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

THE STATE OF WASHINGTON
RESPONDANT,

v.

TERRANCE JON IRBY
APPELLATE:

GROUNDS (1)
NO. 59741-8-1-

ADDITIONAL GROUNDS FOR
APPEAL OF CONVICTION

AND CHALLENGE OF PREM-
EDITATION AND DELIBERATION

Under Washington law, "premeditation" and deliberation are the essential elements distinguishing first degree murder from second degree murder.

Under Washington law, premeditated intent is the element that distinguishes first degree from second degree murder. Compare WPIC 26.02 (elements of first degree murder) with WPIC 27.02 (elements of second degree murder). Indeed, the absence of premeditation is fundamental to the charge of murder in the second degree. See WPIC 27.01 ("A person commits the crime of murder in the second degree when with intent to cause the death of another person but without premeditation, he or she causes the death of such person . . .").

That "deliberation" is a critical element distinguishing first degree murder from other offenses is made clear in the comment to the pattern instruction regarding premeditation.

Premeditation is an element of first degree murder that is distinct from intent. It is possible to form an intent to kill that is not premeditated. Thus, premeditation cannot be inferred from the intent to kill. See WPIC 26.01.01 comment. See also State v. Bingham, 105 Wn.2d 820 (1986).

An instruction that fails to preserve the distinction between first degree and second degree murder is constitutionally defective. Jury instructions are sufficient only if they "are not misleading and, when read as a whole, properly inform the trier of fact of the applicable law." State v. Rice, 110 Wn.2d 577, 603 (1988). Washington courts repeatedly have reversed convictions where the instructions given to the jury failed to preserve the distinction between

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1 first and second degree murder. See, e.g. State v. Shirley, 60 Wn.2d 277 (1962) (error to
2 instruct jury that premeditation may be found even if an appreciable period of time has not
3 elapsed, since such an instruction eliminates the difference between murder in the first and
4 second degree):

The definition of "premeditated" in WPIC 26.01.01 is incomplete and confusing because it fails
to define "deliberation."

The pattern instruction defines "premeditated" as "thought over beforehand" and says:

When a person, after any *deliberation*, forms an intent to take human life, the
killing may follow immediately after the formation of the settled purpose and it will
still be premeditated. Premeditation must involve more than a moment in point of
time. The law requires some time, however long or short, in which a design to kill
is *deliberately* formed.

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WPIC 26.01.01 (emphasis added). Thus, the pattern instruction says that a murder is
premeditated where the defendant forms an intent to take a life after deliberation. The
instruction alternately states that a "design to kill" must be "deliberately formed." Id.

The term "intent" is defined in a separate pattern instruction. See WPIC 10.01 ("A
person acts with intent or intentionally when acting with the objective or purpose to accomplish a
result which constitutes a crime.") However, the pattern instructions fail to define "deliberation"
or "deliberately," critical terms in the definition of premeditation. In its everyday usage, the noun
deliberation is "[t]he act or process of deliberating." The American Heritage Dictionary of the
English Language (3rd Ed. 1992) ("deliberation" definition). "Deliberation" means:

The act or process of deliberating. The act of weighing and examining the
reasons for and against a contemplated act or course of conduct or a choice of
acts or means. See deliberate.

Black's Law Dictionary at 514 (4th Ed. Rev. 1968).

The transitive verb *deliberate* means "[t]o consider (a matter) carefully and often slowly,
as by weighing alternatives." The American Heritage Dictionary of the English Language (3rd
Ed. 1992) (*deliberate* - verb, transitive - definition no. 1). The verb *deliberate* also has an
intransitive form which carries a similar meaning - "To think carefully and often slowly, as about
a choice to be made." (*deliberate* - verb, intransitive - definition no. 1). "Deliberate" means:

To weigh, ponder, discuss, regard upon consider. To examine, to consult, in
order to form an opinion. To weigh in the mind; to consider the reasons for and
against; to consider maturely; reflect upon, as to deliberate a question; to weigh
the arguments for and against a proposed course of action.

Black's Law Dictionary at 513 (4th Ed. Rev. 1968) (citations omitted).

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1 The word *deliberate* also may be an adjective. In its adjectival form, *deliberate*
2 principally means "intentional." The American Heritage Dictionary of the English Language (3rd
3 Ed. 1992) (*deliberate* – adj. – definition no. 1). However, the adjective *deliberate* can also mean
4 "[a]rising from or marked by careful consideration." Id. (*deliberate* – adj. – definition no. 2).

5 The various meanings of *deliberate* may give rise to confusion among jurors. Since a
6 man may commit a deliberate (intentional) murder without deliberating (weighing alternatives),
7 the pattern instruction defines premeditation in an ambiguous way.

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9 A pattern instruction should be supplemented or modified where, as here, it is incomplete or
10 inaccurate.

11 Courts have recognized that standard pattern instructions, no matter how respected and
12 established, may not alone be sufficient to assure that the jury will "accomplish its
13 constitutionally mandated purpose." McDowell v. Calderon 130 F.3d 833, 836 (9th Cir. 1997).

14 Jury instructions are only judge-made attempts to recast the words of statutes
15 and the elements of crimes into words in terms comprehensible to the lay person.
16 The texts of "standard" jury instructions are not debated and hammered out by
17 legislators, but by *ad hoc* committees of lawyers and judges. Jury instructions do
18 not come down from any mountain or rise up from the sea. Their precise
19 wording, although extremely useful, is not blessed with any special precedential
20 or binding authority. This description does not denigrate their value, it simply
21 places them in the niche where they belong.

22 Id. 130 F.3d at 840. See also U.S. v. Barber, 442 F.2d 517, 527-8 (3d Cir. 1971) ("While . . .
23 [pattern instructions] may be useful for the purpose of supplying guidelines to the trial courts, we
24 believe that instructions to the jury must be molded to fit the factual context of each case. An
25 instruction approved in one case, or indeed in many similar cases, may not be sufficient for the
26 particular case at bar if the comparative circumstances are not identical or substantially
27 similar.").

28 The rote recitation of general form instructions will not always suffice to fulfill the court's
29 obligation to instruct the jury properly. People v. Thompkins, 195 Cal.App.3d 244, 250; 240
30 Cal.Rptr. 516 (1987). See also U.S. v. Lofton, 776 F.2d 918, 922 (10th Cir. 1985); Wright v.
31 U.S., 250 F.2d 4, 11 (DC Cir. 1957). The court "should not require a party to rely on abstract
generalities . . . but should instruct the jury in terms that relate to the particular case before it."
Fish v. L.A. Dodgers Baseball Club, 56 Cal.App.3d 620, 642; 128 Cal.Rptr. 807 (1976). See
also People v. Rollo, 20 Cal.3d 109, 123 n. 6; 141 Cal.Rptr. 177 (1990). Hence, trial courts
have been warned to "examine [pattern instructions] carefully before using them to ensure their

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1 accuracy and appropriateness to the case at hand." People v. Petrella, 380 N.W.2d 11, 36 (MI
2 1985).

3 [T]he fact that pattern jury instructions are available should not preclude a judge
4 from modifying or supplementing a pattern instruction to suit the particular needs
5 of an individual case . . . The thrust of such objection goes not to the use of
6 pattern instructions themselves, but rather to the practice of rote reliance upon
7 such instructions without modification, a practice that may develop simply by
8 virtue of their existence . . . [P]attern instructions should be modified or
9 supplemented by the court when necessary to fit the particular facts of a case.

10 American Bar Association, ABA Standards for Criminal Justice Discovery & Trial by Jury,
11 Standard 15-4.4 at 236-37 (3d Ed. 1996).

12 The defense's proposed instruction defining "deliberation" eliminates any possible juror
13 confusion and accurately states the applicable law.

14 The instruction offered by the defense supplements the definition of premeditation and
15 eliminates the possible confusion created by the pattern instruction. The proposed instruction's
16 definition is consistent with the most common meaning of the term and faithful to its linguistic
17 derivation.¹

18 Finally, the proposed instruction is necessary to inform the jury completely about the
19 meaning of premeditation. For over a century, Washington court have recognized that
20 "deliberation is the distinguishing idea between murder in the first degree and second degree."
21 See, e.g., State v. Rutten, 13 Wash. 203, 212-13 (1895). In cases of first degree murder, the
22 term "deliberations" means "to weigh in the mind, to consider the reasons for and against, and
23 consider maturely, to reflect upon." Id. The Washington Supreme Court has repeatedly upheld
24 jury instructions defining "deliberation" in murder cases. For example, in State v. Straub, 16
25 Wash. 111 (1896), the court approved an instruction defining deliberation as "the mental
26 operation of weighing motive or consideration that makes for or against an inclination of the
27 proposed act or line of action." Accord State v. Farris, 26 Wash. 205, 209 (1901).

28 Most decisions regarding the sufficiency of premeditation instructions have focused
29 principally on the issue of the amount of time necessary to premeditate a murder. See generally
30 State v. Benn, 120 Wn.2d 631, 657-58 (1993). However, those decisions also make clear that
31 premeditation requires "the deliberate formation of a reflection upon the intent to take a human
32 life," and it involves "the mental process of thinking beforehand, deliberation, reflection,

33 ¹ That "weighing alternative" is central to the meaning of *deliberate* is apparent from the term's etymology.
34 [Latin: *deliberatus*, past participle of *deliberare*, to consider or weigh; from *de*, *de-* + *librare*, to balance
(from *libra*, a balance or scales).]

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1 weighing or reasoning for a period of time, however short." State v. Pirtle, 127 Wn.2d 628, 644
2 (1995) (citations omitted). See also State v. Arata, 56 Wash. 185, 188 (1909) ("But the words
3 'deliberation' and 'premeditation' necessarily imply some appreciable length of time. To
4 deliberate and to meditate upon an act means to think it over and to weigh the consequences,
5 and when there is no appreciable time, therefore there can be no deliberation and no
6 premeditation.") The Appellate Terrance Jon Irby, would ask this court to notice
7 that there are no grounds for either Aggravated first degree murder or preme-
8 ditation, there simply is no evidence to support such a claim. THE APPELLATE
9 TERRANCE JON IRBY, Would ask of this court to place this challenge to any
10 layperson to try and understand the legal separation between required law
11 and statute to justify the present language used in the deliberation that
12 a jury must understand in order to bring about a finding, of first degree mu-
13 er or even second degree murder. Jury people are not attorneys that can make
14 out what the law stands for when they are put to the challenge by the court.

15 It only takes one person to lead a jury panel to believe in what he or she,
16 needs to take into consideration, and to pay no attention to what the Attor-
17 neys have to say, because it is the court whom gives the instructions to the jury and
18 decision must be very clear as to , between what the law reads and does not read.
19 clearly in this case there is no grounds for the finding of guilt, of the ch-
20 arg of murder in this case. The evidence does not support such a finding, its
21 the jury whom appoints the foreman of that jury and it just appears that -
22 this person may have been the person that made the, decision, and every one
23 just followed along with one persons view on the matter, in deliberation.
24 The expert witnesses were in favor of the Defendant, and the evidence of the
25 state of Washington patrol police laboratory. All of this herein will be ad-
26 dressed in the coming documents, to this court. This brief is in support of
27 an reversal of the charge of first degree, premeditation and or
28 aggravated murder in any degree.

29 I TERRANCE JON IRBY SUBMITS THIS IN SUPPORT OF HIS APPEAL, AND THAT BRADY VIOLATION, BAGLEY, AG -
30 URS, ALL OF THESE CASES WILL BE CEIED HEREIN. SUBMITTED BY APPELLATE, PRO-SE, SIGNED BELOW.

31 CONTINUE TO GROUNDS (2) OF APPEAL:

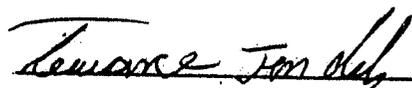
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1 IN THE COURT OF
2 APPEALS OF SEATTLE
3 WASHINGTON

4 TRANSCRIPT'S:DATE: 1/19/07 1/5/07 1/8/07

5 TRANSCRIPT'S:DATE: 3/29/06 1/18/07

6 TRANSCRIPT'S:DATE: _____

SUMMARY OF GROUNDS
CASE NO: 59741-8-1-
SECOND SET OF ADDITIONAL
GROUNDS FOR APPEAL

7 Herein we will be talking about the destruction of evidence and the
8 contaminated evidence. Detective Theresa Luvera/Dp. Millen had taken
9 a plastic, white bag, out of the safe, that was discovered in the corner
10 of the shop. This is believed to be where the Murder took place. The
11 bag was placed into evidence than taken out and given to the victi-
12 m's daughter (candy Rock) Needless to say but after the detectives
13 had the evidence they did not test it for Finger - prints or (D.N.A.)
14 Now we must keep in mind that there also was a pen and piece of paper that
15 was setting next to the open safe, this paper had the combination of
16 the safe. So why would'nt a person want to just test - any evidence
17 found near that corner of the shop? The pen was tested and no finger
18 prints or D.N.A. Was found, but on the piece of paper the D.N.A. of
19 the victim, James T. Rock was found, and an unknown contributor not
20 of the Appellate (Terrance Jon Irby) This was good news for the def-
21 ense. So at this time the two Attorneys' Kieth w. Tyne and Jon Ostlu-
22 nd, asked the defendant at that time if he would like to have an air
23 Mattress tested for finger prints and D.N.A. The reply was yes, so
24 after several attempt's, to motion the court to allow this to take
25 place, before the trial began. Denial - after Denial -, and, even after
26 filing in the Appeals- court, DENIED. That court found that it was
not --- appropriate, emphasizing that the trial had already began.

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1 At last the defendant was granted the right to have that tested as ---
2 material evidence. The consequences were that the lab. scientist, had
3 not done the right procedure when testing the mattress. There is a
4 (black fingerprint dusting powder) that is used to lift fingerprints off of
5 certain materials, but if you don't do the D.N.A. first, you cannot go
6 back and get that information. The diversification of one to the other
7 is critical because you have covered up the most important ev-
8 idence the D.N.A. In reading PEOPLE V. HITCH 12, Cal. 3d. 641, 527, P. 2d
9 361, 117. The court held that destroyed evidence will invoke sanction-
10 ns against the prosecutor under the due process clause when there
11 is a reasonable possibility the evidence was material to guilt or
12 innocence and favorable to the defendant. 87, Wn. 2d. at. 788-9. After
13 reading that entire record, the court concluded that the defendant
14 had satisfied this standard by enumerating 9 areas ' ' where the ex-
15 istence of the evidence destroyed could possibly have been of assi-
16 stance to him I.d. at. 790, 557. P. 2d. at. 6. Because the evidence had
17 been destroyed, the defendant could only speculate what it might
18 have revealed. As the Appellate Irby, after seeing the good news from
19 the piece of paper that was next to the open safe, it just seemed
20 like the logical thing to test, you see a safe open, there is a piece
21 of paper next to the safe, the combination to the safe is on that
22 paper next to it is a writing pen. And the most important thing is
23 that there is a body ten (10) or (15) Fifteen feet from that safe
24 and this is a murder investigation and (CRITICAL ELEMENT) DESTROYED.
25 The Appellant Irby. (The handwriting on the paper was never tested)
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1 In STATE V. ROCH 114 Wn.App. THERE IS NO MALFEASANCE CLAIM IN THIS
2 CASE OF IRBY AT THIS POINT IN TIME. But what is sufficient basis on
3 which to reverse or vacate the conviction of a defendant at whose
4 trial the chemist identification of a chemical substance constitut-
5 ed a critical item of evidence. In state v. Roche 114.Wn.App.424,59,
6 P.3d.682.(2002) That court held that, the most important considerat-
7 ion for us now is the preservation of the integrity of the crimin-
8 al justice system, that there cannot be a miscarriage of justice take
9 place. And the fashion that the public, the defense at bar, the pros-
10 ecuting attorney's and the courts of Washington will clearly unde-
11 rstand that we will not tolerate criminal convictions based on "tainted
12 ed "evidence" but will insist upon proper standard of conduct and
13 (PROCEDURE) And this is the word the appellant IRBY is bringing to
14 the attention of this court, that the procedure in how the air matt-
15 ress was tested for finger prints and could not be tested for the
16 D.N.A. that was "demanded" from the defendant at that time. IN ROCHE
17 114, Wn.App.424,59, P.3d.682 (3) criminal law-evidence-no change -- in
18 ~~condition~~ necessity before a physical object connected with the
19 commission of a crime may properly be admitted in as evidence, it
20 must be in satisfactorily identified and shown to be in substanti-
21 ally the same condition as when the crime was committed. The pro-
22 secutor at trial used the air mattress to cover up the body and
23 therefore to conceal a crime or in flight of that murder, and to
24 evaluate, the commission of aggravated first degree premeditation,
25 to go with the murder. Also IN RE: UNITED STATES V. CARDENAS 864, F.2d
26 1528,1531, 10th Cir.(1989)

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1 In Rules of evidence 901(a) Fed. Evid. 28 U.S.C. The rationale is that in
2 the absence of showing that the evidence is what its proponent alleges
3 the evidence is simply irrelevant. The scientist in IRBY's Case the ex-
4 pert witness the scientist GREG FRANK/BRIAN SMELSER — would not acknowledge
5 the existence of blood on the outside of the mattress, they would not
6 admit to seeing anything that would be legally binding. And it was this
7 blood on the outside of that mattress that the defendant was interested
8 in having tested, not the underside because the chances are that blood
9 would belong to the victim James T. Rock. There was a request that hair,
0 that was also on the mattress may belong to some one other than the vi-
1 ctim. The finger print testing destroyed the red substance therefore ul-
2 timately the lab. was unable to test or to even say what - the substance
3 was scientifically. Through the chain of custody of items with sufficient
4 completeness to render it improbable that the original item has either
5 been exchanged with another or been contaminated or tampered with. As
6 long as the evidence remains unaltered the evidence is admissible. Cite
7 at Federal Rules of Evidence, 327, 5th ed. 1976 see also 7.J. Wigmore, 2129
8 at. 703 Chadbourn Rev. 1978 (authenticity is an inherent logical necess-
9 ity. Rule 901) (a) Process or system Evidence describing a process or
10 system used to produce a result and showing that the process or system
11 produces an accurate result. The Appellant as, being the defendant and his
12 Attorney's claim that there was what looked like blood and more than li-
13 kely was blood. Rule 901(b) (3) Comparison by the tier or by expert wi-
14 tness which has been authenticated. A lay person would be able to see
15 the existence of blood, and this blood was to be tested, and was not.

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1 In Rule 901 (a) The requirement of authentication or identification as
2 a condition precedent to admissibility is satisfied by evidence sufficient
3 to support a finding that the matter in question is what its proponent
4 claims. (Expert witness Mr. Christman transcripts January 19, 2007.
5 Page 1595 line 15, on to page 1596, line (1) Det. Tiscornia, Deputy Mullen.)
6 The crime laboratory chemist had completely destroyed the blood evidence
7 a critical item coming from the crime scene, covering the victims
8 body. We will be seeing more evidence destroyed at the crime scene, blood
9 splatter stains, and the clean up of that crime scene, before the defense
10 had the opportunity in advance to investigate the crime scene, before
11 it had been released to the daughter of the victim (CANDY ROCK. On
12 March 11, 2005. The (Day after, when) the body was moved for the Autopsy was,
13 to take place on the next day (that the scene was released.) And we will
14 be writing about one Detective Kin Tiscornia who took pictures of the
15 crime scene before things were moved around, and contaminated, but he
16 claims that he over exposed the film, and these were the only pictures
17 of the crime scene before it was altered. In Re; STATE V ROCHE 114, Wn. App. 4-
18 24, 59, P3d. 682. (6) In CRIMINAL-LAW-NEW TRIAL-NEWLY DISCOVERED EVIDENCE--
19 CHANGE-RESULT-TRIAL LIKELY NOT HELD-EFFECT. In circumstances in which
20 a defendant would not have been tried or sentenced at all if certain
21 newly discovered evidence had sooner come to light, the question of whether
22 the result at trial would have been different had the evidence
23 been available effectively becomes moot. In Re; Prosecutors and courts
24 have a bad habit of using the word "exculpatory" in defining Brady material.
25 Although that word was used in the Brady opinion, the reinstatement
26 of the Rule in Moore clearly relates to "favorable" evidence. Obviously, there
27 is a vast difference between "favorable" evidence and that which
28 is "exculpatory". (Brady v. Maryland, 373, U.S. 83) (1963)

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1 In Re; United States v. Spawr Optical Research In.c. 864 F2d.1467,1472
2 n.6.9th Cir.)1988) (The Strickland Standard to impose prejudice has
3 been considered to virtually the same burden on the defense as the
4 standard for materiality in Brady Claims) Thus, the test for Strickl-
5 and and Brady are similar. In light of this the court held that Brady's mate-
6 rial standard determines prejudice from admittedly improper conduct. It sh-
7 ould not be considered as approving all conduct that does not fail
8 its test. Just as unreasonably deficient assistance of counsel is im-
9 proper even if it does not meet the prejudice prong of Strickland
10 and results in a sixth amendment violation, so suppression of exculp-
11 atory evidence is improper even if it does not satisfy the material-
12 ity standard of Brady and result in a due process violation. Though
13 an error may be harmless, it is still "error". Strickland v. Wash. 446.U.S.
14 668, (1984) Because the definitions of materiality as applied to appe-
15 llate review are not appropriate in the pretrial discovery context,
16 the court relies on the plain meaning of "Evidence Favorable" to an
17 accused" as discussed in Brady. 373, U.S. at 87. The meaning of "Favorab-
18 le" is not difficult to determine. In the Brady context, "Favorable"
19 evidence is that which relates to guilt or punishment. See Brady 373
20 U.S. at 87, and which tends to help the defense by either BOLSTERING
21 or pointing out the relations of that favorable evidence. In Appella-
22 nt Irby the word BOLSTERING THE DEFENSES. This is in regard to the -
23 piece of paper next to the safe, after finding that another contrib-
24 utor's D.N.A. Was found along with the D.N.A. of the victim James RO
25 CK. The appellant Irby was very frustrated at the trial judge, in
26 not allowing an continuance after several attempts to have the air
27 mattress tested for D.N.A. and finger prints. Because we do not know

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1 For sure rather or not, Rock put up a fight, maybe he had something in
2 his hand, or even just his hand. There simply is nothing to say that
3 he did not fight back. There was blood on that mattress, on the outside.
4 And because there were what has been considered, that more than one
5 assailant (AT LEAST TWO DIFFERENT WEAPONS WERE USED DR. SEALOVE, MULTIP-
6 LE WEAPONS, MULTIPLE-PERSONS) Whom's blood is on that mattress? It was
7 the last thing that was ever touched, for sure, someone had to place
8 the mattress over the body. The sequencing of events that took place
9 in the (SHOP-GARAGE). The finding of someone other than the Appellant's
10 blood would be Favorable Evidence, this in conjunction with the D.N.A.
11 found on the piece of paper next to the floor safe (Bolstering or even
12 impeaching) Along shot, not really because we did find an unknown contri-
13 butor's D.N.A. on the piece of paper (REASONABLE DOUBT AS TO GUILT)
14 This also was noticed by this court of appeals. when the Appellant mo-
15 ved for an stay of proceedings on this matter of the air mattress, As a
16 attempt to recover any new information. The Appellant is going to be
17 moving on, so that we can take a look at the crime scene it'sself.
18 CRIME SCENE REVIEW AND POTENTIAL EVIDENCE LOCATION outside of residen-
19 ce, at 35896 Shangri La Drive, in Skagit County of the victim James T.
20 Rock. There ~~clearly~~ is no speculation, concerning the damages to the crime scene.
21 "Bloodstain pattern Analysis". On this subject the Appellant will be asking the cou-
22 rt to read the Review of the Appellants witness Daniel v. Christman, blood Pattern
23 Analyst expert. At the enterance to the fount door of the, ~~inside~~ shop-garage there
24 was a drop of blood, that was never tested to see if it was of the victim or of
25 another person, that could have left it there by mistake. Whom know's. It was-
26 never even tested at all, No one cared to do — so. The Appellant would like
to know whoms blood, it was or even not knowing, is something to work
with. Again the piece of paper with the combination to the floor safe, the D.N.A.
coming from an unknown contributor, process of elimination between Irby/Rock.

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1 In the illinois Supreme Court Rule 415, (g) (i)166 III 2d, at 314-317,
2 652, N.E. 2d, at 290-292. (due proceess CLause, used out of Newberry) The
3 Appellate Court, however, relied ony on the portion of Newberry that add-
4 ressed due process, and the Appellate Court based its decision solely
5 on the due process Clause. Accordingly, we have jurisdiction to review
6 that decision. See, e, g, Long, supra, at, 1038, n.4. We the court, review a st-
7 ate case decided on a federal ground even if it is clear that there
8 was an available state ground for decision on which the state court
9 could properly have relied (citing Beecher v. Alabama 389, U.S. 35, 37, n. 3
0 (1976) In the case of Appellate Irby, There was a quick to judgment call, after the
1 police found out that, there were no other poeple, around, that anyone could say for
2 sure, other than one witness seen a man and a black car. But this evidence came out at
3 the trial. The Appellate has had runins with the authorities, in the past, years over
4 20, Twenty. This is when the investigation stoped taking place the focus was on the
5 Appellate and there was not much time spent investigating the crime scene itsself,
6 with the poor police work that took place, are even that did not take place. This is
7 about destruction of evidence. In Re; United States v. Agurs, 427 U.S. 97, 110, (1976) since
8 Youngblood was decided, a number of state courts have as a matter of constitutional
9 law that the loss or destruction of evidence critical to the defense does
0 violate due prcess, even in the absence of bad faith. As the connectic-
1 ut Supreme court has explained, fairness dictates that when a person's
2 liberty is at stake, the sole fact of Whether the police or other state
3 official acted in good or bad faith in failing to preserve evidence
4 cannot be determinative of Whether the criminal defendant received due
5 process of law; State v. Morales. 232, comm. 707, 723, 65A2d. 585, 593, (1995) State v. fer-

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1 guson, 2 S.W.3d.912, 916-917. (Tenn.1999) State v. Osakalumi, 149, W.Va.758, 765-767, 461,
2 S.E. 2d.509, 511-512(1995) State v. Delisle, 162 Vt.293, 301, 648, A.2d.632, 642, (1994) Ex-
3 parte Gingo. 605, So.2d.1237, 1241. (Ala.1992) Commonwealth v. Henderson. 411, Mass.309, 310-
4 311, 582, N.E.2d.496, 497. (1991) In Re; VAN V. BRANDY, 726, F.2d.at.552, This is consis -
5 tent with the court's conclusion that the proper standard under Brady is evidence
6 "that might reasonably be considered favorable to the defendant's case" Brady, at, 473.
7 U.S.696. (There is no requirement that the exculpatory nature of Brady material be
8 indisputable. The air mattress herein was an exhibit -of the trial, as evidence not
9 in its original condition, coming from the crime scene. State v. Roche 114 Wn.App.424
0 59 P.3d.682. (2002) (condition -necessity before a physical object connected with the
1 commission of a crime may properly be admitted in as evidence," it must be in satisf-
2 actority identified and shown to be in substantially the same condition as when
3 the crime was committed.) The air mattress is a critical element of the crime scene. This is
4 the evidence that blocked out any D.N.A. Testing because of an inhi-
5 bitor called amino-black, that is used to left finger print's off of
6 certain items. If the blood would have fallen into what ever it was
7 packed into we would still have the blood, inside of that Bag, Sheet, Pl-
8 astic bag, paper bag, duck tape, Blanket, Roll of Plastic. How can it be
9 lost, destroyed, damaged. Contaminated. Misplaced. All variations have -
0 been gone over. Exhibit (1) and (2) Of Transcript's. Air/water mattress.
1 In Brady, the conviction cannot stand if there is a reasonable probab-
2 ility that the evidence, considered cumulatively, would have produced
3 a different result at trial. The court in kyles, 514 U.S. at 436. The -
4 reasonable probability of a different result, the error cannot subse-
5 quently be found harmless under Brecht. Kyles 514 U.S.at.436. The App-
6 ellant Irby will be asking of this court to take into consideration
7 all of this cumulatively, and conclude that the Appellant did not rec-
8 eive a fair trial. That the conviction is reversible.

26 ADDITIONAL GROUND FOR
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ILLUSTRATION APPELLANT'S CONSISTENT WITH CrR.8.3(b) FUNDAMENTAL LAW:

1. GOVERNMENTAL MISMANAGEMENT WARRANTS DISSMISSAL ;
UNDER CrRLJ 8.3 (b)

A trial court has the authority to dismiss criminal charges, pursuant to CrR 8.3(b). The court's decision to dismiss a case, pursuant to CrR 8.3(b) .Will only be reviewed under the "manifest abuse of discretion" standard State v. Burri ,87,Wn.2d.175 (1976)State v. warner 125Wn.2d.876,882 (1995)

Before a court may require dismissal of charges under this, rule, two things must be shown. First, there must be arbitrary action or government misconduct ("Mismanagement") State v. Michielli, 123,W2d.229,239 (1997) The second necessary element is a resulting "prejudice" to the defendant's rights to a fair trial. Ibid."

The "government misconduct" necessary to satisfy the first element need not be of a "malicious, evil or dishonest" nature. Simple "Mismanagement"-- also falls within the standard of the rule. State v. Sulgrove, 19, Wn. App. 860, 863, (1978). Thus, conduct that is "sufficiently careless" provides the basis for dismissal in the furtherance of justice when the mismanagement results in prejudice to the right of a fair trial.

2. THE DESTRUCTION OF EVIDENCE HERE VIOLATES BASIC NOTIONS--
OF DUE PROCESS AND REQUIRES DISMISSAL:

To comport with due process, the Prosecutor has a duty to disclose material exculpatory evidence to the defense; And a related duty to "preserve such evidence for use by the defense". See Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d.215 (1963); California v. Trombetta, (467 U.S. 479, 104 S.Ct. 2528, 81L.Ed.2d.413 (1984)).

It is well established that "destruction" or withholding evidence - violates due process if the evidence is "favorable" to the defendant and material to his case.

Brady v. Maryland, supra; United States v Agurs, 427, U.S. 97, 49, L.Ed.2d.342,-

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1 96 S.Ct.2392 (1976):State v.Wright,87,Wn.2d.783,557 P.2d. I. (1976);State
2 v. Temple,5 Wn. App. I,485.P.2d.93 (1971).Two Supreme Court cases,Californ-
3 ia v. Trombetta,supra,and Arizona v. Youngblood,488,U.S.51,109 S.Ct. 333,-
4 102 L.Ed.2d.281 (1988),developed a test to determine whether the government's
5 failure to preserve evidence significant to the defense violates a defenda-
6 nt's due process rights.It is clear that if the State has failed to preser-
7 ve material exculpatory evidence'criminal charges must be dismissed. State .
8 v. McReynolds,104,Wn.App. 560,17 P.3d. 608 (2000)

9 In order to be considered 'material exculpatory evidence',the evide-
10 nce must, both possess an exculpatory value that was apparent before
11 it was destroyed and be of such a nature that the defendant would be
12 unable to obtain comparable evidence by other reasonably available
13 means.

14 Trombetta,supra,State v.Wittenberger,124,Wn.2d.467,474-75,880.P.2d.517,(1994).Agurs distinguis-
15 hed cases where specific requests were made,stating that When the
16 Prosecutor-"receives a specific and relevant request",the failure to
17 make any response is seldom,if ever.excusable"United States v.Agu-
18 rs,supra,at.106(emphasis added)Agurs did not,however, involve a "spe-
19 cific defense request for preservation of evidence".The court stat-
20 ed that the test of materiality in case like Brady in which speci-
21 fic information has been requested by the defense is not necessar-
22 ily the same as in case in which no such request has been made."-
24 "United States v.Agurs,supra,at.106,Reviewing BRADY v. Maryland,the
24 court found that implicit in the requirement of materiality is a "
25 Concern that the suppressed evidenc might have affected the outco-
26 me of the trial"United States v.Agurs,supra at.104.This test has

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1 Been interpreted to require reversal whenever "there is a 'reasonable
2 possibility 'that the error materially affected verdict"United States
3 v. Goldberg, 582, F.2d.483,489, (9th Cir. 1978).cert.denied,440 U.S.973,
4 59, L.Ed.2d.790.99, S.Ct. 1538(1979).Cited with approval, State v. Boyd,
5 29, Wn. App.584,629, P.2d.930 (1981).

6 In U.S. V.COOPER,983,F.2d.928,(9th. Cir.1993), Lab equipment
7 was routinely destroyed by government agents after several requests had
8 been made for its preservation.In several requests by counsel,it was
9 alleged that the equipment could not be used for the purpose alleged
0 by the government and the defense indicated an intent to have the eq-
1 uipment evaluated by experts for presentation at trial.

2 The court found that even though the equipment was destroyed
3 part of a normal procedure and not out of malice or other ~~improper act~~, mo-
4 tive, dismissal was still required.The court found the unambiguously
5 stated intent of defense counsel to have the equipment reviewed by
6 experts in an effort to prove that the equipment was configured for a
7 specific, legitimate purpose, to have clearly ~~communicated that~~, - the exculp-
8 atory nature of the evidence.U.S.V.Cooper, supra at 931.

9 It is significant that the defense was never able to prove
0 its assertion that the equipment couldn't have done what the governm-
1 ent claimed.The defense was not required to demonstrate that the evi-
2 dence was IN FACT, "exculpatory".Instead, the court held that "We will not
3 adopt the government's belief that they are lying.The defendant's ver-
4 sion of the facts, which was repeatedly relayed to government agents,
5 had at lest a ring of ~~credibility~~.They should not be made to suffer -
6 because government agents discounted their version and, in bad faith,
7 allowed its proof, or its disproof, to be destroyed U.S.v.Cooper, supra

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1 At 933. In addition, a close reading of that case indicates that on-
2 ce the defense presents evidence that the government was informed
3 of the value of the evidence and the need for its preservation, the
4 burden shifts to the government to demonstrate that the defense co-
uld have obtained comparable evidence elsewhere - or the case should
be dismissed .

5 In support of dismissal, the court indication that the governm-
6 ent has not suggested any reasonably available evidence which would
7 be comparable to the destroyed lab. equipment. U.S. v. Cooper, supra, at
8 932. Herein the case of Appellant Irby, the air/water mattress was
9 known to the prosecutor and of its importance in the case. And -
10 IT WAS THE LAB. THAT DESTROYED THE D.N.A. evidence that could have maybe
11 lead - to another persons D.N.A. other than the victim or Appellant, herein,
12 IRBY. In U.S. V. Elliot, 83, F. Supp. 2d 637, (E .D. Va. 1999), The court made
13 an exhaustive review of the history of the law Regarding — the dest-
14 ruction of evidence. In a careful analysis of the facts in that case,
15 the court found that where the government intended to offer testim-
16 onty of fingerprints identified as the defendants on glassware in a
17 lab. alleged to have been used for the manufacture of illegal drugs,
18 the actual evidence was required, by constitutional mandate, to be -
19 preserved for further examination, analysis, and testing. Id. at, West .
20 page 648, 649.

21 The court examined both the issue of bad faith and the requir-
22 ements for exculpatory value in the evidence. Regarding the need to
23 demonstrate the exculpatory value of the evidence, the court seemed
24 convinced that the "possibility of exculpatory value" was sufficient
25 to warrant a finding that the evidence should have been preserved;

26 Because a test of the evidence could have yielded both ex-

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culpatory and inculpatory evidence, a law enforcement officer could conclude that - the glassware lacked exculpatory value only by assuming that the residue was inculpatory. That is not a reasonable predicate for a law enforcement officer to use to destroy evidence and it certainly would not in logic support a conclusion that the evidence was not of potentially exculpatory value. The Appellant Irby will be showing an exhibit (3) of a critical piece of evidence, stated by the judge of the court. This would be the judge John Meyer, of the Skagit County Superior court.

As the evidence was sent to the crime lab. to be tested for fingerprints and D.N.A. That information is lost forever. Further more the transcript's will go into this matter, supported by - the evidence, that the Appellant Irby will be using as evidence of the known exculpatory, favorable, critical, curtail evidence, Also referred to as material Evidence.

In regarding bad faith, the court found that the government had either ignored the policies on the preservation of evidence, - or had simply not taken any steps to insure its preservation. Either way, the court found the lack of concern and consequent lack of steps taken to insure preservation of the evidence to constitute a "reckless disregard" sufficient to meet the bad faith requirements of Trombetta, and, youngblood, supra. Id. at. West -page 647.

In State v. Burden, 104, Wn. App. 507, 17 P. 3d. 1211 (2001) The Division II, of the court of Appeals reviewed the law in Washington and the adoption of the two part test for materially exculpatory evidence. The exculpatory value of the evidence must be apparent before its destruction and the nature of the evidence must be such that its destruction leaves the defense unable to obtain comparable evidence through other reasonably available means. Id. at 512.

In that case, the court found a coat was a material and potentially - exculpatory piece of evidence, the loss of which required dismissal of the charge. Burden sought to use the coat to support his defense of unwitting -

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1 Possession. The State argued that the coat fit the defendant tightly and the -
2 bag of drugs in the pocket could not be missed. Nonetheless, the court found the
3 evidence to be exculpatory precisely because it was at the center of controver-
4 sy in the case. It reasoned that the defense would be, "trying this case with one
5 hand tied behind his back" if the coat were not available to show the jury. With-
6 out concluding that the defendant's assertions were either proved or plausible,
7 the court found that the coat was crucial to the controversy, and therefore the
8 exculpatory value was apparent before it was lost. Id. at 513.

9 In conclusion, the court held that because the evidence was materially
0 exculpatory, it was not necessary to examine the "good or bad faith" of the State.

1 "IRRELEVANT THE GOOD FAITH OR BAD FAITH:"

2 Because we find that the evidence was material exculpatory
3 and not merely "potentially useful" we need not determine whether the State acted in bad faith. Due process "ma-
4 kes the good or bad faith of the State" irrelevant "for ma-
5 terial exculpatory evidence, as opposed to evidence which
6 is merely "potentially" useful". Youngblood, 488 U.S. at 57-
7 58.

8 A. THE EXCULPATORY NATURE OF THE EVIDENCE WAS APPARENT AND SPECIFICALLY NOTED
9 BY THE DEFENSE:

0 In this case the evidence that was destroyed consisted of the blood trace evi-
1 dence at the crime scene, the first set of pictures taken at the crime scene. And
2 transcripts of January 8, 2007. on page 210. Det. Ken Tiscornia, line 8, to page 211
3 line 6, page 210 line 17 the film failed to develop in my camera. Lin 24, Det.
4 right, it was the pictures that I took when I initially entered into the scene,
5 between the time that I entered the scene and made my way around to the north
6 side. And on page 293 of January 8, 2007 page 293 question the first roll of fi-
7 lm failed to develop? Answer (it did) Essentially, when the roll of film was
8 sent in by our evidence technician, it came back and the negative strips were
9 blank. Appellant Irby, these were the only pictures of the crime scene before

JANUARY, 10, 2007. TRANSCRIPTS:

1 The scene was altered and evidence was destroyed. Det. Terry Esskew; Transcripts
2 of January 10, 2007. Page 514, Hamilton Market "question" but the transcripts got
3 lost; Answer somewhere. Question by Attorney Ostlund. Am I correct that you also
4 any handwritten notes you had, you did not save. Answer (correct). Question; so -
5 you destroyed those yourself? Answer; yes, sir, Attorney Ostlund question, And you
6 also indicated to us that you left witness statements for those people to have
7 picked up later on; Answer correct. Det. Ken TIS. And both your transcripts of no-
8 tes and witness statements never showed up; Answer correct. From the people at
9 the Hamilton Market. Answer correct. Appellant Irby this is important because of
0 the witness that came forward, and stated that on March 9, 2005. He had break-
1 ast with James Rock and Jessie Reynolds at the Hamilton Market. So The Appella-
2 nt would have loved to hear from those people at the Market, because the App-
3 ellant was incarcerated ; at that time in question. You will find a declaration
4 of Norman Destrempts Exhibit (4) Herein. Detective January 10, 2007 Transcripts
5 these are being read from page 515 above and now page 541. Question from the
6 prosecutor Mr. Seguire on cross exhibit III question, what is exhibit III Answ-
7 er That would be the bag that I pulled out of the safe or the hole in the gro-
8 und. Page 542 line 8, Answer if I am looking at it correctly, I believe that's the
9 white plastic bag. Question; that was inside the safe? Answer yes. Page 543 of the
0 same document line 20, question after you opened up the bag and looked at them,
1 what, if anything, did you do with them? Answer (documents) read line 10, Answer I
2 brought the plastic bag into the command van and opened that up, and that's when
3 I found the documents of his (Rock) property. Line 22, Answer; I didn't do any-
4 thing with them. I secured them back into the house. (Appellant Irby the documen-
5 ts never came for the house, they came from the shop-Garage, out of the safe.
6 Page 553 of the same document that we are reading from line 15 to 25. Detective

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1 Luvera, Question the bage itself, you opened it up and you looked to see if there
2 re was any- the documents that you decided to leave with the house. Answer yes;
3 line 22, Am I correct that you did not either dust that bag for fingerprints or
4 dust that bag for possible D.N.A. swabbing? Answer No, I did not. (destroyed Evi);
5 The detective Luvera, was answering questions from defense Attorney John Ostlund.
6

7 On January 8, 2007, transcripts Det. Tiscornia, page 213, Exhibit (2) This page
8 215 Exhibit (1) Of the air mattress; Question by John Ostlund, And thats a closer
9 picture of that mattress? Answer from Det. Ken. uh-huh (affirmative) Line 5, page
0 215; Question; And it shows blood on it? Answer- It does; Question line 8, Let me
1 put it up on here; Question; would you agree it shows drops and possibly a smear
2 of blood? Answer line 10, Yeah, certainly both of those things ; Question pardon
3 me? Answer certainly. Read page 215 over to page 216, line 21 Question I THINK
4 YOU TESTIFIED THAT THERE WAS SOME BLOOD DROPS ON THE CONCRETE SURFACE NEAR THE
5 ENTRY DOOR. ANSWER YES, THERE WAS. Page 217, line 13, line 2, But if you know any samples of
6 those blood drops were ever taken into evidence? Line 4, I don't know that. Det.
7 Ken Tiscornia, The same document page line 15, I, knew ahead of time the scene
8 was disturbed, the bloodstain items were disturbed, and those - things could have
9 been moved after more documentation of the scene, was done? Question line 19, Ad-
0 ditioanl photographs? Yes. And on page 284 line 9, and the scene was released on
1 the 13th, or 14th. I take it. Line 10 to 13 (The answer can be found). And even in
2 Deputy - Mullen January 4, 2007. On page 36 line 7, Answer well, probably this
3 one showign the blood on the floor, just inside the door. Line (10) This is num-
4 ber four line 24, Thats a blood spot right there, I believe. The Appellant Irby-
5 has seen the picture of the blood spot, a singal drop about the size of a dime.
6 It was setting there all by its self, why would'nt one want to test something -
7 as important as that (evidence of someone's blood) The Appellant could not beli-
8 ve that was never tested for D.N.A. That would of been the first thing on my
9

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1 Münd(The Appellant Irby) The blood could of come for a weapon or off of the body
2 of the person's leaving the crime scene.(ASSAILANT,S)Then the judge of the trial
3 stated that the evidence of the air/water mattress was a piece of critial evidence
4 than can this be the same,the blood drop? There is not much deference in the spe-
5 elling,between critial and crutial the very meaning of the word used by the judge
6 can we assume that the word can,as in Youngblood and Agurs, be applied,as to mean
7 "exculpatory,Trombetta,Brady, as we have examed,in those cases.And after reading
8 several rulings of the trial judges rulings you will notice that he will only use
9 the word potentially exculpatory.But after the ruling to have the mattress tested
0 it all the sudden becomes"critial "it would seem after reading the higher -court's
1 view's that phrase,as being virtually - the same as if we were to say"Hay" that so-
2 unds like"excupatory" evidence. Can it mutate into crutial,than critial,favorable,
3 material evidence,excupatory.Now that realy is not a new animal is it ?When the
4 prosecutor incroperated the air/water mattress into this case,as being used to con-
5 cel (cover the body) of the victim James T.Rock,he had in fact interduced that -
6 evidence as a key element of the crime"To concel a crime!After all is'nt this wh-
7 er premeditation,in this case,was to be the basis for such a claim.AlthoUGHT ~~it~~
8 realy has'nt been proved(PREMEDITATION) it has not been established by law.As an
9 alturnitive to dismissal of all the charges,the Appellant will be seeking sancti-
0 ons against the states most probative,evidence as if this Appeal brings about a
1 new trial.The white plastice bag that was removed from the safe in the shop-gara-
2 ge how will we classify this "potentially useful,favorable,critical,crutial,pote-
3 ntially material " exculpatory".Fingerprints could have been taken from the bag,
4 or even D.N.A. The bag. was never tested for any of the above.The plastice bag
5 also could of had documents in it that had the victims handwritting on them.The
6 combination to the safe,hwom wrote it down .January 19,transcripts page 1644,Ques-

Tion page 1558, The detective Jennifer Sheahand-Lee, the lead investigator of the crime (The assailant forced Rock to give him the combination and the assailant wrote that card. Answer; that's certainly possible. The Appellant would ask this court to take that into consideration, that the evidence we speak on is exculpatory. Detective Terry Esskew and his lost, destroyed notes.

Kyles v. Whitley 514 U.S. 419(1995) (examines a Different Result of Brady Doctrine and suggests change in standard by which Appellant could prove a Brady violation. Evidence is material if there is a "reasonable probability that, the evidence been disclosed to the defense the result of the proceedings would have been 'different' Strickler v. Green 527, U.S. 263, 280(1999) Quoting United States v. Bagley 473 U.S. 667, 682, (1985) Citing Fed. RULES. CRIMINAL PROCEDURE. 16.(a) (2) the meaning of rule 16, (a) (2) Is so plain that it should be unnecessary to do anything more than simply read the text in order to conclude that it does not protect documents prepared by the police Department without - any involvement by the federal government Fort, at, 472, F3d. 1124. RULE 16 and Brady are in many ways are two sides of the same coin. If a local agency is a "government agent" For Rule 16, the purposes, it should also be deemed an agent for Brady purposes. This extends - the federal governments Brady duties to included information in the control of local agencies that participated in the case. Appellant Irby is referring to the notes that Detective Terry Esskew, who, destroyed his hand written notes of his investigation of the crime. Transcripts January 10, 2007 page 514, as the prosecutor is - asking the question, of Det. Esskew, SO this is found on page 514 line 6 to line 10, clearly this is the government, and he is the states witness for the prosecution. And this witness has admitted the destruction of notes, documents generated by the local police, local government, in the investigation of a murder. The court must view this as bad faith on the part of that government, careless, disregard for the - preservation of exculpatory or inculpatory evidence.

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And what Mr. Christman is saying, that the Detective should have done. Appellant Irby is thinking back to Detective Ken Tiscornia and the film destroyed of the first pictures of the crime scene before it was altered, what he is saying is that the detective should have checked the film in doing so he than could have altered the crime scene, the consequences of not doing so has caused a loss of information forever. And that he had not taken the pictures with a 90 degree angle (improper procedure) Not by the text book of the Justice Department, training. And the office of the Attorney general Reading --. Transcripts January 19, 2007. Jon Ostlund Attorney for the defense. Asking the questions; page 1595 As exhibit 69 of the transcripts Mr. Christman well, the photographs of the water bed mattress actually that I saw from the scene had blood spatter on that, Of course, I'm going to tell you that I think it's important because it's "bloodstain patterns", and they need to be studied to get a clear picture of what happen. Page 1615 line 21 Jon Ostlund question to Mr. Christman; Do you think useful information as far as the items that you talked about that are possible from crime scene, blood spatter, could have been found if this had been preserved better? And the answer from Mr. Christman page 1615 line 25, Answer; I think there was information that has been forever lost at the scene by moving prematurely collecting evidence from the scene "yes". And Mr. Ostlund asking Deputy Mullen, on page 65 of January 5, 2007. Transcripts Question line (1) And those are blood spots on top of the mattress and around the edges of it? Line (3) Yeah, it looks like that. Question does it look like both a smear and spots? Answer Yes. The Appellant is going to introduce, a interview by Jon Ostlund, Sean Devlin, Michael Sparks, Keith Tyne and, the prosecutor Tom Seguire. March 9, 2006 With Detective Tiscornia, And would draw your attention, to page 6, under lined at the bottom of the page. In which is in support of Appellant Irby's argument, in

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Relation to the drop of blood by the entrance door; Detective Tiscornia, said there was a small drop near the little door that was consistent with blood.

The Detective goes on to say that (Detective Tiscornia said that could have been carried away by the "assailant" (this is the argument that the Appellant Irby has made claim to) And if you read on you will read another question asked of the detective (How far that was from Rock's body. Det. Tiscornia said approximately fifteen feet) EXHIBIT (5) Of this document. It is important that this court would see the gross violations of the 5th, 6th, 14, Amendments to the constitution. THE LACK OF DUE PROCESS OF LAW, AND THE EQUAL PROTECTION OF THAT LAW. The right to have an independent investigation of the crime scene. For the defense, expert's to be able to view the evidence before it has been destroyed, the evidence that should have been preserved. In the Appellant's case there are Brady violation. And the Appellant is going to be citing several rules of Federal Rules Of Procedure. They embroider on the similarities and conclusion, emphasizing several federal cases that have been in support of the constitution, the basic Rules that influence the characteristics related in United States v. Cardenas 864, F 2d. 1528, 1531, 10th. Cir. (1989) Can be admissible when appropriate. In Brady the materiality standard for Brady claims is met when "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict, as in Kyles 514, U.S. at 435. On page 8, 2007, of the transcripts question — by the prosecutor Tom Seguire; Were you attempting to reach conclusion about maybe what happen in the garage? Answer Det. Ken Tiscornia. The results of the autopsy told us a lot basically, I was trying to confirm what we learned through the autopsy, and be able to prese-

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1 sent that to anybody who asked, and also to collect enough information
2 to where, if it came necessary, to show that to an expert, someone who
3 knows something more about blood stains than I do. Ends on line 19, page -
4 181.

5 And now we will be going, into fingerprints that were improperly lifted
6 and or processed at the crime scene, the lead Detective Sheahan-Lee
7 to page 1539 of January 19, 2007; Attorney Keith Tyne for the defense-
8 Question: And was this photograph sent to the crime Lab? line 17, Answer:
9 er the photographs were not sent to the Lab? Line 18, Question: Just -
0 the lifts? Answer correct, that's the typical procedure; line 20, Quest-
1 ion; And did you testify it was the opinion of the crime Lab. that th-
2 is was of no value? Line 22, Answer that's correct. Question; that the -
3 lifts that they examined of that print was of no value? Answer; That's
4 correct.

5 B. D.N.A. OFFER'S REASONABLE DOUBT AS TO GUILT:

6 Than on page 1540 line (1) Question; Why was that? They say because -
7 there weren't enough points of comparison, correct? Answer that's typic-
8 ally - that's the known reason that I've ever known. Question It doesn't
9 have enough points of comparison? Answer; correct. This is now going i-
0 nto the same document January, 19 2007 Transcripts page 1559, This is
1 talking about the pen and piece of paper by the safe. We are still wi-
2 th Detective Sheahan Lee. (The lead Detective on the case) Question li-
3 ne 4, And again that's never been submitted for any kind of handwriting
4 analysis, has it? Answer no; Question and it has been submitted for D.N.
5 A. processing, hasn't it? Answer ; yes, it has. Question And it came back
6 with two people's D.N.A. on it, didn't it? Answer yes, it did. Question Mr.
7 Rock and an unknown person. Question; That's correct. Question; and as an
8 investigator, if there is an open safe with a paper and pen, with a com-
9 bination on that piece of paper and a body within 15 feet, that's somet-

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APPEAL THIRD SET:

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1 hing as an investigator you are interested in and want to look at, isn't it?
2 Answer, yes and it was looked at. It is important that this court would
3 take note that Appellant Irby and the defense asked that these steps
4 would take place, in order to test for fingerprints and D.N.A. This ne-
5 xt document that Appellant Irby is asking this court to take a close
6 look at, transcripts of March 29, 2006. This is before any testing of -
7 certain items was ever conducted. From page 3, line 7, down to line 18,
8 Now, obviously if Mr. Irby's fingerprints or D.N.A. showed, ~~then~~ - that,
9 would be evidence that the state would be interested in. If only Mr.
10 Rock's fingerprints, D.N.A. and handwriting shows on that, it is neutral.
11 If it shows a third persons D.N.A. fingerprints or handwriting, then,
12 in our view it is relevant and compelling evidence in Mr. Irby's favor.
13 And we want to have that tested. I have talked to the Lab. they can -
14 test both fingerprints and D.N.A. off that without destroying it. It
15 has to be done very, very carefully, fingerprints analyst and D.N.A. -
16 analyst has to work together not to destroy them. As the Appellant Ir-
17 by has included a point on this, matter by citing on page 3, of the sec-
18 ond set of grounds; State v. Roch 114 Wn.App. "Standard of conduct and
19 procedure." As Attorney Jon Ostlund has pointed out that the D.N.A. and
20 fingerprint analyst has to work together not to destroy them. We are
21 talking about the air/water mattress that the fingerprint process de-
22 stroyed the ability to test for D.N.A. Now the very important reason-
23 behind this request of testing was to see if that evidence could, poi-
24 nt to someone other than the (Appellant Irby) So this could be inculpa-
25 tory as well as exculpatory evidence, as the Attorney explained to the-

8 **ADDITIONAL GROUNDS FOR
APPEAL THIRD SET:**

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1 court. And in this document the court can see on this same document
 2 page 4, the court will notice that the defense also requested that the
 3 plastic bag that is there as the Attorney Jon Ostlund (I can show the
 4 court another picture.) The white bag pulled out of the safe by, Deputy
 5 Mullen and Detective Luvera, see page 1, of the second set of grounds -
 6 for appeal. And on page 4, you can see on line 18, a piece of paper that
 7 had the - code for entering the computer (This was never tested at the re-
 8 quest of the defense) Page 1, to page 23 of this document of March 29, -
 9 2006. It is worth reading to the end. And on page 9, as Attorney Ostlund-
 0 points out to the court line 13, to 16, (There is no issue against Mr.
 1 TYNE.) This crime scene was turned over and not preserved, in other wor-
 2 ds destroyed. And now we are ready to read the defense expert fingerpr-
 3 int witness, as to the proper tech, person, Mr. Robett Kerchusky; Transcr-
 4 pts of January 22, 2007; The Appellant believes it is important that th-
 5 is court would take notice in this matter, and this mans career, his wh-
 6 ole lifetime as far as fingerprints are concerned. Page 1788, line 19 as
 7 he answers questions by Attorney Keith Tyne. Answer that was asked in
 8 relation to his career, That in 1952 he started. And I started with the
 9 F.B.I. I had six months of classroom training with direct supervision, I
 0 advanced to supervisory, assistant supervisory class in about ten years
 1 and supervised as many as, like 30, or 40 subordinates in fingerprints.
 2 Question by Tyne; was that through your work with the F.B.I. Answer page
 3 1789 answer; correct, line 1, Question your years with the F.B.I. Were
 4 1952 through '69'; Answer, that's correct, right. Line 10, yes, I've worked with
 5 the F.B.I. I worked with the metropolitan police Department in Washi-
 6 ngton D.C. Pa, 1790 L, 16 That was from 1969 to 79. on page 17900 of the same
 7 transcripts of January 22, 2007. line 12 Question. okay, and how many tim-

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JANUARY 22, 2007;

1 es would you estimate you've testified in court? Answer Approximately
2 300 times. Question line 15, And in what states or countries have you -
3 testified in? Answer, oh, lets see, well, Idaho, Montana, Washington, Nevada,
4 Washington D.C. Maryland and Virginia, Question what did you do after -
5 leaving the metorpolitan police Department for D.C.? line 21 Answer; I
6 became a ~~private consultant~~ in pennsylvania for five years. Page 1792 li-
7 ne 10, Kerchusky kept his certification for 19, years until he retired
8 in 1996. On Pa, 1798 Lin. 7. Question; have you seen the washington state pat-
9 rol crime Lab. report on the lifts in the slider door frame? Answer; yes
0 Question have you reiewed numerous photos from the crime scene? Answer
1 yes ,I did. Page 1799 moving along a bit, Question; line 11, the reasalut-
2 ion is not good on this projector, but nevertheless from what you could
3 see when holding exhibit in your hands, did you determine that, that is
4 a print of value for comparison purposes? Answer yes, it was. Question
5 why? Answer because there was at least 20, or more points of identific-
6 ation or characteristics in that fingerprint there, Question; And so -
7 would you disagree with the conclusion that, that is not a print of va-
8 lue? Ans, Lin. 23. I definitely would. This number 185. Moving along to page -
9 1805, Question; okay, so, then is that thumbprint from an unknown person?
0 Answer; yes It has to be from an unknown person that left that on that
1 door or side door there: Question; because its not from Mr. Irby, and not
2 from Mr. Rock? Answer thats correct. (We have read from Sheahhan-Lee DET.
3 on page 13, herein this document that the cirme Lab stated that there
4 was not enough points of comparison) And we have heard, from Mr. Kerchu-
5 sky that there were at least 20, points of comparison. As they have said
6 the Washington State Patrol crime Lab. told her that there were no us-

7 ADDITIONAL GROUNDS FOR
8 APPEAL THIRD SET:

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1. able prints, lifts of value. Appellant Irby now we are going to be gett-
 2. ing to the very point of the procedure that the police, Detectives and
 3. crime Lab people W.S.P. And keeping with In Re; State v. Roch 114, Wn.-
 4. App. 424, 59, P. 3d. 682. (2002) On page (3) of second set of grounds. Proper
 5. standard of conduct and page 1809 line 8, "PROCEDURE" Question; Is dust-
 6. ing powder the only technique one can use to detect latent fingerprin-
 7. ts? Answer definitely not. Question is it the preferable one? Answer; No,
 8. not in most cases line -13 Question; okay what agent or chemical would -
 9. you used instead of dusting powder on this door frame? Answer I would
 0. have used 'amido-black'. Question; What is amido-black? Answer; A CHEMI-
 1. CAL ENHANSER for latent fingerprints. Amido Black - is one, that it reac-
 2. ats to the blood thats on the finger when it hits an area, and it will
 3. develop a latent fingerprint for you. Question; So, does amido-black -
 4. react in the presence of blood? Answer; Thats what it reacts to. Page-
 5. 1810 January 22, 2007 line 16, Question I think ~~was~~ asking if amido-bl-
 6. ack is a chemical enhancer for blood. Answer; for blood right. Question;
 7. is dusting powder an enhancer for blood? Answer No, it is not. Appellant
 8. Irby I think we all can learn something, herein regarding the procedure
 9. in which you can take fingerprints an even if you don't see blood you
 0. can get the results of blood by using the amido-black. The air water
 1. mattress and in further reading we will go there. Its not just the idea
 2. that the fingerprints did not belong to the Appellant, its the matter
 3. of facts that a murder investigation was taking place and the fingerp-
 4. rints were taken from the crime scene. And they were found not to be -
 5. the Appellants or the victims. And we know by D.N.A. we can then start
 6. to look for somone to do a process of cross reference between the vic-
 7. tim, the Appellant, and any unknown persons.

8. ADDITIONAL GROUNDS FOR
 9. APPEAL THIRD SET:

JANUARY, 22, 2007; TRANSCRIPTS:

1 On page 1811 line (1) Question what happens if one puts dusting powder-
2 on some faint marks that may or may not be blood? What will the dusting
3 powder tell us about whether or not that is blood or not? Answer; well
4 first of all if you dust it first, could maybe destroy it if its very
5 faint blood, because all you need is just a very little blood to where
6 you could'nt even see it on you finger, because I've gotten it off of
7 doors where you could;nt even see them. And they will come out real go-
8 od (as far as for - comparison) purposes. Page 1811 line 12. Now, as far as if
9 you use powder first, it may destroy it, but if they would have come ba-
0 ck after - the powder prints was lifted, the impressions still might be -
1 there in blood. Question, so in your 50-plus years of being a fingerprint examiner,
2 did you use amido-black to search for fingerprints? Answer yes, I did. Question on li
3 ne 23 Question did you read anything in the reports in this case that indicated that
4 law enforcement used a chemical enhancer for blood, fingerprints or palm prints on -
5 the frame door: Answer No, I did not. Question; was there any indication that law enfo-
6 rcement used any chemical enhancer for blood on the latent prints that we have seen
7 Answer No, I did not see any. Lets go to Pa. 1812 - 15, Well, the reason why is because you
8 don't have to really see it. All it has to be is present on that finger. Question you
9 don't have to see what? Answer you don't have to see the blood. All you have to do
0 is spray those areas. Numerous times I got them where I didn't see them until I spr-
1 ayed it with amido-black. Question I guess another way, can blood prints be invisible
2 to the naked eye? Answer - line 1, page 1813 Answer oh, definitely, as far as amido-black
3 is concerned, yeah (That there could have been blood in the fingerprints, that now are destroyed Irby)
4 In State v. Roch 114, Wn. APP. 424, 59, P3d. 682, (2002) As the court held,
5 that the courts will not tolerate criminal conviction based on tainted
6 evidence, but will insist upon proper standard of conduct and "procedure".
7

8 ADDITIONAL GROUNDS FOR
APPEAL SECOND SET:

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1 (And through the chain of custody the detectives, police, and lab people destroyed evidence The Governme-
 2 nt) The credibility of the scientist's must at this point in time be qu-
 3 estable at best. And we have Greg Frank and Brian Smelser, are for this
 4 purpose government agents. And in reading there testimony, and testing
 5 of evidence of the crime scene, must also be under fire-. On page 6, of
 6 the third set of grounds, we have emphasize that good faith and bad fa-
 7 ith, can also be irrelevant; Ceting youngblood at, 488, U.S. 57-58. The is-
 8 sue of the air/water mattress was tied several times and found to have
 9 blood on the outside of it, this has been established January 16, Transc-
 10 ripts, Question by Mr. Ostlund page 1034. line 18, That when we got a rep-
 11 ort that you were'nt able to get any results because there might be a
 12 possible inhibitor? Answer; correct line 25, Question you remember that --
 13 came to find out how you got around the blood on the mattress? Answer
 14 from Frank (scientist at the crime Lab) Um, I, 'm not sure of the questi-
 15 on. I remember that you were asking about why I, did not see any blood
 16 on it when I swabbed on the vinyl side, yes (This is where the scientist
 17 plays a game of Tip. Toe, around the questions, and this is a agent, for
 18 the purpose of the government) In Re; U.S. v. Cooper, 983, F.2d. (928) (9th-
 19 Cir. 1993) Page 1035 Line 8. The scientist agrees that Exhibit (1) Is the
 20 mattress that he had tested. Line 8, Answer it is. There's not enough of
 21 it ~~that~~ for me to tell you for sure that it is. Irby now we have bad -
 22 faith, because there clearly was enough that ~~several~~ - Detectives had alr-
 23 eady tesyified that they can see the blood, and this court must be able
 24 to see whats taking place here. Line 11, I, will make the -- if somebody te-
 25 lls me it is, thats fine. Line 13 Question; When you got the mattress, and
 26 we just looked at it now, was it that color on the vinyl side?

27 ADDITIONAL GROUNDS FOR:
 28 APPEAL THIRD SET:

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JANUARY, 16, 2007; TRANSCRIPTS:

1 Answer; No, Question; what color was it? Answer; It is black. Question; And black all over that
2 side? Answer; Yes it is; line 20, Question I think the jury has already
3 seen this, but we are looking here and there's blood on this area of the
4 mattress; correct. Line = 23, Again, I have no firsthand knowledge of it. There
5 are some stains in that area, yes, but I'm not going to be able to
6 tell you that it's blood - from a picture; Question; Do they appear similar
7 to blood? Answer; They appear similar to blood? Answer; They have the red-
8 dish staining that I would consider as being blood-colored, yes. (Ok, -
9 the Appellant Irby is now going to be getting somewhere with this line
0 of questioning) Question is there anything about those dots and stains that
1 at is inconsistent with being blood? Answer; Except where, I've seen stuff
2 that looks like blood that is not blood. So that's why I can't tell you
3 just visually that it is blood. Question; Does it look like blood? Answer;
4 It has the appearance of blood yes; Question; If this was blood and if
5 there was, not an inhibitor, this is actually, for D.N.A. Sampling, a fairly
6 significant amount of blood for finding D.N.A.: Answer; Yes; Isn't Attor-
7 ney Jon Ostlund good in bringing out one's interpretations, at the parties
8 leisure? The Appellant found it one, "redundant" as being needlessly "rep-
9 etitive". I the Appellant believes the court can take notice that this
0 scientist is "prejudice" against the defense. On line 2, page 1037 of the
1 same document. Question; If you had known there was blood on the vinyl -
2 side, would you have done anything different? Answer; if I had known there
3 was blood on it, yes, I would have probably swabbed it in a manner -
4 such that I would try to avoid any bloodstains, realizing that more than
5 an likely that is the victim's blood and try not to contaminate the sw-
6 abbs with that. Appellant IRBY: The scientist again is prejudice that he
7 would give testimony that the blood is more than likely the victim's blo-

8 ADDITIONAL GROUNDS FOR
9 APPEAL: THIRD SET:

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od the government,would rush to judgement and stop all,investigation and, The Appellant Irby stuck out his neck,on this testing of the mattress,because he and the victim had used this air/water mattress to work on the victims truck and lawnmower.So there was a chance that the Appellants D. N.A. COULD HAVE JUMPED UP AND SAID HERE I'AM,BUT THIS IS WHATS IMPORTANT The Appellant was not looking for his D.N.A.Or Rocks on the "outside of the mattress,not on the under side.because,we know who's blood that is,be longing to James T. Rock.

The Appellant was hoping to find an unknown persons D.N.A. and just may-be the same D.N.A. That was found on the piece of paper by the open safe with the combination to that safe.Inculpatory as well as exculpatory.The scientist Grag Frank in his testimony only gives one explanation to wh-oms blood could be found on the air/water mattress.Extreme prejudice,to influence the jury,substantially.There is no other reason for that blood to be considered to be coming from any one person.Thats why it was reque-sted to be tested for D.N.A. and fingerprints.The Appellant Irby line 13 16. Page 1037 of document,Greg Frank;It's unclear as to in this case what th-at inhibitor is.I just know that there is something in the sample from either the mattress or the "finerprint" powder most likely" that is causi-ng,basically D.N.A. coping not to occur.I the Appellant can only say - this the mattress was sent to the Lab.for fingerprint and D.N.A. testing and the scientist acting as an agent of the local government,had destro-ved the testing process On January 9,2007 page 314,line 16, The skagit - county superior court Judge states;Do you have a case that tells me that who asked for testing makes a difference? Is'nt it just the fact of what occurred with the testing? I understand your rush to judgment. I unders-tand all of that.The court page 314 January 9,07.line 17, I do'nt think that the defense is precluded from arguing that there was a rush to judg-ment when the fact is brough out that it took a year-and-a-half for this stuff to be tested(The right to a fair trial cannot take place when the-

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1 Local government, fails to ~~preserve~~ - evidence, and this has been the Appell-
 2 nts, ~~Claim even after~~ - the destruction of the crime scene, and the -- very apare-
 3 nt misleading testimony of the detectives, police, and their misrepres-
 4 ntation before the jury. The prosecutor is very aware of this fact of
 5 prejudice, trial that took place. On page 1955, Jan. 23, 2007. lines 3, to
 6 line 10, "He states Washington — v. Terrance. You have taken an oath to as-
 7 sess the evidence which has been prsented to you related to Mr. Irby.
 8 Thats your primary function. This is not the state of Washington v. the
 9 Skagit County Sheriffs Department. This case is not the Sfate v. Det.-
 0 Sheahan-Lee or Det. Tiscornia or Mr. Frank from the State crime Lab. Page
 1 1955 January 23, 2007. So why bring it up? Because theres an attempt to
 2 focus you away, to go to the area of Prejudice and to think, to suggest,
 3 however subtly, that the police and maybe even the government, as they,
 4 come before you today, is being unfair, is somehow not open to all poss-
 5 ibilities, and because of that they ought to be sent a message. Line 8,
 6 but that - particular idea, to make the Sheriffs office or whoever was involva
 7 olved in the investigation look bad, thats what its about its about Pe-
 8 judice, (Appellant Irby and that is what this is about, as Mr. Seguire has
 9 conveyed to the jury, it is prejudice. And that is the only way to view this.)
 0 Page 1956. We are going to be in a area, where Det. Key Walker is taking
 1 blood samples on ; Transcripts of August 2005 9, Day this is when Attorney Keith -
 2 Tyne and Lana his ivestigator whent out to the crime scene, for the fir-
 3 st time, six months later, after the destruction of the crime scene Evid, On Transcripts
 4 January 9, 2007. Line 2, All right, Now I'll get to that in a minute, but as for as aski-
 5 ng you about blood drop near the door, this is the area that - you did not take any sam-
 6 pel in that area? (Correct The Answer) Admitted as number 79 Exhibit. And more prejudi-
 7 ce, on page 317, of Jan, 9, 07. Transcripts. As Jon Ostlund explains to the court, line 19,

1 And of course our argument is that it shows the carelessness of the sta-
2 te in how they dealt with the evidence and the crime scene. And the App-
3 ellant would like to show another act of prejudice, and abuse of Discr-
4 ation. The Appellant had to fight, the court, the prosecutor's office, in
5 order to have evidence tested, this is very important witness, that we
6 have talked about Mr. Destrempts had taken with Detective Key Walker
7 On March 10 or 11th of 2005. And an exhibit (6) Showing that the Appell-
8 ant was incarcerated on March 8, 2005. When Mr. Destrempts had breakfast
9 on Wednesday the 9th, of March, 2005. And the Appellant can find no report
10 of an investigation follow up, by any of the detectives, remember the -
11 statement - forms that never showed up that were left by Det. Esskew, see
12 page 7, of third set of grounds. This Mr. Destrempts showed up at the cri-
13 me scene, and had informed the Detectives that were there, that he had
14 in fact seen the victim alive, on March, 9, 2005. What better witness can
15 a person want? He is a eyewitness to the VERY EXISTENCE OF THE VICTIM
16 BEING ALIVE. The Appellant even asked the court for an order to have his truck -
17 tested for evidence, Transcripts December 27, 2006. Page 12, line 10, .The
18 Appellant; In relation to the request if a detective would be able to
19 go and look up under the hood in the area of the battery and test for
20 blood trace evidence. And on line 23. you will be able to see some of -
21 the prejudice comments - from the Judge and prosecutor. Mr. Seguire; I don't
22 "either, your honor, except the sheriff's department probably has other things to do. The court I know they
23 do." The Appellant would ask this court to view this as prejudice, Be-
24 cause this was a very important thing to have take place. And now aga-
25 in this will go to a higher level of prejudice, In which may show sust-
26 antial amount of prejudice. The Appellant must assume that once again,
27 right in the middle of Appeal in a criminal prosecution valuable evid-

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ADDITIONAL GROUNDS FOR
APPEAL THIRD SET:

TERRANCE JON IRBY 631794
UNIT-6-TIER-D-CELL-17
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ence, been destroyed. Your, Justices this may very well be the straw that
 at brok the camels back. That this truck of the Appellant was said
 to have been involved in several crimes, and furthermore it was used
 in the ciminal posecution, and must remain in evidence, untell the - out-
 come of the case. The Appellant cannot test evidence thats not there
 how can one interduce newly discovered evidence, in order to submit,
 to this court. It is in the Transcripts that on December 27, 2006. And
 again in the year of 2007 and these documents well be sent to this
 court, as proof of, the Appellant filing several motion to the superi-
 or court of Skagit County. Furthermore no hearing was held in order to dispose of said
 Ford truck. If the prsecutor cannot produce the truck, than it has been
 evidence, that has been supressed. Brady violation. That this court -
 would take notice of the several requests that have been made to -
 just find the location of that evidence. Exhibit (A)(B)(C) and (D). And
 just to cover some of the issues that have been raised herein.

I. EVIDENCE MATTRESS WHAT IS THE IMPORTANTANCE OF THE
 Transcripts of 1/9/07. Exhibit (69) Picture of Air/-
 Water Mattress, page 554, more of a close-up than wh-
 ats in Exhibit (3) Page (354) Line (4) Question by
 Mr. Ostlund. It would be something touching the blo-
 od after it was dropped. Answer Its been disturbed,
 so its been spattered on there and something touch-
 ed it to disturb it. Answer; Right. And that could be
 somebody handling the mattress; Answer; Possibility.
 Answers by Det. Ken Tiscornia, Question by Attorney
 Ostlund; Note the black fingerprint powder that destroyed the D.N.A. test-
 ing of the blood seen on the outside of the mattress. The Lab. Frank/Snelser.
 Someone touched that mattress when the blood was -
 wet. D.N.A. And finerprints could have - possibly been -
 found on that mattress. And that evidence has been
 destroyed forever. Why would'nt, the blood be dry, after

JANUARY 9, 2007 TRANSCRIPTS:

1 being there from March 8th, to March 11, 2005? So many questions — th-
2 at can no longer be answered. Line 12, page 314 January 9, 2007. —
3 question; You, on redirect, commented about a drop of blood near
4 entrance door On page 355. Exhibit (4) Questions by Attorney —
5 Jon Ostlund; Answer by Det. Tiscornia.
6

7 II. WHAT IS IMPORTANT ABOUT THE BLOOD BY THE
8 ENTRANCE DOOR:

9 Line 17. Transcripts 1/9/07 Question; And
10 that drop of blood we are talking about/
11 line(19) Okay. And am I correct that appears
12 to be a fresh drop of blood/ Answer, —
13 Yeah, it's consistent with the other dro-
14 ps of blood in the room. We are still se-
15 eing wet blood (Fresh Drop of Blood). And
16 it could be coming from the assailant(s) leaving the scene.

17 Question; Line(3) Page(357) And you also testified that the scene —
18 was released after your examination -- I mean, when I say yours, I me-
19 an the Skagit County Sheriffs Departments examination on the (12) Yes.
20 Appellant Irby ; Now this Detective Ken Tiscornia, was one of the first —
21 responder to the crime scene, taking pictures, and "looking for a wea-
22 pon". All thorough out the shop/garage; On page 360, Of January 9, 2007
23 line, 14-16 The Det. Ken Tiscornia is asked when did he become aware of
24 the safe line 14 to 16, Answer; Quite a bit of time later. So it wasn't
25 never — discussed with you on the afternoon of the 12th, after it was —
26 discovered/ Answer; No; Question line 21, How long later did you ever—
27 become aware of this floor safe? Answer; It was months, caunsel. It was
28 months. Question; could it possibly have been when we interviewed you
29

30 ADDITIONAL GROUNDS FOR
31 APPEAL: THIRD SET:

32 TERRANCE JON IRBY 631794
33 UNIT -6-TIER-D-CELL-17
34 WASHINGTON STATE PENITENTIARY
35 1313 N. 13th AVE
36 WALLA, WALL, 99362

JANUARY 9, 2007. TRANSCRIPTS:

1 In March of 2006?(The Appellant Irby;one year later)Page 361,Jan.9,
2 2007Answer;I might have been ~~aware~~ of it before ~~then~~-that it was pres-
3 ent,but--Question;And that was just because the detectives who inve-
4 stigated - the scene never brought it up in your presence? Answer;not
5 in my presenence;No.Appellant are we to believe this testimony for
6 one minute? The Detective that, plays a big role in the investigati-
7 on,as we have read several,transcripts.That is showing his,most "Ex-
8 perience.The Appellant would suggest an element of bad faith,his ac-
9 ts are with extreme prejudice.Unchallenged untill now.And again the-
10 re is prejudice on,this: ~~January~~- 9,2007 Transcripts; Page 311 line 4,
11 The court;I agree that its relevant that testing was done further -
12 down the road and not done -immediatally,but who cares who asked?Line
13 7,Mr. Ostlund.I think that we care;I think the jury cares.Ithink it
14 is relevant who asked to have testing done,because again it shows -
15 what we are arguing is that the state really was'nt interested in -
16 the crime scene or what evidence might show what in the crime scene.
17 "And Mr.Irby has made every effort he can to have whatever he could-
18 have tested-tested,and I think that those things are relevant.They
19 are certatainly relevant."Going back for just one minute,The Detect-
20 ive Ken Tiscornia spent time in the shop seeking out a weapon,in the
21 garage,and are we to conclude that for some reason he has become,in-
22 competent,and is looking for something larger than a safe,we must as-
23 sume,he was looking for a weapon,but did not see the safe?And that
24 he is the person as well as other detectives sereaching at the same
25 time,and that no one said "Hay"Look here it's an open safe,I wonder
26 if it has anything to do with the cirme?What an "astonishment",it must
27 have been when he was finaly informed one in a half years later.

ADDITIONAL GROUNDS FOR
APPEAL THIRD SET:

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JANUARY 18, 2007. TRANSCRIPTS:

1 Let's take a look at Detective Sheahan-Lee. The Prosecutor Tom, is asking
2 the questions of this detective, on page 1514 Transcripts; January 18, 2-
3 007. Line (9) Question were you aware of the fact that there was a safe
4 found in the garage prior to that time? Answer; yes, but not necessari-
5 ly in the context of the way that it was found. Line 13, Question; what do
6 -you mean by that? Answer; How the wood lid was on there, From what I -
7 had seen in the picture, again, the same picture that you folks had se-
8 en, the plywood up and the safe lid resting against that and the flat
9 piece laying beside it, that's what I had seen. And now that really does'
0 nt sound like it was that difficult, in seeing where the safe was found.
1 And now we must keep in mind that this Detective never went to the -
2 crime - scene until August (9) or, 19. Never went into the shop/garage at all.
3 When the crime was being investigated. Detective Sheahan-Lee, and this is
4 the lead Detective on this case. And the Appellant would suggest that -
5 the Detective Ken Tiscornia was very much aware of the safe's existe-
6 nce. Before the year of 2006. The Appellant is asking this court to take
7 into consideration this Detective's testimony, cumulatively with all of
8 the bad acts in his testimony. It adds up to bad faith. And for the
9 record it was Detective Sheahan-Lee that was not at the shop/garage-
0 inside of that area. Until August 9, or 19, of 2005. January 17, 2007. Mr.
1 Tyne Attorney, Questions To Sheahan-Lee. Page 1272 Line 11 .Okey. And don't you
2 think you probably know this case better than any other detective in
3 terms of the chronology and the details? Answer; I would say yes other
4 than the initial crime, because Detective Tiscornia had the experience
5 of being there firsthand. Question; Right. And you didn't go into the -
6 garage on March 11th; Right? Answer; The first time I went into the ga-
7 rage was August of 2005. WITH YOU. I didn't even go into the garage on

8 ADDITIONAL GROUNDS FOR
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1 The 12th.Question;Mr.Tyne,the closest you got is when you were film-
 2 ing and we saw the video of the garage? Answer;Thats correct.Ques-
 3 tion; you certainly did'nt penetrate very far--Answer;No, I stepp-
 4 ed--at the man door I stepped upon the concrete steps,but I never
 5 went in the threshold.And when I was at the slider door,I just st-
 6 ood at the slider door and zoomed in as much as I could.(Transcri-
 7 pts of January 17,2007 page 1272).Line 8,Question;You went to the
 8 house at Shangri-La on 3-11-05,the day the body was discovered;Co-
 9 rrect? Answer I, did not.Det.Tiscornia was the only dectective on
 0 march 11.05.Line 12,Question;Did you go to the property than? Ans-
 1 wer;On march 11.Question;Yes.Answer No. The first day was the 12th
 2 the next day?Answer;Correct.Page 1276 line 23, TYNE:Question I"d-
 3 like to talk about the mattress and I'd like to put up Exhibit No.
 4 69,We've seen this before,have'nt we? I think there was testimony
 5 that this appeared to be blood or what could be blood;Correct?On
 6 the mattress? Answer Yes. Question; And your information was that,
 7 that mattress was found droped over Mr.Rocks body;Correct? Answer;
 8 Yes;Det. Shanhan-Lee.If the court could read from line 5, to line
 9 20 on page 1277, of January 17,2007 of the Transcripts;The Appell-
 0 ant will pick up on line 21,Question;And if it had;nt fallen on -
 1 his body,its quite possible the killer placed it on the body? Ans-
 2 wer; I would assume that,Yes.Question;And if its possible or even
 3 likely that the killer touched that mattress,that makes that matt-
 4 ress an item of interest to you,does;nt it? Answer;Page 1279,Cert-
 5 ainly.Line 22, The mattress was,essentially,seized,then,on march
 6 11th or 12th;Right- probably march 11th of 2005.Answer;I believe
 7 it was collected by Det.Walker,so it would have been march 12th.-

1 Question; Okay, And it was not sent to the crime Lab, the state patr-
2 ol Lab. untill October of 2006; Is'nt that right? Answer; Thats cor-
3 rect. On page 1288, If the court could read pages 1287-1289, This -
4 will cover the fact that a third person; s D.N.A. was found on -
5 the piece of paper with the combination to the safe; And on page
6 1287, line 4, Transcripts, of January 17, 2007. And The safe lid, and
7 paper and pen were not sent down to the Lab. untill August of 20-
8 06; correct? Answer; correct. Line 7, And handwriting was never done
9 on the writing, the pen writing on the paper. Is'nt that right? Li-
10 ne 10, ~~Thats right~~. The Appellant would ask this court to take notice
1 that a lot of Detective Shahan-Lee; s testimony is nothing more -
2 than hearsay, she was not present, for a lot of this investigation
3 of the crime scene it's self. (She never went into the shop/grarge
4 when the body of - Mr. Rock was discovered, on the 11th of March 2005.
5 And again your Justices, another expert witness, with a very impre-
6 ssive career on Page 1565, of Transcripts January 19, 2007. And the
7 reason for bringing this to the attention of the court is to show
8 the, evidence, that should have been preserved at the crime scene-
9 and that is why this witness was called or hired to evaluate the
1 damage done to the crime scene, that Daniel Christman is a expert
1 on this subject, beyond any doubt. Transcripts January 19, 2007.
2 And because there is so much to cover, the Appellant is only going
3 to cover, some background and hope that this court would be able-
4 to read a little bet of this mans career. Page 1565 Line 2, worked with
5 the nedical examiners office as a scene investigator. And going -
6 back to page 1564 of the same document of Jan. 19, 2007. This is why
7 the defense called upon this witness, Line 4, Question; Do you ha-

3 ADDITIONAL GROUNDS FOR
APPEAL THIRD SET:

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ve a private professional occupation in relation to this? Answer; I do. Question; And what is that? Line 8, I have an independent consulting business on the side that just deals with crime scene reconstruction and specifically bloodstain pattern analysis for reconstruction of crime scenes. Your justices the Appellant Irby would ask this court to read up on this mans life' and career. From page 1562 Lets just say to page 1579 of January 19, 2007 Transcripts. Its a - rather long diaogue of information, that would probably, take up all 50, pages of the brief. So we are going to kind of skip around a bit, untill we come to the most important views, atacking evidence. Specifically a pair of boots that were found - in the bed of the Appellants truck, in which has been said to have small spots of the victims bloodstains on them. And other issues aswell. The very evidence that the jury used to convict the Appellant, was these boots, that should have been challenged at a Cr.R. 3.6 And this is where Mr. Christmans testimony comes to light. The Appellant in reading from Transcripts of January 19, 2007. at trial on page 1643 line 7, to begin with; Mr. Christman; is asked the question, On line 7, by Attorney Jon Ostlund; Can you exclude the boots being at the crime scene during the incident which killed Mr. Rock? Answer: NO. Question; from the evidence you've seen of the bloodstains, the blood pattern at the scene and the bloodstains that have been described on the boots and what you observed, are there inconsistenies in those boots being present at the homicide, when the homicide happened? Answer; I'd like to answer that by saying that in forensics we deal with possibility and probability. Thats what we deal with. Is it possible that these boots were in the scene? Yeah, absolutely. Absolutely.

ADDITIONAL GROUNDS FOR
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Is it probable that they were in close proximity to the victim at the time of the bloodletting? Answer; Not probable. And the reason I say that is because they don't have the same size, shape and distribution of bloodstains that you are seeing directly around the victim. Were these boots ten feet away?, Yeah, Its possible, its possible. And now lets go to page 1749 of the same document. Line 15, Mr. Christman I suggested to you on firday that there are different ways for blood to be atomized. If we are going to assume, and thats what we are going to do is assume, and that those 24, stains are blood, if those are blood, than we can get them from gunshot wounds, that was;nt the situation here. There was no-nobody was shot in this case. We can get it from explosion. Mr. Rocks body was not subjected to an explosion. So the only other place that I can even imagine it would have come is a sneeze. And I do'nt know how likely that is and I'm just telling you that in my experience and training thats the only other place that we've seen microscopic bloodstains is from coughing and sneezing blood. And again the Appellant is going to jump around a little bet. Jon Ostlund on January 23, 2007 Page 1759 Question I think we agree you cant take hand writing exemplars from the deceased, but you can take a known handwriting to send down to have compaired with unknown writing from a person; Am I correct? Mr. Christman, Answer; correct. Question And you certainly can take handwriting exemplars from live people, from possible suspects? Answer; Yes. Question by Jon Ostlund; And on page 1764-1765 January 22, 2007 line 17, on page 1764 Question; Did you do a demonstration of that for us when we came to-- Answer I did. Page 1765 line 5, Answer so, when I met with the attorneys and I was told that there were the issues of the droplets on the shoes, I actually when out to my examine area and got some cow's blood. I used whole cow's blood that has anticoagulant added to it, similar in consistency and chemical composition as human blood.

And I took an eye dropper and dropped blood from a distance down onto the floor. And I took a shoe that I had in my Lab. and I just sat it next to the puddle. And as it dropped these blood droplets began to project over and strike the shoes. And then I turned the shoe around and moved it a distance away to demonstrate the point that these larger droplets actually go further and the smaller droplets fall off. ~~Page 176 Line 19~~ So -- the shoe close to the puddle, you have both large and small visible with the naked eye, and as you get further out, the bloodstains are more isolated towards the larger stains. The smaller stains are dropping off onto the floor in between the puddle of the blood and the shoe itself. And the Appellant is just showing this court that he believes -- that a hearing should have been held to suppress the boots as evidence based - on the "expert witnesses testimony", and we will be looking at what the other scientist have to say on this subject, even if they are prejudice in their testimony to the court. The very truth will come out, that the Appellant - believes will shed some light on this matter, of the boots. And it was necessary to, show this court, the subject of handwriting expert that was never called upon. It was Detective Sheahn-Lee who -- suggesting that law enforcement no longer tests for handwriting, of suspects, and we all know that's not the case, herein and that any piece of paper coming for Mr. Rocks house could have been tested for his handwriting as well as the Appellants.

C. BURGLARY IN THE FIRST DEGREE.

JANUARY 4, 2007 Transcripts, Deputy Mullen, the, first responder to the crime scene. On page 30, line 21. Question from Prosecutor Tom: When you went inside (The House) What if anything did you observe? It was cold. It didn't seem like anything was disturbed, such as a burglary,

ADDITIONAL GROUNDS FOR
APPEAL THIRD SET;

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1 BEING disturbed that way. There was still television, V.C.R. things of that
2 Nature, fishing poles, some camping equipment. Than on page 36, January 4, 2-
3 007. Mr. Seguire the Prosecutor line 5, Question; Whats the next one
4 in sequence? Answer; line 7, Well probarbly this one showing -
5 the blood on the floor, just inside the door (exhibit number fo-
6 ur. (shop) On over to page 37, part of Question; on page 36 line
7 23, does that photograph depict? That is-Its hard to see. Thats
8 a blood spot right there, I believe, and just--I can't tell from
9 here if those are blood spots or dirt or leafs or what from -
10 here, but theres several blood spots in this area here on the
11 floor. January 4, 2007 On page 42, Line 25, Question; Other than -
12 taking the photographs what other role did you play in the in-
13 vestigation, in responding, of coures? Line 5, page 43 In part; -
14 Det. Tiscornia arrived, then we went back inside the shop. We we-
15 re looking for, like I said, any weapon. Line 19, In part; So we -
16 were looking around the immediate area for any type of a weap-
17 on or a firearm which could have been used in a suicide. Line
18 25 Question; When Det. Tiscornia arrived, was he leading the inv-
19 estigation at that point in time as far as you were concerned?
20 Answer; Yes (On page 44.) On page 45 line 6, In part; But we could
21 clear open the shop a little bit more, trying to find some sort
22 of weapon. Again the Appellant is suggesting that surly now, the
23 Det. Tiscornia must have been aware of the safe. And we have re-
24 ad his denial of being able to see the safe. (Interesting) The-
25 one officer and Det. Tiscornia move items out of the garage to
26 look for a weapon that Appellant is going to assume is smaller
27 than the safe, but the point being these two officers are trai-
28

19 ADDITIONAL GROUNDS FOR
APPEAL

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1 ned to observe these kind of things,like recovery of a weapon no
2 matter what size it may be.The acts of Det.Tiscornia,are an att-
3 empt to take the focus off of the safe,as being an element of -
4 the crime.In regard to the charge of first degree burlary.There
5 is a cohabitation and brief visit,With the victim of this crime.
6 And the State has not met its burden ,that on march 8,2005 that
7 the Appellant Irby entered or remained unlawfully at the buildi-
8 ng located at 35896 Shangri La Drive in Hamilton;In the State of
9 Washington.Secondly,that the entering or remaining was with the
10 intent to comit a crime against a person or property therein.Th-
11 ird,that in so entering or while in this dwelling or in immedia-
12 te flight from the dwelling,the Appellant Irby was armed with a
13 deadly weapon or assaulted a person therein,and these acts occu-
14 rred in the State of Washington.The States case fails,and it do-
15 es at the second element,that second requirement,that the enter-
16 ing or remaining be with the intent to commit a crime therein.-
17 And we will visit a couple of things that would suggest otherwise
18 ,and in part,we know from the record the Appellant,was a long -
19 time friend and had a relationship that went back several years.
20 Socializing - drinking together,and the Appellant Irby,was a freq-
21 uent house guest at the Hamilton home at the Shanri-La,property
22 at Mr.Rocks home.And we also know that the shop/garage is not -
23 attached to the house of the victim.And the story that the Pros-
24 ecutor offers is that there were firearms taken form the house,
25 not the shop/garage area.And now the Appellant,is going to argue
26 that the charge of burglary in this case is unconstitutional on

27 ADDITIONAL GROUNDS FOR
APPEAL: THIRD SET:

TERRANCE JON IRBY 631794
UNIT-6-TIER-D-CELL-17
WASHINGTON STATE PENITENTIARY
1313 N.13th AVE
WALLA,WALLA, 99362

1 Its face. The only area of this claim is that the up stairs bedro-
2 om, and this is what we need to take a look at. Transcripts Janua-
3 ary 17, 2007 Mr. Tyne, Page 1303 In part line 11, Question, so when we
4 start getting debris this far out and even this far out, we are
5 talking two - or three feet from the door frame itself; Correct? An-
6 swer; From Det. Shahan-Lee, (As it's positioned now, yes. Line 15, Qu-
7 estion; Back to Exhibit 93, If this lock or doorknob were pushed
8 out in this direction, the direction of the fracture while the -
9 door was closed, we would expect the debris to be inside the room;
10 Correct? Answer; If it went all the way through the door, Yes. -
11 Question; LINE 12, Right. And there isn't debris inside the room.
12 Answer; No; Question all the debris is right around here; correct? -
13 Line 24, So, if the knob did come this way, if it was forced this
14 way through the door and the debris fell here, doesn't it suggest
15 that the door was open when the knob was pushed through? (this
16 is on page 1307 of Jan. 17, 2007) Line 3, Answer; That would be my -
17 assessment. Line 4, Question; And if the door was open when the kn-
18 ob was pushed through, the door obviously wasn't in a closed, shut
19 and locked position; Correct? Answer; When the knob came all the
20 way through, no it wouldn't--I don't think it would have been cl-
21 osed. Line 9, Question; Well, if this door, the door is open if -
22 the door were shut and locked and the handle pushed through, you
23 would expect debris on the far side of the door inside the Mast-
24 er bedroom; Correct? Line 13, Answer; Yes, if it was pushed all the
25 way through. And there the Appellant is suggesting that one other
26 element is missing, the use of force to enter, to break and enter
27 is an element of burglary. And we do not have that element in

28 ADDITIONAL GROUNDS FOR
APPEAL THIRD SET:

TERRANCE JON IRBY 631794
UNIT-6 TIER-D-CELL-17
WASHINGTON STATE PENITENTIARY
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WALLA, WALLA, 99362

1 This case we,do not have any of the elements that would constitut-
2 ionally be aplied to this case herein.An now the Appellant woud -
3 like to leave with this in mind that the very closing argument us-
4 ed by the Prosecutor;On page 1955 January 23,2007Line 18,in part -
5 There are other instructions that Judge Meyer read to you that I
6 didn't read to you,and they talk about the elements of first-degr-
7 ee murder.Sõ when you go back there,thats where the deliberations
8 focus.It's not this other thing.So why bring it up? Because theres
9 an attempt to focus you away,to go to the area of prejudice and to
10 think,to suggest,however subtly,that the police and maybe even the
11 government,as they come before you today,is being unfair,is someh-
12 ow not open to all possibilities,and because of that they ought to
13 be sent a message.We've heard those kinds of phrases before.Thats
14 not your function today.And if we are in another setting,that wou-
15 ld be the case,but that particular idea,to make the sheriffs offi-
16 ce or whoever was involved in the investigation look bad, thats -
17 what its about; its about prejudice.And I guess thats just a sum-
18 mation of what I said there.The Appellant Irby could not have said
19 in any better than the prosecutor had just explained,in his closi-
20 ng.This case is about prejudice.And the trial was about prejudice
21 aswell,and for the reasons stated herein,the Appellant asks this
22 court,for the relief sought.And that would be a reversible error
23 that if this court orders a new trial that,the prsecutors most fa-
24 vorable evidence would be withheld as in a sanction-,of the states
25 most probative evidence,in which would be the boots,and the air/w-
26 ater mattress,and the uses of the firearms at trial,or any other-

27 ADDITIONAL GROUNDS FOR RE
28 APPEAL THIRD SET:

TERRANCE JON IRBY 631794
UNIT-6-TIER-D-CELL-17
WASHINGTON STATE PENITENTIARY
1313 N. 13th AVE
WALLA,WALLA, 99362

1 Relief that can be given. On January - 16, 2007. Detective Sheahan = Lee
2 had a phone conversation with Greg Frank --- was on May 2d, 2006 Page
3 1014 of Transcripts Jan. 16, 2007. And this is in regard to the boots
4 that were to be tested for D.N.A. Jon Ostlund is asking the question
5 on line 6, ; And again you discussed with he the issue of having the
6 boots examined for blood spatter? Answer; sure. Question; And you wer-
7 e the stains-- the statement - you gave was where the stains are loca-
8 ted on the boots. Page 1016 Jan. 16, 2007. Line 1, Answer yes, Question;
9 Would require the legs to be crossed? Answer; yes. The boots are of
0 exhibit 144. The Appellant is simply pointing out that the ridiculous
1 illustration by both of the scientist Brian and Greg Frank, Brian Sme-
2 lser, show the jury the same illustration. Attached hereto you will -
3 find the Lab. Document, making the same statement. AND THAT SAME DOCUM-
4 ENT, STATES THAT THERE IS NO BLOOD ON SOLE (obvious) These are the re-
5 asons that Appellant believes the evidence should have been supress-
6 ed, by having a hearing under 3.6 CrR. Because of a time factor the -
7 Appellant is going to have to close, and send along several exhibit's
8 Reports from Mr. Robert J. Kerchusky and Daniel v. Christman, also to in
9 concluding the Lab. Report as well. There has been a new addition added to the old-
0 institution, called the west complex. And on march 26, 2008. The access to the law lib-
1 rary, for several days. Than comes the new institution, with new officers, and staff, +
2 things just are not coming together any time soon. The Appellant must meet his dead
3 line of April 4, 2008. And back to January 16, 2007 line 9, Question; Page 1014 and 10
4 15. And you told her on that time that, am, I correct, there was an unliklihood th-

6 ADDITIONAL GROUNDS FOR
7 APPEAL:

8 page-37- ~~UNRECORDED~~ 0821031794
WASHINGTON STATE PENITENTIARY
1313 N. 13th AVE
WALLA, WALLA, 99362

1 at the stains were from the wearer stepping in blood; Answer correct?
2 Answer Yes. The boots are of exhibit 144. The Appellant is simply poi-
3 nting out some dissimilarities and elimination suggesting (one) The
4 likelihood of the placement of the feet while this assault on the vi-
5 tim is taking place. And the ridiculous demonstration showed by the
6 two scientist attempting to show the jury the very stance that a pe-
7 rson would assume, while in the mist of this assault taking place.
8 The illustration looked like two cartoon characters acting out befo-
9 re the jury. And now time is against the Appellant, so here come some
10 exhibit's Exhibit's (E) Is Lab. No; 706-000765 Results, The three sum-
11 mitted latent prints lifts contain no latent impression of value for
12 identification purposes. And we have read from Mr. Christman, and Mr.
13 Robert J Kerchusky on this subject. Exhibit (F) In part; The fingerpr-
14 ints process they are looking at is amido-black. Than when you go to
15 Exhibit (I) You will notice that they used, black magnetic fingerpri-
16 nt powder. (G) Is Authorized to test air mattress. Exhibit (H) In -
17 part (I will focus my exam on the vinyl side since the "reddish" Stai-
18 ns indicate that it may have been in contact with the victim) Read
19 Greg Frank, January 16, 2007, page 1037 line 2. page 20. herein third -
20 set of grounds line 22, If I had known there was blood on it, yes, I
21 would probably swabbed it in a manner such that I would try to avoid
22 any blood stains. Exhibit (I) Lab. No; 706-000765 In part; mattress; -
24 plastic side was dusted with black magnetic finger print powder App-
24 ellant the inhibitor) Exhibit (J) NO obvious blood on sole/2, where the
25 stains are located on the boot would require the legs to be crossed.
26 Exhibit (K) It wasn't until 3/22/2006 that the lead Det. Sheahan-
27 Lee noticed the damaged master bedroom door knob was missing.

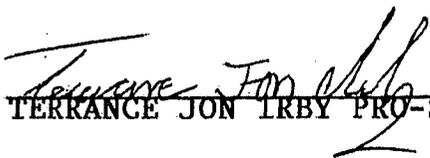
28 ADDITIONAL GROUNDS FOR
APPEAL THIRD SET:

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And on Mr.Christman's Report-----par. there is no time left.

I am the Appellant in the above caption case Terrance Jon Irby ant under penaly of prejury that this is true and correct.

Appellant rests and would ask this court to review this-cumulatively and find that there is reversible erroes,.And that there would be sactions if a new trial was granted that the states most probative evidence would be withheld from trial.


TERRANCE JON IRBY PRO-SE

page 39

page 39

ADDITIONAL GRUONDS FOR RELIEF AND APPEAL.THIRD SET:

APRIL 2,2008

2006 OCT 27 PM 3:31

1 SUPERIOR COURT WASHINGTON
2 COUNTY OF SKAGIT COUNTY

3
4 *State of Washington*

5
6 vs.

7
8 *Terrance Irby*

Case No.: *05-1-00276-9*

() CLERK'S ACTION REQUIRED

ORDER ON:

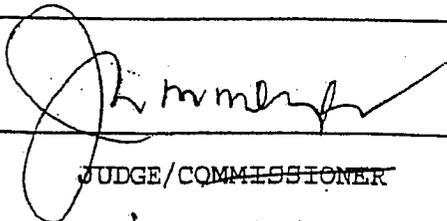
() CIVIL CRIMINAL
() DOMESTIC () OTHER

10
11 THIS MATTER having come on regularly and the Court having heard
12 the motion(s) *of the defense for testing of the*
13 *air metres which was over the body of James Rock*
14 *when discovered on March 16, 2005 [Evidence # 2451]*

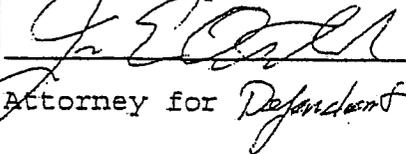
15 THIS COURT FINDS *that this is a critical piece of*
16 *evidence and the trial will commence on October*
17 *30th, 2006*

18
19 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that *the Washington*
20 *State Crime Lab test this item for fingerprints and*
21 *DNA as quickly as possible, and compare*
22 *the results with fingerprints and DNA profile*
23 *previously processed in this case.*

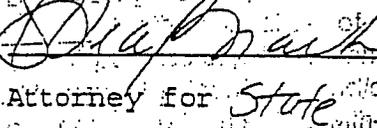
24
25 Dated: *10/27/06*

26
27 
JUDGE/COMMISSIONER

28 Presented by:

29 
30 Attorney for Defendant

Approved: County Sheriff on


Attorney for State

This copy was prepared by the County Sheriff's Office for the use of the State Attorney for State or agency created and used only with- out the consent of the Skagit County Sheriff's Office.

Deputy

1077

Declaration of Norman Destrempts

My name is Norman Destrempts. I am over the age of eighteen years, competent to testify to the matters herein and declare as follows:

1. I have known James Rock for years.
2. I have routinely had breakfast on Wednesdays at the Hamilton Market with James Rock.
3. On Wednesday, March 9th, 2005, I had breakfast with James Rock and Jessie Reynolds at the Hamilton Market. I am sure of the accuracy of the date (March 9th) that I had breakfast with James Rock.
4. I do not know Terrance Irby and have never met him.
5. Months ago, I told Detective Walker that I had breakfast with James Rock on Wednesday, March 9th, 2005.

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

DATED this 5 day of June, 2005 at Mount Vernon, Washington.

Norman Destrempts
Norman Destrempts

including the large pool of blood, a red metal tool box that had been near the victim, two plastic crates that had been near the victim, as well as blood spatter on the west wall of the shop near the door.

Once DETECTIVES CUNNINGHAM and WITMAN were finished documenting the overall property and buildings, ESAR was directed to begin an extensive search starting on the bank near the river which is on the south side of the residence. They completed the entire exterior grounds. They located several cigarette butts, a wire coat hanger, a piece of chewed gum, and a cigarette cellophane wrapper. These items were collected.

I completed two receipts of execution for the Skagit County District Court Search Warrant that DETECTIVE TISCORNIA had obtained telephonically on 03/11/05 with the HONORABLE LINFORD SMITH. A copy of that search warrant and the Receipt of Executions were left on a table just inside the residence prior to it being secured. The shop and residence were secured by DETECTIVE TISCORNIA and I at approximately 1800 hours.

The mobile command vehicle containing all of the collected evidence was transported by CHIEF REICHARDT from the scene to the office. Upon arriving at the office, DETECTIVE LUVERA and CHIEF REICHARDT had removed the evidence from the mobile command vehicle to the evidence lab. The evidence was secured by DETECTIVE LUVERA, DETECTIVE ESSKEW, and I. Several of the items were layed out to dry. Each of the items had been packaged and handled seperately to keep from co-mingling or contaminating them.

During the exterior ground search of the residence on Shangri La Drive, I saw a man park a truck across from this residence and start to cross the road toward this property. I contacted him outside the secured area. I identified him as NORMAN DESTREMPS. He was a friend of the victim, MR ROCK. DESTREMPS stated he knew ROCK for about 5 years. ROCK is a member of the Hamilton Baptist Church and attended the previous Sunday, 3/6/05. DESTREMPS also saw ROCK a few days prior to him being discovered dead. DESTREMPS saw ROCK at the Hamilton Market where they had breakfast together at about 1000 hrs. DESTREMPS believes this was on Wednesday, 3/9/05.

DESTREMPS knew from ROCK that ROCK had problems the previous three weeks with people stealing stuff from him.

DESTREMPS believes that a lady named RITA who lives in Marblemount and has an adult son named CARL may have a key for ROCKS house. He also thinks CARL could have a key and that CARL helped ROCK get his computer set up. This information was passed along to DETECTIVE SHEAHAN-LEE.

03/12/05, 2105 hours, DETECTIVE KAY WALKER.

ckv

approved WALKER 3/29/05

This copy was prepared by the Skagit County Sheriff on
(date) _____ for the official use of
the Prosecuting Attorney for the purpose of prosecution
and may not be revealed to any other individual and/or
agency or used for any other purpose than stated with-
out the consent of the Skagit County Sheriff's Office.

Deputy

62

To: KEITH TYNE
From: Lana Reichert
Client: TERRANCE IRBY
Charge(s): MURDER 1

Witnesses Interviewed: DET. KEN TISCORNIA
Witness Address: SKAGIT COUNTY SHERIFF OFFICE
MOUNT VERNON, WA. 98273

Witness Phone: (360) 336-9450

Date of Interview: MARCH 9, 2006
Interview Conducted: IN PERSON
Location of Interview: AT PROSECUTOR'S OFFICE

DETECTIVE KEN TISCORNIA

INTERVIEW SUMMARY:

On March 9, 2006 Keith Tyne and I went to the prosecutor's office to speak with Detective Tiscornia regarding the Terrance Irby case. John Ostlund, Sean Devlin, Michael Sparks and prosecutor Tom Seguire were also present. We introduced ourselves to Det. Tiscornia and I asked him if he would consent to us tape recording the interview. Det. Tiscornia refused to be tape recorded. John Ostlund began questioning while I took notes.

John asked Det. Tiscornia to look at the entrance log that was done while the scene was being processed. John asked Det. Tiscornia if the Search and rescue kids were in the garage. Det. Tiscornia said no they were outside searching around the area.

John asked Det. Tiscornia if there was an entrance log done for March 11th. Det. Tiscornia said no when he and the coroner cleared the scene with the body they locked up the garage and had deputies guard it.

John asked Det. Tiscornia if he was the lead detective in this case. Det. Tiscornia said no Detective Sheahan-lee was the lead.

John asked Det. Tiscornia what this role was on the 11th and 12th. Det. Tiscornia said he was the initial responding investigator on the 11th and on the 12th he assisted on what needed to be done at the scene and then went to the autopsy and then went back to the scene.

*→ who specifically
did he assist us as
we search on 3/12/06
before going to autopsy?*

John asked Det. Tiscornia if his department has investigators that are crime scene analysis. Det. Tiscornia said he would probably be the closest to that. Det. Tiscornia said the others have been to some training. John asked Det. Tiscornia if Det. Sheahan-Lee had been to that kind of training. Det. Tiscornia said he is not sure.

John asked Det. Tiscornia if he was the only one doing the blood spatter analysis at the scene. Det. Tiscornia said yes.

John asked Det. Tiscornia what kind of training he has had in the area of blood spatter. Det. Tiscornia said he took Daniel Chrisom's class. Det. Tiscornia said it's a forty hour school through the attorney generals office. John asked Det. Tiscornia when he took that class. Det. Tiscornia said he would have to check on that. Det. Tiscornia said he was referring to some literature that they have on blood spatter at the office. Det. Tiscornia said they have a book on blood spatter at the office that he used.

John then showed Det. Tiscornia page 386 on discovery to get some orientation of the scene. John asked Det. Tiscornia if the piece of sheetrock that was collected at the scene came from the west wall area. Det. Tiscornia said he couldn't answer that because he wasn't there when it was collected.

*Sheet
rock
Det. saw
when it
was
found*

John asked Det. Tiscornia which wall in the cad drawing that had the dots on it. Det. Tiscornia said that would be the wall right inside the door which would be the west wall.

John asked Det. Tiscornia what substance are the dots on the cad drawing representing. Det. Tiscornia said it was the appearance of blood in a cast of pattern. John asked Det. Tiscornia if the Washington Sate Patrol plotted the blood spatter. Det. Tiscornia said he believe they did plot the ones he marked.

John asked Det. Tiscornia what the distance is on from the spots on the diagram to where the victim was found. Det. Tiscornia said about ten feet. Det. Tiscornia said Rock was almost dead center of the garage.

John asked Det. Tiscornia if he knows what is in the picture that was wrapped in plastic. Det. Tiscornia said he doesn't know he didn't take the picture.

John asked Det. Tiscornia if they discovered the safe on the 11th. Det. Tiscornia said no they didn't do any searching on the 11th because they didn't have a search warrant. Det. Tiscornia

said the safe was discovered on the 12th.

John then showed Det. Tiscornia some pictures. John showed Det. Tiscornia the picture he marked as page 2 and asked Det. Tiscornia which wall is the picture of the one with drywall or press board. Det. Tiscornia said he couldn't tell us.

John then showed Det. Tiscornia the picture he marked page 4 and asked him if the strings he used where to show the blood spatter. Det. Tiscornia said yes.

John asked Det. Tiscornia which way Rock's head was facing. Det. Tiscornia said he was lying on his right side and his head was facing towards the south wall and he was in a semi-fetal position.

John showed Det. Tiscornia the picture he marked page 5 and asked Det. Tiscornia if that picture is looking north. Det. Tiscornia said yes it's taken from standing in the doorway in a northerly direction. Det. Tiscornia said the work bench is n the west wall.

John showed Det. Tiscornia the picture he marked page 6 and asked Det. Tiscornia what that was. Det. Tiscornia said it is the slider door frame.

John asked Det. Tiscornia if he reached any conclusions from the crime scene as to where the assault happened. Det. Tiscornia said given the scene and where the victim was it is reasonable to believe the assault took place in the general area of where the body was found. John asked Det. Tiscornia if there could have been a blow or two struck from two to three feet away. Det. Tiscornia said yes. Det. Tiscornia said he wouldn't bleed a lot until the second blow.

John asked Det. Tiscornia if there was anything found in the garage that was considered a probable weapon. Det. Tiscornia said no. Det. Tiscornia said that is why he returned to the garage after the autopsy because he had a better idea of what kind of weapon caused the blows.

John asked Det. Tiscornia what the strings that are connecting the blood spatter tell him. Det. Tiscornia said nothing more than what he was seeing was cast off. Det. Tiscornia said he wasn't trying to determine an exact location from the drops. Det. Tiscornia said generally the drops would tell you the direction. John asked Det. Tiscornia if he was able to get a direction from the drops. Det. Tiscornia said he doesn't feel that he is enough of an expert to pull the strings off the wall

and do the mathematical calculation to get that area. Det. Tiscornia said he was just showing that this was cast off blood being cast off the instrument that was used. Det. Tiscornia said that's what it looked like to him not only from his experience but also from the literature he took with him to the scene.

Mike asked Det. Tiscornia if he worked with anyone else at the scene on the blood spatter. Det. Tiscornia said he showed other detectives but none of them had experience at that time on blood spatter.

John asked Det. Tiscornia if he knows why the piece of sheet rock was taken. Det. Tiscornia said he believes it was taken as an example of the cast off. John asked Det. Tiscornia if he knows where that sheet rock was taken from. Det. Tiscornia said he is not sure where it came from.

John asked Det. Tiscornia if he has taken any other classes on blood spatter. Det. Tiscornia said it has been addressed in other trainings but the forty hour training was the only concentrated training he has been to on the subject.

John asked Det. Tiscornia if he saw any other cast off in other areas of the garage. Det. Tiscornia said it was all over a cabinet that was next to the body and a computer. Det. Tiscornia said a lot of it was medium cast off from hitting the head. Det. Tiscornia said all of the blood he saw would be considered medium velocity blood spatter cast off.

John asked Det. Tiscornia if any of the blood spatter was on any other walls other than the west wall. Det. Tiscornia said not that he saw when he was there. Det. Tiscornia said from what he saw the cast off was all associated with where the body was there was none on the east wall that he saw.

John asked Det. Tiscornia if he examined Terrance Irby's clothing. Det. Tiscornia said to a limited extent he did. Det. Tiscornia said he assisted in the removal of clothes from the pick-up and did a cursory examination looking for obvious blood. Det. Tiscornia said also later he used luminal on a black leather jacket and got a positive reaction. Det. Tiscornia said that was submitted to the lab he believes.

John asked Det. Tiscornia if he looked at the boots taken from the truck. Det. Tiscornia said he doesn't believe so he thinks that was done by the crime lab people with Det. Sheahan-Lee. John asked Det. Tiscornia if he saw the boots. Det. Tiscornia said he's sure he saw them but he doesn't recall examining them.

John showed Det. Tiscornia page 334 and asked him if he knew anything about the boot found by ESAR (search and rescue). Det. Tiscornia said no. John asked Det. Tiscornia if that was submitted for evidence. Det. Tiscornia said he is not sure. John asked Det. Tiscornia if there were any photos of the search area and the ditches that ESAR searched. Det. Tiscornia said he is not sure.

John asked Det. Tiscornia if a cell phone was found on Rock's body. Det. Tiscornia said yes. John asked Det. Tiscornia if it was impounded. Det. Tiscornia said yes. John asked Det. Tiscornia if they searched the cell phone records. Det. Tiscornia said he doesn't know.

John asked Det. Tiscornia if he went through Rock's clothing at the autopsy. Det. Tiscornia said yes they collected all of it.

John asked Det. Tiscornia what evidence is still at the crime lab. Det. Tiscornia said Sheahan-Lee would know that.

John asked Det. Tiscornia if he ever made an analysis of whether the assailant was right or left handed. Det. Tiscornia said no.

John asked Det. Tiscornia if he found any footprints or partial footprints at the scene. Det. Tiscornia said no. John asked Det. Tiscornia if that seemed unusual to him. Det. Tiscornia said no. John asked Det. Tiscornia why. Det. Tiscornia said with the type of blows the man received he doesn't think he was standing up for the subsequent blows. Det. Tiscornia said maybe the first one but the blows were virtually on top of each other and blood flows according to gravity so it would go to the ground. Det. Tiscornia said it seemed to him that everything occurred right there in the same place.

*Slow
with
L u
on the
front
part*

John told Det. Tiscornia that Dr. Sealove had stated that he believe these blows were delivered in rapid succession. John asked Det. Tiscornia if there is anything that he disagrees with. Det. Tiscornia said no it was absolutely brutal.

John asked Det. Tiscornia when he took Candy and Pam to the scene if they went into the garage. Det. Tiscornia said no they might have gone to the threshold of the door but that was all. Det. Tiscornia said they didn't want to see it.

John asked Det. Tiscornia when the scene was cleared. Det. Tiscornia said whenever the execution of the search warrant receipt was left. Det. Tiscornia said Detective Walker would know. Det. Tiscornia said they did leave the crime scene tape up.

Keith asked Det. Tiscornia if he was the first responding detective. Det. Tiscornia said yes. Keith asked Det. Tiscornia if Jenny Sheahan-Lee was there at the same time as he was. Det. Tiscornia said no. Keith asked Det. Tiscornia if they were ever there together. Det. Tiscornia said yes the following morning all the detectives met on sire at 0650 hours.

Keith asked Det. Tiscornia when this officially became Sheahan-Lee's case. Det. Tiscornia said we would have to ask Chief Reichardt that.

Keith asked Det. Tiscornia why he says nothing in the garage appeared to be the probable weapon. Det. Tiscornia said lack of blood on any instrument and the autopsy. Det. Tiscornia said the best way to answer that is you don't eliminate anything but you start looking for shapes that are consistent with the injuries. Det. Tiscornia said the difference in the injuries could be one instrument with different side or multiple edges. Det. Tiscornia said the slashing to the throat may be another instrument. Keith asked Det. Tiscornia if there were screw drivers in the shop. Det. Tiscornia said yes but he didn't see any with blood on them.

Det. Tiscornia said the two main reasons he said there was not a probable weapon in the garage was that they found no blood on any objects or instruments and they didn't find any instrument consistent with the injuries.

Keith asked Det. Tiscornia if there as any indication that the victim staggered or traveled after the blows. Det. Tiscornia said no.

Keith asked Det. Tiscornia if there was any indication that the scene was cleaned after the incident like wipe marks or things like that. Det. Tiscornia said given the position of the body and where the assailant was he could have gone back out the door without leaving prints. Det. Tiscornia said he didn't see any wipe marks or anything that indicated to him that the scene had been cleaned.

Keith asked Det. Tiscornia if there was anything at the scene to suggest which way the assailant left. Det. Tiscornia said there was a small drop near the little door that was consistent with blood. Det. Tiscornia said that could have been carried away by the assailant. Keith asked Det. Tiscornia how far that was from Rock's body. Det. Tiscornia said approximately fifteen feet.

Keith asked Det. Tiscornia if he examined the house. Det.

Tiscornia said he took a walk through but he didn't do any searching. Det. Tiscornia said he believes that other searched it the following day.

I asked Det. Tiscornia if the person that did this would have blood on them. Det. Tiscornia said yes he would expect the person that walked out of there would have some blood on them but he couldn't say how much.

I asked Det. Tiscornia if any time frame was given by Candy as to when the prior burglary occurred. Det. Tiscornia said no.

Keith asked Det. Tiscornia why he had the coroner on the scene. Det. Tiscornia said he wanted a second set of eyes. Keith asked Detective Tiscornia what the coroner did as far as examining the body. Det. Tiscornia said they talked about it and walked around the room. Det. Tiscornia said this was prior to removing the plastic or the cot to see if there was a weapon under him.

Keith asked Det. Tiscornia if the body was moved before Sealove got there. Det. Tiscornia said yes he stood over the body and lifted it up a little bit to see if there was a firearm under it. Det. Tiscornia said rigor was there and he was pretty stiff. Det. Tiscornia said he is not sure how much but the arms weren't flailing around when he lifted the body.

John asked Det. Tiscornia what was covering the body. Det. Tiscornia said he is not sure if it was an air mattress or what. Det. Tiscornia said it was partially covering the body when it was found. Keith asked Det. Tiscornia if that appeared to have been placed over the body. Det. Tiscornia said he is not sure if it was drug down with him when he went down or if it was place over him.

John asked Det. Tiscornia if he knows the results on the black jacket. Det. Tiscornia said Sheahan-Lee would know.

John asked Det. Tiscornia if he saw anything in the house or garage that looked like a robbery had taken place. Det. Tiscornia said no the home was orderly and nothing jumped out but his time in the house was very short. Det. Tiscornia said nothing jumped out at him in the garage but it was fairly cluttered and disorganized.

John asked Det. Tiscornia if any of the tools or tarp that was by Rock's truck were seized at evidence. Det. Tiscornia said no but he believes they were photographed. John asked Det. Tiscornia if he looked to see if there was blood on anything. Det. Tiscornia said he looked and walked around it but he didn't pick up each

Snohomish County Incident Report
Marysville PD

Case Number
05-00942

Incident Classification 1 Traffic-Eluding	<input type="checkbox"/> Attempted	Offense Code	Incident Classification 2 Firearm-Felon poss	<input type="checkbox"/> Attempted	Offense Code
Incident Classification 3	<input type="checkbox"/> Attempted	Offense Code	Type of Report		

Address/Location of incident	Premise Type/Name	Code
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Officer Assault/Safety	Responding To	Type of Assignment	<input type="checkbox"/> Force <input type="checkbox"/> No Force	Reporting Area	Beat
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Occurred on or From (Date/Time/DOW) 03/08/2005 22:48 Tuesday	Occurred To (Date/Time/DOW) 03/08/2004 23:23 Monday	Reported On (Date/Time/DOW) 03/09/2005 22:48 Wednesday
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PERSONS/BUSINESSES					
No. P-1	Non-Disc. <input type="checkbox"/>	Name (Last, First, Middle) FORSLOF, W.	Race	Ethnicity	Sex
DOB/Age	Height 0'00"	Weight	Hair	Eyes	Residential Status

Street Address 1635 Grove ST, Marysville, WA 98270	Residence Phone	Business Phone
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No. P-2	Non-Disc. <input type="checkbox"/>	Name (Last, First, Middle) HENDRICKSON, J	Race	Ethnicity	Sex
DOB/Age	Height 0'00"	Weight	Hair	Eyes	Residential Status

Street Address 1635 Grove ST NE, Marysville, WA 98270	Residence Phone (360) 651-5080	Business Phone (360) 651-5050
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No. P-3	Non-Disc. <input type="checkbox"/>	Name (Last, First, Middle) Off Wennersten, K	Race	Ethnicity	Sex
DOB/Age	Height 0'00"	Weight	Hair	Eyes	Residential Status

Street Address 1635 GROVE ST, Marysville, WA 98270	Residence Phone	Business Phone
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No. P-4	Non-Disc. <input type="checkbox"/>	Name (Last, First, Middle) Weirsm, A	Race	Ethnicity	Sex
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No. <input type="checkbox"/>	Non-Disc. <input type="checkbox"/>	Name (Last, First, Middle) SOREN, D	Race	Ethnicity	Sex
DOB/Age	Height 0'00"	Weight	Hair	Eyes	Residential Status

Street Address 1635 NE Grove ST NE, Marysville, WA 98270	Residence Phone (360) 651-5050	Business Phone
--	--	----------------

Known Suspects/Subjects					
No. A-1	Name (Last, First, Middle) Irby, Terrance Jon		Race W	Ethnicity Non-Hispanic	Sex M
DOB/Age 06/10/1958 45	Height 6'01"	Weight 220	Hair BRO-Brown	Eyes GRN-Green	

Street Address 7918 NE Cape Horn Rd, Concrete, WA 98237	Residence Phone	Business Phone
---	-----------------	----------------

Level	Charge	Citation #	Warrant #	Agency
F	9.41.040 Felon in possession of firearm			
Level	Charge	Citation #	Warrant #	Agency
F	46.61.024 Eluding police officer			

Officer Name/Number McLeod, D G #9446	Unit	Approved By Number <i>Da...</i>	Date 3/9/05
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Clearance <input checked="" type="checkbox"/> Arr/A <input type="checkbox"/> Arr/J	<input type="checkbox"/> Unfounded <input type="checkbox"/> Excl/A <input type="checkbox"/> Excl/J	Distribution <input type="checkbox"/> PA <input type="checkbox"/> ADMIN	<input type="checkbox"/> DOC <input type="checkbox"/> CPS <input type="checkbox"/> DSHS	<input type="checkbox"/> HD <input type="checkbox"/> JUV <input type="checkbox"/> MH	<input type="checkbox"/> TRAF <input type="checkbox"/> DET <input type="checkbox"/> PAT	<input type="checkbox"/> PROACT <input type="checkbox"/> Court <input type="checkbox"/> Other	Logged
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Entered RMS	Date	Initials	<input type="checkbox"/> Entered WACIC/NCIC	Date	Initials	<input type="checkbox"/> Entered WACIC/NCIC	Date	Initials
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IN THE SUPERIOR COURT OF WASHINGTON
AND COUNTY OF SKAGIT

THE STATE OF WASHINGTON,)
VS. PLAINTIFF,)
TERRANCE JON IRBY,)
DEFENDANT,)

CASE NO:05-00276-9
D.N.A. TESTING OF
EVIDENCE THAT WAS NOT
TESTED AT TRIL R.C.W.
10.73.170

COMES NOW THE DEFENDANT TERRANCE JON IRBY, PRO-SE. And that there is one pair of black Thermal underwear pants (LONG JONS) That these would be Tested for D.N.A. In the mostlikeiy spot on the clothes, where one would sweat a lot, and leave D.N.A. And that the size of the clothing be recorded; top and bottom if there is a top and bottom And that all clothing found in the cap or bed of the defendants truck. All to be checked for sizes not D.N.A. Because that may be just a little bit to much to ask for within reason. That a update of the defendants location of truck that should still be heald as evidence. FOR ANY FURTHER TESTING OF ANY VISABLE EVIDENCE WETHER THAT BE BLOOD OR MATERIAL, EVIDENCE.

DEFENDANT PRO-SE HEREIN.

Terrance Jon Irby

TERRANCE JON IRBY 631794.
unit-6-Tier-B-Cell-16
Washington State Penitentiary
1313 N.13 Ave, Walla, Walla,
99362

FOR THE COURTS CONVENIENCE THIS MOTION
HAS BEEN ATTACHED TO MOTION ONE (1) OF (2)

NOVEMBER 29, 2007

SUPERIOR COURT OF WASHINGTON - COUNTY OF SKAGIT

Cause No. 05-1-00276-9

Clerk's Action required

STATE OF WASHINGTON,

PLAINTIFF,

vs.

Terrance Irby
DEFENDANT.

ORDER RE:

- CONTINUANCE
- TRIAL CONTINUANCE
- PRESENTENCE REPORT
- CORRECTING NAME/DOB
- WAIVER SPEEDY TRIAL (DEFENDANT)
- WAIVER SPEEDY SENTENCING (DEFENDANT)
- BAIL (SHERIFF'S ACTION REQUIRED)
- QUASHING WARRANT (SHERIFF'S ACTION REQUIRED)
- SETTING HEARING DATE
- SETTING SENTENCING DATE
- OTHER Motion for

The Court, being fully advised and good cause having been shown, Now, Therefore, ORDERS:

- CONTINUANCE: This matter is continued to _____ at _____ am/pm for _____
Reason: _____
- BAIL: Bail is set at \$ _____
- WARRANTS: Outstanding warrants in this cause are quashed. Next hearing date is: _____
- CORRECTING NAME/DOB: To: _____
- SENTENCING DATE: The defendant (waiving below if necessary) shall appear for sentencing on _____
- PRESENTENCE: Presentence Investigation pursuant to CrR7.1 (a) Defendant is in custody at the Skagit County Jail.
 Defendant is not in custody and resides at _____
- SETTING NEW DATES: The court hearing dates at which the defendant's presence is required are: _____

OMNIBUS _____ 3.5/3.6 HEARING _____ TRIAL CONFIRMATION _____ 1:30 pm

- TRIAL CONTINUANCE: by agreement of the parties; by motion of party/court the trial date is continued to _____
resulting in speedy trial of _____ (30 days after trial date).

OTHER: Based upon RAP, the court is unable to rule on discovery request. Motion for Contempt of Court is denied. State is required to provide copy of order to Mr. Irby and auditor.

DATED: 2/13/08

[Signature]
Judge of the above-entitled court

WAIVERS BY DEFENDANT

- SPEEDY ARRAIGNMENT: The undersigned, having been advised by my Attorney of Record of my right to arraignment as determined by CrR 4.1, hereby waive my right to have my arraignment within that time period.
- SPEEDY TRIAL: The undersigned, having been advised by my Attorney of Record that I have the right to be brought to trial within 60/90 days of the commencement date, hereby requests that trial in this matter be re-set. I am aware of and wish to waive my right to speedy trial as provided in CrR 3.3 by resetting a commencement date of: _____ resulting in a new speedy trial date of: _____ (60/90 days after commencement date).
- SENTENCING: The undersigned, having been advised of my right to be sentenced within 40 court days from the date of guilty plea or conviction, and being aware of and hereby waive the right to a speedy sentencing pursuant to RCW 9.94A.500. Further, I acknowledge that this waiver is my personal request and that I will not be prejudiced by this continuance.

DATED: 2/13/2008
Telephonic Appearance
Defendant

Attorney for Defendant

[Signature] 10010
Prosecuting Attorney

SKAGIT COUNTY, WASH
FILED

JUDGE JOHN MEYER

JAN 14 2008

NANCY K. SCOTT, CO. CLERK
Deputy

IN THE SUPERIOR COURT OF WASHINGTON
AND COURTY OF SKAGIT

THE STATE OF WASHINGTON)
PLAINTIFF)
VS.)
TERRANCE JON IRBY)
DEFENDANT)

CASE NO:05-1-00276-9
CrR.4.7 DISCOVERY
MOTION TO COMPEL

COMES NOW THE DEFENDANT PRO-SE, AND MOVES THIS COURT FOR AN ORDER TO PRODUCE THE 1980 FORD TRUCK, WHEREABOUTS. IS THIS VEHICLE BEING HEALD? LICENSE A73161F. VIN:F10FRHGO796, MILEAGE, 785753. That this vehicle is evidence of two crimes, and that it also was said to be involved in a murder, that took place in the skagit county. This request is made under CrR.4.7 And that the prosecuter would produce the findings of that information to the Defendant. THAT THIS INFORMATION ALSO IS REQUESTED UNDER R.C.W. 10.73.170. And that this request was asked of this court and never answered. Herein the clerkes of the court can find a motion for contempt of court order and motion to enforce the order of this court by JUDGE JOHN MEYER. That the need of testing is not asked of at this time only the whereabouts of the said vehicle, would be given to the defendant fourthwith.

Terrance Jon Irby
TERRANCE JON IRBY 631794
UNIT-6-TIER-D-CELL-17
WASHINGTON STATE PENITENTIARY
1313 N.13 AVE.
WALLA, WALLA, 99362

MOTION TO COMPEL DISCOVERY
JANUARY 9, 2008

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

1
2
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4 State of Washington,
5
6 vs. PL

NO. 05-1-00276-9

() Clerk's Action Required

7 Terrance Jon Inby,
8 DEF.

ORDER ON:

Civil Criminal
 Domestic Other

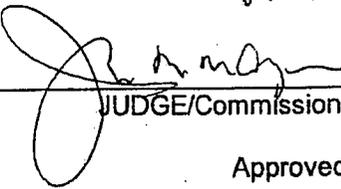
9
10 THIS COURT FINDS the Sheriff, State, and PD are working
11 to resolve the issues raised in Mr. Inby's Tort claim.
12 The Court expects a Status Report by COB 12/21/07.

13 The defendant has moved for additional discovery
14 & further DNA testing. Regarding the size of clothing being
15 held, location of a trace, testing any and all evidence.
16 These were all issues revealed in pre-trial discovery, and
17 no basis exists to test same now.

18 Testing of the stool and long john is not justified
19 either procedurally or substantively under RCW 10.73.170
20 or State v. Rieff, 134 Wn. App. 169 (2006). The information
21 was available at trial, not particularly material, and
22 not likely to demonstrate innocence on a more probable
23 than not basis.

24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED motion re testing
25 & evidence is denied. The stool & long johns are to
26 be held in evidence until state appeals are exhausted.

27 DATED: 12/13/07

28 
JUDGE/Commissioner

29 Presented by:

Approved:

30
31 Attorney for

Attorney for

32 CL: Inby
33 Pedersen
34 Tyne
Ostlund.

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IN THE SUPERIOR COURT OF WASHINGTON
AND COUNTY OF SKAGIT

THE STATE OF WASHINGTON,)
VS. PLAINTIFF,)
TERRANCE JON IRBY,)
DEFENDANT,)

CASE NO :05-00276-9
D.N.A. TESTING OF
EVIDENCE THAT WAS
NOT TESTED AT TRIAL
R.C.W.10.73.170

The defendant is requesting that one bar stool be tested for fingerprints and D.N.A. To include blood typing.R.C.W.10.73.170 An offender may obtain postconviction D.N.A. testing of an item of evidence that has not been tested,or available but not tested at trial Bar stool out of the shop of the crime scene.That this evidence was taken into evidence but never was tested for D.N.A. Typing.SEE.NO:79407-3 THE STATE (RESPONDENT V.RIOFTA (PETITIONER) (10/23/07) 134 Wn.App.6699(2006)The defendant is making this request and it could be granted.

DEFENDANT PRO-SE HEREIN.

Terrance Jon Irby

TERRANCE JON IRBY 631794
unit-6-Tier-B-Cell-16
Washington State Penitentiary
1313 N.13 Ave Walla,Walla, 99362

THE TIME OF TESTING WILL BE WRITTEN HEREIN AT THIS: _____ day of _____ 2007
THEREFOR AFTER HEARING FROM THE STATE,AN THE DEFENDANT IT IS HEREBY AJUDGED AND DECREED,ORDERED THAT THE TESTING OF THE BAR STOOL WOULD BE CONDUCTED FOR THE PURPOSE OF D.N.A. TYPING,TO INCLUDE BLOOD,FIGERPRINTS ASWELL,AT THE COST OF THE STATE OF WASHINGTON.

ORDER INTERED ON THIS DAY OF _____ YEAR 2007

THIS IS MOTION ONE OF (1) OF (2)

by the honorable MEYER
SKAGIT COUNTY SUPERIOR
COURT

NOVEMBER 29, 2007

IN THE SUPERIOR COURT OF WASHINGTON
AND COUNTY OF SKAGIT

THE STATE OF WASHINGTON)
VS. PLAINTIFF)
TERRANCE JON IRBY)
DEFENDANT)

CASE NO:05-00276-9
TESTING OF EVIDENCE
NOT TESTED AT TRIAL
R.C.W.10.73.170

COMES NOW THE DEFENDANT PRO-SE, TERRANCE JON IRBY, That a request was made to have the location of the defendants 1980 License A73161F vin; FLOPRHG0796, Mileage, 785753. FORD TRUCK.

That said (VEHICLE) is evidence of a crime, that evidence was taken from that vehicle. And the detectives and police must hold on to that evidence for further testing, at the request of the defendant.

This case has a reputation of the destruction of material and exculpatory evidence. And the defendant has not had any hearing in regard to the release of that property in order for the state to disregard that evidence, even in the transcripts the defendant was inquiring into having, the truck looked over for blood, that may or may not have been under the hood of the vehicle. That there was blood found in the cab of the truck, and it was tested for blood, and found to be the blood of the defendant. A Pair of boots were also found in the bed of that vehicle, A PAIR OF SWEAT PANTS OR TOP (LONG JONS Thermal UNDERWEAR) The vehicle must remain in evidence until the end of this case that is on (APPEAL) therefore, The defendant request that this location would be re-reviled to the defendant (FOR FURTHER TESTING OF EVIDENCE).

TESTING OF EVIDENCE
NOT TESTED AT TRIAL
R.C.W.10.73.170

Terrance Jon Irby 631794
unit-6 Tier-B-Cell-16
Washington state penitentiary
1313 N.13 ave
Walla, Walla, 99362

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY WA

2007 AUG 24 AM 9:31

1 SUPERIOR COURT WASHINGTON

2 COUNTY OF SKAGIT COUNTY

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State of Washington,
PL

vs.

Terrance Jon Irby,
Def

Case No.: 05-1-00276-9

() CLERK'S ACTION REQUESTED

ORDER ON:

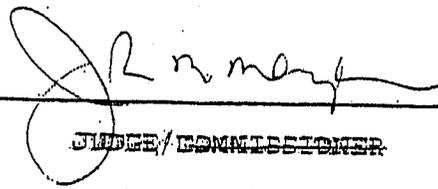
() CIVIL (X) CRIMINAL
() DOMESTIC () OTHER

THIS MATTER having come on regularly and the Court having heard
the motion(s) to enforce pro se status.

THIS COURT FINDS this motion should be heard by
the Court of Appeals per RAP 7.2.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that motion denied
without prejudice. If defendant wishes to
pursue this matter, he should do so
in the Court of Appeals.

Dated: 8/24/07.


CLERK/COMMISSIONER

Presented by:

Approved:

Attorney for

Attorney for

CL: Irby
Nielsen
Pedersen
TUNE



STATE OF WASHINGTON
WASHINGTON STATE PATROL

PO Box 42608 • Olympia, Washington 98504-2608 • (360) 705-5988

CRIME LABORATORY REPORT

Agency: Skagit County Sheriff's Office
Agency Rep: Detective Ken Tiscornia

Laboratory Number: 706-000765
Agency Case Number: 0503552
Request Number: 0001

Subject: Suspect - IRBY, TERRANCE JON

Victim - ROCK, JAMES T

RECEIVED
NOV 2 2006
SKAGIT COUNTY
PUBLIC DEFENDER

The following item(s) were examined:

Submission #LAT001: one sealed paper bag 16-51

Item #LAT001-01: 3 - latent print lifts.

Submission #LAT002: one sealed plastic bag 16-51

Item #LAT002-01: Inked prints of victim.

Results

The three submitted latent print lifts contain no latent impressions of value for identification purposes.

This copy was prepared by the Skagit County Sheriff on
(date) 11-21-06 for the official use of
the Prosecuting Attorney for the purpose of prosecution
and may not be revealed to any other individual and/or
agency or used for any other purpose than stated with-
out the consent of the Skagit County Sheriff's Office.

Date

Robert S Johnson
Robert S Johnson, Forensic Scientist

09-06-06
Date

If examination and comparison of this evidence will require a court appearance, at least one week's notice is necessary for the preparation of presentation materials.

1043

Phone Notes

- 10/31/06 Phone call with Prosecutors Tom Seguire and Eric Pederson and Detective Jennifer Sheahan-Lee. The judge in this case has ordered that fingerprints and DNA be done on an air mattress from the crime scene. Discussed how the testing might be done, the significance of the results, and how long the testing might take.
- 10/31/06 Phone call with Investigator Lana Reichert from the Skagit County Public Defenders Office. I let her know that Eileen Slavin was doing the latent print exam and that it was being examined at this time. I discussed how I would try to do the DNA testing and how long that testing might take. She said there are two court dates, 11/27/06 and sometime in 1/07.
- 11/2/06 Phone call with Det. Sheahan-Lee. Let her know that I got the air mattress. Let her know how I was going to swab it for DNA. I also told her that latents found some hairs. She mentioned that the defense may want some additional latent print testing done.
- 11/3/06 Phone call with Tom Seguire. Talked about how the DNA testing might destroy any possible latent prints and how this other latent print process may destroy the DNA. He will discuss this with the defense and get back to me.
- 11/3/06 Phone call with Tom Seguire. The fingerprint process they are looking at is amido black. He and the defense are fine with me doing what I need to to do the DNA testing.
- 11/9/06 Phone call with defense attorneys Keith Tyne and Jon Ostlund and Investigator Lana Reichert. Discussed the hairs that I found and that they would need to be sent to another lab for screening prior to any DNA work that would be done. Also discussed was my time frame for finishing this case. I told them that if things go well I should be finished by 11/27.
- 11/13/06 Phone call with Prosecutor Dona Bracke. Let her know I needed a consumption authorization for the swabbings from the air mattress. I also told her that I had talked to the defense about the hairs on the mattress.

1168

SKAGIT COUNTY PROSECUTING ATTORNEY
THOMAS E. SEGUINE

CRIMINAL DIVISION
CHIEF CRIMINAL DEPUTY
DONA BRACKE
SENIOR CRIMINAL DEPUTY
ERIK PEDERSEN

605 SOUTH THIRD
MOUNT VERNON, WA 98273
PHONE (360) 336-9460
FAX (360) 336-9347

CRIMINAL DEPUTIES
TRISHA D. JOHNSON
EDWIN N. NORTON
ERJKA E. SOUBLET
TONI T. GUZZO
ERIN C. DYER
SLOAN G. JOHNSON
KAREN L. PINNELL
JAMIE N. JONES

CIVIL DIVISION
CHIEF CIVIL DEPUTY
DON L. ANDERSON
CIVIL LITIGATOR
PAUL H. REILLY
CIVIL DEPUTIES
MELINDA M. MILLER
ARNE O. DENNY
STEPHEN R. FALLQUIST
FAMILY SUPPORT DIVISION
CHIEF FAMILY SUPPORT DEPUTY
KURT E. HEFFERLINE
FAMILY SUPPORT DEPUTY
GWEN L. HALLIDAY

November 13, 2006

Greg Frank
Washington State Patrol Crime Lab
Marysville WA

RE: Skagit County Sheriff's Department Case No. 05-03552
Defendant: Terrance Jon Irby
Victim: James T. Rock, Jr.

Dear Mr. Frank:

Please be advised that you are authorized to test in its entirety any possible DNA samples available in this case pertaining to the swabbing of the air mattress.

Feel free to contact me if you have any questions at (360) 336-9460.

Sincerely,


Dona Bracke
Skagit County Chief Criminal Prosecuting Attorney

DB/krw

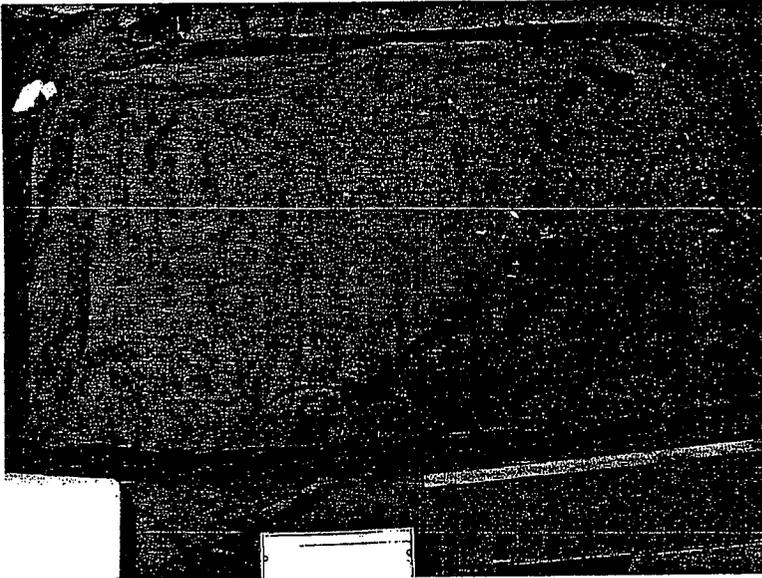
cc: Det. Jenny Sheahan-Lee, Skagit County Sheriff's Department

1169

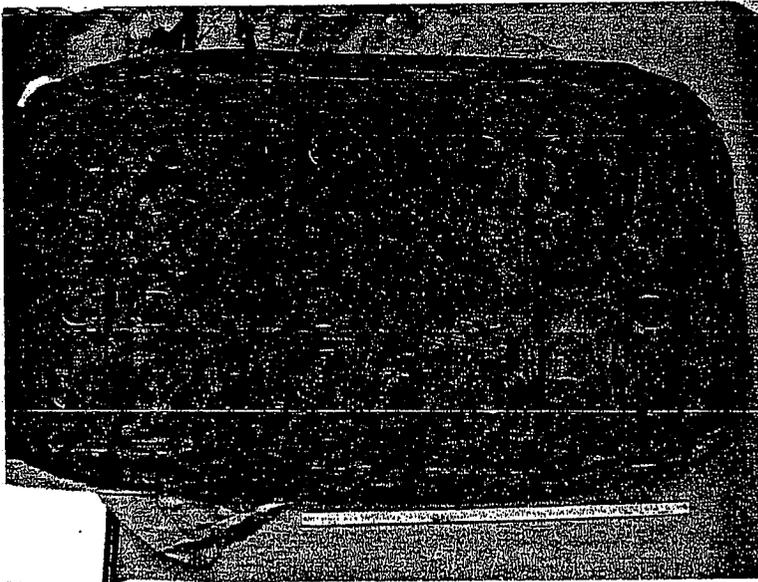
Item No.: 24-51

Received a sealed paper bag labeled "...24-51...05-03552...plastic air mattress...". One seal is made with WSPLL tape with initials "ES". The bag contains an un-inflated air mattress wrapped in paper. The mattress has a cloth side and a vinyl side. The cloth side has red staining, paper debris, and possible hairs. There are a few clumps of possible hairs that look like they may have been cut.

I phoned Eileen Slavin and clarified with her that she found no latent impressions. I will focus my exams on the vinyl side since the reddish stains indicate that it may have been in contact with the victim.



Cloth side of mattress



Vinyl side of mattress. This was the side examined.

Used 6 swabs to swab the edges of the mattress. These will be combined together into 1 sample.

Used 18 swabs to swab the center portion of the mattress. These will be combined into 1 sample.

All of the swabs were allowed to air dry.

11/6/06 Consumed all of the mattress edge swabs for a DNA extraction.

11/7/07 Consumed all of the mattress center swabs for a DNA extraction.

1170

400-000572 R-7

COPY



EXHIBIT (I) A 17

STATE OF WASHINGTON
WASHINGTON STATE PATROL

PO Box 42608 • Olympia, Washington 98504-2608 • (360) 705-5988

CRIME LABORATORY REPORT

Agency: Skagit County Sheriff's Office
Agency Rep: J Sheahan-Lee

Laboratory Number: 706-000765
Agency Case Number: 0503552
Request Number: 0003

Subject: Suspect - IRBY, TERRANCE JON

Victim - ROCK, JAMES T.

The following item(s) were examined:

Submission #LAT005: one sealed paper bag, Item 24-51

Item #LAT005-01: 1) mattress

Results

The mattress was viewed with the forensic light source. No latent impressions of value for identification purposes were observed. The mattress was processed with cyanoacrylate and the plastic side was dusted with black magnetic fingerprint powder. No latent impressions of value for identification purposes were developed. The cloth side of the mattress is not a receptive surface for latent prints and was not processed.

Eileen Slavin

1185

10/31/06

Eileen Slavin, Forensic Scientist

Date

If examination and comparison of this evidence will require a court appearance, at least one week's notice is necessary for the preparation of presentation materials.



Phone Notes

042105 Phone call with Det. Sheahan-Lee. She would like the jacket (item #28-45) looked at for blood and the boot looked at for wearer's DNA. She is looking into having the boot examined for blood spatter. Let her know that there were people in the lab system that could do that analysis.

050205 Phone call with Det. Sheahan-Lee. She would like the boot examined for blood spatter. I discussed with her the unlikelyhood that the stains were from the wearer stepping in blood due to:

- 1) No obvious blood on sole.
- 2) Where the stains are located on the boot would require the legs to be crossed.

050405 Left a voicemail for Det. Sheahan-Lee regarding need for consumption order.

051605 Phone call with Skagit County Deputy Prosecutor Erik Pedersen. He would like me to swab shoelaces to see if enough DNA for testing can be obtained.

072205 Phone call with Det. Sheahan-Lee. There is a trial date of early September. She would like someone to do bloodspatter interpretation on the boot. There is also some bloodspatter on a garage floor that she would like examined and compared with the boot. I told her to contact Jim Tarver about having someone do the scene and that I would find someone to do the boot and compare that to the garage pattern.

080505 Phone call with Skagit County Prosecutor Tom Seguire. He does not want to pursue a consumption order for the testing on the boot. There will probably be a delay of the 9/12/05 trial date, but he does not know for how long. He asked about photos of the boot prior to the testing I did. I told him that I didn't think I had taken photos of the staining except for the one stain I tested. I told him I had a stain on the leather jacket I wanted to test. He asked that a copy of my case notes be sent to Det. Sheahan-Lee.

This copy was prepared by the Skagit County Sheriff's Office
(date) _____ for the office use.
the Prosecuting Attorney for the purpose of this case.
and may not be revealed to any other individual, agency or used for any other purpose without
out the consent of the Skagit County Sheriff's Office.

Deputy _____

45c

EXHIBIT(K)

Michael Sparks - Master bedroom door

From: "JennySheahan-Lee" <jennys@co.skagit.wa.us>
To: "Lana Reichert" <lanar@co.skagit.wa.us>, "Michael Sparks" <MSparks@co.whatcom.wa.us>, "KeithTyne" <keitht@co.skagit.wa.us>, "Tom Seguire" <tomes@co.skagit.wa.us>
Date: 3/22/2006 3:05 PM
Subject: Master bedroom door

I returned to the office and took the time to review the photographs. I was surprised to see the picture of the door into the Master bedroom was damaged in a way I didn't recall. The picture shows that the knob is missing and it appeared to be recent damage as there were splitters at the base.

Jenn

ROBERT J. KERCHUSKY
Fingerprint Consultant
1235 N Echohawk Way
Eagle, ID 83616
FAX*/PH (208)939-4914

PROPER TECHNIQUES FOR CRIME SCENE PROCESSING

TECHNIQUES THAT SHOULD HAVE BEEN USED AT THE JAMES ROCK CRIME SCENE OR FOR ITEMS PROCESSED AT THE OFFICE LAB:

TECHNIQUE #1 - AMIDO BLACK - CHEMICAL ENHANCER FOR LATENT PRINTS IN BLOOD

TECHNIQUE #2 - SUPER GLUE - CYANONACRYLATE ESTER - USED FOR ALL NON-POROUS SURFACES

A. RUBBER AIR MATTRESS THAT COVERED THE VICTIM

This was most crucial piece of evidence at the crime scene; it was not processed for latent fingerprints.

TECHNIQUE #1 OR #2 COULD HAVE BEEN USED TO DEVELOPE FINGER-PRINTS. #1 WOULD HAVE BEEN MY PREFERENCE.

B. EYE GLASSES NEAR COT

TECHNIQUE #2 SHOULD HAVE BEEN USED

C. STOOL

Which had obvious dust that had been disturbed

TECHNIQUE #2 SHOULD HAVE BEEN USED

Using #1 could have destroyed the latent prints due to the fact that Methyl Alcohol could cause bubbling of the varnished finish. (Amido Black is 90% Methyl Alcohol)

D. FOUR (4) NATURAL BEER CANS, BEER CARTON & ONE (1) MILWAUKEE BEST BEER CAN

TECHNIQUE # 2 SHOULD HAVE BEEN USED

E. SAFE DOOR

TECHNIQUE #2

F. RED METAL TOOL BOX & TWO(2) PLASTIC CRATES

TECHNIQUE #2

G. TECHNIQUE #1 SHOULD HAVE BEEN USED ON DOORS, DOORS FRAMES AND ALL OTHER AREAS THAT A BLOOD PRINT COULD HAVE BEEN LEFT BY THE PERPETRATOR. THE CADAVER EXPOSED SKIN SHOULD HAVE BEEN PROCESSED.

1-B

H. NIN-HYDRIN WAS USED ON THE PAPER ITEMS AND THEN DIRECT LIGHT WAS USED ON THE ITEMS TO HELP ACCELERATE THE DEVELOPMENT PROCESS.

(The best procedure to accelerate the development of latent prints is to use steam heat. A common household iron is the best source of steam heat.)

Robert J. Kerchusky

2-B

ROBERT J. KERCHUSKY
Fingerprint Consultant
1235 N Echohawk Way
Eagle, ID 83616
FAX*/PH (208)939-4914

RECEIVED
OCT 24 2006
SKAGIT COUNTY
PUBLIC DEFENDER

LATENT TO INK FINGERPRINT COMPARISON REPORT

On March 11, 2005, Skagit County Sheriff's Office responded to a homicide at the residence of James Thomas Rock at 35896 Shangri La Drive, Skagit Co., Washington.

Detectives from Skagit Co. conducted a search for evidence and developed latent fingerprints from a garage door on or about March 11, 2005.

On September 29, 2006, Mike Sparks, of Whatcom Co. Public Defender's Office sent me four (4) latent prints which were recovered from the afore mentioned residence. I analyzed the photographs and found that three (3) of the photographs were made from the same developed latent print and one (1) of the three (3) photos was out of focus. The other two (2) photos were of value for comparison purposes. #4 photograph was of four (4) fingerprints in sequence, but were of no value for comparison purposes.

In the photographs, no ruler was used to indicate the size of the latent prints: plus, they were not identified properly with the date, the case number or the processors initials.

On October 17, 2006, Mike Sparks sent me additional photo enlargements of the one latent print of value for comparison purposes, which was developed from the garage door. Also included were inked known fingerprints of Terrance Irby and the known inked fingerprints of the left hand of James Rock.

On October 17, 2006, a comparison was made of the latent print of value to the inked left hand fingerprints of James Rock and was found to be non-identical.

A comparison of the latent print recovered from the garage door to the inked known impressions of Terrance Irby appeared to be non-identical, but I requested better quality inked prints on the #6 finger (left thumb) and the #7 (index finger) to be 100% sure of my findings.

On October 18, 2006, additional inked known fingerprints of Terance Irby were received from Investigator Lana Rechaert and a comparison was made of Irby's #6 and #7 fingers against the latent print found on the garage door. They were found to be non-identical.

As of October 23, 2006, no copies of the latent lift cards were received.

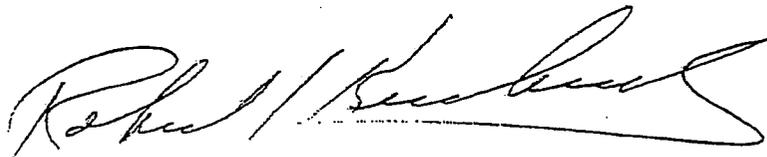


1-A

ROBERT J. KERCHUSKY
Fingerprint Consultant
1235 N Echohawk Way
Eagle, ID 83616
FAX*/PH (208)939-4914

QUESTIONS FOR STATE'S FINGERPRINT EXAMINER

1. Did you examine the latent print photos and latent hinge lifters from garage door?
2. Did you find any latent prints of value in the photos or latent hinge lifters?
3. How many points of identification or characteristics do you need to make an identification?
4. How many points of identification did you find in the best latent lift recovered from the crime scene?
5. a Let me show you an enlargement of the best latent print in question.
b. Is that photo of the latent print of value for comparison purposes? (If he states that is of no value, continue on with rest of the questions.)
6. If you had a latent print with 20 or more points of identifications, could you make an identification?
7. a. Our Latent Print Expert, Bob Kerchusky, stated that there are 20 or more points of identification in that latent print photograph.
b. Are you telling us there are not enough points of identification in that photograph?
8. In the first joint of a finger, approximately how much area is needed to make an identification? (Ans. $\frac{1}{4}$ of the finger.)
9. a. Let me show you the latent print in this enlargement.
b. How much area of the joint is in that photograph? (Ans At least $\frac{1}{2}$ of the first joint.)



Daniel V. Christman

Curriculum Vitae

DANIEL V. CHRISTMAN

PO Box 823
Bothell, WA. 98041-0823
(206) 919-8392

EDUCATION

Masters of Science – Criminology, 2005

Boston University – Boston, Massachusetts

Bachelor of Arts - Social Science, 1992

Boise State University - Boise, Idaho

Associate of Arts - Administration of Criminal Justice, 1982

Bellevue Community College - Bellevue, Washington

CAREER PATH

1997 – Present

Police Officer, City of Bothell, Washington.

- 1997 - 1999: Patrol Division
- 1997 – Present: Crime Scene Investigator
- 1998 - Present: Washington State Criminal Justice Training Commission
Adjunct Instructor of Death Investigation, Crime Scenes
- 1999 - 2002: City of Bothell D.A.R.E. Officer
- 2002 - Present: Traffic Officer, Collision Investigator, Motorcycle Operator

1995 - Present

Forensic Consultant, Christman Forensics, Bothell, WA.

An independent forensic criminalistics consulting firm which provides case investigation, consultation, examination of evidence, expert testimony and forensics education. www.ChristmanForensics.com

1988 – 1997

Medicolegal Death Investigator, Snohomish County Medical Examiner's Office, Everett, WA. Investigate, document and determine the cause and manner of natural, accidental, suicidal, homicidal, and undetermined deaths. Record and document evidence for forensic, pathological, and judicial review.

- Instructor of various aspects of medicolegal investigation and crime scene reconstruction and preservation.
- Supervisor of Criminal Justice Internship Program.
- Assist medical examiner with autopsies.
- Organized and implemented a county youth suicide prevention program.
- Presented with the DWI Task Force Special Recognition Award for youth suicide prevention efforts.
- Personal Computer Coordinator for Investigation Bureau.

1993 - 1996

Part-Time Instructor, Bellevue Community College, Administration of Criminal Justice Department, Bellevue, WA. Create original forensic curriculum and instruct from that material.

- Instructor of *Principles of Forensic Examination* and *Death Investigation*.
- Developed only comprehensive forensic investigation class offered in the Washington State Community College System at the time.
- Created and facilitated technical workshops on such topics as Bloodstain Pattern Analysis, Criminal Investigation, Crime Scene Reconstruction and Preservation, Suicide Investigation and Fire Investigation.

CAREER PATH

1988 - Present

Court Qualified Consulting Forensic Expert: Geometric Bloodstain Pattern Analysis, Crime Scene Reconstruction and Preservation, and Medicolegal Death Investigation. Provide independent consultation in criminal and civil cases. This involves fieldwork, as well as bench work, to reconstruct the events that transpired prior to, during and after a crime was committed.

- Instructor of Bloodstain Pattern Analysis Workshops, defining the flight characteristics and stain patterns of human blood, laboratory and real scene documentation, lectures, update and review of bloodstain pattern identification, analysis and interpretation.
- Continuing research in techniques of crime scene reconstruction and Medicolegal Death Investigation, compiling data through experimentation.
- Noted expertise in the field of Bloodstain Pattern Analysis, Crime Scene Reconstruction, Injury Causation, Death Investigation, and Forensic Evidence.

1985 - 1988

Deputy Coroner, Ada County Coroner's Office, Boise, Idaho.

Investigated and documented all deaths in Ada County. Supervised surgical procedures (post mortem and ante mortem). Authorized and officiated in human organ harvesting. Provided public education on suicide and criminal justice training to law enforcement.

- Developed and implemented a Suicide Rating Scale for use in the Boise Public Schools.
- Guest lecturer at Boise State University in the Schools of Psychology, Sociology and Criminal Justice.
- Recognition from Boise Public Schools for youth suicide prevention program.
- Community Service Award for meritorious service.

1983 - 1985

Public Safety Officer, Harborview Medical Center, University of Washington, Seattle, Washington. Worked extensively with the Emergency Department staff to maintain a secure working environment.

- Provided basic public safety for hospital employees, patients and visitors.
- Assisted Medic One ambulance units upon arrival to the ER.
- Assisted with emergent peripheral patient care.

AWARDS / APPOINTMENTS:

2 Police Unit Commendations
 Professional Lecturer Status
 Instructor Certification Status
 Adjunct Criminal Investigation Instructor
 Regular Guest Lecturer – WA. Police Corps
 Regular Guest Lecturer –Criminal Investigations
 2001 – 2002 Police Motorcycle "Rookie of the Year"
 BLEA Class #473 Vice President
 Board Member WA State Youth Suicide Prevention
 Adjunct Criminal Justice Professor
 "M.A.D.D." Award for Youth Suicide Prevention
 Recognition Award Youth Suicide Prevention Scale
 Meritorious Community Service Award
 Regular Guest Lecturer

Bothell Police Department
 Criminal Justice Training Commission
 North American Motor Officer Association
 CJTC Basic Law Enforcement Academy
 Washington State Governor's Office
 Bellevue Community College
 Snohomish County Chapter
 Boise, Idaho Public School System
 Ada County, (Boise) Idaho
 Boise State University

SELECTED TRAINING BY CATEGORY:**Criminal Investigations / Crime Scene Reconstruction:**

Communication Analysis; Lies, lies, lies National Drug Intelligence Center (NDIC)	June 2005 Everett, Washington	8 hours
Buried / Scattered Surface Remains Lane County (OR) Sheriff's Office	July, 2004 Eugene, Oregon	24 hours
Practical Homicide Investigation Washington State Attorney General's Office	April 2002 Bellevue, Washington	24 hours
Drugs, Guns, and Gangs in Washington Schools The Law Advisor – Lake Washington School District	November 3, 1999 Redmond, Washington	8 hours
Death Investigation Washington State Criminal Justice Training Commission	March 22-26, 1999 Burien, Washington	40 hours
Reid Method Criminal Interview and Interrogation	November 4-6, 1998	24 hours
Reid Method of Field Interviewing King County Sheriff's Office	November 3, 1998 Kenmore, Washington	8 hours
Police Report Writing Auburn Police Department	September, 1998 Auburn, Washington	8 hours
Identification Techniques (IAI Pacific NW Division) International Association for Identification Annual Meeting	May 15-17, 1997 Silverdale, Washington.	24 hours
Multiple Fatalities Seminar Washington State Criminal Justice Training Commission	May 1995 Seattle, Washington.	16 hours
Puget Sound Forensic Science Group Meeting March 1995	Seattle, Washington.	5 hours
1995 American Academy of Forensic Sciences Annual Meeting January 1995	Seattle, Washington.	40 hours
Forensic Drawing for Medical Examiners Stuart Parks Forensic Consultants	December 1994 Bellevue, Washington	40 hours
Fire Origin and Cause Investigation Snohomish County Fire Marshall's Office	November 1994 Monroe, Washington	8 hours
Criminal Personality Profiling Specialized Training Services, Inc.	January 1993 Seattle, Washington	13 hours
Identification Techniques International Association for Identification Annual Meeting	May 1992 Salem, Oregon	24 hours
Death Investigation University of Washington School of Medicine	April 1992 Seattle, Washington	24 hours
Death Investigation University of Washington School of Medicine	April 1990 Seattle, Washington	32 hours
American Association of Suicidology 1989 Annual Meeting	April 1989 San Diego, California	24 hours
Medical Terminology Course Providence Hospital Medical Center	March 1989 Everett, Washington	30 hours
Psychological Profiling International Protection of Assets Consultants	May 1988 Boise, Idaho	32 hours
Death Investigation University of Washington School of Medicine	April 1988 Seattle, Washington	24 hours

Juvenile Justice Training Idaho Peace Officers Standards & Training	August 1987 Boise, Idaho	24 hours
Death Investigation Seminar International Assoc. of Coroners and Medical Examiners	June 1986 Seattle, Washington	40 hours
International Homicide Investigation Seminar Scottsdale Police Department	September 1985 Scottsdale, Arizona	40 hours
Homicide Investigation School Northern Colorado Southern Wyoming Detectives Assoc.	May 1985 Cheyenne, Wyoming	40 hours
Interpersonal Violence FBI / National Law Enforcement Training School	April 1985 Boise, Idaho	16 hours
Crime Scene Investigation and Reconstruction Boise Police Department / California DOJ	March 1985 Boise, Idaho	40 hours
Homicide Investigation - Serial Murder Seminar National Law Enforcement Institute	February 1985 Las Vegas, Nevada	40 hours
<u>Bloodstain Pattern Analysis:</u>		
Fluorescein as a Presumptive Blood Test Advanced Forensic Training Institute	October 2003 Bothell, Washington	16 hours
Advanced Bloodstain Pattern Analysis / Forensics International Association of Bloodstain Pattern Analysts	October, 2001 Tucson, Arizona	32 hours
Advanced Bloodstain Pattern Analysis / Forensics IABPA & the Metropolitan Toronto Police	November 1998 Toronto, Ontario Canada	40 hours
Advanced Bloodstain Pattern Analysis and Forensics IABPA & Association of Crime Scene Reconstructionists	November, 1997 Seattle, Washington	32 hours
Math & Physics in Bloodstain Pattern Analysis Canadian Police College/RCMP	March 3-17, 1997 Ottawa, Ontario Canada	80 hours
Advanced Bloodstain Pattern Analysis and Forensics IABPA & Association of Crime Scene Reconstructionists	November 1996 Albuquerque, New Mexico	32 hours
Advanced Bloodstain Pattern Analysis and Forensics IABPA & Association of Crime Scene Reconstructionists	October, 1995 Oklahoma City, Oklahoma.	32 hours
Advanced Bloodstain Pattern Analysis and Forensics International Association of Bloodstain Pattern Analysts	October 1994 Miami, Florida	32 hours
Advanced Bloodstain Pattern Analysis and Forensics International Association of Bloodstain Pattern Analysts	November, 1990 Reno, Nevada	32 hours
Advanced Techniques in Bloodstain Pattern Analysis Valencia Community College	March 1988 Orlando, Fl.	40 hours
Basic Bloodstain Pattern Interpretation Idaho State Coroner's Association	August 1985 Boise, Idaho	40 hours

Traffic Crash Investigation / Reconstruction:

Collision Reconstruction Washington State Patrol Academy	October, 2005 Shelton, Washington	160 hours
Harley Davidson Police Motorcycle Transition Course Seattle Police Department Motorcycle Training Unit	October, 2004 Seattle, Washington	24 hours
Police Motorcycle Escort Training Seattle Police Department Motorcycle Training Unit	September, 2004 Seattle, Washington	16 hours
At-Scene Crash Homicide Investigation Institute of Police Technology and Management	November, 2004 Eugene, Oregon	80 hours
Traffic Crash Reconstruction Institute of Police Technology and Management	June, 2004 Bellevue, WA.	80 hours
Pedestrian Bicycle Crash Investigation Institute of Police Technology and Management	June, 2004 Aberdeen, WA.	40 hours
Technical Collision Investigation Washington State Criminal Justice Training Commission	June, 2001 Bellevue, WA.	120 hours
Police Motorcycle Operator's Course Washington State Criminal Justice Training Commission	September, 2000 Bellevue, WA. PD	80 hours
Motorcycle Operator Training Course Washington State Criminal Justice Training Commission	June 17, 2000 Renton, WA.	42 hours
Motorcycle Rider Course WA State Motorcycle Safety Foundation	March 23, 2000 Edmonds, WA	16 hours
Advanced Collision Investigation Washington State Criminal Justice Training Commission	April, 1999 Vancouver, WA. PD	80 hours
Standard Field Sobriety Testing / Wet Lab Washington State Criminal Justice Training Commission	December, 1998 Bothell, WA	16 hours
Basic Drug Recognition Washington. State Criminal Justice Training Commission	December 17, 1998 Bothell, WA	8 hours
Basic Collision Investigation Washington. State Criminal Justice Training Commission	September 14, 1998 Federal Way, WA PD	40 hours

PAPERS, PUBLICATIONS and PRESENTATIONS:

1. **Adolescent Suicide: A prevention Resource for the Family and Community.** Idaho Bureau of Mental Health Publication, 1988. Chapter submission, Adolescent Suicide: A Coroner's Perspective.
2. **Collection and Preservation of Bloodstain Pattern Evidence on Sheetrock Surfaces.** *International Association of Bloodstain Pattern Analysts News*, Spring 1993.
3. **Bloodstain Pattern Interpretation - Laboratory Manual**, June 1993. Revised ed. April 1997
A laboratory text designed as a companion to the Basic 40-hour Bloodstain Pattern Analysis Course of instruction.
4. **Precautions You Should Take (Bloodborne Pathogens)**
POLICE Magazine, August 1994
5. **Handwriting on the Wall (Bloodstain Pattern Analysis)**
POLICE Magazine, November 1994
6. **Crime Scene Preservation, It's Everybody's Concern.** (Photo Credits)
Journal of Emergency Medical Services, January 1995 Vol. 20, No. 1
7. **Special Evidence in the Fatal Fire Scene.** (Contribution to textbook chapter.)
Practical Fire Investigation, ed, by David Redsicker, CRC Press, 1995
8. **Bloodborne Pathogens and the Law Enforcement Officer.** Informational paper presented at the Washington State Attorney General's Office Annual Investigators Conference, September 27, 1995 in Moses Lake, Washington.
9. **A Study to Compare and Contrast Animal Blood to Human Blood.**
Technical paper presented to at the annual meeting of the International Association of Bloodstain Pattern Analysts & Association of Crime Scene Reconstructionists. Oct. 5, 1995 Oklahoma City, Oklahoma
10. **Handwriting on the Wall, Bloodstain Pattern Analysis can be a Key Signature in Interpreting the Scene of the Crime.** *The California Identification Digest* June 1996, Vol. 96, Number 6.
11. **A Study to Compare and Contrast Animal Blood to Human Blood.**
International Association of Bloodstain Pattern Analysts News, June, 1996 Volume 12 Number 2
12. **Basic Bloodstain Pattern Analysis: A Companion Workbook to the 40-Hour Basic Course.** April 1997. Revised, September 2004. Self-published Daniel V. Christman.
13. **Investigating the Fatal Fire - A technical paper outlining successful fire scene investigations.** Presented at the International Association for Identification, Pacific NW Division Annual Meeting in Silverdale, Washington. May 16, 1997
14. **Death Investigation: A Companion Workbook to the Death Investigation Course.** May 1997. Self-published Daniel V. Christman.
15. **Expired Bloodstain Patterns - A research paper documenting this unique bloodstain pattern and how it is created.** Presented for peer review at the IABPA Annual Conference in Albuquerque, NM Nov., 1996. *International Association of Bloodstain Pattern Analysts News*, June, 1997 Volume 13 Number 2
16. **Infant Death Investigation: An Interactive Training Guide for Death Investigators, Law Enforcement, and Emergency Medical Personnel.** Video DVD Production, SIDS Foundation Seattle, Washington, 2003

17. **Bloodstain Pattern Interpretation - A Short Course of Instruction:** Washington State Criminal Justice Training Commission – Crime Scene Investigation, 2000.
18. **Bloodstain Pattern Interpretation Laboratory Manual and Experiments - A Short Course:** Washington Association of Coroner's and Medical Examiners Annual Training Conference, 2004.

PROFESSIONAL ASSOCIATIONS

Member, International Association of Bloodstain Pattern Analysts (IABPA) Since 1986

- President, IABPA 1997 - 1999
- Conference Chair IABPA/ACSR 1997 Annual Training Conference in Seattle, WA.
- Region I - Vice President IABPA, 1995-97
- Co-Chair, IABPA Education Committee, 1996-1997

Charter Member, Washington State Violent Crime Investigator's Association, 1999 – Present

- Advisory Board Member Appointment - 2004

Board Member, Eastside Criminal Justice Education Advisory Committee, 1993 - 1996

Board Member, Washington State Youth Suicide Prevention Committee, 1996 - Present

Board Member, Northshore Youth and Family Counseling Services, 1994 - 1996

Member, North American Motor Officer's Association (NAMOA), 2000 to Present.

- Recipient - 2001 Rich Cochran Memorial "Rookie of the Year" Award
- Editor, North American Motor Officer's Association Newsletter, 2001 to Present

CONSULTING AND TRAINING

The following is a partial list of agencies which have either invited me to teach, requested assistance in crime scene investigation / reconstruction, or attended courses I have taught.

Agencies:

Washington State Criminal Justice Training Center
Seattle (WA) Police Department
King County (WA) Sheriff's Department
Port of Seattle (WA) Police Department
Ada County (Boise, ID) Prosecutor's Office.
Chelan County (WA) Sheriff's Office
Snohomish County (WA) Sheriff's Office
Snohomish County (WA) Medical Examiner
Garden City (ID) Police Department
Adams County (WA) Sheriff's Office
Skagit County (WA) Sheriff's Office
Pierce County (WA) Sheriff's Office
Washington State Department of Corrections
Washington State Attorney General's Office
FBI - San Francisco, Los Angeles and Honolulu
Kennewick (WA) Police Department

Basic Law Enforcement Academy
Richland (WA) Police Department
Ada County (ID) Sheriff's Office
Lewiston (ID) Police Department
Spokane (WA) Police Department
Marysville (WA) Police Department
Boise (ID) Idaho Police Department
Everett (WA) Police Department
Spokane (WA) City Attorney's Office
LaConner (WA) Police Department
Latah County (ID) Prosecutor's Office
Richland (WA) Police Department
Skamania County (WA) Sheriff's Office
Superior Court of British Columbia, Canada
Victoria (B.C.) Police Department
Royal Canadian Mounted Police

Organizations:

Polaroid School of Law Enforcement Imaging
Boise State University (ID)
Everett Community College (WA)
International Association of Identification, NW Division
International Association of Bloodstain Pattern Analysts

Fraternal Order of Police – WA.
Bellevue Community College (WA)
Shoreline Community College (WA)
NW Association of Fire Investigators
Northwest Forensic Study Group

Justice Institute of British Columbia, Canada

WA State Attorney General

Crime Scene Review and Potential Evidence

TO: Whatcom County Public Defender
Director Jon E. Ostlund

FROM: Daniel V. Christman, Blood Pattern Analyst
City of Bothell Police Department

DATED: June 5, 2006

Case: State v. Terrance-Irby
Skagit County S.O. Cause #05-1-00276-9

CIRCUMSTANCES:

According to official law enforcement records, on 03-11-2005, the lifeless body of James R. Rock was discovered in a detached shop building, located outside of his residence, at 35896 Shangri La Drive, in Skagit County. Mr. Rock was lying in a pool of his blood, and the detectives, and Medical Examiner believed he was a victim of homicidal violence.

EVIDENCE EXAMINED:

Items Examined

1. Scene Photographs ~ Digital Copies to CD / December 2, 2005
Obtained from the Whatcom & Skagit County Public Defender
2. Law Enforcement Records – Various / December 2, 2005
Obtained from the Whatcom & Skagit County Public Defender
3. Interview Transcripts – Various / April 21, 2006
Obtained from the Whatcom & Skagit County Public Defender

REPORT SUMMARY:

This report was generated as a result of questions posed by Mr. Jon Osterlund, of the Whatcom County Prosecuting Attorney's Office.

Are there any deficiencies in the crime scene work performed by the deputies, from their starting point to the conclusion of the investigation?

Regardless of the type of death investigation, the first responding officer has three distinct responsibilities:

1. Determining whether the victim is alive or dead and the necessary actions to be taken.
2. Apprehending the perpetrator, if s/he is still present, or giving the appropriate notifications if s/he is escaping or has escaped, and
3. Safeguarding the scene and detailing witnesses or suspects.

Timeline: 03-11-2005

09:48 hours	Dispatch advised of a "Welfare Check" call.
? hours	Deputy Mullen arrives on scene.
11:21 hours	Deputy Rose arrives on scene.
12:10 hours	Detective Tiscornia arrives on scene (Per Rose' report).
12:20 hours	Detective Tiscornia arrives on scene (Per Tiscornia's report).
12:32 hours	Coroner Investigator Bruce Bacon arrives on scene.
15:20 hours	Chief W. Reichardt arrives on scene.

Timeline 03-12-2005

06:43 hours	Detective K. Walker arrives on scene.
07:00 hours	Detective T, Esskew arrives on scene.
07:00 hours	Detective T. Luvera arrives on scene.
07:00 hours	Detective J. Sheahan-Lee arrives on scene.

First Responding Deputy: C. Mullen

In most cases a uniformed deputy will be the first person on scene, and this case is no different. From the documents I reviewed, it appears Skagit County Sheriff's Deputy C. Mullen was the first responder on scene, and that he spent a considerable amount of time in the "shop" in order for him to examine the scene and articulate in such detail.

Mullen writes in his Supplemental Narrative:

"As I opened up the door to the storage shed, I noticed that there were numerous items inside of it. I was shining my flashlight around and as I stepped inside the storage shed I was still calling MR. ROCK'S name and was looking around. As I stepped inside of the storage shed to a point where I then could see the entire interior, I then saw that there was a body lying almost directly in the center of the storage shed on the concrete floor."

"The body was lying on top of an aluminum folding lawn chair frame and it appeared that there was some sort of water bed mattress or air mattress over the top of the body. He (Rock) was lying down next to a small cabinet and there were numerous items surrounding him where he was. There was a large amount of blood on the floor directly below the head of the person. I then approached the body, shining my flashlight around inside of the shop, and I lifted up the covering on the body slightly and saw that there was a wound to the head of the subject which would be on the top left side of the head which measured approximately ½ inch to one inch in diameter. There was a large amount of blood around the head, on the scalp, and on the floor."¹

A widely recognized principle in homicide investigation (one which is taught to all Washington State Law Enforcement Officers) refers to a theoretical exchange between two objects that have been in contact with each other. This theory of transfer or exchange is based on Edmond Locard's "*Principle of Exchange.*" Edmond Locard, a Frenchman who founded the University of Lyon's Institute of Criminalistics, believed that whenever two humans come into contact, something from one is exchanged to the other and vice versa. This Principle of Exchange may be inclusive of an entire scene as well, and can involve the transfer of hairs, fibers, dirt, dust, blood, and other bodily fluids as well as skin cells, metallic residue, and other microscopic materials.

Locard's Principle is summed up by saying:

1. Anyone (within the scene) will take away traces of the victim and the scene.
2. The victim will retain traces of the perpetrator and may leave traces on the perpetrator.
3. Anyone (within the scene) will leave behind traces at the scene.

Mullen continues to write in his Supplemental Narrative:

"After clearing the residence, I then went back out to my patrol car and obtained a camera and then began taking photos of the scene. I took photos showing the proximity of the shop and residence; also the situation of the front door showing the approximate distance it was open to the shop area. I then took several photos of the body and also the blood droplets all the way over to the entry way door which would be a distance of approximately 12 to 14 feet. So as not to disturb the scene any further, I did not take any more photos nor did I

move anything inside of the shop area where the body was located due to the fact that there was other units enroute to my location.”¹

Second Responder: SCSO Deputy Rose arrives on scene:

Deputy Rose writes in his Supplemental Narrative:

“I entered the garage with Deputy Mullen and checked the area. I saw a white male lying on his right side, draped the aluminum frame for a cot. There was a gold plastic empty water bed mattress lying over the upper portion of the body. There was a large amount of blood underneath the body, on the concrete floor. Next to the body was a wooden cabinet. There was an orange inflatable canoe on the opposite side of the body, and there was blood spattered on the side of the wooden cabinet and on the canoe. The head of the body was pointed in the direction of the entry door, at the southwest corner of the garage. Blood had been splattered toward the doorway, and was on the floor and the west wall of the garage. I saw what appeared to be an entry wound near the outside corner of the victim’s left eye. There appeared to be an exit wound on the top of the victim’s head. At that time we thought the subject had been shot and possibly committed suicide. We were not able to find a firearm on scene, and thought possibly it might be underneath the body. Deputy Mullen had notified Sergeant Wise and Detective Tiscornia was enroute to the scene.”

“There did not appear to be any signs of struggle inside the garage. I looked inside the residence... Detective Tiscornia arrived at around 12:10 hours.”²

Stabilizing the crime scene is important, but those with little experience working crime scenes often rush in to check the victim and surroundings. The only times a responding officer should enter into the crime scene is when someone is (in their opinion still alive) breathing and moving, but in need of assistance. Every effort should be made not to disturb the crime scene, and preserve it in as pristine a condition as possible.

NOTE: Like so many law enforcement agents, Deputies Mullen and Rose both forgot their primary responsibilities to the preservation of the crime scene, and let their curiosity overtake them. It was incumbent on Deputy Mullen to first:

1. Determine whether the victim is alive or dead, which he did.
2. After that, Mullen should have focused on determining if the perpetrator was still on scene. Both Mullen and Rose (independent of each other) thought Rock had died of a gunshot wound, and opined about whether or not it was a suicide. Mullen and Rose both describe, in their reports, how they performed a cursory search of the residence and property.
3. Ultimately (and most importantly) Mullen should have safeguarded the scene from any other intrusion of personnel and cross-contamination, until the first detective arrived, which he did not do. Once Rose was on scene, he admittedly entered the shop and both he and Mullen describe in detail Rock’s position, and the presence of evidentiary items. Those evidentiary items could only have been visualized if the plastic water / air mattress was taken off the body, to reveal Mr. Rock’s upper body.

According to Mullen's Supplemental Narrative, the shop is dark and the lights don't work. He uses his flashlight to illuminate the scene during his initial search for Mr. Rock. When Deputy Rose arrives the lighting has not significantly changed, and yet they re-enter the shop, walk through the crime scene, and re-examine what has already been examined.

Both Mullen and Rose describe in detail (from their initial walk through) Rock's position on the floor, the presence of blood stains in and around Rock, as well as the absence of a firearm and / or weapon, thought to be under the body.

Both Mullen and Rose acted in a way similar to the duties of a crime scene investigator, or detective.

First Responding Detective: K. Tiscornia

Detective Tiscornia appears to be the senior investigator at the Skagit County Sheriff's Office. By his own admission, he has been employed by the Skagit County Sheriff's Office since 1984. The last 14 years I have been assigned to as a Detective. During the course of that assignment, I have attended and/or participated in numerous classes and seminars pertaining to death investigation, to include homicide investigation, crime scene investigation, and trace evidence collection. I have been the lead investigator or assisted in over 75 death investigations; of that number, over 25 were classified as homicides.⁴³

NOTE: As a point of reference, Detective Tiscornia has investigated (on an average) less than 2 homicides each year during his tenure at the SCSO.

Are there any specific issues with WSP forensic scientist, Brian Smelzer's review of the evidence?

On May 8, 2006 Brian Smelzer was interviewed by John Ostlund and Michael Sparks. On the end of page 3 of that interview, Smelzer talked about one of two ways the bloodspatter could be created on the boots. He tells Jon, "One is large volume with high velocity and the other is low velocity with high or low velocity." Then on the top of page 4 Brian said, "It could be a large amount with high force involved or it could be a smaller volume with less force." Either Smelzer doesn't really know what caused these bloodstains, or his words were misrepresented when Lana transcribed the notes from the interview.

The fact is that bloodstain patterns are reproducible, and if an analyst is going to render an opinion about how a bloodstain pattern was created, the analyst should try to reproduce the bloodstain pattern and be able to present exemplars as evidence supporting the opinion. Somewhere along the way, Smelzer should be asked (on the stand), "Did you conduct any experiments to confirm your opinion about the origin of these stains?" If he replies, "no" then a follow up question would be, "Isn't it a recognized practice of bloodstain pattern analysts to

do experiments to confirm their opinions?" (The answer is yes.) And the next questions would have to be, "Why didn't you do any experiments?" I think this type of line of questioning would weaken his credibility with the jury, especially when you ask me a similar line of questioning, and I could expound on the importance of experimentation in the bloodstain pattern analysis community.

Brian never really gives an answer to Jon's question about how the bloodstains got on the boots. Every answer Brian gives is not substantiated by evidence at the scene.

- High velocity blood is created when blood is acted on by a force or energy similar to a gunshot wound or the application of high RPM machinery. It has been generally accepted that the force needed to create high velocity blood is around 100 fps of energy.
- Blood dripped into blood creates "satellite spatters" which are very small in diameter. The problem with this scenario is that there is only one place in the scene where this type of bloodstain pattern is seen, which is under Mr. Rock's head, which is elevated up from the floor by the aluminum cot frame. The blood dripping from the head wound(s) drops into a pool of blood, causing smaller droplets to be set into motion.

Are there any "glaring" issues with the interviews and follow-up investigation?

No glaring issues.

If done correctly, what could have been gotten from the scene?

If done correctly, an overall picture of what occurred in this scene would have been reached. To date, I have not read anyone's statement about what really happened inside the shop. Instead, the investigators speak about what they saw, position of the body, blood on the wall, etc.

A thorough investigation and reconstruction of this scene (and the different types of evidence in it) should have been able to paint a clear picture for the jury. Without doing so, the jury will only hear fragmented pieces of a puzzle offered by individuals expressing only their involvement in this investigation.

REFERENCES:

1. Supplemental Narrative, SCSO Deputy C. Mullen
Dated: Transcribed March 12, 2005
2. Supplemental Narrative, SCSO Deputy J. Rose
Dated: Transcribed March 14, 2005
3. Supplemental Narrative, SCSO Detective K. Tiscornia
Dated: Transcribed March 13, 2005
4. Skagit County Sheriff's Office Affidavit, Jennifer Sheahan-Lee
Dated: April 15, 2005
- 5.

