibility the outcome depends. STATE V. Allen, 98 Wn.App. 452, 459-60, 464-65, 989 P.2d 1222 (1999).

In Considering the ARREST, detaining, investigation, and denial of motions to Suppress, depended upon "Ms. Elliott's" credibility which was flawed, corrupting the outcome of all proceeding with distinct prejudice. ER 801(d)(1)(iii). STATE V. Coburne, 10 Wn.App. 298, 518 P.2d 747 (1973). (When a motion to Suppress an in-Court identification is presented to the trial Court, the trial Court must ascertain whether any external suggestiveness, intentional or inadvertent, subtly or obtusely applied, produced the initial identification or whether the initial identification was truly produced by the independent exercise of the witness' own powers of perception, memory, and Reasoning). STATE V. McDonald, 40 Wn.App. 743, 746, 700 P.2d 327 (1985). Even being in Court by his ATTORNEY with jailhouse clothes and leg shackles violated due process to such a degree that eroding the presumption of innocence is prejudiced by this in Court ID. STATE V. Jaime, 168 Wn.2d 857, 233 P.3d 554 (2010).

The only eyewitness Alleging A Crime not only did not identify Mr. Holtz at the scene, did not describe him in her statement nor did she know him to remember him or provide A description upon prior interview by phone with Prosecutor "Horibe" and defense Counsel "Wickens" and admit to "not paying ATTention" to see who Allegedly pushed "Ms. Strain". However, Mr. Holtz was still held From the initial unlawful ARREST. It is the State's burden to establish the "identity of the accused as the person who committed the offense." State v. Hill, 83 Wn. 2d 558, 560, 520 P. 2d 618 (1974).

SUFFICIENCY OF THE EVIDENCE, The due process clause of the Fourteenth Amendment to the United States Constitution requires that the State prove every element of A crime beyond A reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The remedy For A conviction based on insufficient evidence is reversal And dismissal with prejudice. State v. Hickman, 135 Wn. 2d 97, 103, 954 P. 2d 900 (1998). CrR 8.3(b).

ONE must also view the most recent rulings of the Supreme Court of United States in light of the unlawful governmental Acts by Police and Prosecutors violating due process safeguards in ARRANging impermissibly Suggestive identifications.

In A recent case where All evidence was suppressed due to A violation of due process in An identification procedure.

SEE; Holding in: Perry v. New Hampshire, ___ U.S. ___, 132 S. Ct. 716, 728, 181 L. Ed. 2d 694 (2012)." In addition to the 6th Amendment SAFEGUARDS such as "the Right to Counsel, Compulsory process to obtain defense witnesses, and the opportunity to cross-examine witnesses for the prosecution[,]" the principles of due process provide an additional "check on the admission of eyewitness identification, applicable when the police have arranged suggestive circumstances leading the witness to identify a particular person as the perpetrator of a crime." This due process check prohibits the use of identifications which under the totality of the circumstances are impermissibly suggestive and present an unacceptable risk of irreparable misidentification."

"Mr. Holtz," was denied due process by law enforcement when they arrested him based upon no identification as the perpetrator to have committed a crime, thereafter, no photo montage or lineup, but the stage had already been set for the June 4, 2012 probable cause as an "in-Court" identification which was arbitrarily used inorder to deny the CrR 3.6 Motion. This Unconstitutional violation of due Process abridged the basic Fundamental Rights of procedure and protocol, by being extremely prejudicial as well as impermissibly suggestive to such a degree that the only just remedy by law is reversal and dismissal with prejudice.

THE DEFENDANT HAD A RIGHT TO SPEEDY TRIAL UNDER 6th AMENDMENT WASH. ST. CONST. ART 1 § 22, CrR 3.3 TRIGGERING A PREJUDICE ANALYSIS

The Appellant "Ronald Holtz" was arrested on 9/19/11 to be arraigned on 9/20/11 for Fourth degree assault and Felony violation of a No Contact Order in Pierce County Superior Court Case No. #11-1-03845-1 with trial set for 11/9/11 with attorney "Harry Steinmetz". 1) on 10/25/11, "Mr. Steinmetz" motioned the Court for an extension of time from trial 11/9/11 to 11/29/11 in order to draft motions which it was day "38". He checked box of "defendant" and pursuant to CrR 3.3(F)(1). 2) on 11/29/11 "Mr. Steinmetz" is allowed to withdraw without providing any motions which was the reason for extension beyond the 60 days but it is day "70" and the Court using for "administrative necessity" (being the issue is "Mr. Holtz," refuses to sign an extension until March). The Court sets over until 12/6/11. 3) on 12/6/11 the expiration date of 1/5/12 from 11/29/11 hearing is rewritten to 4/15/12. The new trial date is 3/6/12, the case age is at "77 days." Mr. Holtz", is attorney "Robert Depan" (whom he has a conflict with from another case he is on No. #10-1-02212-2 before Judge Beverly Grant). Mr. Holtz, again refuses to sign yet, CrR 3.3(F)(1), is checked with alleging by Defendant's request which is vehemently objected to. see, Sept.

4) on 2/14/12 omnibus hearing "Mr. Holtz" objects to "Mr. Depan's" Representation, speedy trial violations, and requests Pro-Se Rep. And is drug from Court by Jail guards to be assaulted in the hallway which was incited by "Mr. Depan" before Judge "Katherine M. Stolz" the Defendant again refuses to sign.

5) on 3/6/13 "Mr. Holtz" oral motion to dismiss due to Speedy trial violations is denied and he sign's to obtain private Counsel at case age 168 days. Signs on: 3/20/12 at (182) dys.; 4/19/12 with new Counsel Sean Wickens at (211) dys.; 5/10/12 at 234 dys.

6) on 5/24/12 at (247) dys. "Mr. Holtz" never signs another documents through any proceeding. All the way up to trial the Court and State use various reasons for extensions of time especially "No Court room Availability" up to July 25, 2012, where Attorney "R. Depan" allows prosecution to check both boxes for State and Defendant at (309) days. Again "Mr. Holtz" objects and refuses to sign, even throughout time to the true trial date 9/4/12. However, on computer "Linx online", it shows this case in trial reading: (10/25/2011-order for continuance of trial date) on numerous entries up to 9/4/12. How can this be? [SEE; Exh. #4 - Crt. Continuances]

In State v. Saunders, 153 Wn. App. 209, 220 P.3d 1238 (Wash. App. Div. 2, 2009)

A defendant has a right to speedy trial under the Sixth Amendment and Article I, section 22, of the Washington State Constitution. Although CrR 3.3(b)(1)(i), requires trial within 60 days when the defendant is in custody, this requirement is not a constitutional mandate.

CARSON, 128 WASH. 2d AT 821, 912 P.2d 1016 (1996). UNDER CrR 3.3(h), THE TRIAL COURT MUST DISMISS CHARGES WHEN THE APPLICABLE SPEEDY TRIAL PERIOD HAS EXPIRED WITHOUT A TRIAL, BUT CrR 3.3(e), EXCLUDES THE TIME ALLOWED BASED ON VALID CONTINUANCES AND OTHER DELAYS FROM THE SPEEDY TRIAL PERIOD. WHEN ANY PERIOD OF TIME IS EXCLUDED FROM THE SPEEDY TRIAL PERIOD UNDER CrR 3.3(e), THE SPEEDY TRIAL PERIOD EXTENDS TO AT LEAST "30 DAYS AFTER THE END OF THAT EXCLUDED PERIOD." CrR 3.3(b)(5). EXCLUDED PERIODS UNDER CrR 3.3(e) INCLUDE DELAYS "GRANTED BY THE COURT PURSUANT TO SECTION (F)." CrR 3.3(e)(3). A COURT MAY GRANT A CONTINUANCE BASED ON WRITTEN AGREEMENT OF THE PARTIES, WHICH MUST BE SIGNED BY THE DEFENDANT "OR" ON MOTION OF THE COURT OR A PARTY "WHERE A CONTINUANCE IS REQUIRED IN THE ADMINISTRATION OF JUSTICE AND THE DEFENDANT WILL NOT BE PREJUDICED IN THE PRESENTATION OF HIS OR HER DEFENSE."

IN VIEWING MR. HOLTZ CASE THE 10/25/11 AM EXTENSION TO DRAFT MOTIONS WAS GIVEN BY THE COURT WITH box CrR 3.3(F)(1) "UPON THE AGREEMENT OF THE PARTIES WITHOUT DEFENDANT'S SIGNATURE UNTIL 11/29/11. ON day(70) 11/29/11 "MR. STEINMETZ" WAS ALLOWED TO WITHDRAW WITHOUT PRODUCING ANY MOTIONS IN WHICH HE RECEIVED THE EXTENSION FOR. THE COURT SIGNS "FOR" ADMINISTRATIVE NECESSITY" AS DEFENDANT REFUSES TO SIGN. ON 12/6/11 day(77) box CrR 3.3.(F)(1) IS CHECKED "UPON AGREEMENT OF PARTIES" WITHOUT DEFENDANT'S SIGNATURE AND "MR. DEPAN" IS GIVEN (90) DAYS. ON 2/14/12 "MR. HOLTZ" OBJECTS AND REFUSES TO SIGN. THE STATUTE STATES THAT IT IS MANDATORY FOR A DEFEND-

to sign when Counsel checks CrR 3.3 (F)(1) on 10/25/11 and 12/6/11. The reason behind the Court allowing "Mr. Steinmetz" to withdraw simply because he wanted more time even after an extension of (70) days but "Mr. Holtz" refused to agree. What about the Motions that were to be produced? This was an unreasonable order of the Court. Then on 11/29/11 and 12/6/11, the Court goes beyond by allowing Counsel (90) days pursuant to CrR 3.3 (F)(1) with no signature by Defendant at day (77). If there be a "cure period" under CrR 3.3. (b)(6) that 14 days was used between the first two dates only for good reason. Then, if in fact, due to Counsel's withdrawal new commencement date is set which triggered CrR 3.3 (C)(2)(vii) or section (b)(1)(i) which in each case is from the time of 11/29/11 and would only allocate (60) days NOT (97) days and in other cases we may look at (30) days. State v. J.J. Earl, 97 Wn. App. 408 (1999).

See; State v. Chavez-Romero, 285 P.3d 195 (Wash. App. Div. 3, 2012) When a trial Court denies a motion to dismiss for speedy trial purposes, the appellate Court reviews that decision for an abuse of discretion. Pursuant to CrR 3.3 (C)(2)(ii) defendant was released to Immigrations and Customs Enforcement to offset the Court date for 90 days. Thus, violating CrR 3.3 and requiring CrR 8.3 remedy of dismissal. George, 160 Wash. 2d at 738, 158 P.3d 1169.

The same basic principle should apply here where "Mr. Holtz" was offset for not (30) or (60) but (90) days which is what "Mr. Steinmetz" requested until March or April in the first inst-

ANCE. "Mr. Holtz," WAS ARRESTED on 9/19/11 but did not truly go to TRIAL in any PROCEEDINGS until 9/4/12 which is almost A YEAR 351 days. The United STATES Supreme Court has consistently emphasized an individualized, FACT-specific inquiry into whether a delay is presumptively prejudicial, some confusion was created by the Court's observation in a footnote in Doggett that "[d]epending on the nature of the charges, the lower courts have generally found post-accusation delay 'presumptively prejudicial' at least as it approaches one year." Id. at 652 n. 1, 112 S. Ct. 2686. Many lower courts have seized on this statement as evidence that one year is the cut-off point for a presumptively prejudicial pretrial delay. See, e.g., Grimmond, 137 F.3d at 828; United States v. Beamon, 992 F.2d 1009, 1012-13 (9th Cir. 1993); State v. Goodroad, 521 N.W.2d 433, 437 (S.D. 1994). Indeed, Division Two of our Court of Appeals has taken this approach. In STATE V. CORRADO, 94 Wash. App. 228, 231, 972 P.2d 515 (1999), the defendant was charged with attempted first-degree murder and incarcerated for the entire 11-month pretrial delay. On appeal, the Court of Appeals found the 11-month delay presumptively prejudicial after noting that other courts have found delays between eight months and one year presumptively prejudicial. Id. at 233-34, 972 P.2d 515. There was no analysis of any other factors in the Court's discussion.

The Court of Appeals below followed Division Two's reasoning. Having established the method of analysis under Arti-

Cle I, Section 22, and the Sixth Amendment, the Court of Appeals agreed with Iniquez that the pretrial delay was presumptively prejudicial. Iniquez, 143 Wash. App. at 859, 180 P.3d 855. The Court surveyed cases from other jurisdictions and concluded that the consensus is to presume prejudice for delays of between eight months and one year. Id. at 858-59, 180 P.3d 855. Because the delay in this case was more than eight months, the Court of Appeals held it qualified as presumptively prejudicial. Id. at 859, 180 P.3d 855. In analyzing the "Barker Factors," Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) and State v. Cunwall, 106 Wash.2d 54, 54, 720 P.2d 808 (1986), the Court of Appeals noted that (1) Iniquez was never the cause of any pretrial delay, (2) the delay due to the unavailability of the witness should be weighed against the state, (3) Iniquez consistently asserted his speedy trial rights by objecting to all delays, and (4) Iniquez was prejudiced by his pretrial incarceration which caused anxiety and concern and was exacerbated by the delay of his trial. Id. at 855-58, 180 P.3d 855. [See; Exh. #4 - Crt. Continuances]

This should be one of the analysis performed in "Holtz", but more so, viewing in depth the prejudice analysis in State v. Saunders, 153 Wn. App. 209, 220 P.3d 1238 (Wash. App. Div. 2 2009). where it goes on to cite the holding in State v. Kenyon, 167 Wash. 2d 130, 216 P.3d 1024 (2009) Compels our result here. The Washington Supreme Court recently reversed our decision and

dismissed numerous unlawful Firearm possession charges based on the trial Court's failure to articulate an adequate basis of Continuances beyond the speedy trial limits. Kenyon, 167 Wash.2d at 131-32, 138-39, 216 P.3d 1024. In Kenyon, the trial Court continued a trial for "unavoidable or unforeseen circumstances" where the trial judge was in a criminal trial and the second judge of the two judge County was on vacation. CrR 3.3(e)(8), 167 [153 Wn.App. 220] Wash.2d at 134, 216 P.3d 1024. To view preceeding link please click here. The Supreme Court held that the "trial Court should have documented the availability of pro tempore judges and unoccupied courtrooms" because, under CrR 3.3(f)(2), it is "required to 'state on the record or in writing the reasons for the continuance' when made in a motion by the Court or by a party." Kenyon, 167 Wash.2d at 139, 216 P.3d 1024. The Supreme Court did not perform a prejudice analysis before vacating the convictions, as it would in a claim of a Constitutional speedy trial right violation. Compare Kenyon, 167 Wash.2d at 135-39, 216 P.3d 1024 with STATE v. Iniguez, 167 Wash.2d 273, 281-85, 290-95, 217 P.3d 768 (2009). In Holtz, Counsel signed for continuances without Defendant's signature, on occasion both State were in different trials and the Court merely cites "no Court Room Available" on Multiple dates. [see; Sept. 12th, 2012 - Pg.# 1-7 Defendant objects CrR 3.3 violations]

-INEFFECTIVE ASSISTANCE OF COUNSEL AND CONFLICT OF INTEREST-

The Sixth Amendment to the U.S. Constitution and Article I, Section 21, & 22, of the Washington State Constitution guarantee criminal defendants effective Assistance of Counsel. State v. Grier, 171 Wn. 2d 17, 32, 246 P3d 1260 (2011). Representation is ineffective, and therefore constitutionally deficient, when (1) counsel's performance falls below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defense.

Attorney Robert Depan was Appointed to case No. #10-1-02212-2-1 on August of 2011, in Pierce County Superior Court, where he did nothing and subsequently allowed "Mr. Holtz" to be sentenced outside the guidelines which "Mr. Holtz" would later correct "Pro-Se". However, the Unlawful sentence took place on 12/9/11 but on 12/6/11, Mr. Depan was also appointed to this case No. #11-1-038-45-1 on it's (77) day which "Mr. Holtz" vehemently objected to as Depan commenced by obtaining a (90) day continuance using CrR 3.3 (E)(1) which requires "Mr. Holtz" signature yet, he refused. During the course of time from "Judge Beverly Grant" to "Judge B. Tollefson," all cited references to a Conflict of Interest. Mr. Holtz was forced to go Pro See in case No. #10-1-02212-2-1

due to "Depan" REFUSAL to investigate or communicate And at EVERY hearing "Mr. Holtz" Requested new Counsel from the Court. Until on 2/14/12 in Front of "Judge K. Stolz" ATTORney Depan" incited "MR. Holtz" being threatened with TASERS by Jail escort and drug from the Court room when ATTEMPTing go Pro-Se yet, Again. Though "MR. Depan" had NEVER SPOKE to "MR. Holtz" AT All Concerning the CASE, on 3/6/12 he informed the Court that he was possibly PREPARED to go to trial. AFTER begging his Family to pool money FOR an ATTORNEY "Holtz" moved to Appoint PRIVATE Counsel due to "MR. Depan's" INEFFECTIVENESS. In re Disciplinary Proceeding against Anschell, 69 P.3d 844, 149 Wn.2d 484 (2003).

Under RPC 1.2(a): "A lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." Because "the client controls the goals of litigation," The client's goal determines the strategy available -- For example, "A competent defendant may forbid counsel to put on a mitigation case if his goal is to have the death penalty imposed," but when the defendant decides he does "not wish to be put to death.... the strategy is largely in the hands of his ATTORNEY." STATE V. CROSS, 156 Wash. 2d 580, 613, 132 P.3d 80 (2006); see, State v. Bergstrom, 162 Wash. 2d 87, 95-96, 169 P.3d 816 (2007).

Not only did "Mr. Depan" Aid in violating my speedy trial rights but was Appointed A 3-4 time on 7/23/12 over "Holtz" objections. The Conflict was not only with his ineffective performance, previous case and the Fact that Department of Assigned Counsel Michael Kawamura (Director) and Richard Whitehead had Also been served in U.S. Western District Court on 7/11/12 in Civil Case No. #C12-5111 RJB/KLS. [July 25, 2012 (TRANSCRIPT) Pg(s) #4-13] RPC 1.9 However, then (DAC) Appoints Attorney Kent Underwood on August 1, 2012 (TRANSCRIPT) Pg. #3 Ln. 5-10; Pg. #3 Ln. 22-25; Pg. #4 Ln. 1-25; Pg. #5 Ln. 1-5 And at Pg. #9 Ln. 2-4 Judge Nelson Alleges trial has started but the continuance is merely a recess without any objection From Counsel. Mr. Underwood requests files or discovery. Motel surveillance video, evidence of Holtz presence at Fife jail, 9-1-1 call record, witness Fife officer Larkins who drove Holtz From Fife to Pierce County jail, and witnesses: Sean Wickens, Neil Horibe, Stephanie and IRA Foreman and occupant of Room #117 "Shonda." These witnesses were crucial with pertinent exculpatory evidence in the case. Proving: A) Mr. Holtz was in Room #117 where officer took his I.D., stood in Front of door and refused to Allow him to leave. B) That "Connie Elliott" never gave description of Holtz during phone interview with Pros. Horibe and Counsel Wickens who was ineffective For failing to record the interview. C) That officers Morales and Peterson never received an A.K.A. of "Keal" For "Mr. Holtz" but did call Fife officer Larkins to standby to bring "Holtz" in

For him to identify. D) The surveillance video at the Sunshine Motel would have proven that "Holtz" didn't assault "Strain," Morales did go to the office first to view the Motel registry. These different points were crucial evidence for the defense especially in a CrR 3.5 & 3.6 hearing, as well as impeaching the credibility of main witnesses of the State which without, prejudiced and crippled the defense. [See; Pg.# 20 Ln. 12-25 and Ln. 20-25 Prosecutor Eggertsen admits it is Morales on CAD report.] [June 11, 2012 - Previous cite w/ Eggertsen current in June Pg.# 4 Ln. 1-12; Pg.# 5 Ln. 11-25; Pg.# 6 Ln. 3-22; Pg.# 9 Ln. 22-25 & Pg.# 10 Ln. 1-17; Pg.# 18 Ln. 6-25 - Judge confirms witness Pg.# 22 Ln. 8-21; Holtz discovery request filed 3/16/12 Pg.# 1-# 13. - Aug. 30, 2012 - Underwood verifies witnesses Horibe and Wickens. Pg.# 23 Ln. 21-23] [Sept. 6, 2012 - Underwood fails to interview (4) witness and obtain subpoena for surveillance video and 9-1-1 recording. Pg.# 367 Ln. 1-25 & Pg.# 368 Ln. 1-16. Sept. 12, 2012 - Conflict with (DAC) State v. A.N.J., RPC 1.8(m) citing Speedy trial violation CrR 3.3 Substantial prejudice. Pg.# 1-# 7 and Aug. 29, 2012 - Signed extension/ continuance due Prosecution and Defense being in different other trials. Pg.# 3 Ln. 5-11; Pg.# 8 Ln. 17-25; Pg.# 9 Ln. 1-25; Pg.# 10 Ln. 9-10.] Defendant was denied the benefit of crucial evidence and witness testimony in a timely manner, when did not receive them at all which may have changed the outcome of proceedings.

The Attorneys violated "Mr. Holtz" 6th Amendment right to Counsel which states that the Defendant should have "compulsory process for obtaining witnesses in his favor." by failing to do so,

CAUSED A BREAKDOWN in the legal DEFENSE RPC 1.4 RESULTING in PREJUDICE. MOREOVER, DEPRIVING DEFENDANT OF AN ADEQUATE AND ZEALOUSE DEFENSE by his INEFFECTIVENESS. STRICKLAND V. WASHINGTON, 466 U.S. 668, 685-86, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). [SEPT. 6, 2012 - Pg. #317-#324 Underwood FAILED to PRESENT jury INSTRUCTION on PERJURY - INCONSISTENT STATEMENTS WPIC OR IMPEACHED TESTIMONY ER-806 AND 801] CONSIDERING "OFFICER MORALES" AND "Ms. C. ELLIOTT" WERE IMPEACHED WHERE THEIR CREDIBILITY in TESTIMONY in PROCEEDINGS WAS CRITICAL AND upon WHOSE CREDIBILITY THE OUTCOME DEPENDED. STATE V. ALLEN, 98 WN. APP. 452, 459-60, 464-65, 989 P.2d 1222 (1999). "Mr. HOLTZ" WAS GRAVELY PREJUDICED by COUNSEL FAILING to PROVIDE THIS INSTRUCTION AT A CRITICAL STAGE OF PROCEEDINGS. JURY INSTRUCTIONS ARE REVIEWED de novo, WITHIN THE CONTEXT OF THE INSTRUCTIONS AS A WHOLE. STATE V. JACKMAN, 156 WN. 2d 736, 743, 132 P.3d 136 (2006). AN INSTRUCTION THAT IS NOT OBJECTED to AT TRIAL MAY BE RAISED on APPEAL IF IT "INVADES A FUNDAMENTAL RIGHT OF THE ACCUSED." STATE V. LEVY, 156 WN. 2d 709, 719, 132 P.3d 1076 (2006) (quoting STATE V. BECKER, 132 WN. 2d 54, 64, 935 P.2d 1321 (1997). IN THE PRESENT CASE, THE FAILURE to RIGOROUSLY REVIEW AND CORRECT THE INSTRUCTIONS ADEQUATELY to ENSURE THAT PRESENT REPRESENTATION GOES to THE HEART OF THE DEFENDANT'S RIGHT to PRESENT A DEFENSE WITH THE ASSISTANCE OF A VIGOROUS ADVOCATE.

STATE V. ABRAMS, 163 WN. 2d 277 (2008) THAT PORTION OF PERJURY STATUTE, RCW 9A.72.010(1), WHICH DECLARES THAT THE MATERIALITY OF A FALSE STATEMENT MUST BE DETERMINED by THE JUDGE, IS UNCONSTITUTIONAL,

United States v. Gaudin, 132 L.Ed.2d 444 (1995), Johnson v. United States, 137 L.Ed.2d 718 (1997); materiality is a jury question; 9-0. Unfortunately, this information and jury instruction was not afforded to the jury which deprived the defendant of the right to due process of law. One major aspect of ineffective assistance of Counsel is deficient performance that falls below the objective standard of reasonableness and that but for Counsel's errors, there is a reasonable probability that the trial's result would have been different. STATE V. TURNER, 143 Wn.2d 715, 730, 23 P.3d 499 (2001).

In light of all the constitutional violations arising from ineffective assistance of Counsel the only just remedy by law would be dismissal.

- DENIAL OF MENTAL HEALTH EVALUATION AND DIMINISHED CAPACITY DEFENSE -

Throughout proceedings since arraignment at just about every Court hearing Mr. Holtz placed the Attorneys and Court on notice that he was deemed mentally and physically disabled by a Social Security administration judge in Seattle Washington. Also, that he was on Social Security and had been at Greater Lakes Mental Health in Lakewood Washington on the date 9/19/11 of the alleged crime attempting to commit himself. He was not on mental health medication with the new prescriber going over a process in order

to find which ones did not cause more side effects with his heart. However, the Attorneys and Courts ignored this fact without adhering to RCW 10.77 when there is a question as to Competency or diminished Capacity and such a defense see; RCW 10.77.220. There was no evaluation, Aug. 27th 2012 - Pg. #4 Ln. 23-25; Pg. #5 Ln. 1-2; Aug. 28th 2012 - Pg. #1 - #11; Aug. 30th 2012 - Pg. #19 Ln. 6-9 & 23-25; Pg. #20 Ln. 1-6 & 19-25; Pg. #21 Ln. 1-5; Judge K. Nelson, denies mental health evaluation and diminished capacity defense. Pg. #21 Ln. 6-23. She also was informed of the date of crime, showing state of mind. on the following date Judge Nelson acknowledges the merit of the mental health records submitted and "Mr. Holtz" condition but still sentences him. Sept. 21, 2012 - Pg. #22 Ln. 11-25.

This is a Manifest injustice as the Court abuses it's discretion which is a form of Judicial Misconduct when RCW 10.77 set the mandatory provision for one who is even suspected of having Mental Health issues. see; In re Royal Fleming, 99- of the written Reports may have fallen under CrR 4.7.

State v. Thomeer, 45, Wn. App. 143, 723 P.2d 1204 (1986) (Defendant was suffering from chronic paranoid schizophrenia, an incurable disorder characterized by identity confusion, the hearing of voices, indecisive thinking, and poor impulse control). State v. Baird, 83 Wn. App. 477, 922 P.2d 157 (1996) (Paranoid personality disorder that caused defendant to believe things that were not true and not rational). State v. Warden, 133 Wn. 2d 559, 947 P.2d 708 (1997) (PTSD - dissociative episodes).

For a discussion of the scientific status and legal relevance of research on diminished capacity, see; Faigman, Kaye, Saks & Sanders, Modern Scientific Evidence: The Law and Science of Expert Testimony ch. 6 (1997).

In one case, without directly addressing the issue, the Supreme Court did not reject the argument that once the defendant meets the burden of producing some evidence of diminished capacity, the State bears the burden of proving the absence of the defense beyond a reasonable doubt. STATE v. Hamlet, 133 Wn.2d 314, 320, 944 P. 2d 1026, 1029 (1997). It is clear that the ATTORNEY(S) and Court(s) deprive "Mr. Holtz" of an adequate defense, prejudicing all proceedings of due process of law for which the only just remedy is reverse, remand and dismissal.

- ACCUMULATIVE ERRORS -

- PROSECUTORIAL MISCONDUCT -

In some events during proceedings the attitude of Counsel particularly Prosecution may prejudice the judge and the defendants rights to due process. The comments or inappropr-

priate remarks can be more damaging than a crime itself with an extreme disadvantage due to there prejudicial effects. [June 25, 2012 - Prosecutor Kara Sanchez: Pg. #15 Ln. 3-25 & Pg. #16 Ln. 1-8]

Prosecutorial Conduct, must in particular, be carefully scrutinized inorder to determine whether abuse of, is being attempted or has already occurred. State v. Diaz, 2012 Wash. App. LEXIS 698 (Wash. Ct. App. March 15, 2012).

Sept. 5, 2012 - Prosecutor Erica Eggertsen: Alleges there is no Def. CrR 3.6 Motion to be heard. Pg. #296 Ln. 1-10 & Ln. 11-25; Pg. #297 Ln. 1-12 - Then she finally admits the Motion has not been heard. Pg. #305 Ln. 7-11

The most damaging to the defense was the Prosecution's / State allowing their witnesses to fabricate from the police report to June 4, 2012 CrR 3.5/3.6 hearing on Probable Cause to Aug 30th, Sept. 4th, 5th and 6th, 2012 trial. Knowing from her prior interviews that they would allege a few different versions of how it was allegedly discovered that "Keal" was an A.K.A. for "Holtz". From "Peterson" running "Holtz" from his I.D. at the rooms to "Morales" saying it was later to them both alledging dispatch told them or it was on the order which the Court can see, it is not on any order. However, Prosecutor Eggertsen interviewed both Peterson and Morales from the jump yet, in addition, the most important witness in establishing how or when the name "Holtz" was connected to "Keal" by way of fingerprints on (AFIS). Sept. 4, 2012 - Pg. #85 Ln. 7-18 & 22-25; Pg. #86 Ln. 1-14 AND At Ln. 19 Defense Attorney Underwood calls "MISTRIAL", as he

RECOGNIZES THE INCONSISTENCY BUT GOES NO FURTHER. Kim Howard (Fingerprint Expert) goes on. SEE; Pg.#104 Ln. 9 & 20-25; Pg.#105 Ln. 10-25; Pg.#106 Ln. 1-25. This clearly states automatically identified as belonging to "Holtz" prior name at the time of booking on 9/19/11 by "AFIS System". SEPT. 6, 2012 - Pg.#339 Ln. 6-10 "Eggertsen", repeats officer Peterson's false statement/testimony to the jury yet, at Pg.#356 Ln. 20-22 quote; "He was taken from there to be booked, where he was identified." unquote. Unfortunately, this ongoing farce corrupted and prejudiced every proceeding especially in considering the main issue/element in this case was "identification". Could this be why Prosecutor "Neil Horibe" was replaced on this case, for ethical reasons and might the case been dismissed at the June 4, 2012 Probable Cause Hearing had one of the Prosecutors come forth with the truth as to the false testimony of officers Peterson and Morales??

Let there be no question that Prosecutor "Erica Eggertsen" was quite aware of officers false statements and testimony. see; RPC 8.4 and 3.3 Prosecutorial Misconduct.

see; RPC 1.15(b)(1). A lawyer who reasonably believes that his or her client intends to commit perjury may neither advocate nor passively tolerate the client's position. see; RPC 3.3; RPC 1.6 STATE V. FLECK, 49 Wn. App. 584, 586, 744 P.2d 628 (1987) (RPC's 1.6 requires attorney to disclose client's plan of perjury to the court if necessary to avoid assisting such criminal act).

REV. den. 110 Wn.2d 1004 (1988). Prosecutorial Misconduct violates duty of ensuring that defendants receive a fair trial and can constitute reversible error. Where a defendant meets the burden of establishing both that state committed misconduct by making inappropriate remarks, and those remarks had prejudicial effect, Appellate Court reverses the defendant's conviction. Fuller, 169 at 799 & 282 P.3d at 179.

In considering the magnitude of prejudicial criminal Acts of Prosecutor Eggertsen in conspiracy with officers who are also sworn to serve, the only just remedy by law is dismissal due to irreparable damage. State v. Fuller, 169 Wn. App. 797, 282 P.3d 126 (Wash. App. Div. 2, 2012).

-JUDICIAL MISCONDUCT-

Judge K. Nelson, made inappropriate comments/remarks concerning defendant "Holtz," aided prosecution, denied defense CrR 3.6 motion on Art. 1, § 7 Wash. St. Const. without a hearing or findings of Facts and Conclusions of Law and proposed sentence prior to the defendant's "Allocution." June 4, 2012 - Pg. #3 Ln. 15-25; June 25, 2012 - Pg. #14 Ln. 11-25; Pg. #17 Ln. 2-23; Pg. #18 Ln. 1-20; Aug 1, 2012 - Speedy trial violation Pg. #3 Ln. 5-10; Pg. #9 Ln. 2-4; Denial of Mental Health eval. Aug. 30th 2012 - Pg. #21 Ln. 6-23; Attempt to disinclude 3.6 Mot. Sept. 4, 2012 Pg. #44 Ln. 4-9; Leading a Prosecution witness. Pg. #112 Ln. 13-14; Pg. #116 Ln. 15-16.

Sept. 5, 2012 - Alleges "Holtz gives Peterson I.D. and denies Motion w/no hearing. Pg.#297 Ln.13-17 Reminded of 3.6 Mot. 6/4/12 Not Heard. Ln.21-25; Does not allow state to Rest. Pg.#293 Ln.21-25; Admits Motion WAS filed but will REVIEW in Chamber. Pg.#305 Ln.7-24. Sept. 6, 2012 - Alleges Motion WAS Ruled on June 4, 2012" another Court' and REFUSES to deal w/it due Process violation. Pg.#317 Ln.8-25 & Pg.#318 Ln.1-4; Ln.5-8 ↑ motion FOR STAY on Appeal denied. Nelson instructs prosecution on my SEVERE CRIME ALTERNATE. Pg.#322 - #Pg.325; Aided in guiding Prosecution to AMEND charges and stalls, PREVENTING prosecution FROM RESTING purposely. Pg.#317 - Pg.#334. Conflict ISSUES and bias/ prejudice judicially. Sept. 12, 2012 - Pg.(s) #1 - #7. ISSUES SENTENCE PRIOR to Allocution. Pg.#12 Ln.10-25; Pg.#13 Ln.1-10.

Throughout proceedings "Judge K. Nelson" displayed a distinct bias, partiality, and prejudice towards "Mr. Holtz" that could be grifted from the proceedings. Discretion WAS uncommonly abused with the uncharacteristic unappropriate remarks, assisting of Prosecution, and denial of Motions without being entertained. Code of Judicial Conduct Rule 2.2 Impartiality and Fairness. A judge shall uphold and apply the law, and shall perform all duties of judicial office Fairly and impartially. SEE; Rule 2.3. Not only did the Court REFUSE to hear a crucial Motion of Defendant that may've effected the outcome of the whole case but could not have Follow mandated Rules. SEE; pursuant to CrR 6.1(d) TRIAL Courts Findings of FACT and Conclusions of Law ARE inadequate. Failure to enter Findings of Fact

Conclusions of Law pursuant to CrR 3.6(b) STATE V. BROWN, 154 Wn. 2d 787, 117 P.3d 336 (2005). Requires that "At it's conclusion" of a Suppression hearing "the Court shall enter written Findings of Facts conclusions of Law. see; Counsel K. Underwood's Motion in Limine. The Court has abused it's discretion in the case of Mr. Holtz at the trial level. The Supreme Court of the State of Washington has held. "We review the trial Court's admission of evidence for abuse of discretion. STATE V. BASHAW, 169 Wn. 2d 133, 140, 234 P.3d 195 (2010). A trial Court abuses it's discretion when it bases it's decision on unreasonable or untenable grounds. STATE V. RAFAY, 167 Wash. 2d 644, 655, 222 P.3d 86 (2009). We review the interpretation of evidentiary Rules de novo. STATE V. DEVINCENTIS, 150 Wash. 2d 11, 17, 74 P.3d 119 (2003). STATE V. LUCAS, 167 Wn. App. 100, 271 P.3d 394 (Wash. App. Div. 2, 2012).

In viewing the injustices deriving from judicial Court that which has been divulged is but a few instances without the benefit of between 9/19/11 and June 4, 2012. Transcripts will reveal Judges "Katherine Stolz," "Beverly Grant," and "Murphy" yet, I request the Court Concentrate on the unconstitutional Acts I have highlighted for your attention. As one prays for relief reverse, remand, and dismissal in Full understanding that the taint from such prejudicial proceedings caused irreparable damage to the defense.

BONE CLUB ANALYSIS:

A closed courtroom at any time to the Public, any hearing or Proceeding held outside of eyes of the Public throughout the Defendant's course of prosecution. STATE V. MARSH, 126 Wash. 142, 217 P. 705 (1923) The Constitution guarantees the right to a public trial, A private trial is void and no objection is necessary. SEE; CrR 6.16(b) duty of Court instruction, defendant's Failure to take the stand was not grounds for inference of guilt. STATE V. MYERS, 8 Wash. 177, 35 P. 580, 756 (1894). STATE V. PAUMIER, 230 P.3d 212, 155 Wn. App. 673 (4/27/10 Div. II); STATE V. Mc Donald, 157 Wn. App. 1053 (Wn. App. Div. II - 9/8/10); STATE V. Henry Grisby, III, (No. 65564-7-I (3/12/2012 Div. I) (In Chamber juror questioning Voir dire). Sept. 4, 2012 - Judge and Attorney spoke to jurors outside Courtroom and jurors spoke. Pg.* 53 Ln. 8-22. " Chambers conference held which was not* Reported." Pg.* 55 Ln. 17 & Pg.* 56 Ln. 3. Judge Nelson admits that "Holtz" CrR 3.6 motion is filed and will review in chamber. Pg.* 305 Ln. 12-24 STATE V. Bowen, 239 P.3d 1114 (WA. App. Div. 2 9/21/10); STATE V. Sleet, 169 Wn. App. 766, 282 P.3d 101 (Wn. App. Div. 2, 2012).

The Courts have held that any such communications or proceeding/review taken place outside of the public's eye and defendant is a matter for a Bone Club Analysis to determine how in depth the Constitutional violations and prejudice presumed to the defense. This case as well need to reversed, remanded scrutinized and dismissed.

Pierce County Superior Court Cause No. #88102021S & 88-1-02456-3 sentenced concurrently on 9/14/88 as (2pt.) as the grid begins at "0" yet, in Cause No. #89-1-03292-1, The "89" Court does not have the jurisdiction under prior RCW 9.94A.360 to separate the offenses once deemed Concurrent by the original sentencing Court. Also, Assault 3° No. #88-1-02021-5 & Theft 1° No. #90-1-02748-3, 12/03/1990 other 09/14/1988. At some point must "Wash out". In Re Higgins, 120 Wn. App. 159, 83 P.3d 1054 (Wn. App. Div. 3 2004); State v. Morales, 168 Wn. App. 489, 278 P.3d 668 (2012). "Mr. Holtz", Challenges this offender score for he was also told by prior Counsel "Mathew Wareham" on 5/18/11 that "Rioting" Cause No. #10-1-02212-2-1 is a gross misdemeanor that does not constitute a Felony point. Mr. Holtz, due process rights have been violated and infringed up by the sentencing Judges reliance on false information. U.S.C.A. Const. Amend. 14-RCWA Const. Art. 1, §3; RCWA 9.94A. 530(2), as the 2008 Amendments to RCW 9.94A.500(1) and .530(2) are unconstitutional by shifting the prosecutor's burden of proving prior convictions at sentencing. State v. Hunley, 161 Wn. App. 919, 253 P.3d 448 (Wash. App. Div. 2, 2011). State v. Hunley, 2012 WL 5360905 (Wash. 2012)

The Forementioned Complaint and offender score need be evaluated by the Court and corrected, if not charges dismissed for the evidence of prior complaint is insufficient to prove a 3rd violation by criminal history. See; Also State v. Weaver, 171 Wn. 2d 256, 260, 251 P.3d 876 (2011). "Affirmative ~~AC~~Knowledgment is required"). There has been none...

-IN VALID CHARGING DOCUMENT AND ERRONEOUS SENTENCING ERROR- [See Exh. #1 - Comp. #9L1035]

In the proceedings From Aug. 30, 2012 to Sept. 21, 2012 sentencing Prosecution/STATE and the Court used Lakewood Municipal Court Amended Complaint No. #9L1035 dated 16th day of October 2009. This Complaint provides the name of "Deborah Arlene Keal" but provides no date of birth to specify who this person is nor gives A description. More so, name and date of birth ARE requirements inorder to identify the EXACT person one is to have "no contact" with and establish that it is in Fact this person you ARE to be charged For having Contact with. Without A Date of Birth it could be Almost anyone. [Sept. 4, 2012 - Pg. #107 Ln. 7-19] Formatting requirements of Wash. General Rules 14(a) apply to Wash. Rev. Code § 10.99.040, sec. 020, and RCW 26.50.110. In A Felony violation of A No Contact order, the Statutory Authority For prior No Contact orders is not an essential to be decided by the jury. STATE V. GRAY, 134 Wn.App. 547, 556, 138 P.3d 1123 (2006). Rather, the trial Court makes A threshold determination whether the previous (NCO's) ARE Admissible "AS part of it's 'gate-keeping Function' before Admitting the prior convictions into evidence For the jury's consideration." Id. (quoting, STATE V. MILLER, 156 Wn.2d 23, 31, 123 P.3d 827 (2005). "[W]hen A defendant stipulates to A prior Conviction the Court must accept the stipulation and shield the jury From hearing evidence that led to the prior conviction." STATE V. ROSWELL, 165 Wn.2d 186, 195, 196 P.3d 705 (2008). The State need prove prior (NCO) violations within list of qualifying orders under RCW 26.50.110 sec. (2), (4), & (5). See; STATE V. ARTHUR, 126 Wn. App. 243, 108

P.3d 169 (2005). (The State issued A (NCO) under RCW 26.50.110(5). The State Couldn't prove it 26.50.110 IS AN element of the Felony offense and the Court's ruled insufficient Evidence). The 14th Amendments due process clause and Washington State Constitution Articles 1, sec.(s) 21 and 22, A charging document had to contain "[A]ll essential elements of a crime" and said victim so as to give defendant notice of the charges and to allow defendant to prepare a defense, (1)(2)(3), due process Rights under Wash. Const. Art. 1§3, and the 14th Amend, STATE V. BERRIER, 143 Wn. App. 547, 178 P.3d 1064 (2008). STATE V. KJORSVIK, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). "Mr. Holtz", did object through proceedings and is entitled to appellate review. The Complaint listed as exhibit #1, is "invalid upon it's face" which invalidates the current conviction as a 3rd violation amounting to a Felony violation. STATE V. FRANCE, 120 P.3d 654 (2005).

Further, there has been a miscalculation of Mr. Holtz's sentencing score in violation to the 1981 Sentencing Reform Act (SRA) [SEPT. 21, 2012 - Pg.#6 Ln. 23-25. Prosecutor alleges offender score of (9) points. Pg.#11 Ln. 14-17 & Pg.#25 Ln. 11-25.] "Mr. Holtz," was arrested on 9/19/11, prosecution added a point for being on Community placement when on June 1, 2012 case No. #10-1-02212-2-1 before Judge Beverly Grant a "Nunc Pro Tunc" entry was made modifying the unlawful sentence back to 12/9/11 terminating Supervision. "Holtz" was not on Supervision at the time of sentencing. If one might view this from a more legal perspective, on [SEPT 6, 2012 - Pg.#322 - Pg.#325 Prosecution was allowed to amend information and arraign "Holtz" on new charges.] At the time of this charge "Mr. Holtz" was not on Community Supervision as it was terminated on the date forementioned. At Pg.#25 Ln. 11-25. prior points were challenged

-INSUFFICIENT RECORD-

In the Current Appellate Case the transcipts have not been provided to the Appellant by Counsel "Stephanie Cunningham" nor the Court. Though Mr. Holtz, has requested them From both. RECORDS From 9/20/11 ARRAIGNMENT to MAY 31, 2012 but in particularly 4/23/12 and 2/14/12. Showing Speedy trial RECORD, Judicial misconduct with defendant drug From the Court, Defendant attempting PRO-SE Representation due to conflict of interest with Counsel R. Depan, and more. Mr. Holtz cites STATE V. Tilton, 72 P.3d 735, 149 Wn.2d 775 (2003). in mirror of Tilton's claim For ineffective assistance of Counsel based on Counsel's Failure to raise diminished capacity or an intoxication defense. SEE; RAP 9.5 (c)....

-CONCLUSION-

WHEREFORE, in light of the numerous Constitutional violations and there magnitude in not only prejudicing all proceedings constituting a Manifest injustice. Appellant prays For relief reverse, remand, and dismissal.

THIS 6th, DAY OF JUNE, 2013. UCCI-308

RONALD HOLTZ