

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

COA Served 12/1/10 (in)

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 Mark L Christensen)
 (your name))
)
 Appellant.)

No. 40116-9-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

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

Additional Ground 1

Ineffective Assistance of Counsel
Violations of Rules of Professional Conduct

Additional Ground 2

Probable Prosecutorial misconduct
Violation of Rules of Professional Conduct

If there are additional grounds, a brief summary is attached to this statement.

Date: 11/22/10

Signature: Mark L Christensen

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II
CASE NO. 40116-9-II**

I, Mark L. Christensen, have received and reviewed the opening brief prepared by my appellate attorney, Sheri L. Arnold. Summarized below are the additional grounds my appellate attorney did not address in her opening brief on my behalf. Appellant believes the following issues have merit and should be addressed by this Honorable Court. Appellant understands the Court will review this Statement of Additional Grounds for Review prepared by myself when my appeal is considered on its merits.

My appeal is based on several items. During trial one (1) and trial two (2) the prosecution presented witnesses whose testimonies were inconsistent and contradicted one another. In addition, my appeal is also based on violations of my constitutional rights. The constitutional rights violated are listed below:

The right to effective assistance of counsel including to be represented to fullest measure of the appointed attorney without bias and effective preparation.

The right to an impartial jury due to being subjected to pressures and influences preventing the case from being determined on evidence.

The right to present exculpatory evidence.

Below are accounts based on trial transcripts and personal knowledge drawing concerns to my constitutional rights being violated and basis for appeal.

GROUND 1: INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth Amendment to the United States Constitution and Article I, section 22 (amendment 10) of the Washington State Constitution, both, guarantee the right to effective assistance of counsel in criminal proceedings. My counsel violated my rights to effective assistance of counsel, when she did not use all evidence provided to her.

Prior to trial:

Once I was extradited to Washington, I was bailed out of Pierce County Jail by my wife, (on or around, December 6, 2007). The first time I met with my attorney was at a pre-trial hearing on December 24, 2007. That meeting took place outside the courtroom. The prosecutor imposed a travel restriction on me and my attorney stated to me she did not think it was worth arguing with him about. Between 12/2007-5/2008, I only met with my attorney, (outside of court), a few times, which was due to her overwhelming case load. We would generally meet, briefly in the courthouse just before a hearing or something.

The few times that I did meet with my attorney, she was uninterested in what I had to say, (she would hold her hand up to signal me to be quiet), and would tell me to "sit down and shut up." At one meeting while I was telling my counsel how I was as a parent in regards to my being strict, (which comes from my serving in the US Army), she just told me to "sit down and shut up", she also made a comment that I reminded her of her father, and I don't understand why she made that comment. I had given my counsel evidence and she immediately disregarded it and refused to consider any productive value in it without even looking through it. This evidence would have proved "relevant" and would have shown a motive for the accusations against me. During the first trial, she had to excuse herself from the courtroom a few times to go in the hallway where my wife was sitting and ask her for copies of some of the evidence that she said she "misplaced."

The travel restriction was finally lifted at the end of May 2008 and I was allowed to return to my home in Utah. Once home I kept in contact with my attorney leaving her voice mails and sending her emails, both of which would go unanswered for days or weeks. I would email her with any questions or concerns I had or regarding evidence that was pertinent to my case. Sometimes it would take my emailing her 4 or 5 times before I would get an answer and even then some questions were still left unanswered. I have attached some of the emails, (which I have marked as exhibit B), where you can see by the content in the email, I was waiting for a response.

I sent her director, Mr. Kawamura, a letter dated February 18, 2008, (which I have attached as exhibit a), requesting new counsel. This letter explained the attorney/client relationship from the start of the first trial was not being supported and violated the sixth amendment. Twice I requested new counsel in writing by contacting the Department of Assigned Legal Counsel. All requests for new counsel were denied without course. My wife and I wrote Judge Serko a letter explaining my concerns that I had with my counsel, (I later found out she does not read letter sent to her), those letters have been sealed.

The prosecutor, Mr. Ausserer, contacted my wife, Gail, by phone on March 16, 2009 to ask some questions. In previous conversations, with my counsel, Gail realized that her earlier statements had been taken out of context so Gail decided to tape the phone conversation, (we reside in Utah and it is a 1 party consent state), and in that conversation the prosecutor stated that there were some "inconsistencies in MS's counseling records and with what MS was saying." The prosecutor had also

asked Gail, in that conversation what the age difference was between the girls and Gail stated 4 years and the prosecutor repeated 4 back to Gail.

I was totally left in the dark as to what kind of “trial strategy” or “tactics” my attorney had. My wife and I drove to Washington from our home in Utah and arrived on Friday, April 3, 2009. I contacted my attorney upon my arrival, left her a voice mail advising her where we were staying. She returned my call on Monday, April 6, 2009 and we agreed to meet the following day. When we met with my attorney, I presented her with the evidence that I had found while home. Very little of this evidence was used, which my counsel later acknowledges during trial.

My counsel also refused to subpoena any witnesses that I had requested, which is another violation of my constitutional right.

Several violations of the Rules of Professional Conduct at best. Starting with the Preamble #4, which states:

(Washington revision), “In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct.”

RPC Rule 1.3 Diligence as well as RPC Rule 1.4 Communication:

Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

Communication:

(a) A lawyer shall;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(4) promptly comply with reasonable requests for information;

Comment:

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

First trial:

While my counsel and the prosecutor were still filing motions during the 1st trial, my counsel exited the courtroom and approached my wife and said that the prosecutor wanted to talk to her. In Volume 2 of the 1st trial, April 9, 2009, page 75, (starting on line 9), the prosecutor refers to a conversation that he had outside the courtroom, in the hallway, with my wife, and my defense attorney. In addition to identifying Gail with an adverse party under Evidence Rule 611, he also stated that Gail was somewhat hostile toward him and the states prosecution in this case. This conversation was a follow up to the phone conversation that had taken place on March 16, 2009. The prosecutor had asked Gail if January 1996 rang a bell and Gail's response was that, that was when the accident between Mark and DS had taken place, and the prosecutor stated that was what DS also said. For some reason that was not what DS stated when she took the stand. Then the prosecutor had asked Gail if she remembered the name of the movie that we watched and Gail stated "no, we've watched so many movies over the last 14 years, it would be difficult to say what movie we watched at any certain point." The prosecutor stated that DS stated the name of the movie was "Tin Cup," (this can be found in Volume 3, April 13, 2008, of the 1st trial, page 98, line 14). We had researched this online, at a website called www.imdb.com, and learned that this movie was released in the theaters on August 16, 1996 and on VHS in May 1997. The relevance of this information is that DS left our home, in South Dakota, at the very end of March/beginning of April 1997, (this is verified by a page in DS's journal which was admitted as an exhibit), DS states in her testimony, that she left immediately after this accident took place, which would be one reason that the January 1996 time frame changed to the beginning of 1997. Another reason the date change would be to aid the prosecutor in his "plan/scheme theory." (Gail told my defense attorney what she found out about the movie and gave her the website and during a lunch recess, my attorney printed this information up and showed it to Gail and I and then my defense attorney hands it to the prosecutor.) The name of the movie was never mentioned in front of the jury. The prosecutor also says in Volume 2, April 9, 2009, of the 1st trial, page 75, that he tried asking Gail questions 3 or 4 times just to get her to answer a question and instead of answering she just wanted to tell him what she wanted to, Gail did answer the questions she was asked. Then, Gail asked the prosecutor a question, she noticed on his legal pad, which he acknowledged was his notes from their phone conversation, why there was a 3 ½ circled. The prosecutor stated that was the difference in the ages that Gail had stated to him in their phone conversation. Gail told the prosecutor that she had told him there were 4 years between the girls. The prosecutor told Gail, no, she said 3 ½. Since Gail taped that phone conversation, it is on tape that she said 4 years and he repeated that back to her. It was after that, the prosecutor went into the courtroom and stated that Gail was being hostile. My defense counsel was present during this conversation.

My attorney acknowledges, on record, in front of Judge Chushcoff, (1st trial, April 20, 2009 V. 6, P. 546 Line 23), and states: "what they gave me and what I decided to use is irrelevant. There is a whole bunch of stuff, and I could bring in a trunk, but I'm not going to and I told the Christensens that I wasn't go to." Included in this evidence were family photographs showing that both MS and DS had friends over and us a family having fun and being spontaneous (which would contradict DS's testimony), journals written by both MS and DS, (DS's journal shows direct inconsistent and conflicting accounts of events to her testimony), MS's therapy records, (to my knowledge only 2 pages were marked as an exhibit), and my medical records, against my wishes, which my counsel, insisted on having sealed during the court proceedings. My attorney stated my medical records could not benefit my trial. I know the information contained in my medical records would have contradicted MS's testimony. I provided my counsel with all this evidence which she admits she "decided not to use" On her own accord. Again, how can I have a fair trial?

This is in violation to my constitutional right to a fair trial. How can a trial be fair if all the evidence I provide my counsel with is not used?

In the verbatim report of the court proceedings held in front of Judge Serko on April, 8, 2009, on page 4, line 9 and 10, my counsel acknowledges to Judge Serko the contact that I made with her director, Mr. Kawamura, to request new counsel. Both times I was denied by Mr. Kawamura. I then made my request on record in front of Judge Serko, this being the first of 4 requests placed on record through the court. I was denied by Judge Serko as well as Judge Chushcoff later that day. On page 9 of Volume 1 from the first trial (dated April 8, 2009), there is record of a sealed transcript. The prosecuting attorney was asked to step outside the courtroom where I brought my concerns to Judge Chushcoffs attention. I do not have access to that sealed transcript. Judge Serko, (and I believe Judge Chushcoff too), stated that they denied my request because of the age of the case. At that time it was 491 days old (verbatim report, page 3, line 13). Even though I met with Mr. Kawamura, between January-May 2008, prior to returning to Utah. On page 4 of the verbatim report, lines 1-7, my counsel informed Judge Serko the reason the case was so old was due to continuances because of a conflict of schedule involving the original prosecutor, John Sheeran.

As far as being prepared for trial, well an attorney who has to excuse themselves from the courtroom to get evidence from their clients spouse because they "misplaced" it, is not prepared. My counsel also admitted to me, one day during trial that she did not have even my file with her.

Six of the twelve jury members for the first trial were rape victims, which violates my constitutional right to a fair and unbiased jury.

After the trial:

The first trial ended in a hung jury and it seemed to focus more on the accident that happened between DS and myself. Sometime between that accident with DS and the first trial, DS's account of events changed from the way she originally told Gail, (in 1996), after it happened. Shortly after the first trial, Gail had tracked down D.S's friend Christy and her mother, Fay, who D.S had disclosed the details of that one accident to, the day after it happened. My wife, had a 3 hr telephone conversation, on 7/31/2009, (which Gail taped, as Utah is a 1 party consent state), and Christy's details supports Gail's, including the time line. When I advised my counsel, in a phone conversation on 8/6/09, that Gail had been in contact with Christy, she requested Christy's phone number which Gail had given her. My attorney stated to me that she wanted to have her investigator contact Christy. It was not until 9/30/2009 that my defense counsel informed me in an email that she had just forwarded Christy's phone number to the investigator. I had emailed my attorney numerous times during these 2 months asking if she forwarded Christy's number to Karl, but had not received a response until 9/30/09. I do not know the reason for the nearly 2 month delay, but Gail was able to find out that Christy had been in contact with Dawn sometime in mid August 2009. By the time Karl Calhoun, the investigator had contacted Christy, her story mirrored Dawn's testimony. I mailed the tape of the telephone conversation to my defense counsel to prove to her what Christy had said, but I was advised that she did not listen to it. She told me that she would not be calling Christy as a witness based on that interview with Karl. I was also advised in that same email that my defense counsel was not going to be calling any of my witnesses that I was requesting, which is violation of my constitutional right. The only witness that I had to testify on my behalf was my wife, who was not subpoenaed by my defense counsel, but by the prosecutor. In an email dated as early as 1/16/2009, my counsel advised my wife that "if she needed a subpoena to explain her absence from work, she could hand her one when we got to Washington." In a later email dated 3/10/2009, my wife asked my counsel if she still planned on using her as a witness

since she did not receive a subpoena and my counsel promptly replied and stated "yes." Gail was somewhat confused when she finally did receive a subpoena and it was from the prosecutor's office. In the end, the prosecutor did not call Gail to testify, but my counsel did. It was explained to me by Judge Chushcoff and my attorney that it did not matter who subpoenas the witness. That may be the case, but the prosecutor did make it a point in his closing argument that Gail had been subpoenaed by the State.

In the Declaration For Determination of Probable Cause, that was prepared by Deputy Prosecuting Attorney, Sunni Y. Ko, WSBA #20425, (dated August 20, 2007), it states on line 22 of the 1st page that after MS disclosed to her sister, DS what had happened, MS was surprised and dismayed as she learned about the accident with DS and myself. However, it was told differently in court by both MS and DS, when they took the stand and testified under oath.

During the 1st trial, (April 15, 2009), Volume 4, page 177, lines 11-17, when the prosecutor asked MS if she knew the reason why DS moved out, MS states "yes," the prosecutor follows that up with "I'm assuming that is because she told you why she moved out?" and MS states "later on, yes."

When DS took the stand on April 16, 2009, the prosecutor asked DS, if she told MS why she moved out and DS stated "yes." The prosecutor then asked DS when she told MS why she moved out and DS stated: "I came back to visit my senior year for Christmas." (Volume 5 pages 372-375 lines 13-19).

If the information contained in the Declaration For Determination of Probable Cause came from the interview tape that MS made in Kansas then her testimony should be the same as in her interview, but clearly that was not the case. My counsel and I watched the interview tape together, sometime in the early part of 2008, and my counsel stated to me that she had never seen anything like that before. She stated to me that she was able to tell that MS was lying. My counsel also stated to me that she could tell that the detective interviewing MS thought that MS was lying too. It seemed as if the detective was directing her with what to say. I told my counsel that I wanted the interview tape shown to the jury, but she refused. I know it would have benefited the jury if they could have seen the interview tape.

Even though 6 of the 12 jury members were victims of rape at one time, the jury was not able to unanimously agree on the verdict. The prosecutor and defense attorney had gone back to speak to the jury after the trial and it was disclosed to me by my defense attorney that no one had believe M.S.'s testimony. So, if DS's testimony was only used by the prosecutor so he can prove a "plan or scheme" theory and the jury doesn't believe the complaining witness, then DS's testimony prejudiced the jury. According to the Limiting Instructions and I quote "Evidence regarding an incident that involved Dawn Stockmann and the defendant has been admitted in this case for a limited purpose. This evidence must not be used by you to infer guilt as to the charges at issue."

After the first trial, when my wife and I returned to our home in Utah, I gathered some additional evidence. Based on the testimonies of DS and MS in the first trial, I provided my attorney with additional photographs and about 3 or 4 report cards from MS from when she was living with her mom and myself. Not only was MS an "A" student, she was also in advanced placement classes. I felt this was relevant evidence, due to an opinion that the prosecutor gave in his closing argument (V. 7, P. 622, line 22).

SECOND TRIAL:

Volume 1, starting on page 5, November 16, 2009, of the transcripts for the second trial, my counsel goes on record acknowledging that earlier in the day, in CDPJ before Judge Felnagle, I again requested new counsel and was denied. My counsel goes on record, (at the second trial, November 16, 2009 Volume 1, page 6, line 11), stating that the reason is we had a disagreement about offering my medical records, (which she had me sealed just prior to the first trial against my wishes). I wanted my medical records unsealed for the second trial, but my counsel refused. My counsel also states (dated November 16, 2009 Volume 1 page 6, lines 16-18), that “we’re having ongoing disputes even to this day as to what the evidence is going to be, how we would proceed and what the trial strategy is.” On lines 21-24, my counsel continues and states: “Before, I have not said to any court before today, I have not said to any court our relationship has broken down to the point where I think that I should be removed. I haven’t said that before. I am saying that now.” The issues my counsel addresses to Judge Culpepper are 2 of the concerns I had with my attorney. In addition, my counsel has lost evidence, or as she stated to me “misplaced” evidence. I even went on record to Judge Culpepper, (November 16, 2009 Volume 1, page 20, line 4), stating my counsel has lost evidence and Judge Culpepper responded by stating “Well, I hope she can find it.” Then the Judge starts discussing the jury questionnaire, hopefully selecting a jury by afternoon and being done with the whole trial in 3 or 4 days. The prosecutor told my attorney that he got the prospective jurors from another trial that just ended. This group of jurors seemed to be made up of people that had some kind of connection to either law enforcement or counselors. Six of the twelve jury members for the first trial, (consisted of a specific group of bias jurors), were rape victims, which violates my constitutional right to a fair and unbiased jury.

GROUND 2: PROSECUTORIAL MISCONDUCT

The prosecutor committed probable prosecutorial misconduct in addition to violating several Rules of Professional Conduct.

By allowing the prosecution's witness, DS to change the timeline of the accident, from 1996 to 1997 and not allowing the name of the movie to be mentioned when she testified on the stand in front of the jury would be considered changing testimony and probable misconduct.

On page 105, Volume 3, April 13, 2008, 404b hearing, line 8, and also in Volume 5, 1st trial, April 16, 2009, page 367, Line 2, DS states that when she got to Christy's house she told her mother what had happened. In Volume 2, 2nd trial, November 18, 2009, page 273, starting on Line 4, DS was asked if before Gail got to Christy's house, if she discussed it further with Christy or Christy's mom about what Mr. Christensen had done. DS states "no," line 8, DS is asked if Christy's mom knew at this point and DS states "no." This is not consistent with her original testimony. DS's testimony changed from 1 trial to the next.

On April 13, 2008, (Volume 3, Page 113, starting on line 6), after DS testified in the 404b hearing, the prosecutor in, addressing the court, states "In my brief, the information that I've provided was based on my contact with Gail Sternemann. Quite frankly, some of that information was not correct, but what the Court did hear today was that this happened in about 1997 are – '96 and '97, I think, was her testimony. Our first incident in this case is alleged to have occurred between October '97 and October of '99. We are talking about a year, maybe a year and a half, between that alleged conduct and this alleged conduct. I would submit to the Court that that portion of the test has been satisfied."

RPC Rule 3.4 Fairness to Opposing Party and Counsel

Paragraph (e) A lawyer shall not: in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused."

That statement he made to court is the prosecutor's opinion, in addition to other statements he made including the following:

First trial:

V. 7, P. 622, line 22, the prosecutor states, (in reference to MS), "Not the most sophisticated person in the world, right? I think that we can all agree, not the most sophisticated person in the world. Do you

think that she could concoct this entire scheme and make it planned out so it makes perfect sense all of the way around just because she didn't like him?" This is his personal opinion.

Page 637, line 12, he states: "How about this, we know he molests Dawn, right? By all accounts, he molests Dawn, and we just sweep it under the rug." This one incident with Dawn, was an accident, and unintentional. My defense counsel even stated to me that Dawn's story changed from the very beginning.

Second trial:

V. 3, P. 538, lines 9 & 10, he states, "Clearly, this family is about as dysfunctional as you can come up with."

These statements would be the prosecutor's opinion and appear to be in violation under RPC Rule 3.4.

Based on the violations of my constitutional rights and the Rules of Professional Conduct, I ask that these charges be dismissed and reversed.

Mark L Childerman 92C 336113
Airway Heights Correction Center
PO Box 2049 NB15
Airway Heights, WA 99001

Exhibit
A**GAIL M CHRISTENSEN**

From: "GAIL M STERNEMANN" <garnetrose1927@msn.com>
To: "Jane Pierson" <jpierso@co.pierce.wa.us>
Sent: Monday, March 16, 2009 7:00 AM
Subject: RE: St of WA v Mark L Christensen

Ms. Pierson,

March 15, 2009

In response to your email concerning another polygraph I say this, "as GOD is my witness, I am innocent of what I am being accused." And as easy as it was for Michelle to say I did, I said I didn't, but without a shred of evidence I was arrested on my way to work, in the street in my own neighborhood made to lay in the street with guns drawn, my pickup searched and without even being told what the charges were I was dragged off to jail. While in the Salt Lake jail, I tried to come up with a retainer for a private attorney. So I fought extradition to buy myself time, so I could have adequate legal counsel. Unfortunately, we could not come up with the \$15 -\$20,000.00 needed, so I sat here in jail for approximately 3 months. Then extradited approximately 850 miles, in leg shackles, with no more than a t-shirt, booked into a minimum of eleven jails along the way, in unheated vehicles in mid November and this all started within 2 ½ months of watching our son die in front of our eyes.

Once in Washington, Gail posted my bail. We were then forced to sell our vehicle, my work tools and just about everything we owned to cover my hotel and food expenses, not to mention putting a lien on our home. The only work I could find while staying at the hotel was odd jobs around the hotel only covering a small percentage of my living expenses in Washington, relying on Gail to cover the balance on her \$12.00 an hour job. Jane, you and I even discussed the possibility of me being able to leave Washington and go back home to Utah, while awaiting my next court date, but after one court date in January 2008, you informed me that the prosecutor had said no, because "I had fought extradition tooth and nail," and you stated to me that you didn't think it was worth arguing about.

I then met with you and was informed I would not find a jury who was not bias, that I would spend the rest of my life in prison, that I didn't have a chance; without even seeing a shred of evidence on my behalf. I then presented you with Michelle's therapy evaluation report, by a Washington State licensed therapist due to a rape incident that had occurred to Michelle while in the 9th grade at Clover Park High School in 2002, shortly before moving out of our home. Stating in Michelle's own words she had never been molested, could not liken this event to any event she had ever experienced. And she goes on to explain other incidents at school about being curious, etc. Even to include, as documented on 7/3/02 in the therapy report, "won't do stuff like last summer, dealing with things getting weird where least expect it," while visiting her dad and sister in Kansas. It was just before my moving out that Michelle had admitted to me, during a conversation about trust, that she had had sex the previous summer in Kansas, while out cruising one night with Dawn. Michelle went on to explain that Dawn had taken her cruising to pick up guys to take back to her friend Kim's' house where Dawn was living. Michelle admits that Dawn knowingly allowed Michelle to have sex with a guy in the next room, who spent the night, while Dawn was with another guy in another room. Without even looking at the report you notice some underlined statements, as I had underlined key statements and stated abruptly you could not use the document as it had been written on, I then explained this was a copy for you, that I had the original, you then abruptly dismiss the report and state sarcastically, "Michelle lies anyway." I then agree to a polygraph. You arrange for me to meet with Rick from Comtes & Associates. I was not informed prior to the nature and content of this examination and was even subjected to demeaning questions with my answers being exaggerated and manipulated right in front of me. Upon explaining to you my concerns and feelings of betrayal as I could not imagine my state appointed counsel subjecting me to and even at my explanation of events defending these manipulated and exaggerated tactics by the interviewer to even go as far as to raising your voice to me and demanding that I shut up and sit down or you would have me thrown into jail.

I then present you with a multitude of evidence to the contrary of the plaintiff's accusations concerning this case including: personal medical history, letters and cards signed by the plaintiff, documented reports by a licensed therapist, time lines and events during plaintiffs alleged time lines, which I can prove.

I even have a written statement by my investigator stating he observed a minimum of a dozen discrepancies in plaintiffs' taped interview. In watching the interview I even observed the interviewer directing the plaintiff and even suggesting events to the plaintiff during the interview. Jane you even stated "even the interviewer could tell she is lying" and "you had

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never seen this before."

And Jane to this date approximately a year and a half since you were assigned as my counsel, by your own admission or by lack of responding to my requests made numerous times, to review my reports, medical records, signed cards and letters by plaintiff, even to include personal blogs by plaintiff also noted in investigation statement including admission to illegal underage drinking even while at fathers, with his knowledge, even openly discussing his participating, her admitting to lying and manipulating, even states in recent blogs planning to meet with male friends and get drunk and party every night during trial.

Jane it seems to me, by definition, my counsel is bound to defend my rights, counsel me with any concerns I might have regarding fair and impartial treatment, to conduct themselves with zealous in their professional capacity and thoroughly evaluate any and all evidence I have provided. Can you honestly state, truthfully, you have done all of this? And yet you would have me put myself in a position where I have no protection against possible manipulation. How can I be expected to put my trust into the very system that has done nothing but violate just about every right I have as an American citizen entitled to due process and fairness? I have put great effort into the documentation of all events I have encountered over the course of the past year and a half, but I guess that was a bone head thing to do.

Before we proceed, based on events, Jane I feel I need to speak with the Judge on how to proceed. I do not feel at this point I would have adequate counsel and feel my case has already been grossly compromised by events contained in this letter.

Sincerely,

Mark L Christensen

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GAIL M CHRISTENSEN

From: "GAIL M CHRISTENSEN" <garnetrose1927@msn.com>
To: "Jane Pierson" <jpierso@co.pierce.wa.us>
Sent: Thursday, September 17, 2009 6:25 PM
Subject: State vs Mark Christensen

Jane:

As you had been previously advised, we had been trying to get a hold of Christy, which Gail did on 7/31/09. When we advised you that Gail had spoken to Christy, you asked for her phone number, which we gave you, so you can have the investigator contact her. We are still waiting for a response from you as to how that conversation went, or if Christy had been contacted. I also gave you a list including her, (on 9/11/09), as a potential witness to have her subpoenaed based on her statements on 7/31/09. Also due to DS's testimony on the stand, (and previously requested before I was allowed to come back to UT), I had requested having Richard Sollars also subpoenaed, which now seems beneficial to my case. You should still have his notarized statement, which I gave you before I left Washington, witnessing DS's and MS's interactions with me while they were here in Nov. 2005 (including DS's daughter). We also asked you, (in an email on 9/10/09). for a list of what evidence we gave you for the 1st trial in April 2009, so I know what additional evidence you need for the retrial. I would still like to know what the Findings/Conclusions is, as it seems I'm not being informed in terms that we can understand, as to what is going on with my case. As you also know, the retrial is quickly approaching and it's imperative for me to prepare and gather evidence you do not have. I would also like to have a complete copy of the transcript from April 2009's trial so I can find any other discrepancies that have been overlooked.

It is of utmost urgency that I get a response as soon as possible in order to prepare for my defense for the retrial.

Mark & Gail

A

GAIL M CHRISTENSEN

From: "GAIL M CHRISTENSEN" <garnetrose1927@msn.com>
To: "Jane Pierson" <jpierso@co.pierce.wa.us>
Sent: Tuesday, September 29, 2009 11:04 PM
Subject: Completed Witness List for Subpoenas-Christensen

Jane:

As I stated in my last email I sent you on 9/17/09, requesting subpoenas for Lisa Borg, Richard Sollars and Christy Rittberger. We have also contacted Christy's mother, Faye, who was also present at DS's original account of events concerning the accident with her and I, as stated to Gail at the time. We have made contact with her and recorded her statements of events which support our account of the events concerning the accident. So to conclude I will need a subpoena for her also. So to summarize, my complete witness list for subpoenas includes:

1. Lisa Borg-801-414-5570 - witness to DS and MS's last visit in Utah, states MS sat down right next to me, shows no awkwardness, discomfort or malice towards me.
2. Richard K. Sollars-4154 W. 4990 S, Kearns, UT 84418 801-966-3038 - witnessing DS's and MS's interactions with me while they were visiting Gail and I at our home in Nov. 2005, states no signs of hostility or discomfort between me and MS, DS or even her daughter on several occasions, including me babysitting DS's daughter.
3. Christy Rittberger-206-414-4906 - witness to DS's original account of events supporting our account as told to Gail, even states DS did not act any differently around me, immediately after the incident. She even acknowledges she still came over to our house with no concerns.
4. Faye Payne-605 209 4542 - also witness to DS's original account of events supporting our account as told to Gail. She did not have any problems with Christy continuing to come over to our house. She even states she definitely would have remembered accusations of molesting DS. She also states that's definitely not something she would have forgotten.

I need to get a response from you as soon as possible concerning my request or at least an acknowledgement, so I know you have begun the subpoena process. If you have any questions concerning my witnesses call or email me. This is a crucial element in my defense and is in my best interest. I am also sure you will be tactful in extracting useful and supportive statements in my best interest when interviewing our witnesses as to not bias or prejudice them.

A hardcopy will follow in the mail.

Mark Christensen

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GAIL M CHRISTENSEN

From: "GAIL M CHRISTENSEN" <garnetrose1927@msn.com>
To: "Jane Pierson" <jpierso@co.pierce.wa.us>
Sent: Sunday, October 11, 2009 11:24 AM
Subject: Re: St v Mark Christensen: interview

Jane:

If you recall during our phone conversation on 8/6/09, I informed you that I had spoken to Christy on 7/31/09 and you asked for her phone number which I provided to you. We have asked you in several emails since then if you or Karl had contacted Christy and had not received any response. I have since found out that Christy has been in contact with DS since mid August, 2009. On 9/30/09, we receive an email from you advising us that you had just forwarded the information to Karl. So now Karl contacts Christy AFTER she had been in touch with DS, so DS can poison her mind with her "latest version." What kind of strategy was this, Jane?

So Jane, when exactly did this case become about DS? Was it after you and the prosecutor talked to the jury after they were unable to reach a unanimous verdict and you stated to Mark and I that they did not believe MS?

By the way, you should be excited because now DS's journal, (from 4/19/97 to the end), NEEDS to be used because Christy's accounts of DS contradicts the journal. Christy states to Karl that DS was withdrawn, passive, not outgoing even with friends and that DS distanced herself from Mark. Here is what DS states in her journal, in her own words: within 2 months after moving to Kansas, she states "I miss everyone dearly, even Mark," there's a reference to her playing "strip uno," (at a friends house), with multiple friends and doing shotguns, (blowing smoke in each others mouths), she states she has had numerous boyfriends and plenty of friends. DS also admits to scheming and lying by leaving the school grounds, where she said she would be studying, to go to a boys house, with several other people and "stuff happened." DS even states in her journal, after going to the movies, one night, (while she was in Kansas), "tell Mark to see ConAir, good flick, recommended by me," keeping in mind, the accident happened, while watching a movie. Christy also told Karl the accident with Mark and DS happened late 1996 or early 1997 because she remembered it being cold outside, (she could not remember the date in the conversation that I had with her). It was also cold in Jan. 1996. Jane, as you know, during the jury selection, you walked out of the courtroom, into the waiting area, (adjacent to the courtroom), and said to me that the prosecutor wanted to talk to me. Then the prosecutor came out of the courtroom and you, the prosecutor and myself went into the lobby and he asked me about the message that I left him back in March, 2009. I then asked him if he had his notes from that conversation and he acknowledged he did. As he was getting his legal pad out, he asked "if Jan. 1996 rang a bell" and I stated "that was when the accident with Mark and DS happened." The prosecutor stated "that was when DS said it happened as well," (which I have proof). Did you forget about this conversation that you witnessed. Which by the way DS then during trial changes this accident timeline to early 1997. You and the prosecutor allow this perjured testimony to go unchallenged.WHY? So from this point on, you and the prosecutor accept this new timeline as fact, keeping in mind the prosecutor stated Jan. 1996, Mark stated before coming home Jan. 1996 and I acknowledged to the prosecutor Jan. 1996.

Christy stated to me that she remembers DS telling her that Mark had touched her and that was all she remembered. During the 3 hour conversation that I had with her, she states twice that she remembers DS telling her that Mark only touched her. Christy also stated "I don't remember DS acting any differently around Mark after the accident. Christy also stated to me that because she had been raped, (just prior to the accident involving Mark and DS), by one of her male relatives, that she was and still is uncomfortable around ALL males. Also Jane, Christy told me that shortly after we had moved to Washington, her and DS lost contact and I did not discuss anything relating to MS, but she tells Karl that mine and DS's relationship went downhill, after the incident involving MS...makes one

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wonder how she heard that. Draw your own conclusions to that one. As I told you on 8/6/09, I told Christy that DS and I had a falling out, but never told her what it was about.

As for Mark being dirty and filthy, what a petty remark. I'll tell you this, in the 14 years that Mark and I have been together, he has always prided himself on his appearance, well groomed, clean shaven and prides himself on cleanliness. In MS's therapy minutes she makes a reference to the fact that Mark and I would occasionally have a disagreement on our home needing to be a little neater and that I could clean more. In the 130 plus photos and family home videos that we will be submitting as evidence as well, not only will you notice that Mark is neither dirty or grungy, you will see a family having fun, including DS with Mark. We will also be submitting as evidence a scrapbook, made by DS a few years ago, when she came out to Utah, to visit, which has pictures of Rob, MS, DS and even has about 12-14 pictures of Mark. DS even took the time to put cute little captions under Marks pictures - for example: "Small boys become big men who care," and "we find delight in the beauty and happiness of children that make the heart to big for the body." Again Jane, this is GREAT news for the defense and Mark definitely wants Christy subpoenaed, so we can show the jury just what kind of scheming, manipulative liar DS is, including what I would suspect as being witness tampering by DS, the prosecution's witness, including perjury, being that Christy's statements of her accounts changed so dramatically after she had contacted DS and now they seem to be mirror images of DS's testimony on the stand, even to include the changed timeline of accident.

In light of this new evidence I would feel inclined to believe this whole case seems to have strong evidence suggesting a "scheme or plan" theory against Mark. The one thing I know is: 130 photographs don't lie, scrapbooks don't lie, video tapes don't lie, people don't normally lie in personal journals, police reports don't lie, (concerning DS), medical records don't lie and therapists don't lie.

And for the record, Jane, as you know, we had, (prior to the first trial), provided you with evidence of DS's unlawful activities as an adult involving child endangerment, contributing alcohol to minors and contributing to the delinquency of a minor on more than 1 occasion. As reported to the Salt Lake PD, after an incident involving DS taking a minor, Jasmin Christensen to look for a party at 2:30 am. While DS and Jasmin were out walking, they saw some men drinking in a driveway, (neither DS or Jasmin knew these people), and DS started talking to them and the men offered them a beer. DS accepted and Jasmin did not. DS then went into the house to party and drink and Jasmin, who did not want to participate, was left outside, on the street. As Jasmin waited outside and even crossed the street as the people inside seemed to be getting rowdy and frightened Jasmin, who then witnessed DS, who by now was fairly drunk, run outside as she was accused by a female in the residence of hitting on or flirting with her boyfriend and Jasmin then witnessed a fight break out between DS and other adults, at which time DS left the premises and ran away leaving Jasmin who was concerned and upset, who then ran home to get Mark and I to go look for DS as she did not know where DS had went. Jasmin was visibly upset when she returned home. At this news of events by Jasmin, we drove around the neighborhood for some time until we saw DS, sitting on some strangers steps, who had asked him for help because she was to drunk to know where she was or how to get home, the guy did not speak English and was somewhat puzzled at who this drunk woman was as he came out at approximately 4:30 am to go to work and saw her sitting on his steps. DS had some bruising from the fight that ensued, so we took her to Pioneer Valley Hospital, where she was treated for released. By now it was approximately 7 am. We then took her to get some prescriptions filled, then brought her home where, yes, "Mark," who has always nurtured the kids and myself when we were hurt and was always referred to as "Dr. Mark." saw to DS's needs and made sure she was comfortable. Which I am sure DS would deny but she is a "liar." Which we have and will continue to prove. Because of this incident, as we had told you before the first trial, a police report had been filed in SLC and also at Pioneer Valley Hospital, would you call this a Creditable Witness?

Then there's the incident when I went to visit DS immediately before these charges were filed, as we have also told you before the first trial, where DS had provided MS with and allowed her, (a minor at the time), to consume alcohol in her home prior to taking her out to a bar as she would not have been able to consume alcohol, so DS allowed her to get drunk there at which time, I objected to MS drinking alcohol and was then told by DS "my house, my rules" at this I stood

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there in awe and felt disrespected as her mother. DS, her husband and MS were going out drinking and wanted me to go with them and I stated "I would not go out to a bar with someone who was drinking underage as I did not believe in underage drinking nor did I want to get arrested." After they left at 10 pm, Rob and I looked at each other and Rob said that he couldn't believe what DS had said to me. Rob and I then watched a movie and went to sleep. The next thing I knew was being woken up at 4:30 am to a drunken minor, who was slurring her words, saying "mom, I need to talk to you," barely audible. Being as sloppy drunk as she was at this time, (6 ½ hrs after they had left), it was obvious, she was drinking with them.

So these are 2 examples of DS and this time even involved her (Air Force) husband contributing to minor consumption.

Let me ask you this Jane, if the accident between Mark and DS happened the way DS testified to, during the first trial, then why would we contact Christy? Why didn't DS try to locate her? It took me all of about 3 minutes to look her up online and contact between Christy and DS was only made after I had contacted Christy.

Personally, I feel that this whole trial has been conducted in a way with the intent to convict, regardless of evidence for the defense, as you do not even respond to our emails with questions or concerns regarding Mark's case.

Everyone wants to know "WHY." Why would MS make these accusations. Think about this "Freedom to do whatever she wants, whenever she wants" when she is at her father's house. All this is documented in her online journal, (which by the way you have a copy of), and the therapy minutes, (which you also have a copy of). MS states in her online journal, on numerous occasions that she drinks with her dad and she does what she wants. She also makes a reference in her online journal that "I would never leave Mark." In her therapy minutes, she refers to the fact that she could have a better life at her fathers. Also in the therapy minutes, on 7/3/02 she refers to "probably won't do stuff like summer, dealing with things getting weird where least expect it." To remind you Jane, MS was referring to the summer of 2001, where DS and MS went out cruising, (while in Kansas), till late at night and MS was only 13 at that time.

Jane, I know my husband is INNOCENT and I know what those girls are capable of, as they have proved time and again and never cease to amaze me with the lengths they will go to, to get what they want.

----- Original Message -----

From: Jane Pierson

To: 'GAIL M CHRISTENSEN'

Sent: Wednesday, October 07, 2009 2:31 PM

Subject: St v Mark Christensen: interview

Mark:

"Christy" is obviously not someone that I intend to call as a witness at trial. A summary of the investigator's interview (of 10-1-09) is attached.

Jane, 10-7-09

Exhibit
13

February 18, 2008

My name is Mark L Christensen, I am writing this letter to inform the Dept. of Assigned Counsel of my request for a re-assignment of legal counsel on the basis of bias and conflict of interest regarding my case No. 07-1-04299-9, in the Superior Court for Pierce County, Washington. At present my counsel for my defense is Jane Pierson Bar No. 23085 thru the Dept. of Assigned Counsel.

The few times I have met with Jane, I found her statements and actions regarding my defense to be a display of extreme bias and not in my best interest, as set forth by the American Bar Association Rules of Professional Conduct.

My first meeting with Ms. Pierson, Jane read the allegations charged against me, while asking questions concerning the plaintiff's motive. I try to explain the circumstances during time of allegations, recalling disagreements between the plaintiff and I involving her conduct and lies at said time. While explaining and considering possible motive, Ms. Pierson continuously cuts me off in mid sentence and snaps at me to "stick to the point," continuously holding her hand up, palm out, gesturing for me to stop talking. Clearly Jane is uninterested in my view or explanations of events. Ms. Pierson then re-directs the questioning, entertaining other possibilities of motive.

I handed Ms. Pierson a psychological report from a Certified Psychologist, concerning plaintiffs' state of mind and circumstances documented during 24 therapy sessions over a period of about 1 year during time of accusations. I considered this to be very relevant evidence. At which time Jane glanced at the document and immediately stated "this is no good, it's been wrote on, I don't know how I could get another one". To clarify, I had underlined key quotations in the report and included asterisks at points of interest, nowhere in the report was any original wording covered or changed. I explained this was a copy and I could get her another one without any markings that would compromise this report. At this time Jane just looked at me and reluctantly took the report. She read only a few underlined statements of interest to herself. Then handed it back and sarcastically stated "the plaintiff lies anyway". I tried to read aloud some other important statements underlined in the report. Once again, Ms Pierson stopped me and changed the subject. Ms. Pierson then began explaining to me the process of choosing the jurors and stated in her experience during these types of cases jurors had stated they could not be impartial. Jane explained, the jury would be bias, that there was no way around it. At this time I asked what my chances are, (meaning of convincing the Jury of my innocence), Jane shook her head in a no direction and immediately walked over to some kind of a calendar or something and stated what my mandoratory minimum sentence would be, then said I wouldn't find a Judge who would grant parole, so basically life. Then she asked if I smoked, I said yes, so she said let's go out and have a cigarette. After returning Jane made copies of my paperwork, by now it was approaching 4:20pm. She said she would be in touch and ended our meeting. This is the only time that I have met with Jane other than pretrial and continuance conferences.

While I was awaiting pretrial conference, she spoke with the prosecutor, outside of my presence, and upon returning, informed me of the testimony that he would like to use. This testimony, Jane had previously told me would be her choice on whether to allow the

prosecutor to use. At which time I had related my disapproval over using that testimony on the grounds that it was unrelated and unsubstantiated. It just seems that she is conducting this under the direction of the prosecutor. I feel it impossible to communicate effectively and openly with Ms. Pierson and feel from talking with her, decisions, options and concerns are not being addressed or expressed to my satisfaction or best interest. I feel because of these concerns there is no way to reconcile our differences and it feels to me as if Ms Pierson has already condemned me in her own mind. Based on these actions I do not feel that I would be able to get fair representation to prove my innocence.

Sincerely,


Mark L Christensen