

**FILED**  
NOV 24 2010

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

CLERK

STATE OF WASHINGTON

2010 NOV 24 AM 8:03

STATE OF WASHINGTON

**IN THE WASHINGTON STATE  
SUPREME COURT**

State of Washington, )  
Respondent, )  
 )  
 )  
vs. )  
 )  
Richard Henry Mutch, )  
On Direct Appeal. )

**CAUSE NOS: 82425-8 Consolidated  
w/82029-5**

**STATEMENT OF ADDITIONAL GROUNDS  
FOR REVIEW. SECOND RESENTENCING**

\*\*\*\*\*

**ADDENDUM**

The two additional grounds for review both hinge on the concept of Double Jeopardy (Const. Article I, § 9 & USCA 5 & 14) defined by this very Court:

**GROUND NO. 1, DOUBLE JEOPARDY  
UNDER FORCE OF ARMS**

In October of 2008 Whatcom County petitioned this Court for permission for said county to return me to the RE-SENTENCING court for an adjustment in the Offender Score. Your clerk, Ms. Susan Carlson forbid said county to do so unless approved by a Justice of this Court. Said petition WAS NEVER APPROVED. In violation of Ms. Carlson's Clerk's Order, and eventual disapproval by justice Alexander, Whatcom County had me KIDNAPPED from WSR---Falsely Imprisoned in the Whatcom County Jail, and subjected me to another **Double Jeopardy** re-sentencing similar to the one in June of 2008 wherein I was "re-sentenced" to the same illegal **400 month** sentence of November of 2008. The Offender Score was reduced from

19 to 16 points. But the unlawful 400 month Exceptional Sentence was not reduced one iota.

This court held in State v. Tili that: "Remand is necessary when the offender score has been miscalculated UNLESS THE RECORD MAKES CLEAR THAT THE TRIAL COURT WOULD IMPOSE THE SAME SENTENCE." State v. Tili, 148 Wn.2d 350, 358[3-5], 60 P.3d 1192(2003). Review of this blatant Double Jeopardy violation is de novo: State v. Parker, 132 Wn.2d 182, 189, 937 P.2d 575. Emphasis mine.

"Under Double Jeopardy Clause, once defendant is placed in jeopardy for offense, and jeopardy terminates with respect to that offense, defendant may neither be tried or punished a second time for the same offense." Sattazahn v. Pennsylvania, 123 S. Ct. 732, 537 U.S.101(2003).

Thus, Whatcom County (under force of arms) compelled your petitioner to attend a Double Jeopardy resentencing. And should be compelled to forfeit JURISDICTION for its own duplicity and unconscionable violation of this Court's ORDER. IT IS SO PRAYED.

#### GROUND NO. 2

#### THE FIRST DOUBLE JEOPARDY RE-SENTENCING

At the second resentencing of November 2008 (as well as the first resentencing of July 2008) I pointed out to the court that said Whatcom County Superior Court had lost JURISDICTION with which to resentence me to any new sentence WHATSOEVER. To wit: This Court held in State v. Hardesty that: "...the double jeopardy clause will prevent resentencing if the original sentencing proceeding was more like a trial than an ordinary sentencing proceeding." State v. Hardesty, 129 Wn.2d 303, 310-11, 915 P.2d 1080(1996).

At the original sentencing proceeding of 16 December 1994

I had a "bench trial." Witnesses were called and sworn. Exhibits were entered. One-hundred and twenty-five pages of testimony was recorded. The State has already admitted, in another Cause No. 81736-7, that the 16 Dec. 1994 sentencing proceeding was a "bench trial." Thereby **JEOPARDY** having attached. At said sentencing I was given incorrect **SRA** sentences as follows:

1. Counts I-V (2nd° rape) **LIFE WITHOUT PAROLE**. The correct **SRA** sentence is 198 months maximum.
2. Count VI (2nd° kidnapping) **TEN YEARS and/or \$ 20,000.00**. The correct **SRA sentencing is a maximum of 96months**. See Exhibit "A" pages 1 & 2 **JUDGMENT AND SENTENCE**. This Court ~~has~~ held that the **JUDGMENT AND SENTENCE** is the official document as to appeals.

Would the Court please note the following as to this issue: the **JUDGMENT AND SENTENCE**, at page 3 2.4 has a box to mark if and Exceptional Sentence is being given. Said box was not so marked at all. Exhibit "B" page 2 lines 13 & 14 indicates that I was first brought before the court to be sentenced to the underlying felonies of rape & kidnapping. So there is no room for doubt as to the fact that I was given incorrect **SRA** sentences for 2nd° rape & kidnapping. And being that this was a "bench trial" sentencing proceeding, jeopardy attached!

I had previously raised this issue in Cause No. 81736-7. The matter was fully briefed, and the honorable Court Commissioner Goff set the matter for Accelerated Review. Then justice Alexander (not so mysteriously) **DISMISSED** without issuing an Opinion as re-

quired by RCW 7.36.140 Duty of courts when federal question is raised. Please keep in mind that the honorable commissioner Goff saw it appropriate to require briefing. And knowing my position was solid, set the matter for Accelerated Review. Justice alexander trashed all work product in violation of the above RCW and this Court's holding in Stewart v. Fitzsimmons which states, in pertinent part, as follows: "...a denial of due process means a denial of a right to be heard upon an issue of fact or law. If an opportunity to be heard remains, there is no lack of due process." Stewart v. Fitzsimmons, 86 Wash. 55, 61, 149 Pac. 659(1915). Being that this Grounds for Review was unlawfully dismissed by justice Alexander (RCW 7.36.140)---but raised at the Second Resentencing: "...there is no lack of due process." Stewart v. Fitzsimmons supra at 61.

In conclusion, it has been brought to my attention that the F.B.I. is circulating a forged Rap Sheet purporting to show me as a serial rapists. The true F.B.I. Rap Sheet, appended hereto, plus the statements of Judge Steven J. Mura, in the Trial Transcripts, serve to dispel this vindictive and duplicitous allegation. EXHIBIT "C" 5 pages.

What is seen in regards to my two Double Jeopardy allegations is that the unconscionable and recalcitrant ((Justice Sander's own word) Whatcom County Prosecutor, Mr. David McEachran has flouted the law to the Honorable Justice Barbara Madsen thinking again (ad nauseum) that he will get away with patently unconstitutional criminal acts under color of law.

Respectfully submitted by:

Richard Henry Mutch

Richard Henry Mutch, in pro se

21 Nov. 2010

P.4 end

FILED IN OPEN COURT

12-16 1994

WHATCOM COUNTY CLERK

By [Signature]  
Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 94-1-00117-8
	)	
vs.	)	
	)	
RICHARD HENRY MUTCH	)	JUDGMENT AND SENTENCE
	)	(FELONY)
Defendant.	)	
	)	

I. HEARING

1.1 A sentencing hearing in this case was held:

December 16, 1994.

1.2 Present were:

Defendant: RICHARD HENRY MUTCH  
 Defendant's Lawyer: JENIFER GREEF  
 Prosecuting Attorney: DAVID S. McEACHRAN  
 Judge: STEVEN J. MURA

1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the Court finds:

2.1 CURRENT OFFENSE(S): The defendant was found GUILTY on September 28, 1994 by JURY of: RAPE IN THE 1ST and 2ND DEGREE, COUNTS I THROUGH V; and KIDNAPPING IN THE 2ND DEGREE, COUNT VI

Count No. I

94 9 02718 4

JUDGMENT AND SENTENCE (FELONY)  
 CONFINEMENT OVER ONE YEAR - 1  
 Re: RICHARD HENRY MUTCH

EXHIBIT "A"

1 of 2 pages

622

*Jan*  
*PC*

( ) Additional current offenses are attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime: ROBBERY IN THE 1ST DEGREE  
Sentencing Date: 7/14/66

Crime: ROBBERY IN THE 1ST DEGREE  
Sentencing Date: 7/14/66

Crime: BANK ROBBERY  
Sentencing Date: 1/16/81

( ) Additional criminal history is attached in Appendix B.

2.3 SENTENCING DATA:

	Offender Score	Seriousness Level	Range	Maximum Term
COUNT NOS. I-V:	19	XV	LIFE SENTENCE WITHOUT PAROLE	
COUNT NO. VI:	19		TEN YEARS and/or \$20,000.00	

( ) Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

( ) Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s)                     . Finding of Fact and Conclusions of Law are attached in Appendix D.

2.5 CATEGORY OF OFFENDER: The defendant is:

(a) (XX) An offender who shall be sentenced to confinement over one year.

(b) ( ) An offender who shall be sentenced to confinement one year or less.

(c) ( ) A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(12), .120(5)).

JUDGMENT AND SENTENCE (FELONY)  
CONFINEMENT OVER ONE YEAR - 3  
Re: RICHARD HENRY MUTCH

EXHIBIT "A" p. 2 of 2

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COUNTY CLERK

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WHATCOM COUNTY  
WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR WHATCOM COUNTY

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STATE OF WASHINGTON, )  
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Plaintiff, )  
)  
vs. )  
)  
RICHARD H. MUTCH, )  
)  
Defendant. )

AUG 20 2004

WHATCOM COUNTY CLERK

By: *[Signature]*

NO. 94-1-00117-8  
COA NO. 54268-1-I

VERBATIM REPORT OF PROCEEDINGS

December 16th, 1994

KENNETH E. QUINN  
Official Court Reporter  
Courthouse  
Bellingham, Washington 98225  
(360) 676-6748

COURT OF WASHINGTON  
2004 SEP 29 AM 9:56

Movant's Exhibit "B" 1 of 2 pages

1 of Exhibit No. 2 which contains a certification dated  
2 October the 5th of 1994, and those fingerprints were taken  
3 on February the 18th of 1970, they're very high quality  
4 fingerprints. And comparing the fingerprint card of  
5 Richard Henry Mutch from February 18th of 1970 in Exhibit  
6 2 with the fingerprints of one David Joseph Savanti on  
7 October the 18th of 1980, the court is satisfied that  
8 those, to the extent that I as a layman can compare, are  
9 the same fingerprints of the same individual.

10 Under the facts that are presented by the State in  
11 this case, I can reach no conclusion but that by a  
12 preponderance of the evidence that the defendant in this  
13 case, Richard Mutch, prior to the convictions for which he  
14 comes before the court for sentencing has been convicted  
15 on two prior separate occasions for offenses that under  
16 the laws of this state constitute most serious offenses.

17 Coming to that finding, the court further finds the  
18 defendant is a persistent offender under Chapter 9.94A of  
19 the Revised Code of this state as that term is defined  
20 therein, and having made those findings, the law of this  
21 state gives the court no discretion in adjudging the  
22 sentence of imprisonment in this case.

23 So, it is the sentence of this court, Mr. Mutch, that  
24 you pay court costs in the amount of \$110, a \$100 crime  
25 victim assessment, a \$100 crime laboratory assessment,

940-3097

p.1 of 5

DAVID S. MC EACHRAN  
Prosecuting Attorney

FEB 04 1994

Whatcom County  
Bellingham, Wash



# FBI FACSIMILE COVERSHEET

## CLASSIFICATION

### PRECEDENCE

- Immediate
- Priority
- Routine

- Top Secret
- Secret
- Confidential
- Sensitive
- Unclassified

Time Transmitted: \_\_\_\_\_  
 Sender's Initials: \_\_\_\_\_  
 Number of Pages: \_\_\_\_\_

To: PD, BELLINGHAM, WA Date: 2-4-94  
(Name of Office)

Facsimile number: 206 738 7322

Attn: SUPV. RICHARD NOLTE 206 676 6943  
(Name Room Telephone No.)

From: FBI HQ, EXPEDITE SERVICE UNIT  
(Name of Office)

Subject: ~~RICHARD HENRY MUTCH~~

FBI #487 352 E

Special Handling Instructions: COPY OF RECORD AS IDENT

Originator's Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Originator's Facsimile Number: \_\_\_\_\_

Approved: pje

FBI/DOJ

Exhibit "C" 1 of 5 pages

MASTER  
1-4 (Rev. 7-19-77)

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**UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
IDENTIFICATION DIVISION  
WASHINGTON, D.C. 20537**

Use of the following FBI record, NUMBER 487 352 E, is REGULATED BY LAW. It is furnished FOR OFFICIAL USE ONLY and should ONLY BE USED FOR PURPOSE REQUESTED. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
Monte Vista PD PO Ontario CA	Rick Mutche 291	1-27-58	susp ADW	rel no chg
PD Alhambra CA	Richard Henry Mutch 10510	4-2-63	836.3 susp 476a PC NSF chks	imposition of sent susp 3 yrs prob
SO Los Angeles CA	Richard Henry Mutch B-958995	4-4-63	chks:NSF	
SO Los Angeles CA	Richard Henry Mutch B-958995/ C-152420	10-26-64	burg	
PD Anaheim CA	Richard Henry Mutch 21994	12-21-65	susp of armed robbery & GT 836.3 of 211 & 487.3 cpo) auto	rel to Long Bch PC
PD Long Bch CA	Michael Richard London 219681	12-21-65	inv GTA inv robbery	rel to LA Sheriff Temple STA for rob
SO Los Angeles CA	Richard Henry Mutch B-958995/ C-323876	12-22-65	robbery kidnapping for ranson & burg/ warr	
CI&I Sacramento CA	Richard Henry Mutch B-3564	7-19-66	NSF check 2cts (prob revoked) & RSP & kid for rob with prior felony convic- tion 2 cts all conc (476a PC & 496 PC & 209 PC)	6mos to 14 yrs 2cts & 6 mos to 10yrs & life 2cts all conc 1-28-72 par 2-23-73 disch on chg of crt ret

FEB 04 '84 15:18

P.4

OPD: 1974-0-528-091  
 MASTER  
 -4 (Rev. 8-9-72)

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**UNITED STATES DEPARTMENT OF JUSTICE**  
**FEDERAL BUREAU OF INVESTIGATION**  
**IDENTIFICATION DIVISION**  
**WASHINGTON, D.C. 20537**

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The following FBI record, NUMBER **487 333 E**, is furnished FOR OFFICIAL USE ONLY.  
 Information shown on this Identification Record represents data furnished FBI by fingerprint contributors.  
 WHERE DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS  
 DESIRED, COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD Sacramento CA	Richard Henry Mutch B 28504	2-18-70	fel escape AWDW GT armed rob kidnapping conv felon with gun & GTA	no compl filed to CA SPR at Folsom on chg of 211 PC armed rob GT 12021 PC ex-con W-CCW GT auto 207 PC kidnapping 4630 PC
SO Sacramento CA	Richard Henry Mutch 114810	inquiry 3-5-70	escape	
PD Reno NV	Richard Henry Mutch 208050	9-29-76	NRS-embezz	12-22-76 DR DETA Warrant issued
SO San Diego CA	Richard Henry Mutch 834 430	9-14-76	Fugitive (NV)	deft picked up 9-29-76 - disp
St Bu of Cr Ident & Inv Sacramento CA	Richard Henry Mutch B-80308 SID 1239024	FP 2-2-77	Ct. 2, RPS (496.1 PC)	6 mo-10 yrs Prison on chg of 496.1 PC Rec St P Prop. Ct 246 Dismissed of 12021 PC Own FirAr & 12303 PC Own Devic.
PD Seattle WA	David Joseph Savant 92761	10-17-80	Robbery NCIC 1299	Inv & Rel 10-20-80

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 1-4 (Rev. 7-19-77)

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**UNITED STATES DEPARTMENT OF JUSTICE**  
**FEDERAL BUREAU OF INVESTIGATION**  
 IDENTIFICATION DIVISION  
 WASHINGTON, D.C. 20537

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CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
PD Fort Lauderdale FL	Richard Andrew Bell ID-166012 SID# 1910231	8-14-83	Bank Robbery CAP (FTA) NCIC 5015	
USM Seattle WA	David Joseph Savanti	9-20-83	FTA 5015 for bank rob 1-13-84 sent lyr for fail to appear 1-13-84	sent 5yrs 1-13-84 sent
<del>USM Seattle WA</del>	David Joseph Savanti 11244 086	<del>10-21-80</del> Prt Rec. 12-12-83	Bank robbery NCIC 20 1211	
USM Seattle WA	David Joseph Savanti	9-21-83	failure to <del>appear-Federal</del> 5015	6-0-0 held in Lieu of \$25,000 bail
US Pen Leavenworth KS	David Joseph Savanti 11244-086. EQ50841	3-19-84	bank robb	5 yrs Par 2-19-87 frm FGI Terminal Isl CA
SO San Rafael CA	Richard Henry Mutch 112411 SID 01239024	3-14-88	PC 12021A felon in poss of firearm PC 245A I assault with deadly weapon	

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UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
IDENTIFICATION DIVISION  
WASHINGTON, D.C. 20537

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CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
USM San Fran CA	David Joseph Savanti	6-2-88	Parole Violation	
US Pen Lompoc CA	David Joseph Savanti 11244 086 F050841	6-11-88	P.V. Bank Robbery	6yrs 8-22-88 par revoked. case closed 1-14-90 MR

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