

TABLE OF CONTENTS

	Page
DEFINITION OF IMPORTANT WORDS	1
OPINION TESTIMONY	2
CHAIN OF CUSTODY FOR EVIDENCE WAS BROKEN	3-4
COURT FAILED TO APPLY THE FRYE TEST	5-6
MANUELS FIFTH AMENDMENT RIGHTS WERE VIOLATED	7-9
MANUELS SIXTH AMENDMENT RIGHTS WERE VIOLATED	10-11
INCONSISTENT TESTIMONY	12-16
MANUEL WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL	17-25
THE PROSECUTIONS MISCONDUCT DENIED MANUEL A FAIR TRIAL	26-34
TRIAL COURT ABUSED ITS DISCRETION	35-40
CONCLUSION	41-44
RELIEF SOUGHT	45
CERTIFICATE OF MAILING	46

DEFINITION OF IMPORTANT WORDS

BLACKS LAW DICTIONARY 8TH EDITION PUBLISHED 2004

PERJURY - Pg. 1175

Perjured Adj. (noun) The act or an instance of the person's deliberately making material false or misleading statement while under oath. Also termed false swearing; false oath.

TESTIMONY - Pg. 1514

Testimony (noun) Evidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition, also termed personal evidence.

False Testimony - Testimony that is untrue. This term is broader than perjury, which has a state of mind element. Unlike perjury, false testimony does not denote a crime - Also termed false evidence.

Opinion Testimony - Testimony based on ones belief or idea rather than on direct knowledge of the facts at issue. Opinion testimony from either a lay witness or an expert witness may be allowed in evidence under certain conditions.

OPINION TESTIMONY

Generally no witness may offer testimony in the form of an opinion regarding a witness's credibility, such a testimony is unfairly prejudicial to the defendant because it invades the exclusive province of the jury, *state v Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278(2001)

Opinion testimony based on one's belief or idea rather than on direct knowledge of the fact at issue. *Demery* 144 Wn.2d at 760(quoting Black's Law Dictionary(7th ed. 1999))

In some instances, a witness who testifies to his belief that the defendant is guilty is merely stating the obvious, such as when a police officer testifies that the defendant because he had probable cause believe he committed the offence. See *cg State v Kirkman* 155 P.3d 123 (wa 2007).

CHAIN OF CUSTODY FOR COMPUTER EVIDENCE WAS BROKEN.

The chain of custody for the computer evidence (exhibits 28 and 29) was broken when Detectives Cardener and Darcobly allowed Mary Jane Manuel to access the computers that were seized in the search warrant. Detectives Gardener and Darcobly testified that they accessed the computers with Mary Jane Manuel. Ms. Manuel testified that she did not access the computers or files.

Detective Gardener testified to the following:

Q) and after -- what occurred during that follow up interview, without going into what she said, what if anything occurred during that follow up interview?

A) Well she assisted us with examining information on the computer by -- she voluntarily came down and accessed into the computer so we were able to determine what it was that we wanted the state crime lab to actually look at. There was a lot of storage devices that were recovered, hard drives. And a lot of them didn't really have anything that were necessarily important to this case. So she was able to go through some of that and other media storage devices and things like that, so we could determine what we wanted to send to the lab. RP @ 243.

Q) was there anything else that she accessed in terms of internet or e-mail accounts to assist you in your investigation?

A) I'm not sure, we looked at everything. Specifically there were some photographs that were discovered in there.

Q) And that -- those were on the computers that were seized during the search warrant?

A) Yeah, on the storage devices, things like that, cell phones. RP @ 243 and 244.

Detective Darcobly testified to the following:

Q) Okay and Ms. Manuel used her password to open

a file in the computer?

A) Believe so

Q) Okay and do you know, was the file hers?

A) I don't know. RP @ 337.

So in fact if Ms. Manuel did access the computer as testified by both Detectives Gardener and Darcobly without having an expert to supervise Ms. Manuel and to testify that precautions were taken to prevent the loss or addition of evidence to the computers that there is no record to show this was done and neither Detectives Gardener or Darcobly have testified that they are experts or any precautions were taken. Then the chain of evidence was broken before the computers were sent to the state crime lab. With the chain of evidence being broken this evidence should not be allowed. Along with that part of both Detectives Gardener and Darcoblys testimony be stricken.

If in fact Ms. Manuel did not access the computer as both Detectives Gardener and Darcobly testified she did, then both testimonies are perjured testimonies and should be stricken. Because if they committed perjury with this part of their testimony what is to say that their complete testimony is not a perjured testimony.

Manuel requests that both computers and all evidence from the computers that was admitted be withdrawn and count III and IV be dismissed with prejudice.

COURT FAILED TO APPLY THE FRYE TEST

Manuel contends that counsel fell below an objective standard when after the State presented testimony from Anne Parsons Marchant the counsel for the defense did not challenge the testimony with the "Frye Test"; "Washington Practice, Evidence Rule 702(d) 'Expert testimony should not exceed the limits of the underlying science or art (Frye)'".

Because Foley never challenged Marchant as being a "SANE" nurse or if its even something that the State of Washington accepts as a matter fact. Foley fell below the standard of representation.

Furthermore, the testimony from Marchant in her own words was inconclusive of rape.

To remove the inconsistent testimony of HMC because of the way HMC answered a question one way then when asked again would give a completely different testimony. As shown in this SAC.

Marchant made reference to the fact it was the standard in Massachusetts but, never was it disclosed to be a standard for Washington. The testimony is as follows:

RP @ 194

Marchant - Massachusetts initiated the "SANE" program 11 years ago...

RP @ 195

... In Massachusetts, pediatric sexual assault...

RP @ 196

... yes there is. Massachusetts is the "Only" state in the United States that has a ...

When Marchant testified that Massachusetts was the only state and that is the state that the examine was done in and it might not be the practice in the

State of Washington, then the test "Failed" the Frye Test and should be excluded along with exhibit no. 2.

RP @ 217

... we have a very strong quality assurance program in Massachusetts...

Foley never once did the Frye Test with the testimony of Marchant as shown in the cross examination of that witness, RP @ 219-220, nor did he re-cross.

MANUELS FIFTH AMENDMENT RIGHTS WERE VIOLATED

Under the Fifth Amendment to the United States Constitution and Article 1, Section 9 of the Washington Constitution, a defendant has the right to say nothing at all about the allegations against him. This privilege against self-incrimination prohibits the STATE from forcing the defendant to testify or eliciting testimony from witnesses relating to the defendants silence or **evasiveness**. State v. Easter, 130 Wn.2d 228, 236, 241, 922 P.2d 1285 (1996).

Manuels Constitutional rights were violated when Detective Gardener testified for the State. The State questioned Detective Gardener about Manuels demeanor. This became an opinion and bias testimony because the Detective has never testified that he has been trained or that he was an expert in determining a persons demeanor.

RP @ 453, 455

Q) Jones - And what was his (Mr. Manuels) demeanor when you first had contact with him?

A) Gardener - We advised him we have a search warrant to search his home. And the first words out of his mouth that I recall -- I was like the second person back -- were that I've been expecting you.

Q) - What was his demeanor while you were there at his residence when you were executing on the search warrant?

A) - Normally people ask a lot of questions when we come into their home, especially when its unannounced, but even so when they're waiting for us as Mr. Manuel indicated. But this particular time he was very quiet, for lack of a better term, **Almost Smug** about us being there and like you know, do what you got to do type thing.

Q) - And what was the defendants demeanor at the beginning of the interview?

A) - Pretty much the same as it was back at the house. The first thing we did was to sit him down.

advise him that we wanted to speak to him, we wanted to advise him of his rights. And we did that. And right off the bat he had several questions for which in and by itself is not a -- you know, and indicator one way or the other. But I guess to describe his demeanor at that point, again the word that -- the only word that comes to my mind would be almost -- rather cavalier, smug attitude about what was going on. This was a pretty serious thing we were locking into, and he was aware of what we were locking into. I advised him what -- what he was being arrested for at that point. And at just -- you know, again, the -- the only words that come to my mind were just a cavalier, kind of a SMUG attitude.

RP @ 456

Q) - Now when you say you become confrontational, can you describe for the jury, in a general context, what you mean by confrontational.

A) - A lot of times -- the goal in this is to keep our level of conversation as an interrogator, and interviewer, to at least the same level as the person that you're speaking to. And when I mean level, I mean you don't want that other person controlling the interview that you're trying to conduct. You're there to elicit information and gather the truth. And if that other person is controlling the -- the interview, obviously that makes it a lot tougher. So one of the techniques that we're taught is to balance out that field. When you have somebody who is a strong personality, somebody who's very intelligent, or somebody who's for lack of a better term, copping an attitude what you'll do is sometimes you'll raise your voice. There's some theatrical things you can do. We didn't do it this particular time, but maybe slam a book on the table to get their attention. What you're trying to do is bring your level of conversation and input into this interview to at least equal to his so you can at least try and extract information at this point.

Foley should have objected when Detective Gardener testified that "you're there to elicit information and gather the TRUTH. Where in fact it is not the job of the interviewer to determine what is the truth or not. But to gather information that the State can present for the Jury to determine what is the truth. With the testimony of Gardener it is depicted that everything

this Detective testifies to is the truth. And whatever Manuel testifies to is not the truth.

RP @ 457

Q) - Throughout the course of the interview that you had with the defendant, did his demeanor shift or change with you?

A) - You know, it vacillated a little bit. But it played -- it played pretty much out as -- as a strong willed personality. He attempted -- in my opinion, he attempted to control some of the interview. My job was to ask questions, his job was to answer those questions. It certainly doesn't mean he can't ask me questions. But I would just say based on my experience, more than usual for somebody who's facing those type of allegations at that time, he seemed to want to control the situation and not, you know, let us ask our questions so he can make an explanation of what the allegations were.

On redirect examination Mr. Foley objected to the questions that were asked by the state of which were sustained. But Mr. Foley failed to have those questions stricken. So in fact the State was permitted to get those questions out for the jury to hear and could have used what they thought Detective Gardener might have answered to.

Fifth Amendment, cited and quoted from State v. Easter, 130 Wn.2d 228, 922 P.2d 1285 (1996):

An accused's right to silence derives, not from Miranda, but from the Fifth Amendment itself ["The right to silence described in Miranda derives from the Fifth Amendment and adds nothing to it" Roberts v. United States, 445 U.S. 552, 560, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980). "The furnishing of the Miranda warnings does not create the right to remain silent; that right is conferred by the Constitution" Jenkins, 447 U.S. at 247n.1 (Marshall, J, dissenting).] The Fifth Amendment applies before the defendant is in custody or is the subject of suspicion or investigation. The right can be asserted in any investigatory or adjudicatory proceeding. Kastigar v. United States, 406 U.S. 441, 444, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972).

MANUELS SIXTH AMENDMENT RIGHTS WERE VIOLATED

The pre-sentence investigation report that was prepared by Community Corrections Officer 2, Missy Farr of Shelton, WA field office and then approved by Community Corrections Supervisor, Jack W. Hill, dated 3/5/2010, should never have been allowed for anyone to consider because Manuel had requested that his attorney be present before he answered any questions. Manuel was denied his request as shown in the report presented to the Court by Missy Farr.

CP @ 107

III - Defendant's Statement Regarding Offense:

I met with the defendant, Rene D. Manuel, briefly in the Mason County Jail on 2/24/2010 to obtain information for this report.

After I introduced myself and asked if he would talk with me, he belligerently told me he would not. He then sarcastically said he would consider it if I returned with his attorney. I told him I didn't think I'd be doing that and I made no further attempts to interview Mr. Manuel.

Throughout the report Ms. Farr continually made reference to Manuels refusal to speak with Ms. Farr, lack of cooperation with Ms. Farr, Manuels refusal to speak and being belligerent about the way I communicated along with what she considered as a poor attitude.

Ms. Farr also refers to "events occurred at the then family home located in the Portland and Oregon City, OR area" where in fact when the report was written and to the date of this SAC Manuel has yet to be interviewed or charged by the State of Oregon.

Manuel requests a reversal of convictions because his Sixth Amendment rights were violated when the DOC Community Corrections Officer (CCO) presented a Pre-sentence Investigation Report (PSI) to the court even though Manuel requested to have his attorney present

at the time of questioning. Manuel was not notified of when the report was going to be taken so that he could notify the trial attorney.

The Court abused its discretion by allowing the report to be admitted into record without allowing Manuel to have his attorney present. The Court should have held over the sentencing or not allowed the report to be presented. Because the State commented on the fact that Manuel did not participate with the interview that Manuel was being evasive.

The CCO did not notify the trial attorney to disclose that she was or wanted to interview Manuel for the PSI.

As in State v. Everybodytalksabout, 166 P.3d 693 (2007). Where the Supreme Court of Washington reversed and remanded for new trial because Everybodytalksabout's attorney was not notified the CCO was going to question or had questioned Everybodytalksabout. With this Everybodytalksabout's Sixth Amendment rights were violated.

INCONSISTENT TESTIMONY

When questioned by the State HMC would state one thing then state something different a couple of questions later. This being the inconsistent testimony or statement.

RP @ 262

Q) - Did you ever move out of Hal and Maries house?

A) - Yes, mam. Right after school had started a little bit, after school started.

Q) - Okay. And how long did you live at the house?

A) - Until I had left. So it was only a couple months.

Q) - Do you remember when you left?

A) - I want to say it was in September.

RP @ 277

Q) - Do you remember moving out of that house at some point in time?

A) - Yes, mam.

Q) - And do you remember what time of year that was?

A) - Still fall. Still -- around like the last month of school (fall last month of school. why did Foley not get it clarified?).

HMC testified that no one was allowed to wear clothes in the hot tub but then when questioned about Manuel touching her she testifies that it was "just like over my bathing suit, you know like grabbing".

RP @ 279-280

Q) - Do you remember whether or not you had a hot tub there at the Currie Way house?

A) - Yes, mam. We had a hot tub.

Q) - Tell me about the hot tub. Who would be in it and how -- how would that go when -- well, did you use the hot tub?

A) - Yes. Me -- sorry, that's not grammatically correct my mom, Rene and I were all in the hot tub. And we weren't allowed to wear clothes.

Q) - Why weren't you allowed to wear clothes?

A) - Because it -- the material from our bathing suits ruined the chlorine. That's what I was told.

Q) - So were you ever alone in the hot tub with the defendant?

A) - Yes.

Q) - And how would that happen?

A) - Before my mom had come out, like before she'd come out to come in, I was alone with him.

Q) - And what would happen when you were in the hot tub alone with him?

A) - He'd rub my legs and like try to get me to come sit really close to him and stuff. And I'd push away, cause I knew my mother was coming out. And I told him no, and he just like rubbed me and tried to grab my legs and stuff.

Q) - Did he touch any other parts of your body while you were in the hot tub?

A) - Yes

Q) - What other parts of your body did he touch?

A) - My vagina.

Q) - Tell me how he did that. What kind of a touch was it?

A) - It was just like rough -- just like over my bathing suit, you know, like grabbing.

Q) - Where did his fingers go?

A) - Just on my bathing suit down there, that area.

HMC testified that she moved out of Hal and Marie's house right after school started. That she moved to

a home on Currie Way. Where she testifies that she lived in that house a couple months

RP @ 262

Q) Jones - Did you ever move out of Hal and Marie's house?

A) HMC - Yes, Mam. Right after school had started a little bit, after school started.

Q) - Okay. And how long did you live at that house?

A) - Until I had left. So it was only a couple months.

Q) - Do you remember when you left?

A) - I want to say it was September.

Then she was asked somewhat the same question again from the State:

RP @ 277

Q) - Do you remember moving out of that house at some point in time?

A) - Yes, mam.

Q) - And do you remember what time of year that was?

A) - Still fall. Still -- around like the last month of school.

Now this was questioned of HMC as to the house with the loft above the garage. Hal and Marie Heiser's house on James Rd.

The State questioned how long she lived in the house on Currie Way.

RP @ 281

Q) - How long did you live at the Currie Way address?

A) - I want to say about a month, I really do, 'cause it was beginning of the school year still when I had left.

So to look at all the testimony HMC could have lived in the house for a couple months or only a month this is classic inconsistent testimony from HMC.

Because of HMC's testimony about being scared was the reason she never told the Child Protection Services (CPS) about what Manuel is accused of doing to her is another reason why Foley should have argued to have the CPS worker testify:

RP @ 267

Q) Jones - Do you remember being interviewed by somebody from Child Protective Services or Child Welfare Services?

A) Hannah - Yes mam

Q) - Did you tell her anything?

A) - No, mam

Q) - Why not?

A) - I was scared.

Had Gwen Thompson been able to testify then she could have told the jury what HMC's reaction to any question she might of asked HMC.

HMC told the Court and jury that it happened twice or three times a week before she left for vacation:

RP @ 273

Q) - Now when you were living here at the -- the James street house. Hal and Marie's house -- and we're talking about the period before you went on vacation to Massachusetts. How often would you say the intercourse happened?

A) - Probably once, twice or three times a week. Somewhere it varied.

Q) - And where did this take place?

A) - When I first got there, above the garage. And then -- then back -- well, are we talking about before?

Q) - We're talking about before --

A) - Oh

Q) - you went on vacation.

A) - Okay. So I wasn't in the garage yet. So that was inside my bedroom.

MANUEL WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL

Manuels defense attorney (Foley) failed to object to the State admitting exhibits no. 4 and no. 5.

one was taken of jewelry that was removed and the other was of manuels penis with jewelry in penis. The second picture was / showed the piercing and showed plastic tubing going through penis. Never were there any pictures taken by any detective of manuels penis.

one of the photos that was taken was taken of ALL bars (piercings) removed from manuel to include navel, nipples, tongue, ear and penis. For a total of 11 bars along with being shown to the jury as being in a bag with a bio-hazard sign on the bag.

Foley should have objected to the photo because they were depicted as being a hazard.

Foley should have objected to the photo because it was not taken by the detective as the detective testified that it was. Put in truth the picture that was taken of the penis and bars was taken in Portland, Oregon at a salon called "Straight To The Point".

Foley should have objected under Evidence Rule 403 exclusion of relevant evidence on grounds of prejudice, confusion or waste of time.

Mr. Foley stated that he wanted to subpoena witnesses if the state was not going to subpoena them. But Mr. Foley failed to do so as he stated he would.

RP @ 96

Mr. Foley - Your honor, I beg to differ. She gave us an omnibus application. And there's a woman named Holly who was -- was the guardian of the alleged victim in this case. And we -- and the State intended to call her. They intended to call the officer who interviewed the alleged victim in this case, all at State's expense. If they're not going to call those people, then I have to subpoena them because I want them all here. So I'm going to have subpoena them and then make application to the Court to have you fly all of

them out here too. And this is -- and I -- and I -- I can't be sandbagged by this. I can't have the State say the day of trial we'll be flying Hannah out and she's not going to call any other witnesses, because all of these witnesses are essential to my case. And I was told in the omnibus that the State was calling them.

As Foley stated that these witnesses were essential to the case but he failed to subpoena and or make application to have these essential witnesses to testify.

Mr. Foley was ineffective when at the January 11, 2010 hearing when on record Mr. Foley admits that he does not know what a witness for the defense is going to testify to.

RP @ 103

Ms. Jones - No, your honor. Just that the State will be objecting to any evidence from the Oregon CPS as being collateral.

Mr. Foley - Well we don't even know what they're going to say, so how can we know if it's collateral?

On 25 January 2010 Mr. Foley again admits that he's not prepared when he stated on the record:

RP @ 110

... I'm -- I'm sorry. Mr. Manuel is locking at more than 20 years in prison. He's entitled to a proper defense.

Again Mr. Foley states on record that he's not prepared to go to trial for lack of preparation as stated:

RP @ 120

... And we have a right to have a -- if the State's going to bring evidence of the examination of this woman's vagina, we have a right to have an independent examination. We have a right to prepare. I'm -- I'm at a loss to know whether this person's even an expert. It's not a doctor. It's someone with a nursing degree. I don't even know if it's an RN or LPN, or what their background is. And

I don't know if that's even admissible, or whether she qualifies as an expert...

Foley failed to object to the amended information that the State presented. Knowing that he was not prepared to defend Manuel against these charges.

RP @ 125

Mr. Foley - and your honor, we would acknowledge receipt of the first amended information, waive formal reading of the information, waive any further advisement of rights, and ask that the court enter pleas of not guilty to all four counts.

Mr. Foley failed to call prospective jurors 21 and 37 to be questioned outside the presence of the other jurors when the court asked.

SRP @ 107

The Court - Not a problem. Okay, I'm going to now turn to the attorneys and ask is there anyone else since we've gone through this process that they've had a chance to go through their list and feel that we need to inquire?

Ms. Jones - Not from the State, your honor.

Mr. Foley - No, your honor.

But in fact Mr. Foley failed to call juror 21 and 37 when they had responded positively to question number three, "Now this is a related type of question. Do any of you have a close friend or a relative who had an experience with a similar or related type of case or incident? Once again Sex Offenses". All right 4, 19, 21, 27, 31, 41 -- 38, I have 27, thanks where am I? 37, 47, 50, 56, 61, 62, 66, 65, 71 --

Where in fact neither prospective juror was questioned privately by either attorney. So in fact it is unknown as to why they raised their card in response to that question.

Subsequently, both prospective jurors were seated on the jury. This is to say then, had Foley questioned

these jurors, they could have been excused for cause or Mr. Foley could have used one of the peremptory challenges. But because Mr. Foley failed to do so both could have shown bias with the other jurors.

The jurors were seated:

SRP @ 146

The Court - yes sir, thank you. Juror number 21, seat four; Juror 23, seat seven; Juror number 24, seat eight; Juror number 28, seat nine; Juror number 30, seat ten; Juror number 37, seat eleven; Juror number 39, seat twelve. Okay Mr. Hill, guess what seat you have?

Juror Number 44 - The hot one.

Foley failed to object to the State's opening statement when it referred to Jillian Rowback. Mr. Foley did not know anything about this person. Mr. Foley should have objected to any reference to Rowback because any reference would have been hearsay without the witness there to testify.

SRP @ 150

... She was interviewed by a forensic interviewer, a trained child interviewer by the name of Jillian Rowback.

Foley states that because the State has made comments on HMC's concern for sexually transmitted diseases he would ask about HMC's sexual history.

RP @ 180

... Ms. Jones has said there was a concern about sexually transmitted diseases. That opens the door to the woman's history; does she have a boyfriend, has she had sex with her boyfriend. Where is this concern for sexually transmitted diseases coming from? And right now we're prohibited from going into her sexual history. But if they bring in information about she has concerns about sexually transmitted diseases, we're going to have to go

into the fact that she was out partying with boys. so it shouldn't be allowed.

Again Foley states he is not prepared to go to trial.

RP @ 185

... And so here we are -- I mean really Mr. Manuel has a right to know, to have another expert read this report and look at the forensic interview, and do an examination of Holly (should have said Hannah) so that we can have the ability to defend ourselves against this report. And we didn't have that because of the States absolute sandbagging of us and late disclosure.

and the State came back with the fact that Foley had intended to call a yet un-named medical witness. Foley now complains that he was not prepared without that witness. But he had time to retain said witness for defense.

Foley failed to ever ask HMC if or why she thought she had a sexually transmitted infection (STI). With both Marchant and HMC's testimony he should have.

RP @ 204 and 205

Prosecutor - Describe for us if you would how the physical examination of Hannah progressed.

Marchant - I had mentioned earlier that Hannah had two concerns when she came forward to me. It is common, in my experience, for children to come forward and ask questions that they have never asked anyone else. Hannah's concerns were she was concerned that she might have a sexually transmitted infection. And she was looking to me to be able to answer that question for her

With the testimony of Parsons Marchant, Foley failed to ask HMC about the concerns in the spring of 2008
As referred to in:

RP @ 206

Marchant - ... Hannah had reported to me that there were two occasions the previous spring of 2008 where she had experienced -- she had noticed in her genital area patches of what she described as red raised sores. And these were very concerning to me and -- as a possibility of -- of indeed being a sexually transmitted infection...

Foley failed to object to the testimony of Parsons Marchant as being an opinion testimony when Parsons Marchant testified:

RP @ 208

Marchant - ... I want to tell you a little bit about a part of a female body that "I Think" is one of the least understood parts of the body. This area, and I'm going to color it in, represents the vagina...

Mr. Foley does object to this type of testimony as being narrative but does not object to it being an opinion testimony.

Foley should have objected to the question from the State to HMC when she had already stated that Manuel was the husband of Mary Jane her mother:

RP @ 260

Ms. Jones - Now you mentioned somebody by the name of Rene. Who is he?

Hannah Chquette - my moms husband.

Jones - O.K. I know this is going to sound like a silly question, but are you married to him?

Hannah - No.

Foley should have objected to the evidence, exhibit no. 6, as to the time the e-mail's were written. Had he looked at the date of the e-mail it would have been shown to have been in April of 2008 which was in the State of Oregon. This evidence should never have been

admitted, RP @ 284-288 and then again with exhibit no. 7, RP @ 288-291, and then again with exhibit no. 8 RP @ 291-292, and again with exhibit no. 9, RP @ 293-294, and again with exhibit no. 10, RP @ 294-295.

Foley should have objected to exhibits 13, 18, 20, and 24 that was evidence that was provided by Mary Jane from the computers where the chain of evidence, or custody of evidence was broken. Exhibits 22 and 23 are pictures that were taken off the computers also. These pictures were Manuel's penis and also should never have been entered into evidence. Had Foley objected to this then again count III and count IV would have been dismissed for lack of evidence. So if exhibits 7-10, 13-18, 20, 22-24 are removed then all the elements of the crime for count III would not be fulfilled and should be dismissed.

Foley had stated that if HMC or the State made testimony about HMC's desire to be checked for sexually transmitted infections (STI) that the State would open the door to questioning HMC about her boyfriends and if she had had sex with anyone.

RP @ 309

Q) Jones - Do you remember talking to the nurse about some concerns you had?

A) Hannah - Yes, ma'am.

Q) - what were you concerned about when you went and saw the nurse?

A) - I had had -- oh, god. This is embarrassing. I had had little bumps down there and I was -- I was scared that it was something. I thought it was --

Q) - Take a deep breath. You were scared that it was what?

A) - Herpes

Q) - Did they do testing?

A) - Yes, man.

Q) - And was it or was it not?

A) - It was but --

Foley acknowledged that he did understand the relevance behind the question because Foley objected and the court sustained. What Foley should have done was to write the question down and then ask Mary Jane and Manuel if they had or were being treated for Herpes. Because HMC testified that "It was but --", RP @ 309.

The trial attorney, Mr. Foley, was ineffective when he stated in open court:

RP @ 326

Foley - [A]nd then they came back and did a follow up interview. And I have to tell you that I'm not 100% sure what Gwen Thompson will tell us because the Oregon Attorney General's office has said, we have the subpoena with you, having an in camera review first.

Court - Okay, well then at this point I'm going to stop you.

Foley - Yeah

Court - Because if you're not quite sure what she's going to say, I think we have to wait to have this

Foley - Okay, we'll bring her up

Court - Because I don't want to make a decision today and find that it's based on something completely different

Foley - Okay

Quoting from State v. Fay, 116 Wn.2d 531, 548, 806 P.2d 1220 (1991): In State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (quoting Strickland at 687) if defense counsel's conduct can be characterized as legitimate trial strategy, it cannot serve as a basis for a claim of ineffective assistance of counsel. State

v. Mak, 105 Wn.2d 692, 731, 718 P.2d 407, Cert. denied, 479 U.S. 995 (1986) Failure to investigate or interview witnesses, or to properly inform the court of the substance of their testimony, is a recognized basis upon which a claim of ineffective assistance of counsel may rest. State v. Visitacion, 55 Wn.App. 664, 674-75, 754 P.2d 1255 review denied, 111 Wn.2d 1022 (1988); State v. Byrd, 30 Wn.App. 794, 799-800, 638 P.2d 602 (1981); State v. Jury, Wn.App. 256, 264, 576 P.2d 1302 review denied, 90 Wn.2d 1006 (1978).

So when Mr. Foley was instructed by the court that the CPS worker, Ms. Thompson, would not be able to testify for Manuel he was confused by the courts ruling as shown at:

RP @ 442

Court - That evidence is before the jury. Okay. And so I don't understand your theory as to why when you'd put up a CPS worker. And my concern obviously, is what I've indicated, is I think it would be -- context would be prejudicial.

Foley - To who? Both sides? [emphasis added]

Court - Both sides

Foley - I mean I guess -- you know, again, I'm at a loss

Court - I know you are, and I appreciate that.

THE PROSECUTIONS MISCONDUCT DENIED MANUEL A FAIR TRIAL

When the State questioned Correia about HMC's demeanor it opened the door to HMC's state of mind when she told Correia.

For what reason did HMC have a counselor when she lived there before?

RP @ 232

... and we contacted them, and we tried to contact Hannah's counselor that she had while she was living in Massachusetts before, and she directed us to another counselor...

Foley failed to object to Correia's testimony as being speculative when she stated:

RP @ 233

... when she came to - to - back to live? She was mature. I commented to my mom that she seemed very grown up. She wasn't the little kid that had gone out to the west coast anymore.

The State opened the door to HMC's attitude when HMC was questioned and answered that she was unhappy and was acting mean. That "they were angry with the way she was acting."

RP @ 274

Q) - Why were you sleeping in the garage?

A) - Because they were angry with the way I was acting.

Q) - How were you acting that made them angry?

A) - I was mad. I -- I didn't want to be back there. I didn't want to come back from Massachusetts. I just -- I wasn't happy and I was acting near I guess towards Pene.

Foley failed to question HMC about this. Then when Foley questioned both Ms. Heiser and Ms. Manuel about HMC's attitude towards everyone and Manuel the State argued that Ms. Manuel's state of mind was not a part

of this. Which in fact it wasn't but because HMC had testified, RP @ 274, this opened the door for testimony about HMC's attitude. The State objected to Ms. Heiser's testimony about HMC's attitude. RP @ 381.

By Mr. Foley:

Foley - So Ms. Heiser, when you said that Hannah had an attitude what kinds of things did she say to you that caused you to believe she had an attitude?

Jones - Objection, calls for hearsay.

Foley - It doesn't.

Court - Sustained.

Foley - can we have a side bar?

Court - Yes.

The witness and the jury were excused. This is when Mr. Foley tried to argue the hearsay of the testimony that Ms. Heiser was offering. Instead of using Evidence Rule 801(c) he should have argued 801(d)

RP @ 381-82

Foley - Your honor, 801(c) says hearsay is a statement other than one made by the declarant while testifying at the trial or hearing offered in evidence to prove the truth if the matter asserted. I don't care whether whatever Hannah said, we don't care whether it was true. It goes to this particular persons state of mind and the State inquiring about her state of mind. She said Hannah had an attitude, didn't she. She opened the door to this and its not hearsay its that simple.

Under Evidence Rule 801(d)(1) - Washington Practice, Evidence Law and Practice (2007) Evidence Fifth Edition Rules 701 to 802 (page 315) it states:

Statements which are not hearsay. A statement is not hearsay if -

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement,

and the statement is (i) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (ii) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (iii) one of identification of a person made after perceiving the person;

So in fact had Mr. Foley argued the fact that Ms. Heiser was around when she saw the attitude that HMC testified that she demonstrated towards the defendant and the alleged victims mother along with everyone else in the house then Mr. Foley could have proven to the Court it was not hearsay.

Again when Ms. Manuel tried to testify about phone calls she received from HMC prior to her return to Washington after visiting family in Massachusetts Ms. Manuel should have been able to testify about the context of those phone calls. HMC had already testified to the fact that she had called and that both Manuel and Ms. Manuel had called her. So the context of those phone calls would not be hearsay. Questions by Foley.

RP @ 396

Q) - Okay, and when she was back there, was she calling you frequently?

A) - She was calling anywhere between 10 and 20 plus times a day.

Q) - Okay, and did she say anything that caused you personally to have a concern?

A) - No

Q) - Okay. Now was there anything said in the first two weeks there from Hannah to you that caused you to have any kind of suspicion?

A) - No

Q) - Or worries?

A) - No

Q) - Okay. Did that change?

A) - It did

Q) - What happened?

A) - I received a phone call from her

Jones - Objection to the extent that this response involves hearsay, your honor.

Court - I would sustain that.

at this time the jury and witness are dismissed and Mr. Foley is going to argue as to why Ms. Manuel's testimony is not hearsay. But once again this falls under the Evidence Rule 801(d)(1). And clearly Mr. Foley was not proving to the court that Ms. Manuel would testify that HMC attitude had changed.

RP @ 247

Jones - There's been a concern raised by Hannah because of the defendant's past history of violence, not only with her mother but criminal convictions and his own threats to harm her. She's concerned that frankly there's no security in this courthouse or anywhere. She's concerned that he might be armed. And I'm going to ask the Court tomorrow to allow Detective Gardner to do a weapons frisk of the defendant prior to trial because I think it's appropriate, in any circumstance, given the security concerns that -- that we have, since we don't have any security to speak of.

When the State commented to the Judge of Manuel's past history of alleged violence after it was ordered that Manuel's past history was not to be disclosed. They could have put the thought into the court's mind that Manuel is a violent person which could have made the court rule differently on other objections.

When the State questioned both Marchant and Choquette about STI's without having evidence of tests that might have been conducted on Choquette. If the State did have test results and withheld them from

the trial attorney then this is in direct violation of Superior Court Criminal Rule 4.7(a)(1)(iv) it states in part:

[A]ny reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and scientific tests, experiments, or comparisons;

It was disclosed at pre-trial conference that if the State brought up the issue that HMC had been tested for any STI's then the trial attorney would explicit that HMC could have been sexual prior or post when Manuel is accused of the crimes against him. With the State having knowledge that HMC had been tested for STI's but did not disclose this to the trial is in direct violation with CrR 4.7(a)(1)(iv). Had the trial attorney known that HMC had been tested for any and all STI's then the trial attorney could of had Manuel and his wife, Mary Jane Manuel, tested for any and all STI's to dispute that neither Manuel or his wife had herpes as HMC disclosed when she was questioned by the State at RP @ 309.

Q)(Jones) - What were you concerned about when you went and saw the nurse?

A)(Hannah) - I had had -- oh God. This is embarrassing. I had had little bumps down there and I was -- I was scared that it was something i thought it was...

Q) - Take a deep breath. You were scared that it was what?

A) - Herpes.

Q) - Did they do testing?

A) - Yes nam.

Q) - And was it or was it not?

A) - It was but --

Now under CrR 4.7(b)(7) - Sanctions:

(i) - If at any time during the course of the

proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, dismiss the action or enter such other order as it deems just under the circumstances.

(ii) - willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

[amended effective September 1, 1986; September 1, 2005; September 1, 2007.]

Manuel requests that because the information was not disclosed that count I and count II be dismissed with prejudice. Manuel was ordered by the court to be tested for any and all STI which came back negative for herpes. This was done by Department of Corrections (DOC) when he became detained / confined to the DOC's custody on 23 March 2010.

So in fact the State would have withheld information and restricted Manuel from interviewing HMC had not the State requested a hard set start date for the trial.

Then the State again would not disclose who they intended to call until the Friday before the trial was scheduled to begin as Mr. Foley testified.

RP @ 107

... Friday afternoon I received an e-mail -- I haven't even received a hard copy of -- of a nurse expert -- alleged experts resume'. I get it Friday and I called up Ms. Jones and said what are you talking about? You can't do this the day before trial, give me an expert and give me their resume'...

When the State was asked about this out of state witness she discloses that the witness is in fact from Massachusetts so the number of out of state witnesses is not two as stated in the hearing on 11 January 2010

but in fact three out of state witnesses.

RP @ 109

Court - The hearing however that we had on January 11th about which witnesses the State would actually be calling from out of state -- is this an out of State witness?

Jones - It is . She's from Massachusetts, your honor. And what I said -- and its on page 4 (RP @ 96) -- is that that person may or may not be called... Now I understand that the Court wanted to have all the out of state witnesses here by today. But due to that particular witnesses professional schedule, we were not able to get her flown out until tomorrow and get her here and available for counsel to interview. So I understand that's not consistent with what the court wanted to see happen, but we've done the best we can with what her schedule allows for. But at no point in time did the State definitively tell defense that we were not calling that particular witness. State applied for funds shortly after this hearing and included her in that request for funds.

The State knew it was going to call Ms. Marchant but failed to give notice to Mr. Foley, as reflected on record.

RP @ 111

Court - Is this witness -- is her name Ann Parsons Marchant?

Jones - Marchant. Yes, your honor

Court - All right. I see an application for expenditure of public funds to allow the travel payments to be made. That was filed January 15th.

The State decided to amend the charges on January 26, 2010.

RP @ 125

Jones - The amended, your honor, was filed this morning.

But the State testified on January 11, 2010 that it had filed amended charges. With the State filing on the 26th this hindered the defense from preparing for those amended charges.

With the State not getting the witnesses to Washington on time as requested by the Court and with the State filing the amended charges on the eve of the trial. This made it impossible for the defense to prepare adequately.

RP @ 93

Jones - And again this is a case where we will need a hard set trial date. We have two out of town witnesses, one who will need to be have travel arrangements made from Texas, the other from Massachusetts. So --

Where in fact there were three out of state witnesses called. Two from Massachusetts and one from Texas. The two that were called were Holly Correia and Ann Parsons Marchant and from Texas was the alleged victim, HMC.

Along with the fact that it was disclosed 14 days before trial that HMC was no longer living in Massachusetts as expressed by the surprise from Mr. Foley.

RP @ 93

Foley - And who's coming from Texas? I thought there was three from Massachusetts you had listed in your omnibus.

Misconduct occurred many times which prohibited Manuel from developing a proper defense when the State would not disclose what witnesses it was going to call but would only state that they **May** call witnesses.

Where in fact the State state's in a hearing on January 11, 2010 that it **May** call two out of town witnesses.

It was misconduct when the State used the CrP 4.7(a)(1)(i) which states: And abuse of discretion when the court rules that the State **MAY CALL**.

Rule 4.7 - Discovery

(a) Prosecutors obligations.

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following material and information within the prosecuting attorneys possession or control no later than the omnibus hearing.

(i) The names and addresses of persons whom the prosecuting attorney **INTENDS** to call as witnesses at the hearing or trial, together with any written or recorded statement and the substance of any oral statements of such witnesses.

Because both the Court and the State abused the rule the defendant should have been granted a continuance.

Misconduct occurred when the State made a comment about a prospective juror would not show because that person might be in another court.

RP @ 160

Jones - I'll bet if we called down to District Court we could see where juror number 40 is

Court - Yes, all right, so did both parties get those? Do either of you want the Court to repeat those?

Foley - No, I got them.

Jones - I got them.

Court - Okay and we'll strike number 8 off our other list of people we wanted to inquire privately of. All right. Okay, we're going to select 13. And I believe we're ready then for the selection process. We're ready.

TRIAL COURT ABUSED ITS DISCRETION

The Court abused its discretion when it closed the courtroom to the public which deprived Manuel a public trial. The Court states that jurors will be interviewed in private. The Court did not ask the State nor Manuel if they agreed to this. So in fact Manuel was denied a public trial.

RP @ 154

Court - Well I anticipate that we'll be having people --- we'll be calling them, you know in **privately** and the rest in the hallway and that this will be a long selection process.

RP @ 160

Court - Okay. And we'll strike number 8 off our other list of people we wanted to inquire **privately** of. All right. Okay, we're going to select 13 and I believe we're ready then for the selection process. We're ready.

The Court again abused its discretion when it had ruled that 14 jurors would be selected but then only selected 13. The ruling of selecting 14 was agreed to by both the State and Manuel as stated:

RP @ 124

Court - Okay. All right all right. Then with that I was thinking of selecting 13, but should we have 14 jurors?

Jones - It might not hurt

Court - Any input on that Mr. Foley?

Foley - No, your honor.

Court - Jurors, okay. All right. We do have a fairly bit panel coming in. The Court requested a large panel, given the length of time and the nature of this case. All right. And has there been an amended information filed, or do we have the original information?

Then the Court decided without consulting with the State or Manuel when it was decided that only 13

jurors would be selected:

RP @ 160

Court - Okay. And we'll strike number 8 off our other list of people we wanted to inquire privately of. All right. Okay, we're going to select 13. And I believe we're ready then for the selection process. We're ready.

SRP @ 55

Court - ... In today's case and in many criminal cases, the Court will require that we select 13 jurors. And the 13th juror is an alternate juror. And the reason we do that is occasionally during a case which goes for a few days, unexpectedly a juror gets ill or gets called away...

The Court abused its discretion when it stated alleged acts which might have occurred in Oregon as if they had.

RP @ 138

Court - I just have a couple questions regarding the offer of proof. These are incidents that occurred -- can you tell me timing? The offer of proof the State would make regarding when the incidents occurred in Oregon that you are alleging to get in versus what occurred in Washington.

It shows that the Court assumed that in fact the alleged acts that occurred in Oregon did in fact happen which at said time Manuel had not been charged or convicted of any of the same type of crimes as charged in Washington.

Then it abused its discretion when it stated that it would discuss off the record something that should stay on the record.

RP @ 141

... if you want to make a separate offer of proof at the time you have your witnesses here, we can discuss that off the record and the Court will then decide whether or not the Court needs to have an actual hearing where we put on each witness...

Stating that it would be done off the record would prevent Manuel from having access to that for any appeal.

The Court abused its discretion when it violated Manuels right to a public trial when it interviewed jurors number 3, 4, 7, 11, 12, 13, 14, 19, 21, 35, 38, 41, 47, 50, 60, 61, 65 and 70 in private as the Court stated:

RP @ 154

Court - Well I anticipate that we'll be having people --- we'll be calling them, you know, in **privately**, and the rest in the hallway. And that this will be a long selection process.

This was also stated to the jurors when, again, the Court addressed the prospective jurors.

SRP @ 58

Court - ...we do this outside the presence of the rest of the panel. And the reason we do that is so that anything that you say -- if you feel there's something that may prejudice you, we don't want to spread to the rest of the panel because we want to make sure that we have a fair and impartial trial.

The Court abused its discretion when it allowed all the testimony from the State as to instances that occurred in Oregon but when the trial attorney, Mr. Foley, requested to have a witness for the defense, a Ms. Gwen Thompson, it was denied its ruling that quote:

RP @ 444

Court - ...[B]ut beyond that anything in the documents, the majority that the Court finds were either not relevant or prejudicial. And keep in mind that this involves a situation that occurred in Oregon. And I believe the issue here, of course, as counsel for the State has -- and we have heard of instances in Oregon. And that would be what this evidence would be referencing, and not the conduct that occurred in Washington on which he's charged with.

The Court allowed all the States testimony from the alleged victim as to what had allegedly occurred in Oregon as being a matter of fact. In the Judges own words, on record, Judge Amber Finlay states that

testimony would be prejudicial to both parties. In essence the Judge decided that she would be the Judge and jury and not allow Manuel to present evidence that was prejudicial to the State. Who is to say what the outcome of the trial might have been had the jurors been allowed to hear the testimony of the witness for Manuel, a Ms. Gwen Thompson.

The Court abused its discretion when it neglected the requests by Manuel of the State to disclose all expenses asked to be reimbursed to the State and victim prior to the restitution hearing that was held 1 June 2010:

SRP @ 161-162

Manuel - Your -- your honor, the State has not presented me with any of the court costs, any of the attorney fees, any of the other costs that are going to be required to be paid by me. That was asked last time we were in court, to receive all documents the Court is asking for me to reimburse the State.

When in fact these items were not gone over as disclosed in:

RP @ 537-541

Court - "Okay. Court will also impose standard legal financial obligations, and will adopt the appendix on the pre-sentence investigation that set forth the terms of the community placement that are required, which includes the mandatory conditions and other conditions that are required for Mr. Manuel to follow...

It was not disclosed as to what dollar amount that Manuel was required to pay.

When Manuel requested to view his central file with the Department of Corrections was the first time he knew of some of the dollar amounts. Manuel also contends that the CP 20, 36, 43, 54, 58, 64, 80, 82, 84, 87, 89, 91, 104 and 106 were placed on the Judgment and sentence but was never disclosed on record as to the amount or as to what they are for.

Because it was never disclosed and Manuel requested that this all be resolved at the restitution hearing held on June 1, 2010 and was denied. Manuel requests that all financial obligations be dismissed with prejudice except for the CP 141 (order establishing amount of restitution of \$487.50).

The Court abused its discretion when it ruled to allow testimony of alleged acts that occurred in Oregon even though said acts, the Court states that they, are **unduly prejudice**. Where in the jury instruction it is still stated that these acts did occur:

RP @ 148

Court - Okay, all right. So in that case I find this unduly prejudiced. Obviously it does open her up to the cross examination of Mr. Foley and the introduction of whether or not she -- ...

The Court abused its discretion when it put in place the "Rape Shield" which prevented Manuel from his constitutional right to confront witnesses.

State v. Johnson, 90 Wn.App. 54, 67-70, 950 P.2d 981 (Wn.App. Div.II 1998) which states:

A defendant's right to impeach a prosecution witness with evidence of bias or a prior inconsistent statement is guaranteed by the constitutional right to confront witnesses. Davis v. Alaska, 415 U.S. 308, 316-18, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). State v. Dickenson, 48 Wn.App. 457, 469, 740 P.2d 312 (1987) Thus, any error in excluding evidence is presumed prejudicial and requires reversal unless no rational jury could have a reasonable doubt that the defendant would have been convicted even if the error had not taken place. Davis, 415 U.S. at 318; State v. Fitzsimmons, 93 Wn.2d 436, 452, 610 P.2d 893, 18 ALR 4th 690 (1980); Dickenson 48 Wn.App. at 470.

Dickenson, 48 Wn.App. at 466-67 states that [Washington uses the following test for determining whether statements are inconsistent:

"Inconsistency is to be determined, not by individual words or phrases alone, but by the whole impression or effect of what has been said or done. On a comparison of the two utterances are they

in effect inconsistent? Do the two expressions appear to have been produced by inconsistent beliefs?"

CONCLUSION

When you look at Manuel's Statement of Additional Grounds (SAG) Manuel shows that the hearings, and the trial along with the sentencing was a miscarriage of justice towards Manuel.

With Manuel showing Prosecutorial Misconduct by the Attorney for the State, Rebecca Jones, when she withheld discovery information that would have proven Manuel had not ~~Raped~~ HMC as HMC claims. If the State would have disclosed that HMC had been tested for STI's as Manuel has shown through the record. Then Manuel could have prepared for that by having himself and his wife/sexual partner, Ms. MaryJane Manuel tested and proven that neither of them are positive for **HERPES**.

Had the State again not conducted Prosecutorial Misconduct as shown on record by not adhering to the CrR 4.7 but infact manipulated the wording to fit their desired needs by stating the they "**MAY**" call instead of "intend" to call as the correct wording should have been. Then Manuel would have known the exact witnesses the State intended to call as witnesses and would have had the witnesses to rebut the States witnesses. Buu infact the Attorney for the State played a word game so Manuel was not afforded the right to prepare properly.

When the State did not allow Manuel to interview the Medical expert witness until the morning the trial started even though the State was instructed by the Court that the witnesses for the State must be avilable to interview the Monday before the trial was to start. Along with the fact that the State withheld the experts resume' until the Friday before the trial week. This also prevented Manuel from preparing proper defense.

When you look at how the Court would not allow a witness to testify for Manuel. The Court Abused it's Descretion when it ruled that the testimony from that witness would

be prejudicial to both parties. When that was decided it was taken away from the jury to decide if it is infact prejudicial to both parties. Because the testimony of this witness was not preserved to be reviewed by the Court of Appeals it is unknown by everyone except for the Trial Court as to the exact content of that testimony. The Court removed that option when it released the witness for Manuel and did not preserve the "In Camera Testimony"

To look at the evidence that the State presented regarding the computer there are only two ways to look at it. One being that the two Detectives that testified that allowed Ms. Manuel to access information so that they knew what to ask the Washington State Patrol Computer Crime unit to look for. Themselves not being quillified experts to deal with the computer or to put in place the proper safeguards to preserve what information was accessed or where that information came from. Then you must accept that the all evidence including the computers are tainted evidence and must be excluded. Along with the testimony from the computer expert Detective Taylor. If you are to believe that the evidenced was not accessed which is not what the two witnesses for the State testified to. Then you must conclude that the testimony of those two witnesses can be nothing but perjured testimony. With it being that that part of the testimony is perjured then the whole testimony should be concluded as being perjured. So infact the testimony in a whole should be excluded.

The representation that Manuel should have received fell way below the acceptable standard before the trial even started when James Foley, the Attorney for the defense, stated that he was not prepared, stated that he did not know what a witness would testify to. His lack of knowledge as to the Rules he should have argued. For Foley's lack of preperation for the trail. There were funds earmarked for the defense to use towards a medical expert and a computer expert that Foley failed to secure or even use. Those

funds were earmarked at CP57 and CP75 where the State even testified that they are "earmarked" (RP540@13) But Foley failed to do this which did not afford Manuel proper representation to the best of Mr. Foley's ability. Nowhere can it be shown that any of the errors Mr. Foley has done were of any tactical purpose. Manuel has shown that if Mr. Foley had not fallen below the acceptable expectation of representation, Manuel might have been fairly represented.

Through the record Manuel has shown that he was not given a fair and just trial that was open to the public. This was shown when not on one but many occasions the Court stated that the prospective jurors would be questioned privately. It was never asked if the State, Defense or of anyone that was in the court, that day, if they disagreed with the Court's ruling to do so in private. This is and was in direct violation of Manuel's Right to have a public trial.

Manuel has shown how testimony from the State's witness was a bias and opinion testimony when the State's witness referred to Manuel as being "for lack of a better term, almost **SMUG**" "the only words that come to mind were just a cavalier, kind of a **SMUG** attitude" "for lack of a better term, **COPPING** and attitude" Where Manuel was expected to act a certain way when being interviewed by the Detective. That because Manuel had shown that he was an intelligent that Manuel had no right to ask the Detective questions when Manuel asked them. Because the witness is not trained nor shown the Court that he is qualified as an expert as to the person's demeanor the testimony should not have been allowed. It presents false or opinionated testimony against Manuel.

Manuel has shown that the jury was not an impartial jury when the Court allowed Jurors #21 and #37 to be seated even though they had raised their card when asked, if they had friends or family members that were a victim of the crimes

Manuel was convicted of. What is to say that those Jurors did not influence the other members of the jury? Because of those two jurors what is to say that Manuel ever had a chance of a fair and just trial?

The pre-sentence report that was presented to the Court, that was prepared by Missy Farr should not have been allowed. Manuel had requested to have his attorney present before answering any questions that Missy Farr would have asked. This is afforded to Manuel by his Fifth Amendment Right to remain silent. Because Manuel invoked his right to remain silent, the States investagator reported that Manuel was "belligerent, sarcastic, refused to speak, lack of cooperation" When all that Manuel had done was to have his attorney present before he answered the reporters question. There for the pre-sentence report that was presented to the Trial Court was onesided and a bias report which should not have been used or allowed to be presented to the Trial Judge to concider when sentencing Manuel. The report that Missy Farr presented had multiple derogatory remarks on almost all the responcees that Ms. Farr submitted to be concidered for sentencing.

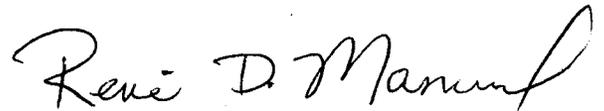
And finally Manuel was not allowed to dispute the amount of LFO's the State had submitted to the court. Manuel had requested to be heard regarding this matter when the restitution hearing was held but the Court said it had already addressed that issue when Manuel was senteced. The Court stated that the amount Manuel was required to pay was stated in open Court when manuel was sentenced, but infact the record shows that the only dollar amount that was stated was in the amount of \$99. No other dollar amount has ever been disclosed in open court for the record.

RELEIF SOUGHT

With all that Manuel has shown in his SAG, all that is on the record, all the errors, the ineffective counsel, the Prosecutorial misconduct, the Courts abuse of discretion, Manuel respectfully asks the Justices for the Court of Appeals Div. II grant him the following relief:

COUNT I Rape of a Child in the 2nd be dismissed with prejudice
COUNT II Child Molestation 2nd be remanded for new trial.
COUNT III Sexual Exploitation be dismissed with prejudice
COUNT IV Possession of Depictions of Minors Engaged in Sexually Explicit Conduct be dismissed with prejudice

Manuel hopes and prays that he will be granted the relief he seeks for the unjust he has been afforded.



Rene D. Manuel
DOC# 759310
Cedar Hall/ F02L
WCC
PO Box 900
Shelton, WA. 98584

