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**A. ASSIGNMENTS OF ERROR**

- 1. Mr. York was denied effective assistance of counsel when his attorney failed to request a lesser included offense of assault in the fourth degree.**
- 2. Mr. York was denied effective assistance of counsel when his attorney did not object to the admission of a highly inflammatory second page of a *Smith* affidavit when the second page was replete with prejudicial, irrelevant, and inadmissible hearsay.**
- 3. The court's blanket 10-year no contact order exceeded the statutory maximum penalty for three of Mr. York's convictions: taking a motor vehicle in the second degree (a class C felony); unlawful imprisonment ( a class C felony); and interfering with reporting of domestic violence (a gross misdemeanor).**

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- 1. Was Mr. York denied effective assistance of counsel when his attorney failed to request a lesser included offense of assault in the fourth degree? [Assignment of Error 1]**
- 2. Was Mr. York denied effective assistance of counsel when his attorney did not object to the admission of a highly inflammatory second page of a *Smith* affidavit when the second page was replete with prejudicial, irrelevant, and inadmissible hearsay? [Assignment of Error 2]**
- 3. Did the trial court's blanket 10-year no contact order exceed the statutory maximum penalty for three of Mr. York's convictions: taking a motor vehicle in the second degree (a class C felony); unlawful imprisonment ( a class C felony); and**

**interfering with reporting of domestic violence (a gross misdemeanor)? [Assignment of Error 3]**

**C. STATEMENT OF THE CASE**

**1. Procedural history.**

The Clark County prosecutor charged and tried Robb York on four crimes: count 1, second degree assault by recklessly inflicting substantial bodily harm in violation of RCW 9A.36.021(1)(a); count 2, second degree taking a motor vehicle without permission in violation of RCW 9A.56.075(1); count 3, unlawful imprisonment in violation of RCW 9A.40.040(1); and count 4, interfering with the reporting of domestic violence in violation of 9A.36.150(1). CP 1-2.

Before the trial started, the court held a CrR 3.5 hearing. RP<sup>1</sup> 21-36. After listening to the testimony of Clark County Sheriff's Deputy Robin Ternus, Mr. York stipulated to the admissibility of the statements subject to cross examination. RP 35-36. Mr. York did not testify at the trial and presented no witnesses. RP 164-67. York's statements were admitted during the State's case. RP 72-83.

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<sup>1</sup> There are four bound volumes of report of proceedings. The page numbers are consecutive.

Mr. York proposed certain jury instructions. See Supplemental Designation of Clerk's Papers (sub. nom. 29, Defendant's Instructions to the Jury). Specific to his case were two self-defense instructions. Id. He did not propose a lesser included instruction of fourth degree assault to counter the charged second degree assault. Id. Mr. York had no objections to the court's instructions. RP 160, 168.

The jury found Mr. York guilty as charged. CP 36-40. With three exceptions, Mr. York was sentenced within his standard ranges. The court, in imposing a ten-year no contact order on all counts, exceeded the standard range on three of the counts. CP 46, 65, 70-71.

Mr. York timely appeals all portions of his judgment and sentence. CP 68-69.

## **2. Trial testimony.**

In August 2008, Metro Watch security officer Andres Alvarez was working a shift at the Steeplechase Apartments in Vancouver. Around 11 p.m., he noticed a couple engaged in a heated argument in the street outside of the apartment complex. RP 127-128. A woman, later identified as Nicole McNeel, was standing in a car's open driver's door. RP 128. She was yelling at a man walking

down the street. RP 128. The man was later identified in court as Robb York. RP 95, 103. Mr. Alvarez had the impression that they were both intoxicated. RP 128. Mr. York yelled, "You're a whore," at Ms. McNeel before turning and walking back to the car. RP 129. Alvarez heard a yelp and saw Ms. McNeel fall against the car. RP 129. Mr. York pushed Ms. McNeel away, got into the car, and drove off leaving Ms. McNeel in the street. RP 129.

Around midnight, Mr. Alvarez saw the car again. RP 130. This time, the car was on Steeplechase property. RP 130. The car was in the parking lot but not in a parking space. RP 130-31. The car was running. RP 130. Ms. McNeel was standing in the driver's door. RP 130-31. Mr. York was standing in front of her. RP 131. They were having a heated, animated discussion. RP 131. Mr. York reared back and slugged Ms. McNeel in the face. RP 131. Mr. Alvarez yelled at Mr. York saying, "What do you think you are doing?" RP 131. Mr. York threw up his hands and said, "Oh, we're just talking, we're just – we're just gonna talk." RP 131. Ms. McNeel then turned and got into the driver's seat and drove the car into a parking spot. RP 131. Mr. York walked to the passenger door and got into the car. RP 132. The car backed out of the parking spot and drove off down the road "really fast." RP 132.

At some time that evening but before driving off, Ms. McNeel had a memory of being picked up by Mr. York and put back in her car. RP 108, 111.

Ten to fifteen minutes later, Ms. McNeel, now shoeless and disheveled, came running back to the apartment complex yelling that she wanted the security guard and the police. RP 132. She was crying and looked pretty battered. RP 133. Mr. Alvarez called 911. RP 132.

Clark County Sheriff's Deputy Robin Ternus responded. RP 53-55. Deputy Ternus interviewed Ms. McNeel who, through tears and the odor of alcohol, gave an account of what happened in the Steeplechase parking lot. RP 56-61.

What she did is she said as it was as they got to the Steeplechase Apartments, this was kind of an ongoing deal, so she pulled over, stopped the vehicle, got out of the vehicle, got up on the sidewalk and started walking.

She thought initially she had removed her keys from the car so the car could not be moved. And next thing she knows is that the vehicle's pulling up next to her, Robb gets out of the vehicle, comes up to her and tells her to get back in the car.

She refuses. He grabs her. She starts fighting back. And she says she's – she hit him and – and scratched him and did whatever she could to get away from him.

He knocks her down and grabs her and then pulls her over to the car, and at which time she finally agrees to get in the car, so she gets in the car at that point in time, and they

drive a little bit further north, past the Steeplechase Apartments to Oscar's.

RP 61.

Ms. McNeel went on to tell Deputy Ternus what happened next. They drove to Oscar's, a nearby mini mart, where they stopped. RP 61-62. They started arguing again and Mr. York started to hit her. RP 62. She got out of the car to call 911, Mr. York followed her, knocked the phone out of her hand, punched her in the head knocking her to the ground, and took off in her car without her permission, leaving her at Oscar's. RP 62.

Deputy Ternus described Ms. McNeel's injuries. RP 59-70. She had a swollen left eye, a swollen lip and cut lip, a scratch on and below her right eye, a scratch on her chin, scratches and bruises on her wrists and upper arms, a bruised shoulder, a bruise behind her ear, a skinned and bruised knee, scratched fingers. RP 62-71. Ms. McNeel testified that she "got her ass beat that evening." RP 109.

Ms. McNeel refused medical treatment while at her apartment with Deputy Ternus, but later went to a hospital emergency room. RP 42-43. By the time she arrived at the emergency room, her left eye was swollen shut and she had a

notable bruise on the right side of her scalp. RP 45. The emergency room doctor described Ms. McNeel's pain level as moderate to severe. RP 47. He also noted that she had "multiple bruises on her upper and lower extremities" and that she had pain in her neck and chest wall tenderness. RP 47. She was nauseous which he attributed to a possible concussion even though her head scan was negative. RP 48. She was given a shot of pain medication which was atypical for assault patients seen in the emergency room. RP 49.

There was no testimony at trial as to how Ms. McNeel felt the next day or the following week. Nothing in the record suggests that Ms. McNeel suffered any sort of long term consequence as a result of her injuries.

Ms. McNeel testified that she and Mr. Robb had had an on-and-off-again relationship for eight years. RP 95. At the time of this incident they were not in a relationship. RP 96. That evening, they were drinking at various bars in Jantzen Beach. RP 97. She told Mr. York that she wanted to be with someone else. RP 98. He was hurt by that statement. RP 99. He told her that she was ugly. RP 99. That hurt her feelings. RP 99-100. They got in the car and started to drive to her apartment. RP 100-01. When she stopped

at a light near her apartment, she started to hit him. RP 101-02. He took the keys out of the ignition. RP 101. She jumped out of the car and threw her purse in the bushes. RP 101. She wanted to walk to her apartment but realized her apartment keys were with her car keys. RP 103. She thought that Mr. York pulled into the apartment complex. RP 103. After that point, her memory of events was sketchy. RP 103. She did remember being out of control and hitting Mr. York repeatedly and hard. RP 104.

She wrote a statement for the police that evening. RP 105. At the prosecutor's request, she read the first page of the statement into the record.

On August 29, 2008, on the way home from Jantzen Beach, Robb and I became involved in an argument or I became involved in an argument with Robb York. The fight got out of control and I tried to get out of the car.

He wanted to talk and work things out. That's when I told him that I wanted to be with someone else and he started hitting me and I hit him back.

I jumped out of my car and took the keys, but he was really angry and said give him the keys or else. I did because I wanted to stop – wanted it to stop.

He left in my car without permission, and when I got out of the car at Oscar's Market, I called 9-1-1-. He hit the phone out of my hand and I knocked – and knocked me to the ground. The call was not completed.

When he was picked up he was carrying my ID.

RP 106-107.

Mr. York returned to the apartment complex while the police where there interviewing Ms. McNeel. RP 71. He was highly intoxicated. RP 71, 89. He was upset and crying and said that he never hurt Ms McNeel. RP 72. He denied hitting Ms. McNeel but acknowledged having to defend himself when Ms. McNeel started to hit him. RP 75. He used his arms and wrists to push her away. RP 75. He had scratches on his neck and face and a fresh bite mark on his arm. RP 77. After being arrested, he refused to cooperate and show the police where Ms. McNeel's car was parked.

#### **D. ARGUMENT**

##### **1. MR. YORK WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL FAILED TO REQUEST A LESSER INCLUDED INSTRUCTION OF FOURTH DEGREE ASSAULT.**

Mr. York's counsel failed to ask the trial court to instruct the jury on the lesser included offense of fourth degree assault. Based upon the evidence presented at trial, Mr. York was entitled to the lesser fourth degree assault instruction. Trial counsel's all or nothing approach on the degree of assault was not a legitimate trial

strategy and Mr. York incurred prejudice because of the failure to seek the lesser instruction. Mr. York is entitled to a new trial.

(a) **An accused is entitled to effective representation.**

The state and federal constitutions guarantee accused persons effective representation of counsel at all critical stages of trial. U.S. Const. Amend 6; Const. Art 1 §§ 3, 22; *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 1052, 80 L. Ed 2d 674 (1984); *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). To obtain relief based on ineffective assistance of counsel, an appellant must establish that (1) his counsel's performance was deficient and (2) his counsel's deficient performance prejudiced his defense. *Strickland*, 466 U.S. at 687. A claim of ineffective assistance of counsel presents a mixed question of law and fact that is reviewed de novo. *In re Brett*, 142 Wn.2d 868, 873, 16 P.3d 601 (2001).

(b) **Effective representation included requesting instruction on a lesser included offense if the law and facts support the giving of the instruction.**

Failure to seek an instruction on a lesser included offense can form the basis of a claim for ineffective assistance of counsel.

*State v. Pittman*, 134 Wn.App. 376, 166 P.3d 720 (2006); *State v. Ward*, 125 Wn.App. 243, 104 P.3d 670 (2004). A defendant is entitled to a lesser included offense instruction when (1) each of the elements of the lesser included offense is a necessary element of the charged offense, and (2) the evidence supports an inference that the lesser crime was committed. *State v. Fernandez-Medina*, 141 Wn.2d 448, 454, 6 P.3d 1150 (2000) (citing *State v. Workman*, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978)). There must be some evidence showing that the defendant committed only the lesser included offense to the exclusion of the greater charged offense. *Fernandez-Medina*, 141 Wn.2d at 456 (citations omitted). Although affirmative evidence must support the issuance of the instruction, such evidence need not be produced by the defendant. Rather, the trial court “must consider all of the evidence that is presented at trial when it is deciding whether or not an instruction should be given.” *Id.* Finally, the appellate court is to view the supporting evidence in the light most favorable to the party requesting the instructions. *Id.* at 455-56.

Two cases, *State v. Jimerson*, 27 Wn. App. 415, 618 P.2d 1027, *review denied*, 94 Wn.2d 1025 (1980), and *State v. Nordby*, 20 Wn. App. 378, 579 P.2d 1358 (1978), are comparable to the

facts in Mr. York's case and demonstrate when a lesser included instruction should be given. In both *Jimerson* and *Nordby*, the court found error in failure to instruct on the lesser offense of fourth degree assault.

Jimerson was charged with first degree assault for attempting to run over police officers with his car. *Jimerson*, 27 Wn. App. at 417. The jury was given alternate instructions for second degree assault, but the trial court refused to instruct the jury regarding simple assault.<sup>2</sup> *Jimerson*, 27 Wn. App. at 417. Jimerson was convicted of second degree assault. *Id.* Jimerson testified at trial that he merely intended to splash officers with slush, not run them over. *Id.* The appellate court held that the failure to instruct the jury on simple assault constituted prejudicial error. *Id.* at 420. Evidence was produced which would justify a reasonable person in concluding that the lesser offense had been committed, and it was up to the jury to determine the defendant's credibility. *Id.*

Similarly, *Nordby* was charged with second degree assault for knowingly inflicting grievous bodily harm upon another. The trial court's failure to instruct the jury on simple assault was error where

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<sup>2</sup> Fourth degree assault used to be codified under RCW 9A.36.040 as simple assault.

the defense claimed diminished capacity based on intoxication. *Id.*  
at 381.

- (c) **There was no legitimate tactical reason in failing to request a lesser included fourth degree assault instruction in Mr. York's case. Mr. York incurred prejudice through his counsel's failure.**

In order to prove the charge of assault in the second degree, the State had to prove that Mr. York inflicted substantial bodily harm on Ms. McNeel. Substantial bodily harm was defined for the jury as follows:

Substantial bodily harm means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or that causes a fracture of any bodily part.

CP 19.

Here, Ms. McNeel testified that she got "her ass beat" that evening. Both the emergency room doctor and Deputy Ternus described Ms. McNeel's injuries: a lot of bruising, a swollen shut black eye, and a possible concussion. But contrary to the jury instruction defining the necessary element of substantial bodily harm, there was no evidence of a temporary but substantial loss or impairment of the function of any bodily part or organ, or a fracture of any bodily part. The State may argue that Ms. McNeel's

bruising was equivalent to temporary but substantial disfigurement, but without any evidence as to the extent and impact of Ms. McNeel's injury on Ms. McNeel in the days following the incident, there is not evidence of any substantial disfigurement. The jury in this case could have concluded that although Mr. Robb assaulted Ms. McNeel, the injuries in this case more closely fit under the rubric of assault in the fourth degree rather than the substantial bodily injury needed to convict on assault in the second degree. Fourth degree assault is defined as an assault of another that is not a first, second, or third degree assault or a custodial assault. RCW 9A.36.041.

In *Pittman*, Division I of the Court of Appeals addressed a situation in which an "all or nothing" defense was an illegitimate trial strategy. *State v. Pittman*, 134 Wn.App. 376. There, the court noted that one of the elements the State was required to prove was in doubt, but the defendant was "plainly guilty of some offense." *Pittman*, at 388. The Court stated: "Under those circumstances, the jury likely resolved its doubts in favor of conviction of the greater offense." *Pittman*, at 388. In *Ward*, Division I held that an all or nothing defense was deficient performance in that case because Ward's defense was the same for both the lesser and

greater offenses and there was an inherent risk in relying solely on Ward's case of self-defense. *State v. Ward*, 125 Wn.App. 243. The *Ward* Court further noted there was a significant difference in penalties between second degree assault and unlawful display of a weapon. *Ward* at 387.

Like *Pittman*, because the jury rejected Mr. York's self-defense claim, it was evident that he was "plainly guilty of some offense." Under the law and facts of Mr. York's case, that something could have been a fourth degree assault but the jury was denied that choice. Like *Ward*, there was an inherent risk in Mr. York relying solely on his claim of self-defense especially given the significant difference in penalties between second degree and fourth degree assault. As such, in this case, like *Ward* and *Pittman*, it was unreasonable to submit this case to the jury as an all or nothing case. Only legitimate tactics may defeat a claim of ineffective assistance of counsel. *State v. Ward*, 125 Wn. App. at 249-50. The choice not to seek a lesser instruction of fourth degree assault was not a legitimate tactic.

Mr. York received ineffective assistance of counsel and should be granted a new trial.

**2. MR. YORK WAS ALSO DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS COUNSEL SUPPORTED THE ADMISSION OF IRRELEVANT AND HIGHLY INFLAMMATORY PROPENSITY EVIDENCE.**

In its case in chief, the State moved to admit Ms. McNeel's *Smith*<sup>3</sup> affidavit. (See exhibit 33 attached as Appendix A). Defense counsel did not object. RP 113. Defense counsel should have objected to the inflammatory evidence contained on page two of the affidavit as it is, at the very least, inadmissible ER 404(b) evidence.

The purpose of the rules of evidence is to secure fairness and to ensure the truth is justly detained. *State v. Wade*, 98 Wn. App. 328, 333, 989 P.2d 576 (1999). To that end, ER 404(b) prohibits admission of character evidence to prove the person acted in conformity with the character on a particular occasion. "ER 404(b) forbids such inferences because it depends on the defendant's propensity to commit a certain crime." *Wade*, 98 Wn. App. at 336. Prior misconduct, including acts that are merely unpopular or disgraceful, are inadmissible to show that the defendant is a "criminal type" and is likely to have committed a crime for which he is charged. *State v. Halstien*, 122 Wn.2d 109, 126, 857 P.2d 270 (1993). In other words, ER 404(b) prohibits

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<sup>3</sup> *State v. Smith*, 97 Wn.2d 856, 861, 651 P.2d 207 (1982).

admission of evidence simply to prove character. *State v. Lough*, 125 Wn.2d 847, 859, 889 P.2d 487 (1995).

The following is what the jury learned about Mr. York in page two of the *Smith* affidavit.

- He has contemplated, threatened, or attempted suicide;
- He has, in the past, controlled or restricted Ms. McNeel's freedom;
- He has said, "If I can't have you, no one will;"
- He has accused Ms. McNeel of cheating on him;
- He has tried to control Ms. McNeel's daily activities;
- He has stalked Ms. McNeel and repeatedly harassed and/or followed her causing her fear;
- He has choked Ms. McNeel;
- He abuses alcohol and drugs;
- He has a mental health history and/or diagnosis;
- He is violent toward children;
- He has been violent outside of his relationship with Ms. McNeel;
- Ms. McNeel has told him that she is leaving;
- Ms McNeel was in the process of leaving Mr. York when this incident happened;

- And that he is stalking her and looking in her windows daily.

(See Appendix A).

None of that information was material or relevant but it is high inflammatory and prejudicial. It is no wonder Mr. York's self-defense claim failed given the wealth of propensity evidence as discovered in page two of Exhibit 33. Mr. York's counsel was grossly ineffective for supporting the admission of this inflammatory evidence.

**3. THE TEN-YEAR NO CONTACT ORDER IMPROPERLY EXCEEDED THE STATUTORY MAXIMUM ON THREE OF MR. YORK'S FOUR CONVICTIONS.**

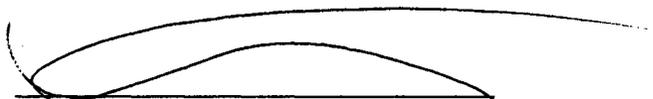
As both a condition of his sentence and in a domestic violence no-contact order, the court ordered Mr. York to have no contact with Ms. McNeel for ten years. CP 46, 65, 70-71. However, a no-contact order cannot exceed the statutory maximum for the underlying offense. *State v. Armendariz*, 160 Wn.2d 106, 119-20, 156 P.3d 201(2007); See also RCW 9A.20.021. The only crime Mr. York was convicted of with a statutory maximum of ten years was the second degree assault. RCW 9A.36.021. The second degree taking a motor vehicle and unlawful imprisonment

are class C felonies with a statutory maximum of five years. RCW 9A.56.075, 9A.40.040. The interfering with reporting of domestic violence is a gross misdemeanor with a statutory maximum of one year. RCW 9A.36.150. Because the no-contact order and conditions exceed the statutory maximum for these three crimes, Mr. York's case must be remanded to correct these errors.

**E. CONCLUSION**

Mr. York was denied effective assistance of counsel because of counsel's failure to request a lesser included instruction of fourth degree assault. Mr. York's conviction should be reversed.

Respectfully submitted this 15<sup>th</sup> day of June 2009.

  
LISA E. TABBUT/WSBA #21344  
Attorney for Appellant



# APPENDIX A

Domestic Violence Victim Statement

Incident # 08-12969

Statement of: Nyomie L. McNEEL Date of Birth: 04-25-69  
 Res. Address: 4617 NE ST JOHNS RD #104 STEEPLE CHASE APT  
 Res. Phone: 760 546 3111 Work phone: \_\_\_\_\_ Cell phone: \_\_\_\_\_  
 Date of statement: 08-31-08 Time of statement: 0230  
 Suspect Name: ROBB E YORK Relationship: BOYFRIEND

Please describe what happened: On Aug 29th 2008 on the way home from Jantzen Beach Robb and I became involved in an argument with Robb York the fight got out of control and I tried to get out of the car. ~~Robb York~~ He wanted to talk and work things out that's when I told him that I wanted to be with someone else. He started hitting me and I hit back. I jumped out of my car and took the keys but he was really angry and said to give him the keys or else. I did because I wanted it to stop. He left in my car without my permission.

And when I got out of the car at Oscars market I called 911 he hit the phone out of my hand and knocked me to the ground the call was not completed when he was picked up he was carrying my I.D.

Were you hit / any physical force used against you / or were you in fear of being hurt? (circle one)  YES  NO.

If YES, by Whom? Robb York

HOW, WHERE and/or WITH WHAT were you hit / assaulted or threatened? Asts St Johns

Are you injured? (circle one)  YES  NO. If YES, describe injuries: Brusses Black eye fat lip busted chin brusses on ribs and arms

Do you have any marks or are you in any pain? (circle one)  YES  NO. If YES, describe the marks or the locations of pain: my face head arms shin left.

Will you seek/need medical aid? (circle one) YES NO. If YES, where? \_\_\_\_\_

Where and when did this incident occur? St Johns rd.

Has this person done this type of thing to you before? (circle one) YES NO If YES, when and where? Nov 2005 ?

Was a police report made? (circle one) YES NO Agency Name: \_\_\_\_\_

What was occurring just prior to this incident? (Drinking)

Are Any of the Following Currently Occurring or Have Occurred?

|   |   |
|---|---|
| <input type="checkbox"/> Guns or other weapons presently in the home                    | <input checked="" type="checkbox"/> Choked (strangled) you or other family member     |
| <input type="checkbox"/> Threats to use any weapon against you or another person        | <input checked="" type="checkbox"/> Abuses alcohol or drugs                           |
| <input type="checkbox"/> Recently assaulted you with weapons                            | <input checked="" type="checkbox"/> Mental health history/diagnosis                   |
| <input type="checkbox"/> Assaulted (struck, kicked, etc) you while pregnant             | <input type="checkbox"/> Injured or killed pets                                       |
| <input type="checkbox"/> Threatened to kill you or others                               | <input checked="" type="checkbox"/> Violent towards children                          |
| <input type="checkbox"/> Recent loss of job/family member/ other stressors              | <input type="checkbox"/> Recently increased level / frequency of violence             |
| <input checked="" type="checkbox"/> Contemplated, threatened or attempted suicide       | <input checked="" type="checkbox"/> Been violent outside your relationship            |
| <input checked="" type="checkbox"/> Controlled or restricted your freedom               | <input type="checkbox"/> You are currently pregnant                                   |
| <input type="checkbox"/> Said "If I can't have you, no one will"                        | <input checked="" type="checkbox"/> You have told suspect you're leaving              |
| <input type="checkbox"/> Destroyed cherished items                                      | <input checked="" type="checkbox"/> You are in the process of leaving suspect         |
| <input checked="" type="checkbox"/> Accused you of cheating                             | <input type="checkbox"/> Have either of you recently filed for divorce/ child custody |
| <input checked="" type="checkbox"/> Tried to control your daily activities              | <input type="checkbox"/> Threatened to permanently take your children                 |
| <input checked="" type="checkbox"/> Stalked, repeatedly harassed/ followed causing fear | <input type="checkbox"/> Forced you to do something sexually uncomfortable            |

If the incidents checked in the above table occurred within the past 12 months, please explain: Stalked looking in windows ect. daily?

Additional comments (list possible witnesses, the presence of CHILDREN or any other pertinent information): \_\_\_\_\_

Were you given a Domestic Violence Information Pamphlet? YES NO. If NO, why not? \_\_\_\_\_

I have written, or had this statement written for me and this statement truly and accurately reflects my recollection of this incident. The deputy sheriff has explained to me that by signing this statement I am certifying or declaring, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Name of Officer who explained this form to me: R. Torres 4457

I, Nicole Mcneel, certify, or declare, under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

SIGNED: Vancouver Wa PLACE: County of Clark

DATE: 08-30-08 Time: 02:30

Witnessed by: [Signature] Agency CCSU PSN 4457

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STATE OF WASHINGTON  
BY \_\_\_\_\_  
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CERTIFICATE OF MAILING

State of Washington, Respondent, v. Robb E. York, Appellant  
Court of Appeals No. 38590-2-II

I certify that I mailed, unless otherwise noted, a copy of Appellant's Brief to:

Mr. David C. Ponzoha, Clerk  
Court of Appeals, Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454 – hand delivered

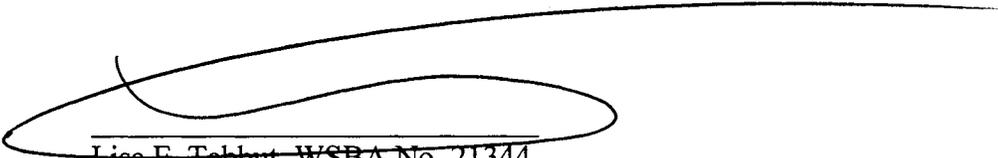
Michael C. Kinnie  
Clark County Prosecutor's Office  
P.O. Box 5000  
Vancouver, WA 98666-5000

Robb E. York/DOC#960147  
Washington State Reformatory  
P.O. Box 777  
Monroe, WA 98272-0777

All postage prepaid, on June 15, 2009

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE  
OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT .

Signed at Longview, Washington, on June 15, 2009.



\_\_\_\_\_  
Lisa E. Tabbut, WSBA No. 21344  
Attorney for Appellant