

NO. 45811-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY DEWAYNE PARKER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON

Superior Court No. 13-1-00597-1

AMENDED BRIEF OF RESPONDENT

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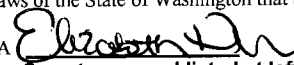
<p>SERVICE</p> <p>John A. Hays 1402 Broadway Longview, WA 98632 Email: jahays@3equitycourt.com Anthony D. Parker #776122 C-Unit 1830 Eagle Crest Way Clallam Bay, WA 98326</p>	<p>This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, <i>or, if an email address appears to the left, electronically</i>. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED March 12, 2015, Port Orchard, WA  Original e-filed at the Court of Appeals; Copy to counsel listed at left.</p>
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I. COUNTERSTATEMENT OF THE ISSUES
DIRECT APPEAL

1. Whether Parker fails to show that counsel had any conflict of interest, much less an actual one that adversely affected his trial?

2. Whether the State proved a nexus between Parker's firearm and the continuing crimes of human trafficking and promotion of prostitution where the gun was present and easily accessible during many of Parker's acts of force, coercion and threats against Holliday, and especially during the most egregious of those acts, the second-degree assault with a firearm?

PERSONAL RESTRAINT PETITION

1. Whether the charging document contained all essential elements of each of the offenses charged?

2. Whether the police properly searched Parker's phone after obtaining a warrant and whether Parker lacks standing to challenge the searches of Holliday's phones?

3. Whether Parker fails to show his counsel was ineffective?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Anthony Dewayne Parker was charged by information filed in

Kitsap County Superior Court with the following offenses

	OFFENSE CHARGED	AGGRAVATING CIRCUMSTANCE(S)	OTHER SPECIAL ALLEGATION(S)
I	First-degree human trafficking	Deliberate cruelty	Domestic violence; Armed with a firearm
II	First-degree promoting prostitution	Deliberate cruelty	Domestic violence; Armed with a firearm
III	Second-degree assault	Domestic violence	Domestic violence
IV	First-degree burglary	--	--
V	Second-degree assault	Domestic violence	Domestic violence
VI	First-degree kidnapping	Domestic violence	Domestic violence
VII	Second-degree assault	Domestic violence Deliberate cruelty	Domestic violence
VIII	Second-degree assault	Domestic violence Deliberate cruelty	Domestic violence; Armed with a firearm
IX	Fourth-degree assault	--	Domestic violence
X	First-degree unlawful possession of a firearm	Multiple current offenses	--
XI	Witness Tampering	--	--

CP 252-64. Parker was found guilty by a jury of all charges and special allegations. CP 465-76.

B. FACTS

Johanna Holliday grew up in Bainbridge Island. 5RP 446. In November of 2012, she was struggling with addiction. 5RP 446. She lost her job, got kicked out of her house, and ended up in Kitsap County Jail. 5RP 446. She was addicted to opiates, mainly heroin and Percocet. 5RP 447.

She could not make bail, and had a pending charge in King County as well. 5RP 447. She wanted to get out, and was talking to other people in jail about how she could get out and how she could make money to survive. 5RP 447. One of those people was Llamas, who went by the nicknames Angie and Crazy. Llamas lived in the same pod, and they spent a lot of time together. 5RP 447. Llamas first suggested that she could stay with Parker if she paid a little rent and took care of his laundry and cooking. 5RP 448. Llamas offered to ask Parker to bail Holliday out. 5RP 449. Llamas called Parker and told him Holliday could be “a good asset” and that she would be worth bailing out. 5RP 449. Holliday was unsure who paid the bail, but she was bailed out on December 6, 2012. 5RP 451.

She was bailed out around 1:00 a.m. and was supposed to call Parker. 5RP 451. She tried, but he did not answer his phone, so despite the cold wet weather, she began walking from Port Orchard to Parker’s house in Bremerton. 5RP 451, 453. All she had when she was released was the clothes on her back, \$20 in cash and a dead cell phone. 5RP 451. All of her other possessions were in her car, which was impounded when she was arrested. 5RP 452. She met Parker for the first time that day. 5RP 452.

When she arrived at Parker’s house, no one was there. 5RP 453.

She went to a friend who lived nearby and called another friend who picked her up and stayed with her until she could get ahold of Parker. 5RP 453. Parker finally came and picked her up between 6:00 and 7:00 a.m. at the Walmart in Poulsbo. 5RP 453-54. He bought her some basic hygiene items and told her he had some clothes at the house she could wear. 5RP 454. Then they went to his house. 5RP 454.

Parker's house consisted of a kitchen, living room, two bedrooms and a single bathroom. 5RP 455-56. Romond, who went by the name Ahmad, lived in the second bedroom. 5RP 454. Downstairs was a basement with two more bedrooms and a living area which were not in use. 5RP 455. It was full of junk and the bathroom did not work. 5RP 455. There was also an outside door that led into the basement. 5RP 455. The house belonged to Llamas's family. 5RP 457.

Parker repeated what he had told her when she was in jail: he wanted to spend a week or so getting to know her so they could bond. 5RP 454. So the first day they just got to know each other and later went to a bar and had a few drinks. 5RP 456. Before they went out, Parker told her that he did not want his friends to know her real name, so she should go by Baby Doll. 5RP 456. Parker's nickname was Baby Deuce. 5RP 457.

Although Llamas had told Holliday no one was to go into her

room, Parker told her she could sleep there. 5RP 456. Holliday went to bed. 5RP 456. Later, Parker joined her and they had sex. 5RP 456. The rest of the week was pretty low key. 5RP 457.

When Holliday first bailed out, she did not really want to work as a prostitute. However, she was unable to find other work, and began to talk to Parker about it. 5RP 457. Parker told her she could make a lot of money and that they could have a good life together. 5RP 458. He told her he could give her what she needed: money, cars, clothes. 5RP 458.

She enjoyed herself the first few weeks with Parker. 5RP 462. It was good friendship or relationship. 462. She did not have any limitations, he let her use one of his cars, and he bought her things. 5RP 462. They spent a lot of time together and he took her out with his friends. 5RP 462. She came to care about him. 462. That lasted for about a month to a month and a half. 5RP 462.

Holliday started working as a prostitute about a week or two after she was released. 5RP 458. Parker sent pictures of Holliday to a friend who posted an ad on an internet site called Backpage. 458-59. It cost \$5.95 to post the ad. 5RP 459.

The ad had a phone number. 5RP 463. People would call or text her to set up a time to meet. 5RP 463. The price was usually already set up. 5RP 463. If Parker suspected she was not answering all her calls, he

would switch the number in the ad to his, and set them up for her. 5RP 463.

In the beginning, her rate was \$250 per hour or \$150 for a half hour. 5RP 464. Over time the price came down because there were not enough people willing to pay that much. 5RP 464. Eventually people were paying \$50 for a few minutes. 5RP 464. The highest she received was \$800 or \$900. 5RP 464. She gave the money to Parker afterwards. 5RP 465.

She usually just performed oral sex and massage, with her being naked. 5RP 464. A handful just wanted to get high and hang out, but mostly it involved sex. 5RP 465.

Her first call was at a hotel in Silverdale with a visiting businessman. 5RP 466. Parker drove her. 5RP 466. She received \$300 and gave the money to Parker. 5RP 466. In the beginning she did not work very often. 5RP 466. She was nervous and tried to avoid it. 5RP 466. Eventually she became more comfortable. 5RP 466.

In the beginning Parker had no issue with how many calls she took. 5RP 467. After about a month, he told her she needed to work more frequently and that it would pay off in the end. 5RP 467. It got to the point where he started offering her incentives. 5RP 467. He would tell her if she worked every day until the end of the month, he would buy her a

car, and then she could have a break. 5RP 467. It never really happened, though. 5RP 467.

In the beginning she had told him that she did not want to work every day, that she wanted to be able to take breaks and see friends or rest. 5RP 467. Parker agreed, telling her that it was up to her to schedule. 5RP 467. Within two to four weeks, however, he told her she needed to work every day until they got a car or saved \$5000. 5RP 467.

She would take up to eight calls a day. 5RP 468. She took most of the calls in her bedroom. 5RP 468. Sometimes she would meet the tricks at their hotel rooms. 5RP 469. In the beginning she was making between \$500 and \$1000 a day. 5RP 468. Sometimes he would let her take just one call and then take the rest of the day off and spend time together. 5RP 468. Other times, however, he just left her at the house and told her not to leave. 5RP 468.

There relationship began to change in January. 5RP 469. In the beginning she had a lot of privileges and he would treat her fairly. 5RP 469. He told her that when she “pushed his buttons” if she were any other “she would have had [her] ass beat by then.” 5RP 469. Some of the things that pushed his buttons were showing up late, or telling little lies, or buying pills from his friends, which she was supposed to do through Parker. 5RP 470. He also did not want her having contact with his

friends. 5RP 470.

Her drug use increased. She had access to pills through Parker, and began using more than before. 5RP 470. On occasion he would make her do tricks when she was withdrawing before he would give her the pills. 5RP 470. He also controlled how much she could have. 5RP 470.

She only left the house with Parker's permission. 5RP 471. He would ask where she wanted to go, and sometimes told her no. 5RP 471. Even if she went with a friend, he would call her after a while and tell her she needed to come home. 5RP 471.

In the beginning, when Parker had friends over, she would hangout with them. 5RP 471. At one point in January, she was talking to one of his friends and Parker became angry. 5RP 471. He told her not to talk to any of his friends anymore. 5RP 471. After that she had to stay in her room with the door locked when they came over. 5RP 471.

She gave all her money to Parker. 5RP 472. If she wanted to spend any of it, she had to steal it from him. 5RP 472. His money was mostly earned by Holliday. 5RP 472. If he caught her spending it he would berate her and call her a dope fiend. 5RP 479.

Holliday was responsible for cleaning the house. 5RP 480. Sometimes she was in withdrawal and could not physically do it. 5RP

480. He would verbally abuse her, call her a “raggedy-ass ho,” dope fiend, worthless, etc. 5RP 480.

Parker told her she was the closest thing to him, and that she was the one thing that could hurt him. 5RP 481. He told her to never have contact with the police. 5RP 481. If she was arrested he told her to say nothing and he would bail her out. 5RP 481.

She was considered Parker’s “bottom bitch” – the prostitute who had the most authority in his group. 5RP 481. It made her feel special. 5RP 481. Parker had her talk to other girls about working for him, girls they met in the bar, or that Llamas sent. 5RP 482.

In late December and early January, Holliday had court hearings in King County. 5RP 482. She knew Anthony Flewellen through Parker. 5RP 482-83. Flewellen’s nickname was Blacc Jacket. 5RP 483. After one of the hearings, Flewellen texted her and offered to pick her up. 5RP 484. One of her tricks, John, had driven her to court and she had him drop her off in Federal Way. 5RP 484, 490. She told the trick to not say anything to Parker. 5RP 485. The trick told her she should not go because it would end up bad. 5RP 485. She went anyway and waited at Wal-Mart for Flewellen to pick her up. 5RP 485.

They went to Flewellen’s girlfriend Jennifer’s house in Renton. 5RP 485. While she was gone, Parker called and texted her, but she did

not answer or respond to the texts. 5RP 485. The next morning her phone was off because the bill had not been paid. 5RP 485. Flewellen and Jennifer did not want her to tell Parker she was with them, and would not let her use their phones. 5RP 485. Later in the evening, Flewellen told Parker she was with them. 5RP 485. Holliday returned to Parker's house the next day. 5RP 485.

Holliday asked Flewellen to go inside with her when she got there. 5RP 486. She wanted him to talk to Parker and give him the money she made. 5RP 486. When they arrived around midnight, there were several people at the house and Parker was in their bedroom. 5RP 486.

There were other people in the bedroom. 5RP 486. Flewellen went into the bedroom and Holliday stood behind him. 5RP 486. They talked and Parker told Flewellen it was OK. 5RP 487. Parker asked everyone to leave the room so he could talk to Holliday. 5RP 487. He locked the door and stood in front of it so she could not leave. 5RP 487.

Parker began yelling and hitting her. 5RP 487. She put up her hands to protect herself. 5RP 487. He told her to put her hands down and take it because she deserved it. 5RP 487. He told her she had screwed up and was being shady and disloyal. 5RP 487. He hit her mainly in the head and face but also in her chest and legs. 5RP 487. She kept telling him she was sorry and begged him to stop hitting her. 5RP 488. It went

on for about 10 minutes. 5RP 487. Then he told her to go clean herself up and to go back to the bedroom when she was done and lock the door. 5RP 488.

Afterwards he told her that their relationship should be strictly business. 5RP 489. He told her he did not trust her and did not care about her anymore. 5RP 489. He stopped taking her out of the house or doing anything with her. 5RP 489. She just stayed in the house and took calls. 5RP 489. He also told her not to have any contact with Flewellen or any of his other friends. 5RP 489.

Parker struck Holliday again within about a week. 5RP 490. She was supposed to go to a funeral with Parker, but had been up all night and decided not to go. 5RP 490. She was in withdrawal and Parker told her Flewellen would bring her a pill. 5RP 490. She questioned why in light of Parker's previous instruction not to have contact with Flewellen. 5RP 490. Parker then told her that it was all right if she remained friends with Flewellen. 5RP 490.

After Parker left for the funeral, she called Flewellen, and asked him to drive her to a few calls so she could earn some money for drugs. 5RP 491. After she got a pill they went to Flewellen's house in Bremerton. 5RP 491, 493. Her phone ran out of minutes, so she called Parker from Flewellen's phone and told him she was calling from the 7-

Eleven where she was buying a card for her phone. 5RP 491. Parker was already back in Bremerton, and told her to get out of the car and walk home immediately. 5RP 491. Then Parker said he would come get her at the 7-Eleven and she said she was already on the way and hung up. 5RP 491.

Flewellen had already left his house by then. Before he left, Holliday told him that she did not want to stay with Parker because of the way he was treating her. 5RP 492. Flewellen said she could stay with him. 5RP 492. She said she did not want to stay that day because all her belongings were in Parker's house, and she was afraid of what he would do with them. 5RP 492. Flewellen told her she needed to "choose up." She did not make a decision, so Flewellen left and went to Seattle. 5RP 492. She was there at Flewellen's house with Jennifer Prerost and Prerost's eight-year-old daughter. 5RP 492-93. Prerost had worked for Parker in the past. 5RP 492.

Parker figured out that she was at Flewellen's apartment and showed up and banged on the door. 5RP 493. They did not answer the door or say anything and he kept banging and yelled that he knew she was in there. 5RP 493. He told Prerost that was not going to hurt her and that she better let him in. 5RP 494. Holliday went into Flewellen's bedroom and locked the door, and Prerost let Parker into the apartment. 5RP 494.

Parker broke the bedroom door down. 5RP 494. Holliday was on the floor behind the door and Parker yelled at her to get up. 5RP 495. She was crying and apologizing and begging him not to. 5RP 495. Parker grabbed her by her hair and threw her against the wall. 5RP 496. Holliday wet herself. 5RP 496. Then he smashed her head against the wall several times. 5RP 496. She was on the floor again and he kept hitting her and telling her to get up. 5RP 496. He told her to get out, so she got up and began walking out of the house. 5RP 496. She kept telling him she was sorry and begging him to stop hitting her. 5RP 496. She told him her purse was in the bedroom closet, and he responded that it did not matter, he would get it later. 5RP 497. He told her to get in the car. 5RP 497. There was a woman in the front, so she got in the back. 5RP 497.

When they dropped the woman off, Parker told her to get in the front seat. 5RP 498. She did not want to because she was afraid he would hurt her again. 5RP 499. As soon as she put her seatbelt on, he started hitting her again and banged her head against the side window. 5RP 499.

Parker told her that he was taking her to his “cousin’s” house. 5RP 499, 523. He told her that his friends would do whatever he told them, that they would rape her or kill her if he asked. 5RP 499. She was afraid. 5RP 500. When they got to the house, he hit her and made her bleed. 5RP 500. He apologized and got her a napkin. 5RP 501. Shortly after that he

started hitting her again. 5RP 501. He repeated the sequence of being nice and then hitting her several times. 5RP 501.

Parker went into the house and told Holliday to wait in the car. 5RP 501. Parker came back out and told her to come inside. 5RP 502. She said she did not want to because she had wet herself and was embarrassed. 5RP 502. He told her to put on his jacket and they went in. 5RP 502. She had bruises on her face blood dripping from a cut on her eye. 5RP 502. They walked in and Parker told her to clean her “raggedy ass” up in the bathroom. 5RP 502. She went into the bathroom to wash, but he would not let her close the door. 5RP 502. They did not stay long, Parker just said he wanted to tell his friends how awful she was. 5RP 503. Then he took her home. 5RP 503. She thought about running but was afraid of what would happen if he caught her. 5RP 504.

When they got home she changed her pants and lay down on the bed. 5RP 504. He told her she could not sleep because he was not done with her. 5RP 504. He made her sit on the couch while he periodically berated her and hit her some more. 5RP 504-05. He made her stay up all night while he played X-box and watched movies. 5RP 505. When she fell asleep he would wake her up. 5RP 505. She did not sleep until Parker fell asleep. 5RP 508.

Parker had a gun. 5RP 506. He kept it under his mattress or in the

piano in the hallway. 5RP 506. At one point during that night he went and got the gun. 5RP 506. He put it to Holliday's head and asked her if she wanted to die. 5RP 507. He yelled that she needed to look at the gun while he was pointing it at her. 5RP 507. He struck her with the gun or another object several times, leaving large bumps on her head. 5RP 507.

The next day, he woke her up and told her she needed to go make some money. 5RP 509. She was weak with withdrawal and the injuries and did not fight with him about it. 5RP 509. She did several calls that day. 5RP 510.

During the following week he hit her every day. 5RP 511. On one occasion she bought a pill from one of his friends, who she was not supposed to contact, and Parker found out. 5RP 511. He pushed her down on the bed and began whipping her across the face with a wire hanger. 5RP 512.

Holliday also feared Parker because he told her he was well-placed in a gang, and they would do what he asked, including killing people. 6RP 522. He told her there was nowhere she could go where he would not find her. 6RP 526. After a while she did not even think about leaving because it did not seem like an option. 6RP 527.

Eventually they moved from Llamas's house to a garage apartment that she was told belonged to Parker's mother. 6RP 528.

When he was in custody, Parker told Holliday that she needed to take his gun out from under the bed and put it in a bag in the garage. 6RP 531.

One day Holliday and another girl went to buy some pills and got pulled over by the police. 6RP 532. Detective Heffernan took her aside and talked to her. 6RP 532. He did not arrest her, but wanted information about Parker. 6RP 532. She said she was not comfortable talking about Parker. 6RP 532. Heffernan told her he would let her go if she agreed to talk to him the next day, and let him have the pills she had bought and her cell phone. 6RP 532. She turned over the phone and pills, but did not show up for the meeting. 6RP 532, 534.

When Parker got out of jail, she told him what had happened. 6RP 535. After that, Parker became very "off and on." 6RP 536. He would tell her she was useless and tell her to leave. 6RP 536. He would push her out the front door without her shoes or purse and lock it. 6RP 536. The physical abuse continued as well. 6RP 537-38.

Finally, on April 12, she posted an ad so she could earn some money, which she hoped would placate Parker. 6RP 538. She called a cabbie she regularly used to go to the old house for the call. 6RP 540. Parker thought she was talking to someone else and became enraged and beat her. 6RP 540. Then he made her go the store with him. 6RP 541.

There she told him she needed to get to the house because her call was coming. 6RP 541. He let her go, and she called a friend to come and pick her up. 6RP 541.

Her friend took her to the Oyster Bay Inn where there was a room her friend said she could stay in until she figured out what she would do. 6RP 542. She set up some calls so she would have some money. 6RP 542. The first call ended up being a detective. 6RP 542. They arrested her and took her to jail for prostitution and for the drugs from the previous stop. 6RP 543. She subsequently entered a diversion agreement for the charges. 6RP 543. At the time she was arrested, she was using her old phone. 6RP 544. That was seized when she was arrested. 6RP 544.

Jennifer Prerost verified the incident where Parker attacked Holliday at Flewellen's house. 7RP 676-79, 687-88. Flewellen's landlord and her handyman verified that the door had been kicked in. 7RP 737, 8RP 775.

Afterward Prerost lived with Parker and Holliday for about a month. 7RP 681. Parker kept a gun in the house. 7RP 684. He kept it in case there was any trouble so he could protect them. 7RP 684.

Holliday was pretty naïve when Prerost first met her. 7RP 686. "She didn't know anything about nothing" when it came to prostitution. 7RP 686.

Parker came to attention of the Bremerton police when they were investigating one of his associates. 8RP 886. They learned he had a prostitute living with him and they attempted to identify her. 8RP 886. They found her in a Backpage ad. 8RP 886. They also listened to the jail calls between Parker and Llamas. 8RP 886. They ultimately identified the prostitute as Holliday. 8RP 886.

On February 11, Detective Rodney Rauback observed Holliday in an apparent drug deal. 8RP 811-12. Holliday was a target because she was associated with Parker. 8RP 793. He and Detective Ryan Heffernan contacted her. 8RP 812. They detained her and Heffernan questioned her. 8RP 813. They recovered a pill and her cell phone from her. 8RP 813. They did not arrest her because they were seeking her cooperation. 8RP 814. She did not meet with Heffernan the next day as she agreed. 8RP 890.

The police subsequently saw a Backpage ad for Holliday. 8RP 781. Sergeant Randy Plumb Plum contacted her, posing as a John and set up an appointment. 8RP 783. He met her at the Oyster Bay Inn. 8RP 784. Detectives Rauback and Heffernan went to the meeting with him. 8RP 784. She invited him into the room, and after he checked to be sure no one else was there, Plumb opened the door and the detectives came in. 8RP 784. Heffernan took her phone. 8RP 785. They arrested her. 8RP

785. After she was arrested at the Oyster Bay Inn, Heffernan and Rauback interviewed Holliday. 8RP 815. Holliday had bruises on her arms and legs and was very afraid of talking to them about Parker. 8RP 816, 838.

Police then obtained a warrant to search Parker's residence. 8RP 785. Parker refused to come out, so they called the SWAT team because they had information that he had a firearm. 8RP 786-87. Parker was ultimately arrested and the home was searched. 8RP 787. They located a gun in a bag downstairs in the garage area. 8RP 788. The gun had four rounds with it. 8RP 837. The gun was tested and found to be operable. 8RP 873.

The police also located significant evidence tying Parker to the activities in question on his Facebook and Backpage accounts. 8RP 914-15. On his phone they found instructions for managing a Backpage ad as well as a deleted email from a John. 8RP 917.

There was reference in one of the jail calls to the incident at Flewellen's house around January 23. 8RP 919. In another jail call, Parker asked Holliday to move gun on April 3, 2013. 8RP 920. The jury heard recordings of 31 separate calls between Parker, Llamas, Holliday and others. See 8RP 939-43, 9RP 949, 951-81, 987-988 and CP 122, generally. content 8RP 939-43, 9RP 951-81, 987-988. [31 calls 9RP 949]

John Buckner was originally listed as a defense witness. 10RP 1071. Her met Holliday as a customer through Backpage. 10RP 1071. He was the one who drove Holliday to the Kent court date and to her meeting with Flewellen. 10RP 1072. Buckner saw Holliday three days later, which she attributed to a fight with a girl. 10RP 1075.

He met Parker about a week later. 10RP 1073. Holliday needed a ride to Bainbridge. 10RP 1073. After that he gave them both rides a couple times a week. 10RP 1074.

Later, after Parker was released from jail Buckner mentioned that Holliday owed him \$150. 10RP 1075. Parker became angry and pushed her to the floor. 10RP 1074.

Shortly before trial, Parker began sending him letters. 10RP 1076-77. During trial Parker called Buckner about his testimony. 10RP 1077. One letter gave questions and answers for him to testify to. 10RP 1086.

Parker also called their roommate Ahmad Watson from jail and suggested he testify similarly about Holliday having gotten the gun. 10RP 1116.

III. ARGUMENT – DIRECT APPEAL

A. PARKER FAILS TO SHOW THAT COUNSEL HAD ANY CONFLICT OF INTEREST, MUCH LESS AN ACTUAL ONE THAT ADVERSELY AFFECTED HIS TRIAL.

1. Parker must show an actual conflict of interest that affected counsel's conduct at trial.

This Court reviews ineffective assistance of counsel claims de novo. *State v. White*, 80 Wn. App. 406, 410, 907 P.2d 310 (1995). The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington State Constitution provide criminal defendants with the right to effective assistance of counsel. *State v. Kolesnik*, 146 Wn. App. 790, 800, 192 P.3d 937 (2008). This right includes the right to assistance of an attorney free from conflicts of interest in the case. *State v. Dhaliwal*, 150 Wn.2d 559, 566, 79 P.3d 432 (2003) (citing *Wood v. Georgia*, 450 U.S. 261, 271, 101 S. Ct. 1097, 67 L. Ed. 2d 220 (1981)). Further, whether the circumstances demonstrate a conflict under ethical rules is a question of law, which is reviewed de novo. *State v. Regan*, 143 Wn. App. 419, 428, 177 P.3d 783, review denied, 165 Wn.2d 1012 (2008).

Dhaliwal was the most recent case in which the Washington Supreme Court addressed the standard of review for a claim that trial counsel had a conflict of interest. There, the Court followed the lead of the United States Supreme Court in *Mickens v. Taylor*, 535 U.S. 162, 173-74, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002), and held that the burden

was on the defendant to demonstrate, from the record, that an actual conflict of interest adversely affected his attorney's performance. *Dhaliwal*, 150 Wn.2d at 573. However, the conflict must be *actual*: even where a defendant "has demonstrated the possibility that his attorney was representing conflicting interests," the defendant nevertheless "failed to establish an actual conflict" where he did not demonstrate how his attorney's conflict of interest affected his attorney's performance at trial. *Dhaliwal*, 150 Wn.2d at 573. Although a defendant need not demonstrate that the outcome of the trial would have been different but for the conflict, the defendant must show that "some plausible alternative defense strategy or tactic might have been pursued but was not and that the alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or interests." *Regan*, 143 Wn. App. at 428. (internal quotation marks omitted).

However, as the Court in *Dhaliwal* emphasized, the defendant bears the burden of proving that there was an *actual* conflict that adversely affected his or her lawyer's performance. *Dhaliwal*, 150 Wn.2d at 573 (citing *Mickens*, 535 U.S. at 174, 122 S. Ct. 1237; and *Cuyler v. Sullivan*, 446 U.S. 335, 350, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980)). "Holding that the possibility of a conflict was not enough to warrant reversal of a conviction, the *Sullivan* Court stated: '[U]ntil a defendant shows that his

counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.”⁶ *Dhaliwal*, 150 Wn.2d at 573 (quoting *Sullivan*, 446 U.S. at 350). In *Dhaliwal* the defendant demonstrated the possibility that his attorney was representing conflicting interests. The Court therefore proceeded directly to the issue of whether the defendant had established an actual conflict.

A conflict of interest exists when a defense attorney owes duties to a party whose interests are adverse to those of the defendant in the context of a particular representation. *State v. White*, 80 Wn. App. 406, 411–12, 907 P.2d 310 (1995).

2. Counsel’s prior advice to estate-planning clients did not establish a conflict with counsel’s current representation of Parker.

Parker first claims that counsel had a conflict because of advice he had given to estate-planning clients. It is difficult to see how this prior representation could constitute even a potential conflict.

The State called King County Sheriff’s Detective Brian Taylor as an expert witness to talk about prostitution culture and prostitute-pimp relationships. Taylor had no personal knowledge of the present case or any of the involved parties. 5RP 362.

Taylor was formerly involved in the founding and operation of a nonprofit called the Genesis Project, which worked to help prostitutes

escape the sex trade. RP (10/28 J. Laurie) 7-8, 5RP 391.¹ After another King County deputy involved in the organization was investigated for financial irregularities, Taylor left the organization. RP (10/28 J. Laurie) 10, 5RP 391-92.

Defense counsel alleged he had a conflict with the witness because he had previously advised his estate-planning clients to donate to the Genesis Project. RP (10/28 J. Laurie) 10. However, after the investigation into Genesis's finances, counsel advised these clients to stop donating to the organization. RP (10/28 J. Laurie) 11. None of the clients were connected to Parker's case. RP (10/28 J. Laurie) 11.

The trial court was unpersuaded that any conflict existed:

I'm unclear on how your former advice to clients to donate to Officer Larson's organization would impede your ability to vigorously cross-examine him in the future, especially in view of the fact that you're now not advising clients to.

RP (10/28 J. Laurie) 23. Even defense counsel conceded that it was not an *actual* conflict:

That's correct. I'm not advising clients, and actually I'm advising them to do just the opposite.

In all candid, and I have to be 100 percent honest with the court, I don't believe that it would be. There would be the appearance of a conflict of interest. There would be the appearance that I'm not vigorously cross-examining him. There would be the appearance of the conflict of interest.

¹ In the in-camera hearing, counsel refers to the deputy as Officer Larson, but from the context it is clear they are discussing Detective Taylor.

RP (10/28 J. Laurie) 23.

Defense counsel's representation of a witness adverse to the defendant, alone, is insufficient to demonstrate an actual conflict of interest warranting withdrawal from representation. For example, in *State v. Ramos*, 83 Wn. App. 622, 632, 922 P.2d 193 (1996), this Court held that the trial court erred in finding that defense counsel had an actual conflict of interest necessitating counsel's withdrawal from representation. *Ramos* reasoned that the defendant had failed to present any evidence that defense counsel's cross examination of a State's witness would involve an inquiry into information gained by defense counsel through its prior representation of the witness. *Ramos*, 83 Wn. App. at 632. Similarly in *State v. Hunsaker*, 74 Wn. App. 38, 48, 873 P.2d 540 (1994), the Court reversed a trial court's finding of an actual conflict of interest, where that the defendant had failed to present any evidence that cross examination of a State's witness would involve the use of information acquired during counsel's prior representation of the witness. *See also State v. Anderson*, 42 Wn. App. 659, 713 P.2d 145 (1986) (no actual conflict of interest existed where defense counsel had previously represented a State's witness).

By contrast, in *State v. MacDonald*, 122 Wn. App. 804, 813-14, 95 P.3d 1248 (2004), the Court determined that the trial court had properly

disqualified the defendant's attorney based on a conflict of interest created by the attorney's representation of the victim's mother in a marital dissolution case. In upholding the trial court's disqualification of counsel, the Court noted that defense counsel had received confidential information about the victim that was relevant to the victim's credibility and her accusations against the defendant, and that the victim's testimony was the sole evidence of the defendant's guilt. *MacDonald*, 122 Wn. App. at 813-14.

RPC 1.7(a) defines conflict of interest:

A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Here, the clients were Parker, and the estate-planning clients. The latter had no relation to Parker's case. It is difficult to see how there could be any adverse effect on either. Moreover, the State's witness was (formerly) associated with an organization that counsel was now recommending that his estate clients not donate to. If anything, the record tends to show that the interests of counsel's clients was congruent.

Moreover, as noted above, even where a defendant has demonstrated the possibility that his attorney was representing conflicting

interests, the defendant fails to establish an actual conflict if he cannot show that a conflict of interest adversely affected counsel's trial performance. *Dhaliwal*, 150 Wn.2d at 573. Here, counsel fully cross-examined Taylor about his involvement with the Genesis Project and the financial issues.² 5RP 391-92. Thus even if these highly tenuous claims did constitute a conflict, they did not affect counsel's handling of the trial, and cannot be deemed an actual conflict. This claim should be rejected.

3. Counsel's decision not to call listed defense witnesses after it was revealed that Parker had attempted to tamper with at least one of the witnesses in question did not establish a conflict.

Parker's second claim of conflict is premised on the notion that under the circumstances revealed at trial, counsel was either "a witness against the defendant or he [was] a co-conspirator with him." This contention lacks record support.

Counsel learned on the ninth day of trial that one of the listed defense witnesses, John Buckner, had disclosed to the police that Parker had sent him two letters that essentially amounted to a script for Buckner's testimony. 9RP 984; *see* 10RP 1076, Exh. 64 & 65. The next day, counsel moved to withdraw, out of concern that he could be a witness:

Your Honor, at this point in time, given the fact that we anticipate the State is going to call a person named Mr. John Buckner, who is going to unveil certain letters, that

² Notably Taylor had also distanced himself from Genesis and now referred prostitutes to a different nonprofit organization. 5RP 392.

the State already has in its possession, that indicate that my client tampered with the witness that we are about to call, who was going to be our witness, I believe that this makes my office here potentially liable for having its e-mail server searched, at least any e-mails between Mr. Mace, my private investigator and I. Mr. Mace is the person who went out there and interviewed Mr. Buckner initially. He wrote a report. I believe those reports there would be discoverable to the State. And I believe that he would be a witness. I believe that I may also very well be a witness in this case given the fact of putting the e-mail messages into context, should they wish to be called.

Given that fact, I believe that there is a *remote chance* here that I would be a witness in this case. I would like to bring this to the Court's attention. And given that, I have to make a motion to withdraw.

10RP 1063-64 (emphasis supplied). The State, however, specifically disavowed any such intent:

During our interviews, both of the people we interviewed stated they had never met Mr. Wareham; they have never communicated with him. We have no concerns about him being involved in any of this. We're not going to subpoena any records. We're not going to call the investigator. All we're doing, simply, is calling one of the defense witnesses in our case in chief. I'm not sure if defense is still going to call him in their case. But we have no concerns about that. I don't believe counsel is a witness in any way. And, obviously, I mean, what he stated, it's the conduct of his own client. It's unfortunate, you know, in terms of it hurts his ability to represent him and put on an effective case. However, he had nothing to do with it. So it wasn't his choice. He wasn't a part of it. And we're not investigating it any further other than just calling Mr. Buckner.

10RP 1065-66. The State reiterated that position in response to questioning by the court:

THE COURT: Just so the Court is clear,

you do not intend to call either Mr. Wareham as a witness or his investigator?

MR. TALEBI: Correct. We're not doing any more investigating in terms of the issue that's come up. We're seeking to admit a couple letters that were written by the defendant through this witness, and that's essentially it.

10RP 1066. Thereafter, the court denied the motion to withdraw, specifically due to "the State's representation that they are not intending to call you." 10RP 1067.

Even assuming that there was some theoretical possibility that counsel could have been a potential witness, such a theoretical possibility does not establish a conflict. In the absence of the attorney actually being called as a witness, no conflict occurs.

Indeed, when an attorney testifies against his client during the course of representation, he has an actual conflict of interest. *Regan*, 143 Wn. App. at 430. However, an actual conflict of interest is more than "a mere theoretical division of loyalties." *Dhaliwal*, 150 Wn.2d at 570 (quoting *Mickens*, 535 U.S. at 171). "The mere possibility of a conflict of interest is not sufficient to 'impugn a criminal conviction.'" *State v. Davis*, 141 Wn.2d 798, 861, 10 P.3d 977 (2000) (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980)).

State v. Fualaau, 155 Wn. App. 347, 364, 228 P.3d 771, review denied 169 Wn.2d 1023 (2010), cert. denied 131 S. Ct. 1786 (2011).

Here, as in *Fualaau*, where there was no possibility that counsel would be called as a witness, the conflict is not actual. Because Parker showed at best "a mere theoretical division of loyalties," the court

properly declined to recuse his counsel.

Parker also argues that counsel's failure to call any defense witnesses after it was learned that Parker had suborned perjury demonstrates that counsel had an actual conflict. However, despite Buckner's revelation of the letters Parker sent him, counsel, in a lengthy cross-examination, elicited much of the testimony he intended to obtain from Buckner, pointing out in the process the statements in Parker's letters to Buckner that Buckner endorsed as true. 10RP 1079-97. He specifically elicited testimony that Parker's letters did not influence how he testified. 10RP 1091.

As for the remaining witnesses, the record is not clear that counsel made an intentional decision not to call those witnesses. Counsel initially expressed concern that all but one of the witnesses had been compromised like Buckner:

And they were witnesses we were planning on talking or on calling. They have been interviewed by my private investigator. Upon them being interviewed by my private investigator, it appeared they were pertinent witnesses. I had been having issues getting ahold of them. For some reason, they weren't returning my phone calls. I had instructed them to be here, by means of his family, to be here at noon today in order to be available for questioning, and they were here. We were able to get through two of the witnesses. One of the witnesses denied receiving – or denied receiving any letters that instructed him how to testify. The other witness, unfortunately, did not. So at this point in time, Your Honor, I don't know if the case is changing underneath our feet at this point in

time, as the defense stands.

9RP 985. The next day, counsel indicates that it was unlikely he would be calling any witnesses:

Your Honor, my case in chief has been thrown kind of a boomerang here. ... But I can't see calling any witnesses today at this point in time. At this point in time, I believe the only witnesses what we would have testify may very well be the defendant, if he wishes to testify. I don't see us having any witnesses testify.

10RP 1111. After a brief recess to allow counsel to discuss with Parker whether Parker should testify, counsel suggests that the witnesses had become unavailable:

Your Honor, at this point in time, all of our witnesses have kind of disappeared. We did have intentions on calling witnesses, mainly Mr. Buckner. He's already testified. I have spoken with my client about testifying, including his important right to be able to testify. At this point in time, I believe that he has wisely chosen not to testify at this proceeding or any of the proceedings related to this. So he will not be testifying. The defense anticipates, if the State rests, the defense anticipates on resting.

10RP 1112. It is unclear from the record whether counsel is speaking literally or metaphorically. If it is the former, the alleged conflict clearly had no effect on trial.

Even if counsel were speaking metaphorically and had affirmatively decided not to call these witnesses due to the taint of the Parker's attempt at witness tampering, the Supreme Court has specifically rejected the inference of an actual conflict from such a decision:

Dhaliwal argues that Salazar's performance was affected

by his dual representation of Dhaliwal and Sohal because Salazar failed to object to various hearsay statements and testimony about Dhaliwal's prior bad acts during Sohal's testimony. Standing alone, the failure to object to testimony does not indicate that Salazar was operating under a conflict, as there are numerous tactical reasons for not objecting to testimony. In ineffective assistance of counsel cases, this court has been reluctant to find counsel's performance deficient solely on the basis of questionable trial tactics. In *Sullivan*, the United States Supreme Court found that the trial attorney's tactical decision to rest Sullivan's defense was a reasonable response to the weakness of the prosecutor's case rather than evidence of a conflict of interest. Similarly, Salazar's failure to object to testimony is a tactical decision that, without more, does not indicate that he was acting under a conflict of interest. This is not a case where the defendant's attorney utterly failed to make any objections, to cross examine the State's witnesses, or to mount a defense.

Dhaliwal, 150 Wn.2d at 572-73. (footnotes and citations omitted). The Court specifically noted that *Strickland*'s "highly deferential" standard of review applied in this context. *Dhaliwal*, 150 Wn.2d at 572 n.9 (citing *Strickland v. Washington*, 466 U.S. 668, 689, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

Thus, in *Fualaau*, 155 Wn. App. at 362-63, this Court also rejected such a claim:

It may have been that Fualaau's attorney believed that he could not present the testimony of these witnesses without losing credibility with the jury. ... defense counsel's decision not to call the additional witnesses falls well within the ambit of sound trial strategy. See *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996) ("Deficient performance is not shown by matters that go to trial strategy or tactics.")

Here, assuming that counsel actually made a decision to not call the witnesses,³ as “emphasize[d]” by the Court in *Fualaau*, “no complete offer of proof was made to the trial court as to the exact nature of the proposed testimony of these witnesses.” *Fualaau*, 155 Wn. App. at 363 n.4. Moreover, that Parker had given Buckner a script for his testimony, and Buckner testified that some of it was not true, reasonable counsel could conclude that any witness the defense called could have been seen as unreliable and likely to reflected badly on the credibility of both counsel and Parker with the jury. Rather than demonstrating adverse affect, the record showed that counsel made a reasonable tactical decision in light of the fallout of Parker’s own misconduct.

Under the highly deferential standard *Dhaliwal* and *Strickland* require, counsels decision not to call these tainted witnesses does not demonstrate an actual conflict. *See State v. Krause*, 82 Wn. App. 688, 697–98, 919 P.2d 123 (1996) (A decision not to call a witness is considered a matter of trial tactics that generally will not support a claim of ineffective assistance of counsel); *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995) (This Court employs a strong presumption that counsel’s representation was effective). This claim should also be rejected.

³ And again, counsel never clarified whether he meant the witnesses were literally or only practically unavailable.

B. THE STATE PROVED A NEXUS BETWEEN PARKER'S FIREARM AND THE CONTINUING CRIMES OF HUMAN TRAFFICKING AND PROMOTION OF PROSTITUTION WHERE THE GUN WAS PRESENT AND EASILY ACCESSIBLE DURING MANY OF PARKER'S ACTS OF FORCE, COERCION AND THREATS AGAINST HOLLIDAY, AND ESPECIALLY DURING THE MOST EGREGIOUS OF THOSE ACTS, THE SECOND-DEGREE ASSAULT WITH A FIREARM.

Parker next claims that the State failed to prove a nexus between Parker's gun and the commission of the crimes of human trafficking and promotion of prostitution. This claim is without merit because the gun was present and easily accessible during many of Parker's acts of force, coercion and threats against Holliday, and especially during the most egregious of those acts, the second-degree assault with a firearm, provides the required nexus.

A court may add time to a sentence if a defendant was armed with a firearm while committing a crime. RCW 9.94A.533(3). A person is armed while committing a crime if he can easily access and readily use a weapon and if a nexus connects him, the weapon, and the crime. *State v. Schelin*, 147 Wn.2d 562, 567-68, 55 P.3d 632 (2002); *State v. Valdobinos*, 122 Wn.2d 270, 282, 858 P.2d 199 (1993).

This nexus requirement is critical because “[t]he right of the individual citizen to bear arms in defense of himself, or the State, shall not be impaired...” Const. art. I, § 24. The State may not punish a citizen

merely for exercising this right. *State v. Rupe*, 101 Wn.2d 664, 704, 683 P.2d 571 (1984). The State may punish him for using a weapon in a commission of a crime, though, because a weapon can turn a nonviolent crime into a violent one, increasing the likelihood of death or injury. *State v. Gurske*, 155 Wn.2d 134, 138–39, 118 P.3d 333 (2005).

When a crime is a continuing crime a nexus obtains if the weapon was “there to be used,” which requires more than just the weapon’s presence at the crime scene. *Gurske*, 155 Wn.2d at 138, 118 P.3d 333. This potential use may be offensive or defensive and may be to facilitate the crime’s commission, to escape the scene, or to protect contraband. *Id.* *Gurske*, 155 Wn.2d at 139. In every case, whether a defendant is armed is a fact specific decision. *Id.* Since the issue is fact specific, the facts and holdings of prior cases are helpful. *State v. Neff*, 163 Wn.2d 453, 462, 181 P.3d 819 (2008).

In *State v. O’Neal*, 159 Wn.2d 500, 503, 150 P.3d 1121 (2007), officers searched the defendants’ methamphetamine laboratory. Besides evidence of drug manufacturing, the officers found over 20 guns, body armor, night vision goggles, and a police scanner. *Id.* A jury found the defendants guilty of manufacturing drugs and added a firearm enhancement. *Id.* The Supreme Court affirmed the firearm enhancement. *O’Neal*, 159 Wn.2d at 502. Since the weapons were easily accessible to

protect the drugs, and since the defendants kept a police scanner in the laboratory, the jury could find that the defendants used the guns to protect the drugs, and so the Court upheld their conviction. *O'Neal*, 159 Wn.2d at 504.

In *State v. Eckenrode*, 159 Wn.2d 488, 491, 150 P.3d 1116 (2007), the defendant called the police, alerting them to an intruder in his house. He told the dispatcher he was armed and ready to shoot the intruder. *Id.* When the police arrived, he was outside his home, sitting on his porch. *Id.* Police investigated and found he was growing marijuana and had two firearms in his house. *Eckenrode*, 159 Wn.2d at 491-92. A jury convicted him of drug charges and a firearm enhancement. *Eckenrode*, 159 Wn.2d at 492. The Court affirmed his conviction and enhancement. *Eckenrode*, 159 Wn.2d at 491. The defendant told the dispatcher he was armed. *Eckenrode*, 159 Wn.2d at 494. Police found two weapons, one loaded, and a police scanner in the house. *Id.* Under those facts, a jury was allowed to infer that the defendant armed himself to protect his criminal enterprise and so was allowed to find him armed while committing the crimes. *Id.*

In *Valdobinos*, 122 Wn.2d at 273, by contrast, police arrested the defendant when he offered to sell cocaine to an undercover officer. They searched his house, finding cocaine and an unloaded rifle under his bed.

Valdobinos, 122 Wn.2d at 274, 282. A jury convicted him of drug charges and a firearm enhancement. *Valdobinos*, 122 Wn.2d at 274. The Court reversed the enhancement, holding the jury could not infer from an unloaded rifle near the cocaine that the defendant was armed. *Valdobinos*, 122 Wn.2d at 282. Notably, however, no evidence indicated the gun was in the house to protect the drugs, as indicated by the presence of loaded weapons and police scanners in *O'Neal* and *Eckenrode*.

Finally, in *Neff*, when police searched Neff's garage, they found two loaded pistols in a safe, which also contained four bags of marijuana. Neff held the keys to the garage. The police found a third pistol hanging from a tool belt in the garage's rafters. While it was unclear from the record whether Neff could easily reach the gun, the Supreme Court construed the fact in the State's favor. Finally, the officers found two security cameras and a monitor in the garage on which to view live feeds. An officer testified that the monitors were for countersurveillance. *Neff*, 163 Wn.2d at 464. The Court concluded that these facts, together with all inferences favoring the State, were enough for a rational person to find beyond a reasonable doubt that Neff was armed, and affirmed the conviction and enhancement.

The rationale of these cases obtains here, because like manufacturing drugs, human trafficking and promoting prostitution are

continuing offenses. *State v. Gooden*, 51 Wn. App. 615, 754 P.2d 1000, review denied, 111 Wn.2d 1012 (1988).

Here, Holliday testified that Parker testified that Parker kept the gun accessible – under the mattress of in a hold in a piano that was in the hall. Prerost, who had lived with Parker and Holliday during the period in question, testified that Parker kept the gun to in case there was any trouble.

Even discounting this evidence, Parker’s argument is that the gun was “only” used to commit the second-degree assault charged in Count VIII. What Parker ignores is that that assault was an integral part of the ongoing abuse and intimidation that Parker used to carry out the crimes of human trafficking and promotion of prostitution.

The gun was present and easily accessible during many of Parker’s acts of force, coercion and threats against Holliday, and especially during the most egregious of those acts, the second-degree assault with a firearm, provides the required nexus. This claim should be rejected.

IV. PRP RESPONSE

The State respectfully moves this court for an order dismissing the timely-filed petition with prejudice because it is factually without merit.

V. AUTHORITY FOR PETITIONER’S RESTRAINT

The authority for the restraint of Anthony Parker lies within the

judgment and sentence entered by the Superior Court of the State of Washington for Kitsap County, on January 14, 2014, in cause number 13-1-00597-1, upon Parker's conviction of the offenses noted above in the procedural history section of this brief.

VI. PRP ARGUMENT⁴

A. THE CHARGING DOCUMENT CONTAINED ALL ESSENTIAL ELEMENTS OF EACH OF THE OFFENSES CHARGED.

Parker next claims that his charging document was inadequate. This claim is without merit because it contained all essential elements of each of the offenses charged.

Pursuant to both the Sixth Amendment United States Constitution, U.S. Const. amend. VI, and art I, § 22 of the Washington Constitution, “[a]ll essential elements of a crime, statutory or otherwise, must be included in a charging document in order to afford notice to an accused of

⁴ Although he does not include any argument on the issue, Parker asserts that the State's filing of an amended information amounted to prosecutorial vindictiveness. PRP at 4. In *State v. Korum*, 157 Wn.2d 614, 625, 141 P.3d 13 (2006), the Supreme Court observed that constitutional due process principles prohibit prosecutorial vindictiveness, which occurs when “the government acts against a defendant in response to the defendant's prior exercise of constitutional or statutory rights.” *Korum*, 157 Wn.2d at 627 (quoting *United States v. Meyer*, 810 F.2d 1242, 1245 (D.C. Cir. 1987)). Thus, “a prosecutorial action is ‘vindictive’ only if *designed* to penalize a defendant for invoking legally protected rights.” *Id.* (emphasis the Supreme Court's). As noted in *Korum*, the United States Supreme Court has “emphatically rejected the notion that filing additional charges after a defendant refuses a guilty plea gives rise to a presumption of vindictiveness.” *Korum*, 157 Wn.2d at 629 (citing *United States v. Goodwin*, 457 U.S. 368, 377-85, 102 S. Ct. 2485, 73 L. Ed. 2d 74 (1982), and *Bordenkircher v. Hayes*, 434 U.S. 357, 360-65, 98 S. Ct. 663, 54 L. Ed. 2d 604 (1978)). That is precisely what occurred here. This contention is thus without basis.

the nature and cause of the accusation against him.” *State v. Kjorsvik*, 117 Wn.2d 93, 97, 812 P.2d 86 (1991). This rule “requires that a charging document allege facts supporting every element of the offense, in addition to adequately identifying the crime charged.” *Kjorsvik*, 117 Wn.2d at 98.

When, as here, a challenge to the language in a charging document is raised for the first time on appeal, the Court engages in a two-part inquiry. *Kjorsvik*, 117 Wn.2d at 105. First, the Court examines whether “the necessary facts appear in any form, or by fair construction can they be found, in the charging document.” *Kjorsvik*, 117 Wn.2d at 105. Second, if the necessary facts do appear, the Court considers whether the defendant can “show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice.” *Kjorsvik*, 117 Wn.2d at 106.

With respect to the first part of this inquiry, the Court liberally construes the charging language in favor of finding it sufficient. *Kjorsvik*, 117 Wn.2d at 103. Application of a liberal standard of construction discourages a defendant from engaging in sandbagging, that is, the tactic of waiting to challenge a charging document as defective until after trial because raising the issue beforehand might result in a curative amendment to the charging document. *Kjorsvik*, 117 Wn.2d at 103. Thus, “[u]nder this rule of liberal construction, even if there is an apparently missing

element, it may be able to be fairly implied from the language within the charging document.” *Kjorsvik*, 117 Wn.2d at 104.

With respect to the second part of this inquiry, the Supreme Court has also recognized that a charging document that can be fairly construed as containing all essential elements of the charged offense might nonetheless have actually prejudiced a defendant. *Kjorsvik*, 117 Wn.2d at 105-06. Thus, “if the language is vague, an inquiry may be required into whether there was actual prejudice to the defendant.” *Kjorsvik*, 117 Wn.2d at 106. The inquiry into whether there was actual prejudice “affords an added layer of protection to a defendant even where the issue is first raised after verdict or on appeal.” *Kjorsvik*, 117 Wn.2d at 106.

Here, Parker complains that the information alleged that because the information alleged that the crimes, for example,⁵ in Count I, occurred on “or about November 1, 2012 and April 12, 2013,” the information was defective. He argues that either the crimes had to have occurred either the specific dates alleged or that “and” should have read “through.” However, despite this obvious typographical error, the information was not defective.

“All essential elements of a crime, statutory or otherwise, must be

⁵ Counts II through IX and XI contained similar language. CP 254-63. Count X only alleged a single date. CP 263.

included in a charging document in order to afford notice to an accused of the nature and cause of the accusation against him.” *Kjorsvik*, 117 Wn.2d at 97. However, RCW 10.37.050(5) only requires that a charging document set forth sufficient facts to demonstrate that the statute of limitations has not expired. Unless time is an essential element, the State need not plead anything more specific. *State v. Carver*, 37 Wn. App. 122, 126, 678 P.2d 842, *review denied*, 101 Wn.2d 1019 (1984) (noting that the “test is whether the lack of specificity is prejudicial to the defendant”).

Moreover, where “the [information] alleges that an offense allegedly occurred “on or about” a certain date, the defendant is deemed to be on notice that the charge is not limited to a specific date.” *State v. Gassman*, 160 Wn. App. 600, 616, 248 P.3d 155 (*quoting State v. Bergin*, 214 Conn. 657, 574 A.2d 164, 173 (1990) (editing the Court’s), *review denied*, 172 Wn.2d 1002 (2011)). Finally, the Court does not generally treat a technical error in the information as an omission of an element warranting reversal. Technical errors include “the date of the crime.” *Bellingham v. Struthers*, 109 Wn. App. 864, 867, 38 P.3d 1021 (2001) (*citing State v. Vangerpen*, 125 Wn.2d 782, 790, 888 P.2d 1177 (1995)), *review denied*, 146 Wn.2d 1019 (2002). The Court has consistently upheld convictions despite technical defects in the information. *State v.*

Hopper, 118 Wn.2d 151, 160, 822 P.2d 775 (1992).⁶

Here, none of the charges had a specific date as an essential element. See RCW 9A.40.100(1) (human trafficking); RCW 9A.88.070(1) (promoting prostitution); RCW 9A.36.021(1)(a), (e) & (f) (second-degree assault); RCW 9A.52.020 (first-degree burglary); RCW 9A.040.020(1) (first-degree kidnapping); RCW 9A.36.041(1) (fourth-degree assault); 9A.72.120 (witness tampering). As such the dates in question were not essentially elements that were required in the information. Moreover, the use of the term “on or about” put Parker on notice that the dates were not precise. Finally, the date of the crime is a “technical error” that does not affect the validity of the conviction.

Further, there is no showing that this technical error in any way prejudiced the defense. There certainly is no evidence that defense counsel believed he was only defending against charges that occurred only on the two dates in the information. To the contrary, when the court instructed the jury, it used the term “through” on all but one to-convict instruction. The jury sent a note asking if the “and” instruction was

⁶ Parker relies on *State v. Stribling*, 164 Wn. App. 867, 267 P.3d 403 (2011) in support of this claim. However the part of the opinion that addresses the *Kjorsvik* issue is unpublished and should not be considered. GR 14.1(a); *Skamania County v. Woodall*, 104 Wn. App. 525, 536 n.11, 16 P.3d 701, review denied, 144 Wn.2d 1021 (2001). (“Unpublished opinions have no precedential value and should not be cited or relied upon in any manner”). In any event, that case supports the State’s position. See *Stribling*, at ¶ 28.

incorrect. Parker's counsel agreed that the jury should be told that the instruction should read "through":

THE COURT: Thank you.

The question, I'm going to read it out loud for the record, and then we have Mr. Talebi here from the prosecutor's office and we need to decide how to answer it.

The jury's question: In the wording of Count VIII, the date of the assault is stated as "on or about January 1, 2013 and February 2, 2013." The other counts have this date range "and"-- "and" is in quotes-- as a "through." Is the jury to determine guilt on 1/11/13 and 2/2/13 or 1/1/13

through 2/2/13?

And that is the jury's question. Any thoughts, Mr. Talebi or Mr. Wareham?

MR. TALEBI: I discussed it with Mr. Wareham. I think we're in agreement that it's, essentially, a scrivener's error. It should be "through." And it's on or about that date range. And I think that's the language in the lesser included also for that count.

I believe that's the only count that has the "and," and it was probably just something we missed when we were going through the instructions.

MR. WAREHAM: And, Your Honor, I'm sorry, I don't know if it's my time to speak, but I'm in agreement with that.

THE COURT: Go ahead.

MR. WAREHAM: The lesser included is the reasoning behind that, includes it through. So I believe it was a scrivener's error. It was simply overlooked. And it should have been "through," not "and." "And" would not have made any sense. We didn't elicit any dates from any of the people as far as the assaults go. So I believe it should have been "through," not "and."

THE COURT: All right. I will answer it. So the date range should read 1/1/13 through 2/2/13. Is that

sufficient?

MR. WAREHAM: Yes, Your Honor.

MR. TALEBI: If you can include “on or about 1/1/13 through 2/2/13.”

THE COURT: I’m going to rephrase it -- I’m writing it as I’m speaking-- “The date range should read as follows: On or about January 1, 2013, through February 2, 2013.”

Do you both concur?

MR. TALEBI: Yes, Your Honor.

MR. WAREHAM: Your Honor, the defense concurs, yes.

12RP 1266-68. Further in a declaration filed in support of a motion to dismiss, Parker’s counsel cited the charging period as being “[b]etween the dates of November 1, 2012 and April 12, 2013.” CP 94.

Also notable is that in the instructions on lesser included offenses that Parker proposed, he included the “through” formulation (*e.g.* “on or about January 1st – February 2nd”). CP 284, 286-87, 297, 299-300; *see also* CP 294 (“on or about the 1st day of January 2013, Through February 2013”). Because this scrivener’s error neither omitted an essential element of the offense, nor resulted in any prejudice to Parker’s defense, this claim should be rejected.

B. THE POLICE PROPERLY SEARCHED PARKER’S PHONE AFTER OBTAINING A WARRANT AND PARKER LACKS STANDING TO CHALLENGE THE SEARCHES OF HOLLIDAY’S PHONES.

Parker next claims that his rights were violated when the police

searched his phone without a warrant. This claim is without merit because the police in fact obtained a warrant before searching Parker's phone. See Appendix A.

As for the searches of Holliday's phones, Parker lacks standing to challenge them since none of the evidence obtained from them pertained to possessory crime. The rights protected by the Fourth Amendment and article I, section 7 are personal rights that may be enforced by exclusion of evidence "only at the instance of one whose own protection was infringed by the search and seizure." *Rakas v. Illinois*, 439 U.S. 128, 138, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978); *State v. Jones*, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002). To claim automatic standing, a defendant (1) must be charged with an offense that involves possession as an essential element; and (2) must be in possession of the subject matter at the time of the search or seizure. *Jones*, 146 Wn.2d at 332. Parker meets neither of these requirements with regard to any of the information obtained from the search of Holliday's phones. As such he was not entitled to seek suppression of this evidence.⁷ This claim must fail.

⁷ The State notes that the uncontradicted affidavit for the search of Parker's phone states that the police obtained a warrant to search the first phone they seized from Holliday. App A, at 4. The second was seized at the time of her arrest. Since she agreed to speak with the police at that time it is likely that she consented to a search of her phone at the same time as well. App. A, at 5-7.

C. PARKER FAILS TO SHOW HIS COUNSEL WAS INEFFECTIVE.

Parker next claims that trial counsel was ineffective. This claim is without merit because as discussed above, Parker's claims with regard to suppression and the charging document are without merit. Additionally his remaining claims lack evidentiary support.

In order to overcome the strong presumption of effectiveness that applies to counsel's representation, a defendant bears the burden of demonstrating both deficient performance and prejudice. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995); *see also Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). If either part of the test is not satisfied, the inquiry need go no further. *State v. Lord*, 117 Wn.2d 829, 894, 822 P.2d 177 (1991), *cert. denied*, 506 U.S. 856 (1992).

The performance prong of the test is deferential to counsel: the reviewing court presumes that the defendant was properly represented. *Lord*, 117 Wn.2d at 883; *Strickland*, 466 U.S. at 688-89. It must make every effort to eliminate the distorting effects of hindsight and must strongly presume that counsel's conduct constituted sound trial strategy. *Strickland*, 466 U.S. at 689; *In re Rice*, 118 Wn.2d 876, 888-89, 828 P.2d 1086 (1992). "Deficient performance is not shown by matters that go to trial strategy or tactics." *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d

563 (1996).

To show prejudice, the defendant must establish that “there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different.” *Hendrickson*, 129 Wn.2d at 78; *Strickland*, 466 U.S. at 687.

1. Charging document

Parker claims counsel was ineffective for not objecting to the date language in the charging document. Parker can prove neither deficient performance nor prejudice. As discussed above, the dates were not essential elements of the offense and counsel’s ability to prepare was clearly not affected by this scrivener’s error. Moreover, an objection would merely have resulted in the filing of an amended information, and would have had no effect on the outcome of the proceedings.

2. Suppression

Parker next claims counsel was ineffective for failing to move to suppress the information from Holliday’s phone. As discussed above, a motion to suppress would have been without merit and, as such, this claim must also fail.

3. Investigation and conduct of trial

None of the affidavits Parker has provided show counsel’s investigation of the case was deficient. As previously discussed, counsel

had planned to call various witnesses, but Parker's sending a letter to at least one of them, Buckner, outlining testimony that Buckner conceded was at least partially false caused him to change that strategy because his "case in chief has been thrown kind of a boomerang." 10RP 1111. The State also presented evidence that Parker had attempted similarly infect the testimony of proposed witness Ahmad (Romond) Watson, whose affidavit is attached to the petition. *See* 10RP 1116. Counsel acted well within his professional discretion in concluding that the appearance that Parker was manipulating the witness would have made their testimony more damaging than helpful. Notably, they were still being interviewed by the State for discovery purposes the day counsel decided not to call them.

Further, none of these proposed witnesses have provided any evidence as to what their testimony would have been, other than "helpful." As such, Parker also fails to show deficient performance.

As two final notes, the State would also point out that contrary to the claim in the petition, there is no evidence that the defense investigator had concerns about counsel's investigation. At most, the unverified emails show the investigator explaining to Parker's sister how the process of filing such a claim would occur. Secondly, the State also rejects the claim that the trial prosecutor in any way threatened any of Parker's

proposed witnesses. *See* Appendix B. Because Parker shows neither deficient performance nor prejudice, this claim must fail.

VII. CONCLUSION

For the foregoing reasons, Parker's conviction and sentence should be affirmed.

DATED March 12, 2015.

Respectfully submitted,
TINA R. ROBINSON
Prosecuting Attorney



RANDALL A. SUTTON
WSBA No. 27858
Deputy Prosecuting Attorney

APPENDIX A

1 The training included instruction in drug and drug paraphernalia identification, as well as
2 identifying impairment indicators associated with specific drug use. Instruction pertained to each
3 of the seven categories of drugs: depressants, stimulants, hallucinogens, phencyclidine and
4 narcotic analgesics.

5 In February of 2010 I attended an 80-hour basic drug enforcement class presented by the
6 Drug Enforcement Administration. The training included, but was not limited to the following:
7 pharmacology/drug ID, electronic narcotics' investigation, criminal interdiction, tactical entries
8 and surveillance procedures

9 In September 2010 I attended a 24-hour methamphetamine investigations course
10 presented by the Midwest Counterdrug Training Center. The training pertained to
11 methamphetamine lab identification, and considerations for writing and executing
12 methamphetamine related search warrants.

13 In November 2012, I attended 20 hours of training through the California Narcotics
14 Officers Association (CNOA). The course topics included instruction on informant management,
15 search and seizure issues, controlled buy and buy-bust operations, and undercover officer
16 survival.

17 During my law enforcement career, I have participated in multiple narcotics
18 investigations, which have resulted in arrests and seizures of various controlled substances
19 including Marijuana, Cocaine, Methamphetamine, Black Tar Heroin, Ecstasy, Molly and
20 Ketamine. Through these investigations and discussions with other experienced law enforcement
21 agents, I have become familiar with the methods of packaging illegal narcotics, values of illegal
22 narcotics, and terms associated with the manufacture, distribution and use of these substances. I
23 have been an affiant for approximately 25 narcotics related search warrants, and participated in
24 the execution of narcotics related search warrants that have resulted in arrests, and the discovery
25 of illegal narcotics and items related to the use, packaging, distribution, and manufacturing of
26 these substances.

27 In addition to narcotics related crimes, I have participated in investigations pertaining to
28 prostitution. Through the course of these investigations, I have interviewed numerous prostitutes
29 and pimps. I have found through my training and experience that these investigations often
30 overlap with drug investigations. Specifically, I have learned that those individuals who promote
31



1 prostitution, commonly referred to as pimps, sometimes use drugs as a means to maintain control
2 over prostitutes. It is common for those individuals who promote prostitution to pay prostitutes
3 with drugs, and withhold drugs when they are dissatisfied with performance. Pimps will often
4 utilize well established prostitutes to mentor new prostitutes, and facilitate their transition into the
5 illicit activity. I also know that pimps and prostitutes will often utilize internet websites such as
6 tncboard.com and backpage.com to advertise for prostitution. Pimps and prostitutes will often use
7 their cellular phones to post ads on these websites, and communicate with clients and each other
8 about their illicit activities.

9 I also know that people engaged in prostitution perform their services either in a fixed
10 location that they designate, such as a motel room, or in a location determined by the client. This
11 distinction is commonly referred to as an "in" or "out" call. Because of the inherent dangers
12 associated with prostitution, pimps or their agents will often drive prostitutes to out calls and
13 remain in the area during the encounter. This practice provides a degree of perceived protection
14 for the prostitute, and allows the pimp to immediately be paid for the service. In addition to
15 driving their prostitutes to specific locations for out calls, I know from my training and
16 experience that pimps often use their vehicles as a private meeting locations to discuss their
17 criminal business enterprises, which often extend beyond promoting prostitution.

18 This affidavit is made in support of an application for a search warrant for the cellular
19 telephone described as follows:

20 **SAMSUNG CELLULAR PHONE MODEL SPH-M580, S/N DEC268435460810632413 BEING**
21 **STORED IN THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE ROOM AS ITEM #**
22 **"TP" IN CASE NUMBER B13-001589 IN THE CITY OF BREMERTON, COUNTY OF KITSAP,**
23 **STATE OF WASHINGTON**

24 **PROBABLE CAUSE:** Over the course of the last several months, SOG detectives have
25 investigated the criminal activities of Anthony Parker (AKA Baby Deuce). Parker has an
26 extensive criminal history including seven felony convictions, eleven gross misdemeanor
27 convictions, three misdemeanor convictions and four "classification unknown" convictions.
28 Through the course of the investigation, Detectives learned that Parker's former girlfriend,
29 Lorena Llamas (AKA Crazy), groomed women to work as prostitutes for Parker while she
30 (Llamas) was incarcerated in the Kitsap County jail. Detectives identified one of these prostitutes
31 as Johanna Holliday. Holliday has no felony convictions, and five gross misdemeanor convictions

COMPLAINT FOR SEARCH WARRANT; Page 3



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1 for the following: Theft 3rd degree, Minor in Possession/Consumption (three counts) and DUI. As
2 set forth below, Parker used his Samsung Cellular phone model SPH-M580, S/N
3 DEC268435460810632413 (hereinafter referred to as the "Phone") to communicate with
4 Holliday, Llamas and clients about prostitution activities. There is probable cause to believe that
5 evidence of human trafficking, promoting prostitution and/or prostitution will be found in the
6 Phone, which is currently be stored in the Bremerton Police Department's secure evidence room.

7 Through a review of jail phone calls as well as contact with confidential informants and
8 Jaccet associates, Detectives learned that Parker bailed Holliday out of jail in or around
9 December 2012, and since that time has been involved in a dating relationship with Holliday and
10 acted as her pimp. Detectives reviewed Holliday's ads for prostitution on backpage.com, which
11 list phone numbers and addresses associated with Parker. Detectives performed surveillance, and
12 confirmed that Holliday was living with Parker, and performing acts of prostitution at 1720 14th
13 St in Bremerton Washington. The residence is believed to be owned by a family member of
14 Llamas. Parker and Holliday have since moved to a residence at 703 S Summit Ave in
15 Bremerton, Washington.

16 On 4/4/13, detectives observed Holliday participate in a drug transaction with Parker's
17 associate, Travier Stevenson (AKA Little Jaccet). Detectives contacted Holliday on a traffic stop,
18 and developed probable cause to arrest her for possession of a schedule II drug, Percocet.
19 Holliday was in possession of a cellular phone, which detectives determined had been used to
20 post advertisements for prostitution on backpage.com as well as to communicate with Parker and
21 clients about prostitution. Detectives took of custody of the phone, and released Holliday.

22 On 4/8/13, detectives obtained a search warrant for Holliday's phone. Detectives
23 examined the phone, which contained numerous text messages – many to Parker - pertaining to
24 prostitution and drug activity. The phone also contained photos of Holliday that had been posted
25 on backpage.com.

26 Upon her release, Holliday obtained a new phone and continued to post advertisements
27 for prostitution on backpage.com listing the number (360) 551-9523. Detectives reviewed an
28 advertisement Holliday posted on April 11th, 2013 at approximately 1828 hours. In that
29 advertisement, Holliday posts six photographs of herself scantily-clad and in provocative poses.
30 Her "screen name" on this advertisement is "Baby Doll."

31

COMPLAINT FOR SEARCH WARRANT; Page 4



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1 Using a texting application with a fictitious name and phone number, detectives
2 contacted Holliday at the new number, and inquired if she was available. Holliday told detectives
3 that she was available, advising that the cost was \$200 per hour. Holliday also provided pricing
4 information for two girls - "125 per person," for each half hour and "200 each" for an
5 hour. Holliday said that she was available to meet at the Oyster Bay Inn, and asked detectives to
6 "grab some condoms" and "lube. Detectives met with Holliday, and placed her into custody for
7 possession of a schedule II drug, Percocet, and an outstanding warrant. At the time of her arrest,
8 Holliday was in possession of a cellular phone, and received a call from Parker. Detectives
9 believe that Parker called Holliday from the above-described Phone.

10 After being provided with her Miranda rights, Holliday agreed to speak with detectives.
11 Holliday provided a taped statement, detailing her relationship with Llamas and Parker. Holliday
12 confirmed that Parker has acted as her pimp and boyfriend since he bailed her out of jail
13 approximately four months ago. Since that time, Holliday has lived with Parker and maintained a
14 dating relationship with him. Holliday told detectives that Parker helped place her ads on
15 backpage.com, responded to customers and kept nearly all of the money she made through
16 prostitution. Parker saw it all as his money, and gave it out to Holliday as he saw fit. Although
17 Parker was initially nice to Holliday and courted her as his girlfriend, he later forced her to work
18 as a prostitute seven days a week, and left her alone for days at a time in the house demanding
19 that she not spend time with her friends and family. Holliday told detectives that she lost
20 everything she ever had - friends, family, possessions etc. over the last several months at the
21 hands of Parker.

22 Holliday told detectives that she was terrified to leave Parker, and was isolated with
23 nowhere else to go. When Holliday disobeyed Parker, he verbally abused her and often beat her
24 severely. Detectives have reviewed numerous jail phone calls in which Parker berates Holliday,
25 screaming, "You need to follow my orders . . . what the fuck I tell you from right now until I get
26 the fuck out of here in three days." Parker also cautions Holliday that that "[her] money better be
27 right when I get out." Parker instructs Holliday to help with his bail saying, "Take that little bit of
28 chump change that you fucking got and give it to Jaccet." I know that Jaccet is the moniker used
29 by Tyler Williams, the leader of the gang. When Holliday starts to sob, Parker says, "I don't want
30 to hear any crying bitch. . . . stop crying nigga; I want someone to be making fucking moves."



1 In addition to verbal abuse and threats, Holliday recounted numerous instances in which
2 Parker assaulted, and imprisoned her in an effort to prevent her from leaving him. In one instance
3 in or around the middle January, Parker became infuriated that Holliday had been with Anthony
4 Flewellen, another Jaccet gang member and pimp. After scolding Holliday over the phone, Parker
5 located Holliday at Flewellen's apartment at 901 Pleasant Ave in Bremerton. Parker came to the
6 residence, and demanded to be let in. Jennifer Prerost, who was present at the residence with her
7 (Prerost's) young daughter, allowed Parker inside the residence over Holliday's protests. Holliday
8 huddled on the ground in Flewellen's locked bedroom. Parker came inside the residence, and
9 broke down the bedroom door. Parker picked Holliday up off the ground by the hair, threw her
10 against the wall and beat her face. Holliday was so terrified that she urinated in her pants. She
11 later discovered large clumps of her hair missing. Detectives spoke to Prerost, who independently
12 confirmed this account of events, telling detectives that it was one of the worst beatings she had
13 ever witnessed. Detectives have also reviewed jail telephone calls, in which Parker tells Llamas
14 that he beat Holliday for stealing from him. In addition, Detectives reviewed jail calls in which
15 Holliday describes this portion of the assault in great detail to Llamas, who appeared more
16 concerned about damage to the wall (Llamas mistakenly believed that the assault occurred in her
17 residence).

18 Holliday told detectives that Parker took her from Flewellen's residence against her will
19 to an unknown house on Houston Ave. Parker continued to beat Holliday about the head and face
20 while in the car, which caused her to temporarily black out. Parker told Holliday that he planned
21 to have his cousins tie her down, and torture her at the residence. Instead, Parker took Holliday
22 inside and retrieved a towel for her to clean the blood from her face. Parker then drove Holliday
23 back to 1720 14th St where he continued to abuse her for the next several hours.

24 At one point, Parker took a handgun and held it to Holliday's head asking if she was
25 ready to die. Parker made Holliday look down the chamber of the gun, which he pointed directly
26 at her face. Holliday broke down in tears as she told detectives that she was terrified for her life.
27 Parker eventually put the gun away, but continued to torment Holliday for the next several days,
28 periodically beating her and demanding that she continue to see clients despite having a black
29 eye, significant bruising and limited function of one of her arms.

30 Although this was the worst beating that Parker inflicted on Holliday, it was far from the
31



1 last. He continued to beat her, often for no reason, in an effort to maintain her as a prostitute
2 under his control. Parker assaulted Holliday as recently as 4/12/13, crushing her cheek against the
3 wall of their apartment with his fist. Parker applied such a degree of pressure that Holliday feared
4 he would break bones in her face. Holliday said that Parker treated her like a piece of property,
5 and made it clear that he could leave her at any time. He expected complete obedience from
6 Holliday, saying that she needed to always be on point, and Holliday lived in constant fear of
7 being assaulted, or possibly killed if she could not perform to his expectations.

8 Holliday spoke extensively about Parker's gun, which she described as a small handgun
9 with a large light on the barrel. Holliday, who is not familiar with guns, noted that it was similar
10 in appearance to a semi-automatic handgun carried by a detective. Holliday told detectives that
11 Parker referred to the gun as "Monster", and usually kept it hidden under his mattress. Holliday
12 confirmed that Parker took the gun to the couple's new residence on S Summit Ave. Holliday told
13 detectives that Parker asked her to move the gun from under the mattress to a bag in the garage.
14 Parker made the request in a phone call from the jail. Detectives reviewed the call which occurred
15 on or around 4/3/13 in which Parker tells Holliday to move "Monster" from under the mattress to
16 a duffel bag in the attached garage. Holliday told detectives that she followed Parkers
17 instructions, and placed the gun in a blue Victoria Secret clothing bag in the garage.

18 On 4/12/13 Detectives applied for a telephonic search warrant for Parker's residence. The
19 Honorable Kitsap County Judge Jennifer Forbes issued the warrant allowing law enforcement to
20 enter the residence to effectuate the arrest of Parker, and search for the firearm.

21 On 4/13/13 at approximately 1200, detectives and patrol officers went to the residence to
22 serve the warrant. Parker, who could be seen inside the residence, refused repeated demands to
23 exit. Because of the severity of the crimes and safety concerns associated with the handgun, the
24 SWAT team responded to the scene. Parker came out of the residence at approximately 1500, and
25 was placed into custody. During a search of the residence, detectives located a confirmed stolen
26 Taurus 45 caliber semi-automatic handgun S/N NBO91701 equipped with a light on the barrel in
27 a clothing bag in the garage.

28 At the time of his arrest, Parker was holding the above-described cellular Phone. The
29 Phone was on, and connected to "Lil Jac" or "Lil Jaccet," which I know to be Travier Stevenson.
30 Detectives believe that Parker also used the phone to call Holliday while she was being placed
31




1 into custody hours earlier. In addition, Detectives believe that Parker used the Phone to
2 communicate with Llamas, advertise for prostitution on backpage.com, respond to customers on
3 Holliday's behalf and/or otherwise further his criminal activities. Based on the foregoing, there is
4 probable cause to believe that evidence of human trafficking 1st degree, promoting prostitution 1st
5 degree and/or prostitution is currently being stored in the Phone.

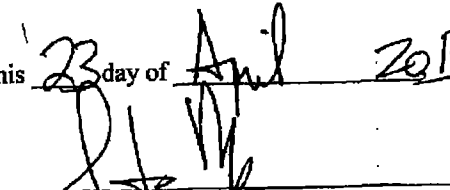
6 I respectfully request that the court issue a search warrant allowing law enforcement to
7 search and seize the following information from the Phone:

- 8 1. All information stored in the above-described cellular phone that can be extracted
9 through a forensic examination, or other means including, but not limited to images,
10 video, contacts, conspirator phone numbers/addresses, text messages, email messages,
11 ledgers, financial transaction information, electronic documents, or any other stored
12 information relating to human trafficking, promoting prostitution and/or prostitution.

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DETECTIVE RYAN HEFFERNAN
Bremerton Police Department

SUBSCRIBED AND SWORN to before me this 23 day of April 2018


JUDGE STEVEN DIXON

Distribution--Original (Court Clerk); 1 copy (Prosecutor), 1 copy (Detective)



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IN THE KITSAP COUNTY SUPERIOR COURT

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STATE OF WASHINGTON,

Plaintiff,

v.

SAMSUNG CELLULAR PHONE MODEL SPH-M580,
S/N DEC268435460810632413 BEING STORED
IN THE BREMERTON POLICE DEPARTMENT'S
SECURE EVIDENCE ROOM AS ITEM # "TP" IN CASE
NUMBER B13-001589 IN THE CITY OF
BREMERTON, COUNTY OF KITSAP, STATE OF
WASHINGTON,

No. 20130180
SEARCH WARRANT FOR FRUITS,
INSTRUMENTALITIES AND/OR EVIDENCE
OF A CRIME, TO WIT- RCW 9A.40.100
Human Trafficking 1st Degree, RCW
9A.88.080 Promoting Prostitution 1st
Degree and/or RCW 9A.88.030
Prostitution

Defendant.

STATE OF WASHINGTON TO- Any Peace Officer in said County

WHEREAS, upon the sworn complaint heretofore made and filed and/or the testimonial evidence given in the above-entitled Court and incorporated herein by this reference, it appears to the undersigned Judge of the above-entitled Court that there is probable cause to believe that, in violation of the laws of the State of Washington, fruits, instrumentalities and/or evidence of a crime as defined by law is being possessed, or kept, in violation of the provisions of the laws of the State of Washington, hereinafter designated and described:

SAMSUNG CELLULAR PHONE MODEL SPH-M580, S/N DEC268435460810632413 BEING STORED IN THE BREMERTON POLICE DEPARTMENT'S SECURE EVIDENCE ROOM AS ITEM # "TP" IN CASE NUMBER B13-001589 IN THE CITY OF BREMERTON, COUNTY OF KITSAP, STATE OF WASHINGTON

NOW, THEREFORE, in the name of the State of Washington, you are hereby commanded, with the necessary and proper assistance, to ~~enter and search said place and to seize any fruits, instrumentalities and/or~~ *search and seize the above-referenced phone for* evidence of the crime(s) of RCW 9A.40.100 Human Trafficking 1st Degree, RCW 9A.88.080 Promoting Prostitution 1st Degree and/or RCW 9A.88.030 Prostitution, to wit-

1. All information stored in the above-described cellular phone that can be extracted

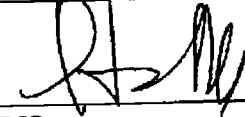


Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949

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through a forensic examination, or other means including, but not limited to images, video, contacts, conspirator phone numbers/addresses, text messages, email messages, ledgers, financial transaction information, electronic documents, or any other stored information relating to human trafficking, promoting prostitution and/or prostitution. and to safely keep the same and to make a return of said warrant within ten (10) days; with a particular statement of all the articles seized and the name of the person or persons in whose possession the same were found, if any; and if no person be found in possession of said articles, the return shall so state. A copy of said warrant shall be served upon the person or persons found in possession thereof; if no such persons are found, a copy of said warrant shall be posted upon or provided to said place where the same are found, then in any conspicuous place upon the place, together with a receipt for all the articles seized.

GIVEN UNDER MY HAND this 23 day of April, 2013

JUDGE **STEVEN DIXON**



APPENDIX B

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IN THE COURT OF APPEALS OF WASHINGTON
DIVISION II

<i>In re the Personal Restraint of</i>)	No. 45811-0-II
)	
ANTHONY DEWAYNE PARKER,)	DECLARATION OF COREEN E. SCHNEPF
)	
Petitioner.)	
)	
)	
)	

DECLARATION

I, COREEN E. SCHNEPF, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

I am a duly appointed, qualified, and acting Kitsap County Deputy Prosecuting Attorney.

I was the lead trial prosecutor in the trial of this case.

I have reviewed the affidavits of Keesha Parker, Patricia Battles, and Romond



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Watson.

The final day evidence was presented I interviewed defense witnesses during a break in the trial.

At no point during of before Mr. Parker's trial did I ever threaten or yell at any witness.

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

SIGNED this 11th day of March, 2015, at Port Orchard, Washington.



COREEN E. SCHNEPF, WSBA NO. 37966
Deputy Prosecuting Attorney



KITSAP DISTRICT COURT

March 12, 2015 - 1:32 PM

Transmittal Letter

Document Uploaded: 2-458110-Amended Respondent's Brief.pdf

Case Name: Parker, Anthony

Court of Appeals Case Number: 45811-0

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Amended Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Elizabeth R Allen - Email: erallen@co.kitsap.wa.us

A copy of this document has been emailed to the following addresses:

jahays@3equitycourt.com