68874-0 68874-0

Washington State Court of Appeals - Division I

State of Washington,
Plaintiff/Respondant

No. 68874-0-I

v.

Mark Anthony Stiller,
Defendant/Appellant

Statement of Additional Grounds

2011 SEP -3 PM 1:21

Now comes Mark Anthony Stiller, Pro se, Defendant/Appellant filing this Statement of Additional Grounds on Cause # 68874-0-I.

Relief Sought

The Court should reverse all charges against the Appellant with prejudice. Alternatively reversed without prejudice, and remand. If the Court chooses the alternative of reversal without prejudice, then the Court should remand the case back to Whatcom County with counts #'s I, III, IV, and VI removed from chargings due to the facts presented in this brief. The Court should also order Whatcom County Superior Court to consolidate counts # II, and V, together as one continuous act, this arguement is not addressed in this brief but in the brief filed by the Appellant's legal representative, Christopher Gibson.

Arguments

1. Elements of Charges

The State did not prove all of the elements of all charges (I to VI). Under Washington State Criminal Practices, Volume 13, § 4617, on Verdicts it states: At the trial of a criminal prosecution, a jury verdict must be based only on the admissible evidence developed at trial.
St. V Stephens 93 Wn. 2d 186, 607 P. 2d 304 (1980)

In all six charges there is an element that the Defendant not be married to the victim. See jury instructions # 12(2), 13, 17(2), 18(2), 19(2), 20(2), and 21(2), (See Exhibit A), 9, and 11.
This is also reinforced in instruction # 22 (Exhibit A), which states: These instructions are complete and until a verdict has been reached you are not permitted to go beyond these instructions to discover new definitions meanings or information. ... (Emphasis added)

This non-proven (or provided at trial) element was admitted to by the trial judge on pages 669-671 of the verbatim transcripts, during the discussions on the jury instructions. To quote Judge Snyder: "I was going to say we haven't had any testimony to that effect, have we? Nobody's been asked that question."

Since a vital element of each charge was not proven during the trial, then all six charges must be reversed and dismissed with prejudice.
U.S. V Swanson 943 F.2d 1070 (9th Cir. 1971)
St. V Barrero 58 P.3d 245, 147 Wn 2d 353
St. V Bailey 787 P.2d 1578, 114 Wn. 2d 340 (1990); 757 P.2d 541, 52 Wn. App. 42 (1988)
St. V Castillo 208 P.3d 1201, 150 Wn. App. 466
St. V Gamboa, Garcia 685 P.2d 643, 38 Wn App 409
St. V Acosta 683 P.2d 1069, 101 Wn 2d 612
St. V Kjorsvik 812 P.2d 86, 117 Wn 2d 93

2. Prosecutorial Misconduct

The Whatcom County Prosecutor, Mr. Setter, committed prosecutorial misconduct during his closing arguments.
Setter violated Washington State Criminal Practices, Volume 13, § 4503, for closing arguments, (8), and (9), dealing with bringing up matters outside of the evidence provided in trial (6), and the Prosecutor's responsibility to see to it that

justice is done.
St. V Russell 125 Wn. 2d 24, 887 P.2d 747 (1994), cert. denied, 514 U.S. 1129, 115 S. Ct. 2004, 131 L.Ed 2d 1005 (1995)

During Setter's closing argument he brought up repetitively, a fact that wasn't proven during the trial. To wit, the fact (and element in argument #1) that the Defendant was not married to the alleged victim. This action by Setter had violated the Constitutional Rights to a fair trial of the Defendant, both under the U.S. Constitution and Washington State Constitution.

Setter, in his closing argument, was given reasonable lattitude to draw and express reasonable inferences from <u>evidence produced at trial</u>. The burden of proof estoblishing the impropriety of Setter's remarks, and thier prejudicial effect on the Defendant, falls upon the Defendant.
State V. Wilson 28 Wash. App 821, 626 P.2d 998, review denied

Counsel cannot make prejudicial statements not sustained by record, in his closing arguments to the jury. This is particularly applicable to the prosecutor due to his <u>responsibility</u> and <u>duty</u> to see that the Defendant is given a fair trial in all criminal prosecutions, in accordance with the U.S. and Wash. Const.
St. V Rose 62 Wash. 2d 309, 382 P. 2d 513 (1963)

Setter's statements during his closing argument improperly introduced into evidence, facts not proven before the jury.
St. V. Davenport 100 Wn. 2d 757, 675 P.2d 1213 (1984)

Since Setter's actions, intentional (as stated in RPT 669-671), or accidental has caused the action of prosecutorial misconduct. The only action this Court should do is order a dismissal of all charges with prejudice.
St V Russell 125 Wn. 2d 24, 882 P.2d 747 (1994), cert. denied, 514 US 1129, 115 S.Ct. 2004, 131 L.Ed 2d 1005 (1995)

US V Swanson 943 F.2d 1070 (9th Cir. 1971)
ST V Alexander 64 Wn. App 147, 151, 822 P.2d 1250 (1992)
citing St. V Ferguson 100 Wn. 2d 131, 135, 667 P.2d 68 (1983)
St V Murley 35 Wn. 2d 233, 237, 212 P. 2d 801 (1949)
St V Monk 42 Wn. App 320, 324-25, 711 P.2d 365 (1985
St V Borsheim 140 Wn. App 357 (2007)
ST V Ziegler 114 Wn. 2d 533, 540, 789 P.2d 79 (1990)

3. Sentenced to Out of Range

Count #I was charged on the J+S as January 1, 2007.
Count #III was charged on the J+S as January 1, 2006.

Count #I on the charging documents and in instruction #12, section (1), as occuring between October 16, 2008, and October 15, 2010. (Exhibit A)
Count #3 on the charging documents and in instruction #18, section (1), as occuring between October 16, 2008, and October 15, 2010. (Exhibit A)

Due to the J+S' stating dates on counts I and III outside of the dates brought to the jury for thier verdict, both must be dismissed with prejudice as being unfactual. A Defendant's Constitutional Right under the U.S. Const., and the Constitution of the State of Washington mandate that all convictions must be made on factual items. Since 2006 and 2007 both fall out of any and all facts brought to trial, these charges must be dismissed with prejudice. see Borrero, Bailey, Castillo, Gambra-Garcia, Acosta, Kjorsvik.
U.S. V Swanson 943 F.2d 1070 (9th Cir. 1971)
PRP of Wilson 279 P.3d 990, 169 Wn. App. 379
St V Deer 287 P.3d 539, 175 Wn 2d 725
St V Embry/Morgan/Parker 287 P.3d 648
St V Powell 290 P3d 353
St V Shouse 83 P.3d 453, 119 Wn. App 793
St V Zillyette 169 Wn App. 24, 278 P.3d 1144

St V Rivas 168 Wn. App. 882, 278 P.3d 686
St V Aamick 126 Wn. 2d 422, 894 P.2d 1325

4. Testimony of Alleged Victim/Due Process

The testimony of the alleged victim changed from her initial reporting.

Originally, the alleged victim reported to nurse ~~Knapstad~~ Margaret John, the interviewing and examining nurse of the alleged victim, and witness for the state. During this interview ~~Knapstad~~ John was informed that there was no vaginal contact by the alleged victim (RPT 425-426).
A.J.B. (alleged victim) testified that the accused touched/used her hands, front (vagina), and mouth (RPT 490 lines 7-16). She did not mention her "butt" until later on in the testimony, but she did mention a new fact not told, and in fact, was denied by A.J.B. to Nurse John of vaginal contact. (RPT 414 line 20)

The use of this testimony by Setter is a direct violation of the Washington State Criminal practice, volume 13, § 4503(9), which states the responsibility of the Prosecutor to see that justice is done, and is based on facts. While it is clearly authorized that he can strike hard blows in an earnest and vigorous prosecution, he is not at liberty to strike foul ones. Of which this qualifies. Kinzer V Jacksen 316 F.3d 139 (2nd Cir. 2003). The ~~insect~~ Knowing use of this purjured testimony by Setter, violates the due process clause of Mr. Stiller. Schaff V Snyder 190 F.3d 513 (7th Cir. 1999), U.S. V Maryland 238 F.3d 601 (10th Cir. 2000), U.S V Miller 263 F.3d 1 (2nd Cir. 2001), Phillips V Woodford 267 F.3d 966 (9th Cir. 2001).
Since this was done purposedly by Setter, Mr. Stiller's conviction must be reversed, due to due process grounds where the government knowingly elicits, or fails to correct, materially false statements from its witnesses. Daniels V Lee 316 F.3d 477 (4th Cir. 2003), U.S. V Haese 162 F.3d 359 (5th Cir. 1998) Prosecutors cannot obtain a conviction through the use of false evidence. Thompson V Calderon 109 F.3d 1358 (9th Cir. 1996)

In fact, the prosecutor has a Constitutional duty to correct all evidence that he knows is false. U.S. V Groodson 165 F.3d 610 (5th Cir. 1999), Hayes V Woodford 301 F.3d 1054 (9th Cir. 2002)
Setter did not correct any falsehood, more concerned about a conviction than the Constitutional responsibilities of his duty as a prosecutor, or the rights of the accused. Thusly, justifying a reversal of all charges with prejudice, especially counts I, III, and VI, as they are based on uncorrected, and knowingly used false testimony.

Additionally, the testimony of A.J.B. was altered by her mother Lynda Cline's influence, and has been altered/manipulated from the beginning.
Proof of this is in the testimony of Sherry Mulligan, private investigator for the defendant, Mr. Stiller. (RPT 685-686) During an interview where the prosecutor, and defense counsels were present with Ms. Mulligan, interviewing A.J.B, she responded to a question about a note of what happened (Exhibit B), about who's idea the note was. Her response was to lean over the table, look at her mother, and said "It wasn't my idea, wasn't it yours?". A.J.B. also disclosed that her mother Lynda Cline also disclosed to her about her being raped, Cline did this both prior to, and after the initial report. (RPT 685-686).
The deception of Setter to allow these lies and changes to be heard by the jury, constitutes a violation of Mr. Stiller's Constitutional Rights, justifying dismissal with prejudice.
St V Goldberg 72 P.3d 1083, 149 Wn. 2d 888
ST V Carol M.D. & Mark A.D. 948 P.2d 837, 89 Wn. App. 77
D.P.A. Simmons 757 P.2d 519, 110 Wn. 2d 925
ST V Rafay V Burns 285 P.3d 83, 168 Wn. App 734
City of Bremerton V Corbetti, etal 723 P.2d 1135, 106 Wn. 2d 569
Smith V. U.S. 348 U.S. 147, 75 S.Ct. 194, 99 L.Ed. 192 (1954)
State V Howard 102 Or. 431, 203 P. 311 (1921)
St V M.R.C. 989 P.2d 93, 98 Wn. App. 52
St V Page 199 P.3d 437, 147 Wn. App. 849
Detention of Strand 217 P.3d 1159, 167 Wn. 2d 180

Grounds For Relief No. 5

WPIC 1.01 Is A Misstatement of The Law And Impermissibly Aligns The Jurors With The Prosecution

Shortly after impanelment of the jurors, the court impermissibly "and incorrectly" informed said jurors that they were "OFFICERS-OF-THE-COURT". (See attached Exhibit "A")

This is patently untrue and runs afoul of this very court's holding as to the standard for Jury Instructions, and Statutory Law. To wit: WPIC 2.22 holds that jurors are "Public Servants." (See attached Exhibit "B")

As does RCW 9A.04.110(23) (See attached Exhibit "C")

Evidentially, jurors know that a defendant IS NOT an "Officer of the Court". But they are "instructed" TWICE that they are "Officers of the Court" (See Vol. 11 Washington Pattern Jury Instructions -- Criminal): (See attached Exhibit "D"): WPIC 1.01 Advance Oral Instruction (See attached Exhibit "E"): WPIC 1.02 Conclusion of Trial

And thereby become aligned with the Prosecutor and the judge. The court held that "The standards for clairity in a jury instruction is higher than for a statue." State v. LeFaber, 128 Wn.2d 896, 899, 913, P.2d 369 (1996).

Thereby elevating a jury instruction to one notch below Constitutional Law. It appears the Federal Courts are in agreement with this court's holding in LeFaber.

"The purpose of jury instructions is to inform the jury Clearly and Succinctly of the role it is to play..." "United States v. Assi 748 F.2d 62, 65 [1,2] (1984)

"A jury instruction is erroneous if it misleads the jury as to the correct legal standard (OR DOES NOT ADEQUATELY) informs the jury of the Law." U.S. v. Walsh, 194 F.3d 37, 52 [20,21] (1999)

This court held in State v. Hayes, that: "The test in such a situation as this is not a matter of semantics, but whether the jury was misled as to its function." State v. Hayes, 73 Wn.2d 568, 572 [6], 439 P.2d 178 (1968). Only a member of Washington States Just-US Ver work would hold that the jury was not misled as to their "Correct Legal Standard" and the "Role They Were To Play".

Clearly the victim of the "Network" did not receive a fair trial: (U.S.C. VI, Const. Art. I §22) by... 'the unanimous sufferage of twelve of his equals and neighbors." Blakely v. Washington, 542 U.S. 296, 313, 124 S.Ct. 2531, 2543 (2004). "Just as suffrage ensures the PEOPLES ULTIMATE CONTROL of the legislative and executive branches, jury trial is meant to ensure THEIR CONTROL IN THE JUDICIARY". Blakely supra at 124 S.Ct. 2539.

Instead, your victim received an unfair trial by the ~~notorious~~ Washington State "Just-US Network"

Exhibit (A) In Superior Court of The State of Washington
In And For The County Of Whatcom

The Honorable Charles R. Snyder, Judge
Rhonda Jensen, CSR, Official Court Reporter
Whatcom County Superior Court/Bellingham, Washington

State of Washington: Plaintiff
Mark Stiller: Defendant
CS. No. 10-1-01331-1 / Coa No. 68874-0-I
Trial Volume I (Pages 290-468
Verbatim Report of Proceedings
Tuesday, January 24, 2012

(Pg.326, Par 25 - Pg.327, Par 1-7)

Pg 326, Par 25) (25) As jurors, you are "Officers of this Court", and as such,

327, Par 1-7)

Par (1) you must not let your emotions overcome your rational

Par (2) thought process. You must reach a decision based on the

Par (3) facts proved to you, and on the law given to you, not on

Par (4) sympathy, prejudice, or personal preference.

Par (5) To assure that all parties receive a fair trial, you

Par (6) must act impartially with an earnest desire to reach a

Par (7) just and proper verdict.

Exhibit 2)

Washington Practice Series TM
Volume. 11. Washington Pattern Jury Instructions -- Criminal
Part 1 General Instructions
(WPIC 2.22 "Public Servant -- Definition)
WPIC chapter 2. Definitions

"Public Servant" means any person who presently occupies the position of or has been elected, appointed, or designated to become [any officer or employee of government], a [legislator], [judge], [judicial officer] [juror], and [any person participating as an advisor, consultant, or otherwise in performing a government function].

Exhibit 3)

West's Revised Code of Washington Annotated
Title 9A. Washington Criminal Code
Chapter 9A.04. Preliminary Article
"Current With all 2012 Legislation and Chapter 1, 2 and 3 from the 2013 Regular Session"
(RCW[A] 9A.04.110 (23)
(Page 3, Par 23)

"Public Servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including legislator judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function.

xhibit 4)

Washington Practice Series TM
Volume 11. Washington Pattern Jury Instructions -- Criminal
Part I General Instructions
WPIC Chapter 1. Introductory Instructions
(WPIC 1.01 Advance oral Instruction -- Beginning of Proceedi
(Page 6, Par 2)

As jurors, you are "Officers of this Court". As such, you must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, predjudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an ernest desire to reach a just and proper verdict.

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xhibit 5)

Washington Practice Series TM
Volume 11. Washington Pattern Jury Instructions -- Criminal
Part I General Instructions
WPIC Chapter 1. Introductory Instructions
~~(WPIC 1.01 Advance ofal Inst~~
(WPIC 1.02 Conclusion of Trial -- Introductory Instructio
(Page 2, Par 6)

As jurors, you are "Officers of this Court". You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preferenc To assure that all parties receive a fair trial, you must act impartially with an ernest desire to reach a proper verdict.

Grounds For Relief No. 6
Washington State's Enabling Act Mandates Indictment By Grand Jury And Is "Inviolable."

"... no State is at liberty to impose upon one charged with a crime a discrimination in its trial procedure which the Constitution, or AN ACT OF CONGRESS passed, pursuant to the Constitution, alike forbid." Hill v. Texas, 316 U.S. 400, 406, 62 S.Ct. 1159 (1942). All judges not of the "Network" should re-read, U.S.C. Art. VI, Clause No. 2.

When the Washington Territory, in the year 1889 "only" petitioned Congress to be admitted to the Union. Congress agreed, If certain conditions were met. These conditions were enumerated in a Congressional Document called an Enabling Act. At Section 4 of our Enabling Act, Congress is very clearly required that the Washington Territory to agree to ADOPT the United States Constitution as its controlling State Law. And further that nothing could be placed in our State Constitution that was or is "Repugnant" to the United States Constitution. NO PROVISION WAS MADE FOR ANY "PIECEMEA ADOPTION OF THE UNITED STATES CONSTITUTION." Once again no "piecemeal" ADOPTION was agreed to, or permitted by any Enabling Act language whatsoever. Furthermore, we are restrained from placing "any law" in our State Constitution that was or is "Repugnant" to the United States Constitutio Enabling Act. Sec. 4.)

"Acts of the state legislature ... which interfere with, or are contrary to the laws of congress, made in pursuance of

the Constitution, are invalid under the Supremacy Clause." Perez v. Campbell, 91 S.Ct. 1704, 1711 (1971).

There by, Article I, § 25 of our States Constitution, in o far as it purports to lawfully permits a prosecutor to indict y his or her "Information" is unlawful. And is in clear violation f an Act of Congress: (Enabling Act. Sec. 4), mocks Article I, § 2 of our States Constitution) and to continue with this knowing nconstitutional act of indictment by a prosecutor's information vould be an evidential act of Treason by the Washington State Supreme Court. And further indicts every justice of thi Network Court by the language of Article VI, Clauses 2 & 3 of the United States Constitution. In essence, you have knowingly withheld this information from "We, the People," and instead left "We, the People" in the hands of the rosecutors, who generally overcharge and threaten with their nconstitutional power of indictment by these "Informations."

I am formally requesting that the convictions in Whatcom County in the state of Washington Case No. 68874-0-I e thrown out by this Network Court, and that the Whatcom ounty - Washington State prosecutor's office be ORDERED to eek an Indictment by a Grand Jury before I am "confronted" vith any new trial.

> "Only Congress can dispose of and make all needful rules and regulations respecting the TERRITORY or other property belonging to the United States. U.S. Const. Art. IV, §3. Karuk Tribe of California v. Ammon, 209 F.3d 1366, 1373 [3-12] (Fed. Cir. 2000)

In other words, our "Enabling Act" is an Act of ongress, "Guaranteeing" Indictment by "Grand Jury." And cannot be brogated by any case law, statutory law, or Hoc Est Juris.

Conclusion

Due to the accumulated errors on the case at hand, the Court should dismiss all charges with prejudice, as requested under the relief section.
This is due to the elements of all charges not being proven to a jury during the trial, Prosecutorial Misconduct by Mr. Setter, incorrect sentencing outside of the range in the instructions and charging documents, the change in the testimony of the alleged victim, and the prosecutor allowing it, the notifying the jurors that they were "officers of the Court", and that there was never an indictment by a grand jury.
The Court should follow all requests in the Relief Sought Section.

I Mark-Anthony: Stiller, declare under penalty of purjury to Title 28 U.S.C. § 1746, under the laws of the United States of America, and the laws of The State of Washington, that the Declarant, is of age of majority of sound mind and competent to testify and that the facts stated are true and correct to the best of the Declarant's first hand knowledge, understanding and belief.

Signed on This 30th Day of August, 2013

Mark-Anthony: Stiller
Printed Name

Mark Anthony Stiller
Signature of Declarant, Pro_Se

EXHIBIT

A

INSTRUCTION NO. 9

A person commits the crime of child molestation in the first degree when the person has sexual contact with a child who is less than twelve years old, who is not married to the person, and who is at least thirty-six months younger than the person.

INSTRUCTION NO. 11

Married means one who is legally married to another; but does not include a person who is living separate and apart from his or her spouse and who has filed in court for legal separation or for dissolution of the marriage.

INSTRUCTION NO. 12

To convict the defendant of the crime of child molestation in the first degree count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the time intervening between the 16th day of October, 2008 and the 15th day of October, 2010, the defendant had sexual contact, to-wit: penile/vaginal contact with A.J.B.;

(2) That A.J.B. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That A.J.B. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

EXHIBIT

INSTRUCTION NO. 13

A person commits the crime of rape of a child in the first degree when the person has sexual intercourse with a child who is less than twelve years old, who is not married to the person, and who is at least twenty-four months younger than the person.

INSTRUCTION NO. 17

To convict the defendant of the crime of rape of a child in the first degree count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the time intervening between the 16th day of October, 2008 and the 15th day of October, 2010, the defendant had sexual intercourse, to-wit: fellatio with A.J.B.;

(2) That A.J.B. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That A.J.B. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 18

To convict the defendant of the crime of rape of a child in the first degree count 3, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the time intervening between the 16th day of October, 2008 and the 15th day of October, 2010, the defendant had sexual intercourse, to-wit: cunnilingus with A.J.B.;

(2) That A.J.B. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That A.J.B. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 19

To convict the defendant of the crime of rape of a child in the first degree count 4, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the time intervening between the 16th day of October, 2008 and the 15th day of October, 2010, the defendant had sexual intercourse, to-wit: digital/anal penetration with A.J.B.;

(2) That A.J.B. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That A.J.B. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 20

To convict the defendant of the crime of rape of a child in the first degree count 5, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the time intervening between the 16th day of October, 2008 and the 15th day of October, 2010, the defendant had sexual intercourse, to-wit: penile/anal penetration with A.J.B.;

(2) That A.J.B. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That A.J.B. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 21

To convict the defendant of the crime of rape of a child in the first degree count 6, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during the time intervening between the 16th day of October, 2008 and the 15th day of October, 2010, the defendant had sexual intercourse, to-wit: digital/vaginal penetration with A.J.B.;

(2) That A.J.B. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That A.J.B. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Instruction No. 22

These instructions are complete and until a verdict has been reached you are not permitted to go beyond these instructions to discover new definitions, meanings or information. This means that you are not permitted to utilize dictionaries, computers, encyclopedias, the internet or any other source for information about this case. You may not use any electronic device, mobile device or media, such as a cell phone, smart phone, I-phone, Blackberry, computer, any text or instant messaging service, nor may you consult social media sites such as Facebook, My Space, LinkedIn, You Tube or Twitter, websites, or blogs to gather information or to communicate to anyone any information about this case. You may not consult or look to any electronic source to find information of any type in order to supplement what is contained in these instructions or in the evidence presented in court.

EXHIBIT

B

EXHIBIT

10B-38713

MARK

well he would pull down my pants and his two he would push me up two the bed and I don't know what he would do but it really would hurt me. some times he would put something could on me and say like bad words, and like oh yeah mmm that's what my uncle mark dose by the way he buys toys he sais there play toys and they scare me really really badly and so dose he!!!