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COURT OF APPEALS
DIVISION II

2014 DEC -4 PM 1:10

STATE OF WASHINGTON COA. No. 45811-0-II

BY: ~~DEPUTY~~
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
Respondent,

v.

ANTHONY DEWAYNE PARKER
Appellant.

PRO SE SUPPLEMENTAL BRIEF
PURSUANT TO RAP 10.10 STATEMENT OF ADDITIONAL GROUNDS

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

The Honorable Sally Olsen

Anthony D. Parker
#776122 C-Unit
Clallam Bay Corr. Cntr.
1830 Eagle Crest Way
Clallam Bay, WA 98326

PM 12-3

A. SUPPLEMENTAL FACTS.

While incarcerated on unrelated charges Johanna Holliday and Lorena Llamas became good friends. RP 447. They discussed ways for Holliday to make money being that she had no place to go upon her release. Llamas told Holliday about her friend Anthony Parker, and that he could be the one to help her out. RP 448-449.

Eventually a deal was struck for Parker to bail her out of jail for a possible business venture. RP 451-452. On **December 6, 2012** Parker bailed Holliday out of jail, the day they met for the first time. RP 454-455.

Holliday planned to do other things to make money, and when those plans failed brought up prostitution as a source to Parker. RP 457,,. Holliday went on her first date or call to prostitute soon after but made no mention of a specific date or time. RP 466.

In the beginning things went well, Parker treated her real nice. RP 469. He bought her things and made sure she was comfortable. RP 456-459.

Sometime in late December, January, or early February 2013, during the time of Holliday's court hearings in Kent, Washington, the assault allegedly occurred. RP 482-484.

During the altercation, Jennifer Prerost had let Parker into a home owned or rented by Prerost and her Boyfriend Anthony Flewellen. RP 486-487. Parker entered the home and went looking for Holliday

"right away". RP 494.

Parker went to the back bedroom, and begin to knock on the door. RP 495-496. Parker allegedly grabbed Holliday by her hair and threw her across the wall. RP 496. He told her to get up and get out of the house. RP 496. Eventually Holliday walked "straight out of the house". RP 497. On the way to the car she noticed Jennifer Prerost standing next to the car door with her daughter in her arms.¹ RP 497.

On the way home Parker allegedly beat her. RP 499. At some point they stopped at some friends and then proceeded home. RP 503-504. There he continued to beat her and verbally abuse her. RP 505, 509-510. Parker forced Holliday to stay awake until he went to sleep on the couch. RP 510. Holliday stated that she too went to sleep. RP 509.

The next day Parker was calm and Holliday apologized and continued to go out on calls, to turn tricks for money. RP 510. At no time could Holliday attribute the assaults to any specific date and time.

While being let out to prostitute, Holliday bought pills to get high on the money she made. RP 511. During this period of time Parker would leave the house for long periods of time. RP 524-526. On one of these occasions Holliday called her friend Alisha for a ride to buy some percocet pills. RP 532-533. On April 4, 2013, after buying the pills, the police pulled Holliday and Alisha over during a traffic stop. RP 534-535. The officer's detained Holliday, searched her where the

2.

1. APPELLATE COUNSEL STATED IN HIS BRIEF THAT PARKER DRAGGED HOLLIDAY OUT OF THE HOUSE. WHICH WAS INCORRECT.

pills were found. RP 534-535. Without consent from Holliday the police seized her cell phone and the drugs. RP 812-814. She was not taken to jail for the drugs because she had agreed to meet with the police later. RP. 812-814, 890. Holliday told Parker that the police had taken her cell phone while she was out working. Id. About a week later on April 12, 2013, Holliday posted another ad on Backpage.com. RP 538-540. A sting was set up to apprehend Holliday when she answered the call. RP 891. Within a short time she got a response and agreed to go to the Oyster Bay Inn in Bremerton to meet the customer who called. RP 541-543. When she entered the motel room with the customer she found out that he was a police officer. RP 541-543, 814-818.

Two more officers then entered and arrested her,. They seized her second cell phone, without her consent to search, and took her to the police station where she eventually gave them a lengthy statement about her activities with Parker. Id. RP 819-821, 899-900.

After the interview the police obtained a search warrant, to search the house on 14th based upon Holliday's statements. RP 819-821, 903-904. (CP. Search Warrant attached as App. A. to this Suppl. Brief).

The scope of the warrant was to arrest Parker, and locate a firearm. During the arrest, the police found the weapon in question but also seized Parker's cell phone without his consent. RP 904.

Post Arrest

After Parker was arrested and taken into custody, the Bremerton Police began to build their case. Most of the evidence

compiled came from the Seized cell phones of Holliday and Parker.
RP 993--995, 997, 1000, 1001, 1004-1007, 1010-1012, 1032-1033.

Detective Ryan Heffernan gleaned from both cell phones that Holliday was working for Parker, and used the photos and e-mails to show proof of prostitution and human trafficking. RP 1032.

However, Heffernan did not obtain consent to search the cell phone taken from Holliday on the 4th of April, 2013, nor for the second cell phone taken from her on the 12th of April, 2013. RP 1033, He did not subpoena Parker's e-mail account to retrieve the messages. RP 995-997.

Heffernan stated that after he seized the cell phones he was in the process of obtaining warrants or had the warrants. RP 899. In fact there wasn't any warrants telephonic or otherwise issued to search the cell phones including the alleged warrant obtained on the 23rd of April, 2012, for Parker's cell phone. RP 1007.

See (App. B. attached to the Suppl. Brief, Kitsap County Clerk swearing to no warrants being filed with the Court). The only warrant received and filed in superior court was the warrant issued for Parker's arrest and a specific item i,e, firearm. (App. A.) Which is a violation of Article 1, section 7.

While awaiting trial, Parker had extensive conversations over the phone that the State claimed to be incriminating. RP 1249. During one conversation he had asked Prerost to tell the truth. App.

C. Pg. 239-243. in another he asked Holliday to retrieve (monster) a pistol from its original hiding place and put it in a bag and in the basement of the house. RP 531. APP. D. Parker had also contacted John Buckner, telling him to essentially tell the truth. RP 1250-1251.

However, during trial, not only was **counsel ineffective** for failing to suppress the photographs and e-mails taken without consent or search warrant from Parker and Holliday's cell phone's, he was also ineffective for failing to call critical witnesses such as Parker's mother and sister to rebut Johanna Holliday's testimony. See App. F. (Witness List.).

Furthermore, it was **prosecutor misconduct** to allow its witnesses to go unchecked, where 1) the Detective had lied about getting search warrants for both of the cell phones, and 2) where Prerost lied about being with Parker on the streets in the years of 1999 and 2000. See App. E. DOC Records).

And it was **judicial error** to allow the highly prejudicial gang evidence where the court needed to conduct the 4 prong test provided in ER 404(b). RP 513-518

The following errors will be assigned to additional grounds for review and argument found in Section C.

B. ASSIGNMENTS OF ERROR.

1) Insufficient evidence deprived Parker of his right to a fair trial.

2) Ineffective Assistance of Counsel deprived Parker of his right to a fair trial.

3) Prosecutor Misconduct deprived Parker of his right to a fair trial.

4) Judicial Error deprived Parker of his right to a fair trial.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1) Did insufficient evidence deprive Parker of his 6th amendment right to a fair trial where the State failed to prove the essential elements of Burglary in the First Degree, Kidnapping in the First Degree, Promoting Prostitution in the First Degree, Human Trafficking in the First Degree, Assault in the Second Degree, Unlawful Possession of a Firearm in the First Degree, and Witness Tampering?

And; absent the evidence taken from the cell phones could the State therefore prove Promoting Prostitution and Human Trafficking?

2) Did Ineffective Assistance of Counsel deprive Parker of his 6th amendment right to a fair trial where counsel (1) failed to suppress the photographs and e-mails that were illegally obtained without consent or warrant, and (2) where counsel failed to call critical witnesses such as Parker's mother and sister to rebut the State's chief witness Holliday's testimony?

3) Did Prosecutor Misconduct deprive Parker of his right to a fair trial where the Prosecutor (1) failed to correct Detective Heffernan on actually obtaining the search warrants for the cell phones,

and (2) knowingly allow Prerost to lie about being with Parker in the years of 1999-2000, when in fact Parker was incarcerated from 1998-2001?

4) Did Judicial Error deprive Parker of his 6th amendment right to a fair trial where the Court allowed gang evidence to be admitted without first conducting the 4 prong test required in ER 404(b)?

C. ADDITIONAL GROUNDS FOR
REVIEW AND ARGUMENT.

1. Insufficient Evidence Deprived Parker Of His Right To A Fair Trial When The State Failed To Prove Every Essential Element Of The Crime Charged!

a) Due Process requires the State to prove each element of the offense charged beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 u.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)(A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence; the accepted test is whether, after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt). Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 628, L.Ed.2d 560 (1970); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

In this case at bar, the Prosecutor did not prove Parker committed the crimes of First Degree Burglary, First Degree Kidnapping,

First Degree Promoting Prostitution, First Degree Human Trafficking, Second Degree Assault, Unlawful Possession of a Firearm in the First Degree, and Witness Tampering.

First; To convict Parker of First Degree Burglary, each of the following elements of the crime must be proved beyond a reasonable doubt;

1) That on or about January 1, 2013 through February 2, 2013 the defendant entered or remained unlawfully in a building;

2) That the entering or remaining was with intent to commit a crime against a person or property therein;

3) That in so entering or while in the building or in immediate flight from the building the defendant assaulted a person; and

4) That the acts occurred in the State of Washington.

See App. G. Instruction 34.

A person enters or remains unlawfully in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain. Instruction 32.

The first element cannot be proven, because the court heard evidence by Holliday that Prerost let Parker into the home to talk to her. "Jennifer had let him in and he came straight to -- he came looking for me right away." RP 494. "When you let somebody in your house and say, come on in, that's a license. It's a license to let them

in your house." RP 1241. Thus the burglary falls apart here like counsel argued in closing because the missing element is whether he had permission and evidence clearly shows that Parker had permission from his friends to be in the house.. Absent the missing element of number 1, no rational trier of fact could have found the essential elements beyond a reasonable doubt. State v. Green, 94 Wn.2d 216 controls.

Second; To convict Parker of First Degree Kidnapping, each of the following elements of the crime must be proved beyond a reasonable doubt;

- 1) That on or about January 1, 2013 through February 2, 2013, the defendant intentionally abducted Johanna Cathrine Holliday,
 - 2) That the defendant abducted that person with intent
 - a) to inflict bodily injury on the person, or
 - b) to inflict extreme mental distress on that person; and
 - 3) That any of these acts occurred in the State of Washington.
- See Appendix G. Instruction 47. also; Instruction 13.

"Abduct" means to restrain a person by...using or threatening to use deadly force." or secreting or holding him or her in a place where he or she is not likely to be found. RCW 9A.40.020

The first element cannot be proven because the court heard evidence by Holliday that he continued to tell me to get up and to get out of the house and whatever else he was threatening me or just

talking to me in a really rude way." RP 496. ... "And he kept on walking forward, so I kept on walking back, and eventually, I walked straight out of the house." RP 497. "He just told me to go straight to the car, to leave the house and go straight to the car." Id.

At some point they ended up going to Parker's friends house where they stayed for at least 10 minutes. RP 503. When asked by the Prosecutor "why did you leave the house?" Holliday answered "Because he needed to take me home?" RP 503.

Thus the kidnapping falls apart, because Holliday willingly walked out of the house on her own. RP 497, 1241. Furthermore, to satisfy the elements of abduction." A person must be restrained by using or threatening to use deadly force, or secreting where she could not be found.

a) Parker took her home.. RP 503.

b) Parker " would tell me to pack up my stuff and go. And I would beg him to not do that, to not make me leave... RP 536.

c) Tony "told me that he was going move his stuff to the Summit house, and I asked if I could come with." RP 620. At no time did Parker threaten to kill Holliday, or use any type of deadly force. while he may have beaten her with his hands nothing here suggest otherwise. Holliday further stated that she was angry with Parker for going back to his wife. RP 622.

The above testimony by Holliday clearly shows that Parker

could not have committed First Degree Kidnapping. Therefore, absent the missing element of number 1, and 2 no rational trier of fact could have found the essential elements beyond a reasonable doubt. In re Winship, 397 U.S 358, controls. See also; State v. Garcia, 179 Wn.2d 828, 318 P.3d 266 (2014)(evidence was insufficient to establish that defendant intended to cause extreme mental distress).

Third; To convict Parker of Second Degree Assault, each of the following elements of the crime must be proven beyond a reasonable doubt:

1) That on or about December 13, 2012 through January 20, 2013, the defendant assaulted Johanna Catherine Holliday;

2) That the assault was committed with intent to commit Unlawful Imprisonment; and

3) That this act occurred in the State of Washington.
See Appendix G. Instruction 29.

A person commits the crime of unlawful imprisonment when he or she knowingly restrains the movements of another person in a manner that substantially interferes with the other person's liberty if the restraint was without legal authority and was accomplished by physical force, intimidation, or deception. Instruction 28.

The second element cannot be proven, for the following; 1) the instruction implies that this act was a **continuing** offense for over 30 days, 2) the court heard evidence by Holliday that she could

have left Parker at anytime. At one point she begged Parker to let her stay when he wanted her to leave. See RP 536. **Asking someone to stay** in their presence does not satisfy the elements of unlawful imprisonment. Thus, the Second Degree Assault with intent to commit a felony; to wit Unlawful Imprisonment was not proven. [I]f the State had elected a specific date then the jury could discern how to apply the act. But when the State charged Parker on a continuing course of conduct throughout a lengthy time period then Holliday's testimony becomes critical when the jury had to decide that she was unlawfully restrained for 37 days. Apprendi v. New Jersey, 530 U.S. 466 controls.

Fourth; To convict Parker of Unlawful Possession of a Firearm in the First Degree, each of the following elements of the crime must be proven beyond a reasonable doubt:

1) That on or about April 12, 2013, the defendant knowingly owned a firearm or knowingly had a firearm in his possession or control;

2) That the defendant had previously been convicted of a serious offense; and

3) That the ownership, or possession or control of the firearm occurred in the State of Washington.

See Appendix G. Instruction 62.

Possession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when

the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.

Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Instruction 59.

The first element cannot be proven because the court heard evidence by Holliday that Parker instructed her to move "Monster" from underneath the bed "and needs to go downstairs in the garage and to put it in a bag" RP531.

When asked if she did that? Holliday replied yes". RP 531.

Detective Heffernan testified "after conducting the interview I had applied for a telephonic search warrant for Mr. Parker's residence. RP 903. To arrest Mr. Parker and, secondly, to locate the handgun." Id.

"I saw the firearm where it was located inside the house." RP 990. There were no fingerprints located on the firearm." RP 989.

To prove constructive possession, the State must show dominion and control over an object and the ability to reduce [it] to actual possession. State v. Chouinard, 169 Wn.App. 895, 282 P.3d 117 (2012), however, mere proximity to the firearm is insufficient to show dominion and control, as basis for constructive possession, in a prosecution for unlawful possession of a firearm. Id.

The only evidence showing the last person to have exclusive control over the gun is Holliday. She moved it to a location in a

basement, and told the police where they could find it. See State v. Callahan, 77 Wn.2d 27, 459 P.2d 400 (1969)(Proof of possession of narcotics by defendant may not be established by circumstantial evidence when undisputed direct evidence places exclusive possession in some other person). Also; State v, Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986) In Knapstad amongst other things, the Prosecutor described the States evidence as follows; drug paraphernalia was found in common areas of the house, a gasoline credit card receipt issued to Douglas Knapstad several months prior to the search was found in a dresser drawer in one of the bedrooms...)

With no distinction between Knapstad, and Parker, the trial court held that "even considering all reasonable inferences [from this evidence] most favorable to the State...there is insufficient... evidence tending to prove that Doug Knapstad owned or had knowledge, control, or possession of the subject marijuana or that he was a resident" of the searched house. Id. at 349.

Like Callahan, and Knapstad, here the record shows that the States evidence is insufficient as a matter of law to prove that Parker actually or constructively possessed the firearm found inside a bag, in a basement that was known to be in the possession of someone else other than Parker. State v. Callahan, and Knapstad controls.

Moreover, it appears that the jury was erroneously instructed on on dominion and control. See Instruction 59. Third paragraph, "In

deciding whether the defendant had dominion and control over an item you are to consider all the relevant circumstances in the case... and whether the defendant had dominion and control over the premises where the item was located. In *Shumaker*, the defendant's conviction was overturned because the trial court erroneously instructed jurors that dominion and control over premises proved constructive possession of drugs found therein. *State v. Shumaker*, 142 Wn.App. 330, 334, 174 P.3d 1214 (2007), like *Shumaker*, this court should grant same treatment, and reverse the unlawful possession of a firearm conviction.

Fifth; To convict Parker of Tampering With A Witness, each of the following elements of the crime must be proven beyond a reasonable doubt:

1) That on or about June 29, 2013 and July 1, 2013, the defendant attempted to induce a person to testify falsely or withhold any testimony or absent himself or herself from any official proceeding or withhold from a law enforcement agent information which he or she had relevant to a criminal investigation; and

2) That the other person was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings or a person whom the defendant had reason to believe might have information relevant to a criminal investigation; and

3) That the acts occurred in the State of Washington.

See Appendix G. Instruction 65.

A person commits the crime of tampering with a witness when he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation to testify falsely or, without right or privilege to do so, to withhold any testimony, or to absent himself or herself from any official proceedings, or to withhold from a law enforcement agency information which he or she has relevant to a criminal investigation. Instruction 63.

The first element cannot be proven for the following; 1) the court heard testimony from Prerost, and heard the jailhouse phone calls where Parker, asked her to tell the truth. At no time during the calls did Parker ask Prerost to lie, or give false information, or to simply not show up for court.

On June 29, 2013, the call between Parker and Prerost, show Parker asking her to testify for him, and asked her to tell the truth . See App. C. Pg. 241.

On July 1, 2013, Parker again ask Prerost to be a witness for him because the State was trying to give him a lot of time. App. C. Pg. 243

The State played the recording for the jury, trying to prove witness tampering against Jennifer Prerost. The transcripts of the recording is part of the record and should be reviewed by this

court. RP 1246, 1249.

See State v. Rempel, 114 Wn.2d 77, 785 P.2d 1134 (1990)(
In that case evidence did not support conviction for witness tampering;
only contact between defendant and witness, who was complainant in
attempted rape case consisted of telephone calls to her from jail,
during which he did not ask her to change or withhold testimony but
simply apologized for his conduct and asked that she drop charges),

Earlier cases are factually distinguishable. In State v.
Stroh 91 Wash.2d 580, 588 P.2d 1182, 8 A.L.R. 4th 760 (1979), the
defendant asked the witness to not appear or alternatively change his
testimony. In State v. Wingard, 92 Wash. 219, 158 P. 725 (1916), the
defendant promised a reward, made a threat, and urged the witness to
ignore a subpoena.

Like Rempel, none of the above facts appear here in Parker's
case. The only contact between Parker and Prerost, consisted of tele-
phone calls to her from jail, during which he did not ask her to change
or withhold testimony but simply explained that she was there during
incident of the alleged burglary and kidnapping and to tell the truth.

Therefore, evidence did not support the conviction. State
v. Rempel, controls. Where reversal is required.

Finally!

To convict Parker of Promoting Prostitution in the First
Degree, and Human Trafficking in the First Degree, each of the following

elements of the crime(s) must be proven beyond a reasonable doubt:

1) That on or about November 1, 2012 through April 12, 2013, the defendant knowingly advanced prostitution by compelling Johanna Catherine Holliday by threat or force to engage in prostitution; and

2) That the defendant recruited, harbored, or transported by any means another person, knowing that force, fraud, or coercion will be used to cause the other person to engage in a commercial sex act and the **acts involves committing or attempting to commit kidnapping.** and;

3) That the acts occurred in the State of Washington.

See Appendix G. Instruction 23, and Instruction 10.

The first element cannot be proven because the court heard evidence from Holliday that, she was the one who suggested that she try prostitution. RP 457. And at no time did Parker force her to engage in prostitution. Holliday sold her body for sex because it was her only way of getting money. RP 457. She testified that she could have left the situation at any time but chose to stay and provide income for herself and Parker. RP 510. While the assaults allegedly occurred out of jealousy for Holliday being around Flewellen, there was no testimony from Holliday stating that Parker threatened or forced her into prostitution.

The second element cannot be proven because the element of kidnapping do not exist. Parker has shown above that there was insuffi-

cient evidence to establish first degree kidnapping absent the element of abduction.

There was insufficient evidence to support the use of kidnapping as an element of Human Trafficking, because the Prosecutor failed to prove abduction. Abduction may be proved in three distinct ways, each of which necessarily involves restraint, by threatening deadly force, by using deadly force or by secreting or hiding he/she in a place where she Johanna Holliday is not likely to be found. See State v. Green, 94 Wn.2d 216, at 224-230, 616 P.2d 628 (1980), here, there is no evidence of a threat of deadly force, or use of deadly force, the place where Holliday was taken to was where she was living with Parker, so there is no evidence of Parker hiding her out where she could not be found. Id.

The assault itself could not constitute the restraint necessary to prove kidnapping in the first degree as shown above and where there is insufficient evidence to establish Human Trafficking the conviction must be reversed. State v. Green, controls.

However before this court can come to the conclusion of whether sufficient evidence exist to sustain the convictions of promoting prostitution and human trafficking, this court must first consider whether the evidence obtained to support the convictions was obtained in violation of Article 1, section 7.

Illegal Search And Seizure

**NO PERSON SHALL BE DISTURBED IN HIS PRIVATE AFFAIRS, OR
HIS HOME INVADED, WITHOUT AUTHORITY OF LAW. WA. CONST. ARTICLE 1
§ 7.**

Under the privacy section of the Washington Constitution a search occurs when the government disturbs those privacy interests that citizens of the State have held, and should be entitled to hold safe from governmental trespass absent a warrant. *State v. Hinton*, 179 Wn.2d 862, 319 P.3d 9 (2014).

Here, at the start of this case when Holliday was pulled over during a traffic stop after being observed purchasing drugs, the officer's took the drugs she bought and confiscated her cell phone. RP 532. On April 4, 2013, Holliday was detained and let go with a promise to meet with the Detectives later. *Id.*² RP 812-814, 890, 1012.

Detective Heffernan told Holliday that he was taking the phone into custody either "pending a consent search or a search warrant". At that time the police had no legal authority to seize Holliday's cell phone without a warrant prior to the seize. *State v. Hinton*. 179 Wn.2d 862.

Approximately a week later, during a sting to trap Holliday, on April 12, 2013, Holliday was arrested for solicitation of prostitution at the Oyster Bay Inn Motel. RP 541-543, 814-818, 819-821. The police seized Holliday's second cell phone again without a warrant, and no consent to search the phone. RP 1032, 1033.

When asked why he took the phone? The Detective replied

"Because we thought it would have evidence of criminal activity on it." RP 1032.

The police may seize an individual's phone pursuant to a lawful search incident to arrest to prevent the destruction of evidence. *State v. Valdez*, 167 Wn.2d 761, 776, 224 P.3d 751 (2009), but may search the phone (including text messages) only with a warrant, a valid exception to the warrant requirement, or the phone owner's express consent. *Id.*

Here, the record shows that the police did not obtain a warrant to search Holliday's cell phone on April 4, 2013, and for the one taken on the 12th of April, 2013. See App. B. Public Disclosure confirming this claim.

However, a substantial amount of evidence such as e-mails, photographs, and phone numbers were taken off of Holliday's phone and used to show the jury that she was prostituting and her ties with Parker. RP 886, 889, 894, 897, 899, 532-534, 544.

On April 12, 2013, pursuant to a statement given by Holliday to the police, Detective Heffernan obtained a search warrant for Parker's residence. RP 903. The warrant covered the search of the home for a firearm known to be in the basement, and the body of Anthony Parker. *Id.* Parker was arrested without incident. The police also seized Parker's cell phone. RP 904. Thus violating the scope of the warrant. *State v. Thein* 138 Wn.2d 133, 977 P.2d 582 (1999).

Detective Heffernan stated that he did obtain a search

warrant for Parker's phone on the 23rd of April. RP 1007. Evidence taken from the phone consisted of backpage ad, postings of Holliday soliciting money for sex. RP 993, 1007. This was shown to the jury to concrete the convictions of promoting prostitution and human trafficking. RP 1257,. However, there is no record of any warrant(s) being issued on April 23rd, 2013, or on any other date pertaining to the cell phones.

Constitutional protections are strongest in the home. U.S. Const. amend. IV; Wash. Const. art I § 7; Payton v. New York, 445, U.S. 573, 590, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980)("the Fourth Amendment has drawn a firm line at the entrance to the house"): State v. Young, 123 Wash.2d 173, 185, 867 P.2d 593 (1994)("the home receives heightened constitutional protections"). Warrantless searches of the home are unreasonable under both the Federal and State Constitutions unless pursuant to a recognized exception. State v. Garvin, 166 Wash. 2d 242, 249, 207 P.3d 1266 (2009), exceptions to the warrant requirement are carefully drawn and jealously guarded. Id. Plain view is one of these exceptions. Id. "A plain view search occurs when law enforcement officers "(1) have a valid justification to be in an otherwise protected area and (2) are immediately able to realize the evidence they see is associated with criminal activity." State v. Hatchie, 166 P.3d 698 (2007), The question here is 1) whether the police had legal standing to seize the cell phone when there was no evidence at that

time that the cell phone was involved in any illegal activity? 2) whether the scope of the warrant covered the cell phone? and 3) whether the evidence seized absent the warrant from the cell phones require dismissal of the entire case with prejudice due to fruits of the poisonous tree doctrine? *State v. Hinton, supra.*

Probable cause to search requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched. *State v. Johnson, 104 Wn.App 489, 17 P.3d 3, (Div. 2 2011).*

Like *Johnson*, police officers seizure of cellphone found during the search of Parker's residence was not justified by plain view doctrine; When the officers seen the cell phone nothing about that cell phones exterior gave probable cause to believe that evidence of a crime was being committed, and to acquire probable cause, police needed to view contents and doing so was an additional, unauthorized search.

Court's require that a nexus between the items to be seized and the place to be searched must be established by specific facts; *State v. Thein, 138 wn.2d 133, 977 P.2d 582 (1999)*(citing *United States v. Schiltz 14 F.3d 1093, 1097 (6th Cir. 1994)*(while officers training and experience may be considered in determining probable cause, it cannot substitute for the lack of an evidentiary nexus).

In contrast to *Campbell*, where the court reviewed the

telephonic warrant authorizing the search, noted it described the place to be searched as "the vehicle" without express limitations. 166 Wn.App. 464, 272 P.3d 859 (2011) here the limitations were put on the scope of the search.

Although we cannot be sure if the evidence obtained off the cell phones persuaded the jury to convict Parker, this court cannot make that determination for the jury. The entire case should be dismissed. *State v. Green*, 177 Wn.App. 332, 312 P.3d 669 (2013) Exclusionary rule prohibits the admission of evidence that is the product of the unlawfully acquired evidence up to the point at which the connection with the unlawful search becomes so attenuated as to dissipate the taint.

Under our state constitution, officers of the law must have actual authority of the law to intrude into the private affairs, even the affairs of bad men. *State v. Winterstein*, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009) In this case, the Bremerton police did not have a scintilla of authority to search both cell phones of Holliday and the cell phone of Parker, without a valid search warrant or consent from both parties.

While the sender of the text message assumes a limited risk that the recipient may voluntarily expose that message to a third party, the sender does not assume the risk that the police will search the phone in a manner that violates the phone owner's rights. *State*

v. Hinton, 179 Wn.2d 862, 319 P.3d 9 (2014).

To determine whether governmental conduct intruded on Parker's private affair's as well as Holliday's, Parker invites this Court to look at the "nature and extent of the information which was obtained as a result of the government conduct." State v. Miles, 160 Wash.2d at 244, 156 P.3d 864 (citing State v. McKinney, 148 Wash.2d 20, 29, 60 P.3d 46 (2002) and conclude that absent the information taken from the cell phones to prove promoting prostitution in the first degree, and human trafficking in the first degree, the convictions need to be reversed with prejudice. State v. Hinton, 179 Wn.2d 862, 319 P.3d 9 (2014) controls. See also; State v. Ruem, 179 Wn.2d 195, 313 P.3d 1156 (2013)(Deputy's observation of starter marijuana plants outside defendant's residence during examination of perimeter did not provide independent source of probable cause sufficient to uphold issuance of search warrant); State v. Monaghan, 165 Wn.App. 782, 266 P.3d 222 (Div 1 2012)(Search of locked container within the trunk of defendant's car exceeded the scope of consent he gave police); State v. Gebaroff, 87 Wn.App. 11, 939 P.2d 706 (Div 2. 1997)(Affidavit did not provide probable cause to search travel trailer under control of another person that was located on same property as mobile home); Application for Writ of Habeas Corpus of Charles McNear Jr. 65 Wn.2d 530, 398 P.2d 732 (1965) (Search warrant was unreasonable and in violation of his constitutional rights, and evidence procured thereby should have been excluded at

defendant's subsequent trial, on narcotics charges) and *State v. Dennis*, 16 Wn.App. 417, 558 P.2d 297 (Div 2. 1976). Thus, insufficient evidence deprived Parker of his due process rights to a fair trial.

2. Ineffective Assistance Of Counsel Deprived Parker Of His Right To A Fair Trial When Counsel Failed To Suppress The Photographs And E-mails That Were Illegally Obtained, And Failed To Call Critical Witnesses.

Both the Sixth Amendment to the United States Constitution and article 1 § 22 (amendment 10) of the Washington State Constitution guarantee the right to effective assistance of counsel in criminal proceedings.

A claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal. *State v. Nicols*, 161 Wn.2d 1, 9 162 P.3d 1122 (2007). A claim of ineffective assistance of counsel presents a mixed question of fact and law reviewed de novo." *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To establish ineffective assistance of counsel, the defendant must establish that his attorney's performance was deficient and the deficiency prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Deficient performance is performance falling "below an objective standard of reasonableness based on consideration of all circumstances." *State*

v. McFarland, 127 Wn.2d 322, 334-335, 899 P.2d 1251 (1995). The prejudice prong requires the defendant must show that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment.

Second, the defendant must show that the deficient performance prejudiced the defense. This also requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial whose result is reliable. Strickland, 466 U.S. at 687.

While there is a strong presumption that counsel's performance was reliable. State v. Studd, 137 Wn.2d 533, 551, 973 P.2d 1049 (1999); State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). The question here, in deciding whether Parker was denied reliable, effective representation is whether counsel acted accordingly when he failed to suppress the contents of Holliday's first and second cell phone, as well as Parker's cell phone taken during the search.³

For a defendant to demonstrate his or her reasonable expectation of privacy in an item searched, as a prerequisite to claiming that the search was unconstitutional the defendant must show that (1) he or she had an actual, subjective expectation of privacy, by seeking to preserve something as private and (2) society recognizes that expectation as reasonable. State v. Hamilton, 179 Wn.App. 870, 320 P.3d 142 (Div. 2 2014)

First; Our Supreme Court settled on the premise that an

27.

individual's expectation to privacy is violated absent consent to the search or valid warrant. *State v. Hinton*, 179 Wn.2d 862, supra. (Under the Fourth Amendment, Const. art. 1. § 7.)

Second; Prejudice attached the moment the contents of the cell phones were exposed, absent the warrant or consent. RP 991, 993, 994-997, 1000-1001, 1004-1006, 1010-1011.

Third; The prejudice continued where counsel failed to object or move to suppress the information that was taken to support the Prosecution's case-in-chief, when the Detective testified that he did not get consent to search Holliday's cell phone.

Defense counsel was in possession of all discovery, a red flag should have been raised when the Detective claimed he obtained warrants to search the phones. Failing to investigate whether or not the evidence admitted at trial was tainted clearly shows counsel performance fell below the standard set forth in *Strickland*.

[I]f counsel would have moved to suppress, it is almost certain that the trial court would not have let the evidence in absent a showing of a valid search incident to arrest, consent, or warrant. See App. B. Kitsap County Clerk (No warrants issued for cell phones).

Absent the tainted evidence the State could not prove beyond a reasonable doubt that Parker committed the crimes of promoting prostitution in the first degree and human trafficking in the first degree. *Jackson v. Virginia*, supra. Where circumstantial

evidence is at issue, without the photographs or e-mails the State had no case to try. And no lawyer worth his weight would have failed to move for a, 3.6 hearing to suppress. Strickland, controls.

Further, in light of certain facts surrounding the lawyer and client relationship, where conflict of interest is at issue on direct appeal,⁴ this court could conclude that there was a break down in communication to justify counsel's lack of zeal to defend Parker according to our Federal and State Constitutions. See *In re Brett*, 142 Wn.2d 868, 16 P.3d 601 (2001)(citing *Sanders v. Ratell*, 21 F.3d 1446, 1456 (9th Cir. 1994)).⁵

Thus, ineffective assistance of counsel deprived Parker of his right to a fair trial. Reversal is required. See *U.S. v. Wurie*, 728 F.3d 1 (2013)(Search-Incident-To-Arrest exception does not authorize the warrantless search of data on a cell phone seized from an arrestee's person, such a search is not necessary to protect arresting officers or preserve destructable evidence. U.S.C.A. Const. Amend. 4).

3. Prosecutor Misconduct Deprived Parker Of His Right To A Fair Trial When He Elicited False Testimony From Witnesses.

It is established that a conviction obtained through use of false testimony, known to be such by representatives of the State, must fall under the Fourteenth Amendment, *Mooney v. Holohan*, 294 U.S. 103; *Pyle v. Kansas*, 317 U.S. 213; *Curran v. Delaware*, 259 F.2d 707.

Here, during direct examination the Detective stated that he

obtained a search warrant for Parker's cell phone on the 23rd of April, 2013, and search warrants for Holliday's cell phones taken on the 4th and 12th of April, 2013. RP 1007, 1032, 1033.

The State knew this to be not true, because there wasn't any warrants issued for the cell phones. The Prosecutor had all material evidence in his possession, and knew that if no warrants existed his case would crumble. See App. B.

The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. *Napue v. Illinois*, 360 U.S. 264 (1959)

If Officers use false evidence, including false testimony, to secure a conviction, the defendant's due process rights are violated. *Wilson v. Lawrence County*, 260 F.3d 946 (8th Cir); See *Phillips v. Woodford*, 267 F.3d 966 (9th Cir).

Further, the prosecutor's knowing use of perjured testimony also violates the due process clause. *Schaff v. Snyder*, 190 Fed. 513 (7th Cir.)

State's witness Jennifer Prerost testified that she have known Parker since 1997 or 98. RP 700 And Parker was her Pimp on the street between 1999 and 2000. RP 706.

However, Parker was incarcerated in the Department of Corrections from the year of 1998 to 2001. See App. E.

Also to substantiate the lie Prerost told, in the jail call interview that the state published to the jury, it shows Lorena Llamas Jennifer Prerost and Parker in a conversation. See the brief text on Pg. 1, 3-1-13: App. C.

Q; Jennifer says hi tony.

A: Who's that?

Q: Jennifer that was there. You don't remember? Jaccet's...

A: No.

Q: ..Jennifer. The blue eyes. Jennifer.

A: What is she doing in jail?

Q: She's right here next to me.

A: Let me talk to her.

A: Jennifer who? What's her last name?

.....

If Parker had knew Prerost he would have acknowledged that fact. But there was no recognition.

The State knew Parker was in custody during the time Prerost claimed to be in a relationship with Parker, because the State had

access to Parker's criminal record.

Napue, held; "it is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth... Napue v. Illinois 360 U.S. at 269-270.

Prosecutor has constitutional duty to correct evidence he knows is false. Hays v. Woodford, 361 F.3d 1054 (9th Cir); U.S. v. Johnson, 968 F.2d 768 (8th Cir)(Just one "single misstep" on the part of the government or prosecutor, may be so destructive to a defendant's right to a fair trial that dismissal is required).

In this case, the perjured testimony of both Detective Heffernan and Prerost contributed to Parker being convicted. Thus reversal is required.

4. Judicial Error Deprived Parker Of His Right To A Fair Trial When The Court Admitted Highly Prejudicial Gang Evidence.

Both the United States Constitution and the Washington State Constitution article I, section 22, guarantee the criminal defendant a fair by an impartial jury. State v. Latham, 100 Wn.2d 59, 62-63, 667 P.2d 56 (1983).

"A trial in which irrelevant and inflammatory matter is introduced, which has a natural tendency to prejudice the jury against

the accused, is not a fair trial." State v. Miles, 73 Wn.2d 67, 70, 436 P.2d 198 (1968). Where a defendant is denied the right to a fair trial, the proper remedy is reversal of the conviction and remand for a new trial. State v. McDonald, 96 Wn.App. 311, 979 P.2d 857 (1999), affirmed 143 Wn.2d 506, 22 P.3d 791 (2001).

At trial, counsel objected to the prosecutor asking Holliday whether or not Parker ever talked about being affiliated with a gang. RP 513, Citing State v. Scott, counsel argued that before trial court can admit gang evidence, it must find a nexus between the gang evidence and the charged crimes. RP 515. The court admitted the evidence for its impact on the victim, the knowledge of it, to force her to comply with his demands and threats. RP 518, 522.

Based on the above, the trial court erred in admitting gang evidence without first conducting the requisite on-the-record analysis under ER 404(b).

Before admitting ER 404(b) evidence, a trial court "must" (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect.

State v. Foxhoven, 161 Wn.2d 168, 175, 163 P.3d 786 (2007).

While the record does show that the court had the discussion about the gang evidence, satisfying the first three prongs of ER 404(b)

the record does not support any showing that the court weighed the probative value against the prejudicial effect. Thus failing the four prong test of ER 404(b).

It was undisputed that Parker and Holliday was in some kind of relationship. And the central issue in Parker's trial was the credibility of the State's witnesses such as Holliday, Prerost and Detective Heffernan.

The jury had the duty to consider all of the evidence at trial and determine which testimony was credible and what facts were established by the State's evidence. *State v. Walton*, 64 Wn.App. 410, 415-416, 824 P.2d 533, review denied, 119 Wn.2d 1011 (1992) ("It is the trier of fact who resolves conflicting testimony, evaluates the credibility of witnesses and generally weighs the persuasiveness of the evidence.").

The only question before the jury was whether or not the State had proved beyond a reasonable doubt that Parker committed the crimes charged. *State v. Green*, supra. Thus under the facts of this case, as Parker have shown above, any evidence which would bias the jury against Parker was more prejudicial than usual. *State v. Foxhoven*, 161 Wn.2d 168, controls. Simply put, absent the court meeting all of the prongs required in ER 404(b) it was error for the court to allow the jury to here that Parker was affiliated with a gang. Because the erroneous gang evidence could have tributed to the jury finding guilt reversal is

required. State v. Mee, ---Wn.App.---,---P.3d---, WL 1604808, *5 (2012), citing State v. Kilgore, 147 Wn.2d 288, 294-295, 53 P.3d 974 (2002).

D. CONCLUSION AND
PRAYER FOR RELIEF.

Based on the above, should this Court conclude that insufficient evidence deprived Parker of his right to a fair trial then reversal is mandated with prejudice.

In the alternative, should this Court conclude that errors of constitutional magnitude attaches to ineffective assistance of counsel, prosecutor misconduct, or judicial error as claimed herein, then reversal with new trial is mandated.

Respectfully Submitted,

Lony D. Parker
12-2-14

APP. A.

APPENDIX A. SEARCH WARRANT

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

The residence located at 703 1/2 S. Summit Avenue described as the two story cream colored structure with white trim encompassing a garage and 2nd story apartment in the City of Bremerton, County of Kitsap, State of Washington

Defendant.

No. 201301109

SEARCH WARRANT FOR FRUITS,
INSTRUMENTALITIES AND/OR EVIDENCE
OF A CRIME, TO WIT- RCW 9A.36.011
Assault 1st Degree & RCW 9.41.040
Unlawful Possession of a Firearm

RECEIVED AND FILED

APR 15 2013

DAVID W. PETERSON
KITSAP COUNTY CLERK

STATE OF WASHINGTON TO- Any Peace Officer in said County

WHEREAS, upon the sworn complaint heretofore made and filed and/or the testimonial evidence given in the above-entitled Court and incorporated herein by this reference, it appears to the undersigned Judge of the above-entitled Court that there is probable cause to believe that, in violation of the laws of the State of Washington, fruits, instrumentalities and/or evidence of a crime as defined by law is being possessed, or kept, in violation of the provisions of the laws of the State of Washington, in, about and upon a certain place within the County of Kitsap, State of Washington, hereinafter designated and described;

The residence located at 703 1/2 S. Summit Avenue described as the two story cream colored structure with white trim encompassing a garage and 2nd story apartment in the City of Bremerton, County of Kitsap, State of Washington

SEARCH WARRANT; Page 1



Russell D. Hauge, Prosecuting Attorney-
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949

ORIGINAL

2

1
2 NOW, THEREFORE, in the name of the State of Washington, you are hereby
3 commanded, with the necessary and proper assistance, to enter and search said place and
4 to seize any fruits, instrumentalities and/or evidence of the crime(s) RCW 9A.36.011
5 Assault 1st Degree & RCW 9.41.040 Unlawful Possession of a Firearm, to wit-

6 1. Any and all Firearms, AND

7
8 2. ~~BY~~ ANTHONY D. PARKER 6/15/79, B/M
9 5'8" w 175 BLACK HAIR BROWN EYES

10 and to safely keep the same and to make a return of said warrant within ten (10) days;
11 with a particular statement of all the articles seized and the name of the person or persons
12 in whose possession the same were found, if any; and if no person be found in possession
13 of said articles, the return shall so state. A copy of said warrant shall be served upon the
14 person or persons found in possession thereof; if no such persons are found, a copy of
15 said warrant shall be posted upon or provided to said place where the same are found,
16 then in any conspicuous place upon the place, together with a receipt for all the articles
17 seized.

18 The said place above-referenced to, located in the County of Kitsap, State of
19 Washington, is designated and described as follows-

20 The residence located at 703 1/2 S. Summit Avenue described as the two story
21 cream colored structure with white trim encompassing a garage and 2nd story apartment
22 in the City of Bremerton, County of Kitsap, State of Washington
23

24
25 GIVEN UNDER MY HAND this 12th day of APRIL, 2013

26
27 JENNIFER FORBES

28 JUDGE

29 SIGNED  RYAN HEFFERMAN
30 BY

31 SEARCH WARRANT; Page 2



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949

APP. B.

APPENDIX B. PUBLIC DISCLOSURES



2281

Kitsap County Sheriff's Office

REQUEST FOR PUBLIC RECORDS

Fill out and fax to 360-337-4923 or attach and email to KCSOPUBLICRECORDS@CO.KITSAP.WA.US



****NOTE: PLEASE PRINT INSUFFICIENT OR ILLEGIBLE INFORMATION MAY DELAY RESPONSE****

REQUESTING PARTY

TODAY'S DATE 8-4-14		CHECK ONE: Copy <input checked="" type="checkbox"/> View only <input type="checkbox"/>		360-550-0662	
REQUESTER'S NAME Patricia Battle		HOME PHONE #		CELL PHONE # 360-550-0662	
MAILING ADDRESS: STREET 1240 Cylford Ave East		CITY P.O.	STATE WA	ZIP CODE 98366	

INCIDENT INFORMATION

DATE OF INCIDENT 2013	TIME OF INCIDENT	LOCATION Bremerton
PERSON INVOLVED IN INCIDENT Anthony D. Parker @ Johanna C. Holiday		ADDITIONAL PERSON INVOLVED IN INCIDENT
INVESTIGATING DEPUTY		BADGE # CASE NUMBER

DESCRIPTION OF REQUESTED DOCUMENTS

PLEASE BE SPECIFIC AS TO THE ITEMS/INFORMATION REQUESTED

(**Print legibly** If you need more space, please continue on the back.)

I need any warrants containing to cell phone number - 360-908-2471 and her name is Johanna C. Holiday - Dob - ^{arrest} 9/27/89 in 2013 - Dob 9/27/89 Anthony D. Parker I need any warrants in 2013 for cell phone number 360-551-6938 Dob 6/15/79 warrants for both numbers B-d and names given for cell phones 2013

Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (3) denying the public record request. [RCW 42.56.520]

KCSO RESPONSE

REQUEST RECEIVED BY D 1043	<input checked="" type="checkbox"/> ATTACHED <input type="checkbox"/> RELEASED WITH REDACTIONS SEE ATTACHED REDACTION LOG REQUEST FOR TIME SERVED BOOKED DATE: _____ RELEASE DATE: _____ RELEASED TO: _____ NOTES FIELD: _____	RECEIVED AUG 04 2014 KITSAP COUNTY SHERIFF'S OFFICE RECEPTION Check w/Brem Police Dept
DATE RECEIVED 8/4/14		
PROCESSED BY DC 1038		
DATE PROCESSED 8-8-14		
KCSO ASSIGNED # 2281		
Method of Delivery <input type="checkbox"/> US MAIL <input type="checkbox"/> FAX <input type="checkbox"/> EMAIL <input checked="" type="checkbox"/> PICKED UP	<input checked="" type="checkbox"/> REPORT NOT AVAILABLE TO RELEASE <input checked="" type="checkbox"/> OTHER AGENCY REPORT <input type="checkbox"/> NO REPORT WRITTEN SHERIFF'S OFFICE <input type="checkbox"/> STILL UNDER INVESTIGATION This matter is still under investigation and contains intelligence information and investigative records the non-disclosure of which is necessary for effective law enforcement pursuant to RCW 42.56.240(1) <input type="checkbox"/> REPORT PURGED/DESTROYED The report you are requesting has been destroyed. Also any other documents and/or written statements that were attached to the original report has been purged and destroyed. [The destruction of reports is pursuant to RCW 40.14.070.] <input type="checkbox"/> JUVENILE OFFENSE This is a record of a juvenile offense. The report is withheld because all records other than the official juvenile court file are confidential and may be released only as provided in this section. RCW 13.60.010, 13.40.215, and 4.24.550 pursuant to RCW 13.50.050 (3) <input type="checkbox"/> NOTHING LOCATED WITH INFORMATION PROVIDED	

Left message - no answer

PARKER - K13-3698 Agency Assist - BPD
HOLIDAY - Ø
Just report - not warrant

B.

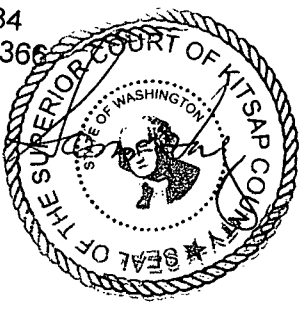
I AM REQUESTING UNDER CAUSE # 13-1-0597-1, THE
COPY OF THE WARRANTS FOR JOHANNA C. HOLLIDAY ^{BD} 9/27/89
CELL PHONE 360-908-2471. IF THERE IS NOT ONE, COULD
YOU PLEASE STATE THAT IN WRITING THAT YOUR RESEARCH
DOES NOT SHOW ANY WARRANTS. PLEASE STATE WHO YOU ARE
TO KITSAP COURT, YOUR NAME AND I.D. NUMBER OR BADGE NUMBER
AND IF POSSIBLE NOTORIZE THIS REQUEST.

↓ PLEASE RESPOND BELOW ↓

Nothing found. 8-20/14

DAVID W. PETERSON
KITSAP COUNTY CLERK
614 DIVISION ST. MS-34
PORT ORCHARD, WA 98366

by Alison D



B

REQUEST FOR PUBLIC DISCLOSURE RECORDS

TO:

KITSAP COUNTY CLERK DISTRICT

ATTN: PUBLIC DISCLOSURE OFFICER "AP" KITSAP COUNTY CLERK DISTRICT

REQUESTER: Anthony PARKER

five day legal notice given on this 12th day of September, 2014

DESCRIPTION OF RECORDS REQUESTED AND AUTHORITY

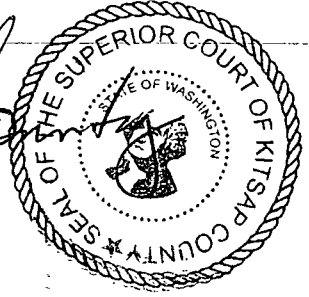
I, Anthony PARKER am requesting disclosure pursuant to RCW 42.56 et.seq. on the following listed documents.

I AM REQUESTING UNDER CASE # 13-1-0597-1 THE COPY OF THE
WARRANTS FOR JOHANNA C. HOLLIDAY ^{B-D} 9/27/89 CELL PHONE 360-908-2471
IF THERE IS NOT ONE, COULD YOU PLEASE STATE THAT IN
WRITING THAT YOUR RESEARCH DOES NOT SHOW ANY WARRANTS
ON PAGE '2'. AND STAMP THIS PLEASE WITH THE COUNTY SEAL ON
PAGE '2' ALSO

No warrants found. 9/18/14

DAVID W. PETERSON
KITSAP COUNTY CLERK
614 DIVISION ST. MS-34
PORT ORCHARD, WA 98366

by: *Alicia D. Schmitz*



REQUEST FOR PUBLIC DISCLOSURE RECORDS

TO:

KITSAP COUNTY CLERK DISTRICT

ATTN: PUBLIC DISCLOSURE OFFICER 'AP' KITSAP County CLERK District

REQUESTER: ANTHONY PARKER

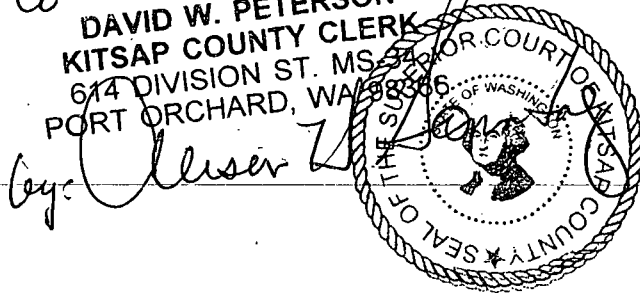
five day legal notice given on this 12TH day of SEPTEMBER 2014
DESCRIPTION OF RECORDS REQUESTED AND AUTHORITY

I, ANTHONY D. PARKER am requesting disclosure pursuant to
RCW 42.56 et.seq. on the following listed documents.

I AM REQUESTING UNDER CAUSE # 13-1-0597-1, THE COPY OF THE
WARRANTS FOR ANTHONY D. PARKER - ^{B.D} 6/15/79 CELL PHONE 360-551-6938
IF THERE IS NOT ONE, COULD YOU PLEASE STATE THAT IN WRITING
THAT YOUR RESEARCH DOES NOT SHOW ANY WARRANTS ON PAGE 2,
AND STAMP THIS PLEASE WITH THE COUNTY SEAL ON PAGE '2' ALSO.

No warrants found
9/18/14

DAVID W. PETERSON
KITSAP COUNTY CLERK
614 DIVISION ST. MS. 3000
PORT ORCHARD, WA 98386



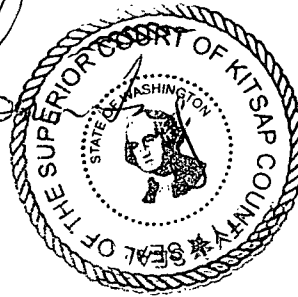
I AM REQUESTING UNDER CAUSE # 13-1-0597-1, THE COPY
OF THE WARRANTS FOR ANTHONY D. PARKER ^{B-D} 6/15/79 CELL
PHONE 360-551-6938 IF THERE IS NOT ONE, COULD YOU
PLEASE STATE THAT IN WRITING THAT YOUR RESEARCH
DOES NOT SHOW ANY WARRANTS, WHO YOU ARE TO THE ^{KITSAP} COURTS, YOUR
NAME AND I.D NUMBER OR BADGE NUMBER. AND IF POSSIBLE NOTORIZE THIS
REQUEST

↓ PLEASE RESPOND BELOW ↓

Nothing found 8/20/14

DAVID W. PETERSON
KITSAP COUNTY CLERK
614 DIVISION ST. MS-34
PORT ORCHARD, WA 98366

by: Alison D. [Signature]



APPENDIX C. JAIL CALL RECORDINGS ADMITTED IN TRIAL

JENNIFER PREROST

3/1/13 12:11

JAIL CALL
Q=Lorena Llamas
Q1=Jennifer Prerost
A=Anthony Parker

Break-edit

1
2
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7
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11
12
13
14
15 Q: Jennifer says hi Tony.
16
17 A: Who's that?
18
19 Q: Jennifer that was there. You don't remember? Jaccet's...
20
21 A: No.
22
23 Q: ...Jennifer. The blue eyes. Jennifer.
24
25 A: What is she doing in jail?
26
27 Q: She's right here next to me.
28
29 A: Let me talk to her.
30
31 Q: She don't want to talk to you.
32
33 A: L- let me talk to her.
34
35 Q: She knows you're a creature from hell. She don't want to talk to you. She's
36 right here sitting right next to me. He wanna talk to you.
37
38 A: Jennifer who? What's her last name?
39
40 Q: He wants - he said, "What's your last name?" What's your last name? Huh?
41 (Pre) what?
42
43 Q1: (Rost)
44
45 Q: Prerost? Prerost.

225
16

46
47 A: What is she in jail for?
48
49 Q: She a cute little thing.
50
51 A: What is she in jail for?
52
53 Q: None of your goddamn business. She's here.
54
55 A: Alright ask her what's up with her sister - ask her what's her sister's number so
56 I can get my tool man.
57
58 Q: She said - he said, "What's your," he said, "What's your sister's number so,"
59 what? You can get your tools?
60
61 A: She know what I'm talking about. Tell her what's her sister's number so I can
62 get my shit man.
63
64 Q: He said that you know what he's talking about so he can get his shit man.
65
66 Q1: Oh. Uh, 621-2240 (unintelligible).
67
68 Q: 621-2240.
69
70 A: Hold up. Say it again.
71
72 Q: 621...
73
74 A: 621.
75
76 Q: ...2240. Uh, 360? 360.
77
78 A: Ah, thank you. Thank you. Needed that.
79
80 Q: Mm-hm. You're welcome.
81
82 Break-edit
83
84 This transcript has been reviewed with the audio recording submitted and it is an accurate
85 transcription.
86 Signed _____

226

1 6/29/13 1018 #

2

3

4

5

6

7

JAIL CALL

8

Q=Anthony Parker

9

A=Jennifer Prerost

10

11

12 Recording: This is a one-time free one minute call from...

13

14 Q: Tony.

15

16 Recording: An inmate at Kitsap County Jail. Your phone does not accept collect calls.
17 This call has been provided by Tel Mate of the curiosity for friends and
18 family. You cannot receive additional calls from this inmate until you set up a
19 prepaid account. We can take your credit or debit card information over the
20 phone and connect you immediately back to your call. This call is subject to
21 recording and monitoring. Press one or star to accept the call. To deny --
22 thank you for using Tel Mate.

23

24 Q: Hello?

25

26 A: Hello?

27

28 Q: What's up man?

29

30 A: Mm, Nothing. How are you?

31

32 Q: I'm all right. Yeah - Come up here and visit me I'm about to - how do I get
33 you to come up here and visit me?

34

35 A: I just got to um, go on and sign up for some visiting is all.

36

37 Q: 'Cause I got a free visit today. Why don't you come up here and see me
38 'cause I'm about to call you back cause this (unintelligible) is about to hang us
39 up so I can talk to you. You been all right?

40

41 A: Yeah.

42

43 Q: What's going on?

44

45 A: Shit, going to court.

239

46

47 Q: What are they trying to do to you?

48

49 A: Uh, I mean 60 months, um, but I find out next Sunday if I get drug court or
50 not.

51

52 Q: What do you mean? Are they gonna give it to you?

53

54 A: That's what I find out on Sunday.

55

56

57 This transcript has been reviewed with the audio recording submitted and it is an accurate
58 transcription.

59 Signed _____

1 6/29/13 1021

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JAIL CALL

8

Q=Anthony Parker

9

A=Jennifer Prerost

10

11

12 Break-edit

13

14 Q:

Yeah, I need you to testify on my behalf. They saying that you - that you said - that, that was the worst beating she ever had, that you witnessed it. . .

15

16

17 A:

(Unintelligible) I wasn't even at that house when those police came.

18

19 Q:

That's what I'm saying, I need you to - I need you to talk to my private investigator and let him know. I'm not even trippin because what I want to know is - 'cause we - we know that when we were saying she - when she, smoked up all them pills, right, remember that? And I had - had to tell Lorena that stuff - what I was wondering if you didn't tell Lorena that, it must have been (Tyler) that told her. Because she had to figure out that we was - I was lying about that whole incident. So...

20

21

22

23

24

25

26

27 A:

Mm-hm.

28

29 Q:

You need to tell him that, that shit - you need to tell him that - the truth, that none of that shit happened man. I need you as a witness too, because you in my report.

30

31

32

33 A:

If you want to give your lawyer my number.

34

35 Q:

I - I'm a - I'm a give my prosecutor your - your number. Yeah, you gotta tell them none of that shit happened man. I don't understand this shit. This shit is looking real - looking real serious.

36

37

38

39 A:

I wasn't even nowhere around. Remember I got my daughter and I left that house. Because I had - no I had DOC warrants.

40

41

42 Q:

I don't know.

43

44 A:

And I left. I wasn't there, because I didn't wanna go to jail with my daughter there.

45

241
3

46

47 Q: Yeah. You just have - you was there. Nothing happened.

48

49 Break-edit

50

51 Q: Yeah, for some shit I didn't even do. You know I didn't do that. You was
52 there with us.

53

54 A: Yeah, I know.

55

56 Q: You was there with us. And even when I wasn't there, she was doing all that
57 stuff, you know? You're a material witness to everything that was going on
58 that I wasn't forcing her. 'Cause you was there. You was - you was living
59 there half - half assed, you know what I'm saying?

60

61 A: Yeah, and also that's what, um, (John) had wrote up in his thing and the
62 pictures that he put in there and shit, he - he was like that's crazy. He was like
63 he would never do anything like that. He was like she was always on her own
64 able to do whatever she wanted to do.

65

66 Q: Yeah. That's what I need, you know what I'm saying? I need that letter. I
67 need that. I need you to, um - here write this thing down and call my private
68 investigator.

69

70 Break-edit

71

72 This transcript has been reviewed with the audio recording submitted and it is an accurate
73 transcription.

74

Signed _____

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JAIL CALL
Q=Anthony Parker
A=Jennifer Prerost
A1=Elia

Edit-break

Q: I was like dude? I'm like - and I'm telling my lawyer - I'm like man I ain't never did none of this shit. Then you know the papers come out, she done robbed her family and all this type of shit. And I'm like dude I didn't do none of this shit. This shit got me really fucked up.

A: I know.

Q: Really fucked up. I was like huh.

A: And it's crazy. I don't know why she would do...

Q: I need you to...

A: I don't know why in the fuck would she even say all that?

Q: Sh - Who you telling? I need you to call my private investigator. And I need you to be a witness because they trying to give me some time behind this bullshit.

A: All right.

Q: No, I'm serious.

A: No, I know.

Q: I'm serious.

Edit-break

Q: All right, I'm a - I'm a tell (unintelligible) tell me. I'm a, uh - write this number down. This my private eye - this is my private investigator.

243
5

46
47 A: Yeah...
48
49 ((Crosstalk))
50
51 Recording: You have one minute remaining for this call.
52
53 Q: You got minutes on your phone...
54
55 A: Go ahead what's the number?
56
57 Q: 990...
58
59 A: 990.
60
61 Q: 2718.
62
63 A: 2718.
64
65 Q: His name is (James Harris).
66
67 A: Oh I know him.
68
69 Q: How do you know him?
70
71 A: He, uh - he was the investigator for fucking, uh - for (Matt's) case.
72
73 Q: Uh (Matt Zapango)?
74
75 A: (Zapatka), yeah.
76
77 Q: (Zapatka), yeah.
78
79 A: Yeah.
80
81 Q: Mm, mm, mm. Yeah please call that number.
82
83 A: No I don't have - I don't have money on my phone. And (Unintelligible) I
84 been just fucking struggling out here.
85
86 Q: No, I'm talking about do you have any - I can call you back - I got money on
87 my phone. I'm talking about do you got minutes, so I can call you back?
88
89 A: Oh, yeah, yeah.
90

244
u

APP. D.

APPENDIX D. JAIL CALL RECORDINGS ADMITTED IN TRIAL

JOHANNA HOLLIDAY

1 4/3/2036

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6

7

JAIL CALL

Q= Anthony Parker

A= Johanna Holliday

8

9

10

11 Edit-break

12

13 Q:

I'm not doing all that. I'll wait till I get a bed. I need you to be in the house.

14

15 A:

I need you to be what?

16

17 Q:

I need you to be in the house, all right.

18

19 A:

I will baby. I promise I will. I'm not gonna go – you know going somewhere for money or whatever then I'll be in the house or if I have to go to the store or whatever it may be, I promise you I'll be in the house. I'll go to Red Box and get some movies or something to keep me busy, just do laundry and watch movies and stuff okay. Okay baby?

20

21

22

23

24

25 Q:

All right, man.

26

27 A:

I'm proud of you. I'm not gonna fail you again.

28

29 Q:

This is where – this is where you can redeem yourself right here.

30

31 A:

I know.

32

33 Q:

All right. Well, um...

34

35 A:

I know. I could – I could just run away.

36

37 Q:

You could. That will be...

38

39 A:

I would never do that though that's what you don't get. I bet that's what you're thinking too is like, oh...

40

41

42 Q:

I'm not thinking – I'm not thinking that.

43

44 A:

...all that money.

45

233
7

46 Q: I'm not even thinking that. I know – that doesn't even bother me at all. If that
47 was the case I wouldn't have even told you where the money was then I
48 would have just kept the money here if I didn't trust you.
49
50 A: Yeah. I already know why you're telling me. You didn't say anything about it
51 before – when you told me where the money was. You didn't say anything
52 about you going to jail.
53
54 Q: I just had that feeling. It's like you get up in this building and knowing your
55 inmate is a punk you would tell them where that – where that money is.
56
57 A: Yeah.
58
59 Q: You got all that stuff out...
60
61 A: Moved what out?
62
63 Q: You know that – that – um – you remember – you know where monster is
64 right? ^
65
66 A: Uh? ^
67
68 Q: Under the mattress?
69
70 A: Okay, yeah.
71
72 Q: Um, take him – take him and put him in the garage downstairs in...
73
74 A: In that wheel barrel or whatever?
75
76 Q: Um... ^
77
78 A: Suitcase, something like that? .
79
80 Q: It's a little duffle bag with chrome in it right by the shed door and when you
81 walk in you walk all the way back to the shed door and look down there's a
82 bag that...
83
84 A: My blue bag?
85
86 Q: Yeah – or it's a white bag. I don't know but clean it out, all right.
87
88 A: All right.
89
90 Q: Take him – take him out – out – outside so he can run.

234
8

APP. E.

APPENDIX E. DEPARTMENT OF CORRECTIONS RECORDS



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
CLALLAM BAY CORRECTIONS CENTER
1830 Eagle Crest Way • Clallam Bay, WA 98326-9723 • (360) 963-2000
FAX (360) 963-3390

June 20, 2014

Keesha Parker
kparker_1@comcast.net

Dear Ms. Parker,

This is to acknowledge receipt of your Public Disclosure Request (PDR) which was dated June 19, 2014 and was received in this office on June 20, 2014. This request has been given the tracking number of PD 14-29829. In the future, to avoid confusion and to expedite your request, please refer to this specific PDR tracking number on all correspondence involving this request. You have requested the following records:

The dates Anthony Parker, DOC #776122 was incarcerated in 1998 and when he was released in 2000.

I found that his first admission was on January 27, 1998 and he released on March 12, 2001

If you have any questions, please feel free to contact me.

Respectfully,

A handwritten signature in cursive script that reads "Yvette Stubbs".

Yvette Stubbs, AA4
Public Disclosure Coordinator
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326
360-963-3219

YS:sif
cc: Public Disclosure File PD-14-29829

"Working Together for SAFE Communities"

APP. F.

APPENDIX F. DEFENDANT'S WITNESS LIST

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RECEIVED AND FILED
IN OPEN COURT

NOV - 1 2013

DAVID W. PETERSON
KITSAP COUNTY CLERK

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

STATE OF WASHINGTON,)
)
 Plaintiff,) No. 13-1-00597-1
)
 v.) DEFENDANT'S WITNESS LIST
)
 Anthony Parker,)
)
 Defendant.)
 _____)

1. Kaccee Coates
2. Genie Elton
3. Ryan M. Hefferman
4. Keith A Halt
5. Steven Lawson
6. Michael J. Mezen
7. Christine Perry-Ockerman
8. Randy D. Plumb
9. Rodney Rauback
10. Chrisholm, Trista Dawn
11. Crettol Fenney, Alishia Danielle
12. Darden, Brian Keith
13. Dibella-Lira, Angelica Lorena

DEFENDANT'S Witness List

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SUB(43)

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Original +2 copies to Clerk
1 copy to file

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left side
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Prosecutor's File Number-13-102535-66



60

14. Flerellen, Anthony Dwayne A.
15. Gilson, Dorothy
16. Holliday, Johanna Catherine
17. Hunnel, Leon Dean
18. Miller, Jonathan Wade
19. Perkins, Ginger
20. Williams, Tyler
21. Llamas, Lorena
22. Camacho, Renisha
23. Prerost, Jennifer
24. Madison, Dontrel
25. Wabon, Ramond
26. Fowler, Sue
27. Buckner, John
28. Nedtals, Nicci
29. Parker, Heather
30. Parker, Keesha



Matthew Wareham 38826

DEFENDANT'S Witness List

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RECEIVED AND FILED
IN OPEN COURT
NOV - 4 2013
DAVID W. PETERSON
KITSAP COUNTY CLERK

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
) No. 13-1-00597-1
)
) Plaintiff,)
) MOTION IN LIMINE TO ADMIT EXPERT
)
) v.) WITNESS TESTIMONY
)
) ANTHONY DEWAYNE PARKER,)
) Age: 34; DOB: 06/15/1979,)
)
) Defendant.)

COMES NOW the Plaintiff, STATE OF WASHINGTON, by and through its attorney COREEN E. SCHNEPF, Deputy Prosecuting Attorney, with the following Motion in Limine to admit expert testimony—

A. MOTION TO ADMIT EXPERT TESTIMONY UNDER ER 702

The State intends to offer expert testimony on prostitution, "pimping" during its case in chief. Evidence Rule 702 provides "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Under ER 702, the trial court is directed to conduct a two-part test: (1) whether the witness qualifies as an expert, and (2) whether the expert testimony would be helpful to the fact finder. Cauthron, 120 Wn.2d at 890.

MEMORANDUM OF AUTHORITIES;
Page 1 of 5



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949
www.kitsapgov.com/pros

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APP. G.

APPENDIX G. JURY INSTRUCTIONS

INSTRUCTION NO. 10

A person commits the crime of Human Trafficking in the First Degree when he or she recruits, harbors, or transports by any means another person, knowing that force, fraud, or coercion will be used to cause the other person to engage in a commercial sex act and the acts involves committing or attempting to commit kidnapping.

Additional instructions relating to Count I

INSTRUCTION NO. 13

"Kidnapping" means intentionally abducting another person.

"Attempting to commit kidnapping" means doing any act, with the intent to commit kidnapping, that is a substantial step toward the commission of kidnapping..

INSTRUCTION NO. 14

“Commercial sex act” means any act of sexual contact or sexual intercourse for which something of value is given or received.

INSTRUCTION NO. 23

To convict the defendant of the crime of Promoting Prostitution in the First Degree as charged in Count II, each of the following five elements of the crime must be proved beyond a reasonable doubt—

- (1) That on or about November 1, 2012 through April 12, 2013, the defendant knowingly advanced prostitution by compelling Johanna Catherine Holliday by threat or force to engage in prostitution; and
- (2) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 22

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or, result when he or she is aware of that fact, circumstance, or result. It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime.

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.

INSTRUCTION NO. 27

Unlawful Imprisonment is a felony.

335

INSTRUCTION NO. 28

A person commits the crime of unlawful imprisonment when he or she knowingly restrains the movements of another person in a manner that substantially interferes with the other person's liberty if the restraint was without legal authority and was accomplished by physical force, intimidation, or deception.

INSTRUCTION NO. 29

To convict the defendant of the crime of assault in the second degree as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about December 13, 2012 through January 20, 2013, the defendant assaulted Johanna Catherine Holliday;
- (2) That the assault was committed with intent to commit Unlawful Imprisonment; and
- (3) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Additional instructions relating to Count IV

6

INSTRUCTION No. 30

A person commits the crime of burglary in the first degree when he or she enters or remains unlawfully in a building with intent to commit a crime against a person or property therein, and if, in entering or while in the building or in immediate flight therefrom, that person or an accomplice in the crime assaults any person.

INSTRUCTION NO. 31

Building, in addition to its ordinary meaning, includes any dwelling.
Building also includes any other structure used mainly for lodging of
persons.

INSTRUCTION NO. 32

A person enters or remains unlawfully in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

INSTRUCTION NO. 33

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 34

To convict the defendant of the crime of burglary in the first degree, as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about January 1, 2013 through February 2, 2013 the defendant entered or remained unlawfully in a building;
- (2) That the entering or remaining was with intent to commit a crime against a person or property therein;
- (3) That in so entering or while in the building or in immediate flight from the building the defendant assaulted a person; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Additional instructions relating to Count V and VII

INSTRUCTION NO. 47

To convict the defendant of the crime of kidnapping in the first degree, as charged in Count VI, each of the following three elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about January 1, 2013 through February 2, 2013, the defendant intentionally abducted Johanna Catherine Holliday;
- (2) That the defendant abducted that person with intent
 - (a) to inflict bodily injury on the person, or
 - (b) to inflict extreme mental distress on that person; and
- (3) That any of these acts occurred in the State of Washington.

If you find from the evidence that elements (1) and (3), and any of the alternative elements (2)(a), or (2)(b), , have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (2)(a), or (2)(b), has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), or (3), then it will be your duty to return a verdict of not guilty.

358

Additional instructions relating to Count VIII

359

INSTRUCTION No. 58

A person commits the crime of unlawful possession of a firearm in the first degree when he has previously been convicted of a serious offense and knowingly owns or knowingly has in his possession or control any firearm.

372

INSTRUCTION NO. 59

Possession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.

Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.

In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the ability to take actual possession of the item, whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control over the premises where the item was located. No single one of these factors necessarily controls your decision.

5.

INSTRUCTION NO. 62

To convict the defendant of the crime of unlawful possession of a firearm in the first degree as charged in Count X, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about April 12, 2013, the defendant knowingly owned a firearm or knowingly had a firearm in his possession or control;
- (2) That the defendant had previously been convicted of a serious offense; and-
- (3) That the ownership, or possession or control of the firearm occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

374

Additional instructions relating to Count XI

6.

INSTRUCTION NO. 63

A person commits the crime of tampering with a witness when he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation to testify falsely or, without right or privilege to do so, to withhold any testimony, or to absent himself or herself from any official proceedings, or to withhold from a law enforcement agency information which he or she has relevant to a criminal investigation.

378

INSTRUCTION NO. 64

Official proceeding means a proceeding heard before any legislative, judicial, administrative or other government agency or official authorized to hear evidence under oath.

INSTRUCTION NO. 65

To convict the defendant of the crime of tampering with a witness, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about June 29, 2013 and July 1, 2013, the defendant attempted to induce a person to testify falsely or withhold any testimony or absent himself or herself from any official proceeding or withhold from a law enforcement agency information which he or she had relevant to a criminal investigation; and

(2) That the other person was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings or a person whom the defendant had reason to believe might have information relevant to a criminal investigation; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

380

Additional instructions relating to Aggravating
Circumstances and Special Allegations

DECLARATION OF SERVICE BY MAIL
GR 3.1(c)

I, ANTHONY PARKER, declare that, on
this 2nd day of December, 2014 I deposited the forgoing documents:

My Statement of Additional Grounds

or a copy thereof, in the internal legal mail system of

And made arrangements for postage, addressed to: (name & address of court or other party.)

Court of Appeals
450 Broadway Suite 300
TACOMA WA 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at CLALLAN Bay, WA 98326 on 12-2-14
(City & State.) (Date)

AP Parker
Signature

ANTHONY PARKER
Type / Print Name

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY DEPUTY