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COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

STATE OF WASHINGTON,  
Respondent,  
V.  
IMRAN VAHORA  
Appellant.

No. 65848-4-1

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

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

**Assignment of Error**

**Appellant's fifth, sixth, and fourteenth amendment rights to the U.S constitution and Washington constitution Art. 1 & 9 sections 22 were violated when the state found Mr. Vahora guilty for double jeopardy charges, defense counsel failed to pursue an impeaching cross-examination, CCLCrR 4.7 failed to provide defendant a discovery, conflict of interest, and ineffective assistance of counsel.**

## Additional Ground 1

I Imran Vahora filing for ineffective assistance of counsel. Defining ineffective counsel as when a counsel's deficient performance causes prejudice against his client. In **Wednesday 6/17/10 RP 3. Lines (11, 12, 13, 14,)** when the state charges Mr. Vahora count seven assault in the second degree under the strangulation prong against victim Ms. B.R.C and other count of second degree with sexual motivation, this is based on the same incident that's charge six occurring at the same location during the same time period against victim Ms. B.R.C the defense counsel neither investigated nor made a reasonable decision to investigate the state's through discovery. This put at risk the defendant's right to an ample opportunity to meet prosecution. And the result of the proceeding a defendant found guilty of **Double Jeopardy** charges.

The literal language of **the Fifth Amendment**, which guarantees against being "twice put in jeopardy of life or limb". After jeopardy has attached, the same **double jeopardy protection bars protect the defendant for the offense**. The Supreme Court has held, however, that the protections of the double jeopardy clause apply to all charges.

The protection against multiple punishments, the court majority in Dixon rejected the view that the term "same offense" could have two different meaning, the court's decisions on the issue have developed clearly different tests for when two offenses are the same when the protection against successive prosecution is being asserted from the test that governs when the protection against multiple punishment is being asserted.

## Additional Ground 2

The sixth Amendment to the constitution guarantees the accused the right to trial “by an impartial jury of the state and district wherein the crime shall have been committed.” the right to trial by jury is also guaranteed by all state constitutions, and by the state and federal statute. These guarantees may be more or less broad than the sixth Amendment right.

**On Tuesday 6/15/10 RP 3. Lines (9, 11, 12, 13,)** the state conform that defense counsel Ms. Muth intended to waive jury on this matter. Ms. Muth conform that Mr. Vahora and I had discussed about reviewed the waiver of the jury trial. The discussion based on some circumstance that Mr. Vahora had no choice to take bench trial, because of financial situation. In **date 6/17/10 RP 18. Lines (4, 5, 6, 7, 8, 9,)** on transcripts that clarify Mr. Vahora worked in McDonald’s to provide his family a better life he also worked for transportation industry as school bus driver. When Mr. Vahora’s family hired Ms. Muth for to get fair trial, Ms. Muth demanded \$25,000 thousand for fair trial and investigation. After eighteen months of serving times in king county jail, Ms. Muth and Mr. Allen Bred demanded more money for jury trial \$20,000 thousand which is that time Mr. Vahora had no money, he already paid \$ 25,000 thousand to defense counsel the money he had save for his family, and his daughter education. Ms. Muth suggested that if you don’t have money to pay us then we have to take this case to bench trial. It will cast you only couple thousand dollars, and if you take this case to jury trial, they will find you guilty to all charges, because all jury will be white and you are an Indian. This conversation had recorded on the phone of king county jail, in Kent. Defense counsel knew that Mr. Vahora have no criminal history and even unfamiliar with justice system. this situation put Mr. Vahora financial pressure to a followed a defense counsel advice and hoping for to get fair trial and that justice will be prevent.

In some cases the defendant may wish to waive trial by jury because defendant believe that they have better chance of an acquittal if defendant triad before judge. But Mr. Vahora's case that defendant was on financial pressure. Mr. Vahora had two choices one is to take to bench trial or other one is loss \$25,000 thousand that he already paid to defense counsel. The court held that the defendant does not have a constitutional right to be tried by a judge without a jury.

The approach to ineffective assistance of counsel claims set forth in Strickland vs. Washington which requires a showing of both inadequate representation and prejudice to the accused, is premised on the view that the right to effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. The **sixth Amendment** right includes the right to assistance counsel that is effective. Mr. Vahora's sixth amendment rights to the **U.S constitution and Washington constitution right** were violated when defense counsel waive the trial by jury, when surrounding circumstance justify a presumption of ineffectiveness can a sixth amendment claim be sufficient without inquiry in to counsel's actual performance at trial.

The sixth Amendment guarantee encompasses the right to a jury determination of guilt or innocence. Because of ineffective assistance of counsel Mr. Vahora found guilty not just all charges but including charge of double jeopardy.

### **Additional Grounds 3**

Counsel has duty to make reasonable investigation or make reasonable decision that makes a particular investigation necessary. On **Thursday 6/17/10 RP 87. Lines (1, 2 and RP 96. Lines 22, 23,)** when the state asked defense counsel to do the quick interview to Ms. Christina Palermo in the middle of the trial. After examine by the state. A defense counsel did not asked any question to Ms. Christina Palermo on cross-examination. The right of an accused in a criminal trial to due process is the rights to a fair opportunity to defend against the state's accusation. The rights to confront and cross-examine a witness, but instead of cross-examining the states witness a defense counsel tried to find **resolution (negotiate the deals)** in middle of the trial.

The benchmark for judging any claim of ineffectiveness must be whether counsels conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. A defendant's right to impeach a prosecution witness with evidence of bias or prior inconsistent statement is guaranteed by the constitution right to confront witness. Thus any error excluding evidence is presumed prejudicial and requires reversal unless honorable judge could have a reasonable doubt that the defendant would not be convicted.

Cross-examination is the principal means of testing the reliability of evidence. The confrontation clause ensures the reliability evidence against a defendant by subjecting it to rigorous testing in an adversary proceeding. Trial counsel has an obligation to investigate possible methods for impeaching prosecution witness and failure to do so may **constitute ineffective assistance of counsel.**

Defense counsel has not presented the defendant to the satisfaction of **the sixth amendment** when counsel failed to pursue an impeaching cross-examination or present

Addition evidence that would in all reasonable probability cast a reasonable doubt on the testimony of the state's witness. Facts tending to discredit a witness which the examiner could have inquired into on cross-examination, even if the witness had not raised them in direct testimony.

A defendant shows prejudice by his attorney's ineffectiveness by demonstrating there is a reasonable proceeding would have been different.

#### Additional Ground 4

On **Thursday 6/22/10 RP 108. Lines (11, 12, 13,)** the state shows Mr. Vahora **exhibit No .43**. The transcripts of Mr. Vahora's statement and asked him do you recognize this document? Mr. Vahora said no, I have not seen my any transcripts, and the state has not provided me any discovery through the defense counsel. **Rules 4.7 the regulation of discovery.** Distribution of criminal discovery by counsel to in custody defendants. Defense counsel without need for leave of court, may provide his or her client lodged in the king county jail all police reports, investigation reports, test results, witness statements, and any other discovery under the following limitations.

The constitutional duty and the Supreme Court has held that the due process clause of the fifth and fourteenth amendment require the prosecution to provide any evidence or full discovery to the defense. This constitutional discovery requirement, known as the Brady rule, operates independently of the prosecution's statutory discovery obligation. The state had failed to provide fully discovery to defendant also did victim interview in middle of the trial and failed to provide transcripts of interview to defendant.

The Supreme Court held that the prosecutor's failure to disclose the statement in response to the defendant's request violated **Brady's constitutional right**. The court concluded that the test developed in Strickland vs. Washington (S. ct.1984) for demonstrating prejudice in **ineffective assistance of counsel** claims was sufficiently flexible to cover the no request, general request, and specific request cases of prosecutorial failure to disclose evidence favorable the accused under that test, evidence is material only if there is a reasonable probability that the discovery been disclose to the defense, the result of the proceeding would have been different.

**Rule (a) (1) (A)** requires the government the defendant's request or without request, the state must provide to defendant that portion of any written record containing the substance of any

Relevant oral statement made by the defendant in response to interrogation by a person the defendant knew to be a government agent the state had failed to provide transcripts of defendant's testimony.

### **Additional Ground 5**

In this additional ground, I, Vahora Imran arising the issue of first degree robbery that, Mr. Vahora did not committed, or did not even had intention to commit the first degree robbery. **On Tuesday, 6/22/10. RP. 34.** The state's witness Ms. Erika Wolf specifically said that in the court of justice, that Mr. Vahora did not rob me from my phone or anything. And, also when a defense counsel asked the same question to Ms. Erika wolf on cross-examination did Mr. Vahora take any personal property during this incident? Again Ms. Erika Wolf denied, that Mr. Vahora did not take anything from me, I left everything in Mr. Vahora's car. After the statement of Ms. Erika Wolf in the court, a defense counsel filed motion to dismiss the charge against Mr. Vahora. **On RP 82. Lines (19, 20, 21, 22, 23, 24, 25,)** a defense counsel present the original information, and Mr Santos and the court remind the defense counsel that Mr. Vahora is charged with taking money from Ms. wolf, that the to-witness, the united states currency, and there no testimony from Ms. Wolf that Mr. Vahora took money from her. And I do not think the state has met its burden. In addition, the retention of property, there is a different between retaining and simply leaving it.

The court denied the motion for only two reasons, one it was because that was half-time motion and other reason was the weighed favorable to non-moving party. Even though Mr. Vahora had no intention to rob Ms. Erika Wolf. End of the trial the court found Mr. Vahora guilty for first degree robbery. Even the state knew that Mr. Vahora was not guilty of first degree robbery, because of middle of the trial. The state willing to drop charge against Mr. Vahora if defendant plead guilty of other charges.

None of the testimony proves that Ms. Erika Wolf had \$100 or \$200 hundred dollars in her wallets. In Defense interview Ms. Erika said that she had only some change not more than a dollar.

The definition of robbery under the statute of robbery is as follows, its **RCW 9A.56.190**.  
“A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force of violence, or fear of injury to that person or his property.

Again Mr. Vahora had no intention to rob Ms. Erika Wolf property. In this matter the state must dismiss charges against Mr. Vahora with or without prejudice.

### Conclusion

Mr. Vahora's fifth, sixth, and fourteenth Amendment rights to the U.S constitution and Washington constitution rights were violated. These constitutional errors which require automatic reversal. In addition, automatic reversal is required when the remedy for the constitutional violation, such as violation of the Double Jeopardy Protection, under the some circumstance "denial of jury trial" on the criminal charges, violation of constitution standards which themselves required a showing of prejudice to the defendant, such as right to "effective assistance of counsel."

For the reason above this court should reversal Mr. Vahora's conviction and remand for a new trial or dismissed with or without prejudice.

Respectfully

Date: 04/21/11

signature: Vahora Imrem, G.