

NO. 63352-0-1

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

MUSE ALI MOHAMUD,

Appellant

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APPELLANT'S REPLY BRIEF

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FILED  
COURT OF APPEALS DIV. I  
STATE OF WASHINGTON  
2010 APR -5 PM 4:01

ORIGINAL

TABLE OF AUTHORITIES

**Cases**

State v. Borg 145 Wash.2d 329, 36 P.3d 546 (2001) ..... 9  
State v. Calle, 125 Wash.2d 769, 781-82, 888 P.2d 155 (1995)..... 9  
State v. Grantham, 84 Wash.App. 854, 856, 932 P.2d 657 (1997)..... passim  
State v. Horton, 136 Wash.App. 29, 36, 146 P.3d 1227 (2006) ..... 4  
State v. Longuskie, 59 Wash.App. 838, 801 P.2d 1004 (1990)..... 16, 17, 18, 19  
State v. Lopez, 107 Wash.App. 270, 275, 27 P.3d 237 (2001) ..... 3, 4  
State v. Perez-Mejia, 134 Wash.App. 907, 916, 918, 143 P.3d 838 (2006)..... 7  
State v. Price, 103 Wash.App. 845, 14 P.3d 841 (2000). ..... passim  
State v. Releford, 148 Wash.App. 478, 200 P.3d 729 (2009)..... 4  
State v. Saunders, 120 Wash.App. 800, 86 P.3d 232 (2004),..... 16, 17, 18, 19  
State v. Tili, 139 Wash.2d 107, 985 P.2d 365 (1999)..... 12, 16, 17  
State v. Woolfolk, 95 Wash.App. 541, 547, 977 P.2d 1 (1999) ..... 7

**Statutes**

9.94A.589(1)(a) ..... 13  
RCW 9.94A.400(1)(a) ..... 13  
RCW 9.94A.589 ..... 19  
RCW 9.94A.589(1)(a) ..... 9, 12

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	NO. 63352-0-1
	)	
vs.	)	APPELLANT'S REPLY
	)	BRIEF
MUSE A. MOHAMUD,	)	
	)	
Appellant.	)	
_____	)	

1. THE PERSONAL RESTRAINT PETITION ESTABLISHES AN ADEQUATE RECORD TO EVALUATE THIS ISSUE

The Personal Restraint Petition filed on January 8, 2010. Along with this instant Appeal, the Personal Restraint Petition establishes an adequate record to review this first assignment of error. A motion to consolidate was filed on January 13, 2010. The motion to consolidate was granted in part on February 10, 2010. However, the portion that was denied would have supplemented and furnished an adequate appellate record.

At this juncture, since the motion to consolidate was denied in part, Appellant concedes there is no adequate *record on appeal* to evaluate this first assignment of error. Thus, *for the purposes of this appeal only*, the Appellant withdraws this assignment of error.

Appellant respectfully requests that the Court of Appeals fully review this assignment of error as part of the Personal Restraint Petition. The

Personal Restraint Petition contains all the necessary information to evaluate Mr. Mohamud's claim as it relates to the first assignment of error.

2. THE CUMULATIVE EFFECT OF TRIAL COUNSEL'S PERFORMANCE FELL BELOW A MINIMUM OBJECTIVE LEVEL OF REASONABLE ATTORNEY CONDUCT

As a preliminary matter, The Personal Restraint Petition filed on January 8, 2010, along with this instant appeal, established another fourth ground of ineffective assistance of counsel. A motion to consolidate was filed on January 13, 2010. The motion to consolidate was granted in part on February 10, 2010. However, the portion that was denied attempted to supplement the appellate record so that the *entire* claim for ineffective assistance of counsel could be granted at once against the entire record. State v. Lopez, 107 Wash.App. 270, 275, 27 P.3d 237 (2001). In fact, the ground of ineffective assistance of counsel brought to light in the Personal Restraint Petition was *the most important error* committed by Mr. Mohamud's trial counsel. Because it was not part of the appellate record, the State, in its response, did not address this fourth, most prejudicial, error committed by trial counsel.

Without surrendering, forgoing or otherwise waiving Mr. Mohamud's right to argue all four instances of error<sup>1</sup>, cumulatively, constituted ineffective

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<sup>1</sup> The four consist of the three in this appeal and the fourth ground in the Personal Restraint Petition.

assistance of counsel, Mr. Mohamud argues that the three alleged in his appeal suffice, in and of themselves, to constitute ineffective assistance of counsel.<sup>2</sup>

A defendant is denied effective assistance of counsel if the complained-of attorney conduct (1) falls below a minimum objective standard of reasonable attorney conduct, and (2) there is a probability that the outcome would be different but for the attorney's conduct. U.S.C.A. Const.Amend. 6, State v. Releford, 148 Wash.App. 478, 200 P.3d 729 (2009). For purposes of ineffective assistance of counsel, Counsel's performance is evaluated against the "entire record." State v. Lopez, 107 Wash.App. 270, 275, 27 P.3d 237 (2001). The Court of Appeals reviews a claim of ineffective assistance de novo; the appellant must show both that counsel's performance was defective and that the error changed the outcome of the trial. State v. Horton, 136 Wash.App. 29, 36, 146 P.3d 1227 (2006).

In evaluating Mr. Mohamud's claim that his attorney did not properly impeach Ms. Jama, the State omits to mention the key difference between all the other impeachment evidence and the telephone interview on the eve of trial. This Court should consider the impeachment value of the contradictions in the telephonic interview, occurring days before trial, which are far greater than the impeachment value of the statements Ms. Jama gave to her health care workers the night of the incident or anyone else. The record implies that Ms.

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<sup>2</sup> Mr. Mohamud respectfully requests that all four errors committed by counsel be cumulatively considered when evaluating his Personal Restraint Petition filed on January 8, 2010.

Jama was intoxicated, excited and in the immediate aftermath of the incident when she gave her original statements to the medical workers.

In contrast, the contradictions between the telephonic interview and trial \_\_\_\_\_ are far more glaring. First, Ms. Jama, presumably, was not intoxicated when she gave her interview to Mr. Geisness and, furthermore, certainly not in the excitable aftermath of the incident. Second, Ms. Jama was changing her story within the period of a few days. Third, a neutral witness would not have the same sympathies to Mr. Mohamud as the other two impeachment witnesses, Ms. Abdulle and Mr. Issee. Fourth, Ms. Jama, was changing her testimony even though Mr. Doyle, the prosecutor, was present during the telephonic interview and at trial. All these inconsistencies go far more towards Ms. Jama's credibility compared to the other impeachments that the State details at length. Quite simply, Ms. Jama story was so erratic and fluid that it changed within days (*and even to the same people*). However, Mr. Guisness could not adequately demonstrate this because he could not properly impeach her.

Regarding the Heineken, the State alleges that Mr. Mohamud failed to demonstrate a lack of trial strategy, or that an objection would have been sustained. First, it is very clear that the State laid *no foundation* for the Heineken bottle at trial. Without laying the foundation, the bottle would have been inadmissible. However, even if it was let in, it would be let in as a demonstrative exhibit as to what Ms. Jama may have hit Mr. Mohamud with. However, that was not its real purpose. Its real purpose was to allow the jury

to speculate on what the police saw at the apartment, *but never entered into evidence*. Essentially, the State was allowed to show the jury a bottle to let them imagine what the responding officer may have seen at the crime scene but fail to enter into the evidence. No trial strategy allows the State to inflame the jury unnecessarily and, this, in culmination with other errors changed the result of the trial.

When evaluating the last act, failure to object during the prosecutor's closing, the State neglects to refute three important points. First, the word "terror" was not casually used, but used "four" times throughout the closing. Second, there was a religious undertone to some of the allegations set forth by witnesses. Specifically there were the lines "God is watching you. Please don't do this." and "Fuck God." RP 33-34. Third, it was implicit, either by design or accident, that the prosecutor was talking about terrorism when he said "terror" that "society" hears "a lot" about. RP 309. What else could the prosecutor have been referring to?

Society is not hearing a lot about "fear," "fright," or "horror" the way they are hearing about terrorism, specifically Islamic terrorism. There is simply no reason to believe that the jury was not lead, either intentionally or by accident, to think that what occurred was an act of "terror" that society hears "a lot about." In other words, this was unnecessarily tied to Islamic terrorism.

"It is unquestionably improper for a prosecutor to reference racial or ethnic prejudice or to appeal to jurors' fear and repudiation of criminal groups as a reason to convict" State v. Perez-Mejia, 134 Wash.App. 907, 916, 918,

143 P.3d 838 (2006) Here, it was unquestionably improper for the State to implicitly reference terrorism which had nothing to do with this case—at all—except that the stereotypical terrorist is a young Muslim male adult. It does not matter if it was accidental or not. This inflamed the jury during the most important part of the trial—closing argument. State v. Woolfolk, 95 Wash.App. 541, 547, 977 P.2d 1 (1999) (“Closing argument is perhaps the most important aspect of advocacy in the adversarial criminal justice system.”). There is no reason why this statement should have been made. Likewise, there is absolutely no tactical reason to allow the jury to believe that it was acceptable, in their minds, to link the events of that night to Islamic terrorism.

These three errors, even without the fourth error alleged in the personal restraint petition, clearly constitute ineffective assistance of counsel.

3. THE ACT OF STRANGULATION OUTSIDE THE CAR AS WELL AS INSIDE THE APARTMENT, ENCOMPASS THE SAME CRIMINAL CONDUCT AS THE KIDNAPPING

The State commits two errors in its analysis of the third assignment of error. First, the State wholly neglects to address that Ms. Jama stated that *three* separate acts of strangulation occurred at *three* separate locations. Second, the State misapplies the case law as it relates to “current” convictions when one of the “current” convictions is kidnapping.

- a. Ms. Jama’s alleges that strangulation occurred in three locations. The principle of lenity directs that the strangulation be deemed to have solely occurred in the parking lot.

For unknown reasons, the State consistently references two times and two locations where strangulation occurred. However, the State *completely omits* that Ms. Jama alleged that strangulation occurred (in three different locations at three different times).

Ms. Jama alleges that Mr. Mohamud strangled in the car; The State addresses this. Resp. Br. pg. 35 Ms. Jama alleges that Mr. Mohamud strangled at the apartment; The State addresses this. Id. However, the State does not address that Ms. Jama alleges that Mr. Mohamud strangled her *on the way from the car to the apartment.* Id.

Ms. Jama testified that Mr. Mohamud strangled her on the way from the car to the apartment. RP 158-159 Ms. Jama's testified as follows:

- Q. So Mr. Mohamud chokes you until you get to the parking lot. When you get to the parking lot, what happens at that point?
- A. I come out of the car. I come out of the car. And then Mohamud is telling me to go into the house. And he started choking me. Dragged me into the house, so I had to go in. I had no choice.
- Q. Did you get out of the car by yourself or were you dragged out of the car?
- A. I got out of the car. And that's when he choked me and started dragging me to the house.
- Q. Okay. Did you get out of the car by yourself?
- A. Yeah.
- Q. Okay. No one dragged you out of the car; correct?
- A. Right after I got out of the car, I was trying to go away, and then he dragged me and started choking me and took me to the house. That's all I remember, me going into the house getting

dragged. That's all. Getting choked. And I ended up on the bathroom and he was still choking me.

RP 158-159

Additionally, Appellant's Brief multiple times, Ms. Jama alleges that strangulation occurred in *three different locations*—in the car, outside the car (in the parking lot) and at the apartment. App. Br. pg. 5, 29, 32, 35, 36

The State and Mr. Mohamud set forth much of the basic foundational case law to interpret RCW 9.94A.589(1)(a) in order to determine whether one “current” conviction constitutes the “same criminal conduct” as another “current” conviction.<sup>3</sup>

*Most importantly*, the State does not contest the following (i) the jury verdict is ambiguous and unclear as to where the strangulation occurred (ii) *Taylor* sets forth that the principle of lenity requires that the ambiguity be resolved in favor of the Defendant and (iii) Mr. Mohamud can elect that only one incident of strangulation occurred and, then, select the incident that has the most ameliorative effect on his sentence. Resp. Br. pg. 30, State v. Taylor, 90 Wash.App. 312, 317, 950 P.2d 526 (1998).

Here, due to the verdict's ambiguity, Mr. Mohamud may argue that the strangulation occurred outside the car and on the way to the apartment *or, instead*, that the strangulation occurred inside the apartment. In either location, as detailed below, the strangulation is part of the same criminal conduct.

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<sup>3</sup> The only significant difference is that the State omits to mention that the Washington Supreme Court has stated that “the purpose of the multiple offense policy is to limit the consequences of multiple convictions stemming from a single act.” State v. Borg 145 Wash.2d 329, 36 P.3d 546 (2001) *citing* State v. Calle, 125 Wash.2d 769, 781-82, 888 P.2d 155 (1995)

- b. The facts and rationale in two non-kidnapping cases, *Grantham* and *Price*, are easily distinguishable from the facts in this Appeal.

The State relies on the facts of *Grantham* (involving the anal rape and subsequent oral rape of the same victim) and *Price* (involving two separate shooting incidents at two separate locations) to conclude that Mr. Mohamud's strangulation and kidnapping in the parking lot were not part of the same criminal conduct. *Grantham* and *Price* are not kidnapping cases. Thus, they are easily distinguishable. State v. Grantham, 84 Wash.App. 854, 856, 932 P.2d 657 (1997), State v. Price, 103 Wash.App. 845, 14 P.3d 841 (2000).

In *Grantham*, the Defendant beat the victim and then anally raped her. Grantham at 856-57 The Defendant finally stopped and withdrew.<sup>4</sup> Id. After the Defendant stopped, he started to beat the victim again. The Defendant then grabbed her face and threatened her not to tell anyone what happened. Id. The victim begged the Defendant to take her home. Id. The Defendant then demanded that the victim perform oral sex on him. Id. When she refused, he slammed her head against the wall, grabbed her hair and forced her to comply with his demand. Id.

The trial court found that the anal and oral rapes did not constitute "the same criminal conduct." Id. at 857. The defendant appealed, arguing that they "constituted the same criminal conduct." Id.

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<sup>4</sup> The Court of Appeals states that "The trial court heard evidence that Grantham completed the first rape before commencing the second." Grantham at 859

In evaluating these facts, first the *Grantham* Court noted that although the anal and oral rapes occurred close in time, they did not occur “simultaneously.” Id. at 858

Second, the *Grantham* Court, noted that it was “significant” that the defendant used two “distinct methods” to accomplish each rape. Id. at 859 Third, the *Grantham* Court considered that the anal rape did not depend on, or “further,” the oral rape. Id.

Most importantly to the *Grantham* Court’s analysis were four key events that occurred between the two rapes. Id. These four events significantly determined that the latter rape had a new objective “intent,” from the former rape. Id. Specifically the *Grantham* Court considered that:

[The Defendant] completed the first rape before commencing the second; that after the first and before the second he had the presence of mind to threaten [the victim] not to tell; that in between the two crimes [the victim] begged him to stop and to take her home; and that [the defendant] had to use new physical force to obtain sufficient compliance to accomplish the second rape.

Id. at 859

Based on this—the completion of one act, the threatening of the victim not to tell, the victim’s pleadings between the rapes and the additional physical force employed to compel the new act—the *Grantham* Court determined that the Defendant had the “time and opportunity to pause, reflect and either cease his criminal activity or proceed to commit a further criminal act.” Id. They found this telling in finding a “new” objective intent.

The combination of all four the aforementioned considerations lead the *Gratham* Court to determine that the second rape was not part of the same “criminal conduct” as the first rape.

However, this Court should not evaluate *Gratham’s* holding without also evaluating the *Tili* decision—a subsequent Washington State Supreme Court case. State v. Tili, 139 Wash.2d 107, 985 P.2d 365 (1999) In *Tili*, a defendant burglar entered the home of the victim. Id. at 111 The Defendant attacked the victim and forced her to subdue to his sexual assault which involved three separate methods of penetration. Id. There were two separate digital penetrations of the victim’s vagina and anus. The Defendant also inserted his penis in to the victim’s vagina. Id. These three separate penetrations occurred over the course of two minutes. Id.

The trial court found that all three penetrations were not part of the “same criminal conduct” as defined in RCW 9.94A.589(1)(a). Id. at 123. The Washington State Supreme Court contrasted the facts of *Tili*, with *Gratham*, and disagreed. Id. Specifically, the *Tili* Court found that the defendant’s three penetrations of the victim were “continuous,” “uninterrupted,” and committed in a “much closer time frame” Id. at 124.

The *Tili* Court stated:

“this extremely short time frame, coupled with [the Defendant’s] unchanging pattern of conduct, objectively viewed, renders it unlikely that [the Defendant] formed an independent criminal intent between each separate penetration.”

Id.

In light of this, the *Tili* Court held that the trial court abused its discretion in failing to treat the Defendant's three first-degree rape convictions as the "same criminal conduct" under RCW 9.94A.400(1)(a).<sup>5</sup>

The State also relies on *Price*, a non-kidnapping case, with the following facts. Aleta Nakano and Larry Hooper saw a suspicious incident at a gas station involving the defendant and a truck. Price at 849 They were driving when they saw this incident. Id. The Defendant drove the truck away from the gas station. Ms. Nakano and Mr. Hooper decided to follow the truck, in their car, in an attempt to take down its license number. Id. They followed the Defendant for some period of time until the Defendant pulled the truck over. Id. Once the Defendant pulled the truck over, the Defendant pointed a gun at Mr. Nakano and Mr. Hooper. Id. They drove off. Id. The Defendant fired the gun at them. Id. The bullet lodged in the passenger headrest. Id. Ms. Nakano and Mr. Hooper drove away as fast they could. Id. However, the Defendant got back into the truck and followed them. Id. A high-speed chase ensued, down the Dechutes Parkway, onto the freeway on-ramp, and then onto northbound Interstate 5. Id. The Defendant followed Ms. Nakano & Mr. Hooper onto Interstate 5 and pulled the truck next to them. Id. As the Defendant was alongside them, he fired two more gun shots at the car. Id.

849-50

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<sup>5</sup> Later recodified as 9.94A.589(1)(a).

The trial court found that two shooting incidents constituted “separate and distinct” criminal conduct. *Id.* at 854 The *Price* Court agreed, holding that the two shooting incidents did not constitute the “same criminal conduct.” *Id.*

*Price*, like *Grantham*, relied on the completion of one act and the passage of some amount of time for pause and reflection. *Price* held that, after the initial shot, “[the Defendant] made the choice to return to the stolen [truck], start the truck, and pursue the victims onto the interstate. This allowed time for [the Defendant] to form a new criminal intent. Like the defendant in *Grantham*, [the Defendant here], had time to decide either to cease his criminal conduct or to commit a further criminal act.” *Id.* at 858.

As discussed above, due to the ambiguity, the principle of lenity allows Mr. Mohamud to elect that strangulation only occurred in one location and that location was the parking lot outside the apartment. Ms. Jama’s testimony regarding this choking incident is excerpted above. RP 158-159. Her testimony is instantly distinguishable from the facts of *Gratham* and *Price*.

First, according to Ms. Jama, the strangulation occurred simultaneously as Mr. Mohamud attempted to force her into the apartment. The State acknowledges that act of kidnapping was not completed when Mr. Mohamud was strangling her. The State states:

“Mohamud then pulled Jama out of the car by her hair, hit her, dragged her across the parking lot and into the vacant apartment. 4 FP 64 Thus, Mohamud had completed the crime of kidnapping because he had abducted Jama by threat of deadly force or by secreting or holding her in the apartment where she was not likely to be found, with the new specific intent of causing Jama physical injury. 4RP 64, 67, 92”

As stated above, this is not the complete testimony of what occurred in the parking lot. This Court must also consider (4) RP 158-159, excerpted above, which sets forth that choking was part of effectuating the ongoing kidnapping—just as the hitting and dragging were. The kidnapping was *not* complete at the time of choking.

These facts contrast with both *Gratham* and *Price* which involved a second independent act occurring after a completed first independent act.

The second contrast between this instant Appeal and *Gratham* and *Price* is that there was a period of time between the first completed act and the second act. This period of time was the underpinning of both holdings. The pause purportedly would allow a defendant to complete one act and then “have opportunity to pause, reflect and either cease his criminal activity or proceed to commit a further criminal act.” See *Gratham* at 859.

Ms. Jama’s testimony of the parking lot stands in stark contrast. The kidnapping was not complete until she was secreted into the apartment. No “pause” existed that allowed Mr. Mohamud to “reflect” on one criminal act before deciding to cease or commit another separate criminal act.

To the contrary, Ms. Jama’s testimony is much more like the victim in *Tili* where three separate penetrations occurred in quick succession. There was no pause to reflect before committing each of these three separate penetrations.

Likewise, here, just as in *Tili*, the choking and kidnapping were part of one “continuous” and “uninterrupted” criminal act committed in a close time frame.

Also, when comparing this Appeal directly with *Gratham* and *Price*, this Court must consider that the strangulation objectively appears to *further* the kidnapping. In *Gratham*, the anal rape did not further the oral rape. In *Price*, the first shooting did not further the second shooting.

When reviewing “same criminal conduct,” and “current” convictions, kidnapping, by its very nature, has singular considerations, which lead to a different case law analysis and conclusion which is addressed in Section (c) below.

- c. Crimes in occurring in conjunction with kidnapping must be considered in light of the singular issues attributed to kidnapping

As addressed in Appellant’s brief, Ms. Jama’s testimony must be evaluated in light of the singular issues that occur alongside the crime of kidnapping. State v. Saunders, 120 Wash.App. 800, 86 P.3d 232 (2004), State v. Taylor, 90 Wash.App. 312, 950 P.2d 526 (1998), State v. Longuskie, 59 Wash.App. 838, 801 P.2d 1004 (1990). Assaults are commonly used to further a kidnapping—as in *Taylor*. Other times, kidnapping is used to further another crime—as in *Saunders* or *Longuskie*.

*Saunders* governs the situation in terms of kidnapping over *Gratham*’s “pause and reflect” analysis. First, this Court should note *Saunders* cites and was published four years after *Gratham* and *Tili*. Saunders at 825.

*Saunders* stands for the proposition that any time to “pause and reflect” is irrelevant if one “current” conviction “furthered” another. As set forth in the Appellant’s Brief *Saunders* states, “[Courts] look objectively at whether one crime furthered the other, or whether there was a substantial change in the nature of the criminal objective.” Id. 824, App. Br. 33

To that point, the facts of *Saunders* reveal a distinct period of time once the Defendant completed the criminal act of kidnapping, before moving onto the act of rape, where there ample time to “pause and reflect.” Id. at 807. However, the *Saunders* Court never, implicitly or explicitly, discussed this concept of whether the Defendant had time to “pause and reflect” before committing a further criminal act. The *Saunders* Court simply focused on the fact that the kidnapping furthered the rape. Very tellingly, the *Saunders* Court held *it was ineffective assistance of counsel* not to argue that the kidnapping and rape were part of the same criminal conduct because the kidnapping was in furtherance of the rape because “*the case law provides strong support to this argument.*” Id. at 825. They seemed to imply that there was little reason to believe that the trial court would find that the rape and kidnapping were not part of the same criminal conduct.

There is simply no way to harmonize *Saunders*, *Longuskie*, or *Dunaway* with *Tili* and *Price* unless this Court considers *Saunders*’ facts, test, rationale and very strongly worded conclusion. In sum, if one “current” conviction that furthers another “current” conviction they can be the same criminal conduct—regardless of a “pause and reflect” period after one

“current” conviction is completed. If this Court found otherwise, this Court would be expressly overruling *Longuskie* where there were many periods to “pause and reflect” during the many molestations.<sup>6</sup>

*Saunders* puts the “pause and reflect” analysis in proper perspective for kidnapping cases. It suborns “pause and reflect” consideration to the consideration of whether one “current” conviction furthers another. Thus, *even if this Court somehow permits the State ignore the strangulation in the parking lot*, the strangulation in the apartment also is part of the same criminal conduct.

Ms. Jama’s strangulation in the parking lot is already reviewed extensively above. To reiterate, the strangulation, like the hitting and dragging, all effectuated the kidnapping. The strangulation furthered the kidnapping and allowed it to happen. This was like the shackling and restraining in *Saunders* which allowed the rape to happen—in other words the kidnapping furthered the rape.

*Saunders* also needs to be considered vis-à-vis Ms. Jama’s testimony regarding the third location of strangulation occurring in the apartment. The State *does* address this third location of strangulation. However, the State applies the wrong analysis. It does not consider *Saunders*, or even address the singular issues involved with kidnapping cases. Had the State done this, the State would have been forced to address why the facts of *Saunders* do not

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<sup>6</sup> It would also cast doubt on the viability of *Dunaway*, a Washington State Supreme Court decision, where the facts seem to reflect ample time to “pause and reflect” between the robbery in the car and the act of kidnapping that occurred after driving from the bank.

indicate the Defendant had ample time to “pause and reflect” before commencing the rape (and, most glaringly, why it was ineffective assistance of counsel not to argue this.) Instead of using *Saunders*, the State relies on *Gratham* and *Price* analysis. However, these cases are inapposite to the matter at hand. They involve two independent crimes *which do not further each other*.

The State does address *Longuiskie*. However, it gives it short shrift vis-à-vis the facts the Appeal. *Longuiskie* contained multiple incidents which would be considered “molestation” and “kidnapping.” There were multiple times to “pause and reflect.” Nevertheless, the State concedes that the kidnapping was found to “further” the molestation. The State does not criticize this decision or seriously attempt distinguish it beyond stating “the court found that the two convictions constituted the same criminal conduct because the child molestation was the objective intent and the kidnapping only furthered that crime.” App. Brf.

Thus, the State leaves this Court with open question. Why did the choking in the apartment not “further” the kidnapping or, conversely, why did the kidnapping not “further” the choking in the apartment?

Analysis of *Saunders* provides the answer the State omits. The choking in the apartment furthered the kidnapping and the kidnapping furthered the choking. They were intertwined, perpetrated on the same victim at the same location. Just as the kidnapping and rape were in *Sanders*. They are the same criminal conduct under RCW 9.94A.589.

CONCLUSION

Mr. Mohamud seeks the following forms of relief, depending on which error this Court finds existed.

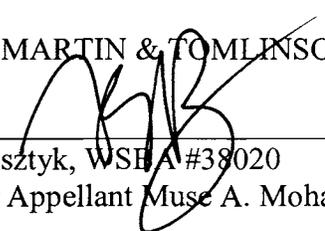
If the second error is found to have existed, then Mr. Mohamud should be brought to King County, Washington and granted a new trial with constitutionally sufficient counsel.

If the second error is not to be found to have existed then this Court should consider the three errors of this Appeal, along with the fourth error cited in the Personal Restraint Petition, and find that Mr. Mohamud is entitled to a new trial in King County, Washington.

If, after considering the Personal Restraint Petition and this Appeal, this Court finds that competent counsel was provided, then Mr. Mohamud should be brought back to King County to be resentenced with an offender score of "0" or be able to present argument as to why the offender score should be a "0" not a "2."

DATED this 5<sup>th</sup> day of April, 2010.

BAROKAS MARTIN & TOMLINSON

By   
Aric S. Bomsztyk, WSHA #38020  
Attorney for Appellant Muse A. MohamuD

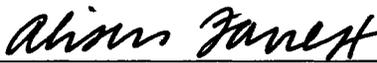
**PROOF OF SERVICE**

On April 5, 2010, I caused the foregoing Appellant's Reply Brief to be served on the parties to this action by electronic mail to:

Jennifer S. Atchison  
Deputy Prosecuting Attorney  
Office of the King County Prosecutor  
Appellate Unit  
516 Third Avenue, Room W554  
Seattle, Washington 98104

I declare that the statements above are true to the best of my information, knowledge and belief.

DATED this 5 day of April, 2010.

  
\_\_\_\_\_  
Alison Forrest

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