STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)
)
Respondent,) No. 45694-0-II
)
v.) STATEMENT OF ADDITIONAL
) GROUNDS FOR REVIEW
)
Shawn E. Christopher)
(your name))
Appellant)

I, Shawn Christopher, 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

Addition Ground I is an addition to my appeal lawyers Opening Brief, Argument II, and is attached.

Additional Ground 2

Suppression of evidence by the prosecutor. Also attached.

If there are additional grounds, a brief summary is attached to this statement. (Additional Grounds 3, 4, 5 and 6 attached and 7)

Date: 7-22-14 Signature:

Additional Ground I

This is an addition to my appeal lawyers Opening Brief. Officer Bibens starts his prejudicial comments on RP 232 when he says, "It was a 911 call of a--a disturbance, a neighbor had called and basically said my neighbors are arguing again." Again on RP 233 when he states, "I start to walk up to the--the building, I had been there two, three times before so I Knew where it was." This was a deliberate attempt to make it seem as though he'd been there for Christina and I. I'll get to Officer Bibens motivations later. But this is a lie, he'd only been there one time before, and for our roommate. Again by using the words, "some previous calls." He was never there for us and that should've been cleared up since mistrial wasn't granted. So he (the prosecutor) has been warned, yet moments later he again introduces prejudicial testimony from Officer Bibens by asking, "Did you get a chance to look at that person's face?" Officer Bibens then replies, "Yes, sir." The prosecutor continues with "And did you recognize that person that you saw then?" Officer Bibens responds, "Yes, sir." Next question, "Okay. And do you see that person in the courtroom today?" Answered, "Yes, sir." Question, "Okay. And who is it? At which point Officer Bibens uses my first name again by responding, "Shawn Christopher." Next question, "The Def--the Defendant seated at the table to the right?" Answer, "Yes, sir. Yes, sir." (That was on RP 240) Then on RP 262 the prosecutor again is trying to show familiarity between Officer Bibens and our apartment by asking, "Okay. Did you know who that other person was?" Answer, "Yes, sir." Question, "Who was it?" Answer, "Amos." Again using our first names. Same thing on RP 267, question, "Who did you understand him to mean by my boy?" Answer, "Amos, that's the only person I could of (have) thought he was talking about." Office Bibens really makes an emphasis that he's on a first name basis on RP 268 when asked, "You indicate you took pictures of Ms. Gutierrez that night, is that correct?" He then answers, "Ms.--who?" This is blatant. Myself and Officer Bibens had been in an argument the one prior time that he came to my house at which point Officer Bibens said, and I quote, "I'm going to get you." Which brings up my second

Continued from Additional Ground 1 of my SAG

The prosecution introduces prejudicial testimony after being told specifically not to by the judge.
Judge Lewis tells Mr. Farra that he's not going to exclude the prosecution from using the reference that Christina is going to testify to but that she can't explain what the "strike" means. RP 56
Judge Lewis says, "I'm not going to exclude it. She can't go on to explain what she thought that he meant by that, or what she knew in terms of his past record and all that sort of thing, but she can testify as to what he said."
Then on RP 159 Mr. Farra does exactly what the judge told him not to do with these questions and answers, Mr. Farra asks, "Did the caller tell you anything else about the defendant?" Christina answers, "That he's looking at a second strike." Mr. Farra, "What does that mean?" Christina, "That --" Mr. Farra, "Or why did the caller tell you that? Strike that. Why did the caller -- what was the significance of that." Christina, "To me, it meant something bad."
This was one more of Mr. Farra's total disregards for the courts instructions.

addition ground.

Additional Ground II Suppression of evidence. (Police car video)

I had told Susan Stauffer that we needed the police car video and she asked for it again the day of trial in the courtroom. The prosecutor made it seem as though he had it. He did not give it to us. It was a very important piece of my defense and that could not have escaped Mr. Farca's attention considering how drunk officer Bibens was claiming I was and especially after I had Mrs. Stauffer ask Officer Bibens in the 3.5 Hearing (RP64) If I asked him to take pictures that night. Also on RP62-RP6. When I told Officer Bibens that I didn't want to talk to him. It would've shown my state of mind and Officers Bibens prejudice towards me by saying, "I told you I was going to get you."

Ryle V. Kansas (1942) 317 U 213, 87 L Ed 214, 63 S Ct 177, the United States Supreme Court took a firm stand on the issue, a few federal courts, stating that the prosecution's conduct deprived the accused of his constitutional right to due process of law, held that the deliberate suppression of evidence vitiates a conviction. In United States ex rel. Montgomery V. Ragen (1949, DC Ill) 86 F. Supp 382, The court, calling the defendants trial "an unlawful sham," pointed out that it is repugnant to the concept of due process for a prosecutor to introduce everything in the ~~prosect~~ prosecutions favor and ignore anything which may excuse the accused for the crime with which he is charged. The ~~the~~ prosecutions degradation suppression of evidence is usually condemned as being conduct in ~~degrogati~~ of the Federal Constitution's provisions for due process as stipulated in the 5th and 14th Amendments. "Suppression or concealment of evidence or eyewitnesses favorable to him" (Curtis V Rives (1941) 75 App DC 66, 123 F 2d 936) As pointed out in a recent case, a weakness in the adversary system of administering justice is the possibility of unfairness sometimes arising from the prosecution's superior resources and special access to information and witnesses. To protect the innocent who might suffer from this unequal contest, Canon 5 of the American Bar Association Canons of Professional Ethics commands: "The primary duty of a lawyer engaged in public

prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible." This command has been held to be embodied in the due process clause of the Constitution, and a number of courts have interpreted this to mean negligent or passive nondisclosure as well as deliberate concealment or suppression of evidence. As to deliberate suppression, there is - an has been for a number of years - practical unanimity in the view that the deliberate or intentional suppression of evidence will vitiate a conviction, at least if the evidence was exculpatory in nature, and was material on the issue of guilt or punishment, or according to some courts, if it merely related to the credibility of a prosecution witness. Courts have also interpreted the suppression-of-evidence doctorine in terms of the conduct of the prosecutor. Thus, while the prosecutor is generally allowed to exercise some discretion as to what he need not reveal to the defense, and while his primary duty is to present evidence of an inculpatory nature, it is clear that under appropriate circumstances he has an affirmative duty to disclose evidence to the defense on his own initiativ Under Brady 14th Amendment, fail to disclose defendant material exculpatory evidence to the extent the prosecution knows of material evidence favorable to a criminal defendant, it has a due process obligation to disclose that evidence Prosecution deprives defendant of due process when it suppresses evidence that is favorable to an accused, where the evidence is material either of guilt or punishment, irrespective of the good faith or bad faith of the prosecution. The duty ~~on~~ under the due process clause to disclose exculpatory evidence is applicable even in the absence of a request by the defendant (Mrs. Stauffer did ask for it, I heard her ask at trial), and it encompasse impeachment material as well as exculpatory evidence (Officer Bibens may have been impeached with the video). U.S.C.A. Const. Amend. XIV. Mararaja V. Secretary for Dept. of Corrections, 432 F.3d 1292 (11th Cir 2005) Fletcher V. Superior Court, 100 Cal. App. 4th 386, 123 Cal. Rptr. 2d 99 (1st Dist. 2002) The failure of the prosecution to disclose to the defendant any favorable evidence would deprive the jury of the opportunity to consider all material evidence, offended the standards of justice, and deny the defendant a fair trial in violation of the due process clause of the 14th Amendment. See State V. Chelk,

812 A. 2d 819 (R.I. 2002) A nondisclosure of evidence favorable to the accused is deliberate and, thus, grounds for a new trial regardless of the degree of harm to the defendant, whenever the prosecution makes a considered decision to suppress for the purpose of obstructing or where it fails to disclose evidence whose high value to the defense could not have escaped it's attention. [Again, there is no way that Mr. Farra could not have known the importance of the video he suppressed. It was intentional, highly valuable to my defense, and it was withheld to impede my ability to present my defense. He then deliberately introduced exaggerated testimony by Officer Bibens as to my level of intoxication (RP 265 and 266). Which he then exaggerates himself and lies about in his closing argument. Saying, "In a narrow sense, this trial is about drunkenness, jealousy and control. It's been about a defendant who was intoxicated that night, been drinking beer, some malt liquor...." (I didn't drink any malt liquor and the records show that I only drank Bud Light. This was a deliberate, flagrant exaggeration.) (RP 385) He then goes on to say, "She admitted that there was a mark on her neck that was a hickey. She could have said that that was a thumbprint or a handprint or something from the strangulation (Which she did. She told Officer Bibens that it was a mark from me choking her, and that's what Officer Bibens told me that she was claiming it was. On video in the patrol car. This would've discredited Christina as well.) but she said, "No, that was a -- what it was, it was [n't] a bruise, it was a hickey." This was another attempt to misguide the jury. We also asked Officer Bibens in the 3.5 Hearing if I asked him to take photos and he denied that I asked. The video would've given me credibility and discredited both Officer Bibens and Christina in the fact that after Officer Bibens told me that Christina had told him that I choked her, she then showed him a big "bruise" that she was claiming was the result of me choking her. Once he told me this I instantly remembered her hickey and not only did I tell him what it really was, I asked him to take pictures. I then asked him to make sure that he ~~took~~ takes good pictures. I asked him multiple times and he ensured me that he took good pictures. I asked him many times and there's no way that he forgot that. The video

could've impeached him. At the very least it would have discredited him coupled with the fact that he told me on that video, "I told you I was going to get you." No one commits a crime and then asks the police to please take good pictures. I didn't choke her and I knew the only mark was a hickey. The jury would've seen me asking for good pictures multiple times and understood that by its face value. I cannot stress enough the importance of that video. It was material and exculpatory in nature and would have, if not suppressed, shown my innocence, my state of mind, and Officer Bibeas personal prejudice towards me. But most importantly it would have shown Christina was telling the police, that night, that a hickey was a strangulation mark.]

People V. Filson, 22 Cal. App. 4th 1841, 28 Cal. Rptr. 2d 335 (1st Dist. 1994) (disapproved on other grounds by, People V. Martinez, 11 Cal. 4th 434, 45 Cal. Rptr. 2d 905, 903, P. 2d 1037 (1995)) The court held that the failure of the prosecution to produce a tape recording of the defendant's statement amounted to a violation of due process. The court reasoned that the non-production of the evidence prevented the defense from obtaining and using the tape, and also foreclosed all inquiry into legitimate field favorable inferences deducible from the defendant's statement. The court said that the net effect was to hobble the defendant's ability to challenge a crucial prosecution witness and to present independent, objective, and admissible evidence.

Mr. Farra was trying to use any and everything to make me look bad and exclude anything favorable to my defense. This is evident on a few issues, starting on RP 6, 7, 8, 21, 22 When he drops the dishonest Officer Skeeter and tries to prevent us from using her (I was never informed of all her prior bad acts. Only the threatening of Jacinto Hausinger to testify the way they wanted him to.). Also by keeping out Christina's multiple mental health issues (RP 43, 44, 45, 46) and the fact that she was off of her medication, knowing that she has committed violent acts while off her medication. Then on RP 32, 33, 34, 35, 36, 37 he keeps trying to let the photos of texts be admitted with the title that Christina named them, "30-Day Inmate Friend Violation." He also tries to use my past Assault II RP 24, 25. (and does) Then once again on RP 288, 289, 290

by trying to show the jury the video of me signing the no contact order for the simple reasons that I'm cuffed, shackled, and in jail garb. Rejecting a stipulation to enter the evidence without the prejudicial video by saying, "I'm not stipulating Your Honor..." He then goes on to make a personal appeal to Judge Lewis by saying, "Your Honor, would you consider just the playing of only the part where Your Honor, you happened to be the judge on this, Your Honor -- where Your Honor read to him the no contact order and warnings and -- and what not?" (Judge Lewis seen through that) If the patrol car video would have shown me in a bad light in any way, shape, or form Mr Farra would've presented it to the jury To the contrary though, it showed me in a good light. Completely under control, not as intoxicated as Officer Bibens testified to, and I'm asking for good pictures. It would've hurt the prosecution by showing both Christina and Officer Bibens in a bad light and so it was withheld by Mr. Farra. RP 349 to 354 he again trys to admit false prior bad acts. He goes above and beyond to make me look bad.

Additional Ground III Photos should not have been allowed.

The photos that "Christina and Amos" took shouldn't have been admitted into evidence. They were objected to on RP 148, evidence numbers 11, 12, and 13. They were not taken by law enforcement. Christina alone testified as to their authenticity, and she's not credible. RP 193 Questioned by Mrs. Stauffer, "Then you indicate that several day later -- do you know exactly when it was that you decided to have more pictures provided?" Christina answers, "It was like two or three days later." Question, "Okay. Did you call the police to ask them to come over and take some pictures?" Answer, "No. I called Amy." Question, "Okay. So, did you end up going to any law enforcement to get the picture taken?" Answer, "No." Question, "Okay. So then you're saying that you had Amos take some pictures?" Answer, "Yes." Question, "Okay. And so those are the 13, 12, 11 pictures that you're saying are all ones that you had Amos take right?" Answer, "Yes." In her interview with Mrs. Stauffer's investigator Christina says that her and Amos take the pictures, now it's just ~~Christina~~ Amos. Interview page 23 she says she took them, then moments later on page 25 Amos "took all of them." I don't know if I can use the inter-

view but either way, she isn't credible. So who knows when those pictures were taken, who took them, or if they were later altered. We live in the world of "Photoshop" and they could've easily been manipulated. I know for a fact that she knows how to manipulate photos very well because she changes pictures that we've taken together. Futhermore, if she had called Amy (DV advocate) wouldn't it be Amy's job to have her call the police or someone in law enforcement? It seems to me that that would be standard operating procedure for a DV advocate.

Additional Ground IV My race should've been left out.

RP 135, 136 During the 911 call, the fact that I'm Native American should have been edited out. People often have preconceived ideas about Native Americans and alcohol. ESpecially liquor, which Mr. Farra intentionally misleads the jury into thinking that I was drinking in his closing argument. There is a widely held belief that Native Americans, while drinking liquor, get violent. It is indisputable that people of all races, ages, and walks of life hold that belief about Native Americans and liquor

Additional Ground V Prosecution closing argument.
(It is improper for the goverment to propound inferences that it knows to be false)
In the context of closing arguments, misconduct includes making arguments that are unsupported by the admitted evidence. Which Mr. Farra also did, as stated earlier about malt liquor, but also as to how long Christina and I had been together. RP 385, 386. He does these things intentionally to mislead the jury. The records show that I did not drink malt liquor, that I only drank Bud Light. He's trying to paint a false picture that I'm wasted, and he's been trying to paint that picture the whole trial. Again, the suppressed video would have shown otherwise. He then misleads the jury by saying we were together for five years. We were only together for months but he's trying to paint a picture of a long relationship full of domestic violence. He starts with, "Well how did you get to that point, Christina? What brought you there? Well how did this happen?" Then he

goes on about her having to overcome a lot ending with, "She's got to overcome the emotional ties of a five-year relationship...." This trial was about anything to mislead the jury. Including misleading the jury as to the reason that I ran that night. I had unpaid ~~Additional Ground VI~~ LFO's and I had been arrested for them two times prior to this. He knows that and he knows about LFO's. RP 392 I'm not sure if that qualifies as misconduct but it goes to show that he'll be dishonest to seal a conviction with total disregard for ethics. "That doesn't make sense. That doesn't make sense. Over unpaid tickets? No. He ran because he knew he was wrong..." and in trouble

(Space please)

Additional Ground VI Counts 2 and 3, Jacinto Hausinger, and the misconduct by the prosecution. RP 10, 11, 12, 14, 15, 26, 278, 279, 280, 281 282, 283, 284, 285, 392, 393, 394, 400, 401

First off Mr. Farra waits until the last moment to add charges 2 and 3 even though he had plenty of time to do so. He then keeps that witness (Jacinto Hausinger) from us until the day that Mr. Hausinger takes the stand even though Mrs. Stauffer had made attempts to get an interview with the short time Mr. Farra had given us. I wasn't given a chance to have questions asked and answered in the interview that Mrs. Stauffer finally got. That was very important to my defense and Mrs. Stauffer didn't have time to go over the interview with me before trial resumed. Was there manifest prejudice and should counts 2 and 3 have been severed? Or even allowed in the first place? Then Mr. Farra again tried to amend the charges at the readiness hearing. He then doesn't give us all the witnesses prior convictions in a timely manner and keeps adding more convictions (RP 26) and it never became clear if we were given them all. Mr. Farra was using a threatened witness (RP 14) that he knew was going to commit perjury and so he did everything he could to cripple my ability to challenge that witness. Even if there had been proper notice....

The requirement of due process cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial in which truth was used merely as a

means of depriving a defendant of liberty through deliberate deception of court and jury by the presentation of testimony known to be perjured, said the court, concluding that such a contrivance by a state to procure the conviction and imprisonment of a defendant "is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation." (Which they also did. They threatened Jacinto Hausinger with charges unless he changed his story.) Subsequently Mr. Hausinger (as far as I've heard) wasn't charged with a crime.

(Space between these please)

It is within the bounds of fair advocacy for a prosecutor, like any lawyer, to ask the jury to draw inferences from the evidence that the prosecutor believes in good faith might be true, but it is improper for the government to propound inferences that it knows to be false, or has very strong reason to doubt, particularly when it refuses to acknowledge the error afterwards to either the trial court or the Court of Appeals and instead offers far-fetched explanations of its action.

(no apostrophe, accident sorry)

When the government learns that part of its case may be inaccurate, it must investigate; it cannot simply ignore evidence that its witness is lying.

Rule against presenting false evidence to the jury is to protect the integrity of the truth-finding function of courts -- not to protect the rights owed to the defendant.

For purposes of a prosecutorial misconduct claim, the prosecutor's job is not just to win, but to win fairly, staying within the rules.

State may not knowingly use false evidence, including testimony, to obtain a tainted conviction. Prosecutors cannot advance false evidence to the jury in order to get a conviction.

For a due process claim arising from alleged perjury of government's witness to succeed defendant must show: 1) the government's witness committed perjury; 2) the government knew or should have known of his perjury; 3) the testimony was uncorrected; and 4) there is any reasonable likelihood that the false testimony could have affected the verdict.

-or the other one- Court applies three-part test for determining whether there was a denial of due process through prosecutor's use of

false testimony, under which defendants must show 1) the statement was actually false; 2) the statement was material; and 3) the prosecution knew it was false.
False testimony is "material," as required to establish prosecutorial misconduct claim of using false testimony, only if there is a reasonable likelihood that it affected the judgment of the jury. (which it obviously did)
In criminal trials, State must disclose any favorable treatment accorded witness for their testimony and may not permit a false view of that treatment to go before the jury.
Exposure of a witness' motivations in testifying is a proper and important function of the constitutionally protected right to cross-examination; where there are facts that would support a reasonable inference of bias that relates to a witness' credibility, the defendant should be permitted to make an effective inquiry into that bias.
Jacinto Hausinger committed perjury and it was not only known by Mr. Farra, but he presented it time and time again as the truth. He Unequivocally presents it as the truth. Mr. Hausinger told the police that he called Christina and texted her on his own accord. (RP 14, 282, 283, 284) that I had nothing to do with it and that he was just trying to help me out. I never gave him her phone number. I did give him my sisters phone number so that he could get a hold of me when I got out of jail, since that's where I'd be staying and my phone was cut off by then. He knew my sister had Christina's number from previous conversations we had about me getting my stuff from Christina's apartment. He testifies that he got the number (Christina's) from my sister on RP 280. He also never had a letter from me although, after being threatened with criminal charges, he claims that he threw ~~the~~ it away. ~~After~~ The prosecution gave Mr. Hausinger favorable treatment by not charging him with a crime for his testimony. Furthermore, the jury is never informed of this favorable treatment as due process calls for. Mr. Farra then has Mr. Hausinger perjure himself on RP 278, 279, 280, 281 and when Mr. Hausinger

tells the truth on RP 282, 283, 284, instead of Mr. Farra letting the truth stand he reconfirms the perjured testimony by asking him if he's telling the truth (meaning the perjured testimony) knowing that he's lying only because he was threatened with criminal charges and his testimony will prevent him from being charged. The jury should have been informed that for his testimony he won't be charged with tampering with a witness, a felony. The jury needs to know that so that they can decide on his credibility. Furthermore, not only does Mr. Farra not correct the perjured testimony, but he continues to use it in his closing argument saying, "He didn't want to admit that the Defendant told him to contact Mrs. Gutierrez. That was like pulling teeth out of him, but he did because he was under oath and he was telling the truth." Mr. Farra continues to try to convice the jury that perjured testimony is the truth by saying, "Now he could have also changed his story, he could have denied it." Then he puts his final emphasis that it's the truth by saying, "But he finally came clean and said "yes." Unequivocally. He said, "Yes, he told me to take this letter and to call Christina and to read this letter to her." And Mr. Farra continues on 419 RP These are deliberate and flagrant statements to intentionally misguide the jury. 1) Mr. Hansinger committed perjury; 2) Mr. Farra knew it; 3) the testimony went uncorrected (actually emphasized instead); and 4) it must have affected the jury. Or the other three part test. 1) The statement was false; 2) it was material because it affected the judgment of the jury; and 3) Mr. Farra knew it was false. I believe this satisfys Giglio and even the more strict Brady rule.

In a narrow sense, contrary to Canon 5 of the American Bar Association Canons of Professional Ethics, and due process laws under the Constitution of the United States of America, Mr. Farra's intentions were clearly shown that he was not seeking justice, but rather a conviction by any means necessary, and in doing so he made a mokery of the justice system.

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In a broader sense, Mr. Farra had a very weak case based on lies, exageration, and a perjured witness. So in an overzealous attempt to get a conviction he had to supplement his case to make up for its deficiencys (ie?). In doing so he committed multiple due process violations, completely threw his ethics along with Canon 5 out of the window, and totally disregarded the instructions by the court. He pulls out all the stops and uses all the tricks in the book because he was not seeking justice, but rather a "win" at all costs, and if given his choice I would've been tried in a Kangaroo court. He relied on adding counts 2 and 3 right before trial, at the last moment; withholding the key witness to those counts until the day he was to take the stand; then to "prove" those counts he uses an untruthful and threatened witness that he knows was going to perjure himself to receive favorable treatment; then not letting the jury know about that favorable treatment; dropping the dishonest Officer Skeeter that threatened Mr. Hawinger to change his [redacted] statement at the last minute, then trying to prevent us from using her; also making sure Christina's multiple mental health issues and the fact that she stopped taking her meds because she "thought [she] I could control it" wouldn't be heard by the jury, knowing she has a prior act of attacking a former boyfriend, and when he tried to restrain her, she tried to claim he tried to break her arm; then Mr. Farra uses photos that weren't authenticated; then suppresses video evidence that was favorable to my defense but then tries to present a video that was prejudicial just to parade me around in jail garb and all; lying or should I say extremely over exagerating in his closing argument about 1) malt liquor; 2) how long Christina and I were together; and 3) my unpaid fines (LFO's), actually I think the word "lying" was the appropriate word now that I think about them all together; then add in the fact of him using my past Assault II, prior bad acts, and improperly exposing the jury to propensity evidence multiple times to present his case and ~~it's no wonder why it took the jury so long to come back with a verdict~~, it still took the jury 3 1/4 to 3 3/4 hours to come back with a verdict. (depending if they started at 8:30 Am or 9 Am)

Can the court please explain this to me because I can't figure it out. 1) Mr. Hausinger commits a crime by tampering with a witness. 2) Then he's questioned by the police and subsequently tells the police that he acted alone to try to help me out and that I had nothing to do with it. 3) Then the police leave a threatening message that he's going to be charged unless he changes his statement. 4) He then is given favorable treatment and not charged with tampering with a witness for committing perjury. 5) The prosecution knows his statements are now false but uses them anyways. And when you add it all up somehow the sum is that I tampered with a witness? This seems like backwards thinking to me. Here's an idea; why not just accept the truth that he told the police before he was threatened, and if you want to charge someone with a crime, how about going after the one that committed the crime? Is intimidation, threatening, and then giving favorable treatment to someone that commits perjury because they're now scared the essence of truth finding? Everything is in the police and court records.

Counts 2 and 3 must be vacated and the charges dismissed. They were obtained by perjured testimony that the prosecution was aware of. The perjury wasn't corrected and had a major impact on the jury. The perjured witness also received favorable treatment that was not disclosed to the jury. At the very least a new trial should be granted. A fair trial. Did Officer Skeeter and Mr. Farra commit subornation of perjury? Tamper with a witness? Commit misconduct? (Plus Additional Ground # 7)

Other cases cited:

Brady V. Maryland (1963) 373 US 83, 10 L Ed 2d 215, 83 S Ct 1194

Mooney V. Holohan (1934) 294 US 103, 79 L Ed 791, 55 S Ct 340 98 ARL 406 reh den 294 US 732, 79 L Ed 1261, 55 S Ct 511, which is generally regarded as the source of the now axiomatic view that at least where the action of the prosecution is deliberate and the evidence is favorable to the defense, suppression of evidence constitutes a denial of due process and requires that the conviction

be overturned.
The most recent case to significantly contribute to the development of the suppression-of-evidence doctrine is United States V. Keogh (1968, CA2 NY) 391 F2d 138, 34 ALR3d 1, on remand (DC) 289 F Supp 263, affd (CA2) 417 F 2d 885, where the law as to prosecutorial suppression of evidence was classified into three categories: 1) deliberate bad faith suppression for the very purpose of obstructing the defense, or the intentional failure to disclose evidence whose high probative value to the defense could not have escaped the prosecution's attention; 2) deliberate refusal to honor a request for evidence where the evidence was material to guilt or punishment, irrespective of the prosecutors good faith or bad faith in refusing the request; and 3) where suppression was not deliberate and no request for evidence was made, but where hindsight discloses that it was so material that the defense could have put the evidence to "not insignificant use."
And again I believe I satisfy all 3 albeit the third is tricky. If I understand this correctly, I don't have to satisfy all three but for arguments sake: 1) the video was withheld in bad faith for the purpose of obstructing my defense and it could not have missed the prosecutions attention. This is evident on and off the record. On the record, the prosecutions actions of trying to show any and all things that would've made me look bad, at all costs. Also the exageration used as to my intoxication level, knowing the video would've shown otherwise. He also would've known it was important after Mrs. Stauffer asked Officer Bibens if I asked for pictures. He knew I only talked to Officer Bibens in the car and that is all recorded, plus we had just asked for the video. Off the record, and I hope you can watch the video to confirm this, between breaks in trial I told Officer Bibens to look me in my eyes and tell me that I didn't ask him for photos and his guilty conscience wouldn't let him do it. I then called him a liar and "dirty," and Mr. Farra was witness to this. It definitely could've escaped his attention then. Sorry for that rant, now for 2) The prosecution deliberately refused Mrs. Stauffer's

request for the video right before trial started, but still in the court room. Again, I'm not sure if the trial video will show this but I'm sure Mrs. Stauffer will confirm this. Finally, 3) it's tricky because the suppression was intentional and it was requested, but it was material and we would've put it to a very significant use.

(Additional Ground V cont. ↓)

It is improper for the government to propound inferences that it knows to be false, or has very strong reason to doubt. This is true as it pertains to perjury of a state witness that's known by the prosecution and it should hold true about misleading the jury in closing statements Mr. Farra does just that multiple times in his closing argument, to deliberately propound false inferences to the jury. One time could be written off as a mistake, slip of ~~the ton~~ tongue, but three times? That is flagrant and deliberate in an attempt to misguide the jury.

Additional Ground VII Missing witness

The absent witness must have been "available" and within the "control" of the party against whom the inference is applied, factors that for practical purposes are largely interchangeable, and related essentially to the party's superiority of access to the witness.

The testimony that the absent witness could have given must also be "material." This factor may be seen as including not only the relevance of the testimony but also its general importance to the party's case. In this respect, courts have considered whether the burden of proof lies with the party failing to call the witness, the significance of the issue that would have been affected by the missing testimony, the strength of the opposing evidence, and whether the absent witness' testimony would have been merely cumulative of other evidence, rather than providing the only proof on a particular issue or need corroboration on a disputed point.

The third significant consideration affecting the application of the missing witness rule is whether the party has satisfactory excuse for failing to call the witness; usually, the explanation will pertain to one of the factors mentioned above.

A state police officer has been held to be within the control of a federal prosecutor (State should also apply), due to his collaboration with the prosecution in developing the case and his consequent interest in seeing the defendant convicted.
The prosecution in this case dropped Officer Skeeter and tried to prevent us from using her at the last moment (RP 6, 7, 8, 21, 22) so we weren't given the ability of discovery procedures to ascertain the expected testimony of Officer Skeeter whom I believe found me to be credible. When she came to see me at the jail to interview me I didn't "lawyer up" even though I already had a lawyer, I ~~corrected~~ waived my miranda rights and answered all of her questions honestly. Mr. Farra knowingly failed to call Officer Skeeter because her testimony would have been favorable to my defense and damaging to his prosecution because it would also have shown the threats that Mr. Hansinger received and discredited the states main witness for counts 2 and 3. Officer Skeeters testimony by no means would've only been cumulative. It would've significantly helped my defense and given me credibility in the fact that I had nothing to hide, I didn't hide behind a lawyer, I answered her questions honestly and without hesitation. She was the only investigating officer into counts 2 and 3 insofar as I know of and would've created reasonable doubt as to my guilt by testifying adversely to the state. At the very least she should've been interviewed in the courtroom by defense counsel and called as a defense witness if thereafter desired. This was one of the many things that Mr. Farra used to severely cripple my defense.

It is an established rule of evidence that the failure to call an available witness who is within one party's control and has knowledge pertaining to a material issue may, if not ~~satisfactory~~ satisfactorily explained, lead to an inference or presumption that the witness' testimony would have been adverse to that party (Am. Jur. 2d, Evidence section 180), and a simular inference may result from the failure to question a witness on a particular point.
Washington States rule: 1) The witness must be peculiarly available

to the party; 2) the testimony must relate to an issue of fundamental importance as contrasted to a trivial or unimportant issue; and 3) the circumstances must establish, as a matter of reasonable probability, that the party would not knowingly fail to call the witness in question unless the witness's testimony would be damaging.

All three are easily covered. Should the jury also have been informed on the "missing witness rule?"

Canon 5 again, "The suppression of facts or the secreting of witnesses capable of establishing the innocense of the accused is highly reprehensible Mr. Farra again commits misconduct, with disregard for the due process of the Constitution.

Jury Instructions

An instruction to view the testimony of an accomplice with caution is mandatory when the prosecution relies solely upon the uncorroborated testimony of an accomplice. RP 381, 398 they refer to us as accomplices. "Far from being superfluous or objectionable, a cautionary instruction is mandatory if the prosecution relies upon the testimony of an accomplice A conviction may rest solely upon the uncorroborated testimony of an accomplice only if the jury has been sufficiently cautioned by the court to subject the accomplice's testimony to careful examination and to regard it with great care and caution. We adhere, therefore, to the rule that a ~~proper~~ cautionary instruction is proper where accomplice testimony is relied upon by the prosecution." State V. Carothers, 84 Wn. 2d 256, 525 P. 2d 731 (1974)(citations omitted. Footnote added)(as harmonized in Harris and Sherwood) Carothers, at 269-70. 525 P. 2d 731. Carothers stresses this courts often repeated concern over accomplice testimony and the need to caution jurors regarding its questionable reliability. State V. Troiani, 129 Wash. 228, 224 P. 388 (1924); State V. Jones, 53 Wash. 142, 101 P. 708 (1909); State V. Pearson, 37 Wash. 405, 79 P. 985 (1905). Where the testimony of an accomplice is uncorroborated, a cautionary instruction must be given.

Failure to give a cautionary instruction is reversible error when such testimony is wholly uncorroborated see e.g., United States V. Bernard, 625 F. 2d 854 (9th Cir. 1980); cf. United States V. Slocum, 695 F. 2d 650 (2 d Cir. 1982), cert denied, 460 U.S. 1015, 103 S. Ct. 1260, 75 L. Ed 2d 487 (1983). Some federal courts look to whether the accomplice testimony supplied the only strong evidence of guilt, United States V. Moore, 700 F. 2d 535 (9th Cir. 1983), while others are satisfied if aspects of testimony are corroborated, United States V. Wright, 575 F. 2d 681 (1st Cir), cert denied, 436 U.S. 949 98 S. Ct. 2857, 56 L. Ed. 2d 792 (1978), and one court broadly stated that it is reversible error not to give a requested accomplice instruction even where substantial corroboration

exists. United States V. Leonard, 494 F.2d 955 (D.C. Cir. 1974).
The Alaska courts will reverse for failure to instruct if they determine the conviction was substantially obtained through the use of accomplice testimony. The [102 Wn.2d 155] persuasiveness of a corroborating evidence is scrutinized more carefully under this approach. Anthony V. State, 521 P.2d 486 (Alaska 1974); Price V. State, 647 P.2d 611 (Ct. App. Alaska 1982).
Moore, 229 Kan. at 81, 622 P.2d 631 "We hold: (1) it is always the better practice for a trial court to give the cautionary instruction whenever accomplice testimony is introduced; (2) failure to give this instruction is always reversible error when the prosecution relies solely on accomplice testimony; and (3) whether failure to give this instruction constitutes reversible error when the accomplice testimony is corroborated by independent evidence depends upon the extent of corroboration. If the accomplice testimony was substantially corroborated by testimonial, documentary or circumstantial evidence, the trial court did not commit reversible error by failing to give the instructions.
A cautionary instruction is required only if the accomplice's testimony is uncorroborated. State V. Willoughby, 29 Wn. App. 828, 630 P.2d 1387 (1981). When substantial corroborating evidence exits, the instruction need not be given, although "it is always the better practice for a trial court to give the cautionary instruction whenever accomplice testimony is introduced." State V. Harris, 102 Wn.2d 148, 155, 685 P.2d 584 (1984) (whether the instruction is need depends on the extent of the corroborating evidence; harmless error is not committed if the corroborating evidence is substantial.), overruled on other grounds in State V. Brown, 113 Wn.2d 520, 782 P.2d 1013 (1989); see State V. Sherwood, 71 Wn. App. 481, 860 P.2d 407 (1993).
Under Harris, two tests are available for determining whether error is harmless beyond a reasonable doubt; under "Contribution

test, "appellate court looks only at tainted evidence and determines whether it might have influenced the fact finder's verdict; under "overwhelming evidence test," appellate court considers all the evidence against defendant and determines whether it is so overwhelming that it necessarilly leads to a guilty finding.

As an exception to the general rule, the court may instruct the jury to evaluate the testimony of an accomplice with caution. Such an instruction is mandatory if the State's case rests solely upon the uncorroborated testimony of an accomplice.
WPIC 6.05 instruction was cited and approved in State V. Murphy, 98 Wn App. 42, 47 n.5, 988 P.2d 1018 (1999).
WPIC 6.05 provides: The testimony of an accomplice, given on behalf of the plaintiff, should be subject to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth.

In this case, under the Harris "contribution test," it is indisputable that the tainted "evidence" influenced the jury's verdict. Not only for counts 2 and 3, but for count 1 as well. There can be no doubt that the added effect of counts 2 and 3 played a significant contribution in finding me guilty on count 1. Under the "overwhelming evidence test," there was no physical evidence against me. There wasn't any physical marks on Christina except for a hickey that she - at first - tried to pass off as a strangulation mark. There was no letter (that he conveniently said he's destroyed) to corroborate Mr. Hausinger's testimony. In fact, Mr. Hausinger was impeached (RP 281, 282, 283, 284) as to the fact that I told him to contact Christina. These instructions

would have played a major role in the outcome of my trial as a whole. Specifically, "You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied ~~but~~ beyond a reasonable doubt of its truth. Here there was more than a reasonable doubt of its truth, but Mr. Farra vouched for Mr. Hausinger in his closing ~~out~~ argument.
I'm not arguing to the fact that Mr. Hausinger contacted Christina multiple times and that he tampered with a witness. My argument is that I never told him to do that, and he did it on his own. He even said he did it on his own, to help out a friend. He changes his statement to avoid being charged with a crime after he is coerced to do so. He then claims that he destroyed any evidence that would have corroborated his new statement. The prosecution relied on his testimony, and his testimony alone to "prove" that I had him tamper with a witness and break a no contact order, which in turn made me look guilty of count 1.

Witness Coercion

Franklin v. State, 94 Nev. 220, 577 P.2d 860 (1978), People v. Medina, 41 Cal. App. 3d 438, 116 Cal. Rptr. 133 (1974) the court held that an immunity agreement conditioned upon witnesses "not material or substantially" changing their testimony from a prior tape-recorded statement placed the witness under a "strong compulsion" to testify in a particular fashion, thereby depriving the defendants of any meaningful cross examination and, consequently, of their right to a fair trial. Medina at 146. In Franklin, the prosecution plea-bargained with an accomplice to murder in order to obtain specific testimony implicating the defendant and then withheld the benefit of

of the bargin, i.e., a plea to a lesser charge, until the witness performed at trial. The court held that such compulsion so tainted the witness's testimony as to contribute a due process violation. Washington court has cited Franklin with approval in State v. Brown, 29 Wash. App. 770, 630 P.2d 1378, review denied, 96 Wash. 2d 1013 (1981). The Franklin court stated: "By bargaining for specific testimony to implicate a Defendant and withholding the benefits of the bargin until after the witness has performed, the prosecution becomes committed to a theory quite possibly inconsistent with the truth and the search for truth. We deem [29 Wn. App. 774] this contrary to public policy, to due process and to any sense of justice."

In this case, insofar as I know, Mr Hausinger was never charged with a crime and the record clearly shows that he was coerced into testifying falsly. In effect giving him immunity for his false and perjured testimony. Furthermore, the prosecution has still ~~held~~ withheld that favorable deal from me.

Improperly vouching for a witness (Mr. Hausinger)

Although the point was not emphasized by the Washington drafters, the general theme running through the cases is that an opinion on credibility is disallowed because credibility is an issue for the jurors alone to decide. This same notion arises in other contexts as well.

In criminal cases, a violation of the rule prohibiting opinion testimony may be an error of constitutional magnitude.

Vouching is considered improper under Rule 608.

The rule against vouching also extends to other practices by the prosecuting attorney. For example, the prosecuting attorney should avoid making statements during closing arguments

that suggest the prosecuting attorney's personal opinion on the credibility of a witness.
State V. Esh 170 Wn. 2d 189, Improper vouching occurs: (1) if the prosecutor expresses his or her personal belief as to the veracity of the witness, or (2) if the prosecut~~ion~~or indicates that evidence not presented at trial supports the witness's testimony. United States V. Brook, 508 F.3d 1205, 1209 (9th Cir 2007) (quoting United States V. Hermanek, 289 F.3d 1076, 1098 (9th Cir. 2002). "It is misconduct for a prosecutor to state a personal belief as to the credibility of a witness." Warren, 165 Wash. 2d at 30, 195 P.3d 940 (citing Bret, 126 Wash. 2d at 175

The prosecutor expresses his personal belief - in this case - that Mr Hausinger was telling the truth by saying, "The last thing Mr. Hausinger wanted to do today was stand up on this stand and testify. He didn't want to admit that the Defendant told him to contact Ms. Gutierrez. That was like pulling teeth out of him, but he did because he was under oath and he was telling the truth." (RP 393) That is Mr. Farra's personal belief, forced upon the jury to believe that because he (the prosecutor) believes, "because he was under oath" that "he was telling the truth," that the jury should in turn believe that he was telling the truth (add in the absense of the accomplice jury instrutions and it's a big effect to the jury). This may seem like a small thing but again, this was a credibility contest, and in a credibility contest every small thing every little detail that pertains to the truth or credibility of a witness, become big issues. And credibility issues, as stated above, are an issue for the jury alone to decide on. This is exactly why there are rules in place to prevent these types of statements (vouching) and behaviors from entering the courtroom or from being presented to

the jury. Rule 608.

Secreting of witness and failing to provide any advanced discovery for counts 2 and 3. (RP11, 12, 13, 14, 15

The prosecution kept Mr. Hausinger from my defense attorney until the day that Mr. Hausinger testified. Plus the prosecution had Officer SKeeters report for counts 2 and 3 on September 27th and, "did not give it to the Defense until October 15th and since then we have not been able to interview Mr. Hausinger because the State's somehow saying things arent working out or we can't set it up and the schedules arent working." (RP15). That was on November 12th, so the prosecution had ample time to provide us with an interview. As for discovery, (RP11) "... State failing to provide any advanced discovery until two days prior to the readiness (which was objected to), and actually almost 5 o'clock the day of -- October 15th, of new information relative to their desire to suddenly amend the information relative to their desire to suddenly that afternoon of the readiness hearing on October 17th. Over my objection...." It was allowed and I was forced to agree to set over trial. On RP12, "... the State continuing to not provide adequate notice in advance of any decisions or motions that have relevance as to the charges and/or to the witnesses."

Canon 39 of Canons of Professional Ethics of the American Bar Association provides, in part, that a lawyer may properly interview any witness or prospective witness for the opposing side in any civil or criminal action without consent of opposing counsel or party. Disciplinary Rule 7-103(B) of the ABC Code of Professional Responsibility specifies that a public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to defense counsel, or to the defendant if he has no attorney, of the existence of evidence known to such public official that tends to negate

the guilt of the accused, mitigate the degree of the offense or reduce the punishment; and Disciplinary Rule 7-109(A,B) provides that a lawyer shall not supress any evidence that he or his client has a legal obligation to reveal or produce, and shall not advice or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness. Moreover, Section 3.1 (c) of the ABC Standards for Criminal Justice, "The Prosecution Function," provides that a prosecutor should not discourage or obstruct communications between prospective witnesses and defense counsel, and that it is unprofessional conduct for a prosecutor to advice any person to decline to give to the defense information which the person has the right to give. Defense counsel has the right to interview witnesses before trial without interference by the prosecution.