

No. 68661-5-1

COURT OF APPEALS
Division - I
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

Vs.

PARAMJIT SINGH BASRA

Appellant,

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
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STATEMENT OF ADDITIONAL GROUNDS BRIEF

ON APPEAL FROM THE KING COUNTY SUPERIOR COURT
Honorable Judge BRAIN GAIN

Presented By: PARAMJIT SINGH BASRA
Appellant, In Pro Se

DOC No. 357517 CFIL No. A,D--6

Clallam Bay Correctional Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326

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C O U R T O F A P P E A L S
DIVISION - I
O F T H E S T A T E O F W A S H I N G T O N

STATE OF WASHINGTON,
Respondent,

V.

PARAMJIT SINGH BASRA ,
Appellant,

No. 68661-5-1

STATEMENT OF ADDITIONAL GROUNDS

A. IDENTITY OF THE APPELLANT

COMES NOW, PARAMJIT SINGH BASRA , Appellant, in pro se, requests the Court adhere to less stringent rules under Haines V. Kerner, 404 U.S. 519, 92 S.Ct. 594 (1972), and except Appellant's "STATEMENT OF ADDITIONAL GROUNDS BRIEF"; which Appellant prepared after reviewing the "APPELLANT'S OPENING BRIEF" of counsel.

B. STATEMENT OF THE CASE

July 27, 2009 Appellant, during a domestic dispute assaulted his wife, and she later dies July 30, 2009 from her injuries substained during the assault.

February 22, 2012 the Jury convicted Appellant under both "First Degree Murder" and "Second Degree Murder"; for the death of a single human being, his wife of 27 years. The Court sentenced on April 20, 2012, then amended that sentence on June 26, 2012, modifying community custody.

C. ARGUMENTS PRESENTED FOR REVIEW

1. DID THE JURY VIOLATE 'DOUBLE JEAPARDY' STANDARDS, WHEREBY APPELLANT WAS CONVICTED UNDER BOTH RCW 9A.32.030 AND RCW 9A.32.050, FOR A SINGLE ACT OR DEATH OF A HUMAN BEING?

State charged "Murder in the First Degree" RCW 9A.32.030 under Count-I of State's Information, and "Murder in the Second Degree" RCW 9A.32.050 under the Count-II of State's Information. CP 131; 1

Trial Court instructed the Jury under the "Lesser Included Offenses" of the "Murder in the Second Degree" RCW 9A.32.050; (CP 156) "Manslaughter in the First Degree"; (CP 159) "Manslaughter in the Second Degree"; (CP 160).

State's case in chief presented that on July 27, 2009 Appellant "Assaulted" his wife at their shared residence, by choking her for between 20-60 seconds, an State claimed this mere fleeting act of "Assault" resulted in her death July 30, 2009, at the hospital. The records show that responding officers observed that Appellant appeared calm, was not sweating, breathing hard, or showing signs of a extensive altercation having taken place. Appellant informed the officers that he feared his wife might be dead from their brief altercation, and directed the officers to her immediate location in the residence, through his broken english.

Appellant was in shock at this point, where after 27 years of marriage they had an altercation, which became physical and his wife might be seriously hurt or dead in their home. The State charged Appellant with both "First and Second" Degree Murder for the death of his wife, which the Jury erroneously convicted.

State cannot now present any authority allowing the State to charge and/or prosecute the "Lesser Included Offense" as a separate count before the Jury, an then request to "Vacate" when the Jury convicts on both counts.

"The conviction not only the sentencing creates a double jeopardy violation." State V. Gohl, 109 Wa. App. 817, 37 P.3d 293 (2001)

Prejudice is clearly established in this case, where the Jury clearly had a "reasonable Doubt" as to which degree of "Murder" Appellant committed, where it

chose to enter multiple convictions of both "First and Second Degree Murder" in the single death of Appellant's wife, there is clear double jeopardy.

"...When a crime has been proven against a person, and there exists reasonable doubt as to which of two or more degrees that person is guilty, he or she shall be convicted only of the lowest degree" see RCW 9A.04.100; CP 153A at 78 (Jury Instruction #14)

Appellant presents to this reviewing Court, that where the Jury convicted under both "First and Second Degree Murder", the record contains the "Reasonable Doubt" required to apply the "Lesser Degree" of "Murder in the Second Degree", dismissing the "Murder in the first Degree", as Jury was instructed. CP 153A

Trial court errors in not following RCW 9A.04.100 and dismissing the Jury's erroneous verdict under "Murder in the First Degree" as required, where Jury failed to follow the given instructions of the Trial Court, and violated these 'Double Jeopardy' standards in convicting Appellant for the two crimes for the single death of his wife.

State excepted the instruction given by the Court on "Murder" under Count-I, which included "Lesser Offense Instructions", but still failed to dismiss the Count-II of the charging information pretrial, which directly charged "Murder in the Second Degree" separate from Count-I in this case, which made the "Charging Information" defective, and did lead the Court to instruct the Jury in error.

Had the Jury been properly instructed that the Jury could find guilt under the alternative of "Felony Murder in the Second Degree" RCW 9A.32.050 as the "Lesser Included Offense" alternative to "Felony Murder in the First Degree" instead of a completely separate crime under Count-II, the Jury's verdict might be very different based upon the facts of this case. CP 153A; CP 153A

The Jury clearly found Appellant guilty of "Second Degree Murder" and of a "First Degree Murder" both for the death of his wife, therefore the Jury was required to then apply only the lesser degree of Murder, per instructions, and this Jury failed to follow those instructions, resulting in double jeopardy.

This is not a case where the Jury entered a verdict under both a greater and lesser offense, per the verdict forms CP 156; CP 159; CP 160 are all now blank as required of the Jury. The Double Jeopardy herein resulted from State's charging information, and the erroneous "Count-II" Appellant faced during this entire trial, which Jury convicted separately from "Count-I" of this case.

"A Separate crime is charged in each count. You must decide each Count separately. Your verdict on one count should not control your verdict on the other count." CP 153A at68 (Jury Instruction #5)

The question before this Court is did the State cause Appellant to face a 'Double Jeopardy' for his wife's death, and did the Jury convict the Appellant twice, separately for his wife's death, in violation of Double Jeopardy?

State moved to dismiss the Count-II prior to sentencing, once State relised State's error in the charging, which resulted in the double conviction, but the damage had already been done at this point. Once the bell has been rung, we are not able to go back in time and unring that bell later. Appellant faced these dual charges during the entire trial, and they were before the Jury during the case deliberations, which prejudice the Appellant before that Jury. The Jury did clearly convict Appellant of both "First and Second Degree Murder" for a single death of a human being, and had the Jury been told that it had to then decide between First or Second Degree Murder, basically whether this death did result from the "Assault" alleged by the State or not, then the Jury's verdict likely would have been different.

Thereby, not only did the jury instructions as given by the Court place a Defendant in jeopardy twice of the single death, these instructions failed to fully and properly state the law of the case at hand for the Jury. CP 153A

State deliberately and knowingly charged "Premeditated Murder First Degree" and "Felony Murder Second Degree", to ensure State could present the intent to "Assault" in arguing for premeditation element, and the Jury was so confused by

the State's actions and those instructions that Appellant was convicted for a single death under both "First and Second Degree Murder" Statutes.

State then moved the Trial Court to vacate Count-II erroneously, whereby a Jury instruction specifically required the Trial Court vacate Count-I, and to sentence the Appellant under Count-II, whereby "Murder in the Second Degree is clearly the lesser degree of murder that the Jury convicted under. CP 153A

When the crime has been proven against a person, and there exist "Reasonable Doubt" as to which of two or more degrees he is guilty, he must be convicted of only the lowest degree, and reasonable doubt has been shown herein this review, whereby the Jury's convictions of both First and Second Degree Murder cause a reasonable person to question which degree this Appellant actually committed, without any need for additional elaborations.

"Our criminal Justice System prefers erroneous acquittals to erroneous convictions, thus, public policy dictates that if there is any doubt about whether the Jury verdict would be the same, had the error not have occurred, we must reverse!" State V. Easter, 130 Wn.2d at 242

Appellant believes that he has established reasonable doubt regarding this Jury's verdict, whereby it is well settled that "Murder in the Second Degree is the lesser offense of "Murder in the First Degree"; and the Jury erroneously an in violation of Jury's Instruction #14 did convict under both degrees of Murder, for the single death of Appellant's wife, which occurred during a 20-60 second "Assault" between the couple on July 27, 2009, per State's case in chief.

Appellant respectfully requests re-trial before a properly instructed Jury, or reversal of "Murder in the First Degree" and Re-instatement of "Murder in the Second Degree"; which ever the Court finds proper.

2. DID TRIAL COURT ERROR IN FAILING TO FOLLOW LEGISLATIVE INTENT, WHICH IS STATUTORY STATED UNDER RCW 9A.04.100?

The Evidence presented by the State alleged an "Assault" on July 27, 2009 resulted in the death of a human being on July 30, 2009 in the hospital.

"In judicial interpretation of statutes, the first rule is 'the Court should assume the legislature means exactly what they say'. Plain words do not need construction!" State V. McCraw, 127 Wn.2d 281 (1995)

Since there is no evidence in State's case in chief that tends to prove a 'Premeditation' element under the facts, the Trial Court should have granted a "Knapstad or Green" motion, when such was presented, where State's case merely alleged an "Assault" on July 27, 2009, which resulted in the death of a human.

Legislature is very clear under RCW 9A.32.050 that an 'assault' which then results in a death of an individual later, constituted "Felony Murder in the Second Degree"; whereby a defendant only intended to "Assault" the victim, not to commit 'Murder'; as in the present case with Appellant.

RCW 9A.32.050 required, as stated in Jury's Instruction #22:

- (1) That on July 27, 2009 Defendant committed assault in the second degree...
- (2) That Defendant caused the death of (a Human Being) in the course and in the furtherance of that crime...(Assault)
- (3) That (the Human Being) was not a participant in the crime...
- (4) That the act occurred in Washington...

The Jury determined that all of these things were proven in the State's own case in chief, whereby the Jury convicted Appellant of "Murder in the Second Degree"; predicate on assault, per verdict forms. CP 157

Appellant was in the process of locating his wallet and GPS Cord for work, when his daughter refused to leave his bedroom, giving him and his wife time to speak about the misplaced items. Appellant slapped his daughter, and his wife of 27 years chose to intervene between father/daughter which resulted in the altercation, which resulted in assault. It is unclear when the GPS Cord was involved in this altercation, where the daughter is the only witness, and was unsure exactly where or when her father had located that GPS Cord. RP 341-342

Appellant realized his wife was no longer physically fighting, and thought he might have injured or seriously hurt her. Appellant never though Assault is

likely to cause the death of his wife, and therefore he never had formed that required intention or premeditation required for "First Degree Murder," but is still responsible for her death under "Second Degree Murder," per Legislative's clear intent found in RCW 9A.32.050. RP 925

"When the plain language is unambiguous and legislative intent is apparent, we will not construe the statute any differently!" State V. JP, 149 Wn.2d 444 (2003).

Washington State Legislature clearly took this exact type of case into the decision to deliberately exclude "ASSAULT" as a predicate crime under RCW 9A.32-.030(1)(c), and therefore the case before us, although very tragic does not meet the legislative intent and standards for charging under "Murder in the First Degree," on an act of assault which later resulted in the death of a person.

Legislature specifically and deliberately included "Assault" as a crime in RCW 9A.32.050, under Murder in the Second Degree, which allows that this exact type of incident be punished under the lesser standards in Washington Law.

Although Appellant's counsel argued the premeditation element of "Murder in the First Degree" in the opening briefing, Appellant will address such to the extent as it relates to legislative intent under this issue.

Counsel for the Appellant is correct that nothing presented in the State's case proved that any premeditation was formed, and appellant acted upon the mere spur of the moment, then assaulting his wife, which later resulted in her tragic and untimely death. RP 926

RCW 9A.32.020 States in relevant part:

"(1) As used in this chapter, the premeditation required in order to support a conviction of the crime of murder in the first degree must involve more than a moment in point of time!"

This is a clear and proper statement of the law, and was not proven under a death resulting days later, predicated upon a mere incident of assault, which lasted between 20-60 seconds, found as fleeting at best. Nothing proved that a

mental thought had ever enter Appellant's mind, regarding the potential of his act of assault causing the death of his beloved wife, making this a clear case for "Felony Murder in the Second Degree," as established by legislature. RP 925

Washington Legislature has the power to amend RCW 9A.32.030(1)(c) to include "Assault" as a predicate felony, but has determined that 'Murder' merely then resulting from "Assault" should not be punished under RCW 9A.32.030, but only under 9A.32.050 Which States in relevant part:

"He or she has committed or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c)...".

Legislature, by the words: "other than those enumerated in RCW 9A.32.030-(1)(c)," directly and deliberately excluded "Assault" from "Murder in the First Degree," which was done in response to the Supreme Court's ruling in State V. Andress, (2003) under RCW 9A.32.050 wording.

Trial Court therefore failed to uphold the Legislative intent, when it did allow the defendant charged and convicted of both "First and Second Degree Murder," for his wife's death, which was clearly a single act or crime.

State's original charging documentation showed merely "Murder in the Second Degree" predicate upon assault, which State vindictively amended when defense refused to plead guilty, and demand his "Right to Jury Trial," as will later be addressed under Prosecutor Misconduct in this briefing.

Jury did clearly determine that the death resulted from an assault, and the human being died several days after being assaulted, without proof of formation of thought or premeditation, where Appellant is convicted twice by the Jury.

Legislature clearly established the intent for a case like this, when they specifically and directly addressed "Assault" under RCW 9A.32.050, and their legislative intent was not properly applied to these facts by a Trial Court in this case, which should be now corrected by this Court.

Appellant has shown that the legislature intended such a crime directly now

charged and punished under "Murder in the Second Degree," where legislature has recognized that an appellant may not have intended to cause the death, when he decided to 'Assault' the party whom later dies from injuries sustained during the 'Assault, but still must answer and be punished for the unintentional death resulting from the assault, which legislature codified under RCW 9A.32.050, the "Murder in the Second Degree" Statute specifically.

"When interpreting a statute the Court's fundamental objective is to ascertain and carry out the legislative intent." State V. Jacobs, 154 Wn.2d 596 (2005)

Additionally, the prosecutor did have knowledge that Appellant's alleged act of "Murder" resulted directly from a 20-60 second "Assault," or the State would be in error charging Count-II before the Court, thereby the State asks to have the proverbial cake and eat it to in this case, which is improper. RP 924-925

"Prosecutor has a duty to seek a verdict free of prejudice and based on reason." State V. Hudson, 73 Wn.2d 660 (1968)

What reasonable person would not follow the clearly established legislative intent expressly stated under RCW 9A.32.050? Appellant asks this Court rule on whether the legislative intent precluded the State from seeking conviction of a "Murder" State knew was predicated upon mere "Assault" under RCW 9A.32.030, an in direct violation of RCW 9A.32.050. Re-Trial might be necessary herein.

3. DID THE TRIAL COURT ERROR ADMITTING PRE-MIRANDA STATEMENTS UNDER THE CIRCUMSTANCES, WHERE IT IS ESTABLISHED THE APPELLANT DID NOT KNOW OR UNDERSTAND HIS RIGHTS WITHOUT AN INTERPRETER'S ASSISTANCE.

Sixth amendment guarantee to assistance of counsel applies to every critical stage of the proceedings, which would include arrest and detainment. see State V. EverybodyTalksAbout, 161 Wn.2d 702 (2007); State V. Tinkham, 74 Wa. App. 102 (1994)(quoting United States V. Wade, 388 U.S. 218 (1967)). The Courts apply the deliberately illicit standard to determine whether government agents violated a defendant's sixth amendment right to counsel. see Fellers V. United

States, 540 U.S. 519 (2004); State V. Benn, 134 Wn.2d 868 (1998).

The present case involved a "Defendant" whom does not speak english, and is completely unable to understand the arresting/detaining officers statements in regards to miranda rights. see RP 587; 553

Trial Court was clearly advised during the CrR 3.5 hearing that the Defendant required an interpreter for the english language, and therefore could not have a knowingly and voluntarily made waiver under miranda, whereby the Defendant was not an american, able to read or speak proper english, there is question as to whether he knew and understood his American Right or the American Laws.

The Sixth amendment deliberately illicited standard has been distinguished from the Fifth Amendment's custodial interogation standard. see Fellers, 540 U.S. at 524. "Sixth Amendment provides protections of counsel, even when there is no interogation and no Fifth Amendment application!" (Alteration in Original) See Michigan V. Jackson, 475 U.S. 625 (1986).

For the Sixth Amendment rights to be violated there simply must be some type of showing the governmental agent attempted to stimulate the conversation, and such was admitted to the Trial Court in this case, whereby the Officer admits to asking "Who else was in the residence;" which Defendant answered, and these officers were informed that Defendant's wife was hurt or dead in a bedroom to the right and his teenaged daughter was upstairs somewhere, which the officer all admit they heard in "Broke English" with a heavy "India" accent. RP 587

Additionally the officers had to obtain services from an "Punjabi" type language interpreter, merely to read the Defendant his rights, at which time he chose not to speak with the officers without his attorney's presence.

The Trial Court errors in this case admitting evidentry statements made at a time the Court knew the defendant did not have a fully and complete understanding of his right to counsel first, and where the records and officers stated that he

exercised his rights upon understanding his rights once translated into his own language by the interpreter. The records showed that the officers all had the "turbin" upon Defendnat's head a different color when arresting defendant, and therefore it is reasonable that the Court would believe the officers might have merely misunderstood Defendant's statements initially made, directing these officers to Defendant's injured loved one and daughter, where he spoke in the "Broken English," and required an interpreter to understand the officers.

There is no dispute that the officers arrested the defendant immediately, by his being placed into handcuffs and detained in the police car under "Suspicion of First Degree Murder;" per officers statements to the Trial Court. See RP 27

The Defendant, even in the best light to the State never actually admitted to killing his wife, merely answering the officer's questions about whom was where in the residence, and telling the office his wife might be injured or dead in a bedroom, shows merely the concern for his loved ones, and the officer's safty in entering that residence, which is why the officers asked the defendant these questions. RP 27;28 (2-1-12)

Under the standards of this State, the defendant was attempting to relay the crime scene information requested by these officers, in "Broken English," and is unable to understand the officers speaking to him completely, until an "Punjabi" interpreter is located, and Defendant's right could be properly read. Therefore any statements made prior to such interpretation of the defendant's actual right should not have been admitted before the Jury, even if they only relay basic an necessary information to the responding and arresting officers, whom admitted the Defendant was partially cuffed when making the statemend, therefore was in actual custody and control of the officers at the time of these statements, an merely informed the officer that his beloved wife needed immediate help. This Court should now find that this case is special, in that an interpreter is the

key point at which time the defendant understood his full rights, and all these alleged statements made prior to the interpreter translating his rights should have been excluded by the Trial Court in this case. This is especially true in the present case, where immediately upon interpretation of the rights, this very defendant immediately and without delay stood upon his right not to speak without counsel being then present, showing that had the defendant immediately been read his miranda rights, he would not have made any statements, except through counsel.

Appellant believes there is sufficient standing for this Court to determine a defendant whom does not understand his actual right, nor has no understanding of the arresting officer's choice of language (English), would violate both these Fifth and Sixth Amendment Rights, when obtaining any statements or information from defendant, prior to translation of his actual rights by an interpreter of his actual language. RP 587

These arresting and responding officers admitted to the Trial Court these are statements made in "Broken English," from someone of "Indian" decent, and this Court might have heard someone from India attempt to speak english, where they reverse wording, and speak only half phrases, then this Court can understand an patrol officer might have took these "Broken English" wording under the wrong or improper contexted. Therefore Appellant asks this Court consider whether this Trial Court abused discretion allowing evidence admitted under CrR 3.5 hearing.

"Trial court abuses discretion when the trial court rules upon unsupported facts, takes a view no reasonable person would take, applies a wrong legal standard, or bases its rulings on an erroneous view of the law!" State V. Lord, 161 Wn.2d 276 (2007); State V. Quazimundo, 164 Wn.2d 499 (2008); State V. Rohrich, 149 Wn.2d 647 (2003).

Therefore the Court on review is merely asked to determine if these are the proper application of the law, and remand for re-trial, without these statement made prior to miranda rights being translated to the defendant. Miranda V. Arizona, 384 U.S. 436 (1966)

4. DID TRIAL COURT ERROR IN SENTENCING APPELLANT TO A TERM OF POST-SENTENCE "COMMUNITY CUSTODY" EXCEEDING THAT PROSCRIBED BY LAW?

Appellant was given 'Community Custody' for a "Sex Offense" originally, which the Superior Court later corrected on June 26, 2012 to 36 months for a non-sexual based crime, per written Court Order.

The Judgement documentation however still reflects the original term for a sex crime, even when Appellant committed no sex crime. see

Superior Court should have entered an amended Judgment document, when it determined that an error was requiring correction, but merely issued a letter stating that the Court Ordered the correction.

Appellant has discovered that the Court's corrected term of 36 months is additionally in error for this case, whereby the laws in effect when Appellant is to have committed this current alleged criminal act required that Appellant be given a term of 24 months "Community Custody," not 36 months Court Ordered.

This is clearly stated and found upon the face of the Judgment document, section 4.7(c), where this offense was alleged to have been committed before 8-1-09, whereby the State listed the crime date as 7-27-09 upon the first page of this same Judgment documentation.

Therefore, the State cannot prevail in any arguments that Appellant is not now entitled to be re-sentenced to the proper terms of "Community Custody," as the law required at the time this offense was committed.

RCW 9.94A.345 states in relevant part:

"shall use the law in effect when the crime was committed, in determining any sentence under this chapter!"

Appellant therefore asks this Court give relief, and order that there is a proper correction made to this sentence, finding that Appellant should be merely subjected to the required 24 months of "Community Custody," that was a required term before August 1, 2009, per the face of the judgment.

5. DID STATE'S CONDUCT VIOLATE ER-612 PROTECTIONS, WHERE WITNESSES ARE "COACHED" DURING TESTIMONY, DIRECTLY TO TESTIFY FROM WRITINGS, WERE THE WITNESS HAS 'NO' ACTUAL MEMORY FROM WHICH TO TESTIFY?

Prior to a writing being used to refresh the memory of a witness, the Trial Court must ensure that: (1) The witnesses' memory needs refreshed, (2) Opposing counsel has had the right to examine the writing, and (3) The Trial Court is satisfied that the witness is not being coached.

"Witness is not being coached by use of a writing to refresh the memory of the witness, if the witness is using the notes to aid, and not to supplement, his own memory. State V. Nolan(McCrevan), COA#39598-3-II, 284 P.3d 793 (Div. II Sept. 5, 2012).

Appellant agrees that after two and a half years, all witnesses needed to be refreshed in their memories, but this should have been done outside the presence of the Jury, where witness after witness took the stand and "refreshed" their testimony from the notes and previous reports, with a few being directed to the specific testimony the State wanted them to recite into this Trial Court's own testimonial records. RP 305 Ln. 12; RP 165; RP 92; Etc....

The State has no authority or right to prejudice the defendant in such a fashion before the Jury, as what weight the Jury is to give each witness would be effected by the witnesses ability to recall accurately the case statements and prior report information, especially where the State has the witness look at those report and notes before the Jury, then testify to what they actually say word for word on the records, after the witness has stated they did not know.

"Prosecutor has a duty to seek a verdict free of prejudice, and based reason." State V. Hudson, 73 Wn.2d 660 (1968).

In United States V. Crawford, 541 U.S. 36, 124 S.Ct. 1354 (2004) and United States V. Davis, 547 U.S. 813, 126 S.Ct. 2266 (2006) the highest Court has now established that: "I Don't Know" and "I Don't Remember" are both Constitutional excepted answers to questions during a trial, which need no additional kind of prompting, and should be excepted by all parties in the case.

"...an attorney's interest in a criminal case is not that it may win a case, but that justice shall be done." Berger V. United States, 295 U.S. 78, 55 S.Ct. 629 (1935)

Appellant presents the following portions of the trial testimony as proof of State's conduct, where witnesses are prompted to give live testimony from prior notes and reports, even after they have given the State "Constitutionally Excepted" answers to the questions asked during trial.

A. "According to my report" RP at 27

This would constitute substituting the report for the memory, without any question for this Court to decide.

Q. "Refresh your memory" RP at 40

This is in response to the witness advising that they could not remember an answer the State wanted on the records, therefore also is supplementation of a witness's memory from a report. (Coaching of Trial Testimony)

Q. "Look at your report" RP at 46

Again State's attorney is directing the testimony, after a witness could not recall what the State want said to this Jury. (Coaching Testimony)

A. "That's a quote" RP at 46

The witness directly quoted the information the State's requested placed on the records, after reviewing the notes before the Jury. (Witness Coaching)

"Review report" RP at 65

"Look to notes" RP at 78

"Memory refresh" RP at 87

"Refresh from my reports" RP at 92

All of these are examples of the continuous conduct of the State in this case records, whereby they "REFRESHED TESTIMONY" for almost every witness, after they were informed the witness did not have the memory to testify about the case.

A. "Testified from my report" RP at 92

There is no question of the prejudicial effects this had upon the Jury in a

murder trial, whereby these person are law enforcement officers, whom already carry a high degree of trust before a jury, their notes and reports carry that much more trust of a Jury, and whereby a Jury is directly told that these are statements made directly from those case notes, then prejudice is clearly now established. Merely having the notes reviewed in the Juries presence would be unduly prejudicial to the weight that the Jury might give the witness's Court testimony, and could be the sole factor upon which guilt rests.

Amanddeep Barsa:

- A. "I don't know" RP at 303
- Q. "I'm handing you...turn to page 12 about 2/3 of the way down the page, there is a large paragraph. RP at 303
- Q. "...let me make sure your reading the section of the interview... Yes right here. And where is says: and he said that line. And then this line here. RP at 305
- Q. "Does that refresh your memory as to the specific words he used" RP at 305
- Q. ...ask you to read line 2... lines between 2 or 3. RP at 306
"Objected: relevance" (Defense Counsel) "OverRuled" (Judge)
- Q. "Could you go ahead and read that" RP at 307

There is no question the State was directing the witnesses testimony, and it is clear that such comes directly from the notes or reports from prior case and witness hearings, which is improper during a live trial. This witness did not have the required memory to testify at the time of the trial proceedings, and a defendant should not be prejudiced in this fashion, where the defense attorney did object several times on the records to this questioning and leading, and the Court should have excluded this witness from testifying, where she had no independent memory of the event from which to give trial testimony, at time of this trial proceeding, per her numerous responses stating: "I don't remember!"

The State's choices in causing delay in bringing this action before Jury is neither grounds to allow this conduct, nor proper grounds for the State's use of notes and reports to supplement trial witness testimony.

Nor, should this Court on review over look that the State called this very witness, apparently to deliberately cause prejudice before the Jury, as this State attorney should have interviewed the witness pretrial to determine if a passage of time might have effected the witnesses ability to testify, where a two year delay in the case was knowingly present.

"An attorney, including a prosecutor, may not coach a witness, i.e. urge a witness to create testimony under the guise of refreshing the witness's recollection with a writing!" State V. Delarosa-Flores, 59 Wa. App. 514, 799 P.2d 736 (1990)

A. "Don't remember" RP at 310

Q. "...look at page 30 of Ex-19, and read the two sentences here!" RP at 310

"Objection Improper Impeachment" (Defense Counsel) Overruled (Judge) RP at 313

"Objection Hearsay" (Defense Counsel) Overruled (Judge) RP at 313

The witness was being asked to state what she heard another person say, and that does constitute "Hearsay", where that declarant was not taking the stand and being asked about that "Hearsay", and there was no ongoing emergency at time of the person making the hearsay statements. This is directly on point with United States V. Davis, 547 U.S. 813, 126 S.Ct. 2266 (2006), where the statement came from the reports taken almost three months after the incident, by law enforcement interviewing witnesses, per State's earlier admission "Told Det. Weller" the information.

"Same Objection" (Defense Counsel) Overruled (Judge) RP at 315

"Objection Hearsay" (Defense Counsel) Overruled (Sustained) RP at 323

Q. "...more than two and a half years later your saying he didn't have anything in his hands." RP at 327

A. "Yes" RP at 327

Q. "He grabbed a rope and just put it to my mom's neck?" RP at 327

A. "Yes I did say that..." RP at 327

The State clearly directed several witnesses through testimony, and this is clearly improper under ER-612, whereby if the witness does not have any actual memory to testify from, the State cannot use notes to create a new or APPELLANT'S S.A.G. BRIEF-17

directed memory, especially where the State is directing a witness to very specific events the State wants presented to this Jury.

Q. "and the other thing he was looking for was a cord, right!" RP at 341

A. "Yes" PR at 341

Q. "...GPS cord, right" RP at 342

A. "Yes" RP at 342

Q. "...cord he needed for work?" RP at 342

A. "Yes" RP at 342

The defense asked question and the witness answered these questions to the best of her ability, and is not pressed by defense counsel when she is unable to recall specific details of these events she is questioned upon. The State's actions not only violated the established rules under ER-612, but violated the holdings under Crawford and Davis from the United States Supreme Court, and a standing under the Revised Codes of Washington, whereby RCW 5.60.050 requires a witness whom does not have a sufficient memory of the event which they are in Court to testify about, should be excluded from giving testimony about those issues they cannot remember.

"Notes are to aid memory, not to supplement." State V. Little, 57 Wn.2d 516 (1961); ER-612

The Appellant will stop citing specific points in the long record, but the State had almost every witness address their testimony from the note and record of the case, some testifying that they were quoting that record directly in the Jury's presence, and other whom could not remember or did not have memory from which to actually testify, where asked to read and restate specific portions of the notes or statements in to the trial records, under the guise of "refreshing their memory"; which is the evil disallowed directly under State V. Nolan, COA# 39598-3-II, 284 P.3d 793 (Div. II Sept. 5, 2012).

The fact that RCW 5.60.050 required the Court to actually exclude some of these witnesses from testifying, once the Court determined during trial that a

witness upon the stand clearly did not possess the necessary and statutorily required memories to actually give testimony about these events, so weigh to the prejudicial effects of the State supplementing the memory with notes and statements made prior to trial, as such is clearly what the Court sought to avoid under the NOLAN ruling, not to mention the Legislative intent that is so clearly stated in RCW 5.60.050 regarding witness memory.

"Fair competition in the adversarial system is secured by prohibitions against improper influencing witnesses." RPC 3.4 State V. Nolan, COA# 39598-3-II, 284 P.3d 739 (Div. II Sept. 5, 2012)

Appellant believes these records established that the State has acted in a fashion that was not allowed under ER-612, and that such has prejudiced this Appellant's rights to a "Fair Trial"; whereby the State caused witnesses whom had no memory of the events at the time of trial to give the state's version of events, found in the State's agencies records and documentation, whereby these witnesses could not recall if they actually had made these statements, or if a over zealous State's attorney might have changed the wording to seek a conviction in this case. If a witness does not have a proper or sufficient memory of the alleged events, the State cannot cause the witness to create such a memory, based upon the State's records, as state directed several witnesses to their specific notes, and reports, then directed them where to read for the State to obtain the testimony the State was asking the witness to give the Jury.

If this is not considered coaching of these witnesses, then every case is able to result in a conviction, when the Jury can see a witness is told what they should be saying, right before the Jury's eyes. If the State feels that a witness needs to refresh their memory , they should be given the records with the Jury in recess, then give live testimony when the Jury is returned to the room, that is necessary to ensure the Court can make a proper record of the case witness needing refreshed, and give room for objections outside the Jury.

6. DID ARRESTING OFFICER VIOLATE APPELLANT'S SIXTH AMENDMENT RIGHTS, IN FAILING TO ENSURE APPELLANT WAS PUT IN CONTACT WITH AN ATTORNEY?

State's witness does tell us that once appellant was read his right through the "Punjabi" interpreter, the appellant invoked his right to counsel. These same records fail to address what steps the arresting officer then took given a unequivocal request for an attorney, to ensure appellant was put in contact with counsel.

Appellant was held in the arresting officer's vehicle, until transported to a King County holding facility, where he was still not put in contact with the requested attorney.

Once the party was in the custody of the arresting officer, the officer has a duty under the Sixth Amendment to ensure, or to make "reasonable efforts" to put the detained party in contact with an attorney, which was not done in this present case.

"...make all reasonable efforts to put a person in custody in contact with a lawyer, when the person unequivocally requests a lawyer, was not harmless in murder investigation, where as a result of the violation a defendant gave custodial statements..." State V. Pierce, 169 Wn. App. 533, 280 P.3d 1158 (2012)

Appellant contends that this case is similar in nature to the error in that case, and is more egregious where the defendant's "custodial statements" happen to be taken completely out of context during trial, base solely upon Appellant's speaking "Broken English", and requiring an interpreter for his rights to even be read and understood properly.

The Counsel would surely have been willing and able to directly advise this Appellant to say absolutely nothing in the officer's presence or to any officer of the law, outside the presence of the attorney, which would have stopped any attempt by the appellant of informing the officers' where his wife or family are located in the house, when they asked him, or any of the statements used in Trial.

7. DID TRIAL COURT VIOLATE APPELLANT'S FIFTH AND SIXTH AMENDMENT RIGHTS, FAILING TO RESOLVE ATTORNEY/CLIENT CONFLICTS?

Appellant should be provided a "Fair Trial", which should include being provided representation free of conflicts for trial. An attorney might be found ineffective for failing to bring a conflict with defendant to Court's attention. However, in this instance the records show the Court knew about a conflict between attorney/client, and the Trial Court chose to take no proper action, even after receiving letters from defendant. CP 161; 171; 177

Therefore the Court failed its duty to ensure the trial process would not be effected by the conflict, whereby the Court failed to conduct the required and necessary analysis upon the record, to ensure this reviewing Court these matters did not reasonably effect the trial process. RP 58-63; RP 40 (2/2/12)

The records clearly show that the counsel attempted to "Withdraw" well in advance of Defendant's letters, for conflicts with this particular defendant, which the Trial Court did not permit. CP 55; 56; 54

This is not a question of did the Court know about the conflict, but more of why did the Court not take the necessary steps to ensure a "Fair Trial" in this case, when the Court was informed of issues with counsel. The Court is required to make inquiry into the nature of the conflicts upon the records of the case, necessary to ensure this reviewing Court can determine whether these conflicts effected the trial process, and without such inquiry, the reviewing Court is without the necessary information to support the conviction.

The reviewing Court should be satisfied that the conflicts did not effect the defense presented at trial, and that the attorney was completely effective before the Jury, which conviction requires, which is not true herein.

"Sixth amendment 'assistance of counsel' at trial, requires representation free of conflicts!" State V. Regan, 143 Wa. App. 419 (2008)

The Sixth amendment right to counsel advances the Fifth amendment rights

to a 'fair trial,' which cannot be found where there existed adversarial type conflict at the defense table, in the attorney/client relationship.

"Trial Court has a duty to investigate an attorney client conflict of interest, if it knows, or reasonably should have known such potential conflict existed, as the trial may have been effected!" State V. Regan, 143 Wa. App. 419 (2008)(citing Mickens V. Taylor, 535 U.S. 163 (2002))

Therefore, the Trial Court was required to make inquiry into this issue in the present case, especially once the Defendant personally notified the Court in writing of the conflicts with the assigned attorney. CP 161

Appellant address several specific conflicts in the letters to the Judge, and the Judge did not take even the minimal action necessary to preserve the 'Fair Trial' rights of this Appellant, making the inquiry of counsel on case records, or addressing Defendant's concerns upon the records, even minimally to create a record for this reviewing Court. CP 104A; 104B; 161; 171; 177; RP 908

The reviewing Court have long held that where the record shows a defendant made objection to conflicts with counsel during the trial proceeding, and the Trial Court fails to make the required inquiry into the conflicts, this Court on review will reverse the conviction, to ensure that a "Fair Trial" is given in every case. CP 104A; CP 104B; CP 161; RP 908

"We will reverse a defendant's conviction if he timely objected to an attorney conflict at trial, and trial court failed to conduct adequate inquiry!" State V. Regan, 143 Wa. App. 419 (2008) at 425.

This Court should now view the letters from Appellant to the Trial Judge as a clearly stated objection to the attorney conflicts, where they fully informed the Trial Court of the specific nature of the conflicts, and asked the Court to resolve these conflicts pretrial or during trial proceedings. CP 54

The question is not whether there is a proper "Objection," but whether the Trial Court should reasonably have been aware of the conflicts, as once these conflicts were known to the Trial Court, that Court was required to take a necessary action to ensure that a fair trial was available to Appellant.

The trial Court's own conduct could reasonably be viewed as showing an act of 'Judicial Impartiality' violation of CANNON RULE 3.1(D)(1), whereby Court supported counsel's conduct against the Defendant, after being informed.

"Due Process, the appearance of fairness, and Cannon 3(D)(1) of the code of judicial conduct, requires the disqualification of a Judge who is bias against a party or whose impartiality may be reasonably question. State V. Perala, 132 Wa. App. 98 (2006)

"Trial Court should not enter into the fray of combat, or assume the role of trial counsel!" Edege-Nissen V. Crystal Mountain Inc. 93 Wn.2d 127 (1980)

The Court should not have allowed the conflicts with counsel to happen in this case, merely because Defendant was unable to speak english, or was not of american heritage. The Constitution protects every person tried in america, an even those not born or raised here, still have the fundamental trial rights.

"That a person happens to be an lawyer is present at trial, alongside the accused however is not enough to satisfy the Constitutional Comm-ands!" State V. Boyd, 160 Wn.2d 424 (2007)

Here the Court was fully informed of the conflicts, and counsel had even asked to withdraw from the case due to conflicts with the client. Appellant asks that this Court provide the necessary relief, and State can re-try this case, with non-conflicted counsel if necessary to ensure a "Fair Trial!"

8. DID DEFENSE COUNSEL FAIL TO INVESTIGATE EVIDENCE WHICH EFFECTED THE TRIAL PROCESS?

Appellant asks this Court view the defense counsel's failure to give full investigation to Appellant's mental health issues, and self treatment for a condition which effects the mental thought process, where intent must be formed for conviction under "Premeditated" murder, greater than the rea gesta needed for Felony murder predicate upon mere assault. RP 84; RP 222; RP 247

"To prevail on ineffective assistnace of counsel, proof that counsel's performance was deficient, and the deficiency prejudiced the defense must be shown. Strickland V. Washington, 466 U.S. 668 (1984); State V. McFarland, 127 Wn.2d 322 (1995)

Therefore, first we must determine if counsel's performance was reasonably defective or deficient in nature, which can be addressed from records.

"Deficient performance is that which falls below an objectionable standard of reasonableness!" State V. Horton, 116 Wa. App. 909 (2003)

Defense counsel chose to present a defense involving "Mental Deficiency" of his client, which resulted in Appellant not forming the required element of knowing intent under "Premeditation" for conviction. RP 588; RP 591

Therefore, any evidence which would tend to support this defense is now a matter under "reasonableness," as failure to present evidence can result in a finding of deficient performance of counsel's duty. RP 589; RP 590

"We begin with a strong presumption of effective performance of the counsel!" State V. McFarland, 127 Wa. App. 909 (2003)(Modified in a part).

However, if counsel failed to investigate any portion of the defense he is choosing to present the Jury, and such results in prejudice to the defendant's trial, then there has been ineffective representation of the counsel.

This attorney failed to investigate fully the "mental" defense counsel was attempting to present to this Jury, whereby the counsel did not introduce the available 'Blood Reports' showing that defendant's body chemistry was in the state, which could effect the mental state of the defendant, while defendant is being detained by the proceedings. This is actual physical scientific evidence, which the Jury should have seen. Additionally, this chemistry is based on scientifically sound principals, where an expert could have informed this Jury of the nature of the chemical imbalances, and the effects that such is knowing to have upon a normal human brain. RP 84

The defense counsel, not only failed to conduct the complete investigation relevant to the defense he chose to present, but directly blocked "mental" health information from coming before the Jury, where he stopped testimony of a State witness, whom was asked about "Homeopathic Medicine" practiced by the

Appellant of this case, during "Self-Treatment" at home. The evidence was then available to defense, and could have resulted in the Jury finding "reasonable doubt" regarding the element of "premeditation," where the Jury determines the appellant had a mental health deficiency. RP 84; RP 672

These Court(s) have repeatedly held that "a lawyer whom fails to adequately investigate and introduce... (evidence) that demonstrates his client's factual innocence, or that raises sufficient doubt as to any question or elements, an such would tend to undermine the confidence in the verdict, renders deficient performance!"

"That right to effective assistance of counsel, includes a 'reasonable investigation' by the defense counsel!" State V. Brett, 142 Wn.2d 868 (2001); Strickland V. Washington, 466 U.S. 668 (1967).

Courts additionally have long recognized that effective assistance of the counsels rests on 'access to evidence' and in some cases even upon 'expert witnesses'; which can be crucial elements of 'Due Process' right to fair trial. see State V. Boyd, 160 Wn.2d 424 (2007); State V. Green, #81449-0 (2010)

This was one such case, where the evidence available required experts to explain to the Jury why Defendant's "Blood Test" chemistry proved defendant is likely to not have known or formed the intent necessary for "premeditation," based upon mental health imbalances in the brain of Appellant at that time.

Therefore, the attorney is ineffect for failing to investigate fully the conditions of his client, the medications his client used of self-medicating his mental health conditions, and the defense aspects of such a condiction.

State did attempt to present into trial the mental health issues of this Appellant, addressing medical personel regarding self-treatment, and "Homeo-pathic medication" found in defendant's home during investigations, but this defense attorney blocked the testimony completely. RP 672

Defense Counsel was standing upon a defense that involved mental health of

his client at the time this information was being introduced by the State, and thereby knew that his clients entire mental history could be called into light before the Jury, therefore is deficient telling the State not to address these issue of self-treatment and medications found during investigation, during this case proceedings, as the defense should have properly prepared for this very information, obtaining the necessary expert witnesses to explain each of these facts to this Jury, including self-medicating, homeopathic medication, and the results of the 'blood tests' showing his clients chemical imbalance might have been the cause of the mental condition resulting in the assault and death of a loving wife of 27 years.

Defense counsel failed to address a "Character Trait" of his client, which could have been the very fact the entire case hinged upon, therefore prejudice can be clearly established in this instance, based upon either failure to call a necessary "expert witness" to rebut state's evidence and expert testimony, or failing to conduct a complete and necessary investigation into his client's own mental state of mind regarding the intent element.

"Judicial scrutiny of counsel's performance must be highly deferential and we must evaluate counsel's conduct from his perspective at the time without benefit of hindsight." State V. Ornoski, 528 F.3d 1222 (2008); see also 104 S.Ct. 2052.

The Court(s) have established general principles that guide our determinations of what constitutes objectionable reasonable attorney's performance, including the duty to investigate. See Summerlin 427 F.3d at 629-30.

"Whether the evidence together with expert testimony is sufficient to create a reasonable doubt as to specific intent is a question for the Jury!" State V. Eakins, 127 Wn.2d 490 (1995) "Defendnat's prrof is admissible not as character evidence, but rather as evidence relevant to measure the extent of the diminished capacity. State V. Eakins, 127 Wn.2d 490 (1995).

Therefore, the Jury should have been presented the evidence the attorney stop State from presenting, and such is ineffective assistnace. RP 672...

"Diminished capacity is a mental condition that causes an inability to form the requisite intent for the crime charged. State V. Ferrick, 81 Wn.2d 942, 506 P.2d 860 (1973)

The defense required proof of the mental condition of the defendant, and that defendant suffered an identifiable mental disorder which effected his ability, which did not actually amount to insanity in and of itself.

Therefore this Court should agree the counsel was deficient, where there is proof the counsel interfeared with evidence being presented that tended to support the actual defense being put before the Jury, such as the evidence of Defendant's self-medicating and Homeopathic medicines found at his residence during the investigations. These are both clearly supportive of a mental or emotional condition, which effected the Defendant at the time of the alleged acts, and would be relevant for the Jury's determination of the ability for a formation of the element of intent, and counsel for the defense knew there is such evidence available, supporting his actual theory of the case, but chose to block the evidence from being brought to the Jury's attention during this case trial. RP 672

Any reasonable attorney would have presented the "blood tests" proving the defendant suffered a proven chemical imbalance, which effected his ability to form intent, and surely would have presented expert testimony supporting that his client had mental defects, supporting the "mental deficiency" defense the attorney was claiming to be presenting on defense for murder.

"Sixth amendment recognizes the right to assistnace of counsel, because it envisions counsel's playing a role critical to the adversarial system to produce 'just' results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays a role necessary to ensure the trial is fair." State V. Boyd, 160 Wn.2d 424 (2007)

Therefore, Appellant is asking this Court provide the "Fair Trial" this case required, by reversal of convictions without prejudice, allowing counsel assigned whom will present a complete defense, with all available evidence.

9. DID TRIAL COURT FAIL TO INSTRUCT JURY UNDER THE 'SEPARATE ACTS,' AS STATE CHARGED MULTIPLE COUNTS OF MURDER?

This reviewing Court should find that it is long settled, a jury verdict must be unanimous, and based upon specific evidence or intent, showing that a jury found criminal in nature an act of the defendant, before rendering the finding of guilt, specifically for each count the jury convicted under.

"...defendant's right to a unanimous jury verdict is the guarantee the defendant may only be convicted when a unanimous jury concludes that the criminal act charged in the information has been proven!" State V. Borsheim, 140 Wa. App. 357 (2007)(modified in part)

State chose to bring multiple counts of murder, under multiple degrees in the amended charging information, even when State clearly knew there was but the single death of a human being. Therefore, the State should have elected a specific act for each count or requested the Court instruct the Jury under the necessary "Separate Acts" instruction, to ensure jury convicted of two separate acts evidence. "Motion To Supplement Ex-2"

"Thus, in a case where several acts could form the basis of one charged count, in order to convict the defendant on that count, either a State must elect the specific act on which it relies for conviction, or the Court must instruct the Jury that it must agree to a specific act..." State V. Noltie, 116 Wn.2d 831 (1991); State V. Petrich, 101 Wn.2d at 572.

This is also necessary to ensure the Jury does not enter multiple convictions, under multiple counts, using the same evidence or act proven beyond a 'Reasonable Doubt,' to convict the defendant of multiple crimes, as was done in the present case. "Motion To Supplement Ex-2 (Vore Dire 7-8; Ex-3 (Vore Dire 11-12)

This is a case where the act alleged does not equal separate crimes, but a over zealous prosecutor charged both first and second degree murder in separate counts upon the face of the charging information, then argued for separate and distinct convictions under each count charged, during closing. RP 902

This required the trial court inform the jury that it must base each count

on a separate and distinct act of murder, committed by the defendant, which in fact would require a separate victim, where a human being may only be murdered once, as murder requires the "death" of the victim to be completed.

Therefore, the Jury convicting this defendant of both "Murder in the First Degree" and "Murder in the Second Degree" of the single death of a human being should not have been allowed to happen, as was done in the case on review, as such prejudiced the defendant's right to fair trial, when the State argued for conviction under both counts separately.

It is long settled that this Court would apply the "Harmless Error" standards to such conduct, and should now determine if the State's conduct could have effected the Jury verdict in this case, where the State did not make an election of what evidence the State relied upon for each count of murder, and the Court failed to instruct the Jury upon the necessity to use separate acts evidence in each count charged. see "Motion To Supplement Ex-2"

Since the error resulted in multiple convictions for murder, when only one human being was killed, then there can be no harmless error found, as harm is openly apparent herein this case.

"No party disputes that failure to follow one of these options is a error, violative of a defendant's constitutional right to unanimous jury verdict, and right to a jury trial!" State V. Kitchens, 110 Wn.2d 403 (1988);(modified in part)

Standard remedy for such error is reversal, for failing to ensure a fair trial, based upon failure to ensure a unanimous verdict, upon separate acts evidence. However, the Court should consider State's deliberate acts, which resulted in the Jury not being fully and properly instructed under this very issue, and preclude State's future misconduct involving this appellant, as a finding that state acted deliberately, intentionally, and with calculated or forethought, to prejudice the defendant before this jury, by State's acts in charging two counts for a single death.

10. DID PROSECUTOR CHARGE DEFENDANT IN VIOLATION OF THE ESTABLISHED OR EXCEPTED 'UNIT OF PROSECUTION', WHEN CHARGING TWO SEPARATE COUNTS?

This is a long settled issue of law and fact, where the question rests on whether the State has deliberately and willfully violated the standing "Unit of Prosecution" in the charging information. This Court should review this issue de novo, and determine first what the standard unit of prosecution is for the crimes charged, and if the evidence was available to meet that "Unit of Prosecution", at the time State filed the charging information in question.

State cannot possible prevail to claim that the "Unit of Prosecution" is anything other than the "Death of a Human Being", when addressing any degree of murder, therefore charging this defendant with two separate counts of "Murder" for the single death of a single human being, is clearly enough evidence for a reviewing Court to "Infer" State's conduct was deliberate, intentional, and improper. CP-1

Appellant claims that the State acted in violation of the "Unit of Prosecution" to directly prejudice the Appellant before the Jury in this case, and a reasonable Court would conclude that the State's conduct is such that a State attorney should be held liable for such impropriety, especially where there is reason to believe the State's conduct would be committed knowingly, as in this instance. Deliberate violation of the standards of prosecution, the very "Unit of Prosecution" the State is charged to ensure is followed, merely to be then allowed to argue "intent" under Second Degree Assault, instead of murder, is a act showing deliberate mismanagement of the case by the State.

"...stating that an attorney's interest in a criminal case is not that it may win a case, but that justice be done" Berger V. United States, 295 U.S. 78, 55 S.Ct. 629 (1935)

Apparently the prosecutor forgot this fundamental principle in this case as established by the defendant, where State charged multiple counts of murder in

State's 'Amended Information,' then sought deliberate conviction under these multiple counts during trial proceedings, even when State knew there was but a single death of a human being committed.CP-1

Again this issue rest with analysis of harmless error, and whether State's conduct of charging and arguing multiple counts of murder effected the Jury's fact finding process in this case. Appellant believes this Court will find a Jury's verdict is effected, as in this case, where the Jury convicted of both "first and Second Degree Murder" for the single death, therefore showing that had the Jury understood that it either had to find guilt under first degree or second degree murder, the Jury might have determined that only second degree murder had been actually committed, predicate upon assault. CP 157; CP 158

The question here rest upon the proper remedy for State's misconduct in a charging information, where one might believe the State deliberately did an act of misconduct to prejudice the defendant before the Jury, or merely the State attorney mismanaged the case, and simple mismanagement is enough for a reviewing Court to reverse, ensuring a fair trial is given every defendant.

11. DOES THE EVIDENCE SUPPORT THAT THE PROSECUTOR DELIBERATELY INCREASED THE CHARGE, AFTER DEFENDANT'S REFUSAL TO PLEAD GUILTY?

State charged the defendant with "Murder in the Second Degree" under the original (First) Charging Information, then entered into plea negotiations on the charged crime, with defense counsel. The counsel provided the State the defense information on the case during negotiations, and thought that a plea agreement would result from State's position, whereby the State was talking of "Manslaughter" as an alternative to murder. see "Motion To Supplement Ex-1"

The defendant did not authorize his counsel's conduct in negotiations of a potential plea agreement, and wished to have his "Right to Jury Trial," in a case were intent is fully relevant to the crime of murder, and Appellant did

not intend the actual death of his beloved wife of twenty-seven years, such is merely the tragic result of a domestic dispute between the two parties, that included an alleged act of assault resulting in the death.

State's attorney, upon learning that the defendant was demanding his own constitutional right to a jury trial, and had rejected State's plea agreement offer under "Manslaughter"; apparently acted with deliberate, willful intent and increased the charges State filed. "Motion To Supplement Ex-1"; CP 56

State's Original Information charged a single count of "Second Degree Murder" for the death of defendant's wife, allegedly resulting from an assault.

State's Amended Information charges two separate counts of both "First Degree Murder and Second Degree Murder" for the death of defendant's wife.

State therefore cannot prevail in arguing that the State did not increase the charges deliberately, and since such was done at such a late stage, after the defendant specifically enacted his right to a jury trial, instead of then agreeing to guilt under State's offered plea agreement, this Court should find State's conduct is in violation of established standards, which would constitute misconduct of the State prosecutor involved.

"It is the prosecutor's attempt or threat to 'up the ante' by bringing new or more serious charges in response to the exercise of protected rights that violates the due process guarantee." United States V. Shaw, 644 F.2d 1270, 1272 (9th Cir. 1981); United States V. Goodwin, 457 U.S. 368 (1982)

In the case at bar the prosecutor not only threatened this defendant with an increase in the charges, but actually did deliberately increase the charges, when defendant demand the right to jury trial, instead of making a deal with a State's Attorney, regarding the current charge of Murder in the Second Degree, or the lesser charge of "Manslaughter" in this case, as State offered.

State added Murder in the First Degree, and charged defendant with multiple

counts of murder for the single death of a human being, alleged by the State.

This should be enough to establish the State acted in violation of "Due Process" on multiple levels, merely because defendant refused to enter a plea agreement in the current case, therefore that State's committed misconduct.

It should be long settled that the State's misconduct need not be so egregious as to actually involve an "Evil" or "Dishonest" act of the prosecutor, as mere "Simple Mismanagement" is enough to warrant dismissal, for governmental misconduct, if evidence supports the case was mismanaged. State V. Blackwell, 120 Wn.2d 882 (1993); State V. Brooks, 149 Wa. App. 373 (2009).

Appellant asks this Court find there is evidence the State acted with more than 'simple mismanagement', as increasing charges based solely on the Defendant refusing to enter a plea agreement, over twenty-nine months after charging, is a violation of established due process, and tends to show the prosecutor acted with "Evil", deliberate intent, especially where he not only increased the case degree, but added counts to the charging information, charging multiple counts of murder for the single death of a human being, which required separate acts for each count, thereby separate deaths for each count of murder.

Appellant believes this court should remand for a "fair trial" under the original charging information, with a single count of second degree murder.

12. DID AMENDED INFORMATION TWENTY-NINE MONTHS INTO PROCEEDINGS VIOLATE ESTABLISHED PROCEDURES, SHOWING ARBITRARY ACTION, WHEN DONE WITHOUT ANY FINDING OF NEW EVIDENCE?

Appellant believes prosecutor committed misconduct 'arbitrarily' increasing counts charged, when defendant refused the plea, without finding some kind of new evidence. The prior issue addressed depriving a party the right to demand his right to a "Jury Trial" without fear of reprisal by the State, and this issue addresses the arbitrary conduct of the prosecutor increasing these

charges, without proof or cause in the records for such increase, as there is no discovery of new evidence justifying State's conduct.

"Defendant failed to convince the trial court that prosecutor's late amendments of the charges was due to prosecutor's vindictiveness, however, the simple mismanagement satisfies the misconduct element" see State V. Michielli, 132 Wn.2d 229 (1997) at 243.

Appellant presented the Court a copy of the prosecutor's "E-Mail" showing the terms of the plea offer. (see Motion To Supplement EX-1) The Prosecutor, Mr. Raz is attempting to get approval for "Manslaughter" instead of "Murder in the Second Degree" then pending, which proves the State intended to reduce the seriousness of this crime, and later amends to greater degrees once the "Plea Agreement" is refused by defendant. This is evidence that would prove that a prosecutor's amending the information was deliberate and vindictive, whereby there is no newly discovered evidence in the case to support the increase.

"An amended information charging defendant with a felony after prosecutor had agree to charge him with a lesser crime in exchange for information does constitute "arbitrary actions," and was properly dismissed. State V. Sonneland, 80 Wn.2d 343 (1972)

The Appellant asks this Court find the facts of this case similar, and to provide relief under the amended information, whereby the State had no proper reason to seek the amended charges, without showing some new evidence.

13. DID PROSECUTOR MAKE IMPROPER, PREJUDICIAL STATEMENTS DURING STATE'S CLOSING ARGUMENTS, WHICH EFFECTED THE JURY'S DECISION?

Prosecutor increases the prejudicial effects of improper statements or of improper evidence, when prosecutor draws attention directly to that evidence before the Jury, and such violates Jury's decision making ability, when the State's comments direct the Jury's verdict, or comment upon the guilt of the

of the defendant, as that is the primary purpose of the Jury trial is for the Jury to determine if the Defendant is guilty of committing any criminal acts.

"Stating the search for the truth is the ultimate purpose of a trial!" State V. Gakin, 24 Wa. App. 681 (1979); State V. Curtis, 161 Wn.2d 673 (2011).

When asking the Jury find the defendant guilty of both "first" and "Second" degree murder, charged in two separate counts, for the single death on a human being, prosecutor was prejudicial to the Defendant. The truth is a single act of murder was committed, and therefore the State's arguments and comments to a Jury directing them to find the Defendant guilty of multiple counts of murder cannot be found harmless, or proper in this case.

"Prosecutor increases the prejudicial effects of improper evidence by then commenting on the evidence during the closing arguments and statements!" see State V. Padilla, 69 Wa. App. 295, 846 P.2d 564 (1993); State V. Kennard, 101 Wa. App. 533, 6 P.3d 38 (2000).

Prosecutor used personal beliefs in the records multiple time, asking that the Jury enter multiple convictions, where the evidence did not support such a argument, and the laws specifically required the Jury enter only a single case conviction for each act proven beyond a reasonable doubt. State directly tells the Jury to convict defendant of both First and Second degree murder. RP 933

Nothing in the State's evidence or evidence given at the trial supported a closing argument that defendant ever killed more than one person, at the most and when conjoined with the "unit of Prosecution" for murder, the State's whole claim that Appellant was guilty of both counts, must fail. RP 1009

"I made it to the last paper. It is as it seems, the defendant... in anger and with premeditated intent, and because of that he is guilty of murder in the First Degree and he's also guilty of felony murder in the second degree!" RP 1009

Therefore, State's choice of closing argument was not supported in facts of in the laws, and resulted in prejudice before this Jury, whom specifically did

follow the State's closing arguments, and convicted the Appellant exactly as a prosecutor improperly argued in closing. CP 157; CP 158

State did not have the authority in the laws to claim that Appellant was guilty of two separate acts of murder, or two separate degrees of murder, when there is but a single death being address, as the "unit of Prosecution" is the death of a human being equals "murder, there is no question this error is "Due Process" under prosecutor misconduct, and cannot be harmless in light of this case verdict of the Jury, especially where the Jury clearly failed to follow a given Jury Instruction, directing that where there is a question to which degree of murder applied, they should only convict of the lesser degree, proving this Jury followed the State's improper arguments and prejudicial comments.

State additionally attempted to correct the error during the sentencing, as State moved to "VACATE" count two of the Jury Verdict, which was the lesser of the degrees of murder the Jury found, but this bell had been rung, and State's attempt to un-ring that bell later fails, where the prejudicial effects have more likely than not already effected the Jury verdicts entered.

State's argument at RP 933 completely asked the Jury to find guilt under "Felony First Degree Murder", which was not even charged, or given as an alternative means of committing any of the crimes actually charged. Appellant is asking the Court determine if that effected the Jury, or was improper in light of the right to a fair trial in this case.

Prosecutor also gave an improper fill in the blank argument in closing, an this Court has rejected such many time in the past as misconduct. The closing arguments at RP 909 stated the improper arguments, that prejudiced the Jury in the case. State V. Reed, 102 Wn.2d 140 (1984) at 141.

"To prevail on prosecutor misconduct, the defendant must show both an improper conduct by prosecutor, and a prejudicial effect!" State V. O'Donnell, 142 Wa. App. 314 (2007)

Appellant has established the State's actions are misconduct, and that a verdict rendered under that misconduct proves the prejudice in this case.

"The right to procedural Due Process is absolute in the sense that it does not depend upon the merits of a claimants substantive assertions!" Babcock V. White, 102 F.3d 267 (7th Cir. 1996)

Once again this Court confronts the difficult task of evaluating the effects that misconduct on the part of a young, zealous prosecutor has upon the rights of the defendant, to ensure that the defendant was provided the required fair trial, and his constitutional rights all remained unabridged throughout the proceedings.

Herein this case we find highly prejudicial, as well as improper expressions of personal belief, forces us to reverse appellant's conviction, so that the unconditional "Right to a Fair Trial" is preserved.

"As a quasi-judicial officer of the Court, prosecutor has a duty to subdue courtroom zeal for the sake of fairness to the defendant!" see State V. Fisher, 165 Wn.2d 727 (2009)

This includes ensure that the prosecutor seeks a verdict free of any and all prejudice, which is lacking in this instance.

"...stating that an attorney's interest in a criminal case is not that it may win a case, but that justice be done!" Berger V. United States, 295 U.S. 78, 55 S.Ct. 629 (1935)

The improper, prejudicial comments in the closing make it apparent that the prosecutor's only interest in this case was to win a conviction, no matter the cost. This is more evident, where State deliberately charged multiple counts, where there never was evidence or "Corpus Delicti" to support these multiple acts charged, but State willfully argued for conviction under each count separately, of the single act under multiple degrees.

"Prosecutor like all other attorneys has a duty of candor towards the tribunal, which precludes it from making any false statements of material facts of law to such tribunal!" State V. Choppin, 57 Wa. App. at 874.

State makes improper comments on the GPS Cord, where the evidence and the trial testimony claimed defendant had returned home to find the GPS Cords, an a Wallet he needed for his truck driving job, therefore possession of that is not proof of fore thought necessary to support premeditations, as prosecutor directly informed the Jury. RP 911

State then has argued that defendant strangled his wife with both fore-thought and premeditated intent to murder her at RP 909, but contradicted the State's very position at RP 924, when addressing the fact that defendant's in the bedroom with his wife and adult teenage daughter, and directed his daughter to leave the room to allow his wife and him to converse, and when she is to of told him no she was not done with their computer useage, he slapped her across the face for speaking back to him. Then at RP 925 State specifically is claiming that defendant's wife came to the daughters add, to stop any further discipline, and defendant "turns his attention to the person who was trying to stop him from continuing to discipline his daughter with violence!"

If these are the facts the State believed were proven in this case, then the State cannot possible argue that there was any premeditated intent, as if the assault on his wife resulting in death was from her stopping defendant's disciplining his daughter, then defendant could not possible have arranged a situation where the daughter would defy him, and his wife would intervene, as a defendant cannot possibly have controled their actions in such a fashion.

State then informed the Jury at RP 926 the premeditation required proof of more than a mere point in time, fore thought for conviction, even after the State just told the Jury State believed the evidence presentend proved that this was completely random, against the wife, either way this falls to the improper conduct in closing, that prejudiced this Jury without question.

Therefore, to warrant action for misconduct, the Appellant must prove a

detrimental effects of State's closing arguments to this Jury, in the duel and erroneous convictions on records. CP 157; CP 158

Appellant has showing to this Court that State's closing argument was a complete mis-application of Washington Laws, in violation of Appellant's own "Due Process" protections of the Constitution, where the State argued that a Jury should convict Appellant of two separate degrees of murder for a single death of a human being, and State charged two separate degrees of murder in a case without evidence that there was any second or additional death alleged.

"It is improper to present an argument not based on the evidence that appeals to the juries passions and prejudice." State V. Echevarria, 71 Wa. App. 595 (1993)

Appellant asks this Court find that State's closing arguments did appeal to this Jury's passions and prejudice, causing defendant deprivation of a fair and impartial trial, as such this misconduct should result in reversal for a deliberate and willfull act of the State attorney before the Jury. RP 909

14. DOES THE DOCTRINE OF CUMULATIVE ERROR APPLY IN THIS CASE?

Appellant believes that the Court on review should apply the doctrine for a 'cumulative error' in this case, if the reviewing court fails to find enough of a grounds for reversal under each individual error, as each error presented was prejudicial, and that prejudice clearly accumulated in this case, whereby there is proof in the Jury verdict standing alone to show the Jury was prejudiced by these presented errors without question, and if we view each individual act of prejudice in the case alone, we might find the error 'Harmless,' however where viewed together, we seen a clearly established violations of the "Fair Trials" rights of this Appellant.

First in issue #1 we have the prejudice established, where the Jury is to decide if the single act of murder equals two separate degrees of murder, and

the jury decided that the appellant had killed his wife twice, per Jury's own written verdicts on the two counts charged. CP 157; CP 158.

This conduct violated the principles and protections of the United States Constitution, where a party shall not be twice convicted under a single act or conduct course, but the Jury errors in this case verdict, attempting to follow the Jury's Instructions given, that specifically told the Jury to decide each of the counts separately.

"Supreme Court concluded that a person could be charged in two separate counts, but they had to be alternative means of committing the same act or crime!" State V. Meas, 118 Wa. App. 297 (2003)(Citing State V. Lord, 123 Wn.2d 296 (1994)).

The Stacking of charges violates the double jeopardy clause of both the Washington and United States Constitutions. see State V. Sweet, 91 Wa. App. 612 (1998). These Reviewing Courts have long settled that "Even if sentencing Court did not sentence the Appellant in regards to the lesser, so called conviction, the double jeopardy has still been violated. see State V. Calle, 125 Wn.2d 769 (1995); State V. Lopez, 79 Wa. App. 775 (1995), thereby the prejudice under issue #1 would accumulate, if the Court did not find sufficient alone.

Then in issue #2 we have the prejudice of "Legislative Intent" not being followed, which is the fundamental principle that our Courts are to ensure in providing a defendant a "Fair Trial"; as if the laws are not properly followed by the Court and Jury, then there is no question of the prejudice suffered by a party, and such prejudice would not always be enough, depending upon the law that were not followed, and that is within the sound review of this Court, but is available for accumulation, if the Court reaches this part of the briefing.

Additionally in issue #3 we have Statements admitted, that were made before the officer could mirandize the party, and the party did not speak english, as "Punjabi" is necessary for the defendant to understand his right, and since he enacted his rights immediately upon being properly mirandized under "Panjabi"

then Court should have excluded those pre-miranda statements from being given before the Jury. Although this issue raises direct constitutional rights, and should be enough alone for reversal, ensuring a fair trial proceeding, there is a chance this Court might decide the prejudice is not enough alone, but with a finding in accumulation of prejudice, this act might be the item necessary for this Court to reverse under this doctrine of accumulative error.

Additionally, issue #4 only goes to accumulation of error to the extent a remand for correction of sentence is clearly necessary, and that might effect a reviewing court's decision, whereby the reviewing Court could return other items to the trial court at the same time as the sentencing error.

Additionally issue #5 is sufficient in and of its very own self to warrant reversal, but still falls to accumulative prejudice, where the Court might find each "coaching" of each witness insufficient for reversal, but with the other more serious errors present the Court could determine that "coaching" by the State even once deprived the Appellant of his rights to a "Fair Trial" and the "Due Process" of the laws, requiring reversal for corrections.

Additionally issue #6 would provide accumulation of prejudice, as if these officers failed to ensure, or attempt to put Appellant in immediate touch with legal counsel upon request, then Court at trial admitted Pre-miranda statements from these very officers, there is no quest this would be unfair, and should be considered under accumulative error doctrine by this Court on review.

Additionally issue #7 would be sufficient without further elaboration, as the constitutions protect against conflicted counsel representing a client, but the prejudice is being included herein this section for consideration, incase this Court were to find insufficient evidence of the conflicts in the records to provide reversal upon that issue standing alone, there is evidence that is clearly "Infering" that there existed some degree of conflict, and such did or

should be found to have caused some form of substantial prejudice to the right to a fair trial, and should be weighed in conjunction with the rest of these issues presented herein for accumulation.

Additionally issue #8 is sufficient, where the evidence in the file shows a issue with the investigation conducted by the attorney, and such is protected under the Constitution for every defendant. Even if the reviewing court were to find the issue insufficient as presentend, the Court should clearly see there is sufficient prejudice to accumulate in the case, even if the attorney might be found effective, if he failed to fully investigate or present a complete and full picture to the Jury, as the verdict is effected clearly by the evidence a attorney presented during trial. The trial process is therefore effected and is thereby a clear establishment that a "Fair Trial" and "Due Process" was not in fact provided this Appellant, equaling prejudice.

Additionally issue #9 presented sufficient evidence to warrant reversal, as there is evidence in the records supporting the Appellant was twice convicted for the failure to properly and completely instruct this Jury. Therefore the issue should still be considered in this accumulation if the Court finds there is insufficient grounds for reversal under the direct issue, as it combined in the Accumulative Error Doctrine Test, does establish additional prejudice to a "Fair Trial" rights, especially where the verdicts entered show the mistake is effecting the Jury directly, and could have case issue with the verdicts, where this court cannot find merely a harmless matter, there is some prejudice.

Additionally issue #10 accumulates with other 'Double Jeopardy' issues in this briefing, and alone would establish the required prejudice for reversal, Appellant asks this Court include it herein this section also, as it may be a scale tipping point for the reviewing court, where prejudice accumulates with all the other prejudice presented in this section.

Additionally issue #11 is also of constitutional magnitude alone, and should establish reversal with reaching this section of the review, but the Courts are possibly going to find there simple is not enough evidence standing alone for reversal, even when the evidence does show the charges were erroneously later increased by the State, which caused most of the issues with the Court and the Jury or Jury Instructions that Appellant is addressing in the statement, but a reviewing Court has the authority and duty to ensure the prejudice faced by an act on the part of the prosecutor, which is improper in nature can be corrected during the review process, and therefore might attach that prejudice under this section to avoid directly accusing the State of misconduct, even if the State's acts would be "Evil" in nature, and would warrant action under disciplinary, a Court likes to give wide leadway to the State's counsel on errors, and this is a means to address the prejudicial effect without having to state what prejudice accumulated into a reversal directly. RP 909

Additionally issue #12 show additional prejudicial conduct of the State's attorney, which should accumulate, even if the Court does not want to address the conduct head-on in the issue directly. The amending of the charges is an act that caused Jury Instruction issues, verdict issues, and confusion for the Court and Jury alike, therefore is on point for accumulation doctrine.

Additionally issue #13 is established directly in the records, the reviewing Courts do give leadway to the State in closing, however the statements in question are clearly improper, the Court may wish to accumulate the prejudice, than address that prejudice head-on accusing the State's Counsel of improper or a questionable act, the prejudice can be address herein in this issue, without a need to attack the State counsel's conduct or performance, and should be given full and complete consideration during this appeal process.

This Court has applied this doctrine multiple time and should continue to

ensure every defendant gets a fair and complete trial before an impartial and unbiased Judge and Jury, to ensure only those whom deserve the sentence they are serving are retained in our prison systems.

"Accumulative Error requires court's action even where each error standing alone would be considered to be harmless error!" State V. Grieff, 141 Wn.2d 910 (2000)(Modified in part); State V. Hodges, 118 Wa. App. 668 (2003)

"But absent prejudicial error, there exists no accumulative error depriving a 'fair trial'!" State V. Saunders, 120 Wa. App. 800 (2004)

Appellant is of the belief that this case presented multiple errors that are sufficient for reversal, and necessary to ensure Appellant is given a completely fair and impartial trial, without improperly admitted evidence, obtained before Appellant knew his constitutional rights, or enacted his rights to counsel based on a communication error, due to Appellant's native language. Appellant is now asking this Court that if the Court failed to reverse under an individual issue, to protect these constitutional rights, then Court should reverse under these issues combined, in light of the weight of the combine prejudice present.

15. DID TRIAL COURT AND DEFENSE COUNSEL INTERFEAR WITH APPELLANT'S RIGHTS TO TESTIFY OR ADDRESS THE COURT ON ISSUES AND ERRORS?

The Defense Attorney, Prosecutor, and Judge all forbid me to give testimony on the even in this case, when Defense Counsel was allowed to only question me about what color of turbin I was wearing at the time of arrest, and there is much more that I wished to testify about, regarding the officer's words they claimed that I had spoken to them. Since such goes directly to an element of the charged crimes in each count, and I had information, or should have been allowed to address the Jury in my broken english directly, so the Jury would of understood how these officers might have misunderstood what I was trying to of said, and I believe that if the Jury had lisened to me try to speak english in the trial the verdict would have been different, and I might have been given a

conviction only under "Manslaughter", as when the Jury understood that I always mix my words when speaking in english, they would have known that I could not have spoken the clear and concise statements found in the reports of these police officers, where the word did not show any mixed or misstated wording of the kind found in my speaking of the english language.

This would effect the Jury's determination on the truthfulness of the State witnesses, where they claimed I speak the language perfectly, without mixing of wording or phrases. The condcut of not allowing me to address the Court in the "Broken English" that I speak, and refusing to allow my testimony on the matters that I needed to speak about, cause me extreme prejudice.

The Court had told me before that I could not speak to the Court directly, and I would not receive a response. RP 40 (2-2-12)

The Court should review these records at RP 685- 686 and determine if I am faced with the necessary prejudice in being denied the oportunity to speak to my Jury in "English" brokenly as I am able, so the Jury might evaluate these unbroken statements the police officer's reports all contained. The Jury would need this information to determine the weight to give their testimony, and all the reports used to refresh their memories, or testified directly from during the trial process in violation of ER- 612.

D. CONCLUSIONS

Appellant has had to use help of the offenders housed with Appellant in the preparation of this briefing, as Appellant cannot speak english well, as needed assistance wording the issues that Appellant believed are present in the case.

This Court should review the issues presented in the briefing, and ensure a "Fair Trial" is provided, where all these errors can be corrected, as Appellant merely seeks true, fully, and complete justice in this case, before a Court that ensures Appellants rights are fully provide and protected in every instance.

This Court should find that if Appellant has to have assistance in preparing this briefing in english, then it is reasonable to assume the perfectly worded statements in the officer's reports did not come from this Appellant, as stated in the reports, therefore should not have been allowed during trial, as officer's stated them as direct hearsay from the defendant.

Appellant is entitled to atleast a trial where the Jury is informed that the Count two, is an alternative means of murder, and they can only convict under a single means of committing murder for the single death. State recognized the error post-trial, when asking to vacate the count two at sentencing, but this did nothing to lessen the prejudice faced during the trial, where Jury chose to convict under two degrees of murder, or deliberated under two degrees of Murder.

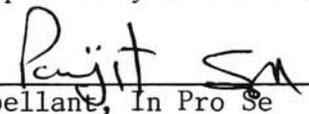
DATED This 21st Day of March, 2013.

Respectfully Submitted,


Appellant, Pro Se

I declare under the penalty of perjury, under the laws of the State of Washington, that I have read, or have had read to me, each line of this brief, and herein state that these are the issues I am presenting this Court under the Statement of Additional Grounds for review.

Respectfully Submitted,


Appellant, In Pro Se

DOC #357517 Cell# A,D-6
Clallam Bay Correction Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326

4-9-13
The record is deemed. However
the document will be processed
as an attachment to the Grand
Statement of Additional Grounds
for Review.

COURT OF APPEALS
Division - I
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION ONE
MAR 25 2013

STATE OF WASHINGTON,
Respondent,

No. 68661-5-I

v.

MOTION TO SUPPLEMENT RECORDS
(RAP 9.11)

PARAMJIT SINGH BASRA.
Appellant,

A. IDENTITY OF THE APPELLANT

COMES NOW Appellant, PARAMJIT SINGH BASRA, in pro se, requesting the Court adhere to less stringent rules under Haines V. Kerner, 404 U.S. 519, 92 S.Ct. 594 (1972), moves the Court allow the records supplemented, where it is necessary, in the interest of justice.

B. RELIEF SOUGHT

Appellant merely requests an order under RAP 9.11, directing the herein attached "EXHIBITS" be supplemented for the pending review of the "STATEMENT OF ADDITIONAL GROUNDS BRIEFING", whereby the interest of justice would now be served, having Appellant's presented additional grounds fully reviewed.

C. STATEMENT OF THE FACTS

Appellant obtained the "Exhibit-1 'E-Mail of Prosecutor'" directly from a defense counsel, during the plea negotiations.

Appellant obtained the "Vore Dire Transcript Pages 'Exhibit-2 and Exhibit-3'" directly from appeals counsel.

D. ARGUMENTS PRESENTED

It being long settled and established that an Appellant is required to ensure the records before this Reviewing Court are sufficient for the Court to review the issues presented in the "STATEMENT OF ADDITIONAL GROUNDS (SAG) briefing, and this Court knowing that supplementing the record on review may be necessary to serve the ends of justice.

Therefore, the Appellant's motion should be considered and granted to now allow full review of the issues presented in the SAG Briefing, where only one (1) records is not of the actual Court's Official Files, the "E-Mail From The Prosecutor", which appellant was given during plea negotiations.

"Party seeking review has the burden to perfect the records, so that the reviewing court, has all relevant evidence before us. *Bulzomi V. Dept. of Labor & Industry*, 72 Wa. App. 522 (1994) "An insufficient record precludes review of the alleged errors!" ID at 525

Appellant has presented this Court nothing more than the evidence of the errors being addressed in the SAG Briefing, and this Court should except that necessary evidence for reviewing this case.

"Appellant Court is not required to search the records in support of a claim made in Appellant's SAG Brief!" *State V. Wheaton*, 121 Wn.2d 347 (1993).

Appellant is ensuring the records are complete with the necessary evidence for review of his issue presented.

"A Defendant's SAG for review must operate within the scope of appellant review, and thus, is subject to the same requirements!" *State V. Delacruz* 136 Wa. App. 1043 (2007)(Unpublished Non-Authority)

"We cannot review legal issues that rely upon evidence outside of the records on appeal!" *In Re Wintermute*, 70 Wa. App. 741 (1993)

The very Jurish Prudence requires that if there is error in the application of the laws or procedures, then there must be action taken to provide a complete and fair proceeding, which these records are necessary to prove, and since the error is knowing at this time, appellant should not be asked to now

wait until he can file the PRP to raise the issue, as the evidence is from the prosecutor found in the actual transcript records.

State cannot claim that the attorney did not make such offers to plea in this case, as such can be found directly in the report of proceedings, but a issue raised in the SAG directly addresses the State raising charges, merely for Defendant and demanding his right to jury trial, an evil, unconstitution-
-al act by the State.

This Court should except the supplemting of:

1. Exhibit-1 "E-Mail From Prosecutor"
2. Exhibit-2 "Vore Dire Transcript Pages 7 & 8"
3. Exhibit-3 "Vore Dire Transcript Pages 11 & 12"

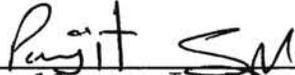
into this record for review of the Statement of Additional Grounds issues, as the interest of justice would be served.

E. CONCLUSIONS

Appellant believes this Court should grant the relief that is requested in this motions.

DATED This 21st Day of March, 2013.

Respectfully Submitted,


Appellant, In Pro Se (SAG)

I declare that I am the appellant, and I have reviewed or had read to me the "MOTION TO SUPPLEMENT RECORDS"; and find it to be true and correct, under the penalty of perjury, in the laws of the State of Washington.

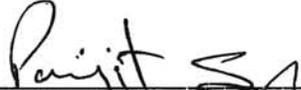

Appellant, In Pro Se

EXHIBIT - 1

EXHIBIT - 1

Richard Hansen

From: Raz, Don [Don.Raz@kingcounty.gov]
Sent: Thursday, November 18, 2010 12:12 PM
To: Richard Hansen
Cc: Raz, Don; Rivera, Pauline; Bergstrom, Tod
Subject: Basra

Richard

I was told that Basra's casescheduling/status conference was continued to December 8th. Tod told me that Basra unexpectedly went off on you on the record to such a degree that a hearing to determine your continued representation of him is likely necessary. Sorry you were on the receiving end of that. It just further proves the axiom that no good act or acts go unpunished.

Tod believed you were looking into a date for a hearing on the representation issue. Since I personally believe I have abused Tod and Bianca's assistance on the Basra case far too much, I should cover this hearing. Is the hearing still necessary? If yes, do you have some potential dates? Thanks

Don

From: Raz, Don [mailto:Don.Raz@kingcounty.gov] Sent: Monday, October 25, 2010 12:19 PM To: Richard Hansen Cc: Raz, Don; Baird, Jeff; Rivera, Pauline

Subject: RE: Basra

Richard

Jeff Baird and I discussed the case facts and Dr. Gollogly's evaluation and conclusions. Baird is not convinced that a reduction to either Manslaughter 1 or 2nd is appropriate. In fact, he thought the case wasn't a bad Murder 1 and wanted to be sure you knew we would so amend if trial. I told him I had informed both you and the family. He said that the best we could offer would be to recommend the low end of 123 months on a plea to Murder in the 2nd degree. He further said that we would not require the 123 months be a joint recommendation and thus you and Mr. Basra would be free to pursue an exceptional sentence below the standard range. Sorry, that's the best I could do.

Don

EXHIBIT-2

EXHIBIT

1 and I will tell them what the case is about. And then
2 we will indicate that a number had indicated they wanted
3 to discuss one of their answers outside the presence of
4 the other jurors, and then ask if there was anybody else
5 that, now that they know what the case is about, would
6 like to speak about something in their background
7 outside the presence of the other jurors. Does that
8 sound reasonable?

9 MR. RAZ: Yes.

10 MR. JOHNSON: That sounds good, Your Honor.

11 THE COURT: Let me ask you a question,
12 however. How do you wish to handle the fact that there
13 are two counts and only basically one crime? I could
14 say it involves a case that involves the charge of
15 murder, and then tell them the date and the individuals.

16 MR. RAZ: I think that would be better. I
17 know the Court will have to address the number of counts
18 later. In the past when I had to -- with both
19 intentional and felony murder, the Court -- when they
20 get to the point of reading the information, just read
21 the information and then let the attorneys address it
22 during closing.

23 THE COURT: After the instructions, that would
24 be my preference.

25 MR. JOHNSON: I think that we tell them that

1 it is a first degree charge. I know it gets to be
2 problematic if we try to differentiate them both at the
3 same time at this point. But I think they have to
4 understand it's a first degree charge, because that may
5 mean something even to some laypeople. I hate to have
6 to do it, but I don't see any other way to get around
7 it. Or we could indicate -- no. Just first degree.

8 THE COURT: Mr. Raz?

9 MR. RAZ: I guess what the Court can say is
10 that the Defendant has been charged, just for
11 description purposes, has been charged with first and
12 second degree murder.

13 MR. JOHNSON: You can say alternatively. with
14 first and alternatively second degree.

15 MR. RAZ: And the jury instructions clearly
16 say you deliberate on both counts separately. So I have
17 no trouble with that.

18 THE COURT: We will do it that way. The ones
19 that I have that indicated that they wanted to talk
20 outside the presence of the other jurors are Jurors 1,
21 5, 9, 13, 27, 31, 34, 43, 45, 46, 47, 50, 53, 59.

22 MR. RAZ: Your Honor, can I interrupt.

23 THE COURT: Sure.

24 MR. RAZ: I think that might be the very
25 problem I mentioned, the way the question is written, it

EXHIBIT-3

EXHIBIT

1 outside the presence of the other jurors, they are going
2 to be up here.

3 I will leave the bench, and Maria will bring
4 up those remaining jurors that we haven't excused
5 between 1 and 60. And then we will bring up the others.

6 RECESS

7 JURY PANEL PRESENT

8 THE COURT: Ladies and gentlemen, we are
9 trying to get down to a number that we can manage to
10 select a jury to hear this case. So I'm going to
11 explain to you a little bit about the case. And I'm
12 going to ask you that because of the questionnaire and
13 the questions about mental illness or the nature of this
14 case, whether there is any of you that would like to
15 talk about certain aspects of your life outside the
16 presence of the other jurors.

17 We are going to bring you up into sections to
18 get an idea of who we need to talk to individually, and
19 will tell you about the case.

20 The title of this case is the State of
21 Washington versus Paramjit Basra, Defendant. It is a
22 criminal case. There are two counts.

23 The counts are, the crime alleged is murder in
24 the first degree and, in the alternative in count two,
25 murder in the second degree.

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
AT DIVISION I

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 MAR 25 PM 1:40

PARAMJIT SINGH BASRA

Appellant/ Petitioner,

vs.

State of Washington

Respondent.

PROOF OF SERVICE

1. PARAMJIT SINGH BASRA, pro se, do declare that on
the ___ day of _____, 2013. I have served the
enclosed 1. Statement of Additional Grounds (SAG) Brief
2. Motions to Supplement Records
3. Declaration of Service (each Party)

on ever other person required to be served, by presenting an envelope to
state prison officials at the Clallam Bay Corrections Center, containing the
above documents for U.S. mailing properly addressed to each of them
and with first-class postage prepaid.

The names and addresses of those served are as follows:

King County Prosecutor
516 Third Avenue Ste. W554
Seattle, WA. 98104-2362

I declare under penalty of perjury under the laws of the State of
Washington, pursuant to RCW 9A.72.085, and the laws of the United
States, pursuant to Title 28 U.S.C. § 1746, that the forgoing is true and
correct.

Executed on this ___ day of MARCH, 2013

Paramjit Singh
Pro se

MAILED PURSUANT GR 3.1

Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326-9723

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
AT DIVISION I

COURT FILED
STATE OF WASHINGTON
2013 MAR 25 PM 1:41

PARAMJIT SINGH BASRA.

Appellant/ Petitioner,

vs.

State of Washington

Respondent.

PROOF OF SERVICE

I, PARAMJIT SINGH BASRA, pro se, do declare that on
the ___ day of _____, 2013. I have served the
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2. Motion to Supplement Records
3. Declarations of Service (each Party)

on ever other person required to be served, by presenting an envelope to
state prison officials at the Clallam Bay Corrections Center, containing the
above documents for U.S. mailing properly addressed to each of them
and with first-class postage prepaid.

The names and addresses of those served are as follows:

Thomas M. Kummerow
Washington Appellant Project
1511 3rd. Ave. ste 201
Seattle, WA. 98101-3647

I declare under penalty of perjury under the laws of the State of
Washington, pursuant to RCW 9A.72.085, and the laws of the United
States, pursuant to Title 28 U.S.C. § 1746, that the forgoing is true and
correct.

Executed on this ___ day of MARCH, 2013

Paramjit Singh
Pro se

MAILED PURSUANT GR 3.1

Clallam Bay Corrections Center
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Clallam Bay, WA 98326-9723

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
AT DIVISION I

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STATE OF WASHINGTON
2013 MAR 25 PM 4:40

PARAMJIT SINGH BASRA.

Appellant/ Petitioner,

vs.

State of Washington

Respondent.

PROOF OF SERVICE

I, PARAMJIT SINGH BASRA, pro se, do declare that on
the ___ day of _____, 20___. I have served the
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2. Motion to Supplement Records
3. Declaration of Service

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state prison officials at the Clallam Bay Corrections Center, containing the
above documents for U.S. mailing properly addressed to each of them
and with first-class postage prepaid.

The names and addresses of those served are as follows:

Court of Appeals, Div I
One Union Square
600 University St.
Seattle WA 98101

I declare under penalty of perjury under the laws of the State of
Washington, pursuant to RCW 9A.72.085, and the laws of the United
States, pursuant to Title 28 U.S.C. § 1746, that the forgoing is true and
correct.

Executed on this ___ day of MARCH, 2013

Paramjit Singh, Pro se

MAILED PURSUANT GR 3.1

Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326-9723

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
AT DIVISION I

PARAMJIT SINGH BASRA

Appellant/ Petitioner,

vs.

State of Washington
Respondent.

PROOF OF SERVICE

I, PARAMJIT SINGH BASRA, pro se, do declare that on
the 21 day of March, 2013. I have served the
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3. Declarations of Service

FILED
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STATE OF WASHINGTON
2013 MAR 25 PM 1:10

on ever other person required to be served, by presenting an envelope to
state prison officials at the Clallam Bay Corrections Center, containing the
above documents for U.S. mailing properly addressed to each of them
and with first-class postage prepaid.

The names and addresses of those served are as follows:

Gurjet Kaur, Attorney
The Sikh Coalition
50 Broad St., suite 1537
New York, NY 10004

I declare under penalty of perjury under the laws of the State of
Washington, pursuant to RCW 9A.72.085, and the laws of the United
States, pursuant to Title 28 U.S.C. § 1746, that the forgoing is true and
correct.

Executed on this 21 day of MARCH, 2013

Paramjit Singh, Pro se

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