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DIVISION II

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STATE OF WASHINGTON
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NO. 41133-4-II

IN THE COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON - TACOMA

STATE OF WASHINGTON
RESPONDENT

V.

JAMES PHILIP DOUGLAS
APPELLANT

APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS

JAMES PHILIP DOUGLAS-DOC#891542 ~~GE210~~
WASHINGTON STATE PENITENTIARY
1313 N. 13th AVE.
WALLA WALLA, WA. 99362

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STATEMENT OF HISTORY

THE FACTS RELEVANT TO THIS APPEAL REQUIRE THE ADDITION OF P.R.P'S PREVIOUSLY FILED IN THIS CAUSE IN DIV-II AND WA. SUPREME COURT. THE FACTS PREVIOUSLY ESTABLISHED IN THIS CAUSE BY COMMISIONER STEVEN GOFF ARE AS FOLLOWS: THE APPELLANT'S E.R.D. WAS 3-20-2008 AND THE APPELLANT'S MAX DATE OF RELEASE WAS 11-29-2009; (UNDER THE ORIGINAL SENTENCING ON 2-10-2006 IN 04-1-05086-5 BEFORE JUDGE CHUSHCOFF.) THE COA DIV-II OVERTURNED 1/2 OF THE CAUSE, WHICH WAS ORIGINALLY JOINED FOR TRIAL, ON 9-6-2008, AND REMANDED FOR RE-TRIAL. WHILE WAITING FOR RE-TRIAL THE APPELLANT FILED P.R.P NO. 38530-9-II WHICH WENT TO COMMISIONER GOFF IN WA. SUPREME COURT NO. 83200-5 AS REVIEW, BUT WAS ULTIMATELY DENIED CERT. THE APPELLANT THEN PETITIONED U.S. DISTRICT COURT IN NO. C09-5439 HABEAS CORPUS WITH SIMILAR GROUNDS. THE U.S. DISTRICT COURT JUDGE ROBERT J. BRYAN RULED THE PETITION WAS NOT EXHAUSTED IN STATE COURT PROCEEDINGS. THE APPELLANT APPEALS FOR CERTIFICATE OF APPEALABILITY IN THE 9th CIRCUIT COURT OF APPEALS, YET TO BE DECIDED. ULTIMATELY, THE QUESTIONS OF THIS CASE HAVE YET TO BE DECIDED BY THE STATE COURT AS WELL AS THE EVIDENCE.

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[1] This brief refers to the verbatim report of proceedings as follows: 1RP – 11/21/08; 2RP – 12/1/08; 3RP – 12/8 and 12/16/08; 4RP – 1/12/09; 5RP – 2/6, 2/13, 2/19, 3/13, 4/15, 4/22, 5/4, 5/13, 5/29, 6/3, 6/17, and 6/22/09; 6RP – 6/12/09; 7RP – 6/30, 7/1, and 7/2/09; 8RP – 7/13, 7/14, 7/17, and 7/20/09; 9RP – 8/4/09; 10RP – 8/24 and 8/27/09; 11RP – 9/1/09; 12RP – 9/2/09 (Judge Van Doorninck); 13RP – 9/2/09; 14RP – 9/16, 9/22, 9/23, 9/24, 9/28, 9/29, and 10/8/09; 15RP – 11/9/09; 16RP – 12/28/09; 17RP – 12/29/09; 18RP – 2/19/10; 19RP – 5/4, 5/19, and 6/9/10; 20RP – 5/26/10; 21RP – 6/10, 6/11, and 6/15/10; 22RP – 6/14/10; 23RP – 6/16, 6/21, 6/29, and 6/30/10; 24RP – 6/17/10; 25RP – 6/28/10; 26RP – 7/1/10; (27RP – 7/6/10; 28RP – 7/7/10; 29RP – 7/8/10; 30RP – 7/12-13/10; 31RP – 7/14/10; 32RP – 7/15/10; 33RP – 7/19/10; 34RP – 7/20/10; 35RP – 7/21-23/10; 36RP – 8/10/10; 37RP – 8/11-12/10;) 38RP –(8/13, 8/16, and 8/17/10;) 39RP – 8/17/10 (a.m.); 40RP – 8/18, 8/19, 8/20, 8/23, and 8/27/10; 41RP – 8/27, 8/30, and 10/22/10.)

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STATE V. YOUNG, 129 Wash. App 468, 119 P.3d 870 (2005) 157 Wash. 2d — 1011, 139 P.3d 350 (2006) (40)

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SATTERWHITE V. TEXAS, 486 U.S. 249, 108 S.Ct 1792, 100 L.Ed — 2d 284 (1988) (19)

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CrR 3.1(e) (3)

ASSIGNMENTS OF ERROR

1. THE DEPARTMENT OF ASSIGNED COUNSEL WAS INEFFECTIVE AS STAND-BY COUNSEL AND FAILED TO PROVIDE THE APPELLANTS INVESTIGATOR BY DECEMBER 18TH, 2008. THE COURT HAD ORDERED IT BY THAT DATE SO THE APPELLANTS SPEEDY TRIAL RIGHTS WOULD BE UPHELD. THE APPELLANTS' COURT APPOINTED STAND-BY ATTORNEY JACK MCNIESH WAS NEVER HEARD FROM AGAIN AFTER HIS APPOINTMENT BY THE COURT.

2. THE MISTRIAL DECLARED BY JUDGE LISA WORSWICK WAS AN ABUSE OF DISCRETION AND DENIED THE APPELLANTS CONSTITUTIONAL RIGHT TO HIS CHOICE OF A JURY OF HIS PEERS.

3. FAILURE BY THE COURT TO RE-APPOINT STAND-BY COUNSEL PRIOR TO TRIAL VIOLATED APPELLANTS' CONSTITUTIONAL RIGHT TO COMPULSORY PROCESS IN THE GATHERING AND COORDINATING OF WITNESSES AND EVIDENCE, DURING: PRE-TRIAL MOTIONS, TRIAL, AND SENTENCING.

4. THE COURTS ALLOWANCE OF PRIOR CRIMES/BAD ACTS VIOLATED ER 403/ER 404B AND PREJUDICED THE DEFENSE BY ALLOWING THE JURY TO INFER GUILT, RATHER THAN BY A REASONABLE DOUBT AS REQUIRED IN THE FIRST STAGE OF TRIAL, AND BY ALLOWING THE SAME JURY TO DETERMINE AGGRIVATING FACTORS IN THE SECOND STAGE OF TRIAL, VIOLATING LEGISLATIVE INTENT.

5. THE COURT JUDGE ABUSED HIS DISCRETION AND ERRED BY NOT ALLOWING THE IMPEACHMENT OF CARROLL PEDERSON AND BY NOT STRIKING MR PEDERSONS' TESTIMONY, BASED ON INCONSISTENT STATEMENTS.

6. THE COURT JUDGE CUTHBERTSON ABUSED HIS DISCRETION BY SENDING THE APPELLANT TO WESTERN STATE ON THE PROSECUTIONS' REQUEST AND OVER THE APPELLANTS' OBJECTIONS.

7. THE COURT ERRED DENYING DUE PROCESS OF LAW BY FAILING TO HOLD AN EVIDENTIARY HEARING AS SCHEDULED PRIOR AND AS REQUESTED BY THE APPELLANT.

8. THE COURT ERRED BY NOT APPOINTING COUNSEL WHEN REQUESTED BY THE APPELLANT, PRIOR TO THE EXCEPTIONAL SENTENCE PHASE OF TRIAL.

9. THE COURT ERRED, DENYING DUE PROCESS OF LAW BY FAILING TO FILE DISCRETIONARY REVIEW, AND APPELLANTS MOTION FOR TIME TO TRIAL WENT UNHEARD.

10. THE COURT ERRED IN ALLOWING PROSECUTIONS EXHIBIT (1), A PHOTO OF MY VEHICLE, TO PREJUDICE THE JURY BY IMPLICATION OF THE APPELLANTS' VEHICLE RATHER THAN BY SUBSTANTIVE FACTS AS REQUIRED.

11. THE COURT ERRED BY PLACING BEFORE THE JURY IN THE FIRST STAGE OF TRIAL COUNT THREE SPECIAL VERDICT FORM (EXHIBIT D1) AND THE INSTRUCTION (EXHIBIT D2) RELIEVING THE STATE OF ITS' BURDEN OF PROOF REQUIREMENT.

12. THE COURT PREJUDICED THE JURY BY SHOWING THEM THE VIDEOTAPE OF THE FIRE SCENE IN THEIR DELIBERATIONS', WHEN THEY HAD ALLREADY SEEN THE VIDEO (EXHIBIT 79) AS IT WAS TESTIFIED TO PRIOR BY THE INVESTIGATOR, AND ALLOWED THE PROSECUTOR TO QUESTION THE WITNESS' DURING IT WITHOUT GIVING THE DEFENSE RE-DIRECT DURING IT, SHOWING BIAS.

13. THE COURT ERRED BY NOT HEARING THE DEFENDANTS MOTIONS', WHICH WERE TIMELY FILED, DENYING A FIFTH AMEN. RIGHT TO DUE PROCESS OF LAW, AND A FOURTEENTH AMEN. RIGHT TO EQUAL PROTECTION OF THE LAW, BY SENDING ALL THE DEFENDANTS' MOTIONS' TO THE COURT OF APPEALS AS CrR 7.8(c)(2), EVEN AFTER THE COURT OF APPEALS' REJECTED IT THE FIRST TIME.

14. THE COURT ERRED IN INSTRUCTING THE JURY TO CONSIDER ALL FACTS', INCLUDING PRIOR CONVICTIONS, TO DETERMINE THE EXISTANCE OF AGGRIVATING FACTORS, AND ERRED IN NOT INCLUDING WPIC 300.10, WPIC 300.17, AND WPIC 2.27 TO THE SPECIAL VERDICT OF INVASION OF PRIVACY FOR THE ARSON CONVICTION.

QUESTION: DID THE DEPARTMENT OF ASSIGNED COUNSELS FAILURE TO PROVIDE CONTACT TO THE COURT APPOINTED INVESTIGATOR AS ORDERED, DENY THE APPELLANT A CONSTITUTIONAL RIGHT BY HIS HAVING TO CONTINUE TRIAL TO GATHER WITNESSES OR TO CHOOSE TO HAVE A SPEEDY TRIAL WITHOUT WITNESSES?

STATEMENT OF FACTS (1)

UPON REMAND, APPELLANT REQUESTS SPEEDY TRIAL, 2RP-6 "... I CHOOSE NOT TO WAIVE MY SPEEDY TRIAL RIGHTS." THE STATE SAYS THEY ARE LOOKING TO ASK FOR AN EXCEPTIONAL SENTENCE IN THE RANGE OF (10 YEARS, 2RP-4,8,15. THE STATE SUGGESTS STAND-BY COUNSEL BE APPOINTED TO ASSIST THE APPELLANT, 2RP-10,11. THE COURT APPOINTS JACK MCNIESH AS STAND-BY COUNSEL, 2RP-16. THE COURT SETS TRIAL DATE FOR DECEMBER 8TH, 2008, 2RP-15, 3RP-3. THE APPELLANT STATES THAT HE HAS ALLREADY SERVED ALL THE TIME FOR THE PRIOR ASSAULT CHARGES AND PROSECUTION CONCURRS, 2RP-15. APPELLANT ASKS FOR DISCOVERY, 2RP-17. APPELLANT ASKS THE COURT NOT TO CONTINUE THIS CASE, 3RP-7. THE COURT RE-SETS TRIAL FOR DECEMBER 18, 2008, 3RP-9,10. 12-16-08 OMNIBUS HEARING - SEE OMNIBUS FILED. THE COURT AGAIN RE-SETS THE TRIAL DATE TO JANUARY 12TH, 2009, 3RP-19. PER THE APPELLANTS MOTION, THE COURT ORDERS THE DEPARTMENT OF ASSIGNED COUNSEL TO PROVIDE THE APPELLANT AN INVESTIGATOR BY THURSDAY, DECEMBER, 18TH 2008 AND TO NOTIFY THE APPELLANT WHO IT IS BY THEN, 3RP-21. THE JUDGE SETS THE PARAMETERS OF STAND-BY, 9RP-23.

ARGUMENT(1)

THE APPELLANTS "MOTION FOR CONTINUANCE" WAS FILED AS A NOTICE OF APPEARANCE ON JANUARY 12TH OF 2009. THE APPELLANT HAD INFORMED THE COURT THAT THE INVESTIGATOR NEVER GOT A HOLD OF ME SO I TRIED TO FIND ONE ON MY OWN, 4RP-4. STAND-BY COUNSEL MACDONALD SHOWED UP THE FIRST TIME ON JANUARY 12TH, 2009, WHICH WAS THE DAY OF TRIAL, 4RP-3. THE COURT HAD TO FILE ANOTHER ORDER APPOINTING AN INVESTIGATOR ON FEBRUARY 4TH, 2009 BESIDES THE ONE FILED DECEMBER 16TH, 2008. I RELUCTANTLY AGREED TO CONTINUE TRIAL TO APRIL 15TH, 2009. THE STAND-BY COUNSEL FORCED ME TO ALLOW HER TO GET UP TO SPEED ON THE CASE, SO SHE COULD TAKE OVER AT TRIAL IF NECESSARY, 4RP-5. I DID REPLY, "I WOULDN'T HAVE A PROBLEM WITH THAT" TO TELL THE TRUTH I HAD ALLREADY FILED THE MOTION TO DISMISS/ASSIGN CURE WHICH STATED I DID HAVE A MAJOR PROBLEM WITH THE CONTINUANCE AND LACK OF BEING ABLE TO HAVE A SPEEDY TRIAL. THE LACK OF ASSISTANCE IN GAINING WITNESSES' AND THE STAND-BY COUNSELS' DEMAND TO "GET UP TO SPEED" FORCED THE APPELLANT TO CONTINUE THE CASE TO APRIL 15TH, 2009. I WAS THINKING OF DISMISSING STAND-BY COUNSEL, BUT I HAD SEVERAL THINGS I NEEDED HER TO HELP ACCOMPLISH, 5RP-101. THE APPELLANT DID OBJECT TO ANY MORE CONTINUANCES, 5RP-96. THE COURTS' SCHEDULING ORDER CITED MAY 14TH AS THE FINAL DAY FOR TRIAL, 5RP-163. THE APPELLANT AGAIN OBJECTS TO ANY MORE CONTINUANCES, 5RP-180. THE MOTION TO DISMISS/ASSIGN CURE IS HEARD, 6RP-2-9, 12.

THE MOTION IS DENIED. THE APPELLANT FILES A DISCRETIONARY REVIEW, AND SERVES A COPY ON THE PROSECUTION, 5RP-189-90. THE SUPREME COURT DECLARES A NEED TO FILE IT FIRST IN SUPERIOR COURT. I REFILED IT IN SUPERIOR COURT ON JULY 13TH, 2009 AND SERVED A COPY ON THE PROSECUTOR. IT WAS NOT HEARD SO I FILED IT AGAIN FOR AN ADDITIONAL VIOLATION ON SEPTEMBER 28TH, 2009, 14RP-32-34. IT STILL WAS NEVER HEARD. IN STATE V. MARTINEZ, 53 Wn. App 709, 770 P.2d 646 (1989) A TRIAL COURT COMMITS REVERSABLE ERROR IF IT KNOWS OR REASONABLY SHOULD KNOW OF A PARTICULAR CONFLICT INTO WHICH IT FAILS TO INQUIRE, AND REVERSAL IS ALWAYS NECESSARY WHERE A DEFENDANT SHOWS AN ACTUAL CONFLICT OF INTEREST ADVERSELY AFFECTING HIS LAWYERS PERFORMANCE AND IN NEITHER SITUATION NEED PREJUDICE BE SHOWN. IN THIS CASE THE CONFLICT WAS ME AS COUNSEL NOT RECIEVING THE ASSISTANCE OF THE INVESTIGATOR OR CrR 3.1(e) - STAND-BY COUNSEL AS ORDERED BY THE COURT. I WAS FORCED TO CHOOSE BETWEEN A SPEEDY TRIAL WITHOUT COUNSEL AND WITNESSES OR CONTINUE TRIAL SO I HAD WITNESSES AVAILABLE. THE NEW STAND-BY COUNSEL FORCED ME TO WAIT FOR HER TO GET UP TO SPEED AS WELL. THIS VIOLATED MY RIGHT TO A SPEEDY TRIAL CrR 3.3. UNDER THE U.S. CONSTITUTION'S SIXTH AMENDMENT AND ARTICLE I §22 OF WASHINGTON STATES' CONSTITUTION, IT VIOLATED MY RIGHT TO THE TOOLS NECESSARY TO HAVE AN EFFECTIVE PRO-SE REPRESENTATION, See STATE V. SILVA, 107 Wn. App 605, 27 P.3d 663 (2001), (1) ACT AS A LIASON ---- (2) PROVIDE FORMS ---- (3) ASSIST IN SECURING AN INVESTIGATOR ---- (4) ANY OTHER DUTIES LOGICALLY ASSOCIATED WITH APPOINTED COUNSEL THAT WOULD SATISFY THE ACCUSED'S RIGHT TO ACCESS TO TOOLS NECESSARY TO PREPARE AN ADEQUATE PRO-SE DEFENSE. THE STAND-BY ACTUALLY QUIT BEFORE TRIAL BEGAN (9RP-34)

QUESTION: WAS THE TRIAL JUDGE LISA WORSWICKS' DECLARATION OF A MISTRIAL AN ABUSE OF DISCRETION SINCE THE DEFENSE DID NOT WANT A MISTRIAL?

STATEMENT OF FACTS(2)

THE INTERIM MISTRIAL WAS DECLARED OVER DEFENSES OBJECTIONS. THE JUDGE ORIGINALLY STATED THAT ONE OPTION WOULD BE TO RECESS THE JURY UNTIL SHE GOT BACK ON THE 24TH, 8RP-231. THE COURT ASKS THE PROSECUTION IF WE CAN GET THE TRIAL DONE IN TWO WEEKS, THE PROSECUTION STATES "YES, YOUR HONOR"....."I DON'T KNOW THAT WE WOULD HAVE TO HAVE THE SAME JURY TO DO THE SENTENCING PROCEEDING," 8RP-234. WE HAD STARTED THE JURY SELECTION ALLREADY, 8RP-228, THEY WERE SWORN IN. THE PROSECUTOR ALSO JUST WANTED TO GIVE ME A DAY OR TWO TO GET BACK ON MY FEET AND THEN HEAR THE MOTION I HAD FILED, 8RP-232. I ASKED THAT STAND-BY ATTORNEY MELANIE MACDONALD CONTINUE TO PICK THE REST OF THE JURY, 8RP-239-40. I JUST WANTED TO POSTPONE THE TRIAL A FEW DAYS, 8RP-240, THIS WAS (4 DAYS) AFTER THE INCIDENT. THE PROSECUTOR TRIES TO GET MY MEDICAL RECORDS OF THE INCIDENT, I OBJECT, 8RP-244. THE PROSECUTOR OBJECTS TO A MISTRIAL, 8RP-248. I ASK THE COURT TO POLL THE JURY TO SEE IF THEY WOULD BE PREJUDICE BY ME HAVING A BLACK EYE AND IF THEY WOULD BE OPPOSED TO HAVING A THREE TO FOUR WEEK EXTENSION, 8RP-255. THE PROSECUTOR SAYS SHE NOW WANTS A MISTRIAL BECAUSE THE JURY WAS ALLREADY SWORN IN, 8RP-254, SHE DECIDES A CONTINUANCE TO AUGUST

24TH WOULD BE O.K. WITH HER. THE PROSECUTOR STATES AGAIN SHE WOULDN'T MIND A CONTINUANCE, 8RP-259. I STATE I REALLY WANT TO KEEP THIS JURY, 8RP-260, THE JUDGE DECLARES A MISTRIAL. SHE KEEPS THE CASE HOWEVER AND SETS IT FOR THE 24TH OF AUGUST FOR JURY SELECTION, 8RP-261,62. TRIAL IS RESET FOR AUGUST 4TH, 2009 BY THE COURT, 8RP-267. THE JULY 24TH, 2009 RECORD BEFORE JUDGE LISA WORSWICK IS UNAVALLABLE. ON AUGUST 4TH, 2009 BEFORE JUDGE FRANK CUTHBERTSON I WAS ORDERED TO WESTERN STATE HOSPITAL BY THE PROSECUTOR MRS FITZER OVER MY OBJECTIONS. I DECLARE MY CIVIL SUIT TO JUDGE CUTHBERTSON, 9RP-32. I TELL HIM I ALREADY HAD AN EVALUATION AND IT IS ON FILE, 9RP-35. JUDGE CUTHBERTSON TAKES STAND-BY ATTORNEYS MELANIE MACDONALDS REQUEST TO BE UNASSIGNED AND STATES HE WILL RULE ON IT AT THE NEXT HEARING, 9RP-34. SHE WAS UNASSIGNED BY JUDGE TOLLEFSON ON AUGUST 27TH, 2009, AFTER MY COMPETENCY HEARING ON AUGUST 24TH, 2009, 10RP-20.

ARGUMENT (2)

THE CONSTITUTIONAL AMENDMENT VI DECLARES THE RIGHT TO AN "IMPARTIAL JURY" OF ONES PEERS. THE MISTRIAL WAS DECLARED OVER DEFENSE AND THE PROSECUTIONS ARGUMENTS AGAINST IT. THE JURY WAS SWORN IN AND SELECTION HAD BEGUN. THE APPELLANTS' IDEA WAS TO POLL THE JURY TO SEE IF THEY WOULD BE PREJUDICED BY MY CONTINUING THE TRIAL. MY TRIAL AND MY RIGHT TO REQUEST. AFTER

THE MISTRIAL WAS DECLARED THE APPELLANT FILED A DISCRETIONARY REVIEW WITH THE COURT OF APPEALS', (39657-2-II). PRIOR TO THAT HE WAS SENT TO THE WESTERN STATE HOSPITAL OVER OBJECTIONS ON AUGUST 4TH 2009 BY JUDGE CUTHBERTSON. THE EVALUATION WAS FOR (15 DAYS) AND ACCORDING TO COURT RULES THE CLOCK ON COURT PROCEEDURES STOPS WHEN A DEFENDANT IS SENT FOR AN EVALUATION C.R 3.3(e)1. THE DISCRETIONARY REVIEW SHOULD HAVE BEEN ACCEPTED BY THE COURT OF APPEALS. IT WAS DENIED CITING TIMELY FILING BUT THE COURT NEVER CONSIDERED MY EVALUATION TIME OF (15 DAYS) WHEN I FILED IT. THE APPELLANT ASKS THE COURTS REVIEW ON THE MATTER NOW. LEGALLY, JEOPARDY HAD ATTACHED WHEN JUDGE WORSWICK CALLED THE JURY, SWORE THEM IN AS JURORS IN THE TRIAL. THE JUDGE ABUSED DISCRETION BY DISMISSING JURORS OVER OBJECTION OF THE DEFENSE AND PROSECUTION. CONSENT WAS NOT IMPLIED FOR A MISTRIAL WHEN I HAD ASKED TO POLL THE JURY TO SEE IF PREJUDICE WOULD EXIST IF A CONTINUANCE WAS FILED. IN U.S. V. LARA-RAMIREZ, 519 F.3d 76, 89 (1ST CIR 2008) ABUSE OF DISCRETION TO DECLARE A MISTRIAL BECAUSE TRIAL COURT DID NOT INVESTIGATE THE EXTENT OF THE PREJUDICE ... THE APPELLANT HAD A SIXTH AMENDMENT RIGHT TO A JURY OF HIS SELECTION. AT THE TIME I HAD STAND-BY COUNSEL TO ASSIST ME IF NECESSARY. IN STATE V. SHEETS, 128 WASH. APP 128 149, 115 P.3d 1004 (DIV II 2005) Amended (AUGUST 2, 2005), WHEN A MISTRIAL IS GRANTED WITHOUT THE DEFENDANTS' CONSENT AND AFTER JEOPARDY HAS ATTACHED, A RETRIAL IS BARRED BY DOUBLE JEOPARDY PRINCIPLES, UNLESS THE MISTRIAL WAS JUSTIFIED BY A MANIFEST NECESSITY.

QUESTION: DID THE COURTS REFUSAL TO RE-APPOINT STAND-BY COUNSEL VIOLATE DEFENDANTS RIGHT TO COMPULSORY PROCESS IN OBTAINING EVIDENCE AND WITNESSES IN HIS FAVOR?

STATEMENT OF FACTS (3)

THE APPELLANT WAS APPOINTED AS PRO-SE COUNSEL ON DECEMBER 1ST, 2008, 2RP-6. THE STATE SUGGESTS STAND-BY COUNSEL BE APPOINTED TO ASSIST THE DEFENDANT, 2RP-10,11. THE COURT APPOINTS JACK MCNIESH AS STAND-BY COUNSEL, 2RP-16. THE DEPARTMENT OF ASSIGNED COUNSEL APPOINTS MELANIE MACDONALD AS STAND-BY COUNSEL, 4RP-3. ON MARCH 18TH, 2009 I DID FILE A MOTION TO REMOVE STAND-BY COUNSEL AND APPOINT ORIGINAL COUNSEL, CP-110-113. I DID NOT, HOWEVER, PURSUE THAT MOTION, 5RP 98-99, 112-113. TRIAL BEGAN BEFORE JUDGE LISA WORSWICK WITH STAND-BY ATTORNEY MELANIE MACDONALD PRESENT, 7RP-3. I HAD ASSUMED ME AND MRS MACDONALD HAD WORKED OUT OUR DIFFERENCES BUT SHE ASKED JUDGE CUTHBERTSON TO BE RELEASED FROM THE CASE ON AUGUST 4TH, 2009, JUDGE CUTHBERTSON DEFERRED A DECISION TILL AFTER MY COMPETENCY HEARING, 9RP-25-28, 34. WHEN I RETURNED I CAME BEFORE JUDGE TOLLEFSON, 10RP-1,2. JUDGE TOLLEFSON ALLOWED STAND-BY MELANIE MACDONALD TO WITHDRAW, 10RP-17-26. SHE WAS RIGHT IN THE MIDDLE OF GETTING ME CONTACT WITH MY WITNESSES. ON SEPTEMBER 1ST, 2009, I WAS FORCED TO INTERVIEW DETECTIVE JOHN SAMPLE BY VIDEO DEPOSITION WITHOUT COUNSELS ASSISTANCE, 11RP. THIS WAS ONLY (3 DAYS) AFTER COUNSEL WAS REMOVED. I LATER FILED A MOTION TO DISMISS CrR 3.3(h) ON SEPTEMBER 28TH, 2009, 14RP-32-33. THE DEPARTMENT OF ASSIGNED

COUNSEL HAD SENT ME A LETTER STATING THAT THEY WERE NO LONGER GOING TO SUPPLY WITNESSES IN MY CASE, 14RP-35,36. THE MOTION I HAD FILED WAS SCHEDULED TO BE HEARD THE NEXT DAY. DUE TO MY FRUSTRATION WITH THE COURTS' LACK OF DUE PROCESS OF LAW I WAS GIVEN AN ATTORNEY, 14RP-30-39. THE NEW ATTORNEY QUIT ON DECEMBER 28TH, 2009, 16RP-3-6. ON MAY 4TH, 2010 MY NEW ATTORNEY SENT ME AGAIN TO WESTERN STATE OVER MY OBJECTIONS, 19RP-3-4. THE HOSPITAL, NOT UNDERSTANDING WHY I WAS EVEN THERE, SENT ME BACK A WEEK EARLY CITING THE EARLIER COMPETENCY EVALUATION. ON MAY 26TH, 2009 I ASK THE COURT TO PROCEED PRO-SE AGAIN WITH ATTORNEY JAMES' OLIVER AS STAND-BY COUNSEL, 20RP-5. I RELAY TO THE COURT THE FACTS' CONCERNING STAND-BY COUNSELS' PREVIOUS' DEPARTURE, 20RP-8-9. THE COURT GRANTS' PRO-SE STATUS ONCE AGAIN BUT DENIES STAND-BY COUNSEL, JAMES OLIVER ~~BE~~ IS DISMISSED, 20RP-20-21. TRIAL COMMENCES JUNE 10TH, 2010, 21RP-28. I AGAIN ASK FOR STAND-BY COUNSEL, IT'S DENIED, 21RP-70-72,79. ON JUNE 16TH, 2010 I INDICATED A DESIRE TO TAKE AN ALFRED NEWTON PLEA (24RP-5) AND ASK THAT JAMES OLIVER BE APPOINTED TO ASSIST IN THE MATTER, 23RP-249-50. OLIVER WAS RE-APPOINTED, 23RP-261-62. I HAD PREVIOUS' TO THAT POINT ALLREADY SERVED BEYOND THE STATUATORY MAXIMUM SENTENCE OF (61 MONTHS) - SEE EXHIBIT 'B' - ORDER OF RELEASE DATED: 11-28-2009. I REFUSED THE PROSECUTORS DEMAND THAT I PLEAD GUILTY TO THE EXCEPTIONAL SENTENCE AND AFFIRM MY PRIOR CONVICTION IN CAUSE 04-1-03902-1. MR OLIVER WAS DISMISSED AGAIN AND WE PROCEEDED TO TRIAL. AT SENTENCING I ASKED FOR MR OLIVERS' PRESENCE TO TESTIFY. HE WAS NOT MADE AVAILABLE, BUT HE DID PROVIDE

AN AFFIDAVIT OF HIS PRE-TRIAL INTERVIEW WITH DEBORA DOUGLAS - SEE EXHIBIT 'A' - LETTER AND AFFIDAVIT OF JAMES OLIVER, ATTORNEY. HE TOLD ME ABOUT THE STATEMENTS MY WIFE HAD MADE TO HIM IN THE PRE-TRIAL INTERVIEW, THAT THERE HAD BEEN NO ABUSE. MY EX WIFE TESTIFIED TO ALL KINDS OF THINGS THAT NEVER HAPPENED IN THE 2ND STAGE OF TRIAL. NOBODY WAS THERE FOR THE DEFENSE TO CROSS EXAMINE HER. I NEVER WAS GIVEN ADEQUATE TOOLS NECESSARY FOR A PROPER PRO-SE DEFENSE. JUDGE CUTHBERTSON HAD OUTLINED STAND-BY COUNSELS' DUTIES, 9RP-23. THE RESOURCES FOR DEFENSE WERE NOT MADE AVAILABLE, 40RP-2151-2154. MR. OLIVER'S DECLARATION WAS MADE AFTER TRIAL WAS OVER, JUST BEFORE SENTENCING. HIS AFFIDAVIT IS DATED MARCH 21ST, 2011.

ARGUMENT (3)

THE APPELLANTS' CURRENT ATTORNEY ARGUED THAT JUDGE TOLLEFSON SHOULD NOT HAVE MADE MY REQUEST FOR AN EFFECTIVE REPRESENTATION THE LITMUS TEST FOR WHETHER OR NOT HE WOULD APPOINT COUNSEL. THE REQUIREMENTS FOR PRO-SE STAND-BY COUNSEL ARE SET FORTH IN THE CASE OF STATE V. MATTHEW GARRETT SILVA, JULY 30TH, 2001-45355-6-I. THE COURT FOUND THAT A PRO-SE DEFENDANT MUST HAVE THE TOOLS NECESSARY FOR AN ADEQUATE PRO-SE DEFENSE. I TRIED TO GET MR OLIVER TO BE AT SENTENCING TO TESTIFY, 41RP-2347. BETTY RICHARDSON WAS ALSO TO BE AT SENTENCING BUT WAS NOT, 41RP-2353. I FILED A MOTION FOR A CHANGE OF VENUE, IT WAS NOT HEARD, 41RP-2389. I FILE A MOTION TO TERMINATE LFOS, 41RP-2409, IT IS

FILED AS SENTENCING EXHIBIT #3. THE MOTION FOR NEW TRIAL WAS TIMELY FILED AND TRANSFERED ERRONIOUSLY BY THE COURT TO THE COURT OF APPEALS, SEE 41465-1-II, EXHIBIT 'C'. IN ARTICLE I § 22 OF THE WASHINGTON STATE CONSTITUTION, IT STATES "IN CRIMINAL PROSECUTIONS THE ACCUSED SHALL HAVE THE RIGHT. . . TO MEET THE WITNESSES AGAINST HIM, FACE TO FACE, TO HAVE COMPULSORY PROCESS TO COMPEL THE ATTENDANCE OF WITNESSES ON HIS BEHALF." . . . THE U.S. CONSTITUTIONS SIXTH AMENDMENT, THE SAME RIGHT. IN RCWA 10.52.040 COMPELLING WITNESSES TO ATTEND AND TESTIFY, "FEW RIGHTS ARE AS FUNDAMENTAL THAN THAT OF AN ACCUSED TO PRESENT WITNESSES IN HIS OWN DEFENSE; AND THE RIGHT TO COMPEL THE ATTENDANCE OF DEFENSE WITNESSES," GREGORY V. UNITED STATES, 369 F.2d 185 (D.C. Cir 1966). IN TAYLOR V. LIST, 880 F.2d 1040, 1047 (9TH CIR 1989) "AN INCARCERATED DEFENDANT MAY NOT MEANINGFULLY EXERCISE HIS RIGHT TO REPRESENT HIMSELF WITHOUT ACCESS TO LAW BOOKS, WITNESSES OR OTHER TOOLS TO PREPARE A DEFENSE" see also MILTON V. MORRIS, 767 F.2d 1443, 1447 (9TH CIR 1985) requiring "ACCESS TO MATERIALS AND WITNESSES. THE EXCLUSION OF TESTIMONY IS PREJUDICIAL AND VIOLATES A FEDERAL CONSTITUTIONAL GUARANTEE OF THE FIFTH AMENDMENT "DUE PROCESS OF LAW" MADE APPLICABLE TO THE STATE BY THE FOURTEENTH AMENDMENT. THE EXCLUSION OF WITNESSES MAKES IT IMPOSSIBLE FOR THE TRIER OF FACT TO REACH A FAIR CONCLUSION AS TO THE DEFENDANTS GUILT OR INNOCENSE. THIS APPLIES TO THE FIRST AND SECOND STAGE OF TRIAL AND SUBSEQUENT MITIGATION AT SENTENCING. THE DEFENDANT HAD CONSISTENTLY SOUGHT A SUBPOENA FOR SUMNER POLICE OFFICER SGT, DENNIS DORR, TO TESTIFY AT THE TRIAL, BUT HE WAS NEVER MADE AVAILABLE, SEE 14RP, 35-37, 7RP-28,29, 34RP-1265-1268, 34RP-1286-1287, I HAD WANTED A LIVE PERSON PLUS TO TESTIFY FROM QWEST, 33RP-1229.

QUESTION: DID THE COURTS' ALLOWANCE OF PRIOR CRIMES/BAD ACTS' VIOLATE ER 403/404B AND PREJUDICE THE DEFENDANT BY ALLOWING THE JURY TO INFER GUILT, RATHER THAN BY A REASONABLE DOUBT AS' REQUIRED IN THE FIRST STAGE OF TRIAL? DID THE COURT ALSO ERR BY ALLOWING THE SAME JURY TO DETERMINE AGGRIVATING FACTORS' IN THE SECOND STAGE OF TRIAL, VIOLATING LEGISLATIVE INTENT?

STATEMENT OF FACTS' (4)

THE STATE DECLARES' THAT THIS WILL BE A (2 STAGE) PROCEEDING OF THE ARSON, RESIDENTIAL BURGLARY AND VIOLATION OF PROTECTION ORDER. IT WILL ALSO BE THE SUBSEQUENT AGGRIVATING FACTORS, 2RP-10,11. THE DEFENDANT ASKS THE COURT TO DENY PRIOR CRIMES/ BAD ACTS' AS' THEY ARE 404(B), 22RP-17,18, AND 403 UNFAIRLY PREJUDICIAL TO THE DEFENSE. THE COURT GRANTS' PROSECUTIONS' MOTION IN LIMONE' STATING THE RES GESTAE OF THE CONVICTION, 22RP-19. THE STATE SAYS' I SHOULDN'T BE ALLOWED TO DEFEND THE CHARGES', 22RP,-11. THE STATE INCORRECTLY STATES MY DEFENSE AT THE PRIOR TRIAL TO THE JUDGE, THE PRIOR JUDGE NEVER ALLOWED INSTRUCTIONS' ON DEFENSE OF OTHERS, 22RP-14, THE JUDGE GRANTS' HER MOTIONS' ANYWAY. THE STATE DECLARES' IF THERE IS' ANY PREJUDICE, SHE WILL SANITIZE IT, 22RP-19. THE COURT HEARS DEFENDANTS MOTION TO DISMISS FOR PROSECUTORIAL MISCONDUCT, 22RP-28-39. THE COURT STATES' MY REMEDY LIES WITH THE COURT OF APPEALS, 22RP-50. HE IS' INDIFFERENT TO THE MOTION AND MANIFESTLY UNJUST. THE OCCURANCE OF THE ALTERCATION WITH THE PEDERSONS' OVER MY CHILD WAS' JULY 25TH, 2004, THE FIRE OCTOBER 10TH, 2004. IN

THAT TIME NO ONE FROM THE PEDERSONS' FAMILY (27RP-435), HAD HEARD FROM THE APPELLANT, 26RP-97, DUE TO THE JUDGES' RULINGS ALLOWING THE PROSECUTION TO REARGUE THE PRIOR ALTERCATION, I WAS FORCED TO DEFEND AGAINST IT, EVEN THOUGH THE JUDGE SAID I COULDN'T IN MOTIONS IN LIMONE', 22RP. THE JUDGE WAS BIAS IN THE RESPECT OF PRIOR ACTIONS OF THE APPELLANT V.S. THE PEDERSONS' AND DEBRA'S. I SUBMITTED EVIDENCE OF EXHIBITS 160, 164, 165 WHICH WAS FOR A LIMITED PURPOSE OF SHOWING THE JURY THE MISTAKEN SIGNATURES OF KATHLEEN OLIVER, 37RP-1905-1908. PRIOR BAD ACTS ARE 404B AND NOT ALLOWED, 37RP-1910. MY MOTION TO WITHDRAW THE EXHIBITS' IS' DENIED, 37RP-1911. THE MOTION TO RE-OPEN THE EVIDENCE PHASE IS DENIED, 37RP-1920. I ASKED FOR A PETRICH UNANIMITY INSTRUCTION, BUT ITS' DENIED, 37RP-1938-39, 1942-43. THE COURT USED THE SAME JURY IN BOTH THE FIRST STAGE AND SUBSEQUENT EXCEPTIONAL STAGE TO FIND GUILT, 38RP-2108. THE APPELLANT ASKED FOR A SEPERATE JURY FOR THE AGGRIVATING FACTORS, 38RP-2109. THE STATE HAD DECLARED PRIOR THAT SHE DIDN'T THINK WE HAD TO USE THE SAME JURY FOR AGGRIVATING FACTORS, 8RP-234. THE JURY HAD HEARD THE PREJUDICIAL PRIOR CRIMES/BAD ACTS IN VIOLATION OF ER 403/404B AND SHOULD HAVE BEEN DISMISSED AND A NEW JURY PANELED FOR THE AGGRIVATING FACTORS' STAGE. THE COURT ERRED IN ALLOWING THE EXHIBITS AND THE TESTIMONY SINCE IT HAD APPROVED THE PROSECUTIONS' MOTION IN LIMONE' DENYING IT. THE COURT OF APPEALS MAY HAVE AFFIRMED THE PRIOR CONVICTIONS BUT THE SUPREME COURT HAS IT NOW. MRS FITZER BROUGHT UP THE PRIOR CAUSES OF ASSAULT, 34RP-1331.

THE LEGISLATURE INTENDED IN RCW9.94A.537 (2005) THAT TO HAVE A JURYS DETERMINATION OF GUILT ON AN EXCEPTIONAL SENTENCE, THE COURT SHALL PLACE BEFORE THE JURY FACTS' OTHER THAN PRIOR CONVICTIONS TO DETERMINE AGGRIVATING FACTORS, 40RP-2127. THE COURT FOUND IN STATE V. COLE, 74 Wn.App 571, 874 P.2d 878 (1994) THE FUNCTION OF A MOTION IN LIMONE IS THE PREVENTION OF POTENTIALLY PREJUDICE EVIDENCE BEING PLACED BEFORE THE JURY. THE COURT ALLOWED THE PROSECUTION TO PRESENT TO THE JURY THE PRIOR ASSAULT FORCING THE APPELLANT TO DEFEND AGAINST IT, VIOLATING THE COURTS RULING NOT ALLOWING ME TO DEFEND AGAINST IT, THE COURT ALSO ALLOWED INFLAMATORY PITOTOS OF PRIOR INJURIES OF MRS PEDERSON, 40RP-2188. IN STATE V. WILSON, 181 P.3d 887, 144 Wash.App 166 (2008) EVIDENCE OF PRIOR "BAD ACTS" MUST PROVE LOGICALLY RELEVANT TO PROVE ESSENTIAL ELEMENT OF CRIME AND MUST BE PROBATIVE V. PREJUDICIAL AS TO ITS LEGAL RELEVANCE AND MUST HAVE LIMITING INSTRUCTION IF GIVEN TO THE JURY FOR WHAT ITS CONSIDERED FOR. IN STATE V. FERSER, 158 P.3d 616, 138 Wash App 737 rev. denied 180 P.3d 784, 163 Wash. 2d 1007 (2007) A CONVICTION CANNOT STAND IF THE JURY IS INSTRUCTED IN A MANNER WHICH RELIEVES THE STATE OF ITS BURDEN TO PROVE EVERY ESSENTIAL ELEMENT OF A CRIME BEYOND A REASONABLE DOUBT. IN STATE V. BERRIER, 143 Wn.App 398, 174 P.3d 697 (2008) IT STATES, SO LONG AS THE DEFENDANTS SUBSTANTIVE RIGHTS ARE NOT PREJUDICED, THE STATE MAY ALLEGE AGGRVATING FACTORS, 40RP-2126. EVIDENCE OF PRIOR CRIMES, WRONGS OR ACTS ARE INADMISSABLE TO PROVE

THE DEFENDANTS "CHARACTER" OR "PROPENSITY", ER 404(b). SUCH EVIDENCE IS PROHIBITED BECAUSE IT IS SO LIKELY TO CAUSE THE JURY TO "PREJUDGE" THE DEFENDANT AND DENY HIM A FAIR OPPORTUNITY TO DEFEND HIMSELF AGAINST THE STATES CASE, MICHELSON V. U.S., 335 U.S. 469, 475-76, 93 L.Ed 168, 69 S.Ct 213 (1948) A DEFENDANT IS ENTITLED TO BE TRIED BASED ON THE EVIDENCE RATHER THAN BEING CONVICTED BECAUSE THE JURY BELIEVES HE IS A BAD PERSON WHO IS BY PROPENSITY A PROBABLE PERPETRATOR OF THE CRIME. See also STATE V. PERRETT, 86 Wn.App 316, 319-20, 936 P.2d 426 (1997). ER 404(b) EVIDENCE IS LIKELY TO CAUSE THE JURY TO TRY A DEFENDANT NOT FOR WHAT HE IS ACCUSED OF DOING BUT RATHER FOR WHO THEY THINK HE IS, See STATE V. KELLY, 102 Wn. 2d 188, 199-200, 685 P.2d 564 (1984). THE JUDGE DID NOT GIVE A LIMITING INSTRUCTION IN THE SECOND STAGE OF AGGRIVATING FACTORS. THE TRIAL COURTS FAILURE TO GIVE SUA SPONTE A LIMITING INSTRUCTION REGARDING ER 404(b) EVIDENCE IS REVERSABLE ERROR, IT IS IRRELEVANT THAT THE DEFENDANT DID NOT REQUEST SUCH AN INSTRUCTION, STATE V. RUSSELL, COA NO. 38233-4-II (Feb 9TH 2010). THE TRIAL COURT ALLOWED THE PROSECUTION TO ARGUE NAME CALLING AS DOMESTIC VIOLENCE BY THE PEDERSONS AND DEBRA DOUGLAS. DEBRA'S PRIOR STATEMENT TO MY ATTORNEY THERE WAS NO DOMESTIC VIOLENCE (SEE EXHIBIT A). IN FACT I HAD VISITATION WITH MY DAUGHTER UNTIL THE INCIDENT WITH THE PEDERSONS. THAT WAS THE LAST DAY I SAW HER. THERE WAS NO DOMESTIC VIOLENCE, IN FACT, THE TERM 'DOMESTIC VIOLENCE' WAS A MOTION IN LIMONE' THAT IT WAS NOT TO BE BROUGHT UP, 35RP-1446-1447, I ASKED FOR A LIMITING INSTRUCTION ON IT, (23RP-278). FRANK BOSHEARS VIOLATED IT, 32RP-1068-1070.

THE COURT WOULD NOT GIVE THE LIMITING INSTRUCTION. WHEN THE PEDERSONS' CALLED 911 AT THE SAFEWAY PARKING LOT, A POLICE OFFICER RESPONDED. HIS REPORT STATED THAT NO CRIME WAS COMMITTED. IN ALL THE INCIDENTS' THE COURT ALLOWED AS DOMESTIC VIOLENCE, THERE WAS' NO COMPLAINT FILED EXCEPT THE SAFEWAY PARKING LOT. NO ONE HAD REALLY COMPLAINED OF ANYTHING UNTIL AFTER THE JULY 25TH 2004 INCIDENT WITH MR AND MRS PEDERSON AT THE CUSTODY EXCHANGE. I TAKE GREAT OFFENSE TO MY WIFES ACCUSATIONS' THAT I REPEATEDLY DEMANDED SEX FROM HER. SHE NEVER COMPLAINED OF THAT IN OUR DIVORCE PROCEEDINGS' PRIOR TO ALL OF THIS, NOR DID SHE COMPLAIN TO ANYONE UNTIL AFTER THE FIRE AT THE PEDERSONS HOME. IN STATE V. McAIPIN, 108 Wn.2d 458, 740 P.2d 824 (1987) UNCHARGED CRIMES COULD NOT BE USED AS AGGRIVATING FACTORS' JUSTIFYING AN EXCEPTIONAL SENTENCE, SINCE UNLESS ARRESTS' AND CONFESSIONS HAVE RESULTED IN CONVICTIONS, THEY MAY NOT BE CONSIDERED AT ALL. IN STATE V. GONZALES, 46 Wn.App 388, 731 P.2d 1101 (1986), THE SENTENCING COURT ERRED IN USING A CRIME FOR WHICH THE DEFENDANT WAS NEVER CONVICTED AS A REASON TO JUSTIFY AN EXCEPTIONAL SENTENCE. ALSO CRIMINAL HISTORY CANNOT BE USED AS AN AGGRIVATING FACTOR, BECAUSE IT IS ALREADY INCLUDED IN THE COMPUTATION OF THE SERIOUSNESS LEVEL OF THE OFFENSE, STATE V. WHITEHEAD, 51 Wn.App 841, 755 P.2d 852, (1988). I DON'T BELIEVE THAT THE PROSECUTION WAS' CORRECT IN THEIR ASSUMPTION THAT AN ARGUMENT BETWEEN TWO PARTIES' CONSTITUTES' DOMESTIC VIOLENCE. I BELIEVE THE COURT EXCERCISED ABUSE OF DISCRETION WHEN THE JURY WAS ALLOWED TO HEAR FACTS' OF THE PRIOR CONVICTIONS. A JURY CAN BE MISLED BY GROSS ACCUSATIONS THAT HAVE NO MERIT. I OFFERED EXHIBITS 160, 164, 165 AS ILLUSTRATIVE EXHIBITS, 33RP-1220.

QUESTION: DID THE COURT JUDGE ABUSE HIS DISCRETION BY NOT ALLOWING THE IMPEACHMENT OF CARROL PEDERSONS' TESTIMONY OF INCONSISTENT STATEMENTS?

STATEMENT OF FACTS (5)

THE APPELLANT MAKES A MOTION TO IMPEACH CARROL PEDERSON BASED ON INCONSISTENT TESTIMONY, RP26-113-130. THE APPELLANT STATES THE DEFENSES PRIOR ATTEMPT TO IMPEACH MR PEDERSON, RP26-117. THE APPELLANT SHOWS THE PROSECUTION (EXHIBIT 99) MR PEDERSONS' PRIOR WRITTEN STATEMENT, RP26-118. THE DEFENSES' (EXHIBITS 99 & 100) WERE NOT IN THE PRIOR TRIAL. I REPEATEDLY CLAIMED THAT PROSECUTION WITHHELD THEM AS THEY WERE ATTACHMENTS TO THE BONNEY LAKE POLICE REPORT, BOTH MR AND MRS PEDERSON STATED "UPON THEIR ARRIVAL TO THE BONNEY LAKE POLICE STATION WE TOLD JAMES WE WOULD NOT GIVE ALYSSA TO HIM." THE COURT DID NOT ALLOW THEIR STATEMENTS TO BE ADMITTED. THE APPELLANT ALSO SHOWED PROSECUTION THE PRIOR STATEMENT (TRANSCRIPT) OF MR PEDERSONS TESTIMONY WHERE HE STATES HE DID NOT TOUCH THE MOWER FUEL CAN (EXHIBIT 55), RP26-120. HE ALSO STATED IN PROSECUTIONS QUESTIONING THAT HE DID NOT PROVIDE THE CAN TO ANYONE, RP26-34. THE CAN WAS THEN ADMITTED INTO EVIDENCE. THE APPELLANT STATED TO THE COURT THAT MR PEDERSON HAD PRIOR INCONSISTENT STATEMENTS AND THAT IT WAS PART OF THE IMPEACHMENT PROCESS, RP26-116. MR PEDERSON ALSO CONTRADICTED HIS STATEMENT THAT HE WOULD NOT GIVE MY DAUGHTER TO ME WHEN HE ARRIVED AT THE BONNEY LAKE POLICE DEPARTMENT FOR VISITATION ON JULY 25TH, 2004, 26RP-125. MR PEDERSONS STATEMENT WAS DATED JULY 28TH, 2004 (EXHIBIT 99). MRS' PEDERSONS' STATEMENT MATCHED THAT OF HER HUSBAND, (EXHIBIT 100). THESE WERE NOT AVAILABLE IN TRIAL PRIOR.

THE WASHINGTON STATE RULES OF EVIDENCE (ER) DECLARE IN RULE 613(a) THAT THE PRIOR INCONSISTENT STATEMENTS BE SHOWN TO THE PROSECUTOR AND THE WITNESS UPON QUESTIONING. THE PROSECUTOR OPENED THE DOOR TO THE PEDERSONS' STATEMENTS TO THE POLICE AND THE FACT THAT CHARGES WERE FILED AGAINST THE APPELLANT, 26RP-18. I SUPPLIED TO THE COURT AND PROSECUTOR MR PEDERSONS PRIOR TRIAL TESTIMONY, 26RP-115. IN ER RULE 612 IT STATES THE WRITING MAY ALSO BE USED TO REFRESH THE WITNESSES' MEMORY. IT WAS. IN RULE 611(b) IT STATES "THE COURT MAY ... PERMIT INQUIRY INTO ADDITIONAL MATTERS AS IF ON DIRECT EXAMINATION". RULE 611(c) "ORDINARILY LEADING QUESTIONS SHOULD BE PERMITTED ON CROSS EXAMINATION." THE PROSECUTION KEPT DISRUPTING THE PROCESS DECLARING "IMPROPER IMPEACHMENT" PROCEEDURE BUT SHE NEVER DECLARED WHY. THE COURT ABUSED DISCRETION WHEN IT DENIED COUNSELS' MOTION TO IMPEACH CARROLL PEDERSON AND TO STRIKE HIS TESTIMONY. THE DENIAL WAS BASED ON THE PROSECUTIONS VERSION OF WHAT PROCEEDURE TO USE. ER607 DECLARES "THE CREDIBILITY OF A WITNESS MAY BE ATTACKED BY ANY PARTY ..." AND THE WITNESS CARROLL PEDERSON WAS A KEY WITNESS AS HE WAS THE HOMEOWNER. IN U.S. V. LAY, 644 F.2d 1087 (5TH CIR 1981) PRIOR INCONSISTENT STATEMENTS ARE ADMISSABLE FOR IMPEACHMENT. See also FRASER V. BEUTEL, 56 Wash. App 725, 785 P.2d 470 (1990). MR PEDERSON HAD LIED ABOUT EVIDENCE AND HIS PRIOR INVOLVEMENT IN THE CUSTODY EXCHANGE. THE APPELLANT SHOULD HAVE BEEN ALLOWED A DEFENSE OF OTHERS' INSTRUCTION IN TRIAL PREVIOUSLY AND CURRENTLY. THE JURY SHOULD HAVE BEEN INSTRUCTED TO DISREGARD MR PEDERSONS TESTIMONY. THE PREJUDICE IS A LACK OF VI AMENDMENT "IMPARTIAL JURY."

QUESTION: DID THE COURT JUDGE ERR AND ABUSE DISCRETION WHEN HE ORDERED THE DEFENDANT TO WESTERN STATE HOSPITAL ON PROSECUTIONS REQUEST? AND WITHOUT COUNSEL PRESENT?

STATEMENT OF FACTS (6)

TRIAL WAS SET BY JUDGE LISA WORSWICK ON AUGUST 4TH, 2009, 8RP-267. ON AUGUST 4TH, 2009 I APPEARED BEFORE JUDGE FRANK CUTHBERTSON WITH STAND-BY COUNSEL MELANIE MACDONALD, 9RP-2. THE STATE DECLARED ITS INTENTION TO SEND ME TO WESTERN STATE TO HAVE A MENTAL EVALUATION, 9RP-2-. I DECLARE TO THE JUDGE THIS IS THE FIRST I HEARD OF IT, 9RP-14. STAND-BY COUNSEL ASKS TO BE REMOVED, 9RP-25. THE JUDGE ASKED IF I WANTED TO GO FORWARD WITH MY MOTION TO RELIEVE STAND-BY COUNSEL, MY RESPONSE NOT AT THIS TIME YOUR HONOR, 9RP-14. I AM STILL IN THE PROCESS OF CONTACTING WITNESSES. THE JUDGE DECLARES WHAT THE COURT IS TO CONSIDER UNDER WASHINGTON STATE ARTICLE I § 22, 9RP-29. THE APPELLANT DECLARES CIVIL RIGHTS VIOLATIONS FILED IN U.S. DISTRICT COURT, 9RP-32-33. THE COURT TAKES STAND-BY COUNSELS' REQUEST UNDER ADVISEMENT AND DEFERRS A DECISION, 9RP34. I STATE MY EX WIFES PSYCHOLOGIST JUDY SNOW'S PRIOR INVOLVEMENT, 9RP-39. THE JUDGE ORDERS' THE EVALUATION. COUNSEL WAS UNASSIGNED PREMATURELY. I STATED TO JUDGE CUTHBERTSON THAT I ALLREADY HAD AN EVALUATION I SUBMITTED TO JUDGE CHUSHCOFF IN RE-SENTENCING 04-1-03902-1 ON MARCH 27TH, 2009. THE STAND-BY COUNSEL TOOK NO PART IN SENDING ME TO WESTERN STATE HOSPITAL FOR A (15 DAY) EVALUATION.

THE APPELLANT WAS APPOINTED COUNSEL ON DECEMBER, 1ST, 2008 BY JUDGE FELNAGLE. HE WAS RE-APPOINTED ALSO LATER BY JUDGE HOGAN. IN THE HEARING WITH JUDGE CUTHBERTSON ON AUGUST 4TH, 2009 THE JUDGE ONCE AGAIN GAVE A COLLEQUOY TO DETERMINE IF I WAS GOING TO REPRESENT MYSELF. I ASKED TO REPRESENT MYSELF ONCE AGAIN. THE COURT HAD STATED AND THE PROSECUTION REMINDED ME AGAIN AND AGAIN THAT I WAS TO BE HELD TO THE SAME STANDARDS AS AN ACTUAL ATTORNEY. I DO NOT BELIEVE MRS FITZER HAS ASKED THE COURT TO SEND ANY DAC OR PROSECUTORS TO WESTERN STATE HOSPITAL FOR EVALUATION. THEREFORE I WAS NOT HELD TO THE SAME STANDARD AS AN ATTORNEY. I ALSO WAS COUNSEL AT MY OWN VOLITION. SO IF THERE WAS A COMPETENCY ISSUE I SHOULD HAVE BEEN REPRESENTED BY COUNSEL AS IN, SATTERWHITE V. TEXAS, 486 U.S. 249, 108 S. Ct 1792, 100 L. Ed 2d 284 (1988) WHERE, EXAMINATION WITHOUT COUNSEL VIOLATED SIXTH AMENDMENT RIGHT TO COUNSEL. HOWEVER, THIS STATE CARRIES A PRESUMPTION OF SANITY, IN STATE V. WICKLUND, 96 Wn 2d 798, 638 P.2d 1241 (1982) DEFENDANT TO CHOOSE WHETHER TO WAIVE RCWA 10.77.050 or RCWA 10.77.090. A CRIMINAL DEFENDANT IS PRESUMED TO BE SANE. THE PRESUMPTION OF SANITY IS WELL ESTABLISHED IN WASHINGTON AND IS BASED ON THE TRADITIONAL NOTION OF FREE WILL AND INDIVIDUAL RESPONSIBILITY, STATE V. McDONALD, 89 Wn 2d 256, 571 P.2d 930 (1977). THE TRIAL WAS SET TO START THAT DAY AND I HAD NO PRIOR NOTICE OF THE PROSECUTORS' INTENTION OF SENDING ME TO WESTERN STATE. THE COURT ERRED IN ABUSE OF DISCRETION BY NOT HAVING COUNSEL PRESENT AND NOT HAVING MY CONSENT. THIS POSTPONED MY TRIAL CAUSING YET ANOTHER ERROR IN 39657-2-II FILING.

QUESTION: DID THE COURT ERR BY NOT HOLDING THE EVIDENTIARY HEARING THAT WAS SCHEDULED PRIOR BY THE APPELLANT?

STATEMENT OF FACTS (7)

THE PROSECUTION STATES THE MOTIONS FOR EVIDENTIARY HEARING AND DISMISSAL ARE TO BE HEARD THE FIRST DAY OF TRIAL, REGARDLESS OF WHAT THE TRIAL DATE IS, 5RP-99-100. THE JUDGE ALSO CONCURRS. THE APPELLANT AGAIN ASKS FOR EVIDENTIARY HEARING WITH WITNESSES FILED AS A MOTION TO COMPEL EVIDENTIARY HEARING, 7RP-26-43. MY SUBPEONAS HAD BEEN CHANGED BY SOMEONE IN THE DEPARTMENT OF ASSIGNED COUNSEL TO PEOPLE OTHER THAN THE ONES I ASKED FOR. THIS WAS AFTER THE JUDGE HAD ALLREADY SIGNED THEM, 7RP-30-33. I DECLARED MY PRIOR ATTORNEY ROBERT QUILLIANS REQUEST FOR AN EVIDENTIARY HEARING FILED SEPTEMBER 23RD, 2005, SEEKING TO MAKE AN ACCURATE RECORD OF FACTS. THE EVIDENTIARY HEARING NEVER HAPPENED WITH JUDGE WORSWICK TO THE DETRIMENT OF THE APPELLANT. THE COURT DECLARED A MISTRIAL BEFORE WE GOT WITNESSES AND EVIDENCE SORTED OUT. JUDGE WORSWICK DECLARES THAT SINCE THE CASE WAS OVERTURNED THERE WAS NO NEED FOR THE EVIDENTIARY HEARING. THE JUDGE WAS HALFWAY CORRECT BECAUSE ONLY ONE-HALF OF THE CONVICTION WAS OVERTURNED. THE APPELLATE COURT DID NOT OVERTURN THE ASSAULT CONVICTION IN NO. 04-1-03902-1 COA NO 34451-3-II. IN THAT THERE WERE STATEMENTS WITHELD BY PROSECUTION OF THE PEDERSONS THAT WERE ATTACHED TO THE POLICE RECORDS. DEFENSE EXHIBITS, 99 AND 100. THE APPELLANT

ALSO WANTED TO FIND OUT WHY HIS SUBPOENAS WERE BEING CHANGED BY THE DEPARTMENT OF ASSIGNED COUNSEL, 7RP-38,39. THE APPELLANT ALSO WANTED TO DISCLOSE THE FACTS OF WHY MY PRIOR ATTORNEYS' FILES WENT TO THE PROSECUTION INSTEAD OF ME AS THE COURT ORDER SAID, 7RP-45. I REITERATED AGAIN THE NEED FOR AN EVIDENTIARY HEARING, 7RP-52. THE PROSECUTION VIOLATED ATTORNEY-CLIENT PRIVELEDGE BY OBTAINING THE RECORDS OF JOHN JENSEN WITHOUT AUTHORIZATION AND THEN SHE DECLARED SOME OF THEM WERE NOT SUPPOSSED TO GO TO ME, 7RP-59. THE PROSECUTOR DID NOT WANT ME TO GET RECORDS OF THE PRIOR ASSAULT CHARGE, 7RP-61. THESE WERE NOT IN MR JENSENS' DISCOVERY PRIOR IN TRIAL. THE MEDICAL PAPERS ON ALYSSA AND MR PEDERSON WOULD HAVE BEEN EXTREMELY HELPFUL TO THE DEFENSE. MRS MACDONALD WANTED NO PART OF THE REDACTION AND JUST GAVE THE PAPERS TO THE PROSECUTOR ON MAY 21ST, 2009 PER HER LETTER, 7RP-64. THIS SEEMED TO BE A PROBLEM WITH THE DEPARTMENT OF ASSIGNED COUNSEL JUST GIVING PAPERS TO THE PROSECUTION WITHOUT MY KNOWLEDGE VIOLATING, ER 501(a) AND RULES OF DISCLOSURE CrR 4.7(h)(7)(i)(ii). I ACTUALLY ASKED FOR A MISTRIAL BASED ON THE COLLUSION OF THE DEPARTMENT OF ASSIGNED COUNSELS' RICHARD WHITEHEADS GIVING OF MY WORK/MEDICAL RECORDS TO THE PROSECUTOR BERTHA FITZER WITHOUT MY KNOWLEDGE, 35RP-1495,96. THE COURT DENIED MY REQUEST HOWEVER FOR MISTRIAL, 35RP-1508. THE APPELLANT REMINDED THE COURT OF A NEED FOR AN EVIDENTIARY HEARING JUST PRIOR TO THE SECOND STAGE OF TRIAL, 40RP-2137-2139. THE COURT DECLINED CAUSING ERROR. THE GIVING OF MY PAPERWORK TO THE PROSECUTION PRIOR TO IN-CAMERA REVIEW IS ERROR, STATE V. PERROW, NO. 27894-8-3 (MAY 25, 2010).

IN THE CASE OF STATE VS McDONALD, 143 Wn.2d 506, 22 P.3d 791 (2001) THE DEFENDANT FILED SUIT AGAINST STAND BY COUNSEL, WHO CONTINUED ON CASE; THE TRIAL COURT ERRED IN NOT HOLDING HEARING TO DETERMINE EXISTENCE OF CONFLICT OF INTEREST AFTER BEING DRAWN TO THE COURT ATTENTION. I BROUGHT UP THE CIVIL SUIT TO JUDGE CUTHBERTSON THE 4TH OF AUGUST WHEN HE SENT ME TO WESTERN STATE, 9RP-32,33. MELANIE MACDONALD ASKED TO BE REMOVED AS COUNSEL THEN. THE COURT DID EVENTUALLY APPOINT A CONFLICT ATTORNEY JAMES OLIVER WHO WAS UNASSIGNED TWO WEEKS BEFORE THIS TRIAL. I ASKED FOR HIS APPOINTMENT AS STAND-BY BUT THE COURT DENIED IT, THE COURT ERRED CAUSING BIAS TO THE DEFENDANTS CONSTITUTIONAL RIGHT TO COUNSEL UNDER WASHINGTON STATE ARTICLE I § 22 AND THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION. THE COURT CAN ALLOW HYBRID REPRESENTATION IF IT FINDS GOOD CAUSE TO DO SO, SUCH AS CO-COUNSEL, See STATE V. HIGHTOWER, 36 Wn. App 536, 676 P.2d 1016 (1984). THE STATE AND STAND-BY COUNSEL ERRONIOUSLY INFORMED THE COURT IT WASN'T AVAILABLE. THE DEPARTMENT OF ASSIGNED COUNSEL ALSO COMPLAINED OF FINANCES IN GETTING MY WITNESSES AND EVIDENCE BUT THE TRUTH IS WE SPENT MORE TIME AND MONEY ARGUING ABOUT GETTING THE WITNESSES TO COURT THAN IF THEY WOULD HAVE JUST BEEN MADE AVAILABLE TO THE DEFENSE. THERE WERE NUMEROUS CONFLICTS AND THE COURT ALWAYS HAD TO GET INVOLVED. THERE IS NO WAY THIS TRIAL WAS IMPARTIAL OR FAIR TO THE ADMINISTRATION OF JUSTICE AND AN EVIDENTIARY HEARING WOULD HAVE SHOWN IT.

QUESTION: DID THE TRIAL COURT JUDGE ABUSE HIS DISCRETION WHEN HE DID NOT APPOINT COUNSEL PRIOR TO THE AGGRIVATING FACTORS STAGE OF TRIAL? OR SENTENCING AS MY ATTORNEY SUGGESTS?

STATEMENT OF FACTS(8)

THE APPELLANT REQUESTS COUNSEL BE APPOINTED TO TAKE OVER DEFENSE, 40RP-2140-41. THE APPELLANT STATES "I CANNOT GO FORWARD WITHOUT AN ATTORNEY," 40RP-2141. THE APPELLANT STATES HIS THEN CONFLICT WITH THE DEPARTMENT OF ASSIGNED COUNSEL, 40RP-2146. AGAIN THE APPELLANT STATES HIS IN-EFFECTIVENESS AS COUNSEL AND ASKS COUNSEL BE APPOINTED, 40RP-2148-49. AFTER THE JUDGES DENIAL, THE APPELLANT ASKS THE JUDGE TO RECUSE HIMSELF FOR BEING BIAS, 40RP-2156. THE APPELLANT INFORMS THE COURT THAT HE HAD BEEN PLACED IN ISOLATION AND HIS MENTAL HEALTH MEDICATIONS HAD NOT BEEN GIVEN TO HIM THE LAST(3) DAYS, 40RP-2251. THE JAIL NURSE WAS CONTACTED BY THE COURT AND CONFIRMED THAT I WAS MOVED ON THE 18TH OF AUGUST AND THAT MY MEDICATION HAD NOT CAUGHT UP WITH ME, 40RP-2255. I RE-REQUESTED AN ATTORNEY FOR SENTENCING, 40RP-2261. THE DAC ATTORNEY MR. WHITEHEAD INFORMS THE COURT THAT I WAS PLACED IN ISOLATION A FEW DAYS BEFORE IN A SUICIDE SMOCK AND MY LEGAL MATERIALS TAKEN FROM ME, 40RP-2273. I NEVER STATED OR INDICATED ANY THOUGHTS OF SUICIDE, 40RP-2282. THE COURT DENIED MY REQUEST TO BE REPRESENTED DURING THE AGGRIVATORS STAGE.

ARGUMENT(8)

THE TRIAL COURT ABUSES ITS' DISCRETION WHEN IT IS MANIFESTLY UNREASONABLE OR EXERCISES' ITS DISCRETION BASED ON UNTENABLE GROUNDS OR REASONS, STATE V. McDANIEL, 83 Wn. App. 179, 920 P.2d 1218 (1996) rev. denied. THE CONVICTION, TO BE CONSTITUTIONALLY INVALID MUST SHOW THAT DEFENDANTS RIGHTS' ARE VIOLATED AND LACK OF COUNSEL PRESENT IS GROUNDS' TO OVERTURN THE SENTENCE OF ITSELF, STATE V. BOOKER, 176 P.3d 620, 143 Wash. App 138 (2008); SEE ALSO, STATE V. THOMPSON, 181 P.3d 858, 143 Wash. App 861 (DIV II 2008), and FAILURE TO WAIVE COUNSEL RENDERS' A CONVICTION CONSTITUTIONALLY INVALID ON ITS' FACE, STATE V. PHILIPS, 972 P.2d 932, (DIV III 2008) and REVERSAL IS ALWAYS NECESSARY WITH A CONFLICT OF INTEREST, STATE V. MARTINEZ, 53 Wn. App 709, 770 P.2d 646 (1989). IN THE CASE OF STATE V. BANDURA, 85 Wn. App 87, 931 P.2d 174 (1997) THE DEFENDANT SOUGHT TO YET AGAIN OBTAIN. NEW COUNSEL, WHICH WAS DENIED AS UNTIMELY AND DEFENDANT WAS' ORDERED TO PROCEED WITH SENTENCING-WITHOUT COUNSEL; "WHEN A CRITICAL STAGE OF THE PROCEEDINGS' IS UPCOMING, THE COURT CANNOT RELIEVE PRESENT COUNSEL AND REQUIRE A NON-WAIVING DEFENDANT TO PROCEED WITHOUT COUNSEL. STAND-BY COUNSEL WAS DISMISSED (3) DAYS BEFORE A VIDEO DEPOSITION OF INVESTIGATOR JOHN SAMPLE AND I REQUESTED COUNSEL (STAND-BY) PRIOR TO TRIAL AND REGULAR COUNSEL PRIOR TO THE AGGRIVATORS STAGE CAUSING ERROR. IN STATE V. JESSUP, 31 Wn. App 304, 641 P.2d 1185 (1982) "STAND-BY COUNSEL MUST BE APPOINTED EVEN OVER OBJECTION BY THE ACCUSED IF HE REQUESTS HELP."

THE INVESTIGATOR THAT WAS APPOINTED WAS TO BE CONTACTED THROUGH THE DEPARTMENT OF ASSIGNED COUNSEL. WHEN STAND-BY COUNSEL WAS CUT MY CONTACT TO THE INVESTIGATOR WAS ALSO LIMITED. THE PROSECUTOR HAD TO CONTACT HER TO HAVE HER COME TO COURT AS WELL AS THE DEPARTMENT OF ASSIGNED COUNSEL. I HAD TO COMPLAIN TO THE COURT FIRST SO THE JUDGE WOULD ORDER IT. THE INVESTIGATOR REFUSED THE COURTS ORDER (EXHIBIT 162) TO PROVIDE INFORMATION FOR THE DEFENSE.

THE JURY HAS A RIGHT TO HEAR ALL EVIDENCE GOING TO THE DEFENSE. THE DRIVING RECORDS I HAD REQUESTED WERE BASED ON FACTS OF APPROXIMATE TIME AND DISTANCE FROM BONNEY LAKE TO YAKIMA. THE COURT WOULD NOT ALLOW THE INVESTIGATOR TO TESTIFY TO THESE RECORDS THAT SHE SUPPLIED, (EXHIBIT 89). I HAD WANTED HER TO ACTUALLY DRIVE THE DISTANCE, SHE REFUSED. I HAD PRIOR SUBPOENAS SIGNED FOR A WSP OFFICER TO DO IT. THEY DID NOT. I DID ARGUE A MOTION FOR A REGULAR PHONE TO CONTACT WITNESSES, SRP-2/19, THAT MOTION WAS DENIED. THE JAILS PHONE DID NOT ALLOW ME TO CONTACT WITNESSES DIRECTLY. THE LACK OF WITNESS CONTACT VIOLATES WASHINGTONS CONST. ART I § 22, RIGHT TO CONFRONT WITNESSES AND PROVIDE WITNESSES FOR DEFENSE. THE RULES OF DISCOVERY CrR 4.7(h) REQUIRE THAT A DEFENDANTS INVESTIGATION NOT BE IMPEDED. IF THE DEFENDANT WAS HELD TO THE SAME STANDARD AS AN ATTORNEY, HE WOULD HAVE PHONE ACCESS TO WITNESSES, OR A REASONABLE ALTERNATIVE. I DIDN'T EVEN HAVE ACCESS TO PAPER AND A WRITING UTENTIL AFTER AUGUST 18TH, 2010 BECAUSE I WAS IN A SUICIDE CELL IN A SMOCK THAT DAY, NOT BY MY ACTIONS.

QUESTION: DID THE TRIAL COURTS' REPEATED FAILURE TO HEAR APPELLANTS' MOTION TO DISMISS FOR SPEEDY TRIAL VIOLATION DENY AN ADDITIONAL RIGHT TO DUE PROCESS OF LAW?

STATEMENT OF FACTS'(9)

THE APPELLANT FILES' A TIME FOR TRIAL DISMISSAL MOTION C.R 3.3(h), 5RP-180. THE COURT SCHEDULES THE MOTION FOR JUNE 12TH, 2009 AT 3:00 PM BEFORE JUDGE SUSAN SERKO, 5RP-185. THE JUDGE DENIES THE MOTION. THE APPELLANT CONTINUES' TO OBJECT TO ALL CONTINUANCES, 5RP-187. ON JUNE 19TH, 2009 THE APPELLANT FILES' A MOTION FOR DISCRETIONARY REVIEW OF THE JUDGES' DENIAL OF THE TIME FOR TRIAL MOTION. THE MOTION WAS FILED IN SUPREME COURT AND A COPY SERVED ON THE PROSECUTOR, 5RP-189-90. THE COURT STATED THAT TIME FOR TRIAL BEGAN TICKING DOWN ON MONDAY JUNE 22ND, 2009, 5RP-188. THE 30 DAY COUNTDOWN HAD ALLREADY PASSED BY. ON JUNE 3RD, 2009 THE APPELLANT AGAIN HAD STATED HIS' FILING OF THE TIME TO TRIAL MOTION, 5RP-185. THE COURT HEARD THE MOTION, JUNE 12TH, 2009, 6RP-2-13. THE DISCRETIONARY REVIEW WAS NOT ACCEPTED IN THE SUPREME COURT. THEY STATED THE NEED TO FILE IT FIRST IN SUPERIOR COURT. THE DISCRETIONARY REVIEW WAS FILED IN SUPERIOR COURT ON JULY 13TH, 2009 AND A COPY GIVEN TO PROSECUTION. THAT REVIEW WAS' NOT HEARD, SO I ONCE AGAIN FILED AN ADDITIONAL MOTION ON SEPTEMBER 28TH, 2009, 14RP-33. IT WAS' NOT HEARD EITHER.

THE COURT CLERK DID NOT FILE THE MOTION FOR DISCRETIONARY REVIEW ON JULY 13TH, 2009 THAT I FILED IN OPEN COURT THAT DAY. I HAD ALSO GIVEN THE PROSECUTOR A COPY. THE COURT DID NOT HEAR THE MOTION FOR TIME TO TRIAL VIOLATION CrR 3.3(h) FILED ON SEPTEMBER 28TH, 2009. THE COURTS' ACTIONS' MANIFESTED "DELIBERATE INDIFFERENCE" TO THE DEFENSE AND VIOLATED U.S. CONSTITUTIONS FIFTH AMENDMENT "DUE PROCESS" CLAUSE AND THE FOURTEENTH AMENDMENT "EQUAL PROTECTION" CLAUSE; SUBJUGATING THE DEFENSES' RIGHT TO PETITION THE COURT FOR REDRESS'. THE WASHINGTON STATE CONSTITUTIONS' ARTICLE I § 22 "RIGHT TO DUE PROCESS", ALSO APPLIES, TO THE COURTS' INDIFFERENCE IN FAILING TO FILE THE DISCRETIONARY REVIEW AND THE COURTS' FAILURE TO HEAR THE APPELLANT MOTION FOR THE SPEEDY TRIAL VIOLATION. THE APPELLANT DID REQUEST A SPEEDY TRIAL, 2RP-6. THE APPELLANT ONLY ASKED FOR ONE CONTINUANCE JANUARY 12TH 2009 AND THAT WAS BECAUSE OF THE DEPARTMENT OF ASSIGNED COUNSELS' NEGLIGENCE, SHOWN IN ERROR(1). THE ACTUAL TIME BETWEEN MY REQUEST FOR SPEEDY TRIAL AND THE ACTUAL TRIAL ITSELF WAS' (556 DAYS). ON SEPTEMBER 29TH, 2009 I REQUESTED AN ATTORNEY DUE TO MY INABILITY TO CONTACT WITNESSES' FOR TRIAL, 14RP-51. MY LACK OF ABILITY TO GATHER EVIDENCE HAD FRUSTRATED ME TREMENDOUSLY, SEE ERROR(3).

QUESTION: DID THE PROSECUTIONS (EXHIBIT 1), A PHOTO OF MY VEHICLE, LEAD THE JURY TO AN UNREASONABLE CONCLUSION THAT THE VEHICLE AT THE SCENE OF THE FIRE WAS MY VEHICLE?

STATEMENT OF FACTS.. (10)

DETECTIVE SAMPLE WAS ASSIGNED TO LOOK FOR ME AND MY VEHICLE, 11RP-21. I OBJECT TO ITS PREJUDICIAL EFFECT ON THE JURY. I SHOW MR SAMPLE (EXHIBIT 91) WHICH WERE TIRE TRACKS LEFT AT THE SCENE OF THE PEDERSONS' RESIDENCE, 11RP-29. MR SAMPLE WAS PROVIDED A DESCRIPTION OF THE APPELLANTS TRUCK AS WELL AS THE PHOTO OF THE APPELLANTS TRUCK, 11RP-35. DEBRA DOUGLAS HAD GIVEN IT TO HIM AT THE SCENE. DEBRA GAVE MR SAMPLE THE LICENSE PLATE NUMBER OF MY VEHICLE, 11RP-37. MR SAMPLE TESTIFIED HE ALSO RECIEVED THE APPELLANTS PHONE RECORDS IN FEBRUARY OF 2005, 11RP-44. THE PROSECUTOR CONCURRS. THE PROSECUTIONS OFFICE HAD PROVIDED IT, 11RP-45. THE PHONE RECORDS SHOW I MADE A CALL TO MATTHEW HAYNES AT 10:48 AM ON OCTOBER 10TH, 2004, 11RP-50. DETECTIVE SAMPLE FOLLOWED UP ON THAT. MR HAYNES LIVED IN AUBURN AT THE TIME AND THE PHONE CALL WAS MADE TO HIM IN AUBURN, 11RP-52. DETECTIVE SAMPLE REITERATES HIS ASSIGNMENT WAS TO LOOK FOR MR DOUGLAS AND HIS TRUCK BASED ON THE PEDERSONS AND DEBRA'S TESTIMONY, 11RP-57. THE DETECTIVE STATED THE THE FIREMEN HAD FORCED ENTRY INTO THE HOME, 11RP-61. OTHER THAN THAT, THERE WAS NO SIGN OF FORCED ENTRY INTO THE HOME PRIOR TO THAT. DEBRA GAVE THE DETECTIVE A GAS RECIEPT FOUND AT THE

SCENE BY HER MOTHER, 11RP-65. IT WAS DATED THE DAY AFTER THE FIRE. THE DETECTIVE STATED THAT HE HAD NEVER INVESTIGATED THE HOMEOWNERS' OR DEBRA AS SUSPECTS, 11RP-67. NO OTHER SUSPECTS WERE EVER CONSIDERED, BESIDE MYSELF. DETECTIVE SAMPLE STATES HIS RECIEPT OF PHOTOS OF THE SCENE FROM ONE OF THE WITNESSES, 11RP-75. THE PICTURE OF MY TRUCK WAS ADMITTED BY CARROLL PEDERSON OVER MY OBJECTION IT WAS PREJUDICIAL TO THE JURY, 26RP-12. MR PEDERSON STATES THAT HIS CAR WAS PARKED IN THE GARAGE THAT MORNING AND THAT DEBRAS CAR WAS PARKED BEHIND HIS OUTSIDE, 26RP-77. MR PEDERSON HAD MADE SURE ALL THE DOORS AND THE WINDOWS WERE LOCKED BEFORE LEAVING THAT MORNING, 26RP-90. THE FIRE DEPARTMENT HAD TO KICK THE GARAGE DOOR INTO THE HOUSE, TO GET INSIDE, 26RP-91. DEBRA STATED THAT SHE HAD CHECKED ALL THE DOORS WERE LOCKED BEFORE SHE LEFT THAT MORNING, 30RP-854. DEBBIE STATED SHE HAD PARKED IN THE GARAGE, 30RP-855. SHE STATED SHE THEN CLOSED THE GARAGE DOOR. DEBBIE STATED THAT SHE HAD WANTED SOME QUILT FROM ME AND THAT I HAD REFUSED TO GIVE IT TO HER, 30RP-862. SHE RECALLED GETTING A COURT ORDER FOR JULY 3RD, 2004 TO COME TO MY HOUSE TO RETRIEVE HER THINGS, 30RP-863. IN THE LETTER I SENT HER (EXHIBIT 142) DECEMBER 28TH, 2003 I HAD ASKED HER TO COME PICK UP HER THINGS. THIS WAS PRIOR TO HER FILING FOR DIVORCE. DEBBIE ALSO STATED THAT ON THE DAY OF THE FIRE SHE GAVE DETECTIVES A CARD WITH ALL MY INFORMATION ON IT, NAME, ADDRESS, DESCRIPTION OF ME, MY TRUCK, LICENSE PLATE NUMBER, 30RP-866.

THE CARD WAS PREPREPARED AND IN HER GLOVE BOX, 30RP-866. SHE DID RECALL ME TELLING HER TO COME TO MY HOUSE TO PICK UP HER THINGS AT DIFFERENT TIMES, 30RP-865. I RECORDED THE DAY SHE CAME TO PICK UP HER BELONGINGS, (EXHIBIT 173). THE OTHER DVD I SUBMITTED WAS NOT RECORDED AS EVIDENCE FOR SOME REASON. DEBRA STATES THE QUILT WAS NEVER RETURNED TO HER, 30RP-871. DEBRA STATES THE LAST DAY SHE RECALLS ME BEING AT HER PARENTS HOUSE IS DECEMBER 28TH, 2003, 30RP-837. THIS IS ALMOST A YEAR BEFORE THE FIRE AT THE PEDERSONS' HOME. DEBRA STATES THAT THE COURT ORDER TO RETRIEVE HER ITEMS FROM MY HOME DOES NOT SPECIFICALLY SAY QUILT, 30RP-873. DEBRA AND HER PARENTS WERE EXTREMELY UPSET THAT I CHOSE TO KEEP THE QUILT AT MY HOUSE. WHEN SHE CAME TO MY HOUSE JULY 3RD, 2004 SHE DID ASK ABOUT THE QUILT ON THE VIDEO (EXHIBIT 173) AND I TOLD HER IT WAS IN THE BOXES. THIS WAS THREE WEEKS BEFORE THE ALTERCATION WITH MR PEDERSON OVER VISITATION, ON JULY 25TH, 2004. THE PEDERSONS WERE VERY UPSET ABOUT THE QUILT, HENCE THE ALTERCATION. THE PROSECUTION ALLUDED IN THE INFORMATION AND PROBABLE CAUSE THAT I WAS UPSET SOMEHOW OVER THE QUILT THAT DEBRA HAD AT THE PEDERSONS' HOME. THIS WAS INCORRECT. THE ONE THAT SHE HAD WAS MADE BY HER SISTER, NOT THE ONE THAT SHE WANTED FROM ME. SHE ASKED FOR IT AGAIN AT THE RESTITUTION HEARING AND JUDGE TOLLEFSON REFERRED US TO THE DIVORCE JUDGE, KITY-ANN VAN DOORNICK AS SHE HAD ALREADY MADE RULINGS ON PROPERTY. DEBBIE'S MOTION WAS WITHDRAWN, 41RP-2425.

THE APPELLANTS' VEHICLE WAS ADMITTED AS AN EXHIBIT IN THE PRIOR TRIAL. NO ONE TESTIFIED THAT IT WAS THE VEHICLE AT THE SCENE OF THE PEDERSONS' HOUSE FIRE. THERE WERE (3) WITNESSES TO A VEHICLE BEING SEEN LEAVING THE INCIDENT. ALL (3) WERE NEIGHBORS OF THE PEDERSONS', OF THOSE, (2) WROTE STATEMENTS. ONE WAS JENNIFER VAHN WHO SAW A FLASH OF WHITE GO BY HER WINDOW. TWO WAS KYLE BULLOCK WHO SAID HE SAW A PICKUP WITH AZ ON THE LICENSE PLATE. THE THIRD WITNESS MR MURPHY TESTIFIED BY VIDEO DEPOSITION AND HE STATED IT WAS A ½ OR ¾ TON PICKUP. NONE OF THE TESTIMONY MATCHED MY VEHICLE. IN THIS TRIAL THE PHOTO WAS AGAIN SHOWN TO WITNESSES AND ASKED IF THIS WAS THE VEHICLE THEY SAW. ALL OF THE WITNESSES GAVE MORE SUBSTANTIAL TESTIMONY. ~~THAT~~ THIS WAS A VOLUNTARY REPOSSESSION OF MY VEHICLE, 36RP-1606-1607. BASED ON MY MEDICAL CONDITIONS, 36RP-1645. JUDGE TOLLEFSON WOULDN'T ALLOW TESTIMONY OF MY SURGERIES OR MY FINANCIAL STATUS, 36RP-1660. MRS EVELYN ROOT TESTIFIED I HAD MISSED WORK, 36RP-1699, 1704. THE QWEST CUSTODIAN STATED THAT MY PHONE WAS ROAMING IN YAKIMA WHEN I CALLED, MY BROTHER MATTHEW HAYNES AT 12:48PM, 34RP-1350 (EXHIBIT 129), (EXHIBIT 130). THE VISUAL EXHIBIT WAS NOT ALLOWED TO BE ADMITTED TO THE JURY, (EXHIBIT 166) 34RP-1360. THE WASHINGTON STATE PATROL OFFICERS I ASKED TO TESTIFY WERE NOT ALLOWED, 34RP-1364-1365, 1373. I DO HAVE A RIGHT TO EXPERT SERVICES. THE WITNESSES THAT TESTIFIED TO THE VEHICLE LEAVING THE PEDERSONS

HOME ON OCTOBER 10TH WAS TIMOTHY MCGEE, WHO STATED HE SAW A LIGHT COLORED PICKUP TYPE VEHICLE, 31RP-927. THE PEDERSONS HAD TALKED TO HIM ABOUT HIS TESTIFYING AT THE PRIOR TRIAL, 31RP-936. THE OTHER WITNESS JENNIFER VAHN (EXHIBIT 135) SAW JUST A WHITE TRUCK, 30RP-733. MR KYLE BULLOCK TESTIFIED TO A WHITE TRUCK WITH A MATCHING WHITE CANOPY, 29RP-669. HE THOUGHT IT MIGHT BE A RANGER. HIS STATEMENT IS (EXHIBIT 134). HE TESTIFIED TO BEING SHOWN THE PICTURE OF MY VEHICLE RIGHT BEFORE HE TESTIFIED TO IT, 29RP-679. HE HAD ALSO SEEN IT IN TRIAL PRIOR. HE ALSO STATED HE HAD TALKED TO THE PEDERSONS TWICE AFTER THE FIRE, 29RP-683. HE STATED HE HAD TALKED TO MRS PEDERSON 2 OR 3 TIMES ABOUT 2-3 YEARS AFTER THE INCIDENT, 29RP-690. HE WAS VERY PREJUDICED. HIS STATEMENT AND PRIOR TESTIMONY WERE VERY VAGUE IN THE PRIOR TRIAL. MR MURPHY TESTIFIED TO A WHITE PICKUP, 25RP-15. MR MURPHY STATED THE HOUSE BEHIND THE PEDERSONS HOME HAD BURNED PREVIOUSLY AND IT WAS FOR SALE AS IS, 25RP-22. HE STATED THERE WAS A LOT OF TRAFFIC COMING IN AND OUT LOOKING AT THE HOME FOR SALE. HE STATED THAT MR PEDERSON HAD EXTINGUISHED THE PILOT LIGHT IN THE GAS FIREPLACE THAT MORNING, 25RP-23. HE STATED THAT THE TRUCK HE SAW HAD NO CANOPY ON IT, 25RP-24. HE SAID IT WAS EITHER A HALF TON OR QUARTER TON PICKUP, 25RP-27. MRS DOUGLAS ALSO TESTIFIED TO (28RP-542) PICKING UP MY TRUCK IN BONNEY LK WHEN I WAS ARRESTED AT THE JULY 25TH, 2004 INCIDENT WITH THE PEDERSONS.

THE PHOTO OF THE APPELLANTS TRUCK IS IMPERMISSABLY SUGGESTIVE. THE RESULT IS THE EFFECT OF TAINT ON SUBSEQUENT IDENTIFICATION, WHEN IT IS SHOWN PRIOR TO A WITNESS. THIS ALLOWS THE APPELLANT TO ATTACK THE SUGGESTIVENESS OF THE PROCEEDURES, STATE V. BURDEN, 155 N.J. SUPER 462, 382 A.2d 1146 (1977); STATE V. BROWN, 27 Wn. App 639 (1980). THE SHOWING OF THE APPELLANTS VEHICLE TO THE JURY CAUSED A MANIFEST ERROR WHICH AFFECTED THE OUTCOME OF THE TRIAL. NO ONE ACTUALLY SAID THAT MY VEHICLE WAS THE VEHICLE AT THE SCENE OF THE FIRE. THE PROSECUTIONS' SHOWING OF THE PHOTO PRIOR TO TESTIFYING BY THE WITNESSES IS TANTAMOUNT TO WITNESS TAMPERING. THE PREJUDICE IS VERY APPARENT BY THE TESTIMONY OF KYLE BULLOCK. THE PROSECUTOR WAS COACHING OR BOLSTERING THE WITNESSES' TESTIMONY, BY SHOWING HIM THE PHOTO PRIOR. THE ACTUAL IDENTIFICATION OF A VEHICLE IN QUESTION SHOULD BE BY A PHOTO MONTAGE SO THE WITNESS IS NOT PERSUADED TO BE BIAS IN THEIR IDENTIFICATION.

THE COURT ALSO ERRED BY NOT ALLOWING THE JURY TO SEE THE WITNESSES WRITTEN STATEMENTS OF THE VEHICLE IN QUESTION DURING THEIR DELIBERATIONS. THE JUDGE ERRED BY NOT ALLOWING THEIR ADMITTANCE INTO EVIDENCE (EXHIBITS 134, 135).

QUESTION — DID THE COURT ERR WHEN IT PUT FORTH THE INSRUCTION (EXHIBIT D1) WITHOUT A LIMITING ISTRUCTION ON ITS INTENDED PURPOSE SINCE THE FACTORS CALLED INTO QUESTION WERE ALSO ELEMENTS OF THE CRIME OF ARSON? AND ALSO IN (EXHIBIT D2)?

STATEMENT OF FACTS — (II) AND ARGUEMENT

WHERE THE JURY WAS INSTRUCTED IMPROPERLY ON THE EVIDENCE OF MATERIAL FACT IN THE APPELLANTS SENTENCING IN THE FIRST STAGE OF TRIAL, THE APPELLANT WAS DENIED FOURTEENTH AMEN. DUE PROCESS OF LAW. THE U.S. CONSTITUTIONS FOURTEENTH AMENDMENT PRESERVES AGAINST ARBITRARY DEPRIVATION OF LIBERTY. THE INSRUCTION NUMBER 29, (59 RP-28-30), ASKS "WAS THE CONDUCT THAT CONSTITUTED A VIOLATION OF THE COURT ORDER RECKLESS AND DID IT CREATE A SUBSTANTIAL RISK OF DEATH OR SERIOUS PHYSICAL INJURY TO ANOTHER PERSON?". THIS QUESTION RAISED THE LEVEL OF THE CRIME FROM A MISDEMEANOR TO THAT OF A FELONY COUNT. THE COURT SHOULD HAVE PROVIDED A LIMITING INSTRUCTION THAT THE CRIME OF ARSON WAS NOT TO BE CONSIDERED SINCE THE ELEMENTS OF ARSON ARE IDENTICAL TO THE SPECIAL VERDICT FORM ON COUNT THREE. THE INSTRUCTION RELIEVED THE PROSECUTOR OF HER BURDEN OF PROOF THAT THE CRIME OF VIOLATION OF THE COURT ORDER WAS EXCEPTIONAL. THE COURT ALSO GAVE AN INSTRUCTION (EXHIBIT D2) THAT STATED THAT THE VIOLATION OF THE COURT ORDER WAS THE SAME ELEMENTS AS THOSE SOUGHT IN THE SPECIAL VERDICT, WHICH ALSO RELIEVED THE PROSECUTOR HER BURDEN OF PROOF. THE COURTS INSTRUCTION (EXHIBIT D2) WAS MANIFESTLY UNREASONABLE AND CAUSED PREJUDICE.

QUESTION: DID THE COURT PREJUDICE THE JURY BY SHOWING THEM THE VIDEOTAPE OF THE FIRE SCENE WHEN IT WAS ALLREADY SHOWN AND TESTIFIED TO PRIOR? OR BY ALLOWING PROSECUTION TO QUESTION IT?

STATEMENT OF FACTS (12) AND ARGUMENT

INVESTIGATOR, MARY COU HANSEN O'BRIEN, TESTIFIED TO THE VIDEOTAPE AS IT WAS PLAYED TO THE JURY, 32RP-1097-1114. THE VIDEO WAS (EXHIBIT 79) THE FIRE SCENE AT THE PEDERSONS RESIDENCE. I OBJECTED TO THE VIDEO AS BEING CUMULATIVE EVIDENCE OF THE FIRE, 32RP-1103. DURING THE PROCESS OF SHOWING THE VIDEO THE PROSECUTOR WAS ALLOWED TO QUESTION THE INVESTIGATOR DURING THE VIDEO, 32RP-1104. I WAS NOT ALLOWED CROSS EXAMINATION OF THE VIDEO WHILE IT WAS PLAYED. THE JUDGE ALLOWED THE JURY TO REPLAY THE FIRE VIDEO, 39RP-27, BUT THEY NEVER OFFICIALLY ASKED, SO THE COURT MUST HAVE JUST PLAYED IT FOR THEM INVITING PASSION AND PREJUDICE TO THE JURY BY THE CUMULATIVE EVIDENCE. I WAS NOT ALLOWED TO REPLAY MR MURPHY'S TAPED DEPOSITION IN MY CASE IN CHIEF. I OBJECTED TO THE FIRE VIDEO AS CUMULATIVE, 32RP-1063-1064, ER403, ALTHOUGH RELEVANT, EVIDENCE MAY BE EXCLUDED IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, OR MISLEADING THE JURY, OR BY CONSIDERATIONS OF UNDUE DELAY, WASTE OF TIME, OR NEEDLESS PRESENTATION OF CUMULATIVE EVIDENCE.

HERE, THE PRESENTATION OF THE FIRE VIDEO WAS CUMULATIVE, PREJUDICIAL TO THE DEFENDANT, AND RESULTED IN INSTILLING A CONVICTION BASED ON PASSION. THE INVESTIGATOR ALSO WENT THROUGH SEVERAL HOURS OF FINGERPRINT IDENTIFICATION, WHICH WAS MISLEADING AND A WASTE OF TIME, SINCE THERE WAS NO FINGER PRINT EVIDENCE DISCOVERED. THE PREJUDICE WAS MULTIPLIED.

QUESTION: DID THE TRIAL COURT ERR AND DENY THE APPELLANT A RIGHT TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW BY FAILING TO HOLD HEARINGS' TO DETERMINE FACTS ASSOCIATED WITH THE APPELLANTS' MOTIONS' TO THE COURT?

STATEMENT OF FACTS. (13) AND ARGUMENT
THE SUPERIOR COURT JUDGE UNSEALS' MY MOTION MADE DECEMBER 8TH, 2008 THAT WAS' ERRONIOUSLY SEALED, 41RP-2430. THE COURT HEARS' THE MOTION FOR DISMISSAL/AMENDMENT OF CHARGES', 41RP-2431-2441. THE PROSECUTOR MR COOPER ASKS THE COURT TO SEND ALL MY MOTIONS' TO THE COURT OF APPEALS, 41RP-2443. I FILE A MOTION FOR ARBITRATION SERVICES TO BE APPOINTED, 41RP-2444, AND GIVE THE PROSECUTOR A COPY. THE JUDGE DENIES THE MOTION, 41RP-2446. THE JUDGE SENDS MY MOTIONS FOR NEW TRIAL, SCHEDULED TO BE HEARD THAT DAY, ALONG WITH THE OTHER MOTIONS' TO THE COURT OF APPEALS', 41RP-2448. THE COURT OF APPEALS' REJECTS TRANSFER IN NO. 41465-1-II (EXHIBIT 'C'). I DIRECT A LETTER TO THE SUPERIOR COURT (EXHIBIT 'E,') ASKING THAT MY MOTIONS BE HEARD WITH ASSIGNED COUNSEL. I FILED A MOTION FOR A NEW TRIAL JUDGE, 41RP-2450, THE MOTION WAS DENIED AS' MOOT. THE COURT SENDS' MY MOTIONS' FOR RECONSIDERATION TO THE COURT OF APPEALS, (EXHIBIT E_2). THESE WERE ALSO TIMELY FILED. THE WASHINGTON STATES ARTICLE I §22 AND THE U.S. CONSTITUTION DECLARE A DEFENDANTS RIGHT TO DUE PROCESS OF LAW UNDER THE 5TH AMENDMENT, AND 14TH AMENDMENT EQUAL PROTECTION CLAUSE. I WAS' DENIED THAT RIGHT REPEATEDLY.

QUESTION:

DID THE COURT INSTRUCT THE JURY IMPROPERLY ON THE FACT THAT THE JURY WAS TO CONSIDER THE EVIDENCE IN BOTH PHASES OF TRIAL TO DETERMINE GUILT ON THE AGGRIVATING FACTORS? WAS THE STATE RELIEVED OF ITS BURDEN OF PROOF?

STATEMENT OF FACTS ...(14) AND ARGUMENT

JURY INSTRUCTION (1),(7) WPIC 300.05, WPIC 300.51 STATE "DURING YOUR DELIBERATIONS, YOU SHOULD CONSIDER THE EVIDENCE PRESENTED TO YOU IN THE FIRST PHASE OF TRIAL. YOU SHOULD ALSO CONSIDER ANY EVIDENCE OFFERED AND RECIEVED DURING THIS PHASE OF THE CASE."

NOTE ON USE: "THIS INSTRUCTION SHOULD BE USED WHENEVER THE FACTS SUPPORTING THE AGGRIVATING CIRCUMSTANCES WILL NOT BE PRESENTED TO THE JURY DURING THE TRIAL OF THE ALLEGED CRIME."

THE STATUTORY PRESUMPTION IS THAT THE JURY WILL GENERALLY CONSIDER THE EXISTENCE OF AGGRIVATORS DURING THE QUESTION OF GUILT (FIRST), HOWEVEVER, THERE ARE (4) EXCEPTIONS TO THE RULE. "DOMESTIC VIOLENCE OFFENSES INVOLVING PATERNS OF ABUSE," IS ONE EXCEPTION REQUIRING BIFURCATED PROCEEDINGS, IF THE FOLLOWING CONDITIONS ARE MET: "IF THE EVIDENCE SUPPORTING THE AGGRIVATING FACT IS NOT PART OF THE RES GESTAE OF THE CHARGED CRIME, AND IF THE COURT FINDS THAT THE PROBATIVE VALUE... IS SUBSTANTIALLY OUTWEIGHED BY ITS PREJUDICIAL EFFECT ON THE JURYS ABILITY TO DETERMINE GUILT OR INNOCENSE FOR THE UNDERLYING CRIME."

THE JURY INSTRUCTIONS IN THE WPIC'S INCLUDE ALL EVIDENCE IN THE GUILT PHASE INCLUDING PRIOR CRIMES INVITING PREJUDICIAL ERROR TO THE JURY'S DETERMINATION.

AN EXCEPTIONAL SENTENCE IS REVIEWED UNDER RCW 9.94A.210(4) TO DETERMINE (1) UNDER THE CLEARLY ERRONIOUS STANDARD, WHETHER THE REASONS GIVEN BY THE SENTENCING COURT ARE FACTUALLY SUPPORTED BY THE RECORD; (2) UNDER THE MATTER OF LAW STANDARD, WHETHER THE REASONS JUSTIFY AN EXCEPTIONAL SENTENCE; AND (3) UDER THE ABUSE OF DISCRETION STANDARD, WHETHER THE SENTENCE IS CLEARLY EXCESSIVE OR CLEARLY TOO LENIENT.

IN THE AGGRIVATED SUPPLEMENTAL PROCEEDINGS, THE JURY WAS INSTRUCTED TO FIND ON COUNT I, SPECIAL VERDICT FORM A, THE FACTS OF:

(1) WERE THE VICTIMS AND THE DEFENDANT FAMILY OR HOUSEHOLD MEMBERS? WRITE "YES" ONLY IF ALL AGREE. IF ALL DO NOT AGREE ANSWER IS "YES" PLEASE INDICATE "ANSWER INTENTIONALLY LEFT BLANK."

(2) IF THE ANSWER TO QUESTION ONE IS YES, WAS THE OFFENSE EITHER (a) PART OF AN ONGOING PATTERN OF PSYCHOLOGICAL, PHYSICAL, OR SEXUAL ABUSE OF THE VICTIMS' MANIFESTED BY MULTIPLE INCIDENTS OVER A PROLONGED PERIOD OF TIME? WRITE "YES" ONLY IF ALL AGREE. IF ALL DO NOT AGREE ANSWER IS "YES" PLEASE INDICATE "ANSWER INTENTIONALLY LEFT BLANK."

IF YOU HAVE ANSWERED THE ABOVE QUESTION "YES" PLEASE LIST EACH VICTIM TO WHICH YOU HAVE FOUND SUCH A PATTERN. DO NOT USE INCIDENTS RELATING TO JUST ONE VICTIM AS PART OF A PATTERN RELATING TO ANOTHER:

(b) DID THE DEFENDANTS CONDUCT DURING THE COMMISSION OF THE OFFENSE MANIFEST DELIBERATE CRUELTY OR INTIMIDATION OF THE VICTIMS?

ANSWER "YES" ONLY IF ALL AGREE. IF ALL DO NOT....

THE JURY WAS NEXT INSTRUCTED TO LIST THE VICTIMS'. THEY WROTE IN CARROLL PEDERSON, PAULINE PEDERSON, DEBRA DOUGLAS'.
THE NEXT INSTRUCTION ONLY ASKED (1) DID THE COMMISSION OF THE CRIME INVADE THE VICTIMS ZONE OF PRIVACY? WRITE "YES" ONLY....
IF YOU HAVE ANSWERED THE ABOVE QUESTION "YES" PLEASE LIST EACH VICTIM....
THE JURY ONCE AGAIN WROTE IN THE THREE ABOVE.
ONCE AGAIN IN COUNT II RESIDENTIAL BURGLARY, THE COURT USED THE SAME INSTRUCTIONS AS THE ARSON, MINUS THE SPECIAL VERDICT OF INVASION OF PRIVACY. THIS' SEPERATE INSTRUCTION WAS ON A SHEET OF IT'S OWN (SPECIAL VERDICT FORM B).
THE JURY WAS INSTRUCTED ALSO TO SIGN AND DATE EACH FORM, (SEE EXHIBIT - D_3).
IN THE COURTS' ORAL OPENING, WPIC 300.05, THE JURY WAS INSTRUCTED AS FOLLOWS: "DURING YOUR DELIBERATIONS, YOU SHOULD CONSIDER THE EVIDENCE PRESENTED TO YOU IN THE FIRST PHASE OF THIS CASE. YOU SHOULD ALSO CONSIDER ANY EVIDENCE OFFERED AND RECIEVED DURING THIS PHASE OF THE CASE."
THE JURY'S INSTRUCTION WPIC 300.51 WAS GIVEN TO THE JURY AND STATED: "DURING YOUR DELIBERATIONS' ON THESE QUESTIONS', YOU SHOULD CONSIDER THE EVIDENCE PRESENTED TO YOU THROUGHOUT BOTH PHASES' OF TRIAL."
THIS' INSTRUCTION ALSO TOLD THE JURY THEY WOULD ALSO GET THE INSTRUCTIONS' FROM THE EARLIER, FIRST PHASE.
THE INSTRUCTION THEN STATED. "YOU SHOULD CONSIDER" BOTH SETS' OF INSTRUCTIONS' TOGETHER, "EXCEPT TO THE EXTENT THAT THESE SUPPLEMENTAL INSTRUCTIONS MODIFY THE EARLIER SET."

THESE INSTRUCTIONS IN THE SECOND PHASE WERE TO SUPERCEDE THE FIRST PHASE INSTRUCTIONS WHICH INCLUDED THE DEFENDANTS' LIMITING INSTRUCTION WPIC 5.30 3rd (MODIFIED) STATING: "CERTAIN EVIDENCE HAS BEEN ADMITTED IN THIS CASE FOR ONLY A LIMITED PURPOSE. THIS EVIDENCE CONSISTS OF THE DEFENDANTS' ARREST AND CONVICTIONS FOR BAILJUMPING AND ASSAULT. THIS EVIDENCE"...

THE JURY WAS ERRONIOUSLY INSTRUCTED TO INCLUDE ALL INCIDENTS PRIOR TO THE HOUSE FIRE. THOUGH THE DEFENDANT WAS NOT PRESENT DURING THE QUESTIONING OF CARROLL AND PAULINE PEDERSON AND DEBRA DOUGLAS, 40RP-2176. MRS PEDERSON TESTIFIED TO THE ASSAULT ON HER AND MR. PEDERSON, 40RP-2186. MR PEDERSON TESTIFIES TO THE ASSAULT, 40RP-2198-2199. DEBRA TESTIFIED THE LAST INCIDENT WITH ME WAS JULY 25TH, 2004, 40RP-2215, BUT SHE WASN'T AT THE JULY 25TH, INCIDENT. THE PROSECUTOR TELLS THE JURY TO ANSWER "YES" TO THE JURY INSTRUCTION AND TO PUT THE NAMES OF CARROLL AND PAULINE PEDERSON IN THE JURY FORM, 40RP-2228. SHE CALLS THE FIRE A TERRORIST ACT, 40RP-2230. THE PROSECUTOR THEN ASKS THE COURTS JURORS TO CONSIDER AMIE AND STEPHANIE IN THE PRIVACY INSTRUCTION, 40RP-2233. MRS FITZER OFFERS EXHIBITS 63 AND 65 AND ALL THE EARLIER EXHIBITS ADMITTED IN THE FIRST STAGE, AS WELL AS THE PRIOR JURY INSTRUCTIONS, 40RP-2236-37, SHE DOES NOT OFFER MR PEDERSONS' PHOTO'S OF HIS ASSAULT. THE COURT READS THE SPECIAL VERDICT FORMS, 40RP-2239-2242. IN THE CASE OF STATE V. YOUNG, 129 Wash. App 468, 119 P.3d 870 (2005) 157 Wash. 2d 1011, 139 P.3d 350 (2006) THE TRIAL COURTS ERRONIOUS DISCLOSURE OF THE DEFENDANTS' PRIOR SECOND DEGREE ASSAULT CREATED PREJUDICE REQUIRING A NEW TRIAL. THE COURT SHOULD SO ORDER.

IN CONCLUSION

THE APPELLANT WAS PLACED IN ADMINISTRATIVE SEGREGATION ON JULY 14TH, 2011 FOR INVOLUNTARY PROTECTION/HOUSING REVIEW, WITH LIMITED RESOURCES AT MY AVAILABILITY FOR MY APPEAL. IT TOOK OVER A MONTH TO GET MY LEGAL PAPERS AND TRANSCRIPT. I FILED AN EXTENSION IN THE COURT IN THIS MATTER. MY UNDERSTANDING IS THAT THEY ARE GOING TO NOW SEND ME TO CLALLUM BAY CORRECTIONS. I AM STILL IN AD-SEG PENDING TRANSFER. I WOULD HAVE TYPED EVERYTHING IF I WOULD HAVE HAD ACCESS TO A TYPEWRITER. ALL I HAVE IS A LITTLE FLEX-PEN TO WRITE WITH HERE. I HOPE THE COURT WILL ACCEPT MY ARGUMENTS AS VALID AND OVERTURN THE LOWER COURT CONVICTION. I AM ASKING THE COURT OF APPEALS TO DISMISS THIS CAUSE AND THE ASSAULT CAUSE NO. 04-1-03902-1 WITH PREJUDICE TO THE APPELLANT. THE PIERCE COUNTY SUPERIOR COURT HAS BEEN VERY PREJUDICIAL TO THE APPELLANT BASICALLY GOING THROUGH THE WHOLE PROCESS. I AM NOT AN ATTORNEY, NOR WAS I TREATED LIKE AN ATTORNEY. I DID NOT SEE ANYTHING FAIR OR IMPARTIAL ABOUT MY TRIAL.

IF THE COURT OF APPEALS CHOOSES TO REMAND THIS FOR ANOTHER TRIAL, I WOULD ASK FOR A NEW JUDGE TO BE APPOINTED. IF THE COURT OF APPEALS WOULD CONSIDER IT, I WOULD LIKE A CHANGE OF VENUE TO KING COUNTY REGIONAL JUSTICE CENTER DUE TO PREJUDICE IN PIERCE COUNTY. MOST OF ALL I WOULD APPRECIATE A DISMISSAL WITH PREJUDICE TO THE APPELLANT. THANK YOU.

FACTS' OF RE-SENTENCING ON 04-1-03902-1 PAGE 38-42

THE COURT HEARS APPELLANTS' MOTION FOR RELIEF FROM JUDGEMENT AND ORDER ON THE CAUSE OF PRIOR SENTENCING IN 04-1-03902-1, 3RP-22,23. THE COURT SEVERS' THE(2) CAUSES' THAT WERE PREVIOUSLY JOINED FOR TRIAL, 3RP-26. THE COURT ORDERS THE PRIOR RESTITUTION HEARING ON APRIL 28TH 2006, VACATED, 3RP-25,26. THE APPELLANT STATES' THE IMPROPER JOINDER OF OFFENSES' AT THE PRIOR TRIAL, 3RP-24. THE COURT ORDERS RE-SENTENCING ON CAUSE 04-1-03902-1 WITH A NEW JUDGEMENT AND SENTENCE AND ALLOWS' APPELLANT TO PRESENT MITIGATING EVIDENCE, 3RP-26,27. THE COURT ALLOWS' THE DEPARTMENT OF ASSIGNED COUNSEL TO SUBSTITUTE MELANIE MACDONALD FOR JACK MCNIEISH AS STAND-BY COUNSEL, 4RP-3. DUE TO LACK OF CONTACT WITH STAND-BY COUNSEL AND THE INVESTIGATOR, THE APPELLANT FILES' A MOTION TO DISMISS/ASSIGN CURE ON DECEMBER 23RD, 2008 AND A LETTER TO THE JUDGE DECEMBER 29TH, 2008. THE JUDGE DECLINES' TO HEAR MOTIONS, 4RP-7, 5RP-9, 10. THE PROSECUTOR CORRECTS' THE SCHEDULING ORDER IN CAUSE 04-1-03902-1 TO REFLECT "VACATE JUDGEMENT AND SENTENCE AND RESENTENCE," 5RP-13. THE APPELLANT ALSO ARGUES LACK OF INVESTIGATOR CONTACT, 5RP-9. THE APPELLANT FILES' A "MOTION TO DISMISS" IN CAUSE 04-1-03902-1 AND THE COURT DECLARES IT CAN BE HEARD ON MARCH 27TH, 2009 AT THE RE-SENTENCING, 5RP-21. THE STATE FILES' THE SCHEDULING ORDER FOR THE "MOTION TO DISMISS," FOR 04-1-03902-1. THE RE-SENTENCING IN 04-1-03902-1 IS' HELD BEFORE THE ORIGINAL TRIAL JUDGE BRYAN CHUSHCOFF ON MARCH 27TH, 2009. SEE JUDGEMENT AND SENTENCE AND APPEAL NO. 39429-4-II. THE APPELLANT SEEKS' REVIEW IN STATE SUPREME COURT.

LIST OF EXHIBITS

A. ATTORNEY JAMES' OLIVERS' LETTER/AFFIDAVIT, DATED: 3-21-11

B. DEPARTMENT OF CORRECTIONS ORDER OF RELEASE, DATED: 11-24-09

C. C.O.A. NO. 41465-1-II ORDER REJECTING TRANSFER, DATED: 1-21-11

D. PHASE ONE, COUNT THREE SPECIAL VERDICT FORM, (D_1) DATED: 8-17-10
PHASE ONE, JURY INSTRUCTION, (D_2) DATED: 8-17-10
PHASE TWO, SPECIAL VERDICT FORM B, (D_3) DATED: 8-19-10

~~E.~~

E. CORRESPONDENCE TO THE SUPERIOR COURT, (E_1) DATED: 12-8-10
SUPERIOR COURT ORDER, (E_2) DATED: 2-18-11

EXHIBIT A
(2 PAGES)

DURFLINGER, OLIVER & ASSOCIATES

Attorneys at Law

711 St. Helens Avenue Suite 209
Tacoma, Washington 98402

Telephone (253) 683-4180
Facsimile (253) 683-4184

March 21, 2011

James Douglas
Washington State Penitentiary
DOC # 891542
Golf, East 210
1313 N. 13th Avenue
Walla Walla, WA 99362

Dear Mr. Douglas,

I received your letter and request for a declaration. I apologize for the delayed response. I have attached a copy of a declaration by me as to what statements your former wife made to me when I interviewed her. Good luck with your appeal.

DURFLINGER, OLIVER & ASSOCIATES

Sincerely,

James Oliver

I, James E. Oliver, do declare under the penalty of perjury that the foregoing is true and correct.

I was one of the attorneys assigned to represent Mr. James Douglas in Superior Case # 04-1-05086-5.

During my investigation of this case, I did personally interview Ms. Debra Douglas, the former wife of Mr. James Douglas in April of 2010. When I questioned Ms. Douglas about whether there was any abuse that Mr. Douglas had inflicted upon her during their relationship, she told me that there really hadn't been any abuse. She admitted that Mr. Douglas wasn't always very nice, but that there hadn't been any physical abuse. I did not make any recording of the interview with Ms. Douglas, but I am confident that this is an accurate recollection of what Ms. Douglas told me on the day I interviewed her.

Signed this 21st day of March in Tacoma Washington

James Oliver WSBA # 29984
Attorney At Law

ORDER OF RELEASE

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

SECTION 1

Offender's Name: DOUGLAS, James P.	Scheduled Release Date: 3/29/2008	DOC Number: 891542	Facility: MICC
Date of Birth: 1/31/1968	Authorized/Actual Release: 11/28/2009	Records Manager/Designee: Kalli Swy, CRT	Date: 11/24/2009
SID Number: 22418721		TYPE OF RELEASE: ☐ 5990 W/SUPV ☒ 5990 W/O SUPV ☐ INS ☐ DET/WARRANT	☒ TSF TO CCI/CCP ☐ MCN ☒ MAX ☐ PRS/CCM ☐ CCV
			☐ CCJ ☐ PAROLE ☐ BOND ☐ VACATED ☐ CCB

The Department of Corrections, after carefully reviewing all available information, hereby releases the above named individual, an offender of a Washington State Correctional Facility.

SECTION 2

RELEASE ADDRESS: Pierce County Jail

EMERGENCY CONTACT. MUST BE COMPLETED
Name: James & Nora Douglas
Address: 20052 SE 216TH ST Maple Valley, WA 98038
Telephone: (425) 432-1804

I understand that I must report to the designated Community Corrections Officer (CCO) no later than the next work day following my actual release date as noted above.

Telephone	City, State	Zip Code
253-680-2635	Tacoma, WA	98409-8020

To: ALLEN WERTH
Office Address: 1016 S 28TH ST, 2ND FLOOR

SECTION 3

Offender's Initials

1. I understand that I owe Legal Financial Obligations and must contact the Clerk of the Court in the county/counties in which I owe Legal Financial Obligations. I have received a copy of DOC 02-243 Notice to Offender for the current prison causes for which I owe Legal Financial Obligations.
2. (If applicable) I have been registered with the Department of Corrections and informed of the registration requirements with my county of residence. I have signed and received a copy of the DOC 20-312 Registration/Notification..
3. Any detainer issued by the Immigration and Naturalization Service (INS) remains in effect. If the INS detainer is dropped or if I return to the State of Washington, I will report no later than the next work day to the Duty Officer, FSI 1 - Court Liaison Section, 1516 2nd Avenue, 2nd Floor, Seattle, Washington 98101; Phone: (206) 264-4888.
4. I understand that, under the provision of the sentencing laws of the state of Washington, I am subject to the conditions and/or sentence requirements imposed by the court/ISRB. I also understand that if I am under the legal custody/supervision of the Department of Corrections, I must comply with all imposed conditions and instructions of the Department.
5. If I am transferred to Community Custody and fail to report as ordered, I understand that escape charges may be filed against me.

Offender's Name (Please Print)	Date	Witness	Date
JAMES P. DOUGLAS	11-24-09	Releasing Agent (CRM/CCO)	11/24/09
Offender's Signature			

Distribution:
Central File
Offender
Receiving Assignment Officer/ Supervising CCO (With Attachments)

Attachments:
DOC 20-312 Registration/Notification (If appropriate)
Order of Parole (If appropriate)

Release Packet:
J&S (All current causes on DI14 except parole causes)
PSI (Most recent)
CHR Summary
DOC 20-402 Facility Plan (most recent)

The contents of this document may be eligible for public disclosure.
Social Security Numbers are considered confidential information and will be redacted in the event of such a request.
This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

DOC 350.200

EXHIBIT C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
COURT OF APPEALS
11 JAN 21 PM 2:52
STATE OF WASHINGTON
BY
DEPUTY

In re the Personal Restraint Petition of JAMES PHILIP DOUGLAS, Petitioner.	No. 41465-1-II ORDER REJECTING TRANSFER

24

On October 22, 2010, this court received an order from the Pierce County Superior Court purporting to transfer several filings from James Philip Douglas in Pierce County cause number 04-1-05086-5 to this court "for consideration either as part of Defendant's Appeal or as a Personal Restraint Petition."[1] Although CrR 7.8(c)(2) allows a trial court to transfer CrR 7.8 motions to this court for consideration as personal restraint petitions, it requires the trial court to make specific findings before transferring the motion and it does not provide for a trial court to transfer materials as part of a direct appeal. The transfer order here contains none of the required findings and it purports to transfer some or all of the filings as part of a direct appeal.

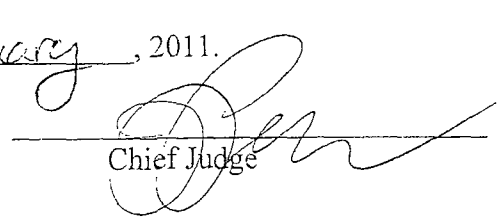
Accordingly, it is hereby

ORDERED that the order transferring is rejected and the matter is returned to the

[1] The transfer order states that Douglas filed these motions on September 22, 2010; December 8, 2008, and December 16, 2008.

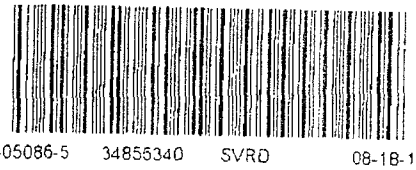
superior court for further appropriate action. CrR 7.8(c).

DATED this 21st day of January, 2011.



Chief Judge

cc: James Philip Douglas
Pierce County Clerk
County Cause No(s). 04-1-05086-5
Patrick Cooper, DPA



04-1-05086-5 34855340 SVRD 08-18-10

EXHIBIT D1

FILED
DEPT. 8
IN OPEN COURT
AUG 17 2010
By BM
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. JAMES PHILIP DOUGLAS Defendant	CAUSE NO 04-1-05086-5 **COUNT THREE** **SPECIAL VERDICT FORM**

THIS SPECIAL VERDICT FORM IS TO BE ANSWERED ONLY IF THE JURY FINDS THE DEFENDANT GUILTY OF VIOLATION OF A COURT ORDER AS CHARGED IN COUNT THREE.

We, the jury, return a special verdict by answering as follows

Was the conduct that constituted a violation of the court order reckless and did it create a substantial risk of death or serious physical injury to another person?

ANSWER Yes (Write "Yes" if all agree If all do not agree the answer is "Yes" write in "Intentionally left blank")

William D. Short
PRESIDING JUROR

Dated 17 AUG 2010

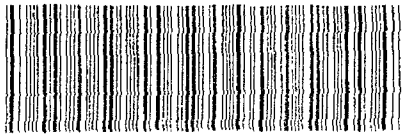
ORIGINAL

INSTRUCTION NO. _____

A person commits the crime of violation of a court order when he or she knows of the existence of a no-contact order and knowingly violates a provision of the order, and the person's conduct was reckless and created a substantial risk of death or serious physical injury to another person.

9443 8/26/2010 00141

EXHIBIT D3



04-1-05086-5 34870519 SVRD 08-20-10

IF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. JAMES PHILIP DOUGLAS Defendant.	CAUSE NO. 04-1-05086-5 SUPPLEMENTAL PROCEEDING COUNT I **SPECIAL VERDICT FORM B**

FILED
DEPT. 8
IN OPEN COURT
AUG 19 2010
By BM
DEPUTY

We, the jury, having previously found the defendant guilty of Arson in the First Degree in Count I, return a special verdict by answering as follows:

1) Did the commission of the crime invade the victims' zone of privacy?

ANSWER: Yes

Write "yes" only if all agree. If all do not agree answer is "Yes" please indicate "Answer intentionally left blank"

If you have answered the above question "Yes" please list each victim to which this answer applies: Carroll Pederson, Pauline Pederson, Debra Douglas.

Please sign and date this Special Verdict Form.

19 AUG 2010
DATE

William Short
PRESIDING JUROR

WPIC 300.25

ORIGINAL

04-1-05086-5 35500336 LTRDF 12-08-10

EXHIBIT E1

FILED
IN COUNTY CLERK'S OFFICE

AM DEC 03 2010 PM.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY _____ DEPUTY

PIERCE COUNTY SUPERIOR COURT CLERK
BRIAN MATSON DEPT. 08 RM 207a
930 Tacoma Ave So.
Tacoma, WA. 98402-2108

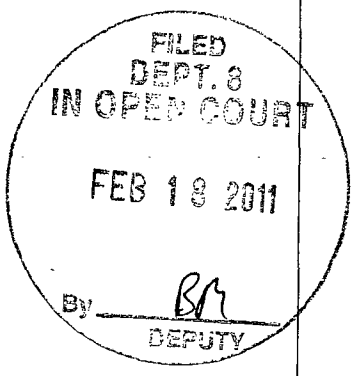
Dear Mr. Matson,
On November 11th I sent to your Court a Motion for Reconsideration to appoint counsel, terminate LFO's, and/or Fwd the Courts Decisions to the Court of Appeals if the Judge did not wish to grant the hearing of my Motion for New Trial which I am asking counsel to present. I waived my presence for such presentation. I feel the court should have heard the motion for new trial but with counsel present and with their presentation. So, I am asking the court to place the matter on the next available Docket on Friday's Motion Calendar to put before Judge Tollefson the Motion to appoint Counsel to hear the CrR 7.4/CrR 7.5 Motion and to present the Motion to terminate LFO's filed as exhibit #3 in 04-1-05086-5. Just so were clear on the filing date of the motion, I filed it on the 7th of November of 2010, which was in the properly filed timeframe. I did however file a change of address after that so that may have delayed or re-directed my mail. My current address is below. If you need me to file a Note for Motion Docket form again I can do that but I'm hoping you will accept this letter as notice of my intent to place this on the next available calendar for consideration. I appreciate your time and review.

Respectfully,

X _____

James Philip Douglas DOC#891542
WASHINGTON STATE PENITENTIARY
1313 N. 13th AVE
Walla Walla, WA 99362
Unit-GE210

EXHIBIT E2



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. JAMES PHILIP DOUGLAS, Defendant.	CAUSE NO. 04-1-05086-5 ORDER ON DEFENDANT'S MOTION TO MODIFY JUDGMENT AND SENTENCE ***CLERK'S ACTION REQUIRED***

THIS MATTER came before the undersigned Judge of the above-entitled court upon review of the defendant's motion(s) for relief from judgment filed on 12-8-08; 12-16-08; AND 9-22-10. After reviewing the defendant's written pleadings, the court now enters the following order pursuant to CrR 7.8(c)(2). It is hereby

A. [X] ORDERED that this petition is transferred to the Court of Appeals, Division II, to be considered as a personal restraint petition. The petition is being transferred because:

[ ] it appears to be time-barred under RCW 10.73.090;

[ ] is not time-barred under RCW 10.73.090, but is untimely under CrR 7.8(a) and, therefore, would be denied as an untimely motion in the trial court; or

[X] is not time-barred but does not meet the criteria under CrR 7.8(c)(2) to allow the court to retain jurisdiction for a decision on the merits.

(Note: Direct appeal is pending.)

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

If box "A" above is checked, the Pierce County Superior Court Clerk shall forward a copy of this order as well as the defendant's pleadings identified above, to the Court of Appeals.

DONE IN OPEN COURT this 18th day of February, 2011.

Signed on the record with Mr. Douglas, appearing via telephone on 2/18/2011 at 2:36pm

JUDGE BRIAN TOLLEFSON

Presented by:

PATRICK COOPER, WSB# 15190
Deputy Prosecuting Attorney

~~Approved for entry.~~
~~Signed~~

present telephonically
Defendant, Pro se

FILED
DEPT. 8
IN OPEN COURT
FEB 18 2011
By BM
DEPUTY

Copy of this document was Mailed, Delivered or Faxed this 18 day of Feb, 2011
To: Defendant, Prosecutor DAC, Defendant's Appellate attorney
By: Brian Muse

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

SIGNED AND DATED, THIS 28TH OF SEPTEMBER IN 2011.

RESPECTFULLY SUBMITTED,

X

JAMES PHILIP DOUGLAS - APPELLANT

THE APPELLANT SWEARS THE FOREGOING STATEMENTS TO BE TRUE AND ACCURATE UNDER PENALTY OF THE LAWS OF WASHINGTON STATE.

NOTICE OF SERVICE

THE APPELLANT HEREBY NOTIFIES THE COURT THAT A COPY OF APPELLANTS BRIEF WAS MAILED FIRST CLASS LEGAL MAIL TO THE RECIPIENTS:

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