

IN THE COURT OF APPEALS  
IN THE STATE OF WASHINGTON  
DIVISION ONE

THE STATE OF WASHINGTON )  
Respondent, )  
)  
)  
v. BRENDA NICHOLAS )  
Appellant )  
\_\_\_\_\_)  
Appellant, )

NO: 70857-1-I

STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW

I, Brenda Nicholas, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

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COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
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Cover Page

(1.)

## Additional Ground I

THE TRIAL COURT ERRED IN ALLOWING THE TESTIMONY OF ROMANI INTERPRETER TONY URICH WITH INADEQUATE KNOWLEDGE OF DIALECT, WAS UNCERTIFIED AS A ROMANI INTERPRETER AND COURT INTERPRETER.

There is no written standard for the Romani Language / dialect. It's a complicated language where one word can mean 5 different things. The meaning depends on the context. The Romani interpreter, Tony Ulrich, at trial was not a professional interpreter nor was he certified as an interpreter (3/25/2013 RP 489) of the Romani dialect, nor was he certified for court interpreting. He is a police officer by profession (3/25/2013 RP 478) not an interpreter. In fact he was addressed only as "Officer" by the prosecuting attorney Ms. Ulrey & not as Interpreter. (3/25/2013 RP 478) Doing so was prejudicial, intimidating and biased the jury - due to his position as a police officer. It's clear the prosecution used his honorable position as an officer to intimidate the jury that his testimony is honorable because he was not proven honorable as an interpreter. Just because he was born into the Romani culture, doesn't make him a qualified interpreter. In fact, my counsel stated "Certainly there were words that he admits to not

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knowing" and "The fact that he doesn't know all the words is certainly a problem." 3/25/2013 RP490. And further my counsel went onto say "I would withdraw my stipulation" that he is qualified "but he has already testified. I don't know what to do in that regard." 3/25/2013 RP490. My counsel knew this was a problem, but he clearly did not know what to do about it. Mr. Urich testified that the amount of time his parents spoke Romani to him versus English was 60 percent English and 40 percent Romani. 3/25/2013 RP 491-492. He also testified he interpreted other Court hearings, then changed and said "Investigatio" "a total of 10." This trial was his first time to appear in court. 3/25/2013 RP 493.

After Mr. Urich testified, the Court decided it needed to find the interpreter qualified. I quote the record of the Court saying, "We have two issues. First, the RCW 2.43.030 is one. The Court needs to find the interpreter qualified. There is certainly good cause for not finding a certified interpreter, because there aren't any in Romani, right?" 3/25/2013 RP489. Mr. Newcomb, my defense Counsel replied, "I would admit that, yes." 3/25/2013 RP 489. In questioning Mr. Urich about his qualifications outside the presence of the jury, he testified that he "got a letter of recommendation from the United States Attorney's Office." 3/25/2013 RP 49

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However, questioning by my counsel, Mr. Newcomb, revealed (by Mr. Urich's admission) that the person that wrote the letter of recommendation did not know whether or not Mr. Urich provided accurate interpretations.

3/25/2013 RP 498. The Court soon determined Mr. Urich "qualified" saying, "The Court makes basically a prima facie determination that the witness is qualified as an interpreter."

3/25/2013 RP 498. It's obvious here that there was no certified Romani interpreter either. The Court should have found out if he was qualified before, not after, he testified and before the Court handed out the transcripts of his interpretation of the phone calls to the jury. And the questioning by the Court of his qualification should have been done in the presence of the jury so they could, based on their own understanding, come to a conclusion themselves whether or not he was qualified or not - especially due to the seriousness of the charges and the complexity of the situation with these phone calls in a language that is not written. The main questions the jury members had during deliberations were regarding the phone calls that Tony Urich translated. The conversations in the phone calls as interpreted by the Romani interpreter did not flow naturally and consequently made no sense. They were

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incomprehensible, thus the multiple questions by the jurors - a huge indication that they were not interpreted accurately.

The jury could have and should have gotten the truth, but they never got the real interpretation of the phone calls because the judge didn't allow my written interpretation to be given to the jury members at trial so they could do a comparison of their own. The judge wanted me to give the interpretation on the witness stand as the tapes were played word for word, but my attorney objected saying it would take too long and be overwhelming while questioning me. Since the judge and my defense attorney could not come to an agreement, they left me with no choice but a false interpretation of those calls. Mr. Urich was an insufficient witness and the Court should have never allowed his testimony.

Since this was not a harmless error, was prejudicial, violated my Constitutional Right to a fair trial, and there was a substantial likelihood that Mr. Urich's interpretations affected the jury, this Court must reverse my conviction of Murder I with instructions to dismiss

(5.)

## Additional Ground II

THE TRIAL COURT ERRED IN FAILING TO FIND A MISTRIAL UPON THE FAINTING OF A JUROR DUE TO LURID PHOTOS.

During the testimony of these lurid photos, one of the jury members fainted and everyone rushed into the jury box - including the current witness on the stand, the arresting officers, the prosecutor, the detective, and attorneys - despite the fact that no one is supposed to go in the box or interact with jurors. It was clearly known that this fainting incident occurred due to these lurid photos. This juror was replaced with an alternate juror. Due to the emotional bond the jurors had formed after 3 weeks of trial - how fainting was extremely emotional and damaging to the jury on many levels. My attorney initially filed a motion for mistrial, but later that motion was withdrawn against my wishes. I also asked if I could address the judge myself about a mistrial and my counsel told me I'm not allowed to address the judge. My counsel told me that he had the last say so in decisions. Then the judge and my attorney decided to question the jurors and ask them if they felt they could continue with trial.

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The judge, my counsel and prosecutor felt that was a good enough remedy to solve the damage done by the juror fainting. However, I was again forced into a situation that did not remedy the taint and prejudice caused by the jury member fainting. Again I had insufficient counsel that left me with an unfair trial - thus violating my Constitutional right. This was not a harmless error and it is clear that the only remedy would be a reversal of my conviction for Murder I, with instructions to dismiss.

### Additional Ground III

MY CONSTITUTIONAL RIGHT TO A PROPER DEFENSE WAS VIOLATED DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL

My counsel, Mr. Jonathan Newcomb, conducted himself below the standard by not objecting many times when he should have, ~~not~~ questioning all the witnesses before trial, not going through all the evidence before trial, not objecting to and arguing certain points that were very prejudicial to me - like my nationality, by withdrawing a motion for mistrial, not submitting certain things into evidence, that would have proven me

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innocence, not going through Mrs. Ramirez bank records, not asking the right questions to those on the stand, weak opening and closing arguments - at certain points he even forgot my name, addressing me as Mrs. Ramirez before the jury because he was unprepared and overly drained from his trip out of the country. These are just a handful of the many errors ~~my~~ he made from the beginning, making my chance of a fair trial virtually impossible. At one point pre-trial I asked Mr. Newcomb if I could speak to his supervisor to explain to her I'm not satisfied with him defending me, but he told me it was too late in the game to fire him and unfortunately this is what you got. I strongly feel that if I had sufficient counsel, I would not be sitting in prison right now. Insufficient Counsel violated my Constitutional right to a proper defense and a fair trial, and was very prejudicial. Consequently, this Court must reverse my Murder I Conviction with instructions to dismiss.

#### Additional Ground IV

THE TRIAL COURT FAILED TO GRANT A MOTION

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## FOR CONTINUANCE OF TRIAL.

In preparing for trial, my counsel Mr. Newcomb had a death in the family that he had to fly out of the country for. He came back in an extremely short time before appearing for trial. I strongly feel my attorney did not have enough time to adequately prepare for trial or question the witnesses. My counsel continued to ask for an extension, even up to the very last. Both the pre-trial and trial judges denied his motions for continuance of trial. Given the seriousness of the charges, the potential length of trial, and the emergency circumstances of my counsel, shouldn't my counsel been given as much time as necessary to adequately prepare? As a result, I had insufficient counsel and insufficient defense at trial. This violated my Constitutional right to a fair and proper representation at trial. The trial Court erred in failing to grant the defense motions for continuance and a new trial is the only remedy.

## Additional Ground VI

THE TRIAL COURT ERRED IN ALLOWING THE

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## ADMISSION OF OVERLY LURID AUTOPSY PICTURES.

My counsel argued the admission of an over abundance of these overly lurid pictures, but the judge denied his motion. As a result, there were so many pictures that a lot of time was spent showing them - much more than necessary. They were so lurid that one of the jury members fainted during the viewing. And another jury member that evening sent an email to the Courts Clerk (which was noted in the record, saying she felt her Constitutional rights were violated by making her sit through such a lengthy presentation of these lurid pictures). At that point I felt that the jury was completely damaged and would not fairly deliberate a decision. This was extremely prejudicial to me and my trial - making a fair trial impossible. Therefore, since my Constitutional Right to a fair trial was violated by this error, and it was not a harmless error, a new trial is the only obvious remedy.

### Additional Ground VI

THE TRIAL COURT ERRED IN ALLOWING THE

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ADMISSION OF JAIL PHONE CALLS RECORDINGS UNIDENTIFIED BY THE STATE AS CALLS TO BE USED UNTIL THEIR ACTUAL PROPOSED ADMISSION DURING THE COURSE OF THE TRIAL.

My counsel was not notified of these phone calls to Archie Marks from jail. One particular call in English, the prosecutor decided to play for the jury while I was being questioned by her. My attorney objected because this call was not submitted as evidence, nor had he heard this call before. At that point my attorney said that there was no use arguing it, because the jury already heard it and the prejudice against me was already there. My counsel addressed the prosecutor and the judge about it, but nothing was done. The prosecutor just continued to question me about what was said in the phone call. Because proper procedures were not followed - the call was not submitted into evidence - the prosecuting attorney should not have been allowed to continue to question me on the phone call. It should have been discussed between my attorney, the prosecutor and the judge, and decided if it was going to be submitted into evidence before playing it for the jury and questioning me on it.

while I was on the stand. That would have been proper procedure. I felt this was extremely prejudicial and damaging to me, nor was it a harmless error. It violated my Constitutional right to have a fair trial. Therefore, the only remedy to cure the taint and prejudice done by this error, would be to reverse my charges and have a new trial.

### Additional Ground VII

THE TRIAL COURT ERRED IN ALLOWING THE STATES WITNESS DETECTIVE CLOYD STEIGER TO NOT ANSWER THE DEFENSE QUESTIONS THAT HE DELIBERATELY REFUSED TO ANSWER.

There were many defense questions that the States witness Detective Cloyd Steiger refused to answer. Especially questions about Archie Marks. Witness Gilda Ramirez testified that Archie Marks "helped her get rid of the evidence"; but Mr. Marks was never subpoenaed or investigated. That was just one of the questions out of several that my attorney asked Detective Steiger about regarding Archie Marks. He refused to answer any of them. At one point, Detective Steiger said with great agitation

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that he refused to answer any questions about Archie Marks, with no explanation as to why. His refusal to answer questions on behalf of my defense was unprofessional and presented huge prejudices to the jury that likely had an impact on their verdict. My counsel was upset and addressed the judge about it, but the judge did not do anything about it. As a result, this violated my Constitutional right to a fair trial because my counsel was not allowed to properly question my accuser. Accordingly, I, Ms. Nicholas, is entitled to a new trial.

### Additional Grounds VIII

THE CUMULATIVE EFFECT OF THESE MANY ERRORS REQUIRES THE REVERSAL OF I, MS. NICHOLA'S CONVICTIONS.

When the combined effect of errors during trial denies the defendant her right to a fair trial, the Courts may reverse her convictions. If this Court should decide that any one of these errors by themselves are insufficient to warrant a reversal, I, Brenda Nicholas submit that these many errors together warrants the reversal of my

convictions with instructions to dismiss

## Conclusion Summary

For the reasons stated, I, Brenda Nicholas, asks this Court to reverse my conviction for Murder I with instructions to dismiss for erring in allowing the testimony of Romani interpreter who was uncertified, unqualified and prejudiced, for failing to find a mistrial upon the fainting of a juror due to lurid pictures, and for Ineffective Assistance of Counsel.

Alternatively, I, Brenda Nicholas asks this Court to reverse my convictions and remand for a new trial as the trial Court erred in failing to grant a motion for continuance of trial, erred in allowing the admission of overly lurid autopsy pictures, erred in allowing the admission of jail phone calls recordings unidentified by the State, and erred in allowing the States witness Detective Cloyd to continue to deliberately refuse to answer defense questions.

If there are additional grounds, a brief summary is attached to this statement.

Dated: Oct. 20, 2014 Brenda Nichols  
Signature  
Brenda Nicholas 339217  
Print Name & DOC

Washington Correction Center for Women  
9601 Bujacich Rd. N.W.  
Gig Harbor, Washington 98332-8300

IN THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF King

THE STATE OF WASHINGTON )  
COUNTY OF PIERCE ) ss.

DECLARATION OF MAILING

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STATE OF WASHINGTON  
2014 OCT 22 AM 10:18

I, Brenda Nicholas, state that on this 20<sup>th</sup> day of  
October, 2014, I deposited in the mail of the United States of  
America a properly stamped envelope containing a copy of the following  
described documents:

My statement of Additional Grounds and a letter  
to my counsel, Jared Steed, was placed in the prison  
Legal mail system per GR 3.1

I further state that I sent these copies to the following addresses:

1. The Court of Appeals of the State of Wash, DIV. I  
One Union Square, 600 University St. Seattle, Wa, 98101
2. Page Ulrey, King Co. Prosecutor's office W554 King Co. Courthouse  
516 3<sup>rd</sup> Ave, Seattle, Wa. 98104
3. Jared Steed, Nielsen Broman & Koch PLLC  
1908 E. Madison St., Seattle, Wa. 98122

Dated: Oct. 20, 2014

Brenda Nicholas  
Signature  
Brenda Nicholas 339217

Print Name & DOC  
Washington Corrections Center for Women  
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