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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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NO. 40526-1-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent

vs.

RICHARD A. PLECHNER,

Appellant

Statement of additional Grounds for Review

APPEAL FROM THE SUPERIOR COURT FOR
MASON COUNTY
The Honorable Amber L. Finlay Judge
Cause No. 09-1-00109-0
AND No. 04-1-00283-4

Richard A. Plechner,
(Pro-Se) Defendant.

C.B.C.C.
No. # 975-117
1830 Eagle Crest Way
Clallam Bay, Wa.
98326-9724

CERTIFICATE OF SERVICE
I certify that I mailed
1 copies of SAG
to App. Counsel
& Pros. Office
1/28/11
Date Signed

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v.s. RICHARD PLECHNER, Appellant.	Case No. # C.O.A 40526-1 FROM MASON CO, 09-1-00109-0 AND 04-1-00283-4 **STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW**, MOTION FOR: EN-BANK HEARING, Appellate Counsel, REFERANCE Hearing, to Present and be Present by Phone AND To have Ruling Published, Vacation of Above CAUSES. (Pro-se) Richard Plechner (Please Review All Motions in file)

This Petitioner brings this petition before this court with the understanding that he is not skilled counsel. Further; I do not Pretend that I understand the evidently Secret understanding of the Law, that Apparently only Lawyers know. I do not know why Some Lawyers say one case is on point, while others say it is not. Further; I don't know which cases have "Authority" and which do not. Nor; do I see why Some cases are "published" and others are not... Expecially when the un-published case states the issue much more clearly, for the "Lay-defendant. Reguardless, of how this court Rules... I hope my case is "published", so that if I don't get Any relief today... Someday; when my broken heart has carried me walking down Some cold, dusty, road, Someone will stop me, and explain to me, why the 9 following issues Lacked "Merit", and made all the things I thought, that made Justice... un-true. All of the following cases in this brief are cases where the words Sounded Like; they Applyed, or because I thought they have Some Juxtaposed "idea", I wish to convey. Inotherwords; I do not WANT to offend the rules of this court... So they are just "illuminations", that

I see... I hope you see them as well. They will be presented sometimes without some gramer or citations, and will be refered to herein by referance. I do hope the court finds at least one issue that this court can "hang its hat on", and provide me some relief. I do not know if this court saw the movie "Gladiator", with Russel crow? But, just like in the movie, where the "Protagonist" is mortally wounded... out of sight of the public view, just before the big spectical, in the columnseum... I feel thats exactly what happend to me. The several D.O.C. hearings that D.O.C. held, not only prior to trial, but durring important court hearings, compounded, to distroy my fair trial rights. There are several referances to them, not only in the court record... but actually durring trial as well!!! So while a P.R.P. would normally be my recorse to expose those events, I feel in my case, this court can see the "Smoke", for its self. So I don't think it's a fully P.R.P. situation. The proof is there. I'm not making a broad castings into the sea of speculation... I'm simply letting the court know, what to expect, in this brief. It was the thousand little cuts that formed the "Perfict Storm", that made my trial an abomination, to Amerizan Justice.

I once, in the 5th grade, won a contest, for writing, a 250 word essay, about what the flag means to me. In one of the prose I wrote, I said that; "The white stripes represent the purity of our Justice System, and our sense of fair play,... to do what is Right."

I hope those words are still true today!

ISSUE No. #1

I believe I WAS unfairly sentenced because the court said that feloney assault and felony Harrassment are not SAme criminal conduct for Purposes of Sentencing. So I got a extra Point for nothing.

R.O.P. PAge 570: @ 2" The court will find that the Standard range is nine based on the seven prior felony convictions here in MASon County. The additional Point for a felony-for current because they're "not" SAME and Similar, and one point for community custody..."

The CASE LAW I fand that I believe refutes this Position is: State V. MANdanas (No. 80441-9)(wash. 01/28/2010) "@ 8.)... felony assault and felony Harrassment... Same criminal conduct for purposes of R.C.W. 9.94A.589(1)(a) (The Sentencing Statute.)...

"@.) 34.) He thought that in the history of the world it might be that there WAS More punishment than crime but he took Small comfort from it. (* See Note.)

"@ 41.) * Cormac Mc CArthy, "The Road" 33 (Vintage INTL 2008).
And: STATE V. Lucero; (No. 83777-5) (MAR 6th 2010) "A defendant's mere failure to object to the State's Assertion of criminal history is Not an affirmative acknowledgement amounting to waiver of Criminal history Sentencing error."

But on R.O.P. PAge 544 @ 22 The State; Dorcy" Say's; "...There are issues with regard to the offender's Score that arise from the '04 cause, (which we've already discussed with Commissioner Whitehouse) and then any issues the defendant has filed..."

So not only did I Not Agree with the offender Score... the record shows I filed motions that Said I did Not Agree with the offender Score. However, I am at a Less why there Seems to be No record of me Verbally doing it, on the record? In fact the WAY the record reads... I WAS Never ASKed?

Either way; I feel I have Showen that I obviously did "Not" receive effective ASSistance of counsel, at Sentencing. This issue Needs to be remanded to the Sentencing court. These Next CASES ARE dispositive... but ~~[illegible]~~ they make a point.

[U] State v. ELL; (No.# 62768-6) (WASH. APP. Div 1 07/19/10) @ 103.) "...ELL disregards the his Attorney argued Successfully for finding of Same Criminal conduct on the harassment and assault conviction for offender Score purposes under R.C.W. 9.94A.589.(1)(a)."
[U] State v. Goldsberry; (No. 38344-6-II) (WASH. APP. Div. 2 02/17/2010) "...(finding distinct criminal conduct where the two crimes respective statutes define different criminals intents) There was also no opportunity for Goldsberry to form a New intent from one crime to the next because the acts occurred simultaneously."
See: Schad v. Department of corrections; (No.# 07-99005) 01/12/10.

ISSUE No. #3

My trial Attorney Mr. Baum totally prevented me from testifying at my trial. Evendently; (without me knowing it.) he never planed to let me do so! When the issue came up... he played this kind of "Passive-aggressive" game with the court. Since, I was in the cross-fire... I received ineffective assistance of counsel. R.O.P. Page 374 @ 2.) "... (The court:) Are you gonna testify or is the defense going to rest? (Richard Plechner:) "Are you asking me or him?" (The court:) "Yeah. Are you gonna testify? (Richard Plechner:) "Not with the way it's (inaudible), Your Honor. I can't. What's the point? My lawyer won't ask me no questions about what I just said. In other words, the - and that's your position, right? (I'm looking right at my Attorney who is standing with his arms crossed and his thumb in his mouth, literally!) (My Attorney Mr. Baum:) (No audible response!!!) (Richard Plechner:) So; since he won't ask me no questions, how can I have a defense?"

So at this point... I thought the only thing that I could do was to take the stand and get tore up! R.O.P. Page 375 @ 18.) (Richard Plechner:) I'm telling you that it doesn't do me any good to get up on the stand and have Mr. Dorcy just talk about my criminal past and have my lawyer ask me nothing. That would pointless. So - and mr. - you know, I've told you from the gate, me and Mr. Baum had a problem with our theory of our case..."

So after this little "colloquially"

no one trys to correct my forgoing belief. Not my Attorney, Not the Prosecutor, OR the judge. The CASE LAW that follows Show why I Should get a New trial.

STAte v. Robinson; 138 WASH. 2d. 753, 982, P. 2d 590 (No. # 66758-6) (WASH. 08/19/1999)
34.) "... AS this CASe demonstrates, Attorneys can prevent thier clients from testifying by refusing to call the defendant to the Stand..."

Howard v. Clark: (No. 08-55340) (9th Cir. 06/15/2010)
@ 17.) "... but erred in denying his claim that his Attorney WAS ineffective in failing to interview or elicit trial testimony from Ragland. Since the record is not Sufficiently developed to determine whether Howard is entitled to relief based on his attorney's allegedly inadequate investigation of Ragland, we remand the CASe to the district court for further Proceedings."

STAte v. Johnson; NO. 35135-8-II (WASH. App. Div II 10/9/07)
@ 31.) "The sixth Amendment to the United States Constitution and article I Section 22 of the State Constitution grant crimininal defendants the right to present testimony in their defense."

Harris v. Wood; 64 F. 3d. 1432 (9th. Cir. 09/12/1995)
"The district court found these arguements were beyond any discernible trial Strategy, and were OUTRAGEOUS."

I feel this issue Shows; Abuse of discretion, ineffective Assistance of Counsel and Harmfull error, which calls for a New trial.

ISSUE No. #2

At my trial Detective Heldreth was allowed to testify as a Medical expert. Not only that... he concluded that from what he saw I had strangled "Sherri". Not that the marks could not have been made by some other method, or that she made them her self.. Further; My Attorney did not get anyone to Rebut this so called expert. R.O.P. PAge 332 @ 24) "... 440 hours of training ... injury recognition..." R.O.P. PAge 339 @ 7.) In this case, I seen red marks around the neck. And in between some of the areas, there was white areas of her neck, which in my opinion, at that point, were probably between the fingers as if Somebody was being Strangled."

Then on R.O.P. PAge 339 @ 25 to Page 340 @ 1.) we get: "It was pretty evident she was involved in some sort of struggle. She had redness on her chest as well and her cheeks, but I was mainly focused in on the neck Area."

Notice that there is no mention of Ripped clothes, bruised skin or broken glasses... Yet; he knows from some skin discoloration she was in not only a struggle... but; was Strangled!!!

She could have had Someone put thier hand on her Neck while she was eating pop-corn and watching T.V. for an hour, or she could have made the marks herself, (which I claim) either way; he does not "know" how they were made. The CASE LAW

Shows that my Attorney Should have called at least one expert to refute Det. Heldreth. Instead; I got R.O.P. Page 376 @ 13.)" So then Mr. Baum, at this point would you be resting? Mr. Baum: "Yes." He never calls a single witness for my defense... Let alone an expert... Like, a doctor. (I gave him a List of At Least 5 People!!!)
The case Law for Relief is:

State v. Olmedo; 112 Wn. App. 525 (2002) An experts opinion evidence as to guilt of the defendant is reversible error when the expert presents the Sole evidence on that point.

Richter v. Hickman No (9th Cir. Aug 10, 2009) Counsel's failure to consult an expert blood Spatter expert prior to trial, based upon counsel's belief that the case was a "credibility contest", constituted prejudicial deficient performance. I Suffered Ineffective Assistance of counsel. (No medical report to show she did it to her self or not! All 3 were in on covering up the thieft!)
State v. Hudson; C.O.A. (No. 36642-8-II) (June 2, 2009 while a Sexual assault Nurse examiner's opinion that the victim's Physical injuries were of the type you would expect to See in a Non-consensual Sexual encounter might be proper, testimony that "the nature and cause of (the victim's) injuries was that they're extensive injury related to non-consenual sex and that this was a Very traumatic Non-consenual... Penetration"... Constituted an improper opinion of guilt."
Thus; I Suffered Reversible Error, and Ineffective Assistance of counsel. Further; My Attorney did

follow the mandates of the Sixth Amendment of the United States. He did Not put on a defense! Though it's an un-published case; it makes my point About the Sixth Amendment nicely. [V] STAte V. Johnson, No. 35135-8-II (2007) @31.) "The Sixth Amendment to the United States Constitution and article I Section 22 of the States constitution grant criminal Defendants the right to offer testimony of witnesses, and to compel their attendance, if necessary, is the right to present a defense, The right to present the defendant's version of the facts as well as the Prosecutions to the jury So it may decide where the truth lies." (criminal defendants have the right to put before a jury evidence that might influence the determination of guilt.)".

Because my Atterney did Not make Any effort to call any defense experts or even Put on a defense I feel this case covers it.

Harris V. Wood, 64. F. 3d. 1432 (9th Cir. 09/12/1995) @ 75.) "... found," These arguements were beyond any discernible trial Strategy, and were outrageous."

Taken as a whole, I feel I have Showen Ineffective Assistance of counsel, Abuse of discretion, and Harmfull error, which calls for; "Reversible Error".

See: Owens V. United States; No. #05-1784 (2007)
"The Lawyer Shall Abide"

issue No. #4

The Supressed Evidence of; "Sherri Wurzbacher's" drug use, Not only affected her credibility, but also went to the Heart of the defense, that She is a drug Addict,..She stole money, and made up a Story that She WAS ASSaulted. It Also prevented me from Presenting fair evidence; at my Sentencing, for Mitigating Circumstances.

The Court: R.O.P. PAge 206 @ 5.) "The OxyContin and the - whatever else you said - the alcohol is within the layperson's testimony. Then @ 4.) "It's Not relevant except - it's Not relevant.." Then Look at ~~Page~~ R.O.P. 205 @ 20.) "The court: My UnderingStanding is you have to be More Specific, Okay, and you'd have to lay a fandation if it's Something beyond just within a layperson's realm of Knowledge as to how it would affect credibility."

Kyles V. Witley; 514 U.S. 419, 435 (1995)
United States V. Robinson; (No. 08-3120) (10th Cir 10/20/09 @ 67.) "we have already concluded there exists a reasonable probability the jury would have reached a different decision had robinson been privy to the C.I.'s Prescription drug usage; it necessarily follows that the districts courts Prohibition on cross-examination regarding the same topic cannot clear the high hurdle of harmlessness beyond a reasonable doubt. See Kyles, 514 U.S. @ 435, 36; VAN Arsdall, 475 U.S. @ 684. And 07/02/85 United States V. Bagley (No. 84-48) (July 2nd. 1985)
United States V. Bailey; (No. 07-1182) (7th Cir. 12/18/07) @. 37.) "A Prophylactic rule that drug-using withesses are per se unbelievable would derail Most drug

Prosecutions which frequently involve, of necessity, the testimony of drug users. These witnesses Short Commings MUST be accounted for through cross-examination, not an exclusionary rule."
United States V. Marshall; (714 F. 2d. 143)(6th cir. 06/13/1983)
"... the Supressed evidence greatly affected the credibility of the governments Chief witness and thus "MIGHT HAVE affected the Goverments Chief witness and thus Might have affected the outcome of the trial". Agurs V. United States, 427 U.S. 97 105 (1976).
[U] State V. Oak, (No. 22074-5-III)(WASH. DIV. 3 08/12/04) @17.) "... The Judge Later ruled that Mr. Ryan's current and PAST drug use was admissible to Allow the jury to assess his credibility and recall, but refused to disqualify him."
United States V. Dicaro; 852 F. 2d 259 (7th cir. 07/15/88) @26.) "...A discriminating Apprasial of the witness's motives and Bias..." See: United States V. De Gudino; 722 F. 2d. 1351, 1354, (7th cir. 1983)

At the very Least; I suffered unfair Prejudice, reversible error, and Ineffective Assistance of Counsel. And; AS A dispositive CASE; Look at: United States V. George; @22.) "Denying cross-examination about Mrs. George's Mental helth did not Violate Mr. George's right to confront her, in part because She had already been impeached by much more damning evidence. @23.) "...defence Counsel had the opportunity to Apply Mrs. George P.C.P. use in this WAY..."

This Error WAS by No means Harmless it would have made a big difference in my case. I could have Showed All three of the States witnesses were drug users, and had "motive", to Keep the Money!!!!

ISSUE No. #5

The trial court abused its discretion when it did "Not" follow the mandates for my requested CrR 7.8 hearing, without conducting a show cause hearing.

R.O.P. PAGE 546 @ 22.) (The Court:) "And it Looks Like Mr. Plechner has filed Motions in this case, and although he is not the Attorney of Record - because you are at this time - he did file, I believe, Motions Pretty Close to the amount - the timefrain required for setting up, Like, a Motion for a New trial."
R.O.P. PAge 549 @ 22.) (Richard Plechner) "Your Honor, I do have Some objections myself that I'd Like to put on the record and one thing I want to inform the court of... because, one objection is I Never "received Notice" that the court hearing was going to be today."
R.O.P. PAge 561 @ 2. (The court:) "... what the Court will do will be - will allow a date to hear the Motions that have already been filed by Mr. Plechner."
R.O.P. 561 @ 24.) (Mr Quillian) Okay, but I'm not trying to argue with the court, but I think I would Still have the ability, legally, to file, for example, a CrR 7.8 Motion or 7.6 Motion."
R.O.P. PAge 562 @ 2.) (The court:) You may have - and what I'm indicating to you is, I'm Not reserving jurisdiction for filing of Post-trial Motions."
But Now Look at R.O.P PAge 550 @ 18.)

(THE court:) "Alright. well, you have an Attorney now who is going to be meeting with you, I believe, again at Least once probably - (Mr. Quillian:) "oh, yeah." (The court:) "-- in order to make sure that these - that a motion will be filed and that you will, in fact be present here on MARCH 1st." R.O.P. PAge 544 @ 11.) (Quillian:) "... I have been retained by his grandfather, who also has limited funds, but Mr. Plechner is clearly indigent and he's been found indigent by this court many, many, many times and has been in custody ever since the last such finding."

So what happend to my Paid counsel??? What happend to my Hearing??? How did my Attorney get removed off the case???

The only CASE I found; that WAS even close to the Mess I Suffered, so far, is:

[U] State v. Brazzel (No.# 38430-2-II) (WASH. DIV. 2 01/26/2010). @ 16.) " Brazzel contends that the trial court violated the MANdates of CrR 7.8 when it denied his motion for relief from judgement without conducting a Show CAUSE hearing. WE Agree." @ 18.) "... trial court abuses its discretion when it fails to follow Statutory Procedures.)."

* See: SCHAD v. Dept. of corrections (No. 07-99005) (9th cir. 01/12/10). I have Suffered unfair Prejudice, reversible error, and Ineffective Assistance of counsel, on this issue alone, and it has been a big Heart Ache.

* @122.) "...we reverse the districts courts' conclusion that Shad WAS Not entitled to a evidentiary hearing regarding..." (Schad)

Issue No. #6

This Next issue is Nothing short of a total "Fiasco" by the State. To keep this court from getting confused, I will call this incident the; "Cell-Phone Caper".

First; Det. Harry Heldreth of the Shelton Police; falsely Arrest me, for a incident, that happend 2 months, before the events of instant case. Durring that Arrest; Det. "Harry Heldreth" deliberately tells me a lie, In hopes that he can turn his false Arrest, into a real charge.

Well; I don't say anything, that was incriminating, and 3 days later, All charges are droped!!! But durring that Arrest, he claims that I Said (from 4 month old memory) "R.O.P. PAge 92 @ 20.) "... Next time he's just gonna take the law into his own hands. He WAS just gonna take the person out, kill them, we would Never find the body. He said even if you find a blood trail from my front door to my van, you'll never be able to prove it, because; you'll Never find the Body." (Notice that there is Nothing about anybody being; Strangled".) (would I really make it that easy for them?) Now; the Plot thickens. AS my "trial" Progresses, for this instant charge, my Attorney Ask for a 3.5 hearing, to determin if Heldreth will be able to testify, that I Said the Statement. Then on PAge 150 of R.O.P. @ 13.) "(My Attorney Baum:) Okay. And we Still Need to deal with the Statement from Detective Heldreth. @ 15.) (The Court:) "Whether Det. Heldreth will be able to testify to Some-

that is a different situation. @17.) (My Attorney Baum:) Alright. @18. (The court:) The court just needs to - I don't know why my notes aren't so great on that subject, but I've got to go ahead and look at it. @21.) (My Attorney Baum:) Okay... Thank you.

Now I want to remind this court this is All Stemming from a failed aborted false Arrest Charge! R.O.P. Page 352 @16. (my Attorney Baum) "These charges were droped. He was arrested for it and they were droped." But this does not step the State from Recycling its failed Attempt to "generate evidence". In fact, when Det Harry Heldreth takes the Stand, Something More Prejudical happends, than him saying, that I will take the Law into my own Hands... Like he says in R.O.P. Page 102 @ 12.) "... and he said that he was just gonna take care of it himself next time." (Notice how its trimed down, Now.) But, as the defense waits for the dreded Statement... He Says in R.O.P. 349-350. @ 18.) "He came to the police department wanting to know what was going on with his theft complaint. Q. Okay and ultimately, during your contact with him on January the 5th of 2009, was Mr. Plechner arrested by you? A.) Yes Q.) Okay. And where did that take place? A.) Inside my office. Q.) And, Specifically, what was the Nature of his Arrest that day? A.) Theft. Q.) Okay. was it in any way related to the Same investigation where he was Named as a victim of theft? A.) Yes!!!

After this Colloquially Det. Harry Heldreth finally Says on R.O.P. Page 355 @. 14.) "He said the Next time somebody steals money from him, he was Not gonna call the cops and he was going to take matters into his own hands." So Now its Changed again!!!! But now the State has got a much better "fish"! The Jury heard I was

I was Arrested for theft!!! Not only that, I was Arrested for; and in connection with, Reporting a theft!!!! Now; "Lay-People", may Not be Lawyers and cops. But; in this country, 93% of Americans have a T.V. And, 41% of the Shows on those T.V.'s at "Prime-time" are Detective and Cop Shows. Now, on those Shows, there is one theme that is used over and over. That's "Fraud"!!! We all know the Story... Steal your own Stuff... Report it Stolen to the police... Collect the insurance money!!! But; in the Shows of Corse; the Scum-Sucking-Lying No good, dirt balls, get caught! By the; "Good Guys!!!"

This is All happening when over 28% of Americans are Suffering at the hands of fraudulant BANKers!!! This Situation reminds me of Something Andy Whorhall Said; "The "Medium" is the message!" And in my CASE, the message is: the Police don't Like Richard Plechner.

So the first Question is... just how "bogas" was the; "cell Phone caper?" How Reliable was the So called Evidence? How much did the State Knowingly Create, that was false? How Prejudical was it to me? 86 R.O.P. @ 18.) (Heldreth) "-I'm Not asking for a floor Plan - but is your office behind a Secure door? (Heldreth) @ 21.) "Yes". (Heldreth) @ 5 R.O.P. PAge 100 @ 5.) (Heldreth) A.) You know I think it was an Hour. He came in at about 1500..." Then on R.O.P. PAge 101 @ 4.) (Heldreth) You know, it was an hour long - the conversation-..."

So one thing is for Sure... I was Behind a Locked door for over an hour, to get the answer to one question... do you have my 175.00 Bucks? But Now go to R.O.P. PAge 87 @ 10.) A.) I didn't know a whole bunch about the actual theft that Mr. Plechner was making, that was a different CASE number, but the Phone theft complaint, I think I reviewed them-

The phone theft one first and talked to Mr. Plechner in there. So really; he does not give a "Hoot" about the theft that happend to me! He's just on the "cell Phone caper"...and for over an hour! But; Now, R.O.P. PAge 89 @ 23.)"...She said she wasn't going to pay him more than what she owed him.". (Fine I'LL take that!!! But; that's not what he tells me!!!) R.O.P. PAge 90 @ 9.) A.) "I told him she wasn't going to PAy him the money that he wanted... He became irritated." Q. "Okay". A.) "We continued to talk and at that point I had determined that I was gonna take him into custody." But here's the best one! R.O.P. PAge 99 @ 12.) (Baum) Q.) Do you remember exactly what he said? A.) (HELDRETH) "Verbatim, No."

So He does Not KNow or even Rember if I mention Anything About; WAC 308-18-300 Citizens Arrest (iii) Authority to detain, question or Search a Private citizen. OR R.C.W. 42.17.400 Citizen's Action. (This court can check the Mason county district court...I filed 2 of them!) I did Not even have to take them to thier conclusion, to get very good results!!! I might be the only guy in the State, who has done it twice! I don't Need the police or the D.A.!

I think this first CASE Shows just how "out of Line", the above events Are.
United States V. Millen; 594 F.2d. 1085 (6th cir. 02/27/1979). @ 46.)"...Censorable conduct in eliciting the "gay" relationship testimony which forms the basis for the vacation of the Manslaughter conviction and which we unanimously believe to have been done intentionally." (The state wanted the jury to hear I was Arrested for Theft! Expecially in This CASE.)

So this is A EASY one... If you were in "trial"... would you rather have the Jury think you are "Gay", or a "thief" who is in volved with "fraud"??? The rest of the cases should be self explainatory and I won't bore this court with my drivel.

United States v. BAron, 860 F.2d 911 (9th Cir. 10/28/88)
@28.) "... 20-minute detention in back of seat of Patrol CAR held to constitute arrest."
Hinchman v. Moore; (No. 00-2457) (6th cir. 12/02/2002)
@.17.) "That the defendants had fabricated the facts to establish probable cause."
9/15/80 United States of America v. GUILLERMO NOVO SAMPOL; District of Columbia circuit No. # 79-1541; 79-1542; 79-1808
@95.) "... he must have known that such "Propinquity" Likely would lead to that result."
United States v. Arnold; 106 F.3d 37 (3d. cir 02/04/1997)
@.22.) "under the Sixth Amendment the government is Prohibited from deliberately eliciting incriminating evidence from an anaccused".
United states v. Vega-Figueroa (No. 99-1394) 2nd cir. 12/18/2000)
@28.) "... Miranda safeguards come into play when ever a Person in custody is subjected to either express questioning or its functional equivalent. That is to say; the term "interrogation;" under Miranda refers Not only express questioning, but also to Any words or Actions on the part of the Police (other than those Normally attendant to Arrest and custody.) that Police should know are reasonably Likely to elicit an incriminating response from the suspect... A Practice that Police should know is reasonably Likely to envoke an incriminating response from a suspect thus amounts to interrogation."

Nielander v. Board of county commissioners of Republic, Kansas (No. # 08-3092) (10th cir. 08/31/2009) @65.) " Mr. Watt's Statement was political hyperbole Protected by the first Amendment."
State v. Grant; (1996) E.R. 404(b).
@18.) "under E.R. 404(b). Noting that Prior convictions are admissable under 404(b) to Prove... but at this Point based on the representations of counsel I'm Satisfied that they are NOT admissible basically because at this juncture they are not relevant."
United States v Slaughter; 891 F.2d. 691 (9th cir. 05/12/1989), @32.) "The claim of governmental outrageous conduct involves a difficult area of the Law. There is No bright line between acceptable..."
United STATES V. Tobias; 662 F.2d. 381 (11th cir. 11/30/81) @58.) As Justice Brandeis observed, to declare that in the administration of Criminal law the end justifies the means to declare that the governments may commit Crimes in order to Secure the conviction of a Private criminal would bring terrible retibution" Olmstead v. United States, 277 U.S. 438, 485, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1927)
United States v. C.M.; @62.) "... In assessing harmlessness, we Must be convinced beyond a reasonable doubt that the governments misconduct did Not give rise to any Prejudice." See Wendy G 255 F.3d. at 767." | (CAUSE No. # 05-50585) (9th cir. 05/08/2007) U.S. v. C.M.
Thomas V Hobbard (No. # 00-17050) (9th cir. 12/05/2001) 39.) " There are However Some CASES in which out of court Statements are so Prejudical that a jury would be unable to disregard their Substantive content regardless of the Purpose for which they Are introduced and

regardless of ANY Curative instruction!
See: U.S. V. MAYfield; (9th cir. 1999)
Brown V. NAtions bank corporation; 188 F 3d 579 (5th cir. 09/08/1998)
@77.) " The due process clause WAS intended to Prevent governmental officials from abusing their power or employing it as an instrument of oppression." See Collins V. City of Harker Heights, tex. 503 U.S. 115, 126, (1992)
State V. Fisher; (No. # 70760-0) (WASH. 12/06/2001) (in the Supreme court of WASHington)
@69.) " Decision of our courts of Appeal have addressed the question of "Probable CAUSE" and "well-founded suspicion" for Arrest without warrents. While not squarely on point with this case, they are of VAlue at least in focusing on Conceptual references."

If you take my case to the extream... (more than it is?)... what do you got? You Let the State make a bunch of false Arrest... then wait months for Memories to fade... then write reports... then have trials for suspects, where you use the State Created evidence!

R.C.P. PAGE 96 @ 8.)
Q.) At what point did you document that contact if, in fact, you did?
A.) Several Monts LAter, after this investigation from March 17th of 2009..."

This WAS not A matter of Harmless Error...
It is A matter of "deliberate Harmfull Error"!!

ISSUE No. #7

In my case; the prosecutor knowingly lets the jury hear a "Bold face Lie"...or at the very least, trys to mislead them, regarding my defense theory and credibility, before I even take the stand. (he knows my defense strategy because he got my tape!) I don't need A P.R.P. to show the contrast of the lie, because both pieces are in the record. R.O.P. PAGE 347 @ 7.)"...Exhibit 10...Identification as 10, do you recognize that as a copy of the report that you wrote documenting your investigation on March the 17th of 2009? A.) "Yes"" So this court has this Report, and though the jury never heard it, or read it... on page 4 five lines down from the top it say's;" He said that Sherri is a thief and stole money from him and..." So Now; Notice the date at the bottom... It say's 03/18/09!!! Just hours after 3/17/09! But; that does not stop "Harry H. Eldreth" from testifing to R.O.P. Page 356 @ 9.) "Eventually he did file a complaint with the Shelton Police Department, yes. When did that happen? At approximately one month after his arrest in this case." (His Report was only 4 pages long! So it was no accident!!!)(Did the jury need to hear I was arrested?)

Notice there is not an objection...no correction by the Prosecuter... Nothing! So for sure, the jury thinks anything I say about; "Sherri", being a thief, or that she rubbed her own neck... is all "Spite"!! This testimony is very prejudicial to me!

The case law for Relief:

"If Prosecutors are permitted to convict

guilty defendants by improper, unfair means, then we are but a moments away from the time when prosecuters will convict innocent defendants by unfair means. State v. Rivers 96 Wn. App. 672 (1999).

R.C.W. 9A.72.040: False swearing is a gross misdemenor, defined by...:

(1) A Person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or Authorized by Law R.C.W. 9A.72.040 "A person is guilty of Perjury in the first degree if in any offical porceding he makes materially false statement which he knows to be false under an oath required or authorized by Law.

STAte V. Agurs: 427 U.S. 97, 103 (1976)
"Knowing use of Perjured testimony by a Prosecutor generally requires that the conviction be set aside see: United States v. Agurs U.S. 97, 105 (1976)

HAYES V. Brown: 399 F. 3d 972 (9th Cir. 03/07/2005) (CAUSE No. 99-99030) @ 46.) is that the State may not use false evidence to obtain a criminal conviction. Nepue v. Illionis, 360 U.S. 264. Indeed if it is establish that the goverment knowingly permitted the introduction of false testimony, "REVERSAL IS vertually Auto-MATIC". United States v. Wallach 935 F. 2d. 445, 456 (2d. cir. 1991) 269 (1959) "Deliberate Deception of Judge and Jury is inconsistent with the rudimentary demands of Justice". Moony v. Holohan, 294, U.S. 103, 112, (1935) In addition, the State

Violates a criminal's defendant's right to due process of Law when, Although not soliciting false evidence, it allows false evidence to go uncorrected when it appears. See: Alcorta v. Texas 335 U.S. 28 (1957) Pyle v. Kansas, 317 U.S. 213 (1942)

Kyles v. Whitley: 514 U.S. 419, 433-434 (1995)
"Move over, the rule encompasses evidence known only to police investigators and not the prosecutor" Id. at 438. In order to comply with "Brady" therefore; "The individual Prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in this case, including the Police". Kyles; 514. U.S. @ 437 [@ 87.)]

REMBER The trial Started on June 16th, 2009... So the State can't SAY they did Not know, because on MARCH 19th 2009, R.O.P. PAge 1 @ 23.) "I was a victim of a robbery of Six hundred dollars, Your Honor." At this Point the State MAkes No effort to have the Police "or" the "Sheriff" come talk to me. But Now Look at R.O.P. PAge 19 @ 15.)" - this whole CASE has been a Subterfuge to get rid of the burglary that happend to me, that was perpetrated on me."

ELL iOT-PArk v. MANglona; (No. 08-16089) (9th cir. 01/12/2010 @.25.) "There is a constitutional right ... to have police Services administered in a Non-discriminatory MANNER - a right that is violated when a State actor denies such Protection to disfavored Persons" 219 F. 3d. 1018, 1028, (9th cir. 2000) See Also 02/22/89 De Shaney v. Winnebago county Dep't of Sec. Services, 489 U.S. 189, 192, n3. (1989) "The state may Not of corse Selectively deny its protective Services to certain disfavored Minorities without Violating the Equal Protection Clause."

Jean V Collins; 107 F.3d 111 (4th Cir. 03/07/1997)
@31.) " we held that failure of police to disclose impeachment evidence involves a question of fundamental fairness rising to the Level of constitutional due process which cannot be brushed aside as mere error in evidentiary ruling Barbee V. Warden, 331 F.2d. 842 (4th Cir. 1964)
@64.) Brady claim might Arise;
(1) Where the prosecutor introduced testimony that he knew or should have known was false, (3) where the governments failed to disclose a Specific kind of exculpatory or impeachment evidence requested by the defendant; and (3) where the government failed to disclose EXCULPATORY OR IMPEACHMENT EVIDENCE Never requested, or requested in a general way. under the false testimony standard, the court Noted that it had consistently set aside convictions..."
"In other words, if the undisclosed evidence created a reasonable doubt that did not otherwise exist, there was constitutional error."
Yick Wo V. Hopkins, 118 U.S. 356 (1886)
The State may not of Course, Selectively deny its protective Services to Certain disfavored Minorities without Violating the Equal protection clause.
United States V. C.M.; (No.#05-50585) (9th Cir. 05/08/2007)
@ 62.) "... In assessing harmlessness, we Must be convinced beyond a reasonable doubt that the governments misconduct did not give rise TO ANY PREJUDICE! See Wendy; G. 255 F.3d. at 767."
STATE V. Brooks; (No.#36171-0-II) (Wash. App. Div. 2 03/24/09
"... @62.) The Jacobson court appears to provide that it is in fact, the Prejudice to the defendants right to a fair trial that must be MATERIAL, RATHER THAN

The Evidence itself."

State v. WALLS, (No.# 30743-0-II)(WASH. App. Div. 2 06/07/05) @.34.) "Under CrR 8.3(b), a court may dismiss any Criminal prosecution due to arbitrary Action or governmental misconduct when there has been Prejudice to the rights of the accused which materially affected the accused's rights to a fair trial.

State v. Michielli (No.#64270-2)(WASH. Supreme court) (WASH. 05/29/1997) "... First a defendant must Show arbitrary action or governmental misconduct. State v. BLACKwell... Governmental misconduct, however, Need Not be of an evil or dishonest NAture; Simple mis MANAGEMENT is Sufficent..."

Levy v. PArker; (478 F.2d 772 (3rd. Cir. 04/18/1973) (No.# 71-1917) @ 139.) "... The Second circuit held that the question is Not Whether the ACCUSED WAS Actually Prejudiced, but Whether ~~[illegible]~~ There IS A REASONABLE POSSibility that he was prejudiced."

Mc Kinney v. Rees; 993 F. 2d 1378 (9th cir. 04/28/1993) (No.# 89-55869) "Violates those fundamental conceptions of Justice which Lie at the base of our civil and Political institutions"'... and which define the community's Sense of fair play and decency"; 493 U.S. @ 535.

The Simple truth is; if "Sherri" had been properly investigated and Charged... my Attorney could have at Least got me a plea bargain! Because, of the Lies told by officer Harry Heldreth, I was deprived of providing the court with fair Mitigating Evidence, for a more Leanant, or fair Sentence. (This is where the real Problems Started!)

This issue is much Bigger than it Looks. If this Court does not find Error in this issue, it Lets the States; "Non-feasance" Be used to infer guilt on a defendant! It Let's the state generate "Culpable evidence" against the defendant! Further, It totally underminds one of the States own witness, so that, she appears, she has her own ax to grind. Or that she is actually a defense witness, on this one issue, and is working with me, on my defense Story. It difinately distroys any chance of "Mitigating Evidence", at Sentencing.
R.C.W. 9.94A.535
R.O.P. PAGE 241 @ 18.) GINA WURZBACHER; (the States witness on direct.) "-he called me back, he said all my money is missing."

So now the Jury can conclude three things...

A.) The Money was "Drug money", and I did Not want to Report it, to the Police.

B.) Gina is just flat out Lying, and the money Story, came 30 days Later.

C.) The Police do not Like me, and thats why it took So Long to get it reported.

D.) I was in Jail, and for Some reason, I did not Report it untill 30 days Later. (Like I Need time to think up a Story!)

E.) Gina and Me are both Lying.

This is Not Harmless Error, and my case Needs to be Remanded, or flat out dismissed with Prejudice.

issue No. #8

My Attorney did not put to the jury, or ask for; "Assault in the third degree." He told me that it was Not Available, do to his understanding of the Law. I think the case law and the statute say otherwise.

R.O.P. Page 173 @ 12.) "... And then he shoved me down into the "Chair" and proceeded to, you know, put his hands on my throat and choke me..."

But here's the reason I think this is an assault in the third degree.

State v. Marohl: (No.# 37566-4-II)(Wash. App. Div. 2 8/4/09) @.) 8.) "We hold that sufficient evidence supported that Marohl assaulted Joseph Rex Perterson and that Marohl used the "floor" as an instrument to commit the assault, We Affirm."

"(d.) with criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm R.C.W. 9.A.36.031 (1)(d)."

So; "floor" or "Chair"... whats the differance?
Please Review the following,
In Re Personal Restraint Petition of Lonnie Lee burton; (No.# 35358-6-1) 80 Wash. App. 573, 910 P.2d. 1295 WA. App. 02/12/1996
"...(6) assault that does not result in hospitalization in violation of W.A.C. 137-28-030 (704)."

So at Least in this part, of washington Law, it differenchiates the differance between ASSAULTS, by degree.

State v. Posey (No.# 78043-9) (WASH 09/20/2007) @ 30.) "... --- Bolsters the principles set out by the Legislature that the more severe punishment should be only imposed on defendants who actually commit an enumerated charge...

[V] People v. Estrada; (No.# D 050551) (CAL. App. Dist. 4, 08/11/2008.) "People v. Williams (2001) Cal. 4th 779, 790 @ 19.) "... He may not be convicted based on facts he did not know but should have known"

"... on this standard, mere "recklessness" or "criminal negligence is not sufficient to establish the crime."

[vi] State v. Swain; No. 37440-4-II (WASH. APP. DIV. 2 10/20/09) @ 37.) "As in Keend under the statute and the trial Court's instructions, the Jury could convict Swain if he intentionally ASSAULTED the victim and one of the Three results occurred from that unwanted touching: (1) Swan intended to choke Owen (i.e. interrupt the flow of air to her lungs and blood to her brain by squeezing her neck,) untill she was nearly unconsciousness (2) Swain knew that by continuing to squeez owens neck she was Likely to black out, or (3) Swain knew and disregarded the risk that owen would become unconscious if he continued to squeez her neck. without including all the substitutes for the instance where Swain specifically intended the result of his intentional ASSAULT i.e. choking Owen untill she black out..." So now we have some kind of standard that my attorney did not get for me. But we can do better than that.

[vii] State v. Sajjadi; (No.# 35899-9-II) (WASH.

App. Div. 2 04/08/2008) @.36) "We Vacate Saijadi's Second degree assault adjudication. We remand to the trial Court for entry of adjudication on fourth degree assault and resentencing @ 8.)"... reverse the second degree assault adjudication and remand for entry of a fourth degree assault adjudication,." @16.) "... that Saijadi inflicted substantial bodily harm on halter." But in the End there WAS Not Any MEdical EVidence!!!

And; we can get that!!! (1) Tissue Bruises that are only visible under; "ULTRAVIOLET LIGHT, 2.) It takes about 30 Seconds of Sustained Pressure to produce "petechiae"..." See: [U] Myers v. State; No. A-10212 (Alaska App. 02/03/2010) @.19 And [U] State v. MAYNARD; (No. 62214-5-I (Wash. App. Div. 1 7/20/09) @. 44.).

[U] State v. Benson; (26821-3-II) (Wash. App. Div. 2 8/9/02) [59.] "...a person would most likely Survive without any Problems from a "Sleeper hold" that is released quickly. Through cross examination of Howard..."

Davis v. Woodford; (No. 01-99014) (9th Cir 09/21/2004) @ 55. "... To render her unconscious Davis would have had to Apply pressure deliberately and Steadily for up to two minutes.'

State v. Lui; (No 61804-1-I) (Wash Div. 1. 11/23/2009) @ 19.) "... and testified that it generally takes four minutes to Strangle Someone to death."

[U] State v. Buchmann; (No. 20188-1-III) (Wash. App Div 3. 10/31/2002) @21.) "...and "PetechiAe" tiny hemorrages, around the eyes consistent with Strangulation..."

Also see: [U] State v. Inouye (No.# 64955-8-I) (Wash. App. Div. 1 08/23/2010) So; Lets go back to what the

So called "victim" said. R.O.P. Page No. 228 @ 2.) By (Mr. Baum:) Now, you had indicated to Detective Heldreth that this lasted - this choking incident - lasted about a "minute?"
A) Give or take, I don't - you know, everything was happening so fast. Q.) Do you not know how long it took? A.) You know, I'm doing the best I can. I, you know, a minute, two minutes, three - I don't - somewhere around there. Q.) you did not go to the doctor, is that correct? A.) No, I didn't Q.) At any time? A.) No, I didn't Sham on me, huh? Q.) and law enforcement offered you the opportunity to go to the doctor? A.) Yes; they did ask. (Had She went to the Doctors he would have discovered that there was Not Any deep bruises from being choked only Self inflicted Abrashions that only Looked Like Choke marks!!!) Cause the other States witnesses Say: R.O.P. Page 246 @ 4.) (Gina) "... It All Happened So fast, but my recollection is he came..." Then R.O.P. Page 327 @ 2.) (Shelly Gardner) "okay so, fifteen to twenty seconds in the Chair? A.) Yeah, that's just a guess though. So the States own witnesses got the whole choking thing somewhere from a minute to 15 seconds!!!

[U] State v. Foster, No. 20735-8-III (Wash. App. Div. 3 4/28/03) "The fact Prong of workman is whether the facts support an inference that only (the Lesser Crime was commited)."
But Look at what these other defendants got:

[U] State v. Fernandez, (No. 24749-6-II) Wash App. Div 2 11/02/2001) @ 19.) "...and one count of third degree assault for Strangling J.A.W. Fernandez appeals."

[U] State v. Glover, (62454-7-1) (Wash. App. Div. 1 12/21/09) @ 11.) "Cory Glover Plead guilty to third degree assault - domestic Violence, a class C non-violent felony..."

So one thing is Sure... I got a bad deal!

I did not get anything Like these guys! I got 80 months and A Strike!!! 1/3 of A Life Sentence!!! See MASK V. Mc Ginnis (No. 99-2071) (2d. cir. 11/15/2000) @13) "... Specifically, the court found that MASK's counsel failed to correct the prosecutor's mistaken belief that MASK WAS..." Like MASK I had verry ineffective assistance of counsel. See Mikens V. Taylor; 535 U.S. 162 (2002) Strickland V. WASHington 466 U.S. 668, (1984)

[V] State V. Thomson; No. 38678-5-II
(WASH. Div. 2. 02/23/10)

@38.) "... there is evidence that the defendant committed only the inferior offense. Fernandez-Medina 141 WN. @ 454. quoting State V. Perterson 133. WN. 2d. 885, 891, 948 P. 2d 381 (1997)

@19.) "... Moreover Criminal Statutes are to be Strictly construed in favior of the defendant. State V. Wissing 66 WASH APP. 775, 753, 833 P. 2d 424."

The is No Standard for Such a Serious Charge! Normally for an assault 2ᵈ go got a "Hole", Some blood, and some doctors reports. The way you got it Now... any woman who WANTS a quick divorce just Rubbs her neck!

issue No.

I believe I have suffered Accmulative Error. The error in my case is extensive and happened all through my case. The following cases I believe should illuminate my position.

IN CONCLUSION:

Please Read: Street v. National Broadcasting co., 645 F.2d. 1227 (6th cir. 03/13/81 @70.) I really do feel, that it is not right, that an "officer of the court", has been allowed to run-off with my families money, and not have any of my Pre-trial and Post trial motions heard. (By EN-BANC court, with Assigned Counsel, and by Phone for me.)

I can't imagine what more I could have done in my effort to get a fair trial? You can only expect a "lay person", to do so much. After that... it's up to the courts, like yourselves, to do what is right. (How about ~~1/4 of a~~ Point for every 1/4 error... then add them up???) (for Reverseable Error.)

If this court can't see clear to dismiss both causes, then I at least hope it orders the Lower court to give me a "hearing"... because, So far, no matter how you slice it... Justice has not happend, in my case. That's why I WANT THE: (EN-BANC court, Hearing, Assigned counsel, and Appearance By Phone for me.)

Respectfully Presented by:

Richard A. Plechner

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge,

SWORN to this 23 day of January, 2011.

Richard Plechner

Signature

Richard Plechner 975-117

Printed Name DOC#

C.B.C.C.
F-unit A/02
1830 Eagle Crest Way
Clallam Bay, WA. 98326-9724

C.O.A. 40526-1