FILED
COURT OF APPEALS
DIVISION II

2018 AUG -6 AM 11:35

STATE OF WASHINGTON

BY AP
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON, Respondent,	) No. 50707-2-II
	) STATEMENT OF ADDITIONAL
v.	) GROUNDS FOR REVIEW
HOWARD GOODWIN, Appellant.	) (SAG) [RAP 10.10]

COMES NOW, HOWARD BRUCE GOODWIN IV, the above-named Appellant, Pro Se, and having received and reviewed the opening brief prepared by my court-appointed attorney, and wishing to address issues and errors not raised therein, and pursuant to RAP 10.10(a), I do hereby lay before this Court the following SAG:

STATEMENT OF ADDITIONAL GROUNDS

ADDITIONAL GROUND ONE (1)

The Jury's Verdict is based on insufficient evidence, in violation of due process and the law of the case and the right to a fair trial

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit-B129
1313 N 13th Ave
Walla Walla, WA 99362

(a) STATEMENT OF THE CASE

1. Procedural Facts

I, HOWARD BRUCE GOODWIN IV, the above-named Appellant, adopt all procedural facts presented in Appellant's Opening Brief in the present case.

NOW, on top of those procedural facts presented therein said brief, the to-convict instructions instructed the jury in the present case that: (1) "To convict the defendant of the crime of indecent liberties, **each** of the following elements of the crime must be proved beyond a reasonable doubt: 1. That on or about November 16, 2016, the defendant Knowingly caused Patricia Meyer to have sexual contact with the defendant. That this sexual contact **occurred by forcible** compulsion, and that any of three - that any of these acts occurred in the state of Washington." [Note: (1) There is three elements to the crime, though the instructions kind of blur them all together as one; and (2) The third element is an improper instruction, as the jury actually had to find that all of the acts occurred in the state of Washington - but that's another error/issue/ground]. See RP 654, LN 07 - 14.

(2) "To convict the defendant of the crime of assault in the second degree, **each** of the following elements of the crime **must** be proved beyond a reasonable doubt: 1. That on or about November 16, 2016, the defendant assaulted Patricia Meyer; 2. That the assault was committed with the intent to commit rape in the second degree and/or rape in the third degree; And 3. That this act occurred in the state of Washington." See RP 658, LN 19 - RP 659, LN 3 (emphasis added).

Further, the jury in the present case was instructed

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

that: (1) "Forcible compulsion means physical force that overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to one's self or to another person or in the fear of being kidnapped or that other person will be kidnapped." See RP 652, LN 7-12 (emphasis added).

(2) "A person knows or acts **knowingly** or with knowledge with respect to a fact, circumstance or result when he or she is aware of that fact, circumstance or result. It is not necessary that the person know the fact. Circumstances or results is defined by law as being an element of a crime." [Note: How can a person be aware of a fact but not know a fact? I ask that because, this instruction (#15) instructs the jury that to act knowingly you have to be aware of that fact, yet instructs the jury that "it is not necessary that [you] know the fact." That seems to be a contradiction.] "If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted, but not required, to find that he or she acted with knowledge of that fact. When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if the person acts intentionally as to the fact." See RP 653, LN 8-21.

(3) "Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desires of either party." See RP 653, LN 22-24 (emphasis added).

2. Evidence

THE EVIDENCE presented in the present case was direct and/or circumstantial. See RP 650, LN 3-14.

Howard Bruce Goodwin, IV (733205)
Washington State Penitentiary
Williams Unit - D129
1313 N 13th Ave
Walla Walla, WA 99362

The direct evidence presented in the present case came from live testimony made in trial and prior out-of-court statements made at the time of the alleged acts.

(i) testimony evidence

THE ALLEGED VICTIM, Patricia Arlene Meyer, testified in trial, under oath, that: (1) Mr. Goodwin and her have been dating for 14 years. RP 351, LN 17 - RP 352, LN 25.

(2) Mr. Goodwin is 6'4 and she is 5'3. RP 353, LN 16-19.

(3) Mr. Goodwin is "[t]he love of [her] life." RP 353, LN 23 - 25.

(4) Mr. Goodwin and her had sex the day before the alleged crimes took place. RP 355, LN 1-3.

(5) Mr. Goodwin and her left from some friends' of Mr. Goodwins to go to a park, they frequent quite often, "[t]o sleep and be together." RP 358, LN 5 - RP 359, LN 17; RP 356, LN 7-14.

(6) She was not in a real good mood, that day at the park. RP 362, LN 18-21.

(7) She wanted to have sex with Mr. Goodwin, that day at the park. RP 363, LN 7-15; RP 366, LN 2-7.

(8) Sex is a given in their relationship because they have been together for a long time. RP 364, LN 22 - RP 365, LN 1.

(9) Mr. Goodwin was not simply and solely trying to have sex with her that day at the park. Mr. Goodwin was also "there to keep [her] safe and protect [her]." RP 365, LN 19-21.

(10) They were high on drugs that day at the park. RP 366, LN 19-20; RP 364, LN 1-2.

(11) They were ~~fighting~~ arguing on and off that day at the park. RP 364, LN 13 - RP 369,

Howard Bruce Goodwin IV (733305)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

LN 21. (12) Her clothes were off prior to the physical fight that occurred between her and I that day at the park. RP 380, LN 13-15.

(13) Her and I were kissing and touching that day at the park. RP 381, LN 14-RP 382, LN 22. (14) The arguing between her and I eventually led to a physical fight. RP 384, LN 17- RP 385, LN 1. (15) I left atleast twice that day at the park to try to defuse the situation, but came back to check up on her and spend time with her. RP 361, LN 16-24; RP 362, LN 6-10; RP 367, LN 14- RP 369, LN 23.

(16) I did not hit her. RP 385, LN 12. (17) I did restrain her from leaving. RP 385, LN 13-18.

(18) During our fight, we just wrestled around. RP 385, LN 23-25.

(19) While fighting, ~~I told her~~ my general tone was that "[m]ostly, I'm not going to start this again, and we're not going to do this again, and I need to calm down, and he's not going to hurt me." RP 387, LN 11-14. (20) I threw her to the ground. RP 388, LN 5-18.

(21) I did not know she was getting her phone. RP 389, LN 3-5.

(22) She called the cops and I ran away and cussed her out, for calling the cops. RP 389, LN 21- RP 390, LN 9.

(23) She never told me that she did not want to have sex that day at the park. RP 397, LN 8-12 (24) I never told her that I was going to make her have sex with me. RP 397, LN 13-15. (25) I did not try to make

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Willards Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

her suck my penis. RP 397, LN 16-17.

(26) That the prosecutor was being subjective and leading her and tampering with her during direct. RP 400, LN 18-21; RP 401, LN 23- RP 402, LN 3.

(27) She did not remember saying that I sexually assaulted her or anything of that nature to the 911 operator or to anybody. RP 420, LN 20- RP 421, LN 25.

(28) She was using "meth" that day at the park. RP 422, LN 1- 12.

(29) We love each other. RP 476, LN 12-15.

BRETT JENSEN, testified that:

(1) He is an emergency medicine physician at PeaceHealth Southwest Medical Center. RP 276, LN 20-23

(2) He's worked at PeaceHealth for ten years. RP 276, LN 24-25.

(3) He graduated from the Dartmouth College with a bachelor's degree in 1997, Stanford Medical School in 2003. RP 277, LN 7-10.

(4) He is certified by the American Board of Emergency Medicine, as well as other things. RP 277, LN 17-25.

(5) He was working November 16, 2016. RP 287, LN 18-20.

(6) He spoke with the alleged victim, Patricia A. Meyer, on said day. RP 287, LN 25- RP 288, LN 18.

(7) Alleged victim told him "that she had been assaulted through various means," including "attempted forced sexual intercourse," by

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

I, Howard Bruce Goodwin IV, being the man "she [has] been with for 14 years, in her words, consensually." RP 290, LN 3 - RP 291, LN 16.

(8) Alleged victim had injuries, but not "that were life-threatening," and "no injuries that needed surgery." RP 294, LN 18-19; RP 295, LN 6-21; RP 298, LN 10-19.

(9) Alleged victim "declined narcotics pain medication but accepted what's called an NSAID." RP 298, LN 20-22.

(10) Alleged victim declined counseling. RP 298, LN 25 - RP 299, LN 3.

(11) Alleged victim indicated she had a pain of 10 out of 10 on a scale of 1 to 10 with 10 being the most pain, yet she did not want any pain medication. RP 312, LN 6-19.

(12) Alleged victim has psychiatric history. RP 313, LN 18-19.

(13) Alleged victim declined screening for her sexual assault claim. RP 322, LN 3-25.

MARY HAMMOND in trial ~~that~~ testified, under oath, that: (1) She is an emergency room department nurse, has been one since 2008, and works at PeaceHealth. RP 329, LN 1-10.

(2) She "treat[ed] a patient named Patricia A. Meyer on November 16, 2016." RP 332, LN 23-25. (3) Alleged victim told her that "she was shoved, pushed around, and kicked all over, by her partner of 14 years, on November 16, 2016." RP 333, LN 20 - RP 334, LN 2.

(4) Alleged victim "denied any

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit-B129
1313 N 13th Ave
Walla Walla, WA 99362

sexual assault at that time." RP 334, LN 3-5; RP 340, LN 19-20. (5) she "wrote that: No visible bruising noted to sites of pain." RP 334, LN 9-11. (6) Alleged victim declined any sexual assault exam. RP 342, LN 1-7. (7) Saw nothing on alleged victim's head, no injuries ~~to head~~ on her. RP 342, LN 8-RP 343, LN 19.

ERIC SWENSON, testified in this trial, under oath, that: (1) He is "a deputy sheriff with the Clark County Sheriff's Office," and has been one "[s]ince March 18, 1991." RP 499, LN 8-13. (2) He was working on November 16, 2016. RP 499, LN 14-15. (3) His whole testimony that day of trial was made from memory. RP 505, LN 21-24.

RUSSELL BRADSETH, testified in this trial, under oath, that: (1) He is a patrol deputy in the enforcement branch of the Clark County Sheriff's Office, in his 27th year. RP 511, LN 10-13. (2) He was working on November 16, 2016. RP 511, LN 14-16. (3) He spoke with Ms. Meyer. RP 512, LN 25 - RP 513, LN 2. (4) The alleged victim told him that she did not want to have sex with I, RP 537, LN 18-22; she "wanted to just sleep together," RP 538, LN 12; "she had to remove [my] hands from her body as [I] was touching her," RP 538, LN 13-16; I climbed on top of her and slapped her, RP 539, LN 4-8; she had to push me off of her, RP 539,

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

LN 12-16; "that the physical sexual contact last time occurred two to three months prior to the 16th of November;" RP 539, LN 24 - RP 540, LN 1; that I yelled at her to touch my penis, RP 541, LN 23-25; she bit my penis, RP 542, LN 24-25; I assaulted her because she refused to have sex with me or suck my penis, RP 543, LN 1-3.

(5) Ms. Meyer filled out what is called a Smith form, which is a series of questions that come in a domestic violence packet. RP 543, LN 10-19. (6) Exhibit 9A is that Smith form he was talking about. RP 543, LN 20-25. (7) when he's writing down something that's not an exact quote, it is fair to say that he is not writing down verbatim what was reported to him. RP 551, LN 21 - RP 552, LN 8.

(8) I did not hit the alleged victim with a closed fist. RP 555, LN 19-22.

(ii) <u>out-of-court statement evidence / Exhibit 1A</u>

THE OUT-OF-COURT statement marked as Exhibit 1A, being the 9-1-1 call, shows that:

(1) I, Howard Bruce Goodwin IV, was not present when she made this call. RP 410, LN 25 - RP 411, LN 8. (2) She thought I was watching her as she made the call, RP 410, LN 25 - RP 411, LN 1, yet she couldn't see anything. RP 411, LN 10-11.

(3) She alleged that I sexually assaulted her that night. RP 411, LN 21-23.

(4) She later stated that she did not know where I went and I could not see her. RP 413, LN 23-24.

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - D129
1313 N 13th Ave
Walla Walla, WA 99362

(5) She chose to remain half dressed even after we fought and I left. RP413, LN 11; RP414, LN 14-18. (6) She had not seen me since she called the cops. RP 415, LN 23-25.

(7) She thought the cops would let me go. RP417, LN 23.

MS. MEYER testified in response to this evidence that:
(1) She didnt say on the recording that I sexually assaulted her. RP 420, LN 20-24.
(2) She did not remember saying that I tried to make her suck my dick. RP420, LN 25-RP421, LN 2.
(3) It is her voice on the 9-1-1 call. RP 421, LN 8-9.
(4) She meant she didnt want to have sex that way, meaning, while we were fighting. RP 421, LN 10-14.
(5) She told the 9-1-1 Operator that she didnt want this to go on anymore, "this" being the fighting, the physical fighting. RP 421, LN 15-21.
(6) She was using substances that night - illegal substances - which substances were methamphetamines. RP422, LN 4-15, which substances she was not sure if it affected her memory that night/day at the park. RP 422, LN 1-5.

(iii) out-of-court statement evidence / Exhibit 9A

THE OUT-OF-COURT statement marked as Exhibit 9A, being the Smith affidavit made November 16, 2016, shows that:

(1) The alleged victim wrote it. RP 457, LN 2-8.
(2) The alleged victim wrote therein that I physically assaulted and sexually assaulted her at Orchards Park in the early hours and made several attempts to have

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

sex against her will. RP 457, LN 13-21.

MS. MEYER, the alleged victim, testified, in trial, under oath, in response to this Exhibit 9A, that:

(1) She does not know why she wrote that I made several attempts to have sex with her against her will. RP 458, LN 6-9.
(2) She wrote that I, Howard Bruce Goodwin IV, threatened to kill her if she called the police, "because, at that time that's what [she] thought [she] heard, and [she] was mistaken." RP 458, LN 10-16, 19.

MS. MEYER further testified that she planned on seeing me again and wants to see me again. RP 459, LN 11-14.

3. Jury verdict and finding

THE JURY, ultimately, found, as follows:

(a) "To verdict on Count 1 [...] [N]ot guilty of the crime of attempted rape in the second degree." RP 716, LN 25 - RP 717, LN 2 (emphasis added).
(b) "Verdict on Count 2 [...] [G]uilty of the crime of indecent liberties with forcible compulsion." RP 717, LN 3-5.
(c) "Count 3 [...] [G]uilty of the violation of a contact order." RP 717, LN 6-7.
(d) "To Count 4 [...] [G]uilty of the crime of assault in the fourth degree." RP 717, LN 8-10.
(e) "To Count 5 [...] [G]uilty of the crime of assault in the second degree." RP 717, LN 11-13.
(f) "Special Verdict Form for family or household member. Were Howard Bruce Goodwin and Patricia Meyer members

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

of the same family or household? Answer is yes. RP 717, LN 14-16.

(g) "Special Verdict Form B, regarding Count 3. Was the conduct that constituted a violation of the court order an assault which did not amount to assault in the second degree? Answer, no." RP 717, LN 17-20.

(h) "Special Verdict Form C, to which applies to Count 5. Did the defendant, Howard Bruce Goodwin, commit the crime of assault in the second degree with sexual motivation? Answer, yes." RP 717, LN 21-24.

(b) LAW and ARGUMENT

1. Standard of Review/Test

"THE TEST for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). When the sufficiency of evidence is challenged in a criminal case, all reasonable inferences from the evidence **must** be drawn in favor of the State and interpreted most strongly against the defendant. State v. Partin, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). A claim of sufficiency of evidence admits the truth of the State's evidence and all inferences that can be reasonably drawn therefrom. State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980)." State v. Salinas, 119 Wn.2d 192 (1992) (emphasis added).

2. Viewing evidence in light most favorable to the state

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N. 13th Ave
Walla Walla, WA 99362

NOW, even though the standard of review/test for determining the sufficiency of evidence post-conviction seems to be an unfair test to one's right to a fair appeal, which/and I believe that this Court should find that it is, let us see what reasonable inferences we can draw from the evidence that are in favor of the State and interpreted most strongly against the defendant.

3. Reasonable inferences

FROM THE EVIDENCE, and based on a few definitions of reasonable: (a) rational; (b) governed by or in accordance with reason or sound thinking; (c) within the bounds of common sense; (d) not extreme or excessive: FAIR, Webster's II New College Dictionary, THIRD EDITION, 945 (2005), to draw reasonable inferences requires us to be unreasonable. I say that because, the only fair inferences or inferences within the bounds of common sense or rational inferences or inferences governed by or in accordance with reason or sound thinking which can be drawn from the evidence are: (1) the alleged victim does not tell the truth; (2) the alleged victim exaggerates the truth (see RP 312, LN 6-19 with RP 294, LN 18-19 and RP 295, LN 6-21 and RP 298, LN 10-19); (3) A minor assault and No-contact order violation did occur; but (4) No sexual assault or indecent liberties with forcible compulsion could have occurred, because, the evidence in no fair way shows that either one of those acts could have occurred (see Statement of the Case presented

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

herein).

4. Rational trier of fact

WITH THAT BEING SAID, and after viewing the evidence in the light most favorable to the State, I do not believe any sane or logical (being definitions and synonyms for the word "rational," see Webster's II New College Dictionary, THIRD EDITION, 941 (2005) and BARRON'S REFERENCE GUIDES Pocket Dictionary & Thesaurus, 537 (2005)) trier of fact could have found guilt beyond a reasonable doubt, and this Court should so find.

5. Test being unfair to one's right to a fair appeal, I, Howard Bruce Goodwin IV, included

NOW, an appeal in a criminal case, must be a fair appeal, and this Court should so find.

To not accord one an appeal according to the rules of appellate procedure, the Constitution of the State of Washington, and all other laws applicable to criminal appeals - which laws are compatible with the RAPs and Constitution - would be unfair and unjust, in violation of the XIV (Fourteenth) Amendment of the U.S. Constitution, and this Court should so find.

Now, if having found thus, then this Court must agree that the only way to accord one a fair appeal is to: (a) interpret the rules of appellate procedure in such a way as to promote justice and facilitate the decisions of cases, this present case included, on the

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

merits, RAP 1.2(a); and

(b) only use judicial decisions which are not inconsistent with the Constitution and the laws of the United States, or the State of Washington, nor incompatible with the institutions and conditions of society of this state, RCW 4.04.010.

WITH THAT BEING SAID, and if this Court thus agrees, then, I ask this Court: Is the Test, as it now stands, for determining the sufficiency of evidence post-conviction in an appeal, a fair test?

As the Test now stands, unless I am misinterpreting the Supreme Court's opinion made in State v. Salinas, the test allows the state to have a conviction based on insufficient evidence upheld, because, the test:

(1) requires this Court to view the evidence in the light most favorable to the ~~defendant~~ State; and

(2) draw all reasonable inferences from the evidence in favor of the State and most strongly against the defendant; and

(3) admit the truth of the State's evidence, see State v. Salinas, 119 Wn. 2d 192, at 201 (1992); State v. McVey, 2018 Wash. App. LEXIS 227 (2018). This viewing is in violation of the XIV Amendment of the U.S. Const., as it violates the Equal Protection of the Law Clause, by not making the viewing, post-conviction, equal. Further, it violates the right to a fair appeal accorded by art. 1, § 22 of the Const. of the State of Wash., by tipping the scale in the State's favor, and this Court should so find.

6. Truth of the State's evidence

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit-B129
1313 N 13th Ave
Walla Walla, WA 99362

NEVERTHELESS, the State's evidence has no truth to it to support the jury's finding(s) as to and on Count 2 - Indecent Liberties with Forcible Compulsion and Count 5 - Assault in the Second Degree; and Special Verdict Form C - which applies to Count 5, finding of sexual motivation.

"TRUTH" can be defined as meaning, "[c]onformity to fact or actuality." Webster's II New College Dictionary, THIRD EDITION, 1213 (2005) (emphasis added).

"Fact," lawfully, can be defined as "[a] crime." Id 409.

Now, as I forgot to mention, "[t]he evidence is sufficient if after viewing the evidence in a light most favorable to the state, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt," State v. Armstrong, 188 Wn. 2d 333 (2016) (quoting State v. Dempel, 114 Wn. 2d 77, 82, 785 P. 2d 1134 (1990)) (internal quotation marks omitted) (emphasis added), and now that we have a few definitions which can help us to better understand that opinion, let us, again, look at the evidence to see what truth of the State's evidence can be found.

7. Re-look at the evidence

MS. MEYER'S testimony was inconsistent throughout, including on the day of the alleged crimes, and this Court should so find. She told, Brett Jensen, medicine physician at Peace Health, "that she had been assaulted

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

through various means," including "attempted forced sexual intercourse," by I, the appellant. See RP 290, LN 3-RP 291, LN 6. Yet, on the very same day, being, November 16, 2016, she told, Mary Hammond, emergency room department nurse at PeaceHealth, that I did not sexually assault her, see RP 334, LN 3-5; RP 340, LN 19-20. Then she writes a Smith affidavit saying, essentially, that I did sexually assault her, see RP 457, LN 13-21. Yet, in trial, she testified, under oath, in response to her Smith affidavit that she does not know why she wrote that I made several attempts to have sex with her against her will. See RP 458, LN 6-9.

She further testified, essentially, at my trial, under oath, that none of the allegations happened, save the fourth degree assault and violation of the no-contact order; and she said that she did not remember saying what she said to the 9-1-1 operator; and the 9-1-1 operator and police and some of the medical staff misinterpreted what she said. (See the Statement of the Case presented herein).

She furthermore testified that she was high ~~See RP~~ the day of the alleged crimes. RP 422, LN 1-12.

Even further still, her behavior on the day of the alleged crimes is questionable to say the least. I mean, who, in their right state of mind, keeps their clothes half off of their body after the person they allege attacked them has left the area and they are no longer being attacked? Yet, Ms. Meyers kept her clothes half off of her body long after I left. See RP 413, LN 11; RP 414, LN 14-18.

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit-B129
1313 N 13th Ave
Walla Walla, WA 99362

She further shows questionable behavior by her statements made in the 9-1-1 call to the operator the day of: (1) states that she thought I was watching her as she made the call, see RP 410, LN 25- RP 411, LN 1, yet, in the same breath states, (a) she couldn't see anything, see RP 411, LN 10-11; and (b) that she did not know where I went and that I could **not** see her, see RP 413, LN 23-24 (emphasis added).

This direct evidence, which leads to circumstantial evidence, shows us, that, based on common sense and experience, there is no truth in any of Ms. Meyer's statements and testimony, and if there is any, it is very questionable and highly limited solely to uphold the convictions of assault in the fourth degree and violation of a no-contact order, as it can not be extended to uphold the convictions of second degree assault and the Special Verdict Form connected thereto and the conviction of indecent liberties with forcible compulsion, and this Court should so find.

BRETT JENSEN testified, under oath, that, Patricia alleged that she was sexually assaulted - which is testimony of what someone else said, and, therefore, hearsay, which hearsay Ms. Meyer's denied saying - yet declined screening for her sexual assault claim. He also said she has a psychiatric history, see RP 313, LN 18-19. He also said the she indicated that she had a pain of 10 out of 10, yet she had no life-threatening injuries and no injuries that needed surgery. See RP 312, LN 6-19, with, RP 294, LN 18-19 and RP 295, LN 6-21 and RP 298, LN 10-19.

This direct evidence, which leads to circumstantial

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

evidence shows that, not only does Ms. Meyer have a tendency to over exaggerate, but, no truth can be established based off this testimony because the alleged victim, who, evidently, cannot even stick to her own story and who's credibility is shot, see RP 426, LN 21-22 - where assigned counsel Mr. KURTZ let us know that prosecuting attorney Mr. FARRA "said her [Ms. Meyer] credibility and veracity is shot;" is who Mr. Jensen is alleging said these things to him, and this Court should so find.

MARY HAMMOND testified that alleged victim denied any sexual assault at that time. See RP RP 334, LN 3-5 and RP 340, LN 19-20. Ironically, this testimony of Ms. Hammond's match's the alleged victim's testimony made in trial, which leads us to being able to conclude that, based on common sense and experience, no truth can be established to uphold the convictions of assault in the second degree, and, indecent liberties with forcible compulsion, and the Special Verdict Form attached to the assault in the second degree conviction, and this Court should so find.

ERIC SWENSON'S entire testimony was from memory. See RP 505, LN 21-24. Now, I am not saying that deputy Swenson's memory is bad, but, it does leave great room to wonder how accurate his memory is in regard to that day, considering the fact that most everybody else who testified had a hard time recollecting the events surrounding that day of the alleged crimes, which "most everybody" had notes to go off of. Yet and still, he did not say much that we can use to find guilt or innocence, or from which we can

Howard Bruce Goodwin IV (933205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

admit the truth of the State's evidence, and this Court should so find.

RUSSELL BRADSETH'S testimony was mostly hearsay, and this Court should so find, as he repeated several times that the alleged victim "told him that...", see RP 537, LN 12-22 and RP 538, LN 8-12, and 538, LN 17-20, and RP 539, LN 3-8, for a few examples.

Ms. Meyer's rebutted deputy Bradseth's testimony.

Deputy Bradseth did not have any audio or video proof which could corroborate his testimony. And the Smith affidavit which he made mention of, again, as I stated before, Ms. Meyer rebutted.

8. Law of the case

NOW, the law of the case is the jury instructions, see Millies v. LandAmerica Transnation, 185 Wn.2d 302, 313, 372 P.3d 111 (2016) ("Unless there is a proper objection, jury instructions become the law of the case"), atleast in the present case, as the jury instructions in the present case were not objected to.

With that being opined, the jury instructions in this case show that: (1) To convict I of second degree assault, the jury had to find that the assault was committed with the intent to commit rape in the second degree and/or rape in the third degree, inter alia. See RP 658, LN 19 - RP 659, LN 3.

(2) To convict I of indecent

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

liberties, the jury had to find that (a) I knowingly caused Patricia A. Meyer to have sexual contact with I; and (b) that that contact occurred by forcible compulsion. See RP 654, LN 7-14.

Now in regard to showing one (1) above-mentioned, the jury found me not guilty of the crime of attempted rape in the second degree. RP 716, LN 25 - RP 717, LN 2. To my belief and understanding, the crime of attempted rape in the second degree requires a finding of intent, see RP 651, LN 7-9. Therefore, if the jury found I not guilty of this crime, and the crime of second degree assault, in the present case, required a finding of intent to commit the crime of rape 2° or 3°, how can it be said that the jury's verdict, in the present case, is based on sufficient evidence in accordance with the law of the case as to the conviction on assault in the second degree, in the present case? It can not be said so, and this Court should so find.

Now, in regard to showing two (2) above-mentional: "forcible compulsion means physical ~~force t~~ force that overcomes resistance, or a threat, express or implied that places a person in fear of death or physical injury to one's self or to another person or in the fear of being kidnapped or that other person will be kidnapped." RP 652, LN 7-12.

The facts of this case show that: (1) there was no threat, express or implied, that placed Patricia A. Meyer in fear of being kidnapped, and there was/is no other person who could have been kidnapped; and

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

(2) I never once used physical force that overcame resistance while knowingly causing Patricia A. Meyer to have sexual contact with I, as, I left several times due to our fighting, see RP 361, LN 16-24 and RP 362, LN 6-10 and RP 367, LN 14 - RP 369, LN 23; I tried to defuse the situation, and she wanted to have ~~conse~~ sex with I, consensually, e.g., see RP 363, LN 7-15 and RP 366, LN 2-7; and

(3) no threats were made, expressly or impliedly, which placed Patricia A. Meyer in fear of death or physical injury to herself or another person, ~~which threats~~ while knowingly causing her to have sex with I or even have sexual contact with I, and this Court should so find, as the record reflects thus.

(c) CONCLUSION

FOR THE ABOVE REASONS, this Court should find that: (1) No reasonable inferences can be drawn from the evidence in favor of the State and interpreted most strongly against the defendant; and (2) after viewing the evidence in the light most favorable to the state, no rational trier of fact could have found guilt on Count 2 - Indecent Liberties with Forcible Compulsion - and Count 5 - Second Degree Assault - and Special Verdict Form C - which applies to Count 5, and is a finding of Sexual Motivation; and

(3) there is no truth of the State's evidence to admit on the above-mentioned counts and special verdict form; and, therefore

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

(4) the Jury's Verdict is based on insufficient evidence, in violation of the law of the case and due process and/or right to a fair trial; or (5) the Test, as it now stands, for determining the sufficiency of evidence post-conviction on appeal does allow the State to: (a) have a conviction based on insufficient evidence upheld, because, the Test: (i) requires this Court to view the evidence in the light most favorable to the State; and (ii) draw all reasonable inferences from the evidence in favor of the State and most strongly against the defendant; and (iii) admit the truth of the State's evidence, all being in violation of the XIV Amendment of the U.S. Const., as it violates the Equal Protection of the Law clause, by not making the viewing, post-conviction, equal, and, it also violates the right to a fair appeal accorded and guaranteed an accused by art. I, § 22 of the Const. of the State of Wash., by tipping the scale in the State's favor, and, therefore, does not apply in the present case.

WHEREFORE, this Court should dismiss Count 2 and Count 5 and Special Verdict Form C and remand for resentencing; or, set aside the jury's verdict on the ground of insufficient evidence, pursuant to Kelly v. Madden, 2017 U.S. Dist. LEXIS 156815 (2017).

NOW, if this Court feels that what I have presented herein Ground One suffices to find reason to dismiss Count 2 and Count 5 and Special Verdict Form

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

C or set aside the jury's verdict, then this Court need not read any further. Otherwise, I, respectfully, and pursuant to RAP 1.2(a), (c), ask this Court to grant I the following: Fifteen (15) days to present the following Grounds:

Ground Two (2)

The Jury mistook the law in the present case, in violation of the law of the case and the right to a fair trial

Ground Three (3)

The Jury was partial, in violation of the constitutional right to an impartial jury

Ground Four (4)

Prosecutor was vindictive and failed to uphold prosecutor's duties, in violation of due process and equal protection of the law

Ground Five (5)

Court abused its discretion, in violation of constitutional right to fair trial and equal protection of the law

For the reasons as to why I need fifteen (15) more days, see Motion to Accept SAG as Timely Filed, submitted herewith.

If granted the additional fifteen days, I understand that I will only have twenty five (25) pages wherein to present the four additional Grounds, as I used 25 pages herein, and a SAG is limited

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

to fifty (50) pages (RAP 10.10 (b)). Thank You.

Respectfully Submitted This 31st Day of July, 2018 by:

HOWARD BRUCE GOODWIN IV
The Appellant, Pro Se

HOWARD BRUCE GOODWIN IV (733205)
WASHINGTON STATE PENITENTIARY
WILLIAMS UNIT-B
1313 N 13th AVE
WALLA WALLA, WA 99362

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON, Respondent,	) No. 50707-2-II
	) DECLARATION OF SERVICE
VS.	) AND FILING
HOWARD BRUCE GOODWIN IV, Appellant.	) [GR 3.1; RAP 18.5(e)]

FILED
COURT OF APPEALS
DIVISION II
2018 AUG -6 AM 11:36
STATE OF WASHINGTON
BY DEPUTY

DECLARATION

STATE OF WASHINGTON)
) ss.
COUNTY OF WALLA WALLA)

I, Howard Bruce Goodwin IV, the above-named appellant and inmate at Washington State Penitentiary (WSP), pro se, declare that on the 31st day of July, 2018, I deposited the following:

(1) MOTION TO ACCEPT SAG AS TIMELY FILED

(2) ORDER (proposed)

(3) STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW (SAG)

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit-B129
1313 N 13th Ave
Walla Walla, WA 99362

or a copy thereof, in the internal mail system of WSP and made arrangements for postage, addressed to:

(1) DEREK M. BYRNE (court/place of filing)
Court Clerk
Washington State Court of Appeals
Division Two
950 Broadway, Ste. 300
Tacoma, Washington 98402-3694

(2) ANTHONY F. GOLK and AARON T. BARTLETT (opposing counsel)
Prosecuting Attorney and Deputy Prosecuting Att'y
Clark County Prosecuting Attorney
1013 Franklin Street, PO Box 5000
Vancouver, WA 98666-5000

~~(3) KATHRYN RUSSELL SELK (assigned counsel)~~
~~Attorney at Law~~
~~Russell Selk Law Office~~
~~1037 N.E. 65th St., Private Box 176~~
~~Seattle, WA. 98115~~ (was denied copies for her)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. [RCW 9A.72.085]

7-31-18 Walla Walla, WA
Date and Place of Execution

HOWARD BRUCE GOODWIN IV
The Appellant, Pro Se

Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit-B129
7313 N. 13th Ave
Walla Walla, WA 99362

HOWARD BRUCE GOODWIN IV (733205)
WASHINGTON STATE PENITENTIARY • WILLIAMS UNIT-B 129 •
1313 N 13th AVE • WALLA WALLA, WA 99362

Tuesday, July 31, 2018

ANTHONY F. GOLK and AARON T. BARTLETT
Prosecuting Attorney and Deputy Prosecuting Attorney
Clark County Prosecuting Attorney
1013 Franklin Street, PO Box 5000
Vancouver, WA 98666-5000

FILED
COURT OF APPEALS
DIVISION II
2018 AUG -6 AM 11:35
STATE OF WASHINGTON
BY _____
DEPUTY

RE: Contents Enclosed
STATE OF WASHINGTON v. HOWARD BRUCE GOODWIN
Superior Court Case No.
Court of Appeals No. 50707-2-II

Dear Prosecuting Attorneys of Clark County,

Please find enclosed a copy of appellant's Motion to Accept SAG as Timely Filed, with a Noticed attached to the front of it. A proposed order is submitted therewith.

Also find enclosed a copy of the SAG that I am asking this Court to accept as timely filed.

If you have any questions or concerns, feel free to address them to I via assigned counsel. Thank you.

Sincerely & with All Due Respect,

Howard Bruce Goodwin IV
The Appellant, Pro Se