PETITIONER MAY FILE THE PETITION WITHOUT PAYMENT OF A FILING FEE

COURT CLERK 6/29/06

FILED COURT OF APPEALS 06 JUN 29 PM 2:54

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

)	
)	NO. 35039-4
)	
)	PERSONAL RESTRAINT PETITION
William Henry Motter)	

Petitioner's Full Name

If there is not enough room on this form, use the back of these pages or use other paper. Fill out all of the form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, William Henry Motter, Washington State Penitentiary,
(Full name and current address)
BMU 3-E-5-2, 1313 N 13th, Walla Walla, Wa. 99362

Apply for relief from confinement. I am X am not _____ now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order: _____
(Identify type of court order)

_____.

1. The court in which I was sentenced is: Superior Court of Wa. Clark County
2. I was convicted of the crime of: Burglary in the First Degree.
3. I was sentenced after (check one) Trial X Plea of Guilty ____ on 10-24-05.
Date of Sentence
4. The Judge who imposed sentence was Robert Harris.
5. My lawyer at trial court was Mathew Butler, WSBA# 27993,
Name and Address if known
1402 Broadway st. Longview, Wa 98632-3714.

6. I did X did not ____ appeal from the decision of the trial court. (If the answer is that I did), I appealed to: Washington State Court of Appeals Division II # 34251-1-II
Name of court or courts to which appeal took place

7. My lawyer for my appeal ~~was~~ is: John Hays 1402 Broadway Longview, Wa. 98632
Name and address if known or write "none"

The decision of the appellate court was N/A was not N/A published. (If the answer is that it was published, and I have this information) the decision is published in N/A

8. Since my conviction I have ~~X~~ have not X asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked, the court I asked was ~~Court of Appeals # 34251-1-II~~ N/A. Relief ~~was denied on~~
Name of court
N/A
Date of Decision or, if more than one, all dates)

(If you have answered in question 7 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was N/A
Name and address if known

9. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: N/A

B. GROUNDS FOR RELIEF:

(If I claim more than one reason for relief from confinement, I will attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc). I claim that I have 14 reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

14 Ground
(First, Second, etc)

1. I should be given a new trial or released from confinement because (State legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement): See Grounds 1-14 errors of "constitutional magnitude." ~~Grand~~ Ground 15 Alleged prosecutorial misconduct of ABA rules + procedures for investigation + correction.

2. The following facts are important when considering my case. (After each fact statement put the name of the person or persona who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that also) See Grounds 1-14 facts that support "constitutional rights violations." Ground 15 facts of "prosecutorial misconduct".

3. The following reported court decisions (indicate citations if possible) in cases similar to mine show the error I believed happened in my case. (If none are known, state "None Known". See Grounds 1-14 Court decisions that show the errors are of "constitutional Magnitude." Ground 15 ABA rules of conduc

4. The following statutes and constitutional provisions should be considered by the court. (If none are now, state, "None Known") See grounds 1-14 The 6th + (5th 14th "Due Process") rights of the U.S. Constitution.

5. This petition is the best way I know to get the relief I want, and not other way will work as well because: I am being held in violation to my constitutional right as a citizen of the United States of America + the State of washingt and my Appelate attorney will not begin work on Appelants Brief untill late summ "I petition for relief."

C. STATEMENT OF FINANCES:

If you cannot afford to pay the $250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do X do not____ ask the court to file this without making me pay the $250 filing fee because I am so poor and cannot pay the fee.

2. I have $ 0 in my prison or institution account.

3. I do ____ do not _X_ ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a layer.

4. I am _X_ am not ____ employed. My salary or wages amount to $_17_____a month. My employer is _Garmet factory Washington State Penitentiary_____.
Name and address of employer

5. During the past 12 months I did _____ did not _X_ get any money from a business, profession or other form of self-employment. (If I did, it was _____
Type of self-employment
And the total income I received was $_~~20~~ Ø_____.

6. During the past 12 months I:

Did ___ Did Not _X_ Receive any rent payments. If so, the total I received was $_____

Did ___ Did Not _X_ Receive any interest. If so, the total I received was $_____

Did ___ Did Not _X_ Receive any dividends. If so, the total I received was $_____

Did _X_ Did Not ___ Receive any other money. If so the total I received was $_20_____

Do___ Do Not _X_ Have any cash except as said in question 2 of Statement of Finances. If so the total amount of cash I have is $_____Ø_____.

Do ___ Do Not _X_ Have any savings or checking accounts. If so, the total amount in all accounts is $_____

Do ____Do Not_X_ Own stocks, bonds or notes. If so, their total value is: $_____.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what eat item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value
N/A	
N/A	
N/A	

8. I am ____ am not _X_ married. If I am married, my wife or husband's name and address is:

_____

_____

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
N/A		
N/A		
N/A		
N/A		

10. All the bills I owe are listed here:

Name & Address of Creditor	Amount
NO	
NO	
NO	

D. REQUEST FOR RELIEF:

I want this court to:

_____ Vacate my conviction and give me a new trial

_____ Vacate my conviction and dismiss the criminal charges against me without a new trial

X Other: Vacate my conviction and dismiss the criminal charges against me + convict me of what I did do (criminal trespass)
(Please Specify)

E. OATH OF PETITIONER

STATE OF WASHINGTON)
) ss.

COUNTY OF Walla Walla)

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

William H. Mother

(Signature Here) William Mother # 889252

SUBSCRIBED AND SWORN to before me this 12th day of June 2006

OFFICIAL SEAL
WANDA K. HEIMANN
NOTARY PUBLIC - STATE OF WASHINGTON
My Comm. Expires August 20, 2007

Wanda K. Heimann
Notary Public in and for the State of Washington
Residing at Walla Walla, WA
my commission Expires 8/20/07

If a notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary: _____

_____

_____.

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

DATED This _____ day of _____, 200___.

_____
(Signature Here)

Washington State Court of Appeals
Division Two
950 Broadway, suite 300,
Tacoma, Washington 98402-4454

RECEIVED
JUN 22 2006
CLERK OF COURT OF APPEALS
STATE OF WASHINGTON

June 19, 2006

Re: Personal Restraint of William H. Motter.
Statement of finances.

Dear Court Clerk: This is Motters response to June 15 2006 letter from court clerk

[Statement of finances. Please waive filing fee of 250.00 for Motters PRP.]

1) Motter is presently employed. hourly wages are $0.50 per hour. Washinton State Penitentiary Garment factory is the employer. Motter Nets Approximately 15.00 per MH

2) Motter has received [no] Monies from the following Sources. a) Business, profession or form of self employme b) Rent payments, interest or dividens. c) Pensions, annuities or life insurance payments d) inheritances e) Any other Sources.

3) Motter has received $20.00 in the last 12 Months as Gifts total.

4) Motter owns [no] real estate, stocks, bonds, notes, automobiles, or other valuable property

5) Motter has $1.00 in his prison account.

Motter has sent to Court Clerk a copy of "prison account statement" in letter dated June 17, 2006.

Motter understands that a false statement in this "Statement of finances" will subject him to penalties for perjury, and Motter declares under penalty of perjury that the foregoing is true and correct.

Signed this 19 day of June, 2006

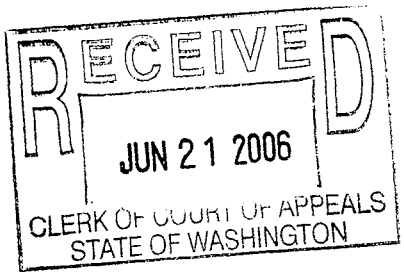
William Motter

Signature of Petitioner

Included in this "Statement of finances" is 1) Pre-Payroll Report By Employee 2) Trust Account Statement of William H. Motter.

William Motter #889252
Washington State Penitentiary
BMU 3-E-5-2
1313 N. 13th ave.
Walla Walla, Wa.
99362

June 17, 2006



WASHINGTON STATE COURT OF APPEALS
950 Broadway, Suite 300
Tacoma, Washington 98402-4454

RE: Correction and additional information required for PERSONAL RESTRAINT PETITION OF HENRY MOTTER.

Attention Clerk;
Please be advised of correction to Petition. Also a certified copy of Motter's financial status is enclosed. The financial status report is from 12-02/2005 to 6/12/2006.

Thank you,

William Motter

William Henry Motter 889252
Washington State Penitentiary
BMU 3-E-5-1
1313 N 13th Ave.
Walla Walla, WA 99362

DEPARTMENT OF CORRECTIONS
WASHINGTON STATE PENITENTIARY

PLRA IN FORMA PAUPERIS STATUS REPORT
FOR DEFINED PERIOD : 12/02/2005 TO 06/12/2006

DOC : 0000889252 NAME : MOTTER WILLIAM ADMIT DATE :12/02/2005

DOB : 07/29/1958 ADMIT TIME :00:00

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
31.77	6.35	0.63	0.13

RECEIVED
JUN 21 2006
CLERK OF COURT OF APPEALS
STATE OF WASHINGTON

WASHINGTON STATE PENITENTIARY

Carolyn Munden
6/12/06

FILED
[illegible]
[illegible] 21 PM 12:50
[illegible]

WASHINGTON STATE COURT OF APPEALS
DIVISION II

RE Personal Restraint of: WILLIAM MOTTER Petitioner	CORRECTION AND ADDITIONAL INFORMATION FOR PRP OF MOTTER.

Please be advised of error in Motter's PRP.

ERROR

Grounds Twelve - 16:

4. Status and Constitutional Provisions;

   [5th and 14th Amendments to United States Constitution, DUE PROCESS RIGHTS].

ERROR CORRECTION

Ground Twelve - 16:

4. Statutes and Constitutional Provisions;

   [6th Amendment to United States Constitution, RIGHT TO COUNSEL].

Ground 12 is an Ineffective Assistance of counsel claim and falls under the

6th Amendment right to counsel, not a due process claim under the 5th and 14th Amendments.

SUBMITTED ON 17 Day of June, 2006.

William Matter

William Henry Matter 889252
Washington State Penitentiary
BMU 3-B-5-1
1313 N. 13th Ave.
Walla Walla, WA. 99362

MOTION PETITIONS FOR RELIEF FOR THESE CONSTITUTIONAL RIGHTS VIOLATIONS.

GROUNDS FOR RELIEF:

1.-4.

Petitioner seeks relief for the following Constitutional Violations.

GROUND ONE: It was error for the Superior Court to give permissive inference Jury Instruction #12. The inference was the sole and sufficient evidence of proof that I intended to commit a crime violating my rights of due process under the 5th & 14th amendments of the U.S. Constitution.

GROUND TWO: It was error for the Superior Court to give Jury Instruction #12. Jury Instruction #12 permitted the jury to infer my guilt in violation of the 5th and 14th Amendments to the United States Constitution (Due Process).

GROUND THREE: The State prosecutor instructed the jury using a mandatory presumption. The mandatory presumption required me to offer evidence of my innocence or accept the presumption of guilt. The presumption shifted the burden off the State to prove every element of the crime charged beyond a reasonable doubt, or to me, to prove my innocence. Violating my due process, 5th & 14th Amendment Rights of the U.S. Constitution.

GROUND FOUR: The State prosecutor instructed the jury using a mandatory presumption. The mandatory presumption required the jury to find guilt of intent to commit a crime once the State proved I entered or remained, unlawfully, violation my due process rights under the 5th & 14th Amendments of the U.S. Constitution.

GROUND FIVE: The State's prosecutor misstated the law to the jury. The

PETITION # 1

prosecutor said you can infer guilt of intent to commit a crime by the sole and sufficient evidence of entering or remaining unlawfully violating, thus my due process and fair trial rights under the 5th, 6th, & 14th Amendments of the U.S. Constitution.

GROUND SIX: The State's prosecutor gave his personal opinion of my guilt to jury, thus violation my right to a fair trial by an impartial jury, under the 6th Amendment of the United States Constitution and Article I§22 of the Washington State constitution.

GROUND SEVEN: The State tried me without investigating my mental health issues and inquiring into my competency to stand trial; 1) whether I had apparent understanding of the charge and consequences of conviction; 2) apparent understanding of the facts giving rise to the charge; and, 3) my ability to relate the facts to my attorney in order to help prepare the defense. Nor did the court question my attorney whether I had the same, violating my due process rights under the 5th & 14th Amendments of the U.S. Constitution.

GROUND EIGHT: Defense counsel failed to investigate State's evidence and applicable law of charged crime. Counsel failed to object or except to court's use of Jury Instruction #12. Counsel failed to object to State's prosecutor's use of: 1) permissive inference; 2)mandatory rebuttal presumptions; 3) mandatory conclusive presumptions violating my 6th Amendment rights of the United States Constitution (right to counsel & a fair trial).

GROUND NINE: Defense counsel's failure to investigate State's case, and evidence State has in their possession, with which the State would use in prosecuting defendant. Also, Defense counsel's failure to heal a deficient "Information" with a "Bill of Particulars", so that the Defendant would have all necessary facts to prepare a defense against the criminal charges of the State, violation my right to counsel under the 6th Amendment of the U.S. Constitution.

GROUND TEN: 1) It was error for the State's prosecutor to charge defendant with "Burglary in the First Degree"; and, 2) it was error for the Court to accept and file the charge of "Burglary in the First Degree"; and, 3) it was error for the State's public defender to bring a plea bargain to defendant before any investigation of the alleged crime charged against defendant, violating my due process under the 5th & 14th Amendments of the U.S. Constitution.

GROUND ELEVEN: It was error for defense counsel to not bring out exculpatory testimony from Lindsay Schultz in cross-examination, violating my right to counsel under the 6th Amendment of the U.S. Constitution.

GROUND TWELVE: Defense counsel made numerous errors, which cumulatively prejudiced Mutter's defense, violating his right to counsel under the 6th Amendment of the U.S. Constitution.

GROUND THIRTEEN: Defense counsel failed to stop criminal proceedings before going to trial with "Kuplstad" hearing, a pretrial motion for dismissal for insufficiency of evidence, violation my right to counsel

PETITION - 3

under the 6th Amendment of the U.S. Constitution.

GROUND FOURTEEN: The State's prosecutor withheld exculpatory evidence from defense counsel, hindering defendant's defense and violation the defendant's due process rights under the 5th & 14th Amendments of the U.S. Constitution.

GROUND FIFTEEN: Did State's prosecutor violate "ABA Discovery Standards". A request for an investigation and chastisement of prosecutor's unlawful action of rules and regulations of ABA (investigation).

GROUNDS FOR RELIEF: THIS PERSONAL RETRANT PETITION IS THE BEST WAY MOTTER KNOWS TO GET RELIEF BECAUSE.

5. This petition is the best way I know to get the relief I want, and not other way will work as well because: Petitioner was convicted of a crime in violation of his "constitutional rights" both federal and state. Every element of the crime charged was not proved beyond a reasonable doubt. There was no evidence that petitioner entered a building with intent to commit a crime against a person or property therein, an element of "Burglary in the First Degree". Petitioner is being unlawfully restrained.

Petitioner's Direct Appeal attorney was appointed by the Office of Public Defense (OPD) and is very busy. Appointed Counsel has many other cases he is working on. He will begin work on Brief of Appellant in petitioner's case in late summer (letter dated May 11, 2006).

Because petitioner's liberty has been taken unlawfully by the State of

Washington the petitioner is compelled to petition the court of Appeals for relief from restraint [as soon as possible], thus this PERSONAL RESTRAINT PETITION has been filed and is the best way petitioner knows and not another way will work as well. A [petition] for relief.

GROUND ONE

1. **Legal Reason Errors**:

It was error for the Superior Court to give permissive inference Jury Instruction **#12**. The inference was the sole and sufficient evidence of proof that I intended to commit a crime.

2. **Facts and location of facts**:

The State gave **WPIC 60.05** as Jury Instruction **#12**. (RP 132 at line 25).

WPIC 60.05 - A person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein. This inference is not binding upon you and it is for you to determine what weight, if any, such inference is to be given.

There was no evidence submitted at trial of intention to commit a crime.

"I did not find any signs of forced entry." (Dixon - Cross, RP 49 at line 25).

"I did not find anything missing." (Dixon - Cross, RP 50 at line 4).

Nothing out of order in building. (Dixon - Cross, RP 50 at line 6).

No broken windows or door, no damage to door, no forced entry. (Schultz - Direct, RP 73 at line 2).

No property from the medical office was in my possession. (Waddell - Recross, RP 123 at line 19).

I was found inside Dr. Dixon's office building at approximately 10:00 p.m. (Dixon - Direct, RP 37 at line 2). The alarm had gone off at approximately 8:50 p.m. (Dixon - Cross, RP 62 at line 1). But I had possibly entered while the doors were open at around 6:30 p.m., according to Dr. Dixon's testimony. (Dixon - Redirect, RP 65 at line 10). I am homeless. See "Information" - "last known address: transient." I have mental problems. (RP 2 at line 2, RP 3 at line 5). I am mentally disabled. (Dr. Moore, Psychiatrist, Officers Row, Vancouver, Washington; Dr. Berman, Columbia River Mental Health, Vancouver, Washington; Clark County Jail Mental Health Psychiatist).

According to the record, if I had entered or remained with intent to commit a crime I had plenty of time.

But there is no fact, alone or in conjunction with others, from which entering with intent to commit a crime more likely than not could flow.

3. **Court Decisions with citations**:

State v. Sandoval, 123 Wn.App. 1: Jury may not be permitted to infer criminal intent from defendant's unlawful entry into or remaining, if as a result, the state would be relieved of its burden of proving the intent element of the burglary beyond a reasonable doubt... inference may not be permitted if it constitutes the sole and sufficient proof of intent.

"Due process requires the state to bear the burden of persuasion beyond a reasonable doubt of every element of a crime." State v. Deal, 128 Wn.2d 693, 698, 911 P.2d 996 (1996); quoting State v. Hanna, 123 Wn.2d 704, 710, 871 P.2d 135 (1994).

A due process challenge to the propriety of a jury instruction is an issue of constitutional magnitude. Deal, 128 Wn.2d at 698; See also RAP 2.5(a)(3).

The intent required for burglary is intent to commit any crime inside the burglarized premises. State v. Bergeron, 105 Wn.2d 1, 4, 711 P.2d 1000 (1995). Intent to commit a crime may be inferred when a person enters or remains unlawfully. RCW 9A.52.040.

But the permissive inference cannot relieve the State of its burden to prove each element of a crime without violating due process. State v. Randhawa, 133 Wn.2d 67, 76, 941 P.2d 661 (1997). And the Appellate Court evaluates the constitutional propriety of these instructions based on the particular fats of each case, and specifically the State's evidence supporting the inference. Id., Hanna, 123 Wn.2d at 712.

When a permissive inference is "only part of the State's proof supporting an element and not the 'sole and sufficient' proof of such element, due process is not offended if the prosecution shows that the inference more likely than not flows from the proven fact." Deal, 128 Wn.2d at 700 (citing State v. Brunson, 128 Wn.2d 98, 107, 905 P.2d 346 (1995)).

Because the inference was the **only** proof of intent the State's burden was greater and it failed to prove that my intent to commit a crime against a person or property flowed beyond a reasonable doubt from any proved fact. See, Brunson, 128 Wn.2d at 107-110 (citing County Court of Ulster County v. Allen, 442 U.S. 140, 167, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979)); Hanna, 123 Wn.2d at 711 (suggesting that when a permissive inference is the "sole and sufficient" proof of an element of the crime, due process requires that the inference flow beyond a reasonable doubt from the proved fact.).

Leary v. United States, 89 S.Ct. 1532 (1969). It has long been settled that when a case is submitted to the jury on alternative theories the unconstitutionality of any of the theories requires that the conviction be set aside. See, e.g., Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931).

4. Constitutional provisions:

See constitutional provision for due process in the 5th and 14th Amendments to the United States Constitution and fair trial by impartial jury provision in 6th Amendment to the United States Constitution.

GROUND TWO

1. Legal Reason Errors:

It was error for the Superior Court to give Jury Instruction #12. Jury instruction #12 permitted the jury to infer my guilt in violation of the 5th and 14th Amendments to the United States Constitution.

2. Facts and location of facts:

State gave **WPIC 60.05** as Jury Instruction **#12.** (RP 132 at line 25).

WPIC 60.05 - A person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein. This inference is not binding upon you and it is for you to determine what weight, if any, such inference is to be given.

3. Court Decisions with citations:

Schwendeman v. Wallenstein, 971 F.2d 313 (9th Cir. 1992).

[3] - We noted that a permissive inference jury instruction is constitutional "so long as it can be said 'with substantial assurance' that the inferred fact is more likely than not to flow from the proved fact on which it is made to depend," citing Ulster County, supra.

In Schwendeman, supra, the jury was instructed with Jury Instruction #7:

A person who drives in excess of the maximum lawful speed at the point of operation may be inferred to have driven in a reckless manner. This inference is not binding upon you and it is for you to determine what weight, if any, such inference is to be given.

The Court noted:

[4] - Although it is certainly true that excessive speed is probative of a jury's determination of recklessness, here we cannot say with substantial assurance that the inferred fact of reckless driving more likely than not flowed from the proved fact of excessive speed. Under Ulster County, supra, the instruction was constitutionally deficient. See Ulster County, 442 U.S. at 166 n.28, 99 S.Ct. at 2229 n.28.

[5,6] - A constitutionally deficient jury instruction requires reversal unless the error is harmless beyond a reasonable doubt. Id. at 296 n.3. An error is harmless beyond a reasonable doubt when "there is no reasonable possibility that error materially affected the verdict." Id.

[7] - ...[B]ut instruction #7 isolated speed as the only circumstance needed to permit the jury to find reckless driving and thereby convict Schwendeman. The jury was told, in effect, that it could ignore all the other evidence, consider only the evidence of Schwendeman's speed, and if it found Schwendeman was exceeding the speed limit, that was enough to convict him - not of speeding, but of reckless driving.

Instruction #12 in my case had the same effect. The instruction told the jury, in effect, consider only the evidence that I entered or remained unlawfully, and that was enough to find guilt, not of criminal trespass, but of intent to commit a crime, burglary.

967 F.2d 294 (9th Cir. 1992):

[2,3] - We recognize at the outset that the instruction at issue in this case describes a [permissive] inference. The jury was clearly instructed that it was not required to draw the inference. A permissive inference is constitutional so long as it can be said "with substantial assurance" that the inferred fact is "more likely that not to flow from the proved fact on which it is made to depend." Ulster County v. Allen, 442 U.S. 140, 166 n.28, 99 S.Ct. 2213 n.28, 60 L.Ed.2d 777 (1979), quoting Leary v. United States, 395 U.S. 6, 36, 89 S.Ct. 1532, 1548, 23 L.Ed.2d 57 (1969).

First, we have disapproved of the use of certain instructions when they might permit a jury to convict without finding all the elements of a crime beyond a reasonable doubt. See, e.g., United States v. Garzon, 688 F.2d 607 (9th Cir. 1982):

III

[.].. told the jury it could infer knowledge from two isolated facts - that he defendant was the driver and that cocaine was concealed in the body of the body of the vehicle.

Permissive inferences of this sort have been roundly criticized. Writing for the court in Morissette v. United States, Justice Jackson observed that a,

> "[P]resumption which would permit but not require the jury to assume intent from an isolated fact would prejudge a conclusion which the jury should reach of their own volition. A presumption which would permit the jury to make an assumption which all the evidence considered together does not logically establish would give to a proven fact an artificial and fictional effect."

342 U.S. 246, 275, 72 S.Ct. 240, 256, 96 L.Ed. 288 (1952), citing Morissette,

> "We have ourselves stated that where intent is a necessary element of a crime, it is error for the court to instruct the jury that it may, but is not required to, infer the requisite intent from an isolated fact, there can be no presumption as to intention which would permit the jury to make an assumption which all the evidence considered together does not logically establish."

Baker v. United States, 310 F.2d 924, 930-31 (9th Cir. 1962), cert. denied, 372 U.S. 954, 83 S.Ct. 952, 9 L.E.2d 978 (1963), a leading commentator has more recently observed, "the key problem with permissive inferences is that they isolate and abstract a single circumstance from the complex of circumstances presented in any given case, and on proof of that isolated fact, authorize an inference of some other fact beyond reasonable doubt... Permissive inferences thus permit juries to avoid assessing the myriad facts which make specific cases unique."

The court in summary, we conclude that the instruction given in this case was defective in two respects. First by telling the jury that the judge thought there was sufficient evidence to

convict, the instruction intruded inappropriately on the jury deliberations. Second, by focusing the jury on two isolated facts, the instruction permitted the jury to convict without considering all the evidence presented at trial. It is apparent that the first defect turns in part on the particular facts of this case. The second defect, on the other hand, stems from the language of the instruction. Since either defect is fatal, we conclude that the instruction we approved in Castillo-Burges should not be used. An error in the jury instruction requires reversal unless that error is harmless.

State v. Delmarter, 68 Wn.App. 770, 845 P.2d 1340 (1993):

[2] - Criminal Law - Evidence - Presumptions - Inferences - Validity - In General. A presumption or inference must be authorized by statute or commonlaw, and not prohibited by the federal or state constitution.

[3] - Criminal Law - Evidence - Presumptions - Inferences - Instructions - Validity - Due Process. With respect to giving of an instruction on presumption or an inference, due process prohibits... (2) the shifting of the state's burden of proving each element beyond a reasonable doubt, and (3) the judge from inviting the jury to find an element of the crime arbitrarily or irrationally.

[4] - Criminal Law - Evidence - Presumptions - Inferences - Rational Connection - Necessity. The jury cannot be instructed on

a permissive presumption or an inference as proof of an element of a crime charged unless the connection between the elemental fact and the foundational fact is rational.

4. **Statutes and Constitutional provisions**:

Consider Due Process of the 5th and 14th Amendments to the United States Constitution.

-

GROUND THREE

1. **Legal Reason errors**:

The State prosecutor instructed the jury using a mandatory presumption. The mandatory presumption required me to offer evidence of my innocence or accept the presumption of guilt. The presumption shifted the burden off the State to prove every element of crime beyond a reasonable doubt, on to me, to prove my innocence.

2. **Facts and location of facts**:

State's prosecutor quote at trial:

"Mr. Motter was in a place that he entered or remained unlawfully, that alone allows you to find -- and that common sense -- **for what -- for what other purpose are you in that location for?**

If there was some evidence possibly that he was looking for somebody, that there was some evidence that he was hiding from a dangerous situation, or if there was evidence that there was some claim of ownership to this property, yes, we don't have a situation where he entered and remained unlawfully, knowingly, and maybe that he wasn't intending to commit a crime therein." (RP 140 at lines 9-21).

"[l]aw allows you to find that, because simply using your common -- common sense, for what -- and common experience, **for what other purpose was Mr. Motter doing in that building?** He was

there to commit a crime, either a theft, either to continue to stay there, to break something, to steal, we don't know." (RP 141 at lines 6-12).

"[h]ad no reason to be waltzing in there during any -- there's -- **there's no fathomable explanation or excuse as to why he entered that building and to the lawful nature of that.**

Mr. Motter entered and remained unlawfully in that building, and that prong has been proved." (RP 142 at lines 3-8).

"It's an inference. It's a, 'if this then this, then this.' If you enter or remain unlawfully, then your intent must be to commit a crime. It's not binding upon you, but it's what the law proposes and allows for you to -- to use.

And then again, using your common sense. For what other reason -- what other reason has been provided to you? If there's another reason out there, if there was evidence that there was -- that he was in there not to commit a crime I've missed it. And it's not there. (RP 158 at line 17 to RP 159 at line 3).

For what other purpose was Mr. Motter unlawfully remaining inside of the doctor's office? (RP 161 at line 13).

"Mr. Motter was not just trespassing. If Mr. Motter was trespassing **he could easily have said, 'Hey, I was just trying to**

find a place to sleep.' And -- there was no evidence of that.

3. **Court Decisions and citations**:

These instructions to the jury have the same effect as **WPIC** 60.05 before it was revised:

"unless such entering or remaining shall be explained by evidence satisfactory to the jury to have been made without such intent."

That language improperly shifts the burden of proof State v. Deal, 128 Wn.2d 693, 911 P.2d 996 (1996).

Mandatory presumptions whether rebuttable or conclusive will only be sustained if proof of the basic fact leads factfinders to find the presumed fact beyond a reasonable doubt. Allen, 442 U.S. at 167, 99 S.Ct. 2213.

The clear import of recent United States Supreme Court cases is that instructional errors which tend to shift the burden of proof to a criminal defendant are of constitutional magnitude because they may implicate a defendant's right of due process. Sandstrom v. Montana, 442 U.S. 510, 61 L.Ed.2d 39, 99 S.Ct. 2450 (1979).

Sandstrom:

1. **Criminal Law**

Effect of a presumption in a jury instruction is determined by the way ~~ion~~ in which a reasonable juror could have interpreted it, not by a State court's interpretation of its logical import.

Sandstrom at 514.

[1] - The threshold inquiry in ascertaining the constitutional analysis to the kind of jury instruction is to determine the nature of the presumption it describes. See, Ulster County Court v. Allen, 442 U.S. 140, 157-63, 99 S.Ct. 2213, 2224-2227, 60 L.Ed.2d 777 (1979) **that determination requires careful attention to the words actually spoken to the jury.** See, Id. at 157-159 n.16, 99 S.Ct. at 2225, **for whether a defendant has been accorded his constitutional right depends upon the way in which a reasonable juror could have interpreted the instruction.** (BOLD emphasis added).

Ulster County Court v. Allen, supra:

[6] - Nonetheless, in criminal cases the ultimate test of any device's constitutional validity in a given case remains constant: The device must not undermine the fact-finder's responsibility at trial based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt.

Leary v. United States, 89 S.Ct. 1532 (1969):

It has long been settled that where a case is submitted to the jury on alternate theories the unconstitutionality of any of the theories requires that the conviction be set aside. See, e.g. Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931).

4. **Statutes and Constitutional provisions**:

See 5th and 14th Amendments to the United States Constitution, Due process rights.

GROUND FOUR:

1. **State Legal errors**:

The State prosecutor instructed the jury using a mandatory presumption. The mandatory presumption required the jury to find guilt of intent to commit a crime once the State proved I entered or remained unlawfully.

2. **Facts and facts location**:

"[f]or what other purpose was Mr. Motter doing in that building? **He was there to commit a crime**, either continue to stay there, to break something, to steal, we don't know." (RP 141 at lines 8-12).

"How many people knew that **you can automatically infer** that somebody is intending to commit a crime therein if they're there unlawfully?" (RP 142 at line 14).

"It's an inference. It's a 'if this, then this, then this.' If you enter or remain unlawfully, then your intent **must be** to commit a crime." (RP 158 at lines 17-20).

"Therefore, we look to the inference. And the inference says if you're entering or remaining unlawfully, **you were there to** commit a crime therein." (RP 159 at lines 4-7).

"

"We've established that he entered and remained unlawfully in this property. We've established that the inference tells you when you are doing that, **it's to** commit some crime therein." (RP 160 at lines 6-10).

"The law only says he was somewhere that he wasn't supposed to be, the inference is that **he was there to** commit a crime." (RP 161 at line 18).

"[t]hat's why the inference, the reasonable inference that you can draw is that if you're breaking into a medical doctor's office, **you're there to commit** a crime." (RP 162 at line 9).

"Because he knew he was doing wrong. **He knew he that he was trying to commit a crime inside of this business.**" (RP 163 at 5-8).

"If you were entering and/or remaining unlawfully, **your intent is to** commit a crime within the property whether there's evidence of that or not." (RP 165 at lines 5-8).

3. **Court Decisions with citations**:

A mandatory conclusive presumption simply removes the defendant from the evidentiary process and requires the fact-finder to find an ultimate or elemental fact as true once the prosecutor has offered sufficient proof of the basic fact.

Francis v. Franklin, 471 U.S. 307, 314 n.2, 105 S.Ct. 1965.

It is fair to say that the Supreme Court has viewed mandatory presumptions in criminal cases with much skepticism. See e.g. Sandstrom v. Montana, 442 U.S. 510, 523, 99 S.Ct. 2450 (1979).

Carella v. California, 491 U.S. 263, 265, 109 S.Ct. 2419 (1989), "[t]he Due Process Clause of the Fourteenth Amendment denies States the power to deprive the accused of liberty unless the prosecution proves beyond a reasonable doubt every element of the charged offense."

"Jury instructions relieving the State of this burden violate a defendant's due process rights." (citing In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068 (1970).

State v. Deal, 128 Wn.2d 693 (1996):

[6] - Criminal Law - Evidence - Presumptions - Conclusive Presumptions - Validity. The use of a mandatory presumption in a criminal case is invalid if it relieves the State of its burden of proving all the essential elements of the charged crime beyond a reasonable doubt.

[7] - Criminal Law - Evidence - Presumptions - Conclusive Presumptions - Determination - Instructions. A court determines whether an instruction in a criminal case established an impermissible mandatory presumption by reading the instructions

as a whole and considering the instructions as they would be understood by a reasonable juror.

Sandstrom, 99 S.Ct. 2450 (1979):

Because the jury may have interpreted the challenged presumption as conclusive, like the presumption in Morisette, 342 U.S. 246, 72 S.Ct. 240 and United States v. Gypsum Co., 438 U.S. 422, 98 S.Ct. 2864. The presumptions violated the Fourteenth Amendment requirement that the State prove every element of a criminal offense beyond a reasonable doubt, the instruction is unconstitutional. (pp. 2454-2460.)

Leary v. United States, 89 S.Ct. 1532 (1969):

It has long been settled that when a case is submitted to the jury on alternative theories the unconstitutionality of any of the theories requires that the conviction be set aside. See e.g. Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1119 (1931).

4. Statutes and Constitutional provisions:

See Due Process clause of the 5th and 14th Amendments to the United States Constitution.

GROUND FIVE:

1. **Legal Reason errors**:

The State's prosecutor misstated the law to the jury. The prosecutor said you can infer guilt of intent to commit a crime by the sole and sufficient evidence of entering or remaining unlawfully.

2. **Facts and location of facts**:

"Instruction No. 12 explains that, 'A person who enters of remains unlawfully in a building --' such as Mr. Motter being in this doctor's office that he had no permission to be in, 'may be inferred to have acted with intent to commit a crime against a person or property therein.' You are allowed to find an inference. **The law says to you just because Mr. Motter was in a place that he entered or remained unlawfully that alone allows you to find** -- for what other purpose are you in that location for?" (RP 139 at line 25 to RP 140 at line 13).

"**All we need to prove to you is that he had an intent to commit a crime therein, and this instruction allows you to infer that based on his entering or remaining unlawfully.**" (RP141 at line 13).

"How many people knew that you can **automatically infer that somebody is intending to commit a crime therein if they're there unlawfully? Well, that's the law.**" (RP 142 at line 14).

"What the law says is that you can prove that element on its own based upon somebody entering or unlawfully remaining in a -- in a property." (RP 158 at line 13).

"Therefore, we look to the inference, and the inference says of you're entering or remaining unlawfully, you were there to commit a crime therein." (RP 159 at line 4).

"-- We've established that he entered and remained unlawfully in this property. We've established that the inference tells you when you are doing that, it's to commit some crime therein." (RP 160 at line 6).

"The law only says he was somewhere that he wasn't supposed to be, the inference is that he was there to commit a crime." (RP 161 at line 18).

"A common inference of law is that you are entering and/or remaining unlawfully, your intent is to commit the crime within the property, whether there's evidence of that or not." (RP 165 at line 3).

3. <u>Court Decisions and citations</u>:

The law of inferences does not allow the inference to be used as the sole and sufficient evidence of guilt in criminal

proceedings. Ulster County Court v. Allen, 442 U.S. 140, 157-63, 99 S.Ct. 2213, 2224-2227, 60 L.Ed.2d 777 (1979). At 162, "As long as it is clear that the presumption is not the sole and sufficient basis for a finding of guilt it need only satisfy the test described in Leary."

An inference is lawful when properly given when it was only part of the State's proof supporting an element and not the sole and sufficient proof of such element, Brunson, 128 Wn.2d at 107, 905 P.2d at 351.

We also hold in Brunson, 128 Wn.2d 98, P.2d 346 (1995), that when permissive inferences are only part of the State's proof supporting an element and not the "sole and sufficient" proof of such element, due process is not offended.

4. **Statutes and Constitutional provisions:**

See 5th, 6th, and 14th Amendments to the United States Constitution, Due Process and Right to fair trial by impartial jury.

GROUND SIX:

1. Legal Reason errors:

The State's prosecutor gave his personal opinion of my guilt to jury.

2. Facts and location of facts:

"We don't have a situation where he entered and remained unlawfully, knowingly, and maybe that **he wasn't intending to commit a crime therein.**" (RP 140 at line 19).

"For what other purpose was Mr. Motter doing in that building? He **was there to commit a crime**, either a theft, either to continue to stay there, to break something, to steal, we don't know," (RP 141 at line 9).

"Then your intent must be to commit a crime." (RP 158 at line 19).

"You were there to commit a crime." (RP 159 at line 6).

"It's to commit some crime therein." (RP 160 at line 9).

"He was there to commit a crime." (RP 161 at line 20).

"You're there to commit a crime." (RP 162 at line 11).

"He knew that he was trying to commit a crime inside of this business and that is evidence of guilt." (RP 162 at 15).

"Mr. Motter was not just trespassing." (RP 164 at line 23).

"Your intent is to commit the crime within the property whether there's evidence of that or not." (RP 165 at line 6).

3. **Court Decisions and citations**:

The Code of Professional Responsibilty, DR 7-106(c)(4), states unequivocally that an attorney shall not assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the **guilt or innocence of an accused**, for any position or conclusion with respect to the matters stated herein.

State v. Reed, 102 Wn.2d 140:

[1] Applying the predecessor to this rule, this Court has noted that it is just as reprehensible for one appearing as a public prosecutor to assert in argument his personal belief in the accused's guilt. State v. Case, 49 Wn.2d 66, 298 P.2d 500 (1956). Here, the prosecutor clearly violated CPR DR 7-106(c)(4), by asserting his personal opinion of the credibility of the witness and the guilt or innocence of the accused.

In Reed, 102 Wn.2d 140, the Supreme Court held, that the prosecutor's closing argument was improper and likely had

affected the jury, the Court reverses the decision of the Court of Appeals and the judgment.

Here, highly emotional appeals to jury prejudice, as well as improper expressions of personal belief, force us to reverse petitioner's conviction so that petitioner's constitutional right to a fair trial is preserved.

The responsibility of the prosecutor in the matter of a fair trial is referred to in People v. Fielding, (1989), in these words:

> "[a] public prosecutor, who is a **quasi-judicial officer** representing the people of the State, and presumed to act impartially in the interest **only of justice.** If he lays aside the impartiality that should characterize his official action to become a heated partisan, and by vituperation of the prisoner and appeals to prejudice seeks to procure a conviction at all hazard, he ceases to properly represent the public interest, which demands no victims and asks no conviction through the aid of passion, sympathy, or resentment.

4. Statutes and Constitutional provisions:

The 6th Amendment to the Unites States Constitution, and Article I, § 22 of the Washington State Constitution grant defendant the Right to fair trial by an "impartial jury."

GROUND SEVEN:

1. Legal Reason errors:

The State tried me without investigating my mental health issues and inquiring into my competency to stand trial; (1) whether I had apparent understanding of the charge and consequences of conviction; (2) apparent understanding of the facts giving rise to the charge; and, (3) my ability to relate the facts to my attorney in order to help prepare the defense. Nor did the court question my attorney whether I had the same.

2. Facts and location of facts:

Mr. Butler: "Your honor... my client just mentioned a little bit ago that he would like to have a mental health evaluation."

The Court: " What's the issue?"

Mr. Butler: "... ..."

The Court: "Well, this is the time set for trial."

Mr. Butler: "I'm aware of that, and again, this is just to request that he wanted to make to the court,..."

The Court: "Okay, Mr. Motter, is there something you wish to say to the court, or --?"

Defendant: "I don;t know what to say."

The Court: "Okay. Okay. Well, we'll bring in the jury."

(Trial RP 2 at line 6 to RP 3 at line 7).

I wrote multiple letters to Defense Counsel Mr. Butler, asking for a mental health evaluation. (Butler Defense File).

I made multiple requests to Clark County Jail Mental Health professionals for a mental health evaluation and mental health medication. (Jail Mental Health File).

The Mental Health Psychiatrist at Clark County Jail denied my request until after trial, then diagnosed me with Mental Psychosis and gave me necessary medications for my mind to function correctly. (Mental Health File, Clark County Jail).

I've been diagnosed mentally disabled (Washington State, Dr. Moore, Psychiatrist, Officer's Row, Vancouver, Washington). I've been approved for Social Security benefits and General Assistance from Washington State for my mental disability. (Dr. Berman at Columbia River Mental Health, Vancouver, Washington. He has information on my mental health.).

3. **Court Decisions and citations**:

State v. Marshall, 144 Wn.2d 266, 27 P.3d 192 (2001):

[1,2] "Requiring that a criminal defendant be competent has a modest aim; It seeks to ensure that he has the capacity to understand the proceedings an to assist counsel." Godinez v. Moran, 509 U.S. 389, 402, 113 S.Ct. 2680, 125 L.Ed.2d 321 (1993).

"Procedures of the competency statue (Chapter 10.77 RCW) are mandatory and not merely directory." (State v. Wickland, 96 Wn.2d 798, 805, 638 P.2d 1241 (1982)). "Thus once there is a reason to doubt a defendant's competency, the court must follow the statute to determine his or her competency to stand trial." City of Seattle v. Gordon, 39 Wn.App. 437, 441, 693 P.2d 741 (1985).

"Failure to observe procedures adequate to protect an accused's right not to be tried while incompetent to stand trial is a denial of due process." State v. O'Neal, 23 Wn.App. 899, 901, 600 P.2d 570 (9179) (citing Drope **v. Missouri**, 420 U.S. 162, **95 S.Ct. 896, 43 L.Ed.2d 103 (1975)**; Pale **v. Robinson**, 383 U.S. 375, **86 S.Ct. 836, 15 L.Ed.2d 815 (1966).**

Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975):

1. Mental Health:

A person whose mental condition is such that he lacks the capacity to understand the nature and the object of the proceeding against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.

2. Mental Health (p. 432):

As to federal cases, the test of competence to stand trial is one which seeks to ascertain whether the defendant has sufficient present ability to consult with his lawyer with reasonable degree or rational understanding, and whether he has a rational as well as a factual understanding of the proceedings against him.

122 Wn.App. 504:

[2-5] Mental incompetence at the time of trial is a bar to trial. RCW 10.77.050. ...or if the court has reason to doubt the

defendant's competency to stand trial. The court must order an expert evaluation of the defendant's mental condition. RCW 10.77.060(1)(a). "The 'reason to doubt' language vests a large measure of discretion in the trial judge." City of Seattle v. Gordon, 39 Wn.App. 437, 441, 693 P.2d 741 (1985).

[1] We distinguish the determination of a reason to doubt competency from an actual determination of competency. Before a determination of competency is required by RCW 10.77.060, the court must make the **threshold determination** that there is reason to doubt competency. A motion to determine competency does not have to be granted merely because it has been filed, United States v. McEachery, 465 F.2d 833, 837 (5th Cir.), cert. denied, 409 U.S. 1043 (1972), and is not of itself sufficient to raise a doubt, concerning competency... The court will then inquire to verify the facts. in the process the court's consideration will include the defendant's:

1. Apparent understanding of the charge and consequences of conviction;
2. Apparent understanding of the facts giving rise to the charge; and,
3. Ability to relate the facts to his attorney ion order to help prepare the defense.

In exercising its discretion in determining the threshold question, the court should give considerable weight to the attorney's opinion regarding a client's competency and ability to assist in the defense.

State v. Hansen, 20 Wn.App. 579, 581 P.2d 589:

[1] The determination that an accused is competent to stand trial is within the discretion of the trial court, and will not be reversed on appeal absent manifest abuse of discretion. State v. Johnston, 84 Wn.2d 572, 527 P.2d 1310 (1974); State v. Eldridge, 17 Wn.App. 270, 562 P.2d 276 (1977). The trial court correctly interrupted proceedings when the question of defendant's competency was raised under RCW 10.77.060.

4. **Statutes and Constitutional provisions**:

See 5th and 14th Amendments to the United States Constitution (Due Process).

GROUND EIGHT:

1. **Legal Reason errors:**

Defense counsel failed to investigate State's evidence and applicable laws of charged crime. Counsel failed to object or except to court's use of Jury Instruction #12. Counsel failed to object to State's prosecutor's use of: (1) permissive inference; (2) mandatory rebuttable presumptions; and, (3) mandatory conclusive presumptions.

2. **Facts and location of facts:**

Counsel ~~filed~~ failed to object or except to Jury Instruction #12. (RP 132 at line 25; RP 134 at lines 3-7).

Counsel failed to object to the State's prosecutor's use of permissive inference instructions to jury.

"All we need to prove to you is that he had an intent to commit a crime therein, and this instruction allows you to infer that based upon entering or remaining unlawfully." (RP 141 at lines 15-18).

"How many people knew that you can automatically infer that somebody is intending to commit a crime therein if they're there unlawfully?" (RP 142 at lines 14-17).

"Instruction No. 12 explains that. A person who enters or

remains unlawfully in a building --" such as Mr. Motter being in this doctor's office that had no permission to be in. -- "May be inferred to have acted with intent to commit a crime against a person or property therein."

"You are allowed to find an inference." (RP 139 at line 24 to RP 140 at line 8).

"What the law says is that you can prove the element on its own based upon somebody entering or unlawfully remaining in a -- in a property." (RP 158 at line 13).

"The law only says he was somewhere that he wasn't supposed to be, the inference is that he was there to commit a crime." (RP 161 at line 18).

"But the law also says, okay, you're entering -- you've entered -- we've established that he entered and remained unlawfully in this property. We've established that the inference tells you when you are doing that, it's to commit some crime therein. Is doesn't have to be -- there doesn't have to be evidence or proof of the crime." (RP 160 at line 5).

"A common inference of law is that you are entering and/or remaining unlawfully, your intent is to commit the crime within the property, whether there's evidence of that or not." (RP 165 at line 3).

Defense counsel failed to object to the State's prosecutor's use of mandatory rebuttable presumptions. (Burden shifting presumptions).

"[f]or what -- for what other purpose are you in that location for?

If there was some evidence possible that he was looking for somebody, that there was some evidence possibly that he was hiding from a dangerous situation, or if there was evidence that there was some claim of ownership to this property, yes, we don't have a situation where he entered and remained unlawfully, knowingly, and maybe that he wasn't intending to commit a crime therein." (RP 140 at lines 12-21).

"[t]he law allows you to find that, because simply using your common -- common sense for what -- and common experience, for what other purpose was Mr. Motter doing in that building? He was there to commit a crime, either a theft, either to continue to stay there, to break something, to steal, we don't know." (RP 141 at lines 6-12).

"Mr. Motter was not just trespassing. If Mr. Motter was trespassing, he could easily have said, 'Hey, I was just trying to find a place to sleep.' And -- and there was no evidence of that." (RP 164 at line 23).

Counsel failed to object to the State's prosecutor's use of a mandatory conclusive presumption. (The presumption requires the fact-finder to find guilt of intent to commit a crime once the State proves entering or remaining unlawfully).

"For what other purpose was Mr. Motter doing in that building? **He was there to commit a crime.**" (RP 141 at line 8).

"How many people knew that **you can automatically infer** that somebody is intending to commit a crime therein if they're there unlawfully?" (RP 142 at 14).

"It's an inference. It's a, 'if this, then this, then this.' If you enter or remain unlawfully, then your intent **must be** to commit a crime." (RP 158 at line 17).

"Therefore, we look to the inference. And the inference says if you're entering or remaining unlawfully, **you were there to commit a crime therein.**" (RP 159 at lines 4-7).

"We've established that he entered and remained unlawfully in this property. We've established that the inference tells you when you are doing that **it's to commit some crime therein.**" (RP 160 at lines 6-10).

"The law only says he was somewhere he wasn't supposed to be. The inference is that **he was there to commit a crime.**" (RP 161 at line 18).

"That's why the inference, the reasonable inference that you can draw, is that if you're breaking into a medical doctor's office, **you're there to commit a crime.**" (RP 162 at line 9).

"If you were entering and/or remaining unlawfully, **your intent is to commit the crime within the property.**" (RP 165 at lines 5-8).

3. <u>Court Decisions and citations</u>:

<u>Miskel v. Karnes</u>, 397 F.3d 446 (6th Cir. 2005):

C. UNCONSTITUTIONAL PRESUMPTIONS:

[9-14] Presumptions are evidentiary devices that enable a fact-finder to presume the existence of an "ultimate" or "elemental" fact upon proof of "evidentiary" or "basic" facts. <u>County Court of Ulster v. Allen</u>, 442 U.S. 140, 156, 99 S.Ct. 2213 (1979). The Supreme Court has identified three types of presumptions in criminal cases: Permissive, Mandatory Rebuttable, and Mandatory Conclusive. Id. at 157-58, 99 S.Ct. 2213. A permissive presumption places no burden on the defendant but permits the jury to "infer the elemental fact from proof by the prosecutor of the basic one." Id. at 157, 99 S.Ct. 2213. Permissive presumptions comport with due process unless the

inferences they motivate ate irrational. Id. Mandatory rebuttable presumptions "tell [ ] the trier of fact that he or they **must** find the elemental fact upon proof of the basic fact, at least unless the defendant has come forward with some evidence to rebut the presumed connection between the two facts." Id. (citations omitted). Finally, a mandatory conclusive presumption simply removes the defendant from the evidentiary process and requires the fact-finder to find an ultimate or elemental fact as true once the prosecution has offered sufficient proof of the basic fact." Francis v. Franklin, 471 U.S. 307, 314 n.2, 105 S.Ct. 1965.

Mandatory presumptions - whether rebuttable or conclusive - will only be sustained if proof of the basic fact leads fact-finders to find the presumed fact beyond a reasonable doubt. Allen, 442 U.S. at 167, 99 S.Ct. 2213.

[15] It is fair to say that the Supreme Court has viewed mandatory presumptions in criminal cases with much skepticism. See e.g. Sandstrom v. Montana, 442 U.S. 510, 523, 99 S.Ct. 2450. (The clear import of recent United States Supreme Court cases is that instructional error which tend to shift the burden of proof to a criminal defendant are of a constitutional magnitude because they may implicate a defendant's right of due process.).

Sandstrom, 99 S.Ct. 2450 (1979):

Because the jury may have interpreted the challenged

presumptions as conclusive, like the presumption in Morisette, 342 U.S. 246, 72 S.Ct. 240, and United States v. Gypsum Co., 438 U.S. 422, 98 S.Ct. 2864, or a shifting of the burden of persuasion like that in Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, and because either interpretation would have violated the fourteenth amendment's requirement that the State prove every element beyond a reasonable doubt, the instruction is unconstitutional. (pp. 2454-2460).

Defense counsel allowed the State to violate the Plaintiff's constitutional rights by not objecting to the unlawful use of Jury Instruction #12 and the unlawful use of presumptions: (1) permissive inference; (2) mandatory rebuttable; and, (3) mandatory conclusive presumptions.

To prevail on a claim of ineffective assistance of counsel, counsel's representation must have been deficient, and the deficient representation must have prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). We have held that the failure to object to an instruction which incorrectly sets out the elements of a crime with which the defendant is charged was deficient performance where the failure to object permitted the defendant to be convicted of a crime he or she could not have committed under the facts presented by the State. State v. Ermert, 94 Wn.2d 839,

849-50, 621 P.2d 121 (1980).

4. **Statutes and Constitutional provisions:**

6th Amendment to the United States Constitution, right to counsel (effective assistance of counsel).

GROUND NINE:

1. Legal Reason errors:

Defense counsel's failure to investigate State's case, and evidence State has in their possession, with witness testimony and any other documents, with which the State would use in prosecuting defendant. Also, Defense counsel's failure to heal a deficient Information with a Bill of Particulars, so that the Defendant would have all necessary facts to prepare a defense against the criminal charges of the State.

2. Facts and location of facts:

The "Information" was deficient. It lacked the "essential element" of alleged facts supporting every element of the offense charged, specifically alleged facts of defendant's intent to commit a crime and any alleged facts of intentionally assaulting any person. (Clerk's Papers 1 at lines 13-16).

Defense counsel did not file a motion for a "Bill of Particulars" to correct the deficient "Information." (the File).

Counsel did not file a comprehensive demand for discovery and omnibus application, nor make any additional discovery requests. (the File).

Counsel did not obtain copies of police reports until the day of trial. (Defense Counsel Mr. Butler and Deputy Prosecutor James Senescu).

Defense Counsel did not prepare. (Failure to investigate).

"I was not able to prepare." (RP 101 at line 10).

The Court: "Because I think you're prepared."

"-- Well, I don't know." (RP 102 at lines 8-15).

Defense counsel at Readiness Hearing, Thursday, October 20th, said he wasn't ready for trial, but went ahead anyway. He explains at (Trial RP 100 at line 17 to RP 102 at line 15).

3. **Court Decisions and citations**:

In State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989), "[w]e recently stated that 'essential elements' rule requires that a charging document **allege facts supporting every element of the offense**; in addition to adequately identifying the crime charged."

The primary goal of the "essential elements" rule is to give notice to an accused of the nature of the crime that he or she must be prepared to defend against. In Leach, we noted that defendants are entitled to be **fully informed** of the nature of the accusations against them **so they can prepare an adequate defense.** See Russel v. United States, 369 U.S. 749, 763-64, 8 L.Ed.2d 240, 82 S.Ct. 1038 (1962).

State v. Holt, 104 Wn.2d 315, 321, 704 P.2d 1189 (1985):

Holt at 320 **[1,2]** In State v. Bonds, supra, this Court distinguished between constitutionally defective information and one which is merely deficient due to vagueness as to some other matter... if the information states each statutory element of a crime, but is vague as to some other matter significant to the

defense, a "Bill of Particulars" is capable of correcting the defect.

Court Rules 2.1(c) - Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or at such later time as the court may permit.

Washington Practice: § 308 - Pretrial discovery, preparation and practical approach. Persons who should be interviewed may include: The victim, eyewitnesses at scene, aid car or emergency room personnel, police officers at scene, detectives in charge of case, defendant; Defense character witnesses, defendant's physicist or psychologist.

Defense counsel should also timely file a comprehensive demand for discovery and omnibus application. See CrR 4.5(H), CrR 4.7; Ferguson. Wash. Crim. Pract. and Procedure, ch. 13 (2nd Ed. 1997).

Additional specific discovery requests include: visit scene of assault , examining and photographing physical evidence booked into police property room, statement of first persons, tape recordings and records of radio transmissions dispatching police, reports and statements of police officers investigating the case, victim, mental health and medical records concerning the defendant.

CrR 4.5(H) - Memorandum: At the conclusion of the hearing, a

summary memorandum shall be made indicating the disclosure made, the rulings and orders of the court, stipulations, and any other such matters determined or pending. Such summary memorandum shall be in substantially the following form: omnibus application by plaintiff and defendant.

PURPOSE: to prepare for trial or plea and to determine the extent of discovery to be granted to each party.

Sanders v. Ratelle, 21 F.3d 1446 (9th Cir. 1994):

Held: Other circuits agree that failure to conduct a reasonable investigation constitutes deficient performance. The Third Circuit has held that "ineffectiveness is generally clear in the context of complete failure to investigate because counsel **can hardly be said to have made a strategic choice when s/he [sic] has not yet obtained the facts on which such a decision could be made."** See United States v. Grey, 878 F.2d 702, 711 (3rd Cir. 1989). A lawyer has duty to "investigate what information... potential eyewitnesses possess [ ], even if he later decide[s] not to put them on the stand." Id. at 712. See also Hoots v. Allsbrook, 785 F.2d 1214, 1220 (4th Cir. 1986) ("Neglect even to interview available witnesses to a crime simply cannot be ascribed to trial strategy and tactics."); Birt v. Montgomery, 709 F.2d 690, 701 (7th Cir. 1983), cert. denied, 469 U.S. 874, 105 S.Ct. 232, 83 L.Ed.2d 161 (1984) ("Essential to effective representation... **is the independent duty to investigate and**

prepare.").

State v. Fleming, 142 Wn.2d 853, 16 P.3d 610 (2001):

[13] Ineffective assistance of counsel is "a mixed question of law and fact." Strickland, 466 U.S. 668, 698, 104 S.Ct. 2052 (1984). Because claims of ineffective assistance of counsel present mixed questions of law and fact, we review them de novo. State v. S.M., 100 Wn.App. 401, 409, 996 P.2d 1111 (2000), citing State v. White, 80 Wn.App. 406,410, 907 P.2d 310 (1995).

To sustain a claim of ineffective assistance of counsel, the defendant must show: (1) counsel's performance was deficient; and, (2) "the deficient performance prejudiced the defense." Strickland, 466 U.S. at 687.

[14] The first prong of the Strickland test "requires a showing that counsel's representation fell below an objective standard or reasonableness based on consideration of all the circumstances." State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). To provide constitutionally adequate assistance "counsel must at a minimum **conduct a reasonable investigation** enabling counsel to make informed decisions about how best to represent the client." Sanders v. Ratelle, 21 F.3d 1446, 1456 (9th Cir. 1994) (citing Strickland, 466 U.S. at 691).

The second prong requires the defendant to show there is a "reasonable probability" that, but for counsel's conduct of errors, the results of the proceeding would have been different.

A reasonable probability is a probability sufficient to undermine confidence in the outcome. State v. Carter, 56 Wn.App. 217, 218 n.1, 783 P.2d 589 (1989) (Quoting Strickland, 466 U.S. at 694).

4. Statutes and Constitutional provisions:

6th Amendment to the United States Constitution, Right to counsel (effective assistance of counsel).

GROUND TEN:

1. Legal Reason error:

(1) It was error for the State's prosecutor to charge defendant with Burglary in the First Degree; and, (2) it was error for the Court to accept and file the charge of Burglary in the First Degree; and, (3) it was error for the State's public defender to bring a plea bargain to defendant before any investigation of the alleged crime charged against defendant.

2. Facts and location of facts:

State's prosecutor had no evidence or testimony that defendant entered or remained with intent to commit a crime or intentionally assaulted any person. See, Report, Deputy Lindsay Schultz; See also, "Information," filed September 12th, 2005, In the Superior Court of the State of Washington for Clark County.

Superior Court arbitrarily accepted the charge of Burglary in the First Degree against defendant, without any prima facie evidence or allegations made to his intent to commit a crime or had assaulted any person.

Public defense counsel attempted to coerce defendant into a plea bargain, threatening him that a conviction of Burglary in the First Degree was 7.2 to 9.6 years. He said, "the prosecutor's a friend of mine, we went to school together, this is a good deal," and offers a plea of Burglary in the Second Degree with 4.2 to 5.6 years. Public defense counsel got mad at defendant and

stomped out of the room when defendant said, "no deal." (1) (See, "Exhibit A", Clark County Prosecuting Attorney's Office Offer of Settlement, printed October 6, 2005; Brought to defendant approximately October 12, 2005. On it, the "7.2 - 9.6 yrs. and 4.2 yrs., 5.6 yrs." was written by public defense counsel.); (2) (See, No "Bill of Particulars" filed.); (3) (See, No omnibus application or additional discovery); (4) (See, No police reports obtained from prosecutor.).

All of the above was done while defendant was mentally unstable.

3. **Court Decisions and citations**:

In the case of State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989), we recently stated that "The 'essential elements' rule requires that a charging document **allege facts supporting every element of the offense**, in addition to adequately identifying the crime charged." This core holding of Leach requires that the defendant be apprised of the elements of the crime charged and the conduct of the defendant which is alleged to have constituted that crime.

Russel v. United Sates, 369 U.S. 749, 763-64:

[15] "It has long been recognized that there is an important corollary purpose to be served by the requirement that an indictment set out "the specific offense, coming under the general description" with which the defendant is charged. This purpose is defined in United States v. Cruikshank, 92 U.S. 542,

558, 23 L.Ed. 588, "to inform the court of the ~~fats~~ facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had... This Criterion is of the greatest relevance."

Sheppard v. Reese (citation unknown):

1. The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusation..." This guarantee is applicable to the States through the due process clause of the Fourteenth Amendment. In re Oliver, 333 U.S. 257, 273-74, 68 S.Ct. 499, 507-08, 92 L.Ed. 682 (1948).

The State of Washington made the defendant to suffer charges of criminal conduct without alleged facts to back the charges. (Case law unknown).

The State of Washington deprived defendant of liberty for crime without alleging facts to support a charge of Burglary in the First Degree. (Case law unknown).

Defendant requested a Mental Health Evaluation from public defender four times and received no response. (Cse law unknown).

The Court, Prosecutor, and Public Defender conspired together to deprive defendant of his liberty without due process of law. (Case law unknown).

4. Statutes and Constitutional provisions:

Washington State Constitution, Article I, § 22 (10); Court Rule 2.1(a); Court Rule 2.1(b); The 5th, 6th, and 14th Amendments to the United States Constitution.

GROUND ELEVEN:

1. **Legal Reason error:**

It was error for defense counsel to not bring out exculpatory testimony from Lindsay Schultz in cross-examination.

2. **Facts and location of facts:**

Defense counsel asked one question of Deputy Schultz. (RP 76 at line 9).

Deputy Schultz was given charge of Dr. Dixon (victim). (Waddell - Direct, RP 116 at line 17).

Deputy Schultz spent 20 to 30 minutes interviewing Dr. Dixon and going over crime scene. (Schultz - Direct, RP 72 at line 17).

Deputy Schutlz found no evidence of defendant's intent to commit a crime. (Schultz - Direct, RP 73 at line 1).

Deputy Schultx had no evidence and gave no testimony of the defendant assaulting any person. (Schultz - Direct, RP 75 at line 8)

In Direct examination, Lindsay Schultz was asked if she had evidence or testimony concerning who initiated the physical contact with the door. (Schultz - Direct, RP 75 at line 9).

Before Deputy Schultz could answer from her notes, the prosecutor stopped her and said, "I have no further questions." (Schultz - Direct, RP 75 at line 11).

It is clear from the police reports that there was no defendant slamming door on the doctor. There was no evidence by

the police of an assault, yet counsel did not show forth this in cross-examination.

3. **Court Decisions and citations**:

No specific showing of prejudice was required in Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974), because the petitioner had been "denied the right of effective cross-examination" which would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure.

4. **Statutes and Constitutional provisions**:

6th Amendment to the United States Constitution, Right to counsel (effective assistance of counsel).

GROUND TWELVE:

1. Legal Reason error:

Defense counsel made numerous errors, which cumulatively prejudiced Mr. Motter's defense.

2. Facts and location of facts:

I. FAILURE TO INVESTIGATE AND ADEQUATELY PREPARE:

Counsel failed to file a "Bill of Particulars." The "Information" wad deficient, lacking "essential elements" of alleged crime, i.e., intent to commit a crime and intentionally assaulted any person. (See, Clerk's Papers 1 at line 13).

Failed to file omnibus application or request additional discovery. (See, "the File.").

Failed to obtain police reports before trial. (See, Defense counsel Butler file and Prosecutor James Senescu file.).

Failed to investigate before bringing plea bargain to defendant. (See, no discovery before October 12, 2005, approximate date of settlement offer.).

Failed to prepare for trial. (See, "I was not able to prepare," RP 100 at line 17 to RP 105 at line 8; See also, "Readiness Hearing, "I'm not ready," - Defense Butler.).

Failed to file motion to compel discovery. Defense counsel could not get copy of the police reports. (See, "the File.").

II. FAILURE TO CONSULT ADEQUATELY WITH DEFENDANT:

Defense counsel met with defendant two timed for 15 minutes

each, from defendant's arrest on September 7th, 2005, to October 24th, 2005, defendant's trial date. (See, Butler file.).

This amount of time was inadequate to get information from defendant concerning the alleged crime and conduct.

Also, defendant's mental health hindered the 30 minutes total that was available to the defendant. (See, Trial RP 2 at line 6 to RP 3 at line 6).

Defense counsel never discussed any defense or tactic to the charge of Burglary in the First Degree.

Defendant wrote four letters to Mr. Butler concerning mental health issues and drug/alcohol abuse, requesting help and evaluations. He received no response. (See, Butler file; Trial RP 2 at line 6 to RP 3 at line 6).

III. FAILURE TO ADEQUATELY ASSESS MR. MOTTER'S MENTAL AND EMOTIONAL STATUS:

Mr. Butler: "I don't have any specific requests or concerns at this point in time." (RP 2 at line 13).

> "I don't believe that there are any specific concerns that I can bring to the Court's attention to make any specific requests at his time, so --." (RP 2 at line 19).

Persons and places that defendant's mental health

information was available to defense counsel: Dr. Moore, Psychiatrist, Officers Row, Vancouver, Washington; Dr. Berman, Columbia River Mental Health; Clark County Jail Mental Health Staff file.

Type of disability: Mentally disables; Social Security benefits; General assistance, State of Washington for mentally disabled.

Mr. Motter made four requests to defense counsel to investigate his mental health issues along with drug/alcohol abuse - No Response.

Mr. Motter was requesting mental health help from Clark County Jail. A mental health evaluation and medication was denied continually, leaving him defective, unable to concentrate and to think properly, incoherent much of the time. Then, after trial, was given an evaluation and diagnosed with mental psychosis and given needed medication to function correctly mentally. It helps his mental health but was too late for his trial and defense.

IV. FAILURE TO CHALLENGE ADMISSIBILITY OF MOTTER'S STATEMENT TO POLICE:

Defense counsel failed to either ~~way~~ advocate or suppress defendant's statement made to officer Waddell, (See, Waddell - Direct, RP 21 at line 23 to RP 23 at line 13), or move to suppress the statement because it was obtained through coercion. (See, Defendant beaten by doctor, Dixon - Direct, RP 40 at line 12; RP 52 at line 21; RP 54

at line 3; RP 56 at line 7); (See also, defendant chewed on by two police dogs, Schultz - Direct, RP 92 at line 7; RP 92 at line 17; RP 93 at line 1). These statements were made to police because of fear of continued abuse and needed to be suppressed.

Defendant had requested a lawyer before making any statements. (See, 3.5 Waddal - Direct, RP 20 at lines 20 - 22). The statement should have been suppressed because they were made after he invoked his right and he was mentally disabled and intoxicated.

Defense counsel failed to challenge admissibility of defendant's statements.

V. FAILURE TO OBJECT TO TESTIMONY (EVIDENCE):

State's prosecutor instructed the jury with unlawful permissive, mandatory rebuttable, and mandatory conclusive presumptions 25 times in closing arguments, with absolutely no objections from defense counsel Butler. (See, RP 140 at lines 5, 8, 21, and 24; RP 141 at lines 2, 3, and 17; RP 142 at line 15; RP 158 at lines 12, 14, 17, 19, and 24; RP 159 at lines 4, 5, and 6; RP 160 at lines lines 8 and 9; RP 161 at line 19; RP 162 at lines 9 and 10; RP 163 at line 5; RP 163 at line 23; RP 165 at lines 4 and 20.).

State's prosecutor gave his opinion of defendant's guilt with no objections from defense counsel Butler. (See, RP 141 at line 9; RP 142 at line 4; RP 158 at line 19; RP 159 at lines 2

and 6; RP 160 at line 9; RP 161 at lines 14 and 20; RP 163 at line 15; RP 165 at line 6.).

State's prosecutor misstates the law to the jury without any objections from defense counsel Butler. (See, RP 140 at line 9; RP 141 at line 6; RP 142 at line 17; RP 158 at lines 13 and 21; RP 160 at line 5; RP 161 at line 18; RP 164 at line 11; RP 165 at lines 4 and 16.).

State's prosecutor illicits unlawful prejudicial testimony of a "SAP" striking weapon and doesn't enter into evidence anything of this mature.

DIXON: "[a]nd I thought I saw something in his right hand, something black." (Dixon - Direct, RP 40 at line 10).

(Proscutor) Q: Doctor, were you concerned for your safety at any point?"

DIXON: "When he swung that door at me and I saw that in his right -- whatever that was in his right hand -- **it turned out later to be a sap** -- yes, I was definitely apprehensive." (Dixon - Direct, RP 42 at line 5).

Q: "And when you say evidence, what are you (inaudible)?"

A: "You know, there was a report that he may -- Mr. Motter may have had a -- a club or something like that. Again, I'm always looking -- as a patrol officer, as a police officer, I'm always looking for guns --."

Q: "Did you find a club or anything like that?"

A: **"I did not, no."** (Waddell, RP 119 at line 15).

Here, the prosecuting attorney on Redirect examination makes sure the jury hears what a SAP is without ever proving or establishing that defendant had one. (Waddell - Redirect).

Q: "Okay. You also indicated or counsel asked you about the mention of a club or any other item. Dr. Dixon, **we all heard Dr. Dixon testify to a Sap?"**

A: "Yes."

Q: "Did you find anything of that nature?"

A: "Didn't find a sap specifically. What -- what I found inside his backpack was --"

Q: "Whose backpack?"

A: Mr. Motter's backpack, was a black electrical tape wound around rocks and tied -- and stuff that looked like a long teardrop.

And, quite frankly --"

Q: "What is a sap?"

A: "Okay."

Q: "I'm sorry."

A: "A -- a sap is a leather -- a small leather baton filled with usually BB's, and it's -- it's a **striking weapon."**

Q: " Okay, so you didn't find a sap?"

A: "No."

Q: "-- you found --"

A: "uh --"

Q: "-- like a makeshift?"

A: "I actually thought at the time it was -- it contained drugs. That's why I unwrapped all the tape."

Q: "Okay, and it turned out to be rocks and --"

A: "Rocks and --"

Q: "-- (inaudible; voices overlapping) --"

A: "-- some other items and, you know, wadded-up tape wrapped on itself.

Q: "Okay." (Waddell - Redirect, RP 122 at line 7 to RP 123 at line 12).

This is clearly prejudicial, hearsay opinion testimony that was not objected to by defense attorney Matthew Butler.

VI. FAILURE TO PROPOSE OR EXCEPT TO JURY INSTRUCTIONS:

Counsel failed to propose **WPIC 18.20** - Diminished Capacity Jury Instruction, and **WPIC 18.10** - Intoxication (voluntary intoxication) Jury Instruction. Defendant has history of mental disability and was voluntarily intoxicated. (See, Clark County Jail Detox Tank; Clark County Mental Health Professionals' file: william Motter; Dr. Moore, Vancouver, Washington; Dr. Berman, Columbia River Mental Health, Vancouver, Washington.).

Defense counsel failed to object or except to Jury Instruction **#12, WPIC 60.05**: "A person who enters or remains unlawfully in a building may be inferred --" (RP 132 at line 25;

RP 134 at line 4). No fact or combination of facts had been offered as evidence that the inference could proceed from. The inference was not lawful, and defense counsel failed to object or except.

WPIC 60.05 - Notes on use:

The constitutional validity of this instruction as a permissive inference was affirmed in State v. Brunson, 128 Wn.2d 98, 905 P.2d 346 (1995), and upheld as properly given where it was only part of the State's proof supporting an element and not the sole and sufficient proof of such element. 128 Wn.2d at 107, 905 P.2d at 351.

VII. CLOSING ARGUMENTS IMPROPER:

First thing defense counsel says to jury is to affirm the prosecutor's ~~unlawful~~ use of Jury Instruction **#12**, when Jury Instruction **#12** was unlawful.

Mr. Butler: "Thank you, your honor. Counsel talked about instruction No.12, and that is an **important instruction....**

And the reason why instruction No.12 is important is that it allows that an element be inferred." (RP 145 at line 25 to RP 146 at line 9).

"This is a kind of a different part of law where it allows something to be inferred." (RP 146 at line 11).

"A person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime."

These statements are not truthful or lawful. The inference must flow from a proved fact. Absent proof of a fact, in addition to unlawful entering or remaining, that would support an inference of criminal intent, the jury may not be instructed on the inference. State v. Sandoval, 123 Wn.App. 1 at [5] - Burglary - Intent - Crime within premises - Inferences - Basis - Evidence - Sufficiency.

Defense counsel never brought out in closing that witnesses Dr. Dixon, Deputy Lindsay Shultz, and Deputy Brad Waddell, gave no testimony or offered any evidence of defendant's intent to commit any crime. (Trial RP 145 - RP 158).

Defense counsel never brought out that investigating officers: arresting officers Waddell and interviewing officer Schultz had no evidence or testimony of defendant intentionally assaulting any person. (Trial RP 145 - RP 158).

Defense counsel fails to go over jury instructions thoroughly:

"There are a lot of instructions, and **ordinarily I go over these things fairly thoroughly**, but it's been a long day," (RP 155 at line 24).

Defense counsel failed to cure the prosecutor's unlawful remarks, taking the jurors attention off the complete picture of the jury instructions.

Prosecutor said, **"Let's look at the confusing language in the instructions**, and I'll explain to you and show to you, argue how these element have been established."

"They're gonna **be a little confusing**, they may be different than what you thought."

VIII. FAILURE TO ADVOCATE DEFENDANT'S CAUSE:

Defense counsel did not advocate a Diminished Capacity defense with Voluntary Intoxication and character witness of defendant's non-violent nature.

Clark County Jail - Detox - Mental Health professionals had testimony of defendant's mental disability, as well as alcohol and drug use and addictions.

Dr. Berman, Columbia River Mental Health, Vancouver, Washington.

Dr. Moore, Officer's Row, Vancouver, Washington.

Defendant has been declared mentally disabled by the State of Washington, and federal government Social Security Administration.

Defense counsel did not raise the defendant's mental disability, nor his drug and alcohol use at the 3.5 Hearing, nor did he object to Findings of Fact **Nos. 5 and 9.**

IX. DEFENSE COUNSEL FAILED TO MOTION FOR A PRETRIAL DISMISSAL OF CRIMINAL CHARGES (KNAPSTAD HEARING):

~~Defense counsel~~ State's Prosecutor had no evidence or testimony of defendant's intent to commit a crime - without intent to commit a crime, it was not possible to convict Mr. Motter of Burglary in the First Degree. (RP 143 at line 20 to RP 144 at line 18; Police Reports; Testimony of Deputy Lindsay Schultz, Deputy Brett Waddell, and victim Dr. Dixon).

Counsel failed to stop the proceeding against Motter, before it went to trial.

X. INADEQUATE CROSS-EXAMINATION:

1. <u>Lindsay Schultz</u>:

Defense counsel asks one questions of Lindsay Schulytz. (RP 76 at line 9).

Deputy Schultx was given charge of Dr. Dixon (victim). (Waddell - Direct, RP 116 at line 23).

Deputy Schultz spent 20-30 minutes interviewing Dr. Dixon and going over crime scene. (Schultz - Direct, RP 72 at line 17).

Deputy Schultz found no evidence of defendant's intent to commit a crime. (Schultz - Direct, RP 73 at line 1).

Deputy Schultz had no evidence and gave no testimony of defendant assaulting any person. (Schultz - Direct, RP 75 at line 8).

In Direct Examination. Lindsay Schultz was asked if she had

evidence or testimony concerning who initiated the physical contact with the door? (Schultz - Direct, RP 75 at line 9). Before Deputy Schultz could answer from her notes, the prosecutor stopped her and said, "I have no further questions." (Schultz - Direct, RP 75 at line 11).

It is clear from the police reports that there was no defendant slamming door on the doctor. There was no evidence gathered by the police of an assault, yet counsel did not show forth this in effective cross-examination. this was deficient behavior on the part of defense counsel.

3. **Court Decisions and citations**:

In re Personal Restraint of Fleming, 142 Wn.2d 853, 16 P.3d 610:

[13] Ineffective assistance of counsel is a mixed question of law and fact - Strickland.

[14] The first prong of the Strickland test "requires a showing that counsel's representation fell below an objective standard of reasonableness based on consideration of all the circumstances." State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). To provide constitutionally adequate assistance, "counsel must at a minimum, [conduct a reasonable investigation] enabling [counsel] to make informed decisions about how best to represent [the] client." Sanders v. Ratelle, 21 F.3d 1446 (9th Cir. 1994) (citing Strickland, 466 U.S. at 691).

The second prong requires the defendant to show "there is a "reasonable probability" that, but for counsel's conduct of errors, the results of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." State v. Carter, 56 Wn.App. 217, 218 n.1, 783 P.2d 589 (1989) (quoting Strickand, 466 U.S. at 694.

Cumulative Error Doctrine

State v. Johnson, 90 Wn.App. 54, 950 P.2d 981:

[25] although none of the errors discussed alone mandate reversal, it appears reasonably probable that the cumulative effect of those errors materially affected the outcome. See, State v. Russell, 125 Wn.2d 24, 93, 882 P.2d 747 (1994).

Russell at [44]:

It is well accepted that reversal may be required due to the cumulative effects of trial court errors, even if each error examined on its own would otherwise be considered harmless. See, State v. Coe, Wn.2d 772, 789, 684 P.2d 668 (1984); State v. Badda, 63 Wn.2d 176, 183, 385 P.2d 859 (1963); State v. Alexander, 64 Wn.App. 147, 154, 822 P.2d 1250 (1992). Analysis of this issue depends on the nature of error. Constitutional error is harmless when the conviction is supported by overwhelming evidence. State v. Whelchel, 115 Wn.2d 708, 728, 801 P.2d 948

(1970); State v. Guloy, 104 Wn.w2d 412, 425, 705 P.2d 1182 (1985), Cert. denied, 475 U.S. 1020 (1986). Under this test, constitutional error requires reversal unless the reviewing court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in absence of the error. Whelchel at 728; Guloy at 425. Non-constitutional error requires reversal only if it, within reasonable probabilities, it materially affected the outcome of the trial. State v. Halstren, 122 Wn.2d 109, 127, 857 P.2d 270 (1993); State v. Tharp, 96 Wn.2d 591, 599, 637 P.2d 961 (1981).

Harris by and through Ramseyer v. Wood, 64 F.3d 1432 (9th Cir. 1995):

B. Undisputed Deficiencies:

The State does not challenge the district court's conclusion that Anderson did not thoroughly investigate facts surrounding the charge and possible defenses, and he failed to prepare adequately for trial.

D. Cumulative Prejudice:

[10, 11] In addition to finding prejudice from individual deficiencies, the district court concluded that the deficiencies it found were cumulatively prejudicial. Harris, 853 F.Supp. at 1274. We have previously recognized that "prejudice may result from cumulative impact of multiple deficiencies." Cooper v.

Fitzharris, 586 F.2d 1325, 1333 (9th Cir. 1978) (en banc), cert. denied, 440 U.S. 974, 99 S.Ct. 1542, 59 L.Ed. 793 (1979).

Anderson's deficiencies in the guilt phase of Harris's trial were numerous. They included: (1) failure to investigate and prepare adequately for trial; (2) failure to consult adequately with Harris; (3) failure to investigate adequately Harris's mental and emotional status; (4) failure to challenge the admissibility of Harris's statements made before October 22, 1984, regarding the events of the murders; (5) failure to conduct proper voir dire; (6) failure to object to evidence; (7) failure to propose, or except to jury instructions; (8) failure to raise or preserve meritorious issues in appellate proceedings; (9) advice to make statement to prosecutor; (10) decision to call Harris to testify at trial; and (11) closing argument in the guilt phases.

Anderson's performance was deficient in eleven ways, eight of them undisputed. We are compelled to find that the cumulatively prejudiced Harris's defense. The Court properly granted Habeas relief. AFFIRMED.

Similarly, in Mak v. Blodgett, 970 F.2d 614 (9th Cir. 1992), the Ninth Circuit held that the cumulative effect of counsel's errors at the penalty phase of a murder defendant's trial amounted to prejudice to the defendant. the Court reasoned:

> "we do not need to decide whether these deficiencies alone meet the prejudice standard because other significant errors occurred that, considered cumulatively, compel a finding of prejudice."

It appears also the 8th Circuit Courts have left an open door to consider a cumulative-prejudice argument if a defendant demonstrates that counsel committed a sufficient number of constitutionally deficient errors while under Strickland's first prong.

4. Statutes and Constitutional provisions:

~~5th And 14th~~ 6th Amendments to the United States Constitution, ~~Due Process Rights~~. Right to counsel

GROUND THIRTEEN:

1. Legal Reason error:

Defense counsel ~~filed~~ failed to stop criminal proceedings before going to trial with a "Knapstad Hearing," a pre-trial motion for dismissal for insufficiency of evidence.

2. Facts and location of facts:

The "Information" lacked any alleged facts of intent to commit a crime against a person or property therein. (See, Clerk's Papers 1 at line 13).

Deputy Brett Waddell, arresting officer, had no evidence or testimony of defendant's intention to commit a crime or intentionally assaulting any person. (See, Police Reports - Waddell and trial testimony - Waddell).

Deputy Lindsay Schultz, interviewing deputy, found no evidence of defendant's intent to commit a crime or intentionally assaulting any person. (See, police Reports - Schultz, and trial testimony - Schultz).

Victim, Dr. Dixon, had no evidence of Motter's intent to commit a crime and on the night of the incident had no testimony of Motter intentionally assaulting him. (See, Police Reports - Waddell and Schultz).

3. Court Decisions and citations:

No rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime of First

Degree Burglary, entered with intent to commit a crime against a person or property therein. State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). Fairness and judicial efficiency both demand that in such a case a procedure be made available to the trial court for insufficient evidence.

To prevail on a [Knapstad] motion, the defendant must show that "there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. 107 Wn.2d at 356. A trial court may dismiss a criminal charge if the State's pleadings and evidence fail to establish prima facie proof of all elements of the charged crime. State v. Sullivan, 143 Wn.2d 162, 171 n.32, 19 P.3d 1012 (2001).

"An appellate court will uphold the trial court's dismissal of a charge pursuant to a Knapstad motion if no rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." State v. Snedden, 112 Wn.App. 122, 127, 47 P.3d 184 (2002), Aff'd, 149 Wn.2d 914, 73 P.3d 995 (2003); See also, State v. Green, 133 Wn.2d 679, 693, 947 P.2d 240 (1997) (Appellate review of a Knapstad motion "does not include deciding whose version of events is correct, but concerns whether the State has established a prima facie case of guilt.")

4. Statutes and Constitutional provisions:

6th Amendment to the United States Constitution.

GROUND FOURTEEN:

1. **Legal Reason error:**

The State's Prosecutor withheld exculpatory evidence from defense counsel hindering defendant's defense.

2. **Facts and location of facts:**

The prosecutor had evidence that defendant did not intent to commit a crime or intentionally assault any person and did not give this information to defense attorney with sufficient time for defense counsel to adequately prepare a defense.

The information withheld were the police reports of Deputy Waddell and Deputy Schultz. Both reports show no intent to commit a crime and no intentional assault of any person. They were withheld until the day of trial. (See, Butler and Senescu - Police reports).

Prosecutor had evidence that defendant did not have a bat or club or a "SAP." This evidence was not given to defense counsel until the day of trial.

The information withheld was the police reports of Deputy Waddell, arresting officer, and Linsday Schultz, interviewing officer. Both reports show there was no bat, club, or "SAP." (See, Police reports).

3. **Court Decisions and citations:**

"Suppression of favorable evidence violates due process." Brady v. Maryland, 83 S.Ct. 1194 (1963).

"To establish a Brady claim a habeas petitioner must demonstrate that: (1) the prosecution suppressed evidence; (2) the evidence was favorable to the defendant; and, (3) the evidence was material." Johnson v. Gibson, 167 F.3d 1239 (10th Cir. 1999).

See also, United States v. Turner, 104 F.3d 217 (8th Cir. 19997); United States v. Blais, 98 F.3d 647 (1st Cir. 1996).

1) Brady error occurs when government suppresses "material information that is favorable to defense; information is 'material' if there is a reasonable probability that, had the evidence bee disclosed to defense, result of proceedings would have been different."

2) Brady rule which prohibits government from suppressing evidence favorable to defense, applies to impeachment evidence, as well as to exculpator evidence.

4. Statutes and Constitutional provisions:

5th and 14th Amendments to the United States Constitution, Due Process Rights.

GROUND ~~SIXTEEN~~ Fifteen:

1. **Legal reason error:**

Did State's prosecutor violate ABA Discovery Standards?

2. **Facts and location of facts:**

2.1 Prosecutorial Disclosure:
(a)(iv) - With respect to each expert whom the prosecutions intends to call as a witness at trial, the prosecutor should always furnish to the defense a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of the opinion.

(v) - Any tangible objects, including books, papers, documents, photographs, buildings, places, or any other objects, which pertain to the case or which were obtained for or belong to the defendant, the prosecution should also identify which of these tangible objects it intends to offer as evidence at trial.

The State's prosecutor withheld discovery from the defense until the day of trial.

1) Police Reports

2) Witness testimony

3) Evidence that was no "SAP" weapon.

All of this was done to hinder the defense.

Defense counsel did not know there was not a "SAP" in evidence or any testimony in evidence of a "SAP" weapon.

Defense counsel did not know that Deputy Lindsay Schultz had exculpatory evidence he could have brought out at trial in cross-examination.

Defense counsel did not know that Deputy Waddell had exculpatory evidence that he could have obtained and used to show the defendant's innocence.

The record showed no intent to commit a crime and no assault of any person. This information was hidden from defense until it was too late. **After** trial, defense counsel read the Police Reports and at Sentencing said, "where was the assault?" If he had the evidence prior to trial he could have argued defendant's innocence.

Defendant is complaining that ABA Discovery Standards were violated, and asks that there be an evidentiary hearing and investigation into these matters, as well as correction for State's prosecutor James Senescu, WSBA # 27137.

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, Issue Summaries, and General Information at http://www.courts.wa.gov/courts

June 15, 2006

William H. Motter
#889252
WA State Penitentiary
1313 N 13th
Walla Walla, WA 99362

Re: Personal Restraint Petition of William H. Motter

Dear Mr. Motter:

On June 14, 2006, we received your personal restraint petition. Pursuant to RAP 16.8(a), a petition will be filed by the clerk of the Court of Appeals only if the $250 filing fee is paid, unless the clerk determines that the petitioner is unable to pay the filing fee. I reviewed the petition and found no statement of finances. See RAP 16.7(a)(3). **Accordingly, I will hold the petition for 10 days pending receipt of the filing fee or a statement of finances, together with your prison account statement.**

Very truly yours,

David C. Ponzoha,
Court Clerk

DCP:tg

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, Issue Summaries, and General Information at http://www.courts.wa.gov/courts

July 13, 2006

Arthur David Curtis
Clark Co Prosecuting Atty
PO Box 5000
Vancouver, WA 98666-5000

William H. Motter, IV, IV
#889252
Washington State Penitentiary
1313 No. 13th Ave
Walla Walla, WA 99362

John A. Hays
Attorney at Law
1402 Broadway St.
Longview, WA 98632-3714

Michael C. Kinnie
Clark Co Prosecuting Atty
PO Box 5000
Vancouver, WA 98666-5000

CASE #: 34251-1-II\State of Washington, Respondent v. William H. Motter, IV, Appellant

CASE #: 35039-4-II\Personal Restraint Petition of William H. Motter, IV

Counsel:

The action indicated below was taken in the above-entitled case.

A RULING SIGNED BY COMMISSIONER SCHMIDT:

The court, on its own initiative, consolidates defendant's personal restraint petition, COA No. 35039-4-II, to his direct appeal, COA No. 34251-1-II. Once appellant's opening brief is filed, respondent should file a single brief responding to both the direct appeal brief and the petition.

Very truly yours,

David C. Ponzoha
Court Clerk

T R U S T A C C O U N T S T A T E M E N T

DOC# 0000889252 Name: MOTTER, WILLIAM H BKG# 275686
LOCATION: E02-033-S3E052

Account Balance Today (05/01/2006) Current : 15.35
Hold :
Total : 15.35

Account Balance as of 04/30/2006 15.35

04/01/2006 04/30/2006

SUB ACCOUNT	START BALANCE	END BALANCE
SPENDABLE BAL	0.01	0.13
SAVINGS BALANCE	8.35	15.22
WORK RELEASE SAVINGS	0.00	0.00
EDUCATION ACCOUNT	0.00	0.00
MEDICAL ACCOUNT	0.00	0.00
POSTAGE ACCOUNT	0.00	0.00
COMM SERV REV FUND ACCOUNT	0.00	0.00

RECEIVED
JUN 22 2006
CLERK OF COURT OF APPEALS
STATE OF WASHINGTON

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
CVCS	CRIME VICTIM COMPENSATION/07112000	12022005	UNLIMITED	3.00	0.00
COIS	COST OF INCARCERATION /07112000	12022005	UNLIMITED	12.00	0.00
COPD	COPY COSTS DEBT	01172006	1.87	0.53	0.00
MEDD	MEDICAL COPAY DEBT	04042006	0.00	2.99	0.00
DEND	DENTAL COPAY DEBT	03082006	0.00	3.00	0.00
DEND	DENTAL COPAY DEBT	01062006	0.00	0.27	0.00
COI	COST OF INCARCERATION	12022005	UNLIMITED	13.84	0.00
CVC	CRIME VICTIM COMPENSATION	12022005	UNLIMITED	4.62	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	01202006	0.00	0.84	0.00
TVD	TV CABLE FEE DEBT	01142006	0.00	2.00	0.00
LFO	LEGAL FINANCIAL OBLIGATIONS	20051220	UNLIMITED	29.45	0.00
POSD	POSTAGE DEBT	01172006	0.00	10.32	0.00
HYGA	INMATE STORE DEBT	12062005	0.00	4.62	0.00
LMD	LEGAL MAIL DEBT	01252006	0.00	0.83	0.00

TRANSACTION DESCRIPTIONS -- SPENDABLE BAL SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
04/04/2006	MEDICAL COPAY DEBT		2.99	3.00
04/04/2006	I05 - MEDICAL COPAY		(3.00)	0.00
04/05/2006	POSTAGE DEBT		0.41	0.41
04/05/2006	POSTAGE-INDIGENT 04/03/2006		(0.41)	0.00
04/08/2006	TV CABLE FEE DEBT		0.50	0.50

TRUST ACCOUNT STATEMENT

DOC# 0000889252 Name: MOTTER, WILLIAM H BKG# 275686
LOCATION: E02-033-S3E052

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
04/08/2006	I05 - TV CABLE FEE		(0.50)	0.00
04/13/2006	CLASS 2 GRATUITY-GARMENT FACTORY P/R		48.73	48.73
04/13/2006	Deductions-CVC-12022005 D D		(2.44)	46.29
04/13/2006	Deductions-COI-12022005 D D		(7.31)	38.98
04/13/2006	Deductions-SAV-01122006 D D		(4.87)	34.11
04/13/2006	Deductions-LFO-20051220 D D		(9.75)	24.36
04/13/2006	Deductions-MEDD-04042006 D D		(2.99)	21.37
04/13/2006	Deductions-TVD-01142006 D R		(0.50)	20.87
04/13/2006	Deductions-POSD-01172006 D R		(6.26)	14.61
04/14/2006	CRS SAL ORD #3384934STOR2		(10.66)	3.95
04/18/2006	OTHER DEPOSITS-J. LUND		20.00	23.95
04/18/2006	Deductions-CVCS-12022005 D D		(1.00)	22.95
04/18/2006	Deductions-COIS-12022005 D D		(4.00)	18.95
04/18/2006	Deductions-SAV-01122006 D D		(2.00)	16.95
04/18/2006	Deductions-LFO-20051220 D D		(4.00)	12.95
04/18/2006	Deductions-POSD-01172006 D D		(1.59)	11.36
04/18/2006	Deductions-LMD-01252006 D R		(0.83)	10.53
04/18/2006	Deductions-COPD-01172006 D R		(0.53)	10.00
04/20/2006	CRS SAL ORD #3392140STOR		(6.69)	3.31
04/20/2006	CRS SAL ORD #3394809STOR2		(3.18)	0.13

TRANSACTION DESCRIPTIONS -- SAVINGS BALANCE SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE
04/13/2006	Deductions-SAV-01122006 D D		4.87	13.22
04/18/2006	Deductions-SAV-01122006 D D		2.00	15.22

TRANSACTION DESCRIPTIONS -- WORK RELEASE SAVINGS SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- EDUCATION ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- MEDICAL ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- POSTAGE ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE

TRANSACTION DESCRIPTIONS -- COMM SERV REV FUND ACCOUNT SUB-ACCOUNT

DATE	TRANSACTION DESCRIPTION	RECEIPT#	TRANSACTION AMT	BALANCE

#50

Pre-Payroll Report By Employee

From: [illegible] **To:** [illegible]

Payment Frequency: **Monthly**

Employee Type: [illegible]

CI-WSP\WSP\Garment Factory
With Sublevels

Count	Date	Weekday	Start Time	End Time	Punch Type	Hours
889252	Motter William		WSP SHOP			
1	03/01/2006	Wed	7:52 am	1:05 pm	login	4.970
2	03/02/2006	Thu	7:46 am	3:17 pm	login	7.190
3	03/06/2006	Mon	7:56 am	1:08 pm	login	4.830
4	03/08/2006	Wed	7:37 am	3:21 pm	login	7.330
5	03/09/2006	Thu	7:34 am	3:18 pm	login	7.380
6	03/13/2006	Mon	7:29 am	3:24 pm	login	7.570
7	03/14/2006	Tue	7:30 am	3:17 pm	login	7.450
8	03/15/2006	Wed	7:32 am	3:21 pm	login	7.540
9	03/16/2006	Thu	7:45 am	3:20 pm	login	7.250
10	03/20/2006	Mon	7:27 am	3:18 pm	login	7.500
11	03/21/2006	Tue	7:42 am	3:18 pm	login	7.270
12	03/22/2006	Wed	11:59 am	3:16 pm	login	3.280
13	03/23/2006	Thu	7:33 am	3:16 pm	login	7.390
14	03/27/2006	Mon	7:26 am	1:06 pm	login	5.290
15	03/29/2006	Wed	7:31 am	1:09 pm	login	5.230
						97.470
					Employee Total:	**97.470**

Hourly Amount	**$48.73**
Overtime Amount	**$0.00**
Incentive Amount	**$0.00**
TOTAL Amount	**$48.73**

Hourly Rate	**$0.50**
Overtime Rate	**$0.75**

Employee Signature

Monday, April 10, 2006
3:02:39PM