

63839-4

63839-4

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

NORMAN GOTCHER, Jr., )  
 )  
Petitioner, )  
 )  
v. )  
 )  
STATE OF WASHINGTON )  
 )  
Respondent. )

Case No. 08-1-13106-4 SEA  
CoA # 63839-4  
STATEMENT OF ADDITIONAL  
GROUNDS, PURSUANT TO  
RAP 10.10 [Pro-Se]

I. STATEMENT OF ADDITIONAL GROUNDS

I, Norman Gotcher' Jr., hereby state that the foregoing is true and correct to the best of my knowledge, and that I am over the age of eighteen(18), and competent to be a witness herein, where I have received and reviewed the opening brief prepared by my Attorney: Gregory C. Link. Summarized below are the additional grounds for review that's Not, addressed in the brief. I understand the court will review when my appeal is considered on the merits.

280 MAR - 9 AM 10:55  
STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION ONE

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A. ASSIGNMENT OF ERROR'S

1. Gotchers, 6th Amendment Rights were Violated Once Judge; Sharon Armstrong Denied Gotchers, Two Motion's to Remove Counsel From His Case, And Defense Counsel Filed His Self Serving Motion Requesting to be Removed From Gotchers Case.
2. Gotcher' Maintained his 6th Amendment Rights to be Afforded New Counsel.

B. BREACH OF ATTORNEY CLIENT PRIVILEGE

1. Pursuant to RPC 1.9 (e), Gotcher' Had a Right to maintain his defense Not to be exposed to the State.
2. The Court and Several Defense Attorney's Whom Performed Civil Duties, Agreed that there was a Breach of Attorney Client Privilege of which They had to Defend.
3. Once this took place, "There, became a Serious Conflict of Interest within the Defenders Association Law Firm with all Attorneys whom Performed Under Color of State and Federal Law.

A. ARGUMENT'S

1. THE RIGHT TO A SIXTH AMENDMENT, IS THE RIGHT THAT AFFORDS ALL CRIMINAL DEFENDANTS TO BE AFFORDED WITH A COMPETENT DEFENSE COUNSEL. ONCE THE COURT TOOK THAT RIGHT AWAY FROM MR. GOTCHER, IT BECAME A CONSTITUTIONAL ISSUE, THAT IS NOW BEING BROUGHT TO THIS COURTS ATTENTION FOR JUDICIAL FINDINGS OF THE LAW.

A. The Sixth Amendment, Includes a Defendants Right to be Represented by Counsel of His Choice, And when that Right become a serious conflict of interest between several Attorney's out of the same Law Firm, Then the Trial Court is Required to Investigate Further and to Ignore Counsels Timely Objections, Mandates Automatic Reversal of the Resulting Conviction as argued in Holloway v. Arkansas, 435 U.S. 475, 488 (1978)

B. During Gotchers Omnibus hearing there were never an inquiring or further investigation, If at all into the legal fact's as to why, Both Gotcher' and his Defense Attorney, Filed their order's to be Removed Thus, Ignoring Article 1 § 7, That also allows any criminal defendant to be represented by a counsel of his or her choice without severe conflict of interest.

C. Pursuant to Holloway v. Arkansas, 435 U.S. 475, 488 (1978); It is stated, The Trial Court is Required to Investigate Further, Regarding The Motion's, Ignoring Counsels Objections Mandates Automatic Reversal of the Resulting Conviction.

D. Again, in Holloway v. Arkansas, 435 U.S. at 475, This Court Created an Automatic Reversal Rule, Where Counsel is Forced to represent Co-Defendants over his timely objections Unless the Trial Court has determined there is No-Conflict. See, Footnote's 11 and 12.

In support of this claim, See, RP 2 Id. at 2. on 3/31/09 at 8:41 a.m. Before Judge: Sharon Armstrong, Defense Attorney: John Ewers stated I put this matter on for a motion to withdraw. The Reason for that, Your Honor, is that on Thursday the State brought to my attention their intent to place under subpoena an attorney from my office, Jennifer Atwood, who was Mr. Gotcher's former attorney, as well as my defense investigator Jill Williamson. Id. 10-14.

On 1/21/09 at 8:50 a.m. RP 2 Id at 2 Atty Mr. Ewers Argued For the record, John Ewers appearing on behalf of Mr. Gotcher. About a week and a half ago Mr. Gotcher' expressed an interest in me in having a new attorney appointed to represent him. He doesn't--no longer wants me representing him. He also indicated to me that he no longer wants my

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agency representing him. This case originally started off at the RJC where one of the attorneys in my agency was representing him. He was in custody at the time. The case was then transferred up here to the Seattle court. I'm not entirely sure why the jail transported or transferred him to the King County Jail from RJC up to Seattle, But they Did.

Mr. Gotcher' Argue there became a serious conflict of interest "where" Four(4) seperate Attorney's from the same Law Firm interfeared with his Case, Regardless of Gotchers Filed Motion's and Complaints to be Remov ed from that Agency, Filed before Judge: Sharon Armstrong, Noted on January 21, 2009 and on February 25, 2009. Then Atty: John Ewers also Filed an Order to Withdraw on March 31, 2009. See, Attached Order's, Denied by Judge Armstrong.

Gotcher' Argue, There is a reasonable propability that confidence's were disclosed to information by each attorney regarding the defense of his case by attorney's: David Seawell, Rick Lickenstadher, John Ewers Jennifer Atwood and Jill Williamson, Whom severely damaged any re-course to argue the lesser included charge of attempted first degree criminal tresspass.<sup>1</sup>.

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1. Pursuant to Trone v. Smith, 621 at 994 (9th Cir. 1980) & CrR 1.9(1) (2) & (3), Confidential information, Is not the only aspect of the professional tie preserved by the disqualification rule at Footnote-34 At Footnote-35, The Rule We, state is necessary to implement the following cannon's;.....

- a) Cannon (1), (Maintaining Intergrity and Confidence in the legal profession) Which didnt happen with Mr. Gotchers Case.....
- b) And in reference to Cannon (4), (Preserving Confidences and Secrets to a Client that was breached by all four(4) above attorney's from the same law firm.
- c) Cannon (5), (Exercise of independent professional Judgment): Whereby
- d) Cannon (6) (Representing a Client Compently): Which all Four(4), Attorney's Lacked providing during the course of Gotchers Case.
- e) Cannon (7), (Representing a Client Zealously within Bounds of the Law):Which all four attorney's failed to perform, pursuant to the rules of professional conduct relating to all above claim's,
- f) Even in Cannon (9), (Avoiding even the appearance of professional impropriety), But by the records the court can view all claim's as Mr. Gotcher' have shown in reference to way below poor standards of representation and a serious of conflict of interest from all attorney 's whom became involved with Gotchers Case.

It is argued in relations to the defenders association, cannon 4, applies Not only to the individual attorney, But confidential information possessed by One attorney, may or may not, have been shared with other member's of that Firm, But that Firm as a whole is disqualified, Whether or Not it's Member's where actually exposed to the information and "yet, That agency ignored its dutie's to Mr. Gotcher' by refusing to turn Mr. Gotchers, Case and Files over to a seperate agency to provide Non Bias Representation but the right to competent counsel.

**B. ISSUE'S PERTAINING TO ASSIGNMENT OF ERROR'S**

**B. INSUFFICIENT EVIDENCE**

1. Instruction 7, 10, and 11, Relieved the State of proving each element of the offense beyond a reasonable doubt.
  
2. The State did not prove each element of a Residential Burglary, Pursuant to RCW 9A.52.025(1) & RCW 9A.28.020(1), of the States Charge Argued in front of all 12 Jurors.
  
3. The State maintained throughout Gotchers Case, "That, Gotchers, Intentions were to Commit a Residential Burglary, As seen in Instruction's 7, 10 and 11, and in CP-45 To define RCW 9A.52.025(1) and RCW 9A.28.020(1) Into its Conviction.
  
4. Mr. Gotcher' Maintained his innocence Pursuant to RCW 9A.52.025(1) and RCW 9A.28.020(1), Throughout his Case and that he "never" committed an Attempted Residential Burglary or a Residential Burglary.

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C. STATEMENT OF THE CASE

One afternoon, Rebecca Rohman, heard a knock on the front door of her Maple Valley Home, and through the Peephole Saw Mr. Gotcher. 6/9/09 RP-28. Because, She is Suspicious of any person who approaches her Semi-Rural Home, Ms. Rohman Retreated to an Upstairs Room, Where from a window She saw Mr. Gotcher' Attempt to Open a Sliding Glass Door. Id. at 30-32.

Mr. Gotcher' Climbed a Ladder, Walked Across the Roof and Attempted to Open a Second Floor Window. Id, at 34. Ms. Rohman Called 911. Id. 36. Meanwhile, Mr. Gotcher' Climbed off the Roof, Returned to his Car, and Drove Away. Police Officer's Stopped and Arrested Mr. Gotcher' A short distance away. 6/9/09 RP 93-94.

The State Charged Mr. Gotcher' With a **Single** Count of Attempted Residential Burglary. CP 9-10. A Jury Convicted Mr. Gotcher' as Charged. CP-74.

**D. FACTS: SUPPORTING THE STATEMENTS OF  
THE CASE INCLUDING ATTACHED EXHIBITS.**

1. To commit a residential burglary, a residential burglary is an unlawfull entry with the intent to commit a crime inside. The state accused Mr. Gotcher' of these acts infront of all 12 jurior's during the course of Gotchers trial. The record supports these inflammatory prejudicial claims against Mr. Gotcher. CP-45 Id. at 8-25.

2. CP-45 Id at. 8-25, The state said, So breaking that apart alittle bit. Unlawfull Entry, "Well" know it was an unlawfull entry, Because he dosen't know Rebecca. She doesn't know him. He was not Invited. The house was locked. And he kept trying to get in. We know it was an unlawfull entry. He was not welcome in that house in question? At this point did the state prove its case by real evidence that Gotcher' unlawfully entered into Rebecca Rohmans home and while unlawfully inside, his intent was to commit a Residential Burglary?<sup>1</sup>.

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<sup>1</sup>. Looking at these four(4), attached pitcure's. Do it really look like Gotcher' damaged any parts of the victims house? Do it really look like Gotcher' ~~force~~fully kicked the victims front white painted door to step on wet leaves, dirt and not leave not one footprint or leaves on that door? Do it relly look like Gothcer tampered with the sliding s creen glass door which the victim said ~~was~~ unlocked told to Gotchers Probation Officer' Thomas Lebrain under investigating her over the phone?

Do it look like it was a rainy day? And do it look like it was a Dark, Dark, Dreary Day, too Dark to wear sun glasses by looking at this evidence? These are the false claim's told by the victim and State Prosecutor all throughout Gotchers Case.

**FACTS.**

In trial the victim swore her door was locked, But over the phone told Gotchers, Probation Officer' She had her Screen Sliding Glass Door Unlocked and the only thing holding it shut was a small stick in the slidding groove, which brings Gotcher to the next question? If he was trying to get in the victims house, what made the state feel he just could not open the sliding ~~screen/glass door?~~ ~~or just~~ as easily broken one of the down stairs windows? Gotcher' sure in the heck wouldn't of climbed up on some ladder and go through all that trouble to walk across a roof onto another roof to climb down another roof then try to push up on a very high up window and not try to break it and go inside and there was no fingerprints on any windows? The states claim's never added up with the truth. If Mr. Gotchers intentions were to get inside that house!

- a) Gotcher' could just broke the screen glass door.
- b) Gotcher' could had broke any of the down stairs windows or kicked the door in by force, If Mr. Gotchers intentions were to commit a burglary.

In the 911 Transcript call by the victim on page-2, line 21, states; he just climbed up on the roof and looking in the windows. The victim never claimed Gotcher' attempted to mess with or open any of her bedroom window's. These claims were made up by the state

solely to obtain a bogus conviction under prior bad acts of malicious prosecution, Also looking at the ladder' Do it really look like the ladder was tampered with, climbed up on or touched in any way which is sitting in mud and lots of sticker bushes? What happened to the mud, leaves and sticker bushes that would have been left on this so-called ladder? Did it look like Gotcher' could have done all those things before the Helicopter pilot arrived or the police that all say they were in the area already?

Looking at those four(4), pictures it would be impossible to reach the middle of the window to push up on it, that would be the only part of the window to push up on with bare hands that's claimed to be locked. Why would Gotcher mess with a high up window when it is much easier to get in through bottom windows? and how could the victim see a shadow from Gotcher's waist up, If her bedroom windows are the three high up windows?

The State over exaggerated that Mr. Gotcher' Entered Unlawfully Inside the Home of Rebecca Rohman and while there Intended to Commit the Crime of Residential Burglary Pursuant to RCW 9A.52.025(1). Mr. Gotcher' Ask is this not a question of Law or Fact for Judicial Review? Mr. Gotcher' believes his Judgment, Sentence and Conviction must be Reversed and Dismissed with Prejudice as the Victim and the State made several different claims prior to Charging Mr. Gotcher. Review CP-45, Id. at 6-25 Trial Transcript. This was very prejudicial Not only to Gotcher's Case, But within the Pretense of the Law.<sup>1</sup>

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<sup>1</sup>. Mr. Gotcher' Argue when there are more than one claim made by the State, and the state believed there were different inferences presumed! One, indicating a Theft, Another indicating an Assault to

to do bodily harm and another indicating a possible rape, Then it is said that the state has failed to prove its case in chief of Attempted Residential Burglary as the Law is quoted in Jackson, 112 Wn.2d at 876. The state made its claim's on different inference's Review CP-45 Id. at 6-25

Now in the States Memorandum on Page's 19-21, Prosecutor, Kathy Ungerman Provided an intent, alleged from Gotchers Prior Burglary Charge's and Conviction, Approved by the Trial Court Under' ER 404(b), by using acts that took place in Gotchers Past Burglary's to state either' Gotcher' was Caught on the Victims Property, Inside the Victims House or Building or Gotcher' Broke into the Victims House's by Breaking Windows or Removing a Screen or had Burglary Tools and was Wearing Gloves or there were some type of Paint Chips that proved entry into a Residence. These are the statements that supports Gotchers Innocence to this Court, to Show none of this was found period with this case now before the Judicial Administration of the Court, There was No evidence or proof of Gotchers Intentions to Break inside the Victims House.

Mr. Gotcher' also argue there was plenty of way's and opportunity's He actually had to get inside, If that was his intentions on committing a Crime. There was No Burglary Committed, Nor was there any Unlawful Entry Into the Victims House to Claim Gotcher' Committed a Burglary as the State made claim to as seen in Court Records CP-45 & RP-45 Id at 10-15. This became an Act of Malicious Prosecution in a Desperate Attempt to Secure a Bogish Conviction and Has Violated Gotchers, Civil Rights and Civil Libertie's, And this Case Should be Dismissed with Prejudice Pursuant to 8.3(b).

D. [ ARGUMENT'S ];

In support thereof, Mr. Gotcher' Argue, There was insufficient evidence from which the court inferred intent to commit a crime inside Rebecca Rohmans Home, Why? First, There was No Evidence that Gotcher' Broke into the Victims House, Nor was there a Requisite intent to justify a crime of unlawful entry. Next; The "Overt Act" Requirement ensured that a person was not punished for criminal intent alone. See, State v. Lewis, 69 Wash.2d 120, 124, 417 P.2d 618 (1966)(Decided Under' Former RCW 9.01.070); The Conclusion's in the intent to commit a Specific Named crime as presented by State Prosecutor' Kathy Ungerman, Stated Gotcher' Unlawfully Entered Inside the Burglarized Premise's which still is not an "Element" of the crime of Burglary, In The State of Washington, See, Footnote-41 in Washington v. Bergeron, 105 Wash.2d 1, 711 P.2d 1000 (WA 12/12/1985).<sup>1</sup>.

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1. It is also argued in Bergeron, That intent required for a Burglary is an intent to commit any crime inside the Burglarized Premise's and an intent to commit a crime may only be infered "When" A person actually Enters or Remain Unlawfully.<sup>2</sup>.

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2. The states evidence showed an attempt was made without criminal intent, and even if Gotcher' made an alleged statement to the officer's It only support that Gotcher' was not intending to commit anytype of crime. Similar holdings are found in State v. V.F. No. 38921-1-I (Wash. App.Div.1 05/27/1997); Per Curuam, We agree that insufficient evidence do not support an conviction of an Attempted Residential Burglary\*fn.2

Mr. Gotcher' Also Argue, The court relied on 404(b), To infer his prior Burglarie's supported the states claim on intent to commit a Residential Burglary, When there was [No],Actual Entry into Rebecca Rohmans Home. There are similar facts in State v. V.F. No. 38921-1-I (Wash.App.Div.1 05/07/1997); Also Review Page's 20-22 of the State Trial Memorandum; 10-10-10-12.

**I. DEFENCE ARGUMENT:**

In this case, The state agreed to send that case back to court to remand for the court to enter proper findings on intent to commit a crime without using improper inference, and had Gotchers, Attorney presented possible alternatives for reasonable explanation's for Mr. Gotchers, Action's, The state would had failed from a competent defense to establish guilt as to similar facts outlined in State v. Bradley, No. 41455-1-I (Wash.App.Div.1 05/10/1999); Id. at 18, 21 & 24, Where the Supreme Court Reversed Holding, That "Where, The state Plea's and proves "Only" Attempted Burglary as Gotcher' Relates to his case, Then the inference instruction is improper.

Because, There was insufficient evidence to prove Gotcher' intended to commit an Attempted Residential Burglary, and the only evidence that linked Gotcher' to any claim's of this alleged and trumped up charge, was by the alleged victims inconsistent falsified claim's as shown in all Police Reports, The Attached Pitcure's, The 911 Transcript Report, The States Interview Reports,, Defense Interview Reports, The victims own personal Report and Statements, The Probable Cause and Information Report, & Gotchers Probation Officer's Investigation Reports, Which will all show and prove to this court, Continued Inconsistent Added on Claims made up by the Victim, Non to be the Truth from her Original Report.

8 AC Statement of  
Additional Grounds

ADDITIONAL GROUND 7.

6. WHERE THE TRIAL COURT AND STATE PROSECUTORS OFFICE BOTH USED ER 404(b) TO ENTER GOTCHERS PRIOR RECORD OF BURGLARY CONVICTIONS TO BE BASE ON HIS INTENT TO COMMIT THE CRIME OF AN ATTEMPTED RESIDENTIAL BURGLARY OR RESIDENTIAL BURGLARY, CAN THIS BE ALLEGED AS VERY PREJUDICIAL AND BEYOND A HARMLESS ERROR?..... 15-23
- A). Whether' The Court believes the Prejudicial Affect Outweighed the Probative Value and Thereby Affected Gotchers Const. Rights to obtain a Fair Trial? ..... 15-23
- B). Whether' After Reviewing the Record and Finding the facts to be true, can there be a rational legal finding of the law to assist Mr. Gotcher' of his claim's of not receiving a fair and speedy trial? ..... 15-23
- C). Whether' This Court find The Trial Court ignored and failed to look into ER 404(b), Prejudicial Affect to Outweigh the Probative Value Once it Allowed all Gotchers Prior's be admitted and Heard before all 12 Jurior's? ..... 15-23

8 AC Statement of  
Additional Grounds

**ARGUMENT**

Did the Trial Court and State Prosecutor' Both Agree and Ignor to Weigh in any Prejudicial Affect against its Probative Value, If to allow all of Mr. Gotchers Priors' to be heard and admitted infront of all 12 Jurior's to say Gotcher' had the Required intent to commit a Residential Burgalry allowed Under ER 404(b)? See, CP-11-12 and the State Trial Memorandum-10-12 Page's 20-22

1. CP-11 Id. at 5-25, The Court; Ask Did you wish to present further argument or rely on your brief with regard to that motion? This is a 404(b) issue.
2. Ms. Ungerman; Correct. I will highlight that again The intent for offering the conviction, it is again to prove intent, which is an element of the crime. It is not unlike 404(b), it's not with 404(b), obviously deals with character evidence, and that is not why the state is offering it. It is to prove intent to commit a crime inside.

**[DEFENCE ARGUMENT];**

The Court: And Mr. Ewers, Did you wish to Respond? Mr. Ewers: Yes Please, [Your Honor]; What is most concerning here is that the Admission of these priors "once, again is Over Ten Years Old". We're getting into a Range, Well, We discussed this moments ago on the 609 matter. The earliest we're talking about here is 13 Years Old. The State is seeking to admit One that is over 20 Years Old.

**8 AC Statement of  
Additional Grounds**

Essentially what the state is trying to do here is put evidence into place that deals with propensity. Id at 25 CP-12 You don't suddenly get to say that because this crime has an element of intent and because somebody has been convicted of another crime in the past That has intent as another element, Those are not magic words to suddenly open up the flood gates to admit all prior crime's that a defendant has been convicted of. And that is essentially what the state is attempting to do here.

What they are trying to say is because Mr. Gotcher' had the intent to commit a burglary 13 years ago, or 20 years ago, or 26 years ago, That he suddenly today had the intent to do it. This is propensity evidence and is exactly what evidence Rule 404(b), was designed to sort out, to push to the side those sorts of arguments that you are allowed to try to bring in and essentially what it amounts to is to explain to a person while they are before the jury, what their thought is. This is propensity evidence and it's far, far, far too old. Which seems to me the Prejudice Far Outweighs the Probative Value.

1. **The Court:** Ms. Ungerman, Did you wish to Respond? Ms. Ungerman: No, Your Honor.
2. **The Court:** All Right. The Prior Convictions are now being offered under ER 404(b) to show Not propensity, But rather that Mr. Gotcher' had the required intent to commit a crime therein, When he committed the crime of Residential Burglary. CP 12 Id at 22-25.

Gotcher' Argue, Not only did the Trial **Court** make its personal Judgment and allowed Gotchers Prior's from honoring the State Trial Memorandum-12 Page 22 Id at 18-22, Allowing the State to Claim Gotchers Burglary Convictions qualify as crimes of dishonesty, under the Requirement of ER 609, But the court "Never" Once Balanced the Prejudicial Affect that took place with Gotchers Trial against the Probative Value, Why? Because Gotchers Old Conviction's steamed from Ither Unlawful Entry's made to commit Theft, Rather then to commit an Act of Violence or some other crime not involving Theft.

Although more than 10 years has elapsed since the date of Gotchers Release from these Convictions, The Court should find that in the interests of justice, , That the Prejudicial Effect supported by the specific facts and circumstances Substantially Outweighed the Probative Value.

The Trial Court Abused its Discretion under pre-existing law's in dispute with ER 404(b). The Trial Court also ignored balancing the Prejudicial Affect that far outweighs the Probative Value. Why? Because to establish common design or plan for the purpose's of ER 404(b), The evidence of prior conduct must demonstrate, Not merely similarity in results, But such occurence of common features, That the various acts are naturally to be explained as caused by a general plan of which the Charged Crime and the Prior Misconduct are the Individual

Manifestations to allow Gotchers, Prior Conviction's under both ER 609, and ER 404(b), Which Violates Pre-Existing Law's to dig up Very Old Crime's of which the law state's: Prejudice can be caused to show intent from past very old crime's that weighs in as Prejudicial when trying to balance and weigh out a **specific** crime without there first being a real crime proven or committed pursuant to RCW 9A.52.025(1).

Next: The Trial Court again never balanced the prejudicial affect that out weighed the probative value of ER 404(b), By offering Mr. Gotchers Prior Conviction's of which it offered under ER 404(b), To show not propensity, But rather pointing the finger that Gotcher' had the required intent to commit a crime therein when he committed the crime of Residential Burglary from the Trial Court Personal Opinion.

Mr. Gotcher' Argue, that the prejudicial affect is the court made personal opinions to state Gotcher' Unlawfully Entered the Home of Rebecca Rohman with the Intent to Commit Residential Burglary, without checking out facts, That Gotcher' Never' Broke inside Nor Unlawfully Entered and Remained Inside the Victims House, Nor did the Court Cite any Authoritie's to bring in and allow Gotchers Prior Burglarie's to be Admitted Just to **Show** a crime of Intent and Not for any other Purpose Very, Damaging to Gotchers Case and of not Receiving a Fair Trial.

8 Statement of  
Additional Grounds

Gotcher' Argue where the trial court allowed his prior convictions to be assumed for the intent action of this crime pursuant to ER 404(b), Was very prejudicial and the law States:, I Agree with the Majority, That the Trial Court must always begin with a presumption that Evidence of prior Bad Acts is Inadmissible, Which contradicts the Trial Court and States Claims to allow Prior Bad Acts to be Admissible to Prove or Show the Intent Factor and to commit a Specific Crime. Majority at 8.<sup>1</sup>.

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<sup>1</sup>. As the Majority Notes, Our evidentiary rule's prohibit admission of evidence to prove a defendant has a criminal propensity to bring in evidence of prior Bad Acts under One of the exceptions to the General Prohibition Set Forth in ER 404(b), E.g. Lough, 125 Wn.2d at 853; Majority at 9. ER 404(b), Does not permit evidence of prior misconduct to show that the defendant is a "Criminal Type" and is likely to have committed the crime for which he or she is presently charged. Lough, 125 Wn.2d at 853.

2. Gotcher' Also Argue, This contradicts the Trial Court Rulings. See, CP 12 at Id at 22-25, Where the Trial Court Stated: All Right, The Prior Conviction's are now being offered under' ER 404(b), To Show Not Propensity, But Rather Mr. Gotcher' had the required intent to commit a crime therein, When he committed the crime of Residential Burglary, At this stage Gotcher' was deprived of his Const. Rights to Due Process and a Fair Trial as these Constitutional Error's Warrant Reversal and Dismissal of Gotchers Sentence and Conviction Pursuant to 8.3(b) and in the interest of justice.

Pursuant to State v. Tharp, 96 Wash.2d 591, 597, 637 P.2d 961 (1981); The Law that holds to the contrary dispute the acts of which the trial court admitted, Referenced on Page 12 Line's 8-25, of the trial transcript. This is where the court allowed the state to use Gotchers Prior Burglary Conviction's to show intent. The State was Required to show Gotcher' Entered Unlawfully Inside

The house of Rebecca Rohman. Also the court and state claimed Mr. Gotcher' had the required intent to commit the crime charged and that Gotchers, prior's can be admitted under' ER 404(b). Mr. Gotcher' Argue, The Trial Court should first instruct the Jury of the limited purpose of such evidence. State v. Saltarell, 98 Wn.2d 358, 362, 655 P.2d 697 (1982); However' Because the court failed to excersie its discretion in Balancing on the Record and because the Trial Court didnt properly Balance the Prejudicial Affect and its Not shown in the Record, The evidence was therefore Not properly Admitted. Tharp, at 597.

Judicial Review of this finding is Requested, Because the outcome of the Trial would had been different, had the error of the trial court not occurred. State v. Jackson. 102 Wash.2d 689, 695, 689 P.2d 76 (1984), At this stage the state cannot prove that there was no prejudicial affect that poisoned the minds of the jurior's and to prevail on this, The state must prove that the jurior's all would had ignored any of the acts the state showed in Gotchers Prior Burglary Conviction's and because this was shown by the state none of the jurior's would had came forward in their minds with the intent pursumed Mr. Gotcher' had in his mind to commit a Burglary.

The princible issue in dispute in this case was rather there any prejudice involved by refering to all Gotchers prior Burglarie's and of showing what took place in each one of them to claim intent to commit a crime inside the victims home with this case?

Gotcher' Argue, Here as in Saltarelli, The evidence of prior acts the court claimed made by Gotcher' was referenced from 13 to 20 year's ago which consisted of Breaking and Entering or a Theft which cannot be compared with this case, because reviewing all facts from this case, There was No Fingerprints, Footprints, Palmprints, No-Force Entry's, ~~No~~ Damage's, No Pry Marking's, No Burglary Tools and No Gloves Nor was Gotcher' Inside the Victims Home or on the Victims Property when the Officer's or Helicopter Pilot showed up, Nor did Gotcher' Once Try to Flee the Scene or Hide, But yet the state made false claims in front of all 12 Jurior's to say Gotcher' Committed a Burglary Crime as Referenced on CP-45, Id at 6-25.

Mr. Gotcher' Argue Improper Admission of prior burglarie's admitted by the trial court is not considered harmless, But beyond ~~and harmless~~ error's when the trial court relied on Gotchers prior Burglarie's to Impeach under' ER 404(b). Gotchers Conviction and Sentence Must be Reversed and Dismissed with Prejudice Pursuant to 8.3(b). Review State v. Saltarelli, 98 Wn.2d at 362-363 Regarding ER 404(b) Crimes.

In support of Gotchers Case In conflict with inflammatory, prejudicial Claims made by the state: Gotcher' First Defines Intent that ~~was~~ used against him. [(Intent may only be infered when a person actually enters or remain unlawfully.)] RCW 9A.52.040.

8 AC Statement of  
Additional Grounds

Gotcher Argue, his intent if to had committed a crime in the Residence, cannot be Rationalized or Infered by his attempt to enter or of alleging of climbing up on a ladder, or alleging to open up a bedroom second story window, especially when Gotcher did not enteæ any parts of his body inside the victims house or remained unlawfully where the jurior's **could** had came to the conclusion a Burglary was committed, This went beyond imagination.

Gotcher' Argue Unlawful Entry Pursuant to RCW 9A.52.020, For the purpose of the Burglary Statute, State: Entry is Unlawful if made without invation license or privilege, and still there was no unlawful entry inside the victims home stretched out by the state, similar to State v. Gohl, 109 Wash.App. 817, 37 P.3d 293, 146 Wash.2d 1012 (2001).

Gotcher' Also argue RCW 9A.52.040 at 127, State: The elements of Burglary are(1) Unlawfully Entering or Remaining in a Building other than a Vehicle with Intent to Commit a Crime Against a Person or Property Therein, and Entry is Defined as the Entrance of a Person; or the Inserction of Any Parts of his Body." RCW 9A.52.010(2), In Reality Gotchers Alleged Crime **was** Attempting to Attempt to Commit a Crime, Because there was No Evidence of an Attempted Residential Burglary or a Residential Burglary claimed by the State and Trial Court. RP-45 Id at 10-15 and CP-45 Id at 6-25.

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Mr. Gotcher' Argue, There was No evidence from which the Jury could infer he entered the Building and that Instructions 7, 10 and 11, was therefore improper. State v. Jackson, 112 Wash.2d 876, 774 P.2d 1211 (1989).

Referring back to ER 404(b), Even if the court were to apply ER 404(b) as Probative, There was never any supporting authoritie's used by the trial court or prosecutor to admit and offer' Gotchers Prior's as a means to infer intent to commit a Burglary. In the pre-text of the law both the trial court and state prosecutors, failed to apply the prejudicial affect that would follow which took away Gotchers Due Process Rights to obtain a Fair Trial.

There is No Records Showing that the trial court and state prosecutor first exercised or applied its two prong test, which is the prejudicial affect towards the probative value before offering any of Gotchers past crimeş.and to use the presumption as a means to support an intent the most could had been said was that Gotcher Attempt to Attempt to Commit a Crime, Just like that of an Attempt to Possess Cocaine, which Is a Gross Misdemeanor.

Instructions 7, 10 and 11, All Relieved the state of its burden proving each element of the offense beyond a reasonable doubt. The state didnt prove each element of Attempted Residential Burglary beyond a Reasonable Doubt.

1. The Due Process Clause of the Fourteenth Amendment Requires the State Prove each element of an offense beyond a reasonable doubt. **Instruction's 7, 10 and 11**, Allowed the Jury to Convict Mr. Gotcher' If it found that with the intent to commit a Residential Burglary, Gotcher' Took a Substantial Step Towards the Commission of a Residential Burglary. By defining the crime as a Residential Burglary, using **Jury Instructions 7, 10 and 11**, Did Instruction's 7, 10 and 11, Relieve the State of its Burden of Proving the Crime and thereby Deny Gotcher' Due Process?

2. The Due Process Clause of the Fourteenth Amendment Requires the State Prove each element of an Offense beyond a reasonable doubt. To Prove the Crime of Residential Burglary the State must prove a person took a substantial step towards unlawfully entering in the house and while inside had intent to commit a crime inside. Where the state did not offer any evidence that Gotcher' went inside Rebecca Rohmans Home with intent to commit a crime inside, Did the state offer evidence of this alleged crime?

3. Gotcher' Argue, The right to Due Process and the Right to a Jury Trial, Require the Court Instruct the Jury on every element of the Offense. The Jury Trial Guarantee of the Sixth Amendment and Article 1 § 22 of the Washington Constitution, and the Fourteenth Amendment's Due Process Clause and the similar provisions of Article 1, Section 3 of the Washington Constitution which Require the State

To Prove each element of a Criminal Offense to a Jury beyond a Reasonable Doubt. Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Mills, 154 Wn.2d 1, 6-7, 109 P.3d 415 (2005). This Requirement is Violated where a Jury Instruction Relieves the State of its Burden of Proving any Elements of the Crime. Sandstrom v. Montana, 442 U.S. 510, 523-24, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979).<sup>1</sup>.

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1. Instruction's 7, 10 and 11, Relieved the State of its Burden of Proving the Elements of the Crime of a Residential Burglary. The Court Instructed The Jury, A person commits the crime of a Residential Burglary, When Entering Unlawfully inside the Premise's with Intent to Commit a Crime Against a Person or Property Therein, Other than a Vehicle.

Mr. Gotcher' Argue, The Court Records Show Gotcher' was accused of a Residential Burglary as seen in RP-45 Id at 10-15 and CP-45 Id at 6-25. As the facts are shown as part of the record, Gotchers' Conviction and Sentence must be Reversed and Dismissed with Prejudice.

Instruction's 7, 10, and 11, Substantially Misstates the State's Burden of Proof by Requiring the Jury to find Gotcher' Attempted to Attempt to Commit a Crime. By Requiring the jury to find Gotcher' committed the crime of a Residential Burglary even though it claimed Attempted Residential Burglary, Forced the Jury to go beyond Imagination to assume Instruction's 7, 10, and 11, Is exactly what Gotcher' Committed and Contained precisely the same Error as laid out in Smith, Where the Erroneous Instruction Relieved the State of its Burden of Proof. ~~Are~~

These facts constitutional grounds for review for judicial findings of the law which can be corrected to determine the correct findings In the interest of justice?

Gotcher' Argue he was charged with Attempted Residential Burglary, But the state argued at trial Gotcher' Attempted to commit a Residential Burglary as seen on CP 45 Id 6-25. For this reason, The jury had to believed as they were mislead and confused about the two that Mr. Gotchers Intentions were to commit a Residential Burglary that was not Clarified by the Court, The State or Defense Counsel.

Mr. Gotcher' Argue, Jurior's are presumed to follow the court's instruction's. State v. Stein, 144 Wn.2d 236, 247, 27 P.3d 184 (2001); Pittman, However, Rest upon the conclusion that jurior's will resort to Common Sence, CP-67 Id at 3-10 as reviewed facts and simply ignore erroneous or poorly drafted instructions like instructions 7, 10 and 11, That relieved the state of its burden of proof.

**The Error In Instructions 7, 10 and 11, Requires Reversal of Gotchers Conviction.**

The Supreme Court has applied a harmless error test to erroneous jury instructions. State v. Brown, 147 Wn.2d 330, 340, 58 P.3d 889 (2002) (CITing Neder v. United States, 527 U.S. 1, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999)). However, The court held "an instruction that relieves the state of its burden to prove every element of a crime requires automatic reversal."

Brown, 147 Wn.2d at 339 (Citing Smith, 131 Wn.2d at 265); See, also, State v. Reed, 150 Wn.App. 761, 770, 208 P.3d 1274 (2009) (If "a jury instruction is erroneous, But does not relieve the state of its burden to prove every essential element, Then the error is harmless"), But because the instruction's of 7, 10, and 11, Relieved the state of its burden of proof, The error's cannot be harmless.

Even if the court were to apply the harmless error test, The state cannot meet its burden. To prevail, The state must prove beyond a reasonable doubt "That, the jury would have found Mr. Gotcher' possessed the requisite intent, If properly Instructed. Neder, 527 U.S. at 15-18. The principle issue in dispute in this case was Gotchers intent. The States only evidence that Gotcher' intended to commit the crime of a Residential Burglary, was Gotchers Attempt to Enter. The State maintained Gotchers effort showed an intent to commit a crime, to wit, Residential Burglary.

Mr. Gotcher' Argue, it merely showed an intent to enter, The lesser offense of criminal trespass. Each of these is reasonable inference when the only evidence of intent is the attempt to enter. State v. Bencivenga, 137 Wn.2d 703, 707-09, 974 P.2d 832 (1999). Mr. Gotcher' Argue, The trial court recognized the state's evidence of intent to commit a crime was weak. 6/10/09 RP 22. But instruction's 7, 10 and 11, Allowed the jury to convict Gotcher' without resolving which jury instruction was more reasonable for the correct findings of the lesser included crime. Instead, The jury was not required to find Gotcher'

had an intent to commit a crime inside, But merely the intent to attempt to enter. Because of that, The state cannot prove beyond reasonable doubt that the error's was harmless, The Court must Reverse Gotchers Conviction.

In furthering Gotchers Claim's regarding facts argued about jury instruction's 7, 10 and 11, Other jury instructions didnt correctly state the law, although a jury is not required to search other instructions to see if another element should have been included in the instruction defining the crime. Aumick, 126 Wn.2d at 431 (Citing State v. Stewart, 35 Wn.App. 552, 667 P.2d 1139 (1983)): Similarly in State v. Stephens, 93 Wn.2d 186, 191, 607 P.2d 304 (1980), This court held that an erroneous "to convict" instruction was not harmless error because, although other instruction's correctly stated the law, the court was unable to conclude that the erroneous instruction's "In No way affected the outcome of the case." (Quoting Wanrow, 88 Wn.2d at 237), This was especially true because,.....

1. The "[I]nstruction...Purported to set forth the elements of the crime structuring the deliberations for the jury," Stephens, 93 Wn.2d at 191. The court pointed out as it had in Gotchers case, That the jury should "[d]isregard any remark, statement or argument that is not supported by the evidence or law as stated by the trial court and state prosecutor in Gotchers case. See, Clerks papers at 103 Jury Instructions 1, and 13, That Damaged Gotchers Case.

Mr. Gotcher' Argue there is absolutely No-Evidence in the Record to prove he entered into Rebecca Rohmans Home, Nor is there evidence to show Gotcher' intended to commit a crime inside Rebecca Rohmans Home, Nor is there any evidence of forceful entry or Attempted Force Entry?

The main issue here, is that instruction 11, The "to convict" instruction on the Attempted Residential Burglary Charge, Failed to list all the elements of the crime pursuant to RCW 9A.52.025(1) and RCW 9A.28.020(1), and is thus, constitutionally defective for attempted residential burglary case's.

Instruction 11, Required the jury to find beyond a reasonable doubt that Gotcher' committed a residential burglary, [Clerks papers at 45]; Instead of listing the elements of attempted residential burglary, The instruction described the even more inchoate crime of a residential burglary. There is no-dispute that the instruction's is defective. There is no-dispute that the phrase crime of attempted residential burglary, when with the intent should read, the person attempts to commit a crime of attempted residential burglary when with the intent he attempts to enter unlawfully inside the building of another with the intent he attempt to commit a crime against a person or property therein other than a vehicle. The definitions were not defined in the instruction's and cannot be said to be accurate statutes of the law, but is defective.<sup>1</sup>

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1. The instruction's can be challenged on appeal, however, if the instruction's involved a manifest error affecting a constitutional right. Salas, 127 Wn.2d at 182. A defendant can raise such error's for the first time on appeal. State v. Eastmond, 129 Wn.2d 497, 502, 919 P.2d 577 (1996), and instructing the jury in a manner that relieves the state of its burden of proof is an error of constitutional magnitude that a defendant can raise for the first time on appeal. State v. Byrd, 125 Wn.2d, 707, 714, 887 P.2d 396 (1995).

The United State Supreme Court recently held that a jury instruction that omits an element of a charged offense could be harmless. Needer v. United States, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) But Gotcher' Argue the to convict instruction is not subject to a harmless error analysis, when it focuse's strickly on committing a specific crime of a residential burglary as seen in jury instructions 7, 10, and 11, which included the intent to commit a residential burglary of which Gotcher' was never originally charged with. This instruction was not only prejudicial and misleading, But also defined the incorrect crime Gotcher' was originally charged with and is a manifest claim of justice which require's reversal and dismissal of Mr. Gotchers, sentence and conviction.

[ Sworn Testimony ];

Gotcher' Argue facts that his charge was trumped up by the state behind his past history as told to Rick Lichendther whom told Gotcher' the state said if you didnot have prior burglarie's, The state would only pursue a misdemeanor charge against you. told by Kathy Ungerman to Rick Lickenstadher.

**C. LAW AND FACT:**

The Washington Supreme Court has determined that the inference of criminal intent in burglary prosecution's is permissive, Not mandatory. State v. Cantu, 156 Wn.2d 819, 826, 132 P.3d 725 (2006); Under No. 76198-1, Thus, Although a trier of fact may infer criminal intent from a person's unlawful presence in a building. Unlawful presence does not relieve a state of its burden to prove criminal intent beyond a reasonable doubt. Id. at 825-26.

So it was a serious prejudicial error for the state to allow the jurior's to infer criminal intent when Gotcher' never acutally entered into the victims house. This case should respectfully be decided on the merits of the law, Regardless of reviewing all police reports, The police pitcure's, The probation officers interview note's, The victims own personal reports, The probable cause and information reports, The 911 Transcription report, The states interview reports, The defense interview reports and the trial transcripts all which will show and prove the victim and the state added on extra claim's and they are all inconsistent with the claim's provided when it was first made by the 911 call to dispatch?

Mr. Gotcher' Argue once the state made its false claims in trial as referenced in CP 45 Id 6-25 and provided instruction 10, To state A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitute a crime,

thereby leaving out the two prong test which must state there have to be an Unlawful Entry inside the premise's in order for the intent instruction to stand valid. Without this it leaves this instruction blanketed and mislead the jury, in support thereof, See, State v. Lewis, 69 Wash.2d 120, 124, 417 P.2d 618 (1966)(Decided under 'former' RCW 9.01.070) A person cannot be held to a criminal charge alone, because of a criminal intent.

The law clearly state, the definitions on intent presumption and the inference of intent are spelled out in, Washington v. Bergeron, 605 Wash.2d 1, 711 P.2d 1000 (WA. 12/12/1985); Seen in Footnote 159 as outlined below:.....

**[PRESUMPTION OF INTENT];.....**

- A) Every person who shall unlawfully break and enter or unlawfully enter any building or structure enumerated in sections 326 & 327 of this act, Shall be deemed to have broken and entered or entered the same with intent to commit a crime therein.
- B) This is exactly what the state claimed against Mr. Gotcher'during trial and sentencing. See, page-45 during trial and page's 116-124 on the [Felony Judgment and Sentencing]; see, also, page's 101-115 of the Sentence Recommendation/States Order.

**Next: See, Footnote: 160 on [Inference of Intent];**

In any prosecution for Burglary, Any person who enters or remains Unlawfully in a Building may be inferred to have acted with intent to commit a crime against a person or property therein. The state

or court didnot provide this information into its instructions to show the different elements to fully show intent and because the court failed to provide both above instruction's, The jury couldnot determine the full extent of the law to make a rational decision. This violated Gotchers Due Process because RCW 9A.52.025(1) Defines the crime of residential burglary, with intent to commit a crime against a person or property therein, The person enters or remains unlawfully in a dwelling other than a vehicle.

At this stage the state has caused irreparable harm that can't be fixed, because this statute do not define attempted residential burglary or how attempted residential burglary is committed?

Mr. Gotcher' Argue the state was required to prove beyond a reasonable doubt that he took a substantial step towards entering or remaining inside Rebecca Rohmans House with intent to commit a residential burglary and of how he intended to commit that specific crime inside Rebecca Rohmans House pursuant to RCW 9A.52.025(1), before jury instruction's could be given under that specific statute? Gotcher' ask how can there be a correct finding of this law under RCW 9A.52.025 (1) even if entry was attempted and not gained? What evidence was it to say and show Gotcher' unlawfully entered into the victims home? as apposed to the states claim's in CP 45 Id at 6-25?

Mr. Gotcher' Argue the state just cannot trample all over the constitution's, just because they persumed the statute is a correct statute of the law, when the victim, Not one time admitted that Gotcher

Broke into her House or committed a Theft.

So Mr. Gotcher' Argueth the state court violated his due process, that required, The state to bear the burden of persuasion beyond a reasonable doubt of every essential element of a crime and without actual "entry" into a building or home, The jury may not be instructed that criminal intent may be inferred, moreover, such an instruction is improper, If the most that is shown is equivocal conduct.

In otherword's [A]n inference (of intent to commit a crime in a building or Home), Should not arise where there exist other reasonable conclusion's, "that" would follow from the circumstances, like when the state trampled over Mr. Gotchers Character by stating Gotcher' could had attempted to Assaulted, Steal or Raped the Victim. These opinion's shows all sorts of reasonable conclusions that should apply to the facts outlined in State v. Mckail No. 47412-0-I (Wash.App.Div.1 12/24/2001)

Mr. Gotcher' Argue in the interest of justice and the correct findings of the law, His Case should be reversed and dismissed under it s constitutional provision's pursuant to 8.3(b). Mr. Gotcher' Also Argue Jury Instructions Number 7, 10 and 11, Based on RCW 9A.52.025(1) and RCW 9A.28.020(1) Relieved the state of its burden of proof that Gotcher Actually entered and remained unlawfully inside Rebecca Rohmans House with intent to commit a Residential Burglary, both the state and trial court made personal opinion's on outlined on Page-22, Lines-20-25 & Page 22 on Lines 8-25 two seperate trial transcripts.

Mr. Gotcher' Argue This case thus, violated his Due Process and Equal Protection Rights under these instructions which are Reviewable Because the arguments is based on constitutional grounds as seen below:<sup>1</sup>.

<sup>1</sup>. Gotcher' Argue that his Due Process Required the State to bear the Burden of Persuasion beyond a Reasonable doubt of every essential element of a Crime, and without actual "Entry" into a Building or Home, The Jury May Not be Instructed that Criminal Intent may be infered, Even if the Alleged Crime was Attempted and Not Gained. Moreover' Such an Instruction is improper, If the most that is shown like in Gotchers Case, Is Equivocal Conduct. In otherwords, [A]n Inference [of Intent to commit a crime in a Building or Home], Should Not arise where there existed other Reasonable Conclusion's that would follow from the Circumstance's. See, State v. McKail No. 47412-0-I (Wash.App.Div.1 12/24/2001). This goe's back to CP-45 Id at 6-25

2. In the language of the Burglary Statute's. \*fn.35, see, State v. Leach 36 Wash.2d 641, 646, 219 P.2d 972 (1950); see, State v. Willis, 67 Wash.2d 681, 685, 409 P.2d 669 (1966); & United States v. Thomas, 444 F.2d 919, 924 (D.C. Cir. 1971) at Footnote 128, In Lewis, states if the Majority believes its holding today can impact the burglarie's and attempted burglrie's committed since Johnson, It is surely mistaken.

3. At Footnote 129, This Court overrules a prior decision so as to enlarge & the scope of criminal liability, Due Process and Prohibition against Ex-Post Facto Laws Requires the New Rule must be applied prospectively only. see, United States v. Goodheim, 651 F.2d 1294 (9th Cir. 1981)(United States v. Potts, 528 F.2d 883 (9th Cir. 1975) & (Bouie v. Columbia), 378, U.S. 347, 353-54, 12 L.Ed.2d 894, 84 S.Ct. 669 (1964).

[FACTS IN GUIDING THE ABOVE COURT]:

[ Undisputed Facts];

1. First it was never claimed by the victim that Gotcher' Entered Unlawfully Into Her Home.
2. Next: Its Undisputed by looking at the Attached Pitcure's that Mr. Gotcher'Never Kicked the victim's White Painted Front Door with Force Nor is there any Footprints or Leave's seen on this Door.
3. It is also undisputed that there was No Fingerprints or Palmprints on any of the Window's, Door's or Door Knobs.
4. It is undisputed there was no Footprints on the Porch, in the Mud or in the sticker bushes by the ladder or on the ladder or on the Roof.

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5. It is Undisputed that Gotcher' Never Damged any Door's, Window's or Sliding Screen Glass Door.
6. It is Undisputed that Gotcher' never tried to hide, or flee the scene But took his time walking to his Car and Cooperated fully with all deputie's.
7. It is undisputed that the Helicopter pilot and deputie's arrived at the scene a short time from the 911 call and there is No dispute the Helicopter pilot do have a Camera attached to the bottom of his Helicopter that can pick up a wide range of thing's in the street or period.
8. In is undisputed that the victim in CP 10 Id at 11-12 admitted in the last six months there's been some burglarie's in her Neighborhood so it makes her nervous and Id at 13 the victim admitted this has been a busy area today all the way around before Gotchers Presence in that Neighborhood.
9. It is Undisputed that the victim never claimed Gotcher' Tried to open up her second story bedroom windows in the 911 call, Nor was it ever claimed Gotcher' Forcefully Kicked her Front Door, until after she had contact with the Police Interview's and with the Prosecutor Interview's that is when all sorts of claim's were added.
10. It is Undisputed where the victim told many inconsistent storie's and it is undisputed that the state added on extra claim's made against Mr. Gotcher.
11. It is Undisputed the victim misidentified all of Gotchers Clothing and Gotchers' Skin Tone Color and Gotchers Age ?
12. It is Undisputed that the victim stated she only seen a shadow walking towards her bedroom window and she lost sight of Mr. Gotcher while on her Roof.
13. It is Undisputed the victim swore under oath she had her sliding screen door locked, And it is Undisputed she told Gotchers Probation Officer she had her sliding screen door unlocked?
14. It is undisputed the victim first stated in the police reports that her occupation is she makes Gift Baskets, It is Undisputed the victim swore under oath her occupation is an accountant. It is also Undisputed the victim is a thief who embezzled over \$50,000 Dollar's from the company she worked for, she got caught went to jail, got found guilty of a Felony and did time for a crime of dishonesty.

**[ DISPUTED FACTS];**

1. It is Disputed regarding the discreption the victim made claim to about Mr. Gotcher and Gotchers Age and what Gothcher' was wearing that day.
2. It is Disputed about maybe the victim seen someone else that day and because of her excitement over exgerrated that it was Mr. Gotcher.
3. It is Disputed about all the different claims the victim provided to the state prosecutor and police officer's, The Court and Defense Team.

4. It is Disputed that Gotcher' Committed any of the **claim's** made by the victim.
5. It is Disputed that Gotcher Intended to Break Into the Victims House When he could had just Broke one of the Windows or went right on in Through the Sliding Screen Glass Door that was Unlocked the Victim told Gotchers' Probation Officer about over the Phone during his Personal Interview with the Victim?
6. It is Disputed that RCW 9A.52.025(1) Define all facts of Attempted Residential Burglary and of how one leads up to this Attempt?
7. It is Disputed on Criminal Intent Instructions or the Intent Instructions to be given without adding the complete definitions that also would include Entering Unlawfully Inside the Building or Residence **Inorder** for the Intent Instruction to Stand Valid. See, State v. Lewis, 69 Wash.2d 120, 124, 417 P.2d 618 (1966)(Decided under former RCW 9.01.070).
8. It is Disputed that Gotcher' Tried to open up the Victims Bedroom Windows, Any of its Door's or Forcefully Kicked any Doors.
9. It is Disputed that Gotcher' Walked around the victims house or looked inside any windows.
10. It is Disputed as seen on CP-5 Id at 21 The Victim admitted basically there was really no crime, but she could have been inticed by the 911 call operator to pursue it as a crime, Because the victim ask should I Really have bothered Nine-One-One? and CP-5 Id-15 the alarm is set for the downstairs which mean if Gotcher would had kicked the door forcefully or tried to open the screen door or windows the alarm would had triggered.
11. It is Undisputed that the operator is the one who made the statement to intice the victim to pursue a Burglary as to state on Cp-6 Id 3, well and the defendant definetly shoul'n't be climbing ladders and looking in your upstairs window. This support Gotchers claim that he never tried to push open a Bedroom window and admitted by the victim.
12. It is also Undisputed that the victim admits she refused to answer her door becasue of prior burglary's committed prior to Gotchers Knocking on her door that scared her. Her first reactions and thoughts was Gotcher is going to do physical harm, See, Page-9 Line-20 of the 911 Transcript and Page-10, Line's 11-12 and 13 to state **its** been a busy area today all the way around as to infer there has been earlier crime's committed in her area **which can mean she seen** a Black male trying to get into her home earlier that day or she assumed and lied stating false claim's as seen, all police reports. The Police pitcures the Probation Offciers Interview Notes, Her own Testimony at trial and with the 911 Transcript call and Defense counsel notes. It is Undisputed that it was not a Wet, and Dreay Dark Dark Day too Dark to Wear Sunglasse's as seen in these Attached Pitcure's the victim and state lied about.

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Again the state never proved Mr. Gotcher' entered any part's of his Body into the Victims House. The state slandered Mr. Gotcher' when it accused Gotcher of Unlawful Entry into the Victims Home as Evidenced in CP-45, And all throughout the Court Trial Transcript, and other State Documents that include the 911 Transcript Call and Rebecca Rohmans Interview Report in question?

The states instruction's were misleading to poisoned the minds of the jurior's inticing them to render an unfair verdict, because the intent factor, couldnot had been proven without an actual "Breaking and Entering " At this point Gotchers, Defense Counsel exposed Mr. Gotcher' To the all or nothing strategy that left the jurior's to convict "only" on the available option of Attempted Residential Burglary, According to Holdings outlined in State v. Jackson, 62 Wn.App. 53, 813 P.2d 156 (1991). Mr. Gotchers, Case also falls into place with V.F. which states;.....

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Insufficient evidence do not support Gotchers Conviction of an Attempted Residential Burglary. \*fn.2, Where the court improperly relied on RCW 9A.52.025(1), To infer that V.F. [Sic],like Gotcher' was claimed Intended to commit a crime where there was no actual entry into the apartment like that of Rebecca Rohmans HÖme, So in V.F. Case the state argued however, The appropriate remedy is for the court to remand for the trial court to enter findings on intent to commit a crime without using the improper inference to the same facts Mr. Gotcher' Challenge?

In support therof, See, State v. Bradley No, 41455-1-I (Wash.App.Div. 1 05/10/1999); That states where two different inference's can be drawn from a case, Than the state has failed to prove its case and a conviction must be reveresed and dismissed, as referenced in footnote's [18] and [21]. State v. Bradley, Gotcher' Also support his claim's to argue there was no windows pushed open or tampered with, Even the victim

claimed she only saw a shadow that could be that of Mr. Gotcher' which is only mere speculation and conjecture not evidence or sound proof that it ~~was~~ Mr. Gotcher' she saw coming towards her bedroom window, Nor was the victims sliding glass door pushed open or damaged, admitted by the victim. There were no fingerprints or palmprints or footprints on the ladder' roof, sliding screen glass door or any windows or door's to say Gotcher' actually touched or climbed up on or left leaves or forcefully was kicking the victims white painted front door, nor was there any type of damage's nor was the screen door ripped or torn in question? There was no physical evidence or eye witness's cooperation evidence to say it was Mr. Gotcher' whom done all these things?

All claims were added by the state prosecution and then the victim who was more than likely coached by the state or detectives, because every statement made by the state and victim were inconsistent in every way with all discovery evidence.

Gotcher' also referenced his case with State v. Ramond E. Thomas, [J.T.] No. 37821-0-I (Wash.App.Div.1 12/09/1996); That points out there was insufficient evidence from which the court inferred intent to commit a crime within as to the same facts as with the victim in Gotcher's case.

- A) Question? What was the court's written findings to state Gotcher' entered unlawfully inside Rebecca Rohmans House with the intent to commit a Residential Burglary the state accused Gotcher of in front of all 12 Jurors's?
- B) What did the court and state rest its facts on towards a Breaking and Entering or Unlawful Entry, when these attached pictures specifically show the house had no signs of damage's or forceful entry's?

Mr. Gotcher' argue pursuant to State v. J.P., 130 Wn.App. 887, 125 P.3d 215 (2005); We, explained that "[C]riminal Trespass is a lesser included offense to Burglary, even these constitutional provision's contridict the states claim's on CP-65, where the state claimed criminal trespass occurs when for example squatter break into a house thats unoccupied and are just there for shelter or for whatever reason's; They are not committing any crime inside and this is not a burglary charge.

Mr. Gotcher' believes the states findings here were misleading and a serious error to mislead the jury, because this case also state a Residential Burglary is a Criminal Trespass with the added element of Intent to commit a crime against a person or property therein. The state admitted instruction No.13 which contridicts its claims on CP-65 by providing the jurior's with the wrong information on Criminal Trespass when instruction 13, States [ A person commits the crime of criminal trespass in the first degree when he knowingly enters or remains unlawfully in a building], The state Showed Gotchers Unlawful Entry Only supported the crime of Attempted First Degree Criminal Trespass, Not a Felony Crime of a Burglary, Supported by Jury Instruction No. 15. Id. and

Because the Unlawful Entry component of the Burglary Statute and the Criminal Trespass Statute are the same. The states claim and jury instruction's provided to all 12 Jurior's didnt fully inform them of all supporting facts to the alleged crime. The claims Gotcher' argue is outlined in State v. J.P. 130 Wn.App. 887, 895, 125 P.3d 215 (2005) seen in Footnote; [25].

Mr. Gotcher' Argue there was no consistent evidence claimed by the victim and what the state added on to secure its conviction under false pretense. The victim claimed Gotcher' Knocked on her door, Then tried the door knobs, Then forcefully kicked the front door forcefully, Then went to push open the screen slidding door, Then climbed upon her ladder and walked around on her roof, But the state added on Gotcher' looked through additional windows, Gotcher' threw out his hat and sunglasse's from his car into the street to hide and change his identity so he would not get caught because he wanted to get away. Also Gotcher' unlawfully entered the victims house to steal something or could had assaulted or raped the victim. At all stages of Gotchers trial the state severely prejudice Gotchers defense to obtain a fair trial, providing the jurior's with false claim's and personal opinion's without any objections from defense counsel or the court to caution the state from using inflammatory, prejudicial remarks without any evidence to support its claims.

There surely was no cooberating evidence or any eye witness to support any claims made by the victim. Every last officer involved provided heresay statements reported by the victim inconsistent of the truth. Why was it that not one deputy dust for prints or damage's to any parts of the victims home, Nor was there any investigation to see if Gotchers vehicle left tire marks in the victims driveway or grass or mud, Nor did the police helicopter pilot admit such claim. Why was these claim's admitted without supporting evidence? Gotchers case was a sham a conspiracy a mockery of justice.

ADDITIONAL GROUND 8

- 1. Whether the appellate court believe there is a miscalculation of Gotchers offender score points and criminal history that can be resolved pursuant to the merging document Statute RCW 9.94A.589(1)(a)? .....42-45
  - A). Whether' Gotchers Offender Score Points and Criminal History can be challenged for the First Time on Appellate Review on the basis, that it is contrary to law? .....42-45
  - B). Where a constitutional claim stand valid on its face, can there be an immediate hearing for Mr. Gotcher' to be re-sentence to the correct amount of time after the correction of his offender score point's and criminal history record is challenged? .....42-45

2. [ Argument which includes facts in the Records & Attached Exhibits]

Where the state makes contridictory claim's. First it is stated on Page 102 on the Sentencing Recommendation and Opposition Request for a Dosa Report on Line-1 and in the Seattle Deposition Reporters LLC Page 3 States: Gotcher' has Accumulated 13 Felony Convictions ~~with an~~ Offender Score of 21 for this crime. Mr. Gotcher' Challenges the states findings where the state stated on line-3 According to the SRA, The Defendant's Offender Score in this case is 21. ~~His~~ score was maxed out at 9. ~~Then~~ on page-7 in Gotchers Trial Transcript on Line's 2-4 The court stated these are Old Convictions, ~~Five~~(5) of them, Not 13 old Convictions. See, Attached Appendix B To Plea Agreement (Sentencing

Reform Act), where Gotcher points out that the two 1985 Burglary 2nd Degrees the State counted Separately that was ran'd Concurrent to count as One Point. Then there are two 1989 Burg Convictions that also was ran'd concurrent and should had been counted as one point? Then there are two cts of attempted burglary 2nds thats unknown which do not belong on Gotchers Record and was counted as point's. Then there is a 1979 Pot Conviction that is a Misdemeanor Conviction the state still added as an offender score point where Gotcher' did 45 days in Jail, Then there is 3 Cts of attempted Burglary 2s dated 1983 the state counted don't belong in Gotchers Criminal History where the 1983's the 1979 and the 1985's have to be washed off the Books Pursuant to Washington v. Bergeron, 105 Wash.2d 1, 711 P.2d 1000 ( WA. 12/12/1985) seen at Footnote 60-62, as seen below:

States; 5,755 Attempted Burglarie's Occurred in this State last Year in (1984), \*fn.21, Where the Crime of Attempted Burglary whould have to be Virtually written off the Books as a Crime, Except in the case where a Burglary Defendant or an Accomplice Confess. "Question"? How can the State Reasonably expected to prove beyond a reasonable doubt what Specific Crime or Crimes where intended to be committed inside a Building When Entry is Attempted, But not gained? See, RCW 9A.52.030.

Mr. Gotcher' Argue where His Burglary Conviction's Encompassed the " Same Criminal Conduct" for purposes of Calculating his Offender Score The State claimed to be 21, Gotcher' Argue it should be No more than 7 or 8 Max. See, **Exhibits** [5] [6] and [7], Thus for Sentencing purposes The Crime emcompased the same criminal conduct RCW 9.94A.400(1)(a), Which should not had counted on the Scoring Form, Because Mr. Gotchers'

Burglary Crime's was a Continuing progress and where intimately related. There was no substantial change in the nature of the criminal nature of the criminal objective. See, Exhibits, 5, 6, & 7 and in Support of the Law See, State v. Franklin, 46 Wash.App. 84, 729 P.2d 70 (1986);.....

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Second, Our analysis is aided by reference to other analogous language, for example, A Similar Phrase, "Same Course of Conduct," Is set out in The Juvenile Justice Act, RCW 13.40.020(6)(a), State v. Adock, 36 Wash. App. 699, 706, 676 P.2d 1040, Reviewed Denied, 101 Wash.2d 1018 (1984), Interpreted that phrase to include offense's committed as part of any ordered or continuing sequence or under any recognizable scheme or plan." See, State v. Calloway, 42 Wash.App. 420, 423-24, 717 P.2d 382 (1985), ("Same Course of Conduct" If there is no substantial change in the nature of the Criminal Objective).....

Although, We Note purpose's behind the Juvenile Justice Act, Are some what different from those of the Sentencing Reform Act(SRA), Adock's Interpretation of Similar Language presents a Sound Analogy here. See, Washington Sentencing Guidelines Comm in Sentencing Guidelines Implementation Manual Pt.II, § 9.94A.400 Comment, At II-40 (1984)1&2

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**Therefore** The above problems that include Gotchers Offender Score Points and Criminal History, can be resolved pursuant to the Merging Document under State v. Bovan, 97 Wash.App.Div.1 04/19/1999) At Footnote [36] and [37]; RCW 9.94A.589(1)(a); State v. Wells, No. 60198-9 ( Wash.App. Div.1 11/10/2008).

Mr. Gotcher' Argue his offender score claims and criminal history can also be resolved as outlined in Footnote [21] in State v. Edwards, 725 P.2d at 442 (1986); & RCW 9.94A.400, and all throughout Washington v. Pittman, 59 Wash.App. 825, 801 P.2d 999 (WA.App. 12/13/1990) as seen in Footnote [25] and [26]. Gotchers, 1985 and 1989 Burglary Convictions must be ran'd concurrent and counted as one offender score point according to the original court contract agreement for those crimes under the same cause numbers, day date, year, criminal conduct and criminal intent that incompass the same criminal conduct. The two or three Cts of Attempted Burglaries under cause number 83-1-00466-3 King County Ran'd Concurrent thats Unknown in the Appendix-B, Criminal History (Sentencing Reform

Act) Which all have to be corrected. Then there is the 1979 Burg 2 Under' #90288 Deferred where Gotcher' served 45 days in Jail where an Evidentiary Hearing and Judicial Findings must be held to correct Mr. Gotcher's Sentencing.

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It is a fact pursuant to Ewards & Pittman, That a party may challenge a sentence for the first time on review on the basis, That it is contrary to law. \*fn.5, See, Footnote's [21], [25] and [26]; Washington v. Pittman 59 Wash.App. 825, 801 P.2d 999 (Wa.App. 12/13/1999), With the correction of Gotchers, Offender Score Points at the Minimum, Gotcher' should only been looking at 22 to 29 months with 75% off, or a Max of 8 Points of 37 to 45 months with 75% off including credited for all Jail time earned, Also a hearing will help correct all False D.U.I's Gotcher' Never had in his life, including correcting added crimes don't belong on Gotchers Matrix and those that are Misdemeanor Crime's the State counted as Felony Point's for Gotchers Sentencing This is why in the Interest of Justice ~~An Immediate Hearing is Required.~~

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Moreover, State v. Erickson, 22 Wash.App. 38, 42, 587 P.2d 613 (1978) Interpreted the phrase "Crime based on the same conduct or arising from the same criminal episode" (italics omitted), Set out in ABA Standards Relating to Speedy Trial § 2.2(e)(Approved Draft 1968), Erickson, at 44; Hold that offense's which are "Intimately connected or related" arise out of the same criminal conduct or episode.

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Once again, This interpretation guides our analysis and supports our Decision. Further' State v. Bradley, 38 Wash.App. 597, 687 P.2d 856, Reviewed Denied 102 Wash.2d 1024 (1984); Considered, Whether' two crimes were based on the "same conduct" for the purposes of CrR 4.3(c), The Mandatory Joinder Rule, Bradley, at 599, States, See, Footnote [33]-[56]; Therefore, Gotcher' Must be brought back to court in the interest of justice to correct his offender score points and criminal history record from a 60 month sentence.

[ LAW OF REVIEW ];

- a). Whether' The State Broke its Plea Agreement when it offered Mr. Gotcher' a 22 month sentence, Whether' an evidentiary hearing was required before the state and defense attorney took the plea away?
- b). Whether' Gotcher' must be taken back to court for the state to honor its 22 month contract plea agreement and, Whether' Mr. Gotcher' must be taken before a court for the court itself to make its own decision of this plea that was offered?

Second, Claim Gotcher' argue is he must be given a new sentencing to correct his offender score and criminal history behind the original plea agreement, Breached by the State. The question now become, did the state breach its plea offer on a vindictive or retaliatory motive of prejudice behind the victims alleged claim's. Why? Because the first set of state prosecutor's offered Mr. Gotcher' a 22 month sentence to prevent the harsher punishment the state would seek, If Gotcher' were not to accept the states offer.

This Gotchers, Attorney's John Ewers and Jennifer Atwood never discussed regarding any options. But what they did do was took it upon themselves to initiate a decision without Gotchers permission or consent if to accept or reject the states offer.<sup>2</sup>.

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2. Gotcher' argue its up to a Judge to make a decision under his or her discretion whether' to say "Yah or Nah". Gotcher' was never provided with a hearing to confront the state regarding its offer, because Gotchers defense Attorney's deceived Gotcher' by lieing to the state in violation of Gotchers Civil Rights and Civil Liberties. There are similar' holdings outlined in State v. Denistor, 143 Ariz 407, 411-12, P.2d 237, 241 (1985);.....

- a). Where' The judge has complete authority to reject the sentence negotiated by the partie's, See, Ariz.R.Crim P.17.4(d), Williams v. Superior Court, 130 Ariz 210, 212, 635 P.2d 498, 500 (1981); and
- b). 143 Ariz at 412, 694 P.2d 241; That states (even after accepting a plea agreement, a judge may reject the stipulated sentence, If he or she finds it inappropriate. \*fn.15.
- c). According to Denistor, 143 at 410, 694 P.2d at 241 & Seen in Frank Smith, 130 Ariz, at 212, 635 P.2d at 500, Seen in Footnote [41]; The Judge held hearing's in order to determine Whether' the Defender would accept the Plea and Sentence Negotiated between Admason and the State, There was no hearing in Gotchers Case.

3. Mr. Gorcher' knew if he Breached his plea agreement, He would be at a Risk to face a 60 month sentence, Meaning Gotcher' would never had given his

Attorney permission to take his case to Trial, Especially since the filling of several Washington State Bar Complaint's and two motion's filed with the Superior Court Judge: Sharon Armstrong for requesting removal of defense counsel John Ewers from his case do to on constant lie's, Deceit, Distrust Unloyalty, Lack of Communication, Lack of Interest and way below poor standards of Representation.

Also there is a 6th Amendment Violation with both attorney's Jennifer Atwood and John Ewers whom were both told by Mr. Gotcher' Verbally and by Written Documents to go or have their Private Investigator' Jill Williamson to go look inside Gotchers Vehicle by the arm rest to find a stirofoam cup with alchol in it, because when both deputie's Robert Kearney and Christopher Cross ask was you drinking? First Gotcher stated No. Then Deputy Cross said I can smell the Alchol from here. So you may as well tell me the truth! SO Gothcer' stated "okay" So what of it? I had a few drinks, still not ither attorney brought this up during the course of their Representation.

Atty: Jennifer Atwood displayed severe bias actions by just up and to go on her vacation without going over any Plea Agreement or to have her Investigator go out and take pitcure's of those sections of the victims house Gotcher' many of times requested by Letter's over the Phone and by leaving message's and speaking with her directly. She stated she would go to the victims home after she get confirmation first by ither attorney, But she never did so, this deprived Gotcher' of the evidence he needed to prove the victim lied about her roof leading to her Bedroom Windows or the connections thereto. Then there was all four attorneys giving personal

opinion's about Gotchers Case in front of Prosecutor' Kathy Ungerman, who then over looked any lesser included charge Mr. Gotcher' ~~Brought to~~ **His** Counsels attention including arguing the Dosa Program, Atty; John Ewer had No Intention to bring up. His only remarks was that your facing 60 months in prison and where going to trial.

Therefore, Attorney's Jennifer Atwood and Jill Williamsons actions both Violated Gotchers 6th Amendment Rights to Legal Representation. This claim is also to look into why Gotchers' case was refused to be turned over to a defferent law firm from Attorney's Jennifer Atwood, John Ewers, Rick Lickenstadher David Seawell Leo Hamagee and Lisa Duggard which became a serious conflict of interest since each attorney interfeared and made personal opinions about Gotchers case to the State prosecutor damaging Mr. Gotchers case.

Mr. Gotcher' argue the King County Prosecutor's failure to recommend his 22 month plea be given as it was promised by Reginal Justice Center Prosecutor's to Remove any potential benefit Mr. Gotcher' had obtained from his future of that agreement deprived ~~him~~ of his civil rights and due process of that plea as seen in Footnote [28] Supported by In re Ford No. 38643-3-I (Wash.Div.1 12/07/1998)). Mr. Gotcher' Also argue the State never Restored it Breach, being that that agreement is a contract that entittled Gotcher to the remedy that restores him his position before the breach as outlined in Footnote [29] In In re Ford No., 38643-3-I (Wash.Div.1 02/01/1998)) See, also State v. Hawley, No. 55497-2-I (Wash.App.Div.1 11/14/2005) outlined in Footnote's [25] and [26].

E. CONCLUSION. .... 49

For the following above reasons, this court must reverse and dismiss Mr. Gotchers, Conviction and Sentence. Also Mr. Gotcher must be abled to challenge the miscalculation of his offender score point's and criminal history record towards the reduction of his sentence.

Respectfully submitted this 4<sup>th</sup> day of March, 2010.



Mr. Norman Gotcher' Jr., #634076  
H-6, B:37 Pro-Se  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

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DECLARATION OF SERVICE BY MAIL

GR 3.1

I, Norman Katcher Sr., declare and say:

That on the 4th day of March, 20 10, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. # 63839-4:

Attached: 15 Katcher's, Sworn Affidavit in Support of Katcher's Statement of  
Addition Grounds with attached exhibits<sup>15 B's</sup> / Katcher's Statement of Additional  
Grounds, Pursuant to RAP 10.10 [Proposed] 49 pgs. 3 photos of victim's house;  
3 orders to Discharge Counsel, 2 orders of Attorney Client Privilege, 6 Appendix B and;  
Criminal History, Court Transcripts 12, 16, 45, 59, 64, 2 pros decl 39, 40, 4 Surety Instructions 7, 10, 11, 13,  
1 Sheriff Incident Report, 3, 911 Transcript, Court of Appeals Division One; Pre-Sent Notice for appeal  
2 pgs statement of arrangements calls. Clerk, Court Administrator Richard D. Johnson  
addressed to the following:  
One Union Square 600 University Street,  
Seattle, WA 98101-4170

Prosecuting Atty: King County  
King Co pros/app unit Supervisor  
W554 King County Courthouse  
516 3rd Ave  
Seattle, WA 98104

Atty: Gregory C. Link  
Washington Appellate pro-se  
1511 3rd Ave, Ste 701  
Seattle, WA 98101-3635

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

DATED THIS 4th day of March, 20 10, in the County of Aberdeen, County of Grays Harbor, State of Washington.

Norman Katcher  
Appellate/petitioner pro-se

DOC #634076. Unit H-6, B135  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520-9504

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2010 MAR -8 AM 10:56

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

NORMAN GOTCHER, Jr.,  
Petitioner,  
v.  
STATE OF WASHINGTON,  
Respondents,

CASE No. 08-1-13106-4 SEA  
CoA #63839-4  
SWORN AFFIDAVIT IN SUPPORT  
OF GOTCHER'S STATEMENT OF  
ADDITIONAL GROUNDS [PRO-SE]  
[SEE, ATTACHED EXHIBIT'S]

I. SWORN AFFIDAVIT IN SUPPORT OF  
GOTCHER'S STATEMENT OF ADDITIONAL  
GROUNDS, SEE, ATTACHED EXHIBIT'S.

I, Norman Gotcher' Jr., hereby provide the following facts and supporting attached exhibit's, in support of Gotchers, statement of additional grounds, and that I Norman Gotcher' Jr., am over the age of eighteen(18), and competent to be a witness herein.

The following facts are supported by supporting exhibit's and authoritie's referenced to the records as seen below: .....

SWORN TO Before me this 4th, day of March, 2010.

  
Norman Gotcher' Jr., #634076/H-6,  
B:37, [Pro-Se]  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

SWORN AFFIDAVIT IN SUPPORT  
OF GOTCHERS STATEMENT OF  
ADDITIONAL GROUNDS [PRO-SE]

I. [ TRIAL COURT ABUSE OF DISCRETION, VIOLATING GOTCHERS 6th AMENDMENT CONST. RIGHTS TO OBTAIN NEW COUNSEL], SEE, Page's 1-5, IN GOTCHERS STATEMENT OF ADDITIONAL GROUNDS].

[ FACT'S]:

See, Attached Order's, Exhibit's 1, 2 and 3. Two order's were filed by Mr. Gotcher' and No.3, ~~was~~ filed by defense counsel Atty; John Ewers. All order's were denied by Superior Court Judge: Sharon Armstrong on 1/21/09, 2/25/09 and on 3/31/09. There was no further' inquiry into why Mr. Gotcher' or Defense Counsel filed their order's? Referenced in CP. 27-28 and RP. 12, also defense brief at 1-5.

Mr. Gotcher' argue the court didnt question or inquire, If he had a stand by attorney to represent him or take over his case from prior counsel. This is one of the courts requirements when a defendand is in question to seek new counsel? This did not take place nor is there any record were the court provided Mr. Gotcher' any opportunity to seek new counsel?

The court did straight out denied both Mr. Gotchers and his Defense Attorney's Motion's requesting removal of defense counsel, so that Mr. Gotcher' could be afforded such opportunity to obtain new counsel for further representation and to complete all requested action's.

The actions by the court, Thus, Violated Gotchers Due Process Rights to be afforded with new counsel, which took away Gotchers 6th Amendment Rights were Gotcher' ended up getting convicted by poor representation with counsel whom was forced to remain on Mr. Gotchers case.

Mr. Gotchers, Motion's were all timely filed, As was defense counsels motion to withdraw from Gotchers case. The motion's were presented at Gotchers Omnibus Hearing, allowing plenty of time for Gotcher' to be abled to obtain new counsel, since there was no jury impaneled, NOR was there a trial started to prevent Gotcher' the right to obtain new counsel.

The courts ruling prejudice any chance's Gotcher' may have had to secure competent counsel in order to obtain a fair trial. Its argued that Gotchers prior attorney's allowed the state prosecutor and trial court to use inflammatory, slanderous remarks to assassinate Gotchers character without cautioning the state from making any inflammatory slanderous remarks or assassinating Gotchers character. Nor did defense counsel make any objection's from allowing the state to twist its defense evidence to use in favor of the state. CP.45 Id. 6-25

Atty: John Ewers didnt cross examine any of its own defense evidence the state end up using. Because the states evidence showed an attempt was made without criminal intent. Why? Because there was no physical evidence shown by the state that Gotcher' committed any of the claim's presented by the victim.

It is argued, to prove intent, there must be an unlawful entry into the premise's. Taking it a step further' even if to believe Gotcher' climbed this ladder, got on the roof and attempted to open a second story bedroom window and then leave, unlawfull entry was not proven in question?

Again the states evidence shown an attempt was made without criminal intent. Where was any evidence to show Gotcher' Unlawfully Entered into the victims premise's or Home? Why was Attempted First Degree Criminal Tresspass overlooked?

II GOTCHERS SENTENCE AND CONVICTION MUST BE REVERSED AND DISMISSED:  
ON THE ER 404(b) AND ER 609, CLAIMS ADMITTED BY THE TRIAL COURT.

The ER 404(b) and ER 609, Claim's are Constitutional Claim's that warrant reversal and dismissal of Gotchers Sentence and Conviction behind severe prejudial affect that outweighed the probative value. Why? This took away any fairness for Gotcher to receive a fair trial and because the prosecutor' knowingly and intentionally violated legal valid constitutional law's as outlined in E.g. Lough, 125 Wn.2d at 853 Majority at 9.

The law states: It is also a fact that ER 404(b), doe's not permit evidence of prior misconduct to show that the defendant is a criminal type, and is likely to have committed the crime for which he or she is presently charged. Lough, 125 Wn.2d at 853. These facts alone,

contradicts the trial court actions as seen in CP.12 at 22-25 and argued on page's 15-23 of Gotchers statement of additional grounds. Therefore, Gotcher' seeks dismissal of his Sentence and Conviction with prejudice according to CrR 8.3(b).

### III. [EVIDENCE TO SUPPORT INSUFFICIENT EVIDENCE FROM THE STATES CASE]

See, Attached Exhibits 4, 5, And 6, [ Pitcure's of the alleged victim's house ]; These pitcure's show there was no wet footprints or wet leave's seen on this white painted door in question? It also show there was no damage's whatso-ever from any alleged forceful kicking of this door? These pitcure's also show it was not a rainy day, It was not a dark, dark and dreary day too dark for Gotcher or any one to wear sunglasse's. See, RP,25 & CP,86 Contridicted Claim's, By Deputy Meeks at RP,75.

These pitcure's also show there was mud and lots of leave's every where that would had been stuck onto Gotchers tennis shoes to leave footprints and "yet" there were none? These pitcure's also show there was no rips or torn area's of this screen door' to say Gotcher' tampered with or touched anything. These pitcure's also show this ladder is placed in mud and sticker bushe's and is common sense If someone steps in mud and sticker bushe's, there is going to be footprints on the porch, the steps, ladder, roof and in the mud the ladder was sitting in. See, CP,59.

SWORN AFFIDAVIT IN SUPPORT  
OF GOTCHERS STATEMENT OF  
ADDITIONAL GROUNDS [ PRO-SE]

It is common sense that from the weight of stepping in the mud and on these sticker bushe's would had been broken or bent up and the force ful kicking of the door would had damaged it in some sort of way and maybe set off the alarm or motion senser's?

Why did the victim tell Gotchers' Probation Officer' She left her screen sliding glass door unlock, But in court swore to the court She had her screen door locked? If the victim claimed her door was unlocked , that means Gotcher' would had been abled to get inside? Why would the victim tell Gotchers Probation Officer' Thomas Lebrain this over the phone, But then tell a different story during Gotchers Trial under oath? That she had her sliding screen door locked? This is two different serious claim's she presented which was a great big part of Gotchers case in question?

Next: See, Attached Order's on Criminal Motion's which will show there was a Breach of Attorney Client Privilege, Which prosecutor' Kathy Ungerman used from information Breached by Atty: Jennifer Atwood and Private Investigator' Jill Williamson, that Kathy Ungerman added as an Aggravator as it took away any chance's Gotcher' had to seek the lesser included charge of Attempted First Degree Criminal Trespass. See, Exhibits 7, and 8. This is the most sacred aspect of the attorney client privilege to keep clients information confidential, and when this is breached by an attorney, The trust becomes lost and a defendant s 6th amendment rights become stripped. See, Gotchers arguments on page's 1-5 of his Statement of Additional Grounds.

V. MISCALCULATION OF GOTCHERS OFFENDER SCORE POINTS AND CRIMINAL HISTORY RECORD, MUST BE CORRECTED. JUDICIAL HEARING IS REQUIRED.

Mr. Gotcher' challenge's the miscalculation of his offender score point's and criminal history record. See, Attached Exhibits; A, B, C, and D. This will show the Trial Court Admitted Gotcher' Only have Five(5), Criminal Conviction's, Not 13 Conviction's as claimed by the State prosecutor's Office.

First, The trial court stated Gotcher have Five(5), prior convictions as seen in CP.4 and CP.7, But in the Seattle Deposition Reporters Brief The state say's Gotcher' has 13 prior conviction's with an offender score of 21, and this single attempted residential burglary carry's an offender score of 4 point's. This triples offender score points for any crime's.

How do a single crime carry an offender score of 4, even if it doubles, It could not count as 4 points. The state contradicts its own finding's, and over sentenced Gotcher' were Mr. Gotcher' must challenge his offender score points and criminal history record. Therefore, Mr. Gotcher' must be brought back before a sentencing court in the interest of justice.

Gotcher' argue with five prior conviction's he would carry 8 points Max which would give Gotcher' a standard range of 37 to 45 months at mid range for the DOSA program with 75% off and Credited with Jail Time.

Gotcher' points out on page 102, The sentencing recommendation and opposition request for a DOSA Report on Line-1, and on the Deposition Reporters Page-3; The state, stated; Gotcher' has accumulated 13, Felony Conviction's with an Offender Score of 21 for this Crime. Still, The state contradicts its own findings as seen on page-7 in Gotchers Trial Transcript on Line's, 2-4, Where the Trial Court Admits these are old conviction's, **Five** (5), of them, Not 13 old convictions, which Gotcher' points out in his Statement of Additional Grounds on page's 42-45. See, supporting case law where Mr. Gotcher' can challenge his sentence for the first time on review, where this challenge is contrary to law supported by Washington v. Pittman, 59 Wash.App. 825, 801 P.2d 999 (Wa.App. 12/13/1999), See, Footnote's 21, 25 and 26.

In reference back to page five (5) for insufficient evidence; It is argued the state didnot prove by any physical evidence that Gotcher Intended to commit an Attempted Residential Burglary, Where Gotcher' Crime was defined Under' RCW 9A.52.025(1), and RCW 9A.28.020(1), That is incorrect, by giving these two instruction's, The Jury was misled to the precise crime and the intent instruction the state provided was not to been provided without the unlawful entry to define the second prong.

[ EXAMPLE ];

The court further' explained "an inference cannot follow that there was an intent to commit a crime within the building just by the

defendants shattering of the window in the door. This evidence is consistent with two different interpretations. "One, indicating Attempted Burglary; A Felony; and the other' Malicious Mischief, A Misdemeanor. See, Jackson, 112 Wn.2d at 876. Similar to Gotchers case seen on CP.45, Id at 6-25.

Gotcher' Illistrate "That" he did try to notify the residence and he did make an effort by "First, Knocking on the residence door to notify any potential occupant of his presence, which further' show Mr. Gotcher' had no intentions to commit a crime or enter into the victims residence.

Why? Because, If Gotcher' was trying to do so, He could had eassily open the victims sliding screen door already unlocked told to Gotchers probation officer' Thomas Lebrain who has Records of his Interview with the Victim. Gotcher' also could had physically Ripped off the screen door or broken any window's of the first floor to eassy access, If this was Gotchers Intentions to commit such a crime.

Further' more it is a fact **Gotcher'** was never wearing any Glove's to cover his Hand's, Nor had anytype of Burglary Tool's, Nor was it a Dark and Dreary Rainy Day the Victim and Prosecutor Claimed it to be. Mr. Gotcher' also cooperated fully with the officer's, Nor did Gotcher try to flee the scene or hide which show Gotcher' had no intention of committing such crime. Gotcher' apparently was looking for help so he could get back onto the freeway from taking the wrong exit and got lost he panic and start knocking on doors to the only house's in the area

only to seek information on which way to get back onto the freeway, and to locate the Nintendo Corporation to seek employment Mr. Gotcher' tried to explain to very prejudice, incompetent officer's who not only made up false claim's nor even once, attempted to do their dutie's, once a crime has allegely been committed, But they also made it seem like Mr. Gotcher' didnt know what he was talking about and seemed illeterate. See, CP or RP-44.

Gotcher' made a mistake and took the wrong exit, got lost on a long empty road, Panic and didnt know how to get back onto the freeway, so Gotcher' did the only thing to do! to go knock on residence door's to seek anytype of help, but got more than he bargin for which not only caused him to be arrested, But to be sent to prison behind false claims to a crime that never took place and the first thing came to the alleged victims mind was Gotcher' is going to physically harm her instead of atleast trying to see what Mr. Gotcher' wanted?

Next: In reference to Jacksons, case compared to Gotchers Case, was Whether' the trial court erred in instructing the jury that it could infer Gotchers, intent was to commit a crime inside a building from the mere fact he attempted to enter. 112 Wn.2d at 872. \*fn.21, The Court held that such an instruction was improper in a attempted burglary case. See, Footnote 27 in State v. Jackson, at 876.

SWORN AFFIDAVIT IN SUPPORT  
OF GOTCHERS STATEMENT OF  
ADDITIONAL GROUNDS [PRO-SE]

Next: Gotcher' argue it was very crucial when defense counsel didnot offer' the court that the victim had motive to lie, from her past crime of dishonesty for embezzling over \$50,000 thousand dollars from the company and employee's she worked for, and because the victim did tell the court, there have been many burglarie's committed in her neighborhood prior to Gotchers presence and her neighborhood has been very busy that day, See, RP-11..& Trial Transcript of 911 call-10, Id at 11.

It well to say the victim had many reason's to lie and tell a lie, also the victim is an ex-felon for a crime of dishonesty and there is no telling how long the victim been stealing from her job, before she got caught? The point is, Is the victim is not what everyone see her as! If she constantly lied to her employee's and her boss, what make it so the victim won't do it again? See, RP-~~10~~.10.

Gotcher' argue because of the erroneous jury instructions the state provided to all 12 juroir's relieved itself of its dutie's and burden to prove every element beyond a reasonable doubt that is also reference is Smith, at 265(3); Where this court states our holding today is in accord with prior case's out of this courts holding, and that failure to instruct on an element of an offense is automatic reversable error.<sup>1</sup>

---

<sup>1</sup>. Recently, is State v. Eastwood, 129 Wn.2d 497, 503, 919 P.2d 577 (1996), We, held that the omission of an element of the crime produce's a "fatal error" by relieving the state of its burden of proving every essential element beyond a reasonable doubt. See, State v. Byrd, 125 Wn.2d 707, 713-14, 887 P.2d 396 (1995)(Failure to Instruct the Jury on Every Element of the Crime was Reversible Error), Because such an error relieves the State of its Burden of Proving Every Element beyond a Reasonable Doubt.

CONCLUSION BY THE ABOVE COURT RULING:

We, Reverse the court of Appeals and Remand For a New  
Trial on the Conspiracy Charge, Smith, at 266.

The Supreme Court Reversed, The holding that where the state plea's and prove's, "Only" Attempted Residential Burglary, as to the same in Mr. Gotchers case of which Mr. GOTcher' Challenges, Then the inference instruction, Is improper as seen below:

1. As in Becivenga, The inference instruction, Is not at issue as in the Bradley's, case, which is defferent than Mr. Gotchers' case "Where, There is a Second Reason pointing to Jacksons, and Mr. Gotchers, case which apply here; Only to say, In both Jacksons, and Mr. Gotchers, case The inference instructions was given, Dispite the "fact" Entry had not been proved. Therefore, the inference instructions were misleading to the jurior's as the above court states below:.....

2. This Court held, "that, the instruction on intent, cannot be given without evidence to support it, and that, it must place the defendant within a building or a residence home! The existing facts as argued here refer' that Mr. Gotcher' never went inside the victims house, Nor was there any physical evidence shown to prove Mr. Gotcher' Attempted to Enter or that Mr. Gotcher' Took a Substantial Step Towards Committing any Crime.

SWORN AFFIDAVIT IN SUPPORT  
OF GOTCHERS STATEMENT OF  
ADDITIONAL GROUNDS [PRO-SE]

As continued Mr. Gotcher' argue, The states instruction's were misleading, which also poisoned the minds of the jurior's, whom all came back with rendering a guilty verdict, which should not had happen, Why? Because the intent factor' could not had been proven without an actual "Breaking and Entering", Therefore, An Attempted Residential Burglary Charge, Conviction and Sentence against Mr. Gotcher' Must be Reversed and Dismissed with Prejudice after careful review of the Trial Court Records.

[ FACTS IN GUIDING THE APPELLATE COURT ];.....

[ UNDISPUTED FACTS ]:....

1. First, It was never claimed by the victim, That Mr. Gotcher' Entered Unlawfully Into Her Home.
2. It is Undisputed from the victims, Original 911 call to Dispatch That Gotcher' Never Once Forcefully, Kicked Her Front Door, Nor did the victim, Ever claim in her 911 call that Gotcher' Ever Tried to open up her Second Story Bedroom Window's.
3. It is Undisputed the victim never "once, claimed in her 911 call that She ever seen Gotcher' as the one coming towards her bedroom window's, But only to see a shawdow coming towards her window's.
4. It is Undisputed that there was "Not, one Fingerprint, Footprint or Palmprint found or discovered on any parts of the alleged victims house.
5. It is Undisputed that the porch did have lot's of wet leave's and it was a Muddy, Day, that if Gotcher' would had done any of the acts claimed by the victim, There would had been all sorts of fingerprints, footprints, and palmprints everywhere.
6. It is Undisputed, Gotcher' Never' Damaged any Door's, Window's or Screen Sliding Glass Door.
7. It is Undisputed Gotcher' Never went inside the victim's House, Nor Tried to Steal Something, or Hide or Flee from the Scene.

SWORN AFFIDAVIT IN SUPPORT  
OF GOTCHERS STATEMENT OF  
ADDITIONAL GROUNDS [PRO-SE]

8. It is Undisputed the Helicopter Pilot and Deputie's arrived in a very short period of time and was already in the neighborhood, and have camera's hooked up at the bottom of its helicopter to pick up anything. See, RP-6
9. It is Undisputed the victim admitted there were several crime's committed in her neighborhood, See, RP at 11 to state within the last six months prior to Gotcher' Knocking on her Door that made her nerveous and her first thought was Gotcher' going to cause physical harm. See, RP-42 and CP, 50-52.
10. It is Undisputed the victim told many inconsistent storie's, All in conflict with every single Report.
11. It is Undisputed that Gotcher, Did knock on the victims Front Door as any normal person would do. It is Undisputed the victim stated Should I really have bothered, Nine-One-One? as seen in 9115 cad 125 Id.at 21.
12. It is Undisputed the victim told Gotchers probation officer' She had her screen sliding Glass Door Unlocked.
13. It is Undicted the victim told everyone, Her occupation is making Gift Baskets, But told the court under oath her occupation is an Accountant. See, Attached Police Report<sup>24</sup> and Trial Transcript. ~~Ex. 2~~
14. It is Undisputed the victim is a thief with a felony record for embezzling over \$50,000 thousand dollar's from her employee's and the company she worked for, She got caught, Did time after being Charged with a felony. See, RP-10 & 11.

[ DISPUTED FACTS ];.....

1. It is Disputed regarding the discreption made about what Gotcher' was wearing, about Gotchers discreption and about Gotchers Age.
2. It is Disputed that maybe the victim seen someone else that day who was also african american, She got over excited when Gotcher' knocked on her door to assume Gotcher was the same person who came to her house earlier.
3. Is is Disputed about why the victim kept changing her statement's and why she added on extra claim's to lie infront of everyone?
4. It is Disputed about Gotcher' COMmitting any crime's claimed by the victim.

**SWORN AFFIDAVIT IN SUPPORT  
OF GOTCHERS STATEMENT OF  
ADDITIONAL GROUNDS [PRO-SE]**

5. It is Disputed about Gotcher' Intending to break into the victims house to steal something?
6. It is Disputed that RCW 9A.52.025(1), Defines all facts leading up to Attempted Residential Burglary or how this crime is Attempted?
7. It is Disputed how the state was abled to use the intent instruction without giving the unlawful entry evidence which is the second prong to make the intent a valid instruction as seen in, State v. Lewis, (Decided under former' RCW 9.01.070).

[ THE STATE PROVIDED DEFECTIVE JURY INSTRUCTIONS THAT RELIEVED THE JURORS TO PROVE BEYOND A REASONABLE DOUBT ALL THE ELEMENTS OF THE CRIME GOTCHER WAS CHARGED AND CONVICTED OF ];.....

See, Attached Exhibits 7, 10, 11 & 13, Each one of these instruction relieved the state of its burden of proof and violated Gotchers Due Process Rights to be afforded a Fair Trial as argued in Gotchers Statement of Additional Grounds on page's 6,23-35, and after full review by the Appellate court, Mr. Gotcher' Seek in the interest of Justice that its found he didnt obtain a Fair Trial, But was Severely Prejudiced by Defective Jury Instruction's that was also Erroneous pursuant to the Authoritie's of the Court's.

[ THE TRIAL COURT AND PROSECUTORS OFFICE BOTH COMMITTED REVERSABLE ERROR'S BEHIND IMPEACHING ALL GOTCHERS 13 and 26 YEAR OLD BURGLARY CONVICTIONS UNDER ER 609 & ER 404(b) WITHOUT WEIGHING THE PREJUDICIAL AFFECT AGAINST THE PROBATIVE VALUE ];.....

See, page's 14-35 ~~14~~ argued in Gotchers Statement of Additional Grounds which require automatic reversal. Then there is the Trial Court Abuse of Discretion argued on page's 2-5 6th Amendment Violation. Breach of Attorney CLient Privilege page's 1-5 and Breach of the State 22 month Plea Agreement argued on page's 45-48 and the Miscalculation

STATE EXHIBIT 5

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**FILED**

KING COUNTY, WASHINGTON

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of Gotchers offender score point's and crimianl history record as argued on page's 42-48. See, Attached Exhibit's A,B,C, and G three time's. Everything in support of Gotchers Claim's.

CONCLUSION'S:

For the foregoing facts supported by Attached Exhibits, The Sworn Affidavit and the Attached Statement of Additional Grounds Mr. Gotcher' Seek's Reversal and Dismissal of his Conviction and Sentence with Prejudice.

All claim's are sworn to before me this 4/12, day of March, 2010. And that I am over the age of eighteen(18), and competent to be a witness herein and that all supporting exhibits, the Sworn Affidavit In Support of Gotchers Statement of Additional Grounds and Gotchers Pro-Se Statement of Additional Grounds have now be served upon the following as addressed below:

Richard D. Johnson, *Prosecuting Atty, King County  
King CO Pros/App Unit Supervisor*  
W554 King County Courthouse  
516 3rd Ave  
Seattle, WA 98104 Appellate Attorney for Mr. Gotcher' Atty: Gregory C. Link  
The Court of Appeals, Division One Washington Appellate Project  
One Union Square, 600 University Street 1511 3rd Ave, Ste 701  
Seattle, WA 98101-4170 Seattle, WA 98101-3635

Upon service, Atty: Gregory Link promised to serve a copy to the State Prosecutor's office at W554 King County Courthouse 516 3rd Ave Seattle, WA 98104 King CO Pros/App Unit Supervisor.

SWORN AFFIDAVIT IN SUPPORT  
OF GOTCHERS STATEMENT OF  
ADDITIONAL GROUNDS [PRO-SE]

*Norman Gotcher Jr.*  
Norman Gotcher' Jr., Petitioner  
#634076/H-6, B:37 [ Pro-Se ]  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520

STATE EXHIBIT 4

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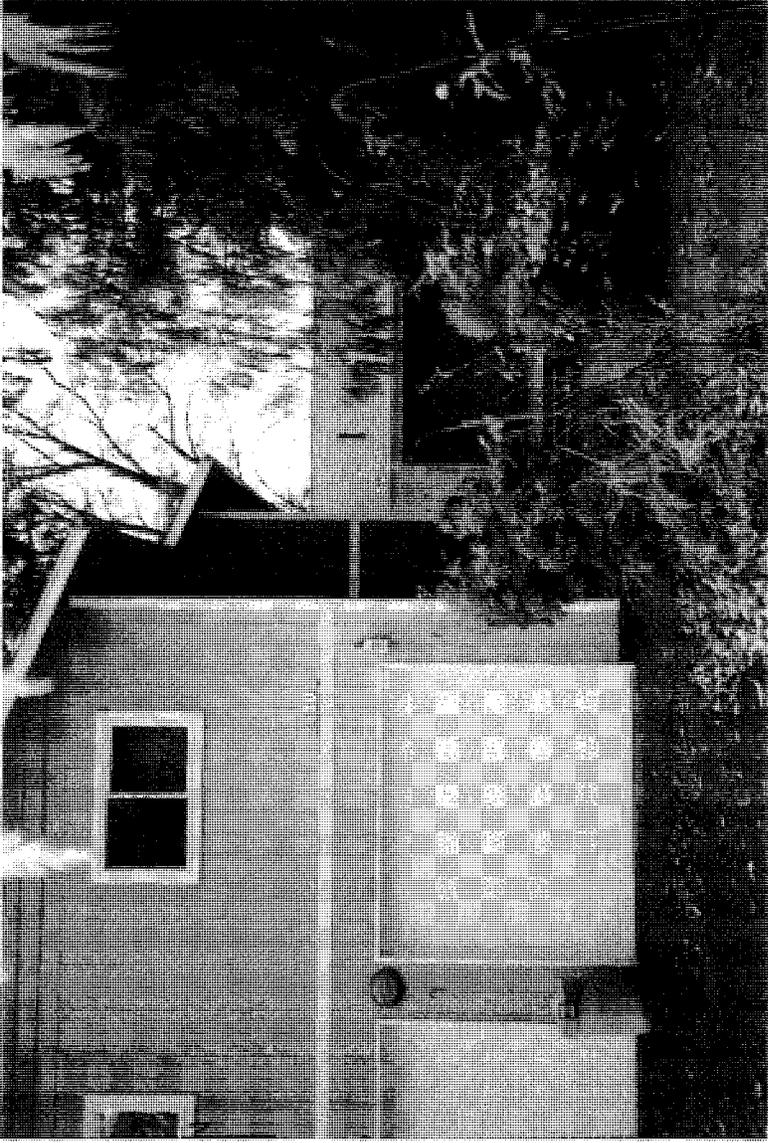
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STATE EXHIBIT 23  
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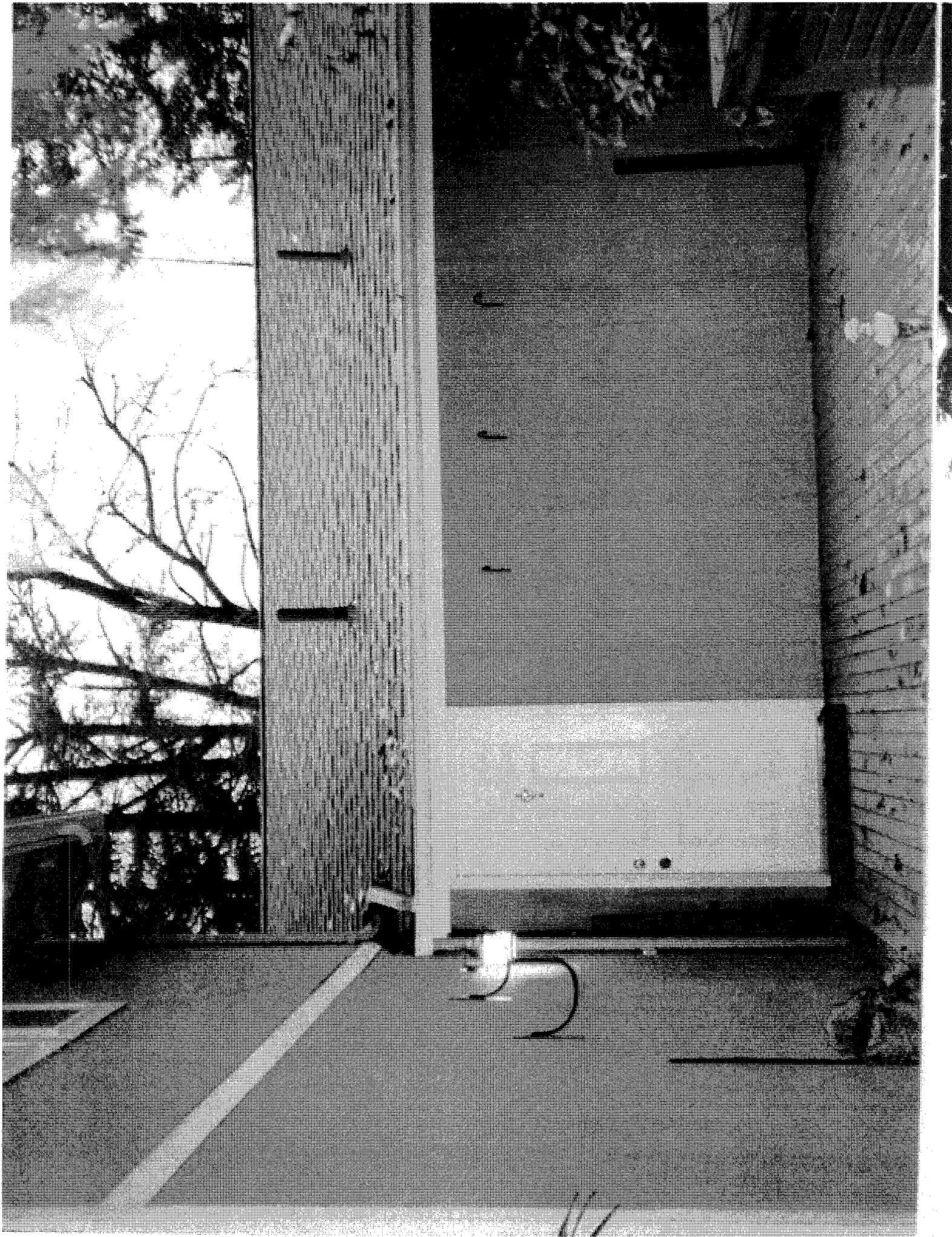


Exhibit 2

**FILED**  
KING COUNTY, WASHINGTON

JAN 21, 2009

CRIMINAL PRESIDING

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IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

*NORMAN GOTCHER*

Defendant.

Case No. *08/131064* SEA

ORDER *DENNING PER'S*  
*MOTION TO DISCHARGE*  
*COUNSEL*

Plaintiff  Defendant moves the court for an order *TO DISCHARGE*

*COUNSEL*

; now, therefore, it is hereby

ORDERED *MOTION IS DENIED*

DATED this *21* day of *JAN*, 2009.

*Sharon S. Armstrong*  
SHARON S. ARMSTRONG,  
JUDGE

Exhibit 2

FILED  
KING COUNTY, WASHINGTON

FEB 25 2009

CRIMINAL PRESIDING

IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

NORMAN GOTCHER  
Defendant.

Case No. 081131064 <sup>KNT</sup> ~~SEA~~

ORDER DENYING DEF'S  
MOTION TO DISCHARGE  
COUNSEL

Plaintiff

Defendant moves the court for an order

TO DISCHARGE

COUNSEL

; now, therefore, it is hereby

ORDERED

MOTION IS DENIED

DATED this 25 day of Feb., 2009.

Sharon S. Armstrong  
SHARON S. ARMSTRONG,  
JUDGE

King County Superior Court  
King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9113



ORDER - 1

ORIGINAL

Exhibit 3

FILED  
KING COUNTY, WASHINGTON

MAR 31 2009

CRIMINAL PRESIDING

IN THE SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

Norman Gotcher  
Defendant.

Case No. 08-1-13106-4 SEA

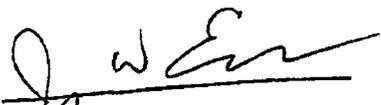
ORDER for withdrawal  
of Counsel

Plaintiff  Defendant moves the court for an order withdrawing  
as counsel

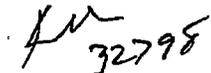
; now, therefore, it is hereby

ORDERED denied w/o prejudice

DATED this 31<sup>st</sup> day of March, 2009.

  
John Ewers  
WASA #31245

  
SHARON S. ARMSTRONG,  
JUDGE

  
32798

King County Superior Court  
King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9113

ORDER - 1

ORIGINAL  
Page 7

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JUDGE SHARON ARMSTRONG DEPT 29  
BAILIFF MALIA ROTH DATE: 03/31/09  
CLERK TANNER COLE  
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KING COUNTY CAUSE NO: 08-1-1310ce-4 KNT  
STATE OF WASHINGTON VS Norman Gotcher

Appearances:

DPA Cathy Ungerman present  
Defendant  present ( ) not present with counsel John Ewers  
Interpreter \_\_\_\_\_ present

MINUTE ENTRY

- Defendants motion to reduce bond.  Denied.  Granted, bond set at \_\_\_\_\_  
On:  Basic CCAP  Enhanced CCAP  EHD Basic  EHD Enhanced  WER  
 \_\_\_\_\_
- States / Defendants motion to continue trial date. Denied / Granted.  
Omnibus date: \_\_\_\_\_ Trial date \_\_\_\_\_ Expiration date: \_\_\_\_\_
- Defendant's motion to withdraw & substitute  
 Counsel - Denied without prejudice  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- Order is signed.

SCOMIS CODE        MTHRG        TCNTU        HCNTU

JUDGE SHARON ARMSTRONG  
BAILIFF MAILIA ROTH  
CLERK LYNN HARKEY  
Digital Recording DR E1201

DEPT 29  
DATE: 01/21/09

Start: 85039 PAGE 1 OF 1

KING COUNTY CAUSE NO: 081131064 SEA

STATE OF WASHINGTON VS NORMAN GOTTLER

Appearances:

DPA CATHY S. ANDERSON present

Defendant ( ) present ( ) not present with counsel JOHN EWERS

Interpreter \_\_\_\_\_ present

MINUTE ENTRY

Defendants motion to reduce bond.  Denied.  Granted, bond set at \_\_\_\_\_

On:  Basic CCAP  Enhanced CCAP  EHD Basic  EHD Enhanced  WER

\_\_\_\_\_

States / Defendants motion to continue trial date. Denied / Granted.

Omnibus date: \_\_\_\_\_ Trial date \_\_\_\_\_ Expiration date: \_\_\_\_\_

DEFIS MOTION TO DISCHARGE COUNSEL

DENIED.

/

\_\_\_\_\_

\_\_\_\_\_

Order is signed.

Exhibits 7

FILED

2009 MAY -1 AM 11:08

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING

STATE OF WASHINGTON

Plaintiff,

NO. 08-1-13106-4 SEA

vs.

ORDER ON CRIMINAL  
MOTION  
(ORCM)

NORMAN GOTCHER

Defendant.

The above-entitled Court, having heard a motion regarding the quashing of  
the subpoenas issued by the state commanding  
the appearance of an attorney and investigator  
for TDA in <sup>the</sup> trial of the above named defendant

IT IS HEREBY ORDERED that the attorney client privilege is the  
defendant's <sup>privilege to</sup> ~~to~~ waive. Upon reviewing the notes of the  
alleged victim, the most that can be said of the notes  
is that the attorney or investigator was repeating the  
defendant's statements. There is no indication that the  
defendant asked that his statements be conveyed to the  
alleged victim or in any other way ~~waive~~ the attorney-client  
privilege

DATED: May 1, 2009

[Signature]  
JUDGE

[Signature] 22296  
Deputy Prosecuting Attorney

[Signature]  
Attorney for the Defendant W.S.B.A. # 31245

Order on Criminal Motion (ORCM)

05/02



Exhibit 8

FILED  
KING COUNTY WASHINGTON

JUN 02 2009

SUPERIOR COURT CLERK  
BY TANNER M. COLE  
DEPUTY

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

State of Washington,

Plaintiff,

v.

NORMAN GOTCHER, JR.

Defendant.

No. 08-1-13106-4 SEA

ORDER ON CRIMINAL MOTION

RE: State's Motion to Compel

( ) CLERK'S ACTION REQUIRED

The above-entitled Court, having heard a motion on the State's request to  
order J. Atwood and J. Williamson to answer questions  
concerning an alleged apology by Mr. Gotcher and conveyed to  
IT IS HEREBY ORDERED: R. Rohman that the State's motion is  
denied because it is not timely and would involve  
inquiry into the attorney-client privilege

Date: 6/2/09

[Signature]  
Judge

[Signature] 32798  
Deputy Prosecuting Attorney

[Signature]  
Attorney for Defendant  
WSBA #31245



SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

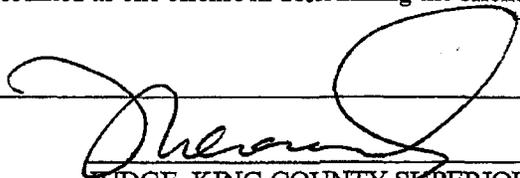
STATE OF WASHINGTON, )  
 )  
 Plaintiff, ) No. 08-1-13106-4-SEA  
 )  
 vs. ) JUDGMENT AND SENTENCE,  
 ) (FELONY) - APPENDIX B,  
 NORMAN GOTCHER ) CRIMINAL HISTORY  
 )  
 Defendant, )

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
CONT SUBS VIO/CONSPIRACY	03/15/2007	ADULT	07104871	KING CO.
HIT/RUN ATTENDED VEHICLE	01/21/2004	ADULT	041094387	KING CO.
CONT SUBST VIOL-SEC(a)	07/07/2003	ADULT	031073764	KING CO.
CONT SUBST VIO A: MFG/DEL/POSS	04/06/1998	ADULT	981036571	KING CO.
RESIDENTIAL BURGLARY	06/21/1996	ADULT	961063351	KING CO.
RESIDENTIAL BURGLARY	07/26/1990	ADULT	901048051	KING CO.
BURGLARY 2ND	02/08/1989	ADULT	891007734	KING CO.
BURGLARY 2ND	02/08/1989	ADULT	891007734	KING CO.
BURGLARY 1ST	12/31/85	ADULT	861001227	KING CO.
BURGLARY 2ND	12/31/85	ADULT	861001227	KING CO.
2CTS ATT BURGLARY 2ND	UNKWN	ADULT	831004663	KING CO.

[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 7/15/09



JUDGE, KING COUNTY SUPERIOR COURT

**APPENDIX B TO PLEA AGREEMENT  
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY  
(SENTENCING REFORM ACT)**

Defendant: **NORMAN GOTCHER**

FBI No.:

State ID No.: **WA11555296**

DOC No.: **634076**

This criminal history compiled on: **November 14, 2008**

- |                          |   |
|--------------------------|---|
| <input type="checkbox"/> | None known. Recommendations and standard range assumes no prior felony convictions. |
| <input type="checkbox"/> | Criminal history not known and not received at this time.                           |

**Adult Felonies**

Offense	Score	Disposition
<i>Misdemeanor</i> 07-1-04871-1 <b>controlled substance violation conspir</b>	03/15/2007	WA King Superior Court - Guilty 01/31/2008 6m work/ed release. 12m comm custody.
<b>1</b> 04-1-09438-7 <b>hit/run attended vehicle (fel)</b>	01/21/2004	WA King Superior Court - Guilty 07/23/2004 felony 45m doc ct ii conc with 03-1-07376-4sea, 9-18m comm custody. dismissed ct i.
<b>2</b> 03-1-07376-4 <b>cont subst viol - section (a)</b>	07/07/2003	WA King Superior Court - Guilty 07/23/2004 felony 45m doc conc w/04-1-09438-7 sea. 9-12m comm custody.
<b>3</b> 98-1-03657-1 <b>cont subst vio a: mfg/delvr/p</b>	04/06/1998	WA King Superior Court - Guilty 01/08/1999 33m doc.
<b>4</b> 96-1-06335-1 <b>residential burglary</b>	06/21/1996	WA King Superior Court - Guilty 12/05/1997 serve 63m doc. 06 04 99 nt of disc revw
<b>5</b> 90-1-04805-1 <b>residential burglary</b>	07/26/1990	WA King Superior Court - Guilty 01/08/1991 convicted by jury. serve 84m doc. pay cv/pen asst \$100 01-20-93 mandate affirmed.
<b>6</b> 89-1-00773-4 <b>burglary 2nd degree</b>	02/08/1989	WA King Superior Court - Guilty 05/22/1989 p/guilty 2 cts. serve 20m ea ct doc conc. pay rest/costs. pay cv/pen asst \$70. 07 14 97 ord mod sent. serve 15d kc jail.
<b>6</b> 89-1-00773-4 <b>burglary 2nd degree</b>	02/08/1989	WA King Superior Court - Guilty 05/22/1989 p/guilty 2 cts. serve 20m ea ct doc conc. pay rest/costs. pay cv/pen asst \$70. 07 14 97 ord mod sent. serve 15d kc jail.
<b>7</b> 86-1-00122-7 <b>burglary 1st degree</b>	12/31/85	WA King Superior Court - Guilty 10/3/88 48 months
<b>7</b> 86-1-00122-7 <b>burglary 2nd degree</b>	12/31/85	WA King Superior Court - Guilty 10/3/88 48 months
83-1-00466-3 <b>3 cts att burglary 2</b>		WA King Superior Court - Guilty 7/6/83 5 years concur
90288 <b>burglary 2</b>		WA King Superior Court - Guilty 8/14/79 3 years deferred, 7/6/83 deferred revoked 10 years prison
79-1-00797-4 <b>cont sub violation</b>		WA King Superior Court - Guilty 11/16/79 45 days

**Adult Misdemeanors**

Offense	Score	Disposition
CR0058213 EP <b>driving while suspended 3rd</b>	05/10/2003	WA Everett Municipal Court - Guilty
18201 SP <b>no valid op</b>	05/17/1990	WA Seattle Municipal Court - Guilty

APPENDIX B TO PLEA AGREEMENT  
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY  
(SENTENCING REFORM ACT)

Defendant: NORMAN GOTCHER

FBI No.:

State ID No.: WA11555296

DOC No.: 634076

**Adult Misdemeanors**

Offense	Score	Disposition
14453 SP susp.ol.	04/20/1990	WA Seattle Municipal Court - Guilty
890120549 SP no valid op	01/11/1989	WA Seattle Municipal Court - Guilty
883560532 SP reck.driving	12/19/1988	WA Seattle Municipal Court - Guilty
883120448 SP susp.ol.	11/05/1988	WA Seattle Municipal Court - Guilty
883020548 SP susp.ol.	10/26/1988	WA Seattle Municipal Court - Guilty

**Juvenile Felonies - None Known**

**Juvenile Misdemeanors - None Known**

**Comments**

Prepared by:

\_\_\_\_\_  
Sidnie Sebastian  
King County Office of the Prosecuting Attorney

*Exhibit G*

**APPENDIX B TO PLEA AGREEMENT  
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY  
(SENTENCING REFORM ACT)**

Defendant: **NORMAN GOTCHER**

FBI No.: **111302V9**

State ID No.: **WA11555296**

DOC No.: **634076**

This criminal history compiled on **July 18, 2003**

- None known. Recommendations and standard range assumes no prior felony convictions.  
 Criminal history not known and not received at this time. WASIS/NCIC last received on 07/17/2003

**Adult Felonies**

Offense	Score	Disposition
98-1-03657-1 04/06/1998 <b>vucsa- possess cocaine</b>		WA King Superior Court - Guilty 01/08/1999 33m doc.
96-1-06335-1 06/21/1996 <b>residential burglary</b>		WA King Superior Court - Guilty 12/05/1997 serve 63m doc. 06 04 99 nt of disc revw
90-1-04805-1 07/26/1990 <b>residential burglary</b>		WA King Superior Court - Guilty 01/08/1991 convicted by jury. serve 84m doc. pay cv/pen asst \$100 01-20-93 mandate affirmed.
89-1-00773-4 02/08/1989 <b>burglary 2nd degree</b>		WA King Superior Court - Guilty 05/22/1989 p/guilty 2 cts. serve 20m ea ct doc conc. pay rest/costs. pay cv/pen asst \$70. 07 14 97 ord mod sent. serve 15d kc jail.
89-1-00773-4 02/08/1989 <b>burglary 2nd degree</b>		WA King Superior Court - Guilty 05/22/1989 p/guilty 2 cts. serve 20m ea ct doc conc. pay rest/costs. pay cv/pen asst \$70. 07 14 97 ord mod sent. serve 15d kc jail.
86-1-00122-7 12/03/1985 <b>burglary 1st degree</b>		WA King Superior Court - Guilty 06/10/1986 4 years 6 months
86-1-00122-7 12/31/1985 <b>burglary 2nd degree</b>		WA King Superior Court - Guilty 06/10/1986 14 months
90288 01/18/1979 <b>burglary 2</b>		WA King Superior Court - Guilty 07/06/1983 10 years
831004663 01/06/1983 <b>attempted burglary 2</b>		WA King Superior Court - Guilty 07/06/1983 5 years

**Adult Misdemeanors**

Offense	Score	Disposition
18201 SP 05/17/1990 <b>no valid op</b>		WA Seattle Municipal Court - Guilty
14453 SP 04/20/1990 <b>susp.ol.</b>		WA Seattle Municipal Court - Guilty
890120549 SP 01/11/1989 <b>no valid op</b>		WA Seattle Municipal Court - Guilty
883560532 SP 12/19/1988 <b>reck.driving</b>		WA Seattle Municipal Court - Guilty
883120448 SP 11/05/1988 <b>susp.ol.</b>		WA Seattle Municipal Court - Guilty
883020548 SP 10/26/1988 <b>susp.ol.</b>		WA Seattle Municipal Court - Guilty



*Exhibit 6*

**CRIMINAL HISTORY SUMMARY**

the next time he needed anything. The buy money was recovered from Gotcher upon his arrest.

**DISPOSITION:** 45 months.

**Institutional Adjustments:** No documented problems at this time.

**Violence Type:** LSI-R and the RMI not completed in the Reception Center, therefore unable to assess violence type.

**B. PRIOR OFFENSE (S):**

**JUVENILE:**

None known.

**ADULT:**

**01/18/79: BURGLARY 2<sup>ND</sup> DEGREE: (King Co. Cause #90288):**  
**DISPOSITION:** 36 months.

**01/06/83: BURGLARY 2<sup>ND</sup> DEGREE: (King Co. Cause #83-1-00466-3):**  
**DISPOSITION:** 36 months.

**12/03/85: BURGLARY 2<sup>ND</sup> DEGREE: (King Co. Cause #86-1-00122-7):**  
**DISPOSITION:** 14 months.

**12/03/85: BURGLARY 1<sup>ST</sup> DEGREE: (King Co. Cause #86-1-00122-7):**  
**DISPOSITION:** 14 months.

**12/31/85: BURGLARY 1<sup>ST</sup> DEGREE: (King Co. Cause #86-1-00122-7):**  
**DISPOSITION:** 54 months.

**12/31/85: BURGLARY 1<sup>ST</sup> DEGREE: (King Co. Cause #86-1-00122-7):**  
**DISPOSITION:** 48 months.

**10/28/88: BURGLARY 2<sup>ND</sup> DEGREE: (King Co. Cause #89-1-00773-4):**  
**DISPOSITION:** 20 months.

**07/23/90: RESIDENTIAL BURGLARY: (King Co. Cause #90-1-04805-1):**  
**DISPOSITION:** 84 months.

*(Continued on Page 3)*

NUMBER	NAME: LAST	FIRST	MIDDLE
634076	GOTCHER, JR.,	NORMAN	

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.17, and RCW 40.14.

Distribution: ORIGINAL - Facility Central File COPY - Headquarters

Exhibit G.



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

**CRIMINAL HISTORY SUMMARY**

**06/21/96: RESIDENTIAL BURGLARY: (King Co. Cause #96-1-06335-1):**  
**DISPOSITION:** 63 months.

**06/21/96: RESIDENTIAL BURGLARY: (King Co. Cause #96-1-06335-1):**  
**DISPOSITION:** 63 months.

**04/06/98: VUCSA – POSSESSION OF COCAINE: (King Co. Cause #98-1-03657-1):**  
**DISPOSITION:** 33 months.

**C. OFFENSE BEHAVIOR PATTERN:**

Insufficient information available at this time to complete this section of the Criminal History Summary.

NUMBER	NAME: LAST	FIRST	MIDDLE
<b>634076</b>	<b>GOTCHER, JR.,</b>	<b>NORMAN</b>	

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.17, and RCW 40.14.

Distribution: **ORIGINAL** - Facility Central File **COPY** - Headquarters

X

1 THE COURT: Okay. Let's go ahead and do the ER  
2 609 issue and then we'll go to the Knapsted motion.

3 MS. UNGERMAN: Your Honor, I am handing forward  
4 the amendment.

5 THE DEFENDANT: Your Honor, I also have some  
6 motions, additional motions I would like to present  
7 myself.

8 THE COURT: You need to talk to Mr. Ewers about  
9 that, because he's your attorney.

10 Okay. Let's go ago ahead with the ER 609 issues.  
11 And, I have the State's trial memorandum before me and it  
12 shows five prior convictions the State is asking me to  
13 admit for impeachment should Mr. Gotcher decide to  
14 testify.

15 And did you wish to argue this issue,  
16 Ms. Ungerman?

17 MS. UNGERMAN: Your Honor, I'll rely on my  
18 briefing.

19 THE COURT: All right, Mr. Ewers.

20 THE DEFENDANT: I wonder if I could go get a  
21 Band-Aid.

22 THE COURT: Oh, my, yes.

23 Okay. We will take a short recess.

24 (Recess)

25 THE COURT: Okay, we are on the issue of prior

1 THE COURT: Okay, that makes sense.

2 Because then we might be able to do that Monday  
3 morning and then go right to the trial and your witness  
4 can be here for that as well.

5 Okay, great. And let's see, I haven't had a  
6 chance to read all the briefing. I have State's trial  
7 memorandum. I have read all of that. I didn't get a  
8 chance to read the facts. I have defense trial memorandum  
9 and the Knapsted motion, I haven't had a chance to read  
10 that, or the State's response.

11 So let's see, we will do the 3.5 on Monday.

12 Does the State have a motion to amend?

13 MS. UNGERMAN: Your Honor, actually, we were sent  
14 out to Judge Hayden recently, and Judge Hayden did the  
15 amendment at that time.

16 So the amendment was not changing the charges, it  
17 was just adding the allegation for the aggravator because  
18 the victim was home during the attempted residential  
19 burglary.

20 THE COURT: Okay. Can I get a copy of the  
21 Information?

22 MS. UNGERMAN: Yes, Your Honor.

23 THE COURT: And there's no 3.6; is that right,  
24 Mr. Ewers?

25 MR. EWERS: That is correct, Your Honor.

1 THE COURT: Okay. I'm going to deny the motion  
 2 to admit under 609. These are old convictions, five of  
 3 them, they are more that ten years old under ER 609, then  
 4 it becomes an ER 403 analysis. Although they are crimes o  
 5 dishonesty and per se admissible they are over ten years  
 6 old. So then the standard flips. They are admitted only  
 7 if the probative value substantially outweighs the  
 8 prejudicial effect. And the probative value here would be  
 9 that they are crimes of dishonesty and relevant because  
 10 they are virtually the same crime that Mr. Gotcher is  
 11 charged with today. But that's one of the reasons why the  
 12 Court will exclude them. Because I don't find that that  
 13 probative value substantially outweighs the prejudicial  
 14 effect.

15 Here the prejudicial effect is very substantial  
 16 for that very reason because they are the same crime as  
 17 he's charged with today. And it would be very difficult  
 18 for the jury hearing that evidence to not take into  
 19 account that he has a record of committing these sort of  
 20 crimes. So it really would be evidence of  
 21 predisposition.

22 What else have we got? The Knapsted motion.  
 23 And, I don't know, counsel, if you've had a chance to  
 24 confer about this. How did you envision the Court deali  
 25 with the Knapsted motion? Did you want to rely on the

X

24

1 police report?

2 MR. EWERS: I wouldn't have a problem if the  
3 Court wanted to review the Certificate for Probable  
4 Cause. I wouldn't have a problem if counsel wants to  
5 supplement that with the police reports. I don't have a  
6 problem with either one of those.

7 MS. UNGERMAN: Your Honor, has Your Honor had an  
8 opportunity to review the State's brief?

9 THE COURT: Well, I read your brief but not the  
10 facts. And I haven't read defense brief or your reply  
11 brief. Because I just got them.

12 MS. UNGERMAN: Before we can actually engage in  
13 the Knapsted hearing it's the State's position that the  
14 defense is not entitled to it. And that is articulated in  
15 my brief.

16 THE COURT: I need to read your brief then.

17 MS. UNGERMAN: Yes.

18 MR. EWERS: It would be helpful if I had  
19 counsel's brief.

20 MS. UNGERMAN: It was on your desk when I walked  
21 in.

22 THE COURT: We'll take a short recess so I can do  
23 that. But before that let's see if we can take care of  
24 any standard motions of a housekeeping nature. And in  
25 looking at defense brief, motion to exclude witnesses,

No. 7

A person commits the crime of residential burglary when he or she enters or remains unlawfully in a dwelling with intent to commit a crime against a person or property therein.

---

No. 10

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



Mr. Gatchers' Argument and prove this Jury Instruction should not had been given to the Jurors, because this Instruction of Intent Cannot be given without Evidence to Support it, and it must place the Defendant within a Building. See Jackson, 112 Wn.2d at 876. The Court further explained, "An Inference Cannot Follow that there was intent to Commit a Crime within the Building just by the Defendant's Shuttering of the Window in the Door. Just Like in Mr. Gatchers Case because there can be indications on many different Crimes Gatchers' could had pursued a Delicate Misdemeanor or Felony one would never know or could pinpoint without actual Entry or Breaching into one's Home or Building and to Speculate even the slightest would severely prejudice one's case. This Alone is Grounds for Reversal of the Conviction and Sentence.

No. 11

To convict the defendant of the crime of attempted residential burglary, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about November 7, 2008 the defendant did an act that was a substantial step toward the commission of a residential burglary;

(2) That the act was done with the intent to commit residential burglary; and

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

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

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

INSTRUCTION NO. 13

A person commits the crime of criminal trespass in the first degree when he ~~enters~~  
*knowingly enters*  
or remains unlawfully in a building.

1 locate the area that he wanted to commit a crime in. Or  
 2 maybe just casing the house. But certainly climbing up on  
 3 the roof and trying to get in a second story bedroom  
 4 window is evidence of a substantial step to commit a  
 5 residential burglary. 2

6 The last element is an act that was an intent to  
 7 commit a residential burglary. A residential burglary is  
 8 an unlawful entry with the intent to commit a crime  
 9 inside.

10 So breaking that apart a little bit. Unlawful entry.  
 11 Well, we know it was an unlawful entry because he doesn't  
 12 know Rebecca. She doesn't know him. He was not invited.

13 The house was locked. And he kept trying to get in. We  
 14 know that it was an unlawful entry. He was not welcome in  
 15 that home. *There was no Unlawful Entry, because to say or prove this Defendant*

16 Also, intent to commit a crime inside. The State  
 17 doesn't have to prove what type of crime he intended to  
 18 commit. And it could be any crime. It could have been a  
 19 theft. Like we maybe would normally think about when  
 20 somebody is trying to break in. Steal a T.V., steal some  
 21 money, steal some jewelry, watch some T.V. Which, in  
 22 essence, is a theft, because he's using electricity that  
 23 somebody else pays for.

24 It could have been something very scary. It could  
 25 have been an assault. It could have been a rape. It

X

X

*Would had to actually had went inside Rebecca Robinson Home?*

1 could have been something else. The State doesn't have to  
2 prove what type of crime that he intended to commit. The  
3 State only needs to prove that he intended to commit some  
4 sort of crime.

5 Now, what this case all boils down to is whether the  
6 defendant - - the State can prove the defendant took a  
7 substantial step with the intent to commit a crime inside  
8 the house.

9 And this is what the defense attorney is going to  
10 argue, as he should. He's going to argue that the State  
11 can't prove it. The State can't prove that Norman Gotcher  
12 attempted to get into the house because he intended to  
13 commit a crime. But that's not what the evidence shows.  
14 That's not what our common sense shows. That's not what  
15 our common experience shows. And this is all based on the  
16 evidence. And here's why.

17 First of all, he doesn't know Rebecca. She doesn't  
18 know him. He had no reasonable purpose to be at her  
19 house. Remember, he wasn't working for the city doing any  
20 inspections. He wasn't making any deliveries. He was not  
21 calling on her for any business purposes. He had no  
22 reasonable purpose to be there. Also, there was no  
23 emergency. It wasn't like he was in desperate need of  
24 medical attention and needed to get in that house to get  
25 to a phone to call 911. That's not what happened here.

1 facts for the purpose of this hearing.

2 THE COURT: Mr. Ewers.

3 MR. EWERS: Your Honor, we have before us a  
4 charge of attempted residential burglary. The elements of  
5 attempt or to get to an attempt, there needs to be  
6 substantial steps towards committing a crime. In this  
7 case this crime would be residential burglary, which  
8 requires the entry unlawfully into a building with the  
9 intent to commit a crime therein.

10 Before we get to an argument concerning whether  
11 or not there is proof or evidence here of intent to commit  
12 a crime, I think we need to first ask whether or not the  
13 State has enough evidence to prove something beyond mere  
14 preparation. In this case they do not. In order for - -  
15 what they have basically, is a person who knocks on a  
16 door, climbs a ladder, tries a window, and then leaves.  
17 That is essentially - -

18 THE COURT: Well, didn't he do more than that  
19 though? He knocked on the front door, then he went to a  
20 side door, sliding glass door and tried to open that.  
21 Then he got on the ladder.

22 MR. EWERS: He attempted to open a sliding glass  
23 door, got on a ladder and tried a window up there. Then  
24 left.

25 At this point that's all the State has for

1 do it that way. But counsel's offering to take her packet  
2 and make a photocopy for the Court.

3 THE COURT: We have a copy machine here, why  
4 don't we do it here. And I'm sure that will take a few  
5 minutes, so let me know when you're ready.

6 (Recess)

7 THE COURT: All right, we're back on the record.  
8 And the defense has a Knapsted motion. I have before me  
9 not only defense briefing, State's response, but now also  
10 the Certification for Determination of Probable Cause and  
11 the interview with Ms. Rohman.

12 MS. UNGERMAN: As well as the police reports.

13 THE COURT: Yes.

14 MS. UNGERMAN: Your Honor, in light of defense's  
15 stipulation, I believe this has been marked as Exhibit No.  
16 1 for pretrial purposes.

17 THE COURT: Yes.

18 MS. UNGERMAN: In light of defense's stipulation  
19 to the facts for the purpose of this hearing I'm ready to  
20 go forward with a Knapsted motion.

21 THE COURT: So you're not asking me to find that  
22 it is not properly before me? You want me to rule on the  
23 merits?

24 MS. UNGERMAN: Not now. Well, now I believe it  
25 is properly before you since the defense stipulated to

1 heard him trying to open the second story level, or the  
2 second story window, correct? f

3 A. Correct.

4 Q. You didn't actually see that, you saw a shadow?

5 A. I saw a shadow of a person in front of my bedroom  
6 window.

7 Q. Where in your statement does it say he kicked the  
8 door?

9 A. It doesn't. f

10 Q. Where do you say it doesn't say he opened a  
11 screen door?

12 A. It says in here, doors.

13 Q. Where does it say a screen door?

14 A. It doesn't say a screen door. And I must have  
15 left that out - -

16 THE COURT: Hold on.

17 MS. UNGERMAN: Objection to the argumentative  
18 nature of the question.

19 THE COURT: Okay, sustained.

20 Allow the witness to finish her answer before  
21 asking another question.

22 Q. (Mr. Ewers continuing) Where does it say your  
23 dog was growling?

24 A. It's doesn't. It says she was barking. f

25 Q. I didn't ask you what it says, I asked you if it

1 A. Correct.

2 Q. And he climbed the ladder?

3 A. Yes.

4 Q. Now, was this ladder on the patio?

5 A. It was on the ground in front of the sliding  
6 glass door.

7 Q. So it was on dirt? ~~X~~

8 A. It is landscaped, yes.

9 Q. Dirt and grass?

10 A. There is no grass there.

11 Q. No grass. ~~V~~

12 Leaves?

13 A. Probably the leaves were off to the side I think.  
14 I don't know that.

15 Q. Any bushes?

16 A. There are some bushes there.

17 Q. So you've got dirt and bushes. ~~+~~

18 A. Yes. ~~+~~

19 Q. So your sliding glass door opens to dirt and  
20 bushes? ~~V~~

21 A. At the time, yes. It doesn't now.

22 Q. Now you have a patio?

23 A. We do have a deck there.

24 Q. Now, at some point you said you heard him walking  
25 on the roof. And it is your contention that you think you

*use these arguments first for my appeal ?*  
 ↓

1 You don't suddenly get to say that because this crime has  
 2 an element of intent and because somebody has been  
 3 convicted of another crime in the past that has intent as  
 4 another element those are not magic words to suddenly open  
 5 up the flood gates so to speak to admit all prior crimes  
 6 that a defendant has been convicted of. And that is  
 7 essentially what the State is attempting to do here.

8 What they are trying to say is because he had the  
 9 intent to commit a burglary 13 years ago, or 20 years ago,  
 10 or 26 years ago, that he suddenly today had the intent to  
 11 do it. This is propensity evidence and is exactly what  
 12 Evidence Rule 404(b) was designed to sort out, to push to  
 13 the side those sorts of arguments that you are allowed to  
 14 try to bring in and essentially what it amounts to is to  
 15 explain to a person while they are before the jury what  
 16 their thought is. This is propensity evidence and it's  
 17 far, far, far too old. Which seems to me the prejudice  
 18 far outweighs the probative value.

19 THE COURT: Ms. Ungerman, did you wish to  
 20 respond?

21 MS. UNGERMAN: No, Your Honor.

22 THE COURT: All right. The prior convictions are  
 23 now being offered under ER 404(b) to show not propensity  
 24 but rather that Mr. Gotcher had the required intent to }  
 25 commit a crime therein when he committed the crime of }

1 seeking to admit the defendant's prior burglary  
2 convictions. All of them, again, were residential, and  
3 would be admissible in order to prove intent to commit  
4 this crime.

5 THE COURT: Did you wish to present further  
6 argument or rely on your brief with regard to that  
7 motion? This is a 404(b) issue.

8 MS. UNGERMAN: Correct. I will highlight that  
9 again the intent for offering the conviction, it is,  
10 again, to prove intent, which is an element of the crime.  
11 It is unlike 404(b), it's not with 404(b), obviously deals  
12 with character evidence, and that is not why the State is  
13 offering it. It is to prove intent to commit a crime  
14 inside.

15 THE COURT: And, Mr. Ewers, did you wish to  
16 respond?

17 MR. EWERS: Yes, please, Your Honor.

18 What is most concerning here is that the  
19 admission of the these priors once again is over ten years  
20 old. We're getting into a range - - well, we discussed  
21 this moments ago on the 609 matter. The earliest we're  
22 talking about here is 13 years old. The State is seeking  
23 to admit one that is over 20 years old.

24 Essentially what the State is trying to do here  
25 is put evidence into place that deals will propensity.

Exhibit

DO NOT DISCLOSE! <input type="checkbox"/>		<b>SHERIFF</b> <b>KING COUNTY</b>		<b>INCIDENT REPORT</b>		08-274197		Page 1		
Domestic Violence: <input type="checkbox"/>						276-G-0		District: F-2		
Reported:	DOW:	Time:	Incident Type:			Initial FCR		Court		Juvenile
11/7/2008	Fri	15:11	BURGLARY, RES., ATTEMPT			276-G-0				<input type="checkbox"/>
Occ Between:	DOW:	Time:	And:	DOW:	Time:	Location Name:				
11/7/2008	Fri	15:00	11/7/2008	Fri	15:00					
Incident Location:					City:			State:	Zip	
24109 SE 208 ST					MAPLE VALLEY			WA	98038	

**SUSPECTS/ARRESTED PERSONS SECTION**

Association:		Last, First Middle				Interpreter Needed	Booked	Citation #	Co-Defendant #		
SUSPECT		GOTCHER, NORMAN *				<input type="checkbox"/>	<input checked="" type="checkbox"/>				
Address				City			ST	Zip		Phone Numbers:	
510 22 AV C				SEATTLE			WA	98122		Home 206/322-1775	
Sex	Race	DOB	Height	Weight	Hair	Glass'	Eyes	Facial Hair			
M	B	10/26/1960	5' 9"	167	BLK		BRO	GOATEE			
Scars, Marks & Tattoos			Clothing				Gang		Set		
			GREY JACKET, GREY SWEATSHIRT, BLACK PANTS								
Occupation		Employer			OLN	ST	SSN	AFIS#:			
UNEMPLOYED					GOTCHN*403P6	WA	535-68-7322				
Charges Codes:				RCW( or Local Ord) Code - Description					Counts:		
503-F CRIMINAL WARRANT, FELONY				- FTA Veh aslt/ \$5000					1		
276-I BURGLARY, RES., ATTEMPT				- Invest. of att. res burg					1		

**VICTIMS, WITNESSES AND OTHER PERSONS SECTION**

Association:		Last, First Middle				Interpreter Needed	Phone Numbers:				
VICTIM		ROHMAN, REBECCA SUZANNE				<input type="checkbox"/>	Home 425/432-6915				
Address				City			ST	Zip			
24109 SE 208 ST				MAPLE VALLEY			WA	98038			
Sex	Race	DOB	Height	Weight	Hair	Glass'	Eyes	Facial Hair			
F	W	5/28/1967	5' 7"	115	BRO		GRN				
Scars, Marks & Tattoos			Clothing				Gang		Set		
Occupation		Employer			OLN	ST	SSN	AFIS#:			
GIFT BASKET		SELF EMPLOYED			ROHMARS337K8	WA	532-92-4222				

**REVIEW**

Date Submitted:	Reporting Officer:	Disposition:	
11/7/2008	03078 Kearney, Robert F	INCIDENT REPORT - PHYSICAL BOOKING MADE	
Date Time Reviewed:	Reviewed By:	CID Screener:	Event Processing Status:
11/7/2008 23:15	18548 Sullivan, Jessica L		Approved
Date Assigned:	Investigator Assigned:	Date Status Last Changed:	
		11/7/2008 11:15:36	
<input type="checkbox"/> Aid Req <input type="checkbox"/> Weapons <input type="checkbox"/> Injury <input type="checkbox"/> Alcohol <input type="checkbox"/> Computer <input type="checkbox"/> Dom Viol <input type="checkbox"/> Drug <input type="checkbox"/> Juvenile <input type="checkbox"/> Gang			

1 CALLER: And I . . .

2 OPERATOR: And you haven't seen any weapons right?

3 CALLER: I haven't no. Huh, uh. It just makes me nervous though because nobody comes  
4 down this road and there's no reason for somebody to be checking my doors.

5 OPERATOR: Okay.

6 CALLER: And he's still not back to his car so he's around our property somewhere. And  
7 the alarm is . . .

8 OPERATOR: Okay just a second, just a second okay.

9 CALLER: I do have my dog inside so that's good, but no there's no reason for him to be  
10 checking my doors. (Unintelligible) come. Good girl (unintelligible). Good girl.

11 OPERATOR: Okay.

12 CALLER: But if he breaks in the upstairs bedroom, if the, he breaks in the upstairs, any of  
13 the upstairs windows there's no alarm upstairs.

14 OPERATOR: Okay.

15 CALLER: The alarm is only set for the downstairs. (Unintelligible) come, good girl. Come.  
16 (Unintelligible). Come. (Unintelligible).

17 OPERATOR: Okay. Okay I've got the officer's in route. They're, they're comin' lights and  
18 sirens. You're not um armed with anything right?

19 CALLER: No I have no arms.

20 OPERATOR: Okay. Okay.

21 CALLER: Should I really have bothered nine-one-one. It (unintelligible) . . .

22 OPERATOR: Yes, yes.

23

1 OPERATOR: your house would be easier (unintelligible) . . .

2 CALLER: it was kind of funny because I was just downstairs um getting my dog ready to get  
3 it brushed and I was talkin' to her when the, when he knocked on the door so he  
4 must have known somebody was here.

5 OPERATOR: Oh you think he knew somebody was inside?

6 CALLER: I think so because he kept knocking and I just immediately turned around and got  
7 the dog upstairs and turned on the alarm.

8 OPERATOR: Okay. And you said you, you heard the chopper overhead right?

9 CALLER: Yeah he's overhead right now.

10 OPERATOR: Okay cause I see him on here, but um we've got one patrol car in the area.

11 CALLER: And I know that in the last you know six months there's been some burglaries in  
12 our neighborhood so. It makes me nervous.

13 OPERATOR: Yeah. That's what I was gonna say, this has been a busy area today all the way ?  
14 around.

15 CALLER: Is this a bad area today?

16 OPERATOR: Yeah, for whatever, I was gonna say normally no. . . .

17 CALLER: (Unintelligible) . . .

18 OPERATOR: But for whatever reason you guys are catchin' up today.

19 CALLER: Really?

20 OPERATOR: Yeah. They've got, okay the chopper has the car. It's going north . . .

21 CALLER: He does?

22 OPERATOR: Yeah well he can see it. We don't . . .

23 CALLER: Oh good.

1 OPERATOR: Gravel road.

2 CALLER: Sounds like a . . .

3 OPERATOR: Off of south . . .

4 CALLER: helicopter's come over.

5 OPERATOR: yeah. Off . . .

6 CALLER: Off of . . .

7 OPERATOR: Two-Thirty-Sixth . . .

8 CALLER: yes.

9 OPERATOR: Avenue Southeast?

10 CALLER: Uh, huh.

11 OPERATOR: Okay. Okay and we've got, actually yeah that helicopter is for you.

12 CALLER: Oh you're kidding.

13 OPERATOR: No.

14 CALLER: Oh my gosh.

15 OPERATOR: So I'm gonna go ahead, now I'm gonna go ahead and keep you on the phone

16 because I didn't know the chopper was up in the air. Um and chances are if that

17 vehicle just left he's gonna see it somewhere.

18 CALLER: Yeah he's, he's around here somewhere.

19 OPERATOR: Yeah.

20 CALLER: I don't know what he would be wanting. ?

21 OPERATOR: Uh yeah, probably to see if there was anybody home and he probably didn't think

22 there was and he thought . . .

23 CALLER: Well . . .

States Exhibit E

**FILED**  
KING COUNTY, WASHINGTON

**JUN 02 2009**

**SUPERIOR COURT CLERK  
BY TANNER M. COLE  
DEPUTY**

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	Plaintiff,
	)	No. 08-1-13106-4 SEA
	)	
v.	)	
	)	DECLARATION OF DEPUTY
NORMAN GOTCHER,	)	PROSECUTING ATTORNEY
	)	
	)	Defendant.
	)	

STATE OF WASHINGTON	)	
	)	ss.
COUNTY OF KING	)	

1. I am a deputy prosecuting attorney for the King County Prosecutor's Office, and am familiar with the above entitled case.
2. The defendant was arrested for Attempt to Elude, DUI, and Hit & Run on December 29, 2007.
3. At that time, he had two DUI convictions, and had an additional three DUI cases pending in warrant status.
4. Additional investigation was necessary before felony charges were filed in King County.
5. A request for additional information was sent on January 3, 2008.
6. The pending cases were resolved before charges were filed in the case at hand.
7. The statute of limitations expires on December 29, 2010.
8. The State filed charges 13 months after the defendant's arrest on January 30, 2009.

DECLARATION OF DEPUTY PROSECUTING ATTORNEY- 1

Daniel Saterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955

State Exhibit B

- 1
- 2
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- 22
- 23
9. In regards to the first pending case (492638), the defendant was arrested for DUI, Refusal to Stop and Resisting Arrest on September 8, 2006, the defendant was arraigned on September 11, 2006, found guilty by a jury on May 6, 2008, and was sentenced on May 15, 2008. According to the docket, this case was continued on the defendant's motion on at least 10 separate occasions. In addition, one bench warrant was issued for the defendant's arrest during that time. At no point did the State ever ask the court for a continuance.
  10. In regards to the second pending case (07-1-01168-9), the defendant was arrested for Attempting to Elude and DUI on January 6, 2007, charges were filed on April 23, 2007, the defendant was found guilty by a jury on November 6, 2007, and sentenced on June 23, 3008. According to the docket, two bench warrants were issued for the defendant's arrest for failing to appear for sentencing hearings. As a result of the defendant's failure to appear for sentencing on November 20, 2007, sentencing occurred seven and a half months after the verdict.
  11. In regards to the third pending case (07-1-03673-8), the defendant was arrested for Attempting to Elude and DUI on February 16, 2007, charges were filed on December 17, 2007, a bench warrant was issued and the defendant was ultimately arraigned on August 20, 2008, found guilty by a jury on November 25, 2008, and sentenced on November 26, 2008.

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

Signed and dated by me this 1 day of June, 2009, at Seattle, Washington.

  
Kathy K. Ungerman, WSBA #32798  
Deputy Prosecuting Attorney

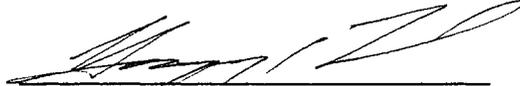
DECLARATION OF DEPUTY PROSECUTING  
ATTORNEY- 2

Daniel Saterberg, Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000  
FAX (206) 296-0955



DATED this 2<sup>nd</sup> day of October, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregory C. Link", written over a horizontal line.

Gregory C. Link – WSBA 25228  
Attorney for Appellant (WAP #91052)

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710

FILED

2009 JUL 23 PM 1:38

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

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

Norman Gotchar Jr.

Plaintiff/Petitioner,

vs.

State of Washington, King Co.

Defendant/Respondent.

NO. 08-1-13106-4SEA

SEA  
 KNT

Notice and motion for new trial is attached.