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

STATE OF WASHINGTON, Respondent, VS. William Womack Appellant.	NO. 42999-3-II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, William Womack, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits:

ADDITIONAL GROUND 1

The Trial Court erred by entering the order on October 17th, 2010, in finding "probable cause" and granting State's Motion for Warrant of Arrest; Defense Counsel failed to challenge probable cause in a preliminary hearing in which denied Appellant of due process and effective assistance of counsel guaranteed by the federal and Washington State constitutional, U.S. Const. amend. VI, XIV, and Wash. Const. art. I, §22.

On October 17th, 2010, the State filed charges of 1 count of Rape of a Child, 1 count of Child Molestation, and 2 counts of Rape of a Child 2, which were signed by Deputy Prosecutor Amy Hunter in the place of Prosecutor Susan Baur. (CP 1-2) The Courts found "probable cause" based on the following 5 events:

1.) CJAC interview of alleged victim (Hereafter AW) (RP 845 at 1-2)

2.) Declaration of AW's step mom stateing AW told her about alleged abuse. (Hearsay)(RP 845 at 3-4)

3.) AW's cousin and cousin's step mom's declaration stating AW also told them about alleged abuse. (Hearsay)(RP 845 at 7-9)

4.) A "confirmed CPS involvement of prior incident." (Unfounded)(RP 944-962)

5.) A declaration of AW's step mom stating she allegedly heard Womack imply that he abused AW. (Double Hearsay)(RP 845 at 24-25)

On October 6th, 2011, one year later, the State filed a Motion in Limine, which stated, "The present case is similar to Scherner in that the case does rest on the victim's credibility and her statement's the abuse occurred. There is no physical evidence of the abuse." (CP 75 at 1-2) Furthermore, "This Court should admit the evidence under RCW 10.58.090 as the case creates a need for such evidence in light of the lack of physical evidence and the multiple offender issues." (CP 75 at 24-25, 76 at 1)

The "confirmed CPS involvement of a prior incident" was a incident in February of 2008 where AW admitted to lying about stating father had hit her in a note to a friend in which was intercepted by a teacher which further informed CPS as a mandatory reporter. The two younger step childeren of Womack's family, then AW, and finally the Appellant were all individually interviewed by CPS and the "allegations" in the final report were "Unfounded." During the interview with AW, CPS searched for bruising and found none in which they even tried to take pictures to show later that there were none in which AW refused. (RP 944-948)

Beck v. State of Ohio, 379 U.S. 95, 85 S.Ct. 223

> "Whether that arrest was constitutionally valid depend in turn upon whether, at the moment of the arrest was made, the officers had probable cause to make it -- whether, at that moment the facts and circumstances within their knowledge and of which they had reasonably trust worthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." Brinegar v. United States, 338 U.S. 160, 175-176, 69 S.Ct. 1302, 1310-1311, 93 L.Ed. 1879; Henery v. United States, 361 U.S. 98, 102, 80 S.Ct. 168, 171, 4 L.Ed.2d 134.

If anything the CPS incident should of indicated that AW's credibility was lacking by making false allegations in the recent past which was admitted to and proven. Based on the facts and circumstances, AW's credibility alone was the sole provider of knowledge, and would not warrant a prudent man to believe Womack committed the offense. Defense Counsel Scudder failed to argue this from the very beginning and his reasonableness was clearly deficient.

In fact, even one year later when Hunter filed her Motion in Limine, AW's credibility alone was the only true evidence that existed which consisted of multiple inconsistencies. (CP 75 at 1-2, 24-25, 76 at 1)

ADDITIONAL GROUND 2

The State erred between the dates of October 17th, 2010, to January 25th, 2011, by failing to use "due diligence" to obtain custody of Womack for trial, disregarding the use of the IAD (Interstate Agreement on Detainers), so Womack could avail himself of demands for speedy trial in which violated his right to due process and right to a speedy trial guaranteed by the federal and state constitution, U.S. Const. amend. VI, XIV, Wash. Const. art I, §22.

In early August, 2010, Detective Voelker received information from Womack's parents that Womack was working as a long haul truck driver. (RP 815 at 1-3, 816 at 7-8) On October 13th, 2010, the State filed charges, the Courts found probable cause, and a local State warrant was issued. In discovery there is no record of the Interstate Agreement on Detainers being utilized. In State v. Anderson, 121 Wn.2d 852, 855 P.2d 67 (1993) the Courts held:

> "[2] There is no legislative history to determine whether we purposely omitted a good faith and due diligence requirement for amendments to CrR (g)(6). But the policy expressed in the Standards for Criminal Justice, our cases prior to amendment's to the rule, and our recent decision in State v. Greenwood lead us to the conclusion that Washington prosecuting authorities act in good faith and with due diligence in bringing a defendant to trial in this State once it has been brought to their attention that the defendant is detained in jail or prison and the defendant is subjected to conditions of release not imposed by a court of the State of Washington CrR 3.3 (g)(6).
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> Good faith and due diligence requires that Washington prosecutoring authorities undertake to obtain the presence of a defendant for trial in this State by extradition or interstate compact. **The Interstate Agreement on Detainers should be utilized for filing detainers as that defendant's may avail themselves of demands for speedy trial.** Failure of the State to do this results in inapplicability of the exclusion from computation of the speedy trial period under CrR 3.3 (g)(6) and possible **dismissal with prejudice** under CrR 3.3 (i)." (emphasis added)

In State v. Hudson, 130 Wn.2d 48, 921 P.2d 538, the Courts affirmed Anderson and held:

> "In State v. Anderson, 121 Wn.2d 852 P.2d 671 (1993), holds that the State has a duty to use due diligence to obtain custody of an out-of-state defendant even when he or she is not incarcerated. The burden on the State is to use the agreement on detainers differ significantly from use of the mechanism where by prosecutors may **promptly** [court's emphasis] obtain the presence of a prisoner for trial." (underline added) Id. at 864

The State knew from the very beginning that Womack was working as a long haul truck driver and yet failed to utilize the Interstate Agreement on Detainers. The State's due diligence consisted of placing a local State warrant for arrest on Womack and by calling him twice in which Womack responded back three times. Womack was egregiously prejudiced by the State in which they lead the jury to believe that Womack was "running from the law" and there was no way he could of been working the whole time with a warrant out for his arrest. (RP 1102-1104)

ADDITIONAL GROUND 3

The State erred between January 14th, 2011, to early September, 2011, by not providing Womack with "meaningful access to a law library and other legal research, and the rudiments of an adequate law library", violating Womack's right to access the Courts guaranteed in the federal and state constitution, U.S. Const. amend. VI, XIV, and Wash. Const. ar. I, §22.

As admitted to and proven (United States District Court, Western District of Washington at Tacoma, Cause No. C12-5431 RBL/KLS), the Cowlitz County Jail refused Womack's access to the legal law library up until September 28th, 2011. It has long been held that right without remedies are no rights at all. Woods v Interstate Realty Co., 337 U.S. 535, 538 (1949). In Johnson v. Avery, 373 U.S. 483 (1969), the Courts held:

> "it is fundamental that access of prisoner's to the Courts for the purpose of presenting their complaints may not be denied or obstructed." Johnson, at 485

In Bounds v. Smith, 430 U.S. 817 (1977), the Supreme Court for the first time squarely held that the right of access to court is so fundamental that prison officials are under an affirmative obligation to ensure that it is maintained. Bounds teaches that the states bear the responsibility for taking steps to ensure that inmates enjoy a right of access to the Courts that is "adequate, effective, and meaningful." Bounds, at 825

> "Without a library, an inmate will be unable to rebut the states argument. It is not enough to answer that the Court will evaluate the facts pleaded in light of the relevant law. Even the most dedicated trial judges are bound to overlook meritorious cases without the benefit of an adversary presentation." Bounds, at 826 (citing

Gardner v. California, 393 U.S. 367, 369-70, (1969)), and

> "We reject the State's claim that inmates are 'illequipped to use' 'the tools of the trade of the legal profession,' making libraries useless in assuring meaningful access." Bounds, at 826

The State would have this Court believe that since it provided Womack a state appointed counsel, then Womack had no need for a adequate law library or legal research. "A pretrial detainee 'may not meaningfully represent himself without access to law books, witnesses, or other tools to prepare a defense.'" Taylor, 880 F.2d at 1042 In Silva v. Di Vittorio, 658 F.3d 1090 (2011) the Courts reaffirmed Bounds v. Smith and held:

> "Prisoners have a constitutional right of access to the courts. see Bounds v. Smith, 430 U.S. 817, 821, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). Under the First Amendment a prisoner has both a right to meaningful access to the courts and a broader right to petition the government for a redress of his grievances. See Bradly v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995) (overruled on other grounds by Shaw v. Murphy, 532 U.S. 223, 230 n. 2, 121 S.Ct. 1475, 149 L.Ed.2d 420 (2001)). In some instances, prison authorities must even take affirmative steps to help prisoners exercise their right." Silva, at 1101-02
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> "This right does not require prison officials to provide affirmative assistance in the preparation of legal papers, but rather forbids states from erect[ing] barriers that impede the right of access of incarcerated persons." Silva, at 1102 (emphasis added)
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> "...prisoners have a right under the First and Fourteenth Amendment to litigate claims challenging their sentences or the conditions of their confinement to conclusion without active interference by prison officials." Silva, at 1103

If Womack had been allowed adequate time in the law library he would have known his rights and been in a much better position to present his case before and during trial. Womack was only allowed to use the law library after a Judge ordered use. (RP 50, 1402-05)

ADDITIONAL GROUND 4

The State erred on March 4th, 2011, by not disclosing interim notes or CD's from police reports, thus committing a Brady violation, in which denied Womack's right to due process guaranteed by the federal and Washington State constitution, amend. V, VIX.

In early August through December, 2010, Detective Voelker interviewed several people including AW, Tammy Ashley, Bill and Sue Womack, Shannon and Kayla Vonstein, Charles Graling, and Robin Anderson. The only discovery provided to Scudder was the final police report. No interim notes were ever disclosed or mentioned. However, on a majority of the police reports, towards

the bottom, stated a CD was enclosed. The State agreed to Defendant's Omnibus request, No. 7, filed on February 24th, 2011, which is similar to the Jencks Act in which ask the State to provide a copy of all physical or documentary evidence. (CP 4-5, RP 1347 at 21-23) Discovery was ordered due on the Fourth of March, 2011, in which no CD's or interim notes were provided. (RP 1348 at 5-11) In fact, this evidence was never seen by Womack. Womack did ask for CD's on October 6th, 2011, and stated that he wanted the CD's because the police reports were extremely biased and incomplete based on his knowledge of his interview with Detective Voelker and what was put in the police report. (and left out) Judge Evans ordered that if the Kelso Police had additional evidence regarding audio CD's, that they immediately copy and hand them over to Womack. (RP 80 at 19-25, 81-85, 86 at 1-15) In Jencks v. United States, 353 at 661, 77 S.Ct. 1007, 1008 (1957), the Courts held:

> "A criminal action must be dismissed when the government, on the ground of privilege elects not to comply with an order to produce, for the accused's inspection and for admissions in evidence, relevant statements or reports in it's possession of government's witnesses touching the subject matter of their testimony at trial."

Detective Voelker testified during trial to attending the Washington State Criminal Justice Training and had further training at the Reed School of Interview, Schools on Search and Seizure, felony apprehension, and FBI School of Interrogation and Interview. (RP 807 at 1-12) Voelker further testified that out of the 10 or more interviews, he only recorded one. (RP 848 at 20-25) He also testified that instead of recording interview, he had special training in taking interim notes and he transcribed those notes into his final police report. (RP 871 at 13-25, 872 at 1-3, 875 at 23-25, 876 at 1-4) Furthermore, he testified that during the only recorded interview with Tammy Ashley, he wrote 4 things on a piece of scratch paper for Tammy to write down on a special "friend of the Court" statement form, and the scratch paper would be thrown away. (RP 861 at 22-25, 862 at 1-8, 877 at 3-17) Voelker then testified that the reason for this additional statement is to show consistency and to guage honesty. (RP 877 at 18-25, 878 at 23-25) So essentially he tells Tammy what to write so she will be consistent and look honest. With all Voelker's and Hunter's experience and training, they should have known that they were to provide interim notes in discovery, in fact the last two witnesses that Hunter interviewed just days before the trial, Hunter provided interim notes. (CP 185-192) Without these first interim notes or an audio recording, Womack had

no way of guaging the reliability of these first interviews and comparing them with later interviews. In fact there were interviews done in which there were no record what so ever. Voelker reluctantly admitted to interviewing the first person involved in reporting the allegations, but there was no record in discovery of this at all. (RP 857 at 6-25, 883 at 10-15) In Giles v. Maryland, 386 U.S. 66, 98 (1967), Justice Fortas, concurring, noted that the State is compelled to disclose any information:

> "which is material, generously conceived to the case, including all possible defenses." see Levin v Clark, 408 F.2d 1209, 1212 (D.C. Cir. 1967); Note, Discovery and Disclosure -- Dual Aspects of the Prosecutors Role in Criminal Procedure, Supra note 6, at 105; Note, The Prosecutor's Constitutional Duty to Disclose Evidence to the Defendant, Supra note 6, at 148-49.

In United States v. Bryant, 439 F.2d 642, 653 (D.C. Cir. 1971), noted in 1971 Duke L.J. 644, the Courts held:

> "[W]e hold that sanctions for nondisclosure based on loss of evidence will be invoked in the future unless the Government can show that it promulgated, enforced, and attempted in good faith to follow rigorous and systematic procedures designed to preserve all [court's emphasis] discoverable evidence gathered in the course of a criminal investigation. The burden ...is on the Government to make this showing. Negligent failure to comply with the required procedures will provide no excuse."

Furthermore, Voelker illegally confiscated Womack's laptop, and then the State failed to provide a mirror image by the "Forth of March" as ordered by Judge Stonier, as requested in the Omnibus request No. 7. (CP 128-136) On April 18th, 2011, an additional computer was seized by Voelker from Womack's wife. Hunter provided mirror images of the two computers only after Judge Evans ordered her to do so on August 25th, 2011, in which Hunter stated on the record that it would take a couple days to do so. (RP 1391-92) Womack did not receive the mirror images until 42 days later, 4 days before trial was suppose to take place. (RP 87 at 15-18) Hunter then actually objected to anything that the Defense was to pull off the computers because they would be essentially be receiving it the day of trial. (RP 90 at 17-22) Because of these many Brady violations and the total disregard of the Jencks Act, Womack was denied due process and was unable to gauge the credibility of key parts of the investigation and rebut these first testimonies, police reports, Voelker's testimony, nor judge if any of the first testimonies had any probative value.

ADDITIONAL GROUND 5

The Trial Court erred on May 6th, 2011, by entering the order granting Defense Counsel's Motion to Continue and not "scrutinizing the delay with particular care" once a continuance was granted. The state appointed attorney erred on the same day by requesting an unreasonable continuance over Appellant's objection, and by not objecting to discovery not being complete as ordered on March 4th, 2011. The State erred on the same day by not providing discovery by "the close of business day on the Forth of March", 2011, in which denied Appellant's right to a speedy trial, effective assistance of counsel, and due process guaranteed by the state and federal constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22.

From the very first time Womack talked to his court appointed attorney, Thad Scudder, he voiced his concern about having a speedy trial. Womack knew his truth would stay consistent and the chances of the two main witnesses fabrications were bound to be inconsistent. In the beginning of the case at bar, there were only 4 people total included in the statements from the police reports that were remotely relevant, three in which were absolutely hearsay statements that were not admissible in court. There was one alleged victim in which she told 3 individuals. So the only people that needed to be interviewed were these 4 people and Voelker. On March 10th, 2011, 4 days before trial, Scudder contacted Womack and told him he "hadn't had time to look at his case yet." Scudder assured Womack that he wouldn't loose his right to a speedy trial if he signed a waiver with a dated commencement date of March 15th, 2011. Judge Stonier on the record stated, "Having signed this agreement to a new commencement date, you must be tried within 60 days of March 15th." (RP 6 at 7-9)(emphasis added) Essentially, at that point womack had to choose between adequate counsel, or signing a waiver starting a new commencement date. This has been called a "Hobson's choice" as defined in State v. Sherman, 59 Wn.App. 763, 769 (quoting State v. Price, 94 Wn.2d 810, 814 (1980)). Womack is not arguing the point he signed the waiver, however, after 112 days to interview 5 people, Scudder failed to do so. And he failed to object to late discovery which was due on March 4th, 2011. Instead Scudder ask for an unreasonable continuance of 60 more days over Womack's objection. (RP 8 at 4-25, 9 at 1-14)

In State v. Flinn, 154 Wn.2d 193, 110 P.3d 748 (2005), Honorable J. Chambers held:

> "CHAMBERS,J. (dissenting) -- the purpose of CrR 3.3 is to prevent undue and oppressive incarceration prior to trial. State v. Kingen, Wn.App. 124, 692 P.2d 215 (1984). Despite this mandate, Anthony Flinn, a mentally-challenged defendant, was kept in jail for almost 5 and one-half months before his trial began, of least three weeks of which were probably unnecessary. Because the trial court failed to make an adequate record demonstrating the delay was unavoidable under the circumstances, I cannot conclude that the length of the delay was reasonable."

In Flinn the Court put the burden on the Trial Court to make an adequate record that the delay was unavoidable under the circumstances. In the case at bar, Judge Bashor stated, "Well, I will make a finding of good cause if you're [Scudder] not prepared to go to trial and won't be within speedy trial. I'm not hearing anybody, essentially pointing fingers as to anybody being at fault, other than that we're not ready to go on this case." (RP 10 at 5-14) Judge Bashor does not show that the delay is unavoidable, nor does he have a reason why 45 days of delay is required.

> "Delay which occurs after a speedy trial is demanded should be **scrutinized with particular care.**" (emphasis added) Cain, 686 F.2d at 382, (citing United States v. Carini, 562 F.2d 144 (2d Cir. 1977); United States v. New Buffalo Amusement Cort., 600 F.2d 368, 377-78 (2d Cirt. 1979)).

Womack clearly objected to the continuance and Scudder clearly stated on the record that Womack was not willing to waive his rights to a speedy trial. (RP 8 at 10-15, 9 at 1-14) Scudder stated his investigator had been working with the State to interview these witnesses that had not yet been interviewed. (RP 8 at 7-10) Scudder did not directly say the investigator was being held up by the State, but that was the case. After Womack demanded a speedy trial, Judge Bashor failed to "scrutinize the delay with particular care" by granting an unreasonable 45 day continuance over Judge Stonier's previous ruling of, Womack "must be tried within 60 days of March 15th", 2011. (RP 6 at 7-9)

ADDITIONAL GROUND 6

The State erred on May 6th, 2011, my egregiously lying to the Judge during a public hearing in which substantially lowered Womack's chance of getting a reduced bail which placed an extreme amount of prejudice against Womack in front of the Courts and the public (which later could be potential jurors$)which denied WOmack's right to access the courts, witnesses, legal research, impartial jury, and to not be intentionally prejudiced in front of the public, guaranteed by the federal and state constitution, U.S. Const. amend. VI, XIV, Wash. Const.

art. I, §22.

During the hearing on May 6th, 2011, Scudder motioned the Courts to reduce bail. Ms. Shaffer, representing the State, stated the following:

> "Well, Your honor, we would dispute that Mr. Womack was not aware of the charges when he fled to the mid-west. His wife was well aware of the pending investigation and, in fact, worked as an employee of law enforcement. So I think it's very realistic to assume, in fact, he did know about the investigation and that it was a major, if not the only reason, for his move to the mid-west." (RP 11 at 3-11)

She further stated:

> "This is a pretty egregious case, even for this type of charge. We have video -- excuse me. The State's case is quite strong, and I just point that out because Defendant is looking at a lengthy prison sentence if convicted. There's video evidence of the rapes and molestation. So we would oppose any bail reduction." (RP 11 at 23-25, 12 at 1-5)

The woman Ms. Shaffer was referring to is Tammy Ashley (formerly Tammy Womack), in which was never married the Appellant. Womack and Tammy lived as a couple two-one-half years prior to this hearing and Womack since then married another woman. (RP 11 at 11-15) Furthermore, Womack never relocated to the mid-west, his driver license currently then an now list a local address, he was working as a long haul truck driver in which he was arrested in the mid-west. As far as the video of rapes and molestation, the State never had such video, and that was an extremely prejudicial blatant lie. This lie is cleared up on May 17th, 2011, in which Scudder on the record stated that the video was a premature allegation. (RP 1359 at 20-25, 1360 at 1-15) The NEW York Code of Professional Responsibility: Canons and Disciplinary Rules DR 1-102 (a)(5) Misconduct, states:

> A lawyer shall not: Engage in conduct that is prejudicial to the administration of justice.

In the ABA Standards of Prosecution Function, Part I, Standard 3-1.4(a) Public Statements, states:

> A prosecutor should not make or authorize the making of an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the prosecutor knows or reasonably should know that it will have a substantial likelihood of prejudicing a criminal proceeding.

These statements made by Ms. Shaffer were made at a **public** hearing. Anyone attending this hearing could of been a prospective juror or could of told a prospective juror what they heard. In a small community this is highly likely. By hearing this false testimony, the public was misled that there was extremely

incriminating evidence that did not exist. Not only was Womack denied a lower bail setting so he could bail out and have meaningful access to law research and his witnesses, he was extremely prejudiced in which there later would be no way to 100 percent guarantee a impartial jury.

ADDITIONAL GROUND 7

The Trial COurt erred by entering the order on June 7th, 2011, granting the State's Motion to Continue the Trial Date filed on June 7th, 2011, and by not setting a trial date to "the earliest possible day" once a continuance was granted. The state appointed attorney erred on the same day by not objecting to late discovery. The State erred on the same day by "not acting with due diligence in seeking to secure the State's witnesses presence at trial" as stated in RCW 5.56.010, and by not using a different counsel while taking a month long vacation, denying Womack's right to a speedy trial and right to effective assistance of counsel guaranteed by the federal and state constitution, U.S. Const. amend VI, Wash. Const. art. I, §22.

On June 7th, 2011, Hunter filed a Motion to Continue, based on the unavailability of material witnesses, and a prescheduled month long vacation from June 24th, 2011, to July 25th, 2011. (CP 12 at 15-18, 13 at 24-25) Hunter also explained that Womack's speedy trial period ended on July 20th, 2011. (CP 13 at 23-24) The State issued local subpoena's for these two out-of-state witnesses. (CP) These two subpoena's are not compliant to RCW 5.56.010 in which states:

> **When witnesses must attend - Fees and allowances.** ...that a party desiring the attendance of a witness residing outside of the county in which such action or proceeding is pending, or more than 20 miles of the place where such court is located, shall apply ex parte to such court, or to the judge, commissioner, referee, or clerk thereof, who, if such application be granted and a subpoena issued, ..."

The two witnesses, Janet Long and Kayla Vonstein, both reside in Junction City, Oregon, which is over a hundred miles from the Cowlitz County Court House. (RP 766 at 7-11, 785 at 8-10) In State v. Iniguez, 143 Wn.App 845, 180 P.3d 855 (2008), the Courts held:

> "The trial court does not abuse it's discretion in granting a continuance when there is a valid reason for the witness's availability, the witness will become available within a reasonable time, and the continuance will not substantially prejudice the defendant. State v. Day, 51 Wn.App. 544, 549, 754 P.2d 1021 (1988).
> These requirements are not satisfied, however, unless the party whose

witness is absent proves it acted with due diligence in seeking to secure that witness's presence at trial. State v. Nguyen, 68 Wn.App. 906, 915-916, 847 P.2d 936 (1993).

[A] party's failure to make 'timely use of the legal mechanisms available to compel the witness's presence in court' preclude[s] granting a continuance for the purpose of securing the witness's presence at a subsequent date. State v. Adamski, 111 Wn.2d 574, 579, 961 P.2d 621 (1988) (quoting State v. Toliver, 6 Wn.App. 531, 533, 494 P.2d 514)). Thus, 'the issuance of a subpoena is a critical factor in granting a continucance.'" State v. Wake, 56 Wn.App 472, 476, 783 P.2d 1131 (1989). Iniguez, at 853-54.

In Iniguez, the Court's found that a delay due to the lack of presence of a witness due to the State not informing that witness of the new trial date until 1 week before trial, and the fact the Trial Court did not order that witness back which created a month delay, was unreasonable. At the case at bar, the reason for the delay was for both the witnesses and the prosecutor to take a vacation in which created a two month delay.

"A defendant's speedy trial rights do not depend on how convenient the trial date is to potential witnesses. Barker, 407 U.S. 531 (citing Strunk v. United States, 412 U.S. 434, 439 n. 2, 93 S.Ct. 2260, 37 L.Ed.2d 56 (1973))." Iniguez, at 857.

"The Defendant's assertion of his speedy trial right ... is entitled to strong evidentiary weight in determining whether the Defendant is being deprived of the right. Barker, 407 at 531-32. The timeliness, vigor, and frequency with which the right to a speedy trial is asserted are probative indicators of whether a Defendant was denied needed access to a speedy trial over his objection. Cain, 686 F.2d at 384 (citing Barker, 407 U.S. at 528-29; United States v. Avalos, 541 F.2d 1100, 1115 (5th Cir. 1976); United States v. Netterville, 553 F.2d 903, 914 (5th Cir. 1977))." Iniguez, at 857.

Womack has clearly asserted his right to a speedy trial by this time. (RP 8 at 11-12, 9 at 7-14, 18 at 12-14, 19 at 7-18) Scudder mentioned that he was waiting on discovery. (RP 18 at 19-23) This is because the State waited until June 3rd, 2011, to submit two computers to the Washington State Crime Lab. (RP 18 at 11-23)(CP 117-120) The State had both of these computers by April 18th, 2011, so there was no reason why it took 45 days for the State to submit these computers to the crime lab. There is also no reason why a continuance could not of been granted on the previous good cause since speedy trial did not end until July 20th, 2011. Futhermore, there was no reason why one of the 16 other prosecutors could not of deliberated in place of Hunter. (Ms. Gulmert - RP 1 at 4-6, Mr. Phelan - RP 1347 at 5-7, Mr. Smith, RP 2064 at 21-23, Mr. Brittain - RP 2067 at 19-21, Mr. Betson - RP 8 at 21-24, Ms. Shaffer - RP 11 at 3-11) Womack had to endure another 85 days in jail (55 days till trial and another 30 due to 3.3(b)(5)) while several people enjoyed

their summer vacation. (CP 13 at 7-9, 24-25)(RP 1367 at 3-25) During this time Womack wrote several grievances about his conditions in the local jail. Womack was locked down 21 hours a day, fed nasty bologna meat with a piece of bread twice a day, and treated extremely poor. Like Iniguez, this continuance was the longest and most oppressive, in which placed the most substantial amount of prejudice by allowing the State's witnesses to have an alibi of why their fabrications did not match up with previous declarations during interviews. The large amount of time incarcerated wore heavily on Womack in which by the time he got to trial, he could barely show any emotion when hearing the allegations against him. He also lost so much weight from the egregious diet that his physical appearance was poor. Defense Counsel's choice not to object to late discovery was not reasonable. The State's action by not providing discovery and trying the case in a timely manner was highly unethical. Because of this 85 day continuance, Womack's constitutional right to a speedy trial was egregiously denied.

ADDITIONAL GROUND 8

The Trial Court erred by entering the order on July 28th, 2011, granting Defense Counsel's Motion to Continue filed on July 26th, 2011. The state appointed attorney erred on the same day by not objecting to discovery being disclosed a week before trial, well past March 4th, 2011 discovery deadline, and instead asking for a continuance over Womack's objection. The State erred on July 25th, 2011, by providing late discovery in which all together denied Womack's right to a speedy trial, due process, and effective assistance of counsel guaranteed by the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22.

On or before July 19th, 2011, the State received the lab report from the Washington State Crime Lab. (CP 121) For unknown reasons, and knowing Scudder is waiting for them, the State failed to disclose the report to Scudder until July 25th, 2011, one week before trial and in total disregard of Judge Evans prior ruling on July 5th, 2011. (RP 1363 at 24-25, 1364 at 1-14)(CP 22 at 22-25) Upon disclosing the report, the State prematurely told Scudder that they would be calling two new witnesses to testify. (CP 22 at 22-25, 23 at 1-7) This is done 1 week before trial. One week later these premature allegations are proven to be false. (CP 122-123) Once again, instead of objecting to the discovery being late, Scudder unreasonably filed a Motion to Continue the next day which was July 26th, 2011. (CP 22-24) This motion was based on wanting

day which was July 26th, 2011. (CP 22-24) This motion was based on wanting to hire a professional to rebut what a new witness, Dr. Blaine Tolby, might put in a report a couple days before the trial. (The report came back on the day the trial was supposed to take place, August 1st, 2011. (CP 123)) Any reasonable attorney working on the behalf of his client would object to this material coming in this late, especially when a Judged voiced concerns about the discovery coming in later than ideal, and ordered it to be disclosed as soon as possible. (RP 1364 at 4-13) On July 26th, 2011, Judge Stonier did make the statement that "there would be no more continuances", but for unknown reasons the Report of Proceedings for July 26th, 2011, is not accurate and does not reflect all that was said. (RP 2069) Two days later, on July 28th, 2011, Scudder presented the same motion in front of Commissioner Maher in which he granted the motion over Judge Stoniers previous ruling, and moved the trial date within the previous found good cause. (RP 1367-1369) In State v Price, 94 Wn.2d 810, 814, 620 P.2d 994 (1980), the Courts held:

> "If the State inexcusably fails to act with due diligence, and material facts are thereby not disclosed to defendant until shortly before a crucial state in the litigation process, it is possible either a defendant's right to a speedy trial, or his right to be represented by counsel who had had sufficient opportunity to adequately prepare a material part of his defense, may be impermissibly prejudiced. Such unexcused conduct by the State can not force a defendant to choose between these rights."

Womack claims that the preponderance of the evidence shown within shows that the State failed to act with due diligence by not providing discovery until a week before trial, which compelled him to choose between adequate counsel or a right to a speedy trial, in which he was impermissibly prejudiced.

ADDITIONAL GROUND 9

The Trial Court erred on August 18th, 2011, by denying Appellant's Motion to Dismiss due to speedy trial violation, and further granting States Motion to Continue over Appellant's objection, in which denied Appellant's right to a speedy trial guaranteed by the state and federal constitution, U.S. Const. amend. VI, Wash. Const. art. I, §22.

On August 18th, 2011, 4 days before the scheduled August 22nd, trial date, Womack hit a breaking point and asserted his right to represent himself to allow himself to go to trial because Scudder intended on asking for another continuance. (RP 24 at 10-12, 26 at 23-25, 43 at 8, 49 at 8) Hunter clearly stated on the record that she was not ready to proceed to trial. (RP 29 at

19-20) Judge Evans appointed Scudder in which Womack had just got done declaring he had trust issues with, as standby counsel. (RP 25 at 18-20, 35 at 9-12, 45 at 18-19, 46 at 13-17) Womack clearly made it apparent that he wanted to proceed to trial. (RP 47 at 12-25, 48, 49 at 1-8 **"I just want my trial")** Judge Evans granted Hunter's motion to continue based on: (1) everybody was planning on a continuance prior to the hearing (everybody except Womack), (2) Voelker had plans to go out of town for personal reasons, and (3) Womack needed time to prepare (over Womack's objection). (RP 50 at 21-25, 51 at 1-14) In State v. Fritz, 21 Wn.App. 354, 585 P.2d 173 (1978), the Courts held:

> "The right to proceed pro se cannot be used as a means of unjustifiably delaying a scheduled trial or hearing or to obstruct the orderly administration of justice."

As it is known that a defendant cannot ask to represent him/herself days before trial and then ask for a continuance, this should hold true with the prosecution as well. Womack also verbally motioned the court to dismiss the case due to his speedy trial rights being violated in which Judge Evans denied. (RP 57 at 8-19) Hunter needed additional time to try to come up with evidence to support all of the charges she filed, in which was the real reason for the continuance. (RP 51 at 20-25, 52, 53 at 1) In State v. Brice, 2008 Wash. App. Lexis 688, the Courts held:

> "To determine whether a defendant's federal constitutional speedy trial rights have been violated, the court must balance four interrelated factors: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant. State v. Hudson, 130 Wn.2d 48, 57 n. 5, 921 P.2d 538 (1996)(citing Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33L.Ed.2d 101 (1972); Doggett v. United States, 505 U.S. 647, 112 S.Ct. 2686, 2690, 120 L.Ed.2d 520 (1992). Of these factors, prejudice is normally the most significant. State v. Greenwood, 57 Wn.App. 854, 860, 790 P.2d 1243 (1990), aff'd in part, rev'd in part, 120 Wn.2d 585, 845 P.2d 971 (1993). But a sufficient showing of an unjustified egregious delay can warrant relief even in the absence of specifically identifiable prejudice. Doggett, 505 U.S. at 657."

On the first issue, length of delay, the charges were filed on October 13th, 2010, so this delay had been close to a year. (CP 1-2) Factor two, reason for the delay: The main delay in the case was the State's lack of due diligence in bringing Womack to custody by not utilizing the IAD, and the State failing to use due diligence in submitting computers to the Washington State Crime Lab, and for the States lack of due diligence to bring Womack to trial by the Judge allowing a delay caused by the prosecutor and witnesses to take vacations.

The State will argue that Scudder ask for continuances, but that was because Scudder was working directly with the State. After Womack asserted the right to represent himself, it was only Hunter that maintained to repeatedly ask for continuances. The third factor, the Defendant's assertion of the right, is very clearly documented on the record by both Scudder and Womack on multiple occasions. (March 3rd, 2011 RP 2065 at 1-3)(May 6th, 2011, RP 8 at 11-12, 9 at 7-14),(June 7th, 2011, RP 18 at 12-14, 19 at 7-18), (July 28th, 2011, RP 1366 at 19-23, 1368 at 4-7), (August 18th, 2011, RP 26 at 8-25, 27 at 1-3, 43 at 8, 49 at 2-8) And the final factor, the prejudice to the Defendant, just the basis of the nature of the charges is highly prejudicial. Any human individual is bound to want to "protect the child" in these types of cases. But when the sole provider of evidence is based on the testimony of two individuals credibility, a large gap of time gives these two individuals an excuse in why they either could not remember key points to the case, or could not remember what they previously declared in prior interviews. The following are instances in which the alleged victim and witnesses claimed to not remember important facts relevant to the case: (AW - RP 453 at 6, 454 at 18, 456 at 11, 459 at 20, 482 at 5-8, 485 at 12-15, 491 at 10-12, 497 at 2, 500 at 2-8, 552 at 4-5, 552 at 21-22, 553 at 13-17, 555 at 1-6, 568 at 17-21, 571 at 7-14, 582 at 23-24, 585 at 14-17, 587 at 19-22, 615 at 23-24, 617 at 1-2, 617 at 18-25, 618 at 5-6, 633 at 16-17, 640 at 19-20)(Tammy Ashley - 650 at 23-25, 653 at 19-20, 669 at 3-5, 741 at 13-18, 742 at 1-8, 746 at 13-16, 746 at 20-22, 750 at 8-10, 756 at 4-11, 757 at 1-3, 781 at 1-6)(Kayla Vonstein - RP 771 at 17-18, 782 at 17-25, 783 at 18-20, 790 at 22-25, 862 at 19-21)(Curtis Mattison - RP 928 at 20-25)(Robert Fullerton - RP 933 at 13-15, 934 at 20-25, 935 at 1-5)(Morgan Fullerton - RP 940 at 12-14. Even Judge Evans commented on how many times peoples memory has to be refreshed. (RP 742 at 15-18) In State v. Iniguez, 143 Wn.App. 845, 858-59, 180 P.3d 855 (2008) the Courts held:

> "Many courts have held that an eight-month delay is presumptively prejudicial. E.g., United States. v. Beamon, 992 F.2d 1009, 1012-13 (9th Cir. 1993)(noting that he Second Circuit in United States v. Vassell, 970 F.2d 1162, 1164 (2d Cir. 1992) found a general consensus that a delay of 8 months is presumptively prejudicial). Division Two of this court found that a delay of 11 months was presumptively prejudicial. Corrado, 94 Wn.App. at 233-34. We agree with these courts and hold that an 8 month delay is presumptively prejudicial and we conclude that Mr. Iniguez was denied his constitutional right to a speedy trial."

and,

"'Consideration of prejudice is not limited to the specifically demonstratable' and 'affirmative proof of particularized prejudice is not essential to every speedy trial claim.' Doggett, 505 U.S. at 655. The Supreme Court in Doggett reasoned that 'impairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony 'can rarely be shown.' Id. (quoting Barker, 407 U.S. at 532). Generally, 'excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, that matter, identify.' Id. 'While such presumptive prejudice cannot alone carry a [speedy trial] claim without regard to the other Barker criteria,' it is part of the mix relevant facts' and 'it's importance increases with the length of delay.' Id. at 655-56." Iniguez, at 858.

Even though the close to a year delay is presumptively prejudicial, and the fact that prejudice is extremely hard to prove, the record clearly shows that on many occasions witnesses had forgotten what they had said previously, or their statements were not consistent in which can be presumptively explained by a large delay in time between the time of pre-trial interviews to trial. All four factors are met under the Barker criteria and Womack was denied his right to a speedy trial time after time.

ADDITIONAL GROUND 10

The Trial Court erred between October 6th, 2011, to October 27th, 2011, by denying Appellants Motion to Dismiss Due to CrR 3.3(h) filed on September 21st, 2011, by further granting it's own motion to yet another continuance, and by not promptly setting a hearing for two speedy trial objections filed on October 6th, 2011, and October 27th, 2011, as stated in CrR 3.3(d)(3) in which violated Appellants right to a speedy trial and right to due process guaranteed by the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22.

On August 25, 2011, Judge Evans ordered the State to provide mirror images of Womack's computer harddrives to stand-by-counsel as quickly as possible in which the State agreed and declared it would take a couple of days. (RP 1391 at 21-25, 1392 at 4-17) The State also motioned the court to move the scheduled Motion in Limine hearing to a later date in which Womack objected. (RP 1373 at 9-17, 1374, 1375 at 1-8) Judge Evans stated the speedy trial clock reset on August 18th, 2011, when he found good cause to continue. (RP 1376 at 4-7) Judge Evans scheduled 3 hearings, 1 on September 13th, 2011, and 2 on October 6th, 2011. (RP 1377 at 7-15, 1377 at 19-21) The first hearing was to be a readiness hearing at 9:00 AM, and the second hearing was to be a Motion in Limine hearing at 1:30 PM. (RP 1378 at 12-14, 17-22) For unknown reasons

there was no hearing held on October 6th, 2011, at 9:00 AM. On the afternoon of October 6th, 2011, Judge Evans addressed a Motion to Dismiss filed by Womack and denied it. Judge Evans did state on the record that Womack did object to every continuance independently and separately. (RP 75 at 6-9, 76 at 20-23) Judge Evans also stated he was not going to go back and revisit the Court's finding of good cause at prior hearings. (RP at 75 at 21-25, 76 at 20-23) During this hearing Hunter declared that on June 7th, 2011, she had every intention of trying this case that day yet 73 days later she declared she was still not ready. (RP 69 at 11-15, 29 at 19-23) Hunter also declared that the month long vacation was a good cause continuance by itself. (RP 69 at 11-20) During this hearing, Judge Evans also put a time limit of two minutes on how long he had to rubut the State once, and thirty seconds a second time in which no time limits were put on the State. (RP 72 at 7-8, 73 at 22) Similar to Iniguez, at 858, the State once again failed to use due diligence, egregiously disregarded a prior ruling [provide harddrives to defense], and provided a mirror image of the harddrives to the Defense 4 days before trial. (RP 87 at 15-18, 1392 at 13-17) Judge Evans ask Womack if regardless if he had time to use the harddrives, if he still wanted to go to trial on October 10th, 2011, in which Womack clearly replied with, "yes." (RP at 2-16, 88 at 23-25, 89 at 1-4) Hunter actually objected to any evidence coming in from the computers due to it coming in the day of trial when the State was the sole reason it would be late. (They had access to the harddrives for close to a year.) (RP 90 at 17-25, 91 at 1-22) Womack does agree with one thing Judge Evans declared which is, "you have the absolute right to go to trial on October 10th, 2011." (RP 92 at 18-19) However, on his own motion, Judge Evans denied Womack of that right because the State failed to provide the mirror images of the hard-drives, Defense's computer expert, Tod Engkraf was not able to do his job.. (RP 92 at 20-25, 93, 94 at 1-16) Hunter addressed the Court prior to this ruling declaring she was still trying to get ready for trial and ask the Court to either not address the Motion in Limine or find good cause for a continuance. (RP 103 at 20-25, 104 at 1-17) One of the motions that still needed to be heard was a Validity of a Search Warrant, which had to do with the State illegally seizing Womack's expensive laptop in which Voelker told Womack's boss to retrieve Womack's laptop and video camera out of his work truck and bring them to the local jail in Illinois and place them in Womack's personal property so Voelker could seize them when they reached Washington. (CP 128-136).

In the Washington State Crime Lab report, nothing was found of interest on this particular computer. (CP 128-136) Womack ask for the return of the laptop and his personal property several times in which the State intentionally held illegally. (RP 15 at 14-18, 16 at 14-18, 1360 at 11-15, 55 at 4-17, 105 at 17-25, 106 at 1-10)(CP 48-49) In holding on the these items (like a bully in elementary school), it wasted everyone's time by arguing matters that should not of needed to be addressed which created undue delay and prejudice. Womack was denied the use of the law library until September 28th, 2011, 12 days before trial. The Jail staff further failed to print off material relevant to writing to motions until the night of October 5th, 2011, one-half day before a hearing and 4 and one-half days before the scheduled trial date. (CP 42-43)(RP 105 at 3-25) Judge Evans reason for "good cause" for a continuance on October 6th, 2011, was based on not having enough time to hear all of the motions before October 10th, 2011.(trial date)(RP 92 at 18-25)(RP 111 at 6-12) Essentially, the State interfered in Womack's ability to timely try his case by denying law library access, legal supplies, and canceling hearings (or not scheduling enough time to hear all the motions), and then the Court "punished" him by issuing continuances. On October 20th, 2011, on his own motion, Judge Evans granted another continuance over Womack's "exasperated" objection based on courtroom congestion. (RP 125 at 10-13, 126 at 12-22, 140 at 2-10) Womack claims that the principal of not having enough time to hear all the motions is the same as "court congestion." On October 6th, 2011, and October 27, 2011, Womack filed written objections to the October 6th and 20th continuances in which the Trial Court failed to address these motions as stated in CrR 3.3 (d)(3). Womack once again claims he was put in a position where he had to choose either adequate assistance of counsel or a speedy trial (State v. Iniguez, at 857) due to: (1) the State intentionally holding on to mirror images of the harddrives until 4 days before trial (RP 1396 at 21-23, 1392 at 4-17, 87 at 15-18), (2) by not providing law library access until 12 days before trial (Womack v. Sergeant Frank Hauschildt, United States District Court Western District of Washington, cause No. C12-5431 RBL/KLS), (3) by not printing material off of law library until 5 days before trial. (RP 105 at 3-11)

ADDITIONAL GROUND 11

The Trial Court erred on October 20th, 2011, by granting on it's own motion to continue the trial date due to "court congestion" in which violated Appellant's right to a speedy trial guaranteed by the federal and state constitution, U.S. Const. amend. VI, Wash. Const. art. I, §22.

On October 20th, 2011, Judge Evans on his own motion granted another continuance due to courtroom congestion which Womack objected. (RP 126 at 12-22) In State v. Cuff, 2001 Wash. App. Lexis 2028, the Courts found court-room congestion to be inexcusable in which reaffirmed State v. Smith, 104 Wn.App. 244, 15 P.3d 711 (2001); see also State v. Warren, 96 Wn.App. 306, 979 P.2d 915, as amended by 989 P.2d 587 (1994).

> "At oral argument the State candidly acknowledged that there is no distinction between the courtroom congestion in the instant case and the routine congestion that we ruled inexcusable in Smith." Id. Cuff, at [*4]
>
> "[C]ourtroom unavailability is synonymous with 'court congestion.'" Id. Warren, at 309 (quoting State v. Kokot, 42 Wn.App 733, 737, 713 P.2d 1121 (1986)).

In State v. Grimes, 2006 Wash.App. Lexis 1616, [*12], the Courts held:

> "Here Mr. Grimes was arraigned on July 27, 2004. On Aug. 27, the court continued Mr. Grimes trial from Aug. 30 until Sept. 13. On Sept. 10 the trial was continued to Sept. 27. On Sept. 24, a trial continuance was granted until Oct. 25. Thus, on the 36th day of speedy trial clock, a number of continuances were granted that excluded the time for speedy trial up to October 25. The trial began on November 17, on the 59th day of speedy trial clock."

Using the same method in the case at bar, the commencement date was March 15th, 2011. (CP 10-11) On May 6th the Courts continued Womack's trial from May 9th to June 20th. (RP 10) On June 7th the trial was continued to August 1st. (RP 20) On July 28th the trial was moved within the previous found good cause to August 22nd. (RP 1369) On August 18th, the Trial Court found good cause to move the trial date but did not set a date until August 25th, therefore 7 days expired on the clock. (RP 50-51) On August 25th the trial was set to October 10th. (The Trial court was under the impression that since it found good cause to continue, the speedy trial clock resets. RP 1376) On October 6th the trial was continued to October 31st. (RP 92, 110-114) On October 20th the trial was moved within the Courts previous found good cause. (RP 126) From March 15th to May 6th, 52 days expired on the clock. From August 18th to August 25th, another 7 days expired. From October 31st to November 14th, 14 days expired. Therefore, the trial was

held on the 73rd day of the speedy trial clock which failed to meet the 60 day criteria. On August 25th, 2011, the Trial Court stated that on August 18th the speedy trial clock reset to zero which is the case if new counsel is presented. Argumentively, if that were the case, August 18th would be the commencement date. From August 18th to October 6th, 49 days of the clock would have expired. From October 6th to Otober 31st would be excluded time. From October 31st to November 14th would be 14 more days expired, which would make the trial starting on the 63rd day which is still over the 60 day limit. In State v. Kenyon, 143 Wn.App. 304, 314 (2008)(dicta #7) the Courts held:

> "We are not unmindful of the recent proliferation in continuances in the trial courts. But here, with each continuance, the court was careful to document the reason."

In the case at bar, it is clear that several continuances were due to the State failing to act with due diligence, ad the Trail Court failed to state valid reasons why the length of the delay for the continuance was needed and further failed to scrutinize the delay with particular care when speedy trial demants were clearly asserted over and over again. In State v. Edwards, 94 Wn.2d 208, 616 P.2d 620 (1980)(quoting State v. Stiker, supra at 676-77) the Courts held:

> "... past experience has shown that unless a strict rule is applied, the right to a speedy trial as well as the integrity of the judicial process cannot be effectively preserved."

Womack claims that due to the large amount of lengthy continuances, Grimes, and all 4 factors of the Barker inquiry, Womacks constitutional right to a speedy trial was violated.

ADDITIONAL GROUND 12

The State erred between the dates of August 18th, 2011, to January 19th, 2012, by hindering Appellant's ability to effectively research case=law, set up interviews, make legal phone calls, and to be clean shaven, in which denied Appellant's right to effective assistance of counsel, and the right to an impartial jury as guaranteed in the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22.

As stated in Additional Ground 3, the Cowlitz County jail staff hindered Womack's ability to effectively try his case by: (1) not providing law library time until 12 days before October 10th, 2011, trial date, (2) not providing printed material from law library until the night before October 6th, 2011,

hearing date and 5 days before October 10th, 2011, trial date, (3) denying legal phone calls, legal copies, and interviews, (4) reading Womack's legal work, and (5) not allowing Womack to be clean shaven two days of his trial. (CP 83-101)(RP 87 at 15-18, 105 at 3-25, 418, 419 at 1-3, 421 at 18-25, 422 at 4-8, 642 at 1-18, 1392 at 4-17, 1396 at 21-23) Womack was denied due process and effective assistance of counsel by not being able to effectively prepare his case in a timely manner. Womack also had to go in front of the jury two days without being clean shaven which with that and the extreme loss of weight due to the long confinement and poor jail conditions, Womack was prejudiced by his appearance.

ADDITIONAL GROUND 13

(Supplemental to Opening Brief, Assignment of Errors #2) The Trial Court erred on November 14th, 2011, by granting State's motion to allow prejudicial custodial statements allegedly made by Appellant, which denied Appellant's right to silence and counsel guaranteed under the Washington Constitution, Wash. Const. art. I, §9 & §22, and the federal constitution, U.S. Const. amend. V, VI.

On November 14th, 2011, during the 3.5 hearing, Womack motioned the Court to suppress any statements made during the interrogation with Voelker after Womack stated, "Talk to my attorney, I'm done" in which was most of the interrogation. Womack also ask to suppress any mention of judges and the system due to undue prejudice. Voelker clearly stated that when Womack stated, "Talk to my attorney, I'm done", that Womack wasn't invoking his right to an attorney at that point. (RP 175 at 5-16, 176 at 1-3) Voelker admitted on the second day that Womack was interviewed, he started the interview with, "you need to talk to my attorney (RP 178 at 5-8) and once again stated that Womack just continued on talking after that but contradicted himself by stating he ask Womack if he wanted to submit to a polygraph test and where Womack kept his possessions. (RP 179 at 14-18, 180 at 19-25) Voelker further claimed that Womack never ask to speak to an attorney. (RP 181 at 19-20, 204 at 23-25, 205-06, 207 at 1-20, 214 at 8-10, 219 at 14-21) Hunter also argued that Womack's statement, "talk to my attorney, I'm done". was not invoking his right to counsel. (RP 221 at 16-21) Hunter also contradicted herself by stating the same thing as Voelker in that Womack stated, "Talk to my attorney, "I'm done", and then kept on talking with no

further questioning, and then stated afterwards that Voelker ask about a polygraph test. (RP 222 at 4-10, 23-25, 223 at 1-7, 8-18) Well after Womack invoked his right to counsel, Voelker first alleged Womack didn't trust the court systems because everyone's working together and, "People connected with the local judges are all in trouble." (RP 194 at 23-25, 195 at 1-2) Womack motioned the court to suppress any statements referring the local judges due to prejudice in which Judge Evans denied. (RP 237 at 15-19, 238 at 11-24) Judge Evans also allowed all comments allegedly made by Womack to Voelker after he invoked his right to counsel including all comments made during different encounters at the local jail even though no miranda was ever read to Womack in the State of Washington. In front of the jury the story changed, and Voelker testified that Womack stated all the judges knew him and this would be bigger than Russ Chambers. (Chambers was a local sheriff that got fired for committing insurance fraud) Hunter pushed Voelker to further state that Womack stated that his case should not be tried in this county because he knows something about the judges. Voelker then changed his story and stated Womack brought up the judges a different time and the fact he did not trust the local court system. Voelker even went as far as testifying that Womack stated that all the judges were against him. (RP 824 at 22-25, 825 at 1-14, 826 at 18) Any jury seeing someone claim to "know something about the local judges", which are respectable people in society, is going to have less faith in that persons credibility. When the whole case relies on credibility, this was some very damaging intentional prejudice.

In a very recent case, State v. Nysta, 168 Wn.App. 30 (2012), the Courts held that a suspect's statement during a custodial interrogation, "shit man, I gotta talk to my attorney," was an unequivocal invocation by the suspect of his right to an attorney. The context in which the statement was uttered is irrelevant in determining whether this phrase was an unequivocal request for an attorney, such that all further questioning should have ceased. There is no difference between Womack's statement and Nysta's statement in which all questioning should have ceased after Womack stated, "talk to my attorney, I'm done", and nothing past that point should be held against him. In these types of charges there is already a high amount of prejudice in the air, but to have this type of intentional prejudice pushes the jury over the edge of being impartial.

ADDITIONAL GROUND 14

The State erred on or before October 20th, 2011, by tampering with a defense witness without first inquiring the presence of Defense Counsel (or Stand-by Counsel) and by prejudicing him to the point that he was not used, in which denied Appellant's right to have compulsory process for obtaining witnesses in his favor guaranteed by the federal and state constitution, U.S. Const. amend VI, Wash. Const. art. I, §22.

On September 22nd, 2011, Womack filed a witness list with his brother, Shannon Vonstein, listed as a defense witness. (CP 57) Before the trial Womack contacted his brother to arrange a time to interview him and ask him to come foward and testify to what he knew. Mr. Vonstein is the father to Kayla Vonstein, which was one of the State's lead witnesses. Sometime shortly after, Womack attempted to contact his brother in which he refused to answer the phone. Womack then found out by reading discovery that Voelker had contacted Mr. Vonstein the day before Vonstein ended all communication with Womack. (RP 260-61) Womack had to withdraw him from the witness list because Vonstein had been prejudiced by Voelker.

ADDITIONAL GROUND 15

The Trial Court erred on November 14th, 2011, by granting State's motion to exclude any mention of nude photos taken back and forth between alleged victim and her older boyfriend in which denied Appellant's right to introduce relevant tangible evidence which denied Appellant of due process guaranteed by the federal and state constitution, U.S. Const. V, XIV, ER 104.

In late 2010, Voelker seized AW's phone and searched it for alleged text messages that was allegedly from both AW's step mom, Tammy, and Womack. The phone was handed over by AW's grandparents in which Voelker never attained a search warrant knowing it was Womack's property. (RP 813 at 12-25, 814 at 1-2) Upon the search Voelker found nude photos of AW and her boyfriend. AW later disclosed that her boyfriend and herself were sending these pictures back and forth starting as soon as she moved out of her father's house. She also disclosed that she started a sexual relationship with this boy soon after moving out of her fathers house and while living with her grandparents. (RP 609 at 21-25, 614 at 17-19) Womack's defense was based on AW fabricating these allegations to win grandparents sympathy and turn them against Womack in which they would then let her live with them which would allow AW to have

unappropriate relationship with her boyfriend. Womack made it clear that he was not looking to show the jury the pictures, but to disclose to the jury by AW's testimony that the photo's existed and what time they were taken. Judge Evans denied even the **mention** of these risque photos in which denied Womack's right to due process and his right to present relevant evidence as stated in ER 104. (RP 293 at 7-14, 612 at 8-13)

ADDITIONAL GROUND 16

The Trial Court erred on November 14th, 2011, by not granting Appellant's Motion Moves the Court to Reconsider filed on November 14th, 2011, asking the Court to reconsider allowing 2 State witnesses to testify due to late discovery and their primary testimony to be hearsay, in which promoted undue prejudice and denied Appellants right to due process guaranteed by the federal and state constitution, U.S. Const. V, XIV.

On November 14th, 2011, Womack filed a Motion to Reconsider in which asked the Court to reconsider a prior ruling on November 4th, 2011, to exclude State witnesses due to the State not providing discovery interim notes until 4 days before trial, and less than 24 business hours before trial. (CP 183-192) on October 27th, 2011, Hunter stated the following:

> "And, Your Honor, I would also ask that we have an **absolute** discovery deadline of November 4th. **No further witnesses after that day** without at least a finding of good cause by the Court. I -- I just -- the State wants a time that we can actually start preparing our case with no additional discovery by the Defense." (RP 2193 at 1-9)

Womack ask the Court if he could have to the 10th of November in which the Court was going to allow to the 7th of November until Hunter further argued:

> "Your Honor, my concern is we don't have a Friday that week. So, if he gets it to me by 5 o'clock, I have potentially three days." (RP 2194)

Judge Evans then ruled:

> "Okay, So, earlier I ruled with the supplemental witness list that was filed today, all the summary needs to be completed by November 4th. I think that -- I think that's a fair ruling for both sides to have that -- **all** witnesses and discovery complete by November 4th with notice to each side.

and,

> "And so -- so, let me just clarify that. If it's not submitted and received by November 4th, I'm not going to allow it in. Just so it's clear so you'll really need to move quickly and get it all done."

The State's witnesses, Cindy Clem and Ken Hall's testimony was completely based on hearsay. (RP 899-912) Womack ask the Court to exclude these witnesses

due to late discovery and the fact their testimony was based on hearsay in which Judge Evans denied. (RP 321-323) In a recent case, State v. Kipp, 2012 Wash. LEXIS 2364, 286 P.3d 68 (2012), the Courts found that the Trial Court did not abuse its discretion by excluding a defense witness who the defense did not identify until 6 days prior to trial and did not disclose the substance of the witness' testimony until the first day of trial. By denying Womack's motion, he was prejudiced by the State soliciting inadmissible hearsay.

ADDITIONAL GROUND 17

The Trial Court erred on November 14th, 2011, by not granting Appellant's motion to exclude any mention of illegal drug use by appellant due to ER 403 which denied Appellant's right to due process and his right to a fair trial guaranteed by the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22.

On October 27th, 2011, Womack filed a Motion in Limine asking the Court to exclude any mention of illegal drug use due to ER 403, ER 404(b), and ER 608, as irrelevant and prejudicial. (CP 168) On November 14th, 2011, Hunter stated that a number of witnesses claimed Womack used marijuana but it had no relevance to why AW left and she was not planning on asking questions regarding marijuana unless it became relevant at the time. (RP 254 at 23-25, 255 at 1-6) Judge Evans reserved the motion but also stated he was not inclined to allow any mention of illegal drug use. (RP 258 at 2-17) During trial on November 19th, 2011, Hunter ask AW, "So, now that you said you were intoxicated, were you smoking anything?" Hunter led AW to say she got the marijuana from Womack and they smoked it together. (RP 484 at 1-9) On November 18th, 2011, Hunter brought up the marijuana use again with the State witness Ashley in which Womack objected and a curative instruction was given. (RP 652 at 6-14) In State v. Kelly, 102 Wn.2d 188, 192, 685 P.2d 564 (1984)(quoting Fenimore v. Drake Const. Co., 87 Wn.2d 85, 91, 549 P.2d 483 (1975), the Courts held:

> "[T]he trial court shall grant such a motion if it describes the evidence which is sought to exclude with sufficient specificity to enable issues as drawn or which may develop during the trial, and if the evidence is so prejudicial in it's nature that the moving party should be spared the necessity of calling attention to it by objection when it is offered during the trial."

In State v. Evans, 96 Wn.2d 119, 123, 634 P.2d 845 (1981), the Courts held:

> "The purpose of motion in limine is to dispose of legal matters so counsel will not be forced to make comments in the presence of the jury which might

prejudice his presentation."

The Trial Courts error by not granting Womack's motion to suppress any mention of illegal drug use opened the door for Hunter to intentionally and egregiously prejudice Womack with the alleged inadmissible testimony that he gave his daughter marijuana. No curative instruction could take away this prejudice.

ADDITIONAL GROUND 18

The Trial Court erred on November 15th, 2011, by granting State's motion to dismiss the whole jury panel because of an alleged "court closure" in disregard of CrR 6.4(a) which placed Appellant in double jeopardy which denied Appellant's right to be tried once and right to due process guaranteed by the federal and state constitution, U.S. Const. amend. V, XIV.

On November 15th, 2011, during the latter part of Voir Dire, the bailiff mistakenly ask a spectator to step out for a moment in which the spectator later stated he was leaving anyway. (RP 379 at 16-25, 381 at 5-8, 1674 at 3-17, 1675 at 8-11) The State argued that under State v. Price, 154 Wn.App. 480, since the bailiff who worked for the court ask the gentlemen to leave, that was considered a "court closure." (RP 382 at 7-11) Hunter also argued that the jury had not been sworn. (RP 382 at 22-23) Womack argued that it was not a "court closure" according to Price, strongly objected to dismissing the panel, and several times said if there was a "court closure" he would waive his right for that short period of time to a public trial. (RP 358 at 21-22, 359 at 6-7, 18-19, 362 at 4-6, 364 at 2-12, 19-21, 365 at 3-15) In State v. Price, 154 Wn.App. 480 (2009), a prosecutor requested the mother of the victim to step out. The Courts held:

> "The prosecutor's request that the spectator leave the courtroom **does not amount to a courtroom closure** because there was no court order, implied or otherwise: the prosecutor -- not the court -- requested that the spectator leave and it was a request -- not an order -- to which the spectator agreed." Price, at [6] ¶15

The bailiff **requested** the spectator to step out, it was a **request**, not an **order**, in which the spectator agreed in which there was **no "courtroom closure."** Under CrR 6.4(b), it states: "A Voir Dire examination shall be conducted **under oath ...**" In State v. Bone-club, 128 Wn.2d 254, 906 P.2d 325 (quoting In re Oliver, 333 U.S. 257, 270 n. 25, 68 S.Ct. 499, 92 L.Ed. 682 (1948)(quoting Thomas M. Cooley, Constitutional Limitations 647 (8th ed. 1927)) held:

"The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions ..." (emphasis added)

and,

"Although the public trial may not be absolute, protection of this basic constitutional right clearly calls for a trial court to resist a closure motion except under the most unusual circumstances." (emphasis added) Id.

This case certainly does not constitute a most unusual circumstance.

In CrR 6.4(a) it states:

"Challenges to the entire panel shall only be sustained for a material departure from the procedures prescribed by law for their selection."

Womack claims that there was not a material departure and the panel was illegally dismissed. Hunter waited till all the questions were ask of the panel, and only after the panel was looking to favor the Defense did she request a new panel. (see question about NCIS, RP 1682 at 15-25, 1683 at 1-4, 1686 at 13-23, 1693 at 10-17, 1695 at 18-20, 1696 at 4-9) The historical basis of the right of a criminal defendant to have his case determined by the jury originally impaneled and sworn to try his case was recognized in State v Brunn, 22 Wn.2d 120, 154 P.2d 826, 157 A.L.R. 1044 (1945), supra as follows:

"There was a period in England when many of the judges apparently considered it their judicial duty to obtain convictions in all criminal cases which came before them for trial. To that end, if it appeared during trial that the jury was not likely to convict, it became the practice to discharge that jury and impanel another, and, in some cases, a third or forth, if necessary. The tyranny and injustice of such a procedure are obvious, but may times more apparent when it is remembered that in those days there were upwards of two hundred statutory crimes punishable with death, and a decision in the trial court was absolutely final. The defendant had no appeal. The rule that a jury could not be discharged without the defendant's consent grew up as a counter weight to that pernicious practice."

Womack claims that his right to be tried by the first impaneled jury was deliberately deprived for the above mentioned reasons in which robbed him of the right to be tried by the first panel which put him in double jepardy and deprived him of due process.

ADDITIONAL GROUND 19

The Trial Court erred on November 17th, 2011, by denying several of Appellant's "for cause challenges" in which denied Appellant of his right to an impartial jury guaranteed by the federal and state constitution, U.S.

Const. amend. VI, Wash. Const. art. I, §22.

On November 17th, 2011, during the second Voir Dire, Womack was not allowed to ask the panel the following questions: (1) What age do young ladies start being allowed to have boyfriends over in an unsupervised setting? (RP 2028 at 20-25) and, (2) How would you define being over protective, or too strict? (RP 2029 at 2-5). Womack claims he should have been allowed to ask these questions. The following people were ask for a "for cause challenge" and wrongfully denied:

(1) Lisa Brunner came forward in a private setting stating she was "molested from the age of 5-12." (RP 1835 at 14-14) She further stated that it was behind her but she was currently very emotional about the subject, and listening to the subject would be harder to deal with than she thought. (RP 1835 at 18-25, 1836 at 1-8) She then stated it would be a very much challenge to listen to the evidence. (RP 1836 at 14-17) She also stated she could not guarantee a hundred percent to be fair and impartial. (RP 1836 at 21-25), 1837 at 1-3) When ask if she could be fair to both sides, she stated, "yes, I think so." When Womack ask Ms. Brunner if she was to "shut down" due to intimate settings, if it was going to hinder her ability to see the facts that come up, Ms. Brunner stated, "I would do my best, but, again it's human nature and I really have never been put in this situation to face you know, this kind of subject. And, to be quite honest I really don't know how I'll be truly behaving and acting." (RP 1841 at 8-23) Womack ask for a "for cause challenge" due to the emotional status and the undue prejudice to the rest of the panel in which Judge Evans denied. (RP 1857 at 14-25, 1858 at 1-15, 1859 at 6-20)

(2) Rachael Parker (wrongfully listed as Ms. Kerker in transcripts) stated she would be influenced by "just hearing what the case is," she felt herself getting emotional. She further stated, "Just seeing the effects of, you know, on an almost daily basis, I see the effects that this type of crime has on students and its great." (RP 1914 at 1-5) When ask if she was going to let her concerns about protecting kids and having that experience substitute the missing evidence, she stated, "I'd try not to. It's hard to get that emotional piece out of it, but I'd try not to." (RP 1914 at 14-20) She also stated she was concerned about whether or not she would get emotional, that she couldn't guarantee it, and that, "just hearing what the case is makes me feel kind of emotional. So, I have concerns about that." (RP 1915 at 7-10) She

also had concerns about Womack questioning the alleged victim. (RP 1984 at 14-18) She also stated that some allegations she reported as being a mandatory reporter were currently being investigated by CPS and the authorities. (RP 1997 at 12-17) Womack ask for a "for cause challenge" for the emotional impact to the jury in which Judge Evans denied because "we all have emotions" and there wasn't sufficient basis. (RP 2018 at 8-14, 2019 at 4-8)

(3) Renee Ross's husbands grandmother was abused when she was young and stated it would influence her consideration of the case. (RP 1775 at 16-25, 1776 at 1-8) She is a family member of a local judge. (RP 1783 at 21-22) She stated that it bothered her to hear her grandmother to talk about it because its hard to listen to something that happened to someone that she loves. (RP 1950 at 9-14) She further admitted to being prejudiced by a gentlemen saying, "something brought you here", and, "there's a reason your in this court." Then a second time she stated that listening to the subject would be harder to deal with then she thought. (RP 1835 at 18-25, and 1836 at 1-8) She then stated again that she would be bias because "there's a reason we're here." (RP 1950 at 19-21). She goes on saying, "It would be difficult, I find it difficult to listen to grandma." Hunter then states, "but you do it for grandma's sake, right?", which Ms. Ross replied with, "yes." (RP 1951 at 9-18) Then Ms Ross stated, "My problem with, that is -- something brought this gentlemen here. There's -- There's a reason this person is here." (RP 1951 at 24-25, 1952 at 1-5) After that Ms. Ross stated, "I think I could be objective to this case, but I do, as a parent, tend to want to lean towards child protection." (RP 2003 at 13-16) Womack ask for a "for cause challenge" due to being bias by [grandma's] past experience and she could not answer one time she was asked if she would be biased which Judge Evans denied because Ms. Ross was absolutely right, there is a reason defendant is here, probable cause was found. He also states that Ms Ross would have trouble listening to the facts, but those issues are with grandma. And whether she'd lean towards protecting the child, she said all cases are different. (RP 2014 at 19-25, 2015 at 1-20)

(4) John Tull was a nurse at the jail Womack was being held at. He lied right off by stating he used to work at the jail across the street as if he didn't no more, but Womack talked to him daily while receiving medication, and talked to Mr. Tull after he was dismissed from the panel. (RP 1731 at 14-23, 1777 at 18-19) Womack ask for a "for cause challenge" due to knowing him by his

by his work on a daily basis for a year and that there were unsolved issue's between the jail medical staff and himself. Judge Evans denied the "for cause challenge" because Tull said he could be fair. (RP 1826 at 22-25, 1827 at 1-10) Later Mr. Tull admitted to being very familiar with Womack and any kind of medical issue with Womack. (RP 2007 at 20-24, 2008 at 1) He also admitted the he had heard that Womack was planning to sue the medical staff, the people in which he worked for. (RP 2008 at 8-13) Womack once again ask for a "for cause challenge" due to prejudice that Mr. Tull could very well have due to Womack writing 50 grievances against the medical staff. (RP 2016 at 18-25, 2017 at 1-4) Once again, Judge Evans denied the "for cause challenge." (RP 2017 at 18)

(5) Dennis Norvell was a retired Corrections Officer and a Sheriff's Reserve, who knew the "stand-by counsel" Thad Scudder when he worked for the "Prosecutor's Office." He also known and worked with Mark Nelson, which was the Chief of Police for the Sheriff's Department, for 30 years. (RP 1733 at 16-18, 1743 at 2-16) He further stated, "I do have some very close friends in the corrections and law enforcement and I -- I have fairly regular contacts, sometimes as often as two or three times a week." (RP1787 at 2-6) He also stated, "I don't think there's a defense attorney in the world who would ever put me on your jury." He had a medical condition in which he could not sit on the jury unless several breaks were taken. (RP 1883 at 5-18) When ask if he would be bias in any way he replied with, "I try not to, no." When ask if he came in to this having a law enforcement background, if another officer automatically had credibility he answered with, "not automatically, no." Mr. Norvell also made it clear he did not want to be there by stating, "I try to get excluded. I go to the Clerk's Office and they didn't -- between that and medical, they didn't feel that they were valid enough reasons, so here I am. Fourth time." (RP 1884 at 2-25, 1885 at 1-17) Judge Evans denied the challenge for cause due to Mr. Norvell lives with the medical condition every day, and he stated he could be fair and impartial. (RP 2012 at 7-25) Mr. Norvell ended up as one of the jurors.

After being denied so many challenges, Womack failed to ask for challenges on several people because the prejudice was less than those that were denied. Sara Pursley remembered reading an article in the local paper with a headline that read "Child Rapist." (RP 1726 at 13-25) One of her best friends was molested as a child by her father and he died in jail serving the sentence

for it. (RP 1771 at 15-18) She did state, "I would try to be fair. I -- I think I could be fair." (RP 1772 at 7-8) She then ask to speak privately and when called, she shut down and changed her mind. She was very emotional but refused to talk about it even though the State tried to fish some information from her. (RP 1863-1868) When ask if she could sit on the jury, she emotionally replied with, "It won't be very comfortable." When ask about further information about her friend that was molested, she replied with, "She was very credible. And he went to jail. There was no reasoning to go through that." (RP 1945 at 9-25, 1946 at 1-3) When ask if she had concerns about homosexuality in a sexual assault she replied with, "Well its not something anybody wants to listen to." Womack had to waste one of his six challenges on Ms. Pursley. Gerald Jackson read the second article in the local paper with a headline of, "Child Rapist." (RP 1720 at 12-18) Mr. Jackson knew a lot of the local police officers due to working for the local police department for 9 and one-half years, and had the chance to investigate several similar allegations because he was a detective for quite awhile. (RP 1744 at 3-7, 1748 at 19-22, 1749 at 1-6, 1754 at 3-10, 1908 at 19-22) He further stated he had strong family ties to the state by indicating his father-in-law is a local retired policeman, his son-in-law is a policeman in Portland, and his sister is a prosecutor in Clark County. (RP 1955 at 12-15) Once again Womack did not ask for a for cause challenge because Judge Evans denied is challenge for Mr. Norvell. Mr. Jackson was on the jury panel. Robert Gentry's wife worked for CPS locally and he knew one of the witnesses from CPS, Bill Basler, through his wife. Mr. Gentry was on the jury panel. (RP 1742 at 7-14) Daniel Uhlenkott (Mr. Yullencot in the transcripts) is a local high school administrator that has worked with students that have been offenders as well as victims. (RP 1761 at 21-25, 1762 at 1-4) When ask if he could be fair and impartial he stated, "I can't make a quarantee -- 100% -- I can't guarantee that." (RP 1927 at 13-17) Mr. Uhlenkott was on the jury panel. Catherine Basler felt the need to privately let the courts know that she was placed in a uncomfortable position when she was six where she was made to sit on a neighbor's lap that later went to prison for molesting his niece. She felt that she was a victim. (RP 1847 at 13-25, 1848 at 1-21) Ms. Basler was on the jury panel. When ask about the credibility of children, Melisa Nusbaum stated, "teen-agers are capable of lying, but they're not." (RP 1968 at 23-25) Ms. Nusbaum was the presiding juror. It is absolutely clear that

Womack did not have a impartial jury because of being denied challenges for cause and being denied to ask voir dire questions. In Frederiksen, 40 Wn.App. 749, 700 P.2d 369, 371 (1985)(quoting State v. Laureano, 101 Wash.2d 745, 758, 682 P.2d 889 (1984)(quoting State v. Tharp, 42 Wash.2d 494, 499-500, 256 P.2d 482, the Courts held:

> "The voir dire scope should be coextensive with its purpose, which is to enable the parties to learn the state of mind of the prospective jurors, so they can know whether or not any of them may be subject to a advisability of interposing their peremtory challenges."

By being denied these two questions (RP 2028 at 20-25, 2029 at 2-5), Womack was denied the right to learn the state of mind of the prospective jurors.

ADDITIONAL GROUND 20

The State erred on November 16th, 2011, by inappropriately soliciting material to educate the jury panel and stating her prejudicial opinion to intentionally prejudice the jury which denied Appellant's right to an impartial jury guaranteed by the federal and state constitution, U.S. Const. amend. VI, Wash. Const. art I, §22.

On November 16th, 2011, during the second voir dire, Hunter ask the Court to direct Womack to refrain from making personal comments that he has knowledge of a juror in a similar situation. Neither the Judge nor Womack had any idea what she was talking about. (RP 1925 at 4-25) Womack then addressed the Court that this should be a rule that pertains to the prosecutor as well in which Judge Evans state, "So, its a little bit different in that a person can speak of their professional life." (RP 1826 at 1-14) Ironically, Hunter asked a potential juror about a prior jury panel she sat in before with related charges and the juror conveniently said that she learned from the previous panel that is was not normal for any physical evidence to be left behind. Hunter replied with, "Maybe not anything you can find 3 years later." (the time that lapsed between the alleged time the crime took place and the time it was reported, of the case at bar.)(RP 1944 at 1-9, 2050 at 22-25) By saying this, Hunter was intentionally letting the jury know that it was normal for there to be no physical evidence, especially after 3 years. This is misconduct that is so flagrant and ill-intentioned that an instruction could not of cured the prejudice. Charlton, 90 Wn.2d 657, 661, 585 P.2d 142 (1978).

ADDITIONAL GROUND 21

The State erred on November 17th, 2011, by unappropriately stating her opinion, testifying to inadmissible hearsay statements, and asking the jury to find Appellant guilty, in which severely prejudiced Appellant. Stand-by counsel erred by telling Appellant that the prosecutor did nothing wrong, in which denied Appellant's right to effective assistance of stand-by counsel, a impartial jury, and due process, in which is guaranteed by the federal and state constitution, U.S. Const. amend. VI, Wash. Const. art. I, §22.

On November 17th, 2011, during the State's opening statement, Hunter's intentional inflammatory comments were a deliberate appeal to the jury's passion and prejudice and was highly prejudicial. She started out by stating the following:

> "I find a lot of people do horrible things to children. This is one of those times. This is one of these children. **And this is one of those people.**" (pointing at Womack)(RP 2050 at 9-12)

She then slowly read each charge to further flame the fire. Hunter then walked through her version of the alleged crimes quoting several people's statements which seems to be a form of vouching or hearsay. Hunter also stated the following inadmissible hearsay statements allegedly made by Womack:

> "It took AW three years to get the courage up to walk out and brave the conquences **daddy told her** would happen when she told." (RP 2050 at 22-25)
>
> "But she's [AW] going to tell you about the nightmare that she lived, when at age eight, her dad came in **and told her** that he had to put some cream on a rash." (RP 2051 at 3-5)
>
> "And the Defendant **told her** that he needed to treat the whole rash and this was just normal." (RP 2051 at 8-10)
>
> "Tammy confronts the Defendant. She goes to him and says, 'Are you doing this? How could you be doing this?' **And his response** to her in February, 2008 is, 'It will never happen again.' But it did." (RP 2053 at 7-11)
>
> "And one night the Defendant took AW, got her drunk, **and told AW** that he talked to Tammy and Tammy forgiven him, and that everything was O.K. And then he took AW in the bedroom where Tammy was, and he woked up Tammy. **He told Tammy** that AW had always been interested in having sex with a woman and it would be better if she was that person. He then performed oral sex on Tammy in front of AW. **He told** AW to perform oral sex on Tammy ..." (RP 2053 at 19-25, 2054 at 1-4)

Then Hunter decided to admit hearsay evidence of people who were not endorsed witnesses, by stating the following:

> "And this time Kayla manages to talk to AW into telling kayla's step-mom,

Janet. And Janet tells her husband, Shannon. And Shannon tells his [defendant's] parents, Bill and Sue." Shannon is the Defendant's brother. And it is decided that AW will go live with Bill and Sue, her grandparents. And everybody knows AW does not want this to get out." (RP 2056 at 16-23)

These statements are highly prejudicial. This misconduct was so ill-intentioned and flagrant that an instruction could not of cured the prejudice. Hunter also misleads the jury to believe that AW had no knowledge of Ms. Ashley's involvement coming to light and out of the blue, (just happens to be a few weeks after Womack filed in Court an statement alleging Ms. Ashley's involvement (CP 17-30)) comes out and tells about Ms. Ashley's involvement. (RP 2058 at 6-12) She ends the opening statement with the following:

"In the end, the State will ask that you hold him accountable for the nightmare that he created and find him guilty of the charge." (RP 2058 at 24-25, 2059 at 1-3)

In the jury instructions, there was no instruction stating that opening and closing statements are not considered to be evidence. In State v. Glasmann, 175 Wash.2d 696, 286 P.3d 673 (2012), the Courts held:

"It is also well established that a prosecutor cannot use his or her position of power and prestige to sway the jury and may not express an individual opinion of the defendant's guilt, independent of the evidence actually in the case." Id. at **679[8]

A normal layman of the law would see the prestige of the prosecutor and could very well do exactly as the prosecutor ask. The prosecutor literally ask the jury to find Womack guilty.

ADDITIONAL GROUND 22

The Trial Court erred between November 14th, 2011, to November 23rd, 2011, by not providing adequate means for the jury panel to hear the deliberation in which did not allow the jury to hear all the key facts in which denied Appellant's right to due process guaranteed by the federal and state constitution, U.S. Const. amend. V, XIV.

On November 17th, 2011, Judge Evans had to ask AW to speak up because the jurors were "having a real tough time hearing." (RP 447 at 17-25, 448 at 1-3) Shortly after the bailiff informed Judge Evans that "a number of the jurors would like to try headsets to hear better," in which headsets are distributed. (RP 462 at 9-16) On July 18th, 2011, during cross examination of Kayla Vonstein, the bailiff had to interrupt questioning because the headsets all failed. Instead of fixing the headphones, Judge Evans instructs Kayla to "speak extra loud because those things in their ears aren't working

right now." (RP 777 at 13-25, 778 at 1-7) On November 22nd, 2011, the bailiff once again had to interrupt Plaintiff's direct examination of AW due to problems with the sound system. (RP 993 at 7-11) A little later in the same direct examination Judge Evans ask AW to "grab the microphone and just pull it a little closer to your mouth." (RP 1001 at 4-7) There were multiple times the jurors expressed that the sound system was inadequate, that they couldn't hear, which would indicate that they did not hear at least some testimony. And if all of the jurors did not hear one hundred percent of the testimony, then Womack did not get a fair trial. And the question to ask is, how much testimony was not heard because certain jurors did not care to speak up?

ADDITIONAL GROUND 23

The Trial Court erred on November 17th, 2011, by denying Appellant's motion to suppress evidence of an alleged email message printed by an unknown person due to lack of authentication and RCW 9.73.030 (1)(a),(b), in which denied Appellant's right to due process guaranteed by the state and federal constitution, U.S. Const. amend V, XIV.

On November 17th, 2011, the State moved to admit an alleged email email conversation between AW and Womack in which was printed by an unknown person on an unknown printer. Womack objected to the email coming in as evidence due to lack of authentication. (Basically anyone could produce these documents on a home computer.) The State's idea of authentication was the fact AW said she sent them. On November 22nd, 2011, Voelker testified that he received a copy of two emails already in evidence on August 17th, 2010. But no where in discovery does it say where these emails came from, who printed them, on what computer, or a place or organization that did the printing. (RP 522-526, 814 at 21-22) RCW 9.73.030 states the following:

> (1) Except as otherwise provided in this chapter, it shall be unlawful for **any individual**, partnership, corporation, association, or the state of Washington, **its agencies**, and political subdivisions to intercept, or record any:
>
> **(a) Private communication transmitted by telephone**, telegraph (old version of texting), radio, or other device between two or more individuals between points within or without the state by **any** device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of <u>all</u> the participants in the communication.
>
> (b) Private conversation, **by any device** electronic or otherwise designed to record or transmit such conversation regardless how the device is

powered or actuated without first obtaining the consent of all the participants in the communication.

Womack clearly objected to this evidence coming in because he knew it had been edited. If the email was authentic, it would indicate that Womack knew about the allegations prior to getting arrested in which Womack denied in his testimony. The State painted the picture that Womack knew about the Allegations and ran from the law which indicated guilt. This email would clearly be considered "private conversation" and it would of been sent by "an electric device designed to transmit conversation" in which then consent would clearly be needed. Any layman or unprofessional jury member is going to look at this printed out email and assume that they would not have it in front of them unless it was authentic. If it is authentic then Womack would have at least lied about one thing, and once proven to not be credible on one aspect, then the jury would have to question what else is he not credible about. Judge Evans wrongfully allowed this evidence in which created a fatal amount of undue prejudice. (RP 527 at 12-25, 528 at 1-5, 800 at 12-19)

ADDITIONAL GROUND 24

The Trial Court erred on November 17th, 2011, by denying Appellant's right to use "demonstrative evidence" and ordered it to be removed, which denied Appellant's right to a fair trial, and due process guaranteed by the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22. On November 17th, 2011, Womack was writing down facts as they were being presented by witnesses on the easel in front of the jury to later show answers that were inconsistent in which Hunter objected due to "it doesn't appear to be for any sort of purpose at this point." (RP 545 at 18-22) There were too many inconsistencies to count and writing them down for the jury to see hurt Hunter's case too much. Judge Evans ordered the demonstrative evidence to be removed because "generally demonstrative evidence is demonstrative in some shape or form as opposed to mere words." (RP 546 at 6-14) In Blacklaw's Legal Dictionary, Demonstrative evidence is defined as:

> Physical evidence that one can see and inspect (i.e. an explanatory aid, such as a chart, map, and some computer simulations) and that, while of probative value, and use offered to clarify testimony, does not play a direct part in the incident in question.

Womack was charting when certain main points of interest that were for use of clarification later on in the questioning and between what one

witness testifies to another. Being that the whole case was based on credibility, the Defense's whole strategy was based on showing the egregious amount of inconsistencies without a shadow of doubt from the jury. (EX)

ADDITIONAL GROUND 25

The Trial Court erred on November 18th, 2011, by denying Appellant's hearsay objection and by not further instructing the jury to disregard the hearsay statement which violated Appellant's right to a fair trial and due process guaranteed by the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22.

During direct examination of Tammy Ashley, Hunter solicited hearsay by asking:

"Do you know if he agreed to allow AW to come with you?"

Ashley responded with:

"After I had told AW that I wanted her to come with me, I don't know if it was the same day or the next day but he came to me and said, 'You're not taking Alya.'"

Womack objected for hearsay in which Judge Evans overruled. This was clear, inadmissible evidence that provided undue prejudice. (RP 676 at 8-16)

ADDITIONAL GROUND 26

The State erred on November 18th, 2011, by intentionally soliciting hearsay evidence from State's witness in which severely placed undue prejudice on Appellant in which denied him his right to a fair trial guaranteed by the federal and state constitution, U.S. Const. amend. VI, Wash. Const. art. I, §22.

On November 18th, 2011, Hunter ask State witness Kayla Vonstein the following question:

Did you -- I mean, when she [AW] was telling you about this unexpected thing, was she serious in her manner?"

Kayla answered with:

"Can -- What?"

Hunter:

"Sure. Sure. What was the secret that she shared with you?"

Kayla answered with:

"She told me somebody had raped her."

Womack objected in which Judge Evans sustained, but no curative instruction was given. And no curative could be given to take away this kind of intentional prejudice. (RP 768 at 1-22)

ADDITIONAL GROUND 27

The State erred on November 22nd, 2011, by intentionally soliciting inadmissible hearsay evidence against a prior ruling in which severely provided undue prejudice and denied Appellant's right to a fair trial guaranteed by the federal and state constitution, U.S. Const. amend. VI, Wash. Const. art. I, §22.

On November 4th, 2011, Womack filed a Motion in Limine asking the Court's permission to present tangible evidence regarding allegations made of a neighbor named Allen Smith involving similar charges, and contradicting statements AW made to her doctors office. Because Mr. Smith had been charged but not yet tried and the charges still being up in the air, the Motion was denied. (RP 239-245) On November 22nd, 2011, Hunter solicited the following inadmissible hearsay testimony from Voelker:

Hunter: "You were also talking earlier about a neighbor having seen some bruises on AW?"

Voelker: "Yes ma'am."

Hunter: "Did that neighbor confirm for you seeing a black eye that AW had?"

Voelker: "Yes, on one occasion he did say she had a black eye and then, he said other comments about Mr. Womack."

Hunter: "Did he say if he had talked to Mr. Womack about that black eye?"

Voelker: "Yes."

Hunter: "What about the son? Did that neighbor's son also see that black eye?"

Voelker: "Um -- yes. He recalled that in April or May of 2010 AW went to school with heavy make-up on one eye. And, he -- he said it was clear that she had a black eye and it lasted for two or three days. Um -- she told him it wasn't all that bad and he kept questioning her and then, she told him that her dad had hit her." (RP 872 at 15-25, 873 at 1-14)

First, the neighbor Hunter is referring to is Allen Smith and his son would be Michael Smith. Though the State originally listed Michael Smith as a state witness, he did not testify nor did Allen Smith. (CP 64) Second, all of this testimony is intentional hearsay and double hearsay in which was laid out to intentionally prejudice Womack. Womack did object and Judge Evans did sustain the objection but his curative instruction was inadequate in which he only instructed the jury to disregard the last phrase. (RP 873 at 10-14) There would be no instruction that could cure this flagrant and ill-intentioned

misconduct. Part of Womack's defense was based on the fact that it is extremely hard to prove innocence of the related charges, however, since AW stated there were multiple times in which Womack punched AW in the face, and this could easily be proven false which would show a pattern of AW's fabrications. This ground goes hand in hand with Additional Ground 28.

ADDITIONAL GROUND 28

The State erred between November 16th, 2011, to November 23rd, 2011, by intentionally misleading the jury with prejudicial questions which provided undue prejudice toward Appellant in which denied his right to a fair trial and due process guaranteed by the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22.

In February of 2008, AW got caught passing a note which the note implied that her father had bruised her arm. The school as mandatory reporters contacted CPS. CPS interviewed both of Womack's step children, AW, Ms. Ashley, as well as Womack. This incident had nothing to do with bruises on AW. (RP 945 at 1-3, 21-25, 946 at 1-7, 21-25, 947 at 1-8) AW confessed that she was pissed off at her dad and that's why she wrote the note. (RP 947 at 6-8)

Throughout the trial Hunter asked several people misleading questions in which would imply that AW was investigated by CPS due to bruises on AW's arm. (AW, RP 573 at 16-21), (Ms. Ashley, RP 652 at 17-21, 653 at 10-18), (Voelker, RP 813 at 5-7), (Mr. Mattison, RP 920 at 14-17), (Mr. Fullerton, RP 933 at 22-25). Hunter further ask Voelker:

Hunter: "Did you even point out to him [Womack] the school had reported discipline problems and bruising on AW and the discipline was a result of the behavior commonly associated with a traumatic event?"

Voelker: "The school was lying, he told me."

First, Hunter is testifying to what Voelker found out about the school. Second, there were no school records what so ever in discovery, in fact Womack received the school records the day the trial started so he could not use them, but they would show that AW lied about skipping school and Hunter lied about the school reporting bruises on AW. This is just intentional prejudice to help make the conviction and keep her 94% conviction rate. This too, is cumulative flagrant ill-intentioned misconduct that could not of been cured with an instruction.

ADDITIONAL GROUND 29

The State erred between November 16th, 2011, to November 23rd, 2011, by intentionally asking leading questions that could only be answered with inadmissible hearsay testimony in a egregious cumulative manner, which created undue prejudice and denied Appellant's right to a fair trial and due process guaranteed by the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22.

Womack was stuck in a position where he had to be waiting for the State to present inadmissible hearsay and if presented, then he had to choose between objecting and having the jury wonder what he was hiding or not objecting and letting in inadmissible evidence. The following instances were instances that Hunter ask leading questions to intentionally receive inadmissible hearsay testimony in which Womack did not object:
(RP 465 at 17-25, 466 at 1-4, 478 at 24-25, 479 at 1-3, 479 at 10-16, 481 at 15-20, 483 at 12-18, 487 at 19-25, 488 at 1-4, 488 at 17-25, 489 at 1-6, 494 at 6-12, 12-16, 499 at 1-3, 516 at 24-25, 517 at 1-2, 16-25, 518 at 1-5, 24-25, 519 at 1-5, 536 at 6-11, 633 at 16-20, 654 at 7-8, 660 at 8-13, 13-15, 662 at 3-6, 667 at 11-14, 663 at 16-20, 667 at 18-23, 668 at 13-19, 673 at 3-10, 670 12-18, 1-6, 7-9, 680 at 14-21, 691-692, 720 at 4-17, 758 at 5-9, 10-18, 761 at 6-8, 772 at 15-17, 776 at 7-8, 789 at 19-20, 811 at 23-25, 812 at 10-12, 814 at 24-25, 815 at 1-3, 819 at 12-14)

On November 18th, 2011, during direct examination with Ms. Ashley, Hunter ask, "How did the conversation start with AW?" Womack objected knowing where the conversation was heading. Judge Evans denied the objection and Hunter told Ms. Ashley to proceed. Ms. Ashley then stated, "So, on the note option where you can create notes, **she typed in that her dad had been touching her.**" Womack objected again in which was sustained, but the damage was already done.

Just shortly after that Hunter ask, "Do you know if he [Womack] agreed to allow AW to come with you?" Ms. Ashley replied with, "After I had told AW that I wanted her to come with me, I don't know if it was the same day or the next day but **he came to me and <u>said</u>**, 'You're not taking AW.'" Womack objected, but this time Judge Evans overruled the objection. (prior paragraph - RP 656 at 5-22, this paragraph - RP 676 at 5-16)

The same day Hunter ask Kayla Vonstein, "What was the secret that she [AW] shared with you?" Vonstein responded with, "**She told me somebody had raped her.**" Womack objected in which it was sustained, but Judge Evans failed

to give the jury a curative instruction. (RP 768 at 7-22)

There was more inadmissible hearsay admitted then there was valid testimony. In State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984), the Courts held:

> "Numerous errors, harmless standing alone, can deprive a defendant of a fair trial." (see also State v. Russell, 125 Wn.2d 24, 882 P.2d 747; State v. Badda, 63 Wn.2d 176, 183, 385 P.2d 859 (1963); State v. Alexander, 64 Wn.App. 147, 154, 822 P.2d 1250 (1992); U.S. v. Diahrce-Estada, 526 F.2d 637, 640, (5th Cir. 1976)(holding a cumulative effect of errors committed by the judge and prosecutor may deny a defendant to a fair trial.))

In Bruton v. U.S., 391 U.S. 123, 88 S.Ct. 733, 54 L.Ed.2d 761 (1978), the Courts held:

> "A jury cannot always be trusted to follow instructions to disregard improper statements."

A prosecutor's job isn't just to win, but to win fairly, staying well within the rules. U.S. v. Kojayan, 8 F.3d at 1323 Because the case at bar was solely based on testimonial evidence, the prosecutor found it necessary to promulgate inadmissible hearsay evidence to win the case, and deny Womack of a fair trial.

ADDITIONAL GROUND 30

The Trial Court erred on Novermber 22nd, 2011, by asking a predicial question that could only be answered with inadmissible hearsay testimony in which denied Appellant's right to a fair trial guaranteed by the federal and state constitution, U.S. Const. amend. VI, Wash. Const. art. I, §22.

On November 22nd, 2011, Hunter ask Cindy Clem the following question:

> "Okay, And, just so were clear, the information she [AW] shared, did she come right out and say, 'I was molested', or was it something different?"

Ms. Clem responded with:

> "It was something different. She said that she thought she liked girls."

Womack objected and the objection was sustained, but Hunter continued on by asking:

> "I -- you're fine. I just wanted to know if that in that time, she told you about the molestations or was it something different?"

Ms. Clem responded with:

> "No, she didn't tell me about the molestation." (RP 907 at 3-15)

At face value, and the fact Hunter knew the answer (CP 186), this question's sole purpose was to appeal to the passion and prejudice of the jury. No curative instruction could be given to take away such flagrant and ill-intentioned prejudice. Gregory, 158 Wn.2d at 841 (quoting State v. Stenson,

132 Wn.2d 668, 719, (1997).

ADDITIONAL GROUND 31

The Trial Court erred on November 22nd, and 23rd, 2011, by denying Appellant's motion to use tangible relevant video evidence and putting a time limit on the video that was allowed, and allowing the State to repeatedly besmirch the character of Appellant by objecting to video evidence due to "lack of authentication" in which denied Appellant's right to a fair trial, right to use tangible evidence, and due process guaranteed by the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22.

Due to his confinement, and the State maliciously holding on to Womack's computer's, Womack had an extremely hard time retrieving video evidence going through his computer expert, under a restrained time period. Once he retrieved a very small amount of video, in which was presented and decided outside the presence of the jury would would be allowed to come in. On November 21st, 2011, Judge Evans stated:

> "I would have to have good strong reasons why we should show more than a couple of minutes." (RP 1024 at 13-16)

Womack had his computer expert narrow down 4 clips to just 3-4 minutes of play time in which Hunter objected to any of it coming in. (RP 1028-1036) Judge Evans then denied one video all together due to it not being relevant. During testimony, AW stated that she did not have any friends over during her middle school year (RP 550-51) yet the video that was not relevant was of a surprise 13th birthday party orchestrated by Womack with 5 or more of AW's girlfriends over. (RP 1036 at 11-13) Judge Evans then made Womack pick between two videos because they were "cumulative." (RP 1036 at 19-23) By giving Womack this choice, this would indicate that both video's were revlevant, which forced Womack to choose which video would not be shown. How can 4 videos edited down to less than 5 minutes be "cumulative." (RP 1028-1042) Judge Evans then sustained 5 objections for the video coming in due to authentication. Womack was even forced to have to stop his presentation to step down and ask stand-by counsel what he was doing wrong which he could give no useful advise. (RP 1042-1057) In doing this, it allowed only a couple minutes of video and embarrassed Womack in front of the jury which was highly prejudicial.

ADDITIONAL GROUND 32

The Trial Court erred on November 22nd, 2011, by admitting evidence to

the jury that was not admitted into discovery prior to the trial pursuant to CrR 4.7 in which denied Appellant's right to a fair trial and due process guaranteed by the federal and state constitution, U.S. Const. amend. V, VI, XIV, Wash. Const. art. I, §22, CrR 4.7.

On November 22nd, 2011, after asking Womack on the stand if he was aware of a warrant that was placed for his arrest on October 8th, 2010, Hunter ask the Court to admit a copy of the arrest warrant which was not in discovery prior to the trial. Womack objected on these grounds and Judge Evans ignored this objection and admitted Exhibit 76. (RP 1103 at 15-25, 1104 at 1-4)(CP 410) This was clearly offered to insinuate that Womack was either lying about not knowing about the pending warrant, or about the dates he was working. Just before Hunter offered Exhibit 76, Womack just got done testifying that he was a long haul truck driver in which he was working between the dates of October 8th, 2010 to December 20th, 2010. Hunter would have known that a local warrant would have no merit in other states and would of given a reason why other states were able to run Womack's drivers license at weigh stations without the warrant showing up. But instead of explaining this to the jury, she leads them to believe Womack could only be lying. (RP 1100-1104) This was highly prejudicial based on the fact that the whole case was based on credibility.

ADDITIONAL GROUND 33

The Trial Court erred on Novermber 21st, 2011, by denying Appellant's motion to admit a CPS report at the end of a CPS representive, William Baszler's testimony, which denied Appellant's right to admit tangible evidence, and right to due process guaranteed by the federal and state constitutution, U.S. Const. amend V, VI, XIV, Wash. Const. art. I, §22, ER 104.

On November 21st, 2011, after Womack got done with William Baszler, a CPS representative, Womack ask the Court to admit the CPS report from MR. Baszler, so the jury could see what he wrote in his report supported what Womack had stated all along, that CPS was never contacted due to "bruises on AW" as the State repeatedly tried to present. Without this tangible evidence the jury had to rely on what they heard in testimony and the repeated prejudicial questioning of Hunter. (see additional ground 28)(RP 957 at 9-15)

ADDITIONAL GROUND 34

The Trial Court erred on November 17th, 2011, by overruling Appellant's

objection to besmirching questioning in which denied Appellant's right to a fair trial and due process guaranteed by the federal and state constitution, U.S. Const. amend. V,VI,XIV, Wash. Const. art. I, §22.

On Novermber 17th, 2011, Hunter objected to information pertaining an extramarital affair between Ms. Ashley and another man. (RP 576-582) On the same day, a little bit earlier, Hunter lead AW into describing how Womack was hitting on other women (Ms. Ashley and his former wife, Jessica) behind their backs, and it went as far as AW stating Womack cheated on Jessica with one of the State's Witness's, Cindy Clem. Womack objected and the objection was overruled. (RP 501 at 4-25, 502 at 1-5) This line of questioning was clearly intended only to besmirch Womack's character and was plainly offered to flame the passions and prejudices of the jury.

ADDITIONAL GROUND 35

The Trial Court erred on November 22nd, 2011, by granting the State's motion to not allow Defense to call Stan Munger, Defenses Private Investigator, for impeachment purposes based on Defendant allegedly not having the proper foundation laid, which denied Appellant's right to a fair trial, right to offer his private investigator for impeachment purposes, and right to due process guaranteed by the federal and state constitution, U.S. Const. amend. V. VI, XIV, Wash. Const. art. I, §22.

On November 22nd, 2011, Hunter ask the Court to not allow Stan Munger testify because there was no foundation laid. (RP 1042 at 16-25, 1043-1050, 1051 at 1-3) Defenses main argument is AW fabricated the allegations to live in a setting where she would be able to have a sexual relationship with a boy named Thomas. During an interview with Mr. Munger, AW stated she started a relationship with a boy named Thomas Enos "at the end of her ninth grade year and most of her tenth." AW reluctantly admitted to this on November 18th, 2011. (RP 614 at 1-16) On November 21st, 2011, Womack ask AW the following:

Womack: "You say that your relationship with Thomas started after school got out and after you moved to Rainier, is that correct?"

Not wanting the jury to hear this answer, Hunter objected many times trying to stop AW from stating the answer because it clearly showed that AW came up with the allegations at the exact same time as the relationship started with Mr. Enos. Finally after many objections, Hunter objected that AW could not look at reference because she did not believe it was impeachment and it was direct questioning in which Judge Evans sustained. (RP 995 at 11-25, 996,

997 at 1-9) Womack did not pursue with this line of questioning because he was under the impression that he could call upon Mr. Munger for impeachment purposes. This was a vital point in the case that the jury needed to know. Because Womack was unable to call Mr. Munger for impeachment purposes, the jury did not have all of the relevant facts. Therefore, the jury could not make a final decision based on all the relevant facts.

ADDITIONAL GROUND 36

The State erred on November 23rd, 2011, by egregiously personally assuring witness' credibility, expressing her personal opinion regarding Appellant's guilt (better know as "vouching"), appealing to the passion and prejudice of the jury, assuming and insinuating personal knowledge of facts not offered in evidence, creating Giglio violations, shifting the burden of proof to defendant, and misstating statutorial law in which denied Appellant's right to a fair trial and due process guaranteed by the federal and state constitution, U.S. Const. amend. V, VI,XIV, Wash. Const. art. I, §22.

The very first thing the jury heard at closing was the following:

> "The Defendant raped his daughter over and over and over. He forced her into intercourse, digital penetration, oral sex. He used a lubricant and forced her into a threesome with the only mother she had ever known, and he used a sex toy. He is a person that does horrible things to children. And that child was his daughter, ..." (RP 1223 at 9-17)

Is this not what the jury is to decide? And the comment, "He is a person that does horrible things to children" is a direct appeal to the passions and prejudice of the jury. Next Hunter stated:

> "He [defendant] played the jealous man to keep her away from other boys, and to keep his secret safe, because what would another boy find out if she ever became involved? That she probably knew a whole lot more that what she should." (RP 1223 at 20-25, 1224 at 1)

Here Hunter wrongfully appealed to the passions of the jury by her first person narrative of the thoughts the defendant must have been thinking leading up to the crimes. State v. Pierce, COA No. 40777-9-II (July 17, 2012) Hunter's next statement of question is:

> So, when you [jury] are looking at what those charges are, child molestation in the first degree, you can automatically go through the easy ones of what the elements are, absolutely. Okay." (RP 1224 at 11-16)

Here Hunter is giving her opinion by stating the charge of child molestation is an easy one to convict because the elements are absolutely there. Next Hunter states:

> Sexual intercourse. Pretty much what you think it is, but it also includes

oral sex. So it's penetration of the vagina by any object, body part, however slight. That means penis or finger. You heard AW testify that there was digital penetration as well as him putting his penis inside her vagina. She testified that this happened when she was under the age of 12. She also testified that there was oral sex when she was under the age of 12. That is clearly sexual intercourse. (RP 1226 at 14-24)

Once again by stating, "That is clearly sexual intercourse", Hunter is stating her opinion and stating that all oral sex would consist of penetration. Next:

The Defendant had sexual intercourse with AW. AW was at least 12, but less than 14; not married; at least 36 months; all of the actions occurred in Washington State. The only thing you need to be concerned about between first degree and second degree is the age of AW at the time of the offense." (RP 1227 at 19-25, 1228 at 1)

This tells the jury that all they need to be concerned about is whether it was first or second degree, that the jury need not decide any other factor. Hunter is telling the jury that Womack is guilty, that they just need to decide if it is first or second degree. Next:

"Count 2, child molestation in the first degree. If you find that this touching happened because of treating the rash, and he touched her vagina, you can agree on child molest one." (RP at 20-23)

There would be a huge amount of fathers that would need to go to prison if this were the case. Hunter completely misstated the law here. Next:

"You only have to agree on one. Pick the one that's the most details. GUILTY! GUILTY! Rape of a child two. Penetration of her vagina in any way, digital or from his penis, when she's 12 or 13. You only have to agree that it happened one time, before the Tammy incident. GUILTY! If you agree that there was oral sex when she was 12 or 13, GUILTY!" (RP 1229 at 3-12)

In State v. Glasmann, 175 Wash.2d 696, 286 P.3d 673 (2012), the Courts held:

"[8] It is also well established that a prosecutor cannot use his or her position of power and prestige to sway the jury and may not express an individual opinion of the defendant's guilt, independent of the evidence actually in the case."

"[11] A prosecutor could never shout in closing argument that 'Glasmann is guilty, guilty, guilty!' and it would be highly prejudicial to do so."

Hunter chants guilty 6 times during closing and states, "FIND HIM GUILTY!" twice. (RP 1229 at 5-12, 1230 at 7, 1256 at 15, 1286 at 10) The Courts in Glasmann have directly stated this is highly prejudicial. Hunter is also using her power and prestige when she is stating, "FIND HIM GUILTY!" Next Hunter states:

"So all you have to do is decide for Count 5 and Count 6 on that date if there was penetration during the threesome, and if there was oral sex during the threesome. GUILTY GUILTY!" (RP 1230 at 3-7)

First Hunter has told the jury that they only need to find one count of rape

of a child prior to the Tammy incident. (RP 1229 at 8-9) Since there are 4 counts of rape of a child 2, this would indicate she has laid out 3 charges due to the alleged threesome. Then she states there was only two charges for the alleged threesome. (RP 1230 at 4-7) How could a jury convict on all accounts when they are designated like that?

In State v. Fisher, 165 Wn.2d 727, the Courts held:

> "[35, 36] ¶57 To return a guilty verdict, the jury must unanimously agree that the defendant committed the charged crime. State v. Petrich, 101 Wn.2d 566, 569, (1984) Where a defendant is charged with multiple counts of the same crime, the State must designate the acts upon which it relies to prove it's case. Id. at 570 Alternatively, the Court may instruct the jury to agree unanimously to which acts support a specific count."(emphasis added) (quoting State v. Kitchen, 110 Wn.2d 403, 409 (1988).

On November 22nd, 2011, Womack ask the Court:

> "So, if I'm found guilty, can I have something that states that the jury gives a reason that this is an instruction, and why they found me guilty?" (RP 1164 at 4-15)

Hunter and Judge Evans both replied with, "OK." Womack's whole point to that was for the jury to designate what acts were found for what count, knowing that if he was confused about what acts went with what, then the jury surely would also. Next Hunter stated that the school AW went to recommended counseling. (RP 1231 at 8-10) There were no records from the school in discovery nor did anyone representing the school testify so obviously Hunter is "vouching" inadmissible evidence. Next Hunter stated:

> No, that doesn't make sense. They [Ms. Ashley and Womack] didn't send her to counseling because they knew what would happen. They knew if she talked to a counselor that this secret would come out. So what do they do, they move and hide, move and hide. And that is exactly what he does, he switches her out of school. He doesn't send her to school for the rest of the time." (RP 1231 at 14-20)

Here Hunter once again appealed to the passions of the jury by her first person narrative of the thoughts the defendant must have been thinking. And she is once again using evidence (school suggested counseling) that is not was not part of discovery. Hunter then brought up inadmissible hearsay statements allegedly made by Womack to Ms. Ashley which was highly prejudicial and unethical. (RP 1232 at 19-24) Then she did some more "vouching" by stating:

> "This is one of the themes, manipulation by the Defendant. Because at that time he makes Tammy think, "Okay, don't worry. It'll all go back to normal. Everything will be okay." But he's thinking long term, and he get her involved." (RP 1232 at 25, 1233 at 1-5)

A prosecutor cannot testify to what a defendant is thinking. This is highly

prejudicial and unethical. Hunter then told the jury that there was no positive evidence that Womack was alone with the kids, due to some alleged protective measures that Ms. Ashley supposedly put forth on Womack for a year. She stated none of the Defense witnesses could give times, dates, that they ever saw, or could say the Defendant was out there alone with kids. Yet there was video of this and Mr. Mattison and Mr. Fullerton both stated they had seen Womack around the kids at that time. (RP 1233 at 9-11) Then Hunter stated:

> "The Defendant is manipulative. and with enough foresight to have deliberately gotten his, for all intents and purposes, wife involved and to keep her silent. Because he knows that she's already remained silent about it. She's got her job. How would that look? And so, he involves her. And you remember the details, how much AW's and Tammy's version of that even lined up, even though AW had been given alcohol and marijuana by her father?" (RP 1233 at 20-25, 1234 at 1-4)

Here again Hunter is appealing to the passion and prejudice of the jury by the first person narrative of the defendant's thoughts and intentions and the highly inflammatory comment about the drugs and alcohol. Hunter then states:

> That is the last time because the Defendant has exactly what he needs. He has ensured Tammy's silence. He has agreed that it will stop. And he has all the control he needs over AW." (RP 1235 at 1-7)

More inadmissible hearsay, more "vouching." Hunter then stated, "The school saw the alcohol. They recommended counseling. CPS came and they investigated but the bruises weren't there at that time." Once again Hunter is testifying in behalf of the school and she is insinuating that there was bruises in the first place. Then Hunter stated:

> "And the Defendant tried to trip her [AW] up with dates. 'And, oh, what about this date, and, oh, where was the fire pit, and oh, this and that.' AW did very well in regards to her dates. Why? Because she experienced it. She was there, and she has a memory of it. What makes sense, that here her acting out behavior is a sign of the trauma that she's been through? Or she just doesn't like dad's rules of no boys? That she's been introduced to an adult lifestyle by her father for sex, alcohol, and marijuana?" (RP 1239 at 1-12)

and,

> "So it makes sense that when she's stronger she comes forward. Don't penalize her for that. So many people want that physical evidence, because it's easier. It's easier if you have that physical evidence that corroborates that person. But it's not necessary." (RP 1239 at 22-25, 1240 at 1-3)

Here Hunter is clearly "vouching" for the credibility of her witness by stating AW did very well by her dates. And she is clearly appealing to the passion and prejudice of the jury by the mention of alcohol and drugs. And by a layman,

one might interpret that one needs no physical evidence as one only needs to hear what the prosecutor tells them to do and do it. She is also appealing to the passion and prejudice of the jury by telling the jury not to penalize the child by not making the conviction. Hunter also stated, "If you believe AW, the Defendant is guilty. And that's all you need to do." (RP 1240 at 20-21) Hunter goes on by stating Womack was manipulating AW, Tammy, Voelker, and the jury. (RP 1242 at 1-4; 1243 at 15-22) How many times does she have to tell tell the jury that the defendant is a manipulator before they believe her? If that's not enough, next she states:

> "He's [Womack] messing with us all. Messing with the system. And if he's going to do that in the middle of his jury trial, what would he do to AW?" (RP 1244 at 6-9)

and,

> "Think about the reasons he gives to you for the reason why he doesn't report the threesome, as I call it, or the twosome, as he calls it." (RP 1244at18-20)

Now she is telling the jury that he is messing with them, and by stating, "as I call it", she is giving her personal belief as to the threesome. This is flagrant and illintentioned misconduct. Next she refers to the note AW passed to her friend that started the whole CPS incident and states it's from 2006, and states "somebody saw the bruise enough to ask her about it. It was there." (RP 1241 at 4-10) This would be a Giglio violation because Hunter knew this to be false, this incident took place in 2008. (see additional ground 28) Furthermore, she is "vouching" for the testimony of the "somebody" that passed the note which was not an endorsed witness. Hunter further adds prejudice by stating:

> "And all of those family photos, those nights, hundred thousand family photos that he's documenting, he just gives up when she turns 16, and says I want out. These are more like those family photos. [While holding up a picture of AW and two of her friends passed out on the hide-a-bed in the livingroom] Three teenage girls passed out in bed. That's what he wants to document." (RP 1246 at 6-14)

This is Hunter's idea of a "fair trial." This is said to the jury for the absolute means of prejudice. She further stated, "The Defendant avoided the police. He absolutely avoided the police." (RP 1246 at 22-23) There is absolutely no proof of this, in fact there is more evidence of the exact opposite. (RP 1247 at 15-17) Hunter also brings up prejudicial statements about Womack suing the county for millions. (RP 1249 at 17-19) This has no relevance and is the same as saying he is going to sue the jurors because they are most likely tax paying citizens so the prejudice here is huge. Hunter

then stated while talking about the intimidating charge:

> "Wasn't just a threat, he [Womack] made good. Why? Because she [Ms. Ashley] didn't do what he wanted. That's that manipulation. That's that from day one. 'If you don't do what I want, I'm going to hurt you.' Just like he did to AW when she fought back and he gave her those bruises. 'You're going to do what I want, and if you don't you're going to get hurt.'" (RP at 1251 9-16)

Once again Hunter is appealing to the passion and prejudice of the jury with her first person narrative telling the jury what Womack was thinking and must be saying. The letter's threat was a threat of telling the "truth" but Hunter crosses that line and makes it a physical threat which is again, highly prejudicial and inflammatory. Hunter even goes as far as telling the jury, "his witnesses mean nothing. Nothing." (RP 1252 at 16-17) Someone with the power and prestige Hunter has as being a representative of the State telling the jury the witnesses mean nothing would absolutely reflect prosecutorial misconduct. Then we can ask how the aggravators were found. To sway the jury Hunter first states:

> "If you find him guilty of Counts 1 through 6, that answer is yes. Multiple incidences over a prolonged period of time. AW testified that it started when she was eight, and it ended when she was thirteen. You could still find aggravating circumstances. You could still find there's a pattern for the first one." (RP 1253 at 4-19)

and,

> "Multiple incidences. That one's easy. And it's on each count."

Hunter is telling the jury the answer to mark on the aggravator form and stating her opinion by stating, "That one's easy" to the Multiple incidences, which again is highly prejudicial and unethical. She then states that AW was particularly vulnerable more than other kids because her biological mom was not in her life. (RP 1254 at 6-13) And then she states:

> "You have two special verdict forms requiring you to find whether or not AW and the Defendant were family or household members, and whether Tammy and the Defendant were family or household members. The automatic answer to those are yes. So on those special verdict forms you can go back all of you, 'YES. YES!' Because AW was his daughter, and Tammy and he had a long term dating relationship. Automatic yes." (RP 1255 at 12-22)

Now Hunter is chanting, "yes, yes" to the jury to "automatically" mark yes on the special verdict forms just because they were a family.

In Belgarde, 110 Wn.2d 504, 788 P.2d 174 (1984)(quoting State v. Claflin, 38 Wn.App. 847, 690 P.2d 1186 (1984); State v. Claflin, 103 Wn.2d 1014 (1985) stated in Claflin the Courts found that by the prosecutor reading a poem written

by the alleged victim was highly prejudicial and unethical. Hunter does this very thing to add some more intentional inflammatory prejudice and to appeal to the passions of the jury. (RP 1231 at 22-25, 1232 at 1-2, 1255 at 23-25, 1256 at 1-14) And of course she ends this part by demanding the jury to "Find him guilty." (RP 1256 at 15) After Womack stated all the true facts about the case in his closing argument, Hunter came back in her Rebuttal Closing Argument by first stating:

> "Follow the rules. That's what the Court wants you to do. That's what this packet is all about, those rules. And what these rules say is the State has proved its case beyond a reasonable doubt." (RP 1279 at 12-17)

Here Hunter is using her power and prestige to tell the jury to find Womack guilty because the rules say so!" She goes on with the inflammatory statement right after defining "reasonable doubt" with:

> "What does your head say? What does your heart say? What does your head say? It says the Defendant raped his daughter." (RP 1280 at 4-6)

This is not only inflammatory, it is appealing to the passion of the jury when she as, "What does your heart say." Next Hunter states:

> "The Defendant says there was no medical evidence. Why is there no medical evidence? Because he made sure that we would never find it. He made sure that she couldn't do that at age eight, age none, age ten, age eleven, age twelve, because she was so scared." (RP 1280 at 813)

Once again Hunter is insinuating what Womack must of been doing. She further states that Womack purposely withheld evidence of a dildo to hide evidence when she knew the Defense Counsel Scudder was holding on to it and it was brought forward by Womack many months prior, and in fact because the testing did not get done on it, that was one reason why he fired Scudder in which then became stand-by counsel. (RP 26 at 8-13) This was solely said to intentionally mislead and prejudice the jury. Hunter then states:

> "He had his opportunity. He called witnesses. A Defendant doesn't have to present evidence. The Defendant doesn't have to put on a case. A Defendant doesn't have to testify, and you can't use that against him. But when he chooses to do so, when he makes that choice to present evidence, as you would any other evidence. It gets the same weigh scale. And you judge it on its credibility, on its common sense. And his is lacking. He tries to point out the timing differences. For him it's all about timing in this case. It's all about the dates. It's all about the numbers. Why? Because that's the only thing he has. (RP 1281 at 20-25, 1282 at 1-9)

Here Hunter is shifting the burden of proof to the Defendant by saying once Womack testified and provided evidence that the burden was on him, and providing her opinion by stating, "because that's the only thing he has." Hunter next

created a Giglio violation by intentionally misstating the facts by stating:

> "Both AW and Tammy testified the threesome happened in the summer."

and,

> "...but if you had to remember the exact time for that, it's reasonable and consistent that they both say it happened in the summer." (RP 1282 at 13-15, 22-25, 1283 at 1)

The facts in the evidence absolutely does not support this. (RP 571 at 16-25, 572 at 1-12, 615 at 18-25, 735 at 5-9) Hunter goes on mocking Womacks trial by once again calling his case a "Red herring. Absolute red herring." (RP 1241 at 24-25, 1242 at 1-4, 1283 at 17-22) She also states more evidence that was not in the evidence, which Womack objected. (RP 1241 at 24-25, 1242 at 1-4, 1283 at 22-25, 1284 at 1-8) She states the poem she read was from the eighth grade when it was actually from 2010. (RP 1003-1008, RP 1284 at 20-23) Hunter then "vouches" for evidence outside the record by stating:

> "You also heard from Detective Voelker, when the Defendant asked about why he was arrested and on what basis he had and the corroborative evidence of that, you heard from Detective Voelker that he talked to the neighbor and the neighbor's son, who saw her black eye. There is corroboration. He says look at the school. The school had all these issues. You know, honestly, the school got a note from a friend about bruising, and CPS got involved." (RP 1285 at 14-24)

Hunter is "vouching" for the school and for the neighbor and his son, which was covered earlier, was Allen and Michael Smith, and against her own Motion in Limine. She ends with:

> "Ladies and gentlemen, this is about the child. This is about AW, and has always been about AW. AW is the victim, since age eight, of her father."

and,

> "This all about AW. It is not about him. [pointing and glaring at Womack] He is not the center of attention, AW is. FIND HIM GUILTY!" (RP 1286 at 1-11)

This is a clear appeal to the prejudice and passion of the jury by putting the child in the spotlight and saying find him guilty for the child's sake.

ADDITIONAL GROUND 37

The Trial Court erred on January 13th, 2012, by denying 3 motions made by Appellant, 2 in which were filed on December 2nd, 2011, in which denied Appellants right to due process guaranteed by the federal and state Constitution. U.S. Const. amend. V, XIV.

On January 13th, 2012, Womack motioned the Court to dismiss once again due to his speedy trial rights being violated and also to hear a CrR 7.4(a)(3),

CrR 7.4(b) Motion for Arrest of Judgment and a CrR 7.5(a)(2) CrR 7.5(a)(7) Motion for Arrest of Judgment. (CP 286-288) The 7.4(a)(3), 7.4(b) motion was based on the fact there was no way the jury could distinguish between the 6 charges because the prosecutor failed to properly designate them. (see Statement of Additional Grounds for Review pg. 47-48) The 7.5(a)(2), 7.5(a)(7) motion was due to the prosecutorial misconduct of the closing argument. (see Statement of Additional Grounds for Review, Additional Ground 36, pg. 46-53) Judge Evans denied the speedy trial vacation again and the 7.4(a0(3), 7.4(b) motion. Judge Evans fails to even address the CrR 7.5(a)(2), 7.5(a)(7) motion. (RP 1329-30) All three of these motions had merit and were wrongfully denied in which denied Womack's right to due process.

ADDITIONAL GROUND 38

The Trial Court erred on January 13th, 2012, by determining Appellant's sentence points as 16 and off the scale in which denied Appellant's right to due process guaranteed by the federal and state constitution, U.S. Const. amend. V, XIV.

On January 13th, 2012, the Trial Court sentenced Womack using 16 points on the sentencing grid in which he has never had any prior felonies. This goes against everything the sentencing grid was originally created for. How can an innocent man not only get convicted for something he didn't do, but get a life sentence with a minimum of 68 years of time to spend when he has never had a felony in his life?

Dated this 25th day of April, 2013.

Respectively submitted,

Wm. Womack

William Womack 354117 BB-205
Washington State Penitentiary
1313 N. 13th Ave.
Walla Walla, WA 99362-1065

FILED
SUPERIOR COURT

2011 MAY 10 P 2:37

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK

BY _____

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

STATE OF WASHINGTON, Plaintiff, vs. **WILLIAM CHARLES WOMACK,** Defendant(s).	**No. 10-1-00974-1** **SUBPOENA (CRIMINAL)**

TO: TAMI WOMACK, CHARLES GRALING, JANET LONG, KAYLA VONSTEIN, MICHAEL SMITH, JANE DOE, DEP. LORENZO GLADSON, DET. DAVE VOELKER

IN THE NAME OF THE STATE OF WASHINGTON, You are required to appear in the Superior Court of Cowlitz County, at the Hall of Justice, 312 South West First Avenue, Kelso, Washington on:

MONDAY, JUNE 20, 2011, AT 10:30 AM

to testify in the above-entitled case.

YOU ARE FURTHER DIRECTED to report your attendance each day at the Clerk's Office and to verify your claim for mileage compensation.

DATED **May 9, 2011.**

Susan I. Baur

SUSAN I. BAUR / WSBA# 15221
Cowlitz County Prosecuting Attorney

Sheriff's fees: $_____ JNEAL

You must call (360) 414-5505 *after 5:00 p.m. the night before* you are scheduled to testify. You will hear a recording listing only those cases which are still scheduled to go to trial. If your case is not listed, you do not need to appear for trial.

If you need to talk to the Prosecuting Attorney's Office, please call 577-3080 between 8:30 a.m. and 5:00 p.m. from Monday through Friday.

(22)

Cowlitz County Prosecuting Attorney
312 S.W. 1st Street
Kelso, Washington 98626

STATE OF WASHINGTON,
Respondent,

WILLIAM WOMACK,
Appellant.

NO. 42999-3-II

AFFIDAVIT OF SERVICE BY MAILING

I, William Womack, being first sworn upon oath, do hereby certify that I have served the following documents:

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW
AFFIDAVIT OF SERVICE BY MAILING
LETTER TO COURT CLERK

Upon:
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA. 99362

On this _____ day of April, 2013.

William Womack 354117
Name & Number

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.