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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

State of Washington v. Johannes

ON APPEAL FROM SUPERIOR COURT OF KING COUNTY, WA. ST.

No. 08-1-12175-1 SEA

COA NO. 63444-5-1

FILED
COURT OF APPEALS
STATE OF WASHINGTON
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The Defendants Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Washington State Constitution Article I § 9 and 22 were violated when the State of Washington failed to prove all the elements of the crime charged, beyond a reasonable doubt.

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The Due Process Clause requires the government to prove beyond a reasonable doubt every element of the crime with which a defendant is charged. *In re Winship*, 397 U.S. 358, 364 90 S.Ct. 1063, 25 L.Ed.2d 368 (1970). This applies to State proceedings. *Sullivan v. Louisiana*, 508 U.S. 275, 278 (1993). The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation. The "demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times (though) its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798. It is now excepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of all the essential elements of guilt." C. McCormick, *Evidence*, (of guilt) § 321, pp. 681-682 (1954); see also 9 J. Wigmore, *Evidence* § 2497 (3rd ed. 1940). Although virtually unanimous adherence to the reasonable-doubt standard in common-law jurisdictions may not conclusively

establish it as a requirement of due process, such adherence does "reflect a profound judgment about the way in which law should be enforced and justice administered." *Duncan v. Louisiana*, 391 U.S. 145, 155, 20 L. Ed. 2d 491, 499, 88 S.Ct. 1444 (1968).

Expressions in many opinions of this Court indicate that it has long been assumed that proof of a criminal charge beyond a reasonable doubt is constitutionally required. See, for example, *Miles v. United States*, 103 U.S. 304, 312, 26 L. Ed 481, 484 (1881); *Davis v. United States*, 160 U.S. 469, 488, 40 L. Ed 499, 506 (1895); *Holt v. United States*, 218 U.S. 245, 253, 54 L. Ed 1021, 1030, 31 S. Ct. 2 (1910); *Wilson v. United States*, 232 U.S. 563, 569-570, 58 L. Ed 728, 732, 34 S. Ct. 347 (1914); *Brinegar v. United States*, 338 U.S. 160, 174, 93 L. Ed 1879, 1889, 69 S. Ct. 1302 (1949); *Leland v. Oregon*, 343 U.S. 790, 795, 96 L. Ed 1302, 1307, 72 S. Ct 1002 (1952); *Holland v. United States*, 348 U.S. 121, 138, 99 L. Ed 150, 165, 75 S. Ct. 127 (1954); *Speiser v. Randall*, 357 U.S. 513, 525-526, 2 L. Ed 2d 1460, 1472, 78 S. Ct. 1332 (1958). Cf. *Coffin v. United States*, 156 U.S. 432, 39 L. Ed 481, 15 S. Ct. 394 (1895).

Mr. Justice Frankfurter stated that "It is the duty of the Government to establish... guilt beyond a reasonable doubt. This notion - basic in our law and rightly one of the beds of a free society - is a requirement and a safeguard of the due process of law in the historic, procedural content of due process."

Leland v. Oregon, supra at 802-803, 96 L.Ed at 1311
(dissenting opinion).

In a similar vein, the Court said in *Brinegar v. United States*, supra, at 174, 93 L.Ed at 1889, that "(g)uilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property."

Davis v. United States, supra, at 488, 40 L.Ed at 506, stated that the requirement is implicit in "constitutions.... (which) recognize the fundamental principles that are deemed essential for the protection of life and liberty." In *Davis* a murder conviction was reversed because the trial judge instructed the jury that it was their duty to convict when the evidence was equally ~~based~~ balanced regarding the sanity of the accused. This Court said: "On the contrary, he is entitled to an acquittal of the specific crime charged if upon all the evidence there is reasonable doubt whether he was capable in law of committing crime.... No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them... is sufficient to show beyond a reasonable doubt the existence

of every fact necessary to constitute the crime charged. *Id.*, at 484, 493, 40 L.Ed at 504, 507.

The reasonable - doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence - that bedrock "axiomatic and elementary" principle whose "enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, *supra*, at 453, 39 L.Ed at 491.

As the dissenters in the New York Court of Appeals observed, and we agree, "a person accused of a crime... would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could ~~not~~ be judged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case." 24 NY 2d, at 205, 247 NE 2d, at 259.

The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the good name, of freedom of every individual

should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As in *Speiser v. Randall*, supra, at 525-526, 2 LEd2d at 1472, 1473: "There is always in litigation a margin of error, representing error in factfinding, which both parties must take into account. Where one party has at stake an interest of transcending value - as a criminal defendant his liberty - this margin of error is reduced as to him by the process of placing on the other party the burden of.... persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt.

Due process commands that no man shall lose his liberty unless the Government has borne the burden of.... convincing the factfinder of his guilt." To this end, the reasonable - doubt standard is indispensable, for it "impresses on the trier of fact the necessity of reaching a subjective state of certitude on the facts in issue."

Dorsen and Rezneck, *In re Gault and the Future of Juvenile Law*, 1 *Family Law Quarterly*, No. 4, pp. 1, 26 (1967).

Moreover, use of the reasonable doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned.

It is also important in our free society that every individual going about his ordinary affairs have confidence

that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.

Lest there remain any doubt the constitutional stature of the reasonable-doubt standard, we explicitly hold that Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which one is charged. (In re Winship, Mr. Justice Brennan delivered this opinion to the Court, and all is quoted from Winship.)

Mr. Johannes was charged with one count of rape in the second degree - domestic violence (RCW 9A.44.020(1)(a)) CPL. The State alleged the defendant, "by forcible compulsion did engage in sexual intercourse with another person, named Lia Yoisef Araya." CPL. The alleged rape victim is the defendant's wife. 02/24/09 RP@104-05.

A person commits the crime of rape in the second degree when he or she engages in sexual intercourse with another person by forcible compulsion. W.P.I.C. 41.01. The State has the burden to prove beyond a reasonable doubt that, not only forcible compulsion occurred but that actual intercourse at the time the alleged victim claims occurred - actually did occur as well.

1) The State did not prove beyond a reasonable doubt any intercourse had occurred at the alleged

time of the second degree rape violating Mr. Johannes Due Process rights.

A, "Consensual intercourse" of an entire different period in time is testified about concerning sexual intercourse by the defendant at trial. Please see in general, 'Johannes Direct' and 'Cross', RP 73 through 75 and 104 through 109. Because the alleged victim does not at all testify concerning Mr. Johannes' testimony regarding this period of time whatsoever, there is no forcible compulsion, nor sexual intercourse (as proposed by the State of Washington in the to convict jury instructions, WPIIC 45.01 (2005), WPIIC 41.01 (2005)); that the State or jury could have used to convict the defendant as was charged under RCW 9A.44.050(1)(a). The above trial transcripts as to (any) sexual intercourse ever occurring, is the only that is found that this court can rely upon - beyond a reasonable doubt "sexual intercourse of a 2^o Rape is not available as was needed in this case, and in fact, the defendant's own testimony over such sexual intercourse description wise, event wise, is not at all anywhere near a rape of any kind, ever. (Please see Direct, and Cross in full of Mr. Johannes.)

¹ Please see, 'States Jury Instructions', attached herein under the briefs Appendix, under B, and please refer to such hereinafter when any jury instruction is brought forth please.

The defendant's wife however, does not ever see her husband rape her, in any place or time, never see's his penis enter, anywhere on her body whatsoever nor use of any object, finger, tongue, absolutely no penetration of any kind is testified to or about beyond a reasonable doubt before the jury in order to convict Mr. Johannes and never did exist prior to the trial either. Araya RP Cross RP 27 ("Did you see intercourse?" "No.")

The closest this honorable Court can remotely even consider, was Mr. Johannes wife did state at trial that when she had awoke the outside of her private area hurt - like it does when they have consensual sex. Araya RP 140, 143, 142"

However - the above testimony is consistent with the position that the couple were struggling; after she'd gone through her husband's pants and recovered an open condom, and several unused condoms, and, by Araya's testimony, she'd become crazy, or crazed and severely combative. Araya RP 127 line 7-25, 40 / Mr. Johannes RP Cross in full. She claims to have broken open her husband's lip, hitting and punching him; also throwing several objects at him. It was testified by Araya, Mr. Johannes wife, he was holding her down like the above, her legs, when she explained, when Mr. Johannes held her down, were open - back, on the bed - her husband had her wrists, and at times arms; restraining her as she was "crazy" and clearly assaulting Mr. Johannes. She even says her husband held her

down with her legs hanging open, off the couples bed, as she stated, and together with Mr. Johannes by no choice having to restrain his wife as the couples child ¹ is also right there on the same bed too; with her legs open, Mr. Johannes standing or somewhat leaning into them via having both their body movements possibly hitting her private area in struggle motion, ² ie, she's obviously inflamed over condoms² and obvious spouse infidelity - very likely that "o u t s i d e" the vaginal ³ area, pain alleged, may have been an accidental knee to her groin area, ⁴ and when she awoke was even then more (obviously) upset, because she now believes that her husband hit her unconsent⁵ and then raped her.⁵ See Araya in full Cross and Direct RP134 "I was laying on my back" RP134 line 18, then RP134 "My feet was not on the floor, not in the bed, like hanging off. RP134 line 20 through 23.

RP134 State of Washington: "Is that the same position you remember being in when he pushed you down on to the bed?" RP134 line 24-5.

RP135 "Yes" RP135 line 1-3.

RP140 "Standing up in between my legs, standing up..."

¹ RP 127 line 8-17.

² RP 131 line 4-13, RP 132

³ RP 27, 28, 29, 30

⁴ RP 131 line 4, RP 130 line 15, RP 127 line 21 through 25

⁵ RP 128 line 1 through 6, RP 133, RP 140 in full.

⁶ RP 112, 113, 115, DP 149, 142, 140 Cross RP 27 in L 11, RP 30-1.

This being true beyond a reasonable doubt, the State never proved any sexual intercourse occurred beyond a reasonable doubt, or any sexual penetration, however slight, or otherwise as argued and submitted to the jurors per WPIE 45.01 and failed to prove any sexual intercourse occurred as alleged in the crime charged per RCW 9A.44.050 (1)(a); and argued and submitted WPIE 41.01 to the jury as well, let alone with the required forcible compulsion as is required in (1)(a), above.

Therefore, the State of Washington failed to prove beyond a reasonable doubt every element of the above crime as charged, and has violated the Due Process Clause rights of the defendant under the Fourteenth Amendment, Fifth Amendment and Sixth Amendment of the U.S. Constitution, as well as violated his Washington State Constitution Article 1 § 9 and 22 rights to a fair trial. *In re Winship*, 397 U.S. 358, 364 90 S.Ct. 1063, 25 L.Ed.2d 368 (1970). Reversal is required as a matter of law and public interest. See also LaFare, *Criminal Law* § 1.8 (4th ed. 2003), and McCormick, *Evidence* §§ 336-337 (5th ed. 1999). The Due Process Clause places on the prosecution the burden of persuasion on every element of the crime charged, reversal is mandated, when the state fails to do so. *U.S. v. Corral-Gastelum*, 240 F.3d 1181, 1184-85 (9th Cir. 2001).

This Court cannot rely upon the States Exhibit # 42, the Rape Kit, (Diprima (RP in full), Ishimitshu (RP in full), and

Kim Smith (RP in full) the State of Washington (in full RP closing arguments and rebuttal for the State of Washington) in regards to P30 protein's that are alleged by Kim Smith to be found on and in pre-ejaculant semen, as to there being such P30 found on States Exhibit 42; the rape kits swabs result: positive P30 on the anal swab, Kim Smith RP 3 through 28 positive P30 semen protein on the vaginal swabs, Kim Smith RP 3-28 positive P30 semen protein on the oral swab Kim Smith RP 3-28 whatsoever - because for one: the State of Washington's entire Witness line up against Mr. Johannes can absolutely never say the semen was ever tested to be his. Certainly, this honorable Court as a matter of law should reverse based simply on this proven beyond a reasonable doubt fact = the State never tested any Rape Kit results, to see if the results even link the defendant, Mr. Johannes, to every single swab. Prejudice caused, because (Kim Smith) DNA expert @ trial, testified, RP 28 that the P30 protein(s) can be picked up 3 to 4 days, RP 28 ago, after sexual intercourse! Testimony exists by Mr. Johannes wife she packed her bags, most of her clothes were already moved from their fixed residence, (Araya @ RP 107, 106) and were at her boss's basement where she was in the process of moving too - further more, shutting off the internet and other household systems under her name, and without her husband's knowledge (Araya RP 12, 20) (Johannes RP in full) on top of this, Mr Johannes explains an infidelity situation @ trial, (Johannes RP in full) so too, his wife may too have been having sexual intercourse with

another person as well, and the P30 proteins were from this other individual, or even from another sexual intercourse by the couple - but far worse than the above, the State never tests the Rape Kit against Mr. Johannes clearly = violating his Due Process Rights, as its standard criminal procedure to do so! You cant claim P30 semen proteins that are able to be picked up 3 to 4 days after sexual intercourse, ANY sexual intercourse, (consensual) and claim its rape DNA proof without even testing to see who's it is, as well?! Mr. Johannes Due Process rights were violated there, please see *United States v. Cardenas*, 864 F.2d 1528, 1531 (10th Cir. 1989).

Furthermore, and completely in the emediate intrests of the public - because the State knew there'd be a question of doubt whether any intercourse per RCW 9A 44.050(1)(a) ever did happen - the State opens up the "already" tested Rape kit by State (Pro. DNA expert) witness Kim Smith, via Washington State Patrol crime lab test result; (located herein as Exhibit C under Appendix), tampers with, evidence Ms. Woo (the State) has absolutely no business tampering with because she's a State Dep. Prosecutor, and not a Forensic Scientist with 10, 15 or 20 years as an Criminal Forensic Scientist - opens up illegally; completely against all W.S.B.A. (Woo 2175 RP2) professional norms, and just stomps on and clearly violates Mr. Johannes American Due Process Rights, and thereby contaminates the entire Rape kits contents. The arguements ever such a vindictive, malicious and carelessness

act, are endless. As if not testing the rape kit to be sure its even the defendants DNA or otherwise that the Due Process Clause extends to the American public at large - the 2^o rape crime has evolved into a serious violent offense, a strike offense and one that carries a life sentence should the W.D.O.C. Indeterminate Sentence Review Board deem so. In Mr. Johannes position, claiming he did not rape his en crazed wife, could prejudice him against such a Board, and subject him to a life term in prison as the Board may think him in denial of this alleged crime, or prejudice him into having to claim he was guilty of the alleged act of 2^o rape against his wife, thereby making him appropriate for release, but with a life full of explanation to employers, and registering as a possible Class III or Class II sexual offender. Restrictions on living area's, possible even GPS tracking. Obviously - Due Process Clause commands a Rape kit's contents be tested against the defendant, and DNA herein this case, blood. Case in point: That the State sent the Rape kit in (2125 RP2) prior to the trial. Kim Smith, DNA Forensic Crime Lab (RP21-23) employee of the Washington State Patrol, States witness (RP21-23) for States Exhibit #42, testifies to this, and then states she tests such again, only that, its now been opened up by an alien party - and contaminated. Kim Smith (RP21-2 RP6 through 22, and 2-18-09 Wao, Counsel Garrett, and the Honorable Fox presiding RP8, 7 and 9, Ishimitsu RP64, 37, Kim Smith RP 21-23 (cross)

38 through 42.

Ms Woo, 2/25/2009: RP2

Woo: "One thing your Honor. With regard to Exhibit 42, the rape kit, I am moving to just have the ear swab, that was testified about yesterday, and Exhibit No. 44 the only two things that were analyzed in this case, to be marked."

Court: "As separate exhibits?"

Woo: "Yes, and then withdrawing Exhibit 42."

Clerk: "The two new exhibits from that will be 44, the slide, and 45 the envelope."

Court: "The two exhibits you have identified may be separately marked as indicated. Is there any objection to the withdrawal of the box itself?"

Garrett: "No objection, Your Honor."

Court: "All right. So 42 is withdrawn and may be delivered to the proper custodian."

Ms Woo Continued 02/25/2009 RP 2:

Woo: " I am turning over custody to
Detective Ishimitsu."
(End.)

Clearly the Detective states that the rape kit was open when he received it whereby upon moving the opened rape kits contents prior too sealing it, sperm found on the ear swab, may have transferred to the other swabs thereby (contaminated) contaminating the prior original swabs that were taken by Diprima. Please see Ishimitsu at RP 40 lines 2 through 25, and RP 41 as well.

According to Detectives testimony above, he hands the 'Kit' over to the States DNA expert, Kim Smith. Kim Smith, @ RP 10-11, @ RP 11 lines 5 through 24, Smith states it had been resealed lines 20-1, and claims again, lines 20 and 24, itd been resealed. On Kim Smith Cross, again resealed RP 16. At RP 17, line's 8 and 9, Smith states that the Rape kit was opened and then resealed by Detective Ishimitsu.

This proves beyond a reasonable doubt that probable tampering was done, even by accidental error. It is not probable for the State to not check the entire rape kits contents prior to trial, and merely 2 things; admitt the Rape kit #42 Exhibit, then not admitt it after Diprima testified, with the exception of the facial swabs, then

not immediately re-seal such an integral piece of evidence. Kim Smith testifies to a 02/18/2009 original DNA testing time and release back into the States hands, whereby the State, unbelievably takes it, opens the rape kit does whatever they wish to it; (See Kim Smith @ RP 17 lines 18-22), have on top of that, one States witness testify to whatever the favor for the state for greater or if such lackness exists - such as Diprima stating there being no physical signs of sexual intercourse Diprima (@ RP in full) only one can suspect the reason for such an emediate withdrawal of such a heavy piece of evidence directly after such testimony by States witness that conducted such a rape kit - the State & Lead Detective have the contents of the rape kit opened, unwatched by the trial court or defense nor Kim Smith, to do whatever they deem necessary and by doing so, create what may be the greatest Due Process Rights violation against Mr. Johannes Yet.

Counsel's failure to object at this time was unarguably ineffective assistance of counsel, as described above, possible contamination en oral, anal, vaginal swabs, as the State was emediate able to argue with proof P30 semen proben was found, abling the State to convince the jury sexual intercourse occurred, vs. only being able to weigh Mr. Johannes theory, which was an inflamed wife over finding condoms, as a motive, who wasn't knocking down the States door trying to testify against her then husband, but assuredly would have possibly faced perjury

changes had she not testified after all this, and defense counsel could have shown eradicate prejudice based merely off the rape kit in the States hands - as simple as understanding the concept of gravity - place the rape kit in the defense attorneys hands and have all the (o)ther test's come back "negative for P30 protein", there is just no comparison; Mr. Yohanes Due Process Rights under the Fourteenth Amendment were violated, and counsel caused ineffective assistance of counsel by not clearly stating purely obvious prejudice then, when the state brought the issue up, both prongs under Strickland v. Washington are met here and reversal is mandated with prejudice. See Strickland, 466 U.S. at 687. The Due Process Clause of the Fourteenth Amendment guarantees the right to effective assistance of counsel on a first appeal as well. See Evitts v. Lucey, 469 U.S. 387, 396-99 (1985). The Sixth Amendment of our U.S. Constitution guarantees the right to effective assistance of counsel in criminal prosecutions. In Strickland v. Washington, the Supreme Court established a two prong test to evaluate ineffective assistance claims, 466 U.S. 668, 687 " [The purpose of the effective assistance guarantee of the Sixth Amendment is... to ensure that criminal defendants receive a fair trial" Id. @689. Strickland states that a Court must:

..... judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have

been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or commissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing norms, is to make the adversarial testing process work in the particular case. At the same time, the court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* at 690.

To obtain reversal of a conviction under the Strickland standard, the defendant must prove that counsel's performance fell below an objective standard of reasonableness, (See *Id.* at 687-88) and that counsel's deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding. See *Strickland*, 466 U.S. at 687; see also *Clover v. U.S.*, 551 U.S. 198, 204 (2001) (assuming counsel erred in failing to press grouping argument in sentencing phase of defendant's trial and upon appeal, increase of sentence from 6 to 21 months was prejudicial).

Even more so, had counsel raised the above herein, a rational trier of fact may have immediately seen none at trial shut down on its face, a possible contamination; due to all the time the rape kit was open and with the State and States witness's out of the normal chain of custody, i.e., from Washington State Patrol Crime Lab, to the trial court, to expert opening it, testifying, 'one' time only, jury deliberating.

Due to counsel failing to raise the above, he fell beyond the professional norms of counsel, again, had counsel had for the defense, the rape kit under the same circumstances, the state would have possibly moved for disbarment, and is prosecutor misconduct to conduct such activity and falls below the ABA Criminal Justice Standards § 3:5.6(a) (prosecutor should not knowingly offer false evidence)

Granted - by accidental movement, or a knowing movement of semen rubbed on other package's even within the rape kit contents by the state when it was opened or by its star witness lead Detective Ishimutsu - the possibility (ies) were endless on not knowing they may have contaminated the rape kit results, and conviction rate by way of reality - was severely heightened.

[D]eliberate deception of a court... by the presentation of known false evidence (kit contamination, *infra*) is incompatible with "rudimentary demands of justice" This was reaffirmed in *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 (1942). In *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed. 2d 1217 (1959), we said "[t]he same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." *Id.*, at 269 79 S.Ct., at 1177... When the "reliability of a given witness (Kim Smith)

may well be determinative of guilt or innocence," nondisclosure of evidence affecting credibility falls within this general rule. *Napue, supra*, @269, 79

S.Ct., at 1177. (Emphasis added, mine). (Smith-Rapekit)

United States v. Graham, 54 M.J. 605 ("Prosecutorial Misconduct is generally defined as action or inaction by a prosecutor in violation of some legal norm (Due Process) or standard (Due Process) such as a constitutional provision (14th U.S.C.A.) a statute, a manual rule, or a professional ethics canon. (Emphasis added, mine).

ABA Code of Professional Responsibility DR 7-102(A)(3,5,8) and ABA Code of Professional Responsibility DR 7-102(B)(2).

Before a physical object connected with the commission of a crime may properly be admitted into evidence, it must be satisfactorily identified and shown to be in substantially the same condition as when the crime was committed. *State v. Campbell*, 103 Wn.2d 1, 21, 691 P.2d 929 (1984).

As herein indicated, the rape kit was not, (as a clear and unmovable matter of pure logic) as it was open, and in the States hands, *infra.*, with DNA or semen or P30 particles - looking with the naked eye at this rape kit; is not the same as getting an expert DNA witness on the defense, or even on defense counsel to question the States DNA expert Kim Smith on & over this matter, raised now: From 2/18/09 to 2/25/09, 8 days - is it

possible that there may very well have been a contamination breach, under un-qualified expert handling of such, as Kim Smith states @ trial, it'd been "opened for 8 some days and out of her custody. K. Smith @ RP 17, lines 18 through 22. Again, ineffective assistance by counsel for not raising such, and the States misconduct of doing such, and trial courts denial of a defense expert over such matter is judicial misconduct and violates Mr. Johannes' Article 1 § 9 and 22 Washington State Constitution rights to a fair trial.

Evidence that is unique and readily identifiable may be identified by a witness who can state that the item is what it purports to be. However, where evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, (open rape kit), it is customarily identified by the testimony of each custodian in the chain of custody from the time the evidence was acquired. *Id.* This more stringent test requires the proponent to establish a chain of custody "with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with." *United States v. Cardenas*, 864 F.2d 1528, 1531 (10th Cir. 1989). Kim Smith RP 17, lines 18 through 22 and other above raised transcript herein over this issue proves on its face contamination and tampering - "sufficient completeness", "to render it

improbable" contamination or tampering did not occur - cannot be said by the State of Washington.

Furthermore, factors to be considered include the nature of the item, (D.N.A.ect. argued herein this brief of Mr. Yokhemes') the circumstances surrounding the preservation and custody, and the likelihood of tampering or alteration. Campbell, 103 Wn.2d at 21. The proponent need not identify the evidence with absolute certainty and eliminate every possibility of alteration or substitution. Campbell, 103 Wn.2d @ 21. "Minor discrepancies or uncertainty on the part of the witness will affect only the weight of the evidence, not its admissibility." Id.

The alleged swabs were sealed accordingly on 10/10/08, by Diprma. Kim Smith tested at that time, all the State had - See Statement of Kim Smith on Exhibit C herein Appendix, Washington State Patrol Crime Lab Report:

"Conclusions: Semen was detected on the ear swab(s) (Item 111428-1).

The R30 test result obtained from the face swab(s) (Item (111428-1) indicates the presence of semen..."

Remark "The item was resealed and returned to the Washington State Patrol Crime Lab. evidence vault, pending return to the submitting agency..."

(Emphasis mine.)

It was only after such Diprma testimony did the State re-submit the opened rape kit, and come out

with all these new positive P30 proteins swabs all over Mr. Johannes wifes body parts as Kim Smith testifies too, none, Mr. Johannes or his wife testified as to an anal penis to, near or in her anus, anal sex whatsoever - yet, somehow, Kim Smith after already testing the rape kits contents 2/18/09, the rape kit being opened and re-tested, Smith testifies to P30 proteins found in her (Araqa) anal folds. See in full RP Kim Smith concerning nothing at all the first rape kit result, and second testing on such, vs. Kim Smiths Crime Lab. Report of the U.S. Patrol conclusions) as to an ear test done and mere facial swab.

The chain of custody test requires with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with." (United States v. Cardenas, 864 F.2d 1528, 1531 10th Cir. 1989). The State never offered an on its face testimony proving beyond a reasonable doubt or otherwise in assurance that, it was improbable that the opening of the swabs, rape kit, did not contaminate the evidence, nor future evidence, should this case go back to trial. Mr. Johannes Due Process Rights were violated as argued herein and reversal is mandated, with prejudice. Accordingly, without sexual intercourse as the defendant was charged under RCW 9A.44.050(1)(a) proven beyond a reasonable doubt under (1)(a) no forcible compulsion can even be met, let alone a mere belief sex occurred. The crime charged was never proved every element of the crime beyond a reasonable doubt.

2) It was reversible error to instruct the jury in Count I on uncharged alternative means of committing the crime of Rape in the Second Degree.

An accused must be informed of the criminal charge to be met at trial and cannot be tried for an offense that has not been charged. *State v. Trizerry*, 111 Wn.2d 591, 592, 763 P.2d 432 (1988); *State v. Vangerpen*, 125 Wn.2d 782, 888 P.2d 1177 (1995). When a statute provides that a crime may be committed by alternative means, an information may charge one or all of the alternatives. However, when an information charges only one of the alternative means of committing a crime, it is error to instruct the jury that they may consider other alternative means by which the crime may have been committed, regardless of the strength of the evidence admitted at trial. *State v. Williamson*, 84 Wn.App. 37, 42, 924 P.2d 960 (1996). The manner of committing a crime is an element and the defendant must be informed of this element in the information in order to prepare a proper defense. See *State v. Carothers*, 84 Wn.2d 256, 263, 525 P.2d 731 (1974). A defendant cannot be tried for an uncharged offense. *State v. Brown*, 45 Wn.App. 571, 576, 726 P.2d 60 (1986).

A claimed manifest error affecting a constitutional right may be raised for the first time on appeal. RAP 2.5(a)(3);

State v. Scott, 110 Wn.2d 682, 686, 757 P.2d 492 (1988). An erroneous instruction, which may have affected a criminal defendant's right to a fair trial, may be considered for the first time on appeal. *State v. Fesser*, 23 Wn. App. 422, 423-24, 595 P.2d 955 (1979); See *State v. Hanna*, 123 Wn.2d 704, 709, 871 P.2d 135 (1994). Here, the error at issue is of constitutional magnitude and may be challenged for the first time on appeal. See, e.g., *State v. Kjorsvik*, 117 Wn.2d 93, 105, 812 P.2d 86 (1991) (sufficiency of charging document). A charging document must include all of the essential elements of a crime; the primary goal of this rule is to give notice to an accused of the nature of the crime so that he or she can prepare an adequate defense. *Kjorsvik*, 117 Wn.2d at 97 (citations omitted). Generally, where a statute provides that a crime may be committed by alternative means, but the information charges only one of the alternatives, it is reversible error for the trier of fact to consider other means of committing the crime because it violates the defendant's right to notice of the crime charged. *State v. Bray*, 52 Wn. App. 30, 34, 756 P.2d 1332 (1998) (citations omitted) (In prosecution for forgery, trial court committed reversible error in instructing the jury on an alternative means of committing the crime that was not charged in the information); *State v. Doogan*, 82 Wn. App. 185, 188, 917 P.2d 155 (1996).

In *State v. Severns*, 13 Wn.2d 542, 125 P.2d 659 (1942), our Supreme Court rejected the State's argument that the trial court could instruct on means of committing an offense not addressed in the information, provided sufficient evidence of the means had been presented to the jury.

"We have recognized that, where the statute provides that a crime may be committed in different ways or by different means, it is proper to charge in the information that the crime was committed in one of the ways or by one of the means specified in the statute, or in all the ways. Even though the statute disjunctively connects the different ways or means, the information may allege them conjunctively, provided the different ways or means are not repugnant to each other....

However, we have been cited to no authority, nor do we know of any, which permits a court, when the information charges the act to have been done only one of the ways or by one of the means named in the statute, to instruct the jury that they may consider other ways or means by which the act may have been committed.

We are firmly of the opinion that, where, as in the instant case, the information charges ~~that~~ that the crime was committed in a particular way, under one subdivision of a statute, it is error

for the trial court to instruct the jury, as was done in this case, that they might consider other ways or means by which the act charged might have been committed, regardless of the range which the court may have permitted the testimony to take.

State v. Sererns, 13 Wn. 2d at 548.

Mr. Johannes was charged and convicted on a single count of Rape in the Second Degree - Domestic Violence under RCW 9A.44.050(1)(a) which provides in relevant part:

Forcible compulsion means physical force which overcomes resistance, or a threat, expressed or implied, that places a person in fear of death or physical injury to oneself or another person.

WPIIC 45.03, in accordance to Mr. Johannes charge.

There are also other alternative means, kidnapping in the form of, "or in fear of being kidnapped or - that another person will be kidnapped" or, as Appellate counsel, (pp. 43-47) argued under RCW 9A.44.050(1)(b): "a person commits second degree rape if he engages in sexual intercourse with another person" [w]hen the victim is incapable of consent by reason of being physically helpless or mentally incapacitated." "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act." RCW 9A.44.010(5)." (Appellate Counsel's brief @ pp. 43-47 for defendant). (Under 9A.44.050(1), there are several.

Clearly as described above, under this statute a person can commit the offense by alternative means, and in the instant case, 'forcible compulsion' prong is met by a threat, express or implied, or fear of death or physical injury to oneself or another person.

In the to-convict instruction for Count I however, the State (and Courts) instruction No. 9, to which Johannes counsel failed to object to, the jury was also instructed on the uncharged alternative means of committing the crime of rape in the second degree; " or in fear of being kidnapped or that another person will be kidnapped..." (CP28), WPIC 45.03.

It was reversible error to try Mr. Johannes under the uncharged alternative statutory means of fear of being kidnapped or another kidnapped if; sexual intercourse did not occur and clearly was prejudicial, as it allowed yet another prejudicial and prejudicing element for the State to use, (and the defendant to prove he did not commit second degree rape) by way of fear of kidnapping somebody, regardless - nobody spoke of any kidnapping(s) whatsoever - in contrast, the State never proved a kidnapping occurred, and never proved every element of forcible compulsion under (t)his WPIC 45.03 where the jury instruction states it can be allowable for one of the triers of fact to feel to believe, if you feel Mr. Johannes could put fear of kidnapping his wife or child - rapes occurred, convict him. The way the State attacked him in closing arguments, post terrorist 9-11, to basically, well,

basically an individual that very well could pull off a kidnapping; prosecution continuously also appeals to the jurors' ethnic and cultural biases and other improper prejudicial comments repeatedly portraying Mr. Johannes a liar - also saying he could be a kidnapper by way of such, being an individual who tailors testimony because; he testifies at the end, rather, than in the beginning of trial. See State, Closing Arguments, MsLWoo in full, as well as: 2/24/09 RP 100, 101; 2/26/09 RP 120, 121, 2/27/09 RP 22, 23, 25 and 26; 2/26/09 RP 15, 2/27/09 RP 34, 40-41, 87, 92, 93 - "cleat", "bad liar", "manufactured story tailored to fit the evidence as it came out at trial, just to pull the wool over your eyes", and, "a completely manufactured story..." and, "Obviously he is lying"... Found above as linked via trial RP transcripts.

It was reversible error to try Mr. Johannes under the uncharged statutory alternative means of kidnapping of another since it violated his right to notice of the crime charged. See *State v. Duggan*, 82 Wn. App. at 188 (citing *State v. Bray*, 52 Wn. App. at 34). Moreover, the error is prejudicial because of the State's misconduct described above, there then exists a very reasonable probability that jury may have convicted Johannes of the uncharged alternative kidnapping preng ever such. Should the State reply, its a part of Forcible compulsion - then they never proved any fear of kidnapping beyond a reasonable in order to convict either,

and should have restricted WPIE 45.03 as commonly done, to state, how they intend to prove what alternative of rape in the second degree beyond a reasonable doubt, as the to convict instruction doesn't exclude kidnapping & the State had to prove all within the prong's alternative means of Forceful Compulsion, as submitted under WPIE 45.03.

3) The trial court committed reversible error when it failed to instruct the jury that it must be unanimous on which act constituted the crime of rape in the second degree where the State presented and argued that more than one act could constitute the crime and where a rational juror could have reasonable doubt as to one of the incidents alleged and the State did not elect which act it was relying upon to prove the crime.

When one crime is charged and the State presents evidence of more than one act that could constitute the crime, constitutional error occurs if the State does not elect which act it is relying upon or the court does not instruct the jury that it must be unanimous as to which act has been proven beyond a reasonable doubt. *State v. Kitchen*, 110 Wn. 2d 403, 411, 756 P.2d 105 (1991) (citing *State v. Gitchel*, 41 Wn. App. 820, 822, 706 P.2d 1091, review denied, 105 Wn. 2d 1003 (1985)).

"The right to a unanimous verdict is derived from the fundamental constitutional right to a trial by jury; it may be raised for the first time on appeal." *State v. Gooden*, 51 Wn. App. 615, 617, 754 P.2d 1000, review denied, 111 Wn.2d 1012 (1988). "[T]he error is not harmless if a rational trier of fact could have a reasonable doubt as to whether each incident established the crime beyond a reasonable doubt." *State v. Loehner*, 42 Wn. App. 408, 411-12, 711 P.2d 337 (1985) (Schofield A.C.J., concurring), review denied, 105 Wn.2d 1003 (1986); *Kitchen*, 110 Wn.2d at 411; see also *State v. Handyside*, 42 Wn. App. 412, 416, 711 P.2d 379 (1985).

This approach presumes that the error was prejudicial and allows for the presumption to be overcome only if no rational juror could have reasonable doubt as to any one of the incidents alleged. See *State v. Burri*, 87 Wn.2d 175, 181, 530 P.2d 507 (1976).

Here, the State presented more than one act to prove the charge of rape in the second degree in Count One, (located under the Appendix, as Exhibit ^(E)E-1) arguing that the crime is rape in the second degree - (d) domestic violence under RCW 9A.44.050(1)(a). CPL.

"Domestic violence" was in and for the State of Washington into the "Verdict Form", located herein in the Appendix together with the Jury Instructions, as Exhibit B.

did not all (12) agree together on either all, or one act of domestic violence (CPI RCW 9A.44.050(1)(a)) unanimity was not upheld on the "domestic violence", rape in the second degree charge as was given to the jury to deliberate upon.

Furthermore, mere reasonable doubt exists in the form of Mr. Yohannes wife's credibility, which was the State's principle evidence - yet her testimony and hearsay statements contained enough inconsistencies in the Court or State in this case, to submit a specific unanimity instruction with several acts alleged surrounding the above transcripts on domestic violence above.

As for the physical alleged act(s) of rape testified to about at trial as well:

Araya tells police Yohannes punched her, she lost consciousness and woke up to Mr. Yohannes having sex with her, against her will. 2/19/09 RP 36.

However, 6 jurors may not have believed that (act), because Araya told the responding medic, that she was sexually assaulted, blacked out, and woke up to Yohannes ejaculating on her face, 2/23/09 RP 49, because it's inconsistent, and no 12 juror unanimous verdict was done meaning also, the crime wasn't proven beyond a reasonable doubt, as all 12 never received a separate unanimity instruction as to which act the State was relying upon. Just the acts alone - we haven't even reached the DNA, which swab(s), nor, the actual other act of domestic violence linked, to a domestic violence act, from days prior too

Several "Domestic Violence" incidents were described throughout the trial and because no unanimity instructions were correctly given, any described domestic violence act, could have caused the second degree rape-domestic violence, crime as charged: 2/19/09 RP 28-9, 31, and 2/23/09 RP 47, 56, 58, and 2/24/09 RP 21, scratches, husband and wife domestic violence acts. Testimony surrounding not getting along and in 10/2008 the couple were not getting along and his wife was leaving their relationship and moving out 2/24/09 RP 106-7.

On Oct. 9, 2009, Mr. Yohannes came home intoxicated, fell asleep, afterwards, wife finds condoms and cash money in his pockets, she gets "crazy", assaults her husband, argued, caused his lip to bleed, domestic violence on its face proven - 2/24/09 RP 109-10, and RP 111, 113-115, 2/24/09 RP 122, 127. The couple begin allegedly fighting again another time, 2/24/09 RP 127-30, 139, 127 through 132-33, 2/25/09 RP 38, 40, 42. 2/26/09 RP 66 through 69-72, 73-74 75-76, 87-89.

A rational juror could have a reasonable doubt as to one of the domestic violence acts alleged over either of the married couples testimony and the State failed to uphold unanimity to prove the crime beyond a reasonable doubt - also 2/27/09 RP 23 through 25-6, meaning 6 jurors may have choose 2 incidents of the same, but the other 6 jurors may have not believed those 2 incidents, but other domestic violence incidents, meaning 12 jurors

did not all (12) agree together on either all the alleged acts, or otherwise as per crime charged in relevant part, RCW9A44050

(1)(a) rape in the second degree - 'domestic violence' that the jury was given to deliberate on to convict him with and on.

Further more, because the States principle evidence was the wifes testimony, Arayas testimony and hearsay statements contained so many inconsistencies, a unanimity instruction was clearly needed as a matter of law in order to ensure a 12/12 unanimous poll - in act - in order to constitutionally convict Mr. Yohannes, proven beyond a reasonable doubt.

This is true also with the actual alleged act of rape: 2/19/09 RP36; Araya tells police Yohannes punched her, she lost consciousness and awoke to Yohannes having sex with her against her will.

Then, Araya states at trial that she told the responding medic, that she was sexually assaulted, blacked out, and woke up to Yohannes ejaculating on her face. 2/23/09 RP49.

But again, she told the hospital social worker that she might have lost consciousness after her husband hit her. 2/23/09 RP77.

She had yet another act of rape when she said to the nurse at the hospital, blacked out, and awoke to find her husband on top of her, holding her down and raping her. 2/24/09 RP16.

But, when it came down to Ms. Araya testifying about the described above; she said that she was unconscious

during the rape and never felt or observed her husband having any intercourse whatsoever, of any kind, and - she testifies she never saw Mr. Yohannes ejaculate on her face. 2/24/09 RP 127-28, 132, 133, 134-5, 140, 142.

The above alone, proves on its face, many jurors may have had some reasonable doubts as to the acts of rape that were spoken of at trial, and 6 jurors may could have elected an act of rape, some to convict him of rape, may have selected a domestic violence act to convict him, as again, their "Verdict Form", said second degree rape - "domestic violence."

On top of all that, a rational trier of fact may have concluded no rape occurred at one of those alleged times because Arayas, about the pain in her genitals were also inconsistent. 2/24/09 140, 142. She testifies that the reason everyone's there over a rape charge, is she felt pain in her private area, after she awake as was broken down in Issue I of this brief - said the pain felt like it did when the couple would have consensual sex. Without seeing a rape as was charged, rational juror may not have believed the rape on the alleged - my husband raped me, my only proof is the outside of my private area had pain. Pain also, testified too, inconsistently as well. At first, she states at trial, she knew she was raped because she felt, "a little pain down there," the same that she feels every time after having intercourse. 2/24/09 RP 140, 142. But she said that

the pain was gone by this same days evening. 2/24/09 RP 176. But again this changed up when on Cross by Counsel Garrett, Araya said the sexual pain 'was a 10 out of 10, 10 being the highest. 2/25/09 RP 100-1.

The error of not upholding the required unanimity as was needed in this instant case, cannot be deemed harmless because Mr. Yohannes has proved that, "a rational trier of fact could have had a reasonable doubt as to whether each incident established the crime beyond a reasonable doubt." State v. Loehner, 42 Wn. App. 408, 411-12, 711 P.2d 337 (1985) (Schofield A.C.T., concurring), review denied, 105 Wn.2d 1003 (1986) Kitchen, 110 Wn.2d at 411; see also State v. Handlyside, 42 Wn. App. 412, 416, 711 P.2d 379 (1985). As said prior to the above incidents alleged: (in relevant part)

This approach presumes that the error was prejudicial and allows for the presumption to be overcome only if no rational juror could have reasonable doubt as to (any) one of the incidents alleged. See State v. Burns, 87 Wn.2d 175, 181, 550 P.2d 507 (1976).

Araya's testimony creates other reasonable doubt established with a trier of fact's ability to discern and weigh inconsistencies about the actual timing of the alleged rape in question: Police are sent to a neighbors home at around 1:30 pm - afternoon time. 2/19/09 RP 29. Araya told the Seattle police in response, that the rape occurred early

that morning or late the previous nite. 2/23/09 RP 20. On another troublesome area of reasonable doubt testimony, Araya tells the social worker and the medical sexual assault nurse that the rape occurred at around 7 or 8 a.m. 2/23/09 RP 95; 2/24/09 RP 51. In this same vein of reasonable doubt, her testimony indicated that the rape happened soon before she awoke after losing consciousness. When she did awaken, the semen on her face and ear were still warm and wet. 2/24/09 RP 132. She could feel semen outside her "private stuff" Araya 2/24/09 140, 141. States at trial her nose was still bleeding. 2/25/09 RP 38. She testifies she ran to the neighbors house immediately after awaking up, 2/24/09 RP 140, 142, clearly calling her many statements into a reasonable doubt questionability, that the rape occurred early that morning.

To add a little more weight to Mr. Johannes argument as for a need for unanimity concerning which act of "domestic violence" the State relied upon to convict as per charged (CPL), the State of Washington may have just had a rape conviction agreed upon by 8 jurors on one of the alleged rape acts, and 4 other jurors on a "domestic violence act due to the prosecutor yelling at trial " Mr. Johannes raped his wife in order to "put her in her place", because she "was acting a little bit too big for her britches," 2/27/09 RP 23; and in Closing Arguments State claims Araya stood up for herself and Mr. Johannes "had to knock her back down and put her in her place." 2/27/09 RP 23.

Ms. Woo for the State claims, he did not see her as, "a human being" at that point, but merely as an orifice for him to serve his perverse desire to demean her and disrespect her". 2127109 RP 25. Improper comments of such, and the never-ending encouragement to convict off the patriarchal views of Eritrean culture and Mr. Yohannes beliefs, there is obvious substantial domestic violence injected throughout the trial and a substantial likelihood a few jurors just may have convicted solely on comments of domestic violence allegations of his culture - let alone acts of rape alleged and thus - since it is impossible from the record, as previously argued herein, multiple acts of rape, domestic violence, to conclude that all the jurors agreed on the same act to support the conviction here at issue, and since a rational juror could have concluded there was sufficient evidence of a domestic violence act able to convict, act, but not sufficient evidence of (any) of the forcible compulsion prongs (as clearly indicated, the wife was unconscious) and under RCW 9A44050(1)(a) forcible compulsion couldn't be met - or a mixture thereof, and since the trial court nor State did not elect which act it was relying on for the crime's conviction, and because no unanimity instruction was given, reversal and dismissal is mandated for Mr. Yohannes conviction for rape in the second degree.

(Please note some exhibits were noted alphabetically, but are taken out for non-alphabetic for easier reading. Thank you.)

4) The Trial Court and the State of Washington violated Mr. Johannes U.S.C.A. Fifth rights under the Double Jeopardy Clause by allowing him to be subject for the same offense to be twice in jeopardy after he was acquitted once already for the crime, in violation of Article 139 of our Washington State Constitution.

The Double Jeopardy Clause of the Fifth Amendment states that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Constitutional Amendment V not only applies to "life or limb", but to prison sentences and criminal fines as well. See *Jeffers v. U.S.*, 137, 155 (1977) (plurality opinion). The Fourteenth Amendment's Due Process Clause extends the Double Jeopardy Clause protections to state proceedings. See *Benton v. Maryland*, 395 U.S. 784, 794 (1969). Other guarantees deemed integral to double jeopardy protection also apply to the States. See *Crist v. Bretz*, 437 U.S. 28, 37-38 (1978) (federal rule that jeopardy attaches when jury sworn in applies to states because integral part of 5th Amendment); *Greene v. Massey*, 437 U.S. 19, 24 (1978) (federal rule that retrial barred when conviction reversed due to insufficiency of evidence applies to states because integral part of 5th Amendment). Protection against double jeopardy applies to both misdemeanor and felony charges. See *ex parte Lance*, 85 U.S. (18 Wall.) 163, 168-69 (1873) (double jeopardy

protection applies to every indictment or information charging party with crime or misdemeanor). The Double Jeopardy Clause bars a second prosecution for the same offense only if jeopardy attached in the original proceedings. See *Ex parte Lange*, 85 U.S. (18 Wall.) 163, 168-69 (1873). In a criminal proceeding, jeopardy attaches when the defendant faces the risk of a determination of guilt. *U.S. v. Sparks*, 87 F.3d 276, 279 (9th Cir. 1996) (jeopardy did not attach to 2 counts because state dismissed them before defendant's trial).

In a jury trial, jeopardy attaches when the jury is impaneled and sworn. (Jeopardy attached when jury impaneled and sworn, though indictment dismissed, because dismissal not required by manifest necessity. *Wilcox v. McGee*, 241 F.3d 1242, 1244, 1246 (9th Cir. 2001)). Once jeopardy attaches, the Double Jeopardy Clause prohibits retrial after any dismissal that is sought by the prosecution (*U.S. v. Scott*, 437 U.S. 82, 86, 97-100 (1978)); or operates as an acquittal. *Smith v. Mass.*, 543 U.S. 462, 467 (2005).

Prior to the trial, Mr. Johannes attorney filed a 'Defendant's Trial Memorandum' under the 08-1-12175-1-SEA number. Within such, under A, defendant attorney raised, Double Jeopardy.

He claimed that the discovery is replete with references and statements concerning a prior allegations and charges by Lia Araya, Johannes wife, that resulted in a not guilty verdict. McGirrett further went on to

raise Mr. Johannes has already faced these charges and has been acquitted of any such wrongdoing and said he believed that the State, based on the inclusion of these prior statements, incident reports, photographs, and medical reports from the past trial as well, that regarded the previous allegations that had clearly been subject to a prior trial (as Mr. Garrett Jr. was Mr. Johannes previous attorney whereby Johannes was acquitted) intended to introduce this evidence into the present case - and that if such was going to be the case, such constituted double jeopardy pursuant to the U.S. Constitution Amendment 5 and Article 139 of the Washington State Constitution and obviously, the State was going to be prohibited from doing such as he couldn't legally face the allegations within the past case or evidence ever again. (Defendants Trial Mem. aka Trial Brief @ Page 3, found under Appendix herein).

Counsel for the defense, the State, and trial court go over the said Motion above and the Judge grants that there will be absolutely no double jeopardy issues concerning introductions of old incidents ect. of the last trial case, State agrees.

Court: All right. And you tried that case?

Garrett: That is correct.

Court: All right. Does the State have any plan on introducing any evidence about events of June 22, 2008?

Woo: No, your honor.

Court: Okay. Well, it doesn't look like that's an issue then.

Court Cont.: And so I'll take the Motion of Double Jeopardy.

I will just indicate that the ruling of the Court is in response to that Motion that there be no testimony introduced by the State regarding any alleged events that occurred on June 22, 2008. And if there's any change in that, if the State believes that the door has been opened on any of that, I'll expect that the State will bring that up to my attention and Mr. Garrett's attention outside the presence of the jury, prior to any attempt to introduce that into evidence. All right?

Woo: Yes.

Court: Thank you.

Garrett: If-- may I? Before you move on? Just to clear that, and I would take the State, the State at its word, but I received photographs that were taken of alleged injuries occurring at that time as well, and I wanted to make sure that that's included because I would-- I would hate to-- those be introduced prior to, you know, my standing and giving an objection.

(Please see in general, Pretrial Motions, RP 15 through 29.)

Then directly after this was established, the State introduces one of these old domestic violence acts in a photograph: *Prima-Direct* by Woo.

Woo: Exhibit 25, can you explain to the jury what this is?

Diprima: We are looking at pink abrasion here on her -
in her right elbow.

Woo : There appears to be some scratches closer to
her wrist. Do you remember those?

Diprima: Yes, I think she felt those were old. I
am not sure where she received those.

Woo : Were they darker?

Diprima: Yes.

Woo : In your opinion, were they freshly sustained
injuries?

Diprima: No, not in my opinion. She noted no pain.

The State used other photographs used in the
prior trial at this time of the trial. Diprima claims
that she "thinks" Araya felt the markings were old,
further indicating she wasn't sure where she received
those, also stating they weren't fresh injuries, meaning
the state used another form of acts - acts that were
never charged, never had any curative instruction over
any of this prejudicial testimony that calls for a
unanimity instruction as to the domestic violence. A
photo was accidentally allowed in from a prior trial whereby
the defendant was acquitted. As discussed by all parties
concerning the Double Jeopardy - the defense's failure to object,
and states failure, Courts failure to hold an evidentiary
inquiry, violated Mr. Johannes rights against the state
trying and convicting him, twice placing him in jeopardy

for the same acts alleged in violation of the laws agreed herein this Double Jeopardy Clause issue.

In addition to the State using previous acts, the trial court subjects the defendants U.S.C.A. right 5 just discussed, right out the window by overruling a move to strike testimony regarding the previous June 22, 2008 trial whereby an acquittal was granted to the defendant:

Garrett (in relevant part): how long had it been on again / off again in terms of times?

Araya: After the last case.

Garrett: Objection. Move to Strike, Your Honor.

Court: Overruled. The witness was responsive, but I think you ought to ask her in terms of months.

Garrett: When was that?

Araya: It was after the case was closed.

This on itself was a double jeopardy violation because the judge allows evidence in over a past case - a past case that a juror may have linked the (other) photographs too, and placing Johannes under double jeopardy.

Instead of giving a curative instruction, or addressing the jury, the court continues even further discussion of the last trial case:

Araya: After I got back from Columbus, Ohio.

Garrett: When was that?

Araya: I am sorry, but I don't remember exact dates. It was

after the case was closed.

Garrett: Same objection. Move to Strike. Nonresponsive.

Court: Overruled.

Clearly- the judge allows prejudicial previously ruled upon, double jeopardy violations to occur. All a rational juror would have been able to do, is think, "What last case? One like this same one? How many times has he done this? Is to another woman? He's guilty."...

Granted- it did come from counsel- but you also have no one explaining to the jury to cure the statement, no a curative instruction with the front of such instruction stating, "not only did his wife fail to appear for trial, but he was acquitted and all such testimony should be 100% disregarded about the prior case as the U.S. Constitutional Amend 5, and Article 139 of our Washington State Constitution prohibit such testimony to occur."

So twice Mr. Garrett's overruled by the trial judge. Counsel also fails again, when Araya brings up the other case,

Araya RP 76 on Cross:

Araya: I don't remember. I don't think I had bruises on my face, but I had a cut somewhere.

Garrett: At any point in time during this altercation, either the first one or second one, do you recall Mr. Yohanes grabbing you by your neck?

Araya: In this case, or the other case?

Garrett: On October 10, 2008, do you recall Mr. Johannes grabbing you by the neck?

Araya: I don't remember him grabbing me.

Araya - Cross by Garrett RPL64.

Noone stopped the above testimonies judicially nor objection wise. Double Jeopardy as raised is proven here, there were clear references to the other trial, and prejudice described herein explains, a rational trier of fact may very well have put the two incidents together on trials and convicted thereupon. Thus, the State cannot prove beyond a reasonable doubt, the uncorrected testimony described herein, did not cause the conviction, and thus the State, Court cause reversal by allowing evidence used twice, and the said herein, cause double jeopardy to occur. Reversal with prejudice is mandated for Mr. Johannes rape in the second degree as charged on Count I.

5) The Trial Court caused re-sentencing of the defendant by sentencing him as a sex offender under RCW 9.94A.712, when the RCW 9.94A.712 expired prior to the Sentencing Hearing and places prejudice of a "life" top end sentence under the Indeterminate Sentencing Review Board, and should have been sentenced under RCW 9.94A.507.

Mr. Johannes was sentenced April 10, 2009 under RCW 9.94A.712, 4110/2009 RP 1 through 28, located in the Appendix under 'Sentencing Transcripts'; and also see defendants Judgment and Sentence at page 5, "§ (b) Indeterminate Sentence" and prison amount total "Count I, Minimum Term: 78 months; Maximum Term: Life." Then see at the bottom of same page § 4.5 "The total of all terms imposed in this case is 78-Life months"; also found under 'Defendants Judgment and Sentence' herein Appendix.

The above RCW 9.94A.712 places Mr. Johannes under a Life sentence as an ISRB (Indeterminate Sentence Review Board) offender - to the contrary, RCW 9.94A.712 § 4 and 6, that link to § 3(a) (b) and grant the sentencing of nonpersistent offender (law) to a "3(b); "Shall consist of the statutory maximum sentence for the offense" in relevant of the Class A second degree rapes statutory maximum's term under 9A.20.21(1)(a) in relevant part, for a Class A, "Life", is the Statutory maximum, and is where life comes from on Mr. Johannes Judgment and Sentence, infra, via legislation, had expired July 1, 2006.

See RCW 9.A.2021(1)(a).

See RCW 9.94A.712 revisers notes concerning deletions of § 4 and 6 which link to § 3 of RCW 9.94A.712.

On its face, RCW 9.94A.712, states "Effective until August 1, 2009). The new RCW 9.94A.507 is the replacement

for the 9.94A.712. The subsections that enable the trial court to sentence Johannes to a "Life" sentence top end, are no longer also available under RCW 9.94A.507.

Under law - he is still under 9.94A.712, but as for retroactivities realm, there should not be any argument as § 4 and 6 that link to § 3 of .712, were revised by legislations deletions to those subsections exclusively. The same^L legislation deletions are still upheld. Thus, there is no statutory maximum available for a top end sentence of "Life" for the trial court to impose, but - only in regards to the '78 to Life sentence, whereby, § 6(a)(1) of .712 link the defendant to the ISRB and CCB under RCW 9.95.425 and RCW 9.95.430, ultimately, the 9.95's and therein that pertain to the above said, and 6(b) RCW 9.94A.713 and RCW 9.95.420 through RCW 9.95.435.

Mr. Johannes is not arguing 9A.20.21(1)(a)'s statutory maximum isn't life.

He is arguing, due to legislations revisions under .712 § 4 and 6 - which link to § 3 - end the trial courts ability so to sentence him to 78-Life. Further More, the Court does not have the then needed 36-48 month (only) community custody term's set in his sentence correctly.

(Without an understanding of the 9.95's, Mr. Johannes is subject to having his 78 month, (102 month) terms revoked as is, under ISRB and CCB imposed conditions, at a 5yr. (60 month) term rate, ie, 78 to Life, meant just that.

^L RCW 9.94A.507 - legislation deletions are the same.

RCW 9.94A.712 and RCW 9.94A.507 are also found under this Briefs Appendix herein. However - without a through exhaustion of 9.95's herein the 712 and 507, will you find the law's that link to the eventually 5 year allowable ISRB / CCB prison term's that are handed out, and that extend way past an offenders top end and can eventually even civilly committ him or her. Therefore:

(With the exclusions via legislators intent, Mr. Johannes is a determinate sentencing offender of a determinate sentence of 78 to 102 months imprisonment, and a community custody term of 36 to 48 months, respectively.

Counsel caused ineffective assistance of counsel, as he claims, he (1) knows nothing of the sort when it came down to his client facing any possibility of being sentenced to life imprisonment, which he was sentenced too, (2) counsel blamed his unprofessionalism based of some lame tactic he believed the judge would grant an extension of time based off any evidence on its face requiring the judge to say, 'denied', (3) failed to take 30 min. and look it all up; and be prepared as any attorney should be, and because he did not, his client recieved a life end sentence, and again - its not just community custody.

Reversal and resentencing is mandated as a matter of law.

6) Mr. Johannes Counsel caused ineffective assistance of counsel over the described herein and violated his Sixth Amendment and Article 1 § 22 Washington State Constitution to the right to effective assistance at trial and a fair trial.

A criminal defendant claiming ineffective assistance must prove (1) that the attorneys performance was deficient, i.e., that the representation fell below an objective standard of reasonableness under the prevailing norms, and (2) that prejudice resulted from the deficient performance, i.e., that there is a reasonable probability that, but for the attorneys unprofessional errors the results of the proceedings would have been different. *State v. Early*, 70 Wn. App. 452, 460, 853 P.2d 964 (1993), review denied, 123 Wn.2d 1004 (1994); *State v. Graham*, 78 Wn. App. 44, 56, 896 P.2d 704 (1995). Competency of counsel is determined based on the entire record below. *State v. White*, 81 Wn.2d 223, 225, 500 P.2d 1242 (1972) (citing *State v. Gilmore*, 76 Wn.2d 293, 456 P.2d 344 (1969)). A reviewing court is not required to address both prongs of the test if the defendant makes an insufficient showing of one prong. *State v. Tarica*, 59 Wn. App. 368, 374, 798 P.2d 296 (1990).

While it is submitted that the errors presented herein have been preserved and may be raised for the first time on appeal, this portion of the brief is presented only out of an abundance of caution should this court disagree.

McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970); Gideon v. Wainwright, 372 U.S. 335, 342 (1963). Strickland v. Washington, 466 U.S. at 687; See also Glover v. U.S., 531 U.S. 198, 204 (2001) (assuming counsel erred in failing to press grouping argument in sentencing phase of defendant's trial and upon appeal, increase of sentence from 6 to 21 months was prejudicial).

The above case was found prejudicial, Mr. Johannes attorney at sentencing said:

"Yes your Honor. I want to first apologize. I didn't prepare a presentence memorandum because I was relying on the ability to obtain the continuance... RP 9 Sentencing Hearing.

Garrett furthermore says that:

"as for rape in the second degree is -- must come under this indeterminate sentencing guideline. I don't know that offhand....

And, because he wasn't kidding, now Mr. Johannes sits on a life sentence. Prejudice is met here and also throughout issues 1-6 herein, as discussed in detail in preceding sections of this brief, both elements of ineffective assistance of counsel have been established. Counsel's failure to exercise due diligence in this context falls below an objective standard of reasonableness and was prejudicial for the reasons previously argued in the preceding sections of this brief.

Conclusion:

Based on the arguments, all caselaws, records, trial record, U.S.C.A. laws, Amendments, all state and federal laws, caselaws included, Yohannes respectfully requests this honorable Court of Appeals to reverse with prejudice Count I, Second Degree Rape. In the alternative, reversal. In another alternative, remand for resentencing should the Court deem its the only relief available.

Respectfully Submitted,

Mr. Yohannes WDOC# 329693 Cedar Hall G-12
Washington Correction Center
Post Office Box 900
Shelton, Washington 98584

1 Certificate of Mailing incorporated.

2
3
4
5 AFFIDAVIT OF DEFENDANT _____

6
7 UNDER RCW 9A.72.085, I _____, CERTIFY AND DECLARE UNDER
8 PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WHASINGTON
9 THAT THE FOREGOING IS TRUE AND CORRECT.

10
11
12 DATED this _____ day of _____, _____

13
14 Signature _____

15 Notary

16 _____
17 Washington Correction Center
18 P.O. Box 900
19 Shelton, WA. 98584

20
21
22
23
24
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2010 JUL -8 AM 10:18

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

21 I Mr. Yohannes also certify and declare
22 I mailed the following brief and appendix
23 this _____ day of _____ 2010 to the following
24 people:
25 _____

APPENDIX

State v. Yohannes

No. 08-1-12175-1 SEA

COA No. 63444-5-I

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2010 JUL -8 AM 10:30

Certificate of Mailing incorporated.

AFFIDAVIT OF DEFENDANT _____

UNDER RCW 9A.72.085, I Azazi Yohannes, CERTIFY AND DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WHASINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 6 day of July, 2010

Signature [Handwritten Signature]

Notary



Washington Correction Center
P.O. Box 900
Shelton, WA. 98584

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2010 JUL - 8 AM 10:31

I Mr. Yohannes also certify and declare I mailed the following brief and appendix this 6 day of July 2010 to the following people:

Division 1

One Union Square
600 4th Avenue Street Seattle, WA 98101

U.S.P. Crime Lab Report

Kim Smith (DNA)

CHRISTINE O. GREGOIRE
Governor



JOHN R. BATISTE
Chief

STATE OF WASHINGTON
WASHINGTON STATE PATROL

2203 Airport Way South, Suite 250 • Seattle, Washington 98134-2045 • (206) 262-6020 • www.wsp.wa.gov

CRIME LABORATORY REPORT

Agency:	Seattle Police Department	Laboratory Number:	109-000470
Agency Rep:	Detective R. Ishimitsu	Agency Case Number:	08-381397
Subject:	Victim – Araya, Lia Yoisef	Request Number:	0001
Subject:	Suspect – Yohannes, Azazi		

Evidence Examined

Item 111428-1: One sealed sexual assault kit, reportedly collected from Lia Yoisef Araya. The ear and face swabs were examined for this report.

Procedures and Results

The ear and face swabs (Item 111428-1) were visually examined and faint yellow staining was observed. A portion of each swab was extracted for a microscopic examination. Spermatozoa were observed in the extract from the ear swabs. No spermatozoa were observed in the extract from the face swabs. The extract from the face swabs was further tested for the presence of p30, a protein used in the detection of semen, with a positive result. No further testing was performed on the swabs at this time at the request of the King County Prosecuting Attorney Risa Woo.

Conclusions

Semen was detected on the ear swabs (Item 111428-1).

The p30 test result obtained from the face swabs (Item 111428-1) indicates the presence of semen.

Remark

The item was resealed and returned to the Washington State Patrol Seattle Crime Laboratory evidence vault, pending return to the submitting agency.


Kimberly N. Smith Forensic Scientist

2-18-09
Date



Jury Instructions

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

STATE OF WASHINGTON,)
) No. 08-1-12175-1 SEA
)
) Plaintiff,)
)
)
) vs.)
)
)
) AZAZI YOHANNES,)
)
)
) Defendant.)

STATE'S INSTRUCTIONS TO THE JURY

(With Citations)

Risa D. Woo
Deputy Prosecuting Attorney

No. ____

It is your duty to decide the facts in this case based upon the evidence presented to you during the trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during the trial or in giving these instructions, you must disregard the apparent comment entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

No. ____

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to reexamine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

No. _____

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

No. ____

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

WPIC 5.01

No. ____

The defendant is not compelled to testify, and the fact that the defendant has not testified cannot be used to infer guilt or prejudice him in any way.

WPIC 6.31

No. ____

A witness who has special training, education or experience in a particular science, profession or calling, may be allowed to express an opinion in addition to giving testimony as to facts. You are not bound, however, by such an opinion. In determining the credibility and weight to be given such opinion evidence, you may consider, among other things, the education, training, experience, knowledge and ability of that witness, the reasons given for the opinion, the sources of the witness' information, together with the factors already given you for evaluating the testimony of any other witness.

WPIC 6.51

No. ____

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions and verdict form for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in the verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form(s) to express your decision. The presiding juror must sign the verdict form(s) and notify the bailiff. The bailiff will bring you into court to declare your verdict.

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

STATE OF WASHINGTON,)
)
 Plaintiff,) No. 08-1-12175-1 SEA
)
 vs.) VERDICT FORM
)
 AZAZI YOHANNES)
)
 Defendant.)

We, the jury, find the defendant AZAZI YOHANNES
_____ (write in "not guilty" or "guilty") of the
crime of Rape in the Second Degree Domestic Violence as charged.

Date

Presiding Juror

No. ____

Forcible compulsion means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to oneself or another person or in fear of being kidnapped or that another person will be kidnapped.

WPIC 45.03

No. _____

A person commits the crime of rape in the second degree when he or she engages in sexual intercourse with another person by forcible compulsion.

WPIC 41.01 (2005)

No. ____

To convict the defendant of the crime of rape in the second degree, each of the following three elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about October 10, 2008, the defendant engaged in sexual intercourse with Lia Yosief Araya; and

(2) That the sexual intercourse occurred by forcible compulsion; and

(3) That this act occurred in the State of Washington.

If you find from the evidence that these elements have 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.

No. ____

Sexual intercourse means that the sexual organ of the male entered and penetrated the sexual organ of the female and occurs upon any penetration, however slight or any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

WPIC 45.01 (2005)

Defendants Trial Memorandum, aka Trial Brief

Double Jeopardy Raised

1
2
3
4
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6
7
8 **IN THE SUPERIOUR COURT OF THE STATE OF WASHINGTON**
9 **IN AND FOR THE COUNTY OF KING**

10 STATE OF WASHINGTON,

11 Plaintiff,

12 vs.

13 AZAZI YOHANNES

14 Defendant.

NO. 08-1-12175-1 SEA

**DEFENDANT'S TRIAL
MEMORANDUM**

15
16 **I. CHARGE**

17 The defendant is charged with rape in the second degree – domestic violence. The
18 defense does not anticipate the State will seek to amend the charges.

19 **II. TIME ESTIMATES**

20 This trial should last approximately three days.

21 **III. POTENTIAL WITNESSES**

22 a. Azazi Yohannes

23 b. Lia A. Yosief - *state witness*

24 c. Yohannes Hagos

25 d. Officer Mark M. Mullens, badge no. 5465 *state witness*

26 Law Offices of Alfoster Garrett, Jr.
1325 Fourth Ave., Suite 1500
Seattle, WA 98101
D. (206) 592 0050 • F. (206) 592 0051

- 1 ND — e. Sergeant Mason — *get record for states*
2 f. Officer Wayne A. Johnson, no. 5653 *State's witness*
3 g. Officer Andrew A. Wilkes, no. 6970 (snapshot) *State's witness*
4 ND — h. Kevin McNew and Eyva Winet — *State's witness*
5 i. Celia Ortiz — *was? social worker*
6 j. Jennifer Diffuma, RN — *State's witness*

7 IV. FACTS

8 Lia Yosief alleges that on or about October 10, 2008, her husband, Azazi Yohannes,
9 returned home at approximately 7 a.m. and attempted to go to sleep. She rifled through his
10 pockets and found condoms, some of which were used. She became angry due to his
11 alleged adultery and in her own words became “crazy.” She hit Mr. Yohannes in the face
12 with a bottle and allegedly left the house after this going to her neighbor’s house located at
13 5532 – 20th Ave., South. She told them she was going back home to get her son and if they
14 heard anything to call police. Then she went to her car to “relax.” During her relaxation in
15 the car, Mr. Yohannes allegedly came outside, grabbed her phone and keys throwing her
16 phone. However, the phone battery was located inside the house. According to Lia, Mr.
17 Yohannes did not say one word to her at this point, simply went back into the house
18 leaving the front door unlocked. Lia later returned to the residence. Upon her return, Mr.
19 Yohannes allegedly grabbed her forcefully, punched her in the face several times knocking
20 her unconscious and raping her. She awoke to Mr. Yohannes ejaculating on her face. She
21 was able to flee the house and called the police from another neighbor located at 5540 –
22 20th Ave., South. Mr. Yohannes will tell a much different and more coherent story.

23 V. EVIDENTIARY ISSUES

24 The defense requests a pretrial hearing before the jury is empanelled for the purpose
25 of obtaining rulings on the evidentiary issues identified below. The defense respectfully
26

1 requests that this Court rule on the following motions in limine and take the other specific
2 action requested prior to trial. Legal authority for these motions is provided where
3 appropriate. The defense reserves the right to bring further motions where necessary
4 during the course of this trial.

5
6 **A. Double Jeopardy.** *Granted. extent any event occurred 6/27/08*

7 The discovery is replete with references and statements concerning a prior
8 allegations and charges by Lia which resulted in a not guilty verdict. Mr. Yohannes has
9 already faced these charges and has been acquitted of any such wrongdoing. However, the
10 State I can only assume, base on the inclusion of these prior statements, incident reports
11 and medical reports regarding these previous allegations that were subject to a prior trial,
12 intends to introduce this evidence in the present case. Such constitutes double jeopardy
13 pursuant to the U.S. Constitution Amendment 5 and Article 1 Section 9 of the Washington
14 State Constitution and should be prohibited. He cannot legally face these allegations
15 and/or charges again.

16 **B. Prior Misconduct by the Defendant – 404(b).** *11/20/08 deny Granted*

17 To the extent the prior misconduct falls outside the allegations and/or incident
18 reports from the previous trial, any additional prior misconduct of prior bad acts should
19 also be ruled inadmissible. The defense anticipates that the state will attempt to offer
20 testimony of the defendant's prior threats and/or assaults on the alleged victim. However,
21 the only proof of these alleged prior acts of misconduct are the self serving statements of
22 the alleged victim. There are no police reports or other independent evidence to
23 corroborate these assertions. Moreover, if the state intends to introduce these alleged acts
24 of misconduct for the purpose of showing reasonable fear by the alleged victim, this
25 argument should also fail. While the defense agrees that alleged victim's *specific*
26 *knowledge* of a person's prior actions would be admissible to show the victim's fear was

*alleged fear
No intent to
introduce*

1 reasonable. State v. Barragan, 102 Wash.App. 754, 760, 9 P.3d 942 (2000). In order to be
2 admissible on the issue of reasonable fear the victim must have specific knowledge of such
3 a nature that the threat would not be deemed idle. State v. Ragin, 94 Wn.App. 407, 411
4 (1999). Once it is determined that the defendant possessed specific knowledge of the
5 defendant's criminal history or in this case propensity for violence, then the question
6 becomes, from an objective standpoint, was the fear of the threat reasonable. Id. Thus,
7 what the alleged victim subjectively knew is at issue. The alleged victim asserts that the
8 defendant previously assaulted her in the United States and a couple of times while they
9 lived in Eritrea. However, she never reported these incidents to the police only alleges she
10 told family members of the alleged assaults then subsequently moved to America with Mr.
11 Yohannes. The defense contends that the alleged victim's action of moving to America to
12 live with Mr. Yohannes proves her subject belief that she did not believe any alleged
13 threats she now asserts occurred. Additionally, the defendant's criminal history consists of
14 two misdemeanors, reckless driving and minor in possession. Therefore, the defense
15 respectfully requests a ruling pursuant to 404(b) prohibiting testimony regarding alleged
16 prior acts of misconduct by the defendant. The defense does not see any exception to such
17 404(b) evidence in the form of motive, intent, common plan or scheme, identity or any
18 other applicable exception.

19 Moreover, the alleged prior assaults are not relevant to the current issue and will
20 only serve to emotionally influence the jury and even if the Court determines such is
21 relevant, it should be excluded under ER 403 as being highly prejudicial and less probative
22 of the current charges.

23 C. Hearsay.

24 The defense anticipates that the State will attempt to offer many self serving
25 statements of the alleged victim as told to police officers and offered in the incident reports
26 of those interviewing officers. It is the defense belief that the alleged victim may be

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1325 Fourth Ave., Suite 1500
Seattle, WA 98101

1 unavailable for trial, which raises another issue that will subsequently be addressed. If
2 such statements are offered the defense respectfully requests a ruling prohibiting such on
3 the basis of hearsay. Many of the statements anticipated to be offered are in fact double
4 hearsay. Such statements include, but are not limited to, (1) assertions of child abuse, (2)
5 involvement of CPS, (3) past allegations of DV, (4) assertions of NCO's, (5) assertions of
6 Mr. Yohannes' inability to live at their shared residence, (6) assertions of his intoxication,
7 (7) statements of him possibly beating her and (8) assertions of what allegedly occurred in
8 the presence case. All of these statements are offered for the specific purpose to prove the
9 matter asserted, i.e., that Mr. Yohannes raped and assaulted the alleged victim and do not
10 fall within any recognizable hearsay exception and should therefore be excluded.

11 **D. Confrontation Clause.**

12 To the extent that this Court believes some or any of the aforementioned statements
13 due fall within a hearsay exception, such should still be excluded on the basis of the 6th
14 Amendment Right to Confrontation. Out of court statements which are testimonial in
15 nature are inadmissible where the defendant did not have an opportunity to cross-examine
16 the declarant. Crawford v. Washington, 124 S.Ct. 1354 (2004). Statements made during
17 police interviews are always held to be testimonial. Id. The defense recognizing the
18 current trend of Washington Courts to narrowly construe statements that are testimonial in
19 nature based on the declarant's state of mind and whether some exception exists. In the
20 present case, the majority of the statements do not fall within an exception and all the
21 statements should be considered testimonial in nature because not only has the alleged
22 victim made allegations before and not made herself available for trial but in many
23 instances the officers so much as told her the statements would be testimonial in nature by
24 telling the alleged victim such things as, "we know there have been other instances tell us
25 about those." The defense also respectfully cautions the Court to not forget the two prong
26 test from Ohio v. Roberts, 448 U.S. 56, 100 S.Ct. 2531 (1980). Even if the statement

1 appears to be non-testimonial in nature it must still bear some "indicia of reliability." Id.
2 In the present case, many of the statements made by the alleged victim should fail that test
3 because of direct contradictions within a short time period of the original statement.

4 ~~E.~~ **Failure to Produce.** *Withdrawn*

5 On or about October 10, 2008, law enforcement officials, specifically, officer
6 Andrew Wilkes, took photographs of the alleged crime scene and of the alleged victim's
7 injuries. My office filed a Notice of Appearance on or about October 28, 2008. The
8 Notice of Appearance specifically asked for any photographic evidence to be used at trial.
9 On or about November 12, 2008, my office again asked for discovery that had not been
10 provided by the State. Finally, during the Omnibus Hearing on or about January 15, 2009,
11 I again, this time on the record, made it clear that the defense had not receive photos of the
12 alleged injuries, of the alleged crime scene and have not been granted an interview of the
13 alleged victim. While the State addressed the unavailability of the alleged victim, the State
14 asserted that the other discovery would be provided. To date I have not been provide this
15 evidence. As a result, the defense has been substantially prejudiced in its ability to prepare
16 and respectfully requests under CrR 4.7(a)(1) that any such evidence be ruled inadmissible
17 or in the alternative the defense be granted sufficient time to adequately prepare.

18 ~~E.~~ **Motion to Exclude Witnesses** *Granted*

19 Pursuant to ER 15, the defense moves for an order excluding witnesses from trial so
20 that they cannot hear the testimony of other witnesses. The defense anticipates the state
21 will move to have one officer present as representatives of the state. In the event the state
22 so moves, the defense requests that this representative be required to testify prior to other
23 state's witnesses to prevent that witness from being able to construct his or her testimony
24 after hearing other witnesses testify. Although there is no case law supporting this motion,
25 it is in line with the spirit of ER 615 and certainly within the court's discretion.

1 **G. Motions in Limine**

2 The defense requests a pre-trial ruling on the following motions:

use names as much as possible

3 ~~1.~~ Exclude the use of the word victim pursuant to ER 401 and 403.

deny

4 ~~2.~~ Exclude any mention that there is a victim's advocate on this case pursuant to
5 ER 401 and 403, unless the advocate intends to testify. *Granted*

6 3. Motion to bar law enforcement officers from testifying in front of the jury to
7 any hearsay they received from a 911 call, radio dispatch, other officers or the mobile
8 terminal display (MDT) computers located in their vehicles- ER 802, State v. Aaron, 57
9 Wn.App. 277, 280; 787 P.2d 949 (1990); (hearsay of police dispatcher irrelevant to show
10 officer's state of mind, as that was not in issue at trial for second degree burglary), State v.
11 Olin Edwards, 2006 Wash. App. Lexis 195 (2006); (detective's testimony that informant
12 told him defendant was buying cocaine was hearsay, and states proffered explanation-that it
13 was relevant to show context of investigation-was not in controversy and thus not relevant.)

14 ~~4.~~ Motion to bar the prosecution from referring to the defendant as "the
15 defendant" in front of the jury pursuant to ER 401 and 403. *denied*

16 **VI. CONCLUSION**

17 This memorandum has been prepared solely to acquaint the Trial Court with the
18 issues as they will be presented at trial.

19
20 Dated this 20th day of January 2009.

21
22 LAW OFFICES OF ALFOSTER GARRETT, JR.

23 
24 _____
25 Alfoster Garrett, Jr. WSBA No. 31044
26 Attorney for Defendant

Law Offices of Alfoster Garrett, Jr.

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Sentencing Hearing

(RP 1 through 28.)

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SUPERIOR COURT OF KING COUNTY, WASHINGTON

STATE OF WASHINGTON,)	Case No. 08-1-12175-1 SEA
	)	COA NO. 63444-5-1
Plaintiff,)	
)	
v.	)	April 10, 2009
	)	10:06 a.m.
AZAZI YOHANNES,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS, taken before the
HONORABLE MICHAEL J. FOX at the King County Courthouse.

APPEARANCES

FOR THE PLAINTIFF:

Risa Dee Woo
King County Prosecutor's Office
King County Courthouse
516 Third Avenue, Room W-554
Seattle, Washington 98104

FOR THE DEFENDANT:

Alfoster Garrett, Jr.
Law Office of Alfoster Garrett Jr.
1325 4th Avenue, Suite 1500
Seattle, Washington 98101-2546

STEPHEN W. BROSCHEID
OFFICIAL COURT REPORTER
KING COUNTY COURTHOUSE
SEATTLE, WASHINGTON

1 (On April 10, 2009 at 10:06 a.m., with
2 counsel for the parties present, the defendant
3 being present, the following proceedings were
4 had:)

5 THE COURT: Please be seated.

6 MS. WOO: State versus Azazi Yohannes,
7 08-1-12175-1 SEA. The defendant is present in
8 custody, represented by Mr. Garrett. I'm Risa Woo
9 on behalf of the State. We're here for
10 sentencing. I understand that Mr. Garrett is
11 requesting a continuance. I'll defer to him.

12 THE COURT: All right.

13 MR. GARRETT: Yes, Your Honor. For the
14 record, Alfoster Garrett on behalf of
15 Mr. Yohannes.

16 That's correct. The defense is
17 requesting a continuance. The basis for that
18 continuance is -- as you know, we were here
19 previously. We had wanted to obtain phone records
20 during the trial. It was defense counsel that had
21 learned there was an alternate phone that may have
22 been used at that time. During the trial I did
23 not know anything about it. I requested those
24 records on March 30th after the sentencing.

25 THE COURT: We haven't had a sentencing.

1 MR. GARRETT: Excuse me. After the last
2 motion hearing. Pardon me. I didn't mean to say
3 "sentencing."

4 I got a response from Mrs. Woo on April
5 6, which I didn't receive until April 7 because I
6 was out of town. She didn't say what phones had
7 been provided, but she did give me the name of the
8 persons that may have provided those phones, so
9 I'm in the process of obtaining those -- to get
10 those records. And the other thing is that the
11 transcript is not complete at this time.

12 THE COURT: Transcript of what?

13 MR. GARRETT: Of the trial.

14 THE COURT: Why would we need the
15 transcript of the trial?

16 MR. GARRETT: Before I go on with
17 sentencing, I want to revisit the issue of the
18 request for new trial based upon what I believe to
19 be the language that was used.

20 THE COURT: I've ruled on that.

21 MR. GARRETT: I understand, Your Honor.

22 THE COURT: Let me hear from the State
23 about the State's position about a continuance.

24 MS. WOO: Your Honor, the State is
25 objecting to any continuance at this time. One,

1 with regard to the transcript issue, the Court has
2 already ruled on it, and I don't see what
3 materiality any phone records that counsel is now
4 seeking to obtain would have. It wouldn't serve
5 as a basis for a motion for new trial. This
6 wouldn't be considered newly discovered evidence
7 that Mr. Foster couldn't have obtained in
8 preparation for the trial. So I'm objecting to
9 any continuance at this time.

10 THE COURT: Anything more that you
11 wanted to say?

12 MR. GARRETT: Yes, Your Honor. It would
13 be considered newly discovered evidence. My
14 client didn't know of the other phone. She
15 received this phone, according to her, from the
16 prosecutor's office. He only knew about the phone
17 that was allegedly broken and disconnected.

18 THE COURT: All right. I'm going to
19 deny the motion for a continuance. This matter
20 was tried some time ago; there was a motion for
21 new trial, and the motion was denied. This county
22 is in a financial crisis, and having defendants
23 stay in the county jail for extended periods of
24 time when there's no reason not to proceed with
25 sentencing puts a financial burden on this county.

1 But the fact that we wind up sentencing
2 him does not in any way take away his rights to
3 file any appropriate post trial motions. And that
4 can still be done. And his presence here in the
5 county jail is not crucial for that. So I don't
6 think we are denying any procedural rights to the
7 defendant by proceeding with sentencing today. In
8 any event, he would be remaining in custody, and
9 he would be remaining in custody in the county
10 jail, which is a far inferior facility to those
11 available through the State DOC. So we'll proceed
12 to sentencing today. I'll hear the recommendation
13 of the State and then hear from the defense.

14 MS. WOO: Thank you, Your Honor.
15 Mr. Yohannes was convicted at trial on March 2nd
16 of 2009 of rape in the second degree, domestic
17 violence. He has an offender score of zero. Rape
18 in the second degree carries a seriousness level
19 of 11. The standard range sentencing is 78 to 102
20 months. It is an indeterminate term, making it
21 life in prison and/or a \$50,000 fine.

22 The State's recommendation is for the
23 high end of 102 months in custody with community
24 custody. That the defendant obtain a sexual
25 deviancy evaluation and follow treatment, a

1 substance abuse evaluation and follow treatment;
2 obtain an evaluation for domestic violence
3 batterers treatment, make progress in, and
4 successfully complete that program. It is
5 requested that the defendant have no contact with
6 Lia Araya, and also the defendant's son, the
7 defendant pay restitution in an amount to be
8 determined, court costs, the victim penalty
9 assessment and the DNA collection fee.

10 I know that this Court is familiar with
11 the facts of this case, having sat through the
12 trial, and knows that the defendant committed this
13 ultimate act of betrayal in a violent and most
14 demeaning manner.

15 Ms. Araya came to Seattle with her
16 husband in hopes of a better life, and she put her
17 trust in the defendant, and the defendant trounced
18 that. But, thankfully, her spirit was not
19 completely broken.

20 There is a history of violence, both
21 reported and unreported, by the defendant against
22 Ms. Araya. In the past she has felt so pressured
23 by the defendant and his family to not cooperate,
24 not to call the police, not to testify, that she
25 could not bring herself on several occasions to

1 call the police or testify against the defendant,
2 a man that she loved and shared a child with and
3 who she thought loved her.

4 THE COURT: Let me ask you this question
5 about this indeterminate sentencing procedure.

6 Rape in the second degree with no prior offenses
7 must come under this indeterminate sentencing --

8 MS. WOO: Yes.

9 THE COURT: -- situation. The Court has
10 no discretion there?

11 MS. WOO: No, Your Honor.

12 THE COURT: The Court has discretion as
13 to what the minimum term is?

14 MS. WOO: Correct.

15 THE COURT: Thank you.

16 MS. WOO: Thankfully, since this time,
17 Ms. Araya was able to stand up for herself, to
18 find the courage to testify that she was raped
19 while she was unconscious, knocked unconscious by
20 the defendant.

21 Your Honor, since the trial has
22 concluded, Ms. Araya hasn't found peace. She has
23 been constantly harassed by members of the
24 defendant's family and the community, encouraging
25 her to report to the authorities that she lied,

1 that she made this all up.

2 THE COURT: She doesn't live here
3 anymore, does she?

4 MS. WOO: They have been reaching her by
5 telephone.

6 THE COURT: Okay.

7 MS. WOO: And she should report to the
8 authorities and myself that this was all a lie and
9 do anything she could to get the defendant out of
10 jail.

11 Nothing less than the high end of 102
12 months could account for the trauma and pain that
13 the defendant has inflicted --

14 THE COURT: How does this indeterminate
15 sentence work? Frankly, I remember when this law
16 was passed and these matters come before us, but
17 how is the term actually set? Is it like a parole
18 board?

19 MS. WOO: Yes.

20 THE COURT: When does the hearing take
21 place?

22 MS. WOO: At the time of the minimum
23 sentence that the Court sentences the defendant.

24 THE COURT: Then they decide whether or
25 not any further confinement is warranted?

1 MS. WOO: Yes.

2 THE COURT: They base that decision, I
3 presume, on not only the offense itself, but the
4 conduct while in the institution and matters such
5 as that?

6 MS. WOO: I believe that's correct.

7 THE COURT: All right. Anything else?

8 MS. WOO: No, Your Honor. That
9 concludes the State's recommendation.

10 THE COURT: All right. Mr. Garrett.

11 MR. GARRETT: Yes, Your Honor. I want
12 to first apologize. I didn't prepare a
13 presentence memorandum because I was relying on
14 the ability to obtain the continuance.

15 I want to respectfully disagree with the
16 Court in this one regard, that it will -- if he is
17 sentenced and he is shipped to Monroe or wherever,
18 it will affect my ability to assist him because I
19 will have hampered communication with him at that
20 point. That's the -- that's a very integral part
21 of my continuing to assist him. With that stated,
22 I will do my best to address the issues presented
23 by the State at this time.

24 The first is I would like the time to
25 address this issue of whether or not the rape in

1 the second degree is -- must come under this
2 indeterminate sentencing guideline. I don't know
3 that offhand. I want to go back and be able to
4 provide that to the Supreme Court, and I will
5 respectfully request that the Court reserve ruling
6 on that issue until such time as the Court sets
7 and gives me the opportunity to review that
8 statute.

9 With that stated, the Court is familiar
10 with this case, as counsel has said, knows the
11 facts of this case. Before I go into the facts of
12 the case, I want to say that I completely object
13 to a no-contact order with his son. There's no
14 history, no issues with his son; the son was not a
15 complainant in this case. He wasn't being charged
16 with any abuse or anything with his son. I think
17 to tell the -- Mr. Yohannes that he could not, as
18 a result of this criminal conviction with his
19 wife, no longer in the future see his son, I think
20 is an abuse of not only the Court's power at this
21 point in time, but his constitutional rights to
22 raise his child.

23 I don't think Mr. Yohannes will object
24 to the no contact order with Lia Yosief Araya. As
25 Your Honor knows the facts --

1 THE COURT: As a practical matter, since
2 the mother is the legal guardian of the child and
3 she is the one who is going to have -- the child
4 is basically an infant, right?

5 MR. GARRETT: Correct.

6 THE COURT: As a practical matter, the
7 mother will have control about whether there's
8 going to be any communication between the father
9 and the son in any case.

10 MR. GARRETT: That's correct. But this
11 happens all the time in domestic relations cases.
12 There can be a no-contact period between mother
13 and father, but a third party arrange for
14 visitation with the father.

15 THE COURT: That's in domestic violence
16 situations. Here the father will be confined in a
17 prison.

18 MR. GARRETT: I understand that.
19 Depending on the terms Your Honor sets, the child
20 will be old enough to talk with his father. If
21 you sign a no-contact order preventing him from
22 doing that, that limits his ability to communicate
23 with his son.

24 THE COURT: All right. Thank you.

25 MR. GARRETT: As I was saying, the Court

1 understands the facts of this case and has heard
2 them. Responding specifically to the first issue,
3 which is
4 the -- since this trial there has been some
5 alleged contact with Ms. Lia Yosief Araya,
6 harassing her and telling to change her --

7 THE COURT: I'm not concerned about what
8 people outside of the defendant have done. It's
9 not a factor for me in what the penalty should be
10 that's imposed on Mr. Yohannes.

11 MR. GARRETT: Thank you, Your Honor.
12 But there are people here that I think will want
13 to address those issues and have sincere interest
14 in Mr. Yohannes, and I'll let the Court deal with
15 that at the time.

16 The other issue I wanted to address, he
17 has a zero offender score, zero; no history of
18 violence between him and Ms. Lia Yosief Araya that
19 is before this Court at all. I take great
20 exception to the statement that there was
21 unreported incidents of violence. Ms. Yosief
22 Araya is in Ohio now. If she felt it necessary,
23 she could have been here. If necessary, she could
24 have provided the Court with a letter. The fact
25 that she didn't do that is tantamount -- speaks

1 volumes to the fact that the allegations now
2 espoused by counsel are not -- are untrustworthy.
3 Put it that way.

4 I don't think that this case warrants
5 anything other than the low end of the sentencing
6 range based on the fact -- as I indicated
7 previously, he has a zero offender score. The
8 facts in this case were highly questionable, at
9 best. Your Honor understands and knows during the
10 trial evidence came out that was unbeknownst to me
11 and unbeknownst to Mr. Yohannes, and that is the
12 issue of the phone calls.

13 I'm in the process of getting those
14 phone calls, and I'll put on the record that we
15 will very well know if those phone records state
16 there were phone calls made by Ms. Lia during the
17 time in which she asserts she was knocked out, and
18 I will be providing the Court with a motion for
19 new trial and to dismiss the guilty conviction.

20 Without looking into the issue of the --
21 whether or not the Court has discretion to address
22 whether or not this has to come under this
23 indeterminate sentence - I can't speak to that -
24 but again, I renew the request to be able to
25 provide that evidence, if any exists, to the Court

1 at a later date.

2 THE COURT: All right. Thank you.

3 Mr. Yohannes, is there anything that you
4 would like to say? You have the right to bring up
5 anything you would like to have considered, but
6 you are under no obligation whatsoever to speak.
7 Is there anything you would like to say?

8 THE DEFENDANT: Yeah, I do. It's the
9 phone records, Your Honor. We have been trying to
10 get the phone records from Ms. Lisa Woo. And from
11 my understanding that's how you normally contact a
12 person is through their telephone number. She
13 still hasn't gave that to my lawyer.

14 During that whole time, during the whole
15 morning, this never happened. She was on her
16 phone talking to her sisters that whole morning,
17 she was talking to her sisters. When I got
18 arrested, I was with my son. I couldn't leave
19 because she took my car keys away from me, as I
20 stated during the trial. Even being found guilty,
21 I didn't have nothing to do with that.

22 THE COURT: All right.

23 THE DEFENDANT: I don't know how they
24 found me guilty. If you can -- I understand you
25 didn't give us a motion for continuance, but we

1 should be getting these phone records in the next
2 couple days and that will prove that she actually
3 lied because she was on her phone that she got
4 from the State.

5 THE COURT: All right. Thank you.

6 THE DEFENDANT: Thank you.

7 MR. GARRETT: Your Honor, there were
8 several people that wanted to address the Court.
9 I don't know how you want to deal with that.

10 THE COURT: Well, if they want to speak,
11 I'll hear from them.

12 MR. GARRETT: First there is Mr. --

13 THE COURT: Let me just say that I don't
14 want to hear anything about a new trial. I've
15 denied that motion. If anybody wants to say
16 something pertinent to the sentencing, I will
17 welcome hearing that.

18 MR. GARRETT: I will say this openly in
19 court: I gave Mr. Hagos, his father, instructions
20 to talk about the -- about Mr. Yohannes, his
21 character and things of that nature when they
22 address the Court, not the actual case.

23 THE COURT: Thank you.

24 MR. HOGOS: Good morning. My name is
25 Yohanes, Y-O-H-A-N-E-S, is my first name; last

1 name H-O-G-O-S. I'm the father of Azazi Yohannes.

2 On Friday, October 10, in the morning,
3 10:15, Azazi called me about some disturbance
4 about his wife and himself. I told him, "Get out
5 from the house. Don't stay there."

6 He said, "I couldn't get out."

7 After a few minutes, I get a call from
8 Lia, Lia Yosief. She called me and she said, "We
9 don't have any problem, but we have a problem. I
10 slap his face while he was sleeping. I hit him
11 with a cup of tea, but now we are doing okay. You
12 don't need to come." I was late. By 2:00 already
13 he was arrested and left. The telephone call is
14 very crucial to this case.

15 THE COURT: This is exactly the type of
16 material, Mr. Hogos, with all due respect, I
17 indicated I don't want to hear. If you want to
18 tell me about your son, that's fine. But please
19 listen to me. I don't want to hear anything about
20 the facts of the case, why the telephone records
21 should be produced, why there should be a new
22 trial.

23 What we are to deal with right now is
24 sentencing. And I'm eager to hear anything you
25 can tell me about your son that would be pertinent

1 to sentencing. I know you are the father of this
2 man. I'll say this with all respect, but now is
3 not the time to talk about whether a new trial
4 should be granted. I have denied that. What's
5 before me right now is a decision about
6 sentencing. So I want to know about him, not
7 about what occurred and what your phone calls were
8 on the morning of this event on October 10.

9 MR. HOGOS: Okay. I raise my son when
10 he was young in Catholic school. He's Catholic.
11 Some people indicated, he is a Muslim; he's not.
12 He came as refugee to the United States. He was
13 raised here in the United States. In 16 months
14 old, he was in the United States. And we didn't
15 have any -- we didn't have domestic violence or
16 bad behavior. I am a witness for that myself. He
17 went back to Eritrea. He married this woman and
18 had a son. There was no domestic violence with
19 them, no problem with them.

20 That's all I can say.

21 THE COURT: Thank you, sir.

22 MR. GARRETT: His mother.

23 THE COURT: Good morning.

24 MS. KIDANE: My name Abrehet Kidane.

25 THE COURT: Let me ask the correctional

1 officers: Is it okay if she stands between
2 Ms. Woo and Mr. Garrett? It would be easier for
3 me to hear and also the court.

4 CORRECTIONAL OFFICER: Yes, Your Honor.

5 THE COURT: Go ahead, ma'am. Thank you.

6 MS. KIDANE: Azazi was born and raised
7 with great love, surrounded not only by mother,
8 father, and older brother, but by a refugee
9 community that instilled the old country village.
10 As a refugee family in a new culture here in
11 America, we raised our kids to value life,
12 liberty, respect for people, and strive for
13 greatness.

14 Today I am sad to find myself in this
15 position. I'm greatly saddened and alarmed, the
16 family with a little boy disintegrate. I'm sorry
17 for my daughter-in-law and for my grandson. But I
18 also know my son Azazi is full of love and
19 compassion. However misguided he might have been,
20 he is not made of criminal fabric. I know that if
21 given an opportunity, he would have been a great
22 asset and productive part of society.

23 Your Honor, please consider my personal
24 plea as a mother to give Azazi minimum possible
25 sentence. Thank you.

1 THE COURT: Thank you.

2 MR. GARRETT: Thank you, Your Honor.

3 THE COURT: Mr. Garrett?

4 MR. GARRETT: There is one last person.
5 He is Berhe Desta, he is the leader of their
6 religious community.

7 MR. DESTA: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. DESTA: My name is Berhe Desta. I'm
10 one of the pioneers of the Eritrean community
11 here. I have been here for 35 years. When these
12 people came about 25 years ago, roughly, I met
13 them and have been always in contact with them.
14 So I have known Azazi for all those years. He has
15 been the last two years to my house just visiting,
16 seeking solace for a couple years. So we have
17 known this guy and have never seen any bad
18 negative things about him. I saw him as jovial,
19 very happy, very friendly and respectful. So
20 that's all I know about him.

21 Like I say, I was always involved with
22 the community. Having been here as one of the
23 elderly, I was in contact, making sure that we
24 have a healthy and productive community. All the
25 community is together. So I have always been a

1 board member of that.

2 THE COURT: Thank you.

3 THE WITNESS: Thank you.

4 THE COURT: All right.

5 In 2001, the State legislature made
6 active this indeterminate sentencing law, and my
7 understanding is, I don't I have any authority
8 which applies to this case, which is a rape in the
9 second degree domestic violence case. The effect
10 of this law is to remove some degree of discretion
11 from the sentencing court as to the actual time
12 spent in custody, and it mandates, rather, that
13 the Court -- the Court's only discretion is to set
14 a minimum term, at which time the indeterminate
15 sentence board could then consider release of the
16 defendant's sentence under this act.

17 Now, I think in these circumstances,
18 it's appropriate to impose the bottom of the
19 standard range as the minimum term, and so I will
20 impose 78 months as the minimum term and life as
21 the maximum term, and the board may take up the
22 sentencing of Mr. Yohannes at that time.

23 The state legislature apparently has
24 decided that the judgment of an indeterminate
25 review board is superior to that of the superior

1 court which handled the case, and I think that
2 they are entitled to have the courts act in
3 deference to that.

4 So with this particular case, I don't
5 think there's anything that in my mind would
6 indicate that any other result is mandated.

7 Now, with regard to the proposed
8 no-contact order with the child, I am not going to
9 order that, a no-contact order with the child. I
10 think that it is up to the mother who will be the
11 legal guardian of the child -- and she is living
12 in another state and the child is living in
13 another state -- to decide on her own whether or
14 not contact with the father is appropriate. She
15 is the one who is going to be able to make that
16 decision, and she will be able to make that based
17 on her judgment as to the best interests of the
18 child. So I see no reason for the Court to
19 interfere with her exercise of her best judgment.

20 I will impose a requirement of a
21 substance abuse evaluation upon release from jail.
22 There's no question in my mind, given the
23 testimony in this case, that the defendant does
24 have a substance abuse problem. The testimony
25 basically was that he returned home drunk, that

1 this was a pattern of consistent behavior on his
2 part, and I find that alcohol was a substantial
3 factor in the commission of this crime, and I
4 think a substance abuse evaluation is appropriate.

5 I also will require domestic violence
6 and batterers treatment upon release and
7 satisfactory progress in that. I am not going to
8 require a sexual deviancy evaluation. There's
9 nothing in the facts here that indicates deviancy,
10 unless one is to decide that all cases involving
11 marital rape involve deviancy. There's no
12 indication here that this was caused by anything
13 other than alcohol and anger, and the abuse -- the
14 substance abuse evaluation and the domestic
15 violence evaluation that I am imposing are the
16 appropriate mechanisms to address that particular
17 underlying problem. And I would say that in my
18 experience, the involvement of substance abuse in
19 some sexual assaults is very frequent and is the
20 primary matter that should be addressed.

21 I will sign a no-contact order with Lia
22 Araya, and I will impose the victim penalty
23 assessment and the DNA testing fee. I'm going to
24 waive all nonmandatory costs and financial
25 penalties as I don't think there's any indication

1 Mr. Yohannes of his rights on appeal. This has to
2 be done on the record.

3 Mr. Yohannes, I know -- I'm going to
4 read this to you, and I'm going to summarize it in
5 plain English and then ask you if you understand
6 it. And if you have any -- if you don't
7 understand it, please feel free to take some time
8 and talk to Mr. Garrett.

9 First of all, you do have a right to
10 appeal your conviction. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: And the notice of appeal
13 must be filed within 30 days from today's date,
14 and this is the date we are entering judgment. Do
15 you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. The superior court
18 clerk will, if requested by you, supply you with a
19 notice of appeal and file it upon its completion.
20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: If you cannot afford it, you
23 do have the right to have counsel appointed for
24 you for an appeal and have any portions of the
25 trial record prepared at public expense for review

1 that the defendant is going to have the financial
2 resources to meet any of these other costs.

3 This is a mandatory sex offender
4 registration matter, and he shall so register upon
5 release. I'll also sign all of the other
6 applicable mandatory felony conditions including
7 firearm, voting, and the others.

8 That would constitute the sentence
9 imposed by the Court and I will sign a written
10 Judgment and Sentence and related casework
11 consistent with that.

12 MS. WOO: Your Honor, I don't know if
13 there's a request for restitution, but I would ask
14 that --

15 THE COURT: The State may move for
16 restitution within a statutory period which would
17 be six months from today.

18 MR. GARRETT: I'm not going to waive
19 Mr. Yohannes' presence at such. I'd like to be
20 notified.

21 THE COURT: All right. Fine. He would
22 have the right to be transported to any such
23 hearing.

24 MR. GARRETT: Thank you.

25 THE COURT: Now, I am going to advise

1 of any possible errors at the trial level. Do you
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Now, as well as your
5 rights on appeal, which, again, have to be
6 asserted within 30 days, you also have a right to
7 another way in which to challenge your confinement
8 which is called a "petition for collateral
9 attack." And the law basically provides that you
10 have a right to file that type of petition within
11 one year after today's date.

12 Now, in certain circumstances, the
13 courts -- the supreme court has approved
14 individuals filing such petitions more than a year
15 after today's date, and there are a lot of
16 different reasons why they allow that.

17 But I'm just asking if you have the
18 understanding that you do also have this way to
19 challenge your confinement through a petition for
20 collateral attack. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. All right. I'll --

23 Do you have a copy of this form,
24 Mr. Garrett, down there?

25 MR. GARRETT: I have a copy.

1 COURT CLERK: He has already signed it.

2 THE COURT: All right.

3 MR. GARRETT: I wanted to ask -- I'll
4 let you finish. I have a question.

5 THE COURT: Go ahead.

6 MR. GARRETT: Can you clarify for me
7 what was the time you put on the no-contact order
8 with Lia?

9 THE COURT: It's lifetime.

10 MR. GARRETT: Okay. Last thing, Your
11 Honor, my understanding of your ruling was he was
12 to do a DV evaluation. Did you order that he was
13 to begin a program or just get the evaluation and
14 follow any recommended treatment?

15 THE COURT: He is to get an evaluation
16 and to follow and complete any recommended
17 treatment.

18 MR. GARRETT: Okay. That's what I
19 thought.

20 MS. WOO: What I've indicated, Your
21 Honor, is him trying to make reasonable progress
22 and enter and successfully complete a
23 state-certified domestic violence batterers --

24 THE COURT: That's not what I ordered.
25 I ordered that he get an evaluation. This was the

1 recommendation contained in the State's
2 recommendation is to get an evaluation and to
3 follow any recommended treatment. If he gets an
4 evaluation, and they don't recommend any
5 treatment, then there's no reason why he should do
6 it.

7 MS. WOO: Obtain an evaluation from a
8 state-certified domestic violence program.

9 THE COURT: Yes.

10 Let me say I'm in error. The State
11 recommended domestic violence batterers treatment
12 and at a state-certified agency, but I'm --
13 nonetheless, I'm going to order an evaluation and
14 then obtain a substance abuse recommendation and
15 the sexual deviancy evaluation. And, again, it's
16 a much better way of handling this. Mr. Yohannes
17 may be a much different man in six years, and he
18 should have the opportunity to a current
19 evaluation of him, then follow the
20 recommendations.

21 MS. WOO: For the record, I'm providing
22 Mr. Yohannes, through his attorney, with a copy of
23 his notice of ineligibility to possess a firearm
24 and loss of right to vote, notification of
25 registration requirements, and the no-contact

1 order protecting Lia Araya.

2 THE COURT: I've signed the judgment and
3 sentence, and I believe all of the other forms.
4 Is there anything further?

5 MS. WOO: No, Your Honor.

6 THE COURT: We'll be adjourned.

7 (10:44 a.m., end of proceedings)

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Judgment and Sentence

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	)	No. 08-1-12175-1 SEA
Plaintiff,)	
)	
Vs.	)	JUDGMENT AND SENTENCE
	)	FELONY (FJS)
AZAZI YOHANNES)	
)	
Defendant,)	

I. HEARING

I.1 The defendant, the defendant's lawyer, ALFOSTER GARRETT, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: abrunet kidane, yohannes Hagos, Destay Berhe, syndee gntftr-victim advocate

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 03/02/2009 by jury verdict of:

Count No.: I Crime: RAPE IN THE SECOND DEGREE - DOMESTIC VIOLENCE
 RCW 9A.44.050 (1) (a) Crime Code: 00745
 Date of Crime: 10/10/2008 Incident No. _____

Count No.: _____ Crime: _____
 RCW _____ Crime Code: _____
 Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
 RCW _____ Crime Code: _____
 Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____
 RCW _____ Crime Code: _____
 Date of Crime: _____ Incident No. _____

[] Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
- (b) While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.510(4).
- (c) With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A. offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
- (e) **Vehicular homicide** Violent traffic offense DUI Reckless Disregard.
- (f) **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) **Domestic violence** offense as defined in RCW 10.99.020 for count(s) I.
- (i) Current offenses **encompassing the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).

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

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

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

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	0	XI	78 TO 102 MONTHS	<i>Ø</i>	78 TO 102 MONTHS	LIFE AND/OR \$50,000
Count						
Count						
Count						

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

2.5 **EXCEPTIONAL SENTENCE (RCW 9.94A.535):**

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D**. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.

The Court **DISMISSES** Count(s) _____

IV. ORDER

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

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
- Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
- Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 Date to be set.
- Defendant waives presence at future restitution hearing(s).
- Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

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

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee (RCW 43.43.754)(mandatory for crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs;
 Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA;
 VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived;
(RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____

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

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

4.4 The defendant, having been convicted of a **FELONY SEX OFFENSE**, is sentenced to the following:

(a) **DETERMINATE SENTENCE** : Defendant is sentenced to a term of confinement in the custody of the
 King County Jail King County Work/Education Release (subject to conditions of conduct ordered
this date) Department of Corrections, as follows, commencing: immediately;
 Date: _____ by _____ a.m. / p.m.

_____ months/days on count _____; _____ months/days on count _____; _____ months/days on count _____;
_____ months/days on count _____; _____ months/days on count _____; _____ months/days on count _____;
_____ months/days on count _____; _____ months/days on count _____; _____ months/days on count _____.

ALTERNATIVE CONVERSION - RCW 9.94A.680 (LESS THAN ONE YEAR ONLY):

_____ days of total confinement are hereby converted to:

- _____ days of partial confinement to be served subject to the requirements of the King County Jail.
 _____ days/hours community restitution under the supervision of the Department of Corrections to
be completed as follows:
 on a schedule established by the defendant's Community Corrections Officer;

Alternative conversion was not used because: Defendant's criminal history, Defendant's
failure to appear, Other: _____

**COMMUNITY CUSTODY for FAILURE TO REGISTER AS A SEX OFFENDER under RCW
9A.44.130(11)(a) committed on or after 6-7-2006 as to Counts _____ (regardless of length of
confinement) is ordered pursuant to RCW 9.94A.545(2) and RCW 9.94A.715 for the range of 36 to 48
months.**

**FOR CONFINEMENT LESS THAN ONE YEAR (except for Failure to Register as a Sex
Offender under RCW 9A.44.130(11)(a) committed on or after 6-7-06) as to Counts _____:
COMMUNITY SUPERVISION, for crimes committed before 7-1-2000, CUSTODY, for
crimes committed on or after 7-1-2000, is ordered pursuant to RCW 9.94A.545 for a period of 12 months.
The defendant shall report to the Department of Corrections within 72 hours of this date or of his/her
release if now in custody; shall comply with all the rules, regulations and conditions of the Department for
supervision of offenders (RCW 9.94A.720); shall comply with all affirmative acts required to monitor
compliance; and shall otherwise comply with terms set forth in this sentence.**

APPENDIX _____: Additional Conditions are attached and incorporated herein.

**COMMUNITY PLACEMENT (CONFINEMENT OVER ONE YEAR) as to Counts _____:
pursuant to RCW 9.94A.700, for qualifying crimes committed before 6-6-1996, is ordered for
_____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728,
whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or
sex offense prior to 7-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW
69.50/52, any crime against person defined in RCW 9.94A.440 not otherwise described above.]**

APPENDIX H, Community Placement conditions, is attached and incorporated herein.

**COMMUNITY CUSTODY (CONFINEMENT OVER ONE YEAR) as to Counts _____:
pursuant to RCW 9.94A.710 for any SEX OFFENSE committed on or after 6-6-1996 but before 7-1-
2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW
9.94A.728 whichever is longer.**

APPENDIX H, Community Custody conditions, is attached and incorporated herein.

COMMUNITY CUSTODY (CONFINEMENT OVER ONE YEAR) as to Counts _____: pursuant to RCW 9.94A.715 for qualifying crimes (non RCW 9.94A.712 offenses) committed after 6-30-2000 is ordered for the following established range:

- Sex Offense, RCW 9.94A.030(38): 36 to 48 months
- Serious Violent Offense, RCW 9.94A.030(37): 24 to 48 months
- Violent Offense, RCW 9.94A.030(45): 18 to 36 months
- Crime Against Person, RCW 9.94A.411: 9 to 18 months
- Felony Violation of RCW 69.50/52: 9 to 12 months

or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.

APPENDIX H, Community Custody conditions, is attached and incorporated herein.

(b) INDETERMINATE SENTENCE – QUALIFYING SEX OFFENSES occurring after 9-1-2001:

The Court having found that the defendant is subject to sentencing under RCW 9.94A.712, the defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; (Date): _____ by _____ .m.

Count I: Minimum Term: 70 months/days; Maximum Term: _____ years/life:

Count _____: Minimum Term: _____ months/days; Maximum Term: _____ years/life;

Count _____: Minimum Term: _____ months/days; Maximum Term: _____ years/life;

Count _____: Minimum Term: _____ months/days; Maximum Term: _____ years/life.

COMMUNITY CUSTODY: pursuant to RCW 9.94A.712 for qualifying **SEX OFFENSES** committed on or after September 1, 2001, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence as set forth above. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.713, 9.94A.737.

APPENDIX H: Community Custody conditions are attached and incorporated herein.

4.5 ADDITIONAL CONDITIONS OF SENTENCE

The above terms for counts _____ are consecutive / concurrent.

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

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

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

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (For crimes committed after 6-10-1998.)

The enhancement term(s) for any special **WEAPON** findings in section 2.1 is/are included within the term(s) imposed above. (For crimes before 6-11-1998 only, per In Re Charles)

The **TOTAL** of all terms imposed in this cause is 70-life months.

Credit is given for [] _____ days served ~~X~~ days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A505(6). [] Jail term is satisfied and defendant shall be released under this cause.

4.6 **NO CONTACT:** For the maximum term of life years, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties with: Lia Araya

[] Any minors without supervision of a responsible adult who has knowledge of this conviction.

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

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

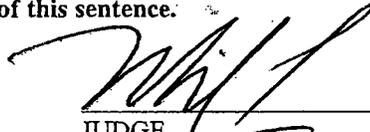
4.8 **SEX OFFENDER REGISTRATION:**

The defendant shall register as a sex offender as ordered in **APPENDIX J**.

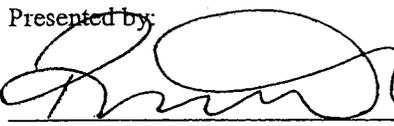
4.9 [] **ARMED CRIME COMPLIANCE, RCW 9.94A.475,.480.** The State's plea/sentencing agreement is [] attached [] as follows:

The defendant shall report to an assigned Community Corrections Officer within 72 hours of release from confinement for monitoring of the remaining terms of this sentence.

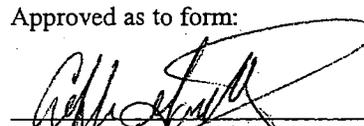
Date: 4/10/09



JUDGE
Print Name: Ford

Presented by: 

Deputy Prosecuting Attorney, WSBA# 35411
Print Name: Risa Woo

Approved as to form: 

Attorney for Defendant, WSBA# 31044
Print Name: Alister Gannett, Jr.

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

AZAZI YOHANNES

DATED: 4/10/09

[Signature]
JUDGE, KING COUNTY SUPERIOR COURT

DEFENDANT'S SIGNATURE:
DEFENDANT'S ADDRESS:

King County Jail

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: [Signature]
DEPUTY CLERK

CERTIFICATE

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

CLERK

BY: _____
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO. WA19544359
DOB: DECEMBER 12, 1979
SEX: M
RACE: B

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	Plaintiff,	No. 08-1-12175-1 SEA
)	
vs.	)	APPENDIX G
	)	ORDER FOR BIOLOGICAL TESTING
AZAZI YOHANNES	)	AND COUNSELING
)	
	Defendant,	
)	
<hr style="border: 0.5px solid black;"/>		

(1) **DNA IDENTIFICATION (RCW 43.43.754):**

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2) **HIV TESTING AND COUNSELING (RCW 70.24.340):**

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 4/10/09



JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	No. 08-1-12175-1 SEA
)	
vs.	)	JUDGMENT AND SENTENCE
	)	APPENDIX H
AZAZI YOHANNES	)	COMMUNITY PLACEMENT OR
	)	COMMUNITY CUSTODY
Defendant,)	

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community service;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: _____

Defendant shall remain within outside of a specified geographical boundary, to wit: _____

The defendant shall participate in the following crime-related treatment or counseling services:
substance abuse eval + follow recommended treatment

The defendant shall comply with the following crime-related prohibitions:
enter into, make, or assist in any other activity that is prohibited by the state certified domestic violence treatment program

obtain some evaluation from state certified domestic violence treatment program + follow all treatment recommendations

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: 4/10/09



 JUDGE

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
Plaintiff,)
vs.)
Abazi Johannes)
Defendant,)

No. *08/12175-1SEA*

APPENDIX J
JUDGMENT AND SENTENCE
SEX/ KIDNAPPING OFFENDER NOTICE OF
REGISTRATION REQUIREMENTS

SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. You are required to register your complete residential address with the sheriff of the county where you reside, because you have been convicted of one of the following sex or kidnapping offenses: *Rape 1, 2, or 3; Rape of a Child 1, 2, or 3; Child Molestation 1, 2 or 3; Sexual Misconduct With A Minor 1 or 2; Indecent Liberties; Incest 1 or 2; Voyeurism; Kidnapping 1 or 2 (if victim is a minor and offender is not the minor's parent); Unlawful Imprisonment (if victim is a minor and offender is not the minor's parent); Sexual Exploitation of a Minor; Custodial Sexual Misconduct 1; Criminal Trespass against Children; Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct; Sending, Bringing Into State Depictions of a Minor Engaged in Sexually Explicit Conduct; Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct; Communication with a Minor for Immoral Purposes; Patronizing a Juvenile Prostitute; Failure to Register as a Sex Offender; any gross misdemeanor that is under RCW 9A.28, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or RCW 9A.44.130 or a kidnapping offense under 9A.44.130; or any felony with a finding of sexual motivation (RCW 9.94A.835 or RCW 13.40.135).*

If you are out of custody, you must register immediately upon being sentenced.

If you are in custody, you must register within 24 hours of your release.

If you change your residence within a county, you must send signed written notice of your change of residence to the county sheriff within 72 hours of moving.

If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of the county of your new residence at least 14 days before moving and register with the county sheriff of your new residence within 24 hours of moving. In addition, you must give signed written notice of your change of address to the sheriff of the county where you last registered within 10 days of moving.

If you plan to attend a public or private school or institution of higher education in Washington, you are required to notify the county sheriff for the county of your residence within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you are currently attending a public or private school or institution of higher education in Washington, you must notify the county sheriff, for the county where the school is located, immediately.

If you lack a fixed residence, you are required to register as homeless. You must also report in person to the sheriff of the county where you registered on a weekly basis. If you are under DOC supervision and lack a fixed residence, you must register in the county where you are being supervised. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county within 24 hours.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 3 business days after returning to this state or within 24 hours if you are under the jurisdiction of the state department of corrections, the indeterminate sentence review board or the department of social and health services.

If you move to a new state, you must register with the new state within 10 days after establishing residence. You must also send written notice, within 10 days of moving to the new state, to the county sheriff with whom you last registered in Washington State.

If you are not a resident of Washington, but attend school, are employed, or carry on a vocation in the State of Washington, you must register with the county sheriff for the county where your school, place of employment, or vocation is located.

If you are ranked as a Level II or Level III offender (even if you have a fixed residence), you must report, in person, every ninety days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours.

The King County Sheriff's Office sex offender registration desk is located on the first floor of the King County Courthouse- 516 3rd Avenue, Seattle, WA. Failure to comply with registration requirements is a criminal offense.

Copy Received:

Defendant

Date

JUDGE FOX

APPENDIX J Rev. 8/06
Distribution:
Original/White - Clerk
Yellow - Defendant
Pink - King County Jail

4/10/09

[Signature]

RCW 9.94A.712 (old)

Sentencing of Sex Offenders

(§ 4 and 6 which link to § 3)

RCW 9.94A.712

Sentencing of nonpersistent offenders. (Effective until August 1, 2009, then recodified as RCW 9.94A.507.)

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a);

committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in *RCW 9.94A.030(33)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the

minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a)(i) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(ii) If the offense that caused the offender to be sentenced under this section was an offense listed in subsection (1)(a) of this section and the victim of the offense was under eighteen years of age at the time of the offense, the court shall, as a condition of community custody, prohibit the offender from residing in a community protection zone.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

[2006 c 124 § 3; (2006 c 124 § 2 expired July 1, 2006); 2006 c 122 § 5; (2006 c 122 § 4 expired July 1, 2006); 2005 c 436 § 2; 2004 c 176 § 3. Prior: 2001 2nd sp.s. c 12 § 303.]

NOTES:

Reviser's note: *(1) RCW 9.94A.030 was amended by 2008 c 276 § 309, changing subsection (33)(b) to subsection (37)(b).

(2) 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

(3) This section was amended by 2006 c 122 § 5 and by 2006 c 124 § 3, each without reference to the other and without cognizance of its amendment by 2005 c 436 § 2. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date -- 2006 c 124 § 2: "Section 2 of this act expires July 1, 2006." [2006 c 124 § 4.]

Effective date -- 2006 c 124: See note following RCW 9.94A.030.

Effective date -- 2006 c 122 §§ 5 and 7: "Sections 5 and 7 of this act take effect July 1, 2006." [2006 c 122 § 9.]

Expiration date -- 2006 c 122 §§ 4 and 6: "Sections 4 and 6 of this act expire July 1, 2006." [2006 c 122 § 8.]

Effective date -- 2006 c 122 §§ 1-4 and 6: See note following RCW 9.94A.836.

Severability -- Effective date--2004 c 176: See notes following RCW 9.94A.515.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

RCW 9.94A.507

Sentencing of Sex Offenders

RCW 9.94A.507

Sentencing of sex offenders.

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); or

(b) Has a prior conviction for an offense listed in *RCW 9.94A.030(31)(b), and is convicted of any sex offense other than failure to register.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.95.420 through 9.95.435.

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

[2008 c 231 § 33. Prior: 2006 c 124 § 3; (2006 c 124 § 2 expired July 1, 2006); 2006 c 122 § 5; (2006 c 122 § 4 expired July 1, 2006); 2005 c 436 § 2; 2004 c 176 § 3; prior: 2001 2nd sp.s. c 12 § 303. Formerly RCW 9.94A.712.]

Notes:

Reviser's note: *(1) The reference to RCW 9.94A.030(31)(b) was apparently in error. The reference should be to RCW 9.94A.030(34)(b).

(2) This section was recodified pursuant to the direction found in section 56(4), chapter 231, Laws of 2008.

(3) 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231: See notes following RCW 9.94A.701.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

Expiration date -- 2006 c 124 § 2: "Section 2 of this act expires July 1, 2006." [2006 c 124 § 4.]

Effective date -- 2006 c 124: See note following RCW 9.94A.030.

Effective date -- 2006 c 122 §§ 5 and 7: "Sections 5 and 7 of this act take effect July 1, 2006." [2006 c 122 § 9.]

Expiration date -- 2006 c 122 §§ 4 and 6: "Sections 4 and 6 of this act expire July 1, 2006." [2006 c 122 § 8.]

Effective date -- 2006 c 122 §§ 1-4 and 6: See note following RCW 9.94A.836.

Severability -- Effective date--2004 c 176: See notes following RCW 9.94A.515.

Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application -- 2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	Plaintiff,
v.	)	No. 08-1-12175-1 SEA
)	
AZAZI YOHANNES,	)	INFORMATION
)	
)	
)	
Defendant.)	

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse AZAZI YOHANNES of the crime of **Rape in the Second Degree - Domestic Violence**, committed as follows:

That the defendant AZAZI YOHANNES in King County, Washington, on or about October 10, 2008, by forcible compulsion did engage in sexual intercourse with another person, named Lia Yoisef Araya;

Contrary to RCW 9A.44.050(1)(a), and against the peace and dignity of the State of Washington.

DANIEL T. SATTERBERG
Prosecuting Attorney

By: _____
David William Gross, WSBA #27031
Senior Deputy Prosecuting Attorney