

64149-2

64149-2

STATEMENT OF ADDITIONAL GROUNDS

TABLE OF CONTENTS i

REFERENCES iii

OVERVIEW 1

TRAFFIC STOP PERJURY 3

OVERVIEW 3

EVIDENCE OF THE PERJURY 4

MENTAL CONCERNS ALLUDE TO TRAFFIC STOP 6

ATTEMPT TO DISTORT TRAFFIC STOP TIMELINE OF EVENTS 7

PERJURY REVEALED 8

PROSECUTORIAL MISCONDUCT 12

OVERVIEW 12

KNOWINGLY SOLICITED TRAFFIC STOP PERJURY 12

ATTEMPT TO DISTORT TIMELIME OF EVENTS 13

ASK COURT FOR A DETERMINATION OF PERJURY 15

AGGRESSIVE BEHAVIOUR INVALIDATED 15

EXPOSING THE POLICE REPORT PERJURY 17

OVERVIEW 17

POLICE REPORT PERJURY 19

ASK COURT FOR A DETERMINATION OF PERJURY 20

**OFFICER RADLEY’S SECOND ‘EYEWITNESS’ OMMISION AND DEFENSE
COUNSEL’S FAILURE TO PLACE DEFENSE VALUE** 20

SELF-INCRIMINATING QUESTION PERJURY 21

OVERVIEW 21

STATEMENT NOT CREDIBLE – DOES NOT FIT LOGIC OR TIMELINE 23

FILED
 COURT OF APPEALS DIV. #1
 STATE OF WISCONSIN
 2010 JUL -8 AM 10:21

THE PERJURY EXPOSED	24
ASK COURT FOR A DETERMINATION OF PERJURY	25
DEFENSE COUNSEL FAILED TO ATTATCH REASONABLE DOUBT TO INCONSISTENT TESTIMONY	26
OVERVIEW	26
RIGHT HAND TURN LANE	26
VEHICLE APPROACH	27
VEHICLE TO VEHICLE DISTANCE	29
THE OPEN CAR DOOR	30
OVERVEIW	30
EXPOSING THE OPEN DOOR PERJURY	32
ASK COURT FOR A DETERMINATION OF PERJURY	35
OFFICER RADLEY'S FOOT PURSUIT PERJURY	35
OVERVIEW	35
EXPOSING THE FOOT PURSUIT PERJURY	36
ASK COURT FOR A DETERMINATION OF PERJURY	38

1. Mr. Flora's conviction must be reversed. Prosecutor Nielsen elicited testimony from Officer Radley that he knew was perjured testimony.
2. A prosecutor has a special duty not to mislead. Knowing use of perjured testimony deprives me of a fair trial^A and also violates my rights under the Fourteenth Amendment.
3. Prosecutor Nielsen acted in an unethical^B way when he presented misleading facts^C to the court and to the jury, and in so doing deprived me of a fair trial.

Reference:

Prosecutorial Misconduct Second Edition, 10:27, Pages 428, 429

U.S. Constitution, Amendment XIV

- A) U.S. v. Fernandez, 145 F.3d 59, 49 Fed. R. Evid. Serv. 731 (1st Cir. 1998)
- A) U.S. v. Sullivan, 85 F.2d 206 (2d Cir. 1987)
- A) Freeman v. U.S., 495 A.2d 1183 (D.C. 1985)
- A) People v. Zambrano, 124 Cal. App. 4th 228, 21 Cal. Rptr. 3d 160 (4th Dist. 2004)
- A) Daniel v. State, 119 Nev. 498, 78 P.3d 890 (2003)
- A) State v. Singh, 259 Conn. 693, 793 A.2d 226 (2002)
- A) State v. Pilot, 595 N.W.2d 511 (Minn. 1999)
- A) U.S. v. Myerson, 18 F.3d 153, 40 Fed. R. Evid. Serv. 601 (2d Cir. 1994)
- B) ABA Criminal Justice Standards 3-5.6(a) (prosecutor should not knowingly offer false evidence).
- C) Giglio v. U.S., 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972)
- C) Shih Wei Su v. Filton, 335 F.3d 119 (2d Cir. 2003)
- C) Jenkins v. Artuz, 294 F.3d 284 (2d Cir. 2002)
- C) U.S. v. LaPage, 231 F.3d 488 (9th Cir. 2000)
- C) U.S. v. Vozzella, 124 F.3d 389 (2d Cir. 1997)
- C) U.S. v. Catton, 89 F.3d 387 (7th Cir. 1996)
- C) Miller v. Pate, 386 U.S. 1, 87 S. Ct. 785, 17 L. Ed. 2d 690 (1967)
- C) U.S. v. Taylor, 210 F.3d 311, 54 Fed. R. Evid. Serv. 492 (5th Cir. 2000)

C) McKinnon v. Carr, 103 F.3d 934 (10th Cir. 1996)

iv

C) U.S. v. Steele, 91 F.3d 1046 (7th Cir. 1996)

C) ABA Code of Professional Responsibility, DR 7-102(A)(3), (5), (8); DR 7-102 (B)(2)

STATEMENT OF ADDITIONAL GROUNDS

OVERVIEW

The state's case was based entirely on the testimony of Officer Radley. Although this is not unique, paramount to defense strategy should have been the impeachment of the officers testimony and the credibility of the testimony. Defense counsel had ample opportunities to do both but failed miserably on both accounts. I do not know what my counsel's strategy was? Whatever it was, it must not have included impeaching officer Radley's credibility. This issue I believe to be most important for two reasons.

1. Officer Radley was the state's only witness.
2. I also knew that Officer Radley had misled and deceived that court on several different issues, and had committed perjury on a few others.

I explained this to defense counsel several times. Yet apparently impeaching the officer's credibility was not a tactic to be used in her unsuccessful attempt to defend me. Had I testified, my credibility would have surely have come under impeachment.

Often times defense counsel rested or changed to another point in her cross immediately after establishing that point, without further in depth cross. This tactic failed to reveal the reasons and motivations behind Officer Radley's unconventional deviation from standard police training. Not to mention, the professional and legitimate actions of a trained police officer. As a direct result of this failure, contradictory and perjured testimony was allowed to go unchallenged or questioned.

Was Officer Radley's testimony credible beyond a reasonable doubt? How could have this been truly determined without a thorough and complete cross? I hold that it could not, and as such, defense counsel erred and was ineffective in my defense. Had she used a more aggressive cross, perjuries would have been exposed. I will provide convincing evidence that there was a conspiracy between prosecutor Nielsen and Officer Radley. I will also show that prosecutor Nielsen solicited testimony from the officer which he knew was false, to be presented before the jury to bring

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2010 JUL -8 AM 10:22

about my conviction.

A witness was present during the entire series of events, with a front row seat. Officer Radley did everything within his power to ensure that there would be no other evidence or testimony that could impeach his sole version of the events that took place on December 27, 2007. Common sense tells us that if this witness would have confirmed the officer's version of what took place, that he would have included the witness's statement, as well as mentioning their existence in his police report.

Video camera footage and the observations of another eyewitness were readily available at Officer Radley's disposal. Yet the officer chose to keep his dashboard camera disabled. His deceptive tactics did not end there. Officer Radley also chose to deny the existence of a witness seated right next to him by omitting this person from his sworn police report, a police report he later testified that was accurate and complete. Furthermore, the officer continued to hide this witness from discovery by the defense for 18 months.

When finally questioned under oath about the possible presence of another eyewitness to the events. Officer Radley provided the name of a false witness, that defense counsel had initially determined was deceased. However the state, using resources not available to the defense, had determined within hours that this witness was in fact, alive and well. Even with that determination, the state chose not to call upon the witness or use her testimony, for what later could be considered dubious good foresight, in my prosecution.

Most disturbing however, is that prosecutor Nielsen had prior knowledge of, and solicited perjuries from a known dishonest tribal police officer to prosecute and convict me. This will be discussed thoroughly in this Statement of Additional Grounds, as well as the supportive evidence which suggests that a conspiracy existed with Officer Radley to bring about my conviction.

During the pre-trial motions, defense counsel failed to challenge or point out the contradictory and misleading statements being used by the state to support their motions. It was defense counsel's responsibility to point out some of the more obvious exaggerations and misleading statements being used by the state, to obtain favorable rulings on motions

in their behalf. Defense counsel could have referenced and presented to the court, information in the police reports in a file at her side, to argue some of the state's more obvious false assertions and exaggerations. Such as pointing out the light vehicle damage received from the state's exaggerated '100 mile an hour crash'? That crash as having occurred, into a ditch lined with 'jagged boulders', as Officer Radley later testified.

The favorable rulings the state did receive in these pre-trial hearings would later prove to be detrimental in my defense in both cases being heard. This failure by defense counsel prejudiced me during my trial and later in plea bargaining.

TRAFFIC STOP PERJURY

OVERVIEW

Upon my initial reading of Officer Radley's police report. I was most outraged by the officer's failing to mention a series of events that took place, just prior to my ending up on the westbound shoulder of Highway 20. This will be discussed in my sworn statement included in my Personal Restraint Petition. Equally egregious was his failure to mention the witness seated next to him.

Officer Radley also stated that he did not activate his emergency lights when he initially pulled in behind me, as I had just conveniently pulled on to the shoulder of the road in my own volition. Making the false assertion that he had just pulled in behind my vehicle, to see if I was OK or needed any assistance.

It was the actions of that vehicle and its male occupants, actions that were omitted from Officer Radley's sworn police report. Combined with my observations upon exiting my vehicle that convinced me to believe my life to be in danger and I needed to get to a place of safety.

One may ask, just as the prosecutor mentions in his closing arguments, why didn't he just call the police? My answer is this. That may be the obvious option available for most citizens not of color, who may be naive and unaware. Because of the police actions in the past in responding to threats against my family or children. I tend to view police actions with a little more scrutiny than the average citizen. As a matter of fact, I filed a lawsuit against the Skagit County Sheriff Department back in the late 1980's.

The sad reality in our society remains, that the police are not always a bastion of safety and integrity for **all**

citizens. Case in point, this very appeal! We have a police officer who deliberately omits key details, including a witness seated right next to him from his sworn police report. In addition, it will later be exposed that not only did Officer Radley falsify his sworn report, but he also commits perjury on the stand as well, and on more than one occasion.

Which takes us back to the naïve premise that calling the police is always the best option for all citizenry? Far more important however, it serves as but another reminder to mainstream America not of color, the sad reality still remains. That police officers are not always a bastion of safety and integrity for all.

Had told Mr. Roth, the original counsel up to March 20, 2009, and Ms. Bonkoski, that Officer Radley had used his emergency lights at the Reservation Road intersection of Highway 20, and had pulled me over. Also that I had initially complied by pulling over some 200 feet west of the intersection. That was the reason why I was stopped on the westbound shoulder of Hwy 20 on December 27, 2007.

Several times during Officer Radley's deposition and during trial, when asked if he had activated his emergency lights when he had pulled in behind me. Officer Radley categorically denied doing so and committed perjury with that testimony on several different occasions.

EVIDENCE OF THE PERJURY

What follows is proof of this perjury:

1. Officer Radley is in the right turn lane before the Reservation Road intersection on Hwy 20. He runs my license plate, 84 PMK. It is important to note here that the vehicle is not registered to me. *(2007Police Report page 1 / paragraph 6)*
(Deposition page 6 / response 4)
2. The officer states, "What had happened is I had called out that um that I had attempted to stop this vehicle..." Later in the response he also states the, "I ran that information um, ran that information." Officer Radley makes the decision "I'm just going to double check real quick..." How can the officer do that, 'real quick', without activating his emergency lights to have me pull over?
(Deposition page 6 / response 4) (2007Police Report page 2 / paragraph 9)
3. Then he continues to state that, "...at that time his mug shot popped up we were five and eight feet of each other." This event occurred after I had exited my vehicle. I was then standing 5 – 8 feet away and my picture simultaneously pops up in the MDT. For my picture to pop up, Officer Radley had to get that information first

from the Mount Vernon officer, as the vehicle is not registered to me. So at this point in time three things had taken place.

License plate had been ran – in the right hand turn lane at the intersection.

Radley is talking with a Mount Vernon officer that he is stopping or attempting to stop this vehicle – this also occurs as both vehicles are at the intersection or in the process of pulling over on to the shoulder. As the Mount Vernon officer recognizes the plate registration over the radio and contacts Officer Radley.

My picture pops up – I have already been pulled over by emergency lights and have exited my vehicle to determine my suspicions and was standing 5 – 8 feet Radley's vehicle.

This all took place **BEFORE** I had returned to my vehicle and re-entered Hwy 20.

(2007 Police Report page 2 / paragraph 9)

4. I then get back into me vehicle and re-enter the highway. This signal to stop was given in the form of emergency lights at the Reservation Road intersection. It is important to note that the officer doesn't say, I fled the scene after he gave me the signal to return to his vehicle. Officer Radley uses the word STOP. As in fleeing after a TRAFFIC STOP.

There are several other indications of Officer Radley's perjury as well.

(Deposition page 13 / response 8)

Here, we have Officer Radley clearly indicating he has performed a traffic stop stating, "... I think the lights may, well, it may have cycled during the time of all of the stop ...". The other vehicles were now gone, except for Radley's vehicle and mine, which had just been pulled over at the Reservation Road intersection. During the whole time of this traffic stop, the lights did cycle .

(Trial page 60 / line 25)

Once again, we see Officer Radley alluding to, "the time of the stop". Mentioning on page 61 / line 1, "... he was running". *(Trial page 29 / line 17) (Deposition page 9 / response 1)* This in reference to me running back to my car after I had approached Radley's vehicle. The officer answers, "That is correct". When asked if I had taken off before he activated any lights. Yet alludes to "the stop", seconds later on line 25.

This testimony is a complete opposite of what the officer wrote in paragraph 9 on page 2 in his 2007 police report. In that report he mentions my picture popping up in the MDT. In which he had stated earlier, had done so when I

was 5 – 8 feet away. Just after having exited my vehicle and approached Radley’s vehicle. Then the officer has me fleeing the scene AFTER I signaled him to stop. Directly referencing that I had already been pulled over by the emergency lights signal, of a traffic stop.

(Trial page 26 / line 6)

Here the officer states, “Exactly, Just stop, say: Hey, are you alright?...”. He can’t very well do that unless I pull over for him. He does not say, “just pull in behind” to say, “Hey, are you alright”. He uses the word, “stop”. As in I need to do a traffic stop to speak to this guy.

(Trial page 27 / lines 13-14)

Officer Radley again mentions, “our stop”. He does say “our stops”, as in a general reference to departmental practice. He says, “our stop”. This infers that he has someone with him at the time of “our stop”. This stop occurs at the Reservation Road intersection. “Our stop” also implies that this passenger has some vested interest in this stop.

(SAG page 15 / lines 1-7, page 16 / lines 37-48)

MENTAL CONCERNS ALLUDE TO TRAFFIC STOP

The officer mentions mental and agitation issues several times in his testimony.

DEPOSITION	TRIAL
Page 7 / response 2,3,4	Page 25 / lines 19-20
Page 8 / response 2	Page 26 / lines 22-25
Page 9 / response 5,6	Page 27 / lines 16-18
Page 10 / response 2	Page 29 / lines 1-3

I mention this; because it goes to further show that Officer Radley did execute a traffic stop at the Reservation Road intersection and pull me over onto the shoulder, some 200 feet west of the intersection. Contrary to his multiple perjuries, that he did not activate his emergency lights until ‘after’ I had re-entered my vehicle and merged back onto Hwy 20.

Officer Radley talks about how during a ‘normal’ traffic stop. Information regarding assaults or ‘two person’ details, etc., is given to the officer once the license plate is ran. Including if a particular individual is associated with that vehicle.

I want to take a moment to clarify to the court a falsehood the officer stated concerning my criminal record.

Officer Radley states, “... if I remember right there is an assault for police”. I have never convicted, or arrested for that matter, for assaulting a police officer. The court can easily verify. This is but another example of this officer’s propensity to mislead and exaggerate the facts, in his testimony. As this SAG continues, this false and misleading

practice will repeat itself many times in the testimony and prosecutor Nielsen will join the officer in using this tactic.

Defense counsel specifically asked him when did he learn that information? As the officer had been referring to 'mental status' since pulling in behind me at Reservation Road. As usual, he is ambiguous in his answer but finally states that it was after he activated his lights following my re-entering the Hwy 20. He still doesn't quite narrow it down apparently wanting to leave maneuvering room and quickly changes the subject to, "all I'm trying to do now is get a plate..." *(2007 Police Report page 1 / paragraph 6)* Apparently Officer Radley has already forgotten his previous testimony? Where he clearly indicated in his police report that the license plate was ran in the right hand turn lane.

We will see this tactic used successfully throughout the officer's testimony in his deposition and trial. It worked magnificently well because defense counsel never once redirects the officer to provide a definitive answer to her question he sidesteps. But the ambiguous answer the officer did give, shows an attempt to mislead and distort as to when he actually activated his emergency lights.

The officer makes reference to mental state a couple of times just prior to and while on the shoulder of the highway. The fact is, that he executed a traffic stop at that intersection. This information was provided to him at, or just after that point in time. With additional information coming from the Mount Vernon officer.

This all took place SHORTLY AFTER my license plate was ran in the right hand turn lane at the intersection. This explains how Officer Radley was privy to the information long BEFORE I re-entered the highway following the traffic stop. This also accounts for his references to mental state, apart from the alleged 'doing a Muhammad Ali' back to his vehicle.

ATTEMPT TO DISTORT TRAFFIC STOP TIMELINE OF EVENTS

Prosecutor Nielsen and Officer Radley try to distort when the officer actually activated his emergency lights. By *(Deposition page 10 / response 4)* claiming just as I was re-entering the highway, Radley was, "trying to get a plate". The officer also strategically places paragraphs 8 and 9 at the end of his police report on page 2. After I had parked my car at the church. All in an apparent attempt to distort the actual chain of events. I will discuss in the Misconduct heading how Mr. Nielsen aided and abetted in Officer Radley's timeline distortion.

In addition to this timeline distortion by Officer Radley. I want to point out another dubious point in the officer's 'made to order' police report. Officer Radley has just started his pursuit and states, "...I informed the center that
(2007 Police Report page 2 / paragraph 2)
I would be very shortly terminating my attempt to stop the vehicle".

How does the officer know that he will be 'very shortly terminating' his pursuit? We are on a straight mile stretch of a four lane highway doing an alleged 70 mph and the pursuit just started a couple seconds earlier? How did the officer know that I was going to be 'very shortly' signaling to turn left on to Thompson Road, for I had not signaled yet? This short revealing text shows that Officer Radley writes 'made to order' police reports. In this case, a report that contains a dubious 'psychic' or prophetic fact.

PERJURY REVEALED

This is not the full chronologic sequence of events that occurred on December 27, 2007, because Officer Radley chose to commit multiples acts of perjury in his testimony and in his sworn police report. In order to expose the perjury of Officer Radley, I will with that caveat, say that this is what took place. At any rate the end result was IDENTICAL. In that I ended up with my vehicle on the westbound shoulder of Hwy 20, approximately 200 feet west of the Reservation Road intersection. The actual process or reason by which I arrived at that location will ultimately be a matter for this court to decide.

(Trial page 4 / lines 24-25) (3.5 Hearing page 3 / lines 13-19)

Officer Radley, who is designated as a traffic officer for the Swinomish Tribal Police Department, is behind a vehicle that just did a 'panic stop' and is now in the right hand turn lane. Officer Radley runs my license plate and begins
(2007 Police Report page 1 / paragraph 5)
(Deposition page 6 / response 6)
to converse with a Mount Vernon police officer who hears the vehicle ID over the radio and thinks he might know who the driver is.

(Trial page 57 / lines 21-23)

This individual then crosses the highway intersection using the right hand turn lane and immediately pulls over onto the shoulder of Hwy 20. In doing so, violates a traffic law right in front of the Swinomish Tribal Police Department's traffic enforcement officer. However, Officer Radley does not attempt a traffic stop and pull over this violator? He simply pulls in behind the vehicle as it had just conveniently pulled onto the shoulder of the road. To offer

his assistance without activating any kind of emergency lights.

(2007Police Report page 1 / paragraph 4)

I want to take the time here to describe the scene at this point in the Officer Radley perjury. It is dark and in

(Trial page 6 / line 21, page 19 / line 25, page 20 / line 1)

heavy rain. We now have two vehicles on the shoulder of a busy four-lane highway with slippery road conditions.

(2007Police Report page 1 / paragraph 7)

However, Officer Radley DOES NOT ACTIVATE ANY KIND OF EMERGENCY LIGHTS. For he just wants to get

(Trial page 26 / lines 2-8) (Deposition page 9 / response 4)

out of his vehicle and have a little 'chit chat' with the individual who happens to pull over onto the shoulder on the highway on his own volition. The officer just wants to say, "Hey, are you alright?", Can I be of assistance?

In fact, Officer Radley is so pre-occupied with his 'chit chat'. That he disregards the road conditions and the fact that there are now two vehicles on the shoulder of a busy four-lane highway, with other vehicles passing by a few feet away. Given all these conditions. Officer Radley still DOES NOT ACTIVATE ANY KIND OF EMERGENCY LIGHTS. This is the perjured testimony that Officer Radley expects us to believe?

Furthermore, this violator just happened by coincidence to pull over onto the shoulder of the highway at the exact time Officer Radley had decided he wants to have a little 'chit chat' with the individual. Yet the officer states later in trial, "It's a standard safety procedure to keep your lights on so people can immediately indicate where you're at".

(Trial page 41 / lines 5-6)

(Deposition page 10 / response 2)

The officer talks about how during a normal traffic stop, information is given the officer once the license plate is ran. Also how sometimes additional information is provided by another officer who may have had a prior stop or is familiar with the vehicle and/or driver. My license plate had been ran in the right hand turn lane at the intersection. We then have a conversational exchange with a Mount Vernon officer. Officer Radley's description of the scene sounds very much like a typical traffic stop. The officer evens contacts his dispatch saying, "I'm going to be out with this vehicle".

(Trial page 26 / lines 14-15)

IN A FINAL REVIEW OF OFFICER RADLEY'S PERJURY:

(2007Police Report page 1 / paragraph 5) (Trial page 20 / lines 20-25, page 21 / lines 1-3)

1. We have a 'panic stop' and I pull into the right hand turn lane at the Reservation Road intersection.
2. We have Officer Radley then pull in behind my vehicle in the right hand turn lane and run my license Plate.
3. We have a Mount Vernon officer recognizing the vehicle plate and relaying to the officer who the driver may be.

(Trial page 26 / lines 13-22)

The officer then inputs that data into the MDT stating, "I got information out".

(Trial page 51 / lines 21-23)

4. We then have me violating a traffic law by crossing the intersection using the right hand turn lane, and doing so right

in front of the traffic officer.

5. All the while, data is coming in about Mr. Flora on the MDT and from the Mount Vernon officer. I have now pulled
(2007Police Report page 1 / paragraph 7) (Deposition page 6 / response 7, page 9 / response 4, page 10 / response 2)
over onto the shoulder of Hwy 20 by Officer Radley's emergency lights. Contrary to the eight perjuries stating he
(Trial page 25 / lines 14-16, page 20 / lines 9-12, page 57 / lines 17-20, page 50 / lines 59-66)
did not activate his emergency lights when pulling in behind me on the shoulder of the road.

(Deposition page 10 / response 5) (Trial page 27 / lines 19-25)

6. I exit my vehicle and approach Radley's vehicle, who is sitting in his vehicle and sees me coming. The officer begins
(Trial page 28 / lines 1-3, page 58 / lines 20-25, page 59 / lines 1-12) (2007Police Report page 1 / paragraphs 9,10)
to frantically wave me away and mouthing the word "GO". He can not hear what I am saying due to the heavy rain

and cars noisily passing by a few feet away on the four-lane highway.

(Deposition page 10 / response 4)

7. We have Officer Radley definitely wanting to talk to me about my actions at the intersection. I also want to note that
(Deposition page 10 / response 4)
in the response officer Radley states, "... All I'm trying to do is get a plate ...". Apparently he has already forgotten
his previous testimony minutes before. For he has already ran the plate in the right hand turn lane at the intersection.

The officer gives us three more reasons why he really wants to talk to me. Proving a total of four different testimonies.

(Deposition page 9 / response 6)

- Is it that he wants to check on driver inattention and possible intoxication?

(Trial page 25 / lines 18-25)

- Or is it that it is now only '8:00 PM' and I might be coming back from a 'late night'?

(Deposition page 9 / response 4, page 6 / response 7)

- Or is it that he just wants to offer his assistance, make sure I'm not having a reaction. Just say, "Hey, are you alright?". Not write a citation or anything like that.

8. We now have two vehicles on the shoulder of a busy four-lane highway. It is at night and in heavy rain with slippery road conditions. However, GIVEN ALL THESE CONDITIONS. Officer Radley DOES NOT ACTIVATE ANY KIND OF EMERGENCY LIGHTS? Officer Radley does not pull me over?

This STOP had occurred BEFORE I had exited my vehicle.

This STOP had occurred BEFORE my picture popped up on the MDT.

This STOP had occurred BEFORE I re-enter Hwy 20.

(2007Police Report page 2 / paragraph 9)

9. We have me leaving the scene, "after I signaled him to stop". Notice that the officer does not say, "after I signaled him to return to his vehicle". He says, "... after I signaled him to STOP". That signal coming by the activation of

emergency lights back at the Reservation Road intersection.

10. I saved this final bit of evidence until last for two reasons. The first being, that it is that it provides solid proof of Officer Radley's **eight perjuries**. The second being, that it is also the most disturbing and reveals a conspiracy existed between Prosecutor Nielsen and the officer. I will provide further evidence exposing this conspiracy later in the Misconduct section. For now however, I simply wish to expose the eight perjuries of Officer Radley on this matter. I will also expose additional perjuries of the officer on other matters later in the SAG. Prosecutor Nielsen is making his closing remarks before the jury. He has just completed explaining my hasty retreat back to my vehicle and my sudden re-entry back on to Hwy 20. The prosecutor then states, "He hurries back to his vehicle, immediately gets in, does not wait for Officer Radley to come approach him to see what the reason for the stop is. He hits the gas and peeled out of there".

Prosecutor Nielsen does not say, "the reason for pulling in behind me". The prosecutor uses the word "STOP", as in a TRAFFIC STOP. Wait for the reason why Officer Radley stopped me. Prosecutor Nielsen has just revealed that not only did he have prior knowledge of Officer Radley's eight individual perjuries concerning this fact. But that he and Officer Radley have conspired to deprive me of my Constitutional rights and deny me my liberty, by knowingly using the perjured testimony of a dishonest tribal police officer. Furthermore, Prosecutor Nielsen knowingly solicited two of those perjuries with his own questioning. Perjuries he entered into trial testimony to convict me before the jury. As I mentioned before, I will detail more of the conspiracy in my Misconduct section.

Officer Radley has resorted to every trick in the 'Book of Deceit' to conceal his perjured testimonies and distort his felonious police reports. In doing so, he has dishonored the badge he wears. Violated the public trust he holds, and (2007 Police Report page 1 / paragraph 7) (Deposition page 6 / response 7, page 9 / response 4, page 10 / response 2) broke the law he enforces. I ask the court for a determination of eight individual perjuries in Officer Martin Radley's multiple testimonies. That he did not activate his emergency lights just before pulling in behind my vehicle on the westbound shoulder of Hwy 20, just west of the Reservation Road intersection.

PROSECUTORIAL MISCONDUCT

OVERVIEW

Prosecutor Nielsen was aggressive and determined in my prosecution and there is no fault in the performance of one's profession if done so within the parameters of the law. However, prosecutor Nielsen went beyond performing his duties within the ethical and legal standards the law mandates.

He went far beyond those parameters when he tossed those standards to the wayside as he asked Officer Radley, *(Trial page 25 / lines 14-16)* "Now, at this point Officer Radley, did you have your lights on, anything on in your vehicle"? Officer Radley answers, "No I did not". With that single question, prosecutor Nielsen ceased being a prosecutor and instead became a criminal. For prosecutor Paul Nielsen already knew that the answer he was soliciting from Officer Radley was false and untrue. *(SAG page 15 / lines 1-17)* Yet he knowingly solicited that perjury from a known dishonest tribal police officer to bring about my conviction at all costs.

I intend to show clear and convincing evidence that a conspiracy existed between prosecutor Nielsen and Officer Radley. Prosecutor Nielsen needed specific testimony to satisfy key elements in order to convict me. He found a ready and willing participant to supply that necessary 'made to order' testimony.

Never mind that 'made to order' testimony contradicted itself or other testimony.

Never mind that 'made to order' testimony wasn't in the police reports.

Never mind that 'made to order' testimony did not make sense or follow the timeline of events.

Never mind that 'made to order' testimony was false.

It all had one purpose, and that was to falsely prosecute and convict me of a crime I did not convict.

KNOWINGLY SOLICITED TRAFFIC STOP PERJURY

Officer Radley testified on eight separate occasions that he did not activate his emergency lights when he pulled in behind me on the shoulder of Hwy 20, just after the Reservation Road intersection. Once in the 2007 police report, three times in the deposition, and four times in trial. With two of those trial perjuries solicited personally by prosecutor *(SAG page 11)* Nielsen. Prosecutor Nielsen knew the testimony he was soliciting from Officer Radley was false and untrue. Yet he

introduced that testimony into trial in order to mislead the jury and bring about my frame and conviction.

If the court agrees with my arguments in a finding of perjury against Officer Radley in the preceding heading. I ask the court for a determination of affirmative misconduct against prosecutor Paul Nielsen. I also ask that the court find that prosecutor Nielsen was in error when he knowingly introduced testimony he knew to be false and untrue on two separate occasions.

(Trial page 25 / lines 14-16, page 20 / lines 9-12)

ATTEMPT TO DISTORT TIMELINE OF EVENTS

This heading is directly related to the similar matter reviewed on page 7 in the SAG. I will show how prosecutor Nielsen aided and abetted his co-conspirator in their attempt to distort the actual time at which Officer Radley made positive identification. Of me. The prosecutor's choice to interject his line of questioning at the point in time he did, exposes his decision to distort the actual timeline of events.

(Deposition page 6 / response 4)

Officer Radley mentions my picture popping up in the MDT and states, "...his mug shot popped up at the time during the a December 27th event we were between five and eight feet of each other ...". Two responses later he tells defense counsel that the running of the license plate was what brought the Mount Vernon officer into the conversation. My plate was ran in the right hand turn lane at the very start of the chain of events. It is interesting to note here because it does show a joint effort with Officer Radley to distort exactly when the officer made positive ID.

(2007 Police Report page 1 / paragraph 6)

We have defense counsel questioning the officer as to when he actually made identification of me. Radley states, "Um, no, it was even after that.", referring to my just having re-entered Hwy 20 from the shoulder. It is important to note here that this had occurred only seconds after being five to eight feet of Radley's vehicle. Being how my picture has already popped up in the MDT seconds earlier, one can easily see where the officer is going with this. Now the officer is trying to say that he learned of my ID at some point in time AFTER I have re-entered Hwy 20. Clearly trying to distort the time of my actually being identified.

Right after Officer Radley finishes that sentence, he immediately changes the subject matter. We have seen this many times before in his testimony during the deposition and trial. It usually happens when the officer realizes there is a problem with his answer. Either it doesn't fit into the scheme of things, or it as a falsehood.

(Deposition page 10 / response 4)

Then co-conspirator Radley becomes completely flustered and blurts out, "... all I'm trying to do now is get a plate .." Not only has he already forgotten that he ran my plate in the right hand turn lane at the very beginning of the chain of events. He now appears to be clumsily trying to lay foundation for the testimony to come. Testimony which actually tries to distort the true timeline of events. It also seems that at this point he is trying to explain away the response he made seconds earlier when he talks about if it were a 'normal' traffic stop, that information would have been provided once the plate was ran.

This shows the degree of effort made by the officer to distort when I was actually identified. This is important because I will later show how prosecutor Nielsen also tries to substantiate the distortion.

(Trial page 44 / lines 10-12)

Now to set the scene. We are now at the church and Officer Radley has just searched my vehicle. The prosecutor asks Radley if he knew who was driving the Camaro and Radley replies, "Not at this point". The prosecutor then asks what he did to try and determine the driver. Radley states, "I gathered information on our own information, attempted to contact who the registered owner was".

(Trial page 44 / lines 18-25)

The prosecutor then asks Officer Radley, "Did you ever determine who the individual was"? Officer Radley responds, "Yes, I was contacted by the Mount Vernon police officer who had been monitoring the radio while we ...". Then he completely changes the subject and starts to ramble on about frequencies and other departments. This is the identical tactic and behavior Officer Radley has exhibited before, when he suddenly realizes his answer doesn't fit or he is trying to deceive.

In this situation, it appears that the officer does not want to associate my identification as having been accomplished much earlier in the chain of events. In reference to the Mount Vernon officer who had been monitoring the situation from the start. After the Mount Vernon officer recognized the plate and registration information when it had been ran in the right hand turn lane at the intersection.

This Mount Vernon officer contacts Radley with my possible ID. Which Radley then enters in the MDT and my picture pops up right about the same time I am 5 – 8 feet away and turn around to return to my vehicle and re-enter Hwy 20. The prosecutor then asks Radley, "Did you end up - - - so how did you identify the individual that was in the

(Trial page 45 / lines 12-15)

vehicle?" It is important to note what happens next. Officer Radley starts to answer the question then again, mid-sentence, he stops and needs to refer to his report. This is an apparent attempt to try and make everything fit.

(Trial page 45 / lines 16-17)

Co-conspirator Nielsen rescues the officer this time by making it easier for him. By asking point blank, "Did you ever look the photograph?" Apparently prosecutor Nielsen doesn't want his co-conspirator to foul up the scenario he is trying to establish with his line of questioning. That being that my positive identification had occurred at that particular point in time in the chain of events.

It is also interesting to note that Officer Radley seemed to completely forget what he stated in his police report,

(2007 Police Report page 2 / paragraph 9)

"I looked up Mr. Flora using my in-car Mobile Data Terminal ..." The answer to the question was that simple. It appears that the last thing co-conspirator Nielsen wanted at the end of 'his' chain of events, was to reveal that my positive identification was established long before. By the information given to Officer Radley by the Mount Vernon officer who had been monitoring the chain of events and talking with Radley since the right hand turn lane.

Finally, I want to point out one more element to this false testimony. Later in trial when asked by defense

(Trial page 64 / lines 19-20)

counsel if he called or went to the registered address? Radley states, "No, I did not obtain that information." This was but PO another blatant lie. He had that information as it was in the vehicle registration. The fact is, the complete response contradicts what the officer testified earlier when he answered his co-conspirator saying, "... attempted to contact who the registered owner was."

(Trial page 44 / lines 13-15)

ASK COURT FOR A DETERMINATION OF PERJURY

I ask the court for a determination of perjury against Officer Radley in his answer to prosecutor Nielsen. When

(Trial page 44 / lines 14-15)

he stated, "I gathered information on out own information, attempted to contact who the registered owner was."

AGGRESSIVE BEHAVIOUR INVALIDATED

(Trial page 26 / lines 24-25, page 27 / lines 16-22, page 29 / line 29)

When I exited my vehicle that night, I hardly stomped and stormed, or aggressively approached the officer's vehicle with fists clenched or lightly clenched. No one in their right mind would approach an unknown vehicle in that manner on a dark highway in this day and age. Especially a vehicle in which I had determined contained two males

masquerading as cops. You could get shot dead in your tracks.

In spite of all that, Officer Radley has me just short of doing a 'Muhammed Ali', on the way back to his vehicle. Stomping and storming with fists clinched. The only thing he left out was the teeth, but he has me yelling so he couldn't very well add that.

In his police report he states, "When the male driver jumped from the vehicle and take an aggressive stance as the male driver walked to my vehicle." Just exactly does one walk with an aggressive stance?" The officer mentions that (2007 Police Report page 1 / paragraph 8) I jumped from my vehicle in his police report, but talks about me 'stomping and storming' out of my vehicle threes times (Deposition page 7 / response 2, page 9 / response 5, response 6) (see 2009 police report crash site photos) during his deposition. My vehicle is not a convertible. As such, how does one 'jump' from a vehicle while using a car door to exit?

In trial testimony the officer states, "He was taking an aggressive stance, walked toward my vehicle." Seconds (Trial page 27 / lines 17-18) later he has me, "marching at a pretty good clip toward the back , toward me." As above, how does one take an aggressive stance while walking or marching?

(Deposition page 9 / response 5)
At any rate, Officer Radley does not like how I got out of my car stating, "Its just not a normal, normal deal (Deposition page 9 / response 6) here." Because I was supposed to know that he was just masquerading as a 'random citizen' who just wanted to chit chat (Trial page 26 / lines 6-8) and say, "Hey are you OK."

As I mentioned at the beginning of this heading, I hardly approached Radley's vehicle doing a 'Muhammed Ali' with fists clenched and all. This was more 'made to order' testimony from Officer Radley.

The officer can only come up with one reason why it appeared to him that I turned around and hastily retreated (Deposition page 10 / response 5) to my car. He states, "Hey it could be that he is scared," In Trial the officer states, "I open my door. I step out of my (Trial page 28 / lines 14-15) vehicle. I'm giving this gentleman commands to get back into his car." Here the officer refers to my demeanor as being that of a gentleman. Both of these testimonies contradict and invalidate all the false 'made to order' testimonies that have me doing a 'Muhammed Ali' with fists clinched. As I approached what I had ascertained as being a fake police vehicle containing two characters in light brown shirts not matching any uniforms of the known police agencies, on a dark and isolated stretch of Hwy 20 inside the city of Anacortes.

EXPOSING THE POLICE REPORT PERJURY

OVERVIEW

(Trial page 80 / lines 1-3)

On December 23, 2008 I sat in Mr. Roth's office and read Officer Radley's police report for the first time. As I read the report I recalled that night a year earlier. When two days after Christmas I thought I was about to be robbed by two guys masquerading as cops that I had heard about in the news. I then realized that contrary to all my observations and intuition, that one of the two males was a legitimate police officer. Also that the vehicle was a legitimate police vehicle with an Officer Radley sitting in the front seat. The police report itself with its false statements explained the reason for the absence of the young male seated next to the officer.

In my initial meetings with Mr. Roth and Ms. Bonkoski, I told them that Officer Radley had failed to mention several key details in his police report. Most prominent of these concealed details, was the young male Caucasian in his late teens to early twenties wearing a matching light brown shirt. This person was seated next to the officer and looked too young to be a police officer.

I requested that they subpoena the reserve and training officer records and photographs from October 2007 to February 2008. I believed that I may have been able to at least narrow down this concealed witness. In a police department only consisting of eleven officers total, there can't be that many reserves or trainees.

(Trial page 6 / line 9)

At this time I want to stop and mention two issues.

1. I now believe that the young male seated with officer Radley was a reserve officer or trainee. Because of his matching shirt. Thus my request that these records be obtained. Later in trial testimony my belief proved to be true, as civilian ride a long as required to wear dark clothing not a matching light brown shirt.

(Trial page 52 / lines 22-23)

The officer also states, "... Um they come out and work, they'd like to see it for sixteen hours a day ..." Later in this response he states, "We try to get them sixteen hours a month. This young man may have actually been on the payroll at the time of the incident.

2. As a result of that requirement. It is a fair assumption that this witness was available to the state.

I offered to take a polygraph as to this and other missing and false details in Officer Radley's police reports. Defense

counsel said she would run that by the prosecutor. To my knowledge the prosecutor never responded. Officer Radley's identification of this false witness is but another perjury among many. I will fully address this issue, as it is but one more trial outcome determining issues. There are details in the officer's testimony that point to the probability that the witness identified by Officer Radley is a false witness.

If the court agrees with the arguments of perjury presented elsewhere in this SAG, it can not be ruled out that Officer Radley would identify a false witness given the testimony alluding to his doing just that.

Defense counsel failed to request and subpoena information from the tribal police department's reserve coordinator. So that I might have identified or at least narrowed down the possible true eyewitness present during December 27, 2007. I requested on multiple occasions that this information be obtained. She failed to subpoena the signed waivers from ride a longs, especially that of Ms. Heddington. Officer Radley appears to sense the direction of *(Deposition page 5 / response 9)* questioning and admits that she signed a waiver, but volunteers that he does not know what happened to it. Further mentioning that it is unfortunate. Some of the officer's testimony does hint to a personal connection with Ms. *(Deposition page 5 / response 8)* Heddington. Officer Radley states that she just wanted to see what you do in law enforcement. Was this in regards to what he does? Does she have some vested interest in what Officer Radley does for a living?

This is the type of effective and thorough cross which could have exposed this false witness before the jury. It is the answers to these questions and others which could have established reasonable doubt to the officer's testimony and perhaps exposed his perjury. In defense counsel's weak cross of Officer Radley. She failed to cross examine and question the officer's reasons and motivations for deviating from his training in hiding this witness from his police report. In continuing to hide her presence from the defense for 18 months.

Defense counsel established Officer Radley's training in report writing. She established the presence, age, and description of this alleged witness. She simply avoided thorough and revealing questions concerning the validity of this witness actually being present. As well as why the officer chose not to reveal her existence for so many months.

These are the very issues critical to my defense.

These are issues exposing this perjury of Officer Radley.

These are the very issues which could have brought about a very different trial outcome.

POLICE REPORT PERJURY

(Trial page 4 / lines 13-18)

It had been established that Officer Radley has had ample police training. The officer was aware of what is to be included in police reports to make them accurate and truthful.
(Trial page 53 / lines 14-23)

This officer remembered some 18 months later that he had a witness seated beside him on December 27, 2007.

He even remembered her name, age, and description. So it is unlikely that he could have forgotten that fact when he wrote his police report on December 29, 2007.

A report in which he had the proper training and the sworn duty as a police officer, to be accurate and truthful in its inclusions and contents. However Officer Radley chose to not include this only eyewitness in his police report, resulting in a police report that was not truthful and not accurate.

Please refer to the trial testimony on page 37, lines 11-14. Officer Radley is being questioned under oath by the prosecutor and is asked if he wrote his report when events were fresh in his mind? The officer responds, "Yes." He is then asked, "Is it truly and accurately written?" Officer Radley responds, "It is."

It has already been established that there was an eyewitness seated next to Officer Radley. The true facts are that there were three individuals present during the chain of events that took place up until the time I parked my vehicle at the church. Officer Radley, the eyewitness, and myself. Officer Radley failed to include one of those individuals in his police report. Then later testified under oath that his police report was truly and accurately written. I will not waste the courts time defining those words, 'truly' and 'accurately', for the court is fully aware of their meanings.

Officer Radley was the state's only witness used against me. Even though there was an eyewitness present throughout the entire sequence of events. There also could have been definitive video footage as well. We only have the word of Officer Radley that it did not exist. As the state's only witness, Officer Radley's testimony must be truthful, honest, and above reproach.

I am not a legal scholar or authority, but a citizen and a human being who has been convicted, sentenced, and

served time for a felony as a result of Officer Radley's dishonest and perjured testimonies.

ASK COURT FOR A DETERMINATION OF PERJURY

Officer Radley's response to the question, "Is it truly and accurately written?" Appears to me to be perjury in the purest sense of the word. I ask the court for a determination of perjury against Officer Radley in this matter.

OFFICER RADLEY'S SECOND 'EYEWITNESS' OMMISION

There was a second eyewitness present on December 27, 2007. This eyewitness was in the form of a dashboard video camera. This camera is designed to automatically record when the police cruiser's emergency lights are activated. *(Trial page 54 / lines 9-10)*
This video camera also has audio ability and three eyes enabling it to see front, back, and partially side views. It is located just below the rear view mirror for an optimum vantage point.

Again, Officer Radley chose to eliminate this eyewitness as well. In fact, he took definitive steps to see that this his police cruiser's dashboard video camera was disabled. The officer gives us a choice of testimonies as to the camera's disabled condition. Leaving it up to us to choose which testimony we choose to believe. Is it, The officer removed the disc? OR is it, He keeps the disc memory full? *(Trial page 55 / lines 13-14)*
(Deposition page 4 / response 5)

Defense counsel ended her cross on the subject after simply establishing the camera's existence, recording ability, and the officer not using it, citing policy. She failed to mention to the jury that in spite of no departmental policy for usage, the department places an importance on the vehicle's dashboard camera being in good working order. This is indicated by the department spending both the time and money to have the camera repaired and remounted. *(Trial page 17 / lines 2-8)*

Common sense tell us if the department did not place an importance on having the camera in good working order, it would not have spent the money to have it repaired. Furthermore, if the camera was not an important piece of equipment to be utilized by the officer in the performance of his duties as a designated traffic officer. Why was the vehicle equipped with the camera in the first place and as such, the only vehicle in the fleet to be so equipped? Just as the vehicle is equipped with a radar that the officer uses. This common sense argument makes null and void Officer Radley's lame excuse for keeping his camera disabled, citing "no policy."

Is there also 'no policy' to use the vehicle's radar unit during the performance of the officer's duties? Perhaps there is no policy because using the camera is a common sense decision. Just as the officer may use concerning his radar unit in the performance of his duties as the department's traffic enforcement officer. *(3.5 Hearing page 3 / lines 13-14) (Trial page 4 / line 23)*

Common sense also tells us that a police officer who may want to conceal his actions, or who is dishonest and misleading in his version of what may have taken place during a traffic stop or other police action. Would view his dashboard camera as a liability, a possible form of impeachment to his version of what may have happened during a traffic stop.

Such an officer would have cause to disable or destroy any evidence that camera may have recorded.

Such an officer would take actions to see to it that his camera would not function.

Such an officer is Officer Martin Radley.

The mere fact that Officer Radley keeps his dashboard camera in a disabled state is indicative of his propensity for being dishonest and misleading on a continual basis.

Defense counsel did point out some of Officer Radley's contradictory testimony. But they had to do with small non trial outcome issues, such as no right hand turn lane, and whether or not it was raining heavily. In her weak cross on the trial outcome issues such as, disabling his dash cam / probable destruction of evidence, hiding the eyewitness, and the claim that he did not activate his emergency lights at the intersection when he pulled me over. She failed to expose the officer's perjuries and in doing so establish reasonable doubt to much of the officer's testimony.

Only by a thorough cross could have these things been revealed.

Only by a thorough cross the trial outcome could have been different.

SELF-INCRIMINATING QUESTION PERJURY

OVERVIEW

I intend to show another perjury of Officer Radley. This being the prejudicial statement that the officer testified I made during my arrest. This testimony was highly prejudicial against me and was presented at the end of the trial, just prior to closing arguments. This statement was presented to the jury as a quote of what I had specifically said.

As a citizen who is not a legal scholar, I believe if one is testifying in court as to first hand knowledge of what another person said, it should be exact and word for word. Especially in a case where the statement is highly prejudicial and is presented just before closing arguments.

If it is not a word for word recreation, this statement should carry the caveat that it is not 'word for word', but is instead a review or synopsis of what that person said. In this case, the alleged statement was short enough that it should have been a 'word for word' recreation and in its original form.

It is an established rule in writing documents and reports that when you quote something a person said, you designate that quote by using quotation marks to distinguish the exact word(s) or word phrase(s). This is common knowledge from the "Dick and Jane" books we read in the first grade, to the research paper we wrote in graduate school. As well as in the training police officers receive on proper report writing protocol. Or in this case, when Officer Radley uses his police report to quote something I allegedly said after my Miranda rights.

(see 5/6/09 Supplemental Law Narrative)

Officer Radley made an effort to correct clerical errors and 'clarify' the very same police report he used to quote what I had said in front of the jury. He even added new details, not even remotely mentioned in his original report.

(2009 Police Report page 2 / paragraph 9,10)

Where are the quotation marks indicating exactly what I had said in the officer's police report? Where does the officer indicate the exact words or word phrases he quotes me as saying in his testimony?

Officer Radley's ambiguous 'made to order' testimony and police reports has been a predominate characteristic in the officer's testimony. It actually appears that he writes his police reports bearing that in mind. I have already established that the officer's police reports are misleading, untruthful, inaccurate, and incomplete. Officer Radley either omits details and upon writing his sworn police reports, or later makes changes by adding new never before mentioned details and changing dates.

Police Officer Martin Radley is a prosecutor's dream with his 'made to order' and later altered documents and reports. Especially if the prosecutor has an agenda and questionable ethic standards, such as knowingly soliciting, and using perjured testimony in his efforts to prosecute and convict. If the state is going to strip a citizen of his constitutional

rights. It should not be based on 'made to order' evidence obtained from a dishonest tribal police officer, such as Officer Radley. Officer Radley gives us two different quotations of the same question I allegedly asked him? Each one a little different than the other, with the final version being the one presented to the jury.

(3.5 Hearing page 8 / lines 3-4)

During the 3.5 Hearing, Officer Radley states, "He asked me, 'if this was the same vehicle and if I was the same officer that had chased him last time'." During trial Officer Radley testifies to yet a second version, "He asked me, 'if I was the same officer, driving the same vehicle as the same vehicle who had chased him on December 27, 2007'." *(Trial page 75 / lines 21-23)*

Haphazard police report writing is one thing. However that same haphazardness should not be passed off to a jury as testimony quoting specifically what I had said. Officer Radley was allowed to testify that was the exact question I has asked him.

There are simply no 'word for word' specifics in Officer Radley's police report as to what I had specifically said. Every one of the alleged statements is a third party reference. Why is this so important one may ask? My answer is that if the state is going to arrest, try, convict, sentence, and carry out that sentence, upon a citizen and human being, and do so based in part on what that citizen said. That statement should be presented in its original 'word by word' phrase. Not a manufactured, 'made to order' statement consisting of part of one question combined with part of another, and a date thrown in. However this is exactly what happened in my trial.

STATEMENT NOT CREDIBLE – DOES NOT FIT LOGIC OR TIMELINE

I want to mention at this time the argument by the prosecutor, used to obtain a favorable ruling during the 3.5 Hearing. For it will show the court the extent that prosecutor Nielsen and his co-conspirator went to further subvert the truth and mislead the court. I mention this just before my argument that the four 'made to order' self-incriminating statements, made be conspirator Radley. Because it is directly related to those statements and will provide reasonable doubt that the 'made to order' statement were ever actually made by me in the first place.

Prosecutor Nielsen is talking about the January 16, 2009 encounter with Officer Radley at the Chevron gas station. The prosecutor tells the court, "... Mr. Flora, a year later, thirteen (13) months later certainly recognized Officer Radley which is why he immediately peeled out of the Chevron parking lot upon making eye contact with him." Then

only minutes later the prosecutor has me asking Officer Radley the 'made to order' self-incriminating question, 'Hey (3.5 Hearing page 25 / line 13) aren't you the same officer that chased me last time?'

This argument simply does not make any sense? Common sense tells us that if I recognized the officer in the Chevron parking lot, why would I ask such a redundant and self-incriminating statement a couple minutes later? Such is the testimony and the logic of both conspirators. But it was used successfully against me in court. Defense counsel stood idly by and did nothing to challenge or refute either during the 3.5 Hearing and during trial. Such was my 'ineffective' counsel.

Co-conspirator Nielsen appears to want it both ways. He wants me recognizing the officer at the gas station, then a couple minutes later he wants me asking the idiotic and incredibly stupid self-incriminating question, "Are you the same officer that chased me last time?" This false 'made to order' question was spoon fed to the jury in a conglomerated and disjointed form by co-conspirator Radley. It does not take a rocket scientist to see that there is something amiss here.

THE PERJURY EXPOSED

What follows is Officer Radley's perjury.

(2009 Police Report page 2 / paragraph 9)

Officer Radley writes in his police report that, "Mr. Flora stated that 'he was happy that I was the officer that arrested him.'" What exactly is it that Officer Radley is quoting I said? For I would not refer to myself as "he" or "him". Again, we find ourselves at a point where we get to choose which sworn testimony we want to pick as having been what I allegedly said. In Officer Radley's police report he writes, "Mr. Flora stated that he was happy that I was the officer that arrested him."

(2009 Police Report page 2 / paragraph 10)

Or we can choose what he writes in paragraph 10. "Mr. Flora continued to state that this incident was not over and that he was happy that I was the officer who captured him because he had done nothing wrong." I want to point out the subtle change from 'arrested' in the first statement, to 'captured' in the fourth statement.

Apparently Officer Radley felt that he had not manufactured enough self-incriminating 'made to order' statements for the prosecutor, so he manufactures another one I allegedly said which is pretty much along the same lines as the first, just changing a word here and there. Then he is apparently satisfied he has provided the prosecutor with

enough self-incriminating statements to choose from in his case against me. As I mentioned earlier in this SAG, my offer to take a polygraph concerning these 'made to order' self-incriminating statements and the actual statements I did make, was never responded to by the prosecutor. One should not be surprised as this whole case is not about the truth, but about a conviction at all costs. Even if it means using known perjured testimony.

It is a fact that Officer Radley manufactures false statements or 'material disputed facts' in his 'made to order' police reports which are written two to three days after an incident. We see this clearly in evidence by the 'supplemental law narrative' written 109 days after the fact on March 6, 2009. The new 'made to order' police report provided the 'material disputed facts' which the prosecutor used to file a Knapstad enhancement against me the next day after receiving the new and corrected police report from Officer Radley. The references to T. Bailey and the alleged 100 mph speeds were not even remotely mentioned in the original police report the officer wrote 109 days earlier. I intend to expose these verifiable perjuries in my PRP.

During the 3.5 Hearing, prosecutor Nielsen actually changes his co-conspirator's wording and states, "Hey *(3.5 Hearing page 25 / line 13)* weren't you the same person that arrested me and chased me?" As he proceeds to tell the court, in order to further distort the truth and receive a favorable ruling on his motion. This was but another apparent attempt to further subvert the false 'made to order' statement Officer Radley provided him. As the word 'were'n't' implies prior knowledge. Where as 'aren't' implies no knowledge. My defense counsel never objected or challenged any of the false and exaggerated statement the prosecutor put to the court to receive his favorable rulings. I will detail major false allegations in the Prosecutor Misconduct heading.

ASK COURT FOR A DETERMINATION OF PERJURY

I ask the court for a determination of perjury in Officer Radley's testimony, "He asked me if I was the same officer, driving the same vehicle as the same vehicle who had chased him on December 27th 2007." I also ask that the court consider my argument as an additional factor to be included with the arguments of my appeal counsel, in finding the the trial court erred in allowing the admission of this statement into trial testimony.

DEFENSE COUNSEL FAILED TO ATTATCH REASONABLE DOUBT TO INCONSISTENT TESTIMONY

OVERVIEW

What follows are contradictions in Officer Radley's testimony. I have not included every contradiction and have elected to point out some that were emphasized by the state and some that were not. In the state's effort to show that I had knowledge the vehicle which had pulled me over was a legitimate police vehicle. I believe I have exposed Officer Radley's perjury that he did not activate his emergency lights at the Reservation Road intersection, pulling me over some 200 feet west of the intersection on Hwy 20. With that caveat I will proceed.

I will also reference testimony which confirmed to me that this was not a legitimate police vehicle. Defense counsel did not adequately point out some of these in her cross and completely missed others. Although some of these details and contradictory testimony are not verdict changing issues individually, they do attach reasonable doubt and outright challenge a couple points made by the prosecutor in his attempt to show that I somehow knew that this was a legitimate police vehicle. When taken as a whole and in combination with the perjuries I have exposed, they do establish ample reasonable doubt, and are verdict changing in whole. In addition to pointing to a miscarriage of justice. This is a given result when the state knowingly uses the perjured testimony of a dishonest police officer to prosecute. Whether or not the individual actually committed the crime is irrelevant and immaterial when the state relies on 'made to order' testimony to bring about a conviction.

RIGHT HAND TURN LANE

The Reservation Road intersection which is traffic controlled, is the ONLY intersection on Hwy 20 that leads directly to the reservation going eastbound or westbound and is closest to the reservation. It is also the only intersection that can access the northern tip of the reservation sliced by Hwy 20 for one-third of a mile. The northern tip is also the location of the Swinomish Northern Lights Casino and the reservation's primary source of income and 'high traffic enforcement' jackpot.

I want to point out two important point-based testimonies. Because they allude to and expose the officer's

observation and memory skills, or lack thereof, intentional or not. This is important considering that Officer Radley writes his police report days after an incident, and in one case, 'made to order' revisions 109 days after the fact. At any rate one has probable cause for reasonable doubt in Officer Radley's recollection of what occurs on his patrol, and what finally ends up in his police reports.

1. Officer Radley had been with the Swinomish Police Department for 39 months at the time of his deposition in June of at five shifts a week and if the officer only used the Reservation Road intersection four times a shift. This is a highly conservative estimate because two of those usages would like be used up going to and from work, and the important relevance of the intersection as detailed above. At any rate, it is noteworthy that the officer lacked the knowledge that this intersection had a right hand turn lane. An intersection he has used well over 3100 times and that is being extremely conservative. Again we find the officer doing his best to avoid or even mention the right hand turn lane at the intersection. Knowing full well it's significance in the actual chain of events that occurred on December 27, 2007. These details will be included in my PRP.

(Deposition page 12 / response 6,7 & page 13 / response 1,2,3,4,5) (Trial page 56 / lines 10-16)

2. Officer Radley admits to later going to the intersection, and wants us to believe that it was at that time, he learned that there was a right hand turn lane at the intersection. This is but another example of the officer's 'made to order' testimony designed to mislead and deceive.

Does the court find this testimony credible? A police officer who is trained and expected to accurately remember and record details. Details that are later used to deny someone of their liberties and Constitutional rights?

The officer actually brags about his acute awareness of his surroundings. We see evidence of this 'acute awareness' in the denial of the existence of a turn lane in an intersection he has used well over 3100 times.

Such are the memory and observation skills of the state's only witness against me.

Such is the unreliable testimony of Officer Martin Radley.

VEHICLE APPROACH

This issue was an important point in the prosecutor's argument to place me as close as possible to the vehicle as

possible in order that there would be no doubt that I had to recognize that this was a legitimate police vehicle. The prosecutor realized two things pointed out by my defense counsel.

1. The vehicle at night has no visible markings from the front, other than blue flashing lights concealed inside the vehicle, that identifies it as a legitimate police vehicle.
2. The uniforms, consisting of a simple tan shirt which does not match any other police uniform in the jurisdiction in of the traffic stop that had taken place. Would lead a typical citizen to question the legitimacy of these characters being legitimate police officers in combination with the vehicle details, or lack thereof.

Thus the importance to place me as close as possible to the vehicle. Hence the 'made to order' testimony from Officer Radley to accommodate the prosecutor's necessary circumstance.

Officer Radley makes four different testimonial claims as to how close I came to his vehicle to achieve this aim barring the one he made, which actually was what had happened. I mention this one first because it is what actually took place. Officer Radley states, "... I mean storm to the back of a car ..." This is where I became frightened by what I had observed and returned to re-enter my vehicle. It is important to note that the officer doesn't say in this response that I, "stormed to the front bumper, car door, or left wheel well". There is also no "probably" in this response. Apparently lacking the officer's usual mental gymnastics and ambiguity in his answer this time.

(Deposition page 9 / response 5)

Officer Radley states in this response, "... he stopped 'probably' between the front bumper and the front left wheel." Resorting back to using the ambiguous "probably" in his response this time, unlike in the above testimony.

Here we have the officer responding during trial to the prosecutor who is asking if I responded to his commands to get back into my vehicle. He responds, "Not initially until that person got within just 4 or 5 feet of my vehicle, 'almost' all the way to the end of where the front driver's side tire bumper assembly is." In this response we again see the ambiguous use of 'almost' in his testimony. I want to point out three things about this particular testimony.

(Trial page 28 / lines 20-22)

1. The officer uses the word 'almost' which does not put me at the door's side or bumper. But still 4 – 5 feet away from his vehicle, "... got within just four or five feet of my vehicle ..."
2. This differs from his testimony about me stopping between the front the bumper and front left wheel. Which is

right at the vehicle, not 4 – 5 away from the vehicle.

3. The prosecutor then actually changes Officer Radley's testimony from being 4 – 5 feet from the vehicle, to 5 feet
(Trial page 28 / lines 23-24)
from the officer. Apparently not satisfied with how close Officer Radley's testimony has placed me to the
vehicle.

I argue, if it is say six feet from the driver's seated position to the front of the vehicle, taking into consideration the hood of the vehicle, and I was 4 – 5 feet away from the vehicle as Officer Radley testified. That would put me approximately 10 – 11 feet away from the officer. Twice what the prosecutor stated before the jury.

(Deposition page 8 / response 6)

In yet a fourth version, the officer states, "He was definitely close enough to touch my car. And he was within of me 5 feet 'maybe' a little more 'possibly'." For the statement to be true, my arms would have to be at least 5 feet long and 'maybe' or 'possibly' longer.

These are more examples of Officer Radley's mental gymnastics to manufacture 'made to order' testimony on the go. He talks about not knowing the distance from the bumper to where he is sitting, stating "... it seems like five percent, five feet is a strain." Then goes on to further figure out the best testimony 'out loud' by talking about parking distance. All the while, trying to satisfy the state's necessity to put me as close to the vehicle door as possible and have it fit realistically in Officer Radley's mind.

(Deposition page 8 / response 6)

This perjury will come back to haunt Officer Radley in the next heading. For now however, I just want to show the court the extent of the officer's false 'made to order' testimony that places me near the driver's door. Close enough to satisfy state's necessary critical fact. That being I could distinguish what was on the side of the vehicle door in the dark.

Defense counsel's weak cross failed to point out the futility of the officer's testimony if one believes what he testifies to in the deposition on page 9 / response 5. Which is actually as far as I got, before being frantically waved away.

VEHICLE TO VEHICLE DISTANCE

Officer Radley is also inconsistent in his testimony as to how far he parked behind my vehicle after he had pulled me over. The officer only gives us two different testimonies this time. Here the officer states, "And I parked
(Deposition page 8 / response 6)
'probably', I could see his license plate so, say four to six feet from his vehicle so to where you can see the license plate."

Two things I want to point out about this testimony. The first is the apparent mental gymnastics, spoken out loud, before finally settling on an answer of “four to six feet”. Why the apparent necessity to calculate, out loud no less? What does having to see the license plate have to do with the matter? The plate was ran much earlier in the right hand turn lane of the intersection. By this point in time, information has been flowing in from the Mount Vernon officer and on the MDT.

Still not quite finished, the officer apparently begins to doubt hi own manufactured ‘made to order’ testimony made just seconds earlier. He then finally admits he does not know the distance saying, “Not absolutely bumpers touching I’m not sure the distance.”

Why is that? Why does Officer Radley have such a problem answering a simple question under oath? The answer is that if he tells the truth, it might not set him free or meet the state’s critical elements. In this case, that being that I need to be placed as close as possible to the vehicle door in order to distinguish those police markings on the side of the door panel in the dark. This officer’s testimony is a disjointed conglomerate of inconsistent and false testimony based not on the truth, but on satisfying the state’s critical elements.

In this testimony Officer Radley has just finished mentioning me getting out of my vehicle and approaching his. *(Trial page 27 / lines 3-13)* He goes on to state, “We try to stop somewhere between 12 and 20 feet behind the vehicle, which gives us time to react.” This testimony is three to four times the distance in his other testimony. However this testimony may be a little more believable. We have the officer stating here, *(Trial page 29 / lines 21-23)* “The driver re-enters his car. He either starts to back up or throws it into reverse and rapidly accelerates on the hard shoulder.”

If one really looks at what the officer just testified, if he had parked only 4 – 6 feet away from my vehicle. I have just rapidly accelerated into the front of his vehicle? As the officer had stated in the previous testimony that he had parked 4 – 6 feet behind my vehicle. The officer clearly stated that I either started to back up, or threw it into reverse and accelerated. Note that he does not say, “I threw it into drive”. He states twice that I either started to back up or threw it into reverse. Either way has me now into the front end of his vehicle.

THE OPEN CAR DOOR

OVERVEIW

This was an important hole to fill in the prosecutor's case against me. Because at night, the only thing that distinguishes this vehicle as being a police vehicle, are the blue lights concealed inside the vehicle. From the front, this vehicle appears to be just another vehicle on the road.

Therefore it was critical for the prosecutor to place me close enough, and/or have the driver's vehicle door open so that I could see those police markings on the side of the door in the dark. He needed testimony from Officer Radley that he had opened his door substantially so that I could see those police markings as I approached from the front of the vehicle.

There were only two problems with this strategy. The first being the most obvious. That being that even if the door was open, the illumination if any, would be on the interior door panel from the headlights of oncoming vehicles. None of this light would shine on the side of the open door facing forward toward me. The second was that the officer never actually exited his vehicle. So necessary testimony would have to be invented or 'made to order' to accommodate the prosecutor's critical element.

Not a problem for a dishonest tribal police officer such as Officer Radley. However I will show that it did become somewhat of a problem to manufacture the necessary 'made to order' testimony. That testimony contradicted itself in some cases and contradicted other testimony in others. But it did have one thing in common in spite of all its various forms, and that was that it was false and perjured, as I intend to show.

The prosecutor emphasized this critical element in his closing arguments. Unfortunately defense counsel failed to expose both the flaw in the argument, that being that how could one distinguish anything in the dark when only the inside panel would have been illuminated? Secondly and most importantly, she failed to expose the outright perjury of the testimony itself.

This has been a persistent failing of defense counsel throughout the entire case. Whether it be failing to investigate and get information pointing to the identification of a false witness, to failing to expose the multiple perjuries of Officer Radley. Including the fictitious 100 mph crash into a boulder lined ditch. A crash in which my vehicle failed (2009 Police Report photo 9) to break so much as a headlight at the point of impact in this 'horrendous 100 mph crash'.

As well as the prosecutor Nielsen's fraudulent claim that this horrendous 100 mph crash happened feet away from a T. Bailey facility, people, and vehicles. Which was in actuality, the rear parking storage lot for the Frontier Ford Auto Dealership. The court could easily see the slight vehicle damage sustained from this 'fictitious 100 mph crash', the prosecutor falsely presented to the court to receive favorable court rulings in his court motions.

All these perjuries will be exposed in my PRP. However that does not take away from the fact that my defense counsel should have exposed these lies for what they were when they were initially presented to the court as factual evidence. These exaggerated and phony claims and assertions did not end with the pre trial hearings, but continued to plague this case throughout the entire trial. Having been very successful with the limited and weak cross, if any at all, from my ineffective defense counsel. My conviction for a crime I did not commit was a sure result, as sure as in any Kangaroo court. Given the knowing use of perjured testimony by an overzealous prosecutor hell bent on conviction at all costs and who checked his ethical and legal standards at the courthouse door. As well as the perjured testimony from a known dishonest tribal police officer. I will also detail statements from to Skagit county attorneys who told me that they knew Officer Martin Radley to be a dishonest police officer and to have my attorney contact them. This will all be detailed in my PRP.

The testimonial claims of Officer Radley actually getting out of his vehicle vary greatly as I will show. From the door being cracked a little, to partially open, to all the way opened, to "four feet on the ground" open. However all this various testimonies have one thing in common, and that is that they are false and perjured. Simply more 'made to order' perjured testimony from Officer Martin Radley to support his co-conspirator's critical case element. I will expose this perjured testimony for what it is, and at the conclusion of my argument I will ask the court for a determination of perjury were appropriate.

EXPOSING THE OPEN DOOR PERJURY

(Trial page 10 / lines 10-20)

Officer Radley states, "I opened my door. I step out of my vehicle. I'm giving this gentleman commands to get back into his car." In looking at what the officer said, two things are apparent.

The first being that, Officer Radley at this point is all the way out of his vehicle. The officer does not say, "I'm

‘trying’ to step out, or I’m ‘partially’ out, or I’m ‘attempting’ to step out of his vehicle. Officer radley states, “I opened my door. I step out of my vehicle.” There is no ‘door cracked’, no ‘door partially open’ here. The officer’s door is open and he is out of his vehicle, period. Secondly and also important to note, is that he is giving me signals to return to my car at this point.

Officer Radley has gone out of his way to stress that that my demeanor was extremely aggressive. Citing it four times during trial and twice during the deposition. *(SAG page 15)* As I mentioned earlier in this SAG. This was not the case, however here we now have the officer describing me as a gentleman. This is hardly the aggressive person he went out of his way to describe in his previous multiple testimonies.

Also important to note that this is one of the times when Officer Radley actually decides to definitively answer a question without changing the subject mid-sentence, being ambiguous, or evasive. We don’t even see any mental gymnastics with ‘on the fly’ testimony in his response this time. He clearly states that he opened his car door and stepped out of his vehicle.

(Deposition page 8 / response 1)
Officer Radley states here that, “... I believe ‘either’ I had my window rolled down or my door was cracked a little bit and gave him commands to get away from my car and back into his vehicle.” This testimony completely contradicts what the officer stated in trial. About being out of his vehicle while giving me commands to return to my vehicle. This time however, his window is rolled down or his door is cracked. It is also 36 – 38 degrees outside and in heavy rain? I must still be some distance away because he can’t hear me ‘yelling’, as he put it. As opposed to the 4 – 5 feet as stated in the previous heading.

(Deposition page 8 / response 4)
Seconds later the officer states, “Or ‘partially’, either I’m directing him to go back or I’m ‘attempting’ to get out ...” There is definitive and unequivocal testimony that also has Officer Radley inside his vehicle and never stepping outside or partially outside. We see that mentioned in, in response one, with his window rolled down.

(Trial page 58 / lines 12-16)
When the officer refers to his report he becomes frustrated as defense counsel tries to elicit a definitive answer from the officer. Does he have his foot on the brake? Or was he in park? More mental gymnastics, as he appears to realize that his testimony does not coincide with his original testimony. When he provided the prosecutor’s critical

(Trial page 10 / lines 10-20)
element by unequivocally and without any mental gymnastics stated, "I stepped out of my vehicle."

(Trial page 58 / lines 17-19)
Finally the officer appears to frustrating state, "I know I wasn't out. I wasn't standing 'four feet on the ground' like I am now out of the vehicle, that's correct." I ask, exactly what is correct? What is the truth here? The officer
(Trial page 10 / lines 10-20)
clearly stated earlier in his 'made to order' testimony for the prosecutor that, "I open my door. I step out of my vehicle?"
Such is the unreliable, contradictory, and 'made to order' testimony of Officer Martin Radley.

I want to make one more point before exposing this perjury for what it is. Officer Radley has just been asked by
(Trial page 29 / lines 18-23)
the prosecutor if he was standing outside his vehicle and the officer states, "That's correct, standing partially outside of
my vehicle." The officer is then asked what happens next? The officer states, "The driver re-enters his car. He either
(Trial page 29 / lines 21-23)
starts to back up or throws it into reverse and rapidly accelerates on the hard shoulder." I already discussed the illogic of
this response. But I wanted to mention this again before my final argument in this heading.

I am going to end this heading as promised by showing the court the two testimonies which expose the 'made to
order' version and all the 'open' or 'partially open' door testimonies for what they are. More perjury to support another
of the state's critical elements.

(Deposition page 8 / response 1)
As discussed already, Officer Radley was sitting in his car with the window rolled down, giving me the signal to
go back to my car. Now go to page 10 in the deposition, response 5. I have just re-entered Hwy 20. Officer Radley
states, "I'm in my vehicle, my vehicle's in drive, he takes off, I have no actions other than to put my foot on the gas so
there was no gap, no immediate gap there."

(Trial page 30 / lines 5-8)
In further support of this perjury exposing testimony. Officer Radley states, "I sit back down in my car, close
my door, put my car into park .." This also shows that his vehicle was in drive. It is important to note the 'made to order'
additional testimony about sitting back down and closing his door? I have already taken off. Why would the officer put
his car into park before immediately beginning his pursuit?

This testimony exposes the 'open' door, 'partially open' door testimonies. As well as the out of vehicle, partially
out, and attempted to get out of vehicle testimonies as perjuries. This also coincides with his testimony in the deposition
on page 8, response 1.

ASK COURT FOR A DETERMINATION OF PERJURY

(Trial page 10 / lines 10-20)

I ask the court for a determination of perjury in Officer Radley's testimony when he states, "I opened my door. I step out of my vehicle. I'm giving this gentleman commands to get back into his car."

OFFICER RADLEY'S FOOT PURSUIT PERJURY

OVERVIEW

It was important for the prosecution to establish another element indicating that I had to know that I was being pursued by a legitimate police officer. Because up until that point in time, the only thing that had been established beyond any doubt that indicated a legitimate police vehicle were the blue flashing lights.

There was contradictory and conflicting 'made to order' testimony as to how close I got to the officer's vehicle, as well as whether or not the vehicle door was closed, open, partially opened, or cracked?

Whether or not someone observing the front of the vehicle in the dark could beyond a reasonable doubt determine that the vehicle was indeed a legitimate police vehicle.

To occupants that did not appear to fit into the situation. Given the jurisdiction and their uniforms consisting of simple tan shirts.

To the open door perjury. Which was exposed not only by the testimony but also by the fact that even if the door was open, it was dark out. Any light would be coming from behind the vehicle, illuminating the inside door panel. Further more, it is likely given all the flashing lights, that one could distinguish any markings anyway during the few seconds I was outside my vehicle.

The prosecutor tried everything to place me in a position where I had to know that this vehicle was a legitimate police vehicle. He had co-conspirator Radley testify 'made to order' false approach claims and false vehicle to vehicle parking distance which were all inconsistent and contradictory. The this providing ample reasonable doubt as to validity.

Prosecutor needed something more. Something specially definitive that would leave no doubt in the jury's mind that I had to know that the vehicle was a legitimate police vehicle. Enter co-conspirator Radley with more 'made to order' testimony about a fictitious foot pursuit and yelling, "STOP POLICE." Then Mr. flora would have to know that he

was being pursued by a legitimate police officer.

Never mind that none of this actually took place.

Never mind that that was just more 'made to order' perjury.

Co-conspirator Radley could continue to easily manufacture 'made to go' testimony to accomplish that exact fact. Thus we have all this perjured testimony about a fictitious foot chase and shouts of "STOP POLICE". To an individual who I will show was not even present at the time. As well as show evidence that this foot pursuit never occurred.

EXPOSING THE FOOT PURSUIT PERJURY

I want to expose this perjured 'made to order' testimony for what it is right from the start. Officer Radley has just pulled up 'next' to my vehicle and searched it. He then states, "I decided at that point not to follow the male on foot and to stay with the vehicle to prevent the driver from regaining control of the vehicle." I want to point out at this time that there is no mention in the police report of anything being shouted at me as the officer exited his vehicle to search my vehicle. For I had long since left on foot. I simply wasn't around.

The officer mentions heavy oncoming traffic in paragraph 3. No mention of traffic at all in the deposition, just a short talk about turning his lights off so there is no 'panic stop', which infers there is traffic but still no actual mention of it. What is mentioned though is that he is stopped at the intersection and sees me run west from my vehicle. Officer Radley also states, "As I was stopped at the intersection of the left hand turn lane I witness the driver exit his vehicle very quickly", and continues to say west behind the church.

If one looks at the map exhibit you will see that the church and the cyclone fence are approximately 20-30 feet from each other. The point being, Officer Radley is still at the intersection when I exit my vehicle and run west. He still has to wait for at least some of the traffic to go by. Which adds more time to when he can cross the intersection and pull in next to my vehicle.

But after reviewing his police report during trial the officer then states, "I just started to move. I see him running." Something is amiss here? Either there is traffic and he is stopped at the intersection waiting for some of it to pass. Or he is crossing at the intersection waiting for at least some of it to pass. Or he is crossing the intersection during

the oncoming traffic and he sees me running from my vehicle?

(Deposition page 11 / response 4)

He states in the deposition, "He had just parked you could see the edge of his car from the stop location." So once I started running west, I am no longer in sight. Given the short distance from the church to the cyclone fence. It is fairly evident that when the officer and his trainee finally do pull in next to my vehicle I am no longer anywhere in sight. Much less running toward the cyclone fence as is stated on page 2 / paragraph 7 in the police report.

Further indicating this is on page 2 / paragraph 6, the officer states, "I decided at that point not to follow the male on foot and to stay with the vehicle." Common sense tell us that if the officer had seen me running anywhere, he could have easily followed me in his vehicle. If I headed back to my vehicle, he would have been able to easily outrun me.

The facts show that I was nowhere in sight when the officer arrived. So he stopped his vehicle and searched my vehicle. There is no mention of shouting anything else. This is common sense because there was no one to shout to.

However co-conspirator Radley manufactures more 'made to order, testimony to establish a key elemental fact to the jury. In doing so, contradicts his own testimony about remaining ay my vehicle, and committing perjury instead. This is nothing new, just more of the same in this trial.

(Deposition page 12 / response 1)

Defense counsel asks the officer if he tried to catch me on foot? Officer Radley answers, "Yes". In response 2 in the deposition he talks about having ran up to the fence, and states, "Once T got to that point, I'm like no. I'm done running." But Officer Radley can't stop there. He continues to state, "Exactly, I don't know which direction he went to.

(Deposition page 12 / response 4)

So while I am running in one direction he could immediately circle right back .." Officer Radley states in trial, "I parked my vehicle 'right behind' his vehicle. I quickly searched the vehicle ..." He later states, I ran to the fence (indicating).

At that point I had not seen where the subject had gone."

I want to stop and point out something here. If you read the entire trial text (page 40 / lines 3-18), you will see that not once does Officer Radley mention shouting anything. He was asked, "What did you do?" by the prosecutor to solicit this perjury. Common sense tells us that if anything was going to be shouted, it would have been done so immediately upon exiting Radley's vehicle. Where is it mentioned in this text? The officer also admits that, "At that point I had not seen where the subject had gone." Further establishing that I was not at the scene when Officer Radley

and his trainee finally arrived, after being delayed at the intersection.

In order to get the response he needs the prosecutor asks Officer Radley point blank, “When you got out of the vehicle were you saying anything?” Officer Radley only then realizes, “oops” – I forgot, and produces the ‘made to order’ testimony by stating, “I was saying “STOP POLICE”, and then throws in a little extra for the prosecutor, “I believe I said ‘you had better stop least once.”

There are two things that bear pointing out in this little bit of revealing perjured testimony. To whom is the officer speaking? He just got out of his car to search my vehicle, not to engage in a foot pursuit? Which indicates I was no longer in view. So who exactly was it that Officer Radley shouted “STOP POLICE” to? More importantly though, this question / answer exchange clearly shows the deliberate and clear and evident solicitation of false testimony by prosecutor Nielsen from his co-conspirator and known dishonest tribal police officer.

The bottom line is that there never was a foot pursuit. Officer Radley never said, “STOP POLICE” or anything else. Because there was no one there to say anything to by the time he and his trainee arrived. The only thing Officer Radley did do was search my vehicle after pulling up ‘next’ to it, and then they remained there awaiting backup. So none of what co-conspirator Nielsen needed to establish knowledge actually occurred. Unless you choose to believe the ‘made to order’ testimony that came about 20 months later.

ASK COURT FOR A DETERMINATION OF PERJURY

(Deposition page 12 / response 1)

I ask the court for a determination of perjury in Officer Radley’s testimony when he answered, “Yes” to defense counsel’s question, “Did you try to catch him on foot?”