Cause No. 101475-9

WASHINGTON STATE SUPREME COURT

State Of Washington,
Respondent,
v.
Michael Leon Palmer,
Petitioner.

PETITION FOR REVIEW

Michael Palmer
(Print Your Name)
Petitioner, *Pro se.*
DOC# 409268, Unit
Monroe Correctional Complex / TRU
(Street Address)
P.O. Box 888
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Court Rules

A. Identity Of Petitioner

I, Michael Leon Palmer, the Petitioner, acting pro se, respectfully ask this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. Court Of Appeals Decision

Palmer asks this Court to accept review of the decision in Court of Appeals, Div. II, No. 52362-1-II, filed Oct. 11, 2022. The motion for reconsideration was denied Nov. 7, 2022.

A copy of the Court of Appeals decision is attached as Appendix 1. A copy of the Order Denying Motion For Reconsideration is attached as Appendix 2.

C. Issues Presented For Review

1. Is the Court of Appeals holding that CrR 8.3(b) dismissal due to discovery violations requires a proven Brady violation in conflict with the appellate court holdings in State v. Sherman and State v. Brooks; thereby, allowing non-Brady violation dismissal?

2. Did the Court of Appeals err in holding Palmer "fails to argue how the Holmes report or the photos themselves were exculpatory or impeaching"; when, based on US v. Agurs

and Strickler v. Greene, Palmer did argue a materially exculpatory issue for the Holmes Report, centered around venue change; thereby, showing a due process Brady violation and supporting CrR 8.3(b) dismissal under State v. Martinez?

3. Did the Court of Appeals err in not holding that all Class A felony defendants are entitled to the greater protection of RCW 10.21.060 bail hearings under Wash. Const. art 1, § 20, due process and equal protection? [Ancillary]

D. Statement of the Case

Palmer was convicted of child molestation in the first degree, assault in the fourth degree, and assaut of a child in the second degree (Grays Harbor County, No. 17-1-00203-1) by a jury that was told by the trial judge "The defendant has entered pleas of guilt to these charges." Report of Proceeding (RP)(July 3, 2018) at 216.

Palmer appealed and was granted reversal and retrial based on denial of counsel. State v Palmer, 18 Wn App 2d 825, 493 P3d 159 (2021) (withdrawn). Palmer's consel filed a motion to reconsider based on failure to address Palmer's Statement of Additional Grounds (Appendix 4, Statement of Additional Grounds (SAG) at 1-60) which was granted. The Published Opinion (Appendix 1, Published Opinion (Slip op), October 11, 2022 at 1-20) was entered, holding that: (1) Palmer was denied his right to counsel (slip op. at 7, 10); (2) the trial court was prohibited from modifying its courtroom procedures as it did (slip op. at 12); (3) the State violated Palmer's right against self-incrimination (slip op. at 12); (4) SAG Ground 1 - Attorney Client Privilege was declined; (5) SAG Ground 2 - Alleged Brady Violations fails as: some documents were not part of the trial record (slip op. at 16), PD's statements were provided prior to trial (slip op at 16), Palmer failed to demonstrate a Brady violation from the AD scrath material (slip op. at 17), the Christmas video and photos could have been obtained (slip op at 17); (6) SAG Ground 3 - Fair Bail and Release Conditions was declined as moot (slip op. at 18-19); (7) SAG Ground 4 - Speedy Trial could not be addressed due to lack of record (slip op at 19); (8) SAG Ground 5 -

Cumulative error fails as none of the arguments warrant reversal.

Another motion for reconsideration was filed based on counsels late filing of record. Appendix 3, Motion For Reconsideration (Oct. 19, 2022). It was denied. Appendix 2. Palmer now files for review.

E. Argument Why Review Should Be Accepted

Issue 1 - Is the Court of Appeals holding that CrR 8.3 (b) dismissal due to discovery violations requires a proven Brady violation in conflict with the appellate court holdings in State v. Sherman and State v. Brooks, thereby allowing non-Brady violation dismissal?

1.1 Review of this issue should be accepted as: (1) the Court of Appeals decision conflicts with other appellate court decisions (RAP 13.4(b)(2)) and the ramifications of flagrant misconduct by the State to deny or delay discovery is of continuing and substantial public interest (RAP 13.4(b)(4)).

1.2 The Court of Appeals held that Palmer's argument for dismissal due to the States failure "to produce the AD scratch material" fails as "Palmer fails to demonstrate a Brady violation with respect to the AD scratch material...." Slip op. at 16-17. Palmer disagrees as he also cited to State v. Sherman, 59 Wn App 763, 801 P2d 274 (1990). SAG, § 2.29 at 25. Sherman does not require a Brady violation to support discovery violation based dismissal.

1.3 The Sherman Court found that the State had

promised to produce IRS records from one of their witnesses and then failed to act with due diligence so the IRS records were not produced. The Sherman Court wrote "The State's failure to produce the IRS records, in and of itself, is a sufficient ground on which to affirm the dismissal." Sherman, 59 WnApp at 768.

1.4 More on point to Palmer's case is State v Brooks, 149 WnApp 373, 203 P3d 397 (2009), wherein the State promised to deliver the lead detectives report but failed to do so. The Brooks Court held "It seems unlikely that this report could be immaterial in any circumstances, and it was certainly material as to how defense counsel would have interviewed the investigator at trial. The delayed and missing discovery prevented defense counsel from preparing for trial in a timely fasion.... we also know the potential ramifications if the State's behavior is not curtailed.... the trial court did not abuse its discretion by failing to require [the defendants] to establish the materiality of evidence the State had not yet disclosed.... the trial court did not abuse its discretion by finding governmental mismanagement and prejudice." Brooks, 149 WnApp at 390-91.

1.5 Niether Sherman or Brooks required a proven Brady violation. They only required mismanagement that resulted in a broken promise by the State to provide some part

of potentially material discovery. Palmer case meets those requirements.

1.6 Judicial Misconduct - The trial judge commited misconduct by: (1) denying Palmer the presumption of innocence (POI); (SAG, § D7 at 7 (jury told Palmer "entered pleas of guilty")); thus, denying Palmer fair trial (State v Jamie, 168 Wn2d 857, 861, 233 P3d 554 (2010)) and causing "great prejudice" (State v Johnson, 159 Wn App 677, 685-86, 243 P3d 936 (2007)); (2) denying Palmer counsel (slip op. at 7,10); thus, denying Palmer fair trial (State v Boyd, 160 Wn2d 424, 434, 158 P3d 54 (2007)) and causing Palmer uncalculable prejudice (State v Granacki, 90 Wn App 598, 603, 959 P2d 667 (1998)); (3) denying Palmer time to prepare and continuances (see SAG, §§ 2.18 at 19-20 (late production objections brushed aside), 4.29(2) at 53 (only about 15 days to prepare); see also RP (June 15, 2018) at 201-203, 205-206 ("fast track to trial")); thus, denying Palmer meaningful self-representation (US v Farias, 618 F3d 1049, 1053 (9th Cir 2010)). POI, counsel, self-representation fall under US Const. amends. 6, 14; Wash Const. art. 1, §§ 3, 22.

1.7 AD Scratch Material; Case File 17-140 - (1) The AD scratch data/material was so important to the defense that: (a) Palmer made his original statement in custody contingent on a promise to investigate it (SAG, § 2.13(1) at 16; RP (Jan. 26, 2018) at 49-52, 56-59; (b) filed a specific demand for AD scratch data (SAG, §§ 2.2(5) at 12, 2.9 at 15-16; supp CP sub#'s 62, 63);

(c) subpoenaed deputy Holmes for the AD scratch material (SAG, §§2.2(6) at 12, 2.9 at 15-16; supp CP sub# 145). (2) The AD scratch material was in sheriff's case file 17-140 (see appendix 5, trial exhibit 24 (Holmes Report), page 1, bottom right; see appendix 6, trial exhibit 23 (Sheriff's Report) at 5, 18). The Sheriff's Report was dated 3-30-17 and written by Det. Ramirez (Sheriff's Report at 1,2), who pulled, read, copied and attached the AD scratch case file 17-140 to the Sheriff's Report (Sheriff's Report at 5, 18). Case file 17-140 contained, in part, the Holmes Report and photos, Deanna (the mother) Statement and CPS report (Holmes Report at 3). The Holmes Report and its attachments had been sent to the prosecutor (RP (July 5, 2018) at 38) and read as the prosecutor declined to file charges (Sheriff's Report at 5). The Sheriff's Report and its attached case file 17-140 went to the prosecutor as the Sheriff's Report and Palmer's statement concerning the AD scratch (trial exhibit 1; see also RP (June 26, 2018) at 236 (noting only photos provided by Palmer) were in the discovery. Therefore, the AD scratch material was provided to the prosecutor twice.

1.8 State Misconduct - The State engaged in flagrant misconduct to deny the defense the AD scratch material, case file 17-140, like: (1) failing to conduct the, in custody questioning, promised investigation of the AD scratch incident (SAG, § 2.13(1) at 17; RP (June 26, 2018) at 242; SAG, § 213(3) at 17) then not doing it and trying to cover up the promise (Id; RP (Jan. 26, 2018) at 48-59);

(2) failing to provide the Holmes Report, photos, Deannas Statement, and CPS report despite four general discovery requests (supp CP sub #'s 10, 48, 52, 53, 95) and three omnibuses (supp CP sub #'s 13, 14, 22, 24, 98, 99, 133) and despite having been provided the AD scratch case file 17-140 twice by the sheriff's office. (Note the first copy of 17-140 was sent to the prosecutor about eighteen months prior to trial.); (3) promising in court that "We'll ask for...." the AD scratch data requested in Palmer's specific demand (supp CP sub#'s 62, 63) to include the Holmes Report and Deanna's Statement (SAG, § 2.10 (2) at 16; RP (Jan. 26, 2018) at 51-52) and then, five months later, asking Holmes in court, mid-trial; but, only providing the Holmes Report and photos - not the full AD scratch case file 17-140 as promised (see SAG, §§ 2.12 at 16, 2.13 (3) at 17; RP (July 3, 2018) at 265-266, 289-290); (4) not providing the requested protection order material (SAG, § 2.11(2); supp CP Sub# 62) or other court documents held by the sheriff's office (Sheriff's report at 21); (5) lying to the court to block the portions of Deanna Drummond subpeona requesting injury related photos and videos from Christmas day 2016 (AD scratch and PD choked (SAG, §§ 2.21-2.22 at 21-22)) by telling the court that only "hurting or abusing" photos came from Palmer (SAG, § 2.13 (4) at 17-18; supp CP sub# 143; RP (June 26, 2018) at 234-238); (6) lying to the court by saying Holmes photos "weren't indicated in his

report" (SAG, § 2.13 (4) at 17-18; RP (July 3, 2018) at 265) when Holmes Report at 3 states "I took photographs"; (7) committing a material and relied upon fraud upon the court to block defense subpoena of Holmes for AD scratch material (supp CP sub # 145 at 2) by lying to the court, indicating AD scratch material has "all been provided in the discovery" and "Those have all been provided. They were provided in the beginning to his defense counsels and again - everything was provided to him once he took over." (SAG, § 2.13 (3) at 17; RP (June 26, 2018) at 241-243); then, proving the fraud upon the court by providing Holmes Report and photos, mid-trial, (note - this fraud seems to violate not only CrR's 4.7 (a)(1), 4.7 (d), 4.7 (h)(1); but, also breaking the law based on RCW 18.185.110, RCW 9A.72.080, RCW 9A.76.175); (8) on Jan. 29, 2018, helping draft and signing an illegal order, based on RCW 5.60.060, forcing Palmer to turn over all his attorney-client protected notes on discovery review to the State, rather than his counsel (SAG, § 1.5-1.6 at 8-9; supp CP sub # 74); thereby, preventing Palmer's critical, imperative, and requested assistance with defense preparation (SAG, § 1.8 at 9; RP (Jan. 26, 2018 at 151) and infringing on meaningful self-representation (US Const. amend. 6; Wash. Const. art. 1, § 22) as the illegal order was not amended until a week after Palmer was forced to go pro se (SAG, § 1.8 at 9; supp CP sub #'s 124, 134).

1.9 Ramifications - The Brooks Court noted "potential ramifications if the State's behavior is not curtailed"

Brooks, 149 WnApp at 390-91. In Palmer's case, the State in the person of deputy prosecutor Erin Riley (Riley) has a known history of unethically violating discovery provision duties under CrR 4.7 by failing to act with reasonable diligence and making material misrepresentations to the court (SAG, § 2.33 at 27; State v Perez, Div. II COA No. 48117-1-II, 2016 Wash App Lexis 3049 (Dec. 20, 2016). That should be another Brooks factor supporting dismissal of Palmer's charges.

1.10 Hearings Prejudiced- The two Brooks prejudice factors- (1) would have affected how witnesses interviewed and (2) prevents defense from timely preparing - also applied to the child hearsay and child competency hearings (supp CP sub#'s 72.1, 77.1, 82; RP (Jan. 26, 2018); RP (Feb. 6, 2018)) where niether the Holmes Report and photos, Deanna Statement, or CPS report was available. The Holmes Report was especially relevant to how PD and her mother, Deanna, were interviewed / cross-examined as: (1) the Holmes Report shows Holmes interviewed them both so he was a potential witness and (2) the Holmes report never mentions double handed neck strangulation, it indicates Palmer grabbed the shoulder; thereby, making it impeaching to AD, PD, and Deanna who now claim AD was strangled (Holmes Report at 2-3).

1.11 Other Materiality - Palmer actually claims that the Holmes report was material to: (1) a venue change under

CrR 5.1(b,c) as it places the scratch as possibly happening in Thurston County (SAG, §§ 2.15-2.16 at 18-19); (2) experts showing the scratch was possibly tampered with and could not have occurred as described (SAG, § 2.19 at 20-21); (3) it showed the existence of two other missing reports, one by a key witness, Deanna, the mother, and (4) it showed a reason for AD to lie (missing reports and reason to lie at SAG, § 2.17 at 19). Further, the Holmes Report outlines parts of both the CPS report and Deanna Statement; thereby, supporting their materiality as the Deanna Statement supports venue change and the CPS report supports scratch tampering (Holmes Report at 2-3). 1.12 Conflict Summary- The Court of Appeals holding that Palmer must demonstrate a Brady violation for the AD scratch material to get dismissal (slip op. at 17) is in conflict with Palmer's cited case State v Sherman (SAG, § 2.29 at 25; § 1.3 at 4-5 herein) and State v Brooks (§ 1.4 at 5 herein) both of which only require a promise by the State to provide specific discovery and then the States failure to provide that discovery (Sherman, 59 Wn App at 768; Brooks, 149 Wn App at 390-91). Prejudice is inferred. (Id). Palmer shows the States promise to provide the AD scratch material and then the failure to do so (§ 1.8(3) at 8; § 1.10 at 10 herein). Palmer shows the flagrant State misconduct the State engaged in. The Court of Appeal decision should be reversed and Palmer should be granted dismissal based on Sherman and Brooks.

Issue 2- Did the Court of Appeals err in holding Palmer "fails to argue how the Holmes report or the photos themselves were exculpatory or impeaching"; when, based on US v. Agurs and Strickler v. Green, Palmer did argue a materially exculpatory issue for the Holmes Report, centered around venue change; thereby showing a due process Brady violation and supporting CrR 8.3(b) dismissal under State v Martinez?

2.1 Review of this issue should be accepted as: (1) the Court of Appeals decision conflicts with other Supreme Court and appellate court decisions (RAP 13.4(b)(1,2) and (2) significant questions of constitutional law are involved (RAP 13.4(b)(3) and the ramifications of flagrant misconduct by the State to deprive a person of access to significant constitutional rights by denying or delaying discovery is of significant and continuing public notice (RAP 13.4(b)(4)).

2.2 The Court of Appeals held that Palmer's argument for dismissal fails as "Palmer fails to demonstrate a Brady violation ... because he fails to argue how the Holmes report or the scratch photos themselves were exculpatory or impeaching...." Slip op. at 16-17. Palmer disagrees because the Court of Appeals should have found the Holmes Report evidence allowing venue change under CrR 5.1(b,c) as materially exculpatory under US v. Agues and showing prejudice under Strickler v. Green, especially when considered in the light of the flagrant governmental

misconduct in Grays Harbor County.

2.3 Agurs and Strickler- Material is materially exculpatory if it creates a reasonable probability, when considered in the context of the entire record, may have affected the outcome of the case. US v. Agurs, 427 US 97, 113-14, 96 SCt 2392 (1976); Kyles v. Whitley, 514 US 419, 435, 115 SCt 1555 (1995). Prejudice occurs if there is a reasonable probability that, disclosure of evidence would have changed the case outcome. Strickler v Green, 527 US 263, 280, 119 SCt 1936 (1999).

2.4 CrR 5.1 (b,c) - CrR 5.1(b,c) indicates that, if there is a reasonable probability that the alleged crime or a portion thereof was committed in more than one county then the defense may choose the county of venue.

2.5 Palmer's Brady Argument - In the SAG, Palmer makes several arguments directed toward the Holmes Report and photos being Brady material: (1) Palmer names the AD scratch material as Brady material (SAG, §§ 2.9 at 15, 2.13 at 16-18, 2.14 at 18 (all stating "AD scratch Brady material")); (2) Palmer shows that the AD scratch material was knowingly suppressed through State misconduct (SAG, §§ 2.14 at 18, 2.9-2.13 at 15-18; see also Issue 1, §§ 1.7-1.8 at 6-9, herein); (3) Palmer states that a small part of the AD scratch material, Holmes Report and photos, was provided, too late for use at the child hearsay and child competency hearings, mid-trial July 3, 2018 when Palmer was denied: (a) counsel, (b) continuances, (c) fair

bail, and (d) the presumption of innocence (SAG, § 2.18 at 19-20; see generally Issue 1, §§ 1.6 at 6, 1.8(3) at 8); and (4) noting that the Holmes Report show several material issues (see SAG, §§ 2.17 at 19, 2.19(2) at 20; see also Issue 1, § 1.11 at 10-11).

2.6 Venue Change Argument- SAG, § 2.15 at 18 is where Palmer makes his argument about the Holmes Report being materially exculpatory base on venue change. He starts by noting "Prejudice to venue change" as "without Holmes report [Palmer] was unable to correctly move for a venue change (see CP 281-293, Affidavit For Change Of Venue (May 11, 2018)) under CrR 5.1(b,c)... as the Holmes report indicates that the [AD] scratch happened on the way to Olympia which is in Thurston county" (Holmes Report at 2 (stating "It was reported that the family had been traveling to Olympia and Michael [Palmer] was driving. At one point, Michael... stopped the vehicle...." Palmer agrees that the AD scratch "happened in Thurston" per Trial Exhibit 10 at E4-E5. SAG, § 6.15 at 18.

2.7 Deanna Statement - The Holmes Report becomes even more materially exculpatory as Holmes outlines a part of the never provided Deanna Statement, that had been attached to the Holmes Report, stating "Deanna provided me a statement.... She said on December 17th, 2016, Michael, [PD], [AD], [LP] and she were traveling to Olympia.... At one point....". Holmes Report at 3.

2.8 Reasonable Probability - The Holmes Report indicates that

Deanna, AD and PD lived in McCleary in Grays Harbor County and that the scratch happened on the way to Olympia in Thurston County "At one point..."; thus, showing that the AD scratch, the basis for the RCW 9A.36.041 assault charge against AD, could have happened in Grays Harbor County or Thurston County; thereby, allowing the defense to change venue based or CrR 5.1(b,c).

2.9 Affected Outcome- Logically, a venue change of just one charge affect the entire trial of all charges just by the fact that there would only be two charges in Grays Harbor County and the charge in Thurston County would have a different judge, prosecutor, defense attorney, and jury; however, Palmer lists how the venue change would have benefitted the defence in SAG, § 2.16 at 18-19. Those benefits include: (1) the presumption of innocence; (2) reduced prejudice from joinder (see SAG, § D.2 at 6) by severing a charge; (3) designation of one provably false charge, the AD scratch (see generally SAG, §§ D.4-D.5 at 6); (4) provided counsel (see slip op. at 6, 10); (5) provided proper discovery (see generally SAG, §§ 2.11-2.12 at 16); (6) provided an expert medical witness to show the AD scratch did not occur as described (see SAG, § 2.19 at 20-21; and (7) allowed bias and previous perjury of Deanna. SAG, § 2.16 at 18-19.

2.10 Fair Trial Rights- Agurs requires that the entire record be considered; so, Palmer lists a few of his fair trial

rights that Grays Harbor trial court deprived him of and he should have regained via venue change: (1) counsel (see Issue 1, § 1.6(2) at 6 (noting fair trial violated (Boyd, 160 Wn2d at 434) and uncalculable prejudice (Granacki, 90 Wn App at 603)); (2) the presumption of innocence (see Issue 1, § 1.6(1) at 6 (noting fair trial violated (Jamie, 168 Wn2d at 861) and great prejudice (Johnson, 159 Wn App at 685-86)); (3) expert medical testimony which was critical to showing AD's scratch did not occur by strangulation (see SAG, § 2.19 at 20-21) as the trial court: denied both medical expert subpoenas (supp CP sub #'s 147, 150) and denied expert testimony and funds citing (rR 4.7(b)(1); yet, Palmer never received an omnibus hearing or all the (rR 4.5 rights that go with it (see generally RP (June 26, 2018) at 282-283; see also Boyd, 160 Wn 2d at 434 (noting expert witnesses may be crucial part of due process and fair trial)); (4) confrontation (see slip op. at 10-12; see also State v Crawford, 147 Wn2d 424, 431, 54 P3d 656 (2002) (noting confrontation is fundamental to fair trial)); (5) time to prepare as counsel said ninety days needed (RP (Feb. 14, 2018) at 188); yet, Palmer only got 17 (see RP (June 15, 2018) at 201-203, 205-206) (noting "fast track to trial") and late disclosure of evidence denies time to adequately prepare and brings prejudice (State v. Michielli, 132 Wn2d 229, 240, 937 P2d 587 (1997); see also Boyd, 160 Wn 2d at 434 (noting access to evidence crucial to due process and fair trial)) and is sufficient to support (rR 8.3(b) dismissal (State v. Price, 94 Wn2d 810, 814, 620 P2d 994 (1980)). US Const. amends 6, 14.

2.11 Materially Exculpatory- Based on Agurs, Palmer shows that the Holmes Report was materially exculpatory as it contained evidence allowing venue change which would affect the outcome of the case especially in light of the prejudice and misconduct Palmer faced in Grays Harbor (see generally §§ 2.5-2.10 at 13-16, herein). This also shows prejudice under Strickler as disclosure and venue change would have severed one charge and restored many of the rights Palmer was deprived of (see generally §§ 2.9-2.10 at 15-16, Agurs, 427 US at 113-114; Strickler, 527 US at 280.

2.12 Brady Violation- Palmer's argument on the Holmes Report's venue changing evidence meet all three Brady violation components: (1) favorable to accused as exculpatory (see § 2.11, above); (2) suppressed willfully by State (see Issue 1, § 1.8 at 7-9, herein); and (3) material as it caused prejudice (see § 2.11, above); therefore, the Court of Appeals erred in holding no Holmes Report Brady argument was made.

2.13 Martinez Dismissal- State v. Martinez (121 Wn App 21, 86 P3d 1210 (2004)) is a CrR 8.3(b) dismissal case that Palmer cites to at SAG, §§ 2.29-2.30 at 25-26. The Martinez Court held that failure to disclose long obvious, materially exculpatory evidence until mid-trial: (1) prejudices a defendants rights to effective assistance of counsel and adequate trial preparation and (2) is so repugnant to the principles of fundamental fairness that it violates due process and may bar a subsequent prosecution of the defendant. Martinez, 121 Wn App at 35-36. The Martinez Court also found that "Retrial

will not seriously deter the conduct of the withholding of exculpatory evidence in the future." so dismissal with prejudice is the proper remedy. Id.

2.14 Palmer Dismissal - Palmer meets the requirments of CrR 8.3(b) dismissal under Martinez as in Palmer's case, the State, which has a known history of withholding exculpatory evidence (see Issue 1, § 1.9 at 9-10, herein), withheld the materially exculpatory Holmes Report (see Issue 2, § 2.11 at 17 (noting materially exculpatory)) despite having possession of said report eighteen months prior to trial (see Issue 1, § 1.7 at 6-7) and having promised to ask for the AD scrath data, which contained the Holmes Report, over five months prior to trial (see Issue1, § 1.8 (3) at 8). After multiple frauds upon the court by advising the trial court that all discovery had been provided through three omnibuses and the hearing requesting to subpoena the AD scratch data (see Issue1, § 1.8 (2,7) at 8-9), the State provided the Holmes Report and photos mid-trial (see Issue 1, § 1.8(3) at 8). Martinez dismissal standards are met and Palmers case should be dismissed with prejudice.

F. Conclusion

The Court of Appeals committed err in Palmer's direct appeal, no. 52362-1-II when addressing Palmer's Statement Of Additional Grounds at Ground 2.

First, by holding that Palmer's arguments for dismissal, due to flagrant discovery violations by the State, need

a Brady violation to succeed, when Palmer cited to a case, State v. Sherman, which allows dismissal for discovery violations by the State without a Brady violation. Palmer also found a more on point case, State v. Brooks. Based on the level of governmental misconduct in Palmer's case due to delay and denial of requested and promised discovery combined with fraud upon the court as to the provision of discovery by the State - Palmer's case should be dismissed with prejudice based on the standards set forth in 8.3(b), State v. Sherman and State v. Brooks.

Second, by holding that Palmer's argument for dismissal fails due to Palmer not arguing a Brady violation based on no showing as to how the Holmes Report was exculpatory. Palmer shows that, based on the ability to change venue, the evidence in the Holmes Report would affect the outcome of the case and is therefore materially exculpatory based on US v Agurs and Palmer suffered prejudice based on Strickler v. Green. So, a Brady violation was shown and Palmer's case should be dismissed based on State v. Martinez.

The first err was addressed in Issue 1. The second was addressed in Issue 2.

RAP 1.2(a,c)

This Court has the power to liberally interprete, alter or

waive its rules to promote and serve justice. What happened in Grays Harbor was extremely unjust. Palmer prays this Court will grant waiver of anything messed up herein.

Based on the foregoing facts and arguments, this Court should accept review.

Dated this 30th day of December, 2022.

By Michael Palmer

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APPENDIX

1

Filed
Washington State
Court of Appeals
Division Two

October 11, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MICHAEL LEON PALMER, Appellant.	No. 52362-1-II PUBLISHED OPINION

VELJACIC, J. — Michael Palmer appeals his convictions and sentence for child molestation in the first degree, assault in the fourth degree, and assault of a child in the second degree. He argues that the trial court violated his constitutional rights to counsel, confrontation, self-representation, due process, and against self-incrimination. Palmer also raises five grounds in his statement of additional grounds (SAG) for review, contending that each error requires dismissal of his convictions with prejudice. We disagree that Palmer's convictions should be dismissed with prejudice, but because the trial court violated Palmer's constitutional right to counsel, we reverse and remand for a new trial.

FACTS

Palmer and his girlfriend, DD, moved in together in 2013. They lived together with DD's two biological children from a prior marriage, her son AD, and her daughter PD. PD has a diagnosis of autism. Palmer and DD also had a baby together, LP. Sometime in 2014, the family moved to Washington. Palmer served as caregiver to the children and in that role disciplined both PD and AD. Child Protective Services (CPS) had been involved with the family, taking custody

of the children in 2015, but releasing LP to Palmer's custody and PD and AD to DD's custody. Palmer subsequently moved from the family residence with LP, but would visit DD's house on weekends with LP.

During a family car trip in 2016, Palmer grabbed AD by the neck, leaving a scratch. At some point after the car trip incident, Palmer told DD that PD had touched his penis. Thereafter, PD disclosed to DD that Palmer had touched her vagina. Approximately four months after PD's disclosure, DD contacted law enforcement. Law enforcement authorities interviewed the children on two separate occasions.

Detective Richard Ramirez participated in PD's interview during which he learned of the accusations against Palmer. Eventually, Ramirez took Palmer into custody, read him *Miranda*[1] rights, and questioned him. Ramirez ended the questioning after Palmer repeatedly refused to admit to any wrongdoing. Ramirez returned the next morning for additional questioning, but Palmer refused to talk. The State charged Palmer with one count of child molestation in the first degree and two counts of assault of a child in the second degree.

While the case was pending, Palmer had several disputes with his appointed attorneys. Palmer's first appointed attorney requested to withdraw due to the absence of a working relationship. When the trial court asked Palmer whether he wanted to dismiss counsel, Palmer responded that he was already preparing a "motion to dismiss" his attorney due to ineffective assistance of counsel. Report of Proceedings (RP) (Oct. 27, 2017) at 3. Palmer said the basis of the motion was that counsel failed to show up to appointments, and he felt counsel had lied to him. The court granted the first attorney's request to withdraw.

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

The trial court appointed a second attorney. A few months later, Palmer's second attorney told the court that he was close to requesting to withdraw because communications between he and Palmer had become strained. Approximately a month after that, Palmer informed the court that he was claiming ineffective assistance of counsel against his second attorney. He told the court that he did not want his attorney to withdraw, but instead wanted him to conduct further investigation to acquire additional evidence. The attorney believed the investigations Palmer wanted would be inappropriate. Based on Palmer's statements that he did not want counsel to withdraw, the court kept the second attorney on the case.

A couple of days later, the second attorney requested to withdraw because Palmer no longer trusted him and had accused him of lying. Counsel also stated that there had been a complete breakdown in the attorney-client relationship. The court denied the attorney's motion and requested that counsel finish an ongoing CrR 3.5 child hearsay and child competency hearing. After the hearing, counsel again requested to withdraw, this time citing his safety and professional standing. The court made no findings or inquiry regarding why counsel felt his safety was at risk but nonetheless granted the second attorney's request and allowed him to withdraw.

The trial court appointed a third attorney to represent Palmer. When Palmer asked whether he could receive a standby attorney in case the third attorney withdrew, the court told Palmer, "You have all the attorneys you are going to get right there." RP (Mar. 12, 2018) at 35. The court did not inform Palmer of the risks he would face if he dismissed the third attorney and proceeded pro se.

Three months later, Palmer wrote an extensive memorandum detailing ineffective assistance of counsel claims against his third attorney. He also named this third attorney in a federal civil rights lawsuit. Counsel requested to withdraw, and the trial court granted his request. The court made no findings regarding counsel's request to withdraw.

After Palmer's third assigned attorney withdrew, the trial court determined that Palmer had waived his right to counsel via his conduct. The court explained that Palmer had intentionally delayed trial by creating "artificial, unfounded, and unwarranted conflicts" with his previously appointed attorneys. RP (June 15, 208) at 202. The court refused to provide Palmer with another attorney, forcing him to proceed pro se. The court appointed a fourth attorney as Palmer's standby counsel because the law library was inaccessible to Palmer. After his attorneys had withdrawn, Palmer sought to acquire additional discovery from the State.

Prior to trial, the State moved to have AD and PD face away from Palmer while they testified and asked the court to have standby counsel conduct the questioning on Palmer's behalf. The State conceded that while "the RCWs" allow complaining witnesses to testify via one-way teleconferencing, the statute does not apply to pro se defendants.[2] RP (June 29, 2018) at 50. The trial court determined that "children are entitled to be treated carefully in court," and granted the State's request. RP (June 29, 2018) at 58. The court made no findings that AD or PD would suffer emotional detriment if required to testify while facing Palmer or if Palmer questioned them.

During the trial, DD testified about an incident she witnessed where Palmer grabbed AD by the neck, leaving a mark that was later seen by a social service organization. She also testified about an incident that Palmer had told her about, saying, "Mr. Palmer had said that . . . he had been in bed naked while I was shopping, and he was watching the kids, and [PD] had gotten into the

[2] While "the RCWs" are voluminous, the State may have been referring to RCW 9A.44.150.

bed to play with his penis." RP (July 3, 2018) at 292. DD further testified that when she asked PD whether Palmer had touched her vagina, PD told her yes. The State questioned Ramirez at trial and asked if he had spoken to Palmer after his initial interview. In the presence of the jury, Ramirez testified that he "went back the next morning, thinking that, you know, a day sitting in the county jail, you know, there's some time to think, and maybe Mr. Palmer would want to do the right thing here." RP (July 5, 2018) at 75. Ramirez further testified that he told Palmer, "You've had some time to think. Do you want to talk?" and that Palmer responded that he did not want to talk. RP (July 5, 2018) at 75.

Also at trial, the court required standby counsel to read Palmer's questions to AD and PD in lieu of Palmer conducting the cross-examination, as he had with the other witnesses. Before standby counsel read Palmer's questions to PD, the court clarified standby counsel's role, telling the jury that counsel was not acting as an attorney cross-examining the witness, but rather as a conduit for Palmer. The court repeated this explanation before AD's testimony. The court also told the jury that standby counsel was asking questions prepared by Palmer, which is in fact what occurred.

Palmer testified at trial. He admitted to touching PD's vagina, but asserted that the touching was inadvertent and occurred as a defensive reaction when he attempted to push PD away. He also admitted to physically disciplining AD and PD.

A jury convicted Palmer of child molestation in the first degree, assault in the fourth degree, and assault of a child in the second degree. The trial court sentenced Palmer to an indeterminate sentence of 82 months to life imprisonment and ordered 18 months of community custody for his assault of a child in the second degree conviction and 12 months of community custody for his assault in the fourth degree charge. The court also imposed several community custody conditions.

Palmer appeals his convictions and sentence.

ANALYSIS

I. RIGHT TO COUNSEL

Palmer argues that he was wrongly deprived of his right to counsel when the trial court determined he had forfeited his right due to misconduct. We agree.

A. Standard of Review

Palmer challenges the constitutionality of the trial court's holding that he waived his right to counsel. Constitutional challenges are issues of law, and we review such challenges de novo. *State v. Price*, 169 Wn. App. 652, 655-56, 281 P.3d 331 (2012).

B. Legal Principles

A criminal defendant has a constitutional right to the assistance of counsel. U.S. CONST. amend. VI; WASH. CONST. art. I, § 22. However, such right does not entitle a defendant to deliberately or inadvertently delay trial by his dilatory conduct. *State v. Stutzke*, 2 Wn. App. 2d 927, 937, 413 P.3d 1037 (2018). A defendant can lose the right to counsel through forfeiture, waiver, or waiver by conduct. *Id.*

Violation of the right to counsel is a "structural error" not subject to the harmless error analysis. *Arizona v. Fulminante*, 499 U.S. 279, 309-10, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991). "[D]eprivation of the right to counsel at trial . . . [is a] structural defect[] in the constitution of the trial mechanism, which def[ies] analysis by 'harmless-error' standards. The entire conduct of the trial from beginning to end is obviously affected by the absence of counsel for a criminal defendant." *Id.*

C. Palmer Was Deprived of His Right to Counsel

The trial court failed to adequately inform Palmer that his conduct would result in the loss of counsel, and Palmer's behavior did not rise to the level of extremely dilatory conduct. Therefore, we conclude that the trial court deprived Palmer of his right to counsel when it refused to appoint him an additional attorney.

1. Palmer Did Not Forfeit His Right to Counsel

Forfeiture of the right to counsel requires a defendant to have engaged in "extremely dilatory" conduct.[3] *City of Tacoma v. Bishop*, 82 Wn. App. 850, 859, 920 P.2d 214 (1996). Forfeiture results in the loss of the right to counsel regardless of whether the court has warned the defendant of the consequences of their misconduct or the risks of proceeding without counsel. *Id.* Conduct that prevents an attorney from preparing a defense may constitute "'extremely dilatory conduct.'" *In re Dependency of E.P.*, 136 Wn. App. 401, 405-406, 149 P.3d 440 (2006) (internal quotation marks omitted) (*In re Welfare of G.E.*, 116 Wn. App. 326, 334, 65 P.3d 1219 (2003)). While *E.P.* discussed the right to counsel in a dependency context, the legal principles apply here.

In *E.P.*, a mother was appointed two different attorneys to represent her in her child's dependency hearing. 136 Wn. App. at 403-04. The first attorney withdrew after the mother failed to communicate. *Id.* The second attorney withdrew for the same reason and argued that he had no information on how the mother wished to proceed so he could not represent her. *Id.* at 404. After the mother failed to show up for the hearing, the family court terminated her parental rights. *Id.* at 404. On appeal, the mother argued that she was denied the right to counsel. *Id.* The court determined that the mother's complete failure to communicate with her attorneys constituted

[3] A study of the authorities discussed herein shows that "extremely dilatory conduct" under the *forfeiture* theory is distinct from both *voluntary waiver*, and separately, "dilatory tactics and misconduct" under the *waiver by conduct* theory.

extremely dilatory conduct. *Id.* at 406. Further, the court ruled that she had forfeited her right to counsel because of her extremely dilatory conduct. *Id.*

A defendant also engages in extremely dilatory conduct when they are abusive or threatening towards their attorney. *United States v. Thomas*, 357 F.3d 357, 362-63 (3rd Cir. 2004). In *Thomas*, the court found that the defendant had threatened to harm his attorney, tore up his correspondence, refused to provide the names of potential witnesses, hung up on him over the phone, and demanded that he file frivolous claims. *Id.* at 363. On appeal, the Third Circuit Court of Appeals determined that the defendant's threatening and abusive behavior constituted extremely dilatory conduct, resulting in his forfeiture of the right to counsel. *Id.*

Here, Palmer's behavior did not constitute extremely dilatory conduct. Palmer was clearly dissatisfied with all three of his appointed attorneys. Palmer's dissatisfaction resulted in several substitutions of counsel, which delayed his trial, as each substitution necessitated a continuance. However, while Palmer's conduct resulted in delays, the only support in the record that his conduct was *extremely* dilatory comes from his third attorney's comment that he feared for his personal safety. The State claims Palmer threatened his attorney, but the record does not support this assertion. The State references judicial findings but there are no such findings in the record before us. Because the record does not show that Palmer's behavior was threatening or abusive like the defendant's behavior in *Thomas*, or that he refused to communicate with his attorneys, like the mother in *E.P.*, we cannot conclude that Palmer engaged in extremely dilatory conduct. Consequently, we hold that Palmer did not forfeit his right to counsel. We next turn to voluntary waiver.

2. Palmer Did Not Voluntarily Waive his Right to Counsel

Voluntary waiver occurs when a defendant voluntarily decides to proceed without the assistance of counsel. *Faretta v. California*, 422 U.S. 806, 819-21, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); *State v. Madsen*, 168 Wn.2d 496, 503-04, 229 P.3d 714 (2010). To validly and effectively waive the right to counsel, the record must unequivocally demonstrate that the accused knowingly, intelligently, and voluntarily waived assistance of counsel. *Faretta*, 422 U.S. at 819-21. Nothing in the record before us demonstrates that Palmer expressly waived his right to counsel. We next turn to waiver by conduct.

3. Palmer Did Not Waive His Right to Counsel by Conduct

A defendant may also waive their right to counsel by conduct. *Stutzke*, 2 Wn. App. 2d at 937-38. Waiver by conduct occurs when the court advises a defendant of (1) the dangers of proceeding pro se as required for voluntary waiver, and (2) that the defendant will lose the right to counsel if they engage in *dilatory tactics or misconduct*. *Id.* at 937-38. This is notably distinct from "extremely dilatory conduct" under forfeiture.

The trial court failed to inform Palmer of the risks of proceeding pro se. The State asserts that the trial court informed Palmer that the third attorney would be his last assigned attorney. But, even assuming the trial court unambiguously told Palmer that it would not assign him another attorney (which we do not conclude here), the court did not warn Palmer of the risks of proceeding pro se. Without such warning, Palmer could not have waived his right to counsel by conduct. *See Stutzke*, 2 Wn. App. 2d at 937-38. We conclude accordingly.

4. Conclusion

The trial court erred in determining Palmer had waived his right to counsel and thereby violated this right by requiring Palmer to proceed pro se. The violation of Palmer's right to counsel is a structural error, and therefore, we reverse and remand for a new trial.

Although our holding regarding Palmer's right to counsel is dispositive, we address some additional issues which are likely to arise on remand.

II. RIGHTS OF CONFRONTATION, SELF-REPRESENTATION, AND PRESUMPTION OF INNOCENCE

Palmer argues that the trial court violated his confrontation right, his right to self-representation, and his right to the presumption of innocence by forcing him to question AD and PD through standby counsel, and by allowing AD and PD to face away from him while testifying. We agree that the trial court failed to conduct the analysis that was essential to ensure Palmer's rights were not violated.

A. The Trial Court Violated Palmer's Right of Confrontation, Right of Self-Representation, and Right to the Presumption of Innocence

Constitutional challenges are issues of law we review de novo. *Price*, 169 Wn. App. at 655-56. The confrontation clause states that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. CONST. amend. VI. In general, the confrontation clause reflects a preference for face-to-face confrontation that must occasionally give way to public policy and the necessities of a case. *State v. Foster*, 135 Wn.2d 441, 456-57, 957 P.2d 712 (1998). Washington's constitution provides a similar preference for face-to-face confrontation. WASH. CONST. art. I, § 22; *State v. Martin*, 171 Wn.2d 521, 531, 252 P.3d 872 (2011).

Under the Sixth Amendment to the United States Constitution, generally, a court may dispense with the usually preferred face-to-face confrontation for child witnesses in abuse cases: "[I]f the State makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant." *Maryland v. Craig*, 497 U.S. 836, 855, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990).[4] Violations of a pro se defendant's confrontation right may also violate such defendant's right to self-representation because how to confront a witness is an important strategic decision for a self-represented litigant. *See State v. Coristine*, 177 Wn.2d 370, 376, 300 P.3d 400 (2013) (recognizing that the Sixth Amendment guarantees a defendant's right to control important strategic decisions of their case).

It is well established that criminal defendants have a right to self-representation under the United States and Washington Constitutions. *State v. Curry*, 191 Wn.2d 475, 482, 423 P.3d 179 (2018). Courts must allow pro se defendants to control strategic decisions regarding their defense. *Id.* Even so, a court's order requiring standby counsel to question the complaining witnesses instead of the pro se defendant does not *automatically* violate their right of self-representation. *State v. Estabrook*, 68 Wn. App. 309, 317-18, 842 P.2d 1001 (1993) (emphasis added); *McKaskle v. Wiggins*, 465 U.S. 168, 174, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984). The court must ensure both that the defendant retains control over their defense and that the jury is not confused by standby counsel's participation. *McKaskle*, 465 U.S. at 178.

[4] *Craig* addressed a Maryland statute similar to RCW 9A.44.150, which allowed child witnesses to testify away from the courtroom via a one-way closed-circuit television.

Moreover, changes to courtroom procedures, like procedures for questioning witnesses, must comport with the protections of due process, thereby ensuring a fair trial. The presumption of innocence is an elementary component of a fair trial. *State v. Chacon*, 192 Wn.2d 545, 549, 431 P.3d 477 (2018). Courts must be "wary of a setting that impermissibly influences a jury's decision-making process and jeopardizes the presumption of innocence." *State v. Jaime*, 168 Wn.2d 857, 862, 233 P.3d 554 (2010). Modifications that jeopardize the presumption of innocence are prejudicial. *Id.* at 863-64. When a defendant challenges a court process by arguing that it violates their right to the presumption of innocence, we must determine whether the process presented an unacceptable risk that the jury's deliberation was based on impermissible factors. *Id.*

Here, Palmer argues that the trial court violated his confrontation right, his right to self-representation, and his right to the presumption of innocence by forcing him to question AD and PD through standby counsel, and by allowing AD and PD to face away from him while testifying.

In order to modify courtroom procedures to prevent a face-to-face confrontation between a witness and the defendant, a trial court is required to analyze why such changes are necessary and what impact they will have on the defendant's rights. *See Craig*, 497 U.S. at 855; *McKaskle*, 465 U.S. at 178; *Jaime*, 168 Wn.2d at 862. But such an analysis does not appear in the record. Absent an analysis, the trial court was constitutionally prohibited from modifying its courtroom procedures in the manner it did.

III. RIGHT AGAINST SELF-INCRIMINATION

Palmer argues that the State violated his right against self-incrimination when it solicited comments from Ramirez at trial about Palmer's decision to remain silent. We agree.

A. Standard of Review

Palmer challenges the constitutionality of the State's eliciting witness comments on Palmer's post-arrest silence. We review such challenges de novo. *Price*, 169 Wn. App. at 655-56.

B. Legal Principles

The Fifth Amendment to the United States Constitution states that no person "shall . . . be compelled in any criminal case to be a witness against himself." U.S. CONST., amend V. The Washington Constitution contains a similar provision: "[n]o person shall be compelled in any criminal case to give evidence against himself." WASH. CONST., art. I, § 9. Washington courts have interpreted both provisions to provide the same protection. *State v. Easter*, 130 Wn.2d 228, 235, 922 P.2d 1285 (1996).

The right against self-incrimination prohibits the State from eliciting comments from witnesses about the defendant's pre- or post-arrest silence. *Id.* at 236. The State may also not suggest the defendant is guilty because they chose to remain silent, because the assurance of *Miranda* is that remaining silent will not be penalized. *Id.*

C. Analysis

Here, the State unequivocally elicited a comment from Ramirez about Palmer's decision to remain silent. The State asked Ramirez if he had spoken to Palmer after Palmer's arrest and overnight confinement. Ramirez testified, "I went back the next morning, thinking that, you know, a day sitting in the county jail, you know, there's some time to think, and maybe Mr. Palmer would want to do the right thing here." RP (July 5, 2018) at 75. Ramirez further testified that he told Palmer, "You've had some time to think. Do you want to talk?" and that Palmer responded that he did not want to talk. RP (July 5, 2018) at 75.

Ramirez's testimony was a comment on Palmer's right to remain silent. *See Easter*, 130 Wn.2d at 236. More pointedly, contrary to *Easter*, the State suggested that Palmer was guilty due to his silence. *See Id.* Indeed, Ramirez testified that Palmer remained silent after being given a chance to "do the right thing" by admitting criminal conduct. RP (July 5, 2018) at 75. This statement presupposed Palmer's guilt and created an impossible choice: Palmer could either do right by confessing to molesting a child or do wrong by remaining silent. Implicit in the "silence equals wrongfulness" notion is that silence withholds the "truth"—that "truth" being one's criminal conduct, *even if there was no criminal conduct.* In this context, a defendant cannot maintain their presumption of innocence by remaining silent. A detective's belief on this front may assist with their investigative duty, but established authority prohibits using a defendant's right to remain silent to suggest guilt to the jury. *Easter*, 130 Wn.2d at 236. Alone, this violation may warrant reversal and a new trial. However, because we reverse on other grounds, we remind the State that it is forbidden from eliciting comments about Palmer's silence during his new trial.

SAG

Palmer raises five grounds in his SAG, contending that each error requires dismissal of his convictions with prejudice. First, Palmer argues that the State violated attorney-client privilege by taking his discovery notes intended for his counsel's review and by reading through them. Second, Palmer argues that the State violated the *Brady*[5] rule by failing to provide exculpatory or impeaching evidence for his defense. Third, Palmer argues the court erred by denying him fair bail and by failing to impose the least restrictive conditions for pretrial release. Fourth, he contends that his right to a speedy trial was denied. And fifth, he requests a reversal of his convictions based on the cumulative error doctrine.

[5] *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

We hold that none of Palmer's SAG arguments warrant a reversal or dismissal of his convictions because they are either not supported by the record, were not properly raised below in the trial court, or fail on the merits.

I. GROUND 1—ATTORNEY-CLIENT PRIVILEGE

Palmer argues that the State violated attorney-client privilege by taking his discovery notes intended for his counsel's review and reading through them, which requires dismissal of his convictions with prejudice. We decline to address the issue.

A SAG should refer only to documents that are contained in the record on review. RAP 10.10(c). We will not search the record for support of a defendant's claims. RAP 10.10(c).

Here, the record before us does not support Palmer's contention that, when he reviewed discovery and tried to mail his notes to his counsel, the State took his notes and read through them, which violated attorney-client privilege. We need not search the record for support of his claims. RAP 10.10(c). Accordingly, we decline to address the issue.

II. GROUND 2—ALLEGED *BRADY* VIOLATIONS

Palmer argues that the State violated the *Brady* rule by failing to provide exculpatory evidence for his defense, which requires dismissal of his convictions with prejudice. We disagree.

A. Legal Principles

There are three components to a *Brady* violation: (1) the evidence at issue must be favorable to the accused, because it is either exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must be material, meaning that the evidence must have resulted in prejudice to the accused. *State v. Sublett*, 156 Wn. App. 160, 200, 231 P.3d 231 (2010). If a defendant fails to demonstrate any of the three elements, the *Brady* claim fails. *Id.* at 200-01. "Prejudice occurs 'if there is a reasonable

probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Id.* at 200 (quoting *Strickler v. Greene*, 527 U.S. 263, 280, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)).

"'A *Brady* violation does not arise if the defendant, using reasonable diligence, could have obtained the information at issue.'" *Sublett*, 156 Wn. App. at 200 (internal quotation marks omitted) (quoting *In re Pers. Restraint of Benn*, 134 Wn.2d 868, 916, 952 P.2d 116 (1998)). In reviewing a *Brady* challenge on direct review, we can consider only matters demonstrated by the trial record. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

B. Analysis

First, Palmer argues that the State violated the *Brady* rule because it failed to produce the substance of AD's, PD's, and DD's oral statements in their May 19, 2017 interview. We disagree.

Here, Palmer fails to show a *Brady* violation with respect to PD's statements because he admits that the State provided PD's statements before trial. Thus, there was no suppression by the State either willfully or inadvertently.

With respect to AD's and DD's statements in the May 19, 2017 interview, their alleged statements are not part of the trial record. Thus, we cannot examine whether these statements were exculpatory or impeaching.

Second, Palmer argues that the State violated the *Brady* rule because it failed to produce "the AD scratch material." SAG at 12. More specifically, Palmer appears to contend that the State's failure to produce something he refers to as "the Holmes report" and associated photographs amounted to a *Brady* violation. SAG at 16. We disagree.

Palmer fails to demonstrate a *Brady* violation with respect to the AD scratch material because he fails to argue how the Holmes report or the scratch photos themselves were exculpatory or impeaching in anyway. Accordingly, this argument fails.

Third, Palmer argues that the State violated the *Brady* rule because it failed to produce "the Christmas video and photos from the protection order case." SAG at 12-13. We disagree.

Here, Palmer fails to demonstrate a *Brady* violation with respect to the Christmas video and photos because he could have obtained that evidence by using reasonable diligence. In fact, Palmer admits that "[he] gave copies of the video(s) to the [Grays Harbor County] court clerk and the commissioner who heard the protection order case." SAG at 21. Accordingly, this argument fails.

III. GROUND 3—DENIAL OF FAIR BAIL AND LEAST RESTRICTIVE CONDITIONS OF RELEASE

Palmer argues the court erred by denying him fair bail and by failing to impose the least restrictive conditions of pretrial release as required by CrR 3.2(c). He seeks dismissal under CrR 8.3(b). We decline to address the issue.

A defendant cannot raise an issue for the first time on appeal unless it is a "manifest error affecting a constitutional right." RAP 2.5(a)(3). "Application of RAP 2.5(a)(3) depends on the answers to two questions: '(1) Has the party claiming error shown the error is truly of constitutional magnitude, and if so, (2) has the party demonstrated that the error is manifest?'" *State v. Grott*, 195 Wn.2d 256, 267, 458 P.3d 750 (2020) (quoting *State v. Kalebaugh*, 183 Wn.2d 578, 583, 355 P.3d 253 (2015)). To be manifest error under RAP 2.5(a)(3), the defendant must show "'actual prejudice.'" *State v. O'Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009) (quoting *State v. Kirkman*, 159 Wn.2d 918, 935, 155 P.3d 125 (2007)).

Here, the State requested bail in the amount of $50,000 in pretrial proceedings and asked the court to deny Palmer's request to be released on his personal recognizance, which the court granted. Palmer raised no issue with the bail amount and only raised issue with release conditions insofar as geography was concerned. Because Palmer did not raise the issues he now complains of in the trial court, and because Palmer does not argue the issue constitutes manifest constitutional error, we refuse to consider his claims under RAP 2.5.

But even if we reached the issues that Palmer complains of, they are moot. An appeal is moot if "the matter is 'purely academic' such that the court cannot provide effective relief." *Ctr for Biological Diversity v. Dep't of Fish & Wildlife*, 14 Wn. App. 2d 945, 985, 474 P.3d 1107 (2020) (quoting *City of Sequim v. Malkasian*, 157 Wn.2d 251, 258, 138 P.3d 943 (2006)). Here, we cannot provide Palmer with effective relief for pretrial incarceration or bail issues, so the issue is moot. Thus, this argument fails in any event.

Palmer also briefly contends that the prosecutor committed prejudicial misconduct by requesting bail in the amount of $50,000 based on the severity of the charges pending against him. We decline to address the issue.

"'In order to establish prosecutorial misconduct, a defendant must show that the prosecutor's conduct was both improper and prejudicial in the context of the entire record and the circumstances at trial.'" *State v. Slater*, 197 Wn.2d 660, 681, 486 P.3d 873 (2021) (internal quotation marks omitted) (quoting *State v. Magers*, 164 Wn.2d 174, 191, 189 P.3d 126 (2008) (plurality opinion)). "However, 'failure to object to an improper remark constitutes a waiver of error unless the remark is so flagrant and ill intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury.'" *Id.* (quoting *State v. Russell*, 125 Wn.2d 24, 86, 882 P.2d 747 (1994)).

Here, Palmer cites no case law finding prosecutorial misconduct in the context of pretrial proceedings. Regardless, Palmer failed to object to the requested bail amount and fails to show how the State's requested bail amount was improper, flagrant, or ill-intentioned, especially in light of the severity of the charges pending against him. We decline to further address the issue.

IV. GROUND IV—SPEEDY TRIAL

Palmer argues that the trial court violated his constitutional right to a speedy trial by continuing the trial date on multiple occasions. However, although Palmer is not required to cite to the record, the continuance orders he references do not appear to be in the record on appeal. We are not obligated to search the record in support of claims made in Palmer's SAG. RAP 10.10(c); *State v. Thompson*, 169 Wn. App. 436, 493 n.195, 290 P.3d 996 (2012).

We note that Palmer admits that he waived his speedy trial rights three times. On this record, however, we are unable to review Palmer's speedy trial argument.

V. CUMULATIVE ERROR

Palmer appears to contend that the cumulative error doctrine warrants reversal of his convictions. "Under the cumulative error doctrine, a defendant may be entitled to a new trial when cumulative errors produce a trial that is fundamentally unfair." *State v. Emery*, 174 Wn.2d, 741, 766, 278 P.3d 653 (2012). Based on the arguments we address, Palmer fails to show cumulative errors requiring reversal of his convictions with prejudice. Accordingly, this argument fails.

We hold that none of Palmer's SAG arguments warrant a reversal of his convictions because they are either not supported by the record, were not properly raised below in the trial court, or fail on the merits.

CONCLUSION

We conclude that the trial court committed reversible error by denying Palmer his right to counsel. However, we conclude that none of Palmer's SAG arguments warrant a reversal or dismissal of his convictions with prejudice. We reverse the convictions and remand to the trial court for a new trial.[6]

Veljacic, J.

We concur:

Worswick, P.J.

Lee, J.

[6] On the eve of oral argument, Palmer filed a supplemental designation of clerk's papers with our court. We will treat this designation of clerk's papers as a motion to supplemental the record. We deny the motion and place the clerk's papers in the court file without action.

APPENDIX

2

Filed
Washington State
Court of Appeals
Division Two

November 7, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MICHAEL LEON PALMER, Appellant.	No. 52362-1-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Michael Leon Palmer, by and through his attorney, moves this court for reconsideration of the court's October 11, 2022 published opinion. After consideration, we deny the motion. It is

SO ORDERED.

Panel: Jj. Worswick, Lee, Veljacic

FOR THE COURT:

Veljacic, J.

APPENDIX

3

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

STATE OF WASHINGTON Respondent, v. MICHAEL LEON PALMER, Appellant.	)	No. 52362-1-II MOTION FOR RECONSIDERATION

A. IDENTITY OF MOVING PARTY AND RELIEF SOUGHT

Michael Palmer, the appellant, respectfully asks this Court to reconsider its decision issued on October 11, 2022. Specifically, Mr. Palmer asks this Court to reconsider the portion of its decision that denied Mr. Palmer's request to accept a supplemental designation of clerk's papers and, relatedly, declined to address some of Mr. Palmer's claims in his statement of additional grounds on the basis that the record was inadequate.

B. GROUNDS FOR RELIEF AND ARGUMENT

Based on several constitutional errors, this Court in a decision issued on August 19, 2021 reversed Mr. Palmer's convictions and remanded for a new trial. Mr. Palmer agreed with this decision, but he filed a motion to reconsider because this Court did not address Mr. Palmer's statement of additional grounds. The remedy for several of Mr. Palmer's claims in his pro se statement was reversal and dismissal of the prosecution with prejudice—a better remedy than a new trial.

Mr. Palmer also asked this Court to reconsider a ruling in its decision that denied a supplemental designation of clerk's papers that was belatedly filed on February 22, 2021. This designation was intended to have been prepared and filed in October 2019. But due to a mishap by counsel and his staff, this designation was not prepared and filed. Counsel noticed the error while preparing for oral argument.

This Court granted the motion to reconsider, withdrew its opinion, and issued a new opinion on October 11, 2022. In the

new opinion, the Court addressed Mr. Palmer's statement of additional grounds. Slip op. at 15-19. However, the Court was unable or declined to address several grounds because the record was inadequate. On one ground, the court noted that the record on appeal did not appear to contain documents that Mr. Palmer referred to. Slip op. at 19. The Court also adhered to its ruling denying the supplemental designation of clerk's papers, which contained documents referred to or cited by Mr. Palmer in his statement of additional grounds. Slip op. at 20 n.6.

Mr. Palmer asks this Court for reconsideration. A motion for reconsideration "should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised." RAP 12.4(c). Although Mr. Palmer already filed a motion to reconsider, this motion is proper because this Court withdrew its earlier opinion and filed a new opinion that adversely affects Mr. Palmer. RAP 12.4(h).

Mr. Palmer has the right to the effective assistance of counsel on appeal. Evitts v. Lucey, 469 U.S. 387, 396, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985); State v. Rolax, 104 Wn.2d 129, 135, 702 P.2d 1185 (1985). Effective assistance includes counsel providing the appellate court an adequate record for the appeal. See State v. Koss, 181 Wn.2d 493, 503, 334 P.3d 1042 (2014) (appellant bears the responsibility to provide a record to support claimed errors); State v. Tilton, 149 Wn.2d 775, 781, 72 P.3d 735 (2003) (defendants have a right to record of sufficient completeness on appeal); State v. Leeloo, 94 Wn. App. 403, 407, 972 P.2d 122 (1999) (before appointed counsel on appeal can move to withdraw, counsel must review and provide court with "records of any proceedings that could contain appealable errors").

In this case, counsel did not raise the issues Mr. Palmer presents in his statement of additional grounds. But to facilitate consideration of Mr. Palmer's additional grounds, counsel attempted to submit additional portions of the trial record to this

court. Due to an oversight, staff did not prepare and file the designation. Counsel failed to notice the error until shortly before oral argument.[1]

To reiterate, this Court declined to consider some of the grounds presented by Mr. Palmer in his pro se statement because the record provided did support the grounds. E.g., slip op. at 19 (stating that continuance orders referred to by Mr. Palmer do not appear to be in the record on appeal and that on this record, court is unable to review Mr. Palmer's speedy trial argument).

But this may be due to counsel's failure in not designating the complete trial record. The omitted documents may have supported Mr. Palmer's additional grounds. If so, this Court might have considered the grounds on the merits, found them meritorious, and ordered dismissal with prejudice. Under

[1] These facts are supported in the attached declaration.

this scenario, counsel's failure to provide this Court with the complete record was ineffective.

For these reasons, Mr. Palmer asks that this Court accept the supplemental designation[2] and for reconsideration of his statement of additional grounds.

C. CONCLUSION

Mr. Palmer respectfully requests this Court accept the supplemental designation and reconsider his statement of additional grounds. Following this reconsideration, he asks that the Court order dismissal of the prosecution with prejudice.

This document contains 885 words, excluding the parts of the document exempted from the word count by RAP 18.17

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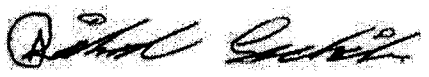
[2] This Court has the authority to extend the time for a filing. RAP 18.8(a). RAP 1.2(a) calls for this Court to liberally interpret its rules in order to promote justice and facilitate the decision of cases on the merits. Weeks v. Chief of Washington State Patrol, 96 Wn.2d 893, 639 P.2d 732 (1982). The Court also has authority to waive or alter the provisions of the rules in order to serve the ends of justice. RAP 1.2(c).

Respectfully submitted this 19th day of October, 2022.



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INMATE

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Transmittal Information

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APPENDIX

4

No. 52362-1-II

Court Of Appeals Of The State Of Washington
Division Two

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

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

Statement of Exceptional Case:

My case has several factors that set it apart:

A. Motive To Lie And Motive For Governmental Misconduct-

A.1 At the time of my arrest I was involved in three legal actions involving-AD, PD, Deanna Drummond ("Deanna"); Grays Harbor County ("GHC") Child Protective Services; GHC Sheriff's personel ("Sheriff")- in an effort to protect my son LP and myself from their wrongdoing.

A.2 Those legal actions were: (1) a "founded" challenge from the 2015 GHC Dependency of LP, No 15-7-00229-0 (CP 313§E, 7-6-18 Ex 11 pg 10 ¶1); (2) the protection order involving LP, GHC No 17-2-00133-0 (7-6-18 Ex 11, pgs 1, 2); and (3) the King County Dependency of LP, No 17-7-00885-9 KNT (CP 292§I, CP 314§K).

A.3 Those legal actions would have documented and exposed GHC CPS and Sheriff participation in multiple criminal activities including: conspiracy to commit, being accomplices to, and/or actual commission of: auto theft, perjury, witness tampering, falsification of documents, obstruction of justice, failure to investigate, the abuse of my son by starvation, and the cover-up of said abuse. CP 288-292; CP 311-314; 7-6-18 Ex. 11 pgs 10§(d), 1§§1, 2, 2§§4, 7, 9¶s 5-7; 1-26-18 VRP pg 56. RCW's 26.44.160, 26.44.050, 9A.04.050, 9A.16.090. Federal Rules of Evidence, rule 414§(d)(4).

A.4 Some people who were directly involved in the criminal acts listed in section A.3 were directly involved in my investigation and arrest on the false criminal charges; for example, Carrie Quail.

A.5 My arrest was specifically timed to block me from attending court for No. 17-7-00885-9 KNT on 3-30-17. (I also now have solid evidence from King County CPS that GHC Sheriff members asked CPS to commit fraud upon the

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

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

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

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

A.8 AD clearly exhibits his fear that Sheriff staff is there to arrest his mother. 1-6-18 Ex 24 pg 2. PD indicates that she does not want to get everyone in trouble because she knows I am not a friend and they are in danger from me. CP 54192.

B. Evidence Of Coaching And Witness Tampering

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

C. Autism Affects And Explains Everything

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

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

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

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

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

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

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

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

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

D. Prejudice Presumed And Uncurable

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

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

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

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

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

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

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

E. Sleep And Self-Defense

E.1 As noted in Section C.7, the alleged molestation has a scientific basis in autism (hence the absolute need for expert witnesses) and I was asleep or returning to sleep during the three instances when I was grabbed; therefore I was legally "physically helpless" (RCW 9A.44.010(5); WAC 132C-285-130(3); State v Puapuage, 54 Wn App 857, 776 P2d 170 (Wash. App. 1989); State v Mohamed, 175 Wn App 45, 301 P3d 504 (Wash App 2013)) and the legal victim which gave me the absolute right to act in self-defense of myself and LP and AD who had also been targeted or touched, by PD, in the genitals (section C.7; 7-6-18 Ex 13 pg 4 of 4 [labled DS9]; 7-6-18 Ex 7 pgs 15-16). Furthermore, in a state of sleep, I had no ability to form the requisite intent and there was no culpable mental state (State v Brockob, 159 Wn 2d 311, 332, 150 P3d 59 (Wash 2006). The momentary contact I made with PD was justifiable under self-defense.

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

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

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

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

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

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

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

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

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

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

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

communications examined.

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

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

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

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

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

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

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

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

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

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

Ground 2- Brady Violations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.16 a venue change on AD's charge would have benefited my defense as: (1) the court in G-HC had already denied me the presumption of innocence; (2) a venue change would have severed a charge and reduced the inherent and uncurable prejudice from joined charges like mine (see Statement of Exceptional Case, section D); (3) allowed a designation of event charged (CP 156) so the defense could focus on just one provably false allegation; (4) provided me with additional counsel in Thurston who might have actually sought the missing Brady evidence, CPS and medical records, witnesses and expert witnesses; (5) obtained expert witness funds which G-HC denied (6-26-18 VRP pgs 281-284) to verify Deanna's autism and no evidence of strangulation medically which was key to my defense and creating reasonable doubt (see generally Brown v Myers, 137 F3d 1154, 1158 (9th

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

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

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

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

2.19 The scratch photos were critical to the defense; because: (1) it shows a plausible expanation for the "long lasting" allegation (7-6-18 Ex 10 pgs E2-E3), the basis for the RCW 9A.36.041 charge, as a medical expert could have testified that due to the location of the scratch, at the shoulder/neck junction, it was subject to reinjury and agrivation from clothing collars and neck movement (see 7-6-18 Ex 24 photos) especially when the mother refused to treat and protect the scratch (7-6-18 Ex 10 pg E5, bottom); (2) a medical expert could have also testified that scratchs do not grow-as indicated by Holmes report which indicates that the scratch: started as one inch wide and two inches long, then shrank to a half inch long, then grows to 55 millimeters long (7-6-18 Ex 24 pgs 2-3)- unless they are tampered with and AD names a tampering suspect "Cliff did it." (7-6-18 Ex 25 pg 8); (3) a medical expert for the defense could have testified that, based on location, the scrach could not have occured due to the alleged double handed strangulation (7-6-18 Ex 25 pgs 8-9) as my pinky fingernails are not wide enough to match the scratch width; and (4) a medical expert for the defense could have testified that based on the location of the scratch there would have been significant trauma to internal structures of the neck in order to cut off air flow as described by AD (7-6-18 Ex 7 pg 8) and voice, trauma that should have included damage to the cartilage of the trachea (wind pipe), esophogas, thyroid, larynx's (vioce box) horns-cornu, and/or hyoid bone as well as petechiae (eye and facial hemorrhaging) and damage and hemorraging to the strap muscles and muscles linking the cricoid cartilage rings (see generally State v Roman, COA 44325, 93 (July 8 2014) reported

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

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

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

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

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

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

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

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

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

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

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

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

2.28 Irreparable Injury- The failure of the State to

provide Brady material combined with the passage of time has resulted in irreparable injury from: (1) the loss of exculpatory evidence, most notably the medical evidence that could have created reasonable doubt about the strangulation allegations, supported expert testimony for the defense, and impaired the credibility of AD, PD, and Deanna; (2) the "dimming memory" issues that are known to result of the passage of time, which can rarely be shown, as AD, PD, Deanna, CPS, Holmes, and many others (see witness list CP 204-211) would have to go back as far as 2015 and remember very specific details of events that happened, which makes it impossible for the defense to adequately prepare which skews the fairness of the entire system. See State v Ross, 8 WnApp 928, 441 P3d 1254, 1267-1268 (Wash 2019); Doggett v US, 505 US 647, 654, 112 SCt 2686 (1992).

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

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

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

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

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

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

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

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

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

(CP 199-213 and sections 3.4-3.7 for detailed damages and witnesses I was not able to contact) which also denied me my constitutional rights to compel and confront witnesses (US Const amend. 6; Wash Const. art1§22); Speedy Trial due to the hampering of my defense preparation, the denial of usable discovery until shortly before trial (Supp CP Sub#134; 6-21-18 VRP pgs 2-7), and the State creating a false allegation of a threat by me against my attorney, Mr Mistachkin, which allowed him to withdraw against my wishes which was only possible due to my pretrial incarceration (see Brief of Respondant pg 5; section 3.5(5) ;and disability accommodations as requested under the ADA (see Supp CP Sub#s 64,65; CP 274-276).

3.2 Relevant Factors For Release- My relevant factors for release were:(1) No Criminal Violent History - I have no criminal history (CP 554); (2) No Protection Order Violations - A protection order for AD, PD, and Deanna had been in place since 3-1-17 based on allegations similar to the criminal charges (see GHC cause 17-2-133-0 referenced in 7-6-18 Ex 11 pg1; 7-6-18 Ex 23 pg 20; Statement of Exceptional Case section A.2). I had not fled, violated the protection order, or harmed anyone. I had shown up for court and filed a response declaration with exhibits (7-6-18 Ex11).; (3) Location And Family - I lived in King County, three counties away from AD, PD, and Deanna, in a travel trail at my sisters house while I was going to college. All of my close family and support network were in Washington were I had lived for about 22 years (Supp CP Sub#7). I maintained no out of state contacts.; (4) My Son- My son was the only surity needed as he is: "more precious than any property right" (Stantosky v Kramer, 455 US 745, 758-759 (1982)) and "more precious ... than the right to life itself" (

In re Welfare of Luscier, 84 Wn2d 135, 137, 524 P2d 906 (Wash 1974)). My right to the control and custody of my child is fundamental and sacred (Moore v Burdman, 84 Wn2d 408, 411, 526 P2d 893 (Wash 1972) and I was engaged in three legal battles to get him out of fostercare and protect him from PD, Deanna, and GHC CPS who have all abused him (see CP 312-313; Statement of Exceptional Case sections A and C). I was not going anywhere and I was not going to do anything criminal as that would endanger my custody of my son.; (5) State Dependency - The State of Washington was providing my: income - TANF (Supp CP Sub#5, 7-6-18 Exll pg 3), Food - SNAP (Supp CP Sub#5), College Expenses - Welfare to Work retraining (CP 117), Business Startup - Div. of Vocational Rehabilitation self-employment program (CP 117-121, CP 386), Disability Accommodations - Dept. of Labor and Industries (CP 274), Medical Insurance - Apple One (CP 332), and Business Licensing - Dept. of Licensing real estate broker, social business, and ride sharing (CPs 117, 361-362, 385; 7-6-18 Exll pg 11).; (6) Medical - Short of death, my faith requires naturopathic medical treatment and Bastyr has the only naturopathic cardiologist that I know of. Plus, I am dependant on the State to pay for very expensive medication and treatment for my heart disease, high blood pressure, and diabetes. (CPs 119, 274, 332, 378).; (7) Appearance History - I had a perfect appearance history for Court from business, dependency, and protection order cases (see Statement of Exceptional Case section A.2 noting some cases).; (8) Alternative Legal Explanations - There were legal alternate explanations for the alleged criminal acts (see Statement of Exceptional Case sections C.6-C7, E1; (9) Deanna's and PD's History Of False Allegations And Perjury - I could show a history of false allegations from PD and Deanna and perjury for

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

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

3.4 Damage To My Life - The oppressive pretrial incarceration did extensive damage to my and my sons life: (1) I lost custody and all contact with my son (CP 82) and he was again endangered and abused by GHC CPS, PD, and Deanna (GHC Dependency of LP 19-7-00060-1-4) because I could not fight the civil cases while in jail as the Sheriff staff blocked my access to the NW Justice Project attorney for the founded case and the SCRAP attorney, Daewoo Kim, for the dependency No. 17-7-00885-9 KNT (CP 314).; (2) I lost the ability to seek justice from GHC CPS and foster parents for the abuse of my then 3 month old son by starvation in the 2015 dependency (CP 312-313; 7-6-18 Ex II pg 105 d).; (3) I lost

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

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

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

and hand disability render me unable to effectively punch or block and the adrenaline surge from a physical fight would cause a significant increase in heart rate, blood platelets, and blood pressure which could literally kill me (CP 277). I would have certainly sworn under oath that I had no intent to physically harm Mr. Mistachkin; but, I never got that chance as no one informed me of the allegation. It was all handled in chambers and sidebar, thus denying me my constitutional right to be present and have open justice (State v Irby, 170 Wn 2d 874, 880-881, 246 P3d 796 (2011); US Const. amends. 6, 14; Wash Const 3, 22, 10), and due process when critical situations (counsel) and/or issues involving dispated facts occure (the assault threat allegation)(Id., In re Pers. Restraint of Lord, 123 Wn2d 296, 306, 868 P2d 835 (1994)) and/or when my presence would contribute to the fairness of the procedure (State v Love, 183 Wn 2d 598, 608, 354 P3d 841 (2014), cert denied, 136 SCt 1528 (2016); US Const. amends 6, 14; Wash. Const. art 1 §§ 3, 22, 10). The State made up this allegation just like it made up the allegation that I had all the discovery in my cell (Ground 1 sections 1.2-1.3, 1.9) both of which were "intentional device[s] to gain tactical advantage over the accused." (quoting US v Marion, 404 US 307, 324, 92 SCt 455 (1971)). [I will fully address ineffective assistance in future legal actions if needed.]

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

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

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

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

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

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

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

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

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

3.12 Wash. Const. art I §20 and RCW 10.21 - Under Artical I §20

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

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

3.14 Critical Stage - My initial appearance was a critical stage, requiring counsel, based on: (1) I was confronted by both the procedural system and an expert adversary and needed "aid in coping with legal problems" as I knew nothing of CrR 3.2, RCW 10.21, or Artical 1§20 and I needed assistance in meeting [my] adversary." (US v Ash, 413 US 300, 310, 313, 37 LEd2d 619 (1973); (2) "Significant consequences for the accused [me]" resulted

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

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

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

unfair as it results in pretrial confinement for no other reason than the size of ones wallet, violating equal justice (Bearden, 461 US at 665) and severly damages a defendants ability to prepare a defense (Barker, 407 US at 532-533; Harris, 171 Wn 2d at 468) thereby denying them a complete defense, confrontation, the ability to compel, and a fair trial.

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

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

3.19 The prosecutor, as a representative of the sovereign State has a duty to ensure my constitutional rights are not violated (State v Ollivier, 178 Wn 2d 813, 860, 312 P3d 27-28 (2012));

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.8 Delay Due To Court Congestion congestion is not a valid reason for a continuance under either time to trial or speedy trial and no prejudice analysis is required (State v Mack, 89 Wn 2d 788, 794, 576 P2d 44 (Wash 1978); State v Kenyon, 167 Wn 2d 130, 135-139, 216 P3d 1024 (Wash 2009)). It is clear that the courts in GHC were so overcrowded that the law library had to be removed to make way for an additional courtroom (4-10-18 VRP pg 198). It appears that my trial date of 8-8-17 was denied due to court congestion as the prosecutor

indicates "this is another one of those cases set on the 8th" (7-17-17 VRP pg 2 (duplicate pg 6); however, the court failed to make the required details of the congestion on the record (Kenyon, 167 Wn2d at 139). The prosecutor then makes a bad faith effort to delay my trial (McNeely v Blanas, 336 F3d 822, 826 (9th Cir 2003) (diligent good faith effort required)) by preventing trial on August 1st - 3rd by stating Det. Fritts is "on vacation until August 2nd," but failing to explain: (1) why he cannot testify on August 2nd or 3rd, and (2) why his testimony would be needed as he was only a witness to the forensic interviews (7-6-18 Ex 23 pgs 2, 6) which were also: witnessed by Det. Ramirez, Mike Clark, Carrie Quail, Debbie Rose, and Jessica Barragan (Id); video taped and recorded (7-6-18 Ex 23 pg 6); and transcribed. Furthermore, he was never called to testify at any hearing or trial (VRP's 1-26-18, 2-6-18, 7-3-18, 7-5-18, 7-6-18) - proving he was not an essential witness. The end result of the fiasco on 7-17-17 was that my trial date was pushed out until 10-17-17 (Supp CP Sub# 28) - three month after the hearing, 63 days past the last scheduled trial date, and 31 day past the last CrR 3.3 time for trial waiver of 8-30-17 (Supp CP Sub# 26). Furthermore, it was done by a written agreement of the parties that was not signed by me, thus violating CrR 3.3 (f)(1) and mandating dismissal in addition to the court congestion issue for speedy trial.

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

made for an interview (Supp CP Sub#'s 60,62) where PD alleges abuse by me by using Mike in Monsters, Inc to invent allegations and please her CPS interviewer, which goes to the veracity and credibility of PD and could be the basis for reasonable doubt. (Also violates CrR4.7(d)).

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

4.11 Failure To Investigate- Relating to section 4.10, the Sheriff failed in its manditory duty to make a complaint, investigate, and arrest (RCW 26.44.160; RCW 26.44.050; RCW 74.08.331; RCW 10.99.010; State v Twitchell, 61 Wn 2d 403, 408, 378 P2nd 444 (Wash 1963); RCW 36.28.010, RCW 36.28.011) concerning the

allegations in 7-6-18 Ex 11 (see 7-6-18 Ex 23 pgs 20-21) and my letter (1-26-18 VRP pg 56) which I believes also violates the law under RCW's 42.20.100 and 42.20.080. This denied me the ability to show the same issues listed in section 4.10 (1-2) and actually prevented a mitigating defense based on battered person syndrom and Cassandra syndrome which denied me the ability to present and prepare a complete defense and thus my right to a speedy trial as there was never a point where I could have prepared a complete defense without the information in Ground 2 sections 2.3 and the showings of perjury (State v McDaniel, 83 Wn App 179, 186-187, 920 P2d 1218 (1996) (perjury in related civil cases is allow as evidence in criminal cases)), motive, bias, planning, credibility, and the injection of personal interest into the enforcement process and prosecutions decisions which raises serious constitutional questions. (Bordenkircher v Hayes, 434 US 357, 365, 54 LEd 2d 604 (1978)) from the issues raised in 7-6-18 Ex11 and my letter. The failures by the State listed in Ground 2 and Ground 4 §§ 4.9-4.11 also denied me my rights to counsel, effective counsel, cumpulsory process, confrontation and cross-examination, and a fair trial as without the Brady, perjury, motive, bias, planning, and credibility- evidence none of those is meaningfully possible.

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

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

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

4.15 Failure To Appoint Viable Counsel - The court failed in its duty to make a diligent good faith effort to bring me to trial while also violating my rights to counsel, due process, equal protection, and fairness (RCW 10.101.005; CrR 3.1(b)) by failing to appoint counsel after Mr. Mistachkins withdrawal and then failing to verify that new counsel would represent me (Supp CP Sub#'s 85, 86-88, 91-94, 97) which resulted in nearly a month (2-14-18 to 3-9-18) without counsel or access to the courts thereby delaying speedy trial.

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

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

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

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

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

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

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

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

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

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

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

285, CP 329, CP 335). The one tool that I needed to do that was computer and internet access, which I sought and asked my counsel to seek (CPs 256, 268, 274-276(A-H), 305, 311, 314-314, 317, 318-320, 330-332, 335; 4-16-18 VRP pgs 12-14. (duplicate 177-179)).

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

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

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

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

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

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

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

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

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

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

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

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

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

Ground 5 - Cummulative For Dismissal

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

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

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

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

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

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

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

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

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

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

By: Michael Palmer
Michael Palmer
Appellant, Pro Se

APPENDIX

5

Grays Harbor County Sheriff's Office (360) 249-3711, (360) 532-3284, FAX (360) 249-3288	Case Number: 17-0140 Date of Report: 1/8/2017	Type of Report: **INITIAL REPORT**

Crime/ Incident **CHILD ABUSE**			RCW
HC ☐	Date of Incident 12/17/2016	Time 1230 hours	Baker Area 17
Location 22 MCCONKEY AVENUE		City MCCLEARY	State WA / ZIP 98557
Burglary Type Not Applicable	Entry Not Applicable	Restitution Form Attached ☐	Stolen Property Recovered ☐

↓ *Subject Code:* RP= Reporting Party V= Victim S= Suspect W= Witness I= Information

Code	Last Name	First Name	MI	Race	Gender	Date of Birth
RP	DRUMMOND	DEANNA	J	W	F	07/25/1976

Address	City	State	Zip Code
1612 WEST FIRST STREET	ABERDEEN	WA	98520
Mailing Address (if different)	City	State	Zip Code

Home Phone	Work or Other Phone	Employer	Driver's License Number	State
785-424-4581				

AKA / Other Identifiers / Spillman #	Height	Weight	Eye Color	Hair Color	Hair Length	Social Security Number

Primary Charge	Citation Number(s)

Date of Arrest	Time of Arrest	Court	Bail / PC	Warrant Number(s)

Code	Last Name	First Name	MI	Race	Gender	Date of Birth
V	DRUMMOND	ALBERT	M	W	M	10/07/2011

Address	City	State	Zip Code
1612 WEST FIRST STREET	ABERDEEN	WA	98520
Mailing Address (if different)	City	State	Zip Code

Home Phone	Work or Other Phone	Employer	Driver's License Number	State

AKA / Other Identifiers / Spillman #	Height	Weight	Eye Color	Hair Color	Hair Length	Social Security Number

Primary Charge	Citation Number(s)

Date of Arrest	Time of Arrest	Court	Bail / PC	Warrant Number(s)

Code	Last Name	First Name	MI	Race	Gender	Date of Birth
S	PALMER	MICHAEL		W	M	03/05/1966

Address	City	State	Zip Code
2907 South 360th	Federal Way	WA	98003
Mailing Address (if different)	City	State	Zip Code

Home Phone	Work or Other Phone	Employer	Driver's License Number	State

AKA / Other Identifiers / Spillman #	Height	Weight	Eye Color	Hair Color	Hair Length	Social Security Number

Primary Charge	Citation Number(s)

Date of Arrest	Time of Arrest	Court	Bail / PC	Warrant Number(s)

Vehicle Information ☐Suspect ☐Victim	License	State	Veh. Year	Make	Model	Style	Color

VIN	Impounded ☐	Tow Co.

ACT	INA/NL	UNF
CLEAR/ARREST		CLEAR/EXCEPTION
To Prosecutor for Charging ☐Scan ☐Copy		To Pros for Review ☐Scan ☐Copy
Follow-up To:		
Computer Entry	Copy to Others	To DC ☐1 ☐2

☒ Pictures Taken ☐ Video Taken

INVESTIGATING DEPUTY	ID #	REPORT REVIEWED BY	CASE NUMBER
			17-0140

ADDITIONAL

Drummond, Penelope M. 06/23/2007
1612 West First Street Aberdeen, WA 98520

Palmer, Leonidas E. 03/25/2015
2907 South 260th Federal Way, WA 98003

REPORTING DEPUTY

GHSO Jeremy Holmes, 1L23

NARRATIVE

On January 3rd, 2017, I was assigned day shift patrol duties for Grays Harbor County. I was provided a CPS referral regarding possible child abuse. Deanna Drummond has two children, Albert and Penelope Drummond. Deanna has a third child, Leonidas Palmer with Michael Palmer being the father.

It was reported that the family had been traveling to Olympia and Michael was driving. At one point, Michael became upset with Albert. Michael stopped the vehicle, reached back and grabbed Albert's shoulder. Michael shook Albert and yelled at him. This left a mark on Albert's Shoulder. The CPS report described the mark on Albert's shoulder to be a scratch that was approximately one inch wide and two inches long. After a couple weeks, CPS described the mark as measuring approximately an inch wide by a half of an inch.

I contacted Deanna at 22B McConkey Avenue in McCleary at approximately 1540 hours. Deanna had Albert and Penelope with her. Albert became afraid and thought I was going to arrest Deanna. I explained why I was there and spoke with Albert and Penelope. They explained that when Michael

watches them, he would "flick" them in the head when they were being annoying or to punish them. Penelope said Michael would even "bonk" her sometimes. She made a fist and hit the top of her head as she told me this.

Albert showed me his right shoulder. He said that was where Michael had grabbed him. I observed a very faint red mark. I took photographs for evidentiary purposes. The mark was approximately 5 millimeters wide and 55 millimeters long.

Deanna provided me a statement on the incident. She said on December 17th, 2016, Michael, Penelope, Albert, Leonidas and she were traveling to Olympia for a Christmas party. At one point during the drive, Albert did something to anger Michael. Michael pulled the vehicle over, reached back and grabbed Albert. Deanna said Michael was yelling at Albert and shook him. This caused Albert to cry. After the incident, Michael was in a "grumpy" mood.

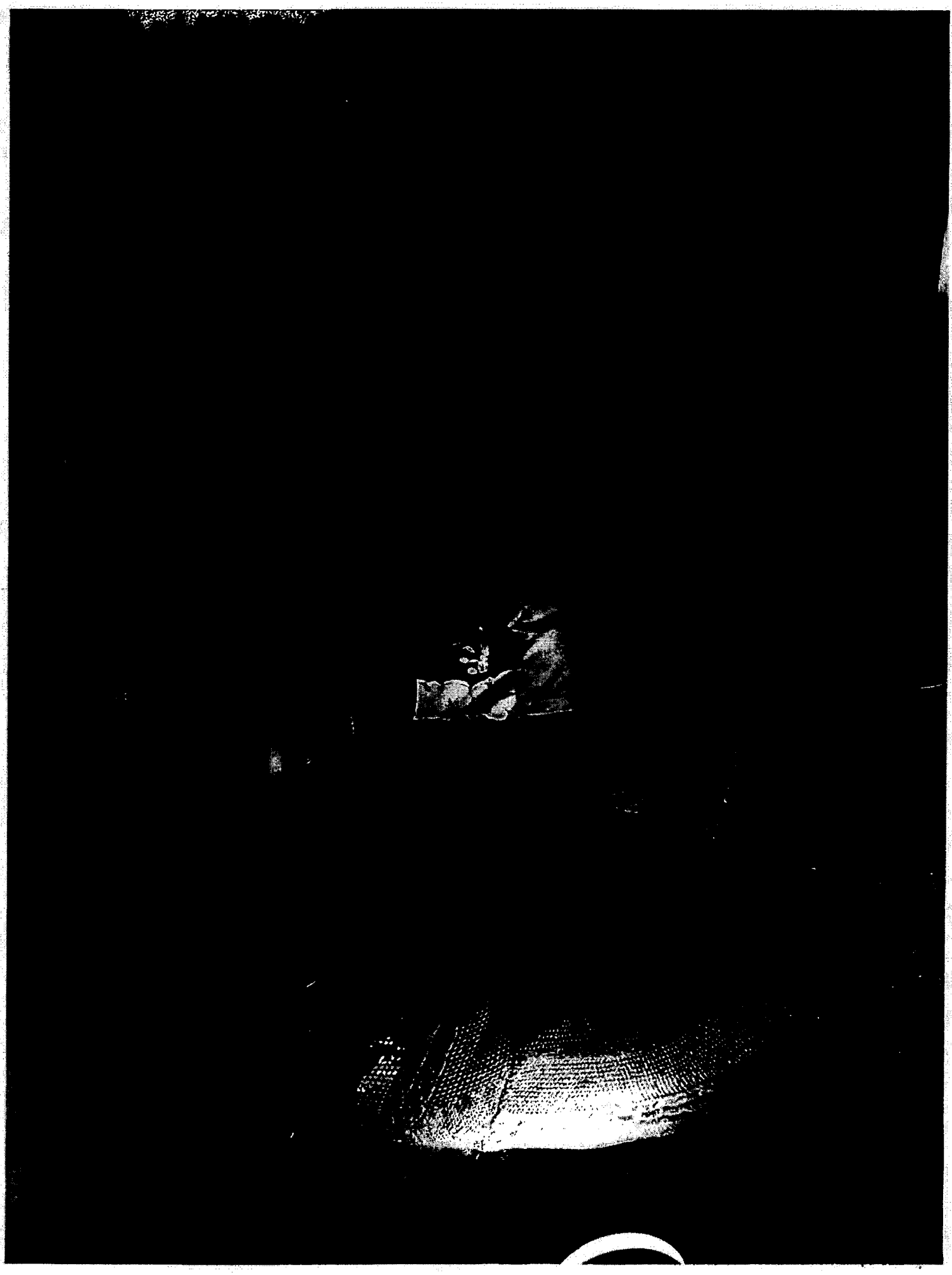
Deanna said she observed a mark on Albert's shoulder shortly after the incident. Deanna described the mark to be similar to that of a scrape. The skin was read and slightly raised. Deanna said she told Michael he left a mark on Albert. Michael apologized. Deanna said she was contacted by CPS shortly after the incident.

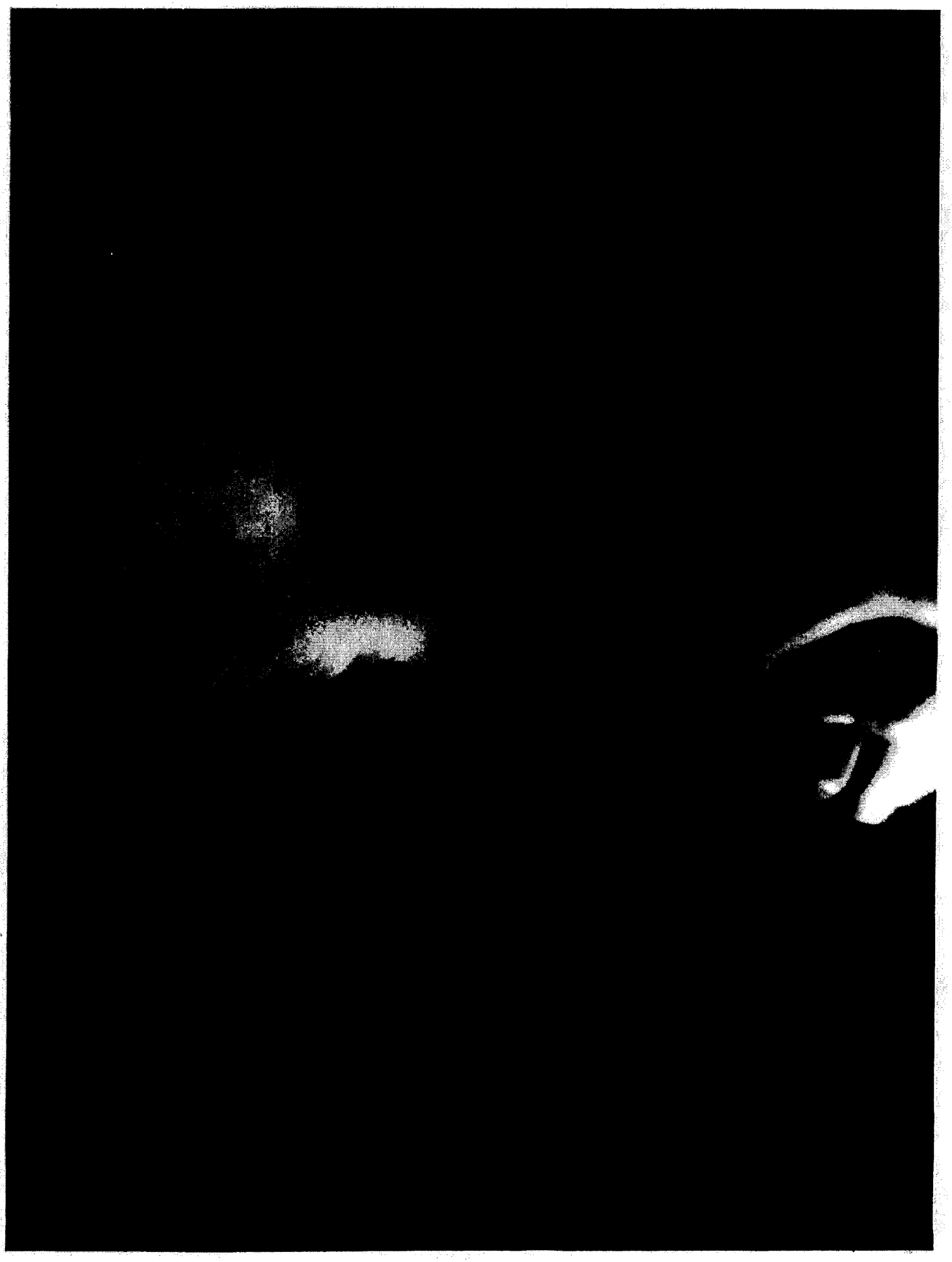
Deanna was curious what would happen now. She expressed concern because Michael was threatening to keep her from seeing Leonidas. I explained to Deanna that I would need to speak with Michael. Deanna said Michael was manipulative and would know what to say to avoid the situation. I provided my contact information to Deanna.

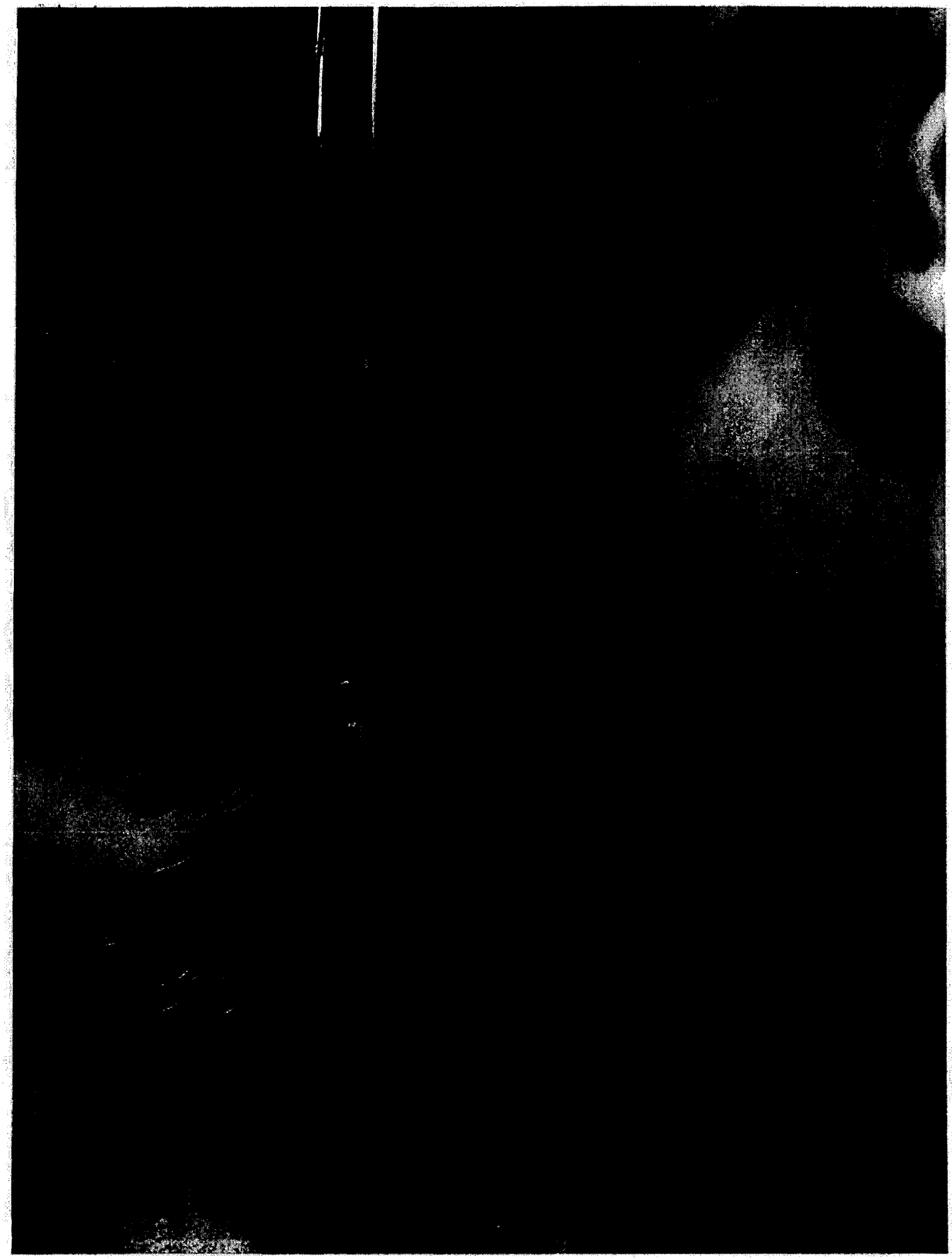
ATTACHED

Deanna Statement
CPS report

INVESTIGATING DEPUTY	ID #	REPORT REVIEWED BY	CASE NUMBER
			17-0140







GRAYS HARBOR COUNTY
CAUSE NO. 17-1-203-1
PLA/PET ID
DEF/RSP ID #24
EXHIBIT NO.
ADMITTED
OFFERED & REFUSED

APPENDIX

6

Grays Harbor County Sheriff's Office (360) 249-3711, (360) 532-3284, FAX (360) 249-3288	Case Number: 17-4158 Date of Report: 03-30-17	Type of Report: FOLLOW-UP

Crime/ Incident CHILD MOLESTATION 1ST DEGREE			RCW 9A.44.083
HC ☐	Date of Incident 2015-2017	Time hours	Baker Area 17
Location 22 MCCONKEY AVE #B		City MCCLEARY	State WA ZIP
Burglary Type Not Applicable	Entry Not Applicable	Restitution Form Attached ☐	Stolen Property Recovered ☐

↓ *Subject Code:* RP= Reporting Party V= Victim S= Suspect W= Witness I= Information

Code	Last Name	First Name	MI	Race	Gender	Date of Birth
RP/ V	DRUMMOND	DEANNA	JOY	W	F	07-25-1976

Address	City	State	Zip Code
1612 W 1ST ST	ABERDEEN	WA	98520
Mailing Address (if different)	City	State	Zip Code

Home Phone	Work or Other Phone	Employer	Driver's License Number	State
785-424-4581			DRUMMDJ241M5	WA

AKA / Other Identifiers / Spillman #	Height	Weight	Eye Color	Hair Color	Hair Length	Social Security Number
131351	5-02	115	BRN	BRN		521-57-9691

Primary Charge	Citation Number(s)

Date of Arrest	Time of Arrest	Court	Bail / PC	Warrant Number(s)

Code	Last Name	First Name	MI	Race	Gender	Date of Birth
V	DRUMMOND	PENELOPE	M	W	F	06-23-2007

Address	City	State	Zip Code
1612 W 1ST ST	ABERDEEN	WA	98520
Mailing Address (if different)	City	State	Zip Code

Home Phone	Work or Other Phone	Employer	Driver's License Number	State
		STUDENT - AJ WEST ELEMENTARY	N/A	

AKA / Other Identifiers / Spillman #	Height	Weight	Eye Color	Hair Color	Hair Length	Social Security Number
131353						

Primary Charge	Citation Number(s)

Date of Arrest	Time of Arrest	Court	Bail / PC	Warrant Number(s)

Code	Last Name	First Name	MI	Race	Gender	Date of Birth
S	PALMER	MICHAEL	LEON	W	M	03-05-1966

Address	City	State	Zip Code
2907 S. 360TH	FEDERAL WAY	WA	98003
Mailing Address (if different)	City	State	Zip Code

Home Phone	Work or Other Phone	Employer	Driver's License Number	State
206-228-7256			PALMEML341DE	WA

AKA / Other Identifiers / Spillman #	Height	Weight	Eye Color	Hair Color	Hair Length	Social Security Number
131352	6-00	285	BRN			519-96-8259

Primary Charge	Citation Number(s)
CHILD MOLESTATION 1ST / ASSAULT ON A CHILD 2ND X 2	

Date of Arrest	Time of Arrest	Court	Bail / PC	Warrant Number(s)
03-29-2017	2020	SUPERIOR	NO BAIL	

Vehicle Information ☐Suspect ☐Victim	License	State	Veh. Year	Make	Model	Style	Color

VIN	Impounded ☐	Tow Co.

ACT	INA/NL	UNF
CLEAR/ARREST 4/13/17 JW		CLEAR/EXCEPTION
To Prosecutor for Charging ☐Scan ☐Copy		To Pros for Review ☐Scan ☐Copy
Follow-up To: 104		
Computer Entry	Copy to Others	To DC ☐1 ☐2
☐ Pictures Taken ☐ Video Taken		

INVESTIGATING DEPUTY	ID #	REPORT REVIEWED BY	CASE NUMBER
	1071	154	17-4158

Rpt Ofc:

Det. Ramirez GHCSO

Add'l Ofc:

Det. Fritts GHCSO

Det. Osgood GHCSO

Sgt. Wallace GHCSO

Inf:

Drummond, Albert M. W/M 10-07-2011

1612 W. 1St St

Aberdeen, Wa 98520

Inf:

Mike Clark

Forensic Interviewer

Children's Advocacy Center of Grays Harbor

Jessica Barragan

Beyond Survival Advocate

Carrie Quail

CPS Caseworker

Hollee Haney

CPS Investigator

INVESTIGATING DEPUTY	ID #	REPORT REVIEWED BY	CASE NUMBER
	191		17-4158

Narrative:

On 03-23-2017, I was briefed by Det. Fritts about his phone conversation with Deanna Drummond who wanted to file a report regarding her ex-boyfriend Michael Palmer sexually assaulting her 9 year old daughter. Det. Fritts informed me Deanna was not available for an interview the 23rd and that he was unavailable on the 24th. Det. Fritts requested my assistance contacting and interviewing Deanna Drummond.

First Interview with Deanna Drummond:

On the morning of the 03-24-2017, I spoke with Deanna on the telephone and made arrangements to interview her later that day. At 1630 hours on the 24th I met Deanna in the lobby of the Sheriff's Office. I escorted her to the interview room and closed the door for privacy.

After introductions I asked her to explain what was going on. Deanna pulled out a typed statement from her bag and handed it to me. Deanna informed me she prepared the statement because she wanted to make sure she didn't forget anything. I reviewed Deanna's statement.

Deanna began explaining that Palmer's grooming behavior was brought to her attention by CPS Social Worker, Hollee Haney. Deanna said on March 16th, 2017 her 9 year old daughter Penelope (Nelly) Drummond revealed to her that Palmer had touched her private areas several times and that it made Nelly nervous. Deanna informed me Nelly is autistic. She said after Nelly's disclosure she went to Beyond Survival and spoke with Beyond Survival Advocate, Jessica Barragan about her concerns regarding Palmer sexually assaulting Nelly. Deanna stated Barragan told her she needed to report the incident to law enforcement. Deanna said she got to thinking about Palmer's past behavior which made her more concerned that Palmer may have been sexually assaulting her children when they first met.

Deanna explained that she met Palmer online and met him in person during business trips to Washington. Deanna was living with her children (Penelope and Albert) in Kansas at the time. Deanna said soon after Penelope and Albert's father passed away, Palmer traveled to Kansas to help her out.

She said they lived in Kansas for a while then moved to Washington. She told me they were living at 22B McConkey Avenue in McCleary, WA. Deanna stated she and Palmer have a 2 year old child, Leonidas Palmer (Leo) in common. She said Palmer was currently residing in Federal Way at 2907 South 360th and had custody of Leo. She said Leo was currently in CPS's custody in Kent, WA. Deanna explained that after Nelly's disclosure she petitioned the courts for a protection order. The order listed Deanna, Nelly, Albert and Leo as the protected parties. Deanna explained that when officers in Federal Way served the order on Palmer officers saw Leo in the home. Leo was taken into protective custody by the officers and turned over to CPS.

In Deanna's statement she stated that while they were living together, Palmer insisted on being nude while home unless they had company over. Deanna stated Palmer wanted her to also be nude but she refused. Deanna told me she never participated in nudism with Palmer. I asked her if Palmer walked around nude in front of her children. She said yes. She told me Palmer was insistent on being a nudist and that he was not going to change is ways. She said when she wanted to set boundaries Palmer became upset and threatened to call CPS and have her children removed.

Deanna said after two years after living with Palmer and putting up with his abusive behavior they separated.

According to Deanna's statement, she said in October or November of 2016, Palmer was visiting for the weekend. She said during that time Palmer told her he was in bed naked when Nelly crawled into bed with him and was playing with his penis. Palmer told Deanna this occurred while she was out shopping and he was watching the kids. I asked Deanna if Palmer elaborated on what he meant by "Playing" or if he made any gestures. She said he did not specify what he meant by "Playing" and did not make any hand gestures. She added that Palmer was clothed in the living room when she left to go shopping.

Deanna also stated that in December of 2016, Palmer suggested they get Nelly a "vibrator" as a Christmas gift. I asked her what she said to Palmer's suggestion. She said she emphatically told him, "No".

I asked Deanna if Nelly disclosed any forms of penetration when Palmer was touching her. Deanna said Nelly only disclosed touching and made no mention of penetration. Deanna informed she did not ask Nelly any further questions after her disclosure. Deanna said she reassured Nelly she did nothing wrong and thanked her for being honest with her.

I asked Deanna if she had concerns about Albert being sexually assaulted by Palmer. She said she did. She told me she never asked Albert if he was sexually assaulted by Palmer. Deanna said Palmer would call Albert things like "Gay and transgender".

I asked Deanna if she saw her children being physically abused at the hands of Palmer. She told me she witnessed Palmer throwing her kids into walls, flicking them on their heads, hitting them on their heads with his knuckles and grabbing them by their collars.

Deanna said there was a report filed with the Sheriff's Office earlier his year regarding Albert being assaulted by Palmer. I recalled reading the incident report (case 17-140). Deanna informed me the prosecutor's office declined to file charges on Palmer reference (case 17-140).

I asked Deanna to complete a written statement clarifying some the information she had already provided. Her statement is attached.

I explained to Deanna that I wanted to have Nelly and Albert forensically interviewed at the Grays Harbor Child Advocacy Center (CAC) in Montesano. I explained what a forensic interview was and how they were conducted. I informed Deanna that I would reopen case number #17-140 now that Albert was going to be interviewed. Deanna agreed to bring Nelly and Albert to the CAC to be forensically interviewed. I informed her that Mike Clark forensic interviewer for the CAC would be contacting her to set up a date and time. Deanna stated she understood.

I was informed by Mike Clark the forensic interviews were scheduled for 03-28-2017 at 1400 hours. Det. Fritts and I arrived at the CAC on the 28th at 1300 hours to observe the interviews. Deanna and her children were already at the CAC when we arrived.

I briefly discussed the case with Clark and certain questions I wanted him to ask. When Clark was ready Nelly and Albert were brought into Clark's office and introduced to everyone. Present to observe the interviews were Carrie Quail of CPS, Debbie Rose of the Crisis Support Network, Jessica Barragan of Beyond Survival, Det. Fritts and myself.

Clark explained to Nelly and Albert that he would be talking with them and that their conversations were going to be audial and visually recorded. They stated they understood. They were then taken to the interview room and informed that Nelly would be talking with Clark first. Albert was taken to the waiting room with Deanna.

Nelly was interviewed first. Her advocate was Debbie Rose. Rose, Det. Fritts and I observed the interview from Clark's office through the observation window (two way mirror). I could hear the interview through speaker in Clark's office.

The following is a summation of Penelope (Nelly) Drummond forensic interview. Note that during the interview Palmer is referred to as Michael.

Penelope Drummond Forensic Interview:

Clark started the interview at approximately 1315 hours. Nelly told Clark she was 9 years old. Clark went over the forensic interview ground rules with Nelly. Nelly stated she understood the rules. Clark asked Nelly if she would tell the truth today and Nelly said yes. Clark continued building a rapport with Nelly by talking about her favorite movies. Clark asked Nelly who she lived with. Nelly said she lived with her brother Albert, her mom and her cat. Clark asked Nelly what her favorite food was. Nelly told Clark her favorite food was pizza. Nelly then explained how to prepare a pizza and bake it in the oven.

Nelly did not appear to have difficulties understanding the questions she was being asked. Nelly listened to the questions she was being asked and responded with appropriate answers.

When Clark asked Nelly what they were talking about today, Nelly replied that they were talking about Michael. Nelly told Clark, Michael was the worst of all. She said Michael did not live with her

anymore. Nelly placed her hands around her neck as she told Clark that Michael choked her. She said Michael also "knocked" her on her head. She hit the top of head with her knuckles to demonstrate how Michael was hitting her. Nelly was hitting her head so hard that I could hear her knuckles hitting her head through the speaker. She told Clark this happened on more than one occasion. Clark asked her why Michael would choke her and hit her. Nelly answered, "Because that's what he do." She told Clark, Michael was not a good father to her.

Clark asked Nelly if anyone saw Michael choking her and hitting her. Nelly told Clark her mom saw. Clark asked Nelly why Michael was choking her. She said Michael would get angry and do those things. Clark asked Nelly how she felt being around Michael. She told Clark, "Really upsetable." She told Clark it was great to be in Aberdeen because of her school. Clark was asking Nelly a question about when she lived with Michael, when Nelly corrected Clark and said his name was Michael Palmer. Clark asked Nelly about Michael's clothing. Nelly said he wore glasses, had gray hair and a mustache with a little beard. She said he had t-shirts, pants and shoes.

Clark asked Nelly if she told her mom about something that happened with Michael. Nelly said she didn't keep any secrets and that she was told not to worry about "That". Clark followed up by asked her not to worry about what. Nelly said what Michael Palmer did. Clark asked Nelly what Michael did. She said the stuff she said earlier.

Nelly told Clark she didn't trust Michael. She said her mom told her not to get close to him, not to talk to him and not stare at him. Nelly told Clark that staring was not ok and that not staring at Michael was rule. Clark asked why that was a rule. Nelly said because he could do naughty stuff to her again. Clark asked Nelly to help him understand what she meant by naughty stuff. Nelly grunted and said it was hard. Clark asked Nelly again what she meant by naughty stuff. Nelly said like yelling at her and other stuff. Clark asked what she meant. Nelly again said yelling at her. I observed Nelly's demeanor change. She appeared to be more guarded. She was no longer looking at Clark like she had been during the interview. Nelly looked down and was playing with her shoe laces pulling them up over her knee. She seemed to be avoiding the question.

Clark asked Nelly what she meant by doing naughty things. Nelly replied, "Yell at me and breaking my stuff." She told Clark it was hard to remember. Clark asked her if it was hard remember

because she couldn't recall or because she just didn't want to tell him. She told Clark he (Michael) just did bad stuff like yelling at her, breaking her stuff and breaking her bones. Nelly said she was angry about Michael and did not want to see him again. Clark asked Nelly if she knew what naughty things meant. Nelly said naughty was also a word for bad. Clark asked Nelly where bad things happened. She told Clark in the living room of her house in McCleary. Clark asked her who was there when the bad things happened. She told him Leo and Albert.

Nelly told Clark she was autistic but didn't know what that meant. She told him that was all. Clark asked Nelly if she wanted to take a break or if they were finished. Nelly told him she was finished. Clark stopped the interview at 1347 hours. At this point I felt that Nelly was holding back from disclosing what happened. I suspected Nelly thought she was going to be in trouble with her mom if she said what Michael did to her.

I asked Barragan to reunite Nelly with Deanna in the waiting room. I also asked Barragan to have Deanna encourage Nelly and to tell her that it was okay to tell Clark what happened. I spoke to Clark in his office about Nelly's interview and how I felt that Nelly she was about to disclose but was hesitant. I asked Clark to speak with Nelly again. After several minutes passed I asked Barragan if Nelly wanted to talk to Clark again. She said yes. It should be noted that during the short break Nelly and Deanna were never alone in the waiting room. Barragan and Rose were in the waiting room with Deanna and Nelly during the break.

At approximately 1556 hours, Nelly and Clark walked back into the interview room. Barragan entered Clark's office to observe the interview. I asked Barragan if Deanna told Nelly what to say. Barragan said Deanna told Nelly encouraging words and that she did nothing wrong and that it was okay to tell Clark what happened.

Clark started the second interview with Nelly at 1556 hours. Clark covered that Nelly talked to her mother. He then asked Nelly if she was finished talking or if they were about to talk. Nelly told Clark they were about to talk. Clark went over the forensic interview ground rules with Nelly again. Nelly stated she understood the rules and that she was going to tell the truth. Clark asked Nelly if she wanted to keep talking. Nelly replied, "Yeah."

Clark asked Nelly what she wanted to talk about. Nelly said Michael touching her. Clark asked Nelly if it happened once or more than once. Nelly said more than once. Clark asked where it happened. Nelly grunted and said in McCleary.

Nelly told Clark she just couldn't keep herself together when she thinks about Michael. She said that was the truth. Clark asked her how Michael touched her in McCleary. Nelly said like this and placed her hands around her neck and acted as if she was gasping for air. She told Clark that was choking. Nelly also hit her head with the knuckles of her hand very hard. The sound of her hitting her head could be heard in the observation room. Clark told Nelly that earlier they were talking about naughty and bad. He asked Nelly what that meant. Nelly said it meant not nice.

Clark asked Nelly what Michael would wear around the house. Nelly said she wasn't exactly sure. Clark asked if he had clothes or something else. Nelly said he had shirts, pants and coats. Clark told Nelly that her mom said Michael didn't wear clothes and asked Nelly what she would say to that. Nelly told Clark Michael did not wear underwear. Clark asked what she meant by he didn't wear underwear. Nelly said "Because he's just who he is. He's kind of weird and very strange and he always touches our privates. I was a little nervous, but I didn't do anything wrong."

Clark asked Nelly, "He always touches what?" She said touches her and Albert. Clark asked Nelly to help him understand and asked her what Michael touched. Nelly said "Touches my private." Clark asked Nelly what a private was. Nelly said seriously. Clark asked her where a private was. Nelly reclined back in the chair and pointed to her vagina. He asked her if it happened once or more than once. Nelly said more than once. Nelly told Clark, Michael touched her skin to skin. Clark asked her what part of his body touched her. Nelly pointed to her vagina a second time as she said, "Right here." I assumed Nelly was referring to where she was touched by Michael. Clark rephrased his question and asked her what Michael used to touch her. Nelly said Michael used his hand.

Clark asked what happened when Michael touched her. Nelly said they were taking a nap. Clark asked what he was wearing. Nelly said he was wearing nothing. She said they were naked. Nelly told Clark she felt nervous. Clark asked if this nap with touching happened once or more than once. Nelly said more than once. Clark asked Nelly what Michael would have her do. She said stay under the covers. Clark asked Nelly if she said Michael touched her privates with his hand. Nelly said "Yes, yes."

Clark asked Nelly what Michael had her do to him. Nelly told Clark her mom told her not to do it again. Clark asked what she meant. Nelly said don't touch Michael's private. Clark asked if that happened once or more than once. Nelly said more than one time. Clark asked her what she touched Michael's private with. Nelly said her hand. Clark asked her how she felt when Michael had her do that. She said nervous. Clark asked her where it happened. She said they were in mom's bedroom. Clark asked Nelly how it ended when she was touching his private. Nelly said the nap was over.

Nelly by this point seemed to lose interest. She said she was tired and asked to go back with her mom. Clark ended the interview with Nelly at 1411 hours.

Albert Drummond Forensic Interview:

At approximately 1420 hours, Albert was forensically interviewed by Clark. Albert was a very talkative 5 year old and was very excited to be talking with Clark. Albert told Clark he was 5 and that he liked playing, reading and doing art in school. Clark discussed the forensic interview ground rules with Albert. Albert did not appear to have difficulties understanding the rules. He demonstrated that he knew the difference between a truth and a lie by correcting Clark about the color of a book. Albert told Clark he was going to tell him the truth today.

Clark asked Albert if he like playing with cars and riding his bike. Albert said yes. Clark asked him what his favorite food was. Albert said macaroni and cheese. Albert then explained his version of how to make mac and cheese. Clark asked him where his favorite place to go was. Albert said he liked playing at the park.

Clark asked Albert if he talked to anyone today about talking to Clark today. Albert said no. Clark asked Albert who he used to live with. Albert said Michael, Nelly, Leo and his mother. Clark asked Albert to tell him about Michael. Albert said Michael liked to flick him. Albert demonstrated by flicking himself on the right side of his head with his right hand. Albert also said Michael did "this" and grabbed his throat to show Clark how Michael grabbed him. Albert's said the Michael left him a scar. He pulled the collar of his shirt down to show Clark where Michael left him a scare. Albert ran his hand across the right side of his neck. Albert told Clark the scar was gone. Clark asked Albert why Michael would do that. Albert said "Oh my gosh I don't know why he does that." Albert said that it was hard to talk and

that it hurt his throat and feelings. Albert told Clark that his mom, Leo and Nelly saw this happen. He said it happened "A lot of times".

Clark asked Albert what else Michael would say to him. Albert said a lot of bad words which made him feel sad and hurt his feelings. Clark asked Michael what happened to him when Michael touched him on his throat. Albert said Michael left him a scar. Clark asked him what else happened. Albert said Michael flicked him, put him on the wall sometimes and "choked" him on the wall. Albert placed his hands around his neck when he said this. Clark asked Albert what happened when you're choked. Albert answered that it made it hard for him to talk. He told Clark it made him try to do anything. Albert again demonstrated for Clark by placing his hands around his neck and making gasping sounds. Clark asked Albert why it was hard to talk when he was being choked. Albert grabbed his neck and started to really choke himself. Clark told Albert he didn't have choke himself to show him. Albert told Clark his voice had hard time and that he felt Michael was going to kill him if Michael did that. Clark asked Albert what happened to his breathing when Michael choked him. Albert said he had a hard time breathing and showed Clark by gasping for air. He told Clark he felt he might die. Albert told Clark that happened more than once.

Albert said Michael was not a good babysitter and that Michael was mean to him. Clark asked him what he saw when Michael was babysitting him. Albert said Michael was mean to his sister and brother Leo.

Clark asked Albert what he saw with Michael and his sister. Albert said his saw "Him" do bad stuff. Clark asked what he meant by bad stuff. Albert said it meant you're doing something bad to somebody like hitting them or slapping them or anything like flicking them or choking them. Clark asked Albert what he saw Michael do to his sister. Albert said he choked her (grabbing his throat to demonstrate), flicks her (flicked his face to demonstrate) and anything else he would do. Clark asked what room they were in when he saw this. Albert said he didn't know.

Clark told Albert that his mom said Michael used to walk around the house in a certain manner. Albert said, "Yeah naked." Clark asked what naked meant. Albert said it meant, "You have clothes off." Clark asked him who else was naked. Albert said, "Just Michael."

Clark asked Albert what happened in the car. Albert said he (Michael) choked him and left him a scar. Albert was referring to (SO case #17-140). Clark asked why. Albert said because he was being bad and wasn't being quiet. Clark asked him what car they were in when it happened. Albert said the red car outside.

They talked for several minutes before Clark ended the interview with Albert at 1446 hours. I spoke to Deanna and explained to her that disclosures were made of sexual and physical abuse. I informed her that I would be investigating the case further.

After hearing the disclosures I determined that PC had been established to arrest Palmer on the charges of Child Molestation 1st Degree and Assault on a Child 2nd Degree.

I contacted The King County Sheriff's Office and requested their assistance contacting Palmer at his address in Federal Way. I explained to the dispatcher that I had PC for Palmer and that Det. Osgood and I would be en route from Grays Harbor to take custody of Palmer.

At approximately 1800 hours on the 29th, Det. Osgood and I traveled to Federal Way in a fully marked Grays Harbor Sheriff's Office patrol vehicle. We stopped at the rest area in Federal Way off I-5. I received a call from a King County deputy who informed me he was dispatched to assist Det. Osgood and I. The plan was to meet the King County deputy near Palmer's residence. While en route to the meeting location the deputy was diverted to a priority detail. I advised the deputy that Det. Osgood and I were going to continue as planned and attempt contact with Palmer.

At approximately 2015 hours, Det. Osgood and I arrived at Palmer's residence located at 2907 South 360th in rural Federal Way. The location was a two story residence with a manicured lawn. There were several vehicles and trailer on the property. Det. Osgood and I knocked on the front door. The door was answered by an adolescent male who was later identified as Christopher G. Smith (05-15-2003). Just as we were about to ask if Michael Palmer was home he appeared from around the corner of the front door. Palmer immediately stated that we were probably looking for him. I introduced us to Palmer and asked him if he had a minute to speak with us. Palmer said he did but needed to grab his shoes. Palmer then stepped outside and I asked him to walk with me to the front of the patrol vehicle. I informed Palmer that there was PC for his arrest on the charges of Child Molestation 1st Degree and

Assault on a Child 2nd Degree. I told Palmer he was under arrest. Det. Osgood secured Palmer in handcuffs. Palmer was cooperative and informed us he had bad shoulder. He was cuffed in front due to his large stature and bad shoulder. Palmer was secured and seat belted in the back seat of the patrol vehicle.

Christopher Smith identified himself and provided his date of birth. He told us Palmer was his uncle. Christopher told me he was home alone with Palmer. He told me his was 13 years old and that his mother, Mary Smith, was not home. I asked Christopher to call his mom so I could speak to her. Christopher called his mom several times before she answered. I introduced myself to Mary and explained that Palmer was under arrest and that he would be booked in the Grays Harbor County jail. Mary informed me she would be home in 30 minutes and that I was okay if Christopher stayed home alone. I informed Mary that I would call her at a later time to speak with her about Palmer. Mary provided me her cell phone number.

I contacted Palmer and advised him of his Miranda Rights directly from a department issued Miranda card. Palmer stated he understood his rights.

Det. Osgood and I cleared the scene with Palmer. We transported Palmer back to Grays Harbor County. During the entire transport Palmer did not speak to us. Upon arriving at the Sheriff's Office we escorted Palmer to the annex building to conduct an interview with him.

Michael Palmer Interview:

I asked Palmer if he remembered his Miranda Rights. Palmer said he did. I asked him if he understood his rights. Palmer said he did. I told Palmer that there were usually two sides to the story and that I wanted to hear his explanation of what was going on. I asked Palmer if he would speak with us. Palmer said yes.

I asked Palmer if he knew why he was arrested. Palmer said because he was falsely accused. Palmer stated that Penelope (Nelly) was an autistic 9 year old little girl who was sexually aggressive. Palmer said that Nelly had been displaying multiple inappropriate sexual behaviors in public. He explained that Nelly would say sexual things, touch herself and masturbate in public. I asked Palmer

where Nelly learned these behaviors. Palmer said all the research he conducted indicated that Nelly's sexual behaviors were normal of a child with autism. I told Palmer that I found that very hard to believe. I told him that she was just 9 years old and that a 9 year old would not know these things unless they were shown them or something happened to them.

Palmer said Deanna was a sadist and practiced BDSM. According to Wikipedia, BDSM is a variety of often erotic practices or roleplaying involving bondages, discipline, dominance and submission, sadomasochism and other related interpersonal dynamics. Palmer said Nelly may have seen her mother practicing BDSM in the home. I asked Palmer if he practiced BDSM with Deanna. He said yes but never in front of the kids.

I asked Palmer if he walked around the house nude when he lived with Deanna and her kids. Palmer said he did. I asked him if he walked around nude in front of the kids. Palmer said yes that everyone walked around nude. I asked if that included the kids. He said yes. Palmer explained that he was an atheist and a Unitarian Universalist. He said it was in their practice to be nudist. I asked Palmer if he suggested they get Nelly a vibrator for Christmas last year. Palmer said yes. I asked why. Palmer explained that Nelly was touching herself and masturbating in the living room. He said he suggested the vibrator as an alternative to her current behaviors. He said he told Deanna they should get Nelly a vibrator with an electrical cord so that Nelly could plug it the outlet in her bedroom to use in private and out of view. I asked him if he thought that was a normal or even an appropriate suggestion. Palmer stated a mental health professional told him about the suggestion.

Palmer went on to tell me about the incident when Nelly crawled onto his bed while he was taking a nap naked and touched his penis. He said Deanna was not home at the time. Palmer stated while he was napping Nelly crawled onto his bed and started play with his penis. I asked him how she was playing with his penis. Palmer described it as "tugging" and demonstrated by moving his hands up and down in a violent motion. Palmer couldn't recall how many times Nelly tugged on his penis. I asked him if how many times this happened. Palmer recalled two other times. I asked if he was in bed naked taking nap on these other occasions. Palmer said yes. I asked Palmer if he touched Nelly. Palmer explained that during one of these incidents Nelly crawled onto his bed. Palmer said he was taking a nap with his son Leo at the time. I asked Palmer if he was naked. He said yes. Palmer said Nelly started "Stemming" and touching his chest and stomach. Palmer explained the "Stemming" was something

autistic children do. He explained that it was the sensation related to the touching and feeling of objects. He said Nelly liked playing with his chest hairs. Palmer said during this incident Leo was sleeping on his arm and that Nelly wouldn't stop touching him and would not get off of him. I asked him if Nelly was straddled over him. Palmer stated Nelly was on top of him but couldn't remember if she was straddling him or not. I asked him if Nelly was nude. Palmer thought she was wearing only underwear that time. He said the only way he knew how to get Nelly off of him was to reach down and touch her vagina. Palmer said he touched Nelly's vagina with his hand. I asked him how many time this happened. He said to his recollection once. I asked him if he penetrated her vagina. He said no.

Palmer said he told Deanna about the incident when Nelly was playing with his penis. He said he told Deanna that Nelly needed to stop and that Deanna needed to seek help for Nelly's sexual behaviors. I asked Palmer if he stopped Nelly or told Nelly no. Palmer said he did not. I told Palmer that he was the adult. Palmer agreed. I asked why he didn't stop Nelly before she crawled onto the bed while he was naked or why he just didn't get up and walk away. Palmer said because Deanna had an open bed policy. He explained that meant the door was always open and that kids were allowed on the bed whenever they wanted. He said Deanna would become upset if he didn't follow Deanna's open bed policy. Palmer said he has done nothing but prevented Nelly from having access to his person. I told him allowing Nelly to crawl into bed with him naked didn't seem like he was preventing her access. Palmer said that he continuously told Deanna that she needed to find Nelly help for her behaviors.

Palmer went on to say that Deanna's household consisted of two non-neurotypical people. He said that all the research he's done indicated that Nelly and Deanna were exhibiting traits of non-neurotypical type persons. He explained non-neurotypical as brain based neurological difference. He said Nelly was autistic and Deanna to his belief was undiagnosed with Asperger's.

I asked Palmer what his passed worked experience was. Palmer said he was in real estate for a long time. I asked him if he had any experience with mental health. He told me he was involved with and had some training from a facility in Federal Way that assisted disabled adults.

I asked Palmer how Albert and Nelly were punished. Palmer said they would yell at them, flick them or thump them on their heads. I asked Palmer if he choked them or placed his hands near their

throats. He said no. I asked him if he picked them up and would throw them against the wall. Palmer said no. I asked Palmer if he wanted to provide a written statement and he refused.

I told Palmer that I didn't believe what he was telling me. I explained to Palmer that Nelly and Albert were forensically interviewed. Palmer stated he was aware of what a forensic interview was. He said Nelly was forensically interviewed when the lived in Kansas. I thought that Palmer was talking about Nelly being interviewed by a trained forensic interviewer. I asked Palmer who conducted the forensic interview in Kansas. Palmer told me he and Deanna forensically interviewed Nelly. I asked Palmer if he was trained in forensic interviewing. Palmer said he was not. He said they questioned Nelly about someone named Mr. B touching Nelly. Palmer said he wanted to show Deanna that Nelly could be influenced and that she was not a reliable witness.

I told Palmer I was present when the Nelly and Albert when interviewed. I showed Palmer several video clips on my department cell phone of Nelly and Alberts forensic interviews. The clips each lasted several second in length. They showed Nelly disclosing to Clark that Palmer touched her vagina not just once but on several occasions. They also showed Nelly and Albert hitting their heads, flicking themselves and choking themselves. Palmer watched the videos in silence. I noticed his eyes began tearing up but he held back his tears. Palmer also smirked and smiled at the things Albert and Nelly was were saying in their interviews. After Palmer saw the video clips I asked him how it made him feel. He said he didn't feel anything. He said Deanna told them what to say. I told him I didn't think so. I told Palmer it didn't appear to me that Nelly was having a difficulties understanding the questions she was being asked. Nelly listened, understood the question, thought about the question and responded. Palmer said Clark was asking open ended questions. I told him that's what a certified forensic interviewer is trained to do. I told him they were opened ended questions for a reason. I told Palmer if he thought Nelly was an unreliable witness what was his excuse for Albert. He had no response. I told Palmer, Albert was very descriptive as to how he was being assaulted by Palmer to point that he thought he was going to die.

Palmer smirked and said he didn't remember ever choking Albert. I asked him if he threw Albert and Nelly into walls. Palmer said he never did that. He said he would pick them up to eyelevel and pin them against the wall to get their attention or to calm them down from having a tantrum.

I asked Palmer about the incident with Albert in the car. Palmer said Deanna had the dates wrong. He explained that Albert was throwing a temper tantrum in the back seat. Palmer said Albert would not stop when he asked him to. Palmer said he was driving and had his right arm on the arm rest when Albert kicked him on the arm twice. Palmer said his he had a prior injury to his right arm and when kicked by Albert it was very painful. He said it disrupted his ability to drive and put everyone's lives in the car in danger. Palmer said he pulled over and stopped. He said he reached back to try and grab Albert by his shoulder to get him to stop his tantrum. He said the scratch was not intentional.

Palmer said he made many suggestions to Deanna to find Nelly help. He said all of his suggestions went unanswered and the Deanna would become upset. He said he contacted the Arc of King County after finding out Nelly touched his son Leo's penis when they were bathing. He said he felt that Leo was not safe around Nelly and that he contacted the Arc of King County for help with finding resources to help Nelly end the multiple inappropriate sexual behaviors. He further stated that Nelly burned Leo. He explained that Deanna left Leo with Nelly unsupervised for a minute and that Nelly turned on a baseboard heater in the bedroom. He said Leo touched the heater and received second degree burns.

I explained to Palmer that there were programs in place like the Special Sex Offender Sentencing Alternative to help him. I further explained that to be considered for this program he needed to be honest, remorseful and accept responsibility for his actions. I told Palmer that I knew that he was worried about losing his son and what his family would think of him. I told him that Deanna trusted him with her children and that he violated that trust. I told him if he wanted to get things back on the right path that he needed to start accepting responsibility and stop putting blame on Nelly. I told Palmer he wasn't showing any remorse and was not accepting any responsibility. Palmer stated he didn't do anything.

I told Palmer that my report wasn't just going to be read by me. I told him the prosecutors and the judge were also going to read it. I asked him what the report was going to say. I asked him if was going to say that he was sorry for what he did and needed help or if it was going to say that he didn't do anything and that Nelly was lying. Palmer said that he didn't do anything and that Nelly was lying.

I told Palmer that if this case went to trail the jury would hear Nelly's interview and maybe even hear Nelly herself say what he did to her. I then said the jury would hear him say that he didn't do anything. I asked him what he thought the jury would think. Palmer said they (Deanna, Nelly and Albert) had their versions and he had his.

It was obvious to me that Palmer was not going to admit or take responsibility for what he did to Nelly and Albert. I told Palmer that I felt he were just going in circles and that he was going to continue deflecting my questions by putting the blame on Nelly. I asked Palmer if he wanted to provide a written statement covering what he had spoken about. Palmer said no. I told Palmer to write refused on the statement form and sign it. Palmer said he wasn't refusing. He said he already submitted a statement with the same information to the Sheriff's Office and the courts when he was investigated the first time by the Sheriff's Office for the scratch on Albert. Palmer said he was pretty sure I had access to those documents and could retrieve them myself. Palmer wrote on his statement that he already explained it in court records and CPS records. He signed his statement.

I ended the interview with Palmer at 2310 hours and escorted Palmer to the county jail. I booked Palmer in the jail on the charges of Child Molestation 1st Degree and Assault 2nd Degree. After Palmer was booked I cleared the jail.

The following morning 03/30/2017 Det. Sgt. Wallace and I contacted Palmer in the jail interview room. I introduced Sgt. Wallace to Palmer and told him I wanted to follow up with. I asked him if he remember is Miranda Rights. Palmer said he did. I told Palmer that he had some time to think things over and asked him if he wanted to talk with us. Palmer said I had already told him he was "full of shit" and that he didn't want to speak with me. He told us he didn't do anything and wanted to speak to an attorney. Sgt. Wallace and I ended our contact with Palmer and cleared the jail.

On 03/30/2017 I pulled the file for case number 17-140 regarding Palmer assaulting Albert. I made copies of the case reports, photos and typed statement by Palmer. These documents are attached.

Second Interview with Deanna Drummond:

On 04/04/2017 I met with Deanna Drummond to ask her a few follow up question I had after my interview with Palmer. The interview was conducted in the Sheriff's Office interview room. The questions I asked Deanna pertained to the forensic interview Palmer conducted in Kansas, Palmer experience with mental illness, Deanna's open bed policy Palmer described, the physical abuse she may have witnessed and the bathing incident.

Deanna provided the following in a written statement,

She wrote, "Michael never claimed to be a trained for forensic interviewing. I never heard him use the term "forensic interview" until Det. Ramirez mentioned his claim of him (M.P) and I forensically interviewing Penelope. I never took part in such a process. Michael claim to have asked Nelly some questions to "prove" that she was an unreliable witness. This would have been in 2013. He requested that her IEP be changed to reflect that Penelope did not always answer the question asked.

Mr. B was Penelope's Special Ed teacher in first grade. Penelope also had an aide/para with her during the school day.

Michael Palmer and I's close association began when he offered to come out to Kansas to help out after my husband's death. Things progressed to an intimate relationship. In about March of 2014 we packed to all move to Washington State. We did a drawn out camping trip that ended when I signed a rental agreement on May 1st 2014 (give or take a day or so). It was after moving into the duplex that I witnessed the beginnings of the physical abuse of Albert and Nelly but mostly Albert.

Michael moved out in June of 2015. We saw each other a few times and communicated by cell phone frequently. In November 2015, CPS granted custody of Leo to Michael. Michael came down to stay nearly every weekend until Penelope, Albert, and I moved to Aberdeen at the beginning of 2017.

I did refer to my bed as a "safe place" or other some such, children. This meant that in of fear, nightmares, sadness other negative emotions the children were allowed to leave their beds and come to my bed at night. I also allowed them to read or play next to me when I was reading on the bed during the day.

Physical abuse of children that I witnessed was grabbing around the collar / lower neck area, rough handling such as slamming into walls, his forearm against their chest, grabbing hands and arms and squeezing until digits turned purple / intense pain was achieved. I did not witness kicking or punching. I did witness grabbing by the face on or near the TMJ.

The bath tub "incident" occurred while I was bathing Leo (now 2) and nelly walked in. For the first time she seemed to notice the genetalia differences between herself and her bothers. She pointed, fingers possible touching but at least got very near and exclaimed, "He has a private." I then explained that it was called a penis and that was included in the areas that touching is not allowed except by doctors and mommy for checking / cleaning.

Michael was fairly silent on counseling or other services for Penelope until he met with the Arc of King County right before I moved from McCleary." This concluded Deanna Drummond signed written statement.

I reviewed her statement. Deanna commented now that she looked back on it she wondered if Palmer wanted her to document on Nelly's IEP that she was an unreliable witness in just case Nelly was to ever disclose what he (Palmer) was doing to her. Deanna wondered if Palmer began molesting Nelly when they were living in Kansas. I asked Deanna what she meant by the initials TMJ. She said TMJ was the temporomandibular joint and pointed to the area behind her jaw.

I asked Deanna if she was a sadist and practiced BDSM. Deanna said she was and did practice BDSM. She told me she never practiced BDSM or any sexual acts in front of her kids.

I asked Deanna if Palmer worked with mentally disable patients. She told he once worked at a home for disabled adults.

I thanked her for meeting with me and providing a statement. Deanna cleared the Sheriff's Office.

During an MDT (Multidisciplinary Team Meeting) at the CAC on 04/06/2017 CPS Supervisor, Erin Miller, informed me that Palmer had filed a declaration with Grays Harbor Superior Court when Deanna was petitioning the courts for a protection order. Miller informed me that the information Palmer

provided in his declaration might be of interest to this investigation. I returned to the Sheriff's Office and contacted Support Specialist Diggle. Diggle requested copies of Palmer's and Deanna Drummond's court documents from the County Clerk's Office.

I received the documents the following morning. I reviewed Palmer's 17 page declaration. I provided Det. Fritts who is the primary investigator on the case the court documents to include Palmer's declaration. Det. Fritts will be completing a supplemental report regarding Palmer's declaration.

End report.

Attached:
Statement of Deanna Drummond dated 03-24-2017 (2 pages)
Statement of Michael Palmer dated 03-29-2017 (1 page)
Statement of Deanna Drummond dated 04/04/2017 (4 pages)
Copy of report ref case 17-170
Jail intake form

GRAYS HARBOR COUNTY
CAUSE NO. 17-1-203-1
PLA/PET ID #23
DEF/RSP ID
EXHIBIT NO.
ADMITTED
OFFERED & REFUSED

INMATE

December 31, 2022 - 6:00 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,475-9
Appellate Court Case Title:	State of Washington v. Michael Leon Palmer
Superior Court Case Number:	17-1-00203-1

DOC filing of PALMER Inmate DOC Number 409268

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