

FILED
COURT OF APPEALS
DIVISION II

2014 MAR 24 PM 1:46

STATE OF WASHINGTON

BY _____
DEPUTY

WASHINGTON STATE COURT OF APPEALS
DIVISION II

Dino Constance,)	COA No.: 40504-1-II Consol.
)	
Appellant)	
)	
v.)	MOTION AND DECLARATION
)	TO ACCEPT AMENDMENT TO
State of Washington,)	STATEMENT OF ADDITIONAL GROUNDS
)	
Respondent)	
_____)	

COMES NOW, the Appellant, who moves this court to accept this AMENDMENT to his Statement of Additional Grounds. Key audio evidence which was required to be preserved by the State has been lost or destroyed, requiring this SAG AMENDMENT. It is necessary because the violation is newly revealed, and Counsel never had the opportunity to hear the now lost evidence. The Appellant hereby incorporates the following Sections A - F into his existing SAG.

A. DECLARATION OF APPELLANT

1. Trial in this case featured two pieces of recorded audio evidence; ~~The state admitted and played recorded conversations between the~~ Appellant and Count 3 witness Ricci Costelanos, and the defense admitted and played two voice mail recordings of Count 2 witness, Jordan Spry, attempting to blackmail the Appellant. (App. 1)

2. Respectively, the recordings were made on May 7, 2007 - the date of the Appellant's arrest, and April 2, 2007 - six (6) days after the Appellant refused to pay Michael Spry (who was in the final stages of eviction) the full \$1,500 for an uncompleted moving job, and (on March 27, 2007) moved out of the shared residence after summoning the police. (App. 2)
3. These recordings were unquestionably the two strongest pieces of evidence on both sides of the trial. The Costelanos recordings were the only evidence offered against the Appellant (beyond witness testimony), and the Jordan Spry blackmail recordings were one (1) of only two (2) exhibits admitted on behalf of the appellant at trial. (The other exhibit was merely a pro se pleading from the underlying family law case.)
4. The Jordan Spry blackmail recordings were possessed and reviewed by defense counsel Jeff Barrar, his replacement trial counsel Brian Walker, the prosecution, and presumably the trial court also retained a copy after trial. (Trial Ex. 2)
5. An additional copy of the Jordan Spry blackmail recordings was filed earlier in Dept. 7 of the Clark County Superior Court, in the underlying family law matter (cause # 5-3-00440-9.)

6. On or about February 17, 2014, appellate counsel Peter T. Connick informed this appellant that he was unable to obtain a copy of the Jordan Spry blackmail recordings. Unfortunately, all the

above parties were unable to produce a copy to be forwarded to this Court (or used at any retrial.)¹ The substance of these recordings was also never transcribed², and even the trial court's copy has disappeared. (Appellant's Reply Brief footnote #23.) (App. 3)

7. The Appellant, who was pro se in the family court matter, also previously attempted to obtain a copy of the recorded Jordan Spry extortion attempts from the family court (Dept. 7) without success. He has no other means to replace this key evidence, destroyed or misplaced by every party who ever had a copy.
8. The Costelanos recordings are now the subject of approximately a dozen Franks Rule violations (SAG pp. 26-32), and a resulting Privacy Act violation (SAG pp. 27 footnote #2), with suppression of these recordings being requested of this Court (SAG pp. 32 & 47.) Prior suppression litigation was plagued by misinformation.
9. The Costelanos recordings, although provocative sounding, are ambiguous in nature, with the Appellant only authorizing Mr. Costelanos to obtain a ½ hour massage from alleged victim Jean Koncos (a massage therapist) - an act similar to previous spying on Ms. Koncos by one Lisa Parcel. (App.4) Only one of the Costelanos recordings, although ambiguous, was potentially inculpatory.

¹Prior counsel Neil M. Fox was also unable to obtain a copy.

²The transcript merely notes that a recording was played.

10. Ms. Parcel was never located for trial by trial counsel Walker, and her declaration to the family court (App. 4) was not offered or admitted until post-conviction proceedings. Trial counsel Walker failed to inform the jury of the existence of Ms. Parcel, or the fact that the Appellant had used anyone other than the state's witnesses in this case, to spy on Ms. Koncos, as an explanation for the Costelanos recordings.
11. The now missing Jordan Spry blackmail recordings included no mention of solicitations, or any intent by Mr. Constance to harm Ms. Koncos.

I hereby swear and affirm that the foregoing is true under penalty of perjury under the laws of the State of Washington.

SWORN this 17th day of March, 2014, at Walla Walla, Washington.

by: 
Dino J. Constance Appellant

B. ARGUMENT

1. This Motion Is Appropriate At This Time

Where the Appellant made all reasonable efforts to comply with the Court Rules, and submitted his SAG on a timely basis, this important issue did not arise until late last month. He could not have foreseen that perhaps the most valuable piece of evidence (especially on retrial) would be lost or destroyed by two prior attorneys, two

prior courts, and the prosecution. He believes this issue is worthy of far more than a footnote mention by appellate counsel, who cannot effectively speak to the subject because he never heard the recordings at issue. As such, this Court should allow this motion and amendment regardless of any timeliness or brief length limitation issues.

2. The Appellant Is Prejudiced By The Loss Of The Blackmail Recordings, Both On Appeal And At Any Retrial

Even though it is not disputed that the Sprys were, trying to extort money from the Appellant just prior to making any allegations against him (first made in the family court), the Appellant is being prejudiced by the lack of the recordings themselves. As with the "flaming email" from Michael Spry, threatening Mr. Constance (App. 5 - which the state unlawfully withheld from discovery prior to trial), the extreme angst and bias toward Mr. Constance by Jordan Spry was shockingly apparent in the recordings. These two powerful pieces of evidence, (one withheld and the other now misplaced and/or destroyed), would properly demonstrate to any jury the extraordinary animosity both Sprys have toward Mr. Constance. Both pieces of evidence are necessary for a jury to accurately determine the Sprys' credibility.

The ability to demonstrate this animosity is key because the Sprys often adjusted their stories about their feelings toward Mr. Constance to appear credible. (RP 2/26/08 379 & 393 @ 18 - 395) The depth of their malevolence, their vindictive motives, and attempts at deception in this area can only be reliably conveyed by playing the recordings.

Too little of this type of evidence at trial enabled the Sprys in fabrication of their own credibility, just as did their false claims of "warning" Ms. Koncos at any time prior to the March 27, 2007 financial falling out. (SAG pp. 14 - 18) This prejudicial dynamic will necessarily be repeated at any retrial with no recordings. Only real trial preparation and the recordings can expose the Sprys' deceptive rouse to a jury.

What the blackmail recordings did not contain may be even more important. These two long-winded and clearly malicious voice mail messages contained absolutely no mention of any sort of threats or solicitations against Ms. Koncos by the Appellant. Rather, the basis of Jordan Spry's attempted blackmail was limited to the threat of sabotaging Mr. Constance's child custody case. Given the clear desperation of the in-eviction Sprys to extort funds from Mr. Constance, the omission of any threat to report the alleged solicitations (had there actually been any), is inexplicable. Only with these recordings, this Court (and any jury at retrial), would make prominent note of the absense of this predictable threat, and seriously question Jordan Spry's truthfulness. Thus the Appellant is also deprived of the critical evidence needed to show that Jordan Spry, not just his "vicious and abusive" father, desires to harm Mr. Constance, and should therefore be categorically mistrusted. (App. 6)

Although a huge volume of previously undiscovered Jordan Spry impeachment material was admitted post conviction, none of it rises to the level of the recorded extortion attempts. None of it is so starkly directed at Mr. Constance or is as clearly admissible to impeach both Sprys³, Jordan Spry in particular. And none other amounted to a crime against the Appellant.

Where enormous effort and expense in post-conviction proceedings rendered counts 1 & 2 weak at best, the loss of this key evidence amounts to taking a giant step backwards. The loss of this evidence is not offset by the addition of the "flaming" Michael Spry email, nor should the Appellant be required to accept such an exchange.

Because of the loss of this powerful evidence, critically important impeachment of the Sprys would be handicapped at any retrial. Given the strength of this unique and irreplaceable evidence, and also given the pivotal role of credibility in this case, a fair retrial cannot be had.

Even this Court's more informed considerations may be prejudiced absent this evidence. As such, and for all the reasons noted above, the loss and/or destruction of the Jordan Spry blackmail recordings is a strong basis for dismissal with prejudice. Minimally, counts 1 & 2 should be dismissed after reversal.

³Note that Michael Spry was aware of and a stand-by participant in his son's attempted extortion. (RP 2/26/08 392 @ 22 - 393)

C. MEMORANDUM OF LAW

In this case, the prosecution, at least, had a duty to preserve the Jordan Spry blackmail recordings. "Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutors must comport with the prevailing notion of fundamental fairness" Trombetta, 467 U.S. at 485, 104 S.Ct. at 2532. This standard of fairness requires that the State afford criminal defendants a meaningful opportunity to present a complete defense. United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). ...The State violates a criminal defendant's due process rights when it fails to preserve material exculpatory evidence, regardless of whether the state acted in good faith. Arizona v. Youngblood, 488 U.S. at 57, 109 S.Ct. at 337.

In recent years, two United States Supreme Court cases have shaped the test to determine whether the government's failure to preserve evidence violates a defendant's right to due process. In Trometta, the Court held that the government violates the defendant's rights to due process if the evidence [124 Wn.2d 497] possessed "exculpatory value that was apparent before the evidence was destroyed, and be of such nature that the defendant would be unable to obtain comparable evidence by other reasonable available means." Trombetta, 467 U.S. at 489, 104 S.Ct. at 2534.

In a string of Washington cases dating back to 1974, the courts have held that if the State has failed to preserve "material exculpatory evidence" criminal charges must be dismissed. One such

case was State v. Wright 87 Wn.2d 783. Wright was convicted of the first degree murder of his wife while armed with a deadly weapon. He claimed a due process violation caused by the destruction of material evidence prior to trial. The Supreme Court, finding a serious breach of the defendant's due process rights because of destruction of evidence, held that dismissal was the proper sanction because a lesser remedy is ineffective to assure a fair trial. This analysis applies to the case at bar, at least with respect to the Spry counts at any retrial.

In a similar case, State v. Boyd 29 P.2d 930, the Court found that denial of due process rights was not cured by a missing evidence instruction, and could not be cured by a new trial in which the destroyed evidence is equally unavailable. Consequently, the charges were dismissed.

The 'Vasta' "reasonable balance" test embodies this state's strong interest in preserving a criminal defendant's constitutional due process rights to a fair trial. Under this test, a court evaluates destruction of evidence cases by weighing the exculpatory potential of a piece of lost evidence against the State's ability to preserve that evidence. Here, there can be no doubt that an accusing witness's own voice maliciously threatening and blackmailing the accused is highly exculpatory in assessing the witness's bias and credibility. The State had physical possession of a CD with these two audio files. It's ability to preserve it is a given. With no ability to 'obtain comparable evidence', dismissal is the appropriate remedy and sanction.

D. ALTERNATE REMEDIES

Although there is a **broad range** of sanctions available to a court confronted with destruction of evidence, dismissal is the appropriate sanction if a lesser remedy is ineffective to assure a fair trial. State v. Wright, supra; Sate v. James, 26 Wash.App. 522, 614 P.2d 207 (1980); State v. Bernhardt, 20 Wash.App 244, 579 P.2d 1344 (1978). (Emphasis is added.) The Court also could order suppression of the Costelanos recordings, as a preliminary matter, as an alternative remedy. In light of the long-term and widespread nondisclosure in this case, the recently revealed loss of the Jordan Spry recordings is nothing less than appalling; An extraordinary remedy is appropriate. Given the interconnected nature of the counts, by suppressing the comparative, single piece of recorded evidence on the other side of the equation, this Court can help level the playing field. This would be a just and proper use of the Court's wide discretion in deciding the remedy in destruction of evidence cases.

In deciding whether sanctions should be imposed for the destruction of evidence, trial and appellate courts are to be guided by a **pragmatic balancing**, requiring a weighing of the degree of negligence or bad faith involved, the importance of the lost evidence, and the evidence of guilt adduced at trial. State v. Scriver 580 P.2d 265. (Emphasis is added.) Here, the negligence

associated with the lost evidence is severe, the importance of it is extreme, and the evidence of guilt adduced at trial is limited, almost exclusively, to the testimony of terribly unreliable witnesses, previously unimpeached, all with strong and often concealed reasons to lie or give state-friendly testimony.

Certainly, given the excessive number of material falsehoods and relevant omissions so recklessly made by police in obtaining the Costelanos recordings, they are destined for suppression in any case. But by doing so prior to all other considerations and proceedings, this Court may restore an element of fairness to this case, and will simplify the very complex appeal at bar.

The state would not be overly prejudiced by this suppression because at any retrial the usefulness of the Costelanos recordings would be greatly diminished by the obvious (and previously neglected by counsel) explanation for them, corroborated by nurse Lisa Parcel and her pre-existing declaration. In any case, a retrial without the Jordan Spry extortion recordings, but with the Costelanos recordings, would be fundamentally unfair.

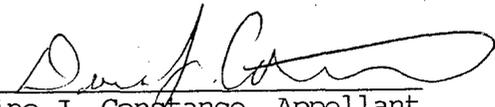
E. CONCLUSION

An epidemic of unlawful nondisclosure and other due process violations have existed in this case since before arrest, through to the post-conviction case, and persists to present. The prejudice associated with these violations has been greatly exacerbated by the loss of material exculpatory evidence that cannot be replaced. An extraordinary remedy is appropriate because of extensive State misconduct, and because a fair retrial cannot be had under the present circumstances. The Court should dismiss the case with prejudice, or take other proactive steps to remedy the resulting one-sided dynamic. Reversal alone is insufficient.

F. STATEMENT OF RELIEF SOUGHT

For the reasons noted, the Appellant requests this Court dismiss this case, or at a minimum, counts 1 & 2, with prejudice, or alternatively suppress the Costelanos recordings as a preliminary matter.

Respectfully signed and submitted this 17th day of March, 2014.

by: 
Dino J. Constance Appellant

DECLARATION OF SERVICE BY MAIL

With reference to COA Cause # 40504-1-II, I hearby swear and affirm that on March 18, 2014, I mailed a opy of the enclosed MOTION AND DECLARATION TO ACCEPT AMENDMENT TO STATEMENT OF ADDITIONAL GROUNDS, with exhibits, to the recipients shown below, first class postage prepaid:

- 1) Clark County Prosecuting Attorney's Office, Appellate Division
1013 Franklin Center Vancouver, WA 98666-5000
- 2) Attorney Peter T. Connick
80 Yester Way #320 Seattle, WA 98666-5000

SWORN under penalty of perjury under the laws of the State of Washington

this 18th Day of March, 2014, in Walla Walla, Washington.

By: 
Dino J. Constance

FILED
COURT OF APPEALS
DIVISION II
2014 MAR 26 PM 1:45
STATE OF WASHINGTON
BY _____
DEPUTY

APPENDIX 1

April 2, 2007 Jordan Spry Blackmail - Accompanying Police Report

Clark County Sheriffs Office		Case No. 07-6185
707 W 13TH Street Vancouver, WA 98660		Report ID ORIGINAL
(360) 397-2211 (360) 397-6074 (FAX)		RCN
Incident Report		
Records Center		DOR 04/25/2007
707 W 13TH Street Vancouver, WA 98660		Officer Assaulted <input type="checkbox"/> Non Disclosure <input type="checkbox"/>
(360) 397-2211 (360) 397-6074 (FAX)		Distribution Other DET OMARA
Distribution NONE		
init	pDis	sDis
dEnt	M.C.	Concl
Case	F/U	Ret
Let	Status <input type="checkbox"/> <input type="checkbox"/> IR <input type="checkbox"/> A <input type="checkbox"/> AR <input type="checkbox"/>	

Administrative Information	
Location 9500 NE 116TH AV	City VANCOUVER
State WA	Zip Code 98662
Local Geo	Slate Geo
Precinct SO CENT	Geo
Rep Date 04/25/2007	Rep Time 16:00
From Date 04/02/2007	To Date
To Time	Category
Class RE	Premise
Dom Viol <input type="checkbox"/>	DV Card <input type="checkbox"/>
Child Abuse <input type="checkbox"/>	Arson <input type="checkbox"/>
Homicide <input type="checkbox"/>	Gang <input type="checkbox"/>
Weapons <input type="checkbox"/>	Alcohol <input type="checkbox"/>
Drugs <input type="checkbox"/>	Computer <input type="checkbox"/>

Offense Information	
Off # 1	Offense 9A.36.080
Offense Category HARASS	Offense Translation Malicious harassment
Location Type 1STORY	Attempted or Completed C

Individual	
Role V	Seq 1
Type I	Last Name CONSTANCE
First Name DINO	Middle Name J
Sex M	Race W
Birthdate 09/12/1959	Eth
Age Low	Age High
Hgt	Wgt
Hair	Eyes
Residence F	Employment/Occupation
Driver's License Number	Driver's License Issuer
Social Security No.	State ID No.
FBI No.	PCN
Custody Status	Gang Affiliation
Tribe Affiliation	Identifiers
Comments	
Type H	Location 9500 NE 116TH AV
City VANCOUVER	State WA
Zip Code 98662	Type H
Phone No. (360) 243-7701	

Individual	
Role S	Seq 1
Type I	Last Name SPRY
First Name JORDAN	Middle Name
Sex M	Race W
Birthdate 11/12/1982	Eth
Age Low	Age High
Hgt	Wgt
Hair	Eyes
Residence F	Employment/Occupation
Driver's License Number	Driver's License Issuer
Social Security No.	State ID No.
FBI No.	PCN
Custody Status	Gang Affiliation
Tribe Affiliation	Identifiers
Comments	
Type H	Location 4115 NE 54TH ST
City VANCOUVER	State WA
Zip Code 98661	Type C
Phone No. (971) 409-1894	

Reporting Officer Luvera, Beth	PSN 3669	Ref Case Number ORIGINAL Report ID 07006185 Agency/Case Number CCSO 07006185
Approving Officer Bieber, Timothy L	PSN 3469	
Report printed by: 3322		

Page 1 of 2
EXHIBIT 14

Clark County Sheriffs Office

Case No.
07-6185

Evidence

Item# 3669-001	Loss/Action EVIDENCE	IBR Type RECORDS	Description CD OF VOICEMAIL LEFT BY SUSPECT		
Loss Value	Amount	Caliber	Drug Type	Drug Quantity	Drug Measure
Brand					
Model					
Serial No.		Owner Applied No. (OAN)			
Miscellaneous					
Rec. Date	By PSN	Rec. Agcy	Rec. Value		
Location				City	State Zip Code
Officer Notes					
Involvement OWNER	Role V	Last Name CONSTANCE	First Name DINO	Middle Name J	

Narrative

On April 25th, 2007 Dino Constance came to Central Precinct to report "black mail." Dino said he received two voice messages from a suspect he identified as Jordan Spry. Dino said Jordan attempted to "extort money" from him. Dino said Jordan and his father Michael are both attempting to extort money from him by threatening to testify against him in court if he does not pay them fifteen hundred dollars. Dino said he is currently involved in a child custody battle in which his ex-wife is accusing him of being an unfit parent. Dino said Jordan has told him if he (Dino) does not pay Jordan \$1,500.00, Jordan will testify against him and lie in court.

Dino was able to provide me a CD copy of these two messages supposedly left by Jordan. Both messages are time/date stamped by an electronic voice giving the date of April 2nd. In both messages a male (whom Dino identified as Jordan Spry's voice) talks about Dino owing Jordan's father some money. Jordan makes mention of this not being "black mail" because it is money Dino owe's his father. The second message is much like the first.

Dino went on to say Jordan and Michael have accused him of being an "alcoholic and drug user." He said they have also accused him of neglecting his two and a half year old son (whom the custody battle is surrounding). Dino said, "They accused me of trying to hire someone to kill my wife." Dino said Jordan and Michael have previously testified, "lied", in court about these things. He said they have told him if he does not pay them this money they will testify against him again and repeat these "lies."

I advised Dino this report would be forwarded to a detective for further follow-up. I advised Dino he needed to be patient as it could be a matter of weeks before he is contacted depending on the detective's case load. Dino said he understood this.

Refer this to Detective O'Mara for review.

I certify or declare under penalty of perjury under the law of the state of Washington, that to the best of my knowledge the attached report(s), documents, and information contained therein are true, correct, and accurate. (RCW 9A.72.085)

Reporting Officer
Luvera, Beth

PSN
3669

Approving Officer
Bieber, Timothy L

PSN
3469

Ref Case Number

Report ID
ORIGINAL

Agency/Case Number
CCSO
07006185

APPENDIX 2

March 27, 2007 911 Call Log

March 27, 2007 Police Report

Call 2007095408 File 0704677 Date 03/27/07 Opr DF7051

Location 4115 NE 54TH ST Juris CLK

Call type DIM Svc P Agcy CCSO Area 2113 Dist

IP? Y Pty 3
How rcvd: 911 Enhanced

Remarks DISTURBANCE MINOR

Time Call Rcvd 11:21:55

REMARKS

ROOM MATE OUT FRONT IN YELLOW PENSKE TRUCK..
THEY ARE VERBAL OVER WHO OWNS WHAT PROPERTY
AND MONEY THAT NEEDS TO BE EXCHANGED BETWEEN
THEM..RP INSIDE..ROOMMIE OUTSIDE..ROOMIE:
SPRY, MICHAEL 50YO WM..CON

11:23:02 9903
11:23:10 9903
11:23:17 9903
11:23:25 9903
11:23:32 9903
11:25:15 9903
11:29:29 9914

NAM/CONSTANCE, DINO J.091259...NW

NAM/SPRY, MICHAEL C.020268...NW

**** RP CALLING BACK, THE ROOM MATE IS INSIDE NOW
THREATNING RP TO HACK INTO HIS COMPUTER SYSTEM,
WHICH CONTAINS FEDERAL CONFIDENTIAL INFO.. ETC

11:30:52 9910
11:31:03 9910
~~11:31:16~~ 9910
11:31:44 9914

Call 2007095408 linked to call 2007095416.

NAM/SPRY, JORDAN P.111282

11:33:21 9914
11:37:53 9914
12:47:16 9914
13:35:18 1D33
13:35:18 1D33
15:18:57 9904

C4

NAM/CONSTANCE, DINO J.091259
Unit 1D33 tx 505 NW 179TH ST #B; CCSO WEST
PRECINCT

Call 2007095408 linked to call 2007095622.

Reporting Party Name CONSTANCE DINO, J.091259 CELL Phone 360-798-1082

DATE	TIME	UNIT	STATUS	OPERATOR
03/27/07	11:23:58	7051		DF7051
03/27/07	11:24:23	7155		RD7155
03/27/07	11:24:25	1D33	DSPH	RD7155
03/27/07	11:25:51	1D33	DspAck	RD7155
03/27/07	11:26:47	1D33	ENROUT	MDT
03/27/07	11:26:58	1D35	ENROUT	MDT
03/27/07	11:28:49	7155		RD7155
03/27/07	11:33:29	7155		RD7155
03/27/07	11:34:29	1D35	ARRIVE	AOS
03/27/07	11:35:01	1D33	ARRIVE	AOS
03/27/07	12:47:21	7155		RD7155
03/27/07	13:28:55	1D33	SUSPND	EH7210
03/27/07	13:35:07	1D33	ARRIVE	MDT
03/27/07	13:35:18	1D33	TRANS	MDT
03/27/07	13:40:42	1D33	SUSPND	EH7210
03/27/07	13:57:59	1D35	CLEAR	MDT
03/27/07	15:08:20	1D33	ARRIVE	MDT
03/27/07	15:08:41	1D33	CLEAR	MDT

EXHIBIT 44

Clark County Sheriffs Office

07-4677

Individual											
Type	Location				City	State	Zip Code				
H	4115 NE 54TH ST				VANCOUVER	WA	98661				
Type	Phone No.										
C	(971) 409-5851										
Individual											
Role	Seq	Type	Last Name			First Name		Middle Name		Sex	Race
I	3	I	SPRY			JORDAN		P		M	W
Birthdate		Eth									
11/12/1982											
Age Low	Age High	Hgt	Wgt	Hair	Eyes	Residence	Employment/Occupation				
						F					
Driver's License Number			Driver's License Issuer		Social Security No.		State ID No.		FBI No.	PCN	
Custody Status		Gang Affiliation		Tribe Affiliation		Identifiers					
Comments											
MICHAEL'S SON											
Type	Location				City	State	Zip Code				
H	4115 NE 54TH ST				VANCOUVER	WA	98661				
Type	Phone No.										
C											

Narrative

INVOLVED:

C/ Constance, Dino J (Michael's and Jordan's roommate)
 I/ Spry, Michael K (Jordan's father)
 I/ Spry, Jordan P

DETAILS:

On 03/27/2007, at approximately 1153 hours, Deputy Barsness and I were dispatched to minor disturbance at 4115 NE 54th Street. When we arrived, Deputy Barsness and I spoke with C/ Dino Constance and I/ Jordan Spry. I/ Michael Spry had left the residence before we arrived.

Jordan Spry

Jordan explained that he and his father, Michael, have been living with Dino for the past two months in this rental house. Jordan said none of them own the house; they are all renting it together. Jordan said Michael met Dino from the online website, "Craiglist." Jordan said Dino moved in about two months ago because they needed another roommate. Jordan said all of them are in the process of moving out because the owner of the home is selling it. Jordan said Dino was moving out today, and Michael and he had to be out by the 1st of April.

Today, Jordan stated Michael and Dino got into a verbal argument over money that Dino was supposed to pay his father. Jordan said Dino offered Michael \$1500 to go down to California, pick up his (Dino's) belongings, and bring them back to Vancouver. Jordan said his father arrived today, and wanted his payment for picking up Dino's belongings. Jordan said Dino told Michael he needed to drop off his property at his (Dino's) new house; otherwise he wasn't going to pay him. Jordan said Michael told Dino dropping off the property at the other house wasn't part of the deal and he wasn't going to do it.

Jordan said Michael and Dino started yelling at each other over the payment of the money and the terms of their verbal agreement. Jordan said Dino wanted the rental truck and his belongings, but Michael wouldn't give Dino the truck because it was in his (Michael's) name. Jordan said Michael wasn't going to give Dino his property until he got payment for transporting the items. Jordan said Michael left the house before we (the police) arrived

Reporting Officer	PSN	Ref Case Number	Agency/Case Number
Yoder, Tom	4266		
Approving Officer	PSN	Report ID	ORIGINAL
Hogman, Craig E	3041		
Report printed by: 3804		Page 2 of 4	

388
4

Narrative

because he was so upset at Dino. Next, Jordan said Dino became confrontational with him and started to intimidate him. Jordan said he was scared of Dino, so he went into his bedroom and closed the door. Jordan said there was no physical altercation between anyone.

Dino Constance

Next, Dino explained that he needs to be moved out of the house today and just wants Michael to unload his property. Dino stated he and Michael had an agreement that Michael was going to California to pick up his (Dino's) belongings and bring them back to Vancouver. Dino said he was going to pay Michael \$1500 to complete the deal. Dino said Michael refused to finish the job by unloading his property at his new home. Dino said he refused to pay Michael because Michael didn't finish the job.

Dino said he and Michael started to argue when Michael told him he wasn't going to give him his property until he paid for the job. Dino said Michael was holding up his end of the deal and was now stealing his property. Dino said Michael left the house in anger.

Michael Spry

Next, I had Jordan call is father to have him return to the residence. Within a few minutes, Michael arrived and we spoke. Michael explained the same sequence of events as Jordan and Dino, with the exception that Dino was the one violating their agreement.

Michael said Dino said he would pay him (Michael) to just pick up his property from California and bring it back to Vancouver. Michael said there was no agreement that he had to unload Dino's property from the rental truck at Dino's new home. Michael said he told Dino he wasn't going to hand over the property until he got payment for the deal. Michael said Dino is an evil person and is trying to take advantage of him (Michael) like he does everyone else. Michael said the rental truck is in his name and he was going to give it to Dino.

Deputy Barsness and I discussed what reasonable outcomes we could come to between Michael and Dino. The one thing we knew was we could not leave Michael and Dino alone in the home together because during our discussions we learned there were loaded weapons in the home, which we secured.

Both Michael and Dino were very uncooperative. Deputy Barsness and I verbally struggled with them to come to some sort of agreement. It was explained to both of them that their verbal agreement to complete a job had now turned into a civil matter, which needed be handled in civil court. I explained to Michael that he could not hold on to Dino's property until he got payment, but he could remove Dino's property from the truck and it would be Dino's responsibility to pick up his own belongings.

Michael and Dino both went back and forth about how they didn't trust each other. Both didn't want to take the chance the other would damage or steal the other's property. Michael would not give the truck to Dino, and Dino said Michael couldn't just dump his property anywhere Michael wanted. Barsness and I explained the only options in the matter were to either have the truck transferred into Dino's name, or to have Michael drop the truck off at Dino's house for Dino to unload the truck himself.

After much discussion, Michael agreed to be the bigger man and drop the rental truck off at Dino's for Dino to unload himself with the understanding that Michael would keep the keys to the truck, and Dino had to have it emptied by tomorrow. Dino agreed with the decision.

Deputy Barsness waited while Dino moved out the rest of his belongings. Dino provided his copy of the rental

Reporting Officer Yoder, Tom	PSN 4266	Ref Case Number	Report ID ORIGINAL	Agency/Case Number CCSO 07004677
Approving Officer Hogman, Craig E	PSN 3041			

Report printed by: 3804

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Clark County Sheriffs Office

Case No.
07-4677

Narrative

house key to Michael and agreed not to come back to the residence because he now had removed all of his belongings. Deputy Barsness said Michael left in the rental truck, and Dino left in his personal vehicle.

CONCLUSION:

This was a civil matter, which turned into a verbal domestic disturbance between two roommates. Michael and Dino are both stubborn individuals, which they both recognized. Both did not want to budge, but Michael finally took a step forward to help temporarily resolve the issue. Michael and Dino realized they needed to take care of their problem through civil court.

REPORT IS FOR INFORMATION

I certify or declare under penalty of perjury under the law of the state of Washington, that to the best of my knowledge the attached report(s), documents, and information contained therein are true, correct, and accurate. (RCW 9A.72.085)

Reporting Officer

Yoder, Tom

Approving Officer

Hogman, Craig E

PSN

4266

PSN

3041

Report ID

07004677

ORIGINAL

Agency/Case Number

CCSO

07004677

Page 4 of 4

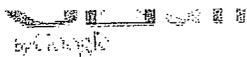
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APPENDIX 3

Email Confirming Misplaced or Lost CD



RE: Constance - Research Request ABC JOB # 30093614

Jared Gannon <jgannon@abclegal.com>
To: Peter Connick <peterconnick@gmail.com>

Thu, Oct 17, 2013 at 10:29 AM

Peter,

Just an update. The case file has been archived down in Olympia and is being transfer up to the Tacoma COA. This usually take a week or more. As soon as it is available we'll work on getting you that CD.

Thank you,

Jared

Jared Gannon <jgannon@abclegal.com>
To: Peter Connick <peterconnick@gmail.com>

Thu, Nov 21, 2013 at 3:59 PM

FYI, I had the COA clerk check for your CD exhibit, she does not have it. Common practice would have been to return it to the trial court anyways, which it looks like they did. I already spoke with Clark Superior, as per my email yesterday, and they have nothing at all for this case. No CD no anything. Seems to be misplaced or lost per the clerk there.

From: Peter Connick [mailto:peterconnick@gmail.com]
Sent: Thursday, November 21, 2013 3:56 PM

[Quoted text hidden]

[Quoted text hidden]

APPENDIX 4

Declaration of Lisa Parcel

THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In Re:

JEAN A. KONCOS

Petitioner,

and

DINO J. CONSTANCE

Respondent.

No. 05-3-00440-9

DECLARATION OF LISA PARCEL

In Re:

DINO J. CONSTANCE

Petitioner,

and

JEAN A. KONCOS

Respondent.

(Consolidated)

No. 05-3-00323-1

FILED
JUL 12 2006

JoAnne McBride, Clerk, Clark Co.

My name is Lisa Parcel. I am a Mother to two boys and a 39-year-old RN, working as a charge nurse at a major Portland hospital. I prefer to give no further details as I am aware of Ms. Koncos's propensities toward violence when angered. I have significant experience working with patients of all types, including mental patients.

I have known Dino Constance since early last year and have been kept abreast of his difficulties with Jean Koncos with regards to his son Nickolous. Approximately two months ago, when in conversation with Dino, he told me that Jean had just abruptly quit her job, and claimed to be without income. Dino was very concerned about his son as a result, especially given Jean's apparent mental state. Given that he was a thousand miles away and that Ms. Koncos was then advertising on the Internet to do massage work at her apartment, I offered to drop in on her and see if the child appeared to be in any jeopardy. So I contacted Jean to arrange a brief meeting there.

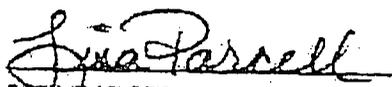
Ms. Koncos greeted me with warm charm and in a gracious manner. In the scope of about twenty minutes, she volunteered half her life's story to me. She told me her version of her relationship and history with Dino in great detail. She also told me that she had just completed a return to Vancouver involving the abduction of Nickolous from San Diego. She said that she had planned an elaborate reconciliation involving the dismissal of a previous divorce, and cross-country relocation with the intent of taking the child and disappearing. This made no sense to me as I was aware that during this previous divorce she had legal representation whereas Dino did not, and so was not doing well in court. I was also aware that when they reconciled, they were very passionate with each other, and that she had given Dino permission to move with the child.

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After the meeting, I reported to Dino that his son appeared to be in good shape, that he was clean and dressed and apparently in good spirits. I also reported to Dino that his wife was "not right in the head", further telling him "She is delusional and you should be concerned about it". Dino simply replied, "Yes, I know, Lisa. Thank you for checking on my boy for me".

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Portland, Oregon, July 12, 2006


LISA PARCEL

APPENDIX 5

Threatening Email from Michael Spry to Appellant
(Please see Exhibit 18)

APPENDIX 6

Declaration of Linda Esole

Constance's wife and his son. I am sure Keitt said that Mr. Constance wanted both his wife and child killed, not just his wife.

5. When I initially met Keitt, he presented himself very well. He speaks well and is very articulate. He tells everyone that he is a minister and is very concerned that people have a good impression of him because of his vocation. He appears over confident and self-assured. However, Keitt is the type of person who is secretly very vicious and abusive. He is very aggressive, sexually deviant and has shown violent and hateful behavior towards myself and others. He is both clever and deceitful.

6. I believe that Keitt is a serial rapist who has sexually abused many women and girlfriends. I believe that Keitt dates women, drugs them and then anally rapes them. This is based upon my own personal experiences with Keitt, as well as the many conversations that I have had with other women who have dated or been involved with Keitt. Keitt pushes the envelope of normalcy. In 1995, I was so afraid of his abuse that I sought the protection of the court by seeking a restraining order in Multnomah County Circuit Court No. 9503-62875. As I explained in the petition, I sought a restraining order because Keitt tried to force me to have sex with our dog and then raped me. A copy of my petition is attached to this certification and is true and correct. I was also afraid of him because he carried loaded guns, including assault type guns with special bullets that explode. Some of these guns ^{had been} were stolen ^{in 1993} and were not registered. Although I did not pursue the restraining order after he got some counseling, ^{the remaining} Keitt's violence and sexual abuse of me continued through our marriage. ^{see} ^{D.C.C.} ^{7/27/10}

7. Keitt has been extremely cruel and violent to my pets. In 2002, Keitt shot and killed my cat. I had made plans to give this cat to my then ex-husband Darwin Eisele. I believe that Keitt killed my cat out of jealousy. In 2003, Keitt took my dog, "Oso-cute" out to the woods and shot and killed her. This was unprovoked and heartbreaking for me. In 2006, I

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came home and found metal pellets littering my front porch and dents in the aluminum siding. At that time, I kept my two dogs, Winston and Hitch tied up outside in my fenced in yard. They had been shot and wounded. Winston was shot on two separate occasions. I eventually gave Winston away, out of concern for its life. Hitch died a terrible death, whereby he inadvertently hung himself by his chain, having jumped over my porch, after trying to get away from whomever was shooting at him. My neighbors witnessed his final moments but could not intervene because Winston was guarding the property and did not allow them to come into the yard to save Hitch. On the day that Hitch died, I had plans to meet Keitt, in order to give him a television set that he had delivered to my address. He knew that my dogs would be outside that day. Although I have no hard evidence, I believe that Keitt was either involved in or was responsible for shooting at my dogs.

8. When I met Keitt, he was going through a divorce with his first wife, whose name is now Patti Pointer. At the time we got together, I believed that Ms. Pointer had treated Keitt poorly. However, I came to find out that Keitt had misled me. Keitt had been a minister in Haines, Oregon at the Haines Baptist Church. While married to Keitt, Ms. Pointer had an affair with a deacon in the church, Les Pointer. Keitt found out about the affair and wanted his wife and Mr. Pointer to continue to have sex with each other so long as he could watch them. When Keitt's voyeurism became known, it caused a huge scandal in the little town and was the reason why Keitt no longer worked as a minister. As far as I know, Keitt did not stop working as a minister because his divorce was unacceptable in his church - rather, he stopped being a minister because of the sex scandal with his ex-wife and Mr. Pointer.

9. Keitt has a son named Michael Craig Spry who is currently in prison for child molestation. Keitt knew for many years that his son molested children. Keitt told him to stop

but never did anything to actually stop the abuse. At one time, Michael Craig Spry was living with us. I do not know the exact date when he was living with us, but he often would live with us from time to time. I know that he lived with us when he was running his business called "Zye's Game Exchange, which I believe was in business in 1994. During the time period that Michael Craig lived with us, Keitt and I came home to find Michael Craig with a bunch of 12 or 13 year old kids in the house. They were all drunk, falling down the stairs and playing on the trampoline. I demanded that they leave the house, but Keitt refused to throw them out. On another occasion, sometime between 1995 and 1996, Keitt and I woke up in the morning to find a 12 year old girl, named Rose, coming out of the shower where she had been with Michael Craig, who was in his mid-20s. I was extremely upset by this. Keitt told me that it was "okay" because Rose was emancipated from her parents.

10. In 2003, the Washougal Police Department investigated Michael Craig for child molestation. I have recently reviewed a redacted incident report (#03-000234). See attached report. I am the person whose name is redacted in this report and am the person who spoke to Detective Bradley Chicks in 2003 about Michael Craig and Keitt. Detective Chicks' report is accurate as to what I told him. There is one correction, however. On page three of the report, it was actually Jordan Spry who was drunk and who beat up his dad, Keitt. I called the police and there is a police report about this. The morning after this incident, Michael Craig and Jordan showed up at the house and were angry and wanted retaliation.

11. On one occasion, Keitt was trying to get life insurance taken out on me. Keitt told my daughter-in-law, Charmin Bays "who's to say that Linda doesn't fall down and hit her head on the pond." He was making reference to my having Meniere's Disease, which is a vestibular disorder that I have. It causes me to lose my balance.

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12. I found out through Keitt's sister, Beverly "Kevin" Lively that Keitt (along with Keitt's step father) had sexually abused her when she was a child. Keitt was 15 at the time and Beverly was 7. Keitt and his step father molested Beverly at the same time.

13. Around Christmas of 2005, a woman named Carla Zawadzki, who had been engaged to marry Keitt, called me and told me that Keitt had given Carla's 17 year old son Anthony, some type of phone or device that interfaces with the computer. I don't know exactly what type of device it is. However, Carla told me that she had looked at the device and found pornographic pictures of other women that Keitt had dated. There were also phone numbers on the device of women that Keitt had been involved with, which is how Carla was able to contact me. Keitt had a girlfriend at some point named Terilyn Bentley. There were nude images of Terilyn on the device as well.

14. I believe that Keitt is not honest and has committed multiple acts of fraud. At one time, when Keitt was living and working on the east coast, in Lowville, New York, someone I believe to be Keitt used my son's and my son's father's identities to take out fraudulent loans. I also believe that Keitt received unemployment benefits in Washington State in 2004 when he was employed as an electrician in Oregon at the same time. I also believe that in 2003 he misrepresented his income on a loan application by not reporting income he made from an E-Bay operation. Also, when I moved out of the family home in March 2003 and returned in April 2003, I discovered that all of my jewelry that had been kept in jewelry boxes in our bedroom was missing (with the exception of one piece of jewelry I found later that had slipped behind my cabinet). I believe that Keitt took this jewelry.

15. In 2006, Keitt was living at a property owned by Emily Terry in Portland Oregon. Ms. Terry eventually contacted me after she had evicted Keitt. She had packed some of his

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~~7-27-10~~
belongings into Keitt's car and wanted me to come get his car, as well as his property from inside of the apartment. Keitt was furious with Emily for evicting him. He asked me to be a witness for him in court, as he intended to sue Emily. He was going to sue her for damage to his car that he was saying she had caused. I am aware that there was damage to the side of Keitt's car. This damage had been done a long time before Keitt ever met Emily. The damage was done by Keitt himself, when he got into an automobile accident. I know that when Keitt was asking me to be a witness to his car being damaged, that he was asking me to lie. I told Keitt that I was not going to get involved in the situation between him and Emily.

16. Until I was contacted by an investigator working for Neil Fox, I was never contacted by a lawyer or investigator who worked for Dino Constance. Had I been contacted by Mr. Constance's lawyer or investigator in 2007 or 2008, I would have told him or her the same things I am stating in this declaration and would have come to court to testify if asked, and I will come to court and testify to the above statements.

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

7/27/10 Portland, Or.
DATE AND PLACE

Multnomah Co.

Linda Eisele
LINDA EISELE

EXHIBIT N

March 9, 2014

Mr. David Ponzoha
Clerk of the Court
Washington State Court of Appeals
Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

RECEIVED
MAR 24 2014

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

Dear Mr. Ponzoha,

Enclosed please find the MOTION AND DECLARATION TO ACCEPT AMENDMENT TO STATEMENT OF ADDITIONAL GROUNDS. This involves the loss or destruction of key audio, which the state failed to preserve. This is a major evidentiary and due process issue that only just arose.

I am handling this through my SAG rather than a supplemented brief by Mr. Connick because only I can attest to some of the relevant facts involved; Mr. Connick never had the opportunity to listen to the missing evidence whereas obviously I did several times.

So please do not "pouch" this pleading under State v. Williams. This issue needs to be properly considered, beyond the footnote mention in counsel's Reply Brief, and circumstances made it impossible to brief earlier.

Thank You,


Dino J. Constance