69308-5

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WASHINGTON STATE COURT OF APPEALS

DIVISION ONE

STATE OF WASHINGTON

PLAINTIFF/RESPONDENT

V

JOSEPH ANTHONY DIGEROLAMO

DEFENDANT/APPELLANT.

NO. 69308-5-I

CN. 09-1-05791-1 KNT.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW RAP 10.10

NOW COMES JOSEPH ANTHONY DIGEROLAMO, APPELLANT, PRO-SE PRESENTING THIS STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW UNDER RAP 10.10, TO THE WASHINGTON STATE COURT OF APPEALS - DIVISION I.

FACTS PERTINENT TO THIS CASE

1) ON JUNE 1ST 2009, MR. DiGEROLAMO CALLED THE POLICE TO REPORT A BURGLARY. RP 310-11

2) ON JUNE 1ST 2009, AFTER INVESTIGATION, DEPUTY T. HANSEN UPGRADED THE INVESTIGATION TO A POSSIBLE SEXUAL ASSAULT OF S.B. CP 48-1 RP 435-5.

3) ON JUNE 1ST 2009, DETECTIVE GORDON INTERVIEWED MR. DiGEROLAMO IN DETECTIVE GORDON'S UNMARKED POLICE VEHICLE CP 73-1, 12.

4) DURING TRIAL, DET. GORDON DESCRIBED HIS OFFICIAL POLICE CAR, RP 220-17 THRU 20 AS UNNOTICABLE AS AN OFFICIAL VEHICLE UNLESS YOU GOT REAL CLOSE TO/OR IN IT, CP 73-24.

5) THAT BEING SAID IN THE VEHICLE IS EVER MORE SO KNOWING THAT IT IS AN OFFICIAL VEHICLE BY BEING ABLE TO SEE THE "POLICE EQUIPMENT" (RADIO, ETC.)

6) ON JUNE 1ST 2009, DETECTIVE GORDON DID NOT MIRANDIZE MR. DiGEROLAMO RP 224-2.

7) ON JUNE 1ST 2009, DETECTIVE GORDON RECORDED MR. DiGEROLAMO'S STATEMENT. RP 223-23.

8) ON JUNE 1ST 2009, DETECTIVE GORDON EITHER BEFORE OR AFTER RECORDING OF MR. DiGEROLAMO'S STATEMENT, COLLECTED CP 75-19-17 DNA SWABS FROM MR. DiGEROLAMO. RP 223-13, CP 80-12.

9) THE RECORDED STATEMENT DOES NOT CONTAIN THE FACT THAT MR. DiGEROLAMO WAS MIRANDIZED OR THAT A WARRENT WAS ISSUED OR THAT A WRITTEN WAIVER WAS SIGNED BY MR. DiGEROLAMO.

10) MR. DiGEROLAMO NEVER SIGNED A WAIVER OR WAS MIRANDIZED PRIOR TO DETECTIVE GORDON'S COLLECTING OF DNA SWABS/SAMPLES.

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STATEMENT OF CASE A - MIRANDA.

THE EVIDENCE ATTAINED BY DETECTIVE GORDON, TO THE RECORDED STATEMENT OF THE DEFENDANT AND THE DNA SWABS WERE ATTAINED ILLEGALLY AND IN VIOLATION OF MR. DIGEROLAMO'S PROTECTED CONSTITUTIONAL RIGHTS UNDER THE U.S AND WA. STATE CONSTITUTION.

MR DIGEROLAMO WAS NOT ADVISED OF MIRANDA RIGHTS UNTIL THE DAY OF ARREST ON SEPT 9TH 2009, CP 83-2, by DET. GORDON.

MR. DIGEROLAMO SHOULD NOT BE QUESTIONED, RECORDED OR SEARCHED AS A SUSPECT WITHOUT BEING MIRANDIZED OR WAIVING HIS RIGHTS TO BE MIRANDIZED OR HAVE AN ATTORNEY PRESENT. THIS IS NOT THE CASE WITH MR. DIGEROLAMO WHO HAD ALL THREE ACTIONS DONE WITHOUT BEING MIRANDIZED OR SIGNING A WAIVER TO THESE RIGHTS. IN FACT, PER DETECTIVE GORDON, MR. DIGEROLAMO WAS NOT MIRANDIZED FOR THREE MONTHS AFTER MR DIGEROLAMO WAS QUESTIONED, RECORDED AND SEARCHED IN A POLICE VEHICLE TO W.T, CP 73-1 THRU 12 DESCRIBED IN FACT # 3 AND 4.

POLICE EFFECT THE SEIZURE OF A PERSON WHEN THEY OBJECTIVELY MANIFEST THAT THEY ARE RESTRAINING THE PERSON'S MOVEMENT AND TO A REASONABLE PERSON WOULD BELIEVE THAT HE OR SHE IS NOT FREE TO LEAVE.
STATE VS. SALINAS, 169 WN. APP. 210, 279 P.3d 917.
WASHington STATE CONSTITUTION ARTICLE 1 §7,
STATE VS. O'NEIL, 148 WASH. 2d, 564, AT 585, 62 P.3d 489 (2003),
STATE VS LUND, 70 WASH. APP. 437, 444, 853 P2d 1379 (1993) REVIEW DENIED, 123 WASH. 2d 1023, 875 P2d 635 (1994).

IN THIS COURTS DECISION ON STATE VS. GAUTHIER COA # 67347-7 (I) 4-1-13, (NO CITATION NUMBERS AVAILABLE), THE COURT ACCEPTED THE CONSTITUTIONAL RIGHTS OF MR ~~DIGEROLAMO~~ GAUTHIER TO REFUSE TO GIVE DNA. THE STATE INTRODUCED THE

DNA EVIDENCE OBTAINED ON JUNE 1ST 2009 BY DETECTIVE GORDON IN HIS POLICE VEHICLE CP 73-24 RP 220 - 17 THRU 20, OBTAINED WITHOUT A WARRANT, MIRANDIZATION OR A WAIVER SIGNED BY MR. DIGERLAMO OF HIS CONSTITUTIONAL RIGHTS.

THESE ACTIONS BY THE STATE EQUATE TO ACTS OF COERCION, IN OBTAINING RECORDINGS AND DNA SWABS/SAMPLES. COERCION CAN BE MENTAL AS WELL AS PHYSICAL, CULMINATING INTO THE ULTIMATE HALLMARK OF UNCONSTITUTIONAL PERSONAL INVASION, PROTECTED BY BOTH THE U.S. CONSTITUTION AND THE CONSTITUTION OF THE GREAT STATE OF WASHINGTON.
STATE VS. ATHAN, 160 WN. 2d 354, 158, P3d 27 (1-26-06).

INTERROGATION OF INDIVIDUALS IN A POLICE DOMINATED ATMOSPHERE, WHICH NOT PHYSICAL INTIMIDATION, PER SE, IS EQUALLY DESTRUCTIVE OF HUMAN DIGNITY AND CURRENT PRACTICE IS AT ODDS WITH PRINCIPAL THAT INDIVIDUAL MAY NOT BE COMPELLED TO INCRIMINATE HIMSELF, UNITED STATES CONSTITUTION AMEND, 5, WASHINGTON STATE CONSTITUTION ARTICLE 1 - 7.
STATE VS. RUPE, 101 WASH. 2D, 664, 678, 683 P2d 571 (1984).

THE STATE HAS THE BURDEN TO DEMOSTRATE THE KNOWING AND INTELLIGENT "WAIVER" OF PRIVILEGE AGAINST SELF INCRIMINATION AND RIGHT TO COUNCEL WITH RESPECT TO INCOMMUNICADO INTERROGATION, SINCE THE STATE IS RESPONSIBLE FOR ESTABLISHING ISOLATED CIRCUMSTANCES UNDER WHICH INTERROGATION TAKES PLACE AND HAS THE ONLY MEANS OF MAKING AVAILABLE CORROBORATED EVIDENCE OF WARNING GIVEN.
STATE VS. HUNTER, 35 WN. APP 708, 669 P2d 489 (1983).

THE STATE DID NOT GET A SIGNED WAIVER FROM MR. DIBERDLAMO NOR DID THEY PLACE ON THE RECORDING A STATEMENT OF THE READING OF MR. DIBERDLAMO'S MIRANDA WARNINGS - (MIRANDA VS. ARIZONA, 384 U.S. 436, 86 S.Ct. 1602, 16 L.ED. 2d 694 (1966)) AS PER RCW 9.73.090 (b)(iii).

PER WASHINGTON STATE CRIMINAL PRACTICES Volume 12 § 3307 WHICH STATES: WHETHER A SUSPECT WAS NOT FREE TO GO AND THUS ENTITLED TO MIRANDA WARNINGS IS DETERMINED BY EVALUATIONS OF SUCH FACTORS AS WHETHER;

1) INVESTIGATION FOCUSED ON THE SUSPECT AT TIME OF QUESTIONS.
2) POLICE INTENDED TO HOLD SUSPECT IF HE REFUSED TO COOPERATE.
3) PROBABLE CAUSE TO ARREST AT TIME OF QUESTIONING.
4) THERE WERE ADDITIONAL POLICE OR PHYSICAL RESTRAINTS;
5) THE DEFENDANT(S) PHYSICAL LOCATION SUGGESTED CUSTODY.
6) THE SUSPECT HAD A REASONABLE, SUBJECTIVE BELIEF "in Custody"; AND AS SUCH, HIS MIRANDA WARNINGS MUST HAVE BEEN GIVEN, BUT WERE NOT.

LEWIS V. STATE D.O.L. 157 WASH 2d 446, 139 P.3d 1078 (2006).
STATE V. COURTNEY, 137 WASH. APP 376, 153 P.3d 238 REV. DENIED. 163. WASH 2d 1010, 180 P.3d 785 (2006)
STATE VS KNIGHT. 54 WASH APP. 143, 772 P.2d 1042 (1988)
STATE VS. DJO. 76 WASH APP. 135 883 P.2d. 1199 (1994)

WASHINGTON STATE CRIMINAL PRACTICE, Volume 12 § 2406 STATES; WASHINGTON STATE HAS NOT ADOPTED THE "GOOD FAITH" RULE WHERE POLICE ACTING IN "GOOD FAITH" UPON A DEFECTIVE SEARCH WARRANT.
STATE VS CRAWLEY, 61 WN APP 28, 808 P.2d 773 (1991) REV. DENIED, 117 WN. 2d 1009, 816 P.2d 1223 (1991)

THE CASE AT HAND NOT ONLY FELL UNDER A "GOOD FAITH" RULE FOR A DEFECTIVE SEARCH WARRANT, BUT IS A CASE OF "GOOD FAITH" WITHOUT A WARRANT OR PROBABLE CAUSE, OR ANY OTHER COURT ORDER CAUSES THIS ACTION TO HAVE BEEN DONE IN VIOLATION OF MR. DIBERARDINO'S CONSTITUTIONAL RIGHTS UNDER BOTH U.S. CONSTITUTION AND THE STATE OF WASHINGTON.

B. DNA SWABS/SAMPLES

THE ONLY APPROPRIATE WAY TO COLLECT DNA SWAB/SAMPLES IS WITH A WRITTEN PROBABLE CAUSE AND A WARRANT. SWABBING A CHEECK TO PRODUCE A DNA SAMPLE CONSTITUTES A SEARCH [redacted] UNDER THE U.S CONSTITUTION AMEND 4 AND ARTICLE I §7 OF THE WASHINGTON STATE CONSTITUTION. THE U.S. SUPREME COURT HAS RECOGNIZED THAT "COMPELLED INTRUSION INTO THE BODY" IS A SEARCH. STATE VS. GARCIA-SALGADO, 170 WN.2d 176, 240. P.3d 153, THE "INTRESTS" IN HUMAN DIGNITY AND PRIVACY WHICH THE 4TH AMENDMENT PROTECTS". REQUIRES A WARRANT. SCHMERBER, 384 U.S. AT 767-70, 86 S.Ct, 1826 (1966). CHEECK SWABS FOR DNA IS A SEARCH AND REQUIRES A WARRANT ABSENT THE EXISTANCE OF AN EXCEPTION, THE WARRANT REQUIREMENT OR THE ABSENT OF EXISTANCE MAY BE SATISFIED BY A COURT ORDER.

ABSENT OF AN EMERGENCY, A WARRANT IS REQUIRED.

STATE VS. MADDOX, 152 WASH. 2d 499, 505, 98 P.3d 1199 (2004) (citing the U.S. Constitution 4TH AMENDMENT).

IN THE CASE AT HAND, THERE WERE NO EMERGENCY OR ANY OTHER QUALIFIED EXPECTATION TO THE REQUIREMENT OF HAVING A WARRANT FOR THE BODY SEARCH FOR THE DNA SWAB/SAMPLES. AS SUCH, THE USE OF ILLEGALLY ATTAINED DNA IN THIS TRIAL SHOULD be PROHIBITED DUE TO THE FACT THAT THIS USE OF THE DNA IS MOSTLY WHAT THE CASE IS BASED ON. THIS SENTENCE SHOULD BE REVERSED AND THE CHARGE DISMISSED WITH PREJUDICE.

C. RECORDING OF SUSPECT

PER RCW 9.73.090 (1)(B)(iii), THE SUSPECT'S MIRANDA RIGHTS MUST BE ON THE RECORDING. THE RECORDING WAS MADE ON JUNE 1ST 2009, FACT #7. DETECTIVE GORDON READ MR. DiGEROLAMO HIS RIGHTS ON SEPT. 9, 2009 CP 83-2, THE RECORDING DOES NOT CONTAIN THE MIRANDA WARNING AS REQUIRED. THIS IS BECAUSE, IT WAS APPROXIMATELY 3 MONTHS AFTER THE RECORDING WAS MADE THAT DETECTIVE GORDON READ MR. DiGEROLAMO HIS RIGHTS UPON ARREST. PRIOR TO ARREST, THERE HAS BEEN NO WRITTEN WAIVER OF MR DiGEROLAMO'S MIRANDA WARNING SIGNED BY HIM.
AS SUCH IN THIS CASE, THE COURT CANNOT PRESUME THAT THE DEFENDANT HAD BEEN EFFECTIVLY APPRAISED OF HIS RIGHTS.
THIS IS A CLEAR CASE OF VIOLATION OF MR. DiGEROLAMO'S U.S. CONSTITUTIONAL 5TH AMEND. ARTICLE 1 RIGHT AS TO ALSO THE WASHINGTON STATE CONSTITUTION ARTICLE 1 SUB 7.
AS SUCH, THE COURT MUST DISALLOW ANY USE OF THE RECORDING MADE ON JUNE 1ST 2009, OR ANY PART THEREOF IN THIS CASE. AS THIS CASE IS BASED PARTLY ON THE ILLEGALLY ATTAINED RECORDING, THE SENTENCE SHOULD BE REVERSED AND THE CHARGES DISMISSED W. TH PREJUDICE.

D. IDENTIFICATION OF DEFENDENT.

THE DEFENDANT, MR. DiGEROLAMO WAS NEVER IDENTIFIED AS THE PERPETRATOR OF ANY CRIME FROM THE ALLEGED VICTIM, S. B. OF THIS CASE. A FACT THAT IS ADMITTED BY THE PROSECUTING ATTORNEY, MS LAM, DURING HER CLOSING ARGUMENT (RP 596 1 THRU 6).
SINCE NOBODY FROM THE WITNESS STAND, OTHER THAN THE STATE'S DNA EXPERT HAD IDENTIFIED MR. DiGEROLAMO, AND THE DNA SHOULD BE DISALLOWED IN AS EVIDENCE AS PROVEN IN THE FIRST ARGUMENT IN THIS BRIEF, THUS HAVING NO BODY IDENTIFY MR. DiGEROLAMO AT ALL.
SINCE MR. DiGEROLAMO WAS NOT IDENTIFIED AS THE PERPETRATOR OF THIS CRIME, THEN ALL REQUIRED ELEMENTS WERE NOT PROVEN

IN THIS CASE AT HAND.

STATE VS. BYRD, 125 WN. 2d 707, 713, 887 P2d 396 (1995), SINCE ALL OF THE ELEMENTS OF RAPE IN THE SECOND DEGREE WERE NOT PROVEN, WHICH INCLUDES THE IDENTIFICATION OF THE ACCUSED, THEN THIS CASE MUST BE REVERSED AND DISMISSED WITH PREJUDICE.

IN CONTRARY to C.R 7.5 (A)(7). THAT THE VERDICT IS CONTRARY to LAW AND EVIDENCE.

E. MISHANDLING OF EVIDENCE / PHYSICAL EVIDENCE.

BY DETECTIVE GORDON'S OWN STATEMENT, THE EVIDENCE IN THIS CASE AT HAND WAS MISHANDLED BY THE STATE, OTHER THAN THE ILLEGAL SEARCH AND SEIZURE ALREADY ARGUED. DETECTIVE GORDON STATED: RP 233 -- 10 thru 19

(LAM) Q: So you would have sealed it after --

(GORDON) A: Not sealed with tape. I would have -- what I'll do is I'll seal the little cap, then I'll take it and I'll just fold over the sleeve. Because it's all about -- I don't know, it's about that long and that wide, and it's just -- it's paper on the on one side and plastic on the other, and it's sealed [redacted]y in some way. And I'll just fold that over just so that -- I mean, I couldn't really slide out anyway, but I'll just fold that over, and then I'll put that aside for me to take with the rest -- if I put other evidence.

RP 223 - 20 THRU 25

(GORDON) OR, IN THIS CASE I THINK, PROBABLY THE ONLY EVIDENCE THAT I TOOK, JUST HAVE THAT WITH ME, AND THEN WHEN I GET BACK TO THE OFFICE, THATS WHEN I'LL --- YOU KNOW, EVERYTHING'S ALREADY IN THE BAG THEN. I DON'T EVEN TAKE IT OUT AT THAT POINT, I JUST, I WOULD TAKE THE ENVELOPE, AND THEN I WOULD SEAL THE ENVELOPE, (RP 234-1) WITH THE SEAMS AND THEN INITIAL AND THEN PUT THE EVIDENCE ---.

BY DETECTIVE GORDON'S OWN ADMISSION, THE FLAP WAS FOLDED OVER BUT THE EVIDENCE WAS NEVER SEALED, THIS CONSTITUTES NOT ONLY A MISHANDLING OF THE EVIDENCE, BUT A VARIANCE IN DETECTIVE GORDON'S TESTIMONY IN PRETRIAL, CP 80 - 12 THRU 15. AND THE TRIAL RP 251 - 19 THRU 22 AS THE COURT SAID BEFORE A JURY;

EXCEPT THIS DETECTIVE DID NOT DO THOSE PROCEDURES WITH REGARD TO THIS PIECE OF EVIDENCE, THAT'S WHAT HE TESTIFIED TO.

THIS CONFLICT SHOWS THE STATE COVERING UP THIER ERRONEOUS ACTS AND ACTIONS IN THE PROCESS OF THIS CASE AGAINST MR. DIBERARDINO, AN INNOCENT VICTIM OF MALICIOUS PROSECUTION.

F. INADEQUATE DNA TESTING.

THE DNA TESTING OF THE EVIDENCE COLLECTED, THE PANTIES (UNDERGARMENT) OF THE ALLEGED VICTIM S.B. OF THE CRIME OF RAPE 2°, WAS INCOMPLETE AND INADEQUATELY DONE.

THERE WERE JUST TWO RANDOM SPOTS WHERE DNA TESTING WAS DONE ON THE PANTIES/UNDERWEAR OF S.B., PER MR. BRUESEHOFF, THE DNA EXPERT PRESENTED BY THE STATE RP 522 - 24,25 RP 523 - 1 THRU 19, THERE WERE ALSO A BROWN/YELLOW STAIN ON THE PANTIES IN THE CROTCH AREA THAT WAS NEVER TESTED OR IDENTIFIED THROUGH DNA TESTING, THAT WERE CLAIMED BY THE DEFENSE to be Vomit. RP 524 - 9 THRU 24. RP 585 - 9 THRU 25.

THERE WAS ONLY ONE positive IDENTIFICATION OF MR. DIBERNARDO ON ONE OF THE TWO SAMPLES TESTED. THERE WAS AT LEAST ONE OTHER MALE DNA IDENTIFIED ON BOTH SAMPLES, MR DIBERNARDO WAS EXCLUDED FROM THE SAMPLE RP 497 - 13,14. RP 507 - 3.

THE OTHER MALE WAS NEVER SOUGHT to be IDENTIFIED, DUE to BEING ASSUMED AS A CONSENTUAL SEXUAL PARTNER, (RP 499 - 1 Through 3. RP 509 - 19,20,21) BY THE TESTING DNA EXPERT MR BRUESHOFF. THE UNKNOWN UNIDENTIFIED CONSENTUAL PARTNER WAS RAN THROUGH AFIS FOR IDENTIFICATION A WEEK BEFORE TRIAL DUE to THE REQUEST OF THE DEFENSE COUNSEL. RP 271 - 10.

THE IDENTIFICATION OF WHO THIS CONSENTUAL SEX PARTNER WAS, WAS REFUSED to be DISCLOSED by THE ALLEGED Victim S.B. RP 330 - 1 THRU 15.

THE STATE REFUSED TO SEARCH ANY FURTHER, OR to DEMAND THAT THE IDENTITY OF THE "UNKNOWN MALE" DNA BE DISCLOSED FOR FURTHER INVESTIGATION AND FOLLOW UP to PROVE IF THE CRIME OF RAPE 2 WAS COMMITTED BY MR. DIBERNARDO EVEN AFTER BEING REQUESTED BY THE DEFENSE COUNCEL.

ALL OF THESE INADEQUATE DNA TESTINGS CONSTITUTE A "BRADY VIOLATION" OF THE UTMOST MAGNITUDE, AS THE EVIDENCE NOT CONDUCTED IS COMPLETELY EXCULPATORY, AND WOULD HAVE PROVEN INNOCENCE OF MR. DIBERNARDO COMMITTING THE CRIME CHARGED (BRADY ARGUED ELSEWHERE IN THIS BRIEF).

IN THE CASE OF BYLSMA, WHERE AN EMPLOYEE OF A FAST FOOD RESTAURANT HAD SPIT INTO AN OFFICER'S HAMBURGER, WHO PURCHASED IT THROUGH A DRIVE THRU WHILE ON DUTY, IN A UNIFORM, AND IN A PROPER UNIFORMED, MARKED POLICE VEHICLE, THERE WAS EXTENSIVE AMOUNTS OF DNA TESTING DONE TO PROVE WHO DID THIS CRIME. EVENTUALLY, THE PERPETRATOR WAS ARRESTED AND CHARGED WITH ASSAULT ON A POLICE OFFICER AND SENTENCED to 90 DAYS IN JAIL.

CERTIFICATION FROM THE U.S. COURT OF APPEALS FOR THE 9TH CIRCUIT IN EDWARD J. BYLSMA, PLAINTIFF/APPELLANT V. BURGER KING CORPORATION, A FLORIDA CORPORATION, AND BURGER KING RESTAURANT #5259 D/B/A, KARZEN RESTAURANT, INC. AN OREGON CORPORATION, DEFENDANT/RESPONDENT. 176 WN 2d 555, Prod. Liab. Rep (CCH) P19,012,293 P.3d 1168 (2013).

TO THE EXTENT THAT THE STATE, IN BYLSMA, RAN DNA TESTING ON THE phlem ON A BURGER - NOT EATEN OR INGESTED BY THE HARMED PARTY, AND ON DUTY, UNIFORMED POLICE OFFICER, AND THEN ON NUMEROUS EMPLOYEES (THIS COMES FROM AN ASSUMPTION OF 20 EMPLOYEES ON SHIFT, 40% MALE AND 60% FEMALE.)

THE STATE HAD to ABSORB THE COSTS AND TIME IN RUNNING DNA TESTS 9 TIMES to IDENTIFY THE PERPETRATOR OF THIS ASSAULT ON AN OFFICER. IN ORDER to PROVE THEIR CASE, NOT ONLY WAS THE CHARGES NOT PROVEN, BUT THE EXCULPATORY EVIDENCE NOT TESTED FOR WOULD HAVE PROVEN MR. DiGEROLAMO'S INNOCENCE, A Complete "BRADY VIOLATION", BUT WOULD HAVE, OR SHOULD HAVE OPENED OTHER VENUES OF INVESTIGATION. (OTHER SUSPECTS OF THE CRIME, DISPROVING OF A CRIME OCCURING, ETC). UP THROUGH THE DISMISSAL OF THE CASE ALTOGETHER, FURTHER PROTECTING MR. DiGEROLAMO'S Constitutional RIGHTS UNDER THE U.S. Constitution AND THE Constitution OF WASHINGTON STATE AS A LAW BIDING CITIZEN OF THE STATE OF WASHINGTON AND THE U.S.A.

PER BRADY V. MARYLAND 373 U.S. 83, 10 L. ED. 2d 215, 83 S. Ct 1194 (1963), SUPPRESSION OF FAVORABLE EVIDENCE VIOLATES THE DUE PROCESS RIGHTS OF THE ACCUSED.

THE LIST OF THE EVIDENCE THAT WAS SUPPRESSED IN THE CASE AT HAND, VIOLATING THE RIGHTS OF THE WRONGLY CONVICTED AND ACCUSED, MR. DiGEROLAMO IS EXTENSIVE TO WIT;

A) DNA SWABS TAKEN FROM MR. DiGEROLAMO WITHOUT A WARRANT, PROBABLE CAUSE OR EMERGENCY.

B) QUESTIONING OF MR. DiGEROLAMO WITHOUT A WARRANT, PROBABLE CAUSE OR EMERGENCY.

C) NO DNA TESTING OF THE BROWN/YELLOW STAIN IN THE ALLEGED VICTIM'S, S.B., UNDERWEAR/PANTIES.

D) NO DNA TESTING OF THE BATHROOM WHERE VOMITING OCCURED.

E) THE SCREEN WAS PLACED into EVIDENCE, BUT NOT SUBMITTED FOR ANALYSIS;

F) NO FOLLOW-UP ON FINGERPRINTS AT THE CRIME SCENE;

G) NO DNA TESTING FOR SPERM IN THE VAGINAL SWABS.

H) THE ALLEGED VICTIM, S.B., LIED to NURSES AND POLICE ABOUT THE LAST TIME SHE HAD CONSENTUAL SEX;

I) THE ALLEGED VICTIM, S.B., REFUSED to DISCLOSE HER CONSENTUAL SEX PARTNER;

J) THE DNA OF THE "UNDISCLOSED MALE" WAS NOT TREATED AS POSSIBLE SUSPECT.

ARGUMENTS A, B AND C WERE ADDRESSED PREVIOUSLY IN THIS BRIEF, AND AS SUCH WILL NOT BE REVISITED AGAIN. THIS USE OF MR. DiGEROLAMO'S DNA AND QUESTIONING AND THE NON TESTING OF STAIN to PROVE MR. DiGEROLAMO'S DEFENSE, THAT his VOMIT CAUSED DNA TRANSFER

CAUSED BRADY VIOLATIONS.

D: TESTING OF BATHROOM

DURING THE INITAL INVESTIGATION, THERE WAS NO TESTING DONE IN THE BATHROOM, WHICH IS PART OF THE CRIME SCENE, THIS TESTING WOULD HAVE PROVEN MR. DIGEROLAMO'S THEORY ON THE DNA TRANSFER FROM VOMIT.

E: ANALYSIS OF SCREEN.

ALTHOUGH THE WINDOW SCREEN WAS ADMITTED INTO EVIDENCE, ONCE THAT MR. DIGEROLAMO'S FINGERPRINTS WERE NOT FOUND AND THAT NO OTHER PRINTS WERE FOUND, THERE WAS NO DNA SWABS TAKEN TO FIND THE TRUE PERPETRATOR OF ANY CRIME COMMITTED, POSSIBLY EVEN THE "CONSENTUAL PARTNER" EVENTUALLY DISCLOSED.

F: FOLLOW UP ON FINGERPRINTS

JUST AS IN THE CASE OF THE SCREEN, THERE WAS NO FOLLOW UP ON ANY OF THE FINGERPRINTS FOUND AT THE CRIME SCENE OF THE DIGEROLAMO HOME, ONCE AGAIN BRINGING OUT VITAL EVIDENCE OF THE "CONSENTUAL PARTNER" OR PERPETRATOR OF THE CRIME.

G: DNA TESTING FOR SPERM

THE DNA EXPERT NEVER TESTED THE VAGINAL SWABS FOR SPERM. THIS WAS DUE TO THE ALLEGED VICTIM, S.B., STATING THAT, IT WAS OVER A WEEK SINCE SHE HAD PENIAL/VAGINAL SEX. THE TESTING WOULD OF FOUND AT LEAST THE SPERM OF THE "CONSENTUAL PARTNER" WHICH WOULD HAVE PROVEN TO MATCH THE "UNKNOWN MALE DNA" FOUND IN BOTH SAMPLE'S TESTED FROM THE ALLEGED VICTIMS, S.B., UNDERWEAR/PANTIES.

H: ALLEGED Victim, S.B. LIED

THE ALLEGED Victim, S.B., LIED to THE INVESTIGATING NURSE ABOUT THE LAST time SHE HAD CONSENTUAL SEX (7 DAYS VS 1 DAY). RP. 382-23 AND) TESTIMONY OF S.B. RP. 332-1 THRU 22.

This SUSPICIOUS BEHAVIOR DEMONSTRATED BY THE ALLEGED Victim, S.B., OF A SERIOUS SEX CRIME, LYING TO THOSE INVESTIGATING THE CRIME, MOST DEFINITELY HINDERS THE TRUTH OF THE EVENTS FROM COMING OUT. This INCLUDES ANY OTHER PARTY THAN THE DEFENDANT MR. DiGEROLAMO.

I: ALLEGED Victim, S.B. REFUSED to DISCLOSE

THE ALLEGED Victim, S.B., REFUSED to REVEAL HER "CONSENTUAL SEX PARTNER" RP-346-5 OR to HAVE THE ENTIRE TRIAL DISCLOSED to HER UNNAMED FIANCÉ (RP-324-5) AND (344-21) ALSO (RP 348-6, THRU 12). AND, FIANCÉ' RP-315-15,16,17. THE REVEALING OF ANY "CONSENTUAL PARTNER") AND HAVING THE UNNAMED FIANCÉ FIND OUT ABOUT IT, COULD CAUSE THE ALLEGED Victim, S.B., SERIOUS DOMESTIC ISSUES, POSSIBLY LEADING to A BREAK UP. TO AVOID THIS PERSONAL DRAMA OR HARM to HERSELF, SHE WOULD RATHER PLACE AN INNOCENT MAN IN PRISON FOR A CRIME HE DID NOT COMMIT. THIS INADEQUATE INVESTIGATION BY THE SEATAC / KING CO. POLICE DEPARTMENT LACKS THE QUESTIONING OF THE "CONSENTUAL PARTNER" OR "PARTNERS" AND THE FIANCÉ HIMSELF. THESE LACK OF INTERVIEWING POSSIBLE OTHER SUSPECTS OR POSSIBLE DNA DONORS, WHICH WOULD HAVE EXHONORATED MR. DiGEROLAMO ARE COMPLETE BRADY VIOLATION.

J: THE DNA OF THE "UNDISCLOSED MALE"

THE DNA OF THE "UNDISCLOSED MALE" FOUND IN BOTH DNA SAMPLES TAKEN FROM THE ALLEGED Victim, S.B., UNDERWEAR/PANTIES,

WAS NEVER TREATED AS A POSSIBLE SUSPECT. THE 'DONOR' WAS ASSUMED TO BE FROM A CONSENSUAL PARTNER BY THE DNA EXPERT RP 499-1 THRU 3 AND RP 509-19, 20 + 21 AND WAS NOT FURTHER TESTED OR ATTEMPTED TO BE IDENTIFIED FURTHER BY THE EXPERT. THE DNA EXPERT DID FINALLY, A WEEK BEFORE THE TRIAL, STARTED, AT THE REQUEST OF THE DEFENSE COUNSEL, RUN THE DNA THROUGH AFIS, RP 271-10. ALTHOUGH, AFIS FAILED TO IDENTIFY THE DNA DONOR, IF DONE ANY TIME DURING THREE YEARS BETWEEN THE ALLEGED RAPE AND TRIAL. THERE WERE OTHER WAYS TO IDENTIFY THE DONOR.

ADDITIONALLY, DETECTIVE GORDON HAD NEVER TREATED THE "UNKNOWN MALE" AS A POSSIBLE SUSPECT. ONCE DET. GORDON HAD "MADE UP HIS MIND" THAT MR. DIBERARDINO WAS THE GUILTY PARTY, HE LOOKED NO FURTHER FOR ANY POSSIBLE SUSPECTS. THIS INCLUDES WORKING WITH THE DNA EXPERT. RP 261-22, 23.,

THIS BEHAVIOR BY DETECTIVE GORDON GOES BEYOND SIMPLE NEGLEGENCE IN AN INVESTIGATION AND INVESTIGATIVE PRACTICES. THIS BEHAVIOR IS ACTUALLY UNPROFESSIONAL AT BEST, BORDERING ON CRIMINALLY NEGLIGENT, CAUSING AN INNOCENT MAN TO BE INCARCERATED FOR NOT ONLY A CRIME THAT HE DID NOT COMMIT, BUT THAT COULD NEVER BE PROVEN TO HAVE OCCURRED AT ALL. THIS BLINDNESS TO FACTS BY THE POLICE AND THE DNA EXPERT TO THE TRUTHS AND FACTS AVAILABLE IN THIS CASE, AND THE UNWILLINGNESS TO TEST OR PROCESS EVIDENCE IS A BRADY VIOLATION TO AN UNIMAGINABLE MAGNITUDE ON BEHALF OF THE STATE CAUSING MR. DIBERARDINO CONSIDERABLE PREJUDICE AND HARM.

BRADY IS OF SUCH CONSTITUTIONAL MAGNITUDE THAT IT IS COVERED UNDER THE U.S. CONSTITUTION AM. 14, STATE VS. MACDONALD, 122 WN APP, 304, 45 P.3d 1248 (2004)

U.S. Constitution. AM. 14.
Washington STATE Constitution.

THE BRADY RULE IS NOT MEANT to DISPLACE THE ADVERSARY SYSTEM, THE PROSECUTOR IS NOT REQUIRED to DELIVER his ENTIRE FILE to DEFENSE COUNCEL, BUT ONLY TO DISCLOSE EVIDENCE FAVORABLE to THE ACCUSED, THAT, IF SUPPRESSED, COULD DEPRIVE THE DEFENDANT to A FAIR TRIAL. STATE VS. JONES, 144 WN APP. 284, 183 P.3d 307 (2008).
FAVORABLE EVIDENCE to DEFENDANT UNDER BRADY INCLUDES NOT ONLY EXCULPATORY EVIDENCE, BUT ALSO IMPEACHMENT EVIDENCE.
STATE VS. MACDONALD 122 WN App 804, 45 P3d 1248 (2004)
BRADY OBLIGATIONS EXTEND NOT ONLY to EVIDENCE REQUESTED by THE DEFENSE, BUT ALSO to FAVORABLE EVIDENCE NOT SPECIFICALLY REQUESTED by THE DEFENSE.
STATE V. COPELAND, 89 WN APP 492, 949, P.2d 458 (1998)
TO ESTABLISH A BRADY VIOLATION, DEFENSE MUST DEMONSTRATE THE EXISTANCE OF EACH OF THE NECESSARY ELEMENTS:
1) THE EVIDENCE AT ISSUE MUST be FAVORABLE to THE ACCUSED, EITHER BECAUSE it is EXCULPATORY, OR BECAUSE it is IMPEACHING, AND,
2) THAT THE [redacted] EVIDENCE MUST HAVE been SUPPRESSED by THE STATE, EITHER WILLFULLY OR INADVERTENLY, AND,
3) PREJUDICE MUST HAVE ENSUED.
GIGLIO V. U.S., 405 US 150, 154-55, 92 S.CT 763, 31 L.ED 2d 104 (1972)
KYLES V. WHITLEY, 514 US. 419, 434, 115 S.CT 1555 131 (1995)
US V. ~~BAGLEY~~ MULLEN, 171 WN 2d 881, 259 P.3d 158 (2011)
STATE V. ~~MULLEN~~ BAGLEY, 473 US 667 682 105, S CT 3375, 87 ED 2d (1985)
STATE V-MACDONALD, 122 WN APP 804, 45 P3d 1248 (2004)
STATE V LOREL, 161 WASH 2d 276, 292, 165 P3d, 1257 (2007)

RHODES V. HENRY, 638 F 3d, 1027, 1089, N12 (9th Cir 2011)

IN CONSIDERING THE PREJUDICIAL NON DISCLOSURE TO DEFENDANT, OF MATERIAL EVIDENCE, A COURT MUST CONSIDER WHETHER THE INFORMATION WAS ALREADY KNOWN TO THE DEFENDANT OR WHETHER REASONABLE DILIGENCE WOULD HAVE UNCOVERED THE INFORMATION THROUGH ALTERNATIVE MEANS.
STATE VS. GREGORY, 158 Wn. 2d 759, 147 P. 3d 1201 (2006)

A REASONABLE PROBABILITY THAT EVIDENCE DISCLOSED TO THE DEFENSE, THE RESULT OF THE PROCEEDING WOULD BE DIFFERENT.
KYLES, 514 U.S AT 433-34, 115 S. CT 1555.

IN THE EXCLUSION OF DNA EVIDENCE THAT THERE IS ANOTHER POSSIBLE SUSPECT IS A BRADY VIOLATION.
PERSONAL RESTRAINT OF LORD, 123 WASH 2d 296, 868 P2d 835 (1994).

IN THE MULTIPLE ACTIONS OF THE STATE OF WASHINGTON IN THE CASE AT HAND AGAINST MR JOSEPH ANTHONY D'BERGLAMO, THERE ARE MULTIPLE AND ACCUMULATED HARMFUL VIOLATIONS THAT QUALIFY AS BRADY VIOLATIONS.
FROM TAKING DNA WITHOUT A WARRANT, PROBABLE CAUSE OR EMERGENCY, TO INADEQUATELY TESTING AND FOLLOWING UPON THE DNA TESTING AND OTHER EVIDENCE, TO THE NEGLIGENT INVESTIGATION into ANY TRUE FACTS OF THIS CASE, INCLUDING THE LIES AND REFUSAL to COOPERATE WITH INVESTIGATION, CULMINATING WITH THE IGNORING OF THE DNA PROVEN "UNDISCLOSED MALE" AS A POSSIBLE SUSPECT, THIS CASE

AGAINTS AN INNOCENT MAN IS THE ULTIMATE SHOWING AS TO WHY BRADY WAS MADE CASE LAW IN THE FIRST PLACE.

IN THIS COURT OF APPEALS -- DIVISION I'S RECENT DECISION ON NO. 677063-I, STATE V. MANION, 295 P3D 270 (2013) WHERE DNA OF A MISSING SUSPECT WAS NOT FOLLOWED UP ON, THE COURT RULED TO REVERSE THE CHARGES.
THIS COURT SHOULD FOLLOW THE SAME RULING IN THIS CASE, AS IT IS JUST ONE OF MANY SHOWN BRADY VIOLATIONS.

Conclusion

THIS COURT MUST REVERSE THE CONVICTION AND DISMISS ALL CHARGES AGAINST JOSEPH ANTHONY DIBEROLAMO DUE TO THE CUMULITIVE CONSTITUTIONAL AND PROSECUTORIAL ACTS OF MISCONDUCT ENACTED UPON AN INNOCENT MAN, THOUGH INADEQUATE AND ILLEGAL INVESTIGATION TECHNIQUES ENACTED BY THE POLICE, DNA EXPERTS AND THE UNCOOPERATIVE AND LYING ALLEGED VICTIM OF THE CASE AT HAND.

RESPECTFULLY SUBMITTED THIS 16TH DAY OF JUNE 2013.

JOSEPH A. DIBEROLAMO,
PRO SE.