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STATE OF WASHINGTON
BY [Signature]
DEPUTY

Court of Appeals Division II
for the State of Washington

Richard York
Petitioner

Cause Number 36381-0-II
Statement of additional

V.

Grounds

State of Washington
Defendant

I. Motion:

Comes Now the petitioner Richard York, in and through his attorney of record, filing
His Supplemental Pro-Se brief in the above-entitled court through the aforementioned
Cause Number, and hereby request that the above court grant the aforementioned brief and
Subsequently add for review it's contents therein.

II. Additional grounds for relief :
A). Supporting fact within record

IRP March 19th 2007 ;

things that must be considered upon review of these grounds are as follows:

Motion in limine and jury trial

Page 2 Lines 12-14 [The Prosecutor states here's a copy of the second amended information that was allowed to be filed even though the defendant was not notified correctly

Page 56 Lines 18-21 [Mr. Rothman States Let me say first Your honor, that the courts Ruling prior to lunch was crystal clear that it was the States responsibility and the States burden] Here the court address the very issue spoke of on Pages 37-38 Lines 15-25 (37) Lines 1-25(38) States witness found in jury room with jury

Page 61 Lines 19-25 [The Judge Stated I Don't know the whole case but Usually the CI is the case (19) I also have a problem that I see as a problem but as a judge is that the

CERTIFICATE OF SERVICE

I certify that I mailed
copies of 2nd Amended
to E. Arbetter, D. Burke and Amended Served
[Signature] by Applicant
Date 2/15/08 Signed [Signature]

1 very fact that jurors have had--and I agree with Mr. Hatch, we're talking
2 about at least if not the states witness, we're talking one of the key
3 witnesses, but I would think--I don't know the whole case but usually the
4 C.I. is the case] Here also the court is addressing the fact that the
5 prosecutor allowed the States key witness to enter into the jury room so
6 there would be a mis-trial.

7 Page-62, lines 1-25, [if he doesn't show up there's no case because you have
8 to testify as to the delivery and all that kind of--kind of thing (3) but
9 you have a witness, a key witness who is in the very sanctity of the jury
10 room so they have seen this witness at least -- I have to assume-- I can
11 "not" assume that 13 didn't see him initially and that two saw him after the
12 lunch which means they have seen this witness twice before trial has even
13 started inside their, what is almost like the inner sanctum in the legal
14 system. I don't know how to fix it. I'd have to put every witness-- every
15 juror on the stand, I'd have to put them all on the stand. It doesn't
16 matter to me what Mr. Oleachea has to say or doesn't have to say, that's
17 not the issue. (16) Well, I'm going to grant a mis-trial. I'm going to
18 order that the prosecutor's offices-office witness never ever ever in any
19 case and I'll put that in writing, ever go into the jury room the day of or
20 at anytime during which the day has started or the day has not yet finished
21 that the jury is still in session--or the court is still in session and the
22 case is not resolved.

23 Page 63, line 8-25, I don't if anything I say does any good frankly. I don't know what I need
24 to do to try to impress that preparation for a jury trial involves alot more than just
25 knowing who the witnesses are. I has to do with management control, crowd control and
26 witness control. And frankly, I wouldn't accept any excuse that Mr. Oleachea had, Mr. Rothman.
27 The fact that you told him that there was a bathroom on the second floor, I still can't
28 imagine that anyone would think they should go into the jury room once the trial has begun at
least once the trial has begun. (21) well the county's going to get stuck with the bill. I
don't think I have a basis to sanction the prosecutos'e office, I am not sure but there 's
no motion in front of me for that, I just don't know it's just really frustrating, extremely.
[here the judge is loosing control of his court but the issue is that the defense counsel
failed to put a or even make a note that a motion for sanctioning the prosecutors office
was forth coming.] April 20, 2007.

Page-11, lines 11-12, Defense counsel states he has violated my rights to a fast and speedy
trial. Page-12, lines 12-16, The judge responded let me ask this one question first Mr. Rothman,
was the re-setting of the May 2nd. and 3rd. trial dates was still within the speedy trial set
one so were outside] While this was in once since true that the fact that at was set due to
the prosecutor's mistake thereby the time was not re-started.

3RP April 27, 2007, page-5, line 1-25, Mr. Hatch : Yes Your Honor, Mr. York did file a formal
bar complaint against me and the Bar asked me to respond, regardless of what he told the
court, the bottom line is the Bar tells me I have to keep my entire file--so of course
Mr. Monson's entitled to a fresh discovery, not the one I had prepared for trial on behalf
of Mr. York. I've provided him a copy of those materials that I had that were the discovery.
The rest of the documents of course are in the courts file. I didn't see any need ti really
make another copy of that steff. (12) But Mr. Monson of course is entitled to a new set.

(14) I had a copy provided to Mr Monson of the contract between the informant Mr. Rod Oleachea,
and the State so he has that and that's the primary witness so he can be prepared to impeach
him with whatever needs to be done there. (19) I've also reviewed with Mr. Monson my theory of
my case reviewed with him the maps and so forth, my interview of the witnesses including
Danial Stigar. I had Ms Stigar subpoenaed for trial on May 2nd. and 3rd., She's now out of
custody, I don't know where to reach her, otherwise I would give that information to Mr. York's
attorney, Mr. Monson.

1 VBR 1 Page 14 Lines 13-25 "Mr Rothman; well your Honor, I'am still not exactly sure ; I Have
2 an idea as to what Ms. Stigar is going to testify to [The Court; Do you have a summary?; Mr.
3 Rothman; I do not have a summary;[The Court; What's the summary? Mr Hatch; your honor, I was
4 able to meet with Ms. Stigar on friday because she was in custody here, and she still is, and
5 so I was able to meet with her and when I met with her I was basically told counsel that the
6 basic summary is - - is that she's Page 15 Lines 1-2 shes going to testify that she made the
7 drug deliveries to Rod Oleachea; PAGE 15 Lines 4-7 ; Mr. Rothman well based on that state-
8 ment your Honor; I would like to file this motion to preclude Ms. Stigar's testimony for a
9 discovery violation. PAGE 16 Lines [The court; okay well i'll take a look at your motion
10 which was handed just now to the court. I have a question for you Mr Rothman and this isn't a
11 Catch -22 how did you know to prepare this motion PAGE 30 Lines 14-16 Mr Rothman, I spoke to
12 Mr. Karlsvik by telephone, he indicated that he had spoken with Ms. Stigar and that she
13 intends to testify Page 31 Lines 5-12 Mr. Hatch; I actually went over there looking for Mr.
14 Karlsvik and I met briefly with Ms. Stigar and just...[The Court; okay! Mr. Hatch; I Mean for
15 a minute and I Asked her if Harold had been there and she said yes... her words were he ad-
16 vised me of everything and I still want to testify; [The Court, Very well:
17 SVRB May 15th 2007; Delt with the courts finding on the record that the court would not go
18 above the standard range of 120 months and the fact that Mr. York was to plea using the alford
19 / newton plea;

III, GROUNDS FOR RELIEF:

B) LIST OF GROUNDS

1 1 Due Process of Law:

2 The fact that the State proceded with the conviction without allowing
3 The petitioner the right to present his defence as he choose to [the
4 fact that someone else confessed to the very charges to which he was
5 Charged]

6 2 Speedy Trial Violation:

7 The fact that the Prosecutor violated his speedy trial when it after
8 causing a mis-trial failed to bring Mr. York to trial within the (60)
9 sixty day rule of CrR 3.3 [the State failed to try Mr. York complying
10 with the rules govering speedy trial when by there own hands created
11 the error that resulted in the very mistrial]

12 3 Prosecutorial Misconduct;

13 The fact that the Prosecutor placed into the jury room it's key witness
14 and did so solely to prejudice the petitioner thereby not allowing his
15 Star witness to testify in this matter next the Prosecutor used what may
16 have amounted to fraud to coerce the petitioner into taking the plea offer
17 instead of taking this matter into court, By the State allowing their star
18 witness to interact with the jury not once but twice after the trial had
19 Begun violated his right to a fair trial Thereby causing;

1 A Miss-trial [ie: this purposful manuver was designed to force the Petitioner to Plea-
2 out Prior to trial] This also was to cover the States Failure to Prove all elements of
3 the Counts charged; [The States failure to produce and subsequently prove all the
4 elements of the crime[ie: to be convicted of the charges at issue the State must have
5 in it's possession the drugs and the money for which it was paid for]

6 4) ineffective Assistance of counsel:

7 The fact that the defendants attorney failed to supress all evidence in the case and
8 his failure to produce the person that under statement admitted the she not the
9 Defendant was the one who actually sold the drugs therefore, creating an alibi to his
10 charges this infomation was also known to the prosecutors office at the time of his
11 Miss-trial.

12 5) Charging documents are invalid or faulty:

13 the fact that the defendant was lured to the location inwhich he was to have allegedly
14 committed the crime charged were in error Therefore, was based on a false accusatition
15 Therefore, should be considered unconstitutional and thus beyond the harmless error
16 rule;

17 Therefore, the petitioner hubly requests that his sentence be vacated and the ap-
18 propriate sentence be given. Furthermore if the court so agrees to grant him all time
19 served to date and if so granted released with time served to wit;

20 III.Grounds for relief

21 A Criminal defendant has a constitutional right to present a defence Washington V Texas
22 388 U.S 14 19 87 S.Ct 1920 18 LEd 2d 1019 (1967) The Washington court discribed the
23 importance of the right as follows:

24 " The right to offer the testimony of witnesses, and to compel
25 Their attendance if necessary is in plain terms the right
26 to present a defence, the right to present the defendants
version of the facts as well as the prosecution's to the jury so
it may decide where the truth lies. just as an accused has the
Right to confront the Prosecution's witnesses for the

1 Purpose of challenging their testimony, he has the right to
2 present his own witnesses to establish a defence. This right
3 is a fundamental element of Due process of Law."

4 Washington 388 U.S. at 19, 87 S Ct at 1923, Cited with approval by State V Smith 101 Wn
5 2d 36 41 677 P2d 100 (1984).

6 The right to compulsory process includes the right to present a defence. State V
7 Burri, 87 Wn 2d 175 181 550 P 2d 507 (1976). Washington defines the right to present
8 Witnesses as a right to present material and relevant testimony. see State V Smith 101
9 Wn 2d 36 41 677 P2d 100 (1984). Defendants have the right to present a defence, but do
10 not have the right to introduce evidence that is irrelevant or otherwise inadmissible.
11 State V Rehak, 67 Wn App 157 162 834 P 2d 651, Reviewed denied 120 Wn 2d 1022 844 P2d
12 1018, cert denied 113 S Ct 2449 508 U.S 953 124 LEd 2d 665 (1992)

13 While a criminal defendant has no constitutional right to have irrelevant evidence
14 Admitted in his or her defence (State V. Maupin, 128 Wn 2d 918 924-25 913 P 2d 808 (1996))
15 a defendant in a criminal case does have a constitutional right to present a defence
16 Consisting of relevant evidence that is not otherwise inadmissible. State V Rehak, 67 Wn
17 App 157 162 834 P2d 651 (1992). Evidence is relevant when it has any tendency to make the
18 existence of any fact that is of consequence to the determination of the action more
19 Probable or less probable than it would be without the evidence. ER 401.

20 "Cross-examination of a witness is a matter of right...it's permissible purposes, among
21 others, are...that facts may be brought out tending to discredit the witness by showing
22 that his testimony in chief was untrue or biased" Alford V. United States, 282 U.S. 687
23 691-92, 51 S.Ct 218 219 75 LEd 624(1931). [Citations omitted].

24 In the case at hand there were two points that the defendant had tried to establish
25 Yet was denied by both the State and by his attorney of record the most important fact
26 was that the State had a sworn Statement from someone else that they infact

1 were the one doing the crime yet the State refused to allow him the chance to bring
2 forth the evidence, The Second issue revolved around the fact when asked by the
3 Petitioner his own defence counsel refused to call even one witness for his client
4 thereby, prejudicing him this error was not trial strategy nor was it harmless error
5 Therefore, this court must vacate Mr. Yorks sentence or atleast remand with instruction
6 to the trial court on the correct sentence.

7 III GROUNDS FOR RELIEF CONT:

8 II GROUND SPEEDY TRIAL VIOLATION

9 CrR.3.3 which governs the rules pertaining to the time in which a defendant whether
10 he is confined in Jail pending trial or out of custody is to be brought to trial. This
11 as the state implies is not a right but merely a rule therefore, does not contain the
12 same protections that a constitutional right would provide. However, under the
13 situation of the case at Bar this would not be facts at issue. CrR 3.3 (c)(2)(iii), States
14 The following:

15 "The Speedy trial requirements of CrR 3.3 apply to retrials following a
16 miss-trial "

17 Which was the very fact before us .The State allowed the States witness to be placed in
18 The Jury box/deliberation room and to speak with the jurors about the testimony he
19 was to bring out during the Trial .While the court declared a Mis-Trial in the case
20 It also did Two things to the defendant (1) it allowed the State to re-Start the Time
21 For trial governed by the CrR 3.3 rules and (2) to collectively correct the very evidence
22 that they needed to pursue a conviction and to allow the very defence witness to be
23 Released from Jail thereby taking away the very witness who was to testify under oath
24 that she her self was the one who committed the very crime Mr. York was to be tried for.
25 CrR 3.3 (c)(2) (iii) goes on to state:

26 "CrR 3.3 does not require a retrial to commence running

1 "From the date of the mistrial unless the
2 mistrial was deliberately caused by the
3 Prosecution's own misconduct "

4 The misconduct was done when the Prosecutor placed the States witness in with the Jury
5 And allowed them to discuss the testimony he was to deliver during the State part of
6 Mr. York's trial thereby prejudicing him irrevocably. However, The right to a speedy
7 trial is not violated by unavoidable and unforeseen delays where made necessary by the
8 usual and ordinary procedures unless the defendant would be substantially prejudiced in
9 his defence. Instances of unavoidable events are the illness or incapacity of the trial
10 Judge, Prosecuting Attorney, or witness. However, the responsibility for ensuring a
11 Speedy trial is on the Court. Thus delays cannot be predicated on claims of court
12 congestion or lack of Judicial manpower. Failure to bring a defendant to trial within
13 The prescribed period of time is not excused where such delay is due to the neglect or
14 Delay of the Prosecution. CrR 3.3 (g)(h) Concludes with the cure period authorized by
15 this rule stating that:

16 (g) "The court may continue the case beyond the limits
17 specified in section (b) on motion of the court or
18 party made within five days after the time for trial
19 has expired. Such a continuance may be granted only once
20 in the case upon a finding on the record or in writing
21 that the defendant will not be substantially prejudiced
22 in the presentation of his/or her defence. The period of
23 delay shall be for no more than 14 days for a defendant
24 detained as Mr. York was in Jail. or 28 days for a defendant
25 not detained in jail, from the date that the continuance
26 is granted. The court may direct the parties to remain in

1 "Attendance or be on call for trial assignment during the
2 Cure period.

3 However, this was not only violated by the prosecutors failure to bring forth the trial
4 in a reasonable time period he was prejudiced when the State released the very person
5 The defendent was going to use to subtanicate his very reason for his not guilty
6 Pleding CrR 3.3(h) finishes the rule as follows:

7 " A charge not brought to trial within the time limit
8 determined under this rule shall be dismissed with
9 Prejudice. The State shall provide notice of dismissal
10 to the victim and at the court's discretion shall allow
11 the victim to address the court regarding the impact
12 of the crime. no case shall be dismissed for Time-to
13 Trial reasons except as expressly required by this
14 rule a statute or the State or Federal Constitution.

15 Therefore, due to the misconduct of the Prosecutor in the case at hand not only was he
16 Prejudiced by their action he was damaged beyond any recovery when the state released
17 the very witness who could have freed him of the charges he now is serving. Thus this
18 Court should remand and vacate his sentence herein.

19 State V. Aleshire, 89 Wn 2d 67 568 P.2d 799 (September 15th 1977) . Therefore due to
20 The obvious misconduct by the Prosecutor the petitioner's Equal rights to a fair and
21 Imparcial trial was violated resulting in a manifest error therefore, this court must
22 Vacate his sentence and order his release from custody.

23 III . Prosecutorial misconduct:

24 In re Murchison 349 U.S. 133 136 99 L Ed 942 75 S.C 623. A fair trial in a fair
25 Tribunal is a basic requirement of due process. Fairness of course requires an absence
26 of actual bias in the trival of cases. But are system of law has always endeavored to

1 prevent even the probability of unfairness, to this end no man can be a judge in his own
2 case and no man is permitted to try cases where he has an interest in the outcome. That
3 interest cannot be defined with precision. Circumstances and relationships must be
4 Considered. This court has said, However, that every procedure which would offer a
5 possible temptation to the average man as a judge. Not to hold the balance nice, clear
6 and true between the State and the Accused, denies the latter due process of law.

7 Turney V Ohio 273 U.S 510 532 147 S.Ct 437 444 71 L.Ed 749 . Such a stringent rule may
8 sometimes bar trial by judges who have no actual bias and who would do their very best
9 to weigh the scales of justice equally between contending parties. but to perform its
10 high function in the best way "Justice must satisfy the appearance of Justice"

11 Offutt V U.S. 348 U.S 11 75 S.Ct 11 13.

12 This case still stands true today as it did many years ago. No Man, to include judges
13 or even Prosecuting attorneys are above the Law, and must yield to the way of Justice.
14 The Prosecutor in the case at hand clearly violated the basic principle of our
15 jurisprudence in that he without concern for the orderly transgression of the court case
16 allowed the States only true witness to enter and communicate with the jurors in this
17 case thereby forcing a mis-trial so that he could cover up the release of the person
18 who not only was charged with the same types of charges as was the petitioner but
19 would have testified to the fact she was the person not the petitioner who actually
20 committed the crimes no at issue.

21 Although the prosecutor is obligated under Brady to disclose to the defendant favorable
22 material evidence[ie : witness who would testify the she committed the crimes Mr York
23 was convicted for] a prosecutor may have a constitutional obligation to assist a defend
24 ant in obtaining evidence that might establish his innocence. this issue could arise
25 for example, in a narcotics prosecution when a defendant wants his own expert to test
26 the drugs: or wishes to preserve a witness who is also incarcerated in the same jail

1 This evidence was known by the prosecution yet when due to the mistake caused by the
2 Prosecutor it was compounded when he ordered the release from jail the very person
3 who stated that she infact sold the drugs Mr. York was charged with. The rationale for
4 this duty has been grounded upon (1) the Brady doctrine on the theory that depriving
5 a defendant of access to evidence that might establish his innocence is just as much a
6 Suppression as if the evidence existed and the prosecutor withheld it Barnard V
7 Henderson 514 F. 2d 744 (5th cir 1975) State V Koenecke 274 Or 169 545 P.2d 127
8 (1976) (2) Fundamental fairness, which forbids a Prosecutor from denying a defendant
9 the means necessary to conduct an effective defence and to cross-examine witnesses
10 against him and for that matter in his favor State V Boettcher 338 So 2d 1356 (La 1976)
11 Warren V State 292 Ala 71 288 So. 2d 826 (1973) (3) a reciprocal discovery rule under
12 which a defendant should be allowed the same opportunity to determine the probative
13 value of the prosecution's evidence against him as a prosecutor has in determining
14 it's inculpatory character Evens V Superior court 11 cal 3d 617 114 Cal Rptr 121 522
15 P 2d 681 (1974) As a unanimous Supreme Court said in Wardius V Oregon Holding uncon-
16 stitutional a State Alibi discovery Statute which made no provision for reciprocal
17 discovery for the defendant:

18 Although the due process clause has little to say regarding the
19 amount of discovery which the parties must be afforded, it does
20 speak to the balance of forces between the accused and his accuser
21 We do not suggest that the Due Process Clause of it's own force
22 requires Oregon to adopt [discovery] provisions but we do hold that
23 in the absence of a strong showing of state interests to the
24 contrary discovery must be a two way street the state may not insist that trial be run
25 as a "Search for truth" so far as defence witnesses are concerned while maintaining "poker game" secrecy for it's own witnesses.

26 Therefore when the Prosecutor released the only person who could alibi the defendant and did so willfully it prejudiced the defendant beyond repair therefore, the harmless error rule does not apply and this court should vacate his sentence to wit.

Due to the States Mis-conduct in the foregoing case the Retitioner Mr. York was
Prejudiced in both his presentation of the case and even the ability to call witnesses
that would negate the States case . therefore, this case must be vacated.

IV. Fourth Ground

Ineffective Assistance of counsel:

1
2 Strickland V Washington 466 U.S. 668 104 S.Ct 2052 80 L.Rd 2d 674 (1984), The Sixth
3 Amendment of the U.S Constitution guarantees the right to effective assistance of
4 counsel in criminal prosecutions. McMann V. Richardson 397 U.S 749 (1970); Owiler V
5 Sullivan 466 U.S. 335 (1980). The United States Supreme court established a two prong
6 test with which to evaluate ineffective assistance of counsel claims; (1) that counsels
7 performance fell below an objective standard of reasonableness and (2) that counsels
8 deficient performance prejudiced the defendant resulting in an unreliable or
9 fundamentally unfair outcome of the proceedings Lockhart v Fretwell 506 U.S ____; 122
10 L.Rd 2d 180 113 S.Ct 838 (1993) quoting Strickland v Washington supra at pg 687; U.S v
11 Springs 988 F 2d 746 (7th Cir 1993) Kyles v Whitley 5 F 3d 806 (5th Cir 1993) cert
12 granted 114 S Ct 1610 (1994).

13 In Lockhart V Fretwell supra the US Supreme court held that the defendant was not
14 prejudiced when counsel failed to make an objection based on a decision that was
15 subsequently overruled. Supra at pgs. 841-842. Although a court may conclude that a
16 single error rendered counsel's performance ineffective it must consider the totality
17 of the circumstances in making its determination. Murry V Carrier 477 US 478(1986)
18 (dictum); Strickland V Washington, Supra at pg 690.

19 While the court ruled that the prosecutors action warranted a mis-trial it failed to
20 acknowledge that such a malicious act on the part of the Prosecutor also prejudiced
21 his ability to defend himself it did so by releasing his number one witness before the
22 second trial forcing him to succumb to the pressure from the State to take a plea
23 agreement. Mr Yorks counsel failed to (1) call the witnesses that he knew would
24 clearly substantiate his defence and when this wilful mistake on the part of the
25 Prosecutor occurred he failed to file a motion to dismiss or even suppress the evidence
26 the State sought to introduce thereby failing his client in the most fundamentally

1 wrong way this action clearly was not trial strategy as the state will must likely
2 Argue but the fact that he to knew the testimony that Mr. York would introduce to
3 the Court would have negated the States case in it's integrity as this witness was to
4 Testify that she was the one who sold the drugs not Mr. York . The Next part of the
5 Strickland test is whether or not the defendant was prejudiced by the actions of his
6 counsel this is best viewed objectively by viewing the outcome of the first trial and
7 than seeing whether or not if it weren't for the mistakes of his counsel would the out-
8 come have been different this the answer would have to be it most defently would have
9 been as the testimony he failed to introduce would have substancated his overall alibi
10 and his not guilty plea he entered into first.

11 While for the most part the inadvertant mistakes done in this trial was clearly the
12 Prosecutors fault it in no way relinquishes the defence counsels obligation to present
13 the Petitioner's defence to the best of his abilities.

14 The next point of interest was the fact that the defence counsel allowed evidence that
15 was clearly tainted by allowing evidence that suggests entrapment on behalf of the
16 police in the original charging documents the state sought to enhance his sentence by
17 adding a school zone issue this was faulty for two reasons (1) to be considered a school
18 zone the petitioner would have to be within 1000 feet of said zone when in fact he was
19 over that distance away and;(2) he was corrceroed into committing the crime in the
20 location , as it was the Ci who stipulated the location not the petitioner.

21 Under the subjective approach which is followed by the Federal courts and most State
22 Courts a law enforcement official is guilty of unlawful entrapment when he originates
23 the idea of a crime and than induces the defendant as was done here who was not other-
24 wise disposed to commit it: Iafave and scott handbook on criminal law pp 369-74. see
25 Bennett from Sorrells to Jacobson; reflections on six decades of entrapment law and
26 related defences in Federal court 27 Wake forest L rev 829 (1992). The Supreme court

1 has embraced this position consistently Although a significant minority of the court
2 has advocated a different formulation of the defence. Thus due to the ineffective
3 behavior of his defence counsel and the subsequent mistake performed by the prosecutor
4 if it weren't for the mistakes Mr. York would not have been found guilty therefore
5 the two prong test outlined in Strickland V Washington this court must vacate his
6 Sentence Herein:

7 V.Fifth Ground:

8 Charging Documents Not valid

9 The requirement of Probable cause reflects the balance sought between the individual's
10 right to privacy and an allowance for police officers to make mistakes when acting as
11 Reasonable persons. the Requirement of Probable cause is the best compromise that has
12 been found for accommodating these often opposing interests. Brinegar V United States
13 838 U.S. 160 69 S Ct 1302 93 L.Ed 1879(1949) The rule of probable cause to make a
14 search or arrest is found in the Fourth Amendment's right to privacy is applicable
15 through the Fourteenth Amendment. Mapp V Ohio 367 U.S 643 81 S. Ct 1684 6 L.Ed 2d 1081
16 (1961) The purpose of Article I Section 7 of the Washington Constitution is to
17 prevent unreasonable searches and seizures without probable cause State v Simpson 95
18 Wn 2d 170 622 P.2d 1199 (1980) [interpreting Article I Section 7 as being more protec-
19 tive than the Fourth Amendment] The Fourth Amendment Seizure of a person [in this case
20 Mr.York] known as "arest" is reasonable if at the moment of arrest the officer had facts
21 and circumstances within the arresting officer's knowledge which amounted to probable
22 cause to make it. Probable cause exists where the facts and circumstances within the
23 arresting officer's knowledge and of which he has reasonably trustworthy information
24 are sufficient in themselves to warrant a person of reasonable caution in the belief
25 That the person to be arrested has committed or is committing an offence State v Ward
26 24 Wn App 761 603 P.2d 857(1979) cert denied 449 U.S. 984 101 S Ct 402 66 L.Ed 2d 247

1
2
3 (1980) ;State v Kirvin 37 Wn App 452 682 P 2d 919 (1984)[Probable cause]; State v Thornton
4 41 Wn App 506 705 P2d 271 (1985) Probable Cause for a felony exists where an officer from
5 personal knowledge or facts communicated by others has reasonable grounds to believe that
6 the accused has committed a felony State v Mustain 21 Wn App 39 584 P.2d 405 (1978). A
7 Finding of Probable cause may be predicated on any one of these categories of information
8 (1) the direct observation of the officer who is applying for the Warrant or (2) hearsay
9 information furnished to the officer by a source or informant or (3) upon a combination of
10 the officer's direct observation and hearsay information CrR 2.2(a) Aguilar v Texas 378
11 U.S 108 84 S Ct 1509 12 L.Rd 2d 723(1964); and Spinelli v United States 393 U.S. 410 89
12 S.Ct 584 21 L.Rd 2d 637 (1969) In the case at hand the officers testified that they witnessed
13 Mr. York sell the alleged drug this is impossible or at best unreasonable in that (1)
14 another stated that she sold the drug and (2) due to the distance away from Mr.York visual
15 clarity would be almost impossible to make But for sake of argument lets just say that they
16 indeed saw the alleged transaction occur was Three months thereby negating even the best
17 argument of reasonableness therefore in that time memories become faded even for the
18 most proficient officer therefore, there was no probable cause that could be derived from
19 their actions next problem waiting so long when they obviously knew that a crime was being
20 committed and they actually knew or atleast they thought they knew who the perpetrator was
21 they themselves aided and abeted the commission of the very crime they sought to convict
22 Mr. York for . Obviously the State was worried about the outcome so much so they devised a
23 plan to force a mistrial and proceed with a new trial this clearly shows Vindictive
24 Prosecution to say nothing of the entrapment of the Petitioner Due to the overwhelming
25 Facts , the Testimony of the person who states she committed the crime and the Police's
26 Failure to act in the interest of the public at large clearly leaves this court only one
27 clear path it must Vacate the sentence this is in the interest of justice. It is a common
28 perception of the court and the State that the public at large is the victim therefore it

1 must consider the evidence presented and rule for the petitioner

2 VI Conclusion:

3 So in Conclusion the court should view this Breif of Additional grounds and
4 His Appellate Counsel's Double Jeopardy argument as a wholistic interpetition
5 of the facts and evidence to the events that Mr. York clearly was not apart
6 of .While it is a common belief that because he was convicted he must in some
7 way be guilty of some if not all of the elements directly relating to the
8 Charges brought fourth . The Following is a drawing together of the arguments
9 Contained herein. The court will plainly see that Mr. York was a victim of
10 Malicious Prosecution; Vendictive Prosecution : Due Process violation and
11 if that was not enough Prosecutorial misconduct and double jeopardy violation
12 this was done both by the prosecutor and by the shear ineffectiveness of his
13 own counsel. to start with to understand the effect that thes violations
14 that occured affected the Petitioner we must define those violations in detail.

15 Malicious Prosecution Means:

16 The institution of a criminal or civil proceeding for an improper purpose
17 and without probable cause (2) The cause of action resulting from the
18 institution of such a proceeding : once a wrongful prosecution has ended
19 [[in the contex of civil proceedings] "Malicious use of process Cf ABUSE
OF PROCESS:

20 " The distinction between an action for malicious prosecution
21 and an action for abuse of process is that a malicious prose-
22 cution consists in maliciously causing process to be issued
23 Whereas an abuse of process is the employment of legal process
for some purpose other than that which it was intended by the law
to effect - the improper use of a regularly issued process. for instance

24 The fact that the prosecution allowed the States witness to enter and stay
in the juriors room and eat and talk with the juriors about the case

25 This as discribed in the arguments presented within clearly support Mr.Yorks
26 Contention that he was prejudiced by the action [IRP pgs 37-38 Lines 15-25]
27 Even the court acknowledged the problem by declaring a mis-trial had this
28 been the final situation that Mr. York was put through the issue would have

1 been concluded but this was not the final stage in this play the state than
2 sought to re-try the petitioner for what would and should be considered a
3 Double Jeopardy violation at least and a dismissal at best of all charges
4 filed by the state. "52 Am Jur.2d Malicious Prosecution 2, at 187 (1970)

5 Double Jeopardy means:

6 "The fact of being prosecuted twice for
7 substantially the same offence

8 This was clearly done in this case when the court ruled a mistrial due to
9 the Prosecution's mistake .

10 Jeopardy exists when:

11 " The risk of conviction and punishment
12 that a criminal defendant faces at trial
13 Jeopardy attaches in a jury trial when
14 the jury is empaneled also termed legal
15 Jeopardy"

16 The fact that it was my no error of the defendant in this case but the prose-
17 cution therefore, that state had no other recourse but to dismiss all other
18 Charges that was brought fourth in his original trial.

19 Vindictive Prosecution Means:

20 " The practice of singling a person out for prosecution
21 under a law or regulation because the person has exercised a
22 Constitutionally protected right."

23 Ie: Going to trial as the petitioner chose to do that the State said that
24 because he would not take the plea offer that he was offered the state
25 Sought to amend his charges and give him 40 years that was clearly except-
26 ional in nature and clearly violated his rights .

27 Due Process of Law Means:

28 " The conduct of legal proceedings according to
established rules and principles for the protection
and enforcement of private rights, including notice
and the right to a fair hearing or trial before a
tribunal with the power to decide the case "
" Due Process of law" in each particular case means
such an exertion of the powers of government as the
settled maxims of law sanction, and under such safe-
guards for the protection of individual rights as
those maxims prescribe for the class of cases to which

1 the one in question belongs

2 "Thomas M. Cooley, A Treatise on the Constitutional Limitations 356 (1868).

3 "An elementary and fundamental requirement of due process
4 in any proceeding which is to be accorded finality is notice
5 reasonably calculated, under all the circumstances, to apprise
6 interested parties of the pendency of the action and afford them
7 an opportunity to present their objections...The notice must be
8 of such nature as reasonably to convey the required information"

9 Mullane v. Central Hanover Bank & Trust Co. 339 U.S. 306 314 70 S Ct 652

10 657 (1950)[Jackson J.]

11 EQUAL PROTECTION CLAUSE means:

12 [[T]he 14th amendment provision requiring the States
13 to give similarly situated person or classes similar
14 treatment under the law "

15 "Equal protection does not require that all persons be dealt with identical-

16 ly but it does require that a distinction made have some relevance to the

17 purpose for which the classification is made" Baxstrom V. Herold, 383 U.S.107

18 111 86 S.Ct 760 763 (1966).As in all equal protection cases,...the crucial

19 question is whether there is an appropriate governmental interest suitably

20 Furthered by the differential treatment" Police Department V. Mosley, 408

21 U.S. 92 95 92 S Ct 2286, 2290,(1972). [T]he equal protection principle is

22 exclusively associated with written Constitutions and embodies guarantees of

23 equal treatment normally applied not only to the procedural enforcement of

24 laws but also to the substantive content of their provisions. in other words

25 the equal protection of the laws is invariably treated as a substantive

26 Constitution Principle which demands that laws will only be legitimate if

27 they can be described as just and equal" Polyviou, The equal Protection

28 of the laws 4 (1980) The Pacific County prosecutor charged the Appellate

with two counts of delivery of methamphetamine in a school zone after

previously having been convicted under chapter 69.50 Cp 18-20 RCW 69.50.401

(1)&(2)(a); RCW 69.50.435(1)(d); RCW 9.94A.533(6); RCW 69.50.408; RCW 69.

50.430. The State alleged that Mr. York delivered the drugs on October 11

and 12 2007 CP 18-19 a jury trial was began on May 19th 2007 before the

Honorable Michael J Sullivan 1RP [included in this brief are the five

volumes of Verbatim reports referenced as follows: 1RP March 19th 2007:

1 2RP-April 20th 2007; 3RP-April 27th 2007; 4RP -May 11th 2007; and 5RP-May 15
2 th 2008] After the jury was selected and sworn in, The Prosecutor allowed Mr.
3 Oleachea the States sole witness with direct knowledge as to the crimes in
4 Question to enter and stay in the jurors room with the jury present 1RP pgs
5 37-38 (pg 37 Lines 15-25] Lines 15th-25 set the stage for the prosecuting
6 attorney to secure a mistrial. The court upon returning from it's 1:30 pm
7 recess for lunch 1RP page 37 line 15-25; page 38 line 1-25 Stating the fol-
8 lowing [pg 37 line 23-25]

9 "" The Court thank you please be seated it's about 1:26 or so were back on
10 the record" [pgs 38 lines 1-25]

11 Here is where the court discovered that the States witness had not only
12 been found in the jury room but was eating his lunch with the jury present
13 as such the Judge ordered a mis-trial and the State proceeded to re-try Mr.
14 York therefore, based upon the states mistake that was arbitrarly and will-
15 fully executed to obtain a continuance that the court would have most
16 likely not have granted due to the Petitioner's Speedy trial rights CrR
17 3.3 . As this court can plainly see that this case should have not went
18 Further than the original trial as the State having full knowledge as to
19 what if anything the defence witness would or even could testify to allowed
20 and ordered the Jail to release her thereby forcing the defence to take
21 a Plea agreement for above the standard range while the state amended his
22 counts to show that the enhancement would not be added yet with his
23 Sentence done in such away the also forced an exceptional sentence on him.
24 It is within the State discretion to amend the charging documents
25 However, that in no way implies that the can coreerce him with an outcome
26 that they no they can not obtain therefore, this court must find for the
27 Petitioner and vacate his sentence . the only reason that this is the
28 only outcome possible Due to the States mistake and the fact that the
State knew that he in fact did not committ the crimes therefore, the only

1 reasonable course of action is to dis mis the charges Mr. York is now
2 Serving and to bar any action by the county for filing said brief
3 This is acked in the interest of justice
4

5
6
7 Done This FeBwRARY Day of 14, 2008
8

9 Respectively Submitted

10
11 Richard York
12

13 Richard York Pro-Se Additional

14 Grounds

15 Airway Heights Correction center

16 P.O.Box 2139 T A 28u 986686

17 Airway Heights Washington 99001
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EXHIBIT

1

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

Cause # 07-1-00014-1

Presiding Judge: Mike Sullivan

STATE OF WASHINGTON
VS
YORK, RICHARD

Court Reporter: M. Staricka
Clerk: V. Leach

Prosecutor : Burke:
Rothman: x
Terrillion:
Bustamante:

JURY TRIAL OF RICHARD YORK
March 19, 2007

Comes before the court, the trial of Richard York.

Court makes introductions. Mr. Mike Rothman, Chief Deputy Prosecutor appearing on behalf of the State. Mr. David Hatch, Counsel for the defense. Mr. Richard York present in custody.

Court welcomes jury and prepares for voir dier. Mr. Hatch addressed the court, ready to proceed. Mr. Rothman addressed the court, ready to proceed.

Court reads general instructions to jury, inquired if any jurors cannot sit on today's and possibly tomorrows jury. None responded. Clerk gives oath to jury. Court inquires with general voir dier questions.

Side Bar: (break issue)

Mr. Stigar #16 excused by the court for cause.

Short recess:

Court back in session:

Mr. Rothman with voir dier. Objection. Sustained. Continued with voir dier. Objection.

Side Bar: (objection issue)

Mr. Rothman continued with voir dier.

Mr. Hatch with voir dier. Moves for excusal of Juror #9 for cause. Court will interview in chambers, reserve on motion. Mr. Hatch continued with Voir Dier.

Mr. Rothman with voir dier. Objection. Sustained. Objection. Sustained. Objection. Sustained. Continued with Voir dier.

Side Bar: (peremptory's/ 13th juror)

Mr. Hatch with voir dier.

Court interviews juror #9 in Chambers.

Mr. Snodgrass Juror #9 excused for cause.

Counsel exercises peremptories.

SEATED JURY

1. Branda Mitby
2. Carla McLeod
3. Ellen Smith
4. Raymond Palmer
5. Tammy Foust
6. William McKenzie
7. Howard Lee
8. William Farrell
9. Gary Dennis
10. Fred Merk
11. Joseph Rapisordo
12. Philip Elcher
13. Dawn Rose

Clerk gives oath to seated jury. Judge gives instructions to jury regarding proceedings.

Out of the presence of the jury:

Mr. Hatch addressed the court, motions in limine granted, witnesses be excused from courtroom, no discussion outside of courtroom with witnesses. Mr. Rothman will instruct his witnesses. Mr. Hatch clarified.

Short recess:

Out of the presence of the jury:

Mr. Rothman states that Ms. Stigar will testify, verified through counsel Mr. Karlsvik, requests ability to speak with her for about one hour with counsel present to ascertain testimony. Mr. Hatch advises spoke with Ms. Stigar, still wants to testify. Court will make ruling if allowed to testify, inquired of opening remarks and if ruling needs to be made prior to opening remarks. Court will make ruling prior to this afternoon. Mr. Rothman states would like decision at end of case in chief. Court inquired. Mr. Hatch addressed the court, will accommodate and not mention in opening. Court will make decision after today, no mention of Ms. Stigar in opening remarks, unless State decides to.

Court advises witness for Prosecution, Mr. Oleachea was in jury room when jury went into the jury room, using the telephone, unknown from the court what took place, will have bailiff testify as to what heard and saw, then will make decision. Prosecutor to speak with witness regarding no contact with jury panel.

Inspector Sultimier inquired regarding possible female witness, how should be dressed. Mr. Hatch explained. Court advises is up to jail. Probably won't get to today as witness.

Recess, resume at 1:30 pm.

Out of the presence of the jury 1:26 pm.

Court explained that it was brought to the court's attention that there was a witness in the jury room after informed Prosecutor to make sure witness did not have contact with jury.

Millie Clements, Bailiff sworn and testified. Court questioned. Testimony. Ms. Clements identified Mr. Rodney Oleachea. Court continued with questioning. Testimony. Mr. Rothman has no questions. Mr. Hatch questioned witness. Testimony. Witness is excused.

Ms. Dawn Lorton, Chief Deputy Clerk sworn and testified. Court questioned. Ms. Lorton identified Mr. Rodney Oleachea. Mr. Rothman has no questions. Mr. Hatch questioned witness. Testimony. Witness is excused.

Court clarified testimony of Ms. Clements. Court inquired of Chief Deputy Prosecutor if he spoke with witness. Mr. Rothman addressed the court, did not have opportunity to contact witness.

Mr. Hatch addressed the court, needs to make sure client gets a fair trial, court is being very careful, witness was alone in jury room with two jurors, concerned that did not know what happened, needs to know exactly what is happening, request for a mistrial, new jury needed, no way to correct what has happened.

Mr. Rothman does not know what standard is needed to request a mistrial, prepared for trying a case, did not research mistrial law.

Court states is within courts discretion to grant a mistrial, again explained incident, jury has seen witness twice since trial started, within their confines of the jury room, concerned with how to fix.

Court grants mistrial. Court orders that Prosecutor's witnesses never go into the jury room at any time during a trial and while the court is still in session. Extremely distressing.

Discussion of how to proceed.

Back in the presence of the jury.

Court speaks to the jury, advises has declared a mistrial, releases the jury.

Short recess:

Court inquired of counsel regarding time frame for jury trial. Mr. Hatch states CR 3.3.(c) III, resetting of commencement date, 60 days from today. Court agrees. Mr. Rothman concurs. Mr. Rothman states will be moving to join with Ms. Danyelle Stigar case. Court explained. Mr. Hatch states has not looked at other case, checked with schedule, shared available dates. Mr. Hatch moves the court for release of defendant, not fault of defendant. Court leaves bail as set, pre-trial release conditions to remain in effect. Court inquired if any new motions to be noted up. Agreement of counsel for date setting of new trial date, preserves right to speedy trial. Court signed "Order RE: Mistrial"

Pre-trial 4-6-2007 1:30pm New Trial Date 5-2/3-2007 9:00am

EXHIBIT

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

STATE OF WASHINGTON,)	
	)	NO 07-1-00014-1
Plaintiff,	)	THIRD
vs	)	AMENDED INFORMATION
	)	RCW 69.50.401(1) and (2)(b)
RICHARD D. YORK,	)	RCW 69.50.435(1)(d)
DOB: 01/10/70)	
Defendant	)	NOTICE OF SENTENCE
	)	ENHANCEMENT

COMES NOW DAVID BURKE, Prosecuting Attorney for Pacific County, Washington, and amends the Information to accuse the defendant of two counts of Delivery of Methamphetamine with School Zone Sentence Enhancements, committed as follows:

COUNT I

The defendant, **RICHARD D. YORK**, in Pacific County, Washington, on or about **October 11, 2006**, did knowingly deliver a controlled substance, to-wit: Methamphetamine, in violation of RCW 69.50.401(1) and (2)(b).

AND FURTHERMORE, the commission of said crime took place within 1000 feet of the perimeter of school grounds which adds an additional 24 months confinement, in violation of RCW

1 **69.50.435(1)(d) and RCW 9.94A.533(6).**

2 Because the defendant committed this crime within 1000 feet of the
3 perimeter of school grounds, and because the defendant has previously been
4 convicted under Chapter 69.50.401 through 69.50.4013, 69.50.4015,
5 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410 or 69.50.415 RCW, the
6 maximum punishment is twenty (20) years imprisonment and/or a fine of not
7 less than \$2,000 nor more than \$50,000, pursuant to RCW 69.50.401(2)(b),
8 RCW 69.50.430, and 69.50.435.
9
10

11
12 **COUNT II**
13

14 The defendant, **RICHARD D. YORK**, in Pacific County, Washington,
15 on or about **October 12, 2006**, did knowingly deliver a controlled
16 substance, to-wit: Methamphetamine, in violation of RCW 69.50.401(1) and
17 (2)(b).
18

19 **AND FURTHERMORE, the commission of said crime took place**
20 **within 1000 feet of the perimeter of school grounds which adds an**
21 **additional 24 months confinement, in violation of RCW**
22 **69.50.435(1)(d) and RCW 9.94A.533(6).**
23

24 Because the defendant committed this crime within 1000 feet of the
25 perimeter of school grounds, and because the defendant has previously been
26 convicted under Chapter 69.50.401 through 69.50.4013, 69.50.4015,
27 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410 or 69.50.415 RCW,
28 the maximum punishment is twenty (20) years imprisonment and/or a fine of
29 not less than \$2,000 nor more than \$50,000, pursuant to RCW
30 69.50.401(2)(b), RCW 69.50.430, and 69.50.435.
31
32
33

1 Dated this 11 day of April, 2007.

2
3 DAVID J. BURKE, Prosecuting Attorney

4
5 By: 
6 MICHAEL ROTHMAN, WSBA#33048
7 Senior Deputy Prosecuting Attorney
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EXHIBIT

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03/07/2007
10:58

PACIFIC COUNTY SHERIFF'S OFFICE
State Link Messages:

286
1



Unread Msg(s) 0

Arrival: 10:56:51 03/07/2007 Msg subj: QW

Message Text:
(See below)

=====

Message Text:

WWCICINDJPC015.QWH.WA0250015.ATN/B WALKER DISPOSITION.NAM/OLEACHEA, RODNEY DEE.
DOB/19650802.
RAC/I.SEX/M.PUR/C.INV/INV

----- RECORD NUMBER 2 OF 4 -----
MISDEMEANOR WARRANT (BASED ON DOB,NAM)

MKE/EWW ORI/WA0140300 NAM/OLEACHEA,RODNEY DEE .M.W. .08/02/1965
HGT/600 WGT/215 EYE/BRO HAI/BRO
OCA/C00025762 SMT/TAT UR ARM
FBI/899581CA0 SID/WA12570601 SOC/537647744
OLN/OLEACRD354ND.WA.2003
OFF/0001

OFL/FTA OBSTRUCTING LAW ENF/POSSESS PARAPHERNALIA



DOW/04/06/2005 ORC/WA014041J

TOW/MS WAR/C00025762 AOB/01050

WASIS/EXTR/GRAYS HARBOR COUNTY CASH BAIL ONLY TO VERIFY CONTACT HOQUIAM PD

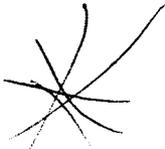
360-532-0892

ENT: 04/08/2005 AT 1822 FROM GH302 BY/PD HOQUIAM (GH300)

WAC/05W0066346

*** WASIS IDENTIFICATION INFORMATION BASED ON SID/PCN IN WARRANT ***
*** POSSIBLE CRIMINAL HISTORY RECORD ***
*** DO NOT ARREST ON THIS INFORMATION ***
*** CONVICTED FELON ***

NAM/OLEACHEA,RODNEY D DOB/08/02/1965 SEX/M RAC/I
SID/WA12570601 PCN/ FBI/899581CA0
HGT/600 WGT/215 EYE/BRO HAI/BLK POB/CA
DOB/08/02/1965
SOC/537647744
SMT/SC ABDOM /TAT L ARM /TAT L ARM /TAT UL ARM /TAT UR ARM /ART R HND
AKA/OLEACHEA,RODNEY DEE /OLEACHEA,ROD /OLEACHA,RODNEY DEE /OLECHEMA,RODNEY DEE



03/07/07 10:46:14

DN2001MI Defendant Case History (DCH) STATEWIDE COURT DB2P PUB 6 of 7

Case: _____ Csh: _____ Pty: _____ StId: D OLEACRD354NB WA

Name: OLEACHEA, RODNEY DEE NmCd: IN 61A 21795

CONFIDENTIAL--NOT FOR RELEASE

True Name: OLEACHEA, RODNEY DEE IN 61A 21795 More> 49 Cases

AKA's:

S	N	Case	LEA	Ty	Crt	Date	Violation Short Title	--- Status ---					
								DV	Jg	CD	W	F	O
-	-	C00319495	WSP	CT	GH1	05/03/02	POSS OF MARIJUANA	N	D			N	I
-	-	I03113331	WSP	IT	NPD	04/02/02	OP MOT VEH W/OUT LIAB INS	N	C				I
-	-	I02-15469	SBP	IT	SBM	04/01/02	OP MOT VEH W/OUT LIAB INS	N	C				I
-	-	I00004528	RAY	IT	RAM	02/12/02	OP MOT VEH W/OUT LIAB INS	N	C				I
-	-	I02-15395	SBP	IT	SBM	01/04/02	FAIL TO WEAR SAFETY BELT	N	C				I
-	-					01/04/02	OP MOT VEH W/OUT LIAB INS	N	C				
-	-	7622403	WSP	CN	LCD	02/02/94	POSSESSION OF MARIJUANA	D		CL	*	*	
-	-	4703293	WSP	CT	THD	09/11/86	NO VALID DRIVERS'S LICENSE	G		CL	*	*	
-	-	05-1-00085-4	S1	S25		03/18/05	ELUDING A POLICE VEHICLE	N	G			CM	N
-	-	04-1-00184-4	S1	S25		10/05/04	CRIMINAL TRESPASS 1ST DEGREE	N	G			CM	

PF1 PF2 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12

HELP PER CDK PLS CDT BWD FWD DOL COS CFHS EXIT

4-0 1 Sess-1 206.194.129.5 FTCP1189 6/75

NAME USED: OLEACHEA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0250000 PACIFIC COUNTY SHERIFF
 LOCAL ID: 66454 PCN: 993130354

ARREST OFFENSES

09930 FAIL TO COMPLY
 CLASS UNKNOWN
 ORIGINATING AGENCY: WA0250000
 PACIFIC COUNTY SHERIFF
 DISPO RESPONSIBILITY: WA025013J
 COURT CASE NO: NDCC350664
 DATE OF OFFENSE: 05/07/2004

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA025013J PACIFIC COUNTY NORTH
 DISTRICT COURT
 COURT CASE NO: C00350664
 REFER TO 10/14/2003

ARREST 13

DATE OF ARREST: 09/09/2004

NAME USED: OLEACHEA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0250000 PACIFIC COUNTY SHERIFF
 LOCAL ID: 66454 PCN: 993133175

ARREST OFFENSES

0736910 MARIHUANA POSS <40 GRAMS
 RCW: 69.50.4014
 MISDEMEANOR
 ORIGINATING AGENCY: WA0250000
 PACIFIC COUNTY SHERIFF
 DISPO RESPONSIBILITY: WA025013J
 COURT CASE NO: NDC046581
 DATE OF OFFENSE: 09/09/2004

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA025013J PACIFIC COUNTY NORTH
 DISTRICT COURT
 COURT CASE NO: ND0008313

STATUS: DISMISSED
 0736910 MARIHUANA POSS <40 GRAMS
 RCW: 69.50.4014
 MISDEMEANOR
 STATUS DATE: 11/30/2004

STATUS: DISMISSED
 0738900 DRUG PARAPHERNALIA
 RCW: 69.50.412(1)
 MISDEMEANOR
 STATUS DATE: 11/30/2004

ARREST 14

DATE OF ARREST: 10/05/2004

NAME USED: OLEACHEA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0250000 PACIFIC COUNTY SHERIFF
 LOCAL ID: 66454 PCN: 993133965

ARREST OFFENSES

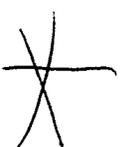
0292400 ROBBERY-2
 RCW: 9A.56.210(2)
 CLASS B FELONY
 ORIGINATING AGENCY: WA0250000
 PACIFIC COUNTY SHERIFF
 DISPO RESPONSIBILITY: WA025015J
 DATE OF OFFENSE: 10/05/2004

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA025015J PACIFIC COUNTY
 SUPERIOR COURT
 COURT CASE NO: 041001844

STATUS: GUILTY
 0235400 CRIMINAL TRESPASS-1
 RCW: 9A.52.070(2)
 GROSS MISDEMEANOR

0231000 RESIDENTIAL BURGLARY



SCARS, MARKS, TATTOOS, AMPUTATIONS

LOCATION	DESCRIPTION	LOCATION	DESCRIPTION
SC ABDOM		TAT L ARM	NAMES
TAT L ARM	SHAPES	TAT UL ARM	SHAPES
TAT UR ARM	NATURE	ART R HND	

CONVICTION AND/OR ADVERSE FINDING SUMMARY

			DISPOSITION DATE
4 FELONY(S)			
	VUCSA-COUNTERFEIT SUBSTANCE	FELONY	07/26/2002
	VUCSA-POSSESS	FELONY 3	01/28/2004
	VUCSA-POSSESS WITHOUT A PRESCRIPTION	FELONY	03/30/2004
	ATTEMPT TO ELUDE	CLASS C FELONY 4	06/10/2005
2 GROSS MISDEMEANOR(S)			
	DRIVING UNDER THE INFLUENCE		06/25/2003
	CRIMINAL TRESPASS-1		11/24/2004
5 MISDEMEANOR(S)			
	VUCSA-POSS MARIJ 40 GRAMS OR LESS		03/06/2003
	DRIVING WHILE LIC SUSP OR REVOKED 3		03/11/2003
	DRIVING WHILE LIC SUSP OR REVOKED 3		10/16/2003
	VUCSA-POSS MARIJ 40 GRAMS OR LESS		10/16/2003
	MARIHUANA POSS <40 GRAMS		12/28/2005
0 CLASSIFICATION(S) UNKNOWN			

NO KNOWN SEX/KIDNAPPING OFFENDER REGISTRATIONS

NO KNOWN APPLICANT DETAILS

CRIMINAL HISTORY INFORMATION

THE ARRESTS LISTED MAY HAVE BEEN BASED ON PROBABLE CAUSE AT THE TIME OF ARREST OR ON A WARRANT. PROBABLE CAUSE ARRESTS MAY OR MAY NOT RESULT IN THE FILING OF CHARGES. CONTACT THE ARRESTING AGENCY FOR INFORMATION ON THE FORMAL CHARGES AND/OR DISPOSITIONS.

ARREST 1

DATE OF ARREST: 05/14/1984

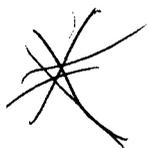
NAME USED: OLEACHEA, RODNEY D
 CONTRIBUTING AGENCY: WA0140300 HOQUIAM POLICE DEPARTMENT
 LOCAL ID: 84173A PCN: N/A

ARREST OFFENSES

02312 BURGLARY 2
 RCW: 9A.52.030
 CLASS B FELONY
 ORIGINATING AGENCY: WA0140300

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA0140300 HOQUIAM POLICE
 DEPARTMENT



03/07/2007
10:57.

PACIFIC COUNTY SHERIFF'S OFFICE
State Link Messages:

286
Page: 1

EXIBIT (5)
EXHIBIT

Unread Msg(s) 0

Arrival: 10:56:52 03/07/2007 Msg subj: QW

Message Text:
(See below)

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Message Text:

WVCICINDJPC015.QWH.WA0250015.ATN/B WALKER DISPOSITION.NAM/OLEACHEA, RODNEY DEE.
DOB/19650802.
RAC/I.SEX/M.PUR/C.INV/INV

----- RECORD NUMBER 4 OF 4 -----

*** NOT A WARRANT ***

PROTECTION ORDER (BASED ON DOB,NAM)

MKE/EPO ORI/WA0250000 NAM/OLEACHEA,RODNEY DEE .M.I. .08/02/1965

HGT/600 WGT/215 EYE/BRO HAI/BLK

OCA/060523005 SMT/TAT R HND

FBI/899581CA0 SID/WA12570601 SOC/537647744

OLN/OLEACRD354NB.WA.2003

RTP/PO ORDER NUMBER/DV06-001 SERVED/YES

PCO/THE SUBJECT IS RESTRAINED FROM ASSAULTING, THREATENING, ABUSING,
HARASSING, FOLLOWING, INTERFERING, OR STALKING THE PROTECTED PERSON AND/OR
THE CHILD OF THE PROTECTED PERSON.

DOI/05/23/2006 EXD/05/23/2007 ORC/WA025013J BRADY/Y

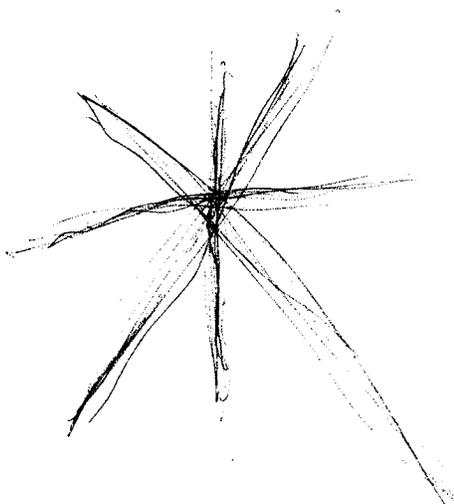
IS/CONFIRM 360 875 9397 REST FROM ANY CONTACT WHATSOEVER REST 300 FT FROM
RESIDENCE WORKPLACE OF PETITIONER

PROTECTED PERSON/TIPLER,ROBIN JEAN.F.W.06/19/1959.

ENT: 05/24/2006 AT 0107 FROM SOBSO BY/SO SOUTH BEND (SOBSO)

UPD: 05/26/2006 AT 0052 FROM SOSO2

WAC/06R0030096 NIC/H687880428



03/07/2007
10:57

PACIFIC COUNTY SHERIFF'S OFFICE
State Link Messages:

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Unread Msg(s) 0

Arrival: 10:56:52 03/07/2007 Msg subj: PA

Message Text:
(See below)

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Message Text:

WWCICINDJPC015.PAGE 1
QR.WA0250015.FBI/899581CA0.PUR/C.ATN/B WALKER DISPOSITION

ATN/B WALKER DISPOSITION
WASHINGTON STATE CRIMINAL HISTORY RECORD FOR SID/WA12570601
WASHINGTON STATE PATROL
IDENTIFICATION AND CRIMINAL HISTORY SECTION
P.O. BOX 42633
OLYMPIA, WASHINGTON 98504-2633

NOTICE

THE FOLLOWING TRANSCRIPT OF RECORD IS FURNISHED FOR OFFICIAL USE ONLY.
SECONDARY DISSEMINATION OF THIS CRIMINAL HISTORY RECORD INFORMATION IS
PROHIBITED UNLESS IN COMPLIANCE WITH THE WASHINGTON STATE CRIMINAL RECORDS
PRIVACY ACT, CHAPTER 10.97 RCW.

POSITIVE IDENTIFICATION CAN ONLY BE BASED UPON FINGERPRINT COMPARISON. BECAUSE
ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED
FOR SUBSEQUENT USE. WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED,
COMMUNICATE DIRECTLY WITH THE AGENCY THAT SUPPLIED THE INFORMATION TO THE
WASHINGTON STATE PATROL.

SID NUMBER	NAME	FBI NUMBER	DOC NUMBER
WA12570601	OLEACHEA, RODNEY D	899581CA0	844237

PERSON INFORMATION

SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR	PLACE OF BIRTH	CITIZENSHIP
M	I W	600	215	BRO	BLK	CA WA	US XX

NAMES USED	DATES OF BIRTH	SOC SEC NUMBER	MISC NUMBER
OLEACHEA, RODNEY DEE			
OLEACHEA, ROD	08/02/1965	537-64-7744	
OLEACHA, RODNEY DEE			
OLECHEA, RODNEY DEE			

DNA TAKEN: Y DNA TYPED: Y DLO:

HOQUIAM POLICE DEPARTMENT
DISPO RESPONSIBILITY: WA0140300
DATE OF OFFENSE: 05/14/1984

STATUS: NOT RECEIVED

ARREST 2

DATE OF ARREST: 07/02/2002

NAME USED: OLEACHEA, RODNEY DEE
CONTRIBUTING AGENCY: WA0250000 PACIFIC COUNTY SHERIFF
LOCAL ID: 66454 PCN: 007484763

ARREST OFFENSES

05207 CRIMES BY PRISONER(S) (DRUGS)

RCW: 9.94.041
CLASS C FELONY
ORIGINATING AGENCY: WA0250000
PACIFIC COUNTY SHERIFF
DISPO RESPONSIBILITY: WA025015J
DATE OF OFFENSE: 06/27/2002

07300 VUCSA

RCW: 69.50.401
CLASS UNKNOWN
ORIGINATING AGENCY: WA0250000
PACIFIC COUNTY SHERIFF
DISPO RESPONSIBILITY: WA025015J
DATE OF OFFENSE: 06/27/2002

09910 PROBATION/SUPERVISION VIOLATION

CLASS UNKNOWN
ORIGINATING AGENCY: WA0250000
PACIFIC COUNTY SHERIFF
DISPO RESPONSIBILITY: WA025015J
DATE OF OFFENSE: 06/27/2002

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA025015J PACIFIC COUNTY
SUPERIOR COURT
COURT CASE NO: 021001023

STATUS: GUILTY
07371 VUCSA-COUNTERFEIT SUBSTANCE
RCW: 69.50.401(B)(1)
FELONY
STATUS DATE: 07/26/2002
COMMENT: METHAMPHETAMINE

SENTENCE: SENT. DESC.:
CHG 01: JAIL-30 DS, SUPV-12
MOS

ARREST 3

DATE OF ARREST: 02/07/2003

NAME USED: OLEACHEA, RODNEY DEE
CONTRIBUTING AGENCY: WA0250000 PACIFIC COUNTY SHERIFF
LOCAL ID: 66454 PCN: 007480946

ARREST OFFENSES

09930 FAIL TO COMPLY

CLASS UNKNOWN
ORIGINATING AGENCY: WA0250000
PACIFIC COUNTY SHERIFF
DISPO RESPONSIBILITY: WA025015J
DATE OF OFFENSE: 02/07/2003

09930 FAIL TO COMPLY

CLASS UNKNOWN
ORIGINATING AGENCY: WA0250000
PACIFIC COUNTY SHERIFF
DISPO RESPONSIBILITY: WA025013J
DATE OF OFFENSE: 02/07/2003

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA025013J PACIFIC COUNTY NORTH
DISTRICT COURT

STATUS: NOT RECEIVED

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA025015J PACIFIC COUNTY
SUPERIOR COURT
COURT CASE NO: 021001023
REFER TO 07/02/2002

CONTRIBUTOR OR RESPONSIBLE AGENCY:

01134 ASSAULT 4
 RCW: 9A.36.041
 DOMESTIC VIOLENCE
 GROSS MISDEMEANOR
 ORIGINATING AGENCY: WA0250000
 PACIFIC COUNTY SHERIFF
 DISPO RESPONSIBILITY: WA025011J
 DATE OF OFFENSE: 02/07/2003

07369 VUCSA-POSS MARIJ 40 GRAMS OR LESS
 RCW: 69.50.401(E)
 MISDEMEANOR
 ORIGINATING AGENCY: WA0250000
 PACIFIC COUNTY SHERIFF
 DISPO RESPONSIBILITY: WA025011J
 DATE OF OFFENSE: 02/07/2003

07389 DRUG PARAPHERNALIA
 RCW: 69.50.412
 MISDEMEANOR
 ORIGINATING AGENCY: WA0250000
 PACIFIC COUNTY SHERIFF
 DISPO RESPONSIBILITY: WA025011J
 DATE OF OFFENSE: 02/07/2003

WA025011J RAYMOND MUNICIPAL
 COURT
 COURT CASE NO: 0356

STATUS: GUILTY
 07369 VUCSA-POSS MARIJ 40 GRAMS
 OR LESS
 RCW: 69.50.401(E)
 MISDEMEANOR
 STATUS DATE: 03/06/2003

SENTENCE: SENT. DESC.:
 CHG 01:
 FINE-500.00/SUSPENDED
 350.00, JAIL-30 DS/SUSPENDED
 29 DS

STATUS: DISMISSED
 07389 DRUG PARAPHERNALIA
 RCW: 69.50.412
 MISDEMEANOR
 STATUS DATE: 03/06/2003

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA025011J RAYMOND MUNICIPAL
 COURT
 COURT CASE NO: 0355

STATUS: DISMISSED
 01134 ASSAULT 4
 RCW: 9A.36.041
 DOMESTIC VIOLENCE

END OF PAGE 1 - PAGE 2 TO FOLLOW

03/07/2007
10:57

PACIFIC COUNTY SHERIFF'S OFFICE
State Link Messages:

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Arrival: 10:56:53 03/07/2007 Msg subj: PA

Message Text:
(See below)

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Message Text:

WWCICINDJPC015.PAGE 2
QR.WA0250015.FBI/899581CA0.PUR/C.ATN/B WALKER DISPOSITION

ATN/B WALKER DISPOSITION
WASHINGTON STATE CRIMINAL HISTORY RECORD FOR SID/WA12570601

GROSS MISDEMEANOR
STATUS DATE: 03/06/2003

ARREST 4

DATE OF ARREST: 02/26/2003

NAME USED: OLEACHEA, RODNEY DEE
CONTRIBUTING AGENCY: WA0140000 GRAYS HARBOR COUNTY SHERIFF OFFICE
LOCAL ID: 24352 PCN: 007053479

ARREST OFFENSES

07644 DRIVING UNDER THE INFLUENCE
RCW: 46.61.502
GROSS MISDEMEANOR
ORIGINATING AGENCY: WAWSP0000
WASHINGTON STATE CONTROL TERMINAL
OIN: C319495
DISPO RESPONSIBILITY: WA014033J
DATE OF OFFENSE: 02/26/2003
COMMENT: WRNT

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA014033J GRAYS HARBOR COUNTY
DISTRICT COURT NO 1
COURT CASE NO: C00319495

STATUS: GUILTY
07644 DRIVING UNDER THE INFLUENCE
RCW: 46.61.502
GROSS MISDEMEANOR
STATUS DATE: 06/25/2003

SENTENCE: JAIL: 365 DS,
JAIL SUS.: 364 DS
SUPERVISION: 5 YRS,
FINE: \$560.00

STATUS: DISMISSED
07370 VUCSA-POSS MARIJ UNKNOWN
AMOUNT
RCW: 69.50.401
CLASS UNKNOWN
STATUS DATE: 06/25/2003

ARREST 5

DATE OF ARREST: 04/10/2003

NAME USED: OLEACHEA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0140000 GRAYS HARBOR COUNTY SHERIFF OFFICE
 LOCAL ID: 24352 PCN: 007052391

ARREST OFFENSES

07331 VUCSA-MANUFACTURE/DELIVER/POSS
 W/INT
 RCW: 69.50.401(A)(1)
 FELONY
 ORIGINATING AGENCY: WA0140000
 GRAYS HARBOR COUNTY SHERIFF OFFICE
 OIN: 0311778
 DISPO RESPONSIBILITY: WA014015J
 DATE OF OFFENSE: 04/10/2003

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA014015J GRAYS HARBOR COUNTY
 SUPERIOR COURT
 COURT CASE NO: 031001778

STATUS: GUILTY
 07351 VUCSA-POSSESS
 RCW: 69.50.401
 FELONY
 STATUS DATE: 01/28/2004

SENTENCE: SENT. DESC.:
 CHG 01: FINE-1700.00,
 JAIL-60 DS

ARREST 6

DATE OF ARREST: 05/25/2003

NAME USED: OLEACHEA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0140000 GRAYS HARBOR COUNTY SHERIFF OFFICE
 LOCAL ID: 24352 PCN: 847844361

ARREST OFFENSES

644 DRIVING UNDER THE INFLUENCE
 RCW: 46.61.502
 GROSS MISDEMEANOR
 ORIGINATING AGENCY: WAWSP0000
 WASHINGTON STATE CONTROL TERMINAL
 OIN: C319495
 DISPO RESPONSIBILITY: WA014033J
 DATE OF OFFENSE: 05/25/2003
 COMMENT: WARRANT

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA014033J GRAYS HARBOR COUNTY
 DISTRICT COURT NO 1
 COURT CASE NO: C00319495
 REFER TO 02/26/2003

07369 VUCSA-POSS MARIJ 40 GRAMS OR LESS

RCW: 69.50.401(E)
 MISDEMEANOR
 ORIGINATING AGENCY: WAWSP0000
 WASHINGTON STATE CONTROL TERMINAL
 OIN: C319495
 DISPO RESPONSIBILITY: WA014033J
 DATE OF OFFENSE: 05/25/2003
 COMMENT: WARRANT

ARREST 7

DATE OF ARREST: 09/01/2003

NAME USED: OLEACHA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0340000 THURSTON COUNTY SHERIFF'S OFFICE
 LOCAL ID: Z0053365 PCN: 766768075

ARREST OFFENSES

07351 VUCSA-POSSESS
RCW: 69.50.401
DRUG RELATED
FELONY
ORIGINATING AGENCY: WA0340000
THURSTON COUNTY SHERIFF'S OFFICE
OIN: C0120357
DISPO RESPONSIBILITY: WA034025J
DATE OF OFFENSE: 09/01/2003

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA034025J THURSTON COUNTY
SUPERIOR COURT
COURT CASE NO: 031016601

STATUS: GUILTY
07361 VUCSA-POSSESS WITHOUT A
PRESCRIPTION
RCW: 69.50.401(D)
FELONY
STATUS DATE: 03/30/2004

SENTENCE: SENT. DESC.:
CHG 01: JAIL-4 MOS

ARREST 8

DATE OF ARREST: 09/24/2003

NAME USED: OLEACHEA, RODNEY DEE
CONTRIBUTING AGENCY: WA0140000 GRAYS HARBOR COUNTY SHERIFF OFFICE
LOCAL ID: 24352 PCN: 847860600

ARREST OFFENSES

07389 DRUG PARAPHERNALIA
RCW: 69.50.412
DRUG RELATED
MISDEMEANOR
ORIGINATING AGENCY: WA0140600
COSMOPOLIS POLICE DEPARTMENT
OIN: C90998
DISPO RESPONSIBILITY: WA014021J
DATE OF OFFENSE: 09/24/2003
COMMENT: WARRANT

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA014021J COSMOPOLIS MUNICIPAL
COURT

STATUS: NOT RECEIVED

07633 DRIVING WHILE LIC SUSP OR REVOKED

3
RCW: 46.20.342(C)
MISDEMEANOR
ORIGINATING AGENCY: WA0140600
COSMOPOLIS POLICE DEPARTMENT
OIN: C90997
DISPO RESPONSIBILITY: WA014021J
DATE OF OFFENSE: 09/24/2003
COMMENT: WARRANT

ARREST 9

DATE OF ARREST: 10/14/2003

NAME USED: OLEACHEA, RODNEY DEE
CONTRIBUTING AGENCY: WA0250000 PACIFIC COUNTY SHERIFF
LOCAL ID: 66454 PCN: 993125458

ARREST OFFENSES

09930 FAIL TO COMPLY

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:

CLASS UNKNOWN
 ORIGINATING AGENCY: WA0250100
 RAYMOND POLICE DEPARTMENT
 DISPO RESPONSIBILITY: WA025013J
 COURT CASE NO: NDCWSPC350664
 DATE OF OFFENSE: 10/14/2003

07369 VUCSA-POSS MARIJ 40 GRAMS OR LESS
 RCW: 69.50.401(E)
 MISDEMEANOR
 ORIGINATING AGENCY: WA0250100
 RAYMOND POLICE DEPARTMENT
 DISPO RESPONSIBILITY: WA025011J
 COURT CASE NO: C2737
 DATE OF OFFENSE: 10/14/2003

09930 FAIL TO COMPLY
 CLASS UNKNOWN
 ORIGINATING AGENCY: WA0250100
 RAYMOND POLICE DEPARTMENT
 DISPO RESPONSIBILITY: WA025011J
 COURT CASE NO: RMU0318503250
 DATE OF OFFENSE: 10/14/2003

WA025011J RAYMOND MUNICIPAL
 COURT

STATUS: NOT RECEIVED

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA0250000 PACIFIC COUNTY SHERIFF
 COURT CASE NO: 03185

STATUS: GUILTY
 07633 DRIVING WHILE LIC SUSP OR
 REVOKED 3

RCW: 46.20.342(C)
 MISDEMEANOR
 STATUS DATE: 10/16/2003

SENTENCE: SENT. DESC.:
 CHG 01: FINE-100.00

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA025025J PACIFIC/WAHKIAKUM
 COUNTY JUVENILE COURT
 COURT CASE NO: 03250

STATUS: GUILTY

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PACIFIC COUNTY SHERIFF'S OFFICE
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Unread Msg(s) 0

Arrival: 10:56:53 03/07/2007 Msg subj: PA

Message Text:
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Message Text:

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QR.WA0250015.FBI/899581CA0.PUR/C.ATN/B WALKER DISPOSITION

ATN/B WALKER DISPOSITION
WASHINGTON STATE CRIMINAL HISTORY RECORD FOR SID/WA12570601

07369 VUCSA-POSS MARIJ 40 GRAMS
OR LESS

RCW: 69.50.401(E)
MISDEMEANOR
STATUS DATE: 10/16/2003

SENTENCE: SENT. DESC.:
CHG 01: FINE-100.00, JAIL-30
DS/SUSPENDED 28 DS

STATUS: DISMISSED
07389 DRUG PARAPHERNALIA
RCW: 69.50.412
MISDEMEANOR
STATUS DATE: 10/16/2003

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA025013J PACIFIC COUNTY NORTH
DISTRICT COURT
COURT CASE NO: C00350664

STATUS: GUILTY
07633 DRIVING WHILE LIC SUSP OR
REVOKED 3
RCW: 46.20.342(C)
MISDEMEANOR
STATUS DATE: 03/11/2003

SENTENCE: SENT. DESC.:
CHG 01: FINE-750.00, JAIL-90
DS/SUSPENDED 70 DS

ARREST 10

DATE OF ARREST: 10/20/2003

NAME USED: OLEACHEA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0140000 GRAYS HARBOR COUNTY SHERIFF OFFICE
 LOCAL ID: 24352 PCN: 847862912

ARREST OFFENSES

7310 VUCSA-FELONY
 RCW: 69.50.000
 FELONY
 ORIGINATING AGENCY: WA0140600
 COSMOPOLIS POLICE DEPARTMENT
 OIN: 0311778
 DISPO RESPONSIBILITY: WA014015J
 DATE OF OFFENSE: 10/20/2003
 COMMENT: WARRANT

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA014015J GRAYS HARBOR COUNTY
 SUPERIOR COURT
 COURT CASE NO: 031001778
 REFER TO 04/10/2003

ARREST 11

DATE OF ARREST: 01/28/2004

NAME USED: OLEACHEA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0140000 GRAYS HARBOR COUNTY SHERIFF OFFICE
 LOCAL ID: 24352 PCN: 847872756

ARREST OFFENSES

07310 VUCSA-FELONY
 RCW: 69.50.000
 DRUG RELATED
 FELONY
 ORIGINATING AGENCY: WA0140000
 GRAYS HARBOR COUNTY SHERIFF OFFICE
 OIN: 0311778
 DISPO RESPONSIBILITY: WA014015J
 DATE OF OFFENSE: 01/28/2004
 COMMENT: WARRANT

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 UNKNOWN
 STATUS: OUT OF COUNTY WRNT
 CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA0140000 GRAYS HARBOR COUNTY
 SHERIFF OFFICE
 STATUS: NOT RECEIVED

07644 DRIVING UNDER THE INFLUENCE
 RCW: 46.61.502
 GROSS MISDEMEANOR
 ORIGINATING AGENCY: WA0140000
 GRAYS HARBOR COUNTY SHERIFF OFFICE
 OIN: C319495
 DISPO RESPONSIBILITY: WA014033J
 DATE OF OFFENSE: 01/28/2004
 COMMENT: WARRANT

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA014033J GRAYS HARBOR COUNTY
 DISTRICT COURT NO 1
 COURT CASE NO: C00319495
 REFER TO 02/26/2003

07310 VUCSA-FELONY
 RCW: 69.50.000
 FELONY
 ORIGINATING AGENCY: WA0140000
 GRAYS HARBOR COUNTY SHERIFF OFFICE
 OIN: 03116601
 DISPO RESPONSIBILITY: WA0140000
 DATE OF OFFENSE: 01/28/2004
 COMMENT: WARRANT THURSTON COUNTY

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA014015J GRAYS HARBOR COUNTY
 SUPERIOR COURT
 COURT CASE NO: 031001778
 REFER TO 04/10/2003

ARREST 12

DATE OF ARREST: 05/07/2004

RCW: 9A.52.025(2)
 CLASS B FELONY
 ORIGINATING AGENCY: WA0250000
 PACIFIC COUNTY SHERIFF
 DISPO RESPONSIBILITY: WA025015J
 DATE OF OFFENSE: 10/05/2004

STATUS DATE: 11/24/2004
 SENTENCE: SENT. DESC.:
 CHG 01: FINE-700.00,
 JAIL-365 DS/SUSPENDED 316 DS

ARREST 15

DATE OF ARREST: 03/11/2005

NAME USED: OLECHEA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0140000 GRAYS HARBOR COUNTY SHERIFF OFFICE
 LOCAL ID: 24352 PCN: 847911808

ARREST OFFENSES

0764400 DRIVING UNDER THE INFLUENCE
 RCW: 46.61.502(5)
 GROSS MISDEMEANOR
 ORIGINATING AGENCY: WAWSP0000

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA014033J GRAYS HARBOR COUNTY
 DISTRICT COURT NO 1
 COURT CASE NO: C00319495

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PACIFIC COUNTY SHERIFF'S OFFICE
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Arrival: 10:56:54 03/07/2007 Msg subj: PA

Message Text:
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Message Text:

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ATN/B WALKER DISPOSITION
WASHINGTON STATE CRIMINAL HISTORY RECORD FOR SID/WA12570601

WASHINGTON STATE CONTROL TERMINAL
OIN: C319495
DISPO RESPONSIBILITY: WA014033J
DATE OF OFFENSE: 03/11/2005
COMMENT: WARRANT FTPF

REFER TO 02/26/2003

ARREST 16

DATE OF ARREST: 03/24/2005

NAME USED: OLEACHEA, RODNEY DEE
CONTRIBUTING AGENCY: WA0140100 ABERDEEN POLICE DEPARTMENT
LOCAL ID: 89739 PCN: 009169261

ARREST OFFENSES

A237600 VEHICLE PROWLING-2
RCW: 9A.52.100(2)
ATTEMPT
MISDEMEANOR
ORIGINATING AGENCY: WA0140100
ABERDEEN POLICE DEPARTMENT
OIN: 049235
DISPO RESPONSIBILITY: WA014011J
DATE OF OFFENSE: 03/24/2005

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA014011J ABERDEEN MUNICIPAL
COURT

STATUS: NOT RECEIVED

ARREST 17

DATE OF ARREST: 05/03/2005

NAME USED: OLEACHEA, RODNEY DEE
CONTRIBUTING AGENCY: WA0250000 PACIFIC COUNTY SHERIFF
LOCAL ID: 66454 PCN: 993138959

ARREST OFFENSES

0761800 ATTEMPT TO ELUDE
RCW: 46.61.024(1)
CLASS C FELONY

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA025015J PACIFIC COUNTY
SUPERIOR COURT

ORIGINATING AGENCY: WA0250000
PACIFIC COUNTY SHERIFF
DISPO RESPONSIBILITY: WA025015J
COURT CASE NO: SUP051000854
DATE OF OFFENSE: 05/03/2005

COURT CASE NO: 05100000854

STATUS: GUILTY
0761800 ATTEMPT TO ELUDE
RCW: 46.61.024(1)
CLASS C FELONY
STATUS DATE: 06/10/2005

SENTENCE: SENT. DESC.:
CHG 01: FINE-600.00, JAIL-3
MOS

ARREST 18

DATE OF ARREST: 08/29/2005

NAME USED: OLEACHEA, RODNEY DEE
CONTRIBUTING AGENCY: WA0250000 PACIFIC COUNTY SHERIFF
LOCAL ID: 66454 PCN: 993141801

ARREST OFFENSES

0113400 ASSAULT-4
RCW: 9A.36.041(2)
DOMESTIC VIOLENCE
GROSS MISDEMEANOR
ORIGINATING AGENCY: WA0250100
RAYMOND POLICE DEPARTMENT
DISPO RESPONSIBILITY: WA025011J
COURT CASE NO: RMU3311
DATE OF OFFENSE: 08/29/2005

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA025011J RAYMOND MUNICIPAL
COURT
STATUS: NOT RECEIVED

093000 FAIL TO COMPLY
CLASS UNKNOWN
ORIGINATING AGENCY: WA0250100
RAYMOND POLICE DEPARTMENT
DISPO RESPONSIBILITY: WA025011J
COURT CASE NO: RMU0531
DATE OF OFFENSE: 08/29/2005

ARREST 19

DATE OF ARREST: 11/14/2005

NAME USED: OLEACHEA, RODNEY DEE
CONTRIBUTING AGENCY: WA0140000 GRAYS HARBOR COUNTY SHERIFF OFFICE
LOCAL ID: 24352 PCN: 847937742

ARREST OFFENSES

0764400 DRIVING UNDER THE INFLUENCE
RCW: 46.61.502(5)
GROSS MISDEMEANOR
ORIGINATING AGENCY: WAWSP0000
WASHINGTON STATE CONTROL TERMINAL
OIN: C319495
DISPO RESPONSIBILITY: WA014033J
DATE OF OFFENSE: 11/14/2005
COMMENT: WARRANT FTA

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
WA014033J GRAYS HARBOR COUNTY
DISTRICT COURT NO 1
COURT CASE NO: C00319495
REFER TO 02/26/2003

ARREST 20

DATE OF ARREST: 12/27/2005

NAME USED: OLEACHEA, RODNEY DEE
 CONTRIBUTING AGENCY: WA0250000 PACIFIC COUNTY SHERIFF
 LOCAL ID: 66454 PCN: 993144614

ARREST OFFENSES

0738900 DRUG PARAPHERNALIA
 RCW: 69.50.412(1)
 MISDEMEANOR
 ORIGINATING AGENCY: WA0250100
 RAYMOND POLICE DEPARTMENT
 DISPO RESPONSIBILITY: WA025011J
 COURT CASE NO: RMUC3321
 DATE OF OFFENSE: 12/27/2005

0736910 MARIHUANA POSS <40 GRAMS
 RCW: 69.50.4014
 MISDEMEANOR
 ORIGINATING AGENCY: WA0250100
 RAYMOND POLICE DEPARTMENT
 DISPO RESPONSIBILITY: WA025011J
 COURT CASE NO: RMUC03321
 DATE OF OFFENSE: 12/27/2005

0235400 CRIMINAL TRESPASS-1
 RCW: 9A.52.070(2)
 GROSS MISDEMEANOR
 ORIGINATING AGENCY: WA0250100
 RAYMOND POLICE DEPARTMENT
 DISPO RESPONSIBILITY: WA025011J
 COURT CASE NO: RMUC3320
 DATE OF OFFENSE: 12/27/2005

DISPOSITION

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA025011J RAYMOND MUNICIPAL
 COURT
 COURT CASE NO: 05518

STATUS: DISMISSED
 0235400 CRIMINAL TRESPASS-1
 RCW: 9A.52.070(2)
 GROSS MISDEMEANOR
 STATUS DATE: 12/28/2005

CONTRIBUTOR OR RESPONSIBLE AGENCY:
 WA025011J RAYMOND MUNICIPAL
 COURT
 COURT CASE NO: 05519

STATUS: GUILTY
 0736910 MARIHUANA POSS <40 GRAMS
 RCW: 69.50.4014
 MISDEMEANOR
 STATUS DATE: 12/28/2005

SENTENCE: JAIL: 60 DS,
 JAIL SUS.: 59 DS
 FINE: \$200.00

STATUS: DISMISSED
 0738900 DRUG PARAPHERNALIA
 RCW: 69.50.412(1)
 MISDEMEANOR
 STATUS DATE: 12/28/2005

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STATE DEPARTMENT OF CORRECTIONS

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CUSTODY STATUS INFORMATION

NAME: OLEACHA, RODNEY D
 DATE: 06/23/2006
 DOC NUMBER: 844237
 CUSTODY STATUS: INACTIVE
 TYPE: INACTIVE
 LOCATION: RAYMOND FIEL

(NON-VERIFIED CUSTODY STATUS INFORMATION-PROVIDED BY DEPARTMENT OF CORRECTIONS)

NO KNOWN CUSTODY HISTORY INFORMATION

GLOSSARY

- CONTRIBUTING AGENCY: A LOCAL SHERIFF'S OFFICE, POLICE DEPARTMENT, JAIL OR CORRECTIONAL FACILITY THAT SUBMITS FINGERPRINT CARDS TO THE SECTION.
- CONTRIBUTOR OR RESPONSIBLE AGENCY: THE AGENCY THAT SUBMITTED THE INFORMATION OR, PRIOR TO OCTOBER 1999, PRESUMED TO BE THE DISPOSITION REPORTER.
- CONVICTION AND/OR ADVERSE FINDING SUMMARY: THE NUMBER AND TYPE OF CONVICTIONS AND/OR ADVERSE FINDINGS PERTAINING TO AN INDIVIDUAL. DETAILS ARE INCLUDED UNDER CRIMINAL HISTORY INFORMATION.
- CUSTODY STATUS INFORMATION: CURRENT CUSTODY STATUS INFORMATION PROVIDED ONLINE BY THE STATE DEPARTMENT OF CORRECTIONS.
- DISPOSITION RESPONSIBILITY: AN INDICATION OF THE PROSECUTOR, COURT, OR LAW ENFORCEMENT AGENCY WHICH MAY BE RESPONSIBLE FOR REPORTING THE DISPOSITION.
- DNA SAMPLE: DNA SAMPLE AND TYPE, CONTACT WSP CRIME LABORATORY, CODIS, AT (206) 262-6020 IF OTHER CONTACT INFORMATION NOT AVAILABLE
- DOC NUMBER: WASHINGTON STATE DEPARTMENT OF CORRECTIONS NUMBER.
- LOCAL ID: LOCAL IDENTIFICATION NUMBER USED BY CONTRIBUTING AGENCY.
- NOT RECEIVED: DISPOSITION OF ARREST OFFENSES THAT HAVE NOT BEEN SUBMITTED TO THE WASHINGTON STATE PATROL IDENTIFICATION SECTION.
- OIN: OTHER IDENTIFYING NUMBER. A TRACKING NUMBER ASSIGNED BY THE CONTRIBUTING OR ORIGINATING AGENCY.

END OF PAGE 4 - PAGE 5 TO FOLLOW

03/07/2007
10:58

PACIFIC COUNTY SHERIFF'S OFFICE
State Link Messages:

286
Page: 1

Unread Msg(s) 0

Arrival: 10:56:51 03/07/2007 Msg subj: WA

Message Text:
(See below)

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Message Text:

NCIC INDJPC015.WA0250015
THIS NCIC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/OLEACHEA,RODNEY DEE SEX/M RAC/I DOB/19650802 PUR/C
NAME FBI NO. INQUIRY DATE
OLEACHEA,RODNEY DEE 899581CA0 2007/03/07

SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR PHOTO
M I 1965/08/02 600 180 BRO BLK N

BIRTH PLACE
CALIFORNIA

FINGERPRINT CLASS PATTERN CLASS
PO PI PI PM PO WU WU WU WU WU LS WU LS WU LS
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ALIAS NAMES
OLEACHA,RODNEY DEE OLEACHEA,ROD
OLECCHA,RODNEY DEE

SCARS-MARKS-
TATTOOS SOCIAL SECURITY
ART R HND 537-64-7744
SC ABDOM
TAT L ARM
TAT UL ARM
TAT UR ARM

IDENTIFICATION DATA UPDATED 2006/01/03

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:
WASHINGTON STA - STATE ID/WA12570601

THE RECORD(S) CAN BE OBTAINED THROUGH THE INTERSTATE IDENTIFICATION
INDEX BY USING THE APPROPRIATE NCIC TRANSACTION.

END

03/07/2007
10:58

PACIFIC COUNTY SHERIFF'S OFFICE
State Link Messages:

286
Page: 1

Unread Msg(s) 0

Arrival: 10:56:50 03/07/2007 Msg subj: QW

Message Text:

WWCICINDJPC015.QWH.WA0250015.ATN/B WALKER DISPOSITION.NAM/OLEACHEA, RODNEY DEE.DOB/19650802.RAC/I.SEX/M.PUR/C.INV/INV

ATN/B WALKER DISPOSITION

BASED ON DESCRIPTORS PROVIDED ABOVE WASIS RESULTED IN THE FOLLOWING:

SEARCH USING NAM/OLEACHEA,RODNEY DEE DOB/19650802 RAC/I SEX/M

SID NO	NAME	DOB	S	R	HT	WT	EYE	SOC
WA12570601	*OLEACHEA,RODNEY DEE	08/02/1965	M	I	600	215	BRO	

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03/07/2007
10:58

PACIFIC COUNTY SHERIFF'S OFFICE
State Link Messages:

286
Page: 1

Unread Msg(s) 0

Arrival: 10:56:51 03/07/2007 Msg subj: QW

Message Text:
(See below)

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Message Text:

WWCICINDJPC015.QWH.WA0250015.ATN/B WALKER DISPOSITION.NAM/OLEACHEA, RODNEY DEE.
DOB/19650802.

RAC/I.SEX/M.PUR/C.INV/INV

----- RECORD NUMBER 3 OF 4 -----
MISDEMEANOR WARRANT (BASED ON DOB,NAM)

MKE/EWW ORI/WA0140100 NAM/OLEACHEA,RODNEY DEE .M.W. .08/02/1965
HGT/600 WGT/215 EYE/BRO HAI/BRO
OCA/C00049235
FBI/899581CA0 SOC/537647744
OLN/OLEACRD354NB.WA.2003
OFF/0001
OFL/VEH PROWL 2/FTA
DOW/08/25/2006 ORC/WA014011J
TOW/MS WAR/C00049235 AOB/0002500
IS/WEST CONFIRM 360 533 3180 OR 538 4458/CASH BAIL ONLY
LXL/LIMITED EXTRADITION SEE MIS FIELD
ENT: 08/25/2006 AT 1322 FROM GH202 BY/ABERDEEN POLICE DEPARTMENT (GH200)
WAC/06W0162684

03/07/2007
10:56

PACIFIC COUNTY SHERIFF'S OFFICE
State Link Messages:

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Page: 1

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Message Text:
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Message Text:

WVCICINDJPC015.QWH.WA0250015.ATN/B WALKER DISPOSITION.NAM/OLEACHEA, RODNEY DEE.
DOB/19650802.
RAC/I.SEX/M.PUR/C.INV/INV

*** MULTIPLE RECORDS ***

----- RECORD NUMBER 1 OF 4 -----
MISDEMEANOR WARRANT (BASED ON DOB,NAM)

MKE/EWW ORI/WA0250000 NAM/OLEACHEA,RODNEY DEE .M.I.CA.08/02/1965
HGT/600 WGT/215 EYE/BRO HAI/BLK
OCA/070130001 SMT/TAT R HND FPC/POPIPIPMPO21PI22DI18
FBI/899581CA0 SID/WA12570601 SOC/537647744
OLN/OLEACRD354NB.WA.2003
OFF/0001
OFL/DWLS 3RD DEGREE
DOW/01/25/2007 ORC/WA025013J
DOW/MS WAR/C00004402 AOB/000600
MIS/EAST WEST ONLY EXTRA COOP RELAY CASH BAIL CONFIRM 24/7 360-875-9397
EXL/LIMITED EXTRADITION SEE MIS FIELD
SUPPLEMENTAL INFORMATION
SMT/SC ABDOM / TAT L ARM / TAT UL ARM / TAT UR ARM / ART R HND
AKA/OLEACHEA,RODNEY D / OLEACHEA,ROD / OLEACHA,RODNEY DEE
AKA/OLECHEA,RODNEY DEE
ENT: 01/30/2007 AT 1153 FROM PC014 BY/SO SOUTH BEND (SOBSO)
UPD: 02/27/2007 AT 1517 FROM PC012
WAC/07W0020441

*** WASIS IDENTIFICATION INFORMATION BASED ON SID/PCN IN WARRANT ***
*** POSSIBLE CRIMINAL HISTORY RECORD ***
*** DO NOT ARREST ON THIS INFORMATION ***
CONVICTED FELON

NAM/OLEACHEA,RODNEY D DOB/08/02/1965 SEX/M RAC/I
SID/WA12570601 PCN/ FBI/899581CA0
HGT/600 WGT/215 EYE/BRO HAI/BLK POB/CA
DOB/08/02/1965
SOC/537647744
SMT/SC ABDOM /TAT L ARM /TAT L ARM /TAT UL ARM /TAT UR ARM /ART R HND
AKA/OLEACHEA,RODNEY DEE /OLEACHEA,ROD /OLEACHA,RODNEY DEE /OLECHEA,RODNEY DEE

COURT OF APPEALS
DIVISION II

FILED

08 MAR 17 AM 9:19

2007 MAR 16 PM 5:20

STATE OF WASHINGTON
BY _____
DEPUTY

VIRGINIA LEACH CLERK
PACIFIC CO. WA

BY _____
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC

STATE OF WASHINGTON,)	
	)	NO 07-1-00014-1
Plaintiff,	)	SECOND
vs	)	AMENDED INFORMATION
	)	RCW 69.50.401(1) and (2)(b)
RICHARD D. YORK,	)	RCW 69.50.435(1)(d)
DOB: 01/10/70)	
Defendant	)	NOTICE OF SENTENCE
_____	)	ENHANCEMENT

COMES NOW DAVID BURKE, Prosecuting Attorney for Pacific County, Washington, and amends the Information to accuse the defendant of two counts of Delivery of Methamphetamine with School Zone Sentence Enhancements, committed as follows:

COUNT I

The defendant, **RICHARD D. YORK**, in Pacific County, Washington, on or about **October 11, 2006**, did knowingly deliver a controlled substance, to-wit: Methamphetamine, in violation of RCW 69.50.401(1) and (2)(b).

AND FURTHERMORE, the commission of said crime took place within 1000 feet of the perimeter of school grounds which adds an additional 24 months confinement, in violation of RCW 69.50.435(1)(d) and RCW 9.94A.533(6).

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Dated this 2 day of March, 2007.

DAVID J. BURKE, Prosecuting Attorney

By: Michael Rothman
MICHAEL ROTHMAN, WSBA#33048
Senior Deputy Prosecuting Attorney

EXHIBIT

FILED

2007 MAR 19 AM 9:28

YVONNE LEACH CLERK
PACIFIC CO. WA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF PACIFIC

STATE OF WASHINGTON,)
)
)
) Plaintiff,)
)
)
) vs.)
) RICHARD D. YORK,)
)
)
) Defendant.)
)

NO.07-1-00014-1

**MOTION FOR
PRECLUSION
OF TESTIMONEY**

FACTS

On February 2, 2007 defense counsel was sent initial discovery in this case. Included in this discovery were police reports that indicated that Danyele Stigar was involved in the delivery of narcotics with Mr. York. In fact Mrs. Stigar is currently incarcerated in the Pacific County Jail on cause number 06-1-227-8. Her pending charges are possession of methamphetamine, possession with intent to deliver marijuana and one count of possession of marijuana over forty grams. On March 2,

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2007 this court entered the omnibus application setting a discovery deadline of March 7th, 2007. On Friday afternoon March 16, 2007 at the discovery compliance hearing
1
2 defense counsel indicated that he may call an undisclosed witness in the defendant's
3
4 case. During a recess defense counsel indicated that he intended to call Danyele
5 Stigar to testify that she was the one that in fact committed the crimes that the
6
7 defendant is charged with.
8
9

10 MOTION

11 12 Counsel Has A Duty To Disclose Defense Discovery Prior To Trial

13 A defendant's discovery obligation under CrR 4.7(b) requires the defendant to
14 disclose to the prosecuting attorney no later than the omnibus hearing the names and
15 addresses of persons whom the defendant intends to call as witnesses at the hearing or
16 trial, together with any written or recorded statements and the substance of any oral
17 statements of such witnesses. In this case omnibus applications were filed and a
18 discovery dead line of March 7, 2007 was ordered by the court Defense counsel has a
19 duty to comply with this rule.

20 It is submitted that a defense counsel commits misconduct by his failure to
21 satisfy defense discovery obligations prior to trial.

22 Such conduct is especially egregious when a defense counsel attempts to
23 satisfy the defense's discovery obligations the morning of trial (or only a day or two
24 before trial) as a tactic to either put the prosecution at a trial disadvantage or to goad
25 the prosecution into seeking a continuance of the trial in order to adequately prepare
26 to the untimely defense discovery. Either result is outrageous because the efficiency
27 of the court and the administration of justice are unnecessarily hampered solely due to
28 counsel's misconduct in violating CrR 4.7(b).

29 Morning-of-trial disclosure of witnesses in violation of disclosure requirement
30 also appears to be an effort to subvert the truth with the manufacture of possible false
31 testimony by newly "found" witnesses just prior to trial.

32 A Court's Authority To Order Preclusion Of Defense Testimony As A Sanction For 33 Discovery Violations Due To Willful Misconduct

34 *Taylor v. Illinois*, 484 U.S. 400, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988) is the
35 seminal case concerning a court's authority to sanction the defense for violating
36 discovery rules, including preclusion of testimony of a proposed defense witness who

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was not disclosed in response to pretrial discovery requests. "If a pattern of discovery violations is explicable only on the assumption that the violations were designed to conceal a plan to present fabricated testimony, it would be entirely appropriate to exclude the tainted evidence regardless of whether other sanctions would also be merited." *Taylor*, 108 S.Ct. at 655.

A trial judge may certainly insist on an explanation for a party's failure to comply with a discovery request to identify his or her witnesses in advance of trial. If that explanation reveals that the omission was willful and motivated by a desire to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence, it would be entirely consistent with the purposes of the Compulsory Process Clause simply to exclude the witness' testimony.

The simplicity of compliance with the discovery rule is also relevant. ... Lawyers are accustomed to meeting deadlines. Routine preparation involves location and interrogation of potential witnesses and the serving of subpoenas on those whose testimony will be offered at trial. The burden of identifying them in advance of trial adds little to these routine demands of trial preparation.

Taylor, 108 S.Ct. at 656. (Citations omitted.) (Emphasis added.)

The Supreme Court continued with a discussion of what is at stake with blatant discovery violations.

More is at stake than possible prejudice to the prosecution. We are also concerned with the impact of this kind of conduct on the integrity of the judicial process itself. ... Regardless of whether prejudice to the prosecution could have been avoided in this particular case, it is plain that the case fits into the category of willful misconduct in which the severest sanction is appropriate. After all, the court, as well as the prosecutor, has a **vital interest in protecting the trial process from the pollution of perjured testimony.**

Taylor, 108 S.Ct. at 657. (Emphasis added.)

The Supreme Court also rejected the argument that a criminal defendant's case should not be harmed by his or her counsel's misconduct.

The argument that the client should not be held responsible for his lawyer's misconduct strikes at the heart of the attorney-client relationship. Although there are basic rights that the attorney cannot waive without the fully informed and publicly acknowledged consent of the client, the lawyer has—and must have—full authority to manage the conduct of the trial. The adversary process could not function effectively if every tactical decision required client approval. Moreover, given the protections afforded by the attorney-client privilege and the fact that **extreme cases may involve unscrupulous conduct by both the client and the lawyer, it would be highly impracticable to require an investigation into their relative responsibilities before applying the sanction of preclusion.** In responding to discovery, the client has a duty to be candid and forthcoming with the lawyer, and when the lawyer responds, he or she speaks for the client. Putting to one side the exceptional cases in which counsel is ineffective, the client must accept the consequences of the lawyer's decision to forgo cross-examination, to decide not to put certain witnesses on the stand, or to decide not to disclose the identity of certain witnesses in advance of trial. In this case, petitioner has no greater right to disavow his lawyer's decision to conceal Wormley's identity until after the trial had commenced than he has to disavow the decision to refrain from adducing testimony from the eyewitnesses who were identified in the Answer to Discovery. **Whenever a lawyer makes use of the sword provided by the Compulsory Process Clause, there is some risk that he may wound his own client.**

Taylor, 108 S.Ct. at 657-58. (Footnote omitted.) (Emphasis added.)

1 The Supreme Court explained *Taylor* in *Michigan v. Lucas*, 500 U.S. 145, 111
2 S.Ct. 1743, 1748, 114 L.Ed.2d 205 (1991) (preclusion of evidence of defendant's own
3 past sexual conduct with victim as remedy for failure to comply with notice and
4 hearing requirements of rape-shield statute is not a per se violation of Sixth
5 Amendment).

6 We did not hold in *Taylor* that preclusion is permissible every time a discovery rule is
7 violated. Rather, we acknowledged that alternative sanctions would be "adequate and
8 appropriate in most cases." We stated explicitly, however, that there could be circumstances
9 in which preclusion was justified because a less severe penalty "would perpetuate rather than
10 limit the prejudice to the State and the harm to the adversary process." *Taylor*, we concluded,
11 was such a case. The trial court found that Taylor's discovery violation amounted to "willful
12 misconduct" and was designed to obtain "a tactical advantage." Based on these findings, we
13 determined that, "[r]egardless of whether prejudice to the prosecution could have been
14 avoided" by a lesser penalty, "the severest sanction [wa]s appropriate."

15 (Citations omitted.)

16 Washington's Supreme Court, following *Taylor v. Illinois, supra*, upheld a
17 trial court's authority to order preclusion of defense testimony as a sanction for
18 willful discovery violations in *State v. Hutchinson*, 135 Wn.2d 863, 959 P.2d 1061
19 (1998), *cert. denied*, 525 U.S. 1157, 119 S.Ct. 1065, 143 L.Ed.2d 69 (1999). The
20 Court said—

21 The Defendant argues the trial court's exclusion of defense expert witness testimony
22 regarding diminished capacity (except Dr. Halpern's testimony about the effects of alcohol)
23 was improper under CrR 4.7(h)(7)(i), which provides:

24 [T]he court may order such party to permit the discovery of material and information
25 not previously disclosed, grant a continuance, dismiss the action or enter such other
26 order as it deems just under the circumstances.

27 *State v. Glasper*, 12 Wn.App. 36, 38, 527 P.2d 1127 (1974) was the first case to interpret
28 the rule. The court in that case pointed out Washington's rule was adapted from
29 Fed.R.Crim.P. 16(g), with one difference: the advisory committee omitted a clause allowing
30 the court to "prohibit the party from introducing in evidence the material not disclosed."
31 *Glasper*, 12 Wn.App. at 39, 527 P.2d 1127 (quoting Wash. Proposed Rules of Crim. Proc.,
32 Rule 4.7, cmt. at 85 (West 1971)). *Glasper* therefore held CrR 4.7(h)(7)(i) does not allow the
33 trial court to suppress evidence as a remedy for discovery violations, and Washington courts
34 have consistently followed that holding. See, e.g., *State v. Ray*, 116 Wn.2d 531, 538, 806
35 P.2d 1220 (1991); *State v. Laureano*, 101 Wn.2d 745, 762, 682 P.2d 889 (1984), *overruled by*
36 *State v. Brown*, 111 Wn.2d 124, 761 P.2d 588 (1988); *State v. Thacker*, 94 Wn.2d 276, 280,
37 616 P.2d 655 (1980).

38 While the Defendant objected to the trial court's exclusion of testimony, CrR 4.7 and the
39 cases interpreting it were never cited or brought to the court's attention. The Defendant does
40 not argue this is a constitutional issue which can be raised for the first time on appeal. In fact,
41 exclusion does not violate the Sixth Amendment. *Taylor v. Illinois*, 484 U.S. 400, 412-13, 108
42 S.Ct. 646, 98 L.Ed.2d 798 (1988). The Defendant does not argue the state constitution
43 provides greater protection. We nevertheless reach the issue, as the Court of Appeals opinion
44 addressed it substantively.

45 We construe CrR 4.7 in light of the United States Supreme Court's decision in *Taylor v.*
46 *Illinois*, which permits exclusion of defense witness testimony as a sanction for discovery
47 violations. While CrR 4.7(h)(7)(i) does not enumerate exclusion as a remedy, it does allow a
48 trial court to "enter such other order as it deems just under the circumstances." This language

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allows the trial court to impose sanctions not specifically listed in the rule. *State v. Jones*, 33 Wn.App. 865, 868, 658 P.2d 1262, review denied, 99 Wn.2d 1013 (1983). The State argues the rule should be read to encompass exclusion of evidence and applied narrowly to discovery violations such as this.

Cases interpreting CrR 4.7(h)(7)(i) have typically involved the failure to produce evidence or identify witnesses in a timely manner. See, e.g., *State v. Linden*, 89 Wn.App. 184, 947 P.2d 1284 (1997) (holding trial court acted within its discretion when granting continuance to defense for prosecution's late disclosure of information). Violations of that nature are appropriately remedied by continuing trial to give the nonviolating party time to interview a new witness or prepare to address new evidence. Where the State's violation of the rule is serious, mistrial or dismissal may be appropriate. See, e.g., *Jones*, 33 Wn.App. at 868-69, 658 P.2d 1262 (holding State's numerous failures to adhere to trial judge's discovery orders justified mistrial).

But where, as here, the discovery violation is the defendant's ongoing refusal to undergo a court-ordered examination, none of those remedies is meaningful. A continuance, as shown here, would serve no purpose unless the defendant who had refused to cooperate could be compelled to submit to an examination during the delay. **Holding the defendant in contempt might result in compliance in some situations but would have little or no effect on a defendant charged with a capital crime, as here. Dismissal, obviously, would only unfairly penalize the State. ...**

The Court of Appeals recognized that disallowing suppression as a remedy allows the jury to make a decision based on more, not less, relevant evidence. Again, however, that laudable policy only results here in a windfall to the Defendant, if he is allowed to present his expert testimony while refusing to be examined by the State's expert. A defendant simply has no incentive to comply with an order that he submit to an examination unless exclusion is a remedy.

Exclusion or suppression of evidence is an extraordinary remedy and should be applied narrowly. Discovery decisions based on CrR 4.7 are within the sound discretion of the trial court, *State v. Yates*, 111 Wn.2d 793, 797, 765 P.2d 291 (1988), and the factors to be considered in deciding whether to exclude evidence as a sanction are: (1) the effectiveness of less severe sanctions; (2) the impact of witness preclusion on the evidence at trial and the outcome of the case; (3) the extent to which the prosecution will be surprised or prejudiced by the witness's testimony; and (4) whether the violation was willful or in bad faith. *Taylor*, 484 U.S. at 415 n. 19, 108 S.Ct. 646 (citing *Fendler v. Goldsmith*, 728 F.2d 1181, 1188-90 (9th Cir.1983)).

In this case, the factors weigh in favor of exclusion. Less severe sanctions, as we stated above, would not be effective. The impact of witness preclusion in this case was significant. Marsha Hedrick, a clinical psychologist, would have testified to the Defendant's history of abuse as a child, his paranoid schizophrenia, and his low IQ, concluding he was highly unlikely to have premeditated the action. Defense counsel made offers of proof that Dr. George Christian Harris, a psychiatrist, would have testified: "We are talking about major mental disorders here with major [e]ffects on the mental machinery.... I think you have substantial impairment of ability, or capability of formulating intent." Clerk's Papers at 309. Monty Scott, a neuropsychologist, would have expressed his "very strong opinion" that the Defendant was not "capable of premeditating the act of murder on that date[.]" Clerk's Papers at 313. Exclusion of the foregoing testimony was nevertheless ameliorated by the allowance of Dr. Halpern's and several lay witnesses' testimony regarding the Defendant's diminished capacity at the time of the crime.

Having been notified of the proposed witnesses' expected testimony, the State may not have been "surprised" at trial. It would, however, have been prejudiced by the inability to

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counter the testimony with any affirmative evidence.

Finally, the discovery violation was willful. As the trial court noted in denying one of the motions for reconsideration, the Defendant's "continual refusal" to undergo an examination was marked by repeated "defiance." Verbatim Report of Proceedings at 1479 (June 15, 1989). We hold exclusion of the Defendant's experts was warranted in this case.

Hutchinson, 135 Wn.2d at '880-84. (Emphasis added.)

A Court's Authority To Order Additional Sanctions For Discovery Violations

A court has sanction options for defense discovery violations in addition to preclusion of defense testimony discussed in *Taylor v. Illinois, supra*, and *State v. Hutchinson, supra*. CrR 4.7(7) empowers the court to order various sanctions for discovery rule violations. The rule says—

(7) *Sanctions.*

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, **the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, or enter such other order as it deems just under the circumstances.**

(ii) A lawyer's willful violation of an applicable discovery rule or an order issued pursuant thereto may subject the lawyer to appropriate sanctions by the court.

(Italics in original.) (Bold emphasis added.)

Criminal Cases Do Not Require A Higher Showing Of Bad Faith Litigation Conduct Than In Civil Cases

RPC 3.1 provides the parameters of an attorney's representation of his or her client. The rule says—

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. **A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.**

(Emphasis added.)

The Supreme Court in *State v. Tomal*, 133 Wn.2d 985, 948 P.2d 833 (1997) was confronted with DUI RALJ appeal wherein the case languished for over four years before the prosecution filed a motion to dismiss the appeal due to defense counsel's failure to file a transcript of proceedings as required by court rules. The State appealed the trial court's denial of its motion to dismiss the appeal for abandonment, and the Court of Appeals reversed. The Supreme Court held that an appeal could not be dismissed as abandoned without showing that a defendant made

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knowing, intelligent waiver of his or her right to appeal. Justice Talmadge in a concurring opinion expressed the Court's displeasure with counsel's actions.

While I agree with the majority we must reverse the Court of Appeals and remand the case to the superior court to determine if Tomal made a knowing, voluntary, and intentional waiver of his right to appeal, I write separately to express my frustration with the conduct evidenced in this case. **We should no more condone dilatory tactics of counsel in the criminal context than we do in the civil context.**

More recently, Division I in *State v. S.H.*, 102 Wn.App. 468, 8 P.3d 1058 (Div. I 2000) affirmed a \$50 sanction in a juvenile case against the Seattle-King County Public Defender Association for failing to enter into a diversion agreement "as expeditiously as possible" for a client as required by RCW 13.40.080(1) if the trial court on remand finds that the public defender acted in bad faith. The diversion agreement was sought the morning of the fact-finding hearing on the last day of speedy trial. The State did not object to entry of the diversion but sought sanctions because "a great deal of State resources were expended preparing for this trial."

The Public Defender Association argued that RPC 3.1 requires a stronger showing of bad faith litigation conduct in criminal cases than civil cases. Division I disagreed.

Although we have granted the PDA's Motion for reconsideration in part, we reject PDA's argument that RPC 3.1 requires a stronger showing of bad faith litigation conduct in criminal cases than in civil cases. ...

A lawyer for a party in a proceeding that could result in incarceration may certainly defend his or her client so as to require the State to prove every element of the case to be established. **But this is not to say that defense counsel may advance frivolous arguments or otherwise unduly delay proceedings.** See *In re Lord*, 123 Wn.2d 296, 302, 314, 868 P.2d 835 (1994) (applying RPC 3.1 in a capital appeal, in noting that defense counsel had been dilatory for failing to separate frivolous from meritorious claims).

S.H., 102 Wn.App. at 479. (Emphasis added.)

The Supreme Court's displeasure with appellate counsel's conduct was sternly worded in the capital personal restraint petition of *In re Lord*, 123 Wn.2d 296, 868 P.2d 835 (1994), *clarified*, 123 Wn.2d 737, 870 P.2d 964 (1994), *cert. denied*, 513 U.S. 849, 115 S.Ct. 146, 130 L.Ed.2d 86 (1994), *denial of habeas corpus reversed sub nom. Lord v. Wood*, 184 F.3d 1083 (9th Cir. 1999), *cert. denied*, ___ U.S. ___, 120 S.Ct. 1262, 146 L.Ed.2d 118 (2000), cited in *S.H.*, *supra*.

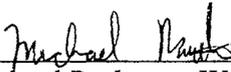
Before beginning our analysis of the substance of Lord's petition, however, we must comment on its scope. The PRP filed by Lord's appointed counsel is 387 pages long and includes a 430-page appendix. In response, the State filed a 333-page brief along with an additional 400 pages of appendix. Lord then filed a 50-page reply brief. These briefs are in addition to those filed on the direct appeal, as well as the numerous motions filed in connection with this action.

The "process of 'winnowing out weaker arguments ... and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy". Here, appointed counsel has thrown the chaff in with the wheat, ignoring their duty under RPC 3.1 to present only meritorious claims and contentions and leaving it for this court to cull the small number of colorable claims from the frivolous and repetitive. In all, the 1,200-plus pages of briefing filed here far exceeds zealous advocacy and borders on abuse of process. **We hereby provide notice that such behavior will not be tolerated in the future.**

In re Lord, 123 Wn.2d at 302. (Citations omitted.) (Footnote omitted.) (Emphasis added.)

While defense counsel certainly has the obligation to zealously represent a criminal defendant, the scope of that representation does not permit the bad faith use of dilatory tactics and frivolous litigation.

RESPECTFULLY SUBMITTED this 19 day of March, 2007



Michael Rothman, WSBA #33048
Deputy Prosecuting Attorney

EXHIBIT

1 THE DEFENDANT: And he told him to go
2 into the jury room.

3 THE COURT: I understand, and that was
4 one of the basis for the reasons that I granted a
5 mistrial. But unless -- I don't -- I frankly don't
6 know of any rule of law or rule of the Court or
7 Supreme Court rules that mandate a dismissal of the
8 case because the Prosecutor's actions in part and in
9 part the confidential informant's actions caused the
10 mistrial.

11 THE DEFENDANT: He violated my rights
12 to a speedy trial by doing so.

13 THE COURT: Well, mistrials can happen
14 for tons of reasons.

15 Well, anyway, --

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17 here, it's RPC 3.2. Um, it says, "*...will not help*
18 *in asserting a public and fair and speedy trial.*"

19 These rights have been violated by Michael
20 Rothman who sent the State's witness into the jury
21 room March 19, 2007 to use the bathroom. Informant
22 509 was seen on two occasions in the jury room, once
23 using the phone and once conversating with people of
24 the jury. On both occasions there were people of
25 the jury present. The Bailiff, Millie Clements,

1 testified under oath. Also did Ms. Lorton. Michael
2 Rothman, the Prosecution, did give permission to the
3 State's witness to go into the jury room, all of
4 which should be on record.

5 THE COURT: It is.

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8 agree pretty much. I think what you said is on the
9 record. I'm still not sure why that mandates a
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11 new trial after declaring a mistrial.

12 Let me ask this question first of Mr.
13 Rothman. Was the re-setting of the May 2nd and 3rd
14 trial date, was that still within the speedy trial
15 or was that -- or motion to have that continued
16 beyond the speedy trial under 3.3?

17 MR. ROTHMAN: That was a -- we reset
18 and went back to zero on the speedy trial and set
19 one so we're outside --

20 THE COURT: And isn't that in fact what
21 the Court Rule says?

22 MR. ROTHMAN: That is in fact what the
23 Court Rule says, that on any of those events, a
24 mistrial being one, --

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EXHIBIT

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PACIFIC**

STATE OF WASHINGTON,)	
)	
Plaintiff,	)	PACIFIC COUNTY NO. 07-1-00014-1
vs.	)	COURT OF APPEALS NO. 36381-0-II
)	
RICHARD D. YORK,	)	PLEA & SENTENCING HEARING
)	
Defendant.)	

**VERBATIM REPORT OF PROCEEDINGS
BEFORE
THE HONORABLE MICHAEL J. SULLIVAN**

May 15, 2007

PACIFIC COUNTY SUPERIOR COURT
SOUTH BEND, WASHINGTON

A P P E A R A N C E S

FOR THE PLAINTIFF:

**MICHAEL ROTHMAN
DEP. PROSECUTING ATTORNEY
P. O. BOX 45
SOUTH BEND, WA 98586**

FOR THE DEFENDANT:

**ANDREW L. MONSON
ATTORNEY AT LAW
408 SECOND STREET
RAYMOND, WA 98577**

COUNSEL ON APPEAL:

**ERIC BROMAN
NIELSEN, BROMAN & KOCH
ATTORNEYS AT LAW
1908 E. MADISON STREET
SEATTLE, WA 98122**

PREPARED BY:

**MARILYN STARICKA
OFFICIAL COURT REPORTER
PACIFIC COUNTY SUPERIOR COURT
P. O. BOX 67
SOUTH BEND, WA 98586**

1 May 15, 2007

2 * * *

3 THE COURT: Thank you for your
4 courtesy. Please be seated. It's approximately
5 11:15 this morning. This matter was set for 10:00
6 a.m.. I just want to make the point that the Court
7 was here ready to go. We didn't have anything else
8 on the docket -- well, we did but we covered that
9 case so --

10 My main concern is --

11 Excuse me, this is the matter of State of
12 Washington v. Richard D. York, 07-1-14-1.

13 My main concern is that Mr. York and Mr.
14 Monson had enough time to adequately review all the
15 documents and if you haven't, I'm going to recess
16 and give you additional time.

17 MR. MONSON: We've pretty much reviewed
18 them, Your Honor, and that is what's taken the time
19 is trying --

20 THE COURT: Well, let me ask you this,
21 Mr. Monson. This is a significant case in that
22 Mr. York's standard range is -- well, I don't have
23 the Judgment and Sentence but I know it's between
24 like 20 and -- or like 60 and 120 or something like
25 that --

1 MR. MONSON: Yes, Your Honor.

2 THE COURT: -- and I want to -- I
3 understood from Angie that she received information
4 that for some reason you did not or could not or
5 were not able to meet in the attorney conference
6 room with your client and that you were in fact -- I
7 walked in here once with the supervisor for Public
8 Works to talk about something to do with, you know,
9 a courtroom situation and people were all in here
10 and you were in the back talking to your client. My
11 concern is that -- were you not able to meet in the
12 attorney-client room?

13 MR. MONSON: I wasn't able to go over
14 the plea papers. We met in the attorney-client room
15 earlier --

16 THE COURT: Okay, and that's fine but
17 did you --

18 MR. MONSON: -- but with the plea
19 papers, I was not able to meet back there with him
20 and I --

21 THE COURT: Okay, so you were meeting
22 in the back of the courtroom with the plea papers?

23 MR. MONSON: Yes, Your Honor.

24 THE COURT: Okay. Were you able to do
25 that in -- without visitation issues? In other

1 words, I don't want Mr. York being distracted by
2 wanting to visit with his family members. I mean,
3 that's understandable but the issue here is did
4 Mr. York have focused time without having family
5 members, in good -- in good faith, trying to
6 communicate with him and possibly distracting him
7 from understanding the documents?

8 MR. MONSON: Was there a distraction
9 for you, Mr. York, with me going over this paperwork
10 with you?

11 THE DEFENDANT: Just when you -- the
12 only -- the only thing is when you came in -- when
13 you told me I was pleading to one count of -- of
14 Delivery and -- and -- and no -- and no
15 enhancements. That's what you told me. I was
16 pleading to 120 months to one count of Delivery and
17 no enhancements.

18 THE COURT: Well, is that it in a
19 nutshell?

20 MR. MONSON: Yes, Your Honor. The
21 papers were not as I expected them when I got them.

22 THE COURT: Okay. Then --

23 MR. MONSON: I talked to Mr. Rothman
24 and made sure that that didn't affect his
25 recommendation at all and that he didn't see -- he

1 didn't think it -- I felt it wouldn't create any
2 peril to my client with them being worded the way
3 they were but I had to talk with him about them and
4 of course being a surprise to him, it was kind of a
5 --

6 THE COURT: Okay, well, let me just go
7 right to that. Mr. Rothman, what exactly are on
8 those plea papers that Mr. York is -- the State is
9 expecting a guilty plea to?

10 MR. ROTHMAN: The State is expecting a
11 plea as charged with the school zone enhancements.
12 The State's going to be making a recommendation of
13 120 months. The Defense is allowed to argue for
14 less. Based on the fact that these crimes occurred
15 inside a school zone, the maximum punishment is not
16 your standard 10 months on a Class B felony but it's
17 20 months pursuant to the statutory scheme.
18 Mr. York has an offender score of 10. His standard
19 range is 60 to 120 months. The enhancements run
20 consecutive to the standard range and, since the
21 changed law last year, run consecutive to each
22 other. Therefore, Mr. York's maximum sentence that
23 he could be sentenced to on this charge would be 168
24 months. His minimum would be 108 months.

25 THE COURT: Okay, here's what I'm going

1 to do because this is -- there's no way I'm going to
2 take a plea at this point in time. I'm going to --

3 Well, let me ask the Corrections Inspector.
4 It just seems like -- well, let me back up right to
5 the start.

6 From what I've heard, it's not crystal clear
7 exactly what's going on in terms of Mr. York's mind,
8 in terms of what he's either looking at or what he
9 agreed to or thought he agreed to or this or that or
10 the other so I obviously am not going to take --

11 THE DEFENDANT: I'm plead- -- I agree
12 to the 120 months with the opportunity to argue for
13 less.

14 THE COURT: And that's what -- and I --
15 Mr. York, I agree with you. That's what I thought I
16 heard come out on Friday. Now, maybe we were moving
17 --

18 THE DEFENDANT: That's what I thought I
19 heard.

20 THE COURT: We were moving pretty fast
21 and I was wondering if people were going to plead
22 that day or not and the paperwork wasn't ready and
23 whatnot. But the point is, that's not what I've
24 heard from Mr. Rothman. And I'm not accusing the
25 State of doing anything wrong because you're --

1 that, Your Honor. It just drops the enhancements.

2 THE COURT: Okay. So we have two
3 counts -- make sure I'm clear on this now -- it
4 shows two counts of Delivery of Methamphetamine,
5 Count I on October 11th, Count II on October 12th,
6 no enhancements. Is that -- that's what I show
7 here.

8 MR. MONSON: Yes, Your Honor.

9 THE COURT: Okay, thank you. I'll sign
10 the Order Allowing Plaintiff To File Amended -- and
11 I'll just put in here "Fourth". I'm signing that
12 document.

13 Now, Mr. Monson, do you waive -- do you
14 waive the reading of that Information?

15 (Counsel conferring with
16 client.)

17 MR. MONSON: We'll waive that, Your
18 Honor.

19 THE COURT: Very well. I want to
20 re-state on the record what I said earlier is that
21 if the maximum possible standard range sentence is
22 10 years, 120 months, I am not intending to go above
23 that, and I said that before the break. If it is
24 different from what the standard range was before, I
25 think that needs to be placed on the record before I

1 enter Mr. -- or take Mr. York's plea.

2 MR. ROTHMAN: Very well, Your Honor.
3 That goes ahead without the enhancements, it reduces
4 the -- it doesn't reduce the standard range but
5 without the enhancements the maximum that he could
6 get would be 120 months.

7 THE COURT: And the minimum?

8 MR. ROTHMAN: And the minimum would be
9 60.

10 THE COURT: Do you agree with that, Mr.
11 Monson, 60 minimum, 120 maximum?

12 MR. MONSON: Yes, Your Honor, that is
13 the range.

14 THE COURT: Okay. Well, I don't have
15 anymore questions of you Mr. Rothman at this time.
16 Thank you.

17 Mr. --

18 MR. ROTHMAN: I'm --

19 THE COURT: Excuse me. Go ahead if you
20 want to put something on the record.

21 MR. ROTHMAN: I was going to say that
22 I'm prepared to hand forward the Plea Agreement.

23 THE COURT: Sure.

24 MR. ROTHMAN: I noticed right before
25 you came out, Your Honor, on the Statement On Plea

1 are admissible, that's fine. Have you talked -- you
2 and Mr. Monson reached an agreement on that or not?

3 MR. ROTHMAN: We haven't really even
4 discussed it, Your Honor.

5 THE COURT: Okay.

6 MR. ROTHMAN: I'm just -- I'm trying to
7 figure out a way to do this without calling in and
8 putting on evidence --

9 THE COURT: Well, my -- well, I don't
10 think --

11 MR. ROTHMAN: -- other than -- because
12 --

13 THE COURT: I don't think you're going
14 to be able to if you want me to make a ruling
15 without -- how do I say this. I'm taking back --
16 what I was going to say I'm not going to say because
17 I am not a prosecutor or a defense attorney --

18 MR. ROTHMAN: Mm-hmm.

19 THE COURT: -- but there's a red flag
20 that comes up real fast in my mind as to why the
21 confidential informant in fact may or may not be --
22 whether or not there's an automatic waiver of
23 *Miranda*. And you haven't briefed anything, not that
24 you have to, --

25 MR. ROTHMAN: Mm-hmm.

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THE COURT: Yes.

MR. ROTHMAN: -- the Court Rule indicates that if the Defendant's statement is going to be used against him, we have to have a 3.5 hearing. CrR 3.5. The only statements that the State would be seeking to use against Mr. York would be any statements that he made to the confidential informant. Well, the PC statement clearly indicates that at no time was he under arrest or was he in custody at the time, therefore *Miranda* doesn't apply. Now, if the Court wants -- therefore, there's no waiver, nothing like that, so the State would be seeking to introduce any statements he made to the confidential informant to use against him at trial. Do you understand the crux of my --

THE COURT: Well, I do, except there's a whole other side to that is that -- the point is, I won't -- I won't grant you your request at this time. Here's why. I want to have a hearing because I don't know what Mr. Monson may raise but the first thing -- red flag that flies in my face is that if I were to just say, okay, -- now, if Mr. Monson says okay -- I mean, if you both agree and you put it in writing and it's very clear that the case in chief and rebuttal and whatnot is -- that these statements

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THE COURT: -- for Tuesday?

MR. ROTHMAN: -- for change of plea on Tuesday. If that falls apart, we can put the rest of this together.

THE COURT: Okay, that makes sense. Let's see, change of plea, Tuesday the 15th. What time, counsel? Let's not press anybody for time here.

What's 10:00 look like, Marilyn? Does it look all right?

COURT ADMINISTRATOR: Fine.

THE COURT: How does 10:00 look for counsel?

MR. ROTHMAN: Ten looks good for the State, Your Honor. I can't speak for Mr. Monson.

THE COURT: Mr. Monson, 10:00?

MR. MONSON: That's the 15th? Yeah, I

--

THE COURT: Tuesday the 15th.

MR. MONSON: It should be all right for me, Your Honor.

THE COURT: Mr. York, if this proceeds as it seems like you want it to, and I don't really want any comments on that, but if this proceeds like you want it to, I will be taking your plea to these

1 various charge on the 15th, Tuesday, at 10:00 a.m..
2 Okay, and then if it doesn't occur, which Mr. York,
3 I want to make it really clear -- you know this, I
4 know you do because you're -- you've been, you know,
5 in the system before -- that you have no obligation
6 to plead guilty. Nodding your head yes. So if for
7 any reason you decide to change your mind, even up
8 to the last minute on Tuesday, that's your right.
9 It's only after the ink is dry and --

10 THE DEFENDANT: Okay.

11 THE COURT: -- not dry -- you know what
12 I mean -- after I sign, ask you all the questions
13 and accept your plea, only then --

14 THE DEFENDANT: I can't -- I can't take
15 much more of this. I'm ready.

16 THE COURT: Okay.

17 Well, thank for bringing Mr. York over.
18 We'll see you over here Tuesday at 10:00, Mr. York.

19 MR. ROTHMAN: Thank you, Your Honor.

20 THE COURT: You're welcome, Mr.

21 Rothman.

22 (End of proceedings.)

23

24

25

EXHIBIT

EXHIBIT

1 March 19, 2007

2 * * * *

3 (The following proceedings
4 were had in chambers prior to
5 the start of jury selection.)

6 THE COURT: Thank you. Good morning.

7 We're on the record in chambers. The Clerk is
8 present; the Court Administrator is present;
9 Mr. Hatch is present with his client, Mr. York; Mr.
10 Rothman is present with Deputy Pat Matlock.

11 Okay, before we get to the Motions In
12 Limine, I wanted to -- let's see, here's a copy of
13 the Second Amended Information that was allowed to
14 be filed. I would like comment on reading the --
15 what Mr. York has been charged with. The only
16 question I really have is a question -- I'm planning
17 on leaving out the RCW unless counsel want that in
18 and I was planning on leaving out the -- all the
19 RCWs. And I was planning on leaving out on page two
20 the whole top paragraph as far as reading this to a
21 jury because to me that has to do with punishment.
22 Count II, I was going to do the same thing but I
23 want comment from counsel.

24 MR. HATCH: That looks like the right
25 thing to do, Judge.

1 MR. ROTHMAN: I agree, Your Honor.

2 THE COURT: Very well, then I'm going
3 to make sure that I cross all this out right now.
4 And I'm going to -- do counsel mind if I skip
5 "to-wit" and just say "knowingly delivered a
6 controlled substance", take a space and go,
7 "methamphetamine"?

8 MR. HATCH: That's fine.

9 THE COURT: Okay. And then I'll
10 scratch out "in violation of". And then,
11 "Furthermore, the commission of said crime took
12 place within 1,000 feet of a school grounds", and
13 then cross out, "which adds" -- I forgot about
14 that -- "which adds an additional 24 months".
15 That's penalty phase. Do counsel both agree --

16 MR. HATCH: Just to the end to "school
17 grounds" then?

18 THE COURT: Just "school grounds",
19 period.

20 Next paragraph, page two, lines one through
21 10 are scratched -- or one through 11 are scratched.
22 Count II, I'm going to scratch out "to-wit" and
23 again just leave "methamphetamine" and I'm going to
24 stop at the end of "school grounds" and everything
25 else is crossed out. And for my sake I'm going to

EXHIBIT

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2 into the jury room.

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21 the Court Rule says?

22 MR. ROTHMAN: That is in fact what the
23 Court Rule says, that on any of those events, a
24 mistrial being one, --

25 THE COURT: Right.

1 MR. HATCH: Thank you.

2 THE COURT: Well, if it's the Stigars
3 in the Valley, it's an "i". Let's see here. Okay,
4 let me just put that down. Do you want me to list
5 that as these witnesses might be called?

6 MR. HATCH: Sure.

7 THE COURT: Okay. Of -- did you say
8 Raymond?

9 MR. HATCH: Yes.

10 THE COURT: Okay, I have that.

11 Now, what else, Mr. Rothman, before I go to
12 Mr. Hatch?

13 MR. ROTHMAN: Well, Your Honor, I'm
14 still not exactly sure -- I have an idea as to what
15 Ms. Stigar is going to -- going to testify to and
16 this --

17 THE COURT: Do you have a summary?

18 MR. ROTHMAN: I do not have a summary,
19 Your Honor.

20 THE COURT: What's the summary?

21 MR. HATCH: Your Honor, I was able to
22 meet with Ms. Stigar on Friday because she was in
23 custody here, and she still is, and so I was able to
24 meet with her and when I met with her I basically
25 told counsel that the basic summary is is that she's

1 going to testify that she made the drug deliveries
2 to Rod Oleachea.

3 THE COURT: Okay.

4 MR. ROTHMAN: Well, based on that
5 statement, Your Honor, I would like to file this
6 motion to preclude Ms. Stigar's testimony for a
7 discovery violation.

8 Here's a copy for you, Mr. Hatch.

9 THE COURT: Give me some time frames,
10 Dawn. What's happening right about now out in the
11 jury room -- out in the courtroom?

12 DEPUTY CLERK: They're probably getting
13 ready to reseal them.

14 THE COURT: Okay, so we're okay with
15 time?

16 DEPUTY CLERK: We probably have 10
17 minutes.

18 MR. ROTHMAN: Well, I don't think
19 there's any need to make a ruling on right now. I
20 think as the testimony lays out, after the State
21 rests the Court can probably make that ruling. The
22 basis of it is that it's willful misconduct by --
23 I'm not -- and I'm not accusing Mr. Hatch but if
24 she's going to testify to that, then apparently his
25 client didn't bother to tell him this and then is

1 going to spring this witness on the day of trial.
2 Had the Defense been privy to this information, I
3 would have joined the cases and tried them both
4 together. To allow her to come in here and
5 manufacture some testimony --

6 THE COURT: Okay. Well, I'll take a
7 look at your -- at your motion which was handed just
8 now to the Court.

9 I have a question for you, Mr. Rothman, and
10 this isn't a catch-22. How did you know to prepare
11 this motion if you thought -- I mean, --

12 MR. ROTHMAN: On Friday, which is laid
13 out in my motion, Mr. Hatch indicated that he may be
14 calling another witness and I asked who that person
15 would be.

16 THE COURT: Oh, okay. Well, that's --
17 I just wanted to know because I didn't remember what
18 was said on Friday.

19 MR. ROTHMAN: Part of it was said on
20 the record --

21 THE COURT: Was that on this -- was
22 that on this case?

23 MR. ROTHMAN: -- and part it was off.

24 THE COURT: Okay. Because I can't
25 recall, was Ms. Danyelle Stigar brought over Friday?

1 Does anyone remember? I don't remember.

2 MR. ROTHMAN: Yes, she was.

3 THE COURT: She was. Okay.

4 Now, if she testifies --

5 MR. HATCH: She's available for
6 interview.

7 THE COURT: I know. I understand.

8 MR. HATCH: Okay.

9 THE COURT: But if she testifies, is
10 there a request for street clothes versus jail
11 clothes?

12 MR. HATCH: No, there's not, Your
13 Honor, and I spoke with Mr. Burke about that, David
14 Burke, that -- he was concerned about that and I'm
15 not --

16 THE COURT: Okay, so if she comes over
17 in orange or a blue jumpsuit --

18 MR. HATCH: That's fine.

19 THE COURT: -- with sandals or slippers
20 or whatever --

21 MR. HATCH: That's fine.

22 THE COURT: -- and if she looks like
23 she's not washed and cleaned, then that's the way it
24 goes? Okay, that's fine.

25 MR. HATCH: She -- I'm believing that

1 I sold the drugs to the informant, not Mr. York.

2 MR. HATCH: Right.

3 THE COURT: Okay, so you know the basis
4 of it anyway at this point in time.

5 MR. ROTHMAN: Yeah.

6 THE COURT: Okay. If you want any time
7 today to speak with her, I'll make sure that that
8 occurs and you let me know.

9 MR. ROTHMAN: Yes, I imagine that I
10 will during some of the down time that we have here
11 with Mr. Matlock, --

12 THE COURT: Okay.

13 MR. ROTHMAN: -- we'll go over and
14 interrogate her.

15 THE COURT: Well, the other -- what I
16 was going to say also is that if -- I guess what I
17 really meant to say was if it looks like we're going
18 to go two days, then I probably will release the
19 jury early today so that Mr. Hatch is here, you're
20 here, and Deputy Matlock is here so you can have
21 just an uninterrupted time to interview Ms. Stigar,
22 if we're going to go a second day, which it sounds
23 like we are.

24 MR. ROTHMAN: One last thing, Your
25 Honor, and I promise I'll be done.

1 I notice that Mr. York is somehow restrained
2 today apparently and that's not -- I understand why
3 the jail wants to do that but that's not the State's
4 --

5 THE COURT: Well, here's what I'm going
6 -- here's what I'm going to do on that. Mr. Hatch
7 already commented something about the jail security
8 or something. But I didn't even notice he had these
9 on. I know they're uncomfortable, sir. But what I
10 thought, we'd just make sure that if -- if Mr. York
11 testifies, that we place him on the stand. Because
12 I think it's pretty obvious when you walk, isn't it,
13 that you have something on? So I'll leave that up
14 to you, Mr. Hatch, how you want to handle that.

15 MR. HATCH: That's fine. How is he
16 going to walk in with the whole jury panel out
17 there? That's my concern.

18 THE COURT: That's a good point.

19 CORRECTIONS OFFICER HESS: Past
20 practice, Your Honor, we always clear the courtroom
21 of the jurors before he's seated or whenever he
22 moves whatsoever.

23 THE COURT: Well, very well. Then
24 we'll just need to -- Dawn, if you'd have Virginia
25 come in. Maybe what we could do is have her --

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after which the following proceedings were had outside the presence of the jury.)

THE COURT: Thank you. Please be seated. It's just shortly before noon. We are on the record.

First matter, housekeeping matter before I get to the issue of whether Ms. Stigar, Danyelle Stigar is planning to testify. Well, let's do that one first. What's the information on that? Mr. Karlsvik's not present --

MR. ROTHMAN: Your Honor, I spoke --

THE COURT: -- nor is Ms. Stigar.

MR. ROTHMAN: I spoke to Mr. Karlsvik by telephone. He indicated that he had spoken with Ms. Stigar and that she intends to testify.

THE COURT: Subject to my ruling on your Motion In Limine.

MR. ROTHMAN: Subject to the ruling on the motion. If she does in fact -- if the Defense does intend to call her as a witness, I'd like to have -- set aside about an hour where I could go ahead and talk to her prior to her testimony so I can properly prepare for cross-examination.

THE COURT: Well, if I allow her

1 testimony, I certainly will give you at least an
2 hour to prepare. That's only fair.

3 Is that about it, Mr. Hatch, as far as your
4 knowledge of Ms. Stigar?

5 MR. HATCH: I actually went over there
6 looking for Mr. Karlsvik and I met briefly with Ms.
7 Stigar and just --

8 THE COURT: Okay.

9 MR. HATCH: -- I mean, for a minute and
10 I asked her if Harold had been there and she said
11 yes. She -- her words were, "*He advised me of*
12 *everything and I still want to testify.*" So --

13 THE COURT: Very well.

14 MR. HATCH: And that was the end of our
15 conversation.

16 THE COURT: Thank you. Thank you very
17 much. So is there any reason that the Defendant,
18 the Defense, -- is the Defense planning -- do I need
19 to make my ruling on the Motion In Limine by -- at
20 1:15? Because I don't know what you're planning as
21 far as your opening remarks.

22 MR. HATCH: On this -- on the Motion
23 For Preclusion Of Testimony, --

24 THE COURT: Yes.

25 MR. HATCH: -- or "*-money*" as it says.

1 MR. HATCH: Well, I don't know. What's
2 the word on the witnesses?

3 MR. ROTHMAN: I haven't left the
4 courtroom --

5 MR. HATCH: It doesn't sound like it,
6 Judge.

7 THE COURT: So -- okay, that takes care
8 of that. No mention of Ms. Stigar in opening by
9 either side and there won't be any mention of Ms. --
10 well, I won't tell the State what to do. If the
11 State mentions Ms. Stigar and opens the door for
12 some reason, then that's -- that's the State's call.
13 I won't even go there now because it's not -- that's
14 not open.

15 Now, here's another issue that came up.
16 Dawn Lorton, who is the Chief Civil Deputy for the
17 Clerk's Office, told me the following right after I
18 had sent the jury, the most recent -- the impaneled
19 jury to lunch, is that when Millie went into the --
20 Millie the Bailiff went into the jury room with the
21 jurors to, you know, get their stuff and do whatever
22 and go to lunch -- now, I don't -- that Mr. -- and I
23 assume that she knows who this person is because I
24 can't remember what Mr. Oleachea looks like. I
25 think I've seen him before in the past but I don't

1 know. Anyway, that he was in the jury room making a
2 phone call on the phone that lots of people use.
3 Right, good, bad, ugly or indifferent, lots of
4 people use that phone. Now, I don't have any idea
5 at this point what they saw, what they heard, I
6 don't have any idea, so the only thing I can do is
7 when the jurors come back is have them stay in the
8 jury room, get Millie, have Millie come out and say
9 what did she see, what did she hear, and then I'll
10 make my call from there.

11 Again, I don't have any idea why
12 Mr. Oleachea thought he could go in that jury room
13 and use the public phone. It's the State's witness.
14 I expect the State to ask him about that and to make
15 sure that no witnesses from the State during any
16 trial go into that jury room the day of trial ever
17 for any reason, unless there's a direct order of the
18 Court. So it does distress me somewhat, bothers me
19 somewhat, and that's -- I just need to make that
20 disclosure and I'll cover it later.

21 So anything else from either counsel before
22 we break for lunch?

23 INSPECTOR SULTEMEIER: I have a
24 question, Your Honor.

25 THE COURT: Mr. -- Inspector

1 Sultemeier.

2 INSPECTOR SULTEMEIER: If the --

3 THE COURT: Louder, please.

4 INSPECTOR SULTEMEIER: If the female is
5 brought in as a witness, how is she supposed to come
6 in --

7 THE COURT: We already covered that and
8 you weren't aware of that and thank you for the
9 question. Unless I hear otherwise, she's coming in,
10 according to Mr. Hatch, in prison garb and that's
11 it.

12 MR. HATCH: She did ask me when I just
13 met with her, Judge, she says she's got a pair of
14 sweatpants and a shirt that she'd rather wear. She
15 said, *"It's not very good but it's better than*
16 *orange."* That's what she said.

17 THE COURT: And Mr. Hatch in chambers
18 -- you weren't aware of this -- Mr. Hatch said if
19 she comes over in orange and sandals and whatnot,
20 that's how it was left. If you have time and she
21 can be put into these sweatpants -- in other words,
22 don't worry about the dress. That's not your
23 responsibility anyway. But just -- if she -- if it
24 works out with your system, if they're not in the
25 wash or whatever and she can get changed into the

1 sweatpants and, what did you say? A sweatshirt or
2 something?

3 MR. HATCH: Yeah, that's what she told
4 me, Judge.

5 THE COURT: And if that works with
6 security, that's fine.

7 MR. HATCH: We probably won't get to
8 that point today --

9 THE COURT: Right.

10 MR. HATCH: -- and if I have time,
11 maybe I can arrange some other clothing for her.

12 THE COURT: Otherwise, one or the
13 other.

14 INSPECTOR SULTEMEIER: Thank you.

15 THE COURT: Thank you.

16 Okay, we're in lunch until -- recess until
17 1:30. We'll start right -- a little bit before.

18 (Court was adjourned for the
19 lunch recess after which the
20 following proceedings were
21 had outside the presence of
22 the jury.)

23 THE COURT: Thank you. Please be
24 seated. It's about 1:26 or so. We're back on the
25 record.

1 came back early that didn't go to lunch with her --
2 now, that's just a procedural error that -- if it is
3 an error. In this case -- I don't know, I'll just
4 wait and see what comes out.

5 And Mr. Hatch, did you need -- you were
6 wanting to say something. Does it need to be said
7 before Millie gets on the stand?

8 MR. HATCH: Your Honor, what I recall
9 is that you brought it to our attention previously
10 that there was an additional prior contact between
11 the State's informant, Mr. Oleachea, that he had had
12 some other contact --

13 THE COURT: Well, he was in the jury
14 room on the phone --

15 MR. HATCH: Yes.

16 THE COURT: -- and I want to go into
17 that also with Millie.

18 MR. HATCH: Okay. I just wanted to
19 make sure we're covering both --

20 THE COURT: Right.

21 MR. HATCH: -- both things.

22 THE COURT: Right.

23 (Bailiff Millie Clements now
24 present in courtroom.)

25 THE COURT: Because I already had you

1 I had some disturbing news that I need to
2 place on the record and then we'll have to sort it
3 out. I don't know if it's accurate or not and
4 that's what we'll find out. In a nutshell, I'm told
5 that when Millie came back from lunch, Millie the
6 Bailiff came back from lunch and she went into the
7 jury room after lunch, after my comments regarding
8 that Mr. Oleachea is the State's witness, anyway,
9 came back -- what I -- I don't know if it's accurate
10 or not. All I know is that Millie informed
11 somebody, I don't know who she informed first but
12 she informed me that Mr. Oleachea was back in the
13 jury room eating food and that there were two jurors
14 in the jury room while he was eating food.

15 So what I'm going to do is ask Angie to
16 please go down and get Millie. Millie is instructed
17 that when she leaves, she is instructed to tell the
18 jury to please lock the door. They have a, you
19 know, a -- I don't know what it's called but it's a
20 non-key latch inside. They can turn the deadbolt.
21 I'll place Millie on the stand.

22 And what else did I need to disclose?
23 Something about -- Millie told me something about
24 that the room was locked -- well, no, she left it
25 unlocked because she thought that the jurors that

1 finished.

2 MR. HATCH: Yeah, I'm done. Thank you,
3 Judge.

4 THE COURT: Thank you.

5 Mr. Rothman.

6 MR. ROTHMAN: Well, the only reason I'm
7 not making the motion myself, Your Honor, is because
8 I'm not aware of what the standard is. I didn't
9 come here today planning for a mistrial. I don't
10 know if we're there yet or not, quite frankly.

11 THE COURT: Well, what else would it
12 take?

13 MR. ROTHMAN: I came here prepared to
14 try a case, not for a mistrial motion, Your Honor,
15 so didn't go look and research the law in that area.

16 THE COURT: Well, whether to grant or
17 not grant a mistrial is well within the discretion
18 of the Court and I frankly don't know how -- how
19 it's viewed by the Court of Appeals in terms of how
20 many are overturned and how many aren't but I do
21 know that -- that it is within the discretion of the
22 trial court.

23 We have two jurors that we are not sure what
24 they heard or didn't hear. We have 12 jurors who I
25 am not sure what they heard or didn't hear because

1 -- 13, excuse me. Everywhere I said 12 I meant 13
2 -- because Millie Clements testified that she
3 thought that if she had been listening that she
4 could have heard whatever -- or at least -- I don't
5 know about whatever but it was loud enough that she
6 could have heard -- thought she could have heard or
7 discerned, understood the conversation, or at least
8 the one side of the conversation, what Mr. Oleachea
9 was saying, if she had wanted to listen. I don't
10 have any way of knowing whether all 13 jurors were
11 focused in on Millie totally or whether in fact --
12 you know how it is with a number of people. Some
13 pay attention, some don't. It doesn't change when
14 you become adults. It's sort of like just an
15 extension of school, you never really know who's
16 listening to you or who isn't. So I have at least
17 two times that 13 jurors and then two jurors may or
18 may not have heard something.

19 I also have a problem, that I see as a
20 problem -- I don't have the problem but as a judge
21 is that the very fact that jurors have had -- and I
22 agree with Mr. Hatch, we're talking about at least
23 if not the key witness, we're talking certainly one
24 of the key witnesses, but I would think -- I don't
25 know the whole case but usually the CI is the case.

1 Office. All I know is things -- how it was done.
2 We told people where to show up, we told them where
3 they were supposed to come, we told them where they
4 were supposed to stay, and that mainly was to keep
5 people from getting in each other's way or getting
6 in fights or getting in each other's faces. So I
7 don't know. All I know is it's extremely
8 distressing. I don't know if anything I say does
9 any good frankly. I don't know what I need to do to
10 try to impress that preparation for a jury trial
11 involves a lot more than just knowing who the
12 witnesses are. It has to do with management
13 control, crowd control, witness control.

14 And I frankly wouldn't accept any excuse
15 that Mr. Oleachea had, Mr. Rothman. The fact you
16 told him there was a bathroom on the second floor, I
17 still just can't imagine that anyone would think
18 they should go into a jury room once the trial has
19 begun at least, once the -- once the -- and trial
20 has begun as soon as we start so --

21 Well, the County's going to get stuck with
22 that bill. I don't think I have a basis to sanction
23 the Prosecutor's Office, I'm not sure, but there's
24 no motion in front of me for that. I just don't
25 know. It's really frustrating. Extremely

1 If he doesn't show up, there's no case because you
2 have to testify as to the delivery and all that kind
3 of -- kind of thing. But you have a witness, a key
4 witness who is in the very sanctity of the jury room
5 so they have seen this witness at least -- I have to
6 assume -- I cannot not assume that 13 didn't see him
7 initially and that two saw him after the -- after
8 lunch, which means they have seen this witness twice
9 before trial has even started inside their, what is
10 almost like the inner sanctum in the legal system.
11 I don't know how to fix it. I'd have to put every
12 witness -- every juror on the stand. I'd have to
13 put them all on the stand. It doesn't matter to me
14 what Mr. Oleachea has to say or doesn't have to say.
15 That's not the issue.

16 Well, I'm going to grant a mistrial. I'm
17 going to order that the Prosecutor's Office's --
18 Office witnesses never ever, ever in any case, and
19 I'll put that in writing, ever go into the jury room
20 the day of or at anytime during which the day has
21 started or the day has not yet finished that the
22 jury is still in session -- or the court is still in
23 session and the case is not resolved. I don't know
24 -- I mean, different -- people do things
25 differently. Again, I'm not in the Prosecutor's

08 MAR 17 AM 9:19

STATE OF WASHINGTON

BY _____
DEPUTY

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION 2

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 Richard York)
 Petitioner.)

No: 36381-0-II

CERTIFICATE OF SERVICE

I, RICHARD YORK, Petitioner in the above entitled cause, under the penalty of perjury, do hereby certify that on the date noted below, I sent copies of: Letter AND Exhibits

To:
Prosecutor Attorney
Po Box 45
South Bend, WA 98586

COURT OF APPEALS
DIVISION # 2
TACOMA WA
98402

By processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2139, Airway Heights, WA 99001-2139

Dated this 10 day of MARCH, 2008.

Respectfully Submitted,

Richard York
Petitioner