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DIVISION II

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STATE OF WASHINGTON
BY AP

No. 52362-1-II

Court Of Appeals Of The State Of Washington
Division Two

State Of Washington, Respondent, v Michael Palmer, Appellant.	No. 52362-1-II Amended Statement Of Additional Grounds (RAP 10.10)

P/M: 6/2/20

I, Michael Palmer, the appellant, having received and reviewed the Brief Of Appellant prepared by my attorney, Richard W. Lechich do hereby submit the following additional grounds, which are not addressed or not fully addressed in the Brief Of Appellant, so that the Court will review them when my appeal is considered on its merits.

Statement of Exceptional Case:
My case has several factors that set it apart:
A. Motive To Lie And Motive For Governmental Misconduct-
A.1 At the time of my arrest I was involved in three legal actions involving-AD, PD, Deanna Drummond("Deanna"); Grays Harbor County("GHC") Child Protective Services; GHC Sheriff's personel("Sheriff")-in an effort to protect my son LP and myself from their wrongdoing.
A.2 Those legal actions were:(1) a "founded" challenge from the 2015 GHC Dependency of LP, No 15-7-00229-0 (CP 313§E, 7-6-18 Ex 11 pg 10 §1); (2) the protection order involving LP, GHC No 17-2-00133-0 (7-6-18 Ex 11, pgs 1,2); and (3) the King County Dependency of LP, No 17-7-00885-9 KNT (CP 292§I, CP 314§K).
A.3 Those legal actions would have documented and exposed GHC CPS and Sheriff participation in multiple criminal activities including: conspiracy to commit, being accomplices to, and/or actual commission of: auto theft, perjury, witness tampering, falsification of documents, obstruction of justice, failure to investigate, the abuse of my son by starvation, and the cover-up of said abuse. CP 288-292; CP 311-314; 7-6-18 Ex 11 pgs 10§(d), 1§§1,2, 2§§4,7, 9§'s 5-7; 1-26-18 VRP pg 56. RCW's 26.44.160, 26.44.050, 9A.04.050, 9A.16.090. Federal Rules of Evidence, rule 414§(d)(4).
A.4 Some people who were directly involved in the criminal acts listed in section A.3 were directly involved in my investigation and arrest on the false criminal charges; for example, Carrie Quail.
A.5 My arrest was specifically timed to block me from attending court for No. 17-7-00885-9 KNT on 3-30-17. (I also now have solid evidence from King County CPS that GHC Sheriff members asked CPS to commit fraud upon the

court and/or perjury involving that case and my criminal case, but it is not on the record due to prosecutor denial of Brady material.) What is on the record is that Sheriff staff directly interfered with my ability to contact counsel in No. 15-7-00229-0 and 17-7-00885-9 KNT. CP292, CP314.

A.6 The three legal actions also provided substantive motive for Deanna to lie about events and to coach the kids to lie due to the following reasons: (1) Money - I was alleging that Deanna had committed federal and state benefit fraud which could have eliminated up to $280,000 in future and past benefits that the family was dependant on for its day to day survival. (18,000 dollars per year in cash and another unknown amount in food stamps and medical benefits.) 7-6-18 Ex11 pg 5 §§ (a-c) Plus, by using my arrest to take LP from me she gained about $10,000 per year in cash and food benefits an no more child support. (2) Custody of LP - My arrest allowed Deanna to gain full custody of LP and prevented LP and I from moving to a better economic area with lower priced housing like Spokane. (3) Illegal Lifestyle of Deanna - My arrest stopped further state intrusion into Deanna's autistic, sadistic, and illegal benefit based lifestyle and the dangers it represented to the kids; thereby, preventing her arrest and the loss of custody of her kids. 7-6-18 Ex11 pg 5-6 § (d); (4) PD's Danger to Siblings - My arrest and conviction prevented my protecting LP from the autistic behavior of PD which included assaults and inappropriate sexual behavior. 7-6-18 Ex11 pgs 1, 2.

A.7 The kids, AD and PD, had fear that their family would be torn apart again which had happen many times already due to: (1) the death of their alleged biological father (7-3-18 VRP pg 278); (2) moving from Kansas resulting in loss of friends and family contact (7-3-18 VRP pg 281); being placed in foster care in 2015 (7-3-18 VRP pg 284); (4) loss of

full time contact with their brother, LP, and second father figure, me, as we only returned on weekends (7-3-18 VRP 285-286). (The family would again be torn apart and my son endangered, as I predicted in Ex11, due to Deannas autistic behavior and life style in February 2019. GHC Dependency of LP, No 19-7-00601-4.)

A.8 AD clearly exhibits his fear that Sheriff staff is there to arrest his mother. 7-6-18 Ex 24 pg 2. PD indicates that she does not want to get everyone in trouble because she knows I am not a friend and they are in danger from me. CP 541 92.

B. Evidence Of Coaching And Witness Tampering

B.1 There is clear evidence of witness tampering: (1) PD clearly indicates that Deanna told her about how I touched her. 7-6-18 Ex 20 pgs 19-20. (2) Deanna states that she asked a yes/no question and pointed to her daughters vulva area to get PD to say yes. 2-6-18 VRP pg 44. (PD has a history of answering yes to questions. 2-6-18 VRP pg 45, 55-56.); and (3) Deanna used toy deprivation to try to get PD to say things. CP 408.

C. Autism Affects And Explains Everything

C.1 Deanna is autistic (non-neurotypical). CP 537; 7-6-18 Ex 11 pgs 7-8 § (d). PD is autistic. 1-26-18 VRP pg 98; 2-6-18 VRP pg 39.

C.2 Autism is well outside the normal range of knowledge of most people as it affects only 1 in 68 people, per the record. 1-26-18 pgs 99, 147.

C.3 Autism is a lifelong neurobiological disorder, with no cure, characterized by: (1) inability to engage in reciprocal social interactions; (2) language and communication difficulties; (3) limited imagination and a prediliction for rigid routines; and (4) unusual responses to sensory experiences. Berge v US, 879 F Supp 2d 98, 103, 120-124, 2012 US Dist Lexis 104401, Civil Action No 10-0373 (RBW) (DC Cir 2012); 34 CFR § 300.8 (c)(1)(i) (2016)

C.4 Common characteristics can include: (1) sensory problems, (2)

decreased motor skills;(3) avoiding physical contact such as hugging and cuddling;(4) tactory and/or sensory defensiveness as sensory hypersensitivity to sound, light, and touch can cause anxiety, discomfort, or physical pain;(5) lack of reciprocity;(6) difficulty grasping the point of communication;(7) difficulty with non-verbal communication;(8) literal language;(9) delays in language developement;(10) repeating things they have heard;(11) tuning out the world;(12) not paying attention to others;(13) avoiding eye contact;(14) abnormal social interaction;(15) limited curiosity;(16) stereotyped behaviors, interests, and activities;(17) repetitive behavior;(18) obsession with routine to the point that deviation from routine can cause outrage or tantrums;(19) and stimming. Berge, 879 FSupp 2d at 103, 120-124; Leibel v City of Buckeye, 364 FSupp 3d 1027, 1033, 2019 US Dist Lexis 14560, *1-3, No. CV18-01743-PHX-DWL (9th Cir 2019)

C.5 Deanna's autism was a key factor in:(1) her sadism / BDSM (2-6-18 VRP pgs 66-68; 7-6-18 Ex11 pgs 2, 5, 11);(2) her hypersexuallity (7-6-18 Ex11 pg 11);(3) binge drinking (2-6-18 VRP pg 55; 7-3-18 VRP pg 284);(4) constant argu ments with myself and AD (7-6-18 Ex1 pg 1);(5) thinking teasing AD meant I was mean and derogotory to him (7-3-18 VRP pg 297);(6) her evasive and argumentative testimony (7-3-18 VRP 324-325);(7) her not protecting the kids from autistic behavior (7-6-18 Ex11 pgs 1, 2, 8);(8) the Ongoing Traumatic Relationship Syndrom inflicted on me. All of which eventually led to the destruction of our relationship and my need to protect my son LP from her, her lifestyle, and her daughter PD.

C.6 PD's autism led me to develop legal behavior modifications and accommodations that later got twisted into alleged illegal actions; like, (1) the "Look At Me" chin hold – not choke hold - to deal with eye contact avoidance and not paying attention (1-26-18 VRP pg 99; 7-3-18 VRP pg 274); (2) a "Wall Hold" by the

upper arms/biceps area – not by the neck- to deal with her bashing her head into floors and walls when she got frustrated and had a meltdown/tantrum (2-6-18 VRP pg 41; 7-3-18 VRP pgs 274, 307-308) because cuddling an autistic child to comfort them makes things worse due to sematic sensitivity (1-26-18 VRP pg 99) and tactory/sensory defensiveness;(3) and a "Hey You" light double tap with two fingers on the head just above the ear to get her attention when she was hyper-focused, especially on TV, and not paying attention to what she was supposed to do. (7-3-18 VRP 274, 310-312; 7-6-18 VRP 411)

C.7 PD's autism was also responsible for the alleged molestation as: (1) her mom told her she could be in the bedroom while others slept which she took literally (2-6-18 pg 69); (2) the dark and quiet in the bedroom while people slept significantly reduced her sensory load; (3) she liked the feel of the fuzzy (fake fur) blankets and their weight (7-6-18 VRP pg 423) on her bare skin; (4) and she could stim on my chest hair (7-6-18 VRP pg 425) often without fully waking me so she developed the habit of crawling into the bed while I and/or her mother napped and later on when I and LP napped (7-3-18 VRP pg 292; 7-6-18 VRP pgs 422, 423-426; 7-6-18 Ex 17 pg 11). On three of those occasions, while I was asleep or returning to sleep, she grabbed my penis (7-3-18 VRP 292; 7-6-18 VRP pgs 422-426; 7-6-18 Ex 12 pgs 23-24, 26). She also grabbed AD's penis; though, he only indicates attempts (7-6-18 Ex 7 pg 15), and she shows interest in LP's penis. This happened despite being told on multiple occasions that such action was inappropriate and was most likely due to autism based: (1) sexual aggression (2-6-18 VRP pg 43; 7-3-18 VRP pg 294; 7-6-18 Ex 13 pg 4; 7-6-18 Ex 17 pg 15); (2) executive function issues (1-26-18 VRP pg 100); (3) impulse control issues (1-26-18 VRP 98); and (4) difficulty grasping the point of what she was told.

D. Prejudice Presumed And Uncurable

D.1 I was charged with child molestation and two counts of assault on a child; which, was effectively a domestic violence allegation as Deanna and I remained in a relationship during part of the alleged time frame.

D.2 The risk of unfair prejudice from joinder and/or prior bad acts is at its highest in sex offense cases. State v Gower, 179 Wn2d 851,857, 321 P3d 1178,1182 (Wash 2014). See also State v Sutherby, 165 Wn2d 870, 884, 204 P3d 916, 923 (Wash 2008) (noting joinder as especially prejudicial). Like-wise, domestic violence also results in risk of unfair prejudice. State v Gunderson, 181 Wn2d 916, 925, 337 P3d 1090, 1094 (Wash 2014). Furthermore, such prejudice is so high that it cannot be cured by jury instructions. Sutherby, 165 Wn2d at 884; State v Harris, 36 Wn App 746, 750, 677 P2d 202 (Wash App 1984).

D.3 Also, jurors in child sex abuse cases naturally wonder "Why would the child lie?" which indicates an even greater inherent prejudice. State v Perez-Valdez, 172 Wn2d 808, 825, 265 P3d 853, 861 (Wash 2011)

D.4 I was effectively accused of multiple uncharged prior bad acts of sexual assault and domestic violence ranging in time from 2013 to 2017 as: (1) PD alleges she was choked 12 times (7-6-18 Ex 12 pgs 10, 12) and touched 8 times and more than once, and AD alleges he was choked a lot of times (7-6-18 Ex 7 pgs 7, 8). Furthermore, multiple allegations of other uncharged assaults on the children were presented to the jury like: hitting, flicking, knocking, and breaking bones. 7-6-18 Ex 7 pgs 9, 10; 7-6-18 Ex 12 pgs 17-18.

D.5 Unpursued charges are not evidence (State v Boehning, 127 Wn App 511, 519-523, 111 P3d 899 (Wash App 2005); yet, they were presented to the jury and considered by the jury (CP149) as the trial court refused to define events to charge (CP pg 156, CP162), resulting in uncurable prejudice.

D.6 I was further, denied corroberation through expert witnesses, by my counsel (CP 386, 298, 303-305) and the court ((Ps 156-157, 201-203, 205-207, 209-210, 212-213; 6-26-18 VRP pgs 226-228, 231, 245, 273, 281-283), without which my own testimony was not an effective defense (Brown v Myers, 137 F3d 1154, 1158 (9th Cir 1998) and I was not allowed the key to creating reasonable doubt (Thomas v Chappell, 678 F3d 1086, 1106 (9th Cir 2012) cert. denied 133 SCt 1239 (2013), thus preventing the only effective defense with two autistic witnesses.

D.7 The court further increased the presumed and uncurable prejudice by denying me the presumption of innocence by stating I made "statements of serious criminal conduct" (4-3-17 VRP pg 3) and telling prospective jurors that I "entered pleas of guilty to [the] charges." (7-3-18 VRP pg 216) which should mandate reversal.

E. Sleep And Self-Defense

E.1 As noted in Section C.7, the alleged molestation has a scientific basis in autism (hence the absolute need for expert witnesses) and I was asleep or returning to sleep during the three instances when I was grabbed; therefore I was legally "physically helpless" (RCW 9A.44.010(5); WAC 132C-285-130(3); State v Puapuage, 54 Wn App 857, 776 P2d 170 (Wash. App. 1989); State v Mohamed, 175 Wn App 45, 301 P3d 504 (Wash App 2013)) and the legal victim which gave me the absolute right to act in self-defense of myself and LP and AD who had also been targeted or touched, by PD, in the genitals (section C.7; 7-6-18 Ex 13 pg 4 of 4 [labled D59]; 7-6-18 Ex 7 pgs 15-16). Furthermore, in a state of sleep, I had no ability to form the requisite intent and there was no culpable mental state (State v Brockob, 159 Wn 2d 311, 332, 150 P3d 59 (Wash 2006). The momentary contact I made with PD was justifiable under self-defense.

Ground 1 (for dismissal) - The State Violated Attorney/Client Privilege By Taking My Discovery Notes For My Counsel

1.1 I requested and demanded discovery. 12-14-17 VRP pg 21; Supp CP Sub #52. A redacted copy of the discovery was provided to the GHC jail. 1-26-18 VRP pgs 151, 155; 1-27-18 VRP pg 26.

1.2 At first, I was not allowed to take notes for my attorney. 1-26-18 VRP pg 151. I complained and was allowed to take notes; but, the GHC jail took my notes for my attorney and then turned them over to the prosecutor under the false allegation that I had the entire discovery in my cell. 1-26-18 VRP pgs 155-157; 1-29-18 VRP pg 26.

1.3 That allegation was not possible because: (1) I was locked in a room or hand-cuffed to a bench when viewing discovery; (2) the discovery was too large to sneak it to my cell as it was "not typical" and "fairly voluminous" (2-14-18 VRP pg 187); and (3) GHC jail staff took the entire discovery and my notes before allowing me to return to my cell. The court seemed to agree the allegation was not possible. 1-26-18 VRP pg 170.

1.4 In court on 1-26-18, the prosecutor demanded that my counsel be in the room with me while I reviewed discovery. 1-26-18 VRP 156-157. My attorney refused stating "I'm not paid enough to do that." 1-26-18 VRP pg 152.

1.5 On 1-29-18, the judge refused to hear the discovery issue (1-29-18 VRP pg 27); but, a sidebar took place with Lt. Byrd, the prosecutor, and my attorney and an order was drafted. Supp CP Sub #74. I was not privy to the sidebar despite a previous motion that I be included in sidebars. Supp CP Sub #56. My right to open justice was violated. Wash. Const. art. 1 §10.

1.6 When I next reviewed discovery and tried to mail my notes to my attorney, the deputy took the notes and read them. 2-6-18 VRP pgs 18-20.

1.7 In court on 2-6-18, I was notified that the discovery order had been drafted to give the State access to my cofidential attorney/client notes as it stated "the discovery and notes will remain with the jail in between times where defendant reviews it." Supp CP Sub# 74; 2-6-18 VRP pg 19.

1.8 The notes taken and reviewed were "critical to him [defendant] being able to assist me [attorney] in his own defense, which obviousley as the court... know is imperative. I have to be able to have his assistance in this- preparing his defense." 1-26-18 VRP pg 151. Furthermore, the notes were relevant not only to the trial but also to the 3.5, child hearsay, and child competency hearing which occurred during the timeframe the notes were taken. 1-26-18 VRP; 2-6-18 VRP. Additionally, I had to stop reviewing discovery and taking notes inorder to protect confidentiality which prejudiced my speedy trial right and ability to be prepared for trial when I was later forced to go pro-se and had only 15 days to prepare and only eleven days with full access to discovery. Supp CP Sub#'s 124, 134.

1.9 The State showed clear misconduct in taking my notes as the prosecutor lied to the court (fraud upon the court) three times concerning the discovery being in my cell as justification for taking the discovery and my notes. 1-26-18 VRP pg 155; 1-29-18 VRP pg 26; 6-26-18 VRP pgs 277-278. Furthermore, the prosecutor refused to give me the name of the Sheriff staff who statled I had discovery in my cell and also refused information concerning the critical sidebar concerning the discovery order. Supp CP Sub# 113; 6-26-18 VRP pgs 277-278

1.10 The State and my attorney clearly violated my rights under RCW 5.60.060(2)(a) as I gave no consent to have my attorney/client

communications examined.

1.11 There was no security justification to take the notes as the GHC jail could have allowed me to mail the notes to my attorney instead of taking them, reviewing them and providing them to the prosecutor. Their actions and the States action were "purposeful."

1.12 State intrusion into private attorney/client communication is a blatant violation of the fundamental constitutional right to counsel. US Const. amend.6; State v Peña Fuentes, 179 Wn2d 808, 811, 318 P3d 257, 258 (Wash 2014); Wash Const. art1§22.

1.13 In my case, the State cannot show that no prejudice resulted (Peña Fuentes, 179 Wn2d at 820, 318 P3d at 262); because:

(1) The incidents clearly damaged my confidence in my attorney which is a demonstration of actual prejudice. US v Irwin, 612 F2d 1182, 1187 (9th Cir 1980); State v Garza, 99 Wn App 291, 301, 994 P2d 868, 873 (Wash App 2000). The loss of the attorney/client notes was effectively due to my attorneys refusal to review the discovery with me as he was "not paid enough" (1-26-18 VRP pg 152) and I filed a Notice of Ineffective Assistance of Counsel shortly thereafter wherein I addressed the not paid enough issue multiple times (CP 363-366, CP 385-387) and the closed sidebar ((CP 380-381).

(2) The State intrusion was relevant to the critical-3.5, child hearsay, and child competency hearings. 1-26-18 VRP; 2-6-18 VRP; Supp CP Sub# 72.1 pgs 1-2; Supp CP Sub# 75; Supp CP Sub# 77.1; Supp CP Sub# 82.

(3) The inability to review discovery and maintain attorney/client privilege denied me my rights to: assist with my defense, have effective assistance of counsel, not be forced to testify against myself as my notes were taken by the State, a speedy trial as it delayed preparation, equal protection as other defendants were allowed attorney/client privilege, and open justice due to the closed sidebar and denial of

information about that sidebar and the Sheriff staff who the prosecutor alleged was saying I had discovery in cell. US Const amends 4,5,6,14; Wash Const art 1§§3,7,9,10,22.

1.14 In a similar case, a child molestation charge was dismissed when materials prepared at the request of counsel got seized under warrant, like some of my attorney/client notes got seized under court order, as it was not possible to isolate the prejudice resulting from the intrusion. State v Perrow, 156 Wn App 322, 331-332, 231 P3d 853, 857 (Wash App 2010). Also, retrial is not a remedy as the information gained in the intrusion would be available at the second trial. Perrow, 156 Wn App at 330 (citing State v Cory, 62 Wn 2d 371, 377, 382 P2d 1019 (Wash 1963))

1.15 Dismissal is also warranted under the factors in Barrera-Moreno, indicating a court may dismiss a case based on: (1) outrageous governmental misconduct that amounts to a due process violation, or (2) under its supervisory powers to remedy a constitutional or statutory violation; protect judicial integrity; or to deter future illegal conduct. US v Barrera-Moreno, 951 F2d 1089, 1091 (9th Cir 1991). See also US v Chapman, 524 F3d 1073, 1084 (9th Cir 2008).

1.16 There is an old legal saying, "Once the bell is rung, it cannot be unrung." The record shows that the discovery and my attorney/client notes were taken and given to the State. Any affidavit that the State did not use those notes would be self-serving; especially, coming from a prosecutor who lied to the court about my possession of the discovery and acted to prevent the truth about my possession of the discovery and the sidebar from coming to light. Dismissal with prejudice is the best and proper remedy.

Ground 2- Brady Violations

2.1 The State failed to provide complete Brady material and/or failed to provide it in time to be of meaningful use to me and the State lied to the Court about the provision and/or existance of said Brady material; thereby, violating my constitutional right to due process (Brady v Maryland, 373 US 83, 87, 83 SCt 1194 (1963); State v Armstrong, 188 Wn2d 333, 344 P3d 373 (Wash 2017)) and effectively denying me several other rights like my right to: (1) a speedy trial; (2) cross-examine witnesses; (3) compel witnesses; (4) prepared and effective counsel; (5) meaningful self-representation; (6) equal justice; and (7) present a complete defense. US Const. amends. 6, 14; Wash. Const. art1 §§ 3, 22.

2.2 Defense Requests For And/Or Notification Of Missing Brady Material- The defense made many attemps to request, obtain, and/or notify the State of missing Brady material, like: (1) Mistachkin's demand (CP 466-467); (2) Arcuri's demand (Supp CP Sub# 95); (3) my demand (Supp CP Sub# 52); (4) my demand for CPS interview (Supp CP Sub# 60); (5) my demand for AD scratch data (Supp CP Sub# 62); (6) the Holmes subpoena (Supp CP Sub# 145); (7) Motion to dismiss (CP 249-255); (8) motion in limine concerning missing evidence (CP 240); (9) request and promise to investigate scratch by Sheriff staff (1-26-18 VRP 41-42, 44-45, 49-50, 55, 58-59, 72-73); (10) request to and promise by prosecutor to seek missing discovery (1-26-18 VRP pg 52); and (11) demand for a Bill of Particulars (CP 467).

2.3 Limit Of Ground And Reservation Of Right- This Ground will be limitted to three Brady violations: (1) the failure of the State to provide the substance of the oral statements of AD, PD, and Deanna; (2) the failure of the State to provide the AD scratch material; and (3) the failure of the State to provide the Christmas video and photos from the protection

order case. There are other critical violations of Brady, like the denial of CPS records and the protection order filings by Deanna, which I reserve the right to present in other legal actions as they require off the record material to show prejudice.

2.4 Statements By Witnesses AD, PD, and Deanna - On 5-19-17 there was an interview involving AD, PD, and Deanna (CP 541, 490) which contained exculpatory and impeaching statements like: (1) a motive for PD to lie as "she did not want everyone to get in trouble" (CP 541, 490) which ties to credibility and directly affects: the States argument at closing that the kids had no reason to lie (see Brief Of Appellant pgs 48-49; 7-6-18 VRP 458-461); the blocking of my ability to present motive to lie testimony (CP 155-163 §§ 1-2, 5, 9-10, 13-17), the juries "Why would the children lie?" prejudice (Perez-Valdez, 172 Wn2d at 825), and the child hearsay and competency determinations; (2) notice of additional interview of PD (CP 541-542, 491) which goes to: the ability to compel, improper interviews creating false memory, and memory hardening; (3) a very specific choking incident on Chistmas day 2016 (CP 542, 491) and PD making things up about that incident which ties to: credibility, the States failure to provide the Christmas video, and the denial of the subpoena for Deanna's Chistmas photos (6-26-18 VRP pg 238); (4) very specific allegations of sexual contact which included, (A) multiple shifts in her story and admitting to making things up, (B) that it happened 20 times which contradicts testimony given earlier (7-6-18 Ex12 pg 23, Ex26 pg 15), (C) that penetration occured which goes to credibility and the need for defense expert witnesses to show that no penetration occurred and she was lying, (expert witnesses

and medical reports that I was denied (6-26-18 VRP pgs 281-282; (P 201-203, 205, 207, 209-210, 213)), based on no injury to hymen and/or genitals, (D) that she grabbed me first and why she did it and why she was nude [panties only], and her stating nothing really happened all of which support defense theory (sexual allegations at CP 542-545, 491-494); (5) statement about seeing adult sexual activity which goes to alternate source of knowledge (CP 545, 494); and (6) witness tampering by reward or deprivation of reward, her toy horses (CP 545, 494) which goes to credibility and the need for expert witnesses on false memory creation and hardening.

2.5 State Knowledge - The State was well aware that I did not have this information for pre-trial hearings or trial as: (1) they provided discovery to me (1-29-18 VRP pg 26); (2) a demand for a Bill Of Particulars was made (see section 2.2); (3) the prosecutor refers to the Christmastime events when denying knowledge of the Christmas video (6-26-18 VRP pg 217); (4) the State fought to deny a second interview (CP 336-352) (note - by not providing the interview the State blocked the defenses ability to overcome the materiality proof that the State indicates the court needs to allow a second interview (CP 341-342)); (5) Arcuri could not get the Armstrong report concerning the interview (4-16-18 pg 176; 5-14-18 VRP pg 9); and (6) the State blocked access to Armstrong contact information so I could not get the report (CP 204).

2.6 CrR 4.7 - It appears the State also violated CrR 4.7(a)(1)(i) by not disclosing the substance of its witnesses statements.

2.7 Effective Use - Portions of PD's statements from 5-19-17 were filed with the court on 6-28-18, a few days before trial; but, I could find no record of when or if I received that. In either case: (1) no portion of what

AD or Deanna said was provided; (2) the statements were not available for the 3.5, child competency, child hearsay, subpoena approval, motion in limine, and expert funding request hearings - especially for cross-examination (VRPs 1-26-18, 2-6-18, 6-26-18); (3) they were provided too late for effective use at trial-especially with the need to have time to find and fund defense experts on medical and memory; and (4) I could not ask witnesses about them as the trial court specifically denied me the ability to ask about missing material (CP 160, 162) (note also that CP 160 shows that the State was clearly aware that the defense did not have the Armstrong report.)

2.8 Child Competency And Speedy Trial- Without the 5-19-17 statements the defense was very prejudiced and unable to: (1) seek critical defense experts concerning damage from penitration and altered memory due to autism, improper questioning, and witness tampering; (2) present a complete argument and completely cross-examine at PD's child competency hearing; and (3) formulate a child competency argument for AD and get a hearing. A finding that the kids were not competent would have eliminated the States case as due process protects a defendant from conviction based on incompetent evidence. (State v Brousseau, 172 Wn 2d 331, 335, 259 P3d 209, 211 (Wash 2010); US Const. Amend. 14). The cases would have ended much sooner; therefore, my speedy trial right was prejudiced (see State v Price, 94 Wn 2d 810, 814, 620 P2d 994 (Wash 1980)(noting late disclosure of Brady material impermissibly prejudices speedy trial.))

2.9 AD Scratch Brady Material- I made multiple attemps to get all the States material about AD's scratch. I made my statement to Sheriff staff conditional on investigation of

the AD scratch incident (see generally 1-26-18 VRP pgs 41-42, 44-45, 49-50, 55, 58-59, 72-73). I filed a specific demand (Supp CP Sub#62). I attempted to subpoena Sheriff staff Holmes for the information (Supp CP Sub# 145).

2.10 The State made two promises to investigate and obtain the material concerning the AD scratch: (1) the first during interogation, to induce my statement (1-26-18 VRP pgs 41-42, 44-45, 49-50, 55, 58-59, 72-73); and (2) the second when the prosecutor states "We'll ask for that." (1-26-18 VRP pg 52) which was in response to my noting that "I sent a motion to you to request all of that [Supp CP Sub# 62]--... and we still have not received it, as far as I know." (1-26-18 VRP pg 51) and specifically noting that I had not received Deanna's or the officer's version [Holmes report 7-6-18 Ex 24 and the Deanna Drummond statement listed as attached therein].

2.11 My specific demand (Supp CP Sub# 62) requests: (1) Sheriff and CPS staff involved; (2) Deanna's protection order material; (3) photos and video; (4) witnesses who saw the scratch; (5) manditory reporter statements about scratch (school, PCAP, medical, clergy); (6) notes, reports, documents, recordings, and testimony from State investigators which would include the prosecutors witness statements refered to in sections 2.4-2.8, and the CPS records the prosecutor had (9-11-17 VRP pgs 13-14); (7) expert and/or forensic information. Despite the promise by the prosecutor, most of that was not provided. (Which I will address in future actions due to the need to present off the record material to show prejudice.)

2.12 Despite the States promise in court no further AD scratch material was provided to the defense until mid-trial when the Holmes report (7-6-18 Ex 24) and its photos were provided (7-3-18 VRP pgs 289-290)

2.13 State Lies, False Statements, And Fraud Upon The Court About

AD Scratch Brady Material - The State made several false statement, told lies-direct and by omission, and committed fraud upon the court concerning the existance, seeking, and provission of the AD scratch Brady material; including:
(1) Sheriff staff Ramirez promising to investigate the incident, especially my side from 7-6-18 Exs 11,10, and then attempting to coverup that promise by not recording the interogation and leaving the promise out of his report (7-6-18 Ex 23; section 2.10);
(2) The prosecutor lying about her intent to "ask for that" material in my specific demand (sections 2.10-2.11);
(3) The prosecutor lying to the court about the existence and provision of "All reports, notes, emails, photos, media, or other documentation, interviews or evidence related to the scratch to AD" and "Any and all follow-up from other deputies concerning said incident." (6-26-18 VRP pg 241; Supp CP Sub# 145) when she stated that "There was no further investigation..." and "Those have all been provided.... once he [me, the defendant] took over [was forced to go pro se]." 6-26-18 VRP pgs 241-243. The court relied on her testimony and denied the portion of the Holmes subpoena requesting that material. 6-26-18 VRP pg 243. The prosecutor then proved she lied to the court by producing the Holmes report and photos in mid-trial after she asked Holmes for them that same day. 7-3-18 VRP pgs 265-266, 289-290.
(4) The prosecutor also lied about the Holmes photos when she indicated that the only photos related to "hurting or abusing" the kids were provided by me (6-26-18 VRP pg 236) and when she stated "They [the photos] weren't indicated in his report..." (7-3-18 VRP pg 265) yet the report clearly

indicated the photos (7-6-18 Ex 24 pg 3) and the prosecutor produced them on 7-3-18 mid-trial.

2.14 Known Existence Of AD Scratch Brady Material - It is evident from the record that Holmes, Ramirez, and the prosecutor knew of the existance of other non-provided AD scratch material as: (1) Holmes did the initial AD scratch investigation and (2) Ramirez indicates that he reviewed the Sheriff's file in his report (7-6-18 Ex 23 pg 21) and attached it to his report.

2.15 Prejudice To Venue Change - Without Holmes report I was unable to correctly move for a venue change under CrR 5.1§§ (b), (c), US Const. amend 6, and Wash. Const. art 1§22 as the Holmes report indicates that the scratch happened on the way to Olympia which is in Thurston county (7-6-18 Ex 24 pg 2). I agree that it happened in Thurston per 7-6-18 Ex 10 pgs E4-E5 (McCleary does not have fast food, large crowds, or Walmart and Costo where we shopped).

2.16 A venue change on AD's charge would have benefited my defense as: (1) the court in GHC had already denied me the presumption of innocence; (2) a venue change would have severed a charge and reduced the inherent and uncurable prejudice from joined charges like mine (see Statement of Exceptional Case, section D); (3) allowed a designation of event charged (CP156) so the defense could focus on just one provably false allegation; (4) provided me with additional counsel in Thurston who might have actually sought the missing Brady evidence, CPS and medical records, witnesses and expert witnesses; (5) obtained expert witness funds which GHC denied (6-26-18 VRP pgs 281-284) to verify Deanna's autism and no evidence of strangulation medically which was key to my defense and creating reasonable doubt (see generally Brown v Myers, 137 F3d 1154, 1158 (9th

Cir 1998)(defendants own testimony is not an effective defense without corroberation); Thomas v Chappell, 678 F3d 1086, 1106 (9th Cir 2012)(corroberation key to reasonable doubt)); (6) allowed me access to the law which GHC did not have (4-16-18 VRP pg 174); and (7) allowed me to use the custody war civil cases to show bias and perjury (see Statement of Exceptional Case section A.2) which was denied by the GHC court (CP 155-161 §§ 1, 2, 5, 11, 13, 14, 15, 17, 9, 10) which should mandate reversal, which I hereby claim, per State v Dolan, 118 Wn App 323, 328, 73 P3d 1011, 1014 (Wash App 2003).

2.17 Further Prejudice - My defense was further prejudiced by not having Holmes report until mid-trial as it showed: (1) the existance of a CPS report which would have helped gain access to the CPS records I was denied; (2) the existence of an additional statement by Deanna; (3) the existence of photos; and (4) a motive for AD to lie as he was afraid that Holmes was there to arrest Deanna which ties to PDs statement of motive to lie (see section 2.4(1)), giving both kids a powerful reason to lie - to protect their mother and family unity (see also Statement of Exceptional Case section A.7). All of which were relevant to child competency, child heresay and trial; yet, not available or not available in time for effective use by me or my proposed experts.

2.18 Scratch Photo Prejudice - The scratch photos and Holmes report (7-6-18 Ex 24) were not provided until mid-trial on 7-3-18 at about 1:15 PM (7-3-18 VRP pgs 289-290) which was too late for use at child hearsay and to motion for a child competency hearing for AD and for effective use at trial. My objections to the late production of the photos and report were brushed aside by the trial judge (7-3-18 VRP pgs 264-265, 289-290, 390) who already presumed me guilty (see section D.7),

denied me counsel (Brief Of Appellant section E(1) pgs 18-32), and denied me least restrictive conditions of release (Ground 3).

2.19 The scratch photos were critical to the defense; because: (1) it shows a plausible expanation for the "long lasting" allegation (7-6-18 Ex 10 pgs E2-E3), the basis for the RCW 9A.36.041 charge, as a medical expert could have testified that due to the location of the scratch, at the shoulder/neck junction, it was subject to reinjury and agrivation from clothing collars and neck movement (see 7-6-18 Ex 24 photos) especially when the mother refused to treat and protect the scratch (7-6-18 Ex 10 pg E5, bottom); (2) a medical expert could have also testified that scratchs do not grow-as indicated by Holmes report which indicates that the scratch: started as one inch wide and two inches long, then shrank to a half inch long, then grows to 55 millimeters long (7-6-18 Ex 24 pgs 2-3) - unless they are tampered with and AD names a tampering suspect "Cliff did it." (7-6-18 Ex 25 pg 8); (3) a medical expert for the defense could have testified that, based on location, the scrach could not have occured due to the alleged double handed strangulation (7-6-18 Ex 25 pgs 8-9) as my pinky fingernails are not wide enough to match the scratch width; and (4) a medical expert for the defense could have testified that based on the location of the scratch there would have been significant trauma to internal structures of the neck in order to cut off air flow as described by AD (7-6-18 Ex 7 pg 8) and voice, trauma that should have included damage to the cartilage of the trachea (wind pipe), esophogas, thyroid, larynx's (vioce box) horns-cornu, and/or hyoid bone as well as petechiae (eye and facial hemorrhaging) and damage and hemorraging to the strap muscles and muscles linking the cricoid cartilage rings (see generally State v Roman, COA 44325, ¶3 (July 8 2014) reported

at 182 Wn App 1019 (2014); Little v Soto, Case No CV-17-4655-AB(JEM) (CD Cal Feb 20, 2019), 2019 US Dist Lexis 72785,*6; (Random House Webster's College Dictionary (2d Ed. 1997) pg 312) cricoid cartilage- "pretain to a ring-shaped at the lower part of the larynx.") and (5) modern medical imaging like CAT [computed tomography] would have showed that cartilage damage as it is long lasting (see Roman, 182 Wn App 1019, full case ¶3; also note that the cartilage structures of the larynx are easy to feel and see at the level of the scratch) thus allowing the defense to show no strangulation occured, which would have created a reasonable doubt.

2.20 The Christmas Video - The State only provided my declaration and its paper exhibits from the protection order case (7-6-18 Ex11). The State failed to provide the video and photos and Deannas filings from the protection order, which we know the State had as the GHC Sheriff staff Ramirez requested all "copies of Palmer's and Deanna Drummond's court documents" from the GHC clerks office (7-6-18 Ex 23 pg 21).

2.21 At this point I address only the video(s) in relation to the AD scratch (sections 2.14-2.19) Brady material and PD's statement that she was choked on Christmas day (section 2.4(3). I reserve the right to address the remaining failures to provide Brady material from the civil cases in future legal actions.

2.22 I gave copies of the video(s) to the GHC court clerk and the commissioner who heard the protection order case (CP 250-251) and to CPS (6-26-18 VRP pg 268); and, those were from Christmas day 2016 at Deanna's (7-6-18 Ex 11 pg 12) and they showed both AD and PD with no visible injuries that I could see and no fear from the kids, even

though: Deanna and I have an argument, AD gets corrected, PD was allegedly choked a short time before. See generally section 2.4 (3); 6-26-18 VRP pgs 267-268.

2.23 Video Relevance - The video was extremely relevant to my ability to cross-examine the kids, Deanna, the Sheriff staff, Mike Clark, and Lisa Wahl, both at hearings and trial, about dates of alleged assaults, lack of or variations in injuries, injury tampering (section 2.19 (2)), lack of fear and trauma in the kids and Deanna, and my actual behavior when correcting a child and having an argument. The video would have also gone a long way toward helping create reasonable doubt by showing the jury that: (1) I did not act like the violent person the State made me out to be in it closing arguments (7-6-18 VRP pg 459); and (2) by showing no visible signs of the scratch and no visible or emotional signs of a choking incident that allegedly happens a short time before the video was taken on Christmas day.

2.24 State Lies About Video - Once again the State lies to the court stating "The State, as far as the prosecutor's office and law enforcement, never had this video." and "That's part of the records that he provided that were then in turn turned over to the defense counsel." which we know is false as I provided copies of the video to the GHC court clerk and the commissioner who heard the protection order case and the Sheriff staff obtained and reviewed all the protection order material (7-6-18 Ex 23 pg 21). See 7-6-18 VRP pg 271.

2.25 Spoilage Of Evidence - The penetration of a young child's hymen and the strangulation of a young child by picking them up by the neck and throwing them against a wall and strangling them until their eyes bug and they can't breath should leave external and internal injuries (see section 2.19 (4)-(5); Criminal Defense Techniques, Vol 3A Cipes, Bernstine and Hall § 67C.09

(2)(b) (Mathew Bender, Rev. Ed.)) that could have been shown by modern medical imaging, especially fractures to the cartilages. That medical evidence is now spoiled due to the passage of time. If damage is not currently evident the State will claim it healed. If damage is present then there is no way to show that it did not happen post allegation, especially with the new abuse dependence against Deanna (GHC 19-7-60-14). Therefore, my defence is forever prejudiced due to the States failure to produce the Brady material in this Ground.

2.26 Prosecutor Duty - "A reasonable competent prosecutor would have diligently obtained and reviewed any material evidence.... The prosecutor would have then produced the evidence, regaurdless of any requests by the defendant or court order, in a timely manner so that the defenant has a meaningful opportunity to review and use the evidence at trial...." US v Covey, 284 FSupp 3d 1054, 1061 (2018). The prosecutor must resolve any doubt regarding disclosure in favor of sharing the evidence with the defense. State v Dunivin, 65 Wn App 728, 733 P2d 799, 801 (Wash app 1992); US v Agurs, 427 US 97, 108, 96 SCt 2392 (1976). The States duty extends to all others acting on the governments behalf that have material evidence even if the evidence is available through public records requests (which I could not access due to indigency). Strickler v Green, 527 US 263, 280-281, 119 SCt 1936 (1999); see also State v Davila, 184 Wn 2d 55, 71, 357 P3d 636, 644 (Wash 2015).

2.27 Prosecutors Actions - Rather than provide all material evidence in a timely manner, the State: (1) blocked my access to discovery by denying me attorney-client privilage (See Ground 1); (2) fought all my efforts to subpoena

relevant material (see 6-26-18 VRP pgs 213-279) which included lying to the court about the existence, possession, and provission of requested and/or attempt to subpoena material evidence (sections 2.13, 2.24); (3) delayed the production of the substance of PD's witness interview until a few days before trial, while leaving out AD's, even though the State knew for months that the defense did not have it and that it was material (see sections 2.4-2.8); (4) failed to produce material portions of the Holmes investigation into AD's scratch, after being given specific demands for the production of said material and promising in court to obtain said AD scratch material (over five months prior to trial), then lying to the court about the AD scratch material and its production in order to prevent me from subpoenaing Holmes for the material, and finally producing some (Holmes report and photos) of the material (the CPS report, Deanna's statement, and AD's and PD's statements, which were all relevant for cross-examination and investigation for pretrial hearings and trial were never produced and provided) after the trial had started when it was too late for the defense to effectively use that material, especially to obtain expert witnesses and medical exams to show no strangulation occurred (see sections 2.9-2.19); and (5) lying about the Christmas video(s), which were very relevant to the allegations of strangulation and my allegedly being a violent person, while failing to produce said video despite the Sheriff staff obtaining "all" of the protection order case back in April 2017, (see sections 2.20-2.24).

2.28 Irreparable Injury- The failure of the State to

provide Brady material combined with the passage of time has resulted in irreparable injury from: (1) the loss of exculpatory evidence, most notably the medical evidence that could have created reasonable doubt about the strangulation allegations, supported expert testimony for the defense, and impaired the credibility of AD, PD, and Deanna; (2) the "dimming memory" issues that are known to result of the passage of time, which can rarely be shown, as AD, PD, Deanna, CPS, Holmes, and many others (see witness list (P204-211) would have to go back as far as 2015 and remember very specific details of events that happened, which makes it impossible for the defense to adequately prepare which skews the fairness of the entire system. See State v Ross, 8 WnApp 928, 441 P3d 1254, 1267-1268 (Wash 2019); Doggett v US, 505 US 647, 654, 112 SCt 2686 (1992).

2.29 Dismissal- Under CrR 8.3 and the factors listed in US v Chapman, 524 F3d 1073, 1084 (9th Cir 2008) and US v Barrera-Moreno, 951 F2d 1089, 1091 (9th Cir 1991)-dismissal with prejudice is the appropriate remedy. Two cases are on point for dismissal in my case: (1) State v Martinez, 121 WnApp 21, 86 P3d 1210 (Wash App 2004) a CrR 8.3 decision on the State failing to disclose Brady material until after trial began; and (2) US v Chapman itself where the government failed to disclose Brady material until after trial began. Furthermore, in State v Sherman the court indicated that when a prosecutor failed to provide significant documents requested in discovery dispite having agreed to do so (see section 2.10), then the failure to produce the documents was "in and of itself" enough to support dismissal. State v Sherman, 59 Wn App 763, 768, 801 P2d 274 (1990).

2.30 Martinez- In Martinez the court stated: (1) "The

States failure to disclose material exculpatory evidence until the middle of a criminal jury trial, despite the fact that the exculpatory evidence was obvious well before trial, may be so outrageouse as to exceed the bounds of fundamental fairness, violate due process and bar a subsequent prosecution of the defendant." (Martinez, 121 Wn App headnotes, 35-36); and (2) that such an act is "so repugnant to the principles of fundamental fairness that it constitutes a violation of due process." (Martinez, 121 Wn App at 35); and (3) that such an act prejudices the defendants right to effective assistance of counsel and to adequately prepare for trial (Martinez, 121 Wn App at 34-35); and (4) dismissal with prejudice is the proper remedy because retrial will not seriously deter the State from such conduct in the future (Martinez, 121 Wn App at 35-36). (See also State v Norris, 157 Wn App 50, 80, 236 P3d 225; 239-240 (Wash 2010) (noting - dismissal appropriate when the State deliberately withholds evidence it knew or should have known [the defendant] was entitled to (see sections 2.11, 2.14, 2.17))).

2.31 Chapman - In Chapman the court found that: (1) the governments failure to inqure into and provide discoverable materials, despite notification by the defense and its promise to do so, combined with its misrepresentation to the court that all such documents had been disclosed prior to trial, then producing portions of the documents after trial started constituted "flagrant" prosecutorial misconduct, even if not intentional (Chapman, 524 F3d at 1085); and (2) that it was "prosecutorial misconduct in its highest form; conduct in flagrant disregard of the United States Constitution;

and conduct which should be deterred by the strongest sanction available." (Chapman, 524 F3d at 1090); and (3) retrial would advantage the government and substantially prejudice the defense; therefore, dismissal is the proper remedy (Chapman, 524 F3d at 1087, 1090); and (4) the violated a "sworn duty... to assure the defendant has a fair and impartial trial," (Chapman, 524 F3d at 1088.

2.32 Govey- I humbly ask the Court to follow the words and intent of Govey: "The Sixth Amendment to the United States Constitution demands that every defendant be given the right to a speedy trial, the right to compulsory process, the right to confront witnesses, [the right to proper venue], and the right to effective counsel. These constitutional rights are not asperational. Every defendant is entitled to them. Unfortunately, the Government denied [the] Defendant those rights by failing to meet its discovery obligations in this case. The Court is left with no viable remedy but to dismiss the charges with prejudice." (Govey, 284 FSupp 3d at 1064. See also Wash. Const. art 1 §§ 10, 22; Brady v Maryland, 373 US at 87 (noting that due process is also violated)) - and move that my conviction and charges be dismissed with prejudice.

2.33 Previous Similar Misconduct - In State v Perez, COA 48117-1-II, 2016 Wash App Lexis 3049 (Dec. 20, 2016) the deputy prosecutor in my case, Erin (Gany) Riley [name change], was noted by the Court Of Appeal as "unethical" after failure to act with reasonable diligence and making material misrepresentation to the court about Brady material.

Ground 3 - Denial Of: Fair Bail, Least Restrictive Conditions Of Release, And Counsel

3.1 I was not granted fair bail and/or least restrictive conditions of release based on my ability to pay and my relevant factors for release (RCW 10.21.050, CrR 3.2 (c), 18 USC § 3142 (a), and ABA Standards Relating to Pretrial Release - Standard 5.1 (b)) which violated my constitutional rights to: freedom from excessive bail, equal protection, access to the court, due process, and counsel (US Const. amends 1, 6, 8, 14; Wash. Const. art 1 §§ 2, 3, 4, 12, 14, 20, 22) resulting in: de facto preventative detention; oppressive pretrial incarceration; sever prejudice to my defense; and allowed the violation of my constitutional and statutory rights to: the presumption of innocence as fair bail recognizes the presumption of innocence and is a corollary to it (US v Motamedi, 767 F2d 1403, 1407 (9th Cir 1985); State v French, 88 Wn App 586, 593, 945 P2d 752, 757 (Wash App 1997)); bail within 48 hours as no bail amount was provided to me (see 3-30-17 VRP and Supp CP Sub#8) as required by CrR 3.2.1(a) and (c) (Westerman v Cary, 125 Wn2d 277, 289, 892 P2d 1069 (Wash 1994)); attorney/client privilege, no unwarranted search and seizure, no forced self-incrimination, counsel, and due process by the State taking my discovery notes for my attorney (Ground 1) as that was only possible due to pretrial incarceration (US Const. amend. 4, 5, 6, 14; Wash. Const. art. 1 §§ 2, 3, 7, 9, 22); fundamental fairness, a complete defense, and a fair trial as pretrial incarceration has the practical effect of hampering a defendant's preparation of his defense (see Barker v Wingo, 407 US 514, 532-533, 92 SCt 2182 (1972); Wash. Const. art 1 § 3; US Const. amend. 14) and in my case, based on 12 hour day, over the 16 months I lost over 5,000 hours of the ability to gather evidence, contact witnesses, and earn money to obtain expert witnesses, testing, and legal information (see

(CP 199-213 and sections 3.4-3.7 for detailed damages and witnesses I was not able to contact) which also denied me my constitutional rights to compel and confront witnesses (US Const amend. 6; Wash Const. art 1 § 22); Speedy Trial due to the hampering of my defense preparation, the denial of usable discovery until shortly before trial (Supp CP Sub #134; 6-21-18 VRP pgs 2-7), and the State creating a false allegation of a threat by me against my attorney, Mr Mistachkin, which allowed him to withdraw against my wishes which was only possible due to my pretrial incarceration (see Brief of Respondant pg 5; section 3.5(5) ; and disability accommodations as requested under the ADA (see Supp CP Sub#'s 64,65; CP 274-276).

3.2 Relevant Factors For Release- My relevant factors for release were: (1) No Criminal Violent History - I have no criminal history (CP 554); (2) No Protection Order Violations - A protection order for AD, PD, and Deanna had been in place since 3-1-17 based on allegations similar to the criminal charges (see GHC cause 17-2-133-0 referenced in 7-6-18 Ex 11 pg 1; 7-6-18 Ex 23 pg 20; Statement of Exceptional Case section A.2). I had not fled, violated the protection order, or harmed anyone. I had shown up for court and filed a response declaration with exhibits (7-6-18 Ex 11).; (3) Location And Famity - I lived in King County, three counties away from AD, PD, and Deanna, in a travel trail at my sisters house while I was going to college. All of my close family and support network were in Washington were I had lived for about 22 years (Supp CP Sub#7). I maintained no out of state contacts.; (4) My Son- My son was the only surity needed as he is: "more precious than any property right" (Stantosky v Kramer, 455 US 745, 758-759 (1982)) and "more precious ... than the right to life itself" (

In re Welfare of Luscier, 84 Wn2d 135, 137, 524 P2d 906 (Wash 1974)). My right to the control and custody of my child is fundamental and sacred (Moore v Burdman, 84 Wn2d 408, 411, 526 P2d 893 (Wash 1972) and I was engaged in three legal battles to get him out of fostercare and protect him from PD, Deanna, and GHC CPS who have all abused him (see CP 312-313; Statement of Exceptional Case sections A and C). I was not going anywhere and I was not going to do anything criminal as that would endanger my custody of my son.; (5) State Dependency- The State of Washington was providing my: income- TANF (Supp CP Sub#5, 7-6-18 Ex11 pg3), Food- SNAP (Supp CP Sub#5), College Expenses- Welfare to Work retraining (CP 117), Business Startup - Div. of Vocational Rehabilitation self-employment program (CP 117-121, CP 386), Disability Accommodations - Dept. of Labor and Industries (CP 274), Medical Insurance- Apple One (CP332), and Business Licensing- Dept. of Licensing real estate broker, social business, and ride sharing (CPs 117, 361-362, 385; 7-6-18 Ex11 pg 11).; (6) Medical- Short of death, my faith requires naturopathic medical treatment and Bastyr has the only naturopathic cardiologist that I know of. Plus, I am dependant on the State to pay for very expensive medication and treatment for my heart disease, high blood pressure, and diabetes. (CPs 119, 274, 332, 378).; (7) Appearance History- I had a perfect appearance history for Court from business, dependency, and protection order cases (see Statement of Exceptional Case section A.2 noting some cases) .; (8) Alternative Legal Explanations- There were legal alternate explanations for the alleged criminal acts (see Statement of Exceptional Case sections C.6-C7, E1; (9) Deanna's And PD's History Of False Allegations And Perjury- I could show a history of false allegations from PD and Deanna and perjury for

Deanna. (7-6-18 Ex11 pgs 2,4; Statement of Exceptional Case section A.6). ; and (10) State Tracking - Much of my location and time was already being tracked by the require logging in and reporting of hour for the Welfare to Work retraining program at Highline College.

3.3 Viable Alternatives To Pretrial Incarceration - I believe that with all the State agencies tracking my hours and location - DSHS (TANF), Welfare to Work, Div. of Vocational Rehabilitation, and Highline College - I should have qualified for release on personal recognizance. Plus, I would have restarted doing ride sharing - Uber and Lyft - and they also track location and time while I drive or wait for customers, via cell phone GPS. In the extreme, cell phone or GPS bracelet location monitoring, which has up to a 99% court appearance success rate (see Hernandez v Sessions, 872 F3d 976, 991 (9th Cir 2017), combined with RCW 10.01.160's $150 limit on pretrial supervision costs to me would have been affordable (see State v Hardtke, 183 Wn2d 475, 481, 352 P3d 771 (Wash 2015)).

3.4 Damage To My Life - The oppressive pretrial incarceration did extensive damage to my and my sons life: (1) I lost custody and all contact with my son (CP 82) and he was again endangered and abused by GHC CPS, PD, and Deanna (GHC Dependency of LP 19-7-00060-1-4) because I could not fight the civil cases while in jail as the Sheriff staff blocked my access to the NW Justice Project attorney for the founded case and the SCRAP attorney, Daewoo Kim, for the dependency No. 17-7-00885-9 KNT (CP 314).; (2) I lost the ability to seek justice from GHC CPS and foster parents for the abuse of my then 3 month old son by starvation in the 2015 dependency (CP 312-313; 7-6-18 Ex 11 pg 10 § d).; (3) I lost

my home, car, benefits, belongings, business licensing, and the business to help end homelessness, hunger, and poverty for people and pets the result being that many people and pets have needlessly died and suffered because the courts failed to follow the laws and their own rules.; (4) I was denied the ability to practice my faith- medically, privately, and through eating /diet.;(5) I lived in constant pain and fear due to: slow starvation, the denial of disability accommodations, cold affecting disabilities due to not being able to buy extra clothing, cardiac chest pain, and hemorrhaging (bleeding) from high blood pressure (CP 273, 306).

3.5 Damage/Prejudice To My Defense - As stated in section 3.1, de facto preventative and oppressive pretrial detention damaged/prejudiced my defense by:(1) allowing the State to take attorney/client privileged notes concerning discovery (Ground 1); (2) costing me over 5,000 hours of investigative and money earning time thus denying me the ability to review the 5,000 to 10,000 pages of documents and photos relevant to my defense (CP 283, 298, 386) and preventing me from doing the things listed in CP 199-213 which includes finding effective counsel, obtaining expert witnesses-autism, interview techniques causing false memories, and physical injuries from alleged crimes and that no such injuries existed which is grounds for doubt-, and interview other potential witnesses, and obtain text messages showing Deanna's perjury, failure to protect, illegal activities and bias.; (3) denying me discovery.; (4) denying me disability accommodations;; and (5) denying me counsel and a speedy trial and a public trial and an open administration of justice and the right to be present when the prosecutor and her Sheriff staff co-conspiritors

presented false allegations that I threatened to attack Mr. Mistachkin and neither the court, my attorney, or the State notified me or allowed me to defend against such allegations which were the basis of the withdrawal as I did not want it (2-8-18 VRP pg 146 "I want him to stay on the case and just do the job he is supposed to do.", Id "I need representation. Mr. Mustachkin is supposed to be the best.", 2-14-18 VRP pg 187 "But I still want him as an attorney."), the court did not allow it without the alleged threat (2-8-18 VRP pg 151 "I am not going to grant the request to withdraw today.") and Mr. Mistachkin indicated that the only reason he was not willing to stay on the case was personal safety (2-14-18 VRP pg 186 "And I would be willing to go on, but I can't -- it's not worth my personal safety..."). The Court also left the threat allegation out of its history of representation (Supp CP Sub#116) which indicates further denial of open justice. The allegation was a fraud upon the court, made up by a prosecutor who: wanted Mistachkin off my case because I was not allowing ineffective representation (see generally CP 283-284, 360-387, 2-8-18 VRP pgs 145-147; 2-14-18 VRP pgs 186-187) and I brought it to the courts and worlds attention; thought it was vengeful that I was demanding my constitutional right to effective assistance (2-6-18 VRP pg 15); knew I could not get full and effective assistance from the attorneys doing public defense work in GHC (2-6-18 VRP pg 15; 2-8-18 VRP pgs 148-149; 2-14-18 VRP pg 191; Brief of Respondent pgs 3-4); and knew I had valid issues for appeal (2-8-18 VRP pgs 147-149). The allegation makes no sense as I am smart enough to know that violence solves nothing (plus my faith abhors it) and assaulting anyone would create more criminal charges, destroy my credibility, and prevent my protecting and regaining my son. Plus, my shoulder, arm,

and hand disability render me unable to effectively punch or block and the adrenaline surge from a physical fight would cause a significant increase in heart rate, blood platelets, and blood pressure which could literally kill me (CP 277). I would have certainly sworn under oath that I had no intent to physically harm Mr. Mistachkin; but, I never got that chance as no one informed me of the allegation. It was all handled in chambers and sidebar, thus denying me my constitutional right to be present and have open justice (State v Irby, 170 Wn2d 874, 880-881, 246 P3d 796 (2011); US Const. amends. 6, 14; Wash Const 3, 22, 10), and due process when critical situations (counsel) and/or issues involving disputed facts occure (the assault threat allegation)(Id., In re Pers. Restraint of Lord, 123 Wn2d 296, 306, 868 P2d 835 (1994)) and/or when my presence would contribute to the fairness of the procedure (State v Love, 183 Wn2d 598, 608, 354 P3d 841 (2014), cert denied, 136 SCt 1528 (2016); US Const. amends 6, 14; Wash. Const. art1 §§ 3, 22, 10). The State made up this allegation just like it made up the allegation that I had all the discovery in my cell (Ground 1 sections 1.2-1.3, 1.9) both of which were "intentional device[s] to gain tactical advantage over the accused." (quoting US v Marion, 404 US 307, 324, 92 SCt 455 (1971)). [I will fully address ineffective assistance in future legal actions if needed.]

3.6 Additional Damage - Additional damage from pretrial incarceration to my defense includes: (1) the State being able to record and use my phone calls when I was pro-se which hampered my ability to investigate and contact witnesses (CP 218) and denied me my constitutional rights to compel witnesses and present a complete defense (US Const. amends. 6, 14; Wash Const art1 §§ 2, 3, 22); (2) my not being able to attend

the three legal actions (Statement of Exceptional Case section a.2) and obtain proof of false allegations against me, perjury, criminal activity, bias, motive, and plan (see generally 7-6-18 Ex 11; Statement of Exceptional Case sections A.6, A.7, B.1, C.5, C.6, C.7) all of which could lead to doubt thereby denying me the ability to confront witnesses and present a complete defense (US Const. amends. 6, 14; Wash. Const. art 1 §§ 3, 22).; (3) not being able to drive for Uber and Lyft (7-6-18 VRP pg 451; 7-6-18 Ex 11 pg 11) to earn money to pay for investigation and expert witnesses that my counsel refused to obtain (CP 386, 298, 303-305) and that the court denied because I could not get names and affidavits for the experts due to being in jail without phone and internet access (CP 156-157, 201-203, 205-207, 209-210, 212-213; 6-26-18 VRP 226-228, 231, 245, 273, 281-283) thus denying me constitutional rights to effective assistance, confrontation, compel witnesses, due process, equal justice (people with money got their experts), and a fair trial with a complete defense (US Const. amends. 5, 6, 14; Wash. Const. art 1 §§ 3, 2, 22).; (4) not being able to access a computer with internet access which where critical to my defense to: (A) show my attorneys were lying (CP 300, 302-303, 368-369, 370; 2-8-18 VRP pgs 145-146, 147, 149; VRP 5-14-18 pgs 6-7), violating RPC and RCWs; (B) locate witnesses and get statements via email; (C) locate evidence; (D) do legal research and view recorded and video presentations; (E) prepare my defense, motions, and exhibits, especially related to damage from strangulation and sexual penetration exhibits (see CP 330-332 for internet benefits). [The internet was so critical that waiver of speedy trial and going pro-se were both conditional on internet access (4-16-18 VRP pgs 9(174), 13(178), 12(177), 14(179)-15(180)). I had already rejected standby counsel as an option (4-10-18 VRP pg 203).] I ask the court to address the damage to my defense due

no internet and no computer under the additional claims of ADA violations, GR 33 violations, the doctrine of "changing standards of decency, and the right to freedom from punishment prior to conviction (US Const. amends. 8,6,14; ADA; Wash. Const. art1 §§ 3,14,22) as in the modern world computers are critical to legal work as is the internet and I requested these as disability accommodations equal to those I had outside of jail (CP 269, CP 318, CP 330).

3.7 Speedy Trial - The courts have acknowledged that de facto preventative detention makes the rights to: speedy trial, the presumption of innocence, and freedom from excessive bail "all empty pronouncements, full of sound and fury but signifying nothing." (US v Aileman, 165 FRD 571,578 (9th Cir 1996)). My speedy trial was certainly denied by the defacto preventative and oppessive pretrial detention I was given due to the damages listed in sections 3.4-3.7. which hampered my ability to prepare my defense and denied me counsel- Mr. Mistachkin- which resulted in a 5 month delay. (2-14-18 VRP for withdrawal; Supp CP Sub# 85; 7-3-18 VRP start of trial). I was severely handicapped in my defense preparation (Harris v Charles, 171 Wn2d 455, 468, 256 P3d 328 (Wash. 2011); Barker v Wingo, 407 US 514, 532-533 (1972)).

3.8 Equal Justice And Excessive Bail- My rights to equal justice and due process and no excessive bail were violated (US Const. amends. 8, 14; Wash. Const. art. 1 §§ 3,12) based on: (1) Bell v Wolfish, 441 US 520, 583 n.12, 99 SCt 1861 (1979) (any bail at all is excessive to the class of people known as indigent); (2) Hernandez v Sessions, 872 F3d 976, 990, 992-995 (9th Cir 2017) (the failure to consider financial circumstances and alternative conditions of release when setting bail results in little more than punishing a person for their poverty in violation of due process and equal justice.); (3) Bearden v

Georgia, 461 US 660, 665, 671-672, 103 SCt 2064 (1983) (equal protection bars [de facto] imprisonment due to indigency.); (4) US v Salerno, 481 US 739, 754, 107 SCt 2095 (1987) (bail is excessive when it is more than needed to achieve the purpose for which it was imposed.) My bail was set at $50,000, though I did not know that until later as bail amount was blank on Supp-CP Sub#8, which was extremely excessive based on my indigency and Relevant Factors for Release (Supp CP Sub#5; section 3.2)

3.9 Abuse Of Discretion And Constitutional Error - The denial of the presumption of innocence and failure to consider financial ability to pay and alternatives to bail is abuse of discretion and constitutional error (State v Huckins, 5 Wn App 2d 457, 467-468, 426 P3d 797, 804 (Wash App 2018); State v Ingram, 9 Wn App 2d 482, 447 P3d 192 (Wash App 2019); Wash. Const art 1 §§ 3, 14, 20).

3.10 Mootness - In Ingram and Huckins the constitutional error was declared moot; however, a violation of a constitutional or statutory violation is not moot if a court can still provide effective relief. (Pentagram Corp. v Seattle, 28 Wn App 219, 223, 622 P2d 892 (1981)). Effective relief can be provided in my case by reversal due to denial of counsel or structural error under Weaver Analysis; but, the best relief is dismissal with prejudice under 8.3 and/or Chapman/Barrera-Moreno Analysis due to governmental misconduct on both the courts and prosecutor and/or forcing me to chose between rights.

3.11 Denial Of Counsel - I was denied counsel at the initial appearance based on: Wash. Const art 1 §20 and its corollary RCW 10.21 and/or critical stage analysis under Agtuca, Ash, Gillespie, and Menefield. Reversal is required (Weaver v Massachusetts, 137 SCt 1899 (2017)).

3.12 Wash. Const. art 1 §20 And RCW 10.21 - Under Artical 1 §20

and its "limitations as shall be determined by the legislature", RCW 10.21, based on one charge carrying "the possibility of life in prison" (CP53), I should have been bailable by "sufficient surities" unless it was shown in a full blown adversarial hearing with counsel and on the record that I had a propensity for violence that creates a substantial likelyhood of danger to the community or any persons" and that no condition or combination of conditions will reasonably assure the safety of the community or any person (RCW 10.21.060, 10.21.030).

3.13 In my case: there was an adversarial confrontation (3-30-17 pgs 2-5); it was determined that I was a danger as: (1) it was determined that I would seek to intimidate witnesses (Supp CP Sub# 8) and a protection order was issued (CP4); and I was given a de facto denial of bail ($50,000) by the failure to consider my financial conditions. However, I was not given counsel or allowed to call witnesses or provided access to the law; therefore, I was denied my constitutional rights to: counsel, confrontation, compel witnesses, due process, equal justice, fair bail, and fair conditions of release under Artical 1§20 and RCW 10.21 (see also US Const. Amends. 6, 8, 14; Wash. Const. art 1§§ 2, 3, 14, 22). The denial of counsel is structural and requires reversal (Rose v Clark, 478 US 570, 577-578 (1986). Furthermore, no "clear and convincing evidence" was shown and no alternatives were considered.

3.14 Critical Stage - My initial appearance was a critical stage, requiring counsel, based on: (1) I was confronted by both the procedural system and an expert adversary and needed "aid in coping with legal problems" as I knew nothing of CrR3.2, RCW 10.21, or Artical 1§20 and I needed assistance in meeting [my] adversary." (US v Ash, 413 US 300, 310, 313, 37 LEd2d 619 (1973); (2) "Significant consequences for the accused [me]" resulted

(see sections 3.1, 3.4-3.7) (Rothgery v Gillespie County, 554 US 191, 212 n.16, 128 SCt 2578 (2008)); (3) significant rights were lost and the outcome of the case was significantly affected (see 3-30-17 VRP pgs 2-5, sections 3.1, 3.4-3.7, 3.9) (State v Agtuca, 12 Wn App 402, 404, 529 P2d 1159 (Wash App 1974)). See also Hovey v Ayers, 458 F3d 892, 901 (9th Cir 2006)

3.15 Menefield Tests - My initial appearance also meets the tests in Menefield v Borg 881 F2d 696, 698-699 (9th Cir 1989) as (1) significant rights were lost (see sections 4.1, 4.4-4.7, 4.9); (2) skilled counsel would have been useful (see section 4.14(1)); and (3) under Artical 1 §20 and RCW 10.21 the merits of my case would have been tested by: witness testimony and the need to show "clear and convincing evidence; plus, as shown in section 3.2(2), there was a protection order based on similar allegations, abuse and molestation to be address as part of the Relevant Factors for Release which would affect the merits due to similar allegations.

3.16 Weaver Structural Error Analysis - Under Weaver v Massachusetts, 137 SCt 1899, 1907-1908, 198 LEd2d 420, 431-432 (2017) the denial of fair bail and least restrictive conditions of release themselves seems to be structural and require reversal as: (1) they protect interests other than false conviction like: (A) the presumption of innocence (Section 3.1); (B) speedy trial (section 3.7); (C) no punishment without conviction (Bell v Wolfish, 441 US 520, 535, 99 SCt 1861 (1979); US Const. amends 6, 14; Wash Const art 1 §§3, 22); (D) equal justice (section 3.8); and (E) freedom from deprivation of life, liberty, or property without due process.; (2) the effects of the error are simply too hard to measure based on the damages listed in sections 3.5-3.7, especially when combined with the court acknowledged damage due to passage of time like dimming memory which PD exhibits when stating she can't remember (2-6-18 VRP pgs 84-88; CP 491-494) (Doggett v US, 505 US 647, 654, 112 SCt 2686 (1992)).; (3) the error is always fundamentally

unfair as it results in pretrial confinement for no other reason than the size of ones wallet, violating equal justice (Bearden, 461 US at 665) and severly damages a defendants ability to prepare a defense (Barker, 407 US at 532-533; Harris, 171 Wn2d at 468) thereby denying them a complete defense, confrontation, the ability to compel, and a fair trial.

3.17 Prosecutor Misconduct- In my case the denial of fair bail based on ability to pay and least restrictive conditions of release and sufficient surities was primarily instigated by the prosecutor who in an adversarial confrontation, where I had no counsel and no access to the law, asked for bail of $50,000 and attempted to make me homeless if bail was met by confining me to Grays Harbor County (3-30-17 VRP pg. 3). That was an act of misconduct as it violated my constitutional (US Const. amend 8; Wash. Const. art1 §§ 14, 20) and statutory RCW 10.21 and other rights (CrR 3.2) and it was in violation of; RPC 8.4 (d) (Conduct Prejudicial to the Administration of Justice); RPC 8.4 (i) (Disregard for the Rule of Law); and RPC 8.4(k) (Violating Oath of Attorney); and RPC 8.4 (F)(1) (Knowingly Assisting a Judge to Violate a Rule of Judicial Conduct, specifically CJC (2)(A) (Duty to Respect and Comply with the Law)

3.18 Furthermore, by making the statement that I "clearly has contacts out of state", simply because I had lived in other states a long time ago, the prosecutor made false statement under 9A.72.080 thus making a misrepresentation that was relied upon in violation of RCW 18.185.110 and RCW 4.1 (Truthfullness in Statements to Others), RPC 3.3(a) (Candor Toward the Tribunal) and RPC 8.4(c) (Misrepresentations).

3.19 The prosecutor, as a representative of the sovereign State has a duty to ensure my constitutional rights are not violated (State v Ollivier, 178 Wn2d 813, 860, 312 P3d 27-28 (2012));

yet, knowingly and actively sought to violate my rights to: fair bail based on ability to pay, sufficient surities, and least restrictive conditions of release and equal justice, despite the clear caselaw stating such conduct is improper and violates my constitutional rights (see sections 3.7-3.9). Furthermore, because there is caselaw indicating the conduct is improper, it is also flagrant and ill-intentioned (State v Johnson 159 Wash App 677, 685, 243 P3d 936, 940 (2010). To paraphrase Chapman 524 F3d at 1090, this was prosecutorial misconduct in its highest form, in flagrant disregard for the United States and Washington State Constitutions, and should be deterred by the strongest sanctions available - dismissal with prejudice.

3.20 Dismissal Under 8.3 - Sections 3.17-3.19 show that the denial of fair bail based on ability to pay, sufficient surities, and least restrictive conditions of release was flagrant and ill-intentioned governmental misconduct. It was also arbitrary as my freedom was simply dependant on how much money I had and no "clear and convincing evidence" was shown for the de facto denial of bail or defacto preventative detention. It is also clear that substantive prejudice affecting my right to a fair trial ensued per sections 3.1, 3.4-3.7. Furthermore, I was forced to choose between multiple rights, due to the resulting oppressive pretrial incarceration severly hampering my defense preparation, including - speedy trial, counsel, attorney/client privilage, confrontation, compelling witnesses, self-incrimination, and a complete defense (see CP 199-213; sections 3.1, 3.4-3.7) which is constitutionally unacceptable (Bittaker v Woodford, 331 F3d 715, 723 and n.7 (9th Cir 2003); Simmons v US, 390 US 377, 394, 88 SCt 967 (1968). Dismissal under 8.3 is warranted.

3.21 Dismissal Under Chapman Part One (US v Chapman, 524 F3d 1073, 1084 (9th Cir 2008) - In my case two judges, McCauly

and Edwards (Supp CP Subt#'s 10 and 11) and two prosecutors Walker and the unethical (Ground 2 section 2.33) Erin Riley (Janey) knowingly and with flagrant ill-intention (Johnson, 159 Wash App at 685) violated my constitutional rights and broke the very laws, rules, and codes they are sworn to follow by denying me counsel (sections 3.11-3.15) and fair bail based on my ability to pay, sufficient surities, and least restrictive conditions of release which resulted in a significant due process violation as it denied me liberty (oppresive pretrial confinement and de facto preventative detention), property, my child (section 3.4), my faith (Id) and subjected me to cruel punishment without conviction (Id) and denied me the ability to prepare a defense. Dismissal under Chapman One is warranted.

3.22 Dismissal Under Chapman Part Two ((Chapman, 524 F3d at 1084) - Dismissal may be granted to remedy constitutional or statutory violations, protect judicial integrity, or to deter future illegal conduct. As I see things: (1) constitutional and statutory violations are clearly evident in this ground; (2) a court, when it knowingly and with flagrant ill-intention fails to protect the rights of the accused (sections 3.1, 3.5-3.8, 3.11-3.20) and violates its own constitution, statutes, and rules (US Const. amends 6, 8, 14, 5; Wash Const. art. 1 §§ 3, 20, 22, 14, 7, 9, 10; CrR 3.2, RCW 10.21), has no integrity and violates the doctrine of the appearance of justice; and (3) the practice of excessive bail resulting in de facto preventative detention is both common and unjust (US v Fidler, 419 F3d 1026, 1029 (9th Cir 2005)), it is a clear violation of equal protection that targets a class of people - the indigent - and does damage to their lives and defense as significant as speedy trial violations. Like speedy trial violations it should be deterred by the strongest sanctions available - Dismissal With Prejudice.

Ground 4 - Violation Of My Rights Under Time To Trial (CrR 3.3) And Speedy Trial

4.1 I was denied my rights to a timely trial (CrR 3.3) and/or a speedy trial (US Const. amend. 6; Wash. Const. art 1§§ 10, 22; Barker v Wingo, 407 US 514, 530-533, 92 SCt 2182 (1972) which also violated my rights to: (1) due process (US v Lovasco, 431 US 783, 789-790, 97 SCt 2044 (1997) (delay of speedy trial violates due process rights; US Const. amend. 14; Wash. Const. art. 1§ 3)); (2) freedom from punishment prior to conviction (Bell v Wolfish, 441 US 520, 535, 99 SCt 1861 (1979) (pretrial detainees cannot be punished)) as I was given de facto preventative detention and oppressive pretrial incarceration (see Ground 3 sections 3.1, 3.4-3.7, 3.20; State v Kingen, 39 Wn App 124 (1984); State v Flinn, 154 Wn 2d 193, 200, 110 P3d 748 (Wash 2005) (the purpose of CrR 3.3 is to prevent undue [de facto] and oppressive incarceration prior to trial.); US Const amend 14; Wash. Const. art 1§ 3); and (3) freedom from being forced to choose between two constitutional right in particular speedy trial verses: (A) effective and prepared counsel; (B) meaningful self-representation; (C) preparation of a complete defense; (D) interviewing, confronting, and cross-examination of witnesses (see CP 199-213 for witnesses I was not able to contact); (E) compelling witnesses (see also CP 199-213, CP 187-196). (A-E are covered under US Const. amends. 6, 14 and Wash. Const. art. 1 §§ 3, 22).

4.2 CrR 3.3 Time To Trial Violations - There were multiple continuanes as noted in Supp CP Sub#'s 16, 19, 23, 26, 27, 28, 36, 39, 41, 45, 46, 50, 80, 85, 87, 91, 93, 97, 103, 109, 111, 118. Of particular interest under CrR 3.3 verses Barker are: the ones stating "by agreement of the parties (signed by the defendant)" which were not signed by me (Supp CP Sub#'s 28, 39, 40, 66, 80, 85) as required by

CrR3.3 (f)(1) as they are in writing and by agreement; furthermore, Supp CP Sub#'s 28, 41, 80 seem to move the trial date beyond the timeframes allowed in CrR 3.3.

4.3 CrR 3.3 Withdrawal - The judge also reset my commencement and time to trial dates for a withdrawal (Supp CP Sub# 45) which is not the same thing as a disqualification under CrR 3.3 (c)(2)(vii) as there was no legal reason to disqualify Mr. Baum. He wanted to withdraw and I agreed to it.

4.4 CrR 3.3 (h) - Charges not brought to trial within the time limits in CrR 3.3 shall be dismissed with prejudice.

4.5 Speedy Trial Violation - Four factors plus other relevant factors and circumstances show speedy trial violation (Barker 407 US at 530-533).

4.6 Barker One: Length Of Delay - Generally, a delay of about one year is presumptively prejudicial. Doggett v US, 505 US 647, 652 n.1, 112 SCt 2686 (1992). My delay was from 3-30-17 (Supp CP Sub# 10) to 7-3-18 (Supp CP Sub# 118), over fifteen months.

4.7 Barker Two: Reasons For Delay - I believe the following reasons for the delays weigh in favor of the defense:

4.8 Delay Due To Court Congestion congestion is not a valid reason for a continuance under either time to trial or speedy trial and no prejudice analysis is required (State v Mack, 89 Wn2d 788, 794, 576 P2d 44 (Wash 1978); State v Kenyon, 167 Wn2d 130, 135-139, 216 P3d 1024 (Wash 2009)). It is clear that the courts in GHC were so overcrowded that the law library had to be removed to make way for an additional courtroom (4-10-18 VRP pg 198). It appears that my trial date of 8-8-17 was denied due to court congestion as the prosecutor

indicates "this is another one of those cases set on the 8th" (7-17-17 VRP pg 2 (dupicate pg 6); however, the court failed to make the required detaits of the congestion on the record (Kenyon, 167 Wn2d at 139). The prosecutor then makes a bad faith effort to delay my trial (McNeely v Blanas, 336 F3d 822, 826 (9th Cir 2003)(diligent good faith effort required)) by preventing trial on August 1st-3rd by stating Det. Fritts is "on vacation until August 2nd," but failing to explain: (1) why he cannot testify on August 2nd or 3rd, and (2) why his testimony would be needed as he was only a witness to the forensic interviews (7-6-18 Ex23 pgs 2,6) which were also: witnessed by Det. Ramirez, Mike Clark, Carrie Quail, Debbie Rose, and Jessica Barragan (Id); video taped and recorded (7-6-18 Ex23 pg 6); and transcribed. Furthermore, he was never called to testify at any hearing or trial (VRP's 1-26-18, 2-6-18, 7-3-18, 7-5-18, 7-6-18)-proving he was not an essential witness. The end result of the fiasco on 7-17-17 was that my trial date was pushed out until 10-17-17 (Supp CP Sub# 28)- three month after the hearing, 63 days past the last scheduled trial date, and 31 day past the last CrR 3.3 time for trial waiver of 8-30-17 (Supp CP Sub# 26). Furthermore, it was done by a written agreement of the parties that was not signed by me, thus violating CrR 3.3 (f)(1) and mandating dismissal in addition to the court congestion issue for speedy trial.

4.9 State Not Ready- Another failure to make a diligent good faith effort comes at 9-11-17 VRP pgs 13-14 where the prosecutor admits that she has a lot of CPS records related to the case and "probably" needs to "go through" them. Not only is this a speedy trial issue but it is also a Brady violation issue as a specific request was

made for an interview (Supp CP Sub#'s 60,62) where PD alleges abuse by me by using Mike in Monsters, Inc to invent allegations and please her CPS interviewer, which goes to the veracity and credibility of PD and could be the basis for reasonable doubt. (Also violates CrR 4.7(d)).

4.10 Denial Of Access To Civil Counsel- The State via the Sheriff blocked my access to my civil counsel in the dependency 17-7-00885-9 KNT, which was based on the GHC protection order case 17-2-00133 and the criminal allegations in this case (CP314) and my counsel for the founded charge from GHC dependency 15-7-00229-0; thus, denying me the ability to show: (1) the involvement of GHC CPS and Sheriff, including some who participated in my arrest and investigation of these charges, in multiple criminal acts against my son and myself (Statement Of Exceptional Case sections A.2-A.5) which goes to perjury, motive, bias, credibility, and vendictive prosecution, and (2) the illegal acts of Deanna, her and PD danger to myself and my son, and motive for the kids to lie (Statement Of Exceptional Case sections A.6-C.7, E.1) which goes to perjury, motive, planning, bias, and credibility. All of which would have been addressed in the dependency cases along with the criminal allegations and without which I could not prepare a complete defense and was denied a legal opportunity to interview the witnesses from CPS as well as Deanna, PD, and AD.

4.11 Failure To Investigate- Relating to section 4.10, the Sheriff failed in its manditory duty to make a complaint, investigate, and arrest (RCW 26.44.160; RCW 26.44.050; RCW 74.08.331; RCW 10.99.010; State v Twitchell, 61 Wn2d 403, 408, 378 P2nd 444 (Wash 1963); RCW 36.28.010, RCW 36.28.011) concerning the

allegations in 7-6-18 Ex 11 (see 7-6-18 Ex23 pgs 20-21) and my letter (1-26-18 VRP pg 56) which I believes also violates the law under RCW's 42.20.100 and 42.20.080. This denied me the ability to show the same issues listed in section 4.10 (1-2) and actually prevented a mitigating defense based on battered person syndrom and Cassandra syndrome which denied me the ability to present and prepare a complete defense and thus my right to a speedy trial as there was never a point where I could have prepared a complete defense without the information in Ground 2 sections 2.3 and the showings of perjury (State v McDaniel, 83 Wn App 179, 186-187, 920 P2d 1218 (1996) (perjury in related civil cases is allow as evidence in criminal cases)), motive, bias, planning, credibility, and the injection of personal interest into the enforcement process and prosecutions decisions which raises serious constitutional questions. (Bordenkircher v Hayes, 434 US 357, 365, 54 LEd 2d 604 (1978)) from the issues raised in 7-6-18 Ex11 and my letter. The failures by the State listed in Ground 2 and Ground 4 §§ 4.9-4.11 also denied me my rights to counsel, effective counsel, cumpulsory process, confrontation and cross-examination, and a fair trial as without the-Brady, perjury, motive, bias, planning, and credibility- evidence none of those is meaningfully possible.

4.12 Denial Of Brady Material - The denial of Brady material as shown in Ground 2 and Ground 4 section 4.9 also caused delay and denial of speedy trial as without that information there was no way to ever prepare and present a complete defense (Ground 2 sections 2.1, 2.3-2.4, 2.8, 2.15-2.19, 2.22-2.23, 2.25; Ground 4 section 4.9). See also State v Price, 94 Wn 2d 810, 814, 620 P2d 994 (Wash 1980) (late disclosure of Brady

material impermissibly prejudices speedy trial) and US v Covey, 284 FSupp 3d 1054, 1064 (2018) (States failure to meet discovery obligations denies defendant the right to a speedy trial and the only viable remedy is dismissal with prejudice).
4.13 Denial Of Discovery - The State, in bad faith, denied me access to discovery and my right to attorney/client confidentiality by taking my notes from discovery that were intended for my attorney (Ground 1 sections 1.2-1.13) which prejudiced my and my attorneys ability to prepare and present a complete defense in a timely manner and denied my right to a speedy trial (Ground 1 section 1.8)
4.14 Allowing Mr. Mistashkin To Withdraw - As indicated in Ground 3 sections 3.5(4), 3.7 somewhere around 2-14-18 a closed conversation took place where the prosecutor alleged that I had threatened to physically harm my counsel Mr. Mistashkin (Brief Of Respondant pgs 3-4; see also Supp CP Sub # 89 pg 3 entry for 12-13-18). No Bone-Club analysis occured (State v Bone-Club, 128 Wn2d 254, 258-259, 906 P2d 325 (1995) and I believe this also counts as an exparte communication in violation of CJC (3)(A)(4) as I was not informed despite my specific requests for openness (Supp CP Sub #'s 56, 54; CP 380-381) and I was constructively denied counsel as Mr. Mistashkins interests in withdrawal (2-6-18 VRP pg 13; 2-8-18 VRP pgs 145, 153; 2-14-18 VRP pgs 155-156, 185-186) is in direct conflict with my interest in keeping him as counsel and having a speedy trial (2-8-18 VRP pgs 146-147 (noting I have no interest in "considerable delay" if new counsel was appointed); 2-14-18 VRP pg 187) which seems to indicate a confict of interest that required my presence (Campbell v Rice, 302 F3d 892, 898 (9th Cir 2002) (due process right to be present

violated by exclusion from in-chamber discussion of conflict of interest)). There was also bad faith as the prosecutor pushed for withdrawal and presented unsubstantiated allegations to teach me that I would get the same level of lying and ineffective representation from other public defenders in GHC (2-8-18 VRP pgs 148-149; 2-14-18 VRP pg 191). The closed allegation allowed Mr. Mistachkin to withdraw (2-14-18 VRP pg 186, (I would be willing to go on, but I can't-- it's not worth my personal safety...")) and added another five months of trial delay.

4.15 Failure To Appoint Viable Counsel- The court failed in its duty to make a diligent good faith effort to bring me to trial while also violating my rights to counsel, due process, equal protection, and fairness (RCW 10.101.005; CrR3.1[b]) by failing to appoint counsel after Mr. Mistachkins withdrawal and then failing to verify that new counsel would represent me (Supp CP Sub#'s 85, 86-88, 91-94, 97) which resulted in nearly a month (2-14-18 to 3-9-18) without counsel or access to the courts thereby delaying speedy trial.

4.16 Transcript Delay - Transcripts of the child hearsay and competency reports were ordered on 4-16-18 (Supp CP Sub# 104); but due to inaccurate docket notes and clerk notes (5-14-18 VRP pgs 2-3) were not completely available until after 6-4-18 (6-4-18 VRP pg 193) which delayed defense preparation by almost two months, thus delaying speedy trial.

4.17 Failure To Remove And Replace Arcuri- On 5-7-18 I filed a Notice of Hostile Counsel which among other things accussed Arcuri of lying to me (CP 300, 303, 310(H); see also CP 321, 327). On 5-14-18 Arcuri abandoned the

required duty of loyalty to me when he directly stated in open court "I have not lied to Mr Palmer." (5-14-18 VRP pg 9) which: undermined my veracity, constructively denied me counsel, and created a genuine conflict of interest (US v Gonzalez, 113 F3d 1026, 1029 (9th Cir 1997). The conflict of interest created a legal duty to disqualify and replace Arcuri (State v O'Niel, 198 Wn App 537, 543, 393 P3d 1238, 1241 (2017) the court failed to do that; thereby, constructively denying me counsel, preventing my ability to prepare effectively and delaying speedy trial.

4.18 Denial Of Fair Bail And Least Restrictive Conditions Of Release - Due in large part to prosecutor misconduct (Ground 3 sections 3.17-3.19), I was denied fair bail and forced into defacto preventative and oppressive detention which severly hampered my ability to prepare and present a complete defense (Ground 3 sections 3.1, 3.4-3.7) and denied me the right to speedy trial (Ground 3 section 3.7).

4.19 Bad Faith - Many of the speedy trial issues that delayed or prevented defense preparation or denied me counsel came as a result of bad faith by State actors. These bad faith acts are noted in: Statement of Exceptional Case sections A.5, D.6-D.7; Ground 1 sections 1.2, 1.7, 1.9-1.10; Ground 2 sections 2.1, 2.5-2.6, 2.10-2.13, 2.24, 2.27, 2.33; Ground 3 sections 3.5 (1,3,5), 3.6 (1), 3.9, 3.17-3.19.

4.20 Barker Three: Claim Of Right - I claimed my right to a speedy trial in the following ways:

4.21 Demands For Constitutional Rights - I am not a courtroom forensic debater and I had no access to the law to "knowingly" understand either waiver or continuances or good cause and how they relate to speedy trial;

plus,(1) I was under threat from counsel that I either agreed or I would go to prison (CP 387 "This is your life."; 12-4-17 VRP pg 22 "I don't have any option."; 4-16-18 VRP pg 24 (duplicate 189) "I have no choice at this point ... better than ... nine years in prison.") and (2) facing defense counsel who specifically told me they were not going to protect my constitutional rights (CPs 308(D), 324, 362; Supp CP Sub# 54 pgs 1-2 of 2 and 3 of 3). I did however file many documents that requested the protection of my right to a speedy trial (CPs 259(F), 261(H,J), 269, 285, 325-326; Supp CP Sub# 56 (Brief) pg 2 of 4; Supp CP Sub# 121 pg 4 (5)). I also filed a Federal Civil Rights §1983 Complaint concerning speedy trial (CP 306).

4.22 Requests For Dismissal - I was in the process of filing three motions to dismiss (CP 364) when I was banned from filing motions on my own behalf in violation of my rights to: free speech and petition for redress of grievances (US Const amend 1, 14 (due process); Wash. Const art 1 §§ 3-5) (1-16-18 VRP pgs 9-10). I then asked both appointed counsel to file motions to dismiss based on violation of attorney/client privilege, Brady violations, and fair bail violations (CPs 317(6), 322(5), 374-375(5)) and they refused (Id; plus CP 301(6), CP 248).

4.23 Fair Bail - I requested that my counsel seek fair bail and conditions of release as evidenced by (CPs 375(D), 325, 326, 317, 319(1)). They refused and I could not make the motion due to the ban.

4.24 Internet Access - I indicated that this case had 5,000 to 10,000 pages of evidence (CP 283, CP 238, CP 298) and that it could have been over in six months (CP

285, (P329, (P335). The one tool that I needed to do that was computer and internet access, which I sought and asked my counsel to seek (CPs 256, 268, 274-276(A-H), 305, 311, 314-314, 317, 318-320, 330-332, 335; 4-16-18 VRP pgs 12-14. (duplicate 177-179)).

4.25 Brady Violations - I asked my counsel to seek the missing Brady material (CPs 362, 372-374(4), 379-380(7), 296, 310(g), 317(6)(v), 322(5-6) my counsel refused.

4.26 Mistachkin Withdrawal - I fought against Mistachkin being allowed to withdraw and specifically noted I did not want a delay from new counsel (2-8-18 VRP pgs 146-147; 2-14-18 VRP pg 187).

4.27 Conflict With Counsel - Counsels waivers of time should not count against defendant when defendant has repeated disagreement with counsel (sections 4.21-4.26) and seeks to assert his rights which I did through non-motion filings and a §1983 Civil Rights lawsuit (Id.) McNeely v Blanas, 336 F3d 822, 829 n.8 (9th Cir 2003); Doyle v Law, 464 Fed. Appx 601 (9th Cir 2011) cert. denied 182 LEd 2nd 1042 (2012)

4.28 Breach Of Conditional Waivers - "Waiver is defined as an intentional abandonment of a known right or privilege indicating that the courts should indulge every reasonable presumption against waiver." McNeely 336 F3d at 829 (citing Barker 407 US at 525-526 and n.4. The State must show waiver was knowing, intelligent, and voluntary. State v Franulovich, 18 Wn App 290, 292, 567 P2d 264 (Wash 1997). Conditional waiver where condition is not met is not knowing or voluntary. State v Brittain, 38 Wn App 740, 742, 689 P2d 1095 (Wash 1984); US v Mendez-Sanchez, 563 F3d 935, 946 (9th Cir 2009).

4.29 I waived speedy trial three time, conditionally, and the conditions were not met; therefore, the

waivers should be void and not count against me. I address two here:
1) 12-4-17 Waiver (Supp CP Sub# 50) - This waiver was made on the basis that I would be able to review discovery prior to the child hearsay and competency hearings which happened 1-26-18 and 2-6-18 (see VPP for those dates); however, due to bad faith on the part of the State by taking the discovery and my attorney client notes (Ground I sections 1.1-1.9). Without the discovery I was not able to prepare for those hearings which was the purpose of the wavier (12-4-17 VRP pg 21 (he wants to review ... discovery and have some additional preparation for the child hearsay and competency); 12-4-17 VRP pg 22 (no one is really prepared.... I don't have any option.). The conditions were not met so this waiver should be invalid.
2) 4-16-18 Waiver (Supp CP Sub# 103) - It is absolutely clear from the record that I was desperately seeking internet access for court access, legal research, investigation, and locating, contacting, and inteviewing witnesses (see section 4.24 for locations in record). 4-16-18 VRP pg 12 (duplicate 177) ("Mr. Palmer wants to have complete internet access.") Going Pro-Se and the waiver where conditional on complete internet access (section 4.24; 4-16-18 VRP pgs 12-15 (duplicate 177-180) (Complete internet access through jail kiosk is not verified." waive his right to speedy trial... so that he can get the kiosk and see if it is going to be sufficient ... a couple of months before the kiosk is up... two months of access to a kiosk.") Those conditions were not met - I was never given kiosk, much less internet access, and I was forced to go prose and given only about fifteen days to prepare (6-15-18 VRP) which I objected to (Id) and refused to sign trial dates

(Supp CP Sub# 118). Furthermore, I specifically objected to the waiver (CP 299). This waiver should be invalid - conditions not met.
4.30 Mistachkin Withdrawal - I fought to keep Mistachkin as counsel specifically to avoid trial delay (2-8-18 VRP pgs 146-147 (I have no interest in "considerable delay" from new counsel appointment.)
4.31 Barker Four: Prejudice To Defense - Based on Barker there are three forms of delay prejudice: (1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) possible defense impairment from dimming memories and loss of exculpatory evidence (McNeely 336 F3d at 831; Doggett, 505 US at 654 (citing Barker, 407 US at 532). All three occurred in my case.
4.32 Oppressive Pretrial Incarceration - Oppressive pretrial incarceration is clearly shown in Ground 3 (sections 3.4-3.7).
4.33 Anxiety And Concern - Anxiety and concern factors, including: my sons safety, loss of everything, unnecessary death and suffering of others, and health damage, are listed in Ground 3 section 3.4.
4.34 Defense Impairment - Defense impairment "skews the fairness of the entire system" and compromises the reliability of a trial in ways that niether party can prove or identify; therefore, impairment is presumptive and intensifies over time (Doggett, 505 US at 651, 654-656). My delay was about sixteen months so presumtive prejudice should apply; however, I can show evidence of actual prejudice from: (1) dimming memories of Sheriff staff (1-26-18 VRP pgs 26 (I don't remember...), 31-33 (issues remembering that he promised to investigate AD scratch and the details of that promise)) and PD who indicates she can not remember details and is making things up (CP 542-545 (also at CP 491-494); 2-6-18 VRP pgs

84-88)* and (2) loss of exculpatory evidence as: (a) I cannot redo the civil litigation to show perjury, motive, plan, bias and/or witness tampering by Deanna and/or State actors (Ground 4 section 4.10; Statement Of Exceptional Case a.2-a.5); (B) I can't undo the loss of the videos and photos showing no injuries or fear from AD and PD due to alleged recent assault and proving assault by Deanna against me (Ground 2 sections 2.20-2.23); and (c) I can't undo the spoilage medical evidence showing the lack of damage to the hymen and throat structures (Ground 2 sections 2.8, 2.4(c), 2.19(4-5), 2.25). Plus, there are a large number of potential witnesses who I was unable to locate, contact, and gain evidence from (CP 204-213) concerning no injuries, no fear, perjury, motive, plan, and bias who would need to remember events lasting a few minutes that happened four years ago. Also, the vagueness of the charges, which show a period of months (CP 420-421) and specify no dates or events prejudices the defense (McNeely, 336 F3d at 832).

4.35 I believe the Barker factors weigh in my favor and therefore I was denied my Sixth Amendment right to a speedy trial which in turn requires a remedy of dismissal (State v Ross, 8 Wn App 2nd 928, 441 P3d 1254, 1269 (Wash 2019); McNeely, 336 F3d at 832; Strunk v US, 412 US 434, 440, 93 SCt 2260 (1973).

4.36 Choosing Between Rights- Dismissal is also supported by the fact that the State, in bad faith, denied me my due process and equal justice rights (US Const. amend. 14; Wash. Const. art 1 §§ 3, 12) by denying me attorney/client privilage (Ground 1); Brady material (Ground 2); and fair bail, least restrictive conditions of release, and counsel (Ground 3) which severly impaired my ability to prepare (sections 1.8, 2.4, 2.8, 2.15-2.19, 2.22-2.23, 2.25, 2.28, 3.1, 3.4-3.7, 4.1, 4.9-4.10, 4.12-4.13, 4.18-4.19, 4.24) and present a complete defense; thus, denying me a fair

trial and forcing me to choose between multiple constitutional rights for criminal defendants, most especially: speedy trial, prepared and effective counsel, confrontation and cross-examination, compelling favorable witnesses, and venue (Ground 2 sections 2.15) as without the Brady material there was no way to ever be fully prepared or to have all the information to confront and cross-examine thus preventing a speedy trial. Nor could the defense make effective arguments for expert witness funding without the Brady material thus preventing the ability to compel favorable witnesses and preventing effective prepared counsel thus no complete defense was possible. Also, without attorney/client privilage ones right to counsel is impared which also prevents or impares speedy trial. Finally, pretrial detention impaires the ability to prepare and makes the right to a speedy trial "all empty pronouncements, full of sound and fury but signifying nothing." Aileman, 165 FRD at 578. (The constitutional rights referenced above are in US Const. amends 6,14; Wash. Const. art 1 §§ 3,12,20,22).

4.37 Forcing a defendant to choose between rights warrants dismissal with prejudice (CrR 3.8; State v Woods, 143 Wn 2d 561, 582-83, 23 P3d 1046 (Wash 2001); Bittaker v Woodford, 331 F3d 715, 723 (9th Cir 2003) and a "strict rule" should be applied to support the right to speedy trial and judicial integrity (State v Kenyon, 167 Wn 2d 130, 136, 216 P3d 1024 (Wash 2009); see also Chapman, 524 F3d at 1084 (dismissal allowed under supervisory powers to remedy constitutional violations, protect judicial integrity, or to deter future illegal conduct.)). I humbly ask for dismissal with prejudice.

* Barragan memory issues noted at 7-5-18 VPP pg 101.

Ground 5 - Cummulative For Dismissal

5.1 Grounds 1-4 individually warrant dismissal under: (1) CrR 8.3 - dismissal based on arbitrary action or governmental misconduct with prejudice affecting the right to a fair trial - which I use in Ground 2 sections 2.29-2.30 and Groud 3 section 3.20; and/or (2) Chapman One - dismissal based on outrageous governmental misconduct amounting to a due process violation (Chapman, 524 F3d at 1084) - which I use at Ground 1 section 1.15, Ground 2 section 2.31, Ground 3 section 3.21; and/or (3) Chapman Two - dismissal based on use of supervisory powers to remedy a constitutional or statutory violation; protect judicial integrity; or to deter future illegal conduct (Chapman, 524 F3d at 1084) - which I use at Ground 1 section 1.15, Ground 2 section 2.31, Ground 3 section 3.22, and Ground 4 section 4.37; and/or (4) Caselaw which seems to mandate dismissal which is found at: Ground 1 section 1.14 (retrial is not a remedy for States intrusion into attorney/client privilege as information gained is still available at retrial, dismissal is proper - Perrow, 156 Wn App at 330; Cory, 62 Wn 2d at 377); Ground 2 sections 2.29-2.31 (States deliberate withholding or delay of exculpatory evidence, especially when the State agrees to provide it or assures the court that it has been provided warrants dismissal - Sherman, 59 Wn App at 768; Martinez, 121 Wn App at 34-36; Norris, 157 Wn App at 80; Chapman, 524 F3d at 1085, 1090; Govey, 284 FSupp 3d at 1064; Ground 4 section 4.35 (Violation of speedy trial right under the Sixth Amendment requires dismissal with prejudice - Ross 441 P3d at 1269; McNeely 336 F3d at 832; Strunk, 412 US at 440); and/or (5) CrR 3.3(h) - violation of time to trial right requires dismissal with prejudice which I use at Ground 4 sections 4.2-4.4 and 4.8.

5.2 CrR 8.3, Chapman One, and Chapman Two also seem to lend themselves to cummulative error analysis - the more acts of governmental misconduct the more that they do in fact equal outrageous, violate due process, affect the right to a fair trial, affect judicial integrity, and need to be deterred (see generally - In re Hammermaster, 139 Wn 2d 211, 237, 985 P2d 924, 938 (Wash 1999) (repeated pattern of failing to protect rights can constitute misconduct); Taylor v Kentucky, 436 US 478, n.15, 98 SCt 1930 (1978) (Cummulative errors can prejudice and violate right to due process); Parle v Runnels, 505 F3d 922, 927 (9th Cir 2007) (Cummulative errors can affect outcome and produce an unfair trial.

5.3 Cummulative Governmental Misconduct - The sections herein indicating governmental misconduct include: Statement Of Exceptional Case sections A.4-A.5, D.7; Ground 1 sections 1.2, 1.5-1.7, 1.9-1.10; Ground 2 sections 2.5-2.7, 2.10-2.14, 2.18, 2.20, 2.24, 2.27; Ground 3 sections 3.1, 3.5(5), 3.6(1), 3.9 (based on State v Johnson, 159 Wn App 677, 685, 243 P3d 936 (Wash 2010) (Published opinion stating conduct is improper means misconduct that may be flagrant and ill-intentioned.)), 3.11-3.14, 3.17-3.19; Ground 4 sections 4.2-4.3, 4.9-4.15, 4.17-4.19. Furthermore, Ground 2 section 2.33 indicates that this is not the first time that the prosecutor in my case, Riley (Jany) has engaged in unethical misconduct by failing to act with due diligence and making material misrepresentations to the court.

5.4 Cummulative Due Process Violations - The core due process issue is that my ability to prepare and present a complete defense due to: (1) the inability to use the discovery as indicated in Ground 1; (2) the denial of Brady material as indicated in Ground 2; and (3) defacto preventative and oppressive pretrial detention severly hampering my ability to prepare and present a

complete defense as noted in Ground 3; however, caselaw already shows that the required due process and fair trial violations occurred: (1) a Brady violation where the State knew Brady material existed, promised to provide it, failed to do so or delayed doing so, and told the court It was provided (Ground 2 sections 2.13, 2.27) is also a due process violation (Brady, 373 US at 87, Armstrong, 188 Wn 2d at 344; Martinez, 121 Wn App at 35-36); (2) closed courts (Ground 3 section 3.5(5) violate due process (Irby, 170 Wn2d at 880-881; Lord, 123 Wn2d at 306); (3) failure to consider financial circumstances and least restrictive conditions of release (Ground 3 sections 3.1-3.3) violates due process for the poor (Hernandez, 872 F3d at 990, 992-995); (4) delay of speedy trial violates due process (Ground 4; Lovasco, 431 US 789-790); (5) failure to allow me to be present during discussions of alleged threat (Ground 4 section 4.14) conflict of interest violates due process (Campbell, 302 F3d at 898; (6) failure to appoint counsel (Ground 3 sections 3.11-3.15; Ground 4 section 4.15) violates due process (RCW 10.101.005)). Furthermore, without the ability to prepare and present a complete defense, my right a fair trial was prevented and I was forced to choose between constitutional rights (see Ground 1 sections 1.8, 1.13(3); Ground 2 sections 2.1, 2.8, 2.15, 2.27, 2.30, 2.32; Ground 3 sections 3.1, 3.5-3.8, 3.11-3.13, 3.20; Ground 4 sections 4.1, 4.10-4.15, 4.17-4.18, 4.36).

5.5 Judicial Integrity And Illegal Conduct - "Nothing can destroy a government more quickly than its failure to observe its own laws - Mapp v Ohio, 367 US 643, 659, 6 LEd 2d 1081 (1961). Judges are required to follow the law ((JC 2(A); Hammermaster, 139 Wn2d at 237) and to protect my rights (Glasser v US, 315 US 60, 71, 62 SCt 457 (1942). The same duties to follow the law and protect my rights also are required of the

prosecutor. That did not happen as evidence by the cummulative governmental misconduct listed in Ground 5 section 5.3. The courts have a duty to stop such unethical practices (In re Marriage of Wixom, 182 Wn App 881, 904, 332 P3d 1063 (Wash 2014)) restore judicial integrity (CJC 2(A)) and deter it from happening in the future. Retrial will not seriously deter the denial of: fair bail, speedy trial, or Brady material (Martinez, 121 Wn App 35-36; Vasquez v Hillary, 474 US 254, 280, 160 SCt 617 (1986); Kenyon 167 Wn2d at 136) only dismissal will deter those illegal acts.

5.6 Defense Disadvantaged - My defense cannot recover from the damages suffered (see Ground 4 section 4.34; Ground 1 sections 1.14, 1.16; Ground 2 sections 2.25, 2.28; Ground 3 sections 3.1, 3.4-3.6). Retrial would substantially prejudice the defense by allowing the prosecutor to use the first trial as a trial run then adjust the second trial based on what was learned in the first trial and the damage to the defense that has occurred allowing it to repair and salvage its original poorly constructed prosecution. Dismissal is the proper remedy where retrial would advantage the government (Chapman, 524 F3d at 1087) which would be the case for me.

5.7 Cummulatively under CrR 3.8, Chapman One, and/or Chapman Two analysis - dismissal with prejudice should be granted.

Dated Monday, June 1st, 2020 in Monroe, Washington

By: Michael Palmer
Michael Palmer
Appellant, Pro Se