

NO# 67616-4-I

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

STATE OF WASHINGTON,
RESPONDENT,

Vs.

PERNELL FINLEY,
APPELLANT.

2017 SEP -4 PM 1:31

COURT OF APPEALS
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY
THE HONORABLE HOLLIS R. HILL, JUDGE

PRO SE BRIEF OF APPELLANT AND STATEMENT
OF ADDITIONAL GROUNDS RAP 10.10

PERNELL FINLEY
APPELLANT, PRO SE

AIRWAY HEIGHTS CORRECTIONS CENTER
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A. ASSIGNMENTS OF ERROR

1. MR. FINLEY'S RIGHT TO DUE PROCESS, RIGHT TO A FAIR TRIAL AND RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WERE ALSO VIOLATED WHEN TRIAL COUNSEL INSTRUCTED THE JURY TO TAKE SHORTCUTS WITHOUT GOING THROUGH ALL OF THEIR JURY INSTRUCTIONS AND YOU DON'T HAVE TO MEMORIZE ALL 27 INSTRUCTIONS.

2. MR. FINLEY RECEIVED INEFFECTIVE ASSISTANCE WHEN HIS TRIAL COUNSEL MADE SEVERAL REFERENCES TO THE JURY THAT THE PROSECUTOR AND HIS GROUP OF PROFESSIONALS WERE UNITED AS PART OF A SYSTEM WHERE EACH HAD "SVU" PROTOCOL AND INFERED THAT MR. FINLEY WAS A BAD GUY AND A SEX OFFENDER.

3. COUNSEL'S FAILURE TO PROPERLY CROSS-EXAMINE MS. LOCK VIOLATED FINLEY'S RIGHT TO CONFRONT WITNESSES.

4. TRIAL COUNSEL WAS INEFFECTIVE FOR:
(ACT ONE) BOLSTERING THE PROSECUTIONS CASE BY SUGGESTING MR. FINLEY TESTIMONY WAS FALSE;
(ACT TWO) CONCEDED GUILT WHICH DENIED JURY TO INDEPENDENTLY REACH A VERDICT; AND
(ACT THREE) INSISTING THAT THE TO CONVICT ELEMENT " THAT ANY OF THESE ACTS OCCURRED

IN THE STATE OF WASHINGTON," WAS TRUE.

5. THE COURT ERRED BY DENYING FINLEY'S MOTION TO PROCEED PRO SE WITHOUT HOLDING AN ADEQUATE INQUIRY INTO FINLEY'S CLAIMS.

ISSUES PERTAINING TO ASSIGNMENTS
OF ERROR.

1. DID FINLEY RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL MISLED THE JURY ON HOW TO INTERPRET THEIR JURY INSTRUCTIONS.

2. DID FINLEY RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE COUNSEL INSTRUCTS JURY TO DELIBERATE BY TAKING SHORTCUTS BYPASSING THE COURT'S INSTRUCTIONS.

3. WHETHER FINLEY RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHERE DEFENSE COUNSEL'S COMMENTS IN CLOSING INFERED THAT FINLEY WAS A BAD GUY AND A SEX OFFENDER.

4. WHETHER THE COURT ERRED BY ITS DELAYED RULING ON THE ADMISSION OF JAIL PHONE CALLS CONFLICTED WITH COUNSEL'S ABILITY TO PROPERLY CROSS EXAMINE MS. LOCK.

5. DID FINLEY RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE MS. TRICKEY'S NUMEROUS OBJECTIONS OF 402, 403 AND 801 EVIDENCE RULES. WERE IN FACT, COUNSEL UNKNOWINGLY OBJECTING TO HER OWN ERRORS.

6. DID FINLEY RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE MS. TRICKEY ALLUDES IN CLOSING ARGUMENT THAT FINLEY'S TESTIMONY (I THINK I AM YOUR BEST WITNESS) WAS FALSE.

7. DID FINLEY RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE MS. TRICKEY CONCEDED FINLEY'S GUILT AND INSTRUCTS THE JURY TO CONVICT MR. FINLEY ON THE CHARGE OF FELONY HARASSMENT. CONTRARY TO FINLEY'S TESTIMONY.

8. DID FINLEY RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE MS. TRICKEY DURING CLOSING ARGUMENT ARGUES THE THEORY THAT MS. LOCK WAS ANGRY AT MR. FINLEY BECAUSE HE RAPED HER.

9. DID FINLEY RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE THE CUMULATIVE EFFECT OF COUNSEL'S ERRORS DENIED FINLEY A FAIR TRIAL.

10. DID FINLEY RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE MS. TRICKEY IMPROPERLY INSTRUCTS THE JURY, "SOME OF THE SHORTCUTS THOUGH MIGHT BE PRETTY EASY WITHOUT GOING THROUGH ALL OF THE (JURY) INSTRUCTIONS."

11. DID FINLEY RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHERE MS. TRICKEY STATES, "NOW IT COULD BE BECAUSE SHE'S BEEN RAPED AND SHE'S ANGRY," WHICH IS CONTRARY TO FINLEY AND LOCK'S TESTIMONY.

12. DID THE COURT ERR BY RESERVING TO RULE ON THE ADMISSION OF THE JAIL PHONE CALLS UNTIL AFTER MS. LOCK'S TESTIMONY. WHICH IN TURN ALLOWED THE STATE TO RECEIVE EVIDENCE THROUGH THE BACK DOOR, DENYING (MS. TRICKEY CLAIMS) THE DEFENSE THE ABILITY TO CONFRONT MS. LOCK ON PREJUDICIAL STATEMENTS WITHIN THE CALLS ADMITTED BY THE COURT POST TESTIMONY, THAT WAS NOT ASKED ON DIRECT BY EITHER PARTY.

B. STATEMENT OF THE CASE

1. THE CHARGES

APPELLANT PERNELL FINLEY IS APPEALING HIS CONVICTIONS FOR: (1) FIRST DEGREE RAPE WHILE ARMED WITH A DEADLY WEAPON; (2) FIRST DEGREE RAPE WHILE ARMED WITH A DEADLY (AN ADDITIONAL COUNT); (3) FELONY HARRASSMENT WHILE ARMED WITH A DEADLY WEAPON; (4) FELONY VIOLATION OF A NO-CONTACT ORDER WHILE ARMED WITH A DEADLY WEAPON; AND (5) WITNESS TAMPERING.(CP 1-4, 23-26, 167-75; RP 2).

COUNTS II, III AND V THE STATE MOVED TO AMEND THESE CHARGES (INFORMATION) FOR REASONS THAT THE CHARGES HAD NOT BEEN FILED EARLIER BASED ON AT SOME POINT TO TALK POTENTIAL NEGOTIATIONS.(RP 2).

THE STATE ALLEGED FINLEY COMMITTED COUNTS 1-4 AGAINST HIS FIANCEE AND ROOMMATE MONIQUE LOCK ON MARCH 5, 2010 (CP 1-4, 23-26, 443, 446). THE STATE ALLEGED FINLEY COMMITTED COUNT 5 DURING TELEPHONE CONVERSATIONS WITH MS. LOCK THEREAFTER, WHILE AWAITING TRIAL (CP 23-26; RP 951-52, 979).

IN 2009, FINLEY MOVED INTO MS. LOCK'S KENT APARTMENT, AND THE TWO BEGAN WHAT LOCK DESCRIBED AS A FULFILLING AND ADVENTUROUS SEXUAL RELATIONSHIP (RP 362, 364, 446-47, 1050).

LOCK ADMITTED THAT SHE WOULD SOMETIMES MANIPULATE FINLEY: " YOU KNOW WE WOULD GET INTO IT AND HE WOULD THREATEN TO LEAVE AND GO BACK TO FLORIDA OR WHATEVER AND I DIDN'T WANT THAT TO HAPPEN SO WE WOULD GET INTO IT AND I WOULD MAKE THREATS TO YOU KNOW CALL YOU GUYS..." (RP 381, 365, 455) ALSO WHEN FINLEY WANTED TO SPEND TIME WITH FRIENDS, LOCK WOULD THREATEN TO REPORT HIM FOR VIOLATING A NO-CONTACT ORDER THAT HAD ISSUED IN 2009 AND PROHIBITED FINLEY FROM IN-PERSON CONTACT WITH LOCK. (RP 365, 369, 381, 1095, 1098; EX 2).

THE ORDER WAS ISSUED AFTER THE TWO GOT INTO AN ARGUMENT WHILE LOCK WAS COOKING RIBS (RP 365-66). LOCK HAD A KNIFE IN HER HAND AND WAS HARANGUING FINLEY (RP 365). FINLEY BECAME ANGRY AND TOLD LOCK THAT IF SHE DIDN'T LEAVE HE WOULD HURT HER (RP 366). LOCK TESTIFIED SHE CALLED THE POLICE AFTER FINLEY ANGRILY KNOCKED OVER A PRINTER (RP 366).

WHILE LOCK DENIED THAT FINLEY THREATENED

HER WITH A KNIFE DURING THE ARGUMENT, SHE TOLD THE POLICE OTHERWISE (RP 371-72, 458). LATER, HOWEVER, LOCK WENT TO COURT AND ADMITTED SHE LIED TO POLICE (RP 377, 458). FINLEY SUBSEQUENTLY PLED GUILTY TO FOURTH DEGREE ASSAULT (RP 377, 1056-57). THE JUDGE ISSUED THE NO-CONTACT ORDER, PROHIBITING ALL BUT TELEPHONIC CONTACT. (RP 377-378, 1098).

THE MORNING OF MARCH 5, 2010, LOCK WOKE UP AROUND 5:00. A.M. AND REALIZED FINLEY HAD NOT COME TO BED; THE TWO WERE STILL SLEEPING TOGETHER (RP 384-85). SHE FOUND HIM AT THE COMPUTER, WHERE HE HAD BEEN ALL NIGHT (RP 384). LOCK ADMITTED SHE STARTED "GOING OFF ON HIM" AND WAS "JUST CALLING HIM NAMES YOU KNOW KIND OF LIKE BELITTLING HIM (RP 385)." SHE TOLD HIM: "YOU SHOULD HAVE BEEN GONE, WHY ARE YOU STILL HERE. I WANT YOU OUT (RP 385)." LOCK STATED HER REASONS FOR SAYING THESE THINGS TO FINLEY WAS BECAUSE "I WAS MAD BECAUSE HE HAD BEEN UP ALL NIGHT (RP 385)," AND "HE SHOULD HAVE BEEN IN THE BED (RP 385)."

LOCK WENT BACK TO BED. AS SHE WAS TRYING TO SLEEP, SHE COULD HEAR FINLEY MUTTERING UNDER HIS BREATH (RP 386). LOCK TESTIFIED SHE

ROLLED OVER, BUT UPON TURNING BACK FOUND FINLEY SITTING IN THE CHAIR BY THE BED HOLDING A BUTCHER KNIFE (RP 386).

ACCORDING TO LOCK, FINLEY SAID HE WAS GOING TO KILL LOCK AND THEN HIMSELF (RP 390). "HE JUST WAS TALKING ABOUT YOU KNOW HIS LIFE WAS OVER AND MINE WAS TOO AND WE WERE GOING TO BE IN THE NEWSPAPERS SIDE BY SIDE STUFF LIKE THAT (RP 392). ACCORDING TO LOCK, "AT THAT POINT THEN I KIND OF TRIED TO CALM HIM DOWN SO HE COULD GET IN THE BED AND I DID DO THAT AND THEN WE HAD SEX (RP 390)." AND; "WELL I INITIATED AND THEN HE JUST GOT IN THE MOOD AND I THOUGHT EVERYTHING WAS WORKING YOU KNOW BECAUSE WE MADE LOVE LIKE WE ALWAYS DO (RP 393)."

LOCK TESTIFIED THAT AFTER THE FIRST TIME, THEY WENT TO THE BATHROOM TO CLEAN UP. SHE CLAIMED FINLEY WAS STILL THREATENING TO KILL THEM BOTH SO SHE INITIATED SEX A SECOND TIME (RP 404-05). BUT WHEN FINLEY WENT TO OPEN THE WINDOW AFTERWARD, LOCK TOOK OFF RUNNING (RP 404). LOCK TESTIFIED SHE WAS UPSET BECAUSE OF THE THREATS, NOT THE SEXUAL CONTACT (RP 471).

LOCK TESTIFIED THAT UPON LEAVING THE APARTMENT, SHE FELL DOWN THE STAIRS. INITIALLY, LOCK THOUGHT FINLEY PUSHED HER (RP 410, 461-62).

UPSTAIRS NEIGHBORS SUSAN AND SHAWN EMERSON HEARD LOCK YELLING FOR HELP, AND MR. EMERSON RAN TO HER AID. MR. EMERSON TESTIFIED THAT WHEN HE ENCOUNTERED LOCK, SHE WAS YELLING THAT SHE HAD BEEN RAPED (RP 725).

MR. EMERSON BROUGHT LOCK BACK TO THE APARTMENT, AND MRS. EMERSON - WHO WAS ON THE PHONE WITH 911 - HANDED THE PHONE TO LOCK. (RP 731, 856-57). LOCK TOLD THE OPERATOR FINLEY WAS TRYING TO KILL HER, THAT HE "HAD A KNIFE AND HE WAS MAKING ME HAVE ALL KINDS OF SEX WITH HIM (RP 413)." LOCK EXCLAIMED THAT FINLEY WAS ESCAPING ON HIS BICYCLE (RP 413).

EMERGENCY MEDICAL TECHNICIAN JUSTIN SCHAUER WAS ONE OF THE FIRST RESPONDERS (RP 490). THE CALL HAD BEEN DISPATCHED AS A DOMESTIC ASSAULT (RP 493). ACCORDING TO SCHAUER, LOCK REPORTED AN ASSAULT ONLY (RP 493). SCHAUER AND HIS CREW LEFT AFTER DETERMINING LOCK DID NOT NEED TO GO TO THE EMERGENCY ROOM (RP 493).

MEANWHILE, OFFICER AMANDA QUINONEZ SPOKE WITH LOCK (RP 965). ACCORDING TO QUINONEZ, LOCK

SAID SHE WAS FORCED TO HAVE ANAL SEX (RP 967). LOCK REPORTEDLY CLAIMED THAT FINLEY USED A KNIFE AND THREATS TO FORCE HER (RP 967). LOCK'S REPORTED STATEMENTS WERE ADMITTED SOLELY FOR THE PURPOSE OF ASSESSING HER CREDIBILITY (RP 970).

OFFICER PAUL PETER TOOK A STATEMENT FROM LOCK. LOCK REPORTEDLY TOLD HIM FINLEY FORCED HER TO HAVE ANAL SEX AT KNIFE POINT, TWICE (RP 646-47, 650). THE FIRST TIME, LOCK LOST CONTROL OF HER BOWELS. AFTER WASHING FINLEY REPORTEDLY FORCED ANAL SEX A SECOND TIME. AS WITH THE STATEMENT TO QUINONEZ, LOCK'S STATEMENT TO PETER WAS ADMITTED SOLELY FOR CREDIBILITY PURPOSES (RP 645, 648).

SCHAUER AND HIS CREW RETURNED TO THE KENT APARTMENT COMPLEX AFTER DISPATCH INFORMED THEM OF THE NEW ALLEGATIONS (RP 494). SCHAUER COULD NOT REMEMBER IF HE SPOKE TO LOCK AGAIN, OR MERELY OVERHEARD HER STATEMENT TO POLICE (RP 499). IN HIS REPORT, HOWEVER, SCHAUER WROTE: "THE SUSPECT STATES THAT SHE WAS RAPED AS WELL AND THAT IN MY ASSESSMENT I ADDED THAT SHE HAD INJURIES FROM A SEXUAL ASSAULT POSSIBLY..." (RP 494).

ANNA HULSE WAS THE EMERGENCY ROOM NURSE WHO TREATED LOCK AT THE HOSPITAL. ACCORDING TO HULSE

LOCK ALLEGED THE FOLLOWING: AROUND 5:30 THIS MORNING I GOT UP TO GET A GLASS OF WATER HE WAS ON THE COMPUTER. I ASKED HIM WHEN HE WAS GOING TO LEAVE HE DID NOT ANSWER. I WENT BACK TO BED. HE WENT IN THE KITCHEN AND GOT A KNIFE AND CAME INTO MY BEDROOM. HE SAT ON A CHAIR NEXT TO MY BED AND WAS LOOKING AT ME. HE WAS TELLING ME I AM NOT A KID I RUINED HIS LIFE I BROUGHT THE OTHER PERSON OUT OF ME. I AM GOING TO KILL YOU THIS IS A RAP. YOU NEED TO SHUT YOUR MOUTH. HE TOLD ME TO LAY ON MY FACE I TURNED AROUND AND HE TRIED TO PUT HIS THING IN ME. HE SPIT ON IT AND HE WENT AHEAD AND HAD SEX IN MY BEHIND. AFTERWARDS I WASHED MYSELF WITH A WET TOWEL I GOT BACK IN BED AND HE DID IT AGAIN WITH VASELINE AND HE CAME. I WASHED MY HANDS AND MY BEHIND AGAIN. I GOT BACK IN BED AND HE KEPT TELLING ME I RUINED HIS LIFE AND THAT I WAS GOING TO DIE. HE GOT UP AND WALKED TOWARD THE PATIO DOOR AND I TOOK OFF RUNNING. HE PUSHED ME AND I FELL DOWN ABOUT 13 STAIRS I WAS SCREAMING AND POUNDING ON MY NEIGHBOR'S DOORS. A NEIGHBOR GAVE ME A BLANKET AND HIS WIFE CALLED THE POLICE. (RP 563).

REGARDING THE MORNING OF MARCH 5, FINLEY TESTIFIED SIMILARLY TO LOCK (RP 1072-1074). FINLEY ADMITTED THAT AFTER LOCK BERATED HIM, HE DECIDED HE WAS GOING TO SCARE HER, TO TEACH HER A LESSON (RP 1074). FINLEY TESTIFIED HE "BLEW A FUSE." GRABBED A KNIFE FROM THE KITCHEN AND WENT INTO

THE BEDROOM (RP 1075). HE SAT DOWN AND TRIED TO EXPLAIN TO LOCK SHE SHOULD NOT TREAT HIM POORLY (RP 1075). FINLEY DID NOT REMEMBER IF HE WAS YELLING, BUT HE ADMITTED HE "MADE THOSE BIG UGLY FACES BECAUSE [HE] WANTED HER TO BE SCARED (RP 1075)."

FINLEY TESTIFIED THAT DURING THE COURSE OF HIS EXPLANATION, LOCK GRABBED HIM AND STARTED KISSING HIM. SHE REPORTEDLY SAID, "LET'S MAKE LOVE AND EVERYTHING WILL BE OKAY (RP 1076)."

FINLEY TESTIFIED HE PUT THE KNIFE DOWN AND FORGOT ALL ABOUT BEING ANGRY (RP 1076). HE ACKNOWLEDGED HAVING ANAL SEX ON TWO OCCASIONS, AND THAT THE TWO USED THE RESTROOM IN BETWEEN (RP 1077-78).

WHEN FINLEY WENT OUTSIDE TO SMOKE A CIGARETTE THEREAFTER, LOCK RAN OUT THE FRONT DOOR (RP 1081). FINLEY TRIED TO PULL LOCK BACK INSIDE, BUT SHE FELL DOWN THE STAIRS (RP 1081).

FINLEY TRIED TO ASSIST LOCK, BUT SHE PUSHED HIM AWAY (RP 1083). ULTIMATELY, FINLEY REALIZED THAT HE WAS NAKED SO HE WENT BACK INTO THE APARTMENT TO CLOTHE HIMSELF AND RETRIEVE CLOTHING FOR LOCK (RP 1083).

2. DEFENSE COUNSEL WAS INEFFECTIVE FOR: INSTRUCTING THE JURY TO TAKE SHORTCUTS WITHOUT GOING THROUGH THEIR JURY INSTRUCTIONS AND NOT TO MEMORIZE ALL 27 JURY INSTRUCTIONS.

DURING CLOSING ARGUMENTS DEFENSE COUNSEL

MS. TRICKEY STATED TO THE JURY:

TO CONVICT ON THIS CHARGE YOU HAVE TO PROVE THIS OR THIS OR THIS. ONE WAY TO START OR YOU CAN START WITH WHAT YOU MUST LOOK FOR TO DETERMINE IF ANY CHARGE IS PROVED OR NOT. AND IN SOME WAYS THAT MAY BE A SHORTCUT. IN INSTRUCTION NO. 3 IT TELLS YOU THAT THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY AND THAT PLEA OF NOT GUILTY PUTS IN ISSUE EVERY ELEMENT OF EACH CRIME CHARGED. SO YOU HAVE TO DETERMINE WHETHER EACH ELEMENT HAS BEEN PROVED. AS MR. WAGNILD SAID SOME OF THOSE MAYBE PRETTY EASY TO DETERMINE. THE DATE MAY BE EASY TO DETERMINE, THAT IT HAPPEN IN THE STATE OF WASHINGTON MAY BE EASY TO DETERMINE AND SOME OF THE CHARGES ARE EASIER TO DETERMINE THAN OTHERS. (RP- 1182 LINES 11-22)

MS. TRICKEY GOES ON AND SOON AFTER STATES:

THE STATE HAS NOT PROVED A CHARGE IF FROM THE EVIDENCE THAT YOU'VE HEARD OR FROM SOMTHING THAT SHOULD HAVE BEEN PRODUCED AND WASN'T THERE IS REASON TO DOUBT ANY ELEMENT OF ANY CHARGE. SO THAT IS THE STATE'S BURDEN. THEY HAVE TO OVERCOME THAT ELEMENT OF REASONABLE DOUBT. MAKING SURE I, THERE MIGHT BE SOME SHORTCUTS THEN GOING THROUGH YOUR JURY INSTRUCTIONS AND DETERMINING SOME OF THOSE CHARGES. MR. WAGNILD

SUGGESTED SOME OF THE CHARGES WERE EASIER THAN OTHERS, YOU COULD GET RID OF THOSE FIRST. AND THAT MIGHT BE A SHORTCUT AND YOU DON'T HAVE TO MEMORIZE ALL 27 JURY INSTRUCTIONS. (RP 1183 LINES 11-21).

MS. TRICKEY GOES ON TO ADVOCATE WHAT SHE BELIEVED TO BE THE PROSECUTOR'S MEANING OF SHORTCUTS, AND STATES:

SO SOME OF THE SHORTCUTS THOUGH MIGHT BE PRETTY EASY WITHOUT GOING THROUGH ALL OF THE INSTRUCTIONS AND THE FIRST ONE IS THE COUNT THAT CHARGES MR. FINLEY WITH VIOLATING THE NO CONTACT ORDER. (RP 1184 LINES 12-15).

MS. TRICKEY FURTHER INSTRUCTS THE JURY TO NOT ONLY TAKE SHORTCUTS BUT TO ALSO RENDER A FINDING OF GUILTY (TO CONVICT MR. FINLEY) ON THE CHARGE OF FELONY HARASSMENT:

NOW ANOTHER CHARGE THAT YOU MAY WANT TO THAT MAY BE ONE OF THE EASIER ONES WITHOUT GOING THROUGH WHOLE, WHOLE LOT OF THINGS IS THE HARASSMENT. AND THAT'S BECAUSE MS. LOCK TESTIFIED THAT HE THREATENED HER AND SHE WAS AFRAID, SHE WAS AFRAID HE WAS GOING TO KILL HER, HE THREATENED HER WITH A KNIFE. SHE TOLD THE 911 OPERATOR, MR. EMERSON, THE OFFICERS, THE EMTS, MRS. EMERSON HEARD HER SAY HELP ME, HELP ME AND HEARD ON THE 911 AND THE OPERATOR, YOU HAVE THE 911 RECORDING. HEARD HIM THREATENED HER WITH A KNIFE. AND HE ADMITTED THAT HE WANTED

HER TO THINK HE WOULD HARM HER IN ORDER TO GET HER TO LISTEN TO HIM. SO YOU MAY BE ABLE TO VERY QUICKLY DISMISS THAT CHARGE.

3. DEFENSE COUNSEL WAS INEFFECTIVE FOR CONTINUELY REFERRING TO MR. FINLEY AS "A BAD GUY" AND "A SEX OFFENDER."

DURING OPENING STATEMENTS MS. TRICKEY STATES TO THE JURY:

"THIS IS THE STORY OF TWO PEOPLE. IT IS NOT JUST THE STORY OF A BAD GUY AND THE WOMAN." (RP 347 LINES 16-17).

DURING CLOSING ARGUMENTS IN THE FORM OF AN ANALOGY AS WELL AS REALISTICALLY MS. TRICKEY STATES:

THE NURSE YOU WOULD THINK WOULD BE GIVING MEDICAL TREATMENT BUT IS TURNED INTO AN EVIDENCE COLLECTOR BY THE PROTOCOLS THAT ARE SET UP TO ADDRESS THIS GET THE BAD GUYS WHO ARE SEX OFFENDERS. AND THEN YOU HAVE MR. WAGNILD WHO WORKS IN A SPECIAL UNIT IN THE PROSECUTOR'S OFFICE TRAINED TO GET THE BAD GUY CHARGED WITH A SEX OFFENSE. (RP 1180 LINES 6-12).

MS. TRICKEY GOES ON TO STATE THAT OFFICER QUINONEZ ALSO HAS SPECIAL TRAINING TO GET THE "BAD GUYS IN SEXUAL ASSAULTS." (RP 1180 LINES 13-19).

MS. TRICKEY REPEATEDLY REFERS AND INFERS THAT THE DEFENDANT IS A "BAD GUY" AND A "SEX OFFENDER (RP 1180-81)," AND THAT THE PROSECUTOR, OFFICER QUINONEZ, THE EMTs, THE 911 OPERATOR AND MEDICAL NURSE ARE ALL PART OF A SPECIAL VICTIMS UNIT (RP 1180-81) LIKE THE PROGRAMS ON TELEVISION (LAW & ORDER; C.S.I.), AND THEY HAVE "SVU" PROTOCOL AND THAT THEY ARE PART OF A SYSTEM SET UP TO GET THE BAD GUY, SEX OFFENDER (MR. FINLEY) (RP 1180-81).

MS. TRICKEY GOES ON TO MAKE THE ANALOGY THAT THE "SYSTEM" IS BIASED AND THE JURY STANDS BETWEEN THE DEFENDANT (BAD GUY, SEX OFFENDER) AND THE TYRANNY OF THE SYSTEM (PEOPLE WHO ARE JUST DOING THEIR JOBS) (RP 1179 LINES 13-23; 1181 LINES 14-22). (EMPHASIS ADDED)

4. THE DEFENDANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO CONFRONT WITNESSES THROUGH INEFFECTIVE CROSS-EXAMINATION

MS. TRICKEY: "... AND THEY'RE CERTAINLY SOME STATEMENTS IN HERE AND I'VE MARKED SOME OF THEM ER 801 BUT, IF THOSE ARE DEFINITELY DIRECTLY RELEVANT TO ONE OF THE CHARGES SUCH AS TAMPERING THEN I, UNLESS WE ACTUALLY TALKED ABOUT THOSE ON DIRECT TESTIMONY THERE'S A PROBLEM I THINK WITH CONFRONTATION AND THEY ARE HEARSAY AND SHOULD NOT BE ADMITTED..." (RP 749 LINES 5-11).

THE COURT: "... OKAY CAN YOU, CAN YOU EXPLAIN A LITTLE BIT FURTHER YOUR CONFRONTATION ARGUMENT ON SOME OF THESE STATEMENTS?" (RP 750 LINES 13-15).

MS. TRICKEY: YEAH YOUR HONOR IF THERE ARE STATEMENTS THAT REALLY ARE HEARSAY THAT ARE GOING DIRECTLY TO WHETHER MR. FINLEY HAS EFFECTIVELY TAMPERED FOR INSTANCE OR STATEMENTS THAT WOULD BE, THE STATE WANTS TO HAVE ADMITTED FOR WHETHER MS. LOCK WAS AFRAID OR BELIEVED THAT SHE WAS RAPED, THAT KIND OF THING, THEN I THINK WE WOULD HAVE TO HAVE THE OPPORTUNITY TO CROSS EXAMINE HER ON THOSE AND IF THE STATE'S TRYING TO BRING THEM IN THROUGH TELEPHONE CALLS RATHER THAN ASK HER ABOUT THOSE DIRECTLY THEN THE STATE'S BRINGING THOSE IN THROUGH THE BACK DOOR WITHOUT THE OPPORTUNITY FOR THE DEFENSE TO CONFRONT THAT WITNESS. (RP 750 LINES 16-24). (EMPHASIS ADDED)

MS. TRICKEY: YEAH IT'S HEARSAY AND CONFRONTATION AS TO THE YOUR HONOR BECAUSE THE STATE DIDN'T BRING THOSE UP, DIDN'T ASK HER ABOUT IT ON DIRECT, YOU KNOW AT THE TIME SHE WAS TESTIFYING. (RP 769 LINES 11-14).

MS. TRICKEY: OKAY AND THEN ON THAT SAME PAGE MISS LOCK'S COMMENTS WHERE SHE'S TALKING ABOUT I DON'T WANT TO REHASH THIS STUFF. THE PROBLEM IS SHE'S NOT SPECIFIC ENOUGH SO WE KNOW WHAT STUFF IT IS THAT SHE DOESN'T WANT TO REHASH. AND I THINK OBVIOUSLY THE STATE'S GOING TO ARGUE THAT SHE'S BEEN RAPED. SHE DOESN'T WANT TO REHASH RAPE BUT BECAUSE WE DIDN'T CROSS EXAMINE HER ON THIS. THIS WASN'T

ASKED ON DIRECT, WE DON'T HAVE THE OPPORTUNITY TO CROSS EXAMINE HER SO IT'S MORE PREJUDICIAL THAN PROBATIVE AND WE DON'T HAVE THE RIGHT TO CONFRONT HER. WE ACTUALLY DO HAVE THE RIGHT TO CONFRONT HER BUT BY SNEAKING IT THROUGH THE BACKDOOR THIS WAY WE'RE NOT GETTING THE OPPORTUNITY TO SO YOU KNOW THIS IS NOT MADE CLEAR. SO THAT'S THE REASON FOR THE 403 THAT IT'S MORE PREJUDICIAL THAN PROBATIVE BECAUSE IT HASN'T BEEN BROUGHT OUT ON DIRECT AND CROSS EXAMINATION WHEN SHE ACTUALLY TESTIFIES. (RP 772 LINES 6-19) (EMPHASIS ADDED).

MR. WAGNILD: ... CLEARLY... BECAUSE THESE ARN'T TESTIMONIAL SO THAT'S NOT AN ISSUE AT ALL BUT THIS WITNESS HAS TESTIFIED SO, DEFENSE HAD ALL THE TIME, NO ONE WAS STOPPING THEM FROM ASKING ABOUT THESE JAIL PHONE CALLS. I WOULDN'T HAVE OBJECTED. AND, AND I MIGHT BE THE ONLY ONE IN FACT THAT ASKED, ALTHOUGH NO I GUESS I SHOULDN'T SAY THAT... (RP 774 LINES 2-6). (EMPHASIS ADDED).

MS. TRICKEY'S OBJECTIONS TO SOME OF THE CONTENT OF THE JAIL PHONE CALLS MANIFESTED WHEN THE COURT RULED TO ADMITT THESE CALLS AFTER MS. LOCK'S TESTIMONY.

MS. TRICKEY CONTINUES TO ARGUE THAT THE CONTENT IS BEING USED TO PROVE UP OTHER

CHARGES AND THAT PARTS OF MR. FINLEY AND MS. LOCK'S CONVERSATIONS ALTHOUGH NOT RELEVANT COULD BE MISINTERPRETED AND PREJUDICIAL:

MS. TRICKEY: I SUBMIT THAT THAT'S IRRELEVANT BUT IT'S ALSO PREJUDICIAL IF JURORS MAY HOLD IT AGAINST MR. FINLEY THAT MS. LOCK IS ACTUALLY PUTTING MONEY ON HIS BOOKS. THERE ARE OTHER PHONE CALLS THAT TALK ABOUT THE FACT THAT SHE TOOK AND USED A CREDIT TYPE CARDS THAT HE HAD LEFT IN THE APARTMENT. THOSE WON'T BE BEFORE THE JURY SO THEY WON'T KNOW HOW SHE'S HAD SOME OF HIS FUNDS AND THEN SHE LATER APOLOGIZES. (RP 881 LINES 3-9). (EMPHASIS ADDED).

THE COURT: ... I BELIEVE THAT ALL OF THIS ON THE, IS RELEVANT TO THE, TO THE OVERALL ISSUE OF WHAT WAS ACTUALLY BEING COMMUNICATED IN THESE PHONE CONVERSATIONS AND THAT IT IS NOT UNFAIRLY PREJUDICIAL IN RELATION TO ITS RELEVANCE... (RP 881 LINES 11-14).

DURING ONE OF THE PHONE CALLS MS. LOCK STATES SHE SPOKE WITH HER ADVOCATE AND ASKED THAT THE RAPE CHARGE BE DROPPED. MS. TRICKEY ARGUES:

MS. TRICKEY: ... SHE SAYS I WANT THE RAPE CHARGE DROPPED BUT I HAVEN'T HEARD ANYTHING SINCE BUT I'M JUST ARGUING THAT THAT'S 801. IT'S OFFERED FOR THE TRUTH. WE DIDN'T CROSS EXAMINE ON HER ON THAT WHEN

SHE WAS ON THE STAND BECAUSE THE STATE DID NOT ASK HER ON DIRECT ABOUT THAT AND SO I BELIEVE THAT IT WOULD VIOLATE HIS RIGHT TO CONFRONT WITNESSES TO ALLOW IT IN THIS ONE. (RP 882 LINES 3-8) (EMPHASIS ADDED).

MR. WAGNILD: WITH ALL DUE RESPECT TO MS. TRICKEY I DON'T THINK THE CONFRONTATION ARGUMENT IS WELL FOUNDED. I MEAN, THE CONFRONTATION CLAUSE IS MET WHEN I PUT THAT WITNESS ON THE STAND AND I ASK HER TO START ASKING HER ABOUT THE INCIDENT. NO ONE HAS CUT OFF MS. TRICKEY'S ABILITY TO CROSS EXAMINE THIS WITNESS... (RP 883 LINES 24, 25 AND RP 884 LINES 1-4). (EMPHASIS ADDED).

THE COURT: MS., MS. TRICKEY DO YOU HAVE ANY AUTHORITY THAT CONTRADICTS WHAT MR. WAGNILD IS SAYING ABOUT? (RP 884 LINES 6-8).

MS. TRICKEY: I DON'T YOUR HONOR. (RP 884 LINE 9)

THE COURT: OKAY, ALLRIGHT THE REST OF IT I AM GOING TO PERMIT THE JURY TO HEAR, IT IS PREJUDICIAL GRANTED BUT I DON'T THINK IT'S UNFAIRLY PREJUDICIAL. (RP 885 LINES 10-13) (EMPHASIS ADDED).

MS. TRICKEY QUESTIONED MR. EMERSON EXTENSIVELY ON WHETHER OR NOT MS. LOCK SAID TO HIM THAT SHE WAS RAPED WAS SCREAMING THAT SHE HAD BEEN RAPED. (RP 737-738).

WHILE CROSS-EXAMINING MS. EMERSON
MS. TRICKEY EXTENSIVELY QUESTIONS HER ABOUT
WHETHER OR NOT SHE HEARD MS. LOCK SCREAMING
RAPE. (RP 862-863)

MR. EMERSON CLAIMS HE HEARD MS. LOCK SAY
THAT SHE HAD BEEN RAPED (RP 737-38)

MS. EMERSON CLAIMS SHE DID NOT HEAR MS.
LOCK SAY ANYTHING ABOUT RAPE OR BEING RAPED.
(RP 862-63):

DURING CLOSING ARGUMENTS MS. TRICKEY
SUMMARIZES THE TESTIMONY OF THESE TWO
WITNESSES AND STATES: "WHO IS THE MOST
BELIEVABLE WITNESS?" (RP 1187 LINE 9).

ODDLY ENOUGH DURING CROSS-EXAMINATION
OF MS. LOCK. (RP 437-471) MS. TRICKEY NEVER
ASKS MS. LOCK WHAT SHE SAID TO EITHER OF
THE EMERSONS. IN FACT DURING CROSS
EXAMINATION DEFENSE COUNSEL DOESN'T EVEN
MENTION THAT MS LOCK EVER SPOKE WITH THE
EMERSONS OR THAT MR. AND MRS. EMERSON
EVEN EXISTED. (RP 437-471)(NO ENTRY FOUND
CONCERNING THE EMERSONS).

THE PROSECUTOR DID ASK THE QUESTION IN
REFERRANCE TO WHAT WAS SAID TO MR. EMERSON
BY MS. LOCK ON DIRECT:

MR. WAGNILD: OKAY AND THEN WHAT HAPPENED WHEN THE NEIGHBORS CAME OUT? (RP 410 LINES 9-10).

MS. LOCK: THEY ASKED ME WHAT WAS GOING ON AND I TOLD HIM AND A GUY GOT A BLANKET AND COVERED ME UP. (RP 410 LINES 11-13).

MR. WAGNILD: WAS IT THAT POINT THAT THE NEIGHBORS THAT CAME OUT AND WAS IT ONE OR BOTH OF THEM THAT ACTUALLY CAME OUT? (RP 410 LINES 13-15).

MS. LOCK: IT WAS THE GUY I DIDN'T SEE THE LADY UNTIL I WENT INTO THEIR APARTMENT. (RP 410 LINES 15-17).

MR. WAGNILD: YOU SAID SOME THINGS TO HIM (RP 410 LINES 18-19).

MS. LOCK: I JUST SAID THAT HE WAS TRYING TO KILL ME CALL THE POLICE. (RP 410 LINES 19-21).

MR. WAGNILD: OKAY. (RP 410 LINES 21-22).

MS. LOCK: THAT'S WHAT I SAID TO HIM AND THAT'S ALL I SAID TO HIM. (RP 410 LINES 22-24).

MR. WAGNILD: AND THEN YOU WENT INTO THEIR APARTMENT? (RP 410 LINE 25).

MS. LOCK: UM HUM. (RP 411 LINE 1).

5. DEFENSE COUNSEL COMMITTED MULTIPLE ACTS OF INEFFECTIVENESS, ABANDONED REQUIRED DUTY OF LOYALTY TO CLIENT, MADE POOR STRATEGIC OR TACTICAL CHOICES WITH DISREGARD FOR CLIENT'S BEST INTEREST WITH THE INTENTION TO WEAKEN HER CLIENT'S CASE.

(a). ACT ONE: MR. FINLEY'S TESTIMONY UNDER OATH WAS THAT HIS REMARK "I THINK THAT I AM YOUR BEST WITNESS (RP 1120)," WAS IN REFERENCE TO HIM HAVING TO TESTIFY AND NOT ANYTHING TO DO WITH JAIL PHONE CALLS.

MS. TRICKEY'S ASSERTIONS DURING CLOSING ARGUMENTS ARE THE EXACT OPPOSITE OF MR. FINLEY'S TESTIMONY (RP 1201) AND BOLSTERS THE PROSECUTION'S CASE. MS. TRICKEY'S ASSERTIONS ALSO INFER THAT MR. FINLEY GAVE FALSE TESTIMONY:

MR. WAGNILD: YESTERDAY AFTER WE PLAYED SOME OF THE JAIL PHONE CALLS, THE CALLS THAT YOU MADE TO MS. LOCK AND WE TOOK A BREAK, DO YOU REMEMBER THAT, THE MORNING BREAK (RP 1120 LINES 4-7)?

MR. FINLEY: YES SIR (RP 1120 LINE 8).

MR. WAGNILD: AND THE JURY WAS LET OUT AND YOU SAID TO ME I THINK THAT I AM YOUR BEST WITNESS. DO YOU REMEMBER SAYING THAT (RP 1120 LINES 9-10).

MR. FINLEY: YEAH. BUT NOT IN THOSE WORDS. BUT, IN THAT CONTEXT YES. (RP 1120 LINES 11-13).

MR. WAGNILD: AND THAT WAS AFTER WE HAD LISTENED TO SOME OF THE JAIL PHONE CALLS RIGHT (RP 1120 LINES 13-15)?

MR. FINLEY: THAT WASN'T IN REFERENCE TO THE PHONE CALLS (RP 1120 LINE 16).

MR. WAGNILD: WELL YOU HADN'T TESTIFIED YET (RP 1120 LINE 17).

MR. FINLEY: I HADN'T, I HADN'T, BUT I WAS GOING TO (RP 1120 LINES 18-19).

MR. WAGNILD: AND SO YOU THOUGHT THAT ONCE YOU TESTIFIED THAT YOU'LL BE MY BEST WITNESS (RP 1120 LINES 19-21)?

MR. FINLEY: WELL SIR I'M THE ONLY PERSON THAT WAS THERE. AND I'M ACTUALLY ADMITTING TO SOME THINGS THAT I DID WHICH I HAD NO, WHICH I WASN'T GOING TO DO (RP 1120 LINES 21-24).

MR. FINLEY EXPLAINS THAT HE DID NOT USE THOSE WORDS "I THINK THAT I AM YOUR BEST WITNESS," AND THAT WHAT WAS SAID WAS NOT IN REFERENCE TO JAIL PHONE CALLS. THAT WHAT HE SAID WAS IN REFERENCE TO HIM HAVING TO TESTIFY.

CONTRARY TO MR. FINLEY'S TESTIMONY MS. TRICKEY DURING CLOSING ARGUMENTS STATES:

MS. TRICKEY: THE TAMPERING CHARGE DEPENDS ON THE PHONE CALLS. THAT MAYBE MR. FINLEY WAS RIGHT WHEN HE TOLD MR. WAGNILD YOU KNOW I'M YOUR BEST WITNESS AS TO THE PHONE CALLS ON THE TAMPERING CHARGE (RP 1201 LINES 6-9).

(b) ACT TWO: MISREPRESENTATION, ERRONEOUSLY CONCEDED DEFENDANT'S GUILT

DURING CLOSING ARGUMENT IN REFERENCE TO THE CHARGE OF FELONY HARASSMENT AND MR. FINLEY'S TESTIMONY MS. TRICKEY STATES:

MS. TRICKEY: NOW ANOTHER CHARGE THAT YOU MAY WANT TO GO TO THAT MAY BE ONE OF THE EASIER ONES WITHOUT GOING THROUGH WHOLE, WHOLE LOT OF THINGS IS THE HARASSMENT. AND THAT'S BECAUSE MS. LOCK TESTIFIED THAT HE THREATENED HER AND SHE WAS AFRAID, SHE WAS AFRAID HE WAS GOING TO KILL HER, HE THREATENED HER WITH A KNIFE. SHE TOLD THE 911 OPERATOR, MR. EMERSON, THE OFFICERS, THE EMTS, MRS. EMERSON HEARD HER SAY HELP ME, HELP ME AND HEARD ON THE 911 AND THE OPERATOR, YOU HAVE THE 911 RECORDING, HEARD HIM THREATEN HER WITH A KNIFE. AND HE ADMITTED THAT HE WANTED HER TO THINK HE WOULD HARM HER IN ORDER TO GET HER TO LISTEN TO HIM. SO, YOU MAY BE ABLE TO VERY QUICKLY DISMISS THAT CHARGE (RP 1185 LINES 23-25 AND RP 1186 LINES 1-8).

MS. TRICKEY NOT ONLY INSTRUCTS THE JURY TO SKIP OVER THEIR JURY INSTRUCTIONS BY TAKING SHORTCUTS. SHE GIVES THE JURY A FORMAT IN DIRECTING THE VERDICT AGAINST MR. FINLEY. CONTRARY TO MS. TRICKEY'S RECOMMENDATION THAT HER CLIENT SHOULD BE CONVICTED BECAUSE "HE ADMITTED THAT HE WANTED HER TO THINK HE WOULD HARM HER IN ORDER TO GET HER TO LISTEN TO HIM." DOES NOT ALLOW THE JURY TO INDEPENDENTLY REACH A VERDICT AND IS ADVERSE TO THE TESTIMONY GIVEN BY MR. FINLEY WHICH WAS:

MR. WAGNILD: SO THE CHARGE OF FELONY HARASSMENT I MEAN YOU DID THIS DIDN'T YOU? (RP 1107)

MR. HEJMAN: YOUR HONOR AGAIN THE, THE ACTUAL. (RP 1107)

THE COURT: OVERRULED. (RP 1107).

MR. FINLEY: OH BOY. (RP 1107).

MR. WAGNILD: IS THAT A YES? (RP 1107).

MR. FINLEY: WELL I THINK THAT'S FOR THE JURY TO DECIDE SIR. (RP 1107) (EMPHASIS ADDED)

MR. WAGNILD: ARE YOU SAYING THAT YOUR NOT SURE YOU THREATENED TO KILL HER, SHE WAS SCARED, HAPPENED IN WASHINGTON, HAPPENED ON MARCH 5TH. (RP 1107).

MR. FINLEY: YES SIR (RP 1107). (EMPHASIS ADDED).

MR. WAGNILD: YOUR GUILTY. (RP 1107).

MR. HEIMAN: YOUR HONOR I'M GOING TO OBJECT. (RP 1107)

MR. FINLEY: THAT'S FOR THE JURY TO DECIDE SIR (RP 1107).

(C). ACT THREE: MR. FINLEY WAS DENIED HIS RIGHT TO A FAIR TRIAL THROUGH MS. TRICKEY'S INSISTENCE THAT "IT HAPPEN ON MARCH 5," AND "IT HAPPEN IN THE STATE OF WASHINGTON." (EMPHASIS ADDED).

PRIOR TO CLOSING ARGUMENTS THE COURT'S INSTRUCTIONS TO THE JURY WERE, "THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY. THAT PLEA PUTS IN ISSUE EVERY ELEMENT OF EACH CRIME CHARGED. THE STATE IS THE PLAINTIFF AND HAS THE BURDEN OF PROVING EACH ELEMENT OF EACH CRIME CHARGED BEYOND A REASONABLE DOUBT." (RP 1142 LINES 5-9). (EMPHASIS ADDED).

DURING CLOSING ARGUMENTS THE PROSECUTOR
IN AN EFFORT TO GET A CONVICTION ON THE
RAPE CHARGES THE PROSECUTOR ARGUES:

MR. WAGNILD: LET'S TALK SPECIFICALLY ABOUT
THE RAPE CHARGES COUNT ONE AND TWO.
BECAUSE LET'S FACE IT, THESE THINGS —
THAT ARE REALLY AT ISSUE HERE. NOW
I'VE DONE SORT OF THE SAME THING. I'VE
SUMMARIZED THE ELEMENTS JUST TO MAKE
THEM, JUST SO WE CAN GO THROUGH THEM
QUICKLY AND WE CAN KIND OF I THINK
THROUGH THIS NARROW THINGS DOWN JUST
A LITTLE BIT IN TERMS OF WHAT THE
ISSUES ARE HERE AT TRIAL. FIRST OF
ALL THE LOCATION, AGAIN WE KNOW IT
HAPPENED IN WASHINGTON. WE KNOW IT
HAPPENED ON MARCH 5TH 2010. (RP 1155 LINES
13-22). (EMPHASIS ADDED).

DEFENSE COUNSEL IN SUPPORT OF THE
PROSECUTOR'S ARGUMENT ON THE ELEMENTS
TO CONVICT MR. FINLEY STATES:

MS. TRICKEY: IN INSTRUCTION NO. 3 IT TELLS
YOU THAT THE DEFENDANT HAS ENTERED A
PLEA OF NOT GUILTY PUTS IN ISSUE EVERY
ELEMENT OF EACH CRIME CHARGED. SO YOU
HAVE TO DETERMINE WHETHER EACH
ELEMENT HAS BEEN PROVED. AS MR. WAGNILD
SAID SOME OF THOSE MAY BE PRETTY EASY
TO DETERMINE. THE DATE MAY BE EASY TO

DETERMINE, THAT IT HAPPENED IN THE STATE OF WASHINGTON MAY BE EASY TO DETERMINE AND SOME OF THE CHARGES ARE EASIER TO DETERMINE THAN OTHERS (RP 1182 LINES 15-22).
(EMPHASIS ADDED).

MS. TRICKEY NOT ONLY CONCEDES THE DEFENDANT'S GUILT. COUNSEL ALSO RELIEVES THE STATE OF ITS BURDEN TO PROVE THE ELEMENTS OF ALL THE CHARGED OFFENSES. DEFENSE COUNSEL FOLLOWING WHAT SHE BELIEVES IS THE PROSECUTION'S LEAD FURTHER INSTRUCTS THE JURY:

MS. TRICKEY: MR. WAGNILD SUGGESTED SOME OF THE CHARGES WERE EASIER THAN OTHERS, YOU COULD GET RID OF THOSE FIRST. AND THAT MIGHT BE A SHORTCUT AND YOU DON'T HAVE TO MEMORIZE ALL 27 JURY INSTRUCTIONS (RP 1183 LINES 17-21).

TRIAL COUNSEL'S ENDORSEMENT THAT "IT" HAPPENED IN THE STATE OF WASHINGTON (RP 1182), (RP 1152 LINES 16-17). DEPRIVES THE JURY OF REACHING AN INDEPENDANT VERDICT BUT ALSO IS INTENTIONALLY MISLEADING, CREATING A FALSE PERCEPTION OF GUILT, ENHANCED BY THE TRIAL COURT'S TRUE AND FACTUAL INSTRUCTIONS IN REGARD TO THE ELEMENTS WHICH ARE:

THE COURT: TO CONVICT THE DEFENDANT OF CRIME OF RAPE IN THE FIRST DEGREE AS CHARGED IN COUNT ONE YOU MUST FIND THAT IN AN ACT THAT IS SEPARATE AND DISTINCT FROM THAT CHARGED IN COUNT TWO, EACH OF THE FOLLOWING FOUR ELEMENTS OF THE CRIME MUST BE PROVED BEYOND A REASONABLE DOUBT. ONE, THAT ON OR ABOUT MARCH 5TH 2010 THE DEFENDANT ENGAGED IN SEXUAL INTERCOURSE WITH MONIQUE LOCK. TWO, THAT THE SEXUAL INTERCOURSE WAS BY FORCIBLE COMPULSION. THREE, THAT THE DEFENDANT USED OR THREATENED TO USE A DEADLY WEAPON OR WHAT APPEARED TO BE A DEADLY WEAPON AND FOUR, THAT ANY OF THESE ACTS OCCURRED IN THE STATE OF WASHINGTON (RP 1145 LINES 1-10). (EMPHASIS ADDED).

MS. TRICKEY'S ENDORSMENT THAT "IT HAPPEN IN THE STATE OF WASHINGTON," CAN NOT BE CONTRIVED FOR ANY DEFENSIVE PURPOSES AND IS COMPLETELY ALIGNED WITH THE PROSECUTOR'S ASSERTIONS OF MR. FINLEY'S GUILT. THE RECORD ALSO SHOWS THAT FROM THE START OF THE TRIAL PROCEEDINGS MS. TRICKEY TOOK EVERY OPPORTUNITY TO PREJUDICE THE DEFENSE BY ENDORSING THE ELEMENTS NEEDED TO CONVICT MR. FINLEY:

MS. TRICKEY STATES TO THE COURT THAT MS. LOCK STATES THAT SHE WAS NOT RAPED (RP 185 LINES 17-24).

MS. LOCK TESTIFIES THAT SHE WAS NOT RAPED, AND SHE CONSENTED TO HAVING SEXUAL CONTACT WITH MR. FINLEY (RP 393 LINE 1-6; RP 400 LINES 10-14; RP 405 LINES 1-6; RP 541; RP 453 LINES 11-17; 470 LINES 4-10).

MR. FINLEY TESTIFIES THAT HE DID NOT RAPE MS. LOCK AND THAT THE SEXUAL CONTACT WAS CONSENSUAL (RP 1076-1079; RP 1118; 1128; 1136)

MS. LOCK TESTIFIED AND MR. FINLEY TESTIFIED THAT THERE WAS NO RAPE BOTH TESTIMONIES WERE CONSISTENT WITH THIS ASSERTION YET, MS. TRICKEY DURING CLOSING ARGUMENTS STATES:

MS. TRICKEY: MS. LOCK ON THE 911 CALL LISTEN TO HER VOICE IF YOU DON'T REMEMBER IT. SHE SOUNDS ANGRY WHEN SHE SEES MR. FINLEY UP ABOVE IN THE PARKING LOT AND SHE SAYS HE'S GETTING AWAY. HE'S DRESSED IN BLACK HE'S GETTING AWAY AND HURRY, HURRY PLEASE HE'S GETTING AWAY. SHE DOESN'T WANT HIM TO GET AWAY. SHE'S REALLY ANGRY. NOW IT COULD BE BECAUSE SHE'S BEEN RAPED AND SHE'S ANGRY (RP 1189 LINES 6-12). (EMPHASIS ADDED).

C. ARGUMENT

1. TRIAL COUNSEL IMPROPERLY MISINFORMED JURY ON HOW TO READ THEIR JURY INSTRUCTIONS WHICH DENIED FINLEY A FAIR TRIAL.

CONTRARY TO TRIAL COUNSEL'S REMINDER TO THE JURY OF JURY INSTRUCTION NO. 3, "IN INSTRUCTION NO. 3 IT TELLS YOU THAT THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY PUTS IN ISSUE EVERY ELEMENT OF EACH CRIME CHARGED." (RP 1182 LINES 15-17). MS. TRICKEY'S

CONTINUED AND REPEATED ASSERTIONS THAT:

MS. TRICKEY: AS MR. WAGNILD SAID SOME OF

THOSE MAY BE PRETTY EASY TO DETERMINE. THE DATE MAY BE EASY TO DETERMINE, THAT IT HAPPEN IN THE STATE OF WASHINGTON MAY BE EASY TO DETERMINE (RP 1182).

MS. TRICKEY: MAKING SURE I, THERE MIGHT BE SOME SHORTCUTS THEN GOING THROUGH YOUR JURY INSTRUCTIONS AND DETERMINING SOME OF THOSE CHARGES. MR. WAGNILD SUGGESTED SOME OF THE CHARGES WERE EASIER THAN OTHERS, YOU COULD GET RID OF THOSE FIRST. AND THAT MIGHT BE A SHORTCUT AND YOU DON'T HAVE TO MEMORIZE ALL 27 JURY INSTRUCTIONS. (RP 1183 LINE 11-21)
(EMPHASIS ADDED).

MS. TRICKEY MAKES SEVERAL REFERENCES ENDORSING THE PROSECUTOR'S ASSERTIONS THAT THE STATE HAS PROVED EACH ELEMENT OF THE CRIMES CHARGED (RP 1152-1157).

MS. TRICKEY FURTHER INSTRUCTS THE JURY THAT THE PROSECUTOR'S SUGGESTIONS ARE CORRECT AND THAT THE JURY COULD (CONVICT) GET RID OF THOSE FIRST. WITHOUT REMEMBERING OR RELYING ON ANY OF THE COURT'S INSTRUCTION. (RP 1183 LINES 11-21).

FINALLY WITHOUT BEING CRYPTIC AND GUARDED MS. TRICKEY STATES: "SO SOME OF THE SHORTCUTS THOUGH MIGHT BE PRETTY EASY WITHOUT GOING THROUGH ALL OF THE INSTRUCTIONS.." (RP 1184 LINES 12-14) (EMPHASIS ADDED).

MS. TRICKEY ALSO INSTRUCTS: "NOW ANOTHER CHARGE THAT YOU MAY WANT TO THAT MAY BE ONE OF THE EASIER ONES WITHOUT GOING THROUGH WHOLE, WHOLE LOT OF THINGS IS THE HARASSMENT." (RP 1186 LINES 1-8).

MS. TRICKEY NOT ONLY INSTRUCTS THE JURY TO NOT READ THEIR JURY INSTRUCTIONS BUT ALSO TO CONVICT MR. FINLEY WITHOUT THE AID OF THE COURT'S INSTRUCTION. (RP 1186 LINES 1-8).

MS. TRICKEY'S CLOSING ARGUMENT IS NOT ADVERSARIAL AS TRIAL COUNSEL NOT ONLY CONCEDES FINLEY'S GUILT SHE INTENTIONALLY UNDERMINES THE DELIBERATION PROCESS TO BE FAVORABLE FOR THE PROSECUTION.

CITING UNITED STATES V. CRONIC, 466 US 648, 80 L Ed 2d 657, 664-65, 104 S. Ct. 2039

"[I]T HAS LONG BEEN RECOGNIZED THAT THE RIGHT TO COUNSEL IS THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL."

MCMANN V. RICHARDSON, 397 US 759, 771, 114, 25 L Ed 2d 763, 90 S. Ct. 1441 (1970).

THE TEXT OF THE SIXTH AMENDMENT ITSELF SUGGESTS AS MUCH. THE AMENDMENT REQUIRES NOT MERELY THE PROVISION OF COUNSEL TO THE ACCUSED, BUT "ASSISTANCE," WHICH IS TO BE "FOR HIS DEFENCE."

UNITED STATES V. ASH, 413 US 300, 309, 37 L Ed 2d 619, 93 S. Ct. 2568 (1973). THUS,

THE ADVERSARIAL PROCESS PROTECTED BY THE SIXTH AMENDMENT REQUIRES THAT THE ACCUSED HAVE "COUNSEL ACTING IN THE ROLE OF AN ADVOCATE." ANDERS V.

CALIFORNIA, 386 U.S. 738, 743, 18 L Ed 2d 493, 87 S. Ct. 1396 (1967).

MS. TRICKEY'S NUMEROUS SUGGESTIONS THAT THE JURY SHOULD DELIBERATE WITHOUT GOING THROUGH ALL OF THE INSTRUCTIONS (RP 1184), VIOLATES FINLEY'S RIGHT TO DUE PROCESS PROMISED AND GUARANTEED TO HIM IN THE 5TH AMENDMENT.

DURING THE DELIBERATION PROCESS THE JURY
FORWARDS A QUESTION IN REFERENCE TO THE
VALIDITY OF THE NO-CONTACT ORDER.

THE COURT: OH HERE SHE COMES. OKAY HERE'S
THE QUESTION, NO SURPRISE. DOES THE
FIRST DATE ON THE NO-CONTACT ORDER
VOID THE WHOLE DOCUMENT, LINE 12 VERSUS
LINE 14 EXHIBIT 2. (RP 1210 LINES 16-19).

MS. TRICKEY: YOUR HONOR I THINK THEY HAVE
TO BE INSTRUCTED TO RE-READ THEIR
INSTRUCTIONS. THEY CAN BE TOLD THEY ARE
THE FINDERS OF FACT. (RP 1211 LINES 11-13)
(EMPHASIS ADDED).

MS. TRICKEY NOW REQUESTS THAT THE COURT
INSTRUCT THE JURY TO RE-READ THEIR
INSTRUCTIONS AFTER COUNSEL HAD CONSISTENTLY
TOLD THEM NOT TO READ ALL OF THEIR INSTRUCTIONS,
"AND THE FIRST ONE IS THE COUNT THAT CHARGES
MR. FINLEY WITH VIOLATING THE NO-CONTACT
ORDER." (RP 1184 LINES 13-15). (EMPHASIS ADDED)

DEFENSE COUNSEL PROVIDED INEFFECTIVE
ASSISTANCE OF COUNSEL. EVERY CRIMINAL
DEFENDANT IS GUARANTEED THE RIGHT TO
EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE
SIXTH AMENDMENT OF THE UNITED STATES
CONSTITUTION AND ARTICLE I, SECTION 22 OF THE
WASHINGTON STATE CONSTITUTION.

STRICKLAND V. WASHINGTON, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed 2d 674 (1984); STATE V. THOMAS, 109 Wn. 2d 222, 229, 743 P. 2d 816 (1987).

DEFENSE COUNSEL IS INEFFECTIVE WHERE (1) THE ATTORNEY'S PERFORMANCE WAS DEFICIENT AND (2) THE DEFICIENCY PREJUDICED THE DEFENDANT. STRICKLAND, 466 U.S. at 687; THOMAS, 109 Wn. 2d at 225-26.

MS. TRICKEY'S ACTS NOT ONLY PREJUDICED THE DEFENDANT'S CASE, THEY WERE PRESUDICIAL PER SE AND CLEARLY DENIED FINLEY A FAIR TRIAL.

BUT FOR COUNSEL'S ERRORS THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT.

RELIEF SOUGHT: THIS COURT SHOULD REVERSE AND REMAND FOR A NEW TRIAL.

2. DEFENSE COUNSEL'S COMMENTS INFERED THAT FINLEY WAS A BAD GUY AND A SEX OFFENDER.

THROUGHOUT THE PROCEEDING MS. TRICKEY MAKES SEVERAL COMMENTS THAT CLEARLY IMPLY AND INSINUATE THAT MR. FINLEY IS A BAD GUY AND A SEX OFFENDER. (RP 347 LINES 16-17; RP 1180-81).

MS. TRICKEY GOES ON TO BOLSTER THE STATE'S CASE AND FURTHER PREJUDICE THE DEFENDANT BY ELEVATING THE PROSECUTOR'S ROLE AND JOB DESCRIPTION. MS. TRICKEY ALSO AMENDS AND ELEVATES THE ROLES AND JOB DESCRIPTIONS OF SEVERAL PROSECUTION WITNESSES, LIKENING THEM TO MOVIE STARS AND ACTORS ON HIT TV SHOWS "LAW & ORDER." (RP 1180-81).

MS. TRICKEY WHILE PRAISING AND AMENDING THE JOB DESCRIPTION OF THE PROSECUTOR AND HIS GROUP OF ELITE PROFESSIONAL WITNESSES THAT AS COUNSEL CLAIMES HAVE "SVU PROTOCOL" (RP 1180), ARE A PART OF THE SPECIAL VICTIMS UNIT IN KING COUNTY (RP 1180), AND THAT THESE PEOPLE ARE ALL PART OF A SYSTEM DESIGNED AND GEARED TO TREAT EVERYONE WHEN THERE'S A SEX CHARGE ALIKE (RP 1179-80), AND COUNSEL STATES THAT EACH WITNESS WAS OR RECEIVED "SPECIAL TRAINING TO GET THE BAD GUYS IN SEXUAL ASSAULTS." (RP 1180-81).

MS. TRICKEY: AND THEN YOU HAVE MR. WAGNILD

WHO WORKS IN A SPECIAL UNIT IN THE PROSECUTOR'S OFFICE TRAINED TO GET THE BAD GUY CHARGED WITH A SEX OFFENSE. SPECIAL, ... (RP 1180 LINES 9-12).

THE SUPREME COURT RECOGNIZED IN CRONIC THAT THERE ARE

"CIRCUMSTANCES THAT ARE SO LIKELY TO PREJUDICE THE ACCUSED THAT THE COST OF LITIGATING THEIR EFFECT IN A PARTICULAR CASE IS UNJUSTIFIED" CRONIC 466 U.S. at 658, 104 S.Ct. at 2046. THE COURT IDENTIFIED THE COMPLETE DENIAL OF COUNSEL OR THE DEPRIVATION OF EFFECTIVE REPRESENTATION AT A CRITICAL STAGE OF AN ACCUSED'S TRIAL AS JUSTIFYING A PRESUMPTION OF PREJUDICE. Id. at 659, 104 S.Ct. at 2047.

MS. TRICKEY'S STATEMENTS IN THIS INSTANCE AS WELL AS OTHERS WERE NOT DESIGNED TO CAST DOUBT ON THE PROSECUTOR'S THEORY. MS. TRICKEY'S STATEMENTS THROUGHOUT THE TRIAL PROCEEDINGS HAS BEEN TO CAST DOUBT ON THE JURY'S ABILITY TO RETURN A VERDICT OF NOT GUILTY.

NOT ONE OF THE STATE'S WITNESSES CLAIMED OR TESTIFIED TO HAVING "SVU" PROTOCOL.

NOT ONE OF THE STATE'S WITNESSES CLAIMED OR TESTIFIED TO HAVE RECEIVED "SPECIAL TRAINING TO GET THE BAD GUYS IN SEXUAL ASSAULTS."

BUT FOR COUNSEL'S ERRORS THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT.

RELIEF SOUGHT: THIS COURT SHOULD REVERSE AND REMAND FOR A NEW TRIAL.

3. DEFENSE COUNSEL FAILED TO ADEQUATELY CROSS-EXAMINE MS. LOCK DENYING FINLEY THE RIGHT TO CONFRONTATION AND A FAIR TRIAL

THE TRIAL RECORD CLEARLY REFLECT THAT MR. FINLEY'S 6TH AMENDMENT CONFRONTATION RIGHTS WERE DENIED THROUGH COUNSEL'S INEFFECTIVE REPRESENTATION (RP 749 LINES 2-13 ; RP 750; RP 769; RP 772; RP 773 ; RP 774 ; RP 881-82; RP 883-85).

IN MS TRICKEY'S OWN WORDS

MS. TRICKEY : "... THE STATE WANTS TO HAVE ADMITTED FOR WHETHER MS. LOCK WAS AFRAID OR BELIEVED THAT SHE WAS RAPED, THAT KIND OF THING, THEN I THINK WE WOULD HAVE TO HAVE THE OPPORTUNITY TO CROSS EXAMINE HER ON THOSE AND IF THE STATE'S TRYING TO BRING THEM IN THROUGH TELEPHONE CALLS RATHER THAN ASK HER ABOUT THOSE DIRECTLY THEN THE STATE'S BRINGING THOSE IN THROUGH THE BACK DOOR WITHOUT THE OPPORTUNITY FOR THE DEFENSE TO CONFRONT THAT WITNESS.
(RP 750). (EMPHASIS ADDED).

MS. TRICKEY NOT ONLY ADMITTS TO FAILING TO CROSS EXAMINE MS. LOCK ON ISSUES DIRECTLY RELATED TO FINLEY'S GUILT OR INNOCENCE BUT COUNSEL ATTEMPTS TO BLAME THE STATE FOR HER OWN DEFICIENT PERFORMANCE.

THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL IS RECOGNIZED NOT FOR ITS OWN SAKE, BUT BECAUSE OF THE EFFECT IT HAS ON THE ABILITY OF THE ACCUSED TO RECEIVE A FAIR TRIAL. UNITED STATES V. CRONIC, 406 US 648, 80 LEd 2d 657, 667, 104 S. Ct. 2039

DEFENSE COUNSEL FURTHER ATTEMPTS TO ARGUE.

MS. TRICKEY: "... AND I THINK OBVIOUSLY THE STATE'S GOING TO ARGUE THAT SHE'S BEEN RAPED. SHE DOESN'T WANT TO REHASH RAPE BUT BECAUSE WE DIDN'T CROSS EXAMINE HER ON THIS. THIS WASN'T ASKED ON DIRECT, WE DON'T HAVE THE OPPORTUNITY TO CROSS EXAMINE HER SO IT'S MORE PREJUDICIAL THAN PROBATIVE AND WE DON'T HAVE THE RIGHT TO CONFRONT HER. WE ACTUALLY DO HAVE THE RIGHT TO CONFRONT HER BUT BY SNEAKING IT THROUGH THE BACKDOOR THIS WAY WE'RE NOT GETTING THE OPPORTUNITY TO SO YOU KNOW THIS IS NOT MADE CLEAR." (RP 772). (EMPHASIS ADDED).

AGAIN, MS. TRICKEY ATTEMPTS TO ARGUE MULTIPLE ISSUES IN WHICH THE PROSECUTOR "SHE CLAIMS," PREVENTED HER FROM EFFECTIVELY CROSS-EXAMINING MS. LOCK. (RP 749-50 ; RP 772; RP 774 ; RP 881-82).

IN QUOTING WILSON V. MINTZES, 761 F. 2d 275, 286 (1985): IN CRONIC, 104 S. Ct. at 2047, THE COURT HAS REAFFIRMED THAT NO SPECIFIC SHOWING

SHOWING OF PREJUDICE IS REQUIRED WHEN AN ACCUSED IS DEPRIVED OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE CROSS EXAMINATION.

MR. WAGNILD: NO ONE WAS STOPPING THEM FROM ASKING ABOUT THESE JAIL PHONE CALLS. I WOULDN'T HAVE OBJECTED. AND, AND I MIGHT BE THE ONLY ONE IN FACT THAT ASKED ALTHOUGH NO I GUESS I SHOULDN'T SAY THAT. (RP 774 LINES 3-6).

QUOTING: UNITED STATES V. CRONIC, 466 US 648, 80 LEd 2d 657, 668, 104 S.Ct. 2099.

NO SPECIFIC SHOWING OF PREJUDICE WAS REQUIRED IN DAVIS V. ALASKA 415 US 308, 39 LEd 2d 347, 94 S.Ct. 1105 (1974), BECAUSE THE PETITIONER HAD BEEN "DENIED THE RIGHT OF EFFECTIVE CROSS-EXAMINATION" WHICH "WOULD BE CONSTITUTIONAL ERROR OF THE FIRST MAGNITUDE AND NO AMOUNT OF SHOWING OF WANT OF PREJUDICE WOULD CURE IT."

IN REGARDS TO MS. TRICKEY'S CONTINUOUS OBJECTIONS OF ER 801, 403 AND 402 WHICH IS NOW A MANIFESTED ERROR IN PROCEDURE DUE TO COUNSEL'S INABILITY TO PROPERLY CROSS EXAMINE MS. LOCK. THE COURT RULES:

THE COURT: OKAY, ALRIGHT THE REST OF IT I AM GOING TO PERMIT THE JURY TO HEAR, IT IS

PREJUDICIAL GRANTED BUT I DON'T THINK IT'S UNFAIRLY PREJUDICIAL. (RP 885 LINES 10-13).

DISPITE THE TRIAL COURT'S RULINGS AGAINST COUNSEL THERE IS NO SUCH THING AS "FAIR PREJUDICE" NOR IS ANYTHING PREJUDICIAL HARMLESS.

DEFENSE COUNSEL'S ERRORS RENDERED THE PROCEEDINGS FUNDAMENTALLY UNFAIR. BUT FOR COUNSEL'S ACTS AND OMISSIONS THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT.

RELIEF SOUGHT: THIS COURT SHOULD REVERSE AND REMAND FOR A NEW TRIAL.

4. DEFENSE COUNSEL COMMITTED MULTIPLE ACTS OF INEFFECTIVENESS WITH THE INTENTION TO WEAKEN HER CLIENT'S CASE.
-

(a) ACT ONE: MR. FINLEY'S TESTIMONY UNDER OATH WAS THAT THE REMARK MADE OUTSIDE OF THE JURY'S PRESENCE "I THINK THAT I AM YOUR BEST WITNESS," WAS NOT THE WORDS HE USED NOR DID HIS COMMENT HAVE ANYTHING TO DO WITH JAIL PHONE CALLS AS THE PROSECUTION IMPLIED. (RP 1120).

DEFENSE COUNSEL, MS. TRICKEY'S ASSERTIONS DURING CLOSING ARGUMENTS ARE THE EXACT OPPOSITE OF HER CLIENT'S TESTIMONY AND NOT ONLY DOES COUNSEL SUPPORT THE STATE'S PREJUDICIAL ASSERTIONS AND CLAIMS THAT FINLEY IS ADMITTING OUTSIDE OF THE JURY'S PRESENCE HIS GUILT TO THE PROSECUTOR AS IMPLICATED IN THE SPECIALLY SELECTED JAIL PHONE CALLS. MS. TRICKEY'S ASSERTIONS ALSO SUGGEST THAT HER CLIENT'S TESTIMONY WAS FALSE. (RP 1201).

WASHINGTON COURT RULES RPC RULE 1.8(b)
STATES:

A LAWYER SHALL NOT USE INFORMATION RELATING TO REPRESENTATION OF A CLIENT TO THE DISADVANTAGE OF THE CLIENT UNLESS THE CLIENT GIVES INFORMED CONSENT EXCEPT AS PERMITTED OR REQUIRED BY THESE RULES.

SPECIFICALLY AND WITH THE INTENT TO DEPRIVE MR. FINLEY OF A TRIAL FREE FROM FUNDAMENTAL UNFAIRNESS MS. TRICKEY ASSERTS:
MS. TRICKEY: THE TAMPERING CHARGE DEPENDS ON THE PHONE CALLS. THAT MAYBE MR. FINLEY WAS RIGHT WHEN HE TOLD MR. WAGNILD YOU KNOW I'M YOUR BEST WITNESS

AS TO THE PHONE CALLS ON THE TAMPERING CHARGE (RP 1201 LINES 6-9).

MS. TRICKEY'S ASSERTIONS CAN NOT BE CONTRIVED FOR ANY DEFENSIVE PURPOSES. IN FACT COUNSEL ARGUMENT IS NOT AN ARGUMENT AT ALL. MS. TRICKEY'S ASSERTION IS ADVERSE ONLY TO MR. FINLEY'S TESTIMONY.

DURING MR. FINLEY'S TESTIMONY WHEN ASKED BY THE PROSECUTOR IF HE SAID "I THINK THAT I AM YOUR BEST WITNESS," FINLEY REPLIED: "YEAH. BUT NOT IN THOSE WORDS." (RP 1120, 11-13).

WHEN THE PROSECUTOR HINTS THAT THIS STATEMENT WAS MADE IN REFERENCE TO JAIL PHONE CALLS, FINLEY STATES: "THAT WASN'T IN REFERENCE TO THE PHONE CALLS."

(RP 1120 LINE 16).

THUS MS. TRICKEY'S STATEMENTS WHILE "APPEARING" AS COUNSEL FOR MR. FINLEY'S DEFENSE ARE EGREGIOUS AND PREJUDICIAL TO A FAIR TRIAL AS TO UNDERMINE MR. FINLEY'S CREDIBILITY IN HIS TESTIMONY:

MS. TRICKEY NOT ONLY DISTORT THE FACTS TO BE FAVORABLE FOR THE PROSECUTION. COUNSEL'S STATEMENT (RP 1201 LINES 6-9) IS OFFERED FROM THE PERSPECTIVE OF A WITNESS.

MS. TRICKEY'S ERRONEOUS ASSERTION OF WHAT MR. FINLEY SAID WAS A BLATANT MISREPRESENTATION OF FACTS WHICH TOOK PLACE OUTSIDE OF THE JURY'S PRESENCE.

A CRIMINAL DEFENDANT IS GUARANTEED, THROUGH THE DUE PROCESS CLAUSE, TO A TRIAL FREE FROM FUNDAMENTAL UNFAIRNESS, WHICH STEMS FROM BLATANTLY INCOMPETENT COUNSEL. CLARK V. BLACKBURN, 619 F.2d 431 (5TH CIR. 1980)

EVERY CRIMINAL DEFENDANT IS GUARANTEED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 22 OF THE WASHINGTON STATE CONSTITUTION.

STRICKLAND V. WASHINGTON, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); STATE V. THOMAS, 109 WN. 2d 222, 229, 743 P.2d 816 (1987)

DEFENSE COUNSEL IS INEFFECTIVE WHERE (1) THE ATTORNEY'S PERFORMANCE WAS DEFICIENT AND (2) THE DEFICIENCY PREJUDICED THE DEFENDANT. STRICKLAND, 466 U.S. at 687; THOMAS, 109 WN. 2d at 225-26.

BUT FOR COUNSEL'S ERRORS THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT.

(b) ACT TWO: COUNSEL'S MISREPRESENTATION WHILE CONCEDEING FINLEY'S GUILT DEPRIVED THE DEFENDANT OF A FAIR TRIAL.

THROUGHOUT THE PROCEEDINGS INSTEAD OF CASTING DOUBT ON THE PROSECUTOR'S THEORIES PERTAINING TO FINLEY'S GUILT. MS. TRICKEY CONSISTENTLY INSINUATES THAT MS. LOCK WAS RAPED AND MR. FINLEY IS GUILTY OF OTHER CHARGED OFFENSES AS WELL.

IN REGARDS TO THE 911 CALL AND MS. LOCK'S WORDS TO THE OPERATOR. MS. TRICKEY ONCE AGAIN WHILE "PRETENDING" TO BE AN ADVOCATE FOR THE DEFENSE, ADVANCES AND OFFERS HER THEORY THAT MS. LOCK WAS ANGRY BECAUSE SHE HAD BEEN RAPED BY MR. FINLEY. (RP 1189).

MR. FINLEY TESTIFIED THAT HE DID NOT RAPE MS. LOCK AND THAT THE SEXUAL CONTACT WAS CONSENSUAL. (RP 1076-79; RP 1118; RP 1128; RP 1136).

MS. LOCK TESTIFIED THAT SHE WAS NOT RAPED AND THAT THE SEXUAL CONTACT WAS CONSENSUAL. (RP 393; RP 400; RP 405; RP 451; RP 453; RP 470; RP 1234 AND RP 1261).

YET, TO THE DEFENDANT'S HORROR AND CONTRARY TO HIS TESTIMONY MS. TRICKEY STATES:

MS. TRICKEY: "... SHE DOESN'T WANT HIM TO GET AWAY. SHE'S REALLY ANGRY. NOW IT COULD BE BECAUSE SHE'S BEEN RAPED AND SHE'S ANGRY.

(RP 1189 LINES 6-12). (EMPHASIS ADDED).

HERE, DEFENSE COUNSEL IS CLEARLY ADVOCATING FOR THE STATE AND THIS IS NOT THE COUNSEL PROMISED BY THE SIXTH AMENDMENT.

IN QUOTING UNITED STATES V. TUCKER, 716 F.2d 576, 592 (1983): (IN RELEVANT PART)

WE ARE ALSO AWARE THAT OTHER CIRCUITS HAVE CHOSEN TO MODIFY THE TERM "PREJUDICE" IN THEIR FORMULATION OF THE RULE THEY APPLY WHERE INEFFECTIVENESS HAS BEEN SHOWN... ADDING THE WORDS "ACTUAL" OR "SUBSTANTIAL" IS RHETORICAL SURPLUSAGE. IF WE ARE PERSUADED THAT PREJUDICE TO THE DEFENSE HAS BEEN SHOWN AS THE RESULT OF COUNSEL'S ERRORS AND OMISSIONS WE MUST REVERSE. WHILE IT IS TRUE THAT CONSTITUTIONAL ERROR MAY BE NON-PREJUDICIAL, THERE IS NO SUCH THING AS HARMLESS PREJUDICE.

THIS IS ONLY ONE OF MANY INSTANCES WHERE MS. TRICKEY EITHER HINTS AT OR EXPRESSES HER OWN BELIEF IN OFFERING TO THE JURY THAT HER CLIENT IS GUILTY.

DURING CLOSING ARGUMENTS MS. TRICKEY REPEATEDLY, IMPROPERLY INSTRUCTS THE JURORS

TO TAKE SHORTCUTS BY NOT READING THEIR JURY INSTRUCTIONS. (RP 1183 LINES 11-21; RP 1184 LINES 12-14; RP 1185 LINES 23-25 AND RP 1186 LINES 1-8).

THIS IS CLEARLY A DUE PROCESS VIOLATION AND INEFFECTIVE ASSISTANCE YET MS. TRICKEY HAS SOMETHING MORE IMPORTANT THAT SHE WANTS THE JURY TO KNOW.

CONTRARY TO MR. FINLEY'S TESTIMONY (RP 1107), AND TO THE DEFENDANT'S HORROR. MS. TRICKEY STATES:

MS. TRICKEY: NOW ANOTHER CHARGE THAT YOU MAY WANT TO GO TO THAT MAY BE ONE OF THE EASIER ONES WITHOUT GOING THROUGH WHOLE, WHOLE LOT OF THINGS IS THE HARASSMENT. AND THAT'S BECAUSE MS. LOCK TESTIFIED THAT HE THREATENED HER AND SHE WAS AFRAID, SHE WAS AFRAID HE WAS GOING TO KILL HER, HE THREATENED HER WITH A KNIFE. SHE TOLD THE 911 OPERATOR, MR. EMERSON, THE OFFICERS, THE EMTs, MRS. EMERSON HEARD HER SAY HELP ME, HELP ME AND HEARD ON THE 911 AND THE OPERATOR, YOU HAVE THE 911 RECORDING, HEARD HIM THREATEN HER WITH A KNIFE. AND HE ADMITTED THAT HE WANTED HER TO THINK HE WOULD HARM HER IN ORDER TO GET HER TO LISTEN TO HIM. SO, YOU MAY BE ABLE TO VERY

QUICKLY DISMISS THAT CHARGE. (RP 1185 LINES 23-25 AND RP 1186 LINES 1-8).

IN COOPER V. FITZHARRIS WE REJECTED THE QUANTUM OF THE EVIDENCE OF GUILT AS A MEASURE OF PREJUDICE. WE CHOSE INSTEAD TO REQUIRE REVERSAL IF COUNSEL'S INCOMPETENCY DENIED AN ACCUSED A FAIR TRIAL, 586 F.2d AT 1333. (CITING TUCKER 716 F.2d 576, 592 (1983)).

IN THIS CASE THERE WAS NO NEED FOR A STATE PROSECUTOR. DEFENSE COUNSEL NOT ONLY CONCEDES MR. FINLEY'S GUILT, BUT COUNSEL GOES ON TO DIRECT AND INSTRUCT THE JURY TO CONVICT HER CLIENT. (RP 1185 LINES 23-25 AND RP 1186 LINES 1-8).

"THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IS THUS THE RIGHT OF THE ACCUSED TO REQUIRE THE PROSECUTION'S CASE TO SURVIVE THE CRUCIBLE OF MEANINGFUL ADVERSARIAL TESTING...[I]F THE PROCESS LOSES ITS CHARACTER AS A CONFRONTATION BETWEEN ADVERSARIES, THE CONSTITUTIONAL GUARANTEE IS VIOLATED." CRONIC, 466 U.S. AT 656-57, 104 S. CT. AT 2045 (CITING: OSBORN V. SHILLINGER, 861 F.2d 612 (10TH CIR. 1988)).

THE RECORD CLEARLY SHOWS THAT MS. TRICKEY UNDERMINES AND MANIPULATES THE JURY'S VERDICT TO BE FAVORABLE FOR THE STATE (RP 1185-86).

DEFENSE COUNSEL IS INEFFECTIVE WHERE
(1) THE ATTORNEY'S PERFORMANCE WAS DEFICIENT
AND (2) THE DEFICIENCY PREJUDICED THE
DEFENDANT. STRICKLAND, 406 U.S. at 687;
THOMAS, 109 WN. 2d at 225-26.

D. CONCLUSION

THE JURY NOTE TO THE COURT (CP 165) CLEARLY
EXPRESSES REASONABLE DOUBT. THE AMBIGUOUS
INAPPLICABLE NO CONTACT ORDER IS CLEARLY
INSUFFICIENT EVIDENCE TO WARRANT A CONVICTION.
YET, THE JURY FOUND MR. FINLEY GUILTY OF FELONY
VIOLATION OF A NO CONTACT ORDER.

THIS JURY'S VERDICT OF GUILT ON THE FVNC0
CHARGE IS NOT BASED ON (1) THE EVIDENCE, (2) NOR
PROOF BY THE STATE OF THE ELEMENTS, (3) NOR
REASONABLE DOUBT. IT IS BASED ON PREJUDICE.

THE JURY'S ABILITY TO CONVICT ON THE FVNC0
CHARGE IS CLEAR PROOF THAT THE FUNDAMENTAL
FAIRNESS IN THIS TRIAL WAS COMPROMISED. THE
CUMULATIVE IMPROPER COMMENTS, ACTS AND OMISSIONS
RESULTED IN DENIAL OF FAIR TRIAL... THIS COURT
SHOULD REVERSE AND REMAND FOR NEW TRIAL.

DATED THIS 28TH DAY OF AUGUST, 2012.

RESPECTFULLY SUBMITTED,

(s) Pernell Finley
PERNELL L. FINLEY, PRO SE
AIRWAY HEIGHTS CORRECTIONS CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA. 99001

CERTIFICATE OF SERVICE

I FINLEY, PERNELL CERTIFY THAT ON THIS 28TH DAY OF AUGUST, 2012 I DELIVERED BY U.S. MAIL TO: PROSECUTING ATTORNEY KING COUNTY, APPELLATE UNIT, W554 KING COUNTY COURTHOUSE, 516 THIRD AVENUE, SEATTLE, WA. 98104; ALSO: DANA NELSON, NIELSEN, BROMAN & KOCH P.L.L.C., 1908 E. MADISON STREET, SEATTLE, WA. 98122. TRUE AND CORRECT COPIES OF: PRO SE BRIEF OF APPELLANT AND STATEMENT OF ADDITIONAL GROUNDS, TO WHICH THIS CERTIFICATE IS ATTACHED. THIS STATEMENT IS CERTIFIED TO BE TRUE AND CORRECT UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON. SIGNED BY ME AT AIRWAY HEIGHTS, WA., ON THE DATE BELOW.

08-28-2012
DATE

Pernell Finley
PERNELL FINLEY, PRO SE
AIRWAY HEIGHTS CORRECTIONS
P.O. BOX 2049
AIRWAY HEIGHTS, WA. 99001