

83308-7

STATE OF WASHINGTON

Cause No. 05-1-01516-2

Appeal No. 36562-6-II

respondent

VS

NATHANIEL J. ISH

appellant

Pro Se additional grounds
For review Rap 10.10

FILED
COURT OF APPEALS
DIVISION II
08 APR 28 PM 1:19
STATE OF WASHINGTON
DEPT. OF CORRECTIONS

Comes Now, Mr ISH, Pro Se appellant, by and through counsel, Jodi Backlund, under above cause, and submits his additional grounds for review.

Additional Statement of case and facts; Mr, ISH incorporates his appellate counsels opening statement of case See (Breif of counsel pages 6-15) However in addition , Mr ISH must point out to this court, some time prior to this crime, still living on "The Shoshone-Bannock "Indian Reservation, in Idaho ,Mr ISH is a Tribal Member of Shoshone Bannock Tribes Enrollment No.5694 -c See Ex "1" in belief , and abiding by his Sovereign nation tribal government Treaty Rights, with and recognized by the United States Government On June 1st 1868, wheras Article. VI of the U.S. Constittution recognizes Treaties with Indians as equal powers to U.S. Constittution as highest law of the land.See (Ex "2").

It was a known prior , and proven fact herein, Mr, ISH was placed on probation for simple possession and D.W.L. incidents, and made to go to drug and alcohol treatment center, Four Directions Treatment facility in Fort Hall Idaho, In which he then , and now asserts , and invokes his "Tribal Treaty Rights" and seeked release , but was denied by the State of Idaho on Jurisdictional grounds , and numerous other issues. See(Pending cases /No.CRFEol-005076/ State of Utah No. 901000044fs, See Ex "3").

Without Jurisdiction ,goveners warrant, probable cause,or recognizing Mr ISH Tribal Treaty Laws, and Rights , the state of Idaho without consent ordered court Treatment ,to the state of Washington "Seadrunar Treatment Center" in Sesttle WA. for continued treatment, only allowed by both states to be released in Washington, not back on Tribal Reservation, hometown with his Faimly support, .

Wherein he met the now victim , Katy Hall while in treatment (RP 1427, lines 16-20) , and later the crime occurred .

It should be noted , the state of Idaho , and Washington Violated Mr Ish's Governmental recognized Tribal Treaty Rights (Ex "2" .), Jurisdiction , and numerous other violations (Ex "4") , placing him within this state without consent, then only allowed release herein Washington state, not with Family on Tribal Lands , and if not for both states disregard of these Constitutional rights , Mr ISH would not even been in this state, wherein a crime occurred On 4/17/07, Mr ISH at trial , again objected to numerous Constitutional Violation, submitting all (Ex "4") , above, preserving all issues for Trial and the now appeal (RP 90, lines 10-25; 91, lines 1-15), wherein he was arrested , never timely Arraigned , allowed Bail, and violating Constitutional speedy trial rights (RP of Oct. 2, 2006/ RP 15, lines 8-13 /April 10, 2006/ RP 3 lines 23-25; /RP 4 lines 1-4), wherein Mr ISH has never signed a waiver of his Constitutional speedy trial rights , noted by counsel, and trial court.

Assignment of Errors;

1. Did the state and trial Court error, Violating Const. Amen. 14, to due process to timely Arraign Mr ISH violating CrR 4.1, and violating his Const. Amend. 6 to speedy trial rights, CrR 3.3 to both State and federal laws?

On March 28th, 2005, Mr ISH was initially arrested, placed in continued custody, held without bail hearing, and on March 30th 2005 , taken to court , charged by information with count I , first degree murder, count II murder in the second degree. (RP 4) but was not timely arraigned on either charge , which violated (CrR 4.1 State v Vailencour, 81 Wn, App. 372 (1996) Crim. law 264, and See CrR4.1/Wash .court rules Annot. 2nd edit. pages 248 / 2007-2008), and the court ordered a mental health evaluation pursuant to RCW 10.77.060, for 15 days , and postponed the hearing , re-set it for April 20th, 2005 , in which the state and court was required again to arraign, and determine Competency to stand trial (RP 5-7).

However the hearing never occurred, the Court had Numerous occasions to Timely Arraign Mr ISH, and determine competency, but never did.

held him also without any bail, or hearing for numerous months. Infact It was not until Oct. 20th, 2005, when finally Mr Ish was brought back to court, to proceed with allready untimely Arrainment and competency hearing See (Oct, 20th, 05 RP 3), in futher violation of his Const, 6,th Amend. rights to speedy trial under CrR3.3 to both state and federal laws. Herein over 7 months have passed with no authentic record noting any signed waivers by Mr Ish, or or his counsel to continue arraignment or 60 day rule, while holding Ish in custody.

Even on 7/6/05 when Mr Ish was finally taken to W~~o~~S;H for Competency Evaluation and returned on. 7/20/05, with a signed order of Competency Dated 7/28/05, and on (Oct 20th 2005, RP 3), the state nor court proceeded to timely Arraign, or set trial date within the 60- day rule, but waited 90 days until Oct 20, 2005, before even holding the untimely hearing. (Oct . 20, 2005 RP 3) Violating both state and federal Laws to the Constitution, and Treaty rights.

Presumably, the state in response will claim court ordered Competency evaluation, over-rides Constitutional laws.

However Mr Ish can find no case law that allows the state to deny procedual, and Constitutional timely arraignment, coupled with speedy trial rights . simply because a Competency Hearing is ordered, without notice to Defendant, and him held to face the , charged crime by information on March 30, 2005, and timely arraigned within 72 hours, or up to 14 days ,after the date of Information CrR 4.1 State v Vailencour, 81 Wn, App. 372. (1996) "speedy trial time starts 14-days after filing information and as herein, defendant who is not promptly arraigned accordingly is denied Const, Amend, 14 to due process, applicable under both state and federal Constitutional laws insofar as it bears on question of deprivation of a fair trial. See also State V Marler, 80 Wn, App, 765 (1996), and is gauranteed all respects according with Constitutional of due process of laws and rules of evidence to Wash. Court . Rules of Crim, Procedure, even, when subject to stayed Competency hearings under RCW 10.77.020, even entiteled to assistance of counsel. under RCW 71.05.200., 240, a probable cause hearing is required within 3-days to determine if a 14. day evaluation is needed, the hearing may be postponed under RCW 71.05.210, but still Mr Ish was entitled to be arraigned, . Secondly under Cr~~R~~ 3.3 (d) (5) , a Criminal charge not brought to Trial within period provided by these rules, shall be Dismissed with prejudice "CrR3.3(i),

under both state and federal Const, Amend, 6 "in all criminal proceedings the accused shall enjoy the right to a speedy trial" with the state and trial court bearing responsibility ensuring the 60-day rules are applied, State v Ralph , Vernon G, 90 Wn. App. 303 (1998), State v Ross, 98 Wn. App. 1 (1999), State v Carson, 128 Wn 2d 805 (1996), State v Peterson 90 Wn, 2d 423 (1978), (quoting state v Otto, Allen Ross Jr, 85 Wn, App. 303 (1997) imposed on states through due process Const, Amend, 14 Klopfers v North Carolina, 386 U.S. 213 (1967), failure to strickly comply with both, requires out right dismissal regaurdless wheather Mr ISH can show prejudice, State v Greenwood , 57 Wn, App, 854 (1990) State v Helms , 72 Wn, App 273 (1993), State v Teems, 89 Wn, App. 385 (1997) " Dismissal is mandatory " U.S. v Duranseau, 26 f.3d 804 (8th circuit 1994), U.S. v Gomez, 67 f.3d 1515 (10th circuit 1995), U.S. v Cardona -Rivera , 64 f.3d 361 (8th circuit 1995) , Also, neither state nor trial court moved under CrR 3.3 (d) (8) , to extend trial for unavoidable or unforeseen circumstances beyond control of the partys nor filed any motions under CrR3.3 (h) (2). before date set for arraignment, or trial, or last day of any motions , orders , continuances or extensions, nor does the record give any good faith or due diligence

reasons for the 8 month delay ,other than a competency evaluation, noted by the court to be finalized by April 20th 2005, but was not . thus the state also violated the court order , and still did not timely proceed with any required due process and procedure requiring 72 hour arraignment and Speedy Trial Rights, from March 28th, 2005 and still waited 8 months before finally proceeding with any noted court hearings.

Mr ISH, at no time consented, or signed his Speedy Trial rights away (April 10, 2006, RP 3, lines 23-25, /RP 4 lines 1-4) thus under CrR 4.1, CrR 3.3 requires out right Dismissal with prejudice State v Thompson 38, Wn 2d. 774 at 780" 60 day rule applied when defendant himself dont sign waiver, Court must Dismiss.

Note to the Court : In addition Mr ISH can openly testify herein, and state for the record, and this courts information ,for reveiw, that on 6/29/2005, Court hearing , the judge noted on the record in proceedings, the state was at fault for not obeying the April 20th, 2005 court order for competency evaluation and arraignment , but the state will not to this date , disclose the trial records , or transcription of these proceedings to this court for review, even knowing they factually exist from March, 30th to Nov 3, 2005, See(Court reporters face plates (Ex"5") due to the failure to comply with timely arraignment, and speedy trial rules , then withholding pertinent trial records. Wherein the state and trial admitted , conceding to default, constitutes governmental misconduct also for purposes of dismissal under CrR 8.3(b) State, . State v Michelli, 132 Wn. 2d 229 at 243 (1997) requirng remand, and outright dismissal.

Mr ISH was prejudiced by numerous delays held without bail , not arraigned, or brought to trial in the required timely manner, neither the competency evaluation over-rides Constitutional 72 hour, and 60 day rules, thus he is entitled to dissimissal with prejudice.

2. Did counsel for Mr ISH render ineffectiveness for failing to object file motions to dismiss under CrR 3.3/CrR4.1 ?.

Mr ISH, counsel was present, made no objections on above grounds, under CrR4.1, or CrR 3.3 on oct 20th 2005, nor before. even on 6/29/05 when the judge noted state was at fault, he still made no objections, or filed any motions to dismiss, knowing Mr ISH, himself was objecting on those specific grounds (RP 90 lines 10-25; 91 lines 1-15, Oct 2nd 06, RP 15 lines 8-13,, April 10th 06, RP 3 lines 23-25,) , and that he sat in jail from March 28th, 2005, until Nov, 2005, thus consels performance was deficient, his representation fell below a an objective standard of reasonableness, and Mr ISH was Prejudiced, because there does exist reasonable probability, but for counsels errors ,the results would be different Strickland v Washington, 466 U.S. 668, 104, s, ct. 2052 (1984); U.S. v Palombra , 31 F.3d 1456 (9th cir 1994) reversed on similar grounds).

The record does not reveal any tactical or stategic reason why counsel did not object, it ws like Mr ISH not having any counsel at all, not arraigned, or taken to trial until 8 months after his arrest in violation of both CrC- 4.1, 3.3, to both state and federal Const. Amend.6..to compound prejudcial error to Mr ISH, at the Oct 20th, 05; hearing, prosecutors misslead the trial court by claiming defence counsel did have an independant expert evaluate Mr ISH (Oct, 20th ,2005/RPRP 3), and counsel knowing this was incorrect, stipulated to an alleged evaluation (Oct 20th 2005/RP4) that Mr ISH, can prove never occured, because Mr ISH was not even evaluated until 10/30/06 not completed until 12/1/06,.

Because defense, Prosecutors, including the Trial court all admitted on the record. the evaluation had not yet even occurred by 8/25/06, (Aug, 25, 06/ RP-4, lines 10-15, Rp 5, lines 13-17; Rp 7, lines 9-20, Rp 8, lines 1-5/Oct, 2, 06, RP, 3 lines 10-25, 4, lines 1-5,, thus all above official, including counsel, knew this fact, counsel should have objected, to the misconduct, knowing it was misleading, prejudicial, was and now ineffective assistance, and reversible error.

It was also compounded by "Prosecutorial Misconduct", which also warrants reversible error under CrR8.3 (b), See (above argument No. 1 page 5), all was prejudicial error, denying him a fair trial.

3. Did the trial court error in failing to give lesser included offense instruction on count II ?

After the state closed the trial court instructed the jury on both Count I and Count II, (Ex "8"), Instruction #31, #37, # 25, # 21, #17, # 15, #6, Mr ISH, was charged by Information on Count II, with Murder in the second degree, thus he was entitled to a lesser included instruction of Manslaughter under State v Rake, 2Wn.App.833 (1970); State v Workman, 90 Wn.2d, 443 (1972), RCW 9a.16.090; W.P.I.C. 4.10, In State v Collins, 30 Wn. App 1 (1981), as herein there exists evidence of Intoxication, (RP, 1819) of DR Howard testimony, both first degree, and second degree, manslaughter instructions are lesser included offenses of murder, a defendant is entitled to instruct on lesser included offenses if two conditions are met (1) each element of the lesser offense must be a necessary element of the offense charged, this is already a proven fact, because the state already instructed on Man 1, and 2, for lesser included offenses to 2nd degree murder Count I, thus they were also obligated to do the same for count II, (2) the evidence in this case must support an inference, that the lesser crime was committed Collins at 15. Herein as noted above at (RP 1819, /1350), by both DR, Howard and DR, Frederick, there exist evidence of Intoxication, thus in State v Furman, 122Wn.2d 440 (1993), the jury was entitled to determine if Mr ISH acted with the specific mental state, necessary to commit the crime charged, and to diminished capacity, as to proof he possessed, required intent, in which the jury, in determining the same as to count I, did not find guilt beyond a reasonable doubt as to the greater offense, but found guilt to man 1, thus, Mr ISH was prejudiced, because the jury was never given any option, but to convict on only 2 degree murder, and like in count I, if instructed on lesser included offenses to count II also could have convicted on the lesser MAN 1, or MAN 2, thereby Mr ISH, was Prejudiced, and reversal is now warranted Workman Supra, See also State v Everybodytalksabout, 145 Wn. 2d 456 at 468- 69, 479 (2002), as argued by Mr ISH, consumption of drugs and alcohol affected his ability to acquire the required intent to kill instructed within count II, thus there is sufficient evidence, that his drug and alcohol use affected his ability to form the necessary intent to commit the crime of 2nd degree murder, Count II, and he was entitled to lesser included instructions of MAN 1. and MAN 2, thus prejudice is inherent, and reversal is now appropriate.

4. Did counsel for Mr ISH, render ineffective assistance by failing to object, and move the court for the lesser included offenses as to count II, ?

Mr, ISH, counsel should have known there existed evidence of intoxication putting in question mental state, intent, and degree of crimes. he argued that specific point at trial (RP, 1819, 1350,), and an objection was warranted. thus his performance was deficient, his representation fell below

an objective standard of reasonableness, and ISH is prejudiced, because there does exist reasonable probability but for counsel's errors, the results would be different. Strickland v Washington, 166 U.S. 668 (1984).

The record does not reveal any tactical or strategic reason why counsel did not object, it was like Mr ISH, not having any counsel at all, because he must have known by arguing Intoxication, mental state, intent and degree of the crimes, that ISH, was entitled to the lesser Included Instructions through published opinions, but also because the court did so on same grounds, to Count I, thus it was obvious when he presented such evidence. Mr ISH, was entitled to have MAN 1, and MAN 2, Instructions given to the jury, to allow them to determine the intent, and degree of crime as he argued throughout trial (RP1462), therefore Mr ISH, was prejudiced by counsel errors, rendering ineffectiveness warranting reversal.

5. Did the state and trial court error? charging and separating one crime into two counts? rendering the charging information defective?.

The state charged Mr ISH, with two counts of Murder, when there exist one victim, one crime. (Ex "6"), RP 1462), constituting a misapplication of law violating Const. Amend. 14.

Basically when a state or court does so, they are committing plain error and did so to gain tactical advantage, "and" broaden the essential elements of the crime, and basis to convict the accused. Herein, counsel pointed out there exists one crime, one victim, and the only question for the jury is to what degree of crime Mr ISH, should be convicted of not how many counts of murder he was liable for, thus the charging information was, and defective, Example See State v Kjorsvik, 117 Wn. 2d, 93 (1991), and remedy is dismissal without prejudice, State v Vangerpen, 125 Wn.2d 782 (1998) (quoting State v Schawb, 98 Wn. App. 179 (1999), secondly count II, (Ex "6") 2nd degree felony murder, is already a lesser included offense in count I, and was given to the jury as an option, to convict on lesser included offenses, thus was already set out as to Count I, the broadening of essential elements, separating one crime into two counts, was done to gain tactical advantage broadening the basis to convict. and such advantage broadening of charging documents, elements, jury instructions is improper, violating Mr ISH Constitutional rights.

To be tried on charges, Statutes reflected in applicable statutes, consistent with one crime, one victim, one count, See Strone v. U.S. 361 U.S. 212 80 s.ct. 270 (1960), But herein the state and court allowed impermissible broadening of the basis jury could convict, U.S. v Leichtnam, 948 F.3d 370 (7th cir 1991), which is reversible error, U.S. v Cancelliere, 09 F.3d 370 1116 (11th cir 1995), U.S. v Marrow, 177 F.3d 272 (5th cir 1999) Mr ISH was prejudice by defective charging information, because the state separated one crime into separate counts, Trial Court,

abused its discretion in allowing it, knowing it was already a lesser included offense of count I and further abused its discretion instructing the jury to same, broadening elements, counts jury Instructions, then gained tactical advantage by Jury convicting only on lesser included of Manslaughter 1st degree, to count I, and to second degree felony murder count II then vacated the lesser count I, to gain greater conviction as to count II giving Mr ISH more time thus prejudice is inherent, constituting reversible error (RP 1510 -11), and does not preclude double jeopardy, Schwab, supra

6. Was Mr Ish, counsel ineffective for failing to object, file pretrial motions to dismiss count II, as improper, defective charging information ?,

As argued above Mr ISH counsel must have known it was impracticable, to take one crime, victim, and count, separate the charging information, charging two counts, he argued such himself at trial, and in closing (RP 1462), thus his representation fell below an objective standard of reasonableness, and Mr ISH, was prejudiced, because there exist reasonable probability but for counsel's errors, of a different outcome, Strickland v Wash, 466 U.S. 668 (1984), nor does the record reveal any tactical or strategic reason why counsel would not object, allowing the state to improperly charge argue at trial, instruct the jury, to convict on two counts, instead of a single count consistent with the evidence. as argued above. there existed published opinions establishing such grounds, thus prejudice is inherent, Mr, ISH was convicted of two counts, in which the court vacated the lesser included offense conviction of MAN, 1, as to count I, and held him to greater offense of second degree felony murder,, giving numerous more years at sentencing, thus an objection was warranted, counsel rendered ineffectiveness, and reversible error.

7. Did prosecutors commit misconduct, by arguing facts, not in evidence, misquoting DR, Howard's actual testimony in closing Arguments ?..

During States closing arguments, Miss Wagner claimed to the jury, that Dr, Howard testified, during the course of the beating of the victim at some point he made a decision to stop, take his hands, place them around Katie's neck, and begin squeezing, and Dr, Howard testimony, never said anything in regards to this, Prosecutors did so to try and prove, the alleged elements of premeditation, in charging information. intent to kill (RP 1384, lines 10-25; 1481, lines 1-25; 1482, lines 1-25 1483, lines 1-25, when Dr, Howard never testified to any such evidence noted by defense counsel (RP - 1441, lines 10-14) the court of appeals have reversed on similar grounds, in State v Flemming, 83 Wn. App. 209 at 216 (1996); U.S. v Fredricks, 78 F.3d at 1370, 1381 (9th cir 1996); U.S. v Smith, 962 F 2d 923 (9th cir 1992; under Const. Amend, 5, 14, to both state and federal laws to the Constitution.

Herein, prosecutors' flagrant, and ill-intentioned comments, and cumulative affect, repeatedly rises to a level of manifest constitutional error, harmful beyond a reasonable doubt., no curative instructions were given of if had, is prejudiced by the misleading argument, to the jury, it was done knowingly to prove essential elements of the charged crime, infecting the trial with unfairness, resulting in the jury conviction being a denial due process. The state must must convict the merits, correct facts, and cannot obtain, or sustain a conviction by way of misstating evidence, shifting burdens, misleading courts, or the jury as to facts, evidence elements or reasonable doubt, to prove the alleged truth of the information but are required to prove each and every essential element, In re Winship 397 U.S. 358, 90 s.ct. 1068 (1970), thus Prejudice to Mr ISH warrants reversal

Secondly , under CrR 8.3 (b) ,the court may dissmis the case based on outrageous misconduct, or simple missmanagement by prosecutors, State v Michelli, 132 Wn.2d 229 (1997); Prejudice is inherent, in the fact the state could not prove essential elements of first degree murder, and proceed to argue facts not in evidence misleading the jury, in hopes to persuade them to convict Mr ISH, was Improper and reversable error,

8. Did Mr ISH counsel render inefective assistance in failing to object to the above misconduct, move for mistrial, ?

counsel was present but made no objection to prosecutor misconduct in arguing facts not in evidence (RP 1384, 1414, 1384, 1481, 1482, 1483,)), but then argued disputing those exact misquotes, misstatement during. defense cloing arguments, even noting there exist no such testimony, by DR, Howard or such Evidence (RP 1441),

Thus , counsels performance was deficient , his representation fell below an objective standard of reasonableness, causing prejudice to Mr ISH, because there does exist reasonable probabilty the results could have been different Strickland v Washington, 466 U.S. 668 (1984),

An objection was warranted, because not objecting allowed the state to mislead the jury argue the facts not in evidence, without any curative instructions attempting to prove essential elements ,and convicted Mr ISH, thus the jury never should have heard such inflamatory arguments, and allowed to deliberate, or base there decision to convict on such misleading untrue facts, and counsel rendered inefective assistance, violating both state and federal laws to the constitutional, and reversal is warranted.

9. Did trial court abuse its discretion , violating const. Amend, 14, in failing to factually determine Constitutional facial validity of Mr ISH , prior guilty pleas, and convictions before use in calaulating his offender score to evaluate and enhance his current sentece .?

Herein, neither prior, or during sentencing, did the state or trial court inquire into properly; under Sentencing Reform Act's requirement that the state prove prior convictions State v Ammons, 105 Wn. 2d 175 (1986); State v Holsworth, 93 Wn.2d 148 (1980); Boykin v Alabama, 395 U.S.238(1969) See (sentencing RP 27, lines 12-15; RP 13-27.

Prejudice is inherent, because the state and trial Court accepting the prior guilty pleas and convictions, used as points, to elevate and enhance Mr ISH current sentence, without any evidentiary hearing, or affirmative showing in the record, that they were constitutional valid on their face, knowingly, fully informed, intelligent, and voluntary requires remand, because they may not be used to calculate the current sentence, by use of previous felony convictions, violates due process Holsworth at 154-60.

Herein, Mr ISH has three past felony convictions in dispute, and a offender now calculated at 3, but without facial, Constitutional validity determination, the state nor Court was allowed use of prior convictions to enhance the present conviction by numerous years, thus an evidentiary remand hearing was, and now is warranted, and all records, transcripts, of those past guilty plea hearings, and sentencing proceedings should be disclose, reversal is appropriate, his offender score, and points are incorrect.

10. Was Mr ISH counsel ineffective for failing to object, dispute, or challenge invalidity of past guilty plea; and current offender score, as incorrect?

Mr ISH does challenge his offender score in its entirety as incorrect, defense counsel should have objected also on above Constitutional invalidity of past guilty plea when the state incorrectly calculated his offender score (RP 27, 13-27), knowing of above published opinions, which under Sentencing Reform Acts, that the state must prove prior conviction validity by a preponderance of the evidence, which is a Constitutional issue, prior to calculation of Mr ISH current offender score, use to elevate, and enhance the current sentence by many years, and counsels representation fell below an objective standard of reasonableness, was deficient, because he challenged points on other grounds, but failed to move the court for trial records, and proper inquiry into invalidity of Mr ISH past guilty plea, and ISH was thereby prejudice, denied critical defense Strickland v Washington, 466 U.S. 668, 104 S.Ct.2052 (1984). The record does not reveal any tactical or strategic reason why counsel would not object on above grounds, and published opinions, he challenged the points as incorrect. If a proper objection was made, evidentiary inquiry, and factual determination, that any one of three prior guilty pleas were invalid, they could not have been used to elevate the current sentence by many years, thus prejudice is inherent, counsel was ineffective now warranting reversal.

11. Did the trial Court err, in sentencing Mr ISH to the high-end of the standard sentencing range, and to community custody outside his standard sentencing range?

Recently, Div. III of Court of appeals held, a court may not impose a sentence providing for a term of confinement, or community supervision, placement, or custody which exceeds that statutory maximum for the crime, State v Zavala-Reynoso, 127 Wn.App. 119 (2005)(vacated) Mr ISH current sentence of 24-48 community custody is outside his standard sentence range (Ex "7") exceeds his maximum sentence, thus remand for resentencing is appropriate.

Secondly, in Cunningham v California, 549 U.S. ____ (2007), held, as herein, Judge had no discretion to select a sentence within a range of 6 to 16 years, but must impose middle range of 12. Thus, Mr ISH was entitled to be sentenced accordingly to 204 months, no less, or no more, and would again request remand to correct his sentence, invalidity of past guilty plea, points and community placement sentencing errors, Blackley v Washington 542 U.S.296, 124 S.Ct.2531,159 L.ED.403(2004)

12. Did the trial Court err, excluding Mr ISH presence at all sidebar hearings under both state and federal law to the Constitution?

During the trial, the Court held numerous 'sidebar' hearings (RP 912,1184,1342, lines 8-9, 1376, lines 24-25, 683), but excluded Mr ISH presence. This error violates Constitutional right to presence, whenever his presence has a relation, reasonably substantial to the fullness of his opportunity to defend against charge, presence is a condition of due process to extent a fair and just hearing would be thwarted by his absence U.S. v Gagnon 470 U.S. 522, 105 S.Ct.1482(1985); Illinois v Allen, 397 U.S. 337(1970). See Snyder v Massachusetts, 291 U.S. 97 (1934), noting that the exclusion of defendant from trial proceedings should be considered violation of defendants right also under Fed. Crim. Proc. Rule 43, right to be present at all stages of trial under due process clause of Amend. 5, 14, and Rule 43 721 F.2d 672, and there exists no record Mr ISH waived his right to presence, or Rule 43, and was prejudiced by the exclusions, sidebar proceedings, denied defenses, thus violated Gagnon to both state and federal laws, warranting reversal.

13. Was counsel ineffective, for failing to obtain critical past medical records, used to assert, and argue diminished capacity, and self defense?

Mr ISH was denied critical defense of diminished capacity and self defense when there exists ample exculpatory evidence in the record, and it was argued by defense counsel (Aug. 25, 06/ RP 3,4,6/Oct. 2, 06/RP 3,4/ Dr. Fredrick 5/16/07/RP 1351, lines 14-18; 1354, lines 16-20; 1348, lines 16-18), and the jury was also deprived to find beyond a reasonable doubt that Mr ISH had need for self defense, State v Ward, 125 Wn.App. 138(2005).

Thus, counsels representation was deficient and fell below an objective standard of reasonableness, denying ISH a critical defense at trial, and on appeal, failed to obtain documents that showed defense wounds, and evidence of diminished capacity, thus Mr ISH was prejudiced by counsels omissions Strickland v Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), because the jury was denied critical evidence in its deliberation as to Mr ISH's mental state of mind to form specific intents to kill, harm, or defend from being assaulted, wherein most crimes of this nature are derived from such, examples 'domestic violence' wherein an assault occurs, which sometimes lead to serious injury or death, and jury is, and was deprived of 'aggressor instructions' counsel should have known this, since he argued such at trial, and thus should have moved for 'diminished capacity' and 'self defense' defenses herein, because the evidence supports both. Thus, these omissions prejudiced Mr ISH, and a new trial should be granted.

14. Did the Prosecutor misconduct submitting inflammatory, prejudicial, photographs to the jury of the autopsy, wherein the victim head/face was peeled back and open?

Over defense continuous objection, prosecutor misconduct admitted highly inflammatory photographs of the victim after the autopsy was done to the body, showing the actual head and face peeled wide open, and the rib cage as well (RP732,733) with trial Court recognizing that defense counsel was correct, and to the potential prejudicial impact on the jury being inflamed (RP 893). However, as noted above, the jury was already exposed for a lengthy amount of time to prejudicial inflammatory photographs of the victim in and after being cut open, then displayed in a gruesome manner to the jury, outweighed any probative value, because autopsy photo's had no bearing on wounds to the victim; allegedly after being assaulted, to prove the truth of expert Doctor, medical testimony, but were portrayed with intent to strike to the heart and passion of the jury, to inflame them into convicting Mr ISH.

15. Without jurisdiction under governors warrant, probable cause, or recognizing Mr ISH tribal treaty rights and laws, I challenge hereby jurisdiction of the State of Washington, and their written codes, and deny all charges brought against me by Pierce County Superior Court in the State of Washington (Ex "2").

As noted above at facts pages 1-2, Mr ISH has challenged the jurisdiction of the State of Washington, under the above causes, which are still pending at this time, and must give notice of appeal to properly preserve all jurisdiction, venue and any related upcoming issues with the court of appeals, and facts he was entitled to tribal counsel.

16. Did cumulative effect of errors claimed herein materially affect the outcome, as well as cumulative ineffective assistance claims of the trial?

An accumulation of non reversible error may deny defendant a fair trial State v Perrett, 86 Wn.App.312(1997); State v Coe, 101 Wn.2d 772 (1984) where it appears reasonable probable cumulative effect of trials errors affected the outcome, reversal is required State v Johnson, 50 Wn.App.54(1998).

Herein, for the reasons argued in this brief, even if anyon one issue standing alone does not warrant reversal, the cumulative effect of all above errors materially, and prejudicially affected the outcome, taken together with cumulative ineffective assistance of counsel errors, Mr ISH conviction should now be reversed, Perrett at 322; U.S. v Fredrick, 78 F. 3d 1370(9th cir1996), it is in violation of both state and federal Constitutional laws requiring reversal.

17. Did Court error by vacating Man. 1. when jury found Mr Ish Guilty of Man.1. first and then Murder 2.?

In State v Womac recent decision June 17th 2007, Womac speaks all squares on point (RP 6,1-25) sentencing See Schwab Supra 'Double Jeopardy'. Futhermore, in State v Trujillo, defendant charged with Two Seperate counts of murder. As with Mr ISH he was not charged in the Alternative. See Schwab Supra also stand for the position that you can not have two convictions for the same homicide(RP 9, 1-25) sentencing report.

We have a situation where Mr ISH was convicted- was charged with intentional murder, charged with premeditated intentional murder, and jury rejected that charge. The jury rejected the allegation that he was acting with premeditation. The jury rejected the allegation that he was acting with intent and instead returned a verdict of guilty on manslaughter! and thus Mr ISH should be resentenced on remand for Man. 1. or Man.2. and on reversal! also see Jury Instuctions (RP-1511 lines, 1-6)
Requiring Reversal..

CONCLUSION

Mr ISH respectfully requests this court to reverse his conviction, or remand vacating second degree murder charge, and impose the jury finding of Manslaughter or lesser included Man. 2.

Respectfully Submitted

Nathaniel Ash

April 23rd 2008

Sworn and subscribed before me on this 23 day of April 2008

David S. Helper

Notary Public for State of Washington

Residing at Pierce Co. WA

My Commission expires on _____

**Records and Identification Office
Authorized Officer pursuant to RCW 64.08.090**

"APPENDIX"

EXIBITS, 1, TO 8,

EXHIBIT, # 1

"ENROLLMENT, CERTIFICATE"

The SHOSHONE-BANNOCK TRIBES

TRIBAL ENROLLMENT DEPARTMENT
P. O. BOX 306
FORT HALL, IDAHO 83203



FORT HALL INDIAN RESERVATION
PHONE (208) 238-3809 or 238-3810
(208) 785-2080
FAX: (208) 237-0797

(Date) March 25, 1997

THE SHOSHONE-BANNOCK TRIBES CERTIFICATE OF ENROLLMENT AND BLOOD DEGREE

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY: Ish Nathaniel Jay
LAST NAME, FIRST, MIDDLE/MAIDEN NAME

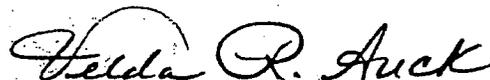
IS LISTED ON THE OFFICIAL SHOSHONE-BANNOCK MEMBERSHIP ROLL, DATED 10/12/1972.

HIS or HER ENROLLMENT NUMBER IS: 5694-C
TRIBAL ROLL #

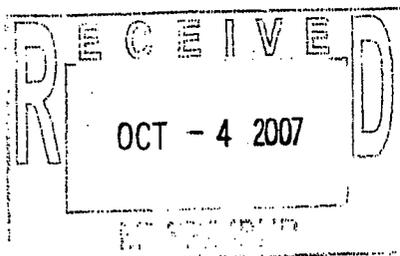
DATE OF BIRTH IS: 01-27-1965, and DEGREE OF INDIAN BLOOD SHOWN IS:

7/16 Shoshone-Bannock -0- Other
SHOSHONE-BANNOCK TRIBAL INDIAN BLOOD, OTHER INDIAN TRIBE

TOTAL INDIAN BLOOD IS: 7/16


Velda R. Auck
Enrollment Committee Member

SEAL



EXHIBIT, # 2

"1868, FORTBRIDGER , TREATY, RIGHTS"

"RESOLUTION"

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,
PLAINTIFF,

VS.

NATHANIEL ISH,
DEFENDANT.

NO. 03-1-01516-2

RESOLUTION FOR 1868
BRIDGER TREATY



WHEREAS, I, NATHANIEL ISH, AN ENROLLED MEMBER OF THE SHOSHONE - BANNOCK TRIBES, BKL.# 2005088010 AM PRESENTLY INCARCERATED IN PIERCE COUNTY JAIL IN THE STATE OF WASHINGTON, AND

WHEREAS, MY PERMANENT HOME IS FORT HALL RESERVATION, 1076 TEE PEE ST., AND

WHEREAS, MY ANCESTORS DID SIGN A TREATY WITH THE UNITED STATES GOVERNMENT IN 1868 WHICH TREATY AGREEMENT DOES RECOGNIZE MY PEOPLE AS SOVEREIGN NATIONS, OBLIGATED ONLY TO THE LAWS OF THE CREATOR AS TAUGHT TO US THROUGH OUR ORAL TRADITIONS, AND

WHEREAS, THE FORT BRIDGER TREATY OF 1868, SIGNED BY MY ANCESTOR AND HEAD CHIEF TAHGEE, DOES NOT, IN ANY WAY, OBLIGATE THE SHOSHONE AND BANNOCK PEOPLE TO WRITTEN CODES OF WASHINGTON TERRITORIES, BUT ONLY TO LIVE IN PEACE WITH THE AMERICAN PEOPLE, AND

WHEREAS, ON JUNE 1, 1868, SUPERINTENDENT OF IDAHO TERRITORIES, DAVID W. BALLARD, SIGNED A LEGAL AND BINDING AGREEMENT WITH MY ANCESTOR AND HEAD CHIEF, TAHGEE, AGREEING THAT "I (TAHGEE) WANT THE RIGHT-OF-WAY FOR MY PEOPLE TO TRAVEL WHEN ON THE WAY TO AND FROM THE BUFFALO COUNTRY, AND WHEN GOING TO SELL THEIR FURS AND SKINS," AND

WHEREAS, ARTICLE VI OF THE UNITED STATES CONSTITUTION RECOGNIZES TREATIES WITH INDIANS AS EQUAL POWERS TO THE UNITED STATES CONSTITUTION, AND

WHEREAS, THE AMERICAN PEOPLE CONSIDER THE UNITED STATES CONSTITUTION TO BE THE HIGHEST LAW OF THE LAND, AND

WHEREAS, THE PRESENT STATE OF WASHINGTON AND PIERCE COUNTY HAVE NOT BROUGHT A CHARGE AGAINST ME IN VIOLATION OF MY TREATY AGREEMENT WITH THE AMERICAN PEOPLE OR IN VIOLATION OF THE UNITED STATES CONSTITUTION PROHIBITING ME FROM INTERFERING WITH ANOTHER PERSON'S LIFE, LIBERTY OR PURSUIT OF HAPPINESS.

THEREFORE, I, NATHANIEL ISH, DO HEREBY CHALLENGE THE JURISDICTION OF THE STATE OF WASHINGTON AND THEIR WRITTEN CODES, AND DENY ALL CHARGES BROUGHT AGAINST ME BY PIERCE COUNTY, AND

FURTHERMORE, I AM ASKING THIS COURT TO RECOGNIZE MY STATUS AS A NON-IMMIGRANT ALIEN LIVING IN MY ABORIGINAL LANDS SUBJECT TO, AND ONLY TO, THE LAWS OF THE CREATOR AS TAUGHT BY MY ELDERS AND TO THE FORT BRIDGER TREATY AGREEMENT WITH THE AMERICAN PEOPLE WHOM I HAVE IN NO WAY OFFENDED.

SIGNED Nathaniel Ish

DATED 04/17/07

DATED _____

EXHIBIT, # 3

PENDING, CASES

TO THE DISTRICT COURT OF ^{1st} JUDICIAL DISRICT OF THE STATE.
OF UTAH, IN AND FOR THE COUNTY, OF BOX ELDER.

WHEREAS, I Nathaniel Ish an enrolled member of the Shoshone Bannock Tribes #5694-am presently incarcerated in I,S,C,I Boise Idaho in the state of Idaho, and

WHEREAS, my permanent home is Fort Hall REsservation, 1076 TEE PEE street. and

WHEREAS, my ancestors did sign a treaty with the United States government in 1868, which Treaty agreement does recognizes my people as Sovereign Nations, obligated to and only to the laws of the Creator as thought to us through our oral Traditions and

WHEREAS, the Fort Bridger Treaty of 1868, signed by my ancestors and head Tahgee, does not IN ANY WAY, obligate the Shoshoni and Bannock people to written codes of Utah territories, but only to live in peace with the American people and.

WHEREAS, on June 1 1868, Supperintendent David w Ballard, signed a legal and binding agreement with my ancestors and head chief , Tahgee, agreeing that I (TAHGEE) want the RIGHT OF WAY for my people to travel when on thier way to and from Buffalo Country, and when going to sell thier furs and skins, and

WHEREAS, Article VI of the United States Constittution recognizes Treaties with Indians as equal powers to the United States . Constitution to be the highest law of the land, and

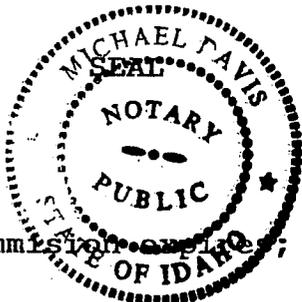
WHEREAS, as the present state of Utah and BOX ELDER. County have not brought a charge against me in violation of the United State Constittution prohibiting me from interfering with another persons life of liberty or pursuit of happiness.

THEREFORE, I Nathaniel Ish do hereby challenge the jurisdiction of the State of Utah, and their written code, and deny all charges brought against me by BOX ELDER COUNTY, and

FUTHERMORE, I am asking this court to recognizes my status as a non-immigrant alien living in my aboriginal lands subject to and ONLY TO the laws of the Creator as taught me by my elders and to the Fort Bridger Treaty agreement with the American people whom I have in no way offended.

Dated this 14 day of Jan 2003

01/13/03



My commission expires: 10/09/03

Nathaniel Ish Tribal Member
[Signature]

Michael Davis
[Signature]

NOTARY OF IDAHO 10/05/03

case# CRFE 01-00507c

TO THE DISTRICT COURT OF THE JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

WHEREAS, I, Nathaniel Ish, an enrolled member of the Shoshone-Bannock Tribes, # 5694-C am presently incarcerated in Bannock County Jail in the State of Idaho, and

WHEREAS, my permanent home is Fort Hall Reservation, 1076 TeePee St., and

WHEREAS, my ancestors did sign a Treaty with the United States government in 1868 which treaty agreement does recognize my people as sovereign nations, obligated only to the laws of the Creator as taught to us through our oral traditions, and

WHEREAS, the Fort Bridger Treaty of 1868, signed by my ancestor and head chief Tahgee, does not, *in any way*, obligate the Shoshoni and Bannock people to written codes of Idaho territories, but only to live in peace with the American people, and

WHEREAS, on June 1, 1868, Superintendent of Idaho Territories, David W. Ballard, signed a legal and binding agreement with my ancestor and head chief, Tahgee, agreeing that "I [Tahgee] want the right-of-way for my people to travel when on the way to and from the Buffalo Country, and when going to sell their furs and skins," and

WHEREAS, Article VI of the United States Constitution recognizes Treaties with Indians as equal powers to the United States Constitution, and

WHEREAS, the American people consider the United States Constitution to be the highest law of the land, and

WHEREAS, the present State of Idaho and Bannock County have not brought a charge against me in violation of my treaty agreement with the American people or in violation of the United States Constitution prohibiting me from interfering with another person's life, liberty or pursuit of happiness.

THEREFORE, I, Nathaniel Ish, do hereby challenge the jurisdiction of the State of Idaho, and their written codes, and deny all charges brought against me by Bannock County, and

FURTHERMORE, I am asking this court to recognize my status as a non-immigrant alien living in my aboriginal lands subject to, and *only to*, the laws of the Creator as taught me by my elders and to the Fort Bridger Treaty agreement with the American people whom I have in *no way* offended.

5 witnesses

SIGNED: Nathaniel Ish

DATED: 09/4/02

WITNESSED: Michael Davis

DATED: 09/4/02

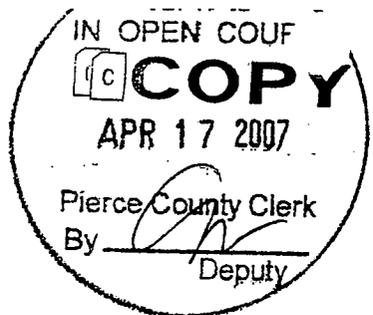
RECEIVED

EXIBTT. # 4

CONSTITUTIONAL, VIOLATIONS

PREDJUDIAL, TREATMENT, RULES, OF

LAWS, VIOLATIONS



IN AND For The STATE OF
WASHINGTON County OF Pierce

STATE OF WASHINGTON
VS
NATHANIEL ISH
Defendant

AFFIDAVIT IN Support
OF
Constitutional Violations
Predjudicial Treatment, Rules
LAWS OF Violations

mPR 6.2 Violation OF Involuntary Treatment
Rule 6.2 Procedures. (CWA STATE)(County) RE: 6/29/05 order

RCW
71.05
Violation OF Due Process OF LAW 5th Amendment:
I have Been Deprived OF Liberty, property, ect w/o
Just Compesation.

Violation OF Amendment VI 6th Right to Speedy Trial.
I expressed to Court, my Attorney to Reserve All rights
I have a right to Compulsory Process For obtaining
witnesses. In my Favor As well As Real AFFECTive Council

8th Amendment Violation: Cruel And Unusaul punishment
I was Not Given "Any Bail" Imprisoned by Slavery.
BAIL set oct 20th 2005 Arrested March 20th 2005

9th Amendment Violation: Constitution Rights have Been
Construed to deny And Disparge my Liberties.

13th Amendment Violation: I have Not Been convicted OF Aledged
Crime, yet I have Been Forced into Slavery And Involuntary
Servitude, Imprionment And Not Given Due Process OF LAW
"Equal Protection OF The law"

14th Amendment Violations: Due Process OF LAW within Jurisdiction
Denied By Pierce County, have Abridged my privileges And
Immunities OF my Rights As a US citizen.

Continued Page on Constitutional Violations

15th Amendment Violations: I Am A Person OF Color And Have Been refused - denied "Bail." Allowance OF Court order Treatment, But ,Am Aware OF whites who have been And are receiving Such rights.

(MPA 2.3) Right to Recieve COPY OF Court Files

RCW 71.05.200, 71.05.240, & 71.05.250.

§ 2254. Remedies in STATE Courts: Im In Custody in Violations OF The Constitutional, laws & Treaties Rights OF THE United STATES And Common law Tribunal.

All Cost OF Court Copies, Documents, Transcripts, ect USE (In Forma Pauperis AFFIDAVIT

Forced VIA TO COERED-N-Duress by Counsel to Sign Paper work ON 9/8/05

Rule 8.4. INEFFECTIVE Council misconduct C, D, E, F, G, H, J, K

RULE 7.1 Services: A

RULE 1.2 A, (C) D And E

RULE 1.6 Confidentiality A, B-2

R, C, W 9A.72.RCW Perjury And Interference 9A.72.100
9A.72.090, 9A.72.120, 9A.72.080, 9A.72.050, 9A.72.060
9A.72.085, 9A.72.010, No Defense 9A.72.070, 9A.72.110
9A.68.050

SIGNED Jathaniel [Signature]

DATED 04/17/07

Witnesses _____

DATED _____

EXIBITS #5

FACE PLATES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff,
vs.
NATHANIEL JAY ISH,
Defendant.

)
)
)
) COA No. 36562-6-II
)
) No. 05-1-01516-2
)
)
)
)

COPY

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 3rd day of November, 2005, the above-captioned cause came on duly for hearing before the HONORABLE KATHRYN J. NELSON, Department 13, Superior Court Judge in and for the County of Pierce, State of Washington;

WHEREUPON, the following proceedings were had and done, to wit:

Reported by: Dana S. Eby, CCR, RPR
CCR# EB-Y*-*D-S312KG

REPORTER'S CERTIFICATE

I, Dana S. Eby, Official Court Reporter for
Department 13 of the Pierce County Superior Court, do
hereby certify that the foregoing transcript entitled,
"Verbatim Report of Proceedings," was taken by me
stenographically and reduced to the foregoing typewritten
transcript at my direction and control, and that the same
is true and correct as transcribed.

DATED at Tacoma, Washington, this 10th day of
October, 2007.

Dana S. Eby
CCR# EB-Y*-*D-S312KG

" EXHIBIT #6 "

" CHARGING INFORMATION "

1
2
3
4
5
6 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

7 STATE OF WASHINGTON,

8 Plaintiff,

CAUSE NO. 05-1-01516-2

9 vs.

10 NATHANIEL JAY ISH,

AMENDED INFORMATION

11 Defendant.

12 DOB: 1/27/1965
PCN#: 538383791

SEX : MALE
SID#: UNKNOWN

RACE: ASIAN/PACIFIC ISLAND
DOL#: UNKNOWN

COUNT I

13 I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
14 authority of the State of Washington, do accuse NATHANIEL JAY ISH of the crime of MURDER IN
15 THE FIRST DEGREE, committed as follows:

16 That NATHANIEL JAY ISH, in the State of Washington, on or about the 28th day of March,
17 2005, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cause
18 the death of such person or a third person, Katy Hall, a human being, on or about the 28th day of March,
19 2005, contrary to RCW 9A.32.030(1)(a), and against the peace and dignity of the State of Washington.

COUNT II

20 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the
21 authority of the State of Washington, do accuse NATHANIEL JAY ISH of the crime of MURDER IN
22 THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same
23 conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or
24 so closely connected in respect to time, place and occasion that it would be difficult to separate proof of
one charge from proof of the others, committed as follows:

That NATHANIEL JAY ISH, in the State of Washington, on or about the 28th day of March,
2005, did unlawfully and feloniously, while committing or attempting to commit the crime of assault in
the second degree, and in the course of and in furtherance of said crime or in immediate flight therefrom,

1 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

2 STATE OF WASHINGTON,

3 Plaintiff,

CAUSE NO. 05-1-01516-2

4 vs.

5 SUPPLEMENTAL DECLARATION FOR
6 DETERMINATION OF PROBABLE CAUSE

7 Defendant.

8 LISA K. WAGNER, declares under penalty of perjury:

9 That the Declaration for Determination of Probable Cause dated the 30th day of March,
10 2005, is by reference incorporated herein;

11 That I am a deputy prosecuting attorney for Pierce County and I am familiar with the
12 police report and/or investigation conducted by the LAKEWOOD POLICE DEPARTMENT,
incident number 050871257;

13 That the police report and/or investigation provided me the following information;

14 That in Pierce County, Washington, on or about the 28th day of March, 2005, the
15 defendant, NATHANIEL JAY ISH, did commit the additional crime of UPCS.

16 A wallet belonging to defendant was searched and a baggie containing a substance that
later tested positive for cocaine was found therein.

17 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
18 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

19 DATED: August 25, 2006

20 PLACE: TACOMA, WA

21 
22 LISA K. WAGNER, WSB# 16718

EXHIBIT # 7

JUDGMENT AND SENTENCE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.389. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>254</u> months on Count	<u>II (murder 2)</u>	_____ months on Count	_____
<u>18</u> months on Count	<u>III (UPCS)</u>	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____

Actual number of months of total confinement ordered is: 254 MD

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.389. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 829 days.

4.13 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[] COMMUNITY CUSTODY is ordered as follows:

05-1-01516-2

1
2
3 Count II (murder 2) for a range from: 24 to 48 Months;
4 Count III for a range from: 9 To 12 Months;
5 Count _____ for a range from: _____ to _____ Months;

6
7 or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer,
8 and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses --
9 serious violent offense, second degree assault, any crime against a person with a deadly weapon finding,
10 Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A.
11 Use paragraph 4.7 to impose community custody following work ethic camp.]

12 **PROVIDED:** That under no circumstances shall the combined term of confinement and term of
13 community custody actually served exceed the statutory maximum for each offense

14 While on community placement or community custody, the defendant shall: (1) report to and be available
15 for contact with the assigned community corrections officer as directed; (2) work at DOC-approved
16 education, employment and/or community service; (3) not consume controlled substances except pursuant
17 to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community
18 custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to
19 monitor compliance with the orders of the court as required by DOC. The residence location and living
20 arrangements are subject to the prior approval of DOC while in community placement or community
21 custody. Community custody for sex offenders may be extended for up to the statutory maximum term of
22 the sentence. Violation of community custody imposed for a sex offense may result in additional
23 confinement.

- 24 The defendant shall not consume any alcohol.
- 25 Defendant shall have no contact with: _____
- 26 Defendant shall remain within outside of a specified geographical boundary, to wit:
- 27 The defendant shall participate in the following crime-related treatment or counseling services: _____
- 28 The defendant shall undergo an evaluation for treatment for domestic violence substance abuse
- mental health anger management and fully comply with all recommended treatment.
- The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

4.14 **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is
eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the
sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on
community custody for any remaining time of total confinement, subject to the conditions below. Violation
of the conditions of community custody may result in a return to total confinement for the balance of the
defendant's remaining time of total confinement. The conditions of community custody are stated above in
Section 4.13.

4.15 **OFF LIMITS ORDER (known drug trafficker)** RCW 10.66.020. The following areas are off limits to the
defendant while under the supervision of the County Jail or Department of Corrections: _____

EXHIBIT # 8

"JURY INSTRUCTIONS"

[The following text is extremely faint and largely illegible. It appears to be a set of jury instructions, likely containing numbered paragraphs and legal definitions. The visible fragments include:]

1. The jury is the sole trier of fact in this case.

2. You must find the defendant guilty only if you find that the State has proved beyond a reasonable doubt that the defendant committed the crime charged in the indictment.

3. The State must prove each element of the crime beyond a reasonable doubt.

4. A reasonable doubt is a doubt that is based on reason and common sense.

5. You must not guess, and you must not let sympathy or prejudice influence your verdict.

6. If you are not sure of your verdict, you must acquit the defendant.

7. The defendant is innocent until proven guilty.

8. The burden of proof is on the State.

9. You must disregard any evidence that you believe is false or unreliable.

10. You must base your verdict only on the evidence presented to you in court.

11. You must not discuss this case with anyone outside the jury room.

12. You must reach a unanimous verdict.

13. If you cannot reach a unanimous verdict, the judge will declare a mistrial.

14. The judge will not tell you what to do, but you must follow the law.

15. The judge will explain the law to you, but you must apply it to the facts of the case.

16. The judge will tell you what the law is, but you must decide if the State has proved the crime beyond a reasonable doubt.

17. The judge will tell you what the law is, but you must decide if the State has proved the crime beyond a reasonable doubt.

18. The judge will tell you what the law is, but you must decide if the State has proved the crime beyond a reasonable doubt.

19. The judge will tell you what the law is, but you must decide if the State has proved the crime beyond a reasonable doubt.

20. The judge will tell you what the law is, but you must decide if the State has proved the crime beyond a reasonable doubt.

INSTRUCTION NO. 6

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

INSTRUCTION NO. 15

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of murder in the first degree as charged in Count I, the defendant may be found guilty of any lesser crime, the commission of which is necessarily included in the crime charged, if the evidence is sufficient to establish the defendant's guilt of such lesser crime beyond a reasonable doubt.

Substantive

Not crimes

The crime of murder in the first degree necessarily includes the lesser crimes of intentional murder in the second degree, manslaughter in the first degree, and manslaughter in the second degree.

Guilty of

When a crime has been proven against a person and there exists a reasonable doubt as to which of two or more degrees that person is guilty, he or she shall be convicted only of the lowest degree.

Was Found Not

[Handwritten mark]

INSTRUCTION NO. 17

To convict the defendant of the lesser included crime of murder in the second degree as to Count I, each of the following elements of the crime must be proved beyond a reasonable doubt;

(1) That on or about 28th day of March, 2005 , the defendant caused the death of Katy Hall;

(2) That the defendant acted with intent to cause the death of Katy Hall;

(3) That Katy Hall died as a result of the defendant's acts; and

(4) That the acts occurred in State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 21

To convict the defendant of the lesser included crime of manslaughter in the first degree as to Count I, each of the following elements of the crime must be proved beyond a reasonable doubt;

- (1) That on or about the 28th day of March, 2005, the defendant caused the death of Katy Hall;
- (2) That the defendant's conduct was reckless;
- (3) That Katy Hall died as a result of the defendant's acts; and
- (4) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 25

No act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition. However, evidence of intoxication may be considered in determining whether the defendant acted with premeditation, intent, recklessness, or negligence.

INSTRUCTION NO. 37

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the Judicial Assistant. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and Verdict Forms A, B, C and D for Count I, Verdict Form E for Count II and Verdict Form F for Count III. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You may deliberate on each count in any order you choose. You must decide each count separately. However, when completing the verdict forms for Count I, you will first