70148-7

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WASHINGTON STATE COURT OF APPEALS
DIVISION 1

STATE OF WASHINGTON PLAINTIFF	
V.	COA No. 70148-7-I
RONALD BROWN DEFENDANT	

STATEMENT OF ADDITIONAL GROUNDS

I RONALD R. BROWN CERTIFY THAT THIS IS MY PRO SE STATEMENT OF ADDITIONAL GROUNDS SIGNED AND DATED.

x Ronald R Brown

JULY 7, 2014

Ronald R Brown

STATEMENT OF FACTS

On December 1, 2011, Ethan Mattox and Jeff Brinkley called Kenny Easley and tell him they have the money they owe him. (RP 1/14/2013 Pg. 428-29).

Kenny Easley went to the Munson Residence to pick-up his money. (RP 1/14/2013 Pg. 429-30).

Mr.Easley Got into a confrontation with Mr. Munson, Mr. Mattox, Mr. Brinkley in the driveway. (RP 1/14/2013 Pg. 431).

Mr. Mattox, Mr. Brinkley, and Mr. Munson assault Mr. Easley and drag him into the basement (RP 1/14/2013 Pg. 486), where visqueen was spread out on the floor. (RP 1/14/2013 Pg. 492-93), where they robbed and beat him and pointed a gun at him. (RP 1/14/2013 Pg. 435).

They stripped Mr. Easley down naked and took all his jewelry, took his safe out of the trunk of his car, and made him smoke methamphetamines at gunpoint. (RP 1/14/2013 Pg. 435-36).

They put Mr. Easly in a back room and have a vote on whether to kill him or not. (RP 1/14/2013 Pg. 437).

Kenny Easly was robbed of $4,700.oo, (4)four ounces of methamphetamines, heroin, 9-millimeter handgun, his car, and all his jewelry. (RP 1/14/2013 Pg. 438).

Chuck Munson was there when the safe was opened and aware of what was going on. (RP 1/14/2013 Pg. 489).

They take Mr. Easley out of the basement and to his car where he has to remove the child seat and put it in the trunk. When they open the trunk it is now lined with visqueen. (RP 1/14/2013 Pg. 494).

Eathan Mattox and Jeff Brinkley take Mr. Easley to the woods and then to a warm beach area to a friends house. (RP 1/14/2013 Pg. 494).

They left him there but took his car, as well as all the other items they had already taken earlier. (RP 1/14/2013 Pg. 438).

Kenny Easley calls his wife, a Mr. Johnson, and the defendant. (RP 1/14/2013 Pg. 439). All Co-defendants meet at Kenny Easley's father's house. (RP 1/14/2013 Pg. 442)

Mr. Brown proposes a business meeting with Chuck Munson, Eathan Mattox, and Jeff Brinkley to get Kenny's property back. (RP 1/14/2013 Pg. 444).

Mr. Brown talks to Mr. Munson before they go over to Munson's residence. (RP 1/16/2013 Pg. 721-22) (RP 1/14/2013 Pg. 444) (RP 1/11/2013 Pg. 222).

It was also pre-arranged for Mr. Mattox and Mr. Brinkley to meet there. (RP 1/14/2013 Pg. 451-52) (RP 1/14/2013 Pg. 501-502).

They have agreed to give the money back and to all meet at Mr. Munson's. (RP 1/16/2013 Pg. 728-30) (RP 1/16/2013 Pg. 754-55).

Everybody goess to Munson's house. Mr. Munson tells everybody "come on in". (RP 1/10/2013 Pg. 100). Everybody enters the Munson residence and Mr. Munson gives back a large amount of money and Kenny's gun. (RP 1/14/2013 Pg. 460) (RP 1/15/2013 Pg. 656).

Mr. Brown reassures Mr. Munson that all we want is Mr. Easley's property back and we are not there to hurt them. (RP 1/10/2013 Pg. 109) (RP 1/14/2013 Pg. 309 & 455).

While waiting for Jeff Brinkley and Eathan Mattox to arrive some individuals were rummaging through Munson's back rooms and took several items. (RP 1/11/2013 Pg. 216 & 220) (RP 1/14/2013 Pg. 314).

When Mr. Brown found out this was happening he told them to stop and not to take anything. He repeatedly reminded them we are not here to take anything from Munson's but rather collect Kenny Easley's stolen items. (RP 1/13/2013 Pg. 224 & 228) (RP 1/14/2013 pg. 314)

Mr. Brown did not take anything from the Munsons residence. (RP 1/11/2013 Pg. 228) (RP 1/15/2013 Pg. 657).

After a few hours Patrick Buckmaster, a friend of Mr. Easley's shows up. (RP 1/10/2013 Pg. 138). A few minutes

later, a loud shotgun blast was heard in the hallway. (RP 1/10/2013 Pg. 139) (RP 1/14/2013 Pg. 459-60).

Mr. Brown tells everybody "Lets Go"... (RP 1/10/2013 Pg. 139).

This is the Point where the Liability of Charges against the Defendant end. (RP 1/10/2013 Pg. 147-48).

BEST ARGUED AT (CP SUB# 125 pg. 222-225)

GROUND # 1

ER 404(b)

APPELLANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED UNDER THE 14th AMENDMENT, VIOLATING DUE PROCESS AND EQUAL PROTECTION. THE TRIAL COURT'S ABUSE OF DISCRETION IN ADMITTING HIGHLY PREJUDICIAL ER 404(b) EVIDENCE DID NOT CONSTITUTE HARMLESS ERROR. BUT INSTEAD WAS BASED ON UNTENABLE GROUNDS AND CAUSED UNDUE PREJUDICE TO THE DEFENSE.

A/. The Erroneous Admission of Evidence Under 404(b) Requires Reversal Only If The Error, Within Reasonable Probability, Materially Affected the Outcome Of The Trial.

In balancing the evidence's probative value against its prejudicial effects under ER404(b), the trial court must read ER 404(b) in conjunction with ER 403. Er 403 requires exclusion of evidence, even if relevant, if its probative value is substantially outweighed by the danger of unfair prejudice.

The danger of unfair prejudice exists when evidence is likely to stimulate an emotional response rather than a rational response. See, **State v. Smith**, 106 Wn.2d 772, 775, 725 P.2d951 (1986).

In order to be admissable under the FED. RULE EVID. 404(b), The evidence of other acts must (1) have a proper evidentiary purpose, (2) be relevant under **Rule 402**, (3) Satisfy **Rule 403**, (i.e.; not be substantially more prejudicial than probative), and (4) be accompanied by a Limiting Instruction, when requested pursuant to **Fed. Rule Evid. 105**, that instructs the jury not to use the evidence for an improper purpose. See, **United States v. Cross**, 308 F.3d 308, 320-21 (3rd Cir. 2002)(footnote omitted).

Here, Appellant's trial court allowed evidence of a homicide, grave-site and burial, x-Rays, pictures of clean up, and forensic witness's in such an enormous amount that any reasonable person would be confused with the charges at hand.

In light of the attached pro-se charting, 32% of the witness's testimony and 41% of the exhibits admitted into evidence was of uncharged crimes. (see chart below).

B/. **The Court's Ruling OF Why The Evidence Was Admitted:**

(1) to prove that the firearm was operational.

(2) to show "consciousness of guilt". (RP 1/10/13, pg. 6).

In light of Washington State Law and the Instructions to the jury, the state need not prove that a firearm was discharged or that it was even operational only that one of the participants of the crimes charged was armed with a firearm.

In **State v. Faust**, 93 Wn.App. 382, 967 P.2d 1284, at 1289 (1998), the state points out that eyewitness testimony to a real gun that is neither discharged or recovered is sufficient to support a firearm enhancement.

In **State v. Berrier**, 110 Wn.App. 645, 41 P.3d at 120 (2002), Division II of the Court of Appeals found that a firearm unloaded or inoperable is still a firearm and trial court may impose a firearm sentence enhancement.

According to **State v. Tongate**, 93 Wn.2d 753, 613 P.2d at 122 (1980),(the prosecution is not required to prove that a pistol, revolver, or other type of firearm was loaded or even that it was capable of being fired.).

The State had in its possession, from original arrest date, Kenny Easley's Jimenez JA-9mm and (6) six eyewitnesses of firearm testimony.

HOW THE APPELLANT WAS PREJUDICED

At; (RP 1/11/13, pg. 259), the prosecutor asks the witness: "Were you asked to look at some evidence with regard to the case, this case in particular, with the victim Patrick Buckmaster?"

Next, (RP 1/18/13, pg. 987), the prosecutor is explaining the elements of the Appellant's charges reflective to the Inflicted Bodily Injury but, instead of the alleged victim, he uses Patrick Buckmaster as the example of what constituted bodily injury. In both of the above cites to the record, Patrick Buckmaster is not the defendant's alleged victim in charging documents. This is why ER 404(b) is distinctive, as Appellant argues.

Appellant is distinguishing that the jurors were overwhelmed with ER 404(b) error and inference of guilt.

TO CONCLUDE THIS

Even if the trial court admits evidence of uncharged crimes & bad acts, it should have limited the nature and amount of evidence admitted.

The problem is that it still weighs too heavily with the jury because it over-persuades the jury into prejudicing defendant with uncharged crimes, and denies the defendant a fair opportunity to a defense against what he is actually charged with.

Given the powerful nature of the evidence and emotional effect

(See CP pg. 143 Court's Instruction To The Jury #29):"A firearm, Whether Loaded Or Unloaded, Is A Deadly Weapon".

(CP Pg. 144 Courts Instruction to the Jury #30): for Purposes Of A Special Verdict, The State Must Prove Beyond A Reasonable Doubt That The Defendant Was Armed With A Firearm At The Time Of The Commission Of The Crime..)

In light of this instruction, any reasonable person or juror could conclude that one participant need only to be armed to find cause on both elements of the deadly weapon and special verdict firearm enhancement.

It is my position that the Honorable Judge's decision to allow this evidence in, for the purpose to show the firearm was operational, was manifestly unreasonable and based on untenable grounds.

In light of reason #2, **"Consciousness of guilt"**, the evidence admitted does not reflect the mens rea of the crimes charged. The gravesite, or the x-rays of deceased, or the pictures of clean-up, and all the forensic witnesses is not reflective of guilt of the crimes I was charged with or as applied to victims. (RP 1/17/13 pg. 957). (CP sub# 125 pg. 222-26)

In determining whether the probative value of evidence outweighs its unfair prejudice, a trial court should consider the availability of other means of proof and other factors. See, **State v. Powell**, 126 Wn.2d 244, at 264, 893 P.2d 615 (1995).

it had on the jury, the lack of relevance, and the absence of a Limiting Instruction, it's admission was not harmless. What it did was shift the Burden of Proof to the defense with highly prejudicial evidence that the jury should not have considered.

PREJUDICAL WITNESS BELOW:

(1-11-13 pg.259-60)--Kathy Geil, Forensic Scientist

(1-15-13 pg.565-75)--Catherine Taylor, Forensic Anthropologist

(1-15-13 pg.585-96)--Stanley Adams, Forensic Pathologist

(1-15-13 pg.597-601)--Brittany Ball, Forensic Scientist

Reversal Is Warranted,

GROUND # 2

LIMITING INSTRUCTION

APPELLANT ARGUES THAT THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO GIVE APPROPRIATE LIMITING INSTRUCTION IN RESPECT TO THE HIGHLY PREJUDICIAL ER 404(b) EVIDENCE ADMITTED BY THE COURT.

THE TRIAL COURT'S ERROR WAS NOT HARMLESS AND VIOLATED DEFENDANT'S 14th AMENDMENT RIGHT TO DUE PROCESS AND, THE RIGHT TO A FAIR TRIAL UNDER THE THE U.S. CONSTITUTION.

ER 404(b) states; "Evidence of other crimes, wrongs, or acts is inadmissible to prove character and show action in conformity therewith; such evidence may, however, be admissible for other purposes, such as proof of motive, opportunity, intent preparation, plan, knowledge, identity, or absence of mistake or accident. **See:** **State v Goebal**, 36 Wn. 2d. 367, 379, 218 P.2d 300 (1950); **State v. Gresham**, 173 Wn.2d 423, 424, 425, 269 P.3d 215 (2012); **State v. Aaron**, 57 Wn.App. 277, 787 P.2d 949 (1990); **State v. Foxhoven**, 161 Wn.2d 168, at 175, 163 P.3d 786 (2007).

The state may refuse to give the requested instruction if it is incorrect or not accurate. This does not end the inquiry, However; While it is not error for the trial court to refuse to give an incorrect instruction it is error for trial court to fail to give a correct instruction. **State v Goebal**, 36 Wn. 2d. 367, 379, 218 P.2d 300 (1950)

ER 404(b) EVIDENCE ALLOWED

	Direct Testimony # OF PAGES	Prejudicial ER 404(b) # OF PAGES	% of PAGES
WITNESSES:			
DETECTIVE WELLS	41	12	12%
DETECTIVE METCALF	9	0	0%
LOIS MUNSON	104	24	23%
KATHY GEIL	10	2	20 %
SUSAN MUNSON	103	2	20 %
KENNY EASLEY	61	20	33 %
DR. CATHRINE TAYLOR	10	10	100 %
DR. STANLEY ADAMS	10	10	100 %
BRITTANY BALL	12	8	66%
LISA CASEY	9	8	91 %
MEGAN EASLEY	32	14	45 %
BILL DAVIS	34	0	0 %
DANNY FORDHAM	38	3	45 %
DONALD CASTANARES	21	3	14 %
DETECTIVE BETTS	43	19	44 %

32% OF DIRECT TESTIMONY IS OF UNCHARGED CRIMES

EXHIBITS

#86 (RP 1-10-13 pg. 66) PITCURE WINDOW

#13, #15 (RP 1-10-13 pg. 153) HALLWAY REPAIR & CARPET

#84, (RP 1-11-13 pg. 262) SEMIAUTOMATIC 308

#60, #61 (RP 1-15-13 pg. 560) BURIAL AREA

#64, #67 (RP 1-15-13 pg. 570) GRAVESITE

#75, #76 (RP 1-~~15~~ 15-13 pg. 592) X-RAYS OF SKULL

#25, #26 (RP 1-~~15~~ 15-13 pg. 604) BLOOD STAIN PICTURES

#27, #28 (RP 1-~~15~~ 15-13 pg. 604) BLOOD STAIN PICTURES

41 % OF EXHIBITS ON UNCHARGED CRIMES

#85 (RP 1-15-13 pg. 665) Bullet Proof Vest

My defense Counsel again asked for a Limiting Instruction, on the very next day in trial, and provided another instruction for the court. But again this was denied. RP 1/18/2013 pg. 974-76).

It is noted: That because the state offered the limiting instruction this in no way negates a request. Once an offer for the Instruction was made, and the defense in my case we excepted, it is the same as a Request From the Defense. Otherwise, it would be a backhanded way of tricking the defense out of a Limiting Instruction by saying, **"You never requested one"**.

IN CONCLUSION OF THIS ISSUE

Approximately 32 % of the witnesses testimony and 41 % of the exhibits admitted into evidence was on ER 404(b) uncharged crimes, bad character and bad acts. There is no greater prejudice than the word "Murder" in a trial if the defendant is not charged with or not relevant to the charges against his victims.

Denying a Limiting Instruction specifying the purpose for which this highly prejudicial evidence can be used is not harmless error. Instead, it shifts the Burden of Proof onto the defense and severely handicapped his Right to a Fair Trial.

Once a criminal defendant request a limiting Instruction to ER 404(b) evidence, the trial court has a duty to correctly instruct the jury, notwithstanding Defense Counsel's failure to provide a correct instruction. **State v. Gresham**, 173 Wn.2d 423, 424, 425, 269 P.3d 215 (2012).

Where the evidence is admitted for a limited purpose, and the party against whom it is admitted request a limiting instruction, it is error not to give the instruction. **State v. Aaron**, 57 Wn.App. 277, 787 P.2d 949 (1990).

In my case, despite the defense counsel's exhaustive efforts in argument to the relevance of the ER 404(b) Evidence that the trial court admitted, a Limiting Instruction must, at a minimum, inform the jury of the purpose for which the evidence is admitted and give Cautionary Instruction that such evidence is to be considered for no other purpose or purposes.

During Motions of Limine the court offered to give a Limiting Instruction to the ER 404(b) Evidnece. My Defense Counsel excepted and proposed the instruction to the court.

Here, the court decided not to give an instruction; (**RP 1/17/ 2013 pg. 953-58**) this was because the specific instruction my defense counsel proposed was not in agreement with the court or the state. (CP sub# 135 pg. 149)

I ask this Court to Reverse all charges and REMAND for new trial on the grounds of this being highly likely the jury used this evidence in their decision for guilt.

I would also add that the jury was out for a little more than (2) Two hours on (7) Seven major charges and (7) Seven gun enhancement charges. [During that time they also went out to lunch]. that is not enough time to properly discuss and deliberate on this many charges let alone read all the instructions. I am sure that the amount of ER 404(b) evidence allowed and lack of Limiting Instruction played a big part in this.

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GROUND #3

ER 609

TRIAL COURT DENIED DEFENDANT'S REQUEST TO INTRODUCE PRIOR FELONY EVIDENCE TO IMPEACH LOUIS MUNSON AS A WITNESS THUS, LIMITING THE SCOPE OF THE DEFENDANT'S CROSS-EXAMINATION OF MR. MUNSON, AND VIOLATED APPELLANT'S COMPULSORY PROCESS OF THE SIXTH AMENDMENT RIGHT OF THE U.S. CONSTITUTION GUARANTEEING APPELLANT A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE. FURTHER, VIOLATING THE FEDERAL RULES OF EVIDENCE 609, 28 § U.S.C.A.

It has long been established that, whether rooted in Due Process Clause of the U.S. 14th Amendment, or in the Compulsory Process of the Sixth Amendment U.S. Constitutional guarantees criminal defendant a meaningful opportunity to present a complete defense. **California v. Tombetta**, 467 U.S. 479, 485 (1984); **Holms v. South Carolina**, 126 S.Ct. 1727, 1731 (2006).

(A) Defense Was Barred From The Issue That The Alleged Victim, And State's Witness, Mr. Munson, Was A Two-Strike Offender Who Would Have Likely Faced Strike Three Had He Not Been Deemed A "Victim" By The State. (RP 1/10/13 pg. 51-57).

FEDERAL RULES OF EVIDENCE Rule 609, 28 § U.S.C.A. ER 609(a)(1): "In general, the following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction.

(1) For a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence":

(i) "Must be admitted, subject to Rule 403, in a criminal case in which the witness is not a defendant".

ER 609(b) Applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissable only if...

(1) "Its probative value, supported by specific facts and

circumstances, substantially outweigh its prejidicial effect"; and

(2) "The proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

Our theory of the case is and was that Mr. Munson was tailoring his testimony for the state. (1/10/13 RP 54). Kenny Easley, the man who was robbed at first and state's witness, testified to the fact that Mr. Munson was an arbitrator to Mr. Easley's abduction and robbery (1/14/2013 RP 486, 489) Mr. Easley and Mrs. Easley both testified that Mr. Munson gave back a large amount of money from the crime and Kenny's gun. (1/14/13 RP 460)(1/15/13 RP 656). Fruits of the poisonous tree. Mr. Easley testified that he was held at gun point.(1/14/13/RP 487). Both of Mr. Munson's strike offenses are armed robbery 1. Mr. Munson was not on trial or was he charged with any crimes, therefore the relevance of the facts and circumstances and their probative value should outweigh any prejudice to a man who is free from prosecution.

Defense Counsel gave written notice to the state of their intent to use Mr. Munson's prior two-strike charges. (12/4/12 RP 94).Pre-trial Motions/Motions in Limine.

A defendant has a right to confront adverse witnesses with bias evidence if the evidence is at least minimally relevant.

State v. Fisher, 165 Wash. 2d at 752, 202 p. 3d 937 ( ).

Bias refers to "the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party". **U.S. v. Abel**, 469 U.S. 45, 52 ,105 S.Ct, 465, 83 L.Ed. 2d 450.

A defendant may establish bias through cross-examination or by introducing extrinsic evidence, including third party testimony: "A defendant enjoys more latitude to expose the bias of a key witness."

(B) In Mr. Munson's Deposition He Stated He Was A Two-strike Offender.

CrR 4.6(d) Use, "Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or as substantive evidence under circumstances permitted by the Rules of Evidence."

The state had proposed Jury Instruction #7: "You may consider evidence that a witness has been convicted of a crime only in deciding what weight or credibility to give to the testimony of the witness, and for no other purpose." This could also lead a juror into thinking that all convictions are being layed out for them to consider. (cp JURY INSTRUCTIONS pg. 117)

Any reasonable person would have taken into consideration that Chuck Louis Munson, being a 2-strike offender, is possibly tailoring his testimony and is less credible as a witness

especially when other state's witnesses say he was an accomplice to the abduction and robbery of Mr. Easley and could have been facing strike three if not deemed a "victim" by the state. Therefore, Mr. Brown was prejudiced by the court's not allowing Mr. Munson's relevant prior convictions of Armed Robbery 1.

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GROUND #4

CUMPULSORY PROCESS

TRIAL COURT ABUSED ITS DISCRETION BY NOT ALLOWING PETITIONER TO BRING WITNESSES IN HIS FAVOR, OR TO CONFRONT HIS ACCUSER, THUS, VIOLATING APPELLANT'S 6th AND 14th AMENDMENT RIGHTS OF DUE PROCESS THROUGH COMPULSORY AND CONFRONTATION CLAUSES.

It is axiomatic that an accused person has the Constitutional Right to present a defense. United States Constitutionl Amendment VI; **Washington v. Texas**, 388 U.S. 14, 19, 87 S.Ct. 1920 (1967). Defendant's Constitional Right to present a defense includes the right to offer the testimony of witnesses and to compel their attendance, if necessary; **U.S.C.A. Const. Amend. 6; WESTS RCWA Const. Art. 1 § 22.**

While the confrontation clause guarantees a defendant the right to be confronted with witnesses "against him", the Compulsory Process Clause guarantees a defendant the right to obtain and call witnesses "In his favor". **U.S.C.A. Amend 6.** The Compulsory process is, in plain terms, the right to present a defense and is a fundamental element of due process of law. **U.S.C.A. Const. Amend 14; United States v. Wittington**, 783 F.2d 1210, 1218 (1986), citing **Washington** 388 U.S.at 17-19; **State v. Ellis**, 136 Wn.2d 498, 527, 963 P.2d 843 (1988).

The defendant exercised his rights under the compulsory process clause in advance of trial, announcing his intent to present certain witnesses (see Witness list below). Violation of defendant's rights under the confrontation clause is U.S. Constitutional error. **Harrington v. California**, 395 U.S. 250, 251-52, 89 S.Ct. 1726 (1996).

GROUND #5

ER 901(a)

APPELLANT'S U.S.C. 14th AMENDMENT DUE PROCESS RIGHTS WERE VIOLATED. TRIAL EXHIBIT #85 "BULLET PROOF VEST" WAS NOT USED IN THE COMMISSION OF THE CRIME, AND ADMISSION OF EVIDENCE WAS NOT HARMLESS ERROR.

Washington Rules Of Evidence: ER 901

(a). The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims.

Moody v. U.S., 376 F.2d 525, 532, (9th Cir. 1967).

State v. Hunter, 152 Wn. App. 30, 216 P.3d 428-30 (2009).

See also; State v. Oughton, 26 WA. App. 74, 83-84, 612 p.2d 812 (1980); **State v. Freeburg**, 105 Wa.App. 492, 20 p.3d 989-90 (2001).

Danny Fordham, co-defendant, and State's witness, was arrested 3 months after the incident at the Munson's residence. In his possession was trial Exhibit #85: "bullet-proof vest." (1/15/13 RP pg. 663). The court admitted the "vest" during the testimony of Det. Wells but layed down no foundation to support the authentication of the evidence. (1/15/13 RP pg. 665). "Vest" was already in front of the jury before Danny Fordham took the stand and admitted it was not the vest which he had at the Munson's residence. (1/16/13 RP pg. 823-24).

In light of the court not allowing defense witness Tom Jackson to testify on behalf of ownership and who was in possession of "vest," the State's apparent attempt to question his "know how" to the authenticity, and the court wanting to make

Defense counsel layed a foundation; that is, he presented facts or circumstances which serve to establish the relevance of the testimony. Trial court, then, refused to allow witnesses testimony because of "It's 404(b) evidence and collateral" probative damage. See the 9th Circuit analysis of the prejudice. **Ocampo v. Vail** 649 F.3d 1098 (9th Cir. 2011), This is contrary to clearly established law holding states applicable to the confrontation clause. **Pointer v. Texas**, 380 U.S. 400, 85 S.Ct. 1065 (1965).

The following witnesses, and error as attached to them, had a substantial and injurious effect or influence in determination of the jury verdict:

CAROL DAVIS (1/8/2013, Pre-trial Motions pg. 92 through 106)

SHAWANA FLY (RP 1/15/2013 pg. 515-522)

SIMONE LYONS (RP 1/15/2013 pg. 515-522)

TOM JACKSON (RP 1/15/2013 pg. 515-522)

The constitutional right to a jury trial would mean little if a Judge could exclude any defense witness whose testimony he or she did not credit. Appellant conveys that he was not allowed to present not only a complete defense but any defense.

Appellant was so prejudiced by the trial court decision he was deprived of a fundamental American Right - the right to a fair trial before an impartial and untainted jury. Reversal is Warranted.

sure this was "vest" on date in question... (1/15/13 RP pg. 520-22).

I do not find this harmless.

A. In **State v. Oughton**; Evidence of a knife unrelated to the murder knife found to be of highly questionable relevance.

B. In **State v. Freeburg**; Defendant was arrested 2 years later with a gun in his possession but not the gun used at the incident. Trial court allowed, Appellate Court Reversed.

C. In **State v. Hunter**; Trial Courts error in admitting a "trigger-pull device" that was "similar to" pressure of gun trigger was not found harmless.

D. In **Moody v. U.S.**; Evidence a defendant had a gun that had no relation to the charge in his case was found irrelevant and prejudicially erroneous.

Evidence of a "bullet-proof vest" is highly prejudicial, and Courts have "uniformly condemned...evidence of...dangerous weapons," even though found in the possession of co-defendant, which has nothing to do with crime charged except that it is a highly prejudicial, "similar to" prop. The admission of this "vest," which was not at the Munson's residence, weighs heavily on the opinions of the jury, and due to the trial court's refusal to give a limiting instruction, that vest's admission was not harmless.

Reverse and Remand.

GROUND #6

JURY INSTRUCTION VIOLATION

APPELLANT'S CONSTITUTIONAL DUE PROCESS RIGHTS AND SIXTH AMENDMENT RIGHT TO A JURY TRIAL WERE VIOLATED BY A CONVICTION THAT RESULTED FROM JURY INSTRUCTIONS THAT WERE FUNDAMENTALLY DEFECTIVE.

The jury instruction for the Firearm Enhancements/Special Verdicts were incomplete as they required the jury to deliberate until they found unanimously **"not guilty"** or **"no."** They did not include the now famous **Brett** **"out"** allowing them to be instructed to leave it blank if they could not come to a unanimous decision.

On 7 June 2012, The Supreme Court overruled its own precedent in **Goldberg** and **Bashaw** because of the **Brett** **"or leave it blank,"** legal way out. **State v. Guzman Nunez,** 174 wn. 2d 707,714 (2012). This holding does not conflict with the holding in **Goldberg** because the words, **"Do not fill in the blank for that alternative,"** do not exist as a way out for a juror to take. There was error in this case because the jurors had to agree unanimously **"no,"** or unanimously **"yes".**

Richardson v. United States, 526 U.S. 813, 143 L. Ed. 2d 985, 119 S. Ct. 1707 (1999). The Supreme Court made a ruling to clarify common law that at the time served policy considerations of judicial economy and finality, rather than constitutional grounds.

State v. Guzman Nunez, 174 wn.2d 707,713, 285 P.3d 21 (2012). In overturning The Supreme Courts past two precedent cases on unanimity and the non-unanimity rule, The Supreme Court justified

this landmark decision because of their previous holding in **State v. Brett**, 126 wn. 2d 126, 172-73, 892 p.2d 29 (1995), and the "out" found in the majority of these particular jury instructions;

> "If, after fully and fairly considering all of the evidence or lack of evidence you are not able to reach a unanimous decision as to any one of the aggravating circumstances, do not fill in the blank for that alternative...."

The Supreme Court held that **Goldberg** was incorrect because of the **Brett** "out." **Guzman Nunez**, 174 Wn. 2d at 714. This would be unnecessary if the "out" words were included in Appellant's jury instructions, like they were in **Brett**, but they were not. (pg. 146-147) **(Clerk's Papers sub #136 inst. #31) (1/18/13 RP 981).**

Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); **Blakely v. Washington**, 542 U.S. 296, 313-14, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); **Guzman Nunez**, 174 wn. 2d at 712. These United States Supreme Court mainstay cases do not say, "The jury must unanimously find beyond a reasonable doubt no" on any aggravating circumstance, as that does violate due process.

The Appellant's jury instructions, as they stand, forcing a jury to go all the way till they conclude a finding of unanimously "no," taints and dilutes the reasonable doubt standard of proof. **Cage v. Louisiana**, 498 U.S. 39 (1990); **Victor**

v. Nebraska, 511 U.S. 127 (1994).

What we have here is plain and simple illegal coercion. The trial court judge, by allowing this incomplete (no **Brett** "out") jury instruction, coerced the jury into a forced verdict. **Allen v. United States**, 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896); **Smith v. Curry**, 580 F. 3d 1071, 1073, (9th cir.2009). and is what happened here by allowing Appellant's jury to be given the unanimous "no," without a **Brett**-worded "out" jury instruction.

Unanimity is not required to find the absence of such a special finding. Appellant's instructions stated that unanimity was required for either determination. As a whole, the instruction failed to make the applicable legal standard apparent. **State v. Borsheim**, 140 wn. app. 357,366, 165 P. 3d 417 (2007). That was error, also violating the defendant's right to have charges resolved by a particular tribunal. **State v. Wright**, 165 wn. 2d 783, 792-93, 203 P. 3d 1027 (2009); **Arizona v. Washington**, 434 U.S. 497, 503, 98 S. Ct. 824, 54 L. Ed. 2d 717 (1978).

Regarding having jurors pressured into having to be unanimous on a **"no"** verdict, The Supreme Court has previously made a clear showing that it is prejudicial.

"When unanimity is required jurors with reservations might not

hold to their positions or may not raise additional questions that would lead to a different result. We cannot say with any confidence what might have occurred had the jury been properly instructed. Therefore, we cannot conclude beyond a reasonable doubt that the jury instruction was harmless." **Keller v. City Of Spokane**, 146 wn. 2d 237, 249, 44 P. 3d 845 (2002).

Extensive authority supports the proposition that instructional error of the nature alleged here is of sufficient constitutional magnitude to be raised for the first time on appeal. **Martinez v. Borg**, 937 F. 2d 422, 423 (9th cir. 1991).

In **Neder v. United States**, 527 U.S. 1 (1999), it says that when there is constitutional error involving a jury instruction, the court **"must"** reverse. The Supreme Court's holding in **Guzman Nunez** should not be errorless in Appellant's case due to the absence of the **Brett "or leave it blank"** fix.

Because of the aforementioned reason, Appellant's right to a fair trial and due process was violated and I ask this court relief from this prejudicial constitutional error and request to have the affected sentences vacated and to be remanded back.

GROUND # 7

INEFFECTIVE ASSISTANCE OF COUNSEL

APPELLANTS CONSTITUTIONAL RIGHTS WERE VIOLATED UNDER THE U.S.C. VI AMENDMENT: W.S.C. ART. 1 §22 DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL.

A. STANDARD OF REVIEW

An ineffective assistance claim presents a mixed question of law and fact, requiring de novo review. **In re Fleming,** 142 Wn. 2d 853,865, 16 P. 3d 610 (2001); **State v. Horton,** 136 Wn. App. 29, 146 P. 3d 1227 (2006).

B. AN ACCUSED PERSON IS CONSTITUTIONALLY ENTITLED TO THE EFFECTIVE ASSISTANCE OF COUNSEL.

The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense." U.S. Const. Amend VI. This provision is applicable to the states through the Fourteenth Amendment, U.S. Const. Amend. XIV; **Gideon v. Wainwright,** 372 U.S. 335, 342, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963). Likewise, Article 1, Section § 22 of the Washington Constitution provides, "In criminal prosecutions, the accused shall have the right to appear and defend in person, or by counsel..." Id.

The right to counsel is "one of the most fundamental and cherished rights guaranteed by the constitution." **United States v. Salemo,** 61 F.3d 214, 221-22 (3rd cir. 1995).

An appellant claiming ineffective assistance must show;

(1) That defense counsel's conduct was deficient, meaning

that it fell below an objective standard of reasonableness; and,

(2) That the deficient performance resulted in prejudice, meaning "a reasonable possibility that, but for the deficient conduct, the outcome of the proceeding would have differed."

State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004); citing **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); see also **State v. Pitman**, 134 Wn.App. 376, 383, 166 P.3d 720 (2006).

1/. Defense counsel's failure to object to the admission of trial EXHIBIT #85 **"Bullet Proof Vest"**, prejudiced the defendant and showed a deficient conduct that fell below an objective standard of reasonableness. (1/15/2013 RP pg. 665). No foundation was layed prior to the admission that EXHIBIT #85 was ever at the Munson's house.

State moved to admit on evidence that was found on Mr. Fordham 3 months after the incident. (1/15/2013 RP 663-65). Defense counsel did not object. During Mr. Fordhams testimony he admits that EXHIBIT #85 **"Bullet Proof Vest"** was not at the Munson's residence. (1/16/2013 RP 823-24).

2/. Defense counsels failed to object to Mr. Munson's testimony of; " what would happen if the cops show up? ... there would be to dead cops." (1/10/13 RP pg. 130). Mr. Munson was interviewed three times and one very long deposition by all co-defendants attorney's. Not once was anything like this said by him in those interviews. Susan Munson, Kenny Easley, and megan Easley were

all in the same room at this time and again not one of them said anything like this.

Defense counsel should have objected and a continuance granted so to produce evidence to the contrary. He does not question Mrs. Munson, Kenny Easley, or Megan Easley in regard to the validity of Mr. Munson's statement. There is no trial strategy to leave such an inflammatory ambush that was totally unexpected by the accused in front of the jury without any effort of Neutralizing these remarks.

> (In the situation where witness for the prosecution testify at trial to fact and circumstances which from the nature of the case are wholly unexpected by the accused, or in contradiction to their former testimony. Thereby taking the accused by surprise, a continuance should be granted to procure evidence of the contrary.).

3/. Defense counse's failed to object to the questioning of Kathy Geil, the State Patrol's Forensic Scientist. (1/11/13 RP pg 259). QUESTION: "Where you asked to look at some evidence with regard to the case, this case in particular, with the victim Patrick Buckmaster"... Patrick Buckmaster is not the victim in my case and the juror's should not be led to believe he is especially when the court allowed so much ER 404(b) evidence in and refused to give a limiting instruction.

The Prosecutor's pervasive misconduct and defense counsel's failure to object substantially increased the likelihood that

jurors would vote guilty based on improper factors. **State v. Glasmann**, 175 Wn.2d 706-07, 286 P.3d 673 (2012).

4/. Defense counsel's failed to object to the states arguement in closing at (1/18/13 RP Pg. 987). Here, the prosecution is explaining the elements of the appellant's charges reflective to the inflicted bodily injury but, instead of the alleged victim she uses Patrick Buckmaster as the example of what constitutes bodily injury. In both of the above cites to the record, Patrick Buckmaster is not the defendant's alleged victim in charging documents.

Defense counsel should have objected and the court could have properly instructed the jury. Again, counsel's failure to object substantially increased the likelihood that juror's would vote guilty based on improper factors. **Glasmann Id.**

5/. Defense Counsel's failed to object to the prosecutor argument in closing at (1/18/13 RP pg. 985-986) Here, she's explaining the elements of the lesser included charge to Kidnapping 1. Prosecutor (about unlawful imprisonment).

"This would be accomplished if you accidentally locked somebody in a room, it wouldn't be a crime because you wouldn't have done it knowingly..." this misrepresentation of the law clearly misstates element #4 of Unlawful Imprisonment: "The defendant acted knowingly"; A prosecutor commits misconduct by misstating the law or making argument inconsistent with the courts instruction. **State v. Davenport**, 100 Wn.2d 760-62, 675 P.2d 1213 (1984).

Jurors may have decided, based on this erroneous definition of unlawful imprisonment, on improper factors and inaccurate instructions during closing arguments. Defense Counsel prejudiced the defendant, because of his failure to object, and not having the court instruct the jury properly.

6/. Defense counsel's failed to object to the authentication of state's exhibit #84 "Setmi .308 rifle." Mr. Fordham was arrested 3 months after the incident at the Munson's residence. In his possession was Exhibit #84 "Setmi .308 rifle."

The State moved to admit evidence during the testimony of Kathy Geil but layed down no foundation that this weapon was ever at the Munson's residence. (1/11/13 RP pg. 262-63). Defense counsel should have objected to the authentification of exhibit #84.

Prosecutor during opening statements says it's an "HK GIII" (1/9/13 RP Opening Statements pg. 9). Mr. Fordham testifies that he had an "HK GIII" (1/16/13 RP pg. 755).

Whether this gun was or wasn't the gun Mr. Fordham had at the Munson's residence , the defense counsel's job is to make proof positive that it is. Appellant's counsel didn't even attempt to argue to the fact that a Setmi .308 rifle, manufactured by Sentry Arms, is not an HK GIII. There is no trial strategy here, only a deficiency in conduct that fell below an objective standard of reasonableness. **Strickland v. Washington**, 466 U.S. at 688, 104 S. Ct. 2052 (1984); **State v. Reichenbach**, 153 Wn. 2d 126, 130, 101 P.3d 80 (2004).

IN CONCLUSION

Counsel's function is to assist the defendant and to bear the professional skills and knowledge of the law while he asserts himself as the defendant's advocate. Representation of a criminal defendant entails certain basic duties. These duties include counsel's effective assistance to ensure a fair and impartial trial. Failure to object to improper arguments, improper instructions, highly prejudicial props, and unexpected inflamatory statements shows counsel's performance fell below an objective standard of reasonableness. I believe it to be highly likely that jurors did vote guilty based on improper factors. Remand for new trial.

GROUND # 8

PROSECUTORIAL MISCONDUCT

DEFENDANT ARGUES THAT THE STATE COMMITTED PROSECUTORIAL MISCONDUCT WITH IMPROPER REMARKS AND MISREPRESENTATION'S OF THE LAW DURING TRIAL AND THROUGH CLOSING ARGUMENTS. THIS VIOLATED HIS RIGHT TO DUE PROCESS UNDER THE U.S.C. 14TH AMENDMANT AND ART. I § 3 OF THE WASHINGTON STATE CONSTITUTION.

1) (RP 1/11/13 pg. 259) - PROSECUTOR ASKS THE WITNESS;
"WERE YOU ASKED TO LOOK AT SOME EVIDENCE WITH REGARD TO THE CASE, THIS CASE IN PARTICULAR, WITH THE VICTIM PATRICK BUCKMASTER?"
MR. BUCKMASTER IS NOT THE VICTIM IN MY CASE AND WITH ALL THE ER 404(b) EVIDENCE ALLOWED THE JURY COULD HAVE LIKELY VOTED GUILTY ON IMPROPER FACTORS.

2) (RP 1/18/13 pg. 987) - PROSECUTOR IS EXPLAINING ELEMENTS OF A CHARGE TO JURY BUT INSTEAD OF USING MY VICTIM SHE USES PATRTRICK BUCKMASTER AS THE EXAMPLE OF WHAT CONSTITUTES BODILY INJURY. AGAIN, MR BUCKMASTER IS NOT THE VICTIM IN MY CASE. (PROPENSITY INFERENCE ARGUMENT)

3) (RP 1/18/13 pg. 985-986) - PROSECUTOR'S MISREPRESENTATION OF THE LESSER INCLUDED CHARGE OF UNLAWFUL IMPRISONMENT PREJUDICED THE DEFENDANT AND LEFT THE JURY WITH A FALSE INTERPRETATION OF THE LAW. IT IS HIGHLY LIKELY THAT THE JURY DIDN'T CONSIDER THE LESSER INCLUDED BECAUSE OF THIS.
PROSECUTOR EXPLAINS TO JURY IN CLOSING ARGUMENTS;
"THIS WOULD BE ACCOMPLISHED IF YOU ACCIDENTALLY LOCKED SOMEBODY IN A ROOM, IT WOULDN'T BE A CRIME BECAUSE YOU WOULDN'T HAVE DONE IT KNOWINGLY."

4) (RP 1/2/2013 pg. 2) - PROSECUTOR MISREPRESENTATION OF THE FACTS IN ORDER TO GAIN ANOTHER CONTINUANCE FORCED UPON THE DEFENSE. PROSECUTOR ROZZANO;
"YOUR HONOR, OVER THE WEEKEND, IT IS MY UNDERSTANDING THAT THE INDIVIDUAL RAY EASLEY WAS ARRESTED BY THE EVERETT POLICE DEPARTMENT. UP UNTIL THAT

"TIME, THE STATE HAD NOT BEEN ABLE TO LOCATE MR. EASLEY TO OBTAIN A STATEMENT FROM HIM WITH REGARD TO THE EVENTS THAT TOOK PLACE AT HIS RESIDENCE ON OR ABOUT DECEMBER 1ST OF 2011."

HERE, THE PROSECUTION LIES TO THE COURT TO GAIN FURTHER ADVANTAGE OVER THE DEFENSE.

5) (RP 1/18/2013 pg. 990) - PROSECUTOR ARGUES IN CLOSING ELEMENTS OF ACCOMPLICE LIABILITY BUT MISREPRESENTS THE LAW IN HER INTERPRETATION. PROSECUTOR ; (LINE 18-21)

"...., YOU BRING PEOPLE TO THE TABLE, YOU BRING THEM THERE, YOU GO WITH THEM, YOUR INVOLVED, THE STATE OF WASHINGTON SAYS YOUR RESPONSIBLE FOR EVERYBODY'S ACTIONS THAT ARE INVOLVED."

THIS IS NOT WHAT THE WASHINGTON STATE LAW SAYS AND AS SHE MISSTATES THE ELEMENTS OF ACCOMPLICE LIABILITY SHE IS PREJUDICING THE DEFENDANT.

6) (RP 1/18/2013 pg. 991) - PROSECUTOR ARGUES CONSPIRACY AND HINTS THAT THE LAW SHOULD BE ABLE TO CHARGE ME WITH MURDER BUT THAT THERES "A WEIRD LITTLE GLITCH", "IN WASHINGTON"..... (LINE 1-5) DEFENSE OBJECTS PROSECUTOR CANNOT INJECT PERSONAL OPINION.

7) (RP 1/18/2013 pg. 996) - PROSECUTOR MAKES A IMPROPER ARGUMENT

"YOU KNOW, DON'T LOOK AT A DOG WHEN IT'S ABOUT TO ... YOU KNOW, WHEN IT'S AGGRESSIVE TOWARDS YOU." (LINE 22-24)

8) (RP 1/18/2013 pg. 997) - PROSECUTOR INJECTS PERSONAL OPINION. THIS WAS NOT TESTIMONY (LINE 6-10)

9) (RP 1/18/2013 pg. 1029-30) - PROSECUTOR ARGUES "A HURRICANE IS COMING". IMPROPER PERSONAL OPINION ANALOGY. (LINE 11-25 & 1-3)

HERE THE PROSECUTOR USED PROPENSITY INFERENCE ARGUMENTS ALONG WITH MISREPRESENTATIONS OF THE LAW AND PERSONAL OPINION INJECTIONS TO PREJUDICE THE DEFENDANT.

THE PROSECUTING ATTORNEY MISSTATING THE LAW OF THE CASE TO THE JURY IS A SERIOUS IRREGULARITY HAVING GRAVE POTENTIAL TO MISLEAD THE JURY.

STATE V. DAVENPORT, 100 WASH.2d 757, 763, 675 P.2d 1213 (1984)

PROSECUTORS IMPROPER COMMENTS DURING CLOSING ARGUMENTS CONSTITUTED REVERSIBLE PROSECUTORIAL MISCONDUCT.

UNITED STATES V. HOLMES, 413 F.3d 770, 774-75 (8TH CIR. 2005)

REPETITIVE MISCONDUCT MAY HAVE A CUMULATIVE EFFECT SO FLAGRANT AS TO BE INCURABLE.

STATE V. GLASMANN, 175 WN. 2d 696, 704, 286 P.3d 673, 678 (2012)

BECAUSE OF THE NUMEROUS INSTANCES OF MISCONDUCT THE CUMULATIVE EFFECT HAS SO PREJUDICED THE DEFENDANT THAT REVERSAL IS WARRANTED.

GROUND # 9

INSUFFICIENT EVIDENCE - KIDNAPPING 1°

APPELLANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED UNDER THE 14TH AMENDMENT, VIOLATING DUE PROCESS. EVIDENCE DID NOT PROVE ELEMENTS OF KIDNAPPING 1°.

DEFENDANT ARGUES THAT THE APPELCATE COURT SHOULD REVERSE THE KIDNAPPING CONVICTIONS BECAUSE THERE IS INSUFFICIENT EVIDENCE OF RESTRAINT. DEFENDANT WAS THERE ONLY TO RETRIEVE STOLEN PROPERTY AND RESTRAINT WAS MERELY INCIDENTAL TO DISARMING AND FOR OUR SAFETY SINCE THIS WAS THE RESIDENCE THAT CO-DEFENDANT KENNY EASLEY WAS ROBBED, ABDUCTED AND ASSAULTED EARLIER THAT DAY AND MR. EASLEY TESTIFIED THAT MR. MUNSON TOOK PART IN THOSE OFFENSES. (RP 1/14/2013 pg. 486-87).

DEFENDANT CONTENDS THAT LOUIS MUNSON HAD TALKED ON THE PHONE WITH THE DEFENDANT PRIOR TO HIS ARRIVAL. (RP 1/11/2013 pg. 222) (RP 1/14/2013 pg. 444) (RP 1/16/2013 pg. 721-22). A MEETING WAS PLANNED FOR ALL TO MEET AT THE MUNSON'S RESIDENCE. (RP 1/14/2013 pg. 444, 451-52, 501-02). WHEN THE DEFENDANT ARRIVED AT THE MUNSON'S HOME MR. MUNSON TOLD EVERYBODY TO "COME ON IN". (RP 1/10/2013 pg. 100). DEFENDANT EXPLAINED TO MR. MUNSON THAT "WE JUST WANT TO GET OUR STUFF BACK". (RP 1/11/2013 pg. 216, 218, 225, 228). MR. MUNSON WAS NEVER HIT, PUNCHED OR EVEN TOUCHED. (RP 1/11/2013 pg. 224). WHEN ASKED... "DID YOU EVER ASK TO GET UP AND GO ANYWHERE?" MR. MUNSON SAYS "NO" (RP 1/11/2013 pg. 226). WHEN ASKED "WHAT DO YOU RECALL OF YOUR OBSERVATIONS OF HOW YOUR WIFE WAS TREATED WHEN SHE CAME HOME?" MR. MUNSON SAYS "VERY NICE" (RP 1/11/2013 pg. 228).

SUSAN MUNSON SAYS THE DEFENDANT DIDN'T HAVE A WEAPON. (RP 1/14/2013 pg. 308, 377) DEFENDANT EXPLAINED TO MRS. MUNSON THAT "WERE NOT HERE FOR HER OR HER HUSBAND" AND "JUST WANT OUR STUFF BACK" (RP 1/14/2013 pg. 309). WHEN ASKED "DID YOU EVER GET UP AND MOVE ABOUT YOUR HOME?" MRS. MUNSON SAYS... "YES, I DID, I MOVED ABOUT MY HOME". (RP 1/14/2013 pg. 310). MRS. MUNSON ASKS TO GO GET HER DOG... SHE DOES. (RP 1/14/2013 pg. 311). MRS. MUNSON EXPLAINS HOW THE DEFENDANT TOLD THE OTHER PEOPLE IN THE HOUSE, SEVERAL TIMES, NOTHING WAS TO BE TAKEN (RP 1/14/2013 pg. 314). MRS. MUNSON OFFERS TO MAKE THE DEFENDANT COFFEE... GO'S TO KITCHEN BY HERSELF. (RP 1/14/2013 pg. 326). MRS. MUNSON GO'S TO BATHROOM NOBODY INSTRUCTS HER TO COME BACK AND SIT ON COUCH. (RP 1/14/2013 pg. 379).

JUDGE WEISS STATES, TALKING ABOUT THE KIDNAPPING CHARGES, "I THINK ON THE BASIS OF THE CROSS-EXAMINATION THAT I HEARD FROM MR. COX, I THINK THERE'S SUFFICIENT EVIDENCE FOR ME TO GIVE THE LESSER-INCLUDED INSTRUCTION IN RELATION TO UNLAWFUL IMPRISONMENT, ...". (RP 1/17/2013 pg. 945).

A PERSON COMMITS FIRST DEGREE KIDNAPPING "IF HE OR SHE INTENTIONALLY ABDUCTS ANOTHER PERSON WITH INTENT ... TO FACILITATE COMMISSION OF ANY FELONY OR FLIGHT THEREAFTER" RCW 9A.40.020(1)(b). THE CRITICAL ELEMENT OF ABDUCTION CAN TAKE THREE FORMS, ALL OF WHICH NECESSARILY INVOLVE RESTRAINT: (1) RESTRAINT BY SECRETING THE VICTIM IN A PLACE WHERE HE OR SHE IS NOT LIKELY TO BE FOUND, (2) RESTRAINTS BY THREATS OF DEADLY FORCE, OR (3) RESTRAINT BY USE OF DEADLY FORCE. STATE V. GREEN, 94 WASH. 2d AT 225, 616 P.2d 628 (1980) SEE RCW 9A.40.010(1).

IN GREEN, OUR SUPREME COURT HELD THAT WHEN THE STATE PRESENTS ONLY EVIDENCE OF CONDUCT THAT WAS MERELY INCIDENTAL TO THE COMMISSION OF ANOTHER CRIME, NO RATIONAL TRIER OF FACT COULD FIND THAT THE EVIDENCE PROVES BEYOND A REASONABLE DOUBT THAT THE CONDUCT WAS A RESTRAINT.

IF THE "EVIDENCE VIEWED IN THE LIGHT MOST FAVORABLE TO THE PROSECUTION GIVES EQUAL OR NEARLY EQUAL CIRCUMSTANTIAL SUPPORT TO A THEORY OF GUILT AND A THEORY OF INNOCENCE OF THE CRIME CHARGED," THIS COURT MUST REVERSE THE CONVICTIONS. CLARK V. PROCUNIER, 755 F.2d 394, 396 (5TH CIR. 1985), UNITED STATES V. FORTENBERRY, 919 F.2d 923, 926 (5TH CIR. 1990). THIS IS SO BECAUSE, WHERE AN EQUAL OR NEARLY EQUAL THEORY OF GUILT AND A THEORY OF INNOCENCE IS SUPPORTED BY THE EVIDENCE VIEWED IN THE LIGHT MOST FAVORABLE TO A VERDICT, "A REASONABLE JURY MUST NECESSARILY ENTERTAIN A REASONABLE DOUBT. CASBY V. JONES, 682 F.2d 1373, 1383 (11TH CIR. 1982), U.S. V. SANCHEZ, 961 F.2d 1169 (5TH CIR. 1992)

SEE ALSO STATE V. GARCIA, 318 P.3d 266 (2014) WA. SUP. CT.

WHEN ALTERNATIVE MEANS OF COMMITTING A SINGLE OFFENSE ARE PRESENTED TO THE JURY, EACH ALTERNATIVE MEANS MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE IN ORDER TO SAFEGUARD A DEFENDANT'S RIGHTS TO A UNANIMOUS JURY DETERMINATION.

(CP SUB # 136 JURY INST. # 11 pg. 121, # 16 pg. 127)

ALTERNATIVE ECEMENTS

(2) THAT THE DEFENDANT OR AN ACCOMPLICE ABDUCTED THAT PERSON WITH INTENT

(a) TO HOLD THE PERSON FOR RANSOM OR REWARD, OR

(b) TO HOLD THE PERSON AS A SHIELD OR HOSTAGE, OR

(c) TO INFLICT EXTREME MENTAL DISTRESS ON THAT PERSON OR A THIRD PERSON.

DEFENDANT CLAIMS THERE WAS NO INTENT TO DO ANY OF THESE ELEMENTS AND CITES STATE V. GARCIA, 318 P.3d 266 (2014) AT 271-76

THE STATE FAILED TO PROVE KIDNAPPING IN THE FIRST DEGREE AND IT IS HIGHLY LIKELY THAT THE JURY FOUND THE DEFENDANT GUILTY BECAUSE OF ALL THE ER 404(b) EVIDENCE ALLOWED AND THE PROPENSITY INFERENCE INJECTED BY THE STATE. Im SURE THE LACK OF LIMITING INSTRUCTION ALSO PLAYED A PART IN THIS.

See; STATE V. BERG, 179 WN. 2d 1028, 320 P.3d 720 (2014)

STATE V. LINDSAY, 171 WASH. App. 808, 288 P.3d 641 (2012)

STATE V. KORUM, 120 WN. App. 686, 86 P.3d 166 (2004)

VACATE KIDNAPPING CHARGES AND ENHANCEMENTS THAT ACCOMPANY THEM.

GROUND # 10

INSUFFICIENT EVIDENCE - BURG 1

APPELLANTS CONSTITUTIONAL RIGHTS WERE VIOLATED UNDER THE 14TH AMENDMANT, VIOLATING DUE PROCESS. EVIDENCE DID NOT PROVE ELEMENTS OF BURGLARY IN THE FIRST DEGREE.

DEFENDANT ARGUES THAT THE APPELLATE COURT SHOULD REVERSE THE BURGLARY CHARGE BECAUSE THERE IS INSUFFICIENT EVIDENCE TO PROVE THAT HE ENTERED OR REMAINED UNLAWFULLY IN THE MUNSONS RESIDENCE. DEFENDANT ALSO CLAIMS HE HAD NO INTENT TO COMMIT A CRIME AGAINST MR. MUNSON OR MRS. MUNSON AND WAS THERE ONLY ON A PRE-ARRANGED MEETING TO RETRIEVE ITEMS THAT WERE STOLEN EARLIER THAT DAY AT THE MUNSON'S RESIDENCE.

MR. MUNSON HAD TALKED ON THE PHONE WITH THE DEFENDANT PRIOR TO HIS ARRIVAL. (RP 1/11/2013 pg. 222) (RP 1/14/2013 pg. 444) (RP 1/16/2013 pg. 721-22) A MEETING WAS PLANNED FOR ALL TO BE AT THE MUNSON'S RESIDENCE. (RP 1/14/2013 pg. 444, 451-52, 501-02). WHEN THE DEFENDANT ARRIVED AT THE MUNSON'S RESIDENCE MR. MUNSON TOLD EVERYBODY TO "COME ON IN". (RP 1/10/2013 pg. 100).

JURY INSTRUCTION # 23 - FIRST TWO PRONGS - (CP pg. 137)

TO CONVICT THE DEFENDANT OF THE CRIME OF BURGLARY IN THE FIRST DEGREE AS CHARGED IN COUNT 5, EACH OF THE FOLLOWING ELEMENTS OF THE CRIME MUST BE PROVED BEYOND A REASONABLE DOUBT:

(1) THAT ON OR ABOUT THE 1ST DAY OF DECEMBER, 2011, THE DEFENDANT OR AN ACCOMPLICE ENTERED OR REMAINED UNLAWFULLY IN A BUILDING;

(2) THAT THE ENTERING OR REMAINIG WAS WITH INTENT TO COMMIT A CRIME AGAINST A PERSON OR PROPERTY THEREIN;

JURY INSTRUCTION #24 - (CP pg. 138)

A PERSON ENTERS OR REMAINS UNLAWFULLY IN OR UPON PREMISES WHEN HE OR SHE IS NOT THEN LICENSED, INVITED, OR OTHERWISE PRIVILEGED TO SO ENTER OR REMAIN.

HERE THERE ARE NO CONFLICTING STATEMENTS.... MR. MUNSON SAID, "COME ON IN" AND ALL THE WITNESSES SAID IT WAS PRE-ARRANGED TO HAVE A MEETING AT THE MUNSON'S AND THEY WERE GOING TO GIVE BACK THE STOLEN ITEMS. (RP 1/14/2013 pg. 444, 451, 501-02)

(RP 1/16/2013 pg. 720-22, 728-29, 754-55, 799, 809-10). MR. MUNSON INVITED THE DEFENDANT IN BECAUSE HE KNEW HE WAS COMING OVER AND MR. MUNSON WAS GOING TO HELP RETRIEVE THE REST OF THE STOLEN ITEMS. MR. MUNSON NEVER SAID "YOU HAVE TO LEAVE" OR "GET OUT OF MY HOUSE".... INSTEAD HE HELPED IN TRYING TO GET AHOLD OF MR. BRINKLY AND MR. MATTOX.

see; STATE V. GARCIA, 318 P.3d 266 (2014)

STATE V. ENGEL, 166 WASH. 2d 572, 576, 210 P.3d 1007 (2009)

I WOULD ALSO NOTE THAT MR. MUNSON PARTICIPATED IN THE ROBBERY AND ABDUCTION OF MR. EASLEY AND IS A TWO-STRIKE OFFENDER. HIS TESTIMONY WAS TAYLORED TO FIT HIS NEEDS SO THAT HE DID NOT RECEIVE A THIRD STRIKE. WHAT LITTLE TRUTH'S THAT WE ILLICETED FROM HIM SHOULD BE TAKEN INTO GREAT CONSIDERATION.... LIKE, "COME ON IN", "I THINK I TALKED TO THE DEFENDANT BEFORE HAND"... MR. MUNSON AGREED TO GIVE BACK WHAT MONEY HE COLLECTED FROM THE ROBBERY AND TO HELP RETRIEVE THE REST FROM MR. BRINKLEY AND MR. MATTOX.
(RP 1/14/2013 pg. 460) (RP 1/15/2013 pg. 656)

see also; RODRIGUEZ V. ROZUM, 867 F.Supp. 2d 714, AT 746 (2012)

THEREFOR, THE STATE FAILED TO PROVE ALL ELEMENTS THAT SUPPORT A CONVICTION FOR BURGLARY IN THE FIRST DEGREE AND MUST REVERSE. IT IS ALSO LIKELY THAT BECAUSE THE JURY FOUND THE DEFENDANT GUILTY OF BURGLARY IN THE FIRST WITHOUT PROOF BEYOND A REASONABLE DOUBT THEY DID THE SAME ON THE ROBBERY AND THE KIDNAPPING CHARGES AND THIS SHOULD BE REMANDED FOR NEW TRIAL.

GROUND # 11

DISCOVERY VIOLATION (EXCULPATORY EVIDENCE TO IMPEACH)

DEFENDANT CONTENDS THAT THE TRIAL COURT ABUSED IT'S DISCRETION WHEN IT VIOLATED HIS RIGHT TO DISCOVERY AND EXCULPATORY EVIDENCE TO IMPEACH. THUS, VIOLATING HIS 14TH AMENDMENT RIGHT TO THE UNITED STATES CONSTITUTION DUE PROCESS.

ON SEPTEMBER 5, 2012 THE STATE ASKED THE COURT TO REVIEW SOME DISCOVERY "IN CAMERA". (RP 9/5/2012 pg. 1-7 & 24-28) THE COURT TOOK A RECESS AND VIEWED THE DISCOVERY. TRIAL COURTS DECISION WAS TO NOT ALLOW THE DEFENSE TO HAVE THIS DISCOVERY AND TO DRAFT A PROTECTION ORDER. THERE REASON WAS;

"THE RISK OF HARM OUTWEIGHS ANY POTENTIAL USEFULNESS OF A DISCLOSURE OF THE MATERIAL. AT BEST, THE USEFUINESS APPEARS TO BE MARGINAL." (CP SUB 80 / CP SUB 82) (DEFENDANT'S CLERK'S PAPERS WERE NOT NUMBERED ONLY SUB #'s)

AT THIS POINT THE DEFENDANT ALERTS HIS COUNSEL THAT HE WANTS THIS DISCOVERY BECAUSE IT WILL BE EXCULPATORY.

PROTECTIVE ORDER WAS SERVED AND FILED DECEMBER 20, 2012. (CP SUB 119 - AGAIN DEFENDANTS CLERK'S PAPERS WERE NOT NUMBERED) ONLY SUB #'s ARE ON THEM.

THE STATE IS OBLIGATED TO DISCLOSE PLEA AGREEMENTS OF THE CO-DEFENDANTS THAT HAVE TURNED TO STATES WITNESSES. NOT JUST WHAT THEY WANT US TO HEAR, THE WHOLE PLEA AGREEMENT. THE STATE VIOLATES A DEFENDANT'S RIGHTS TO DUE PROCESS IF IT WITHHOLDS EVIDENCE THAT IS FAVORABLE TO THE DEFENSE AND MATERIAL TO THE DEFENDANT'S GUILT OR PUNISHMENT. BRADY V. MARYLAND, 373 U.S. 83, 83 S.CT. 1194, 10 L.ED. 2d 215 (1963) FAILURE TO DISCLOSE PLEA DEAL DURING TRIAL IS A BRADY VIOLATION. WHETHER IT IS AN ORAL OR WRITTEN AGREEMENT.

HERE, THE STATE HAS FAILED TO DISCLOSE PREEXISTING DEAL WITH STATES WITNESSES DANNY FORDHAM AND KENNY EASLEY. INSTEAD, THEY DROPPED THE STATES CHARGES AGAINST THEM AND THE FED'S PICKED UP THE CHARGES. WHAT THEY FAILED TO DISCLOSE WAS NOT THE 20-25 YEARS FOR CAREER CRIMINAL IT WAS THE SUSPENDED

SENTENCE THEY ARE RECEIVING FOR THERE HELP AND COOPERATION WHICH IS DIRECTLY LINKED TO THERE CREDIBILITY AS A WITNESS.

WHEN RELIABILITY OF A GIVEN WITNESS MAY WELL BE DETERMINITIVE OF GUILT OR INNOCENSE, NON-DISCLOSURE OF EVIDENCE AFFECTING CREDIBILITY FALLS WITHIN RULE THAT SUPPRESION OF MATERIAL EVIDENCE JUSTIFIES A NEW TRIAL. GIGLIO V. UNITED STATES, 405 U.S. 150, 92 S. CT. 763 (1972)

BOTH DANNY FORDHAM AND KENNY EASLEY PLAYED A MAJOR ROLL IN THE PROSECUTION'S CASE THERE FOR ERROR TO DISCLOSE WAS NOT HARMLESS.

BRADY V. MARYLAND, 373 U.S. 83, 83 S. CT. 1194, 10 L. ED. 2d 215 (1963)

GIGLIO V. UNITED STATES, 405 U.S. 150, 92 S. CT. 763, 31 L. ED. 2d 104 (1972)

see also STATE V. DUNIVIN, 65 WN. APP. 728, 829 P. 2d 799 (1992)

(RP 9/5/2012) - (CP SUB # 80) - (CP SUB # 82) - (CP SUB # 119)

see also SILVA V. BROWN, 416 F. 3d 980, 987 (9TH CIR. 2005)

U.S. V. PRICE, 566 F. 3d 900, 907 n. 6 (9TH CIR. 2009)

THERE ARE THREE COMPONENTS OF A BRADY VIOLATION:

(1) THE EVIDENCE AT ISSUE MUST BE FAVORABLE TO THE ACCUSED, EITHER BECAUSE IT IS EXCULPATORY, OR BECAUSE IT IS IMPEACHING.

(2) THE EVIDENCE MUST HAVE BEEN SUPPRESSED BY THE STATE, EITHER WILLFULLY OR INADVERTENTLY.

(3) AND PREJUDICE MUST HAVE ENSUED.

BOTH KENNY EASLEY AND DANNY FORDHAM PLAYED KEY ROLLS IN THE PROSECUTION'S CASE.

REVERSE

SPEEDY TRIAL RIGHT

APPELLANT ARGUES THAT THE STATE VIOLATED HIS UNITED STATES CONSTITUTIONAL 6TH AMENDMENT, ARTICLE 1 § 22 RIGHT TO SPEEDY TRIAL AND HIS UNITED STATES CONSTITUTIONAL 14TH AMENDMENT RIGHT TO DUE PROCESS. TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE STATE TO CONTINUALLY VIOLATE THE DEFENDANT'S RIGHTS WITH MISCONDUCT AND MISMANAGEMENT.

A TRIAL COURT NECESSARILY ABUSES ITS DISCRETION, FOR THE PURPOSES OR REVIEW ON APPEAL, BY DENYING A CRIMINAL DEFENDANT'S CONSTITUTIONAL RIGHTS. ON APPEAL, AN APPELLATE COURT REVIEWS de novo A CLAIM OF A DENIAL OF CONSTITUTIONAL RIGHTS. STATE V. INIGUEZ, 167 WN. 2d 273, 217 P.3d 768 (2009)

DEFENDANT WAS ARRESTED ON JANUARY 3, 2012 AND ARRAIGNED ON JANUARY 24, 2012. HE WAS HELD WITH "NO BAIL". COUNSEL FILED A NOTICE OF APPEARANCE AND DISCOVERY DEMANDS ON FEBRUARY 2, 2012. MARCH 9, 2012 - 8.3 MOTION TO DISMISS DUE TO STATES NEGLIGENCE. DEFENDANT ASSERTS HIS RIGHT TO SPEEDY TRIAL. (RP 3/9/2012 pg. 27) (CP SUB #19 pg. 913-20) (CP SUB #26 pg. 876-82) (CP SUB 10 - NOT NUMBERED)

MARCH 16, 2012 - STATE FINALLY PROVIDES WITNESS LIST ONE DAY BEFORE TRIAL AND 3 WEEKS LATE. STATE ALSO DROPS 2000 PAGES OF DISCOVERY ON THE DEFENSE CAUSING THE DEFENDANT TO EITHER SACRIFICE HIS SPEEDY TRIAL RIGHTS OR HIS RIGHT TO EFFECTIVE COUNSEL. DEFENSE COUNSEL FILES A "CAMBELL CONTINUANCE". DEFENDANT AGAIN ASSERTS HIS RIGHT TO SPEEDY TRIAL. (RP 3/16/2012 pg. 6-7). NEW TRIAL SET FOR MAY 18, 2012. (CP SUB 32 THESE PAGES ARE NOT FOUND IN THE "INDEX TO CLERKS PAPERS" NOR IS THE DEFENDANT'S CLERK'S PAPERS EVEN NUMBERED.)

MAY 14, 2012 - STATE FILES MOTIONS FOR JOINDER AND CONSUMPTION OF DNA 4½ MONTHS AFTER THEY'VE HAD THE EVIDENCE AND 4 DAYS BEFORE TRIAL DATE .... AGAIN FORCING A VIOLATION OF SPEEDY TRIAL RIGHTS.

MAY 17, 2012 - DEFENSE ARGUES 8.3 MOTION TO DISMISS DUE TO DELAYS IN DISCOVERY, NOT BEING ABLE TO INTERVIEW WITNESSES AND THE TIMELYNESS OF THE DNA CONSUMPTION. (RP 5/17/2012); (CP SUB #36 pg. 857-72). DET. WELLS TAKES THE STAND, DEFENSE QUESTIONS HIM ON THE PROCESSING OF DISCOVERY AND WHEN THE PROSECUTOR RECEIVES IT. (RP 5/17/2012 pg. 27-28)

(RP 5/17/2012 pg. 27-28). DET. WELLS STEPS DOWN AND GRABS HIS FILES TO ANSWER THE QUESTIONS, (PG. 28).

Q: "WHEN WAS THE JANUARY INTERVIEWS CLEARED FOR RELEASE TO THE PROSECUTOR?"

A: "I DONT KNOW. I COULDN'T TELL YOU WHEN THEY WERE.. .... I THINK THERES A LOG HANDLED BY THE PROSECUTOR'S OFFICE AS FAR AS WHEN THEY GET DISCOVERY AND THE ACTUAL DISK AND AUDIO". (PG. 32)

(1) IN ORDER FOR THE PROSECUTION TO BE HELD ACCOUNTABLE FOR NOT DELAYING DISCOVERY TO THE DEFENSE THERE MUST BE SOME SORT OF LOG KEPT OF WHEN THEY RECEIVE IT.

STILL ON THE STAND, DEFENSE QUESTIONS DET. WELLS ON WHEN THEY TOOK SOME 410 STATEMENTS. (PG. 32-33)

Q: "DID YOU TAKE BILL DAVIS'S STATEMENT?"

A: "THE 410 ONE?", "YES",

Q: "WHAT DATE IS THAT?"

A: "THE 2ND OF MARCH, 2012"

Q: "WHEN DID YOU FINISH REVIEWING MR. DAVIS'S 410?"

A: "REVIEWED AND CORRECTED BY ME DET. S. WELLS, ON 3/16/2012" (PG. 35)

(2) A 410 STATEMENT IS A PLEA AGREEMENT AND MR. DAVIS AGREED TO TESTIFY BUT THE STATE WONT ALLOW INTERVIEWS BECAUSE THE PROSECUTION HAS NOT FINISHED THE PLEA AGREEMENTS, WHICH AT THIS TIME IS TWO MONTHS OLD. THIS IS NOT DUE DILIGENCE BUT IS OUTRIGHT DELAY.... AND THIS GO'S ON FOR MONTHS.

PROSECUTOR WEBBER SAYS: "AT THIS POINT, NOBODY HAS AGREED TO TESTIFY AS FAR AS I KNOW" (PG. 55)

PROSECUTOR ROZZANO SAYS: "WE HAVE NOT COMPLETED ANY OF THE PLEA NEGOTIATIONS...." AND THE STATE HAS NOT SUPPLIED DEFENSE WITH CRIMINAL HISTORIES AS OF YET. (PG. 55-56) LATER IN ARGUMENT PROSECUTOR ROZZANO SAYS! "IT IS THE STATES POSITION AND BELIEF THAT MR. DAVIS, MR. EASLEY, AND MR. FORDHAM ARE GOING TO TESTIFY AT TRIAL." (PG. 96)

DELAYS IN FINISHING PLEA AGREEMENTS PREJUDICES THE DEFENSE BECAUSE IT DELAYS INTERVIEWS. IF THE STATE WAS ACTING WITH DUE DILIGENCE THESE AGREEMENTS WOULD HAVE BEEN FINISHED SOON AFTER THEY WERE TAKEN IN ORDER FOR THE MEMORIES OF THE WITNESSES TO BE FRESH AND CORRECT INSTEAD OF WAITING FOR MONTHS AND VIOLATING THE DEFENDANT RIGHT TO FAIR TRIAL WITH MISCONDUCT, MISMANAGEMENT AND JUST PLAIN GAMEPLAYING BY THE STATE. (CP SUB 36 pg. 857-72)

(MAY 18, 2012) - BECAUSE OF DELAYED DNA TESTING AND NOT BEING ABLE TO INTERVIEW THE WITNESSES AND MORE DISCOVERY THE STATE HAS FORCED ANOTHER TRIAL CONTINUANCE AGAINST THE WILL OF THE DEFENDANT. DEFENDANT AGAIN ASSERTS HIS RIGHT FOR SPEEDY TRIAL. NEW TRIAL DATE JUNE 15, 2012. (CP SUB #49, 50) (RP 5/18/2012)

(JUNE 12, 2012) - STATE AGAIN DUMPS LARGE AMOUNTS OF DISCOVERY ON THE DEFENSE AND WILL NOT ALLOW INTERVIEWS. (RP 6/12/2012 pg. 2-3) DEFENDANT AGAIN ASSERTS HIS RIGHT TO SPEEDY TRIAL (pg. 12). COURT ASK'S CO-DEFENDANT'S COUNSEL WHEN THEY'll BE READY FOR TRIAL BUT MOST OF THEM HAVE ALREADY MADE PLEA AGREEMENTS WITH THE STATE SO WHY SHOULD THEIR INPUT GET TO DICTATE TRIAL DATES. NOT ONLY DO THESE UNSIGNED PLEAS GET TO HOLD OFF INTERVIEWS BUT THEIR ATTORNY'S GET TO SAY " NO I WONT BE READY TO GO TO TRIAL THAT WEEK, MONTH "..... THEY'RE NOT GOING TO TRIAL THEY MADE PLEA AGREEMENTS. (RP 6/12/2012) (CP SUB 57 NOT # ON MY CLERKSPAPERS) NEW TRIAL DATE OCTOBER 1, 2012

(AUGUST 30, 2012) - DEFENSE COMPELS FOR INTERVIEWS AGAIN, THE DNA TESTING AND DET. WELLS'S EVIDENCE LOGS. (RP 8/30/2012 pg. 16-18) (CP SUB 63, SUB 64, SUB 69, SUB 70, SUB 72)

(SEPTEMBER 20, 2012) - TRIAL CONTINUANCE IS GRANTED AGAINST THE WILL OF THE DEFENDANT. DEFENDANT HAS NOT OR WILL NOT SIGN TRIAL CONTINUANCES. (CP SUB 87) NEW TRIAL DATE JANUARY 4, 2013.

OCTOBER 25, 2012 - DEFENSE FILES IT'S 3rd CrR 8.3 MOTION TO DISMISS FOR VIOLATION OF SPEEDY TRIAL RIGHTS, STATE MISMANAGEMENT AND STATE MISCONDUCT. (CP SUB # 93 pg. 591-99).

DECEMBER 4, 2012 - COURT HEARS MOTIONS TO DISMISS AND MOTION TO SEVER. DEFENSE ARGUES THAT "IF" THE STATE KEEPS NO RECORD OF WHEN DISCOVERY IS RECEIVED, THEN THEY HOLD NO ACCOUNTABILITY TO HOW LONG THEY CAN KEEP DISCOVERY AWAY FROM THE DEFENSE UNTIL IT'S VALUE DIMINISHES. (RP 12/4/2012 pg. 8-14). ALSO, STATE CANCELLING INTERVIEWS. (RP 12/4/2012)

JANUARY 2, 2013 - STATE TRIES TO KEEP THE CASES JOINED BY SAYING THERE LOOKING TO AMEND NEW CHARGES OF "MURDER 1°" TWO DAYS BEFORE TRIAL CALL, A CLEAR MICHELI VIOLATION. THERE NEW INFORMATION COMES FROM RAY EASLEY, - KENNY EASLEY'S DAD WHO JUST GOT ARRESTED. THE PROSECUTION TRIES TO PULL A HUGE LIE IN TELLING THE COURT;

> MS. ROZZANO: "YOUR HONOR, OVER THE WEEKEND, IT IS MY UNDERSTANDING THAT THE INDIVIDUAL RAY EASLEY WAS ARRESTED by THE EVERETT POLICE DEPARTMENT. UP UNTIL THAT TIME, THE STATE HAD NOT BEEN ABLE TO LOCATE MR. EASLEY TO OBTAIN A STATEMENT FROM HIM WITH REGARD TO THE EVENTS THAT TOOK PLACE AT HIS RESIDENCE ON OR ABOUT DECEMBER 1ST OF 2011." (RP 1/2/2013 pg. 2)

THIS IS MISCONDUCT BY THE STATE.. MR. RAY EASLEY WAS INTERVIEWED BY THE DETECTIVES AT THE INCEPTION OF THE CASE, AS MY ATTORNEY will ARGUE ON (pg. 15) AND THIS IS JUST ANOTHER PROSECUTION TRICK, OBSTACLE OR GAME THE STATE IS DOING TO KEEP FROM HAVING TO SEVER THE CASE.

THE DEFENDANT will NOT CONCEDE TO THIS AND WILL NOT SIGN ANY CONTINUANCE NOR HAS HE THIS ENTIRE CASE. JUDGES RULING IS NOT TO SEVER BUT ALSO NOT TO CONTINUE. (RP 1/2/203)

JANUARY 4, 2013 - STATE FILES A "DECLARATION OF MARA ROZZANO". THIS IS THE KIND OF THINGS THAT THE PROSECUTION HAS DONE OVER THE COURSE OF THIS CASE. ALTHOUGH HER BLUFF WAS CALLED IT IS STILL MISCONDUCT BY THE STATE. (CP SUB # 122 pg. 244-45)

N. H.

JANUARY 7, 2013 - IT IS QUITE OBVIOUS TO THE DEFENSE THAT THE STATE WAS AGAIN TRYING TO PUSH BACK MY TRIAL DATE WITH EVIDENCE THEY KNEW WASN'T TRUE. DEFENDANT HAD ASSERTED HIS RIGHT TO SPEEDY TRIAL SO MANY TIMES AND HAD MANY "CAMBELL" CONTINUANCES THAT THE COURT FINALLY DOES NOT LET THE STATE FORCE A CONTINUANCE. (RP 1/7/2013 pg. 3-10)

THROUGH THE COURSE OF THE TIME THE DEFENDANT HAD BEEN INCARCERATED, WITHOUT BAIL, THE STATE HAS LAID DOWN OBSTACLES IN THE PATH OF THE DEFENDANT THAT HAS VIOLATED HIS RIGHTS TO SPEEDY TRIAL, EITHER BY WITNESS LIST NOT BEING AVAILABLE TILL THE DAY BEFORE TRIAL, LARGE AMOUNTS OF DISCOVERY BEING DUMPED ON THE DEFENSE RIGHT BEFORE TRIAL DATES, LATE TESTING OF EVIDENCE, OR BY THE STATE NOT ACTING WITH DUE DILIGENCE ON PLEA AGREEMENTS AND INTERVIEWS.

WITNESS LIST - THERE IS NO EXCUSE ON THIS. IT WAS ONLY MADE AVAILABLE ONE DAY BEFORE TRIAL. MARCH 15, 2012. TRIAL WAS SET FOR MARCH 16, 2012 CAUSING A CAMBELL CONTINUANCE. (CP SUB # 32 PAGES NOT #)

DISCOVERY - THIS IS THE #1 WAY THE STATE VIOLATES A DEFENDANTS RIGHTS AND GETS AWAY WITH IT BECAUSE THE DISCOVERY IS NOT TIME STAMPED. THE DEFENDANT ARGUES THAT IT IS STATE MISMANAGEMENT FOR THE DETECTIVES AND THE PROSECUTOR'S OFFICE NOT TO DATE INCOMING DISCOVERY. THE DEFENSE PROVED THAT SOME DISCOVERY WE RECEIVED WAS UP TO 9 MONTHS OLD. THE PROSECUTION HAS TO BE HELD ACCOUNTABLE FOR DELAYS OTHERWISE THEY CAN PUSH BACK TRIAL DATES AND OR HOLD DISCOVERY UNTIL IT'S VALUE DIMINISHES. WHICH THEY DID IN THIS CASE. (CP SUB# 93 pg. 597-599)

DNA EVIDENCE - THE STATE ASKS FOR CONSUMPTION 4½ MONTHS AFTER THE STATE HAD THE EVIDENCE AND A FEW DAYS BEFORE DEFENDANTS TRIAL DATE CAUSING FURTHER DELAYS AND ANOTHER CAMBELL CONTINUANCE. (CP SUB# 49)

PLEA AGREEMENT AND INTERVIEWS - THE STATE WILL TAKE 410 STATEMENTS AND THEN DELAY FINISHING THEM BY NOT HAVING THE CO-DEEENDANT/STATES WITNESS SIGN THEM CAUSING DELAYS IN THE DEFENSE BEING ABLE TO INTERVIEW THEM. AGAIN, THESE DELAYS PREVENTS THE DEFENSE FROM QUESTIONING THEM ACCORDING TO THERE THEORY OF THE CASE UNTIL THEY "ALL GET THERE STORIES STRAIGHT". THIS IS GROSS MISCONDUCT BY THE STATE AND IN THE SAME A VIOLATION OF DISCOVERY FOR "STATEMENTS ARE EVIDENCE". MEANWHILE THE STATE LETS MEAGAN EASLEY, "WHO THEY CANT FIND", COME UP TO THE JAIL AND VISIT MULTIPLE CO-DEFENDANTS/STATES WITNESSES CAUSING CONTAMINATION. (CP SUB #93 pg. 596-597)

HOW WAS THE DEFENDANT PREJUDICED?

THE NUMBER 1 WAY A DEFENDANT IS PREJUDICED IN DELAYS OF PROSECUTION IS THAT THE WITNESSES CANT REMEMBER WHAT EXACTLY HAPPENED ON THE DATE OF THE INCIDENT.
THIS IS THE "I DON'T REMEMBER'S":

MR. MUNSON - (RP 1/11/2013 pg. 185 LINE 19-21, pg. 191 LINE 12, pg. 199 LINE 3-5, pg. 200 LINE 12-16, pg. 205 LINE 22-25, pg. 206 LINE 1-5, pg. 210 LINE 15-18, pg. 213 LINE 15-18, pg. 222 LINE 3-7, pg. 227 LINE 20-23, pg. 228 LINE 1-2, pg. 242 LINE 8-15)

MRS. MUNSON - (RP 1/14/2013 pg. 307 LINE 21-24, pg. 316 LINE 19-20, pg. 336 LINE 11-17, pg. 372 LINE 7)

MR. EASLEY - (RP 1/14/2013 pg. 441 LINE 14-15, pg. 455 LINE 15, pg. 461 LINE 10-17, pg. 462 LINE 25, pg. 463 LINE 17-21, pg. 474 LINE 17, pg. 493 LINE 9-11, pg. 502 LINE 6-12, pg. 503 LINE 6) (RP 1/15/2013 pg. 531 LINE 1, pg. 532 LINE 18, pg. 533 LINE 11-13, pg. 534 LINE 14)

MRS. EASLEY - (RP 1/15/2013 pg. 630 LINE 22-23, pg. 631 LINE 7-11, pg. 634 LINE 5-8, pg. 638 LINE 4-6, pg. 647 LINE 1)

BILL DAVIS AND DANNY FORDHAM IS MORE OF THE SAME AND SO NOT TO BE REDUNDANT I WILL FINISH WITH MY CONCLUSION. AND

CITINGS OF CASES.

STATE V. BROOKS, 149, WN. App. 373, 203 P.3d 397 (2009)

STATE V. CAMPBELL, 103 WN.2d 1, 691 P.2d 929 (1984)

STATE V. SHERMAN, 59 WN.App. 763, 801 P.2d 274 (1990)

STATE V. PRICE, 94 WN.2d 810, 814, 620 P.2d 994 (1980)

STATE V. MICHIELLI, 132 WN.2d 229, 244, 937 P.2d 587 (1997)

BARKER V. WINGO, 407 U.S. 514, 92 S. CT. 2182 (1972)

BECAUSE OF THE STATES DISORGANIZATION IN HANDLING THIS CASE IT HAS CAUSED DELAYS THAT HAVE PREJUDICED THE DEFENDANT. WHETHER OR NOT THESE PRACTICES ARE USUAL FOR THE STATE, THEY ARE UNCONSTITUTIONAL.

I ASK THE COURT TO VACATE ALL CHARGES AND DISMISS FOR VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL SPEEDY TRIAL RIGHTS.

DECLARATION

I, RONALD R BROWN, declare that, on JULY, 2014, I deposited the foregoing document(s),

STATEMENT OF ADDITIONAL GROUNDS

or a copy thereof, in the internal mail system of Washington State Penitentiary and made arrangements for postage, addressed to:

THE COURT OF APPEALS - DIV. 1
ONE UNIONSQUARE
600 UNIVERSITY STREET
SEATTLE, WA. 98101-4170

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Walla Walla, Washington on 7-9-2014,

Signature and number: [signature] #299428

COA # 70148-7-I